

SEXUAL HARASSMENT OF STAFF PROHIBITED PROCEDURES

This procedure is intended to set forth the requirements of Policy 5011, including the process for a prompt, thorough, and equitable investigation of allegations of sexual harassment and the need to take 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 NWESD 189 employees carried out by students, other employees, or third parties involved in NWESD 189 programs/activities. The NWESD 189 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 against an employee respondent will be investigated under the definitions, requirements, and procedures on Policy 3205 and Procedure 3205P.

Notice

Information about the NWESD 189 sexual harassment policy will be easily understandable and conspicuously posted throughout each NWESD 189 facility, provided to each employee and reproduced in each staff, volunteer, and parent handbook. In addition, the NWESD 189 will provide annual notice to employees that complaints pursuant to this procedure may be filed at the NWESD 189 administrative office at 1601 R Avenue, Anacortes, WA 98221.

Staff Responsibilities

In the event of an alleged sexual assault, the site administrator will immediately inform: 1) law enforcement; and 2) the Title IX/Civil Rights Compliance Officer (hereinafter referred to as the Compliance Officer), so the NWESD 189 can appropriately respond to the incident consistent with its grievance procedures. The site administrator will notify the targeted NWESD 189 staff person of his/her right to file a criminal complaint and/or a sexual harassment complaint simultaneously.

Confidentiality

If a complainant requests that his/her name not being revealed to the alleged perpetrator or asks that the NWESD 189 not investigate or seek action against the alleged perpetrator, the request will be forwarded to the Compliance Officer. The Compliance Officer would inform the complainant that honoring the request may limit his/her ability to respond fully to the incident, including pursuing disciplinary action against the alleged perpetrator.

If the complainant still requests that his/her name not be disclosed to the alleged perpetrator or that the NWESD 189 not investigate or seek action against the alleged perpetrator, the NWESD 189 will need to determine whether or not it can honor such a request while still providing a safe and nondiscriminatory environment for all students, staff, and other third parties engaging in NWESD

189 activities, including the person who reported the sexual harassment. Although a complainant's request to have his/her name withheld may limit the NWESD 189's ability to respond fully to an individual allegation of sexual harassment, the NWESD 189 will use other appropriate means available to address the sexual harassment.

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 NWESD 189 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 NWESD 189 will investigate all allegations of retaliation and take actions against those found to have retaliated.

Informal Process for Resolution

Anyone may use informal procedures to report and resolve complaints of sexual harassment. Informal reports may be made to any staff member. Staff will always notify complainants of their right to file a formal complaint and the process for same. Staff will also direct potential complainants to the Compliance Officer. Additionally, staff will also inform an appropriate supervisor or professional staff member when they receive complaints of sexual harassment, especially when the complaint is beyond their training to resolve or alleges serious misconduct.

During the course of the informal complaint process, the NWESD 189 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 NWESD 189 will take interim measures to protect the complainant before the final outcome of the investigation.

Informal remedies may include:

- 1) an opportunity for the complainant to explain to the alleged harasser that his/her conduct is unwelcome, offensive, or inappropriate, either in writing or face-to-face;
- 2) a statement from a staff member to the alleged harasser that the alleged conduct is not appropriate and could lead to discipline if proven or repeated;
- 3) a general public statement from an administrator in a program/department reviewing the NWESD 189 sexual harassment policy without identifying the complainant;
- 4) separating staff persons, and/or,
- 5) providing staff and or student training.

Informal complaints may become formal complaints at the request of the complainant, or because the NWESD 189 determines the complaint needs to be more thoroughly investigated.

The NWESD 189 will inform the complainant how to report any subsequent problems. Additionally, the NWESD 189 will conduct follow-up inquiries to see if there have been any new incidents or instances of retaliation, and to promptly respond and appropriately address continuing or new problems.

