

**Merrimack School District/SAU 26
School Board Meeting
Preliminary Agenda
August 9, 2021
Merrimack Town Hall – Matthew Thornton Room**

NON-PUBLIC SESSION – Matthew Thornton Training Classroom

6:00 p.m. Staff Welfare

PUBLIC MEETING

7:00 p.m. **1. CALL TO ORDER and PLEDGE OF ALLEGIANCE**

7:15 p.m. **2. PUBLIC PARTICIPATION**

3. RECOGNITIONS

7:10 p.m. **4. INFORMATIONAL UPDATES**

1. Superintendent Update
2. Assistant Superintendent for Curriculum Update
3. Assistant Superintendent for Business Update
4. School Board Update
5. Student Representative Update

7:20 p.m. **5. OLD BUSINESS**

1. Terms to Accept the \$34,848.32 Grant
2. Health and Safety Task Force Update

*Matt Shevenell
Everett Olsen*

7:40 p.m. **6. NEW BUSINESS**

1. First Reading of Title IX Sexual Harassment Policy and Grievance Process (ACAC)
2. K-6 Enrollments
3. House Bill 2 Prohibitive Practice

*Melissa Gagne
Everett Olsen
Everett Olsen*

8:20 p.m. **7. APPROVAL REQUESTS**

1. July 26, 2021 Minutes
2. Educator/Administrator Resignations
3. Educator/Administrator Nominations

*Cinda Guagliumi
Kimberly Yarlott
Kimberly Yarlott*

8:30 p.m. **8. OTHER**

1. Committee Reports
2. Correspondence
3. Comments

8:40 p.m. **9. PUBLIC COMMENTS ON AGENDA ITEMS**

8:45 p.m. **10. ADJOURN to Non-Public Session**

Cinda Guagliumi

* These times are estimates and may vary depending on discussion.

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

The definition of “Sexual Harassment” is found in Section II.B of this Policy. Instructions for making a report or complaint of sexual harassment are found in Section II.J.1. The “Title IX Grievance Process” is Section III, and the procedure for filing a formal complaint to initiate the grievance process is found in Section III.A

I. RESTATEMENT OF POLICY PROHIBITING DISCRIMINATION ON THE BASIS OF SEX.

Per Board policy AC, Title IX of the Education Amendments Act of 1972 (“Title IX”), as well as RSA 193:38, among others, the District does not discriminate on the basis of sex in its educational programs and activities, including employment and admissions. All forms of sex-based discrimination, including sexual harassment are prohibited in the District.

II. TITLE IX SEXUAL HARASSMENT POLICY.**A. Application of This Policy**

While all forms of sex-based discrimination are prohibited in the district, the purpose of this policy is to address, and only to address, *sexual harassment as defined in Title IX and Sec. II.B*, below, that occurs within the educational programs and activities of the district, and to provide a grievance process for investigating and reaching a final determination of responsibility for a formal complaint of sexual harassment. The “Title IX Grievance Process” is set out in Sec. III below. While the District must respond to all “reports” it receives of sexual harassment, the Title IX Grievance Process is initiated only with the filing of a formal complaint.

The purpose of this Policy, however, is to address, and only to address, sexual harassment as defined in Title IX that occurs within the educational programs and activities of the district. For harassing conduct which does not meet the definition of sexual harassment under Title IX and this Policy, the District’s response will be governed under other applicable laws and policies per Board policy AC, and policies referenced therein.

This Policy shall apply to all students, employees, and any third party who contracts with the District to provide services to District students or employees, upon District property or during any school program or activity.

Nothing in this policy will be construed to confer on any third party a right to due process or other proceedings to which student and employee respondents are entitled under this policy unless such right exists under law. Volunteers and visitors who engage in sexual harassment will be directed to leave school property and/or be reported to law enforcement, the NH Division of Children, Youth and Families (DCYF), as appropriate. A third party under the supervision and control of the school system will be subject to termination of contracts/agreements, restricted from access to school property, and/or subject to other consequences, as appropriate.

The Superintendent shall have overall responsibility for implementing this Policy, and shall annually appoint a District Title IX Coordinator as that position is described in Section II.C, below.

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**B. Definitions.**

As used in this Policy and the Title IX Grievance Process, the terms below shall have the meaning ascribed.

“Actual knowledge” occurs when the District’s Title IX Coordinator or ANY employee of one of the District’s schools (other than a “respondent” or alleged harasser) receives a notice, report or information or becomes aware of sexual harassment or allegations of sexual harassment.

“Complainant” is an individual who is alleged to be the victim of conduct that could constitute sexual harassment, whether or not that person files a report or formal complaint.

“Days” shall mean calendar days, but shall exclude non-weekend days on which the SAU office is closed (e.g., holidays, office-wide vacations), or any weekday during the school year on which school is closed (e.g., snow days).

“Decision Maker” means persons tasked with: the responsibility of making initial determinations of responsibility (at times referred to as “initial decision maker”); or the responsibility to decide any appeal (at times “appeals decision maker”) with respect to formal complaints of sexual harassment in accordance with the Title IX Grievance Process.

“Determination of Responsibility” is the formal finding by the decision-maker on each allegation of Sexual Harassment contained in a Formal Complaint that the Respondent did or did not engage in conduct constituting Sexual Harassment Under Title IX.

“Formal Complaint” means a document filed by a complainant, the complainant’s parent/guardian, or the Title IX Coordinator, alleging sexual harassment against a respondent, and requesting that the district investigate the allegation of sexual harassment.

“Respondent” is an individual who is reported to be the individual accused of conduct that could constitute sexual harassment.

“Sexual harassment” prohibited under Title IX and by this policy *is conduct on the basis of sex* (including, without limitation, gender, 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:

- i. Sexually suggestive remarks or jokes;

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- ii. Verbal harassment or abuse;
- iii. Displaying or distributing sexually suggestive pictures, in whatever form (e.g., drawings, photographs, videos, irrespective of format);
- iv. Sexually suggestive gesturing, including touching oneself in a sexually suggestive manner in front of others;
- v. Harassing or sexually suggestive or offensive messages that are written or electronic;
- vi. Subtle or direct propositions for sexual favors or activities;
- vii. Touching of a sexual nature or groping; and
- viii. 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.

Note: incidents of the above conduct would still need to satisfy one or more of the criteria in paragraphs 1-3 of this definition.

Sexual harassment may be directed against a particular person or persons, or a group, whether of the opposite sex or the same sex.

The context of behavior can make a difference between conduct falling within the technical definition of Sexual Harassment Under Title IX, and conduct of a sexual nature that is offensive or hostile in itself, but which does not arise to the level within that definition. **District policies prohibit both, but for purposes of its Title IX obligations the District must address reports or complaints of conduct which may constitute sexual harassment as defined above, under this specific, limited scope Policy and Title IX Grievance Process.** Except as used in other laws (e.g., Title VII) or policies (e.g., Board policy JICK) pertaining to harassment, including of a sexual nature, other than Title IX sexual harassment, all references to “sexual harassment” in this policy mean sexual harassment that meets the above definition.

Conduct that satisfies this definition is not sexual harassment for purposes of this policy if the conduct occurred (1) outside the United States or (2) under circumstances in which the school system did not have substantial control over both the harasser/respondent and the context in which the harassment occurred.

NOTE Regarding Concurrent Enrollment and Dual Enrollment, Extended Learning Opportunities, 3rd Party Distance Learning and Other Alternative Instructional Programs: Under federal regulations, in order for the District to have jurisdiction over conduct that would otherwise meet the definition above of sexual harassment, the District must have substantial control over both the respondent and the context in which the harassment occurred. In general, this will mean that unless such learning program is occurring upon district property, conduct otherwise meeting the definition of sexual harassment within that program, may not be subject to this policy.

