

# NONDISCRIMINATION IN DISTRICT PROGRAMS, ACTIVITIES, AND OPERATIONS

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The Merton Community School District prohibits all forms of unlawful discrimination against students, employees, and other persons in all aspects of the District's programs, activities, and operations. The term "unlawful discrimination" encompasses any unlawful policy, practice, conduct, or other unlawful denial of rights, benefits, or privileges that is based on any legally-protected status or classification (e.g., race, national origin, sex, disability, religion, etc.). Various state and federal laws establish the actions that do (and do not) constitute unlawful discrimination with respect to each protected status or classification. Where applicable, unlawful harassment that is based on a legally-protected status is one form of unlawful discrimination.

The District requires and will enforce nondiscrimination in a manner that is consistent with applicable constitutional provisions and with the rights and obligations that are established under all applicable state and federal civil rights laws, including but not limited to the current provisions of the following federal laws, which jointly serve to identify and protect the rights of students, employees, and other persons:

- Title IX of the Education Amendments of 1972 (sex discrimination);
- Section 504 of the Rehabilitation Act (disability discrimination);
- The Americans with Disabilities Act (including both the employment-related provisions of the ADA as well as Title II of the ADA, which broadly prohibits discrimination on the basis of disability in state and local government services);
- Titles IV and VI of the Civil Rights Act of 1964 (addressing discrimination based on race, color, national origin, sex, or religion);
- The Age Discrimination Act of 1975 (age discrimination);
- The nondiscrimination provisions of the Elementary and Secondary Education Act;
- The civil rights provisions associated with the District's participation in federal nutrition programs.

There are a significant number of additional state and federal nondiscrimination laws that are not listed above that further establish the rights of students and/or employees. In recognition of such laws, the District maintains additional nondiscrimination policies and rules that specifically and uniquely cover students within the District's policy manual) and all aspects of employment and personnel administration within the District.

### **Special Statement Regarding Sex Discrimination under Title IX**

As mandated by the federal Title IX statutes and the regulations set forth in Chapter 106 of Title 34 of the Code of Federal Regulations ("the federal Title IX regulations"), the District does not unlawfully discriminate on the basis of sex in any education program or activity that the District operates. Title IX's requirement not to discriminate in any education program or activity extends to District students, certain admissions processes, and District employment. Inquiries regarding how Title IX and the federal Title IX regulations apply to the District may be referred to a District Title IX Coordinator (as designated below),

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to the Assistant Secretary for Civil Rights at the U.S. Department of Education, or to both.

### Designation and Authorization of Nondiscrimination Coordinator(s)

Any questions concerning the District’s nondiscrimination and equal opportunities policies, general policy compliance, the application of any nondiscrimination law to the District, or the District’s reporting and complaint procedures may be directed to either of the District’s nondiscrimination and equal opportunity coordinators, each of whom also serves as a District Title IX Coordinator:

<p>The staff member holding the following position serves as the District’s designated <b><u>Becca Stein (Merton Primary) and Jay Posick (Merton Intermediate)</u></b>, with a primary focus on student matters and other non-employment-related matters:</p> <p><u><a href="#">Becca Stein (Primary School Principal) OR Jay Posick (Intermediate School Principal)</a></u> <u><a href="#">N68W28460 Sussex Road</a></u> <u><a href="#">Merton, WI 53056</a></u> <u><a href="#">[262-538-2227]</a></u> <u><a href="mailto:steinb@merton.k12.wi.us">steinb@merton.k12.wi.us</a></u> <u><a href="mailto:posickj@merton.k12.wi.us">posickj@merton.k12.wi.us</a></u></p>	<p>The staff member holding the following position serves as the District’s designated <b><u>Lori Larsen</u></b> with a primary focus on employment-related -matters:</p> <p><u><a href="#">Lori Larsen</a></u> <u><a href="#">N68W28460 Sussex Road</a></u> <u><a href="#">Merton, WI 53056</a></u> <u><a href="#">[262-538-2227]</a></u> <u><a href="mailto:viola-larsenl@merton.k12.wi.us">viola-larsenl@merton.k12.wi.us</a></u></p>
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1. The District’s nondiscrimination and equal opportunity coordinators have responsibility for coordinating the District’s efforts to implement this policy and to adhere to applicable nondiscrimination laws, including coordinating the District’s response to any complaint or report alleging noncompliance with, or acts in violation of, any of those laws. Although each of the nondiscrimination and equal opportunity coordinators identified above has their primary area(s) of focus, each is recognized as a deputy of the other in the event that the normal, primary coordinator for a given matter is affected by a conflict of interest or temporarily absent or otherwise unavailable.
2. Retaining their primary area of focus in either employment or non-employment matters, the nondiscrimination and equal opportunity coordinators identified above also serve as Section 504 and Americans with Disabilities Act Coordinators (i.e., for disability rights and disability-based discrimination issues) and federal Age Discrimination Act Coordinators.
3. The District’s nondiscrimination coordinator for student matters is also designated to receive any student discrimination complaints arising under section 118.13 of the state statutes and Chapter PI 9 of the Wisconsin Administrative Code. The Equal Employment Opportunities Coordinator serves as a secondary designee for this duty.

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4. In their capacity as District Title IX Coordinators, the above-identified individuals are authorized to coordinate the District's efforts to comply with the District's responsibilities under Title IX and under the federal Title IX regulations. The following additional employee(s) are also designated and authorized to serve as District Title IX Coordinators: ***Ron Russ (Superintendent).***"

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### **Any Person May Submit a Complaint or Report of Discrimination to the District**

The District is committed to the appropriate resolution of complaints and reports that allege (1) unlawful discrimination or a violation of a District nondiscrimination policy, including any form of prohibited harassment that is based on a legally-protected status; or (2) any type of retaliation that is prohibited by a nondiscrimination law or a District nondiscrimination policy.

Accordingly, unless otherwise specified by a state or federal law, any person (including a person who is not claiming to have been personally harmed/victimized by the alleged conduct or challenged policy) may report a concern or allegation of prohibited discrimination or prohibited retaliation as follows:

1. To either of the District's designated nondiscrimination and equal opportunity coordinators, using the contact information designated above and any of the following methods.
  - a. By in-person delivery (whether the report is made verbally or in writing);
  - b. By U.S. mail;
  - c. By telephone; or
  - d. By electronic mail.
2. By any other means that results in a designated coordinator actually receiving the person's verbal or written report. For example, a person reporting an allegation of unlawful discrimination or harassment may meet with a school principal or with the District Administrator, and the person and the administrator may mutually agree that such administrator will forward the person's verbal or written report to one of the designated coordinators.
3. If the report or complaint concerns a policy or alleged conduct that may constitute sex discrimination (including sexual harassment) in violation of Title IX, then the report or complaint may alternatively be directed to any of the District's other designated Title IX Coordinators, using any of the methods listed above.

Except as provided below regarding formal complaints of Title IX sexual harassment or as otherwise required by any law, any report or complaint received under this policy will be processed according to the discrimination complaint procedures that the District has established under its student nondiscrimination policies or under its equal employment opportunities policies, as applicable to the facts and circumstances. For reports or complaints of alleged discrimination that are neither student matters nor employment matters, the District will normally process the matter under the complaint procedures that apply to students.

### **Filing a Formal Complaint of Title IX Sexual Harassment**

An individual who is alleged to be the victim of conduct that could constitute sexual harassment under the federal Title IX regulations (i.e., a Title IX "complainant"), or a parent or guardian who has a legal right to act on behalf of such an individual, may file a "formal complaint" of "sexual harassment," as those

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terms are defined in 34 C.F.R. §106.30. No Title IX complainant is obligated to file a formal complaint, but a qualifying formal complaint is necessary for the District to start an investigation of Title IX sexual harassment allegations using the District's formal Title IX grievance process. Even in the absence of a formal complaint that initiates the formal grievance process, the District still has legal obligations to respond to allegations of Title IX sexual harassment whenever the District has sufficient notice of the allegations (i.e., from any source).

All of the following apply to a formal complaint of Title IX sexual harassment:

1. At the time of filing a formal complaint, the complainant must be participating in or attempting to participate in the education program or activity of the District (including through employment).
2. The formal complaint must be in the form of a document or an electronic submission (e.g., an electronic mail message or a file attached to an email) that:
  - a. Alleges sexual harassment against a respondent (if the identity of the respondent is not known, it is not necessary to identify the respondent by name);
  - b. Requests that the District investigate the allegation(s) of sexual harassment; **and**
  - c. Contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
3. The formal complaint must be filed with a District Title IX Coordinator by submitting the document or electronic submission in person, by mail, or by electronic mail, using the District-designated contact information for the Coordinator. If the formal complaint identifies a District Title IX Coordinator as a respondent (i.e., a person reported as a perpetrator of the alleged sexual harassment) or if the complainant otherwise prefers to do so, then the complainant may file the document or electronic submission directly with the District Administrator either in person at *N68W28460 Sussex Road, Merton, WI 53056*; by U.S. mail addressed to *N68W28460 Sussex Road, Merton, WI 53056*; or by electronic mail sent to the District Administrator's District-issued email address at [russr@merton.k12.wi.us](mailto:russr@merton.k12.wi.us). When a formal complaint is not filed in person, complainants are strongly encouraged to contact the District to confirm that their complaint was actually received as intended.

If a complainant files a formal complaint of Title IX sexual harassment, or if a Title IX Coordinator signs such a formal complaint on behalf of the District, then:

1. The formal complaint must be resolved according to the federal regulations and District processes that specifically apply to such formal complaints; and
2. Unless otherwise directed by the School Board or this policy, the District Administrator or his/her administrative-level designee is expected to designate and assign qualified individuals to perform

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the roles that are defined for District agents within the District's grievance process for formal complaints of Title IX sexual harassment. In addition:

- a. The District Administrator may assign one or more of the roles to a qualified individual who is not an employee of the District, including an outside attorney or other contracted service provider, with notice to the Board.
- b. The Title IX Coordinator and the District Administrator shall ensure that the individual(s) assigned to perform such roles have completed any training required by the federal Title IX regulations.
- c. If the District determines that a person assigned to such a role is unavailable, disqualified by a conflict of interest or bias, or otherwise unable to perform the responsibilities of the role, the administration shall assign another qualified individual to perform the role.
- d. The Board or a person designated by the Board shall assign such roles with respect to any formal complaint in which the District Administrator is alleged to be the perpetrator of conduct that could constitute Title IX sexual harassment. The Title IX Coordinator and the District Administrator shall inform the Board of any such need to assign the roles.

Filing a formal complaint of Title IX sexual harassment is one way to report such harassment. However, if a Title IX complainant or other person is not eligible to file a qualifying formal complaint, or if they choose not to do so, the person may still submit a report of the allegations to the District as further described above within this policy (i.e., a report that is **not** a formal complaint for purposes of Title IX). Moreover, **any** report of conduct that could constitute sexual harassment under Title IX that causes the District to have actual knowledge of the relevant conduct/allegations requires an appropriate response by the District, even if the reporting procedures defined in this policy were not followed and even if no formal complaint has been or ever is filed.

### **Deadline for Filing an Initial Report or Complaint**

There is no absolute deadline for the initial filing of a report or complaint of discrimination under this policy. The District always has an interest in being made aware of potential concerns with prohibited discrimination, harassment, or retaliation. However, any person who has a complaint or concern involving such a matter is encouraged to notify the District or pursue a complaint as soon as reasonably possible after the occurrence of the relevant events. A material gap in pursuing a complaint or concern can affect the extent to which it is practical to investigate the matter, and a delay may also limit the range of remedies and resolutions that are reasonably available.

