

Superintendent Procedure 5011SP Sexual Harassment of District Staff Prohibited

Approved by: s/Dr. Brent C. Jones Date: 8/22/23

Dr. Brent C. Jones, Superintendent



I. Introduction

The procedure supports the implementation of Board Policy No. 5011, Sexual Harassment of Staff Prohibited, including the process for a prompt, thorough, and equitable investigation of allegations of sexual harassment and appropriate steps to resolve such situations. If sexual harassment is found to have created a hostile environment, staff must take immediate action to eliminate the harassment, prevent its reoccurrence, and address its effects.

This procedure applies to sexual harassment (including sexual violence) targeted at district employees carried out by other employees, students, or third parties involved in school district activities. The district has jurisdiction over these complaints pursuant to Title IX of the Education Amendments of 1972, Chapter 28A.640 RCW, and Chapter 392-190 WAC.

A formal complaint filed by or on behalf of a student complainant will be addressed under the definitions and requirements of Board Policy No. 3208, Sexual Harassment of Students Prohibited, and Superintendent Procedures 3208SP.A and 3208SP.B, as applicable.

II. Notice

Information about the district's sexual harassment policy will be easily understandable and conspicuously posted throughout each school building, provided to each employee, and reproduced in each staff, volunteer and parent handbook. In addition to the posting and reproduction of this procedure and Board Policy No. 5011, the district will provide annual notice to employees that complaints pursuant to this procedure may be filed with the Human Resources Department at the following address:

Seattle Public Schools
Human Resources, MS 33-157
PO Box 34165
Seattle, WA 98124-1165

Or via email at hreeoc@seattleschools.org.

III. Definitions

As indicated in Board Policy No. 5011, for the purposes of this procedure:

“Complainant” refers to a staff member who is reported to be the victim of conduct that could constitute sexual harassment.

“Respondent” refers to an individual who is reported to be the perpetrator of conduct that could constitute sexual harassment.

These definitions come from federal law and in no way indicate a belief on the veracity of concerns raised. The District encourages all concerns regarding sexual harassment be reported to the District for appropriate next steps.

There are two forms of sexual harassment: quid pro quo and hostile environment.

“Quid Pro Quo” Sexual Harassment

As it relates to employees, quid pro quo harassment can occur when an employee’s supervisor makes unwelcome sexual advances or requests sexual favors and the employee reasonably believes that submitting to that conduct or communication is a condition of obtaining employment *or* that accepting or rejecting that conduct or communication will be used as a factor in employment decisions.

“Hostile Environment” Sexual Harassment

Hostile environment sexual harassment is conduct of a sexual nature that is sufficiently serious that it interferes with, limits, or denies a person the ability to participate in or benefit from a program, education, or environment.

For employees, a hostile work environment is created where the unwelcome conduct of a sexual nature is sufficiently serious that it would interfere with, deny, or limit a person’s work performance or work environment from a reasonable person’s perspective.

(a) The term “conduct” includes, but is not limited to:

- verbal comments, including unwelcome sexual advances, requests for sexual favors, and derogatory remarks;
- nonverbal conduct, such as graffiti, text messages, or notes; and/or
- physical conduct such as sexual touching, fondling, sexual assault, rape, and other forms of sexual violence.

(b) The term “of a sexual nature” is a broad term that includes conduct or comments about sex (the physical act), based on sex (persons being biologically male or female), or based on sex or gender-based stereotyping.

(c) In determining whether conduct is “sufficiently serious” as to interfere with, deny, or limit employment so as to rise to the level of sexual harassment, the district will examine all the circumstances, including: the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the work site; and other relevant factors. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile

environment. For instance, a single instance of rape is sufficiently severe to create a hostile environment.

Under the above definitions, sexual harassment may include, but is not limited to:

- Demands for sexual favors in exchange for preferential treatment or something of value;
- Stating or implying that a person will lose something if they do not submit to a sexual request;
- Penalizing a person for refusing to submit to a sexual advance, or providing a benefit to someone who does;
- Making unwelcome, offensive or inappropriate sexually suggestive remarks, comments, gestures, or jokes; or remarks of a sexual nature about a person's appearance, gender, or conduct;
- Using derogatory sexual terms for a person;
- Standing too close, inappropriately touching, cornering, or stalking a person; or
- Displaying offensive or inappropriate sexual illustrations on district property.

IV. Staff Responsibilities

In the event of an alleged sexual assault, the supervisor will immediately inform the Title IX Coordinator, an employee role further defined in Superintendent Procedure 3208SP.A, so that the district can appropriately respond to the incident consistent with its own grievance procedures. In instances of sexually assaultive conduct, the supervisor will notify the targeted district staff person of their right to file a criminal complaint and a sexual harassment complaint simultaneously.

Any school employee who witnesses sexual harassment or receives a report, informal complaint, or written complaint about sexual harassment is responsible for informing the district's Title IX or Civil Rights Compliance Coordinator. All staff are also responsible for directing complainants to the formal complaint process.

V. Confidentiality

If a complainant requests that their name not be revealed to the respondent or asks that the district not investigate or seek action against the respondent, the request will be forwarded to the district's Title IX Coordinator and the appropriate Labor Relations Manager for evaluation. The district's Title IX Coordinator and/or Labor Relations Manager should inform the complainant that honoring the request may limit its ability to respond fully to the incident, including pursuing disciplinary action against the respondent.

If the complainant still requests that their name not be disclosed to the respondent or that the district not investigate or seek action against the respondent, the district will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all staff, students, and other third parties engaging in district activities, including the person who reported the sexual harassment. Although a complainant's request to have their name withheld may limit the district's ability to respond fully to an individual allegation of sexual harassment, the district will use other appropriate means available to address alleged sexual harassment.

VI. Retaliation

Title IX prohibits retaliation against any individual who files a complaint under these laws or participates in a complaint investigation. When an informal or formal complaint of sexual harassment is made, the district will take steps to stop further harassment and prevent any retaliation against the person who made the complaint, was the subject of the harassment, or against those who provided information as a witness. The district will investigate all allegations of retaliation and take actions against those found to have retaliated.

VII. Informal Complaint Process

Anyone may use informal procedures to report and resolve complaints of sexual harassment. Informal reports may be made to a supervisor, appropriate Labor Relations Manager, and/or the District's Title IX Coordinator at title.ix@seattleschools.org or (206) 252-0367. Supervisors will bring concerns to Labor Relations or the Title IX Coordinator for appropriate next steps.

During the course of the informal complaint process, the district will take prompt and effective steps reasonably calculated to end any harassment and to correct any discriminatory effects on the complainant. If an investigation is needed to determine what occurred, the district will take interim measures to protect the complainant before the final outcome of the district's investigation (e.g., ensuring the complainant and respondent will not be in the same location for breaks).

Informal remedies may include:

- An opportunity for the complainant to explain to the respondent that their conduct is unwelcome, offensive or inappropriate, either in writing or face-to-face;
- A statement from the respondent's supervisor and/or a Labor Relations Manager to the respondent stating that the alleged conduct is unwelcome and not appropriate and could lead to discipline if proven or repeated;
- A general public statement from an administrator in a building reviewing the district sexual harassment policy without identifying the complainant;
- Developing a safety plan; or
- Providing staff and/or student training.

Informal complaints may become formal complaints at the request of the complainant or because the district believes the complaint needs to be more thoroughly investigated. The district will inform the complainant how to report any subsequent incidences or concerns.

VIII. Formal Complaint Process

Level One – Complaint to District

Anyone may initiate a formal complaint of sexual harassment, even if the informal complaint process is being utilized. At any level in the formal complaint process, the

district will take interim measures to protect the complainant before the final outcome of the district's investigation. The following process will be followed:

Filing of Complaint

All formal complaints will be in writing and will set forth the specific acts, conditions, or circumstances alleged to have occurred that constitute sexual harassment. The Title IX Coordinator may draft the complaint based on the report of the complainant for the complainant to review and approve. The Superintendent or Title IX Coordinator may also conclude that the district needs to conduct an investigation based on information in their possession, regardless of the complainant's interest in filing a formal complaint.

The time period for filing a complaint is one year from the date of the occurrence that is the subject matter of the complaint. However, a complaint filing deadline may not be imposed if the complainant was prevented from filing due to: 1) Specific misrepresentations by the district that it had resolved the problem forming the basis of the complaint; or 2) Withholding of information that the district was required to provide under WAC 392-190-065 or WAC 392-190-005.

Complaints may be submitted by mail, e-mail, or hand-delivery to:

Seattle Public Schools
Human Resources, MS 33-157
PO Box 34165
Seattle, WA 98124-1165
hreeoc@seattleschools.org

Formal complaints that meet these criteria will be promptly provided to the Title IX Coordinator.

Investigation and Response

The district will receive and resolve all formal, written complaints of sexual harassment or information in the Coordinator's possession that they believe requires further investigation. The Coordinator will delegate their authority to participate in this process if such action is necessary to avoid any potential conflicts of interest. Upon receipt of a complaint, the Title IX Coordinator and/or Labor Relations Manager will provide the complainant a copy of this procedure.

Investigations will be carried out in a manner that is adequate in scope, reliable, and impartial. During the investigation process, the complainant and respondent, if the complainant has identified an accused harasser(s), will have an equal opportunity to present witnesses and relevant evidence. Complainants and witnesses may have a trusted adult with them during any district-initiated investigatory activities. The district and complainant may also agree to resolve the complaint in lieu of an investigation.

When the investigation is completed, the investigator will compile a full written report of the complaint and the results of the investigation, which will then be provided to Labor Relations for their knowledge.

Superintendent Response

The Superintendent or Superintendent's designee will respond in writing to the complainant and the respondent within thirty (30) calendar days of receipt of the complaint, unless otherwise agreed to by the complainant or if exceptional circumstances related to the complaint require an extension of the time limit. In the event an extension is needed, the district will notify the complainant in writing of the reason for the extension and the anticipated response date. At the time the district responds to the complainant, the district must send a copy of the response to the Office of the Superintendent of Public Instruction (OSPI).

The response of the Superintendent or designee will include: 1) a summary of the results of the investigation; 2) a statement as to whether a preponderance of the evidence establishes that the complainant was sexually harassed ; 3) if sexual harassment is found to have occurred, the corrective measures the district deems necessary, including assurance that the district will take steps to prevent recurrence and remedy its effects on the complainant and others, if appropriate; 4) notice of the complainant's right to appeal and the necessary filing information; and 5) any corrective measures the district will take, remedies for the complainant (e.g., sources of counseling, advocacy and other support), and notice of potential sanctions for the perpetrator(s) (e.g., discipline).

The Superintendent's or designee's response will be provided in a language the complainant can understand and may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964. If the complaint alleges discriminatory harassment by a named party or parties, the coordinator will provide the accused party or parties with notice of the outcome of the investigation and notice of their right to appeal any discipline or corrective action imposed by the district.

Any corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent's mailing of a written response, unless the accused is appealing the imposition of discipline and the district is barred by due process considerations or a lawful order from imposing the discipline until the appeal process is concluded. Staff may also pursue complaints through the appropriate collective bargaining agreement process or anti-discrimination policy.

The district will inform the complainant how to report any subsequent problems.

Level Two – Appeal to Hearing Examiner

Notice of Appeal and Hearing

- If the complainant disagrees with the Superintendent's or designee's written decision, the complainant may appeal the decision by filing a written notice of appeal with the Title IX Office (title.ix@seattleschools.org) within ten (10) calendar days following the date upon which the complainant received the response.
- The district will ensure that the decision-maker for the appeal is not the same decision-maker who reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator;
- The Title IX Office will ensure that a hearing commences by the twentieth (20th) calendar day following the filing of the written notice of appeal, unless otherwise

agreed to by the complainant and the Superintendent or designee or for good cause.

- Both parties will be allowed a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome of the initial determination.

Decision on Appeal

- Unless otherwise agreed to by the complainant, the decision maker on appeal will render a written decision within thirty (30) calendar days following the filing of the notice of appeal and provide the complainant with a copy of the decision.
- The written decision will describe the result of the appeal and the rationale for the result.
- The decision will include notice of the complainant's right to appeal to the Superintendent of Public Instruction and will identify where and to whom the appeal must be filed. The district will send a copy of the appeal decision to the Office of the Superintendent of Public Instruction.
- The decision will be provided in a language that the complainant can understand, which may require language assistance for complainants with limited English proficiency in accordance with Title VI of the Civil Rights Act.

Level Three - Complaint to the Superintendent of Public Instruction

Filing of Complaint

- If a complainant disagrees with the decision of the board of directors, or if the district fails to comply with this procedure, the complainant may file a complaint with the Office of the Superintendent of Public Instruction.
- A complaint must be received by the Superintendent of Public Instruction on or before the twentieth (20) calendar day following the date upon which the complainant received written notice of the board of directors' decision, unless the Superintendent of Public Instruction grants an extension for good cause. Complaints may be submitted by mail, fax, electronic mail, or hand delivery.
- A complaint must be in writing and include: 1) A description of the specific acts, conditions or circumstances alleged to violate applicable anti-sexual harassment laws; 2) The name and contact information, including address, of the complainant; 3) The name and address of the district subject to the complaint; 4) A copy of the district's complaint and appeal decision, if any; and 5) A proposed resolution of the complaint or relief requested. If the allegations regard a specific student, the complaint must also include the name and address of the student, or in the case of a homeless child or youth, contact information.