“Supportive Measures” are free, non-disciplinary, non-punitive, individualized services and shall be offered to the complainant, and may be offered to the respondent, as appropriate. These measures may include, but are not limited to, the following:

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1. Counseling;
2. Course modifications;
3. Schedule changes; and
4. Increased monitoring or supervision
5. School Resource Officer (in accordance with the Merrimack School District Memorandum of Understanding (MOU))
6. Social Emotional Learning Measures
7. System of Care and Learning Supports

Such measures shall be designed to restore or preserve equal access to the District's education programs and activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment and/or deter sexual harassment. Supportive measures shall remain confidential with exclusive exceptions stated required in Sec. II.E, below.

C. Title IX Coordinator.

The Title IX Coordinator shall respond promptly to all general reports as well as formal complaints of sexual harassment. the Title IX Coordinator shall receive general and specific reports of sexual harassment, and coordinate the District's responses to both reports and formal complaints of sexual harassment so that the same are prompt and equitable. In addition to any other specific responsibilities assigned under this Policy, or as assigned by the Superintendent, the Title IX Coordinator will be responsible for:

1. meeting with a complainant, and informing the parent/guardian once the Title IX Coordinator becomes aware of allegations of conduct that could constitute sexual harassment as defined in this Policy;
2. identification and implementation of supportive measures;
3. signing or receiving formal complaints of sexual harassment;
4. engaging with the parents/guardians of parties to any formal complaint of sexual harassment;
5. coordinating with District and school-level personnel to facilitate and assure implementation of investigations, and remedies, and helping to assure that the District otherwise meets its obligations associated with reports and complaints of sexual harassment;
6. coordinating with the Superintendent with respect to assignment of persons to fulfill the District's obligations, both general and case specific, relative to this Policy (e.g., investigator, decision makers, etc.; this may involve the retention of third party personnel.);
7. coordinating with District and school-level personnel to assure appropriate training and professional development of employees and others in accordance with Sec. II.D of this Policy; and
8. helping to assure that appropriate systems are identified and maintained to centralize sexual harassment records and data.

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In cases where the Title IX Coordinator is unavailable, including unavailability due to a conflict of interest or other disqualifying reason (see Sec. II.G, below), the Superintendent shall assure that another person with the appropriate training and qualifications is appointed as acting Title IX Coordinator for that case, in such instances "Title IX Coordinator" shall include the acting Title IX Coordinators.

D. Training.

All District employees shall receive regular training relative to mandatory reporting obligations, and any other responsibilities they may have relative to this Policy.

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the definition of sexual harassment, this Policy, the scope of the District's education program or activity, and how to conduct an investigation (including the requirements of the reporting and the Title IX Grievance Process, including hearings, appeals, and information resolution processes). The training must also include avoiding prejudgment of the facts, conflicts of interest and bias.

Decision-makers must also receive training on issues of relevance of questions and evidence, including when questions about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes, must promote impartial investigations and adjudications of formal complaints of sexual harassment, and must be made available to the public as provided in Sec. II.H of this Policy.

E. Confidentiality.

The District will respect the confidentiality of the complainant and the respondent as much as possible, however, some information may need to be disclosed to appropriate individuals or authorities. All disclosures shall be consistent with the District's legal obligations and the necessity to investigate allegations of harassment and take disciplinary action. Examples of required disclosure include:

1. information to either party to the extent necessary to provide the parties due process during the Title IX Grievance Process;
2. information to individuals who are responsible for handling the District's investigation and determination of responsibility to the extent necessary to complete the District's grievance process;
3. mandatory reports of child abuse or neglect to DCYF or local law enforcement (per Board policy JLF);
4. information to the complainant's and the respondent's parent/guardian as required under this Policy and or the Family Educational Rights and Privacy Act ("FERPA"); and
5. reports to the New Hampshire Department of Education as required under N.H. Code of Administrative Rules Ed 510 regarding violations of the NH Code of Conduct for Education Professionals.

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Additionally, any supportive measures offered to the complainant or the respondent shall remain confidential to the extent that maintaining such confidentiality would not impair the ability of the school district to provide the supportive measures.

Except as specified above, the District shall keep confidential the identity of:

1. Any individual who has made a report or complaint of sex discrimination;
2. Any individual who has made a report or filed a formal complaint of sexual harassment;
3. Any complainant;
4. Any individual who has been reported to be the perpetrator of sex discrimination¹;
5. Any respondent; and
6. Any witness.

Any supportive measures provided to the complainant or respondent shall be kept confidential to the extent that maintaining such confidentiality does not impair the ability of the District to provide the supportive measures.

F. Retaliation Prohibited.

Retaliation against any person who makes a report or complaint, or against any person who assists, participates, or refuses to participate² in any investigation of an act alleged in this Policy is prohibited. 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 during the Title IX Grievance Process do not constitute retaliation. A finding of responsibility alone is insufficient to conclude that a person made a materially false statement in bad faith. Complaints of retaliation with respect to reports or formal complaints of sexual harassment shall be filed under the District's general grievance process.

G. Conflict of Interest.

No person designated as a Title IX Coordinator, investigator, decision-maker, nor any person designated by the District to facilitate an informal resolution process, may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

H. Dissemination and Notice.

The District shall include in all student and employee handbooks, and shall make *publicly available on the district's website* the following information:

1. The District's policy of non-discrimination on the basis of sex (included in Board policy AC).
2. the title, name, office address, email address, and telephone number of the Title IX Coordinator (to be provided pursuant to Board policy AC and its addendum, updated annually, ACE;
3. the complaint process;
4. how to file a complaint of sex discrimination or sexual harassment;

¹ 34 CFR 106.71 (a).

² 34 CFR 106.71 (a).

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5. how the District will respond to such a complaint; and
6. a statement that Title IX inquiries may be referred to the Title IX Coordinator or to the Assistant Secretary for Civil Rights.

The same information shall be provided to all persons seeking employment with the District, or seeking to enroll or participate in the District's educational programs or activities.

Additionally, the District will make this Policy, as well as any materials used to train personnel as required under Sec. II.D *publicly available on the district's website*.

I. Records and Record Keeping.

1. For each report or formal complaint of sexual harassment, the District, through the Title IX Coordinator, must create, and maintain for seven (7) years, record of:
 - a. Any actions, including any supportive measures,
 - b. The basis for the District's conclusion that its response was not deliberately indifferent; and
 - c. Documentation which:
 - If supportive measures were provided to the complainant, a description of the supportive measures taken designed to restore or preserve equal access to the District's education program or activity; or
 - If no supportive measures were provided to a complainant, explains the reasons why such a response was not clearly unreasonable in light of the known circumstances.
2. In addition, the District shall maintain the following records for a minimum of seven (7) years:
 - a. Records for each formal complaint of sexual harassment, including:
 - Any determination regarding responsibility, including dismissals;
 - Any disciplinary sanctions imposed on the respondent;
 - Any remedies provided to the complainant designed to restore or preserve equal access to the District's education program or activity;
 - Any appeal and the result therefrom;
 - Any informal resolution process and the result therefrom;
 - b. All materials used to train Title IX Coordinators, investigators, and decision-makers.

J. Reports of Sexual Harassment, Formal Complaints and District Responses.**1. Report of Sexual Harassment.**

NOTE: *A report does not initiate the formal Title IX Grievance Process. That process is begun only upon the filing of a formal complaint under the procedures set out in II.J.3, and III.A, below.*

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Any person may report sexual harassment whether relating to her/himself or another person. **However, if any District employee – other than the employee harasser, or the Title IX Coordinator – receives information of conduct which may constitute sexual harassment under this Policy, s/he shall, without delay, inform the Title IX Coordinator** of the alleged sexual harassment. Failure to report will subject the employee to discipline up to and including dismissal.

A report of sexual harassment may be made at any time, in person, by mail, by telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Additionally, while the District strongly encourages reports of sexual harassment to be made directly to the Title IX Coordinator, the report may be made to **any** District staff member, including, for instance, a counselor, teacher or principal.

If the Title IX Coordinator is the alleged respondent, the report or formal complaint may be made directly to the Superintendent, who shall thereafter fulfill the functions of the Title IX Coordinator regarding that report/complaint, or delegate the function to another person.

NOTE: For any allegation of sexual assault on a student under the age of 18, such conduction shall be reported immediately to the DCYF per Board policy *JLF*. If the alleged respondent is a person holding a license or credential from the New Hampshire Department of Education (i.e., "credential holder"), then a report shall also be made pursuant to the requirements of Ed 510 (Code of Conduct).

2. District Response to Report of Sexual Harassment.

The district will promptly respond when there is actual knowledge of sexual harassment, even if a formal complaint has not been filed. The district shall treat complainants and respondents equitably by providing supportive measures to the complainant and by following the Title IX Grievance Process prior to imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator may also offer supportive measures to the respondent.

As soon as reasonably possible after receiving a report of alleged sexual harassment from another District employee or after receiving a report directly through any means, the Title IX Coordinator shall contact the complainant to:

- i. discuss the availability of and offer supportive measures;
- ii. consider the complainant's wishes with respect to supportive measures;
- iii. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- iv. explain to the complainant the process for filing a formal complaint.

3. Formal Complaints.

Pursuant to federal regulations, and this Policy, a formal complaint that contains an allegation of sexual harassment and a request that the District investigate the allegations is required before the District may conduct a formal investigation of sexual harassment or take any action (other than supportive measures) against a person accused of sexual harassment. **Once a formal complaint of sexual harassment is received by the Title IX Coordinator, s/he shall commence the Title IX**

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Grievance Process set out in Sec. III below. The process for filing a formal complaint is set forth in Sec. III.A.

4. Limitation on Disciplinary Action.

In no case shall the District impose disciplinary consequences or sanctions against a respondent who has been accused of conduct which may constitute sexual harassment, until the Title IX Grievance Process has been completed.

5. Emergency Removal and Administrative Leave.

At any point after receiving a report or formal complaint of sexual harassment, the Title IX Coordinator (or other District official charged with a specific function under this Policy or the Title IX Process: e.g., investigator, decision maker, etc.) may request the Superintendent to direct that an individualized safety and risk analysis be performed to determine whether a respondent student is an immediate threat to the physical health or safety of any person. In the event that the safety and risk analysis determines that the respondent student does present an immediate threat to the physical health and safety of any person, the District may remove that student, provided that such removal is in full compliance with the IDEA, a student's IEP and or 504 plan if applicable. Such emergency removal shall not be disciplinary. However, the District must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal, and shall continue to offer educational programming until a final determination is made pursuant to the Title IX Grievance Process.

The Title IX Coordinator shall keep the Superintendent of Schools informed of any employee respondents so that he/she can make any necessary reports to New Hampshire Department of Education in compliance with applicable administrative rules and the New Hampshire Code of Conduct for Educational Professionals. In appropriate cases, the Superintendent may place an employee respondent on non-disciplinary administrative leave pursuant to RSA 189:31.

III. TITLE IX GRIEVANCE PROCESS.

The Title IX Grievance Process is used only upon the filing of a formal complaint of sexual harassment as described in Sec. III.A, below. The provisions of Section I of the Policy are incorporated as part of the Title IX Grievance Process. Upon receipt of a formal complaint of sexual harassment, the Title IX Coordinator will coordinate the District's efforts to comply with its responsibilities related to the Title IX Grievance Process.

A. Process for Filing a Formal Complaint of Sexual Harassment.

The Title IX Grievance Process is initiated by way of a formal complaint ("complaint" or "formal complaint") filed by the complainant, the complainant's parent/guardian, or the Title IX Coordinator. The complainant may file a complaint or choose not to file a complaint and simply receive the supportive measures. If the Complainant does not file a complaint, the Title IX Coordinator may sign a formal complaint, but only if initiating the grievance process against the respondent is not clearly unreasonable in light of the known circumstances, and in other cases where, in the exercise of good judgment and in consultation with the District's attorney as appropriate, the Title IX Coordinator determines that a grievance process is necessary to comply with the obligation not to be deliberately indifferent to known allegations of sexual harassment (e.g., reports of sexual assault, employee on student harassment, repeat reports, or the conduct in the complainant's report has not been adequately resolved through the provision of supportive measures). If the complaint is filed by the Title IX

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Coordinator, he/she is not a party to the action, and the District must comply with all of the provisions of the Title IX Grievance Process relative to respondents and complainants.

If no formal complaint is filed by the complainant or the Title IX Coordinator no disciplinary action may be taken against the respondent based upon conduct that would constitute sexual harassment under this policy.

Although there is no time limit per se to filing a formal complaint, for complaints initiated by the complainant or his/her parent/guardian, the complainant must be employed by the District or participating in or attempting to participate in the education program or activities of the District at the time of filing. Additionally, although the District will initiate the Title IX Grievance Process regardless of when the formal complaint is submitted, delays in reporting may significantly impair the ability of school officials to investigate and respond to the allegations.

At a minimum, a formal complaint must:

1. contain the name and address of the complainant and the student's parent or guardian if the complainant is a minor student;
2. describe the alleged sexual harassment,
3. request an investigation of the matter, and
4. be signed by the complainant or otherwise indicate that the complainant is the person filing the complaint.

The complaint may be filed with the Title IX coordinator in person, by mail, or by email. Complaint forms may be obtained from the Title IX Coordinator *or on the District and school websites*.

B. Initial Steps and Notice of Formal Complaint.

1. The Title IX Coordinator will provide notice to the complainant and the complainant's parent/guardian (if the complainant is a non-eligible student under FERPA), and to the respondent (if known) and the respondent's parent/guardian (if the respondent is a non-eligible student under FERPA), as well as to any other known parties, of the following:
 - a. this Title IX Grievance Process, including any informal resolution process;
 - b. the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview; "sufficient details" shall include to the extent known identities of persons involved, the conduct allegedly constituting sexual harassment, and the date and location of the incident;
 - c. a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
 - d. that each party may have an advisor of their choice, who may be, but is not required to be, an attorney (the advisor must be at least 18 years of age);
 - e. that each party is entitled to inspect and review evidence; and

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- f. a reference to any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
2. The Title IX Coordinator will contact the complainant to discuss and offer supportive measures.
3. The Title IX Coordinator may contact the respondent to discuss, and or impose, non-disciplinary supportive measures.
4. The Title IX Coordinator will examine the allegations in the formal complaint, to determine whether even if assumed true, the allegations are sufficient to sustain a finding of sexual harassment under this Policy. If the Title IX Coordinator was not involved with preparing the formal complaint, the Title IX Coordinator will contact the complainant to discuss the complaint and whether amendment is appropriate, in which case the process of Sec. III.C.4 will apply.
5. If the formal complaint fails to satisfy the definition of sexual harassment in this Policy, the complaint shall be dismissed as provided in Sec. III.G, below.
6. If the complaint is not dismissed, then Title IX Coordinator will consult with the Superintendent as to whether the Title IX Coordinator should act as the investigator or whether a different District or other employee shall act in that capacity. At the same time, the Title IX Coordinator and the Superintendent shall appoint the person who shall make the initial determination of responsibility (initial decision maker). In all cases, the investigator and the initial decision maker must be properly trained and otherwise qualified (see Sec. II.D "Training", and Section II.G "Conflict of Interest").
7. If the report alleges sexual harassment by the Superintendent, the Title IX Coordinator will inform the School Board Chair and Human Resources *Manager*, the latter of whom shall have authority to seek guidance from the District's general counsel, but shall not delay the District's response to the report as outlined in this Policy.

