



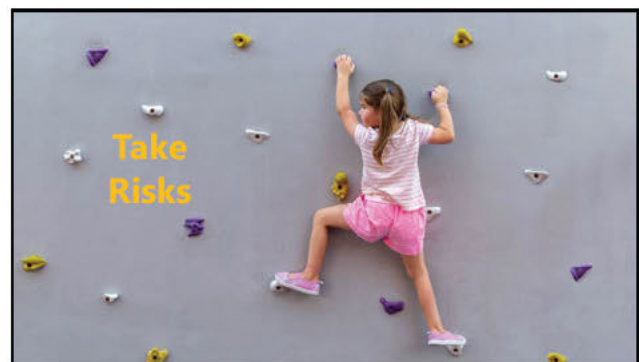
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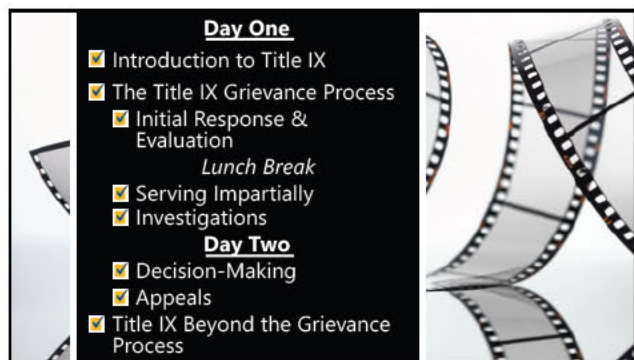
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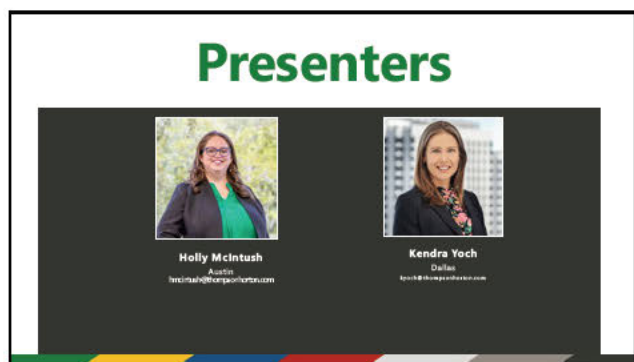
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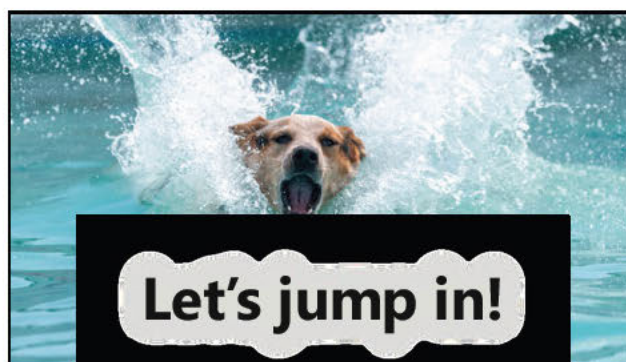
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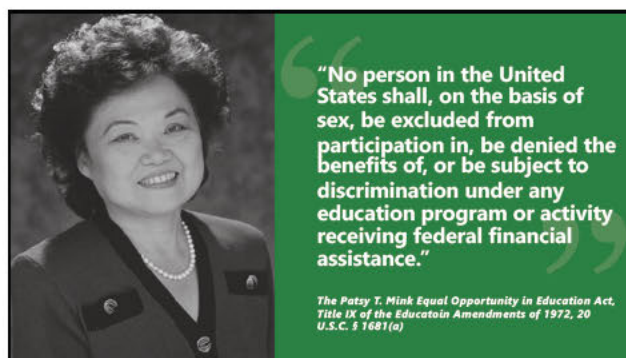
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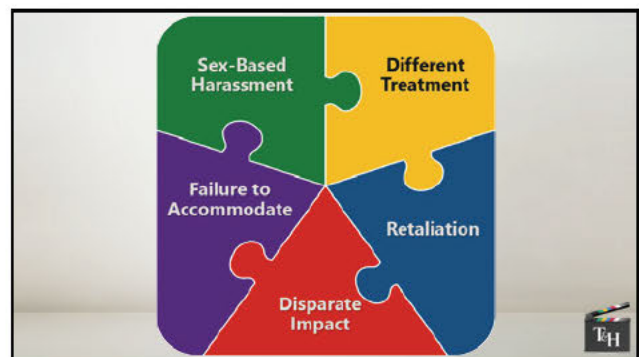
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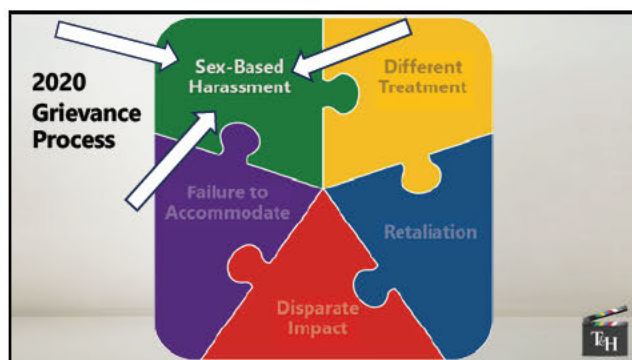
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Title IX Coordinator's Responsibilities

- ▶ The Title IX Coordinator has a duty to coordinate your school district's efforts to comply with Title IX and its regulations and retains ultimate oversight over those responsibilities and ensure your school district's consistent compliance with its responsibilities under Title IX and its regulations.
- ▶ A school district with knowledge of conduct that reasonably may constitute sex discrimination or harassment in its education program or activity must respond promptly and effectively, including by following the grievance procedures and other steps to end sex discrimination and harassment, prevent its recurrence, and remedy its effects.

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Title IX Coordinator's Responsibilities

- ▶ Involved in everything Title IX
- ▶ Works closely with District leadership and legal counsel
- ▶ Knows and helps draft/revise the District's policies and procedures
- ▶ Coordinates implementation and administration of grievance processes

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Title IX Coordinator's Responsibilities

- ▶ Develops a method to survey the school climate and analyze information obtained
- ▶ Monitors outcomes, identifies patterns, and assesses effects on the campus climate
- ▶ Monitors students' participation in athletics to identify disproportionate opportunities based on sex
- ▶ Regularly assesses the adequacy of training opportunities and proposes improvements as appropriate

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Title IX Designees



- ▶ May assign one or more "designees" to carry out some of the responsibilities for compliance
- ▶ Consider designating and training:
 - ▶ An administrator on every campus to help with intake of reports and monitor supportive measures
 - ▶ An athletics administrator to monitor and assist with athletics equity compliance
 - ▶ Someone with experience in the accommodations process (Section 504 Coordinator or ADA Coordinator) to serve as a designee for pregnancy accommodations/modifications
 - ▶ An administrator to coordinate with the colleges or universities you work with to provide dual/concurrent enrollment courses to your students

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Reporting Requirements



All employees must **notify the Title IX Coordinator** when the employee has information about conduct that **reasonably may constitute sexual harassment** under Title IX.

Employees can notify the Title IX Coordinator of potential sex discrimination in any manner including:

- Orally (in-person/phone)
- In writing (email or other documentation)
- Any way that ensures the Title IX Coordinator receives the information.



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Sources of information

Witness

Hear
first-handHear
second-hand

Overhear

Otherwise
learn about

21

Reporting Requirements

Employees' duties to report may not end at notifying the Title IX Coordinator. Employees must immediately report any conduct that could constitute child abuse or neglect under state law to DCF or other appropriate authority.

If the alleged conduct could constitute criminal conduct, employees should contact law enforcement.



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Students Underreport

Reasons students do not report

- Fear of retaliation, embarrassment, or humiliation
- Fear of punishment or loss of special privileges
- Confusion and worry that no one will believe them
- Unable to process the assault as a sexual assault
- Affections are manipulated, or they feel threatened
- Lack knowledge about how to report

How you can help

- Communicate to students that they have a right to be free from harassment and a responsibility not to harass
- Let students know where they can go for help if they witness or experience harassment
- Serve as a role model for students by exhibiting non-harassing behavior and addressing any instance of inappropriate conduct

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THE TITLE IX GRIEVANCE PROCESS

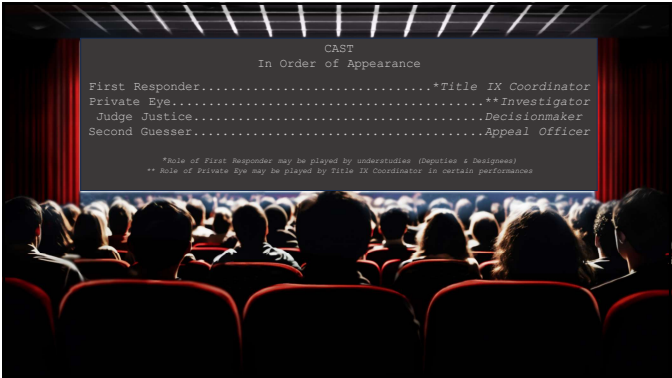
- ▶ **Cast & Key Terms**
- ▶ **A Movie in Four Acts**
 - Initial Response & Evaluation
 - Investigation
 - Determination
 - Appeal



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Complainant

The person who allegedly experienced conduct that could constitute Title IX sexual harassment.

- Must be participating or attempting to participate in the school's education program or activity at the time the formal complaint is filed
- Person may be described as a complainant regardless of whether a complaint has been filed



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Respondent

The person who is alleged to have violated the school's prohibition on sexual harassment

- Does not have to be a student or employee of the institution
- A person may be described as a respondent regardless of whether a complaint has been filed



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Parent's Rights

- ▶ Right to act on behalf of minor students throughout the grievance process
- ▶ May make a Title IX complaint; may exercise the rights of a complainant
- ▶ May accompany student to all meetings and interviews
- ▶ When parent and minor student disagree → give deference to judgment of parent
- ▶ School may set expectations to which parents must comply; these must apply equally to the parties



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Initial Response & Evaluation

- ✓ Receiving Reports
 - ✓ When does the Title IX Grievance Policy Apply?
 - ✓ Recognizing Title IX Sexual Harassment
- ✓ Coordinator's Role in the Grievance Process
 - ✓ Supportive Measures
 - ✓ Notice of Allegations
 - ✓ Consider:
 - ✓ Emergency Removal
 - ✓ Initiating Complaints
 - ✓ Consolidation
 - ✓ Informal Resolution
 - ✓ Dismissal



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**I received a
sexual
misconduct
report.
Now what?**



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Responsibility to Respond

BPS is responsible for promptly and effectively responding to all these forms of discrimination and harassment in a manner that complies with regulatory requirements and:

- ☐ Ends the harassment
- ☐ Remedies the effects of the harassment
- ☐ Prevents its recurrence

32

Responsibility to Respond

BPS is responsible for promptly and effectively responding to all these forms of discrimination and harassment in a manner that **complies with regulatory requirements** and:

- ☐ Ends the harassment
- ☐ Remedies the effects of the harassment
- ☐ Prevents its recurrence

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Jurisdiction



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Do We Use Title IX?

☒ Is it Title IX sexual harassment?



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☒	Is it Title IX sexual harassment?
☒	Did the harassment occur in a District education program or activity?



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☒	Is it Title IX sexual harassment?
☒	Did the harassment occur in a District education program or activity?
☒	Was it in the United States?



38

☒	Is it Title IX sexual harassment?
☒	Did the harassment occur in a District education program or activity?
☒	Was it in the United States?

Title IX Grievance Process



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☒	Is it Title IX sexual harassment?
No	Did the harassment occur in a District education program or activity?
☒	Was it in the United States?



If answer to any question is **NO**, the Title IX Grievance Process does not apply

Use process for other misconduct



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A07 – Evaluation Tool

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 **Yes**, do not use the Title IX Grievance Process. Instead, evaluate under your District's other policies and procedures.

START HERE: JURISDICTION

Did the conduct occur in a program or activity of the District?

This involves conduct that is within the district's control and is not a personal, off-campus activity, and is not a non-student activity. If the conduct is not within the district's control, it is not a Title IX violation and the grievance process is not required.

Yes **No**

Did the conduct occur in the School District?

Was the conduct physically located in the U.S. or a substantial portion thereof?

Yes **No**

Was the conduct unacknowledged?

Has the conduct been acknowledged by a school official or a substantial non-student, non-employee, or non-student?

Yes **No**

Was the conduct unacknowledged?

Has the conduct been acknowledged by a school official or a substantial non-student, non-employee, or non-student?

Yes **No**

Was the conduct unacknowledged?

Has the conduct been acknowledged by a school official or a substantial non-student, non-employee, or non-student?

Yes **No**

Outcome

Title IX Grievance Process

Prompt & Equitable Process

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Let's start with the easiest question first

☒ Was it in the United States?





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Did it occur in the United States?



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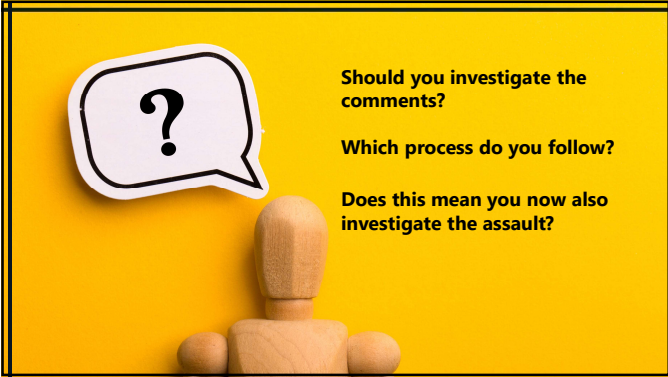
Scenario: Study Abroad



- ▶ Student A reports that Student B raped her during the school's study abroad program.
- ▶ Once back on campus, Student B taunts Student A with sexually suggestive comments about the prior assault.



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Should you investigate the comments?

Which process do you follow?

Does this mean you now also investigate the assault?

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Next easiest...

☒

Did the harassment occur in a District education program or activity?

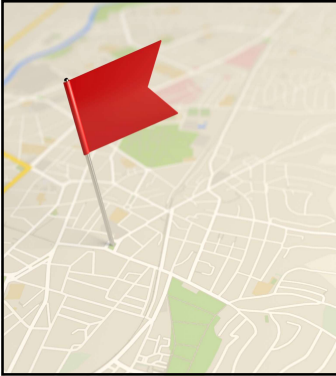
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Was it in the United States?



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Education Program or Activity



- ▶ Conduct within the District's operations
- ▶ Off-campus conduct
 - ▶ Settings operated or overseen by the District
 - ▶ Student organizations' properties
- ▶ External conduct that leads to a hostile environment *within* the education program or activity

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Conduct within the District's Operations



- Classroom
- Hallway
- Restroom
- Lunchroom
- Lockers
- Parking Lot
- Computer

- Field Trip
- Gym
- Playing Field
- Bus
- Before/After School

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Off-Campus Settings

- ▶ School-sponsored education programs or activities are covered no matter where they take place, including off-campus and online
- ▶ So are off-campus settings that are operated or overseen by the school (i.e., athletic facilities)



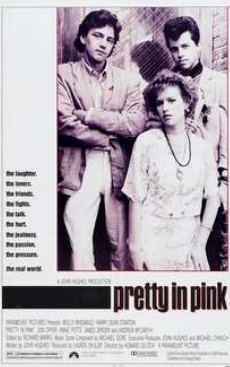
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Cell Phones & Electronic Devices

- ▶ Case-by-case review of the circumstances of the online harassment
- ▶ Did it occur under circumstances where the school had substantial control over the alleged harasser?
- ▶ Did the school have substantial control over the context of the harassment?
- ▶ Did the online harassment have "downstream effects"? (Did it spread into the school's education program or activity?)



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Off-Campus Conduct

Steff McKee exhibits predatory and harassing behavior, especially toward Andie Walsh. During a school-sponsored trip to Paris, France, Steff makes repeated unwanted sexual advances and derogatory remarks towards Andie. His actions continued upon their return, including at Trax Record Store, where Andie works.

Although much of Steff's misconduct occurred outside the country or away from the school, the repercussions of his behavior are felt strongly within the school environment as she faces social ostracism and bullying by Steff and his friends. The hostility is affecting her daily school life and interactions.

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Does the school have jurisdiction under Title IX over the sex-based misconduct that occurred away from the school?

- A. If and when criminal charges are filed against Steff, the school will have authority to investigate and respond to the off-campus misconduct.
- B. Yes, because the sex-based harassment had downstream effects at school, the school must investigate and respond to Staff's conduct in Paris, France and at Trax Record Store.
- C. The school must investigate and respond to the conduct in Paris, because it occurred during a school-sponsored trip—but not the conduct at Andie's workplace, Trax Record Store.
- D. The school does not have jurisdiction over the conduct in Paris or at Trax Record Store.

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That brings us to the most complicated one

✓	Is it Title IX sexual harassment?
✓	Did the harassment occur in a District education program or activity?
✓	Was it in the United States?



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Title IX Sexual Harassment

Unwelcome conduct based on sex that is:

- ▶ Quid Pro Quo Harassment
- ▶ Hostile Environment Harassment
- ▶ The "Big Four"—Sexual Offenses
 - Sexual Assault
 - Domestic Violence
 - Dating Violence
 - Stalking



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Title IX
Sexual
Harassment

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 - Stalking

55

Was the conduct "unwelcome"?

- ▶ Not solicited or invited, and the target considers it undesirable or offensive
- ▶ Acquiescence—even willing participation—or the failure to complain or report the conduct does not always mean the conduct was welcome
- ▶ Conduct welcomed on one occasion can be unwelcomed on a subsequent occasion
- ▶ Whether conduct is "welcome" can be impacted by age, disability, relationships, culture, and intoxication

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Unwelcome?



A student, Carson, reports that other students are constantly making sexual jokes, which Carson said makes them uncomfortable. Carson laughs at jokes, but says they only did so not to make a scene.

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Is the conduct unwelcome?

What if Carson actively participates in the jokes?



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Title IX
Sexual
Harassment

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 - Domestic Violence
 - Dating Violence
 - Stalking

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Was the conduct "sex-based"?

The preamble to the 2020 Rules explains that on the basis of sex includes:

- ▶ Conduct that is sexual in nature
- ▶ Conduct that references one sex or another
- ▶ Conduct aimed at a particular sex
- ▶ Sex stereotyping (gender norms)

Any individual, irrespective of sexual orientation or gender identity can be the victim of sexual harassment



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Title IX
Sexual
Harassment

Unwelcome conduct based on sex that is:

- **Quid Pro Quo Harassment**
- Hostile Environment Harassment
- The “Big Four”—Sexual Offenses
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 - Domestic Violence
 - Dating Violence
 - Stalking

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Quid Pro Quo

An employee of the school district

→ explicitly or impliedly conditioning the provision of an aid, benefit, or service of the district

→ on a person's participation in unwelcome sexual conduct.

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Quid Pro Quo

- Students by definition cannot engage in quid pro quo sexual harassment
- It is **presumed** the sexual conduct is unwelcome, severe, objectively offensive, and deprived a student of educational access
- The employee does not have to make the condition explicit—i.e., state “this for that”—the condition may be implied from the circumstances
- The age and situation/position of the Complaint is relevant to the determination of whether a condition is implied

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Quid Pro Quo

- Callahan, a volunteer mentor for debate students at Harvard High School, and a Partner at a Pearson Hardman, asks to see student Elle Woods alone in his office. First, Mr. Callahan praises Elle's debate skills, saying she will be a great lawyer for following her instincts, then asks if she has considered her career path. Elle says she has not but that she knows getting a summer job is competitive. Callahan explains that competition is really about “knowing exactly what you want and how far you will go to get it. How far will Elle go?” before putting his hand on her thigh. Elle throws off his hand and storms off.

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Are Callahan's actions quid quo pro harassment?

- a. No, because he only praised her debate skills and asked about her career path without making any explicit demands for favors in return.
- b. Yes, because he explicitly stated that competition is about knowing what you want and how far you will go to get it, then made an inappropriate physical advance.
- c. No, because there is no evidence that he intended to follow through with any consequences if Elle did not comply with his advances.

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Do you use the Title IX Grievance Process?

- a. Yes, because Callahan was put in a position of authority over Elle by BPS.
- b. No, because Callahan is not an employee.

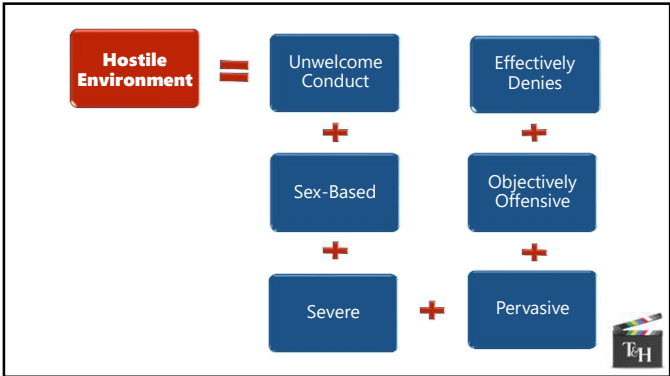
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Title IX
Sexual
Harassment

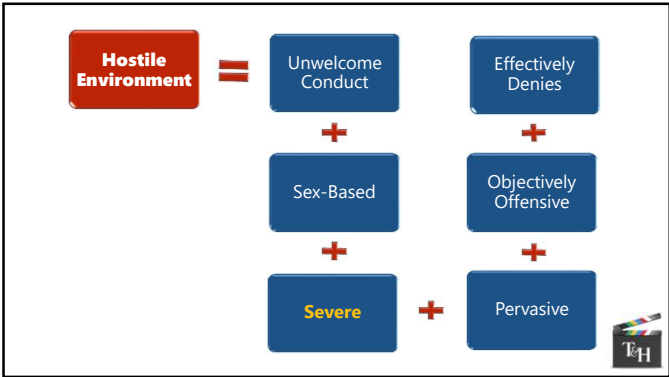
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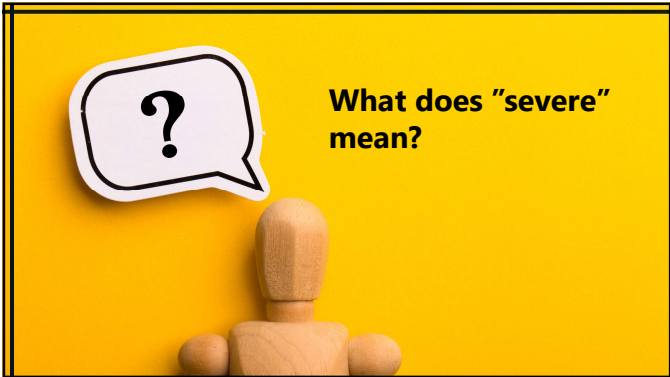
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Severe

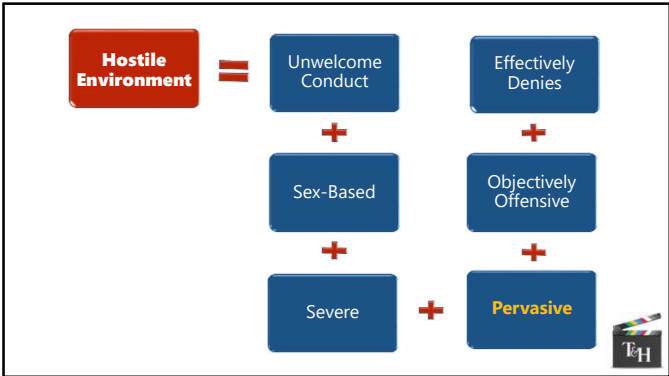
- ▶ Nature and degree of the harassment
- ▶ Severe: "causing very great pain, difficulty, worry, damage, etc.; very serious" (Cambridge Dictionary)
- ▶ Severe: "very bad, serious, or unpleasant"; "causing a lot of physical pain or suffering;" "very harsh" (Britannica Dictionary)

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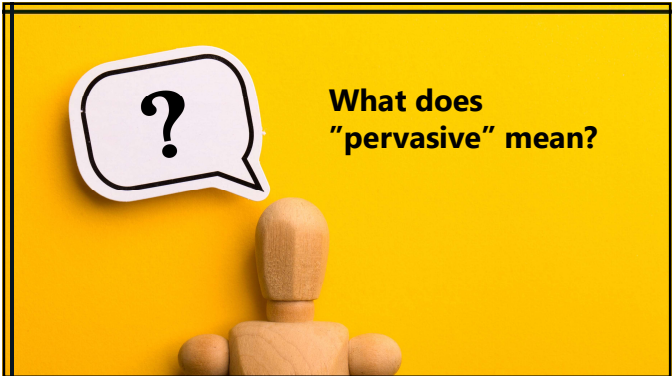
Severe ... The Courts Have Spoken

- ▶ "Courts [] must bear in mind that schools are unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable to adults ... Indeed, at least early on, students are still learning how to interact appropriately with peers.
Davis v. Monroe Cnty. Bd. of Educ., 526 U.S. 629 (1999)
- ▶ Must be more than the sort of teasing and bullying that generally takes place in schools
Sanchez v. Carrollton-Farmers Branch Indep. Sch. Dist., 647 F.3d 156 (5th Cir. 2011)
- ▶ Must be extreme, and not merely rude or unpleasant
Kollaritsch v. Michigan State Univ. Bd. of Trs., 944 F.3d 613 (6th Cir. 2019), *cert. denied* 141 S. Ct. (2020)
- ▶ Goes beyond mere juvenile behavior among students, even if the behavior is antagonistic, non-consensual, and crass
Jenkins v. Univ. of Minn., 131 F. Supp. 3d 860 (D. Minn. 2015), *aff'd*, 838 F.3d 938 (8th Cir. 2016)

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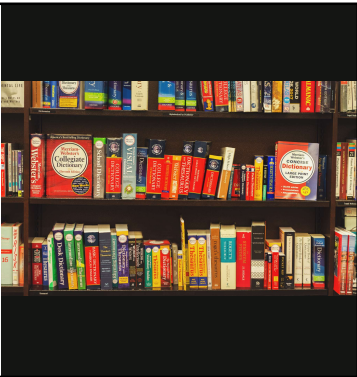
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Pervasive

- ▶ Frequency or duration of harassment; scope or continuousness
- ▶ Systemic or widespread
- ▶ Pervasive: "existing in or spreading through every part of something" (Merriam-Webster Dictionary)
- ▶ Pervasive: "present or noticeable in every part of a thing or place" (Cambridge English Dictionary)



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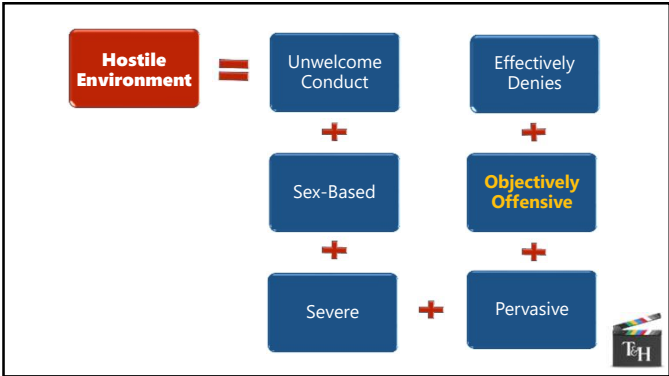
Pervasive ... The Courts Have Spoken

- ▶ Single or isolated incidents are generally not enough
- ▶ But the Court in *Davis* noted a single incident could **hypothetically** be sufficiently severe to meet the standard
- ▶ *Davis* limited student-on-student harassment to encompass only "pervasive" and "widespread" conduct with the "systemic effect of denying the equal access to an educational program or activity"
- ▶ Courts evaluate whether there was a "systemic or ongoing pattern of harassment," a "series of incidents," or "numerous acts of objectively offensive" conduct

E.g., Carmichael v. Galbraith, 574 F.App'x 285 (5th Cir. 2014)



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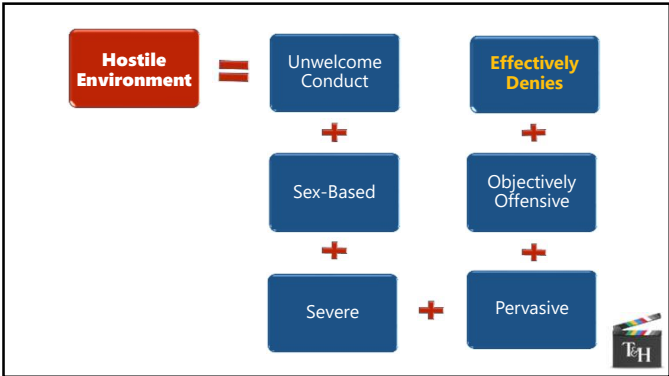


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- ▶ Offensive to a reasonable person under the circumstances, not merely offensive to the victim, personally or subjectively
- ▶ The objective offensiveness of conduct is to be judged by reference to a reasonable child at whom the conduct were aimed

Objectively Offensive

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Effective Denies Equal Access to Your Education Programs or Activities

- ▶ The school must evaluate whether a reasonable person in the complainant's position would be effectively denied *equal* access to education compared to a similarly situated person who is not suffering the alleged sexual harassment.
- ▶ Does not require a complainant to demonstrate any particular harm, such as reduced grades or missed classes.

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Effective Denial of Equal Access

- ▶ The key: School officials turning away a complainant by deciding the complainant was "not traumatized enough" would be impermissible
- ▶ If you have an allegation of severe, pervasive, and objectively offensive conduct, you likely can assume effective denial

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- ▶ The degree to which the conduct affected the complainant's ability to access the education program or activity
- ▶ The type, frequency, and duration of the conduct
- ▶ The location of the conduct and the context in which the conduct occurred
- ▶ The parties' ages, roles within the education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct
- ▶ Other sex-based harassment in the education program or activity

Totality of Circumstances

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Recognizing Sex-Based Harassment

Student-on-Student Sex-Based Harassment

Any sexually inappropriate action by a student against another student, including:

- Exposing one's genitalia;
- Inappropriately touching another student; and,
- Making sexual comments to other students or about other students.

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Examples of Student-Student Sex-Based Harassment

• Rating other students • Snapping bra straps of other students • Disseminating sexual pictures, photographs, illustrations, messages, e-mails or notes • Making sexual comments, jokes, gestures, or looks • Writing sexual messages/graffiti concerning other students on bathroom walls, locker rooms, etc.	• Intentionally brushing up against another student in a sexual way • Blocking or cornering another student in a sexual way • Forcing another student into a kiss or a sexual act • Flashing another student • Spreading sexual jokes or rumors about another student • Touching, grabbing, or pinching another student in a sexual way	• Telephoning or emailing sexual messages • Degrading, shaming, belittling, or humiliating based on sex • Giving intimate or sexual gifts • Commenting on others' bodies and physical attributes
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Recognizing Sex-Based Harassment

Employee-on-Student Sex-Based Harassment

An inappropriate relationship between an employee and a student. Includes

- Sex between a student or employee no matter the age; and,
- Any inappropriate communications with students, especially through social media.



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Examples of Employee-Student Sex-Based Harassment

- Entering into personal relationships with students
- Engaging in a sexual relationship with a student
- Using language of a flirtatious, profane, or sexual nature around students
- Dating or becoming romantically involved with students
- Showing pornographic, provocative, or sexually suggestive materials to students
- Meeting with students alone outside of school
- Meeting alone with students in isolated places
- Showing favoritism to students
- Having physical contact with students, except for inoffensive contact
- Wearing provocative or revealing clothing or exposing inappropriate body parts
- Patting others on any body area except shoulders, arms and upper back
- Tickling or wrestling with students
- Playing games that involve inappropriate touching
- Giving compliments that relate to physique or body development
- Kissing students
- Giving massages to students



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Sexual Abuse

The U.S. Department of Education and numerous studies have estimated that **1 in 10** students experience educator sexual misconduct during their K-12 years.

- ▶ Most reports involved noncontact sexual behaviors (e.g., suggestive language, being shown sexual images)
- ▶ But a significant number of children reported sexual contact. The U.S. Department of Education (2020) found that between 2017–2018 there were 14,152 allegations of educator-perpetrated sexual assault and 786 allegations of rape or attempted rape.



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Victims of Educator Misconduct

- ▶ National data shows that most victims are female (approximately 72%)
- ▶ Studies and federal data indicate that a majority of victims are in middle school or high school
- ▶ Sex abuse of girls *increases* with their age but *decreases* for boys
- ▶ The reporting rate is very low (4 to 6%)



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Grooming

Grooming refers to the manipulative behaviors employed by a perpetrator to gain the cooperation and trust of the victim and avoid detection.

Grooming also involves earning the trust of the child's family members and the perpetrator's colleagues and supervisors.



- ▶ Bonding actions and boundary crossing include targeting a student for a "special" bond or relationship ("I can talk to you," "you're so mature")
- ▶ Abusers encourage the victim's reliance through tutoring, counseling, lessons, grades, food, transportation
- ▶ "Normalizing": acting like a peer; discussing sexual topics; use of social media



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Title IX Sexual Harassment

Unwelcome conduct based on sex that is:

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- ▶ The "Big Four"—Sexual Offenses
 - Sexual Assault
 - Domestic Violence
 - Dating Violence
 - Stalking



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Sexual Assault

Rape - penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim

Fondling - the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Incest - sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

Statutory Rape - sexual intercourse with a person who is under the statutory age of consent

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Consent

- ▶ Title IX generally prohibits “unwelcome” conduct
- ▶ “Unwelcomeness” is presumed with respect to educator-on-student sexual harassment
- ▶ “Consent” comes into play in student-on-student sexual assault cases (rape, sodomy, fondling, etc.)
- ▶ Not defined in Title IX Rules
- ▶ Must be defined in your policies/procedures

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Consent... Generally

The existence of clearly understandable words or actions that manifest a knowing, active, voluntary, and present and ongoing agreement to engage in specific sexual or intimate conduct by one not suffering from incapacitation.

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Consent is not present when a person does not have capacity to consent, voluntarily or involuntarily due to:

- ▶ Age
- ▶ Physical condition
 - Due to alcohol or drug consumption
 - Being unconscious
 - Being asleep, or in another state in which the person is unaware that the sexual activity is occurring
- ▶ Disability that impairs the individual's ability to give consent

Capacity to Consent

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Key Question: Should a reasonable person in the same circumstances have known the other party could or could not consent to the sexual activity?

Incapacitation

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Domestic Violence

felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse intimate partner, or person similarly situated to a spouse of the victim
- Is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- Shares a child in common with the victim
- Commits acts against a person who is protected under the family or domestic violence laws of your state or local government

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Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim

Existence of such a relationship shall be determined based on the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship

Can include sexual, physical, emotional, or psychological violence or threat of sexual or physical abuse

97

Dating Violence Examples

- ▶ Physical abuse (hitting, choking, punching, biting, shooting, etc.)
- ▶ Threats of physical harm to the victim or others
- ▶ Intimidation, blackmail
- ▶ Name calling and put downs
- ▶ Maintaining control over the victim’s financial or other resources
- ▶ Threats to commit suicide or homicide if the victim ends the relationship
- ▶ Attempts to isolate the victim from friends or family
- ▶ Encouraging others to engage in such behaviors

98

Stalking

A course of conduct

directed at a specific person

that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress

Includes cyber-stalking

99

Stalking Examples

- ▶ Following an individual around or spying on an individual
- ▶ Threatening physical harm to an individual, their family, pets, or property
- ▶ Calling, texting, emailing, or mailing the victim’s repeatedly at home or work
- ▶ Repeated, uninvited appearances at the victim’s residence or workplace
- ▶ Breaking into the victim’s home or vehicle
- ▶ Stealing the victim’s belongings
- ▶ Checking the victim’s electronic devices or social media accounts
- ▶ Reading a person’s mail or other private writings or communications

100

Young, Incapacitated, Neurodivergent Parties

101

When These Issues Come Into Play

- ▶ Is conduct *consensual*? (for purposes of sexual assault like rape and fondling)
- ▶ Is conduct *for purposes of sexual gratification*? (for purposes of fondling)
- ▶ Is conduct *unwelcome*? (for purposes of hostile environment harassment)
- ▶ Is conduct *subjectively and objectively offensive*? (for purposes of hostile environment harassment)

102

17

Other Age Situations

- ▶ A student under the age of majority can never consent to sexual conduct with an adult (except "Romeo and Juliet laws")
- ▶ A student can never consent to or welcome sex-based conduct, including sexual conduct and sex-based harassment, with/from an employee of the school district they attend
- ▶ Age will often be a factor when considering the "constellation of circumstances, expectations, and relationships" in the hostile environment sex-based harassment analysis

103

Incapacitation

- ▶ Where a person lacks the capacity to consent to conduct
- ▶ The person may not appreciate that the conduct is sexual or appreciate the nature or extent of the situation
- ▶ Can be based on physical or mental status, developmental disability, or based on alcohol or drug use

104

Capacity

- ▶ First grade teacher, Ms. Crabtree, reports to the principal that Alfalfa has been touching the butts of the other students in class.
- ▶ She has redirected him several times, but the behavior continues.
- ▶ When Ms. Crabtree asked Alfalfa why he was doing this, he responded "It's funny!"

