

Policy No.: 403.03 R1
Adopted: 6-11-2002
Reviewed: 2-19-2015

ABUSE OF STUDENTS BY SCHOOL DISTRICT EMPLOYEES REGULATION

Physical or sexual abuse of students, including inappropriate and intentional sexual behavior, by employees will not be tolerated. Employees found in violation of this policy will be subject to disciplinary action up to and including discharge.

Definition of Physical Abuse

Physical abuse is non-accidental physical injury to the student as a result of the action of an employee. Injury occurs when evidence of it is still apparent at least twenty-four hours after its occurrence. The following do not constitute physical abuse, and no employee is prohibited from:

Using reasonable and necessary force, not designed or intended to cause pain:

- To quell a disturbance or prevent an act that threatens physical harm to any person.
- To obtain possession of a weapon or other dangerous object within a pupil's control.
- For the purposes of self-defense or defense of others as provided for in Neb. Statute 28-1409 and 1410.
- For the protection of property as provided for in Neb. Statute 28-1411.
- To remove a disruptive pupil from class, or any area of school premises or from school-sponsored activities off school premises.
- To prevent a student from the self-infliction of harm.
- To protect the safety of others.

Using incidental, minor, or reasonable physical contact to maintain order and control. In determining the reasonableness of the contact or force used, the following factors shall be considered:

- The nature of the misconduct of the student, if any, precipitating the physical contact by the school employee.
- The size and physical conditional of the student.
- The means or device used in making the physical contact.
- The motivation of the school employee in initiating the physical contact.

"Reasonable force" is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe that such force is necessary to avoid injury or risk to one's life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.

Definition of Sexual Abuse

Sexual abuse is defined as including sexual acts involving a student, acts that encourage the student to engage in prostitution, inappropriate, intentional sexual behavior or physical manifestations of sexual harassment by the employee toward a student. "Sexual harassment" is defined as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;

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- Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
- The conduct has the purpose or effect of substantially interfering with a student's academic performance by creating an intimidating, hostile or offensive education environment.

Complaint Procedure

An individual who believes he/she has been abused shall notify the principal, the designated investigator. The alternate investigator is the superintendent. The investigator may request that the individual complete the Abuse Complaint form. Information received during the investigation shall be kept confidential to the extent possible.

The investigator, with the approval of the superintendent, or the superintendent has the authority to initiate a harassment investigation in the absence of a written complaint. The investigator shall have access to the educational records of the student and access to the student for purposes of interviewing the student about the report.

When abuse is reported, the investigator shall make copies of the report and give a copy to the person filing the report, the students' parents and the immediate supervisor of the employee named in the report. The employee named in the report shall not receive a copy of the report until the employee is initially interviewed.

The investigator shall use discretion in handling the information received regarding an investigation of abuse by an employee, and those persons involved in the investigation shall not discuss information regarding the complaint outside the investigation. The entire investigative procedure will be thoroughly explained, including the confidential nature of the proceedings, to the student and other persons involved in the investigation.

The investigator shall notify the parent, guardian or legal custodian of a student in pre-kindergarten through grade six, of the date and time of the interview and of the right to be present or to see and hear the interview or send a representative in the parent's place. The investigator shall interview the student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

It is the responsibility of the investigator to determine whether it is more likely than not that an incident took place between the employee and the student. If the investigator believes the employee committed a sex act with a student or sexually exploited a student, the investigator shall defer the investigation and immediately notify law enforcement officials, the superintendent, the student's parents and the person filing the report.

If the investigator determines an incident occurred, while not an illegal sex act with a student or sexual exploitation of a student, but where the employee engaged in inappropriate, intentional sexual behavior, further investigation is warranted. If further investigation is warranted, the investigator may proceed to interview the employee and other individuals who may have knowledge of the circumstances contained in the report. Prior to interviewing other individuals who may have knowledge of the circumstance contained in the report, the investigator shall provide notice of the impending interview of student witnesses or the student who is in pre-

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kindergarten through grade six, to their parent, guardian, or legal custodian, and may provide notice to the parent or guardian of older students, prior to interviewing those students.

Within five days of receipt of an investigable report, the investigator shall complete an informal investigation. The informal investigation shall consist of interviews with the student, the employee and others who may have knowledge of the alleged incident. If the investigator determines that the allegations in the report are founded and that immediate and professional investigation is necessary, the investigator may defer further investigation and contact appropriate law enforcement officials, the student's parents and the person filing the report.

Within fifteen days of receipt of the report, the investigator shall complete a written investigative report, unless the investigation was temporarily deferred. The written investigative report shall include:

- The name, age, address and attendance center of the student named in the report.
- The name and address of the student's parent or guardian and the name and address of the person filing the report, if different from the student's parent or guardian.
- The name and work address of the employee named in the report as allegedly responsible for the abuse of the student.
 - An identification of the nature, extent and cause, if known, of any injuries or abuse to the student named in the report.
 - A general review of the investigation.
 - Any actions taken for the protection and safety of the student.
 - A statement that, in the investigator's opinion, the allegations in the report are either: Unfounded. (It is not likely that an incident, as defined in district rules, took place), or Founded (It is likely that an incident took place.)
 - The applicability of exceptions to the investigated incident, or reason for the contact or force used.
 - A statement that, in the investigator's opinion, any physical contact that occurred was: Appropriate (Actions invoking a disciplinary process as defined in district rules), or Inappropriate. (Actions not requiring any disciplinary process.)
 - The disposition or current status of the investigation and recommendations regarding the need for further investigation.
 - A listing of the options available to the parents or guardian of the student to pursue the allegations. These options include, but are not limited to: Contacting law enforcement officials, contacting private counsel for the purpose of filing a civil suit or complaint, or filing a complaint with the Nebraska professional Practices Commission if the employee is a certificated employee.

The investigator shall retain the original and provide a copy of the written investigative report to the school employee named in the report, the employee's supervisor, the superintendent and the student's parent or guardian. The person filing the report, if not the student's parent or guardian shall be notified only that the investigation has been concluded and of the disposition or anticipated disposition of the case.

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If the investigator's report or law enforcement officials conclude the case involved founded physical or sexual abuse by a certified employee, or the employee admits the violation, or the employee has surrendered the employee's certificate or license, the investigator shall file a complaint on behalf of the district after obtaining the superintendent's signature with the Nebraska professional Practices Commission. The investigator shall also arrange for counseling services for the student if the student or student's parent's request counseling services. Information of unfounded abuse shall not be kept in the employee's personnel file.