



NEBO SCHOOL DISTRICT BOARD OF EDUCATION POLICIES AND PROCEDURES

SECTION: J - Students
POLICY TITLE: Student Discrimination and Harassment
FILE No.: JDC
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1. PURPOSE

- 1.1. Nebo School District is committed to maintaining an educational environment in which all students are treated with respect and dignity. This includes ensuring that students are not subject to Sexual Harassment, or to Harassment or Discrimination on the basis of race, color, religion, sex, national origin, disability, or any other classification protected by law.
- 1.2. The Nebo School District Coordinator of Student Services is the Title Coordinator for student protection under the laws identified herein. Except as otherwise provided for disability discrimination in Nebo School District Policy JR, *Section 504 of the Rehabilitation Act of 1973*, all student civil rights issues may be directed to the Coordinator of Student Services.

**Coordinator of Student Services
Nebo School District
350 South Main Street
Spanish Fork, Utah, 84660
Telephone: (801) 354-7424**

All issues related to physical barriers to building access and physical barriers to educational programs, activities, events, and services may be directed to the Nebo School District Risk Manager.

**Risk Manager
Nebo School District
350 South Main Street
Spanish Fork, Utah, 84660
Telephone: (801) 354-7440**

- 1.3. Discrimination, Harassment, and Sexual Harassment, as defined herein, are prohibited by state and federal law. Laws governing Discrimination, Harassment, and Sexual Harassment include but are not limited to the following.
- 1.3.1. Title IX of the Education Amendments of 1972 (Title IX) provides that “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. §1681(a) (2006).
- 1.3.2. Section 504 of the Rehabilitation Act of 1973 (Section 504) provides that “No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 29 U.S.C. § 794(a) (2006). Nebo School District Policy JR, *Section 504 of the Rehabilitation Act of 1973* outlines the District's 504 obligations and program more fully. Complaints of disability discrimination or harassment should be made in accordance with that policy.
- 1.3.3. Title IV of the Civil Rights Act of 1964 (Title IV) prohibits discrimination on the basis of race, color, sex, religion or national origin by public elementary and secondary schools and grants the US Department of Justice jurisdiction and authority to investigate and resolve complaints of religious harassment, as well as to seek relief if a school deprives students of the equal protections of the laws. 42 U.S.C. §2000c-6 (2006).
- 1.3.4. Title VI of the Civil Rights Act of 1964 (Title VI) provides that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. §2000d (2006).

2. SCOPE

- 2.1. This policy is intended to protect District students against Discrimination, Harassment, and Sexual Harassment, whether by fellow students, District employees, volunteers, or others under the District's control. While this policy thus prohibits students from harassing and discriminating against other students, all students are prohibited from engaging in Discrimination, Harassment, and Sexual Harassment against others, including employees, as set forth in Nebo School District Policy JD, *Student Conduct and Discipline* and Policy GBEB, *Employee Discrimination and Harassment*.
- 2.2. Bullying, cyber-bullying, harassment, hazing, and retaliation that are not based on one of the protected classifications found in Section 1.3 are governed by Nebo School District Policy JDD/GBEA, *Prohibition of Bullying, Hazing, and Retaliation*. However, the complaint and investigation procedures in Sections 8 and 10 of this Policy JDC may be followed to determine and remedy violations of Policy JDD/GBEA.

3. POLICY

- 3.1. The District prohibits Discrimination, Harassment, and Sexual Harassment of students, as defined and outlined herein, by other students, employees, volunteers, or other persons at school or at school-related activities and events.
- 3.2. The District encourages all victims of Discrimination, Harassment, or Sexual Harassment, and all persons with knowledge of Discrimination, Harassment, or Sexual Harassment, to report it immediately as described in Section 8 below.
- 3.3. The District prohibits retaliatory behavior or action against persons who complain, testify, assist, or otherwise participate in the complaint process established pursuant to this policy or by any administrative directive.
- 3.4. The District will promptly investigate all verbal and written complaints of Discrimination, Harassment, and Sexual Harassment and will take prompt corrective action to end behavior prohibited by this policy.

