FIRST READING BY BOARD

po3122

Vol. 35, No. 2 - Special Update - Nondiscrimination - July 2026 WI Replacement NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND ANTI-HARASSMENT

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Replacement Policy - Vol. 35, No. 2 - Special Update - Nondiscrimination

3122 - **NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY, AND ANTI-HARASSMENT**

[DRAFTING NOTE: Wisconsin and Federal law applicable to Wisconsin includes the concepts of gender identity and gender stereotypes/nonconformance within the definition of "sex". Whether the language is included expressly in policy or not, Districts are still required to investigate complaints alleging discriminatory treatment on the basis of gender identity and to remedy violations.]

The Board does not discriminate on the basis of race, color, national origin, age, sex ~~(~~ ~~(including gender status, change of sex, sexual orientation, or gender identity) [END OF OPTION]~~ , pregnancy, creed or religion, genetic information, handicap or disability, marital status, citizenship status, veteran status, military service (as defined in 111.32, Wis. Stats.), ancestry, arrest record, conviction record, use or non-use of lawful products off the District's premises during non-working hours, declining to attend an employer-sponsored meeting or to participate in any communication with the employer about religious matters or political matters, or any other legally protected category in its programs and activities, including employment opportunities.

The Board is committed to providing a work environment that is free from Prohibited Conduct, responding promptly and effectively when it has knowledge of conduct that reasonably may constitute Prohibited Conduct, and addressing Prohibited Conduct in its education programs or activities. This commitment applies to all District operations and this policy applies to Prohibited Conduct occurring within or as a part of the District's education programs and activities, whether on school property or at another location during an activity sponsored by the Board.

Persons who commit Prohibited Conduct are subject to the full range of disciplinary sanctions outlined in this policy.

Definitions:

Words used in this policy shall have those meanings defined herein; words not defined herein shall be construed according to their plain and ordinary meanings.

Bullying means: any unwanted and repeated written, verbal, or physical behavior, including any threatening, insulting, or dehumanizing gesture, by an employee, supervisor, manager, or other member of the District staff, that is sufficiently severe or pervasive to create an intimidating, hostile, or offensive work environment; or unreasonably interfere with the individual's work performance or participation. It may involve: (a) threats; (b) intimidation; (c) stalking; (d) cyberstalking; (e) cyberbullying; (f) physical violence; (g) theft; (h) sexual, religious, or racial harassment; (i) public humiliation; or (j) destruction of property. Bullying rises to the level of unlawful harassment when the conduct is based upon one (1) or more Protected Classes, that is, characteristics that are protected by Federal and/or State civil rights laws and is severe or pervasive enough to alter the conditions of employment or create a hostile environment. Ordinary teasing, horseplay, arguments, and peer conflict do not constitute bullying for purposes of this policy.

Complainant means: an employee who is alleged to have been subjected to conduct that could constitute Prohibited Conduct; or a person, other than an employee, who is alleged to have been subjected to conduct that could constitute Prohibited Conduct and who was participating or attempting to participate in the District's education programs or activities at the time of the alleged Prohibited Conduct.

Complaint means: an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged Prohibited Conduct.

Day(s): Unless expressly stated otherwise, the term "day" or "days" as used in this policy means business day(s) (i.e., days that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

Disciplinary sanctions means: consequences imposed on a respondent following a determination that the respondent engaged in Prohibited Conduct.

Education programs or activities refer to: all the District's operations including, but not limited to, in-person and online/remote educational instruction, employment, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all programs and activities operated by the Board on school grounds or on other property owned or occupied by the Board. It also includes events and circumstances that take place off school property/grounds but over which the District asserts disciplinary authority (e.g., at off-campus activities sponsored by the Board).

Exculpatory evidence means: evidence that is favorable to a respondent because it helps excuse, justify, or absolve a respondent of alleged wrongdoing and tends to establish that a

respondent did not engage in Prohibited Conduct.

Genetic information means: information about: (a) an individual's genetic tests; (b) the genetic tests of that individual's family members; (c) the manifestation of disease or disorder in family members of the individual (i.e., family medical history); (d) an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or (e) the genetic information of a fetus carried by an individual or a pregnant woman who is a family member of the individual and the genetic information of an embryo legally held by an individual or family member using assistive reproductive technology.

Harassment means: any threatening, insulting, or dehumanizing gesture, use of technology, or written, verbal, or physical conduct directed against an employee that (a) places the employee in reasonable fear of harm to their person or damage to their property; (b) has the effect of substantially interfering with the employee's work performance; or (c) has the effect of substantially disrupting the orderly operation of a school. Each of the following types of harassment involves unwelcome physical, verbal, or nonverbal conduct that is based upon an individual's protected characteristic(s) and has the purpose or effect of interfering with the individual's work performance or creating an intimidating, hostile, or offensive work environment.

A. **Age Harassment** means: harassment based on negative perceptions about older workers. It also includes harassment based on stereotypes about older workers, even if they are not motivated by animus, such as pressuring an older employee to transfer to a job that is less technology-focused because of the perception that older workers are not well-suited to such work or encouraging an older employee to retire.

B. **Disability Harassment** means: harassment based upon a person’s disability and includes harassment based upon stereotypes about individuals with disabilities in general or about an individual’s particular disability. It also includes harassment based on traits or characteristics linked to an individual’s disability, such as how the person speaks, looks, or moves. For example, negative comments about an individual's speech patterns, movement, physical impairments, or defects/appearances, or the like. Disability-based harassment includes: (a) harassment because an individual requests or receives reasonable accommodation; (b) harassment because an individual is regarded as having an impairment, even if the individual does not have an actual disability, or a record of disability; (c) harassment because an individual has a record of a disability, even if the individual currently does not have a disability; and (d) harassment based on the disability of an individual with whom the employee is associated. Finally, disability-based harassment may occur where conduct is directed at or pertains to a person's genetic information.

C. **National Origin/Ancestry Harassment** means: harassment due to a person's (or their ancestor's) place of origin. Such harassing conduct can include ethnic slurs or epithets, derogatory comments about individuals of a particular nationality, and use of stereotypes about a person's national origin. Additionally, it can include harassment regarding traits or characteristics linked to an individual's national origin, such as physical characteristics, ethnic or cultural characteristics or customs (e.g., surnames, attire, or diet), or linguistic characteristics (e.g., a person's manner of speaking, non-English language accent, or a lack of fluency in English).

D. **Race/Color Harassment** means: unwelcome physical, verbal, or nonverbal conduct that is based upon an individual's race or color and has the purpose or effect of interfering with the individual's work performance; or creating an intimidating, hostile, or offensive work environment. Such harassment may occur where conduct is directed at the characteristics of a person's race or color, such as racial slurs, nicknames implying stereotypes, epithets, and/or negative references relative to racial customs.

E. **Religious (Creed) Harassment** means: harassment based on a person's surname, religion (including atheism or lack of religious belief), religious traditions and practices, or religious dress/clothing, and includes making offensive comments about the same. It also includes religious slurs or epithets, harassing conduct based on religious stereotypes, and harassment associated with a person's request for and/or receipt of religious accommodation. Religious harassment also involves explicitly or implicitly coercing an employee to engage in religious practices at work.

F. **Sexual Harassment** means (for purposes of this policy and consistent with Title VII of the Civil Rights Act of 1964): unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: (a) submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment; (b) submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (c) such conduct has the purpose or effect of interfering with the individual's work performance; or creating an intimidating, hostile, or offensive working environment. Sexual harassment may involve the behavior of a person of any gender against a person of the same or another gender.

1. Sexual Harassment covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities is not included in this policy. Allegations of such conduct shall be addressed solely by Policy 2266.

2. Prohibited acts that constitute sexual harassment under this policy may take a variety of forms. Examples of the kinds of conduct that may constitute sexual harassment include, but are not limited to:

a. Conduct of a sexualized nature, such as unwanted conduct expressing sexual attraction or involving sexual activity (e.g., unwelcome sexual propositions, invitations, solicitations, and flirtations; unwanted physical and/or sexual contact, including unwelcome and inappropriate touching, patting, or pinching **(X)**; and obscene gestures - ~~**[END OF OPTION]**~~.

b. Sexual attention or sexual coercion, such as demands or pressure for sexual favors (e.g., threats or insinuations that a person's employment, wages, or other conditions of employment may be adversely affected by not submitting to sexual advances; giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship; leering or staring at someone in a sexual way, such as staring at a person's breasts, buttocks, or groin).

c. Rape, sexual assault, or other acts of sexual violence.

d. Discussing or displaying visual depictions of sex acts or sexual remarks (e.g., unwelcome verbal expressions of a sexual nature, including graphic sexual commentaries about a person's body, dress, appearance, or sexual activities; the unwelcome use of sexually degrading language, profanity, jokes or innuendoes; unwelcome suggestive or insulting sounds or whistles; obscene telephone calls, texts, etc.; sexually suggestive objects, pictures, graffiti, videos, posters, audio recordings or literature placed in the work environment; asking or telling about sexual fantasies, sexual preferences, or sexual activities; speculations about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history).

e. A consensual sexual relationship where such relationship leads to favoritism of a subordinate employee with whom the superior is sexually involved and where such favoritism adversely affects other employees or otherwise creates a hostile work environment.

f. Verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping that does not involve conduct of a sexual nature.

g. Non-sexual conduct based on sex, such as sex-based epithets; sexist comments (such as remarks that women do not belong in management or that men do not belong in the nursing profession); or facially sex-neutral offensive conduct motivated by sex (such as bullying directed toward employees of one sex).

h. Harassment based on pregnancy, childbirth, or related medical condition, which may include issues pertaining to lactation, using or not using contraception, or deciding whether to have, or not to have, an abortion.

Not all behavior with sexual connotations constitutes unlawful sexual harassment. Sex-based or gender-based conduct must be objectively offensive (a reasonable person would find it hostile or abusive), subjectively offensive (the complainant actually perceived it as abusive), and either sufficiently severe (a single extremely serious incident) or pervasive (a pattern of behavior), such that it adversely affects, limits, or denies an individual's employment, or creates a hostile or abusive employment environment.

Inculpatory evidence means: evidence that links a respondent to alleged wrongdoing and tends to establish a respondent engaged in Prohibited Conduct (i.e., has culpability).

Military status means: a person's status in the uniformed services, which includes the performance of duty on a voluntary or involuntary basis in a uniformed service, including active duty, active duty for training, initial active duty for training, inactive duty for training, full-time National Guard duty, and performance of duty or training by a member of Wisconsin organized militia. It also includes the period of time for which a person is absent from employment for the purpose of an examination to determine the fitness of the person to perform any duty listed above.

Party means: a complainant or respondent.

Pregnancy, childbirth, or related medical conditions means:

A. ”Pregnancy” and “childbirth” refer to the pregnancy or childbirth of a specific employee and include, but are not limited to, current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth (including vaginal and cesarean delivery).

B. “Related medical conditions” are medical conditions relating to the pregnancy or childbirth of a specific employee, and may include termination of pregnancy, including via miscarriage, stillbirth, or abortion; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; maternal cardiometabolic disease; gestational diabetes; preeclampsia; HELLP (hemolysis, elevated liver enzymes and low platelets) syndrome; hyperemesis gravidarum; anemia; endometriosis; sciatica; lumbar lordosis; carpal tunnel syndrome; chronic migraines; dehydration; hemorrhoids; nausea or vomiting; edema of the legs, ankles, feet, or fingers; high blood pressure; infection; antenatal (during pregnancy) anxiety, depression, or psychosis; postpartum depression, anxiety, or psychosis; frequent urination; incontinence; loss of balance; vision

changes; varicose veins; changes in hormone levels; vaginal bleeding; menstruation; and lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections. The preceding list of related medical conditions is not exhaustive.

Prohibited Conduct means: unlawful discrimination or harassment based on a person's Protected Class(es) or retaliation. Such misconduct involves a violation of Federal and/or State civil rights laws.

Respondent means: a person who is alleged to have engaged in Prohibited Conduct.

Retaliation means: intimidation, threats, coercion, or discrimination against any person by the District, a student, a Board employee, or any other person authorized by the Board to provide aid, benefit, or service under the District's education programs or activities, for the purpose of interfering with any right or privilege secured by Federal or State law, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under applicable Federal or State laws or regulations.

School District community means: students and Board employees (i.e., administrators and professional and classified staff), as well as Board members, agents, volunteers, contractors, or other persons subject to the control and supervision of the Board.

Third Parties means: guests and/or visitors on District property (e.g., visiting speakers, participants on opposing athletic teams, parents), vendors doing business with, or seeking to do business with, the Board, and other individuals who come in contact with members of the School District community at school-related events/activities (whether on or off District property).

Pregnancy, Childbirth, and Related Medical Conditions

The Board will not discriminate against an employee based on the person's current pregnancy, potential or intent to become pregnant, past pregnancy, or medical condition related to pregnancy or childbirth, or because the person uses birth control, or has had or not had an abortion.

Additionally, the Board will provide a reasonable accommodation to an employee's known limitation related to pregnancy, childbirth, or a related medical condition, unless the accommodation will cause the District undue hardship.

The Board will treat pregnancy, childbirth, and related medical conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; accrual of seniority and any other benefit or service; reinstatement; and under any fringe benefit offered to employees by virtue of employment.

The Board will provide reasonable break time for an employee to express breast milk while at work for the first year after the employee's child's birth. The Board will provide the employee with a space, other than a bathroom, that is clean, shielded from view, free from intrusion from coworkers and the public, and which the employee can use as needed to express breast milk. See Board Policy 6700 – Fair Labor Standards Act.

Nondiscrimination Based on Employee's Genetic Information

The Board prohibits discrimination on the basis of genetic information in all aspects of employment, including hiring, firing, compensation, job assignments, promotions, layoffs, training, fringe benefits, or any other terms, conditions, or privileges of employment. The Board also does not limit, segregate, or classify employees in any way that would deprive or tend to deprive them of employment opportunities or otherwise adversely affect the status of an employee as an employee, based on genetic information. Harassment of a person because of the individual's genetic information is also prohibited. Likewise, retaliation against an applicant or employee for engaging in protected activity is prohibited.

