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5 Accommodating Individuals With Disabilities and Section 504 of the Rehabilitation Act of 1973

6
7 It is the intent of the District to ensure that qualified employees with disabilities under Section 504 of the
8 Rehabilitation Act of 1973 are identified, evaluated, and provided with appropriate accommodations or
9 other positive actions in assistance.

10
11 The District will not discriminate against a qualified individual on the basis of disability in regard to job
12 application procedures, the hiring, advancement, or discharge of employees, employee compensation, job
13 training, or other terms, conditions, and privileges of employment.

14
15 The Superintendent is designated the Section 504 and Americans with Disabilities Act Title II
16 Coordinator and, in that capacity, is directed to:

- 17
18 1. Oversee District compliance efforts, recommend to the Board necessary modifications, and
19 maintain the District’s final Title II self-evaluation document and keep it available for public
20 inspection.
- 21
22 2. Make information regarding Title II protection available to any interested party.
- 23
24 3. Coordinating and monitoring the district’s compliance with Section 504 and Title II of the ADA,
25 as well as state civil rights requirements regarding discrimination and harassment based on
26 disability.
- 27
28 4. Overseeing prevention efforts to avoid Section 504 and ADA violations by necessary actions,
29 including by not limited to, scheduling Section 504 meetings, implementing and monitoring
30 Section 504 plans of accommodation and providing information to employees and supervisors.
- 31
32 5. Implementing the district’s discrimination complaint procedures with respect to allegations of
33 Section 504/ADA violations, discrimination based on disability, and disability harassment; and
34
- 35 6. Investigating complaints alleging violations of Section 504/ADA, discrimination based on
36 disability, and disability harassment.

37
38 The District’s procedure for resolution of complaints alleging violation of this policy is set forth in Policy
39 1700.

40
41 Cross Reference: 1700 Uniform Complaint Procedure

42
43 Legal Reference: Americans with Disabilities Act, 42 U.S.C. §§ 12111, *et seq.*, and 12131, *et seq.*;
44 28 C.F.R. Part 35.

45
46 Policy History:

47 Adopted on: 11/16/2006

48 Reviewed on:

49 Revised on:

2
3 PERSONNEL

4
5 Equal Employment Opportunity and Non-Discrimination

6
7 ~~The District will provide equal employment opportunities to all persons, regardless of their race,~~
8 ~~color, religion, creed, national origin, sex, age, ancestry, marital status, military status,~~
9 ~~citizenship status, use of lawful products while not at work, physical or mental handicap or~~
10 ~~disability, if otherwise able to perform essential functions of a job with reasonable~~
11 ~~accommodations, and other legally protected categories.~~

12
13 **The District will provide equal employment opportunities to all persons, regardless of their**
14 **race, color, religion, creed, national origin, genetic information, sex, age, ancestry, marital**
15 **status, military status, citizenship status, use of lawful products while not at work physical**
16 **or mental disability.**

17
18 The District will make reasonable accommodation for an individual with a disability known to
19 the District, if the individual is otherwise qualified for the position, unless the accommodation
20 would impose undue hardship on the District.

21
22 A person with an inquiry regarding discrimination should direct their questions to the Title IX
23 Coordinator. A person with a specific written complaint should follow the Uniform Complaint
24 Procedure.

25
26 **All complaints about behavior that may violate this policy shall be promptly investigated.**

27
28 **Retaliation against an employee who has filed a discrimination complaint, testified, or**
29 **participated in any manner in a discrimination investigation or proceeding is prohibited.**

30
31 **Cross Reference: 1700 Uniform Complaint Procedure**

32
33 Legal Reference: Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.*
34 Americans with Disabilities Act, Title I, 42 U.S.C. §§ 12111, *et seq.*
35 Equal Pay Act, 29 U.S.C. § 206(d)
36 Immigration Reform and Control Act, 8 U.S.C. §§ 1324(a), *et seq.*
37 Rehabilitation Act of 1973, 29 U.S.C. §§ 791, *et seq.*
38 **Genetic Information Nondiscrimination Act of 2008 (GINA)**
39 Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e), *et seq.*; 29 C.F.R.,
40 Part 1601
41 Title IX of the Education Amendments, 20 U.S.C. §§ 1681, *et seq.*; 34
42 C.F.R., Part 106
43 Montana Constitution, Art. X, § 1 - Educational goals and duties
44 § 49-2-101, *et seq.*, MCA Human Rights Act
45 **§ 49-2-303, MCA Discrimination in Employment**
46 **§ 49-3-102, MCA What local governmental units affected**

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§49-3-201, MCA **Employment of state and local**
government

personnel.

Policy History:

Adopted on: 04/06/1995

Reviewed on:

Revised on: 11/16/2006

4
5 Equal Employment Opportunity, Non-Discrimination, and Sex Equity

6
7 The District will provide equal employment opportunities to all persons, regardless of their race,
8 color, religion, creed, national origin, genetic information, sex, age, ancestry, marital status,
9 military status, citizenship status, use of lawful products while not at work physical or mental
10 disability. The District will make reasonable accommodation for an individual with a disability
11 known to the District, if the individual is otherwise qualified for the position, unless the
12 accommodation would impose undue hardship on the District.

13
14 Inquiries regarding sexual harassment, sex discrimination, or sexual intimidation should be
15 directed to the District Title IX Coordinator, to the Assistant Secretary for Civil Rights of the
16 Department of Education, or both. The Board designates the following individual to serve as the
17 District’s Title IX Coordinator:

18
19 Title: _____
20 Office address: _____
21 Email: _____
22 Phone number: _____

23
24 Inquiries regarding discrimination on the basis of disability or requests for accommodation
25 should be directed to the District Section 504 Coordinator. The Board designates the following
26 individual to serve as the District’s Section 504 Coordinator:

27
28 Title: _____
29 Office address: _____
30 Email: _____
31 Phone number: _____

32
33 Any individual may file a complaint alleging violation of this policy, Policy 5012/512P – Sexual
34 Harrassment, or Policy 5015-Bullying/Harassment/Intimidation/Hazing by following those
35 policies or Policy 1700-Uniform Complaint Procedure.

36
37 The District, in compliance with federal regulations, will notify annually all students, parents,
38 staff, and community members of this policy and the designated coordinator to receive inquiries.
39 This annual notification will include the name and location of the coordinator and will be
40 included in all handbooks.

41
42 The District will not tolerate hostile or abusive treatment, derogatory remarks, or acts of violence
43 against students, staff, or volunteers with disabilities. The District will consider such behavior as
44 constituting discrimination on the basis of disability, in violation of state and federal law.

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46 All complaints about behavior that may violate this policy shall be promptly investigated.

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Retaliation against an employee who has filed a discrimination complaint, testified, or participated in any manner in a discrimination investigation or proceeding is prohibited.

Legal Reference: 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.*
Genetic Information Nondiscrimination Act of 2008 (GINA)
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 106
Montana Constitution, Art. X, § 1 - Educational goals and duties
§ 49-2-101, *et seq.*, MCA Human Rights Act
§ 49-2-303, MCA Discrimination in Employment
§ 49-3-102, MCA What local governmental units affected
§49-3-201, MCA Employment of state and local government personnel.

Policy History:
Adopted on:
Reviewed on:
Revised on:

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_____ School District

5012F

Sexual Harassment Reporting/Intake Form for Employees

This form is not required. Complaints may be submitted in any manner noted in Policy 5012. The form may be used by the Title IX Coordinator to document allegations.

School _____ Date _____

Employee's name _____

• Who was responsible for the harassment or incident(s)? _____

• Describe the incident(s). _____

• Date(s), time(s), and place(s) the incident(s) occurred. _____

• Were other individuals involved in the incident(s)? yes no
If so, name the individual(s) and explain their roles. _____

• Did anyone witness the incident(s)? yes no
If so, name the witnesses. _____

• Did you take any action in response to the incident? yes no
If yes, what action did you take? _____

• Were there any prior incidents? yes no
If so, describe any prior incidents. _____

Signature of complainant _____

Retaliation is prohibited by federal law and district policy. The identity of the individual signing this form will remain confidential in accordance with law and policy.

1 **Big Fork School District #38**

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3 **PERSONNEL**

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6 Sexual Harassment/Sexual Intimidation Investigation Procedures

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8 Reporting

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10 Any individual who believes he or she has been the victim of sexual harassment, or any individual who
11 has witnessed or heard of an incident and who suspects sexual harassment has occurred, should contact
12 the building principal, immediate supervisor, the Title IX coordinator, or the district superintendent for
13 information about sexual harassment policy and procedure. The purpose of this contact is to provide
14 specific information about a possible complaint and to learn the rights, policies, and procedures for filing
15 a complaint.

16
17 There is no deadline to report an allegation of sexual harassment. Delays in reporting, however, may
18 result in delayed knowledge and increased difficulty in resolving the problem satisfactorily, or in reduced
19 access to other options. Individuals are encouraged to bring complaints of sexual harassment to the
20 attention of a school official as soon as possible after the alleged occurrence.

21
22 Conflict of Interest

23
24 If a potential conflict of interest exists for the principal, supervisor, or Title IX coordinator, the
25 superintendent may be notified of the allegations and the conflict of interest. In the event there is a
26 conflict of interest with the superintendent, the chairman of the Board of Trustees may be notified.

27
28
29 Frivolous or Malicious Charges

30
31 Accusations of sexual harassment are of utmost seriousness and should never be made casually and
32 without cause. This procedure shall not be used to bring frivolous or malicious charges against students,
33 faculty members, or other employees. Disciplinary action may be taken against any person bringing a
34 charge of sexual harassment which is deliberately false.

35
36 Protection of Rights

37
38 Bigfork School District will not tolerate retaliation or discrimination against persons who report or charge
39 sexual harassment or against those who testify, assist, or participate in any investigation, proceeding, or
40 hearing involving a complaint of sexual harassment. Retaliation may include speech or conduct that
41 adversely affects another individual and is motivated by intent to harm the targeted person because of his
42 or her participation in the filing or investigation of an allegation of sexual harassment. Any such
43 retaliation or any encouragement of another to retaliate, subjects the person retaliating to disciplinary
44 action. If an individual believes he/she has been subject to retaliation, he/she should contact the Title IX
45 coordinator, building principal, supervisor, or superintendent.

Definition

Prohibited sexual harassment includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical 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 the 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.

Types of conduct which are prohibited in the district and which may constitute sexual harassment include, but are not limited to:

1. Suggestive or obscene letters, notes, invitations, derogatory comments, slurs, jokes, epithets, assault, touching, impeding or blocking movement, leering, gestures, or display of sexually suggestive objects, pictures, or cartoons.
2. Continuing to express sexual interest after being informed that the interest is unwelcome.
3. Implying or withholding support for an appointment, promotion, or change of assignment; suggesting that a poor performance report will be prepared; or suggesting that probation will be failed.
4. Coercive sexual behavior used to control, influence, or affect the career, salary, and/or work environment of another employee.
5. Offering or granting favors, such as promotions, favorable performance evaluations, favorable assignments, favorable duties or shifts, recommendations, reclassifications, etc., in exchange for sexual favors.
6. Any act of retaliation against an individual who reports a violation of the district's sexual harassment policy or who participates in the investigation of a sexual harassment complaint.

Investigation Procedures

This procedure covers incidents of sexual harassment or sexual intimidation between staff members and between staff members and students. For the purpose of this procedure recognized adult volunteers are to be considered staff members. Individuals wishing to file a complaint should use the sexual harassment complaint form accompanying this procedure.

1
2 The superintendent or his designee shall be the investigating school official. Any person who believes
3 they are a victim of sexual harassment or intimidation by an agent or employee of the District or who
4 knows of such harassment/intimidation against another person should file a complaint with the

5 5012P

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7
8 superintendent. If the superintendent is the one alleged to have committed sexual harassment or
9 intimidation, the complaint shall be filed with the Chairman of the Board of Trustees.

10
11 The district is committed to investigating each complaint and to taking appropriate action on all
12 confirmed violations of policy. The superintendent shall investigate and document complaints filed
13 pursuant to this policy and procedure within thirty (30) days of receipt of the complaint. During the
14 investigation period, the superintendent may direct preventive measures as necessary between the
15 involved parties. In investigating the complaint, the superintendent or his designee will maintain
16 confidentiality to the extent reasonably possible.

17
18 Should the superintendent determine that sufficient evidence exists to conclude that sexual harassment
19 has occurred, the superintendent shall take appropriate action within statutory requirements, the collective
20 bargaining agreement, and school board policy.

21
22 A substantiated charge of sexual harassment against a staff member shall subject that staff member to
23 disciplinary action up to and including dismissal. The staff member shall be afforded all procedural due
24 process rights for which he or she is eligible. Other corrective action may be taken as necessary to ensure
25 that further sexual harassment, retaliation, or intimidation does not occur.

26
27 Should a student be found to have committed sexual harassment against a staff member, the student shall
28 be subject to disciplinary action in accordance with the student handbook and board policy up to and
29 including permanent expulsion. Other corrective action may be taken as necessary to ensure that further
30 sexual harassment, retaliation, or intimidation does not occur.

31 32 Remediation

33
34 A plan may be developed to provide victims and witnesses of harassment with counseling and other
35 support services to help them cope with the effects of harassment or intimidation.

36 37 Confidentiality

38
39 The Confidentiality rights of all parties will be observed within the requirements of state and federal
40 statutes.

41
42 Both the complainant and the accused shall be notified in writing whether sufficient evidence exists to
43 support the allegations of sexual harassment. If the investigation determines that the allegations are
44 unsubstantiated, preventive measures may still be directed by the superintendent

45
46 Should the investigation findings determine there is credible evidence to support the allegations the
47 accused person shall be notified of any corrective or disciplinary measures assigned. Due to
48 confidentiality requirements, the complainant will not be provided detailed investigation findings, witness
49 testimony or administratively assigned corrective or disciplinary measures.

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Legal References:

- Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972
- Montana Constitution Article X, Section 1
- Montana Human Rights Act 49-2-101 *et seq.*
- MCA
- Implementing state and federal regulations

Revision Date: November 20, 2003

DISTRICT CONTACT INDIVIDUALS

- | | |
|---------------|--|
| Alan Robbins | High School Principal - Title IX Coordinator |
| Tyson Roe | High School Counselor - Title IX Investigations |
| Brenda Clarke | Elementary School Principal - Title IX Coordinator |
| Jennifer Wood | Middle School Counselor - Title IX Investigations |
| Matt Jensen | District Superintendent |

Policy History:

- Adopted on:
- Reviewed on:
- Revised on:

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3 **PERSONNEL**

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5
6 Sexual Harassment Grievance Procedure - Employees

7
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 definitions 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 services 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

42
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
46 harassment, the Title IX Coordinator will direct the individual to the applicable sex

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5 discrimination process bullying and harassment policy, or public complaint procedure for
6 investigation.

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

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

27
28 Timelines

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

38
39 Response to a Formal Complaint

40
41 At the time of filing a formal complaint, a Complainant must be participating in or attempting to
42 participate in the education program or activity of the District with which the formal complaint is
43 filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, by
44 electronic mail, or other means designated by the District.
45

1 The District must follow the formal complaint process before the imposition of any disciplinary
2 sanctions or other actions that are not supportive measures. However, nothing in this policy

7 precludes the District from placing a non-student employee Respondent on administrative leave
8 during the pendency of the grievance process. The District may also remove a student
9 Respondent alleged to have harassed an employee Complainant from the education setting. The
10 student may receive instruction in an offsite capacity during the period of removal. This
11 provision may not be construed to modify any rights under the Individuals with Disabilities
12 Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities
13 Act.

14
15 Upon receipt of a formal complaint, the District must provide written notice to the known parties
16 including:

- 17
18 1. Notice of the allegations of sexual harassment, including information about the
19 identities of the parties involved in the incident, the conduct allegedly constituting
20 sexual harassment, the date and location of the alleged incident, and any sufficient
21 details known at the time. Such notice must be provided with sufficient time to
22 prepare a response before any initial interview;
23
- 24 2. An explanation of the District's investigation procedures, including any informal
25 resolution process;
26
- 27 3. A statement that the Respondent is presumed not responsible for the alleged
28 conduct and that a determination regarding responsibility will be made by the
29 decision-maker at the conclusion of the investigation;
30
- 31 4. Notice to the parties that they may have an advisor of their choice who may be, but
32 is not required to be, an attorney, and may inspect and review any evidence; and
33
- 34 5. Notice to the parties of any provision in the District's code of conduct or policy that
35 prohibits knowingly making false statements or knowingly submitting false
36 information.
37

38 If, in the course of an investigation, the District decides to investigate allegations about the
39 Complainant or Respondent that are not included in the notice initially provided, notice of the
40 additional allegations must be provided to known parties.
41

42 The District may consolidate formal complaints as to allegations of sexual harassment against
43 more than one Respondent, or by more than one Complainant against one or more Respondents,
44 or by one party against the other party, where the allegations of sexual harassment arise out of
45 the same facts or circumstances.
46

1 Investigation of a Formal Complaint

2
3 When investigating a formal complaint and throughout the grievance process, the District must:

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5 page 4 of 9

- 6
7 1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach
8 a determination regarding responsibility rests on the District and not the parties’;
9
10 2. Provide an equal opportunity for the parties to present witnesses and evidence;
11
12 3. Not restrict either party’s ability to discuss the allegations under investigation or to
13 gather and present relevant evidence;
14
15 4. Allow the parties to be accompanied with an advisor of the party’s choice who may be,
16 but is not required to be, an attorney. The District may establish restrictions regarding
17 the extent to which the advisor may participate in the proceedings, as long as the
18 restrictions apply equally to both parties;
19
20 5. Provide written notice of the date, time, location, participants, and purpose of any
21 interview or meeting at which a party is expected to participate, with sufficient time for
22 the party to prepare to participate;
23
24 6. Provide the parties equal access to review all the evidence collected which is directly
25 related to the allegations raised in a formal complaint and comply with the review
26 periods outlined in this process;
27
28 7. Objectively evaluate all relevant evidence without relying on sex stereotypes;
29
30 8. Ensure that Title IX Coordinators, investigators, decision-makers and individuals who
31 facilitate an informal resolution process, do not have a conflict of interest or bias for or
32 against Complainants or Respondents generally or an individual Complainant or
33 Respondent;
34
35 9. Not make creditability determinations based on the individual’s status as Complainant,
36 Respondent or witness;
37
38 10. Not use questions or evidence that constitute or seek disclosure of privileged
39 information unless waived.
40

41 Dismissal of Formal Complaints

42
43 If the conduct alleged in the formal complaint would not constitute sexual harassment even if
44 proved, did not occur in the District’s education program or activity, or did not occur against a
45 person in the United States, then the District must dismiss the formal complaint with regard to
46 that conduct for purposes of sexual harassment under this policy.

1
2 The Title IX Coordinator also may dismiss the formal complaint or any allegations therein at any
3 time during the investigation or hearing, if applicable, when any of the following apply:

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5 page 5 of 9

- 6
7 1. a Complainant provides written notification to the Title IX Coordinator that the
8 Complainant would like to withdraw the formal complaint or any allegations therein;
9
10 2. the Respondent is no longer enrolled or employed by the District; or
11
12 3. specific circumstances prevent the District from gathering evidence sufficient to reach a
13 determination as to the formal complaint or allegations therein.
14

15 Upon dismissal, the Title IX Coordinator promptly sends written notice of the dismissal and the
16 reasons for dismissal simultaneously to both parties. The grievance process will close in the
17 event a notice of dismissal is provided to the parties. Support measures may continue following
18 dismissal.
19

20 Evidence Review

21
22 The District provides both parties an equal opportunity to inspect and review any evidence
23 obtained as part of the investigation so that each party can meaningfully respond to the evidence
24 prior to the conclusion of the investigation. The evidence provided by the District must include
25 evidence that is directly related to the allegations in the formal complaint, evidence upon which
26 the District does not intend to rely in reaching a determination regarding responsibility, and any
27 inculpatory or exculpatory evidence whether obtained from a party or other source. Prior to
28 completion of the investigative report, the Title IX Coordinator must send to each party and the
29 party's advisor, if any, the evidence subject to inspection and review in an electronic format or a
30 hard copy. The parties have 10 calendar days to submit a written response to the Title IX
31 Coordinator, which the investigator will consider prior to completion of the investigative report.
32

33 Investigative Report

34
35 The investigator must prepare an investigative report that fairly summarizes relevant evidence
36 and send the report to the Title IX Coordinator. The Title IX Coordinator must send to each
37 party and the party's advisor, if any, the investigative report in an electronic format or a hard
38 copy, for their review and written response. The parties have 10 calendar days to submit a
39 written response to the Title IX Coordinator.
40

41 Decision-Maker's Determination

42
43 The investigative report is submitted to the decision-maker. The decision-maker cannot be the
44 same person(s) as the Title IX Coordinator or the investigator. The decision-maker cannot hold a
45 hearing or make a determination regarding responsibility until 10 calendar days from the date the
46 Complainant and Respondent receive the investigator's report.

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 three 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 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 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 District's receipt of a formal complaint.

The determination regarding responsibility becomes final either on the date that the District provides the parties with the written determination of the result of the appeal, if an appeal is

1 filed, or if an appeal is not filed, the date on which an appeal would no longer be considered
2 timely.

3
4 Where a determination of responsibility for sexual harassment has been made against the

5 5012P

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8 Respondent, the District will provide remedies to the Complainant that are designed to restore or
9 preserve equal access to the District's education program or activity. Such remedies may include
10 supportive measures; however, remedies need not be non-disciplinary or non-punitive and need
11 not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective
12 implementation of any remedies. Following any determination of responsibility, the District may
13 implement disciplinary sanctions in accordance with State or Federal law and or/the negotiated
14 agreement. For employees, the sanctions may include any form of responsive discipline, up to
15 and including termination.

16 17 Appeals

18
19 Either the Complainant or Respondent may appeal the decision-maker's determination regarding
20 responsibility or a dismissal of a formal complaint, on the following bases:

- 21
22 1. Procedural irregularity that affected the outcome of the matter;
- 23
24 2. New evidence that was not reasonably available at the time that could affect the
25 outcome and
- 26
27 3. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or
28 bias for or against Complainants or Respondents generally or an individual
29 Complainant or Respondent that affected the outcome.

30
31 The District also may offer an appeal equally to both parties on additional bases.

32
33 The request to appeal must be made in writing to the Title IX Coordinator within seven calendar
34 days after the date of the written determination. The appeal decision-maker must not have a
35 conflict of interest or bias for or against Complainants or Respondents generally or an individual
36 Complainant or Respondent and cannot be the Title IX Coordinator, the investigator, or the
37 decision-maker from the original determination.

38
39 The appeal decision-maker must notify the other party in writing when an appeal is filed and
40 give both parties a reasonable equal opportunity to submit a written statement in support of, or
41 challenging, the outcome. After reviewing the evidence, the appeal decision-maker must issue a
42 written decision describing the result of the appeal and the rationale for the result. The decision
43 must be provided to both parties simultaneously, and generally will be provided within 10
44 calendar days from the date the appeal is filed.

45 46 Informal Resolution Process

1
2 Except when concerning allegations that an employee sexually harassed a student, at any time
3 during the formal complaint process and prior to reaching a determination regarding
4 responsibility, the District may facilitate an informal resolution process, such as mediation, that

5 5012P

6 page 8 of 9

7
8 does not involve a full investigation and determination of responsibility, provided that the
9 District:

10
11 1. Provides to the parties a written notice disclosing:

12
13 A. The allegations;

14
15 B. The requirements of the informal resolution process including the circumstances
16 under which it precludes the parties from resuming a formal complaint arising
17 from the same allegations, provided, however, that at any time prior to agreeing to
18 a resolution, any party has the right to withdraw from the informal resolution
19 process and resume the Title IX formal complaint process with respect to the
20 formal complaint; and

21
22 C. Any consequences resulting from participating in the informal resolution process,
23 including the records that will be maintained or could be shared.

24
25 2. Obtains the parties' voluntary, written consent to the informal resolution process.

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

33
34 Recordkeeping

35
36 The District must maintain for a period of seven years records of:

- 37
38 1. Each sexual harassment investigation, including any determination regarding
39 responsibility, any disciplinary sanctions imposed on the Respondent, and any remedies
40 provided to the Complainant designed to restore or preserve equal access to the
41 District's education program or activity;
- 42
43 2. Any appeal and the result therefrom;
- 44
45 3. Any informal resolution and the result therefrom; and
- 46

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

5
6 5012P
7 page 9 of 9
8

9 The District must create, and maintain for a period of seven years, records of any actions,
10 including any supportive measures, taken in response to a report or formal complaint of sexual
11 harassment. In each instance, the District must document the basis for its conclusion that its
12 response was not deliberately indifferent, and document that it has taken measures designed to
13 restore or preserve equal access to the District's education program or activity.
14

15 Cross Reference: Policy 5010 Equal Employment and Non-Discrimination
16 Policy 5012 Sexual Harassment
17 Policy 5255 Employee Discipline
18

19 Legal References: Art. X, Sec. 1, Montana Constitution – Educational goals and duties
20 Section 49-3-101, et seq., MCA, Montana Human Rights Act
21 Civil Rights Act, Title VI; 42 USC 2000d et seq.
22 Civil Rights Act, Title VII; 42 USC 2000e et seq.
23 Education Amendments of 1972, Title IX; 20 USC 1681 et seq.
24 34 CFR Part 106 Nondiscrimination on the basis of sex in
25 education programs or activities receiving
26 Federal financial assistance
27 10.55.701(1)(f), ARM Board of Trustees
28 10.55.719, ARM Student Protection Procedures
29 10.55.801(1)(a), ARM School Climate
30

31 Policy History:
32 Adopted on:
33 Reviewed on:
34 Revised on:

4
5 Sexual Harassment of Employees

6
7 The District does not discriminate on the basis of sex in any education program or activity that it
8 operates. The District is required by Title IX of the Education Amendments of 1972 and the
9 regulations promulgated through the U.S. Department of Education not to discriminate in such a
10 manner. Inquiries about the application of Title IX to the District may be referred to the
11 District's Title IX Coordinator, to the Assistant Secretary for Civil Rights of the Department of
12 Education, or both.

13
14 The Board designates the following individual to serve as the District's Title IX Coordinator:

15
16 Title: _____
17 Office address: _____
18 Email: _____
19 Phone number: _____
20

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

26
27 For purposes of this policy and the grievance process, "sexual harassment" means conduct on the
28 basis of sex that satisfies one or more of the following:

- 29
30 1. A District employee conditioning the provision of an aid, benefit, or service of the
31 District on an individual's participation in unwelcome sexual conduct;
32
33 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and
34 objectively offensive that it effectively denies a person equal access to the District's
35 education program or activity; or
36
37 3. "Sexual assault" as defined in 20 USC 1092(f)(6)(A)(v), "dating violence" as defined in
38 34 USC 12291(a)(10), "domestic violence" as defined in 34 USC 12291(a)(8) or
39 "stalking" as defined in 34 USC 12291(a)(30).
40

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

44
45 An individual is not required to submit a report of sexual harassment involving the Title IX
46 coordinator. In the event the Title IX Coordinator is responsible for or a witness to the alleged

1
2
3
4
5 harassment, the individual may report the allegations to the building principal or superintendent
6 or other unbiased school official.

7
8 Retaliation Prohibited

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

19
20 Confidentiality

21
22 The District must keep confidential the identity of any individual who has made a report or
23 complaint of sex discrimination, including any individual who has made a report or filed a
24 formal complaint of sexual harassment, any individual who has been alleged to be the victim or
25 perpetrator of conduct that could constitute sexual harassment, and any witness, except as may
26 be permitted by Family Educational Rights and Privacy Act (FERPA) or as required by law, or
27 to carry out the purposes of the Title IX regulations, including the conduct of any investigation,
28 hearing or judicial proceeding arising thereunder.

29
30 Notice Requirements

31
32 The District provides notice to applicants for admission and employment, students, parents or
33 legal guardians of elementary and secondary school students, employees and the union(s) with
34 the name or title, office address, email address and telephone number of the Title IX Coordinator
35 and notice of the District grievance procedures and process, including how to report or file a
36 complaint of sex discrimination, how to file a formal complaint of sexual harassment and how
37 the District will respond. The District also posts the Title IX Coordinator's contact information
38 and Title IX policies and procedures in a prominent location on the District website and in all
39 handbooks made available by the District.

40
41 Training Requirements

42
43 The District ensures that Title IX Coordinators, investigators, decision-makers, and any person
44 who facilitates an informal resolution process, receives training on the definition of sexual
45 harassment, the scope of the District's education program or activity, how to conduct an

1 investigation and grievance process including hearings, appeals and informal resolution
2 processes, when applicable, and how to serve impartially including by avoiding prejudgment of

3 5012

4 Page 3 of 3

5
6 the facts at issue, conflicts of interest and bias. The District also ensures that decision-makers
7 and investigators receive training on issues of relevance of questions and evidence, including
8 when questions and evidence about the complainant's sexual predisposition or prior sexual
9 behavior are not relevant as set forth in the formal procedures that follow, and training on any
10 technology to be used at a live hearing, if applicable. Investigators also receive training on
11 issues of relevance to create an investigative report that fairly summarizes relevant evidence. All
12 materials used to train individuals who receive training under this section must not rely on sex
13 stereotypes and must promote impartial investigations and adjudications of formal complaints of
14 sexual harassment and are made publicly available on the District's website.

15
16 Conflict of Interest and Bias

17
18 The District ensures that Title IX Coordinators, investigators, decision-makers, and any person
19 who facilitates an informal resolution process do not have a conflict of interest or bias for or
20 against complainants or respondents generally or an individual complainant or respondent.

21
22 Determination of Responsibility

23
24 The individual who has been reported to be the perpetrator of conduct that could constitute
25 sexual harassment is presumed not responsible for alleged conduct. A determination regarding
26 responsibility will be made by the decision-maker at the conclusion of the investigation in
27 accordance with the process outlined in Policy 5012P. No disciplinary sanctions will be imposed
28 unless and until a final determination of responsibility is reached.

29
30 Cross Reference: Policy 5010 - Equal Employment and Non-Discrimination
31 Policy 5012P – Sexual Harassment Procedures

32
33
34 Legal References: Art. X, Sec. 1, Montana Constitution – Educational goals and duties
35 §§ 49-3-101, et seq., MCA Montana Human Rights Act
36 Civil Rights Act, Title VI; 42 USC 2000d et seq.
37 Civil Rights Act, Title VII; 42 USC 2000e et seq.
38 Education Amendments of 1972, Title IX; 20 USC 1681 et seq.
39 34 CFR Part 106 Nondiscrimination on the basis of sex in
40 education programs or activities receiving
41 Federal financial assistance
42 10.55.701(1)(f), ARM Board of Trustees
43 10.55.719, ARM Student Protection Procedures
44 10.55.801(1)(a), ARM School Climate

45
46 Policy History:

- 1 Adopted on:
- 2 Reviewed on:
- 3 Revised on:

2
3 PERSONNEL

4
5 Sexual Harassment, Sexual Intimidation and Sexual Misconduct in the Workplace

6
7 ~~Bigfork Public School District No. 38 is committed to a positive and productive working environment free~~
8 ~~of discrimination. The District prohibits sexual harassment or sexual intimidation of its employees,~~
9 ~~whether committed by a worker, co-worker, supervisor, subordinate, contractor, volunteer or student, and~~
10 ~~finds such behavior cause for disciplinary action. This policy applies to employees, students and~~
11 ~~volunteers on or off District property.~~

12
13 The District will strive to provide employees a work environment free of unwelcome sexual
14 advances, requests for sexual favors, and other verbal or physical conduct or communications
15 constituting sexual harassment, as defined and otherwise prohibited by state and federal law.

16
17 The District prohibits its employees from engaging in any conduct of a sexual nature when:

- 18
- 19 • Submission to such conduct is made either explicitly or implicitly a term or condition of an
- 20 individual’s employment;
- 21 • Submission to or rejection of such conduct by an individual is used as a basis for employment
- 22 decisions affecting that individual; or
- 23 • Such conduct has the purpose or effect of substantially interfering with the individual’s work
- 24 performance or creating an intimidating, hostile, or offensive work environment.
- 25 • Such conduct deprives the individual of their rights to equal employment under District
- 26 policy and state or federal law.
- 27

28 Sexual harassment, sexual intimidation and sexual misconduct prohibited by this policy
29 includes verbal, electronic, or physical contact or conduct. The terms “intimidating,” “hostile,”
30 “misconduct,” or “offensive” include but are not limited to conduct that has the effect of
31 deprivation of rights, humiliation, embarrassment, or discomfort. Examples of sexual
32 harassment, sexual intimidation, and sexual misconduct include but are not limited to
33 unwelcome or forceful physical touching, crude jokes or pictures, discussions of sexual
34 experiences, pressure or requests for sexual activity or favors, intimidation by words,
35 actions, insults, or name calling, teasing related to sexual characteristics, and spreading
36 rumors related to a person’s alleged sexual activities. The District will evaluate sexual
37 harassment, sexual intimidation, and sexual misconduct in light of all circumstances.

38
39 A violation of this policy may result in disciplinary action, up to and including termination of
40 employment. The District is authorized to report any violation of this policy to law enforcement
41 that is suspected to be a violation of state or federal criminal laws.

42
43 Employees who believe they may have been sexually harassed or intimidated should contact the Title IX
44 Coordinator or an administrator, who will assist them in filing a complaint. An individual with a
45 complaint alleging a violation of this policy shall follow the Uniform Complaint Procedure.

46
47 Any person who knowingly makes false accusation regarding sexual harassment will likewise be subject
48 to disciplinary action, up to and including termination of employment.

1 Cross Reference: **1700 Uniform Complaint Procedure**
2 **5012P Sexual Harassment/Investigation Procedures**
3 **5012E Sexual Harassment Complaint Form**
4
5 Legal Reference: Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e), 29 C.F.R.
6 § 1604.11
7 Title IX of the Education Amendments, 20 U.S.C. §§ 1681,
8 Montana Constitution, Art. X, § 1 - Educational goals and duties
9 § 49-2-101, MCA Human Rights Act
10 *Harris v. Fork Lift Systems*, 114 S.Ct. 367 (1993)
11 Policy History:
12 Adopted on: 11/20/2003
13 Reviewed on:
14 Revised on:

4
5 Performance Evaluations

6
7 Performance evaluation instruments and the evaluation process should focus on
8 improvement of professional skills and effectiveness and also provide the basis for
9 employment recommendations to the Board of Trustees.

10
11 The Superintendent is directed to create written procedures for evaluations of all district
12 employees: certified instructional staff, classified staff, administrators, and administrative
13 support staff not covered by either the BUC or BAEA negotiated agreements.

14
15 Evaluation of Tenured Teachers

16
17 Tenured staff will receive a formal evaluation and evaluation conference a minimum of
18 once per school year.

- 19
- 20 • Performance observations and evaluations may be performed by any qualified
- 21 district administrator either individually or as a member of an administrative
- 22 evaluation team. The evaluating administrator or administrative team has the
- 23 discretion to place the certified staff member on a professional development plan, a
- 24 plan of improvement, or an Administrative Plan of Assistance.
- 25
- 26 • A post evaluation conference will be held within seven (7) school days of the staff
- 27 member receiving the written evaluation except in cases of illness, injury,
- 28 emergency or mutual arrangement between the staff member and building
- 29 Principal.
- 30
- 31 • Certified staff members may submit a written response to the evaluation document
- 32 no later than ten (10) days after receipt of the evaluation. The response will be
- 33 attached to the evaluation document as an addendum and placed in the employee's
- 34 personnel file.
- 35

36 Evaluation of Non-Tenured Teachers

37
38 Non-tenured staff will receive a formal evaluation and evaluation conference a minimum of
39 once per each semester.

- 40
- 41
- 42 • Performance observations and evaluations may be performed by any qualified
- 43 district administrator either individually or as a member of an administrative
- 44 evaluation team. The evaluating administrator or administrative team has the
- 45 discretion to place the certified staff member on a professional development plan, a
- 46 plan of improvement, or an Administrative Plan of Assistance.

- A post evaluation conference will be held within seven (7) school days of the staff member receiving the written evaluation except in cases of illness, injury, emergency or mutual arrangement between the staff member and building Principal.
- Certified staff members may submit a written response to the evaluation document no later than ten (10) days after receipt of the evaluation. The response will be attached to the evaluation document as an addendum and placed in the employee's personnel file.

Employment Recommendations – Tenured and Non-Tenured Teachers

Performance evaluations may be used as the basis for employment recommendations to the Board of Trustees. Recommendations may constitute dismissal or non-renewal of contract. A non-tenured teacher who is non-renewed by the Board of Trustees may not use the grievance procedure to challenge the non-renewal decision.

Classified Employees – Non-Probationary

Non-probationary classified employees will be evaluated a minimum of once per year by their immediate supervisor. The Supervisor may perform multiple evaluations to address performance deficiencies or request evaluation assistance from other supervisors, administrators, or an evaluation team comprised of both. Employees who work only during the school year should be evaluated prior to May 15th of each year.

Classified Employees – Probationary

Probationary Classified employees should be evaluated within three (3) months of the start of employment and again prior to the end of the sixth (6) month probationary period. The Supervisor may perform multiple evaluations to address performance deficiencies or request evaluation assistance from other supervisors, administrators, or an evaluation team comprised of both.

Employment Recommendation – Probationary and Non-Probationary Classified Employees

Performance evaluations may be used as the basis for employment recommendations to the Board of Trustees. Recommendations may constitute dismissal or, in the event of a probationary employee, termination of employment without cause prior to the end of the probation period.

Administrative Staff

The Superintendent shall evaluate administrative staff prior to June 15th of each year utilizing the Administrative Evaluation Instrument, Exhibit 5222 – E2.

1
2 **Supervisory Staff**

3
4 **The Superintendent shall evaluate the Maintenance Director and Transportation Director**
5 **a minimum of once a year. The Business Manager shall evaluate the Food Service Director**
6 **a minimum of once a year. The Classified Personnel Evaluation Instrument shall be used,**
7 **Exhibit 5222 – E1.**

8
9 **Administrative Support Staff**

10
11 **Those employees not covered by either the BAEA or BUC Collective Bargaining**
12 **Agreement shall be evaluated annually by the Superintendent or Business Manager using**
13 **the Classified Personnel Evaluation Instrument.**

14
15 **Certified Non-Teacher Employees**

16
17 **Employees such as the school nurse and school counselor have specialized job assignments**
18 **where the standard certified evaluation instrument may not be appropriate. The**
19 **Superintendent is authorized to prepare evaluation instruments specific to the duties of**
20 **these positions.**

21
22 **Superintendent**

23
24 **The Superintendent will be evaluated by the Board of Trustees in accordance with Policy**
25 **6110, Administration.**

26
27 **Evaluation of Certified Staff**

28
29 **Each certified staff member's job performance will be evaluated by the staff member's**
30 **direct supervisor. Certified staff members will be evaluated according to the terms stated**
31 **in the current collective bargaining agreement if applicable or once per year. The**
32 **evaluation model shall be aligned with applicable district goals, standards of the Board of**
33 **Public Education, and the district's mentorship and induction program. It shall identify**
34 **what skill sets are to be evaluated, include both summative and formative elements, and**
35 **include an assessment of the educator's effectiveness in supporting every student in**
36 **meeting rigorous learning goals through the performance of the educator's duties.**

37
38 **The supervisor will provide a copy of the completed evaluation to the staff member and**
39 **will provide opportunity to discuss the evaluation. The original should be signed by the**
40 **staff member and placed in the personnel file. If the staff member refuses to sign the**
41 **evaluation, the supervisor should note the refusal and submit the evaluation to the**
42 **Superintendent.**

43
44
45 **Evaluation of Classified Staff**

1 **Each classified staff member's job performance will be evaluated by the staff member's**
2 **direct supervisor. The supervisor will provide a copy of the completed evaluation to the**
3 **staff member and will provide opportunity to discuss the evaluation. The original should**
4 **be signed by the staff member and placed in the personnel file. If the staff member refuses**
5 **to sign the evaluation, the supervisor should note the refusal and submit the evaluation to**
6 **the Superintendent.**

7
8 Cross Reference: Policy 5231-5231P Personnel Records

9
10 Legal Reference: 10.55.701(4)(a)(b), ARM Board of Trustees

11
12 Policy History:

13 Adopted on: 08/14/1995

14 Reviewed on:

15 Revised on: 7/16/98, 6/1/2000, 08/10/06

1 **Big Fork School District #38**

2
3 **PERSONNEL**

5228

4
5 Employee Drug and Alcohol Offenses

6
7 In accordance with the requirements of the "Drug-Free Workplace Act of 1988," all employees
8 are hereby notified that the unlawful manufacture, distribution, dispensing, possession, or use of
9 a controlled substance is prohibited.

10
11 It is prohibited for any employee of this school district to manufacture, distribute, dispense,
12 possess, or use a controlled substance in the workplace. Employees must, as a condition of
13 direct or indirect employment in any federal grant program, comply with this policy and notify
14 their immediate supervisor of any criminal drug statute conviction for a violation occurring in the
15 workplace no later than five (5) days after such conviction. Your supervisor is responsible to
16 notify the personnel office immediately after notice from any employee or otherwise receiving
17 notice of such conviction. The personnel office is responsible for notifying the Federal Granting
18 Agency of the conviction within ten (10) days of learning of the conviction.

19
20 Violations of this policy will result in disciplinary action up to and including termination and
21 may have legal consequences.

22
23 Employees are encouraged to seek assistance in dealing with drug problems. Conscientious
24 efforts to seek help for drug dependency will not jeopardize an employee's job status. It is the
25 intention of this school district to maintain a drug-free workplace.

26
27
28 Legal Reference: 41 USC 701, et.seq. Drug Free Workplace

29
30
31
32 Policy History:

33 Adopted on: 01/06/1999

34 Reviewed on:

35 Revised on:

5 Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers

7 The District will adhere to federal law and regulations requiring a drug and alcohol testing
8 program for school bus and commercial vehicle drivers.

10 The program will comply with requirements of the Code of Federal Regulations, Title 49, §§
11 382, *et seq.* The Superintendent will adopt and enact regulations consistent with federal
12 regulations, defining the circumstances and procedures for testing.

16 Legal Reference: 49 U.S.C. §§ 45101, *et seq.* Alcohol and Controlled Substances Testing
17 (Omnibus Transportation Employee Testing Act of 1991)

22 Policy History:

23 Adopted on:

24 Reviewed on:

25 Revised on:

**ACKNOWLEDGEMENT OF RECEIPT
POLICY 5228F**

I, _____, an employee serving as a commercially licensed driver for _____ School District complete this form to document that I have received School District Policies 5228 and 5228P and been given the opportunity to ask questions about the policies to fully understand how the policies govern my employment with the School District.

Employee Signature:

Signature: _____ Date: _____

Supervisor Receipt:

Signature: _____ Date: _____

**REQUEST FOR RECORDS
POLICY 5228F2**

I, _____, an employee serving as a commercially licensed driver for _____ School District complete this form to request any records pertaining to my use of drugs or alcohol, including any records pertaining to my drug or alcohol tests in accordance with School District Policies 5228 and 5228P. If I chose to have these records forwarded to a third party, I am noting the contact information in the space provided on this form.

Employee Signature:

Signature: _____ Date: _____

Supervisor Receipt:

Signature: _____ Date: _____

I authorize the School District to send the requested records to the following individual or entity in accordance with the authorization outlined on this form.

3
4 **PERSONNEL**

6 Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers

7
8 School bus and commercial vehicle drivers shall be subject to a drug and alcohol testing program
9 that fulfills the requirements of the Code of Federal Regulations, Title 49, Part 382.

10
11 Other persons who drive vehicles designed to transport sixteen (16) or more passengers,
12 including the driver, are likewise subject to the drug and alcohol testing program.

13
14 Testing procedures and facilities used for the tests shall conform with the requirements of the
15 Code of Federal Regulations, Title 49, §§ 40, et seq.

16
17 Pre-Employment Tests

18
19 Tests shall be conducted before the first time a driver performs any safety-sensitive function for
20 the District. Safety-sensitive functions include all on-duty functions performed from the time a
21 driver begins work or is required to be ready to work, until he/she is relieved from work and all
22 responsibility for performing work. It includes driving; waiting to be dispatched; inspecting and
23 servicing equipment; supervising, performing, or assisting in loading and unloading; repairing or
24 obtaining and waiting for help with a disabled vehicle; performing driver requirements related to
25 accidents; and performing any other work for the District or paid work for any entity.

26
27 The tests shall be required of an applicant only after he/she has been offered the position.

28
29 Exceptions may be made for drivers who have had the alcohol test required by law within the
30 previous six (6) months and participated in the drug testing program required by law within the
31 previous thirty (30) days, provided that the District has been able to make all verifications
32 required by law.

33
34 Post-Accident Tests

35
36 Alcohol and controlled substance tests shall be conducted as soon after an accident as practicable
37 on any driver:

- 38
39 1. Who was performing safety-sensitive functions with respect to the vehicle, if the accident
40 involved loss of human life; or
41 2. Who receives a citation under state or local law, for a moving traffic violation arising
42 from the accident.

43
44 Drivers shall make themselves readily available for testing, absent the need for immediate
45 medical attention.

1
2
3
4 No such driver shall use alcohol for eight (8) hours after the accident, or until after he/she
5 undergoes a post-accident alcohol test, whichever occurs first.
6

7 If an alcohol test is not administered within two (2) hours or if a drug test is not administered
8 within thirty-two (32) hours, the District shall prepare and maintain records explaining why the
9 test was not conducted. Tests will not be given if not administered within eight (8) hours after
10 the accident for alcohol or within thirty-two (32) hours for drugs.
11

12 Tests conducted by authorized federal, state, or local officials will fulfill post-accident testing
13 requirements, provided they conform to applicable legal requirements and are obtained by the
14 District. Breath tests will validate only the alcohol test and cannot be used to fulfill controlled
15 substance testing obligations.
16

17 Random Tests 18

19 Tests shall be conducted on a random basis at unannounced times throughout the year. Tests for
20 alcohol shall be conducted just before, during, or just after the performance of safety-sensitive
21 functions. The number of random alcohol tests annually must equal twenty-five percent (25%)
22 of the average number of driver positions. The number of random drug tests annually must equal
23 fifty percent (50%) of the average number of driver positions. Drivers shall be selected by a
24 scientifically valid random process, and each driver shall have an equal chance of being tested
25 each time selections are made.
26

27 Reasonable Suspicion Tests 28

29 Tests shall be conducted when a supervisor or District official trained in accordance with law has
30 reasonable suspicion that the driver has violated the District's alcohol or drug prohibitions. This
31 reasonable suspicion must be based on specific, contemporaneous, articulable observations
32 concerning the driver's appearance, behavior, speech, or body odors. The observations may
33 include indications of the chronic and withdrawal effects of controlled substances.
34

35 Alcohol tests are authorized for reasonable suspicion only if the required observations are made
36 during, just before, or just after the period of the work day when the driver must comply with
37 alcohol prohibitions. An alcohol test may not be conducted by the person who determines that
38 reasonable suspicion exists to conduct such a test. If an alcohol test is not administered within
39 two (2) hours of a determination of reasonable suspicion, the District shall prepare and maintain
40 a record explaining why this was not done. Attempts to conduct alcohol tests shall terminate
41 after eight (8) hours.
42

43 A supervisor or District official who makes observations leading to a controlled substance
44 reasonable suspicion test shall make a written record of his/her observations within twenty-four
45 (24) hours of the observed behavior or before the results of the drug test are released, whichever
46 is earlier.
47

1
2
3
4 Enforcement

5 Any driver who refuses to submit to a post-accident, random, reasonable suspicion, or follow-up
6 test shall not perform or continue to perform safety-sensitive functions.

7
8 Drivers who test positive for alcohol or drugs shall be subject to disciplinary action up to and
9 including termination of employment.

10
11 A driver who violates District prohibitions related to drugs and alcohol shall receive from the
12 District the names, addresses, and telephone numbers of substance abuse professionals and
13 counseling and treatment programs available to evaluate and resolve drug and alcohol-related
14 problems. The employee shall be evaluated by a substance abuse professional who shall
15 determine what help, if any, the driver needs in resolving such a problem. Any substance abuse
16 professional who determines that a driver needs assistance shall not refer the driver to a private
17 practice, person, or organization in which he/she has a financial interest, except under
18 circumstances allowed by law.

19
20 An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated
21 by a substance abuse professional to determine that he/she has properly followed the prescribed
22 rehabilitation program and shall be subject to unannounced follow-up tests after returning to
23 duty.

24
25 Return-to-Duty Tests

26
27 A drug or alcohol test shall be conducted when a driver who has violated the District's drug or
28 alcohol prohibition returns to performing safety-sensitive duties.

29
30 Employees whose conduct involved drugs cannot return to duty in a safety-sensitive function
31 until the return-to-duty drug test produces a verified negative result.

32
33 Employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function
34 until the return-to-duty alcohol test produces a verified result that meets federal and District
35 standards.

36
37 Follow-Up Tests

38
39 A driver who violates the District's drug or alcohol prohibition and is subsequently identified by
40 a substance abuse professional as needing assistance in resolving a drug or alcohol problem shall
41 be subject to unannounced follow-up testing as directed by the substance abuse professional in
42 accordance with law. Follow-up alcohol testing shall be conducted just before, during, or just
43 after the time when the driver is performing safety-sensitive functions.

44
45 Records

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47 Employee drug and alcohol test results and records shall be maintained under strict

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4 confidentiality and released only in accordance with law. Upon written request, a driver shall
5 receive copies of any records pertaining to his/her use of drugs or alcohol, including any records
6 pertaining to his/her drug or alcohol tests. Records shall be made available to a subsequent
7 employer or other identified persons only as expressly requested in writing by the driver.
8

9 Notifications

10
11 Each driver shall receive educational materials that explain the requirements of the Code of
12 Federal Regulations, Title 49, Part 382, together with a copy of the District's policy and
13 regulations for meeting these requirements. Representatives of employee organizations shall be
14 notified of the availability of this information. The information shall identify:
15

- 16 1. The person designated by the District to answer driver questions about the materials;
- 17
18 2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49,
19 Part 382;
- 20
21 3. Sufficient information about the safety-sensitive functions performed by drivers to make
22 clear what period of the work day the driver is required to comply with Part 382;
- 23
24 4. Specific information concerning driver conduct that is prohibited by Part 382;
- 25
26 5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part
27 382;
- 28
29 6. The procedures that will be used to test for the presence of drugs and alcohol, protect the
30 driver and the integrity of the testing processes, safeguard the validity of test results, and
31 ensure that test results are attributed to the correct driver;
- 32
33 7. The requirement that a driver submit to drug and alcohol tests administered in accordance
34 with Part 382;
- 35
36 8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the
37 attendant consequences;
- 38
39 9. The consequences for drivers found to have violated the drug and alcohol prohibitions of
40 Part 382, including the requirement that the driver be removed immediately from safety-
41 sensitive functions and the procedures for referral, evaluation, and treatment;
- 42
43 10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater
44 but less than 0.04;
- 45
46 11. Information concerning the effects of drugs and alcohol on an individual's health, work,
47 and personal life; signs and symptoms of a drug or alcohol problem (the driver's or a

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4 coworker's); and available methods of intervening when a drug or alcohol problem is
5 suspected, including confrontation, referral to an employee assistance program, and/or
6 referral to management; and
7

8 12. The requirement that the following personal information collected and maintained under
9 this part shall be reported to the Commercial Driver's License Drug and Alcohol
10 Clearinghouse:

- 11
12 A. A verified positive, adulterated, or substituted drug test result;
13
14 B. An alcohol confirmation test with a concentration of 0.04 or higher;
15
16 C. A refusal to submit to any test required by law;
17
18 D. An employer's report of actual knowledge, as defined in law;
19
20 E. On duty alcohol use;
21
22 F. Pre-duty alcohol use;
23
24 G. Alcohol use following an accident;
25
26 H. Controlled substance use;
27
28 I. A substance abuse professional report of the successful completion of the
29 return-to-duty process;
30
31 J. A negative return-to-duty test; and
32
33 K. An employer's report of completion of follow-up testing.
34

35 Drivers shall also receive information about legal requirements, District policies, and
36 disciplinary consequences related to the use of alcohol and drugs.

37
38 Each driver shall sign a statement certifying that he/she has received a copy of the above
39 materials.
40

41 Before any driver operates a commercial motor vehicle, the District shall provide him/her with
42 post-accident procedures that will make it possible to comply with post-accident testing
43 requirements.
44

45 Before drug and alcohol tests are performed, the District shall inform drivers that the tests are
46 given pursuant to the Code of Federal Regulations, Title 49, Part 382. This notice shall be
47 provided only after the compliance date specified in law.

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PERSONNEL

Breastfeeding in the School and Workplace

Recognizing that breastfeeding is a normal part of daily life for mothers and infants and that Montana law authorizes mothers to breastfeed their infants where mothers and children are authorized to be, the District shall support women who want to continue breastfeeding after returning from maternity leave.

The District shall provide reasonable unpaid break time each day to an employee who needs to express milk for a child. The District is not required to provide break time if to do so would unduly disrupt the District’s operations. Supervisors are encouraged to consider flexible schedules when accommodating employees’ needs. Building administrators are authorized to work with teachers to provide students necessary time to express milk for a child.

The District shall make reasonable efforts to provide a room or other location, other than a toilet stall, where an employee or student can express breast milk and access to a place to store expressed breast milk safely. The available space shall include the provision for lighting and electricity for the pump apparatus. If possible, supervisors and building administrators shall ensure that those employees or students in need of such accommodations shall be aware of them prior to maternity leave.

Legal Reference:	§ 39-2-215, MCA	Public employer policy on support of women and breastfeeding – unlawful discrimination
	§ 39-2-216, MCA	Private Place for nursing mothers
	§ 39-2-217, MCA	Break time for nursing mothers
	37.111.811, ARM	Physical Requirements

Policy History:

Adopted on:

Revised on:

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3 **PERSONNEL**

4 Family Medical Leave

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6 In accordance with provisions of the Family Medical Leave Act of 1993 (FMLA), a leave of absence of
7 up to twelve (12) weeks during a twelve-(12)-month period may be granted to an eligible employee for
8 the following reasons: 1) birth of a child; 2) placement of a child for adoption or foster care; 3) a serious
9 health condition which makes the employee unable to perform functions of the job; 4) to care for the
10 employee’s spouse, child, or parent with a serious health condition; 5) because of a qualifying exigency
11 (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse or a son, daughter,
12 or parent of the employee is on active duty (or has been notified of an impending call or order to active
13 duty) in the Armed Forces in support of a contingency operation.

14
15 Servicemember Family Leave

16 Subject to Section 103 of the FMLA of 1993, as amended, an eligible employee who is the spouse, son,
17 daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty-six (26)
18 workweeks of leave during a twelve-(12)-month period to care for the servicemember. The leave
19 described in this paragraph shall only be available during a single twelve-(12)-month period.

20
21 Eligibility

22 An employee is eligible to take FMLA leave, if the employee has been employed for at least twelve (12)
23 months and has worked at least one thousand two hundred fifty (1,250) hours during the twelve (12)
24 months immediately prior to the date leave is requested, and there have been at least fifty (50) District
25 employees within seventy-five (75) miles for each working day during twenty (20) or more workweeks in
26 the current or preceding calendar year.

27
28 The Board has determined that the twelve-(12)-month period during which an employee may take FMLA
29 leave is twelve (12) months backward from the date of FMLA leave.

30
31 Coordination of Paid Leave

32 Employees will be required to use appropriate paid leave while on FMLA leave. Workers’ compensation
33 absences will be designated FMLA leave.

34
35 Medical Certification

36 The Superintendent has discretion to require medical certification to determine initial or continued
37 eligibility under FMLA as well as fitness for duty.

38
39 Legal Reference: 29 U.S.C §2601, *et seq.* - Family and Medical Leave Act of 1993
40 29 C.F.R. Part 825, Family and Medical Leave Regulations
41 §§2-18-601, *et seq.*, MCA Leave Time
42 §§49-2-301, *et seq.*, MCA Prohibited Discriminatory Practices
43 Section 585 – National Defense Authorization Act for FY 2008, Public Law
44 [110-181]

45 Policy History:

46 Adopted on: 04/30/2013
47 Reviewed on:
48 Revised on:

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3 **PERSONNEL**

4
5 **Fair Labor Standards Act**

6
7 **Compensatory Time and Overtime for Classified Employees**

8
9 Non-exempt classified employees who work more than forty (40) hours in a given workweek may receive
10 overtime pay of one and one-half (1½) times the normal hourly rate, unless the District and the employee
11 agree to the provision of compensation time at a rate of one and one-half (1½) times all hours worked in
12 excess of forty (40) hours in any workweek. The Superintendent must approve any overtime work of a
13 classified employee.

14
15 Under Montana law and the Federal Fair Labor Standards Act, a classified employee may not volunteer to
16 work without pay in an assignment similar to the employee’s regular work.

17
18 A non-exempt employee who works overtime without authorization may be subject to disciplinary action.

19
20 **Blended Time**

21
22 Classified Employees working two or more jobs for the District at different rates of pay shall be paid
23 overtime at a weighted average of the differing wages. This shall be determined by dividing the total
24 regular remuneration for all hours worked by the number of hours worked in that week to arrive at the
25 weighted average. One half that rate is then multiplied times the number of hours worked over 40 to
26 arrive at the overtime compensation due.

27
28 *Example: Employee works one job at 30 hrs./week at 10.00/hr. The same employee works a different job*
29 *at 20 hrs./week at \$12.00/hr. (Same district). The employee would get \$300.00 per week for the 30*
30 *hr./week job (\$10.00X30) and \$240.00 per week for the 20 hr./week job (\$12.00X20). A total of \$540.00*
31 *(regular remuneration). Divide \$540.00 by 50(total hours worked) = \$10.8/hr (weighted average). One-*
32 *half that rate (\$10.80/2 = \$5.40) is multiplied by 10 (number of hours over 40). \$54.00 is the amount of*
33 *overtime compensation due the employee based on the “blended time”.*

34
35 **Record-Keeping Requirements Under the Fair Labor Standards Act**

- 36
37 1. Records required for ALL employees:
38
39 A. Name in full (same name as used for Social Security);
40 B. Employee’s home address, including zip code;
41 C. Date of birth if under the age of nineteen (19);
42 D. Sex (may be indicated with Male/Female, M/F, Mr./Mrs./Miss/Ms.);
43 E. Time of day and day of week on which the employee’s workweek begins;
44 F. Basis on which wages are paid (such as \$5/hour, \$200/week, etc.);
45 G. Any payment made which is not counted as part of the “regular rate”;
46 H. Total wages paid each pay period.
47 I. Occupation
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2. Additional records required for non-exempt employees:

- A. Regular hourly rate of pay during any week when overtime is worked;
- B. Hours worked in any workday (consecutive twenty-four-(24)-hour period);
- C. Hours worked in any workweek (or work period in case of 207[k]);
- D. Total daily or weekly straight-time earnings (including payment for hours in excess of forty (40) per week but excluding premium pay for overtime);
- E. Total overtime premium pay for a workweek;
- F. Date of payment and the pay period covered;
- G. Total deductions from or additions to wages each pay period;
- H. Itemization of dates, amounts, and reason for the deduction or addition, maintained on an individual basis for each employee;
- I. Number of hours of compensatory time earned each pay period;
- J. Number of hours of compensatory time used each pay period;
- K. Number of hours of compensatory time compensated in cash, the total amount paid, and the dates of such payments;
- L. The collective bargaining agreements which discuss compensatory time, or written understandings with individual non-union employees.

Legal Reference:	29 U.S.C § 201, <i>et seq.</i>	Fair Labor Standards Act
	24.9.805, ARM	Employment Records
	Title 39, Chapter 3, Part 4	Minimum Wage and Overtime Compensation
	24.16.2501—2581, ARM	Overtime Compensation

Policy History:

Adopted on: 04/06/1995
Reviewed on:
Revised on:

2
3 **PERSONNEL**

4
5 HIPAA

6
7 *Note:*

8
9 *(1) Any school district offering a group “health care plan” for its employees is affected by*
10 *HIPAA. School districts offering health plans that are self-insured will be entirely responsible*
11 *for compliance with HIPAA, despite a third party administrator managing the plan. School*
12 *districts may also be subject to HIPAA as a “health care provider” by either having a school-*
13 *based health center or a school nurse. School-based health centers staffed and serviced by a*
14 *hospital or local health department are responsible for complying with HIPAA if there is a*
15 *sharing of records containing health information. For those districts providing the services of a*
16 *school nurse, HIPAA regulations issued in 2000 commented that an “educational institution that*
17 *employs a school nurse is subject to [the] regulations as a health care provider if the school*
18 *nurse or the school engaged in a HIPAA transaction.” This transaction occurs when a school*
19 *nurse submits a claim electronically.*

20
21 *(2) Any personally identifiable health information contained in an “education record” under*
22 *FERPA is subject to FERPA, not HIPAA.*

23
24 Background

25
26 **Health Insurance Portability and Accountability Act of 1996 (HIPAA)**

27
28 The District’s group health plan is a Covered Entity under the Health Insurance Portability and
29 Accountability Act of 1996 (HIPAA) and its implementing regulations, the Standards for the
30 Privacy of Individually Identifiable Information. In order to comply with HIPAA and its related
31 regulations, the District has implemented the following HIPAA Privacy Policy:

32
33 **The HIPAA Privacy Rule**

34
35 HIPAA required the federal government to adopt national standards for *electronic health care*
36 *transactions*. At the same time, Congress recognized that advances in electronic technology
37 could erode the privacy of health information and determined there was a need for national
38 privacy standards. As a result HIPAA included provisions which mandated the adoption of
39 federal privacy standards for individually identifiable health information.

40
41 The standards found in the Privacy Rule are designed to protect and guard against the misuse of
42 individually identifiable health information, with particular concern regarding employers using
43 an employee’s (or dependent’s) health information from the group health plan to make adverse
44 employment-related decisions. The Privacy Rule states that verbal, written, or electronic
45 information that can be used to connect a person’s name or identity with medical, treatment, or
46 health history information is Protected Health Information (PHI) under the HIPAA Privacy Rule.

Under the HIPAA Privacy Rule:

1. Individuals have a right to access and copy their health record to the extent allowed by HIPAA.
2. Individuals have the right to request an amendment to their health record. The plan may deny an individual's request under certain circumstances specified in the HIPAA Privacy Rule.
3. Individuals have the right to an accounting of disclosures of their health record for reasons other than treatment, payment, or healthcare operations.
4. PHI, including health, medical, and claims records, can be used and disclosed without authorization for specific, limited purposes (treatment, payment, or operations of the group health plan). A valid authorization from the individual must be provided for use or disclosure for other than those purposes.
5. Safeguards are required to protect the privacy of health information.
6. Covered entities are required to issue a notice of privacy practices to their enrollees.
7. Violators are held accountable with civil and criminal penalties for improper use or disclosure of PHI.

Compliance

_____ has been designated Privacy Officer. The Privacy Officer will oversee all ongoing activities related to the development, implementation, maintenance of, and adherence to the District's policies and procedures covering the privacy of and access to patient health information in compliance with HIPAA, other applicable federal and state laws, and the District's privacy practices.

As required for a Covered Entity under HIPAA, the plan has developed these internal privacy policies and procedures to assure that PHI is protected and that access to and use and disclosure of PHI are restricted in a manner consistent with HIPAA's privacy protections. The policies and procedures recognize routine and recurring disclosures for treatment, payment, and healthcare operations and include physical, electronic, and procedural safeguards to protect PHI. The procedures include safeguards for sending PHI via mail or fax, receiving PHI for plan purposes, and workstation safeguards and procedures for securing and retaining PHI received by the plan. Plan participants are entitled to receive a copy of the plan's policies and procedures upon request.

Designating a limited number of privacy contacts allows the District to control who is receiving

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4 PHI from the contract claims payor for plan operations purposes. The contract claims payor will
5 provide only the minimum PHI necessary for the stated purpose and, as required under the
6 Privacy Rule, will provide PHI only to individuals with a legitimate need to know for plan
7 operations purposes.
8

9 The District has distributed a notice of privacy practices to plan participants. The notice informs
10 plan participants of their rights and the District's privacy practices related to the use and
11 disclosure of PHI. A copy of this notice may be obtained by contacting the Privacy Officer.
12

13 The District has reviewed how PHI is used and disclosed by the plan and has limited disclosure
14 of that information to employees who have a legitimate need to know or possess the PHI for
15 healthcare operations and functions. The District will make reasonable efforts to use de-
16 identified information whenever possible in the operations of the plan and will only use the
17 minimum PHI necessary for the stated purpose.
18

19 Some of the District's employees need access to PHI in order to properly perform the functions
20 of their jobs. The District has identified these employees and has given them training in the
21 important aspects of the HIPAA Privacy Rule, the privacy policy, and procedures. New
22 employees who will have access to PHI will receive training on the HIPAA Privacy Rule and
23 related policies and procedures as soon as reasonably possible after they are employed.
24 Employees who improperly use or disclose PHI or misuse their access to that information may
25 be subject to discipline, as deemed appropriate.
26

27 In the event the group health plan must disclose PHI in the course of performing necessary plan
28 operations functions or as required by law or a governmental agency, the District has developed
29 a system to record those disclosures and requests for disclosures. An individual may request a
30 list of disclosures of his or her PHI made by the plan for other than treatment or claims payment
31 purposes. All requests for an accounting of PHI disclosures must be made in writing, and the
32 plan may impose fees for the cost of production of this information. Requests will be responded
33 to within sixty (60) days. If the plan is not able to provide the requested information within sixty
34 (60) days, a written notice of delay will be sent to the requesting individual, with the reasons for
35 the delay and an estimated time for response.
36

37 In order to comply with the new privacy regulations, the plan has implemented compliant
38 communication procedures. Except for its use in legitimate healthcare operations, written
39 permission will be required in order for the District to disclose PHI to or discuss it with a third
40 party.
41

42 The HIPAA Privacy Rule prohibits the District from disclosing medical information without the
43 patient's written permission other than for treatment, payment, or healthcare operations purposes.
44 An authorization signed by the patient and designating specified individuals to whom the District
45 may disclose specified medical information must be on file, before the plan can discuss a
46 patient's medical information with a third party (such as a spouse, parent, group health plan

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4 representative, or other individual).

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6 The District has taken the following steps to ensure PHI is safeguarded:

- 7
- 8 • The District has implemented policies and procedures to designate who has and who does
9 not have authorized access to PHI.
 - 10
 - 11 • Documents containing PHI are kept in a restricted/locked area.
 - 12
 - 13 • Computer files with PHI are password protected and have firewalls making unauthorized
14 access difficult.
 - 15
 - 16 • Copies of PHI will be destroyed when information is no longer needed, unless it is
17 required by law to be retained for a specified period of time.
 - 18
 - 19 • The District will act promptly to take reasonable measures to mitigate any harmful effects
20 known to the group health plan, due to a use or disclosure of PHI in violation of the
21 plan's policies, procedures, or requirements of the HIPAA Privacy Rule.
 - 22
 - 23 • The District will appropriately discipline employees who violate the District's group
24 health plan's policies, procedures, or the HIPAA Privacy Rule, up to and including
25 termination of employment if warranted by the circumstances.
- 26

27 The District has received signed assurances from the plan's business associates that they
28 understand the HIPAA Privacy Rule, applicable regulations, and the Privacy Policy and will
29 safeguard PHI just as the plan would.

30

31 The contract claims payor and certain other entities outside the group health plan require access
32 on occasion to PHI, if they are business associates of the group health plan and in that role need
33 to use, exchange, or disclose PHI from the group health plan. The plan requires these entities to
34 sign an agreement stating they understand HIPAA's privacy requirements and will abide by
35 those rules just as the group health plan does, to protect the PHI to which they have access. For
36 example the plan engages a certified public accountant to audit the plan annually and to make
37 sure payments are made in compliance with the Plan Document. In order for the CPA to
38 complete an audit, the auditor reviews a sample of the claims for accuracy.

39

40 The District will ensure health information will not be used in making employment and
41 compensation decisions. The HIPAA Privacy Rule and other applicable laws expressly prohibit
42 an employer from making adverse employment decisions (demotions, terminations, etc.) based
43 on health information received from the group health plan. To the extent possible, the District
44 has separated the plan operations functions from the employment functions and has safeguards in
45 place to prevent PHI from the plan from going to or being used by an employee's supervisor,
46 manager, or superior to make employment-related decisions.

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Complaints

If an employee believes their privacy rights have been violated, they may file a written complaint with the Privacy Officer. No retaliation will occur against the employee for filing a complaint. The contact information for the Privacy Officer is:

_____ [Name and Title]
_____ School District
_____ [Address]
_____ [Address]

Legal Reference: 45 C.F.R. Parts 160, 162, 164

Policy History:

Adopted on:
Reviewed on:
Revised on:

