

# REGULATION GUIDE

TEACHING STAFF MEMBERS

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Inappropriate Staff Conduct

May 04

Dec 12

[See POLICY ALERT Nos. 169, 187 and 198]

## R 3281 INAPPROPRIATE STAFF CONDUCT

Inappropriate conduct by a school staff member will not be tolerated by the Board of Education. Policy No. 3281 and this Regulation have been developed and adopted by this Board to provide guidance and direction to avoid actual and/or the appearance of inappropriate conduct and conduct unbecoming a school staff member to pupils.

### A. Definitions

1. “Building Principal” is the Principal of the building where the staff member is assigned.
2. “Grievance Procedure” is the grievance procedure that provides for prompt and equitable resolution of inappropriate conduct or conduct unbecoming a school staff member.
3. “Hostile Environment Sexual Harassment” is sexual harassing conduct, which can include sexual advances, requests for sexual favors, or other favors, or other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently severe, persistent, or pervasive to limit a pupil’s ability to participate in or benefit from an educational program or activity, or to create a hostile or abusive educational environment.
4. The “immediate supervisor” for teaching staff members may be a Building Principal, a member of the school district’s non-instructional supervisory staff and/or the School Business Administrator/Board Secretary.
5. “Inappropriate comments” includes, but is not limited to, comments of a sexual nature, sexually oriented humor or language, inappropriate comments about a pupil’s clothing or physical appearance, comments with sexual overtones, comments regarding a pupil’s dating partner or comments about the staff member’s personal life that are not relevant to the professional responsibility of the school staff member.



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6. “Inappropriate conduct” includes, but is not limited to, sexual misconduct, a request by a school staff member to a pupil for a social relationship outside the school staff/pupil relationship, sexually harassing conduct, inappropriate touching by the staff member to a pupil or permitting a pupil to inappropriately touch a staff member, corporal punishment, requesting a pupil to expose private parts of their body, other than for school medical purposes, and a staff member exposing their own private parts of their body to a pupil. Inappropriate conduct also includes physical contact between a staff member and pupil that is beyond the staff member/pupil professional relationship. This contact includes, but is not limited to, kissing, touching or feeling private parts of the body, holding hands or arms, and other contact that typically shows a sign of affection beyond the staff member/pupil professional relationship. “Inappropriate conduct” does not include a hug initiated by a pupil as a sign of the pupil’s appreciation to a school staff member at a school sponsored activity such as school banquets, school recognition programs, graduations, etc.
7. “Inappropriate language or expression” includes, but is not limited to, the use of any profanity, obscene language, public lewdness or the use of public lewdness, comments with sexual overtones, distribution and/or discussion of any pornography.
8. “Inappropriate staff conduct” is any conduct prohibited by this Policy and corresponding Regulation including any other conduct deemed by the Commissioner of Education, the State Board of Education, statute, administrative code, and/or the judicial case law to be inappropriate conduct and/or conduct unbecoming a school staff member.
9. “Quid Pro Quo Sexual Harassment” is when a school employee explicitly or implicitly conditions a pupil’s participation in an educational program or activity or bases an educational decision on the pupil’s submission to unwelcomed sexual advances, requests for sexual favors or other favors, or other verbal, nonverbal, or physical conduct of a sexual nature. Quid Pro Quo Harassment is equally unlawful whether the pupil resists and suffers the threatened harm or submits and thus avoids the threatened harm.



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10. “Professional responsibility or responsibilities” is the responsibilities of the staff member including, but not limited to, all school district sponsored extra-curricular activities, co-curricular activities, athletic coaching responsibilities; and other instructional or non-instructional positions and responsibilities appointed and/or assigned by the administration or Board.
11. “Promptly report” is reporting by the end of the next school day. If school is not in session the next day, then by the end of the first day after the weekend or holiday break. If this reporting time would exceed seventy-two hours, the staff member shall notify the Building Principal no later than seventy-two hours after the required reporting time.
12. “Sexual Harassment” is to include quid pro quo sexual harassment and/or hostile environment sexual harassment.
13. “Staff member” or “school staff member” is a compensated and/or uncompensated member of the school district’s staff, including any agents and/or representatives of the school district.
14. “Unannounced or uninvited visit” is a pupil visiting, without prior notice to the staff member or without an invitation from the staff member, the staff member’s residence and/or other place where the staff member may be when not performing school related professional responsibilities.

## B. Reporting Procedure

1. Any staff member who believes, or has reason to believe, a pupil is seeking a relationship with the staff member beyond his/her professional responsibilities must promptly report this information to the Building Principal or immediate supervisor.
2. Any staff member who believes, or has reason to believe, a pupil is seeking a relationship with another staff member beyond the professional responsibilities of the other staff member or believes, or has reason to believe, another staff member is seeking a relationship with a pupil beyond the professional responsibilities of the other staff member must promptly report this information to the Building Principal or immediate supervisor.



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3. Any staff member who believes he/she had, or may have, engaged in conduct prohibited by this Policy and Regulation must promptly report the conduct to the Building Principal or immediate supervisor.
  4. Failure of a staff member to report conduct they know, or had reason to know, is prohibited by this Policy and Regulation and will result in appropriate disciplinary action.
  5. Any pupil, parent, legal guardian and/or other person(s) who believes, or has reason to believe, a staff member has engaged in conduct prohibited by this Policy and Regulation shall promptly report the conduct to the Principal.
  6. Any person, including school staff, may make an anonymous report to the Principal if the person in good faith believes, or has reason to believe, a staff member has engaged in conduct prohibited by this Policy and Regulation.
  7. School staff having reasonable cause to believe a pupil has been subjected to child abuse or neglect or acts of child abuse or neglect as defined under N.J.S.A. 9:6-8.10 are required to immediately report to the ~~Division of Youth and Family Services~~ **New Jersey Department of Children and Families** in accordance with N.J.A.C. **6A:16-11.1** ~~6A:16-10.1 et seq.~~ and inform the Building Principal or immediate supervisor after making such report.
- C. Investigation of Reports
1. An immediate supervisor or Building Principal who receives a report a staff member engaged in, or may have engaged in, conduct prohibited by this Policy and Regulation will immediately notify the Superintendent of Schools.
  2. The **Building Principal** ~~[staff member designated to complete the investigation]~~ will begin a prompt and thorough investigation of every report.



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3. The **Building Principal** [staff member designated to complete the investigation] or the Superintendent will take such appropriate action as provided for in the law and as necessary at any time after receiving a report. This action may include, but is not limited to, notifying law enforcement, notifying the ~~Division of Youth and Family Services~~ **New Jersey Department of Children and Families** if there is reasonable cause to believe a pupil has been subjected to child abuse or neglect or acts of child abuse or neglect as defined under N.J.S.A. 9:6-8.10 and in accordance with N.J.A.C. **6A:16-11.1** ~~6A:16-10.2 et seq.~~, and/or any other measure provided for in the law.

## D. Preliminary Investigation of Reports by Others

1. The **Building Principal** [staff member designated to complete the investigation] will begin a prompt, thorough, and impartial investigation. The preliminary investigation will be completed no more than ten working days after the **Building Principal** [staff member designated to complete the investigation] received the report.
2. The **Building Principal's** [staff member designated to complete the investigation] preliminary investigation may include, but is not limited to, interviews with staff members who may have potential knowledge of the alleged conduct, interviews with any pupils who may have potential knowledge of such conduct, interviews with parent(s)/legal guardian(s) or any other persons who may have potential knowledge of the alleged conduct, and interview(s) with the school staff member(s) and pupil(s) reported to have engaged in conduct prohibited by this Policy and Regulation.
3. The **Building Principal** [staff member designated to complete the investigation] will request, if relevant to an investigation, the parent(s)/legal guardian(s) of any pupil involved in the investigation to assist in the investigation to determine if inappropriate staff conduct may have existed.



