

THE STATE OF NEW HAMPSHIRE

BELKNAP, SS.

SUPERIOR COURT

David “Skip” Murphy  
9 Gilford Glen Road  
Gilford, NH 03249

v.

Robert Gadomski,  
Gretchen Gandini,  
Karen Thurston,  
Jeanin Onos,  
Kyle Sanborn,  
Audra Kelly,  
SAU 73,

and the

The Gilford School District  
2 Belknap Mountain Road  
Gilford, N.H. 03249.

Case No. 211-2021-CV-00191

**COMPLAINT**

Plaintiff David “Skip” Murphy alleges as follows:

**I. NATURE OF THE CASE**

1. Plaintiff has brought this action to enforce his rights to access certain information generated and retained about his minor child by the Defendants and their agents, to whom the Plaintiff has entrusted his child for his education. Plaintiff further seeks to enforce his right to provide consent on behalf of his minor child. These rights are founded on the Constitution of the

State of New Hampshire, and on state and federal statutory and regulatory provisions, which recognize the fundamental right of parents to direct the upbringing of their children, to be primarily responsible for their children's health and safety, and to decide what is in a minor child's best interests.

2. The Defendants have violated these rights by adopting a Policy (defined below) expressly designed to circumvent parental involvement in a pivotal decision affecting the Plaintiff's minor child's care, health, education, and future. The Policy enables Gilford School District ("GSD") personnel to evaluate minor children concerning matters related to gender identity and allows minor children, of any age, to transition socially to a different gender identity at school, with support and encouragement of GSD personnel, but without parental notice or consent. The Policy further requires school personnel to enable this transition, including by using pronouns other than those consistent with the child's birth gender. The Policy prohibits school personnel from communicating with parents about their child's potentially life-altering and potentially dangerous choice, unless the minor child consents to parental disclosure. The Policy goes even farther. It directs teachers and staff to affirmatively deceive parents by reverting to the child's birth name and corresponding pronoun(s) when communicating with the parents and whenever the child's parents are present. It also directs district personnel to keep information about the child's gender transformation out of the school files to which the parents have access under state and federal law.

3. The Plaintiff further brings this action pursuant to the New Hampshire Constitution and common law, seeking a declaration that the Policies adopted by the Defendants violate his rights to free speech, freedom of conscience, and freedom of religion.

## **II. PARTIES**

4. Plaintiff David “Skip” Murphy is a resident of Gilford, New Hampshire. Mr. Murphy is the legal and custodial parent of a child who is enrolled in the Gilford School District. Mr. Murphy is a fit parent pursuant to New Hampshire law. Mr. Murphy is also an individual taxpayer eligible to vote in the Town of Gilford and the Gilford School District.

5. Defendant Robert Gadomski is the acting superintendent of SAU#73. Mr. Gadomski has a business address located at 2 Belknap Mountain Road, Gilford, N.H. 03249.

6. Defendant Gretchen Gandini is a member of the Gilford School Board. Ms. Gandini has a business mailing address of 2 Belknap Mount Road, Gilford, N.H. 03249.

7. Defendant Karen Thurston is a member of the Gilford School Board. Ms. Thurston has a business mailing address of 2 Belknap Mount Road, Gilford, N.H. 03249.

8. Defendant Janine Onos is a member of the Gilford School Board. Ms. Onos has a business mailing address of 2 Belknap Mount Road, Gilford, N.H. 03249.

9. Defendant Kyle Sanborn is a member of the Gilford School Board. Mr. Sanborn has a business mailing address of 2 Belknap Mount Road, Gilford, N.H. 03249.

10. Defendant Audra Kelly is a member of the Gilford School Board. Ms. Kelly has a business mailing address of 2 Belknap Mount Road, Gilford, N.H. 03249.

11. Defendant SAU #73 is a corporation, with the power to sue and be sued, pursuant to RSA 194-C:1, et. seq. SAU #73 has a business mailing address of 2 Belknap Mountain Road, Gilford, N.H. 03249.

12. Defendant Gilford School District is a corporation with the power to sue and be sued, created pursuant to RSA 194:2. The Gilford School District has a business address of 2 Belknap Mountain Road, Gilford, N.H. 03249.

### **III. JURISDICTION AND VENUE**

13. This Court has jurisdiction of the Plaintiff's state law claims pursuant to Part I, Article 8 of the New Hampshire Constitution, as well as RSA 491:7 and RSA 491:22.

14. Venue is proper in Belknap County as it is the Plaintiff's county of residence and the county in which all of the Defendants are located.

#### **IV. STATEMENT OF FACTS**

##### **Background on Gender Dysphoria in Minor Children**

15. The American Psychological Association ("APA") defines transgender as:  
  
an umbrella term for persons whose gender identity, gender expression or behavior does not conform to that typically associated with the sex to which they were assigned at birth. Gender identity refers to a person's internal sense of being male, female or something else; gender expression refers to the way a person communicates gender identity to others through behavior, clothing, hairstyles, voice or body characteristics.

*See Answers to Your Questions About Transgender People, Gender Identity and Gender Expression*, (Last accessed September 5, 2021, at <https://www.apa.org/topics/lgbtq/transgender.pdf>).

16. The World Professional Association for Transgender Health ("WPATH"), a transgender advocacy organization that has produced a set of guidelines for the care of transgender persons, has defined "gender dysphoria" as the psychological distress often associated with the mismatch between a person's biological sex and his or her perceived gender identity. See *WPATH*, Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People at 2 (version 7, 2012), available at [https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7\\_English2012.pdf?t=1613669341](https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20V7_English2012.pdf?t=1613669341) "WPATH Guidelines")(Last accessed September 5, 2021).

17. Those "transitioning" to the gender other than their birth sex have demonstrated significantly higher rates of suicidal ideation, suicide attempts, and suicide, both with respect to

the average population and to those of homosexual sexual orientation. A study published in the October 2018, issue of *Pediatrics* presented the following findings: Nearly 14% of all adolescents reported a previous suicide attempt, 50.8% of female to male transgender adolescents did so, 41.8% of adolescents who identified as not exclusively male or female did so, and 29.9% of male to female transgender adolescents did so.

<https://pediatrics.aappublications.org/content/pediatrics/142/4/e20174218.full.pdf>. (Last accessed September 13, 2021).

18. Multiple studies have found that the vast majority of children (roughly 80-90%) who experience gender dysphoria ultimately find comfort with their biological sex and cease experiencing gender dysphoria as they mature (assuming they do not transition). See *WPATH Guidelines* at 11 (listing studies). WPATH notes that there is insufficient evidence at this point “to predict the long-term outcomes of completing a gender role transition during early childhood.” WPATH Guidelines at 17.

