

## 3A.01.008 **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 and 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.

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.** "Bullying" means a school employee or student intentionally committing a written, verbal, pictorial, digital, or physical act against a school employee or student that a reasonable person under the circumstances should know or reasonably foresee will have the effect of:

1. causing physical or emotional harm to the school employee or student;

2. causing damage to the school employee's or student's property;
3. placing the school employee or student in reasonable fear of:
  4.
    - a) harm to the school employee's or student's physical or emotional well-being; or
    - b) damage to the school employee's or student's property;
  4. ~~b~~ creating a hostile, threatening, humiliating, or abusive educational environment due to:
    - a~~f~~) the pervasiveness, persistence, or severity of the actions; or
    - b~~f~~) a power differential between the bully and the target. ~~or~~
  5. ~~e~~ substantially interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities, or benefits.
  6. The conduct described above constitutes bullying, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in the conduct.
  7. In addition to the above, Excelsior Academy considers bullying to be aggressive behavior that:
    - a. is intended to cause distress and harm;
    - b. exists in a relationship in which there is an imbalance of power and strength; and
    - c. is repeated over time.

**CB.** "Civil rights violation" means bullying (including cyberbullying), harassing, or hazing that is targeted at a federally protected class.

**DE.** "Cyber-bullying" 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.

**"Cyberbullying"** means:

1. ~~using the Internet, a cell phone, or another device to~~
2. ~~send or post text, video, or an image with the intent or knowledge, or with reckless disregard, that the text, video, or image will hurt, embarrass, or threaten an individual,~~

~~3. regardless of whether the individual directed, consented to, or acquiesced in the conduct, or voluntarily accessed the electronic communication.~~

**E****D**. “Federally protected class” means any group protected from discrimination under federal law.

~~1. Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, or national origin;~~

~~2. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex;~~

~~3. Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990 prohibits discrimination on the basis of disability;~~

~~4. Other areas included under these acts include religion, gender identity, and sexual orientation.~~

**F****E**. “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.

**G****F**. “Hazing”

1. 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:

(a)

(i) endangers the mental or physical health or safety of a school employee or student;

(ii) 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;

(iii) 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

(iv) 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

(b)

- (i) 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
- (ii) 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.

2. The conduct described in 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.

~~“Hazing” means intentionally or knowingly committing an act that:~~

- ~~1. endangers the physical health or safety of a school employee or student;~~
  - ~~a. involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;~~
  - ~~b. involves consumption of any food, liquor, drug, or other substance;~~
  - ~~c. involves other physical activity that endangers the physical health and safety of a school employee or student; or~~
  - ~~d. involves physically obstructing a school employee's or student's freedom to move; and~~
- ~~2. is done for the purpose of initiation or admission into, affiliation with, holding office in, or as a condition for, membership or acceptance, or continued membership or acceptance, in any school or school sponsored team, organization, program, or event; or~~
- ~~3. if the person committing the act against a school employee or student knew that the school employee or student is a member of, or candidate for, membership with a school, or school sponsored team, organization, program, or event to which the person committing the act belongs to or participates in.~~

~~4. The conduct described in Subsection "F" constitutes hazing, regardless of whether the person against whom the conduct is committed directed, consented to, or acquiesced in, the conduct.~~

**H**~~G~~. "Parent" means a student's guardian.

**I**~~H~~. "Retaliate~~ion~~" means an act ~~or of~~ 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.

**J**~~I~~. "School" means any public elementary or secondary school or charter school

**K**~~J~~. "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.~~all others employed, directly or indirectly, by the school.~~

**L**~~K~~. "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 ~~or harassing~~ a school employee or student:

1. on school property;
2. at a school related or sponsored event;
3. in a parent's 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.(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, **harassing**, cyberbullying, **harassment**, hazing, or retaliation
- D. No school employee or student may make a false allegation of **abusive conduct**, bullying, cyberbullying, **harassing****harassment**, hazing, or retaliation against a school employee or student.
- E. Any **abusive conduct**, bullying, **cyberbullying**, **harassing****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.

#### **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, **hazing**, harassment, **hazing**, or **and** 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 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.

1. Excelsior Academy will produce and maintain a record that verifies that the parent was notified of the incident or threat.
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.

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 ~~his~~**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 administrator or designee shall develop an action plan. The action plan shall include:
  - a. safety and support measures for the student or employee who was targeted;
  - b. corrective or disciplinary actions for the individual who engaged in the misconduct;

- c. steps to prevent recurrence of the misconduct, including monitoring or follow-up as appropriate.
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, as requested, regarding the implementation of the action plan, including progress on safety and support measures.

## **V. Investigations**

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

### **Procedures:**

~~Teachers and staff who are aware of an incident will determine if it can be handled within the classroom behavior management procedure.~~

- ~~Classroom Behavior Management Procedure: Students' behaviors are monitored through a color coded behavior chart. Student behavior determines whether they move up or down on the chart throughout the day. It is a redemptive program which allows a student to progress even after making poor behavior choices. Student behavior is reported to parents on a daily learning plan.~~
- ~~Office Referral Procedure: Teachers or staff must complete an office referral for these and other possible misbehaviors; aggressive physical contact with another student, bullying, cyberbullying, harassment, or hazing. A phone call is made to parents of any student who receives an office referral. A copy of the office referral is also sent home to parents.~~

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. ~~Personal electronic devices of any student suspected of violation of the above policy will be confiscated for investigation and may be turned over to law enforcement.~~

If a student or employee records or shares an incident of abusive conduct, bullying, cyberbullying, harassment, hazing, or retaliation, the school shall:

- Review the recording as part of the investigation process;
- 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;

- Ensure that students or employees who appropriately share recordings with school officials for reporting purposes are not disciplined; and
- 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.

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 ~~a friend~~ an individual to assault ~~a child~~ another individual, and social isolation;
- c. **abusive conduct**, bullying, cyberbullying, harassment, and ~~or~~ 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.

2. The school shall:

- a. distribute this policy annually to employees, parents, and students;
- b. require each employee, parent, and student to sign a statement annually acknowledging receipt of the policy; and
- c. keep a copy of each signed statement

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**,**a** 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 **bullying** 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 bullying and hazing prevention training prior to participation in the extra-curricular activity;
2. repeat bullying, cyberbullying, harassment, and hazing 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**, **a** bullying, cyber-bullying, **hazing**, or 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 mean 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.

**Policy Review Schedule:**

**Document History:**

Date Adopted: January 24, 2017 to meet state requirements.

Amended: October 4, 2017 added “abusive conduct” under Prohibitions. Added the Retaliation section, and Administrative Response to Allegations of Bullying and/or Harassment and a few other changes.

Amended: Oct 10-05-2018 Added the “Abusive Conduct” Section

Amended: June 19, 2019 Replaced with this current policy