



WINDHAM SCHOOL
DISTRICT

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October 10, 2013

WINDHAM BOARD POLICY

SUBJECT: PROFESSIONAL STANDARDS OF CONDUCT AND
DISCIPLINARY GUIDELINES

AUTHORITY: Texas Education Code § 19.009

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

This policy **does not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of this policy at any time.

Nothing in this policy limits the superintendent's authority to establish or revise human resources policy. This policy guides the operations of the WSD and **does not** create a legally enforceable interest for employees or limit the superintendent's authority to terminate a noncontract employee at will.

POLICY:

Employees are representatives of the WSD and are expected to adhere to the highest standards of professional conduct on or off duty, including, but not limited to, adherence to the rules of conduct described in this policy.

Employees are expected to comply with standard practices and ethical conduct toward students, colleagues, school officials, and members of the Texas Department of Criminal Justice (TDCJ) community. Employees who allegedly commit a rule violation will be subject to disciplinary action in accordance with the procedures within this policy.

Due to the unique environment of correctional education, it is the policy of the WSD to terminate employment for misconduct that jeopardizes the security of facilities or safety of personnel. Termination may also occur in other instances of misconduct, depending on the facts and circumstances.

The WSD promotes equal employment opportunity through an employee disciplinary system designed to impose corrective and disciplinary action without regard to race, color, religion, gender, national origin, age, disability, genetic information, or uniformed services status.

The WSD has zero tolerance for all forms of employment discrimination in the disciplinary process, and harassment or retaliation is prohibited. No employee or other individual shall be subjected to harassment or retaliation for acting as a representative or witness, or for reporting employment discrimination in the workplace.

DEFINITIONS:

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

“Discrimination” is unequal treatment of persons based on gender (including sexual harassment), race, color, religion, national origin, age, disability, genetic information, or uniformed services status. Discrimination by employers falls into four general areas:

1. Hiring and firing (failing or refusing to hire or discharging);
2. Employment conditions (compensation, terms, conditions, or privileges);
3. Segregation and classification (limiting, segregating, or classifying employees in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee); and
4. Training programs.

“Fact-Finding” is an investigation conducted once a supervisor suspects or becomes aware that an employee may have failed to comply with the standards of conduct established by this policy.

“Harassment” is systematic or continued unwanted and annoying conduct, including, but not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, or offensive objects or pictures, that creates a work environment that a reasonable person would consider intimidating, hostile, or abusive. A hostile work environment is one in which offending behavior is sufficiently severe or pervasive as to interfere with an employee’s work performance. Petty slights, annoyances, and isolated instances, unless extremely serious, will not rise to the definition of harassment.

“Insubordination” is the defiance of authority or the refusal to follow instructions given by a supervisor, director, or administrator.

“Noncontract Employee” is a member of WSD staff that serves at will. They are not employed by contract for any specified length of time and have no property right to employment.

“Preponderance of Evidence” is the weight of all credible evidence that leads to the conclusion that the fact at issue is more probably true than not.

“Retaliation” is the 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 in the workplace.

“Support Documentation” is any written, audio, or video material submitted to and used by a supervisor during the course of a fact-finding investigation.

“Tardiness” is arriving to the workstation or classroom less than 15 minutes after the scheduled, expected, or usual arrival time.

“Unapproved Absenteeism” is time away from work, more than 15 minutes, for which employee leave policies were not followed, including not following notification procedures.

“Violation” is an infraction of any rules identified in this policy. A violation may consist of any one of, or a combination of, the following:

1. Engaging in a specific prohibited behavior;
2. Attempting to engage in a specific prohibited behavior;
3. Conspiring to engage in a specific prohibited behavior;
4. Aiding others in conspiring, attempting, or engaging in a specific prohibited behavior; or
5. Failing to act where required by rule, order, policy, or procedure.

“Witness” is a person who has first-hand knowledge of facts pertinent to an alleged violation(s).

DISCUSSION:

I. Employee’s Responsibility

- A. It is the responsibility of the employee to know, understand, and adhere to the standard of conduct established in this policy and to seek clarification, if necessary. Not being aware of the existence of a rule is not a defense for violations.
- B. WSD employees must be knowledgeable of all WSD policies and related TDCJ policies and procedures. In the event that no written or verbal instructions have been issued regarding a particular subject pertaining to an employee’s responsibilities or duties, the employee is expected to use sound judgment in arriving at a prudent course of action.

II. Failure to Comply

- A. Employees who fail to comply with the standards of conduct established by this policy will be subject to corrective or disciplinary action, up to and including termination, in accordance with the procedures of this policy.
- B. It is the policy of the WSD that appropriate disciplinary steps be followed as a response to employee misconduct. Such steps should be a reflection of the severity of the misconduct.

