

Browning Public Schools



**Title IX
Handbook
2015 - 2016**

Browning Public School District #9
Title IX Handbook –2015 -2016

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Section 1: Introduction – What is Sexual Harassment

What is Section 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:

- *Submission to such conduct is made implicitly or explicitly*
- *Submission to or rejection of such conduct is used against the individual, or affects the individual.*
- *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

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.

“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
- 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 administrating 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 # 5050 – Equal Employment Opportunity and Non-Discrimination Policy is the policy of Browning Public School 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 \$50 90. 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 | <i>Required sign-in sheets</i> |
| 5. Student Awareness of Sexual Harassment, Intimidation, Bullying | Annually | <i>Required sign-in sheets</i> |
| 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 (<i>age appropriate</i>) | Annually | |
| 10. District Wide Self-Evaluation | Annually | |

Section 5. 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:

- 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: 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:

Jason Andreas
Title IX Compliance Officer
Administration Building
129 First Avenue SE
Browning, MT 59417
(406) 338-2715

John Rouse
Superintendent
Administration Building
129 First Avenue SE
Browning, MT 59417
(406) 338-2715

C. 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.
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 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 Procedure

The following investigative steps will be used for both staff and student complainants. All necessary forms are available in Section 7-Forms of this handbook. This investigative procedure complies with BPS Policy #5012-*Discrimination, Sexual Harassment and Retaliation In the Workplace*, BPS Policy # 5015-*Bullying/Harassment/Intimidation*, BPS Policy# 5090-*Complaint Procedure & Alleged Discrimination*, BPS Policy # 3205-*Sexual Harassment/Intimidation/Bullying/Menacing/Hazing Policy*, and BPS Policy# 3205R-*Student Grievance Process*. The Building and Department Title IX Coordinators will utilize the checklist for Handling Complaint to document the completion of the various steps of the investigation. This form is located in Section 7a of this handbook.

| Checklist for Handling Complaints | | <u>Date</u> | <u>Assigned</u> |
|---|-------|-------------|-----------------|
| <p>1. Complaint received from target or third party. <i>The Title IX Coordinator will utilize the Statement of Witness/Subject form located in Section 7b of the handbook. For additional guidance review pages 20a, 20b, and 20c of the <u>Handling Complaints and Investigations of Sexual Harassment in Schools Handbook</u> located in Section 8f of this handbook.</i></p> | _____ | _____ | |
| <p>2. Interview target/complainant to clarify allegations. <i>The Title IX Coordinator will complete the Checklist for Interview with Complainant form provided in Section 7c of this handbook.</i></p> | _____ | _____ | |
| <p>3. Review personnel/student/investigation records of target and accused (observe legal guidelines/protections). <i>Please check with school principals regarding student records. Principals will check with the Superintendent regarding legal guidelines/protections</i></p> | _____ | _____ | |
| <p>4. Interview witnesses identified by target. <i>The Title IX Coordinator will complete the Checklist for Interview with Witnesses form in Section 7d of this handbook</i></p> | _____ | _____ | |
| <p>5. If no veracity, inform complainant & give warnings. <i>Use the sexual harassment continuum as a guide to determine severity. Section 8 Resources h. The investigation may stop here with documentation filed at the building level, (Investigation and documentations will remain at the building level).</i></p> | _____ | _____ | |

6. If target will not be identified, discuss options for next steps. _____

Discuss options with building principal and BPS Title IX Compliance Officer

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

8. Interview accused party.

The Title IX Coordinator will complete the Checklist for Full Interview with Accused form located in Section 7e of this handbook. For additional guidance, review page 22a of the Handling of Complaints and Investigations of Sexual Harassment in Schools Handbook located in Section Bf of this handbook.

9. Interview witnesses identified by accused party.

The Title IX Coordinator will complete the Checklist for interview with Witness form located in Section 7d. For additional guidance, review page 22a of the Handling of Complaints and Investigations of Sexual Harassment in Schools Handbook located in Section 8f of this handbook.

10. Reinterview target and accused if needed for clarification

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

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

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

14. Complete documentation in appropriate MES.

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

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16. Provide copies of all documentation to District Title IX Coordinator. This documentation should include the following

- 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 staff/student handbook*
- f. *Witness statements for complainant*
- g. *Accused statement*
- h. *Witness statements for the accused*

17. Begin remediation (eg, discipline, training, counseling and formal hearings if appropriate).

18. Inform complainant investigation is completed and Superintendent in taking appropriate action to guarantee a harassment-free environment.

19. Continue monitoring situation with follow-up every 2--3 wks.

A resource of *CaJynRuotm: u* focus in sexual harassment and investi !3! ion training, 1997

Checklist for Handling Complaints

| | <u>Date</u> _____ | <u>Assigned</u> _____ |
|---|-------------------|-----------------------|
| 1. Complaint received from target or third party. | _____ | _____ |
| 2. Interview target/complainant to clarify allegations. | _____ | _____ |
| 3. Review personnel/student/investigation records of target and accused (observe legal guidelines/protections). | _____ | _____ |
| 4. Interview witnesses identified by target. | _____ | _____ |
| 5. If no veracity, inform complainant & give warnings. | _____ | _____ |
| 6. If target will not be identified, discuss options for next steps. | _____ | _____ |
| 7. If veracity exists, review relevant policies and plan for further investigation. Make appropriate notification of parents/guardians. | _____ | _____ |
| 8. Interview accused party. | _____ | _____ |
| 9. Interview witnesses identified by accused party. | _____ | _____ |
| 10. Re-interview target and accused if needed for clarification. | _____ | _____ |
| 11. Generate investigation report to summarize investigative steps and interviews taken to support/refute allegations. | _____ | _____ |
| 12. Administrator makes decision about further action in consultation with Title IX Coord. (legal counsel if necessary). | _____ | _____ |
| 13. Inform accused (and parent /guardians) of administrator's decision and basis for it. | _____ | _____ |
| 14. Complete documentation in appropriate files. | _____ | _____ |
| 15. Plan for remedial action (counseling, training, etc.) | _____ | _____ |
| 16. Begin remediation (e.g. discipline, training, counseling, formal hearings if appropriate). | _____ | _____ |
| 17. Inform complainant investigation is completed and the Supt. is taking appropriate action to guarantee harassment-free environment. | _____ | _____ |
| 18. Continue monitoring situation; do follow-up 2-3 wks. | _____ | _____ |

A resource of Catalyst Resources for use in sexual harassment and investigation training, 1997

STATEMENT OF WITNESS/SUBJECT (PLEASE PRINT AND USE INK)

Name of person making statement (printed): _____

Parent/Guardian : _____

Address: _____

Phone: _____

Date:

Time:

Grade:

Witness/Subject Signature

Administrator Signature

Checklist for Interview with Complainant/Target

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 by having them talk about what the problem is and how they are feeling right now. However, each item is critical to include in your conversation.

Date/Initials

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":**
o share the process and the policy to be used
o share the time line for the investigation.
o indicate you will be notifying parents/guardian (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:**
o District will protect it to the extent possible, no absolute confidentiality
o 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...let you know asap.

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

- o specifics: who, what, where, when, why, how it made them feel
- o who else was told about it, knew about it, witnessed it
- o how does it affect them, their ability to study or participate
- o 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, reassignment, 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 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.

Checklist for Interview with Witnesses

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 >r inappropriate?"
- "Before we start, there are some important things you need to know."

Date /Initials

- | | |
|--|--------------|
| <p>1. Responsibility of the school to take all reports of possible harassment seriously and promptly investigate, and stop any harassment found.</p> | <p>_____</p> |
| <p>2. Against the law to retaliate against anyone involved in investigation, including people -who assist.</p> | <p>_____</p> |
| <p>3. Confidentiality need to keep confidentiality themselves district will protect it to extent possible no re-disclosure of info about this complaint</p> | <p>_____</p> |
| <p>4. Purpose of investigation is to "find the facts" share process and policy to be used share time line will be notifying parents (if approp)</p> | <p>_____</p> |
| <p>5. What information do they have about alleged conduct. (specifics); who else should we talk with?</p> | <p>_____</p> |
| <p>6. Tell them that name of complainant and witnesses may have to be shared with accused.</p> | <p>_____</p> |
| <p>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).</p> | <p>_____</p> |
| <p>8. Ask what they need during investigation: a. protection from specific retaliation b. reassignment c. evaluation/test/appraisal reassignment d. counseling</p> | <p>_____</p> |
| <p>9. If questions, problems, retaliation, contact.</p> | <p>_____</p> |
| <p>10. Proper notification of parents/guardians if appropriate.</p> | <p>_____</p> |

A resource of *Catalyst Resources* for use in sexual harassment and investigation training, 1997.
 22-Handling Complaints and Investigations of Sexual Harassment

=====

Checklist for Full Interview with Accused

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 you doing today?"
- "We have received a report/complaint/allegation that you have... (give in detail so the individual can prepare a response)"
- "Before we start, there are some important things you need to know."

date/Initials

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 extent possible
 no re-disclosure of info about this complaint
4. Purpose of investigation is to find the facts" _____
 share process and policy to be used
 share time line
 will be notifying parents (if appropriate)
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(s) 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 : _____
 - a. protection from specific retaliation
 - b. reassignment
 - c. evaluation/test/appraisal reassignment
 - d. counseling
9. If questions, problems, retaliation, contact _____
10. Proper notification of parents/guardians if appropriate. _____

Form F:

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

Date: September 1, 2014
To: Jason Andreas, 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 Harrassment/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:

- Is motivated by an 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.
- 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 the student in reasonable fear of harm of his person.
- 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.

