

Title IX Compliance

Sexual Harassment Intake, Investigation, and Records Checklist

This checklist provides guidance for school district Title IX Coordinators and administrator in compliance with Title IX sexual harassment rules and policies. The checklist is intended to be used in coordination with MTSBA Model Policies 3225, 3225P, 3225F, 5012, 5012P, and 5012F. This document is not intended to be legal advice. Please contact the MTSBA Legal Services Unit with any questions.

Sexual Harassment Intake, Investigation, and Records Checklist		
<i>A. Receiving a Complaint</i>	<u>Yes</u>	<u>No</u>
▪ Provide copy of intake form or request a written or spoken narrative.	<input type="checkbox"/>	<input type="checkbox"/>
▪ Identify those responsible for allegations.	<input type="checkbox"/>	<input type="checkbox"/>
▪ Identify time, location, and date of allegations.	<input type="checkbox"/>	<input type="checkbox"/>
▪ Identify any witnesses to the allegations.	<input type="checkbox"/>	<input type="checkbox"/>
▪ Describe each allegation in detail.	<input type="checkbox"/>	<input type="checkbox"/>
▪ For each allegation, the Title IX coordinator should identify the statutory, regulatory, or policy provision—including federal, state, or local law or school or district policy—implicated by the allegation.	<input type="checkbox"/>	<input type="checkbox"/>
▪ For each allegation, the Title IX coordinator should identify any action School or District has taken regarding the allegation prior to the complaint.	<input type="checkbox"/>	<input type="checkbox"/>
▪ Determine if respondent should be provided offsite instruction or administrative leave.	<input type="checkbox"/>	<input type="checkbox"/>
▪ At time of filing formal complaint, confirm the complainant was participating in or attempting to participate in the district’s education program/activity.	<input type="checkbox"/>	<input type="checkbox"/>
▪ Complainant must sign or otherwise indicate the complainant is the person filing the formal complaint.	<input type="checkbox"/>	<input type="checkbox"/>

<ul style="list-style-type: none"> ▪ If Title IX Coordinator signs a formal complaint, must remain free from conflicts and bias. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Identify if supporting measures are necessary for complainant or respondent. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Supporting measures include: individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party designed to ensure equal educational access, protect safety or deter sexual harassment. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Notice of the allegations of sexual harassment to Respondent, including information about the identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, the date and location of the alleged incident, and any sufficient details known at the time. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Provide an explanation of the District's investigation procedures, including any informal resolution process. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made by the decision-maker at the conclusion of the investigation. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Notice to the parties that they may have an advisor of their choice who may be, but is not required to be, an attorney, and may inspect and review any evidence. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Notice to the parties of any provision in the District's code of conduct or policy that prohibits retaliation, knowingly making false statements or knowingly submitting false information. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Provide copies of applicable policies and procedures to all parties. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Determine if the conduct requires report to law enforcement or child welfare agencies. 	<input type="checkbox"/>	<input type="checkbox"/>

<i>B. Conducting an Investigation</i>	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> Review applicable statutes, regulations, and District and school anti-sexual-harassment or other related policies and procedures. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Ask the alleged victim for a full narrative of the facts. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Review the student/staff files of every individual alleged to be involved in the incident. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Identify a list of witnesses to be interviewed. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Develop a checklist of questions before each interview. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Take notes either during or immediately following all interviews. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Attempt to assess witness credibility by considering the witnesses' character, prior inconsistent statements, bias or motive, demeanor, opportunity or capacity to observe the events, and cooperation with the investigation (or lack thereof). <u>Note</u>: The Investigator may not base credibility determinations on the individuals' status as an alleged victim, alleged perpetrator, or witness. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Confirm that all alleged victims, alleged perpetrators, and all witnesses with relevant knowledge have been interviewed. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Provide interviewee with appropriate translation services if the interviewee is an English Language Learner. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Keep parties and parents/guardians informed about the investigatory process. 	<input type="checkbox"/>	<input type="checkbox"/>

