

**NORTH BRANCH INDEPENDENT SCHOOL DISTRICT NO. 138
NORTH BRANCH AREA EDUCATION CENTER, DO CONFERENCE ROOM
B122
38705 GRAND AVENUE
NORTH BRANCH, MN 55056
POLICY COMMITTEE MEETING
MARCH 7, 2024
4:30 PM**

AGENDA

- I. Policies to be Discussed for Consent Agenda
 - A. Policy 201 - Legal Status of the School Board (Minor MSBA changes to Legal References) 2
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Adopted: _____

Revised: _____

MSBA/MASA Model Policy 201
Orig. 1995
Rev. 202209

201 LEGAL STATUS OF THE SCHOOL BOARD

I. PURPOSE

The care, management, and control of the schools is vested by statutory and constitutional authority in the school board. The school board shall carry out the mission of the school district with diligence, prudence, and dedication to the ideals of providing the finest public education. The purpose of this policy is to define the authority, duties, and powers of the school board in carrying out its mission.

II. GENERAL STATEMENT OF POLICY

- A. The school board is the governing body of the school district. As such, the school board has responsibility for the care, management, and control over public schools in the school district.
- B. Generally, elected members of the school board have binding authority only when acting as a school board legally in session, except where specific authority is provided to school board members or officers individually. Generally, the school board is not bound by an action or statement on the part of an individual school board member unless the action is specifically directed or authorized by the school board.

III. DEFINITION

"School board" means the governing body of the school district.

IV. ORGANIZATION AND MEMBERSHIP

- A. The membership of the school board consists of six elected directors, or seven if the school board has submitted the question to the electors and a majority have approved a seven-member school board. The term of office is four years.

[Note: This number may be different for combining or consolidating school boards that are in a transition period.]

- B. There may be other ex officio members of the school board as provided by law. The superintendent is an ex officio member.
- C. A majority of voting members constitutes a quorum. The act of the majority of a quorum is the act of the school board.

V. POWERS AND DUTIES

- A. The school board has powers and duties specified by statute. The school board's authority includes implied powers in addition to specific powers granted by the legislature.
- B. The school board exercises administrative functions. It also has certain powers of a legislative character and other powers of a quasi-judicial character.
- C. The school board shall superintend and manage the schools of the school district; adopt rules for their organization, government, and instruction; prescribe textbooks and courses of study; and make and authorize contracts.

- D. The school board shall have the general charge of the business of the school district, its facilities and property, and of the interest of the schools.
- E. The school board, among other duties, shall perform the following in accordance with applicable law:
1. provide by levy of tax, necessary funds for the conduct of schools, the payment of indebtedness, and all proper expenses of the school district;
 2. conduct the business of the schools and pay indebtedness and proper expenses;
 3. employ and contract with necessary qualified teachers and discharge the same for cause;
 4. provide services to promote the health of its pupils;
 5. provide school buildings and erect needed buildings;
 6. purchase, sell, and exchange school district property and equipment as deemed necessary by the school board for school purposes;
 7. provide for payment of claims against the school district, and prosecute and defend actions by or against the school district, in all proper cases;
 8. employ and discharge necessary employees and contract for other services;
 9. provide for transportation of pupils to and from school, as governed by statute; and
 10. procure insurance against liability of the school district, its officers, and employees.
- F. The school board, at its discretion, may perform the following:
1. provide library facilities, public evening schools, adult and continuing education programs, summer school programs, and intersession classes of flexible school year programs;
 2. furnish school lunches for pupils and teachers on such terms as the school board determines;
 3. enter into agreements with one or more other independent school districts to provide for agreed upon educational services;
 4. lease rooms or buildings for school purposes;
 5. authorize the use of school facilities for community purposes that will not interfere with their use for school purposes;
 6. authorize cocurricular and extracurricular activities;
 7. receive, for the benefit of the school district, bequests, donations, or gifts for any proper purpose; and
 8. perform other acts as the school board shall deem to be reasonably necessary or required for the governance of the schools.

Legal References: Minn. Stat. § 123A.22 (Cooperative Centers [for Vocational Education](#))
Minn. Stat. § 123B.02 (General Powers [of Independent School Districts](#))

Minn. Stat. § 123B.09 (~~Boards of Independent School Districts~~School Board Powers)
Minn. Stat. § 123B.14 (~~School District~~Officers of Independent School Districts)
Minn. Stat. § 123B.23 (Liability Insurance; Officers and Employees)
Minn. Stat. § 123B.49 (~~Cocurricular and~~ Extracurricular Activities; Insurance)
Minn. Stat. § 123B.51 (Schoolhouses and Sites; Uses for School and Nonschool Purposes; Closings~~Access for Noncurricular Purposes~~)
Minn. Stat. § 123B.85 (Definitions)
Jensen v. Indep. Consol. Sch. Dist. No. 85, 160 Minn. 233 (1924)

Cross References:

MSBA/MASA Model Policy 101 (Legal Status of the School District)
MSBA/MASA Model Policy 202 (School Board Officers)
MSBA/MASA Model Policy 203 (Operation of the School Board -Governing Rules)
MSBA/MASA Model Policy 205 (Open Meetings and Closed Meetings)

Adopted: _____

Revised: _____

MSBA/MASA Model Policy 202
Orig. 1995
Rev. 20~~21~~11

202 SCHOOL BOARD OFFICERS

[Note: The provisions of this policy substantially reflect statutory requirements.]

I. PURPOSE

School board officers are charged with the duty of carrying out the responsibilities entrusted to them for the care, management, and control of the public schools of the school district. The purpose of this policy is to delineate those responsibilities.

II. GENERAL STATEMENT OF POLICY

- A. The school board shall meet annually and organize by selecting a chair, a clerk, a treasurer, and such other officers as determined by the school board. At its option, the school board may appoint a vice-chair to serve in the temporary absence of the chair.
- B. The school board shall appoint a superintendent who shall be an ex officio, nonvoting member of the school board.

III. ORGANIZATION

The school board shall meet annually on the first Monday in January, or as soon thereafter as practicable, and organize by selecting a chair, a clerk, a treasurer, and such other officers as determined by the school board. These officers shall hold office for one year and until their successors are elected and qualify.

- A. The persons who perform the duties of clerk and treasurer need not be members of the school board.
- B. The school board by resolution may combine the duties of the offices of clerk and treasurer in a single person in the office of business affairs.

[Note: The organizational meeting is a good time for the school board to plan for how to cancel and reschedule a board meeting. For example, the school board could decide and include in the regular meeting schedule a provision that if the school district closes early due to bad weather and calls off evening activities, any school board meeting scheduled for that evening will also be postponed and held at the same time and place the following evening.]

The organizational meeting is also a good time for the school board to select the school district's legal counsel and the individuals authorized to contact legal counsel. Usually, the authorized contacts are the board chair, the superintendent, and the chief business official of the school district. In addition, many school districts authorize their human resources director, or a person exercising similar duties, to contact legal counsel.]

IV. OFFICER'S RESPONSIBILITIES

- A. Chair
 - 1. The chair when present shall preside at all meetings of the school board,

countersign all orders upon the treasurer for claims allowed by the school board, represent the school district in all actions, and perform all duties a chair usually performs.

2. In case of absence, inability, or refusal of the clerk to draw orders for the payment of money authorized by a vote of the majority of the school board to be paid, the chair may draw the orders, or the office of the clerk may be declared vacant by the chair and treasurer and filled by appointment.

B. Treasurer

1. The treasurer shall deposit the funds of the school district in the official depository.
2. The treasurer shall make all reports which may be called for by the school board and perform all duties a treasurer usually performs.
3. In the event there are insufficient funds on hand to pay valid orders presented to the treasurer, the treasurer shall receive, endorse, and process the orders in accordance with [Minnesota Statutes section Minn. Stat. § 123B.12](#).

C. Clerk

1. The clerk shall keep a record of all meetings in the books provided.
2. Within three days after an election, the clerk shall notify all persons elected of their election.
3. On or before September 15 of each year, the clerk shall:
 - a. file with the school board a report of the revenues, expenditures, and balances in each fund for the preceding fiscal year.
 - b. make and transmit to the [Commissioner of the Minnesota Department of Education \(Commissioner\)](#) certified reports, showing:
 - (1) revenues and expenditures in detail, and such other financial information required by law, rule, or as may be called for by the [Commissioner](#);
 - (2) length of school term and enrollment and attendance by grades; and
 - (3) other items of information as called for by the [Commissioner](#).
4. The clerk shall enter into the clerk's record book copies of all reports and of the teachers' term reports, and of the proceedings of any meeting, and keep an itemized account of all expenses of the school district.
5. The clerk shall furnish to the county auditor, on or before September 30 of each year, an attested copy of the clerk's record, showing the amount of proposed property tax voted by the school district or the school board for school purposes.
6. The clerk shall draw and sign all orders upon the treasurer for the payment of money for bills allowed by the school board for salaries of officers and for teachers' wages and all claims, to be countersigned by the chair.
7. The clerk shall perform such duties as required by the Minnesota Election Law

or other applicable laws relating to the conduct of elections.

8. The clerk shall perform the duties of the chair in the event of the chair's and the vice-chair's temporary absences.

D. Vice-Chair [Optional]

The vice-chair shall perform the duties of the chair in the event of the chair's temporary absence.

E. Superintendent

1. The superintendent shall be an ex officio, nonvoting member of the school board.
2. The superintendent shall perform the following:
 - a. visit and supervise the schools in the school district, report and make recommendations about their condition when advisable or on request by the school board;
 - b. recommend to the school board employment and dismissal of teachers;
 - c. annually evaluate each school principal assigned responsibility for supervising a school building within the district;
 - d. superintend school grading practices and examinations for promotions;
 - e. make reports required by the commissioner; and
 - f. perform other duties prescribed by the school board.

