



## Administrative Regulation 4430 SEXUAL HARASSMENT AND MISCONDUCT BY STAFF

**Responsible Office:** Office of the General Counsel

### **PURPOSE**

This administrative regulation describes and establishes the prohibition against sexual harassment and sexual misconduct by staff in the Washoe County School District (District).

### **REGULATION**

1. In accordance with Board Policy 9201, Bullying, Harassment and Discrimination Prohibited, as well as state and federal laws and regulations, the District prohibits sexual harassment by staff and volunteers in its educational programs/activities and employment on the basis of sex, sexual orientation, and/or gender identity or expression.
2. Sexual harassment occurs when:
  - a. Submitting to the harasser's sexual demands is a stated or implied condition of obtaining an education or work opportunity or other benefit;
  - b. Submission to or rejection of sexual demands is a factor in an academic, work or other school-related decision affecting an individual; or
  - c. Unwelcome sexual or gender-directed conduct or communication interferes with an individual's performance or creates an intimidating, hostile or offensive environment.
3. Scope
  - a. For the purposes of this administrative regulation:
    - i. The term "sexual harassment" encompasses behaviors to include sexual misconduct, sexual violence and/or abuse, sexually exploitative behavior, and gender based discrimination. Use of the term "sexual harassment" in this document indicates any or all of those behaviors unless otherwise noted.
    - ii. Use of the word "staff" refers to all District employees and volunteers, which may include but is not limited to unpaid coaches, chaperones and advisors, student teachers, and 3<sup>rd</sup> party consultants and/or vendors.

- b. This administrative regulation specifically addresses sexual harassment by a staff member on another staff member or student. Sexual harassment can occur as adult-to-adult, student to adult, student-to-student, male to female, female to male, male to male, and female to female.
  - c. The District will take prompt, equitable and remedial action within its authority on reports and complaints alleging sexual harassment that come to the attention of the District, either formally or informally. Allegations of criminal misconduct will be reported to law enforcement and suspected child abuse will be reported to law enforcement or Child Protective Services.
  - d. Persons found to have been subjected to sexual harassment will have appropriate District services made reasonably available to them and adverse consequences of the harassment shall be reviewed and remedied, as appropriate.
  - e. Nothing contained herein should be construed or interpreted to prohibit or in any way to discourage the genuine discussion of issues or use of materials for legitimate academic, educational, or instructional purposes.
4. Consent
- a. Consent refers to a freely and affirmatively communicated willingness to participate in particular sexual activity or behavior, expressed either by words or clear, unmistakable actions.
  - b. In accordance with Nevada state law, no student, regardless of his/her age, can legally consent to any form of sexual conduct with a staff member. Any such conduct by a staff member or volunteer shall result in disciplinary action up to and potentially including termination of employment or the volunteer opportunity and a criminal investigation. Sexual conduct includes, but is not necessarily limited to, sexual advances, requests for sexual favors and other verbal, nonverbal, or physical conduct of a sexual nature or with sexual implications. Nonverbal conduct may include contact through social media, to include texting.
5. Prohibited Conduct
- a. Quid Pro Quo Harassment
    - i. For students, quid pro quo sexual harassment occurs when a staff member causes a student to believe that he/she must submit to sexual conduct, sexual advances, or grant sexual favors or that acceptance or rejection of such conduct or communications will be

used as a factor in decisions affecting the student's education or participation in programs/activities.

- ii. For staff or potential staff quid pro quo harassment occurs when a supervisor makes unwelcome sexual advances or requests sexual favors and the staff member reasonably believes that submitting to that conduct or communication is a condition of obtaining employment or that accepting or rejecting that conduct or communication will be used as a factor in employment decisions.

b. Hostile Environment

- i. For students, hostile environment sexual harassment means unwelcome conduct of a sexual nature that is sufficiently serious that it interferes with, limits, or denies a student the opportunity to participate in or benefit from an education program or activity.
- ii. For employees, a hostile work environment is created when unwelcome conduct of a sexual nature is sufficiently serious that it interferes with, denies, or limits the employee's work performance or work environment.

c. Soliciting a Romantic Relationship with a Student

- i. Staff and volunteers are prohibited from soliciting a romantic, intimate, or sexual relationship with a current District student or a graduate of a school within the District for one (1) year after the student's graduation, regardless of the student's age.
- ii. "Solicitation of a romantic relationship" means deliberate or repeated acts that can be reasonably interpreted as the solicitation by a staff member or volunteer of a relationship with a student that is romantic in nature even if such romantic relationship doesn't begin until after the student has graduated. Evidence of such solicitation includes but is not limited to the following:
  - 1. Behavior, gestures, expressions, or communications with a student that are unrelated to the staff member's job duties and evidence a romantic intent or interest in the student.
  - 2. Making inappropriate comments about a student's body, creating or transmitting sexually suggestive photographs or images, or encouraging the student to transmit sexually suggestive photographs or images.
  - 3. Making sexually demeaning comments to a student.

