

EMPLOYEE BULLYING, INTIMIDATION, AND HARASSMENT (EMPLOYEE MISCONDUCT) POLICY

It is the policy of this District to maintain a work environment that is free from unlawful discrimination and bullying, intimidation, harassment, and retaliation henceforth known as Employee Misconduct. 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 bullying, intimidation, harassment, retaliation, coercive, or disruptive, henceforth known as Employee Misconduct. 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.

The Board of Trustees does not condone, tolerate, or allow employee misconduct of any measure of district employees. District Employees are prohibited from engaging in or conspiring to engage in any conduct which could reasonably be construed as constituting harassment on the basis of unacceptable conduct relating to an individual's race, color, creed, national origin, ethnic background, sex, sexual orientation, gender identity or expression, religion or beliefs, age, physical or mental handicap or disability or appearance and characteristic, ancestry or genetic information, and protected veteran status, or socio-economic status. An investigation will commence upon reports of such and dealt with accordingly. All employees are to be treated with respect and dignity.

The discipline rules related to the Employee Bullying, Intimidation, & Harassment Policy applies to all conduct on the school district premises/grounds before, during, or after school hours to conduct off the District's premises that has an adverse effect upon an employee's work environment.

All allegations of employee misconduct or retaliation will be promptly reviewed and investigated, as appropriate, or within 24-hours of a complaint being submitted. 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 possible consultation with legal counsel for the District, the alleged perpetrator(s)/assailant(s) may be placed on administrative leave with pay pending completion of the investigation and review of the investigation report.

The policy extends not only to actions taking place on school grounds, but also actions originating at remote locations and carried out via all technological devices or means, including, but not limited to, the use of a landline, car phone, cellular or wireless telephone, social media, or through the use of data or computer software that is accessed through a computer, computer system, or computer network.

District employees are required to report to the building principal or designee, or superintendent or designee, employee misconduct of which the employee becomes aware.

DEFINITIONS

Bullying, intimidation, & harassment otherwise known as “Employee Misconduct” include, but not limited to, any form of violence; abuse including, but not limited to physical abuse, verbal and non-verbal abuse, psychological abuse; sexual abuse/assault/harassment; threats, discrimination, intimidation; verbal, written, graphic, photographic, audio or video depictions of any kind, or physical conduct of a harassing nature relating to an individual’s race, color, creed, national origin, ethnic background, sex, sexual orientation, gender identity or expression, religion or beliefs, age, physical or mental handicap or disability or appearance and characteristic, ancestry or genetic information, and protected veteran status, or socio-economic status 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 and is disruptive to the educational process of the Mountain Home School District; demeaning jokes, taunting, slurs, and derogatory “nicknames,” innuendos, or other negative remarks; graffiti and/or slogans or visual displays such as cartoons or posters depicting slurs or derogatory sentiments; conduct that affects morale and adversely affects an employee’s work performance or opportunities; or has the purpose or effect of creating an intimidating, threatening, abusive, or hostile work environment for employees; any intentional gesture or any intentional written, verbal, or physical acts or threats against another employee; harming an employee, damaging an employee’s property, placing an employee in reasonable fear of harm to his or her person, placing an employee in reasonable fear of damage to his or her property; all the aforementioned include the use of cybertechnology.

Bullying, intimidation, & harassment is also defined as any unwanted aggressive or any intentionally harmful behavior including, but not limited to written, verbal, or physical, and/or misconduct by an employee(s), which is characterized by the perpetrator(s)/assailant(s) repeatedly engaging in negative actions against another employee(s) in an attempt to exercise control over that person; intentionally cause that person grief; intentionally cause that person to become intimidated; intentionally cause that person to become frightened; intentionally cause that person to lessen his/her sense of worth, etc.; an act of bullying, intimidation, & harassment (employee misconduct) may also be committed through the use of a landline, car phone, or wireless telephone or through the use of data or computer software that is accessed through a computer, computer system, or computer network. Bullying, intimidation, & harassment also includes any act of retaliation taken against (1) any person bringing a complaint of employee misconduct; (2) any person assisting another person in bringing a complaint of employee misconduct, or; (3) any person participating in an investigation of an act of bullying, intimidation, & harassment. Additionally, Employee Misconduct includes, but is not limited to:

1. Physical acts of aggression or assault including, but not limited to hitting, pushing, tripping, kicking, blocking, or restraining another’s movement, etc., is a form of misconduct.
2. Sexual acts of aggression or assault including, but not limited to unwelcome verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.; unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term of condition or submission to or rejection of such conduct by an individual is used as a factor

for work related decisions affecting the individual; creating an intimidating, hostile, or offensive work environment; sexual overtures or conduct that is unwelcome, personally offensive, and affecting morale; stalking or unwelcome, sexually motivated attention; inappropriate touching; causing damage to property; sexual overtures or conduct that is unwelcome, personally offensive, and affecting morale, thereby interfering with an employee's ability to work; creating an intimidating, hostile, or offensive work environment; intimidation and implied or overt threats of violence motivated by the victim's sex, sexual orientation, gender identity or expression; taking another's belongings; sexting and texting including, but not limited to the use of all forms of social media and other digital, technical, and electronic devices (cyber-technology bullying/harassment); unwelcome cyber communications, including, but not limited to, sending sexually explicit photographs or messages via any electronic communication devices ("sexting"), including postings on social media sites.

3. Cyberbullying (cyber-technology) is an aggressive, intentional act carried out by a group or individual using electronic forms of contact, using any electronic communication device to convey a message in any format (audio, video, text, graphics, photographs, or any combination thereof) that intimidates, harasses, or is otherwise harmful to another individual; includes, but is not limited to, the behavior used to harm, threaten, intimidate, control, harass, monitor, coerce, stalk, or victimize, except as otherwise permitted by law, that is perpetrated through, but not limited to the internet, social networking sites, spyware, global positioning system (GPS) tracking technology, cellular phones, or instant/text messages. Cyberbullying Harassment also includes monitoring a person's location or communication; unwanted or repeated calls or text messages or sexting; non-consensual access to email, social networking accounts, text or cell phone call logs; and pressuring for or disseminating private or embarrassing pictures, videos, or other personal information.

These include but are not limited to sending or emailing unwelcome texts that are threatening or cause discomfort; sending or publishing picture/video-clip via mobile phone cameras or any other electronic device that is used to make the person being bullied feel threatened or embarrassed, with images usually sent to other people; or phone call bullying via mobile phone uses silent calls or abusive messages; or email bullying uses email to send bullying or threatening messages; or chat room bullying involves sending menacing or upsetting responses to people when they are in a web-based chat room; or bullying through instant messaging (IM) is an Internet-based form of bullying where people are sent messages as they conduct real-time conversations online; or bullying via websites includes the use of defamatory blogs (web logs), personal websites, etc.

Technological and Cyber-Technological Bullying/Harassment Abuse includes, but is not limited to, intimidating, harassing, or is otherwise intended harm to another individual; unwanted monitoring; unwanted repeated calls or hang-ups; sending unwelcome, threatening, discomforting texts and sexting messages; sending picture/video-clip via digitally or via mobile phone cameras used to make the person feel threatened or embarrassed, and may include images usually sent to other people; chat room bullying involving sending menacing or upsetting responses to individuals including children, students, staff when they are in a web-based chat room; non-consensual access to email;

and pressuring for or disseminating private or embarrassing pictures, videos, or other personal information to control, monitor, coerce, stalk, or victimize that is perpetrated through the internet, social networking sites, including, but not limited to, chat rooms, websites, defamatory blogs/vlogs, spyware, global positioning system (GPS) tracking technology, cellular phones and landlines, or instant or text messages (IM) using any electronic communication device to convey a message in any format or any combination thereof.

Sexting is the distribution of sexually explicit or sexually suggestive images using an electronic device.

4. Retaliation – It is a violation of the law and this policy to retaliate against any individual filing a complaint or any person assisting in bringing a complaint, or any person participating in an investigation. Any employee experiencing retaliation because they filed an Employee Misconduct Report of Complaint of Employee Misconduct Form 1a should file a separate complaint regarding the alleged retaliation.
5. 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.

INVESTIGATION AND REPORTING PROCEDURES

1. Employees who believe they are being bullied, intimidated, or harassed 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 misconduct and has the authority to remedy the alleged issues.
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. In the event the complaint involves the principal, the matter must be immediately reported 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 or the Board Chair.
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 complaint with the following state and federal agencies:
 - a. Idaho Human Rights Commission, 317 W Main Street, Boise, Idaho 83720.

- b. Office for Civil Rights, U.S. Department of Education, 810 3rd Avenue, Suite 750, Seattle, WA 98104.
- c. U.S. Department of Justice, Washington, D.C. 20530.
- d. Equal Employment Opportunity Commission, 909 1st Avenue #400, Seattle, Washington 98104 (for employment related complaints).

COMPLAINT, REVIEW, INVESTIGATION, & CONCLUSION:

Upon receiving a complaint of employee abuse, the administrator/supervisor or superintendent shall make a preliminary assessment to determine whether harassment is actually alleged and/or whether there is enough information available to make that determination or investigation.

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

Any allegation of bullying, intimidation, & harassment will be promptly reviewed and investigated. The complainant first needs to report the incident using the Employee Misconduct Report of Complaint of Employee Misconduct Form 1a (Step 1). If, upon initial examination of the complaint, the administrator/supervisor or superintendent determines that the complaint does meet Employee Misconduct and that bullying, intimidation, harassment, or retaliation may have occurred or there is not adequate information to make an initial determination, an investigation shall be initiated using the Employee Misconduct Employee Bullying, Intimidation, & Harassment Reporting & Investigation Forms 1a-1f (STEPS 1-6).

All investigations will be conducted, documented, reported, and filed using the MHSD Employee Misconduct Reporting & Investigation Forms 1a-1f (STEPS 1-6), also referred to as “Employee Misconduct” forms.

The school principal or designee, also called the “investigator,” will within 24-hours of a complaint being submitted will promptly investigate any allegations of employee misconduct that are reasonably characterized as bullying, harassment, intimidation, or abuse within ten (10) workdays. At the discretion of the building principal, investigator, or superintendent, the alleged perpetrator(s)/assailant(s) may be placed on administrative leave with pay until the conclusion of the investigation.

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, the alleged offender may be suspended, with pay, pending completion of the investigation and review of the investigation report.

When a report of employee misconduct is received by the principal or the superintendent, immediate steps will be taken to follow the investigative procedures and the investigation will be

conducted as described in MHSD’s Employee Misconduct Reporting & Investigation Forms 1a-1f (STEPS 1-6), which include the following:

1. Obtain a written statement from the complainant regarding the allegations of Employee Misconduct Report Form 1a – Step 1;
2. Obtain additional information from the Victim/Target – Employee Misconduct Interview Victim/Target Investigation Report Form 1b – Step 2;
3. Obtain written statements from witnesses, if any, regarding the alleged employee misconduct – Employee Misconduct Interview Witness Investigation Report Form 1c – Step 3;
4. Obtain a written statement from the accused – Employee Misconduct Interview Perpetrator/Assailant Investigation Report Form 1d – Step 4;
5. Prepare a written report detailing the investigation – Employee Misconduct Result of Allegation of Employee Misconduct Investigation Form 1e – Step 5;
6. Prepare a written report detailing the conclusion and action taken, if any, against the accused – Employee Misconduct Conclusion & Action Taken of Allegation of Complaint Against an Employee Investigation Form 1f – Step 6.

If, upon initial examination of the complaint, the administrator/supervisor or superintendent (“Investigator”) determines that the complaint does meet the criteria of employee misconduct, or there is not adequate information to make an initial determination of receipt of the complaint of an allegation, other disciplinary actions may be necessary depending on the facts and circumstances of the incident. The superintendent may recommend a corrective action plan to the Board and the Board may impose such corrective action plan.

If the administrator/supervisor or superintendent determines that employee misconduct or retaliation has occurred, the administrator/supervisor or superintendent shall take appropriate disciplinary action to prevent any further acts of employee misconduct or retaliation.

In the event the investigation discloses that the complaining employee has falsely accused another individual of employee misconduct knowingly or in a malicious manner, the complaining employee may be subject to disciplinary action, up to and including termination. False complaints adversely impact the reputation of the accused, even when disproved, and will not be tolerated.

If there is insufficient evidence to support the allegation, no record will be made of the allegation in the complaining employee’s personnel file, and no record of the allegation will be placed in the accused employee’s personnel file.

Promptly after the investigation is concluded, the superintendent and/or designee 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 employee misconduct is found, the complainant will only be advised that the District is taking appropriate steps to ensure that the employee misconduct will not reoccur.

The complainant and the person alleged to have committed the employee misconduct may submit statements to the superintendent and/or designee 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.

Promptly after the superintendent and/or designee 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.

Each school will take prompt and effective steps to reasonably end the employee misconduct; eliminate any hostile environment and its effects; and prevent the bullying, harassment, intimidation, retaliation, or abuse from recurring. Appropriate steps to end the misconduct may include separating the victim/target and the perpetrator(s)/assailant(s) or providing counseling for the victim/target and perpetrator(s)/assailant(s).

DISCIPLINARY ACTION

If the allegation of employee misconduct 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 termination, may be taken against the offender, consistent with the requirements of applicable state law, district policies, and/or collective bargaining agreements.

Employees will not be disciplined for reporting actual employee misconduct that in good faith the employee believed was unlawful, unwelcome and/or inappropriate behavior/remarks/actions/conduct/retaliation

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

Any person found to have retaliated against another individual for reporting an incident of employee misconduct, testifying in an investigation, or providing information, or assisting in an investigation may be subject to the same disciplinary action provided for employee misconduct 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 bullying, intimidation, and 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

Investigations 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 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 employee misconduct 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.



LEGAL REFERENCE:

Idaho Code Sections

33-513 – Professional Personnel

33-518 – Employee Personnel Files

33-1210 – Information on Past Job Performance

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

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