



WINDHAM SCHOOL
DISTRICT

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SUPERSEDES: WBP-07.40
March 18, 1999
and OP-07.40
May 1, 1999

WINDHAM BOARD POLICY

SUBJECT: SEXUAL HARASSMENT

AUTHORITY: Texas Penal Code § 39.03; Texas Education Code § 19.004; Title VII, *Civil Rights Act of 1964*, as amended, 42 U.S.C. § 2000e, *et seq.*; 28 C.F.R. § 115.67; Texas Labor Code Ch. 21 and §§ 301.151-.156

Reference: American Correctional Association (ACA) Standard 4-4056

APPLICABILITY: Windham School District (WSD) Employees

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:

It is the policy of WSD that all employees should work in an environment free from all forms of discrimination, including sexual harassment. Sexual harassment is a form of illegal sex discrimination that is prohibited, and for which WSD has zero tolerance. In order to prevent sexual harassment, WSD also prohibits any discourteous conduct of a sexual nature that a reasonable person would find offensive or which is known to be unwelcome to the person against whom it is directed. Retaliation is also prohibited. This policy addresses employee-to-employee relationships. Refer to Operating Procedures (OP)-07.15, "Relationships and Sexual Misconduct with Offenders," for guidelines concerning employee-to-offender relationships.

Any employee who violates the provisions of this policy shall be subject to disciplinary action up to and including dismissal in accordance with Windham Board Policy (WBP)-07.44, "Professional Standards of Conduct and Disciplinary Guidelines."

The WSD Division of Human Resources shall conduct an Equal Employment Opportunity (EEO) investigation of all allegations of conduct prohibited by this policy.

DEFINITIONS:

“Discourteous Conduct of a Sexual Nature” is any conduct (words or actions) of a sexual nature toward another employee of WSD or other individual that: (a) a reasonable person would find offensive; or (b) is unwelcome to the person to whom such conduct is directed and that person has communicated (by words or actions) to the other person that the conduct is unwelcome.

“Hostile Work Environment” is a work environment in which offensive speech or conduct based on sex (gender), race, color, religion, national origin, age (40 or above), disability, or genetic information is sufficiently severe or pervasive as to alter the complainant’s employment conditions and create an abusive working environment. All the circumstances shall be judged, including the frequency of the conduct, its severity, whether it is physically threatening or humiliating, or an offensive utterance, and whether it unreasonably interferes with an employee’s work performance. Isolated instances, unless extremely serious, do not amount to an alteration of employment conditions.

“Retaliation,” for the purpose of this policy, means dismissal, demotion, refusal to hire or promote, or other harassment of an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.

“Sexual Harassment” is unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when: (a) the conduct is sufficiently pervasive or severe that it has the effect of unreasonably interfering with an individual's work performance or creating a work environment that a reasonable person would find intimidating, hostile, or offensive; (b) submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (c) submission to or rejection of the conduct by an individual is used as a basis for employment decisions affecting the individual.

“Supervisor(s)” refers to the principal, immediate supervisor, regional administrator, division director, or department head.

DISCUSSION:

- I. Prohibition on Sexual Harassment and Discourteous Conduct of a Sexual Nature
 - A. It is against WSD policy for any employee to:
 - 1. Threaten or insinuate, either explicitly or implicitly, that the refusal of any employee or other individual to submit to sexual harassment or discourteous conduct of a sexual nature will adversely affect the terms, conditions, or privileges of employment for any such employee or other individual.
 - 2. State or insinuate that the submission of any employee or other individual to sexual harassment or discourteous conduct of a sexual nature will affect the

terms, conditions, or privileges of employment of any such employee in a positive manner.

3. Subject other employees, either publicly or privately, to embarrassing and offensive comments, innuendoes, jokes, touching, or horseplay of a sexual nature.
- B. Discourteous conduct of a sexual nature that is prohibited by this policy and which may rise to the level of sexual harassment includes the following:
1. Physical acts such as intentional physical conduct that is sexual in nature or that a reasonable person would find offensive. Examples of such acts include intentional touching, jabbing, pinching, grabbing, rubbing, pressing, or brushing against a person's body.
 2. Sexual advances, propositions, or comments, such as:
 - a. Gestures, remarks, or jokes of a sexual nature which are unwelcome or which a reasonable person would find offensive;
 - b. Preferential treatment or promises of preferential treatment for submitting to conduct of a sexual nature, including soliciting an employee or other individual to engage in sexual activity for compensation or other favorable action;
 - c. Subjecting or threatening to subject an employee or other individual to unwelcome attention or conduct that a reasonable person would believe to be sexual in nature, or subjecting an employee to an adverse employment action such as demotion, disciplinary action, or unfavorable reassignment because of that employee's rejection of such conduct; or
 - d. Displaying sexually oriented tattoos.
 3. Displaying, reading, publicizing, or bringing any materials of a sexual nature into the workplace, such as pictures, posters, calendars, graffiti, objects that depict sexual poses, videos, movies or sound recordings, screen savers, or other materials that a reasonable person would regard as inappropriate to a professional workplace.
 4. Discourteous conduct of a sexual nature occurring at locations other than within the physical boundaries of the workplace. For example, the conduct of an employee who makes an unwelcome sexual advance toward another employee or other individual at a WSD sponsored or work-related event held away from the everyday worksite might constitute a violation of this policy.

