

STUDENT HARASSMENT BASED ON A Policy 411.1 LEGALLY-PROTECTED STATUS

~~Sample Policy 2~~ Waunakee Community
School District

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~~{This sample policy defines unlawful harassment as a form of student discrimination under state and federal civil rights laws (i.e., harassment tied to one or more legally-protected classifications). The sample includes specific examples of prohibited conduct. The final section of this sample policy, addressing reports and complaints of harassment based on a legally-protected status, has been written to coordinate with PRG 113 Sample Policy 1 (or PRG 113 Sample Policy 2) and PRG 411 Sample Policy 3. For example, the description of how to file a report or complaint of prohibited harassment under this policy references the same procedures and methods that are set forth under those other sample policies, which in turn are based on requirements established under Title IX for making reports and complaints of Title IX sexual harassment. IMPORTANT: This sample assumes that the district is adopting and implementing the PRG sample policies under topic 113 and topic 411 that have been updated in 2024 to reflect the 2024 federal Title IX regulations.}~~

This policy addresses prohibited harassment of students that is based on, or that occurs because of, a student's legally-protected status, including harassment that is based on a student's sex ~~(if desired, insert as an interpretive clarification: "(including any non-conformance with sex-based or gender-based stereotypes)"~~¹, sexual orientation, race, color, national origin, ancestry, religion, creed, pregnancy, marital or parental status, any physical, mental, emotional or learning disability, or any other legally-protected status or classification. The District prohibits and will intervene to respond to reports, complaints, or other sufficient notice of any such harassment not only because of the District's legal obligations, but also because such conduct is detrimental to the educational environment and to the well-being of students. ~~This policy further addresses preventative education and instructional practices involving harmful speech that creates an environment that is intimidating, hostile or offensive and related to harassment so that the District fosters a positive educational environment. Harassment normalizes discrimination by making prejudiced views seem acceptable, which sows division and it harms relationships, unity, and civil discourse and creates an intimidating, hostile and offensive environment. Clear standards, education, and fostering respectful norms are essential to protect individual dignity while supporting critical thinking and free expression.~~

Defining and Identifying Harassment Based on a Legally-Protected Status

Although different state and federal laws establish different standards to define conduct that does (or does not) constitute prohibited student harassment, prohibited harassment under this policy generally includes behavior (or any course of conduct) affecting one or more students that is based, in whole or in part, on a legally-protected status or classification and that:

1. Substantially interferes with a student's school performance;
2. Substantially interferes with a student's ability to participate in or benefit from any District activity or program; or
3. Creates an intimidating, hostile, or offensive environment within any District school, activity, or program.

¹ This language is from draft two of the hate speech policy you asked me to review.

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As defined and prohibited under the federal Title IX regulations (see 34 C.F.R. §106.30), sexual harassment of a student also expressly includes conduct on the basis of sex within a District program or activity that either (1) involves a District employee conditioning the provision of an aid, benefit, or service of the District on a student's participation in unwelcome sexual conduct; (2) is unwelcome and sufficiently severe, pervasive, and objectively offensive so as to effectively deny a student equal access to an education program or activity; or (3) constitutes sexual assault, stalking, dating violence, or domestic violence as those terms are further defined under the Title IX regulations. 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 a student'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."]* ***{Editor's Note: In connection with this paragraph and particularly the optional final sentence of this paragraph, it is important to consider that the specific scope of discrimination on the basis of sex, including the scope of harassment on the basis of sex, as defined within the 2024 Title IX regulations remains subject to ongoing litigation in the federal courts as of the August 1, 2024, effective date of the regulations.}***

In addition:

- The person responsible for the prohibited harassment may be another student, a District employee, a non-employee acting as an agent or contractor of the District, or another person who is present in, or who engages in conduct that sufficiently impacts, the educational environment or the applicable District program or activity.
- A student can be a victim of and adversely affected by harassing conduct even when ~~he/she is~~ they are not the direct target of the harassment.
- Harassment is defined primarily by the characteristics and effects of the behavior, and such considerations can outweigh any asserted lack of specific intent to harass. The effects of the relevant conduct are normally evaluated from the perspective of a reasonable person in the position of the student victim.