19. There is significant consensus that children with gender dysphoria and their parents can substantially benefit from professional assistance and counseling "as they work through the options and implications." See WPATH Guidelines at 13-17.

### **Plaintiff's Sincerely Held Religious and Philosophical Views**

20. Plaintiff believes, based on scientific evidence, that children do not have a fully developed capacity to understand the long-term consequences of their decisions.

21. Plaintiff wants to protect children, including his own child, from making potentially irreversible and life-changing decisions that they may later regret. Plaintiff believes that, because of the difficulty of assessing matters of gender identity and the long-term irreversible consequences of certain treatments for transgender-identifying people, including

puberty blockers, hormone replacement therapy, and sex-reassignment surgery, children should not be encouraged to undertake social or medical transition because of their inability to assess long-term consequences.

22. Plaintiff believes that parents must help children understand the many and complex factors surrounding gender identity.

23. Plaintiff believes that educators can assist parents in this effort, but that the primary responsibility for providing children with guidance on potentially life-altering decisions rests with parents.

24. Plaintiff believes that any gender-identity school policy must account for this fundamental right.

25. Plaintiff believes that any gender-identity education policy that does not account for parents' fundamental right to control the upbringing and education of their children is deceptive and disserves both parents and children.

26. Plaintiff is a professing Christian who strives to live out his faith daily.

27. Because of his Christian faith, Plaintiff has sincerely held religious beliefs that inform and govern his views about human nature, marriage, gender, sexuality, morality, politics, and social issues.

28. Plaintiff's Christian faith informs his convictions concerning human nature, the purpose and meaning of life, and ethical and moral standards that should govern human conduct.

29. Plaintiff's faith teaches him that God immutably creates each person as a male or female; that these two distinct, complementary sexes reflect the image of God; and that rejection of one's biological sex is a rejection of the image of God within that person.

30. Plaintiff also believes that he cannot affirm as true those ideas and concepts that he believes are not true. Doing so, he believes, would violate biblical commands against dishonesty and lying.

31. Plaintiff believes that referring to a child using pronouns inconsistent with the child's biological sex is harmful to the child because it is untrue.

32. Plaintiff endeavors to treat every person with dignity, love, and care, because he believes all people are created in the image of God.

33. Plaintiff objects to Defendants' regulation, suppression, and censorship of his sincerely held religious beliefs.

34. Plaintiff has free speech and religious freedoms that are chilled by the prospect of enforcement of the Policies.

#### **The Defendants' Transgender And Gender Non-Conforming Students Policy**

35. On January 6, 2020, GSD through the GSB members adopted Policy JBAB. ("The Policy")(See Exhibit #1). The Policy is included by reference as if fully restated herein.

36. The Policy includes the following definitions:

"Gender identity" is a person's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.

"Transgender" describes people whose gender identity is different from their gender assigned at birth.

"Gender non-conforming" describes people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous.

Exhibit #1, at page 2 of 4.

37. The Policy purports to create a privacy interest that transcends the parent-child relationship. The relevant provision of the Policy reads as follows:

The Gilford School Board recognizes a student's right to keep private one's transgender status or gender non-conforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential information. School personnel should not disclose information that may reveal a student's transgender status or gender non-conforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student or parent has authorized such disclosure. Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender non-conforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise.

Exhibit #1, page 3 of 4. By its express terms, the Policy creates a “right” for students to control what information is provided to the student’s parents, without regard to age or capacity. This includes a “right” for students to compel teachers to lie, either directly or through omission, and to require school personnel to otherwise mislead parents about a child’s school activities.

38. Pursuant to the Policy, GSD personnel are provided with a procedure to follow “to address needs raised by transgender students and/or their parent(s)/guardians(s).” Exhibit #1 at page 1 of 4. As set forth above, the Policy expressly states that school personnel should not disclose a student’s transgender status or gender non-conforming status to others, including parents....” Thus, pursuant to the Policy, the procedure described below is expressly permitted to occur while school personnel maintain secrecy at the request of a student and actively withhold information from parents.

39. Pursuant to the Policy<sup>1</sup>:

(2) A meeting should be scheduled to discuss the student’s particular circumstances and needs. In addition to the student...and building administrator,

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<sup>1</sup> The policy is written with the potential that a student’s parents would be involved in the process described below. However, parental involvement is not required. The description of the procedure set forth below reflects an anticipated circumstance in which a student requests that school personnel maintain secrecy and not inform a student’s parents of the student’s gender identify, gender expression, or gender non-conforming presentation.

participants may include the school counselor, school nurse, teachers and/or other school staff, and possibly outside providers who can assist in developing a plan for the student.

(3) A written plan will be developed by the school, in consultation with the student... and other as appropriate, to address the student's particular needs. If the student has an IEP or a 504 Plan, the provisions of these plans should be taken into consideration developing the plan for addressing transgender issues.

Exhibit #1, page 2 of 4.

40. Thus, according to the procedure outlined in the policy, a student requesting that the GSD maintain secrecy from the student's parents, could be subjected to inquiries concerning the student's perceived needs based on the student's unique situation. Further, this inquiry could include questioning and evaluation by a licensed school counselor, a licensed school nurse or other medical provider, and/or an "outside provider who can assist in developing a plan for that student."

41. This process inherently requires these licensed specialists to inquire into the student's specific perceived needs, including the student's sexual behaviors and attitudes, and the student's perception of the student's parents' perceived sexual attitudes.

42. This policy applies to all students of SAU#73 and the Gilford School District, regardless of age or capacity.

43. As quoted above, the Policy contains specific provisions that interfere with the rights of parents to be fully informed and involved in addressing issues relating to gender identity, expression, and potentially even to gender transition involving medical intervention.

44. Upon information and belief, GSD personnel have been trained to enforce the Policy and have conformed their behavior and practices with the Policy, including withholding information from parents about their child's transgender identity, expression, or gender non-conforming presentation at school.

45. Upon information and belief, if a child has requested that information related to transgender identity, expression, or gender non-conforming presentation be hidden or withheld from the child's parents, GSD personnel intentionally lie or mislead the child's parents concerning the same.

46. Upon information and belief, without the relief requested from this Court, GSD personnel will continue to conform their behavior and practices set forth in the Policy, including by withholding information from parents about their child's transgender identity, expression, or gender non-conforming presentation at school if the child has not desired that information to be transmitted to the parents and by keeping such information out of the school records to which parents are given access.

47. Upon information and belief, the vast majority of GSD personnel acting pursuant to the Policy and interacting with students who experience gender dysphoria are not professionally trained, certified, or licensed in the diagnosis or treatment of gender dysphoria.

48. The Policy also purports to create an affirmative duty on members of the school community to engage in speech compelled by the school district. Specifically, the policy states:

C. Names/Pronouns

A student under this policy should be addressed by a name or pronoun that corresponds to the student's gender identify that is consistently asserted at school.

