

Title IX Training Follow-Up Materials

Megan D. Morris, Esq.
Elizabeth O. Crespo, Esq.
Kaleva Law Offices
P.O. Box 9312
1911 S. Higgins Ave.
Missoula, MT 59801
406.542.1300
mdmorris@kalevalaw.com
ecrespo@kalevalaw.com



KALEVA
LAW OFFICE

RULES FOR TITLE IX “TEAM” ROLES

Title IX Coordinator

- Must be district employee
- CANNOT be the same person as the decision-maker or appellate decision-maker
- CANNOT have general or specific conflict of interest or bias
- CAN be investigator but could result in conflict or bias

Investigator

- CAN be outsourced
- CANNOT be the same person as the decision-maker or appellate decision-maker for a particular complaint
- CAN be an investigator in one matter and a decision-maker in another matter as long as there is no conflict or bias
- Must be authorized by MT law to conduct an investigation - Title 37, Chapter 60, MCA, requires licensure for a private party to engage in "investigation."

Decision-Maker

- CANNOT be the Title IX Coordinator
- CANNOT be the same person as the decision-maker or appellate decision-maker for a particular complaint
- CAN be a decision-maker in one matter and an investigator in another matter as long as there is no conflict or bias
- CAN be outsourced but . . . MT law limits the authority to suspend to supervising teacher (if no principal or superintendent) or to principal or superintendent (MCA § 20-4-302(5))
- CAN be done by more than one person

Appellate Decision-Maker

- CAN be outsourced
- CANNOT be the Title IX Coordinator
- CANNOT be the investigator or decision-maker
- CAN be appellate decision-maker in one matter and fulfill a different role in another matter as long as there is no conflict or bias

Supportive Measures

- CAN be offered by Title IX Coordinator
- CAN be offered by another employee assigned (i.e., counselor)
- CANNOT be the investigator, decision-maker, or appellate decision-maker for same matter

Informal Resolution

- CAN be outsourced
- CANNOT be Title IX Coordinator

CHECKLIST OF PROCESS

INITIAL STEPS

- Assign a Title IX Coordinator:** This person is the subject matter expert on Title IX compliance.
- Create and Distribute a Notice of Non-Discrimination:** State the school's position on anti-discrimination. Publish in the handbook with the Title IX Coordinator's contact information.
- Establish and Announce Complaint Reporting Tools:** Inform students, staff members, parents and applicants of their rights to file a Title IX violation and how to do this (i.e., grievance procedures).

NOTICE PRIOR TO GRIEVANCE PROCESS

- CALL YOUR SCHOOL ATTORNEY:** If you have notice and/or actual knowledge of a potential sexual harassment, call immediately.
- Meeting with Complainant:** The Title IX Coordinator (or designee) is responsible for with the alleged victim of sexual harassment ("complainant"). Upon notice, the Title IX Coordinator must:
 - Promptly contact the Complainant to discuss the availability of supportive measures;
 - Consider the Complainant's wishes with respect to supportive measures;
 - Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 - Explain to the complainant the process for filing a formal complaint.
 - "Supportive Measures are designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment."
 - Make a record of when supportive measures were offered and who completed that step.
- Receive/submit formal complaint.** Receive signed formal complaint from complainant or (with consultation with legal counsel) Title IX Coordinator signs formal complaint.

INITIATE FORMAL GRIEVANCE PROCESS

- Notify parties:** Notify involved parties – complainant and individual alleged to be perpetrator of sexual harassment ("respondent") that a formal complaint has been filed, the grievance process is invoked, and an investigation has launched. Provide option for informal resolution if appropriate.
- Gather Facts:** Investigator collects digital and/or physical evidence and conducts interviews. Compiles evidence.
- Review and Analyze:** Provide both parties with a chance to review the evidence collected and opportunity to submit written response within 10 days of providing evidence.
- Prepare Investigation Report:** Investigator considers responses provided by parties to evidence and prepares investigation report that fairly summarizes the evidence and credibility. Investigation report provided to parties.

- Response to Investigation Report:** Parties are provided an opportunity to submit a written response to the investigation report at least 10 days prior to a determination of responsibility.
- Opportunity for Written Questions:** Parties have opportunity to submit written questions to other party or witnesses. Decision-maker must provide parties with answers and provide opportunity for limited follow-up.
- Determine a Violation:** Decision-maker looks at whether the information provided (investigation report, party responses to evidence and report, and written questions/answers) meets standard of evidence (preponderance of the evidence).
- Prepare Determination of Responsibility Report:** Decision-maker creates report including allegations, policy violated, parties, evidence, interviews and outcome, including any discipline/sanctions.
- Notify of Outcome:** Provide parties notice of the outcome and reasons, and, if necessary, appeal steps.
- Dismissal:** Consider at any point in process if dismissal is mandated or discretionary. Notify parties of dismissal.

AFTER THE INVESTIGATION AND DETERMINATION OF RESPONSIBILITY

- Offer the Option to Appeal:** Provide parties with chance to appeal the determination. Determine whether appeal is proper. If proper, appellate decision-maker issues determination.
- Notice:** Once timeline for appeal closes/appeal concludes, send notice of closure of case to parties.
- Records:** Title IX Coordinator maintains records for 7 years.

