

SEXUAL HARASSMENT POLICY – STUDENTS & PERSONNEL

The Board of Trustees believes that students, employees, and visitors of the Mountain Home School District has the right to learn and work or participate in an atmosphere that promotes equal opportunities, free from all forms of discrimination and conduct that can be considered harassing, coercive or disruptive. The purpose of this policy is to promote working and learning environments that are free from sex and gender-based harassment, discrimination, and retaliation, and to affirm Mountain Home School District’s commitment to non-discrimination, equity in education and equal opportunity for employment. Moreover, Mountain Home School District is proud of its tradition of maintaining an educational environment in which all individuals are treated with respect and dignity.

The Board of Trustees will not condone or allow sexual harassment of its students, employees, or visitors whether engaged in by fellow students, teachers, or any person. Consequently, sexual harassment of students and employees, whether verbal, written, physical, images, cyber, unwelcome sexually motivated attention, and/or implied, and whether engaged in by employees, students, volunteers, or any person is unacceptable and will not be tolerated.

This policy covers all employees, students, visitors, and volunteers of the District. Visitors and volunteers, although covered, will not be listed specifically throughout this document.

MANDATORY REPORTERS

The Board of Trustees has designated that ALL employees of the Mountain Home School District are mandatory reporters and district personnel witnessing a violation of this policy shall take immediate action to stop the inappropriate behavior and report the matter to their immediate supervisor, counselor, building principal, or Title IX Coordinator. Failure of a District employee to report an incident of sex or gender-based harassment, discrimination, or retaliation of which they become aware is a violation of this policy and can be subject to disciplinary action for failure to comply. The Superintendent of Schools or designee will govern the implementation of the procedures regarding this policy.

CONFIDENTIALITY

Because of the sensitive nature of the allegations of sexual harassment, any investigation shall be conducted, to the maximum extent possible, within legal constraints, to protect the privacy of the complainant, victim and the accused. In instances where the sexual harassment allegation involves suspected child abuse, the District official must report the case to the proper authorities as required by law.

This District will keep and maintain a confidential, written record of all written sexual harassment complaints including, but not limited to, witness statements, investigative reports, and correspondence, from the date any allegation of harassment is reported to district personnel. The

information in the written record will also include the action taken by the district in response to each allegation.

A complete written record of each complaint will be maintained at the district level to include the manner in which it was investigated, and the manner in which it was resolved. Written records will be maintained in a confidential manner, and a copy will be placed in any affected employee's personnel file or a copy of any affected student will be confidentially maintained by the superintendent or designee. If the investigator determines that sexual harassment has occurred, the complaint and investigation report will be placed in the employee's personnel file or a copy pertaining to a student will be kept by the superintendent or designee.

Documentation of disciplinary action regarding an employee related to any violation of this policy will be placed in the employee's personnel file. The written record will be kept in the District's Administrative Office and will not, at any time, be purged by district personnel.

PREVENTION

District employees, students, visitors, and volunteers are:

1. Prohibited from sexually harassing other employees, students, or visitors of the district;
2. Required to report to his/her supervisor, teacher, building administrator, or the superintendent or designee, sexual harassment of which the student/employee becomes aware; and
3. Required to take immediate action to discipline and/or report students/employees who engage in conduct that may be reasonably considered to constitute harassment of another student/employee.

Such conduct of this nature is unacceptable on school grounds/premises, during regular or special school sessions, or at any school activity, function, or event that has an effect upon an employee's work environment or a student's educational environment.

As deemed appropriate, the District will provide training to employees regarding sexual harassment and will take reasonable steps to take remedial action to stop harassment and prevent its recurrence. This policy should be reviewed by each employee on a periodic basis.

DEFINITION OF SEXUAL HARASSMENT

For purposes of this policy, sexual harassment is defined as any form of misconduct that includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or repeated unwelcome or unwanted conduct of a sexual nature, that interferes with one's ability to learn or to work, committed by any employee, student, visitor, or volunteer of the District against the expressed wishes of a person to whom they are directed.

Sexual harassment also includes, but is not limited to, verbal, written, graphic, photographic, audio, cyber, and/or video depictions of any kind. No employee, student, visitor, or volunteer, male or female, should be subject to unasked for and unwelcome sexual overtures or conduct, either verbal or physical.

Sexual harassment refers to sexual overtures or conduct, including those that relate to the employee's, student's, visitor's, or volunteer's sexual orientation, that is unwelcome, personally offensive, and affecting morale. In certain circumstances, a single occurrence might warrant action.