4. DEFINITIONS

- 4.1. **“Discrimination”** includes, but is not limited to, conduct which illegally disadvantages persons based upon race, color, religion, sex, national origin, disability, or any other classification protected by law.
- 4.2. **“Harassment”** includes, but is not limited to, any behavior, expression, or activity that stigmatizes or victimizes individuals or groups of people because of their race, color, religion, sex, national origin, disability, or any other classification protected by law, and that:
 - 4.2.1. Involves an express or implied threat which adversely affects a student's education or academic status or progress, participation in school or school-related activities and events, or personal safety;
 - 4.2.2. Has the purpose or effect of adversely interfering with a student's education or academic status or progress, participation in school or school-related activities and events, or personal safety; or
 - 4.2.3. Creates an intimidating, hostile, demeaning, or offensive educational environment.
- 4.3. **“Building Administrator”** means a principal or assistant principal who has been trained on civil rights laws and this policy. A Building Administrator does not include a Teacher on Special Assignment, Dean of Students, Facilitator, Secretary, or any other employee who is not a member of the Nebo School District Management Team.
- 4.4. **“Sexual Harassment”** includes, but is not limited to, unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical conduct of a sexual nature made against another person of the same or opposite gender, in the educational setting, when:
 - 4.4.1. Submission to the conduct is explicitly or implicitly made a term or condition of a student's education or academic status or progress (including any aspect of the student's participation in school activities or events);
 - 4.4.2. Submission to or rejection of the conduct by a student is used as the basis for any decisions affecting the student or the student's academic performance, participation in school activities or events, or any other aspect of the student's education; or regarding benefits, services, honors, programs, or activities available at or through any District program or activity; or

- 4.4.3. The conduct has the purpose or effect of having a negative impact on the student's academic performance, or of creating an intimidating, hostile, or offensive educational environment.

5. HARASSMENT AND DISCRIMINATION PROHIBITED

Types of conduct that are prohibited in the District and that may, upon examination of the totality of the circumstances, constitute Discrimination or Harassment based upon race, color, religion, sex, national origin, disability, or other classification protected by law include, but are not limited to:

- 5.1. Threatening or intimidating conduct directed at a student because of the student's race, color, religion, sex, national origin, physical or mental disability, or other classification protected by law;
- 5.2. Epithets, slurs, negative stereotypes, name calling, verbal abuse, derogatory comments, degrading descriptions, and hostile acts which are based upon a student's race, color, religion, sex, national origin, physical or mental disability, or other classification protected by law;
- 5.3. Verbal, written, or graphic material containing comments or stereotypes aimed at degrading students or members of protected classes;
- 5.4. Aggressive conduct towards a student motivated by race, color, religion, sex, national origin, physical or mental disability, or other classification protected by law;
- 5.5. Graffiti containing offensive or derogatory language, symbols, or pictures in the context any of the legally protected classifications;
- 5.6. Any unwelcome communication (whether written, verbal, or sent by electronic or other means) that is offensive or degrading and motivated by a student's race, color, religion, sex, national origin, physical or mental disability, or other classification protected by law;
- 5.7. Jokes, notes, stories, drawings or pictures, gestures, or the display or distribution of offensive or degrading material based upon any of the legally protected classifications;
- 5.8. Displaying words, pictures, or symbols on clothing that are offensive or degrading based upon any of the legally protected classifications; or
- 5.9. Engaging in any of the foregoing types of discriminatory or harassing behavior outside of school or outside of school-related activities and events, but which materially disrupt the educational environment at school.

6. SEXUAL HARASSMENT PROHIBITED

Types of conduct that are prohibited in the District and that may, upon examination of the totality of the circumstances, constitute Sexual Harassment under this policy include, but are not limited to:

- 6.1. Unwelcome leering, sexual flirtations or propositions, or any unwelcome sexual invitations or requests for sexual activity;
- 6.2. Sexual slurs, epithets, name calling, threats, verbal abuse, derogatory comments, or sexually degrading descriptions;
- 6.3. Graphic verbal comments about an individual's body, overly personal conversations, or any unwelcome communication (whether written, verbal, or sent by electronic or other means) that is sexually suggestive, sexually degrading, or implies sexual motives or intentions;

- 6.4. Sexual jokes, notes, stories, drawings or pictures, gestures, or the display or distribution of pornographic or other sexually oriented material;
- 6.5. Displaying words, pictures, or symbols on clothing that are sexually explicit or have an underlying sexual connotation, or wearing clothing in a sexually revealing or suggestive manner;
- 6.6. Spreading sexual rumors;
- 6.7. Teasing or sexual remarks about students enrolled in a predominantly single-gender class;
- 6.8. Massaging, grabbing, fondling, stroking or brushing the body;
- 6.9. Touching oneself or another individual's body or clothing in a sexual way or any other offensive physical pranks or hazing;
- 6.10. Exposing or causing the exposure or accentuation of undergarments, genitalia, or other body parts of oneself or another normally or intended to be covered either by the individual or in accordance with Nebo School District Policy JDG, *Student Dress and Grooming*, including but not limited to mooning, streaking, flashing, pantsing, skirt-flipping, upskirt or other sexually suggestive photos or videos, etc.
- 6.11. Purposefully cornering or blocking normal movements or stalking;
- 6.12. Displaying sexually suggestive objects or performing/showing unwelcome and offensive skits, assemblies, and sexually suggestive productions;
- 6.13. Sexual activities of a criminal nature;
- 6.14. Unwelcome and offensive sexual public display of affection;
- 6.15. Engaging in the improper use of school computers and the Internet, including, but not limited to, accessing, downloading, or uploading pornography; sharing Internet pornography or e-mails with students; creating or maintaining websites with sexual content; participating in sexual discussions with students by means of email, Internet chat rooms, instant messaging, or any other form of electronic communication; or
- 6.16. Engaging in any of the foregoing types of discriminatory or harassing behavior outside of school or outside of school-related activities and events, but which materially disrupts the educational environment at school.

7. PROHIBITED ADULT-TO-STUDENT CONDUCT

- 7.1. In addition to the above listed conduct prohibited by this policy, any behavior by a District employee or volunteer toward a student that would reasonably give the appearance of impropriety and would reasonably cause the student to feel uncomfortable is prohibited, regardless of whether such behavior is complained of by the student, regardless of whether the behavior is overtly sexual, and regardless of whether such behavior would constitute a crime.
- 7.2. Examples of adult-to-student behavior that may, upon examination of the totality of the circumstances in relation to discriminatory or harassing behavior, constitute Sexual Harassment under this policy and lead to employee discipline up to and including termination of employment, include, but are not limited to the following. The prohibition against such conduct is more fully described in Nebo School District Policy GBEF, *Employee/Student Standards of Conduct*.

- 7.2.1. Personal communication with a student via telephone, pager, e-mail, letters, or notes for reasons unrelated to official school business, including use of social media or other electronic communication that would violate Nebo School District Policy GBHB, *Information and Communication Technology/Social Networking*;
- 7.2.2. Obstructing access, or the view, into classrooms, closets, or storage areas by locking doors or covering windows when in a classroom or office alone with a student;
- 7.2.3. Transporting students in a personal vehicle without permission from parents and/or supervisors, unless such transportation is necessary in the event of a health or safety emergency, or other legitimate extenuating circumstances;
- 7.2.4. Drinking alcohol or taking illicit drugs in the presence of students, providing alcohol or drugs to students, requesting or allowing students to provide the employee with alcohol or drugs, or permitting students to drink alcohol or take drugs at school or school-related activities and events, at the employee's residence, or in any other context;
- 7.2.5. Inviting a student to travel or go somewhere alone for non-school related reasons;
- 7.2.6. Providing a student with gifts, money, cards, privileges, or other personal favors;
- 7.2.7. Taking students to lunch off-campus in the employee's/volunteer's personal vehicle for non-school-related reasons;
- 7.2.8. Requesting or encouraging students to "model," taking or distributing photographs of individual students, or "promoting" students on web pages or through other means, where such activities contain sexual innuendo and/or are undertaken without the parent's knowledge or consent;
- 7.2.9. Hot-tubbing or playing inappropriate party games with students;
- 7.2.10. Providing, paying for, attending, or covering up medical appointments or procedures for a student, such as tests for pregnancy or sexually transmitted diseases (STDs), labor and delivery, or abortion; or
- 7.2.11. Viewing with or otherwise providing to a student sexually explicit or inappropriate movies, programs, pictures, or content, whether at a movie theater, on television, on video/DVD, on the Internet, on a computer or other electronic device, or in magazines or other print media,.

8. COMPLAINT PROCEDURE

Students who believe they have been subjected to Discrimination, Harassment, or Sexual Harassment shall immediately file a complaint as described in this section. Complaints may also be filed by parents, employees, or others who have reason to believe one or more students have been subjected to Discrimination, Harassment, or Sexual Harassment.

8.1. Complaint Process

- 8.1.1. Students who believe they have been subjected to conduct constituting Discrimination, Harassment, or Sexual Harassment, as described above, are encouraged, but not required, to confront the respondent and tell him or her to stop the conduct because it is unwelcome.
- 8.1.2. The student should directly inform his or her school administrator of the conduct using the process outlined below.

8.1.2.1. The student should document the respondent's conduct using the student Bullying, Discrimination, and Harassment Complaint Form (Complaint Form) and deliver it to his or her administrator. If the student is not able to complete the Complaint Form, he or she may notify the administrator verbally, and the administrator may complete the Complaint Form based on the verbal report. Alternate methods of filing complaints shall be made available to younger students or students with disabilities who need accommodation.

8.1.2.2. If the respondent is the student's administrator, or if the student feels he or she cannot report the conduct to the administrator, the student shall report the conduct to the Coordinator of Student Services at the address and phone number listed in Section 1 of this policy.

8.1.3. A teacher, counselor, or administrator who receives a complaint shall promptly deliver it to the Building Administrator, who is a member of the Management Team trained and designated to investigate complaints made under this policy. Once a complaint has been received by the Building Administrator or by the Coordinator of Student Services, an investigation will begin as described in Section 10 of this policy. The victim may be interviewed throughout the investigation process for additional information. The victim and respondent will be notified when the investigation is completed.

8.2. Substance of Complaint

Complaints of Discrimination, Harassment, or Sexual Harassment, whether made verbally, using the Complaint Form, or in some other way, must include the following information:

8.2.1. Name, home address, email address, and telephone number of person making complaint;

8.2.2. Date(s) of incident(s) giving rise to the complaint;

8.2.3. Name(s) of respondent(s);

8.2.4. Description of the conduct or incident(s) giving rise to the complaint;

8.2.5. Description of the harm caused by the incident; and

8.2.6. Description of the remedy sought. Providing a description of the remedy sought does not confer authority on the victim or the victim's parent to determine the discipline imposed on the respondent. The imposition of remedies, including any disciplinary action, lies only within the authority and sole discretion of the District and may not be divested to others.

9. EMPLOYEE RESPONSIBILITY TO REPORT

9.1. A teacher, school counselor, or administrator who receives a completed Complaint Form shall, as soon as is reasonably possible, deliver it to the Building Administrator. If the Building Administrator is not available or is the subject of the complaint, the teacher or school counselor shall deliver the Complaint Form to the Coordinator of Student Services.

9.2. Other school employees who observe or otherwise become aware of conduct that may constitute Discrimination, Harassment, or Sexual Harassment involving a student should report the conduct to the Building Administrator whether the victim files a complaint or not.

10. INVESTIGATION

10.1. The procedures outlined in this section are detailed and constitute the recommended best practice. Minor omissions and other procedural inconsistencies do not invalidate an otherwise equitable investigation. Investigators must be flexible and adapt to the circumstances of each complaint.

10.2. Commencing an Investigation

10.2.1. An investigation should begin when an employee with supervisory responsibilities over other employees, becomes aware of an allegation of, or conduct that may constitute, Discrimination, Harassment, or Sexual Harassment against a student. Such conduct or allegation is typically made known by receipt of a Complaint Form, but it may also be made known through a variety of other means, including but not limited to verbal complaints by students or parents, notice from an employee, direct observation, or as facts are disclosed during normal disciplinary proceedings. When a Building Administrator becomes aware of conduct that may be in violation of this policy, he or she shall ensure that the Coordinator of Student Services is aware of the potential violation.

10.2.2. The Coordinator of Student Services shall notify and consult with the applicable Director of Secondary or Elementary Education, the Civil Rights Coordinator, and any other applicable administrator and determine whether to open an investigation.

10.2.2.1. If the complaint alleges Discrimination or Harassment based on disability, notice and consultation should include the District Section 504 Coordinator or Director of Special Education, as applicable.

10.2.2.2. If the complaint alleges facility access discrimination based on disability, notice and consultation should include the District Risk Manager.

10.2.2.3. If the respondent is an employee, volunteer, or other adult, notice and consultation should include the Director of Human Resources.

10.2.3. If the decision is to open an investigation, the Coordinator of Student Services shall use the following guidelines and assign an appropriate administrator to conduct it.

10.2.3.1. If the conduct includes alleged or apparent harassment or discrimination based on a protected class, the Civil Rights Coordinator will typically be assigned to conduct the investigation.

10.2.3.2. If the conduct does not include alleged or apparent harassment or discrimination based on a protected class but includes bullying that is repeated or severe, the Coordinator of Student Services will typically conduct the investigation.

10.2.3.3. Alleged or apparent conduct that does not fall within subsections 10.2.3.1 or 10.2.3.2 may be investigated by the school-level administrator as assigned by the Coordinator of Student Services.

10.2.4. The investigator should begin each investigation by documenting the type of conduct using the student Bullying, Discrimination, and Harassment Investigation Checklist (Checklist) and creating an investigation file. The investigator completes the Checklist as the investigation proceeds.

10.2.5. The investigator will determine whether interim measures need to be taken such as separating the victim from the respondent pending the outcome of the investigation. If necessary, the investigator will recommend or implement appropriate interim

measures to protect the victim from continued Discrimination, Harassment, Sexual Harassment, or Retaliation.

10.2.6. If the investigator begins an investigation before receiving a Complaint Form, he or she shall interview the alleged victim and obtain a completed and signed Complaint Form. If the age or ability of the alleged victim prevents him or her from completing and signing a Complaint Form, the investigator shall complete and sign the form.

10.2.7. The investigator shall refer the matter to law enforcement authorities or the Utah State Division of Child and Family Services, where appropriate or required by law. The investigator must continue to conduct the investigation even if the matter has been referred to another agency. The investigator should coordinate with the other agency and may adjust timelines and procedures accordingly.

10.3. Investigative Procedures

Both school-level and District-level investigations shall include the following steps. If an investigation is reassigned to a new investigator after it has begun, the new investigator shall gather all evidence and information from the previous investigator. The new investigator may, but is not required to, repeat interviews or other investigative procedures conducted by the previous investigator.

10.3.1. Interviews

10.3.1.1. Each of the following persons shall be interviewed, and a record made of their conversations.

10.3.1.1.1. The victim and his/her parent/legal guardian. The victim may be accompanied by an adult representative, including legal counsel. The victim may present evidence supporting the complaint. If the victim has not already completed the Complaint Form, the investigator shall complete it based on information gathered in the interview.

10.3.1.1.1.1. In cases of sexual assault or other severe trauma, the investigator should seek assistance from, and may delegate the interview to, professionals trained in interviewing children. Such professionals may include designated officials from the Children's Justice Center, the Department of Child and Family Services, or some other private or governmental agency.

10.3.1.1.1.2. The investigator shall comply with the reporting requirements found in Nebo School District Policy JHFA, *Child Abuse or Neglect*.

10.3.1.1.2. The person making the complaint, if different than the victim.

10.3.1.1.3. The respondent and, if a student, his/her parent/legal guardian. The respondent may be accompanied by an adult representative, including legal counsel. The respondent may present evidence refuting the allegations set forth in the complaint. The investigator should gather a signed, written statement from the accused responding to the complaint.

10.3.1.1.4. Anyone who witnessed the alleged conduct. The investigator should gather a signed witness statement from each witness

using the District's Harassment Witness Statement form.

10.3.1.1.5. Anyone mentioned as having related information. The investigator should document all conversations related to the alleged incident.

10.3.1.2. The investigator may have additional conversations with any of the individuals listed in Section 10.3.1.1 to ensure that all relevant facts have been gathered.

10.3.2. Preservation of Evidence

The investigator shall gather and preserve all evidence, including video footage from surveillance cameras, photos, physical evidence, documents, correspondence, and any relevant electronic information such as text messages, videos, and social media postings.

10.3.3. For minor incidents, and only when the victim and the respondent agree, the investigator may arrange for them to resolve the complaint informally with the help of a counselor, teacher, administrator, or trained mediator. The victim shall never be asked to work out the problem directly with the respondent unless such help is provided and both parties agree. Informal mediation is not appropriate in cases of Sexual Harassment.

10.3.4. Decision and Report

10.3.4.1. The investigator shall consider all the evidence, including the credibility of all statements, and determine whether a violation of this policy has occurred. In reaching a decision, the investigator should take into account the following:

10.3.4.1.1. Statements made by the persons identified above;

10.3.4.1.2. The details and consistency of each person's account;

10.3.4.1.3. Evidence of how the victim reacted to the incident;

10.3.4.1.4. Evidence of any past violations of this policy by the respondent;

10.3.4.1.5. Evidence of any past Discrimination/Harassment complaints that were found to be untrue; and

10.3.4.1.6. Any other pertinent information applicable to the particular situation.

10.3.4.2. The investigator shall prepare a written report of the investigation. The report should be completed using the student Bullying, Discrimination, and Harassment Investigation Report Form. The Coordinator of Student Services should maintain the report. If the report includes allegations of, or investigation into, Discrimination, Harassment, or Sexual Harassment, a copy shall be given to the Civil Rights Coordinator. If the respondent is an employee, volunteer, or other adult, a copy of the report shall be given to the Director of Human Resources. The report must include the following:

10.3.4.2.1. A description of the complaint.

10.3.4.2.2. A description of the response.

- 10.3.4.2.3.** A list of specific sections of Nebo School District policies that are alleged to have been violated or that the alleged conduct, if true, would violate.
 - 10.3.4.2.4.** A detailed description of the investigation, including names and dates of individuals interviewed; receipt of written statements; and evidence considered, including video and audio recordings, correspondence, etc.
 - 10.3.4.2.5.** Findings of fact. This section should describe with sufficient detail the events and actions found by the investigator to be true. It should include relevant facts such as age, gender, race, or disability of victims and respondents.
 - 10.3.4.2.6.** Conclusions as to whether Nebo School District policy was violated. If the investigator concludes that a policy violation has occurred, this section should state the specific policy section and which facts constitute a violation.
 - 10.3.4.2.7.** Recommendations to address the effects on the victim and school environment.
 - 10.3.4.2.8.** Recommendations for the imposition of disciplinary action on the respondent and for deterrence of future violations. If the investigator concludes that a violation of policy has occurred, and if the investigator is authorized to impose discipline on the respondent, the report shall indicate the discipline imposed. If the investigator is not authorized to impose discipline, the report shall indicate whether disciplinary action is recommended. The discipline and remedies should be commensurate with the severity of the conduct.
- 10.3.4.3.** To judge the severity of any violation of this policy, the investigator should consider the following:
- 10.3.4.3.1.** How the misconduct affected one or more students' education;
 - 10.3.4.3.2.** The type, frequency, and duration of the misconduct;
 - 10.3.4.3.3.** The number of persons involved;
 - 10.3.4.3.4.** The age and gender of the perpetrator;
 - 10.3.4.3.5.** The victim(s) of Discrimination or Harassment;
 - 10.3.4.3.6.** The place and situation where the incident occurred;
 - 10.3.4.3.7.** Other incidents at the school or school-related activities and events, including incidents of Discrimination/Harassment; and
 - 10.3.4.3.8.** Any other pertinent information applicable to the particular situation.
- 10.3.5.** If the perpetrator is a student, the investigator shall ensure that the behavior and resulting disciplinary action is documented in the Student Information System.
- 10.3.6.** Throughout the investigation the investigator shall monitor whether or not the student who complained has been further discriminated against or harassed. If the conduct has

continued or the respondent has retaliated against the complainant, the investigator shall ensure that prompt and appropriate disciplinary action is taken. The investigator shall keep a record of this information and continue this follow-up as reasonably necessary.

10.4. Notice to Parties

At the conclusion of the investigation, the investigator shall notify the victim and the perpetrator of the outcome of the investigation. The notice shall be in writing and shall be sent to both parties at the same time. A modified version of the report prepared under Section 10.2.4.2 may be sent to the parties in accordance with the following provisions:

10.4.1. The victim is entitled to know only such disciplinary action taken against the perpetrator that is directly related to the victim.

10.4.2. The perpetrator should not be notified of the steps taken to address the effects on the victim.

10.5. Appeal of Decision.

Investigative procedures conducted under this policy may be appealed by both victims and perpetrators. The purpose of an appeal under this section is to determine whether the investigative procedures outlined in this policy were followed. An appeal may also be filed to introduce new evidence not available during the investigation. If an appeal does not introduce new evidence or allege a violation of the investigative procedures of this policy, it will be denied. Disagreement with the outcome of an investigation or with an investigator's interpretation of the facts is not grounds for an appeal under this policy.

10.5.1. Students who have been disciplined as a result of an investigation under this policy may appeal in accordance with Nebo School District Policy JD, *Student Conduct and Discipline*.

10.5.2. Employees who have been disciplined as a result of an investigation under this policy may appeal in accordance with the grievance procedures outlined in the applicable employee handbook.

10.5.3. Alleged victims under this policy may appeal by giving written notice to the Superintendent within fifteen (15) calendar days of the date of the decision they are appealing. Failure to submit written notice of appeal to the Superintendent within fifteen (15) calendar days constitutes forfeiture of any right to appeal. The Superintendent or his/her designee will hear the appeal and issue a written decision as to whether the investigative procedures of this policy were followed or whether new evidence would change the outcome of the investigation. The decision of the Superintendent or his/her designee is final.

11. CONFIDENTIALITY

11.1. It is District policy to respect, as far as possible, the privacy and anonymity of all parties and witnesses to complaints brought under this policy. However, because an individual's right to confidentiality must be balanced with the District's obligations to cooperate with law enforcement, government agency investigations, or legal proceedings, or to investigate and take necessary action to resolve a complaint, the District retains the right to disclose the identity of parties and witnesses to complaints in appropriate circumstances, and for other good reasons that apply to the particular situation. The investigator also may discuss the complaint with one or more of the following persons:

11.1.1. The Superintendent, Director of Human Resources, Coordinator of Student Services, Civil Rights Coordinator, Director of Elementary Education, Director of Secondary

Education, Director of Special Education / Federal Programs, Director of Operations, District Legal Counsel, or other applicable school or District administrator;

- 11.1.2. The parent/legal guardian of the victim;
 - 11.1.3. The parent/legal guardian of an alleged student perpetrator;
 - 11.1.4. A teacher or staff member whose knowledge of the students involved may help in determining who is telling the truth;
 - 11.1.5. Utah State Division of Child and Family Services for purposes of investigating child abuse reports; and
 - 11.1.6. Law enforcement agencies where the investigator has reasonable suspicion that the alleged Discrimination or Harassment involves criminal activity.
- 11.2. Where a complaint involves allegations of child abuse, the complaint shall be immediately reported to appropriate law enforcement authorities or the Utah State Division of Child and Family Services. The anonymity of both the complainant and school officials involved in the investigation will be strictly protected as required by UTAH CODE ANN. § 62A-4a-412.

12. RETALIATION PROHIBITED

Retaliation against any person who has filed a complaint, or has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy is prohibited, and therefore, subject to disciplinary action. Retaliation may include, but is not limited to, continued Harassment, threats, taunting, spreading rumors, unauthorized disclosure of the details of an investigation, ostracism, assault, destruction of property, or other negative conduct toward participants in response to an investigation and the events causing it. Anyone found to have engaged in retaliation will be subject to disciplinary action. Participants in an investigation, including victims, respondents, and witnesses, must report to the investigator any conduct that might reasonably constitute retaliation.

13. DISCIPLINE AND REMEDIAL ACTION

- 13.1. Any student who engages in Discrimination, Harassment, or Sexual Harassment of anyone at school or at any school-related activity or event is in violation of this policy and shall be subject to disciplinary action consistent with Nebo School District Policy JD, *Student Conduct and Discipline*. Disciplinary action may include, but is not limited to, suspension, expulsion, exclusion or loss of extracurricular activities, probation, or alternate educational placement. In imposing such discipline, all facts and circumstances of the incident(s) shall be taken into account.
- 13.2. Any employee who engages in Discrimination, Harassment, or Sexual Harassment of any student at school or at a school-related activity or event is in violation of this policy and shall be subject to disciplinary action consistent with Nebo School District Policy GCPD, *Employee Discipline, Administrative Leave, and Orderly Termination*. Disciplinary action may include, but is not limited to, warnings, reprimands, probation, disciplinary transfer, suspension, reduction in pay or hours, or termination. In imposing such discipline, all facts and circumstances of the incidents(s) shall be taken into account.
- 13.3. If the investigator has reasonable suspicion that the Harassment involves sexual assault, rape, or any other activity of a criminal nature, the District shall notify appropriate law enforcement authorities and immediately initiate proceedings to remove the accused party from the situation.

- 13.4. If an investigation finds evidence of Discrimination, Harassment, or Sexual Harassment, the District shall implement remedial action necessary to eliminate its effects upon the victim and the school environment.

14. ENFORCEMENT

District and school administrators shall take appropriate actions to enforce this policy. As needed, these actions may include, but are not limited to, any of the following:

- 14.1. Removing vulgar or offending graffiti;
- 14.2. Providing staff in-service and student instruction or counseling;
- 14.3. Notifying parents/legal guardians of this policy;
- 14.4. Notifying the Utah State Division of Child and Family Services or law enforcement authorities; and
- 14.5. Taking appropriate disciplinary action.

15. FALSE COMPLAINTS

False, malicious, or frivolous complaints of Discrimination, Harassment, or Sexual Harassment shall result in corrective or disciplinary action taken against the complainant.

16. RECORD KEEPING

- 16.1. An employee who conducts an investigation under this policy shall maintain a confidential record separate from the student's educational file that includes the complaint, response, witness statements, evidence, and reports.
- 16.2. All student discipline issued for violations of this policy shall be documented by the Building Administrator on the District's Student Information System ("SIS"). Consistent with the U.S. Department of Education Civil Rights Data Collection, the documentation must indicate the protected classification (religion; race, color, or national origin; disability; or sex) that served as the basis for the Harassment for which the student was disciplined.
- 16.3. All complaints made under this policy must be documented by the Building Administrator on the District's Student Information System ("SIS"). Complaints must be documented even if the investigation results in a finding that this policy was not violated. Consistent with the U.S. Department of Education Civil Rights Data Collection, the documentation must indicate the protected classification (religion; race, color, or national origin; disability; or sex) that served as the basis for the allegation of Discrimination, Harassment, or Sexual Harassment.
- 16.4. All complaints and allegations of Discrimination, Harassment, and Sexual Harassment shall be kept confidential except as necessary to carry out the investigation or take other subsequent necessary action.
- 16.5. Records of site-level and District-level complaints and investigations shall be retained in accordance with applicable federal and state law.

17. TRAINING

Nebo School District recognizes the importance of educating its employees and students regarding the prevention of Discrimination, Harassment, and Sexual Harassment, the promotion of cultural diversity, and the observance of high ethical standards. To these ends, the District will provide

ongoing training and education in this area. Notice of this policy will be distributed, and training will be conducted for employees and students of the District.

18. DISSEMINATION OF POLICY

This policy may be posted on the District’s website and published in student registration materials, student and employee handbooks, parent information guides, and other appropriate school publications as directed by the District. The following nondiscrimination notice shall be disseminated.

Notice of Nondiscrimination: It is the policy of Nebo School District not to discriminate on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, disability, age, or any other legally protected classification in its educational programs, activities, admissions, access, treatment, or employment practices. Nebo School District provides equal access to the Boy Scouts and other designated youth groups.

Questions, concerns, complaints, and requests regarding this nondiscrimination policy should be directed to the following Individuals:

Risk Manager: Physical barriers to building access and physical barriers to educational programs, activities, events, and services. [*Americans with Disabilities Act (ADA)*]

Director of Human Resources: Employment issues regarding discrimination and harassment, and employment accommodation requests due to physical or mental impairments. [*Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act (ADA); Title IX of the Education Amendments of 1972*]

Coordinator of Student Services: Student issues regarding discrimination and harassment in educational programs, activities, events, and services. [*Titles IV and VI of the Civil Rights Act of 1964; Title IX of the Education Amendments*]

Section 504 Coordinator: Student issues regarding discrimination, harassment, and accommodations for students with disabilities [*Section 504 of the Rehabilitation Act of 1973*].

The Risk Manager, Director of Human Resources, Section 504 Coordinator, and Coordinator of Student Services may be reached at Nebo School District Administrative Offices, 350 South Main, Spanish Fork, UT 84660; Telephone No. 801-354-7400.

Additionally, concerns may be directed to the U.S. Department of Education, Office for Civil Rights, 1244 Speer Boulevard, Suite 310, Denver, CO 80204-3582; Telephone No. 303-844-5695; Fax No. 303-844-4303; TDD No. 877-521-2172.

EXHIBITS

Nebo School District Student Discrimination and Harassment Complaint Procedures Flowchart

REFERENCES

Title IV of the Civil Rights Act of 1964, 42 U.S.C. §2000c-6
Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d
Title IX of the Education Amendments of 1972, 20 U.S.C. §1681(a)
Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a)
Americans with Disabilities Act, 42 U.S.C. 12101 et seq.
Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.
Utah Code Ann. § 62A-4a-412.
Nebo School District Policy GBEB, *Employee Discrimination and Harassment*
Nebo School District Policy GBEF, *Employee/Student Standards of Conduct*
Nebo School District Policy GBHB, *Information and Communication Technology/Social Networking*
Nebo School District Policy GCPD, *Employee Discipline, Administrative Leave, and Orderly Termination*
Nebo School District Policy JD, *Student Conduct and Discipline*
Nebo School District Policy JDD/GBEA, *Prohibition of Bullying, Hazing, and Retaliation*
Nebo School District Policy JDG, *Student Dress and Grooming*
School District Policy JHFA, *Child Abuse or Neglect*

Nebo School District Policy JR, *Section 504 of the Rehabilitation Act of 1973*

FORMS

Student Bullying, Discrimination, and Harassment Investigation Checklist
Student Bullying, Discrimination, and Harassment Complaint Form
Student Bullying, Discrimination, and Harassment Response Form
Student Bullying, Discrimination, and Harassment Witness Statement Form
Student Bullying, Discrimination, and Harassment Investigation Report Form

HISTORY

Revised: 11 July 2018 – clarified investigative procedures; added clarification that minor procedural violations don't invalidate an investigation; added provision allowing involvement of professionals interviewing students in cases of abuse; updated notice of non-discrimination; made technical changes.

Revised: 8 July 2015 – appointed coordinator of student services as student civil rights coordinator; described civil rights laws; added scope; defined building administrator; added exposure of body parts as prohibited conduct; made reference to employee policies; revised and reorganized complaint, reporting, and investigation process; clarified prohibition on retaliation; strengthened evidence preservation and recordkeeping provisions; added notice of non-discrimination to section on dissemination of policy; made technical changes.

Revised: 13 August 2014 – capitalized defined terms; separated sexual harassment into its own section; revised and rearranged complaint and investigation procedures; made technical changes.

Reformatted: 9 July 2008 – no substantive changes.

Adopted or Revised: 14 September 2005.