PROCEDURES:

I. Fact-Finding Investigation

- A. Once a supervisor suspects or becomes aware that an employee may have failed to comply with the standards of conduct established by this policy, the supervisor is required to conduct a thorough fact-finding investigation of the alleged violation.
 - 1. The supervisor should initiate the fact-finding investigation into the alleged violation within five days of the supervisor's awareness of the alleged violation.
 - 2. A fact-finding investigation should also include gathering evidence and interviewing witnesses.
 - 3. The employee's history of any prior violations must be considered as part of the fact-finding process.
 - 4. The supervisor must interview the employee and provide them the opportunity to have their case heard prior to a decision being rendered regarding a policy violation and subsequent corrective or disciplinary action.
- B. A preponderance of evidence will be used to determine if an employee has failed to comply with the standards of conduct established by this policy.
- C. Documentation from the fact-finding investigation must include the standard of conduct or policy violation, the number of violations (if multiple), and notes taken during the investigation.
- D. In the event that an employee is found to have violated the standards of conduct established in this policy, the employee's supervisor must weigh all the facts and circumstances in order to render an appropriate response and recommendation for corrective or disciplinary action.
- E. Corrective or disciplinary action should be tailored to improve employee conduct and should be issued within 30 days of the supervisor's awareness of the alleged

violation.

II. Corrective Action

- A. Supervisors are required to take corrective action to improve an employee's unacceptable behavior or performance before pursuing disciplinary action. Deviations for the two exceptions below should be with consultation from Human Resources.
 - 1. Immediate disciplinary action should be taken if the infraction is egregious; or
 - 2. The infraction imposes a security risk.
- B. Supervisors are expected to dispense corrective actions in an objective, job-related, and consistent manner.
- C. Corrective action may be any one or a combination of the following steps focusing on the expected improvement or specific correction:
 - 1. Counseling and related documentation such as an action plan;
 - 2. A letter of instruction; or
 - 3. Retraining on a specific topic(s).
- D. All original documentation related to corrective action will remain in the employee file at the campus or department unless used as supporting documentation for disciplinary action.

III. Disciplinary Action

- A. If corrective action is not the appropriate response or it does not result in the necessary change in conduct or performance, the supervisor should proceed with disciplinary action in accordance with the procedures in this policy.
- B. Five Disciplinary Levels
 - 1. Level One – Written Warning
 - a. A written warning should be used for minor events of misconduct or rule violations.
 - b. A fact-finding resulting in a written warning:
 - (1) Must be signed by the employee and submitted to Human Resources Employee Relations at HREmployee.relations@wsdtx.org, along with all related

documentation;

- (2) Will become a part of the employee's official record;
- (3) Will be maintained in the Administration Building; and
- (4) Must be reviewed and approved by Human Resources, the general counsel, and the division director prior to issuing the disciplinary action to the employee.

2. Level Two – Formal Warning

- a. A formal warning should be used for moderate or repeated minor events of misconduct.
- b. A fact-finding resulting in a formal warning:
 - (1) Must be signed by the employee and submitted to Human Resources Employee Relations at HRemployee.relations@wsdtx.org, along with all related documentation;
 - (2) Will become a part of the employee's official record;
 - (3) Will be maintained in the Administration Building; and
 - (4) Must be reviewed and approved by Human Resources, the general counsel, and the division director prior to issuing the disciplinary action to the employee.

3. Level Three – Reprimand

- a. A reprimand should be used for serious conduct infractions or persistent misconduct.
- b. A fact-finding resulting in a reprimand:
 - (1) Must be signed by the employee and submitted to Human Resources Employee Relations at HRemployee.relations@wsdtx.org, along with all related documentation;
 - (2) Will become a part of the employee's official record;
 - (3) Will be maintained in the Administration Building; and
 - (4) Must be reviewed and approved by Human Resources, the general counsel, and the division director prior to issuing

the disciplinary action to the employee.

4. Level Four – Suspension without Pay

- a. A suspension from work without pay should be used for serious or persistent misconduct which threatens the health or safety of the employee or others, or causes a substantial disruption within the WSD. Suspension without pay may also be used for misconduct that has continued after attempts have been made to improve an employee's unacceptable behavior or performance through less severe disciplinary steps.
- b. A fact-finding resulting in suspension without pay:
 - (1) Must be signed by the employee and submitted to Human Resource Employee Relations at HRemployee.relations@wsdtx.org, along with all related documentation;
 - (2) Will become a part of the employee's official record;
 - (3) Will be maintained in the Administration Building; and
 - (4) Must be reviewed and approved by Human Resources, the general counsel, the division director, and the superintendent prior to issuing the disciplinary action to the employee.
- c. A letter from the superintendent will be issued to the employee with the terms of the suspension without pay.

5. Level Five – Termination of Employment

- a. Termination should be recommended for egregious infractions, violations that impose a security risk, or for misconduct that has continued after attempts have been made to improve an employee's unacceptable behavior or performance through less severe disciplinary steps.
- b. A report of an egregious infraction or a violation that imposes a security risk should be reported to the Human Resources administrator immediately for consultation regarding:
 - (1) Suspension with pay of the employee pending the outcome of the fact-finding and subsequent review by administration; and
 - (2) Communication with the employee.

- c. A fact-finding resulting in the recommendation for termination:
 - (1) Must be signed by the employee and submitted to Human Resources Employee Relations at HREmployee.relations@wsdtx.org, along with all related documentation;
 - (2) Will be maintained in the Administration Building; and
 - (3) Must be reviewed and approved by Human Resources, the general counsel, the division director, and the superintendent prior to issuing the disciplinary action to the employee.
- d. A letter from the superintendent will be issued to the employee with terms of the termination.

C. Contract Employee

- 1. The superintendent may, at the recommendation of a contract employee's supervisor or upon independent judgment, suspend a contract employee without pay for up to six weeks.
 - a. A contract employee must be given an opportunity to have an informal hearing before the superintendent or designee prior to the suspension without pay being imposed.
 - b. As described in WBP-07.05, "Term Contract Employment," a contract employee may present testimony and other evidence to contest the proposed suspension without pay.
- 2. The superintendent may terminate a contract employee before the completion of the term fixed in the contract for reasons constituting a good cause.
 - a. A contract employee will be provided with notice detailing the violations.
 - b. A contract employee receiving notice of termination must be given an opportunity to appeal.
 - (1) The appeal must be received within 10 working days after receipt of the notice.
 - (2) An appeal hearing will be held within 15 working days after receipt of the appeal.

- (3) Immediately upon scheduling, the employee will be given notice of the hearing date.
- (4) As described in WBP-07.05, a contract employee may be represented at their own expense.

D. Noncontract Employee

1. The superintendent may, at the recommendation of a noncontract employee's supervisor or upon independent judgment, suspend a noncontract employee without pay for up to 40 working days.
2. A noncontract employee may use the grievance process to contest the suspension without pay, pursuant to WBP-07.26, "Employee Grievance Procedures."

E. Response to Misconduct

1. The employee's supervisor will recommend appropriate corrective action or level of disciplinary action to the second-line supervisor.
2. The WSD reserves the right to use any of the above-mentioned levels of disciplinary action. An employee is not entitled to corrective action or a lesser level of disciplinary action before a more severe action is used.

F. Violations of general rules of conduct that may result in disciplinary action, nonrenewal of nonprobationary employees, or termination of employment are:

1. Failure to fulfill duties or responsibilities of the position.
2. Excessive unapproved absenteeism or tardiness. Unapproved absenteeism, misuse of sick leave, or tardiness may be grounds for dismissal.
3. Incompetence or inefficiency in the performance of required or assigned duties.
4. Insubordination.
5. Failure to comply with the directives and policies of the TDCJ and the WSD.
6. Failure to comply with oral or written directives.
7. Failure to provide information required by WBP-07.11, "Employee Leave."

8. Use of profane or abusive language.
9. Failure to remain at a unit or department of assignment.
10. Failure to meet standards of professional conduct in accordance with 19 Texas Administrative Code § 247.2.
11. Failure to maintain an effective working relationship or good rapport with colleagues.
12. Falsification of records or other documents related to WSD activities.
13. Failure to provide information or misrepresentation of facts to a supervisor or other official in the conduct of WSD business.
14. Refusal to cooperate with a supervisor or other official in the conduct of WSD business.
15. Damage, destruction, misappropriation, or unauthorized use of WSD or TDCJ equipment or property.
16. Falsification of the WSD Application for Employment and support documents.
17. Failure to achieve and maintain established expectations for standards or work performed as communicated in performance evaluations, fact-findings, action plans, or any other forms of communication.
18. Inability to maintain discipline in the classroom.
19. Failure to comply with WSD professional requirements regarding advanced coursework or professional improvement and growth.
20. A significant lack of student progress.
21. Failure to fulfill requirements for certification in accordance with WBP-07.01, "Employment of Personnel."
22. Failure to fulfill permit requirements for certification in accordance with WBP-07.01.
23. Failure to become industry certified as required by WBP-07.01.
24. Disability, not otherwise protected by law, that impairs performance of duties as required by contract or job description.
25. Use of slurs or hostile epithets.

26. Discrimination or harassment against persons in a protected class.
27. Discourteous conduct of a sexual nature.
28. Retaliation.
29. Failure to report acts of discrimination or harassment against persons of a protected class, discourteous conduct of a sexual nature, or retaliation.
30. Drunkenness or excessive use of alcoholic beverages or illegal use of controlled substances as defined by the *Texas Controlled Substances Act*.
31. Possession, use, or being under the influence of alcohol or controlled substances as defined by the *Texas Controlled Substances Act*, while on state property, in a WSD or TDCJ owned vehicle, or at a WSD authorized function.
32. Conviction of a felony or conviction of any crime involving moral turpitude.
33. Any criminal conviction if such conviction impairs or diminishes the employee's effectiveness in the WSD.
34. Any activity (whether or not work-connected), not otherwise protected by law, that impairs or diminishes the employee's effectiveness in the WSD.
35. Failure to abide by conditions of employment specified in individual employment contracts.

IV. Appeals

Disciplinary action may be grieved pursuant to WBP-07.26 once discipline has been issued. Levels One through Four of the disciplinary process can be grieved by all WSD employees. Level Five can only be grieved by noncontract employees. Appeals on the termination or suspension without pay of a contract employee shall follow procedures established in WBP-07.05.

*Signature on File

Patrick O'Daniel, Chairman

Windham School District Board of Trustees