49. The Policy expressly states that it is intended to:

set[] out guidelines for schools and district staff to address the needs of transgender and gender non-conforming students and clarif[y] how state law, HB 263, should be implemented in situations where questions may arise about how to protect the legal rights or safety of such students.

Exhibit #1, page 1 of 4.

50. Gilford School Board Policy AC, entitled, Prohibition Against Discrimination of Students in Educational Programs and Activities, defines the scope of the District’s “anti-discrimination” policy. See Exhibit #2. Policy AC specifically states that it applies to:

all persons employed or served by the District. It applies to all sites and activities the District supervises, controls, or where it has jurisdiction under the law, including where it (a) occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or (b) occurs off of school property or outside of a school sponsored activity or event, if the conduct interferes with a student’s educational opportunities or substantially disrupts the orderly operations of the school of school-sponsored activity or event, as set forth in Board policy JICK.

Exhibit #2. Policy AC is incorporated fully herein by reference.

51. Policy AC does not define persons “served by the district.” However, the broad definition quoted above indicates that school policies are intended to reach parents of students of the district, members of the community who enter school grounds or facilities, and members of the community who attend any school event, wherever it may be held.

52. Gilford School Policy KFA governs “Public Conduct On School Property.” (See Exhibit #3). The policy reads in pertinent part as follows:

For purposes of this policy, “school property” means any building, vehicles, property, land, or facilities used for school purposes or school-sponsored events, whether public or private. The School District expects mutual respect, civility, and orderly conduct among all individuals on school property or at a school event. No person on school property or at a school event shall: ...

11. Violate other District policies or regulations, or an authorized District employee’s directive.

Any person who violates this policy or any other acceptable standard of behavior may be ordered to leave school grounds. Law enforcement officials may be contacted at the discretion of the supervising District employee if such employee believes it necessary.

Additionally, the District reserves the right to issue “no trespass” letters to any person whose conduct violates this policy, acceptable standards of conduct, or creates a disruption to the school district’s education purpose.

Exhibit #3. Policy KFA is incorporated fully herein by reference.

53. Taken together, Policies JBAB, AC, and KFA compel school employees, students, parents, and members of the community who chose to participate in any school activities, to use gender pronouns selected by a student, without regard to the student’s biological sex. Failure to comply with GSD’s policy prescriptions concerning a student’s preferred pronouns can have dire consequences, including but not limited to being removed from school activities involving the Plaintiff’s child, being excluded from subsequent school and community activities being held on school property, being subject to an encounter with the police at the discretion of the supervising District employee, and being subject to a no trespass order.

54. The policies impose this compelled speech without exception and without regard to: (1) any religious objections that school employees, students, parents, or members of the community may have; (2) whether execution of the policy violates the constitutional rights of GSD personnel, students, parents, or community members; and (3) whether the delegation of authority from the New Hampshire General Court to the GSB was sufficiently broad that it included the authority to adopt policies requiring school employees, students, parents, or members of the community to engage in compelled speech.

## **V. CLAIMS**

55. Plaintiff brings this action as a facial challenge to the Policy. There is no set of facts by which the Policy of withholding information from the parents about their minor children's gender identity or transitioning inclinations or behaviors is lawful.

56. Likewise, there is no set of facts by which the Policy of compelling speech in manner that requires a person to use pronouns that are contrary to another person's biological sex when addressing that person is lawful, and when when doing so is contrary to a person's rights of conscience and freedom of religion under Part I, Article 5.

57. The Policies are not, "necessary to achieve a compelling governmental interest [nor] narrowly tailored to meet that end." *State v. Mack*, 173 N.H. 793, 815 (2020).

58. The Policies are *ultra vires* in that they exceed the legislative grant of authority under RSA 193:27, 193:28, or any other delegation of authority.

59. Pursuant to the Policy, defendants will withhold information from the Plaintiff, or others similarly situated, about their children's gender dysphoria, even if the Plaintiff or parent of a child specifically requests such information.

60. Plaintiff or other parents cannot be forced wait to challenge the Policy until they learn that one of their children experiences gender dysphoria. By the time Plaintiff learns the truth, GSD personnel, acting pursuant to Policy, may have already enabled their children to go through the process of transitioning socially to a different gender identity without Plaintiff being able to counsel and advise them, and without allowing the child to take advantage of professional assistance the Plaintiff or other parent may believe it in their child's best interest to provide.

61. Pursuant to the Policy, Defendants are taking over the rightful position of the Plaintiff, and other parents similarly situated, and intentionally hindering them from counseling their own minor children concerning an important decision that can have lifelong repercussions.

62. Pursuant to the Policy, Defendants' withholding of information prevents Plaintiff, and others similarly situated, from providing additional professional assistance to their children that the parents may deem appropriate. This decision directly relates to the Plaintiff's primary

responsibilities to determine what is in his minor children's best interests with respect to the child's support, care, nurture, welfare, safety, and education.

63. Pursuant to the Policy, Defendants are determining that minor children have a "right" to withhold information from their parents in all situations relating to transgender orientation, gender dysphoria, or related matters, even though the minor has informed unrelated third parties of the information, and that the Defendants and personnel will honor that "right" by withholding information from the minor's parents.

64. Because of the secretive nature of the Policy, Plaintiff and his minor child, and others similarly situated, could be irreparably harmed before Plaintiff or other parents have an opportunity to become aware of the injuries the child may suffer.

65. The explicit purpose of the Defendants' Policy is to secrete away from Plaintiff, and others similarly situated, information related to their minor children, such that parents will have no occasion to be informed of or to complain of such actions and inactions of the Defendants.

66. By hiding from Plaintiff, and others similarly situated, that their children may be dealing with gender dysphoria, the Policy interferes with Plaintiff's ability to provide acceptance, support, understanding, and professional assistance to their children.

67. By hiding from Plaintiff, and others similarly situated, that their children may be dealing with gender dysphoria, the Policy interferes with Plaintiff's ability to facilitate their children's coping, social support, identity exploration and development of their sexual orientation.

68. By hiding from Plaintiff, and others similarly situated, that their children may be dealing with gender dysphoria, the Policy interferes with Plaintiff's ability to provide neutral

interventions to prevent or address unlawful conduct or unsafe sexual practices to which transgender youth show greater susceptibility.

69. By hiding from Plaintiff, and others similarly situated, that their children may be dealing with gender dysphoria, the Policy interferes with Plaintiff's ability to provide high-quality, expert, professional assistance their children may need and that likely is covered by Plaintiff's health insurance, but which almost certainly cannot be provided by GSD or SAU #73.

