

HARASSMENT BASED ON A LEGALLY-PROTECTED STATUS

Policy 512

~~Sample Policy 1~~ Waunakee Community School District

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~~{This sample policy has been written to coordinate with PRG 511 Sample Policy 1 (as well as 511 Sample Policy 2) and with the complaint procedures found in PRG 511 Sample Rule 1. This sample policy defines and provides examples of unlawful harassment as a form of employment discrimination under state and federal law, specifically including sexual harassment and the creation of a hostile work environment based on any legally-protected classification. A policy that defines harassment and provides specific examples of prohibited conduct is recommended because, in some cases, employer liability depends on the extent to which the employer took reasonable steps to prevent and correct harassing conduct. Adopting such a policy, particularly if the policy is well-communicated to employees and supported by training activities and an effective complaint procedure, is one way to show that the district has taken such steps. IMPORTANT: The reference to the definition of "sexual harassment" under the Title IX regulations that appears in this sample is a reference to definition that was created by the 2020 amendments to the regulations. This sample assumes that the district is adopting and implementing the PRG sample policies under topic 113 and topic 511 that have been updated in 2024 to reflect the 2024 federal Title IX regulations.}~~

This policy addresses unlawful, employment-related harassment that is based on a person's legally-protected status or classification. Such harassment is also prohibited by the District's equal employment and nondiscrimination policy, but benefits from further definition and attention. ~~Include for emphasis, if desired: "It is important, for example, for District employees at all levels to be able to identify different types of unlawful harassment, to understand their right to be free from all forms of unlawful harassment, and to clearly understand that the District imposes an expectation and responsibility on every employee — not just supervisors and administrators — to avoid engaging in conduct that constitutes or that could directly contribute to a finding of unlawful harassment in the workplace. The District prohibits all such conduct not only because of the District's legal obligations, but also because such conduct is detrimental to the educational and working environment and to the well-being of District employees."~~

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Defining and Identifying Harassment in the Workplace. Although different state and federal laws establish different standards to define conduct that does (or does not) constitute unlawful harassment in the employment context, harassment generally includes conduct that:

1. Is based, in whole or in part, on the person's race, color, ancestry, national origin, citizenship, sex, sexual orientation, marital status, pregnancy, age, disability, religion, creed, or other legally-protected status; **and**
2. Is sufficiently severe or pervasive such that it: (a) creates an intimidating, hostile, or offensive work environment; (b) improperly interferes with a person's ability to perform their job; **or** (c) otherwise adversely affects a person's employment opportunities.

In addition:

- Prohibited harassment can occur as a result of a single, severe incident or as a result of a pattern of behavior.
- The harasser may be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.

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- Harassment can occur at an employee's workplace, or, provided that there is a legally-sufficient connection to the workplace, when an employee is off duty or away from work.
- An employee who is affected by harassing conduct can be a victim of harassment (e.g., a hostile work environment) even when he/she is not the direct target of the harassment.
- "Sexual harassment," in the employment context, includes unwelcome physical or verbal conduct or unwanted communication that is of a sexual nature or otherwise on the basis of sex, whether directed at a person of the same or opposite gender as the harasser, when any of the following apply:
 - submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment or advancement, including conditioning any aid, benefit or service on a person's participation in or submission to such conduct; or
 - submission to or rejection of such conduct is used as the basis for employment decisions; or
 - such conduct has the purpose or effect of substantially interfering with an employee's work performance or creating an intimidating, hostile, or offensive work environment.
- ~~As specifically defined and prohibited under the federal Title IX regulations (see 34 C.F.R. §106.02), "sex-based harassment" means sexual harassment and other harassment on the basis of sex, including conduct within any District program or activity that either (1) involves a District employee, agent of the District, or other person with a District-authorized role who conditions the provision of an aid, benefit, or service of the District on another person's participation in unwelcome sexual conduct; (2) is unwelcome sex-based conduct that, based on the totality of the circumstances, creates a hostile environment; or (3) constitutes sexual assault, stalking, dating violence, or domestic violence as those terms are further defined under the Title IX regulations. If desired, insert the following sentence to further capture the details of the express definition of sex-based harassment that is established in the 2024 Title IX regulations: "Under the federal Title IX regulations, harassment on the basis of sex includes harassment on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity." Sexual harassment also includes all conduct on the basis of sex that constitutes "sexual harassment" as defined and prohibited under the federal Title IX regulations (see 34 C.F.R. §106.30), including but not limited to conduct in any program or activity of the District that constitutes sexual assault, stalking, dating violence, or domestic violence as those terms are further defined under the Title IX regulations.~~
- Harassment is defined primarily by the characteristics and effects of the behavior, and such considerations can outweigh any asserted lack of intent to harass.
- When determining whether alleged harassment is sufficiently severe or pervasive to (1) substantially interfere with an employee's work performance, or (2) create an intimidating, hostile, or offensive work environment, the conduct in question is evaluated from the objective standpoint of a "reasonable person."

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Examples. Some examples of inappropriate, prohibited conduct that could constitute harassment or directly contribute to the creation of a hostile or offensive work environment under this policy include the following:

- Deliberate, repeated, or otherwise severe verbal or written comments that insult, degrade, or stereotype an employee or group of employees because of any legally-protected status or classification. This might include the use of slurs, epithets, name calling, ridicule, mockery, insults, put-downs, or offensive jokes.
- Threats, intimidation, or physical assaults that have a connection to a person's legally-protected status.
- Posting, displaying, or circulating any written or graphic materials, sound or video recordings, or any electronic or other materials or objects that attack, mock, belittle, or show hostility toward an employee or group of employees based on a legally-protected status.

Examples of inappropriate, prohibited conduct in the workplace that may constitute or contribute to a finding of unlawful sexual harassment include, but are not limited to, the following: (1) lewd or sexually suggestive comments; (2) the use of sexual innuendo; (3) unwelcome touching; (4) unwelcome romantic advances or propositions; (5) offensive language or jokes of a sexual nature; (6) the display or distribution of sexually-explicit content that lacks a sufficiently legitimate purpose; or (7) any other verbal, written, graphic, or physical conduct or communication that attacks, mocks, belittles, or shows hostility toward an employee due to his/her sex, gender, or lack of conformity to gender stereotypes.

Applicability of Nondiscrimination Policies; Reports of Complaints of Harassment. Unlawful harassment that is based on a legally-protected status is a form of discrimination. As a result, ~~identity appropriate local policy cross-reference(s) — e.g., “Board Policy 413/513+13~~ (Nondiscrimination in District Programs, Activities and Operations) and Board Policy 511 (Equal Opportunity Employment and Nondiscrimination) ~~”~~ apply in full to this policy. Accordingly, any report or complaint of possible harassment or conduct that may constitute or contribute to a finding of prohibited harassment, as well as any formal complaint of Title IX sexual harassment, may be submitted to the District as further provided under those other nondiscrimination policies. In addition, any questions or concerns about workplace-related harassment may be brought to the attention of one of the nondiscrimination coordinators identified in ~~identity appropriate local policy cross-reference(s) — e.g., “Board Policy 413/513+13 or Board Policy 511”~~. ~~(Editor’s Note: This paragraph assumes that the district has adopted one or both of the broad nondiscrimination policies that are incorporated into this policy by reference and that such other policies sufficiently address the filing of reports or complaints, the designation of nondiscrimination coordinators, etc. Ensure that the district has, in fact, adopted those related policies and policy provisions.)~~

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Legal References:

Wisconsin Statutes

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[Subch. II of Chapter 111](#) [the state fair employment and nondiscrimination statutes, including specific prohibited bases of discrimination]
[Section 111.32\(13\)](#) [state law definition of sexual harassment in employment]
[Section 118.195](#) [discrimination against handicapped teachers]
[Section 118.20](#) [teacher/administrator discrimination prohibited]

Federal Laws and Regulations

See the federal references for Policy 511–Equal Opportunity Employment and Nondiscrimination

Cross References:

~~WASB PRG 512 Sample Policy 1~~ *[insert appropriate cross references to the policy as applicable to your district.]*

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