



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised CONFLICT OF INTEREST

Number: po1130

## Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

### 1130 - CONFLICT OF INTEREST

Staff members, officers, and agents shall perform their official duties in a manner free from conflict of interest. To this end:

#### A.

The maintenance of unusually high standards of honesty, integrity, impartiality, and professional conduct by the ~~School~~District's Board members, employees, officers, and agents is essential to ensure the proper performance of school business as well as to earn and keep public confidence in the ~~School~~District.

To accomplish this, the Board of Education has adopted the following guidelines which apply to all District employees, officers, ~~and~~agents, and Board members~~including members of the Board~~ to assure that conflicts of interest do not occur. These guidelines are not intended to be all-inclusive, nor to substitute for good judgment on the part of all employees, officers, agents, and Board members~~and agents~~.

#### 1.

No employee, officer, ~~or~~agent, or Board member shall engage in or have a financial or other interest, directly or indirectly, in any activity that conflicts or raises a reasonable question of conflict with the employee's, officer's, agent's, or Board member's~~his/her~~ duties and responsibilities in the school system. When a staff member determines that the possibility of a personal interest conflict exists, the staff members~~he~~ should, prior to the matter being considered by the Board or administration, disclose the staff member's~~his/her~~ interest (such disclosure shall become a matter of record in the minutes of the Board).

#### 2.

No staff member, officer, ~~or~~agent, or Board member shall use their~~his/her~~ position to benefit either themselves ~~himself/herself~~ or any other individual or agency apart from the total interest of the ~~School~~District.

#### 3.

If the financial interest pertains to a proposed contract with the District, the following requirements must be met

The staff member, officer, ~~or~~ agent, or Board member shall disclose the direct financial interest in the contract to the Board with such disclosure made a part of the official Board minutes. If the ~~his/her~~ direct financial interest amounts to \$250 or more or five percent (5%) or more of the contract cost to the District, the staff member, officer, ~~or~~ agent, or Board member shall make the disclosure in one (1) of two (2) ways:

a.

In writing, to the Board President at least seven (7) days prior to the meeting at which the vote on the contract will be taken. The disclosure shall be made public in the same manner as the Board's notices of its public meetings. (See Bylaw 0165)

b.

By announcement at a meeting at least seven (7) days prior to the meeting at which a vote on the contract is to be taken. The staff member, officer, ~~or~~ agent, or Board member must use this method of disclosure if the ~~his/her~~ financial interest amounts to \$5,000 or more.

4.

Employees, officers, ~~and~~ agents, and Board members shall not engage in business, private practice of their profession, the rendering of services, or the sale of goods of any type where advantage is taken of any professional relationship the employee, officer, agent, or Board member ~~they~~ may have with any student, client, or parents of such students or clients in the course of the employee's, officer's, agent's, or Board member's ~~their~~ employment or professional relationship with the ~~School~~ District.

Included, by way of illustration rather than limitation, are the following:

a.

the provision of any private lessons or services for a fee

b.

the use, sale, or improper divulging of any privileged information about a student or client gained in the course of the employee's, officer's, ~~or~~ agent's, or Board member's employment or professional relationship with the District through ~~his/her~~ access to ~~School~~ District records

c.

the referral of any student or client for lessons or services to any private business or professional practitioner if there is any expectation of reciprocal referrals, sharing of fees, or other remuneration for such referrals

d.

the requirement of students or clients to purchase any private goods or services provided by an employee, officer, ~~or~~ agent, or Board member, or any business or professional practitioner with whom any employee, officer, ~~or~~ agent, or Board member has a financial or other relationship, as a condition of receiving any grades, credits, promotions, approvals, or recommendations

5.

Employees, officers, ~~and~~ agents, and Board members shall not make use of materials, equipment, or facilities of the ~~School~~ District in private practice. Examples would be the use of facilities before, during, or after regular business hours for service to private practice clients, or the checking out of items from an instructional materials center for private practice.

B.

Should exceptions to this policy be necessary in order to provide services to students or clients of the ~~School~~ District, all such exceptions will be made known to the employee's supervisor and will be disclosed to the Superintendent before entering into any private relationship.

C.

No employee, officer, agent, or Board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or Board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. ~~Employees, officers, and agents can not participate in the selection, award, or administration of a contract supported by a Federal grant/award if s/he has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties described in this section, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.~~

[SELECT OPTION #1 OR OPTION #2]

[OPTION #1]

An employee, officer, agent, and Board member of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors ~~[ ] Employees, officers, and agents can not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.~~

[OR] ~~OR~~

[OPTION #2]

Pursuant to Federal rules, the District has set standards for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value. For purposes of this section, "nominal value" means that the gift has a monetary value of \$ 75 or less ~~[ ] Employees, officers, and agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts involved with Federal grant funds. Employees, officers, and agents may, however, accept a gift of unsolicited items of "nominal value" from a contractor or party to subcontracts that do not involve Federal grant funds. For purposes~~

[END OF OPTIONS]

[In accordance with M.C.L. 380.634, the Michigan Department of Education (MDE) adjusts the limits on the value of gifts that may be accepted from vendors or potential vendors for Intermediate School District employees. The fiscal year ~~2023-2024~~<sup>2021-22</sup> cap for gifts was \$7364.]

D.

~~If~~<sup>To the extent that</sup> the District has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the ~~School~~ District may not conduct a procurement action involving the parent, affiliate, or subsidiary organization if the ~~School~~ District is unable, or appears to be unable, to be impartial in conducting a procurement action involving a related organization.

E.

Employees, officers, ~~and~~ agents, and Board members must promptly disclose any potential conflict of interest which may lead to a violation of this policy to the ~~School~~ District. Upon discovery of any potential conflict of interest, the ~~School~~ District will disclose, in writing, the potential conflict of interest to the appropriate Federal ~~awarding~~ agency or, if applicable, the pass-through entity.

The District will also promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity. The District is also required to report matters related to recipient integrity and performance in accordance with Appendix XII of 2 C.F.R. Part 200 ~~disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity that affect a Federal award to the appropriate Federal awarding agency or, if applicable, the pass-through entity.~~

F.

Employees, officers, ~~and~~ agents, and Board members found to be in violation of this conflict of interest policy will be subject to disciplinary action, up to and including termination, as permitted by applicable Board policy.

[DRAFTING NOTE: The ~~School~~ District has discretion over the appropriate disciplinary actions. For example, the ~~School~~ District may suspend or terminate the individual's employment, transfer the individual, end the District's professional relationship with that individual, or temporarily re-assign the individual. All disciplinary actions must be in accordance with applicable Federal, State, and local law, as well as any collectively bargained agreements.]

M.C.L. 380.634, 380.1805(1)



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised CONFLICT OF INTEREST

Number: po3110

## Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

### 3110 - CONFLICT OF INTEREST

Staff members, officers, and agents shall perform their official duties in a manner free from conflict of interest. To this end:

#### A.

The maintenance of unusually high standards of honesty, integrity, impartiality, and professional conduct by the ~~School~~ District's Board members, employees, officers, and agents is essential to ensure the proper performance of school business as well as to earn and keep public confidence in the ~~School~~ District.

To accomplish this, the Board of Education has adopted the following guidelines which apply to all District employees, officers, ~~and~~ agents, and Board members ~~including members of the Board~~ to assure that conflicts of interest do not occur. These guidelines are not intended to be all-inclusive, nor to substitute for good judgment on the part of all employees, officers, agents, and Board members ~~and agents~~.

#### 1.

No employee, officer, ~~or~~ agent, or Board member shall engage in or have a financial or other interest, directly or indirectly, in any activity that conflicts or raises a reasonable question of conflict with the employee's, officer's, agent's, or Board member's ~~his/her~~ duties and responsibilities in the school system. When a staff member determines that the possibility of a personal interest conflict exists, the staff member ~~s/he~~ should, prior to the matter being considered by the Board or administration, disclose the staff member's ~~his/her~~ interest (such disclosure shall become a matter of record in the minutes of the Board).

#### 2.

No staff member, officer, ~~or~~ agent, or Board member shall use their ~~his/her~~ position to benefit either themselves ~~himself/herself~~ or any other individual or agency apart from the total interest of the ~~School~~ District.

#### 3.

If the financial interest pertains to a proposed contract with the District the following requirements must be met

The staff member, officer, ~~or~~ agent, or Board member shall disclose the direct financial interest in the contract to the Board with such disclosure made a part of the official Board minutes. If the ~~his/her~~ direct financial interest amounts to \$250 or more or five percent (5%) or more of the contract cost to the District, the staff member, officer, ~~or~~ agent, or Board member shall make the disclosure in one (1) of two (2) ways:

a.

In writing, to the Board President at least seven (7) days prior to the meeting at which the vote on the contract will be taken. The disclosure shall be made public in the same manner as the Board's notices of its public meetings. (See Bylaw 0165)

b.

By announcement at a meeting at least seven (7) days prior to the meeting at which a vote on the contract is to be taken. The staff member, officer, ~~or~~ agent, or Board member must use this method of disclosure if the ~~his/her~~ financial interest amounts to \$5,000 or more.

4.

Employees, officers, ~~and~~ agents, and Board members shall not engage in business, private practice of their profession, the rendering of services, or the sale of goods of any type where advantage is taken of any professional relationship the employee, officer, agent, or Board member ~~they~~ may have with any student, client, or parents of such students or clients in the course of the employee's, officer's, agent's, or Board member's ~~their~~ employment or professional relationship with the ~~School~~ District.

Included, by way of illustration rather than limitation, are the following:

a.

the provision of any private lessons or services for a fee

b.

the use, sale, or improper divulging of any privileged information about a student or client gained in the course of the employee's, officer's, ~~or~~ agent's, or Board member's employment or professional relationship with the District through ~~his/her~~ access to ~~School~~ District records

c.

the referral of any student or client for lessons or services to any private business or professional practitioner if there is any expectation of reciprocal referrals, sharing of fees, or other remuneration for such referrals

d.

the requirement of students or clients to purchase any private goods or services provided by an employee, officer, ~~or~~ agent, or Board member, or any business or professional practitioner with whom any employee, officer, ~~or~~ agent, or Board member has a financial or other relationship, as a condition of receiving any grades, credits, promotions, approvals, or recommendations

5.

Employees, officers, ~~and~~ agents, and Board members shall not make use of materials, equipment, or facilities of the ~~School~~ District in private practice. Examples would be the use of facilities before, during, or after regular business hours for service to private practice clients, or the checking out of items from an instructional materials center for private practice.

B.

Should exceptions to this policy be necessary in order to provide services to students or clients of the ~~School~~ District, all such exceptions will be made known to the employee's supervisor and will be disclosed to the Superintendent before entering into any private relationship.

C.

No employee, officer, agent, or Board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or Board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. ~~Employees, officers, and agents can not participate in the selection, award, or administration of a contract supported by a Federal grant/award if s/he has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties described in this section, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.~~

[SELECT OPTION #1 OR OPTION #2]

[OPTION #1]

An employee, officer, agent, and Board member of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors ~~Employees, officers, and agents can not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.~~

[OR] ~~OR~~

[OPTION #2]

Pursuant to Federal rules, the District has set standards for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value. For purposes of this section, "nominal value" means that the gift has a monetary value of \$73 or less ~~Employees, officers, and agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts involved with Federal grant funds. Employees, officers, and agents may, however, accept a gift of unsolicited items of "nominal value" from a contractor or party to subcontracts that do not involve Federal grant funds. For purposes~~

**[END OF OPTIONS]**

**[In accordance with M.C.L. 380.634, the Michigan Department of Education (MDE) adjusts the limits on the value of gifts that may be accepted from vendors or potential vendors for Intermediate School District employees. The fiscal year 2023-2024~~2021-22~~ cap for gifts was \$7364.]**

D.

~~If~~~~To the extent that~~ the District has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the ~~School~~District may not conduct a procurement action involving the parent, affiliate, or subsidiary organization if the ~~School~~District is unable, or appears to be unable, to be impartial in conducting a procurement action involving a related organization.

E.

Employees, officers, ~~and~~agents, and Board members must promptly disclose any potential conflict of interest which may lead to a violation of this policy to the ~~School~~District. Upon discovery of any potential conflict of interest, the ~~School~~District will disclose, in writing, the potential conflict of interest to the appropriate Federal ~~awarding~~agency or, if applicable, the pass-through entity.

The District will also promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity. The District is also required to report matters related to recipient integrity and performance in accordance with Appendix XII of 2 C.F.R. Part 200~~disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity that affect a Federal award to the appropriate Federal awarding agency or, if applicable, the pass-through entity.~~

F.

Employees, officers, ~~and~~agents, and Board members found to be in violation of this conflict of interest policy will be subject to disciplinary action, up to and including termination, as permitted by applicable Board policy.

**[DRAFTING NOTE: The ~~School~~District has discretion over the appropriate disciplinary actions. For example, the ~~School~~District may suspend or terminate the individual's employment, transfer the individual, end the District's professional relationship with that individual, or temporarily re-assign the individual. All disciplinary actions must be in accordance with applicable Federal, State, and local law, as well as any collectively bargained agreements.]**

M.C.L. 380.634, 380.1805(1)



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised CONFLICT OF INTEREST

Number: po4110

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

#### 4110 - CONFLICT OF INTEREST

Staff members, officers, and agents shall perform their official duties in a manner free from conflict of interest. To this end:

##### A.

The maintenance of unusually high standards of honesty, integrity, impartiality, and professional conduct by the ~~School~~District's Board members, employees, officers, and agents is essential to ensure the proper performance of school business as well as to earn and keep public confidence in the ~~School~~District.

To accomplish this, the Board of Education has adopted the following guidelines which apply to all District employees, officers, ~~and~~agents, and Board members~~including members of the Board~~ to assure that conflicts of interest do not occur. These guidelines are not intended to be all-inclusive, nor to substitute for good judgment on the part of all employees, officers, agents, and Board members~~and agents~~.

##### 1.

No employee, officer, ~~or~~agent, or Board member shall engage in or have a financial or other interest, directly or indirectly, in any activity that conflicts or raises a reasonable question of conflict with the employee's, officer's, agent's, or Board member's~~his/her~~ duties and responsibilities in the school system. When a staff member determines that the possibility of a personal interest conflict exists, the staff member~~s/he~~ should, prior to the matter being considered by the Board or administration, disclose the staff member's~~his/her~~ interest (such disclosure shall become a matter of record in the minutes of the Board).

##### 2.

No staff member, officer, ~~or~~agent, or Board member shall use their~~his/her~~ position to benefit either themselves ~~himself/herself~~ or any other individual or agency apart from the total interest of the ~~School~~District.

##### 3.

If the financial interest pertains to a proposed contract with the District, the following requirements must be met

The staff member, officer, ~~or~~ agent, or Board member shall disclose the direct financial interest in the contract to the Board with such disclosure made a part of the official Board minutes. If the ~~his/her~~ direct financial interest amounts to \$250 or more or five percent (5%) or more of the contract cost to the District, the staff member, officer, ~~or~~ agent, or Board member shall make the disclosure in one (1) of two (2) ways:

a.

In writing, to the Board President at least seven (7) days prior to the meeting at which the vote on the contract will be taken. The disclosure shall be made public in the same manner as the Board's notices of its public meetings. (See Bylaw 0165)

b.

By announcement at a meeting at least seven (7) days prior to the meeting at which a vote on the contract is to be taken. The staff member, officer, ~~or~~ agent, or Board member must use this method of disclosure if the ~~his/her~~ financial interest amounts to \$5,000 or more.

4.

Employees, officers, ~~and~~ agents, and Board members shall not engage in business, private practice of their profession, the rendering of services, or the sale of goods of any type where advantage is taken of any professional relationship the employee, officer, agent, or Board member ~~they~~ may have with any student, client, or parents of such students or clients in the course of the employee's, officer's, agent's, or Board member's ~~their~~ employment or professional relationship with the ~~School~~ District.

Included, by way of illustration rather than limitation, are the following:

a.

the provision of any private lessons or services for a fee

b.

the use, sale, or improper divulging of any privileged information about a student or client gained in the course of the employee's, officer's, ~~or~~ agent's, or Board member's employment or professional relationship with the District through ~~his/her~~ access to ~~School~~ District records

c.

the referral of any student or client for lessons or services to any private business or professional practitioner if there is any expectation of reciprocal referrals, sharing of fees, or other remuneration for such referrals

d.

the requirement of students or clients to purchase any private goods or services provided by an employee, officer, ~~or~~ agent, or Board member, or any business or professional practitioner with whom any employee, officer, ~~or~~ agent, or Board member has a financial or other relationship, as a condition of receiving any grades, credits, promotions, approvals, or recommendations

5.

Employees, officers, ~~and~~ agents, and Board members shall not make use of materials, equipment, or facilities of the ~~School~~ District in private practice. Examples would be the use of facilities before, during, or after regular business hours for service to private practice clients, or the checking out of items from an instructional materials center for private practice.

B.

Should exceptions to this policy be necessary in order to provide services to students or clients of the ~~School~~ District, all such exceptions will be made known to the employee's supervisor and will be disclosed to the Superintendent before entering into any private relationship.

C.

No employee, officer, agent, or Board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent, or Board member, any member of their immediate family, their partner, or an organization that employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from an entity considered for a contract. ~~Employees, officers, and agents can not participate in the selection, award, or administration of a contract supported by a Federal grant/award if s/he has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his/her immediate family, his/her partner, or an organization which employs or is about to employ any of the parties described in this section, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.~~

[SELECT OPTION #1 OR OPTION #2]

[OPTION #1]

An employee, officer, agent, and Board member of the District may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors ~~Employees, officers, and agents can not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.~~

[OR] ~~OR~~

[OPTION #2]

Pursuant to Federal rules, the District has set standards for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value. For purposes of this section, "nominal value" means that the gift has a monetary value of \$13 or less ~~Employees, officers, and agents shall not solicit or accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts involved with Federal grant funds. Employees, officers, and agents may, however, accept a gift of unsolicited items of "nominal value" from a contractor or party to subcontracts that do not involve Federal grant funds. For purposes~~

[END OF OPTIONS]

[In accordance with M.C.L. 380.634, the Michigan Department of Education (MDE) adjusts the limits on the value of gifts that may be accepted from vendors or potential vendors for Intermediate School District employees. The fiscal year ~~2023-2024~~<sup>2024-25</sup> cap for gifts was \$7364.]

D.

If ~~To the extent that~~ the District has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the ~~School~~ District may not conduct a procurement action involving the parent, affiliate, or subsidiary organization if the ~~School~~ District is unable, or appears to be unable, to be impartial in conducting a procurement action involving a related organization.

E.

Employees, officers, ~~and~~ agents, and Board members must promptly disclose any potential conflict of interest which may lead to a violation of this policy to the ~~School~~ District. Upon discovery of any potential conflict of interest, the ~~School~~ District will disclose, in writing, the potential conflict of interest to the appropriate Federal ~~awarding~~ agency or, if applicable, the pass-through entity.

The District will also promptly disclose whenever, in connection with the Federal award (including any activities or subawards thereunder), it has credible evidence of the commission of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act (31 U.S.C. 3729–3733). The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and pass-through entity. The District is also required to report matters related to recipient integrity and performance in accordance with Appendix XII of 2 C.F.R. Part 200 ~~disclose, in a timely manner, all violations of Federal criminal law involving fraud, bribery, or gratuity that affect a Federal award to the appropriate Federal awarding agency or, if applicable, the pass-through entity.~~

F.

Employees, officers, ~~and~~ agents, and Board members found to be in violation of this conflict of interest policy will be subject to disciplinary action, up to and including termination, as permitted by applicable Board policy.

[DRAFTING NOTE: The ~~School~~ District has discretion over the appropriate disciplinary actions. For example, the ~~School~~ District may suspend or terminate the individual's employment, transfer the individual, end the District's professional relationship with that individual, or temporarily re-assign the individual. All disciplinary actions must be in accordance with applicable Federal, State, and local law, as well as any collectively bargained agreements.]

M.C.L. 380.634, 380.1805(1)



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised GRANT FUNDS

Number: po6110

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

#### 6110 - GRANT FUNDS

It is the objective of the Board of Education to provide equal educational opportunities for all students within the District. Government agencies, as well as foundations, businesses, and individuals, periodically offer both human and material resources to the District that would benefit students and the educational program. Therefore, it is the intent of the Board to consider grant proposals and applications for their potential to enhance educational opportunities, the educational environment, and the physical and mental growth for each student.

The Superintendent shall review new Federal education legislation and prepare proposals for programs the Superintendent~~s/he~~ deems would be of aid to the students of this District. The Superintendent shall approve each such proposal prior to its submission, and the Board shall approve all grants resulting from such proposals.

The Board regards available Federal funds of aid to local school districts and communities as a public trust. The Board~~#~~ forbids the use of Federal monies for partisan political activities and for any use that would not be in accordance with Federal regulations and guidelines.

No Federal funds received by the District shall be used (1) to develop or distribute materials, or operate programs or courses of instruction directed at youth, that are designed to promote or encourage sexual activity, whether homosexual or heterosexual; (2) to distribute or to aid in the distribution by any organization of legally obscene materials to minors on school grounds; (3) to provide sex education or HIV-prevention education in schools unless that instruction is age appropriate and includes the health benefits of abstinence; or (4) to operate a program of contraceptive distribution in schools.

#### Grant Proposal Development

A.

All grant proposals must support at least one (1) District goal or priority.

R

must be identified, documented, and approved during the internal review process.

### **Grant Proposal Internal Review**

A. Each grant proposal shall be reviewed and approved by the Superintendent prior to submission to the funding source.

B. ( ) The Superintendent shall present the following proposals to the Board for approval:

1. ( ) Government-funded proposals, regardless of the amount;

2. ( ) Proposals with budgets exceeding \$\_\_\_\_.00; or

3. ~~( )~~ Multi-school or District-wide proposals.

### **Mandatory Disclosures**

The District must promptly disclose whenever they have credible evidence of a violation of Federal criminal law potentially affecting the Federal award including, but not limited to, any fraud, embezzlement, bribery, gratuity violations, identity theft, or sexual assault and exploitation, or a violation of the civil False Claims Act (2 C.F.R. 175.105) regarding the obligation to report credible information related to conduct prohibited by the Trafficking Victims Protection Act, 22 U.S.C. 7104c.

The disclosure must be made in writing to the Federal agency, the agency's Office of Inspector General, and the pass-through entity.

### **Whistleblower Protections**

An employee of the District may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing information to the appropriate agency or individual that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract or grant. See Policy 1411/3211/4211 - Whistleblower Protection and Policy 8900 - Anti-Fraud.

### **Grant Administration**

A. The administration of grants will adhere to all applicable Federal, State, local, and grantor rules and regulations, including the terms and conditions of the Federal awards, as well as District policies and administrative guidelines.

application of sound management practices.

C. The Superintendent is responsible for administering grant funds in a manner consistent with underlying agreements, applicable statutes, regulations, and objectives, and the terms and conditions of the grant award.

D. The District, in recognition of its unique combination of staff, facilities, and experience, shall employ internal controls, including the organizational and management strategies necessary to assure proper and efficient administration of grant awards.

E. All Federal funds received by the District will be used in accordance with the applicable Federal law and regulations and the terms and conditions of the Federal award. The Superintendent shall require that each draw of Federal monies be aligned with the District's payment process (whether reimbursement, cash advance, or a combination). If funds are permitted to be drawn in advance, all draws will be as close as administratively feasible to the related program expenditures and that, when restricted, such monies are used to supplement programs and funding and not to supplant or replace existing programming or current funding.

Maintenance of Effort (MOE) and Maintenance of Equity (MOEquity) requirements of the Federal program will be met in accordance with the requirements of the specific funded program. The District shall maintain appropriate documentation and records to substantiate compliance or to justify allowable exceptions, exemptions, or waivers.

F.  The Superintendent is authorized to sign related documents for grant administration, including documents required for submittal of grant proposals.

G. ( ) Written amendments requiring the Superintendent's signature shall be presented to the Board for approval.

H.  Employee positions established through the use of grant funding shall terminate if and when the related grant funding ceases.

I.  Program reports including, but not limited to, audits ~~audit~~, site visits, and final reports shall be submitted to the Superintendent for review and distribution to the Board and other appropriate parties.

## Financial Management

The financial management of grant funds shall be in compliance with all applicable Federal, State, local, and grantor rules, regulations, and assurances as well as District policies and administrative guidelines.

The District shall provide for the following:

Identification of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the Assistance Listings title and number, Federal award identification number, year the Federal award was issued, and name of the Federal agency or pass-through entity. ~~in District accounts, of all grant awards received and expended and the programs under which they were received. For Federal programs and awards, identification shall include the Catalog of Federal Domestic Assistance (CFDA) title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, as applicable.~~

B.

Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements of the grant.

C.

Effective control over and accountability for all funds, property, and assets. The District must safeguard all assets and ensure they are used solely for authorized purposes. ~~Records that adequately identify the source and application of funds provided for Federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.~~

D.

~~Effective control over, and accountability for, all funds, property, and other assets. The District must adequately safeguard all assets and assure that they are used solely for authorized purposes.~~

Further, the District must:

1.

establish and maintain effective internal control over the Federal award that provides reasonable assurance that the District is managing the Federal award in compliance with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award;

2.

comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award;

3.

evaluate and monitor the District's compliance with statutes, regulations, and the terms and conditions of the Federal award; and

4.

take prompt action when instances of noncompliance are identified. ~~including noncompliance identified in audit findings;~~

5.

~~take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality.~~

E.

Take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal awarding agency or pass-through entity designates as sensitive or other information the District considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and obligations of confidentiality. ~~Comparison of expenditures with budget amounts for each Federal award.~~

F.

Actual expenditures or outlays must be compared with budgeted amounts for each Federal award.

G.

Recordkeeping and written procedures to the extent required by Federal, State, local, and grantor rules and regulations pertaining to the grant award and accountability including, but not limited to, the following areas:

1.

cash management in accordance with 2 C.F.R. 200.305

2.

allowability of costs in accordance with subpart E and the terms and conditions of the Federal award

3.

conflict of interest

4.

procurement

5.

equipment management

6.

conducting technical evaluations of proposals and selecting recipients

7.

compensation and fringe benefits

8.

H.

Disclosure of any potential conflict of interest and all mandatory violation disclosures potentially affecting the Federal award/grant to the Federal awarding agency or pass-through agency in accordance with applicable Federal policy.

I.

Insurance coverage for real property and equipment, if applicable, equivalent to such property owned by the District.

### **Audit Requirements**

A single or program-specific audit (2 C.F.R. 200.514, 2 C.F.R. 200.507) is required for any year if the District expends \$1,000,000 or more in Federal awards during the District's fiscal year. When Federal awards expended are less than \$1,000,000, the District may be exempt from Federal audit requirements (2 C.F.R. 200.501) for that year. However, in all instances, the District's records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and the Government Accountability Office (GAO).

The District shall:

- A. arrange for the audit required in accordance with 2 C.F.R. 200.509 and make sure that the audit is properly performed and submitted in accordance with 2 C.F.R. 200.512;
- B. prepare financial statements including the schedule of expenditures of Federal awards in accordance with 2 C.F.R. 200.510;
- C. promptly follow up and take corrective action on audit findings, including preparing a summary schedule of prior audit findings and a corrective action plan (2 C.F.R. 200.511); and
- D. provide the auditor access to personnel, accounts, books, records, supporting documentation, and any other information needed for the auditor to perform the audit.

### **Certifications and Records Retention**

Financial reports must include a certification, signed by an official who is authorized to legally bind the District. The certification should state:

"I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to, violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812"

Each certification must be maintained pursuant to the requirements of 2 C.F.R. 200.334. The District shall retain all Federal award records for three (3) years from the date of submission of the final financial report.

## Program Income

Program income means gross income earned by a grant recipient that is directly generated by a supported activity or earned as a result of the Federal award during the grant's period of performance.

It includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them. Additionally, taxes, special assessments, levies, fines, and ~~similar other such~~ revenues raised by a recipient are not program income ~~unless the revenues are specifically identified in the Federal award or Federal awarding agency regulations as program income~~. Proceeds ~~Finally, proceeds~~ from the sale of real property, equipment, or supplies are not program income. Finally, license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions made under the Federal award subject to 37 C.F.R. Part 401 are not program income.

Unless it has received prior approval to use a different method or the terms and conditions of the grant authorize a different method, the District uses the deduction method of accounting for program income. Under the deduction method, program income is deducted from total allowable costs to determine the net allowable costs. Program income will only be used for current costs unless the District is otherwise directed by the Federal ~~awarding~~ agency or pass-through entity.

2 C.F.R. 200.56, 200.71, 200.77, 200.80, 200.112, 200.302, 200.307

2 C.F.R. 200.309, 200.310, 200.313, 200.318-.320, 200.343(b)&(e)

2 C.F.R. 200.501-511

20 U.S.C. 7906

34 C.F.R. 75.707, 76.563, 76.565, 76.707

Compliance Supplement for Single Audits of State and Local Governments

© Neola ~~2022~~2024

## Legal References

2 C.F.R. 200.56, 200.71, 200.77, 200.80, 200.112, 200.302, 200.307

2 C.F.R. 200.309, 200.310, 200.313, 200.318-.320, 200.343(b)&(e)

2 C.F.R. 200.501-511

20 U.S.C. 7906

34 C.F.R. 75.707, 76.563, 76.565, 76.707



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised INTERNAL CONTROLS

Number: po6111

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

#### 6111 - INTERNAL CONTROLS

The Superintendent shall establish, document, and maintain effective internal control over financial grants and awards that provide reasonable assurance that the program and funds are managed in compliance with the U.S. Constitution, ~~applicable~~ statutes, regulations, and the terms and conditions of the awards. The District will have a process that provides reasonable assurance regarding the achievement of the following objectives:

- A.  
effectiveness and efficiency of operations;
  
- B.  
reliability of reporting for internal and external use; and
  
- C.  
compliance with applicable laws and regulations.

These internal controls should comply with the guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control-Integrated Framework" issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

The internal controls must provide reasonable assurance that transactions are properly recorded and accounted for in order to permit the preparation of reliable financial statements and Federal reports; maintain accountability over assets; and demonstrate compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. The internal controls must also provide reasonable assurance that these transactions are executed in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award that could have a direct and material effect on a Federal award, as well as any other Federal statutes and regulations that are identified in the Compliance Supplement. Finally, the District's internal controls must provide reasonable assurance that all Federal funds, property, and other assets are safeguarded against loss from unauthorized use or disposition.

The District shall:

A.

comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal award ~~awards~~;

B.

evaluate and monitor its compliance with statutes, regulations, and the terms and conditions of the award;

C.

take prompt action when instances of noncompliance are identified ~~including noncompliance identified in audit findings~~; and

D.

take reasonable cybersecurity and other measures to safeguard protected information including protected "personally identifiable information" (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the District considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality ~~"personally identifiable information" ("PII") and other information the awarding agency or pass-through entity designates as sensitive or the District considers sensitive consistent with applicable Federal, state, local, and tribal laws and District policies regarding privacy and obligations of confidentiality.~~

PII is defined at 2 C.F.R. 200.1~~200.79~~ as "information that can be used to distinguish or trace an individual's identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual."

However, the definition of PII is not attached ~~anchored~~ to any single category of information or technology. Rather, it requires a case-by-case assessment of the specific risk that an individual can be identified.

Suggested resources:

A.

"Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States;

B.

"Internal Control Integrated Framework" (commonly referred to as the Green Book) issued by the Committee of Sponsoring Organizations of the Treadway Commission;

C.

D.

Internal control guidance issued by the U.S. Department of Education.

2 C.F.R. 200.1

2 C.F.R. 200.~~61~~-62

~~2 C.F.R. 200.79~~

2 C.F.R. 200.303

© Neola 2024~~2016~~

Legal References

2 C.F.R. 200.1

2 C.F.R. 200.62

2 C.F.R. 200.303



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised CASH MANAGEMENT OF GRANTS

Number: po6112

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

#### 6112 - CASH MANAGEMENT OF GRANTS

In order to provide reasonable assurance that all assets, including Federal, State, and local funds, are safeguarded against waste, loss, unauthorized use, or misappropriation, the Superintendent shall implement internal controls in the area of cash management.

The District's payment methods shall minimize the time elapsing between the transfer of funds from the Federal agency ~~United States Treasury~~ or the Michigan Department of Education (MDE) (pass-through entity) and disbursement by the District, regardless of whether the payment is made by electronic fund transfer, or issuance or redemption of checks, warrants, or payment by other means.

The District shall use forms and procedures required by the grantor agency or pass-through entity to request payment. The District shall request grant fund ~~funds~~ payments in accordance with the provisions of the grant. Additionally, the District's financial management systems shall meet the standards for fund control and accountability as established by the awarding agency.

The Superintendent is authorized to submit payment requests as often as necessary when electronic fund transfers are used or at least monthly when electronic transfers are not used. See ~~requests for advance payments and reimbursements at least monthly when electronic fund transfers are not used, and as often as deemed appropriate when electronic transfers are used, in accordance with the provisions of~~ the Electronic Fund Transfer Act (15 U.S.C. 1693-1693r).

When the District uses a cash advance payment method, the following standards shall apply:

A.

The timing and amount of the advance payment requested must ~~will~~ be as close as is administratively feasible to the actual disbursement by the District for direct program or project costs and the proportionate share of any allowable indirect costs.

The District shall make timely payments ~~payment~~ to contractors in accordance with contract provisions.

C.

Whenever possible, advance payment requests by the District must be consolidated to cover anticipated cash needs for all Federal awards received by the recipient from the awarding Federal agency or MDE.

D.

If ~~To the extent~~ available, the District shall disburse funds available from program income (including repayments to a revolving fund), rebates, refunds, contract settlements, audit recoveries, and interest earned on Federal ~~such~~ funds before requesting additional cash payments. **[DRAFTING NOTE: It is generally recommended that the District request that program income be added to their total award, but separating program income out and then noting how to address these applicable credits.]**

E.

The District shall account for the receipt, obligation, and expenditure of funds.

F.

Advance payments will be deposited and maintained in insured accounts whenever possible.

G.

Advance payments will be maintained in interest-bearing accounts unless the following apply:

1.

The District receives less than \$250,000 ~~120,000~~ in Federal funding ~~awards~~ per year.

2.

The best ~~reasonably~~-available interest-bearing account would not reasonably be expected to earn interest in excess of \$500 per year on Federal cash balances.

3.

The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

4.

A foreign government or banking system prohibits or precludes interest-bearing accounts.

5.

An interest-bearing account is not readily accessible (for example, due to public or political unrest in a foreign country).

H.

year for administrative costs. Any additional interest earned on Federal funds must be returned ~~advance payments deposited in interest-bearing accounts must be remitted~~ annually to the Department of Health and Human Services Payment Management System ("PMS") through an electronic medium using either the Automated Clearing House ("ACH") network or a Fedwire Funds Service payment. ~~Remittances shall include pertinent information of the payee and nature of payment in the memo area (often referred to as "addenda records" by Financial Institutions) as that will assist in the timely posting of interest earned on Federal funds. Pertinent details include the Payee Account Number ("PAN") if the payment originated from PMS, or Agency information if the payment originated from Automated Standard Application for Payment ("ASAP"), National Science Foundation ("NSF"), or another Federal agency payment system:~~

I.  
All interest in excess of \$500 per year must be returned to PMS regardless of whether the District was paid through PMS. Instructions for returning interest can be found at <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>.

J.  
All other Federal funds must be returned to the payment system of the Federal agency. Returns should follow the instructions provided by the Federal agency. All returns to PMS should follow the instructions provided at <https://pms.psc.gov/grant-recipients/returning-funds-interest.html>.

© Neola ~~2024~~2016

Legal References  
2 C.F.R. 200.305



Book: MI Local Policies for Update  
Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI  
Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised COST PRINCIPLES - SPENDING FEDERAL FUNDS  
Number: po6114

**Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions**

**6114 - COST PRINCIPLES - SPENDING FEDERAL FUNDS**

The Superintendent is responsible for the efficient and effective administration of grant funds through the application of sound management practices. Such funds shall be administered in a manner consistent with all applicable Federal, State, and local laws, the associated agreements/assurances, program objectives, and the specific terms and conditions of the grant award.

**Cost Principles**

A cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost. Except where otherwise authorized by statute, costs shall meet the following general criteria in order to be allowable under Federal awards:

- A.  
Be necessary and reasonable for proper and efficient performance and administration of the Federal award and be allocable thereto under these principles.

To determine whether a cost is reasonable, consideration shall be given to:

1.  
whether a cost is ~~a type~~ generally recognized as ordinary and necessary for the operation ~~of the District~~ or the proper and efficient performance of the Federal award;
2.  
the restraints or requirements imposed by such factors as sound business practices, arm's length bargaining, Federal, State, local, tribal, and other laws and regulations;

4.

whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the District, its employees, its students or membership (if applicable), the public at large, and the Federal Government; and

5.

the degree to which the cost represents a deviation from the Board of Education's established written policies and procedures for incurring costs ~~whether the cost represents any significant deviation from the established practices or Board of Education policy which may unjustifiably increase the expense.~~

While Federal regulations do not provide specific descriptions of what satisfies the "necessary" element beyond its inclusion in the reasonableness analysis above, whether a cost is necessary is determined based on the needs of the program. Specifically, the expenditure must be necessary to achieve an important program objective. A key aspect in determining whether a cost is necessary is whether the District can demonstrate that the cost addresses an existing need, and can prove it.

When determining whether a cost is necessary, consideration may be given to whether:

1.

the cost is needed for the proper and efficient performance of the grant program;

2.

the cost is identified in the approved budget or application;

3.

there is an educational benefit associated with the cost;

4.

the cost aligns with identified needs based on results and findings from a needs assessment;

5.

the cost addresses program goals and objectives and is based on program data.

A cost is allocable to the Federal award if the cost is ~~goods or services involved are chargeable or~~ assignable to ~~that~~ the Federal award in accordance with the relative benefit received. This standard is met if the cost: is incurred specifically for the Federal award; benefits both the Federal award and other work of the District and can be distributed in proportions that may be approximated using reasonable methods; ~~or~~ **and** is necessary to the overall operation of the District and is assignable in part to the Federal award in accordance with these cost principles ~~mentioned here.~~

Conform to any limitations or exclusions set forth in the cost principles in 2 C.F.R. Part 200 or in the terms and conditions of the Federal award, including prohibitions regarding costs incurred for telecommunications and video surveillance services or equipment or as a substantial or essential component of any system or as critical technology as part of any system. Such prohibition also applies to funds generated as program income, indirect cost recoveries, or to satisfy cost share requirements.

C.

Be consistent with policies and procedures that apply uniformly to both Federally-financed and other activities of the District.

D.

Be accorded consistent treatment. A cost cannot be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to a Federal award as an indirect cost under another award.

E.

Be determined in accordance with generally accepted accounting principles.

F.

Be representative of actual cost, net of all applicable credits or offsets.

The term "applicable credits" refers to those transactions that offset or reduce direct or indirect costs ~~receipts or reductions of expenditures that operate to offset or reduce expense items~~ allocable to the Federal award. Typical examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; insurance refunds or rebates; and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the District ~~State~~ relating to the Federal award, they shall be credited to the Federal award, either as a cost reduction or a cash refund, as appropriate.

G.

Be not included as a match or cost-share requirements of any other Federally-financed program in either the current or a prior period, unless the specific Federal program authorizes Federal costs to be treated as such.

H.

Be adequately documented:

1.

in the case of personal services, the Superintendent shall implement a system for District personnel to account for time and efforts expended on grant-funded programs to assure that only permissible personnel expenses are allocated;

2.

documentation identifying the need and purpose for such expenditure if not otherwise clear.

I.

Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

All other costs must be ~~Be~~ incurred during the approved budget period. At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods.

The budget period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which recipients are authorized to incur financial obligations ~~carry out authorized work and expend~~ the funds awarded, including any funds carried forward or other revisions pursuant to 2 C.F.R. 200.308 ~~the law~~. Prior written approval from the Federal ~~awarding~~ agency or State pass-through entity may be required to carry forward unobligated balances to subsequent budget periods unless waived.

### **Selected Items of Cost**

The District shall follow the rules for selected items of cost at 2 C.F.R. Part 200, Subpart E when charging these specific expenditures to a Federal grant. When applicable, District staff shall check costs against the selected items of cost requirements to ensure the cost is allowable. In addition, State, District, and program-specific rules, including the terms and conditions of the award, may deem a cost as unallowable and District personnel shall follow those rules as well.

The following rules of allowability must apply to equipment and other capital expenditures:

A. Capital expenditures for general purpose equipment, buildings, and land are allowable ~~unallowable~~ as direct charges, but only ~~except~~ with the prior written approval of the Federal ~~awarding~~ agency or pass-through entity.

B. Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$10,000 ~~5,000~~ or more have the prior written approval of the Federal ~~awarding~~ agency or pass-through entity.

C. Capital expenditures for improvements to land, buildings, or equipment which ~~that~~ materially increase their value or useful life are allowable ~~unallowable~~ as a direct cost but only ~~except~~ with the prior written approval of the Federal ~~awarding~~ agency or pass-through entity.

D. All Federally-funded contracts in excess of \$2,000 related to construction, alterations, repairs, painting, decorating, etc. must comply with Davis-Bacon prevailing wage requirements.

2 C.F.R. 200.436 and 2 C.F.R. 200.465.

F. When approved as a direct cost by the Federal ~~awarding~~ agency or pass-through entity under Sections A-C, capital expenditures will be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal ~~awarding~~ agency.

G. The District may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the cognizant agency for indirect cost.

H. If the District is instructed by the Federal ~~awarding~~ agency to otherwise dispose of or transfer the equipment, the costs of such disposal or transfer are allowable.

I. Equipment and other capital expenditures are unallowable as indirect costs.

Statutory requirements may limit the allowability of costs. Any costs that exceed the maximum amount allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

Payments made for costs determined to be unallowable by the Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded (with interest) to the Federal Government.

### **Prior Written Approval**

To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the District may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs) before incurring the cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability.

### **Cost Compliance**

The Superintendent shall require that grant program funds are expended and are accounted for consistent with the requirements of the specific program and as identified in the grant application. Compliance monitoring includes accounting for direct or indirect costs and reporting them as permitted or required by each grant. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs, but may not be double charged or inconsistently charged as both.

### **Determining Whether a Cost is Direct or Indirect:**

The association of costs with a Federal award (rather than the nature of the procurement transaction) determines

consistently as direct or indirect.

A.

Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy.

These costs may include: salaries and fringe benefits of employees working directly on a grant-funded project; purchased services contracted for performance under the grant; travel of employees working directly on a grant-funded project; materials, supplies, and equipment purchased for use on a specific grant; program evaluation costs or other institutional service operations; and infrastructure costs directly attributable to the program (such as long-distance telephone calls specific to the program, etc.). Direct costs may also include capital expenditures if approved by the Federal ~~awarding~~ agency or pass-through entity, as well as capital expenditures for special purpose equipment with a unit cost of less than \$10,000~~5,000~~.

If a cost benefits two (2) or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit.

B.

Indirect costs are those that have been incurred for a common or joint purpose benefitting more than one (1) cost objective and not readily assignable to the cost objectives specifically benefitted without effort disproportionate to the results achieved. Costs incurred for the same purpose in like circumstances shall be treated consistently as either direct or indirect costs.

These costs may include: general data processing, human resources, utility costs, maintenance, accounting, etc.

Federal education programs with supplement, not supplant, provisions must use a restricted indirect cost rate. In a restricted rate, indirect costs are limited to general management costs. General management costs do not include divisional administration that is limited to one (1) component of the District, the governing body of the District, compensation of the Superintendent, compensation of the chief executive officer of any component of the District, and operation of the immediate offices of these officers.

The salaries of administrative and clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if all of the following conditions are met:

1.

Administrative or clerical services are integral to a project or activity.

2.

Individuals involved can be specifically identified with the project or activity.

3.

Such costs are explicitly included in the budget or have the prior written approval of the Federal ~~awarding~~ agency.

4.

The costs are not also recovered as indirect costs.

Where a Federal program has a specific cap on the percentage of administrative costs that may be charged to a grant, that cap shall include all direct administrative charges as well as any recovered indirect charges.

Effort should be given to identify costs as direct costs whenever practical, but allocation of indirect costs may be used where not prohibited and where indirect cost allocation is approved ahead of time by the Michigan Department of Education (MDE) or the pass-through entity (Federal funds subject to 2 C.F.R. Part 200 pertaining to determining indirect cost allocation).

~~Equipment and other capital expenditures are unallowable as indirect costs.~~

### **Timely Obligation of Funds**

Financial obligations are orders placed for property and services, contracts and subawards made, and similar transactions that require payment under a Federal award that will result in expenditures by a recipient or subrecipient under a Federal award. ~~This term is used when referencing a recipient's or subrecipient's use of funds under a Federal award.~~

The following list illustrates when funds are determined to be obligated under the U.S. Department of Education ("USDOE") regulations:

If the obligation is for:

A.

Acquisition of property - on the date which the District makes a binding written commitment to acquire the property.

B.

Personal services by an employee of the District - when the services are performed.

C.

Personal services by a contractor who is not an employee of the District - on the date which the District makes a binding written commitment to obtain the services.

D.

commitment to obtain the work.

