



1

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### Who or What is Covered

- The school district employees, agents, and volunteers are covered by liability insurance while acting **within** the scope of their duties
- Intentional wrongs, acts, or crimes are **excluded**
- **PLEASE ALERT ASSISTANT COACHES TO THIS STANDARD!**

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2

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### Top Ten Sports Law Issues Impacting School Athletics Programs (NFHS-2019-20)

1. Concussion management and return-to-play protocols
2. Liability for sports injuries and the duties of athletics personnel
3. Social media issues and school authority to sanction student-athletes
4. Constitutional rights of student-athletes
5. Hazing in athletics programs
6. Sexual harassment in athletics programs
7. Transgender policies for athletics programs
8. Disabilities law applied to athletics programs
9. Title IX & gender equity in athletics programs
10. Retaliation against complainants

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3

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### Quote from Clear Risk Personnel

- “Major issue we see is coaches having inappropriate relations with student athletes. The focus should be on boundary training, school policy, and quarterly reminders of these trainings and policy.”

Supervision- Maintaining a Safe Environment

- Planning
- Safe Transportation
- Duty to **select, train, and supervise** Coaches

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4

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### Problem Defined

**Reactive**  
Crisis Response

**Proactive**  
Prevention  
Intervention

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5

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Inappropriate Actions and/or Omissions

Boundary Invasions

Modeling Appropriate Behavior and Confronting Inappropriate Behavior

Maintaining Professional Boundaries

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## Statutes Pertaining To Boundary Issues

### Know your State Statute

1. Awareness/Inquiry
2. Reporting mandates
3. Training requirements

➤ Do you take the time to discuss State Laws with your coaches?

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7

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## Washington Laws

- WAC: 181-87 (Code of Professional Conduct)
- WAC: 181-87-060 (Disregard of Students- treatment, supervision, instruction & assessment of students)
- WAC: 181-87-080: (Sexual Misconduct)
- WAC 181-86-070: Unprofessional conduct or lacks good moral character
- WAC: 181-86-013 (Criminal Convictions)
- WAC: 181-86-110 (Notice to OSPI of Professional conduct)
- WAC: 382-190-057 (Sexual Harassment Policy- Required)
- WAC: 392-190-058 (Sexual Harassment Policy-Notification)
- RCW 26. 44. 030
- RCW 28A. 320.160
- RCW 28A. 400.317
- RCW 28A. 640-020

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8

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## Legal Duties

### What is a "Legal Duty"?

A legal duty is **an obligation, created by law or contract**. A legal duty requires a person to conform their actions to a particular standard. And it also carries with it a recognition that the law will enforce this duty to the benefit of other individuals to whom this duty is owed.


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9

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## Perspective

- **1 in 716 school employees are violators**
- 99% are NOT violators**



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10

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## Professional Boundary

- In a professional staff/student relationship, school employees maintain boundaries that are consistent with the legal and ethical duty of care that school personnel have for students.
- A boundary invasion is an act or omission by a school employee that violates professional staff/student boundaries and has the potential to abuse the staff/student relationship.
- Seattle Prep (2023)
- Franklin HS (2023)
- North Central HS (Spokane) (2023)
- Tahoma School District (2016- 2023- 3.9 million settlement)
- Washington Supreme Court Holds SD liable for employees sexual misconduct
- Study finds 11.7% of recent grads report educator sexual misconduct (May 2023)

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11

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## What would you do?

- Takes night classes with a student at the local community college
- Keeps a student until 10pm working on a project
- Acts like a child at times when around the student
- Student pats staff member on the butt during passing time in the hall
- Teacher takes student on family vacation with husband and kids
- Provides student with "counseling like" information discussing family personal matters
- Sends students on personal errands during school day driving his (teacher) car
- Exchanging gifts, cards or letters with individual student
- Disclosing personal, sexual, family, employment concerns with student
- Socializing with student outside of school sponsored events
- Giving a student a ride home in a vehicle in a non-emergency situation

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12

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### General Rule

“It’s the general rule that school employees can be disciplined for off-duty conduct if the school district can show that the conduct had an adverse impact on the school or the teacher’s ability to teach.”  
(Supreme Court Ruling 2004)

**NOTE: Do your off-campus coaches know this?**

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13

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### Dynamics

Coaches are generally admired by kids and parents alike and, like priests/clergy, might be the last people suspected of abuse. However, as a profession, coaching has one of the highest rates of sexual misconduct complaints.

A North Carolina study of schools found that the No. 1 reason for the dismissal of a coach, accounting for 1 in every 5 firings, was not a team’s performance, but the coach’s inappropriate relationship with a student.

The Seattle Times Pulitzer Prize winning series entitled “*Coaches Who Prey*” disclosed that Washington teachers who coach are three times more likely to be investigated for sexual misconduct than non-coaching teachers

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14

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### Dynamics

Add to this the fact that many athletes, and some parents, actually “look the other way” when misconduct occurs. For the love of the sport and the prospect of more playing time, student athletes will sometimes endure sexual innuendo, harassment and boundary invasions.

Athletes generally trust their coaches, who are often celebrities in town, which can open the door for misconduct. Looking the other way is not unique to athletes, the truth is that many administrators fear the consequences of “outing” a scandal making themselves and their districts look bad and upsetting the community

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15

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### Things to consider

- Is there a developing pattern?
- Are others beginning to talk about it?
- Are kids talking about it?
- Is there social media traffic (kids might share)?
- What is your role?
- Perceptions are real!

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16

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17


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### Boundaries can be:

1. Physical:  
*Inappropriate touching or handling of a student-*
2. Emotional  
*May fall into grooming category- process to begin separation of victim from friends, parent etc.*
3. Social-  
*Use of social media with suggestive comments- also a grooming technique often looking for the word NO*

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18


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## Definitions


An **act** or **omission** by a school employee that has the potential to violate the professional adult/student working relationship.

- Not reporting (omission)
- Allowing inappropriate conversation (can include locker rooms)
- Adult responsibility to determine boundaries





19

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## Definitions

### Sexual Harassment:


- Behavior characterized by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation. Refers to offensive conduct, such as comments about a student's/child's physical characteristics, sexually suggestive or offensive remarks, etc. that interferes with the student's/child's ability to benefit from school.

### Sexual Abuse:

- Criminal sexual conduct that involves physical contact between the abuser and the victim.




20


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## Definitions

**Deliberate Indifference-** When a school district employee, agent, or volunteer chooses to act outside the policies, procedures of the district and/or the rules and regulations governing the activity, the person may be guilty of deliberate indifference and therefore exposing themselves to **personal liability**




21

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## Definitions

### Sexual Grooming:

Increasingly invasive and inappropriate actions deliberately undertaken with the aim of befriending and establishing an emotional and/or physical connection with a child, to lower the child's inhibitions in preparation for sexual abuse.




22

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## Definitions

### Sexual Grooming:

- Favoring certain students by inviting them to come to the classroom during non-class times;
- Getting a student out of class repeatedly to visit a teacher;
- Talking to a student about problems not normally discussed with an adult;
- Telling a student "secrets" or having secrets; and
- Allowing the child to get away with inappropriate behavior.




23

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## "Red Flags"

### Sexual Grooming:

- Favoring certain students by inviting them to come to the classroom at non-class times;
- Getting a student out of class repeatedly to visit a teacher; • Talking to a student about problems not normally discussed with an adult;
- Telling a student "secrets" or having secrets; and
- Allowing the child to get away with inappropriate behavior.
- Providing students with a ride in a personal vehicle
- Extending contact beyond the school day for personal purposes;
- Telling sexual jokes to students/discussing sexual topics with students;
- Using e-mail, text-messaging, or web sites to discuss personal topics or interests with students




24

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## Definitions

Sexual Grooming:

- Sexual misconduct or abuse by educators is normally always preceded by sexual grooming.
- Since sexual grooming is almost always accomplished through boundary invasions, all boundary invasion behavior is suspect and must be examined.
- Coaches have significantly more opportunity to engage in this kind of behavior




25

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## Grooming: 6 Step Process

- Identify a vulnerable child
- Gaining the victim's trust
- Filling a need
- Isolate the child
- Sexualizing the relationship
- Maintaining control




26

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## Sexual Grooming vs Boundary Invasion

- Grooming is a term used after the fact
- Grooming MAY have played a part
- Not all Boundary Invasions involve Grooming
- But ALL Grooming is a Boundary Invasion






27


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## Two Kinds of Boundary Invasions

- Appropriate for educational, health, and safety reasons
- Inappropriate because they lack such valid reasons




28

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## Report or Not?