70. Issues regarding whether and how children engage in gender transformation are of fundamental importance, and their improper handling could have long-lasting, negative ramifications for a child's physical, mental, and spiritual well-being.

71. Professionals have concluded that many children with gender dysphoria can benefit by assistance that only their parents can provide. See WPATH Guidelines at 16-17.

**COUNT I**  
**Violation of Part I, Art. 2 of the New Hampshire Constitution**  
**Parental Rights**

72. Plaintiff incorporates by reference all other allegations in this Complaint.

73. Parental rights are “natural, essential, and inherent” under Part I, Article 2 of the New Hampshire Constitution. Parents have a fundamental liberty interest in raising and caring for their children.

74. “Fit parents are presumed to act in the best interest of their children.” *In re Guardianship of Reena D.*, 163 N.H. 107, 111 (2011)(citing *Troxel v. Granville*, 530 U.S. 57 (2000)). “When a parent is fit, there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent’s children.” *Id.* (citing *In the Matter of Nelson &*

*Horsley*, 149 N.H. 545, 547 (2003)). “Fit parents are those who have not been adjudicated unfit.”  
*Id.* at 112.

75. These fundamental rights include, but are not limited to, the rights of parents to counsel their children on important decisions regarding their health and safety and to decide what is in the best interests of their minor children.

76. Defendants, by promulgating and putting into effect the Policies and purposefully withholding information from parents directly related to their minor children's support, care, nurture, welfare, safety, and education, have announced their intention to violate, and have directly hindered Plaintiff, and others similarly situated, from carrying out, a parent's fundamental rights protected under the New Hampshire Constitution.

77. The State may not abridge or hinder parents in the exercise of their fundamental rights with respect to their minor children unless there is a compelling reason to do so, and the remedy is narrowly tailored to the circumstances.

78. Defendants have no compelling interest in withholding information from Plaintiff, or other parents similarly situated, with respect to their children's desire to consider becoming or identifying as transgender, or withholding information that their children have taken actions in that regard.

79. The Policies, in withholding information from Plaintiff, and other parents similarly situated, with respect to a child's desire to consider becoming transgender or that their children have taken actions in that regard, are not narrowly tailored to the circumstances.

**COUNT II**  
**Violation of Part I, Arts. 2 and 5 of the New Hampshire Constitution**  
**Freedom of Religion and Conscience**

80. Plaintiff incorporates by reference all other allegations in this Complaint.

81. The fundamental rights of parents to direct the care, custody, education, and control of their minor children in their religious upbringing are protected under Part I, Articles 2 and 5.

82. These fundamental rights include, but are not limited to, the right of parents to counsel their children on important decisions related to their health and safety and to determine what is in the best interests of their minor children and are consistent with the child's spiritual needs and development.

83. Defendants may not abridge or hinder parents in the exercise of their fundamental rights with respect to their minor children and their minor children's spiritual development unless there are compelling reasons and the remedy is narrowly tailored to the circumstances.

84. Defendants have no compelling interest in withholding information from Plaintiff with respect to their children's desire to consider becoming or identifying as transgender, or withholding information that their children have taken actions in that regard.

85. The Policy of withholding information from Plaintiff, and others similarly situated with respect to their children's desire to consider becoming or identifying as transgender, or that their children have taken actions in that regard, is not narrowly tailored to the circumstances.

86. Defendants have, under color of law, deprived Plaintiff of their rights, privileges, or immunities secured New Hampshire Constitutions and federal and state laws and regulations by execution, adoption, enforcement, and application of the Policy with respect to withholding and secreting from Plaintiff information concerning transgender inclinations and behavior of their minor children, thereby interfering with the ability of the Plaintiff to maintain responsibility for their child's spiritual growth and development.

**Count III**  
**Violation of Part I, Art. 22 of the New Hampshire Constitution**  
**Freedom of Speech and Expression**  
**Viewpoint Discrimination**

87. Plaintiff incorporates by reference all other allegations in this Complaint.

88. By adopting a policy that threatens to punish Plaintiff, and others similarly situated, for expressing their views, Defendants have engaged in content and/or viewpoint discrimination in violation of the New Hampshire Constitution.

89. Questions related to gender identity, and its role in our society, are a hotly contested matter of public concern.

90. Referring to a person using a pronoun that is different than an individual's biological sex communicates a message about gender identity.

91. Defendant's policies confer unbridled discretion upon GSD officials, including Defendants, to discriminate based on content or viewpoint on the subject of gender identity.

92. The Policies expressly authorize GSD personnel to exclude Plaintiff, and others similarly situated, from public school grounds and activities based on the content of their speech.

93. Defendants' policies are unconstitutionally overbroad because they restrict a significant amount of constitutional protected speech.

94. The overbreadth of Defendants' policies chills the speech of Plaintiff, who seek to engage in protected expression, including expression that does not violate Plaintiff's religious beliefs.

95. The Policies are not narrowly tailored to achieve a compelling government purpose.

**Count IV**  
**Violation of Part I, Art. 22 of the New Hampshire Constitution**  
**Freedom of Speech and Expression**

### **Compelled Speech**

96. Plaintiff incorporates by reference all other allegations in this Complaint.

97. Referring to a person using a pronoun that is different than an individual's biological sex communicates a message about gender identity.

98. The Policy compels Plaintiff, and others similarly situated, to communicate a message about gender identity, a message that he does not hold, that he does not wish to communicate, and that conflicts with his religious beliefs, conscience, and understanding of science and human development.

99. The discussion of how to respond to individuals with gender dysphoria and whether to alter use of pronouns, or not use pronouns, is a matter of public concern and public debate as defined by the United States Supreme Court in *Janus v. American Federation of State, County, and Municipal Employees, Counsel 31*, 138 S.Ct. 2448, 2473 (2018).

100. Compelling an individual to express an objective biological falsehood is not a lawful message.

101. The discussion of how to respond to individuals with gender dysphoria and whether to alter use of pronouns is not curricular speech.

102. Plaintiff's expression regarding gender identity is protected by the New Hampshire Constitution.

103. Defendants' Policies, and their threatened enforcement of those Policies to compel Plaintiff, and others similarly situated, to express messages that they do not wish to express, violates their right to free speech as guaranteed by the New Hampshire Constitution.

104. Defendants' Policy has caused, and will continue to cause, injury to Plaintiff, and others similarly situated, in that their speech will be chilled by being forced either to forego their

constitutional right to free expression or to forego participation in their child's educational activities.

**Count V**  
**Violation of Part I, Article 22**  
**Due Process of Law – Overbreadth and Void for Vagueness**

105. Plaintiff incorporates by reference all other allegations in this Complaint.

106. The New Hampshire Constitution prohibits the deprivation of liberty without due process of law.

107. Rules which use terms that are so vague that ordinary citizens must guess at their meaning or leave a rule open to selective enforcement unconstitutionally deprive citizens of liberty without due process of law.

