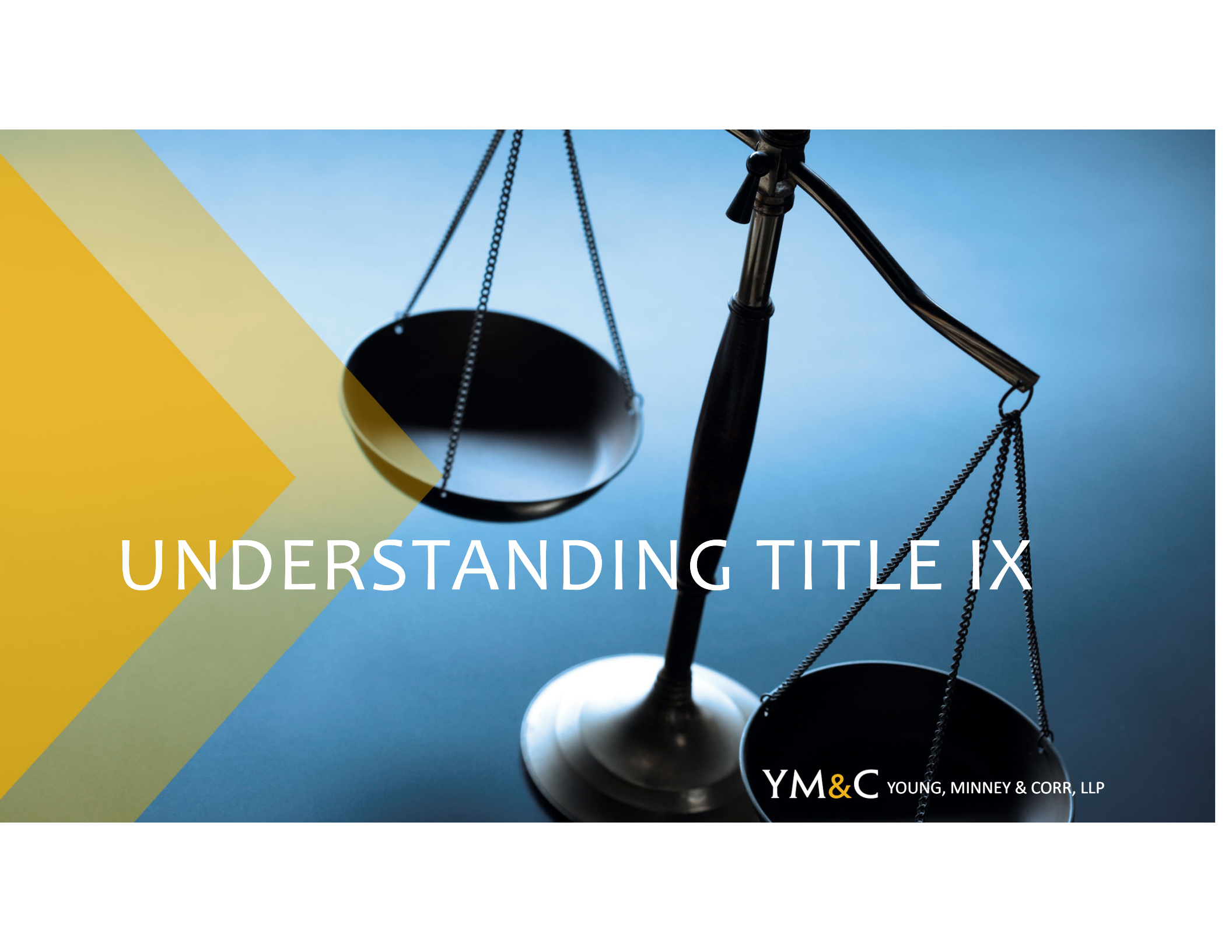




UNDERSTANDING TITLE IX

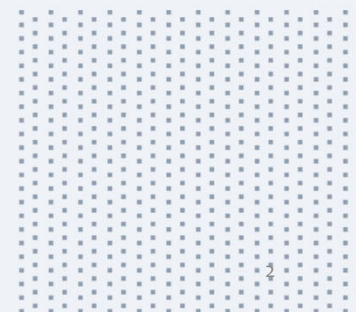
YM&C YOUNG, MINNEY & CORR, LLP



DISCLAIMER

This training cannot substitute for personalized legal advice.

Our advice is based upon the latest available guidance, which is subject to change in this ever-evolving landscape.



2024 Title IX Regs: What Happened?

- Effective August 1, 2024
- Then **vacated** January 9, 2025, by federal court in Kentucky (Tennessee v. Cardona (E.D. Ky. Jan. 9, 2025, No. 2:24-cv-00072-DCR-CJS) 2025 WL 63795)
 - 2024 Title IX **regulations** no longer effective in any U.S. jurisdiction
 - Does not change the underlying law – Title IX itself still exists
 - We are just reverting back to the 2020 Title IX Regulations



2024 TITLE IX REGULATIONS

Why were they vacated?

- Title IX is a federal statutory law enacted by Congress, prohibiting **discrimination on the basis of sex**. It directs the U.S. Dept of Education (“USDOE”) to adopt regulations for **implementing** Title IX. When agencies like USDOE create regulations, they can be sued for having exceeded their authority if their regulations illegally go further than the underlying law. **This is what happened here.**
 - **The Kentucky court ruled:**
 - the USDOE’s 2024 regulations had interpreted Title IX in a **broader** way than it was intended, and USDOE exceeded its authority by illegally attempting to **expand** Title IX protections.
 - 2024 regulations could not transform Title IX’s protection against “sex” discrimination into a protection against “gender identity” discrimination—only Congress itself can do so
 - USDOE unlawfully expanded the meaning of “harassment” under the law in a way that was vague and overbroad when it adopted “hostile environment harassment.”

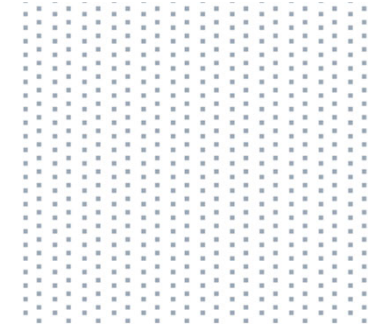
2024 TITLE IX REGULATIONS

Why were they vacated?

In short, the court held that only Congress itself can redefine discrimination on the basis of sex under Title IX.

Instead of ordering the USDOE to correct the deficiencies and revise its 2024 Title IX regulations, the court found the seriousness of the error warranted a serious remedy – the setting aside of the 2024 regulations completely and reverting to what it called “a return to the status quo” of Title IX – **the 2020 Regulations**.

Major Differences Between the 2020 and 2024 Title IX Regulations



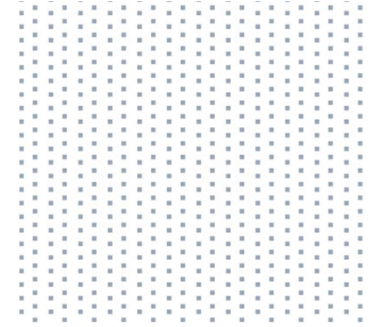
2020 Title IX Regulations (in effect now)

- *Narrower*- Specific grievance procedures for sexual harassment complaints
 - ✓ *More steps* - Must include two required 10-day response timeframes, a report of evidence and an investigation report, etc.; Title IX Coordinator cannot serve as the decisionmaker
- *Narrower* definition of hostile environment sexual harassment (severe and pervasive)

2024 Title IX Regulations

- *Broader*- Specific grievance procedures for sex-based harassment complaints and sex discrimination complaints
 - ✓ *Streamlined*- No investigation report required; Title IX Coordinator can serve as the investigator and decisionmaker
- *Broader* definition of hostile environment sex-based harassment (severe or pervasive)

Major Differences Between the 2020 and 2024 Title IX Regulations



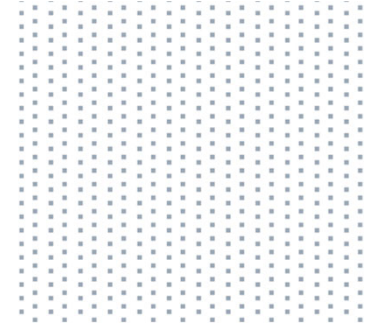
2020 Title IX Regulations (in effect now)

- *Narrower* – Complainants must be participating or attempting to participate in the school's education program or activity at the time the complaint is filed

2024 Title IX Regulations

- *Broader* – Complainants must be participating or attempting to participate in the school's education program or activity at the time the incident occurred
- *Broader* –includes protections against discrimination based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity
- *Broader* protections for students who are pregnant or have related conditions

Major Differences Between the 2020 and 2024 Title IX Regulations



2020 Title IX Regulations (in effect now)

- *Narrower* - No “all employee” or annual training requirement
- *Narrower* – mandatory dismissals on certain grounds
- *Broader* – School must send the parties the evidence that is directly related to the allegations
- *Narrower* - Formal sexual harassment complaints must be in writing

2024 Title IX Regulations

- *Broader* training requirements
- *Broader* – no mandatory dismissals
- *Narrower* - Parties have access to the relevant and not otherwise impermissible evidence
- *Broader* – Complaint may be verbal or in writing

AGENDA:

- ✓ Scope and Definitions
- ✓ Staff Obligations (Coordinator, Investigator, Decision-Maker)
- ✓ Greivance Procedures
- ✓ Supportive Measures and Informal Resolution
- ✓ Dismissals & Appeals
- ✓ Training and Posting Requirements





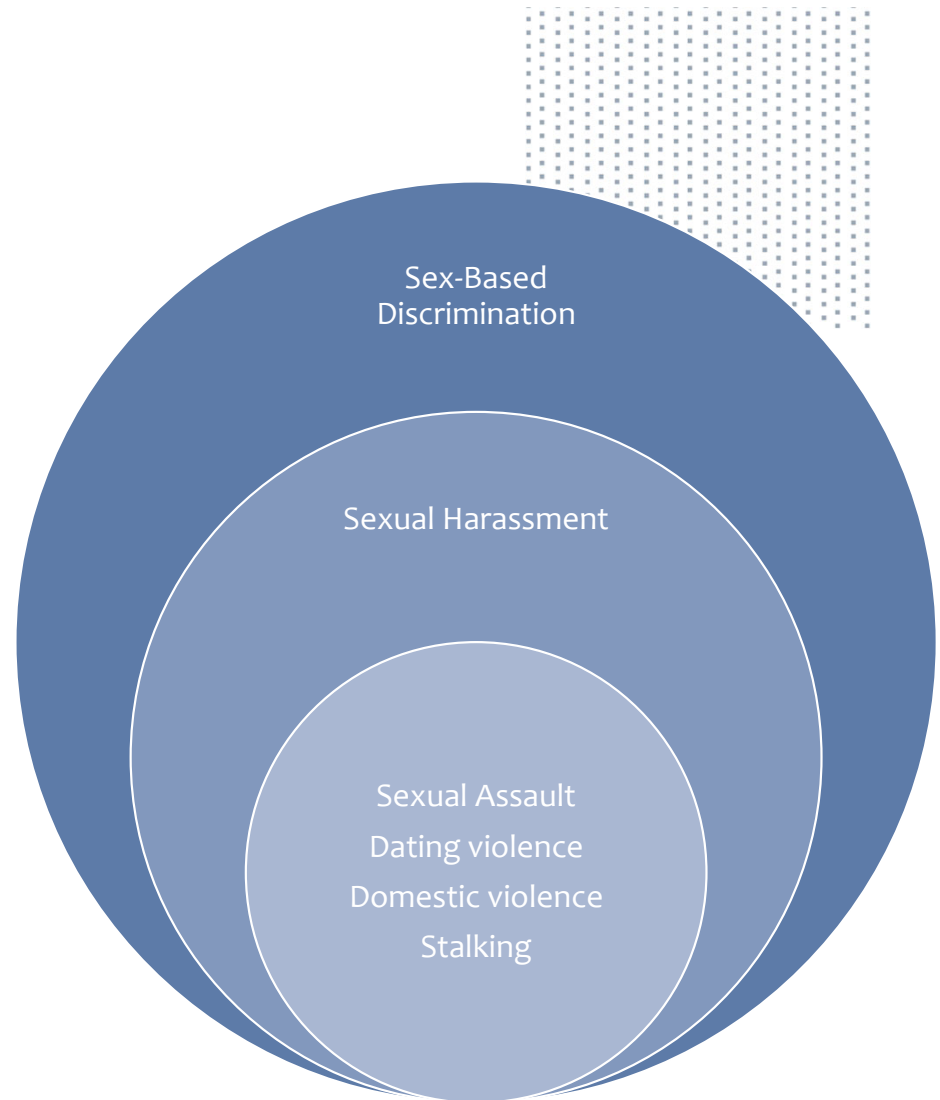
SCOPE OF TITLE IX

“ON THE BASIS OF SEX”

Title IX is a federal civil rights law, part of the Education Amendments of 1972, that prohibits **discrimination on the basis of sex** in education programs or activities that receive federal financial assistance, ensuring equal opportunities for all.

