

1 Great Falls School District

2

3 **PERSONNEL**

4

5012P

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6 Sexual Harassment Grievance Procedure – Employees

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

12

13 Definitions

14

15 The following definition apply for Title IX policies and procedures:

16

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

21

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

26

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

29

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

32

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

36

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

40

41 District Requirements

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43 When the District has actual knowledge of sexual harassment in an education program or activity  
44 of the District, the District will respond promptly in a manner that is not deliberately indifferent.

45 When the harassment or discrimination on the basis of sex does not meet the definition of sexual

1 harassment, the Title IX Coordinator will direct the individual to the applicable sex  
2 discrimination process for investigation.

3  
4 The District treats individuals who are alleged to be the victim (Complainant) and perpetrator  
5 (Respondent) of conduct that could constitute sexual harassment equitably by offering supportive  
6 measures. Supportive measures are designed to restore or preserve equal access to the District's  
7 education program or activity without unreasonably burdening the other party, including  
8 measures designed to protect the safety of all parties or the District's educational environment, or  
9 deter sexual harassment. Supportive measures may include counseling, extensions of deadlines  
10 or other course-related adjustments, modifications of work or class schedules, mutual restrictions  
11 on contact between the parties, leaves of absence, increased security and monitoring of certain  
12 areas of the District's property, campus escort services, changes in work locations and other  
13 similar measures.

14  
15 The Title IX Coordinator is responsible for coordinating the effective implementation of  
16 supportive measures. Upon the receipt of a complaint, the Title IX Coordinator must promptly  
17 contact the Complainant to discuss the availability of supportive measures, consider the  
18 Complainant's wishes with respect to supportive measures, inform the Complainant of the  
19 availability of supportive measures with or without the filing of a formal complaint, and explain  
20 to the Complainant the process for filing a formal complaint. If the District does not provide the  
21 Complainant with supportive measures, then the District must document the reasons why such a  
22 response was not clearly unreasonable in light of the known circumstances.

#### 23 24 Timelines

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

#### 34 35 Response to a Formal Complaint

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

41  
42 The District must follow the formal complaint process before the imposition of any disciplinary  
43 sanctions or other actions that are not supportive measures. However, nothing in this policy  
44 precludes the District from placing a non-student employee Respondent on administrative leave  
45 during the pendency of the grievance process. The District may also remove a student  
46 Respondent alleged to have harassed an employee Complainant from the education setting. The

1 student may receive instruction in an offsite capacity during the period of removal. This  
 2 provision may not be construed to modify any rights under the Individuals with Disabilities  
 3 Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities  
 4 Act.

5  
 6 Upon receipt of a formal complaint, the District must provide written notice to the known parties  
 7 including:

- 8  
 9 1. Notice of the allegations of sexual harassment, including information about the identities  
 10 of the parties involved in the incident, the conduct allegedly constituting sexual  
 11 harassment, the date and location of the alleged incident, and any sufficient details known  
 12 at the time. Such notice must be provided with sufficient time to prepare a response  
 13 before any initial interview.
- 14 2. An explanation of the District's investigation procedures, including any informal  
 15 resolution process;
- 16 3. A statement that the Respondent is presumed not responsible for the alleged conduct and  
 17 that a determination regarding responsibility will be made by the decision-maker at the  
 18 conclusion of the investigation;
- 19 4. Notice to the parties that they may have an advisor of their choice who may be, but is not  
 20 required to be, an attorney, and may inspect and review any evidence; and
- 21 5. Notice to the parties of any provision in the District's code of conduct or policy that  
 22 prohibits knowingly making false statements or knowingly submitting false information.

23  
 24 If, in the course of an investigation, the District decides to investigate allegations about the  
 25 Complainant or Respondent that are not included in the notice initially provided, notice of the  
 26 additional allegations must be provided to known parties.

27  
 28 The District may consolidate formal complaints as to allegations of sexual harassment against  
 29 more than one Respondent, or by more than one Complainant against one or more Respondents,  
 30 or by one party against the other party, where allegations of sexual harassment arise out of the  
 31 same facts or circumstances.

### 32 33 Investigation of a Formal Complaint

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

- 36  
 37 1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a  
 38 determination regarding responsibility rests on the District and not the parties';
- 39 2. Provide an equal opportunity for the parties to present witnesses and evidence;
- 40 3. Not restrict either party's ability to discuss the allegations under investigation or to gather  
 41 and present relevant evidence;
- 42 4. Allow the parties to be accompanied with an advisor of the party's choice who may be,  
 43 but is not required to be an attorney. The District may establish restrictions regarding the  
 44 extent to which the advisor may participate in the proceedings, as long as the restrictions  
 45 apply equally to both parties;

- 1 5. Provide written notice of the date, time, location, participants, and purpose of any
- 2 interview or meeting at which a party is expected to participate, with sufficient time for
- 3 the party to prepare to participate;
- 4 6. Provide the parties equal access to review all the evidence collected which is directly
- 5 related to the allegations raised in a formal complaint and comply with the review periods
- 6 outlined in this process;
- 7 7. Objectively evaluate all relevant evidence without relying on sex stereotypes;
- 8 8. Ensure that Title IX Coordinators, investigators, decision-makers and individuals who
- 9 facilitate an informal resolution process, do not have a conflict of interest or bias for or
- 10 against Complainants or Respondents generally or an individual Complainant or
- 11 Respondent;
- 12 9. Not make credibility determinations based on the individual's status as Complainant,
- 13 Respondent or witness;
- 14 10. Not use questions or evidence that constitute or seek disclosure of privileged information
- 15 unless waived.

### 16 Dismissal of Formal Complaints

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18  
19 If the conduct alleged in the formal complaint would not constitute sexual harassment even if  
20 proved, did not occur in the District's education program or activity, or did not occur against a  
21 person in the United States, then the District must dismiss the formal complaint with regard to  
22 that conduct for purposes of sexual harassment under this policy.

23  
24 The Title IX Coordinator also may dismiss the formal complaint or any allegations therein at any  
25 time during the investigation or hearing, if applicable, when any of the following apply:

- 26  
27 1. A Complainant provides written notification to the Title IX Coordinator that the
- 28 Complainant would like to withdraw the formal complaint or any allegations therein;
- 29 2. The Respondent is no longer enrolled or employed by the District; or
- 30 3. Specific circumstances prevent the District from gathering evidence sufficient to reach a
- 31 determination as to the formal complaint or allegations therein.

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33 Upon dismissal, the Title IX Coordinator promptly sends written notice of the dismissal and the  
34 reasons for dismissal simultaneously to both parties.

### 35 Evidence Review

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

1 hard copy. The parties have 10 calendar days to submit a written response to the Title IX  
2 Coordinator, which the investigator will consider prior to completion of the investigative report.

### 3 4 Investigative Report

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

### 11 12 Decision-Maker's Determination

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

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

30  
31 The decision-maker must issue a written determination regarding responsibility based on a  
32 preponderance of the evidence standard. The decision-maker's written determination must:

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

- 1           6. The procedures and permissible bases for the Complainant and/or Respondent to appeal  
2           the determination.  
3

4 A copy of the written determination must be provided to both parties simultaneously, and  
5 generally will be provided within 60 calendar days from the District's receipt of a formal  
6 complaint.  
7

8 The determination regarding responsibility becomes final either on the date that the District  
9 provides the parties with the written determination of the result of the appeal, if an appeal is  
10 filed, or if an appeal is not filed, the date on which an appeal would no longer be considered  
11 timely.  
12

13 Where a determination of responsibility for sexual harassment has been made against the  
14 Respondent, the District will provide remedies to the Complainant that are designed to restore or  
15 preserve equal access to the District's education program or activity. Such remedies may include  
16 supportive measures; however, remedies need not be non-disciplinary or non-punitive and need  
17 not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective  
18 implementation of any remedies. Following any determination of responsibility, the District may  
19 implement disciplinary sanctions in accordance with State or Federal law and/or the negotiated  
20 agreement. For employees, the sanctions may include any form of responsive discipline, up to  
21 and including termination.  
22

### 23 Appeals 24

25 Either the Complainant or Respondent may appeal the decision-maker's determination regarding  
26 responsibility or a dismissal of a formal complaint, on the following bases;  
27

- 28           1. Procedural irregularity that affected the outcome of the matter;  
29           2. New evidence that was not reasonably available at the time that could affect the outcome;  
30           and  
31           3. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias  
32           for or against Complainants or Respondents generally or an individual Complainant or  
33           Respondent that affected the outcome.  
34

35 The District also may offer an appeal equally to both parties on additional bases.  
36

37 The request to appeal must be made in writing to the Title IX Coordinator within seven calendar  
38 days after the date of the written determination. The appeal decision-maker must not have a  
39 conflict of interest or bias for or against Complainants or Respondents generally or an individual  
40 Complainant or Respondent and cannot be the Title IX Coordinator, the investigator, or the  
41 decision-maker from the original determination.  
42

43 The appeal decision-maker must notify the other party in writing when an appeal is filed and  
44 give both parties a reasonable equal opportunity to submit a written statement in support of, or  
45 challenging, the outcome. After reviewing the evidence, the appeal decision-maker must issue a  
46 written decision describing the result of the appeal and the rationale for the result. The decision

1 must be provided to both parties simultaneously, and generally will be provided within 10  
2 calendar days from the date the appeal is filed.

### 3 4 Informal Resolution Process

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

- 11  
12 1. Provides to the parties a written notice disclosing:
  - 13 a. The allegations;
  - 14 b. The requirements of the informal resolution process including the circumstances  
15 under which it precludes the parties from resuming a formal complaint arising  
16 from the same allegations, provided, however, that at any time prior to agreeing to  
17 a resolution, any party has the right to withdraw from the informal resolution  
18 process and resume the Title IX formal complaint process with respect to the  
19 formal complaint; and
  - 20 c. Any consequences resulting from participating in the informal resolution process,  
21 including the records that will be maintained or could be shared.
- 22 2. Obtains the parties' voluntary, written consent to the informal resolution process.

23  
24 The informal resolution process generally will be completed within 30 calendar days, unless the  
25 parties and the Title IX Coordinator mutually agree to temporarily delay or extend the process.  
26 The formal grievance process timelines are stayed during the parties' participation in the  
27 informal resolution process. If the parties do not reach resolution through the informal resolution  
28 process, the parties will resume the formal complaint grievance process, including timelines for  
29 resolution, at the point they left off.

### 30 31 Recordkeeping

32  
33 The District must maintain for a period of seven years records of:

- 34  
35 1. Each sexual harassment investigation, including any determination regarding  
36 responsibility, and disciplinary sanctions imposed on the Respondent, and any remedies  
37 provided to the Complainant designed to restore or preserve equal access to the District's  
38 education program or activity;
- 39 2. Any appeal and the result therefrom;
- 40 3. Any informal resolution and the result therefrom; and
- 41 4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any  
42 person who facilitates an informal resolution process. The District must make these  
43 training materials publicly available on its website.

44  
45 The District must create, and maintain for a period of seven years, records of any actions,  
46 including any supportive measures taken in response to a report or formal complaint of sexual

1 harassment. In each instance, the District must document the basis for its conclusion that its  
 2 response was not deliberately indifferent, and document that it has taken measures designed to  
 3 restore or preserve equal access to the District’s education program or activity.

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5 Cross References:

6 Policy 5010	Equal Employment and Non-Discrimination
7 Policy 5012	Sexual Harassment
8 Policy 5255	Employee Discipline

9

10 Legal References:

11 Art. X, Sec. 1, Montana Constitution	Educational goals and duties
12 Section 49-3-101, et seq., MCA	Montana Rights Act
13 34 CFR Part 106	Nondiscrimination on Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

14

17 10.55.701(1)(f), ARM	Board of Trustees
18 10.55.719, ARM	Student Protection Procedures
19 10.55.801(1)(a), ARM	School Climate

20 Civil Rights Act, Title VI; 42 USC 2000d et seq.  
 21 Civil Rights Act, Title VII; 42 USC 2000e et seq.  
 22 Education Amendments of 1972, Title IX; 20 USC 1681 et seq.

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24 Policy History

25 Adopted on:	February 22, 2021
26 Revised on:	
27 Revised on:	