108. A rule must afford citizens a reasonable opportunity to know what is prohibited in order to comport with constitutional due process requirements.

109. Rules which restrict or compel speech must meet a higher standard of specificity than other rules in order to comport with constitutional due process requirements.

110. Defendants' Policies, and their prospective enforcement of the Policies, are unconstitutionally vague.

111. The Policies are unconstitutionally vague because they state that a student's selected gender pronouns "should" be used, without providing any guidance whatsoever when use of a pronoun other than the student's preferred pronoun will lead to discipline, sanction, removal from school property, or issuance of a "no trespass" order.

112. The Policies leave an ordinary person reading them without the ability to know when the identified conduct will be prescribed and enforced or when it will be permitted.

**Count VI**  
**Violation of Part I, Article 22 of the New Hampshire Constitution**

### **Prior Restraint on Speech**

113. Plaintiff incorporates by reference all other allegations in this Complaint.

114. Taken together, Policies JBAB, AC, and KFA govern the conduct of all persons involved in any school activities or any activities occurring on school property.

115. These Policies constitutes a prior restraint on speech.

116. A prior restraint on speech is a rule that restricts speech, rather than merely punishing it after the fact.

117. “Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.” *Mortgage Specialist, Inc., v. Implode-Explode Heavy Industries, Inc.*, 160 N.H. 227, 241 (2010).

118. “When...the prior restraint impinges upon the right of the press to communicate news and involves expression in the form of pure speech – speech not connected with any conduct – the presumption of unconstitutionality is virtually insurmountable.” *Id.* (quoting *Matter of Providence Journal Co.*, 820 F.2d 1342, 1344 (1<sup>st</sup> Cir.1986)).

119. The Policies impose a prior restraint on the free speech rights of the Plaintiff, and others similarly situated, in that they purport to restrict speech rather than to punish speech after-the-fact, when the circumstances of the speech and its effects can be considered.

### **Count VII The Policies Are *Ultra Vires***

120. Plaintiff incorporates by reference all other allegations in the Complaint.

121. In New Hampshire, “[t]here has been a consistent and unvarying support of the principle of complete legislative control of local government.” *Opinion of the Justices*, 99 N.H. 540, 541 (1955).

122. If a political subdivision enacts an ordinance or policy pursuant to a grant of authority by the legislature, the political subdivision, “must exercise [its] power in conformance with the enabling legislation.” *K.L.N. Construction v. Town of Pelham*, 167 N.H. 180, 184 (2014)(quotations omitted).

123. By the specific terms of the Policy, JBAB was adopted pursuant to the legislative delegation of authority contained in SB263.

124. SB263 was codified, in part, as RSA 193:38 and RSA 193:39.

125. RSA 193:38 and RSA 193:39 read as follows:

193:38 Discrimination in Public Schools. – No person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination in public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, or national origin, all as defined in RSA 354-A. Any person claiming to be aggrieved by a discriminatory practice prohibited under this section, including the attorney general, may initiate a civil action against a school or school district in superior court for legal or equitable relief, or with the New Hampshire commission for human rights, as provided in RSA 354-A:27-28.

193:39 Discrimination Prevention Policy Required. – Each school district and chartered public school shall develop a policy that guides the development and implementation of a coordinated plan to prevent, assess the presence of, intervene in, and respond to incidents of discrimination on the basis of age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion, national origin, or any other classes protected under RSA 354-A.

126. Nothing in either RSA 193:38 or RSA 193:39 authorizes a school district to adopt policies requiring school district personnel, students, parents, or members of the school community, to use a student’s preferred pronouns.

127. Nothing in either RSA 193:38 or RSA 193:39 authorizes a school district to adopt policies requiring or encouraging school district personnel to hide information about minor students from the student’s parents.

128. Nothing in either RSA 193:38 or RSA 193:39 authorizes a school district to adopt policies that violate the New Hampshire Constitution or state or federal statutory law concerning the rights of parents to raise their children, the rights of free speech, the rights of parents to access information about their minor children, or to violate religious freedoms.

**Count VIII**  
**Violation of the Family Educational Rights and Privacy Act.**

129. Plaintiff incorporates by reference all other allegations in the Complaint.

130. The Family Educational Rights and Privacy Act, (“FERPA”), 20 U.S.C. § 1232g, is a law made under the authority of the United States of America.

131. Plaintiff has standing “to petition the Superior Court to declare whether the State or political subdivision in which [he] resides has spent, or approved spending, public funds in violation of a law, ordinance, or constitutional provision.” N.H. Const. Part I, Art. 8.

132. Defendants have spent public funds considering, adopting, and publishing the Policy. Defendants have further spent public funds training personnel on the enforcement of the Policy.

133. FERPA provides, in relevant part, as follows:

(a)(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children....

No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or

otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which— contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution.

134. SAU #73 and GSD are each an "educational agency or institution" as that term is defined in FERPA.

135. Records referring to a change or proposed change in gender identity by minor children attending GSD schools are "education records" as that term is defined in FERPA.

136. The Policy in withholding records from Plaintiff with respect to their children's desire to consider becoming transsexual or that their children have taken actions in that regard is in violation of FERPA.

### **Count IX**

#### **Violation of Protection of Pupil Rights Act**

137. Plaintiff incorporate by reference all other allegations in the Complaint.

138. The Protection of Pupil Rights Act, 20 U.S.C. § 1232h, is a law made under the authority of the United States. The federal regulations implementing PPRA, found in 34 C.F.R. §98.4, are also law made under the authority of the United States

139. Plaintiff has “standing to petition the Superior Court to declare whether the State or political subdivision in which [he] resides has spent, or approved spending, public funds in violation of a law, ordinance, or constitutional provision.” N.H. Const. Part I, Art. 8.

140. Defendants have spent public funds considering, adopting, and publishing the Policy. Defendants have further spent public funds training personnel on the enforcement of the Policy.

134. PPRA provides in relevant part as follows:

(b) Limits on survey, analysis, or evaluations. No student shall be required, as part of any applicable program, to submit to a survey, analysis, or evaluation that reveals information concerning—

...

(3) sex behavior or attitudes;

...

without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of an unemancipated minor, without the prior written consent of the parent.

135. PPRA is implemented by regulations of the Department of Education, which, as provided in 34 CFR §98.4, in relevant part provides as follows:

(a) No student shall be required . . . to submit without prior consent to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning one or more of the following:

Sex behavior and attitudes;

(b) As used in paragraph (a) of this section, prior consent means: Prior consent of the student, if the student is an adult or emancipated minor; or ***Prior written consent of the parent or guardian, if the student is an unemancipated minor.***

(Emphasis added).

136. By requiring the questioning of a student about gender identity, and other actions required to be taken with a student in order to comply with the Policy without consent as provided for by PPRA and its implementing regulations, the Policy is in contravention of the PPRA and its implementing regulations.

**WHEREFORE**, Plaintiff request the following relief:

- A. A judicial declaration that Policy JBAB with respect to withholding from parents, knowledge of and information about their minor child's gender identity and/or gender expression, and/or gender transitioning conduct, and all records thereof, unduly and impermissibly interferes with a parent's rights to direct the care, custody, education, safety, and control of their minor children, in violation of Part I, Art. 2 of the New Hampshire Constitution; and
- B. A judicial declaration that Policy JBAB unduly and impermissibly interferes with a parent's right to direct and supervise their minor child's religious upbringing and spiritual development, in violation of Part I, Articles 2 and 5 of the New Hampshire Constitution; and
- C. A judicial declaration that Policies JBAB, AC, and KFA require compelled speech in violation of Part I, Article 22 of the New Hampshire Constitution; and
- D. A judicial declaration that Policies JBAB, AC, and KFA are overbroad and vague; and
- E. A judicial declaration that Policies JBAB, AC, and KFA are violate the prohibition on prior restraints of free speech in violation of Part I, Article 22 of the New Hampshire Constitution; and
- F. A judicial declaration that Policies JBAB, AC, and KFA are ultra vires and not authorized by any action of the New Hampshire General Court; and
- G. A judicial declaration that Policies JBAB, AC, and KFA, as written and implemented, violate FERPA and/or the PPRA;
- H. A temporary and permanent injunction prohibiting GSB, the individual defendants, and all GSD staff under their supervision, from enforcing the Policies; and
- I. An injunction requiring GSB and the individual defendants to retrain GSD personnel in accordance with this Court's holding in this case; and
- J. An award of attorney's fees pursuant to the substantial public benefit doctrine; and
- K. Such other relief as may be just and proper.

Respectfully Submitted,  
David "Skip" Murphy  
By his attorneys,  
Lehmann Major List, PLLC

*/s/Richard J. Lehmann*

September 13, 2021

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**TRANSGENDER AND GENDER NON-CONFORMING STUDENTS****I. PURPOSE**

The Gilford School District policy requires that all programs, activities, and employment practices be free from discrimination based on sex, sexual orientation, or gender identity. This policy is designed in keeping with these mandates to create a safe learning environment for all students and to ensure that every student has equal access to all school programs and activities.

This policy sets out guidelines for schools and district staff to address the needs of transgender and gender non-conforming students and clarifies how state law, SB263, should be implemented in situations where questions may arise about how to protect the legal rights or safety of such students. This policy does not anticipate every situation that might occur with respect to transgender or gender non-conforming students, and the needs of each transgender or gender non-conforming student must be assessed on a case-by-case basis. In all cases, the goal is to ensure the safety, comfort, and healthy development of the transgender or gender non-conforming student while maximizing the student's social integration and minimizing stigmatization of the student.

When a student or the student's parent or guardian, as appropriate, notifies the school administration that the student will assert a gender identity that differs from previous representations or records, the school will begin treating the student consistent with the student's gender identity. Under Title IX, there is no medical diagnosis or treatment requirement that students must meet as a prerequisite to being treated consistent with their gender identity. Transgender students often are unable to obtain identification documents that reflect their gender identity (e.g., due to restrictions imposed by state or local law in their place of birth or residence). Requiring students to produce such identification documents in order to treat them consistent with their gender identity may violate Title IX when doing so has the practical effect of limiting or denying students equal access to an educational program or activity.

This procedure will be used to address needs raised by transgender students and/or their parent(s)/guardian(s).

1. A transgender student and/or their parent(s)/guardian(s) should contact the student's counselor or building administrator. In the case of a student who has not yet enrolled in school, the appropriate building administrator should be contacted.
2. A meeting should be scheduled to discuss the student's particular circumstances and needs. In addition to the student, parent(s)/guardian(s) and building administrator, participants may include the school counselor, school nurse, teachers and/or other school staff, and possibly outside providers who can assist in developing a plan for that student.
3. A written plan will be developed by the school, in consultation with the student, parent(s)/guardians(s) and others as appropriate, to address the student's particular needs. If the student has an IEP or a 504 Plan, the provisions of these plans should

be taken into consideration in developing the plan for addressing transgender issues.

4. If the parties cannot reach an agreement about the elements to be included in the plan, the Superintendent shall be consulted as appropriate.

## **II. DEFINITIONS**

The definitions provided here are not intended to label students but rather are intended to assist in understanding this policy and the legal obligations of District staff. Students might or might not use these terms to describe themselves.

"Gender identity" is a person's deeply held sense or psychological knowledge of their own gender, regardless of the gender they were assigned at birth. Everyone has a gender identity.

"Transgender" describes people whose gender identity is different from their gender assigned at birth.

"Gender expression" refers to the way a person expresses gender, such as clothing, hairstyles, activities, or mannerisms.

"Gender non-conforming" describes people whose gender expression differs from stereotypical expectations, such as "feminine" boys, "masculine" girls, and those who are perceived as androgynous.

"Cisgender" refers to a person whose gender identity and expression are aligned with those traditionally associated with their assigned sex at birth.

"Gender non-binary" describes an individual whose gender identity and/or expression does not align with the gender binary of male or female. A gender non-binary person may describe their gender identity and/or expression as androgynous, genderfluid, genderqueer, agender, non-labeling, etc.

"Genderfluid" describes an individual whose gender identity and/or expression may be gender non-conforming or non-binary, who has a wider and more flexible range of gender expression that may even change from day to day. While the gender expression of a student who is genderfluid is flexible or may appear to change with some frequency, their genderfluid identity can be recognized as the "gender which the student consistently asserts at school" in regards to the policy.

"Gender Transition" is the process by which a person goes from living and identifying as one gender to living and identifying as another gender. Gender transition is typically prompted by the feeling that an individual's gender identity does not match the one typically associated with their assigned sex at birth. Examples include: transitioning from a boy to a girl, a girl to a boy, a girl to gender non-binary, or a boy to gender non-binary. For most elementary and secondary students, this involves no or minimal medical interventions. In most cases, transgender students under the age of 18 are in a process of "social transition" from one gender to another.

“Sexual Orientation” describes a person’s romantic and/or sexual attraction. Sexual orientation is different and not the same as gender identity or gender expression. In this policy, sexual orientation refers to an individual’s “actual or perceived” sexual orientation.

### **III. GUIDANCE**

#### **A. Privacy**

The Gilford School Board recognizes a student's right to keep private one's transgender status or gender non-conforming presentation at school. Information about a student's transgender status, legal name, or gender assigned at birth also may constitute confidential information. School personnel should not disclose information that may reveal a student's transgender status or gender non-conforming presentation to others, including parents and other school personnel, unless legally required to do so or unless the student or parent has authorized such disclosure. Transgender and gender non-conforming students have the right to discuss and express their gender identity and expression openly and to decide when, with whom, and how much to share private information.

When contacting the parent or guardian of a transgender or gender non-conforming student, school personnel should use the student's legal name and the pronoun corresponding to the student's gender assigned at birth unless the student, parent, or guardian has specified otherwise.

#### **B. Official Records**

The District is required to maintain a mandatory permanent pupil record ("official record") that includes a student's legal name and legal gender. However, the District is not required to use a student's legal name and gender on other school records or documents. The District will change a student's official record to reflect a change in legal name or legal gender upon receipt of documentation that such change has been made pursuant to a court order. In situations where school staff or administrators are required by law to use or to report a transgender student's legal name or gender, such as for purposes of standardized testing, school staff and administrators shall adopt practices to avoid the inadvertent disclosure of such confidential information.

#### **C. Names/Pronouns**

A student under this policy should be addressed by a name or pronoun that corresponds to the student’s gender identity that is consistently asserted at school.

#### **D. Gender-Segregated Activities**

To the extent possible, schools should reduce or eliminate the practice of segregating students by gender. In situations where students are segregated by gender, such as for health education classes, students should be included in the group that corresponds to their gender identity and have the choice; whatever fits the need of the student.

#### **E. Restroom/Locker Room Accessibility**

The use of restroom/locker rooms requires schools to consider a number of factors,

including but not necessarily limited to the safety and comfort of students; the transgender student's preference; student privacy; the ages of students; and available facilities. As a general rule, transgender students will be permitted to use the restroom/locker room assigned to the gender which the student consistently asserts at school. Any student who has a need or desire for increased privacy, regardless of the underlying reason will be provided with a reasonable alternative changing area or single occupant bathroom.

#### **G. Physical Education Classes & Intramural Sports**

As a general rule, in any other facilities or activities when students may be separated by gender, transgender students may participate in accordance with the gender identity consistently asserted at school.

Interscholastic athletic activities should be addressed through the NHIAA participation policy, Article II, Section 21.

#### **I. Dress Codes**

All students are required to meet the requirements in the dress code or school rules. Transgender students may dress in accordance to the gender which the student consistently asserts at school.

#### **J. Discrimination/Harassment**

It is the responsibility of each school and the District to ensure that transgender and gender non-conforming students have a safe school environment. This includes ensuring that any incident of discrimination, harassment, or violence is given immediate attention, including investigating the incident, taking appropriate corrective action, and providing students and staff with appropriate resources, see Gilford School Board Policy JBAA. Complaints alleging discrimination, harassment or bullying based on a person's actual or perceived transgender status or gender nonconformity are to be handled in the same manner as other discrimination, harassment or bullying complaints. Refer to policy AC, JBAA, and/or JICK.

### **IV. STAFF TRAINING**

1. The Superintendent and/or building principal may institute in-service training and/or distribute educational materials about transgender issues to school staff as deemed appropriate.
2. Teachers and other staff who have responsibilities for a transgender student with a plan, as outlined in this policy, will receive support in implementing the plan.

**(Adopted: 1/6/2020)**

**NON-DISCRIMINATION, EQUAL OPPORTUNITY EMPLOYMENT  
AND DISTRICT ANTI-DISCRIMINATION PLAN**

**A. Prohibition Against Discrimination of Students in Educational Programs and Activities.**

Under New Hampshire law and Board policy, no person shall be excluded from, denied the benefits of, or subjected to discrimination in the District's public schools because of their age, sex, gender identity, sexual orientation, race, color, marital status, familial status, disability, religion or national origin. Discrimination, including harassment, against any student in the District's education programs, on the basis of any of the above classes, or a student's creed, is prohibited. Finally, there shall be no denial to any person of the benefits of educational programs or activities, on the basis of any of the above classes, or economic status.

Harassment of students other than on the basis of any of the classes or categories listed above is prohibited under Board policy JICK {\*\*} Pupil Safety and Violence Prevention.

**B. Equal Opportunity of Employment and Prohibition Against Discrimination in Employment.**

The School District is an Equal Opportunity Employer. The District ensures equal employment opportunities without regard to age, color, creed, disability, gender identity, marital status, national origin, pregnancy, race, religion, sex, or sexual orientation. The District will employ individuals who meet the physical and mental requirements, and who have the education, training, and experience established as necessary for the performance of the job as specified in the pertinent job description(s).

Discrimination against and harassment of school employees because of age, sex, race, creed, religion, color, marital status, familial status, physical or mental disability, genetic information, national origin, ancestry, sexual orientation, or gender identity are prohibited. Additionally, the District will not discriminate against any employee who is a victim of domestic violence, harassment, sexual assault, or stalking.

**C. Policy Application.**

This Policy is applicable to all persons employed or served by the District. It applies to all sites and activities the District supervises, controls, or where it has jurisdiction under the law, including where it (a) occurs on, or is delivered to, school property or a school-sponsored activity or event on or off school property; or (b) occurs off of school property or outside of a school-sponsored activity or event, if the conduct interferes with a student's educational opportunities or substantially disrupts the orderly operations of the school or school-sponsored activity or event, as set forth in Board policy JICK{\*\*}, Pupil Safety and Violence Prevention. Examples of sites and activities include all District buildings and grounds, school buses and other vehicles, field trips, and athletic competitions.

**D. District Anti-Discrimination Plan.**

No later than October 15, 2020, the Superintendent shall develop and provide to the Board for approval, a coordinated written District Anti-Discrimination Plan (the "Plan") to include guidelines, protocols and procedures intended to prevent, assess the presence of, intervene in, and respond to incidents of discrimination.

Among other things, the Plan should include provisions, and recommendations with respect to resources, policies, complaint procedures, student education programs, Plan dissemination and training appropriate to carrying out the Plan objectives stated in the preceding paragraph.

In developing the Plan, the Superintendent is encouraged to seek input from appropriate groups of the school and local community and coordinate with the District's Human Rights [*Non-Discrimination*] Officer and Title IX and 504 Coordinators.

No less than once every two years (off years from review of the District's Suicide Prevention Plan per Policy JLDBB{\*\*}), the Superintendent shall update the District Anti-Discrimination Plan, and present the same to the Board for review. Such Plan updates should be submitted to the Board in time for appropriate budget consideration.

**E. Human Rights [or Non-Discrimination], Title IX, 504 and other Coordinators or Officers.**

The Superintendent shall assure that District and or building personnel are assigned to the positions listed below. Each year, the Superintendent shall prepare and disseminate as an Appendix AC-E to this Policy an updated list of the person or persons acting in those positions, along with their District contact information, including telephone number, email, postal and physical addresses.