~~Nothing in this policy limits the District's discretion or authority to intervene with respect to conduct (or alleged conduct) affecting a student that, although not determined to constitute proven unlawful harassment, either (1) could contribute to a finding of unlawful harassment if the behavior or course of conduct were to continue; (2) violates any other policy or specific conduct rule or directive established by the District; (3) causes a substantial disruption within any District program or activity; or (4) endangers the health, safety, or property of a student.~~ ***{Editor's Note: Some districts may elect to exclude this clarifying paragraph.}***

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~~Persons who engage in prohibited harassment in violation of this policy or in violation of the immediately preceding paragraph are subject to District-imposed discipline or other sanctions and the District may provide victims of harassment with appropriate accommodations or other remedies or support.²~~

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Finally, conduct may occur (or be reported or alleged) that would constitute prohibited harassment under this policy except that the conduct lacked a sufficient connection to a District program or activity or otherwise occurred outside the scope of the District's rule-making, investigatory, or disciplinary authority. In such a situation, the District may still work with the victim (or alleged victim) to provide interventions or supports that address any school-connected consequences that relate to the conduct (or alleged conduct). ~~{Editor's Note: Some districts may elect to exclude this clarifying paragraph.}~~

Examples of Prohibited Conduct

~~{Editor's Note: Some districts may elect to exclude this section providing examples of prohibited harassing conduct. However, the inclusion of some specific examples is one of the primary reasons to maintain a policy on unlawful harassment that is separate from the district's general student nondiscrimination policy. Otherwise, it may be more expedient to simply expand on the definition of unlawful harassment within the general student nondiscrimination policy.}~~

Some examples of prohibited conduct that could constitute unlawful harassment or directly contribute to the creation of an unlawful intimidating, hostile, or offensive educational environment under this policy include any of the following:

- Multiple, repeated, or severe verbal or written ~~(including electronic)~~ comments ~~or gestures~~³ that insult, degrade, or stereotype a student or group of students because of any legally-protected status or classification. This might include the use of slurs, epithets, name calling, ridicule, mockery, insults, or put-downs.
- Conduct ~~or communications~~ that endangers a student's health, safety, or property, such as an assault, a threat, or attempted intimidation, that occurs because of 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, symbols, or objects that attack, mock, belittle, or show hostility toward a student or group of students based on a legally-protected status.

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Additional examples of conduct that may constitute or directly contribute to a finding of unlawful ~~sexual-sex-based~~ harassment include, but are not limited to, the following:

(1) unwelcome comments that are lewd or sexually-suggestive (including sexual innuendo or offensive language of a sexual nature); (2) unwelcome physical contact or other unwarranted

² I added this language to replace the language in the 411 rule that I noted was in the wrong place – see FN 1 in that document.

³ Note that this part of the policy provides examples of prohibited conduct. It is not meant to cover all possible examples and the exclusion of other possible examples does not exclude them from being prohibited conduct. I have no problem with addition of the word “gestures”

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intrusions within an individual's personal space that occur because of a person's sex;
(3) persisting in romantic advances or making requests for romantic involvement after being
informed that such attention is unwelcome; (4) the implicit or explicit making of any demands or
any unwanted requests for sexual activity; (5) the display or distribution of sexually-explicit
content that lacks a sufficiently legitimate purpose; or (6) any verbal, written, graphic, or
physical conduct or communication that attacks, mocks, belittles, or shows hostility toward a
student due to the student's insert either "sex, gender, sexual orientation, or lack of conformity
to sex-based or gender-based stereotypes;" or "sex, sexual orientation, or lack of conformity to
sex-based stereotypes". ~~{Editor's Note: Due to some uncertainty about the exact scope of sex-~~
~~based harassment under applicable civil rights laws, some districts may elect not to expressly~~
~~differentiate between "sex" and "gender" in the final example given in this paragraph. Other~~
~~districts may prefer to include the express differentiation.}~~

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Applicability of Nondiscrimination Policies: Reports of and Complaints of Harassment

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~~{Editor's Note: This section could be replaced with the following alternate, more general~~
~~language:~~

~~"Harassment that is based on a legally-protected status is a form of prohibited~~
~~discrimination under applicable laws and District policies. Any person, including~~
~~any student, may report a concern or allegation of prohibited harassment to the~~
~~District, and the District has established processes and procedures for responding~~
~~to such reports or complaints. When an eligible person initiates a complaint~~
~~seeking an investigation and determination of allegations of student harassment~~
~~based on a legally-protected status, the complaint will be processed according~~
~~to insert references to applicable local policies – e.g., "Board Policy 113 and~~
~~Board Policy 411" and the complaint/grievance procedures established under~~
~~those District nondiscrimination policies. Any individual who needs additional~~
~~information about submitting a report or complaint of possible student~~
~~harassment may contact insert the appropriate position(s) – e.g., "any of the~~
~~District's nondiscrimination coordinators, as identified in "Board Policy 113 and~~
~~Board Policy 411", or the office of the District Administrator"."~~

~~END OF EDITOR'S NOTE.}~~

Unlawful harassment that is based on a legally-protected status is a form of discrimination. As a
result, Board Policy 413/513~~Board Policy 113~~ (Nondiscrimination in District Programs, Activities
and Operations) and Board Policy 411 (Student Nondiscrimination and Equal Educational
Opportunities) apply in full to this policy. In addition, the District's expectations for employees to
intervene and appropriately report their knowledge of incidents or allegations of prohibited
discrimination (including unlawful harassment) to an appropriate administrator apply to
incidents/allegations of student harassment that are known to an employee.

