Nondiscrimination and Anti-Harassment Policy

General Prohibitions

The Fargo Public School District ("District") is committed to maintaining a learning and working environment free from discrimination and harassment in all employment and educational programs, activities, and facilities. The District prohibits discrimination and harassment based on a student's, parent's, guardian's, or employee's race, color, religion, sex, sexual orientation, gender identity, national origin, ancestry, disability, age, or other status protected by law. The District also provides equal access to the Boy Scouts and other designated youth groups, as required by federal law.

It is a violation of this policy for any district student, parent, guardian, employee, or third party to discriminate against or harass another district student or employee, based on any status protected by law, if the conduct occurred within the context of an education program or activity, or if the conduct had a continuing effect in the educational setting of a program or activity occurring on or off school district property. The District will not tolerate discrimination or harassment of a district student or employee by a third party. The District also prohibits aiding, abetting, inciting, compelling, or coercing discrimination or harassment; discriminating against or harassing any individual affiliated with another who is protected by this policy and/or law; knowingly making a false discrimination and/or harassment report; and retaliation against individuals who report and/or participate in a discrimination and/or harassment investigation, including instances when a complaint is not substantiated.

The District shall promptly investigate any discrimination, harassment, or retaliation complaint and act on findings as appropriate, or as required by law. Outcomes may include disciplinary measures such as termination of employment or student expulsion in accordance with board policy, law, and, when applicable, the negotiated agreement. Students and employees are expected to fully cooperate in the investigation process. The District will take steps to prevent recurrence of discrimination, harassment, or retaliation and remedy discriminatory effects on the complainant and others, if appropriate.

Definitions

- *Complainant* is the individual filing the complaint. If the complainant is not the victim of the alleged discrimination and/or harassment, the victim must be afforded the same rights as the complainant under this policy.

- *Disability* is defined in accordance with NDCC 14-02.4-02 (5).

- *Discrimination* means failure to treat an individual equally due to a protected status.

- *Protected status* is defined in applicable state (NDCC 14-02.4-02 (6)) and federal laws.

- *Employee* is defined in accordance with NDCC 14-02.4-02 (7).

- *Harassment* is a specific type of discrimination based on a protected status. It occurs under the following conditions:

- For employees: When enduring the offensive conduct becomes a condition of continued employment, or the conduct is severe, persistent, and/or pervasive enough to create a work environment that a reasonable individual would consider intimidating, hostile, or abusive.
- For students: When the conduct is sufficiently severe, persistent, and/or pervasive so as to limit the student's ability to participate in or benefit from the education program or to create a hostile or abusive education environment.

- *North Dakota Human Rights Act* (NDCC ch. 14-02.4) provides protection from discrimination in the workplace on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer.

- *Section 504* (Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794) is a federal law designed to protect the rights of individuals with disabilities in programs and activities that receive federal financial assistance from the U.S. Department of Education.

- *Sexual harassment* is a form of harassment based on sex. It is defined under Title IX as unwelcome sexual advances, requests for sexual favors, and/or other verbal, written, or physical conduct or communication of a sexual nature, that:
  - Constitutes *quid pro quo* harassment, meaning submission to such conduct or communication is made a term or condition, either explicitly or implicitly, of the basis for employment decisions or educational decisions or benefits for students (e.g., receiving a grade);
  - Is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
  - Constitutes sexual assault, dating violence, domestic violence, or stalking as those offenses are defined in the Clery Act, 20 U.S.C. § 1092(f) and the Violence Against Women Act, 34 U.S.C. § 12291(a).

- *Sexual harassment* examples may include, but are not limited to, the following:
  - Sexual or "dirty" jokes;
  - Sexual advances;
  - Pressure for sexual favors;
  - Unwelcome touching, such as patting, pinching, or constant brushing against another's body;
  - Displaying or distributing of sexually explicit drawings, pictures, and written materials;
  - Graffiti of a sexual nature;
  - Sexual gestures;
  - Touching oneself sexually or talking about one's sexual activity in front of others;
  - Spreading rumors about or rating other's sexual activity or performance;
  - Remarks about an individual's sexual orientation; and

- Sexual violence, including rape, sexual battery, sexual abuse, and sexual coercion.

- *Title II of the Americans with Disabilities Act* extends the prohibition on discrimination established by Section 504 to all services, programs, and activities of State and local government entities.

- *Title VI* is a federal law that provides protection from discrimination based on race, color, or national origin in employment and employment practices in programs or activities receiving federal financial assistance.

- *Title VII* is a federal law that provides protection from discrimination on the basis of race, color, religion, sex or national origin. Title VII applies to all public school districts with 15 or more employees.

- *Title IX* is a federal law that provides protection from discrimination, based on sex, in education programs or activities that receive federal financial assistance.

Grievance Coordinators

The 504/Title II Coordinator's responsibilities include overseeing the District's response to disability discrimination reports and complaints. The 504/Title II Coordinator must have knowledge of the requirements of Section 504 and Title II, of the District's policies and procedures on disability discrimination, and of all complaints raising Section 504/Title II issues throughout the District. In order to accomplish this, the 504/Title II Coordinator must be informed of any report or complaint raising Section 504/Title II issues, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The Board designates the Director of Compliance, Dr. Patricia Cummings, as the 504/Title II Coordinator. Dr. Cummings may be contacted at 700 7th Street South, Fargo, ND 58103, 701-446-1000, cumminp1@fargo.k12.nd.us.

The Nondiscrimination Coordinator's core responsibilities include overseeing the district's response to discrimination and harassment reports and complaints that do not include sex or disability under applicable federal laws, but instead the other protected statuses or sex or disability based discrimination under state law. The Board designates the Chief Human Capital Director, Dr. Jeff McCanna, as the Nondiscrimination Coordinator. Dr. McCanna may be contacted at 700 7th Street South, Fargo, ND 58103, 701-446-1037, mccannj1@fargo.k12.nd.us.

Reporting Procedure for Alleged Policy Violations

1. ***Reporting Options for Students and Community Members***
   Students and community members may report known or suspected violations of this policy by filing a complaint with a District employee. A complaint may be filed anonymously. However, an anonymous complaint may limit the District's ability to investigate and respond to the alleged violations.

2. ***Reporting Requirements for District Employees***
   All District employees must be particularly alert to possible situations, circumstances, or events that might include discrimination or harassment. Any District employee who

receives a report of, observes, or has other knowledge or beliefs of conduct that may constitute discrimination or harassment shall immediately report it by communicating with the building principal. If the alleged violation implicates the building principal, the employee must report the alleged violation to the Chief Human Capital Officer.

If the District determines that an employee knew of or suspected a violation of this policy and failed to report it in accordance with the reporting procedure above, the staff member may be subject to disciplinary action or other corrective measures.

3. ***Reporting Considerations***
   The District's investigation into the alleged behavior will determine whether the conduct meets the statutory definition of discrimination or harassment. If the misconduct does not meet the statutory definition of discrimination or harassment, the District may address the conduct under a different policy including Administrative Policy 6310 – Student Behavior, Discipline, and Reporting or Administrative Policy 5255 – Staff Conduct.

   All Title IX sexual harassment complaints shall be handled in accordance with federal regulations and the proocedures outlined in Administrative Policy AP 5050/6050 Title IX.

Supportive Measures
The District will offer and implement appropriate and reasonable supportive measures to the victim upon receipt of a complaint. Supportive measures are individualized support offered as appropriate and as reasonably available. The purpose of supportive measures is to restore or preserve access to the District's educational programs and activities, including measures designed to protect the safety of the Parties and the District's educational environment and to deter discrimination, harassment, and retaliation.