C. General Provisions and Additional Definitions Relative to Title IX Grievance Process.

1. Copies and Notices. Except as specifically stated elsewhere in this Policy, for any document, information or material required to be delivered to a party or to a person assigned with responsibility under the Title IX Grievance Process, the manner of transmittal may be by electronic mail, regular mail or such other manner reasonably calculated to assure prompt delivery with evidence thereof (such as a commercial carrier or other receipted delivery). Hand delivery will only be permitted if made to the District official charged with the specific function under this Policy (e.g., Title IX Coordinator, Superintendent, investigator, decision maker(s), etc.). Any document required to be delivered to a minor or other non-eligible student, must also be delivered to the minor's parent/guardian. Copies should also be sent to a party's advisor if the information for the advisor has been previously communicated to the sending party. (Under federal regulations, copies of the investigative evidence, as well as the investigative report, must be forwarded to a party's advisor. See Sections III.E.3, and III.E.4).
2. Risk Analysis and Emergency Removal. At any point during the Title IX Grievance Process, the Title IX Coordinator may arrange for an individualized safety and risk analysis as described in Sec. II.J.5, following which a student may be removed.

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3. Administrative Leave. At any point during the Title IX Grievance Process, the Superintendent, and at his/her own discretion, and with or without consulting the Title IX Coordinator, may place an employee on administrative leave pursuant to RSA 189:31.
4. Additional Allegations. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that were not included in the previous notice, the District shall simultaneously provide notice of the additional allegations to the parties whose identities are known.
5. No Interference with Legal Privileges. At no point in process will the Title IX Coordinator, the investigator, any decision maker, or any other person participating on behalf of the District, require, allow, rely upon, or otherwise use questions or evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege (e.g., doctor/patient, attorney/client, clergy, etc.), unless the person holding such privilege (parent/guardian for minor student) has waived the privilege in writing to use the information with respect to the Title IX Grievance Process.
6. Consolidation of Complaints. The District may consolidate formal complaints of allegations of sexual harassment where the allegations of sexual harassment arise out of the same facts or circumstances and the formal complaints are against more than one respondent; or by more than one complainant against one or more respondents; or by one party against the other party. When the District has consolidated formal complaints so that the grievance process involves more than one complainant or more than one respondent, references to the singular "party", "complainant", or "respondent" include the plural, as applicable.
7. Remedies: Range of Disciplinary Sanctions and Remedial Actions Upon Final Determination of Responsibility.
 - a. "Disciplinary sanctions" are consequences imposed on a respondent when s/he is found responsible for sexual harassment under this Policy. Remedial actions are actions intended to restore or preserve a complainant's equal access to the educational programs and activities of the District.
 - b. "Disciplinary sanctions" against an employee respondent may include any available sanction available for the discipline of employees, up to and including dismissal or non-renewal for any other violation of Board policy, NH Code of Conduct for Educational Professionals, applicable individual or collective bargaining contract, or state or federal laws or regulations.
 - c. "Disciplinary sanctions" against a student may include any available discipline or sanction, up to and including expulsion, under the policies, rules and procedures that establish the district's comprehensive student code of conduct.
 - d. "Remedial actions" as to a respondent after a final finding of responsibility, whether employee or student, may include the imposition upon a responsible respondent of any additional non-disciplinary measures appropriate to effecting a remedy for sexual harassment, and may include such measures as no-contact requirements, scheduling adjustments, removal or exclusion from extracurricular activities, class reassignments, limits on future class registrations, restrictions on access to various spaces in the school buildings, reassignment of attendance, and similar measures fine-tuned to respond

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appropriately to the circumstances surrounding a successful complainant's right to access the district's program and activity.

Additional remedial actions may include recommendations that a school-wide or system-wide response is needed in order to respond to the sexual harassment in a way that is not clearly unreasonable under the circumstances. In such cases, the Superintendent shall provide additional staff training, harassment prevention programs, or such other measures as determined appropriate to protect the safety of the educational environment and/or to deter sexual harassment.

D. Timeframe of Grievance Process.

The District shall make a good faith effort to conduct a fair, impartial grievance process in a timely manner designed to provide all parties with a prompt and equitable resolution. It is expected that in most cases, the grievance process will be concluded through at least the determination of responsibility decision within 80 days after filing the formal complaint. In more complex cases, the time necessary to complete a fair and thorough investigation or other circumstances mean that a determination of responsibility cannot reasonably be made within that timeframe.

1. Summary of Grievance Process Timeline.

- a. Investigation 20 +/- days as the complexity of the case demands (Sec. III.E.1)
- b. 10 days for reviewing information prior to conclusion of investigation
- c. 10 days after receiving report to respond to report
- d. 10 days for decision maker to allow initial questions
- e. 10 days for responses to questions
- f. 10 days for questions and responses to follow-up questions.
- g. 10 days for determination of responsibility decision
- h. 10 days for appeal (6 additional days for administrative steps)
- i. 10 days for argument/statement challenging or supporting determination
- j. 10 days for decision on appeal

2. **Delays and Extensions of Time.** At any stage of the grievance process, the District (through the Superintendent, or if the Superintendent is the respondent, the Title IX Coordinator or designee) may for good cause allow for temporary delays or extensions of time upon request of either party, or on his/her own initiative. Examples of good cause may include such things as availability of parties or witnesses, school or school administrative office holidays or vacations, referral back to an earlier stage of the grievance process, concurrent law enforcement or other agency activity, or need to obtain interpreters or accommodation of disabilities. For any such delay or extension of time, the Superintendent or the Title IX Coordinator will provide written notice to the parties of the delay/extension and the reason(s).

E. Investigation.

The Title IX Coordinator will coordinate the investigation. The investigator shall be as appointed pursuant to Sec. III.B.5.

1. The Title IX Coordinator may conduct the investigation, or, in consultation with the Superintendent, designate another qualified person to investigate. The investigation and investigator must:

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

- a. Include objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. (Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is offered to prove consent.)
 - b. Ensure that the burden of proof (and the burden of gathering evidence sufficient to reach a determination) regarding responsibility rests on the District and not on either of the parties;
 - c. Provide an equal opportunity for the parties to present witnesses, and other inculpatory and exculpatory evidence;
 - d. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;
 - e. Provide the parties with the same opportunities to have others present during any interview or other part of the investigation, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The investigator may restrict any others from participating, as long as the restrictions apply equally to both parties;
 - f. Provide, to a party (e.g., respondent or complainant – and parent/guardian as appropriate) whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate within the timeframes established in Sec. III.D, below.
 - g. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint;
2. Prior to completion of the investigative report, the District, through the Title IX Coordinator, must send to each party and party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;
 3. The investigator must prepare a written investigative report that summarizes without bias, relevant evidence, including, without limitation, witness credibility, discrepancies, inculpatory and exculpatory information, and relevant District policies, rules and regulations, and the manner in which the same were made known to the pertinent school populations or specific parties. The investigative report shall include a description of the procedural steps taken, starting with the receipt of the formal complaint, and continuing through the preparation of the investigative report, including any notifications to the parties, interview with parties and witnesses, site visit, and methods used to gather evidence.
 4. The investigator shall provide the investigative report in hard copy or electronic format to the Title IX Coordinator, to each party and each party's advisor, if any. Each party will have 10 days from receipt to provide the Title IX Coordinator a written response to the investigative report.
 5. It serves all parties when investigations proceed diligently and conclude within a reasonable time, which may vary case by case. In most cases, it is expected that the investigator will conclude the initial investigation and provide the parties the evidence and other information required under

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

Sec. III.E.2. Not more frequently than every other week, any party may request the Title IX Coordinator to obtain and provide the parties with a basic status report on the investigator's progress toward completion (the status report may be given orally or in writing). In most cases, the investigator should conclude the investigation within 10-20 days after receiving a Formal Complaint.

F. Determination of Responsibility and Initial Decision Maker.

The determination of responsibility of the respondent shall be made by the initial decision maker as appointed pursuant to Section III.B.5.

1. Prior to making a determination of responsibility, the initial decision maker will afford each party 10 days to submit written, relevant questions to the initial decision maker that the party wants asked of any party or witness.
2. The initial decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the question and evidence concern specific incidents of the complainants prior sexual behavior with respect to the respondent and are offered to prove consent. The initial decision maker may not make any credibility determinations based on the person's status as a complainant, respondent or witness.
3. The initial decision maker will provide the questions to the party/witness, with copies to each party, and provide no less than 10 days for written responses, likewise to be provided to each party.
4. The initial decision maker will provide 5 days each for supplementary, limited follow-up questions and 5 days for answers, and may provide for additional rounds of follow-up questions, as long as the provision is extended to both parties equally.
5. The respondent must be deemed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
6. The initial decision maker may impose disciplinary sanctions and remedies as described in Section III.C7, above.
7. The standard to be used for formal complaints in determining whether a violation has occurred and/or that the respondent is responsible is the preponderance of the evidence standard, which is only met when the party with the burden convinces the fact finder (the initial decision maker) that there is a greater than 50% chance that the claim is true (i.e., more likely than not).
8. The initial decision-maker must issue a written determination/decision within 10 days after the close of the period for responses to the last round of follow-up questions. The written "Initial Determination of Responsibility" must include:
 - a. Identification of the allegations potentially constituting sexual harassment;
 - b. A description of the procedural steps taken from the receipt of the formal complaint through the Initial Determination of Responsibility, including any notifications to the

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;

- c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of the District's applicable codes of conduct, policies, administrative regulations or rules to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility (i.e., whether or not the respondent is responsible for sexual harassment), and any disciplinary sanctions or remedies; and
 - f. The District's procedures and permissible bases for the complainant and respondent to appeal (as set forth in Section III.H, below).
9. The decision maker shall provide the Initial Determination of Responsibility to the Title IX Coordinator, the Superintendent and the parties simultaneously.

G. Dismissal of a Formal Complaint.

1. The District must dismiss a formal complaint with regard to Title IX sexual harassment if the alleged conduct:
 - a. Would not constitute sexual harassment, even if proved;
 - b. Did not occur in the District's education program or District sponsored activity; or
 - c. Did not occur against a person in the United States.
2. The District may dismiss a formal complaint with regard to Title IX sexual harassment if at any time during the investigation or determination of responsibility stage(s):
 - a. A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
 - b. The respondent is no longer enrolled or employed by the District; or
 - c. Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
3. Prior to dismissal of a complaint, the person responsible at that stage shall consult with the Superintendent.
4. Upon dismissal of a formal complaint, the District must promptly send written notice of the dismissal and the reason(s) therefor simultaneously to the parties.

The dismissal of a formal complaint under Title IX does not preclude the District from continuing any investigation or taking action under other District policies, code of conduct or administrative rules/regulations. In some cases, the District may have an obligation to continue an investigation and proceed under a different policy or mandated process.

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS**H. Appeals Process.**

1. Either party may appeal the Initial Determination of Responsibility or the dismissal of a formal complaint or any allegation in a formal complaint by notifying the Superintendent in writing (“written appeal”), with a copy to the Title IX Coordinator. If there are multiple determinations of responsibility, the written appeal shall specify which ones are included in the appeal. The written appeal must be received by the Superintendent within 10 days of the Initial Determination of Responsibility or written notice of dismissal being communicated to the parties.
2. An appeal under this Policy may only be based upon one or more of the following bases, which must be stated specifically in the party’s written appeal:
 - i. Procedural irregularity that affected the outcome of the matter;
 - ii. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
 - iii. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals for any other reason or upon any determination of responsibility not included in the written appeal will not be heard.

Appeals pertain only to the determination of responsibility and non-disciplinary remedies. Once a determination of responsibility is final per Sec. III.I, below, appeals of disciplinary sanctions may be made pursuant to the District’s ordinary review process for discipline, or, to the extent applicable, any statutory or other processes provided under collective bargaining agreements or individual contracts.

3. Within 3 days of receipt of the written appeal, the Superintendent shall appoint a decision maker for appeal (“appeals decision maker”),³ who must have adequate training as provided in Section II.D, be free from conflict of interest as provided in Section II.G, and may not be the same person as the initial decision maker, the person who ordered dismissal, the investigator(s), or the Title IX Coordinator. Upon the appointment of the appeals decision maker, the Superintendent shall provide a Notice of Appeal to each party and to the Title IX Coordinator, with a copy of the written appeal. The Notice of Appeal must include information about all deadlines and timeframes in the appeal stage.
4. Each party shall have 10 days from the date the Notice of Appeal is delivered to the parties to submit to the appeals decision maker a written statement, with copies to the Superintendent, Title IX Coordinator, and other party a statement (“appeal statement”) in support of, or challenging, the determination of responsibility or dismissal.
5. Each party shall provide copies of the appeal statement to the other party, the Superintendent, and the Title IX Coordinator at the same time the appeal statement is given to the appeals decision

³ Although the school board is not precluded from serving as a decision maker with respect to appeals, before it may do so, each member of the board must meet both the training and conflict of interest requirements described in Sections II.D and II.G. Such training may be provided on an as-needed basis, but because of necessary timelines, the framework will need to be in place long before a case is appealed.

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

maker. If the basis of the appeal is newly available evidence affecting the outcome, the party shall submit such evidence or a summary of such evidence along with the party's appeal statement.

6. The appeals decision maker may refer an appealed issue back to a prior point in the grievance process, with written notice to the parties, the Superintendent and the Title IX Coordinator.
7. The appeals decision maker shall provide a written appeals decision after considering the record and the parties' appeal statements. The appeals decision maker will only overturn the Initial Determination of Responsibility upon a conclusion that it was clearly erroneous (i.e., either made on unreasonable grounds, or without any proper consideration of the circumstances). If the basis or one of the bases for the appeal was new evidence, the appeals decision maker may either make a determination of responsibility regarding that evidence, or refer it back to the appropriate stage of the Title IX Grievance Process. The written appeals decision will describe the result(s) of the appeal and the rationale, with copies provided to the parties, Superintendent and Title IX Coordinator, no more than 10 days after receiving the last of the parties' written statements per Section III.H.5.

- I. Finality of Determination of Responsibility.** The determination regarding responsibility becomes final either on the date that the recipient, through the Superintendent, provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal of the Initial Determination of Responsibility would no longer be considered timely. The final determination shall be identified as the Title IX Decision.

Once the Title IX Decision is final, the District may implement remedies and disciplinary sanctions. The Title IX Coordinator is responsible for effective implementation of any non-disciplinary remedies, with the assistance of building and District administrative personnel, while disciplinary sanctions will be imposed by persons charged with such responsibilities under other Board policies, regulations or administrative procedures. The District may also proceed against the respondent or complainant pursuant to the District's applicable code of conduct or other Board policies, collective bargaining agreement, individual contract or administrative rules/regulations/procedures. The issue of responsibility for the conduct at issue shall not be subject to further review or appeal within the District.

J. Informal Resolution.

At any time prior to reaching a determination regarding responsibility (but only after the filing of a formal complaint), the District may offer an optional informal resolution process (e.g., mediation, arbitration), provided that the District:

1. Provides written notice to the parties disclosing:
 - a. The allegations of the formal complaint;
 - b. The requirements of the information resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to an informal final resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
 - c. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

TITLE IX SEXUAL HARASSMENT POLICY AND GRIEVANCE PROCESS

2. Obtains the parties' voluntary written consent to the informal resolution process; and

In no event may the District offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Legal References:

Title IX of the Education Amendments of 1972, 20 U.S.C 1681, et seq 20 U.S.C. §1232g, Family Educational Rights and Privacy Act
34 CFR. Part 99, Family Educational Rights and Privacy Act Regulations
34 CFR 106.8, Designation of responsible employee and adoption of grievance procedures.
34 CFR 106.30, Definitions
34 CFR 106.44, Recipient's response to sexual harassment
34 CFR 106.4, Grievance process for formal complaints of sexual harassment
34 CFR 106.71, Retaliation
RSA 193:38, Discrimination in Public Schools
NH Dept of Ed. Rules Ed 303.01 (i), School Board Substantive Duties
Ed 303.01(j), Substantive Duties of School Boards; Sexual Harassment Policy

Policy Reference: Memorandum of Understanding: Safe School Zones

Legal References Disclaimer: *These references are not intended to be considered part of this policy, nor should they be taken as a comprehensive statement of the legal basis for the Board to enact this policy, nor as a complete recitation of related legal authority. Instead, they are provided as additional resources for those interested in the subject matter of the policy.*

1st Reading: August 9, 2021

2nd Review:

Adoption:

Merrimack School District
K-6 Enrollments
As of August 4, 2021 (subject to change)

Mastricola Elementary School

Grade	Classrooms	Students per Classroom	Total Students
K	5	13, 13, 13, 13, 13	65
1	4	20, 19, 18, 19	76
2	4	21, 20, 21, 21	83
3	4	20, 20, 20, 20	80
4	3	24, 23, 23	70
			Total 374

Reeds Ferry Elementary School

Grade	Classrooms	Students per Classroom	Total Students
K	5	14-15	76
1	5	13-14	72
2	5	15-16	78
3	5	19-20	99
4	4	20-21	85
			Total 410

Thorntons Ferry Elementary School

Grade	Classrooms	Students per Classroom	Total Students
K	5	18, 17, 17, 17, 17	86
1	6	17, 17, 17, 17, 16, 16	100
2	6	17, 17, 17, 18, 18, 18	105
3	4	22, 20, 19, 19	80
3/4 Multi-Age	2	21, 20	41
4	3	22, 22, 23	67
			Total 479

Mastricola Upper Elementary School

Grade	Classrooms	Students per Classroom	Total Students
5	11	22, 22, 22, 22, 22, 23, 23, 23, 23, 23, 23	248
6	11	25, 25 26, 26, 26, 26, 26, 26, 26, 26, 26, 26	284
			Total 532

MERRIMACK SCHOOL DISTRICT
School Administrative Unit #26
36 McElwain Street
Merrimack, New Hampshire 03054
Tel. (603) 424-6200 Fax (603) 424-6229

KIMBERLY YARLOTT
Assistant Superintendent for Curriculum

EVERETT V. OLSEN, Jr.
Interim Chief Educational Officer

MATTHEW D. SHEVENELL
Assistant Superintendent for Business

To: All Staff

From: Everett V. Olsen, Jr.

Date: August 2, 2021

Subject: House Bill 2 Prohibited Practice

New Hampshire recently passed a Prohibited Practice Law (HB 2). Included in this law are section 297 and 298, "Right to Freedom from Discrimination in Public Workplaces and Education. This law applies to all New Hampshire public employees, including public school educators.

With this memo, I have included a link to the Frequently Asked Question document [FAQ link](#) issued by the New Hampshire Department of Education, Commission for Human Rights and Department of Justice. I have also summarized recommendations for educators that were prepared by Merrimack School District's Labor Counsel Kathleen Peahl.

I asked that you carefully review the Department of Education's document and the recommendations from Attorney Peahl. This law essentially codifies what we have been committed to in public education: respecting the civil and human rights and dignity of all students, staff and citizens. We will work closely together to comply with the law so that we have a productive, enjoyable school year.

Provisions Applying to Public School Educators

Schools and School Administrative Units are **NOT** permitted to “teacher, advocate, instruct, or train” any “employee, student, service recipient, contractor, staff member, inmate, or any other individual or group” on the following:

1. That people of one age, sex, gender identify, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin, are inherently superior or inferior to people of another age, sex, gender identify, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin;
 2. That an individual, by virtue of his or her age, sex, gender, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin is inherently racist, sexist, or oppressive, whether consciously or unconsciously;
 3. That an individual should be discriminated against or receive adverse treatment solely or partly because of his or her age, sex, gender identify, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin; or
 4. That people of one age, sex, gender identify, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin cannot and should not attempt to treat others equally and/or without regard to age, sex, gender identify, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, or national origin. (RSA 354-A:31,I-IV).
- b. Government programs, meaning any activity undertaken by a public employer, are NOT permitted to teach, advocate, or advance any of the topics set forth in #1-4 above. (RSA 354-A:32).
- c. **Exception.** Employers, including school districts and SAUs, are permitted to hold trainings on racial, sexual or religious topics, or other “workplace sensitivity trainings” that promote the idea that “all persons are entitled to be treated with equality, dignity and respect.” (RSA 354-A:29, II).

HB 2 Prohibited Practice Law

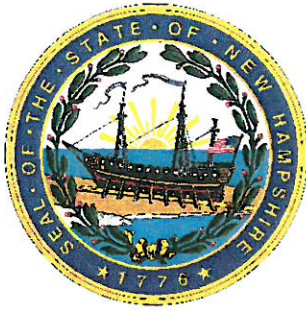
Recommendation from Merrimack School District's Labor Attorney Kathleen Peahl

Recommendation for Educators

- **Do not** teach topics or organize activities which discriminate against any protected group or which encourages or supports such discrimination (age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion, national origin).
- **Do** review lesson plans to assure they do not include any discriminating topics or discussions against protected classes. If any lesson contains topics or activities which are potential violations, consult with administration on ways to teach the lesson without potentially violating the law. **Remember that teaching historical subjects and events and discussing current events is not a violation of the law.**
- **Do** honor parental objectives to course materials in accordance with District policy.

Recommendations for School Districts

- **Do not** conduct staff training that promotes teaching or training anyone, particularly protected classes, in a discriminatory manner.
- **Do not** discipline staff for refusing to teach or participate in any training that promotes teaching or training anyone, particularly protected classes in a discriminatory manner. If a staff member objects to some portion of a training that promotes discriminatory practice they can opt out of that training.
- **Do** review course curriculum to assure that it does not include any discriminatory content.
- **Do** review District policies on parent objections to course materials to assure that they include any objections based on this law.
- **Do** inform educators of this new law and assure that they are familiar with the District policy for parental objectives to course materials.



Frequently Asked Questions: New discriminatory practice prohibitions applicable to public employers and government programs

Issued by: Department of Education, Commission for Human Rights and Department of Justice

House Bill 2 was passed by both bodies of the legislature and signed into law by the Governor on June 25, 2021. Included in [HB 2 are sections 297 and 298](#), Right to Freedom from Discrimination in Public Workplaces and Education.

There has been much discussion about this law and what prohibitions it imposes on public employers, government programs, and schools. The State of New Hampshire and its political subdivisions recognize that they have a duty to ensure that they treat all residents and visitors equally. This means that all employees or individuals who work to provide or administer programs and services on behalf of the State of New Hampshire, including teachers in an educational setting, must continually strive to treat all of those with whom they may come into contact equally and with dignity and respect.

The purpose of these FAQs is to provide guidance to public employers, government program administrators, and school systems as they review their compliance with this new law.

This FAQ document addresses questions that may arise regarding the changes to the New Hampshire Law Against Discrimination, RSA chapter 354-A, that impact public employers and government programs. Please see separate document that addresses [changes to schools and educational programs contained in RSA chapter 193](#).

Changes Regarding Public Employers and Government Programs

1. What are public employers and government programs prohibited from training and advocating?

Public employers and government programs are prohibited from training and advocating that one identified group (a group based upon: age, sex, gender identity, sexual orientation, race, creed, color, marital status, familial status, mental or physical disability, religion or national origin) is:

- Inherently superior or inferior to people of another identified group;
- Inherently racist, sexist, or oppressive, whether consciously or unconsciously;
- Should be discriminated against or receive adverse treatment; or
- Should not treat members of other identified groups equally.

In short, do not train or advocate that a person or a group is inherently oppressive, superior, inferior racist, or sexist. Train and treat all equally and without discrimination.

2. What do the phrases “inherently superior or inferior” or “inherently racist, sexist, or oppressive” mean?

“Inherent” means characteristics that are natural, biological, or innate, as opposed to characteristics that are merely apparent, accidental, or based on external factors.

This new law makes it illegal to teach, train or advocate that a person, because of their membership in one or more identified group(s), is inherently either: (1) racist, sexist, or oppressive, consciously or unconsciously or (2) superior or inferior to people of another identified group.

3. Are these the same prohibitions as those contained in the “divisive concepts” bill, HB 544?

No. HB 544 did not become law and therefore, does not apply or impact public employers, government programs, or schools in New Hampshire. The term “divisive concepts” is not found anywhere in the new law.

4. Can public employers and government programs undertake efforts designed to examine issues related to equity, diversity, inclusion, equality, and other related topics?

Yes. Nothing in this new law prohibits public employers or government programs from taking steps to examine issues related to equity, diversity, inclusion, equality and other related topics.

5. Can trainings address practices or ideas that have harmed or continue to harm certain identified groups?

Yes. Nothing prohibits trainings geared toward educating participants about practices or ideas that may disproportionately affect certain identified groups.

6. Can public employers and government programs conduct trainings designed to improve diversity, equity, and inclusion, such as implicit bias training?

Yes. Nothing prohibits trainings geared towards diversity, equity, equality and inclusion.

Nor does anything prohibit implicit bias training. Implicit bias training is premised on teaching people about biases they may have of which they are not consciously aware and helping them become aware of those biases so as to encourage treating others with dignity and respect and to avoid treating others less than equally.

The new law expressly permits public employers and government programs to provide and require “sensitivity training” based on the “inherent humanity and equality of all persons” and the “ideal that all persons are entitled to be treated with equality, dignity, and respect.”

7. A public employee has claimed that a required diversity training has made them uncomfortable. Has the public employer or government program discriminated against that employee?

No. It is important to note that trainings that address racism, sexism, and other practices or ideas that have harmed or continue to harm certain identified groups may make participants uncomfortable. These trainings may encourage or prompt participants to reflect upon whether and how racism, sexism, or other practices have or have not affected their lives. Even discussion of historical practices and their lingering impact upon different identified groups can cause this discomfort.

The mere fact that a training may make participants uncomfortable does not mean that the training has violated New Hampshire’s anti-discrimination laws and does not give employees or participants the license to refuse to participate in the training without consequence.

8. **What remedies are available to public employees or program participants who believe that a public employer or government program has violated one of the new anti-discrimination statutes?**

A person who believes that they have been subject to discrimination, may file a complaint with the New Hampshire Commission for Human Rights, a complaint with the New Hampshire Office of the Attorney General, or may file a civil claim in superior court to seek damages or declaratory or injunctive relief.

9. **Can a public employee file a claim based upon a training that occurred in 2020?**

No. Complaints alleging a violation of the new laws may only be considered for conduct that occurred after the enactment of those laws on June 25, 2021.

10. **If I am an individual or group simply using a public facility for non-government use, for example a private event or activity at a school building or town hall, does this new law apply to me?**

No.

**Merrimack School Board Meeting
Merrimack School District, SAU #26
Merrimack Town Hall – Town Hall Memorial Room
July 26, 2021**

6:00 p.m. – Non-public Session pursuant to RSA 91-A:3, II (a) & (c)

- **Staff Welfare**

Present: Vice Chair Rothhaus, Board Members Barnes, Hardy, and Peters. Also present were Assistant Superintendent for Business Shevenell, Assistant Superintendent of Curriculum, Instruction, and Assessment Yarlott, and Interim Chief Educational Officer Olsen.

Not Present: Chair Guagliumi – Excused

7:00 p.m. – Public Hearing to Accept/Expend Gifts/Grants \$5,000 and OVER

- New Hampshire Department of Environmental Services to Merrimack School District for \$34,848.32

Assistant Superintendent for Business Shevenell said in 2017 they put in approximately \$120,000 into the operating budget to deal with the PFOA's in the schools. He said the work was completed and the Department of Environmental Services was offering reimbursements for those who had completed that work.

Vice Chair Rothhaus asked if there were members of the public who had questions or comments. There were none.

Board Member Barnes asked if by accepting the grant it would prohibit them from taking any further steps to try to recover the balance of the money spent on the remediation. Assistant Superintendent for Business Shevenell replied that would always be an option.

Board Member Barnes asked if they could use the money for the maintenance or enhancements to the existing system, i.e. flushing, filters, etc. Assistant Superintendent for Business Shevenell replied if the Board accepted the grant under RSA 198:20(b) he could reserve the money as an encumbrance to carry over into the current year to use for any type of replacement filters, or testing needed.

Assistant Superintendent for Business Shevenell said he would bring the item forward at the next meeting so the Board could deliberate the terms under which they would accept the grant.

MOTION: Vice Chair Rothhaus made a motion to close the public hearing. There was no second to the motion.

The motion passed 4 – 0 – 0.

Vice Chair Rothhaus declared a break at approximately 7:05 p.m.; calling the meeting back to order at approximately 7:15 p.m.

1. Call to Order/Pledge of Allegiance

Vice Chair Rothhaus called the meeting to order at 7:15 p.m.

Vice Chair Rothhaus led the Pledge of Allegiance.

2. Public Participation

There were no comments.

Vice Chair Rothhaus welcomed Mr. Everett Olsen (Bill) as the District's new Interim Chief Educational Officer.

3. Health and Safety Task Force Report

Interim Chief Educational Officer Olsen addressed the Board and stated he reviewed the Health & Safety report that Ms. Julie DeLuca had recently presented to the Board. He said he felt the report was very well done and dealt with numerous COVID-19 mitigation factors.

Interim Chief Educational Officer Olsen said mask-wearing would be optional; and noted the Merrimack School District did not have the capacity to accommodate a 3' or 6' distancing. He mentioned the configuration of most of the desks had a distance of approximately 2' to 2 ½'.

Interim Chief Educational Officer Olsen said the schools would be open and would include the use of before and after school programming, and weekend use. He added the traditional "recess period" would be restored.

