

Book Policy Manual

Section Nondiscrimination Policies For the Board

Title REVISED POLICY - VOL. 30, NO. 2 - NONDISCRIMINATION AND ANTI-HARASSMENT -

NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

Code po3122 \* 8/12/21 CP READY

Status

Adopted December 8, 2015

Last Revised February 8, 2022

Prior Revised Dates 1/26/2021

# **REVISED POLICY - VOL. 30, NO. 2 - NONDISCRIMINATION AND ANTI-HARASSMENT**

#### 3122 - NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

The Board does not discriminate in the employment of profession staff on the basis of the Protected Classes of race, color, national origin, age, sex (including transgender status, change of sex, sexual orientation, or gender identity), 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 opportunitiescharacteristic protected by law in its employment practices.

Notice of the Board's policy on nondiscrimination and the identity of the School District's Compliance Officer(s) (see below) will be published on the District's website, posted throughout the District, and included in the District's recruitment statements or general information publications.

## **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.

Complainant is the individual who alleges, or is alleged, to have been subjected to discrimination/retaliation, regardless of whether the person files a formal complaint or is pursuing an informal resolution to the alleged discrimination/retaliation.

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

Military status: refers to 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.

Respondent is the individual who has been alleged to have engaged in discrimination/retaliation, regardless of whether the Reporting Party files a formal complaint or is seeking an informal resolution to the alleged discrimination/retaliation.

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

Third Parties include, but are not limited to, guests and/or visitors on School 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).

#### **District Compliance Officers**

The Board designates the following individuals to serve as the District's "Compliance Officers" (<u>also known as "Civil Rights Coordinators";</u> hereinafter referred to as the "COs").

Director of Pupil Services Wendy Simonis 715-453-2106 1048 E King Road Tomahawk, WI 54487

Elementary Principal Guy Steckbauer 715-453-2126 1048 E King Road Tomahawk, WI 54487

High School Principal Ryan Huseby 715-453-2106 1048 E King Road Tomahawk, WI 54487

The names, titles, and contact information of these individuals will be published annually:

- A. on the School District's website.
- B. in the staff handbooks.

The COs are responsible for coordinating the District's efforts to comply with the 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, retaliation, or denial of equal access. The COs shall also verify that proper notice of nondiscrimination has been provided for Title II of the Americans with Disabilities Act (as amended), Title VI and Title VII of the Civil Rights Act of 1964, Title IX of the Education Amendment Act of 1972, Section 504 of the Rehabilitation Act of 1973 (as amended), the Age Discrimination in Employment Act of 1975, and the Genetic Information Nondiscrimination Act (GINA) to students, their parents, staff members, and the general public.

# Reports and Complaints of Unlawful-Discrimination and Retaliation

Employees are <u>required to expected to promptly</u> report incidents of <u>unlawful</u>-discrimination 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 <u>report</u>complaint shall file it with the CO at <u>the employee'shis/her</u> first opportunity, but no later than two (2) <u>business</u>-days.

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 conduct involving the discrimination or harassment of an employee or applicant based upon his/her gender status, sexual orientation, and gender identity.

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

Employees who believe they have been unlawfully discriminated/retaliated against are entitled to utilize the complaint process set forth below. Initiating a complaint will not adversely affect the Complainant's complaining individual'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 possible 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 unlawful discrimination/retaliation. COs shall accept reports complaints of unlawful discrimination/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(District employees, students, parent(s), and member of the Board), a resident of the District, or a visitor to the District. Upon receipt of a report of alleged discrimination/retaliationcomplaint, theeither directly or through a school building administrator, a 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 discrimination/retaliation) investigation, or the CO will designate a specific individual to conduct such a process. The CO will provide a copy of this policy to the Complainant and the Respondent upon request any person who files a complaint. All members of the School District community must report incidents of discrimination/retaliation that are reported to them to the CO within two (2) business days of learning of the incident/conduct.

Any Board employee who directly observes unlawful discrimination/retaliation is obligated, in accordance with this policy, to report such observations to one of the COs within two (2) business days. Additionally, any Board employee who observes an act of unlawful discrimination/retaliation is expected to intervene to stop the misconduct, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other Board employees and/or local law enforcement officials, as necessary, to stop the misconduct. Thereafter, the CO must contact the Complainantemployee within five (5) two (2) business days to advise him/her of the Board's intent to investigate the alleged wrongdoing.

