

Abusive Conduct, Bullying, Cyberbullying, Harassment, Hazing, and Retaliation Policy

I. Purpose

Abusive conduct, bullying, cyberbullying, harassment, and hazing of students and employees are against federal, state, and local policy, and are not tolerated by Excelsior Academy. Excelsior Academy is committed to providing all students and staff with a safe and civil school environment in which all members of the school community are treated with dignity and respect.

To that end, Excelsior Academy has in place policies, procedures, and practices that are designed to reduce and eliminate abusive conduct, bullying, cyberbullying, harassment, and hazing—including but not limited to civil rights violations—as well as processes and procedures to deal with such incidents. Abusive conduct, bullying, cyberbullying, harassment, or hazing of students and/or employees by students and/or employees will not be tolerated in Excelsior Academy. School officials have the authority to discipline students for off-campus speech that causes or threatens a substantial disruption on campus or school activities, including violent altercations, or a significant interference with a student's educational performance and involvement in school activities.

This policy is intended to comply with Utah Code Title 53G, Chapter 9, Part 6 and Utah Administrative Rule R277-613, and shall be interpreted in a manner consistent with those authorities.

If after an investigation, a student is found to be in violation of this policy, the student shall be disciplined by appropriate measures up to, and including, suspension and expulsion, pursuant to EA Policy 3A.01.13 (Discipline Policy), UCA 53G-8-205, and in accordance with the U.S. Department of Education Office for Civil Rights, loss of participation in extracurricular activities, and/or probation. If after an investigation, a school employee is found to have violated this policy, the employee shall be disciplined by appropriate measures up to, and including, termination.

II. Definitions

A. "Abusive Conduct"

1. Abusive conduct means verbal, nonverbal, or physical conduct of a parent or student directed toward a school employee that, based on its severity, nature, and frequency of occurrence, a reasonable person would determine is intended to cause intimidation, humiliation, or unwarranted distress.
2. A single act does not constitute abusive conduct.

B. "Action plan" means a process to address a verified incident as required by Utah Code 53G-9-605.5.

- C. "Allegation" means a report or claim that conduct prohibited by this policy has occurred but has not yet been verified through the school's investigation process.
- D. "Bullying" means student bullying and staff bullying, consistent with Utah Code 53G-9-601.
 - 1. "Student bullying" means one or more students, with the intent to cause harm, repeatedly committing a written, verbal, or physical act against another student, or engaging in a single egregious act toward another student involving an imbalance of power, that creates an environment that a reasonable person would find hostile and interferes with a student's educational performance, opportunities, or benefits. "Student bullying" does not include ordinary teasing, horseplay, argument, or peer conflict; reasonable correction of behavior by a school employee; or reasonable coaching strategies and techniques by a school employee who is a coach.
 - 2. "Staff bullying" means a school employee, with the intent to cause harm, repeatedly committing a written, verbal, or physical act against a student or another school employee, or engaging in a single egregious act toward another employee involving an imbalance of power, that creates an environment that a reasonable person would find hostile, threatening, or humiliating and substantially interferes with a student's or employee's educational or professional performance, opportunities, or benefits. "Staff bullying" does not include ordinary teasing, horseplay, argument, or peer conflict; reasonable correction of behavior by a school employee; or reasonable coaching strategies and techniques by a school employee who is a coach.
- E. "Civil rights violation" means bullying (including cyberbullying), harassing, or hazing that is targeted at a federally protected class.
- F. "Cyberbullying" means using the Internet, a cell phone, or another device to send or post text, video, audio, or an image with the intent or knowledge, or with reckless disregard, that the text, video, audio, or image will hurt, embarrass, or threaten an individual, regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.
- G. "Federally protected class" means any group protected from discrimination under federal law.
- H. "Harassment" means repeatedly communicating to another individual, in an objectively demeaning or disparaging manner, statements that contribute to a hostile learning or work environment for the individual. This includes rumor

spreading and social aggression intended to demean and disparage another individual and that contributes to a hostile environment for that individual.

- I. "Hazing" means a school employee or student intentionally, knowingly, or recklessly committing an act or causing another individual to commit an act toward a school employee or student that:
1. endangers the mental or physical health or safety of a school employee or student;
 2. involves any brutality of a physical nature, including whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;
 3. involves consumption of any food, alcoholic product, drug, or other substance or other physical activity that endangers the mental or physical health and safety of a school employee or student; or
 4. involves any activity that would subject a school employee or student to extreme mental stress, such as sleep deprivation, extended isolation from social contact, or conduct that subjects a school employee or student to extreme embarrassment, shame, or humiliation; and
 5. is committed for the purpose of initiation into, admission into, affiliation with, holding office in, or as a condition for membership in a school or school sponsored team, organization, program, club, or event; or
 6. is directed toward a school employee or student whom the individual who commits the act knows, at the time the act is committed, is a member of, or candidate for membership in, a school or school sponsored team, organization, program, club, or event in which the individual who commits the act also participates.

The conduct described in this subsection ~~G.1.~~ of Definitions constitutes hazing, regardless of whether the school employee or student against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.

- J. "Incident" means a verified incident of bullying, cyberbullying, hazing, abusive conduct, or retaliation.
- K. "Parent" means a student's legal guardian.
- L. "Retaliate" means an act or communication intended:
1. as retribution against a person for reporting abusive conduct, bullying, cyberbullying, harassment, or hazing; or
 2. to improperly influence the investigation of, or the response to, a report of abusive conduct, bullying, cyberbullying, harassment, or hazing.
- M. "School" means any public elementary or secondary school or charter school

- N. "School Designee" means a school administrator or designee assigned to receive and investigate allegations, notify parents and/or persons involved, and oversee action plans under this policy.
- O. "School employee" means:
1. school teachers;
 2. school staff;
 3. school administrators; and
 4. an individual:
 - a) who is employed, directly or indirectly, by a school, an LEA governing board, or a school district; or
 - b) who works on a school campus.
- P. "Verification" means that an allegation has been substantiated through the school's investigation process.
- Q. "Volunteer" means a person on the approved Volunteer List who is working at the school under the supervision of school staff.

III. Prohibitions

- A. No school employee or student may engage in abusive conduct, bullying, cyberbullying, harassment, or hazing of a school employee or student:
1. on school property;
 2. at a school related or sponsored event;
 3. in a private vehicle being transported to a school sponsored event;
 4. on a school bus;
 5. at a school bus stop; or
 6. while the school employee or student is traveling to or from a location or event described above in Subsection A. 1. – 4.
- B. No school employee or student may engage in hazing or cyberbullying a school employee or student at any time or in any location.
- C. No school employee or student may engage in retaliation against:
1. a school employee;
 2. a student; or
 3. an investigator for, or witness of, an alleged incident of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation
- D. No school employee or student may make a false allegation of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation against a school employee or student.

- E. Any abusive conduct, bullying, cyberbullying, harassment, or hazing that is found to be targeted at a federally protected class is further prohibited under federal anti-discrimination laws and is subject to compliance regulations from the Office for Civil Rights.
- F. No student or parent shall engage in abusive conduct.
- G. No school employee or student may create or distribute sexually explicit or nonconsensual intimate images.
- H. No student may share a recording of an act of bullying, cyberbullying, hazing, abusive conduct, harassment, or retaliation in order to impact or encourage future incidents. This restriction does not prevent a student from sharing a recording with a teacher or administrator for reporting or investigation purposes.
- I. This policy protects students regardless of legal status.