District Compliance Officer(s)

[DRAFTING NOTES:

1. **Neola suggests the Board appoint both a male and a female to serve as the District Compliance Officers. By appointing two (2) District Compliance Officers, there should always be a District Compliance Officer available to address a claim that pertains to the other District Compliance Officer. If, however, the Board appoints more than one (1) District Compliance Officer, Neola recommends that it designate one (1) of the District Compliance Officers to retain ultimate oversight over the assigned responsibilities and ensure the Board's consistent compliance with its responsibilities under applicable Federal and State laws that prohibit unlawful discrimination/harassment based on protected classes and retaliation. Alternatively, the Board could appoint a District Compliance Officer and one (1) or more persons to assist the District Compliance Officer with performance of the responsibilities identified in this policy and its accompanying administrative guidelines. Often the person(s) designated to assist a District Compliance Officer is/are called Deputy or Assistant Compliance Officer(s). If the Board elects this alternative approach, it would designate a District Compliance Officer for purposes of this policy, and then designate the other position(s) through its AG. The person(s) in the alternative support role(s) will need to be trained in the same manner as the District Compliance Officer.**

2. **The Board must list in this policy either the Name(s) or Title(s) of the District Compliance Officer(s); while the Board may list both the Name(s) and Title(s), Neola suggests that the Board only list the Title(s)**

in this policy (so the Board does not need to revise/amend the policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name(s) and Title(s) in the requisite notices/postings (e.g., website) and publications (e.g., handbooks).

3. **Reminder: Whenever a new person begins to serve as the District Compliance Officer (or in a support role to the District Compliance Officer), the District needs to make sure the new person is appropriately trained, in a timely manner, to fulfill the responsibilities of the position to which the person is assigned.]**

[END OF DRAFTING NOTES]

The Board designates and authorizes the following individual(s) to coordinate its efforts to comply with the Board's responsibilities under Federal and State laws that prohibit discrimination, including harassment, based on Protected Classes and retaliation (also known as "Civil Rights Coordinator(s)" or "Anti-Harassment Compliance Officer(s)") (hereinafter referred to as the "District Compliance Officer(s)" or "CO(s)"):

Sarah Trimner, Director of Talent and Culture _____
(Name and/or School District Title)
6100 Alderson Street, Weston, WI 54476 _____
(Office Address)
strimner@dce.k12.wi.us _____
(Email Address)
715-359-4221 _____
(Telephone Number)

[DRAFTING NOTE: The District may want to create a static (i.e., fixed) District Compliance Officer -specific email address and phone number that will not change when the person(s) and/or position(s) designated to be the CO(s) change(s) – e.g., CO4CivilRights@(insert District's domain) – which the Technology Director/Department can program to be forwarded to the actual individual(s) serving as the District Compliance Officer(s) at any given time. Likewise, the District may want to establish a static Telephone Number for the position of District Compliance Officer that can be forwarded to, and accessed by, the actual person(s) serving in the CO position(s) at any given time. These two (2) steps will help reduce the information that needs to be updated in policy, AG, and/or the requisite notices/postings and publications when changes occur to the specific person(s)/position(s) designated to serve as the CO(s).]

[DRAFTING NOTE: Complete the following information if the Board appoints more than one (1) District Compliance Officer.]

[X] [DESIGNATION OF A SECOND DISTRICT COMPLIANCE OFFICER]

Kelley Strike, Assistant Superintendent of Operations _____
(Name and/or School District Title)
6100 Alderson Street, Weston, WI 54476 _____(Office Address)
kstrike@dce.k12.wi.us _____

(Email Address)
715-359-4221 _____
(Telephone Number)

[END OF OPTION]

[DRAFTING NOTE: As discussed above, if the Board designates more than one (1) CO, Neola recommends that the District select the following option.]

[X] The Board designates Sarah Trimner, Director of Talent and Culture _____ **[DRAFTING NOTE: Insert Name and/or Title of the District Compliance Officer who is ultimately responsible for the District's compliance with its responsibilities under Federal and State laws that prohibit discrimination/harassment based on Protected Classes and retaliation]** as the individual who is ultimately responsible for oversight over the Board's compliance with applicable Federal and State laws and regulations that prohibit discrimination based on the basis of Protected Classes and retaliation. **[END OF OPTION]**

X ~~**[**~~ **]** The District Compliance Officer may delegate specific duties to one (1) or more designees. ~~**[END OF OPTION]**~~

The contact information concerning the District Compliance Officer(s) will be published on the School District's website **(X)** and annually **[END OF OPTION]**:

A. **(X)** in parent/student and staff handbooks.

B. **( )** in the School District Annual Report to the public.

C. **( )** on each individual school's website.

D. **( )** in the School District's calendar.

E. **( )** _____.

[DRAFTING NOTE: The Board may want to select the following option when the Superintendent is not the CO. While Neola recognizes that this may not always be possible, it may be preferable to have the CO be someone other than the Superintendent because then – if the CO serves as the investigator and decisionmaker – the Superintendent can serve as the appeal decisionmaker or the facilitator for the informal resolution process.]

[X] The District Compliance Officer(s) shall report directly to the Superintendent except when the Superintendent is a party to a complaint (i.e., either the complainant or the respondent). Under such circumstances, the CO(s) shall report directly to **[SELECT ONE OF THE FOLLOWING] ( )** the Board President **(X)** the Board's Legal Counsel **( )** _____ **[OTHER] [END OF INTERNAL OPTIONS]** until the matter in which the Superintendent is a party is concluded. **[END OF OPTION]**

Questions about this policy should be directed to the District Compliance Officer(s).

The CO(s) is/are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination, harassment, retaliation, or denial of equal opportunity/access. The CO(s) shall also verify that proper notice of nondiscrimination for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973 (as amended), Genetic Information Nondiscrimination Act (GINA), and the Age Discrimination in Employment Act of 1975 is provided to staff members and the general public. Copies of the laws and regulations listed above are available upon request from the CO(s).

The CO(s) shall monitor the District's education programs and activities for barriers to reporting information about conduct that reasonably may constitute Prohibited Conduct pursuant to Federal and/or State laws that prohibit discrimination/harassment based on the basis of a Protected Class/Category and retaliation, and take steps reasonably calculated to address such barriers.

Notice of Nondiscrimination

The Superintendent shall provide notice of the Board's policy on nondiscrimination and the identity of the School District's Compliance Officer(s). Such notice will be published on the District's website, posted throughout the District, and included in the District's recruitment statements or general information publications.

Reports and Complaints of Prohibited Conduct and Retaliation

Employees are required to report incidents of Prohibited Conduct and/or retaliation to an administrator, supervisor, or other supervisory employees so that the Board may address the conduct. Any administrator, supervisor, or other supervisory employees who receive such a report shall file it with the CO as soon as reasonably practicable.

Discrimination against an individual based on their sex (including gender status, sexual orientation, and gender identity) is discrimination in violation of Title VII. Specifically, discrimination on the basis of sex stereotyping/gender-nonconformity constitutes sex discrimination. This is true irrespective of the cause of the person's gender non-conforming

behavior. Employment actions based upon an individual's sex could be suspect and potentially impermissible.

COs are required to investigate allegations of Prohibited Conduct involving the discrimination or harassment of an employee or applicant based upon their gender status, sexual orientation, and gender identity.

Any questions concerning whether alleged Prohibited Conduct might violate this prohibition should be brought to the CO's attention promptly.

Employees who believe they have been subject to Prohibited Conduct are entitled to utilize the complaint process set forth below. Initiating a complaint will not adversely affect the Complainant's employment. While there are no time limits for initiating complaints under this policy, individuals should make every effort to file a complaint as soon as practicable after the conduct occurs while the facts are known and potential witnesses are available.

The COs will be available during regular school/work hours to discuss concerns related to Prohibited Conduct or Retaliation. COs shall accept reports of Prohibited Conduct or Retaliation directly from any member of the School District Community or a Third Party, or receive reports that are initially filed with another Board employee.

Upon receipt of a report of alleged Prohibited Conduct or Retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged Prohibited Conduct/Retaliation), or **(X) [OPTION 1]** the CO will designate a specific individual to conduct such a process as identified in a pre-defined list of investigators. **[END OF OPTION 1]** ~~**( ) [OPTION 2]** the Superintendent will designate a specific individual to conduct the process necessary for an informal or formal investigation.~~ ~~**[END OF OPTION 2]**~~ The CO will provide a copy of this policy to the Complainant and the Respondent upon request.

Any Board employee who directly observes Prohibited Conduct/Retaliation is obligated, in accordance with this policy, to report such observations to one of the COs as soon as reasonably practicable. Additionally, any Board employee who observes an act of discrimination/retaliation is expected to intervene to stop the misconduct, unless circumstances make such an intervention dangerous, in which case the staff member should promptly notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO must contact the Complainant as soon as reasonably practicable to advise of the Board's intent to investigate the alleged wrongdoing.

Investigation and Complaint Procedure (See Form 3122 F2)

Except for sex discrimination and/or sexual harassment that is covered by Policy 2266 - Nondiscrimination on the Basis of Sex in Education Programs or Activities, any employee who alleges to have been subjected to Prohibited Conduct or Retaliation may seek

resolution of the complaint through the procedures described below. The complaint procedures involve an investigation of the individual's claims of Prohibited Conduct/Retaliation and a process for rendering a decision regarding whether the charges are substantiated.

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of discrimination or retaliation with the United States Department of Education Office for Civil Rights, the Wisconsin Equal Rights Division, or the Equal Employment Opportunity Commission ("EEOC").

Complaint Procedure

A Complainant who alleges Prohibited Conduct/Retaliation may file a complaint, either orally or in writing: 1) with a Principal; 2) the CO; or 3) to the Superintendent or other supervisory employees. Any complaint received regarding the Superintendent or a Board member shall be referred to the Board's legal counsel, who shall assume the role of the CO for such complaints. Additionally, if the complaint is regarding a CO, the complaint shall be reported to the Superintendent, who shall coordinate with the other appointed/designated CO or, if appropriate, appoint/designate another individual to serve as CO for the complaint regarding a CO.

Due to the sensitivity surrounding complaints of Prohibited Conduct and Retaliation, timelines are flexible for initiating the complaint process; however, individuals are encouraged to file a complaint as soon as reasonably practicable after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a Principal, Superintendent, or other supervisory employees, either orally or in writing, about any complaint of discrimination or retaliation, that employee must report such information to the CO at the employee's first opportunity, as soon as reasonably practicable.

Throughout the course of the process, the CO should keep the parties reasonably informed of the status of the investigation and the decision-making process.

All complaints must include the following information to the extent known: the identity of the Respondent; a detailed description of the facts upon which the complaint is based (i.e., when, where, and what occurred); a list of potential witnesses; and the resolution sought by the Complainant.

If the Complainant is unwilling or unable to provide a written statement including the information set forth above, the CO shall ask for such details in an oral interview. Thereafter, the CO will prepare a written summary of the oral interview, and the Complainant will be asked to verify the accuracy of the reported charge by signing the document.

Upon receiving a complaint, the CO will consider whether any action should be taken in the investigatory phase to protect the Complainant from further Prohibited Conduct or Retaliation, including but not limited to a change of work assignment or schedule for the Complainant and/or the Respondent. In making such a determination, the CO should consult the Complainant to assess whether the individual agrees with the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO still may take whatever actions are deemed appropriate in consultation with the Superintendent.

As soon as reasonably practicable, the CO or designee will initiate an investigation by, at a minimum, confirming receipt of the complaint with the Complainant and informing the Complainant of the investigation process.

Simultaneously, the CO will inform the Respondent that a formal complaint has been received. The Respondent will be informed about the nature of the allegations and, upon request, provided with a copy of any relevant policies and/or administrative guidelines, including this Policy. The Respondent must also be informed of the opportunity to submit a written response to the complaint and the obligation to do so within a reasonable timeframe established by the CO or designee based on the circumstances.

~~**[ ] [OPTION 1]** Although certain cases may require additional time, the CO or designee will attempt to complete an investigation into the allegations of Prohibited Conduct based on a protected class or Retaliation as promptly as reasonably practicable after receiving the formal complaint.~~ **X** ~~**[ ] [OPTION 2]**~~ Investigations shall be completed promptly. What constitutes promptness will depend on the complexity of the issues, the number of incidents or factual elements, the number of witnesses and documents to be consulted, and the availability of witnesses and other evidence. The CO shall keep the Complainant reasonably informed of the investigation's progress. ~~**[END OF OPTIONS]**~~

The investigation will include:

A. interviews with the Complainant;

B. interviews with the Respondent;

C. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations, as determined by the CO;

D. consideration of any documentation or other information presented by the Complainant, Respondent, or any other witness that is reasonably believed to be relevant to the allegations, as determined by the CO.

At the conclusion of the investigation, the CO shall prepare and deliver a written report to the Superintendent that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of the Prohibited Conduct/Retaliation as provided in Board policy and State and Federal law as to whether

the Respondent has engaged in harassment/retaliation of the Complainant. The CO's recommendations must be based upon the totality of the circumstances. In determining if Prohibited Conduct or Retaliation occurred, a preponderance of evidence standard will be used.

[X] The CO may consult with the Board's attorney during the course of the investigatory process and/or before finalizing the report to the Superintendent.

In cases where no District CO is able to investigate a complaint due to concerns regarding conflicts, bias or partiality, or for other reasons that impair the CO's ability to conduct an investigation, the CO may **( )** in consultation with the Superintendent or Board President, if the matter involves the Superintendent, **[END OF OPTION]** engage outside legal counsel to conduct the investigation consistent with this policy.

Absent extenuating circumstances, within a reasonable timeframe after receiving the report of the CO, the Superintendent either must issue a written decision regarding whether the charges have been substantiated or request further investigation. A summary of the Superintendent's final decision will be provided to both the Complainant and the Respondent.

If the Superintendent requests additional investigation, the Superintendent must specify the additional information that is to be gathered, and such additional investigation must be completed as soon as reasonably practicable, taking into account the availability of necessary witness(es) or documents. At the conclusion of the additional investigation, the Superintendent must issue a final written decision as described above.

If the Superintendent determines the Respondent engaged in Prohibited Conduct/Retaliation toward the Complainant, the Superintendent must identify what corrective action will be taken to stop, remedy, and prevent the recurrence of the discrimination/retaliation. The corrective action should be reasonable, timely, age-appropriate, effective, and tailored to the specific situation.

[X] The decision of the Superintendent shall be final.

~~**OR**~~

~~**[ ]** A Complainant or Respondent who is dissatisfied with the final decision of the Superintendent may appeal through a signed written statement to the Board within five (5) days of the party's receipt of the Superintendent's decision. The written statement of appeal must be submitted to the Superintendent, who will forward the request to the Board President.~~

~~In an attempt to resolve the complaint, the Board shall review the findings and may meet with the concerned parties and their representatives within a reasonable timeframe after the receipt of such an appeal. A copy of the Board's disposition of the appeal shall be sent~~

~~to each concerned party within ten (10) days of its decision. The decision of the Board will be final.~~

~~**[END OF OPTIONS]**~~

The Board reserves the right to investigate and resolve a complaint or report of Prohibited Conduct/Retaliation regardless of whether the Complainant pursues the complaint. The Board also reserves the right to have the complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board or its designee.

The parties may be represented, at their own cost, at any of the above-described interviews/meetings.

The right of a person to a prompt and equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as the filing of a complaint with the Office for Civil Rights, the filing of charges with local law enforcement, or the filing of a civil action in court. Use of this internal complaint process is not a prerequisite to the pursuit of other remedies.

Privacy/Confidentiality

The Board will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and the witnesses as much as possible, consistent with the Board's legal obligations to investigate, to take appropriate action, and to conform with any discovery or disclosure obligations.

All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. Respondents must be provided an opportunity to meaningfully respond to allegations, which may include disclosure of the Complainant's identity.

During the course of an investigation, the CO will instruct each person who is interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of an investigation is expected not to disclose to third parties any information that is learned or provided during the course of the investigation.

Remedial Action and Monitoring

If warranted, appropriate remedial action shall be determined and implemented on behalf of the Complainant, including but not limited to counseling services, reinstatement of leave taken due to the Prohibited Conduct/Retaliation, or other appropriate action.

The Board may appoint an individual, who may be a District employee, to follow up with the Complainant to ensure no further Prohibited Conduct or Retaliation has occurred and

to take action to address any reported occurrences promptly.

Sanctions and Disciplinary Action

The Board shall vigorously enforce its prohibitions against Prohibited Conduct by taking appropriate action reasonably calculated to stop and prevent further misconduct.

While observing the principles of due process, a violation of this policy may result in disciplinary action up to and including the discharge of an employee or the suspension/expulsion of a student. All disciplinary action will be taken in accordance with applicable State law and any relevant codes of conduct.

When imposing discipline, the Superintendent shall consider the totality of the circumstances involved in the matter, including the age and maturity level of any student involved. In those cases where discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies.

Where the Board becomes aware that a prior disciplinary action has been taken against the Respondent, all subsequent sanctions imposed by the Board and/or Superintendent shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging Prohibited Conduct/Retaliation, or participates as a witness in an investigation is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce or interfere with any individual because the person opposed any act or practice made by any Federal or State civil rights law, or because that individual made a report, formal complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under those laws and/or this policy, or because that individual exercised, enjoyed, aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by those laws and/or this policy.

Retaliation against a person for making a report of Prohibited Conduct, filing a formal complaint, or participating in an investigation or meeting is a serious violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

Application of the First Amendment

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution. In no case will a respondent be found to have committed Prohibited Conduct based on expressive conduct that is protected by the First Amendment.

Education and Training

All District Compliance Officer(s), and other persons who are responsible for implementing the Board's complaint procedures or have the authority to modify or terminate supportive measures shall receive training related to their duties under applicable Federal and State laws and this policy. ~~**[ ]** The training shall be provided promptly upon hiring or a change of position that alters their duties under this policy, and annually thereafter. **[END OF OPTION]**~~ The training shall not rely on stereotypes involving Protected Classes.

