POLICY **NONDISCRIMINATION-STUDENTS 4620**

Prohibition Against Discrimination

1. Purpose

   a. The Madison Metropolitan School District strives to provide an environment where every student feels supported, respected and welcomed and where every student can learn in an atmosphere that is free from harassment and discrimination. Discrimination and harassment can have a harmful social, physical, psychological and/or academic impact on students who are the victims of these actions, students who engage in these behaviors and bystanders that observe discriminatory and/or harassing acts. The School District does not allow discrimination and harassment towards or by students on school/District grounds, at school/District-sponsored activities or in transportation to and from school or school/District-sponsored activities.

   b. District policy protects students from discrimination and harassment regarding a person's sex, race, color, age, national origin, ancestry, religion, creed, pregnancy, marital status, parental status, homelessness, sexual orientation, gender identity, gender expression or disability including their physical, mental, emotional, or learning disability and/or retaliation as defined in this Policy.

2. Discrimination

   a. With respect to educational programs, no person shall be denied admission to any District school, or be denied participation in, be denied the benefits of, or be discriminated against in any curricular, extracurricular, student services, recreational or other program or activity because of the person's protected class(es) included but not limited to the following areas:

      1) Admission or enrollment into any school, class, course, program or activity; (This does not place a student in a school, class, program, or activity based on objective standards of individual performance or need.)

      2) Interactions in the classroom, counseling, as well as with other support staff;

      3) Standards and rules of behavior, including student harassment;

      4) Disciplinary actions, including suspensions and expulsions;

5) Acceptance and administration of gifts, bequests, scholarships, other forms of recognition, such as aids, benefits, awards, or services to students from private agencies, organizations or persons;

6) Instructional and library media materials selection policy;

7) Methods, practices, materials, attitudes, and interpretations used for testing, assessment, evaluating, and counseling students; (This does not prohibit the use of special testing or counseling materials or techniques to meet the individual needs of students.)

8) Facilities;

9) Opportunity for participation in athletic programs or activities;

10) School-sponsored food service programs;

11) Graduation requirements.

b. Examples of discrimination may include but are not limited to:

1) Using a protected class, such as race or national origin, as a factor allowing access and opportunity to participate in college and career preparatory programs and courses;

2) Not responding promptly and effectively to complaints of discrimination, such as complaints of sexual harassment of students, including sexual violence;

3) Not allowing a student with physical disabilities to participate in extra-curricular activities; or

4) Denying students an equal opportunity to participate in interscholastic athletics program and by failing to provide the opportunity to receive coaching and the provision of locker rooms, practice and competitive fields, that are equivalent to those provided to students not in their protected class.

c. This Policy does not intend to prohibit the provision of special programs or services based on objective standards of individual need or performance to meet the needs of students, including advanced learners, special education, school-age parents, bilingual bicultural, at risk and other special programs; or programs designed to overcome the effects of past discrimination.

3. Harassment

a. The District is committed to the provision of a harassment-free environment for students of the District. The Board considers all forms of harassment, including hazing, to be unacceptable behavior because it undermines productivity in the academic environment, degrades, intimidates, isolates and is discriminatory. Harassment infringes upon the rights of all and creates a hostile environment for learning.

To ensure that all students study in an environment free of all forms of harassment, the Board expressly prohibits harassment based on race, creed, national origin, sex, pregnancy, marital status, disability, religion, age, ancestry, sexual orientation, gender identity, gender expression, age, parental status and retaliation as defined above, and will take all the necessary steps to prevent such harassment from occurring. Any employee or student who engages in harassment will be disciplined by the appropriate authorities.

b. Examples of harassment may include but are not limited to:

1) Unwanted physical contact including touching, pinching and/or brushing the body.

2) Indecent exposure, including lewd and lascivious behaviors.

3) Persistent requests for social/sexual encounters and favors.

4) Making inappropriate statements or jokes about students because of their protected class(es).

5) Basing a decision regarding classroom or extra-curricular activities on someone providing sexual favors, or someone's protected class(es).

6) Displaying graphic, sexually explicit objects, posters or pictures that show adolescents, women, racial minorities, people who have disabilities or students in a degrading or humiliating manner.

7) Obscene gestures, nonverbal suggestive behavior (leering) or insulting sounds (whistling).

4. Discrimination by Association

A situation where an individual is discriminated against through their association with another person. It shall be a violation of this Policy and is thus prohibited for anyone subject to this Policy to engage in any discriminatory or harassing acts prohibited by this Policy against any individual because of that individual's

association with a member of any protected class(es).

5. Civil Liability

   This Policy provides guidance for appropriate disciplinary action for violations of this Policy. This Policy does not provide a basis for a civil cause of action or damages. Any cause of action or right to damages shall be according to applicable federal and/or state law.