4. Making comments about a student's potential sexual performance.
5. Requesting details of a student's sexual history.
6. Inappropriate hugging, kissing or excessive touching.
7. Suggestions that a romantic relationship is desired after the student graduates, including post-graduate plans for dating or marriage.

6. Reporting and Complaint Process

- a. The District encourages anyone who believes that sexual harassment is occurring or has occurred to report the behavior.
- b. Students
  - i. Sexual harassment or misconduct directed at a student may be reported by any individual using the District's online reporting tool ([www.wcsdbullying.com](http://www.wcsdbullying.com)); to a counselor, administrator, teacher or any other District staff member; to Gina Session, the District's Civil Rights Compliance Director/Title IX Coordinator (email: [titleix@washoeschools.net](mailto:titleix@washoeschools.net)); or to a school police or local law enforcement officer.
  - ii. Allegations by or on behalf of a student may also be filed with the Nevada Department of Education's Office of Safe and Respectful Learning ([www.bullyfreezone.nv.gov](http://www.bullyfreezone.nv.gov)) or the U.S. Department of Education's Office for Civil Rights (OCR).
- c. Staff
  - i. Sexual harassment or misconduct directed at a staff member may be reported to the staff member's first level supervisor who is not involved in the alleged harassment; the District's Civil Rights Compliance Director / Title IX Coordinator; the Department of Labor Relations; or a school police or local law enforcement officer.
  - ii. Staff complaints may also be filed with the Nevada Equal Rights Commission (NERC) or the U.S. Equal Employment Opportunity Commission (EEOC).
- d. For detailed information regarding complaint and resolution procedures, see:

- i. Administrative Regulation 4520, Staff Complaint Process: Harassment, Sexual Harassment and Intimidation
- ii. Administrative Regulation 5700, Student Complaint and Appeal Procedures: Bullying, Harassment and Discrimination

#### 7. General

- a. Notice of this regulation and complaint procedures shall be posted in prominent locations, to include the District's website and staff handbooks.
- b. It is unlawful for any person to intimidate, threaten, coerce, or discriminate against another person for the purpose of interfering with his/her right to file a report or complaint under this regulation. Retaliation against any person who has filed a complaint, provided evidence and/or testimony, assisted or participated in any manner in an investigation, proceeding or hearing conducted by an authorized District representative(s) is prohibited.
- c. The District shall provide regular training about harassment, sexual harassment and intimidation for employees.

### **DEFINITIONS**

1. Consent is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires of both persons an affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person to ensure they have the affirmative consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence, do not alone constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity. The existence of a dating relationship or past sexual relations between the persons involved should never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of consent to prior conduct).
2. Sexual Harassment is generally defined as deliberate, unsolicited and unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal or physical conduct of a sexual or gender-directed nature or with sexual implications, or unwelcome conduct based on sex or sexual stereotyping that is sufficiently severe, persistent or pervasive that it:
  - a. Has or may have direct employment consequences resulting from the acceptance or rejection of such conduct;
  - b. Has or may have direct enrollment, grading or academic consequences resulting from the acceptance or rejection of such conduct;

- c. Creates an intimidating, hostile, or offensive work or learning environment; and/or interferes with an employee's work performance or student's academic performance;
  - d. Denies or limits a student's ability to participate in and/or benefit from a school program.
  - e. Examples of potential sexual harassment include, but are not limited to:
    - i. Sexual assault, coerced intercourse, threats or verbal abuse of a sexual nature, or other actual or attempted unwanted physical touching, to include fondling, rubbing, patting, and pinching;
    - ii. Conduct or communication that has the purpose or effect of substantially or unreasonably interfering with an individual's education or employment; or of creating an intimidating, hostile or offensive learning or working environment;
    - iii. Sexual advances which are insistent and unwelcome. This may include situations which began as reciprocal, but later ceased to be reciprocal;
    - iv. Sexually suggestive text messages, emails, social media postings, letters, notes, threats, or invitations;
    - v. Submission is made either explicitly or implicitly a term or condition of an individual's employment
    - vi. Displaying of sexually suggestive, offensive and unwelcome posters, drawings, objects, pictures, or cartoons;
    - vii. Offensive and unwelcome sexual gestures, verbal abuse, sexually-oriented jokes, stories, rumors, innuendo, teasing, ogling, or obscenities; and
    - viii. Any other physical, verbal or visual conduct that has the purpose or effect of unreasonably interfering with the individual's work or academic performance or creating an intimidating, hostile or offensive work or learning environment.
3. Sexual misconduct encompasses any unwelcome behavior of a sexual nature that is committed by force. Force includes:
- a. Physical force – intentional physical restraint or restricting or controlling the movement of another person with or without the presence of a weapon;

