

SAU 39 Anti-Discrimination Plan



SAU 39
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Introduction

According to NH RSA 193:38, no person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in NH RSA 354-A.

SAU #39 and its School Districts (“District”) are committed to ensuring that all students and staff have equal access to participation in the benefits of the District. The purpose of this document is to provide a coordinated and comprehensive plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other class protected under state or federal law. It is the intent of the District that this plan shall be reviewed on *no less than a bi-annual basis* to ensure that it achieves the objectives set forth in NH RSA 193:38 and NH RSA 193:39. This Plan may be amended at any time to bring it into closer conformity with the law, or a change in the law.

This plan has been developed with the intent that it is in conformance with state and federal law, as well as the Board policies. Therefore, this plan should be interpreted in a manner consistent with the law and Board policies. To the extent this plan may deviate in any way from Board policies, the policies shall govern. To the extent that any Board policies deviates from the law, the law shall govern.

Notifications:

Notification of Antidiscrimination Policies

Under New Hampshire law and Board policy **AC Non-Discrimination, Equal Opportunity Employment and Anti-Discrimination Plan**, no person shall be excluded from, denied the benefits of, or subjected to discrimination in the District’s public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin or any other classes protected under RSA 354-A (including one’s creed). Discrimination, including harassment, against any student in the District’s education programs, or against a District employee, based on any of the above classes or a student’s creed, is prohibited. Finally, there shall be no denial to any person of the benefits of educational programs or activities, on the basis of any of the above classes, or economic status.

Board policy **ACAC, Title IX Sexual Harassment Policy and Grievance Process** specifically governs the reporting, investigation, and resolution of complaints of discrimination and/or harassment on the basis of sex. Discrimination on the basis of disability is governed by Board policy **ACE Procedural Safeguards: Non-Discrimination on the Basis of Handicap/Disability** and Board policy **KED Facilities or Services – Grievance Procedure (Section 504)**. Harassment of students other than on the basis of any of the classes or categories listed above is prohibited under Board policy **JICK Pupil Safety and Violence Prevention**.

Equal Employment & Prohibition Against Discrimination in Employment

The School District and SAU 39 is an Equal Opportunity Employer. The District and SAU ensures equal employment opportunities without regard to age, color, creed, disability, gender identity, marital status, national origin, pregnancy, race, religion, sex, or sexual orientation. The District and SAU will employ individuals who meet the physical and mental requirements, and who have the education, training, and experience established as necessary for the performance of the job as specified in the pertinent job description(s).

Discrimination against and harassment of employees because of age, sex, race, creed, religion, color, marital status, familial status, physical or mental disability, genetic information, national origin, ancestry, sexual orientation, or gender identity are prohibited, and the procedures outlined herein are available to employees experiencing discrimination and/or harassment to the same extent they are available to students. Additionally, the District and SAU will not discriminate against any employee who is a victim of domestic violence, harassment, sexual assault, or stalking.

See policy AC – Non-Discrimination Equal Opportunity Employment and Anti-Discrimination Plan; see also Public Law 90–202, The Age Discrimination in Employment Act of 1967.

Notice Regarding the Rights of Parent/Guardians of Children with Disabilities

There are certain safeguards guaranteed to children and their families by Public Law 94-142, The Education for All Handicapped Children Act of 1975, and Section 504 of Public Law 93-122, The Vocational Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act, reauthorized 2004.

The District and SAU will ensure that all students with a handicap or disability are provided all necessary procedural safeguards as are required by law. Such procedural safeguards are found in pertinent federal and state laws and regulations.

The District shall take measures to ensure that its Section 504 Grievance process, Notice of Section 504 Procedural Rights, including the right to request an impartial Section 504 hearing and file a complaint, are accessible to Parents, guardians, and adult students. At Section 504 Plan meetings, the 504 Coordinator shall disseminate this information to the parent, guardian, or adult student.

Finally, all staff, students, parents/guardians, and other interested persons will be provided the New Hampshire Department of Education Procedural Safeguards Handbook with regard to their protections under the Individuals with Disabilities Education Act, which is available at the following link:

https://www.education.nh.gov/sites/g/files/ehbemt326/files/inline-documents/2020-04/procedural_safeguards_handbook.pdf (last accessed May 27, 2021).

