

Browning Public Schools



Title IX Handbook 2018 - 2019

Browning Public School District #9 Title IX Handbook 2018-19

<u>Section 1: Introduction – What is Sexual Harassment?</u>	2
What is Sexual Harassment?	2
A Basic Definition:	2
Important Legal Definitions:	2
Section 2: Browning Public School District Policy #3205 – Definition of Sexual Harassment	3
BPS Policy #3205- Definition of Sexual Harassment	3
<u>Section 3: Responsibilities of School Personnel</u>	5
The Board of Trustees:	5
The District Superintendent:	5
Title IX Compliance Coordinator:	5
Building Title IX Coordinators:	5
School Principals:	6
School Counselors:	6
Teachers:	6
Employment:	6
BPS Policy # 5010	6
B. BPS Policy # 5012	7
C. BPS Policy # 5015	8
<u>Section 4: Compliance Plan Checklist</u>	11
<u>Section 5: Complaint Procedure</u>	12
BPS District Policy #5090 Complaint Procedure	12
BPS District Policy #3205r Student Grievance Process:	16
<u>Section 6: Investigative Procedures</u>	18
Timeline for Filings of Student/Staff Grievance- Printed by Title IX Investigator, Coordinator, or Superintendent	18
<u>Section 7: Forms</u>	20
7a. Checklist for Handling Complaints	20
7.b Statement of Witness/Subject (Please print and use ink)	25
Grievance Form	26
7.c Checklist for Interview with Complainant/Target	28
7.d Checklist for Interview with Witness	30
7.e Checklist for full Interview with Accused	32
Form F:	33
(Sample Incident report (information that needs to be included in the report))	33

Advice from the Office of Civil Rights	34
Taking Reasonable Action to Stop Harassment	34
Appendix A: District Policies	36
Appendix B: Important Interview Information	52
Effective Intake Interviews- Guidelines	52
What you can expect if you are harassed:	54
You can expect that:	54
As a Student, How Do I Respond to Harassment to Stop it?	55
What to Expect if you are the Accused	55
Office of Civil Rights Guidance on Addressing Sexual Harassment	58

Section 1: Introduction – What is Sexual Harassment?

What is Sexual Harassment?

A Basic Definition:

Sexual harassment is unwanted behavior of sexual or gender directed nature. It is unwelcome sexual advances, requests for sexual favors, and any other verbal, non-verbal or physical conduct of a sexual nature.

Important Legal Definitions:

Federal EEOC – Sexual harassment is illegal in two areas: in the workplace and in the school.

This behavior constitutes sexual harassment when one of the criteria is met:

- a. Submission to such conduct is made implicitly or explicitly
- b. Submission to or rejection of such conduct is used against the individual, or affects the individual.
- c. Such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creates a hostile environment.

Section 2: Browning Public School District Policy #3205 – Definition of Sexual Harassment

BPS Policy #3205- Definition of Sexual Harassment

The Browning Public Schools 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 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.

“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 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.

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

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

- a. unwelcome sexually-oriented jokes, innuendoes, obscenities, pictures/posters or any action with sexual connotation makes a student or employee feel uncomfortable, or
- b. any aggressive, harassing behavior in the workplace or school that affects working or learning, whether or not sexual in connotation, is directed toward an individual based on their sex, or
- c. sexual advances which are unwanted (this may include situations which began as reciprocal attractions, but later ceased to be reciprocal), or
- d. sexual gestures, verbal abuse, sexually-oriented jokes, innuendo or obscenities, or
- e. displaying of sexually suggestive objects, pictures, cartoons, or posters, or
- f. sexually suggestive letters, notes or invitations, or
- g. employment or educational benefits affected in exchange for sexual favors, or
- h. physical conduct such as assault, attempted rape, impeding/blocking movement, unwelcome touching.

Furthermore, the District prohibits retaliation against any employee or student because he or she has made a report of alleged sexual harassment, harassment, intimidation bullying, menacing, or hazing against any employee or student who has testified, assisted, or participated in the investigation of a report. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or adverse pressure. Retaliation is itself a violation of federal and state regulations prohibiting discrimination and will lead to disciplinary action against the offender.

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

This policy applies to individuals attending any events on District property, whether or not district-sponsored, and to any school-sponsored events, regardless of location.

Section 3: Responsibilities of School Personnel

The Board of Trustees:

The role of the Board of Trustees is to:

- a. Adopt a Title IX policy for sexual harassment.
- b. Establish a grievance procedure
- c. Establish a hearing procedure.
- d. Conduct a self-evaluation

The District Superintendent:

The role of a school superintendent involves administering school board policy. In order to do this, she/he informs the board of educational developments, controversial issues, and current district activities, which impact district functioning. It is the School Superintendent who can best advise the board regarding Title IX requirements and purpose related to policy/budgetary recommendations. The Superintendent/designee oversees the Districts self-evaluation of Title IX compliance district-wide.

Title IX Compliance Coordinator:

The role of the Title IX Compliance Coordinator outlines Title IX procedures and monitors school personnel responsible for Title IX implementation. The responsibilities shall include preparation of assurances of compliance, development of all plans and reports required, administration of the established grievance procedure, provide notice to students, parents and employees.

Building Title IX Coordinators:

The building Title IX coordinators will facilitate or conduct in-service training for building staff and students regarding sexual harassment and other forms of sex discrimination and participates in the development of Title IX compliance plans. The building Title IX coordinators are responsible for promoting a school environment that is free of discrimination.

District Department and Program Directors: Directors will schedule in-service training for building staff on sexual harassment and other forms of sex discrimination. The director is to assist the Building Title IX Coordinators with investigations and is responsible for enforcing the policy. Directors will follow-up with remedies to end sexual harassment behaviors with the assistance of Title IX Coordinators. Directors training schedules for sexual harassment prevention and intervention strategies for students and staff will include: Policy # 3205 - Sexual Harassment/ Harassment/Intimidation/Bullying/ Menacing/Hazing, prevention curriculum, and explain reporting procedures.

School Principals:

Principals will schedule in-service training for building staff on sexual harassment and other forms of sex discrimination. Assist the Building Title IX Coordinators with investigations and is responsible for enforcing the policy. School schedules for sexual harassment prevention and intervention strategies for students and staff will include: Policy 3205 Sexual Harassment/Harassment/Intimidation/Bullying/Menacing/Hazing, prevention curriculum, and explain reporting procedures.

School Counselors:

Unless an exception is based on reasonable grounds, school personnel assigned to provide guidance and counseling services, and all materials used in the provision of those services, shall, without regard to their sex, encourage students to explore and develop their individual interests in vocational programs, employment, and educational opportunities. This may include encouraging students to consider nontraditional occupations, careers and educational courses or programs.

Teachers:

Teachers will schedule sexual harassment prevention and intervention strategies for students and staff to include: BPS Policy #3205, Sexual Harassment/Harassment/Intimidation/ Bullying/Menacing/Hazing and sexual harassment prevention curriculum and explain reporting procedures. The teacher will keep Title IX Coordinator and Principal informed of scheduled lessons.

Employment:

A. BPS Policy # 5010

Equal Employment Opportunity and Non-Discrimination Policy is the policy of Browning Public Schools District No. 9 to provide equal employment opportunities to all persons. Discrimination in employment because of sex, race, color, creed, religion, national origin, age, physical or mental disability, marital or parental status or political belief is prohibited unless based upon reasonable grounds as provided by law. In the case of any physical or mental disability, the District will afford reasonable accommodation to any otherwise qualified individuals with such disabilities as may be required by law.

The District also prohibits any retaliation against any employee reporting any form of discrimination prohibited by law or other district policy, anyone assisting in reporting such a complaint or anyone cooperating in the investigation of any such complaint. Such retaliation is itself a violation of the law and may serve as the basis for a separate and independent complaint.

Inquiries or complaints concerning discrimination, harassment, intimidation or retaliation of any type should be directed to the Title IX Compliance Officer or the Superintendent

of Schools. The school administration will assist the individual in pursuing their inquiry or complaint and will advise them of the appropriate procedure for doing so by supplying them with copies of Board Policy #5090. In addition, individuals may pursue their complaints or inquiries with the Montana Human Rights Bureau, the U.S. Equal Employment Opportunity Commission or the U.S. Department of Education's Office for Civil Rights at the following phone number and addresses:

Montana Human Rights Bureau
PO Box 1728
Helena, MT 59624-1728
(406) 444 - 2884 or
1 (800) 542 - 0807

Office of Public Instruction
PO Box 202501
Helena, MT 59620-2501
(406) 444 - 4402

Office for Civil Rights, Seattle Office US Department of Education
9145 Second Ave., Room 330
Seattle, WA 98174-1099
(206) 607 - 1600
(FAX) (206) 607 - 1601

B. BPS Policy # 5012

Discrimination, Sexual Harassment and Retaliation in the Workplace (formerly #5060) – The District will do everything in its power to provide employees a work environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal law.

The District prohibits its employees from making sexual advances or requesting sexual favors or engaging in any conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment prohibited by this policy includes verbal or physical conduct. The terms "intimidating," "hostile," or "offensive" include but are not limited to conduct that has the effect of humiliation, embarrassment, or discomfort. The District will evaluate sexual harassment in light of all circumstances.

A violation of this policy may result in disciplinary action, up to and including discharge. Any person who knowingly makes false accusation regarding sexual harassment will likewise be subject to disciplinary action, up to and including discharge.

The District also prohibits retaliation against any employee because he or she has made a report of alleged sexual harassment, or against any employee who has testified, assisted or participated in the investigation of a report. Retaliation is itself a violation of state and federal laws prohibiting discrimination and any individual who is determined to have engaged in prohibited retaliation will be subject to discipline.

It is the policy of this District to provide regular in-service education and training to its employees about sexual harassment and intimidation, as defined and otherwise prohibited by state and federal law.

Employees who believe they may have been sexually harassed or intimidated should contact the Title IX Coordinator, who will assist them in filing a complaint. An individual with a complaint alleging a violation of this policy shall follow the Uniform Complaint Procedure.

C. BPS Policy # 5015

Bullying/Harassment/Intimidation states that Board will strive to provide a positive and productive working environment. Bullying, harassment, intimidation, between employees or by third parties, are strictly prohibited and shall not be tolerated.

Definitions

“Third parties” 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.

“District” includes District facilities, District premises, and non-District property if the employee is at any District-sponsored, District-approved, or District-related activity or function, such as field trips or athletic events, where the employee is engaged in District business.

“Harassment, intimidation, or bullying” means any act that substantially interferes with an employee’s opportunities or work performance, that takes place on or immediately adjacent to school grounds, at any school-sponsored activity, or on school-provided transportation, and that has the effect of:

- Physically harming an employee or damaging an employee’s property;
- Knowingly placing an employee in reasonable fear of physical harm to the employee or damage to the employee’s property; or
- Creating a hostile working environment.

