

## **HARASSMENT AND SEXUAL HARASSMENT OF STUDENTS**

Harassment of students because of race, color, sex, sexual orientation, religion, ancestry or national origin, or disability is prohibited. Such conduct is a violation of Board policy and may constitute illegal discrimination under state and federal laws. The term “sexual orientation” under state law means a person’s “actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.”

### **Harassment**

Harassment includes but is not limited to verbal abuse based on race, color, sex, sexual orientation, religion, ancestry or national origin, or disability. Harassment that rises to the level of physical assault, battery and/or abuse and bullying behavior are also addressed Board Policies JICIA – Weapons, Violence and School Safety and JICK – Bullying.

### **Sexual Harassment**

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

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

The Superintendent or the employee designated as the Title IX Coordinator (may be the Affirmative Action Officer/Sexual Harassment Officer(s) as determined by the local school unit) will investigate complaints of harassment in accordance with the Student Discrimination and Harassment Complaint Procedure. School employees, students, and parents shall be informed of this policy/procedure through handbooks and/or other means selected by the school administration.

Legal Reference:       Americans with Disabilities Act (42 USC §12101 et seq., as amended; 28 CFR § 35.107)  
                                  Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 CFR § 104.7)

Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.;  
34 CFR §106.8)  
Title VI of the Civil Rights Act of 1964 (42 USC § 2000d)  
Maine Human Rights Act, 5 MRSA § 4551 et seq.  
20-A MRSA § 6554  
MHR/MDOE Joint Rule Chapter 94-348 and 05-071, ch. 4

Cross Reference:     ACAA-R – Student Harassment Complaint Procedure  
                           AC – Nondiscrimination/Equal Opportunity and Affirmative Action  
                           ACAD – Hazing  
                           JFCK – Student Use of Cellular Telephones and Other Electronic  
                           Devices  
                           JICIA – Weapons, Violence and School Safety  
                           JICK – Bullying

Eastport School Committee

Adopted            04/24/00

Revised           10/18/17

## **STUDENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURE**

This procedure has been adopted by the Board in order to provide a method of prompt and equitable resolution of student complaints of discrimination or discriminatory harassment as described in policies AC - Nondiscrimination/Equal Opportunity and Affirmative Action and ACAA - Harassment and Sexual Harassment of Students. Complaints alleging discrimination or harassment of employees or other third parties (such as parents, volunteers, vendors, etc.) should be addressed through the Board's Employee & Third Party Discrimination and Harassment Complaint Procedure.

### **Definitions**

For purposes of this procedure:

- A. A "Complaint" is defined as an allegation that a student has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, or disability.
- B. "Discrimination or harassment" means discrimination or harassment on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, or disability. "Discrimination" may include treating individuals differently, or interfering with or preventing them from enjoying the advantages or privileges afforded to others because of their membership in a protected class. Discrimination on the basis of sex shall include acts of "sexual violence," which refers to acts of physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. "Harassment" may include oral, written, graphic, electronic or physical conduct relating to an individual's actual or perceived membership in a protected class that is sufficiently severe, pervasive or persistent so as to interfere with or limit the individual's ability to participate in the school unit's programs or activities by creating a hostile, intimidating or offensive educational environment. The term "sexual orientation" under state law means a person's "actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression."
- C. Complaints of bullying not involving the protected classes described above may be pursued under Board Policy JICK – Bullying.

## **How to Make a Complaint**

- A. Any individual who believes that a student has been discriminated against or harassed should report their concern promptly to Paul Theriault, Title IX Coordinator, and utilize this complaint procedure. Written reports are preferred, but not required. Individuals who are unsure whether discrimination or harassment has occurred, or who need assistance in preparing a written complaint, are encouraged to discuss the situation with Paul Theriault, Title IX Coordinator.
- B. School staff shall report possible incidents of discrimination or harassment of students to Paul Theriault, Title IX Coordinator. Parents and other adults are also encouraged to report any concerns about possible discrimination or harassment of students.
- C. Students and others will not be retaliated against for making a Complaint or participating in an investigation. Retaliation is illegal under state and federal nondiscrimination laws and any retaliation by students or school staff will result in disciplinary measures, up to and including expulsion or dismissal.
- D. Students are encouraged to utilize the school unit's Complaint Procedure. However, students are hereby notified that they also have the right to report Complaints to the police, the Maine Human Rights Commission, State House Station 51, Augusta, ME 04333 (telephone: 207-624-6290) and/or to the federal Office for Civil Rights, Regional Director, U.S. Department of Education, 5 Post Office Square, 8<sup>th</sup> Floor, Boston, MA 02110-1491 (telephone: 617-289-0111).

