

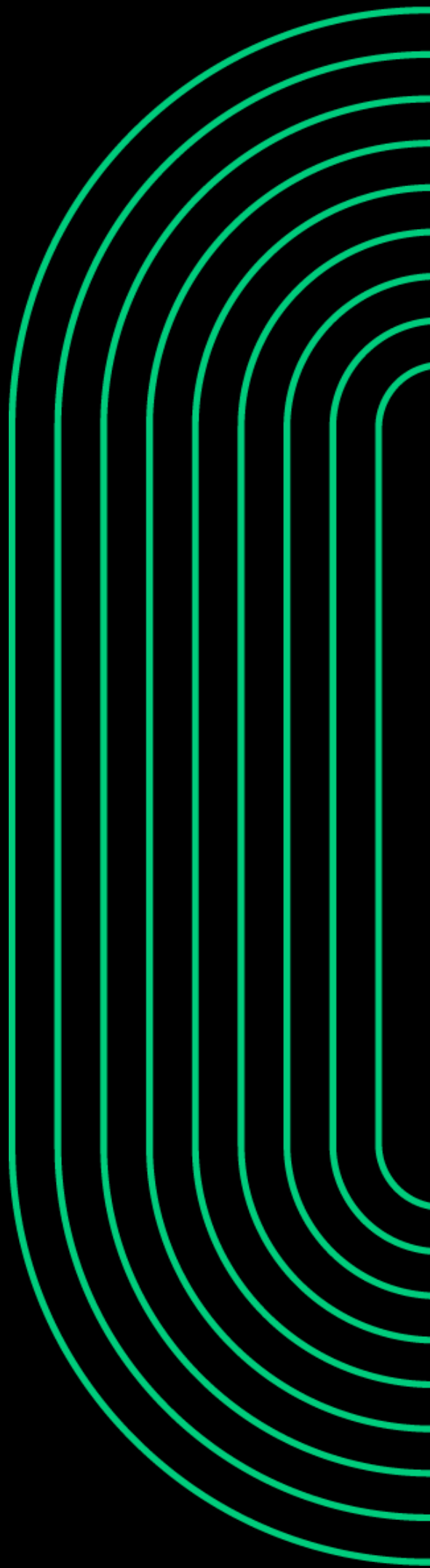
# DISCRIMINATION AND HARASSMENT

West Branch-Rose City Area Schools

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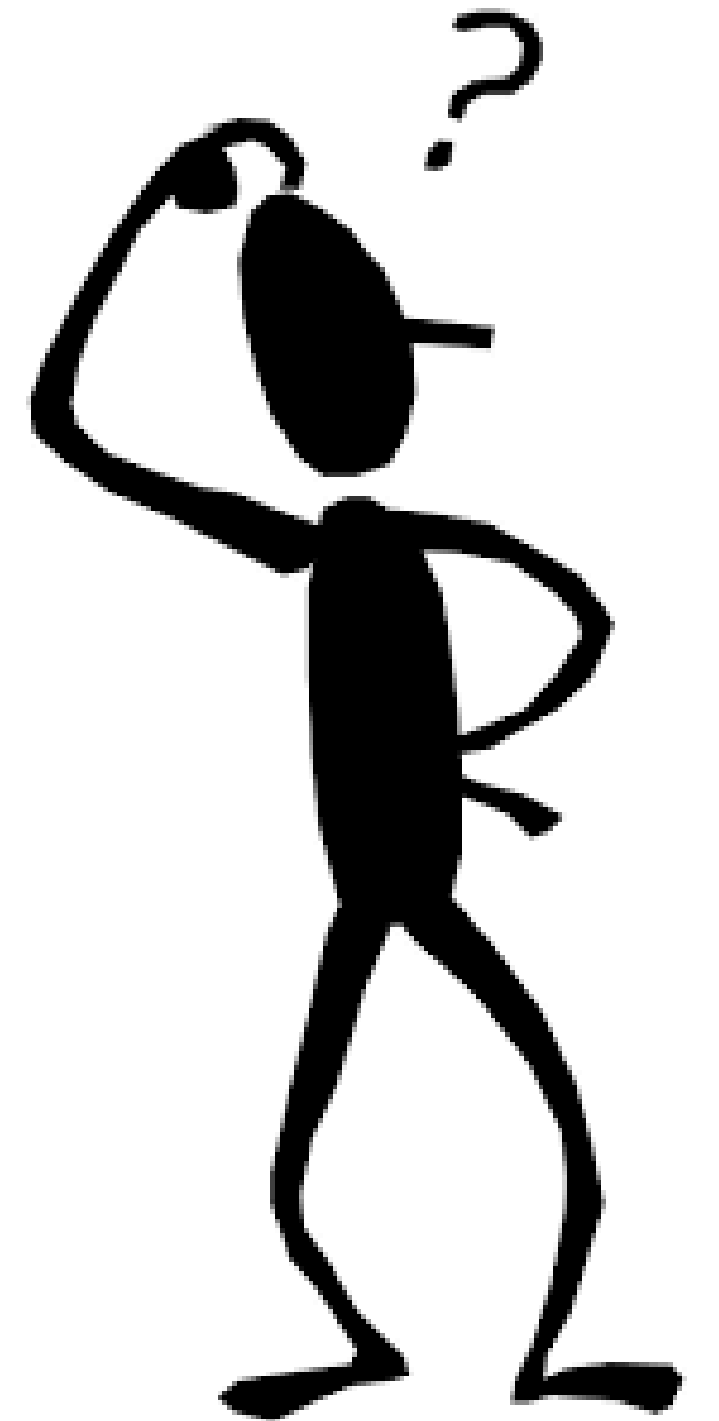
August 21, 2023

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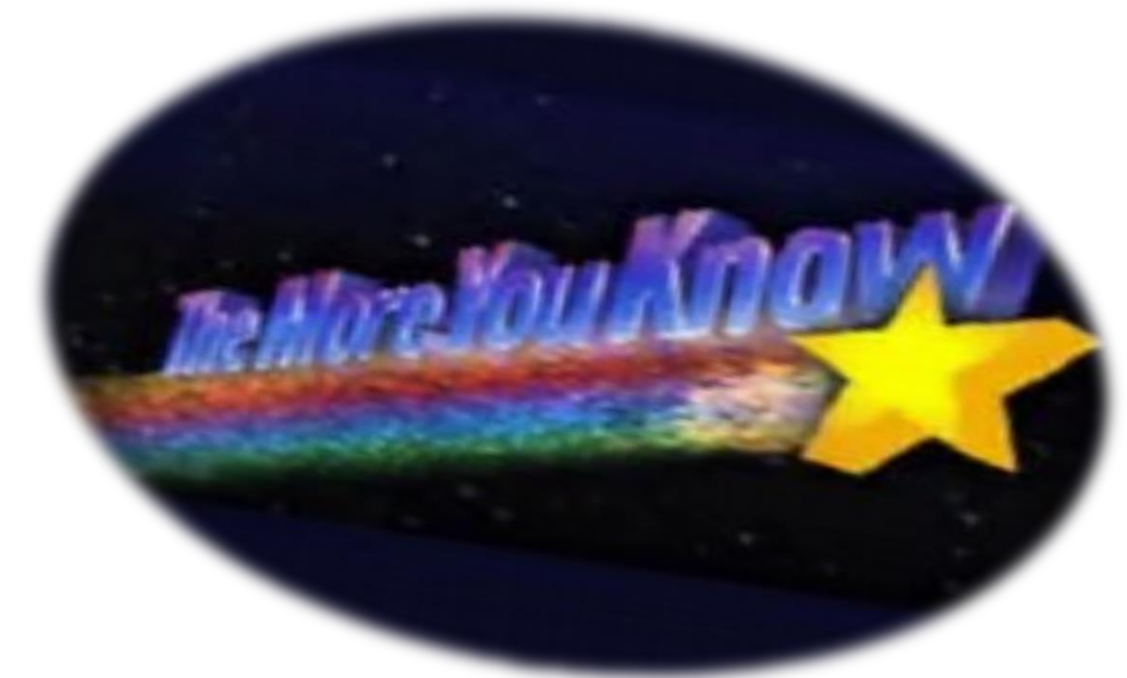
# Why Are We Here Today?

- Discrimination and Harassment
  - To ensure all staff are provided a safe and productive working environment, and all students are provided a safe and positive school environment conducive to learning.
  - Deepen understanding of the District's policies regarding discrimination and harassment.
  - Give you the tools to respond to discrimination/harassment situations so the District can promptly investigate and take action, if needed.



# Do You . . .

- Know who the District's Compliance Officers are for Harassment/Discrimination complaints?
- Know about the Board policy on the District's website regarding Harassment/Discrimination?
  - When was the last time you read it?
- Discuss the policy annually with fellow staff/students?





# WBRC NON-DISCRIMINATION/ANTI-HARASSMENT POLICY

## **Non-Discrimination Statement**

*The Board of Education does not discriminate on the basis of race, color, national origin, sex (including sexual orientation and transgender identity), disability, age, height, weight, marital or family status, religion, military status, ancestry, genetic information or any other legally protected category, (collectively, "Protected Classes"), in its programs and activities, including employment opportunities.*

*The District's Compliance Officers shall handle inquiries regarding the Board's nondiscrimination policies and address any complaint of discrimination.*



# WBRC Non-Discrimination/Anti-Harassment Policy

**This policy is being implemented pursuant to the terms of state and federal law.**

Except with respect to any bona fide occupational qualifications, the Board shall not discriminate in its policies and practices with respect to compensation, terms or conditions of employment because of such individual's race, color, religion, sex, national origin, age, height, weight, marital status, limited English proficiency, political belief, disability, or any other classification protected by state or federal law if otherwise qualified.



# What Is The Law?

- **There are Federal, State and Local laws that school districts must follow**
- **Some federal laws that govern discrimination/harassment include Title VII (Sex, Race, Religion, National Origin, etc.), ADA (Disability), ADEA (Age), GINA (Genetics)**
  - Enforced by EEOC and Federal Courts
- **Title IX also prohibits sex discrimination/harassment for employees and students**
  - Enforced by the Office for Civil Rights (OCR)
- **All states have laws that do pretty much the same thing as the federal laws**
  - Michigan: Elliott-Larsen Civil Rights Act
  - Michigan Persons with Disabilities Civil Rights Act
    - Enforced by MDCCR and State Courts

# What Is Discrimination?

Simply, discrimination is the unjust or prejudicial treatment of people because they are different. Unlawful discrimination is based on an individual's legally protected status or activity.



# What Is Harassment?

Aggressive pressure or intimidation; a course of conduct that annoys, threatens, intimidates, alarms or puts a person in fear of their safety or creates a hostile work/educational environment. Unlawful harassment is based on an individual's legally protected status or activity.





# Harassment Takes Many Forms

- The victim as well as the harasser may be female or male, adult or student.
- The victim does not have to be of the opposite sex for sexual harassment.
- The harasser does not have to be a student or employee (parent, 3<sup>rd</sup> party contractor, vendor).
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Harassment may occur without economic injury to the victim.
- Sexual harassment is not always physical.
- The harasser's conduct must be unwelcome and unwanted and based on a protected class to constitute violation of policy and law.

# Forms of Harassment

- **Verbal Harassment**

- Comments – Derogatory, degrading or demeaning comments, jokes regarding sex, race or stereotypes
- Unwelcome sexual gestures, advances or requests for sexual favors
- Unfavorably commenting on physical attributes, body type, parts or dress
- Jokes, nicknames, cartoons (“homo” or “ho”, “old man”, racial slurs, etc.)
- Leering, whistling, offensive sounds (e.g., lip-smacking or “catcalls”)

- **Physical Harassment**

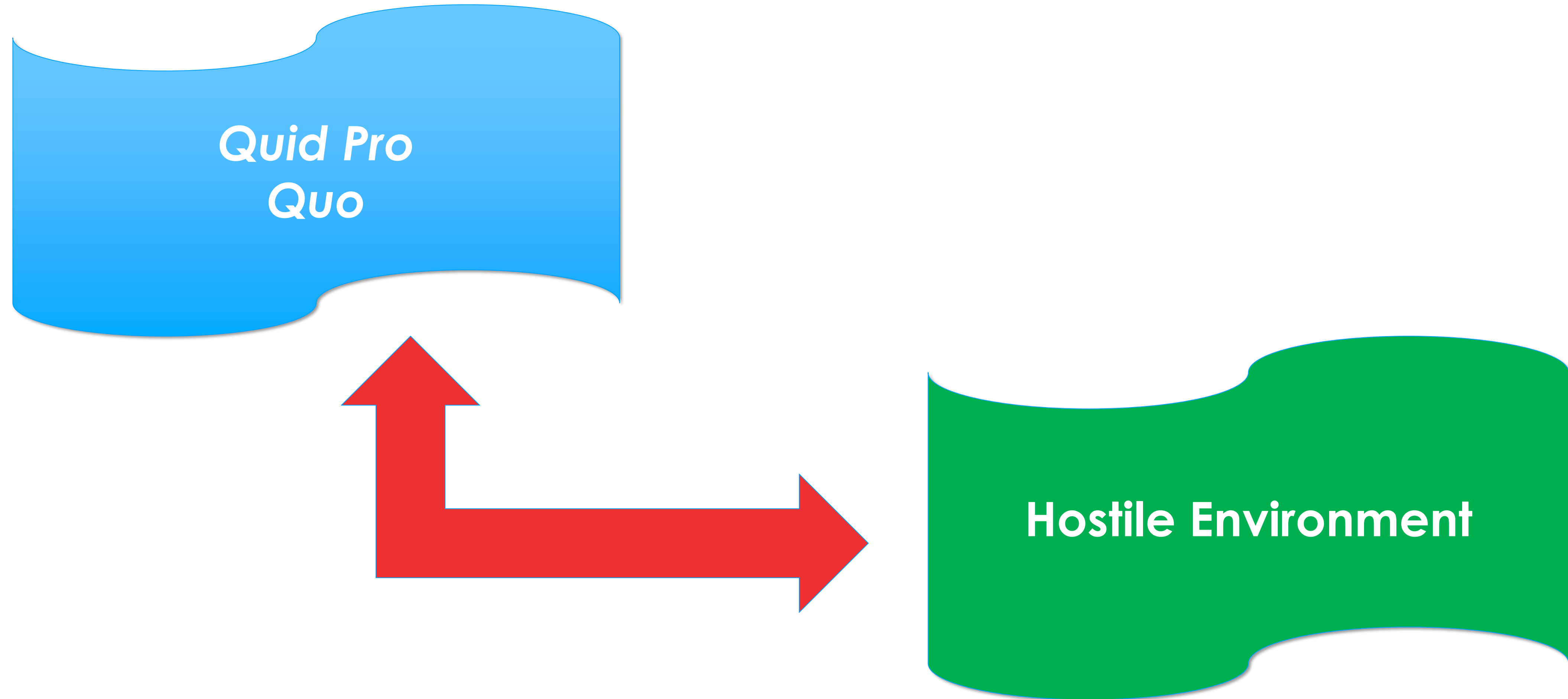
- Unwelcome touching, pinching, grabbing, sexual assaults

- **Visual/Written Harassment**

- Sexually suggestive or offensive pictures/photos
- Technology - Email, Facebook, Twitter



# Two Different Types of Harassment?



# *Quid Pro Quo (Sexual Harassment)*

*Quid Pro Quo* = THIS FOR THAT

This type of harassment typically occurs when a person with the **power to influence** an employment or education program/activity decision seeks a sexual favor in return for a positive outcome or to refrain from a negative outcome.



# Examples of *Quid Pro Quo* Harassment

- An employee is discharged when she refuses to submit to her supervisor's sexual advances.
- An employee is transferred to a lesser job or in worse conditions when she refuses to date her supervisor.
- Performance evaluations are conditioned on accepting or rejecting sexual demands, explicit or implicit.
- A student is promised a better grade if he submits to his teacher's sexual advances.
- An athlete is guaranteed playing time or a starting position if she engages in sexual activity with her Coach.





# Employer Liability *Quid Pro Quo*

- Under federal employment law, where a “tangible employment action” is taken, the employer is liable regardless of whether the employer knew, or should have known, about the harassment.
- AKA: Strict Liability



# Hostile Environment (Any type of Harassment)

- Unwelcome conduct,
- Based on a **protected characteristic**,
- Enduring the unwelcome conduct becomes a condition of continued employment or education, OR
- The conduct is **severe or pervasive** enough to create a work/school environment that a **reasonable person** would consider **intimidating, hostile, or abusive**.



# Hostile Environment Factors

- **Consider the following factors:**
  - The nature and severity of the conduct;
  - How often, and over what period of time, the conduct occurs;
  - The circumstances under which the conduct occurred;
  - Whether the conduct was physically threatening or humiliating; or
  - The extent to which the conduct unreasonably interferes with the victim's work or school performance.