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

Appendix A: District Policies

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 (06 220-7887

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:

4. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
5. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual; or
6. 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.
4. “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 # 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:

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

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

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

“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

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:

Jason Andreas
Title IX Compliance Officer
Administration Building
129 First Avenue SE
Browning, MT 59417
(406) 338-2715

John Rouse
Superintendent
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

Browning Public Schools

Policy -----

Policy Name: Student Grievance Process

Regulation: 3205R

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

**Appendix B: Handling Complaints &
Investigations of Sexual Harassment
In Schools Reference Guide**

Handling Complaints and Investigations of Sexual Harassment in Schools

A collection of suggestions,
guidelines and checklists for
prompt, appropriate and effective
resolution and remediation of the
learning and working environment.



For Leadership and Learning

Catalyst Resources, L.L.C.
301 S. Oakes Street
Helena MT 59601-4638

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Important NOTE

While the information in this manual is based on

the work of legal experts
and on years of practical experience in
investigations and training in sex equity,
the advice, examples, and suggestions in this
manual should in no way be used as
a substitute for the advice of your own
legal counsel based on the circumstances of
each individual case.

These materials are best used in concert
with other manuals, suggestions, and
the advice of legal practitioners
working with your district, agency or
organization.

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Overview of Investigations

Why a complaint procedure?

- solve problems and resolve grievances internally; open communication.
- comply with requirements of Title IX regulation requiring a grievance procedure and the prompt, effective and remedial resolution of all complaints. Follow appropriate laws, regulations, CBAs, and policy.
- reduce risk of litigation; send message to employees, clients, community.

What are the key roles?

- Title IX Coordinator - in charge of compliance with regulations, including prompt, equitable resolution of all complaints; could do investigations or provide support for parties involved in investigations.
- Superintendent - makes decisions on action based on investigation:
- Legal Counsel for district - provides legal advice on process and on analysis of investigation report toward action. Key to avoiding legal pitfalls, protecting inappropriate disclosure, and planning with eye to possible litigation.
- Counselor - may be support for parties to an investigation; mediation after an investigation is completed.
- Independent Investigator - recommended through legal counsel of the district to do investigation and make report of evidence; may also share observations and comments on credibility of witnesses. Works at the direction of the agency/attorney that secures their services.
- Parents/guardians - in cases of unemancipated minor students, parents have some rights of notification before their student is interviewed/investigated.
- Representatives - presence of union representatives or other persons of the interviewee's choice is recommended for support.
- Law enforcement, county attorney, police - reports of some conduct may give rise to mandatory reporting requirements; other conduct may not only be a violation of school policy and law, but also of criminal codes. Cooperative efforts are the optimum.
- Technical Assistance Staff/Consultants in private and public agencies.

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Advice from the US Office for 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 (parent) is seeking in response to the report/complaint.
2. The school official should explain its procedures for informal and formal complaint procedures, including describing the complaint procedure for sexual harassment claims. 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** by: adopting a sexual harassment policy and grievance procedure; publishing it widely with the names and locations of contact persons (both genders); establishing guidelines for building administrators to use in handling reports/complaints; providing regular on-going training for ALL staff, family members, contracted employees (especially transportation staff); modeling behavior you wish of your staff and students; providing prompt, equitable and effective action on all problems and complaints; following your own students and staff discipline policies when applying discipline and remediation strategies.

Factors that Contribute to 'Severity'

- Size and location of school
- Age and sex of harasser and target
- Frequency and severity of conduct (e.g. entrapment)
- Presence of threatening behavior vs. humiliating conduct
 - Regularity
 - Degree of interference with school
- Adult involvement, especially if in authority over target
 - In concert or alone
- Intentional vs. accidental behavior
 - Pattern and duration

Possible Missteps in Investigations

1. Failure to treat behavior as discrimination, therefore failing to offer Title IX option/assistance.
2. Backing away from your own district investigation during law enforcement's proceedings.
3. Failure to recognize symptoms of abuse or harassment in students or adults.
4. Waiting until things become clearer... waiting til things become serious before intervening. Waiting after hearing rumors of serious behavior.
5. Failing to regularly update policies and procedures.
6. Failing to share with the accusing and accused parties what their rights, options, and expectations should be in the process.
7. Failure to make an "expressed finding" when inquiry/investigation is done.
8. Failure to plan; failure to follow plan.
9. Failure to consult legal counsel throughout the process; failure to work with law enforcement if parallel investigation occurs.
10. Giving warnings to offenders but failing to put anything in writing.
11. Failure to check employment or criminal history of job applicants.
12. Failure to check policies, procedures and collective bargaining agreements; no building guidelines.
13. Allowing reputations of accusing and accused parties to influence your judgement.
14. Failure to stop retaliation and protect confidentiality when possible & appropriate.

OCR GUIDANCE ON REQUESTS FOR CONFIDENTIALITY*

The reasonableness of a school's response to a sexual harassment complaint may depend on whether the student has requested confidentiality or that nothing be done about the conduct. For example, a reasonable response would not require disciplinary action against an alleged harasser if a complaining student insisted that his or her name not be revealed, and the harasser was unable to respond to the harassment claim without that information. This is according to the U.S. Department of Education's Office for Civil Rights (OCR).

Issues of confidentiality should be discussed with a grievant initially, and a school should inform the students that requesting confidentiality may hinder its ability to respond. Realistically, many students will not want disclosure because of fear of retaliation. School officials must tell grievants that retaliation is a separate violation of the law, and that the school will take steps to prevent or respond to any and all retaliation.

When faced with a student requesting confidentiality, there are other ways a school may address the harassment without initiating a formal procedure:

- school may conduct harassment training
- may take a student survey to uncover problems involving harassment

Further, the harassment should be reported to the district Title IX Coordinator or other staff responsible for receiving such complaints so the school may learn about or confirm a pattern of harassment based on claims by other students. In situations where there are prior reports of harassment from different students about one particular student, the school can put the alleged harasser on notice of the allegations and provide appropriate counseling without revealing the identity of the students who notified the school.

If a student continues to request confidentiality, a school should take all reasonable steps to investigate and respond to the complaint consistent with the student's request so long as it does not preclude the school from responding effectively and preventing the harassment of other students.

Requests for confidentiality place school officials in the position of balancing such requests with their responsibility to provide a safe and nondiscriminatory school environment. In such situations, OCR recommends considering the following when evaluating a confidentiality request:

1. seriousness of the alleged behavior
2. age of the student filing the complaint
3. have there been other complaints or reports against the same person
4. the rights of the accused to information about the accusing person and the specific conduct alleged in cases involving formal disciplinary proceedings.

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Basic Responsibilities of School Districts and Administrators

1. Adopt a Sexual Harassment Policy, and an effective Grievance Procedure. Publish in student, staff and family handbooks and notices. Publish name and location of complaint managers and Title IX Coordinator.
2. Establish guidelines for site personnel on handling reports, complaints and disclosure.
3. Provide regular on-going training for staff, student, family members, and volunteers in all district programs.
4. Clearly prohibit sexual harassment and abuse and remind staff, students and volunteers of the sanctions for misconduct.
5. Provide prompt, equitable, and remedial action and investigation of all complaints.
6. Provide remedial action including mediation, counseling, retraining, monitoring and follow-up to insure that misconduct has stopped.
7. Prevent and stop retaliation against parties involved in resolution of problems, inquiries, and/or investigations.
8. Encourage staff and students to report problems early.
9. Know your State laws and the responsibilities you continue to have under these laws, especially as federal decisions are made.

NOTES:

Post-Davis Tips for Schools

- review policies for clear definitions and procedures to follow in reporting and handling complaints.
- train students to understand what constitutes harassment and where to go to report it.
- ensure teachers, staff and other school employees know what to do if they witness it or receive a complaint.
- respond promptly when complaints arise. Determine what happened, and discipline the harasser as needed to stop behavior and prevent its recurrence.

What to do when OCR calls!

1. Have your policies and procedures in place and available to share.
2. Maintain accurate and complete records of any investigation and resolution of any grievance filed or alleged incidents of discrimination (keep records!).
3. If an investigation is begun, notify your District's legal counsel.
4. Study allegations and formulate responses. The District administrators should have a clear understanding of the basic facts.
5. Notify all staff who are involved or who might have information about the allegations and explain the OCR process to them. Let them know they may be interviewed.
6. Appoint one person to have contact with the OCR Investigator. The contact person should develop a good working relationship with the OCR Investigator.
7. Reply as promptly as possible to all information requests from OCR. Work out an extension of time if necessary, and explain the need for the extension.
8. Determine if an ECR (Early Complaint Resolution) or negotiated agreement would be appropriate to resolve the complaint.
9. Determine if the District could improve its policies and procedures. Implement changes.
10. Work with OCR Investigators and staff to ensure access to information.
11. Focus on the needs of the District and clarify what interests the District has at stake in the investigation. This will help determine how the District ultimately resolves the allegations.

Advice of Janice Frankino Doggett, Legal Counsel for OPI 1997-99.

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Formal Options for Handling Complaints in Montana

- a Individual takes some steps, which may resolve the problem (with or without the presence of an adult). (See informal options that follow here.)
- a School District initiates some actions informally or formally to resolve the problem (environmental scan, third party complaint, surveys, notice, training).
- f a Formal charges are filed under the District's Sexual harassment policy or grievance procedures; employees can also utilize grievance procedures in the employee bargaining agreements (CBA, master agreement, etc.).
 - o Individual files formal charges with one or all of the following:
 - o U.S. Department of Education Office for Civil Rights (OCR) in Denver
 - o Montana Human Rights Bureau of the Department of Labor in Helena
 - o Equal Employment Opportunity Commission through the MBRJJ above (Helena)
- a Individual takes private legal action in:
 - o Federal court (under Title IX or Title VII) or
 - o State court (state employment or human rights laws and regulations)

Informal Strategies for an Individual

a If an individual wants to stop unwanted sexual behavior, advances or harassment, they can:

o Tell the harasser to STOP – in clear and certain terms.

- Use "Straight Talk Template":

"I feel _____, when you do/did _____, and I want you to STOP. If you don't, I'll take further action to make sure you stop."

- Try the "Broken Record Technique":

Repeat this over and over, **u**if you were a broken recording, and be sure to take along another witness, preferably an adult.

o Keep a journal with details of each incident, witnesses present, actions taken.

o Tell others: tell the first line supervisor or school official not involved. Tell any adult you trust, and keep telling someone until something is done about it.

o Write a letter to the harasser:

*When you did _____ at this time _____
and place _____ / felt _____
and _____*

*/ want you to STOP. **I**f this does not stop, I will take further
action to make sure it **does**.*

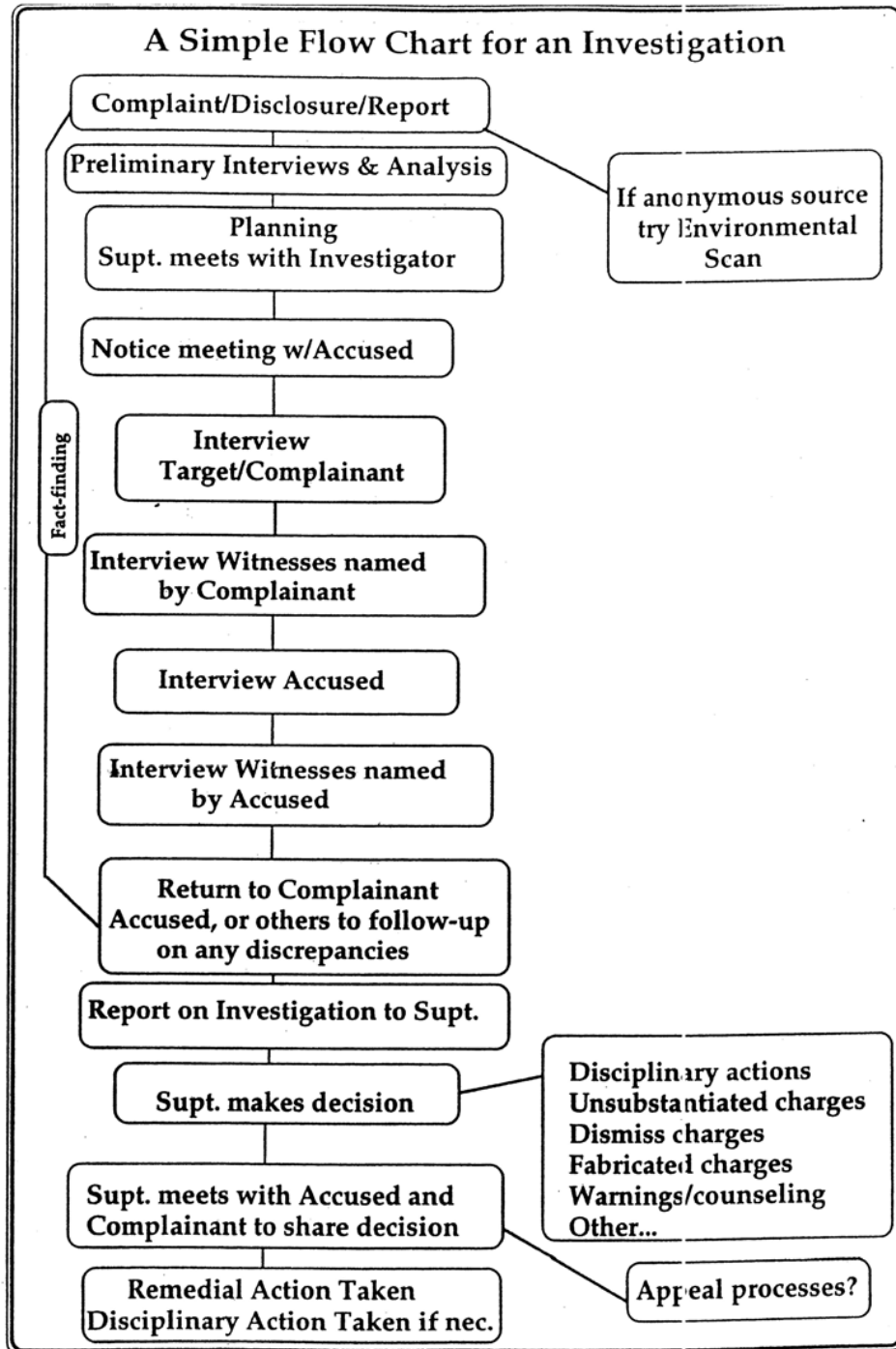
*Your name and the date
(Deliver in person with an adult witness.)*

a Get the District's sexual harassment and grievance policies and the contact person's name. Go see them, talk with them, and find out what they will do to assist you in getting the behavior to stop.

a If information action fails, file a complaint or take other formal action.

a Other strategies: counseling, peer mediation, peer counseling, or asking for an environmental seal! o the administrator can discover the behavior.

A Simple Flow Chart for an Investigation



Options for Handling Reports, Rumors or Complaints of Sexual Harassment in Schools

Informal

Formal

Interview
 : Admission
 : Action:
 : Discipline
 : Counseling

Interviews w/ all parties involved
 : Resolution without confrontation

Training for
 : Students and
 : Staff, Families,
 : Classified Staff,
 : Others

Written Complaint filed:
 : with District
 : Investigation
 : Action

Complaints can be filed at the same time with:
 : Human Rights Commission
 : Office for Civil Rights

Interview
 : Coaching
 : on how to handle on their own

Training of student trainers for regular service
 : Training of adult trainers

(District official or staff observes)

District files "Third Party" complaint on behalf of student or staff

1
 : Legal action taken in State or Federal Courts

No source identified or willing to be identified:

behavior check :
records, interview if nee., take :action

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- Environmental Scan
- General Notice to all students or staff
- Individual Notice to suspected parties

Measures taken across the continuum to prohibit and discipline for retaliation, and protect confidentiality of all panics (to the extent possible).

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Formal Options for Handling Complaints in Montana

- i. Individual takes some steps, which may resolve the problem (with or without the presence of an adult). (See informal options that follow here.)
- .i School District initiates some actions informally or formally to resolve the problem (environmental scan, third party complaint, surveys, notice, training).
- "" Formal charges are filed under the District's sexual harassment policy or grievance procedures; employees can also utilize grievance procedures in the employee bargaining agreements (CBA, master agreement, etc).
- "" Individual files formal charges with one or all of the following:
 - o US.Department of Education Office for Civil Rights (OCR) in HEATILE
 - o Montana Human Rights Bureau of the Department of Labor in Helena
 - o Equal Employment Opportunity Commission through the MHR B above (Helena)
- o Individual takes private legal action in:
 - o Federal court (under Title IX or Title VII) or.
 - o State court (state employment or human rights laws and regulations)

Important Contact Information

- Office of Public Instruction, POBox 20251, Helena MT 59620-2501, 406/444.3161
- MT Human Rights Bureau, POBox 1728, Helena 59624, 406/444-4344, 800/ 42-0807
- USDOE Office for Civil Rights, Seattle Office, 915 Second Ave., Rtn 3310, 10-9010, Seattle, WA 98174-1099, 2061220-7900; fx:2061220-7887; TDD: 877/5212172; Email: OCR.Seattle@ed.gov
- MT High School Assoc., 1South Dakota, Helena 59601, 406/442-6010
- MT School Administrators, 1134 Butte Ave., Helena 59601, 406/442-2510
- Catalyst Resources, 301S.Oakes, Helena 59601, 406/442-6927 or 431-6589
- Your District Legal Counsel:
- Your District Title IX Coordinator/ Title IX Team:
- Others:

f. Handling Sexual Harassment Complaints in a School Setting*

Disclaimer: This is one way to conduct investigations. It is not a substitute for the advice of legal counsel relative to the specific situation, in question.

DISCLOSURE I. Initial disclosure of information or knowledge:

| | | |
|----|----------------|--------------------------|
| A. | From: | To: |
| | Student | School Counselor |
| | Parent | Principal |
| | Staff member | Trusted Teacher or Staff |
| | Another agency | Title IX Coordinator |

B. All staff who may receive a "disclosure" should understand who is to be notified if they suspect sexual harassment may be occurring. (See "Effective Interviews - Guidelines" in this manual). Possible contacts:

1. Title IX Coordinator
2. Principal or Building Grievance Rep.
3. Superintendent or assistant superintendent
4. Personnel Director/District Grievance Manager

C. Informal resolution - if the problem does not appear to be severe (impact is not severe, or this is an initial indication of problem behavior), and if the target voluntarily agrees, informal resolution may be attempted. But a target should never be forced to confront an alleged harasser alone (risk of charge of additional harassment on the part of the district).

PLANNING II. Planning once you know the nature of the allegations:

A. To provide a frame of reference, check district policies, collective agreements, due process requirements for students and staff, and all federal and state regulations guiding privacy rights and notice to parents before interviewing unemancipated students.

- B. Make proper plans and notifications.
1. Develop a plan and move in a timely and thorough manner (get started **within 1-3 days**).
 2. Decide **within** the grievance team:
 - a. Roles. First, determine who should play which roles in the investigation (including Title IX Coordinator, attorney for district, Superintendent, independent investigator, counselors, personnel officer, etc.).
 - b. Protective measures during investigation. Decide what, if any, measures need to be taken to

protect parties involved during the investigation, in accordance with 20-4-207 (MCA) (4) calling for the district to protect the welfare of students and the effective operation of the school district.

c. Identify the records, files or documents that will need to be checked.

d. Identify all persons' rights and when they apply:

1) Privacy rights, rights when property interests may be affected, parents rights, and due process rights, IEP rights.

2) What/when information will be shared with accused. (e.g. complaint, final report)

3) What/when information will be shared with accuser. (e.g. complaint, final report)

3. Superintendent informs the person doing the investigation of the nature of the allegations (report, rumors), and other information available (records, witnesses, evidence).

Preliminary INTERVIEWS and Analysis of Allegations

III. Investigation or "Fact-finding":

A. Designated investigator interviews the initial source of information, the alleged victim or target of the harassment, others identified as having similar experiences and any witnesses to the alleged harassment. Suggested questions (see interviewing and observer's checklists in this manual):

1. What happened
2. When did it happen
3. Where did it happen
4. Who was involved
5. Who else witnessed the actions
6. To whom did the alleged victim talk
7. What remedy would satisfy the alleged victim

B. Document all information gathered.

Decision-next steps C. Analysis of allegations:

1. The grievance team should address: 1) Is there indication that the allegations may be true? and 2) if true, would the conduct be a violation of law,

regulation or policy? 3) What is the nature of the impact on the parties directly involved and any others?

2. Decision to go forward or not. Superintendent should determine if an investigation will go forward depending on the veracity of the allegations.

3. Follow-up with complainant/target. Share the district's decision re: the investigation...

a. If investigation will go forward, press for filing of a formal complaint (if none filed yet). Explain the limitations on district's ability to go forward or remedy without a witness who will identify themselves.

If no complaint

If person will NOT be identified, make plans with grievance team for the steps that can be taken:

- 1) Training for staff or students
- 2) Third party complaint
- 3) Notice to parties involved
- 4) General notice to staff and students

b. If investigation will NOT go forward:

1) advise the "complainant" of the inability to substantiate the allegations at this time, of their right to pursue a claim with other agencies (like OCR), and that the district continues to take problems seriously if they experience trouble again.

2) Meeting with accused. Depending on the visibility of the conduct or the allegations, you may decide to meet with the accused person to inform them that allegations were made, but no investigation will be conducted at this time. Reiterate definitions of sexual harassment and prohibition against it and retaliation against those who report problems.

3) To all parties:

a) State clearly that if any of the parties receive any retaliation for having raised this concern or assisted in interviews, they should contact an administrator immediately.

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b) Stress the need for confidentiality to protect themselves and others, including the accused.

4. Inform parents as appropriate, according to regulations, policies and statutes.

Investigation
CONTINUES

IV. Process for next steps in investigation

Meet w/ Accused A. Meet with the alleged harasser (when scheduling appointment you can advise of their option to bring a representative; notify parents of a minor student):

1. Review the allegations which have been raised in sufficient detail so that the accused can prepare an intelligent response.
2. Do not press the employee/student to respond to any specific questions about the allegations at this time.
3. Explain that the district will be conducting an investigation. Explain that they will have an opportunity to respond to the charges and provide any evidence which refutes the charges. Share entire process.
4. Indicate that a second meeting will be scheduled to hear their response, and witnesses they wish to have contacted. (If allegations are not serious, a second meeting may not be needed. Gather needed information in this interview, but be sure interviewee has support if desired.)

NOTE: As a time saver, the Superintendent can conduct this meeting while the investigator is beginning other interviews.

Interview Witnesses

- B. Interview all potential witnesses. In fairness to the alleged harasser and to control rumors in the school and community, the investigation should be conducted in a timely and thorough manner.
1. Interview witnesses to any of the alleged improper behavior as identified by the target.
 2. Interview any others identified as have similar experiences with the alleged harasser.
 3. In the case of students, determine if their parents should be notified of the interview, or present for the interview. (e.g., FERPA)
 4. Explain to all witnesses that you will maintain confidentiality within the regulations in FERPA and any

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right to privacy under state constitution and laws. Also explain, however, that in order to stop the alleged harassment and to discipline the harasser if wrongdoing is established, the district will need the testimony of affected persons as witnesses. Assure the witnesses of protection from retaliation. Ask each witness if they will sign a statement of their knowledge of events. Ask them if they are willing to testify in the presence of the alleged harasser if that becomes necessary (note that they at no time will be expected to be alone with the alleged harasser). (see checklists below)

**Interview
Accused**

C. Interview the accused:

1. By this time the accused employee may have sought legal counsel and have an attorney or union representative present with them. A student may have representation, or may choose another person to be present for support.
2. Present the factual evidence gathered to date in the investigation including the names of witnesses and the specifics of their testimony if permission was given by the witness.
3. Allow the alleged harasser to respond fully to the charges raised, to the evidence presented, and to provide any other evidence or witnesses on their behalf. Offer to receive any written materials or response and include these in the final report.
4. Indicate that you will be finishing the investigation by following up on the information which they have just provided in this meeting.

CLOSURE

D. Finish the investigation:

1. Follow up on any relevant information of witnesses provided by the alleged harasser.
2. Follow-up may be needed with the accuser or witnesses to clarify discrepancies.

FINAL REPORT V. Final report and decision on action:

- A. Final report.** Investigator writes a final report including a summary of the allegations, how the investigation was conducted, all evidence obtained from all parties involved. (See "Report Outline" in this manual.)

Decision/Action

B. Recommendation for action.

The Superintendent receives the report and reviews any other information available to the Superintendent to determine (in consultation with legal counsel):

- whether there is merit to the allegations,
- and if so, what action, if any, is recommended.

Options for findings include:

- charges are substantiated
- charges are unsubstantiated
- unable to substantiate charges (unable to prove or disprove)
- charges are fabricated (malice involved)

C. If the Superintendent finds merit to the allegations, the Superintendent makes decision to recommend appropriate disciplinary action.

If required by policy, contract, or regulation, the recommendation for action and evidence from the investigation is presented to the board of trustees. The board makes the final determination.

All decisions for action must be made within the rules, regulations, contracts and policies of the district (employment and student discipline policies).

Inform Accused

D. Meeting with accused. If the investigation determines there is no merit to the allegations, the Superintendent should meet with the accused to inform of the Superintendent's decision not to take any further action at this time. The accused should be reminded of the prohibition against retaliation. In some cases, a warning to avoid unnecessary contact with any witnesses or the grievant may be appropriate.

If allegations are substantiated, Superintendent should explain the decision, the evidence supporting it, and the process that will be available to the accused for hearing or appeal (if appropriate).

Inform Accuser

E. Meet with the person who raised the allegation and other witnesses who were affected by the alleged harassment to inform them that the investigation is completed.

1. If their claims were substantiated, inform them of that and indicate that action has been taken to stop the harassment. Repeat notice about confidentiality and retaliation.

2. If the investigation found that the allegations were unsubstantiated, inform them of that. Advise them of any appeal rights if they are dissatisfied with the outcome, or the right to file a complaint with other agencies like the US Office for Civil Rights. Advise all parties of the responsibility to stop rumors and retaliation.

F. If the investigation indicates that the charges were fabricated, a warning or discipline against the responsible parties may be appropriate. Check district policy. End legal counsel for guidance.

REMEDATION VI. Remediation and Follow-up

A. Identify all parties needing remediation.

B. Identify persons to assist and implement remediation.

C. Choose appropriate steps; plan.

1. Training for staff, students, parents, etc.
2. Renew "notice" to school community prohibiting harassment and retaliation.
3. Take steps to restore damaged reputations if possible.
4. Counseling.
5. Support groups.
6. Other: _____

D. Follow-up with all parties in 2 weeks, 2 months, and 6 mos.

1. Has the harassment stopped?
2. Has there been any retaliation?
3. Is additional remediation warranted?

E. Do an Environmental Scan in 2-6 months as routine check.

F. Document results of remediation and your follow-up steps.

"This guideline was prepared from suggestions by the compliance staff of the Montana Human Rights Commission, General Counsel for the Superintendent of Public Instruction of Montana, Gender Equity Specialist, Chief Investigator of Montana Attorney General, and consultants with the Harper Consulting Group, 1995.

Checklist for Handling Complaints

| | Date | assigned |
|---|-------|----------|
| 1. Complaint received from target or third party. | _____ | _____ |
| 2. Interview target/complainant to clarify allegations. | _____ | _____ |
| 3. Review personnel/student/investigation records of target and accused (observe legal guidelines/protections). | _____ | _____ |
| 4. Interview witnesses identified by target. | _____ | _____ |
| 5. If no veracity, inform complainant & give warnings. | _____ | _____ |
| 6. If target will not be identified, discuss options for next steps. | _____ | _____ |
| 7. If veracity exists, review relevant policies and plan for further investigation. Make appropriate notification of parents/guardians. | _____ | _____ |
| 8. Interview accused party. | _____ | _____ |
| 9. Interview witnesses identified by accused party. | _____ | _____ |
| 10. Re-interview target and accused if needed for clarification. | _____ | _____ |
| 11. Generate investigation report to summarize investigative steps and interviews taken to support/refute allegations. | _____ | _____ |
| 12. Administrator makes decision about further action in consultation with Title IX Coord. (legal counsel if needed). | _____ | _____ |
| 13. Inform accused (and parent/guardians) of administrator's decision and basis for it. | _____ | _____ |
| 14. Complete documentation in appropriate files. | _____ | _____ |
| 15. Plan for remedial action (counseling, training, etc.). | _____ | _____ |
| 16. Begin remediation (e.g. discipline, training, counseling, formal hearings if appropriate). | _____ | _____ |
| 17. Inform complainant investigation is completed and Supt. is taking appropriate action to guarantee harassment-free environment. | _____ | _____ |
| 18. Continue monitoring situation; do follow-up 2-3 wks. | _____ | _____ |

A resource of *Catalyst Resources* for use in sexual harassment and investigation training, 1997.

Checklist for Interview with Complainant

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 by having them talk about what the problem is and how they are feeling right now. However, each item is critical to include in your conversation.

Date/Initials

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
- o share the time line for the investigation
- a indicate you will **be** notifying parents/guardian (if approp.)

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:

- o District will protect it to the extent possible, no absolute confidentiality
- a 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 ... let you know asap.

6. Get the fact 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
- a who else was told about it, knew about it, witnessed it
- a how does this **affect** them, **their** ability to study or participate
- a what would they like to see happen to make it right (no guarantees) _____

7. Who else should we talk to about this:

3. What do they need during the investigation: protection from specific retaliation they fear, reassignment, 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** share **with** the accused; never have to **be** alone with accused; if questions or retaliation occurs, call you asap; you'll **be** notifying parents (if approp.); remind them of the next steps in the process.

A possible script for the “cold call”... your call to ask someone to talk with you in an investigation interview:

- Your name
- Who you are working for...
- Looking into allegation of inappropriate behavior
- Need to talk with you on _____ at _____
- Please bring along any written information, journal, documentation, or evidence you think I should see.
- Can reach me between now and the interview at: _____

* * * * *

Topics/questions that may come up:

- Bring a support person... okay for:
 - elementary students
 - for adults who are alleged harassers
 - for students under stress
 - for students when law enforcement is present
 - for students in special populations, at-risk
- Tape record the interview... okay if both of us record and if we exchange copies of our tapes asap after the interview.
- Submitting a written statement – okay, encouraged. Bring to the interview.
- Support person able to speak – no. This is their interview only.
- Assure that their needs will be met for coverage of classroom, release from class, alternate transportation, etc.

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"The Interview Preamble"

Investigators should...

- a Introduce themselves;
- o Explain what the investigation is about;
- o Emphasize that they haven't reached any conclusions;
- o Overview and explain the investigation process;
- o Tell interviewees where they fit into the process;
- a Stress that the parties being interviewed should not discuss the matter with anyone;
- o Explain that retaliation is prohibited;
- o Explain that they will be taking notes, or recording, and that the notes will be used by them to write their report;
- o Make sure they are comfortable before beginning.

Investigators should NEVER:

- a Reveal unnecessarily the names of others being interviewed;
- a Discuss their personal opinions regarding the merits of the complaint;
- a Counsel the person being interviewed. Refer them to employee assistance programs or the counseling services;
- a Neglect importance of the interview seating arrangement ("squaring up" or "facing up" can cause defensiveness).

Questions for the Complainant/Target

- > *Start with some simple, easy questions... how are you doing today? Have any problems getting to our interview? Do you have arrangements for your classes/job duties?*
- > *Please tell me what happened. Start at the beginning and try to be specific.*
- > *What exactly did s/he say and do?*
Where did s/he touch you? How did s/he touch you?
- > *Where did the incident(s) occur? When? Do you remember the date(s)? time(s)? How long did they last?*
Did anyone see what happened or overhear the comments? Who?
- > *How did you respond? Did you find the behavior/comments offensive?*
- > *How often did this happen?*
- > *If it happened more than once, please describe each incident. Did it get worse each time?*
Did you talk to anybody immediately after the incident? Who?
Do you have any cards, notes, emails, letters or memos from him/her that would be relevant?
Do you keep a diary or a journal? Did you write about this?
Do you have any idea why s/he would do this?
How would you describe your relationship with him/her before this happened?
Have you ever had a friendship or romantic relationship with him/her? How long? How did it end?
Have you reported this to anyone else? A teacher? A supervisor? An administrator? What did they do?
How are you feeling now? What impact has this had on you? Have you had any problems as a result of this?
- > *Have you received any threats or behavior designed to pressure you since you reported this?*
What would you like to see happen as a result of this investigation?
What do you need during this investigation?
Is there anything else you would like to tell me about that I haven't covered?
- > *Others:*

Adapted from the excellent resources in *Investigating Sexual Harassment*. IJ&J, Thompson Publishing Group, 2001.

Checklist for Full Interview with Accused

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 you doing today?"
- "We have received a report/complaint/allegation that you have... (give in detail so the individual can prepare a response)"
- "Before we start, there are some important things you need to know."

Date /Initials

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 extent possible
 - ___ no re-disclosure of info about this complaint
4. Purpose of investigation is to "find the facts"
 - ___ share process and policy to be used
 - ___ share time line
 - ___ will be notifying parents (if approp)
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(s) 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 :
 - ___ a. protection from specific retaliation
 - ___ b. reassignment
 - ___ c. evaluation/test/appraisal reassignment
 - ___ d. counseling
9. If questions, problems, retaliation, contact: _____
10. Proper notification of parents/guardians if appropriate. _____

General Questions for the Accused Harasser

- > Start with some simple, easy questions... how are you doing today? Have any problems getting to our interview? Do you have arrangements for your classes/job duties?
- > An allegation has been made that you behaved inappropriately with _____ 'It _____? Can you tell me what happened? And can you be as specific as you can?
- >- What exactly did you say to her/him?
- >- Did you touch him/her? If so, where and how?
- >- What was their response?
- > Where did this happen?
- > Did anyone see or hear what happened?
- > Did you make any promises or other comments (threats)?
- > Did you say anything that could have been misunderstood by him/her?
- > Has she ever said/done anything that would make you believe your behavior was welcome?
- > What is your relationship with _____ (the complainant)? Have you ever been friends? dated? If it ended, how and when did it end?
- > Do you supervise the complainant? Do you have input into their evaluation? How often do you work together?
- > Did anything trigger this event?
- > Did you talk with anyone after the incident? Who?
- > Were any parts of the allegations accurate? Which? Please respond to the other parts.
- > If it isn't true, why do you think she would say it happened?
- > Has anyone ever spoken to you about your behavior in the past? Who? About what? What was your response?
- > Is there anything else you would like to tell me? Who else should I talk to about this?
- > You know that retaliation against anyone involved in this investigation, including the complainant and yourself, is against the law and this District's policies. Let me know as soon as you hear or witness anything that feels like retaliation or adverse pressure, okay?
- > DO NOT: put words in their mouth; try to trick them; shy away from difficult questions; be surprised if they deny the allegations, ask "Why would she say that you did that?"

More specific questions relative to the circumstances should supplement these general questions.
 I Ad8Dteid frOOi the excellent resources in *Investigating Sexual Harassment* and *TIIOIDP9011* Publications Group, 200U

Checklist for Interview with Witness;

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."

J2A/ :e /Initials

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 extent possible
 no re-disclosure of info about this complaint
4. Purpose of investigation is to "find the facts" _____
 share process and policy to be used
 share time line
 will be notifying parents (if approp)
5. What information do they have about alleged conduct. (specifics);who else should we talk with? _____
6. Tell them that name of complainant and witnesses may have to be shared with 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 parents/guardians if _____

appropriate.

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Questions for Witnesses (anyone with relevant knowledge)

- > Start with some simple, easy questions... how are you doing today? Have any problems getting to our interview? Do you have arrangements for your classes/job duties?
- > Have you ever seen anything inappropriate occur between _____ & _____?
- > What did you see/hear?
- > What did each person say? How did (the complainant) respond?
- > What was the attitude of (the accused)? Was she joking? Threatening?
- > Did you participate in the incident? How? How did you come to see what happened?
- > Did anyone else see or hear what happened?
- > Did you talk to anyone after seeing/hearing of the incident(s)? Who? What did you say? What did they say or do?
- > Did either party talk to you after the incident? What did they say? How did she appear to you?
- > What has been the effect of this on (the complainant)? On (the accused)?
- > Have you ever seen (the accused) behave this way before? If so, when? With whom? What happened? Did anyone complain?
- > What is your understanding of their relationship? Has it changed recently?
- > Have you seen or heard (the accused) do or say anything similar before? What and when? With whom? Did anyone complain?
- > Do you know any reason (the accused) would think his/her behavior was welcome?
- >> Do you know any reason why (the complainant) would falsely accuse (the accused)?
- > What is your relationship with both of these persons?
- >> How has this incident affected you?
- > Is there anything else you would like me to know that I haven't covered?
- > You know that by assisting in this process, you are protected from any retaliation from anyone. If you receive or witness behavior towards yourself or others that is intended to pressure you because you talked with me, will you contact me asap?
- >> Others:

Adapted from the excellent resources in *Investigating Sexual Harassment*, 1st ed., Thompson Publishing Group, 2001.

Checklist for "Environmental Scan"

NOTE: When you interview for an environmental scan (following on rumors, for example), it is most important that you do not pollute the information by asking directly about sexual harassment and/or persons allegedly involved in the incident(s). Begin by asking about how things are at (location). After finding out about how they feel about school/workplace, you can ask them if they have any concerns. Then you can ask if they have observed anything which could make them feel uncomfortable or intimidated.

If, during the scan, an interviewee brings up feelings or concerns about harassment, you can pursue those specifically, using the types of questions appropriate for a witness.

Date /Initials

1. Explain you are there to check how things are going in the school or workplace. _____
2. Refrain from leading questions which identify an incident or individuals under investigation. _____
3. Ask if they have any concerns they would like to share. _____
4. Ask if there are particular persons you should talk to who might have concerns. _____
5. Ask if they have observed any behavior that is "not okay" or intimidating in the school/workplace. _____
6. Ask if there are any rumors which need to be looked into. _____
7. Review what they have shared and thank them. Encourage them to report anything troubling to _____

A Word About Taking Notes and Recording

- Experts differ evenly about whether or not you should take detailed notes. Solid notetaking can demonstrate you did all you could to address a complaint and take it seriously.
- Some experts recommend witnesses sign your transcription of the interview notes. Others advise that high degrees of documentation are not necessary since most cases don't go to court.
- A guideline: the more severe the alleged conduct, the more detailed your notes should be.
- If your notes aren't legible, transcribe them.
- In the investigation report, summarize your findings with quotes and sights from your interview notes.
- Keep your notes after summarizing and writing your report!
Keep written and signed statements of witnesses!
- You might not insist that everyone you talk to signs their statements•• it can indeed be intimidating.
- BE OBJECTIVE when taking notes. "Just the facts, man/sir."
If you believe someone is lying, then take detailed notes about how they appeared rather than your judgment that they were lying: "her hands were shaking and she averted eye contact, repeatedly clearing her throat"
- Don't use a tape recorder unless the interviewee insists on recording it him/herself. Then swap copies of tape. Recording intimidates; machines fail; transcription is lengthy and expensive.

Adapted from the [excellent resources](#) in *Investigating Sexual Harassment*, 4th Ed. Thompson Publishing Group, 2001.

How Sexual Harassment Affects the Victim/Target

Physical Effects

Stress-related physical symptoms and problems including:

- acne, skin problems
- changes in body weight
- colds; sore throats; frequent illness
- dependence on alcohol or other drugs
- headaches/stomach aches/backaches/ other physical aches and pains
- illness
- nausea
- sleeplessness/sleep disturbances
- ulcers, diarrhea, intestinal problems
- sudden changes in patterns of dress (e.g., "hiding" behind bulky clothing)

Emotional Effects

- anger
- anxiety
- confusion
- depression
- detachment
- embarrassment
- fear
- feeling degraded
- feeling intimidated
- feeling powerless
- feelings of dread
- guilt
- hopelessness
- humiliation
- irritability
- isolation/withdrawal
- loss of trust in others
- low self-esteem
- mood swings
- self-blaming
- self-doubt
- shame
- stress

School Performance/Experience Effects

- absenteeism
- "acting out" (behaving inappropriately to get attention)

- damaged reputation
- delayed graduation
- drop in quality of school/job work
- dropping a class/leaving a program
- dropping out of school/quitting
- inability to concentrate /feeling distracted
- loss of friends
- loss of trust in the educational system
- lower grades/evaluations
- switching classes/tear sf activities
- switching schools/job ;ites
- switching work-study assignments
- tardiness/ truancy
- loss of privacy
- avoidance behaviors with friends or certain teachers /staff
- increase in rumor-mill :ictivity

Future Effects

- continued inability to trust others
- continued stress-related physical problems and symptoms
- loss of job recommendations
- loss of recommendation::tS for college admission or continuing education
- loss of career and job opportunities
- loss of economic oppo l tunities

Job-Related Effects

- loss of income
- loss of job and employl ?e benefits including unemployment insurance
- loss of promotional opportunities and job-related educational opportunities
- loss of job skills
- reassignment
- dread of work
- distraction from tasks
- inability to work
- drop in work quality
- loss of job recommendations
- absenteeism
- tardiness

Adapted from *Sexual Harassment 2nd Teens*, Susan Strauss, Spint Publications, 1992.

Wrapping it all up..•The Investigation Report

Heading: To whom does the report go? What is the subject? Is it confidential or not? What is the "Re:" line -case, incident, complaint under investigation?

Background:

1. Write a summary paragraph including the date of the report/complaint, and who filed/made it.

2. Name the 'authority' (law, poHcy, regulation, etc.) that appears to be involved with this alleged behavior (Title IX, District Policy on Sexual Harassment or Equal Educational Opportunity, Title VII [empl>yment equity], or state laws) -quote the relevant portions of the law cir policy when possible.

3. In summary, describe the investigative process that was used: on which dates, which persons were interviewed, phone or in-person interviews used, etc. Include a description of any special circumstances: anyone who declined or refused to be interviewed, use of interpreters or special assistance, other sets of notes that were taken by others, presence of attorneys or law enforcement.

Allegations: taking each allegation, individually ...

1. Specifically describe each allegation.

2. Describe what you believed happened and the supporting comments (verbatim please) from various interviewees.

3. Describe specifically the impact of the behavior on the complainant or target, and on others.

4. Summarize what you believe happened, who you believe is credible, and whether or not you find it a violation of policy or law/regulation.

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Findings:

1. Determine which allegations you:
 - a. can substantiate;
 - b. can refute or disprove;
 - c. are unable to substantiate one way or the other;
 - d. believe have been fabricated.
2. Your standard is "a preponderance of the evidence" in substantiating allegations (more evidence to support than to refute).
3. Finally, state whether or not in your opinion as an investigator, the substantiated conduct was a violation of policy and/or law or regulation.
4. Describe any special concerns you have for retaliation and why.

Options for Remediation (optional):

Identify any suggestions you have for remediating the environment, remediating/supporting the major parties, training, and monitoring future situations.

Attachment:

Attach copies of all related written statements, material evidence, policies and laws relevant to the situation, memoranda, etc.

A few Tips when doing inquiries or investigations ...
(taken from OCR 2001 Guidance on Title IX)

Some advice in determining credibility of an individual's report or response ...

In determining *credibility* assess:

- The level of detail and consistency of each person's account to determine who's telling the truth.
- Is the corroborative evidence lacking where it should logically exist? (Note however, that the absence of witnesses may also be evidence of fear or unwillingness to step forward.)
- Is there evidence or documentation that the accused harasser *has* harassed others in the past? This may lend credibility to the current grievant.
- Is there evidence of false or fabricated accusations being made previously by the grievant/subject? This *may* weaken the credibility of their current complaint.
- Is there evidence of the target's reactions after the harassing behavior occurred, such as writing it down, telling others, leaving the situation abruptly, avoidance behaviors? (Note that some behaviors may not appear until days or weeks after the harassment, especially with students.)
- How quickly was the report filed with appropriate authorities? (Note that retaliation can inhibit or even prevent people from filing promptly, or people may not file promptly because they have reasonable doubt that the authorities receiving their concerns will not believe them.)

What do you need to know?

FACTS - What happened in specific details?

1. WHO, WHAT, WHERE, WHEN, WHY, WHO ELSE WAS INVOLVED?

Can you construct a "verbal photo" of the incident, pattern of the behavior or conduct?

2. Was the behavior "sexual in nature" or directed because of the target's gender? How so?
3. What do witnesses or other "players" in the incident say about what happened?
4. What are indicators the behavior was "unwanted" or "unwelcome"?

NOTES:

IMPACT - What was the impact of this behavior?

1. What does the target say is the impact of this behavior on them?
What is the impact on witnesses, the school climate, the community (on students, teachers, staff, administration, community, parents/families, or others)?
2. What are the comments from others (co-workers, faculty, administration, community, clients, students, parents, public, others) about the impact of effects of this behavior/incident/pattern of conduct?
3. Is the behavior "unreasonably interfering" with the target's educational program/benefit/participation?
4. What factors contribute to the "severity" of the behavior? (see OCR guidance)

NOTES:



CONTEXT and ANALYSIS- What happened before? How do I interpret what I have just learned?

1. **Is this behavior part of a pattern, or possible to become a pattern? Or was the behavior pervasive in the target's environment?**
2. **What is the history of interactions between the persons involved?**
3. **What is the record of prior disciplinary action (including verbal warnings) of the individuals involved?**
4. **Is there evidence of retaliation?**
5. **What are the legal authorities related to this complaint (district policies, state and federal laws, employment agreements, standards of professional conduct, student or staff discipline policies, etc.)?**
6. **What is the attitude/motivation of the accused (denial, apologetic, confused, unaware, aggressive, apothetic)? Had they made any effort to correct a similar situation after communication with the district?**

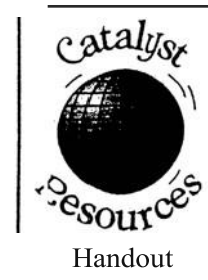
NOTES:

ACTION - What decisions or actions should be taken?

1. **What did the target request as a "remedy"?**
2. **What specific conduct or behavior should be stopped?
What changes do you recommend or direct to be improved?**
3. **What resources will you provide to affect these changes (workshops, counseling, monitoring, mentoring, retraining... for accused & the school)?**
4. **How will you determine that the individual has been successful in meeting your directed changes?**
5. **Have you double-checked all required procedures, rights, guarantees, etc., and have you met them as required?**
6. **How will you protect against retaliation?**

NOTES:

Investigating Allegations of Sexual Harassment "Sorting through your information"



Sexual Harassment is...

1. Unwanted or unwekomenes s communicated (from the target's perspective):

- was unwekomenes s communicated directly?
indirectly?
inferred?
- should it have been assumed?

2. BehaVior of a gender-directed or sexual nature:

- what is the nature of the behavior(s) sexual?
directed at someone because of their gender?
pcu:t of a pattern that includes sexualized behavior?

3. Severe,pervasive or persistent enough to interfere with learning /working:

- behavior severe by OCR guidelines?
- part of a pattern or accumulated effect that together is severe?
- impact on target, witnesses, others?
- degree of interference with working or learning activities?
- severity factors present
 - Size and location of school
 - Age and sex of harasser and target
 - Frequency and severity of conduct (eg. entrapment)
 - Presence of threatening behavior vs. humiliating conduct
 - Regularity
 - Degree of interference with school
 - Adult involvement, especially if in authority over target
 - In concert or alone
 - Intentional vs. accidental behavior
 - Pattern and duration

Information to Share with Student 5/Staff

What you can expect if You are Harassed

- 1) When reporting the incident you have the right to:
- a) have someone of your choice present with you when you talk to the complaint manager (a friend, parent, school employee, counselor, coach, etc.).
 - b) NOT CONFRONT the harasser alone at any time.
 - c) be listened to and taken seriously.
 - d) stop the interview and take your complaint to another administrator if you believe your report or complaint is being handled inappropriately.
 - e) get a copy of the district's harassment and grievance policies.
 - share what you need to feel safe and comfortable during the investigation.

2) 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) the investigation will be immediately and be completed in a timely manner.
- d) you will be informed as to the progress of the investigation.
- e) you will be informed as to the result of the investigation.
- you may have to testify in front of the harasser in the presence of the 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.
- g) when indicated remedial steps will be taken to stop the harassing behavior.
- h) 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.
- i) you will be given the name of someone to contact during the process for information, assistance or to report retaliation.
- j) your parents/ guardian may be notified during the process in accordance with state and federal requirements.

What you can expect if you are Accused

1) When receiving a complaint against you with respect to sexual harassment, you have the right to:

- a) have someone of your choice present with you when you talk to the complaint manager (friend, parent, school employee, teacher, coach, counselor, etc.).
- b) be given the name of the person making the complaint.
- c) be given the specifics of the allegation(s).
- d) be given the opportunity to respond to the allegation(s).
- e) provide the names of persons to whom the investigator may want to speak and/or interview.
- f) 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.
- g) a copy of the grievance and harassment policies and the procedure that will be used to process the complaint.

2) You can expect that:

- a) the investigation will begin immediately and be completed in a timely manner.
- b) you will be warned not to contact the person who filed the complaint.
- c) you will be informed as to the progress and the result of the investigation.
- d) 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.
- e) if warranted, remedial steps will be taken and could include suspension and/or expulsion.
- f) if warranted, the complaint and remedial steps will become part of your school discipline record.
- g) your parents/guardian may be notified during this process according to federal and state requirements.

Effective Intake Interviews - Guidelines

When an individual comes to you as a trusted teacher, advisor, or administrator, remember these guidelines for these important conversations:

- DO**
- Be a good and attentive listener.
 - Let them know you take their 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 your 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 a "no").
 - Make "chilling comments" like:
 - "What did you do that brought 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..."
- Take report seriously: "This is obviously 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 this same issue. Let's go to that 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 Title IX Coord. or grievance manager.

Adapted from *Educators' Guide to Controlling Sexual Harassment*, by Thompson Publishing Group, 1993.
28 - *Handling Complaints and Investigations of Sexual Harassment*

Appendix C: Sexual Harassment and Abuse Definition and Sexual Harassment Continuum

Workshop Notes on Sexual Harassment

These notes include definitions, examples, legal case updates, district responsibilities, and options for handling harassment if it occurs. Keep these for future reference and for sharing with others. They are for guidance on "best practice" and are not a substitute for the advice of your own district legal counsel.

Working Definition

Sexual harassment is unwanted behavior of a sexual or gender-directed nature (either verbal, nonverbal, visual or physical) that unreasonably interferes with work or learning.

Federal Definitions and Guidelines

Title VII of the 1964 Civil Rights Act (enforced by the EEOC) defines it as:

unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. . . .

This behavior constitutes sexual harassment when one of these criteria are met in a work or learning place:

Criteria 1: Submission to such conduct is made either implicitly or explicitly • a condition or term of employment or education. (Quid Pro Quo - "this for that")

Criteria 2: Submission to or rejection of such conduct is used as a basis for employment or educational decisions affecting an individual. (Quid Pro Quo)

[Key: once is enough. Liability: Strict liability for employer if supervisor is perpetrator; "if knew or reasonably should have known" for adult to student situations; unclear if QPQ can apply to student peers.]

Criteria 3: Such conduct has the purpose or effect of unreasonably interfering with the individual's performance or creating an intimidating, hostile or offensive working or learning environment. (Hostile Environment)

[Key: severe and pervasive. Liability for adult-to-student behavior: "if an official with authority to take correction knew about it and failed to take appropriate action. Liability for student: student: if official knew about it and responded with "deliberate indifference."]



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Legal and Policy Authorities

Title VII of the Civil Rights Act of 1964 provides protection from sex discrimination in employment. (EEO process available through Montana Human Rights Commission.)

Title IX of the Education Amendments of 1972 (enforced by the U.S. Department of Education Office for Civil Rights) prohibits sex discrimination (including sexual harassment) in educational programs receiving federal funds. Title IX required the equal treatment of students and the OCR enforces this with audits of schools, and action on complaints filed by students, teachers, trustees, and parents. OCR defines it as:

"... verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient (school district) that denies, limits, provides different, or conditions the provision of aid, benefits, services or treatment protected under Title IX."

"§ 106.8 Designation of responsible employee and adoption of grievance procedures.

(a)... Each recipient (district) shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities... including all investigation of any complaint communicated to such recipient alleging its noncompliance with this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee appointed...

(b)... A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part." (34 CFR 106.8, Title IX regulation, Federal Register, Vol. 45, No. 92, May 9, 1980.)

Montana Human Rights Laws and Regulations

In addition to these federal laws, the Montana Human Rights Act implementing Regulations, SubChapter 10 on Sex Discrimination in Education (ARM) excerpted here, prohibits sexual harassment and intimidation:

24.9.1002 DEFINITIONS. (9) "Sexual harassment" means to welcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. (10) "Sexual intimidation" means any unwelcome behavior, verbal or physical, which has the effect of subjecting members of either sex to humiliation, embarrassment or discomfort because of their gender.

24.9.1003 TREATMENT OF STUDENTS. (3) No student shall be subjected to sexual intimidation or harassment by any school employee or by the effect of any school policy or practice when any employee or agent of the educational institution knew or reasonably should have known of the activity, policy or practice. No student shall be subject to sexual harassment or sexual intimidation by another student on school-owned or controlled property or at any school sponsored or supervised function or activities when any agent or employee of the educational institution knew or reasonably should have known of the activity.

Your own School District Policies and Procedures: _____



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The Montana High School Association and Montana Officials Association:

"The MHSA believes that all individuals should be treated with respect and dignity. Students should be able to participate in MHSA sponsored activities in an environment that is free from sexual harassment and sexual violence. Each member school is responsible for taking such action and enacting such policies as may be necessary to address incidents of sexual harassment and sexual violence and to ensure that an environment free of such prohibited conduct is maintained. Any member school which sponsors or operates such activities is subject to expulsion from the MHSA." (MHSA Handbook 1k)

"The Montana Officials Association believes that all its members should strive to provide a healthy, safe and appropriate environment for athletic competition. This philosophy dictates that each individual involved with intercollegiate competition be treated with respect and dignity. An integral part of a contest official's role is awareness of what behaviors or practices are considered unacceptable. The following informal policy identifies what is considered wrongful conduct, both on and off the contest arena and said conduct is hereby prohibited

Sexual Harassment is a form of sex discrimination, which violates federal law. Sexual harassment is illegal. Sexual harassment includes requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature.
Sexual Intimidation is conduct, which subjects members of either gender to humiliation, embarrassment, or distress. Sexual intimidation can be verbal or nonverbal.
Sexual Violence is an act of physical aggression that includes a sexual act or sexual intercourse. Sexual violence could include, but is not limited to, touching, grabbing or patting another person's intimate body part, coercive sexual touching, or coercive sexual intercourse. Using force or the threat of force to engage in sexual touching or sexual intercourse also constitutes sexual violence." (M/JSA Handbook.)

Critical Court Decisions

Franklin v. Gwinnett Co. Schools, USSup Ct 1992: The first Title IX case to reach the high court (sexual harassment of a student by a teacher/coach), this decision found that individuals may now sue school districts for damages in complaints of intentional discrimination in schools.

Gebser v. Lago Vista Schools, USSup Ct 1998: This case established the standard for liability in teacher/staff-to-student harassment cases – a district is liable if an official has the authority to take corrective action has actual notice, and is deliberately indifferent to it

Davis v. Monroe, USSup Ct 1999: Districts will be liable for peer student harassment if officials knew about it and responded to it with "deliberate indifference": if school officials have strong policies, training, and take reports seriously, they are acting appropriately.

Jackson v. Birmingham Bd Educ., USSup Ct 2005.: In a March 2005 decision, the US Supreme Court held that school employees may sue school districts for disciplinary action taken against them as a result of their complaining about discrimination or sexual harassment of others. Schools are advised to prepare themselves for a potential increase in Title IX litigation by seeking legal advice and better training staff.

- Post-Davis Tips for School Districts:
- Policies with clear definitions and procedures are followed in reporting/handling complaints.
 - Students are trained and understand what constitutes harassment and where to go to report it.
 - Teachers, staff and other employees know what to do if they witness/receive a complaint.
 - Response is prompt when complaints arise; behavior is stopped and recurrence prevented.



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BASIC RESPONSIBILITIES : IDENTIFY it, STOP it, then PREVENT its recurrence.

1. Adopt a Sexual Harassment Policy, and an effective Grievance Procedure. Publish in student, staff and family handbooks and notices. Publish name and location of complaint managers and Title IX Coordinator .
2. Establish guidelines for site personnel on handling reports, complaints and disclosure.
3. Provide regular on-going training for staff, student, family members, and volunteers in all district programs.
4. Clearly prohibit sexual harassment and abuse and remind staff, students and volunteers of the sanctions for misconduct.
5. Provide prompt, equitable, and remedial action and investigation of all complaints.
6. Prohibit any form of retaliation against persons bringing reports or complaints, or against anyone assisting in an investigation .
7. Provide remedial action including mediation, counseling, retraining, monitoring and follow-up to insure that misconduct has stopped.



Informal and formal channels for resolving problems:

Many student-to-student harassment problems can be solved informally. Informal procedures do not mean the district doesn't take them seriously. But informal measures have advantages:

- processes are less frightening, less litigious, and less costly;
- confidentiality is easier to protect for all parties;
- publicity is less, and peer pressure may be less;
- process can be educational for perpetrators;
- process is less adversarial - less "your word against theirs";
- sanctions used can be more creative and effective.

NOTE: Informal processes are only possible if the parties voluntarily agree.



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Handling Complaints

Formal procedures may be initiated at any time during informal measures, or initiated without taking any informal steps:

1. File a formal complaint in the district's grievance procedures.
2. If problem is staff related, persons can file a complaint in their employee agreement procedures.
3. File a formal complaint with the Montana Human Rights Bureau (either under state law or federal law with the EEOC).
4. File civil action in federal court (under Title IX) or state court (under Montana Human Rights Act).
5. File a complaint with the U.S. Department of Education, Office for Civil Rights (under Title IX) in Seattle (*note this is a new office assignment*).

Important Contact Information

- Office of Public Instruction, PO Box 20251, Helena MT 59620-2501, 406/.144-3161
- MT Human Rights Bureau, PO Box 1728, Helena 59624, 406/444-4344, 800/542-0807
- USDOE Office for Civil Rights, Seattle Office, 915 Second Ave., Rm 331(1), 10-9010, Seattle, WA 98174-1099, 206/220-7880; fx: 206/220-7887; TDD 206/220-7907; Email: OCR.Seattle@ed.gov
- MT High School Assoc., 1 South Dakota, Helena 59601, 406/442-010
- MT School Administrators, 1134 Butte Ave., Helena 59601, 406/442-2510
- Catalyst Resources, 301 S. Oakes, Helena 59601, 431-6589
- Your District Legal Counsel:
- Your District Title IX Coordinator/ Title IX Team:
- Others:



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SEXUAL HARASSMENT

A Continuum of Unwanted Sexual and Gender-directed Behavior Patterns

| VISUAL | VERBAL | WRITTEN | TOUCHING | POWER | THREATS | FORCE |
|--|---|---|--|--|--|--|
| Ogling, Leering Staring Posters, Cartoons Graphics Magazines, Flyers Pin-ups Gestures Extreme Forms (could be criminal) Mooning* Flashing* | Requests for Dates Very Personal Questions Lewd Comments Dirty/Sexual Jokes Whistling, Cat- calling Obscene Calls Sexual Rumors | Love Letters or Poems Obscene Letters Cards, Notes Graphics | Violation of Space Patting, Rubbing Pinching Bra-snapping Caressing Blocking of Movement Kissing Groping Grabbing | Retaliation Using Position to Request Dates or Sexual Favors Gender-directed Favoritism or Disparate Treatment Hazing Rituals | Quid Pro Quo Demands Conditioning of Grades or References for Sexual Favors Retaliation for Refusal to Comply with Requests Loss of Job or School Position Loss of Promotion | Attempted or Actual Rape Attempted or Actual Assault Pantsing Stripping Extreme Forms of Hazing Stalking Indecent Exposure* Mooning Flashing |

OFFENSIVE CONDUCT (may be illegal).....

HOSTILE ENVIRONMENT (if severe and pervasive)..... *QUID PRO QUO (once is enough)*

Axioms from Susan Webb: The less severe the form, usually the more it needs to be repeated before it is illegal sexual harassment. The more severe the form, the less it needs to be repeated before it rises to the perspective of a reasonable victim.

**Appendix D: Effective Intake Interviews –
Guidelines for Trusted Teacher, Advisor,
Or Administrator**

Effective Intake Interviews - Guidelines }

When an individual comes to you as a trusted teacher, advisor, or administrator, remember these guidelines for these important conversations:

- DO**
- Be a good and attentive listener.
 - Let them know you take their concern 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 Coordinator, grievance manager, and counselors.
 - Keep written documentation of your conversation.
 - Follow up with the person in 5-7 days; again in 2 weeks.
- DON'T**
- Ask leading questions (can be answered with a "yes" or a "no").
 - Make "chilling comments" like:
 - "What did you do that brought you 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."
- **TAKE REPORT SERIOUSLY:** "This is obviously 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 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 this same issue. Let's go to that 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 referrals to Title IX Coordinator or grievance manager.

Adapted from *Educators' Guide to Controlling Sexual Harassment*, by Thompson Publishing Group, 1993.

As a Student, How Do I Stop Unwanted Sexual Attention? Unwanted Sexual Attention?

DO ...

- Tell the harasser to STOP - in clear and in no uncertain terms with a witness, preferably an ADULT - TRY THE BROKEN RECORD TECHNIQUE:

I felt ... [embarrassed, humiliated, degraded, hurt, angry, dirty, ...]

When you [DESCRIBE OFFENSIVE BEHAVIOR SPECIFICALLY], at [TIME] and [PLACE].

I want you to [STATE SPECIFICALLY WHAT YOU WANT] [STOP, apologize, tell others you lied, ...]

If you do not [STOP or take other requested action], I will take further action to make sure you do.

- KEEP A JOURNAL with details of each incident, [who, what when, where, actions taken, feelings, effects].
- TELL OTHERS. Tell the first-line supervisor or school official not involved in the act. Tell any adult you trust.
- WRITE A LETTER TO THE HARASSER detailing items listed above. SIGN, date, and deliver in person WITH AN ADULT WITNESS.
- 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.

DONOT ...

- BLAME YOURSELF. It is wrong. We are each responsible for our own behavior.
- IGNORE IT. It will not go away. It may get worse.

"How should I respond if someone tells me that something I did feels like sexual harassment?"

DO ...

- LISTEN respectfully, without interrupting.
- ACKNOWLEDGE THEIR FEELINGS.They can feel differently than you think they should.
- ADMIT your behavior,if you behaved as they say you did.
- ACCEPT RESPONSIBILITY for the consequences of your behavior. Agree to make amends.
- APOLOGIZE.
- EXPLAIN why you behaved as you did [I really like you and didn't know how to show you....]
- PROMISE NOT TO DO IT AGAIN and to do whatever else is needed to correct the situation.

DO NOT...

- BLAME anyone else for your behavior. You are responsible for your conduct.
- TELL THE PERSON COMPLAINING THEY SHOULDN'T FEEL AS THEY DO [it was just a joke...; don't you have a sense of humor? you're too sensitive...; Everyone else thought it was funny...; I did you a favor...]

SO, HOW DO I KNOW IF MY BEHAVIOR IS "WELCOME" OR NOT?

Ask_yourseff these questions:

1. Would I want my behavior to be the subject of a column in the school newspaper or a feature on the evening news?
2. Is there equal POWER or STATUS between me and the other person?
3. Would I behave the same way if my girl/boyfriend or my parent were beside me?
4. Would I want someone else to act this way toward me or someone I care about, -my girl/boyfriend, mother, father, sister or brother
5. Is there equal initiation and participation between me and the other person?
6. Does the person's verbal and/or non-verbal response show they like what I am 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.

And 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 serious 7...

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 toward them.