

1 **Browning Public Schools**

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3 Policy -----

4 Policy Name: *Student Grievance Process*

5 **Regulation: 3205R**

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7 **Sexual Harassment Grievance Procedure - Students**

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

12
13 **Definitions**

14
15 **The following definitions apply for Title IX policies and procedures:**

16
17 **“Actual knowledge:” notice of sexual harassment or allegations of sexual harassment to the District’s Title**
18 **IX Coordinator or any official of the District who has authority to institute corrective measures on behalf**
19 **of the District, or to any employee of an elementary or secondary school.**

20
21 **“Education program or activity:” includes locations, events or circumstances over which the District**
22 **exercised substantial control over both the individual who has been reported to be the perpetrator of**
23 **conduct that could constitute sexual harassment, and the context in which the sexual harassment occurs.**

24
25 **“Complainant:” an individual who is alleged to be the victim of conduct that could constitute sexual**
26 **harassment.**

27
28 **“Respondent:” an individual who has been reported to be the perpetrator of conduct that could constitute**
29 **sexual harassment.**

30
31 **“Formal complaint:” a document filed by a Complainant or signed by the Title IX Coordinator alleging**
32 **sexual harassment against a Respondent and requesting that the District investigate the allegation of sexual**
33 **harassment.**

34
35 **“Supportive measures:” non-disciplinary, non-punitive individualized services offered as appropriate, as**
36 **reasonably available and without fee or charge to the Complainant or Respondent before or after the filing**
37 **of a formal complaint or where no formal complaint has been filed.**

38
39 **District Requirements**

40
41 **When the District has actual knowledge of sexual harassment in an education program or activity of the**
42 **District, the District will respond promptly in a manner that is not deliberately indifferent. When the**
43 **harassment or discrimination on the basis of sex does not meet the definition of sexual harassment, the**
44 **Title IX Coordinator will direct the individual to the applicable sex discrimination process, bullying and**
45 **harassment policy, or public complaint procedure for investigation.**

46
47 **The District treats individuals who are alleged to be the victim (Complainant) and perpetrator**
48 **(Respondent) of conduct that could constitute sexual harassment equitably by offering supportive**
49 **measures. Supportive measures are designed to restore or preserve equal access to the District’s education**
50 **program or activity without unreasonably burdening the other party, including measures designed to**
51 **protect the safety of all parties or the District’s educational environment, or deter sexual harassment.**

1 Supportive measures may include counseling, extensions of deadlines or other course-related adjustments,
2 modifications of work or class schedules, mutual restrictions on contact between the parties, leaves of
3 absence, increased security and monitoring of certain areas of the District's property, campus escort
4 services, changes in work locations and other similar measures.

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

14 15 Timelines

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

24 25 Response to a Formal Complaint

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

31
32 The District must follow the formal complaint process before the imposition of any disciplinary sanctions
33 or other actions that are not supportive measures. However, nothing in this policy precludes the District
34 from removing a Respondent from the District's education program or activity on an emergency basis,
35 provided that the District undertakes an individualized safety and risk analysis, determines that an
36 immediate threat to the physical health or safety of any student or other individual arising from the
37 allegations of sexual harassment justifies removal, and provides the Respondent with notice and an
38 opportunity to challenge the decision immediately following the removal. A period of removal may include
39 the opportunity for the student to continue instruction in an offsite capacity. The District may also place a
40 non-student employee Respondent on administrative leave during the pendency of the grievance process.
41 This provision may not be construed to modify any rights under the Individuals with Disabilities Education
42 Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

43
44 Upon receipt of a formal complaint, the District must provide written notice to the known parties
45 including:

- 46
47 1. Notice of the allegations of sexual harassment, including information about the identities of
48 the parties involved in the incident, the conduct allegedly constituting sexual harassment, the
49 date and location of the alleged incident, and any sufficient details known at the time. Such
50 notice must be provided with sufficient time to prepare a response before any initial
51 interview;

2. An explanation of the District’s investigation procedures, including any informal resolution process;
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made by the decision-maker at the conclusion of the investigation;
4. Notice to 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 any evidence; and
5. Notice to the parties of any provision in the District’s code of conduct or policy that prohibits knowingly making false statements or knowingly submitting false information.

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 initially provided, notice of the additional allegations must be provided to known parties.

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.

Investigation of a Formal Complaint

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

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the District and not the parties’;
2. Provide an equal opportunity for the parties to present witnesses and evidence;
3. Not restrict either party’s ability to discuss the allegations under investigation or to gather and present relevant evidence;
4. Allow the parties to be accompanied with an advisor of the party’s choice who may be, but is not required to be, an attorney. 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;
5. Provide written notice of the date, time, location, participants, and purpose of any interview or meeting at which a party is expected to participate, with sufficient time for the party to prepare to participate;
6. Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a formal complaint and comply with the review periods outlined in this process;
7. Objectively evaluate all relevant evidence without relying on sex stereotypes;

1 8. Ensure that Title IX Coordinators, investigators, decision-makers and individuals who facilitate
2 an informal resolution process, do not have a conflict of interest or bias for or against
3 Complainants or Respondents generally or an individual Complainant or Respondent;
4

5 9. Not make creditability determinations based on the individual's status as Complainant,
6 Respondent or witness;
7

8 10. Not use questions or evidence that constitute or seek disclosure of privileged information unless
9 waived.
10

11 Dismissal of Formal Complaints

12
13 If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did
14 not occur in the District's education program or activity, or did not occur against a person in the United
15 States, then the District must dismiss the formal complaint with regard to that conduct for purposes of
16 sexual harassment under this policy.
17

18 The Title IX Coordinator also may dismiss the formal complaint or any allegations therein at any time
19 during the investigation or hearing, if applicable, when any of the following apply:
20

21 1. a Complainant provides written notification to the Title IX Coordinator that the Complainant
22 would like to withdraw the formal complaint or any allegations therein;
23

24 2. the Respondent is no longer enrolled or employed by the District or;
25

26 3. specific circumstances prevent the District from gathering evidence sufficient to reach a
27 determination as to the formal complaint or allegations therein.
28

29 Upon dismissal, the Title IX Coordinator promptly sends written notice of the dismissal and the reasons for
30 dismissal simultaneously to both parties. The grievance process will close in the event a notice of dismissal
31 is provided to the parties. Support measures may continue following dismissal.
32

33 Evidence Review

34
35 The District provides both parties an equal opportunity to inspect and review any evidence obtained as
36 part of the investigation so that each party can meaningfully respond to the evidence prior to the
37 conclusion of the investigation. The evidence provided by the District must include evidence that is directly
38 related to the allegations in the formal complaint, evidence upon which the District does not intend to rely
39 in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence whether
40 obtained from a party or other source. Prior to completion of the investigative report, the Title IX
41 Coordinator must send to each party and the party's advisor, if any, the evidence subject to inspection and
42 review in an electronic format or a hard copy. The parties have 10 calendar days to submit a written
43 response to the Title IX Coordinator, which the investigator will consider prior to completion of the
44 investigative report.
45

46 Investigative Report

47
48 The investigator must prepare an investigative report that fairly summarizes relevant evidence and send
49 the report to the Title IX Coordinator. The Title IX Coordinator must send to each party and the party's
50 advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written

1 response. The parties have 10 calendar days to submit a written response to the Title IX Coordinator.
2

3 Decision-Maker's Determination 4

5 The investigative report is submitted to the decision-maker. The decision-maker cannot be the same
6 person(s) as the Title IX Coordinator or the investigator. The decision-maker cannot hold a hearing or
7 make a determination regarding responsibility until 10 calendar days from the date the Complainant and
8 Respondent receive the investigator's report.
9

10 Prior to reaching a determination regarding responsibility, the decision-maker must afford each party the
11 opportunity to submit written, relevant questions that a party wants asked of any party
12 or witness, provide each party with the answers, and allow for additional, limited follow-up questions from
13 each party. Questions and evidence about the Complainant's sexual
14 predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the
15 Complainant's prior sexual behavior are offered to prove that someone other than the Respondent
16 committed the conduct alleged by the Complainant, or if the questions and evidence concern specific
17 incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to
18 prove consent. Questions must be submitted to the Title IX Coordinator within three calendar days from
19 the date the Complainant and Respondent receive the investigator's report.
20

21 The decision-maker must issue a written determination regarding responsibility based on a preponderance
22 of the evidence standard. The decision-maker's written determination must:
23

- 24 1. Identify the allegations potentially constituting sexual harassment;
- 25
- 26 2. Describe the procedural steps taken, including any notifications to the parties, interviews with
27 parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- 28
- 29 3. Include the findings of fact supporting the determination;
- 30
- 31 4. Draw conclusions regarding the application of any District policies and/or code of conduct rules
32 to the facts;
- 33
- 34 5. Address each allegation and a resolution of the complaint including a determination regarding
35 responsibility, the rationale therefor, any recommended disciplinary sanction(s) imposed on the
36 Respondent, and whether remedies designed to restore or preserve access to the educational
37 program or activity will be provided by the District to the Complainant and
38
- 39 6. The procedures and permissible bases for the Complainant and/or Respondent to appeal the
40 determination.
41

42 A copy of the written determination must be provided to both parties simultaneously, and generally will be
43 provided within 60 calendar days from the District's receipt of a formal complaint.
44

45 The determination regarding responsibility becomes final either on the date that the District provides the
46 parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not
47 filed, the date on which an appeal would no longer be considered timely.
48

49 Where a determination of responsibility for sexual harassment has been made against the
50 Respondent, the District will provide remedies to the Complainant that are designed to restore or preserve
51 equal access to the District's education program or activity. Such remedies may include

1 supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid
2 burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any
3 remedies. Following any determination of responsibility, the District may implement disciplinary sanctions
4 in accordance with State or Federal law and or/the negotiated agreement. For students, the sanctions may
5 include disciplinary action, up to and including permanent exclusion.

6 7 Appeals

8
9 Either the Complainant or Respondent may appeal the decision-maker's determination regarding
10 responsibility or a dismissal of a formal complaint, on the following bases:

- 11
12 1. Procedural irregularity that affected the outcome of the matter;
- 13
14 2. New evidence that was not reasonably available at the time that could affect the outcome and
- 15
16 3. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or
17 against Complainants or Respondents generally or an individual Complainant or Respondent
18 that affected the outcome.

19
20 The District also may offer an appeal equally to both parties on additional bases.

21
22 The request to appeal must be made in writing to the Title IX Coordinator within seven calendar days after
23 the date of the written determination. The appeal decision-maker must not have a conflict of interest or
24 bias for or against Complainants or Respondents generally or an individual Complainant or Respondent
25 and cannot be the Title IX Coordinator, the investigator, or the decision-maker from the original
26 determination.

27
28 The appeal decision-maker must notify the other party in writing when an appeal is filed and give both
29 parties a reasonable equal opportunity to submit a written statement in support of, or challenging, the
30 outcome. After reviewing the evidence, the appeal decision-maker must issue a written decision describing
31 the result of the appeal and the rationale for the result. The decision must be provided to both parties
32 simultaneously, and generally will be provided within 10 calendar days from the date the appeal is filed.

33 34 Informal Resolution Process

35
36 Except when concerning allegations that an employee sexually harassed a student, at any time during the
37 formal complaint process and prior to reaching a determination regarding responsibility, the District may
38 facilitate an informal resolution process, such as mediation, that
39 does not involve a full investigation and determination of responsibility, provided that the District:

- 40
41 1. Provides to the parties a written notice disclosing:
 - 42
43 A. The allegations;
 - 44
45 B. The requirements of the informal resolution process including the circumstances under
46 which it precludes the parties from resuming a formal complaint arising from the same
47 allegations, provided, however, that at any time prior to agreeing to a resolution, any party
48 has the right to withdraw from the informal resolution process and resume the Title IX
49 formal complaint process with respect to the formal complaint; and

1 C. Any consequences resulting from participating in the informal resolution process, including
2 the records that will be maintained or could be shared.

3
4 2. Obtains the parties' voluntary, written consent to the informal resolution process.

5
6 The informal resolution process generally will be completed within 30 calendar days, unless the parties and
7 the Title IX Coordinator mutually agree to temporarily delay or extend the process. The formal grievance
8 process timelines are stayed during the parties' participation in the informal resolution process. If the
9 parties do not reach resolution through the informal resolution process, the parties will resume the formal
10 complaint grievance process, including timelines for resolution, at the point they left off.

11
12 **Recordkeeping**

13
14 **The District must maintain for a period of seven years records of:**

15
16 1. Each sexual harassment investigation, including any determination regarding responsibility, any
17 disciplinary sanctions imposed on the Respondent, and any remedies provided to the
18 Complainant designed to restore or preserve equal access to the District's education program or
19 activity;

20
21 2. Any appeal and the result therefrom;

22
23 3. Any informal resolution and the result therefrom; and

24
25 4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person
26 who facilitates an informal resolution process. The District must make these training materials
27 publicly available on its website.

28
29 The District must create, and maintain for a period of seven years, records of any actions, including any
30 supportive measures, taken in response to a report or formal complaint of sexual harassment. In each
31 instance, the District must document the basis for its conclusion that its
32 response was not deliberately indifferent, and document that it has taken measures designed to restore or
33 preserve equal access to the District's education program or activity.

34
35 **Cross Reference:** Policy 3210 Equal Education, Nondiscrimination and Sex Equity
36 Policy 3225 Sexual Harassment
37 Policy 3310 Student Discipline

38
39 **Legal References:** Art. X, Sec. 1, Montana Constitution – Educational goals and duties
40 Section 49-3-101, et seq., MCA, Montana Human Rights Act
41 Civil Rights Act, Title VI; 42 USC 2000d et seq.
42 Civil Rights Act, Title VII; 42 USC 2000e et seq.
43 Education Amendments of 1972, Title IX; 20 USC 1681 et seq.
44 Section 20-5-201, MCA, Duties and Sanctions
45 Section 20-5-202, MCA, Suspension and Expulsion
46 34 CFR Part 106 Nondiscrimination on the basis of sex in education
47 programs or activities receiving Federal financial
48 assistance
49 10.55.701(1)(f), ARM Board of Trustees
50 10.55.719, ARM Student Protection Procedures
51 10.55.801(1)(a), ARM School Climate

1 **Policy History:**

2 Adopted on:

3 Revised on:

4 Reviewed on: 2/8/22

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6
7 The Board of Trustees supports creating a school environment that is free from discrimination and affords students
8 and their families an opportunity for due process. The grievance process provides the Superintendent and Trustees
9 with opportunities to identify barriers to a discrimination free learning and working environment in our schools.
10 The appeal process facilitates identifying inconsistencies in practice and interpretation of the Board of Trustee's
11 policy.

12
13 **Public Notice of Process**

14 In order to address potential concerns, the Superintendent shall identify a Title IX and Section 504 Coordinators for
15 the District. District coordinators and building-based representatives will be identified in Student Handbooks
16 annually. The grievance and the appeal process will be included in district policy and Student Handbooks.

17
18 **Grievance Process**

19 A grievance/appeal will consist of any complaint alleging discrimination.

20
21 **Level 1: Informal Resolution**

22 The grievant is encouraged to promptly discuss the concern with the teacher, counselor, Principal or building
23 administrator with whom the issue could be resolved informally. However, in the case of alleged sexual harassment,
24 the matter should be discussed with the first line administrator that is not involved in the alleged harassment.

25
26 **Level 2: Superintendent/Designee**

27 If the complaint is not resolved at Level 1, the grievant may file a written grievance stating:

- 28 1. The nature of the grievance.
29 2. The remedy requested.
30 3. Signature and Date

31
32 The Level 2 grievance shall be filed within 60 days of the event or incident, or from the date the grievant could
33 have reasonably become aware of the occurrence. The District may investigate and take action when a student
34 refuses or is unable to file a written grievance.

35
36 The Superintendent or Designee has the authority to investigate all grievances and if possible will resolve the
37 grievance. A written report regarding the investigation shall include the following:

- 38
39 1. Clear statement of the allegations of the grievance and the remedy sought by the grievant.
40 2. Statement of the facts as contended by each of the parties.
41 3. Statement of the facts as found by the Superintendent or Designee and identification of evidence to support
42 each fact.
43 4. List of witnesses interviewed and documents reviewed during the investigation.
44 5. Narrative describing attempts to resolve the grievance.
45 6. Superintendent concludes as to whether the allegations in the grievance are with merit.

46
47 The Superintendent or Designee will complete the investigation and file the report within thirty (30) days after
48 receipt of the written grievance. The Superintendent or Designee will provide a copy of the report to the grievant.

49
50 The Superintendent or Designee may appoint an outside investigator.
51

1 **Level 3: The Board of Trustees**

2 If the Superintendent rejects the recommendation, and/or either party is not satisfied with the recommendations
3 from Level 2, either party may make a written appeal within 15 days of receiving the report to the Board of Trustees
4 for a full contested case hearing. On receipt of the written appeal, the matter shall be placed on the agenda of the
5 Board of Trustees for consideration not later than their next regularly scheduled meeting. A decision shall be made
6 and reported to all parties within thirty (30) days of that meeting. The decision of the Board of Trustees will be
7 final, unless appealed within the period provided by law.

8
9 **Level 4: The County Superintendent**

10 If the case falls within the jurisdiction of the County Superintendent of Schools, the decision of the Board of Trustees
11 may be appealed to the County Superintendent by filing a written appeal within thirty (30) days after the final
12 decision pursuant to the Rules of School Controversy (10.6.103, et seq. ARM).

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19 **Cross Reference:** #3002 Student Handbook Policy
20 _____ #2112 Duties of the Superintendent
21 _____ #1240 Member Authority/Responsibility
22 _____ #3000 Equal Education Nondiscrimination
23 _____ #3205 Sexual Harassment/Intimidation

- 24
25 **Legal Reference:** 20 USC 24.9.1001-1011 Sex Discrimination in Education
26 _____ 10.6.103, et seq. ARM Rules of School Controversy
27 _____ MCA 20-5-201 Appeals by Pupil or Pupil's Parent or Guardian
28 _____ MCA 20-3-210 Controversy Appeals and Hearings
29 _____ MCA 20-3-324 Powers and Duties (Trustees)

30
31
32 **Policy History:**

33 Adopted on: 3/00
34 Revised on: 7/27/05, 7/12/16, 7/25/19
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36