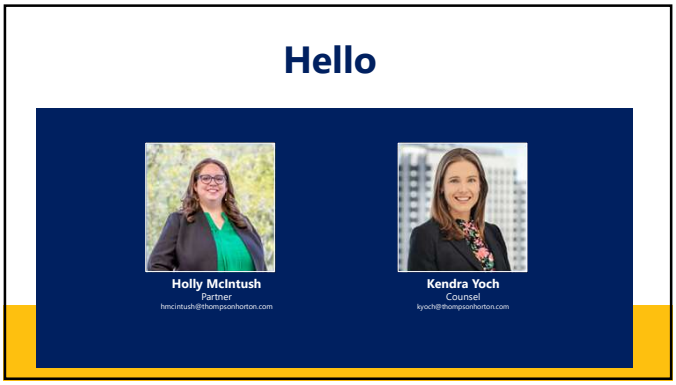
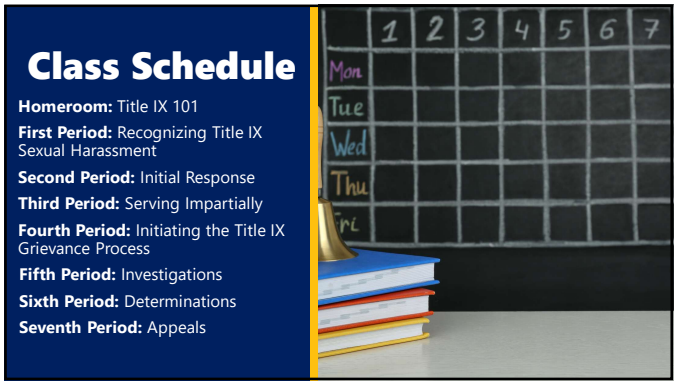


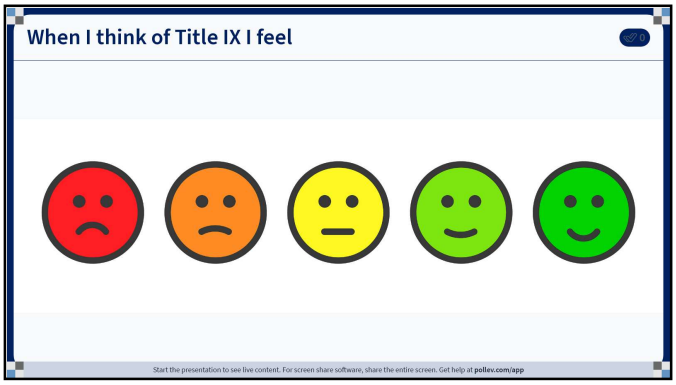
1



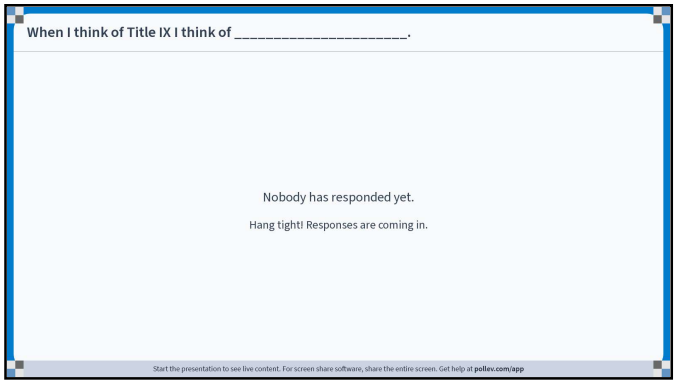
2



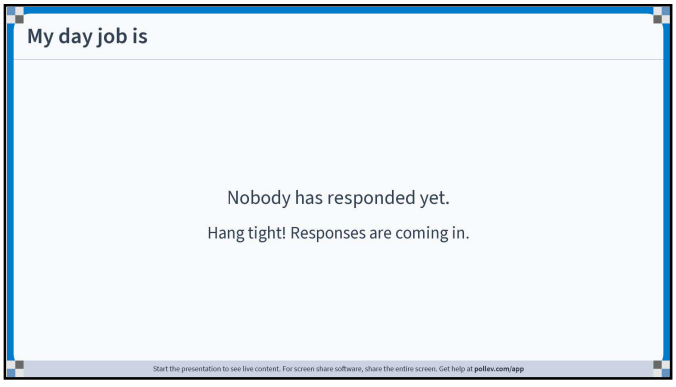
3



4



5

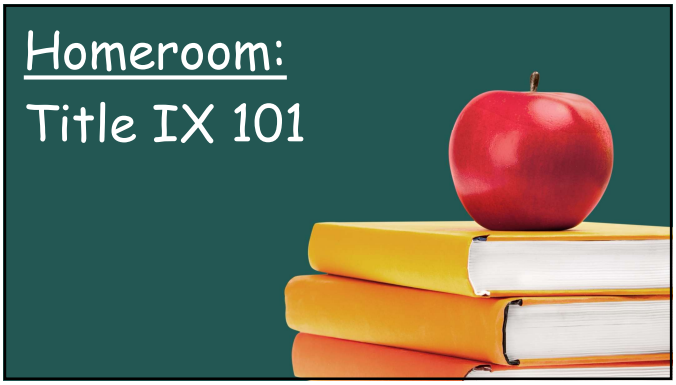


6

© Thompson & Horton 2026. All rights reserved. See final page



7



8

"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)

9

Title IX's Scope

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

10

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

11

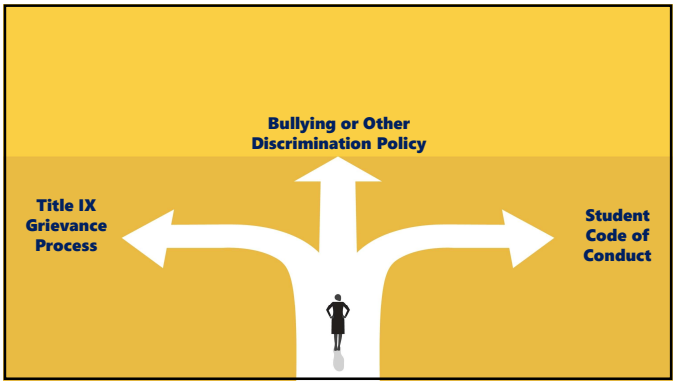


12

© Thompson & Horton 2026. All rights reserved. See final page



13



14

Do We Use Title IX?

- ☑ Is it Title IX sexual harassment?

15

Do We Use Title IX?

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

16

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?

17

Do We Use Title IX?

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

18

© Thompson & Horton 2026. All rights reserved. See final page

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

19

Do We Use Title IX?

Start with the easiest question.

- ☑ Was it in the United States?

20

Where Did It Occur?



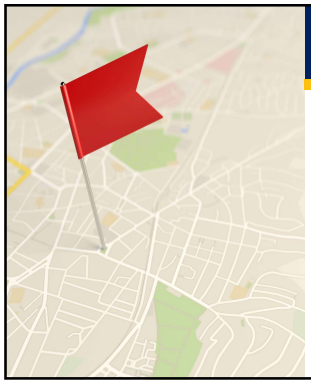
21

Do We Use Title IX?

Next ask:

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

22



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

23

Conduct within the District's Operations



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

24

© Thompson & Horton 2026. All rights reserved. See final page

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?)

25

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?**

Then assess the alleged conduct.

26

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

27

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

28

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



29

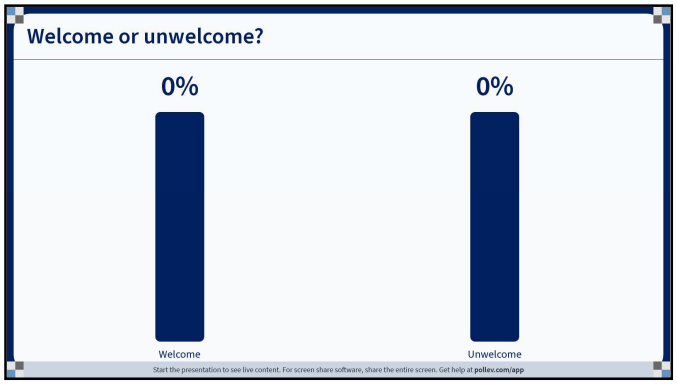
Unwelcome?



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

30

© Thompson & Horton 2026. All rights reserved. See final page



31

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
- Hostile Environment
- The Big 4
  - ►Sexual Assault
  - ►Domestic Violence
  - ►Dating Violence
  - ►Stalking

T&H

32

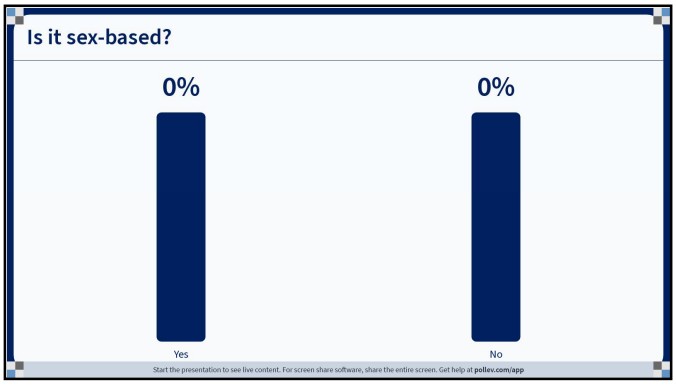
Sex-based?



David Silver drops out of football to join the staff of the West Beverly High radio station. 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."

33

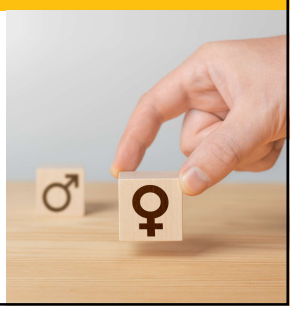


34

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



35

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**
- Hostile Environment
- The Big 4
  - ►Sexual Assault
  - ►Domestic Violence
  - ►Dating Violence
  - ►Stalking

T&H

36

© Thompson & Horton 2026. All rights reserved. See final page

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.

37

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

38

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."

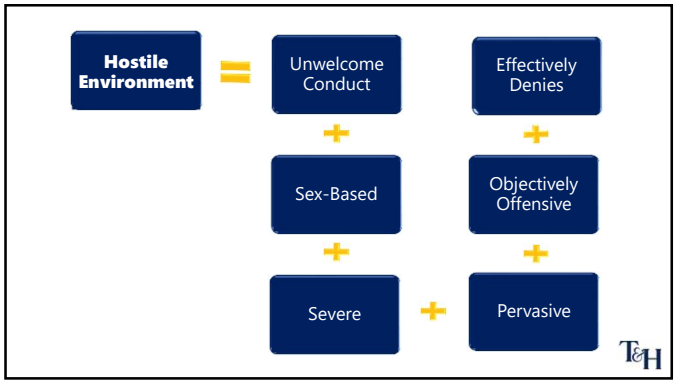
39

Title IX Sexual Harassment

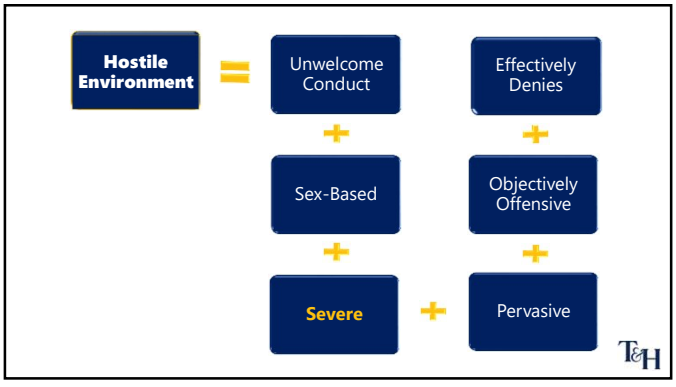
Title IX sexual harassment means unwelcome conduct on the basis of sex that satisfies one or more of the following:

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

40



41



42

© Thompson & Horton 2026. All rights reserved. See final page

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)



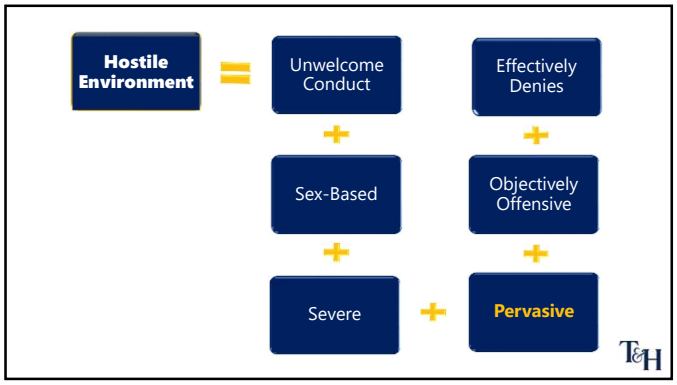
43

Severe: Court Guidance

- 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)

T&H

44



45

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)



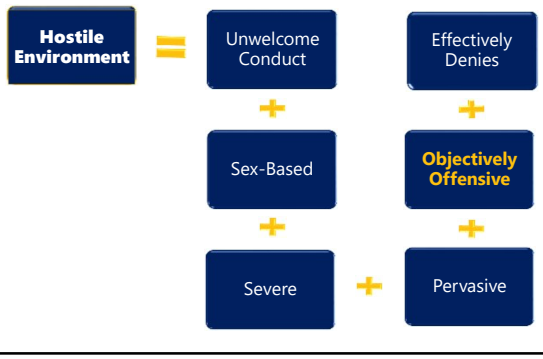
46

Pervasive: Court Guidance

- 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

47



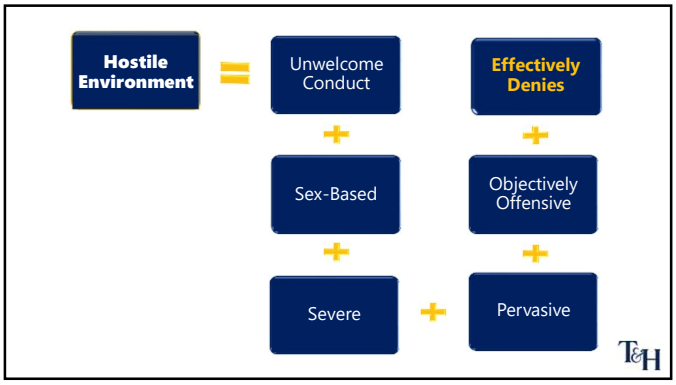
48

© Thompson & Horton 2026. All rights reserved. See final page

Objectively Offensive

- 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

49



50

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.

51

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



52

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

53

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

54

© Thompson & Horton 2026. All rights reserved. See final page

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

55

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

56

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
- Hostile Environment
- **The Big 4**
  - ►Sexual Assault
  - ►Domestic Violence
  - ►Dating Violence
  - ►Stalking

57

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

58

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

59

Capacity to Consent

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

60

© Thompson & Horton 2026. All rights reserved. See final page

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

61

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

62

Dating Violence

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

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

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

63

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

64

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

65

Stalking Examples

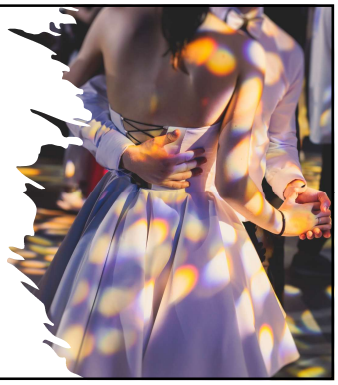
- Following an individual around or spying on an individual
- Threatening physical harm to an individual, their family, pets, or property
- Calling, texting, emailing, or mailing the victim's repeatedly at home or work
- Repeated, uninvited appearances at the victim's residence or workplace
- Breaking 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

66

© Thompson & Horton 2026. All rights reserved. See final page

At the West Beverly High prom, Steve Sanders is dancing with Kelly Taylor. Steve has a crush on Kelly and thinks she returns the crush, but Kelly is in love with another classmate.

While dancing, Steve pulls her in close and slowly begins to move his hand from her waist to her butt. She pulls his hand back up and tells him to cut it out. Steve says, "come on, Kelly. You know you want this," and pulls her in closer and begins to grind against her. Kelly shoves him and runs off the dance floor.



67

Is this Title IX Sexual Harassment

Quid Pro Quo?	0%
Sexual Assault?	0%
Domestic or Dating Violence?	0%
Stalking?	0%
Hostile Environment?	0%
None of the above	0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

68



Donna Martin is chair of the prom. At the last minute the band she booked canceled.

She has tried everything and cannot find a replacement band. So Donna She asks sophomore David Silver to fill in and DJ the dance.

When David arrives, he begins to flirt with Donna and when she blows him off, he says he'll only fill in *"If you're real nice to me..."*

69

Is this Title IX Sexual Harassment

Quid Pro Quo?	0%
Sexual Assault?	0%
Domestic or Dating Violence?	0%
Stalking?	0%
Hostile Environment?	0%
None of the above	0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

70

Brenda and Dylan 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 Brenda slap Dylan and him shove her away hard enough for her to hit the wall.

Administrators want to discipline both students for fighting.



71

Can campus administrators proceed under the Student Code of Conduct?

Yes, because both students violated the rules against fighting	0%
Only if Brenda's parents don't file a formal complaint	0%
Only if neither Brenda's nor Dillon's parents file a formal complaint	0%
No	0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

72

© Thompson & Horton 2026. All rights reserved. See final page



Over several weeks, a group of boys in David's class repeatedly make comments to him about how attractive his stepsister Kelly is. They ask David questions such as, "Is Kelly really that hot in person?" and "Does she look like that at home?" They also make increasingly sexual comments about Kelly when David is present.

David initially laughs along because he doesn't want to draw attention to himself. When David tells the boys to leave him alone, one responds, "Come on, you're a dude, you have to like living with the hottest girl in school."

73



74

Brenda and Dylan break up, and Dylan begins dating Brenda's (now former) BFF, Kelly.

Brenda confronts Kelly at lunch, telling her that Kelly "stole" him from her.

Over the next several weeks, Kelly begins finding handwritten notes in her locker and on the windshield of her car. They include statements such as:

- You can't have him forever.
- I know where you are.
- Dylan will come back to me.
- You should be careful who you trust.



75



Brenda also begins appearing unexpectedly in places where Kelly is spending time. She waits outside Kelly's classroom and at her parking space after school so she can confront Kelly.

Then Brenda hands Kelly an envelope as they are passing each other in the hall at school. The envelope contains photos of of Dylan and Kelly on dates, making out under the school's beach volleyball stands, and sneaking out of a janitor's closet. A typewritten note that says:

You can try to hide, but I'll always find you

76



77



Steve Sanders is struggling in his English class and is worried that his grades could affect his ability to graduate and attend college with his friends.

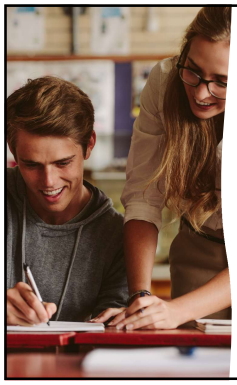
His English teacher, Ms. Carter, offers Steve extra help after school. She tells him that she knows he is capable of doing better and that she is willing to "*take him under her wing*" if he is willing to put in the effort. Steve appreciates the attention and begins staying after class regularly.

Ms. Carter also begins texting Steve on his personal phone about his grades. The messages gradually become more personal:

"Don't tell the other students I'm giving you this much help. They wouldn't understand."

78

© Thompson & Horton 2026. All rights reserved. See final page



When Steve complains about his girlfriend, Ms. Carter tells him that he is "a good-looking guy who could have any girl he wants" and jokes that she wishes all her students were as charming as he is.

Steve begins stopping by her classroom even when he doesn't need help.

When Steve mentions that he might not graduate because of his grades, Ms. Carter tells him not to worry because *"I can make sure you get across that finish line."*

She later invites Steve to meet her at a coffee shop on Saturday to work on his missing assignments. When Steve asks why they can't just meet at school, Ms. Carter responds:

"Because this is between you and me. We don't need everyone else involved."

T&H

79



80

Andria Zuckerman is a nerdy student who likes photography and runs the school newspaper.

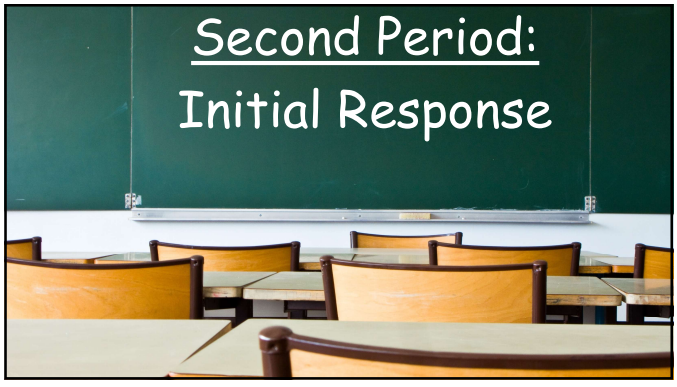
Her friend Brandon reports that other students have created an AI generated "news" story regarding Andria and Brandon, that includes AI images of Andria and Brandon making out, with Andria partially unclothed, that is circulating around the school.



81



82



83



84

© Thompson & Horton 2026. All rights reserved. See final page



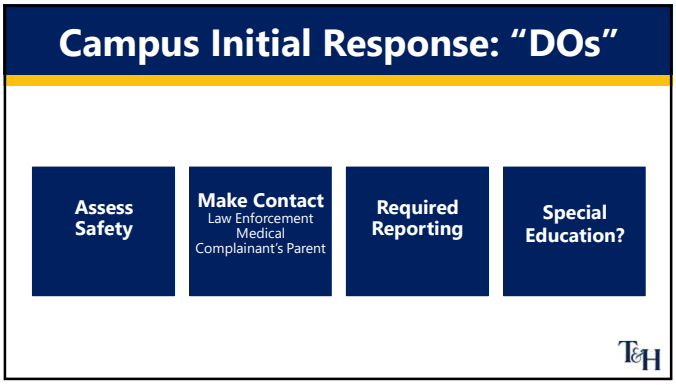
85



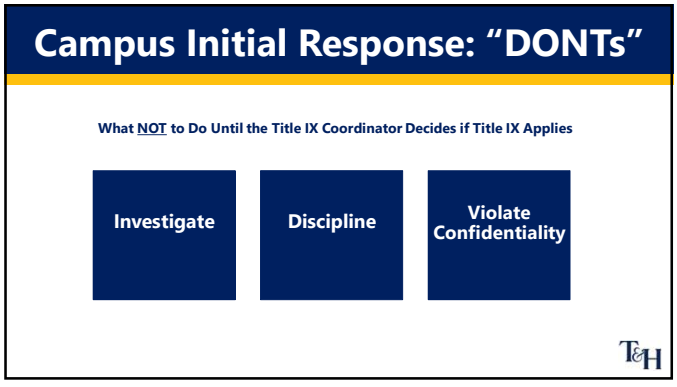
86



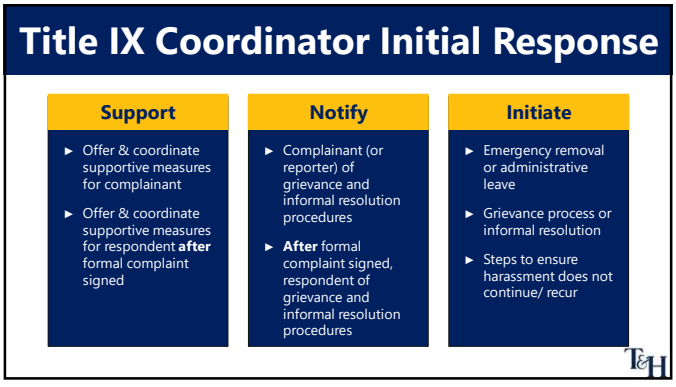
87



88

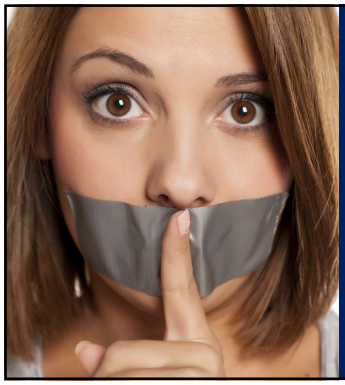


89



90

© Thompson & Horton 2026. All rights reserved. See final page



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

91

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



92

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



93

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

94

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



95



- 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

96

© Thompson & Horton 2026. All rights reserved. See final page

MDR

If the respondent has an IEP or 504 Plan, an MDR is required before a removal exceeding 10 school days.

If the alleged conduct is a manifestation of the student's disability, the removal cannot occur.

Consider and FBA/BIP and additional supportive measures

T&H

97

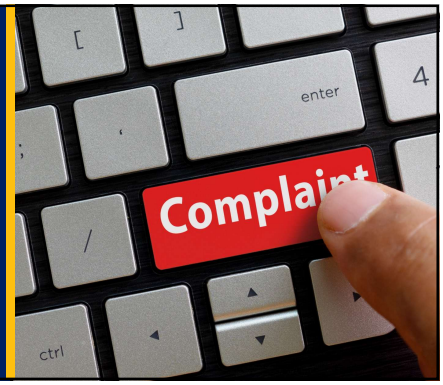
Administrative Leave

- 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



98

Parties and the Formal Complaint



99

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



Key Terms

Complainant

100

Respondent

Key Terms

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



101

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

102

© Thompson & Horton 2026. All rights reserved. See final page

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

103

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

104



105

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

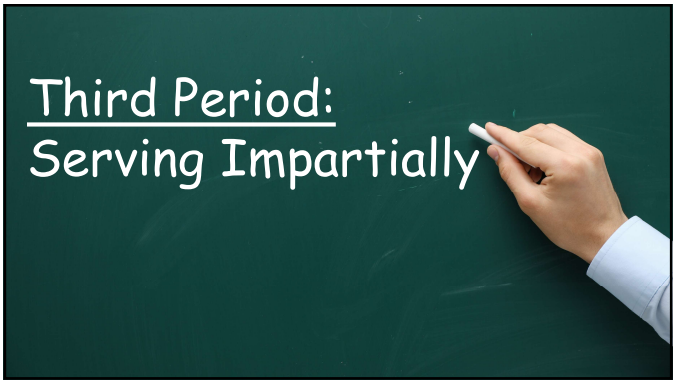
106

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



107



108

© Thompson & Horton 2026. All rights reserved. See final page



Ten Basic Requirements for Local Grievance Procedures

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

109

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

110

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)



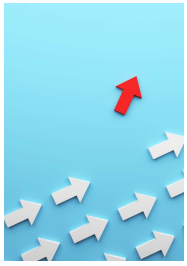
111

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



112

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)

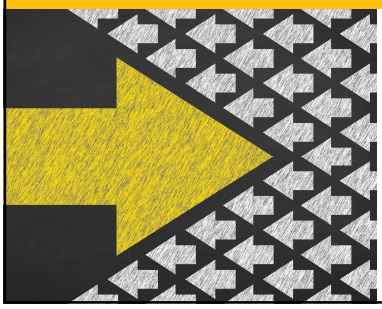
- Sex
- Race
- Ethnicity
- Sexual orientation
- Gender identity
- Disability
- Immigration status
- Financial ability
- Other characteristic

- 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

T&H

113

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

T&H

114

© Thompson & Horton 2026. All rights reserved. See final page

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

115

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



116

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

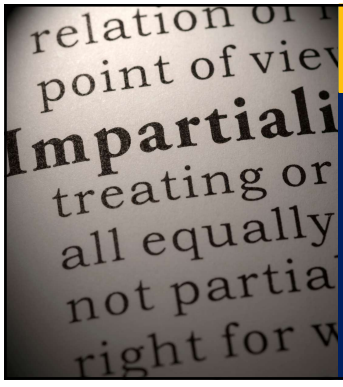
117

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



118



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)

119

The Title IX Coordinator has a disciplinary role in the school and has disciplined the Complainant in the past for academic dishonesty. Can they be impartial? Why or why not?

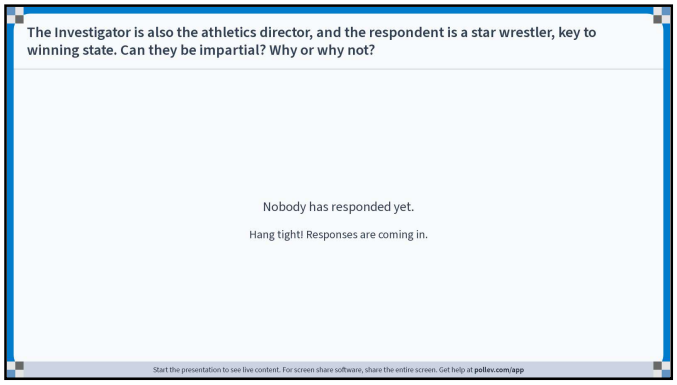
Nobody has responded yet.

Hang tight! Responses are coming in.

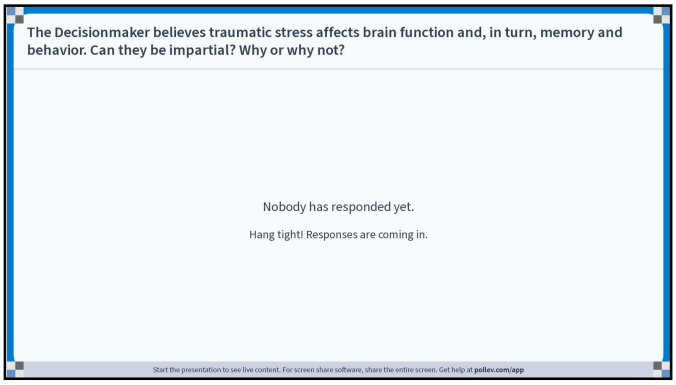
Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

120

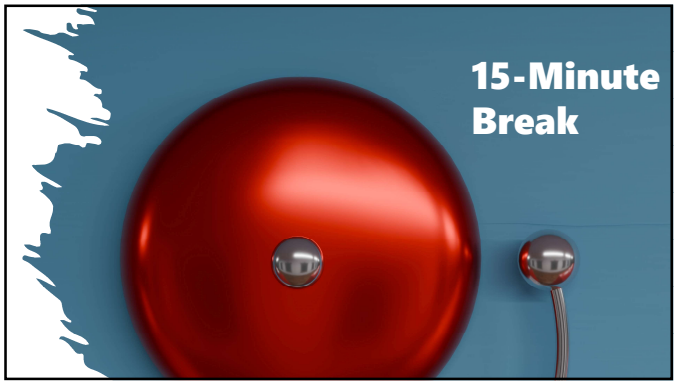
© Thompson & Horton 2026. All rights reserved. See final page



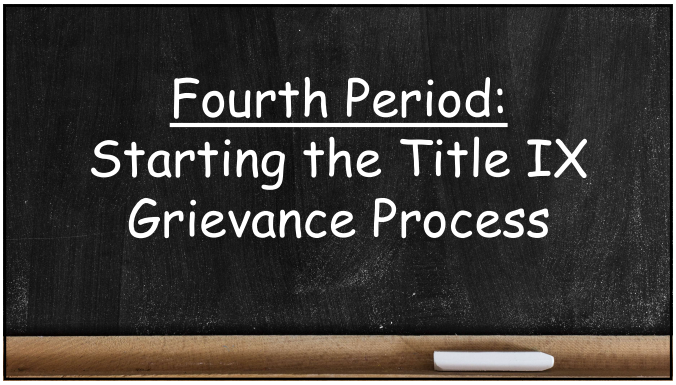
121



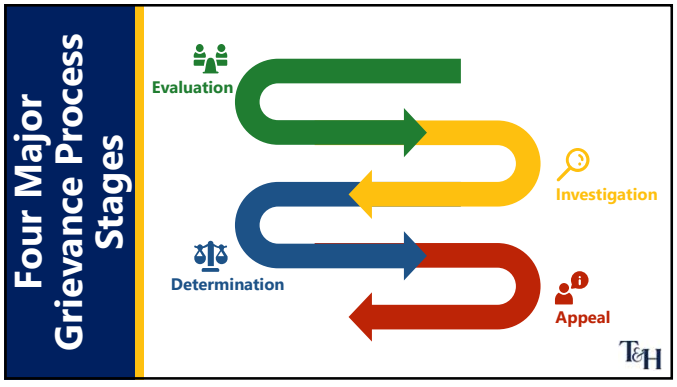
122



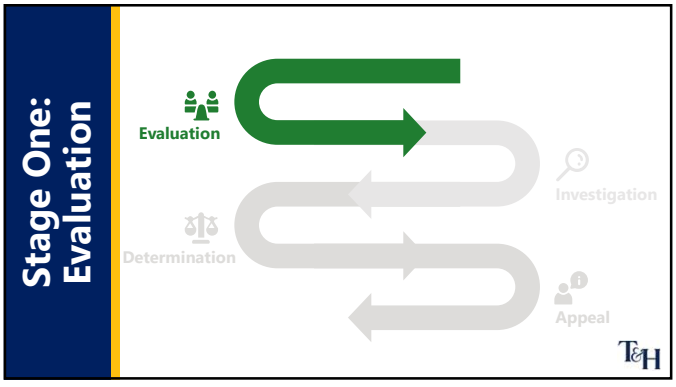
123



124



125



126

© Thompson & Horton 2026. All rights reserved. See final page

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

127

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



128

Dismissal

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

129



130

Dismissal

Mandatory	Permissive
• The conduct, if true, would not meet the definition of sexual harassment unde IX • The conduct did [illegible] ur in [illegible] district's ed[illegible] • The [illegible] not occur against[illegible]son in the U.S.	• T[illegible]plainant withd[illegible] the [illegible]int or all[illegible]s in writ[illegible] • The respo[illegible] longer enrolled or[illegible] by the district • Speci[illegible]umstan[illegible] pr[illegible]e district fr[illegible] g[illegible]ng sufficient evid[illegible]

131

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

132

© Thompson & Horton 2026. All rights reserved. See final page

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

133

Santana Lopez reports to the Title IX Coordinator that Finn Hudson sexually harassed her in the hallway outside the choir room after glee club practice.

According to Santana, Finn followed her into the hallway, blocked her path, made a sexually suggestive comment about her body, and then grabbed her arm and pulled her toward him when she tried to walk away. Santana says she told him to leave her alone, but Finn continued following her until she reached the bus.

Finn denies the allegations. Finn acknowledges that they spoke in the hallway but says he never blocked her, touched her, or made a sexual comment. He says Santana walked away from him and that he went in the opposite direction.

The video shows Santana and Finn talking for approximately two minutes. It also shows Santana briefly placing her hand on Finn's arm. He appears to step backward. Santana continues talking. After another few seconds, Finn walks away in the opposite direction. Santana then walks toward the bus.

134

What do you do next?

Nobody has responded yet.

Hang tight! Responses are coming in.

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

135

During a witness interview, Santana's girlfriend, Brittany says that Finn often forces uncomfortable sexual conversations, including in the hallway and during "down moments" for glee club practice. You speak with Brittany's parents, and Mr. and Mrs. Peirce want to file a complaint against Finn.

136

Do you consolidate the two complaints against Finn?

Yes 0%

No 0%

It depends how far along the investigation already is 0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

137

Consolidation

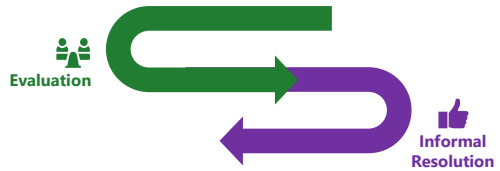


- If multiple complaints arise from the same conduct or incident, Coordinator can consider consolidation
- Consider:
  - The burden of separate grievance processes on the parties
  - Risks to the fairness of the investigation or outcome
  - Privacy rights of any student party
- Alternative: consolidate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

138

© Thompson & Horton 2026. All rights reserved. See final page

Informal Resolution



139

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

T&H

140

What is Informal Resolution?

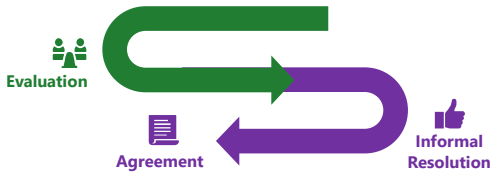
A voluntary, structured interaction between involved parties (complainant and respondent) to resolve the allegations without an investigation, determination, or appeal.

Schools have discretion as to how to structure the informal resolution process

T&H

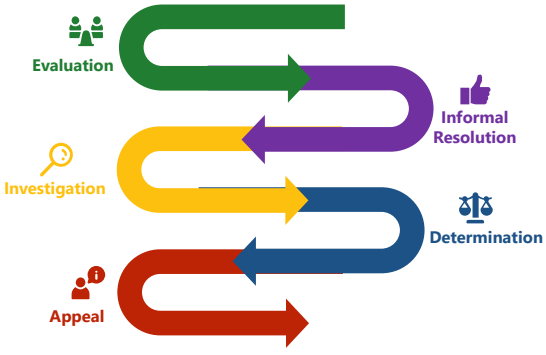
141

Successful Informal Resolution



142

Unsuccessful Informal Resolution



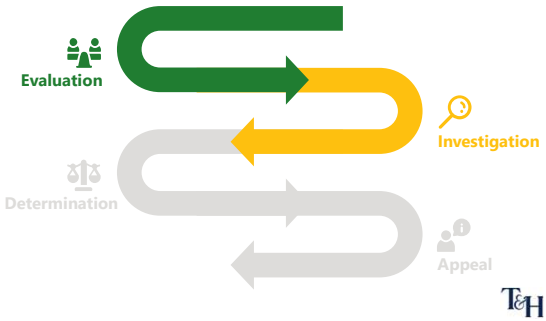
143



144

© Thompson & Horton 2026. All rights reserved. See final page

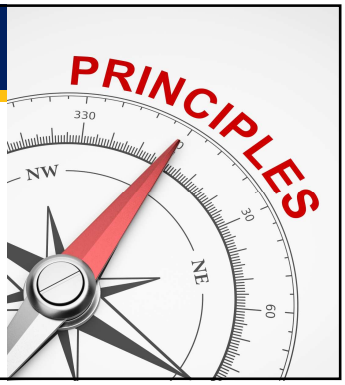
Stage Two: Investigation



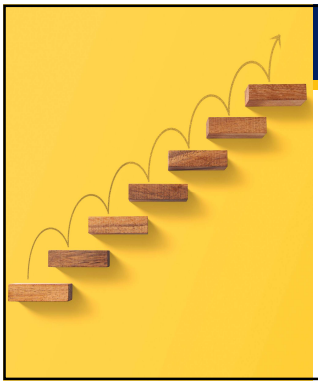
145

Key Investigation Principals

- Thorough
- Prompt
- Impartial
- Fair



146



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

147



#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)

148

Dear Party & Parent:

On [date] Chilton ISD received a formal complaint alleging that Rory G. (the "Complainant") may have been subjected to sexual harassment by Tristan D. (the "Respondent") under Title IX of the Education Amendments of 1972. The complaint alleges that, on multiple days over the last four months, 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

149



Investigator Tip

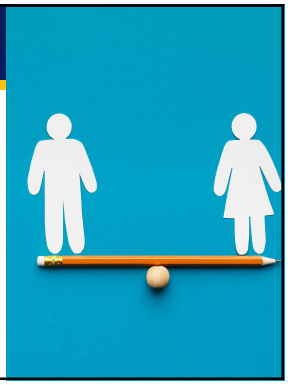
- The Notice of Allegations is your "roadmap" to your investigation
- Make sure you understand the allegations and the elements necessary to prove them
- If there is evidence of new allegations, ensure a new Notice of Allegations is provided to both parties

150

© Thompson & Horton 2026. All rights reserved. See final page

#2 Verify Impartiality

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



151

T&H Title IX Tip

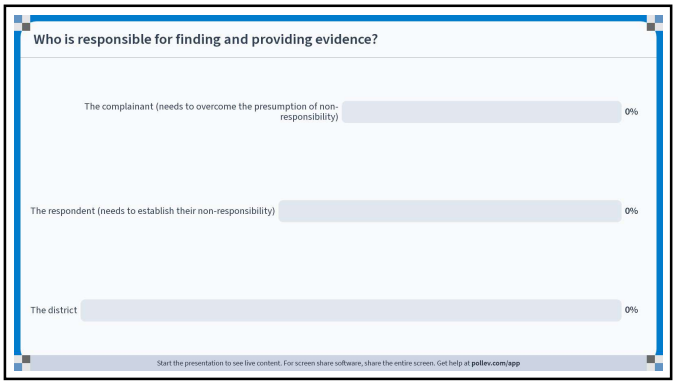
- Be open with the Title IX Coordinator or their designee about any concerns—better to report something that turns out to be nothing than to ignore something that turns out to be a big deal
- When in doubt, disclose any concerns to the parties and get their agreement to allow you to continue in the role (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

152

#3 Plan Investigation

- What questions need to be answered for a thorough and impartial investigation?
- What evidence do you need to collect? Identify and preserve evidence at risk of loss
- Contact law enforcement immediately if there is knowledge of illegal or illicit evidence
- Who should you interview? In what order? 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? Consider the elements of each type of alleged harassment

153



154

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

155

"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



156

© Thompson & Horton 2026. All rights reserved. See final page

Types of Evidence

- Direct Evidence
- Circumstantial Evidence
- Hearsay

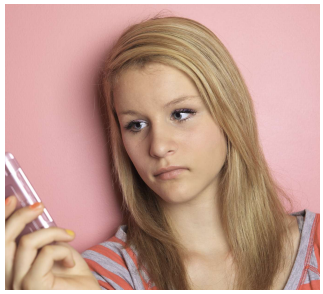
Rumor / innuendo (NOT evidence)



157

Hannah has been receiving anonymous threatening messages from the school's messaging app ever since being interviewed during the investigation into her friend Spencer's Title IX complaint.



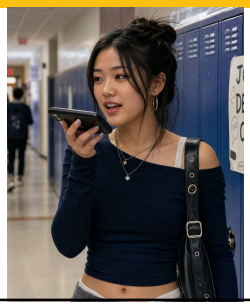


158

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

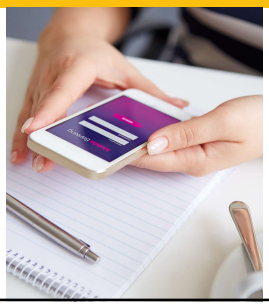


Aria: I saw and heard Mona dictate the text message.

159

Circumstantial Evidence

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



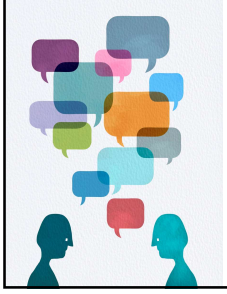
Mona's advanced computer science class had recently learned about common spoofing tricks in a lesson on internet security.

Mona's unique ID was used to log into the school's messaging app just moments before the message was sent.

She must have sent the message.

160

Hearsay Evidence

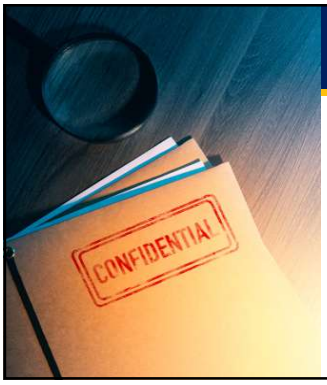


A statement (oral or written) made by someone other than the person you are interviewing and that is offered to prove the truth of the matter asserted in the statement.

Emily: Aria told me she saw Mona send the message.

Allison: Mona told me she sent the message.

161



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

162

© Thompson & Horton 2026. All rights reserved. See final page

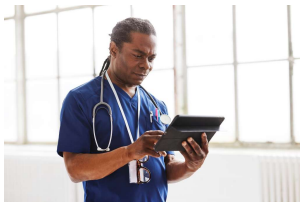
Privileged or Confidential

- 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



163

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

164

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

165

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)

166

#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 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

167

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
- Recommended to do the same for non-party witnesses (not required)



168

© Thompson & Horton 2026. All rights reserved. See final page

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

169

You Belong with Me

Rory's classmate Tristan DuGray has shown an interest in Rory since she first arrived at Chilton. Tristan frequently calls Rory "Mary," a nickname Rory has repeatedly told him she does not like. Tristan's behavior becomes increasingly focused on her relationship with Dean. Tristan tells Rory that Dean is "not her type" and repeatedly suggests that a relationship between Rory and someone like Dean cannot last.

After months of telling Tristan she is not interested, and Tristan continuing to pursue her, Rory files a Title IX complaint. After you interview Rory, you interview Tristan. He shows you a text from Rory that says "Thanks for giving me a ride after library prep today. Things have been really intense with Dean lately and I honestly just needed someone who wouldn't ask a million questions." Tristan says this shows that Rory was not upset by his actions and was actually seeking his support."

170

Rory had provided you with some texts during her interview, but not that one. How should you handle this new evidence?

Include it in the investigation report and let the decisionmaker decide what it means.	0%
Include it in the investigation report with a note that Tristan's explanation is likely correct, given Rory tried to hide the message.	0%
Do not include the message because it was likely fabricated by Tristan because it does not fit with the evidence provided by Rory.	0%
Interview Rory again and ask about the text.	0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

171

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



172

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

173

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

174

© Thompson & Horton 2026. All rights reserved. See final page

#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?



175

What if it's They Said-They Said?

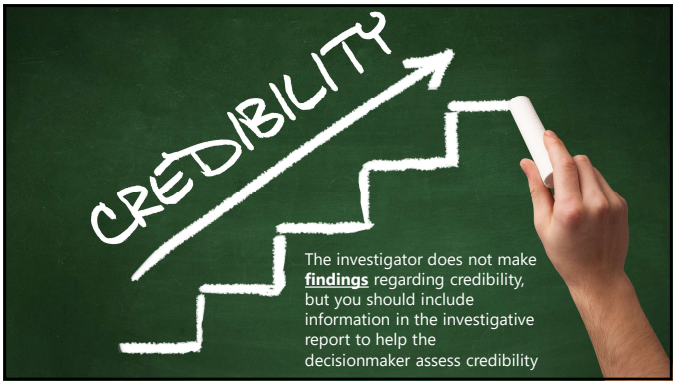


176

They Said/They Said

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

177



178

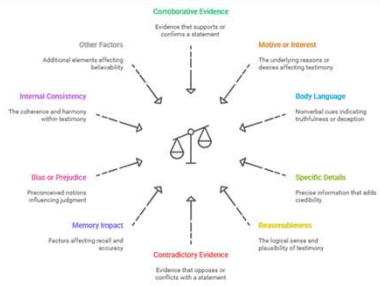
Credibility

- The decisionmaker cannot make credibility determinations based on a person's role as the complainant, respondent, or a witness (or being a star athlete or straight-A student)
- 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



179

Credibility Factors

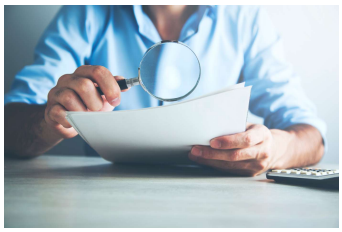


180

© Thompson & Horton 2026. All rights reserved. See final page

#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



181

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



182

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



183

Student witness names should be redacted from the investigation report.

True 0%

False 0%

If the witness or witness's parent requests anonymity 0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

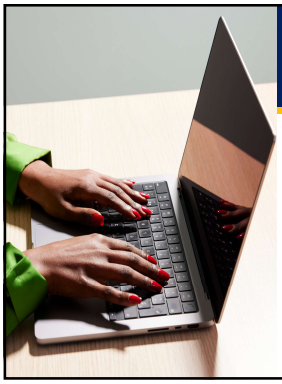
184

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?

185

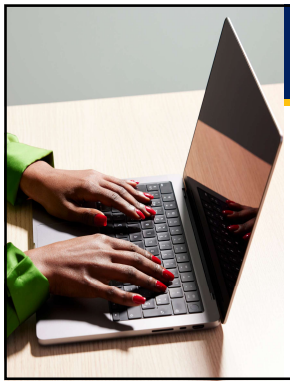


#8 Prepare & Share Investigation Report

- 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

186

© Thompson & Horton 2026. All rights reserved. See final page



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

187

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



188

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



189

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



190

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?

You can dismiss the Title IX matter	0%
The police investigation is irrelevant to the Title IX matter	0%
You can consider evidence shared by the police but their determination does not impact the Title IX finding	0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

191

Police Evidence?

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



192

© Thompson & Horton 2026. All rights reserved. See final page

Investigator Dos and Don'ts

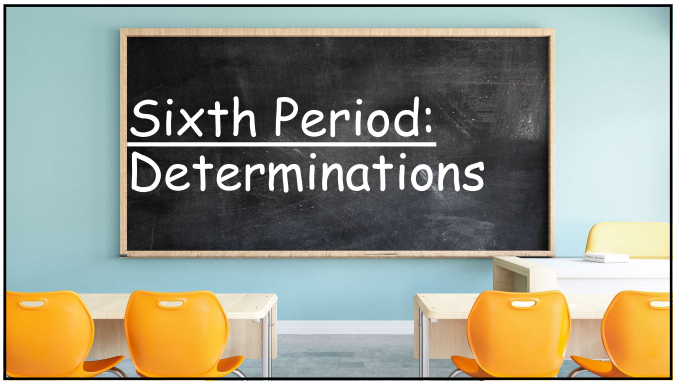
DOs

- ✓ 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

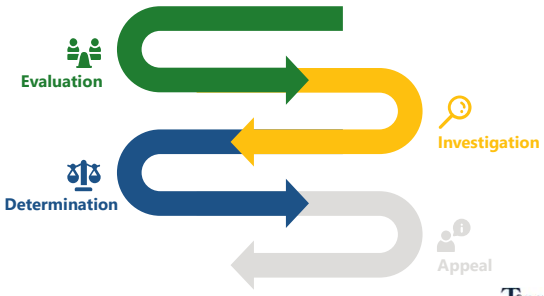
- x Conduct surprise interviews
- x Discriminate in the investigation or rely on stereotypes or preconceived notions
- x Delay or extend the investigation timeline absent good cause
- x Restrict the parties' ability to discuss allegations or gather evidence
- x Shy away from asking tough questions
-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

193



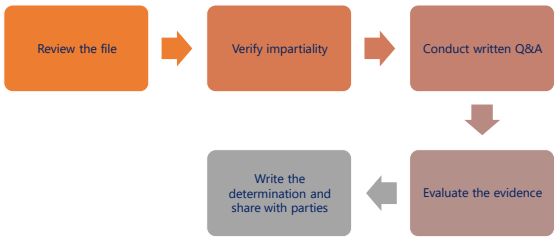
194

Stage Three: Determination



195

Decisionmaking Steps



196

Decisionmaker Questions

1. What does the evidence show is more likely than not to have occurred?
2. Do those actions constitute Title IX sexual harassment?

197

#1 - 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



198

© Thompson & Horton 2026. All rights reserved. See final page

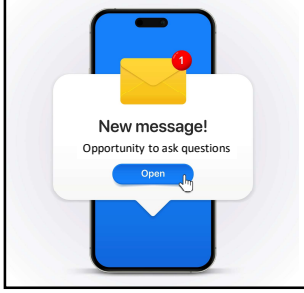
#2 - Verify Impartiality

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



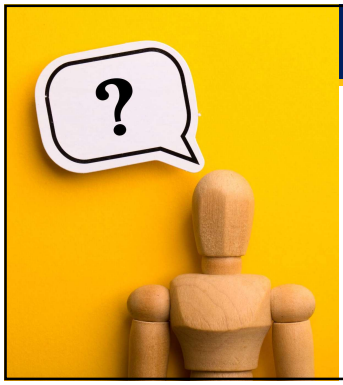
199

#3 - 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

200



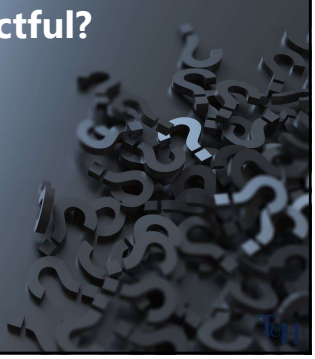
Relevant?

- **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

201

Respectful?

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



202



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

203

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"



204

© Thompson & Horton 2026. All rights reserved. See final page

Non-Relevant or Respectful Questions



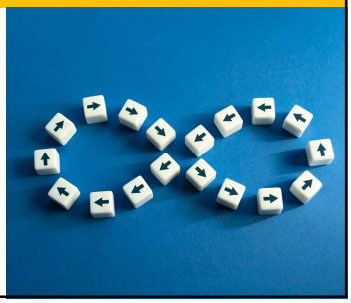
Try & Try Again

- 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)

205

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



206

#4 - Evaluate the Evidence



Standard of proof:

"Preponderance of the Evidence"

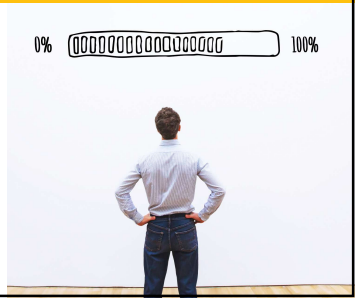
More likely than not.

(50% + a feather)

207

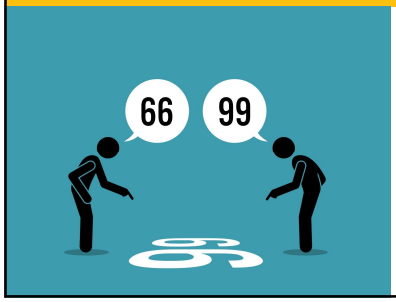
Determination

- Decisionmaker evaluates relevant, not impermissible evidence for its persuasiveness
- If not persuaded by the evidence that sexual harassment more likely than not occurred, the decisionmaker must determine that the respondent is not responsible



208

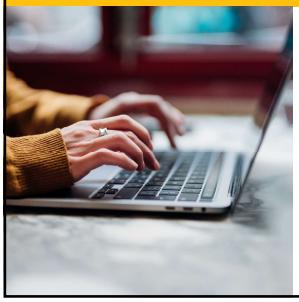
Credibility ≠ Truthful



- 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…

209

#5 - Written Determination



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

210

© Thompson & Horton 2026. All rights reserved. See final page

Number One

Identify the allegations potentially constituting sexual harassment

- 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.

211

Number Two

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

- 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

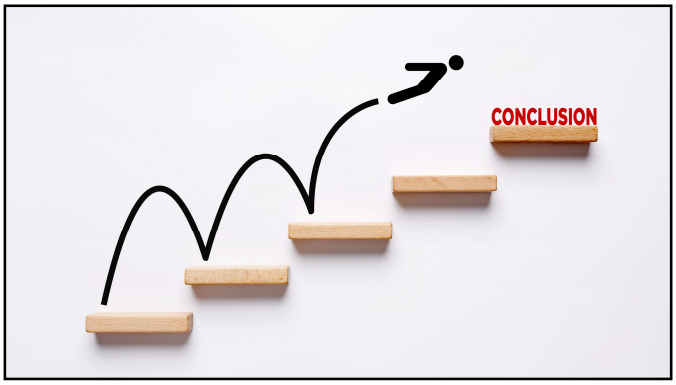
212

Number Three

Findings of fact supporting the determination

- 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

213



214

Number Four

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

- 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

215

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?

216

© Thompson & Horton 2026. All rights reserved. See final page

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

217



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

218

Number Five

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

- 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

219

Determination and Discipline

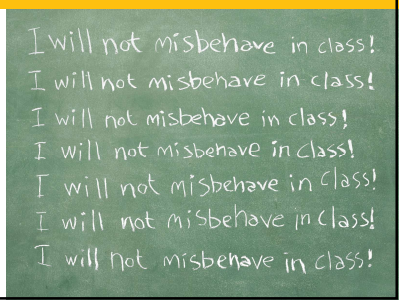


- Complete the investigation and determination before the imposition of any disciplinary sanctions against a respondent.
- Do not discipline a party, witness, or others participating in the grievance process for making a false statement or for engaging in consensual sexual conduct based solely on the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

220

Sanctions

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



221

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.



222

© Thompson & Horton 2026. All rights reserved. See final page

Number Six
Process for Appeal

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

223

Number Seven
Provide the written determination to the parties simultaneously

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

224

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

225



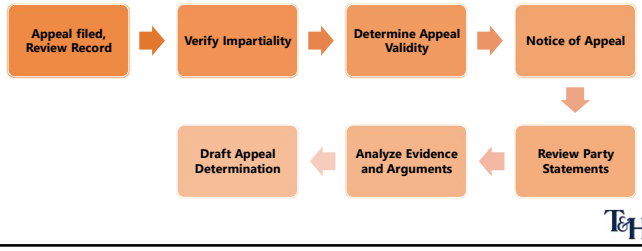
226

Step Four: Appeal



227

Appeal Steps



228

© Thompson & Horton 2026. All rights reserved. See final page

Review File

- Review all material provided by the Title IX Coordinator
- Appeals are not de novo, confine the review to the record + appeal documents



229

Class Dismissed

During end-of-day dismissal in the 5th-grade hallway, Mr. Bullock (substitute teacher) was managing line departure. According to the complaint filed by Courtnee's mother, Mr. Bullock blocked Courtnee from exiting the classroom door, placed both hands firmly on her shoulders, and squeezed her upper arms while standing over her. He allegedly told her, "You're not going anywhere until you give me a smile and a *special* hug."

Courtnee reported feeling frightened, trapped, and physically intimidated. She refused to hug him, squirmed out of his grip, and ran to her school bus crying. Her parent filed a formal Title IX complaint alleging non-consensual sexual contact and quid pro quo.

Mr. Bullock denied demanding a hug or squeezing her shoulders. He claimed he merely placed a supportive, guiding hand on her back to prevent students from rushing into the crowded hallway during dismissal.

230

Class Dismissed

The district assigned Mr. Johnson (Abbott's head custodian, who completed basic Title IX investigator training) to conduct the investigation.

- Mr. Johnson interviewed Courtnee in the main office with her mother present.
- Mr. Johnson interviewed Mr. Bullock, who reiterated that his touch was purely for hallway safety.
- During his interview with Mr. Bullock, Mr. Johnson stated on record: "*Kids these days exaggerate everything to get out of trouble. I've known you for five years; you're just an old-school educator who cares about order.*"
- Mr. Johnson submitted his investigative report concluding that the physical contact was non-sexual, brief, and intended solely for safety maintenance during dismissal.

231

Class Dismissed

The District's decisionmaker reviewed Mr. Johnson's investigative report and issued a finding of "Not Responsible" for Title IX sexual harassment. The written determination stated:

"Based on the preponderance of the evidence in the investigative record, the respondent's physical touch was a minor, supervisory contact intended to manage student safety in a crowded hallway. The evidence does not support a finding that the contact was sexual in nature and does not meet the definition of Title IX sexual harassment."

232

Verify Impartiality

- Appellate decisionmaker must be someone other than the investigator, decisionmaker, or coordinator
- Appellate decisionmaker must be trained
- No bias for against complainants or respondents generally
- No bias for or against these parties
- No conflict of interest
- No prejudgment



T&H

233

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)

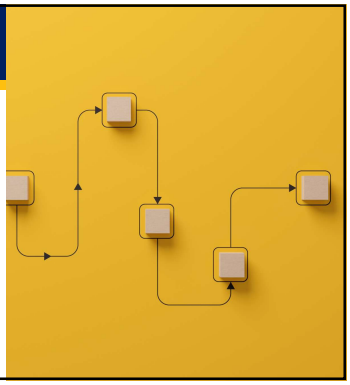
T&H

234

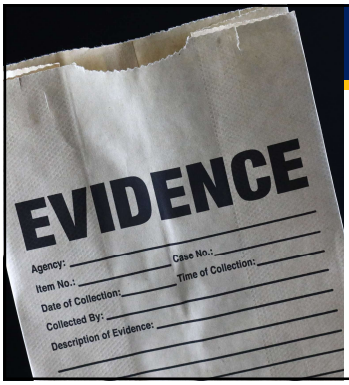
© Thompson & Horton 2026. All rights reserved. See final page

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?



235



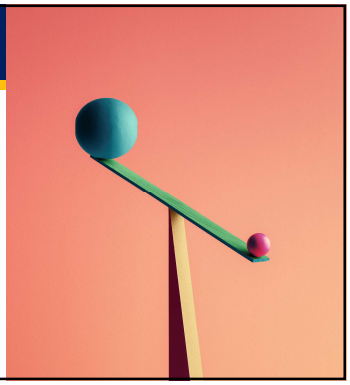
New Evidence

- 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?

236

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?



237



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)

238

Who Decides?



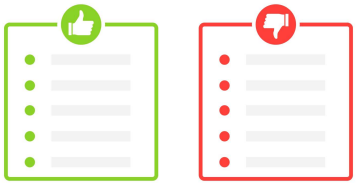
Title IX Coordinator or appellate decisionmaker?

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

239

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

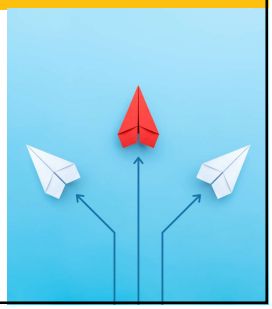


240

© Thompson & Horton 2026. All rights reserved. See final page

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



241

Class Dismissed

Courtney's mother files an appeal alleging that:

Through a records request, she obtained the security footage from the hallway, which shows Mr. Bullock block the doorway, grab Courtnee by the arms, get close to her, and say something (there is no audio), then Courtney squeezes past him and runs down the hall. This new evidence contradicts Mr. Bullock's account.

242

Should the appeal be granted?

Yes, this evidence was not considered by the investigator or decisionmaker and would impact the outcome; reverse	(A)	0%
Yes, this evidence was not considered by the investigator or decisionmaker and would impact the outcome; remand	(B)	0%
No, the evidence was available at the time of the initial determination so the appeal cannot be granted.	(C)	0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at **pollev.com/app**

243

Class Dismissed

Courtney's mother files an appeal alleging the following:

The investigator had a bias against students and in favor of Mr. Bullock. This led to an incomplete investigation and unwarranted credibility considerations.

244

Should the appeal be granted?

Yes, the investigator's bias is clear from the record; reverse.		0%
Yes, the investigator's bias is clear from the record; remand for further investigation by a new investigator.		0%
No, the investigator is entitled to bring common sense and his experiences regarding student behavior and this staff member to bear on his collection and summarization of evidence.		0%

Start the presentation to see live content. For screen share software, share the entire screen. Get help at **pollev.com/app**

245

Class Dismissed

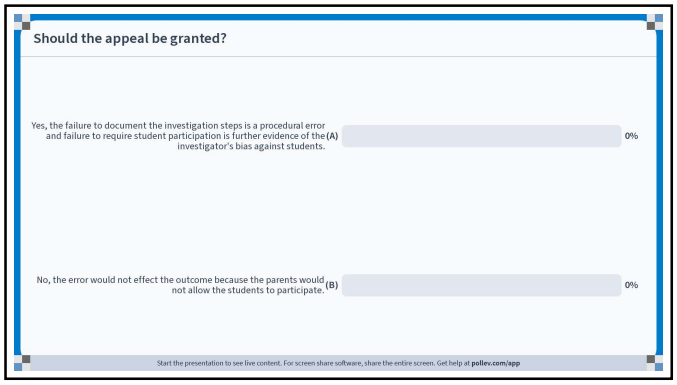
Courtney's mother files an appeal alleging the following:

The investigator failed to interview two other students in line to leave the class who were still nearby when the incident occurred.

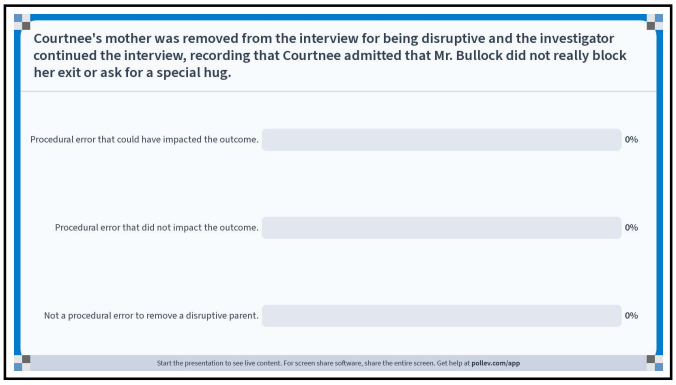
According to the investigator, the students' parents refused to allow them to participate.

246

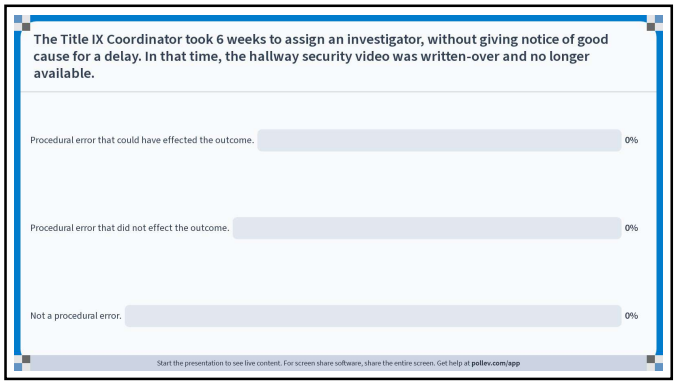
© Thompson & Horton 2026. All rights reserved. See final page



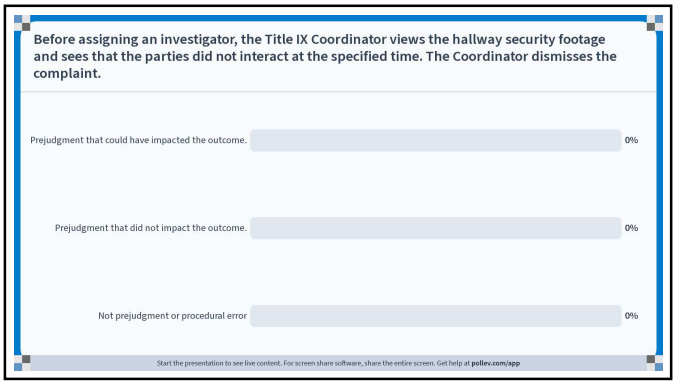
247



248



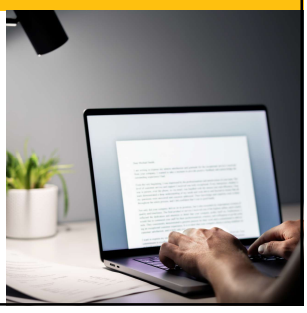
249



250

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



251

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).

252

© Thompson & Horton 2026. All rights reserved. See final page

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

253



254

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.

255



256

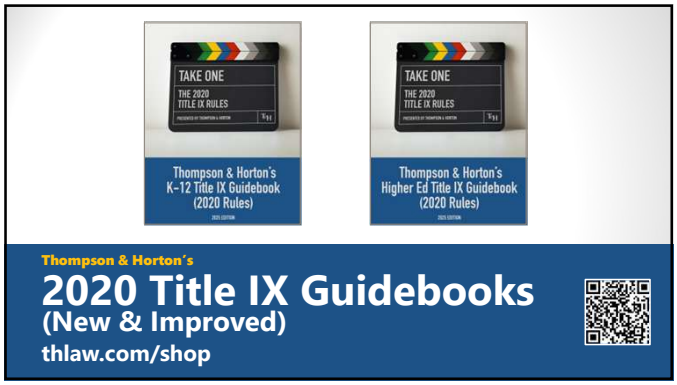


257

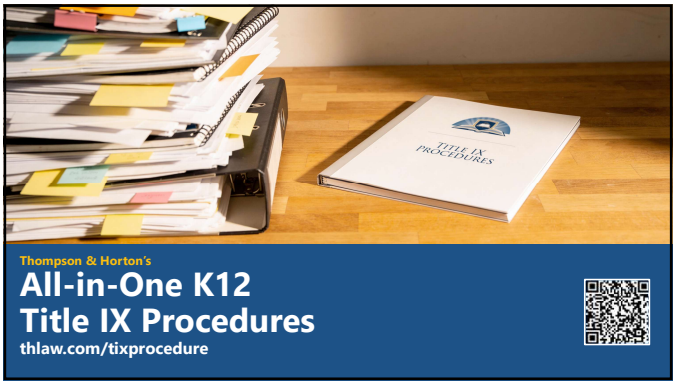


258

© Thompson & Horton 2026. All rights reserved. See final page



259



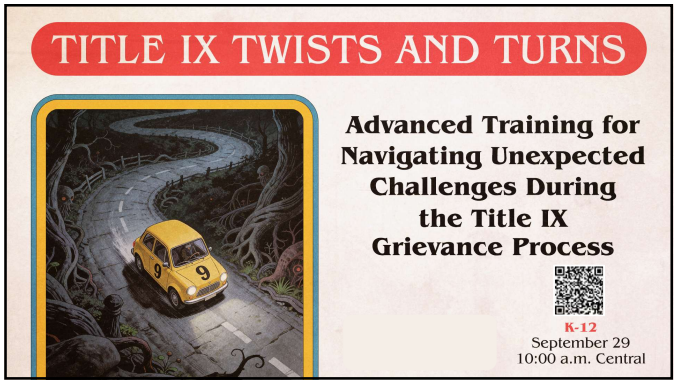
260



261



262



263



264

© Thompson & Horton 2026. All rights reserved. See final page

Thank You

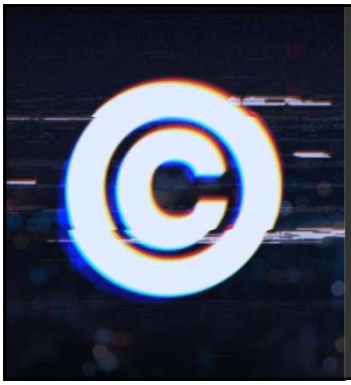


Holly McIntush
Partner
hmcintush@thompsonhorton.com



Kendra Yoch
Counsel
kyoch@thompsonhorton.com

265



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.

266