Human Rights [or Non-Discrimination] Officer Esther Kennedy.

Title IX Coordinator Esther Kennedy.

504 Coordinator Esther Kennedy.

The Appendix will also include current contact for relevant state and federal agencies including:

U.S. Department of Education, Office of Civil Rights

U.S. Department of Agriculture, Office of Civil Rights

N.H. Human Rights Commission

N.H. Department of Justice, Civil Rights Unit

N.H. Department of Education, Commissioner of Education

**F. Complaint and Reporting Procedures.**

Any person who believes that he or she has been discriminated against, harassed, or bullied in violation of this policy by any student, employee, or other person under the supervision and control of the school system, or any third person who knows or suspects conduct that may constitute discrimination, harassment, or bullying, should contact the District Human Rights Officer, or otherwise as provided in the policies referenced below under this same heading.

Any employee who has witnessed, or who has information that another person may have been subjected to discrimination, harassment, or bullying in violation of this policy has a duty to report such conduct to his/her immediate supervisor, the District Human Rights Officer, or as provided in one of the policies or administrative procedures referenced below under this same heading.

Additionally, employees who observe an incident of harassment or bullying are expected to intervene to stop the conduct in situations in which they have supervisory control over the perpetrator and it is safe to do so. If an employee knows of an incident involving discrimination, harassment, or bullying and the employee fails to report the conduct or take proper action or knowingly provides false information in regard to the incident, the employee will be subject to disciplinary action up to, and including, dismissal.

Investigations and resolution of any complaints shall be according to the policies listed below and related administrative procedures or regulations. Complaints or reports regarding matters not covered in one or the other of those policies should be made to the District Human Rights Officer.

1. Reports or complaints of sexual harassment or sexual violence by employees or third party contractors should be made under Board policy GBAA/\*\*/;
2. Reports or complaints of sexual harassment or sexual violence by students should be made under Board policy JBAA/\*\*/;
3. Reports or complaints of discrimination on the basis of disability should be made under Board policy ACE/\*\*/, except for complaints regarding facilities accessibility by disabled non-students or employees, which should be made under Board policy KED/\*\*/; and
4. Reports or complaints of bullying or other harassment of pupils should be made under Board policy JICK/\*\*/.

#### **G. Alternative Complaint Procedures and Legal Remedies.**

At any time, whether or not an individual files a complaint or report under this Policy, an individual may file a complaint with the Office for Civil Rights (“OCR”), of the United States Department of Education, or with the New Hampshire Commissioner for Human Rights.

1. Office for Civil Rights, U.S. Department of Education, 5 Post Office Square, 8<sup>th</sup> Floor, Boston, MA 02109-3921; Telephone number: (617) 289-0111; Fax number: (617) 289-0150; Email: [OCR.Boston@ed.gov](mailto:OCR.Boston@ed.gov)

*Note:* Complaints to OCR must be filed in writing no later than 180 days after the alleged act(s) of discrimination. OCR may waive its 180 day time limit based on OCR policies and procedures.

2. New Hampshire Commission for Human Rights, 2 Industrial Park Drive, Concord, NH 03301; Telephone number: (603) 271-2767; Email: [humanrights@nh.gov](mailto:humanrights@nh.gov)

Notwithstanding any other remedy, any person may contact the police or pursue a criminal prosecution under state or federal criminal law.

#### **H. Retaliation Prohibited.**

No reprisals or retaliation of any kind will be taken by the Board or by any District employee against the complainant or other individual on account of his or her filing a complaint or report or participating in an investigation of a complaint or report filed and decided pursuant to this policy,

unless that person knew the complaint or report was false or knowingly provided false information.

**I. Administrative Procedures and Regulations.**

The Superintendent shall develop such other procedures and regulations as are necessary and appropriate to implement this Policy.

**J. Notice of Compliance.**

The Superintendent will provide notice of compliance with federal and state civil rights laws to all applicants for employment, employees, students, parents, and other interested persons, as appropriate.

**Legal References:**

RSA 186:11, XXXIII, Discrimination  
RSA 193:38, Discrimination in Public Schools  
RSA 193-F, Student Safety and Violence Protection Act  
RSA 275:71, Prohibited Conduct by Employer  
RSA 354-A, State Commission for Human Rights  
The Age Discrimination in Employment Act of 1967, 29 U.S.C. 621, et seq.  
The Rehabilitation Act of 1973, 29 U.S.C. 705 and 794  
Title II of The Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq.  
Title IV of the Civil Rights Act of 1964, 42 U.S.C. §2000c  
Title VII of The Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq  
Title IX of the Education Amendments of 1972, 20 U.S.C 1681, et seq  
NH Dept of Ed. Rule 303.01 (i), School Board Substantive Duties

**(Adopted: 10/14/1975)**

**(Revised: 9/12/1994, 3/4/2002, 4/4/2005, 6/6/2005, 1/7/2019, 5/4/2020)**

## **PUBLIC CONDUCT ON SCHOOL PROPERTY**

For purposes of this policy, "school property" means any buildings, vehicles, property, land, or facilities used for school purposes or school-sponsored events, whether public or private.

The School District expects mutual respect, civility, and orderly conduct among all individuals on school property or at a school event. No person on school property or at a school event shall:

1. Injure, threaten, harass, or intimidate a student, staff member, a School Board member, sports official or coach, or any other person;
2. Damage or threaten to damage another's property;
3. Damage or deface School District property;
4. Violate any New Hampshire law, or Town of Gilford or Belknap County ordinance;
5. Smoke, vape or otherwise use tobacco products;
6. Consume, possess, distribute, or be under the influence of alcoholic beverages or illegal drugs;
7. Possess dangerous devices or weapons unless otherwise authorized by federal or state law;
8. Impede, delay, disrupt, or otherwise interfere with any school activity or function (including using cellular phones in a disruptive manner);
9. Enter upon any portion of school premises at any time for purposes other than those that are lawful and authorized by the School Board;
10. Operate a motor vehicle in violation of an authorized District employee's directive or posted road signs;
11. Violate other District policies or regulations, or an authorized District employee's directive.

Any person who violates this policy or any other acceptable standard of behavior may be ordered to leave school grounds. Law enforcement officials may be contacted at the discretion of the supervising District employee if such employee believes it necessary.

Additionally, the District reserves the right to issue "no trespass" letters to any person whose conduct violates this policy, acceptable standards of conduct, or creates a disruption to the school district's educational purpose.

### **Legal References:**

*RSA 193:11, Disturbance*

*RSA 635:2, Criminal Trespass*

**(Adopted: 10/05/2020)**