

1 **Browning Public Schools**

2
3 **Policy # 3205**

4 **Policy Name:** *Sexual Harassment/Harassment/Intimidation/Bullying/Menacing/Hazing*
5 **Regulation:**

6
7 **Sexual Harassment of Students**

8 The District does not discriminate on the basis of sex in any education program or activity that it
9 operates. The District is required by Title IX of the Education Amendments of 1972 and the
10 regulations promulgated through the U.S. Department of Education not to discriminate in such a
11 manner. Inquiries about the application of Title IX to the District may be referred to the District’s
12 Title IX Coordinator, to the Assistant Secretary for Civil Rights of the Department of Education, or
13 both.

14
15 The Board designates the following individual to serve as the District’s Title IX Coordinator:

16
17 Title: Assistant Superintendent
18 Office address: PO Box 92, Browning, MT 59417
19 Email: dennisj@bps.k12.mt.us
20 Phone number: 406-338-2715
21

22 Any person may report sex discrimination, including sexual harassment, at any time, including
23 during non-business hours. Such a report may be made in person, by mail, by telephone or by
24 electronic mail, using the contact information listed for the Title IX Coordinator, or by any other
25 means that results in the Title IX Coordinator receiving the person’s verbal or written report.
26

27 For purposes of this policy and the grievance process, “sexual harassment” means conduct on the
28 basis of sex that satisfies one or more of the following:

- 29
30 1. A District employee conditioning the provision of an aid, benefit, or service of the District on an
31 individual’s participation in unwelcome sexual conduct;
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33 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and
34 objectively offensive that it effectively denies a person equal access to the District’s education
35 program or activity or
36
37 3. “Sexual assault” as defined in 20 USC 1092(f)(6)(A)(v), “dating violence” as defined in 34 USC
38 12291(a)(10), “domestic violence” as defined in 34 USC 12291(a)(8) or “stalking” as defined in
39 34 USC 12291(a)(30).
40

41 When the harassment or discrimination on the basis of sex does not meet the definition of sexual
42 harassment, the Title IX Coordinator directs the individual to the applicable sex discrimination
43 process for investigation.
44

45 An individual is not required to submit a report of sexual harassment involving the Title IX
46 coordinator. In the event the Title IX Coordinator is responsible for or a witness to the alleged
47 harassment, the individual may report the allegations to the building principal or superintendent or
48 other unbiased school official.
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1 **Retaliation Prohibited**

2 The District prohibits intimidation, threats, coercion or discrimination against any individual for the
3 purpose of interfering with any right or privilege secured by Title IX or this policy, or because the
4 individual has made a report or complaint, testified, assisted, or participated or refused to participate
5 in any manner in an investigation proceeding or hearing, if applicable. Intimidation, threats,
6 coercion, or discrimination, including charges against an individual for code of conduct violations
7 that do not involve sex discrimination or sexual harassment, but arise out of the same facts or
8 circumstances as a report or complaint of sex discrimination, or a report or formal complaint of
9 sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or
10 this part, constitutes retaliation.

11
12 **Confidentiality**

13 The District must keep confidential the identity of any individual who has made a report or
14 complaint of sex discrimination, including any individual who has made a report or filed a formal
15 complaint of sexual harassment, any individual who has been alleged to be the victim or perpetrator
16 of conduct that could constitute sexual harassment, and any witness, except as may be permitted by
17 Family Educational Rights and Privacy Act (FERPA) or as required by law, or to carry out the
18 purposes of the Title IX regulations, including the conduct of any investigation, hearing or judicial
19 proceeding arising thereunder.

20
21 **Notice Requirements**

22 The District provides notice to applicants for admission and employment, students, parents or legal
23 guardians of elementary and secondary school students, employees and the union(s) with the name or
24 title, office address, email address and telephone number of the Title IX Coordinator and notice of
25 the District grievance procedures and process, including how to report or file a complaint of sex
26 discrimination, how to file a formal complaint of sexual harassment and how the District will
27 respond. The District also posts the Title IX Coordinator's contact information and Title IX policies
28 and procedures in a prominent location on the District website and in all handbooks made available
29 by the District.

30
31 **Training Requirements**

32 The District ensures that Title IX Coordinators, investigators, decision-makers, and any person who
33 facilitates an informal resolution process, receives training on the definition of sexual harassment,
34 the scope of the District's education program or activity, how to conduct an investigation and
35 grievance process including hearings, appeals and informal resolution processes, when applicable,
36 and how to serve impartially including by avoiding prejudice of the facts at issue, conflicts of
37 interest and bias. The District also ensures that decision-makers and investigators receive training on
38 issues of relevance of questions and evidence, including when questions and evidence about the
39 complainant's sexual predisposition or prior sexual behavior are not relevant as set forth in the
40 formal procedures that follow, and training on any technology to be used at a live hearing, if
41 applicable. Investigators also receive training on issues of relevance to create an investigative report
42 that fairly summarizes relevant evidence. All materials used to train individuals who receive training
43 under this section must not rely on sex stereotypes and must promote impartial investigations and
44 adjudications of formal complaints of sexual harassment and are made publicly available on the
45 District's website.

46
47 **Conflict of Interest and Bias**

48 The District ensures that Title IX Coordinators, investigators, decision-makers, and any person who
49 facilitates an informal resolution process do not have a conflict of interest or bias for or against
50 complainants or respondents generally or an individual complainant or respondent.

1 **Determination of Responsibility**

2 The individual who has been reported to be the perpetrator of conduct that could constitute sexual
3 harassment is presumed not responsible for alleged conduct. A determination regarding
4 responsibility will be made by the decision-maker at the conclusion of the investigation in
5 accordance with the process outlined in Policy 3225P. No disciplinary sanctions will be imposed
6 unless and until a final determination of responsibility is reached.
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8 **Bullying and Harassment**

9 The Board will strive to provide a positive and productive learning and working environment.
10 Bullying, harassment, intimidation, or hazing, by students, staff, or third parties, is strictly prohibited
11 and shall not be tolerated.
12

13 **Definitions**

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- 15 1. "Third parties" include but are not limited to coaches, school volunteers, parents, school visitors,
16 service contractors or others engaged in District business, such as employees of businesses or
17 organizations participating in cooperative work programs with the District, and others not
18 directly subject to District control at inter-district and intra-District athletic competitions or other
19 school events.
 - 20 2. "District" includes District facilities, District premises, and non-District property if the student or
21 employee is at any District-sponsored, District-approved, or District-related activity or function,
22 such as field trips or athletic events, where students are under the control of the District or where
23 the employee is engaged in District business.
 - 24 3. "Hazing" includes but is not limited to any act that recklessly or intentionally endangers the
25 mental or physical health or safety of a student for the purpose of initiation or as a condition or
26 precondition of attaining membership in or affiliation with any District-sponsored activity or
27 grade-level attainment, including but not limited to forced consumption of any drink, alcoholic
28 beverage, drug, or controlled substance, forced exposure to the elements, forced prolonged
29 exclusion from social contact, sleep deprivation, or any other forced activity that could adversely
30 affect the mental or physical health or safety of a student; requires, encourages, authorizes, or
31 permits another to be subject to wearing or carrying any obscene or physically burdensome
32 article, assignment of pranks to be performed, or other such activities intended to degrade or
33 humiliate.
 - 34 4. "Bullying" means any harassment, intimidation, hazing, or threatening, insulting, or demeaning
35 gesture or physical contact, including any intentional written, verbal, or electronic
36 communication ("cyberbullying") or threat directed against a student that is persistent, severe, or
37 repeated, and that substantially interferes with a student's educational benefits, opportunities, or
38 performance, that takes place on or immediately adjacent to school grounds, at any school-
39 sponsored activity, on school-provided transportation, at any official school bus stop, or
40 anywhere conduct may reasonably be considered to be a threat or an attempted intimidation of a
41 student or staff member or an interference with school purposes or an educational function, and
42 that has the effect of:
 - 43 a. Physically harming a student or damaging a student's property;
 - 44 b. Knowingly placing a student in reasonable fear of physical harm to the student or
45 damage to the student's property;
 - 46 c. Creating a hostile educational environment, or;
 - 47 d. Substantially and materially disrupts the orderly operation of a school.
 - 48 5. "Electronic communication device" means any mode of electronic communication,
49 including but not limited to computers, cell phones, PDAs, or the internet.
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1 **Reporting**

2 All complaints about behavior that may violate this policy shall be promptly investigated. Any
3 student, employee, or third party who has knowledge of conduct in violation of this policy or feels
4 he/she has been a victim of hazing, harassment, intimidation, or bullying in violation of this policy is
5 encouraged to immediately report his/her concerns to the building principal or the District
6 Administrator, who have overall responsibility for such investigations. A student may also report
7 concerns to a teacher or counselor, who will be responsible for notifying the appropriate District
8 official. Complaints against the building principal shall be filed with the Superintendent.
9 Complaints against the Superintendent or District Administrator shall be filed with the Board.

10
11 The complainant shall be notified of the findings of the investigation and, as appropriate, that
12 remedial action has been taken.

13
14 **Exhaustion of administrative remedies**

15 A person alleging violation of any form of harassment, intimidation, hazing, or threatening,
16 insulting, or demeaning gesture or physical contact, including any intentional written, verbal, or
17 electronic communication, as stated above, may seek redress under any available law, either civil or
18 criminal, after exhausting all administrative remedies.

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20 **Responsibilities**

21 The District Administrator shall be responsible for ensuring notice of this policy is provided to
22 students, staff, and third parties and for the development of administrative regulations, including
23 reporting and investigative procedures, as needed.

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25 When an employee has actual knowledge that behavior in violation of this policy is sexual
26 harassment, the employee must contact the Title IX Coordinator. The Title IX sexual harassment
27 grievance process will be followed, if applicable, prior to imposing any discipline that cannot be
28 imposed without resolution of the Title IX process.

29
30 **Consequences**

31 Students whose behavior is found to be in violation of this policy will be subject to discipline up to
32 and including expulsion. Staff whose behavior is found to be in violation of this policy will be
33 subject to discipline up to and including dismissal. Third parties whose behavior is found to be in
34 violation of this policy shall be subject to appropriate sanctions as determined and imposed by the
35 District Administrator or the Board. Individuals may also be referred to law enforcement officials.

36
37 **Retaliation and Reprisal**

38 Retaliation is prohibited against any person who reports or is thought to have reported a violation,
39 files a complaint, or otherwise participates in an investigation or inquiry. Such retaliation shall be
40 considered a serious violation of Board policy, whether or not a complaint is substantiated. False
41 charges shall also be regarded as a serious offense and will result in disciplinary action or other
42 appropriate sanctions.

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44 **Legal Reference:** § 20-5-207 MCA, "Bully-Free Montana Act"
45 § 20-5-208 MCA, Definition
46 § 20-50-209 MCA, Bullying of student prohibited
47 § 20-5-210 MCA, Enforcement – exhaustion of remedies
48 10.55.701(2)(f) ARM, Board of Trustees
49 10.55.719 ARM, Student Protection Procedures
50 10.55.801(1)(d) ARM, School Climate
51 Art. X, Sec. 1, Montana Constitution – Educational goals and duties
52 §§ 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:

Adopted on:

Revised on:

Reviewed on: 2/8/22

The Browning Public School District is committed to a positive and productive working and learning environment. A safe and civil environment in school is necessary for students to learn and achieve high academic standards. Sexual harassment, harassment, intimidation, bullying or menacing, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students. Since, students learn by example; school board members, school administrators, faculty staff and volunteers should be expected to demonstrate appropriate behavior, treating others with civility and respect. Sexual harassment, harassment, intimidation, bullying, menacing and hazing will not be tolerated. This includes bullying, harassment, or intimidation via electronic communication devices ("cyberbullying"), and "Third parties" which include but are not limited to coaches, school volunteers, parents, school visitors, service contractors or others engaged in District business, such as employees of businesses or organizations participating in cooperative work programs with the District and others not directly subject to District control at inter-district and intra-district athletic competitions or other school events.

"Sexual harassment" is generally defined as unwelcome sexual advances, requests for favors and other verbal, physical and/or visual contact of a sexual nature when:

- a. submission is made either explicitly or implicitly a term or condition of an individual's employment or education;
- b. submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment or education; or
- c. that conduct or communication has the purpose or effect of substantially or unreasonably interfering with an individual's employment or education, or of creating an intimidating, hostile or offensive employment or educational environment.

"Harassment, intimidation, bullying or menacing" means any gesture or written, verbal or physical act that takes place on school property, at any school sponsored activity or on a school bus that:

- a. is motivated by any actual or perceived characteristic, such as race, color, religion, ancestry, national origin, sexual orientation, gender identity and expression, or a physical, mental or sensory disability.
- b. a reasonable person should know, under the circumstances, that the act(s) will have the effect of harming a student or damaging the student's property, or placing a student in reasonable fear of harm to his person.
- c. has the effect of insulting or demeaning any student or group of students in such a way as to cause substantial disruption in, or substantial interference with, the orderly operation of the school.

1 “Hazing” is generally defined as any conduct, or method of initiation, which subjects another person
2 whether physically, mentally, emotionally, or psychologically, to anything that may endanger, abuse,
3 degrade, or intimidate the person as a condition of association with a group.
4

5 An “intimidating, hostile or offensive employment or educational environment” means an
6 environment inclusive of:
7

- 8 a. ~~unwelcome sexually-oriented jokes, innuendoes, obscenities, pictures/posters or any action~~
9 ~~with sexual connotation that makes a student or employee feel uncomfortable, or~~
- 10 b. ~~any aggressive, harassing behavior in the workplace or school that affects working or~~
11 ~~learning, whether or not sexual in connotation, is directed toward an individual based on~~
12 ~~their sex, or~~
- 13
- 14 e. ~~sexual advances which are unwanted (this may include situations which began as reciprocal~~
15 ~~attractions, but later ceased to be reciprocal), or~~
- 16
- 17 d. ~~sexual gestures, verbal abuse, sexually-oriented jokes, innuendo or obscenities, or~~
- 18
- 19 e. ~~displaying of sexually suggestive objects, pictures, cartoons, or posters, or~~
- 20
- 21 f. ~~sexually suggestive letters, notes or invitations, or~~
- 22
- 23 g. ~~employment or educational benefits affected in exchange for sexual favors, or~~
- 24
- 25 h. ~~physical conduct such as assault, attempted rape, impeding/blocking movement, unwelcome~~
26 ~~touching.~~
- 27
- 28 i. ~~“Electronic communication device” means any mode of electronic communication,~~
29 ~~including but not limited to computers, cell phones, PDAs, or the internet.~~
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- 31 j. ~~Gossiping in the workplace or on social media has no educational benefit.~~
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33 A person, who cites, aides, coerces or directs others to commit acts of harassment, intimidation or
34 bullying or hazing, will be held to the same extent as the person who commits the act.
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36 Furthermore, the District prohibits retaliation against any employee or student because he or she has
37 made a report of alleged sexual harassment, harassment, intimidation bullying, menacing, or hazing
38 against any employee or student who has testified, assisted, or participated in the investigation of a
39 report. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or adverse
40 pressure. Retaliation is itself a violation of federal and state regulations prohibiting discrimination
41 and will lead to disciplinary action against the offender.
42

43 Students whose behavior is found to be in violation of this policy will be subject to discipline up to
44 and may include expulsion. Staff whose behavior is found to be in violation of this policy will be
45 subject to discipline up to and including dismissal. Third parties whose behavior is found to be in
46 violation of this policy shall be subject to appropriate sanctions as determined and imposed by the
47 Superintendent/designee or the Board. Individuals may also be referred to law enforcement officials.
48

49 This policy applies to individuals attending any events on District property, whether or not district-
50 sponsored, and to any school-sponsored events, regardless of location.
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52 **Cross Reference:** #3205R Student Grievance Regulation
53 _____ #3200 Student Conduct and Discipline Policy
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1 **Legal Reference:** ~~20 U.S.C. 1681, et seq. 34 CFR Part 106 Title IX of the Educational Amendments~~
2 ~~Article XI Montana Constitution~~
3 ~~MCA 49-3-101 Montana Human Rights Act~~
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5 **Policy History:**

6 Adopted on: 4/13/00

7 Revised on: 7/27/05, 1/11/11, 3/11/14, 7/25/19