ACAB-R - Employee Discrimination and Harassment of School Employees

The Board has adopted these employee procedures in order to provide prompt and equitable resolution of employee complaints of discrimination and harassment, including sexual harassment, as described in policies AC – Nondiscrimination/Equal Opportunity and Affirmative Action and ACAB – Harassment and Sexual Harassment of School Employees.

The complaint procedure in Section 2 may also be used, to the extent applicable, by visitors, including parents, volunteers, and others having lawful access to the schools who wish to make a complaint of discrimination or harassment.

Complaints alleging harassment or discrimination against students based on a protected category should be addressed through the Board's Student Discrimination/Harassment and Title IX Sexual Harassment Complaint Procedures (ACAA-R).

Any individual who is unsure about whether discrimination or harassment has occurred and/or which complaint procedure applies is encouraged to contact the Affirmative Action Officer/Title IX Coordinator.

Michelle McClellan

Affirmative Action Officer/Title IX Coordinator Cape Elizabeth School Department

320 Ocean House Road Cape Elizabeth, ME 04107 (207) 799-2217

mmcclellan@capeelizabethschools.org

DEFINITIONS

For purposes of these complaint procedures, the following definitions will be used. The Affirmative Action Officer (AAO)/Title IX Coordinator shall assess all reports and complaints to ensure that they are addressed under the appropriate policy and complaint procedure.

I. Discrimination/Harassment Complaint Procedure Definitions

I. "Discrimination or harassment": Discrimination or harassment on the basis of an individual's membership in a protected category, which, for employees, includes race (including traits associated with race involving hair texture, Afro hairstyles and protective hairstyles such as braids, twists and locks), color, sex, sexual orientation, gender identity, age, familial status, religion, ancestry, national origin, genetic information, or disability.

II. "Discrimination": 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 category.

III. “Harassment”: Oral, written, graphic, electronic, or physical conduct relating to an individual’s actual or perceived membership in a protected category that is sufficiently severe, pervasive, or persistent so as to interfere with or limit that individual’s ability to participate in the Cape Elizabeth School Department’s programs or activities by creating a hostile, intimidating, or offensive environment.

IV. Under Title VII and under Maine law/regulations, sexual harassment is defined differently than under Title IX. Maine Human Rights Commission regulations define sexual harassment as conduct on the basis of sex which satisfies one or more of the following:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

2. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

V. “Sexual orientation”: Under Maine law, this means a person’s “actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression.”

VI. “Gender identity”: Under Maine law, this means “the gender-related identity, appearance, mannerisms, or other gender-related characteristics of an individual, regardless of the individual’s assigned sex at birth.”

VII. “Complaint” is defined as an allegation that an employee or other third party has been discriminated against or harassed on the basis of race, color, sex, sexual orientation, gender identity, age, religion, ancestry, national origin, genetic information, or disability (and in regard to sex, conduct not otherwise addressed in the Title IX regulations and Section 3 of ACAB-R).

VIII. “Employee”: Whenever the term “employee” is used in Section 2, it includes visitors or others who have a lawful basis to make a complaint of discrimination or harassment.

IX. "Familial Status": Under Maine law, this means a family unit that contains:

1. One or more individuals who have not attained 18 years of age and are living with a parent or another person having legal custody of the individual or individuals or the designee of the parent or other person having custody with the written permission of the parent or other person; or

2. One or more individuals 18 years of age or older who lack the ability to meet essential requirements for physical health, safety or self-care because the individual or individuals are unable to receive and evaluate information or make or communicate decisions.

II. Title IX Sexual Harassment Complaint Procedure Definitions

I. “Title IX sexual harassment”: Under the federal Title IX regulations, sexual harassment includes the following conduct on the basis of sex which takes place within the context of the Cape Elizabeth School Department’s education programs and activities:

1. “Quid pro quo” sexual harassment by a school employee: Conditioning a school aid, benefit, or service (such as a promotion or favorable evaluation) on an individual’s participation in unwelcome sexual conduct;

2. “Hostile environment” sexual harassment: Unwelcome conduct based on sex that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies an individual’s equal access to the Cape Elizabeth School Department’s education programs and activities; or

3. Sexual assault, dating violence, domestic violence, and stalking as these terms are defined in federal laws.

II. “Report”: Under the Title IX regulations, any individual may make a report of sexual harassment involving an employee, whether the individual is the alleged victim or not. A report must be made to the AAO/Title IX Coordinator. A report triggers certain actions by the AAO/Title IX Coordinator for the alleged victim of sexual harassment, but an investigation is not conducted unless a “Formal Complaint” is filed.

