

Mission: *Lifelong learners will be inspired and developed through effective teaching in a safe and caring environment.*

Vision: *Respect - Pride - Excellence for All*

AGENDA
BOARD OF EDUCATION - SPECIAL MEETING
Instructional Planning Center/Huron Arena
Monday, January 25, 2021
5:30 p.m.

The meeting can be viewed live from a link on the School's website at <http://huron.k12.sd.us/watch-school-board-meetings/>. In the days following the meeting, the meeting can also be viewed on the local cable TV public access channel 6.

1. **Call to Order**
2. **Roll Call**
3. **Pledge of Allegiance**
4. **Adoption of the Agenda**
5. **Dates to Remember**

January 25	HHS Registration Open House 5:30 – 8:30
January 29	Earliest Date to Begin Circulating or File Nomination Petitions for School Board Election
February 3	Early Release
February 8	Board of Education Meeting – 5:30 p.m. - IPC
February 15	President's Day – No School
February 22	Board of Education Meeting – 5:30 p.m. – IPC
February 26	5:00 p.m. – Deadline for Filing Nominating Petitions for School Board Election
April 13	School Board Election
6. **Community Input on Items Not on the Agenda**
7. **Conflict Disclosure and Consideration of Waivers** – The School Board will review the disclosures and determine if the transactions or the terms of the contracts are fair, reasonable, and not contrary to the public interest.
 - a)
8. **CONSENT AGENDA**

The Superintendent of Schools recommends approval of the following:

 - a) **Board Approval of New Hires**

As was mentioned previously, classified personnel, substitute teachers/classroom aides, and volunteers must be approved in order to be covered by our workers' compensation plan.

 - 1) Ashley Hernandez Torres/ESL Para-Educator-HHS/\$15.39 per hour
 - 2) Kelly Hennrich/Assistant Coach-Track & Field/\$4,520 per season
 - 3) Tyler VanWyhe/Para-Educator-HMS/\$16.19 per hour
 - b) **Contracts for Board Approval**
 - 1)

- c) **Resignations for Board Approval**
 - 1) Jamie Hoek/DLC Special Education Teacher/1 year
- d) **Consideration and Approval of Bills**

(The consent agenda may be approved with one motion. However, if a board member wishes to separate an item for discussion, he/she may do so.)

9. **CELEBRATE SUCCESSES IN THE DISTRICT:
CONGRATULATIONS:**

- Huron Middle School is proud to announce **Hannah Schoenfelder**, 8th Alto Saxophone, has been accepted to the South Dakota Music Education Association Middle School All State Festival Band. Hannah is the daughter of **Tom & Amy (Kindergarten Teacher- Buchanan K-1 Center) Schoenfelder**. Her director is Julie Berger.
- **Kyle (2nd Grade Teacher at Madison 2-3 Center) and Brenda Johnson** on the birth of their son, Owen Kyle Johnson. Owen was born on January 19, 2021.

THANK YOU TO:



10. **REPORTS TO THE BOARD:**

- a) **Classified Employee of the Month** – Presented by Heather Rozell
Glenn Martinson, Custodian – Madison 2-3 Center has been selected as Classified Employee of the Month for January 2021. Nomination comments are included in this packet. Congratulations Glenn!
- b) **Good News Report – Amanda Katzenberger – 18-21 SPED Transition Program**
- c) **ELA Curriculum** – Linda Pietz
- d) **LAN Report** – Tim Van Berkum
- e) **Business Manager’s Report**
- f) **Superintendent’s Report**

11. **OLD BUSINESS**

- a) **Draft Calendar 2021-2022 – Calendar Committee Recommendation**
- b) **Draft Calendar 2021-2022 – After Labor Day Start**
- c) **Policy ICA – School Calendar**
- d) **Policy ACAA: Sexual Harassment (HSD Current Policy-Updated Jan. 2019) + Proposed Policy – ASBSD (Last Reviewed Aug. 2020) – 1st Reading**

12. **NEW BUSINESS**

- a) **Accept Rebate Agreement for Clean Diesel Grant/VW Program** for the purchase of two new school buses. Rebate Agreements are ID Number DERA215 and DERA218.
- b) **Contract with Associated Consulting Engineering, Inc. to make plans for Chiller Replacement and Temperature Control Upgrades.**

13. **EXECUTIVE SESSION**

1-25-2 Executive or closed meetings may be held for the sole purposes of:

- (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term “employee” does not include any independent contractor.
- (4) Preparing for contract negotiations or negotiating with employees or employee representatives.

14. **ADJOURNMENT**

Huron School District

January 11, 2021

150 5th St SW

Huron, SD 57350

Mr. Nebilsick

Mrs. Willemssen

Mrs. Schilling

Huron School Board

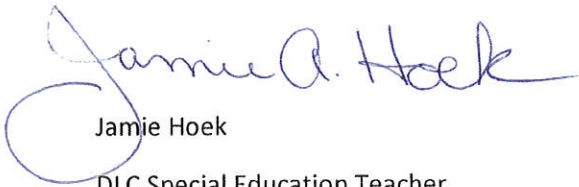
To Whom It May Concern-

It is with a heavy heart that I am informing you of my intent to resign my position as the DLC Special Education Teacher for the Middle School effective at the end of the 2020-2021 School year.

Due to family circumstances we will be leaving the wonderful Huron Community.

It has been my pleasure to serve the Huron School District and these amazing student. I have learned so many things that will benefit me in the future. The friendships I have made will be with me forever.

With sincere wishes for amazing years to come,

A handwritten signature in blue ink that reads "Jamie A. Hoek". The signature is written in a cursive style with a large, looping initial "J".

Jamie Hoek

DLC Special Education Teacher

Huron Middle School

Board Report - Listing of Bills

<u>Vendor Name</u>		<u>Vendor Description</u>	<u>Amount</u>	
Checking	1			
Checking	1	Fund: 10 GENERAL FUND		
NORTHWESTERN ENERGY		UTILITIES	2,048.15	
			Fund Total:	2,048.15
Checking	1	Fund: 32 BOND REDEMPTION FUND-ELEMENTARY		
S&P GLOBAL RATINGS		ISSUANCE COSTS	15,500.00	
SDHEFA		APP FEE	8,381.25	
			Fund Total:	23,881.25
			Checking Account Total:	25,929.40

Classified Employee of the Month

Name Glenn Martinson

Position Custodian – Madison 2-3 Center

Date January 2021

The staff of the Madison 2-3 Center would like to nominate Glenn Martinson, custodian, for the Classified Employee of the month. Glenn is a very hard worker and a team player. Below are some of the things Glenn's co-workers wrote about him:

- Glenn goes above and beyond his duties. He put on a demonstration for the students so they understood the equipment he uses. He makes little gadgets to make life easier. He is always positive and always has a smile on his face.
- Glenn takes great pride in a clean environment and our building shines because of it! He is very conscientious to keep the school safe for a positive learning environment. He is very respectful and kind to the staff and students and has a genuine care for others.
- Glenn is always willing to help, no matter the job.
- Glenn is always looking for ways to improve anything & everything. He researches products so everyone is using the best item for the job. He is friendly and helpful to the staff and students. Madison school has never been cleaner!
- Glenn has been a fantastic addition to the Madison staff. He takes a lot of pride in his work and our building looks great!
- Glenn is so helpful when it comes to moving or fixing furniture in the rooms.
- Glenn is found waving and giving fist bumps to the kids down the hall when he's driving his cleaning machine!
- Glenn takes time to answer the kid's questions when they ask him about what he is doing. The kids love him! He is fun to work with.
- Glenn is friendly, he always greets students and staff with a smile (even with the mask on)! We are beyond grateful for Glenn this year especially with COVID-19. He always has sanitizing or cleaning supplies needed to be safe.
- If there is a dirty job, Glenn is there with gloves and ready to dig in!
- A 3rd grade student said, "Mr. Glenn deserves this because he cleans the big messes and keeps us healthy!"

We all enjoy Glenn and we are extremely grateful to have him with us at the Madison 2-3 Center. "Thank you" Glenn!

Madison 2-3 Center Staff

Huron School District ELA Curriculum Adoption Report

The ELA curriculum study began in the fall of 2019 when the elementary, MS and HS English Language Arts teachers reviewed the standards, identified priority standards, developed scope and sequences for each course, and created proficiency scales for all priority standards. This work was facilitated by the building principals, the instructional coaches (K - 8), and the Director of Curriculum, Instruction and Assessment. The Curriculum Advisory Committees (consisting of staff, parents, and students per board policy IIAA) reviewed and evaluated sample instructional materials from a variety of vendors using a customized matrix specific to ELA.

After evaluating the instructional materials, committee members discussed their findings and the matrix scores tabulated to determine the top three vendors who presented to the ELA committee members on February 25 – 26, 2020. Another more detailed matrix was used to evaluate the materials while choosing the final curriculum. The Director of Curriculum, Instruction and Assessment then met with the ELA staff to hear recommendations on these instructional materials and support their choices with reasoning. The matrix tabulation matched these findings and the building principals met with the Director of Curriculum, Instruction and Assessment to finalize their choices.

Factors influencing the ELA committee's choices included: the balance of online and print materials, content layout, good coverage of the priority standards, the ability to edit presentation materials, and text written within appropriate levels.

Due to COVID-19 interruption of the 2019-2020 school year, and the uncertainty of the budget, the adoption of new ELA curriculum was put on hold. In November of our 2020 school year it was determined by Mr. Christopherson that our budget could be used for continuation of the curriculum adoption process and I proceeded to contact the vendors to ensure there were no major changes that had occurred since the presentations in February. The following curriculum is being recommended for purchase:

myView by Savvas Learning Company for our K – 5

StudySync by McGraw Hill Education for our MS and HS

*Professional development will occur in the summer of 2021 and throughout the 2021-2022 implementation year. This summer teachers will meet with representatives from the companies for a day of professional development on the various aspects of the new curriculum. The following day training will continue with the instructional coaches and the Director of Curriculum, Instruction and Assessment to receive professional development in the areas of backwards planning, developing effective assessments, and designing and delivering units of instruction that specifically align to learning targets. Teachers will also explore common problems in unit design and how to avoid the pitfalls when planning new units. During this curriculum development work, the teachers (with guidance from the director of instruction and instructional coaches) will begin designing one unit utilizing the newly purchased curriculum materials.

Business Office Report – January 25, 2021

1. School Bus Grant

Our two applications for the South Dakota Diesel Emission Reduction Act and Volkswagen School Bus Rebate Programs won State approval. These are for 25% of the cost of two new buses, about \$45,000.

2. Elementary Bonds

We recently successfully completed an Advance Crossover Refunding of the remaining 2013 General Obligation Bonds in the amount of \$6.7 million. This refinancing of debt will save the taxpayers \$746,000 in interest payments. Previously in 2017 we were able to refinance about \$9.3 million of the 2013 General Obligation Bonds at savings of \$1.3 million.



Huron School District Academic Calendar 2021-2022 School Year

(Dec 3 State Interp - End Sem B4 Christmas)

(PTC / OH / ER subject to change)

AUGUST 2021 7						
SUN	MON	TUES	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	+9+	+10	+11	+12	+13	14
15	△16	△17△△	△18	△19	△20 flex	21
22	23✓	24✓	25✓	26✓	27✓	28
29	30	31				

† New teach workdays + New teach lunch/sub in-service △ Teach In-serve △△ All Staff In-service 9:30-12:15
 ○ Aug 23 - 1st Day of School ✓ Kindergarten Screen ✕ Aug 27 - Kindergarten 1st Day

JANUARY 2022 20 = 20 = 102						
SUN	MON	TUES	WED	THUR	FRI	SAT
						1+
2	3	4	5	6	7	8
9	10	11	12+	13	14	15
16	17**	18	19	20	21	22
23	24✕	25	26	27	28	29
30	31					

♦ New Year's Day Holiday † Early release ♦♦ Martin Luther King Holiday
 ✕ High School Registration Open House 5:30 - 8:30

SEPTEMBER 2021 19 = 26						
SUN	MON	TUES	WED	THUR	FRI	SAT
			1+	2+	3+	4+
5+	6+	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27✓	28	29	30		

♦ State Fair (no school) Sep 2 thru 6
 † Early release (Sep 1 In-service / State Fair) (TBA - Homecoming Parade)
 ✕ HS PT Conferences (5:30-8:30 pm)

FEBRUARY 2022 19 = 39 = 121						
SUN	MON	TUES	WED	THUR	FRI	SAT
		1	2+	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21+	22-	23	24-	25	26
27	28					

† Early release ♦ Presidents' Day -4-5 PT Conf (3:30-6:45)

OCTOBER 2021 20 = 46						
SUN	MON	TUES	WED	THUR	FRI	SAT
					1	2
3	4	5-	6+	7-	8	9
10	11-	12	13	14	15	16
17	18	19	20	21	22	23
24	25-	26-	27	28	29	30
31						

♦ Native American Day † Early release -4-5 PT Conf (3:30-6:45)
 --MS PT Conf (3:30 to 6:30)

MARCH 2022 21 = 60 = 142						
SUN	MON	TUES	WED	THUR	FRI	SAT
		1	2+	3	4	5
6	7-	8-	9	10	11+	12
13	14**	15**	16	17	18+	19
20	21*	22* ✕	23	24	25	26
27	28	29	30	31		

* K-1 PT Conf (3:30-6:45) ** 2-3 PT Conf (3:30-6:45) --MS PT Conf (3:30-6:30)
 ✕ HS PT Conf (5:30-8:30) † Early release ♦ Spring Break

NOVEMBER 2021 19 = 65						
SUN	MON	TUES	WED	THUR	FRI	SAT
	1	2	3+	4	5	6
7	8+	9+	10	11+	12	13
14	15**	16**	17	18	19	20
21	22	23	24+	25**	26**	27
28	29	30-				

† Early release ♦ Vet Day *K-1 PT Conf (3:30-6:45) **2-3 PT Conf (3:30-6:45)
 ✕ HS PT Conf (5:30-8:30 pm) ♦♦ Holiday Break

APRIL 2022 19 = 79 = 161						
SUN	MON	TUES	WED	THUR	FRI	SAT
					1	2
3	4	5	6+	7	8	9
10	11	12	13	14	15+	16
17	18+	19	20	21	22	23
24	25	26	27	28	29	30

† Early Release
 ♦ Vacation

DECEMBER 2021 17 = 82						
SUN	MON	TUES	WED	THUR	FRI	SAT
			1	2	3+	4
5	6	7	8+	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23+	24	25
26	27	28	29	30	31	

† Early release ♦ Holiday Break (Dec 3 No School State Oral Interp Host)

MAY 2022 13 = 92 = 174						
SUN	MON	TUES	WED	THUR	FRI	SAT
1	2	3	4+	5	6	7
8	9	10	11	12	13	14
15	16	17-	18 _B	19 _{o+}	20 _o	21
22**	23	24	25	26	27	28
29	30+	31				

o Last day of classes _o Teacher Checkout ♦ Memorial Day † Early release
 B Baccalaureate
 - 8th grade promotion
 ♦♦ Graduation

ELEMENTARY/MIDDLE SCHOOL/HIGH SCHOOL

Quarter will end on date set at grade level.

End of 1st Semester - (81 days)
 End of 2nd Semester - (93 days)

Staff Development) Early Release Days

Sep 1 Oct 6 Nov 3 Dec 8
 Jan 12 Feb 2 Mar 2 Apr 6 May 4
 (Sep ? , Nov 25, Dec 23, May 18 also Early Release)

MAKE-UP DAYS FOR SNOW: May 20, 23, 24, 25, 26, 27

CONFERENCES: (All to be determined by principals after calendar approved)

K & 1st Gr Center: Nov 8, Nov 9, Mar 21, Mar 22
 2nd & 3rd Gr Center: Nov 15, Nov 16, Mar 14, Mar 15
 4th & 5th Gr Center: Oct 5, Oct 7, Feb 22, Feb 24
 Middle School: Oct 25, Oct 26, Mar 7, Mar 8
 High School: Sep 27, Nov 30, Mar 22, (Jan 24 Registration Night)

GRADUATION Sunday, May 22, 2022 2:00 p.m., Huron Arena

174	Student Contact Days
2	Conference Days
4	Teacher In-Service Days
.5	Teacher Check-out (1/2 day)
180.5	Total Teacher Days



Huron School District Academic Calendar 2021-2022 School Year

(PTC / OH / ER subject to change)

Draft – Begins After Labor Day

AUGUST 2021						
SUN	MON	TUES	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

JANUARY 2022 14 = 88 6 = 6 = 94						
SUN	MON	TUES	WED	THUR	FRI	SAT
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

SEPTEMBER 2021 18						
SUN	MON	TUES	WED	THUR	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

FEBRUARY 2022 19 = 25 = 113						
SUN	MON	TUES	WED	THUR	FRI	SAT
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28					

OCTOBER 2021 20 = 38						
SUN	MON	TUES	WED	THUR	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

MARCH 2022 21 = 46 = 134						
SUN	MON	TUES	WED	THUR	FRI	SAT
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

NOVEMBER 2021 19 = 57						
SUN	MON	TUES	WED	THUR	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

APRIL 2022 19 = 65 = 153						
SUN	MON	TUES	WED	THUR	FRI	SAT
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

DECEMBER 2021 17 = 74						
SUN	MON	TUES	WED	THUR	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

MAY 2022 21 = 86 = 174						
SUN	MON	TUES	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29♦♦	30	31	June 1Ⓢ	2□	3	4
5	6	7	8	9	10	

- Ⓢ Last day of classes □ Teacher Check-out ♦ Memorial Day ♦ Early release
- Ⓢ Baccalaureate
- 8th grade promotion
- ♦♦ Graduation

Staff Development) Early Release Days

Sep Oct Nov Dec
Jan Feb Mar Apr May
(Sep , Nov , May also Early Release)

MAKE-UP DAYS FOR SNOW: June 2,3,6,7,8,9,10

CONFERENCES: (All to be determined by principals after calendar approved)

K & 1st Gr Center:

2nd & 3rd Gr Center:

4th & 5th Gr Center:

Middle School:

High School: Sep , Dec , Mar , (Jan Registration Night)

ELEMENTARY/MIDDLE SCHOOL/HIGH SCHOOL


Quarter will end on date set at grade level.

End of 1st Semester - (87 days)

End of 2nd Semester - (87 days)

GRADUATION Sunday, May 29, 2022 2:00 p.m., Huron Arena

- 174 Student Contact Days
- 2 Conference Days
- 4 Teacher In-Service Days
- .5 Teacher Check-out (1/2 day)
- 180.5 Total Teacher Days

	Huron School District #2-2	Code: ICA – School Calendar
	Policies and Regulations	

School Calendar

Prior to establishing a school calendar for the coming year, the superintendent will convene a committee, which shall include administrators and representatives from the teacher’s association. The committee may also include representatives from other employee groups and parents, and will be convened no later than March 15. After consideration of possible variations of the calendar, the committee will propose a calendar to be considered by the school board. The committee will forward calendar recommendations to the board regarding dates for the starting and closing of the school year, in-services, teacher checkout days, vacations, parent-teacher conferences, etc.


In the event that changes in the calendar may be necessary (e.g., days missed because of weather-related closings, etc.), the superintendent will consult with committee members to determine how the days will be made up.

The standard school year will consist of 180.5 contract days. For the purpose of per diem salary computations, the school calendar will include days school is in session, total teacher workshop days, plus days on extended contract (if applicable).

Final authority regarding the calendar, including make-up days, rests with the school board.

Material for January board meeting:

Introduction for policy update / change for Title IX Sexual Harassment

	Huron School District #2-2	Code: ACAA
	Policies and Regulations	Sexual Harassment

Sexual Harassment

Section 1 – Policy Statement

The District is committed to a school environment which is free from sexual harassment and conducive to all students' educational opportunities. Sexual harassment can inhibit a student's educational opportunities and an employee's work. Sexual harassment of students attending school in the District or students from other schools who are at a District activity, and sexual harassment of school employees, school volunteers, parents, guests, visitors and vendors of the District shall also not be tolerated and is strictly prohibited.

All students, school employees, school volunteers, parents, guests, visitors and vendors shall conduct themselves in a civil and responsible manner and in a manner consistent with school policies. This policy prohibiting sexual harassment shall apply to all students, school employees, school volunteers, parents, guests, visitors and vendors while on school property, while attending or participating in school activities, on school-owned property or on non-school property, while in any school-owned or leased vehicle, while at a school bus stop, or when in a private vehicle located on school property during school or during school activities.


The District shall investigate all reported instances involving sexual harassment. Attempts to informally or voluntarily resolve the complaint should not delay the commencement of the District's investigation. Unless a different person is designated by the Superintendent to conduct the investigation, the school administrator of the school attendance center where the sexual harassment is alleged to have occurred is responsible for investigating the alleged sexual harassment. Allegations of sexual harassment may also be reported by the administration to other authorities, including but not limited to law enforcement.

The District will maintain confidentiality to the maximum extent possible under the circumstances. However, a person reporting sexual harassing conduct must understand that should the administrator who is investigating the report determine there is reasonable cause to suspect that sexual harassment did occur which could result in administrative discipline or a referral to the School Board, the person alleged to have sexually harassed another person may have the right to know the identity of the person(s) making the report in order that he/ she may have an opportunity to defend himself/herself.

The District strictly prohibits retaliation against any person because he or she has made a report, testified, assisted, or participated in the investigation of a report of alleged sexual harassment. Retaliation includes, but is not limited to, any form of verbal or physical reprisal or adverse pressure. The person(s) alleged to have sexually harassed another person shall not directly or indirectly (such as through a third person) harass, pressure, or retaliate against any other person because of the complaint being reported. A violation of this provision may lead to separate disciplinary action based on the retaliation. Any person who believes he or she is being subjected to retaliation because of his or her involvement with a sexual harassment report should immediately contact a school administrator.

Students who violate this policy shall be subject to appropriate disciplinary action, up to and including expulsion. Employees who violate this policy shall be subject to appropriate disciplinary action, up to and including termination of employment. School volunteers, parents, guests, visitors, and vendors who violate this policy may be prohibited from being on school property.

Complaints against school employees and complaints related to bullying are addressed through other school district policies and not through this policy.

	Huron School District #2-2	Code: ACAA
	Policies and Regulations	Sexual Harassment

SECTION 2 – Sexual Harassment Defined

Sexual harassment is defined as sexually oriented words and actions which tend to annoy, alarm or be physically or verbally abusive toward another person and which serve no legitimate or valid purpose regardless of the intent of the person accused of the sexually harassing conduct. Not all harassment falls within the definition of sexual harassment (i.e., harassment that is of a sexual nature). Other laws, regulations and policies also prohibit inappropriate conduct and provide a means for addressing inappropriate conduct should it occur.

Sexual harassment is a specific type of harassment which is prohibited under this policy. Examples of sexual harassment include, but not limited to:

1. Unwelcome sexual flirtations, advances or propositions;
2. Verbal comments, jokes, or abuse of a sexual nature;
3. Graphic verbal comments about an individual's body;
4. Sexually degrading words used to describe an individual;
5. Displaying pornographic material;
6. Physical contact or language of a sexually suggestive nature.

SECTION 3 – Sexual Harassment Reporting Procedure

Any individual who believes that he or she has been or is being subjected to sexual harassment or has reason to suspect another person has been or is being subjected to sexual harassment should immediately report it to a teacher, guidance counselor, or school administrator. The report may be made verbally or in writing. A report may be made anonymously, although disciplinary action may not be based solely on an anonymous report. If disciplinary action is being requested, the individual reporting the sexual harassment will be asked to either submit a signed written complaint or sign a completed Sexual Harassment Report Form, Exhibit ACAA-E(1), verifying the accuracy of its content. The written complaint or Sexual Harassment Report Form must include the following:

- the date the written complaint was filed or the Sexual Harassment Report Form was completed,
- the school employee receiving the complaint (if applicable),
- the name of the person reporting the sexual harassment,
- the address/phone # of the person reporting the sexual harassment,
- the specific conduct or nature of the sexual harassment complaint including the person(s) alleged to have sexually harassed the complaining party or another person, the date(s) and location where the conduct occurred, witnesses, etc.,
- the date the school employee completed the form (if applicable),
- the date and signature of the person reporting the sexual harassment .

If the signed written complaint was given to a teacher or guidance counselor, or if the Sexual Harassment Report Form was completed by a teacher or guidance counselor, the teacher or guidance counselor shall forward the complaint or Sexual Harassment Report Form to the teacher's building school administrator.

SECTION 4 – Procedure for Addressing Sexual Harassment Complaints



Huron School District #2-2

Policies and Regulations

Code:
ACAA
Sexual Harassment

STEP 1: School Administrator Investigation and Determination.

Should there be a report which alleges a District student, employee, school volunteer, parent, guest, visitor or vendor has been subjected to sexual harassment, an investigation into the alleged sexual harassment will be initiated. The District's investigation may include, but is not limited to, such things as interviewing individuals with actual or possible knowledge regarding the conduct in question, identifying facts related to the conduct in question, identifying when and over what period of time the conduct is to have occurred, determining whether the conduct negatively affects the educational opportunities or employment condition of the victim, identifying prior history of a similar nature by any of the individuals involved, and attempting to obtain possible verification from other persons. The investigation by the school administrator responsible for the investigation shall be conducted promptly and completed in a reasonable time frame given the nature of the complaint. Unless the nature of the complaint and investigation dictate otherwise, the investigation should be completed and determination made by the school administrator on the merits of the complaint within thirty (30) calendar days of receipt of the complaint.

The person alleged to have sexually harassed another person will be notified that a complaint has been filed pursuant to this policy and that the complaint is being investigated. The name of the person making the complaint will not be disclosed to the person alleged to have violated this policy unless and until the investigation results in a determination that there is reasonable cause to suspect that sexual harassment did occur.


Upon reasonable suspicion by the school administrator responsible for the investigation that the allegation of sexual harassment may be true, the employee, student or third person accused of sexual harassment conduct shall be notified in writing that reasonable suspicion exists that the complaint may be valid, including a statement of the facts supporting the determination that reasonable suspicion exists, and the name of the alleged victim.

The person alleged to have sexually harassed another person in violation of this policy shall be afforded an opportunity to respond to the allegation of sexual harassment but is not required to submit a response.

Pending the outcome of the investigation the school administrator responsible for conducting the investigation may take such action consistent with school policy and state law as deemed appropriate in order to facilitate the investigation and protect the rights of all persons involved. If there is reasonable suspicion to believe that a third person sexually harassed a student, employee or guest while at school or at a school activity on non-school property in violation of this policy, the administration may prohibit that person from being on school property or at school activities.

At the conclusion of the investigation, the school administrator shall make a determination as to whether sexual harassment did occur or whether the facts are insufficient to determine that a determination that sexual harassment occurred. The complainant and the person alleged to have sexually harassed another person will receive written notice of the school administrator's determination. Should the school administrator conclude that sexual harassment did occur, the school administrator shall take such action as deemed appropriate, which may include imposing disciplinary consequences on the person found to have violated this policy prohibiting sexual harassment.

STEP 2: Appeal to the Superintendent

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	Policies and Regulations	Sexual Harassment

The following procedure shall be used to address an appeal of the school administrator's decision in Step 1 to the Superintendent:


1. If either party is not satisfied with the school administrator's decision, or if the school administrator does not render a written decision within fourteen (14) calendar days of the request for a decision on the merits of the complaint, that party may appeal to the Superintendent by filing form ACAA-E(2). The appeal must be filed within ten (10) calendar days of receipt of the school administrator's written decision, or ten (10) days of the deadline for the school administrator's written decision, whichever comes first. The appealing party must attach the school administrator's written decision.
2. Within fourteen (14) calendar days from the date the appeal was filed, the Superintendent shall render a decision in writing. All parties shall receive copies of the decision. The Superintendent shall uphold, reverse, modify the school administrator's decision, or the Superintendent may refer the matter back to the school administrator for further investigation and supplemental decision which decision may restate, modify or reverse the school administrator's initial decision. A supplemental decision by the school administrator after a referral back to the school administrator is subject to appeal to the Superintendent. The time frame for rendering a decision by the Superintendent may be extended by the Superintendent for good cause and upon written notification to all parties, which notification shall identify the reason for the extension and the date on or before which the decision shall be rendered.

STEP 3: Appeal to the Board


If either party is not satisfied with the Superintendent's decision, or if the Superintendent does not render a written decision within fourteen (14) calendar days of the receipt of the appeal, that party may appeal to the School Board by filing with the Business Manager using Form ACAA-E(3) within ten (10) calendar days of receipt of the Superintendent's written decision, or ten (10) days of the deadline for the Superintendent's written decision, whichever comes first. The appeal shall be in writing and the appealing party must attach to the appeal the school administrator's written decision, the appeal to the Superintendent, and the Superintendent's written decision or notice of the Superintendent's failure to render a written decision.

The following procedure shall be used by the Board to address an appeal of the Superintendent's decision on the merits related to a sexual harassment complaint:

1. Upon receipt by the Board President/Chairperson of an appeal by the Complainant, a copy of the appeal shall be given to the person alleged to have violated the sexual harassment policy.
2. Upon receipt of an appeal, the Board shall at its next meeting schedule a date, time and location for the appeal hearing.
3. The following procedure shall be applicable at the appeal hearing before the Board:
 - A. The Board shall appoint a board member or a person who is not an employee of the school district as the hearing officer;
 - B. Within thirty (30) calendar days of an appeal being filed with the Board, the Board shall conduct a hearing in executive session;
 - C. The Complainant, person alleged to have violated the bullying policy, and Superintendent each have the right to be represented at the hearing;


	Huron School District #2-2	Code: ACAA
	Policies and Regulations	Sexual Harassment

- D. The Board shall make a verbatim record of the hearing by means of an electronic or mechanical device or by court reporter. This record and any exhibits must be sealed and must remain with the hearing officer until the appeal process has been completed;
- E. The issue on appeal is whether the Superintendent's decision should be upheld, reversed or modified;
- F. All parties shall be given the opportunity to make an opening statement, with the appealing party being given the first opportunity, followed by the other party, and then the Superintendent;
- G. The appealing party shall present his or her case first, and the other party shall then present his or her case. Both parties shall have the opportunity to ask questions of the other's witnesses. The hearing officer and board members may ask questions of any witness;
- H. The Superintendent shall present the basis of his/her decision which led to the appeal. Both parties shall have the opportunity to ask the Superintendent questions. The hearing officer and board members may also ask questions of the Superintendent;
- I. Unless a witness is a party to the appeal, witnesses may be present only when testifying unless the hearing officer rules otherwise. All witnesses must take an oath or affirmation administered by the School Board president, hearing officer or other person authorized by law to take oaths and affirmations;
- J. The hearing officer shall admit all relevant evidence. The hearing officer may limit unproductive or repetitious evidence. The strict rules of evidence do not apply. *Moran v. Rapid City Area School Dist.*, 281 N.W.2d 595. 602 (S.D. 1979).
- K. All parties shall be given the opportunity to make a closing statement, with the appealing party having the first opportunity, followed by the other party, and then the Superintendent. The appealing party shall be given the opportunity for a brief rebuttal;
- L. After the evidentiary hearing, the Board shall continue to meet in executive session for deliberations. No one other than the hearing officer may meet with the Board during deliberations. The Board may seek advice during deliberation from an attorney who has not represented any of the parties to the hearing. Consultation with any other person during deliberation may occur only if a representative of both parties and Superintendent are present. The Board may, in its sole discretion, continue the proceedings and make a final decision on the appeal at a later date. Within twenty (20) calendar days of the hearing, the Board shall render its decision and issue its written Findings of Fact, Conclusions of Law and Decision. The time frame for rendering a decision may be extended by the Board President for good cause and upon written notification to both parties and the Superintendent, and the notification shall identify the reason for the extension and the date on or before which the decision shall be rendered;
- M. The decision of the School Board must be based solely on the evidence presented at the hearing and must be formalized by a motion made in open meeting. The Board will convene in open session and a motion to uphold, reverse, or modify the Superintendent's decision shall be made and voted upon. Findings of Fact, Conclusions of Law and Decision, consistent with the Board motion shall be in writing and approved by the Board. Both parties, the school administrator and the Superintendent will receive copies after the Findings of Fact, Conclusions of Law and Decision are approved by the Board.
- N. Following the Board hearing, should the Board determine there has been a violation of this policy prohibiting sexual harassment, Board action may include but is not limited to the following: (1) suspend or expel a student from any or all school programs, including but not limited to classes, extracurricular activities, or attendance at school activities; (2) pursuant to statute, reprimand, suspend without pay, or terminate the contract of an employee, or (3)

	Huron School District #2-2	Code: ACAA Sexual Harassment
	Policies and Regulations	

prohibit a third person from being on school property or at school activities for such time as may be determined by the Board.

- O. If either party is dissatisfied with the Board’s decision, that party may appeal the decision by filing an appeal pursuant to law.

	Huron School District #2-2	Code: ACAA-E(1) Sexual Harassment Complaint Report Form
	Policies and Regulations	

Sexual Harassment Complaint Report Form

Date Form Completed: _____

Form Completed by: _____

Person Reporting Sexual Harassment: _____

Address/Phone # of the Person Reporting the Sexual Harassment: _____

Employee Involved: _____

Nature of Complaint: (With specificity, identify the person(s) alleged to have sexually harassed, the conduct which is the basis of the sexual harassment complaint, when/where the conduct occurred, the person(s) alleged to have sexually harassed, witnesses, and any other pertinent information):

(Use additional sheets if necessary).

Date School Employee Completing the Sexual Harassment Report Form

Date Person Reporting the Sexual Harassment

Policy ACAA: SEXUAL HARASSMENT

Status: ADOPTED

Original Adopted Date: 01/01/2007 | Last Revised Date: 08/31/2020 | Last Reviewed Date: 08/31/2020

(The Federal Regulation upon which a specific policy provision is based is referenced within the policy. The District may opt to delete the regulatory reference when adopting the policy.)

I. Policy Statement

The District does not discriminate on the basis of sex in any education program or activity that it operates, including admission and employment. The District is required by Title IX of the Education Amendments of 1972 and the regulations promulgated through the U.S. Department of Education not to discriminate in such a manner. Inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the Department of Education, or both. (34 CFR § 106(b)(1))

The District is committed to a school environment which is free from sexual harassment and conducive to all students' educational opportunities. Sexual harassment can inhibit a student's educational opportunities and an employee's work. Sexual harassment of students attending school in the District or students from other schools who are at a District activity, and sexual harassment of school employees, school volunteers, parents, guests, visitors and vendors of the District shall also not be tolerated and is strictly prohibited.

All students, school employees, school volunteers, parents, guests, visitors and vendors shall conduct themselves in a civil and responsible manner and in a manner consistent with school policies. This policy prohibiting sexual harassment shall apply to all students, school employees, school volunteers, parents, guests, visitors and vendors while on school property, while attending or participating in school activities, on school-owned property or on non-school property, while in any school-owned or leased vehicle, while at a school bus stop, or when in a private vehicle located on school property during school or during school activities.

Federal law (34 CFR § 106.30) defines "sexual harassment" as conduct on the basis of sex that satisfies one or more of the following: (34 CFR § 106.30)

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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 recipient's education program or activity; or
3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. (34 CFR § 106.8(a))

Any student who believes that he or she has been or is being subjected to sexual harassment or has reason to suspect another person has been or is being subjected to sexual harassment may also report it to a teacher, guidance counselor, or school administrator. The report may be made verbally or in writing.

The District's response shall treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies with Title IX requirements before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. (34 CFR § 106.44(a))

II. Designation of Title IX Coordinator

The Board has designated the following District employee to coordinate its efforts to comply with its responsibilities as set forth in 34 CFR Part 106, who shall be referred to as the "Title IX Coordinator." (34 CFR § 106.8(a))

Name or Title: _____
Office Address: _____
Email Address: _____
Telephone Number: _____

The District shall notify applicants for employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the District, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator. (34 CFR § 106.8(a))

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. (34 CFR § 106.30(a))

III. Dissemination of Policy

The District shall notify persons entitled to the notification under Section I. above that the District does not discriminate on the basis of sex in the education program or activity that it operates, and that it is required by Title IX and this policy not to discriminate in such a manner. Such notification must state that the requirement not to discriminate in the education program or activity extends to admission and employment, and that inquiries about the application of Title IX to the District may be referred to the District's Title IX Coordinator, to the U.S. Assistant Secretary of Education, or both.

The District shall prominently display the contact information required to be listed for the Title IX Coordinator on its website, and in each handbook or catalog that it makes available to persons entitled to a notification pursuant to Section I. above. (34 CFR § 106.8(b))

IV. Adoption of Grievance Procedures

The District has adopted and published grievance procedures (ACAA-R(1), Sexual Harassment – Regulations) that provide for the prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by Title IX and this policy. The District shall provide to persons entitled to a notification under Section I above notice of the District's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the District will respond. (34 CFR § 106.8(c))

V. Definitions (34 CFR § 106.30(a), except when otherwise indicated)

- a. "Actual knowledge" means notice of sexual harassment or allegations of sexual harassment to the District's Title IX Coordinator or any official of the District who has authority to institute corrective measures on behalf of the District, or to any employee of an elementary and secondary school. Imputation of knowledge based solely on vicarious liability (when a person has a particular legal relationship to the person who acted negligently) or constructive notice (deeming notice of something to a person having been given, even though actual notice did not exist) is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the District.
- b. "Complainant" means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- c. "Dating violence" means violence committed by a person:
 1. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 2. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. the length of the relationship.
 - ii. the type of relationship.
 - iii. the frequency of interaction between the persons involved in the relationship. (34 U.S.C. 12291(a)(10))
- d. "Decision-maker" means the school administrator who has primary responsibility and authority related to

students, staff and attendance center where the alleged sexual harassment occurred, unless otherwise designated by the Board, and who has the authority to make a determination on the complaint as to responsibility of the respondent. (ASBSD sample definition)

- e. "Domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. (34 U.S.C. 12291(a)(8))
- f. "Education program or activity" includes locations, events, or circumstances over which the District exercised substantial control over both the respondent and the context in which the sexual harassment occurs. (34 CFR § 106.44(a))
- g. "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the District investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the District. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the District.
- h. "Document filed by a complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the District) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Should the Title IX Coordinator sign the formal complaint, the Title IX Coordinator is not a complainant or otherwise a party, and the Title IX Coordinator must comply with the Title IX requirements.
- i. "Notice" includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.
- j. "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
- k. "Sexual assault" means any nonconsensual sexual act proscribed by Federal, Tribal, or State law, including when the victim lacks capacity to consent. (20 U.S.C. 1092(f)(6)(A)(v))
- l. "Stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - 1. fear for his or her safety or the safety of others; or
 - 2. suffer substantial emotional distress. (34 U.S.C. 12291(a)(30))
- m. "Supportive measures" means nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escorting the complainant while on District property or while a District off-campus activity, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

VI. District's Response to Sexual Harassment (34 CFR § 106.44)

- A. General response to sexual harassment. Regardless of whether or not a formal complaint is filed, should the District have actual knowledge of sexual harassment in a District educational program or activity against another person in the United States, the District shall respond promptly in a manner that is not deliberately indifferent (i.e., if the District's response to sexual harassment is clearly unreasonable in light of the known circumstances).

The Title IX Coordinator shall promptly contact the complainant to discuss the availability of supportive

measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

- B. **Response to a formal complaint.** In response to a formal complaint, the District shall follow the grievance process as set forth in ACAA-R(1), Sexual Harassment – Regulations.
- C. **Time frames.** The timeframes set forth in the regulations shall be considered as a maximum length of time within which the related step is to be completed, however, the time frames may be extended for good cause upon written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause includes, but is not limited to, utilization of the informal resolution process, availability of an investigator if not a school employee, complexity of the investigation, absence of a party, a party's advisor, a witness, or decision-maker (including a person necessary for addressing an appeal), concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.
- D. **Emergency removal.** Nothing in Title IX regulations or this policy prohibits the District from removing a respondent from the District's education program or activity on an emergency basis, provided that the District undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal, however, nothing in Title IX regulations or this policy may be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act. Additionally, nothing in the Title IX regulations or this policy prohibits the District from placing an employee respondent on administrative leave during the pendency of a grievance process, however, nothing in Title IX regulations or this policy may be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

VII. Informal Resolution (34 CFR § 106.45(b)(9))

- A. The District may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy.
- B. The District may not require the parties to participate in an informal resolution process under this policy and may not offer an informal resolution process unless a formal complaint is filed.
- C. At any time prior to reaching a determination regarding responsibility the District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the District:
 - 1. provides to the parties a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
 - 2. obtains the parties' voluntary, written consent to the informal resolution process; and
 - 3. does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

VIII. District's Grievance Process for Formal Complaints of Sexual Harassment (34 CFR § 106.45(b))

- A. For the purpose of addressing formal complaints of sexual harassment, the District's grievance procedure as set forth in ACAA-R(1), Sexual Harassment – Regulations, shall be followed. There must be compliance with the requirements of this section, and any provisions, rules, or practices other than those required by this section that the District adopts as part of its grievance process for handling formal complaints of sexual harassment must apply equally to both parties.

- B. Upon receipt of a formal complaint, the Title IX Coordinator shall provide the following written notice to the parties who are known (34 CFR § 106.45(b)(2))
1. Notice of the District's grievance process, including any informal resolution process.
 2. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice shall inform the parties of any provision in the District's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- C. The District shall treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent. Remedies may be disciplinary in nature. Such remedies may include the same individualized services identified as supportive measures. Remedies must be designed to restore or preserve equal access to the District's education program or activity. (34 CFR § 106.45(b)(1)(i))
- D. The District shall follow the grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. (34 CFR § 106.44(a))
- E. Investigation of a formal complaint. When investigating a formal complaint and throughout the grievance process, the District:
1. shall have the burden of proof and the burden of gathering evidence sufficient to reach a determination, and the parties shall not have either burden; (34 CFR § 106.45(b)(5)(i))
 2. cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the District obtains that party's voluntary, written consent to do so for a grievance process under this section. If a party is not an "eligible student," (i.e., student who has reached 18 years of age), the District must obtain the voluntary, written consent of a "parent," (i.e., natural parent, guardian, or an individual acting as a parent in the absence of a parent or a guardian; (34 CFR § 106.45(b)(5)(i))
 3. shall provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence; (34 CFR § 106.45(b)(5)(ii))
 4. shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence; provided, however, nothing in this provision prohibits the District from taking disciplinary action due to a party retaliating against any person due to that person having 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. (34 CFR § 106.45(b)(5)(iii))
 5. shall provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the District may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. (34 CFR § 106.45(b)(5)(iv))
- F. There shall be an objective evaluation of all relevant evidence, and credibility determinations may not be based on a person's status as a complainant, respondent, or witness. (34 CFR § 106.45(b)(1)(ii))
- G. No individual designated by a recipient as a Title IX Coordinator, investigator, decision-maker, or any person designated by the District to facilitate an informal resolution process, may have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. (34 CFR § 106.45(b)(1)(iii))

- H. The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, shall receive training on the definition of sexual harassment, the scope of the District's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. (34 CFR § 106.45(b)(1)(iii))
1. The decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.
 2. The investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
 3. No materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, may rely on sex stereotypes, and training materials must promote impartial investigations and adjudications of formal complaints of sexual harassment.
- I. Until a determination regarding responsibility is made at the conclusion of the grievance process, the respondent is presumed to not be responsible for the alleged conduct. (34 CFR § 106.45(b)(1)(iv); 34 CFR § 106.45(b)(2)(i)(B))
- J. The District's grievance procedure as set forth in ACAA-R(1), Sexual Harassment – Regulations, shall:
- K. including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if District offers informal resolution processes; (34 CFR § 106.45(b)(1)(vi))
- L. include a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities; (34 CFR § 106.45(b)(1)(v))
- M. include the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the District may implement following any determination of responsibility; (34 CFR § 106.45(b)(1)(vi))
- N. state that for all formal complaints of sexual harassment filed against students and employees, the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard. (34 CFR § 106.45(b)(1)(vii))
- O. include the procedures and permissible bases for the complainant and respondent to appeal; (34 CFR § 106.45(b)(1)(viii))
- P. describe the range of supportive measures available to complainants and respondents; (34 CFR § 1045(b)(1)(ix)) and
- Q. not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. (34 CFR § 106.45(b)(1)(x))
- K. If, in the course of an investigation, the District decides to investigate allegations about the complainant or respondent that are not included in the notice provided pursuant to provision B in this section, the District shall provide notice of the additional allegations to the parties whose identities are known. (34 CFR § 106.45(b)(2)(ii))
- L. Any party whose participation is invited or expected, shall be given written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. (34 CFR § 106.45(b)(5)(v))
- M. All parties shall have equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. (34 CFR § 106.45(b)(5)(vi))
- N. Prior to completion of the investigative report, the District must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. (34 CFR § 106.45(b)(5)(vi))
- O. The investigator shall create an investigative report that fairly summarizes relevant evidence and, at least 10 calendar days prior to a determination by a decision-maker regarding responsibility, send to each party and the

party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. (34 CFR § 106.45(b)(5)(vii))

- P. No adversarial hearing shall be held unless the determination of the Superintendent is appealed to the Board, or unless the Superintendent recommends the long term suspension or expulsion of a student, or the suspension without pay or termination of employment of an employee. (34 CFR § 106.45(b)(6)(iii))
- Q. The Superintendent may make a recommendation to the Board that a student determined to have sexually harassed another person be suspended long-term or expelled (ARSD 24:07:01:01). The Superintendent may also make a recommendation to the Board that an employee determined to having sexually harassed another person be suspended without pay or the person's employment with the District be terminated. Should either recommendation be given by the Superintendent, a formal adversarial hearing shall be held before the Board as set forth in ACAA-R(1), Sexual Harassment – Regulations. (34 CFR § 106.45(b)(8)(iii))

IX. Appeal

- A. Both parties have the right to appeal to the Board the Superintendent's determination regarding responsibility, and also from a dismissal of a formal complaint or any allegations therein, on the following bases:
 - 1. Procedural irregularity that affected the outcome of the matter; (34 CFR § 106.45(b)(8)(i)(A))
 - 2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; (34 CFR § 106.45(b)(8)(i)(B)) and
 - 3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter. (34 CFR § 106.45(b)(8)(i)(C))
- B. As to all appeals, the Title IX Coordinator shall: (34 CFR § 106.45(b)(8)(iii))
 - 1. notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - 2. ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 - 3. ensure that the decision-maker(s) for the appeal complies with the standard of evidence as required in this policy;
 - 4. give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
 - 5. ensure that a written decision is issued describing the result of the appeal and the rationale for the result, and provide the written decision simultaneously to both parties.

X. Consolidation of Formal Complaints

The District may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable. (34 CFR § 106.45(b)(4))

XI. Dismissal of a Formal Complaint.

- A. The District must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in this policy even if proved, did not occur in the District's education program or activity, or did not occur against a person in the United States, then the District must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment, however the dismissal does not preclude action under another provision of the District's code of conduct. (34 CFR § 106.45(b)(3)(i))
- B. The District may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: (34 CFR § 106.45(b)(3)(ii))
 - 1. a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

2. the respondent is no longer enrolled in or employed by the District; or specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- C. Upon a dismissal required or permitted pursuant to Section A. or B. above, the District shall promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties. (34 CFR § 106.45(b)(3)(iii))

XII. Recordkeeping (34 CFR § 106.45(b)(10))

- A. The District shall maintain for a period of seven years records of:
1. each sexual harassment investigation including any determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
 2. any appeal and the result therefrom;
 3. any informal resolution and the result therefrom; and
 4. all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.
- B. For each response required under XII.A., the District shall create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If the complainant is not provided with supportive measures, the District shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

XIII. Retaliation Prohibited (34 CFR § 106.71)

- A. Neither the District or 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 has 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.
- B. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this policy, constitutes retaliation.
- C. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination pursuant to the District's Nondiscrimination Policy.
- D. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited by this provision.
- E. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited by this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XIV. Confidentiality

- A. The District shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the purposes of Title IX (34 CFR part 106), including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. (34 CFR § 106.71(a))
- B. The District shall maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the

supportive measures. (34 CFR § 106.30(a))

ASBSD sample policies are intended to be a guide for school districts. As is the case with any policy, a local school district's unique circumstances, challenges and opportunities need to be considered.

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Associated School Boards of South Dakota	NEPN Code: ACAA-E(1)
Policy Reference Manual	

**SEXUAL HARASSMENT
COMPLAINT REPORT FORM**

Date Form Completed: _____

Form Completed by: _____

Person Reporting the Sexual Harassment: _____

Address/Phone # of the Person Reporting the Sexual Harassment:

Nature of Complaint: (With specificity, identify the person(s) alleged to have sexually harassed, the conduct which is the basis of the sexual harassment complaint, when/where the conduct occurred, the person(s) alleged to have sexually harassed, witnesses, and any other pertinent information):

 _____ (use additional sheets if necessary).

 Date School Employee Completing the Sexual Harassment Report Form

 Date Person Reporting the Sexual Harassment

Adopted: 3/30/2015
 Revised:
 Reviewed:

ASBSD sample exhibits are intended to be a guide for school districts. As is the case with any exhibit, a local school district's unique circumstances, challenges and opportunities need to be considered.

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Policy Reference Manual	

**SEXUAL HARASSMENT
COMPLAINT APPEAL TO THE SCHOOL BOARD**

I/We Appeal the Superintendent's Step 2 decision for the following reason(s): [With specificity, Complainant should state how or why the Complainant believes the Superintendent's decision is wrong]:

ATTACH A COPY OF THE SEXUAL HARASSMENT REPORT, PRINCIPAL'S DECISION, APPEAL TO THE SUPERINTENDENT (Exhibit ACAA-E(2)), EMPLOYEE'S STEP 2 WRITTEN RESPONSE, AND SUPERINTENDENT'S DECISION.

_____ Date	_____ Complainant
_____ Date Received	_____ Business Manager

Adopted: 3/30/2015
Revised:
Reviewed:

ASBSD sample exhibits are intended to be a guide for school districts. As is the case with any exhibit, a local school district's unique circumstances, challenges and opportunities need to be considered.

**South Dakota
Clean Diesel Grant/VW Program
Rebate Agreement**

Recipient	Huron School District/4349 150 5 St SW Huron SD 57350	Clean Diesel FAIN: 96896001 CFDA: 66.040 Authority: 2 CFR 200, 2 CFR 1500, and 40 CFR 33	ID Number DERA215
DUNS	076501295	VW Authority: SDCL 34A-1-64, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and (Dkt. No. 3228-1)	Date of Offer 01/13/21
Contact	Kelly Christopherson 605-353-6995		Maximum Rebate Amount \$23,725.00
Project Title/Description South Dakota Clean Diesel Grant/VW Program This agreement provides a rebate to the SD applicant under the State Clean Diesel Grant/VW Program. This project will help replace old diesel buses. The primary goal of the project is to reduce children's exposure to toxic emissions from diesel exhaust and to facilitate the improvement and protection of the ambient air quality throughout South Dakota.			
Rebate Conditions The recipient covenants and agrees that it will expeditiously initiate and timely complete the project above described in accordance with this agreement by September 30, 2021. The recipient warrants, represents, and agrees that it will comply: (1) with any special conditions set forth in the guidelines and (2) with the attached Assurances, Terms, and Conditions which is incorporated herein by reference. Rebates will not be made until after July 1, 2021, unless funding authority is available.			
Offer The State of South Dakota hereby offers a rebate to Huron School District/4349 in an amount up to <u>0.25</u> of all approved costs incurred up to and not exceeding \$23,725.00 for the support of the approved project as described above. Such rebate may be terminated by DENR without further cause if the recipient fails to provide timely affirmation of the agreement by signing under the Acceptance section and returning this page of the signed agreement to the email or mailing address listed below by February 12, 2021.			
Signature of Award Official		Typed Name and Title Hunter Roberts, Secretary	Date
Please check if you are Accepting or Declining this Rebate Agreement			
<p>_____ Accepting In accepting this agreement and any rebate made pursuant thereto, (1) the undersigned represents that he/she is duly authorized to act on behalf of the recipient, and (2) the recipient agrees (a) to comply with the provisions of this agreement, and (b) any rebates found by the State of South Dakota to have been overpaid will be refunded or credited in full to the State. To the best of my knowledge and belief, data in this agreement are true and correct.</p> <p>_____ Declining In declining this agreement, the undersigned represents that he/she is duly authorized to act on behalf of the recipient. To the best of my knowledge and belief, data in this agreement are true and correct.</p>			
Signature of Designated Official		Typed Name and Title	Date

Submit this page of signed agreement to project manager at:

barb.regynski@state.sd.us or
Bus Rebate Program
Barb Regynski
SD DENR – AQ Program
523 E Capitol
Pierre, SD 57501

Assurances, Terms, and Conditions

The recipient entering into this agreement with DENR must follow the specific performance criteria as specified in this agreement to ensure compliance with statutory and audit requirements. All services or work carried out under this agreement must be completed within the scope, time frames, and funding limitations specified by the agreement. Upon signing of the agreement by DENR, a copy of the executed agreement will be returned to the applicant, at which time the agreement will be considered awarded.

The eligibility criteria for existing buses to be **replaced** are as follows:

- The existing bus to be replaced must be an in-use diesel bus engine model year 1996-2009 owned by any South Dakota public schools, non-public schools, state special schools, other educational programs, shuttle or transit system providers, or school bus contractors.
- The existing bus being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement.

The eligibility criteria for **new replacement** buses are as follows:

- **Recipient should receive the new bus by August 31, 2021.**
- New buses with 2019 model engine year or newer diesel, alternative fuel, or zero tailpipe emissions.

REPLACEMENT BUS REQUIREMENTS

- Purchase of new buses may not occur prior to both parties signing the agreement. Submit a copy of the purchase order to DENR when the bus has been ordered. Rebates will be made on a reimbursement basis for eligible expenses incurred and paid by the grant recipient. A cost may not be considered incurred until the replacement bus has been received and accepted by the recipient.
- Program funds must only be used to purchase a new bus that is equipped with essential or standard equipment.
- The recipient must insure that the replaced bus is permanently disabled or scrapped and maintain documentation on how the replaced bus was permanently disabled or scrapped. Please keep a written record signed by both the recipient and the party disabling or scrapping the bus.
- Applicant submits invoice or receipts, record of bus being disabled or scrapped (Certificate of Disposal Form) and colored photos, the DENR Request for Reimbursement Form, and engine certificate if needed. DENR will review the information for compliance with all rebate requirements.
- Payment will be issued upon verification (documentation and/or DENR staff site visit). DENR reserves the right to hold reimbursement until after July 1, 2021.
- DENR maintains the right to monitor the project periodically and to do on-site verification.

STATE CONDITIONS

TERM

The recipients' services under this Agreement shall commence on the signing of the agreement by the State and ends September 30, 2021, unless sooner terminated or extended pursuant to the terms hereof.

HOLD HARMLESS AND INDEMNIFICATION

The recipient agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

FUNDING

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

LICENSING AND STANDARD COMPLIANCE

The recipient will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

NOTICES

Any notice or other communication required under this Agreement shall be in writing and sent to the contact listed on the signature page of this agreement. Notices shall be given by and to the VW Truck Program on behalf of the State, and by the Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

SEVERABILITY

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

SUPERCESSION

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

ASSIGNMENT AND AMENDMENT

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.

CLAIMS AND PAYMENT

By September 30, 2021, the end date of this agreement, the grantee shall submit all claims for rebates due and payable under this agreement.

REBATE CONDITIONS

- A. Substantial Federal Involvement for Cooperative Agreements - EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the recipient's project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.
- B. Emissions Control Technologies - Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs.
- C. Quarterly Reporting and Environmental Results - Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan objectives, including milestones and anticipated outputs and outcomes. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at: <https://www.epa.gov/cleandiesel/clean-diesel-state-allocations#report>. Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.
 - April 1 – June 30 Reporting Period: report due date July 30
 - July 1 – September 30 Reporting Period: report due date October 30
 - October 1 – December 31 Reporting Period: report due date January 30
 - January 1 – March 31 Reporting Period: report due date April 30If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement. VW semi-annual reports are due January 30 and July 30.
- D. Final Report - The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, project results (outputs and outcomes) including final emissions benefit calculations, and the successes and lessons learned for the entire project. To the extent possible,

final emission benefit calculations should be based on the actual number and type of technologies, vehicles, equipment and engines implemented under the award and actual vehicle miles traveled, idling and/or operating hours, and fuel use. If actual vehicle miles traveled, idling and/or operating hours, and fuel use are not available, the final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.

For projects involving vehicle/engine/equipment replacements the recipient must provide in the final report evidence of appropriate scrappage (see E.6.c.iv below).

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report will be available at www.epa.gov/cleandiesel/clean-diesel-state-allocations.

E. Use of Funds Restriction -

1. Federal Matching Funds: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants unless expressly authorized by statute. Likewise, recipient may not use federal funds as cost-share funds for the Clean Diesel Funding Assistance Program, including funds received under EPA's State Clean Diesel Grant Program and federal Supplemental Environmental Project (SEP) funds.
2. Expense Cap: Recipient agrees that no more than 15 percent of the recipient's total project costs may be used to cover personnel, fringe benefits, and travel. Total project costs include the federal share as well as any cost-share provided by the state.
3. Emissions Testing: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
4. Fueling Infrastructure: Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
5. Mandated Measures: Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered "mandated", regardless of whether the reductions are included in the State Implementation Plan of a State.
6. Fleet Expansion: Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. Engine, vehicle, and equipment replacement

projects are eligible for funding on the condition that the following criteria are satisfied:

- a. The vehicle, equipment and/or engine being replaced must be fully operational and in current, regular service.
- b. The replacement vehicle/engine/equipment will continue to perform similar function and operation as the vehicle/engine/equipment that is being replaced.
- c. The replacement vehicle, engine, or equipment will be of similar type and similar gross vehicle weight rating or horsepower as the vehicle, engine, or equipment being replaced.

Highway : The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 5, 6, 7, or 8). The engine's primary intended service class must match the replacement vehicle's weight class (i.e. a LHD diesel engine is used in a vehicle with GVWR 16,001 – 19,500 pounds, a MHD diesel engine is used in a vehicle with a GVWR of 19,501 – 33,000 pounds, and an HHD diesel engine is used in a vehicle with a GVWR greater than 33,000 pounds.)

Exceptions may be granted for vocational purposes, however the GVWR must stay within 10 percent of the engine's intended service class and any exceptions will require written approval by the EPA Project Officer prior to purchase.

- i. The vehicle, equipment, and/or engine being replaced must be scrapped or rendered permanently disabled within ninety (90) days of being replaced.
- ii. Cutting a three-inch by three-inch hole in the engine block (the part of the engine containing the cylinders) is the preferred scrapping method.
- iii. Disabling the chassis may be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles.
- iv. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) or alternative documentation as approved by the EPA Project Officer, and colored digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components as applicable.

Scrapped engines and equipment and vehicle components may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, tires, etc.). If scrapped or salvaged engines, vehicles, equipment, or parts are to be sold, program income requirements apply.

7. Auxiliary Power Units: Recipient agrees that funds under this award cannot be used for the purchase of APUs or generators for vehicles with engine model year 2007 or newer.
8. Highway Model Year: Recipient agrees that funds under this award cannot be used to retrofit (including idle reduction technologies and aerodynamics and tires), convert, or replace a transit bus, medium-duty, or heavy-duty highway vehicle with engine model year 1995 and older or 2010 and newer,

or to retrofit engine model year 2007 and newer with DOCs or DPFs, or retrofit engine model year 2010 and newer with SCR, or replace engine model year 2010 or newer with other than zero tailpipe emission or low NOx.

9. Clean Alternative Fuel Conversion: Funds under this award cannot be used to purchase certified/approved conversion systems that do not meet the following criteria:
 - a. Existing engine model 1996-2006: Conversion kit must be certified or approved to achieve at least a 30% NOx reduction and a 10% PM reduction from the applicable certified emission standard of the original engine.
 - b. Existing engine model 2007 and newer: Conversion kit must be certified or approved to achieve at least a 20% NOx reduction with no increase in PM from the applicable certified emission standards of the original engine.
- F. Employee and/or Contractor Selection - EPA will not help select employees or contractors hired by the recipient.
- G. Program Income - Program income as defined at 2 CFR §200.80 means gross income received by the grantee or subrecipient that is directly generated by a grant supported activity or earned as a result of the Federal award during the period of performance. Under DERA grants, program income is generally limited to the sale of scrapped or remanufactured engines/chassis or salvaged engine/vehicle/equipment components and does not include revenue generated by recipients or subrecipients through the commercial use of vehicles and equipment purchased with grant funds. "Period of performance" is the time between the start and end dates of the period of performance as included in the Federal award.

Program income earned during the project period shall be retained by the recipient and, in accordance with 2 CFR §200.307 recipient is authorized to use program income to meet the cost-sharing or matching requirement of the Federal award, including any mandatory or voluntary cost-share. The amount of the Federal award remains the same. The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income. The recipient must provide as part of its final performance report, a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the final Federal Financial Report, Standard Form 425.

- H. Equipment Use, Management, and Disposition - These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired a Federal award by the state in accordance with state laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 2 CFR §200.313.

Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the non-Federal entity for financial statement purposes (see 2 CFR §200.12 Capital assets). Certified or verified

technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. 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.

- I. Procurement Procedures - The recipient must follow applicable procurement procedures. EPA will not be a party to these transactions. When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 2 CFR §200.322 Procurement of Recovered Materials, and ensure that every purchase order or other contract includes any clauses required by 2 CFR §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow 2 CFR §§200.318 General Procurement Standards through 200.326 Contract Provisions.
- J. Final Workplan and Modifications - Recipient agrees to carry out the project in accordance with the final approved workplan. Modifications to the approved workplan, including additions, deletions, or changes in the schedule, shall be submitted in a timely manner to the EPA Project Officer for approval. Depending on the type or scope of changes, a formal amendment to the award may be necessary.
- K. Public Notification - Not later than 60 days after the date of the award of a subaward, rebate, or loan by a State, the State shall publish on the website of the State:
 1. For subawards, rebates, and loans provided to the owner of a diesel vehicle or fleet, the total number and dollar amount of subawards, rebates, or loans provided, as well as a breakdown of the technologies funded through the subawards, rebates, or loans; and
 2. For other subawards, rebates, and loans, a description of each application for which the subaward, rebate, or loan is provided.
- L. State Grant Cybersecurity
 1. The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.
 2. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated

Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

3. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in 2. if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.
- M. Leveraging - The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution that is described in its final approved workplan. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future applications from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its final approved workplan. EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.
- N. Voluntary Cost-Share - If a state provides a voluntary match equal to the base allocation offered by EPA, EPA will provide a matching incentive equal to 50 percent of the base allocation. The voluntary match may be satisfied by allowable costs incurred by the state (i.e. in-kind contributions), or by cash donations of state funds or private funds. State voluntary matching funds included in the approved project budget are subject to the same terms and conditions and funding limits as the awarded DERA funds. A recipient is legally obligated to expend any voluntary match included in the approved project budget within the project period of that award.

Any voluntary matching funds provided by the state to qualify for the matching incentive count towards the "EPA funds and state voluntary matching funds". Mandatory cost share funds provided by the state and/or eligible third parties cannot count towards the state's voluntary matching funds to qualify for the matching incentive. However, if a state requires a third-party cost-share contribution above and beyond the mandatory cost-share amount for the elected technology, then the "excess" cost-share may be applied towards the state voluntary match funds for the purpose of qualifying for the matching incentive.

Volkswagen Environmental Mitigation Trust Funds may be used (via the DERA Option) as voluntary matching funds, but cannot be used to fund any mandatory

cost-share. This award and the resulting federal funding of \$473,499 is based on estimated costs requested in the recipient's final approved workplan. Included in these costs is a voluntary cost-share contribution of \$315,666 by the recipient in the form of a voluntary cost-share that the recipient included in its final approved workplan. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded. If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future applications from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its final approved workplan, EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.

**South Dakota
Clean Diesel Grant/VW Program
Rebate Agreement**

Recipient	Huron School District/9328 150 5 St SW Huron SD 57350	Clean Diesel FAIN: 96896001 CFDA: 66.040 Authority: 2 CFR 200, 2 CFR 1500, and 40 CFR 33	ID Number DERA218
DUNS	076501295	VW Authority: SDCL 34A-1-64, MDL No. 2672 CRB (JSC) (Dkt. No. 2103-1), and (Dkt. No. 3228-1)	Date of Offer 01/13/21
Contact	Kelly Christopherson 605-353-6995		Maximum Rebate Amount \$23,725.00

Project Title/Description South Dakota Clean Diesel Grant/VW Program
This agreement provides a rebate to the SD applicant under the State Clean Diesel Grant/VW Program. This project will help replace old diesel buses. The primary goal of the project is to reduce children's exposure to toxic emissions from diesel exhaust and to facilitate the improvement and protection of the ambient air quality throughout South Dakota.

Rebate Conditions The recipient covenants and agrees that it will expeditiously initiate and timely complete the project above described in accordance with this agreement by September 30, 2021. The recipient warrants, represents, and agrees that it will comply: (1) with any special conditions set forth in the guidelines and (2) with the attached Assurances, Terms, and Conditions which is incorporated herein by reference. Rebates will not be made until after July 1, 2021, unless funding authority is available.

Offer The State of South Dakota hereby offers a rebate to Huron School District/9328 in an amount up to 0.25 of all approved costs incurred up to and not exceeding \$23,725.00 for the support of the approved project as described above. Such rebate may be terminated by DENR without further cause if the recipient fails to provide timely affirmation of the agreement by signing under the Acceptance section and returning this page of the signed agreement to the email or mailing address listed below by February 12, 2021.

Signature of Award Official	Typed Name and Title Hunter Roberts, Secretary	Date
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Please check if you are Accepting or Declining this Rebate Agreement

 Accepting In accepting this agreement and any rebate made pursuant thereto, (1) the undersigned represents that he/she is duly authorized to act on behalf of the recipient, and (2) the recipient agrees (a) to comply with the provisions of this agreement, and (b) any rebates found by the State of South Dakota to have been overpaid will be refunded or credited in full to the State. To the best of my knowledge and belief, data in this agreement are true and correct.

 Declining In declining this agreement, the undersigned represents that he/she is duly authorized to act on behalf of the recipient. To the best of my knowledge and belief, data in this agreement are true and correct.

Signature of Designated Official	Typed Name and Title	Date
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Submit this page of signed agreement to project manager at:

barb.regynski@state.sd.us or
Bus Rebate Program
Barb Regynski
SD DENR – AQ Program
523 E Capitol
Pierre, SD 57501

Assurances, Terms, and Conditions

The recipient entering into this agreement with DENR must follow the specific performance criteria as specified in this agreement to ensure compliance with statutory and audit requirements. All services or work carried out under this agreement must be completed within the scope, time frames, and funding limitations specified by the agreement. Upon signing of the agreement by DENR, a copy of the executed agreement will be returned to the applicant, at which time the agreement will be considered awarded.

The eligibility criteria for existing buses to be **replaced** are as follows:

- The existing bus to be replaced must be an in-use diesel bus engine model year 1996-2009 owned by any South Dakota public schools, non-public schools, state special schools, other educational programs, shuttle or transit system providers, or school bus contractors.
- The existing bus being replaced will be scrapped or rendered permanently disabled within ninety (90) days of the replacement.

The eligibility criteria for **new replacement** buses are as follows:

- **Recipient should receive the new bus by August 31, 2021.**
- New buses with 2019 model engine year or newer diesel, alternative fuel, or zero tailpipe emissions.

REPLACEMENT BUS REQUIREMENTS

- Purchase of new buses may not occur prior to both parties signing the agreement. Submit a copy of the purchase order to DENR when the bus has been ordered. Rebates will be made on a reimbursement basis for eligible expenses incurred and paid by the grant recipient. A cost may not be considered incurred until the replacement bus has been received and accepted by the recipient.
- Program funds must only be used to purchase a new bus that is equipped with essential or standard equipment.
- The recipient must insure that the replaced bus is permanently disabled or scrapped and maintain documentation on how the replaced bus was permanently disabled or scrapped. Please keep a written record signed by both the recipient and the party disabling or scrapping the bus.
- Applicant submits invoice or receipts, record of bus being disabled or scrapped (Certificate of Disposal Form) and colored photos, the DENR Request for Reimbursement Form, and engine certificate if needed. DENR will review the information for compliance with all rebate requirements.
- Payment will be issued upon verification (documentation and/or DENR staff site visit). DENR reserves the right to hold reimbursement until after July 1, 2021.
- DENR maintains the right to monitor the project periodically and to do on-site verification.

STATE CONDITIONS

TERM

The recipients' services under this Agreement shall commence on the signing of the agreement by the State and ends September 30, 2021, unless sooner terminated or extended pursuant to the terms hereof.

HOLD HARMLESS AND INDEMNIFICATION

The recipient agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the recipient to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

FUNDING

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

LICENSING AND STANDARD COMPLIANCE

The recipient will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

NOTICES

Any notice or other communication required under this Agreement shall be in writing and sent to the contact listed on the signature page of this agreement. Notices shall be given by and to the VW Truck Program on behalf of the State, and by the Recipient, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

SEVERABILITY

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

SUPERCESSION

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

ASSIGNMENT AND AMENDMENT

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.

CLAIMS AND PAYMENT

By September 30, 2021, the end date of this agreement, the grantee shall submit all claims for rebates due and payable under this agreement.

REBATE CONDITIONS

- A. Substantial Federal Involvement for Cooperative Agreements - EPA will provide substantial involvement in the form of technical assistance, development of outputs, and oversight. Specifically, substantial federal involvement will take the form of monitoring the recipient's project by EPA, participation and collaboration between EPA and the recipient in program content, review of project progress, and quantification and reporting of results.
- B. Emissions Control Technologies - Emissions Reduction Projects funded by the recipient pursuant to this assistance agreement must use verified technologies and/or must use engines and engine configurations certified by EPA and, if applicable, CARB. Technologies are verified under EPA or California's Retrofit Technology Verification Programs.
- C. Quarterly Reporting and Environmental Results - Quarterly progress reports will be required. Quarterly reports are considered project status reports and will address the progress made achieving the work plan objectives, including milestones and anticipated outputs and outcomes. In general, quarterly reports will include summary information on technical progress and expenditures, and planned activities for next quarter. A template for the quarterly report is available at: <https://www.epa.gov/cleandiesel/clean-diesel-state-allocations#report>. Quarterly reports are due according to the following schedule. If a due date falls on a weekend or holiday, the report will be due on the next business day.
 - April 1 – June 30 Reporting Period: report due date July 30
 - July 1 – September 30 Reporting Period: report due date October 30
 - October 1 – December 31 Reporting Period: report due date January 30
 - January 1 – March 31 Reporting Period: report due date April 30If a project start date falls within a defined Reporting Period the recipient must report for that period by the given due date. This quarterly reporting schedule shall be repeated for the duration of the award agreement. VW semi-annual reports are due January 30 and July 30.
- D. Final Report - The final project report will include all categories of information required for quarterly reporting, including a final, detailed fleet description. The final project report will also include a narrative summary of the project or activity, project results (outputs and outcomes) including final emissions benefit calculations, and the successes and lessons learned for the entire project. To the extent possible,

final emission benefit calculations should be based on the actual number and type of technologies, vehicles, equipment and engines implemented under the award and actual vehicle miles traveled, idling and/or operating hours, and fuel use. If actual vehicle miles traveled, idling and/or operating hours, and fuel use are not available, the final report will include a detailed explanation of how these values are derived, as well as any assumptions or default values used, for the purposes of emissions benefit calculations. The final report will also detail the methodologies used for the emission benefit calculation.

For projects involving vehicle/engine/equipment replacements the recipient must provide in the final report evidence of appropriate scrappage (see E.6.c.iv below).

For projects that take place in an area affected by, or includes vehicles, engines or equipment affected by federal law mandating emissions reductions, the recipient must provide in the final report evidence that emission reductions funded with EPA funds were implemented prior to the effective date of the mandate and/or are in excess of (above and beyond) those required by the applicable mandate.

The final report shall be submitted to the EPA Project Officer within 90 days after the project period end date or termination of the assistance agreement. A template for the final report will be available at www.epa.gov/cleandiesel/clean-diesel-state-allocations.

E. Use of Funds Restriction -

1. Federal Matching Funds: Recipient agrees that funds under this award cannot be used for matching funds for other federal grants unless expressly authorized by statute. Likewise, recipient may not use federal funds as cost-share funds for the Clean Diesel Funding Assistance Program, including funds received under EPA's State Clean Diesel Grant Program and federal Supplemental Environmental Project (SEP) funds.
2. Expense Cap: Recipient agrees that no more than 15 percent of the recipient's total project costs may be used to cover personnel, fringe benefits, and travel. Total project costs include the federal share as well as any cost-share provided by the state.
3. Emissions Testing: Recipient agrees that funds under this award cannot be used for emissions testing and/or air monitoring activities (including the acquisition cost of emissions testing equipment), or research and development.
4. Fueling Infrastructure: Recipient agrees that funds under this award cannot be used for fueling infrastructure, such as that used for the production and/or distribution of biodiesel, compressed natural gas, liquefied natural gas, and or other cleaner fuels.
5. Mandated Measures: Recipient agrees that funds under this award cannot be used for emissions reductions that are mandated under federal law. This refers to specific compliance dates within the mandate, not when the mandate is passed. Voluntary or elective emissions reductions measures shall not be considered "mandated", regardless of whether the reductions are included in the State Implementation Plan of a State.
6. Fleet Expansion: Recipient agrees that funds under this award, including subawards/subgrants, cannot be used for the purchase of vehicles, engines, or equipment to expand a fleet. Engine, vehicle, and equipment replacement

projects are eligible for funding on the condition that the following criteria are satisfied:

- a. The vehicle, equipment and/or engine being replaced must be fully operational and in current, regular service.
- b. The replacement vehicle/engine/equipment will continue to perform similar function and operation as the vehicle/engine/equipment that is being replaced.
- c. The replacement vehicle, engine, or equipment will be of similar type and similar gross vehicle weight rating or horsepower as the vehicle, engine, or equipment being replaced.

Highway : The replacement vehicle must not be in a larger weight class than the existing vehicle (Class 5, 6, 7, or 8). The engine's primary intended service class must match the replacement vehicle's weight class (i.e. a LHD diesel engine is used in a vehicle with GVWR 16,001 – 19,500 pounds, a MHD diesel engine is used in a vehicle with a GVWR of 19,501 33,000 pounds, and an HHD diesel engine is used in a vehicle with a GVWR greater than 33,000 pounds.)

Exceptions may be granted for vocational purposes, however the GVWR must stay within 10 percent of the engine's intended service class and any exceptions will require written approval by the EPA Project Officer prior to purchase.

- i. The vehicle, equipment, and/or engine being replaced must be scrapped or rendered permanently disabled within ninety (90) days of being replaced.
- ii. Cutting a three-inch by three-inch hole in the engine block (the part of the engine containing the cylinders) is the preferred scrapping method.
- iii. Disabling the chassis may be completed by cutting through the frame/frame rails on each side at a point located between the front and rear axles.
- iv. Evidence of appropriate disposal is required in a final assistance agreement report submitted to EPA and includes a signed certificate of destruction (to be provided by the EPA Project Officer) or alternative documentation as approved by the EPA Project Officer, and colored digital photos of the engine tag (showing serial number, engine family number, and engine model year), the destroyed engine block, and cut frame rails or other cut structural components as applicable.

Scrapped engines and equipment and vehicle components may be salvaged from the unit being replaced (e.g. plow blades, shovels, seats, tires, etc.). If scrapped or salvaged engines, vehicles, equipment, or parts are to be sold, program income requirements apply.

7. Auxiliary Power Units: Recipient agrees that funds under this award cannot be used for the purchase of APUs or generators for vehicles with engine model year 2007 or newer.
8. Highway Model Year: Recipient agrees that funds under this award cannot be used to retrofit (including idle reduction technologies and aerodynamics and tires), convert, or replace a transit bus, medium-duty, or heavy-duty highway vehicle with engine model year 1995 and older or 2010 and newer,

or to retrofit engine model year 2007 and newer with DOCs or DPFs, or retrofit engine model year 2010 and newer with SCR, or replace engine model year 2010 or newer with other than zero tailpipe emission or low NOx.

9. Clean Alternative Fuel Conversion: Funds under this award cannot be used to purchase certified/approved conversion systems that do not meet the following criteria:
 - a. Existing engine model 1996-2006: Conversion kit must be certified or approved to achieve at least a 30% NOx reduction and a 10% PM reduction from the applicable certified emission standard of the original engine.
 - b. Existing engine model 2007 and newer: Conversion kit must be certified or approved to achieve at least a 20% NOx reduction with no increase in PM from the applicable certified emission standards of the original engine.
- F. Employee and/or Contractor Selection - EPA will not help select employees or contractors hired by the recipient.
- G. Program Income - Program income as defined at 2 CFR §200.80 means gross income received by the grantee or subrecipient that is directly generated by a grant supported activity or earned as a result of the Federal award during the period of performance. Under DERA grants, program income is generally limited to the sale of scrapped or remanufactured engines/chassis or salvaged engine/vehicle/equipment components and does not include revenue generated by recipients or subrecipients through the commercial use of vehicles and equipment purchased with grant funds. "Period of performance" is the time between the start and end dates of the period of performance as included in the Federal award.

Program income earned during the project period shall be retained by the recipient and, in accordance with 2 CFR §200.307 recipient is authorized to use program income to meet the cost-sharing or matching requirement of the Federal award, including any mandatory or voluntary cost-share. The amount of the Federal award remains the same. The recipient will maintain records adequate to document the extent to which transactions generate program income and the disposition of program income. The recipient must provide as part of its final performance report, a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the final Federal Financial Report, Standard Form 425.

- H. Equipment Use, Management, and Disposition - These equipment use, management, and disposition instructions are applicable to assistance agreement recipients and subrecipients acquiring equipment under this award. State agencies may use, manage and dispose of equipment acquired a Federal award by the state in accordance with state laws and procedures.

Recipient agrees the equipment acquired under this assistance agreement will be subject to the use and management and disposition regulations at 2 CFR §200.313.

Equipment is defined as tangible personal property having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of \$5,000, or the capitalization level established by the non-Federal entity for financial statement purposes (see 2 CFR §200.12 Capital assets). Certified or verified

technologies, vehicles, engines and nonroad equipment are considered to be equipment to the extent they fall within this definition.

Recipient agrees that at the end of the project period the recipient will continue to use the equipment purchased under this assistance agreement in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award. When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property. 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.

- I. Procurement Procedures - The recipient must follow applicable procurement procedures. EPA will not be a party to these transactions. When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 2 CFR §200.322 Procurement of Recovered Materials, and ensure that every purchase order or other contract includes any clauses required by 2 CFR §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow 2 CFR §§200.318 General Procurement Standards through 200.326 Contract Provisions.
- J. Final Workplan and Modifications - Recipient agrees to carry out the project in accordance with the final approved workplan. Modifications to the approved workplan, including additions, deletions, or changes in the schedule, shall be submitted in a timely manner to the EPA Project Officer for approval. Depending on the type or scope of changes, a formal amendment to the award may be necessary.
- K. Public Notification - Not later than 60 days after the date of the award of a subaward, rebate, or loan by a State, the State shall publish on the website of the State:
 1. For subawards, rebates, and loans provided to the owner of a diesel vehicle or fleet, the total number and dollar amount of subawards, rebates, or loans provided, as well as a breakdown of the technologies funded through the subawards, rebates, or loans; and
 2. For other subawards, rebates, and loans, a description of each application for which the subaward, rebate, or loan is provided.
- L. State Grant Cybersecurity
 1. The recipient agrees that when collecting and managing environmental data under this assistance agreement, it will protect the data by following all applicable State law cybersecurity requirements.
 2. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement, are secure. For purposes of this Section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition. If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated

Regional/Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

3. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in 2. if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.
- M. Leveraging - The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution that is described in its final approved workplan. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future applications from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its final approved workplan. EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.
- N. Voluntary Cost-Share - If a state provides a voluntary match equal to the base allocation offered by EPA, EPA will provide a matching incentive equal to 50 percent of the base allocation. The voluntary match may be satisfied by allowable costs incurred by the state (i.e. in-kind contributions), or by cash donations of state funds or private funds. State voluntary matching funds included in the approved project budget are subject to the same terms and conditions and funding limits as the awarded DERA funds. A recipient is legally obligated to expend any voluntary match included in the approved project budget within the project period of that award.

Any voluntary matching funds provided by the state to qualify for the matching incentive count towards the "EPA funds and state voluntary matching funds". Mandatory cost share funds provided by the state and/or eligible third parties cannot count towards the state's voluntary matching funds to qualify for the matching incentive. However, if a state requires a third-party cost-share contribution above and beyond the mandatory cost-share amount for the elected technology, then the "excess" cost-share may be applied towards the state voluntary match funds for the purpose of qualifying for the matching incentive.

Volkswagen Environmental Mitigation Trust Funds may be used (via the DERA Option) as voluntary matching funds, but cannot be used to fund any mandatory

cost-share. This award and the resulting federal funding of \$473,499 is based on estimated costs requested in the recipient's final approved workplan. Included in these costs is a voluntary cost-share contribution of \$315,666 by the recipient in the form of a voluntary cost-share that the recipient included in its final approved workplan. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded. If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future applications from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its final approved workplan, EPA may take action as authorized by 2 CFR Part 200 and/or 2 CFR Part 180 as applicable.



Associated Consulting Engineering, Inc.

340 South Phillips Avenue • Sioux Falls, SD 57104-6319 • Tel: 605.335.3720 • FAX: 605.335.6220

PROJECT FEE PROPOSAL

To: John Halbkat/Kelly Christopherson
Company: Huron School District
Project Name: Middle School Chiller/Tower Replacement
Location: Huron, SD
Proposal Number: P120-92

Date: January 18, 2020

Project Description: The Owner plans to replace existing chiller and cooling tower on the Middle School Facility with an air-cooled chiller. The existing chilled water piping and pumps will be modified & the Automatic Temperature Controls for the facility will be replaced. Air Conditioning will be added to the gym units (2) as an add alternate.

Consultant's Proposed Responsibilities:

Mechanical Systems:
Chiller & Pump
Cooling Tower & Pump
Automatic Temperature Control/ Building
Automation System, as relates to the
chiller/tower.

Electrical Systems:
Electrical Power

Proposed Fee:

Mechanical/Electrical Total: \$52,000.00

Alternate No. 1 (Gym A/C): \$5,180.00

Conceptual Budgets:

Mechanical: \$807,300.00
Electrical: \$40,000.00
Total: \$847,350.00

Alternate No. 1 (Gym A/C): \$74,000.00

Basis for Proposal: The proposed fee is for basic Mechanical/Electrical design services to provide Construction Documents and Construction Administration services, including services required to manage the Contractor/Owner agreements.

If all terms are mutually acceptable by both parties, acknowledge by signing below. An Architect/Engineer Agreement will be prepared based upon the provisions of this proposal.

Associated Consulting Engineering, Inc.

Norm de Wit

Signature

January 18, 2021

Date

Huron School District

Signature

Date