

SMYRNA SCHOOL DISTRICT

POLICY

Section:	4000 Personnel	Office Responsible:	Human Resources
Policy:	4234 Harassment or Sexual Misconduct Towards Students		
Related Policies:	N/A	Administrative Procedure:	N/A

I. Purpose

To establish the in Smyrna School District harassment and sexual misconduct by a school district employee directed against or toward a student is unacceptable

II. Authority

Delaware Code, 83 Del. Laws C.408, Section 1

Delaware Code, Title 16 § Chapter 9

Delaware Code, Title 14 § 4112

III. Definitions

District Staff: “District staff” or “staff” or “staff member” includes all full-time, part-time, and substitute District employees, including as examples teachers, pupil services staff, student health/medical staff, administrators, supervisors, support staff, activities directors, coaches, and athletic trainer. For the purposes of this policy, “District staff” also includes District-authorized student teachers; District-authorized interns and practicum or fieldwork students; and District-authorized adult volunteers who are serving in a role that would otherwise be filled by a District employee (e.g., volunteer coach) or that significant responsibility for the independent supervision of one or more students. “District staff” under this policy also includes independent contractors and employees of contracted service providers when such persons have a role that involves a regular presence on school grounds or regular, direct interaction with District students.

Students: “District students” or “student” or “students” includes all pupils currently enrolled in any District school, including part-time students and students who are age 18 or older, and includes any individual of school-age who is participating in any District sponsored class, program, or activity that is offered for children and other school-age youth. The age of the students and the staff member are not relevant to the administration of the Policy as the focus is on the Staff Members’ role in relation to the student at the time of the alleged Policy Violation.

Prohibited Harassment or Sexual Misconduct: Physical contact of a sexual nature between the employee and a student. Oral or written words with an offensive or sexual connotation spoken or written by an employee to a student of the display of offensive or sexually suggestive objects or pictures. Oral or Written communication of a personal nature which are not reasonable related to the educational function of the school district and which are offensive, sexually explicit, sexually derogatory, or sexually discriminatory.

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IV. Policy Statement

It is the policy of the Smyrna School District that harassment or sexual misconduct by a school district employee directed against or toward a student is unacceptable conduct and will not be tolerated on or off school premises with any Pre-K through 12th grade student. It is not practical to establish an exhaustive list of rules that expressly define appropriate and inappropriate conduct in all situations. Staff-student relationships may become inappropriate depending on, for example, the frequency, timing, or location of any meetings, activities, or communications between the staff member and a student, and/or due to the specific nature, purpose, or subject matter of any meetings, activities, communications, or other conduct. The consent or purported consent of the student and/or his/her parent or guardian does not alone determine whether a staff member has maintained appropriate boundaries.

Prohibited harassment or sexual misconduct shall include:

- a. Physical contact of a sexual nature between the employee and a student.
- b. Oral or written words with an offensive or sexual connotation spoken or written by an employee to a student or the display of offensive or sexually suggestive objects or pictures.
- c. Oral or written communication of a personal nature which are not reasonably related to the educational function of the school district and which are offensive, sexually suggestive, sexually explicit, sexually derogatory, or sexually discriminatory.

Examples of Inappropriate Conduct:

The following are examples of conduct that constitute an inappropriate staff-student relationship and/or a failure to maintain appropriate staff-student boundaries:

- a. No staff member may engage in a relationship, interaction, or communication with a student that is sexual or romantic in nature. This includes, but is not limited to: dating, making sexual or romantic advances toward a student, accepting or encouraging any sexual or romantic advance initiated by a student, having sexual contact with a student, or communicating with a student using sexual innuendo or in a sexually-explicit or sexually-suggestive manner. Such prohibited communications may be either verbal, written and/or electronic and the location of origination of such communication is not relevant to their matter. The nexus to the learning environment derives from the staff member's employment status with the District.
- b. No staff member may engage in grooming behaviors with any student. In this context, grooming is defined as any conduct or communication that fosters, exploits, or is intended to gauge a student's vulnerability or willingness to engage

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in inappropriate behavior. Grooming may involve a course of repeated or escalating conduct that normalizes inappropriate conduct from a student's perspective or otherwise desensitizes a student to inappropriate behaviors. Grooming often involves but is not limited exclusively to sexual contexts. Examples of conduct that can constitute grooming include:

- i. Singling out a student for inordinate and inappropriate special attention, which may include exchanging special gifts, arranging to meet or communicate at inappropriate times or locations or without a sufficient school-related purpose, or making sexually suggestive or otherwise inappropriate comments about the student's body or appearance.
 - ii. Engaging in expressly or implicitly sexualized communication, including exchanging information about a student's or an adult's sexual experiences or communicating other sexual content or sexual subject matter.
 - iii. Stating or agreeing that any inappropriate conduct or communications between the staff member and a student will be secrets or confidences that should not be shared or disclosed to others.
 - iv. Using threats, bribery, fear, intimidation, harassment, embarrassment, or guilt to encourage secrecy in the relationship or to facilitate the start or continuation of inappropriate conduct or an inappropriate relationship.
- c. No staff member may engage in any activity, conduct, or communication that constitutes, encourages, or invites either unlawful conduct or conduct that would unreasonably endanger the safety or well-being of any person. Such activity may be either verbal, written or communicated electronically.

The following expectations are necessarily context-sensitive, and require staff to reasonably exercise judgement and discretion in particular circumstances in order to maintain appropriate boundaries with students:

- a. Staff shall not engage with students in inappropriately peer-like social relationships via activities or communications that reasonably may compromise the staff member's ability to perform his/her District role, including his/her ability to serve as an effective and objective adult authority figure.
- b. Staff shall not foster, encourage, or maintain relationships with students in which there is an inappropriate level of communicative, interpersonal, or emotional intimacy that reasonably may compromise the staff member's ability to perform his/her District role, including his/her ability to serve as an effective and objective adult authority figure, even though there may be no sexual or romantic aspect to the relationship.

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In-Person or Physical student interactions: Staff shall appropriately limit their physical contact with students. For example, staff are expected to avoid physical contact with students that, taken in context, a reasonable person would be likely to perceive as suggestive of romantic/sexual interest or involvement, or as inappropriately familiar or intimate and without a legitimate purpose.

One-on-one meetings with students: There will be times when adults are alone with students to discuss legitimate educational issues, including discipline or academic performance, for example. When possible, adults should meet one- on-one with students in a public space, such as libraries, open classrooms, or in places observable by others, such as offices or classrooms with windows and unlocked, ajar doors. When supporting students with sensitive issues, as is common for staff such as counselors and social workers, it is appropriate to provide a private setting. To maintain transparency, it is also good practice to let others know when and where meetings with a student will occur.

Physical Contact with Students:

Adults should not initiate any physical contact without a legitimate educational purpose including offering public greetings, positive acknowledgments, or responding to a crisis. There are times when adults have a legitimate educational purpose to initiate physical contact with a student, and noninvasive contact, such as “high fives” or fist bumps to acknowledge a job well done are fine. In other instances, adults may be required to assist an injured student or a student with special needs who requires physical assistance. Likewise, adults may need to touch a student’s arms or hands to redirect them in an activity. Coaches, music teachers, and other instructors may have a need for physical contact as a method of instruction. Adults need to be aware of what kinds of physical contact with which a student is and is not comfortable and limit physical contact to only that which is necessary for a legitimate purpose. In addition, any conduct which may meet the definition of a “restraint” must be reported as required in Delaware Regulation 610 Limitations on Use of Seclusion and Restraint.

Appropriate Means of Communication:

Unless otherwise expressly permitted by Board Policy or this Rule, District staff may only engage in electronic communication with students using a District-provided or otherwise District-approved means of electronic communication (e.g., a District-approved social media account, a District provided online learning platform, or a District-provided email account). The District will establish and maintain a list of District-approved means of electronic communications. The expectation that staff members will use a District-approved means of electronic communication shall not be interpreted or applied in a manner that would restrict common and practical activities in school related settings that, by their nature, already have a high degree of accessibility/visibility, such as using a microphone or sound system to communicate to a group.

District staff are prohibited from communicating electronically with students using a

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personal (i.e., non-District) email, text messaging, or social media account unless

- a. Exigent circumstances are present that suggest that there is an imminent threat to the health, safety, or property of any person and the staff member promptly communicates their reliance on this exception to the school principal or to another appropriate administrator; or
- b. District Title IX Coordinator has granted written approval for such communication for a limited purpose.

For purposes of this paragraph, prohibited communication includes using a staff member's personal account to "friend" or "follow" a student's social media account(s) or to accept a similar request from a student. If a District staff member receives an unsolicited electronic communication from a student that was sent to a personal account, the staff member should not reply to the student using the personal account unless authorized to do so by an appropriate administrator or supervisor or unless exigent circumstances are present that suggest that there is an imminent threat to the health, safety, or property of any person. If a District staff member receives any electronic communication from a student that a reasonable person would perceive as crossing appropriate staff student boundaries or as being otherwise inappropriate, or if the staff member has relied on the exception for exigent circumstances to communicate with a student using a personal account, the staff member shall report the contact to the school principal or to another appropriate administrator as soon as possible. If necessary, an administrator will advise the staff member on the means and content of an appropriate response or follow-up, which may include:

- a. A parent contact;
- b. A statement that the student's communication to the staff member was inappropriate or addressed matters that are outside the boundaries of the staff member's responsibilities;
- c. A statement that the student is expected to refrain from initiating similar communications in the future;
- d. Identification of appropriate means and content of communication that the student should use to contact the staff member moving forward.