<ul style="list-style-type: none"> Comply with the privacy requirements of the Family Educational Rights and Privacy Act ("FERPA"), which generally requires schools to have written permission from a student's parent/guardian in order to release any information from that student's educational record. 	<input type="checkbox"/>	<input type="checkbox"/>
<p>Prevent instances of retaliation against the alleged victim or any others involved in the investigation process. This may include, for example, conducting subsequent investigations into actions of those accused of punishing or harassing the alleged victim for filing a formal complaint of alleged sexual harassment.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>Additional Best Practices:</i></p> <p>Consider the following when conducting interviews –</p> <ul style="list-style-type: none"> The Investigator should review the files of all individuals prior to their interviews. Interview questions should elicit the facts but be open-ended so as to allow the interviewees to tell their side of the story. The notes should state facts (not the Investigator's opinions). The Investigator should obtain basic factual information from the alleged victim about the incident and, as appropriate, information on the alleged victim's reaction to the alleged sexual harassment; how the alleged sexual harassment has affected the alleged victim's educational experience; whether the alleged victim has any physical evidence or documentation of the alleged harassment (e.g., text messages or e-mails); and how the alleged victim would like to see the incident resolved. The Investigator should begin by informing each alleged perpetrator of the allegations and asking about the alleged perpetrator's knowledge of the basic facts surrounding the incident. The alleged perpetrator should then be given an opportunity to elaborate and explain. In addition, the Investigator may wish to ask the alleged perpetrator whether the alleged victim has a motive to lie about the allegations (if the alleged perpetrator denies the 		

<p>allegations) and whether the alleged perpetrator has any relevant physical evidence or documentation (e.g., textmessages or e-mails).</p> <ul style="list-style-type: none"> For general witness interviews, the Investigator should begin by explaining the reasons for the interview and asking for any relevant information about the alleged incident. In addition, the Investigator may wish to ask for a description of the alleged perpetrator's general behavior toward the alleged victim; whether the alleged victim said anything to the witness about the alleged perpetrator; whether the witness knows of anyone else who might have information about the incident; and whether the witness is aware of the alleged perpetrator engaging in similar conduct in the past. 		
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C. Completing Investigation Report

As best practice, an effective investigative report should have five components: (1) Introduction/Origin of the Complaint; (2) Scope of Investigation; (3) Findings of Fact; (4) Conclusions; and (5) Recommendations. While the exact names of these components and their organization may vary by District, all reports should include the substantive information and certain other characteristics described in this section.

1. Introduction/Origin of the Complaint

Note whether the investigative report includes the following substantive information:

Yes

No

- Reviews applicable statutes, regulations, and District and school anti-sexual-harassment or other related policies and procedures.

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- Provides full narrative of the facts and summary of allegations.

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2. Scope of Investigation

Note whether the investigative report includes the following substantive information:

Yes

No

- Explains generally how the investigation was conducted; what steps the Investigator followed, whether the Investigator reviewed relevant statutes or policies prior to commencing the investigation, whether the Investigator worked collaboratively with outside law enforcement.

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- Identifies the documents and other evidence reviewed by the Investigator such as written formal complaint, interview notes, incident reports, photographs, videos, e-mails, text messages, screen shots.

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- Identifies the witnesses interviewed by the Investigator (and if the Investigator omitted any witnesses during the investigation, explain why).

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3. <u>Findings of Fact</u> Note whether the investigative report includes the following substantive information:	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> ▪ Describes all facts relevant to the analysis, conclusions, and recommendations, including: 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Who, what, where, why, when, how; 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Specific actions/incidents that occurred (including actions taken by the school/District); 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Dates and locations; 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Ages of students (and information regarding alleged employee-perpetrators, if applicable); 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Alleged victim and alleged perpetrator's prior relationship, if applicable; and 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Prior incidents involving relevant students. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> <ul style="list-style-type: none"> o Presents the facts in a logical sequence. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Cites to specific evidence to support factual findings (e.g., a particular statement made during an interview or the substance of a particular text message). 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ If a fact is disputed, use the relevant documents and testimony to resolve the dispute. Or, state that such fact cannot be resolved and explain clearly why this is the case. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Characterizes facts and individuals objectively. Does not use subjective characterizations. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Does not analyze the facts or draw conclusions in the section of the report dedicated to the findings of fact. 	<input type="checkbox"/>	<input type="checkbox"/>