How does Title IX define “sex”?

IT DOESN'T.

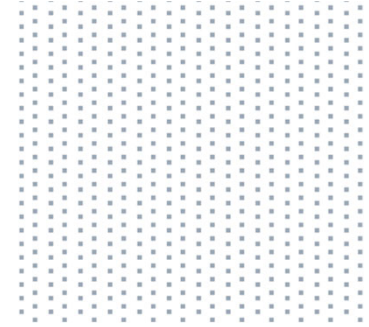


WHEN DOES IT APPLY?

- Applies only to sex-based discrimination occurring in the U.S.
- Applies to recipients of Federal financial assistance operating **education programs or activities**
- Applies to students and employees and may also apply to third-party complaints



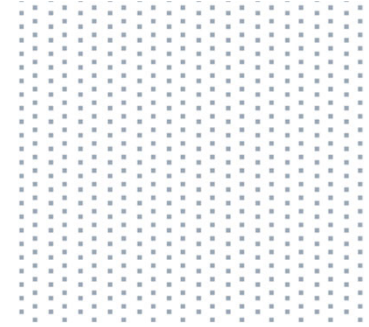
SCOPE OF TITLE IX



"Education program or activity"

- Includes locations, events, or circumstances over which the recipient exercised **substantial control over both the respondent and the context** in which the sexual harassment occurs (34 CFR Part 106.44(a))
- Includes all the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere (2001 DOE Guidance cited by Title IX Final Rule)
- Not necessarily dictated by the geographic location of the incident; requires a fact-specific inquiry (Title IX Final Rule)

SCOPE OF TITLE IX

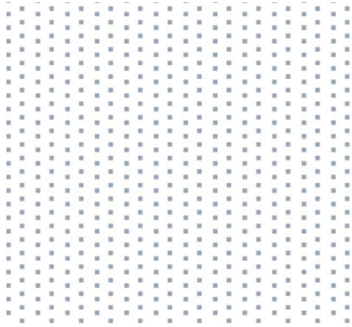


"Education program or activity" (cont.)

- May be affected by whether sexual harassment was perpetrated by a teacher against a student
 - ✓ The Supreme Court in *Gebser* emphasized that a teacher's sexual abuse of a student “undermines the basic purposes of the educational system” thereby implicitly recognizing that a teacher's sexual harassment of a student likely constitutes sexual harassment “in the program” of the school even if the harassment occurs off campus.
- May include school networks, platforms, and computer hardware or software owned or operated by the school, or used in school operations
- Student’s use of a personal device to sexually harass another student online during class time may constitute a circumstance over which the school exercises substantial control (Title IX Final Rule)



PROHIBITED SEXUAL HARASSMENT



All Title IX sexual harassment complaints fall in one of three “buckets”:

- 1) **Quid Pro Quo** - An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct
- 2) **Sexual assault**, dating violence, domestic violence, stalking
- 3) **Hostile Environment**

HOSTILE ENVIRONMENT SEXUAL HARASSMENT

Unwelcome verbal, nonverbal, or physical sex-based conduct that is:

- ✓ **severe**
 - ✓ **pervasive**
 - ✓ **objectively offensive**
 - ✓ **effectively denies** a person equal access to a school program or activity.
-
- Effective denial= conduct so extreme that complainant is afraid to come to school, failing classes; or employee's work environment is so hostile that they are forced to quit/resign.

SEXUAL ASSAULT

Title IX

- Nonconsensual sexual penetration
- Nonconsensual touching of the private body parts of another person for the purpose of **sexual gratification**
 - Title IX Regs distinguish “butt slaps” and similar forms of innocuous, non-sexualized touching between children from more serious, intentionally sexualized conduct
 - Consider age and context

California Ed Code/Penal Code

- Nonconsensual sexual penetration (by means physical force, fear, duress, intimidation, fraud, or if the victim cannot legally consent due to physical or mental incapacity or age)
- Nonconsensual touching of an intimate body part of another person for the purpose of **sexual arousal, sexual gratification, or sexual abuse**



SEXUAL ORIENTATION, GENDER IDENTITY, AND TRANSGENDER STATUS

2020 Regulations do not explicitly address this definition. Thus, Title IX grievance process **not** required to be used for complaints alleging discrimination on these bases.