III. “Formal Complaint”: Under Title IX, the alleged victim of sexual harassment can file a written complaint that triggers the complaint procedure in Section 3 of ACAB-R. Only a school employee (and in certain circumstances, the AAO/Title IX Coordinator) may file a formal complaint.

IV. “Employee”: For the purpose of this procedure, “employee” means an applicant for employment or a current employee of the Cape Elizabeth School Department.

DISCRIMINATION/HARASSMENT COMPLAINT PROCEDURE

This procedure should be used for any complaint of unlawful harassment or discrimination based on a protected category that does not involve Title IX sexual harassment.

I. How to Make A Complaint

I. Any employee who believes they have been unlawfully harassed or discriminated against (as such terms are defined in Section 1.A.1-3) is encouraged to try to resolve the problem by informing the individual(s) that the behavior is unwelcome or offensive, and requesting that the behavior stop. This shall not prevent the employee from making an immediate complaint to the AAO/Title IX Coordinator.

II. Any employee who believes they have been harassed or discriminated against should report their concern promptly to the AAO/Title IX Coordinator. A written complaint must include basic information concerning the allegation of harassment or discrimination (i.e., date, time, location, individual(s) who alleged engaged in harassment or discrimination, description of allegation).

III. Employees who are unsure as to whether unlawful discrimination or harassment has occurred, or who need assistance in preparing a written complaint, are encouraged to discuss the matter with the AAO/Title IX Coordinator.

IV. Employees will not be retaliated against for reporting suspected discrimination or harassment, or for participating in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result in disciplinary measures, up to and including discharge.

V. Any employee who believes they have been discriminated against or harassed is encouraged to utilize the Cape Elizabeth School Department's complaint procedure. However, employees are hereby notified that they
also have the right to report incidents of discrimination or harassment to the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333 (telephone: 207-624-6290) and/or to the federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).

II. Complaint Handling and Investigation

I. The AAO/Title IX Coordinator will promptly inform the Superintendent and the person who is the subject of the complaint (respondent) that a complaint has been received.

II. The AAO/Title IX Coordinator may pursue an informal resolution of the complaint with the agreement of the parties involved. Any party to the complaint may decide to end the informal resolution process and pursue the formal process at any point. Any informal resolution is subject to the approval of the parties and the Superintendent, who shall consider whether the resolution is in the best interest of the Cape Elizabeth School Department and the parties in light of the particular circumstances and applicable policies and laws.

III. The AAO/Title IX Coordinator may implement supportive measures (consistent with any applicable collective bargaining agreement provisions) to reduce the risk of further discrimination or harassment while an investigation is pending. Examples of supportive measures include, but are not limited to, ordering no contact between the individuals involved; changing a work location; or changing a work schedule.

IV. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and the AAO/Title IX Coordinator. 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 Chair of the Board, who should consult with legal counsel concerning the handling and investigation of the complaint.

V. The investigator shall consult with the AAO/Title IX Coordinator as agreed during the investigation process.

VI. The respondent 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 respondent, but may choose to do so as part of an informal resolution process.

VII. The complainant and the respondent may suggest witnesses and/or submit materials they believe are relevant to the complaint.

VIII. If the complaint is against an employee of the Cape Elizabeth School Department, any rights conferred under an applicable collective bargaining agreement shall be applied.

IX. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

X. The investigation shall be completed within 40 calendar days of receiving the complaint, if practicable. Reasonable extensions of time for good reason shall be allowed.

XI. The investigator shall provide a written report and findings to the AAO/Title IX Coordinator.

III. Findings and Subsequent Actions

I. The AAO/Title IX Coordinator shall consult with the Superintendent concerning the investigation and findings.

II. If there is a finding that discrimination or harassment occurred, the AAO/Title IX Coordinator, in consultation with the Superintendent:

1. Shall determine what remedial action, if any, is required to end the discrimination or harassment, remedy its effect, and prevent recurrence; and

2. Determine what disciplinary action should be taken against the individual(s) who engaged in discrimination or harassment, if any.

III. Inform the complainant and the respondent in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

IV. Appeals

I. After the conclusion of the investigation, the complainant or respondent 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.

II. Appeals must be submitted in writing to the Superintendent within five calendar days after receiving notice of the resolution.

III. Upon receipt of a valid appeal, the Superintendent shall provide notice to the other party, along with an opportunity to provide a written statement within five calendar days.

IV. The Superintendent shall review the available documentation and may conduct further investigation if deemed appropriate.

V. The Superintendent's decision on the appeal shall be provided to the parties within ten calendar days, if practicable. The Superintendent's decision shall be final.

V. Records

The AAO/Title IX Coordinator shall keep a written record of the complaint process.

TITLE IX SEXUAL HARASSMENT COMPLAINT PROCEDURE

This section should be used only for complaints of Title IX sexual harassment as defined in Section 1.B.1.

I. How to Make A Report

I. Any individual who believes an employee has been sexually harassed (as this term is defined in Section 1.B.1) may make a report to the AAO/Title IX Coordinator.

II. If the individual making the report is the alleged victim, or if the alleged victim is identified by the individual making the report, the AAO/Title IX Coordinator will meet with the alleged victim to discuss supportive measures that may be appropriate in the particular circumstances and explain the process for filing a formal complaint.

1. Supportive measures are individualized measures designed to ensure the employee can continue to access and perform their work (e.g., requiring no contact between individuals, temporarily moving work locations, or changing schedules).

2. Supportive measures may be continued even if the alleged victim chooses not to file a formal complaint, if appropriate under the particular circumstances.

III. The Cape Elizabeth School Department cannot provide an informal resolution process for resolving a report until a formal complaint is filed.

IV. Employees will not be retaliated against for reporting sexual harassment or for participating in an investigation. Retaliation is illegal under federal and state nondiscrimination laws, and any retaliation will result in disciplinary actions, up to and including discharge.

V. Any employee who believes they have been the victim of sexual harassment is encouraged to utilize the Cape Elizabeth School Department's complaint procedures. However, employees are hereby notified that

they also have the right to report sexual harassment to the Maine Human Rights Commission, 51 State House Station, Augusta, Maine 04333 (telephone: 207-624-6290) and/or to the federal Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8th Floor, Boston, MA 02109-3921 (telephone: 617-289-0111).

VI. The Superintendent shall be informed of all reports and formal complaints of sexual harassment.

II. How to Make A Formal Complaint

I. An alleged victim may file a formal written complaint requesting investigation of alleged Title IX sexual harassment. The written complaint must include basic information concerning the allegation of sexual harassment (i.e., date, time, location, individual(s) who alleged engaged in sexual harassment, description of allegation).

Employees who need assistance in preparing a formal written complaint, are encouraged to consult with the AAO/Title IX Coordinator.

II. In certain circumstances, the AAO/Title IX Coordinator may file a formal complaint even when the alleged victim chooses not to. Examples include if the respondent (person alleged to have engaged in sexual harassment) has been found responsible for previous sexual harassment or there is a safety threat within the Cape Elizabeth School Department. In such cases, the alleged victim is not a party to the case, but will receive notices as required by the Title IX regulations at specific points in the complaint process.

III. In accordance with the Title IX regulations, the AAO/Title IX Coordinator must dismiss a formal complaint under this Title IX procedure if: a) the conduct alleged in the formal complaint does not constitute sexual harassment under the Title IX regulations and this policy; b) the conduct alleged did not occur within the scope of the Cape Elizabeth School Department's education programs and activities; or c) the conduct did not occur in the United States.

IV. In accordance with the Title IX regulations, the AAO/Title IX Coordinator may dismiss a formal complaint under this Title IX procedure if: a) a complainant withdraws the formal complaint, or withdraws particular allegations within the complaint; b) the respondent is no longer employed by the Cape Elizabeth School Department; or c) there are specific circumstances that prevent the Cape Elizabeth School Department from gathering evidence sufficient to reach a determination regarding the formal complaint.

V. If a formal complaint is dismissed under this Title IX procedure, the AAO/Title IX Coordinator will promptly and simultaneously send written notices to the parties explaining the reasons. Parties have the opportunity to appeal dismissals in accordance with subsection I below.

VI. If the conduct alleged potentially violates other laws, Board policies, and/or professional expectations, the Cape Elizabeth School Department may address the conduct under Section 2 or another applicable policy/procedure.

III. Administrative Leave

I. The Superintendent may place an employee respondent on administrative leave during the complaint procedure in accordance with any applicable State laws, school policies, and collective bargaining agreement provisions.

