The Title IX Soundtrack: From Report to Resolution

Region 11 ESC
Title IX Workshop
June 29, 2026

Thompson & Horton LLP

HOUSTON • DALLAS • AUSTIN • FORT WORTH

1

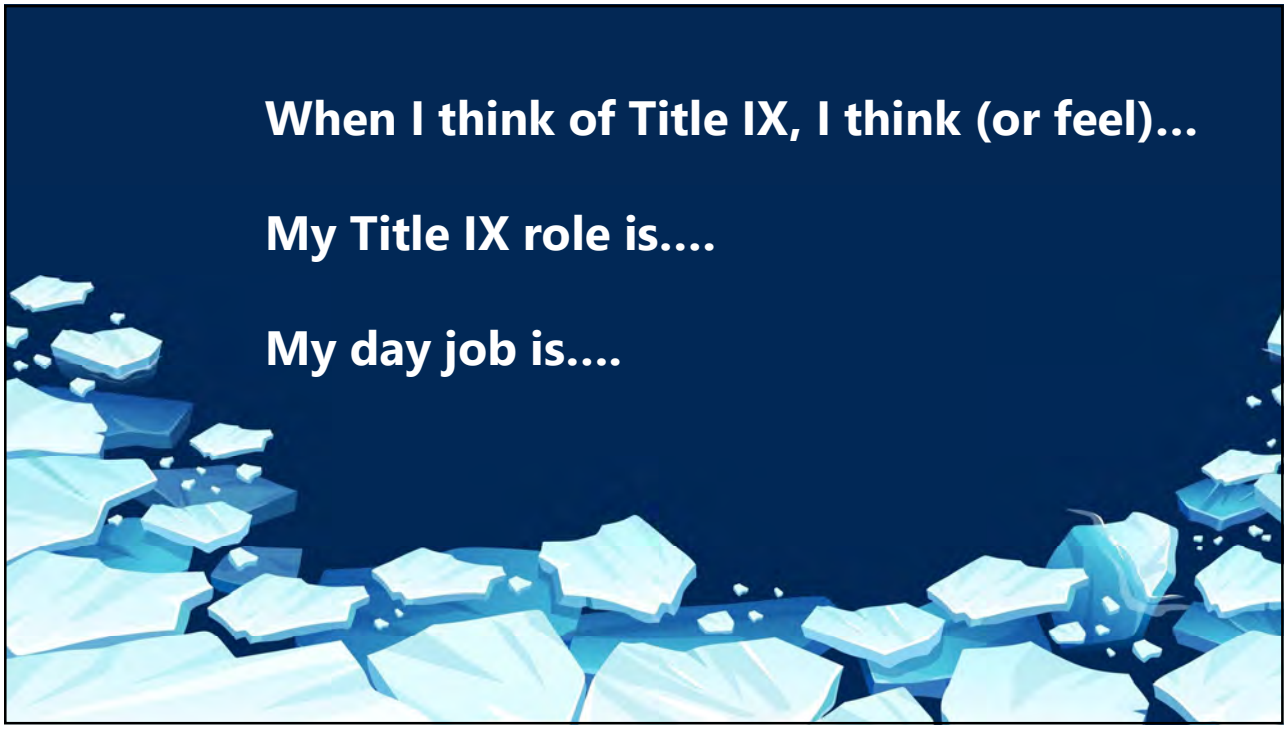
AM SET LIST

***Step-by-Step*: The Title IX Process**

- Intro to Title IX
  - Scope of Title IX
  - Scope of Title IX Grievance Process
- Starting the Title IX Grievance Process
  - Title IX Coordinator's Responsibilities
  - Initial Response & Evaluation
  - Serving Impartially

2

© 2026 Thompson & Horton LLP



3

4

© 2026 Thompson & Horton LLP

5

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

The Patsy T. Mink Equal Opportunity in Education Act, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a)

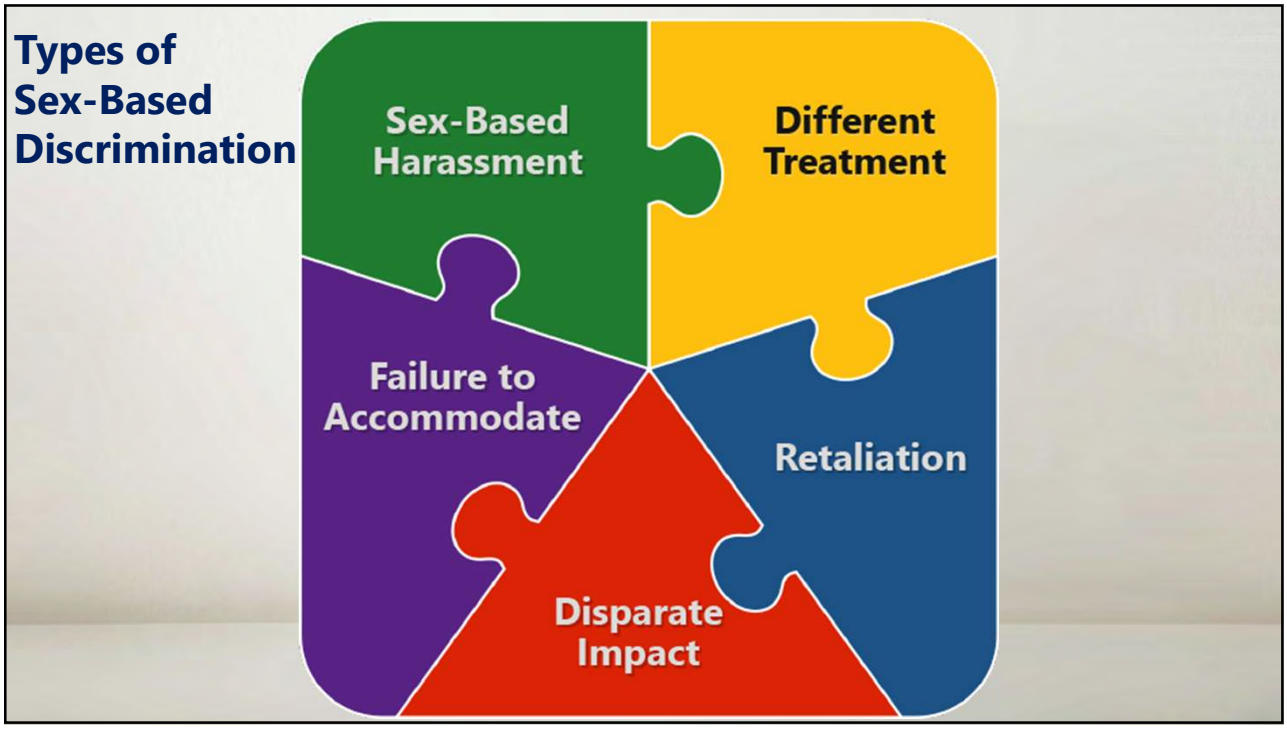
6

© 2026 Thompson & Horton LLP

Title IX's Scope

Recruitment, admissions, and counseling	Financial assistance	Athletics	Sexual harassment
Treatment of pregnant and parenting students	Discipline	Single-sex education	Employment

7



8

Responsibility to Respond

The district is responsible for promptly and effectively responding to discrimination and harassment in a manner that complies with regulatory requirements and:

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

9

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.

10

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

11

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.

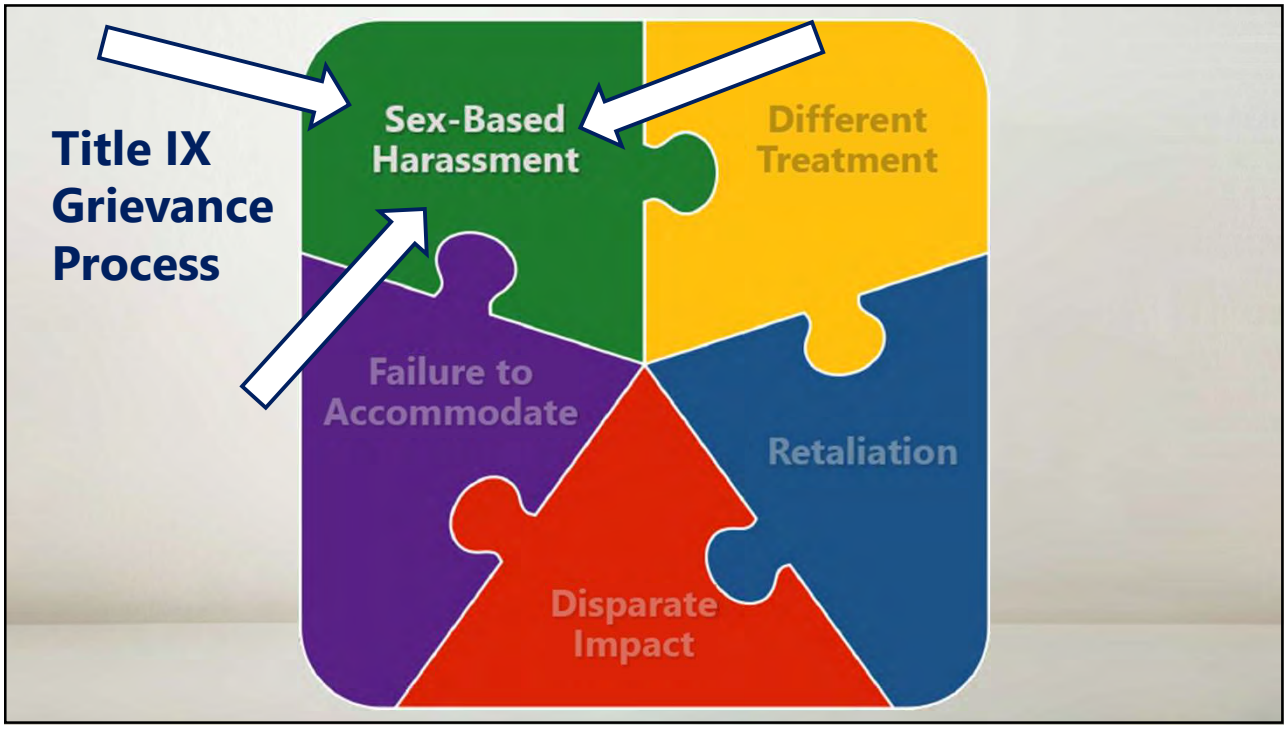
12

© 2026 Thompson & Horton LLP

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.

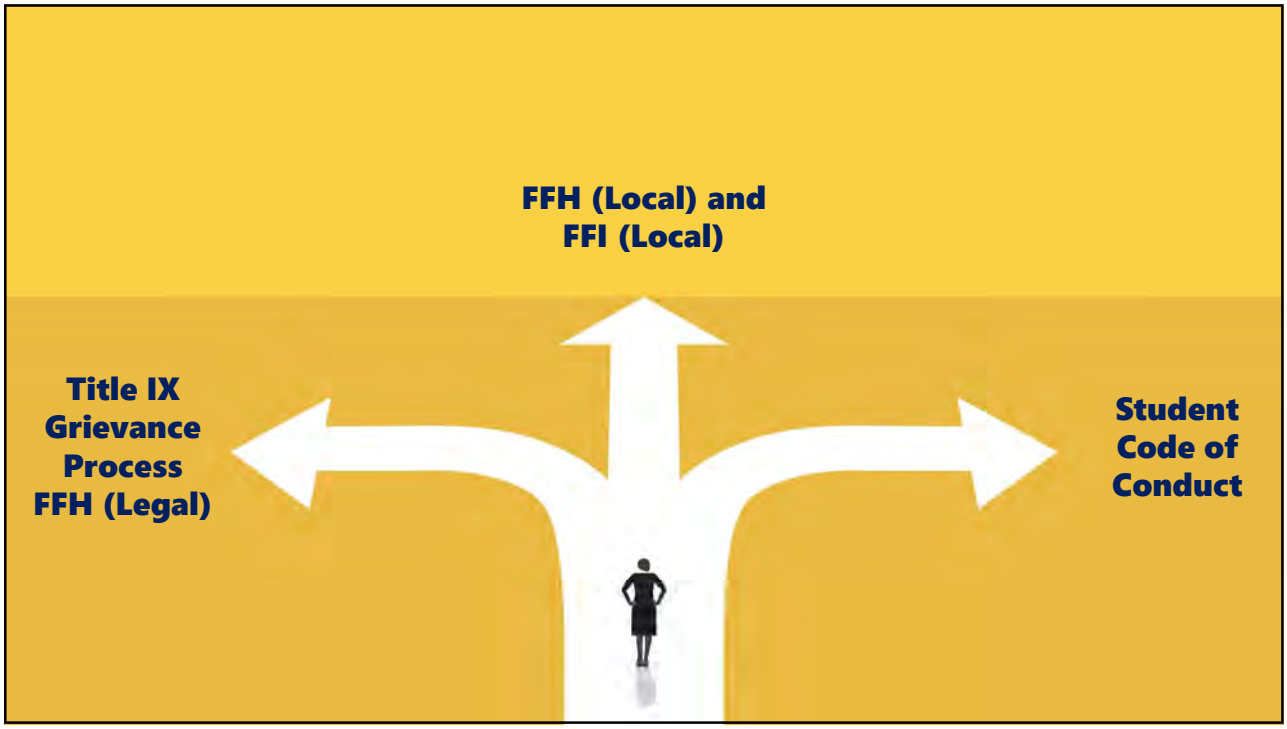
13



14

I received a sexual misconduct report. Now what?

15


FFH (Local) and FFI (Local)
Title IX Grievance Process FFH (Legal)
Student Code of Conduct

16

Title IX Guidebook Forms

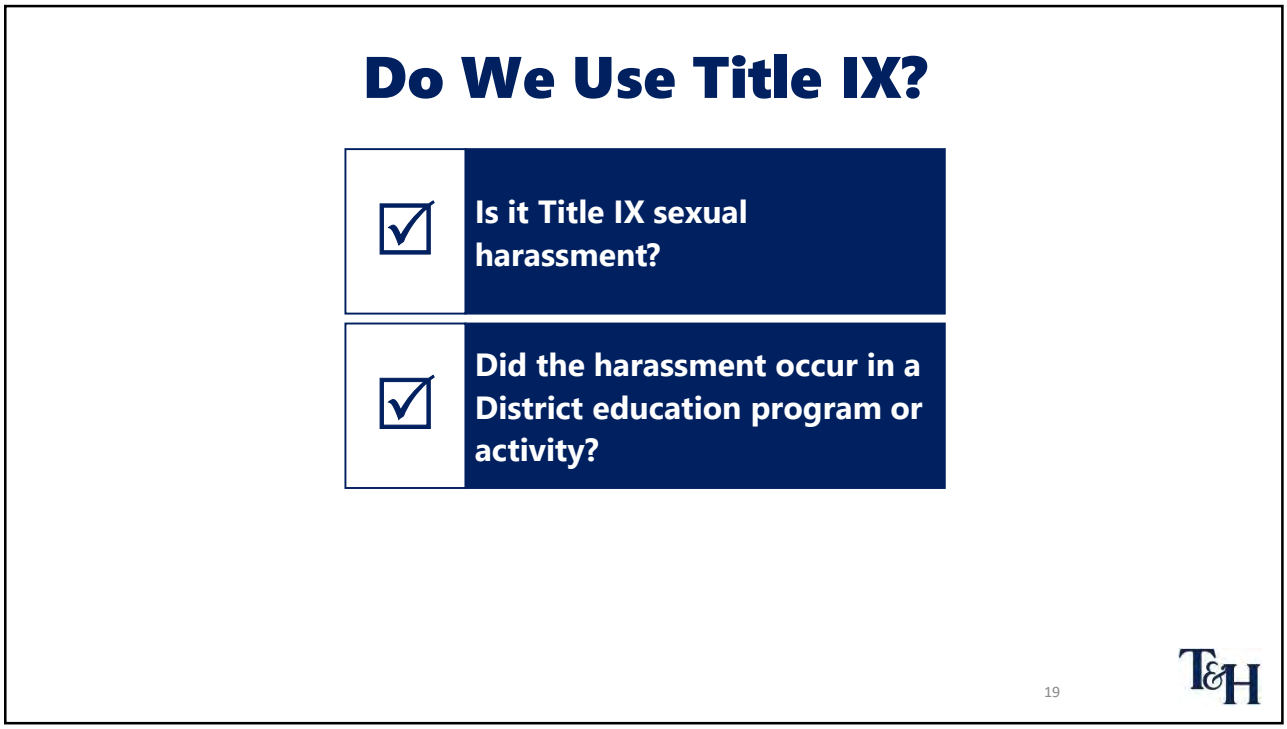
17

Do We Use Title IX?

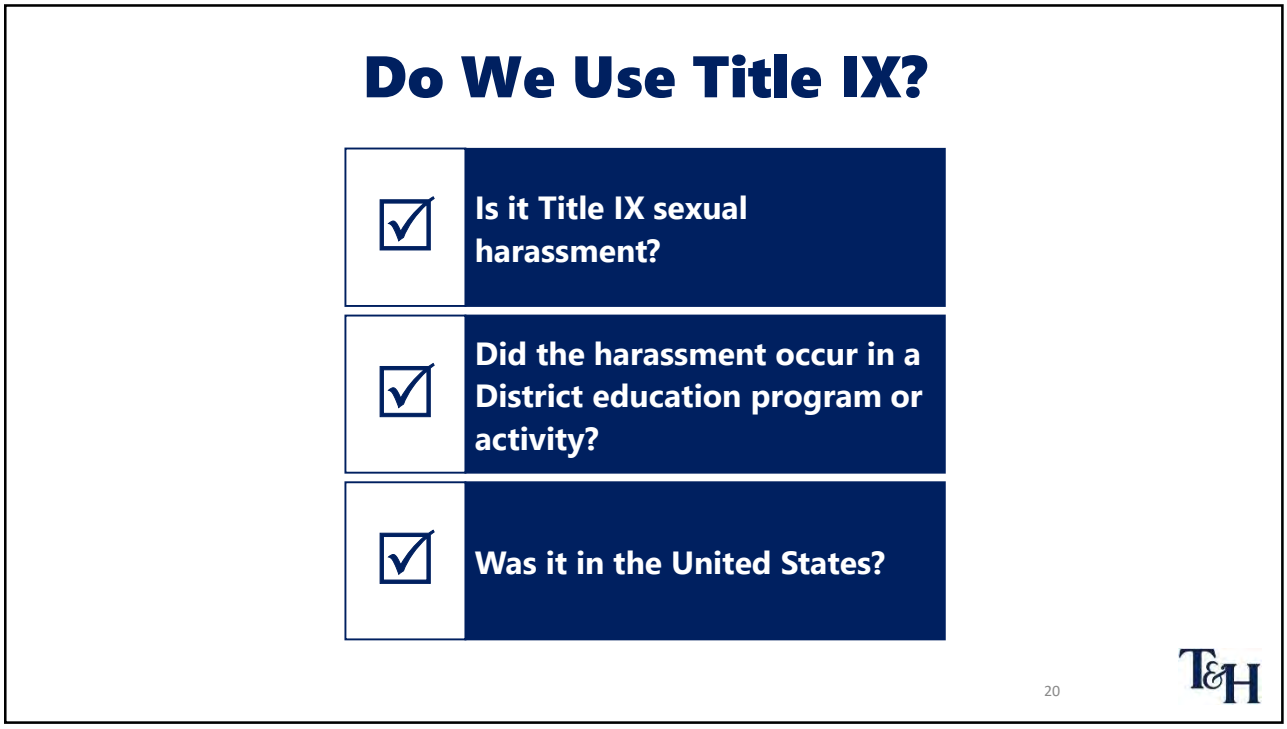
☑ **Is it Title IX sexual harassment?**

18

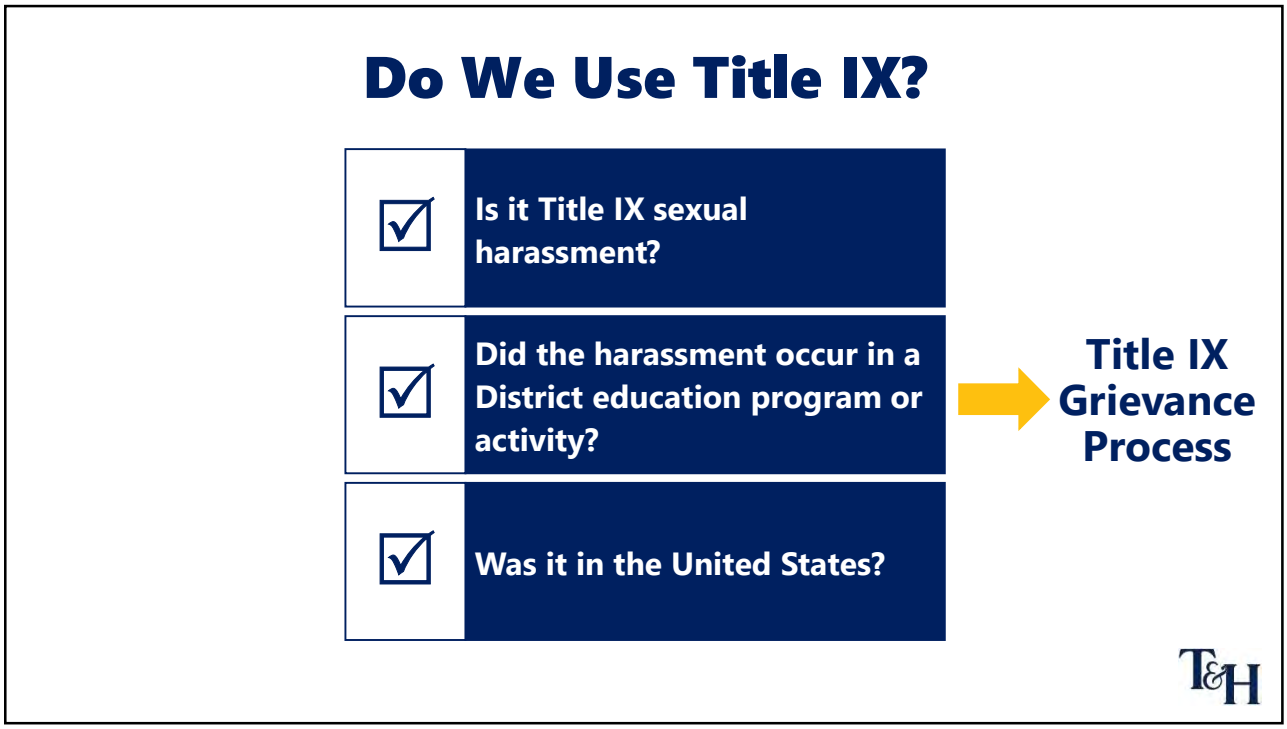
18


Do We Use Title IX?
Is it Title IX sexual harassment?
Did the harassment occur in a District education program or activity?
19

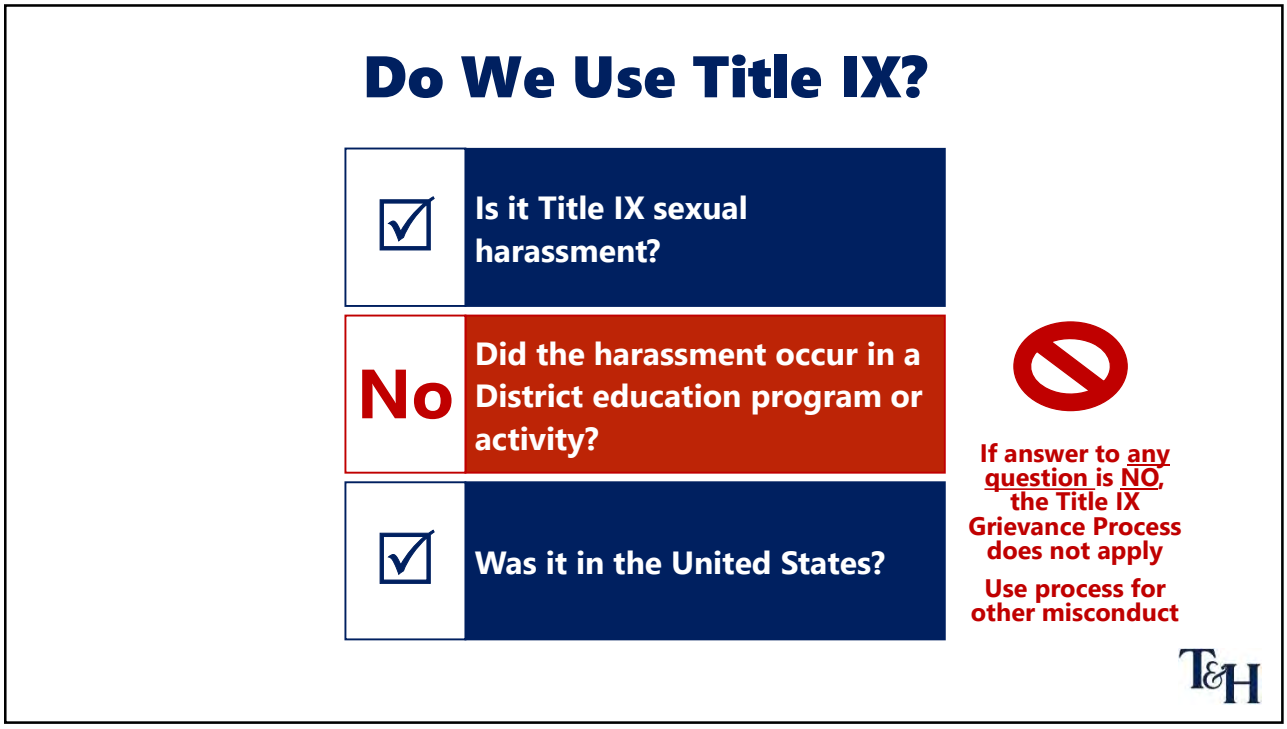
19


Do We Use Title IX?
Is it Title IX sexual harassment?
Did the harassment occur in a District education program or activity?
Was it in the United States?
20

20


Do We Use Title IX?
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

21


Do We Use Title IX?
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

22

Let's start with the easiest question first

☑ Was it in the United States?

23

23

Did it occur in the United States?

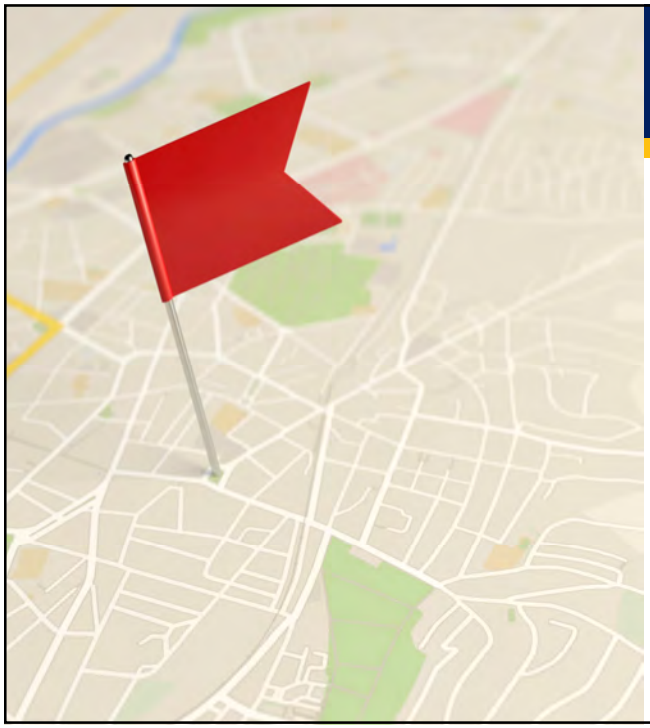
24

Next ask...

- ☑ Did the harassment occur in a District education program or activity?
- ☑ Was it in the United States?

25

25



Education Program or Activity

- Conduct within the District's operations
- Off-campus conduct
  - When the district has substantial control over the alleged harasser and the context in which the harassment occurs
  - Be careful of external conduct that leads to a hostile environment ***within*** the education program or activity

26

Conduct within the District's Operations

- Classroom
- Hallway
- Restroom
- Lunchroom
- Lockers
- Parking Lot
- Computer
- Field Trip
- Gym
- Playing Field
- Bus
- Athletics
- Arts and clubs

27

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?)

28

Then assess the alleged conduct…

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

29

29

Title IX Sexual Harassment

Title IX sexual harassment means unwelcome conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- The Big 4
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

30

Title IX Sexual Harassment

Title IX sexual harassment means **unwelcome conduct** on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- The Big 4
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

T&H

31

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

32

Unwelcome?

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

33

Group Discussion

Is this conduct unwelcome?

Why or why not?

34

Title IX Sexual Harassment

Title IX sexual harassment means unwelcome conduct **on the basis of sex** that satisfies one or more of the following:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- The Big 4
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

35

Sex-based?

Jordan, a male high school student, drops out of football to join theater. The football players repeatedly taunt him, saying things like:

- ▶ "You're too weak to be a real man."
- ▶ "Why don't you play football like normal guys?"
- ▶ "Oh, I get it. You're gay"
- ▶ "Man up."

36

Group Discussion

37

On the Basis of Sex

The preamble to the 2020 Rules explains:

- 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

38

Title IX Sexual Harassment

Title IX sexual harassment means unwelcome conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo Harassment**
- Hostile Environment Harassment
- The Big 4
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

39

Quid Pro Quo

An employee of the school district → conditioning the provision of an aid, benefit, or service of the district → on a person's participation in unwelcome sexual conduct.

40

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 context is relevant to the determination of whether a condition is implied

41

Quid Pro Quo

- "Sleep with me and you will receive an A"
- "Your low grade had nothing to do with you not wanting to go out with me"
- "If you don't sleep with me, I won't renew your position"
- "Come to my conference hotel room tonight for a nightcap so we can talk about that recommendation you asked me for. I feel like I need to get to know you better."

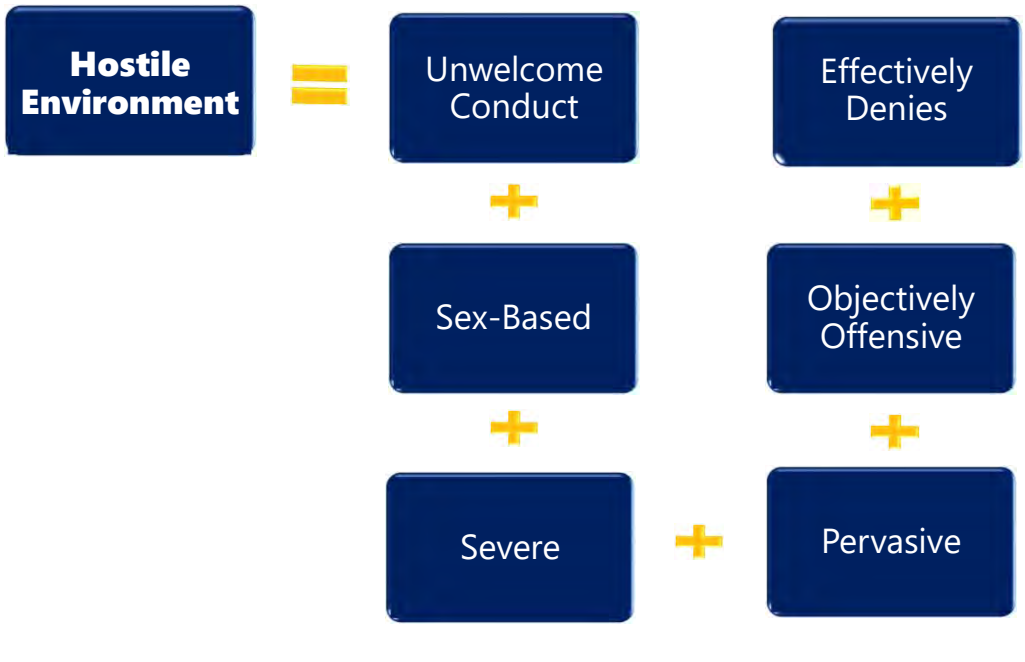
42

Title IX Sexual Harassment

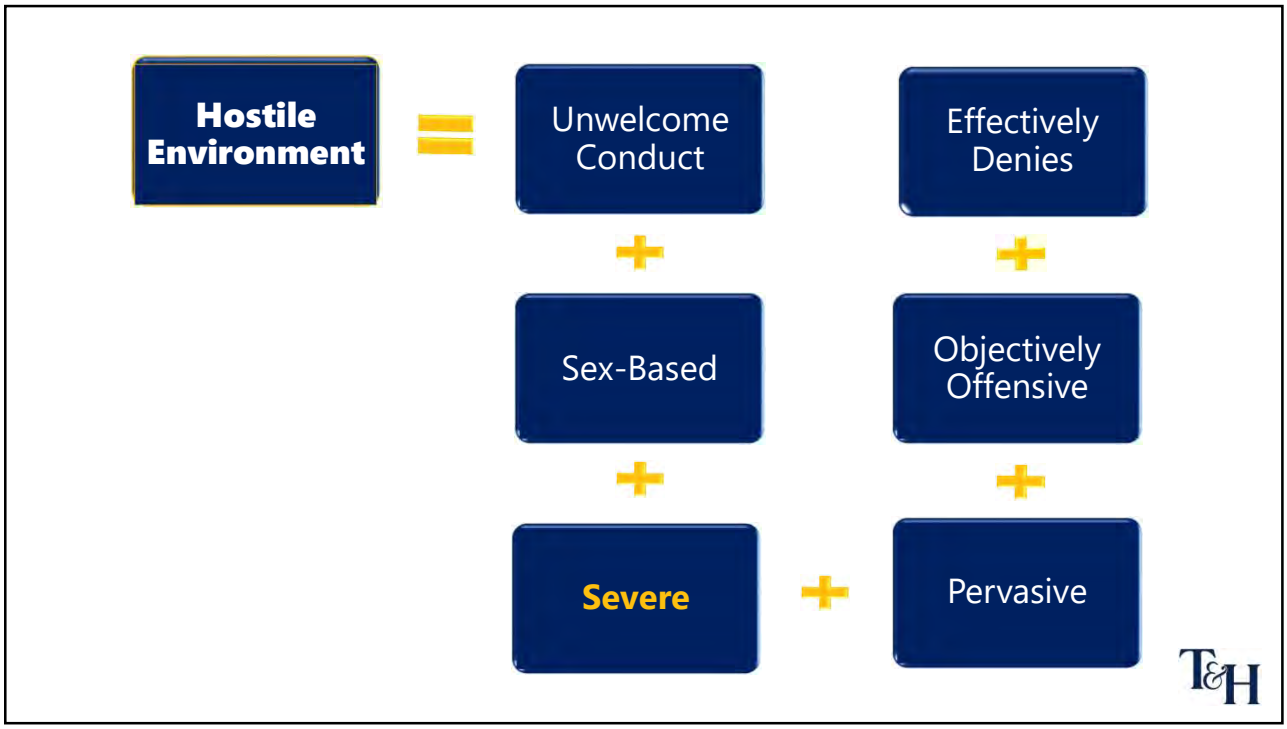
Title IX sexual harassment means unwelcome conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo Harassment
- **Hostile Environment Harassment**
- The Big 4
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

43



44



45

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)

46

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

  Sanches v. Carrollton-Farmers Branch Indep. Sch. Dist., 647 F.3d 156 (5th Cir. 2011)

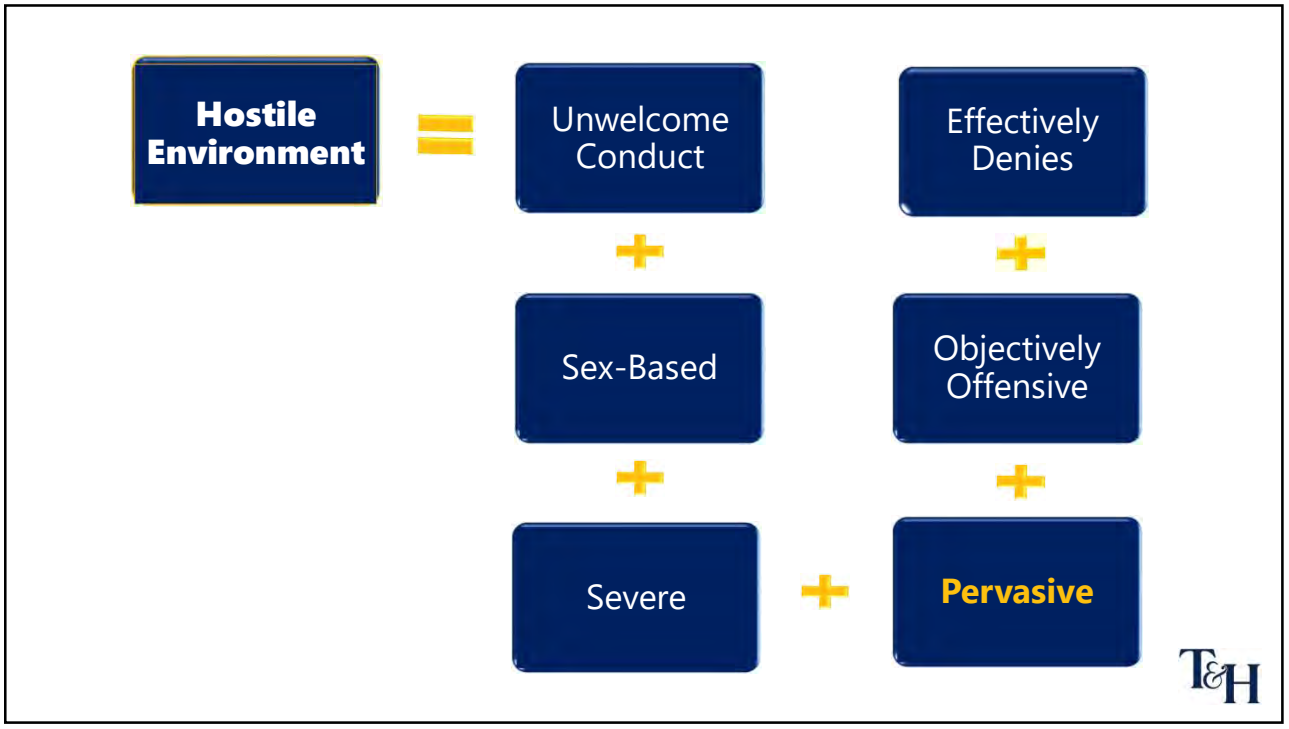
- Must be extreme, and not merely rude or unpleasant

  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)

47



48

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)

49

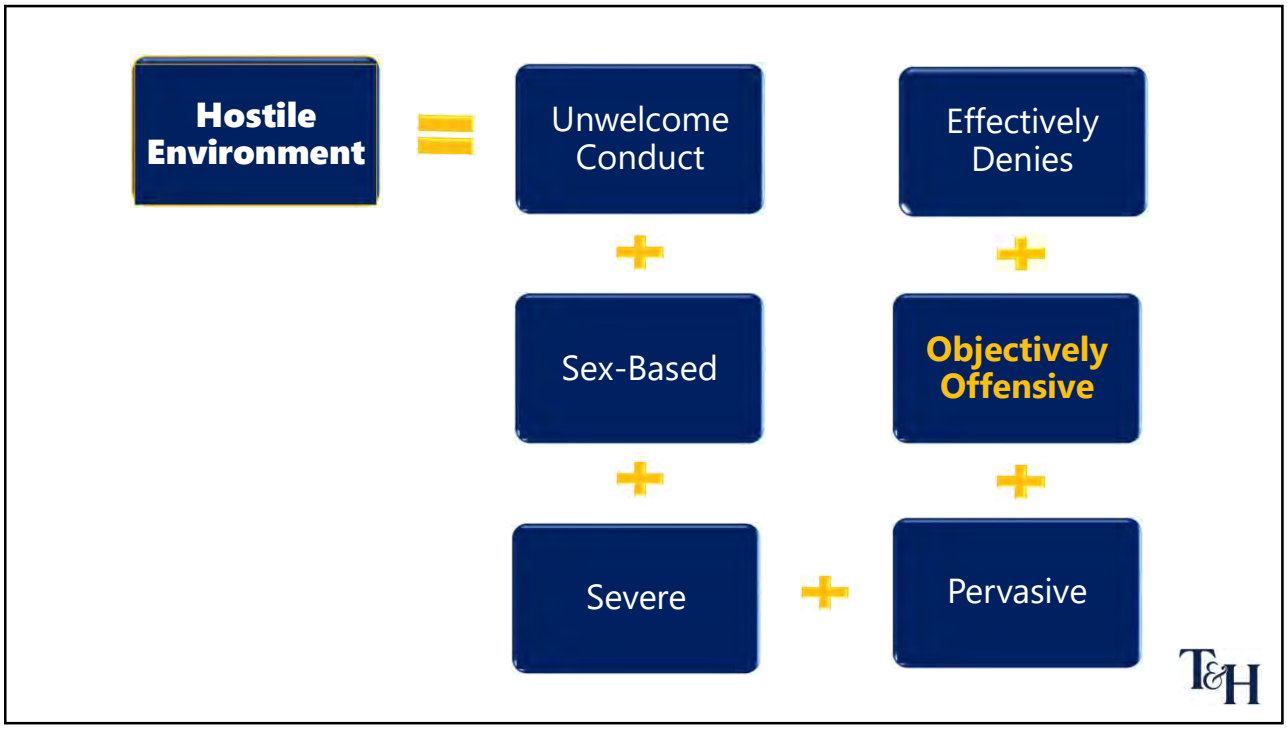
Pervasive … The Courts Have Spoken

- Single or isolated incidents are generally not enough
- 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)
- But with technology, a single action could become widespread

T&H

50

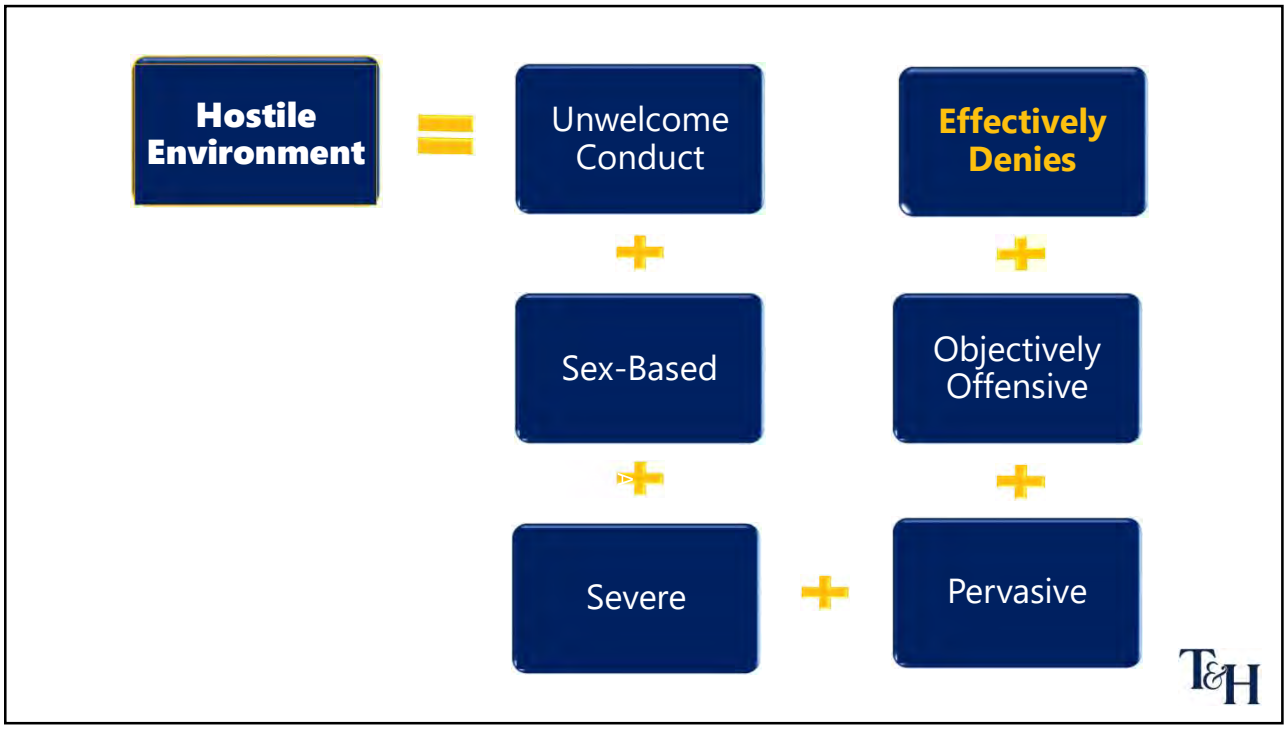


51

- 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

52



53

Effectively 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.

54

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

55

Totality of Circumstances

- 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 sexual harassment in the education program or activity

56

Recognizing Sexual Harassment

- The Title IX regulations contemplate sexual harassment occurring in a variety of circumstances
- Sexual harassment may manifest itself multiple ways
- Key is to recognize when conduct may constitute sexual harassment that needs to be responded to using the Title IX Grievance Process
- Examples on following slides are instructive and are not an exhaustive or exclusive list of conduct constituting sexual harassment

57

Examples of Student-Student Sexual 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

58

Recognizing Sexual Harassment

Employee-on-Student Sexual 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.

59

Examples of Employee-Student Sexual 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

60

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.

Jeglic et al, 2013; Shakeshaft, 2004; Dep't of Educ. (2020).

61

Teacher Perpetrators in Texas

1,022 Teachers Were Sanctioned Between 2008-2016
Total Teacher Population: 333,886

01 **75% were male**

02 **61% were White**
29% were Hispanic

03 **63% were under 39**

04 **53% had worked in education 5 years or less.**

However, men comprised only 23% of the statewide teacher population.

Younger and early career teachers are more likely to engage in inappropriate relationships.

C. Roberts & D. Thompson (2018)

62

Victims of Educator Misconduct

- Texas and national data show 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%)

T&H

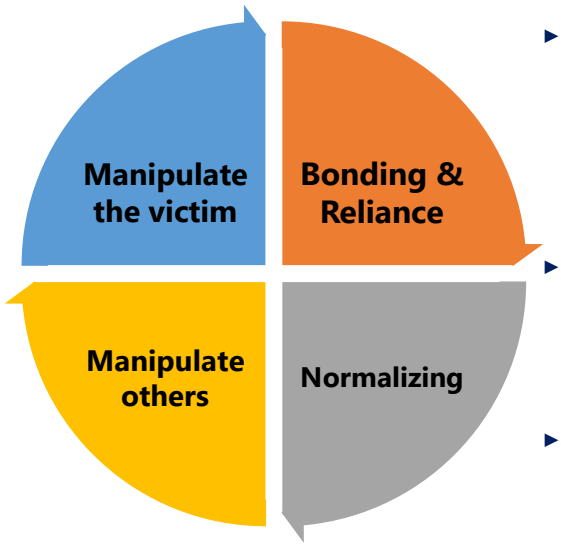
63

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.

Jeglic et al (2025); Shakeshaft et al (2021)



- **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**

64

Title IX Sexual Harassment

Title IX sexual harassment means unwelcome conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- **The Big 4**
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

65

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

Sexual Contact - intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.; forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation

Incest - 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

66

Consent

- "Consent" comes into play in student-on-student sexual assault cases
- Not defined in Title IX Rules
- Must be defined in your policies or procedures
- 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

67

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

68

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

69

- In Texas, 17 is the age of consent
- Exception: parties at least 14 years of age and less than 3 years apart in age
- Students younger than age 14 can never consent
- But remember…public school employees are prohibited from engaging in sexual or romantic relationships with students regardless of the student's age

Age of Consent

70

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

71

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 of physical abuse

72

© 2026 Thompson & Horton LLP

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

73

Stalking

A course of conduct (2 or more acts)

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

74

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

T&H

75

Young, Incapacitated, Neurodivergent Parties

76

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 criminal sexual contact)
- Is conduct *unwelcome*? (for purposes of hostile environment harassment)
- Is conduct *subjectively and objectively offensive*? (for purposes of hostile environment harassment)

77

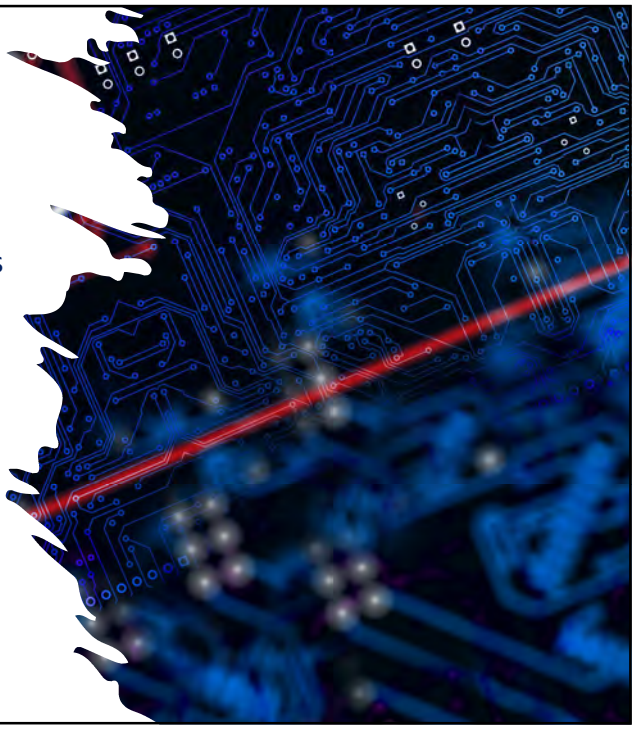
Other Age Issues

- A student under the age of majority can never consent to sexual conduct with an adult (except based on lack of sufficient age gap)
- 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

78

© 2026 Thompson & Horton LLP

While on an overnight school trip, a group of students gather in a hotel room for a party to celebrate their team victory. Carson has never drank alcohol before, but Robin convinces Carson to "*get blasted*," saying Carson is too uptight and "*Just let me liberate you*." As the night goes on, Carson begins to slur their words and stumble. At one point, Robin grabs Carson by the waist to stop them from falling and then pulls Carson toward them until Carson's butt is touching Robin's crotch. Robin rubs up against Carson and says "*Shake your rump. Get down, get up. Do it like it hurt, like it hurt.*" When Carson starts to pull away, Robin says "*I know you want it. I hate these blurred lines.*"



"Blurred Lines" by Robin Thicke (written by Pharrell Williams / Robin Thicke / Joseph Harris Clifford)

79

Group Discussion

Is this Title IX Sexual Harassment?

- Employee quid pro quo
- Sexual assault?
- Domestic violence?
- Dating violence?
- Stalking?
- Hostile environment?
  - Severe, pervasive, and objectively offensive?

80

Reagan is chair of the homecoming dance. They book a local band to play at the dance. When the band arrives, Reagan tells the lead singer what a huge fan they are. The lead singer begins to flirt with Reagan and says the band is going to really "*get together and let the good times roll*" backstage after the concert, and "*You know, I might let you come backstage, but you gotta be real nice to me…*"

"Let the good times roll" (live version) by BB King

81

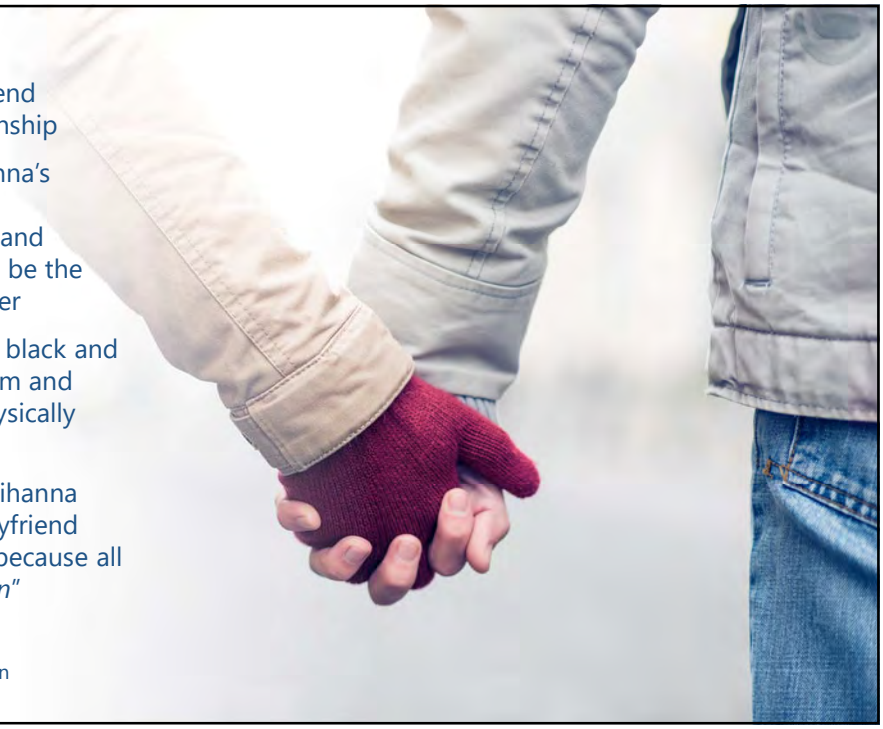
Group Discussion

Is this Title IX Sexual Harassment?

- Employee quid pro quo
- Sexual assault?
- Domestic violence?
- Dating violence?
- Stalking?
- Hostile environment?
  - Severe, pervasive, and objectively offensive?

82

- Melissa reports that her friend Rihanna is in a toxic relationship
- According to Melissa, Rihanna's boyfriend tears her down emotionally, cursing at her and insulting her, just so he can be the one to put her back together
- Melissa has noticed a large black and blue bruise on Rihanna's arm and thinks he might also be physically abusing her
- But according to Melissa, Rihanna can't get enough of her boyfriend and won't listen to reason because all she has is "*Love on the Brain*"



Love on the Brain
by Fred Ball, Joseph Angel, and Robyn Fenty

83

Group Discussion

Is this Title IX Sexual Harassment?

- Employee quid pro quo
- Sexual assault?
- Domestic violence?
- Dating violence?
- Stalking?
- Hostile environment?
  - Severe, pervasive, and objectively offensive?

84

© 2026 Thompson & Horton LLP

- Pat and Neil have a turbulent relationship
- They argue all the time – staff reports it is because no one can tell either of them that they're wrong
- Most recently, they got into an argument in the stairwell of one of your campus buildings
- Security video footage shows them shoving and hitting each other during the argument
- Administrators want to discipline both students for fighting

Love is a Battlefield
by Mike Chapman and Holly Knight

85

Group Discussion

Is this Title IX Sexual Harassment?

- Employee quid pro quo
- Sexual assault?
- Domestic violence?
- Dating violence?
- Stalking?
- Hostile environment?
  - Severe, pervasive, and objectively offensive?

86

© 2026 Thompson & Horton LLP

Stacy reports that Riley has been taunting them about their mom. Riley has asked to come over after school and hang around by the pool so they can see Stacy's mom in their bathing suit. Riley told Stacy that since Stacy's dad moved out, Stacy's mom could really use a person like Riley. Riley spread a rumor that one time last year, when Riley was hired to mow their lawn, Stacy's mom came outside, wearing just a towel and that the way she said "You missed a spot over there," was meant to be a "come on" to Riley. When Stacy confronted Riley, Riley accused Stacy of having a crush on Riley and said "Your mom has got it going on. Stacy, can't you see? You're just not the one for me. I know it might be wrong, but I'm in love with your mom."

"Stacy's Mom" by Fountains of Wayne (written by Adam Schlesinger and vocalist Chris Collingwood

87

Group Discussion

Is this Title IX Sexual Harassment?

- Employee quid pro quo
- Sexual assault?
- Domestic violence?
- Dating violence?
- Stalking?
- Hostile environment?
  - Severe, pervasive, and objectively offensive?

88

Casey and Ryan used to date. Casey broke up with Ryan recently, and reports that Ryan has not handled the break-up well.

Ryan left a poem in Casey's locker that said:

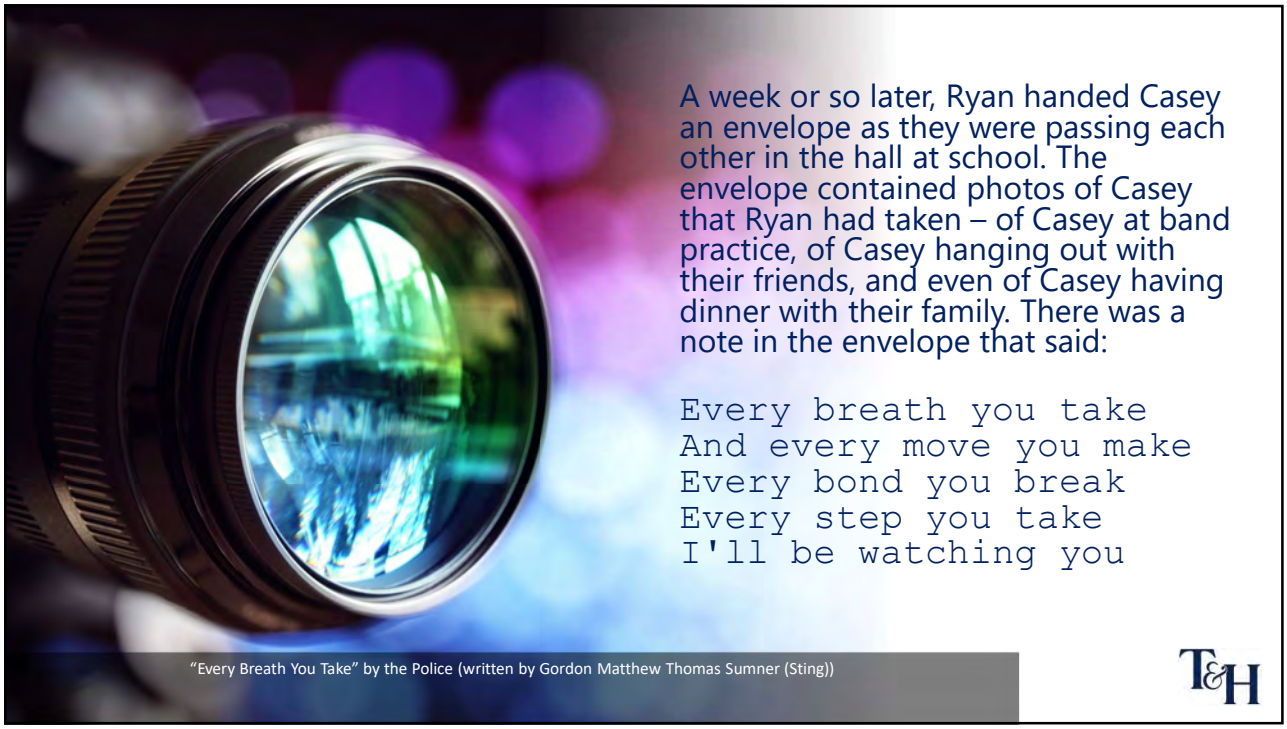
Since you've gone,
I've been lost without a trace.
I dream at night,
I can only see your face.
I look around,
but it's you I can't replace.
I feel so cold,
and I long for your embrace.

89

The next day, during lunch, Ryan sat down next to Casey. Casey told Ryan that they were making them uncomfortable and asked Ryan to sit someplace else. Ryan refused. Casey then got up to leave and Ryan called after them,

"*Can't you see that you belong to me?*"

90


A week or so later, Ryan handed Casey an envelope as they were passing each other in the hall at school. The envelope contained photos of Casey that Ryan had taken – of Casey at band practice, of Casey hanging out with their friends, and even of Casey having dinner with their family. There was a note in the envelope that said:
Every breath you take
And every move you make
Every bond you break
Every step you take
I'll be watching you
"Every Breath You Take" by the Police (written by Gordon Matthew Thomas Sumner (Sting))

91

Group Discussion
Is this Title IX Sexual Harassment?
Employee quid pro quo
Sexual assault?
Domestic violence?
Dating violence?
Stalking?
Hostile environment?
Severe, pervasive, and objectively offensive?

92

Teacher Thompson is the new theater teacher. Sophomore Carson has dreams of being a Broadway star and has been taking private acting lessons after school on campus with Thompson.

Carson's friends report that Carson has been fantasizing about the young teacher. Carson told their friends they "want Thompson badly" and think the teacher might return the feeling because when Carson and Thompson were rehearsing a romantic scene from a play, Thompson said Carson "has all the charms of a woman" before telling Carson not to stand so close to them.

In the teacher's lounge, rumors are flying that Thompson gave Carson a ride home alone the other evening after seeing Carson sitting in the rain at the bus stop.

Teacher Thompson confides in a co-worker that they are trying to put Carson "out of my mind" because they know their feelings for Carson are "way out of line."

"Young Teacher" by the Police and "Young Girl" by Gary Puckett & the Union Gap

93

Group Discussion

Is this Title IX Sexual Harassment?

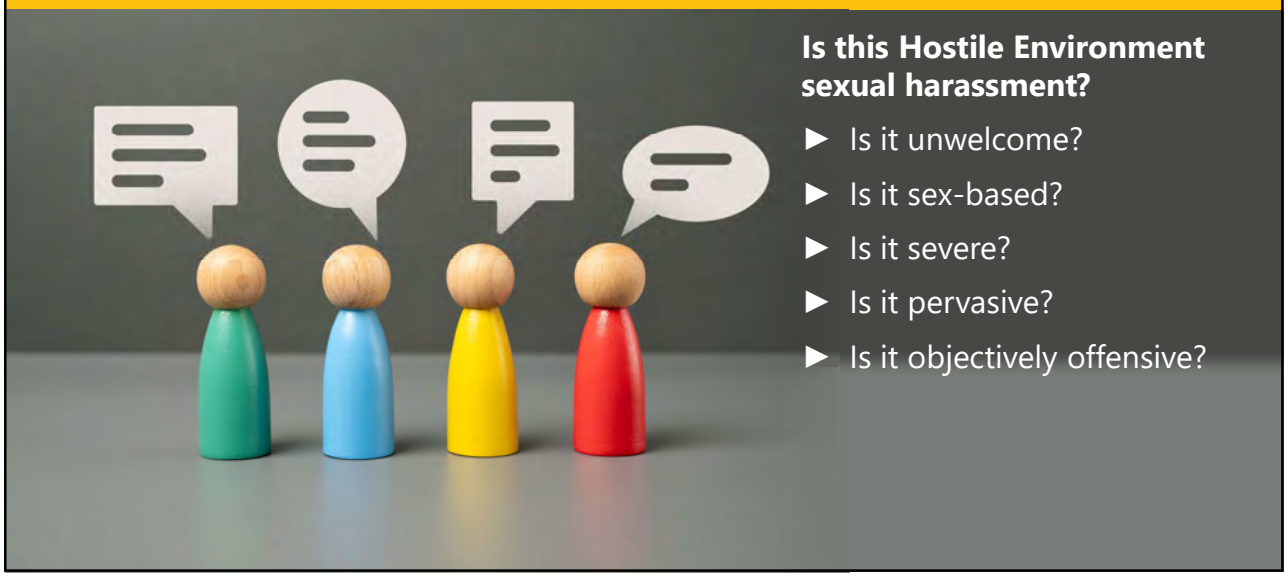
- Employee quid pro quo
- Sexual assault?
- Domestic violence?
- Dating violence?
- Stalking?
- Hostile environment?
  - Severe, pervasive, and objectively offensive?

94

- Sam is a middle school student. She likes to play video games and wears her hair in braids and short shorts. Her friend Joe reports that other students have created AI generated images of Sam as Lara Croft.
- At first Sam thought it was funny, but then images started circulating of Sam as Lara Croft in a skimpy bikini and a few boys started leering at her in the hallway, which she attributed to the images.

95

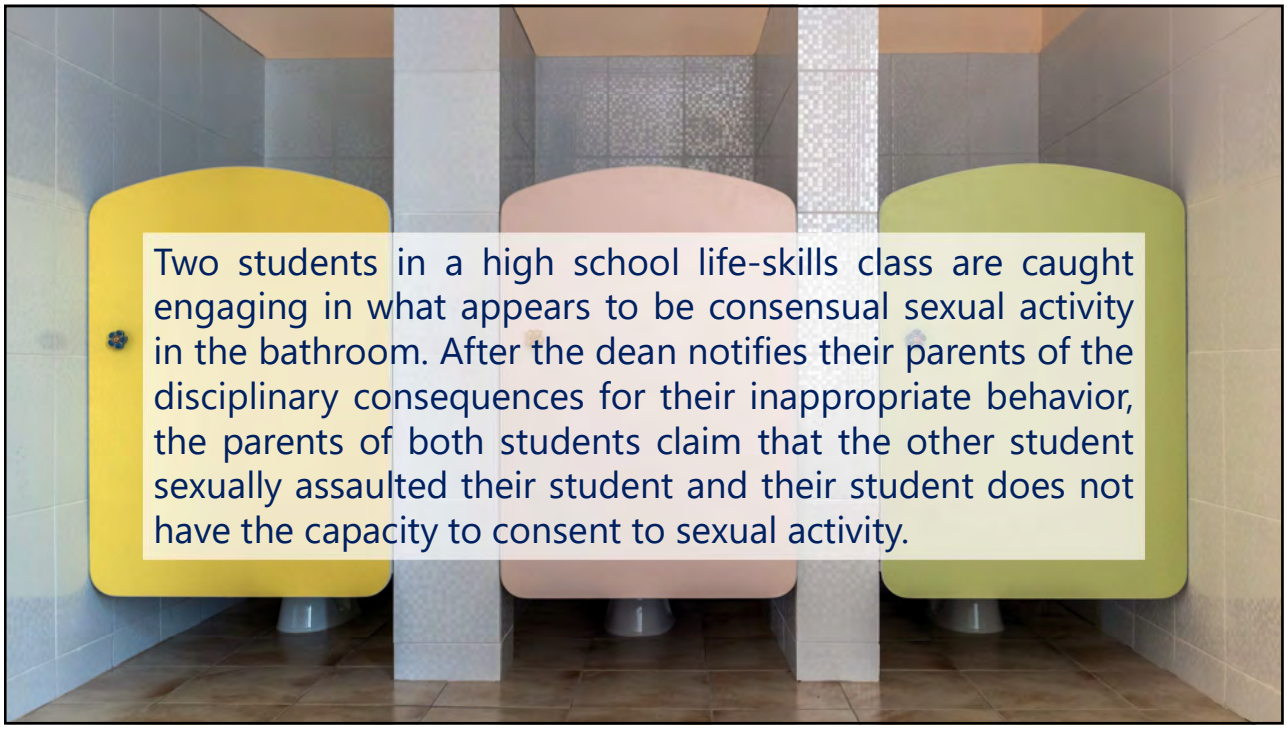
Group Discussion



Is this Hostile Environment sexual harassment?

- Is it unwelcome?
- Is it sex-based?
- Is it severe?
- Is it pervasive?
- Is it objectively offensive?

96



97

Group Discussion

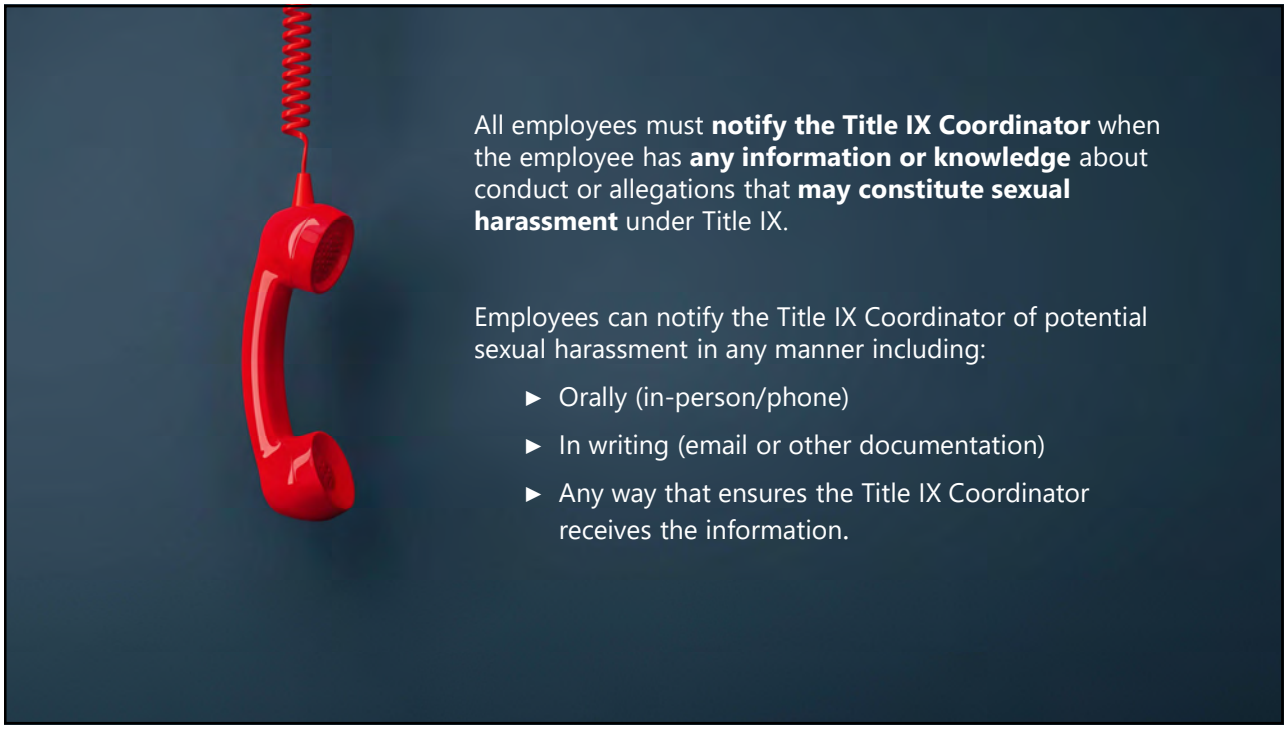
Now what?

- Both students are complainants and respondents
- The likely initiator is the respondent
- Conduct an MDR and dismiss if a manifestation of student's disability
- Dismiss because neither student could understand the other did not have capacity to consent

98

99

100


All employees must **notify the Title IX Coordinator** when the employee has **any information or knowledge** about conduct or allegations that **may constitute sexual harassment** under Title IX.
Employees can notify the Title IX Coordinator of potential sexual harassment 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.

101

Witness
Hear first-hand
Hear second-hand
Overhear
Otherwise learn about
Sources of Information

102

Reporting Requirements

Employees may have multiple reporting obligations.

- **Title IX Coordinator** – conduct that may be sexual harassment (including sexual assault, stalking, and other potentially criminal behavior)
- **Child Protective Services** – conduct that may constitute abuse or neglect
- **Law Enforcement** – conduct that may be criminal

103

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
- Make reporting easy, offer a confidential option

104

© 2026 Thompson & Horton LLP

Title IX Guidebook Resources

105

Jack & Diane

Jack and Diane are two students at Heartland High School who are dating each other.

Teacher Dean reports to Principal Mellencamp that he overheard Diane telling her friends that she and Jack had gotten in an argument in a school stairwell, and he had shoved her.

106

Group Discussion

What should Principal Mellencamp do now?

What should he <u>not</u> do?

107

Campus Initial Response: "DOs"

Assess Safety	**Make Contact** Law Enforcement Medical Parent	**Required Reporting**	**Special Education?**

108

Campus Initial Response: "DONTs"

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

- **Investigate**
- **Discipline**
- **Violate Confidentiality**

109

Coordinator's Response to Report

When notified of conduct that reasonably may constitute sex discrimination (including harassment) 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 it recurrence, and remedy its effects

110

Title IX Coordinator Initial Response

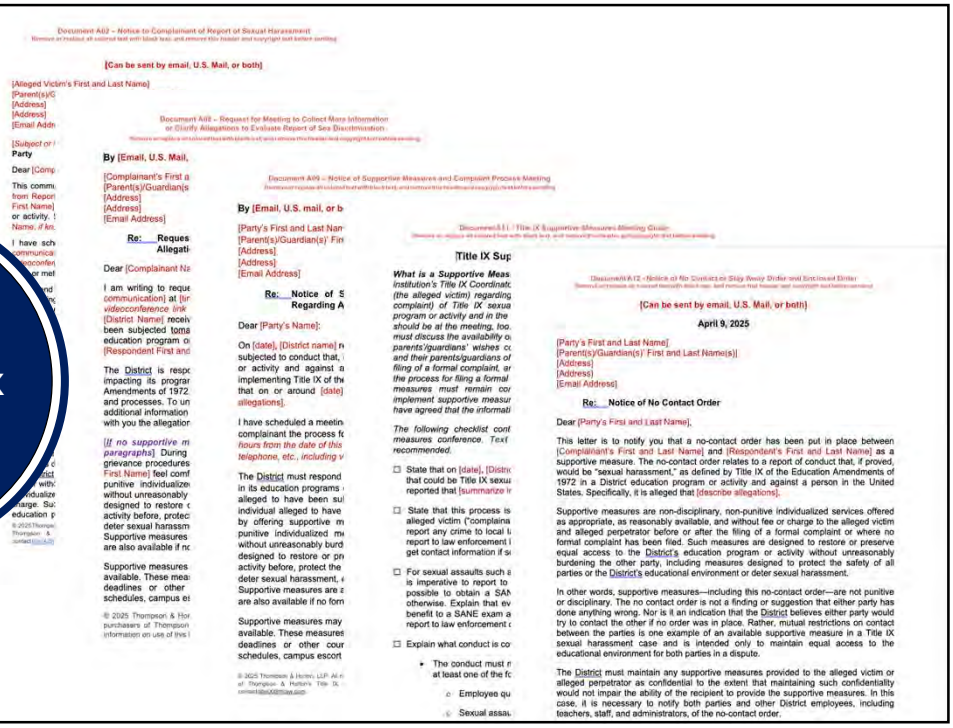
Support	Notify	Initiate
► Offer & coordinate supportive measures for complainant ► Offer & coordinate supportive measures for respondent **after** formal complaint signed	► Complainant (or reporter) of grievance and informal resolution procedures ► **After** formal complaint signed, respondent of grievance and informal resolution procedures	► Emergency removal or administrative leave ► Grievance process or informal resolution ► Steps to ensure harassment does not continue/ recur

111

Until there is a formal complaint, the Complainant's identity is CONFIDENTIAL – including from accused & their parents

112

Title IX Guidebook Forms

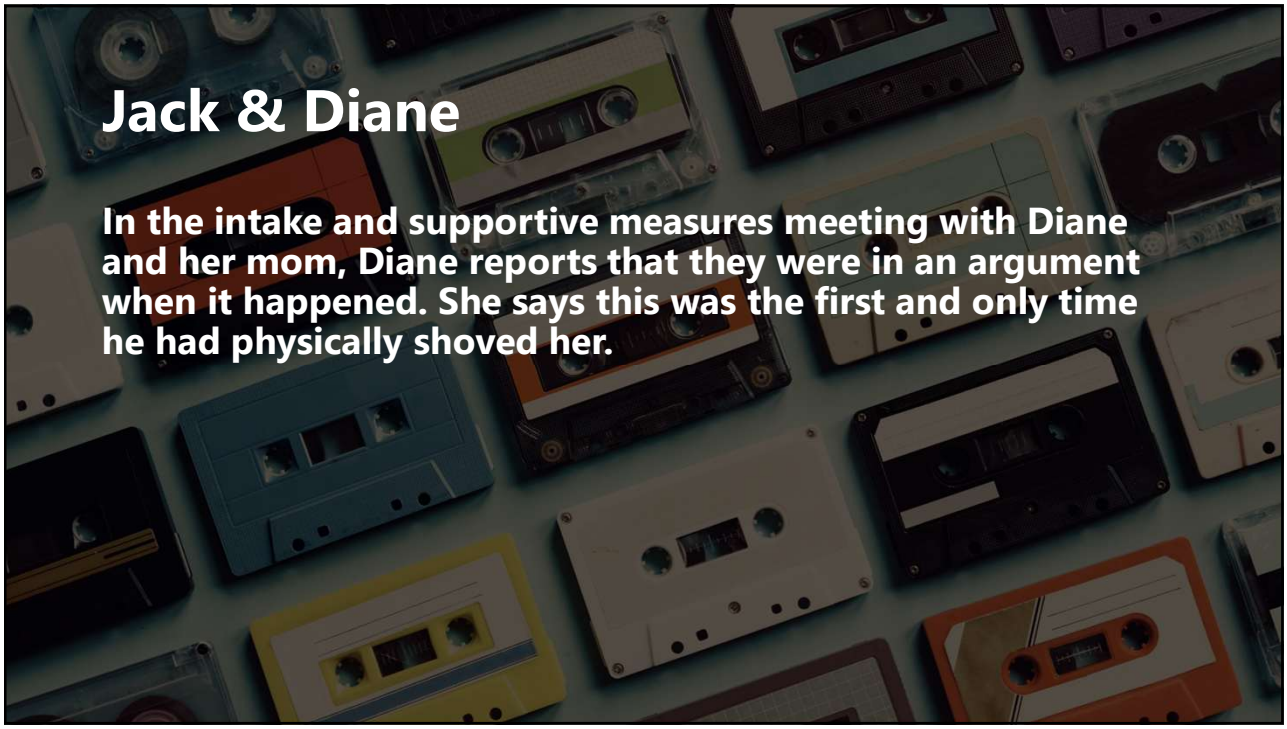


113

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

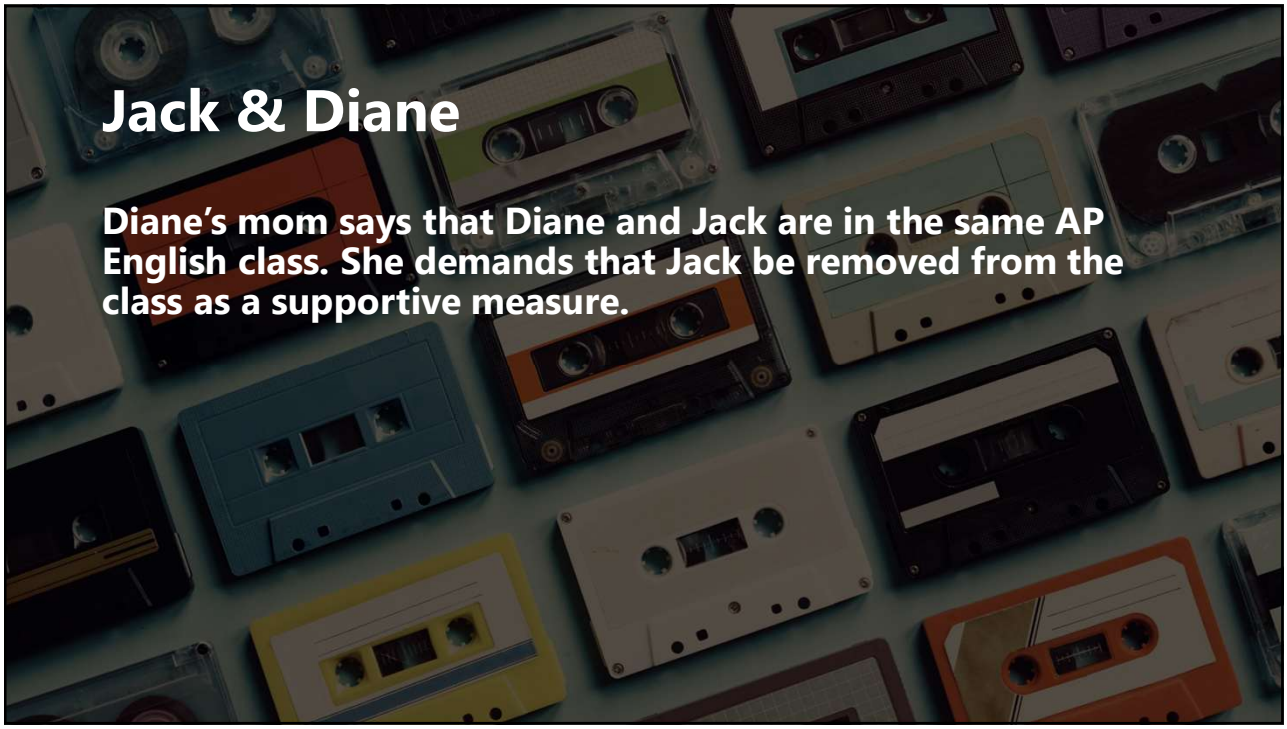
114


Jack & Diane
In the intake and supportive measures meeting with Diane and her mom, Diane reports that they were in an argument when it happened. She says this was the first and only time he had physically shoved her.

115

Group Discussion
Evaluate the Allegations : if proved, would they constitute Title IX Sexual Harassment?
► If yes, what kind(s)?
► If no, why not?

116


Jack & Diane
Diane's mom says that Diane and Jack are in the same AP English class. She demands that Jack be removed from the class as a supportive measure.

117

Group Discussion
Can Jack be moved as a supportive measure?

118

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

119

Supportive Measures

Academic

- Deadline extensions
- Schedule modification or other course-related adjustments
- Tutoring
- Offers to retake courses or redo assignments
- Changes in extracurricular activities

Emotional/ Wellness

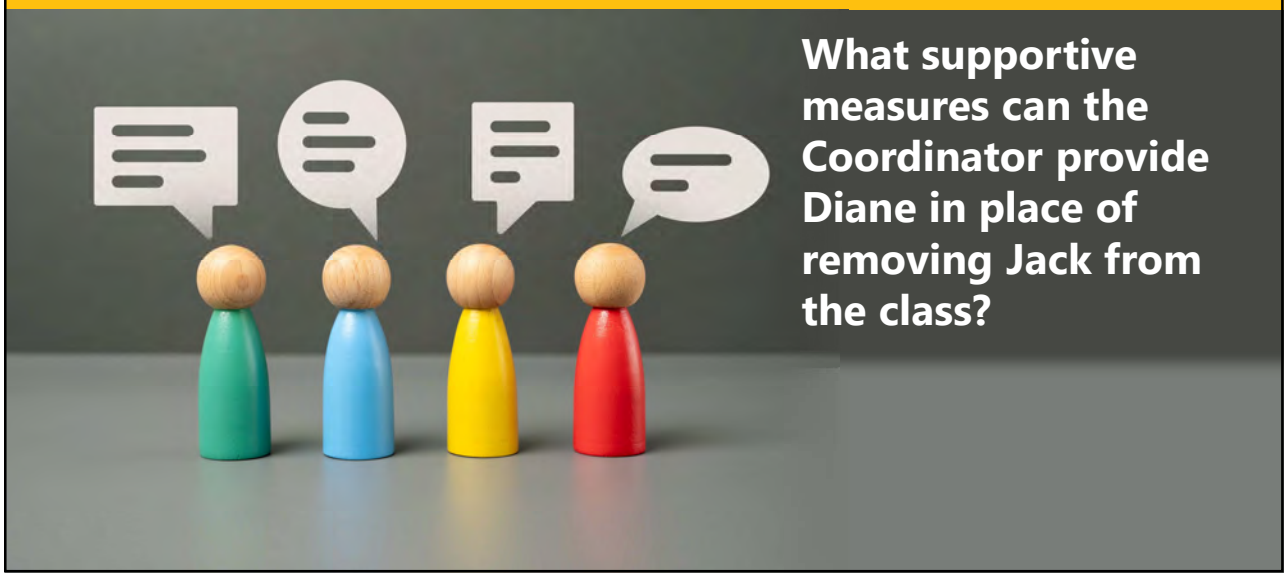
- Counseling
- Excused absences
- Leave of absence
- Referral to medical or psychological care
- Designation of a "safe adult" for check-ins
- Training and education programs related to sexual harassment

Safety/Security

- No contact orders
- 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

120

Group Discussion: Supportive Measures



What supportive measures can the Coordinator provide Diane in place of removing Jack from the class?

121

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

122

- 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 interfer with the student's IEP or 504 services or accommodations
- The special education administrator should consider whether an IEP or 504 meeting is warranted

123

Jack & Diane

The less burdensome measures were not effective. Diane reports that Jack glares at her from across the room during class and makes comments to friends about how she's a b*tch for not withdrawing the report. She says she does not feel emotionally safe in the room.

Diane does not want to transfer out of the class because it is the only AP English class at Heartland HS and switching to a different class would impact her ability to graduate in the top ten percent.

124

Group Discussion

Now What?

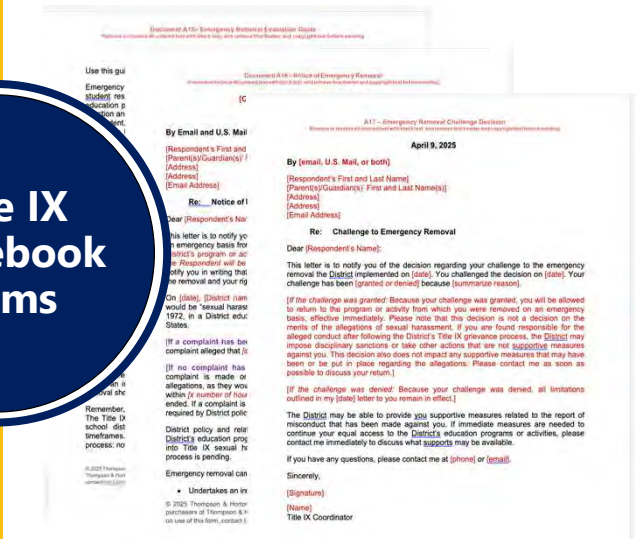
- Can Jack be removed using the emergency removal process?
- Can he be moved as a supportive measure now?
- Any other way to remove him?

125

Emergency Removal

- Must be on emergency basis
- Must conduct an individualized safety and risk analysis
- Must determine that an **immediate threat to the physical health or safety** of a complainant or any students, employees, or other persons arising from the allegations of sexual harassment justifies removal
- Does not modify any rights under IDEA, Section 504, or ADA

Title IX Guidebook Forms



April 9, 2025

By [email, U.S. Mail, or both]

[Respondent's First and Last Name]
[Parent(s)/Guardian(s)' First and Last Name(s)]
[Address]
[Address]
[Email Address]

Re: Challenge to Emergency Removal

Dear [Respondent's Name]:

This letter is to notify you of the decision regarding your challenge to the emergency removal the District implemented on [date]. You challenged the decision on [date]. Your challenge has been [granted or denied] because [summarize reason].

[If the challenge was granted: Because your challenge was granted, you will be allowed to return to the program or activity from which you were removed on an emergency basis, effective immediately. Please note that this decision is not a decision on the merits of the allegations of sexual harassment. If you are found responsible for the alleged conduct after following the District's Title IX grievance process, the District may impose disciplinary sanctions or take other actions that are not supportive measures against you. This decision also does not impact any supportive measures that may have been or be put in place regarding the allegations. Please contact me as soon as possible to discuss your return.]

[If the challenge was denied: Because your challenge was denied, all limitations outlined in my [date] letter to you remain in effect.]

The District may be able to provide you supportive measures related to the report of misconduct that has been made against you. If immediate measures are needed to continue your equal access to the District's education programs or activities, please contact me immediately to discuss what supports may be available.

If you have any questions, please contact me at [phone] or [email].

Sincerely,

[Signature]

[Name]
Title IX Coordinator

126

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

T&H

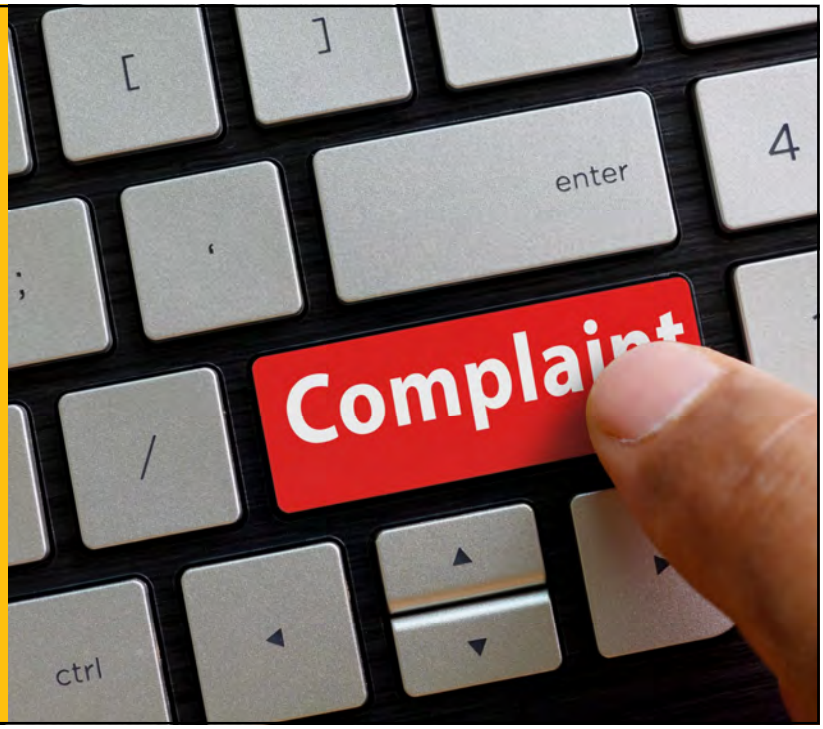
127

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

128

Parties and the Formal Complaint



129

Key Terms

Complainant

A student or employee who is alleged to have been subjected to conduct that could constitute sexual harassment under Title IX or this part

- Even if report made by parent/guardian or third party
- Even if Title IX Coordinator initiates the grievance process
- The complainant must be participating or attempting to participate in the District's education program or activity at the time the complaint is filed

130

Key Terms

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment

131

A document

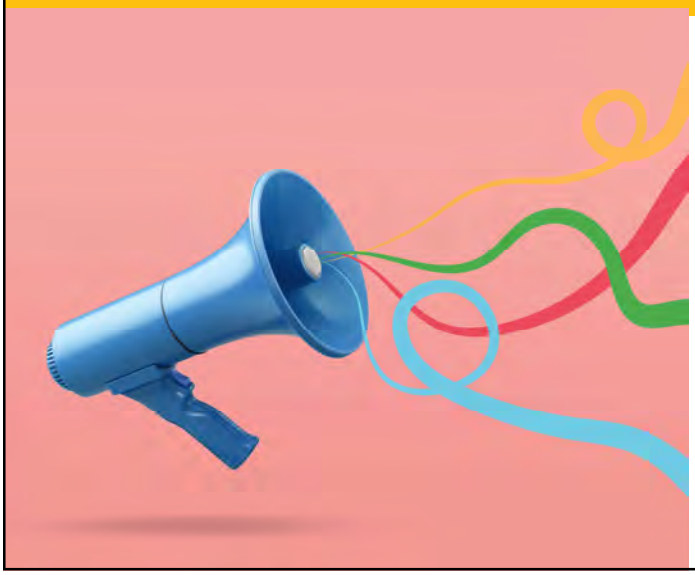
- Filed by a complainant or signed by the Title IX Coordinator
- Alleging sexual harassment against a respondent
- Requesting that the school investigate the allegation of sexual harassment

Key Terms

Formal Complaint

132

Report or Complaint?

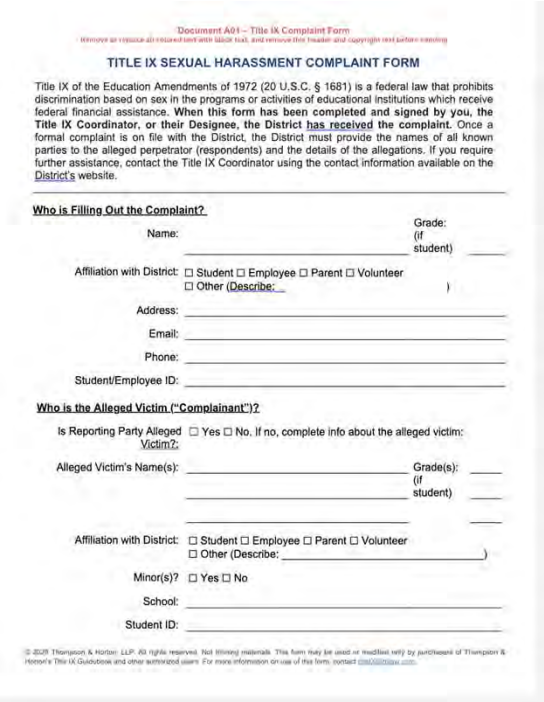


- A **report** is someone sharing information that suggests that sexual harassment has occurred or might be occurring. It triggers the Coordinator to meet with Complainant
- A **formal complaint** is the signed written request for the district to investigate.
- You must have a formal complaint before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

T&H

133

Title IX Guidebook Forms



Document A01 – Title IX Complaint Form

TITLE IX SEXUAL HARASSMENT COMPLAINT FORM

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on sex in the programs or activities of educational institutions which receive federal financial assistance. **When this form has been completed and signed by you, the Title IX Coordinator, or their Designee, the District has received the complaint.** Once a formal complaint is on file with the District, the District must provide the names of all known parties to the alleged perpetrator (respondents) and the details of the allegations. If you require further assistance, contact the Title IX Coordinator using the contact information available on the District's website.

Who is Filling Out the Complaint?

Name: _____ Grade: (if student) ____

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

Address: _____

Email: _____

Phone: _____

Student/Employee ID: _____

Who is the Alleged Victim ("Complainant")?

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

Alleged Victim's Name(s): _____ Grade(s): (if student) ____

_____ ____

_____ ____

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

Minor(s)? ☐ Yes ☐ No

School: _____

Student ID: _____

© 2026 Thompson & Horton LLP. All rights reserved. Not filling materials. This form may be used or modified only by purchasers of Thompson & Horton's Title IX Guidebook and other authorized users. For more information on use of this form, contact ...

134

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
- District may set expectations to which parents must comply; these must apply equally to the parties

T&H

135

136

When to sign a Complaint?

- The Title IX Coordinator should initiate a complaint when it would be deliberately indifferent not to do so
- Consider whether the alleged conduct either:
  - Presents an imminent and serious threat of harm to complainant or another person
  - Prevents the school from ensuring equal access to its education programs or activities

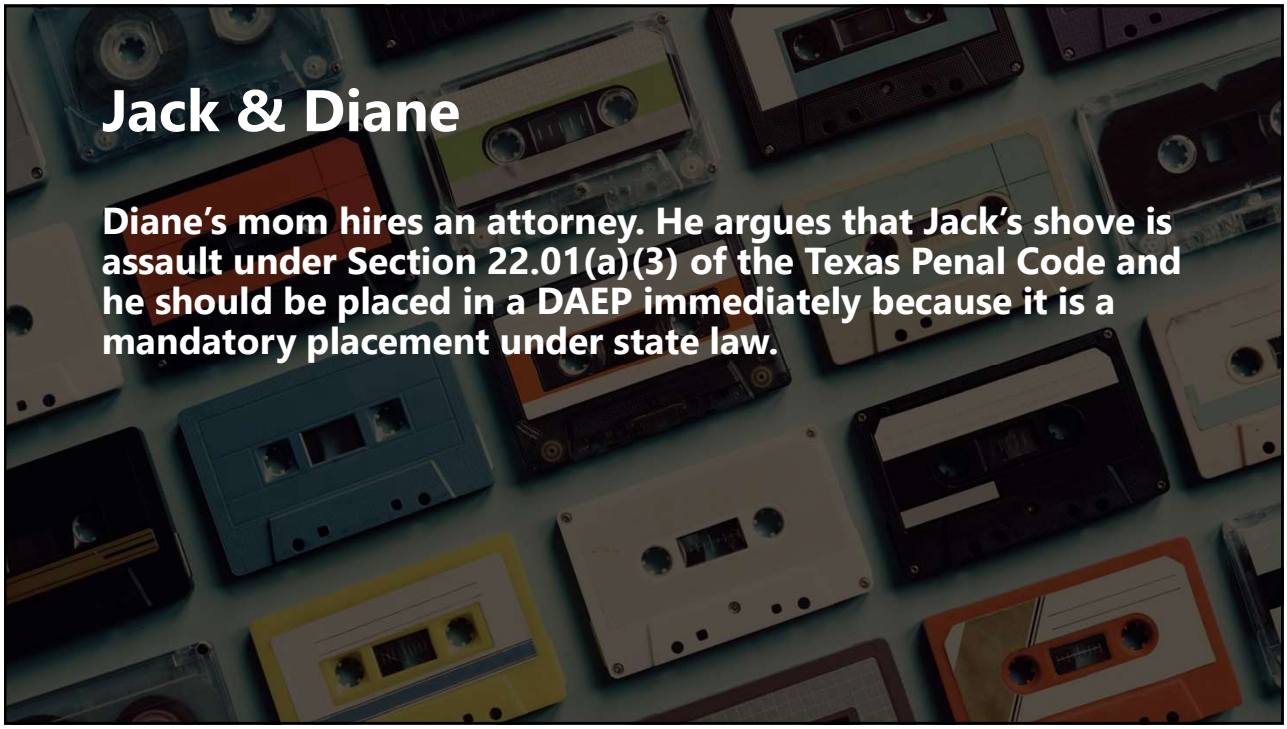
137

Remember

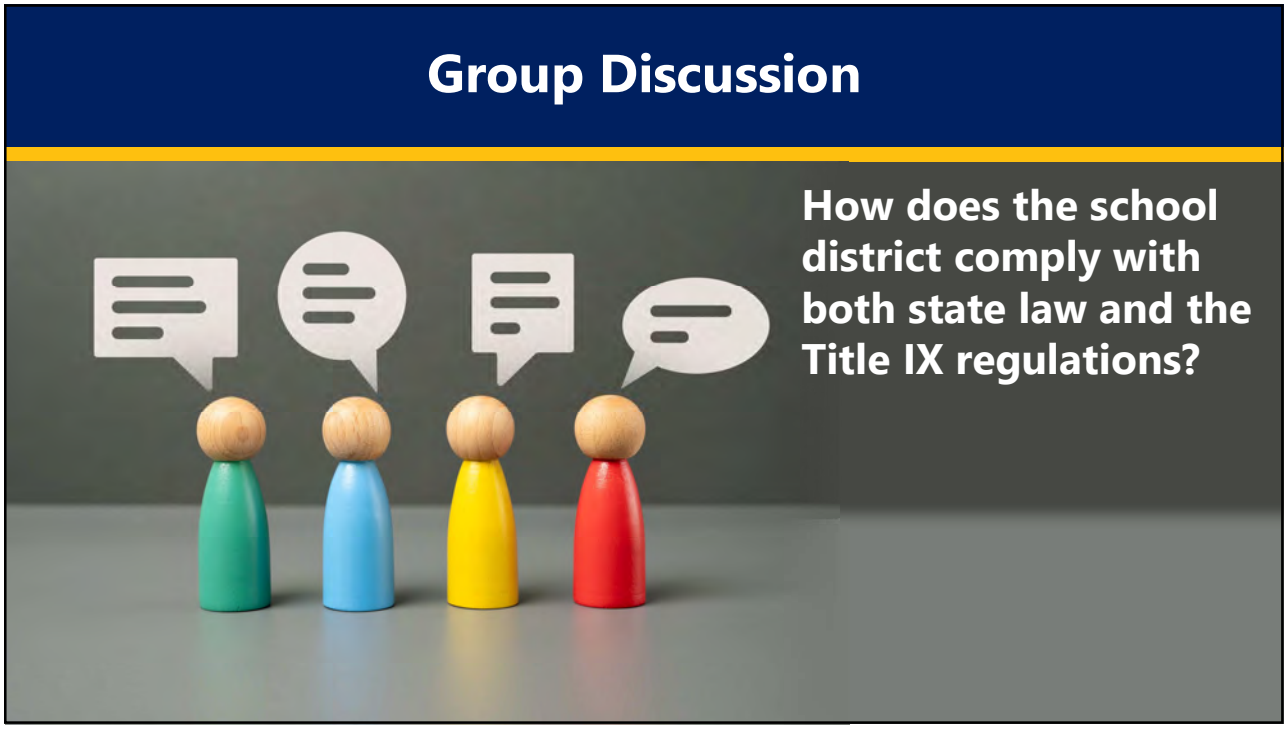
- If the alleged misconduct would be Title IX sexual harassment and the Title IX Coordinator does not initiate a complaint, the alleged misconduct CANNOT be addressed through another district policy or procedure

138

© 2026 Thompson & Horton LLP


Jack & Diane
Diane's mom hires an attorney. He argues that Jack's shove is assault under Section 22.01(a)(3) of the Texas Penal Code and he should be placed in a DAEP immediately because it is a mandatory placement under state law.

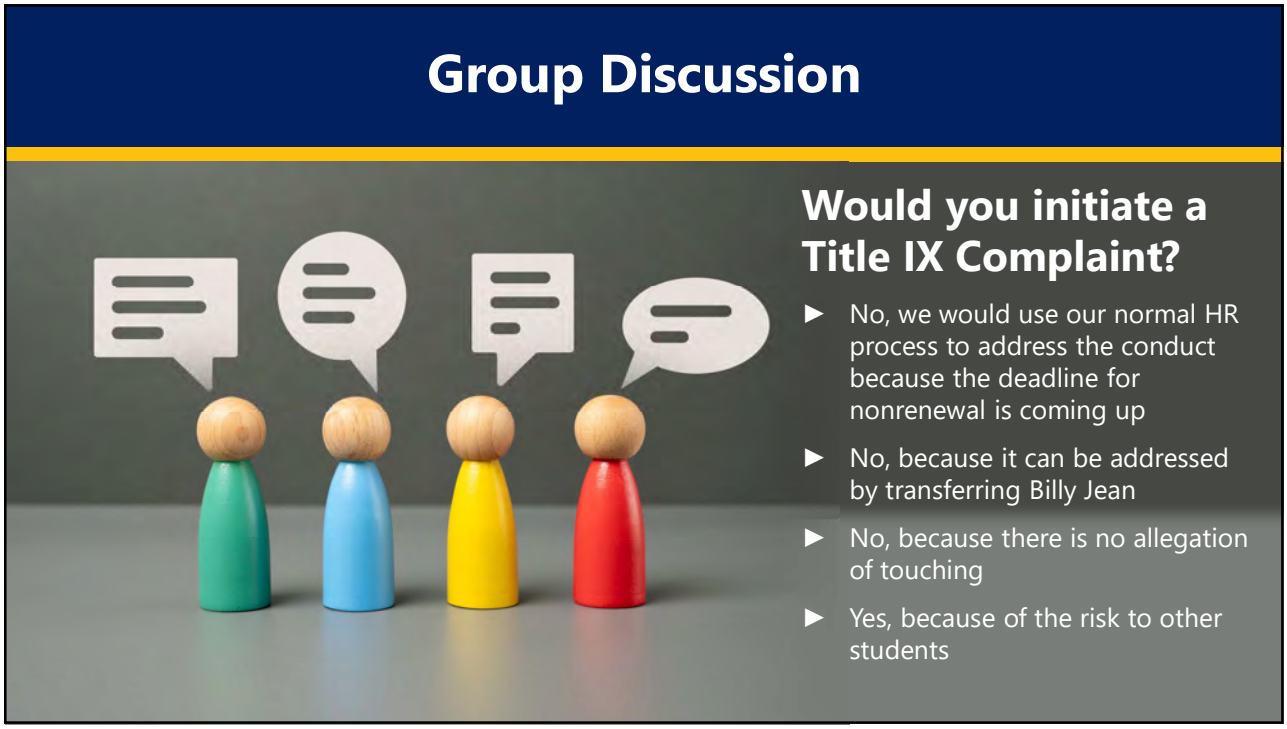
139


Group Discussion
How does the school district comply with both state law and the Title IX regulations?

140

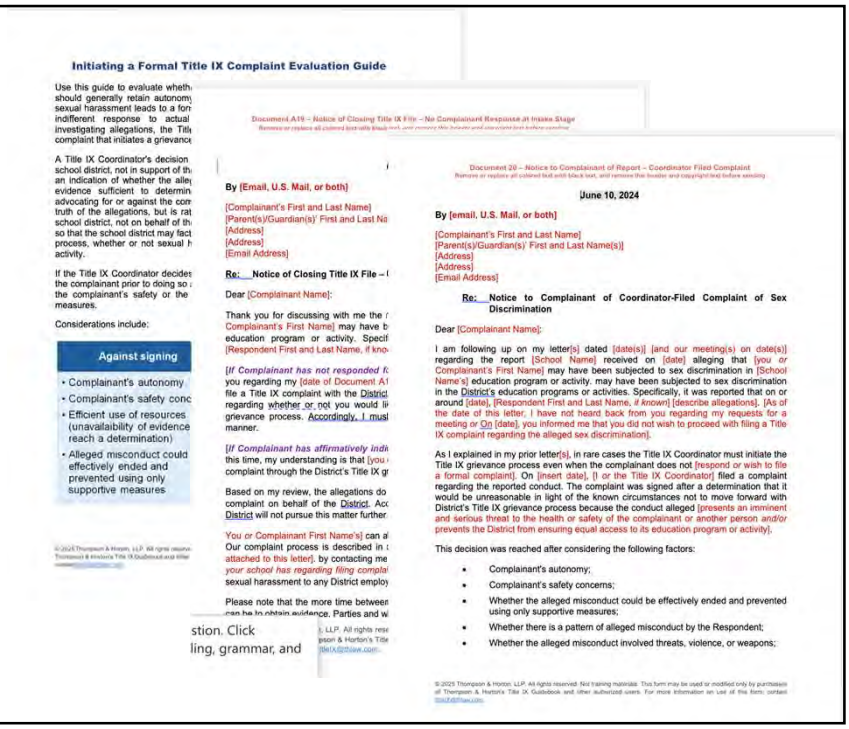
Billy Jean
Student Billy Jean reports that her teacher, Mr. Jackson, made sexually suggestive comments to Billy, asked Billy repeatedly if they wanted rides home or for Billy to babysit, and gave Billy hugs frequently. Billy's mom asks that she be moved to another high school in the district, but does not want to file a formal complaint.

141


Group Discussion
Would you initiate a Title IX Complaint?
No, we would use our normal HR process to address the conduct because the deadline for nonrenewal is coming up
No, because it can be addressed by transferring Billy Jean
No, because there is no allegation of touching
Yes, because of the risk to other students

142

Title IX Guidebook Forms



Initiating a Formal Title IX Complaint Evaluation Guide

Use this guide to evaluate wheth
should generally retain autonom
sexual harassment leads to a for
indifferent response to actual
investigating allegations, the Titl
complaint that initiates a grievanc

A Title IX Coordinator's decision
school district, not in support of th
an indication of whether the alle
evidence sufficient to determin
advocating for or against the com
truth of the allegations, but is rat
school district, not on behalf of th
so that the school district may fact
process, whether or not sexual h
activity.

If the Title IX Coordinator decides
the complainant prior to doing so
the complainant's safety or the
measures.

Considerations include:

Against signing

- Complainant's autonomy
- Complainant's safety conc
- Efficient use of resources (unavailability of evidence reach a determination)
- Alleged misconduct could effectively ended and prevented using only supportive measures

Document A19 – Notice of Closing Title IX File – No Complainant Response at Intake Stage

By [Email, U.S. Mail, or both]

[Complainant's First and Last Name]
[Parent(s)/Guardian(s)' First and Last Na
[Address]
[Address]
[Email Address]

Re: Notice of Closing Title IX File –

Dear [Complainant Name]:

Thank you for discussing with me the
Complainant's First Name] may have b
education program or activity. Specif
[Respondent First and Last Name, if kno

[If Complainant has not responded fo
you regarding my [date of Document A1
file a Title IX complaint with the District
regarding whether or not you would li
grievance process. Accordingly, I must
manner.

[If Complainant has affirmatively indi
this time, my understanding is that [you
complaint through the District's Title IX gr

Based on my review, the allegations do
complaint on behalf of the District. Acc
District will not pursue this matter further.

You or Complainant First Name's] can al
Our complaint process is described in
attached to this letter], by contacting me
your school has regarding filing complai
sexual harassment to any District employ

Please note that the more time between
can be to obtain evidence. Parties and wi

stion. Click
ling, grammar, and

Document 20 – Notice to Complainant of Report – Coordinator Filed Complaint

June 10, 2024

By [email, U.S. Mail, or both]

[Complainant's First and Last Name]
[Parent(s)/Guardian(s)' First and Last Name(s)]
[Address]
[Address]
[Email Address]

Re: Notice to Complainant of Coordinator-Filed Complaint of Sex Discrimination

Dear [Complainant Name]:

I am following up on my letter[s] dated [date(s)] [and our meeting(s) on date(s)] regarding the report [School Name] received on [date] alleging that [you *or* Complainant's First Name] may have been subjected to sex discrimination in [School Name's] education program or activity. may have been subjected to sex discrimination in the District's education programs or activities. Specifically, it was reported that on or around [date], [Respondent First and Last Name, *if known*] [describe allegations]. [As of the date of this letter, I have not heard back from you regarding my requests for a meeting or On [date], you informed me that you did not wish to proceed with filing a Title IX complaint regarding the alleged sex discrimination].

As I explained in my prior letter[s], in rare cases the Title IX Coordinator must initiate the Title IX grievance process even when the complainant does not [respond or wish to file a formal complaint]. On [insert date], [I or the Title IX Coordinator] filed a complaint regarding the reported conduct. The complaint was signed after a determination that it would be unreasonable in light of the known circumstances not to move forward with District's Title IX grievance process because the conduct alleged [presents an imminent and serious threat to the health or safety of the complainant or another person *and/or* prevents the District from ensuring equal access to its education program or activity].

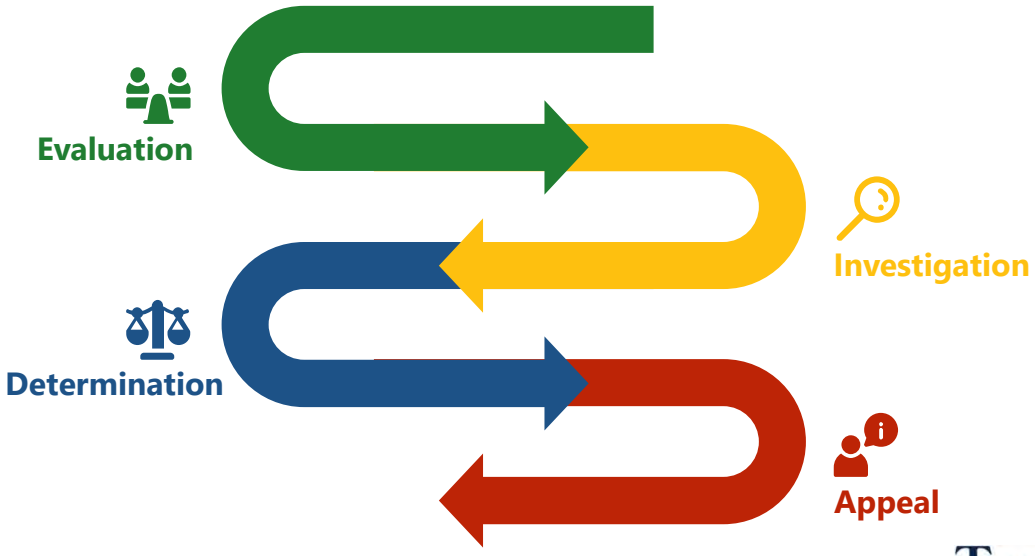
This decision was reached after considering the following factors:

- Complainant's autonomy;
- Complainant's safety concerns;
- Whether the alleged misconduct could be effectively ended and prevented using only supportive measures;
- Whether there is a pattern of alleged misconduct by the Respondent;
- Whether the alleged misconduct involved threats, violence, or weapons;

© 2025 Thompson & Horton LLP. All rights reserved. Not training materials. This form may be used or modified only by purchasers of Thompson & Horton's Title IX Guidebook and other authorized users. For more information on use of this form, contact tix@thlaw.com.

143

Four Major Grievance Process Stages



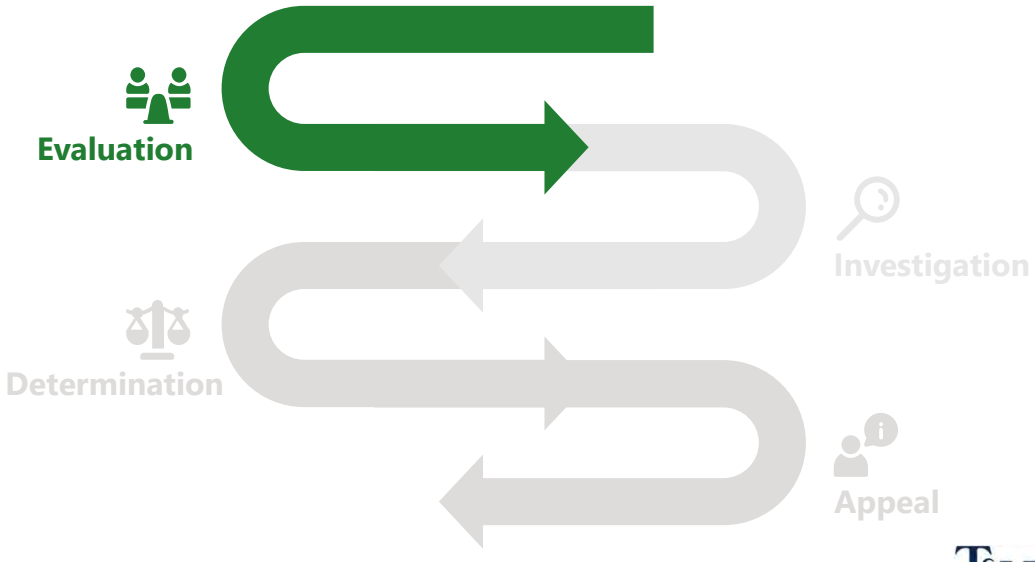
144

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

145

Stage One: Evaluation



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 – CANNOT PROCEED ANONYMOUSLY
  - 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

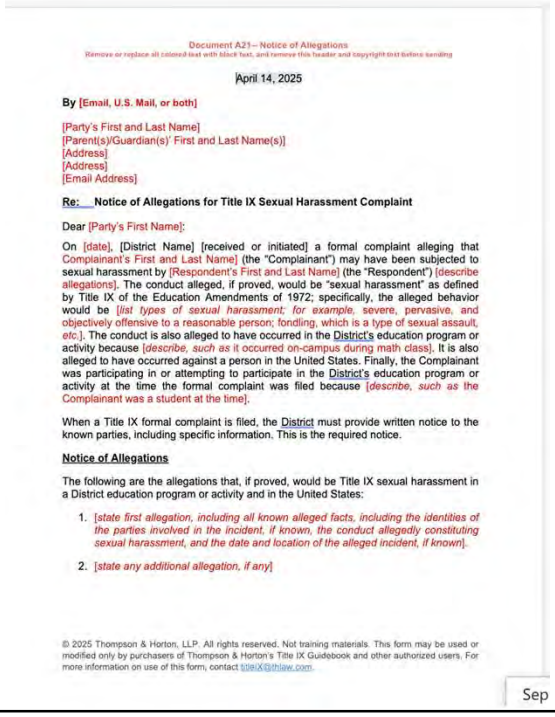
147

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 to ask about the allegations
- No pulling Respondent out of class to inquire about an incident right after the school receives notice

148

Title IX Guidebook Forms



Document A21—Notice of Allegations
Remove or replace all colored text with black text, and remove this header and copyright text before sending

April 14, 2025

By [Email, U.S. Mail, or both]

[Party's First and Last Name]
[Parent(s)/Guardian(s)' First and Last Name(s)]
[Address]
[Address]
[Email Address]

Re: Notice of Allegations for Title IX Sexual Harassment Complaint

Dear [Party's First Name]:

On [date], [District Name] [received or initiated] a formal complaint alleging that Complainant's First and Last Name] (the "Complainant") may have been subjected to sexual harassment by [Respondent's First and Last Name] (the "Respondent") [describe allegations]. The conduct alleged, if proved, would be "sexual harassment" as defined by Title IX of the Education Amendments of 1972; specifically, the alleged behavior would be [*list types of sexual harassment; for example,* severe, pervasive, and objectively offensive to a reasonable person; fondling, which is a type of sexual assault, *etc.*]. The conduct is also alleged to have occurred in the District's education program or activity because [*describe, such as* it occurred on-campus during math class]. It is also alleged to have occurred against a person in the United States. Finally, the Complainant was participating in or attempting to participate in the District's education program or activity at the time the formal complaint was filed because [*describe, such as* the Complainant was a student at the time].

When a Title IX formal complaint is filed, the District must provide written notice to the known parties, including specific information. This is the required notice.

Notice of Allegations

The following are the allegations that, if proved, would be Title IX sexual harassment in a District education program or activity and in the United States:

1. [*state first allegation, including all known alleged facts, including the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known*].
2. [*state any additional allegation, if any*]

© 2025 Thompson & Horton, LLP. All rights reserved. Not training materials. This form may be used or modified only by purchasers of Thompson & Horton's Title IX Guidebook and other authorized users. For more information on use of this form, contact titleIX@thlaw.com.

Sep

149

Dismissal

Mandatory

- 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.

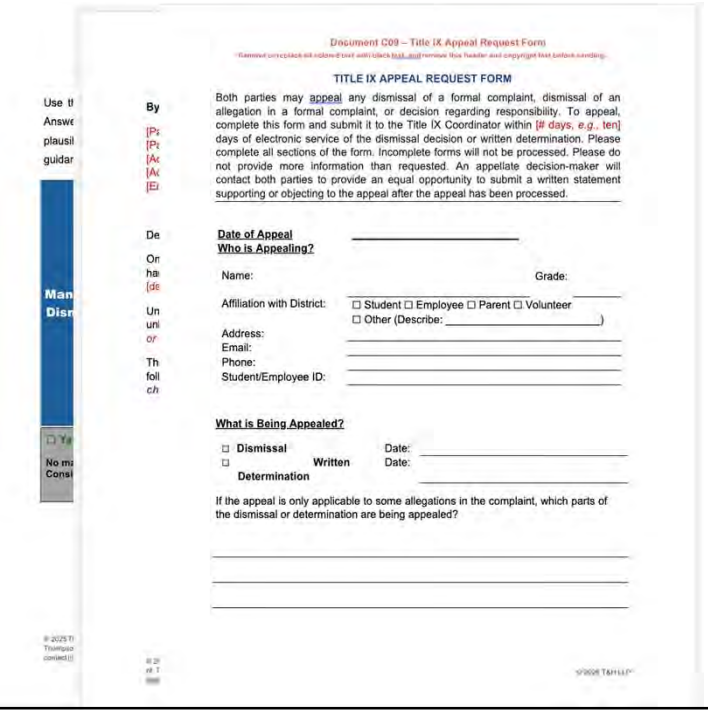
Permissive

- 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

T&H

150

Title IX Guidebook Forms



Document C09 – Title IX Appeal Request Form

TITLE IX APPEAL REQUEST FORM

Both parties may appeal any dismissal of a formal complaint, dismissal of an allegation in a formal complaint, or decision regarding responsibility. To appeal, complete this form and submit it to the Title IX Coordinator within [# days, *e.g.*, ten] days of electronic service of the dismissal decision or written determination. Please complete all sections of the form. Incomplete forms will not be processed. Please do not provide more information than requested. An appellate decision-maker will contact both parties to provide an equal opportunity to submit a written statement supporting or objecting to the appeal after the appeal has been processed.

Date of Appeal _____

Who is Appealing?

Name: _____ Grade: _____

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

Address: _____
Email: _____
Phone: _____
Student/Employee ID: _____

What is Being Appealed?

☐ **Dismissal** Date: _____
☐ **Written Determination** Date: _____

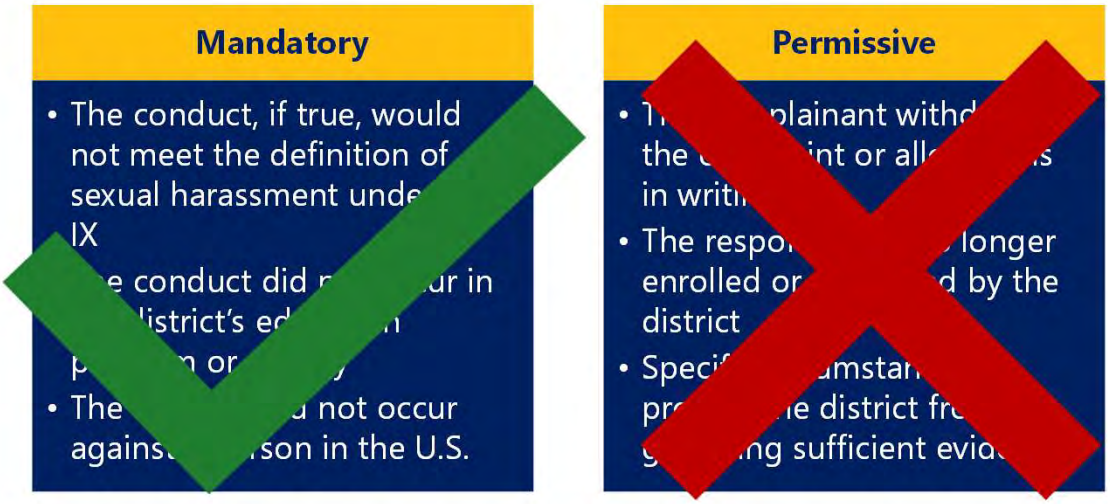
If the appeal is only applicable to some allegations in the complaint, which parts of the dismissal or determination are being appealed?

_____
_____
_____

151

152

Dismissal



153

REMEMBER ... Supportive Measures

If you dismiss, you must "at a minimum"

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

154

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

155

156

Group Discussion

Would do you do with this information?

How does it impact your next steps?

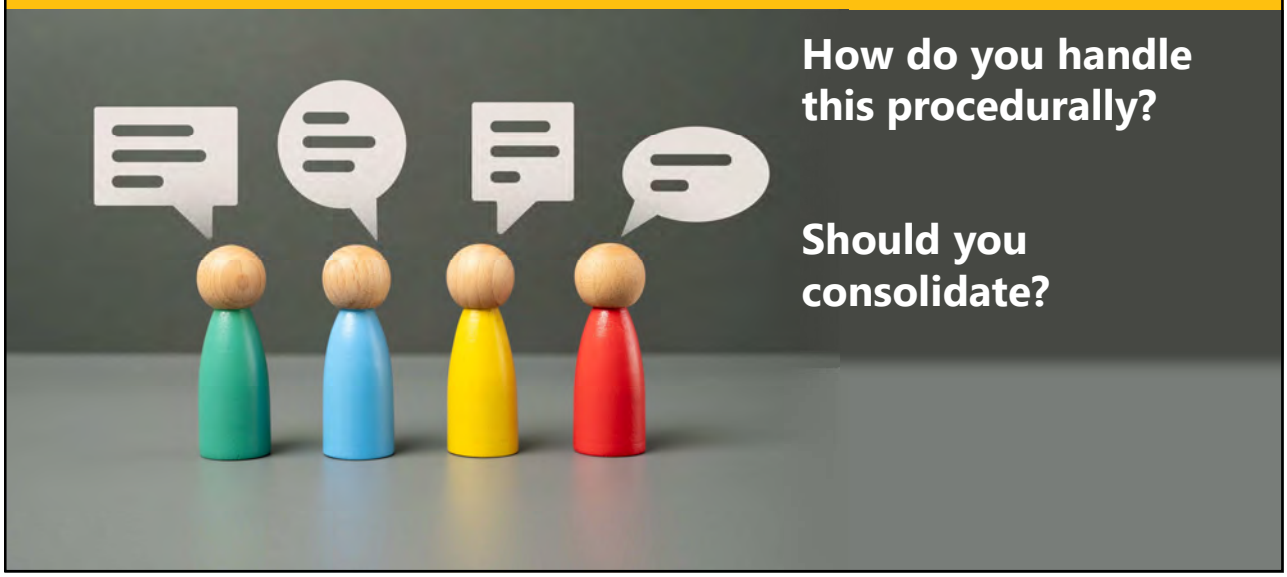
157

Jack & Diane

Jack's parents learn that Diane slapped Jack and file a formal complaint against her.

158

Group Discussion



How do you handle this procedurally?

Should you consolidate?

159

Consolidation

- If multiple complaints arise from the same conduct or incident, Coordinator can consider consolidation
- Consider:
  - The burden of separate grievance processes on the parties
  - Risks to the fairness of the investigation or outcome
  - Privacy rights of any student party
- Alternative: consolidate complaints for investigation but provide individual investigation summaries and determinations

160

161

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

T&H

162

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)

163

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)

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

164

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

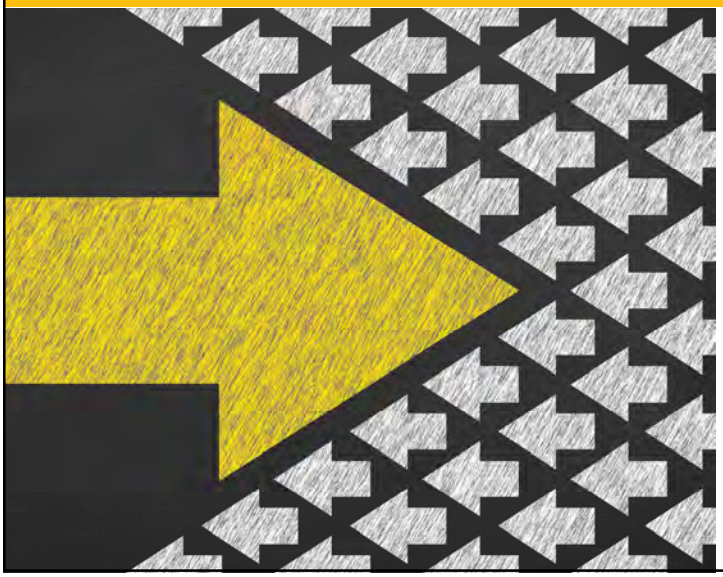
(Merriam-Webster)

- Sex
- Race
- 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

165

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

166

Conflict of Interest

- Related to a party or witness
- Business relationship with a party or witness
- School relationship with a party or witness (research advisor, coach)
- Previously disciplined a party
- Previously spoke or wrote about victim rights or accused rights
- Employee or attorney of the institution
- Prior experience in the role

Likelihood of conflict

T&H

167

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

168

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

Examples:

- 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

T&H

169

Impartial Approach

- The preamble to the 2020 Title IX rules call 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

170

Group Discussion

The Title IX Coordinator is also the athletics director, and Jack is a star football player, key to winning state.

Can they be impartial?

171

Group Discussion

The Title IX Coordinator has a disciplinary role in the school and has disciplined Diane in the past for dishonesty.

Can they be impartial?

172

Group Discussion

The Title IX Coordinator believes traumatic stress affects brain function and, in turn, memory and behavior.

Can they be impartial?

173

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)

174

Intermission

175

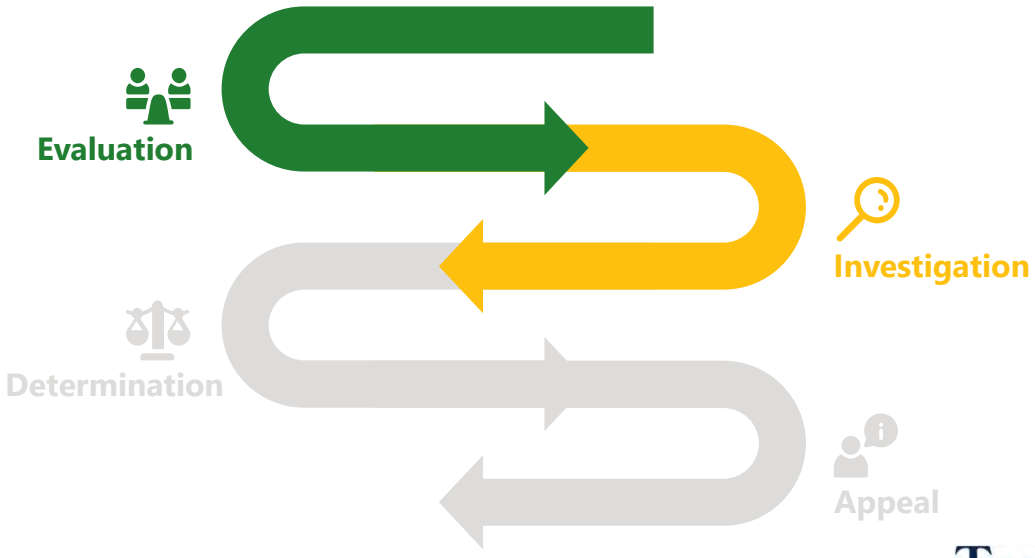
PM SET LIST

This is How We Do It: **Investigations and Determinations Done Right**

- **Investigations**
  - **Regulatory Requirements**
  - **Investigation Roadmap**
  - **Common roadblocks and hurdles**
  - **Best practices and tips**
- **Reaching reliable determinations**
  - **Learning the case**
  - **Written Q&A**
  - **Written Determination**
- **Appeals**

176

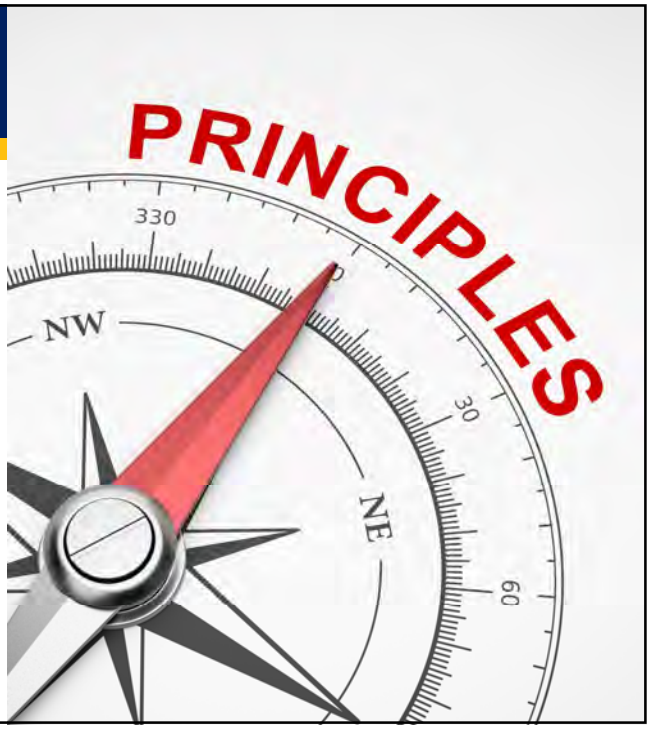
Stage Two: Investigation



177

Key Investigation Principals

- Thorough
- Prompt
- Impartial
- Fair



178

Investigator's Duties

- Serve Impartially
- Plan and carry out investigation
- Interview parties & witnesses
- Gather other evidence
- Provide parties with directly-related evidence & 10 days to respond
- Consider responses and write investigation report

179

Before Interviews

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

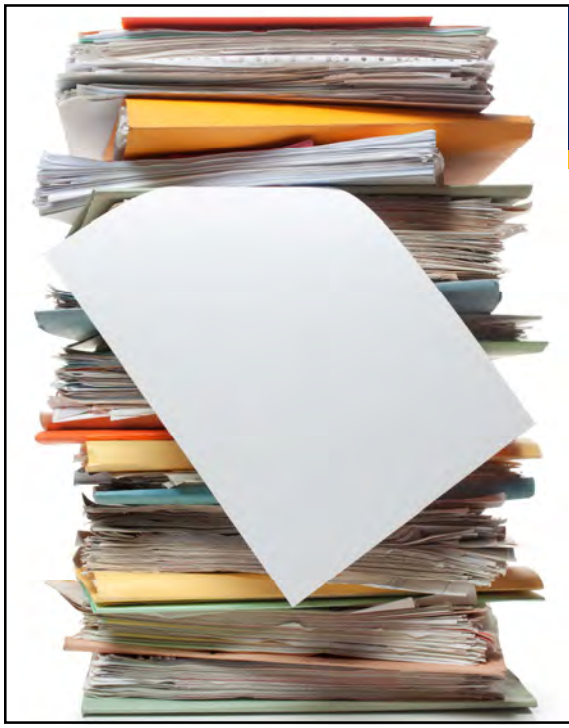
T&H

180

Investigation Steps

1. Review the file
2. Verify impartiality
3. Plan investigation
4. Gather evidence
5. Conduct productive interviews
6. Fill in the gaps
7. Compile and share "directly related evidence"
8. Draft & share investigation report
9. Transmit file to Title IX Coordinator

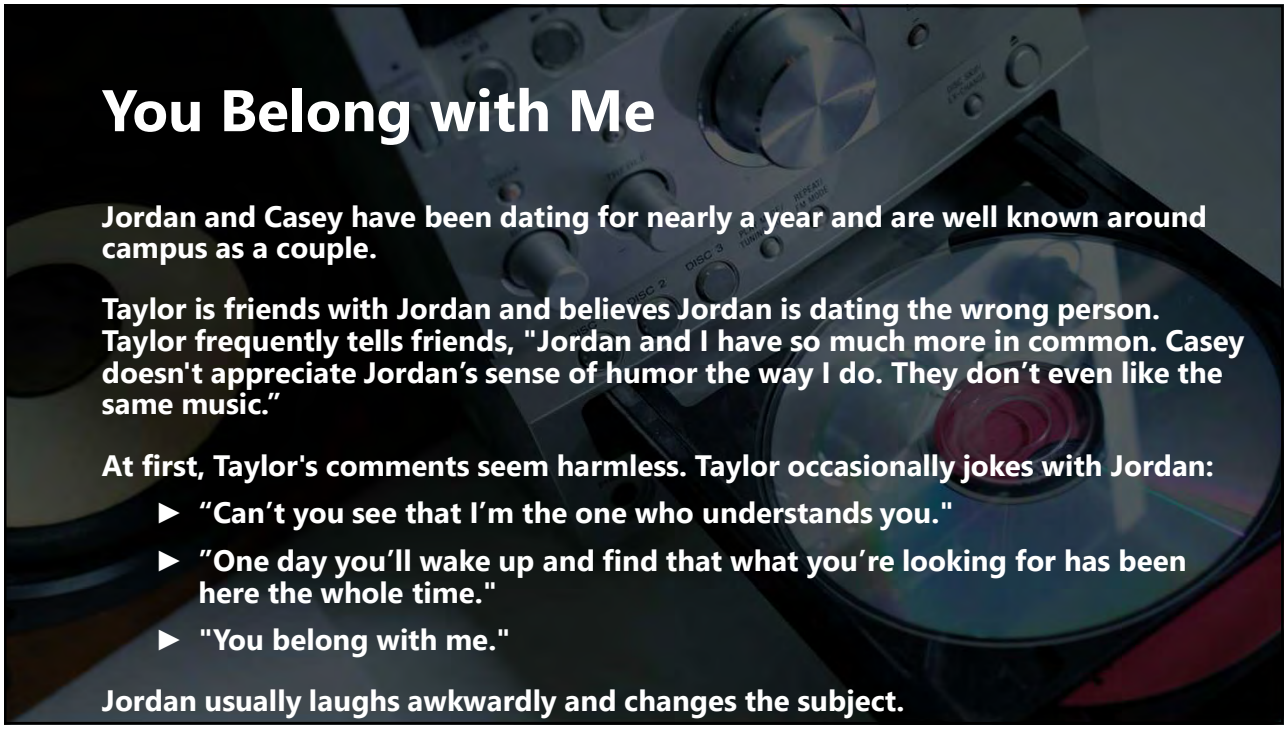
181



#1 Review 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
- Create a checklist to ensure all steps are met and to document compliance (T&H Guidebook Checklist B – Investigator Checklist)

182



183

184

© 2026 Thompson & Horton LLP

You Belong with Me

Eventually, Jordan tells Taylor: "I value our friendship, but I'm happy with Casey. I'm not interested in a relationship with you. Please stop leaving me notes and asking me to break up with Casey."

Taylor apologizes and agrees to stop.

A week later, however, Taylor resumes the behavior. The notes continue. The messages continue. Taylor again tells Jordan, "You'll change your mind someday."

Over time, Jordan begins avoiding the student commons before school because Taylor is usually waiting there. Jordan asks a teacher if it's possible to leave class through a different door after noticing Taylor waiting outside several afternoons each week. Jordan also stops attending one club meeting because Taylor regularly sits next to Jordan and tries to discuss Jordan's relationship with Casey.

185

Group Discussion

Is this Title IX Sexual Harassment?

What kind(s)?

186

Dear Party & Parent:

On [date] Henderson ISD received a formal complaint alleging that Jordan J. (the "Complainant") may have been subjected to sexual harassment by Taylor S. (the "Respondent") under Title IX of the Education Amendments of 1972. The complaint alleges that, on multiple days throughout the Spring Semester, Respondent repeatedly made unwelcome romantic overtures toward Complainant, even after being asked to stop and told they were unwelcome. The alleged behavior would be, severe, pervasive, and objectively offensive to a reasonable person.

You Belong With Me
Notice of Allegations

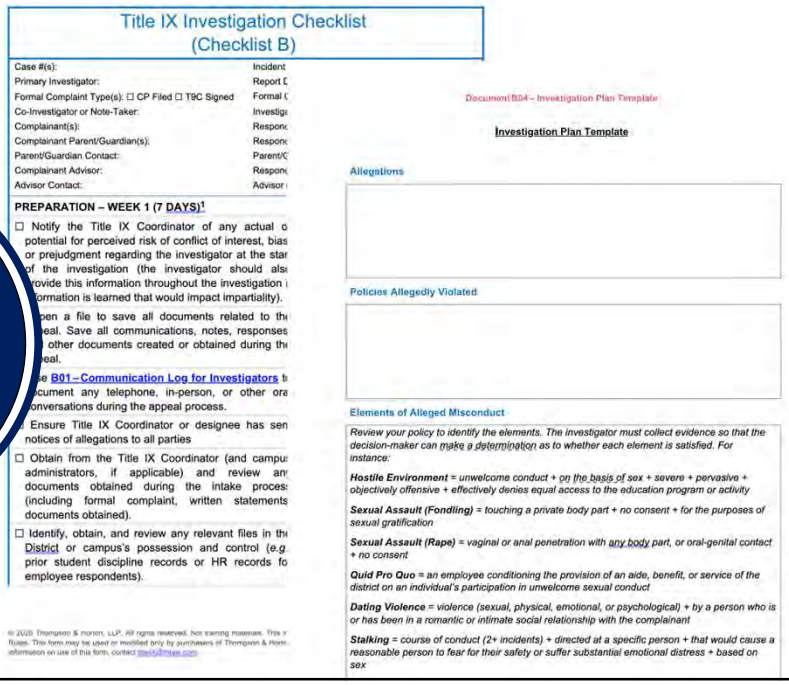
187

Investigator Tip

- The Notice of Allegations is your "roadmap" to your investigation
- Make sure you understand the allegations and the elements necessary to prove them
- If there is evidence of new allegations, ensure a new Notice of Allegations is provided to both parties

188

Title IX Guidebook Forms



Title IX Investigation Checklist
(Checklist B)

Case #(s):
Primary Investigator:
Formal Complaint Type(s): ☐ CP Filed ☐ T9C Signed
Co-Investigator or Note-Taker:
Complainant(s):
Complainant Parent/Guardian(s):
Parent/Guardian Contact:
Complainant Advisor:
Advisor Contact:

PREPARATION – WEEK 1 (7 DAYS)[1]

☐ Notify the Title IX Coordinator of any actual o potential for perceived risk of conflict of interest, bias or prejudgment regarding the investigator at the star of the investigation (the investigator should also provide this information throughout the investigation information is learned that would impact impartiality).

☐ pen a file to save all documents related to the eal. Save all communications, notes, responses other documents created or obtained during the eal.

☐ e B01 – Communication Log for Investigators t cument any telephone, in-person, or other ora conversations during the appeal process.

☐ Ensure Title IX Coordinator or designee has sen notices of allegations to all parties

☐ Obtain from the Title IX Coordinator (and campus administrators, if applicable) and review any documents obtained during the intake process (including formal complaint, written statements documents obtained).

☐ Identify, obtain, and review any relevant files in the District or campus's possession and control (*e.g.* prior student discipline records or HR records fo employee respondents).

Document B04 – Investigation Plan Template

Investigation Plan Template

Allegations

Policies Allegedly Violated

Elements of Alleged Misconduct

Review your policy to identify the elements. The investigator must collect evidence so that the decision-maker can make a determination as to whether each element is satisfied. For instance:

***Hostile Environment** = unwelcome conduct + on the basis of sex + severe + pervasive + objectively offensive + effectively denies equal access to the education program or activity*

***Sexual Assault (Fondling)** = touching a private body part + no consent + for the purposes of sexual gratification*

***Sexual Assault (Rape)** = vaginal or anal penetration with any body part, or oral-genital contact + no consent*

***Quid Pro Quo** = an employee conditioning the provision of an aide, benefit, or service of the district on an individual's participation in unwelcome sexual conduct*

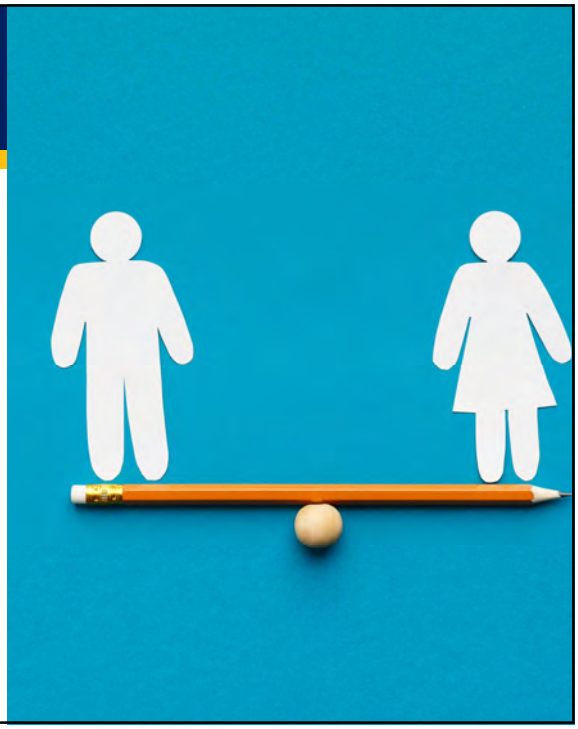
***Dating Violence** = violence (sexual, physical, emotional, or psychological) + by a person who is or has been in a romantic or intimate social relationship with the complainant*

***Stalking** = course of conduct (2+ incidents) + directed at a specific person + that would cause a reasonable person to fear for their safety or suffer substantial emotional distress + based on sex*

189

#2 Verify Impartiality

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



190

Group Discussion

What genders did you assume the parties were?

If, based on the song, you assumed Taylor is female and Jordan is male, did that impact how you viewed the severity of the behavior?

191

Group Discussion

You attend the same church as Taylor and their parents.

Can you be impartial?

What factors might impact how you analyze whether you can be?

192

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

193

#3 Plan Investigation

- What questions need to be answered for a thorough and impartial investigation?
- 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

194

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

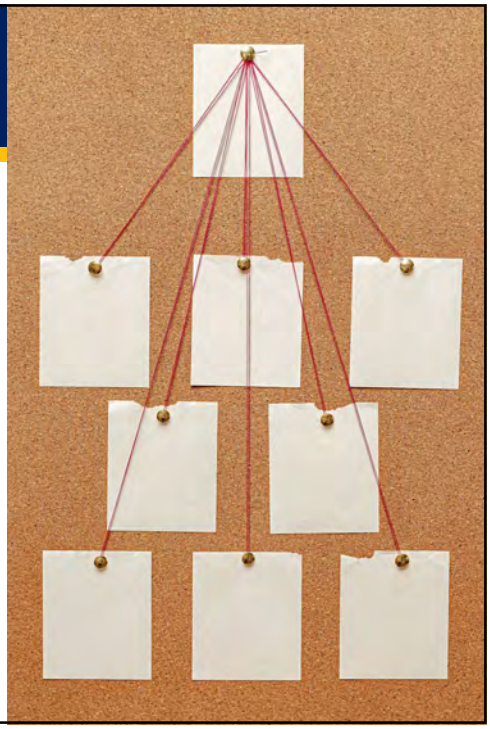
195

Our Investigation

The "elements" of the allegation determine the scope and focus.

Hostile Environment–
Unwelcome behavior
Based on sex, that is so
Severe
Pervasive, and
Objectively offensive that it
Effectively denies equal access to the District's education programs and activities

Jurisdiction–
Did it occur in a District education program or activity?



196

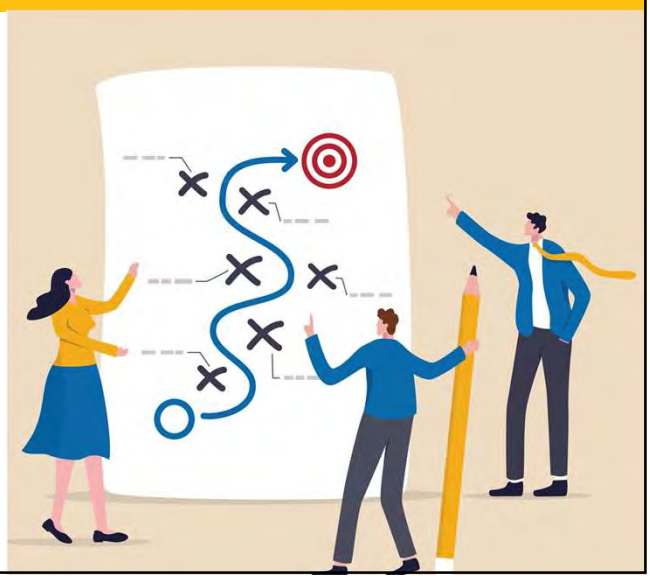
Group Discussion

Based on the elements of a hostile environment claim, what are our must ask questions?

197

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



198

#4 Gather Evidence

Who is responsible for finding and providing evidence?

- The Complainant because the Respondent is presumed not responsible
- The Respondent must prove their innocence
- Both parties are responsible for proving their version of the story
- Neither party is responsible

199

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

200

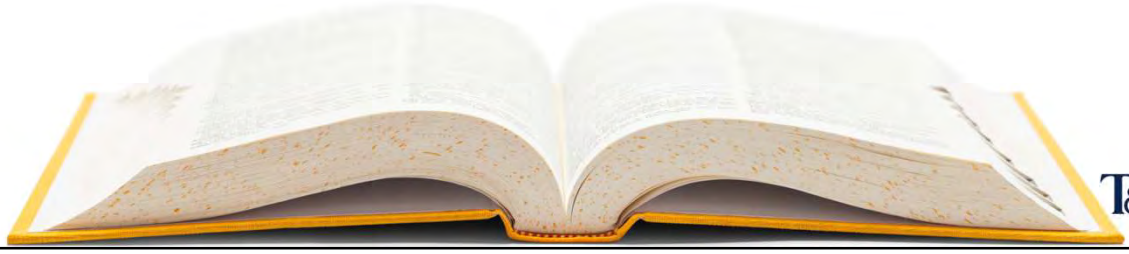
"Relevant"

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.

Includes "inculpatory" and "exculpatory" evidence

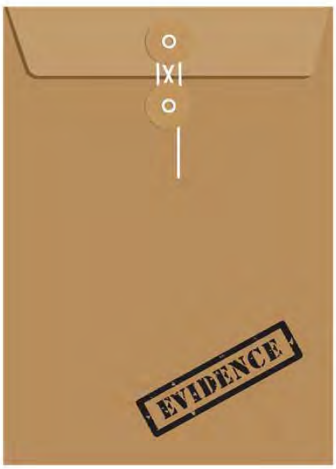


201

Types of Evidence

- Direct Evidence
- Circumstantial Evidence
- Hearsay

Rumor / innuendo (NOT evidence)

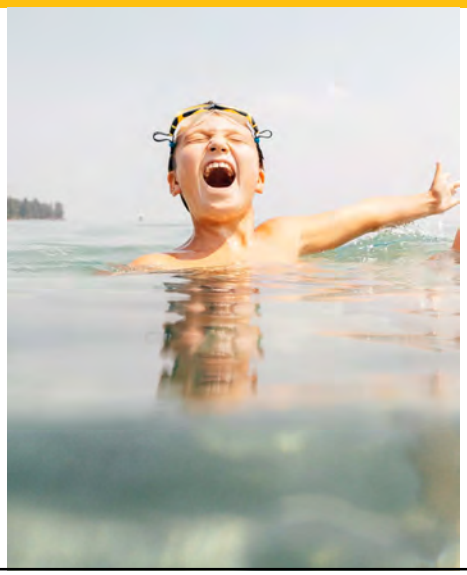


202

Direct Evidence

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

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



I saw Johnny swimming in the lake.

203

Circumstantial Evidence

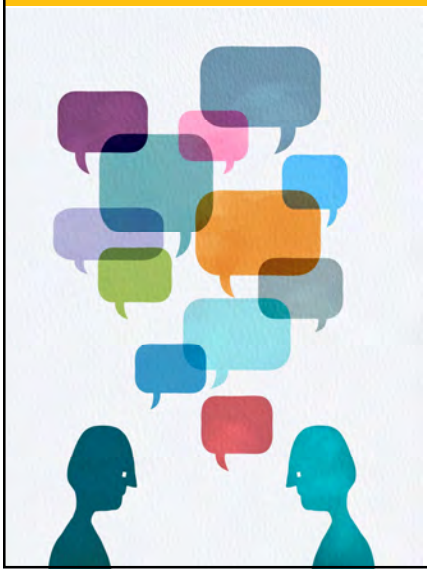
Evidence based on inference and not on personal knowledge or observation … all evidence that is not given by eyewitness testimony.

I saw Johnny walking off the pier, wrapped in his towel, with wet hair.

He must have been swimming.

204

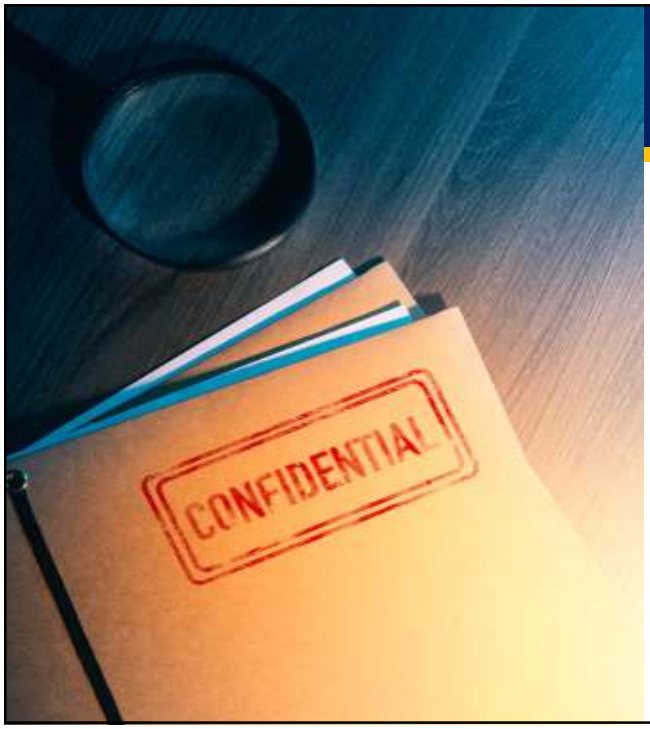
Hearsay Evidence



A statement (oral or written) made by someone other than the person you are interviewing and that is offered to prove the truth of the matter asserted in the statement.

Holly: Kendra said she saw Johnny swimming in the lake.

205



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

206

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

207

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

208

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

209

Group Discussion

Who may have information?

What other types of information can you seek?

210

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)

211

#5 Conduct Productive Interviews

Preparation is key!!!!!

- Prepare a focused and targeted interview outline
- Focus on the allegations of sexual harassment 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

212

Group Discussion

213

Notice of Interview

- Institution 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)

T&H

214

Title IX Guidebook Forms

Document B06 – Notice to Party of Investigative Interview or Other Meeting

[Can be sent by email, mail, or both]

April 14, 2025

RE: Notice to Pa

Dear [Student Pa

This communicat
[filed *or* signed] o

[List allega

The District's Titl
provide a party
time, location, p
other meetings, v

This letter is not
formal complaint.
36 hours later th
through Zoom at

I will attend the m
the meeting from
are expected to
allow you to resp
part of the invest
evidence from th

As a reminder, d
including fact an
evidence to me.

You have the rig
an attorney prese
advisor is in addi
act on behalf of
presence of an
established restri
proceedings, whi
previously receiv
Expectations, bu

© 2025 Thompson & Ho
2020 Title IX Rules. This
authorized users. For mo

Document B06 – Party, Parent/Guardian, and Advisor Rights and Expectations

Party, Parent/Guardian, and Advisor Rights and Expectations

The Title IX regulations governi
the District acknowledge the
authorized to act on behalf o
student complainants, student
grievance process. They also al
to accompany, advise, and assi
District does not restrict the righ
feels most comfortable and belie

The District retains significant
advisors, parents/guardians of
All restrictions on the participat
advisors during the grievance pr

The purpose of this document
parties, parents/guardians of
failure to comply with expectatio

Rights

- Parties in the Title IX sex
assisted by an advisor
harassment grievance p
individuals should serve
members, attorneys, or
relationship. The status
advisor is an attorney c
potential of any party to y
District's compliance with
- For minor parties, th
parent(s)/guardian(s), wh
the same conditions as
party and their parent/gua
choice will prevail.
- The District will objectivel
decision-makers free fro
which are required to be
to advance their respecti
has an advisor, pays for

Document B07 – Notice to Witness of Investigative Interview or Other Meeting

[Can be sent by email, mail, or both]

April 14, 2025

RE: Notice to Witness of Investigative Interview or Other Meeting

Dear [Student Party Name] [and, for minor party, and Parent Name(s)]:

This communication relates to a formal complaint of sexual harassment under Title IX [filed *or* signed] on [date]. I have scheduled [an investigative interview *or* a meeting] regarding the formal complaint with you on [date] from [start time] to [end time]. The meeting will be held [at [location] *or* by telephone *or* through Zoom at the following link ____].

I will attend the meeting along with [list any other persons and their titles who will attend the meeting from the District]. You [for a minor witness include: and a parent/guardian] are expected to attend the meeting. The purpose of the meeting is [purpose, *e.g.*, to determine if you have information relevant to the investigation of the allegations, to obtain your response to rebuttal information from another witness or party, etc.]

[The next paragraph is optional] You have the right to have an advisor of choice, who may be, but is not required to be, an attorney, attend any meeting or grievance proceeding relating to the formal complaint. The advisor is in addition to parents/guardians of a minor student, who can also attend with a minor-student witness in this process. We will not limit the choice or presence of an advisor in any meeting or grievance proceeding; however, we have established restrictions regarding the extent to which the advisor may participate in the proceedings, which apply equally to the parties, witnesses, and parents/guardians. Those expectations are enclosed as an attachment to this letter. If you intend to have an advisor join the [interview *or* meeting] and you have not previously notified me of their information, please let me know the name and title of the advisor at least [# hours or # days] before the meeting.

If you cannot attend the [interview or meeting] at the specified time or need more time to prepare, please promptly contact me and provide information about why a postponement is needed. If you have any questions, please do not hesitate to reach out to me at [email] or [phone number].

215

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?

T&H

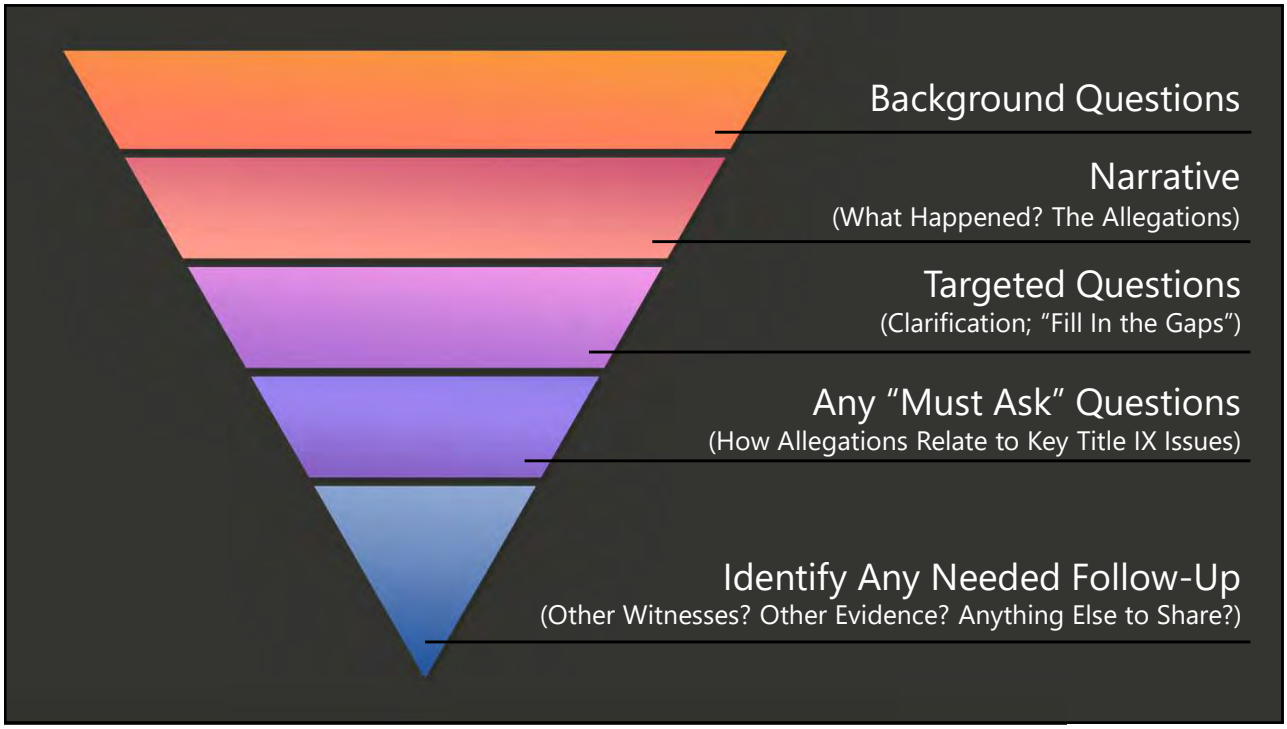
216

Interviews

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

1. Complainant
2. Witnesses you identified (campus personnel, other students)
3. Witnesses identified by complainant
4. Respondent
5. Witnesses identified by respondent

217



218

Group Discussion

Complainant Interview:

- How will you establish rapport?
- What background questions will you ask?
- How will you frame the narrative questions?
- What targeted questions do you anticipate?
- Any "must ask" to put on your outline?

219

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

T&H

220

Subsequent Interviews

- Given the information you learned in the first interview, what additional questions do you have for witnesses? For the other party?
- Give the parties an opportunity to respond to what the other said; this may involve follow-up interviews

221

Group Discussion

222

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

223

More Interview Dos & Don'ts

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

224

© 2026 Thompson & Horton LLP

#6 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 the decisionmaker to reach a reliable determination?
- If you were the decisionmaker, would you have more questions?

225

What if it's They Said-They Said?

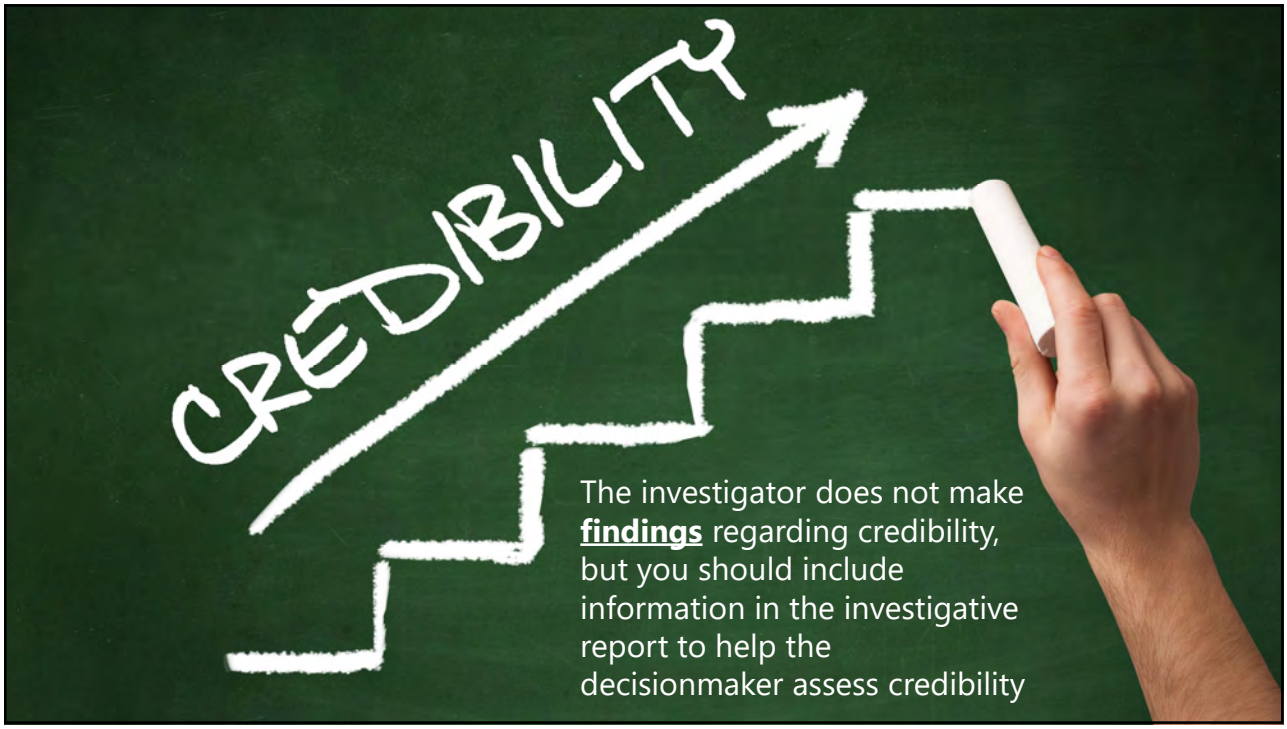
226

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 you/the decisionmaker assess credibility and reach a reliable determination

T&H

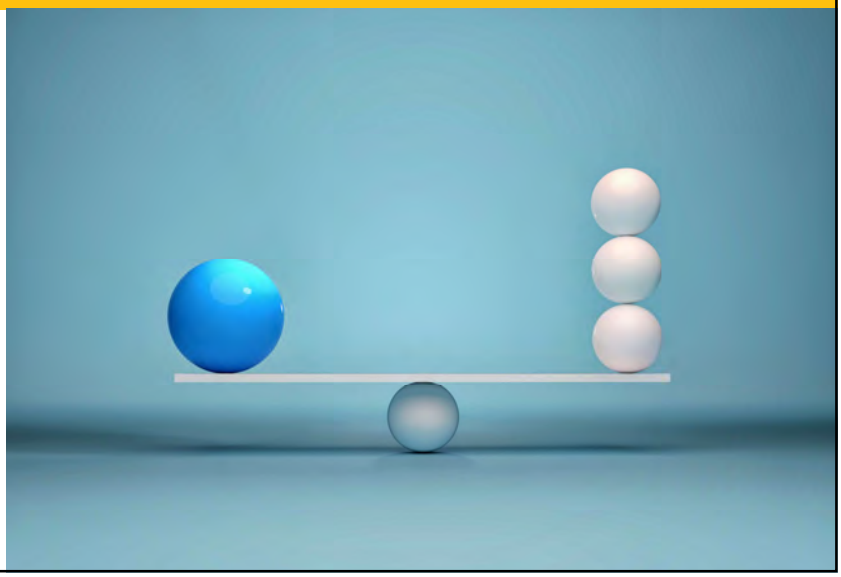
227



228

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
- Collecting evidence related to credibility is key!



229

Group Discussion

Rank these witnesses in order of credibility:

- Nun
- Teacher
- Administrator
- Star athlete
- Honor student
- Person with a disciplinary record
- SRO

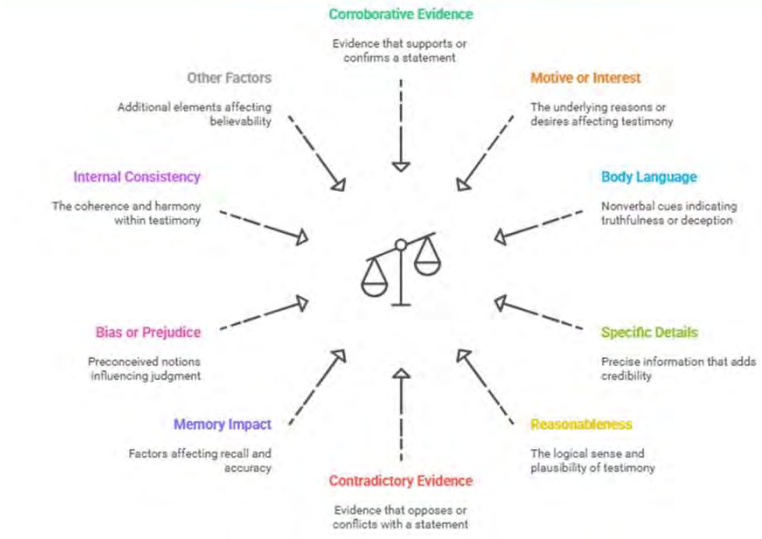
230

Credibility

- The decisionmaker cannot make credibility determinations based on a person's role as the complainant, respondent, or a witness (or being a nun or police officer)
- The investigator needs to collect evidence that may
  - corroborate or contradict the parties' accounts
  - make one version more plausible than the other
  - bear on a witness's or party's ability to accurately and objectively perceive, recall, or explain what happened

231

Credibility Factors



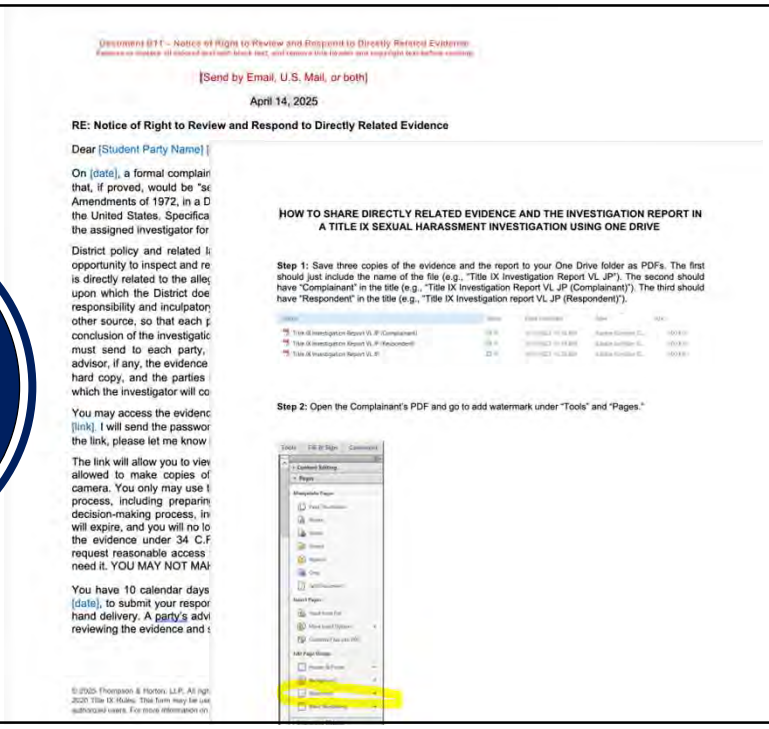
232

#7 Share Directly Related Evidence

- The parties must be given at least 10 days to review the directly related evidence and submit written responses about the evidence to the investigator
  - Includes evidence the school doesn't think it will use
- The investigator must consider the responses when writing the investigative report

233

Title IX Guidebook Forms



[Send by Email, U.S. Mail, *or* both]

April 14, 2025

RE: Notice of Right to Review and Respond to Directly Related Evidence

Dear [Student Party Name]

HOW TO SHARE DIRECTLY RELATED EVIDENCE AND THE INVESTIGATION REPORT IN A TITLE IX SEXUAL HARASSMENT INVESTIGATION USING ONE DRIVE

Step 1: Save three copies of the evidence and the report to your One Drive folder as PDFs. The first should just include the name of the file (e.g., "Title IX Investigation Report VL JP"). The second should have "Complainant" in the title (e.g., "Title IX Investigation Report VL JP (Complainant)"). The third should have "Respondent" in the title (e.g., "Title IX Investigation report VL JP (Respondent)").

Step 2: Open the Complainant's PDF and go to add watermark under "Tools" and "Pages."

234

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

235

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

236

© 2026 Thompson & Horton LLP

Group Discussion

Should party or witness names be redacted from the directly-related evidence?

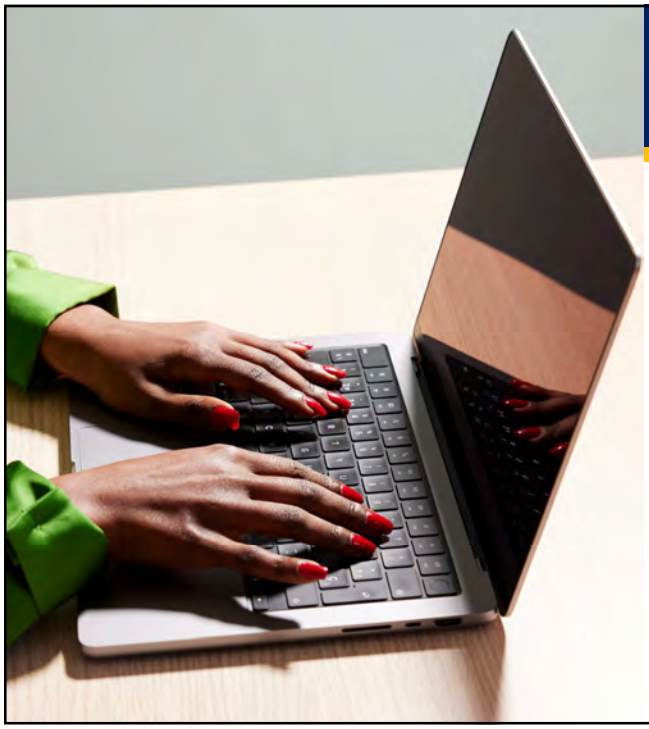
How do you handle video evidence?

237

Evaluating Party Responses

- 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?

238



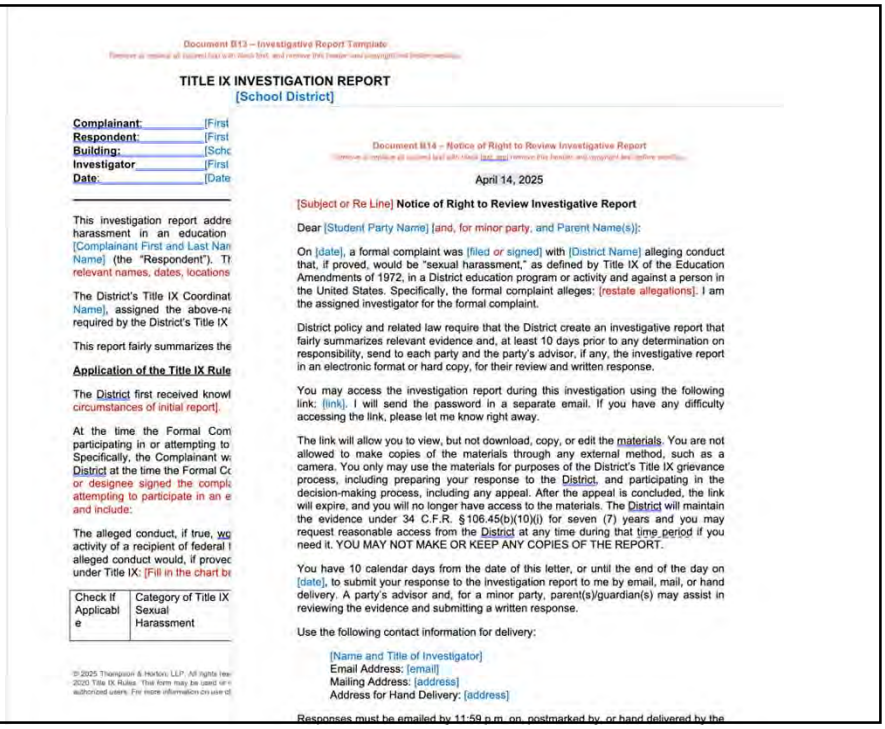
#8 Prepare & Share Investigation Report

- Investigator 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 the determination

T&H

239

Title IX Guidebook Forms



Document B13 – Investigative Report Template

TITLE IX INVESTIGATION REPORT
[School District]

Complainant: _____[First
Respondent: _____[First
Building: _____[Scho
Investigator _____[First
Date: _____[Date

This investigation report addre
harassment in an education
[Complainant First and Last Nan
Name] (the "Respondent"). Th
relevant names, dates, locations

The District's Title IX Coordinat
Name], assigned the above-na
required by the District's Title IX

This report fairly summarizes the

Application of the Title IX Rule

The District first received knowl
circumstances of initial report].

At the time the Formal Com
participating in or attempting to
Specifically, the Complainant w
District at the time the Formal Co
or designee signed the compla
attempting to participate in an e
and include:

The alleged conduct, if true, wo
activity of a recipient of federal f
alleged conduct would, if provec
under Title IX: [Fill in the chart be

Check If Applicabl e	Category of Title IX Sexual Harassment

© 2025 Thompson & Horton LLP. All rights res
2020 Title IX Rules. This form may be used or
authorized users. For more information on use of

Document B14 – Notice of Right to Review Investigative Report

April 14, 2025

[Subject or Re Line] **Notice of Right to Review Investigative Report**

Dear [Student Party Name] [and, for minor party, and Parent Name(s)]:

On [date], a formal complaint was [filed *or* signed] with [District Name] alleging conduct that, if proved, would be "sexual harassment," as defined by Title IX of the Education Amendments of 1972, in a District education program or activity and against a person in the United States. Specifically, the formal complaint alleges: [restate allegations]. I am the assigned investigator for the formal complaint.

District policy and related law require that the District create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to any determination on responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.

You may access the investigation report during this investigation using the following link: [link]. I will send the password in a separate email. If you have any difficulty accessing the link, please let me know right away.

The link will allow you to view, but not download, copy, or edit the materials. You are not allowed to make copies of the materials through any external method, such as a camera. You only may use the materials for purposes of the District's Title IX grievance process, including preparing your response to the District, and participating in the decision-making process, including any appeal. After the appeal is concluded, the link will expire, and you will no longer have access to the materials. The District will maintain the evidence under 34 C.F.R. §106.45(b)(10)(i) for seven (7) years and you may request reasonable access from the District at any time during that time period if you need it. YOU MAY NOT MAKE OR KEEP ANY COPIES OF THE REPORT.

You have 10 calendar days from the date of this letter, or until the end of the day on [date], to submit your response to the investigation report to me by email, mail, or hand delivery. A party's advisor and, for a minor party, parent(s)/guardian(s) may assist in reviewing the evidence and submitting a written response.

Use the following contact information for delivery:

[Name and Title of Investigator]
Email Address: [email]
Mailing Address: [address]
Address for Hand Delivery: [address]

Responses must be emailed by 11:59 p.m. on, postmarked by, or hand delivered by the

240

Writing Our Report

Summary of Investigation

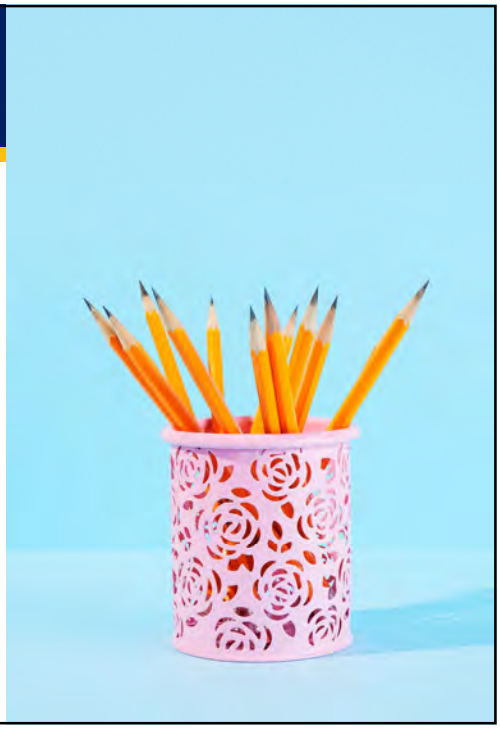
The following is a summary of the investigative steps taken in this matter:

The case was assigned to the investigator on [date].

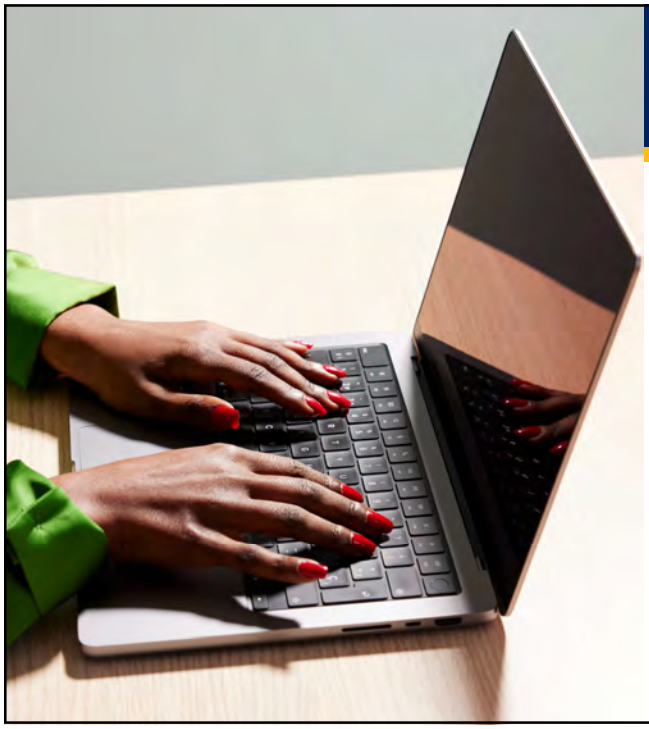
The investigator interviewed [Party *or* Witness] on [date], at [time], [at [location] *OR* via [method]]. Others present at the interview included [*list names and roles*].

[*Repeat for additional parties and witnesses until all interviews are addressed*.]

[*Include any other relevant steps*



241



Investigation Report Best Practices

- Divide the report by issue
- For each issue, start with the undisputed facts
- For the disputed facts, describe the parties' positions and the evidence supporting each position
- Don't forget to include information that will allow the decisionmaker to assess credibility

T&H

242

© 2026 Thompson & Horton LLP

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
- EXCEPT, do not restrict the ability of parties to obtain evidence, speak to witnesses, or consult family members, advisors, or confidential resources
- Both parties must be given at least 10 days to review and respond before the determination

243

#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!

244

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

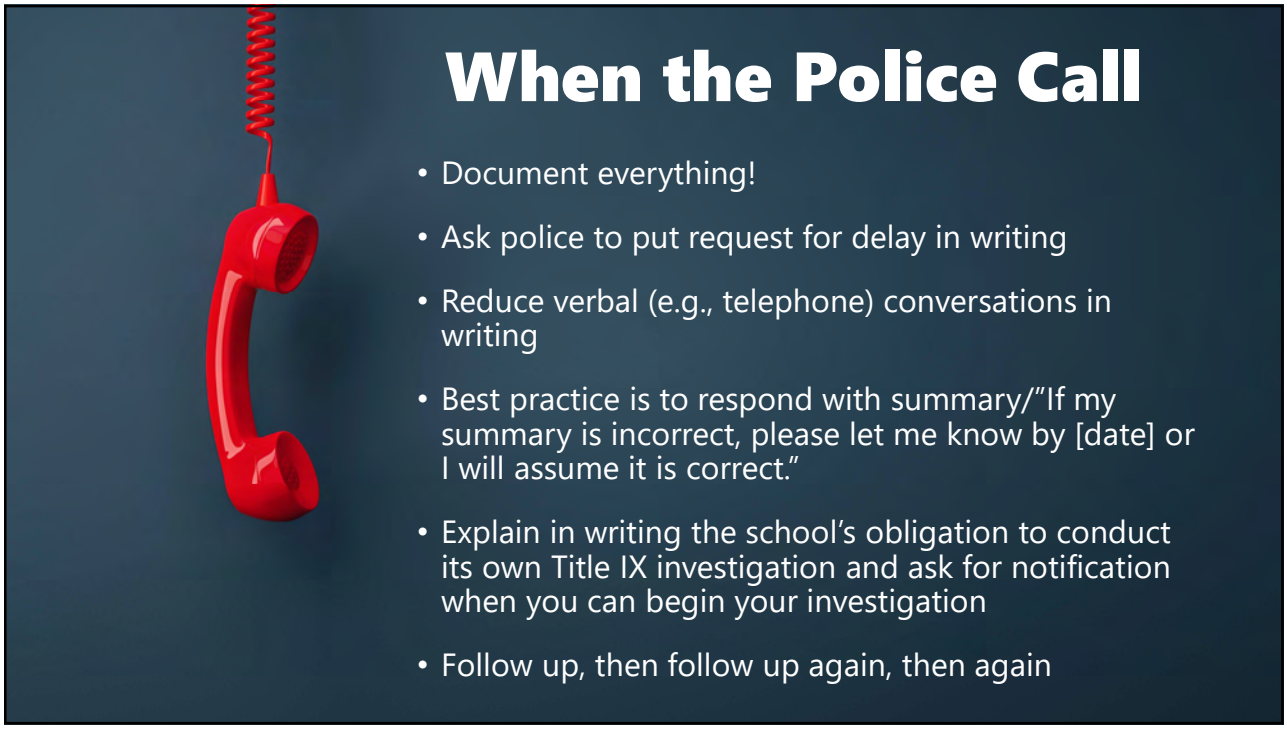
T&H

245

Group Discussion

In a sexual assault case, the police decide not to prosecute because it's a "they said/they said" case. How does this impact your investigation?

246



247

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

248

Police Evidence?

- Police evidence may be useful for *initial* fact-gathering
- They **<u>are not</u>** 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

249

Investigator Dos and Don'ts

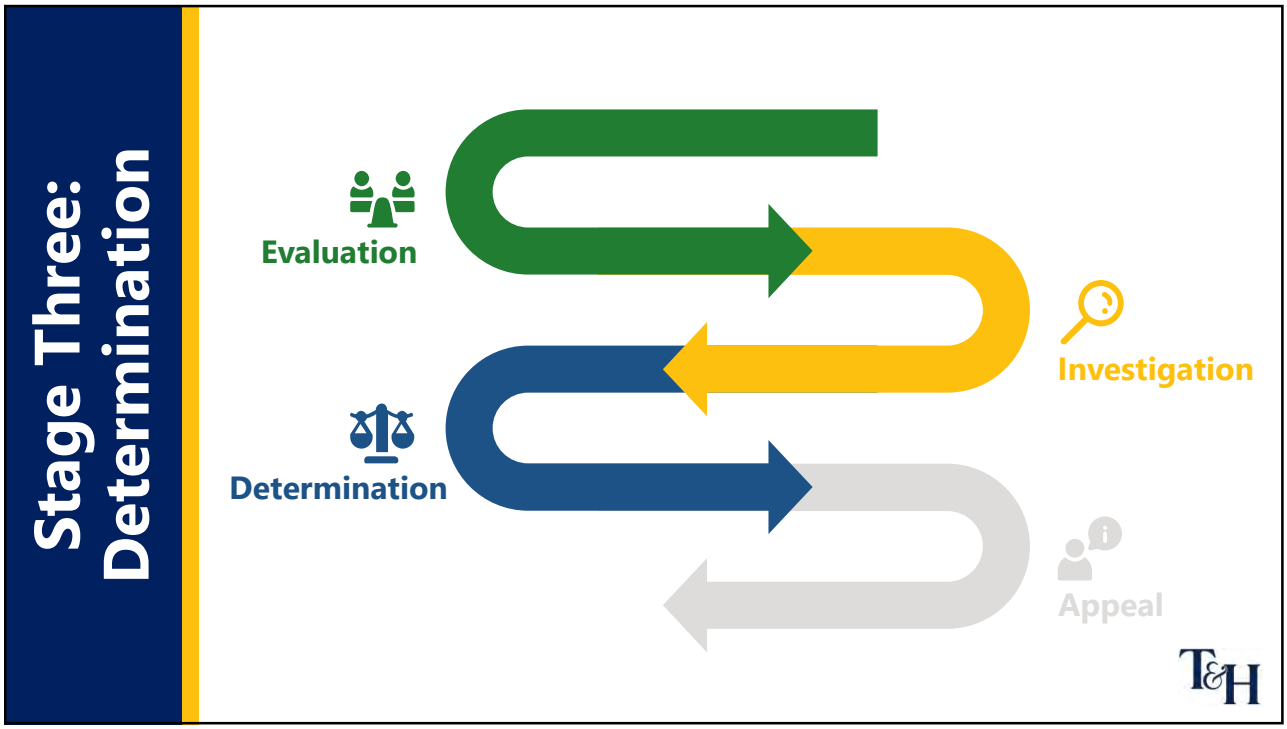
DOs

- ✓ 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

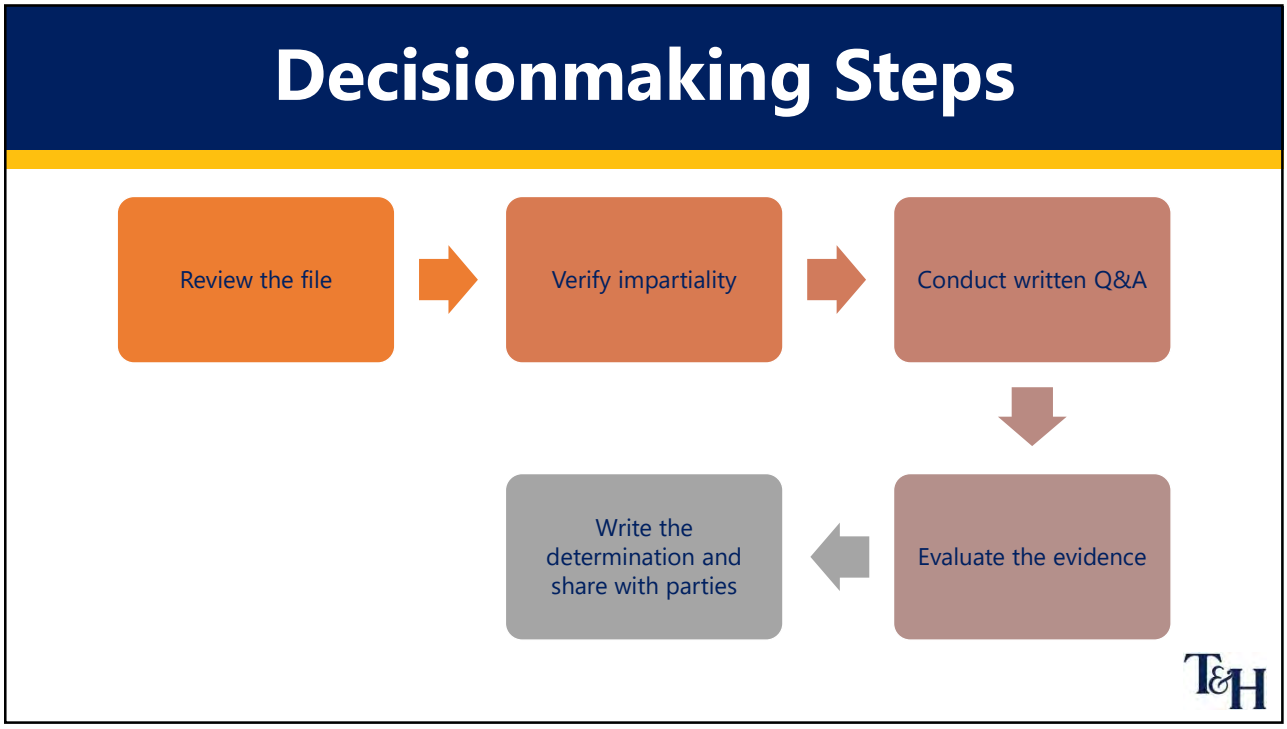
DON'Ts

- 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

250


Stage Three: Determination
Evaluation
Investigation
Determination
Appeal
T&H

251


Decisionmaking Steps
Review the file
Verify impartiality
Conduct written Q&A
Evaluate the evidence
Write the determination and share with parties
T&H

252

Decisionmaker Questions

1

2

253

Title IX Guidebook Forms

Title IX Decision-Maker Checklist
(Checklist C)

Case #(s):	Incident Date(s):
Primary Decision-Maker:	Report Date(s):
Formal Complaint Type(s): ☐ CP Filed ☐ T9C Signed	Formal Complaint Date(s):
Co-Decision-Maker(s):	Written Determination Deadline:
Complainant(s):	Respondent(s)
Complainant Parent/Guardian(s):	Respondent Parent/Guardian(s):
Parent/Guardian Contact:	Parent/Guardian Contact:
Complainant Advisor:	Respondent Advisor:
Advisor Contact:	Advisor Contact:

PREPARATION – 5 DAYS[1]	DATE AND NOTES
☐ Notify the Title IX Coordinator of any actual or potential for perceived conflict of interest, bias, or prejudgment regarding the decision-maker at the start of the decision-making process (the decision-maker should also provide this information throughout the decision-making process if information is learned that would impact impartiality).	
☐ Open a file to save all documents related to the appeal. Save all communications, notes, responses, and other documents created or obtained during the appeal.	
☐ Use C01 – Communications Log for Decision-Makers to document any telephone, in-person, or other oral conversations during the appeal process.	
☐ Send notice to the parties of their right to submit written, relevant questions and follow-up questions within five (5) days of electronic delivery of the notice. Use C02 – Notice of Right to Submit Written, Relevant Questions to Any Party or Witness.	
☐ If, at any time during the decision-making process, a party requests an extension of the timeframe or the decision-maker needs additional time, confer with the Title IX Coordinator to ensure that there is good cause. Notify the parties of any extension using C03 – Notice of Extension of Timeframes for District.	

© 2025 Thompson & Horton, LLP. All rights reserved. Not training materials. This form is intended to support compliance with the 2020 Title IX Rules. This form may be used or modified only by purchasers of Thompson & Horton's Title IX Guidebook and other authorized users. For more information on use of this form, contact titleIX@thlaw.com.

254

Decisionmaker

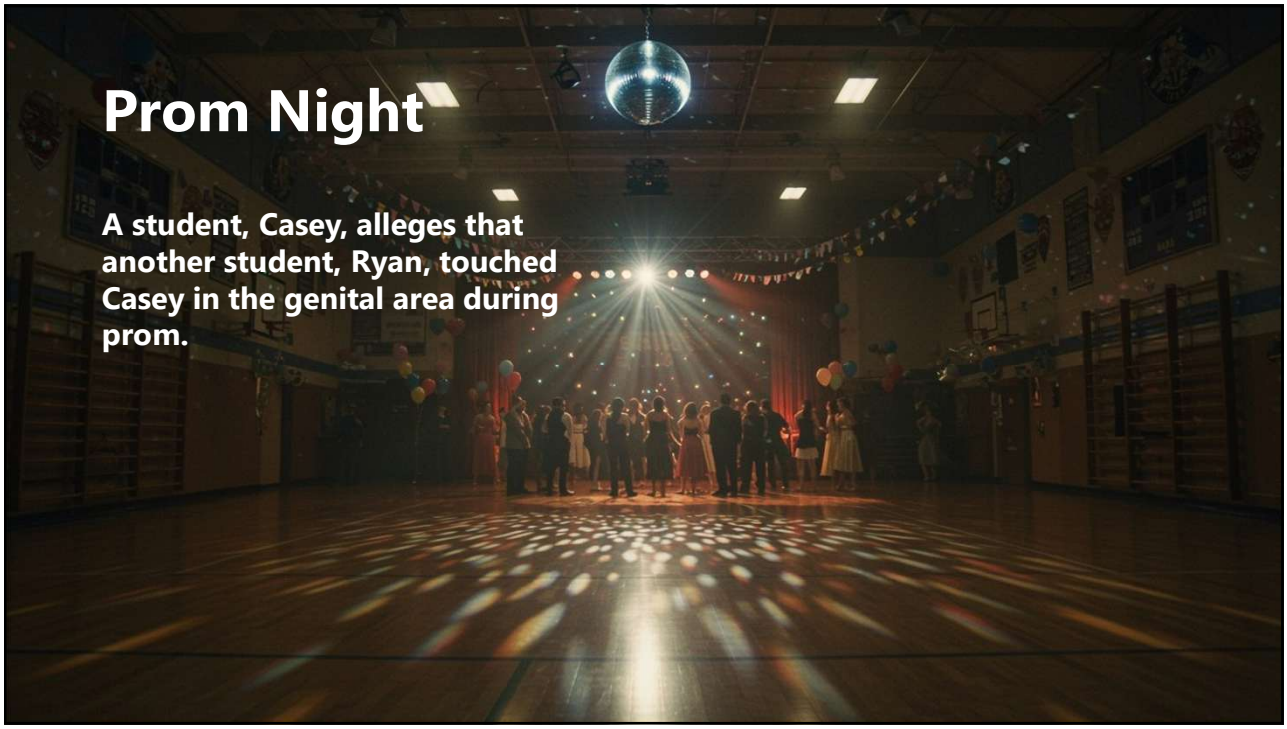
1. Review the File

255

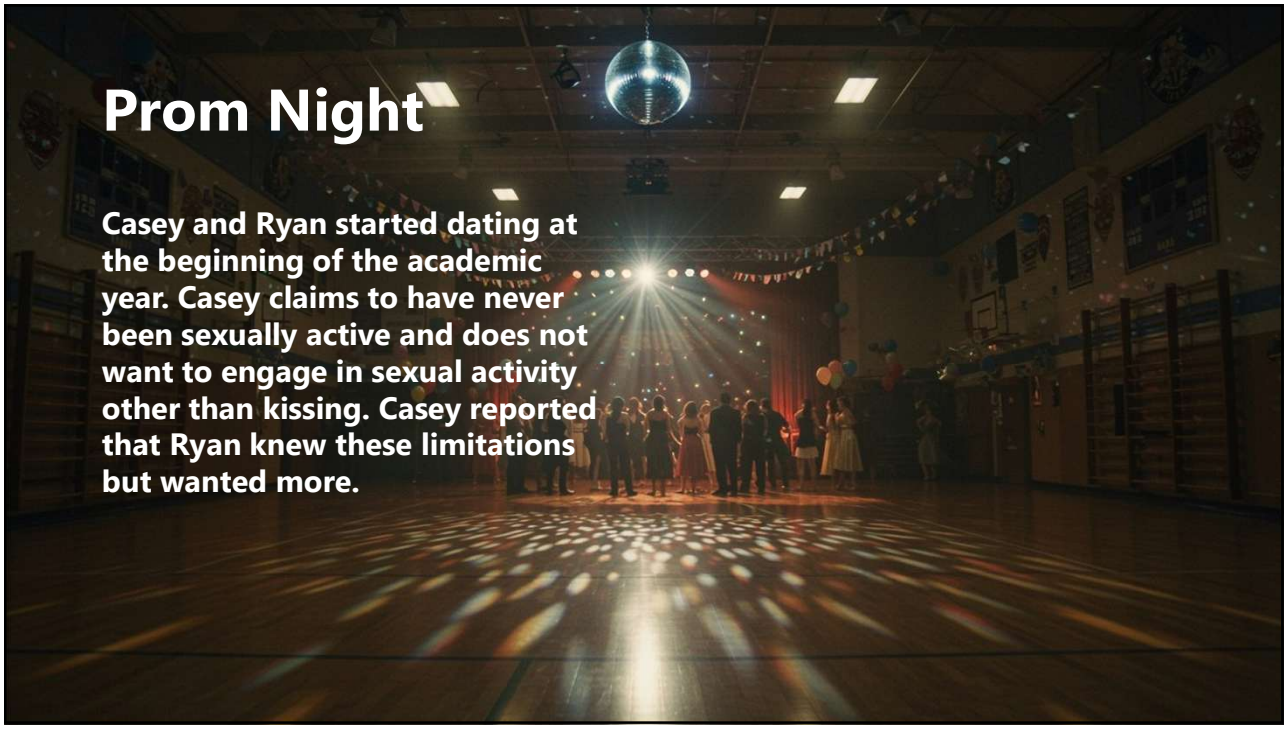
Review Case File

- Formal Complaint
- Written Notice of Allegations
- Directly Related Evidence
- Party Responses to Directly Related Evidence
- Investigation Report
- Party Responses to the Investigation Report

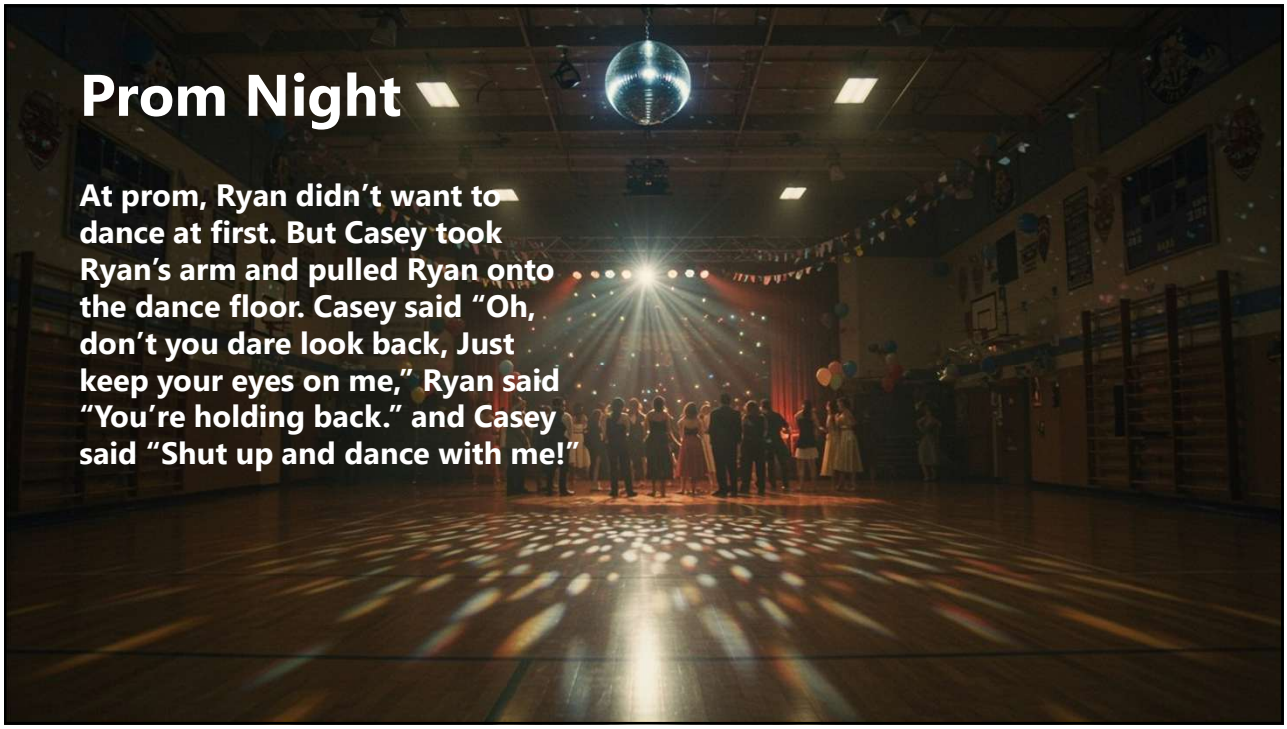
256


Prom Night
A student, Casey, alleges that another student, Ryan, touched Casey in the genital area during prom.

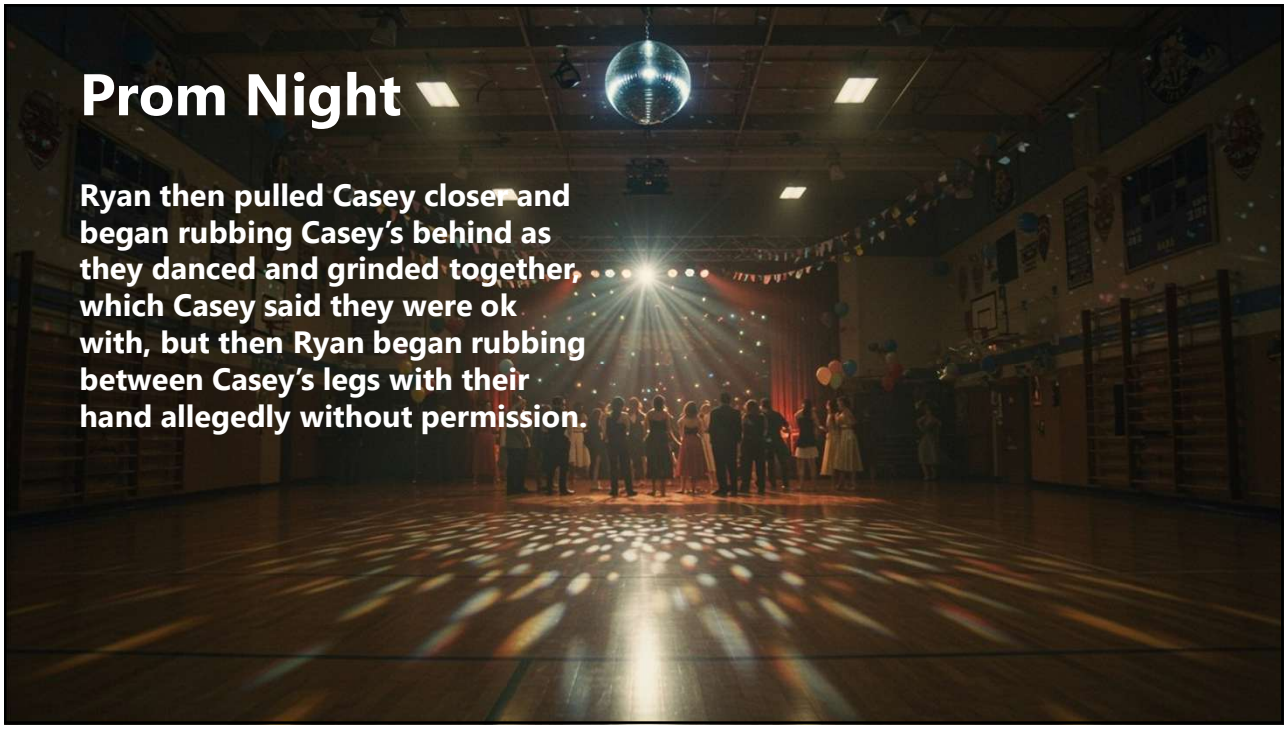
257


Prom Night
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.

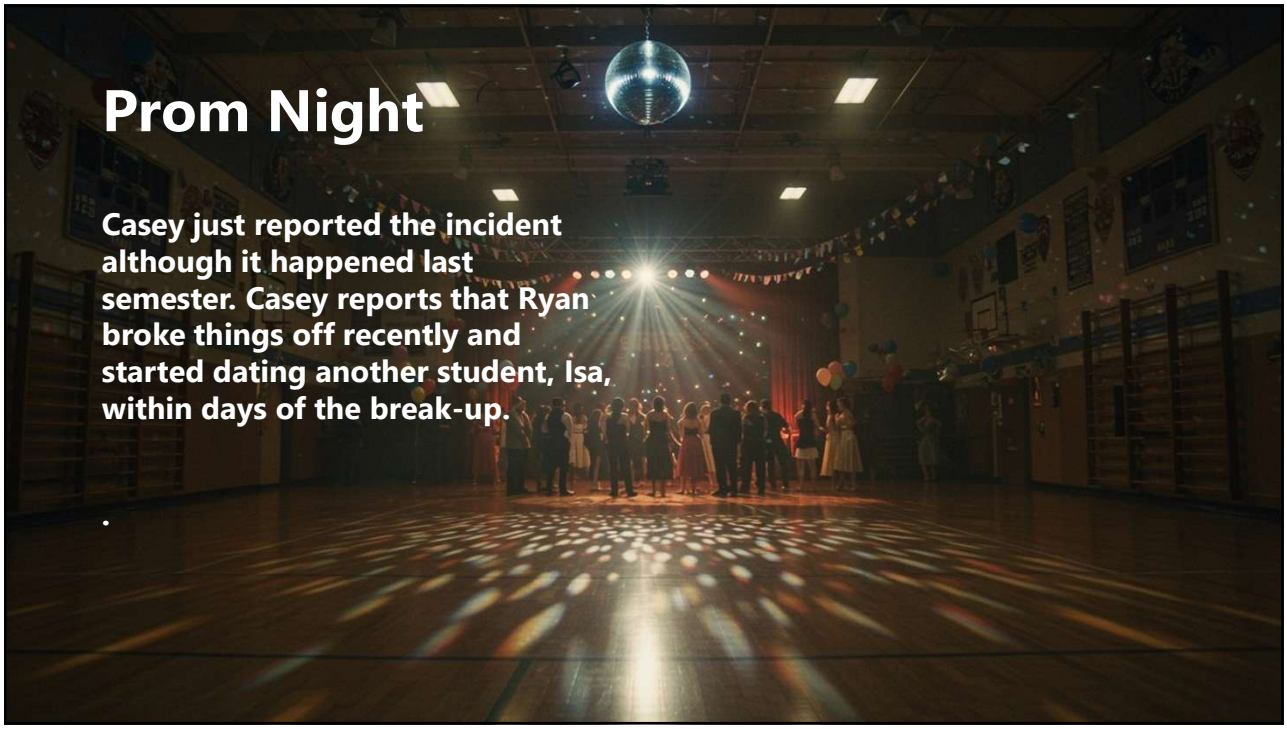
258


Prom Night
At prom, Ryan didn't want to dance at first. But Casey took Ryan's arm and pulled Ryan onto the dance floor. Casey said "Oh, don't you dare look back, Just keep your eyes on me," Ryan said "You're holding back." and Casey said "Shut up and dance with me!"

259


Prom Night
Ryan then pulled Casey closer and began rubbing Casey's behind as they danced and grinded together, which Casey said they were ok with, but then Ryan began rubbing between Casey's legs with their hand allegedly without permission.

260


Prom Night
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.
.

261

Decisionmaker
1. Review the File
2. Verify Impartiality

262

Verify Impartiality

- No bias for against complainants or respondents generally
- No bias for or against these parties
- No conflict of interest
- No prejudgment

263

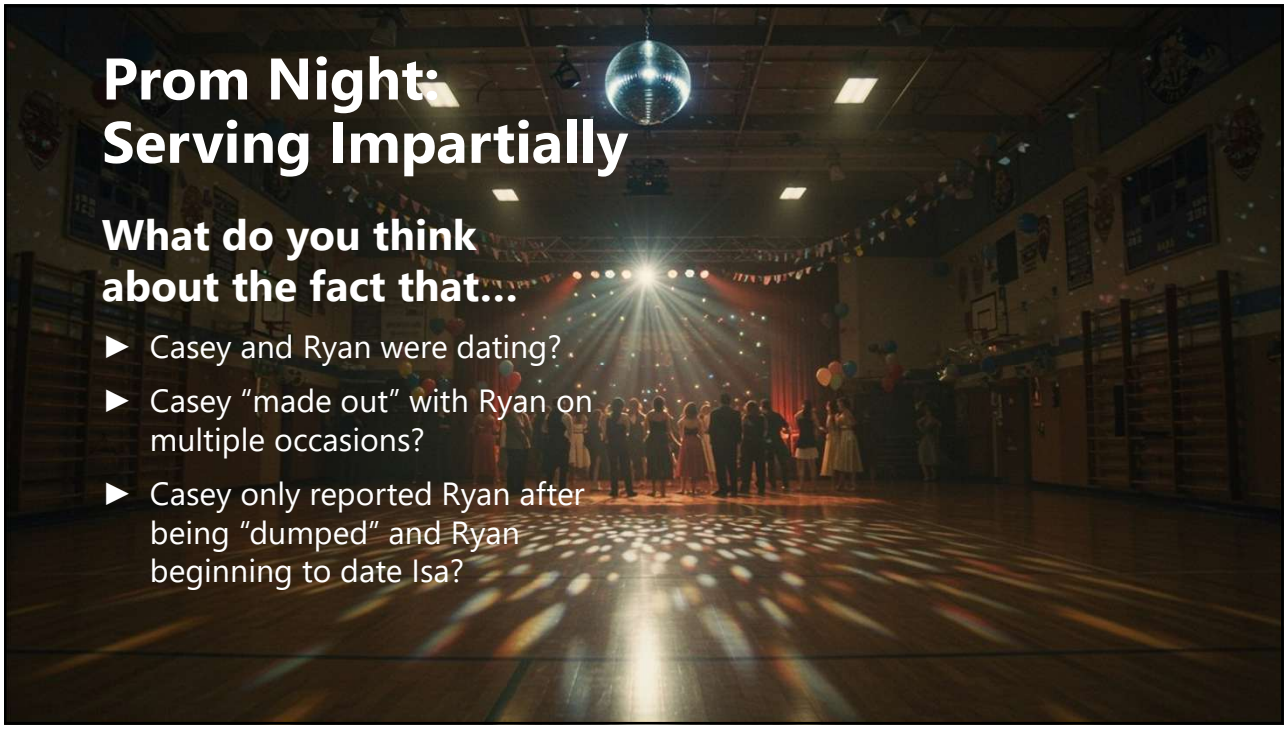
Prom Night: Serving Impartially

What gender is the Complainant, Casey?

What gender is the Respondent, Ryan?

.

264

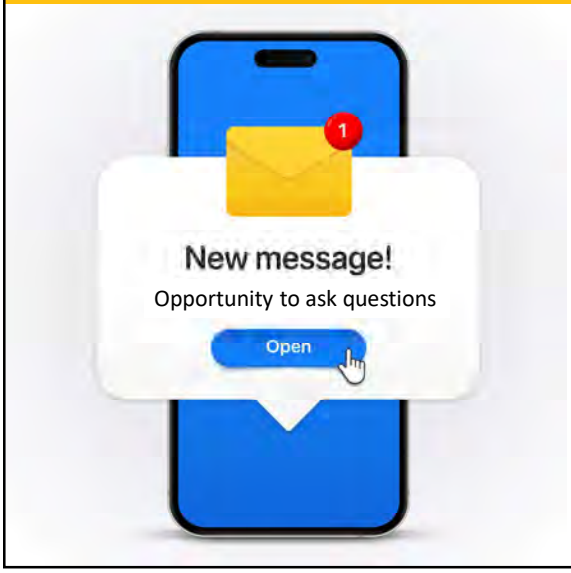

Prom Night: Serving Impartially
What do you think about the fact that…
Casey and Ryan were dating?
Casey "made out" with Ryan on multiple occasions?
Casey only reported Ryan after being "dumped" and Ryan beginning to date Isa?

265

Decisionmaker
1. Review the File
2. Verify Impartiality
3. Conduct Written Q&A

266

Written Questions



- Send parties notice of the right to submit written, relevant questions of the other party and witnesses
- Set a deadline (check your procedures)
- Stay organized, have parties:
  - Number questions
  - Identify who the question is directed to

267

Relevant?

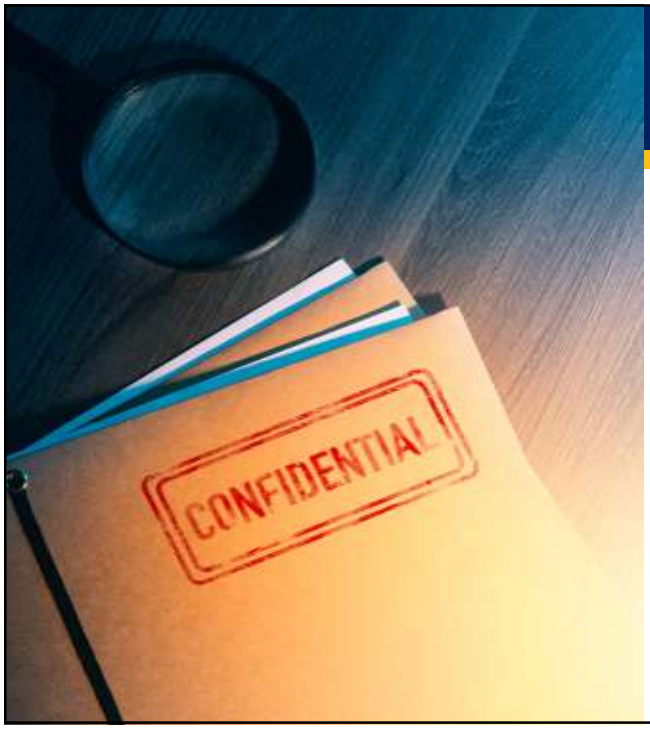
- **Inculpatory:** Evidence tending to make a disputed fact or issue *more likely to be true*
- **Exculpatory:** Evidence tending to make a disputed fact or issue *less likely to be true*
- Facts that help prove or disprove an undisputed issue of fact are not relevant
- Questions that are duplicative of other questions or evidence are not relevant

268

Respectful?

- Cannot use profanity or irrelevant, ad hominem attacks
- Harassing questions will not be tolerated
- Questions about sensitive topics may still be appropriate

269



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

270

Group Discussion

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?

271

Group Discussion

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

272

Group Discussion

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

273

Group Discussion

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

274

Group Discussion

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?

275

Disallowed 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"

276

Non-Relevant or Respectful Questions

Try & Try Again

- Provide the reason that the question is not relevant
- 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)

277

Answers and Follow Up

- Forward relevant and respectful questions to the appropriate party or witness
- Set a deadline for responses
- Forward questions and responses to both parties
- Solicit any follow up questions (set a deadline)
- Repeat as needed

278

Follow-Up Question?

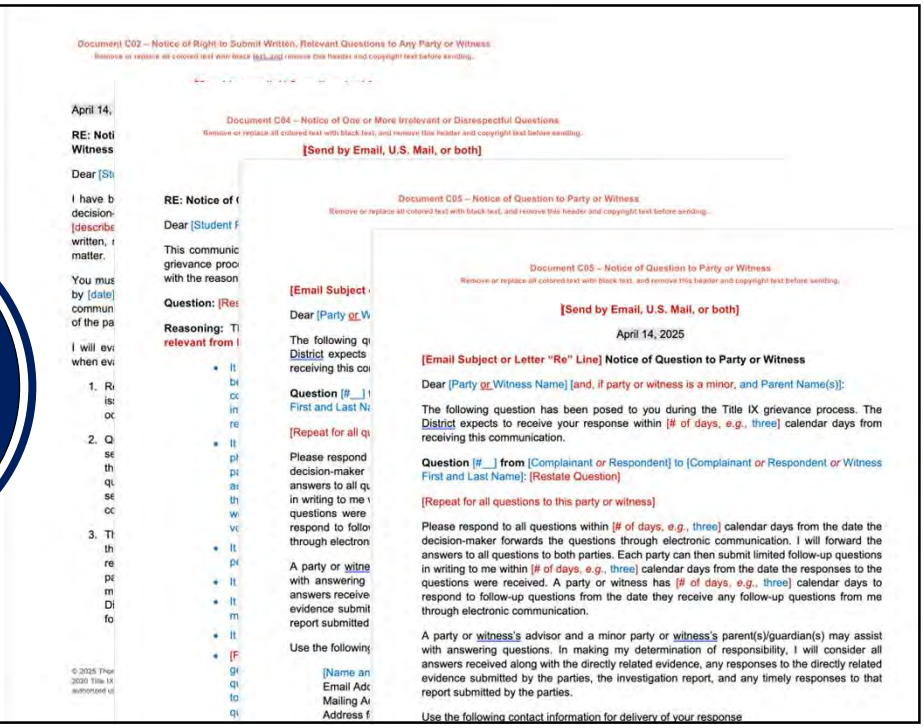
Initial Question:
When did it happen?

Answer:
Yesterday

Follow Up Questions:
What time did it happen?
Who was there?

279

Title IX Guidebook Forms



Document C02 – Notice of Right to Submit Written, Relevant Questions to Any Party or Witness

Document C04 – Notice of One or More Irrelevant or Disrespectful Questions

[Send by Email, U.S. Mail, or both]

Document C05 – Notice of Question to Party or Witness

Document C05 – Notice of Question to Party or Witness

[Send by Email, U.S. Mail, or both]

April 14, 2025

[Email Subject or Letter "Re" Line] **Notice of Question to Party or Witness**

Dear [Party or Witness Name] [and, if party or witness is a minor, and Parent Name(s)]:

The following question has been posed to you during the Title IX grievance process. The District expects to receive your response within [# of days, *e.g.*, three] calendar days from receiving this communication.

Question [#__] **from** [Complainant *or* Respondent] to [Complainant *or* Respondent *or* Witness First and Last Name]: [Restate Question]

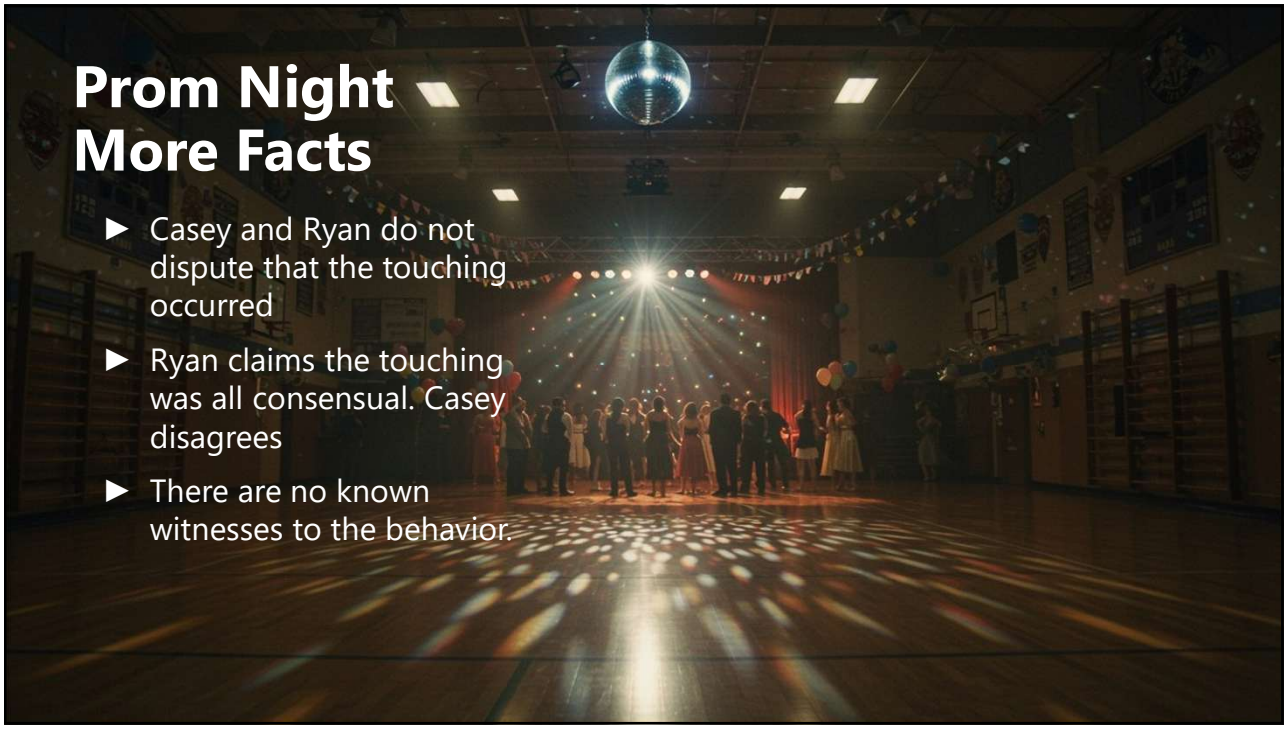
[Repeat for all questions to this party or witness]

Please respond to all questions within [# of days, *e.g.*, three] calendar days from the date the decision-maker forwards the questions through electronic communication. I will forward the answers to all questions to both parties. Each party can then submit limited follow-up questions in writing to me within [# of days, *e.g.*, three] calendar days from the date the responses to the questions were received. A party or witness has [# of days, *e.g.*, three] calendar days to respond to follow-up questions from the date they receive any follow-up questions from me through electronic communication.

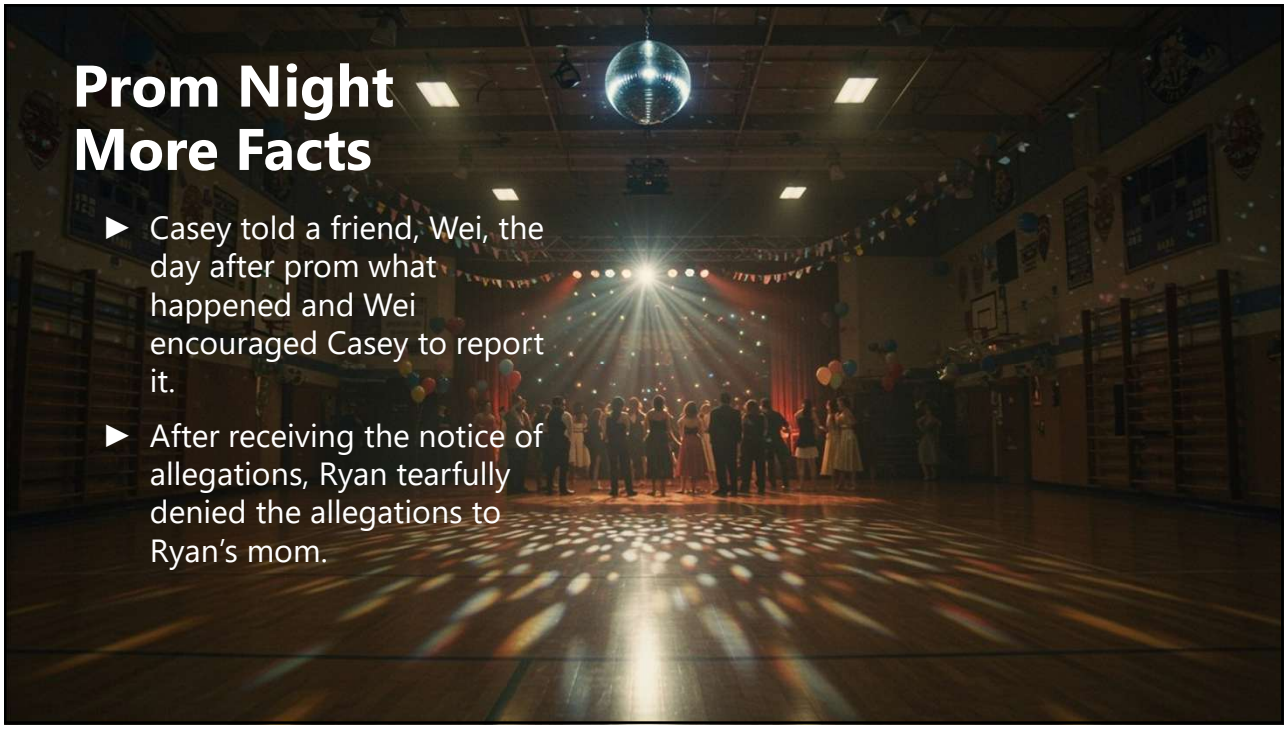
A party or witness's advisor and a minor party or witness's parent(s)/guardian(s) may assist with answering questions. In making my determination of responsibility, I will consider all answers received along with the directly related evidence, any responses to the directly related evidence submitted by the parties, the investigation report, and any timely responses to that report submitted by the parties.

Use the following contact information for delivery of your response

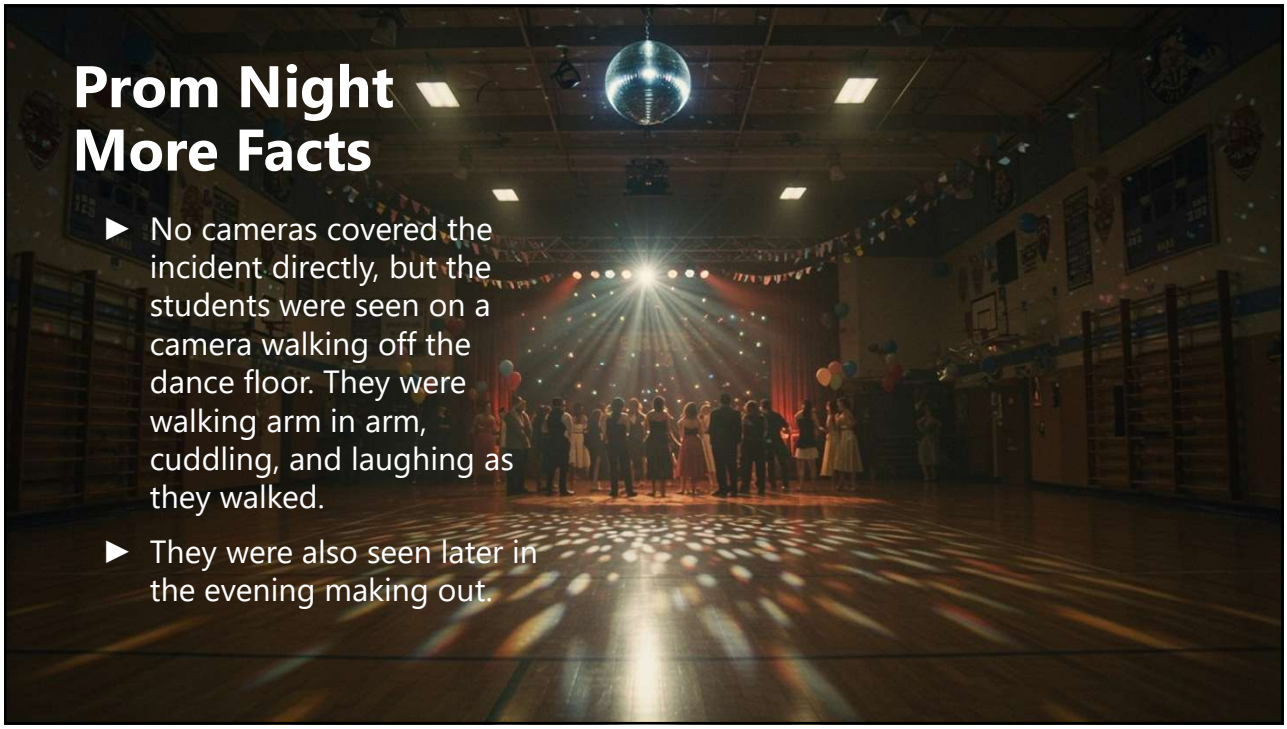
280


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

281


Prom Night
More Facts
Casey told a friend, Wei, the day after prom what happened and Wei encouraged Casey to report it.
After receiving the notice of allegations, Ryan tearfully denied the allegations to Ryan's mom.

282


Prom Night
More Facts
► No cameras covered the incident directly, but the students were seen on a camera walking off the dance floor. They were walking arm in arm, cuddling, and laughing as they walked.
► They were also seen later in the evening making out.

283

Prom Night
More Facts
► Neither student has ever had disciplinary concerns before.
► 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.

284

Decisionmaker

1. Review the File
2. Verify Impartiality
3. Conduct Written Q&A
4. Evaluate the Evidence

285

Standard of Proof

"Preponderance of the Evidence"

More likely than not.

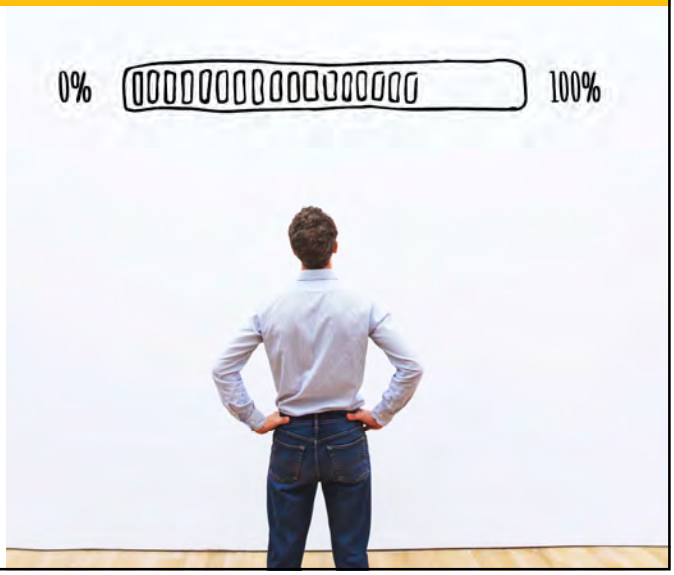
(50% + a feather)

T&H

286

Determination

- Decisionmaker evaluates relevant, not impermissible evidence for its persuasiveness
- If not persuaded by the evidence that sexual harassment occurred, the decisionmaker must not determine that sexual harassment occurred



287

Group Discussion

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

288

Credibility

- Credibility often tips the scale in a seeming 50/50 situation.
- In the decision-making 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.

289

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…

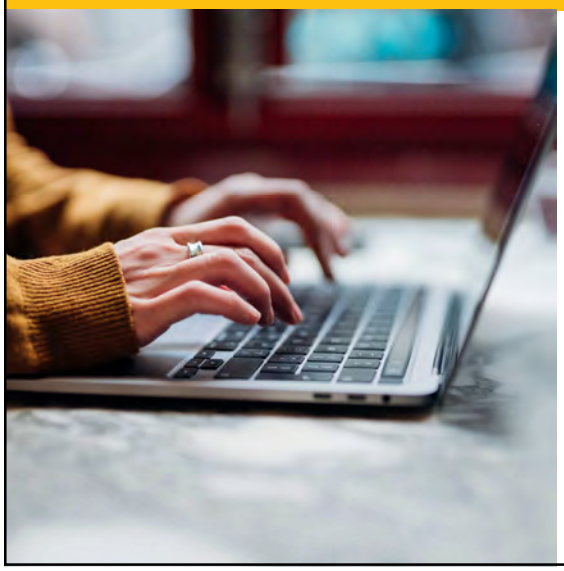
290

Decisionmaker

1. Review the File
2. Verify Impartiality
3. Conduct Written Q&A
4. Evaluate the Evidence
5. Write Determination

291

Written Determination



- The decision-maker(s) must issue a written determination regarding responsibility containing specific requirements.

292

Written Determination Requirement Number One

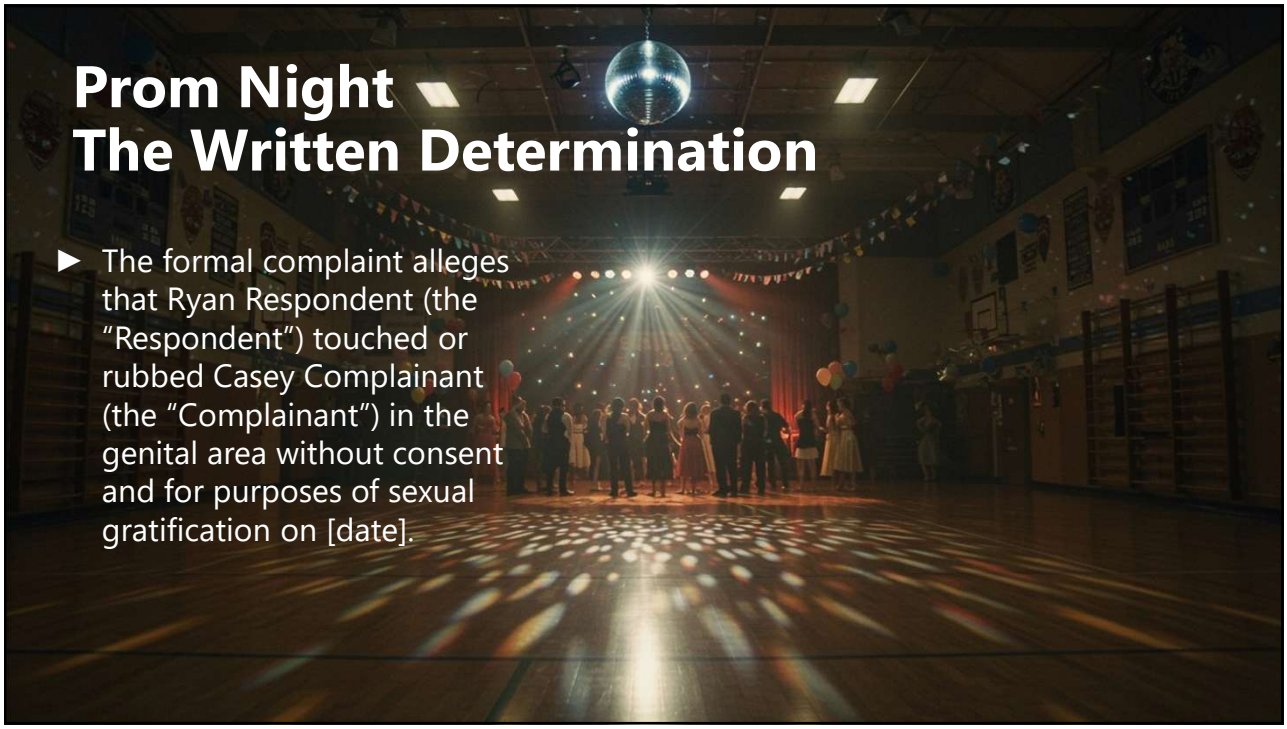
- ☑ Identify the allegations potentially constituting sexual harassment

293

Allegations

- Will be provided in the "notice of allegations" sent to both parties upon receipt of a formal complaint *and* in the investigation report.
- Must be restated in the written determination.

294



295

Written Determination Requirement Number Two

- Describe procedural steps taken from the receipt of the formal complaint through the determination

296

Procedural Steps

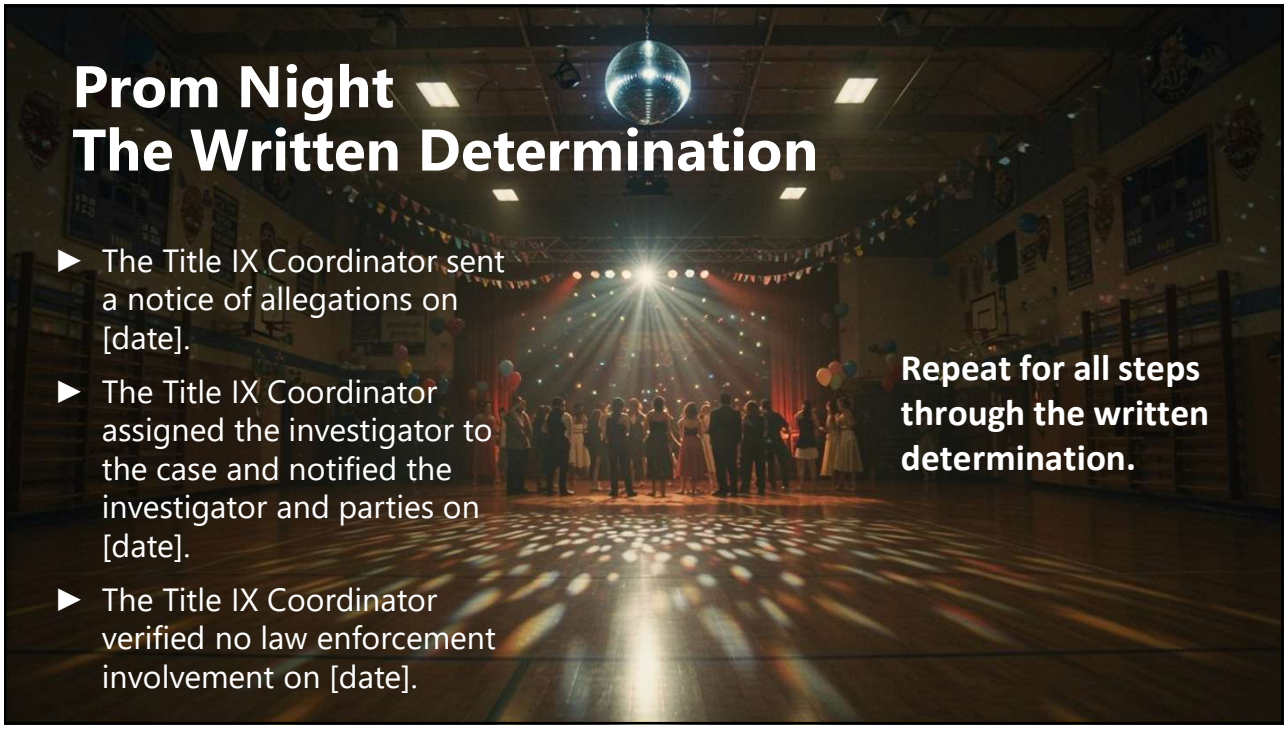
- Notifications to the parties
- Interviews with parties and witnesses
- Site visits
- Methods used to gather evidence
- Much (but not all) of this will be in investigation report
- Q&A overview
- Ask Coordinator for assistance finding missing steps

297

Prom Night
The Written Determination

- 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].

298



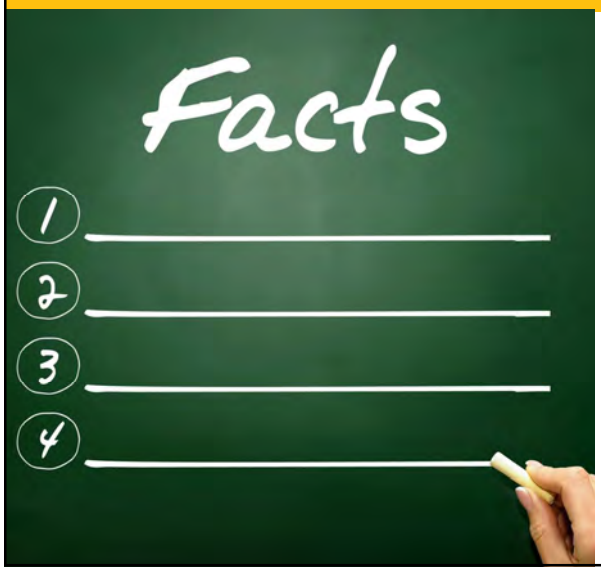
299

Written Determination Requirement Number Three

- ☑ Findings of fact supporting the determination

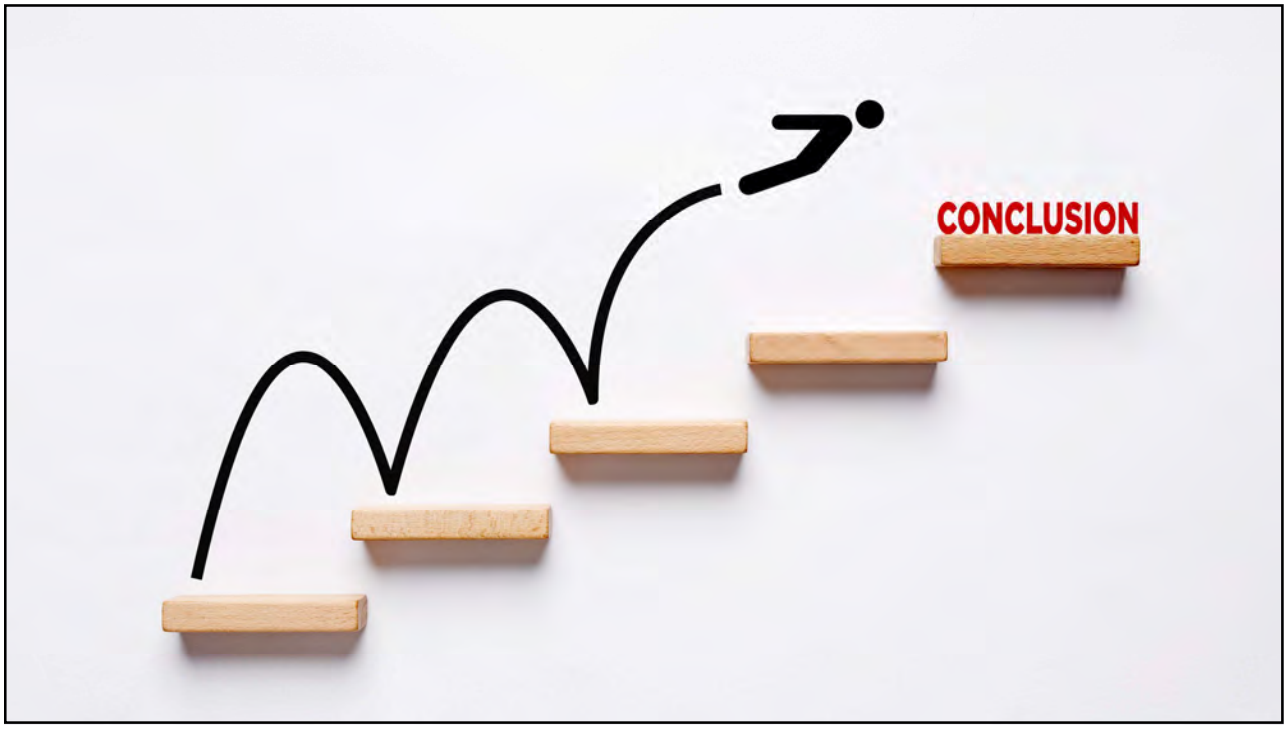
300

Findings of Fact

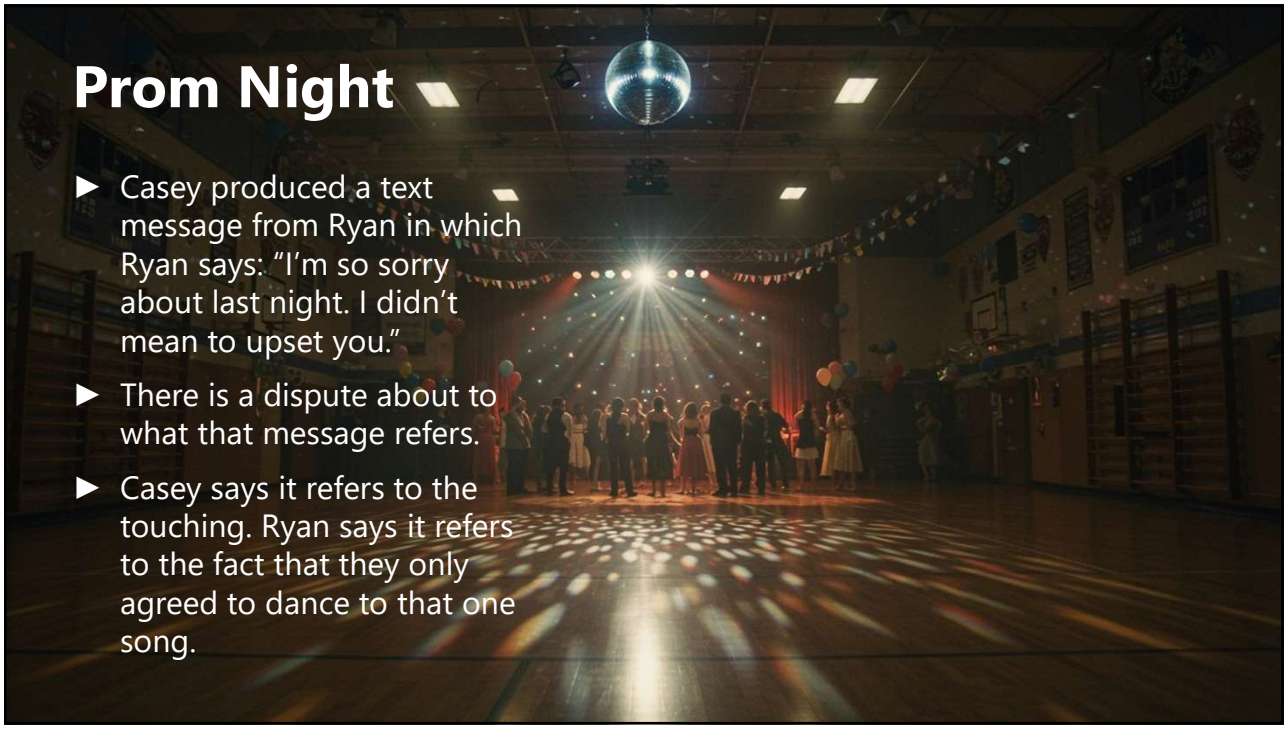


- Identify the undisputed facts related to an issue
- Identify the first disputed fact related to an issue
  - Explain each party's position and any evidence relevant to the fact
  - State your conclusion as to what happened with the first disputed fact
  - Explain your reasoning, including credibility determinations
- Move to the next disputed fact

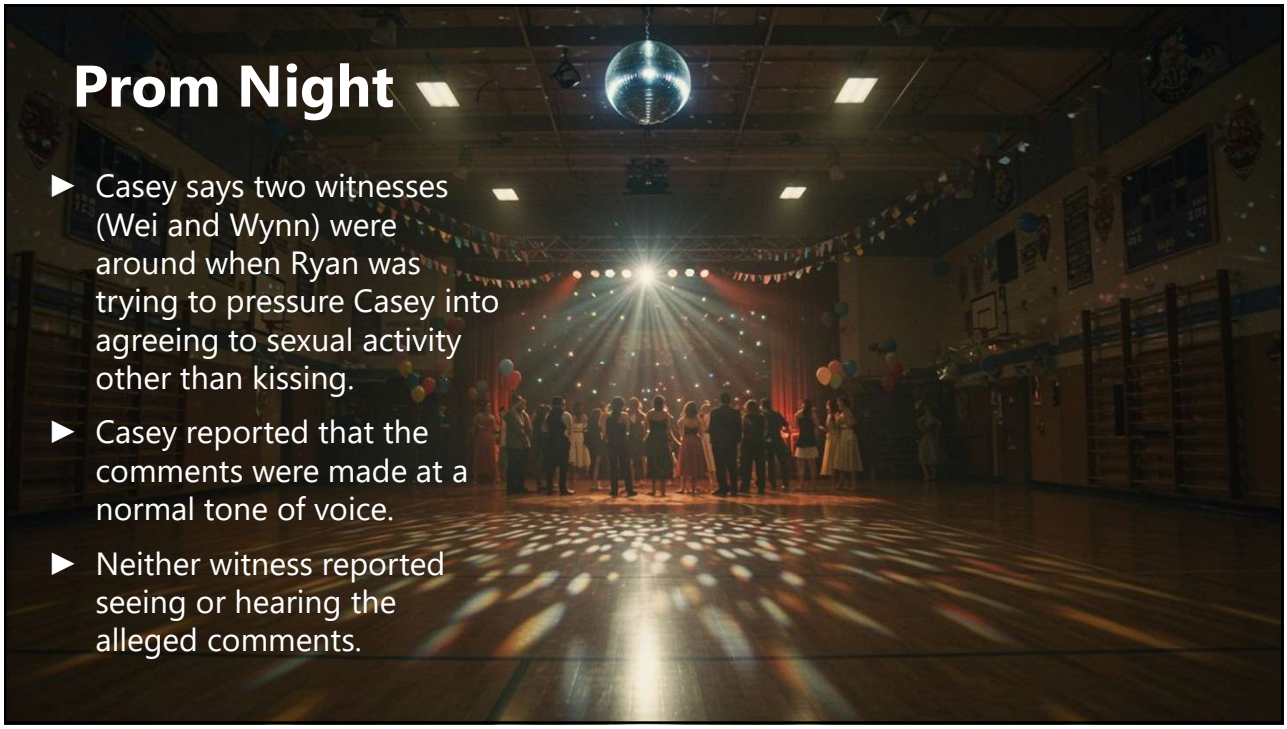
301



302


Prom Night
Casey produced a text message from Ryan in which Ryan says: "I'm so sorry about last night. I didn't mean to upset you."
There is a dispute about to what that message refers.
Casey says it refers to the touching. Ryan says it refers to the fact that they only agreed to dance to that one song.

303


Prom Night
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.
Neither witness reported seeing or hearing the alleged comments.

304

Group Discussion

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

305

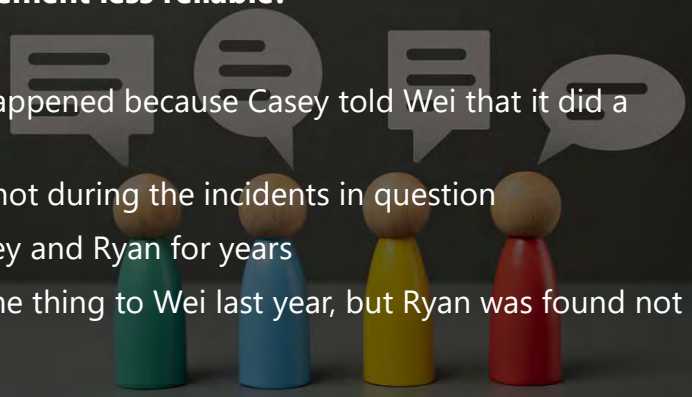
Prom Night

- 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.

306

Group Discussion

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

307

Prom Night

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

308

Group Discussion

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 shifty 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

309

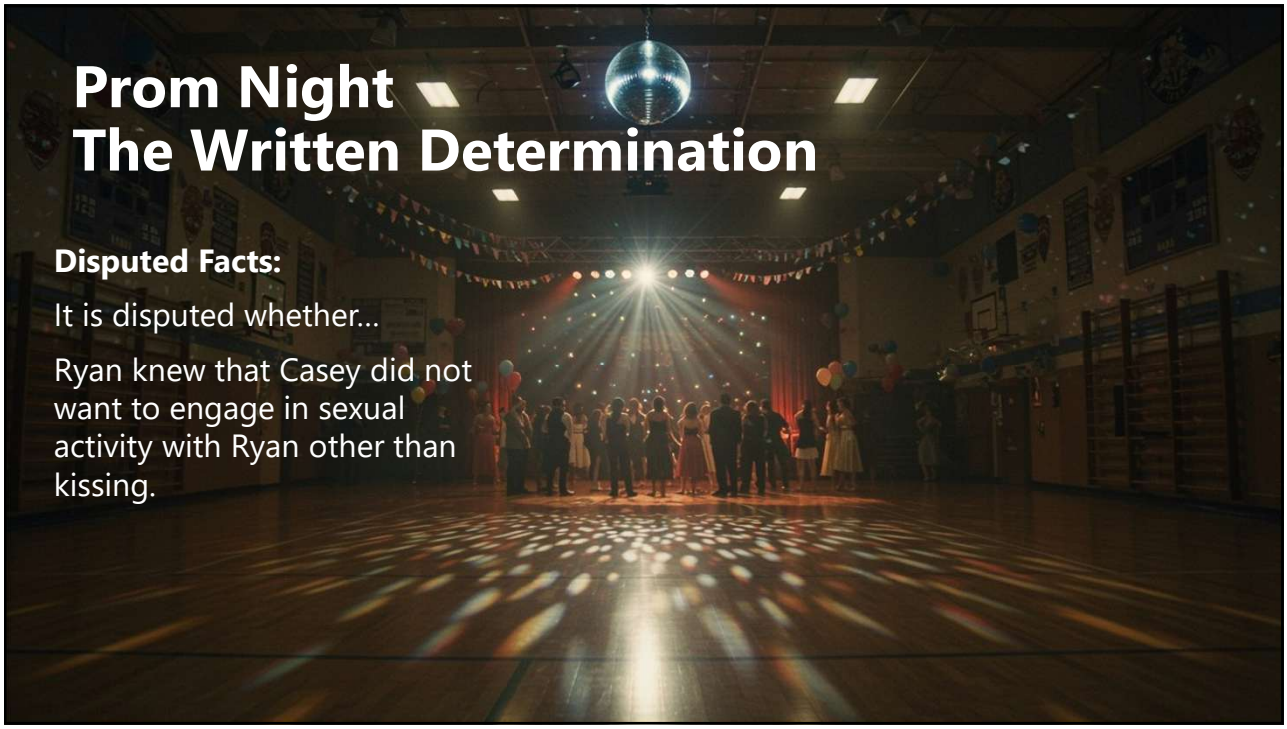
Prom Night
The Written Determination

Undisputed Facts:

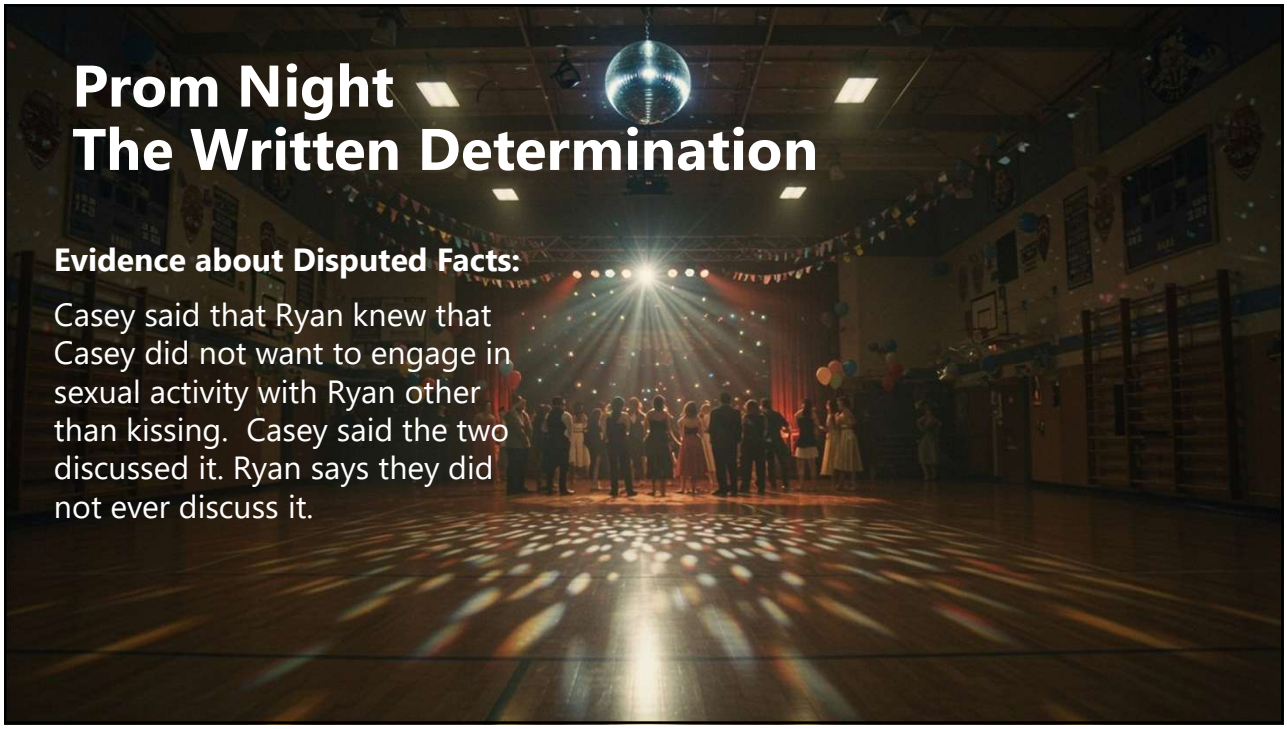
There is no dispute that…

Casey and Ryan started dating at the beginning of the school year.

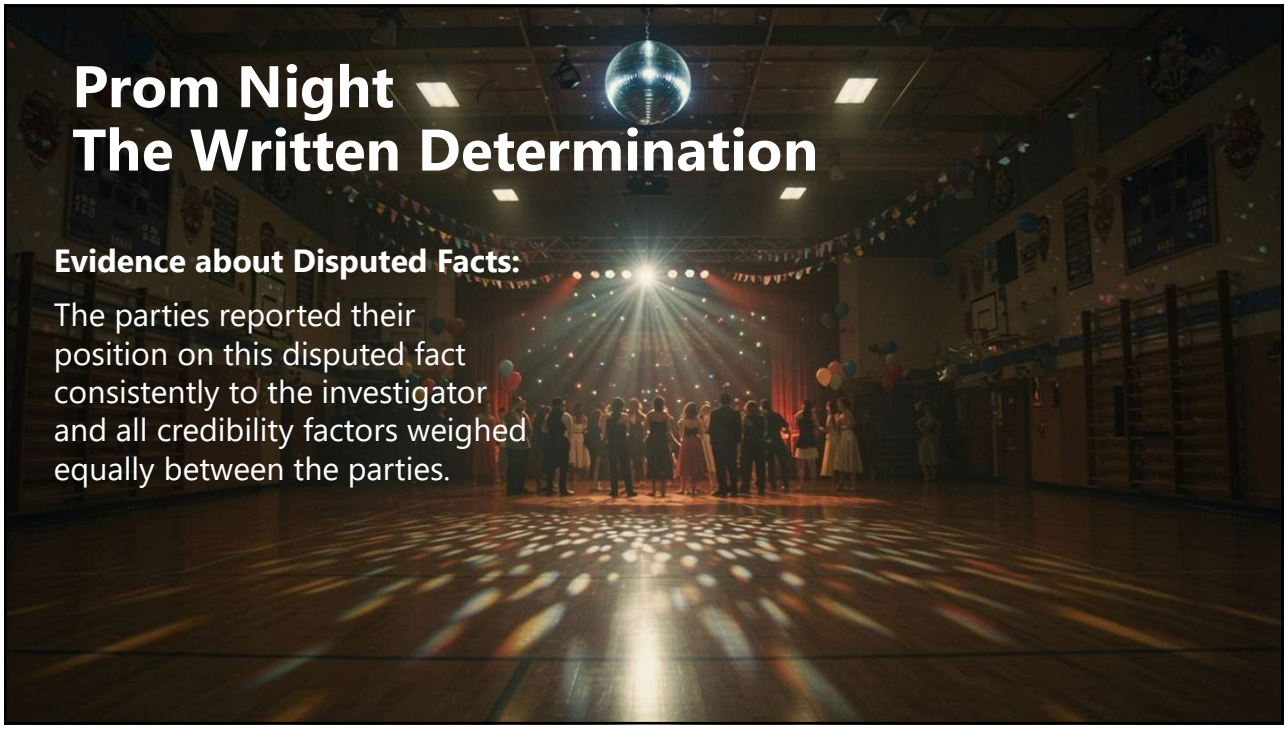
310


Prom Night
The Written Determination
Disputed Facts:
It is disputed whether…
Ryan knew that Casey did not want to engage in sexual activity with Ryan other than kissing.

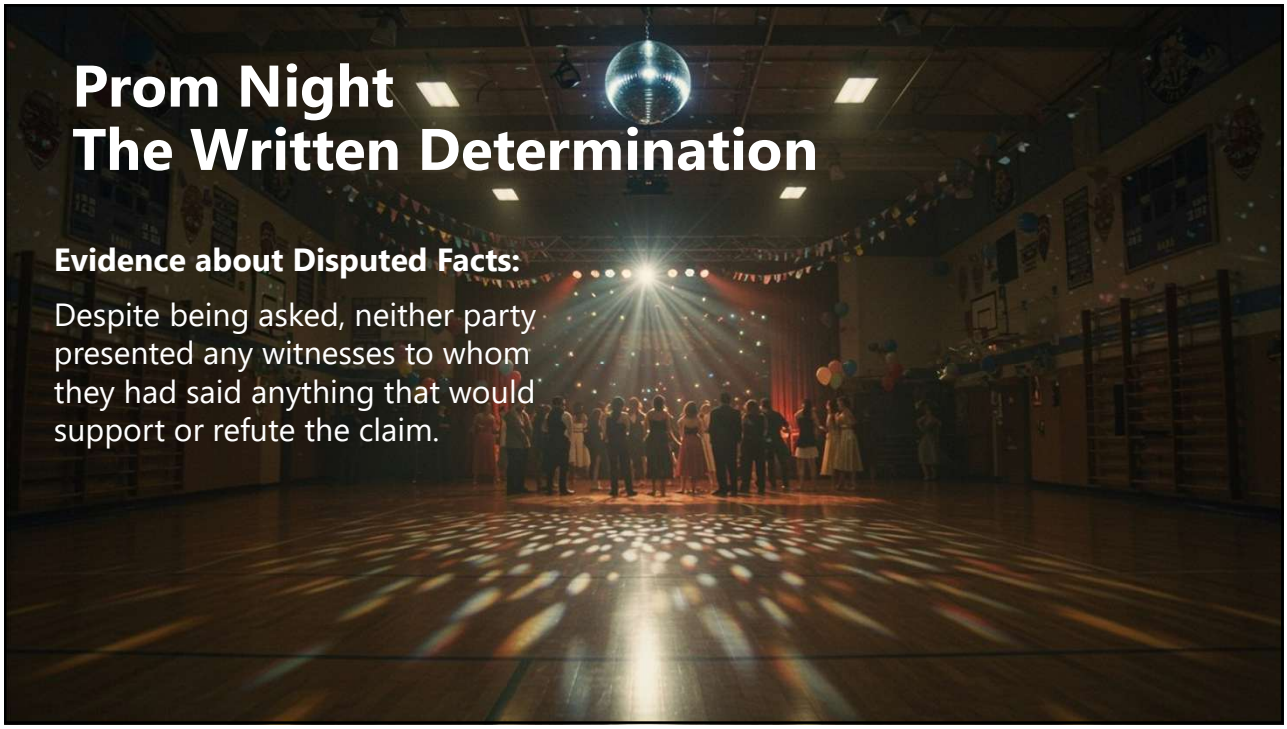
311


Prom Night
The Written Determination
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.

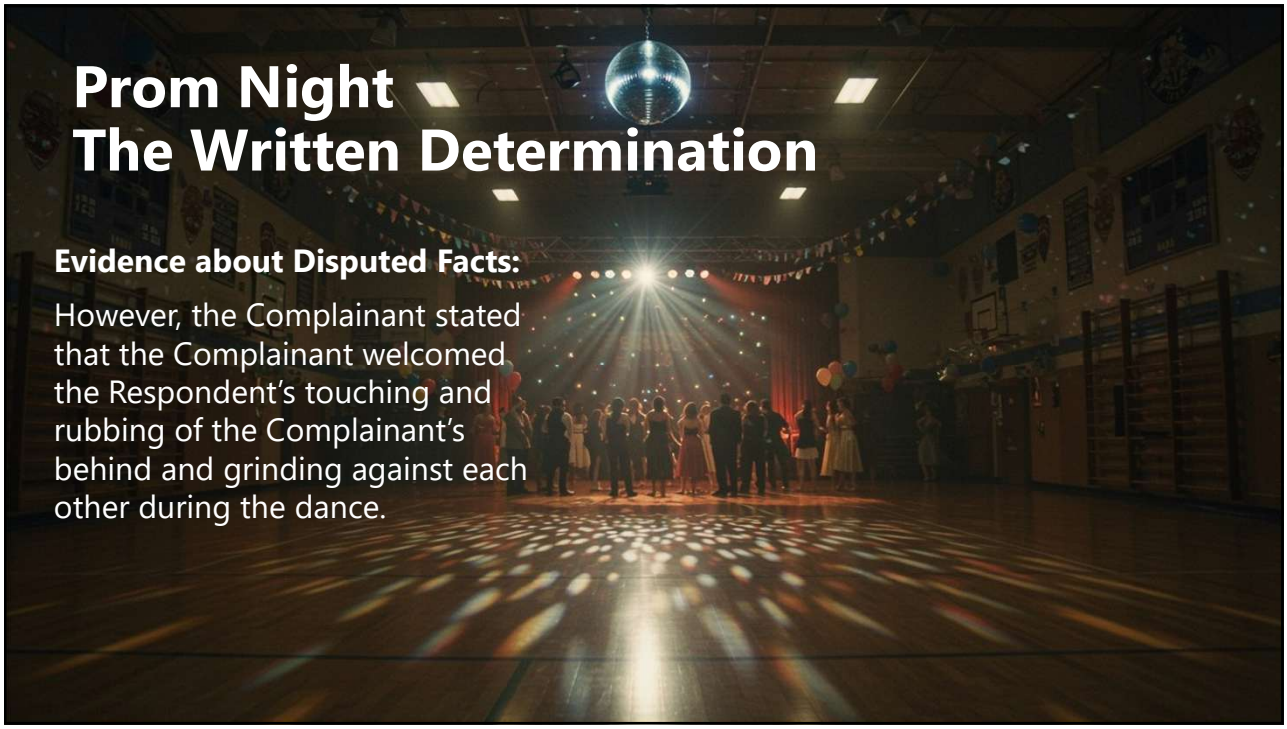
312


Prom Night
The Written Determination
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.

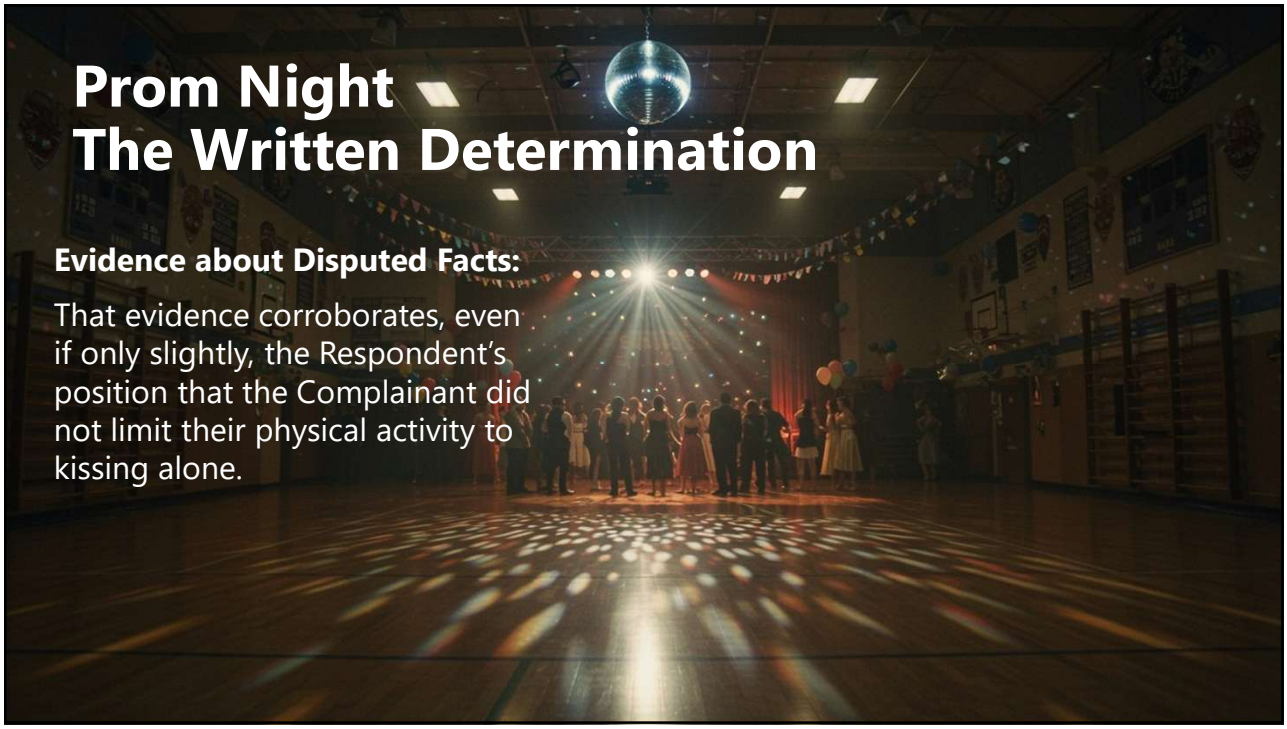
313


Prom Night
The Written Determination
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.

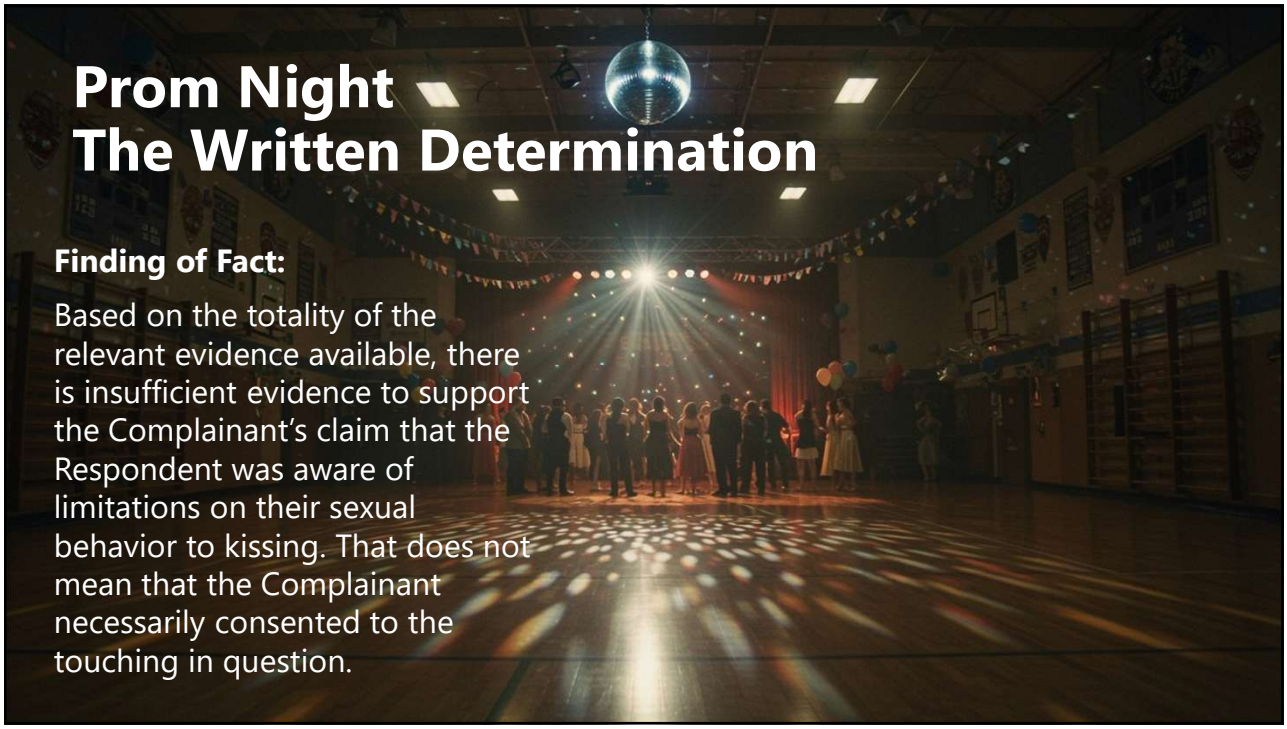
314


Prom Night
The Written Determination
Evidence about Disputed Facts:
However, the Complainant stated that the Complainant welcomed the Respondent's touching and rubbing of the Complainant's behind and grinding against each other during the dance.

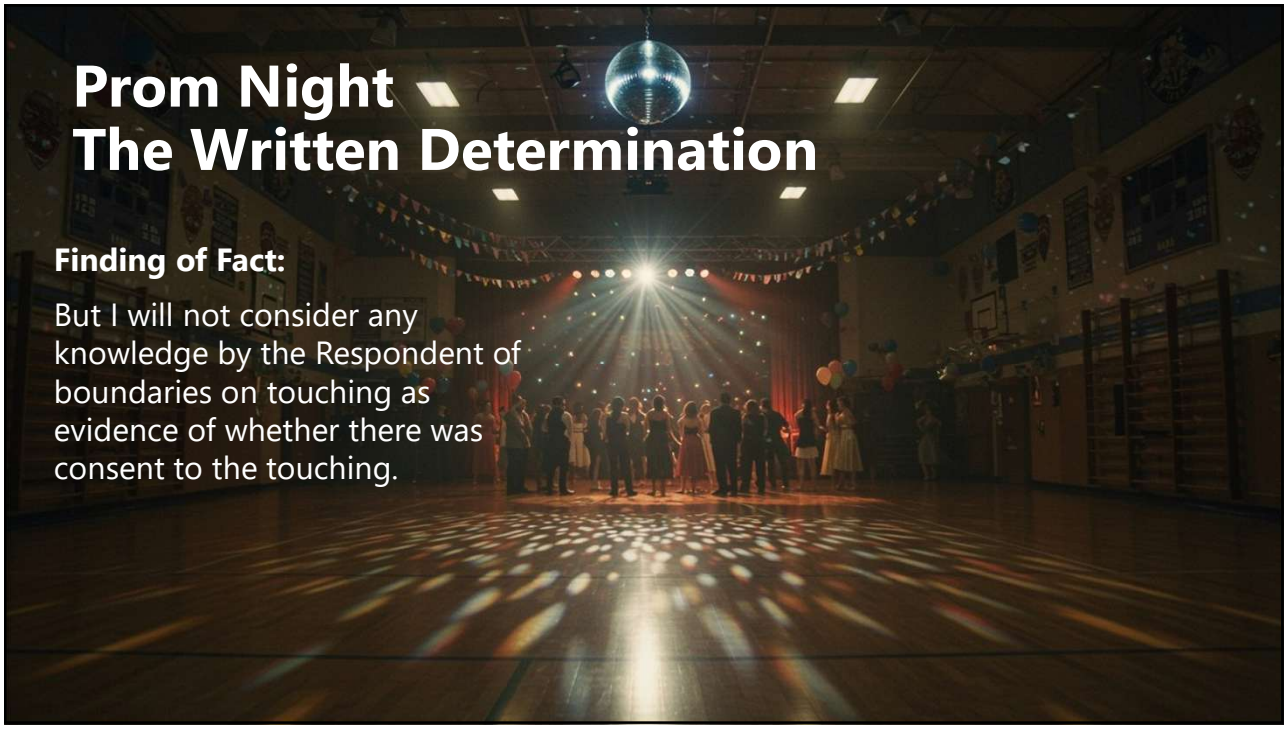
315


Prom Night
The Written Determination
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.

316


Prom Night
The Written Determination
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 touching in question.

317


Prom Night
The Written Determination
Finding of Fact:
But I will not consider any knowledge by the Respondent of boundaries on touching as evidence of whether there was consent to the touching.

318

Group Discussion

What do we do with…

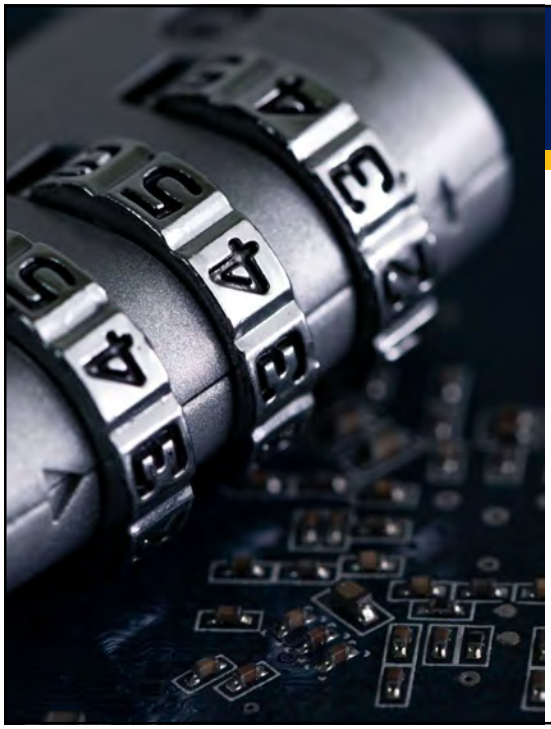
- Casey reporting after Ryan broke things off?
- Videos showing Ryan and Casey walking arm in arm, cuddling, and laughing as they walked and later making out?
- Ryan's nervousness and initial reluctance to describe the touching to the investigator?
- Ryan tearfully denied the allegations to mom right after receiving notice of allegations?

319

Written Determination Requirement Number Four

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

320



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
- Remember to make findings with respect to each element of the alleged misconduct
- Refer to definitions in the policy

321

Three Part Test

1. Is the alleged conduct sexual harassment as defined by the Title IX regulations?
2. Did the alleged harassment occur in a district program or activity?
3. Was the alleged harassment against a person in the United States?

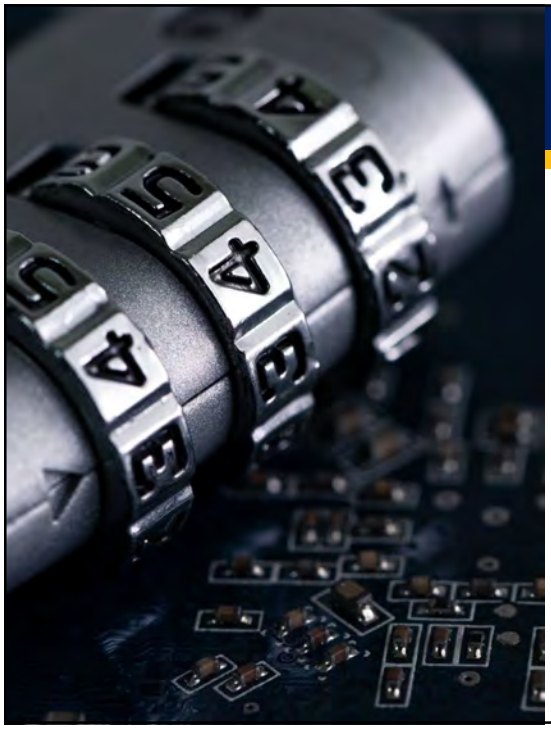
322

Title IX Sexual Harassment

Title IX sexual harassment means unwelcome conduct on the basis of sex that satisfies one or more of the following:

- Quid Pro Quo Harassment
- Hostile Environment Harassment
- The Big 4
  - ▶Sexual Assault
  - ▶Domestic Violence
  - ▶Dating Violence
  - ▶Stalking

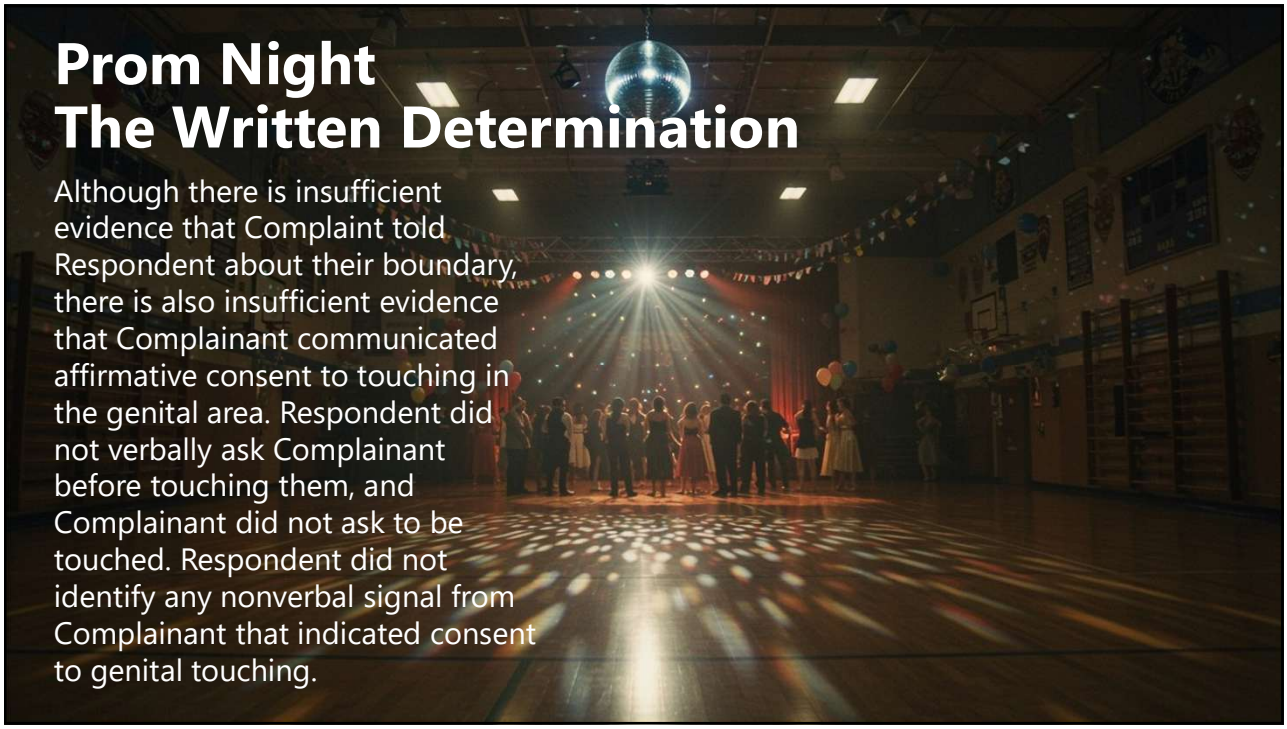
323



Criminal Sexual Contact

- ▶ Respondent intentionally touched complainant's body (over or under the clothing)
- ▶ Without Complainant's consent
- ▶ For the purpose of sexual gratification (or humiliation or degradation)
- ▶ *Check your procedures for the definition of consent

324



325

Written Determination Requirement Number Five

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

326

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

327

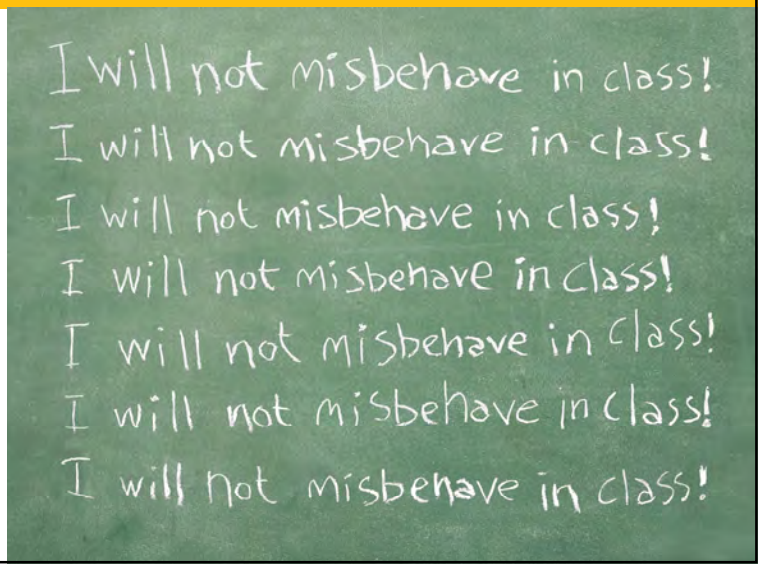
Determination and Discipline

- 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 sexual harassment occurred.

328

Sanctions

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



329

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 sexual harassment, especially when the allegations related to a policy, procedure, or practice of the district.

T&H

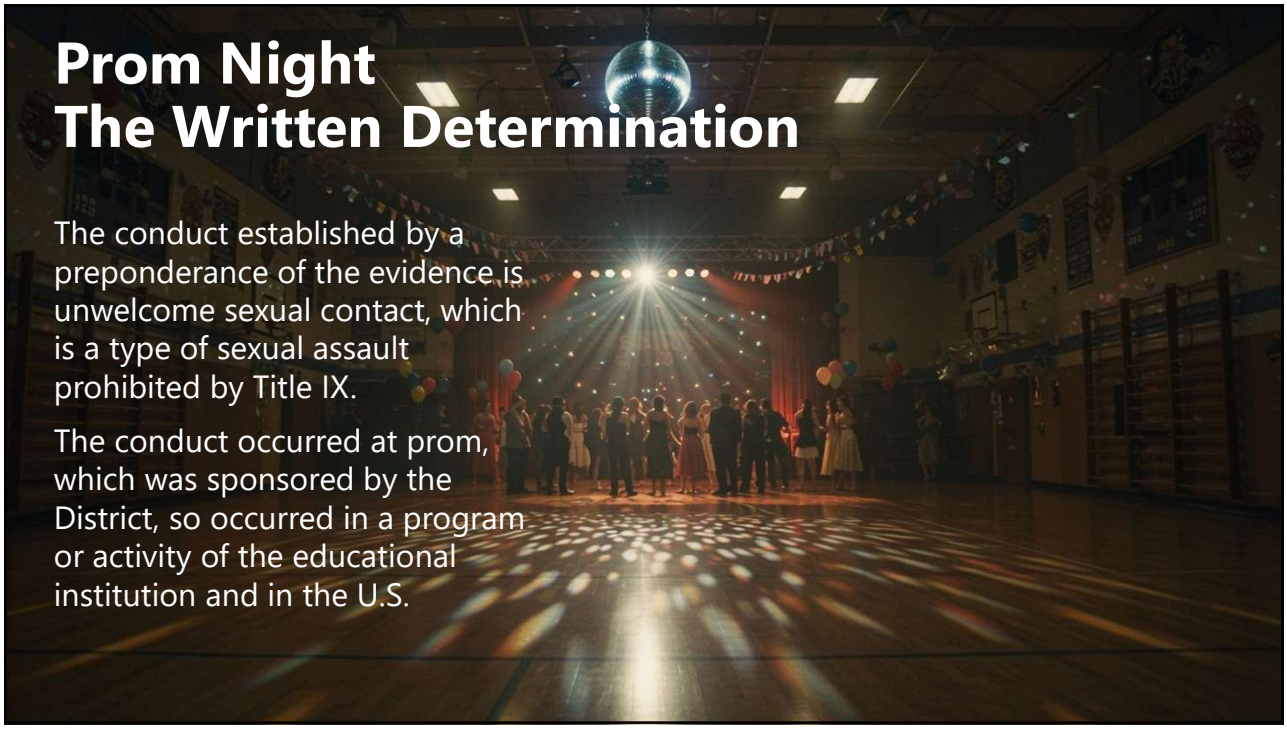
330

Remedies

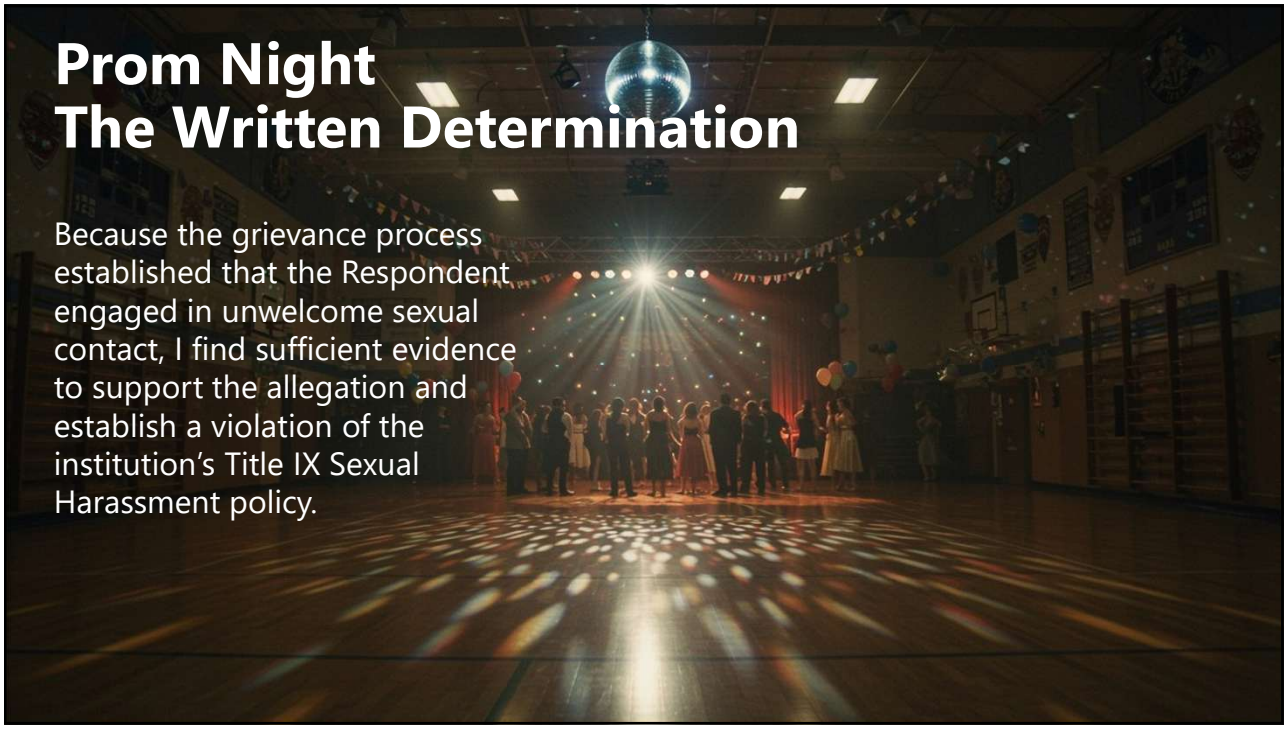
- ✓ Providing a campus escort for the complainant
- ✓ Allowing the complainant to park in the employees' parking lot
- ✓ Changing class schedules or extracurricular activities to ensure the complainant and respondent are separated
- ✓ Providing academic resources, modifications, and support
- ✓ Implementing 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

T&H

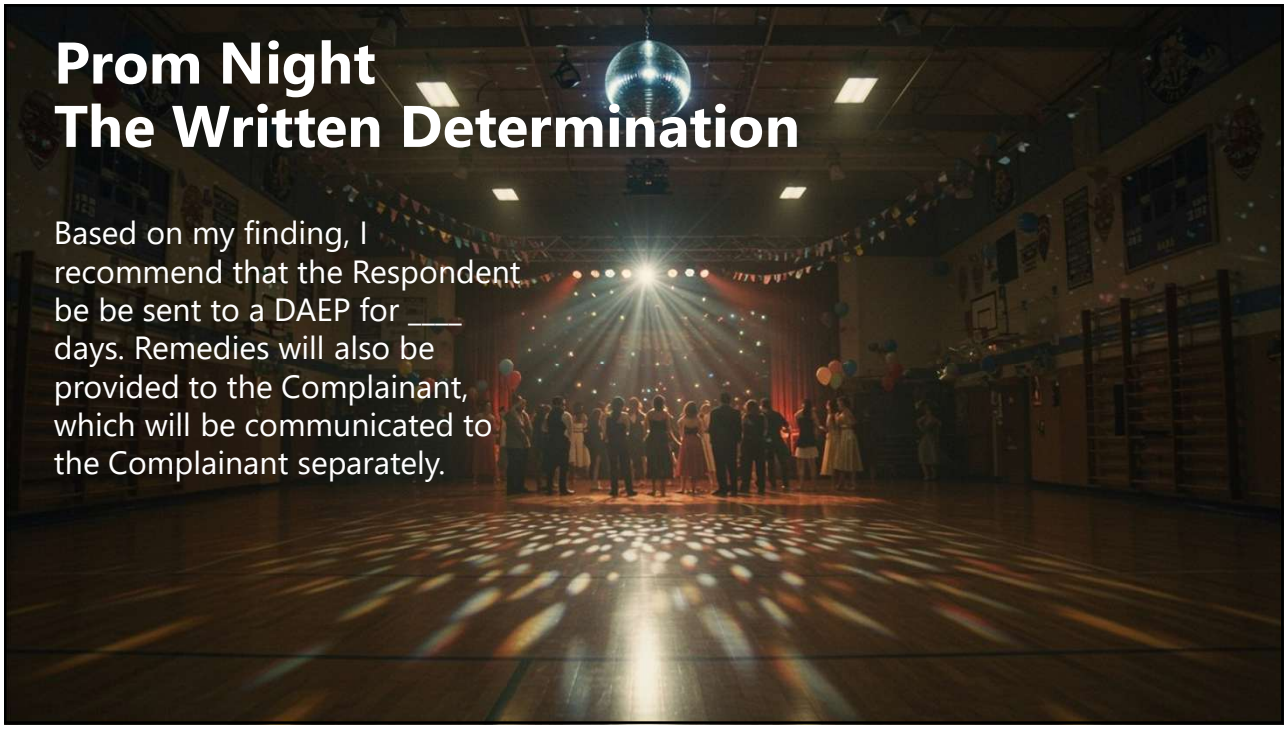
331



332


Prom Night
The Written Determination
Because the grievance process established that the Respondent engaged in unwelcome sexual contact, I find sufficient evidence to support the allegation and establish a violation of the institution's Title IX Sexual Harassment policy.

333


Prom Night
The Written Determination
Based on my finding, I recommend that the Respondent be be sent to a DAEP for ____ days. Remedies will also be provided to the Complainant, which will be communicated to the Complainant separately.

334

Written Determination Requirement Number Six

- ☑ Process for Appeal

335

Process for Appeal

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

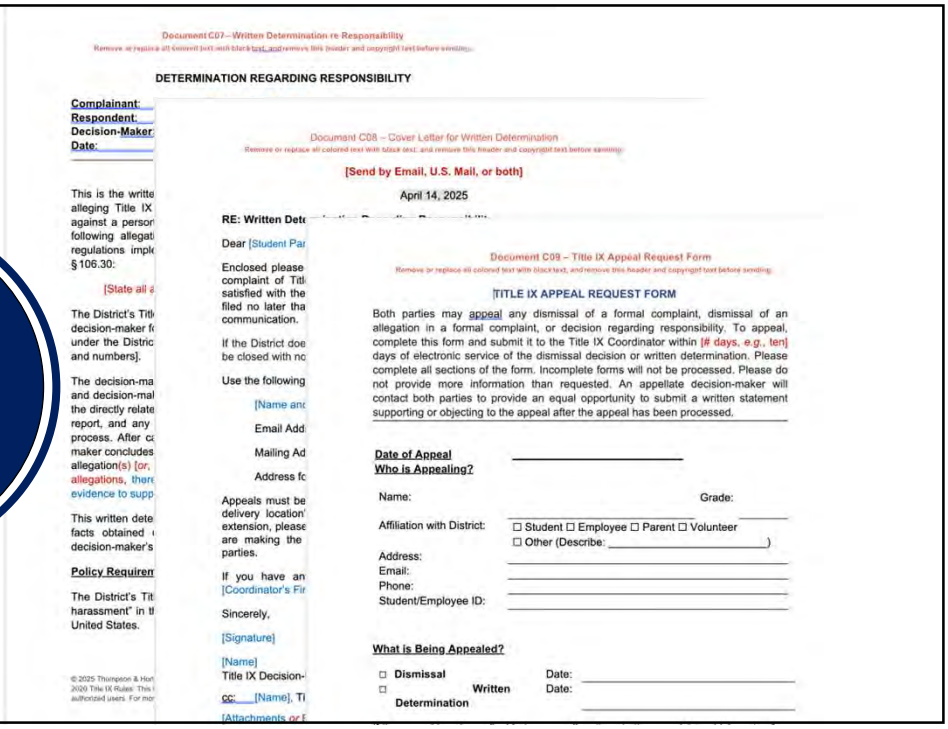
336

Written Determination Requirement Number Seven

- ☑ Provide the written determination to the parties simultaneously

337

Title IX Guidebook Forms



Document C07 – Written Determination re Responsibility

DETERMINATION REGARDING RESPONSIBILITY

Complainant:
Respondent:
Decision-Maker:
Date:

This is the writte
alleging Title IX
against a perso
following allegat
regulations impl
§ 106.30:

[State all a

The District's Titl
decision-maker f
under the Distric
and numbers].

The decision-ma
and decision-mal
the directly relate
report, and any
process. After c
maker concludes
allegation(s) [or,
allegations, there
evidence to supp

This written dete
facts obtained
decision-maker's

Policy Requiren

The District's Tit
harassment" in t
United States.

© 2025 Thompson & Hor
2020 Title IX Rules. This
authorized users. For mo

Document C08 – Cover Letter for Written Determination

[Send by Email, U.S. Mail, or both]

April 14, 2025

RE: Written Dete

Dear [Student Par

Enclosed please
complaint of Titl
satisfied with the
filed no later tha
communication.

If the District doe
be closed with no

Use the following

[Name and

Email Add

Mailing Ad

Address fo

Appeals must be
delivery location
extension, please
are making the
parties.

If you have an
[Coordinator's Fir

Sincerely,

[Signature]

[Name]
Title IX Decision-

cc: [Name], Ti

[Attachments or E

Document C09 – Title IX Appeal Request Form

TITLE IX APPEAL REQUEST FORM

Both parties may appeal any dismissal of a formal complaint, dismissal of an allegation in a formal complaint, or decision regarding responsibility. To appeal, complete this form and submit it to the Title IX Coordinator within [# days, e.g., ten] days of electronic service of the dismissal decision or written determination. Please complete all sections of the form. Incomplete forms will not be processed. Please do not provide more information than requested. An appellate decision-maker will contact both parties to provide an equal opportunity to submit a written statement supporting or objecting to the appeal after the appeal has been processed.

Date of Appeal _____
Who is Appealing?

Name: _____ Grade: _____

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

Address: _____
Email: _____
Phone: _____
Student/Employee ID: _____

What is Being Appealed?

☐ Dismissal Date: _____
☐ Written Determination Date: _____

338

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

T&H

339

Decisionmaker Dos and Don'ts

DOs

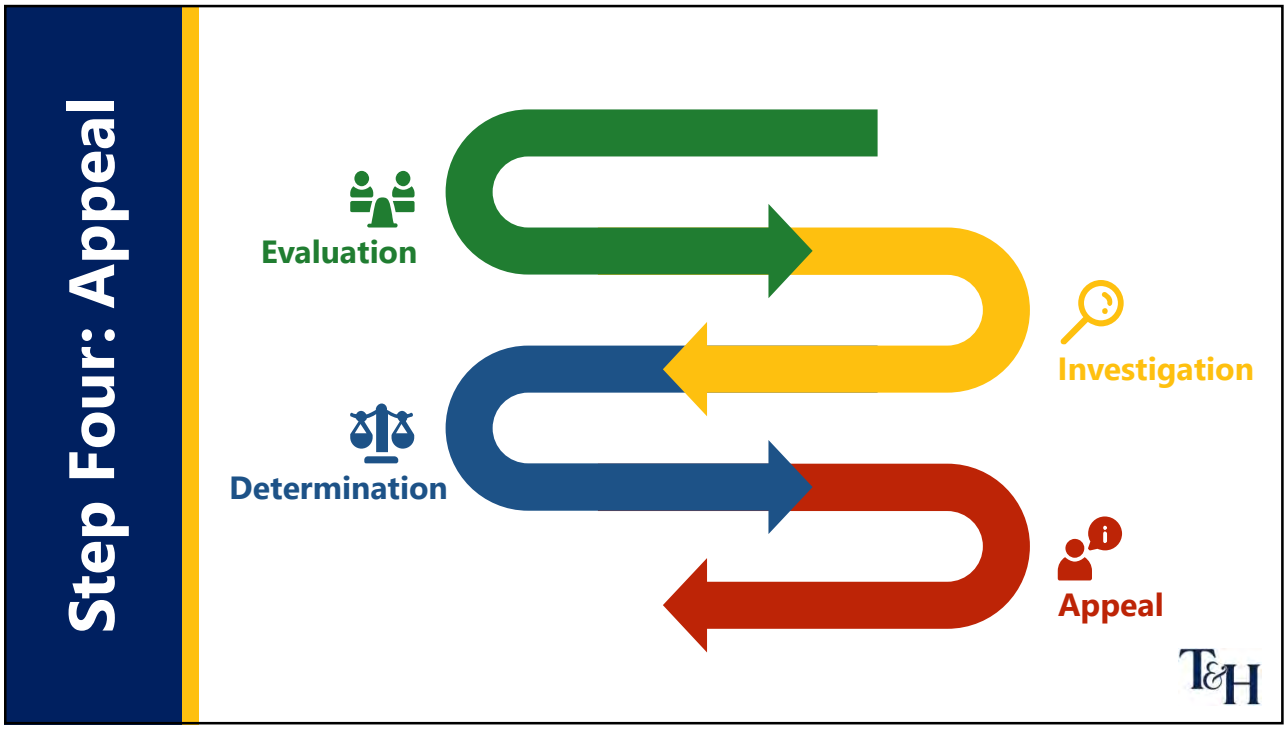
- ✓ Explain the process to parties and advisors
- ✓ Assume respondent is not responsible
- ✓ Exercise independent judgment and objectively evaluate all relevant evidence
- ✓ Follow your grievance procedure
- ✓ Make credibility determinations and evaluate the weight of the evidence using preponderance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

DON'Ts

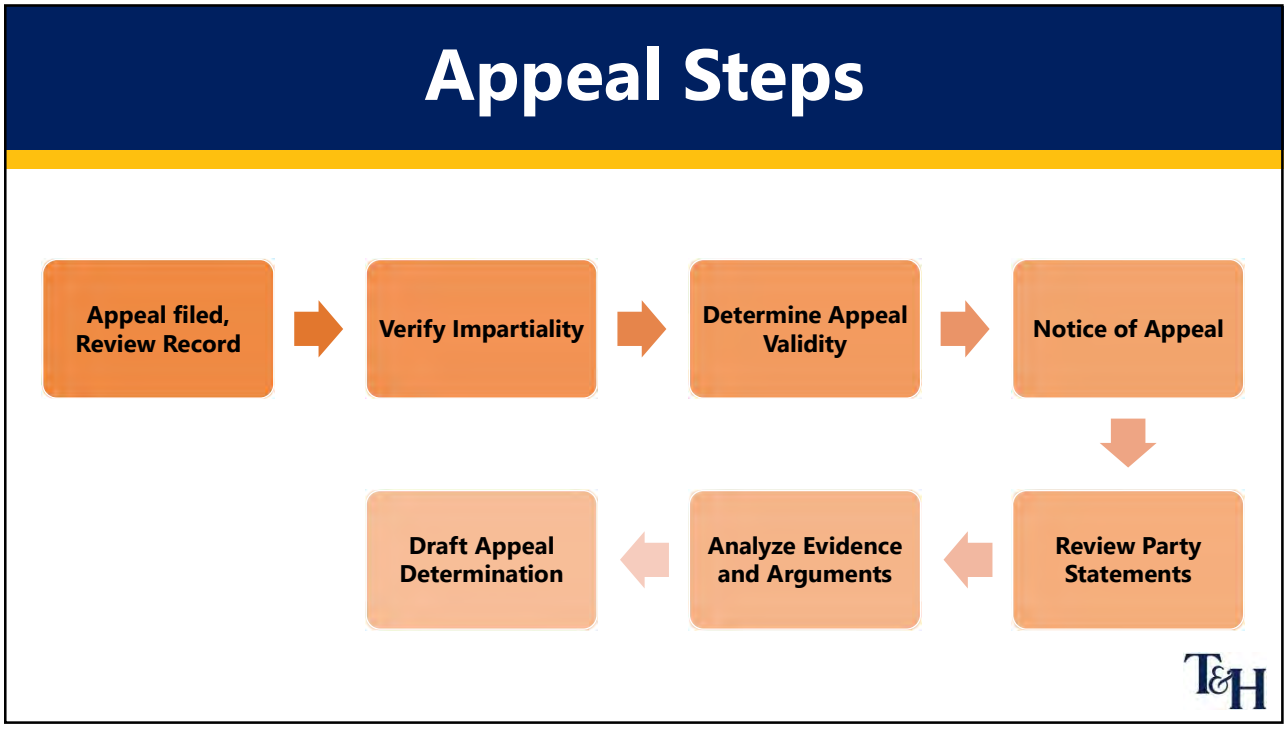
- × Prejudge the facts or rush to judgment
- × Consider impermissible evidence unless a waiver or exception applies
- × Rely on stereotypes or preconceived notions when making credibility determinations or weighing the evidence
- × Delay or extend the decision timeline absent good cause
- × Neglect to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

340

© 2026 Thompson & Horton LLP


Step Four: Appeal
Evaluation
Investigation
Determination
Appeal

341


Appeal Steps
Appeal filed, Review Record
Verify Impartiality
Determine Appeal Validity
Notice of Appeal
Review Party Statements
Analyze Evidence and Arguments
Draft Appeal Determination

342

Review File

- Appellate decisionmaker must be someone other than the investigator or decisionmaker
- Appellate decisionmaker must be trained and impartial
- Review all material provided by the Title IX Coordinator
- Appeals are not de novo, confine the review to the record + appeal documents

343

Jessie's Girl

Morgan accused Avery of sexual contact. The written determination found that Jessie and Morgan recently began dating. Avery is friends with Morgan but friends joke that Avery always talks about having a crush on Jessie's girl.

According to the Title IX decision, there was sufficient evidence that, during the big homecoming game, Avery pulled Morgan aside and asked to speak privately. Avery appeared upset and said: "I just don't understand why Jessie chose you." Morgan responded that they didn't know what Avery was talking about.

Avery suddenly stepped closer, placed one hand on Morgan's hip and the other on Morgan's face, and kissed Morgan on the mouth. Morgan immediately pushed Avery away and said: "What are you doing? Stop." Morgan states Avery responded, "Now you know what you're missing."

The decisionmaker determined that this behavior constituted unwelcome sexual contact done for the purposes of sexual humiliation.

344

© 2026 Thompson & Horton LLP

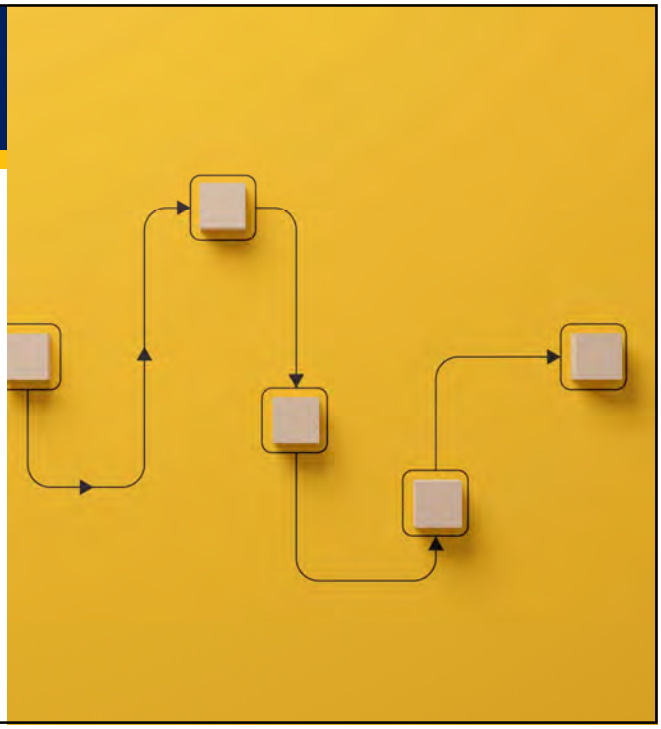
Determine Validity of Appeal

- 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)

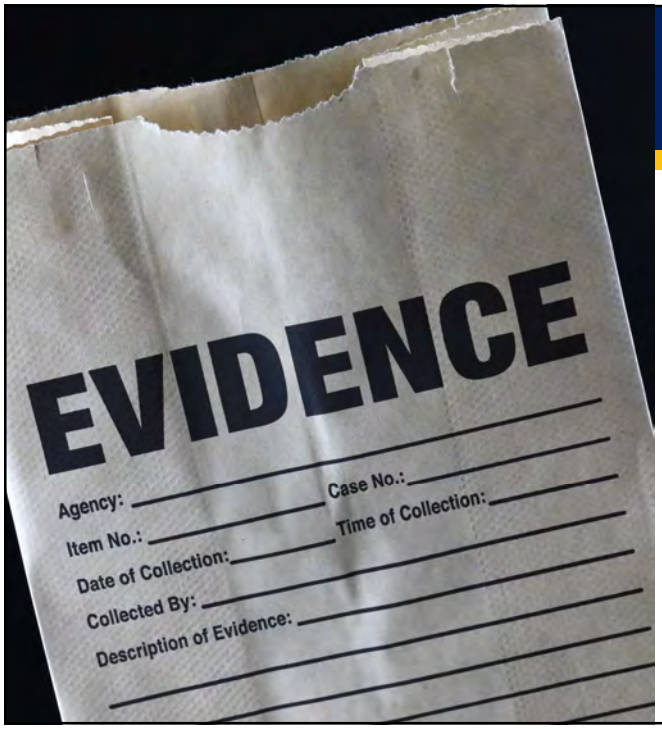
345

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?



346



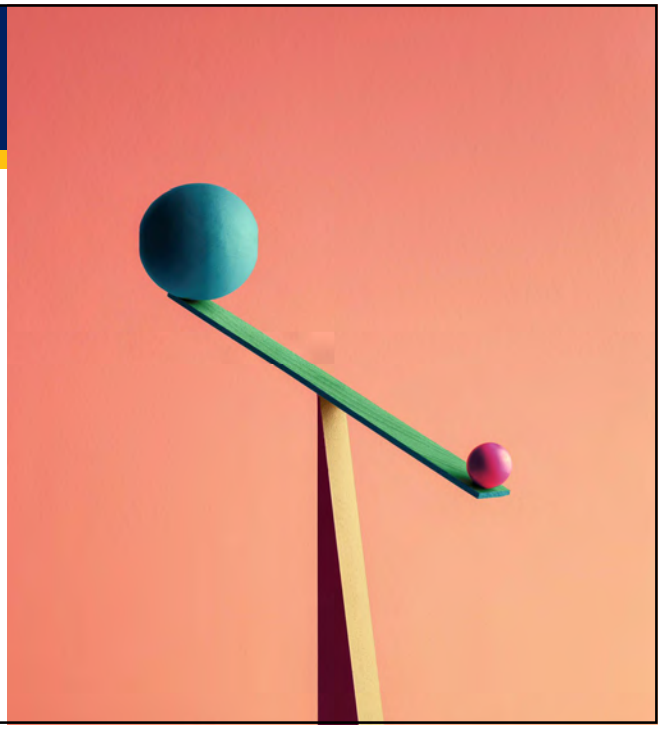
New Evidence

- 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?

347

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?



348

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)

349

Jessie's Girl

Avery files an appeal arguing that the investigator committed a procedural error by not copying their advisor when sending out the directly-related evidence. Avery argues that they didn't notice at first and therefore it was another 5 days before the evidence got forwarded to their advisor.

Avery also says that the Title IX coordinator was biased because they didn't grant the request for an extension to respond to the directly-related evidence because they found the delay did not constitute good cause.

350

Group Discussion

351

Who Decides?

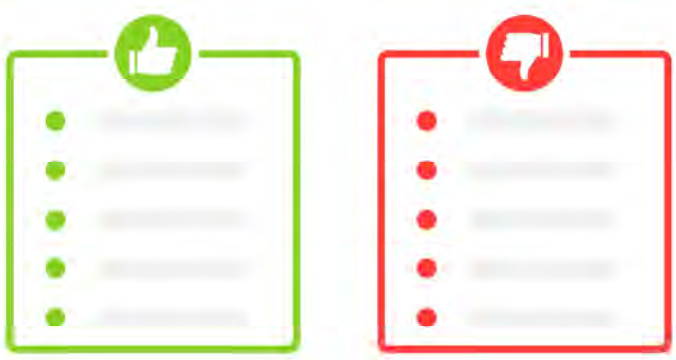
Title IX Coordinator or appellate decisionmaker?

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

352

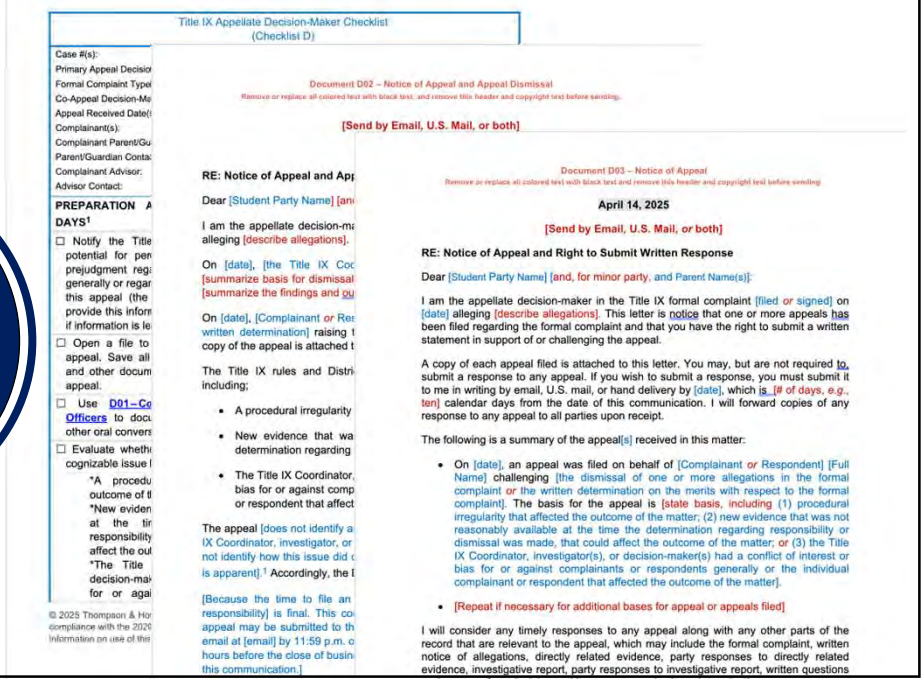
Party Responses

- 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



353

Title IX Guidebook Forms



Title IX Appellate Decision-Maker Checklist
(Checklist D)

Document D02 – Notice of Appeal and Appeal Dismissal

[Send by Email, U.S. Mail, or both]

Document D03 – Notice of Appeal

April 14, 2025

[Send by Email, U.S. Mail, or both]

RE: Notice of Appeal and Right to Submit Written Response

Dear [Student Party Name] [and, for minor party, and Parent Name(s)]:

I am the appellate decision-maker in the Title IX formal complaint [filed *or* signed] on [date] alleging [describe allegations]. This letter is notice that one or more appeals has been filed regarding the formal complaint and that you have the right to submit a written statement in support of or challenging the appeal.

A copy of each appeal filed is attached to this letter. You may, but are not required to, submit a response to any appeal. If you wish to submit a response, you must submit it to me in writing by email, U.S. mail, or hand delivery by [date], which is [# of days, *e.g.*, ten] calendar days from the date of this communication. I will forward copies of any response to any appeal to all parties upon receipt.

The following is a summary of the appeal[s] received in this matter:

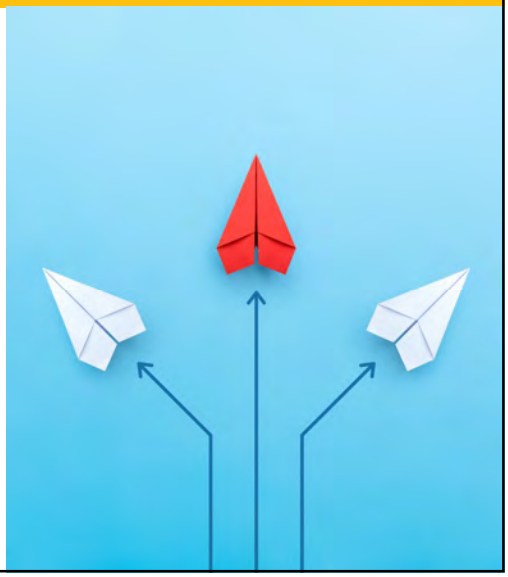
- On [date], an appeal was filed on behalf of [Complainant *or* Respondent] [Full Name] challenging [the dismissal of one or more allegations in the formal complaint *or* the written determination on the merits with respect to the formal complaint]. The basis for the appeal is [state basis, including (1) procedural irregularity that affected the outcome of the matter; (2) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or (3) the Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter].
- [Repeat if necessary for additional bases for appeal or appeals filed]

I will consider any timely responses to any appeal along with any other parts of the record that are relevant to the appeal, which may include the formal complaint, written notice of allegations, directly related evidence, party responses to directly related evidence, investigative report, party responses to investigative report, written questions

354

Analyze the Appeal

- This is where you consider the "weight" of the arguments made in the appeal
- Make sure to consider arguments raised by both sides
- 2 part analysis:
  - Error (or new evidence or bias/conflict)
  - Impact on outcome



355

Jessie's Girl

Avery appeals because the investigator failed to interview a key witness.

According to the investigator, the witness refused to participate

356

Group Discussion

Is this a procedural error, bias, or neither?

Did it impact the outcome?

357

Group Discussion

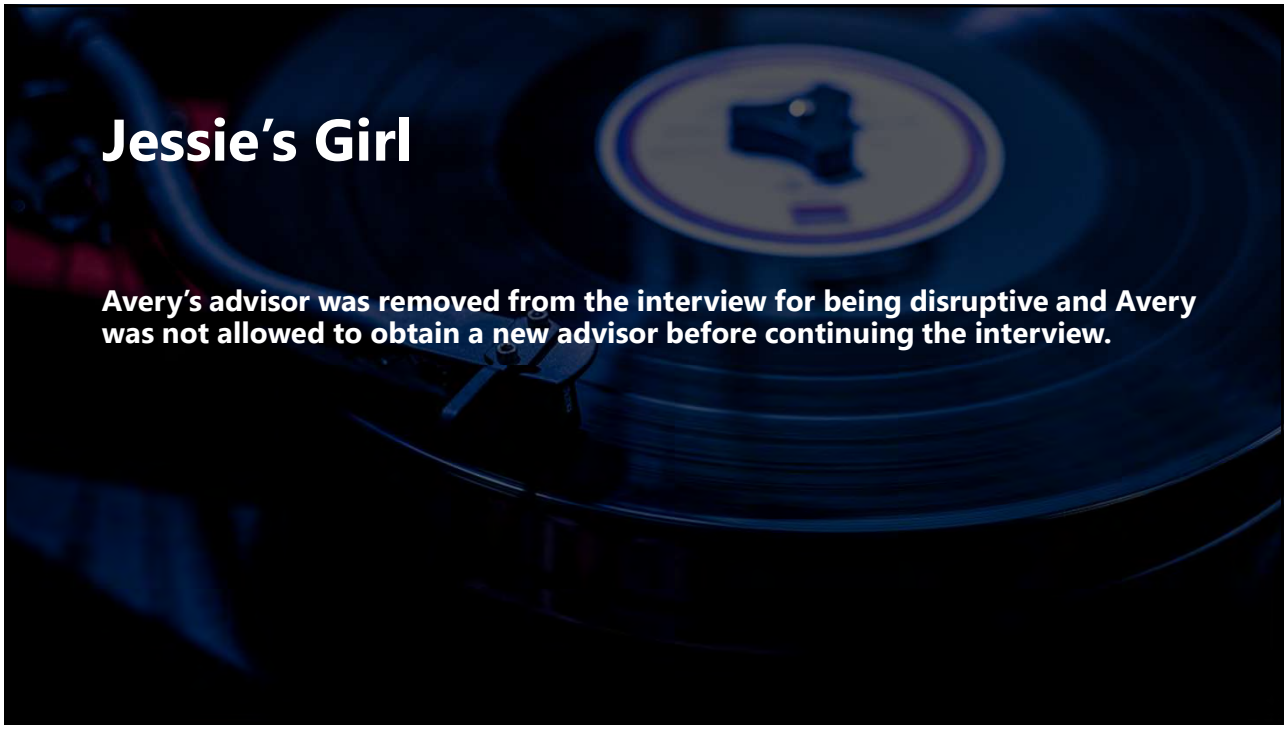
Which would not be evidence of prejudgment?

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 Title IX Coordinator dismissing a complaint because the Complainant could not identify any witnesses, messages, or videos as evidence

358


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

359

Group Discussion
Is this a procedural error?
Did it impact the outcome?

360

Jessie's Girl

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

Avery argues that, as a result, certain witnesses they identified could not recall events as well as they otherwise would have, and one of their witnesses had moved and was not available to be interviewed.

361

Group Discussion

Is this a procedural error?

Did it impact the outcome?

362

Group Discussion

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.

Is this new evidence?

Could it impact the outcome?

363

Group Discussion

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

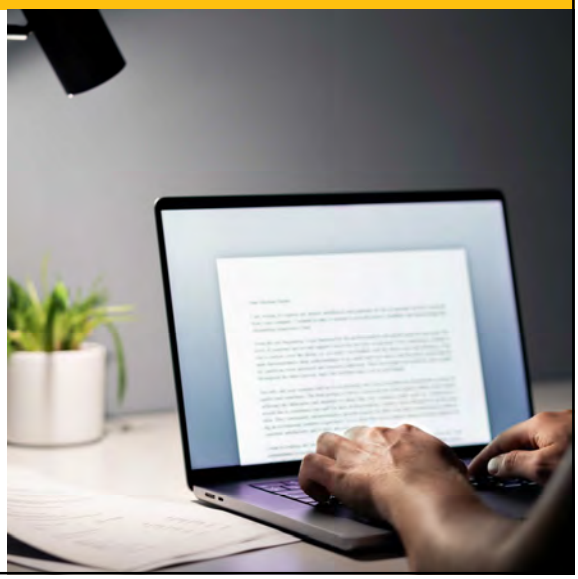
Is this new evidence?

Could it impact the outcome?

364

Write the Report

- Write a determination that includes the relevant information from the decision, party statements, and reasons for the appeal determination
- Remember to show your work and use your policy definitions
- Assess whether there is sufficient evidence of impact on the outcome
- Remember the preponderance of the evidence standard



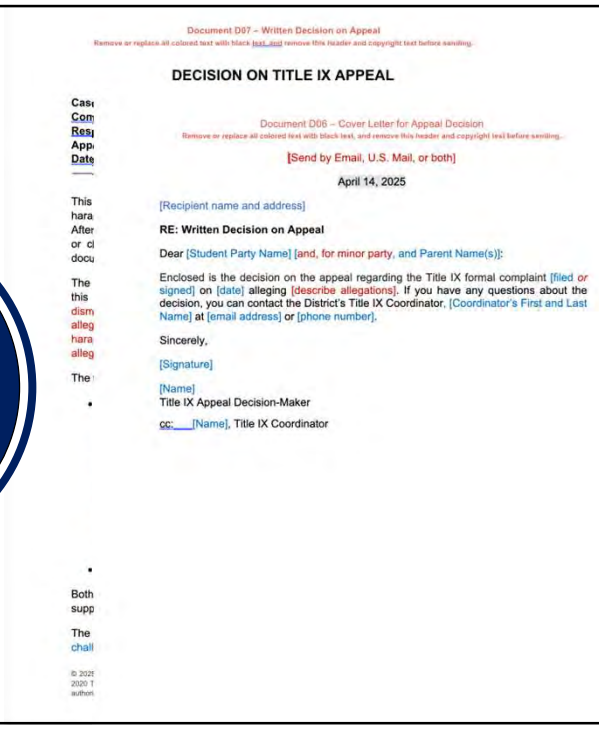
365

Outcome

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

366

Title IX Guidebook Forms



Document D07 – Written Decision on Appeal

Remove or replace all colored text with black text, and remove this header and copyright text before sending.

DECISION ON TITLE IX APPEAL

Document D06 – Cover Letter for Appeal Decision

Remove or replace all colored text with black text, and remove this header and copyright text before sending.

[Send by Email, U.S. Mail, or both]

April 14, 2025

[Recipient name and address]

RE: Written Decision on Appeal

Dear [Student Party Name] [and, for minor party, and Parent Name(s)]:

Enclosed is the decision on the appeal regarding the Title IX formal complaint [filed or signed] on [date] alleging [describe allegations]. If you have any questions about the decision, you can contact the District's Title IX Coordinator, [Coordinator's First and Last Name] at [email address] or [phone number].

Sincerely,

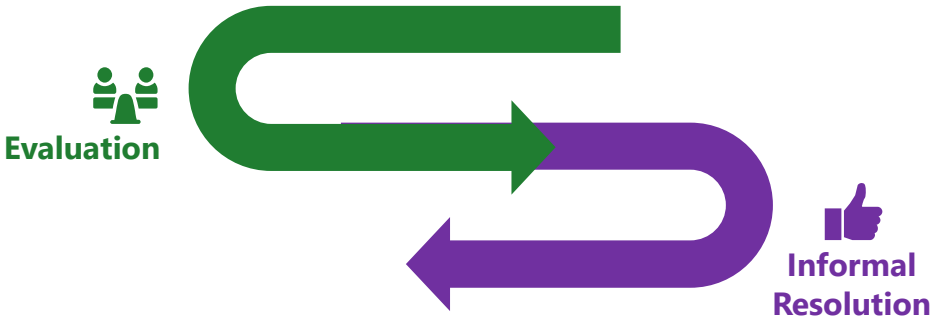
[Signature]

[Name]
Title IX Appeal Decision-Maker

cc: [Name], Title IX Coordinator

367

Informal Resolution



Copyright 2024 - Thompson & Horton, LLP

368

Informal Resolution

- The District may offer informal resolution with a trained facilitator
- The District can decide when it's appropriate and when it's not based on allegations, but may not offer it for allegations of harassment by an employee against a student
- Parties may elect to participate; it must be voluntary
- Title IX Coordinator still must take other appropriate prompt and effective steps to ensure that sexual harassment does not continue/recur

369

What is Informal Resolution?

A voluntary, structured interaction between involved parties (complainant and respondent) to resolve the allegations without an investigation, determination, or appeal.

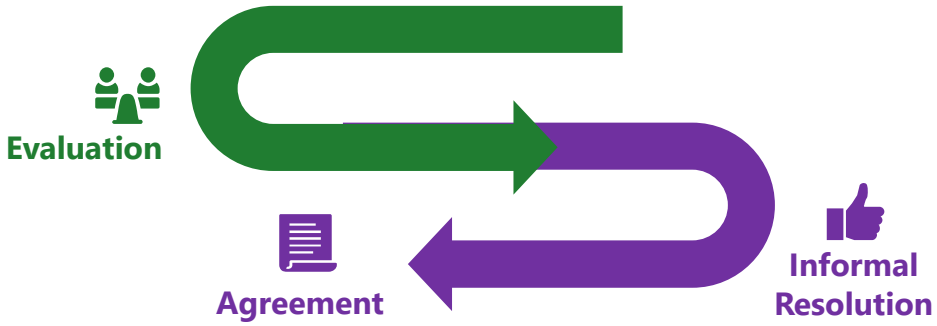
370

Informal Resolution

- Schools have discretion as to how to structure the informal resolution process
- Consider addressing in written procedures:
  - When will the Title IX Coordinator offer informal resolution?
  - How will the facilitator be chosen?
  - What steps will the process follow?
  - What records will be maintained and when can they be disclosed?
  - Potential terms
  - Prompt timeframe

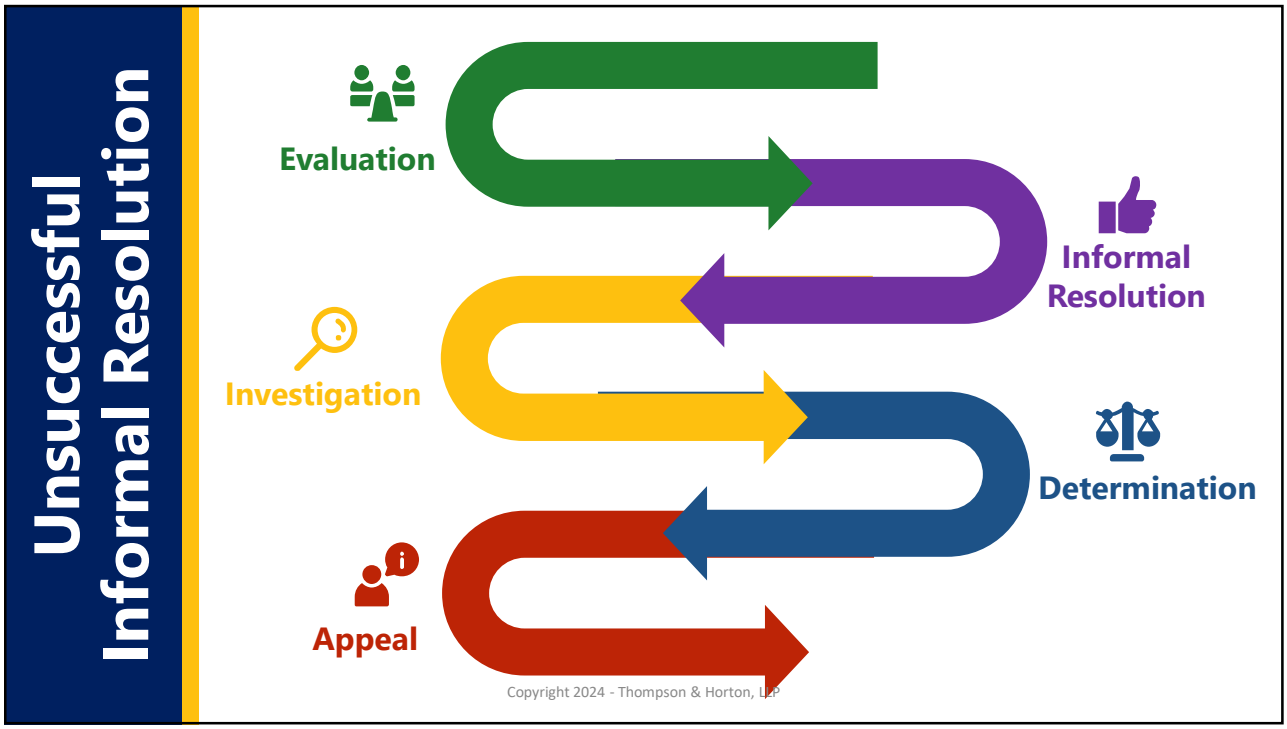
371

Successful Informal Resolution



Copyright 2024 - Thompson & Horton, LLP

372



373

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

T&H

374

Artificial Intelligence

- Do not disclose confidential information.
- Do not rely on AI to answer legal questions or do analysis.
- Ensure accuracy and appropriateness of any output before using.

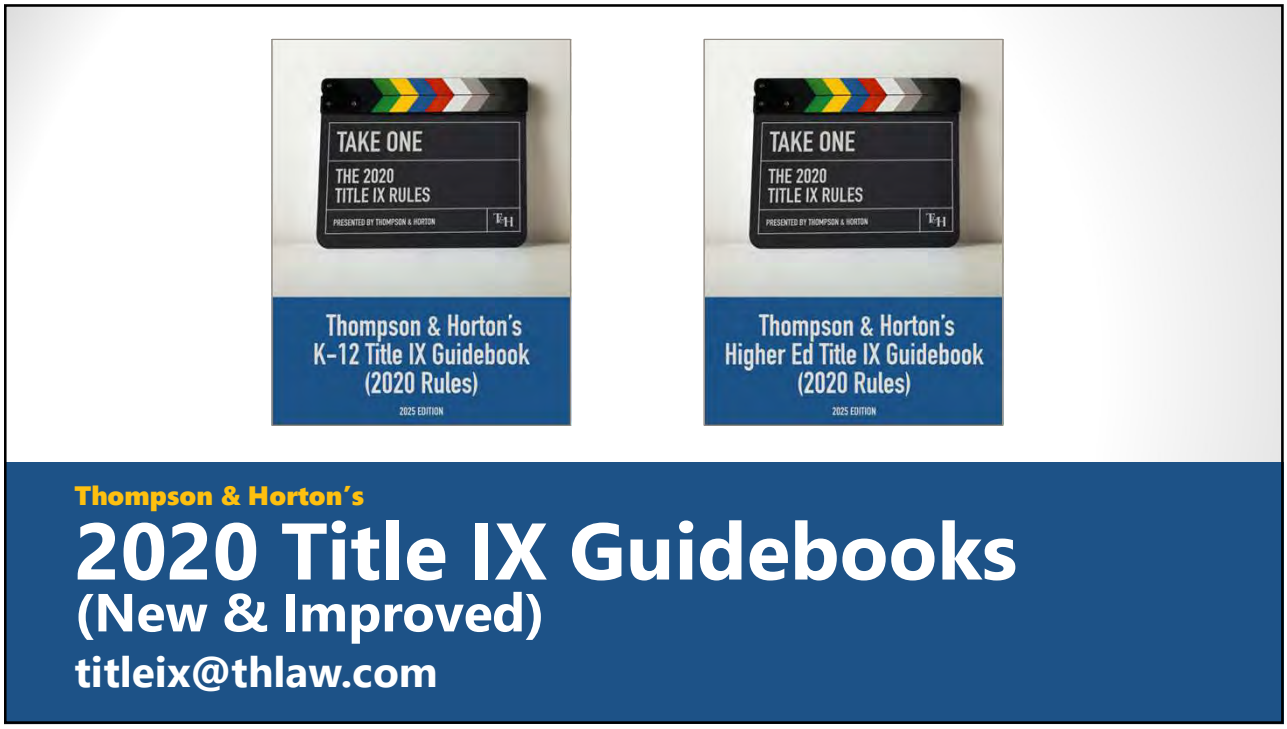
375

Questions?

376

T&H
Title IX Administrators
T&H Has You Covered

377


TAKE ONE
THE 2020
TITLE IX RULES
Thompson & Horton's
K-12 Title IX Guidebook
(2020 Rules)
2025 EDITION
TAKE ONE
THE 2020
TITLE IX RULES
Thompson & Horton's
Higher Ed Title IX Guidebook
(2020 Rules)
2025 EDITION
Thompson & Horton's
2020 Title IX Guidebooks
(New & Improved)
titleix@thlaw.com

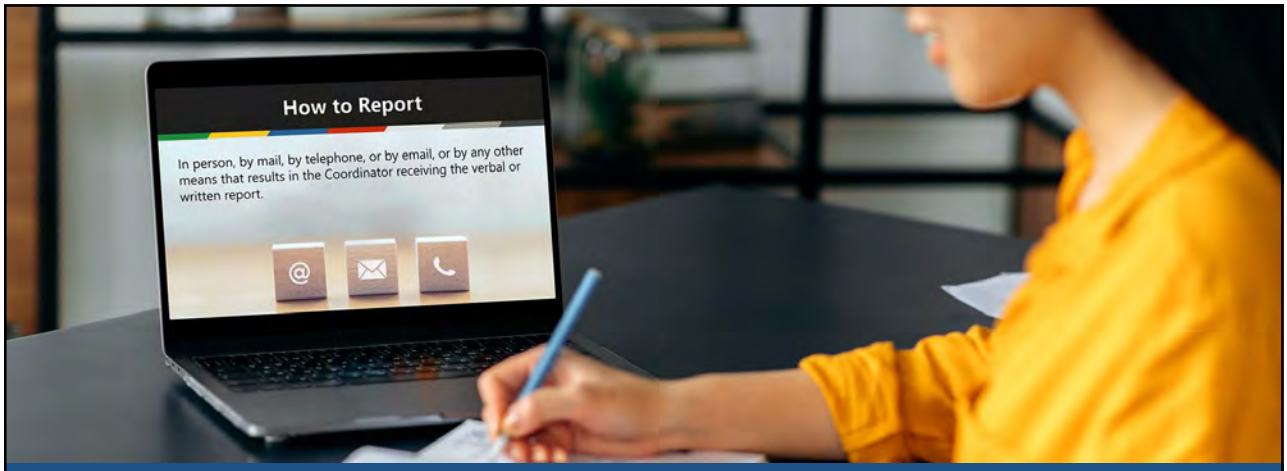
378

Thompson & Horton's

All-in-One K12 Title IX Procedures

titleix@thlaw.com

379



Thompson & Horton's

All Employee Title IX Recorded Training for K-12 and Higher Education

380

Principal's Office
Thompson & Horton's
Campus Leader
Recorded Title IX
Training
titleix@thompsonhorton.com
STRAIGHT TO
THE OFFICE
A CAMPUS ADMINISTRATOR'S
GUIDE TO TITLE IX
K-12

381

CLASS IS
IN SESSION
TITLE IX GRIEVANCE
PROCESS FOR
TEAM MEMBERS
K-12
Thompson & Horton's
Virtual Title IX K-12
Basic Training
September 15th
10:00-2:30
Register Here

382

THOMPSON & HORTON **RESOURCES**

Title IX Leadership Alliances

K-12

4th Tuesday of the month

- Register at thlaw.com/k12alliance
- Email titleix@thlaw.com
- Use the QR code

Higher Ed

4th Wednesday of the month

- Register at thlaw.com/higheredalliance
- Email titleix@thlaw.com
- Use the QR code

383

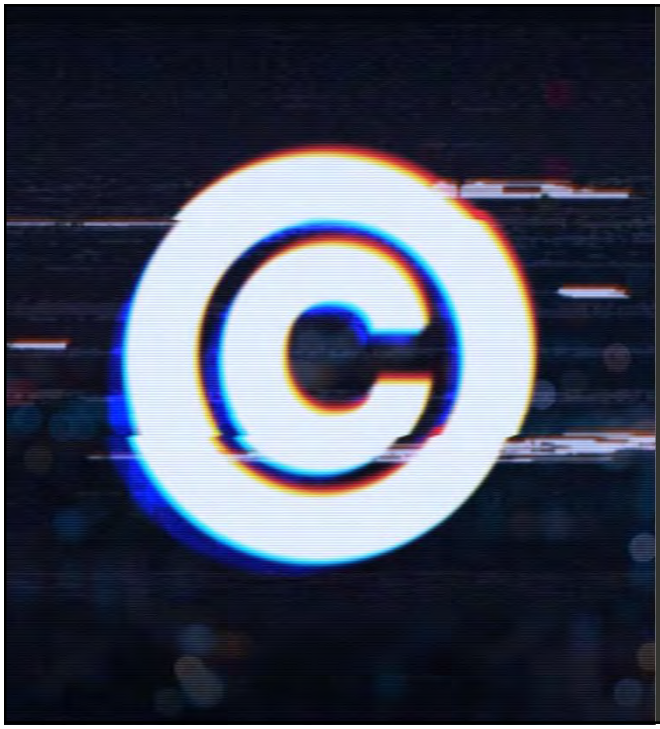
384

Thank You

Kendra Yoch
Counsel
kyoch@thompsonhorton.com

Lindsay Drennan
Senior Associate
ldrennan@thompsonhorton.com

385



Copyright Notice

The materials contained in this document are proprietary and are copyrighted. The legal penalties for copyright infringement range from $750 to $150,000 for each work infringed, and the infringer pays for all attorneys' fees and court costs.

Your right is a right of inspection and review of the materials contained herein, only. No other right is granted beyond viewing. You are not authorized to copy, use, adapt, repost, share publicly, or alter any contents from this document. You are not permitted to use the materials in this document for training, or for any commercial purpose. Any such use will result in damages equivalent to the full-per-head registration costs for the equivalent Thompson & Horton training, plus damages for reputational harm to Thompson & Horton, in addition to any copyright infringement fines and/or penalties.

Proceeding to use and access the content on this document demonstrates your acceptance and understanding of these terms and conditions. To contact Thompson & Horton with questions about any of the contents of this document, please email titleix@thompsonhorton.com.

386