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

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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.

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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.

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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.

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

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41 Cross Reference: 1700 Uniform Complaint Procedure

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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.

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46 Policy History:

47 Adopted on: 11/16/2006

48 **First reading on: 12/8/21**

49 **Second reading/Adopted on:**

2
3 **PERSONNEL**

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

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

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

17
18 **Matt Porrovecchio, Special Services Director/AD**
19 **600 Commerce St., Bigfork, MT 59911**
20 **mattp@bigfork.k12.mt.us**
21 **406-837-7400**
22

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

26
27 **Matt Porrovecchio, Special Services Director/AD**
28 **600 Commerce St., Bigfork, MT 59911**
29 **mattp@bigfork.k12.mt.us**
30 **406-837-7400**
31

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

35
36 The District, in compliance with federal regulations, will notify annually all students, parents, staff, and
37 community members of this policy and the designated coordinator to receive inquiries. This annual
38 notification will include the name and location of the coordinator and will be included in all handbooks.

39
40 The District will not tolerate hostile or abusive treatment, derogatory remarks, or acts of violence against
41 students, staff, or volunteers with disabilities. The District will consider such behavior as constituting
42 discrimination on the basis of disability, in violation of state and federal law.

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

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47 Retaliation against an employee who has filed a discrimination complaint, testified, or participated in any
48 manner in a discrimination investigation or proceeding is prohibited.
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5 Legal Reference: Age Discrimination in Employment Act, 29 U.S.C. §§ 621, *et seq.*
6 Americans with Disabilities Act, Title I, 42 U.S.C. §§ 12111, *et seq.*
7 Equal Pay Act, 29 U.S.C. § 206(d)
8 Immigration Reform and Control Act, 8 U.S.C. §§ 1324(a), *et seq.*
9 Rehabilitation Act of 1973, 29 U.S.C. §§ 791, *et seq.*
10 Genetic Information Nondiscrimination Act of 2008 (GINA)
11 Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000(e), *et seq.*; 29 C.F.R.,
12 Part 1601
13 Title IX of the Education Amendments, 20 U.S.C. §§ 1681, *et seq.*; 34
14 C.F.R., Part 106
15 Montana Constitution, Art. X, § 1 - Educational goals and duties
16 § 49-2-101, *et seq.*, MCA Human Rights Act
17 § 49-2-303, MCA Discrimination in Employment
18 § 49-3-102, MCA What local governmental units affected
19 §49-3-201, MCA Employment of state and local government
20 personnel.
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23 Policy History:

24 **First Reading on: 12/8/21**

25 **Second Reading/Adopted on:**

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3 **PERSONNEL**

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6 Sexual Harassment of Employees

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8 The District does not discriminate on the basis of sex in any education program or activity that it operates.
9 The District is required by Title IX of the Education Amendments of 1972 and the regulations
10 promulgated through the U.S. Department of Education not to discriminate in such a manner. Inquiries
11 about the application of Title IX to the District may be referred to the District’s Title IX Coordinator, to
12 the Assistant Secretary for Civil Rights of the Department of Education, or both.
13

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

15
16 **Matt Porrovecchio, Special Services Director/AD**
17 **600 Commerce St., Bigfork, MT 59911**
18 **mattp@bigfork.k12.mt.us**
19 **406-837-7400**
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21 Any person may report sex discrimination, including sexual harassment, at any time, including during
22 non-business hours. Such a report may be made using the attached form, in person, by mail, by telephone
23 or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other
24 means that results in the Title IX Coordinator receiving the person’s verbal or written report.
25

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

- 28
- 29 1. A District employee conditioning the provision of an aid, benefit, or service of the District on
30 an individual’s participation in unwelcome sexual conduct;
 - 31
 - 32 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and
33 objectively offensive that it effectively denies a person equal access to the District’s education
34 program or activity; or
 - 35
 - 36 3. “Sexual assault” as defined in 20 USC 1092(f)(6)(A)(v), “dating violence” as defined in 34
37 USC 12291(a)(10), “domestic violence” as defined in 34 USC 12291(a)(8) or “stalking” as
38 defined in 34 USC 12291(a)(30).
39

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

44 An individual is not required to submit a report of sexual harassment involving the Title IX coordinator.
45 In the event the Title IX Coordinator is responsible for or a witness to the alleged harassment, the
46 individual may report the allegations to the building principal or superintendent or other unbiased school
47 official.
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4 Retaliation Prohibited
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6 The District prohibits intimidation, threats, coercion or discrimination against any individual for the
7 purpose of interfering with any right or privilege secured by Title IX or this policy, or because the
8 individual has made a report or complaint, testified, assisted, or participated or
9 refused to participate in any manner in an investigation proceeding or hearing, if applicable. Intimidation,
10 threats, coercion, or discrimination, including charges against an individual for code of conduct violations
11 that do not involve sex discrimination or sexual harassment, but arise out of the same facts or
12 circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual
13 harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part,
14 constitutes retaliation.
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16 Confidentiality
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18 The District must keep confidential the identity of any individual who has made a report or complaint of
19 sex discrimination, including any individual who has made a report or filed a formal complaint of sexual
20 harassment, any individual who has been alleged to be the victim or perpetrator of conduct that could
21 constitute sexual harassment, and any witness, except as may be permitted by Family Educational Rights
22 and Privacy Act (FERPA) or as required by law, or to carry out the purposes of the Title IX regulations,
23 including the conduct of any investigation, hearing or judicial proceeding arising thereunder.
24

25 Notice Requirements
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27 The District provides notice to applicants for admission and employment, students, parents or legal
28 guardians of elementary and secondary school students, employees and the union(s) with the name or
29 title, office address, email address and telephone number of the Title IX Coordinator and notice of the
30 District grievance procedures and process, including how to report or file a complaint of sex
31 discrimination, how to file a formal complaint of sexual harassment and how the District will respond.
32 The District also posts the Title IX Coordinator's contact information and Title IX policies and
33 procedures in a prominent location on the District website and in all handbooks made available by the
34 District.
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36 Training Requirements
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38 The District ensures that Title IX Coordinators, investigators, decision-makers, and any person who
39 facilitates an informal resolution process, receives training on the definition of sexual harassment, the
40 scope of the District's education program or activity, how to conduct an investigation and grievance
41 process including hearings, appeals and informal resolution processes, when applicable, and how to serve
42 impartially including by avoiding prejudgment of the facts at issue, conflicts of interest and bias. The
43 District also ensures that decision-makers and investigators receive training on issues of relevance of
44 questions and evidence, including when questions and evidence about the complainant's sexual
45 predisposition or prior sexual behavior are not relevant as set forth in the formal procedures that follow,
46 and training on any technology to be used at a live hearing, if applicable. Investigators also receive
47 training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
48 All materials used to train individuals who receive training under this section must not rely on sex
49 stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual
50 harassment and are made publicly available on the District's website.
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Conflict of Interest and Bias

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

Determination of Responsibility

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

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

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

Policy History:

First reading on: 12/8/21

Second reading/Adopted on:

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6 Sexual Harassment Grievance Procedure - Employees

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

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13 Definitions

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

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

20
21 “Education program or activity:” includes locations, events or circumstances over which the District
22 exercised substantial control over both the individual who has been reported to be the perpetrator of
23 conduct that could constitute sexual harassment, and the context in which the sexual harassment occurs.

24
25 “Complainant:” an individual who is alleged to be the victim of conduct that could constitute sexual
26 harassment.

27
28 “Respondent:” an individual who has been reported to be the perpetrator of conduct that could constitute
29 sexual harassment.

30
31 “Formal complaint:” a document filed by a Complainant or signed by the Title IX Coordinator alleging
32 sexual harassment against a Respondent and requesting that the District investigate the allegation of
33 sexual harassment.

34
35 “Supportive measures:” non-disciplinary, non-punitive individualized services offered as appropriate, as
36 reasonably available and without fee or charge to the Complainant or Respondent before or after the filing
37 of a formal complaint or where no formal complaint has been filed.

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39 District Requirements

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41 When the District has actual knowledge of sexual harassment in an education program or activity of the
42 District, the District will respond promptly in a manner that is not deliberately indifferent. When the
43 harassment or discrimination on the basis of sex does not meet the definition of sexual harassment, the
44 Title IX Coordinator will direct the individual to the applicable sex discrimination process bullying and
45 harassment policy, or public complaint procedure for investigation.

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

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

23 24 Timelines

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

33 34 Response to a Formal Complaint

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

40
41 The District must follow the formal complaint process before the imposition of any disciplinary sanctions
42 or other actions that are not supportive measures. However, nothing in this policy precludes the District
43 from placing a non-student employee Respondent on administrative leave during the pendency of the
44 grievance process. The District may also remove a student Respondent alleged to have harassed an
45 employee Complainant from the education setting. The student may receive instruction in an offsite
46 capacity during the period of removal. This provision may not be construed to modify any rights under
47 the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the
48 Americans with Disabilities Act.

