

# Initial Assessment and Handling Potential Title IX Sexual Harassment Claims

Harry Wright, Jr. , Assistant General Counsel  
Rookie Assistant Principal Conference



## Title IX Guidance Overview

Title IX is a statute Congress passed in 1972 to prohibit sex discrimination in educational institutions and provide remedies against such discrimination.

Title IX protects students and employees from discrimination on the basis of sex in their education programs and activities, including sexual harassment.

In 2020, the U.S. Department of Education released new regulations under Title IX that dictated specific procedures on how schools must respond to sexual harassment complaints.

# Schools Response Obligations

- ▶ A school must respond when it has:
  - ▶ Actual knowledge
  - ▶ Of sexual harassment
  - ▶ That occurred within the school's education program or activity
  - ▶ Against a person in the US
- ▶ A school has actual knowledge when:
  - ▶ ANY employee of an elementary or secondary school has notice of sexual harassment or **allegations** of sexual harassment
    - ▶ Includes teachers, teacher's aide, bus drivers, cafeteria workers, counselors, school resource officers, maintenance staff worker, etc.
- ▶ A school's education programs or activities include any events, or circumstances over which the school exercised **substantial control** over both
  - ▶ the **respondent**; and
  - ▶ the **context** in which the sexual harassment occurs

# What constitutes sexual harassment under Title IX?

- ▶ “Sexual harassment” means conduct on the basis of sex that satisfies one or more of the following:
  - ▶ Quid Pro Quo: a school employee conditioning education benefits on participation in unwelcome sexual conduct
  - ▶ Hostile Environment: Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity
  - ▶ “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).

# What constitutes sexual harassment under Title IX?

- ▶ The definition of sexual assault under Title IX includes:
  - ▶ non-consensual sexual penetration (vaginal, anal, or oral, including with an object);
  - ▶ sexual conduct where the victim is incapable of giving consent because of age or temporary or permanent mental or physical incapacity;
  - ▶ Criminal Sexual Contact (the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation ) or (the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation);
  - ▶ incest (nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law);
  - ▶ and statutory rape (nonforcible sexual intercourse with a person who is under the statutory age of consent)

# What constitutes sexual harassment under Title IX?

- ▶ The term "dating violence" means violence committed by a person-
  - ▶ (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - ▶ (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (i) The length of the relationship.
    - (ii) The type of relationship.
    - (iii) The frequency of interaction between the persons involved in the relationship.

# What constitutes sexual harassment under Title IX?

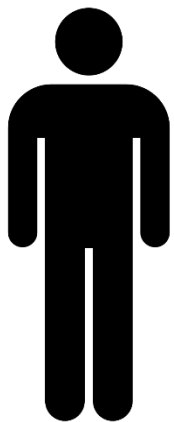
- ▶ Domestic Violence includes Felony or misdemeanor crimes of violence committed by:
  - ▶ (1) a current or former spouse or intimate partner of the victim;
  - ▶ (2) a person with whom the victim shares a child in common;
  - ▶ (3) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - ▶ (4) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state; or
  - ▶ (5) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state

# What constitutes sexual harassment under Title IX?

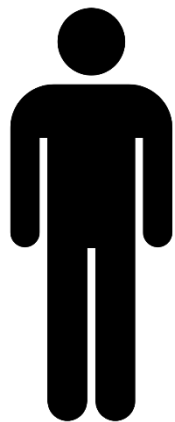
- ▶ The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to-
  - ▶ (A) fear for his or her safety or the safety of others; or
  - ▶ (B) suffer substantial emotional distress.



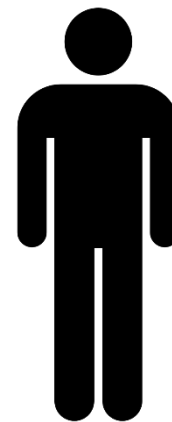
# Title IX Assignments in CFISD



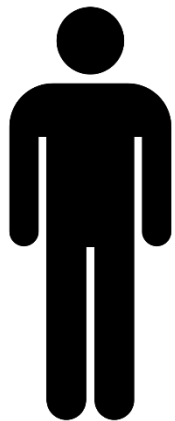
Title IX Coordinator(s)  
Assistant Principal  
(Elem)  
Assistant Principal  
(MS)  
Associate Principal  
(HS)



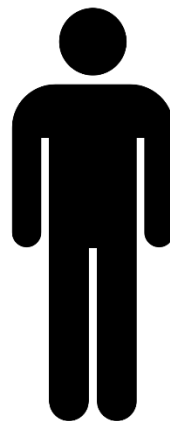
Investigator  
Assistant Principal



Decision maker  
Campus Principal

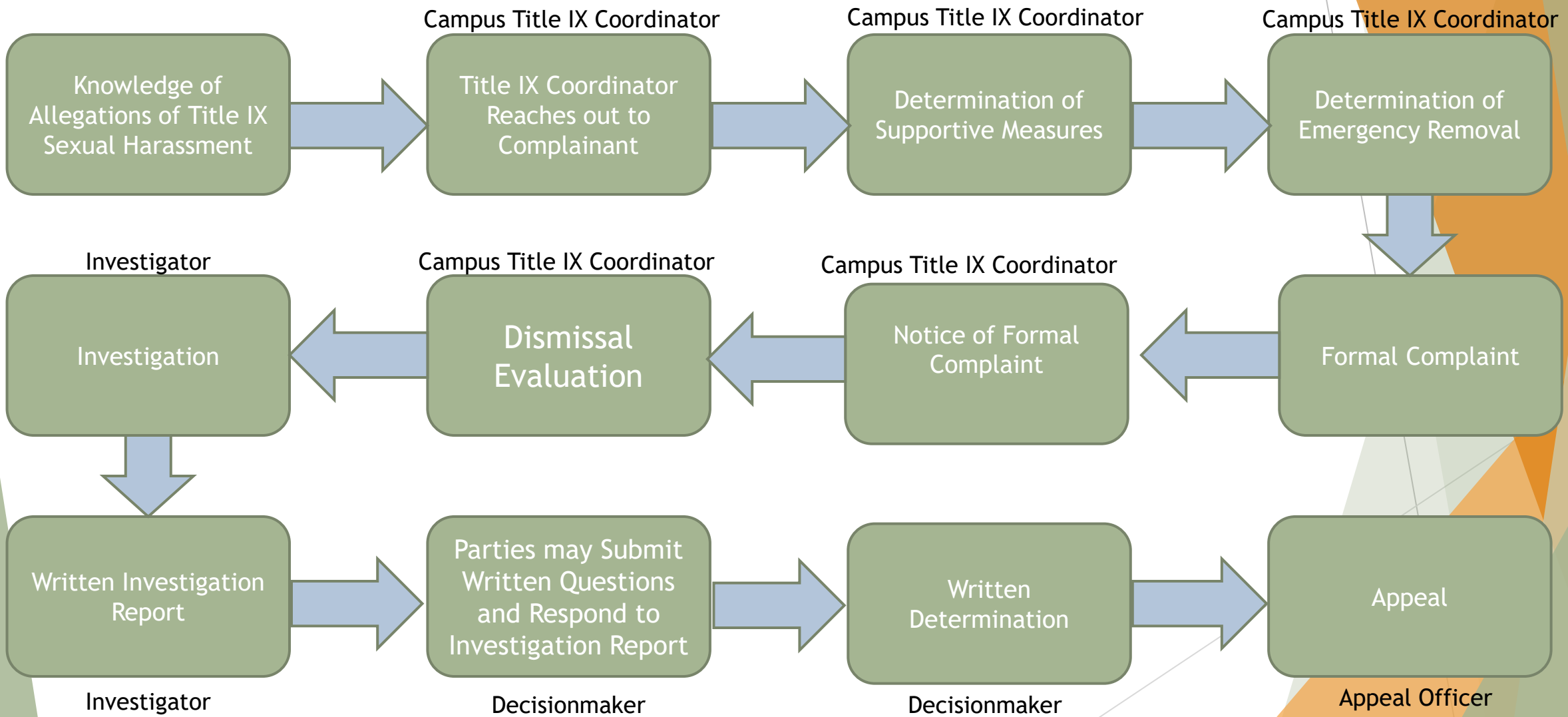


Appeal Officer  
Assistant  
Superintendent



Informal Resolution Facilitator  
Campus Title IX Coordinator

# Basic Title IX Process



# CFISD Title IX Guidance

- ▶ The District's Title IX Guidance documents and forms can be found on Legal Services webpage on the CFISD Staff Intranet. Specifically, these documents are located in the Title IX Section of the Legal Toolkit.
- ▶ Additionally the District's Title IX Complaint Procedures and training materials can also be found on Legal Services webpage on the CFISD Staff Intranet.

<https://inside.cfisd.net/>

- ▶ Further, the District's Title IX Complaint Procedures are available to the public and can be found on Legal Services webpage on the CFISD Internet site.
- ▶ Contact Student Services if any questions or need help.

# Initial Response to Allegations of Sexual Harassment

- ▶ Upon receiving any report of misconduct involving sex or gender a campus administration should:
  - ▶ 1.) Immediately notify the Campus and/or District Title IX Coordinator; and
  - ▶ 2.) Complete the Sexual Misconduct Report Intake Form (See Document 1) and forward it to the Campus Title IX Coordinator.
- ▶ Upon receipt of a report of unwelcome sex-based misconduct, the Title IX Coordinator must determine whether the conduct, if proved, implicates Title IX.

# Initial Response to Allegations of Sexual Harassment— Document 1

[https://inside.cfid.net/download\\_file/5985/1285](https://inside.cfid.net/download_file/5985/1285)

## SEXUAL MISCONDUCT REPORT INTAKE FORM

For known misconduct involving **sex or gender**

### ● What to Do BEFORE Completing This Form ●

<b>Assess Safety:</b> If a student is in immediate danger or is an immediate danger to self or others, remove the student from the environment immediately. Move the student to a safe area with adequate supervision and immediately contact the Title IX Coordinator for what to do next.	<b>Consider Law Enforcement, Medical, and Parental Contact:</b> If allegations include a serious crime, alleged injury, or evidence that needs to be collected (like photographs on an electronic device), follow standard building procedures to contact police, medical, and parent(s)/ guardian(s).	<b>Consider Reporting Abuse, Neglect, or Exploitation:</b> Anyone who has a reasonable cause to believe a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited must report it to DFPS. If in doubt, report. Report at 1-800-252-5400 or the <b>Texas Abuse Hotline</b> .	<b>Consider Contacting Special Education:</b> If a party is a student with a 504 plan or an IEP, contact relevant special education administration to consider impacts on special education placement and services.
---	--	---	---

### ● What NOT to Do Until the Title IX Coordinator Decides if Title IX Applies ●

Do not conduct investigation interviews (asking for or collecting evidence)—only conduct intake meetings with the reporting party and the complainant/family. An intake meeting means asking what is alleged to have happened, not asking for evidence to support the allegations.	Do not discipline either party, including the alleged perpetrator. See the step above “assessing safety” for immediate steps to take to keep your community safe. Contact the Title IX Coordinator to authorize suspensions or other removals from school or activities.	Do not violate the confidentiality of the alleged victim by telling the alleged perpetrator the alleged victim’s name or that a report has been made. We cannot share such information until the Title IX Coordinator says Title IX is not implicated, a Title IX formal complaint is filed, or the alleged victim and their parent(s)/guardian(s) allow it.
--	--	--

### Part I: Reporting Party

Name of Reporting Party: \_\_\_\_\_ Grade: \_\_\_\_\_

Affiliation with District: ☐ Student ☐ Employee ☐ Parent ☐ Volunteer  
☐ Other (Describe: \_\_\_\_\_)

Date of Report: \_\_\_\_\_

Who Reported To (Name/Title)? \_\_\_\_\_

### Part II: Complainant

Is Reporting Party Alleged Victim? ☐ Yes ☐ No. If no, complete info about the alleged victim:

Alleged Victim’s Name(s): \_\_\_\_\_

### Part III: Respondent

Alleged Perpetrator’s Name(s): \_\_\_\_\_ Grade(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (if students)

Affiliation with District: ☐ Student ☐ Parent ☐ Volunteer  
☐ Other (Describe: \_\_\_\_\_)

Minor(s)? ☐ Yes ☐ No

### Part IV: Allegations

What is Alleged to have happened?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When Did Conduct First Happen?  
\_\_\_\_\_

Did It Happen More Than Once? ☐ Yes ☐ No. If yes, provide known dates.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When Did Conduct Last Happen?  
\_\_\_\_\_

Where Did the Conduct Happen? ☐ At School ☐ At a School Activity ☐ During School Hours  
(Check all that apply) ☐ Using School Technology ☐ During Remote Learning  
☐ Near School ☐ Other. If “other” is checked, describe where:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Were There Any Witnesses? ☐ Yes ☐ No. If yes, provide names/how to contact witnesses.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### Did the Conduct Involve Any of the Following?

- ☐ Yes ☐ No **Nonconsensual sexual penetration** (vaginal, anal, or oral, including with an object)
- ☐ Yes ☐ No **Sexual conduct where the victim is incapable of giving consent** because of age or temporary or permanent mental or physical incapacity

# Initial Response to Allegations of Sexual Harassment

- ▶ Until the Title IX Coordinator or Campus Title IX Coordinator decides if Title IX applies:
  - ▶ Do not conduct investigation interviews (asking for or collecting evidence)—only conduct intake meetings with the reporting party and the complainant/family. An intake meeting means asking what is alleged to have happened, not asking for evidence to support the allegations.
  - ▶ Do not discipline either party, including the alleged perpetrator. Contact the Title IX Coordinator to authorize suspensions or other removals from school or activities.
  - ▶ Do not violate the confidentiality of the alleged victim by telling the alleged perpetrator the alleged victim's name or that a report has been made. We cannot share such information until the Title IX Coordinator or the Campus Title IX Coordinator says Title IX is not implicated, a Title IX formal complaint is filed, or the alleged victim and their parent(s)/guardian(s) allow it.

# Initial Response to Allegations of Sexual Harassment

- ▶ If the alleged conduct, even if proved, would not be Title IX “sexual harassment”, campus staff may proceed with disciplining the student in accordance with the Code of Conduct.
- ▶ If the alleged conduct does constitute Title IX sexual harassment, a school only impose punitive or disciplinary consequences against the alleged perpetrator by going through the formal Title IX Complaint process.
- ▶ If the alleged victim decides not file a Title IX complaint, the Campus Title IX Coordinator may still elect to file a complaint.

# Interim Options to Address Conduct: Supportive Measures

- ▶ While you may not immediately discipline a student if the alleged conduct constitutes sexual harassment under Title IX, you have several options to address the conduct.
- ▶ If a parent or student makes allegations that could amount to sexual harassment, the campus Title IX Coordinator is required to offer supportive measures
- ▶ Examples of supportive measures include:
  - ▶ Counseling
  - ▶ Course related adjustments
  - ▶ Modifications of work or class schedules
  - ▶ Campus escort services
  - ▶ Leaves of absence
  - ▶ Increased security and monitoring of certain areas of campus, and
  - ▶ Mutual restrictions on contact between the parties

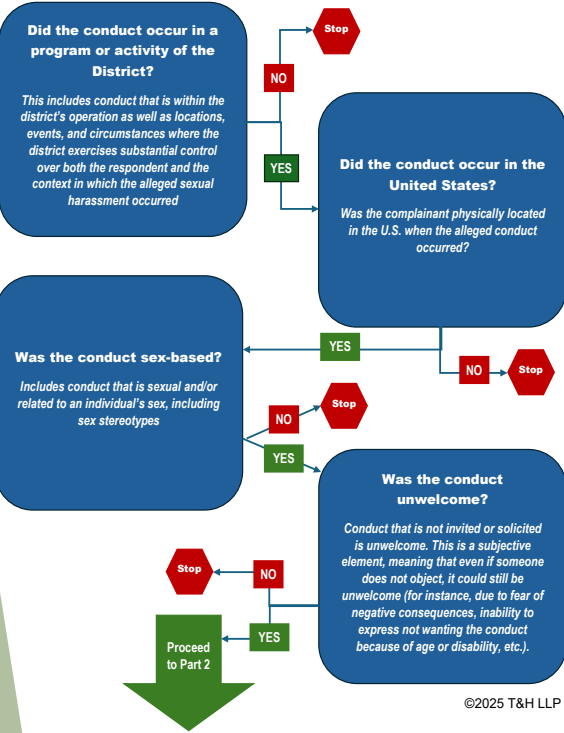


# Determining whether Allegations Constitute Title IX Sexual Harassment—Document 8

## Document 8 – Title IX Sexual Harassment Evaluation Tool

Use this tool to determine if the Title IX grievance process must be used. Answer all questions based on the **allegations**, not based on your assessment of their plausibility or credibility. If you come to a **Stop** do not use the Title IX Grievance Process. Instead, evaluate under your District’s other policies and procedures.

### PART ONE: JURISDICTION



### PART TWO: TYPE OF CONDUCT ALLEGED

Evaluate allegations under each/all types of sexual harassment below; alleged conduct can be more than one type of harassment.

Hostile Environment Harassment	1. Is the alleged conduct severe? <i>The conduct must be extreme and not merely rude or unpleasant; something more than just juvenile behavior, even if antagonistic, non-consensual, and crass. Simple acts of teasing and name-calling are not enough, even where they target gender differences.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	2. Is the alleged conduct pervasive? <i>"Pervasive" means systemic or widespread. It generally means multiple incidents of harassment; one incident of harassment is not usually enough. However, in some cases, such as those involving electronic transmission of sex-based material, one incident can have a widespread effect even if it is only "sent" one time.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	3. Is the alleged conduct objectively offensive? <i>The objective offensiveness of conduct is judged by reference to a reasonable person (considering the age, sex, and other characteristics of the person) at whom the conduct was aimed.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	4. Was equal access to the education program or activity effectively denied? <i>Would the alleged conduct impair a person's access to the educational program or activity relative to someone who was not experiencing harassment? No concrete injury is required.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
		<input type="checkbox"/> Yes to all Hostile Environment Harassment alleged	<input type="checkbox"/> No to any Hostile Environment Harassment not alleged

Sexual Assault: Rape	1. Does the complainant allege vaginal, anal, or oral sexual penetration?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	2. Does the complainant allege they did not give consent? OR Does the complainant allege they were incapable of giving consent because of age or temporary or permanent mental or physical incapacity?	<input type="checkbox"/> Yes to either	<input type="checkbox"/> No to both
		<input type="checkbox"/> Yes to all Rape alleged	<input type="checkbox"/> No to any Rape not alleged

Sexual Assault: Criminal Sexual Contact	1. Does the complainant allege that the respondent intentionally touched the complainant's body part(s) above or under clothing? Or that the respondent forced the complainant to touch the respondent's body part(s) above or under the clothing? <i>This includes any body part.</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	2. Does the complainant allege that the touching was for purposes of sexual gratification, sexual degradation, or sexual humiliation? <i>Does the complainant believe that the respondent's intention was sexual or intimate? Or intended to be degrading or humiliating?</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	3. Does the complainant allege they did not give consent? OR Does the complainant allege they were incapable of giving consent because of age or temporary or permanent mental or physical incapacity?	<input type="checkbox"/> Yes to either	<input type="checkbox"/> No to both
		<input type="checkbox"/> Yes to all CSC alleged	<input type="checkbox"/> No to any CSC not alleged

# What constitutes sexual harassment under Title IX?

## ► Scenario No. 1:

Jennifer has reported that the back of Tim's hand brushed against her buttocks when Tim attempted cross behind her to enter his classroom. Jennifer stated that the incident happened in a very crowded hallway during passing period at the high school. She also stated the Tim did not appear to acknowledge that anything had happened. She has stated the that the conduct was unwelcome and that it upset her.

Could this be sexual harassment under Title IX?

Answer: Most likely no. While the conduct involves non-consensual touching of a private body part, it does not appear that it was done for sexual gratification given the circumstances.

# What constitutes sexual harassment under Title IX?

## ► Scenario No. 1a:

Jennifer has reported that the back of Tim's hand brushed against her buttocks when Tim attempted cross behind her to enter his classroom. Jennifer stated that the incident happened in a very crowded hallway during passing period at the high school. She also stated that **when the incident happened Tim smiled at her and stated the he thought she was fine.** She has stated the that the conduct was unwelcome and that it upset her.

Could this be sexual harassment under Title IX?

Answer: Yes. Tim's alleged actions would constitute criminal sexual contact because would it involved the non-consensual touching of private body part of another, and given his additional actions we could infer that it was done for the purpose of sexual gratification.

# What constitutes sexual harassment under Title IX?

## ► Scenario No. 2:

Matt reports that another first grade student Steve slapped his butt while on the playground. Matt stated that Steve and all of the other first grade boys had been playing a game where they chased each other around and slapped other boys on the butt.

Could this be sexual harassment under Title IX?

Answer: No. While it is alleged that the Matt was touched inappropriately, the circumstances indicate that it was not done for sexual gratification so it would not meet the definition of criminal sexual contact .

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 3:
- ▶ Lisa has alleged that Steve made a comment to her in class about how her breast looked really good and exposed himself to her. She goes on to state how the incident made her very uncomfortable and upset her.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: No. While Steve's conduct is severe, as one-time incident is not sufficiently pervasive enough to create a hostile environment.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 3(a):
- ▶ Lisa has alleged that Steve made a comment to her in class about how her breast looked really good and exposed himself to her. **Lisa has stated that since this incident Steve has continued to make various comments to Lisa about her body parts and how he wants to have sex with her.** She goes on to state how the incident made her very uncomfortable and upset her.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. The frequency of Steve's sexual comments along with him exposing his body parts creates a situation where his actions are so severe, pervasive, and objectively offensive that it could constitute hostile environment harassment.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 4:
- ▶ Jeff and Sara were in a relationship until Sara decided that she wanted to end things. Since breaking up, Jeff often follows Sara while she is walking in the hall and he sends Sara repeated texts during the school day. Additionally, whenever Sara attends an extracurricular event, Jeff attempts to sit as close as possible to her and follows her around. In response to these actions Sara has communicated to school staff that she is afraid of Jeff.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. Jeff's conduct could constitute "stalking" because he has engaged in conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or suffer substantial emotional distress.

# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 5:
- ▶ Amber and Colin were in dating relationship. During the first period they skipped class and went into the boy's bathroom. While in a bathroom stall they began to kiss and Colin attempted to unzip Amber's pants she asked him to stop. Colin did not stop and proceed to place his fingers inside of Amber underwear. Amber was very upset after the incident and reported it to her assistant principal
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. This conduct could be considered criminal sexual contact because it involved nonconsensual touching of private body parts.



# What constitutes sexual harassment under Title IX?

- ▶ Scenario No. 6:
- ▶ Adam and Stacey are in dating relationship. After observing Stacey kissing another male student, Adam places his hand on her throat and attempted to choke her.
- ▶ Could this be sexual harassment under Title IX?
- ▶ Answer: Yes. This conduct could be considered dating violence.

# What constitutes sexual harassment under Title IX?

## ► Scenario No. 7:

Amber has reported that while in the stairwell between class periods Matt cornered her and threatened to punch her if she did not touch his crotch. In response to this threat Amber proceeded to touch his crotch. Amber stated that she did not want to do this, but she was afraid, so she went ahead and did it.

Could this be sexual harassment under Title IX?

Answer: Yes. Matt's alleged actions would constitute criminal sexual contact because it involved the forced touching by Amber of his clothed body parts, without Amber's consent. Further, the nature of the touching indicates that it was done for the purpose of sexual gratification.

# Questions?