See Board policy ACE Procedural Safeguards: Non-Discrimination on the Basis of Handicap/Disability, Board Policy KED Facilities or Services – Grievance Procedure (Section 504).

Prohibition of Discrimination, Harassment, and Violence

General Statement of Policy

Under New Hampshire law and Board policy **AC Non-Discrimination, Equal Opportunity Employment and Anti-Discrimination Plan**, no person shall be excluded from, denied the benefits of, or subjected to discrimination in the District's public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other class protected by NH RSA 354-A. Discrimination, including harassment, against any student in the District's education programs, on the basis of any of the above classes, or a student's creed, is prohibited. Finally, there shall be no denial to any person of the benefits of educational programs or activities on the basis of any of the above classes, or their economic status. The District will act to investigate all complaints, either formal or informal, verbal or written, of harassment or discrimination and to discipline or take appropriate action against any pupil, teacher, administrator, or other school personnel who is found to have violated this policy.

Procedures for filing a written complaint are outlined within this document.

Discrimination and Harassment Defined

Harassment generally includes, but is not limited to, physical contact, violence, or verbal statements relating to an individual's race, color, religion, gender identity, sexual orientation, national origin, age, disability, or actual or perceived status in any group protected by federal, state, or local law when the conduct:

1. Has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment.
2. Has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance, or
3. Otherwise adversely affects an individual's employment of academic opportunities.

Discrimination is the unjust or prejudicial treatment of an individual on the basis of their race, color, religion, gender identity, sexual orientation, national origin, age, disability, or actual or perceived status in any group protected by federal, state, or local law. Discrimination may include but is not limited to:

1. Harassing conduct that is physical, verbal, graphic, or written.
2. Injury to persons or property.
3. Conduct threatening injury to person or property.
4. Deprivation of access to a program or benefit for other than a legitimate, nondiscriminatory reason.

Sexual Discrimination / Harassment Defined (See Policy ACAC)

Discrimination and/or harassment on the basis of sex violates Title IX of the Education Amendments of 1972 and RSA 193:38. It is the policy of the School District to maintain a learning and working environment that is free from sexual harassment and violence. The School District will not tolerate any form of sexual discrimination, sexual harassment, or sexual violence. **See Board policy ACAC – Title IX Sexual Harassment Policy and Grievance Process.**

“**Sexual harassment**” prohibited under Title IX and by District policy *is conduct on the basis of sex* (including, without limitation, sex, sexual orientation, and/or gender identity), occurring in a school system education program or activity that satisfies one or more of the following:

1. A school district employee conditioning an aid, benefit, or service of an education program or activity on an individual’s participation or refusal to participate in sexual conduct irrespective of whether the conduct is welcomed by the student or other employee;
2. Unwelcome sex-based/related conduct determined by a reasonable person to be so severe, pervasive, **AND** objectively offensive that it effectively denies a person equal access to the education program or activity (this standard requires consideration of all the facts and circumstances, including, but not limited to, the ages and disability statuses of the harasser and victim and the number of individuals involved and their authority); **OR**
3. Sexual assault, dating violence, domestic violence, or stalking as defined in state or federal law.

Behaviors that constitute sexual harassment may include, but are not limited to:

- Sexually suggestive remarks or jokes;
- Verbal harassment or abuse;
- Displaying or distributing sexually suggestive pictures, in whatever form (e.g., drawings, photographs, videos, irrespective of format);
- Sexually suggestive gesturing, including touching oneself in a sexually suggestive manner in front of others;
- Harassing or sexually suggestive or offensive messages that are written or electronic;
- Subtle or direct propositions for sexual favors or activities;
- Touching of a sexual nature or groping; and
- Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct.

Racial Discrimination / Harassment Defined

Racial discrimination and/or harassment in public schools violates Title VI of the Civil Rights Act of 1964 and RSA 193:38. Racial discrimination/harassment is present if a person is treated differently on the basis of race, color, or national origin in the context of an educational program or activity without legitimate nondiscriminatory reason so as to interfere with or limit the ability of the person to participate in or benefit from the services, activities, or privileges provided by the recipient.

Racial discrimination/harassment may include, but is not limited to, the following:

1. Treating an individual unfavorably because of their race, national origin, and/or skin color complexion;
2. Treating an individual unfavorably because the person is married to or associated with a person of a certain race or color;
3. Harassing conduct that is physical, verbal, graphic, or written, including the use of racial slurs, offensive or derogatory remarks about a person's race or color, or the display of racially offensive symbols;
4. Injury to persons or property; or
5. Conduct threatening injury to a person or property.

Racial discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Reporting

Complaint and Reporting Procedures

Any person who believes that he or she has been discriminated against, harassed, or bullied in violation of Board policy by any student, employee, or other person under the supervision and control of the school system, or any third person who knows or suspects conduct that may constitute discrimination, harassment, or bullying, should contact the District Human Rights Officer, or otherwise as provided in the policies.

Any employee who has witnessed, or who has reliable information that another person may have been subjected to discrimination, harassment, or bullying in violation of policy has a duty to report such conduct to his/her immediate supervisor, the District Human Rights Officer, or as provided in one of the policies or administrative procedures referenced below. Additionally, employees who observe an incident of harassment or bullying are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator, and it is safe to do so. If an employee knows of an incident involving discrimination, harassment, or bullying and the employee fails to report the conduct or take proper action or knowingly provides false information in regard to the incident, the employee will be subject to disciplinary action up to, and including, dismissal.

Investigations and resolution of any complaints shall be according to the policies below, as well as related administrative procedures or regulations.

1. Reports or complaints of sexual harassment or sexual violence (whether it be by students, employees, or third-party contractors) should be made and resolved under Board policy ACAC.
2. Reports or complaints of discrimination on the basis of disability should be made and resolved under Board policy ACE and/or KED, except for complaints regarding facilities accessibility

by disabled non-students or employees, which should be made and resolved under Board policy KED.

3. Reports or complaints of bullying or other harassment of pupils which do not relate to the pupil's age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other class protected by NH RSA 354-A, should be made and resolved under Board policy JICK. ***Whenever the District receives a report of bullying or harassment under JICK, the investigator or other responsible individual under these policies is encouraged to assess whether the bullying or harassment involves a pupil's actual or perceived membership in a protected class so that the matter may be resolved under the appropriate policy.***

Any other complaints or reports regarding matters not covered in one or the other of those policies, but involve an individual's age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other class protected by NH RSA 354-A, should be made to the District Human Rights Officer and should follow the procedures set forth below.

Filing the Complaint Form

Upon receipt of a complaint or report of discrimination or harassment, the complainant shall be asked to fill out the Complaint form attached as **Appendix A**. In filling out said form, the following instructions apply:

1. The complaint shall be signed by the complainant;
2. Shall describe in detail the specific incident(s), occurrence(s), decision(s), and other factual matters believed to constitute unlawful discrimination, harassment, or retaliation;
3. Shall name as the respondent(s) the individual, department, committee, or other body whom the complainant believes to have engaged in prohibited behavior; and
4. Shall include a brief statement describing the resolution, relief, or action requested by the complainant; and
5. Someone other than the complaining party can write the complaint if necessary.

Investigation Procedures

The building principal or superintendent, upon receipt of a report or complaint alleging discrimination and/or harassment (either verbal or written) shall immediately undertake or authorize an investigation. Subject to any applicable policy, the investigation may be conducted by the Building Principal, District's Human Rights Officer, Title IX Coordinator, 504 Coordinator or by a third party designated by the Superintendent or designee.

Title IX, the IDEA and Section 504 have specific processes for complaints and grievances which are explicitly set forth in both law and District Policy. When not more specifically addressed in another Board policy, the investigation should generally involve the following procedures:

1. The investigation, at a minimum, will consist of personal interviews with the complainant, 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 including retrieval and review of documents deemed pertinent by the investigator.
2. In determining whether alleged conduct constitutes a violation of this policy, the investigation should consider the surrounding circumstances, the nature of the behavior, past incidents or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires an objective determination based on all the facts and surrounding circumstances.
3. In addition, the principal, assistant superintendent or superintendent may take immediate steps consistent with state and federal law to protect the complainant, pupils, teachers, administrators, or other school personnel pending completion of an investigation of alleged discrimination/harassment.
4. The investigation will be completed as soon as possible, but within 20 business days of the date the complaint was received by the District, the superintendent will update the complainant and respondent on the progress of the investigation.
5. The investigator shall make a report to the Superintendent upon completion of the investigation.
6. If the complaint involves the Superintendent, the report may be filed directly with the School Board Chair.

There shall be the right for either party to request the Superintendent to reconsider decisions made with respect to the outcome of an investigation. Except for complaints under policies Title IX, and the IDEA, there is also the right to appeal the final decision of the Superintendent to the School Board, unless a corresponding District policy does not explicitly grant such a right. The complaining party may, at any time, pursue the matter through other state agencies or through the United States Department of Education, Office for Civil Rights.

Informal Resolution

Because of the personal nature of disclosures concomitant with making or responding to accusations of discrimination/harassment, the District will seek to support complainants and respondents who desire to resolve a complaint informally (in lieu of or before commencing formal proceedings).

Informal resolutions may be attempted by taking the opportunity to utilize facilitated mediation with a neutral party (e.g. HR Department Representative) This step is not mandatory and will require the consent of both complainant and respondent. Informal resolution is not available under Title IX for a complaint by a student against a staff member. Under no circumstances will the District suggest mediation where a complaint or report involves harassment of a student by a District employee.

Disciplinary Actions

Upon receipt of an investigation report which indicates that the complaint is valid, the Superintendent shall determine the appropriate disciplinary action if the individual(s) against whom the complaint is filed is an employee. Disciplinary action shall be appropriate to the severity of the discrimination/harassment and may include warning, referral of an employee to the Employee Assistance Program, suspension, or termination. Please note that the timing of a disciplinary decision may be different in the case of a Title IX complaint.

If a substantiated complaint is filed against a student, the building principal shall determine the appropriate disciplinary action. Parents shall be notified consistent with policies dealing with discipline and due process procedures. Disciplinary action shall be appropriate to the severity of the discrimination / harassment and may include warning, suspension, or recommendation to the superintendent for potential expulsion.

The results of the investigation and the disciplinary action taken will be reported in writing to the complainant by the principal within ten (10) working days following the receipt of the investigation report, which validated the complaint.

In all instances involving certified staff members, a substantiated complaint will result in the Superintendent immediately notifying the Department of Education's Office of Credentialing.

Alternative Complaint Procedures and Legal Remedies

At any time, whether or not an individual files a complaint or report pursuant to District policies, an individual may file a complaint with the Office for Civil Rights ("OCR"), of the United States Department of Education, or with the New Hampshire Commissioner for Human Rights.

1. **Office for Civil Rights, U.S. Department of Education**, 5 Post Office Square, 8th Floor, Boston, MA 02109- 3921; Telephone number: (617) 289-0111; Fax number: (617) 289-0150; Email: OCR.Boston@ed.gov

Note: Complaints to OCR must be filed in writing no later than 180 days after the alleged act(s) of discrimination. OCR may waive its 180 day time limit based on OCR policies and procedures.

2. **New Hampshire Commission for Human Rights**, 2 Industrial Park Drive, Concord, NH 03301; Telephone number: (603) 271-2767; Email: humanrights@nh.gov

Notwithstanding any other remedy, any person may contact the police or pursue a criminal prosecution under state or federal criminal law.

Retaliation

No reprisals or retaliation of any kind will be taken by the Board or by any District employee against the complainant or other individual on account of his or her filing a complaint or report or participating in an investigation of a complaint or report filed and decided pursuant to this policy. Actions taken in response to materially false statements made in bad faith, or to submitting materially false information in bad faith, as part of a report or any investigation do not constitute retaliation.

False Claims of Non-Discrimination/Non-Harassment

The school district recognizes that not every advance or communication based on race, color, religion, gender identity, sexual orientation, national origin, disability, age or actual or perceived status in any group protected by federal or state law constitutes discrimination or harassment. Whether a particular action or incident is a personal, social relationship without a discriminatory/harassing employment or classroom learning effect requires a determination based on all the facts and surrounding totality of circumstances. False accusations of discrimination and/or harassment can have a serious detrimental effect on innocent parties and may result in disciplinary action.

Assessment and Prevention

It is important that all students and employees understand what constitutes discrimination and harassment and their right to report unwelcome behavior. Administration will educate those within their building regarding this policy annually and should be watchful for behavior which fits the description of discrimination or harassment. Employees who witness such behavior as a third party have a responsibility to report it.

Students will be provided age-appropriate education about discrimination and harassment on a regularly recurring basis through the District's social emotional learning curriculum, health/wellness curriculum, and/or anchoring adult/advisory program. Education will also occur on an as-needed basis from building leadership.

In addition, a required staff training plan will be developed each year to ensure staff receives appropriate training in all required areas. A combination of online training through platforms such as Primex and Frontline will be utilized in addition to live training during staff meetings and professional development time.

Finally, the District shall exercise care to regularly monitor the overall climate of its schools to determine whether there exists a culture which perpetuates discrimination and/or harassment in violation of District policies. In doing so, the District's Human Rights Officer will compile data from all complaints and analyze whether there exists patterns or practices which indicate a discriminatory or harassing environment. If the District has reason to believe that such an environment exists, it will take the appropriate steps to provide remedial action, which may include but is not limited to additional education to students and/or staff, disciplinary action, etc.

This plan will be approved by the SAU Board and posted to the SAU 39 Website.

Appendix A - Discrimination / Harassment Complaint Form

If you have experienced or been threatened physically or sexually with assault, harm, or injury, notify 911 immediately.

Directions:

Please fill out this form if you believe you have experienced or witnessed an act of discrimination, harassment (including bullying and other behaviors that lead to a hostile work environment), or retaliation. Please see pages 3-7 for information on different types of discrimination, harassment, or retaliation.

You may submit this form electronically or by hard copy to a trusted supervisor, administrator, or the Human Resources department. If you prefer to submit a complaint verbally, you may do so by contacting any of the previously mentioned staff members. If you prefer to submit this complaint anonymously, please mail to 1 School Street, Amherst, NH 03031 or send through interoffice mail to: Human Rights Officer – SAU Office.

Whether or not you file a complaint with SAU 39, you also have the right to file a complaint with an external agency. These include:

- **Office for Civil Rights: U.S. Department of Education**; 5 Post Office Square, 8th Floor, Boston, MA 02109-3921; Telephone - 617-289-0111; Email - _OCR.Boston@ed.gov
- **N.H. Commission for Human Rights**, 2 Industrial Park Drive, Concord 0330, Telephone - 603-271-2767; Email – humanrights@nh.gov
- **N.H. Department of Justice, Civil Rights Unit**; 33 Capitol Street, Concord, NH 03301; Telephone – 603-271-1181
- **N.H. Department of Education, Commissioner of Education**; 101 Pleasant Street, Concord, NH 03301, Telephone – 603-271-3494; Email - info@doe.nh.gov

For additional information, please see: ***Policy AC – Nondiscrimination***

Harassment, Discrimination, or Retaliation Complaint Form

What type of complaint are you filing?

(Choose all that apply, please see definitions at end of form)

Discrimination (check all that apply)

- Age
- Creed
- Disability, presence or perception of
- Gender
- Gender Identity Gender identity
- Genetic information
- Marital status
- Military status
- National origin
- Pregnancy
- Race/ethnicity/color
- Religion
- Sexual orientation
- Other (please explain):

Harassment

- Hostile Work Environment
- Retaliation
- Sexual Harassment
- Other (please explain):

Please include any information that you are able to and/or comfortable including.

Please describe what happened. The more information and details you are able to provide, the more helpful it will be in our ability to follow-up. The type of information that is helpful includes: dates, times, locations, witnesses, and any details you are able to provide about the event(s), incident(s), and/or behavior(s). If you have included your name, the Office of Human Resources may follow up with you for more information.

Is there anything else you would like the Office of Human Resources to know?