Supportive measures will be developed on a case-by-case basis and may be amended based on the totality of the circumstances upon the completion of an investigation substantiating a policy violation. The District will maintain the confidentiality of supportive measures provided that confidentiality does not impair the District's ability to provide the supportive measures. Supportive measures may include, but not be limited to, the following:

- Referral to counseling services
- Referral to the Employee Assistance Program
- Implementation of no contact orders between the Parties
- Modification of the classroom seating assignments

A violation of a no contact order issued as a supportive measure pursuant to this policy may be addressed under a different policy including Administrative Policy 6310 – Student Behavior, Discipline, and Reporting or Administrative Policy 5255 – Staff

Investigation Procedures
The District has an obligation to investigate violations of this policy when in receipt of actual notice of an alleged policy violation. Actual notice of an alleged violation occurs when alleged discrimination, harassment, reprisal, retaliation, or false reporting is reported. Upon receipt of a

report of an alleged policy violation, the designated administrator shall first determine if the alleged policy violation is on the basis of sex. Alleged policy violaions where the harassment or discrimination is on the basis of sex must be investigated in accordance with Administrative Policy 5050/6050.

In all other cases, the designated administrator shall immediately undertake or authorize an investigation. In any case where there is a potential conflict of interest or bias, the designed administrator shall contact the Chief Human Capital Officer. Unless the complaint is regarding the Chief Human Capital Officer, the Chief Human Capital Officer, in their sole discretion, may assign a new investigator at any time.

The depth of the investigation will be based on numerous factors including the age of the parties involved; the nature of the allegations; the details, content, and context of the report. The investigation may also include the following steps or any other steps the designated administrator deems necessary:

1. Identification and collection of evidence, if available and accessible
2. Interviews with the complainant, the victim, and the accused. *At no time during the investigation will the victim be required to meet with the accused.*
3. Interviews with any others who may have witnessed or otherwise have knowledge of the circumstances giving rise to the alleged complaint. *Both the complainant and accused will have equal opportunity to present evidence and name witnesses. Witnesses shall be instructed not to discuss this matter with others.*
4. A review of any mitigating or extenuating circumstances.

Upon completion of the investigation, the designated administrator shall complete a written report containing a detailed description of their findings. The designated administrator must also make a determination as to whether the allegations were substantiated, whether Administrative Policy 4060/50600/6060 was violated, and/or whether any other District policies were violated. Investigations must be completed within 60 days unless the designated administrator documents good cause for extending the deadline. Such documentation mut be sent to the victim and the accused during the investigation.

Disciplinary Action

If the report against a student for harassment or discrimination is substantiated, the building principal shall determine the appropriate disciplinary action. Parents shall be notified consistent with policies dealing with discipline and due process procedures. Disciplinary action shall be based on the totality of the circumstances and in accordance with the District Code of Character, Conduct, and Support. If the report is unsubstantiated but another policy violation is identified, the building principal shall determine the appropriate level of discipline based on the applicable policy.

Disciplinary actions against students are protected student information pursuant to the Family Educational Rights and Privacy Act ("FERPA") and only available to the parent and guardian of the student who is the subject of the discipline; disciplinary actions will not be provided to the complainant or victim.

If the accused is a District employee and the report is substantiated, the District shall take appropriate disciplinary action up to and including discharge for cause.

Reporting to Law Enforcement and Other Forms of Redress
Anytime there is reasonable suspicion that a discrimination or harassment incident constituted a crime, the District may report the alleged conduct to law enforcement. Nothing in this policy prevents a victim or their family from seeking redress under state and federal law.

Prevention
It is important that all students and employees understand what constitutes discrimination and harassment and their right to report such behavior. Building Principals, or their designee, should educate those within their building regarding this policy and should be watchful for behavior, which fits the description of discrimination, harassment, and retaliation.

Document Retention
All reports and documentation related to the investigation will be stored electronically by the District.

Policy Dissemination
In addition, the Superintendent shall display this policy on the District website and publish it in student and employee handbooks.

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