

**WINDHAM SCHOOL
DISTRICT**

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**SUPERSEDES: WBP-07.15 and
WBP-07.56
October 15, 2015**

WINDHAM BOARD POLICY

SUBJECT: PROHIBITED EMPLOYEE RELATIONSHIPS

AUTHORITY: *Prison Rape Elimination Act (PREA) 28 C.F.R. § 115.6; Tex. Educ. Code § 19.004; Tex. Penal Code §§ 21.01, 21.08, 21.12, 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)-22, "General Rules of Conduct and Disciplinary Action Guidelines for Employees," Rule, Employee-Offender Relationships; TDCJ PD-29 (rev.6) "Sexual Misconduct With Inmates."

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

This policy 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 at all times must maintain an appropriate, professional relationship with residents, including professional educator-student relationships and boundaries based on reasonably prudent educator standard. Windham School District has zero tolerance for sexual misconduct with residents.

DEFINITIONS:

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

"Cohabiting" means two or more people living together or sharing housing arrangements.

"Employee" includes any person employed by WSD on a full-time, part-time, or temporary basis. The term also includes interns and persons working under contract.

“Immediate Family Member,” means a spouse, child, parent, brother, or sister.

“Individual Under Supervision” means a person sentenced to TDCJ but released to parole or mandatory supervision.

“Marriage” includes “ceremonial marriage” and “informal marriage,” which are the two types of marriage recognized by the state of Texas and are defined as follows:

1. “Ceremonial Marriage” is documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.
2. “Informal Marriage,” also known as “common law marriage,” is valid when a couple agrees to be married and after that agreement lives together in Texas and represents to others that they are married.

“Resident” is an individual currently incarcerated by or in the custody of TDCJ, including those sentenced to incarceration in TDCJ but housed in private facilities and facilities operated by another state, a county, or the federal government.

“Sexual Abuse” includes any of the following acts, with or without consent of the resident:

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 or other individual has the intent to abuse, arouse, or gratify sexual desire;
4. Penetration of the anal and genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the employee 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 has the intent to abuse, arouse, or gratify sexual desire;
6. Any attempt, threat, or request by an employee or other individual to engage in the activities described in paragraphs 1-5 of this section;
7. Any display by an employee of his or her uncovered genitalia, buttocks, or breast in the presence of a resident; and
8. Voyeurism by an employee.

“Sexual Harassment” is repeated verbal comments or gestures of a sexual nature to a resident by an employee, including demeaning references to gender, sexually suggestive or derogatory comments about body of clothing, or obscene gestures.

“Sexual Misconduct” includes any of the following acts, with or without consent of the resident:

1. Engaging in sexual abuse of a resident;
2. Sexual harassment of a resident;
3. Requiring or intentionally allowing a resident to engage in sexual abuse for any reason;
4. Influencing, attempting to influence, or communicating intent to influence a resident’s conditions or status (e.g., an inmate’s safety, custody, parole status, privacy, housing, privileges, work assignment, or program status) in exchange for sexual favors or because a resident refused to submit to a sexual advance; or
5. Providing written communication or photographic items of a sexual nature to a resident.

“Spouse” is an employee’s husband or wife through marriage.

“Voyeurism” is an employee’s intentional viewing of a resident’s intimate body parts or intimate acts for reasons unrelated to official duties.

PROCEDURES:

I. Disclosure of Relationships

Windham School District applicants and employees must provide written notification of a relationship the employee has with a resident, former resident, or individual under supervision by completing and submitting the TDCJ PERS 282A, Additional Resident Information form. The PERS 282A may be obtained from the WSD website or by request from WSD Division of Human Resources. A copy of the completed PERS 282A is maintained in the employee’s human resources file.

An employee must provide a completed PERS 282A to WSD Human Resources immediately upon becoming aware of any of the following circumstances:

- A. The employee has a present relationship or had a past relationship with a resident or individual under supervision that involved direct interaction. Examples of direct interaction include dating, former in-law, personal correspondence, and visits to residence;

- B. The employee has an immediate family member who is a resident or individual under supervision;
- C. The employee had a past acquaintance with a resident or individual under supervision that involved regularly planned or scheduled indirect interaction with the resident, such as a high school classmate;
- D. The employee has a present or had a past relationship involving direct interaction with a family member of a resident or individual under supervision;
- E. The employee's immediate family member has a present or had a past relationship involving direct interaction with a resident or individual under supervision;
- F. A change in a previously reported relationship. The employee must describe the nature of the change. Examples of changes in relationship requiring notification include but are not limited to:
 - 1. Employee previously reported that a resident was an immediate family member's former boyfriend and the immediate family member begins dating the resident again.
 - 2. Employee previously reported an ex-spouse is incarcerated and upon the resident's release to parole, the ex-spouse receives visitation rights with the employee's child.

II. Prohibited Contact

- A. Employees are prohibited from continuing or establishing an unreported or unapproved relationship with a resident or individual under supervision, or a family member of a resident or individual under supervision, if the relationship has the potential to jeopardize the security of TDCJ or compromises the integrity or effectiveness of the employee. An unreported or unapproved relationship that would have the potential to jeopardize the security of TDCJ or compromises the integrity or effectiveness of the employee includes, but is not limited to, the following:
 - 1. Soliciting or engaging in sexual misconduct or a romantic relationship with a resident;
 - 2. Communications, other than those required by WSD official duties, with a resident, an individual under supervision, or a family member of a resident or individual under supervision;
 - 3. Visiting a resident during unit visitation;
 - 4. Visiting a resident's housing area unless required by WSD official duties;

5. Putting money into a resident's TDCJ Trust Fund account;
6. Providing references for residents, former residents, or individuals under supervision, including communications with the Board of Pardons and Paroles or other authorities, regarding character or other subjective attributes. All requests for information regarding an individual's performance in WSD educational programs must be directed to the WSD Assessment, Advisement, and Records Department; and
7. Knowingly cohabiting with an individual under supervision or a family member of a resident or individual under supervision.

Mere contact, including through social media, with an individual under supervision or family member of a resident or individual under supervision does not alone constitute a relationship. However, if WSD determines that an employee, through such contact, has potentially jeopardized the security of TDCJ or compromised the integrity or effectiveness of the employee, the employee is subject to disciplinary action.


B. Sexual Misconduct and Romantic Relationships

1. An employee commits a felony offense by engaging in sexual misconduct with a resident specified in section 39.04, Texas Penal Code.
2. An educator involved in a romantic relationship with a student or who solicits or engages in sexual conduct with a student will be reported to the State Board of Educator Certification for investigation which may result in sanctions up to revocation or cancellation of the educator's certification.

III. Reporting Requirements

- A. An employee who becomes aware of alleged sexual misconduct must immediately report the matter to one or more of the following:
 1. A WSD or TDCJ supervisor;
 2. WSD Human Resources Department Administrator;
 3. Office of Inspector General; or
 4. PREA Ombudsman.
- B. A supervisor who becomes aware of alleged sexual misconduct must immediately report the matter to one or more of the following:

1. Warden or department director
 2. WSD Human Resources Department Administrator
 3. Office of Inspector General
 4. PREA Ombudsman
- C. Principals, regional principals, department administrators, and division directors must immediately report to OIG any allegations of sexual misconduct.
- D. Any person may privately report alleged sexual misconduct directly to the PREA Ombudsman or the Office of Inspector General without reporting the conduct through the chain of command.



Patrick L. O'Daniel, Chairman
Windham School District Board of Trustees