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Any person may report a concern or allegation of prohibited student harassment that is based
on a legally-protected status to any of the District's nondiscrimination and equal opportunity

⁴ This is from draft 2 of the hate speech policy.

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coordinators. The report or complaint may be submitted to a designated coordinator (1) in person (whether verbally or in writing), (2) by U.S. mail, (3) by telephone, or (4) by electronic mail. Other methods that result in the coordinator actually receiving the report or complaint are also acceptable. Board Policy 413/513 ~~(Board Policy 113)~~ identifies and provides contact information for designated coordinators, including identifying the primary coordinator for any student discrimination matter. To this end, any individual who believes they have been subjected to harassment, or who witnesses or becomes aware of harassment, is encouraged to report the incident immediately to a school administrator, counselor, or any trusted staff member so that this is brought to the attention of the District's nondiscrimination and equal opportunity coordinators. Reports may be made orally or in writing. The District will provide reporting forms in multiple languages and accessible formats as needed.

The District will maintain confidentiality to the extent possible, consistent with the need to investigate and address the reported conduct, while protecting the rights of all parties. ~~(Editor's Note: The reporting procedures referenced in this paragraph must be consistent with the reporting procedures that are defined in the district's related nondiscrimination policies/rules.)~~

Reports and complaints of possible student harassment under this policy will be processed and resolved as set forth in the rules and procedures adopted under ~~(Board Policy 113/413/513)~~ and ~~(Board Policy 411)~~.

Instructional Materials and Texts⁵

Harassment and harmful language do not include educational materials or lessons that are used by the District, or its staff, in good faith. As a matter of policy, the District will not allow students or staff to read aloud slurs related to a legally protected status that may appear in texts that we teach out loud. In addition to not reading the word aloud, staff members are expected to acknowledge to students that while this word/phrase exists in a particular text and may be seen as having artistic or literary value, or may be essential to understanding the prevailing culture at the time the piece was written, the words will not be read out loud or spoken in class. The staff member will explain why the words are not being used, referencing the reasons identified above.⁶ Staff members with questions/concerns about this position should review district guidance on sensitive topics and speak to building administrators and/or the Directors of Curriculum and Instruction for their grade span.

Prevention and Education

A. The District will implement ongoing training and education programs for students, staff, and the community to promote understanding, respect, and inclusivity. These programs will address the impact of harassment and harmful language and the importance of standing against discrimination and hostility.

⁵ The remainder of this policy is language from the second draft of the hate speech policy.

⁶ I think this is sufficiently clear – the staff member is not to say the slur when explaining to the class why the slur is not to be read or spoken. It is important that the policy be clear on this point - staff may be subject to discipline for violation of this part of your policy and may argue that the policy is ambiguous. You may wish to say this more explicitly – say that the staff member will not say the slur (or write it on the board, etc.) under any circumstances.

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B. The District will provide training in recognizing and responding to microaggressions, which are statements, actions or incidents regarded as manifesting unintentional or inchoate discrimination against protected classes of individuals.

C. The District will regularly review and update its anti-harassment policy and practices to ensure effectiveness and compliance with state and federal laws.

Policy Dissemination

A. This policy will be distributed annually to students, staff, and parents/guardians through handbooks, newsletters, registration and/or enrollment materials, and the District website.

B. The District will display information about this policy and reporting procedures prominently in all school buildings.

Compliance

This policy complies with all applicable federal and state laws, including Title VI, Title VII, and Title IX of the Civil Rights Act, the Americans with Disabilities Act, Section 504, and Wisconsin state statutes.

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Legal References:

Wisconsin Statutes

[Section 118.13](#) [student nondiscrimination]
[Section 947.013](#) [harassment prohibited]

Wisconsin Administrative Code

[PI 9](#) [student nondiscrimination; policy/procedure/notice required]

Federal Laws

See the federal references for Policy 411-Student Nondiscrimination and Equal Educational Opportunity

Cross References:

[WASB PRG 411.1 Sample Policy 2](#)
[411, Student Nondiscrimination and Equal Educational Opportunity 411-Rule \(1\), Student Discrimination/Harassment Complaint Procedure](#)
[413/513, Nondiscrimination in District Programs, Activities and Operations 447.3, Student Suspension](#)
[447.4, Student Expulsion](#)

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447.5, Student Discipline Suspension/Expulsion of Students with Disabilities 454, Child Abuse and Neglect

~~{Insert appropriate cross references to the policy as applicable to your district.}~~

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