BUT – **state law** requires schools to investigate and respond to discrimination and harassment on these bases using its:

- Bullying procedures
- Uniform complaint procedures (UCP)

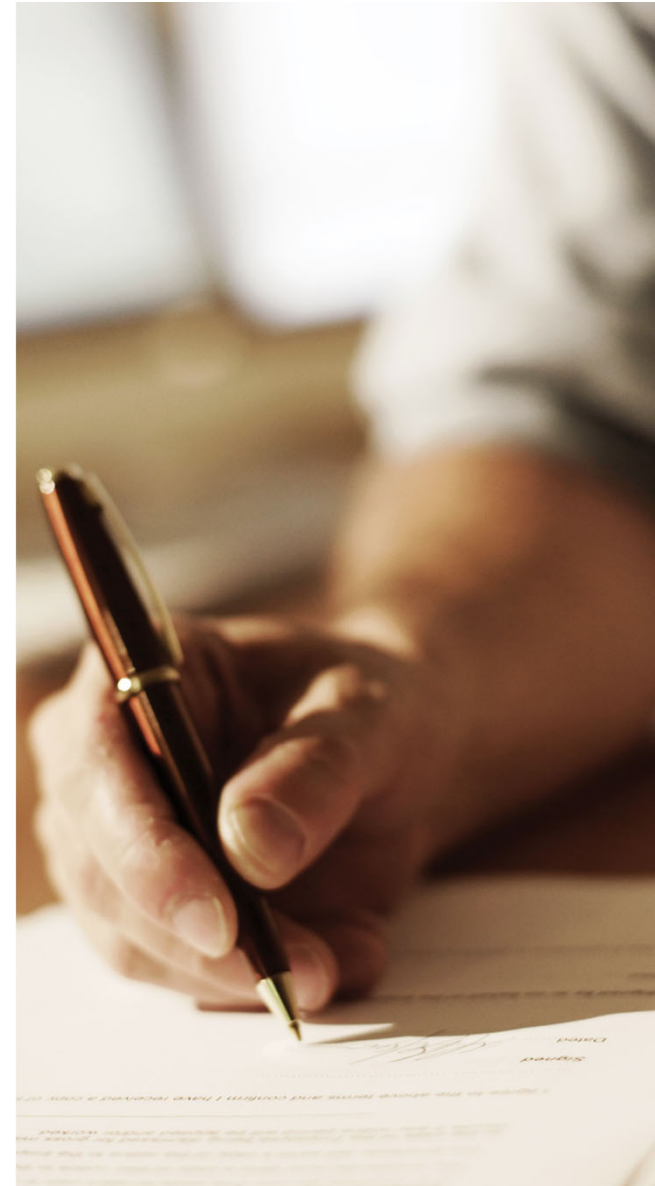


IMPORTANT DEFINITIONS

WHAT IS A FORMAL SEXUAL HARASSMENT COMPLAINT?

A Formal Sexual Harassment Complaint:

- Is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School investigate the allegation of sexual harassment.
- Must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint, and may be submitted electronically.
- Does NOT need to be on the school's formal complaint form. An email is sufficient if it's clear who it's from.



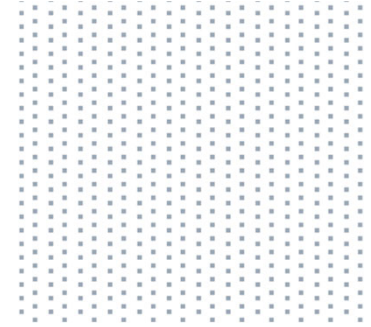
WHO IS THE COMPLAINANT?

The Complainant is:

- Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- Not necessarily the person who reports the conduct.
- At the time of filing, the complainant must be participating in or attempting to participate in the education program or activity.



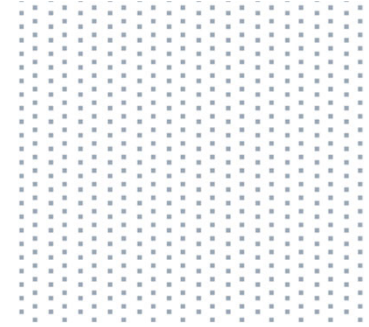
WHO IS THE RESPONDENT?



The Respondent is:

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

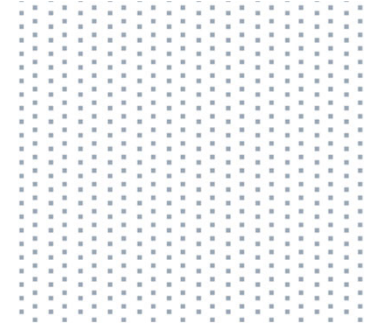
SUPPORTIVE MEASURES



“Supportive Measures” are:

- Non-disciplinary, non-punitive, free individualized services offered to the complainant or the respondent before or after the filing of a formal complaint **or where no formal complaint is filed.**
- Designed to **restore or preserve equal access** to the education program or activity without unreasonably burdening the other party.
- May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus chaperone services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

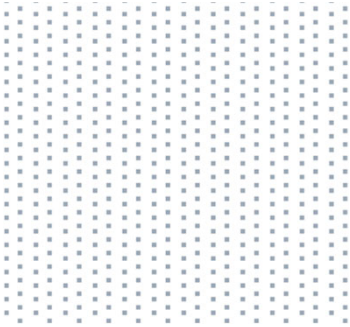
SUPPORTIVE MEASURES



- No affirmative requirement to offer these to the Respondent; just the Complainant
- Can be offered at any time in the process, even if no formal complaint filed
- No obligation to offer if the complaint is dismissed



TITLE IX COORDINATOR



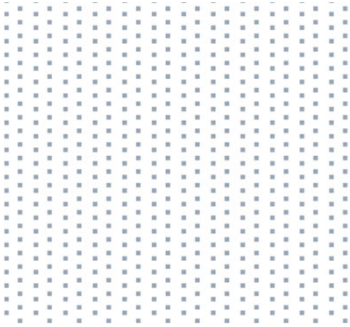
TITLE IX COORDINATOR

The School must designate and authorize at least one employee to serve as the “Title IX Coordinator.” The Title IX Coordinator:

- Coordinates the School’s efforts to comply with the requirements of Title IX and the regulations
- Receives reports of sex discrimination and sexual harassment, formal sexual harassment complaints, and inquiries about the application of Title IX



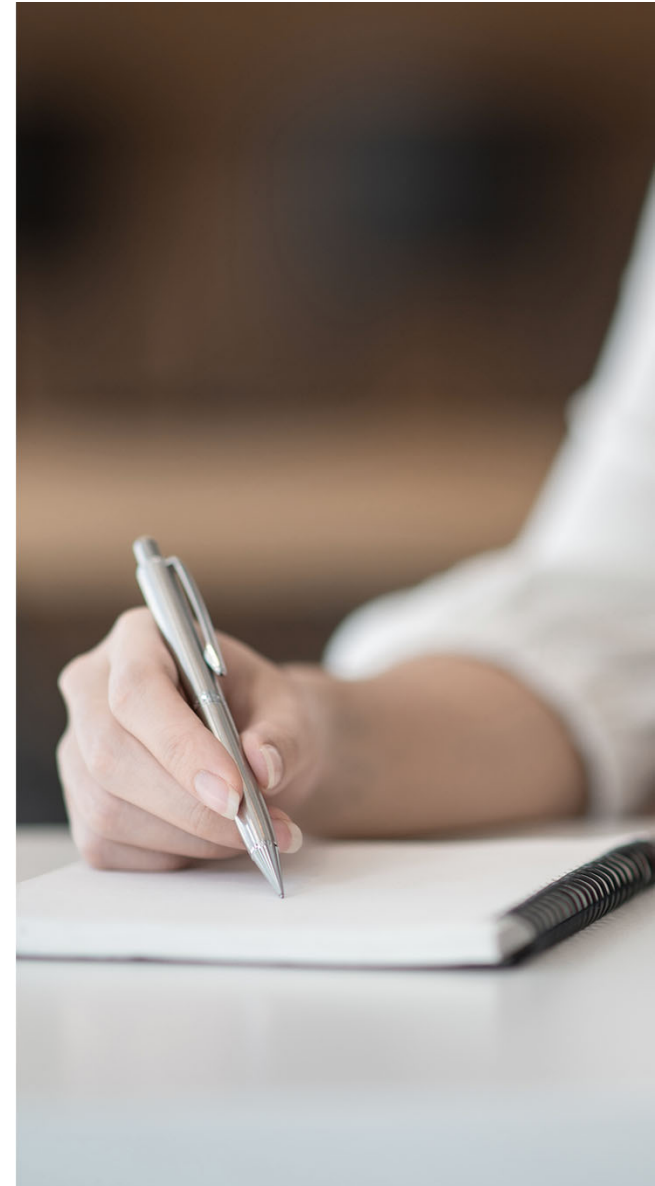
TITLE IX COORDINATOR



- May investigate complaints or reports but **cannot** serve as a decision-maker for formal complaints of sexual harassment
- Must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent
- Must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Coordinates the effective implementation of remedies and supportive measures

