

## SEXUAL HARASSMENT (TITLE IX)

Bonneville Joint School District is committed to creating and maintaining a learning and working environment that is free from unlawful discrimination based on sex in accordance with Title IX, which prohibits discrimination on the basis of sex in education programs or activities and Title VII, which prohibits sex discrimination in employment. Sexual Harassment and Retaliation under this Policy will not be tolerated by Bonneville Joint School District and are grounds for disciplinary action, up to and including, expulsion from Bonneville Joint School District and/or termination of employment.

### Section 1. Introduction

1. **Purpose.** Bonneville Joint School District takes all reported sexual misconduct and Sexual Harassment seriously. Bonneville Joint School District will promptly discipline any individuals within its control who are found responsible for violating this Policy. Additionally, reported sexual misconduct, harassment, and retaliation that does not meet the definitions and jurisdiction of this policy will be referred for review under the Student Code of Conduct or employee Personal Conduct Policy #5240.
2. **Applicability.** This policy applies to students and employees when all of the following criteria are true:
  - a. **Respondent:** when the Respondent is a student enrolled in Bonneville Joint School District at the time of the alleged conduct or is an employee at Bonneville Joint School District at the time of the alleged conduct,
  - b. **Complainant:** the alleged conduct occurs against a person in the United States, and the Complainant is participating in or attempting to participate in Bonneville Joint School District's education program or school-sanctioned activity.
  - c. **Conduct:** when the alleged conduct includes Sexual Harassment under this Policy,
  - d. **Context:** where the alleged conduct occurs in Bonneville Joint School District's education program or school-sanctioned activity,

3. **Title IX Coordinator and Key Title IX Officials:** The Title IX Coordinator is the Bonneville Joint School District administrator who oversees Bonneville Joint School District compliance with Title IX. The Title IX Coordinator is responsible for responding to all reports and Formal Complaints of Sexual Harassment. The Title IX Coordinator is available to discuss the grievance process, coordinate supportive measures, explain Bonneville Joint School District's policies and procedures, and provide education on relevant issues. The Superintendent may designate one or more Deputy Title IX Coordinators to help facilitate these responsibilities. Any parent, student, or staff member of Bonneville Joint School District may contact the Title IX Coordinator with questions. Title IX Coordinator and Deputy Title IX Coordinator contact information is as follows:

**Title IX Coordinator:**

Ken Marlowe, Director of Social-Emotional Learning and Support

Email: [TitleIX@d93mail.com](mailto:TitleIX@d93mail.com)

Phone: (208) 552-8480

**Deputy Title IX Coordinator:**

Gordon Howard, Director of Safety and Technology

In addition to the Title IX Coordinator, the Superintendent / designee will appoint investigators, decision makers and informal resolution facilitators who have roles in the formal grievance process more fully explained in Sections 6 and 8 of this policy.

The Title IX Coordinator, Deputy Title IX Coordinators, and appointed investigators, decision-makers, and informal resolution facilitators will receive annual training in compliance with Title IX. All administrators in these roles will not rely on sex stereotypes and will provide impartial investigations and adjudications of Formal Complaints of Sexual Harassment. All materials used to train these administrators will be publicly made available on Bonneville Joint School District's website in accordance with Title IX requirements.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

4. **Notification:** Bonneville Joint School District will use email and digital forms for purposes of communication and notification under this Policy unless a party to a complaint requests written communication in hard-copy version.
5. **Dissemination of Policy:** This Policy will be made available to all Bonneville Joint School District employees and students online at [d93.org/U-4085](http://d93.org/U-4085) with summarized information provided in the student and employee handbooks.
6. **Retaliation and False Statements Prohibited:** Neither Bonneville Joint School District nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy.
  - a. Alleged violations of retaliation will be referred to the student or employee Code of Conduct,
  - b. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy.
  - c. Charging an individual with a Code of Conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute Retaliation prohibited under Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
7. **Amnesty:** Bonneville Joint School District strongly encourages students to report incidents violating the policy related to discrimination, harassment, sexual harassment, and related inappropriate conduct. Bonneville Joint School District's primary concern is the safety of the members of the school district community, and it encourages behavior that demonstrates care and concern for members of the community. Accordingly, the school district reserves the right to provide a reprieve from disciplinary actions for Complainants and other individuals who exhibit responsible and proactive behavior in reporting Sexual Harassment, sexual misconduct, sexual violence, or other prohibited conduct or for students acting as a witness during the formal grievance procedures. Bonneville Joint School District may provide referrals to counseling and may require educational options, rather than disciplinary Actions, in such cases.

8. **Other Bonneville School District Policies:** In the event of a conflict, this Policy shall take precedence over other Bonneville Joint School District policies and procedures concerning Sexual Harassment under Title IX.
9. **Modification and Review of this Policy:** Bonneville Joint School District reserves the right to modify this Policy to take into account applicable legal requirements. Bonneville Joint School District will regularly review this Policy to determine when such modifications need to be made.
10. **Additional Code of Conduct or Bonneville Joint School District Policy Violations:** Alleged violations of the student or employee Code of Conduct that arise from the same events as alleged Sexual Harassment under this policy will be investigated and resolved under the grievance process in this policy unless the Sexual Harassment has been dismissed under Section 5.2 of this policy.
11. **Role of Parent or Guardian:** Nothing in this Policy will prevent a parent or guardian of a minor student from exercising any legal right to act on behalf of a “Complainant,” “Respondent,” “party,” or other individual, subject to this Policy including but not limited to filing a Formal Complaint.
12. **Role of Advisor:** Either party may be accompanied to any related meeting or proceeding by the advisor of their choice. The advisor may be an attorney, but this is not a requirement. However, neither party’s advisor will be permitted to question witnesses. Neither party’s advisor may participate in interviews or meetings in which the represented party is not a participant.

## Section 2. Definitions

1. Definitions of Prohibited Conduct Under this Policy
  - a. **Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:
    - i. 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;
    - ii. 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

- iii. Sexual assault, dating violence, domestic violence or stalking as defined in this policy.
- b. **Sexual Assault** means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including rape, fondling, incest, and statutory rape as defined in this Policy.
- c. **Rape** means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim, as well as under any of the circumstances identified in Idaho Code Sections [§18-6101](#) or §18-6608.
- d. **Fondling** means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental Incapacity.
- e. **Incest** means sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- f. **Statutory Rape** means sexual intercourse with a person who is under the statutory age of consent as defined in Idaho Code Section [§18-6101](#).
- g. **Dating Violence** means violence committed by a person
  - i. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - ii. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - 1. The length of the relationship, The type of relationship,
    - 2. The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

- h. **Domestic Violence** includes felony or misdemeanor crimes of violence committed by:
- i. a current or former spouse or intimate partner of the victim, a person with whom the victim shares a child in common,
  - ii. a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
  - iii. a person similarly situated to a spouse of the victim under the domestic or family violence laws of Idaho, or
  - iv. any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Colorado.
- i. **Stalking** means engaging in a Course of Conduct directed at a specific person that would cause a reasonable person to—
- i. fear for his or her safety or the safety of others;
  - ii. or suffer Substantial Emotional Distress.
2. **Definitions Related to Sexual Harassment:** Consent, Course of Conduct, Incapacitation, Reasonable Person, Substantial Emotional Distress
- a. **Consent** is affirmative, conscious, voluntary, and revocable. Consent to sexual activity requires an affirmative, conscious, and voluntary agreement to engage in sexual activity from each participant.

It is the responsibility of each person to ensure they have the affirmative Consent of the other to engage in the sexual activity. Lack of protest, lack of resistance, or silence do not, alone, constitute consent. Affirmative consent must be ongoing and can be revoked at any time during sexual activity.

The existence of a dating relationship or past sexual relations between the Complainant and Respondent will never by itself be assumed to be an indicator of consent (nor will subsequent sexual relations or dating relationship alone suffice as evidence of Consent to prior conduct).

The Respondent's belief that the Complainant consented will not provide a valid defense unless the belief was actual and reasonable. In making this determination, the decision-maker will consider all of the facts and circumstances the Respondent knew, or reasonably should have known, at the time. In particular, the Respondent's belief is not a valid defense where:

- i. The Respondent's belief arose from the Respondent's own intoxication or recklessness;
  - ii. The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively Consented; or
  - iii. The Respondent knew or a reasonable person should have known that the Complainant was unable to Consent because the Complainant was incapacitated, in that the Complainant was:
    1. asleep or unconscious
    2. unable to understand the fact, nature, or extent of the sexual activity due to the influence of drugs, alcohol, or medication
    3. unable to communicate due to a mental or physical condition.
- b. **Course of Conduct** means two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- c. **Incapacitation** means that a person lacks the ability to actively agree to sexual activity because the person is asleep, unconscious, under the influence of alcohol or other drugs such that the person does not have control over their body, is unaware that sexual activity is occurring, or their mental, physical or developmental abilities render them incapable of making rational informed decisions. Incapacitated is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking, using drugs, or taking medication.

A person violates this policy when they engage in sexual activity with another person who is Incapacitated and a Reasonable Person in the same situation would have known that the person is Incapacitated. Incapacitation can be voluntary or involuntary. Signs of Incapacitation may include, without limitation: sleep; total or intermittent unconsciousness; lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; emotional volatility; combativeness; vomiting; incontinence; unresponsiveness; and inability to communicate coherently. Incapacitation is an individualized determination based on the totality of the circumstances.

- d. **Reasonable Person** means a reasonable person under similar circumstances and with similar identities to the victim.
- e. **Substantial Emotional Distress** means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

### 3. Other Defined Terms

- a. **Actual Knowledge** means Notice of Sexual Harassment allegations to any employee of Bonneville Joint School District (Officials with Authority), except that Actual Knowledge is not met when the only individual with Actual Knowledge is the Respondent.
- b. **Business Day** means any weekday not designated by Bonneville Joint School District as a holiday or administrative closure day. When calculating a time period of Business Days specified in this Policy, the Business Day of the event that triggers a time period is excluded.
- c. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as “parties” throughout this Policy.
- d. **Disciplinary Actions** are imposed only after a finding of responsibility through the grievance process or an agreement through the informal resolution process.



- e. **Education Program or School-sanctioned Activity** includes locations, events, or circumstances over which Bonneville Joint School District exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs. This includes conduct that occurs on Bonneville Joint School District property, during any Bonneville Joint School District activity.
- f. **Formal Complaint** means a document filed by a Complainant (or parent or guardian of a minor student) or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that Bonneville Joint School District investigate the allegation of Sexual Harassment.
- g. **Official with Authority** means any employee of Bonneville Joint School District.
- h. **Remedies** are measures designed to restore or preserve equal access to Bonneville Joint School District's Education Program or Activity. Remedies may include, but are not limited to, the same individualized services as Supportive Measures; however, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- i. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. Complainants and Respondents are referred to collectively as "parties" throughout this Policy.
- j. **Retaliation** means intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or this Policy.
- k. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent after the Title IX Coordinator has been provided a report of sexual harassment.

Such measures are designed to restore or preserve equal access to Bonneville Joint School District's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Bonneville Joint School District's educational environment, or deter sexual harassment.

Supportive measures may include, but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the property, and other similar measures.

### **Section 3. Reporting Sexual Harassment and Preservation of Evidence**

#### **1. Reporting to Bonneville Joint School District**

##### **a. Reporting to Title IX Coordinator:**

- i. Reports of Sexual Harassment may be made to the Title IX Coordinator in any of the following ways, by anyone, at any time:
  - Email: [titleix@d93mail.com](mailto:titleix@d93mail.com)
  - Phone: (208) 552-8480
  - Online form: <http://d93.org/report>
  - Mail:  
Title IX Coordinator  
Bonneville Joint School District 93  
3497 N Ammon Road  
Idaho Falls, ID 83401
  - In-person reports may be made to the Title IX Coordinator in person at the Office of Social Emotional Learning, 3497 N Ammon Road.
- ii. After Title IX Sexual Harassment has been reported to the Title IX Coordinator, the Title IX Coordinator will promptly offer supportive measures to the Complainant, regardless of whether the Complainant was the reporter of the Sexual Harassment.

- b. **Reporting to Employees of Bonneville Joint School District:** If employees of Bonneville Joint School District are notified of Sexual Harassment, they shall promptly report such Sexual Harassment to the Title IX Coordinator who will take immediate action under this Policy.
2. **Reporting to Law Enforcement.** Reports may be filed with local law enforcement agencies. The Title IX Coordinator can assist with contacting law enforcement agencies. Law enforcement investigations are separate and distinct from Bonneville Joint School District investigations.
3. **Time Limits on Reporting.** There are no time limits on reporting Sexual Harassment to the Title IX Coordinator or Bonneville Joint School District. If the Respondent is no longer subject to Bonneville Joint School District's Education Program or Activity or significant time has passed, Bonneville Joint School District will have limited ability to investigate, respond and/or provide disciplinary Remedies and Actions.

#### **Section 4: Initial Response to Reported Sexual Harassment:**

Upon receipt of a report of Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant, regardless of whether the Complainant was the individual who initiated the report. During the initial contact with the Complainant, the Title IX Coordinator will:

- Provide the Complainant with notice of their option to have an advisor;
- Explain the process for filing a Formal Complaint;
- Explain the Grievance Process;
- Discuss the availability of Supportive Measures regardless of whether a Formal Complaint is filed;
- Consider the Complainant's wishes with respect to Supportive Measures.

#### **Section 5: Formal Complaint:**

Bonneville Joint School District will investigate all allegations of Sexual Harassment in a Formal Complaint.

1. **Filing a Formal Complaint:** A Formal Complaint must:
  - a. Contain an allegation of Sexual Harassment against a Respondent;
  - b. Request that Bonneville Joint School District investigate the allegation;and

- c. Be signed by the Complainant (or parent or guardian of the Complainant) or Title IX Coordinator.
- d. In limited circumstances, if a Complainant does not sign a Formal Complaint, the Title IX Coordinator may sign a Formal Complaint. In determining whether to sign a Formal Complaint, the Title IX Coordinator will consider factors that include but are not limited to:
  - i. occurred while the Respondent was an Bonneville Joint School District student or employee;
  - ii. Whether the Respondent threatened further Sexual Harassment or other misconduct against the Complainant or others;
  - iii. Whether the alleged Sexual Harassment was committed by multiple perpetrators;
  - iv. The nature and scope of the alleged Sexual Harassment including whether the Sexual Harassment was perpetrated with a weapon;
  - v. The ages and roles of the Complainant and the Respondent;
  - vi. Bonneville Joint School District can pursue the investigation without the participation of the Complainant (e.g., whether there are other available means to obtain relevant evidence of the alleged Sexual Harassment such as security cameras or physical evidence);
  - vii. Whether the report reveals a pattern of perpetration (e.g., perpetration involving illicit use of drugs or alcohol) at a given location or by a particular group.

## 2. Dismissal of a Formal Complaint.

- a. **Required Dismissal:** The Title IX Coordinator must dismiss a Formal Complaint for purposes of Sexual Harassment if:
  - i. The conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined in this Policy even if proved;
  - ii. The conduct alleged did not occur in Bonneville Joint School District's Education Program or Activity; or
  - iii. The Conduct alleged in the Formal Complaint did not occur against a person in the United States.

- iv. Dismissal of a Formal Complaint does not preclude action under other provisions of the Bonneville Joint School District's policies and procedures. If a Formal Complaint is dismissed for one of these reasons, the matter will be referred to the school principal or immediate supervisor to determine whether the matter will be pursued under the Bonneville Joint School District Student Code of Conduct, Employee Personal Conduct Policy, or other relevant policies of the Board of Trustees.
    - b. **Permissive Dismissal:** The Title IX Coordinator may dismiss a Formal Complaint or any allegations within the Formal Complaint, if at any time during the investigation or hearing:
      - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations within the Formal Complaint,
      - ii. The Respondent is no longer enrolled or employed by Bonneville Joint School District, or
      - iii. Specific circumstances prevent Bonneville Joint School District from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations within the Formal Complaint.
    - c. **Appeal of Dismissal:** Either party may appeal the dismissal of a Formal Complaint or any allegations therein. See Section 7 for reasons for and the process for appeals.
  3. **Consolidation of Formal Complaints:** The Title IX Coordinator may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent or by more than one Complainant against one or more Respondents where the allegations arise out of the same facts or circumstances.

## Section 6: Grievance Process

The grievance process within this Policy is designed to treat Complainants and Respondents equitably. Remedies are provided to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent and Disciplinary Actions are not imposed against a Respondent prior to the completion of the grievance process.

## 1. General Grievance Process Information:

- a. **Burden of Proof and Burden of Gathering Evidence:** All investigations and proceedings, including hearings, relating to Sexual Harassment will be conducted using a “preponderance of the evidence” (more likely than not) standard. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility is the sole responsibility of designated Title IX investigators assigned to investigate the allegations by the Title IX Coordinator, and not the parties.
- b. **Presumption of Not Responsible:** The Respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the end of the grievance process.
- c. **Time Frames for Grievance Process:** Bonneville Joint School District strives to complete the grievance process within seventy-five (75) Business Days. Temporary delays and/or extensions of the time frames within this Policy may occur for good cause. Written notice will be provided to the parties of the delay and/or extension of the time frames with explanation of the reasons for such action. Examples of good cause for delay/extensions include but are not limited to considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.
- d. **Medical Records:** Bonneville Joint School District will not access, consider, disclose, or otherwise use party’s records that are that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Bonneville Joint School District obtains that party’s voluntary, written permission to do so for the grievance process within the Policy.
- e. **Privileged Information:** Bonneville Joint School District will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived the privilege.

- f. **Range of Disciplinary Actions:** Actions that may be required if an individual is found responsible for violating this policy include:
  - g. **Notice of Meetings, Interviews, and Hearings:** Parties and witnesses will be provided notice of any meeting, interview, and/or hearing with sufficient time (at least 24 hours) to prepare to participate. This notice will include the date, time, location, participants and purposes of the meeting, interview and/or hearing.
2. **Notice of Allegations:** Upon receipt of a Formal Complaint, the Title IX Coordinator will provide Notice of Allegations (Form U-4085F1 and U-4085F2) to the parties who are known. The Notice of Allegations will include:
- a. Notice of the party's rights and options
  - b. Notice of Bonneville Joint School District's grievance process
  - c. Notice of Bonneville Joint School District's informal resolution process and options
  - d. Notice of the allegations of Sexual Harassment including:
    - i. The identities of the parties involved in the incident, if known, The conduct allegedly constituting Sexual Harassment, and The date and location of the incident, if known.
    - ii. Notice that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
    - iii. Notice that the parties may have an advisor of their choice, who may be, but is not required to be an attorney, and that the advisor may inspect and review evidence.
    - iv. Notice of the Bonneville Joint School District Code of Conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
  - e. The Notice of Allegations will be updated and written notice provided to the parties if at any time during the investigation, Bonneville Joint School

District decides to investigate allegations about the Complainant or Respondent that are not included in the initial Notice of Allegations.

3. **Investigation of Formal Complaint.** If a formal complaint is not dismissed pursuant to the criteria listed in Section 5.2, the Title IX Coordinator will assign one or more trained investigators to conduct an investigation following the Notice of Allegations. During all meetings and interviews the parties may be accompanied by an advisor of their choice, which can be, but is not required to be an attorney. The advisor's role is limited to assisting, advising, and/ or supporting a Complainant or Respondent. An advisor is not permitted to speak for or on behalf of a Complainant or Respondent or appear in lieu of a Complainant or Respondent.
  - a. **Opportunity to Provide Information and Present Witnesses:** Each party will be provided an equal opportunity to provide information to the investigator and present witnesses for the investigator to interview. The information provided by the parties can include inculpatory and exculpatory evidence. The witnesses can include both fact witnesses and expert witnesses.
  - b. **Opportunity to Inspect and Review Evidence:** Each party will be provided an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including evidence upon which Bonneville Joint School District does not intend to rely upon in reaching a determination regarding responsibility. This review includes inculpatory and exculpatory evidence that is obtained by a party, witness, or other source. Each party and their advisor (if any) will be provided an electronic copy of the evidence for inspection and review. The parties will have ten (10) business days to review and submit a written response to the investigator. The investigator will consider the written responses prior to completing an investigative report. All evidence provided during the inspection and review phase will be available at any hearing for the parties to use during the hearing, including for purposes of cross examination.
  - c. **Investigative Report:** Following the opportunity to inspect and review evidence directly related to the allegations raised in the Formal Complaint, the investigators will create an investigative report that fairly summarizes relevant evidence obtained during the investigation. The investigators



should strive to complete the Investigative Report within six (6) Business Days of the conclusion of the Opportunity to Inspect and Review Evidence.

- d. **Review of the Investigative Report:** The investigator will provide each party and the party's advisor (if any) an electronic copy of the investigative report for their review and written response. The determination of responsibility may not be made until parties have been given the opportunity to submit a response to the Investigative Report. The parties will be provided ten (10) Business Days to submit a response to the Investigative Report to the Title IX Coordinator. The parties will also be provided at least five (5) business days to review the Investigative Report before being asked to submit questions and answers pursuant to Section 7.
- e. **Investigation Timeframe:** The investigator should strive to conclude the investigation of a Formal Complaint and complete the Investigative Report within thirty (30) Business Days of the filing of a Formal Complaint. The parties will be provided updates on the progress of the investigation, as needed.

### **Section 7: Question and Answer Period**

After the investigation, the Superintendent / designee will assign a decision-maker who will be responsible for making a determination of responsibility and assigning sanctions. No sooner than 5 Business Days after the Investigator has sent the Investigative Report as described in Section 6d, the Decision Maker will afford each party the opportunity to:

- submit written, relevant questions that a party wants asked of any party or witness;
- provide each party with the answers; and
- allow for additional, limited follow-up questions from each party.

#### **1. Question and Answer Time Period:**

- a. 3 days to submit questions in response
- b. 2 days for Decision Maker to send
- c. 3 days to submit answers
- d. 2 days to submit follow up questions

- e. 3 days to submit follow up answers
  - f. 5 days for decision maker to review and submit decision
2. **Evidence and Questions Excluded:** The decision-maker will make determination regarding relevancy prior to sending questions to parties or witnesses. The following questions and evidence are considered not relevant:
- a. **Sexual Predisposition or Prior Sexual Behavior of the Complainant:** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
  - b. **Privileged Information:** No person will be required to disclose information protected under a legally recognized privilege. The decision-maker must not allow into evidence or rely upon any questions or evidence that may require or seek disclosure of such information, unless the person holding the privilege has waived the privilege. This includes information protected by the attorney-client privilege.
  - c. **Medical Records:** Evidence or records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, are not permitted to be used during a hearing unless the party provides voluntary, written permission to do so for the grievance process within this Policy.

### **Section 8: Determination Regarding Responsibility:**

After the question and answer period, the decision-maker will provide the Complainant and the Respondent with a written determination simultaneously. The determination regarding responsibility becomes final either on the date that Bonneville Joint School District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or, if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written notice will include:

- Identification of the allegations potentially constituting Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held; Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary Actions that Bonneville Joint School District imposes on the Respondent, and whether remedies designed to restore or preserve equal access to Bonneville Joint School District's education program or activity will be provided by Bonneville Joint School District to the Complainant; and
- The procedures and permissible bases for the Complainant and Respondent to appeal.

### **Section 9: Appeals**

Either party may appeal the determination regarding responsibility, or the dismissal of a Formal Complaint or any allegations therein within three (3) Business Days of the receipt of the determination regarding responsibility or dismissal. The appeals must be made in writing and delivered to the Title IX Coordinator.

1. **Bases for Appeal:** Appeals of the determination of responsibility or the dismissal of a Formal Complaint may be made on the following bases:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or
  - c. The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
2. **Appeal Procedures:** If an appeal is submitted, Bonneville Joint School District will

- a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
  - b. Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator or the Title IX Coordinator.
  - c. Provide the non-appealing party with five (5) Business Days from receipt of the notification of appeal to submit a written statement in support of the outcome of the determination or dismissal.
  - d. Issue a written decision describing the result of the appeal and the rationale for the result which can be one of the following:
    - i. Affirm the decision-maker's determination regarding the Respondent's responsibility and affirm the disciplinary Actions and remedies, if applicable;
    - ii. Affirm the decision-maker's determination regarding the Respondent's responsibility and amend the disciplinary Actions and remedies, if applicable;
    - iii. Remand the process back to the question and answer stage for the decision-maker to remedy any procedural irregularity or consider any new evidence;
    - iv. Reverse the decision-maker's determination of the Respondent's responsibility and amend the disciplinary Actions and remedies, if applicable; or
    - v. Affirm or amend the Actions and/or remedies outlined in the determination issued under this Policy.
  - e. Provide the written decision simultaneously to both parties.
3. **Appeal Timeframe:** The appellate decision-maker will release the written decision within ten (10) Business Days of receiving the appeal.

### **Section 10: Informal Resolution Process**

At any time after a Formal Complaint has been signed and before a determination regarding responsibility has been reached, the parties may voluntarily agree to

participate in an informal resolution facilitated by Bonneville Joint School District that does not involve a full investigation and adjudication. Types of informal resolution include, but are not limited to, mediation, facilitated dialogue, conflict coaching, and restorative justice and resolution by agreement of the parties.

1. **Informal Resolution Notice:** Prior to entering the informal resolution process, Bonneville Joint School District will provide the parties a written notice disclosing:
  - a. The allegations;
  - b. The requirements of the informal resolution process, including the right of any party to withdraw from the informal resolution process and resume the grievance process and the circumstances which preclude parties from resuming a Formal Complaint arising from the same allegations;
  - c. Consequences resulting from the informal resolution process, including that the records will be maintained for a period of seven (7) years but will not be used by investigators or decision-makers if the formal grievance process resumes.
2. **Informal Resolution Agreement:** Prior to entering the informal resolution process, the parties must voluntarily agree, in writing to the use of the informal resolution process.
3. **Informal Resolution Availability:** The informal resolution process is not permitted to resolve allegations that an employee committed Sexual Harassment against a student.
4. **Informal Resolution Timeframe:** Informal resolutions of a Formal Complaint will be concluded within twenty-five (25) business days of notice to Bonneville Joint School District that both parties wish to proceed with the informal resolution process. Such notice that the parties wish to proceed with an informal resolution process will “pause” the counting of the timeframe to conclude the Grievance Process of this Policy, should the informal resolution process fail, and the parties continue with the Grievance Process.
5. **Informal Resolution Documentation.** Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven (7) years. However, no recording of the informal resolution process will be made and all statements made during the informal resolution process will not be used for or against either party (and the decision-maker and/or appellate decision-maker

may not consider any such statement made during informal resolution) should the parties resume the grievance process. Failure to comply with an informal resolution agreement may result in disciplinary action.

### **Section 11: Emergency Removal and Administrative Leave**

1. **Emergency Removal** At any time after the Title IX Coordinator is on notice of Sexual Harassment, Bonneville Joint School District may remove a Respondent on an emergency basis. Bonneville Joint School District will only conduct an emergency removal after:
  - a. Undertaking and individualized safety and risk analysis,
  - b. Determining that an immediate threat the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and
  - c. Providing the Respondent with notice and an opportunity to challenge the decision to the Title IX Coordinator, within two (2) Business Days following the removal.
2. **Administrative Leave:** Bonneville Joint School District may place an employee Respondent on administrative leave while the grievance process in this Policy is pending.

### **Section 11: Record Keeping**

Bonneville Joint School District will maintain all of the documentation related to reports of Sexual Harassment, Formal Complaints, the grievance process, and information resolution process for seven years in accordance with state and federal records laws and requirements. The documentation of all records are private and confidential to the extent possible under law. Student records of the grievance process are disciplinary records under Family Education Rights and Privacy Act (FERPA). Employee records of the grievance process are subject to the Freedom of Information Act (FOIA) and applicable state laws, and included in the employee's official employment record.

### **Section 12: Additional Conduct Violations Related to This Policy**

Alleged violations of the terms in this section will be sent to the Title IX Coordinator for student Respondents or the Director of Human Resources for employee

Respondents for investigation and adjudication under the Bonneville Joint School District student or employee Code of Conduct.

- Retaliation:
- False Information
- Interference with Grievance Process
- No Contact Directive Violations

Adopted: 06-16-2021

Reviewed:

Revised:

Legal References: 34 CFR Part 106 Nondiscrimination on the Basis of Sex in Educational Programs or Activities Receiving Federal Financial Aid