

Policy

**BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT**

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EMPLOYEE ANTI-HARASSMENT

Prohibited Harassment

It is the policy of the Board of Education to maintain an educational environment that is free from all forms of unlawful harassment. This commitment applies to all District operations, programs, and activities. All students, administrators, teachers, staff, and all other school personnel share responsibility for avoiding, discouraging, and reporting any form of unlawful harassment. This policy applies to unlawful conduct occurring on school property, or at another location if such conduct occurs during an activity sponsored by the Board.

The Board will not tolerate any form of harassment and will take all necessary and appropriate actions to eliminate it, including suspension or expulsion of students and disciplinary action against any other individual in the School District community. Additionally, appropriate action will be taken to stop and otherwise deal with any third party who engages in harassment against our students.

The Board will vigorously enforce its prohibition against harassment based on the race, color, national origin, age, sex (including sex stereotypes, sex characteristics, sexual orientation, or gender identity), pregnancy or related conditions, creed or religion, genetic information, disability, marital status, citizenship status, veteran status, military service (as defined in 111.32, Wis. Stats.), national origin, ancestry, arrest record, conviction record, use or no-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 characteristic protected by law in its employment practices ("Protected Classes"), and encourages those within the School District community as well as Third Parties, who feel aggrieved to seek assistance to rectify such problems. Additionally, harassment means behavior toward a student or group of students that substantially interferes with the student's school or academic performance or creates an intimidating, hostile, or offensive school environment.

This Policy establishes the processes and procedures to investigate all allegations of harassment, other than sex-based harassment covered by Policy 2262 – Nondiscrimination on the Basis of Sex in Education Programs or Activities. Any allegations of sex-based harassment shall be processed in accordance with Policy 2266.

The Board will investigate all allegations of unlawful harassment and in those cases where harassment is substantiated, take immediate steps designed to end the harassment, prevent reoccurrence, and remedy its effects.

Individuals who are found to have engaged in harassment will be subject to appropriate disciplinary action.

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Notice

Notice of the Board's policy on anti-harassment related to employment practices and the identity of the District's Compliance Officers will be posted throughout the District and published in any District statement regarding the availability of employment, staff handbooks, and general information publications of the District as required by Federal and State law and 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.

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

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).

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

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).

Harassment: means any threatening, insulting, intimidating, or dehumanizing conduct directed at an employee based on one or more of the employee’s Protected Class(es) that:

- A. Places the person in reasonable fear or harm to their person or damage to their property;
- B. Has the effect of substantially interfering with their performance, opportunities, or benefits; or
- C. Has the effect of substantially disrupting the orderly operation of the school.

“Harassment” also includes “hate speech”—the use of language, behavior, or images/symbols that express prejudice against a particular group or groups on the basis of any protected characteristic(s).

Examples are:

- A. making statements that promote violence toward a racial or ethnic group;
- B. drawing, displaying, or posting images or symbols of prejudice (e.g., swastikas).

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All allegations of sex-based harassment are covered by Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities and will therefore be addressed pursuant to Policy 2266.

Compliance Officers

The following individual(s) shall serve as the District's Anti-Harassment Compliance Officer(s):

Lori Smits

Director of Special Education

(920) 779-7900 Ext. 13111

246 N Olk Street

Hortonville WI 54944

lorismits@hasd.org

Thomas Ellenbecker

Human Resource Director

(920) 799-7900 Ext. 13108

246 N Olk Street

Hortonville WI 54944

thomasellenbecker@hasd.org

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

- A. **on the School District's website.**
- B. in the parent and staff handbooks
- C. in the School District Annual Report to the public.
- D. in the School District's calendar.

The COs are responsible for coordinating the District's efforts to comply with the applicable Federal and State laws and regulations, including the complaints regarding harassment covered by this Policy. The CO 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, Section 504 of the Rehabilitation Act of 1973 (as amended), the Age Discrimination in Employment Act of 1975, and the Genetic Information Nondiscrimination Act to students, their parents, staff members, and the general public.

Reports and Complaints of Harassing Conduct

The COs will be available during regular school/work hours to discuss concerns related to harassment, to assist students, other members of the District community, and third parties who seek support or advice when informing another individual about conduct covered by this Policy.

COs shall accept reports of harassment covered by this Policy directly from any member of the School District community or a Third Party or receive reports that are initially filed with an administrator, supervisor, or other District-level official. Upon receipt of a report of alleged harassment, the COs will contact the Complainant and begin the complaint process. The CO will provide a copy of this policy to the Complainant and Respondent. The CO will prepare recommendations for the District Administrator or will oversee the preparation of such recommendations by a designee.

All employees must report incidents of harassment that are reported to them to the Compliance Officer within two (2) days of learning of the incident.

Any employee who directly observes harassment is obligated, in accordance with this policy, to report such observations to a CO within two (2) days.

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Additionally, any employee who observes an act of harassment is expected to intervene to stop the harassment, unless circumstances make such an intervention dangerous, in which case the staff member should immediately notify other employees and/or local law enforcement officials, as necessary, to stop the harassment. Thereafter, the CO or designee must contact the Complainant, if age eighteen (18) or older, or Complainant's parents/guardians if the Complainant is under the age eighteen (18), within two (2) days to advise of the Board's intent to investigate the alleged wrongdoing.

Members of the School District community along with Third Parties are encouraged to promptly report incident of unlawful harassing conduct to an administrator, supervisor or other School District official so that the Board may address the conduct before it becomes severe, pervasive, or persistent. Any administrator, supervisor, or other District official who receives such a report shall file it with the CO within two (2) days of receiving the report of harassment.

Members of the School District community and Third Parties who believe they have been unlawfully harassed by another member of the School District community or a Third Party are entitled to utilize the Board's complain process that is set forth below. Initiating a complaint, whether formally or informally, will not adversely affect the Complainant's employment unless the complaining individual makes the complaint maliciously or with knowledge that it is false.

Reporting procedures are as follows:

- A. Any employee who believes s/he has been the victim of harassment prohibited under this Policy is encouraged to report the alleged harassment to the appropriate school official as identified in D below.
- B. Teachers, administrators, and other school officials who have or receive notice that an employee has or may have been the victim of harassment prohibited under this policy shall immediately report the alleged harassment to the appropriate school official as defined in D below.
- C. Any other person with knowledge or belief that an employee has or may have been the victim of harassment prohibited by this Policy shall be encouraged to immediately report the alleged acts to an appropriate school official as identified in D below.
- D. Appropriate school officials are as follows:
 1. Any complaint under this Policy shall be reported to the District's CO unless the complaint is regarding the CO. In such cases, the complaints shall be reported to the District Administrator, who will coordinate with the other appointed/designated CO, or, if appropriate appoint/designate another individual to serve as CO for the complaint regarding a CO.
 2. Any complaint under this policy regarding the District Administrator or Board Member that is received by the District CO shall be referred to the School Board' legal counsel, who shall assume the role of District CO for such complaints.
- E. The reporting party or complainant shall be encouraged to use a report form available from the Principal of each building or available from the District Office, but oral reports shall be considered complaints as well. Use of formal reporting forms shall not be mandated. However,

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all oral complaints shall be reduced to writing. Further, noting in this policy shall prevent any person from reporting harassment directly to the District Administrator or other supervisory employee.

- F. To provide individuals with options for reporting harassment to an individual of the gender with which they feel most comfortable, the District shall designate both a male and female District Compliance Officer.

If the alleged harassment involves sexual harassment as defined by Policy 2266, the matter will be referred by a CO to a Title IX Coordinator who shall ensure the matter is investigated in accordance with the procedures outlined in Policy 2266.

Investigation and Complaint Procedure

Except for sex-based harassment that is covered in Policy #2266 – Non-Discrimination on the Basis of Sex in Education Program or Activities, any employee or other member of the School District community or “Third Party” (e.g., visitor to the District) who believes that They have been subjected to unlawful harassment or has witnessed unlawful harassment of another may seek resolution of the complaint through the procedures described below. The complaint process involves an investigation of the Complaint’s claims of harassment or 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 harassment or retaliation with the United States Department of Education Office for Civil Rights (“OCR”), the Wisconsin Equal Rights Division, and/or Equal Employment Opportunity Commission (“EEOC”). The Chicago Office of the OCR can be reached at John C. Kluczynski Federal Building, 230 S. Dearborn Street, 37th Floor, Chicago, IL 60604; Telephone: 312-730-1560; FAX: 312-730-1576; TDD: 800-877-8339; Email: OCR.Chicago@ed.gov; Web: <http://www.ed.gov/ocr>.

Complaint Procedure

A Complainant who alleges harassment or retaliation covered by this Policy, may file a complaint, either orally or in writing; 1) with a Principal, 2) directly to the CO, or 3) to the District Administrator. As noted above, 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 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 will consult, with the other appointed/designated CO, if any, and if necessary, appoint/designate another individual to service in the role of CO for a complaint regarding a CO.

Due to the sensitivity surrounding complaints of harassment and retaliation, timelines are flexible for initiating the complaint process; however, individuals should make every effort to file a complaint within thirty (30) 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 employee,

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either orally or in writing, about any complaint of discrimination or retaliation, that employee must report such information to the CO within two (2) days.

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

All written 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 harassment 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 may still take whatever actions deemed appropriate in consultation with the District Administrator. No temporary arrangements shall be disciplinary to either the Complainant or Respondent.

Within two (2) days of receiving a complaint, the CO will inform the Respondent that a complaint has been received.

The Respondent is not entitled to receive a copy of any written complaint unless the CO determines it is appropriate to do so; however, the Respondent will be informed about the nature of the allegations. The CO shall inform the Respondent of the requirements of this Policy, which may include providing the Respondent with a copy of this Policy or information about where to find it. Respondent shall be afforded the opportunity to submit a written response to the complaint. The CO shall inform the Respondent of the Respondent's deadline to provide the CO with the written response to the allegations in the complaint.

Within two (2) days of receiving the complaint, the CO or designee will initiate an investigation by at a minimum receipt of complaint with the Complainant and informing the Complainant of the investigation process.

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.

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The investigation by the CO or designee 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 or designee;
- D. Consideration of any documentation or other evidence presented by the complainant, respondent, or any other witness which is reasonably believed to be relevant to the allegations, as determined by the CO or designee.

If, at any time before or during the investigation the conduct alleged, if proven, may be considered sex discrimination, including sex-based harassment, per Board Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities, the CO shall refer the matter to a Title IX Coordinator to process the complaint under Board Policy 2266.

At the conclusion of the investigation, the CO or designee 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 harassment as provided in this policy and State and Federal law as to whether the Respondent engaged in harassment of or retaliation toward the Complainant. The CO or designee's recommendations must be based upon the totality of the circumstances, including the ages and maturity levels of those involved. In determining if discriminatory harassment or retaliation occurred, a preponderance of evidence standard will be used.

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

Absent extenuating circumstances, within five (5) days of receiving the report of the CO or designee, the District Administrator or a designee must either issue a written decision regarding whether or not the complaint of harassment has been substantiated or request further investigation. A copy of the District Administrator or the designee's final decision will be delivered to both the Complainant and Respondent.

If the District Administrator or the designee 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) days. At the conclusion of the additional investigation, the District Administrator or the designee must issue a written decision as described above.

If the District Administrator or the designee determines the Respondent engaged in harassment of or retaliation toward the Complainant, the District Administrator or the designee must identify what corrective action should be reasonable, timely, age-appropriate, effective, and tailored to the specific situation.

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The decision of the District Administrator or the designee shall be final. If the investigation results in disciplinary action, the employee subject to discipline is entitled to file a grievance pursuant to Board Policy #3340. Nothing in this Policy shall be construed to prevent an employee from bringing a complaint before the Equal Employment Opportunity Commission or the Wisconsin Equal Rights Division.

The Board reserves the right to investigate and resolve a complaint or report of unlawful harassment regardless of whether the member of the School District community or Third Party alleging the unlawful harassment pursues the complaint. The Board also reserves the right to have the formal complaint investigation conducted by an external person in accordance with this policy or in such other manner as deemed appropriate by the Board.

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

The right of a person to prompt an equitable resolution of the complaint shall not be impaired by the person's pursuit of other remedies such as filing of a complaint with the Office of Civil Rights, the filing of charges with local law enforcement, or filing of a civil action in court. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies. All timelines pertinent to the investigation process are intended to be guidelines to assure that the investigation proceeds with all deliberate efficiency. Failure of the CO to meet any specific timeline does not invalidate the investigation or provide a defense to the allegations.

Privacy /Confidentiality

The District will employ all reasonable efforts to protect the rights of the Complainant, the Respondent(s), and all 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 obligation in an investigation of unlawful harassment. The District will respect the privacy of the complainant, the respondent, and all witnesses in a manner consistent with the District's legal obligations under state and Federal law. Confidentiality, however, cannot be guaranteed. Additionally, the Respondent must be provided with the Complainant's identity.

