

1 **Browning Public Schools**

2  
3 Policy # **3225P**

R

4 Policy Name: *Sexual Harassment Grievance Procedure (Students)*

5 Regulation: -----  
6

7 **Sexual Harassment Grievance**

8 The Board requires the following grievance process to be followed for the prompt and equitable  
9 resolution of student complaints alleging any action that would be prohibited as sexual harassment by  
10 Title IX. The Board directs the process to be published in accordance with all statutory and regulatory  
11 requirements.  
12

13 **Definitions**

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

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

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

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

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

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

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

38 **District Requirements**

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

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

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

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

### 13 14 **Timelines**

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

### 22 23 **Response to a Formal Complaint**

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

28  
29 The District must follow the formal complaint process before the imposition of any disciplinary sanctions  
30 or other actions that are not supportive measures. However, nothing in this policy precludes the District  
31 from removing a Respondent from the District's education program or

32  
33 activity on an emergency basis, provided that the District undertakes an individualized safety and risk  
34 analysis, determines that an immediate threat to the physical health or safety of any student or other  
35 individual arising from the allegations of sexual harassment justifies removal, and provides the  
36 Respondent with notice and an opportunity to challenge the decision immediately following the removal.  
37 A period of removal may include the opportunity for the student to continue instruction in an offsite  
38 capacity. The District may also place a non-student employee Respondent on administrative leave during  
39 the pendency of the grievance process. This provision may not be construed to modify any rights under  
40 the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the  
41 Americans with Disabilities Act.

42  
43 Upon receipt of a formal complaint, the District must provide written notice to the known parties  
44 including:

- 45  
46 1. Notice of the allegations of sexual harassment, including information about the identities of the  
47 parties involved in the incident, the conduct allegedly constituting sexual harassment, the date and  
48 location of the alleged incident, and any sufficient details known at the time. Such notice must be  
49 provided with sufficient time to prepare a response before any initial interview;
- 50  
51 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;
8. Ensure that Title IX Coordinators, investigators, decision-makers and individuals who facilitate an informal resolution process, do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;

- 1 9. Not make creditability determinations based on the individual’s status as Complainant,  
2 Respondent or witness;
- 3
- 4 10. Not use questions or evidence that constitute or seek disclosure of privileged information unless  
5 waived.
- 6

7 **Dismissal of Formal Complaints**

8 If the conduct alleged in the formal complaint would not constitute sexual harassment even if proved, did  
9 not occur in the District’s education program or activity, or did not occur against a person in the United  
10 States, then the District must dismiss the formal complaint with regard to that conduct for purposes of  
11 sexual harassment under this policy.

12  
13 The Title IX Coordinator also may dismiss the formal complaint or any allegations therein at any time  
14 during the investigation or hearing, if applicable, when any of the following apply:

- 15
- 16 1. a Complainant provides written notification to the Title IX Coordinator that the Complainant  
17 would like to withdraw the formal complaint or any allegations therein;
- 18
- 19 2. the Respondent is no longer enrolled or employed by the District or;
- 20
- 21 3. specific circumstances prevent the District from gathering evidence sufficient to reach a  
22 determination as to the formal complaint or allegations therein.
- 23

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

27  
28 **Evidence Review**

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

39  
40 **Investigative Report**

41 The investigator must prepare an investigative report that fairly summarizes relevant evidence and send  
42 the report to the Title IX Coordinator. The Title IX Coordinator must send to each party and the party’s  
43 advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written  
44 response. The parties have 10 calendar days to submit a written response to the Title IX Coordinator.

45  
46 **Decision-Maker’s Determination**

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

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

11  
12 The decision-maker must issue a written determination regarding responsibility based on a preponderance  
13 of the evidence standard. The decision-makers' written determination must:

- 14  
15 1. Identify the allegations potentially constituting sexual harassment;
- 16  
17 2. Describe the procedural steps taken, including any notifications to the parties, interviews with  
18 parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- 19  
20 3. Include the findings of fact supporting the determination;
- 21  
22 4. Draw conclusions regarding the application of any District policies and/or code of conduct  
23 rules to the facts;
- 24  
25 5. Address each allegation and a resolution of the complaint including a determination regarding  
26 responsibility, the rationale therefor, any recommended disciplinary sanction(s) imposed on the  
27 Respondent, and whether remedies designed to restore or preserve access to the educational  
28 program or activity will be provided by the District to the Complainant and  
29
- 30 6. The procedures and permissible bases for the Complainant and/or Respondent to appeal the  
31 determination.

32  
33 A copy of the written determination must be provided to both parties simultaneously, and generally will be  
34 provided within 60 calendar days from the District's receipt of a formal complaint.

35  
36 The determination regarding responsibility becomes final either on the date that the District provides the  
37 parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not  
38 filed, the date on which an appeal would no longer be considered timely.

39  
40 Where a determination of responsibility for sexual harassment has been made against the Respondent, the  
41 District will provide remedies to the Complainant that are designed to restore or preserve equal access to  
42 the District's education program or activity. Such remedies may include supportive measures; however,  
43 remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.  
44 The Title IX Coordinator is responsible for effective implementation of any remedies. Following any  
45 determination of responsibility, the District may implement disciplinary sanctions in accordance with  
46 State or Federal law and or/the negotiated agreement. For students, the sanctions may include disciplinary  
47 action, up to and including permanent exclusion.

#### 48 49 **Appeals**

50 Either the Complainant or Respondent may appeal the decision-maker's determination regarding

1 responsibility or a dismissal of a formal complaint, on the following bases:  
2

- 3 1. Procedural irregularity that affected the outcome of the matter;  
4
- 5 2. New evidence that was not reasonably available at the time that could affect the outcome and  
6
- 7 3. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for  
8 or against Complainants or Respondents generally or an individual Complainant or Respondent  
9 that affected the outcome.

10  
11 **The District also may offer an appeal equally to both parties on additional bases.**

12 The request to appeal must be made in writing to the Title IX Coordinator within seven calendar days  
13 after the date of the written determination. The appeal decision-maker must not have a conflict of interest  
14 or bias for or against Complainants or Respondents generally or an individual Complainant or  
15 Respondent and cannot be the Title IX Coordinator, the investigator, or the decision-maker from the  
16 original determination.  
17

18 The appeal decision-maker must notify the other party in writing when an appeal is filed and give both  
19 parties a reasonable equal opportunity to submit a written statement in support of, or challenging, the  
20 outcome. After reviewing the evidence, the appeal decision-maker must issue a written decision  
21 describing the result of the appeal and the rationale for the result. The decision must be provided to both  
22 parties simultaneously, and generally will be provided within 10 calendar days from the date the appeal is  
23 filed.  
24

25 **Informal Resolution Process**

26 Except when concerning allegations that an employee sexually harassed a student, at any time during the  
27 formal complaint process and prior to reaching a determination regarding responsibility, the District may  
28 facilitate an informal resolution process, such as mediation, that does not involve a full investigation and  
29 determination of responsibility, provided that the District:  
30

- 31 1. Provides to the parties a written notice disclosing:  
32
  - 33 A. The allegations;  
34
  - 35 B. The requirements of the informal resolution process including the circumstances under  
36 which it precludes the parties from resuming a formal complaint arising from the same  
37 allegations, provided, however, that at any time prior to agreeing to a resolution, any  
38 party has the right to withdraw from the informal resolution process and resume the Title  
39 IX formal complaint process with respect to the formal complaint; and  
40
  - 41 C. Any consequences resulting from participating in the informal resolution process,  
42 including the records that will be maintained or could be shared.  
43
- 44 2. Obtains the parties' voluntary, written consent to the informal resolution process.  
45

46 The informal resolution process generally will be completed within 30 calendar days, unless the parties  
47 and the Title IX Coordinator mutually agree to temporarily delay or extend the process. The formal  
48 grievance process timelines are stayed during the parties' participation in the informal resolution process.  
49 If the parties do not reach resolution through the informal resolution process, the parties will resume the  
50 formal complaint grievance process, including timelines for resolution, at the point they left off.  
51

1 **Recordkeeping**

2 The District must maintain for a period of seven years records of:

- 3
- 4 1. Each sexual harassment investigation, including any determination regarding responsibility,
- 5 any disciplinary sanctions imposed on the Respondent, and any remedies provided to the
- 6 Complainant designed to restore or preserve equal access to the District’s education program or
- 7 activity;
- 8
- 9 2. Any appeal and the result therefrom;
- 10
- 11 3. Any informal resolution and the result therefrom; and
- 12
- 13 4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any
- 14 person who facilitates an informal resolution process. The District must make these training
- 15 materials publicly available on its website.
- 16

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

22  
23  
24  
25 **Cross Reference:** Policy 3210 Equal Education, Nondiscrimination and Sex Equity  
26 Policy 3225 Sexual Harassment  
27 Policy 3310 Student Discipline  
28

29 **Legal References:** Art. X, Sec. 1, Montana Constitution – Educational goals and duties  
30 Section 49-3-101, et seq., MCA, Montana Human Rights Act  
31 Civil Rights Act, Title VI; 42 USC 2000d et seq.  
32 Civil Rights Act, Title VII; 42 USC 2000e et seq.  
33 Education Amendments of 1972, Title IX; 20 USC 1681 et seq.  
34 Section 20-5-201 MCA, Duties and Sanctions  
35 Section 20-5-202 MCA, Suspension and Expulsion  
36 34 CFR Part 106 Nondiscrimination on the basis of sex in education programs  
37 or activities receiving Federal financial assistance  
38 10.55.701(1)(f) ARM Board of Trustees  
39 10.55.719 ARM Student Protection Procedures  
40 10.55.801(1)(a) ARM School Climate  
41

42 **Policy History:**

43 Adopted on:  
44 Reviewed on: 4/13/21  
45 Revised on: