



## **Administrative Regulation 5702 STAFF ON STUDENT BULLYING, HARASSMENT, and/or DISCRIMINATION - COMPLAINT AND APPEAL PROCEDURES**

**Responsible Office:** Office of the General Counsel, Department of Civil Rights Compliance

### **PURPOSE**

The Superintendent has adopted this administrative regulation to set forth the procedures for the prompt and equitable response to non-criminal complaints<sup>1</sup> and concerns from students, parent/guardian(s), or others regarding allegations of bullying by a staff member against a student in the Washoe County School District ("District" or "WCSD").

### **DEFINITIONS**

1. For the purposes of this administrative regulation, the word "bullying" encompasses bullying, cyber-bullying, harassment, sexual harassment, discrimination, and/or retaliation as defined in Nevada state law. (NRS 388.122).
  - a. "Bullying" means written, verbal or electronic expressions or physical acts or gestures, or any combination thereof, that are directed at a person or group of persons, or a single severe and willful act or expression that is directed at a person or group of persons, and:
    - i. Have the effect of: physically harming a person or damaging the property of a person; or placing a person in reasonable fear of physical harm to the person or damage to the property of the person; or
    - ii. Interfere with the rights of a person by: creating an intimidating or hostile educational environment for the person; or substantially interfering with the academic performance of a pupil or the ability of the person to participate in or benefit from services, activities or privileges provided by a school; or
    - iii. Are acts or conduct described in paragraph (a) or (b) and are based upon the: actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristic or background of a person; or association of a person with another person having one or more of those actual or perceived characteristics.
    - iv. The term "bullying" includes, without limitation: Repeated or pervasive taunting, name-calling, belittling, mocking or use of put-downs or demeaning humor regarding the actual or perceived race,

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<sup>1</sup> Criminal matters must be referred to school police or local law enforcement.

color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristic or background of a person; Behavior that is intended to harm another person by damaging or manipulating his or her relationships with others by conduct that includes, without limitation, spreading false rumors; Repeated or pervasive nonverbal threats or intimidation such as the use of aggressive, menacing or disrespectful gestures; Threats of harm to a person, to his or her possessions or to other persons, whether such threats are transmitted verbally, electronically or in writing; Blackmail, extortion or demands for protection money or involuntary loans or donations; Blocking access to any property or facility of a school; Stalking; and Physically harmful contact with or injury to another person or his or her property. (NRS 388.122)

- b. “Cyber-bullying” means bullying through the use of electronic communication. The term includes the use of electronic communication to transmit or distribute a sexual image of a minor. (NRS 388.123)
- i. “Electronic communication device” means any electronic device that is capable of transmitting or distributing an image of bullying, including, without limitation, a cellular telephone, personal digital assistant, computer, computer network and computer system. (NRS 388.124)
  - ii. “Image of bullying” means any visual depiction, including, without limitation, any photograph or video, or a minor bullying another minor. (NRS 200.900)
  - iii. “Electronic communication” means the communication of any written, verbal or pictorial information through the use of an electronic device, including, without limitation, a telephone, a cellular phone, a computer or any similar means of communication.
  - iv. “Sexual image” means any visual depiction, including, without limitation, any photograph or video, of a minor simulating or engaging in sexual conduct or of a minor as the subject of a sexual portrayal. (NRS 200.737)
- c. Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's ability to receive an education, unreasonably interferes with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. The term sexual harassment includes sexual violence under Title IX.

- d. Harassment is unwelcome conduct that is based on actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristic or background of a person; or association of a person with another person having one or more of those actual or perceived characteristics.
- e. 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 is worse than the way people are usually treated.
  - i. Protected Classes: Race, color, national origin or ethnic group identification, marital status, ancestry, sex, sexual orientation, gender identity or expression, genetic information, religion, age, mental or physical disability, military or veteran's status.
    - 1. "Disability" means, with respect to a person: 1) a physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, the human immunodeficiency virus; 2) a record of such an impairment; or 3) being regarded as having such an impairment.
    - 2. "Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.
    - 3. "Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.
- f. Hazing is an activity in which a person intentionally or recklessly endangers the physical health of another person for the purpose of initiation into or affiliation with a student organization, academic association or athletic team at a high school, college or university in this state. The term: (a) Includes, without limitation, any physical brutality or brutal treatment, including, without limitation, whipping, beating, branding, forced calisthenics, exposure to the elements or forced consumption of food, liquor, drugs or other substances. In accordance with Nevada State Law, an activity shall be deemed to be "forced" if initiation into or affiliation with a student organization, academic association or athletic team is directly or indirectly conditioned upon participation in the activity.

