

[Heading to conform to District's format: this will be in the 5000 series – Personnel]

Sexual Misconduct

The District prohibits any District employee, contractor, agent, or volunteer from engaging in sexual misconduct with a minor or student. "Sexual misconduct" includes:

- any actual or attempted sexual contact with a minor or student;
- any actual or attempted violation of criminal laws contained in Montana Code Annotated, Title 45, Chapter 5, including but not limited to laws addressing sexual intercourse without consent, sexual assault, sexual abuse, sexual exploitation, and indecent exposure; and/or
- sexual harassment, as defined and addressed in Policy [_____].

Reporting

Students who feel they have been subjected to sexual misconduct, or other students, parents, or others who believe they have witnessed such treatment of a student, may report the incident either in writing or verbally. Reports may be made to any administrator or the [Title IX Coordinator]. A report may be made using the [Incident Reporting Form], but failure to use this form will not cause the complaint to be dismissed as long as the written report provides sufficient detail for investigation and action by the District administration. Administration may require the reporter to fill out a written report, including all known details.

Any employee or volunteer who becomes aware of possible sexual misconduct shall immediately report the misconduct to an administrator in writing or verbally. [If there is only one administrator, and that person is the alleged perpetrator, the report shall be made to the board chair.] If the report is made verbally, administration may require that the report be put into writing, with all details known to the reporter included.

Anonymous reports containing adequate detail to investigate will be investigated.

If the alleged misconduct may constitute a possible criminal offense or child abuse, a District administrator shall notify law enforcement or child protective services, but the District has the right and obligation to conduct its own investigation.

Administrative Leave

Upon receiving a report, administration may place the alleged perpetrator on administrative leave with pay and take other steps as may be necessary to protect and assist the victim.

Investigation

All investigations should be initiated promptly, but no later than two school days after the [Incident Report] has been completed and filed with the District administration. The

investigation may be conducted by an administrator, a designee of administration, or an independent investigator.

The investigation shall be completed within seven school days of receipt of a report, unless a specific finding is made by administration that there are extenuating circumstances requiring an extension of time (such as absence of a critical witness or a large number of individuals with knowledge who must be interviewed, for example).

The administrator and investigator shall take precautions to maintain the confidentiality of the report, the identity of the perpetrator, victim, and witnesses, and the fruits of the investigation during the investigation. Subject to public record laws and the Constitution, all interviewees may be informed that information given will be kept as confidential as possible, but that disclosure may be necessary after the investigation is completed. Administration shall take all possible steps to redact privacy-protected information if disclosure is required. Confidentiality cannot be guaranteed.

Upon completion of the investigation, administration shall make the determination of next steps, such as clearing the alleged perpetrator of all allegations, initiating termination proceedings or other discipline, further protection of the victim, or other actions warranted by the findings. Administration shall make the determination of who shall be notified of the outcome based on the circumstances and the best interests of all involved, subject to Montana public record laws and the Montana Constitution.

No Retaliation

Retaliation against any target/victim, any person who reports or participates in an investigation or any subsequent proceeding, or any person who is closely connected to one of those individuals is strictly prohibited. An employee, volunteer, or student who retaliates is subject to discipline, up to and including termination or expulsion. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment, punishment, or other adverse action.

Discipline

An employee or volunteer who has been found to have engaged in sexual misconduct shall be subject to discipline, up to and including termination.

An employee or volunteer who knowingly condoned sexual misconduct, failed to assist a target or victim, was found to have known of sexual misconduct but failed to report, or interfered with an investigation is also subject to discipline, up to and including termination.

Individuals who intentionally fabricate allegations of sexual misconduct shall be subject to disciplinary action, up to and including expulsion or termination.

The District has the right and/or obligation to report sexual misconduct to the Montana Board of Public Education which may result in loss of licensure.

Record Retention

A written record will be kept of each reported incident, including the written report, investigation, findings, referrals to other entities, and disciplinary and/or remedial action taken. Reference to this retained file may be placed in the personnel file of the perpetrator and/or the permanent file of the student, at the discretion of administration.

Notification and Training

- A. This policy and any related procedure will be posted on the District's website, included in student handbooks, and provided to union leadership.
- B. All employees and volunteers shall be educated on the policy and procedures from time to time, including recognizing inappropriate behaviors, the obligation to report, and possible consequences and discipline.

Prohibition on Assisting (Future Employment of Perpetrator)

An employee who knows or has probable cause to believe that a District employee, contractor, agent, or volunteer engaged in sexual misconduct is prohibited from assisting the employee who engaged in sexual misconduct in obtaining a new job in a school or other entity that serves children. The routine transmission of administrative or personnel files is not prohibited. This prohibition does not apply if the information giving rise to probable cause:

- 1. Has been reported to a law enforcement agency with jurisdiction over the alleged misconduct and any other authorities required by federal, state, or local law, including but not limited to Title IX; and
- 2. One of the following three circumstances has occurred:
 - a. the matter has been officially closed or the prosecutor or police with jurisdiction over the alleged misconduct has investigated the allegations and notified District officials there is insufficient information to establish probable cause that the District employee, contractor, or agent engaged in sexual misconduct regarding a minor or student in violation of law;
 - b. the District employee, contractor, agent, or volunteer has been charged with and acquitted or otherwise exonerated of the alleged misconduct; or
 - c. the case or investigation remains open and there have been no charges filed against or indictment of the District employee, contractor, or agent more than four years from the date the information was reported to law enforcement.

Legal References: Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq.
Montana Human Rights Act, Mont. Code Ann. §§ 49-2-301 et seq.
Montana Governmental Code of Fair Practices, Mont. Code Ann. §§ 49-3-101 et seq.

Montana Criminal Laws: Mont. Code Ann. §§45-501, et seq.
Montana Youth in Need of Care Act, Mont. Code Ann. §§41-3-101 et seq.
Every Student Succeeds Act, §§8038, 8556