105

Is it Title IX sexual harassment?

- a. Quid Pro Quo
- b. Hostile Environment
- c. Sexual Assault
- d. None, students this young cannot engage in sex-based harassment
- e. It depends on whether any parents complain

106

Two students in a high school life-skills class are caught engaging in what appears to be consensual sexual activity in the bathroom. After the dean notifies their parents of the disciplinary consequences for their inappropriate behavior, the parents of both students claim that the other student sexually assaulted their student and their student does not have the capacity to consent to sexual activity.

107

What now?

- a. Both students are complainants and respondents in cross-complaints; the investigation will collect evidence about the students' capacity to consent
- b. The Title IX Coordinator should consider the student's IQs and past behavior to determine who was likely the initiator, that student is the respondent
- c. Dismiss the complaints. Discipline will not be possible because the conduct was likely a manifestation of the students' disabilities
- d. Dismiss the complaints. Even if neither student had capacity to consent, neither student understood the other's lack of capacity to consent
- e. Call your lawyer

108



109



110

DO: Assess Safety

- ▶ If the 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
- ▶ Immediately contact the Title IX Coordinator for what to do next

111

DO: Make Necessary Contacts

- ▶ **Law enforcement:** If the allegations include a serious crime or evidence needs to be collected (like information on an electronic device)
- ▶ **Medical Personnel:** If the allegations involve an injury
- ▶ **Parent(s)/guardian(s):** Follow standard policy/practice

112

DO: Required Reporting

Law Enforcement or Child Protective Services (CPS)

- ▶ Any person who has cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect shall immediately make a report as required by law
- ▶ Submit oral or written report within 24 hours of learning of facts giving rise to the suspicion
- ▶ Reports can be made to:
 - Boston Police Department
 - Department of Children & Families Child-at-Risk Hotline at (800) 792-5200
- ▶ Follow your District's policies and procedures and how and where to report

113

DO: Consider Special Education

- ▶ If a party is a student with a 504 plan or an IEP, contact the relevant special education administrator to consider impacts on special education placement and services

114

DON'T: Investigate

- ▶ Do not conduct investigation interviews
 - Only conduct intake meetings with the reporting party and the complainant/family
- ▶ Do not ask for or collect evidence (there is a caveat)
- ▶ An intake meeting should ask what is alleged to have happened, not ask for evidence to support the allegations



115

DON'T: Discipline

- ▶ Do not discipline either party, including the alleged perpetrator
- ▶ While you can “assess safety” for immediate steps to take to keep your community safe, discipline is not permissible at this stage
- ▶ Contact the Title IX Coordinator, who will evaluate potential emergency removal from school or activities



116

DON'T: Violate Confidentiality

- ▶ Do not tell the alleged perpetrator the alleged victim's name or that a report has been made
- ▶ The school 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 such disclosure



117

Title IX Coordinator's Response to Report



When notified of conduct that reasonably may constitute sex discrimination under Title IX, the Title IX Coordinator must take actions set forth in the regulations to promptly and effectively end sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects



118

Title IX Coordinator/Designee Initial Response

Support	Notify	Initiate
▶ Offer & coordinate supportive measures for Complainant once report is made ▶ Offer & coordinate supportive measures for Respondent once complaint is made	▶ Complainant of grievance and informal resolution procedures ▶ After complaint made, Respondent of grievance and informal resolution procedures	▶ Emergency removal or administrative leave ▶ Dismissal, grievance process, or informal resolution (as appropriate) ▶ Other steps so that harassment does not continue/ recur



119

Intake

- ▶ Initial meeting to better understand the allegations and whether they fall within the definition of Title IX sexual harassment
- ▶ Not an investigation or search of evidence
- ▶ Basic questions:
 - ▶ What happened?
 - ▶ Who was involved?
 - ▶ When and where did it happen?
- ▶ Also discuss the grievance process and offer supportive measures





120

Supportive Measures



- ▶ Must not **unreasonably** burden either party
- ▶ Must be designed to:
 - ▶ Restore or preserve access to the education program or activity
 - ▶ Protect safety of parties or educational environment
 - ▶ Deter sexual harassment
 - ▶ Provide support during grievance process
- ▶ Nondisciplinary and nonpunitive
- ▶ Confidential

121

Supportive Measures

Academic	Emotional/Wellness	Safety/Security
▶ Deadline extensions ▶ Schedule modification or other course-related adjustments ▶ Tutoring ▶ Offers to retake courses or redo assignments ▶ Changes in extracurricular activities	▶ Counseling ▶ Excused absences ▶ Leave of absence ▶ Referral to medical or psychological care ▶ Designation of an employee as a "check-in" for any necessary emotional support ▶ Training and education programs related to sexual harassment	▶ No contact orders (unilateral or mutual) ▶ Escort between classes ▶ Changes to class seating ▶ Assignments to certain routes, bathrooms, or cafeteria locations ▶ Increased security and monitoring ▶ Assistance reporting potentially criminal conduct to law enforcement

122

Supportive Measures

- ▶ Title IX Coordinator should follow up regularly with the parties to ensure the measures are working
- ▶ Title IX Coordinator may need to modify the measures, increase the intensity of measures, or take new measures if initial supportive measures are ineffective
- ▶ Either party can also seek to modify the supportive measures if there has been a material change to the circumstances



123



- ▶ Remember: for a student with a disability, the Title IX Coordinator should consult with a special education administrator to ensure that supportive measures do not interfere with the student's IEP or 504 services or accommodations
- ▶ The special education administrator should consider whether an IEP or 504 meeting is warranted

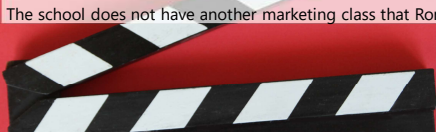
124

Synopsis

Caleb alleges that Rory has been relentlessly mocking him for not having sex with his girlfriend, calling him names, making gestures, and spreading rumors that he can't "close the deal."

After making a complaint, Caleb requests that Rory be moved out of their shared marketing CTE class as a supportive measure. Caleb says that much of the harassment happens in that class and the teacher is ineffective at stopping it.

The school does not have another marketing class that Rory could switch to.



125

Can the Title IX Coordinator change Rory's schedule to not include the marketing class?

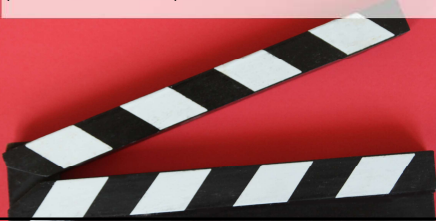
- a. No, if Caleb does not want to be in class with Rory, Caleb's schedule must be changed.
- b. Yes, Rory's schedule can be changed even if there is not another marketing class because it is necessary to restore Caleb's access to the class.



126

Synopsis

The less burdensome measures were not effective. Caleb requests again that Rory be moved out of the class. Rory has an IEP and the marketing class is part of their transition plan.



127

What should the Title IX Coordinator do?

- a. Tell Caleb it is not possible to move Rory out of the class
- b. Contact the special education coordinator at the campus and tell them to change Rory's transition plan
- c. Contact the special education coordinator and ask them to schedule an IEP team meeting



128

Emergency Removal

PROCEED WITH CAUTION

- ▶ Consider:
 - ▶ State law and procedural requirements regarding school removals
 - ▶ Whether to do a threat assessment
 - ▶ Who makes the initial decision and who will hear challenges to emergency removals
- ▶ Emergency removal can occur without a complaint, but caution...
- ▶ Does not modify any rights under IDEA, Section 504, or ADA

129



MDR

- ▶ If the respondent has an IEP or 504 Plan, an MDR is required before a removal exceeding 10 school days.
- ▶ If the alleged conduct is a manifestation of the student's disability, the removal cannot occur.
- ▶ Consider and FBA/BIP and additional supportive measures



130

Administrative Leave

- ▶ Administrative leave with pay for employees is permitted
 - Follow state law, district/board policy, district procedures, employment contracts, and collective bargaining agreements
- ▶ Decisions and processes for placing employees on administrative leave with pay should be consistent with your standard procedures regarding employee administrative leave during other investigations



131



Only move to next steps if you have a Formal Complaint

– NO DISCIPLINE WITHOUT A FORMAL COMPLAINT & COMPLETING THE GRIEVANCE PROCESS –

But support, support, support



132

Report or Complaint?



- ▶ A **report** is someone sharing information that suggests that sexual harassment has occurred or might be occurring. It triggers the Coordinator to meet with Complainant
- ▶ A **formal complaint** is the signed written request for the district to investigate.
- ▶ You must have a formal complaint before you begin a Title IX investigation

133

A document

- ▶ Filed by a complainant or signed by the Title IX Coordinator
- ▶ Alleging sexual harassment against a respondent
- ▶ Requesting that the school investigate the allegation of sexual harassment



Key Terms

Formal Complaint

134

What if the Complainant (or their parent) doesn't want to sign a formal complaint?



135

When to Sign a Formal Complaint

Consider the following factors:

- ▶ Complainant's request not to initiate a complaint
- ▶ Complainant's reasonable safety concerns
- ▶ Risk that additional acts of sex discrimination would occur if a complaint is not initiated
- ▶ Severity of the alleged sex discrimination, including whether (if discrimination were established) the removal of a respondent or imposition of other disciplinary sanction would be required to end the discrimination and prevent its recurrence
- ▶ Age and relationship of the parties, including whether the respondent is an employee
- ▶ Whether there is an alleged pattern, ongoing sex discrimination, or sex discrimination affecting multiple individuals
- ▶ Availability of evidence to assist the decisionmaker
- ▶ Whether the district could end the alleged sex discrimination and prevent its recurrence without initiating the grievance procedures



136

Remember

- ▶ If the alleged misconduct would be Title IX sex discrimination and the Title IX Coordinator does not initiate a complaint, the alleged misconduct **CANNOT** be addressed through another district policy or procedure



137

Synopsis

Carey reports another student, Romy, forced Carey to have sex at school. Carey also claims that Romy did the same thing to another student two months ago.

Romy admits that "they resisted initially but I got them to agree" to the police, raising concerns of coercion.

Neither complainant wants to move forward with a complaint, and sexual assault is a required removal to a disciplinary alternative placement under state law.



138

What should the school district do?

- a. Transfer Romy to the alternative program because it is required under state law and he admitted the conduct
- b. Support the autonomy of the complainant by using only supportive measures to address the situation at school
- c. Sign a formal complaint and use the Title IX process

139

Synopsis

Student Cecil reports that a teacher made sexually suggestive comments to Cecil, asked Cecil repeatedly if they wanted rides home or for Cecil to babysit, and gave Cecil hugs frequently. Cecil did not identify the teacher. Cecil asks to move to another high school in the district, but does not want to file a formal complaint.

140

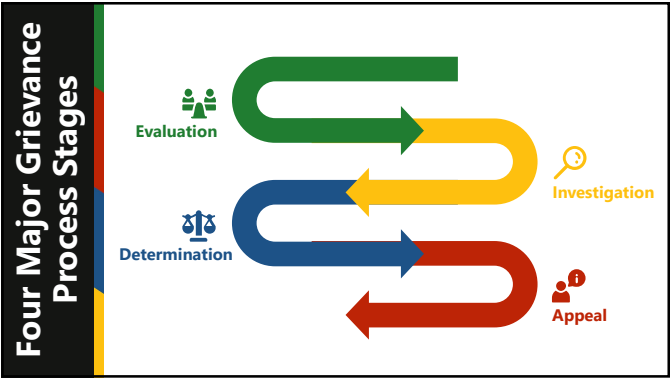
Would you initiate a Title IX Complaint?

- a. No. We would use our non-Title IX HR process to address the complaint
- b. No, because Cecil's concerns can be adequately addressed through changing schools
- c. No, because Cecil refuses to identify the teacher
- d. Yes, because of the risk of sexual harassment of other students by the teacher

141

A formal complaint triggers the Title IX Grievance Process

142



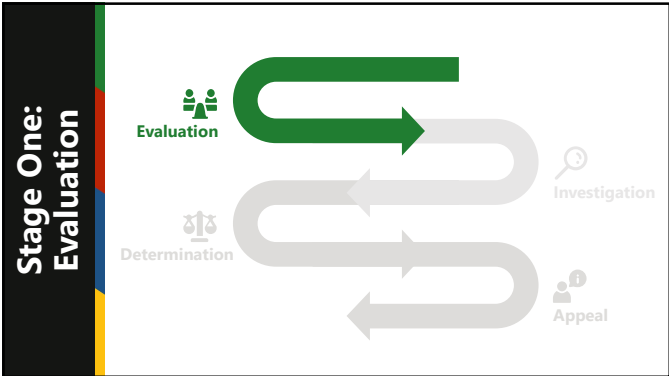
143

BASICS

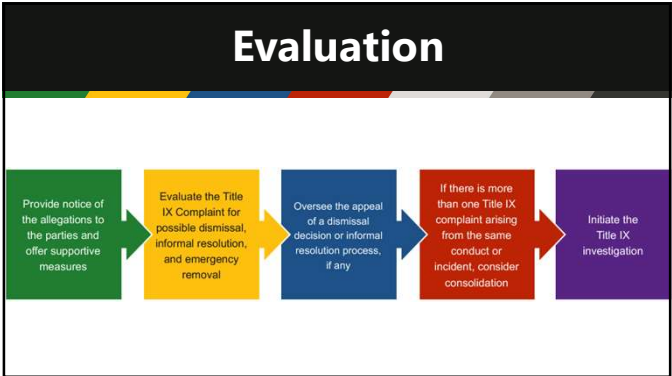
Ten Basic Requirements for Grievance Process

1. Treat complainants and respondents equitably
2. Require an objective evaluation of all relevant evidence
3. Title IX personnel cannot have a conflict of interest or bias and must be trained
4. Presumption that respondent is not responsible
5. Reasonably prompt timeframes for conclusion of the grievance process
6. Describe or list the range of possible disciplinary sanctions and remedies
7. State whether the standard of evidence is the preponderance of the evidence or clear and convincing evidence standard
8. Permissible bases for appeal
9. Describe the range of supportive measures available
10. Not seek, allow, or otherwise use evidence protected under a legally recognized privilege unless waived

144



145



146

Notice of Allegations

- ▶ Provide notice of the District's Title IX grievance procedures
- ▶ Sufficient information **available at the time** to allow the parties to respond
 - Identity of parties involved
 - Conduct alleged to constitute sexual harassment
 - Date and location of alleged incident
- ▶ Statement that retaliation is prohibited
- ▶ Statement that the parties are entitled to an equal opportunity to access the directly related evidence

147

Notice of Allegations

- ▶ At the time the Notice of Allegations is provided to the respondent, offer supportive measures or schedule a supportive measures meeting
- ▶ Notice of Allegations to respondent is required before the school meets with the respondent for an interview
- ▶ No surprise interviews of employees
- ▶ No pulling students out of class to inquire about an incident right after the school receives notice

A graphic of a spiral notebook with a pencil resting on it. The word 'Note' is written on the notebook page.

148

Consider Consolidation

Multiple Complaints	Same Circumstances
• Against more than one respondent • By more than one complainant against one or more respondents • By one party against the other party	• Where the allegations of sexual harassment arise out of the same facts or circumstances • Consider defining the phrase in your procedures

149

Synopsis

Tommy, a student, reports that another student, Charlie, was sexually harassed by a teacher, Mx. Rowan. Tommy also says another student, Casey, was in a similar situation the previous year. Charlie and Casey confirm that the conduct occurred, but do not want to file a formal complaint.

The Title IX Coordinator signs formal complaints in the. Charlie and Casey agree to participate in the process. Neither knows the other exists, however. The incidents happened years apart.

A graphic of a clapperboard with the word 'Synopsis' written on it.

150

Should the Complaints be consolidated?

- a. Yes, because the Respondent is the same in each case
- b. Yes, because they involve the same type of behavior
- c. No, because it would be unfair to Mx. Rowan
- d. No, because the circumstances and facts of the case are not the same

151

Consider Dismissal

Mandatory	Permissive
• The conduct, if true, would not meet the definition of sexual harassment under Title IX • The conduct did not occur in the district's education program or activity • The conduct did not occur against a person in the U.S.	• The complainant withdraws the complaint or allegations in writing • The respondent is no longer enrolled or employed by the district • Specific circumstances prevent the district from gathering sufficient evidence

152

If we dismiss, can we use a different policy or process?

153

Dismissal

Mandatory	Permissive
• The conduct, if true, would not meet the definition of sexual harassment under Title IX • The conduct did not occur in the district's education program or activity • The conduct did not occur against a person in the U.S.	• The complainant withdraws the complaint or allegations in writing • The respondent is no longer enrolled or employed by the district • Specific circumstances prevent the district from gathering sufficient evidence

154

REMEMBER ... Supportive Measures

If you dismiss, you must "at a minimum"

- ▶ Offer supportive measures to complainant
- ▶ Offer supportive measures to respondent
- ▶ Take appropriate prompt and effective steps to ensure that sexual harassment does not continue or recur

155

Appeal of Dismissal

Who	Why?	Appeal Decisionmaker	Steps
• Any party can appeal a dismissal	• Based on • procedural irregularity • new evidence • bias/conflict of interest • That would change the outcome	• Cannot be someone involved in the investigation or dismissal of complaint • Must be trained	• Notify parties when appeal is filed • Implement appeal procedures equally for the parties • Give parties a reasonable and equal opportunity to make a statement in support of or challenging the dismissal • Notify all parties of result of appeal and rationale for the outcome

156

Synopsis

You receive a complaint alleging that student Napoleon Dynamite was subject to sex-based harassment by Summery Wheatley during the bus ride home from school.