E.

Public utility services - when the District receives the services.

F.

Travel - when the travel is taken.

G.

Rental of property - when the District uses the property.

H.

A pre-agreement cost that was properly approved by the Secretary (USDOE) under the cost principles in 2 C.F.R. Part 200, Subpart E - Cost Principles - on the first day of the project period.

## Period of Performance

All financial obligations must occur during the period of performance. Period of performance means the time interval between the start and end date of a Federal award, which may include one (1) or more budget periods. Identification of the period of performance shall be specific to the Federal award and consistent with 2 C.F.R. 200.211 and does not commit the Federal agency to fund the award beyond the currently approved budget period. ~~Period of performance means the total estimated time interval between the start of an initial Federal award when the District is permitted to carry out the work authorized by the grant and the planned end date. The period of performance may include one (1) or more funded portions or budget periods.~~ The period of performance is dictated by statute and will be indicated in the grant award notification ("GAN"). As a general rule, State-administered Federal funds are available for obligation within the year that Congress appropriates the funds for. However, given the unique nature of educational institutions, for many Federal education grants, the period of performance is twenty-seven (27) months. This maximum period includes a fifteen (15) month period of initial availability, plus a twelve (12) month period for carryover. For direct grants, the period of performance is generally identified in the GAN. Note, however, that certain Federal awards have specific requirements that restrict the use of funds beyond the initial period of performance.

In the case of a State-administered grant, financial obligations under a grant may not be made until the application is approved or is in substantially approvable form, whichever is later. In the case of a direct grant, a grantee may use grant funds only for obligations it makes during the grant period unless an agreement exists with the ~~awarding~~ agency or the pass-through entity (e.g., MDE) to reimburse for pre-approval expenses.

If a Federal ~~awarding~~ agency or pass-through entity approves an extension, or if the District extends under C.F.R. 200.308(e)(2), the Period of Performance will be amended to end at the completion of the extension. If a termination occurs, the Period of Performance will be amended to end upon the effective date of termination. If a renewal is issued, a distinct Period of Performance will begin.

For both State-administered and direct grants, regardless of the period of availability, the District shall liquidate all financial obligations incurred under the award not later than ninety (90) calendar days after the conclusion of the period of performance of the award (or an earlier date as agreed upon by MDE and the District ~~end of the funding period unless an extension is authorized~~). Any funds not obligated within the period of performance or liquidated within the appropriate timeframe are said to lapse and shall be returned to the ~~awarding~~ agency. Consequently, the District shall closely monitor grant spending throughout the grant cycle.

© Neola ~~2024~~2022

#### Legal References

2 C.F.R. 200.216, 200.344(b), 200.403-.407, 200.413(a)-(c), 200.430(a), 200.431(a), 200.439(b)(2), 200.458

2 C.F.R. 200.474(b)

34 C.F.R. 76.707-.708(a), 75.703



Book: MI Local Policies for Update  
Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI  
Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised PROCUREMENT - FEDERAL GRANTS/FUNDS  
Number: po6325

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

#### 6325 - PROCUREMENT – FEDERAL GRANTS/FUNDS

Procurement of all supplies, materials, equipment, and services paid for from Federal funds or District matching funds shall be made in accordance with all applicable Federal, State, and local statutes and/or regulations, the terms and conditions of the Federal grant, Board of Education policies, and administrative procedures.

The Superintendent shall have and use a procurement and contract administration system in accordance with the USDOE requirements (2 C.F.R. 200.317-.326), including affirmative steps for small businesses, and minority businesses and women's business enterprises, veteran-owned businesses, and labor surplus area firms for the administration and management of Federal grants and Federally-funded programs. The District shall maintain oversight that requires contractors to perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Except as otherwise noted, procurement transactions shall conform to the provisions of the District's documented general purchasing Policy 6320 and AG 6320A.

When required by Federal program legislation, all Federally-funded contracts in excess of \$2,000 related to construction, alteration, repairs, painting, decorating, etc. must comply with Davis-Bacon prevailing wage requirements.

All District employees, officers, and agents who have purchasing authority shall abide by the standards of conduct covering conflicts of interest and governing the actions of its employees, officers, and agents engaged in the selection, award, and administration of contracts as established in Policy 1130, Policy 3110, and Policy 4110 – Conflict of Interest.

The District will avoid acquisition of unnecessary or duplicative items. Consideration ~~Additionally, consideration~~ shall be given to consolidating or breaking out procurements to obtain a more economical purchase. When appropriate, an analysis shall be made between leasing and purchasing property or equipment to determine the most economical approach., ~~and where appropriate, an analysis shall be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.~~ These considerations

To foster greater economy and efficiency, the District may enter into State and local intergovernmental agreements where appropriate for procurement or use of common or shared goods and services.

## Competition

All procurement transactions under the ~~for the acquisition of property or services required under a~~ Federal award paid for from Federal funds or District matching funds shall be conducted in a manner that provides ~~encourages~~ full and open competition and that is in accordance with 2 C.F.R. Part 200, good administrative practice, and sound business judgment. To ensure ~~in order to promote~~ objective contractor performance and eliminate unfair competitive advantage, the District shall exclude any contractor that has developed or drafted specifications, requirements, statements of work, or invitations for bids ~~or requests for proposals~~ from competition for such procurements.

Examples of situations that may restrict competition include, but are not limited to ~~Some of the situations considered to be restrictive of competition include, but are not limited to, the following:~~

- A.  
unreasonable requirements on firms ~~in order~~ for them to qualify to do business;
- B.  
unnecessary experience and excessive bonding requirements;
- C.  
noncompetitive pricing practices between firms or between affiliated companies;
- D.  
noncompetitive contracts to consultants that are on retainer contracts;
- E.  
organizational conflicts of interest;
- F.  
specification of only a "brand name" product instead of allowing for an "or equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- G.  
any arbitrary action in the procurement process.

~~Further, the District does not use statutorily or administratively imposed State, local, or tribal geographical preferences in the evaluation of bids or proposals, unless 1) an applicable Federal statute expressly mandates or~~

~~which case geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.~~

-  
To the extent that the District uses a pre-qualified list of persons, firms, or products to acquire goods and services that are subject to this policy, the pre-qualified list includes enough qualified sources as to ensure maximum open and free competition. The District allows vendors to apply for consideration to be placed on the list annually.  
[INSERT FREQUENCY; SEE DRAFTING NOTE].

[DRAFTING NOTE: The District shall allow vendors not on the pre-qualified list to apply for placement on the list periodically. The District may determine how frequently the pre-qualified list becomes open for new vendors or whether it is open continuously.]

The District shall require that all prequalified lists of persons, firms, or products which are used in procurement transactions are current and include enough qualified sources to provide maximum open competition. When establishing or amending prequalified lists, the District (or subrecipient) must consider objective factors that evaluate price and cost to maximize competition ~~acquiring goods and services are current and include enough qualified sources to provide maximum open and free competition.~~ The District shall not preclude potential bidders from qualifying during the solicitation period.

To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and 2 C.F.R. Revisions 2024: Unofficial Comparison Version assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

### Solicitation Language (Purchasing Procedures)

The District shall have written procurement procedures (in accordance with 2 C.F.R. 200.319(d)) that require that all solicitations made pursuant to this policy incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured ~~material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition.~~ The description may include a statement of the qualitative nature of the property, equipment, ~~material and/or product~~ or service to be procured. When necessary, the description must ~~and, when necessary, shall~~ set forth those minimum essential characteristics and standards to which the property, equipment, or service shall conform ~~it shall conform if it is to satisfy its intended use.~~ Detailed product specifications should be avoided if at all possible.

When it is impractical or uneconomical to clearly and accurately describe ~~make a clear and accurate description of~~ the technical requirements, a "brand name or equivalent" description of features to provide procurement

identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals ~~may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which shall be met by offers shall be clearly stated; and identify all requirements which the offerors shall fulfill and all other factors to be used in evaluating bids or proposals.~~

The Board will not approve any expenditure for an unauthorized purchase or contract.

## Procurement Methods

The District shall have and use documented procedures, consistent with the standards described above for the following methods of procurement:

### A. Informal Procurement Methods

Informal procurement methods for small purchases expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction ~~When the value of the procurement for property or services~~ under a Federal award does not exceed the simplified acquisition threshold, or a lower threshold established by the State, formal procurement methods are not required. The informal procurement methods ~~District may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the simplified acquisition threshold~~ include:

#### 1. Micro-Purchases

Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed \$ 10,000 **[not to exceed \$10,000]**. To the ~~maximum~~ extent practicable, the District should distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be made without soliciting competitive quotations if the Superintendent considers the price to be reasonable based on research, experience, purchase history, or other relevant information, and maintains documents to support its conclusion ~~documents are filed accordingly~~. The District shall maintain evidence of this reasonableness in the records of all purchases made by this method.

[ ] Unless otherwise defined by State or local law, Districts are responsible for determining and documenting an appropriate micro-purchase threshold in accordance with 2 C.F.R. 200.320(a)(iv) based on internal controls, an evaluation of the risk, and its documented procurement procedures. The micro-purchase threshold used by the District shall be authorized or not prohibited under State, local, or tribal laws or regulations. An eligible District may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity and auditors in accordance with C.F.R. 200.334 ~~A District which is qualified as a low-risk auditee for the most~~

~~DRAFTING NOTE]~~ An eligible District may self-certify the micro-purchase threshold on an annual basis after completing the annual internal institutional risk assessment to identify, mitigate, and manage financial risks. The self-certification, in accordance with C.F.R. 200.334, must include a justification, clear identification of the threshold, and supporting documentation of any of the following:~~the qualifications listed above.~~

- a. a qualification as a low-risk auditee, in accordance with the criteria in C.F.R. 200.520;
- b. an annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or
- c. For public institutions, a higher threshold is consistent with State law.

[DRAFTING NOTE: The Federal regulation allows for a \$50,000 threshold, however, the Revised School Code provides for a lower amount (\$29,572 for the 2023-24 fiscal year ~~\$26,046 for the 2021-22 year~~). While this authority is allowed for an entity qualified as a low-risk auditee, Neola does not suggest its use due to the complexity and subjectivity of the mechanism.]

## 2. Small Purchases

Small purchases include the acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold of \$29,572. Small purchase procedures require that price or rate quotations shall be obtained from [CHOOSE AN OPTION] ~~X~~ 3 [ENTER AMOUNT; SEE DRAFTING NOTE] ~~X~~ an adequate number of [END OF OPTION] qualified sources. [DRAFTING NOTE: 1. The competitive threshold for the 2023-24 fiscal year is \$29572, effective October 23, 2023 ~~2021-22 year is \$26,046, effective October 7, 2021~~. 2. Unless the pass-through entity or State law defines the number of quotes required, the District may define in policy how many quotations are adequate. The number must be greater than one (1).]

Districts are responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk, and its documented procurement procedures which must not exceed the threshold established in the Federal Acquisition Regulations (FAR). When applicable, a lower simplified acquisition threshold used by the District ~~non-Federal entity~~ must be authorized or not prohibited under State, local, or tribal laws or regulations.

## B. Formal Procurement Methods

When the value of the procurement for property or services under a Federal award exceeds the simplified acquisition threshold, or a lower threshold established by the State, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement method can be used in accordance with the standards on competition in C.F.R. 200.319 or non-competitive procurement. The formal

## 1. Sealed Bids

Sealed, competitive bids shall be obtained when the purchase of, and contract for, single items of supplies, materials, or equipment which amounts to more than the amount allowed by Michigan statute and when the Board determines to build, repair, enlarge, improve, or demolish a school building/facility the cost of which will exceed the amount allowed by Michigan statute. **[DRAFTING NOTE: The fiscal year 2023-2024~~2021-22~~ base pertaining to construction, renovation, repair, or remodeling and the base pertaining to procurement of supplies, materials, and equipment is \$29,572, effective October 23, 2023~~\$26,046, effective October 7, 2021.~~]**

In order for sealed bidding to be feasible, the following conditions shall be present:

- a. a complete, adequate, and realistic specification or purchase description is available;
- b. two (2) or more responsible bidders have been identified as ~~are~~ willing and able to compete effectively for the business; and
- c. the procurement lends itself to a firm, fixed-price contract and the selection of the successful bidder can be made principally based on ~~the basis of~~ price.

When sealed bids are used, the following requirements apply:

- a. Bids shall be solicited in accordance with the provisions of State law and Policy 6320. Bids shall be solicited from **[CHOOSE OPTION] ( ) \_\_\_\_\_ [ENTER AMOUNT] X** an adequate number of **[END OF OPTION]** qualified suppliers, providing sufficient response time prior to the date set for the opening of bids. The invitation to bid shall be publicly advertised.
- b. The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond ~~will include product/contract specifications and pertinent attachments and shall define the items and/or services required in order for the bidder to properly respond.~~
- c. All bids will be opened at the time and place prescribed in the invitation for bids; bids will be opened publicly.
- d. A firm, fixed-price contract is awarded ~~award will be made~~ in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids ~~Where specified in bidding documents~~, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts must ~~may~~ only be used to determine the low bid when the District determines they are a valid factor based on prior experience ~~indicates that such discounts are usually taken.~~

bids it rejects for sound documented reason.

## 2. Proposals

Procurement by proposals is a method in which either a fixed-price or cost-reimbursement ~~type~~ contract is awarded. This method is ~~Proposals are generally~~ used when conditions are not appropriate for the use of sealed bids or in the case of a recognized exception to the sealed bid method. **[DRAFTING NOTE: Like sealed bids, Federal law does not require a competitive proposal unless the procurement is for over \$250,000. The State/District may set a lower threshold for sealed bids and competitive proposals. Michigan law stipulates a threshold for which sealed bids are required. The competitive threshold for the 2023-24 fiscal year is \$29,572 effective October 23, 2023 ~~2021-22 year is \$26,046, effective October 7, 2021.~~ (See Policy 6320.)]**

If this method is used, the following requirements apply:

- a. Requests for proposals require public notice, and must ~~shall be publicized and~~ identify all evaluation factors and their relative importance. To the maximum extent practicable, any proposals submitted in response to the public notice must be considered ~~Any response to the publicized requests for proposals shall be considered to the maximum extent practical.~~
- b. Proposals shall be solicited from **[CHOOSE OPTION]** ~~W~~ 3 **[ENTER AMOUNT]** ~~W~~ an adequate number of **[END OF OPTION]** sources.
- c. The District must have written procedures ~~shall use its written method~~ for conducting technical evaluations and for making selections ~~of the proposals received and for selecting recipients.~~
- d. Contracts must ~~shall~~ be awarded to the responsible offeror ~~firm~~ whose proposal is most advantageous to the District considering price and other factors ~~program, with price and other factors considered.~~

The District may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where the price is not used as a selection factor, can only be used to procure ~~in the procurement of~~ A/E professional services. The method ~~it~~ cannot be used to purchase other ~~types of services provided by, though~~ A/E firms are a potential source to perform the proposed effort.

## 3. Noncompetitive Procurement

Procurement by noncompetitive proposals ~~allows for solicitation of a proposal from only one (1) source and~~ may be used only when one (1) or more of the following circumstances apply:

## ~~micro-purchases~~

- b. the procurement transaction can only be fulfilled by ~~the item is available only from~~ a single source;
- c. the public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of ~~publicizing~~ a competitive solicitation;
- d. the District requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or ~~the Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the District~~
- e. after soliciting several ~~solicitation of a number of~~ sources, competition is determined to be inadequate.

## **Domestic Preference for Procurement**

The District should ~~As appropriate and to the extent consistent with law, the District shall~~, to the extent practicable and consistent with law ~~under a Federal award~~, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. Such requirements shall be included in all subawards, ~~including all~~ contracts, and purchase orders ~~for work or products~~ under the Federal award.

## **Procurement of Recovered Materials**

The District must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6962. These requirements include:

- A. procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000;
- B. procuring solid waste management services in a manner that maximizes energy and resource recovery; and
- C. establishing an affirmative procurement program for the procurement of recovered materials identified in the EPA guidelines.

The District should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable.

This may include purchasing compostable items and other products and services that reduce the use of

## Contract/Price Analysis

The District shall perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold (currently \$250,000). The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the District should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the District must make independent estimates before receiving bids or proposals ~~in connection with every procurement action in excess of \$250,000, including contract modifications~~. A cost analysis generally means evaluating the separate cost elements that make up the total price, while a price analysis means evaluating the total price, without looking at the individual cost elements. The District must not use the "cost plus a percentage of cost" and "percentage of construction costs" methods of contracting.

Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that the costs incurred or cost estimates included in negotiated prices would be allowable for the District according to cost principle requirements. ~~The method and degree of analysis are dependent on the facts surrounding the particular procurement situation; however, the District shall come to an independent estimate prior to receiving bids or proposals.~~

~~When performing a cost analysis, the District shall negotiate profit as a separate element of the price. To establish a fair and reasonable profit, consideration is given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.~~

## Time and Materials Contracts

The District uses a time-and-materials type contract only 1) after a determination that no other contract is suitable, and 2) if the contract includes a ceiling price that the contractor exceeds at its own risk. A time-and-materials type contract means a contract whose cost to the District is the sum of the actual costs of materials and direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

Because ~~Since~~ this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, the District sets a ceiling price for each contract that the contractor exceeds at its own risk. Further, the District shall assert a high degree of oversight ~~in order~~ to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

## Suspension and Debarment

The District will award contracts only to responsible contractors that possess ~~possessing~~ the ability to perform successfully under the terms and conditions of the proposed contract ~~procurement~~. All purchasing decisions shall

When making a purchasing decision, the District shall consider such factors as 1) contractor integrity; 2) ~~compliance with~~ public policy; 3) compliance; 4) proper classification of employees; 5) record of past performance; and 6) ~~4)~~ financial and technical resources.

~~The Superintendent shall have the authority to suspend or debar a person/corporation, for cause, from consideration or award of further contracts. The District is subject to and shall abide by the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 C.F.R. Part 180.~~

~~Suspension is an action taken by the District that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended. (2 C.F.R. Part 180 Subpart G)~~

~~Debarment is an action taken by the Superintendent to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 C.F.R. Chapter 1). A person so excluded is debarred. (2 C.F.R. Part 180 Subpart H)~~

The District shall not subcontract with or award subgrants to any person or company who is debarred or suspended. For contracts over \$25,000, the District shall confirm that the vendor is not debarred or suspended by either checking the Federal government's System for Award Management, which maintains a list of such debarred or suspended vendors, at [www.sam.gov](http://www.sam.gov); collecting a certification from the vendor; or adding a clause or condition to the covered transaction with that vendor. (2 C.F.R. Part 180 Subpart C)

## **Bid Protest**

The District maintains the following protest procedures to handle and resolve disputes relating to procurements and, in all instances, discloses information regarding the protest to the ~~awarding~~ agency.

A bidder who wishes to file a bid protest shall file such notice and follow procedures prescribed by the Request For Proposals (RFPs) or the individual bid specifications package for resolution. Bid protests shall be filed, in writing, with the Superintendent within seventy-two (72) hours of the opening of the bids in protest.

Within five (5) days of receipt of a protest, the Superintendent shall review the protest as submitted and render a decision regarding the merits of the protest and any impact on the acceptance and rejection of bids submitted. Notice of the filing of a bid protest shall be communicated to the Board and shall be so noted in any subsequent recommendation for the acceptance of bids and awarding of contracts.

Failure to file a notice of intent to protest, or failure to file a formal written protest within the time prescribed, shall constitute a waiver of proceedings.

## **Maintenance of Procurement Records**

The District shall maintain records sufficient to detail the history of all procurements. These records will include, but are not necessarily limited to, the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price (including a cost or price analysis).

### **Records Retention**

The District must retain all Federal award records for three (3) years from the date of submission of the final financial report. For awards that are renewed quarterly or annually, the District must retain records for three (3) years from the date of submission of the quarterly or annual financial report, respectively. Records to be retained include, but are not limited to, financial records, supporting documentation, and statistical records. Other records retention requirements shall be in accordance with 2 C.F.R. 200.334.

The District must collect, transmit, and store Federal award information in an open file, non-licensed, and machine-readable formats. The District may substitute electronic versions of original paper records through duplication or other forms of electronic conversion, provided that the procedures are subject to periodic quality control reviews. Quality control reviews must ensure that electronic conversion procedures provide safeguards against the alteration of records and assurance that records remain in a format that is readable by a computer system.

2 C.F.R. 200.317-.326; Appendix II to Part 200

2 C.F.R. 200.334 - 200.336

2 C.F.R. 200.520

**[Cross Reference: po6350]**

© Neola 2024

### Legal References

2 C.F.R. 200.317-.326; Appendix II to Part 200

2 C.F.R. 200.334 - 200.336

2 C.F.R. 200.520

### Cross References

po6350 - PREVAILING WAGE



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised TRAVEL PAYMENT & REIMBURSEMENT

Number: po6550

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

**[DRAFTING NOTE: Travel charges must be consistent with the District's established written policies. The District must allow costs for "above and beyond regular dependent care" if consistent with established written policy for all travel.]**

#### **6550 - TRAVEL PAYMENT & REIMBURSEMENT**

Travel expenses incurred for official business travel on behalf of the Board of Education shall be limited to those expenses reasonably and necessarily incurred by the employee in the performance of a public purpose authorized, in advance, in accordance with administrative guidelines. Travel costs may include the transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the District.

Payment and reimbursement rates for per diem meals, lodging, and mileage shall be approved by the Board annually. The Board shall establish mileage rates ( ) in accordance with ~~the~~ not exceeding **[END OF OPTION]** the Federal IRS prescribed mileage rate.

Employees are expected to exercise the same care incurring travel expenses that a prudent person would exercise if traveling on personal business and expending personal funds. Unauthorized costs and additional expenses incurred for personal preference or convenience will not be reimbursed.

Unauthorized expenses include but are not limited to alcohol, movies, fines for traffic violations, and the entertainment/meals/lodging of spouses or guests.

~~X~~ Commercial airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would (1) require circuitous routing; (2) require travel during unreasonable hours; (3) excessively prolong travel; (4) result in additional costs that would offset the transportation savings; or (5) offer accommodations not reasonably adequate for the traveler's medical needs. Instances of commercial airfare cost in excess of the basic least expensive unrestricted accommodations class must be justified and documented on a case-by-case basis

[ ] Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences are allowable provided that (1) the costs are a direct result of the individual's travel for the Federal award; (2) the costs are consistent with the District's documented administrative guidelines for all entity travel; and (3) are only temporary during the travel period. Travel costs for dependents are unallowable, except for travel of a duration of six (6) months or more with prior approval of the Federal ~~awarding~~ agency. **[DRAFTING NOTE: Choosing this option requires this also to be applicable to all District policies.]**

[ ] The costs of identifying and providing locally available dependent-care resources for conference participants are allowable as needed.