## REGULATION

### 1. Filing a Complaint

- a. The District accepts verbal, written or online complaints (Email: [titleIX@WashoeSchools.net](mailto:titleIX@WashoeSchools.net); BullyFree Zone at <http://bullyfreezone.nv.gov>; SafeVoice Nevada at <http://safevoicenv.org>). Complaints shall be directed to the school's principal or designee (i.e. assistant principal or dean of students).
  - i. If the complaint involves the school principal, the complaint shall be filed with the WCSD Department of Civil Rights Compliance.
- b. The Department of Civil Rights Compliance oversees the complaint process for all bullying matters falling under:
  - i. Title VI (of the Civil Rights Act of 1964) and Title IX (of the Educational Amendments of 1972).
  - ii. Title IX (of the Educational Amendments of 1972).
  - iii. Title II (of the Americans with Disabilities Act) and Section 504 of the Rehabilitation Act.
  - iv. Nevada Revised Statutes (NRS) Chapter 388, Safe and Respectful Learning Environment.
- c. The Director of the Department of Civil Rights Compliance and the Title II, VI, IX and 504 coordinator is Gina C. Session. Her contact information is:

Office of the General Counsel  
Department of Civil Rights Compliance  
425 E. 9<sup>th</sup> Street  
Reno, Nevada 89520-3425  
[gsession@washoeschools.net](mailto:gsession@washoeschools.net).
- d. Additional avenues available to students and their parent(s)/guardian(s) for filing a complaint may include:
  - i. U.S. Department of Education's Office for Civil Rights (Telephone: 800-421-3481); or Seattle Office (Telephone: 206-607-1600, TDD 1-800-877-8339), [www.ed.gov/ocr](http://www.ed.gov/ocr).
  - ii. Nevada Department of Education's Safe and Respectful Learning Environment Office ([www.bullyfreezone.nv.gov](http://www.bullyfreezone.nv.gov)).
- e. It is a violation of the law to retaliate against any individual filing a complaint or participating in an investigation. Any student experiencing retaliation because they filed a bullying complaint or participated in an investigation should file a separate complaint regarding the alleged retaliation.

## 2. Reporters

- a. Students – Any student who is the target of bullying and/or students who have first-hand knowledge of such bullying are encouraged to report such incident. Students should report incident(s) to any administrator, counselor, faculty, or staff member; by email to the Civil Rights Coordinator at [titleIX@WashoeSchools.net](mailto:titleIX@WashoeSchools.net); or through the Nevada Department of Education's SafeVoice Program (<http://safevoicenv.org>) or Bully Free Zone (<http://bullyfreezone.nv.gov>).
- b. District Employees and Elected Officials – Members of the Board of Trustees, administrators, faculty, coaches or staff members who witness an act of bullying by a staff member or receives information that bullying may have occurred shall report the information to the principal or designee as soon as practicable, but not later than the same day on which the administrator, faculty, or staff member witnessed the bullying or received information that bullying may have occurred.

## 3. Complaint Review

- a. District staff shall report allegations that are violent or criminal in nature to the appropriate law enforcement officers. Though a school may defer its investigation until completion of an investigation by law enforcement, law enforcement actions do not replace a school's obligation to conduct an investigation and respond to a bullying complaint.
- b. Upon receiving a report of possible bullying the principal or designee shall:
  - i. Take any immediate necessary action to ensure the safety and well-being of the involved student(s). Possible actions may include, but are not limited to:
    1. Implementing a safety plan;
    2. Putting a no contact order in place;
    3. Class changes;
    4. Counseling services; and,
    5. Academic support.
  - ii. Interim actions taken should aim to minimize the impact on the alleged victim.
  - iii. If the principal or designee does not have access to the alleged victim, they can wait until the next school day that there is access to the alleged victim to take the steps outlined above.
- c. A principal that receives a complaint of bullying by a staff member shall inform the Area Superintendent and either the principal or the Area

Superintendent shall prepare a Confidential Request for Investigation Form addressed to the Director of the WCSD Department of Civil Rights Compliance.

