

## **PREVENTING AND RESPONDING TO UNLAWFUL HARASSMENT OF EMPLOYEES & THIRD PARTIES**

### **I. Purposes**

Rutland Northeast Supervisory Union and its member districts are committed to providing a safe and supportive environment in which all members of the school community are treated with respect. This policy addresses employees and/or third parties<sup>1</sup> who are subjected to incident(s) and/or conduct carried out by students, employees, or third parties that occur on school property, on a school bus or at a school-sponsored activity, or incident(s) and/or conduct that does not occur on school property, on a school bus or at a school-sponsored activity but where direct harm to the welfare of the school can be demonstrated or the conduct can be shown to pose a clear and substantial interference with an employee's or third party's equal access.

Unlawful Harassment is a form of discrimination that will not be tolerated. It is the policy of the districts within RNESU to prohibit the unlawful harassment of students, employees and third parties based on race, creed, color, national origin, marital status, disability, sex, sexual orientation, and gender identity, to the extent required by law. In addition, retaliation is a form of unlawful discrimination that will not be tolerated. Consistent with these purposes, annually,<sup>2</sup> each school shall select two or more designated employees to receive complaints and shall publicize their availability in any publication of the districts within RNESU that sets forth the comprehensive rules, procedures, and standards of conduct for the school.

It is the intent of the districts within RNESU to apply and enforce this policy in a manner that is consistent with rights to free expression under the First Amendment of the U.S. Constitution. The purpose of this policy is to prohibit conduct or communication that is directed at a person's protected characteristics as defined below and that is likely to substantially disrupt the educational learning process and/or access to educational resources, or create a hostile work environment.

The districts within RNESU shall promptly and effectively address all complaints of unlawful harassment and promptly end harassing conduct according to procedures established by policy, and shall take appropriate action reasonably calculated to stop unlawful harassment, found against any person, subject to the jurisdiction of the districts within RNESU who violates this policy, prevent its recurrence and remedy the impact of harassment on the victim(s). Such action may include a wide range of responses from education to serious discipline. Such serious discipline may include termination for employees and, for students, expulsion or removal from school property. Nothing herein shall be construed to prohibit punishment of a person for conduct which, although it does not rise to the level of harassment as defined herein, otherwise violates one or more of the school's other disciplinary policies or codes of conduct.

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<sup>1</sup> Grievances regarding students being subjected to harassment should follow the procedures outlined in **Policy JBEAA**.

<sup>2</sup> See 16 V.S.A. § 565(c)(1).

## **II. Definitions**

1. **School Community** includes, but is not limited to, all students, parents, school employees, contractors, unpaid volunteers, work study students, interns, student teachers, and visitors.
2. **Employee** includes any person employed directly by or retained through a contract with the districts within RNESU, an agent of the school, a school board member/member of the board of trustees, a student teacher, an intern or a school volunteer. For purposes of this policy, “agent of the school” includes supervisory union staff.
3. **Third Parties** means individuals who are not students of the school district or employees of the supervisory union.
4. **Complaint** means an oral or written report by an individual, whether employed by RNESU or not, to a designated employee or principal alleging that an employee or third party has been subjected to conduct that may rise to the level of unlawful harassment.
5. **Complainant** means an individual who has filed an oral or written complaint to a designated non-discrimination coordinator or principal, or is the alleged victim in a report made by another alleging conduct that may rise to the level of unlawful harassment.
6. **Designated Employee** means an employee who has been designated by the school or Supervisory Union to serve as the non-discrimination coordinator to receive complaints of alleged unlawful harassment pursuant to 16 V.S.A. § 565 (c)(1). Designated non-discrimination coordinators are identified within corresponding procedures that are included in annual notifications.
7. **Notice** means oral information or a written complaint that unlawful harassment may have occurred which has been provided to a designated employee from another employee, the student allegedly subjected to the unlawful harassment, another student, a parent or guardian, or any other individual who has reasonable cause to believe the alleged conduct may have occurred. In addition, notice may occur when an employee of the district, including any individual who an employee/third party could reasonably believe has this authority or responsibility, knows or in the exercise of reasonable care should have known about potential unlawful harassment. A district can receive notice of potential unlawful harassment in many different ways. An employee/third party may have filed an oral or written grievance with the designated employee or complained to a teacher or other employee about unlawful harassment. A teacher or other employee of the district may have witnessed the unlawful harassment. The district also may receive notice about potential unlawful harassment in an indirect manner, from sources such as a member of the local community or the media.
8. **Retaliation** is any adverse action (i.e. form of intimidation, reprisal or harassment such as suspension, termination, change in working conditions, loss of privileges or benefits or other disciplinary action) by any person against a person who has filed a complaint of harassment, or against a person who assists or participates in any manner in an

investigation, proceeding or hearing related to a harassment complaint, or who has opposed any act of practice of unlawful harassment prohibited by state or federal law. Such adverse action may include conduct by a school employee or student directed at an employee or third party in the form of intimidation or reprisal.

