

**LANE TRANSIT DISTRICT
POLICIES AND GUIDELINES**

BOARD HARASSMENT,
DISCRIMINATION AND
RETALIATION POLICY
Policy Number: 100.20

Tier I: Board of Directors

Revision Date: Click or tap here to enter text.

Effective Date: December 16, 2020

File Location / Name:

Scope: Defines discrimination, harassment, workplace bullying, and retaliation and the process for addressing any issues that arise.

Tier *	Affected Divisions / Departments/ Groups
Tier I:	Lane Transit District Board of Directors
Tier II:	All (LTD) - All LTD employees, temporary employees; contractors, and vendors.
	All Administrative Employees.
	All ATU Employees.
Tier III:	Multiple Divisions and/or Departments: Click or tap here to enter text.
Tier IV:	Division or Department: Choose an item.

** Tier – Tier I Board of Directors governance policies; Tier II operational policies are organizationally supported, governed, and enforced; Tier III standards and procedures are developed, governed, and enforced between specific divisions/departments and must adhere to Tier I requirements; Tier IV methods and instructions are developed, governed, and enforced within divisions/departments, but must adhere to Tier II and III requirements.*

Revision History:

Revision	Author / Editor	Description
00	Click or tap here to enter text.	Click or tap here to enter text.

Legal References:

Related Forms:

Related Policies:

APPROVAL: Resolution No. 2020-12-16-071

100.20.1 PURPOSE AND POLICY STATEMENT

LANE TRANSIT DISTRICT POLICIES AND GUIDELINES

Lane Transit District (LTD) and the LTD Board of Directors are committed to providing and maintaining a work environment that is free from discrimination, harassment, workplace bullying, and retaliation. These procedural rules outline types of prohibited conduct and procedures for reporting and investigating prohibited conduct involving the LTD Board of Directors.

100.20.2 APPLICABILITY

These rules apply to members of the LTD Board of Directors only. LTD shall make this policy available to all LTD employees and members of the LTD Board of Directors.

100.20.3 AUTHORITY

The authority for these rules includes ORS 267.540 (4); 174.100; 243.319; ORS [Chapter 659A](#); Title VII of the Civil Rights Act of [1964](#); [The Age Discrimination in Employment Act](#); [The Americans with Disabilities Act](#); [The Rehabilitation Act](#); and accompanying rules and regulations.

100.20.4 DEFINITIONS

Constructive knowledge

“Constructive knowledge” is knowledge that a supervisor, manager¹, or Director is presumed to have with the exercise of reasonable care.

Director

“Director” means a member of the LTD Board of Directors

Discrimination

“Discrimination” means treating an employee or another Director negatively or less favorably based on or because of a protected class ~~status in a manner that results in harm to the employee or Director.~~

Legitimate, nondiscriminatory reasons for different treatment of an employee or Director that are not based on or motivated in any part by a protected class status do not violate these rules unless the treatment otherwise constitutes workplace bullying.

Employee

“Employee” means an individual hired by LTD to perform work, under the supervision and control of LTD, in exchange for an hourly wage or salary. For purpose of these rules, volunteers, interns, and similar unpaid workers shall also be considered employees. Employee does not include independent contractors.

Gender Identity and Gender Expression

- (a) **Gender identity** is the personal sense of one’s own gender. One’s present gender identity may be the same or different from the sex assigned at birth. Gender identity may be expressed or described as cisgender (i.e., male, female), transgender, gender fluid, gender-neutral, and by other terms or phrases indicating a gender identity other than the binary male or female. Gender identity does not imply any specific sexual orientation.
- (b) **Gender expression** refers to the external appearance of one’s gender identity, usually expressed through behavior, clothing, haircut, or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

Commented [AC1]: Harm from discrimination is presumed. We don’t want to leave room for a subjective interpretation that an adverse employment action did not really cause harm, so it is allowed.

Commented [AC2]: The legal causation standard for discrimination includes an act that is in any way motivated by a protected class status. It does not need to be the only reason or even an important reason.

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Harassment

"Harassment" is unwelcome verbal, nonverbal, or physical conduct, based on a person's protected class, [status](#) that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating, or offensive working environment. Protection against harassment extends to the person harassed, as well as other people affected by the offensive conduct.

Harassment includes Sexual Harassment (defined below), as well as other forms of protected class harassment. Examples of conduct based on protected class status that is prohibited by this policy, regardless of whether sexual or non-sexual in nature, include:

- (a) Unwelcome intentional touching of another person or other unwanted intentional physical contact (including patting, pinching, rubbing, brushing against, etc.).
- (b) Unwelcome questions or comments about another person's sexual activities, dating, personal or intimate relationships, appearance, race, religion, age, disability, or any other category protected by law.
- (c) ~~Unwelcome~~ Whistling, staring, or leering at another person. Unwelcome sexually suggestive or flirtatious gifts, letters, notes, e-mail, text messages or other form of instant messaging, or voice mail. Unwelcome sexual advances or flirtations.
- (d) Conduct or remarks that are sexually suggestive or ~~that otherwise~~, demeanor ~~that~~ demonstrates hostility toward another person (regardless of whether sexual in nature) ~~based on~~ ~~for~~ any protected class ~~status~~ ~~reason~~ (e.g., jokes, taunts, ~~negative~~ stereotyping, and threats).
- (e) Displaying or circulating pictures, objects, or written materials (e.g., graffiti, cartoons, photographs, pinups, calendars, magazines, figurines, etc.) that are sexually suggestive, demeaning, or otherwise demonstrate hostility toward another person (regardless of whether sexual in nature) ~~based on~~ ~~for~~ any protected class ~~status~~ ~~reason~~.
- (f) Slandering, libeling, ridiculing, maligning, or spreading ~~similarly~~ negative and derogatory information about a person or that person's family or spreading rumors and gossip about individuals ~~based on any~~ ~~protected class status~~.
- (g) Expressing or communicating sentiments of hate towards a person or protected class group of people or that is intended to disparage, demean or denigrate another person or group of people based on their protected class ~~status~~.
- (h) Any other unwelcome gestures, symbols, comments, name-calling, or behavior that is directed towards another person, relates to another person, or that negatively impacts another employee's or Director's ability to work productively and efficiently ~~that is based on their protected class status~~.

Although this policy provides examples of ~~harassment possible harassment-type behaviors~~, it is not intended to be a complete list.

Nondisclosure, Non-Disparagement, and No-Rehire Agreements

- (c) A "**nondisclosure agreement**" is any agreement by which one or more parties agree not to discuss or disclose information regarding any complaint of work-related harassment, discrimination, retaliation, or sexual assault.
- (d) A "**non-disparagement agreement**" is any agreement by which one or more parties agree not to discredit or make negative or disparaging written or oral statements about any other party or the

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company.

- (e) A “**no-rehire provision**” is an agreement that prohibits an employee from seeking reemployment with the company and allows a company to not rehire or re-associate with that individual in the future.

Preponderance of Evidence

A “preponderance of evidence” is sufficient evidence to convince a fact-finder or investigator that it is more likely than not that a violation occurred, and, therefore, that the allegation is substantiated.

Protected Class

“Protected class” means a class protected by federal law, ORS chapter 659A, and any other state or local law designating protections for an identified group of persons or demographic, and includes race, color, national origin, religion, gender, gender identity (including gender expression), sex, sexual orientation, pregnancy, age, disability, injured worker status, family leave status, protected medical or veterans’ leave, marital status, familial status, veteran’s status, genetic information or history, opposition to unlawful employment practices, good faith reports of safety violations, good faith reports of harassment, discrimination or retaliation, whistleblower, or any other status not listed here but protected by local, state or federal law.

Retaliation

“Retaliation” occurs when there ~~is found to be~~ appears to be a causal connection between an ~~an~~ ~~opposition to -report of~~ prohibited conduct under Section 2 and subsequent adverse treatment that is reasonably likely to deter future ~~opposition to prohibited conduct, including reports of a violation of this policy,~~ participation in an investigation into the alleged conduct, testimony regarding the alleged conduct (regardless of forum), or other ~~related or~~ protected conduct ~~in the future~~. Retaliation may take the form of overt, direct, or indirect acts ~~toward~~ or adverse treatment ~~of, towards~~ an individual that serves to punish, demean, discredit, intimidate, or otherwise harm an individual because of ~~their opposition to prohibited conduct, reporting prohibited conduct, participating in an investigation into prohibited conduct, or testifying about prohibited conduct.~~

Commented [AC3]: The section references here and throughout need to be updated.

Sexual Assault

A “sexual assault” is unwanted conduct of a sexual nature that is inflicted upon a person or compelled using physical force, manipulation, threat, or intimidation.

Sexual Harassment

Sexual harassment is a form of workplace harassment and includes, but is not limited to, the following types of conduct:

- (a) Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex, sexual orientation, gender or gender identity and submission to such conduct is made either explicitly or implicitly a term or condition of employment or board-related activity; or submission to or rejection of such conduct is used as the basis for employment or board related decisions affecting that individual.
- (b) Unwelcome verbal, non-verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating, or offensive working environment.

Sexual Orientation

“Sexual orientation” means an individual's actual or perceived heterosexuality, homosexuality, other sexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression, or behavior differs from that traditionally associated with the individual's sex at birth.

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Violence

"Violence" includes physically harming another person, shoving, pushing, hitting, intimidating, coercing, brandishing weapons, using weapons to inflict harm, throwing objects at another person, etc., and threatening or talking or engaging in those activities.

Workplace and Workplace Conduct

"Workplace" includes [the usual place of performing a person's job and](#) work-related settings outside the [usual place of work, workplace](#), including board meetings (including in-person, telephonic, virtual, etc.), other job sites, business trips, business meetings, business-related social events, and company-sponsored events. ["Workplace Conduct" is any conduct engaged in while at a workplace.](#)

Workplace Bullying

"Workplace bullying" is behavior or conduct that, while not necessarily based on a protected class [status](#), is nevertheless so severe or pervasive that it would offend a reasonable person in the workplace or unreasonably interferes with work performance or creates a hostile or intimidating working environment.

~~Severe or pervasive behavior that may, in some circumstances, rise to the level of Workplace Bullying under this policy if it is severe or pervasive~~ includes but is not limited to:

- (a) Conduct that intentionally embarrasses, humiliates, offends, or degrades another person.
- (b) Shouting or yelling at a person in anger or frustration or otherwise behaving in a manner that a reasonable person would consider unreasonably confrontational or disruptive in a ~~workplace~~[public or private setting](#).
- (c) Personal attacks, negative or derogatory name-calling, and abusive language of any kind.
- (d) Disparaging or denigrating another person to others with the purpose or effect of diminishing that person's reputation or credibility with management, other employees, or Directors or encouraging others to avoid, ignore or isolate an employee or Director.
- (e) Repeated and frequent complaints about an employee or Director that are determined to be unsubstantiated, false, misleading, or consistently relating to minor annoyances, or disagreements, or issues of little or no significance.

~~Conduct that is not considered workplace bullying includes but is not limited to:~~

- ~~(a) Incidental and insignificant behaviors common among diverse workgroups, even if considered irritating, distracting, disappointing or frustrating.~~
- ~~(b) Conflicts arising from diverse personality types or communication styles.~~
- ~~(c) The ordinary communication, delivery, and provision of non-discriminatory performance-based directions, oversight, coaching, discipline, employee reviews, and other performance-related feedback or decisions.~~
- ~~(d)(a) Reports or complaints of harassment, discrimination, or retaliation made in good faith.~~

Although this policy provides examples of possible workplace bullying behaviors, it is not intended to be a complete list.

100.20.5 PROHIBITED CONDUCT

Discrimination, Harassment, and Retaliation

Commented [AC4]: I would not include this section. It is not needed. (a), (c) and (d) are common sense. (b) could be bullying if the conflict was severe or pervasive.

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Directors are prohibited from engaging in discrimination, ~~and harassment, workplace bullying and retaliation~~ against LTD employees and other Directors. ~~LTD also prohibits retaliation based on good faith reports under this subsection.~~

Workplace Bullying

~~Directors are prohibited from engaging in workplace bullying conduct towards other Directors and LTD employees. LTD also prohibits retaliation based on good faith reports under this subsection.~~

Conduct Occurring Outside of Work or Board-Related Activities

Directors are prohibited from using social media, regular media, telephone calls, text messages, recordings, and personal interactions outside of the workplace to share, post, or publish information that rises to the level of harassment, discrimination, workplace bullying, or retaliation expressly prohibited by this policy against an LTD employee or another Director, regardless of whether the comments are directed specifically at the employee or Director or made in direct or indirect reference to the employee or Director.

Violence

Directors are prohibited from threatening violence, engaging in violence, or inciting others to engage in violence towards another LTD employee, Director, member of the public, group of people, or protected class demographic.

Sexual Relationships with LTD Employees

Due to potential conflicts of interest and a heightened risk of sexual harassment claims, Directors are prohibited from dating or pursuing romantic or sexual relationships with LTD employees.

Directors are also prohibited from participating in, or providing input, directly or indirectly, on decisions related to the employment, job assignment, performance measurement, or compensation review of any LTD employee with whom they currently have or have had a dating, romantic, or sexual relationship. Failing to disclose the existence of a sexual relationship contemplated by this policy is considered a form of dishonesty and a violation of this section.

Commented [AC5]: Retaliation includes more than just good faith reports. All retaliation, as defined in this policy, is prohibited.

Commented [AC6]: No reason to treat workplace bullying separately.

Commented [AC7]: I suggest moving this to a different policy. A violation of this section results from consensual behavior and does not constitute harassment, discrimination or retaliation. A violation would not be reported and handled as described in the following section for reports of harassment, discrimination or retaliation.

Commented [AC8]: See next comment.

Commented [AC9]: These two paragraphs are inconsistent. Legally you can make the policy whatever you want, just keep it consistent.

100.20.6 PROCEDURES FOR REPORTING A VIOLATION OF 100.20.5

Report by Employee of Potential Director Violation

Any LTD employee, which includes leadership and non-leadership positions, who experiences or observes what the employee believes to be a violation of Section 2 is encouraged to document the incident and share that information with at least one of the following: (1) the Board President or Vice President; (2) LTD General Manager or Assistant General Manager; (3) Human Resources Department; or (4) the employee's manager or supervisor.

Report by Director of Potential Director Violation

A Director who experiences or observes what the Director believes to be a violation of Section 2 is encouraged to document the incident and share that information with the Board President or, if the subject of the report is the Board President, the Board Vice President. If the subject of the report is the Board President and Vice President, the Director shall report the incident to the Board Secretary or Treasurer.

Notice of Potential Director Violation

If an individual listed in Sections 3 (1) or 3 (2) receives notice of a potential violation other than through a report, such as personally witnessing a violation or constructive knowledge of a violation, that individual shall treat that

Commented [AC10]: Update to match current template form.

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information as a report under Section 3 (1) or 3 (2).

Designated Persons Responsible for Reports of Potential Director Violation

Supervisors, managers, and Directors who receive reports or complaints of possible violations of Section 2 by Directors shall document the concerns and forward the documented information to one of the following Designated Persons responsible for receiving reports, in order of priority listed here: (1) the Board President; or (2) the Board Vice President. If the subject of the report is the Board President and the Board Vice President, the Director shall report the incident to the Board Secretary or Treasurer.

Upon receipt of a complaint or report, the Designated Person shall remind the complainant that the accused Director will be notified that a concern has been raised consistent with an independent investigation. The Designated Person shall also provide a copy of these rules to the Director who is the subject of the prohibited conduct report

Form of Reports

Reports of alleged violations of Section 2 or other parts of this policy may be made orally or in writing. A supervisor, manager, or Director with actual or constructive knowledge of a potential violation under Section 2, or who receives an oral report of a potential violation under Section 2, shall document that information to a person designated under Section 3 (4). When a report is received orally and forwarded to the Designated Person pursuant to this paragraph, the Designated Person shall follow up with the complainant to review the allegations and then send a summary of the interview and concerns to the complainant for verification of scope and accuracy. The absence of written confirmation of allegations shall not postpone the initiation of an investigation contemplated by this Policy.

Documentation of a report of an alleged violation of Section 2 should include: (1) the date of incident; (2) the date the complaint was received by the Designated Person or alternate; and (3) a summary of the alleged violations of Section 2.

Other Reporting and Remedy Options

Although employees and Directors are encouraged to bring matters to the attention of the appropriate party for prompt resolution, nothing in this policy precludes an employee or Director from seeking remedies for unlawful conduct through the grievance process afforded by state or federal administrative agencies and the courts.

Investigation

The Designated Person under Section 3 (4) who receives a report of a potential violation of Section 2 shall contact and coordinate with counsel for the Board to initiate a formal investigation facilitated by an independent third-party workplace investigator to investigate any complaints or reports of a Section 2 violation. The Designated Person shall have authority to engage an independent third-party workplace investigator on behalf of the Board and without further Board approval. The investigator shall report directly to counsel for the Board. Serious violations, such as allegations of conduct that violates the law, shall be concurrently forwarded by the Designated Person to the Governor's office. If the complaint is forwarded to the Governor's office, the Designated Person shall notify the complainant, the Board, and the accused Director that the Governor's office has been notified. Any notice to the Governor's office shall confirm the initiation and status of any investigation contemplated by this Policy.

Commented [AC11]: Nothing legally wrong with this process, but it's fairly restrictive, leaving no discretion on handling depending on what the complaint actually is.

Investigations initiated by the Designated Person shall be conducted independently from any investigation the Governor's office may choose to pursue, unless a majority of the Board (as defined in Section 4 (2) below) votes to discontinue its' investigation in light of the investigation conducted by the Governor's office.

Cooperation with Investigation and Dishonesty

LTD expects all employees and Directors to cooperate fully with any investigation. Dishonesty during an

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investigation is considered unprofessional, and, in some cases, may be a violation of the [government ethics under ORS Chapter 244 law](#), and may be grounds for removal from the Board.

Action on Finding of Violation

If a violation is found by a preponderance of evidence, prompt and appropriate action shall be taken consistent with [Section 4 of these rules](#).

Confidentiality

Confidentiality shall be maintained throughout the investigatory process to the extent possible and to the extent consistent with an adequate investigation and appropriate corrective action. LTD requests that employees and Directors maintain confidentiality to the extent allowed by law.

[LTD](#) may elect not to disclose or discuss with the [reporting](#) employee or Director ~~who made the complaint~~ the results of the investigation or the actions taken in response to a report. Information regarding the person who complained or the witnesses who participated in an investigation may similarly be withheld from the subject of the complaint. The subject of the complaint will be notified by either the Designated Person or counsel whether a complaint is substantiated.

If a complaint is substantiated, the results of the investigation and/or the Investigation Report shall be forwarded to the Governor's office by the Designated Person.

Prohibition of Non-Disclosure, Non-Disparagement, and No-Rehire Agreements

LTD may not ~~require or coerce an employee to enter into, and LTD itself may not require, coerce, or enter into~~ an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits, that contains a nondisclosure provision, a non-disparagement provision, ~~or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct~~ [related to discrimination or harassment on the basis of any protected category under state law, including sex, race, religion, national origin, age and sexual orientation, or a provision that prevents an employee from seeking reemployment with LTD.](#)~~that:~~

- ~~(a) Constitutes sexual assault or alleged discriminatory conduct prohibited under ORS 659A.030, ORS 659A.082 or ORS 659A.112; or~~
- ~~(b) Constitutes conduct between employees and/or Directors that may have occurred in the workplace or at a work-related event; or~~
- ~~(c) Constitutes conduct that may have occurred between an employee and a Director off-site in a non-work-related situation or capacity.~~

An employee may voluntarily request a settlement, separation, or severance agreement which contains a nondisclosure, non disparagement, or no-rehire provision and will have at least seven days to revoke any such agreement. Other restrictions may also apply to any such agreement as required by applicable law.

Time Limitations

Time limitations apply to employee reports alleging violations of Oregon law. A complaint alleging a violation of ORS 659A.030, 659A.082, 659A.112 or Section 2 of the Oregon Workforce Fairness Act must be filed with the Oregon Bureau of Industries (BOLI) or in civil court no later than five years after the occurrence of the alleged violation ~~for conduct occurring on or after September 29, 2019.~~

Civil actions and BOLI complaints alleging unlawful employment actions other than a violation of ORS 659A.030, 659A.082, 659A.112 or Section 2 of the Oregon Workforce Fairness Act must be filed no later than one year after the occurrence of the alleged unlawful employment practice.

Commented [AC12]: Perhaps clarify – “may be grounds to recommend removal from the Board to the Governor.”

Commented [AC13]: I recommend you identify who has the final say on whether a violation has occurred. For example, you can have the investigator make findings of fact only, leaving it to the Board to decide if a violation is proven based on the factual findings, or you can leave that final determination to the investigator.

Commented [AC14]: Update section references and remove reference to “rules”. This is a policy, not a rule or regulation.

Commented [AC15]: Should this be a Board decision?

Commented [AC16]: This provision and the next one (time limitations) are required under the Oregon Workplace Fairness Act for harassment and discrimination policies covering employees. As this policy applies only to Board members, the information is not required to be included. It is certainly fine to leave it in if you chose to do so.

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Filing deadlines differ and are considerably shorter for complaints filed with the federal Equal Employment Opportunity Commission and the federal Department of Labor. Additionally, any individual harmed by a public employer may be required to give advance notice of a claim as required by ORS 30.275.

100.20.7 VIOLATIONS AND DISCIPLINE

Violations

Violations of Section 2 may result in discipline up to and including referral to the Governor's office requesting removal.

Discipline

The nature and scope of discipline will depend on the nature and seriousness of the violation, and it shall reflect LTD's commitment to prevent discrimination, harassment, and retaliation by taking prompt, appropriate action in the face of a violation. Counsel for the Board shall provide Directors *other than the Director(s) who is the subject of the report* with a copy of a confidential Executive Summary or the confidential Investigation Report, whichever counsel deems most prudent under the circumstances, and shall concurrently make the recommendation of discipline to the Board. Directors who receive a copy of the confidential Executive Summary or Investigation Report shall not distribute or disclose the contents of such information to the subject of the report unless distribution or publication is authorized by counsel for the Board.

The Director(s) accused of violating Section 2 shall be afforded an opportunity to respond to the proposed discipline with a statement, either orally or in writing, within 7 business days of learning of the proposed discipline. The Directors other than the accused shall then deliberate and vote on the proposed discipline. The discipline measure, if any, voted on by the Board shall be adopted if it passes with a majority of Board members, not counting the accused (but counting any vacant or absent Board members).² The Director(s) accused of violating Section 2 shall abstain from voting on any matter involving proposed discipline for their conduct.

If the disciplinary measure is passed, it shall be implemented, and a copy of the disciplinary measure shall be sent to the Governor's office by the Designated Person. If the Board votes to request removal of the Director from the Board, the accused Director shall be given the opportunity to resign in lieu of a request to the Governor's office that the accused Director be removed. If the accused Director declines to resign, the Designated Person shall make a formal request to the Governor's office that the Director be removed from the Board.

Board Member Removal

A violation of Section 2 shall be considered unprofessional and, in some cases, may be a violation of the law. A Board's vote to allow a Director to retain their position on the Board does not preclude the Governor's office from making an alternate determination that would result in the Director's removal from the Board. Directors are subject to removal by the Governor's office.

Vacancies shall be filled under ORS 198.320(2).

Commented [AC17]: Just FYI, there is no legal prohibition preventing the subject Director from having a copy of the report.

¹ As used herein, "supervisor or manager" includes LTD managers, supervisors, department directors, the Assistant General Manager, and the General Manager.

² By way of example, assume there is: (a) one Board member who is the subject of the complaint; and (b) one vacancy on the Board. Six Board members attend the meeting, including the accused. Five Board members vote, with four voting in the affirmative to implement the proposed discipline measure and one Board

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member opposed. The sixth Board member (the accused) abstains, consistent with this policy. There is a vacancy representing the seventh Board member. The motion passes: Four of six Board members voted in the affirmative (the vacancy is counted towards the six Board members), one Board member opposed, one Board member, abstained. For purposes of determining a majority, the abstaining Board member is not counted in this instance.