- d. The Director of Civil Rights Compliance upon receipt of the Confidential Request for Investigation Form shall make a preliminary assessment applying the District's Three-Point Criteria (for an explanation of the Three-Point Criteria see the Definitions section of this regulation) to determine whether bullying is actually alleged and/or whether enough information is available to make that determination.
  - i. If, upon initial examination of the complaint, the Director determines that the complaint **does not meet** the Three-Point Criteria, **a bullying investigation shall not be initiated.** However, other discipline or interventions may still be necessary depending on the incident(s). The Director shall notify the principal and/or Area Superintendent of the determination that the allegation does not meet the criteria for bullying. **The principal or designee shall document in the District's electronic student records system ("Infinite Campus" or "IC") the analysis that led to the conclusion that the incident was not bullying.**
  - ii. If, upon initial examination of the complaint, the Director determines that the complaint **does** meet the Three-Point Criteria and that bullying may have occurred or there is not adequate information to make an initial determination, the Confidential Request for Investigation Form shall be forwarded to the General Counsel or designee for assignment to the Administrative Investigator.
  - iii. The Administrative Investigator will collaborate with the principal and/or Area Superintendent to conduct a neutral investigation of the allegations. The Administrative Investigator is not responsible for notifications, safety plans, and documentation in Infinite Campus or final reports to parents required by Nevada state law.
  - iv. Upon assignment to the Administrative Investigator, a letter will be sent to the principal and/or the Area Superintendent outlining the duties of the principal and/or the Area Superintendent to facilitate the investigation.

e. Three-Point Criteria.

i. The three-point criteria used to evaluate a bullying complaint is as follows:

1. Criterion One: Did Harm or Threat of Harm Occur?

- a. Was there an intentional act that caused physical or emotional pain? (Note: an intentional act refers to the individual's choice to engage in a behavior(s); it does not refer to the intent of the individual to hurt the alleged victim.)
- b. Is the behavior related to a protected class: Race or ancestry; color; national origin or ethnic group identification; marital status; sex; sexual orientation; gender identity or expression; genetic information; religion; age; mental or physical disability; and military or veteran's status. Additionally, state law includes "other distinguishing characteristics" when defining protected class.

2. Criterion Two: Is the Action Unwelcome?

- a. Was the conduct welcome by the recipient? Who initiated the conduct?
- b. Is the alleged victim afraid? Is the alleged victim avoiding school or areas of the school or school bus?
- c. Was the alleged victim an unequal participant in the conduct?

3. Criterion Three: Is the Action Severe, Persistent or Pervasive?

- a. Severe behavior can be established with a single action (i.e. Physical Assault).
- b. Persistent behavior occurs repeatedly. If the victim asks the offender to stop but the act(s) continue, this is persistent behavior.
- c. Pervasive behavior is when the behavior is rampant throughout the school. Generally, there is not one specific offender in these cases.

ii. The answer to Criterion One, Two and Three must be yes in order for the conduct to meet the definition of bullying.

4. The principal or designee and/or Area Superintendent shall:
- a. Notify the parent(s)/guardian(s) of all involved students by telephone, electronic mail or other electronic means, or in person.
    - i. If the bullying is reported before the end of school hours on a school day, notification of the parent(s)/guardian(s) must occur prior to the school's administrative office closes on the same day; or
    - ii. If the bullying is reported on a day that is not a school day or after hours on a school day, notification of the parent(s)/guardian(s) must occur prior to the school's administrative office closes on the next school day.
  - b. Support and collaborate with the Administrative Investigator in conducting interviews and gathering evidence.
  - c. Document the incident in the District's electronic student records management system (Infinite Campus). An identifier, not the staff member's name, shall be used in the Infinite Campus documentation.
  - d. The Administrative Investigator will provide preliminary findings in a written report. The principal and/or the Area Superintendent, if warranted, shall incorporate the findings in an Investigative Due Process (IDP) letter to the staff member.
  - e. Once an IDP of the staff member has been a conducted and appropriate discipline has been determined, a written report of the findings and conclusions of the investigation shall be completed. The findings and conclusions must be provided to parents of the alleged victim(s) within 24 hours of the completion of the report.<sup>2</sup> The report must include:
    - i. A summary of the allegations;
    - ii. A summary of the investigation;
    - iii. An analysis explaining why the incident did or did not meet the criteria for bullying;
    - iv. If bullying is found, recommendations regarding any disciplinary action for the accused or other measures to be imposed and/or remedial actions taken to support the victim; and<sup>3</sup>
    - v. Information on how to file an appeal of the decision.

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<sup>2</sup> Student information shall only be released in accordance with the Family Educational Rights and Privacy Act of 1974 ("FERPA") and the Individuals with Disabilities in Education Act (IDEA).

<sup>3</sup> Specifics regarding discipline and remediation measures shall not be disclosed to families whose child is not the subject of the discipline or remediation pursuant to student privacy laws.



- f. Not later than 10 school days after receiving the initial report/complaint, the principal or designee shall meet with each reported victim regarding the student's well-being and to ensure that sufficient steps were taken to ensure the bullying is not continuing.
5. Sanctions
  - a. If an investigation determines that a staff member engaged in bullying a student, the District may take any necessary and appropriate action that is consistent with District policies and/or applicable statutes.
  - b. Successive violations by a staff member shall lead to progressively more severe discipline. However, the principles of progressive discipline do not preclude the District from taking serious discipline, up to and including dismissal from service, for a first offense if the first offense is sufficient to warrant such discipline.
  - c. If an offender receives discipline, the victim(s), consistent with the Family Educational Right to Privacy Act ("FERPA"), will be advised that the District is taking appropriate steps to ensure that the bullying behavior will not re-occur. A victim will be provided appropriate information regarding sanctions to be able to report continued prohibited contact or retaliation.
6. Remediation
  - a. Students found to be the victim of bullying will be offered support services available from the District to help deal with the effects.
  - b. Any action(s) taken after the completion of the investigation shall be carried out in a manner that causes the least possible disruption for the victim(s). When necessary, the principal or designee shall give priority to ensuring the safety and well-being of the victim(s) over any interest of the perpetrator(s) when determining the actions to take.
7. Appeals
  - a. Any staff member covered by the negotiated agreement that is dissatisfied with a finding of bullying and resulting discipline may file a grievance consistent with the terms of the negotiated agreement. Apart from the grievance process, a staff member covered by the negotiated agreement does not have any additional appeal right pursuant to this regulation.
  - b. Any alleged victim that is dissatisfied with a finding of not bullying as a result of an investigation may appeal the decision.
  - c. Any staff member **not covered** by the negotiated agreement may appeal a decision that they engaged in bullying of a student.

- d. An appeal must be submitted in writing within 10 business days of notification of the resolution addressed to the Area Superintendent assigned to the school based on one or more of the following grounds:
  - i. Procedural error that significantly impacted the outcome of the investigation (i.e. insufficient evidence to support findings, substantiated bias, material deviation from established procedures).
  - ii. To consider new evidence, unknown or unavailable during the original investigation and that could substantially impact the original findings or sanction. The appeal must include a summary of new evidence, why it was unavailable at the time of the investigation and its potential impact on the outcome of the investigation or sanction.
  - iii. A Sanction imposed is substantially disproportionate to the severity of the violation.
- e. An appeal will be assigned to an Area Superintendent in the Office of School Leadership who did not have oversight of the underlying investigation. The Area Superintendent will serve as the “reviewing officer”. The reviewing officer shall send acknowledgement of receipt of the appeal to the appealing party within three business days.
- f. Before considering the appeal, the reviewing officer will determine whether the appeal is timely and raises one or more of the permissible grounds for appeal listed under 8(d) above.
- g. If the written appeal is not timely or does not raise one or more of the permissible grounds for appeal, the reviewing officer will notify the appealing party in writing that the appeal is denied and the basis for the denial.
- h. If the written appeal is timely and raises a permissible ground for appeal, the review officer shall consider those grounds and decide the appeal based on the following:
  - i. Unless there is a request to consider new evidence pursuant to 8(d)(ii) as grounds for an appeal, the reviewing officer will limit his or her review to the records from the school’s process.
  - ii. The reviewing officer will decide whether to grant or deny the appeal based on the specific grounds for appeal pursuant to 8(d)(i),(ii) or (iii).
  - iii. The reviewing officer may also remand the matter back to the original investigator to consider new evidence.