- Consider each alleged complaint separately then decide.
  - Report or not to your school administrator?
  - If unsure, get help!





29

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## Duty to Provide a Safe Environment

Do our coaches support a healthy culture?  
Do our coaches apply HIB training?  
Do our coaches promote a "classroom environment?"  
Do we provide our coaches with relevant in-service instruction?





30




## Other Areas Of Concern

- Hazing
- HIB
- Body Shaming
- Physical Contact with Athletes
- Inappropriate Language
- Physical Punishment and Coaching by Fear
- Inappropriate Dress
- Administration of Medication




31




## HIB

1. **Can HIB be considered a Boundary Invasion Issue?**
2. **Can staff be reprimanded for violation of HIB policies?**
  1. Yes. Remember, "staff" includes everyone on staff, administrators, teachers, counselors, nurses, bus drivers, kitchen staff, custodians, Para pros, subs, temps, and volunteers. Everyone.
  2. **Staff who bully students** may be subject to disciplinary action up to and including termination.
3. **Nearly 50% of educators nationwide consider bullying the biggest issue among school discipline problems!- ALL STATES HAVE HIB POLICIES!**
4. **Do your Coaches know yours???**




32



## HIB

- Can HIB be considered a boundary invasion issue?
- Can staff be reprimanded for violation of HIB policies?
  1. Yes. Remember, "staff" includes everyone on staff, administrators, teachers, counselors, nurses, bus drivers, kitchen staff, custodians, Para pros, subs, temps, and volunteers. Everyone.
  2. **Staff who bully students** may be subject to disciplinary action up to and including termination.
- **Nearly 50% of educators nationwide consider bullying the biggest issue among school discipline problems! ALL STATES HAVE HIB POLICIES!**
- Do your coaches know yours?



33




## School, District, and State Regulations DO NOT Differentiate

- Is it bullying or motivation?
- What are the perceptions of others? (observer filming)
- Is it behavior common to a classroom setting?
- "Coaches behavior is often viewed in the gray area"
- The law is clear; bullying (cyber, verbal, and physical) is against the law (HIB)

*'HS Basketball Coach Resigns After Video of Locker Room Profanities Spreads Online'*



34




## Can Hazing be considered a Boundary Invasion?


### Washington Hazing Law- What's Yours!

#### 28B.10.900 to 28B.10.902

- **Misdemeanor**—any organization that knowingly permits hazing is strictly liable for harm caused by persons or property.
- **Directors of organization may be held individually liable**. The definition limits hazing to students attending institutions of higher learning or post-secondary institutions.
- **Two high school coaches and a player in Massachusetts were charged this week for their alleged roles in hazing incidents earlier this year.**




35




## RCW 28B.10.901

### Hazing prohibited—Penalty (2023)

- **Washington is the 17<sup>th</sup> state to include potential felony charges in hazing cases**
- **New Mexico State Fires First-Year Coach Heiar Amid Hazing Scandal**
- **Lawsuit Seeks \$1.5M After Peanuts Placed in Allergic Football Teammate's Locker**




36




## Who, Where, and When

- Locker rooms 41%
- Gymnasium 18%
- Football field or practice 31%
- Initiated by varsity players 80%
- Parents and administrators unaware 70%
- Coaches not present 80%
- **Coaches present 20%**




37



## Strategies For Prevention Of Boundary Invasions In Athletics

- Educate students and parents on how to identify inappropriate behavior and to report inappropriate boundary invasions to administrative personnel to make them aware of the issue for further investigation.
- With student athletes, be particularly mindful of the strength of the bond with coaches when addressing participation in sports.
- Notify all employees that inappropriate boundary invasions will not be tolerated. Rinse and repeat.
- Athletic Directors and Principals must take an active role in this process. (Train the Trainers!)
- Remain observant and have employees do the same



38




## Hazing Hot Spots

- Locker Rooms
  - Lack of Locker Room Supervision Costs District \$3.25M
- Busses




39




## Strategies For Prevention

- Be clear about the fact that there is no reasonable expectation of privacy when using school-owned technology AND that private use of social media has limits!
- Clearly reinforce the prohibition against the release and/or use of confidential information, e.g., personal information on students, co-workers, and supervisors.
- Post the rules regarding the use of technology on websites and in classrooms, highlighting rules pertaining to social networking and what to do if a student feels victimized.