District staff may not initiate a communication with any student using a form of electronic communication that does not enable the staff member to retain a record of the communication (e.g., Snapchat) unless:

- a. The particular form or means of electronic communication has been provided or approved by the District (e.g., certain online learning platforms);
- b. the staff member is communicating with a student via voice call at an appropriate

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time and when doing so is reasonably expected or necessary in the normal course of the performance of the staff member's District role and responsibilities; or

- c. Exigent circumstances are present that suggest that there is an imminent threat to the health, safety, or property of any person and the staff member promptly communicates their reliance on this exception to the school principal or to another appropriate administrator.

Except as authorized by the District, District staff may not delete or destroy any record of an electronic communication with a student that was sent or received in connection with the staff member's District-authorized role. If any such electronic communication with a student occurs outside of a District-provided system, application, or account, the staff member should, to the extent feasible and consistent with student record confidentiality, forward a complete electronic copy of the relevant record to a District-controlled system, application, or account. If forwarding a copy of any such record is not feasible, then, prior to deleting any such record, the staff member is expected to seek additional direction from District Title IX Coordinator regarding retention of the record.

Student Reporting of Harassment or Sexual Misconduct:

Students of the Smyrna School District who feel that they are a victim of harassment or misconduct in any form by a district employee or become aware of an instance of harassment or misconduct by a district employee toward a student, should report the situation immediately to the Principal or Assistant Principal of the school or to a district employee who is in a position of authority other than the person about whom the complaint is being made. Students are also encouraged to report all violations of this policy to their parents or guardians. Students who are uncomfortable for any reason with discussing such matters with the individuals designated, or who are not satisfied after bringing the matter to the attention of one or more of these individuals, shall report the matter promptly to the Assistant Superintendent.

Mandatory Reporting Requirements:

As noted in Delaware Code, Title 16, Chapter 9 Reports and Investigations of Abuse and Neglect as well as Title 14, Chapter 41 § 4112. Reporting school crimes. Staff members, just as any reasonable person within the State of Delaware, are mandatory reporters with the responsibility to report any witnessed or reported allegations of misconduct to their Administrator as well as Law Enforcement AND the Department of Family Services Hotline.

All District staff are required to promptly report any known or reasonably suspected violation of this policy to their Administrator and/or the District's Title IX Coordinator. The obligation to report based on reasonable suspicion applies to incidents and circumstances that are known by the staff member and that a reasonable person in the staff member's role would identify as a probable violation of this policy. The District will not impose consequences against a staff member who reasonably and in good faith determines

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that a specific situation does not rise to the level of reportable conduct. Staff members are further encouraged to contact their District Title IX Coordinator any time that they have questions or concerns about the scope and possible application of this policy, or any rules or guidelines adopted under this policy. The District encourages all other persons, including students, parents, or other community members, to also submit any reports, complaints, or concerns regarding possible violations of this policy to District Title IX Coordinator. The District will not retaliate against or, to the extent within the District's reasonable control, tolerate any harassment or retaliation by others against a person for making a good-faith report or for cooperating in any investigation commenced under this policy. Furthermore, retaliation in any form against students who exercise their right to make a complaint under this policy is strictly prohibited and will itself be cause for appropriate disciplinary action.

The District will investigate all reports of harassment or misconduct in as prompt and confidential a manner as possible and will take the appropriate corrective action, when warranted. Any district employee who is found, as result of such an investigation, to have engaged in harassment or misconduct in violation of this policy will be subject to appropriate disciplinary action, up to and including termination of employment.

Human Resources Requirements for release of information regarding substantiated violations of this Policy to future potential employers.

As part of this policy, all new and existing employees, as defined herein, shall be aware that any substantiated reports of misconduct will be reported as part of any subsequent reference check conducted after the conclusion of the District investigation. This reporting requirement shall occur regardless of whether a criminal case has been pursued or adjudicated within the criminal justice and court system. The release of this information does not depend upon the status of employment within the District and/or the nature of the conclusion of the employee's employment with the District. This reporting will only be based upon a substantiated violation of the policies and procedures enumerated above.

Screening Process for Potential New Hires

As required by Code, the Human Resources Department shall implement such screening processes necessary to seek information from previous employers regarding potential incidents of adult sexual misconduct.

*Italics indicate Delaware Regulation Administrative Code Title 14 wording

Board Approval Acknowledged by:



Christopher Scuse, *President*
Smyrna School District Board of Education

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Policy Actions

Adopted: 11/15/2023

Revised: