

EUREKA COUNTY SCHOOL DISTRICTPROHIBITED CONDUCT:EMPLOYEE BULLYING, CYBER-BULLYING, AND HARASSMENT

The District will not tolerate instances of bullying, cyber-bullying, harassment, or retaliation whether or not such behavior meets the threshold of prohibited conduct/behavior(s).

Sexual Harassment Under Title IX

If the alleged bullying, cyber-bullying, or harassment could constitute sexual harassment under Title IX, Board Policy 4002 and Administrative Regulation 4002 apply rather than Board Policy 4112 and Administrative Regulation 4112 AR.¹ Because the school district must respond with specific steps whenever any employee has notice of sexual harassment under Title IX, all school employees are required to report possible incidents of sexual harassment to the District's Title IX Coordinator, as soon as practicable, but not later than a time during the same day on which the employee became aware of sexual harassment, including allegations of sexual harassment. Reports by school district employees must be made in person, by telephone, and/or by email to the school district's Title IX Coordinator as follows:

Personnel Officer
Eureka County School District
PO Box 249
Eureka, NV 89316
Ph: 775-237-5373/Fax: 775-237-5014
detchegaray@eureka.k12.nv.us

The school district's Title IX Coordinator will assist the employee to determine whether the allegation could constitute sexual harassment under Title IX, in which case Board Policy 4002 and Administrative

¹ Sexual harassment is defined under the federal Title IX regulations as conduct on the basis of sex that satisfies one or more of the following:

- a. A school employee conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in welcome sexual conduct (i.e., *quid pro quo*); or
- b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school district's education program or activity; or
- c. Sexual assault as defined in the federal Clery Act, or dating violence, domestic violence, or stalking as defined in the federal Violence Against Women Act.

Regulation 4002 AR will be followed rather than Board Policy 4112 and Administrative Regulation 4112 AR.

Employee Bullying, Cyber-Bullying and Harassment

1. Definitions:

Bullying (NRS 388.122) and **Cyber-Bullying** (NRS 388.123):

1. **“Bullying”** means written, verbal or electronic expressions or physical acts or gestures, or any combination thereof, that are directed at a person or group of persons, or a single severe and willful act or expression that is directed at a person or group of persons, and:
 - a. Have the effect of:
 - i. Physically harming a person or damaging the property of a person; or
 - ii. Placing a person in reasonable fear of physical harm to the person or damage to the property of the person; or
 - b. Interfere with the rights of a person by:
 - i. Creating an intimidating or hostile educational environment for a pupil; or
 - ii. Substantially interfering with the ability of the person to participate in or benefit from services, activities or privileges provided by a school; or
 - c. Are acts or conduct described in paragraph (a) or (b) and are based upon the:
 - i. Actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a person, sex or any other distinguishing characteristic or background of a person; or
 - ii. Association of a person with another person having one or more of those actual or perceived characteristics.
2. The term includes, without limitation:
 - a. Repeated or pervasive taunting, name-calling, belittling, mocking or use of put-downs or demeaning humor regarding the actual or perceived race, color, national origin, ancestry, religion, gender identity or expression, sexual orientation, physical or mental disability of a

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- person, sex or any other distinguishing characteristic or background of a person;
 - b. Behavior that is intended to harm another person by damaging or manipulating his or her relationships with others by conduct that includes, without limitations, spreading false rumors;
 - c. Repeated or pervasive nonverbal threats or intimidation such as the use of aggressive, menacing or disrespectful gestures;
 - d. Threats of harm to a person, to his or her possessions or to other persons, whether such threats are transmitted verbally, electronically or in writing;
 - e. Blackmail, extortion or demands for protection money or involuntary loans or donations;
 - f. Blocking access to any property or facility of a school;
 - g. Stalking; and
 - h. Physically harmful contact with or injury to another person or his or her property.
2. **“Cyber-bullying”** means bullying through the use of electronic communication. The term includes the use of electronic communication to transmit or distribute a sexual image of a minor. As used in this policy, “sexual image” has the meaning ascribed to it in NRS 200.737.
3. **“Electronic communication”** means the communication of any written, verbal or pictorial information through the use of an electronic device, including, without limitation, a telephone, a cellular phone, a computer or any similar means of communication.

Harassment: unwanted conduct/behavior(s) harasses, disrupts, or interferes with another’s work performance or that creates an intimidating, offensive, or hostile environment based on that person’s race, color, religion, age, gender, pregnancy, sexual orientation, national origin, ancestry, disability, veteran status, domestic partnership, genetic information, gender identity or expression, political affiliation, or membership in the Nevada National Guard, or any other class that becomes protected by federal and/or state law.

