

STUDENT DISCRIMINATION AND HARASSMENT COMPLAINT PROCEDURE

[NOTE: The organizational structure of local school units varies widely, as do the personnel and resources available for investigating complaints. This sample complaint procedure is intended to provide general guidance for local Boards in developing a procedure that meets local needs and conditions.]

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.

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; and
- B. “Discrimination or harassment” means discrimination or harassment on the basis of race, color, sex, sexual orientation, religion, ancestry, national origin, or disability.

[NOTE: The board should make a determination at the local level regarding the staff authorized to receive and investigate student discrimination and harassment complaints. Examples of such staff may be an Affirmative Action Officer, building principal, or guidance counselor who has received appropriate training and has an understanding of the legal issues involved in addressing complaints. The Board may also want to consider providing both male and female staff members to whom students can make complaints and/or varying the procedure depending upon the age of students served in a particular building. Local Boards should insert specific staff member(s) by title wherever the term “school administrator” appears in bold throughout this procedure.]

[NOTE: The time lines in this procedure are only suggestions and may be adapted to meet local needs. However, the Board should take care not to unreasonably limit the time school administrators may have to investigate and resolve complaints.]

How to Make a Complaint

- A. Any student who believes he/she has been discriminated against or harassed should report his/her concern promptly to the **[school administrator]**. Students who are unsure whether discrimination or harassment has occurred are encouraged to discuss the situation with the **[school administrator]**.
- B. School staff are expected to report possible incidents of discrimination or harassment of students. 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. 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 Maine Human Rights Commission, 51 State House Station, Augusta, ME 04333 (telephone: 207-624-6050) and/or to the U.S. Department of Education, Office for Civil Rights/ED, 5 Post Office Square, Suite 900, Boston, MA 02109-3921 (telephone: 617-223-9622; TDD: 877-521-2172; fax: 617-289-0150).

Complaint Handling and Investigation

- A. **[School administrator]** shall promptly inform the Superintendent and the person(s) who is the subject of the complaint that a complaint has been received.
- B. **[School administrator]** may pursue an informal resolution of the complaint with the agreement of the parties involved. 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 school unit in light of the particular circumstances and applicable policies and laws.
- C. The complaint will be investigated by **[school administrator]**, unless the Superintendent chooses to investigate the complaint or 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 Chair 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.
2. If the complaint is against an employee of the school unit, any applicable individual or collective bargaining contract provisions shall be followed.
3. Privacy rights of all parties to the complaint shall be maintained in accordance with applicable state and federal laws.
4. **[School administrator]** shall keep a written record of the investigation process.
5. **[School administrator]** may take interim remedial measures to reduce the risk of further discrimination or harassment while the investigation is pending.
6. **[School administrator]** shall consult with the Superintendent concerning the investigation, conclusions, and any remedial and/or disciplinary actions.
7. The investigation shall be completed within 21 calendar **[OR: business]** days of receiving the complaint, if practicable.

D. If **[school administrator]** determines that discrimination or harassment occurred, he/she shall, in consultation with the Superintendent:

1. Determine what remedial action is required, if any;
2. Determine what disciplinary action should be taken against the person(s) who engaged in discrimination or harassment, if any; and
3. Inform the student who made the complaint in writing of the results of the investigation and its resolution (in accordance with applicable state and federal privacy laws).

E. If the student's parents/legal guardians are dissatisfied with the resolution, an appeal may be made in writing to the Superintendent within 14 calendar

[OR: business] days after receiving notice of the resolution. The Superintendent shall review the investigation report and may conduct further investigation if deemed appropriate. The Superintendent's decision shall be final.

[NOTE: Local boards may want to allow appeal of the Superintendent's decision to the Board].

[Optional language:

- F. If the student's parents/legal guardians are dissatisfied with the decision of the Superintendent, an appeal may be submitted in writing within 14 calendar [or business] days after receiving notice of the decision. The Board will consider the appeal in executive session, to the extent permitted by law, at its next regular meeting or a special meeting. The Superintendent shall submit the investigation report and any other witnesses or documents that he/she believes will be helpful to the Board. The student, his/her parents/legal guardians and his/her representative shall be allowed to be heard. The person(s) against whom the complaint was made shall be invited and allowed to be heard. The Board's decision shall be final.]**

Legal Reference: Americans with Disabilities Act (28 CFR § 35.07)
Section 504 of the Vocational Rehabilitation Act (34 CFR § 104.7)
Title IX of the Education Amendments of 1972 (20 USC § 1681 et seq.)
Title VI of the Civil Rights Act of 1964 (PL 88-352)
20 USC § 1232g;
34 CFR Part 99
5 MRSA §§ 4571; 4602; 4681 et seq.
20-A MRSA §§ 6001 et seq.

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

Adopted: _____

PLEASE NOTE MSMA sample policies and other resource materials do not necessarily reflect official Association policy. They are not intended for verbatim replication. Sample policies should be used as a starting point for a board's policy development on specific topics. Rarely does one board's policy serve exactly to address the concerns and needs of all other school units. MSMA recommends a careful analysis of the need and purpose of any policy and a thorough consideration of the application and suitability to the individual school system.

MSMA sample policies and other resource materials may not be considered as legal advice and are not intended as a substitute for the advice of a board's own legal counsel.