~~X~~ Conference costs must be appropriate, necessary, and managed to minimize costs to the Federal award.

**[DRAFTING NOTE: This draft policy includes the Federal rules for commercial airfare and temporary dependent care costs. Based on State or local laws and policies, Districts may decide that all temporary dependent care costs or commercial airfare costs in excess of the basic least expensive unrestricted accommodations class are unallowable under any circumstance.]**

Travel payment and reimbursement provided from Federal funds must be authorized in advance and must be reasonable and consistent with the District's travel policy and administrative guidelines. For travel paid for with Federal funds, the travel authorization must include documentation that demonstrates that (1) the participation in the event by the individual traveling is necessary to the Federal award; and (2) the costs are reasonable and consistent with the District's travel policy.

All travel shall comply with the travel procedures and rates established in the administrative guidelines. All costs incurred with Federal funds must meet the cost allowability standards within Board Policy 6114.

To the extent that the District's policy does not establish the allowability of a particular type of travel cost, the rates and amounts established under 5 U.S.C. 5701-11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or ~~his/her~~ designee), must apply to travel under Federal awards.

© Neola 2024~~2016~~

Legal References  
2 C.F.R. 200.474



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI

Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised DISPOSITION OF SURPLUS PROPERTY

Number: po7310

### Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

#### 7310 - DISPOSITION OF SURPLUS PROPERTY

The Board of Education requires the Superintendent to review the property of the District periodically and to dispose of that material and equipment which is no longer usable in accordance with the terms of this policy.

##### A. Instructional Material

The District shall review instructional materials (i.e. textbooks, library books, manuals, support materials, etc.) periodically to determine the relevance of such materials to the present world and current instructional programs. The following criteria will be used to review instructional materials for redistribution and possible disposal:

1. concepts or content that do not support the current goals of the curriculum
2. information that may not be current
3. worn beyond salvage

##### B. Equipment

**[DRAFTING NOTE: Pursuant to 2 C.F.R. 200, the following definition regarding equipment being tangible personal property should be added to the County policy. See also Policy 7450 - Property Inventory to provide for a consistent threshold for such expenditures.]**

For purposes of this policy, equipment shall mean tangible personal property (including information technology systems), a unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles which retains its shape and appearance with use, is nonexpendable, having a useful life of more than one (1) year, and a per-unit cost that equals or exceeds \$ 10,000 ~~10,000~~ to replace ( ) as a single unit **[END OF OPTION]** and does not lose its identity when incorporated into a more complex unit.

The District shall inspect the equipment used in the instructional program periodically, to determine the condition and usability of such equipment in the current educational program. Should the equipment be deemed no longer serviceable or usable, the following criteria will be used to determine possible disposal:

1. repair parts for the equipment no longer readily available
2. repair records indicate the equipment has no usable life remaining
3. obsolete and no longer contributing to the educational program
4. some potential for sale at a school auction
5. creates a safety or environmental hazard

### C. Disposition

The Superintendent is authorized to dispose of obsolete instructional and other property by selling, it to the highest bidder, by donation to appropriate parties, or by proper waste removal in compliance with 2 C.F.R. 200.313(e) and 200.314.

When there is a residual inventory of unused supplies exceeding \$10,000 in aggregate value at the end of the period of performance, and the supplies are not needed for any other Federal award, the District may retain or sell the unused supplies. Unused supplies means supplies that are in new condition, not having been used or opened before. The aggregate value of unused supplies consists of all supply types, not just like-item supplies. The Federal agency or pass-through entity may be entitled to compensation in an amount prescribed in 2 C.F.R. 200.314.

Disposition of surplus property purchased with Federal funds shall be disposed of in accordance with Federal guidelines.

When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal ~~awarding~~ agency, the District shall request disposition instructions from the Federal ~~awarding~~ agency if required by the terms and conditions of the Federal award.

Disposition of the equipment will be made in accordance with disposition instructions of the Federal ~~awarding~~ agency.

~~Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.~~

Except as provided in §200.313~~200.312~~ Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current ~~per-unit~~ fair-market value in excess of \$10,000~~5,000~~ (per unit) may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale ~~by the Federal awarding agency's percentage of participation in the cost of the original purchase~~. If the equipment is sold, the Federal ~~awarding~~ agency may permit the non-Federal entity to deduct and retain from the Federal share \$1,000~~500~~ or ten percent (10%) of the proceeds, whichever is less, to cover expenses associated with the selling and handling of the equipment ~~for its selling and handling expenses~~.

The District may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the District shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

When included in the terms and conditions of the Federal award, the Federal agency may permit the District to retain equipment, or authorize MDE to permit the District to retain equipment, with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.

**[CROSS REFERENCE: po7450]**

© Neola 2024~~2016~~

Legal References

2 C.F.R. 200.312, 200.313

Cross References

po7450 - PROPERTY INVENTORY



Book: MI Local Policies for Update  
Section: Vol. 39, No. 1 - EDGAR UGG - September 2024 MI  
Title: Vol. 39, No. 1 - EDGAR UGG - September 2024 Revised PROPERTY INVENTORY  
Number: po7450

Revised Policy - Vol. 39, No. 1 - EDGAR/UGG Revisions

7450 - PROPERTY INVENTORY

As steward of this District's property, the Board of Education recognizes that efficient management and full replacement upon loss requires accurate inventory and properly maintained property records.

The Board shall

conduct a complete inventory

maintain a continuous inventory

of all District-owned equipment

and supplies

annually.

every 2 years. [specify number; Federal regulations require at least once every two (2) years]

at such intervals as will coincide with property insurance renewal.

and Generally Accepted Accounting Principles ("G.A.A.P.") reporting requirements.

For purposes of this policy, "equipment" shall mean tangible personal property (including information technology systems), a unit of furniture or furnishings, an instrument, a machine, an apparatus, or a set of articles which retains its shape and appearance with use, is nonexpendable, having a useful life of more than one (1) year, and a per-unit cost that equals or exceeds ~~costs at least~~ \$10,000 [DRAFTING NOTE: See also Policy 7310 - Disposition of Surplus Property to provide for a consistent threshold for such expenditures.]

( ) as a single unit [END OF OPTION]

and does not lose its identity when incorporated into a more complex unit. When defining supplies for inventory purposes, no items will be counted whose total value is less than \$ 10,000. [DRAFTNG NOTE: The Federal threshold (2 C.F.R. 200.439) for a supply designation is \$10,000~~5,000~~ regardless of length of useful life, however, the District may set an early acquisition cost level for designation as supply. Capital expenditures with a unit cost of \$10,000~~5,000~~ or more require prior written approval of the Federal awarding agency or pass-through entity.]

It shall be the duty of the ( ) Superintendent ~~X~~ Business Manager ( ) \_\_\_\_\_ [END OF OPTIONS] to ensure that inventories are recorded systematically and accurately and property records of equipment are updated and adjusted annually by reference to purchase orders and withdrawal reports.

~~X~~ Major items of equipment shall be subject to annual spot check inventory to determine loss, mislocation, or depreciation; any major loss shall be reported to the Board.

~~X~~ Property records of consumable supplies shall be maintained on a continuous inventory basis.

~~X~~ The Business Manager shall maintain a system of property records which shall show, as appropriate to the item recorded, the:

- A. ~~(-)~~ description and identification (serial number or other identification number);
- B. ~~X~~ manufacturer;
- C. ~~X~~ year of purchase;
- D. ~~(-)~~ initial cost;
- E. ~~(-)~~ location;  
—
- F. ~~(-)~~ condition and depreciation;  
—
- G. ~~X~~ evaluation in conformity with insurance requirements.

The District is responsible for maintaining and updating property records when there is a change in the status of the property.

Equipment acquired in whole or in part under a Federal award will vest upon acquisition to the District, subject to the following conditions:

A.

The equipment shall be used for the authorized purposes of the award project during the period of performance or until the equipment is no longer needed for the purposes of the project.

B.

While the equipment is being used for the originally-authorized purpose, the District (or subrecipient) must not dispose of or encumber its title or other interests without the approval of the Federal agency or pass-through entity ~~The equipment shall not be encumbered without the approval of the Federal awarding agency or the pass-through entity.~~

C.

The equipment may only be used and disposed of in accordance with the provisions of the Federal ~~awarding~~ agency or the pass-through entity and Policy 7300 - Disposition of Real/Personal Property and Policy 7310 - Disposition of Surplus Property ~~14~~, and AG 7310 - Disposal of District Property.

D.

The District must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the Federal award. The District must not encumber the equipment without prior approval of the Federal agency or pass-through entity.

E.

When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

1.

Activities under other Federal awards from the Federal agency that funded the original program or project; then

2.

Activities under Federal awards from other Federal agencies. These activities include consolidated equipment for information technology systems.

F.

During the time that equipment is used on the project or program for which it was acquired, the District must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-Federally funded projects is also permissible, provided such use will not interfere with the purpose for which it was originally acquired. The District should consider charging user fees as appropriate. If the District does use equipment to earn program income, it must not charge a fee that is less than a private company would charge for similar services unless specifically

G.

When acquiring replacement equipment, the District may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

H.

Property records shall be maintained that include a description of the equipment, a serial number or other identification number, the source of funding for the equipment (including the Federal Award Identification Number (FAIN), title holder, acquisition date, cost of the property ~~entity, acquisition date, cost of the equipment~~, percentage of Federal agency contribution toward the original purchase ~~participation in the project costs for the award under which the equipment was acquired~~, the location, use, and condition of the property ~~equipment~~, and ultimate disposition data, including date of disposal and sale price of the property ~~equipment~~.

I.

A physical inventory of the property must be conducted ~~taken~~ and results reconciled with property records at least once every two (2) years.

J.

A control system shall be in place ~~developed~~ to provide safeguards for preventing ~~adequate safeguards to prevent~~ loss, damage, or theft of the property. Any such loss, damage, or theft of the property must be ~~shall be~~ investigated. The District must notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.

K.

Regular ~~Adequate~~ maintenance procedures shall be implemented to keep the property in proper working ~~good~~ condition.

L.

Proper sales procedures shall be established to ensure the highest possible return, in the event the District is authorized or required to sell the equipment/property.

M.

When ~~original or replacement~~ equipment acquired under a Federal award is no longer needed for the original project/program or for activities currently or previously supported by a Federal ~~awarding agency, and except as otherwise provided by Federal statutes, regulations, or Federal awarding agency disposition instructions,~~ the District shall request disposition instructions from the Federal ~~awarding agency~~ or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment shall be made in accordance with the provisions of C.F.R. 200.313.

Legal References

2 C.F.R. 200.313

Cross References

po7310 - DISPOSITION OF SURPLUS PROPERTY



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - September 2024 MI

Title: Vol. 39, No. 1 - September 2024 Technical Correction NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES

Number: po2264

### Technical Correction - Vol. 39, No. 1

#### 2264 - NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES

This policy pertains to sex discrimination, including sex-based harassment, which occurs on or after August 1, 2024. Allegations of sex-based harassment, that occur on or before July 31, 2024, shall be addressed pursuant to Policy 2266~~X~~ and AG 2266 **[END OF OPTION]**. Throughout this policy, unless expressly stated otherwise, reference to "Title IX" includes and incorporates the 2024 Title IX regulations (also known as the "2024 Final Rule"). The Title IX regulations are found at 34 CFR Part 106. References solely to Title IX (20 U.S.C. §§ 1681 – 1688) are denoted as "Title IX (Statute)." In this policy, unless the context otherwise requires, words importing the singular include the plural and vice versa.

**[DRAFTING NOTE: The 2024 Final Rule serves to "clarify the scope and application of Title IX and the obligations of recipients of Federal financial assistance from the United States Department of Education ["ED"]...to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination." The 2024 Final Rule stresses – in its Supplementary Information section (i.e., "Preamble") – that ED is responsible for "fully [enforcing] Title IX's nondiscrimination mandate."**

The 2024 Title IX regulations are effective August 1, 2024. As such, they apply *only* to sex discrimination that allegedly occurred on or after August 1, 2024. With respect to sex discrimination that allegedly occurred prior to August 1, 2024, regardless of when the alleged sex discrimination was reported, ED has stated that it will "evaluate a recipient's compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sex discrimination occurred." The 2020 Title IX regulations (effective 8/14/2020) focus on effectuating Title IX's prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities. The 2020 Title IX regulations obligate recipients to respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment and effectively implement remedies for victims. The 2020 Title IX

education program or activity that are unrelated to sexual harassment. As such, ED states in the Preamble to the 2024 Title IX regulations that “some reports regarding sex discrimination occurring in a recipient’s education program or activity may be handled under [the 2024 Title IX regulations] while others will be addressed under the requirements of the [2020 Title IX regulations].” (emphasis added) Presumably, the “will” relates to reports of sexual harassment (or “sex-based harassment” as defined in the 2024 Title IX regulations) that allegedly occurred prior to 8/1/2024, and the “may” refers to reports of alleged sex discrimination that occurred prior to 8/1/2024 that involve non-sexual harassment related violations of Title IX (Statute).

Since a recipient is not required to use the grievance procedures outlined in the 2024 Title IX regulations (and this policy) to investigate, address, and remedy alleged violations of Title IX – not involving sex-based harassment - that occurred before 8/1/2024 in the school district’s education programs or activities (again, allegations of sexual harassment that involve conduct that occurred before 8/1/2024 must be addressed pursuant to the grievance procedures delineated in Policy 2266 and AG 2266), the Title IX Coordinator is afforded broad discretion to determine how best to address in a prompt, effective and equitable manner such Title IX violations.

The language quoted in this DRAFTING NOTE is found at 89 Fed. Reg. 33,841 (Apr. 29, 2024).

For more information concerning the use of this policy and the grievance procedures set forth herein, as opposed to Policy 2266 and the grievance procedures contained in it, refer to the first few paragraphs of the Grievance Procedures section located below.

Neola recommends the Board consult with its Legal Counsel relating to any questions it may have concerning application and implementation of this policy and its corresponding administrative guideline, as compared to Policy 2266 and AG 2266.]

## **NONDISCRIMINATION**

### **Overview:**

The Board of Education of the Avondale School District (hereinafter referred to as “the Board” or “the District”) does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX, including in admission and employment.

[DRAFTING NOTE: For purposes of the 2024 Title IX regulations, the term “admission” refers to admission to postsecondary institutions (i.e., institutions of graduate higher education, institutions of undergraduate higher education, institutions of professional education, and institutions of vocational education). If a K-12 school does not operate a vocational program (e.g., a school or institution that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers fulltime study), the K-12 school does not have to include “admission and” in

**recommends that boards include it because all K-12 schools “enroll” students and often the term “enroll” is viewed as synonymous with the term “admit.” Further, K-12 schools cannot discriminate when enrolling students into the education programs or activities that they operate, so it seems reasonable to include the term “admission.” Additionally, many districts operate adult-based vocational programs and/or have students dual-enrolled in post-secondary institutions – e.g., through Michigan's Dual Enrollment – and/or youth apprenticeship programs, so it makes sense to include “admission” even though those postsecondary institutions will have their own Title IX nondiscrimination policies and grievance procedures. If a student enrolled in/admitted to one of these programs notifies the District that the student was allegedly subjected to sex discrimination during/through the student’s participation in the program, the Title IX Coordinator should consult with the Board’s Legal Counsel regarding the District’s responsibility to implement the District’s grievance procedures to address the allegations of sex discrimination and provide supportive measures. The Title IX Coordinator should also contact and coordinate with the postsecondary institution’s Title IX Coordinator concerning the matter.]**

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

**[DRAFTING NOTE: Shortly after the 2024 Final Rule was released, a number of States filed lawsuits to stop implementation of the new regulations. As of May 23, 2024, no court has issued an injunction or preliminary restraining order to prevent the 2024 Final Rule from going into effect on August 1, 2024. Neola is monitoring the litigation across the country and will notify its clients if any court action limits or prevents Michigan school districts from implementing the 2024 Title IX regulations and, in turn, replacement Policy 2264 and replacement AG 2264.**

**Unlike a couple of years ago when several States challenged in court a legal guidance document that ED released interpreting the U.S. Supreme Court’s Bostock decision (Bostock v. Clayton County, 590 U.S. (2020), as applying to Title IX and therefore protecting individuals from discrimination based on their sexual orientation or gender identity, the 2024 Title IX regulations “carry the force and effect of law” as a result of ED going through the notice and comment rulemaking process prior to promulgating them.**

**While the pending lawsuits each seek to void, cancel, or otherwise block ED from implementing the 2024 Final Rule, they each present slightly different bases for challenging the 2024 Title IX regulations. All of them, however, express an underlying or primary concern related to an alleged expansion of the term “sex” to include sexual orientation and gender identity. While these plaintiffs, to date, contend the 2020 Bostock decision – which involved Title VII – does not apply to Title IX, Neola has interpreted “sex” to include “sexual orientation and gender identity” for a number of years pre-dating Bostock based on applicable Sixth Circuit case law (see Dodd v. U.S. Dept. of Education, 845 F.3d 217 (6th Cir. 2016) (holding that discrimination against transgender students likely constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution); since that time, even more Circuit courts have upheld such an interpretation (e.g., Whitaker v. Kenosha Unified School District, 858 F.3d 1034 (7th Cir. 2017) (holding that discrimination against transgender students constitutes sex discrimination under Title IX of the Education Amendments Act of 1972 and the Equal Protection Clause of the U.S. Constitution). In fact, original Policy 2266, which Neola developed in 2020**

**Other concerns raised in the lawsuits primarily deal with aspects of the rules that have a more significant role in the postsecondary setting as opposed to the K-12 education environment; namely, the use of a single investigator/decisionmaker model, and a purported reduction in the due process rights afforded to the accused (i.e., whether the respondent is entitled to a live hearing and the ability to cross-examine parties and witnesses prior to a decisionmaker rendering a determination of responsibility – which is something that is an option for K-12 schools under the 2020 Title IX regulations but was rarely selected.)**

The Board is committed to maintaining an education and work environment that is free from sex discrimination (including sex-based harassment), responding promptly and effectively when it has knowledge of conduct that reasonably may constitute sex discrimination, and addressing sex discrimination in its education program or activity. Persons who commit sex-based harassment are subject to the full range of disciplinary sanctions set forth in this policy. The Board will provide persons who have experienced sex-based harassment ongoing remedies as reasonably necessary to restore or preserve access to the District's education program or activity.

## **KEY DEFINITIONS**

Words used in this policy shall have those meanings specified herein; words not defined herein shall be construed according to their plain and ordinary meanings.

**Complainant** means:

A. a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or

B. a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX and who was participating or attempting to participate in the District's education program or activity at the time of the alleged sex discrimination.

**Complaint** means: an oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX.

## **[OPTIONAL LANGUAGE]**

**[ ] Confidential employee** means:

A. a Board employee whose communications are privileged under Federal or State law; or

The employee's confidential status, for purposes of this policy, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies.

providing services to persons related to sex discrimination;

If the employee also has a duty not associated with providing these services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing these services.

C. the Board designates individuals ( ) assigned to/holding the following positions ( ) with the following Job Titles **[END OF OPTIONS]** to be confidential employees for purposes of this policy:

1. ( ) school counselor;
2. ( ) social worker;
3. ( ) school psychologist;
4. ( ) school nurse;
5. ( ) \_\_\_\_\_;
6. ( ) \_\_\_\_\_.

**[DRAFTING NOTE:**

**A. Neola does not recommend the Board include this definition or designate “confidential employees” based on:**

- 1. the confusion that may result from designating a confidential employee(s) – in particular, Board-designated confidential employees will have different responsibilities as compared to ALL other Board employees when it comes to the actions they must take if a person notifies them of alleged sex discrimination;**
- 2. they require additional training concerning the responsibilities mentioned in the preceding paragraph, which are different from the responsibilities required of ALL other Board employees; and**
- 3. students or persons who are acting on their behalf may “lose” the “confidentiality” they are seeking if they communicate their concerns about alleged sex discrimination to a person who is not actually a confidential employee – it is safer for students, and those acting on their behalf, to operate on the assumption that if they tell a Board employee about alleged sex discrimination that the Board employee will report it to the Title IX Coordinator.**

elementary/secondary school setting to designating confidential employees. A person acting on behalf of a student could contact the Title IX Coordinator to obtain clarification about the Title IX grievance procedures, informal resolution process, and other options available to their child (e.g., supportive measures) without releasing any information or specifically reporting alleged sex discrimination, so there is not much gained by having the person instead speak with a confidential employee who would tell them essentially the same things.

C. Before the Board designates a confidential employee(s), it should consult with its Legal Counsel.

D. If the Board decides to designate one (1) or more confidential employees, Neola suggests that it does so by Position, Title, or Office, and not the person's name, for the reasons discussed below with respect to why it is preferable to only list the Job Title of the Title IX Coordinator in the policy, as opposed to both the Name and Title – i.e., so the Board does not have to act to amend the policy each time a different person is employed in the designated position.]

[END OPTIONAL LANGUAGE]

**Day(s):** Unless expressly stated otherwise, the term “day” or “days” as used in this policy means business day(s) (i.e., a day(s) that the Board office is open for normal operating hours, Monday – Friday, excluding State-recognized holidays).

**Disciplinary sanctions** means: consequences imposed on a respondent following a determination under Title IX that the respondent violated the Board's prohibition on sex discrimination.

**Education program or activity** refers to: all the District's operations including, but not limited to, in-person and online/remote educational instruction, employment, extracurricular activities, athletics, performances, and community engagement and outreach programs. The term applies to all activity that occurs on school grounds or on other property owned or occupied by the Board. It also includes events and circumstances that take place off school property/grounds but over which the District asserts disciplinary authority.

**Eligible Student** means: a student who has reached eighteen (18) years of age or is attending an institution of postsecondary education. [DRAFTING NOTE: This definition is derived from, and consistent with, the corresponding definition from the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g (see 20 U.S.C. 1232g(a)(4) and (d)) and its implementing regulations (see 34 C.F.R. § 99.3).]

**Exculpatory evidence** means: evidence that is favorable to a respondent because it helps excuse, justify, or absolve a respondent of alleged wrongdoing and tends to establish a respondent did not engage in sex discrimination.

**Inculpatory evidence** means: evidence that links a respondent to alleged wrongdoing and tends to establish a respondent engaged in sex discrimination (i.e., has culpability).

**Parental status** means: the status of a person who, with respect to another person who is under the age of eighteen (18) or who is eighteen (18) or older but is incapable of self-care because of a physical or mental disability, is:

- A. a biological parent;
- B. an adoptive parent;
- C. a foster parent;
- D. a stepparent;
- E. a legal custodian or guardian;
- F. in loco parentis with respect to such a person; or
- G. actively seeking legal custody, guardianship, visitation, or adoption of such a person.

**Party** means: a complainant or respondent.

**Peer retaliation** means: retaliation by a student against another student.

**Pregnancy or related conditions** means:

- A. pregnancy, childbirth, termination of pregnancy, or lactation;
- B. medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- C. recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

**Relevant** means: related to the allegations of sex discrimination under investigation as part of the Board's grievance procedures. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

**Remedies** means: measures provided, as appropriate, to a complainant or any other person the District identifies as having had their equal access to the District's education program or activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to the District's education program or activity after the District determines that sex discrimination occurred.

**Respondent** means: a person who is alleged to have violated the Board's prohibition on sex discrimination.

Board employee, or any other person authorized by the Board to provide aid, benefit, or service under the District's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the 2024 Title IX regulations.

**Sex-based harassment** prohibited under this policy and the 2024 Title IX regulations is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex – including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity – that is:

A. Quid pro quo harassment. An employee, agent, or other person authorized by the Board to provide an aid, benefit, or service under the District's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

**OR**

B. Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the District's education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. the degree to which the conduct affected the complainant's ability to access the District's education program or activity;
2. the type, frequency, and duration of the conduct;
3. the parties' ages, roles within the District's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
4. the location of the conduct and the context in which the conduct occurred; and
5. other sex-based harassment in the District's education program or activity.

**OR**

C. Specific offenses.

1. Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    1. the length of the relationship;
    2. the type of relationship; and
    3. the frequency of interaction between the persons involved in the relationship.
3. Domestic violence meaning felony or misdemeanor crimes committed by a person who:
- a. is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction in which the District is located, or a person similarly situated to a spouse of the victim;
  - b. is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
  - c. shares a child in common with the victim; or
  - d. commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the applicable jurisdiction.
4. Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- a. fear for the person's safety or the safety of others; or
  - b. suffer substantial emotional distress.

**Student** means: a person eligible to enroll in, attend, or participate in an elementary (including preschool) or secondary school in the District and who is enrolled in, attending, or participating in, or is seeking/attempting to enroll in, attend, or participate, in the District's education program or activity.

**Student with a disability** means: a student who is an individual with a disability as defined under Section 504 of the Rehabilitation Act of 1973, as amended ("Section 504"), or a child with a disability as defined under the Individuals with Disabilities Education Improvement Act ("IDEA").

**Supportive measures** means: individualized measures offered as appropriate, as reasonably available, without

charge to the complainant or respondent to:

A. restore or preserve that party's access to the District's education program or activity, including measures that are designed to protect the safety of the parties or the District's educational environment; or

B. provide support during the Board's grievance procedures or an informal resolution process.

### **Parental, Family, or Marital Status**

The Board will not adopt or apply any policy, practice, or procedure concerning a student's current, potential, or past parental, family, or marital status that treats such student differently on the basis of sex.

### **Pregnancy or Related Conditions**

#### **Students:**

The Board prohibits discrimination in its education program or activity against any student based on the student's current, potential, or past pregnancy or related conditions. ~~The Board will permit a student, based on pregnancy or related conditions, to voluntarily participate in a separate portion of the District's education program or activity provided the separate portion is comparable to that offered to students who are not pregnant and do not have related conditions. [END OF OPTION] A student who is pregnant or experiencing related conditions shall receive comparable treatment to those with temporary medical conditions. ~~In other words, to the extent not otherwise addressed above, the Board will treat pregnancy or related conditions in the same manner and under the same policies as any other medical condition with respect to any medical or hospital benefit, service, plan, or policy the Board administers, operates, offers, or participates in with respect to students admitted to the District's education program or activity. [END OF OPTION] [DRAFTING NOTE: This last sentence is consistent with the content of the 2024 Title IX regulations, however, on its face, it appears to be more applicable to postsecondary institutions as compared to K-12 schools; hence, Neola suggests the Board determine for itself whether to include it in this policy.]~~~~

The District will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in the District's class, program, or extracurricular activity unless:

A. the certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity;

B. the District requires such certification of all students participating in the class, program, or extracurricular activity; and

C. the information obtained is not used as a basis for discrimination prohibited by Title IX or this Policy.

When a Board employee is informed of a student's pregnancy or related conditions by the student or a person who has a legal right to act on behalf of the student, the employee shall promptly provide that person with the Title IX Coordinator's contact information and inform that person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the District's education program or activity, unless the employee reasonably believes the Title IX Coordinator has already been notified.

Once a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions, the Title IX Coordinator shall promptly take the following specific actions to effectively prevent sex discrimination and ensure equal access to the District's education program or activity:

A. Inform the student and, if applicable, the person who notified the Title IX Coordinator of the District's obligations to:

1. prohibit sex discrimination under this policy, including sex-based harassment;
2. provide the student with the option of reasonable modifications to the Board's policies, practices, or procedures because of pregnancy or related conditions;
3. allow access, on a voluntary basis, to any separate and comparable portion of the District's education program or activity;
4. allow a voluntary leave of absence;
5. provide lactation space; and
6. maintain grievance procedures that provide for the prompt and equitable resolution of complaints of sex discrimination, including sex-based harassment.

B. Provide the student with voluntary reasonable modifications to the Board's policies, practices, or procedures because of pregnancy or related conditions.

C. Allow the student to take a voluntary leave of absence from the District's education program or activity to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. To the extent that a Board maintains a leave policy for students that allows a greater period of time than the medically necessary period, the Board shall permit the student to take leave under that policy instead if the student so chooses. When the student returns to the District's education program or activity, the student will be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.

free from intrusion from others, and may be used by a student for expressing breast milk or breastfeeding as needed.

See Policy 5751 – Parental-Married Status of Students ~~X~~ and Administrative Guideline 5751 – Pregnancy **[END OF OPTION]**.

### **Employees:**

The Board will not adopt or implement any policy, practice, or procedure, or take any employment action, on the basis of sex:

A. concerning the current, potential, or past parental, family, or marital status of an employee or applicant for employment, which treats persons differently; or

B. that is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

The Board also will not make a pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is a "Miss or Mrs."

Similarly, the Board will treat pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration, and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

If an employee has insufficient leave or accrued employment time to qualify for leave under the Board's leave policy, the Board will treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

The Board will provide reasonable break time for an employee to express breast milk or breastfeed as needed and will provide the employee with access to a lactation space, which must be a space other than a bathroom that is clean, shielded from view, free from intrusion from others, and may be used by an employee for expressing breast milk or breastfeeding as needed. See Board Policy 6700 – Fair Labor Standards Act.

### **TITLE IX COORDINATOR(S)**

#### **[DRAFTING NOTES:**

A. Neola suggests the Board appoint both a male and a female Title IX Coordinator; however, if the

Coordinators to retain ultimate oversight over the assigned responsibilities and ensure the Board's consistent compliance with its responsibilities under Title IX. Alternatively, the Board could appoint a Title IX Coordinator and one (1) or more persons to assist the Title IX Coordinator with performance of the responsibilities identified in this policy and the 2024 Title IX regulations. Often the persons designated to assist a Title IX Coordinator are called: Deputy or Assistant Title IX Coordinator, or Title IX Administrator, or Title IX Compliance Officer. If the Board elects this alternative approach, it would only designate a Title IX Coordinator for purposes of this policy, but it would designate the other positions through its AG. The persons in the alternative support roles will need to be trained in the same manner as the Title IX Coordinator (see AG 2264).

B. The Board must list either the Name(s) or Title(s) of the Title IX Coordinator(s); while the Board may list both the Name(s) and Title(s), Neola suggests that the Board only list the Title(s) in this policy (so the Board does not need to revise/amend the policy whenever there is a change in the actual person(s) holding the designated position(s)), but list both the Name(s) and Title(s) in the requisite notices/postings (e.g., website) and publications (e.g., handbooks). The District will also need to decide whether to list the Name(s) and Title(s), or just the Title(s), in Administrative Guideline 2264 if the District elects to identify the Title IX Coordinator in the AG (see DRAFTING NOTE in the AG; again, if the District lists the Name(s) and Title(s), it will need to remember to update the AG whenever there is a change in the actual person(s) holding the designated position(s). No matter what, the Board will need to amend its policy and update its AG, requisite notices/postings, and publications, whenever it changes the Title of the position(s) designated to serve as the Title IX Coordinator(s).

C. Reminder: Whenever a new person begins to serve as the Title IX Coordinator (or in a support role to the Title IX Coordinator), the District needs to make sure the new person is appropriately trained, in a timely manner, to fulfill the responsibilities of the Title IX Coordinator position as specified the 2024 Title IX regulations and AG 2264.]

The Board designates and authorizes the following individual(s) to coordinate its efforts to comply with the Board's responsibilities under Title IX:

Sharon Hyde, Executive Director of Human Resources  
(Name and/or School District Title)

2940 Waukegan St. Auburn Hills, MI 48326  
(Office Address)

Sharon.Hyde@arondale.schools.org  
(Email Address)

(248) 537-6038

[DRAFTING NOTE: The District may want to create a static (i.e., fixed) Title IX Coordinator-specific email address and phone number that will not change when the person(s) and/or position(s) designated to be the Title IX Coordinator(s) change(s) – e.g., tixcoordinator@(insert District’s domain) – which the Technology Director/Department can program to be forwarded to the actual individual(s) serving as the Title IX Coordinator(s) at any given time. Likewise, the District may want to establish a static Telephone Number for the position of Title IX Coordinator that can be forwarded to, and accessed by, the actual person(s) serving in the Title IX Coordinator position(s) at any given time. These two (2) steps will help reduce the information that needs to be updated in policy, AG, and/or the requisite notices/postings and publications when changes occur to the specific person(s)/position(s) designated to serve as the Title IX Coordinator(s).]

[DRAFTING NOTE: Complete the following information if the Board appoints more than one (1) Title IX Coordinator.]

[DESIGNATION OF A SECOND TITLE IX COORDINATOR]

Jamie Brooks, Principal, R Grant Graham Elementary  
(Name and/or School District Title)

2450 Old Salem Rd, Auburn Hills, MI 48326  
(Office Address)

Jamie.Brooks@avondaleschools.org  
(Email Address)

(248) 537-6899  
(Telephone Number)

[END OF OPTION]

[DRAFTING NOTE: Select the following option if the Board designates more than one (1) Title IX Coordinator.]

The Board designates Sharon Hyde, Exec Director HR [DRAFTING NOTE: Insert Name and/or Title of the Title IX Coordinator who is ultimately responsible for the District’s compliance with its responsibilities under Title IX] as the coordinator who is ultimately responsible for oversight over the Board’s compliance with its responsibilities under Title IX. [END OF OPTION]

The Title IX Coordinator may delegate specific duties to one (1) or more designees. [END OF OPTION]

[DRAFTING NOTE: The Board may want to select the following option when the Superintendent is not the District’s Title IX Coordinator. While Neala recognizes that this may not always be possible, it may be

**Title IX Coordinator serves as the investigator and decisionmaker – the Superintendent can serve as the appeal decisionmaker or the facilitator for the informal resolution process.]**

The Title IX Coordinator shall report directly to the Superintendent except when the Superintendent is a party to a complaint (i.e., either the complainant or the respondent). Under such circumstances, the Title IX Coordinator shall report directly to **[SELECT ONE OF THE FOLLOWING]**  the Board President ( ) the Board's Legal Counsel ( ) \_\_\_\_\_ **[OTHER] [END OF OPTIONS]** until the matter in which the Superintendent is a party is concluded. **[END OF OPTION]**

Questions about this policy and Policy 2266  and AG 2264 and AG 2266 **[END OF OPTION]** should be directed to the Title IX Coordinator.

The Title IX Coordinator shall monitor the District's education programs and activities for barriers to reporting information about conduct that reasonably may constitute sex discrimination under Title IX, and take steps reasonably calculated to address such barriers.

The Title IX Coordinator is responsible for notifying all participants in the District's education program or activity of how to contact its confidential employees. **[END OF OPTION]**

**[DRAFTING NOTE:**

A. For the reasons discussed in the DRAFTING NOTE that accompanies the Definition of "confidential employee," Neola does not recommend the Board designate confidential employee(s), especially for their K-12 programs.

B. If, however, the Board designates one or more confidential employees, it needs to select this OPTION.

C. The District has flexibility and discretion to decide what information to provide (e.g., whether to identify a confidential employee by Name, Title, Office, or Telephone Number (this presumably would be a static number that would auto-forward to the actual person serving as a confidential employee)). The District just needs to provide sufficient information for participants to be able to contact the confidential employee(s).]

**Notice of Nondiscrimination**

The Superintendent shall provide a notice of nondiscrimination to students, parents, guardians, or other authorized legal representatives of elementary and secondary students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the Board. Specifically, the Superintendent shall post the notice of nondiscrimination **discrimination** on the District's website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to the persons listed above, or which are otherwise used in connection with the

Nondiscrimination. [END OF OPTION]

## GRIEVANCE PROCEDURES

### Overview:

The Board adopts the following grievance procedures to provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the District's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX.

These grievance procedures shall be used for all complaints of sex discrimination, including sex-based harassment, involving conduct alleged to have occurred on or after August 1, 2024. These grievance procedures also may be used, at the discretion of the Title IX Coordinator, to investigate, address, and remedy (as necessary) conduct alleged to have occurred before August 1, 2024, that does not involve sex-based harassment, but some other form of sex discrimination prohibited by Title IX (Statute) – e.g., claims of unequal athletic opportunities, admissions discrimination, discrimination in courses or academic programs (i.e., excluding students from certain classes or programs based on their sex), pregnancy discrimination, unequal treatment based on parental, family, or marital status, discrimination in employment (including in hiring, promotion, and compensation), and retaliation. If the Title IX Coordinator elects not to use these grievances procedures to investigate and resolve such claims, the Title IX Coordinator will still need to implement some procedures to assess – in a prompt, effective, and equitable manner – whether Title IX (Statute) was violated, and, if it was, how best to end the sex discrimination in the District's education program or activity, prevent its recurrence, and remedy its effects.

**[DRAFTING NOTE: Title VII of the Civil Rights Act of 1964 (“Title VII”) and Title IX are both Federal laws that prohibit discrimination in employment, but they differ in their focus. Title VII prohibits employment discrimination based on race, color, religion, sex, or national origin, and applies to employers with fifteen (15) or more employees. Title IX, on the other hand, specifically prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance, including employment within those institutions. While both laws aim to prevent sex-based discrimination in the workplace, Title VII applies more broadly to various types of employers, whereas Title IX is limited to educational institutions receiving Federal funds. Ultimately, both laws aim to ensure equal employment opportunities and protect individuals from discrimination. When a Title IX Coordinator receives a complaint or notification of alleged misconduct, involving sex discrimination (in particular, sex-based harassment) that involves an employee complainant and an employee respondent, the Title IX Coordinator may want to consult with the Board’s Legal Counsel concerning which law – it may be both – the District will need to comply with when investigating the allegations.]**

Reports and Formal Complaints of “Sexual Harassment” (as defined in Policy 2266) involving conduct alleged to have occurred prior to August 1, 2024, are subject to the grievance procedures outlined in Policy 2266.

in accordance with this policy ~~X~~ and AG 2264 **[END OF OPTION]**, or Policy 2266 ~~X~~ and AG 2266 **[END OF OPTION]**, if the Report or Formal Complaint involves “Sexual Harassment” alleged to have occurred prior to August 1, 2024.

If the conduct giving rise to a report or complaint of sex discrimination is alleged to have occurred both before **and** after August 1, 2024 (i.e., is part of a pattern of sex discrimination), the Title IX Coordinator shall determine ~~X~~ after consulting with the Board’s Legal Counsel, **[END OF OPTION]** whether to use the grievance procedures contained in this policy or the grievance procedures contained in Policy 2266. The Title IX Coordinator will notify, in writing, the parties of the determination and the rationale for it. Under no circumstances, however, will a party be denied the due process to which the party is entitled based on the U.S. Department of Education-issued regulations in effect at the time the conduct alleged to violate Title IX (Statute) took place. ~~X~~ Nothing herein shall prevent the Title IX Coordinator from using a hybrid grievance procedure that contains aspects of the grievance procedures contained in both this policy and Policy 2266, so that the parties receive all of the due process to which they are entitled. **[END OF OPTION]**

### **Complaints:**

The following people may make a complaint of sex discrimination – i.e., request that the District investigate and make a determination about whether sex discrimination as prohibited under Title IX occurred:

A. a “complainant,” which includes:

1. a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
2. a person other than a student or employee of the District who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in the District’s education program or activity;

B. a parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant;

C. the District’s Title IX Coordinator.

A person is entitled to make a complaint of sex-based harassment only if they themselves are alleged to have been subjected to the sex-based harassment, if they have a legal right to act on behalf of such person who was subjected to the sex-based harassment, or if the Title IX Coordinator initiates a complaint consistent with the requirements of the 2024 Title IX regulations ~~X~~, which are detailed in AG 2264 **[END OF OPTION]**.

**[DRAFTING NOTE: This paragraph emphasizes that in order for a person to file a complaint of sex-based harassment, the person has to have been subjected to the alleged misconduct directly, or be a person who**

consistent with the prior paragraph where the complainant is identified as a student or employee who was “subjected to conduct that could constitute sex discrimination under Title IX.” The following paragraph, on the other hand, expands who can file a complaint – when the alleged sex discrimination does not involve sex-based harassment – to persons who are aware of the alleged sex discrimination, even if that person was not directly affected by or subject to the alleged sex discrimination.]

With respect to complaints of sex discrimination other than sex-based harassment, in addition to the people listed above, the following persons have a right to make a complaint:

A. any student or employee of the District; or

B. any person other than a student or employee who was participating or attempting to participate in the District’s education program or activity at the time of the alleged sex discrimination.

The District may consolidate complaints of sex discrimination against more than one (1) respondent, or by more than one (1) complainant against one (1) or more respondents, or by one (1) party against another party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one (1) complainant or more than one (1) respondent is involved, references below to a party, complainant, or respondent include the plural, as applicable.

#### **Basic Requirements:**

The District will treat complainants and respondents equitably.

All persons involved with implementing the grievance procedures and any other aspects of Policy 2264, including the Title IX Coordinator, the investigator, the decisionmaker, [and] the appeal decisionmaker, ~~and~~ and the facilitator of the informal resolution process, **[END OF OPTION]** shall be free from any conflicts of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

~~The~~ Title IX Coordinator may serve simultaneously as an investigator and/or a decisionmaker. **[END OF OPTION] [DRAFTING NOTE: Neola recommends the Board select this OPTION; note it is “may” (i.e., optional) so the Title IX Coordinator can decide when to serve in both roles and when to designate one or more persons to perform those responsibilities in a given case.]**

If the Title IX Coordinator does not intend to serve as the investigator and decisionmaker in a specific case, the Title IX Coordinator shall designate one (1) or more administrators who are appropriately trained to serve in the role. Likewise, the Title IX Coordinator shall appoint an appeal decisionmaker when an appeal is filed.

In circumstances when the Title IX Coordinator and trained administrators do not have time/capacity to serve, or are prevented due to a conflict of interest, bias, or partiality, or other reasons that impair the Title IX Coordinator and other trained administrators from serving as an investigator and/or decisionmaker in a specific case, the Title IX Coordinator shall ~~in consultation with~~ and approval of **[END OF OPTION]** the Superintendent or ~~Board~~

as the investigator and/or decisionmaker. Similarly, the Title IX Coordinator has authority ~~X~~ in consultation with ( ) and approval of [END OF OPTION] the Superintendent or ( ) Board ~~X~~ Board President (as appropriate), [END OF OPTION] to secure an independent third party to serve as the appeal decisionmaker.

The District presumes that the respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its grievance procedures.

Under ordinary circumstances, the Board expects to complete the major stages of the grievance procedures within the timeframe specified below:

**A. Evaluation** – The Title IX Coordinator will determine whether to dismiss a complaint or investigate it within 10 [INSERT # OF DAYS] days of receiving the complaint. [DRAFTING NOTE: Neola recommends that the evaluation stage be completed within ten (10) days of the Title IX Coordinator receiving notice of the complaint.]

**B. Investigation** – The Title IX Coordinator, or designated investigator, shall ordinarily complete the investigation (i.e., collect relevant evidence that is not otherwise impermissible) within 30 [INSERT # OF DAYS] days of the Title IX Coordinator determining the charges require investigation. If, however, the Title IX Coordinator, or designated investigator, determines that the investigation is going to take longer, the Title IX Coordinator will so notify the parties ~~X~~ and the Superintendent [END OF OPTION] and will thereafter keep the parties ~~X~~ and the Superintendent [END OF OPTION] informed of the status of the matter on a Regular [INSERT TIME PERIOD – E.G., BIWEEKLY OR REGULAR] basis. [DRAFTING NOTE: Recognizing ED wants investigations to be completed in a prompt and equitable manner, and therefore provided elementary and secondary schools with greater flexibility when it comes to completing an investigation than is afforded to them under the 2020 Title IX regulations, Neola recommends a school district typically complete Investigations within thirty (30) days.] Once the Title IX Coordinator, or designated investigator, provides the parties with “access” to either the relevant and not otherwise impermissible evidence and/or an accurate description of the evidence, the parties will have 5 [INSERT # OF DAYS] days to respond to the evidence or the description of the evidence unless the Title IX Coordinator approves a party’s written request for more time. If the Title IX Coordinator approves such a request, both parties will be afforded an equal amount of time to submit their response. [DRAFTING NOTE: Neola recommends the Board limits the amount of time the parties have to review the evidence/description of the evidence to five (5) days so the matter can proceed in a timely manner to Determination.]

**C. Determination** – After the parties either submit responses to the evidence/description of the evidence, or the deadline for submitting such responses expires, the Title IX Coordinator, or designated decisionmaker, will consider the relevant and otherwise not impermissible evidence and issue a determination as to whether sex discrimination occurred. The determination shall be issued within 10 [INSERT # OF DAYS] days of the deadline for the parties to submit responses to the evidence/description of the evidence ~~X~~ unless the ~~X~~ Superintendent ~~X~~ Title IX Coordinator [END OF OPTION] approves an extension of time, which must be communicated in writing to the parties [END OF OPTION]. [DRAFTING NOTE: Neola recommends the

their responses to the evidence/description of the evidence. If the decisionmaker is someone other than the Title IX Coordinator, upon written request from the decisionmaker, the Title IX Coordinator should be permitted to approve a reasonable extension of time for the Determination to be issued. If the Title IX Coordinator is the decisionmaker: upon written request from the Title IX Coordinator, the Superintendent should be permitted to approve a reasonable extension of time for the Determination to be issued. In either situation, the administrator granting the extension should communicate to the parties the new deadline along with a rationale for the extension.]

D. **Appeal** – A party filing an appeal of the Title IX Coordinator’s decision to dismiss a complaint~~X~~, or the Determination, [END OF OPTION] must do so within 10 [INSERT # OF DAYS] days of receiving the Dismissal~~X~~ or Determination [END OF OPTION]. [DRAFTING NOTE: Neola recommends the Board allow limited appeals based on the Determination. See DRAFTING NOTE below in the appeal section, which further discusses when a board “has” to allow appeals, as opposed to under which circumstances a board could decide not to allow appeals on the Determination.”]

The Title IX Coordinator, or the Superintendent if the Title IX Coordinator is the individual requesting an extension, may approve reasonable extensions of the preceding timeframes on a case-by-case basis for good cause with notice to the parties.

The District will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedures. These steps will not restrict the ability of the parties to obtain and present evidence, including by speaking to witnesses; consulting with their family members, confidential resources, or advisors; or otherwise preparing for or participating in the grievance procedures. The parties shall not engage in retaliation, including against witnesses.

The Title IX Coordinator, or designated decisionmaker, shall objectively evaluate all evidence that is relevant and not otherwise impermissible — including both inculpatory and exculpatory evidence. Credibility determinations shall not be based on a person’s status as a complainant, respondent, or witness.

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by the District to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

A. evidence that is protected under a privilege recognized by Federal or State law ( ) or evidence provided to a confidential employee [END OF OPTION], unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality; [DRAFTING NOTE: The Board should only select the preceding OPTION if it has designated confidential employee(s).]

B. a party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness unless the District obtains that party’s or witness’s voluntary, written consent for use in its grievance

C. evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent shall not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

### **Notice of Allegations:**

Upon initiation of the Board's grievance procedures, the Title IX Coordinator shall notify the parties of the following:

A. the Board's Title IX grievance procedures ~~and~~ and informal resolution process **[END OF OPTIONS];**  
**[DRAFTING NOTE: Neola encourages the Board to include an informal resolution process.]**

B. sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);

C. retaliation is prohibited; and

D. the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence. If the Title IX Coordinator, or designated investigator, provides the parties with a description of the evidence, any party may request access to the relevant and not otherwise impermissible evidence. The Title IX Coordinator will provide the requesting party with the relevant and not otherwise impermissible evidence in a timely manner.

Should the Title IX Coordinator decide, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the Title IX Coordinator will provide a supplemental written notice describing the additional allegations to be investigated.

### **Dismissal of a Complaint:**

The Title IX Coordinator may dismiss a complaint of sex discrimination if:

A. the District is unable to identify the respondent after taking reasonable steps to do so;

B. the respondent is not participating in the District's education program or activity and is not employed by the Board;

declines to initiate a complaint, and the District determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX even if proven; or

D. the District determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX. Before dismissing the complaint, the Title IX Coordinator will make reasonable efforts to clarify the allegations with the complainant.

**[DRAFTING NOTE: While the 2024 Title IX regulations do not require notification of the dismissal to be provided in writing, Neola recommends that the Title IX Coordinator document the dismissal in writing – i.e., Neola recommends the board selects Option 1.]**

**[SELECT OPTION 1 OR OPTION 2]**

**[OPTION 1]**

Upon dismissal, the Title IX Coordinator will promptly notify, in writing, the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will also simultaneously notify, in writing, the respondent of the dismissal and the basis for the dismissal.

**[END OF OPTION 1]**

**[OR]**

**[OPTION 2]**

Upon dismissal, the Title IX Coordinator will promptly notify the complainant of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will also notify the respondent of the dismissal and the basis for the dismissal promptly following notification to the complainant, or simultaneously if notification is in writing.

**[END OF OPTION 2]**

The Title IX Coordinator will notify the complainant that a dismissal may be appealed and will provide the complainant with an opportunity to appeal the dismissal of a complaint. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will also notify the respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

A. procedural irregularity that would change the outcome;

B. new evidence that would change the outcome and that was not reasonably available when the dismissal

C. the Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If the dismissal is appealed, the Title IX Coordinator will:

A. notify the parties of any appeal, including notice of the allegations, if notice was not previously provided to the respondent;

B. implement appeal procedures equally for the parties;

C. ensure that the appeal decisionmaker did not take part in an investigation of the allegations or dismissal of the complaint;

D. ensure that the appeal decisionmaker has been trained consistent with the 2024 Title IX regulations ~~X~~  
See AG 2264 [END OF OPTION];

E. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and

F. notify the parties of the result of the appeal and the rationale for the result.

When a complaint is dismissed, the Title IX Coordinator will, at a minimum:

A. offer supportive measures to the complainant as appropriate;

B. if the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and

C. take other prompt and effective steps, as appropriate, to ensure that sex discrimination does not continue or recur within the District's education program or activity.

**[DRAFTING NOTE: Neola encourages the Board to select the following option so the Title IX Coordinator can choose in appropriate circumstances to offer the parties the opportunity to participate in an informal resolution process, or to honor the parties' request to use an informal resolution process, to end the sex discrimination, prevent its recurrence, and remedy its effects.]**

~~X~~ [OPTIONAL LANGUAGE: INFORMAL RESOLUTION PROCESS]

**Informal Resolution Process:**

In lieu of resolving a complaint through the Board's Title IX grievance procedures, the parties may instead elect to participate in an informal resolution process. The District will not offer an informal resolution to resolve a complaint that includes allegations that an employee engaged in sex-based harassment of an elementary school or secondary school student, or when such a process would conflict with Federal, State, or local law.

**[END OF OPTIONAL LANGUAGE: INFORMAL RESOLUTION PROCESS]**

**Adding Allegations and/or Consolidating Complaints:**

If, in the course of an investigation, the District decides to investigate additional allegations of sex discrimination by the respondent toward the complainant that are not included in the original Notice of Allegations provided or that are included in a complaint that is consolidated, the Title IX Coordinator will notify the parties of the additional allegations.

**Investigation:**

The District will provide for an adequate, reliable, and impartial investigation of complaints.

The burden is on the District — not on the parties — to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

The Title IX Coordinator, or the designated investigator and/or decisionmaker, will provide an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible.

The Title IX Coordinator, or the designated investigator and/or decisionmaker, will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

The District will provide each party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

A. the District will provide the parties with an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence;

If the Title IX Coordinator, or designated investigator, provides a description of the evidence, the Title IX Coordinator, or designated investigator, will provide the parties with an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.

B. the District will provide a reasonable opportunity to the parties to respond to the evidence or the accurate description of the evidence; and

C. the District will take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized.

**Questioning the Parties and Witnesses:**

**[DRAFTING NOTE: If the investigator and decisionmaker are two (2) separate persons, the Board may select OPTION 1 or OPTION 2, or refrain from addressing this topic in the policy.]**

**[OPTION 1]**

As part of the Investigation, the investigator  may ( ) is encouraged to **[END OF OPTION]** include in the investigator's notes/file the investigator's opinion about each party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one (1) or more allegations of sex discrimination.

**[END OF OPTION 1]**

**[OPTION 2]**

The investigator should refrain from including in the investigator's notes/file the investigator's opinion about each party's or witness's credibility since the assessment of credibility is solely the responsibility of the decisionmaker.

**[END OF OPTION 2]**

**[END OF OPTIONS]**

If the investigator and decisionmaker are two (2) separate individuals, the decisionmaker will have an opportunity to question the parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one (1) or more allegations of sex discrimination.

If the investigator and the decisionmaker are the same person, the decisionmaker will have an opportunity to question the parties and witnesses in individual meetings as part of the investigation.

**[DRAFTING NOTE: The Board may select either, both, or neither of the following options. The Board should consult with its Legal Counsel to assess whether to offer any of these options.]**

Before concluding the Investigation, the investigator ( ) will ( ) may **[END OF OPTION]** allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and

**[DRAFTING NOTE: SELECT OPTION 1, OPTION 2, OR OPTION 3. Neola does not have an opinion as to whether the Board selects OPTION 1 or OPTION 2 but has reservations about OPTION 3. The Board should**

~~X~~ [OPTION 1]

the investigator will review any questions submitted by the parties and ask those questions of the specific party or witness that the investigator determines – in the investigator’s sole discretion – may lead to probative evidence that will assist the decisionmaker in determining whether sex discrimination occurred. The investigator’s decision to ask or not ask a specific question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

[END OF OPTION 1]

[OR]

( ) [OPTION 2]

the investigator will ask the relevant and not otherwise impermissible questions of the specific party or witness during one (1) or more individual meetings, including follow-up meetings, with the party or witness.

[END OF OPTION 2]

[OR]

( ) [OPTION 3]

the investigator will ask the relevant questions that are not otherwise impermissible, provide each party with the answers, and allow for additional, limited follow-up relevant questions from each party. ( ) The investigator will explain to the party proposing the question(s) any decision to exclude a question as not relevant.

[END OF OPTION 3]

[END OF OPTIONS]

~~X~~ After the parties have an opportunity to review the relevant and not otherwise impermissible evidence, or an accurate description of this evidence, the decisionmaker ( ) will ~~may~~ may

**[DRAFTING NOTE: Select OPTION 1, OPTION 2, OPTION 3, OR OPTION 4. While Neola does not have an opinion as to whether the Board selects OPTION 1 or OPTION 2, it does not recommend the Board select OPTION 3 or OPTION 4, without consulting with its Legal Counsel.]**

~~X~~ [OPTION 1]

allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness

and ask those questions of the specific party or witness that the decisionmaker determines – in the decisionmaker’s sole discretion – may lead to probative evidence that will assist the decisionmaker in determining whether sex discrimination occurred. The decisionmaker’s decision to ask or not ask a specific question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

**[END OF OPTION 1]**

**[OR]**

**( ) [OPTION 2]**

allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and the decisionmaker will ask the relevant and not otherwise impermissible questions of the specific party or witness during one (1) or more individual meetings, including follow-up meetings, with the party or witness.

**[END OF OPTION 2]**

**[OR]**

**( ) [OPTION 3]**

allow each party to propose/submit in writing relevant questions that the party wants asked of any party or witness and the decisionmaker will ask the relevant questions that are not otherwise impermissible, provide each party with the answers, and allow for additional, limited follow-up relevant questions from each party. ( ) The decisionmaker will explain to the party proposing the question(s) any decision to exclude a question as not relevant. **[END OF OPTION]**

**[END OF OPTION 3]**

**[OR]**

**( ) [OPTION 4]**

provide each party with an audio or audiovisual recording or transcript of the investigator’s interviews of the parties and witnesses with enough time for the parties to have a reasonable opportunity to propose/submit in writing follow-up questions, and the decisionmaker

( ) will review any follow-up questions submitted and ask those relevant and not otherwise impermissible follow-up questions of the specific party or witness that the decisionmaker determines – in the decisionmaker’s sole discretion – may lead to probative evidence that will assist the decisionmaker in determining whether sex discrimination occurred. The decisionmaker’s decision to ask or not ask a specific follow-up question proposed by a party is not subject to review. Any questions asked must be relevant and not otherwise impermissible.

( ) will ask the relevant and not otherwise impermissible follow-up questions of the specific party or witness during one (1) or more individual meetings.

[END OF OPTION 4]

[END OF OPTIONS]

#### **Determination of Whether Sex Discrimination Occurred:**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, the Title IX Coordinator or designated decisionmaker will:

A. Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. **[DRAFTING NOTE: Pursuant to the 2024 Title IX regulations, the Board may only use the "clear and convincing" evidence standard of proof if it uses that standard of proof in all other comparable proceedings (i.e., when assessing the merits of allegations presented pursuant to complaints filed under the Board's general nondiscrimination and antiharassment policies – see Policies (Insert numbers of nondiscrimination, antiharassment, and Section 504/ADA – e.g., 2260, 2260.01, 5517, and the Employee policies that are going to be consolidated under new numbers)). Neola expects it will be a rare situation when a board chooses to use a clear and convincing standard of proof. If the Board is unsure whether it meets the criteria to be able to use the "clear and convincing standard," it should consult with its Legal Counsel.]** This standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker, applying the applicable standard, is not persuaded by the relevant and not otherwise impermissible evidence that sex discrimination occurred, regardless of the quantity of the evidence, the decisionmaker will not determine that sex discrimination occurred.

B. Notify the parties, in writing, of the determination whether sex discrimination occurred under Title IX including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal.

C. Not impose discipline on a respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedures that the respondent engaged in prohibited sex discrimination.

D. If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:

1. coordinate the provision and implementation of remedies to a complainant and other people the District identifies as having had equal access to the District's education program or activity limited or denied by sex discrimination;

2. coordinate the imposition of any disciplinary sanctions on a respondent, including notification to the

3. take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the District's education program or activity.

E. Comply with the grievance procedures before the imposition of any disciplinary sanctions against a respondent; and

F. Not discipline a party, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred.

**[DRAFTING NOTE: As addressed above, the Board must offer an appeal if the Title IX Coordinator dismisses a complaint in the Evaluation stage (i.e., prior to commencing an investigation). While a board may elect not to offer an appeal from the determination of whether sex discrimination occurred, Neola recommends the Board include an appeal process. If the Board includes an appeal process, the appeal process must be, at a minimum, the same appeal process the Board offers in all other comparable proceedings, including proceedings relating to other discrimination complaints. Neola intends to update its nondiscrimination, antiharassment, and Section 504/ADA policies to provide for appeal procedures that are comparable to that which is included in the following option.]**

~~X~~ **[OPTIONAL LANGUAGE]**

#### **Appeal of Determinations:**

If a party disagrees with the decisionmaker's determination as to whether sex discrimination occurred, the party may file an appeal. Appeals must be submitted, in writing, within 5 (INSERT # OF DAYS) days of the appealing party's receipt of the Determination.

A party may appeal a Determination on the following bases:

A. procedural irregularity that would change the outcome;

B. new evidence that would change the outcome and that was not reasonably available when the Determination was made; and

C. the Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

**[DRAFTING NOTE: The Board may insert additional grounds on which an appeal may be filed.]**

( ) the recommended remedies (including disciplinary sanctions/consequences) are unreasonable in light of the findings of fact (i.e., the nature and severity of the sex discrimination).

E.

( ) [OTHER] \_\_\_\_\_.

The complainant may not challenge the ultimate disciplinary sanction/consequence that is imposed. **[END OF OPTION]**

If a party appeals the decisionmaker's determination, the Title IX Coordinator will:

A. notify the parties of any appeal;

B. implement appeal procedures equally for the parties;

C. designate an appeal decisionmaker, who will be a person who did not conduct the Investigation or render the Determination, and is appropriately trained~~X~~, as set forth in AG 2264 **[END OF OPTION]**;

1. ~~X~~ the Title IX Coordinator will designate the Superintendent to be the appeal decisionmaker, provided the Superintendent has not been otherwise involved in the grievance procedures (i.e., did not serve as the investigator, decisionmaker, or informal resolution process facilitator) and is appropriately trained; **[END OF OPTION]**

2. ( ) in designating an appeal decisionmaker, the Title IX Coordinator will work with the Board to identify and appoint an independent third party to serve as the appeal decisionmaker – this individual shall be considered to be the Board's designee and will submit the appeal decision to the Board who will promptly adopt it as written and forward it to the Title IX Coordinator who will send it simultaneously to the parties; **[END OF OPTION]**

**[DRAFTING NOTE: The preceding options are offered for those districts where the Superintendent or Board typically serves as the appeal decisionmaker; with respect to Title IX, it is Neola's opinion that it is not feasible for the Board to serve as the decisionmaker for a number of reasons, not the least of which is the mandatory training requirements.]**

3. provide the parties a reasonable and equal opportunity to make a statement in support of, or challenging, the decisionmaker's determination;

4. provide the appeal decisionmaker with the relevant and not otherwise impermissible evidence along with the accurate description of the relevant evidence (if one was prepared and shared with the parties), any responses the parties submitted to the investigator related to the evidence and/or the description of the evidence (if one was prepared), and the decisionmaker's determination; and

5. notify the parties, in writing, of the result of the appeal and the appeal decisionmaker's rationale for the outcome.

**[END OF OPTIONAL LANGUAGE]**

**Parties Provided a Reasonable and Equal Opportunity to Make a Statement in Support of, or Challenging, the Determination**

**[DRAFTING NOTE: The Board must select OPTION 1, OPTION 2, or OPTION 3]**

**[OPTION 1]**

When a party files an appeal, the party must set forth the reason for the appeal, and the other party will have \_\_\_\_\_ **[INSERT # OF DAYS]** days to provide the appeal decisionmaker with a statement in support of their position. Once the decisionmaker receives the statement (or the deadline for filing such a statement expires), the appeal decisionmaker will have \_\_\_\_\_ **[INSERT # OF DAYS]** days to issue a decision on the appeal.

**[END OF OPTION 1]**

**[OR]**

**[OPTION 2]**

After a party files an appeal, both parties will have 5 **[INSERT # OF DAYS]** days to submit to the appeal decisionmaker a statement in support of their position that they want the appeal decisionmaker to consider in rendering a decision. Once the decisionmaker receives each parties' statement, or the timeline for submitting such statements expires, the appeal decisionmaker will have 10 **[INSERT # OF DAYS]** days to issue a decision on the appeal.

**[END OF OPTION 2]**

**[OR]**

**[OPTION 3]**

When a party files an appeal, the appeal decisionmaker shall establish a timeline for each party to submit a statement in support of their position that they want the appeal decisionmaker to consider in rendering a decision. Once the decisionmaker receives the parties' statements, or the timeline established by the appeal decisionmaker for submitting such statements expires, the appeal decisionmaker will have \_\_\_\_\_ **[INSERT # OF DAYS]** days to issue a decision on the appeal.

**[END OF OPTION 3]**

**[END OF OPTIONS]**

**[DRAFTING NOTE: With respect to the timelines listed in the preceding options, Neola suggests any appeals should be filed within five (5) days of the parties receiving written notice of the Dismissal or Determination. Neola further suggests that the timeline for submitting a statement in OPTION 1 be equivalent to the timeframe in which an appeal has to be filed, and the timeline for submitting a statement in OPTION 2 be five (5) days. Finally, Neola suggests the appeal decisionmaker have ten (10) days from receipt of the statements to issue a decision.]**

No new or additional evidence may be submitted during the appeal process.

The appeal decisionmaker shall determine the outcome of the appeal based on the appeal decisionmaker's independent review of the record (i.e., the relevant and not otherwise impermissible evidence, the feedback the parties provided to the investigator and/or decisionmaker based on their review of the relevant evidence and any description of the relevant evidence that was prepared and shared with the parties, and the decisionmaker's written determination) and the appeal decisionmaker's application of the law and Board policy to the facts in the record. The appeal decisionmaker must give due deference and due weight to the decisionmaker's factual findings and credibility determinations and should not overturn them unless non-testimonial extrinsic evidence in the record justifies a contrary conclusion or unless the record read in its entirety compels a contrary conclusion. Generally, the appeal decisionmaker is expected to uphold the decisionmaker's determination unless the appeal decisionmaker determines the decisionmaker's determination is unlawful, unreasonable, or against the manifest weight of the evidence. Every reasonable presumption must be made in favor of the decisionmaker's determination.

The appeal decisionmaker shall

**[DRAFTING NOTE: The Board must select either OPTION 1 or OPTION 2 unless the Board appointed an independent third party to serve as the Board's appeal decisionmaker, in which case the Board should select OPTION 3.]**

~~X~~ [OPTION 1]

simultaneously notify the parties, in writing, of the result of the appeal and the rationale for the outcome.

**[END OF OPTION 1]**

[OR]

( ) [OPTION 2]

notify the Title IX Coordinator, in writing, of the result of the appeal and the rationale for the outcome. The Title IX Coordinator will then simultaneously notify the parties, in writing, of the result of the appeal and the appeal

[END OF OPTION 2]

[OR]

( ) [OPTION 3]

submit the appeal decision to the Board who will promptly adopt it as written and forward it to the Title IX Coordinator who will send it simultaneously to the parties. The appeal decision shall set forth the result of the appeal and the appeal decisionmaker's rationale for the outcome.

[END OF OPTION 3]

[END OF OPTIONS]

**Supportive Measures:**

The District will offer and coordinate supportive measures as appropriate for the complainant and/or respondent to restore or preserve that person's access to the District's education program or activity or provide support during the Board's grievance procedures or during the informal resolution process. For allegations of sex discrimination other than sex-based harassment or retaliation, the District's provision of support measures does not require the District, Board employees, or any other person authorized to provide aid, benefit, or service on the District's behalf to alter the alleged discriminatory conduct for the purpose of providing a supportive measure.

The Title IX Coordinator shall determine appropriate supportive measures on a case-by-case basis. Supportive measures may vary depending on what the Title IX Coordinator deems to be reasonably available. Supportive measures may include, but are not limited to: counseling; extensions of deadlines or other course-related adjustments; school/campus escort services; increased security and monitoring of certain areas of the campus (including school buildings and facilities); restrictions on contact between the parties; leaves of absence; changes in class, work, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; training and education programs related to sex-based harassment; ~~X~~ referral to Employee Assistance Program [END OF OPTION]; and other similar measures.

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties and/or the District's educational environment, or to provide support during the Board's grievance procedures or the informal resolution process.

The District will not impose such measures for punitive or disciplinary reasons.

The Title IX Coordinator may, as appropriate, modify or terminate supportive measures at the conclusion of the grievance procedures, or at the conclusion of the informal resolution process, or the District may continue them

The District will provide a complainant or respondent with a timely opportunity to seek, from an appropriate and impartial employee, modification or reversal of the Title IX Coordinator's decision to provide, deny, modify, or terminate supportive measures applicable to them. The impartial employee must be someone other than the employee who made the challenged decision and must have authority to modify or reverse the decision if the impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the definition of supportive measures as set forth in the Key Definitions section of this policy.

A party may seek additional modification or termination of a supportive measure applicable to them if circumstances change materially.

The District will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one party of supportive measures provided to another party, unless necessary to provide the supportive measure or restore or preserve a party's access to the District's education program or activity, or as otherwise permitted pursuant to the 2024 Title IX regulations.

If the complainant or respondent is an elementary or secondary student with a disability, the Title IX Coordinator shall consult with one (1) or more members, as appropriate, of the student's Individualized Education Program (IEP) team, if any, or one (1) or more members, as appropriate, of the student's Section 504 team, if any, to determine how to comply with the requirements of the IDEA and/or Section 504, in the implementation of supportive measures.

The Superintendent may place an employee respondent on administrative leave from employment responsibilities during the pendency of the Board's grievance procedures.

