

Policy

BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT

OPERATIONS
8913 / Page 1 of 8

SECTION 504 / ADA PROHIBITION AGAINST DISABILITY DISCRIMINATION IN EMPLOYMENT

The Board prohibits discrimination against any employee or applicant based upon their disability. As such, the Board will not engage in employment practices or adapt policies that discriminate on the basis of disability, or otherwise discriminate against qualified individuals with disabilities in regard to job application procedures, the hiring, advancement or discharge of employees, employee compensation, job training, or other terms, conditions and privileges of employment. The Board further will not participate in any contractual or other disability. Additionally, the Board will not participate in any contractual or other relationships that have the effect of subjection qualified individuals with disabilities who are applicants or employees to discrimination on the basis of disability.

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.

"An individual with a disability" means a person who has, has a record of, or is regarded as having, a physical or mental impairment that substantially limits one or more major life activities.

Policy

BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT

OPERATIONS
8913 / Page 2 of 8

Major Life Activities

Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, eating, sleeping, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, sitting, reaching, interacting with others, and working.

Major life activities also include the operation of a major bodily function, including but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

Impairment That Substantially Limits a Major Life Activity

The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures such as medication, medical supplies, equipment or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics (including limbs and devices), hear aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, oxygen therapy equipment or supplies, use of assistive technology, reasonable accommodations or “auxiliary aides or services,” learned behavioral or adaptive neurological modifications, psychotherapy, behavioral therapy, or physical therapy.

An impairment that is episodic in nature or in remission is considered a disability if it would substantially limit a major life activity when active.

Qualified Individual with a Disability

A qualified ~~person~~ individual with a disability means the individual satisfies the requisite skill, experience, education, and other job-related requirements of the employment position the individual holds or desires and can perform the essential functions of the job in question with or without reasonable accommodation.

Reasonable Accommodation

The Board will provide a reasonable accommodation to a qualified individual who has an actual disability or who has a record of a disability, unless the accommodation would impose an undue hardship on the operation of the Board program and/or activities. A reasonable accommodation is not required for an individual who believes they are being regarded as having a disability. Employees requesting reasonable accommodation must cooperate with school officials in obtaining specific medical opinion that identifies the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Policy

**BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT**

OPERATIONS
8913 / Page 3 of 8

Facilities

No qualified person with a disability will be denied the benefits of, excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which Section 504/American with Disabilities Act (ADA) applies because the District's facilities are inaccessible to or unusable by persons with disabilities.

For facilities constructed or altered after June 3, 1977, the District will comply with applicable accessibility standards. For those existing facilities constructed prior to June 3, 1977, the District is committed to operating its programs and activities so that they are readily accessible to person with disabilities.

District Compliance Officer(s)

The Board designates the following individual(s) to serve as the District's 504 Compliance Officer(s) / ADA Coordinator(s):

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 name(s), title(s), and contact information of these individuals will be published annually:

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

The District Compliance Officer(s) are responsible for coordinating the District's efforts to comply with applicable Federal and State laws and regulations, including the District's duty to address in a prompt and equitable manner any inquiries or complaints regarding discrimination/retaliation or denial of equal access. The Compliance Officer's also shall verify that proper notice of nondiscrimination 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), and the Age Discrimination in Employment Act of 1975 is provided to staff members and the general public. A copy of each of the Acts and regulations on which this notice is based will be made available upon request from the Compliance Officers.

The District Compliance Officer(s) will oversee the investigation of any complaints of discrimination based on disability, which may be filed pursuant to the Board's adopted internal complain procedure and will attempt to resolve such complaints. Any complaint received regarding the District Administrator, or a Board member shall be referred to the Board's legal counsel, who shall assume the

Policy

role of the Compliance Officer for such complaints, as appropriate. Additionally, if the complaint is regarding a Compliance Officer, the complaint shall be reported to the District Administrator, who shall coordinate with the other appointed/designated Compliance Officer, or, if appropriate appoint/designate another individual to serve as Compliance Officer for the complaint regarding a Compliance Officer.

The Board will provide for the prompt and equitable resolution of complaints alleging violations of Section 504/ADA. (See Complaint Procedure below.)

Complaint Procedures

If a person believes that they have been discriminated against on the basis of their disability, 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.

Internal complaints must be put in writing and must identify the specific circumstances or areas of dispute that have given rise to the complaint and offer possible solutions to the dispute. The complaint must be filed with the Compliance Officer(s) within the time limits specified below. The Compliance Officer(s) are available to assist individuals in filing a complaint.

Internal Complaint Procedure

The following internal complaint procedure is available to employees for the prompt and equitable resolution of complaints alleging discrimination based upon disability. Use of the internal complaint procedure is not a prerequisite to the pursuit of other remedies, including the filing of a complaint with the U.S. Department of Education's Office for Civil Rights.

- A. An employee with a complaint based on alleged discrimination on the basis of disability may first discuss the problem with the Compliance Officer(s).
- B. If the informal discussion does not resolve the matter, or if the employee skips Step A, the individual may file a formal written complaint with the Compliance Officer(s). The written complaint must contain the name and address of the individual or representative filing the complaint, be signed by the complainant, or someone authorized to sign for the complainant, describe the alleged discriminatory action in sufficient detail to inform the Compliance Officer(s) of the nature and date of the alleged violation and propose a resolution. The complaint should be filed within thirty (30) days of the circumstances or event giving rise to the complaint.
- C. The Compliance Office(s) will conduct an independent investigation of the matter. This complaint procedure contemplates informal, but thorough investigations, affording all interested person and their representatives, if any, an opportunity to present witnesses and other evidence relevant to the complaint. The Compliance Officer(s) will provide the complainant with a written disposition of the complaint as soon as practicable relative to the ability to complete a thorough investigation but within sixty (60) days. If no decision is rendered within sixty (60) business days, or the complainant, the employee may file, in writing, an appeal

Policy

with the District Administrator. The Compliance Officer(s) shall maintain the District's files and records relating to the complaint.