# Severe and Pervasive

- **How do I know if it's "bad enough" to be harassment?**
  - Laws against "harassment" or creating a "hostile environment" are not meant to be a general civility code.
  - Unlawful Harassment must be based on a protected category (race, religion, sex/gender, disability, national origin).
- **Conduct found not to be unlawful harassment –**
  - Isolated or offhand comments not specifically related to a protected category.
  - Isolated incidents that do not rise to a level of seriousness or are not based on a protected category.
- **Other conduct, however, may violate other District policies, Code of Conduct or Employee Handbooks.**

# Unlawful Harassment vs. Inappropriate Conduct

- “Harassment” refers to an **illegal** form of discrimination.
- Employees/Students may say they are being harassed, when they are actually being subjected to inappropriate conduct or behavior which is not **illegal** but is **unacceptable** in the workplace or at school.
- Bullying, Aggressive Behavior, Disrespect, Unprofessional Conduct, etc.

*ALLEGED HARASSMENT IS NOT A VIOLATION OF STATE OR FEDERAL LAW UNLESS BASED ON A LEGALLY PROTECTED CHARACTERISTIC OR ACTIVITY: SEX (INCLUDING SEXUAL ORIENTATION/GENDER IDENTITY), AGE, NATIONAL ORIGIN OR ANCESTRY, DISABILITY, RACE, RELIGION, HEIGHT, WEIGHT OR MILITARY STATUS.*



# What Do I Do if I Witness Inappropriate Conduct?

- If it is minor, address the conduct with the staff member/student in a confidential place and during an appropriate time.
- You may also contact Administration, HR or a Compliance Officer for support and/or to follow up with student/staff member.
- If it is not minor, contact Administration as soon as possible.
- The District has an obligation to take remedial action designed to prevent recurrence of any established violation.



# What Do I Do If I Receive a Complaint?

- **Take all complaints seriously**
  - Do not prejudge or speculate in any way!
  - Do not try to “fix it” yourself
  - Report ASAP = doesn’t get better with time
  - Contact Principal/HR/Supervisor or Compliance Officer
- **Document receipt (who, what, when, where)**
- **Maintain Confidentiality**
- **No obligation to do your own investigation; obligation to report only.**



# Protection Against Retaliation

WBRC will **NOT** retaliate or allow retaliation against any employee/student who:

1. Makes a good faith complaint;
2. Files a legal claim (or other agency complaint); OR
3. Participates in an investigation.



# Liability for Harassment/Discrimination

- *Any employee, whether a coworker or administrator, who is found to have engaged in prohibited harassment or discrimination is subject to disciplinary action, up to and including termination of employment.*
- *Any student who is found to have engaged in prohibited harassment or discrimination is subject to disciplinary action, up to and including permanent expulsion.*
- *Any WBRC administrator or member of management who knows about harassment/discrimination but takes no action to report it is also subject to discipline, up to and including termination.*
- *Any WBRC administrator or member of management who does not follow Board policy may lose insurance coverage in the event of a lawsuit, because violation of policy is considered to be conduct outside the scope of the employment relationship, and thus may not be covered by the liability policy.*

# What Will WBRC Do?

- Promptly investigate.
- Protect complainant(s) from retaliation.
- Take interim/safety measures to separate the parties and allow complainant to participate in our educational programs and services or employment.
- Determine if there was a violation and whether remedial or corrective measures should be taken to cure effects of past unlawful discrimination or harassment.
- Reiterate WBRC's commitment to our schools and programs.
- Consider referral to law enforcement when appropriate.





# You Are Our “Eyes and Ears”

- District Board policy prohibits discrimination/harassment by Board members, staff, Administrators, students and third parties.
- If you see any conduct that you believe may be a violation of District Board policy in our schools, activities or programs, **you are encouraged to** report it to a Principal, HR or a Compliance Officer.
- Feel free to advise staff, students, parents and third parties of our policies, grievance procedures and who the District’s Compliance Officers are.
- You are protected from retaliation for making a good faith report of discrimination/harassment.

# WBRC Compliance Officers

## Compliance Officers (aka Civil Rights Coordinators) and Title IX Coordinators (Policy 2266)

### **Ted Matuszak**

Director of Finance

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### **Heather Phelps**

Director of Curriculum and Instruction

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# Title IX: Different Bucket, but be Aware!

- Policy 2266 contains a separate and different investigation procedure for Title IX complaints of sexual harassment. Title IX applies to both students and staff.
- “Sexual Harassment” definition has changed under Title IX (higher standard):
  - "Quid Pro Quo" harassment by a school employee.
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, **and** objectively offensive that it **effectively denies** a person equal access to the school's education program or activity.
  - "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined under other Federal laws called the Clery Act and the Violence Against Women Act.





# QUESTIONS



# Thank You



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## **Legal Disclaimer**

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.