You immediately pull the bus security footage, but it shows no interaction between parties.



157

Can you dismiss?

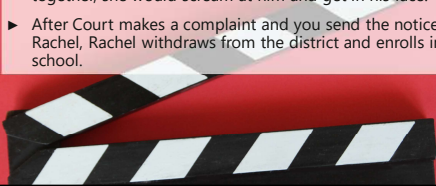
- a. Yes, the evidence is clear that the allegations cannot be proven
- b. No, lack of (or contradictory) evidence is not a reason for dismissal
- c. Yes, if Napoleon withdraws the complaint after being confronted with the video
- d. B and C



158

Synopsis

- ▶ Court alleges that while he was dating Rachel, she was constantly telling him he was a failure and really not good enough for her. Court alleges that Rachel threatened to start posting on social media about what a loser he was if he did not get his act together. If he forgot their plans together, she would scream at him and get in his face.
- ▶ After Court makes a complaint and you send the notice of allegations to Rachel, Rachel withdraws from the district and enrolls in a local parochial school.



159

Should you dismiss?

- a. Yes, if the respondent withdraws, no discipline is possible, so there is no reason to continue the grievance process
- b. Yes, if the respondent is no longer part of the program or activity, you must dismiss the complaint
- c. No, completing the grievance process may be important to protecting the complainant's access to the educational program



160



1

Serving Impartially

The Title IX regulations require that any individual involved in the Title IX process—Title IX Coordinator, investigator, decisionmaker, appellate decisionmaker, or informal resolution facilitator—not be biased, have a conflict of interest, or prejudge any matter before them

A 3D white figure stands on a seesaw. On the left side of the seesaw is the word 'COMPLAINANT' and on the right side is 'RESPONDENT'. A small 'T&H' logo is in the bottom right corner.

2

Impartial Approach

- ▶ The preamble to the 2020 Title IX rules calls for educational institutions to use an objective, “common sense approach” to evaluating whether bias, conflict of interest, or prejudgment exists
- ▶ “Objective” means whether a reasonable person would believe partiality exists
- ▶ The preamble says not to apply “generalizations” that might unreasonably conclude partiality exists

A 3D white figure sits on a stack of four blue books. The books are titled 'Avoiding Bias', 'Conflicts are Bad', 'Prejudgment? No!', and 'Title IX'.

3

Bias

- ▶ “[A]n inclination of temperament or outlook, especially a personal and sometimes unreasonable judgment.”
- ▶ “[T]o give a settled and often prejudiced outlook to”...a person’s background biases them against others who are not like them
- ▶ Synonyms – nonobjectivity, one-sidedness, partiality, partisanship, prejudice (Merriam-Webster)

A 3D illustration of many white arrows pointing to the right on a light blue background. One red arrow points upwards from the middle of the group.

4

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- ▶ Sex
- ▶ Race
- ▶ Ethnicity
- ▶ Sexual orientation
- ▶ Gender identity
- ▶ Disability
- ▶ Immigration status
- ▶ Financial ability
- ▶ Other characteristic

A 3D illustration of many white arrows pointing to the right on a light blue background. One red arrow points upwards from the middle of the group.

5

Bias

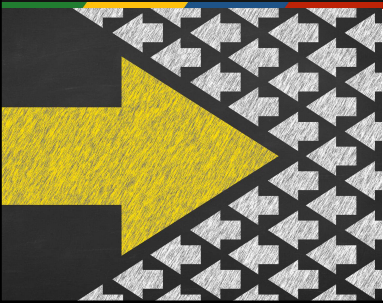
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- ▶ Ethnicity
- ▶ Sexual orientation
- ▶ Gender identity
- ▶ Disability
- ▶ Immigration status
- ▶ Financial ability
- ▶ Other characteristic

- ▶ Men are sexually aggressive and likely to sexually assault women
- ▶ Women often regret their sexual experiences and recast them as assault
- ▶ Men cannot be sexually assaulted
- ▶ The #metoo movement has led to many more false sexual assault reports by women

6

Conflict of Interest



A situation in which the concerns or aims of two different parties are incompatible.

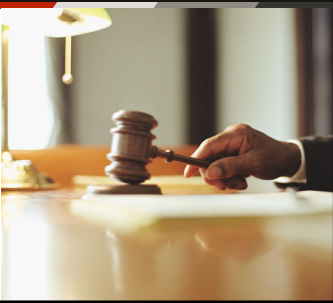
"A conflict of interest arises when what is in a person's best interest is not in the best interest of another person or organization to which that individual owes loyalty."

<https://ethicsunwrapped.utexas.edu/glossary/conflict-of-interest>



7

Prejudgment



"To judge before hearing or before full and sufficient examination"

"[A]n opinion about a situation or a person that is formed before knowing or considering all of the facts."

Cambridge Dictionary

Synonyms – preconception, assumption, presumption/presupposition, speculation

Merriam-Webster

8

Prejudgment

"To judge before hearing or before full and sufficient examination"

"[A]n opinion about a situation or a person that is formed before knowing or considering all of the facts."

Cambridge Dictionary

Synonyms – preconception, assumption, presumption/presupposition, speculation

Merriam-Webster



- A person was described as clearly upset during their interview, so you presume their recollection is credible
- A person was drinking at the time of the incident, so you presume they don't remember what happened
- A person consented to sexual behavior before, so you presume they consented this time, too

9



The investigator attends the same religious institution as Respondent; can they be impartial?

- A. Yes, attending the same religious institution with someone does not create a conflict of interest or bias
- B. Yes, as long as there is no close personal or business relationship between the investigator and Robin or their family
- C. No, attending the same religious institution with someone creates a conflict of interest or bias

10



The investigator has raised money and marched for victims-rights advocacy groups; can they be impartial?

- A. Yes, engaging in such advocacy work does not create impermissible bias or conflict of interest
- B. Yes, as long as the investigator has been trained
- C. Yes, as long as the investigator has not made statements suggesting they are incapable of being impartial
- D. No, a person who has engaged in such advocacy work cannot be impartial

11



The investigator believes that traumatic stress affects brain function and, in turn, memory and behavior; can they be impartial?

- A. Yes, belief in "trauma informed practices" does not create a conflict of interest or bias
- B. Yes, if the investigator does not rely on apparent trauma as evidence
- C. No, if the investigator uses trauma-informed investigative techniques
- D. No, belief in "trauma informed practices" renders someone biased toward victims

12



The investigator is a school basketball coach and respondent is the star of the team, key to winning state; can they be impartial?

- A. Yes, coaching a student does not create a conflict of interest
- B. Yes, as long as the investigator is not responsible for deciding playing time
- C. Yes, the coach can be an impartial investigator, but could not be the decisionmaker
- D. No, the relationship creates a conflict of interest
- E. No, the relationship creates the impression of a conflict of interest

13



You used to work with the respondent (teacher) and found them untrustworthy; can you be impartial?

- A. Yes, you know people can change
- B. No, you have predetermined that the respondent is not credible
- C. It depends on whether either party knows that you think the respondent is untrustworthy

14

Conflict of Interest

Clearest Conflicts:

Is related to the Respondent
Formerly dated a key witness's parent
Invests in a business with the Complainant's parent

Could be Conflicts:

Is Respondent's Coach
Has previously disciplined Complainant for dishonesty

Less Risk of Conflict:

Has a history of speaking out on victim or accused rights
Has other responsibilities, e.g. 504 Coordinator, that cover parties

Not a Conflict:

Is an employee or attorney
Has been trained on trauma informed practices

15



Impartiality DOs & DON'Ts

- ▶ DO be open with the Title IX Coordinator about any concerns
- ▶ DO follow the process "to the T" and include all relevant evidence in the investigative report, written decision, and appeal decision
- ▶ DON'T not assume or infer the existence of facts or the outcome, "connect the dots," speculate, rely on personal experience or beliefs, weigh credibility (unless you are the decision-maker on the initial complaint)

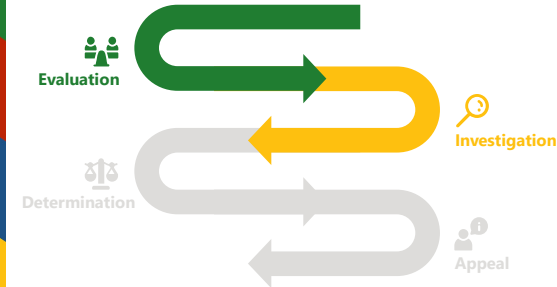
16

Investigations



17

Stage Two: Investigation



18

Key Investigation Principals

- ▶ Thorough
- ▶ Prompt
- ▶ Impartial
- ▶ Fair



19

Parent’s Rights During Investigation

- ▶ Right to act on behalf of minor students throughout the grievance process
- ▶ May accompany student to all meetings and interviews
- ▶ When parent and minor student disagree → give deference to judgment of parent
- ▶ School may set expectations to which parents must comply; these must apply equally to the parties



20

An Effective Investigation → A Reliable Determination

21

Investigation Roadmap



1. Review the file
2. Verify impartiality
3. Introduce yourself to the parties
4. Plan investigation



22

Investigation Roadmap



5. Gather evidence
6. Compile and share “directly related evidence”
7. Draft & share investigation report
8. Transmit file to Title IX Coordinator



23

Investigation Roadblocks

- ▶ Managing timeframes
- ▶ Coordinating schedules
- ▶ Uncooperative parties and witnesses
- ▶ Meddling advisors



Big Photo by Unknown Author is licensed under CC BY-NC-ND

24



#1 Review the File

- ▶ Review all material provided by the Title IX Coordinator
 - ▶ Report
 - ▶ Intake notes
 - ▶ Formal Complaint
 - ▶ Notice of allegations
 - ▶ Supportive measures documentation
 - ▶ Note if either party has an advisor

25

Case Study

On Tuesday, January 21, 2025, Francis F. requested to speak with me after class about a friend in the class. Francis reported that this friend had been touched in the genital area without consent during a social event on campus. Francis did not initially name the student, but eventually told me it was Carson C., another student in my class.

- Teacher Taylor Handwritten Statement
January 22, 2025



26

Case Study

From: Carson Complainant
To: Title IX Coordinator
Subject: Complaint
Date: Thursday, January 30, 2025, 7:18:28 PM

I know that Francis F. spoke to our teacher about what happened to me on campus. I didn't want to tell anyone, but now that it's out, I do think it's important that something be done. I also need you to know that the person who did this to me also has made numerous horrible statements to me, all sexual in nature. Please let me know what you will be doing to deal with this situation.



27

Do we have a formal complaint?

- A. Yes, based on the oral report to Teacher Taylor
- B. Yes, based on Carson Complainant's email to the Title IX Coordinator
- C. No, there is no formal complaint form signed by Carson or the Title IX Coordinator





28

Case Study

- ▶ A formal complaint was filed on January 31, 2025 by Carson Complainant
- ▶ Supportive measures are in place
- ▶ The Title IX Coordinator determined that, if true, the alleged conduct could be "fondling," a type of sexual assault, and severe, pervasive, and objectively offensive "hostile environment" sexual harassment
- ▶ A notice of allegations was sent on February 3, 2025



29

Case Study

Notice of Allegations

It is alleged that on or around [dates]:

1. Robin Respondent (the "Respondent") touched Carson Complainant's (the "Complainant's") genitals over the clothing without consent for purposes of sexual gratification, and
2. The Respondent repeatedly made sex-based comments to the Complainant.



30

Case Study

Notice of Allegations (cont'd)

The alleged conduct, if true, could be sexual harassment in an education program or activity of a recipient of federal funding and against a person in the United States. Specifically:

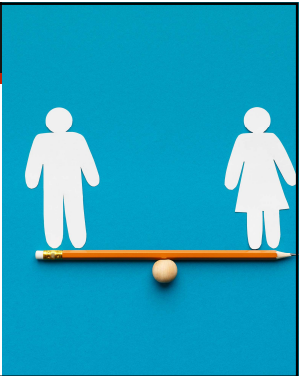
1. Touching the private body parts of another without consent and for purposes of sexual gratification is "fondling," which is a type of sexual assault under Title IX, and
2. Unwelcome sex-based conduct that is so severe, pervasive, and objectively offensive that it effectively denies equal access to the educational institution's educational program or activity is "sexual harassment" prohibited under Title IX.



31

#2 Verify Impartiality

- ▶ An impartial investigator
 - ▶ Is unbiased
 - ▶ Has no conflict of interest
 - ▶ Does not prejudice
 - ▶ Is well trained



32

The investigator has a disciplinary role in the educational institution and has imposed discipline on Robin in the past; can they be impartial?

- A. Yes, imposing discipline on a student does not create an impermissible risk of bias
- B. No, but only if the discipline was for prior sexual misconduct
- C. No, imposing discipline on a student always creates an impermissible risk of bias





33

The investigator feels this conduct is really not a big deal, the kids should just get over it; can they be impartial?

- A. Yes, they are a trained professional and can set aside their personal opinions
- B. No, they have prejudged the situation





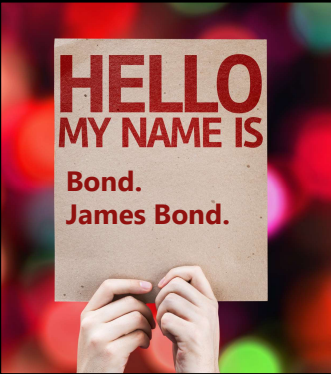
34



T&H Title IX Tip

- ▶ Be open with the Title IX Coordinator or their designee about any concerns—better to report something that turns out to be nothing than to ignore something that turns out to be a big deal
- ▶ When in doubt, disclose any concerns to the parties and get their agreement to allow you to continue in the role (with Title IX Coordinator)
- ▶ Show your work! The best way to avoid a claim of bias, conflict of interest, or prejudgment is to methodically work your case and write a solid report

35



#3 Introduce

- ▶ Not required, but best practice
- ▶ Benefits:
 - ▶ Notice to the parties of the "rules" for the investigation
 - ▶ Notice to the parties that there may be periods where they do not hear from you, and how they can contact you
- ▶ Send to parties, parents/guardians of minor parties, and advisors, if any

36

#4 Plan Investigation

- ▶ Read the formal complaint, notice of allegations, intake notes, and any other preliminary information provided by the Title IX Coordinator
- ▶ Compare the allegations to the definitions in your district Title IX policies and procedures
- ▶ Use the notice of allegations to determine the scope and focus of the investigation



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#4 Plan Investigation

- ▶ What questions need to be answered?
- ▶ What evidence do you need to collect?
- ▶ Who should you interview?
- ▶ In what order will you conduct witness interviews?
- ▶ Prepare interview outlines
- ▶ Think: What information do you need to obtain to allow the decisionmaker to answer the key questions and make a reliable determination?



38



What do you need to know?

- ▶ Think back to the Title IX definitions of "Title IX sexual harassment" "in an educational program or activity" and "against a person in the U.S."
- ▶ Look at the allegations and consider what the elements for each claim are
- ▶ Consider information needed to craft a remedy if a violation is found



39

Which is not a required element for rape (type of sexual assault)?

- A. Penetration of the anus or vagina, no matter how slight
- B. Conduct was non-consensual
- C. Conduct was done for purposes of sexual gratification
- D. None, these are all required elements





40

Case Study

FONDLING

- ▶ Was there touching of the private body parts of another?
- ▶ Was it without consent?
- ▶ Was it for purposes of sexual gratification?



41

Case Study

HOSTILE ENVIRONMENT

- ▶ Was the conduct unwelcome?
- ▶ Was it based on sex?
- ▶ Was it objectively offensive?
- ▶ Was it severe?
- ▶ Was it pervasive?



42

Case Study

JURISDICTION

- ▶ Was it in an “educational program or activity” of your school district?
- ▶ Was it in the United States?



43

Case Study

IMPACT

- ▶ Limits or Denies: What were the effects on the Complainant, if any?
 - ▶ Grades?
 - ▶ Socially?
- ▶ What were the effects on the larger school community, if any?
- ▶ What issues may need to be addressed with the Respondent, if any?



44

Where will you find evidence?

- ▶ Who may have information?
- ▶ Who will you question first?
- ▶ Is there a recording?
- ▶ Are there texts or social media communications or posts?
- ▶ Identify and preserve evidence at risk of loss
- ▶ Contact law enforcement immediately if there is knowledge of illegal or illicit evidence



45

Scope of Investigation



- ▶ If there are additional allegations → Title IX Coordinator will need to amend the notice of allegations
- ▶ If there are additional complainants or respondents • Title IX Coordinator will need to reach out to determine if there will be a Title IX complaint, provide all necessary notices and supports, and decide if consolidation is proper or if there will be separate investigations

46



#5 Gather Evidence

- ▶ Includes interviews and review of tangible evidence
- ▶ District must provide the parties written notice of the **date, time, location, participants, and purpose** of all investigative interviews or other meetings with sufficient time to prepare
- ▶ Recommended to do the same for non-party witnesses (not required)
- ▶ Templates for notices to parties and witnesses in T&H Guidebook

47

Who is responsible for finding and providing evidence in a Title IX sexual harassment investigation?

- A. The complainant must provide evidence to support the complaint
- B. The respondent must provide evidence to refute the complaint
- C. Both parties must provide evidence to support their side
- D. Neither side must provide evidence to support their side





48

YOU ARE!

- ▶ The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the educational institution, not the parties
- ▶ But if parties want to provide evidence, let them. Do not discourage parties from submitting evidence
- ▶ Give all parties the same opportunity to present evidence, suggest witnesses, and recommend directions for your investigation
- ▶ If you decide not to pursue a suggested route, record your reasons



49

Types of Evidence

- ▶ Direct Evidence
- ▶ Circumstantial Evidence
- ▶ Hearsay

Rumor / innuendo (NOT evidence)



50

Direct Evidence

“Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.”

