

MONTANA SCHOOL BOARDS ASSOCIATION

TITLE IX TRAINING

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TODAY'S TRAINING:

Second of three MTSBA training sessions: Nov. 5, 12, and 19 (1-3 p.m.)

This session will be devoted to following up on questions from last week's session, providing an overview of sexual harassment policies and procedures relating to staff and student sexual harassment, the supportive measure that must be made available and the rights of both the complainant and the individual about whom the complaint is made, and the investigator's duties and responsibilities.

THREAD 1: FOLLOW-UP QUESTIONS AND ANSWERS FROM SESSION #1

Follow-up Q&A from Session #1

- What if the alleged conduct does not take place in a District's program or activity (any locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred)?
- Do the new Title IX Regulations apply to all sex discrimination claims or only those that involve allegations of sexual harassment?
- Is the new Title IX Grievance Procedure (set out in the new regulations) different than other grievance procedures in collective bargaining agreements, Policy 1700 Complaints and other processes set out in District Policy?

Follow-up Q&A from Session #1, cont.

- Are all school employees "required" to receive training on the new Title IX regulations? What about contracted individuals (e.g., bus drivers or other independent contractors)?
- What types of privileges are protected under these new Title IX regulations?
- Is off-site delivery of education (for students) or administrative leave with pay (for staff) deemed to be disciplinary in nature?

Follow-up Q&A from Session #1, cont.

- Can the roles of Title IX Coordinator and Investigator be performed by the same person?
- Can the Title IX Coordinator and/or Investigator also be the Decision-Maker?

THREAD 2: MTSBA MODEL POLICES, PROCEDURES, AND FORMS

Policies 3210 and 5010

- Policies outline equal educational and employment opportunities
- Policies specify the identity and contact information of the Section 504 and Title IX Coordinators
- Policies cross reference the other policies that play a role in the preservation of a safe learning and working environment

Policies 3225 and 5012

- Policies specify the definition of sexual harassment for employees and students in accordance with Title IX regulations
- Policies identify the Title IX Coordinator
- Policies state that retaliation is prohibited
- Policies outline the confidentiality expectations, notice requirements, training expectations, and need for staff to remain impartial

Policies 3225P and 5012P

- Policies outlining grievance process in compliance with Title IX regulations
- Policies specify the definitions required to comply with regulations
- Policies note obligations of specific district staff and timelines by which to complete process
- Policies include steps to respond to a complaint, investigate a complaint, honor rights of respondent and complainant, provide support services and informal resolution if applicable
- Policies also detail the methods to make a determination about a complaint, offer opportunity for evidence review, ways to comment on an investigative report, and documenting appeal rights

Policies 3225F and 5012F

Reporting and intake forms for Title IX Coordinator to use when receiving or documenting a complaint. Form is not required but can be used as guide to initiate complaint and related aspects of grievance process.

Policies 3226 and 5015

Updates to bullying/intimidation/harassment policies to cross reference Title IX Coordinator responsibilities and staff obligation to report sexual harassment.

Policy 3310

Updates to student discipline policy to include sexual harassment in the student code of conduct and to document option for non-disciplinary removal from school during an investigation to provide student with offsite instruction.

THREAD 3: SUPPORTIVE MEASURES AND EQUITABLE TREATMENT OF THE PARTIES

Supportive Measures: Introduction

- Title IX Coordinator “must serve as the point of contact for the affected student to ensure that the supportive measures are effectively implemented so that the burden of navigating paperwork or other administrative requirements” does not fall on the student receiving the supportive measures.
- Title IX Coordinator “is responsible for coordinating effective implementation of supportive measures” to the parties.

Supportive Measures: Defined

- **Elements:** Non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available, without fee or charge to both parties
- **Availability:** Prior to or after filing formal complaint or even if no formal complaint is filed
- **Purpose:**
 - Customized to restore or preserve equal access to school's program or activity
 - Protect safety of all parties or school's educational environment or to prevent and deter sexual harassment

Supportive Measures: Specifically Identified

- Counseling
- Extensions of deadlines or other class adjustments
- Mutual restrictions on contact between the parties
- Changes in work or learning locations
- Leaves of absence
- Modifications of work or class schedules
- Increased security and monitoring of certain areas on school

Supportive Measures: Best Practices

- Must take into account the complainant's wishes
- The school should follow up with both parties to determine if supportive measures are working
- Supportive measures may be offered regardless of whether a determination has been made about the allegations or even investigated if the measures help prevent harassment

Supportive Measures: Compliance

- Requirement to keep any supportive measures confidential
- Requirement to create and maintain records, for period of seven years, regarding any actions taken in response to report or formal complaint of sexual harassment including supportive measures
- If district does not provide complainant with supportive measures, it must document the reasons why this was not clearly unreasonable in light of known circumstances

Fairness to Both Parties

- Treat complainants and respondents equitably
- No sanctions until process complete
- No conflict of interest or bias through effectively trained staff
- Presumption that respondent is not responsible
- Reasonably prompt timeframes
- Range of possible disciplinary sanctions and remedies
- Remedies are designed to restore or preserve equal access to district's education program or activity

Fairness to Both Parties

- Evidentiary Standard: preponderance of evidence in MTSBA Model Policy
 - Same standard applicable to complaints against students and employees
 - Same standard applicable to all complaints of sexual harassment
- Objective evaluation of all relevant evidence and credibility determinations
- Describe supportive measures
- Exclude privileged information

Notice to Parties

- Steps in grievance process
- Summary of the allegations
 - Sufficient details known at the time
 - Identity of parties; date and location of alleged incident; alleged conduct
- Sufficient time to prepare response
- Prohibition on retaliation

Notice to Parties

- Statement that respondent is presumed not responsible and that determination will be made at conclusion of grievance process
- May have advisor of choice
- May inspect/review evidence
- Inform of policy or handbook provision prohibiting false statements
- Notice of any additional allegations that may arise

THREAD 4: DUTIES AND RESPONSIBILITIES OF TITLE IX INVESTIGATOR

Duties and Responsibilities of Title IX Investigator

- During Session #1 we provided an overview of the Title IX Coordinator's duties and responsibilities.
- As part of review into roles in districts with limited staff, MTSBA has determined the Title IX Coordinator and the Investigator can be the same person; the Title IX Coordinator can also assist the Investigator designated to complete investigation during the investigative process – regardless of assignment of tasks no bias, prejudice, or conflict of interest is present by staff during the investigation.
- Conducting investigations is not an easy task. There is subjectivity in every investigation, and anyone can attack the process, e.g., who the investigator interviews, what questions are asked, what evidence is gathered, etc.
- Recommendation: Either consult with legal counsel throughout the process or retain legal counsel to conduct the investigation.

The Investigation Process

- The burden is on the District both in terms of gathering evidence and the burden of proof
- Parties must be treated equally in the gathering of evidence and interviewing of witnesses
- Districts are prohibited from implementing gag orders
- The parties are entitled to have representation during the process, including interviews
- Districts must provide written notice of interviews and retain all documents, correspondence for 7 years

The Investigation Process, cont.

- Equitable treatment of parties:
 - Objective, non-biased evaluation of all evidence
 - Presumption of non-responsibility on the part of the Respondent;
 - Both parties must be provided an opportunity to inspect and review the evidence obtained during the investigation. How do you accomplish that while protecting privacy rights???
 - *Note: Session #3 will include investigation do's and don'ts*
 - Both parties must be provided at least 10 days to submit a written response to the evidence reviewed

The Investigation Process, cont.

- Equitable treatment of parties:
 - Distribution of Written Investigative Report
 - Both parties must be provided with a copy of the written investigative report at least 10 days before a determination of responsibility is made
 - Both parties must be afforded an opportunity to submit a written response to the Investigative Report
 - Both parties must be afforded an opportunity to submit written questions of the other parties or the other party's witnesses
 - The District must provide a response to the follow-up requests of either party
 - From there, limited follow-up
 - *As previously noted, the Investigator can facilitate the distribution of the written investigative report, but only the Decision-Maker must be the one involved in facilitating the written questions of the parties.*
 - There can't be any determination regarding responsibility until this process is completed.

THREAD 5: CASE STUDY

Mr. Music teaches band in the high school. A boy in one of his classes tells Ms. Class, his homeroom teacher, that Mr. Music behaves strangely. The student explains Mr. Music regularly offers hugs to girls in his class. When demonstrating techniques on various instruments, Mr. Music exaggerates movements in what appears to be attempts to “accidentally” touch the students. He regularly lingers behind or near girls prior to class or during group work. He makes comments about girls’ outfits and haircuts.

Food for thought: How should Ms. Class and the school district handle this situation? What happens if none of the girls in the class want to make a formal complaint?

DISCLAIMER

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THANK YOU

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