

# STUDENT HARASSMENT BASED ON A LEGALLY-PROTECTED STATUS

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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 (including any non-conformance with sex-based or gender-based stereotypes), 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 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. 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.

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.

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 they are not the direct target of the harassment.

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- 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.

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.

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).

### **Examples of Prohibited Conduct**

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 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 endanger 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.

Additional examples of conduct that may constitute or directly contribute to a finding of unlawful 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 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 sex, gender, sexual orientation, or lack of conformity to sex-based or gender-based stereotypes.

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## **Applicability of Nondiscrimination Policies; Reports and Complaints of Harassment**

Unlawful harassment that is based on a legally-protected status is a form of discrimination. As a result, Board Policy 413/513 (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.

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 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 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.

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 413/513 and Board Policy 411.

## **Instructional Materials and Texts**

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. 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

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the impact of harassment and harmful language and the importance of standing against discrimination and hostility.

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.

## 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

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