The following apply to any report or complaint of discrimination that has been filed under this policy, except for formal complaints of Title IX sexual harassment (which are instead subject to the dismissal and

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appeal provisions of the grievance process that the District adopts for such complaints pursuant to the federal Title IX regulations):

1. At least one of the following administrators, acting in consultation as needed with District legal counsel, must authorize the dismissal or other alternative disposition of a report or complaint due to a lack of timeliness: the District Administrator.
2. Any actual party in interest to the allegations raised by the report or complaint (i.e., any alleged victim or any person alleged to be responsible for the discrimination) may appeal a decision authorized under the previous paragraph to the District Administrator. Or, if the District Administrator authorized the initial decision, the party may request reconsideration.

### **Confidentiality of Reports and Complaints**

Although absolute confidentiality cannot be assured, the District will maintain the confidentiality of discrimination reports and complaints to the extent required by any applicable law, and the District will otherwise make efforts to maintain confidentiality where non-disclosure does not interfere with the District's ability to appropriately process and respond to the report or complaint. Nonetheless, investigating a matter often involves disclosing (directly or indirectly) the identity of persons involved in the particular events/issues. Individuals who have specific concerns about confidentiality should arrange to discuss those concerns with the District as early as possible in the process. *[Note: The Title IX regulations are an example of a law that imposes express confidentiality requirements (see 34 C.F.R. §106.71(a), §106.30(a), and §106.45(b)(5)(i)). Particularly to the extent the district identifies such requirements in a separate rule/procedure or in a Title IX handbook, it is not necessary to include those detailed Title IX confidentiality requirements in this policy. The statement in this paragraph that the district will maintain confidentiality "... to the extent required by any applicable law ..." is sufficient to incorporate the Title IX confidentiality mandates.]*

### **Retaliation Prohibited**

No official, employee, or agent of the District or any other person may intimidate, threaten, coerce, or unlawfully discriminate against any individual (1) for the purpose of interfering with any right or privilege secured by any nondiscrimination statute or related regulation, or (2) because the individual has made a report or complaint, or testified, assisted, participated, or exercised a legal right to refuse to participate in any manner in an investigation or proceeding conducted under the this policy or any other District nondiscrimination policy.

### **Prohibition on Bad Faith Conduct/Abuse of Process**

To the extent permitted by law, the District prohibits and reserves authority to appropriately address and impose consequences for bad-faith conduct by individuals who make a report or complaint, testify, assist, or participate in any manner in an investigation or proceeding conducted under the this policy or any other

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District nondiscrimination policy. For example, the District may impose lawful consequences for making a materially false statement in bad faith in the course of any proceeding that is conducted under this policy or any other District nondiscrimination policy. Examples of abuse of process include, but are not limited to, the pursuit of allegations that the complaining party knows to be wholly frivolous or the use of dilatory tactics that have the purpose or reasonably foreseeable result of unreasonably interfering with a prompt and equitable resolution of alleged discrimination or retaliation.

### **Consequences for Violations**

Any person who is determined to be responsible for any form of unlawful discrimination, any act of prohibited retaliation, or other violation of this policy is subject to appropriate disciplinary action and/or other appropriate consequences that are within the District's lawful authority. In addition, any District employee who, considering the duties, responsibilities, and expectations established for their position, fails to reasonably respond to complaints or reports of alleged discrimination or retaliation or who otherwise fails to reasonably act on their knowledge of a possible violation of a nondiscrimination law or a District nondiscrimination policy is also subject to possible disciplinary action.