6. Any student who believes that they have been discriminated against or harassed may file a complaint using the complaint procedure outlined below.

10/4/04
Revised: 2/29/16

PROCEDURE **NONDISCRIMINATION-STUDENTS 4620**

Resolution of Discrimination/Harassment Complaints

1. Who May File a Discrimination/Harassment Complaint

   Any employee, applicant for employment, student, parent, or resident of the District who believes they have been discriminated against may file a complaint.

2. Filing of Complaint

   a. The District shall not accept any complaint filed more than three hundred (300) calendar days after the alleged discrimination occurred.

      1) Where a complainant alleges a pattern or practice of discrimination, the 300 calendar days shall begin to run from the last act or occurrence of alleged discrimination.

      2) Where a complainant alleges that there is a continuing violation of the Ordinance, the 300 calendar days shall begin to run from the last act or occurrence of alleged discrimination.

   b. A formal complaint may be filed by the complainant in person or mailed to the Title IX Investigator at Legal Services, Attn: Title IX Investigator, 545 West Dayton Street, Room 104, Madison, WI 53703.

      1) A complaint shall be deemed filed on the date received if delivered, or on the date postmarked if addressed by mail.

      2) Anonymous complaints will not be accepted.

3) All complaints should include, to the best of the complainant's ability, specific information regarding the discriminatory or harassing action(s) or inaction(s), the basis (e.g., age, race, sexual orientation, etc.) for the action(s) or inaction(s), the alleged offender(s), and any witnesses.

4) If the complaint is incomplete or does not satisfy the definition of harassment or discrimination, the complaint may be returned to the complainant, without being processed, for further information.

c. The complaint shall be completed on an approved form and must include the complainant's original signature to be accepted and processed.

d. The Title IX Investigator shall send to the complainant a written acknowledgment of the receipt of the complaint as soon as practicable, but within fifteen (15) calendar days.

1) The acknowledgement letter will include information regarding applicable local, state and federal antidiscrimination laws and related administrative agencies. This information is intended to assist the complainant and is not all inclusive. The letter will advise the complainant to seek assistance in determining their rights by contacting the enforcement agencies or an attorney.

2) A letter will also be sent to any alleged offender(s) named in the complaint and their respective supervisor.

3. Confidentiality

a. If the complainant requests confidentiality or asks that the complaint not be pursued, the District will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation.

1) If a complainant insists that their name or other identifiable information not be disclosed to the alleged perpetrator, the District should inform the complainant that its ability to respond may be limited.

2) The District should tell the student that District policy and Title IX prohibits retaliation, and that District officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

b. If the complainant continues to ask that their name or other identifiable information not be revealed, the District should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory

environment for all staff, visitors and students. Thus, the District may weigh the request for confidentiality against several factors including:

1) the seriousness of the alleged harassment;

2) the complainant's age;

3) whether there have been other harassment complaints about the same individual; and

4) the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.

c. The District should inform the complainant if it cannot ensure confidentiality. Even if the District cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence.

4. Retaliation

No District employee or student shall attempt to restrain, interfere with, coerce, discriminate, or take reprisal action against the complainant(s) and/or their witnesses during or after the presentation, processing, and resolution of a complaint. Such an action would be a violation of this Policy and the employee or student would be subject to the appropriate discipline. Any person who feels they are being retaliated against, as defined above, may contact the Title IX Investigator to make a complaint regarding the retaliatory actions.

5. Informal Complaint Resolution

a. The District may offer efforts to resolve the complaint on an informal basis while the investigation proceeds.

b. If an informal resolution of the complaint is arrived at, the terms of such resolution shall be reduced to writing and made a part of the complaint file. If the complaint is not resolved the investigation shall proceed.

6. Investigation

a. All complaints formally filed shall be investigated, unless resolved informally, to determine whether or not this Policy may have been violated.

b. In investigating a complaint, the District will determine:

1) Whether or not the alleged incident(s) occurred; and

2) If the misconduct did occur, the District will take action to stop the current situation, if applicable, and prevent a recurrence.

c. The District shall provide a prompt, complete, independent, and impartial investigation of the complaint. In most cases, the investigation will be conducted by the Title IX Investigator. In some cases, the investigation may be conducted by an investigative team or outside consultant as determined by the Title IX Investigator and Legal Counsel. In all cases the investigation shall be conducted in conjunction with the Legal Counsel.

d. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred and any policies and practices related to the situation. The investigation may include the review of various documents and information acquired during the investigation, which may include, but is not limited to, the response of the alleged discriminating person, written or oral statements from witnesses, copies of or extracts from records, policy statements, on-site visits, or regulations of the District.

