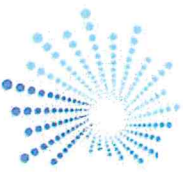




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K-12 and Title IX: What to Know About the New Regulations

Part One



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Grand River Solutions



Agenda for Today

01

People, functions, and impartiality

02

Scope and jurisdiction

03

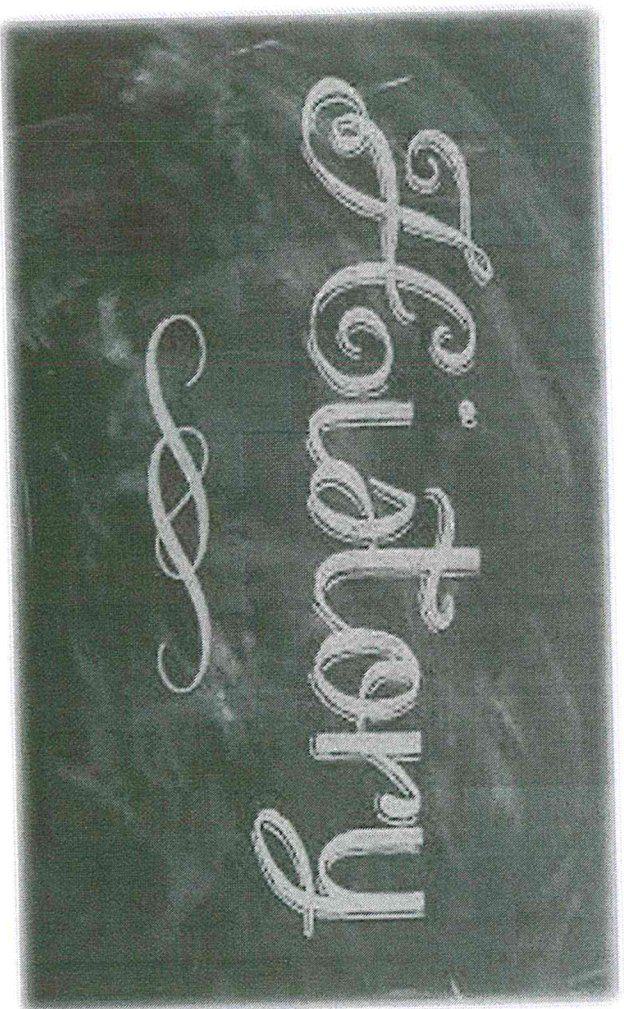
Definition of sexual harassment

04

Supportive measures and informal resolution processes

05

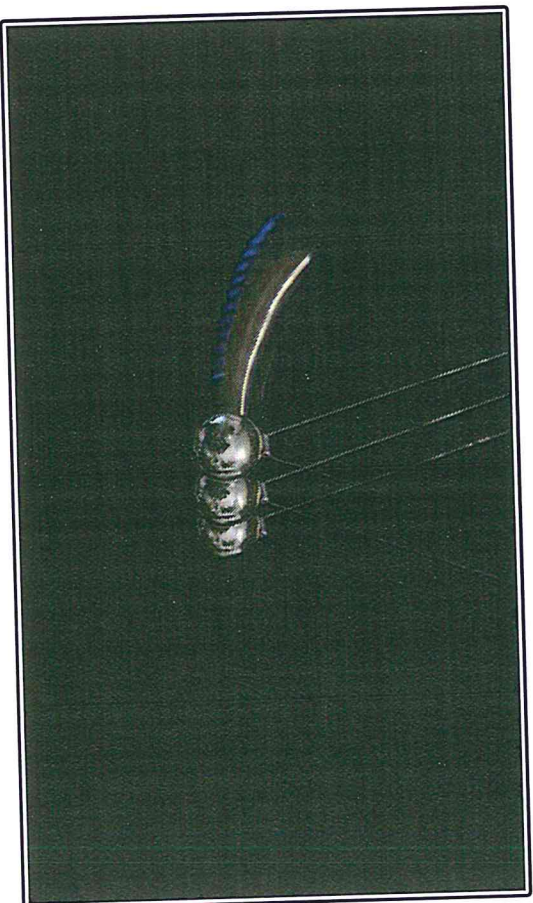
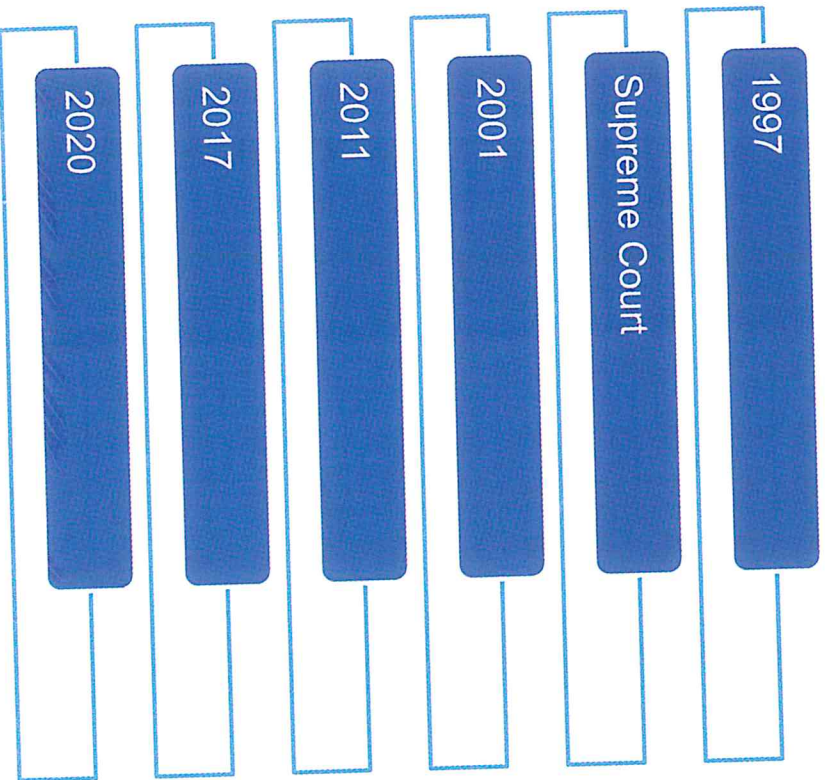
Overview of formal process options



First, Some Background

Title IX of the 1972 Education Amendments

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

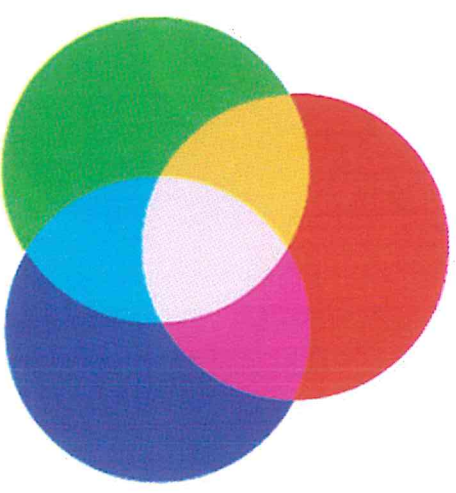


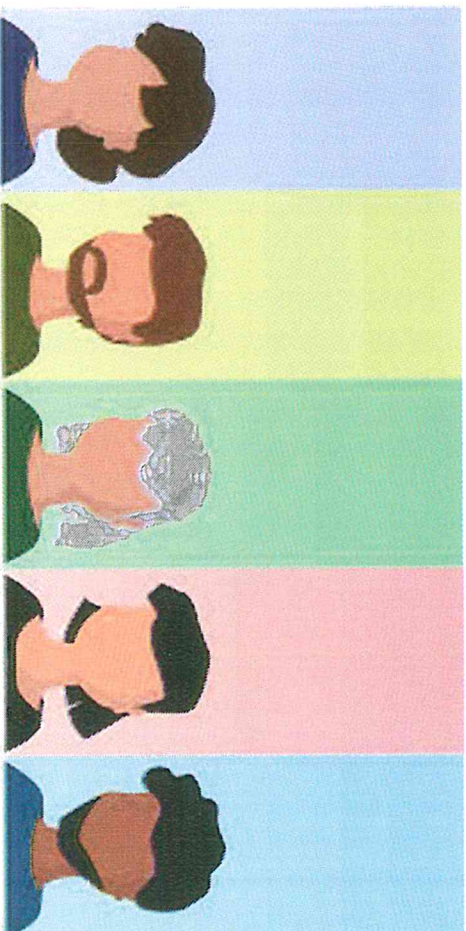
What is Covered by Title IX

- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling

What (Mis)Conduct is Covered by the New Regulations?