### **Disciplinary Sanctions and Remedies:**

Following a determination that sex-based harassment occurred, the District may impose disciplinary sanctions, which may include:

#### **For Students**

##### **A. Informal Discipline**

1. ~~X~~ writing assignments;
2. ~~X~~ changing of seating or location;
3. ~~X~~ <sup>before</sup> pre-school, ~~X~~ lunchtime, ~~X~~ after-school **[END OF OPTIONS]** detention;
4. ~~X~~ in-school discipline;

~~X~~ B. Formal Discipline

- ~~X~~ 1. suspension of bus riding/transportation privileges;
- ~~X~~ 2. removal from co-curricular and/or extracurricular activity(ies), including athletics;
- ~~X~~ 3. emergency removal;
- ~~X~~ 4. suspension for up to ten (10) school days;
- ~~X~~ 5. expulsion for up to eighty (80) school days or the number of school days remaining in a semester, whichever is greater;
- ~~X~~ 6. expulsion for up to one (1) year;
- ~~X~~ 7. permanent exclusion; and
- ~~X~~ 8. any other sanction authorized by the Student Code of Conduct.

**For Employees**

- A. ~~X~~ oral or written warning;
- B. ~~X~~ written reprimands;
- C. ~~X~~ required counseling;
- D. ~~X~~ required training or education;
- E. ~~X~~ demotion;
- F. ~~X~~ suspension with pay;
- G. ~~X~~ suspension without pay;
- H. ~~X~~ termination and any other sanction authorized by any applicable Board Policy, Employee/Administrator Handbook, and/or collective bargaining agreement.

The District may also provide remedies which may include disciplinary sanctions/consequences. The Title IX Coordinator will notify the Superintendent of the recommended remedies, so an authorized administrator can

procedures, whether statutory or contractual.

With respect to student respondents, the Title IX Coordinator will notify the Superintendent of the recommended remedies (including disciplinary sanctions/consequences), so an authorized administrator can consider the recommendation(s) and implement an appropriate remedy(ies) in compliance with Policy 5600 – Student Discipline, Policy 5605 – Suspension/Expulsion of Students with Disabilities, Policy 5610 – Emergency Removal, Suspension, Expulsion, and Permanent Exclusion of Students, Policy 5610.02 – In-School Discipline, and Policy 5611 – Due Process Rights. Discipline of a student respondent must comply with the applicable provisions of the Individuals with Disabilities Education Improvement Act (IDEA) and/or Section 504 of the Rehabilitation Act of 1972 (“Section 504”), and their respective implementing regulations.

**[DRAFTING NOTE: The Board should review applicable policy(ies)/administrative guidelines/employee handbooks to determine whether changes are needed to establish timelines associated with imposition of discipline as result of possible delays caused by the Board’s obligation to follow the grievance procedures; likewise, the Board may need to discuss with union representatives how implementation of the grievance procedures may impact any disciplinary provisions contained in applicable collective bargaining (e.g., timelines, permitted attendees at investigative interviews, etc.).]**

Discipline of an employee will be implemented in accordance with Federal and State law, Board policy, and applicable provisions of any relevant collective bargaining agreement.

## **Retaliation**

Neither the Board 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 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 initiating a disciplinary process against a person for a code of conduct violation that does not involve sex discrimination but arises out of the same facts and circumstances as a complaint or information reported about possible sex discrimination, for the purpose of interfering with the exercise of any right or privilege secured by Title IX constitutes retaliation. Peer retaliation is also prohibited. Retaliation against a person for making a complaint or participating in an investigation is a serious violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Complaints alleging retaliation may be filed according to the grievance procedures set forth above. The District shall initiate its grievance procedures upon receiving any complaint alleging retaliation.

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

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the

determination that sex discrimination occurred, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **Confidentiality**

The District will keep confidential the identity of any individual who has made a complaint of sex discrimination, 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 U.S.C. 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the District's obligation to maintain confidentiality shall not impair or otherwise affect the complainant's and respondent's receipt of the information to which they are entitled related to the investigation and determination of whether sex discrimination occurred).

## **Application of the First Amendment**

The Board will construe and apply this policy consistent with the First Amendment to the U.S. Constitution ~~✗~~ and the principles of academic freedom as set forth in the applicable collective bargaining agreement **[END OF OPTION]**. In no case will a respondent be found to have committed sex discrimination based on expressive conduct that is protected by the First Amendment ~~✗~~ and/or the principles of academic freedom specified in the Board's collective bargaining agreement with its teachers **[END OF OPTION]**.

## **Training**

All employees, investigators, decisionmakers, facilitators of informal resolution process, the Title IX Coordinator(s) and designees, and other persons who are responsible for implementing the Board's grievance procedures or have the authority to modify or terminate supportive measures shall receive training related to their duties under Title IX and this Policy. The training shall be provided promptly upon hiring or change of position that alters their duties under Title IX or this policy, and annually thereafter. The training shall not rely on sex stereotypes.

Training materials must be made available for inspection upon request by members of the public.

## **Recordkeeping**

The District shall maintain for a period of seven (7) calendar years the following records:

- A. for each complaint of sex discrimination, records documenting the informal resolution process and/or the grievance procedures followed and the resulting outcome;
- B. for each notification that the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX, including notifications under 34 C.F.R. § 106.44(c)(1) or (2),

C. all materials used to provide the required training.

### **Outside Appointments, Dual Appointments, and Delegations**

The Board retains discretion to appoint suitably qualified persons who are not Board employees to fulfill any function of the Board under this policy including, but not limited to, Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, or facilitator of the informal resolution process.

The Board also retains discretion to appoint two (2) or more persons to jointly fulfill the role of Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, and facilitator of the informal resolution process.

The Superintendent may delegate functions assigned to a specific Board employee under this policy including, but not limited to, the functions assigned to the Title IX Coordinator, investigator, decisionmaker, appeal decisionmaker, and facilitator of the informal resolution process to any suitably qualified individual and such delegation may be rescinded by the Superintendent at any time.

**[DRAFTING NOTE: The following option expressly sets forth authority that the Board has regardless of whether it is included in this policy, but is offered for those boards of education that may want to affirmatively communicate to/address these issues for readers of this policy.]**

### **~~X~~ Discretion in Application**

The Board retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the Board's interpretation or application differs from the interpretation of any specific complainant and/or respondent.

Despite the Board's reasonable efforts to anticipate all eventualities in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the Board retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy are not contractual in nature, whether in their own right or as part of any other express or implied contract. Accordingly, the Board retains discretion to revise this policy at any time, and for any reason. The Board may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

**[END OF OPTION]**

© Neola 2024

Legal References

20 U.S.C. 1232g

20 U.S.C. 1400 et seq., The Individuals with Disabilities Education Improvement Act of 2004 (IDEIA)

20 U.S.C. 1681 et seq., Title IX of the Education Amendments of 1972 (Title IX)

29 C.F.R. Part 1636

34 C.F.R. Part 99

34 C.F.R. Part 106

34 U.S.C. 12291(a)(8)

34 U.S.C. 12291(a)(10)

34 U.S.C. 12291(a)(30)

42 U.S.C. 1983

42 U.S.C. 2000c et seq., Title IV of the Civil Rights Act of 1964

42 U.S.C. 2000d et seq.

42 U.S.C. 2000e et seq.

42 U.S.C. 2000gg

OCR's Revised Sexual Harassment Guidance (2001)



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - September 2024 MI

Title: Vol. 39, No. 1 - September 2024 Revised EMPLOYMENT OF PERSONNEL FOR CO-CURRICULAR/EXTRA-CURRICULAR ACTIVITIES

Number: po3120.08

Revised Policy - Vol. 39, No. 1

3120.08 - **EMPLOYMENT OF PERSONNEL FOR CO-CURRICULAR/EXTRA-CURRICULAR ACTIVITIES**

The Board of Education may find it necessary to employ, on a part-time basis, coaches or activity sponsors who are not members of the professional staff. Such part-time employees:

A. ~~X~~ may be members of the District's support staff, or

B. ~~X~~ may be individuals from the community or nearby areas.

The Board authorizes the Superintendent ( ) to recommend candidates for employment by the Board ~~X~~ to act for the Board in employing such part-time staff **[END OF OPTION]**.

The Superintendent shall establish administrative guidelines to ensure that each person employed as a coach or activity sponsor has the appropriate qualifications, has been properly interviewed, and signs an employment contract which includes the conditions of employment, compensation arrangements, and contract termination procedures.

Appropriate qualifications shall, at a minimum, include any requirements established by the State, and may also include any program-specific training or certification as determined by the Superintendent. Starting with the 2025-2026 school year, an individual hired to serve at the high school as an athletic coach shall have a valid certification in cardiopulmonary resuscitation and use of an automated external defibrillator issued by the American Red Cross, American Heart Association, or a comparable organization or institution approved by the Michigan Department of Education., ~~such as cardio-pulmonary resuscitation and/or first aid.~~



Book: MI Local Policies for Update  
Section: Vol. 39, No. 1 - September 2024 MI  
Title: Vol. 39, No. 1 - September 2024 Revised OPIOID ANTAGONISTS  
Number: po5330.02

Revised Policy - Vol. 39, No. 1

**5330.02 - OPIOID ANTAGONISTS**

The Board has determined that it is in the best interests of its students and employees to have opioid antagonists available to be administered, if necessary, by appropriately trained personnel. Therefore, the Board adopts this policy to govern the handling and administration of opioid antagonists consistent with the following processes, procedures, and limitations.

The District shall purchase opioid antagonists and distribute the opioid antagonists to an employee or agent of the District who has been trained in the administration of that opioid antagonist. An opioid antagonist is naloxone hydrochloride, Narcan, or any other similarly acting and equally safe drug approved by the U.S. Food and Drug Administration for the treatment of drug overdose.

A District employee or agent may possess an opioid antagonist distributed to that employee or agent and may administer that opioid antagonist to an individual only if both of the following apply:

- A. The employee or agent has been trained in the proper administration of that opioid antagonist.
- B. The employee or agent has reason to believe that the individual is experiencing an opioid-related overdose.

**[ ] [OPTIONAL LANGUAGE]**

Each school in the District shall have at least ~~two~~ two (2) ( ) \_\_\_\_\_ **[END OF OPTION]** employees who have been trained in the appropriate use and administration of an opioid antagonist. The training shall be done in a manner that has been approved by ~~a~~ a licensed registered professional nurse ( ) \_\_\_\_\_ **[END OF OPTION]**. Only an appropriately trained school employee or agent may possess and administer an opioid antagonist.

Each school in the District shall possess at least one (1) package of an opioid antagonist on site. The opioid

grounds who is believed to be having an opioid-related overdose.

**[END OF OPTIONAL LANGUAGE]**

An opioid-related overdose is a condition, including, but not limited to, extreme physical illness, decreased level of consciousness, respiratory depression, coma, or death, that results from the consumption or use of an opioid or another substance with which an opioid was combined or that a reasonable person would believe to be an opioid-related overdose that requires medical assistance.

Any school personnel who have reason to believe that a student is having an opioid-related overdose must call 911.

**[SELECT ANY OR NONE OF THE FOLLOWING OPTIONS]**

Any person who administers an opioid antagonist to a student shall promptly notify the ( ) student's parent/guardian.  Building Administrator, who shall be responsible for promptly notifying the student's parent/guardian that an injection has been administered.

The person who notifies the student's parent/guardian must encourage the parent or guardian to seek treatment for the student from a substance use disorder services program.

It shall be the responsibility of the Building Administrator [insert person or position] to be sure that the supply of opioid antagonists is maintained at the appropriate level and that they have not expired. The HR dept. shall also be responsible for coordinating the training of District employees to administer the opioid antagonists and to maintain the list of employees authorized to administer the antagonists.

The District's training regarding, administration of, and the maintenance and storage of opioid antagonists shall be consistent with Policy ~~PE~~ 5330, Administrative Guideline 5330, ~~AG-5330~~ and the Michigan Department of Education's medication administration guidelines, as amended.

**[END OF OPTIONS]**

© Neola 2024~~2019~~

Legal References

Administration of Opioid Antagonists Act



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - September 2024 MI

Title: Vol. 39, No. 1 - September 2024 Revised STUDENT ACCIDENTS

Number: po5340

### Revised Policy - Vol. 39, No. 1

#### 5340 - STUDENT ACCIDENTS

The Board of Education believes that school personnel have certain responsibilities in case of accidents which occur in school. Said responsibilities extend to the administration of first aid by persons trained to do so, summoning of medical assistance, notification of administration personnel, notification of parents, and the filing of accident reports.

Employees should administer first aid within the limits of their knowledge of recommended practices. All employees should make an effort to increase their understanding of the proper steps to be taken in the event of an accident.

Beginning with the 2025-2026 school year, the Board shall develop a cardiac response plan. This plan will include utilizing employees to respond to sudden cardiac arrests or other life-threatening emergencies that may occur on school campuses during school hours or at school-sponsored events including, but not limited to, school-sponsored athletic events.

~~[ ] The Superintendent may provide for an in-service program on first aid and CPR procedures.~~

The administrator in charge must submit an accident report to the Superintendent on all accidents.



Book: MI Local Policies for Update  
Section: Vol. 39, No. 1 - September 2024 MI  
Title: Vol. 39, No. 1 - September 2024 Revised STUDENT CONDUCT  
Number: po5500

## Revised Policy - Vol. 39, No. 1

### 5500 - STUDENT CONDUCT

Respect for law and for those persons in authority shall be expected of all students. This includes conformity to school rules as well as general provisions of law regarding minors. Respect for the rights of others, consideration of their privileges, and cooperative citizenship shall also be expected of all members of the school community.

Respect for real and personal property; pride in one's work; achievement within the range of one's ability; and exemplary personal standards of courtesy, decency, and honesty should be maintained in the schools of this District.

#### **Academic Honesty**

The Board values honesty and expects integrity in the District's students. Violating academic honesty expectations erodes the trust between teachers and students as well as compromises the academic standing of other students. So that each student learns the skills being taught and is judged solely on their own merits, the Board prohibits any student from presenting someone else's work as their own, using artificial intelligence platforms in place of one's own work, providing unauthorized assistance to another student, and cheating in any manner.

All school work submitted for the purpose of meeting course requirements must be the individual student's original work or the original work of a group of students for group projects. It is prohibited for any student to unfairly advance their own academic performance or that of any other student. Likewise, no student may intentionally limit or impede the academic performance or intellectual pursuits of other students.

Academic dishonesty includes, but is not limited to:

- A. plagiarism (of ideas, work, research, speech, art, music, etc.);
- B. forgery of another's work;

- C. presenting the results that are the product of an artificial intelligence (AI) platform as one's own where the use of AI was not specifically allowed by the teacher as part of the assignment;
- D. downloading or copying information from other sources and presenting it as one's own;
- E. using language translation work of someone else or using technology when the expectation is doing one's own translation;
- F. copying another person's work;
- G. allowing another person to copy one's own work;
- H. stealing another person's work;
- I. doing another person's work for them;
- J. distributing copies of one's work for use by others;
- K. distributing copies of someone else's work for use by others for academic gain or advantage;
- L. intentionally accessing another's work for the purpose of presenting it as one's own for academic gain or advantage;
- M. distributing or receiving answers to assignments, quizzes, tests, assessments, etc.;
- N. distributing or receiving questions from quizzes, tests, assessments, etc.;
- O. ( ) \_\_\_\_\_;
- P. ( ) \_\_\_\_\_.

**[OPTIONAL LANGUAGE - ARTIFICIAL INTELLIGENCE/NATURAL LANGUAGE PROCESSING TOOLS]**

**[ ] Use of Artificial Intelligence/Natural Language Processing Tools For School Work**

In order to ensure the integrity of the educational process and to promote fair and equal opportunities for all students, except as outlined below, the use of Artificial Intelligence (AI) and Natural Language Processing (NLP) tools (collectively, "AI/NLP tools") is strictly prohibited for the completion of school work. The use of AI/NLP tools, without the express permission/consent of a teacher, undermines the learning and problem-solving skills that are essential to academic success and that the staff is tasked to develop in each student. Students are encouraged to develop their own knowledge, skills, and understanding of course material rather than relying solely on AI/NLP

AI/NLP tools is considered a form of plagiarism and any student found using these tools without permission or in a prohibited manner will be disciplined in accordance with the Student Code of Conduct. ( ) (See Policy 7540.09 - Artificial Intelligence (AI)) [END OF OPTION]

Notwithstanding the preceding, students can use AI/NLP tools in the school setting if they receive prior permission/consent from their teacher, so long as they use the AI/NLP tools in an ethical and responsible manner.

Teachers have the discretion to authorize students to use AI/NLP tools for the following uses:

1. **Intelligent Tutoring Systems:** AI-powered tutoring systems can provide personalized feedback and guidance to students. These systems analyze the student's performance, identify areas of improvement, and offer targeted resources or exercises to strengthen their understanding.
2. **Language Learning and Translation:** AI/NLP can assist students in language learning by providing interactive platforms that offer real-time feedback on pronunciation, grammar, and vocabulary. Additionally, AI-powered translation tools can help students comprehend foreign texts or communicate with individuals who speak different languages, thereby broadening their linguistic capabilities.
3. **Automated Essay Grading:** AI-powered systems can efficiently evaluate essays and provide constructive feedback to students. This technology analyzes various aspects such as grammar, coherence, and argumentation, helping students strengthen their writing skills. Automated grading also provides prompt feedback, enabling students to understand their mistakes and make improvements.
4. **Information Retrieval and Research:** AI/NLP can assist students in efficiently finding relevant information for their research projects. Advanced search algorithms and natural language processing techniques enable students to extract valuable insights from vast amounts of textual data. This saves time and allows students to focus on analyzing and synthesizing information, enhancing their critical thinking abilities.
5. **Intelligent Content Summarization:** AI-powered tools can summarize lengthy texts or academic articles, helping students grasp essential concepts and main ideas quickly. By condensing complex information into concise summaries, students can efficiently review and comprehend a wide range of materials, reinforcing their understanding of the subject matter.
6. **Sentiment Analysis and Debating:** AI/NLP techniques can be employed to analyze sentiment in written text or speeches. Students can utilize sentiment analysis tools to understand the emotional tone of a piece of writing or a debate and critically evaluate arguments and perspectives. This enhances their ability to assess the credibility and effectiveness of different communication strategies.
7. **Data Analysis and Visualization:** AI/NLP enables students to analyze and visualize data, facilitating a deeper understanding of complex information. By leveraging machine learning algorithms, students can extract insights, identify patterns, and present data in visually engaging formats. This enhances their analytical and critical thinking skills in interpreting and communicating data-driven findings.
8. **Writing assistance:** AI/NLP tools can provide grammar and spelling corrections, as well as suggest alternative word choices and sentence structure, to help students improve their writing skills.
9. **Accessibility:** AI/NLP tools can be used to help students with disabilities access and understand written materials. For example, text-to-speech software can help students with specific learning disabilities or visual impairments to read texts and AI-powered translation tools can help students with hearing impairments understand spoken language.

As outlined above, under appropriate circumstances, AI/NLP tools can be effectively used as a supplement to and not a replacement for traditional learning methods. Consequently, with prior teacher permission/consent, students can use such resources to help them better understand and analyze information and/or access course materials. If a student has any questions about whether they are permitted to use AI/NLP tools for a specific class assignment, they should ask their teacher.

Staff and Administration have the responsibility for monitoring students' work for compliance with this policy.

~~X~~ All teachers, beginning in the elementary grades, will educate students as to what constitutes academic dishonesty and what is acceptable and unacceptable behavior in District schools regarding academic integrity. ( )  
Such education shall reference this Board policy. **[END OF OPTION]**

Students who violate this policy are subject to disciplinary consequences.

Teachers are authorized, in consultation with their Principal, to apply appropriate consequences for violations of this policy. Disciplinary consequences for significant violations may include removal from the class with a failing grade, removal from student leadership positions, elimination of honors recognition, loss of membership in honor organizations, as well as other disciplinary consequences appropriate to the nature of the violation. **[END OF**

Parents shall be contacted as soon as practicable to report any alleged acts of academic dishonesty by their child.

Repeated violations of this policy will result in additional disciplinary consequences in accordance with the Student Code of Conduct.

Student and/or parent appeals of disciplinary consequences resulting from violation of this policy may be made based on the appeals process documented in the student handbook.

-  
The Superintendent shall establish procedures to carry out Board policy and philosophy, and shall hold all school personnel, students, and parents responsible for the conduct of students in schools, on school vehicles, and at school-related events.

Student conduct shall be governed by the rules and provisions of the Student Code of Conduct. This Code of Conduct shall be reviewed ( ) annually ~~X~~ periodically **[END OF OPTION]**.

~~X~~ A summary of this policy shall be included in the Student Handbook and the Employee Handbook.

#### **[Cross References**

**po7540.03**

**po7540.04**

**po7540.09]**

© Neola 2024~~2009~~

#### Legal References

M.C.L. 380.1311, 380.1312

#### Cross References

po7540.03 - STUDENT TECHNOLOGY ACCEPTABLE USE AND SAFETY

po7540.04 - STAFF TECHNOLOGY ACCEPTABLE USE AND SAFETY

po7540.09 - ARTIFICIAL INTELLIGENCE ("AI")



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - September 2024 MI

Title: Vol. 39, No. 1 - September 2024 Technical Correction SMALL UNMANNED AIRCRAFT SYSTEMS

Number: po7440.03

Technical Correction - Vol. 39, No. 1

7440.03 - **SMALL UNMANNED AIRCRAFT SYSTEMS**

[OPTION 1]

The Board prohibits the operation of small Unmanned Aircraft Systems (sUAS), commonly known as drones, at any time on property owned, leased, or contracted for by the Board by any individual, whether the individual is employed by the District or not.

The Board also prohibits the operation of a sUAS (drone) on property owned, leased, or contracted for by the Board during District-sponsored contests (including scrimmages and previews), practices, tournaments, and activities under the auspices of the Michigan High School Athletic Association (MHSAA). District officials may deny admission or entry to anyone attempting to use a sUAS until the event has been completed. Any exceptions to this prohibition must be approved in advance by the Superintendent.

Any individual who violates this policy ( ) may be ( ) shall be [END OF OPTION] referred to local law enforcement.

[END OF OPTION 1]

[OR]

[OPTION 2]

The Board prohibits the operation of small Unmanned Aircraft Systems (sUAS) at any time by any individual who is not employed by the District, as well as by any District staff member or administrator who is not expressly authorized to do so by the Superintendent, on property owned, leased, or contracted for by the Board.

The Board also prohibits the operation of a sUAS (drone) on property owned, leased, or contracted for by the Board during District-sponsored contests (including scrimmages and previews), practices, tournaments, and

admission or entry to anyone attempting to use a sUAS until the event has been completed. Any exceptions to this prohibition must be approved in advance by the Superintendent.

To be authorized to operate a drone on property owned, leased, or contracted for by the Board, a staff member or administrator must have a Remote Pilot Certificate issued by the Federal Aviation Administration (FAA). Further, the drone must be registered with the FAA and properly marked in accordance with 14 C.F.R. Part 107.