- 9. School administrator** means a superintendent, principal, director or his/her designee.
- 10. Unlawful Harassment** means an incident or incidents of verbal, written, visual, or physical conduct, including any incident conducted by electronic means, based on or motivated by an employee's or third party's or an employee's or third party's family member's actual or perceived race, creed, color, national origin, marital status, disability, sex, sexual orientation, or gender identity<sup>3</sup> that has the purpose or effect of objectively and substantially undermining and detracting from, or interfering with, an employee's or third party's educational performance or access to school resources or creating an objectively intimidating, hostile, or offensive environment. Such conduct includes, but is not limited to, unsolicited derogatory remarks, jokes, demeaning comments or behavior, slurs, mimicking, name calling, graffiti, innuendo, gestures, physical contact, stalking, threatening, bullying, extorting or the display or circulation of written materials or pictures.

Unlawful Harassment includes conduct as defined above and may also constitute one or more of the following:

**1. Sexual Harassment**

Sexual Harassment means conduct of a sexual nature that is unwelcome, including sexual violence, sexual assault, sexual advances, requests for sexual favors and other verbal, written, visual or physical conduct of a sexual nature when one or more of the following occur:

- i. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- ii. submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting such individual; or
- iii. such conduct has the purpose or effect of substantially interfering with an individual's work or educational performance or creating an intimidating, hostile or offensive working or educational environment.

**2. Racial Harassment**

Racial Harassment means conduct directed at the characteristics of an employee's or third party's or an employee's or third party's family member's actual or perceived race or color, and includes the use of epithets, stereotypes, racial slurs, comments, insults, derogatory remarks, gestures, threats, graffiti, or negative references to cultural customs.

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<sup>3</sup> Effective July 1, 2007, 1 V.S.A. § 144 defines "gender identity" as "an individual's actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual's gender or gender-identity, regardless of the individual's assigned sex at birth."

**3. Creed & Religious Harassment**

Creed and Religious Harassment includes unwelcome verbal, written or physical conduct directed at the characteristics of a person's religion or creed such as derogatory comments regarding surnames, religious tradition, religious clothing, religious slurs or graffiti.

**4. National Origin Harassment**

National Origin Harassment includes unwelcome verbal, written or physical conduct directed at the characteristics of a person's national origin such as negative comments regarding surnames, manner of speaking, customs, language or ethnic slurs.

**5. Marital Status Harassment**

Marital Status Harassment includes unwelcome verbal, written or physical conduct directed at the characteristics of a person's marital status, such as comments regarding pregnancy or being an unwed mother or father.

**6. Sexual Orientation Harassment**

Sexual Orientation Harassment includes unwelcome verbal, written or physical conduct directed at the characteristics of a person's sexual orientation such as negative name calling and imitating mannerisms.

**7. Gender Identity Harassment**

Gender Identity Harassment includes unwelcome verbal, written or physical conduct directed at an individual's actual or perceived gender identity, or gender-related characteristics intrinsically related to an individual's gender or gender identity, regardless of the individual's assigned sex at birth.

**8. Disability Harassment**

Disability Harassment includes any unwelcome verbal, written or physical conduct directed at the characteristics of a person's disabling condition such as imitating manner of speech or movement, or interference with necessary equipment.

**III. Reporting**

**1. School Employee Reporting**

Any employee who believes that s/he has been harassed under this policy, or who witnesses or has knowledge of conduct that s/he reasonably believes might constitute unlawful harassment, should promptly report the conduct to a designated employee or school administrator. Any employee who witnesses conduct that s/he reasonably believes might constitute unlawful harassment shall take reasonable action to stop the conduct and to prevent its recurrence and immediately report it to a designated employee or school administrator. Any employee who overhears or directly receives information about conduct that might constitute unlawful harassment shall immediately report the information to a designated employee. If one of the designated employees or school administrator is the person alleged to be engaged in the conduct complained of, the complaint shall be immediately filed with the supervisory union non-discrimination coordinator or another school administrator. The complainant will be asked to provide copies of any relevant documents or notes of events and the names of people who

witnessed or were told of the unlawful harassment and will be asked to provide a written description of the unlawful harassment.

1. Individuals may call the Supervisory Union Central Offices at 802-247-5757 for the names and contact information of each school's designated employees. Additionally, Designated Employee names and contact info are listed on the RNEU website under the HR tab at [www.rnesu.org](http://www.rnesu.org).

## **2. Other reporting**

1. Any other person, including a third party, who witnesses conduct that s/he reasonably believes might constitute unlawful harassment under this policy should promptly report the conduct to a designated employee. Individuals may call the Supervisory Union Central Offices at 802-247-5757 for the names and contact information of each school's designated employees. Additionally, Designated Employee names and contact info are listed on the RNEU website under the HR tab at [www.rnesu.org](http://www.rnesu.org).

## **3. Documentation of the Report**

If the complaint is oral, the designated employee shall promptly reduce the complaint to writing in an unlawful harassment complaint form, including the time, place, and nature of the alleged conduct, and the identity of the complainant, alleged perpetrator, and any witnesses. Both the complainant and the alleged perpetrator will have a reasonable opportunity to present witnesses and other evidence in support of their position.

## **4. False Complaint**

Any person who knowingly makes a false accusation regarding unlawful harassment may be subject to disciplinary action up to and including suspension and expulsion with regard to students, or up to and including discharge with regard to employees. There shall be no adverse action taken against a person for reporting a complaint of unlawful harassment when the person has a good faith belief that unlawful harassment occurred or is occurring.

# **IV. Procedures Following a Report**

## **1. Notification<sup>4</sup>**

Upon receipt of a complaint of unlawful harassment the designated employee shall immediately inform the school administrator of the complaint. In addition, the designated employee shall immediately provide a copy of this policy to the complainant and accused individual. If either the complainant or the accused individual is under the age of 18, his or her parent(s) or guardian(s) shall be: (1) promptly notified that a complaint of unlawful harassment has been filed and provided with a copy of this policy; (2) notified in writing of the results of the complaint investigation, (all notification letters shall be subject to state and/or federal laws protecting the confidentiality of personally identifiable student information. A school administrator may seek waiver of confidentiality rights of the accused in order to inform the complainant of any disciplinary action taken in cases where the school determined that unlawful harassment or other misconduct occurred);

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<sup>4</sup> See 16 V.S.A. § 14(a).

and (3) notified if an alternative dispute resolution method will be offered if appropriate and, if it occurs, of the outcome of any such attempt.

## **2. Investigation<sup>5</sup>**

The School District shall promptly act upon any information regarding unlawful harassment of which it has notice. No later than one school day after the filing of a complaint, a designated employee will initiate, or cause to be initiated, an investigation of the allegations. The school administrator shall assign a person to conduct the investigation. Nothing herein shall be construed to preclude the school administrator from assigning him/herself or a designated employee as the investigator. If unique circumstances are present and documented, the school administrator may need to extend timeframes and notify the parties of such. A school's investigation is different from any law enforcement or other outside investigation, which do not relieve the school of its independent obligation to investigate the alleged conduct. Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own investigation. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. After receiving notice of the alleged conduct, the school shall provide a copy of its harassment policy to the alleged victim and perpetrator, or their parent and/or guardian (if applicable). The School District/Supervisory Union shall take prompt and effective action as appropriate that is reasonably designed to stop the unlawful harassment and prevent further unlawful harassment or misconduct from rising to the level of unlawful harassment. Additional interim measures (such as no contact orders, employee leave, modification to instructional settings, schedules or transportation, etc.) may be taken to protect parties of both sides while the investigation is pending. No person who is the subject of a complaint shall conduct such an investigation.

## **3. Standard Used to Assess Conduct**

In determining whether the conduct constitutes a violation of this policy, the investigating official shall consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved and the context in which the alleged incidents occurred. The complainant and accused are provided the opportunity to present witnesses and other evidence during an investigation. The school or Supervisory Union will also consider the impact of relevant off-site conduct on the work or educational environment, where direct harm to the welfare of the school can be demonstrated or the conduct can be shown to pose a clear and substantial interference with an employee's or third party's equal access. Whether a particular action or incident constitutes a violation of this policy requires determination based on all the facts and surrounding circumstances.

## **4. Completion of Investigation and Report**

No later than fifteen (15) calendar days from the filing of the complaint with the designated employee, unless special circumstances are present and documented, the investigator shall submit a written determination to both the accused and complainant. The report shall include a statement of the findings of the investigator as to whether the

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<sup>5</sup> See 16 V.S.A. § 565(b)(1)(E).

allegations have been substantiated, and as to whether the alleged conduct constitutes unlawful harassment. When the initial determination concludes that an accused individual has engaged in unlawful harassment, the school administrator shall use his or her discretion to decide the appropriate disciplinary and/or remedial action. In cases where the investigation has identified other conduct that may constitute a violation of other school disciplinary policies or codes of conduct, the designated employee shall report such conduct to the school administrator for action in accordance with relevant school policies.

#### **5. Action on a Substantiated Complaint**

If, after investigation, the school finds that the alleged conduct occurred and that it constitutes unlawful harassment, the school shall take prompt and appropriate disciplinary and/or remedial action reasonably calculated to stop the unlawful harassment, prevent any recurrence of unlawful harassment, and remedy the impact of unlawful harassment on the victim(s). Such action may include warning, reprimand, education, training and counseling, transfer, suspension, and/or expulsion of a student, and warning, reprimand, education, training and counseling, transfer, suspension and/or termination of an employee.

#### **6. Alternative Dispute Resolution<sup>6</sup>**

At all stages of the investigation and determination process, school officials are encouraged to make available to complainants alternative dispute resolution methods, such as mediation, for resolving complaints. However, mediation is not an appropriate means of resolving sexual violence complaints. The following should be considered before pursuing alternative dispute resolution methods for other types of complaints: (1) the nature of the accusations; (2) the age of the complainant and the accused individual; (3) the agreement of the complainant; and (4) other relevant factors such as any disability of the target or accused individual, safety issues, the relationship between the target and accused individual, or any history of repeated misconduct/harassment by the accused individual. If an alternative dispute resolution is either not appropriate or is unsuccessful, the school administrator shall initiate or cause to be initiated an investigation of the allegations in accordance with the timelines established in this policy. Any informal process may be bypassed for a formal process at any time.

#### **7. Appeal**

A complainant, or person determined to be in violation of this policy and subjected to disciplinary action under it, may appeal the determination and/or the disciplinary action(s) taken in the same manner as other disciplinary actions, in accordance with the school district or Supervisory Union discipline policy, applicable statutes, or collective bargaining agreements. Appeals should be made to the Superintendent within thirty (30) calendar days of receiving the determination from the investigation. The Superintendent will respond in writing within fifteen (15) calendar days, of receiving the appeal, unless special circumstances are present and documented.

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<sup>6</sup> See 16 V.S.A. § 565(b)(1)(C).

### **8. Retaliation**

It is unlawful for any person to retaliate against a person who has filed a complaint of unlawful harassment or against a person who assists or participates in any manner in an investigation, proceeding or hearing related to an unlawful harassment complaint or who has opposed an act of practice of unlawful harassment prohibited by state or federal law. A person may violate this anti-retaliation provision regardless of whether the underlying complaint of unlawful harassment is substantiated.

### **9. Counseling Support**

The employee assistance program (EAP) provides confidential counseling services to School District/ Supervisory Union employees. Individuals wishing to discuss an incident confidentially or seeking information and advice of a personal nature are encouraged to contact the EAP. The role of the EAP in such cases will be limited to personal counseling and treatment for the person who is then an EAP client. Contacting the EAP will not qualify as notification to the School District/Supervisory Union of a potential harassment or discrimination issue.

## **V. Confidentiality and Record Keeping**

1. The privacy of the complainant, the accused individual, and the witnesses, shall be maintained consistent with the School District's/Supervisory Union's obligations to investigate, to take appropriate action, and to comply with laws governing the disclosure of student records or other applicable discovery or disclosure obligations. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to any existing state or federal law.
2. The Superintendent shall assure that a record of any complaint, its investigation and disposition, as well as any disciplinary or remedial action taken following the completion of the investigation, is maintained by the School District/Supervisory Union in a confidential file accessible only to authorized persons. All investigation records, including but not limited to, the complaint form, interview notes, additional evidence, and the investigative report, shall be kept for at least six years after the investigation is completed.

## **VI. Reporting to Other Agencies**

When a complaint made pursuant to this policy includes allegations of child abuse, any person responsible for reporting suspected child abuse under 33 V.S.A. § 4911, et seq. must report the allegation to the Commissioner of DCF. If the victim is over the age of 18 and a report of abuse is warranted, the report shall be made to Adult Protective Services in accordance with 33 V.S.A. § 6901, et seq.

If an unlawful harassment complaint is made in a public school about conduct by a licensed educator that might be grounds under the State Board of Education Rules for licensing action, the



principal shall report the alleged conduct to the Superintendent and the Superintendent shall report the alleged conduct to the Commissioner.

Nothing in this policy shall preclude anyone from reporting any incidents and/or conduct that may be considered a criminal act to law enforcement officials.

## **VII. Dissemination of Information, Training and Data Reporting**

### **1. Dissemination of Information<sup>7</sup>**

Annually, prior to the commencement of curricular and co-curricular activities, the School District/Supervisory Union shall provide notice of this policy and procedures to students, custodial parents or guardians of students, employees, and third parties (to the extent possible). At a minimum, this notice shall appear in any publication of the School District/Supervisory Union that sets forth the comprehensive rules, procedures and standards of conduct for the School District/Supervisory Union.

### **2. Training<sup>8</sup>**

The school administrator shall use her/his discretion in developing methods of discussing the meaning and substance of this policy with employees (and third parties, if practicable) to help prevent unlawful harassment. The school administrator shall implement training for school staff within the context of professional development to enable staff to recognize, prevent and respond to unlawful harassment.

### **3. Data Gathering**

The School Districts/Supervisory Union shall provide the Vermont Department of Education with data requested by the Commissioner.

## **VIII. Alternative Complaint Process**

Employees and third parties may file a complaint of unlawful harassment with outside agencies at any time including before, after, or in lieu of using the School District/Supervisory Union complaint procedure, such as:

For employees and/or third parties:

### **State and Federal Discrimination Enforcement Agencies**

#### **1. Vermont Human Rights Commission**

14-16 Baldwin Street, Montpelier, VT 05633-6301

Tel: (800) 416-2010 or (802) 828-2480

TTY: (877) 294-9200

Fax: (802) 828-2481

Complaints should be filed within 300 days of the adverse action.

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<sup>7</sup>See 16 V.S.A. § 565(d).

<sup>8</sup> See 16 V.S.A. § 565(d).

2. **U.S. Department of Education, Office for Civil Rights**  
5 Post Office Square, 8th Floor, Suite 900, Boston, MA 02109-3921  
Tel: (617) 289-0111  
TDD: (877) 521-2172  
Fax: (617) 289-0150  
Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)  
Complaints should be filed within 180 days of the alleged discrimination.

For employees only:

3. **Equal Employment Opportunity Commission**  
1 Congress Street, Boston, MA 02114  
Tel: (617) 565-3200  
TDD: (617) 565-3204  
Complaints must be filed within 300 days of the adverse action.

These agencies do not serve as an appellate body for the School District/Supervisory Union complaint procedure. These agencies may be able to conduct impartial investigations, facilitate conciliation, and if probable cause or reasonable grounds are found that sexual harassment occurred, some agencies may be able to take the case to court. In addition, a complainant also has the right to hire a private attorney, and to pursue a private legal action in state court within three or six years, depending on the type of claims raised.

Legal Reference(s): Title IX of the Educational Amendments Act of 1972, 20 U.S.C. §§ 1681, et seq.;  
9 V.S.A. §§ 4502, et seq. (Public accommodations)  
16 V.S.A. § 11(a)(26) (Definitions)  
21 V.S.A. §§ 495, et seq.  
(Unlawful employment practice, sexual harassment)  
42 U.S.C. §§ 2000e, et seq. (Title VII of the Civil Rights Act of 1964)  
29 C.F.R. § 1604.11 (Equal Opportunity Employment Commission)

Cross Reference: Policy JBEAA: Policy on the Prevention of Harassment, Hazing and Bullying of Students  
Policy Board Commitment to Non-Discrimination (C6)

	BUUSD	OVUUSD	RNESU
Public Notice:	05/24/17	05/24/17	05/24/17
Date of Adoption:	06/19/17	06/21/17	06/28/17
Supersedes Policy of:	05/23/12	05/23/12	05/23/12