7. Timeliness

a. Investigations under this Policy will be completed within ninety (90) calendar days from the date a complete, formal complaint has been properly filed with the Title IX Investigator.

b. Due to extenuating circumstances, including the informal resolution process, leaves of absence, etc. an investigation may take longer than ninety (90) calendar days. However, both parties must agree to this extension of time.

c. The ninety (90) day timeframe includes the District's response to the initial complaint. It does not include a response to any appeal that may be filed.

8. Determination and Appeal

a. After the investigation has been completed, the Investigator shall inform the Superintendent or Superintendent's designee of the determination of the complaint. The Superintendent or Superintendent's designee after consultation with the Title IX Investigator and/or Legal Counsel will communicate in writing such determination of the complaint to the complainant and respondent(s).

b. After the complainant and respondent(s) receive the written determination of the District's position, the complainant or respondent(s) may request a reconsideration of the District's position. The reconsideration request

must be filed within twenty (20) calendar days of the date of the determination. The written request for reconsideration must contain a statement as to why the complainant or respondent(s) is not satisfied with the decision. The Superintendent or Superintendent's designee will send the complainant or respondent(s) a written acknowledgment within twenty (20) calendar days after the Superintendent receives the reconsideration request.

9. If the complaint includes allegations protected under Wisconsin Statute s. 118.13, “Pupil Discrimination Prohibited,” and the District determines that discrimination did not occur, the determination letter from the Superintendent or Superintendent’s designee will inform the complainant of their right to appeal the negative determination to the State Superintendent of Public Instruction and the procedures for making an appeal. The complainant has thirty (30) days from the time they receive the determination letter to appeal to the State Superintendent of Public Instruction.

10. Notification of Nondiscrimination Policy and Complaint Procedure

The District will annually publish notice of this Policy. A student nondiscrimination statement shall be included in student and staff handbooks, course selection handbooks, and other published material describing school activities and opportunities. The complete student discrimination complaint procedure, including the Title IX Investigator’s contact information shall be included in student and staff handbooks.

11. Definitions

a. Ancestry. Refers to the country, nation, tribe or other identifiable group of people from which a person descends. It can also refer to the physical, cultural or linguistic characteristics of the person's ancestors.

b. Complainant. Any person eligible to file a complaint under the District’s Non-Discrimination Policy, this includes students, staff and visitors to District grounds and activities.

c. Creed. A system of religious beliefs, including moral or ethical beliefs about right and wrong that are sincerely held with the strength of traditional religious views.

d. Disability. Persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having a physical or mental impairment that substantially limits one or more major life activities, are also covered. Major life activities include but are not limited to caring for one's self, walking, seeing, hearing, speaking, breathing, working, performing manual

tasks, and learning. Some examples of impairments which may substantially limit major life activities, even with the help of medication or aids/devices, are: AIDS, alcoholism, blindness or visual impairment, cancer, deafness or hearing impairment, diabetes, drug addiction, heart disease, and mental illness. This definition includes students who have been identified as having a disability under the Individuals with Disabilities Education Act (IDEA).

e. Discrimination. Any action, policy, or practice, including bias, stereotyping, and student harassment, which is detrimental to a person or group of persons and differentiates or distinguishes among persons, or which limits or denies a person or group of persons opportunities, privileges, roles or rewards based, in whole or in part, on their membership in a protected class, or which perpetuates the effects of past discrimination.

f. Equal. Having the same privileges, status or rights.

g. Equitable. Exhibiting or characterized by equity; impartial or reasonable in judgment or dispensation; not necessarily equal or the same.

h. Evidentiary Standard. Standard used to determine if harassment/discrimination allegations are true. The standard applied to discrimination complaints is a “Preponderance of the Evidence” (defined below).

i. Gender Expansiveness. An umbrella term used for individuals that broaden commonly held definitions of gender, including its expression, associated identities, and/or other perceived gender norms, in one or more aspects of their life. These individuals expand the definition of gender through their own identity and/or expression. Some individuals do not identify with being either male or female; others identify as a blend of both, while still others identify with a gender, but express their gender in ways that differ from stereotypical presentations. A gender-expansive person’s preferences and self-expression may fall outside commonly understood gender norms within their own culture; or they may be aligned with them even as one’s internal gender identity doesn’t align with the sex assigned at birth.

j. Gender Expression. Refers to the ways in which people externally communicate their gender identity to others through behavior, clothing, haircut, voice, and other forms of presentation. Gender expression also works the other way as people assign gender to others based on their appearance, mannerisms, and other gendered characteristics. Sometimes, transgender people seek to match their physical expression with their gender identity, rather than their birth-assigned sex. Gender expression should not be viewed as an indication of sexual orientation.

