

Browning Public Schools

Policy # **5012P**

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Policy Name: *Sexual Harassment Grievance Procedure (Employee)*

Regulation: -----

The Board requires the following grievance process to be followed for the prompt and equitable resolution of employee complaints alleging any action that would be prohibited as sexual harassment by Title IX. The Board directs the process to be published in accordance with all statutory and regulatory requirements.

Definitions

The following definitions apply for Title IX policies and procedures:

“Actual knowledge:” 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 or secondary school.

“Education program or activity:” includes locations, events or circumstances over which the District exercised substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, and the context in which the sexual harassment occurs.

“Complainant:” an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

“Respondent:” an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Formal complaint:” 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.

“Supportive measures:” non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the Complainant or Respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

District Requirements

When the District has actual knowledge of sexual harassment in an education program or activity of the District, the District will respond promptly in a manner that is not deliberately indifferent. When the harassment or discrimination on the basis of sex does not meet the definition of sexual harassment, the Title IX Coordinator will direct the individual to the applicable sex discrimination process bullying and harassment policy, or public complaint procedure for investigation.

The District treats individuals who are alleged to be the victim (Complainant) and perpetrator (Respondent) of conduct that could constitute sexual harassment equitably by offering supportive measures. Supportive 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, mutual restrictions on contact between the parties, leaves of

1 absence, increased security and monitoring of certain areas of the District's property, campus escort
2 services, changes in work locations and other similar measures.

3
4 The Title IX Coordinator is responsible for coordinating the effective implementation of supportive
5 measures. Upon the receipt of a complaint, the Title IX Coordinator must promptly contact the
6 Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with
7 respect to supportive measures, inform the Complainant of the availability of supportive measures with or
8 without the filing of a formal complaint, and explain to the Complainant the process for filing a formal
9 complaint. If the District does not provide the Complainant with supportive measures, then the District
10 must document the reasons why such a response was not clearly unreasonable in light of the known
11 circumstances.

12 **Timelines**

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14 The District has established reasonably prompt time frames for the conclusion of the grievance process,
15 including time frames for filing and resolving appeals and informal resolution processes. The grievance
16 process may be temporarily delayed or extended for good cause. Good cause may include considerations
17 such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the
18 need for language assistance or accommodation of disabilities. In the event the grievance process is
19 temporarily delayed for good cause, the District will provide written notice to the Complainant
20 and the Respondent of the delay or extension and the reasons for the action.

21 **Response to a Formal Complaint**

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23 At the time of filing a formal complaint, a Complainant must be participating in or attempting to
24 participate in the education program or activity of the District with which the formal complaint is filed. A
25 formal complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or
26 other means designated by the District.

27
28 The District must follow the formal complaint process before the imposition of any disciplinary sanctions
29 or other actions that are not supportive measures. However, nothing in this policy precludes the District
30 from placing a non-student employee Respondent on administrative leave during the pendency of the
31 grievance process. The District may also remove a student Respondent alleged to have harassed an
32 employee Complainant from the education setting. The student may receive instruction in an offsite
33 capacity during the period of removal. This provision may not be construed to modify any rights under
34 the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the
35 Americans with Disabilities Act.

36
37 Upon receipt of a formal complaint, the District must provide written notice to the known parties
38 including:

- 39 1. Notice of the allegations of sexual harassment, including information about the identities of
40 the parties involved in the incident, the conduct allegedly constituting sexual harassment,
41 the date and location of the alleged incident, and any sufficient details known at the time.
42 Such notice must be provided with sufficient time to prepare a response before any initial
43 interview;
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45 2. An explanation of the District's investigation procedures, including any informal resolution
46 process;
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48 3. A statement that the Respondent is presumed not responsible for the alleged conduct and
49 that a determination regarding responsibility will be made by the decision-maker at the
50 conclusion of the investigation;

1 4. Notice to the parties that they may have an advisor of their choice who may be, but is not
2 required to be, an attorney, and may inspect and review any evidence; and
3

4 5. Notice to the parties of any provision in the District's code of conduct or policy that
5 prohibits knowingly making false statements or knowingly submitting false information.
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7 If, in the course of an investigation, the District decides to investigate allegations about the Complainant
8 or Respondent that are not included in the notice initially provided, notice of the additional allegations
9 must be provided to known parties.
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11 The District may consolidate formal complaints as to allegations of sexual harassment against more than
12 one Respondent, or by more than one Complainant against one or more Respondents, or by one party
13 against the other party, where the allegations of sexual harassment arise out of the same facts or
14 circumstances.
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16 **Investigation of a Formal Complaint**

17 When investigating a formal complaint and throughout the grievance process, the District must:

- 18 1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a
19 determination regarding responsibility rests on the District and not the parties';
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- 21 2. Provide an equal opportunity for the parties to present witnesses and evidence;
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- 23 3. Not restrict either party's ability to discuss the allegations under investigation or to gather and
24 present relevant evidence;
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- 26 4. Allow the parties to be accompanied with an advisor of the party's choice who may be, but is
27 not required to be, an attorney. The District may establish restrictions regarding the extent to
28 which the advisor may participate in the proceedings, as long as the restrictions apply equally to
29 both parties;
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- 31 5. Provide written notice of the date, time, location, participants, and purpose of any interview or
32 meeting at which a party is expected to participate, with sufficient time for the party to prepare
33 to participate;
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- 35 6. Provide the parties equal access to review all the evidence collected which is directly related to
36 the allegations raised in a formal complaint and comply with the review periods outlined in this
37 process;
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- 39 7. Objectively evaluate all relevant evidence without relying on sex stereotypes;
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- 41 8. Ensure that Title IX Coordinators, investigators, decision-makers and individuals who facilitate
42 an informal resolution process, do not have a conflict of interest or bias for or against
43 Complainants or Respondents generally or an individual Complainant or Respondent;
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- 45 9. Not make credibility determinations based on the individual's status as Complainant,
46 Respondent or witness;
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- 48 10. Not use questions or evidence that constitute or seek disclosure of privileged information unless
49 waived.
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Dismissal of Formal Complaints

If the conduct alleged in the formal complaint would not constitute sexual harassment 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 under this policy.

The Title IX Coordinator also may dismiss the formal complaint or any allegations therein at any time during the investigation or hearing, if applicable, when any of the following apply:

1. a Complainant provides written notification to the Title IX Coordinator that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. the Respondent is no longer enrolled or employed by the District; or
3. specific circumstances prevent the District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon dismissal, the Title IX Coordinator promptly sends written notice of the dismissal and the reasons for dismissal simultaneously to both parties. The grievance process will close in the event a notice of dismissal is provided to the parties. Support measures may continue following dismissal.

Evidence Review

The District provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. The evidence provided by the District must include evidence that is directly related to the allegations in the formal complaint, evidence upon which the District does not intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence whether obtained from a party or other source. Prior to completion of the investigative report, the Title IX Coordinator 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. The parties have 10 calendar days to submit a written response to the Title IX Coordinator, which the investigator will consider prior to completion of the investigative report.

Investigative Report

The investigator must prepare an investigative report that fairly summarizes relevant evidence and send the report to the Title IX Coordinator. The Title IX Coordinator must 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. The parties have 10 calendar days to submit a written response to the Title IX Coordinator.

Decision-Maker's Determination

The investigative report is submitted to the decision-maker. The decision-maker cannot be the same person(s) as the Title IX Coordinator or the investigator. The decision-maker cannot hold a hearing or make a determination regarding responsibility until 10 calendar days from the date the Complainant and Respondent receive the investigator's report.

Prior to reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if

1 the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with
2 respect to the Respondent and are offered to prove consent. Questions must be submitted to the Title IX
3 Coordinator within three calendar days from the date the Complainant and Respondent receive the
4 investigator's report.

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6 The decision-maker must issue a written determination regarding responsibility based on a preponderance
7 of the evidence standard. The decision-makers' written determination must:

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9 1. Identify the allegations potentially constituting sexual harassment;
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11 2. Describe the procedural steps taken, including any notifications to the parties, interviews with
12 parties and witnesses, site visits, methods used to gather evidence, and hearings held;
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14 3. Include the findings of fact supporting the determination;
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16 4. Draw conclusions regarding the application of any District policies and/or code of conduct
17 rules to the facts;
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19 5. Address each allegation and a resolution of the complaint including a determination regarding
20 responsibility, the rationale therefor, any recommended disciplinary sanction(s) imposed on the
21 Respondent, and whether remedies designed to restore or preserve access to the educational
22 program or activity will be provided by the District to the Complainant; and
- 23
24 6. The procedures and permissible bases for the Complainant and/or Respondent to appeal the
25 determination.

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27 A copy of the written determination must be provided to both parties simultaneously, and generally will
28 be provided within 60 calendar days from the District's receipt of a formal complaint.

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30 The determination regarding responsibility becomes final either on the date that the District provides the
31 parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not
32 filed, the date on which an appeal would no longer be considered timely.

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34 Where a determination of responsibility for sexual harassment has been made against the Respondent, the
35 District will provide remedies to the Complainant that are designed to restore or preserve equal access to
36 the District's education program or activity. Such remedies may include supportive measures; however,
37 remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The
38 Title IX Coordinator is responsible for effective implementation of any remedies. Following any
39 determination of responsibility, the District may implement disciplinary sanctions in accordance with
40 state or Federal law and or/the negotiated agreement. For employees, the sanctions may include any form
41 of responsive discipline, up to and including termination.

42 **Appeals**

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44 Either the Complainant or Respondent may appeal the decision-maker's determination regarding
45 responsibility or a dismissal of a formal complaint, on the following bases:

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47 1. Procedural irregularity that affected the outcome of the matter;
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49 2. New evidence that was not reasonably available at the time that could affect the outcome and

3. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent that affected the outcome.

The District also may offer an appeal equally to both parties on additional bases

The request to appeal must be made in writing to the Title IX Coordinator within seven calendar days after the date of the written determination. The appeal decision-maker must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent and cannot be the Title IX Coordinator, the investigator, or the decision-maker from the original determination.

The appeal decision-maker must notify the other party in writing when an appeal is filed and give both parties a reasonable equal opportunity to submit a written statement in support of, or challenging, the outcome. After reviewing the evidence, the appeal decision-maker must issue a written decision describing the result of the appeal and the rationale for the result. The decision must be provided to both parties simultaneously, and generally will be provided within 10 calendar days from the date the appeal is filed.

Informal Resolution Process

Except when concerning allegations that an employee sexually harassed a student, at any time during the formal complaint process and 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 determination of responsibility, provided that the District:

1. Provides to the parties a written notice disclosing:
 - A. The allegations;
 - B. 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 Title IX formal complaint process with respect to the formal complaint; and
 - C. 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.

The informal resolution process generally will be completed within 30 calendar days, unless the parties and the Title IX Coordinator mutually agree to temporarily delay or extend the process. The formal grievance process timelines are stayed during the parties' participation in the informal resolution process. If the parties do not reach resolution through the informal resolution process, the parties will resume the formal complaint grievance process, including timelines for resolution, at the point they left off.

Recordkeeping

The District must 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 District'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. The District must make these training materials publicly available on its website.

The District must 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. In each instance, the District must 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 District's education program or activity.

Cross Reference: Policy 5010 Equal Employment and Non-Discrimination
Policy 5012 Sexual Harassment
Policy 5255 Employee Discipline

Legal References: Art. X, Sec. 1, Montana Constitution – Educational goals and duties
Section 49-3-101, et seq., MCA, Montana Human Rights Act
Civil Rights Act, Title VI; 42 USC 2000d et seq.
Civil Rights Act, Title VII; 42 USC 2000e et seq.
Education Amendments of 1972, Title IX; 20 USC 1681 et seq.
34 CFR Part 106 Nondiscrimination on the basis of sex in education programs or activities receiving Federal financial assistance
10.55.701(1)(f) ARM, Board of Trustees
10.55.719 ARM, Student Protection Procedures
10.55.801(1)(a) ARM, School Climate

Policy History:

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