Reporting

All complaints about behavior that may violate this policy shall be promptly investigated. Any employee or third party who has knowledge of conduct in violation of this policy or feels he/she has been a victim of harassment, intimidation, or bullying in

violation of this policy is encouraged to immediately report his/her concerns to the building principal or the District Administrator, who have overall responsibility for such investigations. Complaints against the building principal shall be filed with the Superintendent. Complaints against the Superintendent or District Administrator shall be filed with the Board.

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

Responsibilities

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

Consequences

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

Retaliation and Reprisal

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

Copies of this policy and procedure will be posted in prominent locations in all District buildings, including information as to how to obtain a copy of the policy. Copies of the policy will also be provided in staff handbooks.

Section 4: Compliance Plan Checklist

Activity	Completion Date	Initial/Date
1. Board of Trustees Review Policies	Annually	
2. Student Handbook (Title IX coordinator names in the handbooks)	Annually	
3. Staff Handbooks (Title IX Coordinator names in the handbooks)	Annually	
4. Title IX training date in PD Calendar for School Bldg Staff, District Departments	Orientation	Required sign-in sheets
5. Student Awareness of Sexual Harassment, Intimidation, Bullying	Annually	Required sign-in sheets
6. Public Awareness (Local Newspaper, TV and Radio identifying Title IX Coordinators) Parent Teacher Conferences (Pamphlet)	Annually	
7. Investigations	Staff and student Investigations must be completed in 30 days Board of Trustees must take Action within 15 days	
8. Location of handbook Policies: Libraries & Principal offices.	District Websites	
9. Posters in all buildings (age appropriate)	Annually	
10. District Wide Self-Evaluation	Annually	

Section 5: Complaint Procedure

BPS District Policy #5090 Complaint Procedure

Employee Obligations: All employees of School District No. 9 have a responsibility to maintain a positive working environment by reporting all incidents or rumors of sexual harassment or other forms of discrimination, intimidation or retaliation involving themselves or others. Employees who observe or hear about any incidents or rumors of sexual harassment or other forms of discrimination, intimidation or retaliation are required to report the incidents or rumors to the Title IX Compliance Officer or the superintendent. Employees who believe that they may have been the subject of sexual harassment or intimidation or the subject of any other form of discrimination or retaliation prohibited by Board Policy Nos. 5010 - 5090 should immediately contact their respective supervisors, the Title IX Compliance Officer or the superintendent.

Administrative Reporting Obligations: All supervisors of the District are directed to report any above-described incident immediately and directly to the Title IX Compliance Officer or the superintendent. In the event the Title IX Compliance Officer is contacted, he or she will immediately contact and relay the complaint to the superintendent. If the Title IX Compliance Officer is the alleged violator, all reports will be directed to the superintendent who will then be in charge of the investigation and vice versa.

Informal Measures: The District is committed to the prompt and effective resolution of all complaints of sexual harassment, other forms of discrimination or retaliation of any kind. An employee may voluntarily choose informal measures but will in all cases be entitled to utilize the options and steps available to them through the more formal procedure outlined below. In the event the employee does not view the harassment, discrimination or retaliation as severe and he or she wishes to attempt to resolve the matter informally, some of the following informal measures may be attempted:

- A. Informing the offending individual that his or her behavior is unwelcome, offensive or inappropriate. Confrontation by the employee is not required, however, and may be accomplished through written communication developed with the assistance of and delivered by the Title IX Compliance Officer or the superintendent or his or her designee.
- B. Notify a supervisor, the Title IX Compliance Officer or the superintendent. Early reporting is crucial and absolutely necessary for the District to assist in addressing the unwanted behavior.
- C. Keep notes, a journal or other records of dates, times, places and witnesses to offending conduct. Save all such notes and records in a safe place.
- D. Request a copy of this policy from a supervisor, the Title IX Compliance Officer or the superintendent or his or her designee so that reporting procedures are clear.

Formal Measures: An employee may at any time choose to initiate a formal procedure to resolve a complaint of sexual harassment, discrimination or retaliation.

In no event will an employee's attempt at informal resolution be used to delay or excuse the District's responsibility to promptly investigate reports of sexual harassment, other forms of discrimination or retaliation, with or without a formal complaint. All employees are encouraged and permitted to have a friend or advisor present with them for moral support during any stage of the reporting and investigation process.

STEP 1: If an employee does not wish to pursue any informal measures to resolve his or her complaint, or such measures are not successful, the employee should contact a supervisor, the Title IX Compliance Officer or the superintendent and advise him or her of the employee's complaint. If the initial report is made to a supervisor or the Title IX Compliance Officer, he or she will refer the matter to the superintendent. The formal complaint should be made within thirty (30) days of the events or incidents giving rise to the complaint. Again, early reporting is crucial and necessary for the District to assist in addressing the unwanted behavior.

The Title IX Compliance Officer or the Superintendent or his/her designee will assist the employee in drafting a written summary of the complaint that outlines the nature of the complaint and the remedy sought by him or her. The Title IX Compliance Officer or the superintendent or his or her designee will then proceed to investigate the complaint and may, in his/her discretion, secure the services of a professional investigator to assist in conducting the investigation.

The Title IX Compliance Officer or the Superintendent or his/her designee will endeavor to have the investigation completed within thirty (30) days after his/her receipt of the written summary. Upon completion of the investigation, the Title IX Compliance Officer or the superintendent or his or her designee will prepare a written report (which may be based in all or part on any report prepared by an outside investigator) that includes the following:

- _____ 1) a clear statement of the allegations of the complaint and the remedy sought by the employee;
- _____ 2) a statement of the facts as contended by each of the parties to the complaint;
- _____ 3) a statement of the facts as determined by the superintendent, his/her designee or outside investigator;
- _____ 4) a list of all witnesses interviewed and documents reviewed during the investigation;
- _____ 5) The Title IX Compliance Officer's or the superintendent's or his or her designee's conclusion as to whether the allegations in the complaint are meritorious; and
- _____ 6) If the conclusion is that the complaint is valid, a statement of the remedy to be implemented.

The Title IX Compliance Officer or the superintendent or his or her designee will endeavor to have the investigative report completed no later than ten (10) days after the completion of the investigation. Upon completion of the report, the Title IX Compliance Officer or the superintendent or his or her designee will promptly meet with the parties to the complaint and advise them of the results of the investigation and of the remedy to be implemented.

STEP 2: If the employee or the subject of the complaint is dissatisfied with the investigation, report or remedy, either party may seek to have the Board of Trustees review the Title IX Compliance Officer's or the superintendent's or his or her designee's action. That procedure must be initiated by a written request for review by the Board of Trustees. Upon receipt of the written request, the matter will be placed on the agenda for consideration by the Board of Trustees at their next regularly scheduled meeting.

After hearing from all affected parties, the Board of Trustees shall take action to either, affirm, reject or modify the actions of the Title IX Compliance Officer or the superintendent or his or her designee. The decision of the Board of Trustees will be final.

In the event that part or all of the remedy to be implemented involves a recommendation to the Board of Trustees by the superintendent for the dismissal or suspension without pay of an employee, the Board hearing conducted with respect to such recommendation will serve as the Step 2 Board review under this procedure. Any decision reached by the Board of Trustees with respect to the superintendent's recommendation under those circumstances may be appealed as may be provided for by law.

Confidentiality: Any reports of sexual harassment, other form of discrimination or retaliation will be kept in confidence to the maximum extent feasible. The District's obligation to investigate and take corrective action may, however, ultimately require disclosure of the names of parties, witnesses and allegations. The District will endeavor in all instances to keep the need for such disclosure to a minimum. Pending the completion of any investigation, the Title IX Compliance Officer or the superintendent or his or her designee is authorized to take any action necessary to protect the alleged victim, or any other individuals assisting with or otherwise participating in the investigation.

Documentation: The District will maintain a record of all complaints of sexual harassment, other forms of discrimination and retaliation in the office of the Title IX Compliance Officer or the superintendent's office, or wherever he or she may otherwise designate. Such records will not be placed in the permanent files of employees without their knowledge and the records will remain confidential.

Retaliation: Retaliation against any employee reporting sexual harassment or any other form of discrimination prohibited by law or policy, anyone assisting in reporting such a complaint or anyone cooperating in the investigation of any such complaint is strictly

prohibited. Such retaliation is a violation of the law and may serve as the basis for a separate and independent complaint.

Sanctions: Consistent with the requirements of applicable laws and regulations, the superintendent or his/her designee may take or recommend such action against any employee determined to have engaged in sexual harassment or any other form of discrimination, or retaliation, as he or she deems appropriate after the completion of the investigation. Such action may include disciplinary action up to and including a recommendation by the superintendent for termination of employment.

Other Complaint Measures: Nothing in this complaint procedure prevents an employee from pursuing his/her complaint of sexual harassment, other forms of discrimination of any kind or retaliation through other appropriate avenues. At any time during this complaint process, an employee may initiate a complaint with the Montana Human Rights Bureau or the U.S. Department of Education's Office for Civil Rights. The address and telephone numbers for those agencies are as follows:

Montana Human Rights Bureau
PO Box 1728
Helena, MT 59624-1728
(406) 444 - 2884 or
1 (800) 542 - 0807

Office of Public Instruction
PO Box 202501
Helena, MT 59620-2501
(406) 444 - 4402

Office for Civil Rights, Seattle Office US Department of Education
9145 Second Ave., Room 330
Seattle, WA 98174-1099
(206) 607 - 1600
(FAX) (206) 607 - 1601

False Accusations: Charges of sexual harassment, any other form of discrimination or retaliation are a serious matter and will be promptly responded to and investigated by the District. Employees should not be afraid of making good faith reports of sexual harassment or other forms of discrimination or retaliation, even if such reports might be erroneous. However, employees who knowingly perpetrate false or fabricated accusations will be held responsible for their actions and may be subject to disciplinary action as listed in SANCTIONS above.

Contact Persons: As outlined above, complaints of sexual harassment, any other form of discrimination or retaliation should be directed to a supervisor, the Title IX Compliance Officer or the superintendent. The names, office locations and telephone numbers for those individuals are as follows:

Emorie Davis-Bird
Title IX Compliance Officer
Natasha Siliezar

Corrina Guardipee-Hall
Superintendent
Administration Building

Title IX Investigator
Administration Building
129 First Avenue SE
Browning, MT 59417
(406) 338-2715

129 First Avenue SE
Browning, MT 59417
(406) 338-2715

BPS District Policy #3205R Student Grievance Process:

The Board of Trustees supports creating a school environment that is free from discrimination and affords students and their families an opportunity for due process. The grievance process provides the Superintendent and Trustees with opportunities to identify barriers to a discrimination free learning and working environment in our schools. The appeal process facilitates identifying inconsistencies in practice and interpretation of the Board of Trustee's policy. (See Section 8e. Policy #3205R)

Public Notice of Process

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

Grievance Process

A grievance will consist of any complaint alleging discrimination

Level 1: Informal Resolution

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

Level 2: Coordinator

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

1. The nature of the grievance.
2. The remedy requested.
3. Signature and Date

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

The Coordinator has the authority to investigate all grievances and if possible will resolve the grievance. A written report regarding the investigation shall include the following:

1. Clear statement of the allegations of the grievance and the remedy sought by the grievant.
2. Statement of the facts as contended by each of the parties. Statement of the facts as found by the coordinator and identification of evidence to support each fact.
3. List of witnesses interviewed and documents reviewed during the investigation.
4. Narrative describing attempts to resolve the grievance.
5. Coordinator's conclusions as to whether the allegations in the grievance are with merit.
6. If the Coordinator believes the grievance is valid, the Coordinator will recommend appropriate action to the Superintendent.

The Coordinator will complete the investigation and file the report with the Superintendent within thirty (30) days after receipt of the written grievance. The Coordinator will provide a copy of the report to the grievant.

If the Superintendent agrees with the recommendation of the Coordinator, the recommendation will be implemented.

The Coordinator and the Superintendent may appoint an outside investigator.

Level 3: The Board of Trustees

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

Level 4: The County Superintendent

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

Section 6: Investigative Procedures

Timeline for Filings of Student/Staff Grievance- Printed by Title IX Investigator, Coordinator, or Superintendent

Level One: Informal Resolution

_____ If informal resolution can be reached within building the complaint stops at this level.

If reason for grievance is possibly sexual harassment, informal measures will not be used. Report incident to building principal. Building principal will contact Natasha Siliezar. If complaint is made about building principal, contact Natasha Siliezar, Title IX investigator. If unavailable contact Emorie Davis-Bird, then Corrina Guardipee.

Level Two: Coordinator

_____ Grievant files written report within 60 days of them reasonably knowing about the incident. _____ Date report received

Report states:

1. The nature of the grievance.
2. The remedy requested.
3. Signature and Date

_____ Report is filed including:

1. Clear statement of the allegations of the grievance and the remedy sought by the grievant.
2. Statement of the facts as contended by each of the parties. Statement of the facts as found by the coordinator and identification of evidence to support each fact.
3. List of witnesses interviewed and documents reviewed during the investigation.
4. Narrative describing attempts to resolve the grievance.
5. Coordinator's conclusions as to whether the allegations in the grievance are with merit.
6. If the Coordinator believes the grievance is valid, the Coordinator will recommend appropriate action to the Superintendent.

_____ Coordinator will investigate and file report with Superintendent within 30 days of receiving the written grievance. _____ Date report is completed and turned in to Superintendent.

_____ Coordinator will provide a copy of the written report to the grievant. _____ Date copy is provided to grievant.

_____ If Superintendent agrees with recommendation of Coordinator, the recommendation will be implemented.

_____ Outside investigator may be appointed by Coordinator or Superintendent.

Level 3: Board of Trustees

_____ If recommendation of Coordinator is rejected by Superintendent, and/or either party isn't satisfied with the recommendations at Level 2, either party has right to make a written appeal within 15 days of receiving the report from Coordinator for a full contested case hearing. When written appeal is made, the issue will be placed on Board of Trustees agenda (no later than their next scheduled meeting). A decision will be made and reported to all parties within 30 days of that meeting. The decision of the Board of Trustees, will be final, unless it is appealed in the period provided by law.

_____ Date appeal is received by the Board of Trustees.

Level 4: County Superintendent

_____ The case will fall within the jurisdiction of County Superintendent of schools if the decision of the Board of Trustees is appealed to the County Superintendent by filing written appeal within 30 days of the final decision per the Rules of School Controversy (10.6.103, et seq. ARM). _____ Date appeal is filed with County Superintendent of Schools.

Section 7: Forms

7a. Checklist for Handling Complaints

Interviewee:

Interviewer:

Date: _____

Date and Initial on left for each step.

_____ Complaint received from target or third party. The Title IX coordinator will utilize the statement of Witness/Subject form located in section 7 of the handbook.

_____ Interview target/complainant to clarify allegations. The Title IX coordinator will complete the Checklist For Interview with Complainant form provided in Section 7c of the handbook.

_____ Review the personnel/investigation records of the Target and the accused (observe legal guidelines/protections). Please check with school principals regarding student records. Principals check with Superintendent regarding legal guidelines/protections.

_____ Interview witnesses identified by target. The Title IX Coordinator will complete the Checklist For Interview with the Witnesses form in Section 7 of the handbook.

_____ If no veracity, inform complainant & give warnings. Use the sexual harassment continuum as a guide to determine Severity (in section 8 of the handbook). The investigation may Stop here with documentation filed at the building level (investigation and documentations will remain at the building level).

_____ If target will not be identified, discuss options for next Steps. Discuss options with building principal and Title IX Coordinator.

_____ If veracity exists, review relevant policies and plan for Further investigation. Make appropriate notification of parents/guardians.

_____ Interview accused party. The Title IX coordinator Will complete the Checklist for Full Interview with Accused form located in Section 7.

_____ Interview witnesses identified by accused party. The Title IX Coordinator will complete the Checklist for Interview of witnesses form located in Section 7.

_____ Re-interview target and accused if needed for clarification.

_____ Generate investigation report to summarize investigative steps and interviews taken to support/refute allegations.

_____ Administrator makes decision about further action in Consultation with Title IX Coordinator. (Superintendent may seek legal counsel if necessary).

_____ Inform accused (and parent/guardian) of administrator's decision and basis for it.

_____ Complete documentation in appropriate files.

_____ Plan for remedial action (counseling and/or training).

_____ Provide copies of all documentation to District Title IX Coordinator. This documentation should include:

- a) Completed Checklist for handling complaints.
- b) Investigative Report with Remedy
- c) Discipline Report
- d) Parent letter regarding student discipline.
- e) Sexual Harassment section of student/staff handbook.
- f) Witness statements for complainant.
- g) Accused statement.
- h) Witness statements for the accused.

1. Begin remediation (e.g. discipline, training, counseling, formal hearings if appropriate).
 2. Inform complainant investigation is completed and Superintendent is taking appropriate action to guarantee harassment-free environment.
 3. Continue monitoring situation with follow-up after 5-7 days and every 2-3 weeks.
- Student Complaint Flowchart

Minor	Severe	
Student Grievance/Complaint is filed with building Principal.	If issue is deemed severe call Superintendent, and turn in statements to Superintendent.	
If not severe or of sexual nature building Principal tries to assist with informal resolution at this level.	If Superintendent is unavailable, refer to Title IX Coordinator.	Informal resolution done only if both parties voluntarily agree. Either can decide to stop the meeting at any time and proceed to formal resolution.
If informal resolution can't be made, turn in statements to Title IX investigator, Natasha Siliezar. Refer to Severe column.	Investigation will be completed.	Be aware of timelines for filing reports, appeals.
	Superintendent/Title IX Coordinator will make recommendation.	
	Supt. makes final decision.	Disciplinary action, unsubstantiated charges, dismiss charges, warning/counseling, others.
Superintendent: Corrina Guardipee-Hall	Title IX Investigator: Natasha Siliezar	

Staff Grievance/Complaint Flowchart

Minor		Severe/Human Rights Violation
Staff Grievance/Complaint is filed with building Principal.		Issue is deemed severe turn in statements to Title IX Investigator.
If not severe or of sexual nature building Principal tries to assist with informal resolution at this level.		If Title IX Investigator is unavailable refer to Title IX Coordinator or Superintendent.
If informal resolution can't be made, turn in statements to Title IX investigator, Natasha Siliezar. Refer to Severe column.		Title IX Investigator will complete investigation. Report will be given to Title IX Coordinator.
		Title IX Coordinator will make a recommendation to Superintendent.
Superintendent: Corrina Guardipee-Hall	Title IX Coordinator: Emorie Davis-Bird	Title IX Investigator: Natasha Siliezar

Flowchart for Investigations

Grievance/Complaint is filed with Building Principal: if resolution is made here stop process. If not refer to admin.	Student Complaints: Corrina Guardipee-Hall, Superintendent Staff Complaints: Natasha Siliezar, Title IX Investigator If they are unavailable: Emorie Davis-Bird, Title IX Coordinator
Preliminary Interviews	
Planning meeting for investigation	

Notice meeting with accused	
Interview target/complainant	
Interview witnesses named by complainant	
Interview accused	
Interview witnesses named by accused	
Return to complainant, accused, or others to follow-up on any discrepancies	
Report on Investigations to Superintendent	
Supt. makes decision	
Supt. meets individually with accused and complainant to share decision	
Remedial action taken, disciplinary action taken if necessary	

7.b Statement of Witness/Subject (Please print and use ink)

Name of person making statement (printed):

Parent/Guardian:

Address:

ne:

Date:

de:

Time:

Pho

Gra

Description of event (who, what, where, when, witnesses):

Witness/Subject Signature

Administrator Signature

Grievance Form

1. Name of
Complainant:

Home Address

City/State/Zip:

Home Phone:

School/Office:

Grade:

2) Nature of Grievance: Please describe the action you believe may be sex discrimination, including complaints of sexual harassment or sexual violence, in violation of Title IX and identify with reasonable particularity any person(s) you believe may be responsible. (Please attach additional sheets, if necessary):

3) When did the actions described above occur?

4) Are there any witnesses to this matter? (Please circle) Yes No
If yes, please identify the witnesses:

5) Did you discuss this matter with any of the witnesses identified in Item 4?

(Please circle) Yes No
If yes, please identify -
Person to whom you have spoken:
Date:
Method of
communication:

6) Have you spoken to any administrator(s) or other District employee(s) about this matter? (Please circle) Yes No
If yes, please identify -
Person to whom you have spoken:
Date:
Method of
communication:

7) Please describe the result of the discussion(s) identified in Item 6:

PLEASE ATTACH ANY STATEMENTS, NAMES OF WITNESSES, REPORTS, OR OTHER DOCUMENTS WHICH YOU FEEL ARE RELEVANT TO YOUR COMPLAINT.

I certify that the foregoing information is true and correct.

Name (Printed)

Signature

7.c Checklist for Interview with Complainant/Target

Interviewee:

Interviewer:

Date: _____

Note: When interviewing a complainant, you should be sensitive to their feelings. Consider an interviewer of the same gender if possible. Prior to starting this checklist you may wish to begin having them talk about what the problems is and how they are feeling right now. However, each item is critical to include in your conversation.

1. Introduction: introduce who you are, what you've been asked to do, ask if they are comfortable, care for the seating arrangement, indicate you will be taking notes so not looking at them doesn't mean you aren't listening: you will use your notes to summarize this conversation for your report; they may submit a written statement if they haven't already; reiterate their option to have a support person present (though not participating).

2. Purpose of the investigation is "to find out what happened"

- a) Share the process and the policy to be used.
- b) Share the timeline for the investigation.
- c) Indicate you will be notifying parents/guardians (if appropriate).

3. Assurance the District takes all problems very seriously...a safe equitable learning environment is guaranteed by law to all.

4. Promise what you can about confidentiality:
District will protect it to the extent possible, no absolute confidentiality.

b. Ask them to keep this as confidential as possible themselves.

5. Retaliation against anyone involved in this is against the law and the District policies; assure retaliation will not be tolerated.

6. Get the facts in detail: ask them to tell you what happened and how it made them feel (IMPACT).....

- a. Specifics: who, what, where, when, why, how it made them feel.
- b. Who else was told about it, know about it, witnessed it.
- c. How does it affect the, their ability to study or participate.
- d. What would they like to see happen to make it right (no guarantees).

7. Who else should we talk to about this:

8. What do they need during the investigation: protection from specific retaliation they fear, reassignments, evaluation/test reassignment, counseling.

9. Closing: Secure written materials, evidence, and a signed statement or complaint; if will not be identified your actions may be limited; their name will be shared with the accused; never have to be alone with the accused, if questions or retaliation occurs, call you asap; you'll be notifying parents (if appropriate): remind them of the next steps in the process.

7.d Checklist for Interview with Witness

Interviewee: _____ Interviewer: _____

Date: _____

Note: The witness is not provided names and specifics of incident(s). They can be told that the interview is regarding a complaint of sexual harassment of which they are not being accused. Inform them that their name has been given to talk to with respect to some (or a) complaint/report of sexual harassment.

The lead questions might generally be:

- "How are things at _____?"
- "Are there any behaviors or actions which you have found to be hurtful or inappropriate?"
- "Before we start, there are some important things you need to know."

Date and Initial on left for each step.

_____ 1. Responsibility of the school to take all reports of possible harassment seriously and promptly investigate, and stop any harassment found.

_____ 2. Against the law to retaliate against anyone involved in investigation, including people who assist.

Confidentiality

- need to keep confidentiality themselves
- district will protect it to the extent possible
- no re-disclosure or info about this complaint.

_____ 3. Purpose of investigation is to "find the facts"

- share process and policy to be used
- share timeline
- will be notifying parents (if appropriate)

_____ 5. What information do they have about alleged conduct? Specifics and who else should be talked to about this.

_____ 6. Tell them that name of complainant and witnesses may have to be shared with the accused.

_____ 7. Confrontation with alleged perpetrator will not be needed at this time, but may be necessary if there is a hearing- others will be present (never alone).

_____ 8. Ask what they need during investigation:

- _____ a. protection from specific retaliation
- _____ b. Reassignment
- _____ c. evaluation/test/appraisal reassignment
- _____ d. Counseling

_____ 9. If questions, problems, retaliation, contact:_____

_____ 10. Proper notification of parent/guardians if appropriate.

7.e Checklist for full Interview with Accused

Interviewee:_____ Interviewer:_____

Date:_____

Note: This full interview can be handled during the first interview with the accused if: 1) the allegations are not serious or the conduct severe, 2) the accused has been notified of their option to have support person present, and 3) time is of the essence for collecting evidence or preventing corroboration among parties. The lead questions might generally be:

- "How are things at _____?"
- "Are there any behaviors or actions which you have found to be hurtful or inappropriate?"
- "Before we start, there are some important things you need to know."

_____ 1. Responsibility of the school to take all reports of possible harassment seriously and promptly investigate, and stop any harassment found.

_____ 2. Against the law to retaliate against anyone involved in investigation, including people who assist.

_____ 3. Confidentiality

- need to keep confidentiality themselves
- district will protect it to the extent possible
- no re-disclosure or info about this compliant

_____ 4. Purpose of the investigation is to "find the facts"

_____ 5. What comments and information do they have about the alleged behavior?
Get specifics: Who else should we talk with?

_____ 6. If deny allegations, "Why do you think this person is making these allegations?"

_____ 7. Warn to avoid any unnecessary contact with the accusing party(ies)- no phone calls, no notes, no requests for meetings (it may appear as retaliation).

_____ 8. Ask what they need during investigation:

- Protection from specific retaliation
- Reassignment
- Evaluation/test/appraisal reassignment
- Counseling

_____ 9. If questions, problems, retaliation, contact:_____

Form F:

Sample Incident report (information that needs to be included in the report)

Date:September 1, 2014

To: Emorie Davis-Bird, Assistant Superintendent, Title IX Coordinator

From: Reporting Person

Re: Summary of Incident Report

This is a summary report on an allegation of a sexual harassment/harassment/hazing/bullying/menacing occurrence from the (School Name) on the (Date). Who, What, Where, When.

This action is in direct violation of district policy #3205 on Sexual Harassment/harassment/Intimidation/hazing/bullying/Menacing/Hazing I am dealing with this issue at the (School Name) because I, Building Title IX Representative, am the convening Title IX Compliance Officer for this building and the student who perpetrated this actions are student in our building. The students in question violated the personal rights of the student by (Action perpetrated towards student) The student in question violated Section II letters a, b, and c of the Policy #3200:

- 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.

Interview of Students

#1 is the victim.

#2 is the perpetrator

#3 is the witness or witnesses

Summary of findings by the Convening Authority. Discipline recommendations from the Convening Authority.

These are my findings and the facts in regards to this matter. I, (Convening Authority) am the finder of fact and investigations for Title IX allegations at Browning High School.

XC: Interview Documents Suspension Documents Parent Letters

Advice from the Office of Civil Rights

Taking Reasonable Action to Stop Harassment

Under Title IX, once your district has notice of possible sexual harassment, you should take immediate action to address the problem- or your failure to take reasonable steps to end it and prevent it from recurring could make you liable.

But what constitutes “reasonable response” can differ depending on the circumstances of each case. In its Sexual Harassment Guidance: Harassment of Students by School employees, Other Students or Third Parties, OCR offers the following examples of suggested responses to allegations of sexual harassment.

1. If a student (or their parent/guardian) complains of sexual harassment of the student, the school should initially discuss what actions the student is seeking in response to the report/complaint and gather details about the alleged incident.
2. The school official should explain its procedures for informal and formal complaint procedures, including describing the complaint procedures for sexual harassment. Be sure to explain how the process works and who to contact.
3. Whether or not a complaint is filed, the school must promptly investigate the allegations and take appropriate steps to resolve the situation, including protection from retaliation. While specific steps may vary depending on the circumstances, every inquiry must be prompt, thorough and impartial.
4. If a student alleges sexual harassment by another student the school may immediately place them in separate classes pending the conclusion of the investigation. If the alleged harasser is a teacher, the student should be allowed to transfer to a different class without penalty.
5. If criminal conduct is potentially involved, school officials should determine whether law enforcement officers should be notified.
6. If it is determined harassment has occurred, school personnel may need to counsel, warn, or take other disciplinary action based on the severity of the conduct and any record of prior incidents.

7. The school may need to do sexual harassment training to eliminate or prevent hostile environment.
8. The school should disseminate information, issue new policy statements, or otherwise clearly communicate that the school will not tolerate sexual harassment, and it will respond to all allegations.
9. School officials may require the harasser to apologize to the target if appropriate.
10. In cases involving teacher-student harassment, a school may be required to make arrangements for a student's work to be evaluated by another faculty, to change a grade if it was affected by the harassment, or arrange for the student to take the course again, have a tutor, or make tuition adjustments.
11. To prevent recurring harassment, a school may provide counseling for the harasser, in addition to training for students and staff to ensure all can recognize harassment and respond to it appropriately.
12. Minimize your risk: adopt a sexual harassment policy and grievance procedure; publish it widely with the names and locations of contact persons; establish guidelines for building administrators to use in handling reports/complaints; provide regular on-going training for ALL staff, family members, contracted employees, modeling behavior you wish of your staff and students; provide prompt, equitable and effective action on all problems and complaints; follow your own students and staff discipline policies when applying discipline and remediation strategies.

Appendix A: District Policies

Browning Public Schools
Policy # 3205

PolicyName: Sexual Harassment/Harassment/Intimidation/Bullying/ Menacing/Hazing
Regulation:-----

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 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").

“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:

- d. submission is made either explicitly or implicitly a term or condition of an individual’s employment or education;
- e. 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
- f. 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.

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

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

- a. unwelcome sexually-oriented jokes, innuendoes, obscenities, pictures/posters or any action with sexual connotation makes a student or employee feel uncomfortable, or
- b. any aggressive, harassing behavior in the workplace or school that affects working or learning, whether or not sexual in connotation, is directed toward an individual based on their sex, or

- c. sexual advances which are unwanted (this may include situations which began as reciprocal attractions, but later ceased to be reciprocal), or
- d. sexual gestures, verbal abuse, sexually-oriented jokes, innuendo or obscenities, or
- e. displaying of sexually suggestive objects, pictures, cartoons, or posters, or
- f. sexually suggestive letters, notes or invitations, or
- g. employment or educational benefits affected in exchange for sexual favors, or
- h. physical conduct such as assault, attempted rape, impeding/blocking movement, unwelcome touching.
- i. "Electronic communication device" means any mode of electronic communication, including but not limited to computers, cell phones, PDAs, or the internet.

A person, who cites, aides, coerces or directs others to commit acts of harassment, intimidation or bullying or hazing, will be held to the same extent as the person who commits the act.

Furthermore, the District prohibits retaliation against any employee or student because he or she has made a report of alleged sexual harassment, harassment, intimidation bullying, menacing, or hazing against any employee or student who has testified, assisted, or participated in the investigation of a report. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or adverse pressure. Retaliation is itself a violation of federal and state regulations prohibiting discrimination and will lead to disciplinary action against the offender.

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

This policy applies to individuals attending any events on District property, whether or not district- sponsored, and to any school-sponsored events, regardless of location.

Cross Reference:

#3205R Student Grievance Regulation

#3200 Student Conduct and Discipline Policy

Legal Reference: 20 U.S.C. 1681, et esq. 34 CFR Part 106 Title IX of the Educational Amendments

Article XI Montana Constitution
MCA 49-3-101 Montana Human Rights Act

Policy History:
Adopted on: 4/13/00 Revised on: 7/27/05, 1/11/11

Policy: 3205R
Policy Name: Student Grievance Process
Regulation: -----

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

Public Notice of Process

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

Grievance Process

A grievance will consist of any complaint alleging discrimination.

Level 1: Informal Resolution

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

Level 2: Coordinator

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

1. The nature of the grievance.
2. The remedy requested.
3. Signature and Date

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

The Coordinator has the authority to investigate all grievances and if possible will resolve the grievance. A written report regarding the investigation shall include the following:

- _____ 1. Clear statement of the allegations of the grievance and the remedy sought by the grievant.
- _____ 2. Statement of the facts as contended by each of the parties.
- _____ 3. Statement of the facts as found by the coordinator and identification of evidence to support each fact.
- _____ 4. List of witnesses interviewed and documents reviewed during the investigation.
- _____ 5. Narrative describing attempts to resolve the grievance.
- _____ 6. Coordinator's conclusions as to whether the allegations in the grievance are with merit.
- _____ 7. If the Coordinator believes the grievance is valid, the Coordinator will recommend appropriate action to the Superintendent.

The Coordinator will complete the investigation and file the report with the Superintendent within thirty (30) days after receipt of the written grievance. The Coordinator will provide a copy of the report to the grievant.

If the Superintendent agrees with the recommendation of the Coordinator, the recommendation will be implemented.

The Coordinator and the Superintendent may appoint an outside investigator.

Level 3: The Board of Trustees

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

Level 4: The County Superintendent

If the case falls within the jurisdiction of the county superintendent of schools, the decision of the Board of Trustees may be appealed to the County Superintendent by

filing a written appeal within thirty (30) days after the final decision pursuant to the Rules of School Controversy (10.6.103, et seq. ARM).

Cross Reference: #3002 Student Handbook Policy
#2112 Duties of the Superintendent
#1240 Member Authority/Responsibility
#3000 Equal Education Nondiscrimination
#3205 Sexual Harassment/Intimidation

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

Policy History:
Adopted on: 3/00 Revised on: 7/27/05

Browning Public Schools
Policy #5010

Policy Name: Equal Employment Opportunity and Non-Discrimination Policy
Regulation:-----

It is the policy of School District No. 9 to provide equal employment opportunities to all persons, regardless of sex, race, color, creed, religion, national origin, age, ancestry, military status, citizenship status, use of lawful products while not at work, physical or mental handicap or disability, sexual orientation or gender identity and expression, if otherwise able to perform essential functions of a job with reasonable accommodations, marital or parental status or political belief, and other legally protected categories.

The District will make reasonable accommodation for an individual with a disability known to the District, if the individual is otherwise qualified for the position, unless the accommodation would impose undue hardship on the District. An individual should report his/her condition immediately following diagnosis or an indication the condition may require employment accommodations.

The District also prohibits any retaliation against any employee reporting any form of discrimination prohibited by law or other district policy, anyone assisting in reporting such a complaint or anyone cooperating in the investigation of any such complaint. Such retaliation is itself a violation of the law and may serve as the basis for a separate and independent complaint.

A person with an inquiry regarding discrimination should direct their questions to the Title IX Coordinator or the Superintendent of Schools. A person with a specific written complaint should follow the Uniform Complaint Procedure. In addition, individuals may pursue their complaints or inquiries with the Montana Human Rights Bureau, the U.S. Equal Employment Opportunity Commission or the U.S. Department of Education's Office for Civil Rights at the following phone number and addresses:

Montana Human Rights Bureau

P.O. Box 1728 (406) 444-2884
Helena, MT 59624-1728

Equal Employment Opportunity Commission
303 East 17th Avenue, Suite 510
(303) 866-1300
Denver, CO 80203

Office of Public Instruction
P. O. Box 202501
(406) 444-4402
Helena, MT 59620-2501

Office for Civil Rights, Seattle Office
U. S. Department of Education
(206) 220-7900
915 Second Avenue, Room 330
Seattle, WA 98174-1099
FAX (206-220-7887)

Cross References: 1700 Uniform Complaint Procedure
Formerly #5010

Legal References:

Age Discrimination in Employment Act, 29 U.S.C. §§ 621, et seq. Americans with Disabilities Act, Title I, 42 U.S.C. §§ 12111, et seq.

Equal Pay Act, 29 U.S.C. § 206(d)\
Immigration Reform and Control Act, 8 U.S.C. §§ 1324 (a), et seq. Rehabilitation Act of 1973, 29 U.S.C. §§ 791, et seq.
Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e), et seq., 29 C.F.R., Part 1601
Title IX of the Education Amendments, 20 U.S.C. §§ 1681, et seq., 34 C.F.R., Part 1061
Montana Constitution, Article X, Section 1 – Educational goals and duties
§ 49-2-101, et. al., MCA Human Rights Act
§ 49-3-102, MCA, What local governmental units affected

Policy History:

Adopted on: 2/11/97

Revised on: 8/30/00, 10/10/00, 2/13/01, 4/25/07 (formerly #5050), 1/11/11

Browning Public Schools

Policy #5012

Policy Name: Sexual Harassment, Sexual Intimidation and Retaliation in the Workplace
Regulation:-----

The District will do everything in its power to provide employees a work environment free of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined and otherwise prohibited by state and federal law.

The District prohibits its employees from making sexual advances or requesting sexual favors or engaging in any conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of substantially interfering with the individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment prohibited by this policy includes verbal or physical conduct. The terms "intimidating," "hostile," or "offensive" include but are not limited to conduct that has the effect of humiliation, embarrassment, or discomfort. The District will evaluate sexual harassment in light of all circumstances.

A violation of this policy may result in disciplinary action, up to and including discharge. Any person who knowingly makes false accusation regarding sexual harassment will likewise be subject to disciplinary action, up to and including discharge.

The District also prohibits retaliation against any employee because he or she has made a report of alleged sexual harassment, or against any employee who has testified, assisted or participated in the investigation of a report. Retaliation is itself a violation of state and federal laws prohibiting discrimination and any individual who is determined to have engaged in prohibited retaliation will be subject to discipline.

It is the policy of this District to provide regular in-service education and training to its employees about sexual harassment and intimidation, as defined and otherwise prohibited by state and federal law.

Employees who believe they may have been sexually harassed or intimidated should contact the Title IX Coordinator, who will assist them in filing a complaint. An individual

with a complaint alleging a violation of this policy shall follow the Uniform Complaint Procedure.

Cross References: 1700 Uniform Complaint Procedure

Legal References: Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e), et seq., 29 C.F.R. § 1604.11

Title IX of the Education Amendments, 20 U.S.C. §§ 1681, et seq. Montana Constitution, Art. X, § 1 - Educational goals and duties
§ 49-2-101, MCA Human Rights Act
Harris v. Fork Lift Systems, 114 S. Ct. 367 (1993)

Policy History:

Adopted on: 10/10/00

Revised on: 2/13/01, 5/30/07 (formerly Policy #5060), 1/11/11

Browning Public Schools

Policy #5015

Policy Name: Bullying/Harassment/Intimidation

Regulation:-----

The Board will strive to provide a positive and productive working environment. Bullying, harassment, intimidation, between employees or by third parties, are strictly prohibited and shall not be tolerated. This includes bullying, harassment, or intimidation via electronic communication devices (“cyberbullying”).

Definitions

1. “Third parties” 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.
2. “District” includes District facilities, District premises, and non-District property if the employee is at any District-sponsored, District-approved, or District-related activity or function, such as field trips or athletic events, where the employee is engaged in District business.
3. “Harassment, intimidation, or bullying” means any act that substantially interferes with an employee’s opportunities or work performance, that takes place on or immediately adjacent to school grounds, at any school-sponsored activity, or on school-provided transportation, that is based on or motivated by a person’s race, creed, religion, color, gender, physical or mental disability, age, national origin, political ideas, marital status,

culture, social origin or condition, sexual orientation, or gender identity or expression that has the effect of:

- a. Physically harming an employee or damaging an employee's property;
- b. Knowingly placing an employee in reasonable fear of physical harm to the employee or damage to the employee's property; or
- c. Creating a hostile working environment.
- d. "Electronic communication device" means any mode of electronic communication, including but not limited to computers, cell phones, PDAs, or the internet.

Reporting

All complaints about behavior that may violate this policy shall be promptly investigated. Any employee or third party who has knowledge of conduct in violation of this policy or feels he/she has been a victim of harassment, intimidation, or bullying in violation of this policy is encouraged to immediately report his/her concerns to the building principal or the District Administrator, who have overall responsibility for such investigations. Complaints against the building principal shall be filed with the Superintendent. Complaints against the Superintendent or District Administrator shall be filed with the Board.

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

Responsibilities

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

Consequences

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

Retaliation and Reprisal

Retaliation is prohibited against any person who reports or is thought to have reported a violation, files a complaint, or otherwise participates in an investigation or inquiry. Such retaliation shall be considered a serious violation of Board policy, whether or not a

complaint is substantiated. False charges shall also be regarded as a serious offense and will result in disciplinary action or other appropriate sanctions.

Legal Reference: 10.55.701(1)(g), ARM Board of Trustees
10.55.801(1)(d), ARM School Climate

Policy History: Adopted on: 5/30/07 Revised on: 1/11/11

Browning Public Schools

Policy #5090

Policy Name: Complaint Procedure, Alleged Discrimination

Regulation: -----

Employee Obligations: All employees of School District No. 9 have a responsibility to maintain a positive working environment by reporting all incidents or rumors of sexual harassment or other forms of discrimination, intimidation or retaliation involving themselves or others. Employees who observe or hear about any incidents or rumors of sexual harassment or other forms of discrimination, intimidation or retaliation are required to report the incidents or rumors to the Title IX Compliance Officer or the superintendent. Employees who believe that they may have been the subject of sexual harassment or intimidation or the subject of any other form of discrimination or retaliation prohibited by Board Policy Nos. 5050 - 5070 should immediately contact their respective supervisors, the Title IX Compliance Officer or the superintendent.

Administrative Reporting Obligations: All supervisors of the District are directed to report any above- described incident immediately and directly to the Title IX Compliance Officer or the superintendent. In the event the Title IX Compliance Officer is contacted, he or she will immediately contact and relay the complaint to the superintendent. If the Title IX Compliance Officer is the alleged violator, all reports will be directed to the superintendent who will then be in charge of the investigation and vice versa.

Informal Measures: The District is committed to the prompt and effective resolution of all complaints of sexual harassment, other forms of discrimination or retaliation of any kind. An employee may voluntarily choose informal measures but will in all cases be entitled to utilize the options and steps available to them through the more formal procedure outlined below. In the event the employee does not view the harassment, discrimination or retaliation as severe and he or she wishes to attempt to resolve the matter informally, some of the following informal measures may be attempted:

- Informing the offending individual that his or her behavior is unwelcome, offensive or inappropriate. Confrontation by the employee is not required, however, and may be accomplished through written communication developed with the assistance of and delivered by the Title IX Compliance Officer or the superintendent or his or her designee.

- Notify a supervisor, the Title IX Compliance Officer or the superintendent. Early reporting is crucial and absolutely necessary for the District to assist in addressing the unwanted behavior.
- Keep notes, a journal or other records of dates, times, places and witnesses to offending conduct. Save all such notes and records in a safe place.
- Request a copy of this policy from a supervisor, the Title IX Compliance Officer or the superintendent or his or her designee so that reporting procedures are clear.

Formal Measures: An employee may at any time choose to initiate a formal procedure to resolve a complaint of sexual harassment, discrimination or retaliation. In no event will an employee's attempt at informal resolution be used to delay or excuse the District's responsibility to promptly investigate reports of sexual harassment, other forms of discrimination or retaliation, with or without a formal complaint. All employees are encouraged and permitted to have a friend or advisor present with them for moral support during any stage of the reporting and investigation process.

STEP 1: If an employee does not wish to pursue any informal measures to resolve his or her complaint, or such measures are not successful, the employee should contact a supervisor, the Title IX Compliance Officer or the superintendent and advise him or her of the employee's complaint. If the initial report is

made to a supervisor or the Title IX Compliance Officer, he or she will refer the matter to the superintendent. The formal complaint should be made within thirty (30) days of the events or incidents giving rise to the complaint. Again, early reporting is crucial and necessary for the District to assist in addressing the unwanted behavior.

The Title IX Compliance Officer or the Superintendent or his/her designee will assist the employee in drafting a written summary of the complaint that outlines the nature of the complaint and the remedy sought by him or her. The Title IX Compliance Officer or the superintendent or his or her designee will then proceed to investigate the complaint and may, in his/her discretion, secure the services of a professional investigator to assist in conducting the investigation.

The Title IX Compliance Officer or the Superintendent or his/her designee will endeavor to have the investigation completed within thirty (30) days after his/her receipt of the written summary. Upon completion of the investigation, the Title IX Compliance Officer or the superintendent or his or her designee will prepare a written report (which may be based in all or part on any report prepared by an outside investigator) that includes the following:

_____ a clear statement of the allegations of the complaint and the remedy sought by the employee;

_____ a statement of the facts as contended by each of the parties to the complaint;

_____ a statement of the facts as determined by the superintendent, his/her designee or outside investigator.

_____ a list of all witnesses interviewed and documents reviewed during the investigation;

_____ the Title IX Compliance Officer's or the superintendent's or his or her designee's conclusion as

to whether the allegations in the complaint are meritorious; and

_____ if the conclusion is that the complaint is valid, a statement of the remedy to be implemented.

The Title IX Compliance Officer or the superintendent or his or her designee will endeavor to have the investigative report completed no later than ten (10) days after the completion of the investigation. Upon completion of the report, the Title IX Compliance Officer or the superintendent or his or her designee will promptly meet with the parties to the complaint and advise them of the results of the investigation and of the remedy to be implemented.

STEP 2: If the employee or the subject of the complaint is dissatisfied with the investigation, report or remedy, either party may seek to have the Board of Trustees review the Title IX Compliance Officer's or the superintendent's or his or her designee's action. That procedure must be initiated by a written request for review by the Board of Trustees. Upon receipt of the written request, the matter will be placed on the agenda for consideration by the Board of Trustees at their next regularly scheduled meeting.

After hearing from all affected parties, the Board of Trustees shall take action to either, affirm, reject or modify the actions of the Title IX Compliance Officer or the superintendent or his or her designee. The decision of the Board of Trustees will be final.

In the event that part or all of the remedy to be implemented involves a recommendation to the Board of Trustees by the superintendent for the dismissal or suspension without pay of an employee, the Board hearing conducted with respect to such recommendation will serve as the Step 2 Board review under this

procedure. Any decision reached by the Board of Trustees with respect to the superintendent's recommendation under those circumstances may be appealed as may be provided for by law.

Confidentiality: Any reports of sexual harassment, other form of discrimination or retaliation will be kept in confidence to the maximum extent feasible. The District's obligation to investigate and take corrective action may, however, ultimately require disclosure of the names of parties, witnesses and allegations. The District will endeavor in all instances to keep the need for such disclosure to a minimum. Pending the completion of any investigation, the Title IX Compliance Officer or the superintendent or his or her designee is authorized to take any action necessary to protect the alleged

victim, or any other individuals assisting with or otherwise participating in the investigation.

Documentation: The District will maintain a record of all complaints of sexual harassment, other forms of discrimination and retaliation in the office of the Title IX Compliance Officer or the superintendent's office, or wherever he or she may otherwise designate. Such records will not be placed in the permanent files of employees without their knowledge and the records will remain confidential.

Retaliation: Retaliation against any employee reporting sexual harassment or any other form of discrimination prohibited by law or policy, anyone assisting in reporting such a complaint or anyone cooperating in the investigation of any such complaint is strictly prohibited. Such retaliation is a violation of the law and may serve as the basis for a separate and independent complaint.

Sanctions: Consistent with the requirements of applicable laws and regulations, the superintendent or his/her designee may take or recommend such action against any employee determined to have engaged in sexual harassment or any other form of discrimination, or retaliation, as he or she deems appropriate after the completion of the investigation. Such action may include disciplinary action up to and including a recommendation by the superintendent for termination of employment.

Other Complaint Measures: Nothing in this complaint procedure prevents an employee from pursuing his/her complaint of sexual harassment, other forms of discrimination of any kind or retaliation through other appropriate avenues. At any time during this complaint process, an employee may initiate a complaint with the Montana Human Rights Bureau or the U.S. Department of Education's Office for Civil Rights. The address and telephone numbers for those agencies are as follows:

Montana Human Rights Bureau
P.O. Box 1728
Helena, MT 59624-1728
(406) 444-2884

Office of Public Instruction
P.O. Box 202501
Helena, MT 59620-2501
(406) 444-4402

Office for Civil Rights: Federal Building
1244 Speer Blvd
Denver, CO 80204-36582
(303) 844-2991

False Accusations: Charges of sexual harassment, any other form of discrimination or retaliation are a serious matter and will be promptly responded to and investigated by the District. Employees should not be afraid of making good faith reports of sexual harassment or other forms of discrimination or retaliation, even if such reports might be erroneous. However, employees who knowingly perpetrate false or fabricated

accusations will be held responsible for their actions and may be subject to disciplinary action as listed in SANCTIONS above.

Contact Persons: As outlined above, complaints of sexual harassment, any other form of discrimination or retaliation should be directed to a supervisor, the Title IX Compliance Officer or the superintendent. The names, office locations and telephone numbers for those individuals are as follows:

Emorie Davis-Bird-Title IX Compliance Office
Natasha Siliezar-Title IX Investigator
(Staff Grievances)
Administration Building
129 First Avenue SE
Browning, MT 59417
(406) 338-2715

Corrina Guardipee-Hall
Superintendent (Student Grievances)
Administration Building
129 First Avenue SE
Browning, MT 59417
(406) 338-2715

Cross References: #5050 Equal Employment Opportunity/Non-Discrimination
#5060 Discrimination, Sexual Harassment and Retaliation
#5070 Accommodating Individuals with Disabilities Formerly
Policy #5012

Legal References:

Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e), et seq., 29 C.F.R. § 1604.11
Title IX of Education Amendments, 20 U.S.C. §§ 1681, et seq. Montana Constitution,
Art. X, § 1
§ 49-2-101, MCA Human Rights Act
Harris v. Fork Lift Systems, 114 S. Ct. 367 (1993)

Policy History:

Adopted on: 10/10/00 Revised on: 2/28/01

Appendix B: Important Interview Information

Browning Public Schools

Effective Intake Interviews- Guidelines

Do:

- Be a good listener
- Let them know you take concerns seriously
- Stay positive and supportive, even accompanying the person to the office of the individual who can help
- Keep copies of the district policy and grievance procedure
- Know the name, location, and phone number of the Title IX Coord., grievance manager, and counselors.
- Keep written documentation of you conversation.
- Follow up with the person in 5-7 days; again in 2 weeks.

Don't:

- Interrupt
- Ask leading questions (can be answered with a "yes" or "no").
- Make "chilling comments" like:

"What did you do to bring this on?"

"You know it's your word against theirs."

"You really can't handle this yourself?"

The goal is to be supportive and get just enough information to refer or assist the person appropriately.

A "Short Interview"

Stay emotionally connected: "How are you doing? Is something bothering you that I can help you with? Tell me about it....."

You take reports seriously: "This is absolutely important to you. I'd be glad to listen- is now a good time?"

Be clear about harassment: "We have policies against that."

With younger children: "You have a right to come to school without being afraid."

Ask non-leading questions: "What happened then? Who else was there? What did you do then? How do you feel now?"

Referral and accompany: "I'm not the person who can be the most helpful to you. _____ has been great help to lots of people who have faced the same issue. Let's go to his/her office; I'll go with you."

Follow-up: "If that doesn't work, please get right back to me and we'll figure out what to do next."

Offer policy: "Here is a copy of the district's policy. Let's look at it together."

Document: Make needed reports to the Title IX Coord. or grievance manager.

Investigators should NEVER:

Reveal unnecessarily the names of others being interviewed;

Discuss their personal opinions regarding the merits of the complaint;

Counsel the person being interviewed. Refer them to employee assistance programs or the counseling services;

Neglect importance of the interview seating arrangement ("squaring up" or "facing up" can cause defensiveness.

Put words in their mouth;

Try to trick them;

Shy away from "difficult questions";

Be surprised if they deny allegations;

Ask "why would she say you did that?"

Information to Share with Students/Staff

What you can expect if you are harassed:

When reporting the incident you have the right to:

Have someone of your choice present with you when you talk to the complaint manager (a friend, parent, school employee).

NOT CONFRONT the harasser alone at any time.

Be listened to and taken seriously

Stop the interview and take your complaint to another administrator if you believe your report or complaint is being handled inappropriately.

- a. Get a copy of the district's harassment and grievance policies.
- b. Share what you need to feel safe and comfortable during the investigation.

You can expect that:

- a. Your complaint will be taken seriously and investigated promptly and according to your district's grievance procedures.
- b. Every effort will be made to handle the complaint discreetly and with as much confidentiality as possible.
- c. Your name will be provided to the harasser when they receive the complaint.

- d. You will be informed as to the progress of the investigation.
- e. You may have to testify in front of the harasser in the presence of appropriate authorities. You will have the right to have someone of your choice present with you. At NO time should you ever have to be with the harasser alone.
- f. When indicated, remedial steps will be taken to stop the harassing behavior.
- g. All persons included in the complaint will be warned that retaliation of any form related to the complaint will be responded to in a severe disciplinary manner.
- h. You will be given the name of someone to contact during the process for information, assistance, or to report retaliation.
- i. Your parents/guardian may be notified during the process in accordance with state and federal requirements.

As a Student, How Do I Respond to Harassment to Stop it?

DO:

Tell the accuser to STOP- in a clear and in no uncertain terms with a witness, preferably an adult.

Use an "I feel statement"

I feel _____ when you _____ (describe offensive behavior with time and place).

I want you to _____ (state specifically what you want them to do (apologize, leave you alone, not say that again, do that again)).

If you don't stop (or do other requested action) I will take action to make sure you do.

Keep a journal with details of each incident (who, what, where, when, actions taken, feelings, effects).

Tell others: tell an adult you trust. Tell the school counselor/administrator.

Get a copy of your school's sexual harassment policy and talk to an administrator.

If informal action doesn't work, file a complaint or take other formal action.

DO NOT:

Blame yourself. It is wrong. We are each responsible for our own behavior.

Ignore it: It will not go away. It may get worse.

What to Expect if you are the Accused

- 1) When receiving a complaint against you with respect to sexual harassment, you have the right to:
- 2) Have someone of your choice present with you when you talk to the complaint manager (a friend, parent, school employee).
- 3) Be given the name of the person making the complaint
- 4) Be given the specifics of the allegation(s)
- 5) Be given the opportunity to respond
- 6) Provide the names of persons to whom the investigator may want to speak to and/or interview

- 7) Be able to share what you need to feel safe during the process and be given the name of a contact person for information, assistance, or to report retaliation.
- 8) A copy of the grievance and harassment policies and the procedure that will be used to process the complaint

2) You can expect that:

- 1) The investigation will begin immediately and be completed in a timely manner.
- 2) You will be warned not to contact the person who filed the complaint
- 3) You will be informed as to the progress and the result of the investigation
- 4) All persons included in the complaint and investigation will be warned that retaliation of any form related to the complaint will be responded to in a severe disciplinary manner
- 5) If warranted, remedial steps will be taken and could include suspension and/or expulsion
- 6) If warranted, the complaint and remedial steps will become part of the school discipline record
- 7) Your parents/guardian may be notified during the process according to federal and state requirements.

What Should I do if Someone Tells Me that Something I did Seems Like Sexual Harassment?

Do:

- 1) Listen respectfully, without interrupting.
- 2) Acknowledge their feelings.
- 3) They can feel differently than you think they should.
- 4) Admit your behavior, if you behaved as they say you did.
- 5) Accept responsibility for the consequences of your behavior. Agree to make amends.
- 6) Apologize.
- 7) Promise not to do it again and to do whatever else is needed to correct the situation.

Do not:

- 1) Blame anyone else for your behavior. You are responsible for your conduct.
- 2) Tell the person complaining they shouldn't feel as they do ("it was a joke...have a sense of humor....you're too sensitive...").

How do I know if Behavior is "Welcome" or Not?

- Would I want my parents to know about my behavior?
- Is there equal power or status between me and the other person?
- Would I behave the same way if my parents were beside me?
- Would I want someone to act this way to someone I care about- my parents/guardian, sibling, friend, boyfriend/girlfriend?
- Is there equal initiation and participation between me and the other person?

- Does the person's verbal and/non-verbal response show they like what I'm doing?

If you answered NO to any of these questions, you need to evaluate your behavior in light of how others are receiving it. Ask others or a counselor for feedback or information.

Remember it's the impact of the behavior, not the intent, that is most important. Treat people as they wish to be treated, not as you think they should be.

Sexual harassment in schools? No big deal?

Yes, it is.

As a student you have both rights and responsibilities including the:

Right to learn and participate in activities...

Free of sexual harassment.

Right to get help from your school to stop it...

Right to be free from retaliation or intimidation if you report or help someone else report it.

And you have a.....

Responsibility to learn about it and take it seriously....

Responsibility to tell harassers to stop...

Responsibility to stop your friends and classmates when they harass others.

Responsibility to listen to and take seriously those who don't welcome your behavior towards them.

Office of Civil Rights Guidance on Addressing Sexual Harassment

UNITED STATES DEPARTMENT OF



EDUCATION OFFICE FOR CIVIL RIGHTS

September 2017

Q&A on Campus Sexual Misconduct

Under Title IX of the Education Amendments of 1972 and its implementing regulations, an institution that receives federal funds must ensure that no student suffers a deprivation of her or his access to educational opportunities on the basis of sex. The Department of Education intends to engage in rulemaking on the topic of schools' Title IX responsibilities concerning complaints of sexual misconduct, including peer-on-peer sexual harassment and sexual violence. The Department will solicit input from stakeholders and the public during that rulemaking process. In the interim, these questions and answers—along with the *Revised Sexual Harassment Guidance* previously issued by the Office for Civil Rights¹—provide information about how OCR will assess a school's compliance with Title IX.

SCHOOLS' RESPONSIBILITY TO ADDRESS SEXUAL MISCONDUCT

Question 1:

What is the nature of a school's responsibility to address sexual misconduct? Answer:

Whether or not a student files a complaint of alleged sexual misconduct or otherwise asks the school to take action, where the school knows or reasonably should know of an incident of sexual misconduct, the school must take steps to understand what occurred and to respond appropriately.² In particular, when sexual misconduct is so severe, persistent, or pervasive as to deny or limit a student's ability to participate in or benefit from the school's programs or activities, a hostile environment exists and the school must respond.³

¹ Office for Civil Rights, *Revised Sexual Harassment Guidance* (66 Fed. Reg. 5512, Jan. 19, 2001), available at <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf> [hereinafter 2001 Guidance]; see also Office for Civil Rights, Dear Colleague Letter on Sexual Harassment (Jan. 25, 2006), available at <https://www2.ed.gov/about/offices/list/ocr/letters/sexhar-2006.html>.

² 2001 Guidance at (VII).

³ *Davis v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629, 631 (1999); 34 C.F.R. § 106.31(a); 2001 Guidance at (V)(A)(1). Title IX prohibits discrimination on the basis of sex “under any education program or activity” receiving federal financial assistance, 20 U.S.C. § 1681(a); 34 C.F.R. § 106.1, meaning within the “operations” of a postsecondary institution or school district, 20 U.S.C. § 1687; 34 C.F.R. § 106.2(h). The Supreme Court has explained that the statute “confines the scope of prohibited conduct based on the recipient’s degree of control over the harasser and the environment in which the harassment occurs.” *Davis*, 526 U.S. at 644. Accordingly, OCR has informed institutions that “[a] university does not have a duty under Title IX to address an incident of alleged harassment where the incident occurs off-campus and does not involve a program or activity of the recipient.” Oklahoma State University Determination Letter at 2, OCR Complaint No. 06-03-2054 (June 10, 2004); see also University of Wisconsin- Madison Determination Letter, OCR Complaint No. 05-07-2074 (Aug. 6, 2009) (“OCR determined that the alleged assault did not occur in the context of an educational program or activity operated by the University.”). Schools are responsible for redressing a hostile environment that occurs on campus even if it relates to off-campus activities. Under the Clery Act, postsecondary institutions are obliged to collect and report statistics on crimes that occur on campus, on noncampus properties controlled by the institution or an affiliated student organization and used for educational purposes, on public property within or immediately adjacent to campus, and in areas within the patrol jurisdiction of the campus police or the campus security department. 34 C.F.R. § 668.46(a); 34 C.F.R. § 668.46(c)

Each recipient must designate at least one employee to act as a Title IX Coordinator to coordinate its responsibilities in this area.⁴ Other employees may be considered “responsible employees” and will help the student to connect to the Title IX Coordinator.⁵

In regulating the conduct of students and faculty to prevent or redress discrimination, schools must formulate, interpret, and apply their rules in a manner that respects the legal rights of students and faculty, including those court precedents interpreting the concept of free speech.⁶

THE CLERY ACT AND TITLE IX

Question 2:

What is the Clery Act and how does it relate to a school’s obligations

under Title IX? Answer:

Institutions of higher education that participate in the federal student financial aid programs are subject to the requirements of the Clery Act as well as Title IX.⁷ Each year, institutions must disclose campus crime statistics and information about campus security policies as a condition of participating in the federal student aid programs. The Violence Against Women Reauthorization Act of 2013 amended the Clery Act to require institutions to compile statistics for incidents of dating violence, domestic violence, sexual assault, and stalking, and to include certain policies, procedures, and programs pertaining to these incidents in the annual security reports. In October 2014, following a negotiated rulemaking process, the Department issued amended regulations to implement these statutory changes.⁸ Accordingly, when addressing allegations of dating violence, domestic violence, sexual assault, or stalking, institutions are subject to the Clery Act regulations as well as Title IX.

INTERIM MEASURES

Question 3:

What are interim measures and is a school required to provide

such measures? Answer:

Interim measures are individualized services offered as appropriate to either or both the reporting and responding parties involved in an alleged incident of sexual misconduct, prior to an investigation or while an investigation is pending.⁹ Interim measures include counseling, extensions of time or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, and other similar accommodations.

⁴34 C.F.R. § 106.8(a).

⁵2001 Guidance at (V)(C).

⁶Office for Civil Rights, Dear Colleague Letter on the First Amendment (July 28, 2003), *available at* <https://www2.ed.gov/about/offices/list/ocr/firstamend.html>; 2001 Guidance at (XI).

⁷Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Pub. L. No. 101-542, 20

U.S.C. § 1092(f).

⁸See 34 C.F.R. § 668.46.

⁹See 2001 Guidance at (VII)(A).

It may be appropriate for a school to take interim measures during the investigation of a complaint.¹⁰ In fairly assessing the need for a party to receive interim measures, a school may not rely on fixed rules or operating assumptions that favor one party over another, nor may a school make such measures available only to one party. Interim measures should be individualized and appropriate based on the information gathered by the Title IX Coordinator, making every effort to avoid depriving any student of her or his education. The measures needed by each student may change over time, and the Title IX Coordinator should communicate with each student throughout the investigation to ensure that any interim measures are necessary and effective based on the students' evolving needs.

GRIEVANCE PROCEDURES AND INVESTIGATIONS

Question 4:

What are the school's obligations with regard to complaints of sexual misconduct? Answer:

A school must adopt and publish grievance procedures that provide for a prompt and equitable resolution of complaints of sex discrimination, including sexual misconduct.¹¹ OCR has identified a number of elements in evaluating whether a school's grievance procedures are prompt and equitable, including whether the school

(i) provides notice of the school's grievance procedures, including how to file a complaint, to students, parents of elementary and secondary school students, and employees; (ii) applies the grievance procedures to complaints filed by students or on their behalf alleging sexual misconduct carried out by employees, other students, or third parties; (iii) ensures an adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; (iv) designates and follows a reasonably prompt time frame for major stages of the complaint process; (v) notifies the parties of the outcome of the complaint; and (vi) provides assurance that the school will take steps to prevent recurrence of sexual misconduct and to remedy its discriminatory effects, as appropriate.¹²

Question 5:

What time frame constitutes a "prompt" investigation? Answer:

There is no fixed time frame under which a school must complete a Title IX investigation.¹³ OCR will evaluate a school's good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.

Question 6:

What constitutes an “equitable” investigation?

¹⁰2001 Guidance at (VII)(A). In cases covered by the Clery Act, a school must provide interim measures upon the request of a reporting party if such measures are reasonably available. 34 C.F.R. § 668.46(b)(11)(v).

¹¹34 C.F.R. § 106.8(b); 2001 Guidance at (V)(D); *see also* 34 C.F.R. § 668.46(k)(2)(i) (providing that a proceeding which arises from an allegation of dating violence, domestic violence, sexual assault, or stalking must “[i]nclude a prompt, fair, and impartial process from the initial investigation to the final result”).

¹²2001 Guidance at (IX); *see also* 34 C.F.R. § 668.46(k). Postsecondary institutions are required to report publicly the procedures for institutional disciplinary action in cases of alleged dating violence, domestic violence, sexual assault, and stalking, 34 C.F.R. § 668.46 (k)(1)(i), and to include a process that allows for the extension of timeframes for good cause with written notice to the parties of the delay and the reason for the delay, 34 C.F.R. § 668.46 (k)(3)(i)(A).

¹³2001 Guidance at (IX); *see also* 34 C.F.R. § 668.46(k)(3)(i)(A).

Answer:

In every investigation conducted under the school’s grievance procedures, the burden is on the school—not on the parties—to gather sufficient evidence to reach a fair, impartial determination as to whether sexual misconduct has occurred and, if so, whether a hostile environment has been created that must be redressed. A person free of actual or reasonably perceived conflicts of interest and biases for or against any party must lead the investigation on behalf of the school. Schools should ensure that institutional interests do not interfere with the impartiality of the investigation.

An equitable investigation of a Title IX complaint requires a trained investigator to analyze and document the available evidence to support reliable decisions, objectively evaluate the credibility of parties and witnesses, synthesize all available evidence—including both inculpatory and exculpatory evidence—and take into account the unique and complex circumstances of each case.¹⁴

Any rights or opportunities that a school makes available to one party during the investigation should be made available to the other party on equal terms.¹⁵ Restricting the ability of either party to discuss the investigation (e.g., through “gag orders”) is likely to deprive the parties of the ability to obtain and present evidence or otherwise to defend their interests and therefore is likely inequitable.

Training materials or investigative techniques and approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the investigation proceeds objectively and impartially.¹⁶

Once it decides to open an investigation that may lead to disciplinary action against the responding party, a school should provide written notice to the responding party of the allegations constituting a potential violation of the school's sexual misconduct policy, including sufficient details and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved, the specific section of the code of conduct allegedly violated, the precise conduct allegedly constituting the potential violation, and the date and location of the alleged incident.¹⁷ Each party should receive written notice in advance of any interview or hearing with sufficient time to prepare for meaningful participation. The investigation should result in a written report summarizing the relevant exculpatory and inculpatory evidence. The reporting and responding parties and appropriate officials must have timely and equal access to any information that will be used during informal and formal disciplinary meetings and hearings.¹⁸

INFORMAL RESOLUTIONS OF COMPLAINTS

Question 7:

After a Title IX complaint has been opened for investigation, may a school facilitate an informal resolution of the complaint?

Answer:

If all parties voluntarily agree to participate in an informal resolution that does not involve a full investigation and adjudication after receiving a full disclosure of the allegations and their options for formal resolution and if a school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate an informal resolution, including mediation, to assist the parties in reaching a voluntary resolution.

¹⁴ 2001 Guidance at (V)(A)(1)-(2); *see also* 34 C.F.R. § 668.46(k)(2)(ii).

¹⁵ 2001 Guidance at (X).

¹⁶ 34 C.F.R. § 106.31(a).

¹⁷ 2001 Guidance at (VII)(B).

¹⁸ 34 C.F.R. § 668.46(k)(3)(i)(B)(3).

DECISION-MAKING AS TO RESPONSIBILITY

Question 8:

What procedures should a school follow to adjudicate a finding of responsibility for sexual misconduct? Answer:

The investigator(s), or separate decision-maker(s), with or without a hearing, must make findings of fact and conclusions as to whether the facts support a finding of responsibility for violation of the school's sexual misconduct policy. If the complaint presented more than a single allegation of misconduct, a decision should be reached separately as to each allegation of misconduct. The findings of fact and conclusions should be reached by applying either a preponderance of the evidence standard or a clear and convincing evidence standard.¹⁹

The decision-maker(s) must offer each party the same meaningful access to any information that will be used during informal and formal disciplinary meetings and hearings, including the investigation report.²⁰ The parties should have the opportunity to respond to the report in writing in advance of the decision of responsibility and/or at a live hearing to decide responsibility.

Any process made available to one party in the adjudication procedure should be made equally available to the other party (for example, the right to have an attorney or other advisor present and/or participate in an interview or hearing; the right to cross-examine parties and witnesses or to submit questions to be asked of parties and witnesses).²¹ When resolving allegations of dating violence, domestic violence, sexual assault, or stalking, a postsecondary institution must "[p]rovide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice."²² In such disciplinary proceedings and any related meetings, the institution may "[n]ot limit the choice of advisor or presence for either the accuser or the accused" but "may establish restrictions regarding the extent to which the advisor may participate in the proceedings."²³

Schools are cautioned to avoid conflicts of interest and biases in the adjudicatory process and to prevent institutional interests from interfering with the impartiality of the adjudication. Decision-making techniques or approaches that apply sex stereotypes or generalizations may violate Title IX and should be avoided so that the adjudication proceeds objectively and impartially.

¹⁹ The standard of evidence for evaluating a claim of sexual misconduct should be consistent with the standard the school applies in other student misconduct cases. In a recent decision, a court concluded that a school denied "basic fairness" to a responding party by, among other things, applying a lower

standard of evidence only in cases of alleged sexual misconduct. *Doe v. Brandeis Univ.*, 177 F. Supp. 3d 561, 607 (D. Mass. 2016) (“[T]he lowering of the standard appears to have been a deliberate choice by the university to make cases of sexual misconduct easier to prove—and thus more difficult to defend, both for guilty and innocent students alike. It retained the higher standard for virtually all other forms of student misconduct. The lower standard may thus be seen, in context, as part of an effort to tilt the playing field against accused students, which is particularly troublesome in light of the elimination of other basic rights of the accused.”). When a school applies special procedures in sexual misconduct cases, it suggests a discriminatory purpose and should be avoided. A postsecondary institution’s annual security report must describe the standard of evidence that will be used during any institutional disciplinary proceeding arising from an allegation of dating violence, domestic violence, sexual assault, or stalking. 34 C.F.R. § 668.46(k)(1)(ii).

²⁰ 34 C.F.R. § 668.46(k)(3)(i)(B)(3).

²¹ A school has discretion to reserve a right of appeal for the responding party based on its evaluation of due process concerns, as noted in Question 11.

²² 34 C.F.R. § 668.46(k)(2)(iii).

²³ 34 C.F.R. § 668.46(k)(2)(iv).

DECISION-MAKING AS TO DISCIPLINARY SANCTIONS

Question 9:

What procedures should a school follow to impose a disciplinary sanction against a student found responsible for a sexual misconduct violation?

Answer:

The decision-maker as to any disciplinary sanction imposed after a finding of responsibility may be the same or different from the decision-maker who made the finding of responsibility. Disciplinary sanction decisions must be made for the purpose of deciding how best to enforce the school’s code of student conduct while considering the impact of separating a student from her or his education. Any disciplinary decision must be made as a proportionate response to the violation.²⁴ In its annual security report, a postsecondary institution must list all of the possible sanctions that the institution may impose following the results of any institutional disciplinary proceeding for an allegation of dating violence, domestic violence, sexual assault, or stalking.²⁵

NOTICE OF OUTCOME AND APPEALS

Question 10:

What information should be provided to the parties to notify them of the outcome? Answer:

OCR recommends that a school provide written notice of the outcome of disciplinary proceedings to the reporting and responding parties concurrently. The content of the notice may vary depending on the underlying allegations, the institution, and the age of

the students. Under the Clery Act, postsecondary institutions must provide simultaneous written notification to both parties of the results of the disciplinary proceeding along with notification of the institution's procedures to appeal the result if such procedures are available, and any changes to the result when it becomes final.²⁶ This notification must include any initial, interim, or final decision by the institution; any sanctions imposed by the institution; and the rationale for the result and the sanctions.²⁷ For proceedings not covered by the Clery Act, such as those arising from allegations of harassment, and for all proceedings in elementary and secondary schools, the school should inform the reporting party whether it found that the alleged conduct occurred, any individual remedies offered to the reporting party or any sanctions imposed on the responding party that directly relate to the reporting party, and other steps the school has taken to eliminate the hostile environment, if the school found one to exist.²⁸ In an elementary or secondary school, the notice should be provided to the parents of students under the age of 18 and directly to students who are 18 years of age or older.²⁹

²⁴ 34 C.F.R. § 106.8(b); 2001 Guidance at (VII)(A).

²⁵ 34 C.F.R. § 668.46(k)(1)(iii).

²⁶ 34 C.F.R. § 668.46(k)(2)(v). The Clery Act applies to proceedings arising from allegations of dating violence, domestic violence, sexual assault, and stalking.

²⁷ 34 C.F.R. § 668.46(k)(3)(iv).

²⁸ A sanction that directly relates to the reporting party would include, for example, an order that the responding party stay away from the reporting party. See 2001 Guidance at vii n.3. This limitation allows the notice of outcome to comply with the requirements of the Family Educational Rights and Privacy Act. See 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.10; 34 C.F.R. § 99.12(a). FERPA provides an exception to its requirements only for a postsecondary institution to communicate the results of a disciplinary proceeding to the reporting party in cases of alleged crimes of violence or specific nonforcible sex offenses. 20 U.S.C. § 1232g(b)(6); 34 C.F.R. § 99.31(a)(13).

²⁹ 20 U.S.C. § 1232g(d).

Question 11:

How may a school offer the right to appeal the decision on responsibility and/or any disciplinary decision? Answer:

If a school chooses to allow appeals from its decisions regarding responsibility and/or disciplinary sanctions, the school may choose to allow appeal (i) solely by the responding party; or (ii) by both parties, in which case any appeal procedures must be equally available to both parties.³⁰

EXISTING RESOLUTION AGREEMENTS

Question 12:

In light of the rescission of OCR's 2011 Dear Colleague Letter and 2014 Questions & Answers guidance, are existing resolution agreements between OCR and schools still binding?

Answer:

Yes. Schools enter into voluntary resolution agreements with OCR to address the deficiencies and violations identified during an OCR investigation based on Title IX and its implementing regulations. Existing resolution agreements remain binding upon the schools that voluntarily entered into them. Such agreements are fact-specific and do not bind other schools. If a school has questions about an existing resolution agreement, the school may contact the appropriate OCR regional office responsible for the monitoring of its agreement.

Note: The Department has determined that this Q&A is a significant guidance document under the Final Bulletin for Agency Good Guidance Practices of the Office of Management and Budget, 72 Fed. Reg. 3432 (Jan. 25, 2007). This document does not add requirements to applicable law. If you have questions or are interested in commenting on this document, please contact the Department of Education at ocr@ed.gov or 800-421-3481 (TDD: 800-877-8339).

³⁰ 2001 Guidance at (IX). Under the Clery Act, a postsecondary institution must provide simultaneous notification of the appellate procedure, if one is available, to both parties. 34 C.F.R. § 668.46(k)(2)(v)(B). OCR has previously informed schools that it is permissible to allow an appeal only for the responding party because "he/she is the one who stands to suffer from any penalty imposed and should not be made to be tried twice for the same allegation." Skidmore College Determination Letter at 5, OCR Complaint No. 02-95-2136 (Feb. 12, 1996); see also Suffolk University Law School Determination Letter at 11, OCR Complaint No. 01-05-2074 (Sept. 30, 2008) ("[A]ppeal rights are not necessarily required by Title IX, whereas an accused student's appeal rights are a standard component of University disciplinary processes in order to assure that the student is afforded due process before being removed from or otherwise disciplined by the University."); University of Cincinnati Determination Letter at 6, OCR Complaint No. 15-05-2041 (Apr. 13, 2006) ("[T]here is no requirement under Title IX that a recipient provide a victim's right of appeal.").