40




## Reporting Suggestions:

- Train all employees how to identify “red flag” behaviors
- Have a procedure of communication in place
- Know your chain of command, reporting procedure in your district/state




41



## The Problem with Boundary Invasion Reporting

- Boundary invasion and being a caring, nurturing employee may at times look the same
  - “I don’t want to get anyone in trouble”
  - “He/she is so popular, kids just like him”
  - “I don’t want to overreact”
- The above provide the avenue for the offender’s success
- It is our challenge to know the difference
- Err on the side of safety of children
- **NOTE: Man charged in UP abuse case threatened kids to keep them quiet**



42



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### Excuses for "Not Speaking Up"

- "I'm not a teacher"
- "I don't know what to do"
- "Why should I get involved?"
- "It a good friend of mine"
- "Its not my student"
- "Its not my job"
- "I don't want to hurt the teacher"

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43

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### Have Protections in Place

1. Solid policies & procedures
2. Effective staff training
3. Follow policies and procedures
4. Student/Parent/Athletic handbooks (rights and responsibilities)
5. Staff/Teacher handbooks
6. Follow up on reports of boundary invasions
7. Documentation of the above

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### Which is your District?

<p><b>Institutional Amnesia</b></p> <ul style="list-style-type: none"> <li>➤ Oral Reprimands</li> <li>➤ Oral Cautions</li> <li>➤ Destroy derogatory personal file material</li> <li>➤ No one in charge of keeping track</li> </ul>	<p><b>Institutional Memory</b></p> <ul style="list-style-type: none"> <li>➤ Written reprimands</li> <li>➤ Sexual misconduct documentation in central location</li> <li>➤ Title IX Officer in charge of keeping track</li> </ul>
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**The faintest ink is better than the finest memory**

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**Steve = Source?**

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46

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### Summary Statements

**Know:**

- *The difference between boundary invasion and sexual grooming*

**Understand:**

- *The importance of addressing the problem of BI in our schools*

**Report:**

- *Process and procedures of BI issues to the proper authority*

**Anticipate:**

- *Anticipate the press- avoid the crisis mode- have a plan!*

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47

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### PEOPLE NOWADAYS

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48



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If the Titanic sunk in 2024 🙄



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49

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## Social Media Networking

- How can it be used? (Dos and Don't)
- What limits do we need?
- Does your school have a social media policy?
  - **Yes/No**
  - **Is it enforced?**
  - **Is it effective?**
- Have policies been updated recently?
- Are there clear guidelines and consequences for the use of SM?

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50

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**REMINDER- WHEN WE TALK ABOUT OUR KIDS, REMEMBER TO SPEAK-**

- About professional topics
- In a professional manner
- In professional ways (SM)
  - **If you have a Social Media policy, follow your guidelines and remind those who don't- reminding each of us the importance of team culture**

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51

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## Student/Coach/Teacher Online Behavior

- "Friending" students
- Is it a good idea? In case you needed an answer: No, it is not
- Employees may open themselves up to numerous issues . . .
  - Students can see personal information.
  - Parents do not necessarily know the nature of a coach's communication with their children.
- Does a coach really want to be able to see everything their athletes are doing?
- What happens if the coach discovers inappropriate material online?
- Gaining access to student passwords - privacy issues?

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52

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## Coaching Communications

- At times, coaches may use cell phone texting to contact students about team related matters i.e. cancelled practices, cancelled games, etc.
- As with any other technology, there are risks associated with allowing coaches and students to text each other.
- Texting policies provide guidance as to when texting is permitted between coaches and students and what types of messages are unacceptable and could result in discipline.

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53

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## What Not To Do...

In one situation, a coach was charged with and **convicted** of sending inappropriate text messages to a student. At the time, the student was 14-years-old.

