

**Wheatland-Chili School District Policy****Series Personnel****Policy #6121 SEXUAL HARASSMENT OF DISTRICT PERSONNEL**

Wheatland-Chili Central School District (hereinafter referred to as the “District”) is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. Sexual harassment is against the law and all employees have a legal right to a workplace free from sexual harassment. Employees are urged to report sexual harassment by filing a complaint internally with the District. Employees can also file a complaint with a government agency or in court under federal or state antidiscrimination laws.

1. This Policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors, vendors, subcontractors, consultants, volunteers, parents, and persons conducting business with the District, whether on or off the District-owned or leased premises. For purposes of this Policy, the terms “employee” and “employees” refer to this collective group.
2. Sexual harassment will not be tolerated. Any employee who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action in accordance with law and any applicable collective bargaining agreement (e.g., counseling, suspension, termination).
3. No employee covered by this Policy shall be subject to adverse action because the employee reports or provides information related to an incident of sexual harassment, or otherwise assists in any investigation of a sexual harassment complaint. The District will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of the District who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination in accordance with law and any applicable collective bargaining agreement. **For the purpose of this policy, all employees who believe they have been subject to such retaliation shall inform their supervisor or the Director of Human Resources. In the event that the alleged retaliatory behavior involves the supervisor or the Director of Human Resources, the Superintendent will be advised. In the event the alleged retaliatory behavior involves the Superintendent, the Board of Education will be advised through the Board President.** All employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.
4. Sexual harassment is offensive, is a violation of this Policy, is unlawful, and may subject the District to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level including managers, administrators, directors, and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized.
5. The District will conduct a prompt and thorough investigation that ensures due process for all parties, whenever the District receives a complaint about sexual harassment, or is otherwise informed of possible sexual harassment occurring. The District will keep the

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investigation confidential to the extent possible. All employees are required to cooperate with any internal investigation of sexual harassment.

6. All employees are required to report any harassment or behaviors that violate this Policy. The District will provide a complaint form for the employees to report the harassment and file complaints.
7. Administrators, supervisors, directors, and managers are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, **to the District pursuant to paragraph 3 above.**
8. This Policy shall be provided to all employees upon hiring and will be posted electronically to the Employee Portal.

**Sexual Harassment Defined**

Sexual harassment is a form of sex discrimination and is unlawful under federal and state law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment includes sexual violence.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or acts of physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit statements, derogatory statements or sexually discriminatory remarks made by an employee which are offensive or objectionable to the recipient and interfere with the recipient's job performance.

Sexual harassment also occurs when a person in a position of authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

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Any employee who feels harassed shall report the conduct to correct any violation of this Policy. Any harassing conduct, even a single incident, can be addressed under this Policy.

**Examples of sexual harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually suggestive gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - Sabotaging an individual's work;
  - Bullying, yelling, name-calling.

**Who can be a target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects all employees. Harassers can be a superior, a subordinate, a coworker or anyone in

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the workplace including an independent contractor, contract worker, vendor, client, customer, visitor, parent, or volunteer.

#### **Where can sexual harassment occur?**

Unlawful sexual harassment is not limited to the physical workplace itself. Sexual harassment can occur while employees are traveling for business or at employer sponsored events or functions. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if that conduct occurs away from the workplace premises, on personal devices or during non-work hours.

#### **Retaliation**

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal and state law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

#### **Reporting Sexual Harassment**

The District cannot prevent or remedy sexual harassment without knowledge of the conduct. Any employee who has been subjected to behavior that may constitute sexual harassment shall report

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such behavior to a supervisor, or the Director of Human Resources. Anyone who witnesses or becomes aware of potential instances of sexual harassment shall report such behavior **to the District pursuant paragraph 3 above.**

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy (hereinafter referred to as "Complaint Form"), and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form.

Employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

#### **Supervisory Responsibilities**

All supervisors, directors, administrators, and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment **to the District pursuant to paragraph 3 above.**

In addition to potentially being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors, directors, administrators, and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors, directors, administrators, and managers will be subject to discipline for engaging in any form of retaliation in accordance with the law and any applicable collective bargaining agreement.

#### **Complaint and Investigation of Sexual Harassment**

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced in a timely manner and completed as soon as possible. The investigation will be kept confidential and only include complainants, witnesses, and alleged harassers. All persons involved in the investigation will be expected to maintain confidentiality. All persons involved, including complainants, witnesses and alleged harassers, will be accorded "due process" in accordance with applicable law and collective bargaining agreement to protect their rights to a fair and impartial investigation.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

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- Upon receipt of complaint, the Director of Human Resources or a designee will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If the complaint is verbal, the individual will be encouraged to complete the Complaint Form in writing. If he or she refuses, the Director of Human Resources or a designee will prepare a Complaint Form based on the verbal reporting. If the Director of Human Resources is the subject of the allegations, the review and subsequent investigation will be supervised by the Superintendent. If the Superintendent is the subject of the allegations, the review and subsequent investigation will be supervised by the Board of Education through the Board President.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve the materials.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses.
- Search District-owned items such as desks, lockers, rooms, cabinets, and computers.
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - A list of all documents reviewed, along with a detailed summary of relevant documents;
  - A list of names of those interviewed, along with a detailed summary of their statements;
  - A timeline of events;
  - A summary of prior relevant incidents, reported or unreported; and
  - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination. Implement any corrective actions as deemed necessary in accordance with law and applicable collective bargaining agreement.
- Inform the individual who reported the behavior of the right to file a complaint or charge externally as outlined in the next section.

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#### **Legal Protections And External Remedies**

Sexual harassment is not only prohibited by the District but is also prohibited by state and federal law.

Aside from the internal investigation process at the District, employees may also choose to pursue legal remedies with the governmental entities outlined below. While a private attorney is not required to file a complaint with a governmental agency, employees may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

#### **State Human Rights Law (HRL)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Filing a complaint with the District does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You are not required to retain an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate the complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring the employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

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Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

**Equal Employment Opportunity Commission**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime **within 300 days from the harassment**. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

**Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

**Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime and you may contact the local police department.

NYS Labor Law § 201-g



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42 United States Code (U.S.C.) § 2000e et seq.

NYS Executive Law §§ 296 and 297

Refer also to Policies: #3420 – Non-Discrimination and Anti-Harassment in the School District  
#7551 – Sexual Harassment of Students

Revised: