

Policy 5016

Personnel

Employee Bullying, Intimidation and Harassment

It is the policy of this district to maintain a work environment that is free from unlawful discrimination, harassment and retaliation. Each employee has the right to attend work in an atmosphere that promotes equal opportunities and that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive. It is important that all employees treat all other employees with respect and in a lawful and civil manner. It is the responsibility of all district employees to deter inappropriate behavior in the workplace. Discriminatory harassing behavior, including bullying and intimidation, that impacts, or has the potential to impact, the workplace will not be tolerated.

District Employees are:

1. Prohibited from engaging in or conspiring to engage in any conduct which could reasonably be construed as constituting harassment on the basis of sex (including sexual orientation), race, color, national origin, age, religious beliefs, ethnic background, or disability;
2. Required to report to the building principal or designee, or superintendent or designee, harassment of which the employee becomes aware.

DEFINITIONS

“Harassment” is defined to include verbal, written, graphic, photographic, audio or video depictions of any kind, or physical conduct of a harassing nature relating to an individual’s sex or sexual orientation, race, color, national origin, age (40 and over), religious beliefs, ethnic background, or disability that is unwelcome and sufficiently severe, pervasive, or persistent so as to alter the conditions of the employee’s employment and create an abusive working environment. Harassment, intimidation and bullying includes, but is not limited to:

1. Physical acts of aggression or assault (e.g. hitting, kicking, pushing, tripping, blocking or restraining another’s movement), damage to property, or intimidation and implied or overt threats of violence motivated by the victim’s sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability;
2. Demeaning jokes, taunting, slurs, and derogatory “nicknames,” innuendos, or other negative remarks relating to the victim’s sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability;
3. Graffiti and/or slogans or visual displays such as cartoons or posters depicting slurs or derogatory sentiments related to the victim’s sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability; and 4. Criminal offenses directed

at persons because of their sex or sexual orientation, race, color, national origin, age, religious beliefs, ethnic background, or disability;

5. Cyberbullying that intimidates, harasses, or is otherwise harmful to another individual.

6. An act of retaliation taken against (a) any person bringing a complaint of harassment, (b) any person assisting another person in bringing a complaint of harassment, or (c) any person participating in an investigation of an act of harassment.

The “Three-Point Criteria” used to evaluate a harassment, intimidation or bullying complaint under this policy is as follows:

1. Criterion One: Did harm or threat of harm occur?

a. Did the conduct involve an imbalance of power between the offender and the victim?

b. What effect did the conduct have on the victim? Did the conduct create or have the potential to create a hostile or intimidating environment for the victim?

c. Was there an intentional act that caused physical or emotional pain? (Note: an intentional act refers to the individual’s choice to engage in a behavior(s); it does not refer to the intent of the individual to hurt the victim.)

d. Is the behavior related to a protected class: race or ancestry; color; national origin or ethnic group identification; marital status; sex; sexual orientation; genetic information; religion; age; mental or physical disability; or military or veteran’s status.

2. Criterion Two: Is the action unwelcome?

a. Was the conduct unwelcome by the recipient? Consent does not mean that the action is welcome (i.e. hazing).

3. Criterion Three: Is the action severe, persistent or pervasive?

a. Severe behavior can be established with a single action (i.e. physical assault).

b. Persistent behavior occurs repeatedly. If the victim asks the offender to stop but the act(s) continue, this is persistent behavior.

c. Pervasive behavior is when the behavior is rampant throughout the school. Generally, there is not one specific offender in these cases.

If the answer to any of the questions that make up the Three-Point Criteria is no, then the incident does not involve bullying/harassment.

REPORTING PROCEDURES

1. Employees who believe they are being 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 employee chooses not to report the complaint to his/her supervisor/building principal, the employee may report the incident directly to the superintendent. If the complaint in any manner involves the superintendent, the employee should report the complaint to the discrimination compliance officer for the district. The discrimination compliance officer will be designated by the superintendent.
3. It is a violation of the law and this policy to retaliate against any individual filing a complaint. Any employee experiencing retaliation because they filed a harassment complaint should file a separate complaint regarding the alleged retaliation.
4. An employee, at any time, may file a 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.