2. Purpose

The purpose of this policy is to communicate to all employees, including supervisors and managers, that the District will not

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tolerate any form of bullying, cyber-bullying, or harassment, including any conduct/behavior(s) on the part of employees, volunteers, clients, customers, vendors, contractors, etc., that impairs an employee's ability to perform his/her duties. Employees found in violation of this policy may be subject to disciplinary action, up to and including termination.

3. Prohibited Conduct/Behavior(s)

Examples of prohibited conduct/behavior(s) include, but are not limited to:

- a. Verbal: Offensive verbal communication including slurs, jokes, epithets, derogatory comments, degrading or suggestive words or comments, unwanted sexual advances, invitations, slander, ridiculing or maligning an employee or his/her family; persistent name calling which is hurtful, insulting, or humiliating; yelling, screaming, and cursing; chronic teasing; belittling opinions or constant criticism.
- b. Physical: Unwanted physical contact including brushing up against someone in an offensive manner, unwanted touching, impeding or blocking normal movement, pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to an employee's work area or property.
- c. Nonverbal: Offensive gestures, expressions, and graphics including leering, obscene hand, finger, or body gestures, offensive drawings, derogatory posters, photographs, or cartoons, displaying sexually suggestive objects or pictures, threatening gestures or glances which convey threatening messages; threatening actions; socially or physically excluding or disregarding a person in a work-related activity.
- d. Online/Digital: Any unwanted digital communication that is offensive or threatening in manner, including repeatedly tormenting, threatening, harassing, humiliating, embarrassing, or otherwise targeting an employee using email, instant messaging, text messaging, social media, or any other type of digital technology.
- e. Workplace Interference: Sabotaging which prevents work from getting done; deliberately tampering with a person's work area or property; unreasonably assigning menial tasks outside of a person's normal job duties.
- f. Expectations, requests, demands, or pressure for sexual favors.

- g. Harassment: Unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.
- h. Harassment violates this policy where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.
- i. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.
- j. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name-calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- i. The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- ii. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- iii. Unlawful harassment may occur without economic injury to, or discharge of, the victim.
- iv. Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct explicitly or implicitly affects an individual's ability to receive an education, unreasonably interferes with an individual's educational performance or creates an intimidating, hostile or offensive educational environment.
- v. Intimidation: Intentional behavior that would cause an ordinary person to fear harm or injury.

4. Other Definitions

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Protected Classes: Race, color, national origin or ethnic group identification, marital status, ancestry, sex, sexual orientation, gender identity or expression, genetic information, religion, age, mental or physical disability, military or veteran's status.

"Disability" means, with respect to a person: 1) a physical or mental impairment that substantially limits one or more of the major life activities of the person, including, without limitation, the human immunodeficiency virus; 2) a record of such an impairment; or 3) being regarded as having such an impairment.

"Gender identity or expression" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

"Sexual orientation" means having or being perceived as having an orientation for heterosexuality, homosexuality or bisexuality.

An "adverse employment action" has been defined in the Ninth Circuit Court of Appeals as "any adverse treatment that is based on a retaliatory motive and is reasonably likely to deter the charging party [an employee] from engaging in protected activity." *Ray v. Henderson*, 217 F.3d 1234, 1242–43 (9th Cir. 2000) Examples of adverse employment actions include termination of employment, demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits or diminished responsibilities. Not every disagreeable workplace action constitutes retaliation; rather, retaliation must produce an injury or harm. *Aki v. Univ. of California Lawrence Berkeley Nat'l Lab.*, 74 F. Supp. 3d 1163, 1181 (N.D. Cal. 2014) (citations and quotations omitted.)

5. Dealing with Allegations of Prohibited Conduct/Behavior(s)

Process

Employees or applicants who believe they are being subjected to any form of prohibited conduct/behavior(s) as described in this policy/regulation by another (e.g., employee, student, parent, volunteer, vendor, contractor of the District), as well as those who believe they have witnessed another employee, volunteer, customer, or member of the public being subjected to prohibited behavior have an affirmative duty to bring the situation to the attention of the administrator/supervisor. Employees covered by a collective bargaining agreement may opt to use the process described in this policy/regulation or in an applicable grievance procedure delineated by their collective bargaining agreement, but may not use both.

Employee Responsibilities

Employees who believe they personally are being or have been subjected to prohibited conduct/behavior(s) and/or are the target of any form of prohibited conduct/behavior(s), or have witnessed any other employee being subjected to these behaviors should immediately:

- 1) Identify the offensive behavior to the alleged offender and request that the behavior cease.

Note: An employee is NOT required to talk directly to the alleged offender or to the employee's supervisor. It is critical, however, that the employee contact one of the individuals listed in sections 2 or 3 below if s/he believes s/he is being targeted or has witnessed what the employee believes to be prohibited conduct/behavior(s) directed to or committed by another employee(s), client(s), customer(s), vendor(s), volunteer(s), contractor(s), etc.