Formal Complaint Process

Level One – Complaint to NWESD 189

Anyone may initiate a formal complaint of sexual harassment, even if the informal complaint process is being utilized. At any level in the process, the NWESD 189 will take interim measures to protect the complainant before the final outcome of the NWESD 189 investigation. The Superintendent or Compliance Officer may conclude that the NWESD 189 needs to conduct an investigation based on information in his/her possession regardless of the complainant's interest in filing a formal complaint.

Filing of Complaint and Investigation

- 1) All formal complaints will be in writing on Form 5274-F1 and will set forth the specific acts, conditions or circumstances alleged to have occurred and to constitute sexual harassment. The Compliance Officer may draft the complaint on Form 5274-F1 based on the report of the complainant for the complainant to review and approve.
- 2) The time period for filing a complaint is one (1) year from the date of the alleged 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 NWESD 189 that it had resolved the problem forming the basis of the complaint; or 2) withholding of information that the NWESD 189 was required to provide under WAC 392-190-065 or WAC 392-190-005.
- 3) Complaints may be submitted by mail, fax, e-mail, or hand-delivery to the Compliance Officer. Any NWESD 189 employee who receives a complaint that meets these criteria will promptly notify the Compliance Officer.
- 4) The Compliance Officer will receive and investigate all formal, written complaints of sexual harassment, or information in the Compliance Officer's possession that the Officer believes requires further investigation. The Compliance Officer will delegate his/her authority to participate in this process if such an action is necessary to avoid any potential conflicts of interest. Upon receipt of a complaint, the Compliance Officer will provide the complainant a copy of this procedure.
- 5) Investigations will be carried out in a manner that is adequate in scope, reliable, and impartial. During the investigation process, the complainant and accused party(ies), will have an equal opportunity to present witnesses and relevant evidence. Complainants and witnesses may have a trusted adult with them during any NWESD 189 initiated investigatory activities. The NWESD 189 and complainant may also agree to resolve the complaint in lieu of an investigation.

- 6) When the investigation is completed the Compliance Officer will compile a full written report of the complaint and the results of the investigation. If the matter has not been resolved to the complainant's satisfaction, the Superintendent will take further action on the report.

Superintendent Response

- 1) The Superintendent or designee will respond in writing to the complainant and the alleged perpetrator 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 NWESD 189 will notify the complainant in writing of the reason for the extension and the anticipated response date. At the time the NWESD 189 responds to the complainant, the NWESD 189 must send a copy of the response to the Office of the Superintendent of Public Instruction (OSPI).
- 2) The response of the Superintendent or designee will include:
 - A) a summary of the results of the investigation;
 - B) a statement as to whether a preponderance of evidence establishes that the complainant was sexually harassed;
 - C) if sexual harassment is found to have occurred, corrective measures the NWESD 189 deems necessary; and
 - D) notice of the complainant's right to appeal to the NWESD 189 Board and the necessary filing information. 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*.
- 3) Corrective measures deemed necessary will be instituted as quickly as possible, but in no event more than thirty (30) days after the Superintendent's or designee's mailing of a written response, unless the accused is appealing the imposition of discipline and the NWESD 189 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 *Nondiscrimination Policy 5010*.
- 4) The NWESD 189 will inform the complainant how to report any subsequent problems. Additionally, the NWESD 189 will conduct follow-up inquiries to see if there have been any new incidents or instances of retaliation, and to promptly respond and appropriately address continuing or new problems.

Level Two – Appeal to Board of Directors

Notice of Appeal and Hearing

If a complainant disagrees with the Superintendent's or designee's written decision, the complainant may appeal the decision to the NWESD 189 Board by filing a written notice of appeal with the Secretary of the Board within ten (10) calendar days following the date upon which the complainant received the response.

The Board will schedule a hearing to commence at its next regularly scheduled meeting following the filing of the written notice of appeal, unless otherwise agreed to by the complainant and the Superintendent or for good cause. Both parties will be allowed to present such witnesses and testimony as the Board deems relevant and material.