Examples of sexual harassment include, but are not limited to:

1. Demanding sexual favors in exchange for advancement of employment, favorable grades, assignments, other education benefits, or benefits related to extracurricular activities, or promises of the same.
2. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or participation in the educational process;
3. Submission to or rejection of such conduct by an individual is used as a basis for employment or educational decisions affecting the individual; or
4. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or education, or creating an intimidating, hostile, or offensive work or educational environment.
5. Unwelcome continued or repeated verbal statements of a sexual or abusive nature, including requests or demands for sexual activity, sexual jokes, and obscene comments, etc.;
6. Verbal abuse of a sexual or abusive nature, requests or demands for sexual activity;
7. Graphic verbal commentary about an individual's body, sexual prowess, or sexual deficiencies;
8. Unwelcome, sexually motivated, or inappropriate touching, pinching, or other physical contact, leering, whistling, brushing the body, assault, coerced sexual acts, or suggestive, insulting, or obscene comments or gestures;
9. Name calling, related stories, gossip, comments, or jokes that may be derogatory toward a particular sex;
10. Unwelcome cyber communications, including, but not limited to, sending sexually explicit photographs or messages via any electronic communication devices ("sexting");

11. Unwelcome sexual behavior or communications, regardless of the method of such communication, accompanied by implied or overt threats concerning an individual's education;
12. The display of sexually suggestive graffiti;
13. The display of sexually suggestive objects, pictures, posters, or cartoons;
14. Unwelcome behavior or communications directed at an individual because of his or her gender, and asking questions about sexual conduct, or sexual orientation, or preferences
15. Stalking or unwelcome, sexually motivated attention.

REPORTING A COMPLAINT

Individuals who believe they are being sexually harassed or believes another person has been sexually harassed should firmly and promptly notify the offender that his or her behavior is unwelcome and should immediately report it to their principal, counselor, to a district employee, or the Title IX Coordinator. Additionally, the complainant has the right to file a written complaint. The following steps should be followed when reporting a sexual harassment complaint:

1. If a student wishes to report a harassment complaint, the following steps shall be followed:
 - A student may choose to report the complaint to any teacher or counselor. If the student chooses not to report the complaint to a teacher or counselor, the student shall report the incident to the building principal or his or her designee. If the complaint in any manner involves the building principal or his or her designee, the student or parent/guardian shall report the complaint to the Superintendent of the District or designee. If the complaint in any manner involves the superintendent or designee, the student or parent/guardian shall report the complaint to a school board member.
 - Students should understand, however, that in reporting the complaint, any such communication may not be considered privileged information, and the person to whom the communication is made may have a duty to report the incident either to his or her superiors, or to other authorities, including the Idaho State Department of Health and Welfare or a proper law enforcement agency.
2. The individual may report the complaint to his or her supervisor, or building principal, or any person in a supervisory position with whom they are comfortable. If the supervisor successfully resolves the complaint in an informal manner, a confidential report will be made to the superintendent about the complaint and resolution so that the district may determine if any pattern of sexual harassment by any particular individual exists. If the supervisor is unable to resolve the complaint, the complaint will be referred to the superintendent.

3. If the individual chooses not to report the complaint to his or her supervisor, the individual may report the incident directly to the superintendent. If the complaint in any manner involves the superintendent, the individual should report the complaint to a school board member.
4. An accurate record of objectionable behavior or misconduct is needed to resolve a complaint of sexual harassment. Verbal reports of sexual harassment shall be in writing by either the student/employee, or the person receiving the complaint, and be signed by the complainant whenever possible. The District encourages anyone who believes he/she has been subjected to sexual harassment report the incident promptly so that a rapid response and appropriate action may be taken. However, because of the sensitivity of these matters, no time frame will be instituted for reporting sexual harassment and the late reporting of sexual harassment will not in and of itself preclude action from being taken.

An employee, at any time, may file a sexual discrimination or harassment claim with the Idaho Human Rights Commission (IHRC) and/or the Equal Employment Opportunity Commission (EEOC).

INVESTIGATION OF A SEXUAL HARASSMENT COMPLAINT

Any allegation of sexual harassment of a student or employee brought to the attention of any District employee should be referred to their supervisor, building principal, or other appropriate personnel. The District Superintendent or designee will be notified of the complaint. If the complaint in any manner involves the school's principal, the complaint should be referred to the District Superintendent or designee. If the complaint, in any manner, involves the superintendent, the complaint should be referred to any member of the Board of Trustees.

1. Any allegation of sexual harassment will be promptly investigated. Unless impracticable, the investigation will begin within five (5) working days of the date the complaint is filed. All investigations will use the Sexual Harassment Reporting & Investigation Forms 1a-1f (Steps 1-6).
2. Confidentiality will be maintained throughout the investigatory process to the extent practical and appropriate under the circumstances. The complainant and alleged offender will be interviewed, as well as other individuals who may have knowledge regarding the allegations.
3. In pursuing the investigation, the investigator/review team shall thoroughly investigate the matter and in so doing, attempt to ascertain all of the facts that explain what has occurred. In conducting the investigation, the complainant, as well as the alleged harasser, will be questioned, as will all employees or students who may have knowledge of either the incident in question or similar problems. The investigative steps and findings shall be documented as thoroughly as possible.

4. Upon completion of the investigation, the investigator will prepare a written report that contains factual findings regarding the allegations and the investigator's conclusion as to whether or not sexual harassment occurred.
5. If the investigation is inconclusive or it is determined that there has been no unlawful sexual harassment or retaliation, but some potentially problematic conduct is revealed, the superintendent may recommend a corrective action plan to the board and the board may impose such corrective action plan.
6. Promptly after the investigation is concluded, the superintendent or designee will separately meet with the complainant and the person alleged to have committed the offenses to notify them in person of the findings of the investigation. At the discretion of the superintendent or designee, the alleged offender may be suspended with pay, pending completion of the investigation and review of the investigation report; in case of a student, the student may have their suspension extended.
7. The complainant and the person alleged to have committed the offenses may submit statements to the superintendent or designee challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) working days after the meeting in which the findings of the investigation are discussed.
8. Promptly after the superintendent or designee has met with both parties and reviewed any written statements challenging the findings of the investigation, and after possible consultation with legal counsel for the district, a decision will be made as to what action, if any, should be recommended to the board.

DISCIPLINARY ACTIONS

Upon completion of the investigation, the investigator will file a written report and the District will communicate, in an appropriately sensitive manner, its findings and intended actions, if any, to the student or employee, the student's parents if the student is under the age of eighteen (18), the harasser, and the harasser's parents if the harasser is a student under the age of eighteen (18).

If it is found that harassment has occurred, the harasser will be subject to appropriate disciplinary procedures as determined by the school's principal, the District Superintendent or, if necessary, the District's Board of Trustees.

If the investigator determines that an employee has sexually harassed another employee or a student, filed false allegations of harassment, or retaliated against a complainant or other individual participating in the investigation of a sexual harassment complaint, the superintendent will inform and recommend disciplinary action to the Board. The Board will impose disciplinary action consistent with the requirements of applicable state law, district policies, and/or collective bargaining agreements. Such disciplinary action may include, but is not limited to, dismissal from employment, suspension, student expulsion, and reassignment.

1. Employees found to have engaged in misconduct constituting sexual harassment may be disciplined up to and including termination of employment.
2. Students found to have engaged in misconduct constituting sexual harassment may be disciplined up to and including expulsion.
3. Any such disciplinary action will be taken pursuant to the policies and procedures of the School District.
4. If the District determines that no sexual harassment has occurred, and if the investigation results in a finding that the student or employee has falsely accused another of sexual harassment knowingly or in a malicious manner, the student or employee may be subject to appropriate discipline, including the possibility of suspension, expulsion, or discharge.

If deemed appropriate, the superintendent or Board will refer the complaint to local law enforcement at any time prior to, during, or after the investigation.

RECORDKEEPING

1. Documentation of disciplinary action related to any violation of this policy, including false allegations and retaliatory actions, will be placed in the employee's personnel file, or in the case of a student with the superintendent.
2. If there is insufficient evidence to support the allegations, the complaint and investigation report will not be placed in the employee's personnel file.
3. This district will keep and maintain a confidential written record of all written sexual harassment complaints, including, but not limited to, witness statements, investigative reports, and correspondence from the date any allegation of harassment is reported to district personnel. The information in the written record will also include the action taken by the district in response to each allegation. The written record will be kept in the district's administrative offices and WILL NOT, at any time, be purged by district personnel.

PROTECTION AGAINST RETALIATION

The School District will not retaliate in any way against a student or employee who makes a good faith report neither of sexual harassment nor, to the extent possible, will it permit any employee or student to do so. Retaliation will be considered a violation of this policy and should be reported immediately. Any person found to have retaliated against another individual for reporting an incident of harassment, in good faith, may be subject to the same disciplinary action provided for sexual harassment offenders. Those persons who are not complainants, but who assist students or employees who believe they have been subjected to sexual harassment, or who assist or participate in an investigation of sexual harassment, also are protected from retaliation under this policy.

FALSE COMPLAINTS

Discipline will result, up to and including termination, when it is conclusively determined that an employee made a complaint of sexual harassment or retaliation knowing it to be false and/or

knowingly participated in the falsehood. This section is not intended to discourage employees from making complaints regarding unlawful employment-based behavior. An employee will not be disciplined for reporting actual behavior that in good faith the employee believed was unlawful employment-based behavior. However, false complaints adversely impact the workplace and the career of the accused, even when disproved, and will not be tolerated.



Legal Reference:

Title VII of the Civil Rights Act of 1964
Title IX of the Education Amendments of 1972
U.S. Department of Education Office of Civil Rights, January 2001
42 U.S.C. 2000e-2(a) – Unlawful Employment Practices

Idaho Code Sections:

- 16-1605 – Reporting of Abuse, Abandonment, or Neglect
- 16-1619 – Adjudicatory Hearing – Conduct of Hearing – Consolidation
- 18-917 – Hazing
- 18-917A – Student Harassment – Intimidation – Bullying
- 33-205 – Denial of School Attendance
- 33-512(6) – Governance of Schools
- 33-1631 – Requirements for Harassment, Intimidation and Bullying Information and Professional Development

Idaho Code Title 33 Chapter 12

Title IX of the Education Amendments of 1972
Gebser v. Lago Vista Independent School District, 188 S. Ct. 1989 (1998)
Mentor Savings Bank v. Winson, 477 U.S. 57 (1986)
Elison v. Brandy, 924 F.2d 872 (9th Cir. 1991)
Davis v. Monroe County Board of Education, 119 S. Ct. 1661 (1999)
Franklin vs. Gwinnett Co Public Schools, 112 S. Ct. 1028 (1992)

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