COMPLAINT REVIEW, INVESTIGATION AND REPORT

Any allegation of harassment, intimidation or bullying will be promptly reviewed and investigated, as appropriate. Confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances. 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.

Upon receiving a complaint of alleged harassment, the administrator/supervisor or superintendent shall:

1. Any harassment will be immediately investigated, unless impractical. The investigation will begin no later than five (5) working days from the date the complaint is filed.
2. Take any immediate necessary action to ensure the safety and well-being of the involved staff member(s); and 3. Make a preliminary assessment applying a Three-Point Criteria, as

defined herein, to determine whether harassment is actually alleged and/or whether there is enough information available to make that determination.

If, upon initial examination of the complaint, the administrator/supervisor or superintendent determines that the complaint does not meet the Three-Point Criteria, a harassment investigation shall not be initiated. However, other disciplinary interventions may still be necessary depending on the facts and circumstances of the incident(s).

If, upon initial examination of the complaint, the administrator/supervisor or superintendent determines that the complaint does meet the Three-Point Criteria and that harassment may have occurred or there is not adequate information to make an initial determination, an investigation shall be initiated. The investigation will follow the procedure set forth below.

When a report of harassment, intimidation or bullying, or retaliation for making or providing information relating to such report, is received by the principal or the superintendent, immediate steps will be taken to do the following:

1. The complainant and alleged offender will be interviewed, as well as other individuals who may have knowledge regarding the allegations. The investigator may also obtain written statements from these individuals.
2. Complaints will be investigated by the superintendent, the district's discrimination compliance officer, or other designee.
3. 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 harassment, intimidation, bullying or retaliation occurred, based on the Three-Point Criteria. If bullying is found to have occurred, the report shall make recommendations regarding any disciplinary action or other measures to be imposed. The written report should also include a summary of the witnesses interviewed and the evidence considered.
4. If the investigation is inconclusive or it is determined that there has been no unlawful 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.
5. 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. If harassment is found, the complainant will only be advised that the district is taking appropriate steps to ensure that the harassment will not re-occur.

6. 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.

7. 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 ACTION

If the allegation of harassment involves a teacher or other school employee, the principal will submit the report of the investigation to the superintendent. If there is sufficient evidence to support the allegation, disciplinary action, up to and including dismissal, may be taken against the offender, consistent with the requirements of applicable state law, district policies and/or collective bargaining agreements.

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.

PROTECTION AGAINST RETALIATION

Retaliation in any manner against a person for filing or initiating in good faith a charge or complaint of discrimination or harassment, testifying in an investigation, providing information or assisting in an investigation is expressly prohibited. Any person found to have retaliated against another individual for reporting an incident of harassment, testifying in an investigation or providing information or assisting in an investigation may be subject to the same disciplinary action provided for harassment offenders. Those persons who assist or participate in an investigation of harassment are also protected from retaliation under this policy. The superintendent and the board will endeavor to take reasonable steps to protect the victim and other potential victims from further harassment or related consequences.

FALSE COMPLAINTS

Discipline will result, up to and including termination, when it is conclusively determined that an employee made a complaint of 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.

CONFIDENTIALITY

Any investigation will be conducted, to the maximum extent possible, in a manner that protects the privacy of both the complainant and the accused. However, the district's obligation to investigate, provide a safe environment and take corrective action may supersede an individual's right to privacy. Pending the completion of the investigation, the district may take any action necessary to protect the safety and well-being of its students, employees and property.

RECORD OF ALLEGATIONS

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 allegation, no record will be made of the allegation in the accused employee's personnel record.
3. The district will keep and maintain a written record, 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.

Policy History:

Adopted: February 2018

Legal Reference:

Idaho Code Sections

33-513

33-518

33-1210

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

Title II of the Americans with Disabilities Act as amended (ADAA), 42 U.S.C. §12101, and 28 CFR Part 35 (comprehensive civil rights protections for "qualified individuals with disabilities")

Section 504 of the Rehabilitation Act of 1973

Age Discrimination in Employment Act (ADEA) of 1967, 29 U.S.C. §621

Age Discrimination Act of 1975, 29 U.S.C. §6101