A staff member or administrator authorized to operate a drone on property owned, leased, or contracted for by the Board, must also comply with all rules set forth in 14 C.F.R. Part 107. (See AG 7440.03       )

Failure to adhere by all rules set forth in 14 C.F.R. Part 107 and AG 7440.03        may result in loss of authorization to operate a drone on property owned, leased, or contracted for by the Board, referral to local law enforcement, and/or further disciplinary action, up to and including termination.

**[END OF OPTION 2]**

**[END OF OPTIONS]**

© Neola 2024~~2022~~

Legal References

86 FR 4314

14 C.F.R. Part 107



Book: MI Local Policies for Update  
Section: Vol. 39, No. 1 - September 2024 MI  
Title: Vol. 39, No. 1 - September 2024 New ARTIFICIAL INTELLIGENCE ("AI")  
Number: po7540.09

**New Policy - Vol. 39, No. 1**

**7540.09 - ARTIFICIAL INTELLIGENCE ("AI")**

The Board of Education recognizes the positive impact that artificial intelligence ("AI") technology may have in the District's educational program and operations. The Superintendent is authorized to support the use of artificial intelligence technology when its use is consistent with the District's mission, goals, and operational integrity.

Any use of artificial intelligence technology in the District's educational program or operations must be in accordance with State and Federal law as well as Board policies ~~and~~ including, but not limited to, the following: Policy 2264 - Nondiscrimination on the Basis of Sex in Education Programs or Activities; Policy 2266 – Nondiscrimination on the Basis of Sex in Education Programs and Activities; Policy 5136 - Personal Communication Devices; Policy 5500 – Student Conduct; Policy 7540.03 – Student Technology Acceptable Use and Safety; Policy 7540.04 – Staff Technology Acceptable Use and Safety; Policy 8330 – Student Records; Policy 8350 - Confidentiality; and Policy 8351 - Security Breach of Confidential Databases. **[DRAFTING NOTE: Confirm and Select as Needed] [END OF OPTION]**

Violation of this policy may result in disciplinary consequences. Students may be disciplined for violations, up to and including suspension or expulsion. Staff may be disciplined for violations, up to and including suspension or termination of employment. The Administration will refer any illegal acts to law enforcement.

**[Cross Reference**

**po5500**  
**po7540.03**  
**po7540.04]**

**© Neola 2024**

**Cross References**

**po5500 - STUDENT CONDUCT**  
**po7540.03 - STUDENT TECHNOLOGY ACCEPTABLE USE AND SAFETY**



Book: MI Local Policies for Update

Section: Vol. 39, No. 1 - September 2024 MI

Title: Vol. 39, No. 1 - September 2024 Revised CRIMINAL JUSTICE INFORMATION SECURITY (NON-CRIMINAL JUSTICE AGENCY)

Number: po8321

### Revised Policy - Vol. 39, No. 1

#### 8321 - CRIMINAL JUSTICE INFORMATION SECURITY (NON-CRIMINAL JUSTICE AGENCY)

The District is required by State law to have the Michigan State Police (MSP) obtain both a State and a Federal Bureau of Investigation (FBI) criminal history record information (CHRI) background check report for all employees of the District and contractors, vendors and their employees who work on a regular and continuous basis in the District. This policy provides the appropriate access, maintenance, security, confidentiality, dissemination, integrity, and audit requirements of CHRI in all its forms, whether at rest or in transit. This policy/procedure shall be reviewed and updated at least annually and following any security incidents involving CHRI. To assure the security, confidentiality, and integrity of the CHRI background check information received from the MSP/FBI, the following standards are established:

#### A. Sanctions for Non-Compliance

Employees who fail to comply with this policy, State and Federal law, current CJISSECPOL, rules or regulations, and any guidelines issued to implement this policy will be subject to discipline for such violations. Discipline ~~can~~**will** range from counseling and retraining to discharge and prosecution, based on the nature and severity of the violation, at the District's discretion. All violations will be recorded in writing, with the corrective action taken. The Superintendent shall review, approve, sign, and date all such corrective actions.

#### B. Local Agency Security Officer (LASO)

The *Executive Director of HR* [insert designated administrator] shall be designated as the District's Security Officer ("LASO"). ~~and~~ The LASO is an authorized user/personnel, has completed a fingerprint-based background check where required, and has been found appropriate to access CHRI, and an employee directly involved in evaluating an individual's qualifications for employment or assignment. The LASO shall be responsible for overall implementation of this policy and for data and system security. This shall include:

2. identifying and documenting any equipment connected to the State system;
3. ensuring that personnel security screening procedures are being followed as set forth in this policy;
4. ensuring that approved and appropriate security measures are in place and working as expected;
5. supporting policy compliance and instituting the incident response reporting procedures;
6. ensuring annual awareness and training is being completed by all personnel with authorized access to the CHRI;
7. ensuring that the Michigan State Police are promptly informed of any security incidents involving the abuse or breach of the system and/or access to criminal justice information;
8. reviewing and updating information security policy/procedures annually or after security incidents involving CHRI;
9. ~~to the extent applicable, identifying and documenting how District equipment is connected to the Michigan State Police system;~~
10. employing one (1) or more of the following techniques to increase the security and privacy awareness of system users: displaying posters, offering supplies inscribed with security and privacy reminders; displaying logon screen messages; generating email advisories or notices from organizational officials; conducting awareness events; and
11. to the extent applicable, identifying who is using the Michigan State Police approved hardware, software, and firmware, and ensuring that no unauthorized individuals have access to these items.

The District's LASO shall be the point of contact for the Michigan State Police and should be the person most knowledgeable about this policy. The District's LASO shall be designated on the appropriate form as prescribed and maintained by the Michigan State Police. A new form shall be submitted every time a new LASO is designated and kept on file by the District indefinitely.

C.

#### **Privacy Act Statement Disclosure**

The District shall ensure that the applicant receives the Federal Privacy Act Statement Disclosure by providing the applicant with the most current version of the MSP RI-030 Live Scan consent form. The applicant will

## D. Agency User Agreements

The District shall enter into any required User Agreement for Release of CHRI ("User Agreement"), and future amendments, by the Michigan State Police necessary to access the required CHRI on applicants, volunteers, and all other statutorily required individuals, such as contractors and vendors and their employees assigned to the District. Agreements are in place to provide data ownership, individual roles, responsibilities, etc. The District shall request a new user agreement in the event they have a legal name change, they move to a new physical address, or they wish to add or remove fingerprint reason codes. The most current copy of the Agreement shall be maintained on file at the agency indefinitely. The LASO shall be responsible for the District's compliance with the terms of any such User Agreement.

## E. Personnel Security

Authorized users/personnel shall be individuals who have been appropriately vetted through a national fingerprint-based background check, as required by school safety legislation, and have been granted access to CHRI data, wherein access is only for the purpose of evaluating an individual's qualifications for employment or assignment.

1. **Subsequent Arrest/Conviction** - If an individual granted access to criminal justice information is subsequently arrested and/or convicted, access shall be suspended immediately until the matter is reviewed by the LASO to determine if continued access is appropriate. Such determination shall be recorded in writing, signed, dated, and maintained with the individual's file. In the event that the LASO has the arrest/conviction, the Superintendent (if not the designated LASO) shall make the determination. If the Superintendent is also the designated LASO, the determination shall be made by the Executive Director of HR [insert designated administrator]; except that, as noted in D(1)(a), individuals with a felony conviction of any kind will have ~~their~~ access indefinitely suspended.

2. **Public Interest Denial** - If the LASO determines that access to criminal justice information by any individual would not be in the public interest, access shall be denied whether that person is seeking access or has previously been granted access. Such decision and reasons shall be in writing, signed, dated, and maintained in the individual's file.

3. **Approval for Access** - All requests for access to criminal justice information shall be as specified and approved by the LASO. Any such designee must be a direct employee of the District. The District must maintain a readily accessible list that includes the names of all LASO approved personnel with access to criminal justice information, as well as the reason for providing each individual access. This list shall be made available to the Michigan State Police upon request.

4. **Notification of Termination of Employment/Access or Transfer/Re-assignment** - When an employee's access or employment is terminated, or if the duties for accessing criminal justice information

be notified promptly in writing. The individual responsible for the termination or transfer/re-assignment shall directly notify the *Executive* **[designated individual]**.

*Director of HR*

**5. Termination of Employment/Access** – Within twenty-four (24) hours of the termination of employment, all access to criminal justice information shall be terminated immediately for that individual, such as requiring the individual to return any keys or access cards to buildings, offices, and/or files, or closing the individual's account and/or blocking access to any systems containing such information at the District.

**6. Transfer/Re-assignment** - When an individual who has been granted access to criminal justice information has been transferred or re-assigned to other duties, the LASO shall determine whether continued access is necessary and appropriate. If not, the LASO ~~s/he~~ shall take such steps as necessary to block further access to such information within the twenty-four (24) hour period immediately following the transfer or reassignment. If such access is not necessary and appropriate, steps to eliminate the individual's access will be taken immediately, such as requiring the individual to return any keys or access cards to buildings, offices, and/or files, or closing the individual's account and/or blocking access to any systems containing such information at the District.

## F. Media Protection

Access to digital and physical media in all forms, which contains criminal history background information provided by the Michigan State Police through the statutory record check process, is restricted to authorized individuals only. Only individuals involved in the hiring determination of both District employees and volunteers shall be authorized to access digital and physical media containing CHRI.

**1. Media Storage and Access** – All digital and physical media shall be stored in a physically secure location or controlled area, such as a locked office, locked cabinet, or other similarly secure area(s) which can only be accessed by authorized individuals. If such security cannot be reasonably provided, then all digital CHRI background data shall be encrypted. Access to such media will be secured at all times when not in use or under the supervision of an authorized individual. Digital media shall be stored on a District or School server and unless encrypted, shall be maintained in a lockable filing cabinet, drawer, closet, office, safe, vault, etc. Storage on a third party server, such as cloud service, is not permitted. Storage of digital media must conform to the requirements in AG 8321 and must be encrypted. Physical media will be stored within individual records when feasible, or by itself when necessary, and will be maintained in a lockable filing cabinet, drawer, closet, office, safe, vault, etc.

**2. Media Transport** – Digital and physical media shall only be transported upon sufficient justification approved by the LASO. Digital and physical media shall be protected when being transported outside of a controlled area. Only authorized individuals shall transport the media. Physical media (e.g. printed documents, printed imagery, etc.) shall be transported using a locked container, sealed envelope, or other similarly secure measure. To the extent possible, digital media (e.g., hard drives and removable storage devices such as disks, tapes, flash drives, and memory cards) shall be either encrypted and/or be

person or destination and shall remain in the physical control and custody of the authorized individual at all times during transport. Access shall only be allowed to an authorized individual.

**3. Media Disposal/Sanitization** – When the CHRI background check is no longer needed, the media upon which it is stored shall either be destroyed or sanitized. The LASO and the Superintendent shall approve in writing the media to be affected. This record shall be maintained by the LASO during the individual's active employment plus an additional six (6) years. **[Note: the regulations do not specify a specific period for maintaining this information. This time period is suggested based on the State of Michigan's background information retention schedule and will likely cover most statutes of ~~limitaiton~~ limitation and can be retained in digital format.]**

a. **Digital Media** - Sanitization of the media and deletion of the data shall be accomplished by either overwriting at least three (3) times or by degaussing, prior to disposal or reuse of the media, but optical media (such as CDs and DVDs) will be physically destroyed. If the media is inoperable or will not be reused, it shall be destroyed by shredding, cutting, or other suitable method to assure that any data will not be retrievable.

b. **Physical Media** – Disposal of documents, images, or other type of physical record of the criminal history information shall be cross-cut shredded or incinerated. Physical security of the documents and their information shall be maintained during the process by authorized individuals. Documents may not be placed in a wastebasket or burn bag for unauthorized individuals to later collect and dispose of.

All disposal/sanitization shall be either conducted or witnessed by authorized personnel to assure that there is no misappropriation of, or unauthorized access to, the data to be deleted. Written documentation of the steps taken to sanitize or destroy the media shall be maintained for ten (10) years, and must include the date as well as the signatures of the person(s) performing and/or witnessing the process. (See also, AG 8321.)

**4. Personal Mobile Devices** – A personally owned mobile device (mobile phone, tablet, laptop, etc.) or no identifiable owner digital media device shall not be authorized to access, process, store or transmit criminal justice information unless the District has established and documented the specific terms and conditions for personally owned mobile devices through a Mobile Device Management (MDM) system. An MDM is not required when receiving CHRI from an indirect access information system (i.e., the system provides no capability to conduct transactional activities on State and national repositories, applications, or services).

## **5. CHRI Background Check Consent and Documentation**

All individuals requested to complete a fingerprint-based CHRI background check must execute Michigan State Police Form RI-088A at the time of application, and be notified fingerprints will be used to check the criminal history records of the FBI, prior to completing a fingerprint-based CHRI background check. The most current and unaltered Livescan form (RI-030) will satisfy this requirement and must be retained. Individuals subject to a fingerprint-based CHRI background check shall be provided the opportunity to complete or

Some type of documentation identifying the position for which a fingerprint-based CHRI background check has been obtained must be retained for every CHRI background check conducted, such as the "Agency User Agreement" (RI-087), an offer letter, employment agreement, new hire checklist, employment contract, volunteer background check form, etc.

## 6. Controlled Area/Physical Protections

All CHRI obtained from the Michigan State Police pursuant to the statutorily required background checks shall be maintained in the HR office [insert designated location, such as the Principal's, Human Resources, or other such office], which is a physically secure and controlled area. The following security precautions will apply to the controlled area:

- a. Limited unauthorized personnel access to the area during times that criminal justice information is being processed or viewed.
- b. The controlled area shall be locked at all times when not in use or attended by an authorized individual.
- c. Information systems devices (e.g., computer screens) and physical documents, when in use, shall be positioned to prevent unauthorized individuals from being able to access or view them.
- d. Encryption shall be used for digital storage of criminal justice information. (See AG 8321)

## 7. Passwords (Standard Authentication)<sup>1</sup>

All authorized individuals with access to computer or systems where processing is conducted or containing criminal justice information must have a unique password to gain access. This password shall not be used for any other account to which the individual has access and shall comply with the following attributes and standards:

- a. at least eight (8) characters long on all systems
- b. not be a proper name or a word found in the dictionary
- c. not be the same as the user identification
- d. not be displayed when entered into the system (must use feature to hide password as typed)
- e. not be transmitted in the clear outside of the secure location used for criminal justice information storage and retrieval

g. renewed password cannot be the same as any prior ten (10) passwords used (See also, AG 8321)

## 8. Security Awareness Training

All individuals who are authorized by the District to have access to criminal justice information or to systems which store criminal justice information shall have basic security awareness training as part of initial training for new users prior to accessing CJJ and annually thereafter, and when required by system changes or within thirty (30) days of any security event for individuals involved in the event. ~~within six (6) months of initial assignment/authorization and every two (2) years thereafter.~~ LASOs require enhanced training on the specific duties and responsibilities of those positions and the impact those positions have on the overall security of information systems.

Training is a role-based security and privacy training for personnel with the following roles:

- a. **Basic Role:** All individuals with unescorted access to a physically secure location. (Not typical for NCJAs)
- b. **General Role:** All personnel with access to CJJ. This level is designed for people who have physical and logical access to CJJ.
- c. **Privileged Role:** This level is designed for all information technology personnel including system administrators, security administrators, network administrator, etc. More access is needed than a general user, but not an assigned LASO. (i.e., CHRIS Administrator)
- d. **Security Role:** This level is designed for personnel with the responsibility to ensure the confidentiality, integrity, and availability of CJJ and the implementation of technology in a manner compliant with the CJISSECPOL. (i.e., LASO)

The training shall, to the extent possible, be received through a program approved by the Michigan State Police. A template of the training is provided on the Michigan State Police's website. At a minimum, the training shall comply with the standards established by the U.S. Department of Justice and Federal Bureau of Investigation for Criminal Justice Information Services. (See AG 8321.) A record shall be kept current of all individuals who have completed the security awareness training.

## 9. Secondary Dissemination of Information

If criminal history background information received from the Michigan State Police is released to another authorized agency under the sharing provision designated by the revised school code, a log of such releases shall be maintained and kept current for all dissemination outside of the CHRIS system indicating:

- b. record disseminated;
- c. method of sharing;
- d. agency personnel that shared the CHRI;
- e. the agency to which the information was released;
- f. the name of the individual recipient at the agency; and
- g. whether authorization was obtained.

A log entry need not be kept if the receiving agency/entity is part of the primary information exchange agreements between the District and the Michigan State Police. A release form consenting to the sharing of CHRI shall be maintained at all relevant times.

If CHRI is received from another District or outside agency, an Internet Criminal History Access Tool (ICHAT) background check shall be performed to ensure the CHRI is based on personal identifying information, including the individual's name, sex, and date of birth, at a minimum.

### **Incident Handling and Responses**

The District shall establish operational incident handling procedures for instances of an information security breach. Information security incidents are major incidents that significantly endanger the security or integrity of CHRI. The District will identify responsibilities for information security incidents and include how and who to report such incidents to. The District will ensure appropriate security incident capabilities exist and should incorporate the lessons learned from ongoing incident handling activities. The District will ensure procedures exist and are implemented for a follow-up action of a security breach and for the collection of evidence in cases of legal action. All individuals with direct or indirect access to CHRI shall be trained on how to handle an information security incident, and such training will be included within the provided awareness and training. Information system security incidents shall be tracked using Form CJIS-016 and documented on an ongoing basis. Incident-related information may be obtained from audit monitoring, network monitoring, physical access monitoring, and user/administrator reports. The LASO shall maintain completed security incident reporting forms for three (3) years or until legal action (if warranted) is complete, whichever timeframe is greater. The District shall implement steps for incident handling capabilities, for both digital and physical CHRI media. Incident response testing will be conducted annually using the following tests: tabletop or walk-through exercises, simulations, or other agency appropriate tests. At a minimum, the following will be implemented:

	<b>Physical - Hard Copy CHRI</b>	<b>Digital - Digitally Saved CHRI</b>
--	--------------------------------------	---------------------------------------

1. Preparation	The CHRI container will be locked at all times in the business office where it is stored. The office must be locked when the office staff is not present. <b>[List name of video system if you have one.]</b> <u>ExacqVision</u>	Firewalls, virus protection, and/or malware/spyware protection shall be implemented and maintained to prevent unauthorized access or intrusion of the information systems.
2. Detection	Unauthorized activities or physical intrusions to the building shall be monitored by building alarm or video surveillance. Doors must be locked and checked at night.	Electronic intrusions shall be monitored and detected by the firewalls, virus protection, and/or malware/spyware protection software.
3. Analysis	The LASO will work with police authorities to determine how the incident occurred and what data was affected.	The LASO shall work with the IT department to determine what systems or data were compromised and affected.
4. Containment	The LASO shall lock uncompromised CHRI information in a secure container, or transport CHRI to a secure area.	The IT department shall stop the spread of any intrusion of the information systems and prevent further damage.
5. Eradication	The LASO shall work with law enforcement to remove any threats and compromised CHRI data.	The IT department shall remove the intrusion of the information systems before restoring the system. All steps necessary to prevent recurrence shall be taken before restoring the system.
6. Recovery	The Police shall handle and/or oversee the recovery of stolen CHRI media. The LASO may contact MSP for assistance in re-fingerprinting if necessary.	The IT department shall restore the agency information system and media to a safe environment.

When an incident involving the security of CHRI or systems with access to CHRI is discovered, the following procedures shall be followed:

- A. ~~The LASO shall be notified immediately.~~ All personnel are required to report suspected incidents to the LASO immediately, but not to exceed one (1) hour after discovery. Personnel who become aware of an incident or believe an incident has occurred should report to the following individuals, in order:

1. HR Assistant [Designated Title]

2. \_\_\_\_\_ [Designated Title]

3. \_\_\_\_\_ [Designated Title]

4. LASO (*Epic Director of HR*)

B. The breach shall be assessed (including determination of whether notification to individuals is needed, assessment of the extent of the harm, and identification of applicable privacy requirements) and steps taken to correct the situation:

1. access shall be stopped for any unauthorized user;

2. media shall be secured;

3. systems shall be shut down as necessary to avoid further exposure to unauthorized access or dissemination of CHRI;

4. such other steps are deemed necessary by the LASO or authorized personnel involved in assessing the incident.

C. All necessary information regarding the security breach and District responses shall be recorded, analyzed, and preserved, including who was involved in taking incident response measures.

D. The LASO shall be responsible for filing the incident report with the MSP using the CJIS-016. Completed CJIS-016 forms shall be retained on an ongoing basis to meet policy requirements for tracking.

The LASO shall monitor MSP information/guidance on incident reports and train authorized users with access to CHRI on detection and response to security incidents.

E. Mobile Device - Incident Handling and Response

1. The LASO shall be notified immediately.

2. The breach shall be assessed and steps taken to correct the situations:

a. access shall be stopped immediately, and remotely if necessary, for any authorized user;

b. media shall be secured and steps taken to identify how the incident occurred and what systems or data were compromised or affected;

c. systems shall be shut down as necessary to avoid further exposure to unauthorized access or dissemination of CJI;

d. such other steps as are deemed necessary by the LASO or authorized personnel involved in assessing the incident.

3. All necessary information regarding the security breach and District responses shall be recorded, analyzed, and preserved, including who was involved in taking incident response measures.

4. Steps shall be taken to restore the device and media to a safe environment.

5. The LASO shall be responsible for filing the incident report with the MSP using form CJIS-016. A copy of the completed form shall be retained and produced to MSP upon request.

When a device is lost the District shall document and indicate how long the device has been lost. Special reporting procedures for mobile devices shall apply in any of the following situations:

a. for a lost device, report if the owner:

1. believed the device was locked;

2. believed the device was unlocked;

3. could not validate the device's locked state;-

b. for a total loss of a device, report if:

1. CHRI was stored on the device;

2. the device was locked or unlocked;

3. capable of remote tracking or wiping of device;-

c. report any compromise of a device when the intrusion occurs while still in the owner's possession;

d. report any compromise outside of the United States.

## **F. Collection of Evidence**

Where an information security incident involves legal action against the District or an individual (either civil or criminal), evidence shall be collected, retained, and presented in accordance with the rules of evidence of the

for evidence collection. For civil matters, legal counsel [designated legal counsel] will be contacted for evidence collection.

---

<sup>1</sup>Applicable to districts that maintain CHRI within a digital system of records, such as a digital database, filing system, record keeping software, spreadsheets, etc. Not applicable if CHRI kept solely via e-mail and/or paper copies.

© Neola 2024~~2021~~

#### Legal References

Ref: Criminal Justice Information Services - Security Policy (Version 5.6, 2017),

U.S. Dept. of Justice and Federal Bureau of Investigation

Noncriminal Justice Agency Compliance Audit Review, Michigan State Police, Criminal Justice Information Center, Audit and Training Section

Conducting Criminal Background Checks, Michigan State Police, Criminal Justice Information Center