Decision

Unless otherwise agreed to by the complainant, the Board will render a written decision within thirty (30) calendar days following the hearing and will provide the complainant with a copy of the decision. 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*. The decision will include notice of the complainant's right to appeal to the Office of the Superintendent of Public Instruction (OSPI) and will identify where and to whom the appeal must be filed. The NWESD 189 will send a copy of the appeal decision to the Office of the Superintendent of Public Instruction.

Level Three - Complaint to the Office of the Superintendent of Public Instruction

If a complainant disagrees with the decision of the Board, or if the NWESD 189 fails to comply with this procedure, the complainant may file a complaint with the Office of the Superintendent of Public Instruction (OSPI).

- 1) A complaint must be received by OSPI on or before the twentieth (20th) calendar day following the date upon which the complainant received written notice of the Board's decision, unless OSPI grants an extension for good cause. Complaints may be submitted by mail, fax, electronic mail, or hand-delivery.
- 2) A complaint must be in writing and include:
 - A) a description of the specific acts, conditions, or circumstances alleged to violate applicable anti-sexual harassment laws;
 - B) the name and contact information, including address, of the complainant;
 - C) the name and address of the NWESD 189 subject to the complaint;

- D) a copy of the NWESD 189's complaint and appeal decision, if any; and,
- E) 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.

- 3) Upon receipt of a complaint, OSPI 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 Board. Following the investigation, OSPI will make an independent determination as to whether the NWSD 189 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 NWESD 189 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 NWESD 189 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 NWESD 189 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 NWESD 189 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 the NWESD 189 may appeal the written decision of OSPI by filing 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, citizenship or immigration status, sex, disability and age. File complaints with OCR within one hundred eighty (180) calendar days of the date of the alleged discrimination. Contact information:

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. Contact information:

1-8100-233-3247 | 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, the NWESD 189 may, at its own expense, offer mediation. The complainant and the NWESD 189 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 NWESD 189 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 NWESD 189 solely because he/she serves 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 NWESD 189 representative who has authority to bind the NWESD 189.

Training and Orientation

A fixed component of all NWESD 189 orientation sessions for staff, students, and regular volunteers will introduce the elements of this 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 policy and procedure. 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 receive the portions of this component of orientation relevant to their rights and responsibilities.

Students will be provided with age-appropriate information on the recognition and prevention of sexual harassment and their rights and responsibilities under this and other NWESD 189 policies and rules at student orientation sessions, parent/guardian handbook, and on other appropriate occasions, which may include parents/guardians.

As part of the information on the recognition and prevention of sexual harassment staff, volunteers, students, and parents/guardians will be informed that sexual harassment may include, but is not limited to:

- 1) Demands for sexual favors in exchange for preferential treatment or something of value.
- 2) Stating or implying that a person will lose something if he or she does not submit to a sexual request.
- 3) Penalizing a person for refusing to submit to a sexual advance or providing a benefit to someone who does.
- 4) 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.
- 5) Using derogatory sexual terms for a person.
- 6) Standing too close and/or inappropriately touching, cornering, or stalking a person.
- 7) Displaying or creating offensive or inappropriate sexual illustrations on NWESD 189 property.

Policy and Procedure Review

Annually, the Superintendent or designee may convene an ad hoc committee composed of representative of certificated and classified staff, volunteers, students and parents/guardians to review the use and efficacy of this policy and procedure. The Compliance Officer will serve as chair of any such ad hoc committee. Based on the review of the committee, the Superintendent will prepare a report to the Board including, if necessary, any recommended policy changes. The Superintendent will consider adopting changes to this procedure if recommended by the committee.

Presented to Board: 12/16/87 (as 4150)
Revised: 02/26/92 (as 4150)
Revised: 09/27/95 (as 4150)
Revised: 06/27/01 (recodified 6590-P)
Revised: 06/23/04
Revised: 10/24/12
Revised: 04/23/14
Revised: 02/25/15
Revised: 09/24/15
Revised: 06/23/21
Revised: 08/25/21