- b. Threats – any threat (to include threat of a negative consequence) that causes someone to do something they would not have done absent the threat.
  - c. Intimidation – use of power or authority to influence someone else (quid pro quo or “this for that”).
  - d. Coercion - an unreasonable amount of pressure to engage in sexual activity. Coercion begins not when the sexual advance is made, but when it is realized the individual does not want to be convinced, and the offender pushes past that point. Frequency, intensity, isolation and/or duration can enhance the coercive effect.
  - e. Sexual misconduct can occur between persons of the same or different genders.
4. Discrimination is the distinguishing treatment of an individual based on their actual or perceived membership in a certain group or category, in a way that explicitly or implicitly affects an individual's employment, prevents or denies equal access to programs or benefits; unreasonably interferes with an individual's work performance; or creates an intimidating, hostile or offensive educational or work environment.
5. Retaliation is adverse action (e.g. payback, retribution, revenge) taken against an individual for engaging in legally protected activity such as making a complaint of harassment or participating in workplace or school site investigations.

## **DESIRED OUTCOMES**

1. Through this regulation and its associated Board policies:
  - a. The District shall promote a culture of respect that prohibits discriminatory practices. All employees are encouraged to foster an environment and to promote a workplace free of discriminatory policies and practices.
  - b. The District seeks to develop and implement procedures related to:
    - i. Identifying resources and support for individuals reporting an incident of sexual harassment or misconduct;
    - ii. Establishment and notice of procedures for filing complaints of sexual harassment or misconduct;
    - iii. Affirming the District's commitment to preventing sexual harassment and misconduct;

- iv. The appropriate response by the District when incidents do occur.

## **IMPLEMENTATION GUIDELINES & ASSOCIATED DOCUMENTS**

1. This administrative regulation reflects the goals of the District's Strategic Plan and aligns/complies with the governing documents of the District, to include:
  - a. Board Policy 9201, Bullying, Harassment and Discrimination Prohibited
  - b. Board Policy 9205, Safe and Respectful Learning Environment
  - c. Board Policy 4505, Standards of Professional Conduct
2. This administrative regulation complies with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC), to include:
  - a. Chapter 201, Crimes Against Public Decency and Good Morals
    - i. NRS 201.540, Sexual conduct between certain employees of school or volunteers at school and pupil
  - b. Chapter 388, System of Public Instruction, and specifically:
    - i. NRS 388.121 – 388.139, Provision of Safe and Respectful Learning Environment
  - c. Chapter 391, Personnel, and specifically:
    - i. NRS 391.312, Grounds for suspension, demotion, dismissal and refusal to reemploy teachers and administrators
  - d. Chapter 392, Pupils
  - e. Chapter 613, Employment Practices, and specifically:
    - i. NRS 613.310 to 613.435, Equal Opportunities for Employment
3. This administrative regulation complies with federal laws and regulations, to include:
  - a. Title IX of the Educational Amendments Act of 1972
  - b. Titles IV, VI and VII of the Civil Rights Act of 1964
  - c. Family Educational Rights and Privacy Act of 1974 (FERPA)



- d. Child Abuse Prevention and Treatment Act (CAPTA) Reauthorization Act of 2010

### **REVIEW AND REPORTING**

1. This administrative regulation shall be reviewed as part of the bi-annual review and reporting process, following each regular session of the Nevada Legislature. The Board of Trustees shall receive notification of any required changes to the guiding policy as well as an audit of the accompanying governing documents.
2. Additional administrative regulations and/or other associated documents may be developed as necessary to implement and support this administrative regulation.

### **REVISION HISTORY**

Date	Revision	Modification
7/18/2017	1.0	Adopted