#### **Investigation and Complaint Procedure**

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 Any employee who believes that s/he has been subjected to unlawful discrimination or retaliation may seek resolution of the his/her complaint through the procedures described below. The complaint procedures involve an investigation of the individual's claims of discrimination/retaliation and a process for rendering a decision regarding whether the charges are substantiated.

Once the complaint process begins, the investigation will be completed in a timely manner. .(ordinarily, within fifteen (15) business days of the complaint being received).

The procedures set forth below are not intended to interfere with the rights of any individual to pursue a complaint of unlawful 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 discrimination/retaliationAn individual who believes s/he has been subjected to unlawful discrimination/retaliation (hereinafter referred to as the "Complainant"), may file a complaint, either orally or in writing; 1) with a Principal; 2) the CO; or 3) to the District Administrator or other supervisory employees. Any complaint received regarding the District Administrator 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 District Administrator, who shall coordinate with the other appointed/designated assume the role of CO or, if appropriate appoint/designate another individual to serve as CO for the complaint regarding a CO. for such complaints.

Due to the sensitivity surrounding complaints of unlawful discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals are encouragedshould make every effort to file a complaint within thirty (30) calendar days after the conduct occurs while the facts are known and potential witnesses are available. If a Complainant informs a Principal, District Administrator, 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, but no later than within two (2) business days.

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

All complaints must include the following information to the extent <u>known</u>it is available: the identity of the <u>Respondentindividual believed to have engaged in, or be engaging in, the discriminatory/retaliatory conduct</u>; 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 discrimination or retaliation, including, but not limited to, a change of work assignment or schedule for the Complainant and/or the **Respondentperson who allegedly engaged in the misconduct**. In making such a determination, the CO should consult the Complainant to assess **whether the individual agrees with his/her position to** the proposed action. If the Complainant is unwilling to consent to the proposed change, the CO **may**-still **may** take whatever actions **are deemeds/he deems** appropriate in consultation with the District Administrator.

Within five (5) two (2) days of receiving the complaint, 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. Within two (2) business days of receiving the complaint, the CO will initiate an investigation to determine whether the Complainant has been subjected to unlawful discrimination/retaliation.

Simultaneously, the CO will inform the <u>Respondent that a formal</u> individual alleged to have engaged in the discriminatory or retaliatory conduct (hereinafter referred to as the "Respondent"), that a complaint has been received. The Respondent will be informed about the nature of the allegations and <u>upon request</u> 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 five (5) business days.

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. Although certain cases may require additional time, the CO will attempt to complete an investigation into the allegations of discrimination/retaliation within fifteen (15) business days of receiving the formal complaint. The investigation will include:

# 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 District Administrator that summarizes the evidence gathered during the investigation and provides recommendations based on the evidence and the definition of unlawful discrimination/retaliation as provided in Board policy and State and Federal law as to whether the Respondent has engaged in harassment/retaliation of the Complainant Complainant has been subjected to unlawful discrimination/retaliation. The CO's recommendations must be based upon the totality of the circumstances. In determining if discrimination or retaliation occurred, a preponderance of evidence standard will be used.

The CO may consult with the Board's attorney during the course of the investigatory process and/or before finalizing the report to the District Administrator.

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 District Administrator or Board President, if the matter involves the District Administrator, engage outside legal counsel to conduct the investigation consistent with this policy.

Absent extenuating circumstances, within five (5) **business**-days of receiving the report of the CO, the District Administrator **either** must **either**-issue a **writtenfinal** decision regarding whether the charges have been substantiated or request further investigation. An **summary explanation** of **the copy of** the District Administrator's final decision will be **provided delivered** to both the Complainant and the Respondent.

If the District Administrator requests additional investigation, the District Administrator must specify the additional information that is to be gathered, and such additional investigation must be completed within five (5) business days, or as quickly as possible if additional time is necessary due to the availability of necessary witness(es) or documents. At the conclusion of the additional investigation, the District Administrator must issue a final written decision as described above.

If the District Administrator determines the <u>Respondent engaged in discrimination/retaliation toward the Complainant, the </u><u>District Administrator Complainant was subjected to unlawful discrimination/retaliation, s/he</u> 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, <u>age-appropriate</u>, effective, and tailored to the specific situation.

A Complainant or Respondent who is dissatisfied with the final decision of the District Administrator may appeal through a signed written statement to the Board within five (5) business days of the party'shis/her receipt of the District Administrator's final decision. The written statement of appeal must be submitted to the District Administrator, 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 twenty (20) **business**-days of 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) **business**-days of its decision. The decision of the Board will be final.