Legal References:

Minn. Stat. § 123B.12 ([Insufficient Funds to Pay Orders Finance](#))
Minn. Stat. § 123B.14 ([Officers of Independent School Districts](#))
Minn. Stat. § 123B.143 (Superintendent)
Minn. Stat. § 126C.17 (Referendum Revenue)
Minn. Stat. Ch. 205A (School District Elections)

Cross References:

MSBA/MASA Model Policy 101 (Legal Status of the School District)
MSBA/MASA Model Policy 201 (Legal Status of the School Board)
MSBA/MASA Model Policy 203 (Operation of the School Board – Governing Rules)

I. PURPOSE

The purpose of this policy is to provide governing rules for the conduct of meetings of the school board.

II. GENERAL STATEMENT OF POLICY

An orderly school board meeting allows school board members to participate in discussion and decision of school district issues. Rules of order allow school board members the opportunity to review school-related topics, discuss school business items, and bring matters to conclusion in a timely and consistent manner.

III. RULES OF ORDER

Rules of order for school board meetings shall be as follows:

- A. Minnesota statutes where specified;
- B. Specific rules of order as provided by the school board consistent with Minnesota statutes; and
- C. *Robert's Rules of Order, Revised* (10th Edition) where not inconsistent with A. and B., above.

Legal References: Minn. Stat. Ch. 13D (Open Meeting Law)
Minn. Stat. § 123B.09, Subds. 6, 7, and 10 (School Board Matters)
Minn. Stat. § 123B.14 (Officers)

Cross References:

SCHOOL BOARD

School Board Procedures; Rules of Order

203.1-NB

I. PURPOSE

The purpose of this policy is to provide specific rules of order to conduct meetings of the school board.

II. GENERAL STATEMENT OF POLICY

To ensure that school board meetings are conducted in an orderly fashion, the school board will follow rules of order which will allow the school board:

- A. To establish guidelines by which the business of the school board can be conducted in a regular and internally consistent manner;
- B. To organize the meetings so all necessary matters can be brought to the school board and decisions of the school board can be made in an orderly and reasonable manner;
- C. To insure that members of the school board have the necessary information to make decisions on substantive issues and to insure adequate discussion of decisions to be made; and
- D. To insure that meetings and actions of the school board are conducted so as to be informative to the staff and the public, and to produce a clear record of actions taken and decisions made.

III. RULES OF ORDER

- A. School board members need not rise to gain the recognition of the chair.
- B. A motion will be adopted or carried if it receives the affirmative votes of a majority of those actually voting on the matter. Abstentions are considered to be acquiescence to the vote of the majority. It should be noted that some motions by statute or Robert's Rules of Order require larger numbers of affirmative votes.
- C. All motions that require a second shall receive a second prior to opening the issue for discussion of the school board. If a motion that requires a second does not receive a second, the chair may declare that the motion fails for lack of a second or may provide the second. The names of the members making and seconding a motion shall be recorded in the minutes.
- D. The chair shall decide the order in which school board members will be recognized to address an issue. An attempt should be made to alternate between pro and con positions if appropriate to the discussion. A member shall only speak to an issue after the member is recognized by the chair.
- E. The chair shall rule on all questions relating to motions and points of order brought before the school board.

North Branch Independent School District No. 138: Policy #203.1-NB

Adopted: December 10, 2015

Replaced: Policy 8300 and Policy 9366

Revised:

Effective: December 10, 2015

SCHOOL BOARD

School Board Procedures; Rules of Order

203.1-NB

- F. A ruling by the chair is subject to appeal to the full school board pursuant to Robert's Rules of Order.
- G. The school board **chair** (NB change in 2015) shall have authority to recognize any member of the audience regarding a request to be heard at the school board meeting. Members of the public who wish to be heard **shall be recognized at open mic and** (NB change in 2015) shall follow school board procedures.
- H. The chair has the authority to declare a recess at any time for the purpose of restoring decorum to the meeting or for any other necessary purpose.
- I. The chair shall repeat a motion or the substance of a motion prior to the vote. The chair shall call for an affirmative and a negative vote on all motions.
- J. The order in which names will be called for roll call votes will be determined by the school board.
- K. The chair has the same right and responsibility as each school board member to vote on all issues.
- L. The chair shall announce the result of each vote. The vote of each member, including abstentions, shall be recorded in the minutes. If the vote is unanimous, it may be reflected as unanimous in the minutes if the minutes also reflect the members present.
- M. A majority of the voting members of the school board constitute a quorum. The absence of a quorum may be raised by the chair or any member. Generally any action taken in the absence of a quorum is null and void. The only legal actions the school board may take in the absence of a quorum are to fix the time at which to adjourn, to adjourn, to recess or to take measures to obtain a quorum.

Legal References: Minn. Stat. § 13D.01, Subd. 4 (Open Meeting Law)
Minn. Stat. § 122A.40 (Employment Contracts, Termination)
Minn. Stat. § 123B.09, Subds. 6 and 7 (**Boards of Independent School Districts School Board Powers**)
Minn. Stat. § 126C.53 (Enabling Resolution; Form of Certificates of Indebtedness)
Minn. Stat. § 331A.01, Subd. 6 (Newspapers; Definitions)
Minn. Stat. § 331A.04, Subd. 6 (Newspapers; Exception to Designation Priority)
Minn. Stat. § 471.88 (Exceptions)

Cross References: NB Policy 203 (Operation of the School Board – Governing Rules)
MSBA/MASA Model Policy 204 (School Board Meeting Minutes)
NB Policy 206 (Public Participation in School Board Meetings/Complaints about Persons at School Board Meetings and Data Privacy Considerations)
MSBA/MASA Model Policy 207 (Public Hearings)

North Branch Independent School District No. 138: Policy #203.1-NB

Adopted: December 10, 2015

Replaced: Policy 8300 and Policy 9366

Revised:

Effective: December 10, 2015

I. PURPOSE

The purpose of this policy is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to maintain a learning and working environment that is free from harassment and violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability. The school district prohibits any form of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.
- B. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel harasses a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel through conduct or communication based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, as defined by this policy. (For purposes of this policy, school district personnel include school board members, school employees, agents, volunteers, contractors, or persons subject to the supervision and control of the district.)
- C. A violation of this policy occurs when any student, teacher, administrator, or other school district personnel inflicts, threatens to inflict, or attempts to inflict violence upon any student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.
- D. The school district will act to investigate all complaints, either formal or informal, verbal or written, of harassment or violence based on a person's race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability, and to discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who is found to have violated this policy.

III. DEFINITIONS

- A. "Assault" is:

North Branch Independent School District No. 138: Policy #413

Adopted: 2/12/98

Replaced: Policy #5141 Sexual, Religious, and Racial Harassment and Violence

Last Reviewed: 4/8/21, 12/8/22

Revised: 6/12/02, 2/11/16, 11/10/16, 11/8/18

Effective: 2/12/98, 6/12/02, 2/11/16, 11/10/16, 11/8/18

EMPLOYEES/PERSONNEL

Harassment and Violence

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1. an act done with intent to cause fear in another of immediate bodily harm or death;
 2. the intentional infliction of or attempt to inflict bodily harm upon another; or
 3. the threat to do bodily harm to another with present ability to carry out the threat.
- B. "Harassment" prohibited by this policy consists of physical or verbal conduct, including, but not limited to, electronic communications, relating to an individual's or group of individuals' race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability when the conduct:
1. has the purpose or effect of creating an intimidating, hostile, or offensive working or academic environment;
 2. has the purpose or effect of substantially or unreasonably interfering with an individual's work or academic performance; or
 3. otherwise adversely affects an individual's employment or academic opportunities.
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.
- D. Protected Classifications; Definitions
1. "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:
 - a. has a physical, sensory, or mental impairment which materially limits one or more major life activities;
 - b. has a record of such an impairment; or
 - c. is regarded as having such an impairment.
 2. "Familial status" means the condition of one or more minors being domiciled with:
 - a. their parent or parents or the minor's legal guardian; or
 - b. the designee of the parent or parents or guardian with the written permission of the parent or parents or guardian. The protections afforded against harassment on the basis of family status apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.

North Branch Independent School District No. 138: Policy #413

Adopted: 2/12/98

Replaced: Policy #5141 Sexual, Religious, and Racial Harassment and Violence

Last Reviewed: 4/8/21, 12/8/22

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Effective: 2/12/98, 6/12/02, 2/11/16, 11/10/16, 11/8/18

EMPLOYEES/PERSONNEL

Harassment and Violence

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3. "Marital status" means whether a person is single, married, remarried, divorced, separated, or a surviving spouse and, in employment cases, includes protection against harassment on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.
 4. "National origin" means the place of birth of an individual or of any of the individual's lineal ancestors.
 5. "Sex" includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth.
 6. "Sexual orientation" means having or being perceived as having an emotional, physical, or sexual attachment to another person without regard to the sex of that person or having or being perceived as having an orientation for such attachment, or having or being perceived as having a self-image or identity not traditionally associated with one's biological maleness or femaleness. "Sexual orientation" does not include a physical or sexual attachment to children by an adult.
 7. "Status with regard to public assistance" means the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.
- E. "Remedial response" means a measure to stop and correct acts of harassment or violence, prevent acts of harassment or violence from recurring, and protect, support, and intervene on behalf of a student who is the target or victim of acts of harassment or violence.
- F. Sexual Harassment; Definition
1. Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct or communication of a sexual nature when:
 - a. submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment or an education; or
 - b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
 - c. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or creating an intimidating, hostile, or offensive employment or educational environment.

North Branch Independent School District No. 138: Policy #413

Adopted: 2/12/98

Replaced: Policy #5141 Sexual, Religious, and Racial Harassment and Violence

Last Reviewed: 4/8/21, 12/8/22

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Effective: 2/12/98, 6/12/02, 2/11/16, 11/10/16, 11/8/18

2. Sexual harassment may include, but is not limited to:
 - a. unwelcome verbal harassment or abuse;
 - b. unwelcome pressure for sexual activity;
 - c. unwelcome, sexually motivated, or inappropriate patting, pinching, or physical contact, other than necessary restraint of student(s) by teachers, administrators, or other school district personnel to avoid physical harm to persons or property;
 - d. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt threats concerning an individual's employment or educational status;
 - e. unwelcome sexual behavior or words, including demands for sexual favors, accompanied by implied or overt promises of preferential treatment with regard to an individual's employment or educational status; or
 - f. unwelcome behavior or words directed at an individual because of sexual orientation, including gender identity or expression.

G. Sexual Violence; Definition

1. Sexual violence is a physical act of aggression or force or the threat thereof which involves the touching of another's intimate parts or forcing a person to touch any person's intimate parts. Intimate parts, as defined in Minn. Stat. § 609.341, includes the primary genital area, groin, inner thigh, buttocks, or breast, as well as the clothing covering these areas.
2. Sexual violence may include, but is not limited to:
 - a. touching, patting, grabbing, or pinching another person's intimate parts, whether that person is of the same sex or the opposite sex;
 - b. coercing, forcing, or attempting to coerce or force the touching of anyone's intimate parts;
 - c. coercing, forcing, or attempting to coerce or force sexual intercourse or a sexual act on another; or
 - d. threatening to force or coerce sexual acts, including the touching of intimate parts or intercourse, on another.

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Effective: 2/12/98, 6/12/02, 2/11/16, 11/10/16, 11/8/18

H. Violence; Definition

Violence prohibited by this policy is a physical act of aggression or assault upon another or group of individuals because of, or in a manner reasonably related to, race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability.

IV. REPORTING PROCEDURES

- A. Any person who believes he or she has been the target or victim of harassment or violence on the basis of race, color, creed, religion, national origin, sex, age, marital status, familial status, status with regard to public assistance, sexual orientation, including gender identity or expression, or disability by a student, teacher, administrator, or other school district personnel, or any person with knowledge or belief of conduct which may constitute harassment or violence prohibited by this policy toward a student, teacher, administrator, or other school district personnel or group of students, teachers, administrators, or other school district personnel should report the alleged acts immediately to an appropriate school district official designated by this policy. A person may report conduct which may constitute harassment or violence anonymously. However, the school district may not rely solely on an anonymous report to determine discipline or other remedial responses.
- B. The school district encourages the reporting party or complainant to use the report form available from the principal or building supervisor of each building or available from the school district office, but oral reports shall be considered complaints as well.
- C. Nothing in this policy shall prevent any person from reporting harassment or violence directly to a school district human rights officer or to the superintendent. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant.
- D. In Each School Building. The building principal, the principal's designee, or the building supervisor (hereinafter the "building report taker") is the person responsible for receiving oral or written reports of harassment or violence prohibited by this policy at the building level. Any adult school district personnel who receives a report of harassment or violence prohibited by this policy shall inform the building report taker immediately. If the complaint involves the building report taker, the complaint shall be made or filed directly with the superintendent or the school district human rights officer by the reporting party or complainant. The building report taker shall ensure that this policy and its procedures, practices, consequences, and sanctions are fairly and fully implemented and shall serve as a primary contact on policy and procedural matters.
- E. A teacher, school administrator, volunteer, contractor, or other school employee shall be particularly alert to possible situations, circumstances, or events that might include acts of harassment or violence. Any such person who witnesses, observes, receives a report of, or has other knowledge or belief of conduct that may constitute harassment or violence shall make

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reasonable efforts to address and resolve the harassment or violence and shall inform the building report taker immediately. School district personnel who fail to inform the building report taker of conduct that may constitute harassment or violence or who fail to make reasonable efforts to address and resolve the harassment or violence in a timely manner may be subject to disciplinary action.

- F. Upon receipt of a report, the building report taker must notify the school district human rights officer immediately, without screening or investigating the report. The building report taker may request, but may not insist upon, a written complaint. A written statement of the facts alleged will be forwarded as soon as practicable by the building report taker to the human rights officer. If the report was given verbally, the building report taker shall personally reduce it to written form within 24 hours and forward it to the human rights officer. Failure to forward any harassment or violence report or complaint as provided herein may result in disciplinary action against the building report taker.
- G. In the District. The school board hereby designates Director of Finance and Human Resources as the school district human rights officer(s) to receive reports or complaints of harassment or violence prohibited by this policy. If the complaint involves a human rights officer, the complaint shall be filed directly with the superintendent.¹
- H. The school district shall conspicuously post the name of the human rights officer(s), including mailing addresses and telephone numbers.
- I. Submission of a good faith complaint or report of harassment or violence prohibited by this policy will not affect the complainant or reporter's future employment, grades, work assignments, or educational or work environment.
- J. Use of formal reporting forms is not mandatory.
- K. Reports of harassment or violence prohibited by this policy are classified as private educational and/or personnel data and/or confidential investigative data and will not be disclosed except as permitted by law.
- L. The school district will respect the privacy of the complainant(s), the individual(s) against whom the complaint is filed, and the witnesses as much as possible, consistent with the school district's legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations.
- M. Retaliation against a victim, good faith reporter, or a witness of violence or harassment is prohibited.

¹ In some school districts the superintendent may be the human rights officer. If so, an alternative individual should be designated by the school board.

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- N. False accusations or reports of violence or harassment against another person are prohibited.
- O. A person who engages in an act of violence or harassment, reprisal, retaliation, or false reporting of violence or harassment, or permits, condones, or tolerates violence or harassment shall be subject to discipline or other remedial responses for that act in accordance with the school district's policies and procedures.

Consequences for students who commit, or are a party to, prohibited acts of violence or harassment or who engage in reprisal or intentional false reporting may range from remedial responses or positive behavioral interventions up to and including suspension and/or expulsion.

Consequences for employees who permit, condone, or tolerate violence or harassment or engage in an act of reprisal or intentional false reporting of violence or harassment may result in disciplinary action up to and including termination or discharge.

Consequences for other individuals engaging in prohibited acts of violence or harassment may include, but not be limited to, exclusion from school district property and events and/or termination of services and/or contracts.

V. INVESTIGATION

- A. By authority of the school district, the human rights officer, within three (3) days of the receipt of a report or complaint alleging harassment or violence prohibited by this policy, shall undertake or authorize an investigation. The investigation may be conducted by school district officials or by a third party designated by the school district.
- B. The investigation may consist of personal interviews with the complainant, the individual(s) against whom the complaint is filed, and others who may have knowledge of the alleged incident(s) or circumstances giving rise to the complaint. The investigation may also consist of any other methods and documents deemed pertinent by the investigator.
- C. In determining whether alleged conduct constitutes a violation of this policy, the school district should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incidents occurred. Whether a particular action or incident constitutes a violation of this policy requires a determination based on all the facts and surrounding circumstances.
- D. In addition, the school district may take immediate steps, at its discretion, to protect the target or victim, the complainant, and students, teachers, administrators, or other school district personnel pending completion of an investigation of alleged harassment or violence prohibited by this policy.

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Adopted: 2/12/98

Replaced: Policy #5141 Sexual, Religious, and Racial Harassment and Violence

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- E. The alleged perpetrator of the act(s) of harassment or violence shall be allowed the opportunity to present a defense during the investigation or prior to the imposition of discipline or other remedial responses.
- F. The investigation will be completed as soon as practicable. The school district human rights officer shall make a written report to the superintendent upon completion of the investigation. If the complaint involves the superintendent, the report may be filed directly with the school board. The report shall include a determination of whether the allegations have been substantiated as factual and whether they appear to be violations of this policy.

VI. SCHOOL DISTRICT ACTION

- A. Upon completion of an investigation that determines a violation of this policy has occurred, the school district will take appropriate action. Such action may include, but is not limited to, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge. Disciplinary consequences will be sufficiently severe to try to deter violations and to appropriately discipline prohibited behavior. School district action taken for violation of this policy will be consistent with requirements of applicable collective bargaining agreements, Minnesota and federal law, and applicable school district policies and regulations.
- B. The school district is not authorized to disclose to a victim private educational or personnel data regarding an alleged perpetrator who is a student or employee of the school district. School officials will notify the parent(s) or guardian(s) of targets or victims of harassment or violence and the parent(s) or guardian(s) of alleged perpetrators of harassment or violence who have been involved in a reported and confirmed harassment or violence incident of the remedial or disciplinary action taken, to the extent permitted by law.
- C. In order to prevent or respond to acts of harassment or violence committed by or directed against a child with a disability, the school district shall, where determined appropriate by the child's individualized education program (IEP) or Section 504 team, allow the child's IEP or Section 504 plan to be drafted to address the skills and proficiencies the child needs as a result of the child's disability to allow the child to respond to or not to engage in acts of harassment or violence.

VII. RETALIATION OR REPRISAL

The school district will discipline or take appropriate action against any student, teacher, administrator, or other school district personnel who commits an act of reprisal or who retaliates against any person who asserts, alleges, or makes a good faith report of alleged harassment or violence prohibited by this policy, who testifies, assists, or participates in an investigation of retaliation or alleged harassment or violence, or who testifies, assists, or participates in a proceeding or hearing relating to such harassment or violence. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, or intentional disparate treatment. Disciplinary consequences will be sufficiently severe to deter violations and to appropriately discipline the individual(s) who engaged in the harassment or violence. Remedial responses to the harassment or violence shall be tailored to the particular incident and nature of the conduct.

North Branch Independent School District No. 138: Policy #413

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VIII. RIGHT TO ALTERNATIVE COMPLAINT PROCEDURES

These procedures do not deny the right of any individual to pursue other avenues of recourse which may include filing charges with the Minnesota Department of Human Rights, initiating civil action, or seeking redress under state criminal statutes and/or federal law.

IX. HARASSMENT OR VIOLENCE AS ABUSE

- A. Under certain circumstances, alleged harassment or violence may also be possible abuse under Minnesota law. If so, the duties of mandatory reporting under Minn. Stat. § 626.556 may be applicable.
- B. Nothing in this policy will prohibit the school district from taking immediate action to protect victims of alleged harassment, violence, or abuse.

X. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall be conspicuously posted throughout each school building in areas accessible to students and staff members.
- B. This policy shall be given to each school district employee and independent contractor who regularly interacts with students at the time of initial employment with the school district.
- C. This policy shall appear in the student handbook.
- D. The school district will develop a method of discussing this policy with students and employees.
- E. The school district may implement violence prevention and character development education programs to prevent and reduce policy violations. Such programs may offer instruction on character education including, but not limited to, character qualities such as attentiveness, truthfulness, respect for authority, diligence, gratefulness, self-discipline, patience, forgiveness, respect for others, peacemaking, resourcefulness, and/or sexual abuse prevention.
- F. This policy shall be reviewed at least annually for compliance with state and federal law.

Legal References: Minn. Stat. § 120B.232 (Character Development Education)
Minn. Stat. § 120B.234 (Child Sexual Abuse Prevention Education)
Minn. Stat. § 121A.03, Subd. 2 (Sexual, Religious, and Racial Harassment and Violence Policy)
Minn. Stat. § 121A.031 (School Student Bullying Policy)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
Minn. Stat. § 609.341 (Definitions)
Minn. Stat. § 626.556 *et seq.* (Reporting of Maltreatment of Minors)

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20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments of 1972)
29 U.S.C. § 621 *et seq.* (Age Discrimination in Employment Act)
29 U.S.C. § 794 (Rehabilitation Act of 1973, § 504)
42 U.S.C. § 1983 (Civil Action for Deprivation of Rights)
42 U.S.C. § 2000d *et seq.* (Title VI of the Civil Rights Act of 1964)
42 U.S.C. § 2000e *et seq.* (Title VII of the Civil Rights Act)
42 U.S.C. § 12101 *et seq.* (Americans with Disabilities Act)

Cross References:

NB Policy 102 (Equal Educational Opportunity)
NB Policy 401 (Equal Employment Opportunity)
NB Policy 402 (Disability Nondiscrimination Policy)
NB Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
NB Policy 406 (Public and Private Personnel Data)
NB Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
NB Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)
NB Policy 506 (Student Discipline)
NB Policy 514 (Bullying Prohibition Policy)
NB Policy 515 (Protection and Privacy of Pupil Records)
NB Policy 521 (Student Disability Nondiscrimination)
NB Policy 522 (Student Sex Nondiscrimination)
NB Policy 524 (Internet Acceptable Use and Safety Policy)
NB Policy 525 (Violence Prevention)
NB Policy 526 (Hazing Prohibition)
NB Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

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Mandated Reporting of Child Neglect or Physical or Sexual Abuse 414

I. PURPOSE

The purpose of this policy is to make clear the statutory requirements of school personnel to report suspected child neglect or physical or sexual abuse.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to fully comply with Minnesota Statutes chapter 260E requiring school personnel to report suspected child neglect or physical or sexual abuse.
- B. A violation of this policy occurs when any school personnel fails to immediately report instances of child neglect or physical or sexual abuse when the school personnel knows or has reason to believe a child is being neglected or physically or sexually abused or has been neglected or physically or sexually abused within the preceding three years.

III. DEFINITIONS

- A. "Accidental" means a sudden, not reasonably foreseeable, and unexpected occurrence or event that:
 - 1. is not likely to occur and could not have been prevented by exercise of due care; and
 - 2. if occurring while a child is receiving services from a facility, happens when the facility and the employee or person providing services in the facility are in compliance with the laws and rules relevant to the occurrence of event.
- B. "Child" means one under age 18 and, for purposes of Minnesota Statutes chapter 260C (Juvenile Safety and Placement) and Minnesota Statutes chapter 260D (Child in Voluntary Foster Care for Treatment), includes an individual under age 21 who is in foster care pursuant to Minnesota Statutes chapter 260C.451 (Foster Care Benefits Past Age 18).
- C. "Immediately" means as soon as possible but in no event longer than 24 hours.
- D. "Mandated reporter" means any school personnel who knows or has reason to believe a child is being maltreated or has been maltreated within the preceding three years.
- E. "Mental injury" means an injury to the psychological capacity or emotional stability of a child as evidenced by an observable or substantial impairment in the child's ability to function within a normal range of performance and behavior with due regard to the child's culture.
- F. "Neglect" means the commission or omission of any of the acts specified below, other than by accidental means:

NORTH BRANCH INDEPENDENT SCHOOL DISTRICT NO. 138: Policy #414

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Replaces: Policy 5141.4 Maltreatment of Minors

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1. failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter, health care, medical, or other care required for the child's physical or mental health when reasonably able to do so;
2. failure to protect a child from conditions or actions that seriously endanger the child's physical or mental health when reasonably able to do so, including a growth delay, which may be referred to as a failure to thrive, that has been diagnosed by a physician and is due to parental neglect;
3. failure to provide for necessary supervision or child care arrangements appropriate for a child after considering factors as the child's age, mental ability, physical condition, length of absence, or environment, when the child is unable to care for the child's own basic needs or safety, or the basic needs or safety of another child in his or her care;
4. failure to ensure that a child is educated in accordance with state law, which does not include a parent's refusal to provide his or her child with sympathomimetic medications;
5. prenatal exposure to a controlled substance as defined in state law used by the mother for a nonmedical purpose, as evidenced by withdrawal symptoms in the child at birth, results of a toxicology test performed on the mother at delivery or the child's birth, medical effects or developmental delays during the child's first year of life that medically indicate prenatal exposure to a controlled substance, or the presence of a fetal alcohol spectrum disorder;
6. medical neglect as defined by Minnesota Statutes section 260C.007, subdivision. 6, clause (5);
7. chronic and severe use of alcohol or a controlled substance by a person responsible for the care of the child that adversely affects the child's basic needs and safety; or
8. emotional harm from a pattern of behavior that contributes to impaired emotional functioning of the child, which may be demonstrated by a substantial and observable effect in the child's behavior, emotional response, or cognition that is not within the normal range for the child's age and stage of development, with due regard to the child's culture.

Neglect does not occur solely because the child's parent, guardian, or other person responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child in lieu of medical care.

- G. "Nonmaltreatment mistake" occurs when: (1) at the time of the incident, the individual was performing duties identified in the center's child care program plan required under Minnesota Rules part 9503.0045; (2) the individual has not been determined responsible for a similar incident that resulted

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in a finding of maltreatment for at least seven years; (3) the individual has not been determined to have committed a similar nonmaltreatment mistake under this paragraph for at least four years; (4) any injury to a child resulting from the incident, if treated, is treated only with remedies that are available over the counter, whether ordered by a medical professional or not; and (5) except for the period when the incident occurred, the facility and the individual providing services were both in compliance with all licensing requirements relevant to the incident. This definition only applies to child care centers licensed under Minnesota Rules chapter 9503.

- H. "Person responsible for the child's care" means (1) an individual functioning within the family unit and having responsibilities for the care of the child such as a parent, guardian, or other person having similar care responsibilities, or (2) an individual functioning outside the family unit and having responsibilities for the care of the child such as a teacher, school administrator, other school employee or agent, or other lawful custodian of a child having either full-time or short-term care responsibilities including, but not limited to, day care, babysitting whether paid or unpaid, counseling, teaching, and coaching.
- I. "Physical abuse" means any physical injury, mental injury (under subdivision 13), or threatened injury (under subdivision 23), inflicted by a person responsible for the child's care on a child other than by accidental means; or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive or deprivation procedures, or regulated interventions, that have not been authorized by Minnesota Statutes section 125A.0942 or 245.825.

Abuse does not include reasonable and moderate physical discipline of a child administered by a parent or legal guardian that does not result in an injury. Abuse does not include the use of reasonable force by a teacher, principal, or school employee as allowed by Minnesota Statutes section 121A.582.

Actions that are not reasonable and moderate include, but are not limited to, any of the following: (1) throwing, kicking, burning, biting, or cutting a child; (2) striking a child with a closed fist; (3) shaking a child under age three; (4) striking or other actions that result in any nonaccidental injury to a child under 18 months of age; (5) unreasonable interference with a child's breathing; (6) threatening a child with a weapon, as defined in Minn. Stat. § 609.02, Subd. 6; (7) striking a child under age one on the face or head; (8) striking a child who is at least age one but under age four on the face or head, which results in an injury; (9) purposely giving a child poison, alcohol, or dangerous, harmful, or controlled substances that were not prescribed for the child by a practitioner, in order to control or punish the child, or other substances that substantially affect the child's behavior, motor coordination, or judgment, or that result in sickness or internal injury, or that subject the child to medical procedures that would be unnecessary if the child were not exposed to the substances; (10) unreasonable physical confinement or restraint not permitted under Minnesota Statutes section 609.379, including, but not limited to, tying, caging, or chaining; or (11) in a school facility or school zone, an act by a person responsible for the child's care that is a violation under Minnesota Statutes section 121A.58.

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Replaces: Policy 5141.4 Maltreatment of Minors

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- J. "Report" means any communication received by the local welfare agency, police department, county sheriff, or agency responsible for child protection pursuant to this section that describes maltreatment of a child and contains sufficient content to identify the child and any person believed to be responsible for the maltreatment, if known.
- K. "School personnel" means professional employee or professional's delegate of the school district who provides health, educational, social, psychological, law enforcement, or child care services.
- L. "Sexual abuse" means the subjection of a child by a person responsible for the child's care, by a person who has a significant relationship to the child (as defined in Minn. Stat. § 609.341, Subd. 15), or by a person in a current or recent position of authority (as defined in Minn. Stat. § 609.341, Subd. 10) to any act which constitutes a violation of Minnesota statutes prohibiting criminal sexual conduct. Such acts include sexual penetration, sexual contact, solicitation of children to engage in sexual conduct, and communication of sexually explicit materials to children. Sexual abuse also includes any act involving a minor that constitutes a violation of Minnesota statutes prohibiting prostitution or use of a minor in a sexual performance. Sexual abuse includes all reports of known or suspected child sex trafficking involving a child who is identified as a victim of sex trafficking. Sexual abuse includes threatened sexual abuse which includes the status of a parent or household member who has committed a violation that requires registration under Minnesota Statutes section 243.166, Subd. 1b(a) or (b).
- M. "Threatened injury" means a statement, overt act, condition, or status that represents a substantial risk of physical or sexual abuse or mental injury. Threatened injury includes, but is not limited to, exposing a child to a person responsible for the child's care who has (1) subjected the child to, or failed to protect a child from, an overt act or condition that constitutes egregious harm; (2) been found to be palpably unfit; (3) committed an act that resulted in an involuntary termination of parental rights; (4) , or committed an act that resulted in the involuntary transfer of permanent legal and physical custody of a child to a relative.

IV. REPORTING PROCEDURES

- A. A mandated reporter shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, county sheriff, tribal social services agency, or tribal police department. The reporter will include his or her name and address in the report.
- B. An oral report shall be made immediately by telephone or otherwise., The oral report shall be followed by a written report within 72 hours (exclusive of weekends and holidays) to the appropriate police department, the county sheriff, local welfare agency, or agency responsible for assessing or investigating the report. Any report shall be of sufficient content to identify the child, any person believed to be responsible for the maltreatment of the child if the person is known, the nature and

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extent of the maltreatment, and the name and address of the reporter.

- C. Regardless of whether a report is made, as soon as practicable after a school receives information regarding an incident that may constitute maltreatment of a child in a school facility, the school shall inform the parent, legal guardian, or custodian of the child that an incident has occurred that may constitute maltreatment of the child, when the incident occurred, and the nature of the conduct that may constitute maltreatment.
- D. A mandated reporter who knows or has reason to know of the deprivation of custodial or parental rights or the kidnapping of a child shall report the information to the local police department or the county sheriff.
- E. With the exception of a health care professional or a social service professional who is providing the woman with prenatal care or other health care services, a mandated reporter shall immediately report to the local welfare agency if the person knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol, or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.
- F. A person mandated by Minnesota law and this policy to report who fails to report may be subject to criminal penalties and/or discipline, up to and including termination of employment.
- G. An employer of a mandated reporter shall not retaliate against the person for reporting in good faith maltreatment against a child with respect to whom a report is made, because of the report.
- H. Any person who knowingly or recklessly makes a false report under the provisions of applicable Minnesota law or this policy shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury, plus costs and reasonable attorney fees. Knowingly or recklessly making a false report also may result in discipline.

V. INVESTIGATION

- A. The responsibility for assessing or investigating reports of suspected maltreatment rests with the appropriate state, county, or local agency or agencies. The agency responsible for assessing or investigating reports of maltreatment has the authority to interview the child, the person or persons responsible for the child's care, the alleged offender, and any other person with knowledge of the maltreatment for the purpose of gathering facts, assessing safety and risk to the child, and formulating a plan. The investigating agency may interview the child at school. The interview may take place outside the presence of the alleged offender or parent, legal guardian, or school official. The investigating agency, not the school, is responsible for either notifying or withholding notification of the interview to the parent, guardian, or person responsible for the child's care. School officials

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may not disclose to the parent, legal custodian, or guardian the contents of the notification or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation or assessment has been concluded.

- B. When the investigating agency determines that an interview should take place on school property, written notification of intent to interview the child on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct an interview on school property.
- C. Except where the alleged offender is believed to be a school official or employee, the time and place, and manner of the interview on school premises shall be within the discretion of school officials, but the local welfare or law enforcement agency shall have the exclusive authority to determine who may attend the interview. The conditions as to time, place, and manner of the interview set by the school officials shall be reasonable, and the interview shall be conducted not more than 24 hours after the receipt of the notification unless another time is considered necessary by agreement between the school officials and the local welfare or law enforcement agency. Every effort must be made to reduce the disruption of the educational program of the child, other students, or school employees when an interview is conducted on school premises.
- D. Where the alleged offender is believed to be a school official or employee, the school district shall conduct its own investigation independent of MDE and, if involved, the local welfare or law enforcement agency.
- E. Upon request by MDE, the school district shall provide all requested data that are relevant to a report of maltreatment and are in the possession of a school facility, pursuant to an assessment or investigation of a maltreatment report of a student in school. The school district shall provide the requested data in accordance with the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes chapter 13, and the Family Educational Rights and Privacy Act, 20 United States Code section 1232g.

VI. MAINTENANCE OF SCHOOL RECORDS CONCERNING ABUSE OR POTENTIAL ABUSE

- A. When a local welfare or local law enforcement agency determines that a potentially abused or abused child should be interviewed on school property, written notification of the agency's intent to interview on school property must be received by school officials prior to the interview. The notification shall include the name of the child to be interviewed, the purpose of the interview, and a reference to the statutory authority to conduct the interview. The notification shall be private data. School officials may not disclose to the parent, legal custodian, or guardian the contents of the notice or any other related information regarding the interview until notified in writing by the local welfare or law enforcement agency that the investigation has been concluded.

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- B. All records regarding a report of maltreatment, including any notification of intent to interview which was received by the school as described above in Paragraph A., shall be destroyed by the school only when ordered by the agency conducting the investigation or by a court of competent jurisdiction.

VII. PHYSICAL OR SEXUAL ABUSE AS SEXUAL HARASSMENT OR VIOLENCE

Under certain circumstances, alleged physical or sexual abuse may also be sexual harassment or violence under Minnesota law. If so, the duties relating to the reporting and investigation of such harassment or violence may be applicable.

VIII. DISSEMINATION OF POLICY AND TRAINING

- A. This policy shall appear in school personnel handbooks.
- B. The school district will develop a method of discussing this policy with school personnel.
- C. This policy shall be reviewed at least annually for compliance with state law.

Legal References: Minn. Stat. Ch. 13 (Minnesota Government Data Practices Act)
Minn. Stat. § 121A.58 (Corporal Punishment)
Minn. Stat. § 121A.582 (Student Discipline; Reasonable Force)
Minn. Stat. § 125A.0942 (Standards for Restrictive Procedures)
Minn. Stat. § 243.166, Subd. 1b(a)(b) (Registration of Predatory Offenders)
Minn. Stat. § 245.825 (Use of Aversive or Deprivation Procedures)
Minn. Stat. § 260C.007, Subd. 6, Clause (5) (Child in Need of Protection)
Minn. Stat. § 260C.451 (Foster Care Benefits Past Age 18)
Minn. Stat. Ch. 260D (Child in Voluntary Foster Care for Treatment)
Minn. Stat. Ch. 260E (Reporting of Maltreatment of Minors)
Minn. Stat. § 609.02, Subd. 6 (Definitions – Dangerous Weapon)
Minn. Stat. § 609.341, Subd. 10 (Definitions – Position of Authority)
Minn. Stat. § 609.341, Subd. 15 (Definitions – Significant Relationship)
Minn. Stat. § 609.379 (Reasonable Force)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act)

Cross References: NB Policy 415 (Mandated Reporting of Maltreatment of Vulnerable Adults)

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Mandated Reporting of Maltreatment of Vulnerable Adults

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I. PURPOSE

The purpose of this policy is to make clear the statutory requirements of school personnel to report suspected maltreatment of vulnerable adults.

II. GENERAL STATEMENT OF POLICY

- A. The policy of the school district is to comply fully with Minnesota Statutes section 626.557 requiring school personnel to report suspected maltreatment of vulnerable adults.
- B. A violation of this policy occurs when any school personnel fails to report suspected maltreatment of vulnerable adults when the school personnel has reason to believe that a vulnerable adult is being or has been maltreated, or has knowledge that a vulnerable adult has sustained a physical injury which is not reasonably explained.

III. DEFINITIONS

A. "Abuse" means:

1. An act against a vulnerable adult that constitutes a violation of, an attempt to violate, or aiding and abetting a violation of: (1) assault in the first through fifth degrees as defined in Minnesota Statutes sections 609.221 to 609.224; (2) the use of drugs to injure or facilitate crime as defined in Minnesota Statutes section 609.235; (3) the solicitation, inducement, and promotion of prostitution as defined in Minnesota Statutes section 609.322; and (4) criminal sexual conduct in the first through fifth degrees as defined in Minnesota Statutes sections 609.342 to 609.3451. A violation includes any action that meets the elements of the crime, regardless of whether there is a criminal proceeding or conviction.
2. Conduct which is not an accident or therapeutic conduct as defined in Minnesota Statutes section 626.5572 which produces or could reasonably be expected to produce physical pain or injury or emotional distress including, but not limited to, the following: (1) hitting, slapping, kicking, pinching, biting, or corporal punishment of a vulnerable adult; (2) use of repeated or malicious oral, written, or gestured language toward a vulnerable adult or the treatment of a vulnerable adult which would be considered by a reasonable person to be disparaging, derogatory, humiliating, harassing, or threatening; (3) use of any aversive or deprivation procedure, unreasonable confinement, or involuntary seclusion, including the forced separation of the vulnerable adult from other persons against the will of the vulnerable adult or the legal representative of the vulnerable adult; and (4) use of any aversive or deprivation procedures for persons with developmental disabilities or related conditions not authorized under Minnesota Statutes section 245.825.
3. Any sexual contact or penetration as defined in Minn. Stat. § 609.341 between a facility staff person

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or a person providing services in the facility and a resident, patient, or client of that facility.

4. The act of forcing, compelling, coercing, or enticing a vulnerable adult against the vulnerable adult's will to perform services for the advantage of another.

Abuse does not include actions specifically excluded by Minnesota Statutes section 626.5572, Subd. 2.

- B. "Caregiver" means an individual or facility who has responsibility for the care of a vulnerable adult as a result of a family relationship, or who has assumed responsibility for all or a portion of the care of a vulnerable adult voluntarily, by contract, or by agreement.
- C. "Common entry point" means the entity responsible for receiving reports of alleged or suspected maltreatment of a vulnerable adult and designated by the Commissioner of the Minnesota Department of Human Services as the MN Adult Abuse Reporting Center (MAARC).
- D. "Financial Exploitation" means a breach of a fiduciary duty by an actor's unauthorized expenditure of funds entrusted to the actor for the benefit of the vulnerable adult or by an actor's failure to provide food, clothing, shelter, health care, therapeutic conduct or supervision, the failure of which results or is likely to result in detriment to the vulnerable adult. Financial exploitation also includes: the willful use, withholding or disposal of funds or property of a vulnerable adult; the obtaining of services for wrongful profit or advantage which results in detriment to the vulnerable adult; the acquisition of a vulnerable adult's funds or property through undue influence, harassment, duress, deception or fraud; and the use of force, coercion, or enticement to cause a vulnerable adult to perform services against the vulnerable adult's will for the profit or advantage of another.
- E. "Immediately" means as soon as possible, but no longer than 24 hours from the time initial knowledge that the incident occurred has been received.
- F. "Mandated reporter" means a professional or professional's delegate while engaged in education.
- G. "Maltreatment" means the neglect, abuse, or financial exploitation of a vulnerable adult.
- H. "Neglect" means the failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is: (1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and (2) which is not the result of an accident or therapeutic conduct.
- I. Neglect also means the absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain

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the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult. Neglect does not include actions specifically excluded by Minnesota Statutes section 626.5572, Subd. 17.

- J. "School personnel" means professional employees or their delegates of the school district engaged in providing health, educational, social, psychological, law enforcement, or other caretaking services of vulnerable adults.
- K. "Vulnerable adult" means any person 18 years of age or older who: (1) is a resident or inpatient of a facility; (2) receives services required to be licensed under Minnesota Statutes chapter 245A, except as excluded under Minnesota Statutes section 626.5572, Subd. 21(a)(2); (3) receives services from a licensed home care provider or person or organization that offers, provides, or arranges for personal care assistance services under the medical assistance program; or (4) regardless of residence or whether any type of service is received, possesses a physical or mental infirmity or other physical, mental, or emotional dysfunction that impairs the individual's ability to provide adequately for the individual's own care without assistance or supervision and, because of the dysfunction or infirmity and need for care or services, has an impaired ability to protect the individual's self from maltreatment.

IV. REPORTING PROCEDURES

- A. A mandated reporter as defined herein shall immediately report the suspected maltreatment to the common entry point responsible for receiving reports.
- B. Whenever a mandated reporter, as defined herein, knows or has reason to believe that an individual made an error in the provision of therapeutic conduct to a vulnerable adult which results in injury or harm, which reasonably requires the care of a physician, such information shall be reported immediately to the designated county agency. The mandated reporter also may report a belief that the error did not constitute neglect and why the error does not constitute neglect.
- C. The report shall, to the extent possible, identify the vulnerable adult, the caregiver, the nature and extent of the suspected maltreatment, any evidence of previous maltreatment, the name and address of the reporter, the time, date, and location of the incident, and any other information that the reporter believes might be helpful in investigating the suspected abuse or neglect. A mandated reporter may disclose not public data, as defined under Minnesota Statutes section 13.02, to the extent necessary to comply with the above reporting requirements.
- D. A person mandated to report suspected maltreatment of a vulnerable adult who negligently or intentionally fails to report is liable for damages caused by the failure. A negligent or intentional failure to report may result in discipline. A mandatory reporter who intentionally fails to make a report, who knowingly provides false or misleading information in reporting, or who intentionally fails to provide all the material circumstances surrounding the reported incident may be guilty of a

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misdemeanor.

- E. Retaliation against a person who makes a good faith report under Minnesota law and this policy, or against vulnerable adult who is named in a report is prohibited.
- F. Any person who intentionally makes a false report under the provisions of applicable Minnesota law or this policy shall be liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury. The intentional making of a false report may result in discipline.

V. INVESTIGATION

The responsibility for investigating reports of suspected maltreatment of a vulnerable adult rests with the entity designated by the county for receiving reports.

VI. DISSEMINATION OF POLICY AND TRAINING

- A. This policy should appear in school personnel handbooks as appropriate.
- B. The school district will develop a method of discussing this policy with employees as appropriate.
- C. This policy should be reviewed at least annually for compliance with state law.

Legal References: Minn. Stat. § 13.02 (Government Data Practices; Definitions)
Minn. Stat. Ch. 245A (Human Services Licensing)
Minn. Stat. § 245.825 (Aversive and Deprivation Procedures; Licensed Facilities and Services)
Minn. Stat. §§ 609.221-609.224 (Assault)
Minn. Stat. § 609.232 (Crimes Against Vulnerable Adults; Definitions)
Minn. Stat. § 609.235 (Use of Drugs to Injure or Facilitate Crime)
Minn. Stat. § 609.322 (Solicitation, Inducement, and Promotion of Prostitution; Sex Trafficking)
Minn. Stat. § 609.341 (Definitions)
Minn. Stat. §§ 609.342-609.3451 (Criminal Sexual Conduct)
Minn. Stat. § 626.557 (Reporting of Maltreatment of Vulnerable Adults)
Minn. Stat. § 626.5572 (Definitions)
In re Kleven, 736 N.W.2d 707 (Minn. App. 2007)

Cross References: NB Policy 103 (Complaints – Students, Employees, Parents, Other Persons)
NB Policy 211 (Criminal or Civil Action Against School District, School Board Member, Employee, or Student)

NORTH BRANCH INDEPENDENT SCHOOL DISTRICT NO. 138: Policy 415

Adopted: 11/10/16

Replaces:

Last Reviewed: 4/8/21, 12/9/21

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NB Policy 403 (Discipline, Suspension, and Dismissal of School District Employees)
NB Policy 406 (Public and Private Personnel Data)
NB Policy 414 (Mandated Reporting of Child Neglect or Physical or Sexual Abuse)
NB Policy 515 (Protection and Privacy of Pupil Records)

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I. GENERAL STATEMENT OF POLICY

- A. The school district does not discriminate on the basis of sex in its education programs or activities, and it is required by Title IX of the Education Amendments Act of 1972, and its implementing regulations, not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The school district is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.
- B. The school district prohibits sexual harassment that occurs within its education programs and activities. When the school district has actual knowledge of sexual harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.
- C. This policy applies to sexual harassment that occurs within the school district's education programs and activities and that is committed by a school district employee, student, or other members of the school community. This policy does not apply to sexual harassment that occurs off school grounds, in a private setting, and outside the scope of the school district's education programs and activities. This policy does not apply to sexual harassment that occurs outside the geographic boundaries of the United States, even if the sexual harassment occurs in the school district's education programs or activities.
- D. Any student, parent, or guardian having questions regarding the application of Title IX and its regulations and/or this policy and grievance process should discuss them with the Title IX Coordinator. The school district's Title IX Coordinator(s) is/are:
- Todd Tetzlaff, Director of Finance and Human Resources, 651-674-1009, 38705 Grand Ave, North Branch, MN 55056, ttetzlaf@isd138.org
- Questions relating solely to Title IX and its regulations may be referred to the Title IX Coordinator(s), the Assistant Secretary for Civil Rights of the United States Department of Education, or both.
- E. The effective date of this policy is August 14, 2020, and applies to alleged violations of this policy occurring on or after August 14, 2020.

II. DEFINITIONS

- A. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the school district's Title IX Coordinator or to any employee of the school district. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the school district with actual

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knowledge is the respondent.

- B. “Complainant” means a person who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A Title IX Coordinator who signs a formal complaint is not a complainant unless the Title IX Coordinator is alleged to be the victim of the conduct described in the formal complaint.
- C. “Day” or “days” means, unless expressly stated otherwise, business days (i.e. day(s) that the school district office is open for normal operating hours, Monday - Friday, excluding State-recognized holidays).
- D. “Deliberately indifferent” means clearly unreasonable in light of the known circumstances. The school district is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.
- E. “Education program or activity” means locations, events, or circumstances for which the school district exercises substantial control over both the respondent and the context in which the sexual harassment occurs and includes school district education programs or activities that occur on or off of school district property.
- F. “Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school district investigate the allegation of sexual harassment.
 - 1. A formal complaint filed by a complainant must be a physical document or an electronic submission. The formal complaint must contain the complainant’s physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint, and must be submitted to the Title IX Coordinator in person, by mail, or by email.
 - 2. A formal complaint shall state that, at the time of filing the formal complaint, the complainant was participating in, or attempting to participate in, an education program or activity of the school district with which the formal complaint is filed.
- G. “Informal resolution” means options for resolving a formal complaint that do not involve a full investigation and adjudication. Informal resolution may encompass a broad range of conflict resolution strategies, including mediation or restorative justice.
- H. “Relevant questions” and “relevant evidence” are questions, documents, statements, or information that are related to the allegations raised in a formal complaint. Relevant evidence includes evidence that is both inculpatory and exculpatory. Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such

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questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

- I. "Remedies" means actions designed to restore or preserve the complainant's equal access to education after a respondent is found responsible. Remedies may include the same individualized services that constitute supportive measures, but need not be non-punitive or non-disciplinary, nor must they avoid burdening the respondent.
- J. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.
- K. "Sexual harassment" means any of three types of misconduct on the basis of sex that occurs in a school district education program or activity and is committed against a person in the United States:
 - 1. *Quid pro quo* harassment by a school district employee (conditioning the provision of an aid, benefit, or service of the school district on an individual's participation in unwelcome sexual conduct);
 - 2. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or
 - 3. Any instance of sexual assault (as defined in the Clery Act, 20 United States Code section 1092(f)(6)A(v)), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act, 34 United States Code section 12291).
- L. "Supportive measures" means individualized services provided to the complainant or respondent without fee or charge that are reasonably available, non-punitive, non-disciplinary, not unreasonably burdensome to the other party, and designed to ensure equal educational access, protect safety, and deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, alternative educational services as defined under Minnesota Statutes section 121A.41, as amended, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the school district buildings or property, and other similar measures.
- M. "Title IX Personnel" means any person who addresses, works on, or assists with the school district's response to a report of sexual harassment or formal complaint, and includes persons who facilitate informal resolutions. The following are considered Title IX Personnel:

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1. "Title IX Coordinator" means an employee of the school district that coordinates the school district's efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator is responsible for acting as the primary contact for the parties and ensuring that the parties are provided with all notices, evidence, reports, and written determinations to which they are entitled under this policy and grievance process. The Title IX Coordinator is also responsible for effective implementation of any supportive measures or remedies. The Title IX Coordinator must be free from conflicts of interest and bias when administering the grievance process.
2. "Investigator" means a person who investigates a formal complaint. The investigator of a formal complaint may not be the same person as the Decision-maker or the Appellate Decision-maker. The Investigator may be a school district employee, school district official, or a third party designated by the school district.
3. "Decision-maker" means a person who makes a determination regarding responsibility after the investigation has concluded. The Decision-maker cannot be the same person as the Title IX Coordinator, the Investigator, or the Appellate Decision-maker.
4. "Appellate Decision-maker" means a person who considers and decides appeals of determinations regarding responsibility and dismissals of formal complaints. The Appellate Decision-maker cannot be the same person as the Title IX Coordinator, Investigator, or Decision-maker. The Appellate Decision-maker may be a school district employee, or a third party designated by the school district.
5. The superintendent of the school district may delegate functions assigned to a specific school district employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, Investigator, Decision-maker, Appellate Decision-maker, and facilitator of informal resolution processes, to any suitably qualified individual and such delegation may be rescinded by the superintendent at any time. The school district may also, in its discretion, appoint suitably qualified persons who are not school district employees to fulfill any function under this policy, including, but not limited to, Investigator, Decision-maker, Appellate Decision-maker, and facilitator of informal resolution processes.

III. BASIC REQUIREMENTS FOR GRIEVANCE PROCESS

A. Equitable Treatment

1. The school district shall treat complainants and respondents equitably. However, equality or parity with respect to supportive measures provided to complainants and respondents is not required.

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2. The school district will not impose any disciplinary sanctions or take any other actions against a respondent that do not constitute supportive measures until it has completed this grievance process and the respondent has been found responsible.
 3. The school district will provide appropriate remedies to the complainant any time a respondent is found responsible.
- B. Objective and Unbiased Evaluation of Complaints
1. Title IX Personnel, including the Title IX Coordinator, Investigator, Decision-maker, and Appellate Decision-maker, shall be free from conflicts of interest or bias for or against complainants or respondents generally or a specific complainant or respondent.
 2. Throughout the grievance process, Title IX Personnel will objectively evaluate all relevant evidence, inculpatory and exculpatory, and shall avoid credibility determinations based solely on a person's status as a complainant, respondent, or witness.
- C. Title IX Personnel will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- D. Confidentiality
- The school district will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 United States Code section 1232g, FERPA regulations, 34 Code of Federal Regulations part 99, Minnesota law under Minnesota Statutes section 13.32, or as required by law, or to carry out the purposes of 34 Code of Federal Regulations part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the school district's obligation to maintain confidentiality shall not impair or otherwise affect the complainants and respondents receipt of the information to which they are entitled with respect to the investigative record and determination of responsibility).
- E. Right to an Advisor; Right to a Support Person
- Complainants and respondents have the right, at their own expense, to be assisted by an advisor of their choice during all stages of any grievance proceeding, including all meetings and investigative interviews. The advisor may be, but is not required to be, an attorney. In general, an advisor is not permitted to speak for or on behalf of a complainant or respondent, appear in

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lieu of complainant or respondent, participate as a witness, or participate directly in any other manner during any phase of the grievance process.

A complainant or respondent with a disability may be assisted by a support person throughout the grievance process, including all meetings and investigative interviews, if such accommodation is necessary. A support person may be a friend, family member, or any individual who is not otherwise a potential witness. The support person is not permitted to speak for or on behalf of a complainant or respondent, appear in lieu of complainant or respondent, participate as a witness, or participate directly in any other manner during any phase of the grievance process.

F. Notice

The school district will send written notice of any investigative interviews or meetings to any party whose participation is invited or expected. The written notice will include the date, time, location, participants, and purpose of the meeting or interview, and will be provided to allow sufficient time for the party to prepare to participate.

G. Consolidation

The school district may, in its discretion, consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

H. Evidence

1. During the grievance process, the school district will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

2. The school district shall not access, consider, disclose, or otherwise use a party's medical, psychological, and similar treatment records unless the school district obtains the party's voluntary, written consent.

I. Burden of Proof

1. The burden of gathering evidence and the burden of proof shall remain upon the school district and not upon the parties.

2. The grievance process shall use a preponderance of the evidence standard (i.e.

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whether it is more likely than not that the respondent engaged in sexual harassment) for all formal complaints of sexual harassment, including when school district employees are respondents.

J. Timelines

1. Any informal resolution process must be completed within thirty (30) calendar days following the parties' agreement to participate in such informal process.
2. An appeal of a determination of responsibility or of a decision dismissing a formal complaint must be received by the school district within five (5) days of the date the determination of responsibility or dismissal was provided to the parties.
3. Any appeal of a determination of responsibility or of a dismissal will be decided within thirty (30) calendar days of the day the appeal was received by the School District.
4. The school district will seek to conclude the grievance process, including any appeal, within 120 calendar days of the date the formal complaint was received by the School District.
5. Although the school district strives to adhere to the timelines described above, in each case, the school district may extend the time frames for good cause. Good cause may include, without limitation: the complexity of the allegations; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, advisors, witnesses, and evidence (e.g., forensic evidence); concurrent law enforcement activity; intervening school district holidays, breaks, or other closures; the need for language assistance or accommodation of disabilities; and/or other unforeseen circumstances.

K. Potential Remedies and Disciplinary Sanctions

1. The following is the range of possible remedies that the school district may provide a complainant and disciplinary sanctions that the school district might impose upon a respondent, following determination of responsibility: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual or unilateral restrictions on contact between the parties, changes in work locations, leaves of absence, monitoring of certain areas of the school district buildings or property, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge.
2. If the Decision-maker determines a student-respondent is responsible for violating this policy, the Decision-maker will recommend appropriate remedies, including disciplinary

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sanctions/consequences. The Title IX Coordinator will notify the superintendent of the recommended remedies, such that an authorized administrator can consider the recommendation(s) and implement appropriate remedies in compliance with MSBA Model Policy 506 – Student Discipline. The discipline of a student-respondent must comply with the applicable provisions of Minnesota Pupil Fair Dismissal Act, the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972, and their respective implementing regulations.

IV. REPORTING PROHIBITED CONDUCT

- A. Any student who believes they have been the victim of unlawful sex discrimination or sexual harassment, or any person (including the parent of a student) with actual knowledge of conduct which may constitute unlawful sex discrimination or sexual harassment toward a student should report the alleged acts as soon as possible to the Title IX Coordinator.
- B. Any employee of the school district who has experienced, has actual knowledge of, or has witnessed unlawful sex discrimination, including sexual harassment, or who otherwise becomes aware of unlawful sex discrimination, including sexual harassment, must promptly report the allegations to the Title IX Coordinator without screening or investigating the report or allegations.
- C. A report of unlawful sex discrimination or sexual harassment may be made at any time, including during non-business hours, and may be made in person, by mail, by telephone, or by e-mail using the Title IX Coordinator's contact information. A report may also be made by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.
- D. Sexual harassment may constitute both a violation of this policy and criminal law. To the extent the alleged conduct may constitute a crime, the School District may report the alleged conduct to law enforcement authorities. The school district encourages complainants to report criminal behavior to the police immediately.

V. INITIAL RESPONSE AND ASSESSMENT BY THE TITLE IX COORDINATOR

- A. When the Title IX Coordinator receives a report, the Title IX Coordinator shall promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.
- B. The school district will offer supportive measures to the complainant whether or not the complainant decides to make a formal complaint. The school district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the school district's ability to provide the

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supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

- C. If the complainant does not wish to file a formal complaint, the allegations will not be investigated by the school district unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the complainant's wishes is not clearly unreasonable in light of the known circumstances.
- D. Upon receipt of a formal complaint, the school district must provide written notice of the formal complaint to the known parties with sufficient time to prepare a response before any initial interview. This written notice must contain:
 - 1. The allegations of sexual harassment, including sufficient details known at the time, the identities of the parties involved in the incident (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
 - 2. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
 - 3. A statement explaining that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
 - 4. A statement that the parties may inspect and review evidence gathered pursuant to this policy;
 - 5. A statement informing the parties of any code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information; and
 - 6. A copy of this policy.

VI. STATUS OF RESPONDENT DURING PENDENCY OF FORMAL COMPLAINT

- A. Emergency Removal of a Student
 - 1. The school district may remove a student-respondent from an education program or activity of the school district on an emergency basis before a determination regarding responsibility is made if:
 - a. The school district undertakes an individualized safety and risk analysis;

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- b. The school district determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal of the student-respondent; and
- c. The school district determines the student-respondent poses such a threat, it will so notify the student-respondent and the student-respondent will have an opportunity to challenge the decision immediately following the removal. In determining whether to impose emergency removal measures, the Title IX Coordinator shall consult related school district policies, including MSBA Model Policy 506 – Student Discipline. The school district must take into consideration applicable requirements of the Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act of 1973, prior to removing a special education student or Section 504 student on an emergency basis.

B. Employee Administrative Leave

The school district may place a non-student employee on administrative leave during the pendency of the grievance process of a formal complaint. Such leave will typically be paid leave unless circumstances justify unpaid leave in compliance with legal requirements. The school district must take into consideration applicable requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act prior to removing an individual with a qualifying disability.

VII. INFORMAL RESOLUTION OF A FORMAL COMPLAINT

- A. At any time prior to reaching a determination of responsibility, informal resolution may be offered and facilitated by the school district at the school district's discretion, but only after a formal complaint has been received by the school district.
- B. The school district may not require as a condition of enrollment or continued enrollment, or of employment or continued employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.
- C. The informal resolution process may not be used to resolve allegations that a school district employee sexually harassed a student.
- D. The school district will not facilitate an informal resolution process without both parties' agreement, and will obtain their voluntary, written consent. The school district will provide to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, the parties' right to withdraw from the informal

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resolution process, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

- E. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

VIII. DISMISSAL OF A FORMAL COMPLAINT

- A. Under federal law, the school district must dismiss a Title IX complaint, or a portion thereof, if the conduct alleged in a formal complaint or a portion thereof:
 - 1. Would not meet the definition of sexual harassment, even if proven;
 - 2. Did not occur in the school district's education program or activity; or
 - 3. Did not occur against a person in the United States.
- B. The school district may, in its discretion, dismiss a formal complaint or allegations therein if:
 - 1. The complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein;
 - 2. The respondent is no longer enrolled or employed by the school district; or
 - 3. Specific circumstances prevent the school district from gathering sufficient evidence to reach a determination.
- C. The school district shall provide written notice to both parties of a dismissal. The notice must include the reasons for the dismissal.
- D. Dismissal of a formal complaint or a portion thereof does not preclude the school district from addressing the underlying conduct in any manner that the school district deems appropriate.

IX. INVESTIGATION OF A FORMAL COMPLAINT

- A. If a formal complaint is received by the School District, the school district will assign or designate an Investigator to investigate the allegations set forth in the formal complaint.
- B. If during the course of the investigation the school district decides to investigate any allegations about the complainant or respondent that were not included in the written notice of a formal complaint provided to the parties, the school district must provide notice of the additional allegations to the known parties.

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- C. When a party's participation is invited or expected in an investigative interview, the Investigator will coordinate with the Title IX Coordinator to provide written notice to the party of the date, time, location, participants, and purposes of the investigative interview with sufficient time for the party to prepare.
- D. During the investigation, the Investigator must provide the parties with an equal opportunity to present witnesses for interviews, including fact witnesses and expert witnesses, and other inculpatory and exculpatory evidence.
- E. Prior to the completion of the investigative report, the Investigator, through the Title IX Coordinator, will provide the parties and their advisors (if any) with an equal opportunity to inspect and review any evidence directly related to the allegations. The evidence shall be provided in electronic format or hard copy and shall include all relevant evidence, evidence upon which the school district does not intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence whether obtained from a party or another source. The parties will have ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
- F. The Investigator will prepare a written investigative report that fairly summarizes the relevant evidence. The investigative report may include credibility determinations that are not based on a person's status as a complainant, respondent or witness. The school district will send the parties and their advisors (if any) a copy of the report in electronic format or hard copy, for their review and written response at least ten (10) days prior to a determination of responsibility.

X. DETERMINATION REGARDING RESPONSIBILITY

- A. After the school district has sent the investigative report to both parties and before the school district has reached a determination regarding responsibility, the Decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness.
- B. The Decision-maker must provide the relevant questions submitted by the parties to the other parties or witnesses to whom the questions are offered, and then provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- C. The Decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
- D. When the exchange of questions and answers has concluded, the Decision-maker must issue a written determination regarding responsibility that applies the preponderance of the evidence standard to the facts and circumstances of the formal complaint. The written determination of responsibility must include the following:

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1. Identification of the allegations potentially constituting sexual harassment;
 2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
 3. Findings of fact supporting the determination;
 4. Conclusions regarding the application of the school district's code of conduct to the facts;
 5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school district imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the school district to the complainant; and
 6. The school district's procedures and permissible bases for the complainant and respondent to appeal and the date by which an appeal must be made.
- E. In determining appropriate disciplinary sanctions, the Decision-maker should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incident occurred.
- F. The written determination of responsibility must be provided to the parties simultaneously.
- G. The Title IX Coordinator is responsible for the effective implementation of any remedies.
- H. The determination regarding responsibility becomes final either on the date that the school district provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

XI. APPEALS

- A. The school district shall offer the parties an opportunity to appeal a determination regarding responsibility or the school district's dismissal of a formal complaint or any allegations therein, on the following bases:
1. A procedural irregularity that affected the outcome of the matter (e.g., a material deviation from established procedures);

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2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
 3. The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.
- B. If notice of an appeal is timely received by the school district, the school district will notify the parties in writing of the receipt of the appeal, assign or designate the Appellate Decision-maker, and give the parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
- C. After reviewing the parties' written statements, the Appellate Decision-maker must issue a written decision describing the result of the appeal and the rationale for the result.
- D. The written decision describing the result of the appeal must be provided simultaneously to the parties.
- E. The decision of the Appellate Decision-maker is final. No further review beyond the appeal is permitted.

XII. RETALIATION PROHIBITED

- A. Neither the school district nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, constitutes retaliation. Retaliation against a person for making a report of sexual harassment, filing a formal complaint, or participating in an investigation, constitutes a violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.
- B. Any person may submit a report or formal complaint alleging retaliation in the manner described in this policy and it will be addressed in the same manner as other complaints of sexual harassment or sex discrimination.
- C. Charging an individual with violation of school district policies for making a materially false

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statement in bad faith in the course of a grievance proceeding under this policy shall not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XIII. TRAINING

- A. The school district shall ensure that Title IX Personnel receive appropriate training. The training shall include instruction on:
1. The Title IX definition of sexual harassment;
 2. The scope of the school district's education program or activity;
 3. How to conduct an investigation and grievance process, appeals, and informal resolution processes, as applicable;
 4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
 5. For Decision-makers, training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's prior sexual behavior are not relevant; and
 6. For Investigators, training on issues of relevance, including the creation of an investigative report that fairly summarizes relevant evidence.
- B. The training materials will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.
- C. Materials used to train Title IX Personnel must be posted on the school district's website. If the school district does not have a website, it must make the training materials available for public inspection upon request.

XIV. DISSEMINATION OF POLICY

- A. This policy shall be made available to all students, parents/guardians of students, school district employee, and employee unions.
- B. The school district shall conspicuously post the name of the Title IX Coordinator, including office address, telephone number, and work e-mail address on its website and in each handbook that it makes available to parents, employees, students, unions, or applicants.

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- C. The school district must provide applicants for admission and employment, students, parents or legal guardians of secondary school students, employees, and all unions holding collective bargaining agreements with the school district, with the following:
1. The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator;
 2. Notice that the school district does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX not to discriminate in such a manner;
 3. A statement that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights of the United States Department of Education, or both; and
 4. Notice of the school district's grievance procedures and grievance process contained in this policy, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the school district will respond.

XV. RECORDKEEPING

- A. The school district must create, and maintain for a period of seven calendar years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the school district must document:
1. The basis for the school district's conclusion that its response to the report or formal complaint was not deliberately indifferent;
 2. The measures the school district has taken that are designed to restore or preserve equal access to the school district's education program or activity; and
 3. If the school district does not provide a complainant with supportive measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. Such a record must be maintained for a period of seven years.
 4. The documentation of certain bases or measures does not limit the recipient in the future from providing additional explanations or detailing additional measures taken.
- B. The school district must also maintain for a period of seven calendar years records of:

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1. Each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. Any appeal and the result therefrom;
3. Any informal resolution and the result therefrom; and
4. All materials used to train Title IX Personnel.

Legal References:

Minn. Stat. § 121A.04 (Athletic Programs; Sex Discrimination)
Minn. Stat. §§ 121A.40 – 121A.575 (Minnesota Pupil Fair Dismissal Act)
Minn. Stat. Ch. 363A (Minnesota Human Rights Act)
20 U.S.C. §§ 1681-1688 (Title IX of the Education Amendments)
34 C.F.R. Part 106 (Implementing Regulations of Title IX)
20 U.S.C § 1400, *et seq.* (Individuals with Disabilities Education Act)
29 U.S.C. § 794 (Section 504 of the Rehabilitation Act)
42 U.S.C. § 12101, *et seq.* (Americans with Disabilities Act)
20 U.S.C. § 1232g (Family Educational Rights and Privacy Act of 1974)
20 U.S.C. § 1092 *et seq.* (Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act ("Clery Act"))

Cross References:

NB Policy 102 (Equal Educational Opportunity)
NB Policy 413 (Harassment and Violence)
NB Policy 506 (Student Discipline)
NB Policy 528 (Student Parental, Family, and Marital Status Nondiscrimination)

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