k. Gender Fluidity. Gender fluidity conveys a wider, more flexible range of gender expression, with interests and behaviors that may even change from day to day. Gender fluid children do not feel confined by restrictive boundaries of stereotypical expectations of girls or boys. In other words, a child may feel they are a girl some days and a boy on others, or possibly feel that neither term describes them accurately.

l. Gender Identity. One's innermost core concept of self which can include male, female, a blend of both or neither, and many more—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different than the sex assigned at birth. Individuals become conscious of this between the ages 18 months and 3 years. Most people develop a gender identity that matches their biological sex. For some, however, their gender identity is different from their biological or assigned sex. Some of these individuals choose to socially, hormonally and/or surgically change their physical appearance to more fully match their gender identity and some do not.

m. Harassment. Unwanted, deliberate or repeated unsolicited comments (oral or written), gestures, graphic material, physical contacts, verbal/nonverbal or physical conduct directed to an individual because of their membership in a protected class(es) constitute harassment when this conduct: 1) Has the purpose or effect of creating an intimidating, hostile or offensive educational environment; or 2) Has the purpose or effect of unreasonably or substantially interfering with a student's performance in school, including their performance in curricular, extracurricular, and nonacademic activities; or 3) Otherwise adversely affects a student's opportunities in curriculum, extracurricular, and nonacademic activities; or 4) Submission to the conduct is made either explicitly or implicitly, a term or condition of a student's opportunity to obtain an education; or 5) Submission to or rejection of the conduct by an individual is used as a factor in decisions affecting the student's education; or 6) Is sufficiently severe, persistent or pervasive that it adversely affects a student's ability to participate in or benefit from an educational program or activity.

n. Homelessness. See paragraph 1(a) of Board Policy 4406 in the Procedures section for this definition.

o. Hostile Environment. A situation in which harassment causes the school environment to be permeated with intimidation, humiliation, ridicule or insult that is sufficiently severe or pervasive to reasonably interfere or alter the conditions of the student's education or the employee's work.

p. Marital status. This includes being married, separated, divorced, widowed, or single.

q. National Origin. Treating people unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not). This includes students whose dominant language is other than English.

r. Parental Status. Parental status means the status of being a parent or childless. A 'parent' includes a step-parent, adoptive parent and foster parent. A student who is pregnant is considered a parent.

s. Pregnancy. This involves treating a student unfavorably because of pregnancy, childbirth, a medical condition related to pregnancy or childbirth or any pregnancy related condition.

t. Preponderance of the Evidence. The evidence submitted must show that it is more likely than not that the act(s) of discrimination/harassment did occur and more likely than not the alleged perpetrator(s) committed the act.

u. Probable Cause. There is reasonable ground for belief supported by facts and circumstances strong enough in themselves to warrant a prudent person in the belief that discrimination probably has been or is being committed.

v. Protected class. A group of people defined by the law who share common characteristics and are protected from discrimination and harassment by federal, state and/or local laws. District Policy recognizes protected classes including sex, race, national origin, ancestry, religion, creed, pregnancy, marital status, parental status, sexual orientation, gender identity, gender expression or disability including her or his physical, mental, emotional, or learning disability.

w. Religion. This includes all aspects of religious observance and practice, as well as belief. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

x. Retaliation. Any adverse action impacting a student's education experience and/or any adverse action to include any act of revenge, reprisal, intimidation or coercion directed at a student and motivated by the belief that the student has either opposed a violation of this Policy, has filed a complaint under this Policy, has participated in an investigation of a complaint filed under this Policy, or has exercised any other right under this Policy.

y. Sex. This involves treating someone unfavorably because of that person's sex. These may include, for example, allegations of sexual harassment or other kinds of sex discrimination, such as adverse actions taken because of the person's non-conformance with sex-stereotypes. It is a Title IX violation and considered discrimination based on sex to treat a person unfavorably if a person identifies as transgender.

z. Sexual Harassment. Unwanted, deliberate or repeated unsolicited comments (oral or written), gestures, graphic material, physical contacts, unwelcome requests for sexual favors, and/or verbal/nonverbal or physical conduct directed to an individual because of the student's sex. "Sexual harassment" includes conduct directed by a person at another person of the same or opposite sex.

aa. Sexual Orientation. Term that refers to being romantically or sexually attracted to people of a specific gender. Our sexual orientation and our gender identity are separate, distinct parts of our overall identity.

bb. Stereotyping. Attributing behaviors, abilities, interests, values and roles to a person or group of persons on the basis, in whole or in part, of their protected class(es).

cc. Student Harassment. Behavior toward students based, in whole or in part, on their protected class(es) which substantially interferes with a student's school performance or creates an intimidating, hostile, or offensive school environment.

dd. Transgender. An umbrella term describing a person whose gender identity or expression is different from that traditionally associated with their assigned sex at birth.

10/4/04
Revised 2/29/16