During the course of an investigation, the CO will determine whether confidentiality during the investigation process is necessary to protect the interests and reputations of those involved and/or to protect the integrity of the investigation and if so shall instruct all members of the District community and third parties who are interviewed about the importance of maintaining confidentiality. Any individual who is interviewed as part of a harassment investigation is expected not to disclose any information that is learned or provided during the course of the investigation.

Directives During Investigation

The CO may recommend to the District Administrator placing any employee involved in an investigation under this Policy on administrative leave pending resolution of the matter. If the District Administrator Board Approved 4/14/14; 10/24/16, 6/10/19; 6/22/2020; 1/10/2022; Legal 8/19/24
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is the Respondent, the CO shall make such recommendation to the Board. Administrative leave may be appropriate in situations in which protecting the safety of any individual or the integrity of the investigation necessitates such action.

The CO shall determine whether any witnesses in the course of an investigation should be provided a *Garrity* warning apprising the person of their obligations to answer questions truthfully and honestly while preserving the right against self-incrimination in the context of any resulting criminal investigation or prosecution.

Every employee interviewed in the course of an investigation is required to provide truthful responses to all questions. Failure to do so may result in disciplinary action.

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 because of the discrimination, or other appropriate action. The Board may appoint an individual, who may be an 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 harassment/retaliation by taking appropriate action reasonably calculated to stop the harassment 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 law.

When imposing discipline, the District Administrator shall consider the totality of the circumstances. In those cases where unlawful harassment 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 District Administrator shall be reasonably calculated to end such conduct, prevent its reoccurrence, and remedy its effects.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging harassment/retaliation in violation of this Policy or participates as a witness in an investigation pursuant to this Policy 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

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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 harassment, 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 related to this Policy, may be filed according to the internal complaint process set forth above.

Allegations constituting Criminal Conduct

If the CO has reason to believe that the complainant has been the victim of criminal conduct, such knowledge should be reported to local law enforcement. After such report has been made, the District Administrator shall be advised that local law enforcement was notified.

If the complainant has been the victim of criminal conduct and the accused is the District Administrator, such knowledge should be reported by the CO to local law enforcement. After such report has been made, the Board President and Board Attorney shall be advised that local law enforcement was notified.

Any reports made to local law enforcement shall not terminate the Cos obligation and responsibility to continue to investigate a complaint of harassment. While the CO may work cooperatively with outside agencies to conduct concurrent investigations, the harassment investigation shall not be stopped due to the involvement of outside agencies without good cause after consultation with the District Administrator.

Reprisal

Submission of a good faith complaint or report of harassment will not affect the complainant's or reporter's work status or work environment. However, the Board also recognizes that false or fraudulent claims of harassment or false or fraudulent information about such claims may be filed. The Board reserves the right to discipline any person filing a false or fraudulent claim of harassment or false or fraudulent information about such a claim in relation to this Policy.

Retention of Investigatory Records and Materials

The Compliance Officer(s) 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 documents, electronically stored information ("ESI"), and electronic media (as defined in Policy 8315) created and and/or received as part of an investigation, which may include but not limited to:

- All written reports/allegations/complaints/statements;
- Narratives of all verbal reports, allegations, complaints, and statements collected;

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- A narrative of all actions taken by District personnel; any written documentation of actions taken by District personnel;
- Any written documentation of actions taken by District Personnel or individuals contracted or appointed by the Board to fulfill its responsibilities;
- narratives of, notes from or audio, video, or digital recordings of witness statements;
- All documentary evidence;
- E-mails, texts, or social media posts pertaining to the investigation;
- Contemporaneous notes in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.) pertaining to the investigation;
- 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;
- Dated written determinations to the parties;
- Dated written descriptions of verbal notifications to the parties;
- Written documentation of any supportive measures offered and/or provided to Complainant and/or the Respondent, including no contact orders issued to both parties, the dates issued, and the dates the parties acknowledged receipt; and
- 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
- 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 Code of Conduct and/or Employee Handbooks);
- Copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;
- 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.)**

The 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).

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The 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, and Policy 8330 for not less than three (3) years, but longer if required by the District's records retention schedule.

Legal References:

111.31, Wis. Stats.

118.1995, Wis. Stats.

118.20, Wis. Stats.

29 U.S.C. 621 et seq., Age Discrimination in Employment Act of 1967

29 U.S.C. 794, Rehabilitation Act of 1973

42 U.S.C. 1983

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

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

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

29 C.F.R. Part 1635

National School Board Association Inquiry and Analysis – May 2008

NEOLA 2021