II. Prohibitions on Retaliation and Providing False Information

- A. WSD prohibits retaliation against any individual who has filed a complaint alleging sexual harassment or discourteous conduct of a sexual nature, or against any individual who cooperates in a fact-finding inquiry or hearing regarding any such allegation. Examples of actions that might be construed by WSD to be retaliation include: disciplining an employee, changing an employee's work assignment, refusing to cooperate or discuss work-related matters with an employee, or providing ratings on an employee's performance evaluation which are below the employee's actual job performance.
- B. WSD also prohibits employees from withholding information or providing false information in any report, fact-finding inquiry, or hearing regarding sexual harassment, discourteous conduct of a sexual nature, or retaliation. This prohibition includes filing a complaint under this policy that the employee knows is unjustified.

III. Training and Awareness

- A. It is the position of WSD that the most effective means of eliminating sexual harassment and discourteous conduct of a sexual nature from the workplace is through training. Training shall be given to all new and former WSD employees during new hire training and to all employees biennially regarding the provisions of this policy.
- B. It is every employee's responsibility to become familiar with the provisions of this policy so that each employee can do his or her part in ensuring that the WSD work environment is free of sexual harassment, discourteous conduct of a sexual nature, and retaliation. Employees should be aware that conduct might be offensive or unwelcome even if an employee or other individual does not openly object to it. However, all employees and other individuals are encouraged to immediately inform an individual committing such conduct that his or her behavior is unwelcome and that such behavior should cease immediately. Once that warning has occurred, any continuation of the unwelcome conduct is viewed as discourteous.

PROCEDURES:

I. Reporting Allegations

A. Employee or Other Individual Responsibility

Any employee or other individual who believes that he or she has been subjected to or has witnessed conduct prohibited in this policy is strongly encouraged to immediately report the allegation directly to one or more of the following:

1. Supervisor(s);
2. The WSD Division of Human Resources;
3. The superintendent;

4. The U.S. Equal Employment Opportunity Commission (EEOC); or
5. The Texas Workforce Commission Civil Rights Division.

Employees are encouraged to make written notification using either Texas Department of Criminal Justice (TDCJ) or WSD EEO forms available at any TDCJ human resources office or the WSD Division of Human Resources. However, complaints will be accepted in any written form or by verbal notification.

B. Supervisor Responsibility

If a supervisor is notified of an allegation relating to conduct prohibited in this policy, or observes conduct that violates this policy, he or she is obligated to report such incidents within 72 hours by notifying the WSD Division of Human Resources via telephone, email, or fax with the following information:

1. Specific nature of the complaint;
2. Names and titles of parties involved;
3. Date and time the supervisor was notified of the alleged conduct or observed the conduct; and
4. The date(s) the alleged or observed incident(s) occurred.

II. Responding to Allegations

A. When the Division of Human Resources receives an allegation of conduct prohibited by this directive, the following actions shall take place:

1. Review the circumstances, in conjunction with the WSD general counsel, and determine whether the information presented justifies a fact-finding inquiry. Unless the regional administrator or division director was the notifier, the Division of Human Resources shall immediately notify the appropriate regional administrator or division director that a complaint has been received and advise whether the Division of Human Resources will conduct a fact-finding inquiry. The Division of Human Resources shall also immediately notify the complainant whether a fact-finding inquiry will be conducted.
2. If it is determined that a fact-finding inquiry will be required, the Division of Human Resources shall be responsible for overseeing the fact-finding inquiry in a timely and thorough manner. All fact-finding inquiries shall be conducted discreetly and in a good faith effort to be fair to all parties involved.
3. If it is determined that a fact-finding inquiry will be conducted, the Division of Human Resources shall make a determination as to whether any interim remedial action shall be taken. Determinations regarding interim remedial actions shall be made on a case-by-case basis.

Determinations shall include, but not be limited to, whether the complainant and the respondent should be separated within their work location until after the fact-finding inquiry has been completed.

- B. Investigation results shall be sent to the Division of Human Resources and forwarded to the WSD general counsel for review and a determination whether the conclusion is legally sufficient based on the facts and analysis set forth in the report.

III. Conclusion and Follow-up

- A. The fact-finding investigation may result in allegations not being sustained, being sustained, or being sustained for a violation of policy other than sexual harassment or discourteous conduct of a sexual nature.
 - 1. If the allegations are not sustained, the complainant and the respondent will be notified, in writing, by the director of the Division of Human Resources.
 - 2. If the allegations are sustained, the regional administrator or division director will take appropriate disciplinary action, with a copy of the action taken being submitted to the Division of Human Resources.
 - 3. If the allegations are not sustained, but a violation of a policy other than sexual harassment or discourteous conduct of a sexual nature is sustained, the respondent will be notified in writing by the director of the Division of Human Resources and appropriate action will be taken.
- B. After concluding the fact-finding inquiry, the results shall be submitted to the following:
 - 1. The superintendent;
 - 2. The regional administrator;
 - 3. The division director;
 - 4. The principal;
 - 5. The complainant; and
 - 6. The respondent.

Signature on file _____
Oliver J. Bell, Chairman
Windham School District Board of Trustees