IV. Actions Required if Prohibited Acts are Reported

- A. Each reported complaint will include:
 - 1. name of complaining party;
 - 2. name of offender (if known);
 - 3. date and location of incident(s);
 - 4. a statement describing the incident(s), including names of witnesses (if known).
- B. Each reported violation of the prohibitions noted previously will be promptly investigated by a school administrator or an individual designated by a school administrator. A report of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation may be made anonymously, but Excelsior Academy will not take formal disciplinary action based solely on anonymous reports.
- C. Verified violations of the prohibitions noted previously shall result in consequences or penalties. Consequences or penalties may include but are not limited to:
 - 1. student suspension or removal from a school-sponsored team or activity including school sponsored transportation;
 - 2. student suspension or expulsion from school or lesser disciplinary action;
 - 3. employee suspension or termination for cause or lesser disciplinary action;
 - 4. employee reassignment; or
 - 5. other action against a student or employee as appropriate.
- D. The school will notify a parent if the parent's student threatens to commit suicide, or if the student is involved in an incident of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation and the action plan to address the

incident. If the school believes the situation presents a serious threat to the well-being of a student, the school shall notify the student's parent without delay and before the end of the school day.

1. Excelsior Academy will produce and maintain a record that verifies that the parent was notified of the incident or threat. The record shall also track implementation of the action plan, if applicable, and will be retained or expunged consistent with Utah Code 53G-9-604.
2. Excelsior Academy will not disclose the record described in IV.D.1. to anyone unauthorized to receive it and will not use the record for purposes not allowed under the law.
3. When required by Utah Code 53G-9-604, the school shall provide the parent with suicide prevention materials, information on limiting access to fatal means, and information/resources on healthy use of social media and online practices.

E. Compliance with the Office for Civil Rights when Civil Rights Violations Occur:

1. Once Excelsior Academy knows or reasonably should know of possible student-on-student bullying, cyber-bullying, harassment, or hazing, the school must take immediate and appropriate action to investigate or otherwise determine what occurred.
2. If it is determined that the bullying, cyber-bullying, harassment, or hazing occurred as a result of the student-victim's membership in a protected class, Excelsior Academy shall take prompt and effective steps reasonably calculated to:
 - a) end the bullying, cyber-bullying, harassment, or hazing
 - b) eliminate any hostile environment, and
 - c) prevent its recurrence.
3. These duties are Excelsior Academy's responsibilities even if the misconduct is also covered by a separate anti-bullying policy and regardless of whether the student makes a complaint, asks the school to take action, or identifies the bullying, cyberbullying, harassment, or hazing as a form of discrimination.

F. Actions must also include, as appropriate:

1. procedures for protecting the victim and other involved individuals from being subjected to:
 - a) further abusive conduct, bullying, cyberbullying, harassment, or hazing, and
 - b) retaliation for reporting the abusive conduct, bullying, cyberbullying, harassment, or hazing.

2. prompt reporting to law enforcement of all acts of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation that constitute suspected criminal activity.
3. prompt reporting to the Office for Civil Rights (OCR) of all acts of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation that may be violations of student(s)' or employee(s)' civil rights.
4. procedures for a fair and timely opportunity for the accused to explain the accusations and defend their actions prior to student or employee discipline.
5. procedures for providing due process rights under Section 53G-11-501 (licensed staff) and local employee discipline policies prior to employee discipline or Section 53G-8-204 and local policies (students) prior to long term (more than 10 day) student discipline.

G. Employee Grievance Process for Abusive Conduct

1. A school employee who believes they have been subjected to abusive conduct by a parent, student, or another employee may file a formal grievance with the school director or designee.
2. The grievance shall be submitted in writing within 30 calendar days of the alleged incident and shall include a description of the conduct, dates, times, and witnesses (if known).
3. The school director or designee shall review the grievance, conduct an investigation, and issue a written determination within 30 calendar days of receipt.
4. If the employee is not satisfied with the determination, the employee may appeal in writing to the Governing Board within 10 business days of receiving the determination.
5. The Governing Board shall review the appeal in closed session, consistent with Utah's Open and Public Meetings Act, and issue a final written decision within 30 calendar days.
6. Retaliation against an employee for filing a grievance is strictly prohibited and will result in disciplinary action up to and including termination.

H. Action Plan and Parent Communication

1. When an incident of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation is verified, the school director or designee shall develop an action plan. The action plan shall include:
 - a) a communication plan designed to keep each parent updated on the implementation of the action plan;

- b) with respect to the student to whom the incident was directed and in direct coordination with the student's parent:
 - (i) a tailored response to the incident that addresses the student's needs;
 - (ii) a mechanism to consider consequences or accommodations the student may need regarding decreased exposure or interactions with the student who caused the incident;
 - (iii) notification of the consequences and plan to address the behavior of the student who caused the incident;
 - (iv) supportive measures designed to preserve the student's access to educational services and opportunities; and
 - (v) to the extent available, access to other resources the parent requests for the student; and
 - c) with respect to the student who caused the incident and in direct coordination with the student's parent:
 - (i) a range of tailored and appropriate consequences, making reasonable effort to preserve the student's access to educational services and activities;
 - (ii) a process to determine and provide any needed resources related to the underlying cause of the incident;
 - (iii) supportive measures designed to preserve the student's access to educational services and opportunities while protecting the safety and well-being of other students; and
 - (iv) a process to remove the student from school in an emergency situation, including a description of what constitutes an emergency.
2. The school shall notify the parent of a student involved in the incident when the action plan is created.
 3. The school shall provide parents with timely updates regarding the implementation of the action plan, including progress on safety and support measures. Updates shall include, as appropriate and consistent with FERPA and other student privacy laws, the outcome of the investigation, safety considerations, and the school's process for addressing the incident.
 4. The action plan may not require the student to whom the incident was directed to change the student's educational schedule or placement, or participation in a school-sponsored sport, club, or activity. If a parent declines to participate after the school attempts to involve the parent, the school may develop and implement the action plan without the parent's involvement.

I. Appeals

1. A complainant or alleged perpetrator may appeal investigative procedures through Excelsior Academy's applicable grievance process. An appeal is limited to whether the procedures in this policy were followed or whether new evidence not reasonably available during the investigation should be considered. Disagreement with the outcome alone is not grounds for appeal.

V. Investigations

Excelsior Academy will promptly and reasonably investigate allegations of abusive conduct, bullying, cyberbullying, harassment, or hazing. Excelsior Academy investigators, which may include the school counselor, and school directors, will be responsible for handling all complaints by students and employees alleging abusive conduct, bullying, cyberbullying, harassment, or hazing.

It is Excelsior Academy's policy, in compliance with state and federal law, that students have a limited expectation of privacy on the school's Internet system, and routine monitoring or maintenance may lead to discovery that a user has violated district policy or law. Also, individual targeted searches will be conducted if there is reasonable suspicion that a user has violated policy or law.

- A. If a student or employee records or shares an incident of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation, the school shall:
 1. Review the recording as part of the investigation process;
 2. Determine whether the recording was shared for the purpose of reporting or stopping misconduct, or if it was shared in a way that further humiliates or retaliates against another individual;
 3. Ensure that students or employees who appropriately share recordings with school officials for reporting purposes are not disciplined; and
 4. Take disciplinary action, up to and including suspension or expulsion, or loss of extracurricular participation for students, and up to and including termination for employees, who share recordings in a manner that perpetuates abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation.
- B. Personal electronic devices of any student suspected of violation of this policy may be confiscated for investigation and may be turned over to law enforcement.

VI. Training

A. All students, staff, and volunteers at Excelsior Academy will receive annual training from a qualified professional regarding abusive conduct, bullying, cyberbullying, harassment, hazing, and retaliation.

1. This training will address:

- a) overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior
- b) relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting an individual to assault another individual, and social isolation;
- c) abusive conduct, bullying, cyberbullying, harassment, and hazing of a sexual nature or with sexual overtones;
- d) cyberbullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging, or any other electronic means for aggression inside or outside of school
- e) civil-rights violations, including training and education specific to bullying based upon students' actual or perceived identities, and conformance or failure to conform to stereotypes. Training on civil rights violations will include compliance when civil rights violations are reported.
- f) awareness and intervention skills such as social skills training.
- g) how bullying, cyber-bullying, hazing retaliation, and abusive conduct are different from discrimination and may occur separately from each other or in combination;
- h) how bullying, cyber-bullying, hazing, retaliation, and abusive conduct are prohibited based upon the students' or employees' actual or perceived characteristics, including race, color, national origin, sex, disability, religion, gender identity, sexual orientation, or other physical or mental attributes or conformance or failure to conform with stereotypes;
- i) the right of free speech and how it differs for students, employees, and parents; and
- j) safe digital citizenship.

2. The school shall:

- a) distribute this policy annually to employees, parents, and students;
- b) require each employee, parent, and student who is at least eight years old to sign a statement annually acknowledging receipt of the policy; and

- c) keep a copy of each signed statement
 - d) maintain training participant lists or signatures and the date of training, and provide the information to the Utah State Board of Education upon request.
- B. Volunteers are under direct supervision of a licensed educator who is responsible for ensuring the volunteer is trained in the above areas. Volunteers are required to report to their supervising staff member if they are notified of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation incidents among students or if they have reason to suspect such an incident. Volunteers are prohibited from engaging in activities outlined in this policy themselves and will be asked to leave Excelsior Academy if in violation of this policy.
- C. Pursuant to 53G-9-702, Excelsior Academy will implement a youth suicide prevention program for students.
- D. All licensed educators must complete 2 hours of professional development of youth suicide prevention training once every license renewal cycle. To the extent possible, other programs or initiatives designed to provide training and education regarding the prevention of abusive conduct, bullying, cyber-bullying, harassment, hazing, and retaliation will be implemented.
- E. In addition to training for all school employees, students, employees, and volunteer coaches involved in any extra-curricular activity shall:
 - 1. participate in abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation prevention training prior to participation in the extra-curricular activity;
 - 2. repeat abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation prevention training at least every three years;
 - 3. be informed annually of the prohibited activities list provided previously in this Policy and the potential consequences for violation of this Policy.

VII. Additional Notes

- A. 53G-9-605 requires that this policy be developed with input from (1) students, (2) parents, (3) teachers, (4) school administrators, (5) school staff, or (6) law enforcement agencies.
- B. All information received in a complaint, names of complainants shall be treated with the utmost confidence to the extent possible. Administrators shall notify complainant before revealing their name.
- C. A student assessment of the prevalence of bullying in Excelsior Academy, specifically locations where students are unsafe and additional adult supervision

may be required, such as playgrounds, hallways, and lunch areas, will be provided on a bi-annual basis.

- D. This policy does not prohibit expressive activity protected by the First Amendment of the United States Constitution. However, if off-campus speech that may constitute abusive conduct, bullying, cyber-bullying, harassment, or a hazing incident creates a substantial disruption to the school environment, under *Tinker v. Des Moines, Excelsior Academy* may take disciplinary action against the student who initiated the speech. Factors that Excelsior Academy may consider in determining whether a substantial disruption has occurred are:
1. whether there is a verbal or physical confrontation over the incident at school;
 2. whether there is likely to be a verbal or physical confrontation based on evidence of a prior relationship between the victim and the student who initiated the speech;
 3. whether any part of the speech that gave rise to the incident was repeated at school;
 4. whether students are discussing the incident during class or if it otherwise is disrupting school work;
 5. whether there is a widespread whispering campaign sparked by the off-campus incident that disrupts the school environment and students' abilities to focus on school;
 6. whether administrators who dealt with the incident were pulled from their ordinary tasks to address the incident and how much time it took out of an administrator's day to do so;
 7. whether speech similar to the off-campus speech in this incident has occurred in the past and has resulted in violence or near violence at school;
 8. whether there is a negative effect on classroom activities as a result of the off-campus incident;
 9. whether the speech was violent or whether there is a history of violence from the student/s who initiated the speech; (Note: true threats are not protected by the First Amendment if it advocates "imminent" violence or unlawful conduct. Thus, a message that threatens physical harm, even if it isn't meant to be serious, may not be protected by the First Amendment and the person who utters such a message may be disciplined by Excelsior Academy.
- E. Excelsior Academy will complete annual reporting required by Utah Code 53E-3-401 and R277-613.