



WINDHAM SCHOOL
DISTRICT

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DATE: October 15, 2015

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SUPERSEDES: WBP-07.15
May 5, 2005

WINDHAM BOARD POLICY

SUBJECT: SEXUAL MISCONDUCT WITH OFFENDERS

AUTHORITY: Tex. Educ. Code §19.004; Tex. Penal Code §§ 21.01, 21.08, 21.15, 22.011, 22.021, 39.04, 42.01(a)(10), 43.21; Tex. Fam. Code § 2.401

Reference: Texas Department of Criminal Justice (TDCJ) Personnel Directive (PD)-29, "Sexual Misconduct with Offenders"

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the superintendent's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the WSD and **do not** create any legally enforceable interest or limit the superintendent's authority to terminate a noncontract employee at will.

POLICY:

The WSD has zero tolerance for an employee's or other individual's sexual misconduct with offenders.

An employee is prohibited from subjecting another employee or other individual to harassment or retaliation for reporting alleged sexual misconduct with offenders.

DEFINITIONS:

"Employee" includes any person employed by the WSD on a full-time, part-time, or temporary basis.

"Misconduct" is any activity that would have an adverse impact upon the integrity or productivity of the employee, WSD, or the TDCJ.

“Offender” is an individual under the supervision, custody, or incarceration of the TDCJ, including a TDCJ offender housed in a privately-operated, federal, county, or other state’s facility. These individuals include, but are not limited to, parolees, individuals under mandatory supervision, incarcerated individuals, and individuals housed in county jails who have been sentenced to the TDCJ but are not yet in TDCJ custody.

“Other Individual” includes, but is not limited to, a contract employee, applicant, vendor, employee of a vendor, or volunteer. This definition does not include an individual under the control or custody of the TDCJ.

“Sexual Abuse,” for the purpose of this policy, includes any of the following acts, with or without consent of the offender:

1. Contact between the penis and vulva or the penis and the anus, including penetration, however slight;
2. Contact between the mouth and penis, vulva, or anus;
3. Contact between the mouth and any body part where the employee, contract employee, vendor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee, contract employee, vendor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
5. Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the employee, contract employee, vendor, or volunteer has the intent to abuse, arouse, or gratify sexual desire.
6. Any attempt, threat, or request by an employee, contract employee, vendor, or volunteer to engage in the activities described in paragraphs 1-5 of this section;
7. Any display by an employee, contract employee, vendor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an offender; and
8. Voyeurism by an employee, contract employee, vendor, or volunteer.

“Sexual Harassment,” for the purpose of this policy, is repeated verbal comments or gestures of a sexual nature to an offender by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene gestures.

“Sexual Misconduct,” for the purpose of this policy, includes any of the following acts, with or without consent of the offender:

1. Engaging in sexual abuse with an offender;

2. Sexual harassment of an offender;
3. Requiring or intentionally allowing an offender to engage in sexual abuse for any reason;
4. Influencing, attempting to influence, or communicating intent to influence an offender's conditions or status, including, but not limited to, an offender's safety, custody, parole status, privacy, housing, privileges, work assignment, or program status in exchange for sexual favors or because an offender refused to submit to a sexual advance. This includes putting money into or promising to put money into an offender's Inmate Trust Fund or bringing in or offering to bring in contraband for an offender in exchange for sexual favors; or
5. Providing written communication or photographic items of a sexual nature to an offender.

“Voyeurism,” for the purpose of this policy, means the intentional viewing of an offender's intimate body parts or intimate acts by staff for reasons unrelated to official duties. This includes, but is not limited to, viewing the intimate body parts or intimate acts of an offender for the purpose of sexual arousal or sexual gratification, amusement, entertainment, profit, or for the purpose of degrading or abusing an offender.

DISCUSSION:

I. General Provisions

- A. Sexual misconduct is not applicable when the offender has been released and is the employee's or other individual's spouse. However, the relationship may still be an offense under this policy or WBP-07.56, “Employee-Offender Relationships.”
- B. Communication of a sexual nature between employees while at work shall be reported in accordance with WBP-7.40, “Sexual Harassment.”

II. Felony Offenses

An employee or other individual commits a felony offense if the person engages in the behavior specified in Texas Penal Code § 39.04(a)(2), Improper Sexual Activity with Person in Custody.

III. Prohibition on False Reporting

An employee shall not report false information regarding sexual misconduct with offenders or provide false information in an investigation of sexual misconduct with offenders.

PROCEDURES:

I. Sexual Misconduct

An employee who commits an act of sexual misconduct with an offender, as described in this policy or in WBP-07.56, shall be subject to disciplinary action.

II. Reporting Responsibilities

A. An employee who becomes aware of alleged sexual misconduct shall immediately report such misconduct to one or more of the following:

1. The employee's immediate supervisor, principal, warden, or department head;
2. The employee's second level supervisor if the person allegedly conducting such misconduct is the employee's immediate supervisor;
3. The unit Office of the Inspector General (OIG) investigator;
4. The Records Management Office, OIG - Investigations Division Headquarters in Huntsville;
5. WSD Human Resources Division; or
6. The Prison Rape Elimination Act (PREA) Ombudsman Office.

B. Supervisors who receive notification of alleged sexual misconduct or abuse and other individuals who become aware of alleged sexual misconduct or abuse shall immediately report such misconduct or abuse to one or more of the following:

1. Warden or department head;
2. Unit OIG investigator;
3. Records Management Office, OIG - Investigations Division Headquarters, Huntsville;
4. WSD Human Resources Division; or
5. PREA ombudsman.

C. An employee, other individual, or supervisor may report alleged sexual misconduct directly to a unit OIG investigator or the Records Management Office without reporting such misconduct to a supervisor or chain-of-command.

D. Upon being notified by an employee, an employee's supervisor, other individual, an offender, or an offender's family member of any alleged sexual misconduct, sexual abuse, or sexual harassment, a principal, department head, or division

director shall contact the OIG.

Signature on file
Dale Wainwright, Chairman
Windham School District Board of Trustees