~~**[ ]** Training materials will be made available for inspection upon request by members of the public. **[END OF OPTION]**~~

Recordkeeping (including retention of investigatory records and materials)

The CO is responsible for overseeing retention of all records that must be maintained pursuant to this policy. All individuals charged with conducting investigations under this policy must retain all information, documents, electronically stored information, and electronic media (as defined in Policy 8315 - Information Management) created and received as part of an investigation. Records and materials associated with the implementation of this policy shall be retained in accordance with Policy 8310 - Public Records, Policy 8315 - Information Management, Policy 8320 - Personnel Records, and Policy 8330 - Student Records for the period set in the District's records retention schedule.

These records may include, but are not limited to the following:

A. all written reports/allegations/complaints/statements;

B. narratives of all verbal reports, allegations, complaints, and statements collected;

C. a narrative of all actions taken by District personnel;

D. any written documentation of actions taken by District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities;

E. narratives of, notes from, or audio, video, or digital recordings of witness statements;

F. all documentary evidence;

G. e-mails, texts, or social media posts pertaining to the investigation;

H. contemporaneous notes in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.) pertaining to the investigation;

I. written disciplinary sanctions issued to students or employees and a narrative of verbal disciplinary sanctions issued to students or employees for violations of the policies and procedures prohibiting discrimination or harassment;

J. dated written determinations to the parties;

K. dated written descriptions of verbal notifications to the parties;

L. written documentation of any supportive measures offered and/or provided to the Complainant and/or the Respondent, including no contact orders issued to both parties, the dates issued, and the dates the parties acknowledged receipt; and

M. documentation of all actions taken, both individual and systemic, to stop the discrimination or harassment, prevent its recurrence, eliminate any hostile environment, and remedy its discriminatory effects;

N. copies of the Board policy and/or procedures/guidelines used by the District to conduct the investigation, and any documents used by the District at the time of the alleged violation to communicate the Board's expectations to students and staff with respect to the subject of this policy (e.g., Student Codes of Conduct and/or Employee Handbooks);

O. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;

P. documentation of any training provided to District personnel related to this policy, including but not limited to, notification of the prohibitions and expectations of staff set forth in this policy and the role and responsibility of all District personnel involved in enforcing this policy, including their duty to report alleged violations of this policy and/or conducting an investigation of an alleged violation of this policy; **[REMINDER: Documentation of training should be maintained regardless of whether there is an investigation of an alleged violation of this policy. It is best practice to maintain a log of all staff members who participate in a training, along with the date, time and location of the training, and a copy of the materials reviewed and/or presented during the training.]**

[DRAFTING NOTE: The following options should be selected if the District concludes that the following items are not adequately encompassed in the preceding paragraphs.]

Q. documentation that any rights or opportunities that the District made available to one party during the investigation were made available to the other party on equal

terms;

R. ~~( ) copies of any notices sent to the alleged perpetrator/responding party of the allegations constituting a potential violation of this policy;~~

S. ~~( ) copies of any notices sent to the Complainant and the Respondent in advance of any interview, meeting, or hearing;~~

T. ~~( ) copies of any notices sent to the Complainant and alleged perpetrator in advance of any interview or hearing;~~

U. ~~( ) copies of any documentation or evidence used during informal and formal disciplinary meetings and hearings, including the investigation report, and any written responses submitted by the Complainant or the Respondent.~~

The information, documents, ESI, and electronic media (as defined in Policy 8315-Information Management) retained may include public records and records exempt from disclosure under Federal and/or State law (e.g., student records, medical records).

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Legal
111.31 et seq., Wis. Stats.
111.335(d)(2), Wis. Stats.
118.195, Wis. Stats.
118.20, Wis. Stats.
Fourteenth Amendment, U.S. Constitution
20 U.S.C. 1092(F)(6)(A)(v)
20 U.S.C. 1232g
20 U.S.C. Section 1681, Title IX of Education Amendment Act
20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974
20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act
29 C.F.R. Part 1635
29 U.S.C. 201 et seq., The Fair Labor Standards Act (FLSA)
29 U.S.C. 218d, PUMP for Nursing Mothers Act (PUMP Act)
29 U.S.C. 621 et seq., Age Discrimination in Employment Act of 1967
29 U.S.C. 701 et seq. (in particular 794), Rehabilitation Act of 1973, as amended
34 C.F.R. Part 110 (7/27/93)
38 U.S.C. Chapter 43 4301-4335 (see in particular 4311(a) [prohibits discrimination based on military service] and 4312 [reemployment rights]), Uniformed Services Employment and Reemployment Rights Act (USERRA)
42 U.S.C. 1983
42 U.S.C. 2000d et seq.
42 U.S.C. 2000e et seq., Civil Rights Act of 1964 (e.g., Title VI and Title VII), as amended by the Pregnancy Discrimination Act

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act
42 U.S.C. 2000gg, Pregnant Workers Fairness Act (PWFA)
42 U.S.C. 6101 et seq., Age Discrimination Act of 1975
42 U.S.C. 12101 et seq., The Americans with Disabilities Act of 1990, as amended