Black’s Law Dictionary 675 (10th ed. 2014)

- ▶ What a witness directly experienced
- ▶ Eyewitness testimony
- ▶ Admissions—written or oral
- ▶ Surveillance tape or cell phone video captures the incident



51

Circumstantial Evidence

“Evidence based on inference and not on personal knowledge or observation ... all evidence that is not given by eyewitness testimony.”

Black’s Law Dictionary 674 (10th ed. 2014)



52

Hearsay Evidence

“A statement (oral or written) made by someone NOT WHILE TESTIFYING and that is offered to prove the truth of the matter asserted in the statement.”

Fed. R. Evid. 801(c)



53

Sources of Evidence

- ▶ Interviews
- ▶ Testimony
- ▶ Documents
- ▶ School records
- ▶ Campus files
- ▶ Personnel files
- ▶ Investigation records
- ▶ Student files
- ▶ Police Reports
- ▶ Emails
- ▶ Handwritten notes
- ▶ Calendars
- ▶ Photographs
- ▶ Videos
- ▶ Text & instant Messages
- ▶ Other electronic files/ cloud storage
- ▶ Journal entries
- ▶ Medical records (ONLY with written consent)



54

Conduct Productive Interviews

Preparation is key!!!!

- ▶ Prepare a focused and targeted interview outline
- ▶ Focus on the allegations of sex discrimination and the questions you need to answer to reach a conclusion
- ▶ Identify "must ask" questions to elicit information related to the allegations and questions you have identified
- ▶ Identify evidence to discuss with witness
- ▶ Prepare questions to obtain a reliable chronology of events and all relevant information that witness has
- ▶ Avoid extraneous questions that seek information that is not relevant

55

Game Plan for Interviews

- ▶ Determine how you are going to establish rapport
- ▶ Where are you going to conduct the interview? Will it make the witness feel comfortable?
- ▶ Are you going to have others present? Who?
- ▶ How are you going to open the interview?
- ▶ Set notice of rights/expectations?
- ▶ To record or not to record?

56

Interviews

- Who do we interview?
- In what order should we conduct the interviews?

Complainant

Witnesses you identified (campus personnel, other students)

Witnesses identified by complainant

Respondent

Witnesses identified by respondent

57

Background Questions

Narrative
(What Happened? The Allegations)

Targeted Questions
(Clarification; "Fill In the Gaps")

Any "Must Ask" Questions
(How Allegations Relate to Key Title IX Issues)

Identify Any Needed Follow-Up
(Other Witnesses? Other Evidence? Anything Else to Share?)

58

Interview Dos & Don'ts

DOs

- ✓ Make party/witness feel at ease
- ✓ Be neutral, objective, and open-minded
- ✓ Listen *actively*
- ✓ Let the interviewee tell their story
- ✓ Take all allegations and statements seriously
- ✓ Be thorough – make sure to elicit all relevant facts

DON'Ts

- ✗ Create a hostile or unwelcoming environment
- ✗ Have an agenda
- ✗ Be a passive interviewer
- ✗ Do all the talking
- ✗ Rush to judgment or dismiss allegations or statements
- ✗ Make determinations based on sex-stereotyping or status

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Interview Dos & Don'ts (cont'd)

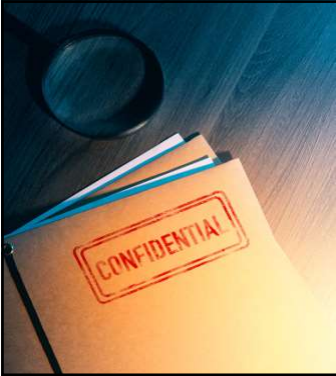
DOs

- ✓ Ask all necessary follow-up questions
- ✓ Ask probing questions
- ✓ Seek information regarding potential justifications/excuses
- ✓ Test the credibility of the statements in the interview
- ✓ Ask for supporting documents and/or corroborating witnesses

DON'Ts

- ✗ Shy away from asking tough questions
- ✗ Conduct an interrogation
- ✗ Be argumentative or accusatory
- ✗ Be unprepared
- ✗ Conduct the interview without reference to any documentation or other evidence

60



Impermissible Evidence

- ▶ Evidence protected by a legal privilege
- ▶ Health care treatment records

MUST OBTAIN WAIVER!

- ▶ Complainant's sexual predisposition, or prior sexual behavior (unless exception)

Impermissible evidence must not be considered (except to determine exception) and must not be disclosed or used

61

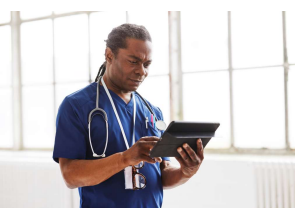
Privileged or Confidential

- ▶ Information protected by a recognized federal or state law, such as attorney-client privilege, doctor-patient privilege, or spousal privilege may not be sought, used, or relied on
- ▶ Unless the person holding the privilege has waived it



62

Healthcare Treatment Records



- ▶ Healthcare treatment records made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment may not be accessed, considered, or used
- ▶ Unless the student (parent) provides voluntary written consent
- ▶ Medical records previously provided to the school related to a special education or 504 evaluation become student records and are not impermissible

63

Complainant's Sexual Predisposition and Prior Sexual Behavior

- ▶ Questions and evidence related to a complainant's sexual predisposition or prior sexual behavior are **impermissible** and may not be asked or sought
- ▶ Exceptions: Evidence related to the complainant's prior sexual behavior
 - Offered to show someone other than the respondent committed the alleged conduct
 - Related to the sexual behavior between the complainant and respondent and offered to prove consent
- ▶ **However**, the fact of prior sexual conduct between the parties does not, by itself, demonstrate or imply the complainant's consent to the alleged sex-based harassment



64

Roadblocks: Police Involvement

- ▶ The district must conduct its Title IX investigation in a "reasonably prompt" manner but may temporarily delay the investigation for good cause, which may include concurrent law enforcement activity
- ▶ No long or indefinite delay or extension of timeframes, regardless of whether a concurrent law enforcement investigation is still pending



65

What can justify a delay for concurrent law enforcement purposes?

- A. An oral request from law enforcement to delay
- B. Notice that law enforcement plans to release evidence that would be material to your investigation at a particular future time
- C. The arrest and incarceration of the Respondent
- D. All of the above
- E. None of the above





66



When the Police Call

- Document everything!
- Ask police to put request for delay in writing
- Reduce verbal (e.g., telephone) conversations in writing
- Best practice is to respond with summary/"If my summary is incorrect, please let me know by [date] or I will assume it is correct."
- Explain in writing the school's obligation to conduct its own Title IX investigation and ask for notification when you can begin your investigation
- Follow up, then follow up again, then again

67

Notice of Delay

- ▶ The District must send written notice to both parties regarding the delay or extension and the reason(s) for the delay or extension
- ▶ Concurrent law enforcement activity is not good cause to delay sending the written notice of allegations to the complainant or respondent
- ▶ **T&H Guidebook Document 23 – Notice of Extension of Timeframes**





68

The police decided not to prosecute the Respondent because it's a "they said, they said" case. How does it impact your case?

- A. You can rely on the police finding to dismiss the complaint
- B. You can rely on the factual information gathered by the police, but not their finding
- C. You cannot rely at all on any information from the police





69

Police Evidence?

- ▶ Police evidence may be useful for *initial* fact-gathering
- ▶ They are not a substitute for your own required investigation
- ▶ The standards for and purposes of criminal investigations are different from school investigations
- ▶ Police investigations or reports are not determinative and you need your own evidence-gathering to determine whether there was Title IX sexual harassment or whether the respondent is responsible



70

Fill In the Gaps

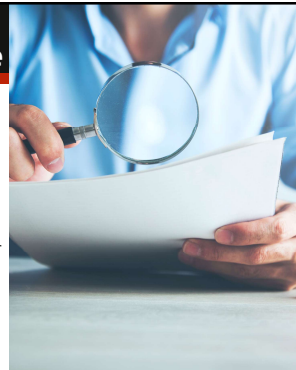
- ▶ Are there any gaps in your chronology of events?
- ▶ Is there any evidence missing?
- ▶ Did you obtain all the documents and information the parties and witnesses referenced?
- ▶ Are there any follow-up questions you need to ask the parties or witnesses?
- ▶ Is there anything else you need to track down to prepare that will allow you (or the decisionmaker) to reach a reliable determination?



71

#6 Compile & Share Directly Related Evidence

- ▶ "Directly related evidence" is not defined in the rules
- ▶ Statements, notes of interviews, and other types of evidence collected in the investigation are likely covered
- ▶ The parties must be given at least 10 days to review all the evidence and submit written responses about the evidence to the investigator
- ▶ The investigator must consider the responses when writing the investigative report
- ▶ T&H Guidebook– Notice of Right to Review and Respond to DRE



72

What is not directly related evidence related to Carson's formal complaint?

- A. Sexting messages between Robin and Carson in the spring and summer
- B. Draft interview notes or recordings once notes have been finalized
- C. A written statement from another classmate saying Robin did the same thing to them the year before
- D. Evidence of the specifics of Robin's disability services
- E. All of the above are directly related

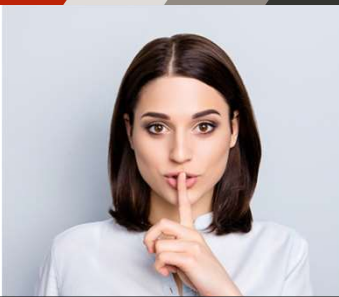




73

Prevent Disclosure

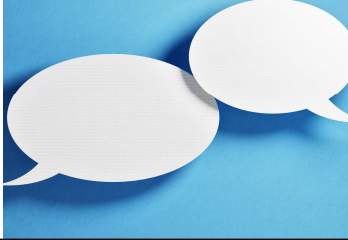
- ▶ Take reasonable steps to protect the privacy of parties and witnesses during the grievance process
- ▶ Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence obtained solely through the grievance process



74

Except...

- ▶ Do not restrict the ability of parties to obtain evidence, speak to witnesses, or consult family members, advisors, or confidential resources
- ▶ Disclosures for purposes of administrative proceedings or litigation related to the allegations are authorized



75

Witness names should be redacted from the directly related evidence (and investigation report).

- A. True
- B. False
- C. True for students but not for staff





76



#7 Prepare & Share Investigation Report

- ▶ You can (and should) begin drafting the report during the 10-day DRE period
- ▶ The report must summarize all "relevant evidence" (which may be different from the "directly related evidence")
- ▶ The report must respond to the parties' responses to the investigation report
- ▶ The report must be shared with the parties, who will have 10 days to respond before a decision

77

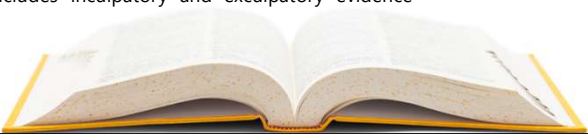
"Relevant"

Evidence is relevant if

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence, and;
- (b) the fact is of consequence in determining the action.

Fed. R. Evid. 401

Includes "inculpatory" and "exculpatory" evidence



78

Rank the evidence from most to least relevant.

A. Sexting messages between Robin and Carson in the spring and summer

B. A written statement from another classmate saying Robin did the same thing to them the year before

C. A text message from Robin to Carson apologizing for "going too far" and "not listening"

D. Francis's statement that Robin told Francis to apologize to Carson for "going too far" and "not listening"

E. Evidence that Carson "made out" with another classmate as justification for Robin asking Carson to make out



79

CREDIBILITY



The investigator does not make findings regarding credibility, but you should include information in the investigative report to help the decisionmaker assess credibility

80

Credibility Factors

▶ Inherent Plausibility

▶ Demeanor

▶ Motive to Falsify

▶ Corroboration

▶ Past Record



U.S. Equal Employment Opportunity Commission

EEOC Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors (Jun. 18, 1999)

81

Credibility Factors

▶ Corroborating evidence

▶ Contradictory evidence

▶ Source of information (and source motive)

▶ Body language and demeanor

▶ Specific details

▶ Reasonableness of testimony / plausibility

▶ Witness's memory (impact of time, outside influence, trauma, intoxicant)

▶ Witness's demeanor

▶ Witness's motivations or interest in the outcome

▶ Witness's bias or prejudice

▶ Internal consistency

▶ Other factors of believability

82

Consider the Parties' Responses

ASK YOURSELF

▶ Did either party identify evidence that was absent or not gathered?

▶ Did either party identify new witnesses or new evidence?

▶ Did either party point out inconsistencies in the evidence?

▶ Did either party raise concerns regarding the relevance of the evidence?

83

Finalize & Share the Report

▶ The report does not reach a decision/determination, that is the decision-maker's role

▶ The educational institution must share the final report with both parties and their advisors

▶ Take reasonable steps to protect the privacy of parties and witnesses during the grievance process

▶ Both parties must be given at least 10 days to review and respond before a final decision

▶ EXCEPT, do not restrict the ability of parties to obtain evidence, speak to witnesses, or consult family members, advisors, or confidential resources

84

14

Investigator Dos and Don'ts

**DOs**

- ✓ Ensure you have no conflict of interest or bias and remain impartial
- ✓ Treat all parties equitably
- ✓ Provide an equal opportunity to the parties to present evidence and witnesses
- ✓ Objectively evaluate all evidence for relevance
- ✓ Know the elements and definitions of the type of alleged sexual harassment and identify the key factual issues
- ✓ Conduct a complete and thorough investigation, identify and address any gaps
- ✓ Ensure your summary of the relevant and not otherwise impermissible evidence is thorough and accurate

**DON'Ts**

- X Conduct surprise interviews
- X Discriminate in the investigation or rely on stereotypes or preconceived notions
- X Delay or extend the investigation timeline absent good cause
- X Restrict the parties' ability to discuss allegations or gather evidence
- X Shy away from asking tough questions
- X Be accusatory or argumentative
- X Seek or use impermissible evidence, unless there is a waiver or applicable exception
- X Violate the parties' confidentiality

85

#8 Close the File

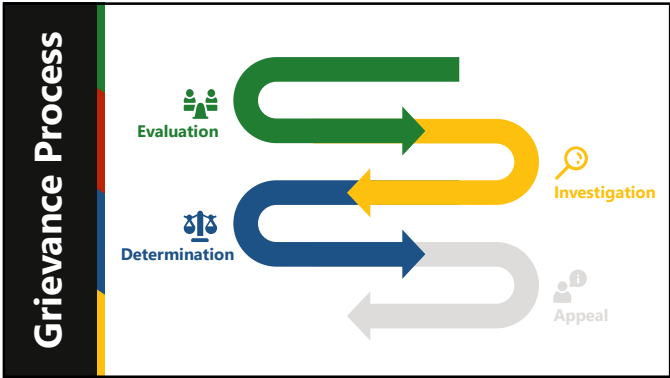
- Files related to a Title IX complaint must be maintained for seven years
- Finalize the file and transmit it to the Title IX Coordinator or their designee for the case
- If you'd like to avoid being called on in six years to find your files, compile and send them to the Title IX Coordinator now
- Think broadly!



86



1



2



Decisionmaking Framework

Step 1:
Learn the Case

Step 2:
Verify Impartiality

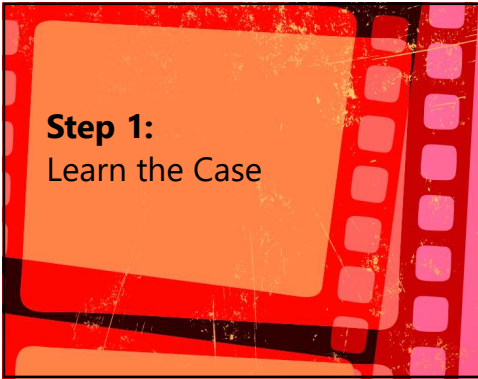
Step 3:
Conduct Q&A

Step 4:
Evaluate Evidence

Step 5:
Prepare Written Determination



3



Step 1:
Learn the Case



4

Our Case	A student, Casey, alleges that another student, Ryan, touched Casey in the genital area on two occasions on campus.

5

Our Case	Casey and Ryan started dating at the beginning of the academic year. Casey claims to have never been sexually active and does not want to engage in sexual activity other than kissing. Casey reported that Ryan knew these limitations but wanted more.

6

Our Case	During the first incident, Ryan and Casey were on campus. Ryan was tickling Casey and, while Casey was protesting, touched Casey's private area.

7

Our Case	During the second incident, Ryan and Casey were at a football game on campus and went below the stands to "make out." Ryan was rubbing Casey's behind, which Casey said they were ok with, but then Ryan began rubbing between Casey's legs allegedly without permission.

8

Our Case	Casey just reported the incident although it happened last semester. Casey reports that Ryan broke things off recently and started dating another student, Isa, within days of the break-up.

9



10

Serving Impartially

The Title IX regulations require that any individual involved in the Title IX process—Title IX Coordinator, investigator, decisionmaker, appellate decisionmaker, or informal resolution facilitator—not be biased, have a conflict of interest, or prejudge any matter before them

An illustration of a white 3D stick figure standing on a seesaw. The left end of the seesaw is labeled "COMPLAINANT" in blue, and the right end is labeled "RESPONDENT" in blue. A silver wheel is at the center pivot.

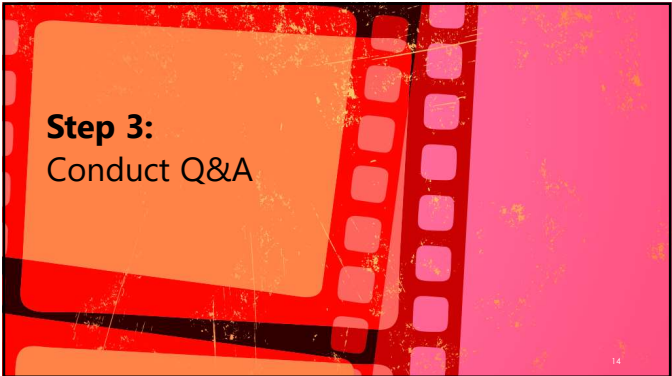
11

Our Case: Serving Impartially	What gender is the Complainant, Casey? What gender is the Respondent, Ryan?

12

Our Case: Serving Impartially	What do you think about the fact that...?
	Casey and Ryan were dating
	Casey "made out" with Ryan on multiple occasions
	Casey only reported Ryan after being "dumped" and Ryan beginning to date Isa

13



14

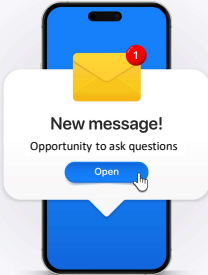
Written Q&A



Individuals Involved

- Parties
- Parents/guardians of minor parties
- Each party's advisor (can be but is not required to be an attorney)

15



- Send notice of right to submit written, relevant questions and follow up questions (email and U.S. mail)
- Provide timeframe for when responses are due (e.g., within 3 or 5 days of electronic delivery of notice)
- Notice can state that questions and follow-up questions:
 - Should be numbered
 - Should identify the name of the party or witness to whom it should be posed

16

Questions Received

Review each question to determine whether it is:

Relevant & Respectful



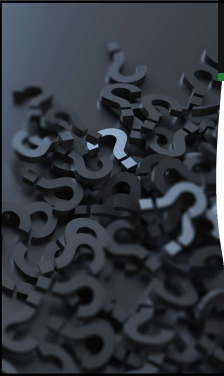
17



Relevant evidence is evidence that has value in proving or disproving a fact at issue and includes both inculpatory and exculpatory evidence.

- ▶ Facts that help prove or disprove an undisputed issue of fact are not relevant
- ▶ Questions that are duplicative of other questions or evidence are not relevant
- ▶ Even if a fact or issue is in dispute, a question is not relevant if it does not "tip the scale" one way or the other in favor of or against the issue in dispute

18

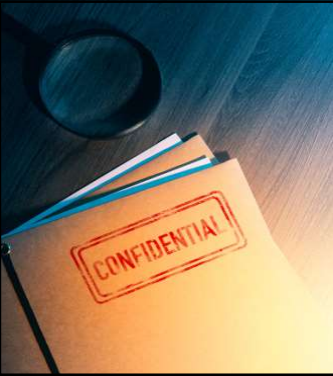


Relevant?

- ▶ **Inculpatory:** Evidence tending to make a disputed fact or issue *more likely to be true*
- ▶ **Exculpatory:** Evidence tending to make a disputed fact or issue *less likely to be true*



19



Impermissible Evidence

- ▶ Evidence protected by a legal privilege
- ▶ Health care treatment records

MUST OBTAIN WAIVER!

- ▶ Complainant's sexual predisposition, or prior sexual behavior (unless exception)

Impermissible evidence must not be considered (except to determine exception) and must not be disclosed or used



20

Respectful?

Cannot use profanity or irrelevant, ad hominem attacks

Harassing questions will not be tolerated

No written notice required, but recommend providing



21



Question 1 (Ryan to Casey):
Isn't it true that you let Wei touch you the same way over the summer before we started dating?



22



Question 2 (Casey to Ryan):
You did this same thing to your ex last year, didn't you?



23



Question 3 (Casey to Investigator):
Why didn't you interview all my friends like I asked to see if anyone saw anything?



24



Question 4 (Decision-Maker to Investigator):
Why did you not interview all Casey's friends as requested to see if anyone saw anything?



25



Question 5 (Ryan to Casey):
Isn't it true that you are on three different medications for being crazy and in therapy because you're a pathological liar?



26

Non-Relevant or Disrespectful Questions

- ▶ Must explain the reason for finding a question not relevant
- ▶ Examples:
 - ▶ "Complainant's Question #3 will not be forwarded to the party or witness because it seeks information protected by a legally recognized privilege"
 - ▶ "Respondent's Question #2 will not be forwarded to the party or witness because it includes irrelevant personal attacks"



27

Non-Relevant or Respectful Questions



Try & Try Again

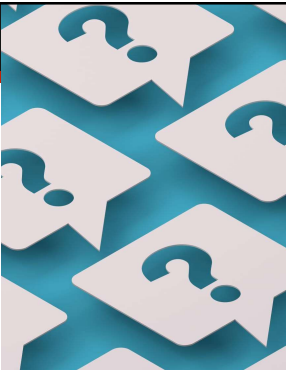
- ▶ Not required to give parties an opportunity to restate their question
- ▶ If you do so, we recommend providing only one opportunity and a time-frame for submission (e.g., 2 days)



28

Forwarding Questions

- ▶ Forward all relevant and respectful questions to the appropriate party or witness
- ▶ Include notification of when a response is required (e.g., within 3 days of electronic delivery of the question)



29

Forwarding Answers



- ▶ Forward all answers to all parties
- ▶ Answers must be respectful
- ▶ Provide Notice of right to submit limited, relevant follow-up questions within a certain time period (e.g., 2 days of electronic transmission of responses)



30

Follow-Up Questions



- ▶ Must be Relevant & Respectful
- ▶ Forward all answers to both parties
- ▶ Answers must be respectful
- ▶ Provide notice of right to submit limited, relevant follow-up questions
- ▶ Repeat as needed

Limited to "Follow-Up"
Follow up: to follow with something similar, related, or supplementary (Merriam-Webster)



31



Follow-Up Question?

Initial Question:
When did it happen?

Answer:
Yesterday



32



Follow-Up Question?

What time of day did it happen?

Who was present?



33



Step 4:

Evaluate Evidence

34

34



Standard of Proof

"Preponderance of the Evidence"

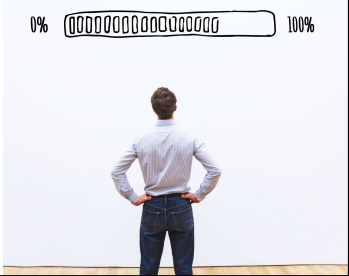
More likely than not.
(50% + a feather)



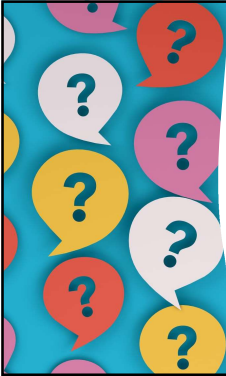
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Determination

- ▶ Decisionmaker evaluates relevant, not impermissible evidence for its persuasiveness
- ▶ If not persuaded under the standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that sex discrimination occurred



36



Ask Yourself

- ▶ What issues are in dispute and what issues are not in dispute?
- ▶ What areas of inconsistency need to be considered?



37

Our Case: More Facts	Casey and Ryan do not dispute that the touching occurred Ryan claims the touching was all consensual. Casey disagrees There are no witnesses to the behavior.

38

Our Case: More Facts	Casey told a friend, Wei, right after the second incident what happened and Wei encouraged Casey to report it. After being charged, Ryan tearfully denied the allegations to Ryan’s mom.

39

Our Case: More Facts	No cameras covered either incident directly, but the students were seen on a camera right after the second incident. They were walking arm in arm, cuddling, and laughing as they walked.

40

Our Case: More Facts	Neither student has ever had disciplinary concerns before.

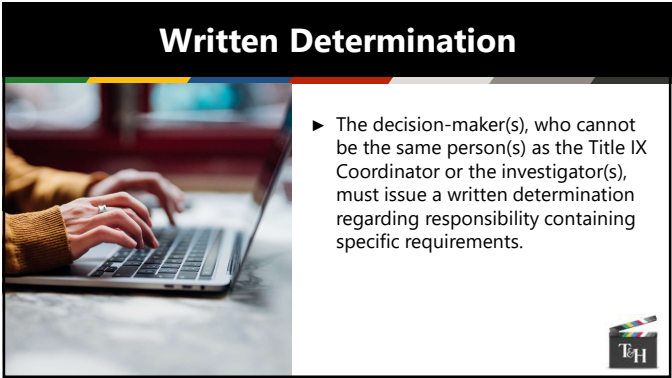
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Our Case: More Facts	Casey’s story has been consistent throughout. Ryan seemed incredibly nervous in the initial interview and at first denied ever touching Casey. As the interviewer built rapport, Ryan acknowledged that the touching occurred but said it was consensual.

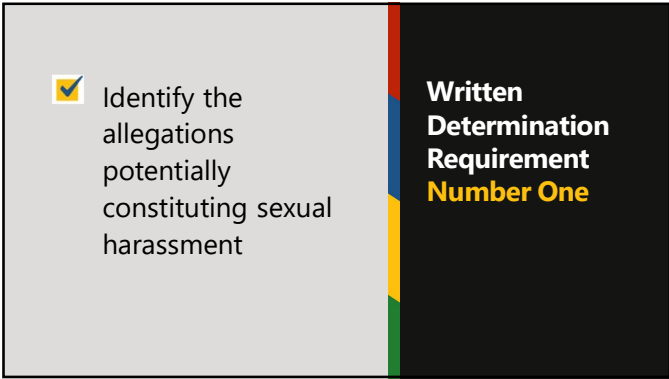
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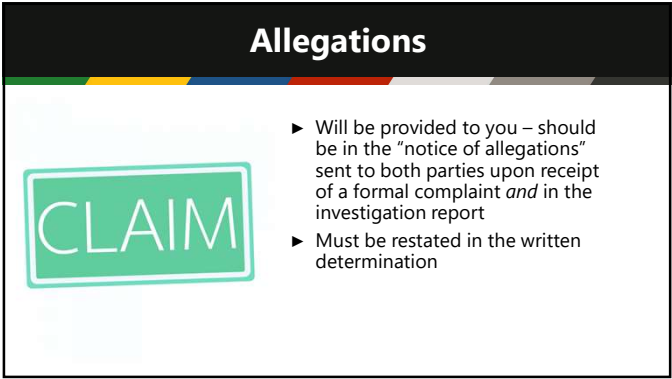
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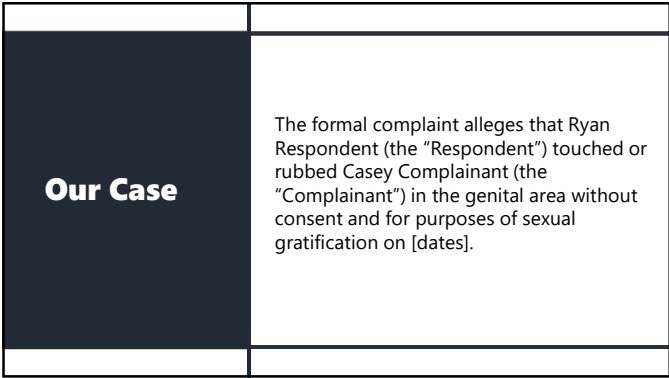
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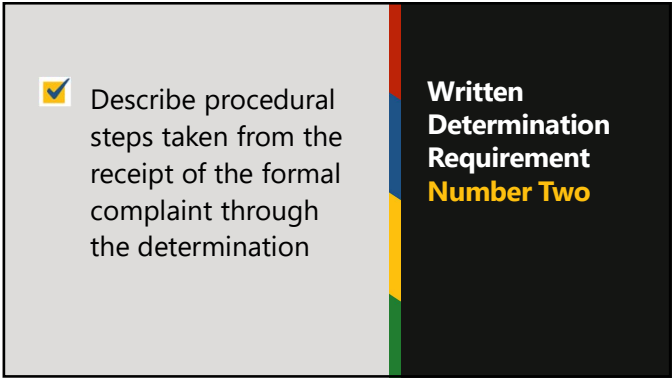
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46



47



48

Procedural Steps



- ▶ Notifications to the parties
- ▶ Interviews with parties and witnesses
- ▶ Site visits
- ▶ Methods used to gather evidence
- ▶ Hearings held
- ▶ Much (but not all) of this will be in investigation report
- ▶ Must include all procedural steps in written determination
- ▶ Ask Coordinator for assistance finding missing steps



Our Case	The Complainant reported the conduct to their Counselor on [date].
	The Title IX Coordinator met with the Complainant (and parents) on [date], to discuss supportive measures and the formal complaint process.
	The Complainant (and parents) signed a formal complaint on [date].

Our Case	The Title IX Coordinator sent a notice of allegations on [date].
	The Title IX Coordinator assigned the investigator to the case and notified the investigator and parties on [date].
	The Title IX Coordinator verified no law enforcement involvement on [date].

Our Case	Repeat for all steps through the hearing and written determination.

 Findings of fact supporting the determination

Findings of Fact



- ▶ Identify the undisputed facts related to an issue
- ▶ Identify the first disputed fact related to an issue
 - ▶ Explain your conclusion as to what happened with the first disputed fact
 - ▶ Explain your reasoning for reaching that conclusion including credibility determinations
- ▶ Move to the next disputed fact
- ▶ Decide the overall issue
- ▶ Repeat for any other disputed issues



54

Our Case	▶ Casey produced a text message from Ryan in which Ryan says: "I'm so sorry for yesterday." ▶ There is a dispute about when that message was sent as compared to the alleged incident.

55

Our Case	▶ Casey says Ryan sent the message the evening after the second touching incident. ▶ Ryan says the message was sent days before, on a Friday, and was about Ryan making fun of Casey for getting a bad grade on a test. ▶ The text message was sent at 10 pm and Ryan has basketball practice every morning at 5:30 am on weekdays, so said they would not have been awake that late. ▶ Casey's professor verified that Casey failed a test the Friday before the second incident.

56



Which position is best supported by the evidence?

A. Casey (the text was sent the same day as the incident)

B. Ryan (the text was sent the Friday before)



57

Our Case	▶ Casey says two witnesses (Wei and Wynn) were around when Ryan was trying to pressure Casey into agreeing to sexual activity other than kissing. ▶ Casey reported that the comments were made at a normal tone of voice. ▶ None of the witnesses reported seeing or hearing the alleged comments.

58



Is it inherently plausible that the witnesses would not have heard the comments?



59

Our Case	When the investigator is interviewing Wei, Wei says they believe Casey made their boundary clear in a conversation with Ryan and that Ryan crossed it without consent, as alleged.

60



Which of these makes Wei's statement less reliable?

- A. Wei says they only believe it happened because Casey told Wei that it did a week earlier
- B. Wei said they were not in earshot during the incidents in question
- C. Wei has been friends with Casey and Ryan for years
- D. Wei says that Ryan did the same thing to Wei last year, but Ryan was found not responsible
- E. None of the above



61

Our Case	During the interview, Casey cannot recall certain details of the incident, such as the sequence of events or who Casey talked to after.

62



Which of the following is not relevant to deciding the impact of Casey's lack of recall on reliability of their account?

- A. The students were drinking alcohol at the time of the incident
- B. Throughout the entire interview, Casey had shift eyes, fidgety behavior, and nervous blinking
- C. Although Casey had been previously composed, when asked about these topics, Casey's neck became extremely flushed and they began perspiring noticeably
- D. The details Casey can't recall are not significant to the overall findings when the evidence is taken in its totality
- E. None of the above – they're all relevant to assessing Casey's credibility



63

Our Case	Undisputed Facts: There is no dispute that... Casey and Ryan started dating at the beginning of the school year.

64

Our Case	Disputed Facts: It is disputed whether... Ryan knew that Casey did not want to engage in sexual activity with Ryan other than kissing.

65

Our Case	Evidence About Disputed Facts: Casey said that Ryan knew that Casey did not want to engage in sexual activity with Ryan other than kissing. Casey said the two discussed it. Ryan says they did not ever discuss it.

66

Our Case	Evidence About Disputed Facts: The parties reported their position on this disputed fact consistently to the investigator and all credibility factors weighed equally between the parties.

67

Our Case	Evidence About Disputed Facts: Despite being asked, neither party presented any witnesses to whom they had said anything that would support or refute the claim.

68

Our Case	Evidence About Disputed Facts: However, the Complainant stated that the Complainant welcomed the Respondent's touching and rubbing of the Complainant's behind during the second incident on [date].

69

Our Case	Evidence About Disputed Facts: That evidence corroborates, even if only slightly, the Respondent's position that the Complainant did not limit their physical activity to kissing alone.

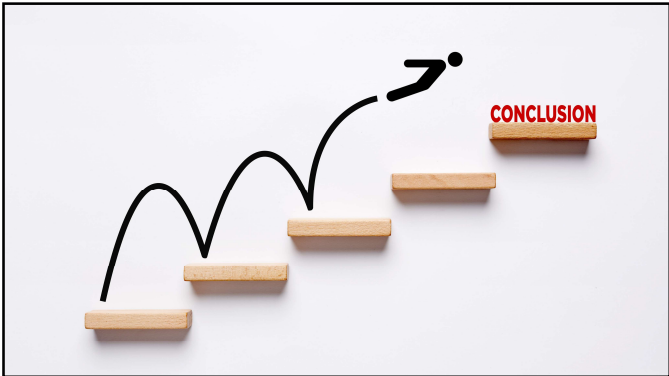
70

Our Case	Finding of Fact: Based on the totality of the relevant evidence available, there is insufficient evidence to support the Complainant's claim that the Respondent was aware of limitations on their sexual behavior to kissing. That does not mean that the Complainant necessarily consented to the conduct on the days in question. But I will not consider any knowledge by the Respondent of boundaries on touching as evidence of whether there was consent on the days in question.

71

Our Case	Be Careful With: ▶ Casey's report after Ryan broke things off ▶ Video showed Ryan and Casey walking arm in arm, cuddling, and laughing as they walked ▶ Ryan's nervousness and initial reluctance to describe the touching to the investigator ▶ Ryan tearfully denied the allegations to mom right after being charged

72



73



74

They Said/They Said

- ▶ Sexual harassment often occurs behind closed doors
- ▶ There are often no witnesses to the alleged harassment
- ▶ Many cases are going to involve the complainant making certain allegations, the responding denying them, with no other witness
- ▶ **The fact that there are no witnesses to the alleged harassment does not mean it is automatically a "50/50"**
- ▶ A thorough investigation and a complete summary of all relevant evidence can help the decisionmaker assess credibility and reach a reliable determination

75

What if there really is no evidence other than "they said, they said"?

- A. A finding in favor of the Complainant
- B. A finding in favor of the Respondent
- C. Dismissal of the complaint with no finding

76

They Said/They Said

- ▶ Very few cases end in 50/50
- ▶ More common for a particular disputed fact to end in 50/50, but even that happens less than one might think
- ▶ What tips the scale one way or another?

77

Credibility

- ▶ In the investigative process, credibility refers to the process of weighing the accuracy and veracity of evidence
- ▶ Relevant evidence tips the scale (even a feather)
- ▶ Credibility determines how much the scale is tipped – a feather or an elephant

78

Credibility ≠ Truthful

▶ Just because you don't find a witness credible does not mean they are a liar

▶ We all remember experiences differently and have different perspectives that shape how we view in

▶ Think about your last fight with a loved one or close friend...

T&H

79

Rank these witnesses in order of believability:

A. Nun

B. Teacher

C. Administrator

D. Star athlete

E. Student with a disciplinary record

F. Police officer

T&H

80

✔

Conclusions regarding the application of the educational institution's code of conduct to the facts

Written Determination Requirement

Number Four

T&H

81

Applying the Code

▶ The Title IX Coordinator should have previously determined that the conduct alleged, if true, is covered by Title IX

▶ However, the written determination must include the analysis of the conduct established

T&H

82

Our Case	Although there is insufficient evidence that Complaint told Respondent about their boundary, there is also insufficient evidence that Complainant communicated affirmative consent to touching in the genital area. Respondent did not verbally ask Complainant before touching them, and Complainant did not ask to be touched. Respondent did not identify any nonverbal signal from Complainant that indicated consent to genital touching.

83

Applying the Code

▶ Remember to make findings with respect to each element of the alleged misconduct

▶ Refer to definitions in the policy

T&H

84

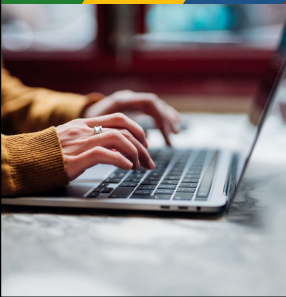


A statement of, and rationale for, the result as to each allegation

Written
Determination
Requirement
Number Five

85

Results



- ▶ A determination regarding responsibility
 - ▶ The reasons for the determination
- ▶ A list of sanctions imposed on the respondent
 - ▶ The reasons for the sanctions
- ▶ Whether remedies provided to the complainant (do not list; communicate privately to the complainant)
 - ▶ The reasons for the remedies



86

Determination & Discipline

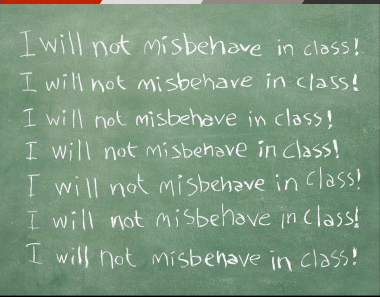
- ▶ Complete the investigation and determination before the imposition of any disciplinary sanctions against a respondent
- ▶ Do not discipline a party, witness, or others participating in the grievance process for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred



87

Sanctions

- ▶ Disciplinary:
 - ▶ Suspension
 - ▶ Expulsion
 - ▶ Probation
 - ▶ Loss of privileges
- ▶ Rehabilitative:
 - ▶ Counseling
 - ▶ Training
 - ▶ Community service



88

Remedies

- ▶ Remedies must be individualized to restore a complainant's equal access to the education program or activity
- ▶ Remedies can also be more wide-spread when multiple people were impacted by the sex-based discrimination, especially when the allegations related to a policy, procedure, or practice of the school district





89

Remedies

- ✓ Providing a campus escort for the complainant
- ✓ Allowing the complainant to park in the employees' parking lot
- ✓ Changing class schedules or extracurricular activities to ensure the complainant and respondent are separated
- ✓ Providing academic resources, modifications, and support
- ✓ Implementing or extending no-contact orders or "stay away agreements"
- ✓ Providing or coordinating health services and counseling
- ✓ Providing training or educational programs to individuals, school groups, personnel, or the school community
- ✓ Modifications to policies, procedures, or practices



90

Our Case	The conduct established by a preponderance of the evidence is fondling, which is a type of sexual assault prohibited by Title IX. The conduct occurred at school, so occurred in a program or activity of the educational institution and in the U.S.

91

Our Case	Result of the Allegation: Because the grievance process established that the Respondent engaged in fondling of the Complainant at school, I find sufficient evidence to support the allegation and establish a violation of the institution's Title IX Sexual Harassment policy. Based on my finding, I recommend that the Respondent be expelled. Remedies will also be provided to the Complainant, which will be communicated to the Complainant separately.

92

 Process for Appeal

**Written
Determination
Requirement
Number Six**

93

Process for Appeal

- Provide the bases for appeal, timeline to file an appeal, and method to do so



94

 Provide the written determination to the parties simultaneously

**Written
Determination
Requirement
Number Seven**

95

What about FERPA?



- OCR states that sharing the result as to each allegation including a list of sanctions is permitted by FERPA because sanctions "always directly impact the victim"
- Remedies do not directly affect the respondent so should be communicated separately to the Complainant



96

Decisionmaker Dos and Don'ts

**DOs**

- ✓ Explain the process to parties and advisors
- ✓ Assume respondent is not responsible
- ✓ Exercise independent judgment and objectively evaluate all relevant evidence
- ✓ Follow your grievance procedure
- ✓ Make credibility determinations and evaluate the weight of the evidence using preponderance standard
- ✓ Make a clear determination regarding whether the respondent violated the school's policies

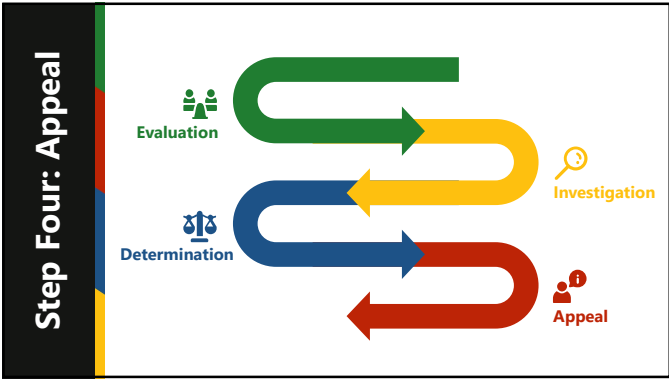
**DON'Ts**

- ✗ Prejudge the facts or rush to judgment
- ✗ Consider impermissible evidence unless a waiver or exception applies
- ✗ Rely on stereotypes or preconceived notions when making credibility determinations or weighing the evidence
- ✗ Delay or extend the decision timeline absent good cause
- ✗ Neglect to provide the rationale for the determination

97



98



99

Appeal of Determination			
Who	Why?	Appeal Decisionmaker	Steps
Any party can appeal a determination	- Based on - procedural irregularity that affected the outcome - new evidence not available at the time of the determination that could affect the outcome - bias/conflict of interest that affected the outcome	- Cannot be Title IX Coordinator, Investigator, or initial Decision-Maker - Must be trained	- Notify parties when appeal is filed - Implement appeal procedures equally for the parties - Give parties a reasonable and equal opportunity to make a statement in support of or challenging the dismissal - Notify all parties of result of appeal and rationale for the outcome

100

#1 Review File

- ▶ Review all material provided by the Title IX Coordinator
- ▶ Create a checklist to ensure all steps in the process are met and to document compliance
- ▶ Appeals are not de novo
- ▶ Confine the review to the record + appeal documents



101

Our Case: Allegations

Student Charlie alleges that student Remi repeatedly asked Charlie out on dates, even when Charlie repeatedly said no, bought Charlie unwanted gifts, incessantly texted, emailed, and messaged Charlie, even after being blocked on certain message platforms, followed Charlie around in ways that made Charlie nervous for their safety, and told a mutual friend they would do “whatever it takes” to get Charlie to be with them.

102

Charlie is alleging:

- A. Sexual assault
- B. Dating violence
- C. Stalking
- D. Hostile Environment



103

#2 Verify Impartiality

The appellate decisionmaker cannot be the Title IX Coordinator, investigator, or initial decisionmaker

The Title IX regulations require that any individual involved in the Title IX process—Title IX Coordinator, investigator, decisionmaker, appellate decisionmaker, or informal resolution facilitator—not be biased, have a conflict of interest, or prejudice any matter before them



104

The appellate decision-maker was previously Charlie’s teacher; can they be impartial?

- A. Yes, if it was at least 3 years ago
- B. Yes, unless Charlie was the teacher’s pet or class trouble-maker
- C. Yes, unless Remi’s parents object
- D. No, the appellate decision-maker should not know either party



105

The appellate decision-maker was the victim of similar conduct when they were in high school. Can the appellate decision-maker be impartial?

- A. Yes, the appellate decision-maker is a trained professional and can put that experience aside
- B. Yes, the appellate decision-maker is only deciding technical, procedural issues and so this type of experience will not influence them
- C. No, this experience is likely to create a bias and lead to prejudgment



106

The appellate decision-maker does an online search for both parties and their parents and finds their social media accounts. One parent has been very vocal criticizing the district and advocating for new leadership. Can the appellate decision-maker be impartial?

- A. No, not if deciding against that party would expose them to public attack
- B. No, this information cannot be ignored and will prejudice the appellate decisionmaker
- C. Yes, the appellate decisionmaker can separate the statements of a parent from the merits of the appeal
- D. Yes, if the Title IX Coordinator will allow them to serve anonymously



107

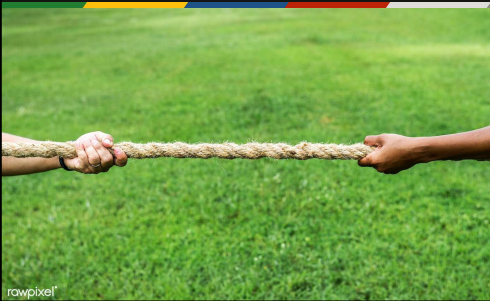
#3 Determine Validity of Appeal

- ▶ The appeal must be on one of the three authorized bases:
 1. Procedural irregularity + affected outcome
 2. New evidence + could have affected outcome
 3. Bias or conflict of interest + affected outcome
- ▶ Also consider whether the appeal is **timely** (consider your policy or timelines in determination of responsibility)



108

Who Decides?



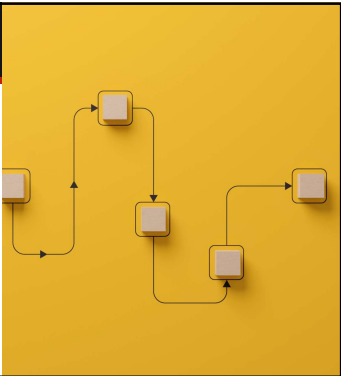
Title IX Coordinator or appellate decisionmaker?

If a dismissal is appealed, the Title IX Coordinator or designee who dismissed the complaint should not decide the validity of the appeal

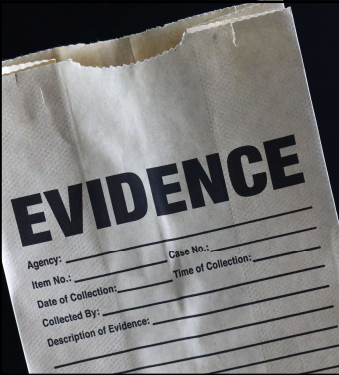
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Procedural Error

- ▶ Did the appealing party identify a procedural irregularity?
 - ▶ Failure to follow policy/procedure steps
 - ▶ Failure to analyze all relevant evidence
 - ▶ Inappropriate disqualification of evidence or questions
- ▶ Did the appealing party identify how they believe the error affected the outcome/decision made?



110



EVIDENCE

Agency: _____ Case No.: _____
Item No.: _____ Date of Collection: _____
Collected By: _____ Time of Collection: _____
Description of Evidence: _____

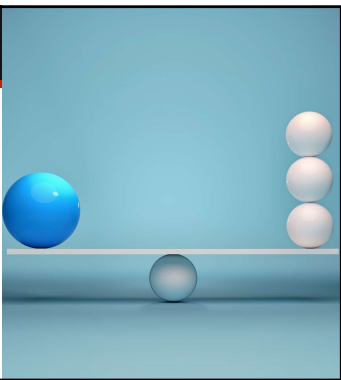
New Evidence

- ▶ Did the appealing party identify new evidence that wasn't reasonably available at the time the decision being appealed was made?
- ▶ Did the appealing party identify how they believe the new evidence could outcome/decision made?

111

Bias or Conflict

- ▶ Did the appealing party identify an alleged bias or conflict of interest by a Title IX team member?
- ▶ Did the appealing party identify how they believe the bias or conflict affected the outcome?



112



Reminder

Evaluation

- ▶ Evaluation just considers whether a valid appeal basis is being raised
- ▶ It does not address the "weight" of the argument (how persuasive it is)

113

Our Case: Appeal

The written determination found that there was insufficient evidence to support the allegations.

Charlie appeals. Charlie points to two concerns:

1. The investigator and decision-maker both relied on evidence that Charlie had made unsubstantiated allegations of sexual assault against another student the previous year. Charlie claims this evidence is irrelevant and that reliance on the evidence is both a procedural error and a sign of bias.

114

Our Case: Appeal

The written determination found that there was insufficient evidence to support the allegations.

Charlie appeals. Charlie points to two concerns:

2. After the decision, Remi reached out to Charlie on messenger with the following exchange:

Remi: Hey, I know we aren't supposed to talk. Just wanted to say I'm really sorry for everything

Charlie: What do you mean?

Remi: I just didn't mean for things to go so far.

Remi: I just liked you. I didn't think it would all bother you so much

Charlie claims this is new evidence that Remi engaged in the alleged conduct.

115

Should Charlie's appeal proceed?

A. Yes

B. No

C. Only the second issue



116

#4 Notify the Parties

- ▶ If the appeal is valid:
 - ▶ Must notify both parties of appeal in writing
 - ▶ Can be from the Title IX Coordinator
- ▶ Must provide the parties equal opportunity to submit written statements for or against the appeal
 - ▶ Consider using an appeal form that requests "just the facts"
 - ▶ Then request a written statement from both parties
 - ▶ Avoids the appealing party feeling cheated that they did not get to respond the responding party's appeal statement



117

#5 Stick to Timeframes

- ▶ Grievance process must include reasonably prompt time frames, including for filing and resolving appeals
- ▶ You can temporarily delay time frames for the grievance process temporarily for good cause with written notice – needs to be in process
- ▶ Must provide written notice of delay to all parties (complainants & respondents)
 - ▶ Must include reason for and length of delay
- ▶ When deciding whether to grant a delay or extension, consider the interests of:
 - ▶ Promptness
 - ▶ Fairness to the parties
 - ▶ Accuracy of adjudications



118

The appellate decisionmaker has other job responsibilities and they blow up shortly after being assigned to an appeal. Good cause for delay?

A. Yes

B. No



119

Remi requests access to the extensive directly related evidence and an additional ten days to review it and provide a statement against the appeal? Good cause?

A. Yes

B. No



120

How long should the extension be?

- A. 10 days; if there is good cause, you must provide the requested amount of time
- B. 5 days; you also need to consider the interests of promptness and fairness
- C. 10 days; but only if Remi identifies specific conflicts like finals or that their parent or advisor is traveling
- D. It depends on whether you can grant the 10 days and still complete with appeal process within the time provided in your policy



121

Do you grant the same extension and access to the DRE to Charlie as well?

- A. Yes, if Charlie requests it and provides a legitimate reason
- B. No, if you get Charlie's statement first, you can start writing your decision, which will be more efficient
- C. Yes, the rules require that you treat the parties equally in the appeals process



122

#6 Analyze Appeal

- ▶ This is where you consider the “weight” of the arguments made in the appeal
- ▶ Make sure to consider arguments raised by both sides
- ▶ Typical appeal issues:
 - ▶ Dismissals
 - ▶ Second-Guessing
 - ▶ New Evidence
 - ▶ Impartiality



123

The Title IX Coordinator dismissed a complaint of fondling because the respondent is in kindergarten and so the conduct could not have been for purposes of sexual gratification.

- A. Procedural error
- B. Prejudgment
- C. Not an appealable issue
- D. Affected the outcome
- E. Did not affect the outcome



124

The Title IX Coordinator dismissed a complaint of sexual assault on the bus because the bus video did not show the students interacting.

- A. Procedural error
- B. Prejudgment
- C. Not an appealable issue
- D. Affected the outcome
- E. Did not affect the outcome



125

A party appeals based on the investigator’s failure to interview a key witness. According to the investigator, the witness refused to participate.

- A. Procedural error, affected the outcome
- B. Procedural error, did not affect the outcome
- C. Not a procedural error



126

Which would not be evidence of prejudice?

- A. A decisionmaker failing to address numerous arguments raised by one party while addressing the arguments of the other
- B. An investigator repeatedly calling the Complainant "the victim" during interviews with parties and witnesses
- C. A decisionmaker repeatedly finding in favor of complainants in multiple cases in a row
- D. A Title IX Coordinator dismissing a complaint because the Complainant could not identify any witnesses, messages, or videos as evidence
- E. None of the above



127

A party's advisor was removed from the interview for being disruptive and the party was not allowed to obtain a new advisor before continuing the interview.

- A. Procedural error, affected the outcome
- B. Procedural error, did not affect the outcome
- C. Not a procedural error



128

The grievance process lasted 8 months and the Title IX team failed to provide notice of the need for extensions.

- A. Procedural error, affected the outcome
- B. Procedural error, did not affect the outcome
- C. Not a procedural error



129

After a determination of insufficient evidence, the respondent sends a text message to the complainant admitting the conduct and laughing because "double jeopardy" means nothing can be done to them.

- A. New evidence, could affect the outcome
- B. New evidence, could not affect the outcome
- C. Not new evidence



130

After a determination of insufficient evidence, a classmate comes forward to say that the respondent admitted the conduct to them shortly after the incident.

- A. New evidence, could affect the outcome
- B. New evidence, could not affect the outcome
- C. Not new evidence



131

After a determination of sufficient evidence, the respondent points to dispositive evidence in the written determination that was not in the DRE or investigation report (as evidence that the decision-maker was biased).

