Title IX Sexual Harassment Grievance Procedures

The Bitterroot Valley Education Cooperative has adopted internal grievance procedures providing for the prompt and equitable resolution of complaints alleging sexual harassment prohibited by Title IX of the Education Amendments of 1972 Act (Title IX). Sexual harassment is a form of sex discrimination. The Bitterroot Valley Education Cooperative does not discriminate on the basis of sex in its education programs and activities. Individuals alleging discrimination on the basis of sex that is not sexual harassment are subject to the District's Uniform Grievance Procedure.

Sexual harassment is conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo* sexual harassment);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
3. "Sexual assault" which is an offense classified as a forcible or nonforcible sex offense under the FBI's uniform crime reporting system (20 U.S.C. § 1092(f)(6)(A)(v)); "dating violence" which is violence committed by a person who is or has been in a romantic or intimate relationship with the victim (34 U.S.C. 12291(a)(10)); "domestic violence" which is felony or misdemeanor crimes of violence committed by a current or intimate partner of the victim, by a person with whom the victim shares a child, or by any other person against an adult or youth victim protected by state law on domestic or family violence (34 U.S.C. 12291(a)(8)); or "stalking" which is a course of conduct directed at a person that would cause a reasonable person to fear for his/her safety or the safety of others or suffer substantial emotional distress (34 U.S.C. 12291(a)(30)).

The BVEC shall follow the procedures set forth herein prior to imposing any disciplinary consequences or sanctions on any individual. The District shall not assign or delegate any responsibility under these grievance procedures to any individual who has any general or specific conflicts of interest or bias.

Title IX Coordinator

Inquiries concerning the application of Title IX, sex discrimination, or sexual harassment may be referred to the District's Title IX Coordinator:

Ashley Gillespie
BVEC MH Programs Supervisor
gillespiea@bvec-mt.org
406-777-2494 X116

Inquiries may also be referred to the Assistant Secretary of the United States Department of Education, separately or in conjunction with an inquiry to the District's Title IX Coordinator.

Formal Complaint

An individual believing that he or she has been the victim of sexual harassment ("complainant") may file a complaint with the Title IX Coordinator within 30 days of the incident(s) giving rise to the allegations. The complaint must be in writing, signed (either physically or digitally) and needs to specify the allegations which

the individual believes constitute sexual harassment. The complainant has the right to contact law enforcement to determine if criminal activity occurred.

A complainant will be provided with a copy of these procedures.

Notice of Allegations

Upon receipt of a formal complaint, the District shall provide the parties (the complainant and the individual reported to be the perpetrator of conduct that could be sexual harassment – the "respondent") written notice of its grievance process and the allegations of sexual harassment at issue. This shall include the identities of the individuals involved if known; the conduct alleged to be sexual harassment; and the date and location, if known, of the alleged incident(s). Notice shall also be provided to the parties in the event additional allegations arise after the formal complaint is filed that will be investigated.

Supportive Measures

The District will offer supportive measures to both parties regardless of the filing of a formal complaint and during the course of the grievance process. Supportive measures are non-disciplinary and nonpunitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. These measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, changes in work locations, restrictions on contact between the parties, leaves of absence, increased security and monitoring of certain areas of the school campus, and other similar measures. Supportive measures shall comply with Section 504 and the Individuals with Disabilities Education Act ("IDEA").

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

Informal Resolution

The District may utilize an informal resolution processes, but only after a formal complaint has been filed.

The decision to invoke the informal resolution process is voluntary and is not required as a condition of enrollment or employment. The District may determine that the matter is not appropriate for informal resolution, including where an employee is alleged to have sexually harassed a student. If determined to be appropriate, both the complainant and respondent must agree to informal resolution.

If appropriate and both parties are in agreement, a school representative will be available to assist. The District shall provide written notice of the request for informal resolution. Either party may also request mediation with a designated mediator present to assist them to reach a resolution if appropriate for informal resolution.

Either party has the right to end the informal resolution process at any time and may request the commencement of the formal complaint process at any time prior to a determination of responsibility.

Investigation

Upon receipt of a formal complaint, the District will conduct an impartial investigation that will provide an equal opportunity for the parties to present witnesses and evidence, provide both parties with an equal opportunity to inspect and review any evidence obtained, and create an investigative report that fairly summarizes the evidence. The respondent is presumed to not be responsible for the alleged conduct until a determination of responsibility is made at the conclusion of the grievance process.

Parties will have an equal opportunity to present relevant fact and expert witnesses and other evidence. The investigation shall allow for both the complainant and respondent to provide information separately. The District shall provide written notice to the parties in advance of any investigative interviews.

Either party may have an advisor or lawyer present during the investigations; however, the advisor or lawyer is not allowed to speak or ask questions during any investigatory interviews. The advisor or lawyer may request clarification of any questions, but may not answer, advise his or her client how to answer, or ask any substantive questions.

Both parties and their advisors shall have the opportunity to inspect and review evidence obtained, subject to the disclosure of such information under the Family Educational Rights Privacy Act ("FERPA") and Montana law, prior to the completion of the investigation report. The parties and/or their advisors shall have an opportunity to submit a written response within 10 days of receipt of the evidence.

Investigation Report and Opportunity for Questions

Prior to the determination of responsibility, the investigative report will be provided to the parties and the decision-maker assigned by the District. The parties and/or their advisors shall have an opportunity to submit a written response within 10 days of receipt of the investigation report, subject to the disclosure of such information under the Family Educational Rights Privacy Act ("FERPA") and Montana law. After the investigative report is submitted to the parties, the decision-maker shall:

1) give each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness;

2) provide each party with the answers; and

3) allow for limited follow-up questions from each party.

The decision-maker may refuse to submit a question to another party but shall provide an explanation of the basis for such refusal.

Evaluation of Evidence

All relevant evidence gathered and received in the course of the grievance process will be objectively evaluated. The District has the responsibility to gather evidence sufficient to reach a determination of responsibility but may request consent to access records of either party that is legally required. The District will not use, rely upon, or seek the disclosure of information protected under a legally-recognized privilege,

unless the individual holding the privilege has waived such privilege. Evidence gathered and received during the grievance process must include both inculpatory and exculpatory evidence. No credibility determinations shall be made on the basis of an individual's status as a complainant, respondent, or witness. No prejudgment shall be made of the facts at issue prior to the determination of responsibility.

Determination regarding responsibility

The decision-maker, who will not be the Title IX coordinator or the investigator, will issue a written determination with findings of facts and conclusions about the application of the District's code of conduct, describing each allegation and the decision reached on such allegation including any discipline, the rationale for the decision, procedural steps taken, and explains the procedures and permissible bases for appeals. The determination of responsibility shall be made on the basis of the preponderance of the evidence.

Subject to the disclosure of such information under the Family Educational Rights Privacy Act ("FERPA") and Montana law, the determination of responsibility shall be provided to the parties. The determination of responsibility shall become final on the date it is issued unless appealed as provided in these procedures.

Dismissal

At any time during the grievance process, the District is required to dismiss a complaint if the conduct alleged in the formal complaint:

- Would not constitute sexual harassment even if proven;
- Did not occur in the District's education program or activities; or
- Did not occur against a person in the United States.

Additionally, the District may dismiss a complaint where:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or allegations;
- The respondent is no longer enrolled in or employed by the District; or
- Specific circumstances prevent the District from gathering evidence sufficient to reach a determination regarding responsibility.

The District will provide the parties with written notice of a dismissal, whether mandatory or discretionary, and the reason for the dismissal.

Dismissal of the formal complaint under Title IX does not preclude action under another policy or the Code of Conduct.

Appeal

Either or both parties may appeal a determination of responsibility or the dismissal of a formal complaint, or any allegations therein, if:

1) a procedural irregularity affected the outcome;

2) a party has new evidence that could affect the outcome and was not reasonably available at the time of the determination; or

3) the Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents (generally or in that specific case) that affected the outcome.

An appeal of the determination of responsibility shall be made within 10 days of issuance of the determination to the Superintendent or Superintendent's designee. The Superintendent or designee shall provide written notice that an appeal is filed. Both parties shall have the opportunity to submit a written statement in support of or challenging the outcome within 10 days of issuance of the notice of appeal. The Superintendent or designee shall issue a written decision to both parties within 30 days of receipt of any appeal, regardless of whether any written statements have been provided, of the result of the appeal and the rational for the result.

Time Frames

The District shall complete the grievance process within 120 days within receipt of a formal complaint. The grievance process or other time frame specified herein may be delayed or extended for good cause. Good cause may include issues related to the absence of a party, a party's advisor or witness; concurrent law enforcement activity; or the need for assistance or accommodation of a person with a disability. The District shall provide written notice to the complainant and respondent of any delays or extensions of the time frames or grievance process with an explanation of the reasons for such delay or extension.

Remedies

The District shall take all reasonable and necessary prevent the recurrence of any harassment and to correct its discriminatory effects on the individual and others. Remedies shall be provided to a complainant where a determination of responsibility for sexual harassment has been made after the grievance procedure is complete. Remedies shall be designed to restore or preserve equal access to the District's education program or activity. Remedies may include discipline against the respondent, counseling, extensions of deadlines or other course-related adjustments, modifications of schedules, restrictions on contact, increased security/monitoring of the school campus, and training. Discipline for a student includes but is not limited to detention, in-school suspension, out-of-school suspension, expulsion, suspension or exclusion from participation in extracurricular activities. Discipline for an employee includes but is not limited to warning, reprimand, suspension with or without pay, or termination from employment.

Any individual participating in a sex discrimination investigation shall notify the Title IX Coordinator if he or she believes that he or she is being retaliating against for participating in the investigation. The District prohibits retaliation against individuals making complaints under these procedures and participating in any investigation that may ensue.

Recordkeeping

The District will maintain records of reports of and all sexual harassment investigations and other required documents related to its obligations under Title IX for seven years.

Confidentiality

The District will maintain the confidentiality of any individual making a report of sexual harassment, complainant, individual who has been reported to be the perpetrator of sex discrimination, respondent, and

witness except as disclosure may be permitted to conduct an investigation or judicial proceeding or as permitted under FERPA.