- 2) If the employee feels uncomfortable in speaking directly to the alleged offender or if the employee requested the prohibited conduct/behavior(s) to cease, but the request did not produce the results desired, the employee should report the prohibited conduct/behavior(s) as soon as possible to any administrator or manager/supervisor, District's designated EEO Officer, or to the HR Representative.

- 3) Employees who believe the EEO Officer has engaged in prohibited conduct/behavior(s) should bring such concerns to the attention of the Superintendent or designee. The Superintendent will designate an objective person to conduct an investigation of such allegations.

- 4) An employee who witnesses or obtains information regarding prohibited conduct/behavior(s) by his/her immediate supervisor is required to report the incident to the administrator, EEO Officer, or HR Representative.

- 5) Applicants who have concern regarding violations of this policy are encouraged to contact the designated EEO Officer or the alternate.

Administrator/Supervisor Responsibilities

Regardless of whether the employee involved is in the administrator's or manager's/supervisor's department and regardless of how s/he became aware of the alleged prohibited conduct/behavior(s), all administrators or managers/supervisors must immediately report all allegations, complaints or observations

of such prohibited conduct/behavior(s) to the EEO Officer. The information reported must include:

- 1) The persons(s) involved, including all witnesses.
- 2) A written record of specific conversations held with the accused and any witnesses.
- 3) All pertinent facts, including date(s), time(s), and locations(s).

An administrator's or manager's/supervisor's failure to immediately report such activities, complaints, or allegations will result in discipline, up to and an administrator/supervisor is required to report this information to the District's EEO Officer, or the Personnel Officer immediately including possible termination.

Investigation

Upon being made aware of allegations or complaints of prohibited conduct/behavior(s), the District will ensure that such allegations or complaints are investigated within three (3) days. The District treats all allegations or complaints seriously and requires all employees to be candid and truthful during the investigation process.

The District will make efforts to ensure that all investigations are kept as confidential as reasonably possible. Employees will be requested to refrain from discussing the subject content with others, particularly while the investigation is in progress. Employees shall be required, upon request, to provide information to regulatory agencies. The District will release information obtained only to those individuals involved in the investigation and the administration of the complaint with a business need-to-know, or as required by law.

The District will communicate to the individual who made the initial complaint, as well as the individual against whom the complaint was made, that the investigation is completed and appropriate action, if any, has been taken.

If evidence arises that a participant in the investigation made intentionally false statements, that employee will be disciplined, up to and including possible termination.

If it is determined that a violation of this policy/regulation has occurred, the District will take corrective action against the violator commensurate with the severity of the offense. Such corrective action may include, but is not limited to, counseling, verbal warning, written reprimand, pay reduction, transfer, demotion, suspension without pay, or termination. The District will also initiate action to deter any future prohibited conduct/behavior(s) from occurring.

With regard to disability-related complaints, the EEO Officer shall propose a resolution to the complaint based upon the findings of such investigation. Such resolution will include reasonable accommodation when the District determines that such a reasonable accommodation can be provided.

Upon being made aware of allegations or complaints of bullying, the District will ensure that such allegations or complaints are investigated where deemed necessary.

The District will make efforts to ensure that all investigations are kept as confidential as reasonably possible. The District will release information obtained only to those individuals with need-to-know business or involved in the investigation and the administration of the complaint, or as required by law.

The individual who made the initial complaint, as well as the individual against whom the complaint was made, will be made aware that the investigation is completed and appropriate action, if any, has been taken.

If it is determined that bullying, cyber-bullying, harassment, or discrimination has occurred, the District will take appropriate action. The District will also initiate action to deter any future prohibited conduct/ behavior(s) from occurring.

6. Training

The District will provide training to all employees on the prevention of discrimination and prohibited conduct/behavior(s) in the workplace. The District will provide new employees a copy of this policy/regulation upon hire and discuss the contents during the new hire orientation process. New employees will participate in training on the prevention of discrimination and prohibited conduct/behavior(s). A copy of this policy/regulation will be made available to applicants upon request.

7. Prohibition Against Retaliation

Retaliation is an adverse employment action against the employee based upon a protected activity, i.e. Filing a complaint or being a witness in an investigation. The District will not tolerate any retaliation by management or by any other employee against an employee who exercises his/her rights under this policy. The District will not tolerate any retaliation by administrators/supervisors or coworkers against an employee who exercises his/her rights under this policy. Any employee who believes s/he has been retaliated or discriminated against in any manner whatsoever as a result of having filed a complaint, assisted another employee in filing a complaint, or participated in an

investigative process should notify the EEO Officer or the Personnel Officer immediately. The District will promptly investigate and deal appropriately with any allegation of retaliation.