Investigation, Determination, and Corrective Action

- Upon receipt of a complaint, the Office of the Superintendent of Public Instruction may initiate an investigation, which may include conducting an independent on-site review. OSPI may also investigate additional issues related to the complaint that were not included in the initial complaint or appeal to the Superintendent or hearing examiner.
- Following the investigation, OSPI will make an independent determination as to whether the district has failed to comply with RCW 28A.642.010 or Chapter 392-190 WAC and will issue a written decision to the complainant and the district that addresses each allegation in the complaint and any other noncompliance issues it

has identified. The written decision will include corrective actions deemed necessary to correct noncompliance and documentation the district must provide to demonstrate that corrective action has been completed.

- All corrective actions must be completed within the timelines established by OSPI in the written decision unless OSPI grants an extension. If timely compliance is not achieved, OSPI may take action including but not limited to referring the district to appropriate state or federal agencies empowered to order compliance.

A complaint may be resolved at any time when, before the completion of the investigation, the district voluntarily agrees to resolve the complaint. OSPI may provide technical assistance and dispute resolution methods to resolve a complaint.

Level Four – Administrative Hearing

A complainant or school district that desires to appeal the written decision of the Office of the Superintendent of Public Instruction may file a written notice of appeal with OSPI within thirty (30) calendar days following the date of receipt of that office's written decision. OSPI will conduct a formal administrative hearing in conformance with the Administrative Procedures Act, Chapter 34.05 RCW.

Other Complaint Options

Office for Civil Rights (OCR), U.S. Department of Education

OCR enforces several federal civil rights laws, which prohibit discrimination in public schools on the basis of race, color, national origin, sex, disability, and age. File complaints with OCR within 180 calendar days of the date of the alleged discrimination. 206-607-1600 | TDD: 1-800-877-8339 | OCR.Seattle@ed.gov | www.ed.gov/ocr

Washington State Human Rights Commission (WSHRC)

WSHRC enforces the Washington Law Against Discrimination (RCW 49.60), which prohibits discrimination in employment and in places of public accommodation, including schools. File complaints with WSHRC within six months of the date of the alleged discrimination.

1-800-233-3247 | TTY: 1-800-300-7525 | www.hum.wa.gov

Mediation

At any time during the complaint procedure set forth in WAC 392-190-065 through 392-190-075, a district may, at its own expense, offer mediation. The complainant and the district may agree to extend the complaint process deadlines in order to pursue mediation.

The purpose of mediation is to provide both the complainant and the district an opportunity to resolve disputes and reach a mutually acceptable agreement through the use of an impartial mediator. Mediation must be voluntary and requires the mutual agreement of both parties. It may be terminated by either party at any time during the mediation process. It may not be used to deny or delay a complainant's right to utilize the complaint procedures.

Mediation must be conducted by a qualified and impartial mediator who may not: 1) Be an employee of any school district, public charter school, or other public or private agency that is providing education related services to a student who is the subject of the complaint being mediated; or 2) Have a personal or professional conflict of interest. A mediator is not considered an employee of the district or charter school or other public or private agency solely because they serve as a mediator.

If the parties reach agreement through mediation, they may execute a legally binding agreement that sets forth the resolution and states that all discussions that occurred during the course of mediation will remain confidential and may not be used as evidence in any subsequent complaint, due process hearing or civil proceeding. The agreement must be signed by the complainant and a district representative who has authority to bind the district.

IX. Training and Orientation

District orientation sessions for staff, students, and regular volunteers will introduce the elements of this procedure and the corresponding policy. Staff will be provided information on recognizing and preventing sexual harassment. Staff will be fully informed of the formal and informal complaint processes and their roles and responsibilities under the applicable policies and procedures.

Certificated staff will be reminded of their legal responsibility to report suspected child abuse, and how that responsibility may be implicated by some allegations of sexual harassment. Regular volunteers will get the portions of this component of orientation relevant to their rights and responsibilities.

As part of the information on the recognition and prevention of sexual harassment staff, volunteers, students and parents will be informed that sexual harassment may include the examples listed in the definitions section in this procedure.

Approved: August 2023

Revised:

Cross Reference: Policy Nos. 3208; 5010; 5011; 5240; Superintendent Procedure 3208SP.A; 3208SP.B