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4. If, based on a preliminary investigation, the **Building Principal [staff member designated to complete the investigation]** determines conduct prohibited by this Policy and Regulation did not exist, he/she will meet with the staff member(s) and the parent(s)/legal guardian(s) of the pupil(s) reported to review the results of the preliminary investigation. The preliminary investigation report indicating inappropriate conduct did not exist will be in writing and will be provided to the staff member(s) and to the parent(s)/legal guardian(s) if requested. The **Building Principal [staff member designated to complete the investigation]** will maintain a separate file for all such reports and the report will not be included in the staff member's personnel file.
  5. If, based on a preliminary investigation, the **Building Principal [staff member designated to complete the investigation]** deems inappropriate staff conduct may have occurred, he/she will immediately notify and meet with the staff member(s) and the parent(s)/legal guardian(s) of the pupil(s) indicated in the report to review the procedures to be followed in a continued full investigation. A copy of this Regulation and corresponding Policy will be provided to the staff member(s) and to the parent(s)/legal guardian(s) of the pupil indicated in the report upon request.
- E. Full Investigation
1. The **Building Principal's [staff member designated to complete the investigation]**, finding that inappropriate staff conduct may have occurred after the preliminary investigation, requires a full investigation. This full investigation may be conducted in cooperation with the ~~Division of Youth and Family Services~~ **New Jersey Department of Children and Families** in accordance with N.J.A.C. **6A:16-11.1** ~~6A:16-10.2~~ and/or local law enforcement.
  2. The **Building Principal [staff member designated to complete the investigation]** will conduct the full investigation if the **New Jersey Department of Children and Families** ~~Division of Youth and Family Services~~ and/or local law enforcement does not intervene or if the allegations do not meet the reporting requirements of N.J.A.C. **6A:16-11.1** ~~6A:16-10.2 et seq.~~ for reporting to the ~~Division of Youth and Family Services~~ **New Jersey Department of Children and Families** and/or of N.J.A.C. 6A:16-6.3 for reporting to law enforcement.



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3. The full investigation will include, but not be limited to, interviews with the staff member(s), pupils, parent(s)/legal guardian(s) and any other persons who know, or would have reason to know, a staff member may have engaged in inappropriate staff conduct.
4. The **Building Principal** [staff member designated to complete the investigation] will accept testimony and evidence from the staff member(s), pupil(s), parent(s)/legal guardian(s) and other persons who may have information relevant to the investigation.
5. All persons that provide information, testimony and evidence to the **Building Principal** [staff member designated to complete the investigation] relative to a report will be informed the information, testimony and evidence may be used in additional investigations and/or hearings as determined by the Superintendent of Schools.
6. Upon the conclusion of the interviews and review of the information, testimony and evidence, the **Building Principal** [staff member designated to complete the investigation] will prepare a written report to the Superintendent of Schools. The report will provide a summary of the interviews and information, testimony and evidence and, if possible, a finding from the **Building Principal** [staff member designated to complete the investigation].
7. If the **Building Principal's** [staff member designated to complete the investigation] full investigation report finds inappropriate staff conduct and/or conduct unbecoming a school staff member did not occur and the Superintendent concurs with the report's findings, the **Building Principal** [staff member designated to complete the investigation] will notify and meet with the staff member(s) and the parent(s)/legal guardian(s) of the pupil(s) investigated to review the findings.



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8. If the **Building Principal's** **[staff member designated to complete the investigation]** full investigation report finds inappropriate staff conduct and/or conduct unbecoming a school staff member may have occurred and the Superintendent concurs with the report's findings, the Superintendent may take such appropriate action necessary and as provided for in the law. This action may include, but is not be limited to:
  - a. Provide the staff member an opportunity to rebut the findings of the **Building Principal's** **[staff member designated to complete the investigation]** full investigation report and findings;
  - b. Recommend to the Board of Education the withholding of the staff member's salary increment/increase for the subsequent school year;
  - c. Not recommend the staff member be re-appointed for the next school year;
  - d. Recommend to the Board of Education the staff member be terminated for inappropriate staff conduct and/or conduct unbecoming a school staff member;
  - e. Institute tenure charges (if applicable) in accordance with **N.J.S.A. 18A and N.J.A.C. 6A** **N.J.A.C. 6A:3-5 — Charges Under Tenure Employees' Hearing Act**; and/or
  - f. Recommend to the Board of Education any other disciplinary **and/or legal** measures as the Superintendent of Schools determines to be appropriate under the circumstances and in accordance with any collective bargaining agreements between the employee representative association and the Board of Education.





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9. If the Superintendent does not concur with the findings of the **Building Principal's [staff member designated to complete the investigation]** full investigation, the Superintendent may continue the investigation, which may include testimony and/or evidence from additional witnesses, a discussion with those who have already provided information to the **Building Principal [staff member designated to complete the investigation]**, a discussion with the pupil(s) and parent(s)/legal guardian(s) and any activity the Superintendent believes would be helpful to the continued investigation. The results of the continued investigation conducted by the Superintendent will proceed consistent with paragraph 7. and 8. above.
10. Any person who is not satisfied with the Superintendent's determination may appeal to the Board of Education.

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