Interim Chief Educational Officer Olsen said the school nurses would continue to play a vital role in providing guidance to families. He said the District would adhere to all of the New Hampshire Department of Health and Human Services quarantine and contact tracing guidelines, and the cleaning and disinfecting measures would remain in place.

Interim Chief Educational Officer Olsen said in every instance of mitigation efforts concerning COVID-19 there was a quantitative and emotional component. He said the positivity of COVID-19 in Merrimack was very low at 1.9% but encouraged people who were not vaccinated to please consider it.

Interim Chief Educational Officer Olsen explained that between physical distancing, increasing ventilation, screening testing, handwashing, and respiratory etiquette that masks would be optional for everyone while in school. However, Interim Chief Educational Officer Olsen stated children were required to wear masks on busses and vans at all times. He added if the New Hampshire

Department of Public Health changed its mask policy then they would change the Merrimack School District's mask policy.

Referring to the results of the Health and Safety Task Force report, Interim Chief Educational Officer Olsen noted 82% of staff were in agreement with the recommendations. He added, however, that approximately 73% of parents indicated they approved the recommendations.

Board Member Barnes commented they received a handful of emails from parents who shared their concerns about not requiring masks; particularly for children under the age of twelve. She suggested that there needed to be resources available for those parents who were not comfortable with the recommendations. She asked if there could be some type of an FAQ on the website that would give parents the path to communicate their concerns and advocate for their children. Interim Chief Educational Officer Olsen replied he would certainly look into it.

Board Member Hardy said they needed to make it clear to parents to keep their children home if they were not feeling well.

Board Member Peters said they needed to be flexible regarding the mask policy and it should be data-driven.

MOTION: Board Member Hardy made a motion to accept the Health and Safety Task Force reports recommendations. Board Member Peters seconded the motion.

The motion passed 4 – 0 – 0.

4. Instructional Task Force Reopening Report

Assistant Superintendent of Curriculum, Instruction and Assessment Yarlott addressed the Board and she led the Instruction Task Force with a wide range of members of the District's teaching teams from kindergarten through grade 12.

Assistant Superintendent of Curriculum, Instruction and Assessment Yarlott said Ms. Allison MacGuire, Teacher, Reeds Ferry Elementary School; Ms. Nicole Diggins, Reading Specialist, Merrimack Middle School; Ms. Jennie Calnan, Reading Specialist, Thorntons Ferry Elementary School; and Ms. Holly Lubelczyk, Reading Specialist, James Masticola Elementary School were present to discuss the report.

Assistant Superintendent of Curriculum, Instruction, and Assessment Yarlott read aloud the following reopening statement as below:

"The Merrimack School District defines opening school as normal as possible for the 2021 – 2022 school year as operating with students, in-person, five days per week. Most, if not all children will be in attendance in their classrooms in local schools. The District will follow a traditional, five days per week schedule. A remote learning option is limited to students with IEP's (Individualized Education Plans) or who require a home-based education as the least restrictive environment through the special education IDEA (Individuals with Disabilities Education Act) process, or students with documented health-related illnesses or conditions that require them to remain home and that would be determined as a reasonable accommodation through the 504 team.

Remote education will only be offered as an exception and only on an as needed basis due to a student's IEP that requires the restrictive setting or a 504 Plan due to a medical condition. Programs such as VLACS, online learning, etc. would be considered when looking at how to accommodate and address the small population of students who would need to stay home. The eligibility for remote learning would be forthcoming."

Assistant Superintendent of Curriculum, Instruction and Assessment Yarlott said it was their recommendation was that all schools would be open and the majority of students would be attending school five days per week.

Board Member Barnes asked if there would be any accommodations for students that had family members who were in a high-risk category that would otherwise not be eligible via an IEP or 504 plan. Interim Chief Educational Officer Olsen replied he would need to look into it. She also requested more information regarding the following:

- Pre-Assessments to benchmark the students in such a way as not to alarm parents regarding how much remediation they needed.
- What the device ratio would be from pre-K through grade 4.
- Staggered start times.
- If the Trimester model would be a good long-term strategy for pre-K through grade 6.

Board Member Peters and Board Member Hardy expressed their thanks and noted they like the idea of an "acceleration process" in addition to remediation.

Board Member Hardy said she felt that some things like parent/teacher conferences should remain available via Zoom.

Vice Chair Rothhaus asked if they would be looking at more extended learning opportunities at the high school level, and what competency-based learning looked like.

Vice Chair Rothhaus asked Interim Chief Educational Officer Olsen if the District had the capability of providing the team with a stipend out of the CARES Act monies for the additional work done over the summer months. Interim Chief Educational Officer Olsen replied they wanted to recognize the work of all of the task force committees and would have a conversation with Assistant Superintendent of Curriculum, Instruction, and Assessment Yarlott as well as Assistant Superintendent for Business Shevenell.

5. Approval of Minutes

- July 2, 2021 – Non-Public Minutes

MOTION: Board Member Barnes made a motion to approve the non-public meeting minutes from the July 2, 2021, meeting as presented. Board Member Peters seconded the motion.

The motion passed 4– 0 – 0.

- July 12, 2021

MOTION: Board Member Barnes made a motion to approve the minutes from the July 12, 2021, meeting as amended. Board Member Peters seconded the motion.

Edit

Page 1, under Public Participation, paragraph #4 – “will be serving us in an interim capacity as Superintendent for the year” was added – Board Member Peters

The motion passed 4 – 0 – 0.

6. Consent Agenda

Educator Resignations:

- Ms. Tania Isenberger, Guidance Counselor, Merrimack High School

Teacher Nominations:

- Ms. Victoria Hamilton, Special Education Teacher, Merrimack High School
- Ms. Amanda Feeney, 3rd Grade Teacher, Thorntons Ferry Elementary School
- Ms. Heather O'Connor, Special Education/PASS Teacher, Merrimack High School
- Ms. Molly Ryan, Social Studies Teacher, Merrimack High School
- Ms. Bonnie Painchaud, Principal, Reeds Ferry Elementary School

MOTION: Board Member Barnes made a motion to accept the Consent Agenda as presented. Vice Chair Rothhaus seconded the motion.

The motion passed 4 – 0 – 0.

7. Other

- Correspondence

Board Member Barnes commented that the entire School Board received three separate e-mails from parents who expressed concerns about masks being optional in school.

- Comments

Vice Chair Rothhaus commented that Dr. Tad Kremen, who graduated from Merrimack High School in 1994, was the Olympic Swim Team physician.

Board Member Peters welcomed Interim Chief Educational Officer Olsen, and Assistant Superintendent of Curriculum, Instruction, and Assessment Yarlott in their new roles.

226 **8. New Business**

227
228 There was no new business to report.

229
230 **9. Committee Reports**

231
232 Board Member Barnes commented that the NHSBA (New Hampshire School Board's
233 Association) Board of Directors had met and was prepping for the Delegate Assembly meeting
234 which would occur in the fall.

235
236 Board Member Barnes stated the Grater Woods Subcommittee had met for the first time since
237 January of 2020 on July 14th where they held a reorganization of the Subcommittee, and
238 discussed future projects.

239
240 Board Member Hardy said the CIT (Curriculum, Instruction, and Technology) Committee had met
241 and they were given a preview of the Task Force Committee updates.

242
243 **10. Public Comments on Agenda Items**

244
245 There were no public comments.

246
247 **MOTION:** At approximately 8:45 p.m. Board Member Barnes made a motion to adjourn. Board
248 Member Hardy seconded the motion.

249
250 **The motion passed 4 – 0 – 0.**
251