II. Any decision to place an employee respondent on administrative leave shall be made in compliance with any applicable disability laws, including Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.

IV. Notice to Parties of Formal Complaint

I. The Title IX Coordinator will provide to the parties written notice of the formal complaint and allegations of sexual harassment potentially constituting prohibited conduct under the Title IX regulations and this procedure. The notice will include:

1. Notice regarding the complaint procedure and the availability of an informal resolution process;

2. Sufficient details known at the time (including identities of parties, if known; the conduct alleged; and the date and location of the alleged incident, if known), with sufficient time to prepare before any initial interview (not less than five calendar days);

3. As required by the Title IX regulations, a statement that the respondent is presumed not responsible for the alleged conduct and that a determination of responsibility will be made at the conclusion of the complaint;

4. Notice that the parties may each have an advisor of their choice (who may be an attorney), and that the parties may inspect and review evidence;

5. Notice that knowingly making false statements or submitting false information during the complaint procedure is prohibited and may result in disciplinary action; and

6. Notice of the name of the investigator, with sufficient time (no less than three calendar days) to raise concerns of conflict of interest or bias.

II. If additional allegations become known at a later time, notice of the additional allegations will be provided to the parties.

III. The AAO/Title IX Coordinator will discuss supportive measures with each party and implement such measures as appropriate.

V. Informal Resolution Process

After a formal complaint has been filed, and if the AAO/Title IX Coordinator believes the circumstances are appropriate, the AAO/Title IX Coordinator may offer the parties the opportunity to participate in an informal resolution process to resolve the complaint without completing the investigation and determination process. Informal resolutions cannot be used to resolve a formal complaint where a student is the complainant and the respondent is an employee.

Informal resolutions can take many forms, depending on the particular case. Examples include, but are not limited to, facilitated discussions between the parties; restorative justice; acknowledgment of responsibility by a respondent; apologies; disciplinary actions against a respondent or a requirement to engage in specific services;

or supportive measures. Both parties must voluntarily agree in writing to participate in an informal resolution process, and either party can withdraw from the process at any time. The Superintendent must agree to the terms of any informal resolution reached between the parties. If an informal resolution agreement is reached, it must be signed by both parties and the Cape Elizabeth School Department. Any such signed agreement is final and binding according to its terms.

If an informal resolution process does not resolve the formal complaint, nothing from the informal resolution process may be considered as evidence in the subsequent investigation or determination.

VI. Investigation

I. The complaint will be investigated by a trained internal or external individual designated by the Superintendent and AAO/Title IX Coordinator. 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 Chair of the Board, who should consult with legal counsel concerning the handling and investigation of the complaint.

II. The investigator shall consult with the AAO/Title IX Coordinator as agreed during the investigation process.

III. If the complaint is against an employee of the Cape Elizabeth School Department, rights conferred under an applicable collective bargaining agreement shall be applied, to the extent they do not conflict with the Title IX regulatory requirements.

IV. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.

V. The investigator will:

1. Meet with each party after they have received appropriate notice of any meeting and its purpose, with sufficient time to prepare.

2. Allow parties to have their advisor at all meetings related to the complaint, although advisors may not speak on behalf of a party or interfere with the process.

3. Allow parties a reasonable opportunity to identify witnesses and submit favorable and unfavorable evidence.

4. Interview witnesses and conduct such other activities that will assist in ascertaining facts (e.g., site visits, review of documents).

5. Consider evidence that is relevant and directly related to the allegations in the formal complaint.

6. During the course of the investigation, provide both parties with an equal opportunity to inspect and review any evidence that is obtained in the investigation that is directly related to the allegations in the formal complaint (including evidence which the Cape Elizabeth School Department does not intend to rely upon in reaching a determination of responsibility), and favorable and unfavorable evidence.

7. Prior to completion of the investigation report, provide each party and advisor (if any) the evidence subject to inspection and review, and provide the parties with ten calendar days to submit a written response.

8. Consider the parties' written responses to the evidence prior to completing the investigation report.

9. Create an investigative report that fairly summarizes relevant evidence and send the report to the parties and advisors (if any), for their review and written responses within ten calendar days of receipt.

10. After receipt of the parties' written responses (if any), forward the investigation report and party responses to the assigned decision maker.

VI. The investigation shall be concluded within 40 calendar days, if practicable. Reasonable extension of time for good reason shall be allowed.

VII. Determination of Responsibility

I. The decision maker shall provide the parties with the opportunity to submit written, relevant questions that the party wants asked of another party or witness within five calendar days of when the decision maker received the investigation report and party responses.

1. The decision maker shall explain to a party proposing questions if the decision maker excludes a question as not relevant.

II. Each party shall be provided the opportunity to review the responses of another party and/or witness, and to ask limited written follow-up questions within five calendar days of receiving the answers.

III. Each party will receive a copy of the responses to any follow-up questions.

IV. The decision maker shall review the investigation report, the parties' responses, and other relevant materials, applying the preponderance of the evidence standard ("more likely than not").

V. The decision maker shall issue a written determination, which shall include the following:

1. Identification of all the allegations potentially constituting sexual harassment as defined in the Title IX regulations and this policy;

2. A description of the procedural steps taken from receipt of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and meetings held;

3. A determination regarding responsibility as to each allegation and findings of fact supporting the determinations;

4. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Cape Elizabeth School Department imposes on the respondent, and whether remedies designed to restore or preserve equal access to the Cape Elizabeth School's Department's programs and activities will be provided to the complainant;

5. The Cape Elizabeth School Department's appeal procedure and permissible bases for the parties to appeal the determination.

VI. The written determination shall be provided to the parties simultaneously. The determination concerning responsibility becomes final either on the date that the Cape Elizabeth School Department provides the parties with the written determination of the results of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

VIII. Remedies, Discipline and Other Actions

I. Remedies

Remedies are measures used to ensure that the complainant has equal access to the Cape Elizabeth School Department's education programs and activities following the decision maker's determination. Such remedies may include supportive measures, and may include other appropriate measures, depending upon the determination and the needs of the complainant. The Title IX Coordinator is responsible for implementing remedies and providing any needed assistance to the Complainant.

II. Discipline and Other Actions

The following are examples of the types of discipline and other actions that may be imposed on an employee when there is a determination that they are responsible for one or more violations involving sexual harassment:

1. Written warning;
2. Probation;
3. Demotion;
4. Suspension without pay;

5. Discharge;
6. Performance improvement plan;
7. Counseling;
8. Training;
9. Loss of leadership/stipend position.

IX. Appeals

The parties have the opportunity to appeal a determination regarding responsibility or dismissals of formal complaints. Under the Title IX regulations, appeals are allowed on the following grounds:

I. A 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 of the formal complaint was made that could affect the outcome of the matter; or

III. The Title IX Coordinator, investigator, or decision maker 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.

An appeal must be filed in writing within five calendar days of receiving the determination, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

I. Appeals must be filed with the Superintendent, who will consider the appeal.

II. The Superintendent shall conduct an impartial review of the appeal, including consideration of the written record of the matter, and may consult with legal counsel or other Cape Elizabeth School Department officials in making their decision.

III. The Superintendent shall issue a written decision describing the result of the appeal and rationale for the result, and provide the written decision simultaneously to the parties. The decision will either deny the appeal; grant the appeal and remand to the decision maker for further consideration; or grant the appeal by revising the disciplinary action(s).

J. Records

Records in connection with sexual harassment reports and the complaint process shall be maintained for a minimum of seven years.

Legal Reference:

- Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.); 34 C.F.R. Part 106

- Clery Act (20 U.S.C. §1092(f)(6)(A)(v) - definition of sexual assault)
- Violence Against Women Act (34 U.S.C. § 1092(f)(6)(A)(v) – definition of sexual assault; 34 U.S.C. § 12291(a)(10) – dating violence; 34U.S.C. §12291(a)(3) – definition of stalking; 34 U.S.C.§12291(a)(8) – definition of domestic violence)
- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d)
- Americans with Disabilities Act (42 U.S.C § 12101 et seq.), as amended
- Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 794 et seq.), as amended
- Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e, et. seq.; 29 C.F.R. § 1604.11)
- Age Discrimination in Employment Act (29 U.S.C. § 623 et seq.)
- Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. § 2000ff et seq.)
- 5 MRSA § 4551 et seq.
- MHRC Rule Chapter 94-348, ch. 3
- 26 MRSA §§ 806-807

Cross Reference:

- AC – Nondiscrimination/Equal Opportunity and Affirmative Action
- ACAB – Harassment and Sexual Harassment of School Employees
- GBGB - Workplace Bullying

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