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

- 6
7 1. Notice of the allegations of sexual harassment, including information about the identities of
8 the parties involved in the incident, the conduct allegedly constituting sexual harassment,
9 the date and location of the alleged incident, and any sufficient details known at the time.
10 Such notice must be provided with sufficient time to prepare a response before any initial
11 interview;
- 12
13 2. An explanation of the District's investigation procedures, including any informal resolution
14 process;
- 15
16 3. A statement that the Respondent is presumed not responsible for the alleged conduct and
17 that a determination regarding responsibility will be made by the decision-maker at the
18 conclusion of the investigation;
- 19
20 4. Notice to the parties that they may have an advisor of their choice who may be, but is not
21 required to be, an attorney, and may inspect and review any evidence; and
- 22
23 5. Notice to the parties of any provision in the District's code of conduct or policy that
24 prohibits knowingly making false statements or knowingly submitting false information.
25

26 If, in the course of an investigation, the District decides to investigate allegations about the Complainant
27 or Respondent that are not included in the notice initially provided, notice of the additional allegations
28 must be provided to known parties.
29

30 The District may consolidate formal complaints as to allegations of sexual harassment against more than
31 one Respondent, or by more than one Complainant against one or more Respondents, or by one party
32 against the other party, where the allegations of sexual harassment arise out of the same facts or
33 circumstances.
34

35 Investigation of a Formal Complaint

36
37 When investigating a formal complaint and throughout the grievance process, the District must:

- 38
39 1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a
40 determination regarding responsibility rests on the District and not the parties';
- 41
42 2. Provide an equal opportunity for the parties to present witnesses and evidence;
- 43
44 3. Not restrict either party's ability to discuss the allegations under investigation or to gather and
45 present relevant evidence;
- 46
47 4. Allow the parties to be accompanied with an advisor of the party's choice who may be, but is
48 not required to be, an attorney. The District may establish restrictions regarding the extent to
49 which the advisor may participate in the proceedings, as long as the restrictions apply equally to
50 both parties;
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5. Provide written notice of the date, time, location, participants, and purpose of any interview or meeting at which a party is expected to participate, with sufficient time for the party to prepare to participate;
6. Provide the parties equal access to review all the evidence collected which is directly related to the allegations raised in a formal complaint and comply with the review periods outlined in this process;
7. Objectively evaluate all relevant evidence without relying on sex stereotypes;
8. Ensure that Title IX Coordinators, investigators, decision-makers and individuals who facilitate an informal resolution process, do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
9. Not make credibility determinations based on the individual's status as Complainant, Respondent or witness;
10. Not use questions or evidence that constitute or seek disclosure of privileged information unless waived.

Dismissal of Formal Complaints

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

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

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

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

Evidence Review

The District provides both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation. The evidence provided by the District must include evidence that is directly related to the allegations in the formal complaint, evidence upon which the District does not

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4 intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory
5 evidence whether obtained from a party or other source. Prior to completion of the investigative report,
6 the Title IX Coordinator must send to each party and the party's advisor, if any, the evidence subject to
7 inspection and review in an electronic format or a hard copy. The parties have 10 calendar days to submit
8 a written response to the Title IX Coordinator, which the investigator will consider prior to completion of
9 the investigative report.

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11 Investigative Report

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

17
18 Decision-Maker's Determination

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

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

35
36 The decision-maker must issue a written determination regarding responsibility based on a preponderance
37 of the evidence standard. The decision-maker's written determination must:

- 38
39 1. Identify the allegations potentially constituting sexual harassment;
- 40
41 2. Describe the procedural steps taken, including any notifications to the parties, interviews with
42 parties and witnesses, site visits, methods used to gather evidence, and hearings held;
- 43
44 3. Include the findings of fact supporting the determination;
- 45
46 4. Draw conclusions regarding the application of any District policies and/or code of conduct
47 rules to the facts;
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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 filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

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

Appeals

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

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

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

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

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

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4 describing the result of the appeal and the rationale for the result. The decision must be provided to both
5 parties simultaneously, and generally will be provided within 10 calendar days from the date the appeal is
6 filed.

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

- 14
15 1. Provides to the parties a written notice disclosing:
16
17 A. The allegations;
18
19 B. The requirements of the informal resolution process including the circumstances under
20 which it precludes the parties from resuming a formal complaint arising from the same
21 allegations, provided, however, that at any time prior to agreeing to a resolution, any
22 party has the right to withdraw from the informal resolution process and resume the Title
23 IX formal complaint process with respect to the formal complaint; and
24
25 C. Any consequences resulting from participating in the informal resolution process,
26 including the records that will be maintained or could be shared.
27
28 2. Obtains the parties' voluntary, written consent to the informal resolution process.
29

30 The informal resolution process generally will be completed within 30 calendar days, unless the parties
31 and the Title IX Coordinator mutually agree to temporarily delay or extend the process. The formal
32 grievance process timelines are stayed during the parties' participation in the informal resolution process.
33 If the parties do not reach resolution through the informal resolution process, the parties will resume the
34 formal complaint grievance process, including timelines for resolution, at the point they left off.
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36 Recordkeeping
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38 The District must maintain for a period of seven years records of:
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- 40 1. Each sexual harassment investigation, including any determination regarding responsibility,
41 any disciplinary sanctions imposed on the Respondent, and any remedies provided to the
42 Complainant designed to restore or preserve equal access to the District's education program or
43 activity;
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45 2. Any appeal and the result therefrom;
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47 3. Any informal resolution and the result therefrom; and
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49 4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any
50 person who facilitates an informal resolution process. The District must make these training
51 materials publicly available on its website.

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4 The District must create, and maintain for a period of seven years, records of any actions, including any
5 supportive measures, taken in response to a report or formal complaint of sexual harassment. In each
6 instance, the District must document the basis for its conclusion that its
7 response was not deliberately indifferent, and document that it has taken measures designed to restore or
8 preserve equal access to the District's education program or activity.
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11 Cross Reference: Policy 5010 Equal Employment and Non-Discrimination
12 Policy 5012 Sexual Harassment
13 Policy 5255 Employee Discipline
14

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

29 **First Reading on: 12/8/21**

30 **Second Reading/Adopted on:**

2
3 **Sexual Harassment Reporting/Intake Form for Employees**

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

7
8 School _____ Date _____

9
10 Employee's name _____

11
12 • Who was responsible for the harassment or incident(s)? _____

13
14
15 • Describe the incident(s). _____

16
17
18
19 • Date(s), time(s), and place(s) the incident(s) occurred. _____

20
21
22
23 • Were other individuals involved in the incident(s)? yes no
24 If so, name the individual(s) and explain their roles. _____

25
26
27
28
29 • Did anyone witness the incident(s)? yes no
30 If so, name the witnesses. _____

31
32
33
34
35 • Did you take any action in response to the incident? yes no
36 If yes, what action did you take? _____

37
38
39
40
41 • Were there any prior incidents? yes no
42 If so, describe any prior incidents. _____

43
44
45
46 Signature of complainant _____

47
48 *Retaliation is prohibited by federal law and district policy. The identity of the individual signing this form*
49 *will remain confidential in accordance with law and policy.*

2
3 PERSONNEL

4
5
6 Performance Evaluations

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

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

15
16 Evaluation of Tenured Teachers/~~Non-Tenured Teachers will follow CBA~~

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

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

34
35 Evaluation of Non-Tenured Teachers

36
37 ~~Non-tenured staff will receive a formal evaluation and evaluation conference a minimum of once per each~~
38 ~~semester.~~

- 39
40 ~~● Performance observations and evaluations may be performed by any qualified district~~
41 ~~administrator either individually or as a member of an administrative evaluation team. The~~
42 ~~evaluating administrator or administrative team has the discretion to place the certified staff~~
43 ~~member on a professional development plan, a plan of improvement, or an Administrative Plan of~~
44 ~~Assistance.~~
- 45
46 ~~● A post evaluation conference will be held within seven (7) school days of the staff member~~
47 ~~receiving the written evaluation except in cases of illness, injury, emergency or mutual~~
48 ~~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.~~

Supervisory Staff

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

Administrative Support Staff

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

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Certified Non-Teacher Employees

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

Superintendent

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

Evaluation of Certified Staff

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

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

Evaluation of Classified Staff

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

Cross Reference: Policy 5231-5231P Personnel Records

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

Policy History:

Adopted on: 08/14/1995
Revised on: 7/16/98, 6/1/2000, 08/10/06
First Reading on: 12/8/21
Second Reading/Adopted on:

2
3 **PERSONNEL**

4
5 Employee Drug and Alcohol Offenses

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

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

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

22
23 Employees are encouraged to seek assistance in dealing with drug problems. Conscientious efforts to
24 seek help for drug dependency will not jeopardize an employee's job status. It is the intention of this
25 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 **First Reading on: 12/8/21**

35 **Second Reading/Adopted on:**

2
3 **PERSONNEL**

4
5 Drug and Alcohol Testing for School Bus and Commercial Vehicle Drivers

6
7 The District will adhere to federal law and regulations requiring a drug and alcohol testing program for
8 school bus and commercial vehicle drivers.

9
10 The program will comply with requirements of the Code of Federal Regulations, Title 49, §§ 382, *et seq.*
11 The Superintendent will adopt and enact regulations consistent with federal regulations, defining the
12 circumstances and procedures for testing.

13
14
15
16 Legal Reference: 49 U.S.C. §§ 45101, et seq. Alcohol and Controlled Substances Testing
17 (Omnibus Transportation Employee Testing Act of 1991)
18 49 C.F.R. Parts 40 (Procedures for Transportation Workplace Drug and Alcohol
19 Testing Programs), 382 (Controlled substance and alcohol use and testing), and
20 395 (Hours of service of drivers)

21
22 Policy History:

23 **First Reading on: 12/8/21**

24 **Second Reading/Adopted on:**

3
4 **PERSONNEL**

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

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

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

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

17
18 Pre-Employment Tests

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

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

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

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

46
47 No such driver shall use alcohol for eight (8) hours after the accident, or until after he/she undergoes a
48 post-accident alcohol test, whichever occurs first.

1
2
3
4 If an alcohol test is not administered within two (2) hours or if a drug test is not administered within
5 thirty-two (32) hours, the District shall prepare and maintain records explaining why the test was not
6 conducted. Tests will not be given if not administered within eight (8) hours after the accident for alcohol
7 or within thirty-two (32) hours for drugs.

8
9 Tests conducted by authorized federal, state, or local officials will fulfill post-accident testing
10 requirements, provided they conform to applicable legal requirements and are obtained by the District.
11 Breath tests will validate only the alcohol test and cannot be used to fulfill controlled substance testing
12 obligations.

13 14 Random Tests

15
16 Tests shall be conducted on a random basis at unannounced times throughout the year. Tests for alcohol
17 shall be conducted just before, during, or just after the performance of safety-sensitive functions. The
18 number of random alcohol tests annually must equal twenty-five percent (25%) of the average number of
19 driver positions. The number of random drug tests annually must equal fifty percent (50%) of the average
20 number of driver positions. Drivers shall be selected by a scientifically valid random process, and each
21 driver shall have an equal chance of being tested each time selections are made.

22 23 Reasonable Suspicion Tests

24
25 Tests shall be conducted when a supervisor or District official trained in accordance with law has
26 reasonable suspicion that the driver has violated the District's alcohol or drug prohibitions. This
27 reasonable suspicion must be based on specific, contemporaneous, articulable observations concerning
28 the driver's appearance, behavior, speech, or body odors. The observations may include indications of
29 the chronic and withdrawal effects of controlled substances.

30
31 Alcohol tests are authorized for reasonable suspicion only if the required observations are made during,
32 just before, or just after the period of the work day when the driver must comply with alcohol
33 prohibitions. An alcohol test may not be conducted by the person who determines that reasonable
34 suspicion exists to conduct such a test. If an alcohol test is not administered within two (2) hours of a
35 determination of reasonable suspicion, the District shall prepare and maintain a record explaining why
36 this was not done. Attempts to conduct alcohol tests shall terminate after eight (8) hours.

37
38 A supervisor or District official who makes observations leading to a controlled substance reasonable
39 suspicion test shall make a written record of his/her observations within twenty-four
40 (24) hours of the observed behavior or before the results of the drug test are released, whichever is earlier.

41 42 Enforcement

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

45
46 Drivers who test positive for alcohol or drugs shall be subject to disciplinary action up to and including
47 termination of employment.

48
49 A driver who violates District prohibitions related to drugs and alcohol shall receive from the District the
50 names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment
51 programs available to evaluate and resolve drug and alcohol-related problems. The employee shall be

1
2
3
4 evaluated by a substance abuse professional who shall determine what help, if any, the driver needs in
5 resolving such a problem. Any substance abuse professional who determines that a driver needs
6 assistance shall not refer the driver to a private practice, person, or organization in which he/she has a
7 financial interest, except under circumstances allowed by law.

8
9 An employee identified as needing help in resolving a drug or alcohol problem shall be evaluated by a
10 substance abuse professional to determine that he/she has properly followed the prescribed rehabilitation
11 program and shall be subject to unannounced follow-up tests after returning to duty.

12 13 Return-to-Duty Tests

14
15 A drug or alcohol test shall be conducted when a driver who has violated the District's drug or alcohol
16 prohibition returns to performing safety-sensitive duties.

17
18 Employees whose conduct involved drugs cannot return to duty in a safety-sensitive function until the
19 return-to-duty drug test produces a verified negative result.

20
21 Employees whose conduct involved alcohol cannot return to duty in a safety-sensitive function until the
22 return-to-duty alcohol test produces a verified result that meets federal and District standards.

23 24 Follow-Up Tests

25
26 A driver who violates the District's drug or alcohol prohibition and is subsequently identified by a
27 substance abuse professional as needing assistance in resolving a drug or alcohol problem shall be subject
28 to unannounced follow-up testing as directed by the substance abuse professional in accordance with law.
29 Follow-up alcohol testing shall be conducted just before, during, or just
30 after the time when the driver is performing safety-sensitive functions.