The Board reserves the right to investigate and resolve a complaint or report of **unlawful**-discrimination/retaliation regardless of whether the **Complainantemployee alleging the misconduct** 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 <u>such as the filing of a complaint with the Office for Civil Rights, the filing of charges with local law</u> <u>enforcement, or the filing of a civil action in court</u>. Use of this internal complaint <u>processprocedure</u> 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. Additionally, the Respondent must be provided the Complainant's identity identities may become known to the Respondent(s) through the investigation process.

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 provideds/he learns and/or provides** during the course of the investigation.

# Remedial ActionSanctions and Monitoring

The Board shall vigorously enforce its prohibitions against unlawful discrimination 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. All disciplinary action will be taken in accordance with applicable State law. When imposing discipline, the District Administrator shall consider the totality of the circumstances involved in the matter. In those cases where unlawful discrimination/retaliation is not substantiated, the Board may consider whether the alleged conduct nevertheless warrants discipline in accordance with other Board policies and/or the Employee Handbook.

<u>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 discrimination, or other appropriate action.</u>

The Board may appoint an individual, who may be a District employee, to follow up with the Complainant to ensure no further discrimination 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 discrimination 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 District Administrator 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 and/or the Employee Handbook.

Where the Board becomes aware that a prior <u>disciplinary</u>remedial action has been taken against <u>the Respondentan employee</u>, all subsequent sanctions imposed by the Board and/or District Administrator 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 unlawful discrimination/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. Specifically, the Board will not retaliate against, coerce, intimidate, threaten or interfere with any individual because the person opposed any act or practice made unlawful by any Federal or State civil rights law, or because that individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under those laws, or because that individual exercised their rights, aided or encouraged any other person in the exercise of any right granted or protected by those laws.

Retaliation against a person for making a report of discrimination, 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.

The exercise of rights protected under the First Amendment of the United States Constitution does not constitute retaliation prohibited under this policy.

#### **Education and Training**

In support of this policy, the Board promotes preventative educational measures to create greater awareness of **unlawful** discriminatory practices. The District Administrator shall provide appropriate information to all members of the School District community related to the implementation of this policy and shall provide training for District staff where appropriate. All training, as well as all information provided regarding the Board's policy and discrimination in general, will be age and content appropriate.

# **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 shall retain all **information**, documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and <u>/or</u> received as part of an investigation, <u>which</u> may include including, but <u>are</u> not limited to:

- 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 <u>supportiveinterim</u> measures offered and/or provided to <u>the Complainant and/or the</u>
  <u>Respondentcomplainants</u>, 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. <u>copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;</u>
- 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;

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

The information, documents, ESI, and electronic media (as defined in Policy 8315) created or received as part of an investigation shall be retained in accordance with Policy 8310, Policy 8315, Policy 8320, and Policy 8330 for not less than three (3) years, but longer if required by the District's records retention schedule.

111.31 et seq., Wis. Stats.

111.335(d)(2), Wis. Stats.

#### 118.125, Wis. Stats.

118.195, Wis. Stats.

118.20, Wis. Stats.

Fourteenth Amendment, U.S. Constitution

## 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 U.S.C. 701 et seq., Rehabilitation Act of 1973, as amended

38 U.S.C. 4301 et seq., Uniformed Services Employment and Reemployment Rights Act

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

34 C.F.R. Part 110 (7/27/93)

42 U.S.C. 2000 et seq., Civil Rights Act of 1964

#### 42 U.S.C. 2000d et seq., Title VI of the Civil Rights Act of 1964

42 U.S.C. 2000e et seq., Title VII of the Civil Rights Act of 1964

42 U.S.C. 2000ff et seq., The Genetic Information Nondiscrimination Act of 1973, as amended

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

29 U.S.C. 701 et seq., Rehabilitation Act of 1973, as amended

29 C.F.R. Part 1635, The GINA Regulations

#### 34 C.F.R. Part 110, The Age Discrimination Act Regulations

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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

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20 U.S.C. Section 7905, Boy Scouts of America Equal Access Act

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42 U.S.C. 12101 et seq., The Americans with Disabilities Act of 1990, as amended

29 C.F.R. Part 1635, The GINA Regulations

34 C.F.R. Part 110, The Age Discrimination Act Regulations

Last Modified by Coleen Frisch on January 22, 2022