- Sexual Harassment
 - Hostile Environment
- Quid Pro Quo (employee to student)
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking





People, Functions and Impartiality

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A Good Start: One Coordinator

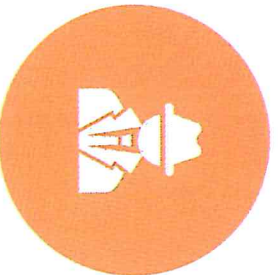
Only One?

Can't someone else help out?

How big is that job?

What, exactly, am I supposed to be doing?

Can One Coordinator Do It All?



INVESTIGATOR

DECISION-
MAKER

APPEALS
OFFICER

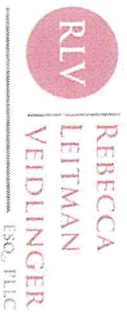
WHY NOT?

Is the Title IX Coordinator an Advocate?

- For Process
- Impartiality
- Avoidance of Prejudgement
- Avoidance of Conflicts of Interest
- Avoidance of Bias

Impartiality

WHAT DOES THIS REALLY MEAN?

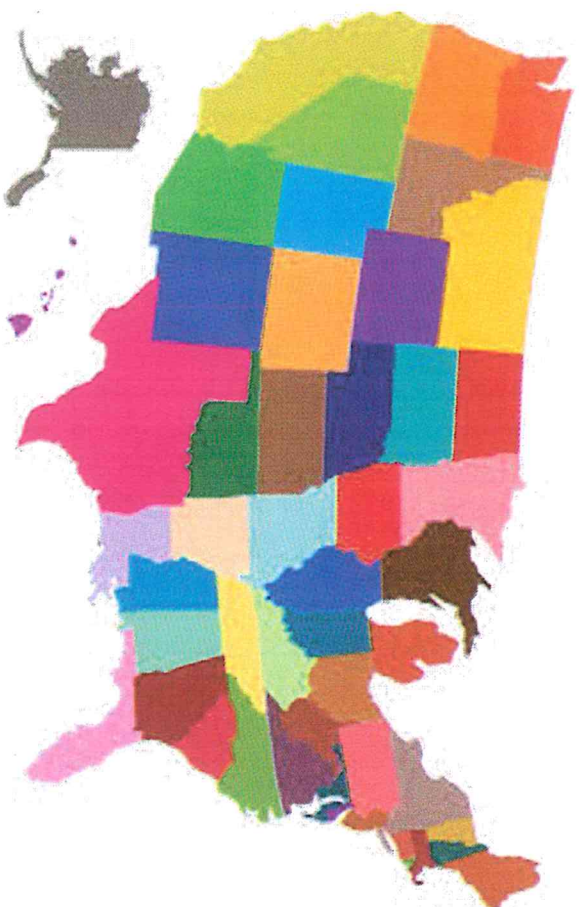


Prejudging

- “Believe all victims”?
- Is bringing forward a case a “judgment”?
- Avoiding any presumption of responsibility

Bias? Conflict of Interest

- Being anti-rape
- The investigator once took a women's studies course
- The appeals officer wrote on Facebook last week that if a boy is accused, he definitely did at least *something* wrong
- The Title IX Coordinator went to the same college as the Complainant's mother
- The Title IX Coordinator's daughter works for the Complainant's mother



Scope and jurisdiction

Mandatory jurisdiction to respond

- Actual knowledge,
- Education program or activity, and
- Person in the United States.



Hypo #1

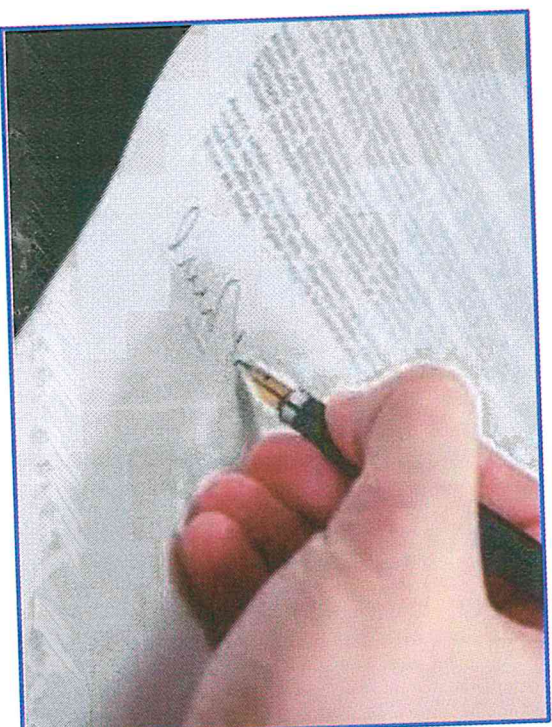
Nancy Hodges is the assistant softball coach at Fairview High School. Josie, a player, approaches her after practice and tells her that another player, Liz, has been telling people that a senior on the softball team sexually assaulted Liz in the locker room a week ago. Josie said no one believes Liz because she always causes drama. Nancy herself has had previous interactions with Liz related to softball when Liz was not always honest.

Hypo #2

Jason Franklin is a regular substitute teacher at Engels Middle School. Aaron, a student in geometry, knows Jason both from his substitute teaching and from attending church together. After class on Thursday, Aaron tearfully asked to speak with Jason. Aaron confided in Jason that the prior weekend, Aaron thinks he might have "done something really bad." Aaron eventually shares with Jason an incident that occurred at Aaron's house when his parents weren't home. Aaron shares that Jordan, another Engels Middle School student, came over and became intoxicated from alcohol. Aaron further shares that Aaron fondled Jordan's breasts when she was unconscious and unaware. Aaron feels badly about the incident and asks Jason what the church would want him to do.

Mandatory jurisdiction to investigate-- formal complaint filed by a complainant

- How to file it/where is it?
- What does it need to say?



Mandatory jurisdiction to investigate-- formal complaint filed by Title IX coordinator

When might a Title IX
coordinator file a
complaint?





Definition of Sexual Harassment

Definition of Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).



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Definition of Sexual Harassment, Quid Pro Quo

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

Meaning: You do this for me, I'll do that for you. Quid Pro Quo

Not covered here: A student leader tells another student, "If you won't go out with me, I'll make sure you never get into the glee club."



Definition of Sexual Harassment, Hostile Environment

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

Comments, emails, posters, actions, gestures, physical contact, images, anything that might create a hostile environment

What is Severe and Pervasive?

Severe: How much does it take?

Pervasive: How many times?

Objectively Offensive

Sexual harassment has an objective, and a subjective, element

OBJECTIVELY, a reasonable person in a similar position would agree that it is offensive

SUBJECTIVELY, the complainant found it to be offensive

I tell a joke to a friend who thinks it is really funny. The joke is highly sexual and crass. Objectively, is it offensive? Subjectively?

Effectively Denies Equal Access to a Program or Activity

- It was harder to feel really comfortable there
- I found it really annoying
- Their mere presence upset me too much to study
- I no longer felt safe enough to go to class

Sexual Assault, Dating Violence, Domestic Violence, Stalking

A few considerations:

Dating Violence:

Who's to say whether they were "Dating"?

Stalking:

Course of conduct = two or more

What is the difference between ongoing harassment, and stalking?

It Was Bad, But Not Title IX Bad

If not 106.30, then no 106.45

DATE OF MEETING:

REPORTING PARTY NAME:

COMPLAINANT NAME:

If different from reporting party

ACCOMPANIED BY (if anyone):

SHORT RECAP OF INCIDENT/SITUATION REPORTED:

A brief description of the incident as told by the complainant. This is not a full interview, but rather a short summary record about the concern raised.

INCIDENT TYPE as characterized by reporting party or complainant

(bullying, sexual harassment, assault, domestic/dating violence, stalking, retaliation, etc.)

INCIDENT TYPE as characterized by person conducting intake

(note that this may change as more facts are discovered)

NAME OF RESPONDENT:

If not identified, please note here reason why reporting party or complainant did not provide name

DATE OF INCIDENT(S):

If known; approximate date is acceptable

LOCATION OF INCIDENT(S)

At school? Off campus? If off-campus, was it part of a school event, such as a field trip, off-campus program meeting, etc.? |

1. Nature of Complaint:

A complaint of sexual harassment in which the harassment was so severe and pervasive that it denied the complainant **equal** access to an educational program or activity, or denied the employee the **equal** ability to continue their work;
A complaint of Dating Violence, Domestic Violence, Stalking, or Sexual Assault;
A complaint of quid pro quo sexual harassment by an employee respondent against a student.

