

Policy

BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT

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NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY / COMPLAINT PROCEDURES

The Board does not unlawfully discriminate in the employment of administrative staff on the basis of 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.), 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 ("Protected Classes") in its programs and activities, including employment opportunities.

This Policy establishes the following processes and procedures to investigate all allegations of discrimination, other than sex discrimination covered by Policy 2262 – Nondiscrimination on the Basis of Sex in Education Programs or Activities.

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.

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).

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.

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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).

If a person believes that s/he has been discriminated against or denied equal opportunity or access to the District's programs, activities or services, the person may utilize the following complaint procedures as a means of reaching, at the lowest possible administrative level, a prompt and equitable resolution of the matter.

Title IX Complaint Coordinators/Compliance Officers

The Board designates the following individuals to serve as the District's "Compliance Officers" (individually "CO" and collectively "COs"):

Lori Smits
Director of Special Education
(920) 779-7900 Ext. 13111
246 N Olk Street
Hortonville WI 54944
lorismits@hasd.org

Thomas Ellenbecker
Director of Human Resources
(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:

1. On School District's website
2. In staff handbooks
3. In the School District Annual Report to the public
4. School District's calendar

The Compliance Officers are responsible for coordinating the District's efforts to comply with the applicable Federal and State laws and regulations, including the complaints regarding discrimination, retaliation or denial of equal access. The Compliance Officers 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. (Any sections of the District's postings, notifications, advertisements, or other materials regarding recruiting, hiring, and promotion need to contain a statement of nondiscrimination similar to that in the Board's statement above. In addition, any gender-specific terms should be eliminated from these materials.)

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Reports and Complaints of Discrimination and Retaliation

Employees are required to promptly report incidents of discrimination and/or retaliation to an administrator, supervisor, or other supervisory employee who receive such a report shall file it with the Compliance Officers at the employee's first opportunity, but no later than two (2) days.

Discrimination against an individual based on their sex (including sex stereotypes, sex characteristics, sexual orientation, and gender identity) is discrimination in violation of Title IX and shall be processed under Policy 2266- Nondiscrimination on the Basis of Sex in Education Programs or Activities.

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

Employees who believe they have been discriminated/retaliated against in violation of the Policy are entitled to utilize the complaint process set forth below. Initiating a complaint will not adversely affect the Complainant's employment. While there are not 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.

A CO will be available during regular school/work hours to discuss concerns related to discrimination/retaliation prohibited under this Policy. CO shall accept reports of discrimination/retaliation prohibited under this Policy directly from any member of the School District community or a Third Party or receive reports that are initially filed with another Board employee. Upon receipt of a report of alleged discrimination/retaliation, the CO will contact the Complainant and begin either an informal or formal complaint process (depending on the Complainant's request and the nature of the alleged discrimination/retaliation) or The District Administrator will designate a specific individual to conduct the process necessary for an informal or formal investigation. The CO will provide a copy of this policy to the Complainant and the Respondent upon request.

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

Investigation and Complaint Procedure

Except for sex discrimination which is covered by Policy #2266 – Nondiscrimination on the Basis of Sex in Education Programs or Activities, any employee who alleges to have been subjected to discrimination or retaliation pursuant to this Policy may seek resolution of the complaint through the procedures described below. The complaint procedures involve an investigation of the individual's

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claims of discrimination/retaliation in violation of this Policy 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) 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 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/retaliation in violation of this Policy may file a complaint, either orally or in writing, 1) with a principal, 2) the CO, 3) to the District Administrator, or other supervisory employee. 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 CO or, if appropriate appoint/designate another individual to serve as CO for the complaint regarding a CO.

Due to sensitivity surrounding complaints of discrimination and retaliation, timelines are flexible for initiating the complaint process; however, individuals **are encouraged** 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, 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 two (2) days.

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

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

If the Complainant is willing 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.

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Upon receiving a complaint, the CO will consider any action that 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 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 unwell to consent to the proposed change, the CO still may take whatever actions are deemed in consultation with the District Administrator.

Within 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.

Simultaneously, the CO will inform the Respondent that a complaint has been received. The Respondent will be informed about the nature of the allegations and upon request be 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) days.

Investigations shall be completed promptly by the CO or designee. 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.

The investigation will include:

1. interviews with the Complainant;
2. interviews with the Respondent;
3. interviews with any other witnesses who may reasonably be expected to have any information relevant to the allegations;
4. 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.

If, at any time before or during the investigation the conduct alleged, if proven, may be considered sex discrimination per Board Policy 2262 – Nondiscrimination on the Basis of Sex in Education Programs or Activities, the CO will 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 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. The CO or designee's recommendations must be based

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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.

Absent extenuating circumstances, within five (5) days of receiving the report of the CO or designee, the District Administrator or designee either must issue a written decision regarding whether the charges have been substantiated or request further investigation. A summary of the District Administrator or designee's final decision will be provided to both the Complainant and the 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, 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 or the designee must issue a written decision as described above.

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

The decision of the District Administrator or the designee shall be final.

The Board reserves the right to investigate and resolve a complaint or report of discrimination/retaliation pursuant to this Policy regardless of whether the Complainant pursues the complaint. The Board also reserves the right to have the complaint investigation conducted by an external person in accordance with this Policy or in such other manner as deemed appropriate by the Board or its designee. The parties may be represented, at their own cost, at any of the above-described interviews/meetings.

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

Privacy/Confidentiality

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

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

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

Remedial Action and Monitoring

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

The Board may appoint an individual, who may be a District employee, to follow up with the Complainant to ensure no further 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.

Where the Board becomes aware that a prior disciplinary action has been taken against the Respondent, all subsequent sanction imposed by the Board and/or District Administrator shall be reasonable 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 discrimination/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 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.

Complaints alleging retaliation covered by this Policy may be filed according to the internal complaint process set forth above.

Education and Training

In support of this Policy, the Board promotes preventative educational measures to create greater awareness of 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.

Retention of Investigatory Records and Materials

The CO are 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/or received as part of an investigation, which may include but are not limited to:

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

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- Written documentation of any supportive measures offered and/or provided to The Complainant and/or the Respondent including no contact orders issued to both parties, the dates issued, and the dates the parties acknowledged receipt; and
- 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 Codes 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).

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.

The individual may also at any time, contact the U.S. Department of Education, Office for Civil Rights, Cleveland Office, 600 Superior Avenue East, Suite 750, Cleveland, Ohio 44114-2611; Telephone: (216) 522-4970; Fax: (216) 522-2573; TDD: (216) 522-4944; E-mail: ocr.cleveland@ed.gov; Web: <http://www.ed.gov/ocr>.

Legal References

111.31 et seq.,

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

118.125, Wis. Stats.

118.195, Wis. Stats.

118.20, Wis. Stats.

Fourteenth Amendment, U.S. Constitution

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20 U.S.C. Section 1701 et seq., Equal Educational Opportunities Act of 1974
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. 2000e et seq., Title VI of the Civil Rights Act of 1964
42 U.S.C. 20003 35 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 C.F.R. Part 1635, The FINA Regulations
34 C.F.R. Part 110, The Age Discrimination Act Regulations

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