31 32 Records

33
34 Employee drug and alcohol test results and records shall be maintained under strict confidentiality and
35 released only in accordance with law. Upon written request, a driver shall receive copies of any records
36 pertaining to his/her use of drugs or alcohol, including any records pertaining to his/her drug or alcohol
37 tests. Records shall be made available to a subsequent employer or other identified persons only as
38 expressly requested in writing by the driver.

39 40 Notifications

41
42 Each driver shall receive educational materials that explain the requirements of the Code of Federal
43 Regulations, Title 49, Part 382, together with a copy of the District's policy and regulations for meeting
44 these requirements. Representatives of employee organizations shall be notified of the availability of this
45 information. The information shall identify:

- 46
47 1. The person designated by the District to answer driver questions about the materials;
48
49 2. The categories of drivers who are subject to the Code of Federal Regulations, Title 49, Part 382;
50
51

- 1
- 2
- 3
- 4 3. Sufficient information about the safety-sensitive functions performed by drivers to make clear
5 what period of the work day the driver is required to comply with Part 382;
- 6
- 7 4. Specific information concerning driver conduct that is prohibited by Part 382;
- 8
- 9 5. The circumstances under which a driver will be tested for drugs and/or alcohol under Part 382;
- 10
- 11 6. The procedures that will be used to test for the presence of drugs and alcohol, protect the driver
12 and the integrity of the testing processes, safeguard the validity of test results, and ensure that test
13 results are attributed to the correct driver;
- 14
- 15 7. The requirement that a driver submit to drug and alcohol tests administered in accordance with
16 Part 382;
- 17
- 18 8. An explanation of what constitutes a refusal to submit to a drug or alcohol test and the attendant
19 consequences;
- 20
- 21 9. The consequences for drivers found to have violated the drug and alcohol prohibitions of Part
22 382, including the requirement that the driver be removed immediately from safety- sensitive
23 functions and the procedures for referral, evaluation, and treatment;
- 24
- 25 10. The consequences for drivers found to have an alcohol concentration of 0.02 or greater but less
26 than 0.04;
- 27
- 28 11. Information concerning the effects of drugs and alcohol on an individual's health, work, and
29 personal life; signs and symptoms of a drug or alcohol problem (the driver's or a coworker's);
30 and available methods of intervening when a drug or alcohol problem is suspected, including
31 confrontation, referral to an employee assistance program, and/or referral to management; and
32
- 33 12. The requirement that the following personal information collected and maintained under this part
34 shall be reported to the Commercial Driver's License Drug and Alcohol Clearinghouse:
35
 - 36 A. A verified positive, adulterated, or substituted drug test result;
 - 37
 - 38 B. An alcohol confirmation test with a concentration of 0.04 or higher;
 - 39
 - 40 C. A refusal to submit to any test required by law;
 - 41
 - 42 D. An employer's report of actual knowledge, as defined in law;
 - 43
 - 44 E. On duty alcohol use;
 - 45
 - 46 F. Pre-duty alcohol use;
 - 47
 - 48 G. Alcohol use following an accident;
 - 49
 - 50 H. Controlled substance use;
 - 51

- I. A substance abuse professional report of the successful completion of the return-to-duty process;
- J. A negative return-to-duty test; and
- K. An employer's report of completion of follow-up testing.

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

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

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

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

The District shall notify a driver of the results of a pre-employment drug test if the driver requests such results within sixty (60) calendar days of being notified of the disposition of his/ her employment application.

The District shall notify a driver of the results of random, reasonable suspicion, and post-accident drug tests if the test results are verified positive. The District shall also tell the driver which controlled substance(s) were verified as positive.

Drivers shall inform their supervisors if at any time they are using a controlled substance which their physician has prescribed for therapeutic purposes. Such a substance may be used only if the physician has advised the driver that it will not adversely affect his/her ability to safely operate a commercial motor vehicle.

Clearinghouse

The School District will comply with the requirements of the Commercial Driver's License Drug and Alcohol Clearinghouse. The School District and Transportation service providers are called upon to report DOT drug and alcohol testing program violations to the Clearinghouse. Drivers have been notified that any information subject to disclosure will be submitted to the Clearinghouse in accordance with this policy and applicable regulations.

Legal Reference: 49 C.F.R. Part 40 Procedures for Transportation Workplace Drug and Alcohol Testing
 49. C.F.R. Part 382 Controlled Substances and Alcohol Use and Testing

Policy History:

First Reading on: 12/8/21

Second Reading/Adopted on:

Acknowledgement of Receipt

I, _____, an employee serving as a commercially licensed driver for Bigfork 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: _____

2
3 **PERSONNEL**

4
5 Breastfeeding in the School and Workplace

6
7 Recognizing that breastfeeding is a normal part of daily life for mothers and infants and that Montana law
8 authorizes mothers to breastfeed their infants where mothers and children are authorized to be, the District
9 shall support women who want to continue breastfeeding after returning from maternity leave.

10
11 The District shall provide reasonable unpaid break time each day to an employee who needs to express
12 milk for a child. The District is not required to provide break time if to do so would unduly disrupt the
13 District’s operations. Supervisors are encouraged to consider flexible schedules when accommodating
14 employees’ needs. Building administrators are authorized to work with teachers to provide students
15 necessary time to express milk for a child.

16
17 The District shall make reasonable efforts to provide a room or other location, other than a toilet stall,
18 where an employee or student can express breast milk and access to a place to store expressed breast milk
19 safely. The available space shall include the provision for lighting and electricity for the pump apparatus.
20 If possible, supervisors and building administrators shall ensure that those employees or students in need
21 of such accommodations shall be aware of them prior to maternity leave.

22	Legal Reference:	§ 39-2-215, MCA	Public employer policy on support of women and
23			breastfeeding – unlawful discrimination
24		§ 39-2-216, MCA	Private Place for nursing mothers
25		§ 39-2-217, MCA	Break time for nursing mothers
26		37.111.811, ARM	Physical Requirements
27			
28			

29 Policy History:

30 **First Reading on: 12/8/21**

31 **Second Reading/Adopted on:**

2
3 **PERSONNEL**

4
5 Family Medical Leave

6
7 In accordance with provisions of the Family Medical Leave Act of 1993 (FMLA), a leave of absence of
8 up to twelve (12) weeks during a twelve-(12)-month period may be granted to an eligible employee for
9 the following reasons: 1) birth of a child; 2) placement of a child for adoption or foster care; 3) a serious
10 health condition which makes the employee unable to perform functions of the job; 4) to care for the
11 employee’s spouse, child, or parent with a serious health condition; 5) because of a qualifying exigency
12 (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse or a son, daughter,
13 or parent of the employee is on active duty (or has been notified of an impending call or order to active
14 duty) in the Armed Forces in support of a contingency operation.
15

16 Servicemember Family Leave

17 Subject to Section 103 of the FMLA of 1993, as amended, an eligible employee who is the spouse, son,
18 daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of twenty-six (26)
19 workweeks of leave during a twelve-(12)-month period to care for the servicemember. The leave
20 described in this paragraph shall only be available during a single twelve-(12)-month period.
21

22 Eligibility

23 An employee is eligible to take FMLA leave, if the employee has been employed for at least twelve (12)
24 months and has worked at least one thousand two hundred fifty (1,250) hours during the twelve (12)
25 months immediately prior to the date leave is requested, and there have been at least fifty (50) District
26 employees within seventy-five (75) miles for each working day during twenty (20) or more workweeks in
27 the current or preceding calendar year.
28

29 The Board has determined that the twelve-(12)-month period during which an employee may take FMLA
30 leave is twelve (12) months backward from the date of FMLA leave.
31

32 Coordination of Paid Leave

33 Employees will be required to use appropriate paid leave while on FMLA leave. Workers’ compensation
34 absences will be designated FMLA leave.
35

36 Medical Certification

37 The Superintendent has discretion to require medical certification to determine initial or continued
38 eligibility under FMLA as well as fitness for duty.
39

40 Legal Reference: 29 U.S.C §2601, *et seq.* - Family and Medical Leave Act of 1993
41 29 C.F.R. Part 825, Family and Medical Leave Regulations
42 §§2-18-601, *et seq.*, MCA Leave Time
43 §§49-2-301, *et seq.*, MCA Prohibited Discriminatory Practices
44 Section 585 – National Defense Authorization Act for FY 2008, Public Law
45 [110-181]

46 Policy History:

47 Adopted on: 04/30/2013

48 **First Reading on: 12/8/21**

49 **Second Reading/Adopted on:**

2
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

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

First Reading on: 12/8/21

Second Reading/Adopted on:

2
3 **PERSONNEL**

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5
6 HIPAA

7
8 *Note:*

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

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

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24 Background

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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 Privacy of
30 Individually Identifiable Information. In order to comply with HIPAA and its related regulations, the
31 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 could erode
37 the privacy of health information and determined there was a need for national privacy standards. As a
38 result HIPAA included provisions which mandated the adoption of federal privacy standards for
39 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 an
43 employee’s (or dependent’s) health information from the group health plan to make adverse employment-
44 related decisions. The Privacy Rule states that verbal, written, or electronic information that can be used
45 to connect a person’s name or identity with medical, treatment, or health history information is Protected
46 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

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

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

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

9
10 Some of the District's employees need access to PHI in order to properly perform the functions of their
11 jobs. The District has identified these employees and has given them training in the important aspects of
12 the HIPAA Privacy Rule, the privacy policy, and procedures. New employees who will have access to
13 PHI will receive training on the HIPAA Privacy Rule and related policies and procedures as soon as
14 reasonably possible after they are employed. Employees who improperly use or disclose PHI or misuse
15 their access to that information may be subject to discipline, as deemed appropriate.

16
17 In the event the group health plan must disclose PHI in the course of performing necessary plan
18 operations functions or as required by law or a governmental agency, the District has developed a system
19 to record those disclosures and requests for disclosures. An individual may request a list of disclosures of
20 his or her PHI made by the plan for other than treatment or claims payment purposes. All requests for an
21 accounting of PHI disclosures must be made in writing, and the plan may impose fees for the cost of
22 production of this information. Requests will be responded to within sixty (60) days. If the plan is not
23 able to provide the requested information within sixty (60) days, a written notice of delay will be sent to
24 the requesting individual, with the reasons for the delay and an estimated time for response.

25
26 In order to comply with the new privacy regulations, the plan has implemented compliant communication
27 procedures. Except for its use in legitimate healthcare operations, written permission will be required in
28 order for the District to disclose PHI to or discuss it with a third party.

29
30 The HIPAA Privacy Rule prohibits the District from disclosing medical information without the patient's
31 written permission other than for treatment, payment, or healthcare operations purposes. An authorization
32 signed by the patient and designating specified individuals to whom the District may disclose specified
33 medical information must be on file, before the plan can discuss a patient's medical information with a
34 third party (such as a spouse, parent, group health plan representative, or other individual).

35
36 The District has taken the following steps to ensure PHI is safeguarded:

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- 38 • The District has implemented policies and procedures to designate who has and who does not
39 have authorized access to PHI.
 - 40
 - 41 • Documents containing PHI are kept in a restricted/locked area.
 - 42
 - 43 • Computer files with PHI are password protected and have firewalls making unauthorized access
44 difficult.
 - 45
 - 46 • Copies of PHI will be destroyed when information is no longer needed, unless it is required by
47 law to be retained for a specified period of time.
 - 48
 - 49
 - 50

- The District will act promptly to take reasonable measures to mitigate any harmful effects known to the group health plan, due to a use or disclosure of PHI in violation of the plan's policies, procedures, or requirements of the HIPAA Privacy Rule.
- The District will appropriately discipline employees who violate the District's group health plan's policies, procedures, or the HIPAA Privacy Rule, up to and including termination of employment if warranted by the circumstances.

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

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

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

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:

Tom Stack, Superintendent
Bigfork School District #38
PO Box 188
Bigfork, MT 59911

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

Policy History:

First Reading on: 12/8/21

Second Reading/Adopted on:

Request for Protected Health Information

This form should be used when release of a patient’s protected health information is being made to the health care provider for an employee or student for a purpose other than treatment, payment or health care operations.

I, _____, hereby authorize _____
Name of Employee, Student 18 or older, or Parent/Guardian *Name of Physician/Practice*
to use and/or disclose my protected health information described below to _____.
School District

My protected health information will be used or disclosed upon request for the following purposes (name and explain each purpose): _____

This authorization for use and/or disclosure applies to the following information (please mark those that apply):

- Any and all records in the possession of the above-named physician or physician’s practice, including mental health, HIV, and/or substance abuse records. (Please cross out any item you do not authorize to be released.)
- Records regarding treatment for the following condition or injury _____ on or about _____.
- Records covering the period of time _____ to _____.
- Other (Specify and include dates.) _____.

I understand that I have the right to revoke this authorization, in writing, at any time by sending such written notification to above-named physician/practice. I also understand that my revocation is not effective to the extent that the persons I have authorized to use and/or disclose my protected health information have acted in reliance upon this authorization.

I understand that I do not have to sign this authorization and that the above-named physician/practice may not condition treatment or payment on whether I sign this authorization.

I understand that information used or disclosed pursuant to this authorization may be subject to re-disclosure by the recipient and no longer protected by federal laws and regulations regarding the privacy of my protected health information.

This authorization expires on the following date or event: _____.

I certify that I have received a copy of this authorization.

Signature of Patient or Personal Representative

Date

Name of Patient or Personal Representative

Personal Representative's Authority