If yes to one of the above, continue. If no, please see (name of basic sex harass policy).

2. Location:

The incident(s) occurred at school, within the United States;
The incident(s) occurred as part of a recognized program in a building under the school's control, and within the United States;
The incident(s) was part of one of the school's programs or activities, such as part of a field trip or team athletic event, and within the United States.

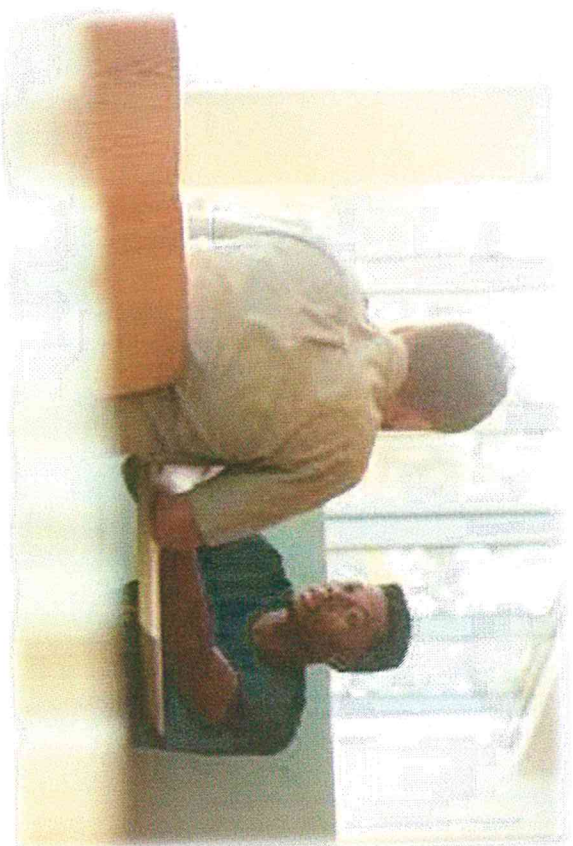
If yes to one of the above, continue. If no, please see (name of basic sex harass policy).

3. The institution has **control over the respondent**, meaning the Respondent is a student (whether applicant, admitted, or currently enrolled) or employee (applicant, hired but not yet working, or employed). In addition, the institution may have control over a respondent who is a contractor, an alum, or a vendor under certain circumstances.

If yes to one of the above, continue. If no, please see (name of basic sex harass policy).

4. Complainant is a student (whether applicant, admitted, or currently enrolled) or employee (applicant, hired but not yet working, or employed), or otherwise still accessing or attempting to access a university program or activity, within the United States.

If yes to one of the above, continue. If no, please see (go to basic sex harassment policy).

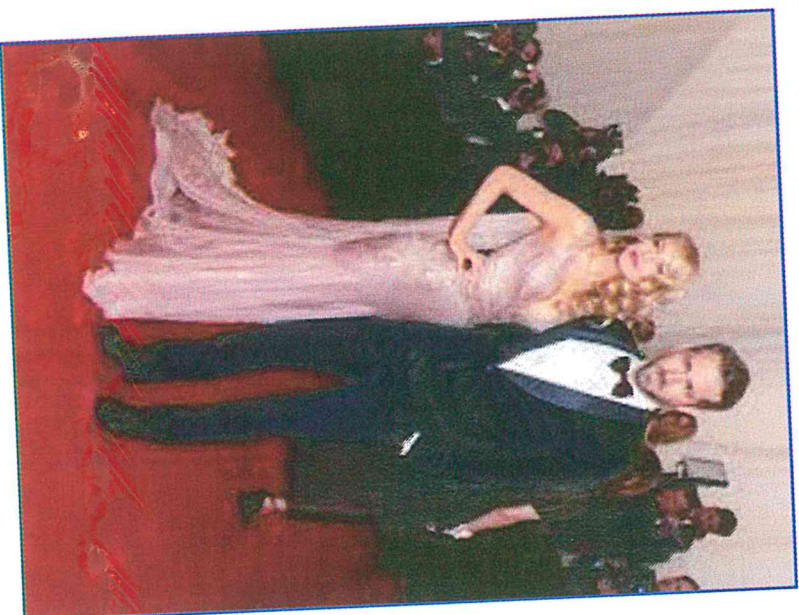


Supportive Measures and Informal Resolution Process

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Notice . . . or *FORMAL* Notice?



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On Notice, Now What?



EASY: Don't Be Deliberately Indifferent

Outreach

Rights, resources, options

➤ Discuss support measures

➤ Can have support without filing formal complaint

➤ Options for resolution and how to File

➤ What the process will look like (*optional* step)

Interim Support

Interim, not
forever

Interim also
includes “before
investigation”

Equitable ≠
Equal

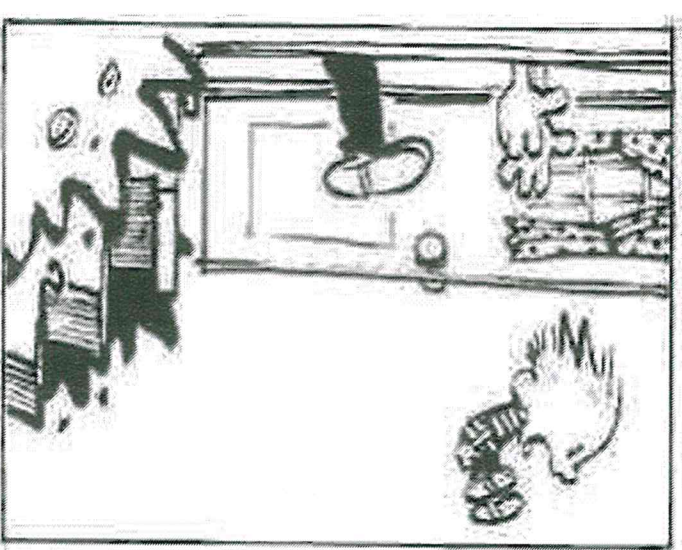
Not Punitive?

- No default, always case-by-case
- Right to challenge
- Local education codes may apply



Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



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Interim Support for a Complainant

To restore or preserve EQUAL access

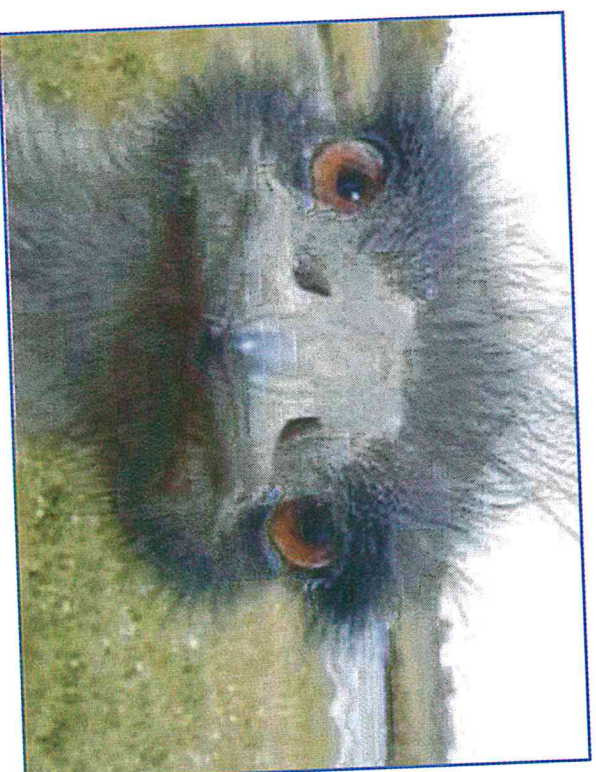
Confidential to extent possible

Upon filing of report (notice)

No fee

Non-disciplinary/not punitive

Individualized



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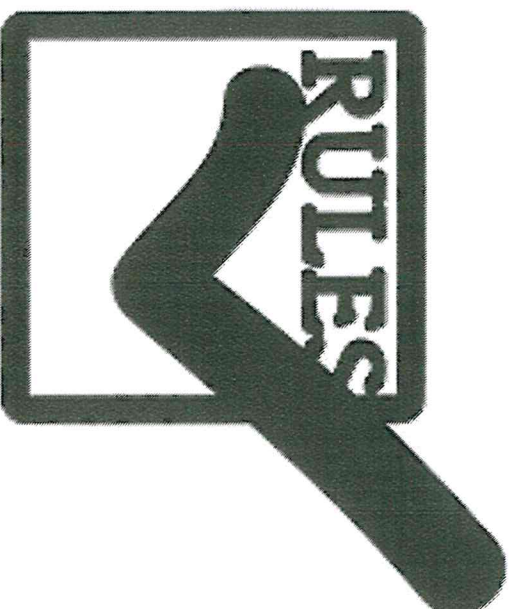


Interim Support for a Respondent

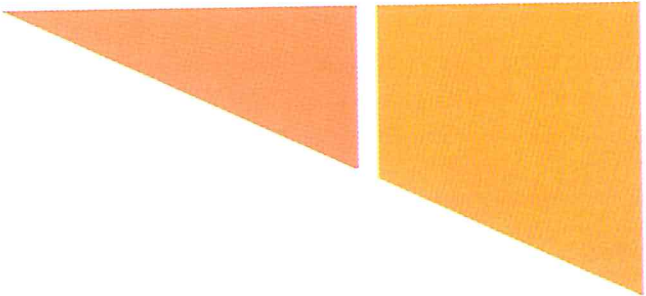
After complaint is filed



**Non-disciplinary
Non-punitive
Individualized**



Overview of Formal Resolution Process



Formal complaint is filed . . . what now? NOTICE

- Grievance process
- Allegations, including sufficient details
- Statement of presumption of non-responsibility
- Right to an advisor/attorney
- Any provision in code that prohibits making false statements during process

Dismissing complaints

MANDATORY

DISCRETIONARY

- Not sexual harassment,
- Did not occur in program or activity, or
- Not against person in the U.S.
- Complainant withdraws complaint,
- Respondent no longer enrolled/employed, or
- School unable to collect sufficient info.

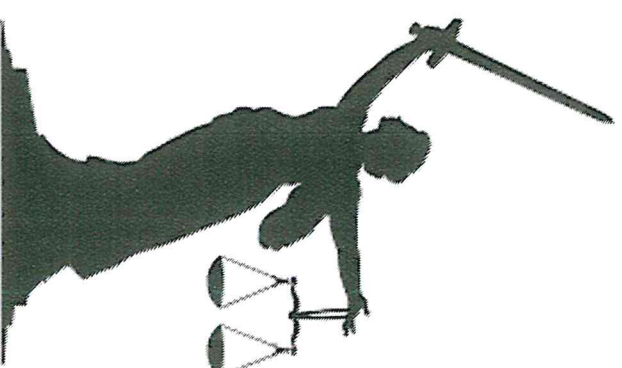
Overview of investigation



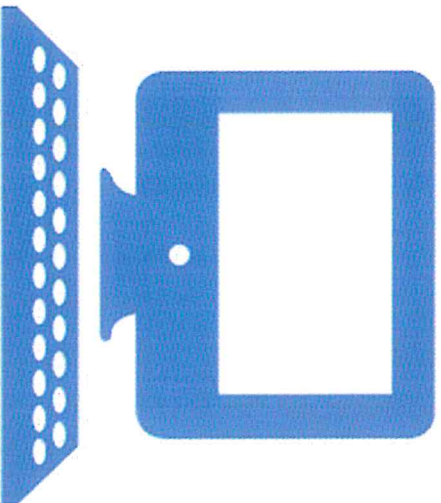
- Trained investigator collects information
- Investigator shares evidence “directly related” to allegations with parties
- **Parties have 10 days to respond**
- Investigator creates summary of “relevant” evidence and shares with parties
- **Parties have 10 days to respond**

Overview of adjudication

- K-12 schools have a choice!
No-hearing v. Hearing
- Hearings and state education laws
- Equal appeal rights with mandatory and discretionary bases



And don't forget to publicize your Title IX information



- Nondiscrimination statement
- Title IX coordinator contact information
- Information regarding how to file complaints and grievance procedures



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Join us for part two:
How to conduct investigations
and hearings

June 18, 2020
12:00 pm Central/1:00 pm
Eastern



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