Billings School District 2

STUDENTS

Title IX Sexual Harassment Grievance Procedure

The Billings Public School District has adopted this internal grievance procedure providing for prompt and equitable resolution of complaints alleging sexual harassment prohibited by Title IX of the Education Amendments of 1972 Act ("Title IX"). Sexual harassment is a form of sexual discrimination and is disallowed by the School District in any of its educational programs or activities. The School District does not discriminate on the basis of sex in its educational programs or activities. Individuals alleging discrimination on the basis of sex that is not sexual harassment may use the School District's Policy 1700 uniform complaint procedure or one of the other related complaint procedures.

Definitions

The following definitions apply to the School District's Title IX policies and procedures:

"Sexual Harassment" is defined as any unwelcome conduct on the basis of sex that:

1. Is so severe, pervasive, and objectively offensive that it denies or limits the provision of educational benefits, services, or treatment; or
2. Has the purpose or effect of:
    a. Substantially interfering with a student's educational environment;
    b. Creating an intimidating, hostile, or offensive educational environment;
    c. Depriving a student of educational aid, benefits, services, or treatment; or
    d. Making submission to or rejection of such conduct the basis for academic decisions affecting the student or making such conduct a condition of a student's ability to participate in the student's education.

Sexual harassment can include, but is not limited to unwelcome advances, requests for sexual favors, sexual assault, dating violence, stalking, and any other verbal, non-verbal, or physical conduct of a sexual or sex-based nature that is unwelcome and meets the definition of sexual harassment included above. Examples of sexual harassment include, but are not limited to, touching, crude jokes or pictures, discussions of sexual experiences, teasing related to sexual characteristics, and spreading rumors related to a person's alleged sexual activities. Sexual harassment also includes sexual violence, including but not limited to, physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the use of drugs or alcohol or due to mental handicap or disability.

"Actual Knowledge" is defined as notice of sexual harassment or allegations of sexual harassment provided to the School District's Title IX Coordinator or any official of the School District who has authority to institute corrective measures on behalf of the School District or to any employee of an elementary or secondary school within the School District.

"Complainant" is defined as an individual who alleges to have been the victim of conduct that could constitute sexual harassment.

"Respondent" is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

"Formal Complaint" is defined as a document filed and signed by a Complainant and received by the Title IX Coordinator, or a document filed and signed by the Title IX Coordinator, alleging sexual harassment against a Respondent. The Formal Complaint must include the allegations which are believed to constitute sexual harassment. Individuals are encouraged to file Formal Complaints by filling out and submitting the School District's 3230-F1 form.

"Educational program or activity" is defined to include any and all educational or extracurricular activities of the School District, including locations, events, or circumstances over which the School District exercised substantial control over both the Complainant and Respondent, and the context in which the alleged sexual harassment occurred.

"Supportive Measures" are defined as non-disciplinary and nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/or Respondent.

"Title IX Coordinator" is defined as the individual selected by the School District to perform the functions necessary to facilitate the Title IX Grievance Process. Inquiries concerning the application of Title IX, sex discrimination, or sexual harassment should be referred to the Title IX Coordinator. The District's Title IX Coordinator is:

JERIL L. HEHN
DIRECTOR OF ADVANCED ACADEMICS
BILLINGS PUBLIC SCHOOLS
hehnj@billingsschools.org
(406) 281-5994

Grievance Process

Formal Complaint:

An individual who believes that he or she has been a victim of sexual harassment may file a Formal Complaint with the Title IX Coordinator. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the educational program or activity of the School District with which the formal complaint is filed. Individuals who have knowledge of situations or instances that may amount to sexual harassment are encouraged to bring such information to the attention of the Title IX Coordinator.

The Formal Complaint must be in writing and signed by either the Complainant or Title IX Coordinator. The written complaint may be filled out on the School District's Form 3230-F1.

When the School District receives a formal complaint or has actual knowledge of sexual harassment in an educational program or activity of the School District, the School District will respond in a prompt manner that is not deliberately indifferent. When the Title IX Coordinator receives a formal complaint or is made aware of alleged harassment that does not meet the definition of Sexual Harassment, the Title IX Coordinator will direct the individual to the applicable grievance policy or procedure.

Supportive Measures:

Both the Complainant and Respondent will be offered Supportive Measures regardless of the filing of a Formal Complaint. These measures are designed to restore or preserve equal access to the School District's educational programs and activities without unreasonably burdening the other party. Supportive Measures may include measures designed to protect the safety of all parties or the School District's educational environment or deter sexual harassment. Examples of Supportive Measures include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modification of work or class schedules, changes in work locations, restrictions on contact between the parties, leave of absence, increased security and monitoring of certain areas of the school campus, or other similar measures. Supportive measures shall comply with Section 504 of the Rehabilitation act of 1973 and the Individuals with Disabilities Education Act ("IDEA"). The Title IX Coordinator is responsible for coordinating the implementation of Supportive Measures and will contact both parties to inform them of the availability of Supportive Measures. If the School District denies implementing any requested Supportive Measure, the School District must document the reasoning as to why such a response was not reasonable in light of the alleged or known circumstances.

Subject to Section 504 and the IDEA, the School District may remove a student from its educational program or activities on an emergency basis if there is a determination that there is an immediate threat to the physical health or safety of any student or individual after conducting an individualized safety and risk analysis. The School District shall provide the respondent with notice of such removal and an opportunity to challenge such removal. The School District may place an employee on administrative leave with pay during the pendency of the grievance process.

Response to a Formal Complaint:

The School District will complete the Title IX grievance procedure in a reasonably prompt time frame. The grievance procedure may be temporarily delayed or extended for good cause. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness, concurrent law enforcement activity, the need for language assistance, or accommodation of disabilities. In the event of the grievance process being temporarily delayed for good cause, the School District will provide written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

The School District must follow this formal grievance process before the imposition of any disciplinary sanctions or other adverse actions that are not supportive measures. Upon receipt of a formal complaint, the School District must provide written notice to the known parties including:

1. Notice of the allegations of sexual harassment, including information about the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, the date and location of the alleged incident, and any sufficient details known at the time. Such notice must be provided with sufficient time to prepare a response before any initial interview;

2. An explanation of the School District's investigation procedures, including any informal resolution process;

3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made by the decision-maker at the conclusion of the investigation;

4. Notice to the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney and may inspect and review any evidence; and

5. Notice to the parties of any provision in the School District's code of conduct or policy that prohibits knowingly making false statements.

The School District maintains the right to investigate allegations about the Complainant or Respondent that are not included in the notice initially provided. If the School District elects to investigate allegations not within the original notice, it must provide notice of the additional allegations to the known parties.

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

Informal Resolution

Except when concerning allegations that an employee sexually harassed a student, at any time during the formal complaint process, and prior to reaching a determination regarding responsibility, the School District may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and determination of responsibility. The informal resolution must be mutually consented to, in writing, by all parties to the grievance. Any party has the right to withdraw from the informal resolution process at any time, at which point the grievance process would continue. If the informal resolution process is to be undertaken, the School District must provide to the parties a written notice disclosing the allegations, the requirements of the information resolution process, including the circumstances under which it precludes the parties

from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Dismissal of Formal Complaint:

At any time during the grievance process, the School District must dismiss a formal complaint if the conduct alleged within the complaint would not constitute sexual harassment even if proved, if the conduct did not occur in the School District's educational program or activity, or if the alleged conduct did not occur against a person in the United States.

The Title IX Coordinator may dismiss a formal complaint or any allegations therein at any time during the investigation when any of the following applies:

1. The Complainant provides written notification to the Title IX Coordinator that the Complainant would like to withdraw the formal complaint or any allegations therein;

2. The Respondent is no longer enrolled in or employed by the School District; or

3. Specific circumstances prevent the School District from gathering evidence sufficient to reach a determination as to the formal complaint of allegations therein.

If a formal complaint is dismissed, the Title IX Coordinator will properly send written notice of the dismissal and the reasons for the dismissal to both parties simultaneously. The grievance process will close in the event that the formal complaint is dismissed. A dismissal of a formal complaint does not impact the availability of Supportive Measures.

Investigation

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

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests with the School District;

2. Ensure that equal opportunity is given to all parties to present witnesses and evidence;

3. Not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence;

4. Allow the parties to be accompanied by an advisor of the party's choice who may be, but is not required to be, an attorney.

5. Provide written notice of the date, time, location, participants, and purpose of any interview or meeting at which a party is expected to participate, with sufficient time for the party to prepare for the interview;

6. Provide the parties equal access to review all relevant evidence collected which is directly related to the allegations raised in the formal complaint and comply with review periods outlined in this process.

7. Objectively evaluate all relevant evidence without relying on sex stereotypes;

8. Ensure that Title IX Coordinators, investigators, decision-makers, and individuals who facilitate an informal resolution process do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

9. Not make credibility determinations based on an individual's status as a Complainant or Respondent;

10. Not use questions or evidence that constitute or seek disclosure of privileged information unless waived.

Prior to the completion of the investigative report, the Title IX Coordinator must send each party, or the party's advisor, if any, the evidence subject to inspection and review in electronic format or hard copy, which may include a draft of the investigative report. The parties have 10 calendar days to submit a written response to the Title IX Coordinator, which the investigator will consider prior to the completion of the investigative report.

The investigator must prepare an investigative report that fairly summarizes relevant evidence and send the report to the Title IX Coordinator. The Title IX Coordinator must then send the investigative report to each party and the party's advisor, in electronic or hard copy format, for review and written response. The parties have 10 calendar days from the date the report is issued to submit a written response to the Title IX Coordinator.

Decision Maker

Once the Title IX Coordinator receives the investigative report, and written responses, if any, he or she shall provide the investigative report and written responses to the decision-maker for review. The decision-maker cannot be the same person as either the Title IX Coordinator or the Investigator.

Prior to reaching a determination regarding responsibility, the decision-maker must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the Complainant's sexual predisposition or prior

sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Questions must be submitted to the Title IX Coordinator within 10 calendar days from the date the Complainant and Respondent receive the investigator's report.

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

1. Identify the allegations potentially constituting sexual harassment;

2. Describe the procedural steps taken, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather evidence, and hearings held;

3. Include the findings of fact supporting the determination;

4. Draw conclusions regarding the application of any School District policies and/or code of conduct rules to the facts;

5. Address each allegation and a resolution of the complaint including a determination regarding responsibility, the rationale therefor, any recommended disciplinary sanction(s) imposed on the Respondent, and whether remedies designed to restore or preserve access to the educational program or activity will be provided by the School District to the Complainant; and

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

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

The determination regarding responsibility becomes final either on the date that the School District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Where a determination of responsibility for sexual harassment has been made against the Respondent, the School District will provide remedies to the Complainant that are designed to restore or preserve equal access to the School District's educational program or activity. Such remedies may include supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of any remedies. Following any determination of responsibility, the School District may implement disciplinary sanctions in accordance with State or Federal law and/the negotiated agreement. For students, the sanctions may include disciplinary action, up to and including permanent exclusion.

Appeals

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

a. Procedural irregularity that affected the outcome of the matter;

b. New evidence that was not reasonably available at the time that could affect the outcome and

c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent that affected the outcome.

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

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

The appeal decision-maker must notify the other party in writing when an appeal is filed and give both parties a reasonable equal opportunity to submit a written statement in support of or challenging the outcome. After reviewing the evidence, the appeal decision-maker must issue a written decision describing the result of the appeal and the rationale for the result. The decision must be provided to both parties simultaneously, and generally will be provided within 30 calendar days from the date the appeal is filed.

Remedies

The School District shall take all reasonable and necessary actions to prevent the recurrence of any harassment and to correct its discriminatory effects on the Complainant and others. Remedies shall be provided to a Complainant where a determination of responsibility for sexual harassment has been made after the grievance process is completed. Remedies shall be designated to restore or preserve equal access to the School District's educational programs and activities. Remedies may include discipline against the Respondent, counseling, extension of deadlines, or other course related adjustments, modifications of schedules, restrictions on contact, increased monitoring of the school campus, and training. Discipline for students is subject to 504 and IDEA considerations and will follow the School District's procedures regarding discipline. Discipline may include but is not limited to detention, in or out of school suspension, expulsion, suspension or expulsion from participation in extracurricular activities. Discipline for an employee is subject to the provisions of the applicable collective bargaining agreement, if any, and state law. Employee discipline may include but is not limited to written warning, reprimand, suspension with or without pay, or termination from employment.

Recordkeeping

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

1. Each sexual harassment investigation, including any determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the School District's education program or activity;

2. Any appeal and the result therefrom;

3. Any informal resolution and the result therefrom; and

4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The School District must make these training materials publicly available on its website.

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

Confidentiality

The School District will maintain the confidentiality of any individual making a report of sexual harassment, complainant, individual who has been reported to be the perpetrator of sexual discrimination, respondent, and witnesses except as disclosure may be permitted to conduct an investigation or judicial proceeding or as permitted or required by state or federal law.

Individual Schools

Principals at each individual school within the School District will appoint an individual to be considered a "Title IX Liaison." That individual must voluntarily consent to being appointed. A Title IX Liaison shall be expected to meet with any individual who has brought to the attention of any school personnel an issue which may amount to sexual harassment or discrimination. If the situation at issue may amount to sexual harassment or discrimination, the Title IX Liaison will report any and all such instances to the Title IX Coordinator. The Title IX Liaison will also direct individuals to the Title IX Coordinator and the School District's Title IX Policy and this corresponding procedure. Nothing within this section precludes a student, parent or staff member from contacting the Title IX Coordinator directly rather than involving the Title IX Liaison.

Cross References:

Number	Title
1700	Uniform Complaint Procedure
3210-F1	Form: Harassment/Intimidation/Bullying Incident Reporting Form
3200	Student Rights, Responsibilities, and Code of Conduct
3201	Student Freedom of Expression
3202	Student Publications
3203	Student Dress
3203-P1	Student Dress – Gang Activity or Association and Extracurricular Activities
3204	Searches and Seizures
3204-P1	Searches of Students and Their Property
3204-P2	Video Surveillance
3204-P3	Video Surveillance -- School Buses, Vehicles, School Buildings and Grounds
3205	District-Provided Access to Electronic Information, Services, and Networks for
3205-P1	District-Provided Access to Electronic Information, Services, and Networks for Students
3210	Harassment, Intimidation, and Bullying
3210-F1	Form: Billings Public Schools – Harassment/Intimidation/Bullying Incident Reporting Form
3220	Equal Educational Opportunity (use reporting Form 3210-F1)
3230	Non-Discrimination,Anti-Harassment and Sex Equity (use reporting Form 3210-F1 other than for complaints regarding sexual harassment which should be submitted on 3230-F)
3230-P	Title IX Sexual Harassment Grievance Procedures
3235	Student Drug and Chemical Use and Abuse
3240	Tobacco Free Schools
3250	Gun-Free Schools
3255	Bomb Threats and Threats of Hazardous Substances
6430	Development of Administrative Procedures
1700	Uniform Complaint Procedure

Legal References:

§ 20-5-101, MCA Admittance of child to school

§ 20-5-102, MCA Compulsory enrollment and excuses

§ 20-5-103, MCA Compulsory attendance and excuses

§ 20-5-201, MCA Duties and sanctions

§ 20-5-202, MCA Suspension and expulsion

§ 20-4-302, MCA Discipline and punishment of pupils – definition of corporal punishment

§49-2-307, MCA Discrimination in education

§§ 49-3-101, et. seq., MCA Montana Human Rights Act

Title IX of the Educational Amendments, 20 U.S.C. §1681, et seq. 34 CFR Part 106

Art. X, Sec. 1, Montana Constitution

Art. X, Sec. 7, Montana Constitution

42 USC §12111 et seq. Americans with Disabilities Act

20 USC §791 et seq. Rehabilitation Act of 1973

Tinker v. Des Moines Ind. Sch. Dist., 89 S. Ct. 733 (1969)