

4001 TITLE IX SEXUAL HARASSMENT MODEL POLICY [REQUIRED]⁷

The Board of The Biome School adopts the following policy effective on the date that the policy is adopted by the Board.

Section 1. Definitions

Section 1.1. Complainant – A Complainant is any individual who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX, in connection with his or her participation in or attempt to participate in an educational program or activity of the School. A Complainant may be a student, an employee, or a third party. However, a Title IX Coordinator who signs a Formal Complaint is not considered a complainant.

Section 1.2. Respondent – A Respondent is an individual who is purported to be the perpetrator of conduct that could constitute sexual harassment. A Respondent need not be affiliated with the School in any respect.

Section 1.3. Complaint - A verbal or written report of discrimination, harassment, or retaliation made to the Compliance Officer/Title IX Coordinator or designee. A “Formal Complaint” for purposes of Title IX complaints includes a document or electronic complaint filed with or signed by the Title IX Coordinator involving a Complainant that is participating in or attempting to participate in the education program or activities of the School. Formal Complaints will be handled in accordance with the grievance procedure described in this Policy.

Section 1.4. Sexual Harassment – Sexual harassment is conduct based on sex that may be one or more of the following:

- 1) Employee conditioning the provision of an aid, benefit or service on an individual’s participation in unwelcome sexual conduct (i.e., often called *quid pro quo* harassment);
- 2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive it effectively denies a person equal access to the School’s education program or activity; or
- 3) Sexual assault, stalking, dating/domestic violence, as defined herein.
 - *Sexual Assault* – Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.
 - *Domestic Violence* – Domestic violence includes violent misdemeanor and felony offenses, committed by a victim’s current or former spouse, current or former co-habitant, person similarly situated under domestic or family law, or anyone else protected under domestic or family violence law.
 - *Stalking* – Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear bodily injury or to experience substantial emotional distress. A course of conduct is two or more

⁷ This policy must be posted on the school’s website.

incidents. Stalking includes “cyber-stalking,” a particular form stalking in which a person uses electronic media.

- *Dating Violence* – Violence by a person who has been in a romantic or intimate relationship with the individual to whom the violence is directed. Whether there was such a relationship will be gauged by its length, type and frequency of interaction.

Sexual harassment may occur between members of the same or opposite sex.

Section 1.5. Business Days – Days on which the school’s business offices are open.

Section 1.6. Title IX Coordinator – The School designates the following employee as the Title IX Coordinator:

- b) [Bill Kent, 4471 Olive St., St. Louis MO. 63108, 314-531-0982, bkent@thebiomeschool.org]

“Title IX Coordinator” and “Compliance Officer” may be used interchangeably in this policy.

Section 2. Supportive Measures

Section 2.1. When a Formal Complaint is made or the School otherwise learns of alleged discrimination, harassment or retaliation against a student without a Formal Complaint, the School will take prompt and appropriate action to protect the alleged victim or the Respondent (i.e., the accused party), including implementing supportive measures, as appropriate and as reasonably available. For example, supportive measures may include counseling, extensions of deadlines or other class-related adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, increased security and monitoring of certain areas of the school, and other similar measures. The School shall maintain the confidentiality of the supportive measures provided to the Complainant or the Respondent, so long as maintaining such confidentiality does not impair the School’s ability to provide such measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures and explaining the grievance procedures to the Complainant and Respondent. The School will take prompt and appropriate steps to prevent retaliation against the alleged victim, any person associated with the alleged victim, or any witnesses or participants in the investigation. These steps may include, but are not limited to, notifying students, employees and others that they are protected from retaliation, ensuring that they know how to report future complaints, and initiating follow-up contact with the Complainant to determine if any additional acts of discrimination, harassment or retaliation have occurred.

Section 3. Scope of Sexual Harassment Grievance Process

Section 3.1. The Sexual Harassment Grievance Process pertains to sexual harassment under Title IX, as defined by this Policy, committed by or against students and/or employees when: (1) the conduct occurs at school or other property owned or controlled by the School; or (2) the conduct occurs in the context of a School employment or education program or activity within the United States.

Section 3.2. All members of the School community have the right to submit a complaint or raise concerns regarding sexual harassment under Title IX pursuant to this Policy without fear of retaliation.

Section 4. Filing a Formal Complaint

Section 4.1. If a Complainant wishes for the School to proceed with an investigation into the allegations of sexual harassment pursuant to the grievance procedures in this section of the Policy, the Complainant must file a Formal Complaint. A Formal Complaint is a document alleging sexual harassment against a Respondent and requesting that the School investigate the allegation of sexual harassment. The Complainant must be participating in or attempting to access a School program or activity at the time the Formal Complaint is submitted. A Formal Complaint must be in written form, but it may be submitted in person, by mail, or by email to the Title IX Coordinator. It must be signed by the Complainant, but the required signature may be physical or digital.

Section 4.2. The Title IX Coordinator may also initiate a Formal Complaint by signing it. The Title IX Coordinator may consider the specific facts and circumstances and whether there is a pattern of misconduct involving a particular Respondent. The Title IX Coordinator may only sign a Formal Complaint after he or she has contacted the Complainant and discussed supportive measures and the Formal Complaint process with the Complainant. The Title IX Coordinator must consider the Complainant's wishes for how the School responds to the report of Sexual Harassment.

Section 4.3. The Title IX Coordinator may consolidate Formal Complaints where the allegations of sexual harassment arise out of the same facts or circumstances. Where a Formal Complaint includes more than one Complainant or more than one Respondent, any references in this policy to a single Complainant and/or Respondent will also refer to multiple complainants or respondents.

Section 5. Dismissal of Formal Complaints

Section 5.1. Upon receipt of a Formal Complaint, the Title IX Coordinator will review the allegations set forth therein and determine whether the Complaint may proceed. Although the allegations may be investigated and resolved pursuant to another School policy, Formal Complaints of sexual harassment brought pursuant to this policy must be dismissed if:

1. The conduct alleged would not constitute Sexual Harassment as defined in this policy;
2. The conduct did not occur in connection with a School education program or activity;
3. The conduct did not occur against a person in the United States.

Furthermore, the Title IX Coordinator may, in his or her discretion, determine that even though it meets the basic threshold requirements to proceed, a particular Formal Complaint should be dismissed. Specifically, a Formal Complaint may be dismissed if:

1. Complainant notified Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations within;
2. Respondent is no longer enrolled in or employed by the School;
3. Specific circumstances prevent the School from gathering evidence to reach a determination.

After an initial review of the Formal Complaint, the Title IX Coordinator will continue to monitor the investigation and evaluate the Formal Complaint to determine if the above criteria for dismissal apply.

Following any dismissal of a Formal Complaint, the Title IX Coordinator will simultaneously send a written notice to the parties of the dismissal and the reasons for the dismissal.

Section 5.2. To the extent the behavior alleged in the Formal Complaint could constitute a violation of another School policy, it may be pursued under that policy. The Title IX Coordinator has the discretion to refer the allegations to the Superintendent or appropriate designee.

Section 6. Interim Action

Section 6.1. The School may remove the Respondent from its education programs and activities prior to the start or completion of the grievance procedure on an emergency basis provided that the School:

1. Performs an individualized safety and risk analysis;
2. Determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
3. Provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision may not be construed to modify any rights under federal disability laws.

Section 6.2. The School may place a Respondent who is an employee on administrative during the pendency of the grievance process in accordance with Board policy and law.

Section 7. Sexual Harassment Grievance Process

Section 7.1. If any party believes that the Title IX Coordinator has a conflict of interest or bias for or against the individual parties and/or for or against complaints or respondents generally, that party should report their concern to the Superintendent within five (5) business days of filing a Formal Complaint. If the Superintendent determines that a conflict of interest or bias exists, the Superintendent will designate another individual to serve as Title IX Coordinator for the purposes of the specific grievance process involving the parties.

Section 7.2. The Respondent will be presumed not responsible for the policy violation that is alleged in the Formal Complaint unless and until the Respondent is found responsible by the decision maker at the conclusion of the grievance process.

Section 7.3. The grievance process generally will be completed within ninety (90) days. However, extensions to this time frame may be granted at the request of either party, or at the discretion of the Title IX Coordinator when good cause exists for the delay. Good cause may include 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. The Title IX Coordinator will notify all parties in writing of the delay, the length of the extension granted and the reason for the extension.

Section 7.4. Within five (5) business days of the receipt of a Formal Complaint, the Title IX Coordinator or designee will issue a written notice to the parties. The written notice should include, if known, the identity of the parties, the conduct alleged to be Sexual Harassment, and the date(s) and location(s) of

the incident(s). The notice will also include a statement that the Respondent is presumed to be not responsible for any policy violations. The notice must also inform the parties that they have the right to an advisor of their choice during the grievance process, that they may inspect and review evidence gathered during the investigation, and that policies related to student conduct prohibit making false statements or submitting false information during the grievance procedure.

Section 7.5. If during the course of the investigation, additional allegations are going to be investigated that were not included in the original notice, the Title IX Coordinator or designee will issue a supplemental written notice to the parties.

Section 7.6. Parties will also be provided with notice of all meetings, interviews, or hearings at least three (3) days in advance. Such notice will include the date, time, location, participants, and purpose of the meeting, interview, or hearing.

Section 7.7. Each party has the right to select an advisor of their choice, and for that advisor to accompany the party to any part of the grievance process, including all meetings and interviews. An advisor can be a family member, staff member, mentor, attorney, or any other person of the party's choice who is available and agrees to serve as advisor.

Section 7.8. The Title IX Coordinator or designee will designate an investigator (which may be himself or herself) to conduct a fair, thorough investigation of the allegations in the Formal Complaint. The investigator will have received training as required by Title IX regulations. The School may designate an outside investigator as the investigator.

Section 7.9. The investigator will provide written notice of any meetings or interviews to the parties and/or witnesses at least three (3) business days in advance of the meeting or interview. This notice will include the date, time, and location for the meeting, as well as who will be participating in the meeting and the purpose for the meeting.

Section 7.10. The burden will be on the investigator to fully and fairly investigate the allegation in the Formal Complaint. All parties will have an equal opportunity to present witnesses and evidence to the investigator.

Section 7.11. At the conclusion of the investigation, the investigator will send a copy of the evidence that is directly related to the allegations in the Formal Complaint to the parties and their advisors for inspection and review. The parties will then have ten (10) business days to submit a written response to the evidence, if they choose to do so. The investigator will consider any written response to the evidence before the completion of the investigative report.

Section 7.12. The investigator will prepare an investigative report that fairly summarizes all the relevant evidence. The investigative report should include a description of all steps taken in the investigation as well as summaries of all interviews with parties and/or witnesses and all relevant evidence reviewed by the investigator. The investigator will send a copy of the report to the parties and their advisors within ten (10) business days following completion of the investigation report.

Section 7.13. Following the delivery of the investigative report to the parties and before reaching a determination, the decision-maker(s) (who may not be the Title IX Coordinator or investigator) will allow the parties 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. Questions or evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant in most scenarios.

Section 7.14. The Decision-maker(s) shall issue a written determination whether the Respondent is responsible for the policy violations alleged in the Formal Complaint within five (5) business days of the conclusion of the follow-up period described in Section 6.13. The Decision-maker(s) must determine the weight of the evidence and credibility of the parties in reaching a determination. The written determination shall include:

- An identification of the allegations in the Formal Complaint;
- A description of procedural steps taken from the receipt of the Formal Complaint through the determination, including any notices, interviews, investigators, and hearings;
- Findings of fact that support the determination;
- Conclusions regarding the application of the policy to the facts;
- A statement and rationale for the result of each allegation including the determination of responsibility, any sanctions that will be imposed on the Respondent, and whether any remedies designed to restore and preserve equal access to the School's educational program will be provided to the Complainant; and
- The procedures and acceptable bases for appeal of the determination.
- The standard of proof will be "preponderance of the evidence," which means whether the evidence shows it is more likely than not that a policy violation occurred.

The written determination will be provided simultaneously to all parties. It will become final and any sanctions will take effect after the resolution of any appeal, or if no appeal is filed, within 48 hours after the issuance of the written determination.

Section 7.15. If a Respondent is found responsible for any violations of policy, then the decision-maker will determine what disciplinary sanctions will be imposed on the Respondent and what remedies designed to restore and preserve equal access to the School's educational programs will be offered to the Complainant. Possible sanctions that can be imposed on a Respondent found responsible include but are not limited to: (a) written warning/behavioral agreement; (b) loss of privilege; (c) educational project or service hours; (d) removal from activities; (e) no contact with certain persons; (f) suspension; (g) expulsion; or (h) termination. The discipline of employees and students is addressed in the policies, regulations, procedures and handbooks of the School.

Section 8. Appeals of Decision

Section 8.1. A party may appeal the determination of responsibility or a dismissal of a Formal Complaint by submitting a written request to the designated Appeals Officer: The Biome School Board Chair within 48 hours of the issuance of the decision-maker's determination of responsibility or dismissal. The request should include a short statement outlining the basis for appeal. Appeals are limited to the following bases:

- Procedural irregularity that affected the outcome of the matter;

- New evidence that was not reasonably available at the time of the determination of responsibility or the dismissal of the Formal Complaint that would affect the outcome of the matter; or
- The Title IX Coordinator, Investigator, or decision-maker had a conflict of interest or bias for or against complainants or respondents generally that affected the outcome of the matter.

The Appeals Officer will notify the parties in writing that an appeal has been filed. Each party will then have five (5) days to submit a written statement in support of or challenging the outcome of the hearing.

Section 8.2. The Appeals Officer will issue a written determination of the outcome of the appeal, describing the result of the appeal and the rationale in support of that decision within five business days of the deadline for parties to submit their written statements. The Appeals Officer’s written determination will be provided simultaneously to all parties.

Section 9. Recordkeeping

The Title IX Coordinator must create and maintain for a period of at least seven years records of any actions, including any supportive measures taken in response to a report or Formal Complaint of Sexual Harassment. For each instance, the Title IX Coordinator must document: 1) the basis for the conclusion that the School’s response was not deliberately indifferent, and 2) that the School has taken measures designed to restore or preserve equal access to the School’s educational program or activity. If the Title IX Coordinator does not provide the Complainant with supportive measures, then the Title IX Coordinator must document why it was not clearly unreasonable to not provide supportive measures.

The Title IX Coordinator will also maintain the following records for a period of at least seven years:

- Records related to each Sexual Harassment investigation, including any determination regarding responsibility;
- Any audio or audiovisual recording or transcript from a grievance hearing, if any;
- Records of any disciplinary sanctions imposed on the Respondent;
- Records of any remedies provided to the Complainant;
- Any appeal from a grievance process and the result of the appeal;
- Records related to any informal resolution and the result of the informal resolution;
- All materials used to train the Title IX Coordinators, Investigator, decision maker, and any individual who facilitates an informal resolution.