- A. Bias, affected the outcome
- B. Bias, did not affect the outcome
- C. Not bias

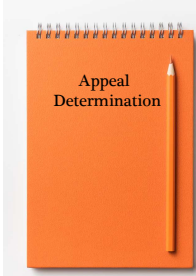


132

#7 Write Appeal Determination

Decision Elements:

- ▶ Introduction
- ▶ Appeal Determination
- ▶ Relevant Procedural Background (for timeliness)
 - ▶ Dismissal/decision date
 - ▶ Appeal date
 - ▶ Date(s) for responses to appeals
- ▶ Standard of Review
- ▶ Summary of Written Determination
- ▶ Written Statements for/against appeal
- ▶ Analysis & Decision – consider each appeal basis separately
- ▶ Conclusion



133

Analysis & Decision

- ▶ Consider all factors for/against the appeal basis/argument – SHOW YOUR WORK!
- ▶ Include policy definitions and procedural requirements
- ▶ Assess whether there is sufficient evidence of impact on the outcome
- ▶ Remember the preponderance of the evidence standard



134

#8 Affirm, Reverse, or Remand

Affirm	Reverse	Remand
• No error or • The error could not have impacted the outcome	• The appeal makes clear the decision was incorrect	• More information is needed • Return to the investigation or determination stage (possibly with a new investigator or decisionmaker)



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#9 Close the File



- ▶ Files related to a Title IX complaint must be maintained for seven years
- ▶ Finalize the file and transmit it to the Title IX Coordinator or their designee for the case
- ▶ If you'd like to avoid being called on in six years to find your files, compile and send them to the Title IX Coordinator now
- ▶ Think broadly!



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Record Keeping

- ▶ Title IX Records must be maintained for at least **7 years**
 - ▶ Reports to the Title IX Coordinator regarding misconduct that reasonably may constitute sexual harassment
 - ▶ Complaints
 - ▶ Informal Resolution documentation
 - ▶ Documentation of the grievance process (including any emergency removal, dismissal, or appeal)
 - ▶ Determination
 - ▶ Actions to respond (including supportive measures, disciplinary sanctions, remedies)
 - ▶ Decisionmaking (whether to initiate a complaint, impose a disciplinary removal, offer informal resolution, etc.)
 - ▶ Training records



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1



2

People Entitled to Notice

- ▶ Students
- ▶ Parents, guardians, or other authorized legal representatives of elementary and secondary school students
- ▶ Employees
- ▶ Applicants for admission and employment
- ▶ All unions and professional organizations with collective bargaining or professional agreements with the recipients



3

Contents of Notice

- ▶ Statement that recipient does not discriminate on basis of sex and prohibits sex discrimination in any education program or activity it operates
- ▶ Statement that inquiries may be referred to Title IX coordinator, to OCR, or both
- ▶ Name and contact info for Title IX coordinator
- ▶ How to locate nondiscrimination policy
- ▶ How to report info about conduct that may constitute sex discrimination, how to make a complaint, and how to locate grievance procedures



4

Publication of Notice

- ▶ Website
- ▶ Each handbook, catalog, announcement, bulleting, and application form to persons entitled to notice or which are used in connection with recruitment of students or employees
- ▶ If needed because of format or size of publication, may simply include a statement of prohibition of sex discrimination in education programs or activities, and that individuals may report concerns to the Title IX coordinator, and provide the location of the notice on the website



5



T&H Title IX Tip

Check to make sure your notice of nondiscrimination is on/in:

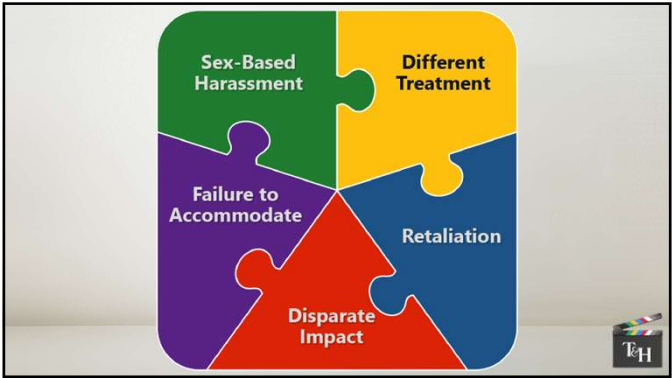
- ✓ your school district’s website
- ✓ employee handbooks
- ✓ student handbooks
- ✓ student codes of conduct
- ✓ course catalogs
- ✓ program handbooks
- ✓ student recruiting brochures or materials
- ✓ applications sent out to prospective students
- ✓ applications for employment
- ✓ employee recruiting brochures or materials and
- ✓ other similar materials



6



7



8

Different Treatment

Different treatment discrimination occurs when an individual or group of individuals is treated differently because of their sex.

Different treatment discrimination is generally intentional—the person or entity intended to treat the individuals differently on the basis of sex. But it does not require bad faith, ill will, or evil motive.

9

Different Treatment Test

- ▶ Was the aggrieved person a member of a **protected class** (sex)
- ▶ Was the aggrieved person treated differently than a **similarly situated** individual, not a member of the protected class?
- ▶ Is there a **legitimate, non-discriminatory reason** for the different treatment?
- ▶ Is there evidence that the reason is **pretext** for unlawful discrimination?

10

Similarly Situated

- ▶ Students are similarly situated when they are comparable, even if not identical, in relevant respects.
- ▶ The “relevant respects” will vary by situation.

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What is Pre-Text?

- ▶ Does the asserted reason explain the actions?
- ▶ Does evidence contradict a stated reason for a disparity, exposing it as false?
- ▶ Were similarly situated individuals treated differently?
- ▶ Were the actions within the bounds of policies, procedures, and past practices?

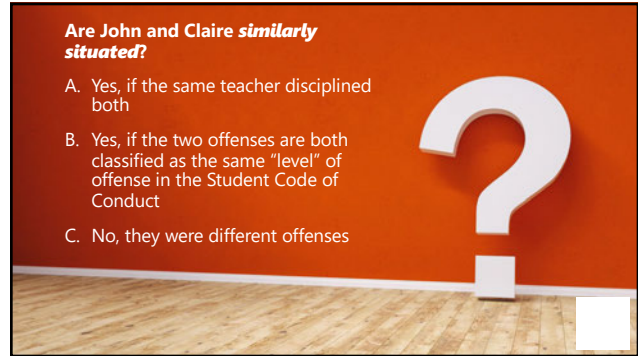
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Different Discipline

- ▶ Mr. & Mrs. Bender complain that their son, John, received a 1-week disciplinary alternative placement, while a female student, Claire Standish, received a 1-day in-school suspension "for basically the same thing."
- ▶ Upon investigation, the Claire's ISS was for yelling at her teacher and being disruptive in class, while the John's discipline was for a fight in the hall.

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Are John and Claire *similarly situated*?

- A. Yes, if the same teacher disciplined both
- B. Yes, if the two offenses are both classified as the same "level" of offense in the Student Code of Conduct
- C. No, they were different offenses

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Different Discipline

- ▶ John and Claire are both caught smoking in the restroom.
- ▶ Claire receives a 1-hour after school detention
- ▶ John gets an all-day Saturday detention.
- ▶ It is Claire's first offense. It is John's third offense

15



Was John *treated differently* than a similarly situated individual?

- A. Yes, it was the same offense
- B. No, because of the difference in their disciplinary background
- C. Yes, but their disciplinary history is a non-discriminatory reason for the different treatment

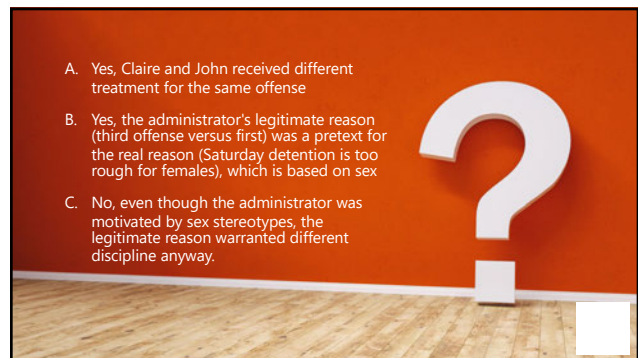
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Different Discipline

- ▶ John and Claire are both caught smoking in the restroom
- ▶ Claire receives a 1-hour after school detention
- ▶ John gets an all-day Saturday detention
- ▶ It is Claire's first offense. It is John's third offense
- ▶ **What if** the administrator who disciplined them has been heard saying they'd never send a female student to Saturday detention because those characters are just too rough?

17



- A. Yes, Claire and John received different treatment for the same offense
- B. Yes, the administrator's legitimate reason (third offense versus first) was a pretext for the real reason (Saturday detention is too rough for females), which is based on sex
- C. No, even though the administrator was motivated by sex stereotypes, the legitimate reason warranted different discipline anyway.

18



Enhanced Learning Opportunities

- ▶ A middle school sends female students to a "Girls in STEM" Robotics Conference. There is not an equivalent opportunity for male students.
- ▶ The principal justifies this decision based on historical numbers showing female students are underrepresented in advanced science classes at the high school the middle school feeds into.

19

Was the different treatment discriminatory?

- A. Yes, whenever a school offers an opportunity to one sex and not the other, it is sex-discrimination
- B. No, remedying the the continuing effect of historical discrimination is a legitimate, nondiscriminatory reason to provide additional opportunities for girls
- C. None of the above, it depends on the needs of the students



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Enhanced Learning Opportunities

- ▶ That same middle school sends male students to a leadership academy geared specifically for male students.
- ▶ The principal justifies this decision based on historical numbers showing male students are more likely to have discipline and attendance issues – something this program says its graduates do better at.

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Is it sex discrimination to send only boys to a leadership academy?

- A. Yes, anytime students are treated differently based on sex it is discrimination
- B. No, there is a special opportunity for girls (STEM) and a special opportunity for boys (leadership), so each group has a benefit
- C. Yes, the leadership academy is not a comparable opportunity to the Girls in STEM conference
- D. Yes, the leadership academy is to address discipline and attendance, so those are more appropriate criteria than sex
- E. C & D



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Disparate Impact

Disparate impact discrimination occurs when a facially neutral policy, rule, or practice—applied evenhandedly—has a disproportionate impact or discriminatory outcome on a particular sex. It is often unintentional. The focus is on the *consequences* of the policy or practice rather than the intent of its creation or implementation.

- Consider whether the District has a substantial and legitimate justification for using the policy, rule, or practice
- Generally, there is no respondent



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Disparate Impact Test

- ▶ Does a neutral policy result in an adverse impact on students of a particular sex?
- ▶ Is the applicable policy necessary to meet an important educational goal?
- ▶ Is there a comparably effective alternative available that would meet the stated educational goal with less of a burden or adverse impact on the disproportionately affected group?

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Disparate Impact

- ▶ The student code of conduct at Rydell High School prohibits use of profanity
- ▶ The student population is about 50/50 male/female
- ▶ Reviewing the school's discipline data, you see that the students disciplined for this offense are 37/63 male/female

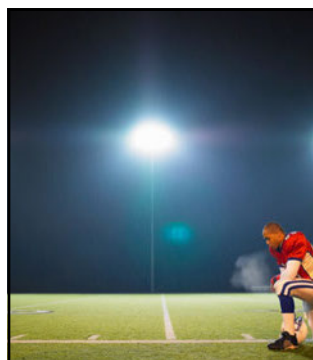
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Is this sex discrimination?

- A. Yes, it may create a hostile environment
- B. Yes, it is different treatment if teachers apply the rule differently (refer boys only for the F-word, but refer girls for other language)
- C. Yes, it is disparate impact if the statistics show significant disproportionality
- D. No, not disparate impact despite disproportionality; prohibiting profanity furthers the important educational goal of maintaining a productive learning environment
- E. Yes, it is evidence of retaliation
- F. B & D



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Disparate Impact

- ▶ West Canaan High School allows booster clubs to raise money for the Coyotes athletics teams
- ▶ The football booster club regularly raises more money for their team than all of the other sports combined

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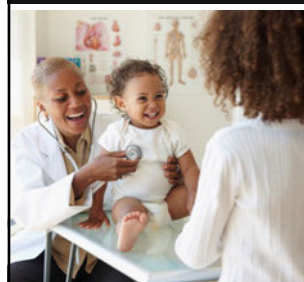
Is this sex discrimination?

- A. No, the school is not responsible for the actions of parent groups
- B. No, football is excluded when reviewing sex equity between teams because there is not a comparable female sports
- C. Yes, if it results in the football team having more or better resources (e.g. nicer equipment, better coaches, more promotion) than female teams at the school



28

Failure to Accommodate



Failure to Accommodate occurs when a school district fails to provide a reasonable accommodation – such as breaks, intermittent absences for medical appointments, or changes to schedules – to a pregnant or parenting student.



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Pregnancy Accommodations



- ▶ Juno reports to Teacher A that she is pregnant. Teacher A is extremely supportive, allowing the student to sit at a table in the classroom instead of a small desk and re-opening closed assignments and tests for her to complete.
- ▶ Teacher B noticed that Juno looked pregnant, but Juno didn't feel comfortable talking to Teacher B about it.
- ▶ Neither Teacher A nor Teacher B referred Juno to the Title IX Coordinator.
- ▶ Juno's grades began to suffer in Teacher B's class, in part due to pregnancy-related attendance issues due to complications with her pregnancy.

30

If Juno complains to the counselor that Teacher B is not treating her fairly, what should happen?

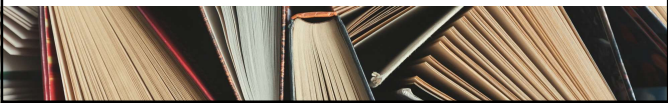
- A. The counselor should talk with Teacher B about allowing Juno to redo assignments and excusing her absences - without disclosing the pregnancy
- B. The counselor should report to the Title IX Coordinator, who should tell Teacher B to make accommodations for Juno
- C. The counselor should tell Juno that the Title IX Coordinator can help her get accommodations and how to contact the Title IX Coordinator
- D. The counselor should report pregnancy discrimination to the Title IX Coordinator



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Retaliation

Intimidation, threats, coercion, or discrimination against any person by the recipient, a student, or any employee, or other person authorized by the recipient to provide aid, benefit, or service under the recipient's education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.



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Retaliation Test

- ▶ Did the aggrieved person engage in protected activity?
- ▶ Did they suffer an adverse consequence?
- ▶ Is there a causal connection between the activity and the consequence?
- ▶ Is there a legitimate, non-retaliatory reason for the adverse conduct?
- ▶ Is there evidence that the reason is pretext for unlawful retaliation?



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Example

- ▶ The principal at Northshore High School instituted a dress code that prohibited female students from dressing "provocatively."
- ▶ At a meeting with school leaders and parents, the principal defended the rules as necessary to prevent sexual harassment and assault.
- ▶ Students emailed the principal and staged a walkout, protesting that the dress code was discriminatory.
- ▶ The principal threatened the students with expulsion, removal from NHS, and loss of privilege to attend prom.

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Were the principal's threats retaliatory?

- A. No, students engaged in a walk out are truant and disrupting the school environment so discipline is appropriate
- B. Yes, if the discipline imposed on these students exceeds typical discipline for truancy and disruption
- C. Yes, but only if the principal follows through and imposes the threatened discipline



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Enforcement & Prevention

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Title IX Enforcers



OCR

- Regional offices across the U.S., including D.C.
- Low bar for opening complaints
- Remedies typically include policy changes, training, other remedial efforts



Department of Justice

- Typically handle higher profile cases
- Investigatory and resolution processes are similar to OCR, but can file Federal lawsuits
- *Title IX Special



Department of Health & Human Services OCR

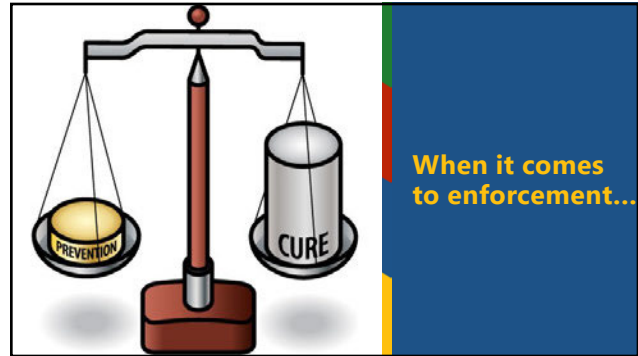
- Can investigate Title IX complaints at educational entities that receive HHS funds
- Includes Headstart
- Recently focused on transgender issues



Federal Courts

- Individuals who believe their rights have been violated can sue the school
- Intense litigation process
- Can lead to significant monetary damages

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Complaints arise in different ways:

- ▶ Some start as internal complaints that are unresolved and are escalated by the complainant
- ▶ Some complaints are filed with OCR before school administrators are even aware there is an issue
- ▶ Some complaints are filed at the same time a complainant files a lawsuit, or even after



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The Proactive Title IX Coordinator



40

You Want Your "Title IX House" To Be In Order

- ▶ All required training complete and documented
- ▶ All required notices in order
- ▶ Website compliant
- ▶ Policies & procedures compliant
- ▶ Adherence to recordkeeping requirements
- ▶ Documented reports/complaints
- ▶ Complete documentation of grievance process



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Proactive Response = Prevention

- ▶ Take internal complaints seriously
- ▶ Take meaningful measures to resolve meritorious complaints
- ▶ If there are issues, address them
- ▶ Take voluntary steps at the outset to avoid compulsory steps at the conclusion

42

Duty to Operate Free from Sex Discrimination

Regardless of whether a complaint is initiated

When informal resolution is used

When a complaint is dismissed

When there is a determination that sex discrimination occurred



Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program or activity

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What Is a Proactive Title IX Coordinator?

- ▶ Consider internal compliance reviews or audits to show proactive efforts to identify and address potential sex discrimination
- ▶ Educate your school community about sex discrimination, sex-based harassment, and protections for those who are pregnant or have related conditions
- ▶ Provide, facilitate, or coordinate training to personnel regarding prohibited conduct, and how to prevent, identify, report, and respond to sex discrimination

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What Is a Proactive Title IX Coordinator?

- ▶ Provide, facilitate, or coordinate training to students (and even parents) regarding sex discrimination and how to report sex discrimination
- ▶ Work to ensure all members of the school community have ample resources notifying them of your school district's nondiscrimination statement and Title IX policies and procedures
- ▶ Make sure everyone knows your school district has a Title IX Coordinator to whom sex discrimination can be reported and who can assist those who experience sex discrimination in your district's programs and activities

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