### **Nondiscrimination Notices; Dissemination of Policy and Complaint/Reporting Procedures**

The District Administrator and the District's designated nondiscrimination and equal opportunity coordinators share joint responsibility for ensuring that the District prepares and issues, on a timely basis, all legally-required general notices of (1) the rights of students, employees, and other persons under the state and federal nondiscrimination laws; (2) the District's nondiscrimination policies; and (3) applicable reporting and complaint procedures. Beyond meeting legal requirements and any local policy requirements, the administration is encouraged to further disseminate such information using such methods as the administration deems appropriate.

### **Maintenance of Complaint Records; Report Preparation**

The District Administrator and the District's designated nondiscrimination and equal opportunity coordinators share joint responsibility for ensuring that the District maintains adequate records of reports and complaints of discrimination and retaliation, including records of the District's response and disposition. Such records shall meet applicable legal requirements for documentation and records retention. The District Administrator and the applicable coordinators shall also direct and oversee the timely preparation of all annual or other reports and evaluations regarding nondiscrimination initiatives/compliance that the District is required to provide to the Department of Public Instruction or to any other oversight entity.

### **Legal References:**

#### **Wisconsin Statutes**



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Subch. III of Ch. 106 [state equal rights programs, some of which can apply to school districts in certain circumstances]

Subch. II of Ch. 111 [the state fair employment and nondiscrimination statutes, including specific prohibited bases of discrimination (sections 111.31 to 111.395)]

Section 118.13 [student nondiscrimination; policy/procedures required]

Section 118.134 [race-based nicknames, logos, mascots]

Section 118.195 [discrimination against handicapped teachers]

Section 118.20 [teacher/administrator discrimination prohibited]

### Wisconsin Administrative Code

PI 9 [student nondiscrimination; policy, procedures, notices, and reporting required]

PI 41 [accommodating student religious beliefs; policy required]

### Federal Laws

20 U.S.C. §1681 et seq. [Title IX of the Education Amendments of 1972, as amended, prohibiting sex discrimination in federally-supported educational programs; implementing regulations at 34 C.F.R. Part 106]

20 U.S.C. §1400 et seq. [The Individuals with Disabilities Education Act, providing for programs. Services, and rights for students with disabilities; implementing regulations at 34 C.F.R. Part 300]

20 U.S.C. §6312(e)(3)(D) [addressing nondiscrimination in admission to federally-assisted education programs on the basis of surname or language-minority status]

42 U.S.C. §2000e et seq. [Title VII of the Civil Rights Act of 1964, as amended, prohibiting employment discrimination based race, color, national origin, sex, pregnancy, and religion; implementing regulations at 29 C.F.R. Ch. XIV]

42 U.S.C. §2000d et seq. [Title VI of the Civil Rights Act of 1964, as amended, prohibiting discrimination on the basis of race, color, or national origin in any program or activity that receives federal funds; implementing regulations at 28 C.F.R. Part 42, Subpart C]

42 U.S.C. §12111 et seq. [The Americans with Disabilities Act, Title I, as amended, prohibiting employment discrimination based on a qualifying disability; implementing regulations at 29 C.F.R. Part 1602 and Part 1630]

42 U.S.C. §12131 et seq. [The Americans with Disabilities Act, Title II, as amended, nondiscrimination based on disability by state and local governments; implementing regulations at 28 C.F.R. Part 35]

29 U.S.C. §794 et seq. [Section 504 of the Rehabilitation Act of 1973, as amended, prohibiting discrimination based on a qualifying disability by recipients of federal funds; implementing regulations at 34 C.F.R. Part 104, 28 C.F.R. Part 42, Subpart G, and 29 C.F.R. Part 1640]

29 U.S.C. §621 et seq. [Age Discrimination in Employment Act, as amended; implementing regulations at 29 C.F.R. Parts 1625 to 1627]

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8 U.S.C. §1324b(a) [prohibiting employment discrimination based on national origin and citizenship status; implementing regulations at 28 C.F.R. Part 44]

**Adoption Date: August 3, 2020**