

<b>BERRYHILL PUBLIC SCHOOLS</b>		<b>FB - Policy #523</b>
<i>Adoption Date: September 13, 2021</i>	<i>Revision Date(s):</i>	<i>Page 1 of 6</i>

## **SEXUAL HARASSMENT OF STUDENTS**

The policy of this school district forbids discrimination against, or harassment of any student on the basis of sex. The Berryhill Board of Education will not tolerate sexual harassment by any of its employees or students. This policy applies to all students and employees including non-employee volunteers whose work is subject to the control of school personnel. Policy DA applies to sexual harassment of employees.

1. Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:
  - a. An employee of the school district conditioning the provision of an aid, benefit, or service of the school district on a student's participation in unwelcome sexual conduct. This is referred to as quid pro quo sexual harassment;
  - b. Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student equal access to the school district's educational program or activity; or
  - c. Sexual assault, dating violence, domestic violence or stalking as defined by federal law.

\*For the purpose of this policy, examples of sexual harassment include, but are not limited to:

\*Verbal or physical sexual advances, including subtle pressure for sexual activity; touching, pinching, patting, or brushing against; comments regarding physical or personality characteristics of a sexual nature; and sexually-oriented "kidding" "teasing," double meanings, and jokes.

\*Demeaning comments about a girl's ability to excel in a class historically considered a "boy's" subject, privately talking to a student about sexual matters, hugging or touching a student inappropriately may constitute sexual harassment.

\*Writing graffiti that names a student or otherwise identifies a student is potentially slanderous and constitutes sexual harassment. Graffiti of any kind will not be tolerated on school property. The superintendent is directed to cause any graffiti or unauthorized writings to be removed immediately. Use of e-mail, the internet, or technology may constitute sexual harassment as much as use of in-person, postal mail, handwritten or other communication.

\*Any of the aforementioned conduct that effectively deprives a student of equal access to educational opportunities or benefits provided by the school.

2. Specific Prohibitions
  - A. Administrators and Supervisors
    1. It is sexual harassment for an administrator, supervisor, support employee, or teacher to use his or her authority to solicit sexual favors or attention from students.

2. Administrators, supervisors, support personnel, or teachers who either engage in sexual harassment of students or tolerate such conduct by other employees shall be subject to sanctions, as described below.
3. The "off-duty" conduct of school personnel that has or will have a negative impact on the educational process of the school or constitutes an illegal or inappropriate relationship with a student may subject the employee to disciplinary action which could include termination of employment. Any romantic or sexual affiliation between school personnel and students, including students who have reached the age of majority (18), during school hours will have a negative impact on the educational process and shall constitute a violation of school policy. Such violations may result in suspension of the student and suspension or termination for the employee. Any sexual affiliation between teachers and students under the age of 20 constitutes a crime under Oklahoma law and will most likely result in the suspension of certification by the State of Oklahoma.
3. Notice of this policy and grievance procedure, including how to file or report sexual harassment and how the district will respond shall be provided to applicants for admission and employment, students, parents or legal guardians, and unions or professional organizations holding agreements with the school district.
4. Reporting Allegations of Sexual Harassment
  - A. It is the express policy of the board of education to encourage student victims of sexual harassment to come forward with such claims.
    1. Students who feel that administrators, supervisors, support personnel, teachers, or other students are subjecting them to sexual harassment are encouraged to report these conditions, or have their parents report these conditions, to the appropriate administrator or teacher. If the student's immediate administrator or teacher is the alleged offending person, the report will be made to the next higher level of administration or supervision or to any responsible adult person. The employee to whom the report was made will provide notice of the report to the Title IX coordinator. The Title IX coordinator should then provide the appropriate paperwork to the student or parent/guardian so that the student (complainant) may file a formal complaint with the Title IX coordinator by mail, e-mail or as directed by the Title IX coordinator.
    2. Every attempt will be made to maintain confidentiality; however, absolute confidentiality cannot be guaranteed because of due process concerns that arise in sexual harassment investigations. No reprisals or retaliation will be allowed to occur as a result of the good faith reporting of charges of sexual harassment.
  - B. Upon notice from an employee that a student or parent/guardian has reported possible sexual harassment, the Title IX coordinator will promptly contact the student (alleged victim) to

discuss the availability of supportive measures, consider the student's wishes with regard to supportive measures, and explain the process that will be involved with a formal complaint.

5. Grievance Procedure.

- A. Equitable Treatment. Both the alleged victim (complainant) and the alleged respondent (respondent) will be treated equitably by the school district.
- B. Objective Evaluation of Evidence. All evidence both inculpatory and exculpatory will be evaluated objectively. Credibility determinations will not be made based upon the party's status as complainant, respondent, or witness.
- C. Conflict of Interest. Any person serving as the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate the process shall not have a conflict of interest against complainants and respondents generally or against the particular complainant and respondent.
- D. Presumption. There will be a presumption that the respondent is not responsible for the alleged conduct until a determination is made at the conclusion of the grievance process.
- E. Timeliness. The grievance process will proceed in a timely manner. Any delay in the process for good cause such as law enforcement involvement, absence of a party, witness or advisor, translation, or accommodation needs will be documented, and written notice provided to both parties explaining the reason for the delay.
- F. Possible outcomes. A description or listing of possible disciplinary outcomes and remedies that may be implemented following a determination of responsibility must be provided to both parties.
- G. Standard of Review. The school district will utilize (a preponderance of the evidence standard) or (a clear and convincing evidence standard) to determine responsibility. \*\*\* The standard selected by the school district will need to be the same standard that is applied to all formal complaints including those against employees.
- H. Privileged Information. The school district will not require, allow or use evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

6. Written Notice. Upon receipt of a formal complaint, the school district will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview. The written notice must include:

- A. Notice of the grievance process, including any informal resolution process;
- B. Notice of the allegations, including sufficient details to allow the respondent to prepare a response;

- C. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
  - D. Notice of the parties' right to have an advisor and to inspect and review evidence. The advisor may but is not required to be an attorney.
  - E. Notice of any provision in the student discipline code that prohibits knowingly making false statements or providing false information in the grievance process.
- \*\*If in the course of an investigation, the school district obtains additional information about the respondent or complainant that was not included in the original written notice, notice of the additional allegations must be provided in writing to both parties.**
7. Investigation of the Allegations. The school district will designate an investigator to conduct a thorough investigation of allegations. Contact information for the investigator will be provided to both the complainant and the respondent.
- A. The burden of proof and of gathering evidence remains on the school district.
  - B. An equal opportunity will be provided to both parties to present witnesses and evidence during the investigation.
  - C. Neither the complainant nor respondent will be prohibited from discussing the allegations or gathering and presenting evidence to the investigator.
  - D. Both parties will have the opportunity to have others present during interviews or related proceedings. This may include an advisor who may but is not required to be an attorney.
  - E. Written notice of the date, time, participants, purpose and location of any investigation interview, hearing, or other meeting shall be provided to the party who is invited or expected to attend.
  - F. Both parties and their advisors, if any, will be provided an opportunity to review all evidence that is directly related to the allegations in the formal complaint. This would include any evidence on which the school district does not intend to rely and any exculpatory or inculpatory evidence from any source. Such evidence must be provided prior to the completion of the final investigation report and in time to give the parties at least ten (10) days to prepare a written response, which the investigator must consider prior to completing the investigation report.
  - G. A written investigation report will be provided that summarizes the relevant evidence. This report will be provided to the parties and their advisors, if any, for their review and written response at least ten (10) days before a hearing or determination of responsibility.
8. Hearing. The Title IX coordinator will determine whether a live hearing is necessary on a case-by-case basis if both parties request or consent to such a hearing (the live hearing component is optional for K-12 schools). Regardless of whether a live hearing is held, or a written hearing is conducted, each party will have ten (10) days from the receipt of the investigation report to submit

written, relevant questions that the party wants asked of another party or witness. Both parties will be provided with the answers and follow up questions. Federal law determines when questions regarding a complainant's prior sexual behavior or sexual predisposition are considered relevant in a hearing provided by a school district.

9. Determination of Responsibility. A decisionmaker, who is not the Title IX coordinator or the investigator, will apply (a preponderance of the evidence standard) or (a clear and convincing evidence standard) to determine responsibility, and will issue a written determination of responsibility that:
  - A. Identifies the allegations that potentially constitute sexual harassment;
  - B. Describes the school district's procedural steps taken from the receipt of the complaint to the determination;
  - C. Includes findings of fact to support the determination;
  - D. Includes conclusions regarding applicants of the discipline code to the facts;
  - E. Includes a statement of, and rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions, and whether remedies to restore or preserve equal access to the school's educational programs or activities will be provided to the complainant; and
  - F. The procedures and permissible basis for appeals.
10. Appeals. Within ten (10) days of a determination of responsibility, dismissal of a complaint or any allegations therein either party may appeal for one of the following reasons:
  - A. A procedural error affected the outcome.
  - B. New evidence that was not reasonably available at the time of the determination and could affect the outcome;
  - C. Conflicts of interest on the part of the Title IX coordinator, investigator or decision maker that affected the outcome.

**\*\*If an appeal is made, the school district will provide written notice to both parties of the appeal. Both parties will be provided an equal opportunity to submit a written statement in support of or challenging the determination within ten (10) days of the written notice to both parties of the appeal being filed. The appeal will be heard by an appeal decision maker who is not the Title IX coordinator, the investigator or the original decision maker. The appeal decision maker cannot have a conflict of interest or bias against complainants and respondents generally or the particular complainant and respondent. The appeal decision maker will receive training as mandated by law. The decision of the appeal decision maker will be final and unappealable. The written decision of the appeal decision maker will be provided within ten (10)**