<u>4. Conclusions</u> Note whether the investigative report includes the following substantive information:	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> Explains whether the alleged acts occurred and why they occurred. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Explains the reasons for accepting or rejecting each allegation. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Explains whether the alleged acts constitute a violation of school or district policy. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Does not state legal conclusions. 	<input type="checkbox"/>	<input type="checkbox"/>
<u>5. Recommendations</u> Note whether the investigative report includes the following substantive information:	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> Recommends a determination as to whether the alleged conduct occurred. <p><u>Note:</u> The Decision-maker makes the impartial responsibility determination, but the Investigator may offer a recommendation regarding the determination and appropriate sanctions.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Recommends actions to provide remedial relief for the alleged victim (e.g., counseling or mental health services). <p><u>Note:</u> Remedies must be designed to restore or preserve equal access to the School or District's education program or activity. They may be the same as the supportive measures provided at the outset of the sexual harassment allegations.</p>	<input type="checkbox"/>	<input type="checkbox"/>

<ul style="list-style-type: none"> ▪ Recommends prospective actions for the School or District as applicable such as changes in policy, additional training for students and staff, or school- or District-wide intervention. 	<input type="checkbox"/>	<input type="checkbox"/>
<p><i>Additional Considerations</i></p> <p>Please indicate whether the investigation report has the following characteristics:</p>	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> ▪ The report does not use biased language. Where possible, the report uses the specific language of the actors. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ The report is thorough. The report includes all facts, regardless of whether certain facts appear damaging to the school or District. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ The report is completed by the deadline established by District policy. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ The report complies with state and federal privacy laws (<i>i.e.</i>, FERPA) and union contracts. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ The report is written clearly using short sentences and active voice. The report has been proofread. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> ▪ Key documents are attached to the report. 	<input type="checkbox"/>	<input type="checkbox"/>

<i>D. Mandatory Recordkeeping Requirements</i> Federal Regulations require certain records to be maintained for a period of seven years.	<u>Yes</u>	<u>No</u>
<ul style="list-style-type: none"> Honor district procedures for documentation and recordkeeping related to responses to sexual harassment allegations. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Maintain record of any actions taken in response to each report of alleged sexual harassment, whether or not a formal complaint was ultimately filed. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> For each report of alleged sexual harassment, documented basis for school's decision that its response was not deliberately indifferent. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> For each report of alleged sexual harassment, documentation that measures were taken to restore or preserve equal access to the school's education program or activity. If no supportive measures were provided to the alleged victim, documented reasons why the lack of supportive measures was not clearly unreasonable in light of the known circumstances. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Maintain records of each sexual harassment investigation, including any responsibility determinations, disciplinary sanctions imposed on alleged perpetrator, and remedies provided to alleged victim to restore or preserve equal access to the school's education program or activity. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> Maintain records of any appeals related to alleged sexual harassment including but not limited to appeal of dismissal of formal complaint, appeal of responsibility determination. 	<input type="checkbox"/>	<input type="checkbox"/>
<ul style="list-style-type: none"> If offered and applicable, records related to any informal resolution processes. 	<input type="checkbox"/>	<input type="checkbox"/>

<p>■ All professional development training materials used for Title IX Coordinators, Investigators, Decision-makers, and if offered, Facilitators of informal resolution processes.</p> <p><u>Note:</u> Professional development training topics include</p> <ul style="list-style-type: none"> ○ Definition of sexual harassment ○ Scope of education program or activity ○ How to conduct an investigation and grievance process, including hearings (if offered), appeals, and informal resolution process (if offered) ○ How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias ○ Issues of relevance of questions and evidence, including when the alleged victim's sexual predisposition or prior sexual behavior is brought up ○ Technology use ○ Professional development training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications/resolutions of formal complaints of sexual harassment 	<input type="checkbox"/>	<input type="checkbox"/>
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