- D. The District Administrator will, within ten (10) days of receiving the written appeal, conduct a meeting with all parties involved in an attempt to resolve the complaint. The District Administrator will render their decision within ten (10) days of the meeting.
- E. The employee may be represented, their own cost, at any of the above-described meetings.
- F. 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 for Civil Rights or the filing of a court case. Use of this internal complaint procedure is not a prerequisite to the pursuit of other remedies.

If it is determined that the complainant was subjected to discrimination, the Compliance Officer(s) 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, effective, and tailored to the specific situation.

OCR Complaint

At any time, if an employee believes that they have been subjected to discrimination based upon their disability in violation of Section 504 or the ADA, the individual may file a complaint with the U.S. Department of Education's Officer for Civil Rights ("OCR"). The OCR can be reached at:

U.S. Department of Education Office of Civil Rights Citigroup Center
500 W. Madison Street, Suite 1475
Chicago, IL 60661
(312) 790-1560
FAX: (312) 730-1576
TDD: (877) 521-2172
E-mail: OCR.Chicago@ed.gov

Privacy/Confidentiality

The District 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 District's legal obligations to investigate, take appropriate action, and conform with any discovery or disclosure obligations.

All records generated under the terms of this policy shall be maintained as confidential to the extent permitted by law. Confidentiality, however, cannot be guaranteed. Additionally, the Respondent must be provided the Complainant's identity.

During the course of a formal investigation, the CO or designee 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.

Policy

**BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT**

**OPERATIONS
8913 / Page 6 of 8**

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 sanctions imposed by the Board and/or District Administrator shall be reasonably calculated to end such conduct, prevent its recurrence, and remedy its effect.

Retaliation

Retaliation against a person who makes a report or files a complaint alleging discrimination/retaliation, or participates as a witness in an investigation, is prohibited. Neither the Board nor any other person may intimidate, threaten, coerce, or interfere with any individual because the person opposed any act or practice made by Section 504 or the ADA, or because that individual made a report, formal complaint, testified, assisted, or participated, or refused to participate in any manner in an investigation, proceeding, or hearing under those laws and/or this policy, or because that individual exercised, enjoyed, aided, or encouraged any other person in the exercise or enjoyment of any 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.

Formal complaints alleging retaliation may be filed according to the internal complaint process set forth above.

Policy

**BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT**

**OPERATIONS
8913 / Page 7 of 8**

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

Education and Training

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

Retention of Investigatory Records and Materials

The Compliance Officer(s) is responsible for overseeing the 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 – Information Management) created and/or received as part of an investigation, which may include but are not limited to:

- A. all written reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- B. any narratives that memorialize oral reports/allegations/complaints/grievances/statements/responses pertaining to an alleged violation of this policy;
- C. any documentation that memorializes the actions taken by District personnel or individuals contracted or appointed by the Board to fulfill its responsibilities related to the investigation and/or the District's response to the alleged violation of this policy;
- D. written witness statements;
- E. narratives, notes from, and audio, video, or digital recordings of witness interviews/statements;
- F. e-mails, texts, and social media posts that directly relate to or constitute evidence pertaining to an alleged violation of this policy (i.e., not after-the-fact commentary about or media coverage of the incident);
- G. notes and summaries prepared contemporaneously by the investigator in whatever form made (e.g., handwritten, keyed into a computer or tablet, etc.), but not including transitory notes whose content is otherwise memorialized in other documents;
- H. written disciplinary sanctions issued to students or employees and other documentation that memorializes oral disciplinary sanctions issued to students or employees for violations of this policy;
- I. dated written determinations/reports (including summaries of relevant exculpatory and inculpatory evidence) and other documentation that memorializes oral notifications to the parties concerning the outcome of the investigation, including any consequences imposed as a result of a violation of this policy;
- J. documentation of any supportive measures offered and/or provided to the Complainant and the Respondent, including no contact orders issued to both parties, the dates the no contact orders were issued, and the dates the parties acknowledged receipt of the no contact orders;
- K. 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;

Policy

BOARD OF EDUCATION
HORTONVILLE AREA SCHOOL DISTRICT

OPERATIONS
8913 / Page 8 of 8

- L. copies of the Board policy and 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);
- M. copies of any documentation that memorializes any formal or informal resolutions to the alleged discrimination or harassment;
- N. 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 conduct 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, the name and title (or credentials) of the presenter, and a copy of the materials reviewed or presented during the training.]**

The documents, ESI, and electronic media (as defined in Policy #8315 - Information Management) retained may include public records and records exempt from disclosure under Federal (e.g., FERPA, ADA) and/or State law, such as student records and confidential medical records.

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

Legal References

29 C.F.R. Part 1630

29 U.S.C. 794, Section 504 Rehabilitation Act of 1973, as amended

34 C.F.R. Part 104.

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

© NEOLA 2023