



**WINDHAM SCHOOL
DISTRICT**

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**SUPERSEDES: OP-07.38
March 12, 1998**

SUPERINTENDENT DIRECTIVE

SUBJECT: EMPLOYEE STATUS PENDING RESOLUTION OF CRIMINAL CHARGES

AUTHORITY: Windham Board Policy 03.02 “Windham School District Superintendent Responsibility and Authority”

APPLICABILITY: Windham School District

EMPLOYMENT AT WILL CLAUSE:

This directive does not constitute an employment contract or guarantee of continued employment and does not create a legally enforceable interest or limit the superintendent’s authority to implement personnel policies. WSD reserves the right to revise this policy at any time.

POLICY:

Employees of Windham School District (WSD) must notify WSD upon being arrested or charged with a criminal offense, learning of a warrant of arrest, or becoming subject to a protective order. The employment status of such employees is determined by considering the circumstances and available information in a fair and consistent manner without regard to race, color, religion, sex (gender), national origin, age, disability, or genetic information.

DEFINITIONS:

These definitions are meant only for this directive and may not apply in other contexts.

“Arrest” occurs when a person has been actually placed under restraint or taken into custody by an officer or person executing a warrant of arrest, or by an officer or person arresting without a warrant.

“Commercial Driver” is an employee who has a commercial driver license and operates a commercial motor vehicle for WSD on any occasion.

“Conviction,” is a finding of guilt by a judge or jury and the assessment of punishment, whether confinement or fines; community supervision (probation), including deferred adjudication; pardons or reprieves for any reason except actual innocence; juvenile adjudications of delinquent conduct if the juvenile records are not sealed; and an equivalent disposition of an offense under the laws of another state, federal law, or Uniform Code of Military Justice. The term does not include a pretrial diversion, which is an agreement between the defendant and prosecutor which occurs before a judicial finding, although a judge may approve of the defendant participating in the program.

“Criminal Charge” is an accusation of a crime by a citation, formal complaint, indictment, or information.

“Citation,” is a written notice: (1) issued by a peace officer when charging a person with committing an offense; and (2) informing the person of the offense charged and the time and place the person must appear before a magistrate. This definition does not include a citation for a minor traffic violation or civil matter, such as a parking ticket, public nuisance, breach of contract, or divorce.

“Formal Complaint,” when referring to a criminal charge, is an affidavit charging a named person or an unknown person with the commission of a specified offense. It is a written statement, made under oath, of the essential facts constituting the offense charged. When presented before a magistrate having proper jurisdiction, and if probable cause exists to believe the person charged committed the alleged crime, a warrant for the arrest of the person named in the complaint may be issued.

“Indictment” is the written statement of a grand jury accusing a person of an offense.

“Information,” when referring to a criminal charge, is a written statement filed and presented on behalf of the state by the district or county attorney, charging a person with an offense.

“Magistrate” is any judge of a court, or anyone officially performing a judge’s functions, such as a justice of the peace.

“Protective Order” is an order issued by a court intended to protect a person from being harmed by another. An employee must report only protective orders that will or reasonably might affect the workplace, such as a protective order related to a WSD or TDCJ employee

“Reportable Event” is a circumstance requiring an employee to notify WSD according to this directive, including arrest, criminal charge, warrant of arrest, protective order affecting the workplace, or a procedural update or change of status in a criminal case related to that event.

“Warrant of Arrest” is a written order from a magistrate, directed to an officer or other specifically named person, commanding the peace officer or named person to take the body of the person accused of an offense to be dealt with according to law.

PROCEDURES:

I. General

- A. Generally, an employee is not subject to disciplinary action based solely on a reportable event. However, an employee may be subject to disciplinary action if:
1. the employee fails to notify WSD of the reportable event according to this directive; or
 2. sufficient facts exist to determine that the employee violated Windham Board Policy 07.44, "Professional Standards of Conduct and Disciplinary Guidelines."

The superintendent may administratively separate an employee from Windham employment based solely on a reportable event if the superintendent determines administrative separation is in the district's best interest.

B. Minor Traffic Violations

1. An employee is not required to report a citation for or conviction of a minor traffic violation. The following are not minor traffic violations and must be reported: Driving While Intoxicated; Driving Under the Influence; Driving While License is Suspended; Failure to Appear; Reckless Driving; Open Container; and Assault with a Motor Vehicle.
2. An employee who is a commercial driver and uses a commercial driver's license in the scope of WSD duties must report a citation or conviction for a traffic violation other than a parking violation.

II. Notification

Before reporting to work and within 48 hours of the reportable event or the employee learning of the event, an employee must notify the employee's immediate supervisor by telephone or email. If the employee's immediate supervisor is not available, an employee may notify the next level employee in chain of command.

- A. A supervisor who receives notification of a reportable event will:
1. explain to the employee that the employee may not report to work until authorized by the Human Resources administrator; and
 2. immediately notify the Human Resources administrator and forward related information by email.

- B. The 48-hour deadline applies without regard to an employee's schedule, and applies during weekends and holidays.
- C. The 48-hour deadline applies even if the employee is not able to personally report the event. In that case, notification may be made by an employee's adult family member, legal representative, or law enforcement.
- D. Notification of a reportable event must include the following facts:
 - 1. Date, time, and location of reportable event;
 - 2. Arresting authority involved, (police department, sheriff's office, etc);
 - 3. Nature of the event;
 - 4. Specific action involved (arrest, indictment, etc.);
 - 5. Release status (held without bail, released on bond, etc);
 - 6. If known, the date of next scheduled court action (arraignment, plea hearing, etc.)
- E. Procedural Updates/Change in Status
 - 1. An employee must, within 48 hours, notify the Human Resources administrator in writing or by email of procedural updates or a change in status related to the case and the date the event occurred. Procedural updates or changes in status include hearings, trials, dismissals, convictions, etc.
 - 2. No later than 14 calendar days after providing notification, an employee must send the Human Resources administrator official documentation confirming the update or change in status.

III. Review and Action

- A. After receiving notification of a reportable event, the superintendent may grant interim leave while the matter is reviewed.
- B. The Human Resources administrator will review available information from any source and provide a recommended action to the superintendent. Recommendations may include the following or combination of the following:
 - 1. Allow employee to return to work pending resolution of charges;

2. Place employee on leave pending resolution of charges up to a maximum of 180 days. The employee must use available accrued time in this order:
 - a. Compensatory time;
 - b. Administrative leave;
 - c. State personal leave
 3. Pursue disciplinary action;
 4. Administratively separate employee; or
 5. Other action.
- C. The superintendent will review available information from any source and notify the Human Resources administrator of the chosen action.



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