- A sample of his texts: "please don't call me a creeper for trying to get a picture, or for what I'm about to say." "your looks...you are incredibly attractive!"
- You're crazy pretty and you have a very hot body! (remember, telling you in a non-creepy way!) you always look so good in everything you wear!
- You're funny. You're flirty. You're pretty much super hot! If I was in your grade, you would be the one girl that I would go after!
- You would be the #1 on my list! You are freaking hot! Absolutely no other way to say it! o "there is no way that I would be interested in anyone else in that school if I was there! I have no idea why you didn't see it, but you catch every guy's eye when you're around!"
- Every guy! (and I think you could give me a pic if you wanted to...not the hot shower...yet, but another pic just for me...for spilling my guts!) "I really hope you don't act weird around me now. Heck, you did at one time put your hand in my pocket for candy :)"

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54

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### Texting Policy

- If your district allows coaches to communicate with students via texting, the district should have a texting policy.
- There should also be a consent form signed by each athlete's parents.

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55

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### Texting Policy

List Appropriate Uses, such as:

- A school district employee must receive written permission from students and parents if a student is under the age of 18 to use cell phone texting prior to use of such technologies and must specify how and when he or she plans to use texting. If a student or parent refuses to accept text messages from an employee, the school district employee must use an alternative means of communication without any penalty to the student involved.
- A district employee may maintain a private address book with student cell phone numbers. However, the employee must protect student privacy rights and ensure that the numbers are not available to unauthorized individuals under any circumstances.

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56

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### Texting Policy

List Appropriate Uses, such as:

- The content of all text messages must directly involve a school-related subject matter. Cell phone texting should never be used to conduct a personal conversation with a student.
- If an employee receives an inappropriate text message response from a student, it is the responsibility of that employee to contact a student's parent and school administration immediately to address the behavior.
- An employee must use text messaging sparingly. A student may incur charges from his or her cellular phone service provider for use of text messaging. Frequent text messaging may be considered harassment as well.

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57

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### Texting Policy

Have the employee sign a copy of the policy.

- Inform employees that there is no expectation of privacy when messages are sent using district technology.
  - Best practices tip: Get parent phone numbers and copy parents on any text sent to students or set up a district-approved system whereby coaches are required through the texting policy to use the system to text students.
    - Remind 101-
    - Wiggle
    - Athleon
    - RainedOut
    - ClassParrot
    - ClassPager
    - gText

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58

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### Texting Consent Form

- \_\_\_\_\_ (an) employee(s) at School District, would like to send you/your student cell phone text messages regarding important school related information. However, the district recognizes that you may not wish to receive messages for personal or financial reasons. By signing and returning this agreement, you may specify your choice as to whether you are willing to participate in this type of communication. Please note that a student will not be penalized for refusing to accept cell phone texts from the school district.
- All employees of the school district who utilize this form of communication are required to sign the School District Cellular Phone Texting Agreement, and must comply with the rules and regulations explained by that Agreement. A copy of the Agreement is attached for your review. If at any time you believe a school district staff member has violated this agreement, you should report such behavior to \_\_\_\_\_.
- If you wish to rescind your permission to accept text messages from the school district, you may do so at any time in writing by sending a letter to \_\_\_\_\_. Such rescission will take effect upon receipt by the school district.
- Please check one of the choices below:
- I GRANT PERMISSION for the abovementioned employees of the School District to send me/my child cellular phone text messages for school related purposes. I further recognize that I may incur charges from my cellular phone service provider for sending or receiving text messages and hereby agree to take full financial responsibility for those charges.
- I DO NOT GRANT PERMISSION for the abovementioned employees of the School District to send me/my child cellular phone text messages.

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59

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**...School District releases wrestling coach after social media post appears to mock death of George Floyd**

'Not dead yet.' Wrestling coach came under fire for a post that appeared to make light of George Floyd's death under Minneapolis policy custody.

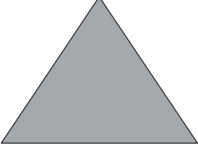
... is no longer employed by the school district. His behavior was not consistent with our equity initiatives and nondiscrimination policies."

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60

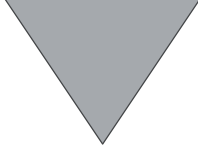


**Rights**




Rights decrease when leadership duties increase

**Responsibilities**



Responsibilities increase when leadership duties increase



61



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62