

Policy 5014

Personnel

Sexual Harassment

It is the policy of this district to maintain an environment that is free from sexual harassment. Every employee has the right to work in an atmosphere that promotes equal opportunities, free from all forms of discrimination and conduct that could be harassing, coercive, or disruptive. Likewise, every student has the right to attend school and access educational opportunities and benefits, free from all forms of discrimination and conduct that could be harassing, coercive, or disruptive.

District employees are:

1. Prohibited from sexually harassing other employees, students, or visitors of the district;
2. Required to report to his/her supervisor, the superintendent, or the discrimination compliance officer, sexual harassment of which the employee becomes aware; and
3. Required to take immediate action to discipline and/or report students who engage in conduct which may be reasonably considered to constitute harassment of another student.

This policy applies to all conduct on the district's premises and to conduct off the district's premises that has an effect upon an employee's work environment or a student's educational environment.

As deemed appropriate, the district will provide training to employees regarding sexual harassment and will take reasonable steps to take remedial action to stop harassment and prevent its recurrence. This policy should be reviewed by each employee on a periodic basis.

DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in the educational process;
2. Submission to or rejection of such conduct by an individual is used as a basis for employment or educational decisions affecting the individual; or

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or education, or creating an intimidating, hostile, or offensive work or educational environment.

Examples of sexual harassment include, but are not limited to, the following:

1. Unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;
2. Unwelcome, sexually motivated or inappropriate touching, pinching, or other physical contact;
3. Unwelcome sexual behavior or communications, accompanied by implied or overt threats concerning an individual's employment or education;
4. Unwelcome behavior or communications directed at an individual because of his or her gender; and
5. Stalking or unwelcome sexually motivated attention.

REPORTING A COMPLAINT

1. Employees who believe they are being sexually harassed, intimidated or bullied in violation of this policy should firmly and promptly notify the offender that his/her behavior is unwelcome. The employee may report the complaint verbally or in writing to the lowest level administrator/supervisor who is not involved in the alleged harassment and has the authority to remedy the alleged issues. If the supervisor is unable to resolve the complaint, the complaint will be referred to the superintendent.
2. If the individual chooses not to report the complaint to his or her supervisor, the individual may report the incident directly to the superintendent. If the complaint in any manner involves the superintendent, the individual should report the complaint to the discrimination compliance officer for this district. The discrimination compliance officer will be designated by the superintendent.

An employee, at any time, may file a sexual discrimination or harassment claim with the Idaho Human Rights Commission (IHRC) and/or the Equal Employment Opportunity Commission (EEOC). The addresses of these organizations are available upon request at the McCall-Donnelly School District office or their respective websites.

INVESTIGATION OF A SEXUAL HARASSMENT COMPLAINT

1. Any allegation of sexual harassment will be immediately investigated, unless impracticable. The investigation will begin no later than five (5) working days from the date the complaint is filed.
2. At the discretion of the superintendent or designee, and after consultation with legal counsel for the district, the alleged offender may be suspended, with pay, pending completion of the investigation and review of the investigation report.
3. Confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances. The complainant and alleged offender will be interviewed, as well as other individuals who may have knowledge regarding the allegations.
4. Complaints will be investigated by the district superintendent, the district's discrimination compliance officer, or other designee.
5. Upon completion of the investigation, the investigator will prepare a written report that contains factual findings regarding the allegations and the investigator's conclusion as to whether or not sexual harassment occurred.
6. If the investigation is inconclusive or it is determined that there has been no unlawful sexual harassment or retaliation, but some potentially problematic conduct is revealed, the superintendent may recommend a corrective action plan to the board and the board may impose such corrective action plan.
7. Promptly after the investigation is concluded, the superintendent and/or the discrimination compliance officer will separately meet with the complainant and the person alleged to have committed the offenses to notify them in person of the findings of the investigation.
8. The complainant and the person alleged to have committed the offenses may submit statements to the superintendent and/or discrimination compliance officer challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) working days after the meeting in which the findings of the investigation are discussed.
9. Promptly after the superintendent and/or discrimination compliance officer have met with both parties and reviewed any written statements challenging the findings of the investigation, and after consultation with legal counsel for the district, a decision will be made as to what action, if any, should be recommended to the board.

DISCIPLINARY ACTIONS

If the investigator determines that an employee has sexually harassed another employee or a student, filed false allegations of harassment, or retaliated against a complainant or other

individual participating in the investigation of a sexual harassment complaint, the superintendent will inform and recommend disciplinary action to the board. The board will impose disciplinary action consistent with the requirements of applicable state law, district policies and/or collective bargaining agreements. Such disciplinary action may include, but is not limited to, dismissal from employment, suspension, and reassignment.

If deemed appropriate, the superintendent or board will refer the complaint to local law enforcement at any time prior to, during, or after the investigation.

RECORDKEEPING

1. Documentation of disciplinary action related to any violation of this policy, including false allegations and retaliatory actions, will be placed in the employee's personnel file.
2. If there is insufficient evidence to support the allegations, the complaint and investigation report will not be placed in the employee's personnel file.
3. This district will keep and maintain a confidential, written record of all written sexual harassment complaints, including, but not limited to, witness statements, investigative reports, and correspondence, from the date any allegation of harassment is reported to district personnel. The information in the written record will also include the action taken by the district in response to each allegation. The written record will be kept in the district's administrative offices and will not, at any time, be purged by district personnel.

PROTECTION AGAINST RETALIATION

This district will not retaliate in any way against an individual who makes a report of sexual harassment, in good faith, nor will it permit any district employee to do so. Any person found to have retaliated against another individual for reporting an incident of harassment, in good faith, may be subject to the same disciplinary action provided for sexual harassment offenders. Individuals who are not complainants but who assist individuals who believe they have been subjected to sexual harassment or who assist or participate in a harassment investigation are also protected from retaliation.

FALSE COMPLAINTS

Discipline will result, up to and including termination, when it is conclusively determined that an employee made a complaint of sexual harassment or retaliation knowing it to be false and/or knowingly participated in the falsehood. This section is not intended to discourage employees from making complaints regarding unlawful employment-based behavior. An employee will not be disciplined for reporting actual behavior that in good faith the employee believed was unlawful employment-based behavior. However, false complaints adversely impact the workplace and the career of the accused, even when disproved, and will not be tolerated.

PREVENTATIVE ACTIONS

The superintendent or designee shall ensure that appropriate periodic sexual harassment awareness training or information is provided to all staff members and students. Copies of this policy and the names and contact information of those individuals to whom an employee or student may file a complaint shall be posted at all district buildings.

Policy History:

Adopted: February 2018

Legal Reference:

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-2(a)

Gebser v. Lago Vista Independent School District, 188 S. Ct. 1989 (1998)

Mentor Savings Bank v. Winson, 477 U.S. 57 (1986)

Elison v. Brandy, 924 F.2d 872 (9th Cir. 1991)

Davis v. Monroe County Board of Education, 119 S. Ct. 1661 (1999)