- iv. The reviewing officer will respond to the appealing party with a written decision within 15 business days of receiving the appeal. A copy of the decision will also be provided to the principal or designee.
    - i. If an appeal results in a new finding that a staff member has engaged in bullying and subject to discipline, the following steps will be taken:
      - i. If the staff member is covered by the negotiated agreement the principal or designee will draft an IDP letter and convene an IDP with the staff member.
      - ii. If the staff member is not covered by the negotiated agreement, the principal or designee will take appropriate corrective action.
- 8. Personnel Record.
  - a. All District action taken in order to address and correct the behaviors of the employee engaged in bullying a student, including discipline, directives, counseling and assistance, shall be memorialized in writing and placed in the employee's Human Resources Personnel File. In addition, any employee appeal and responses shall be placed in the employee's Human Resources Personnel File.
  - b. The employee shall acknowledge that the employee read and received such material by signing and dating the actual copy to be filed. The employee's signature does not indicate agreement with the content of such material.
- 9. Confidentiality
  - a. Bullying must be reported to the principal or designee. Beyond the reporting requirements, the complaint will be kept confidential to the extent possible.
  - b. Written statements and the details of the investigation are to be kept in strictest confidence, where practical, for the protection of all parties involved.
  - c. The District's obligation to investigate, provide a safe environment and take corrective action may supersede an individual's right of privacy.
  - d. Pending the completion of the investigation, the District may take any action necessary to protect the safety and well-being of its students, employees and property.
- 10. Nothing contained herein shall be construed or interpreted to prohibit or in any way to discourage the genuine discussion of issues or use of materials for academic, educational, or instructional purposes.

**LEGAL REQUIREMENTS & ASSOCIATED DOCUMENTS**

1. This administrative regulation reflects the goals of the District’s Strategic Plan and aligns and complies with the governing documents of the District, to include:
  - a. Board Policy 5700, Safe and Respectful Learning Environment
  - b. Board Policy 9200, Harassment and Discrimination Prohibited
  - c. Administrative Regulation 5701, Student Complaint and Appeal Procedures: Bullying, Harassment, Discrimination
  - d. Administrative Regulation 5405, Gender Identity and Gender Non-Conformity – Students
  - e. Administrative Regulation 7211, Responsible Use and Internet Safety
  
2. This administrative regulation aligns with Nevada Revised Statutes (NRS) and Nevada Administrative Code (NAC) to include:
  - a. Chapter 202, Crimes Against the Person
  - b. Chapter 388, System of Public Instruction
    - i. 388.121 – 388.139, Safe and Respectful Learning Environment
  - c. Chapter 389, Academics and Textbooks
    - i. NRS 389.520, establishment of policy for ethical, safe and secure use of computers.
  - d. Chapter 392, Pupils
  
3. This policy complies with federal laws and regulations, to include:
  - a. Americans with Disabilities Act, as amended
  - b. Section 504 of the Rehabilitation Act, as amended
  - c. The Civil Rights Act of 1964
  - d. Title IX of the Education Amendments of 1972

**REVISION HISTORY**

Date	Revision	Modification
9/4/2018	1.0	Adopted: Staff on Staff complaints process removed from Administrative Regulation 5701
9/30/2019	2.0	Revised to comply with changes to state law during the 2019 Legislative Session related to victim rights (SB89, SB239)
12/06/2019	2.1	Revised to remove wcsdbullying.com as a reporting site; replaced with state site