## **Complaint Handling and Investigation**

- A. Paul Theriault, Title IX Coordinator, shall respect the confidentiality of the complainant and the individual(s) against whom the Complaint is filed to the extent possible, consistent with school unit's legal obligations, including the necessity to investigate allegations of discrimination and/or harassment, to take appropriate disciplinary action, and to ensure the safety of the school community.
- B. Paul Theriault, Title IX Coordinator, shall promptly inform the Superintendent and the person(s) who is the subject of the Complaint that a Complaint has been received.
- C. Paul Theriault, Title IX Coordinator, may pursue a prompt and equitable informal resolution of the Complaint with the agreement of the parties involved. Any party to the Complaint may decide to end an informal resolution process and pursue the formal process at any point. The informal resolution is subject to the approval of the Superintendent, who shall consider whether the informal resolution is in the best interest of the parties and the school unit in light of the particular circumstances and applicable policies and laws.

- D. The Complaint will be investigated by Paul Theriault, Title IX Coordinator, unless the Superintendent designates another person to investigate it on his/her behalf. Any Complaint about an employee who holds a supervisory position shall be investigated by a person who is not subject to that supervisor's authority. Any Complaint about the Superintendent should be submitted to the chairperson of the school board, who should consult with legal counsel concerning the handling and investigation of the Complaint.
1. The person who is the subject of the Complaint will be provided with an opportunity to be heard as part of the investigation. The Complainant shall not be required to attend meetings with the subject of the Complaint, but may choose to do so as part of the resolution process.
  2. The Complainant and the subject of the Complaint may suggest witnesses and/or submit materials they believe are relevant to the Complaint.
  3. If the Complaint is against an employee of the school unit, any applicable individual or collective bargaining contract provisions shall be followed.
  4. Paul Theriault, Title IX Coordinator shall keep a written record of the investigation process.
  5. Paul Theriault, Title IX Coordinator, may take interim remedial measures to facilitate the Complainant's access to school programs and activities, and reduce the risk of further discrimination or harassment, while the investigation is pending. Examples of interim measures include, but are not limited to, ordering no contact between individuals, changing schedules or classes, etc.
  6. Paul Theriault, Title IX Coordinator, shall use a preponderance of the evidence standard (i.e. more likely than not) when evaluating the evidence and shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
  7. The investigation shall be completed within 21 business days of receiving the Complaint, if practicable.
  8. If Paul Theriault, Title IX Coordinator, determines that discrimination or harassment occurred, he/she shall, in consultation with the Superintendent:
    - A. Determine what remedial action, if any, is needed to end the discrimination or harassment, remedy its effects and prevent recurrence;

- B. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any; and
  - C. Inform the Complainant and the person(s) who engaged in discrimination or harassment in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).
9. After the conclusion of the investigation, the complainant or the subject of the Complaint may seek an appeal of the findings solely on the basis of either (a) prejudicial procedural error or (b) the discovery of previously unavailable relevant evidence that could significantly impact the outcome. Appeals must be submitted in writing to the Superintendent within 14 business days of receiving notice of the outcome of the investigation. Upon receipt of a valid appeal, the Superintendent shall review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision on the appeal shall be provided in writing to the parties within 21 business days, if practicable. The Superintendent's decision shall be final.

Legal Reference: Americans with Disabilities Act (42 USC §12101 et seq., as amended; 28 CFR § 35.107)  
 Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq., as amended; 34 CFR § 104.7)  
 Title IX of the Education Amendments of 1972 (20 USC § 1681, et seq.; 34 CFR §106.8)  
 Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) 20 USC § 1232g; 34 CFR Part 99  
 Maine Human Rights Act 5 MRSA § 4551 et seq.  
 MHRC/MDOE Joint Rule Chapter 94-348 and 05-071, ch. 4  
 20-A MRSA §§ 6001 et seq.  
 20-A MRSA § 6554

Cross Reference: AC - Nondiscrimination/Equal Opportunity and Affirmative Action  
 ACAA - Harassment and Sexual Harassment of Students

Eastport School Committee

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