TITLE IX COORDINATOR

- Promptly contacts the complainant to discuss the availability of supportive measures
- Considers the complainant's wishes regarding supportive measures
- Informs the complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explains to the complainant the process for filing a formal complaint

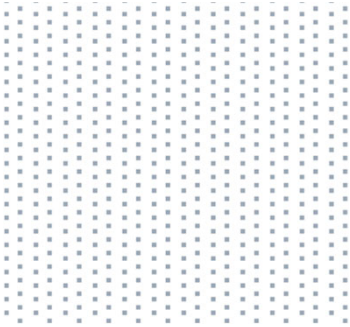


A woman with short, curly dark hair, wearing a mustard yellow button-down shirt, stands and speaks to a group of people. She is gesturing with her hands. In the background, two people are seated at a white table. A woman with dark hair and glasses, wearing a dark blazer over a white top, is looking towards the speaker. Next to her, a man with a beard and grey hair, wearing a green button-down shirt, is also looking towards the speaker. The room has large windows in the background, letting in bright light. The text "GENERAL RESPONSE TO SEXUAL HARASSMENT" is overlaid in white, bold, sans-serif capital letters across the lower half of the image.

GENERAL RESPONSE TO SEXUAL HARASSMENT

BEING 'ON NOTICE' OF HARASSMENT

- The school is on notice of and must respond **promptly and without deliberate indifference** to alleged conduct that **may** constitute sexual harassment if **ANY** employee **has actual knowledge of it** (either because they witnessed it or because it was disclosed to them).
- This means that **ANY** school employee who has actual knowledge **MUST** report it to the Title IX Coordinator.
- If it comes out that an employee had knowledge and failed to escalate it, the school may be liable for failure to respond/investigate. (e.g. “**deliberate indifference**”)



STANDARD FOR SCHOOL'S RESPONSE

The school must respond **promptly** in a manner that is **not deliberately indifferent**.

A school is deliberately indifferent only if its response to sexual harassment is **clearly unreasonable** in light of the known circumstances.

Failing to provide supportive measures constitutes deliberate indifference!
This is the absolute minimum that the school should be doing...



FORMAL SEXUAL HARASSMENT COMPLAINTS

SCOPE OF COMPLAINTS SUBJECT TO GRIEVANCE PROCEDURES

2020

A school is only required to use its grievance procedures for **written** complaints of **sexual harassment** under Title IX.

- Quid pro quo harassment
- Hostile environment
- Sexual assault
- Dating violence, domestic violence, stalking

2024

A school must offer its grievance procedures to address **ALL complaints of discrimination on the basis of sex**, including, but not limited to:

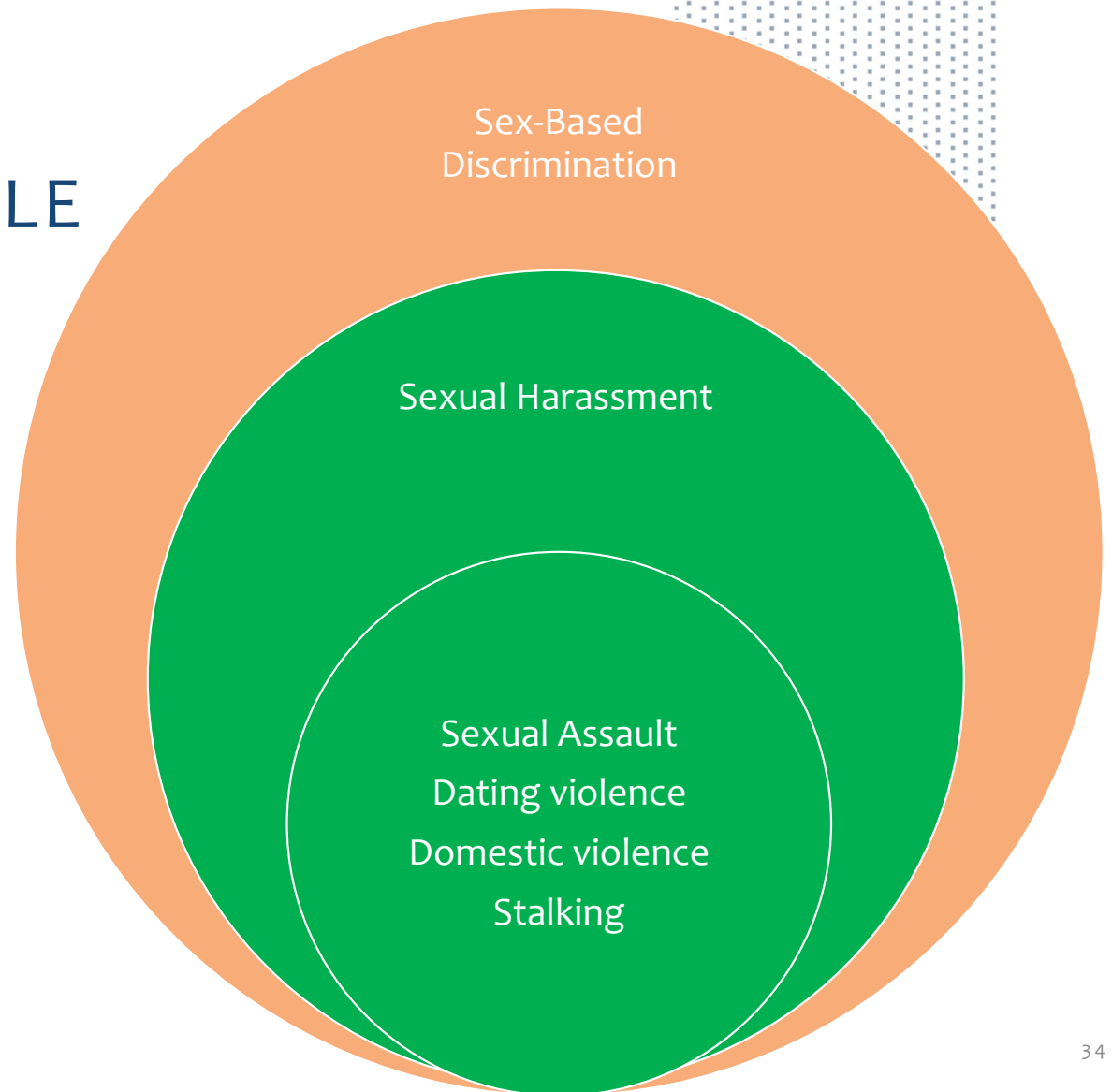
- “sex-based harassment,”
- failure to provide equal athletic opportunity,
- sex discrimination in a school’s courses and programs, and
- discrimination based on pregnancy.

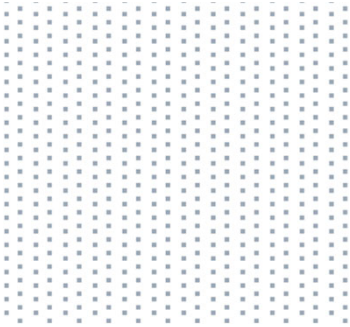
WHAT COMPLAINTS ARE SUBJECT TO TITLE IX GRIEVANCE PROCEDURE?

ONLY Sexual Harassment
complaints

Purely sex-based discrimination allegations
that are not harassment **still violate Title
IX!** MUST be **addressed by alternative
school policies/procedures:**

- ✓ UCP
- ✓ Employment policies (as applicable)





FORMAL SEXUAL HARASSMENT COMPLAINTS – SUMMARY OF STEPS

Entire process should be completed in <60 business days if possible

1. Receive written complaint
2. Offer Supportive Measures to Complainant
3. Issue Notice of Allegations
4. Consider if Complaint can/should be Dismissed
5. Offer Informal Resolution (voluntary and not for allegations that an employee sexually harassed a student)
6. Investigate
7. Issue Report of Evidence to Parties
8. Allow 10-day written comment period
9. Issue Investigation Report
10. Allow 10-day written comment period
11. Issue Written Determination of Responsibility to Parties
12. Appeal, if any



FORMAL SEXUAL HARASSMENT COMPLAINTS

Notice of allegations sent to known parties upon receipt of a formal complaint including notice of:

- The School's grievance process, including any informal resolution process.
- The allegations potentially constituting sexual harassment, including sufficient details known at the time (before formal investigation)
- Parties' right to have an advisor of their choice and inspect and review evidence.
- The presumption that the respondent is not responsible for the alleged conduct until the conclusion of the grievance process.
 - **This means that the Respondent CANNOT be disciplined (suspension/expulsion/detention, etc.) until the entire grievance process is completed.**

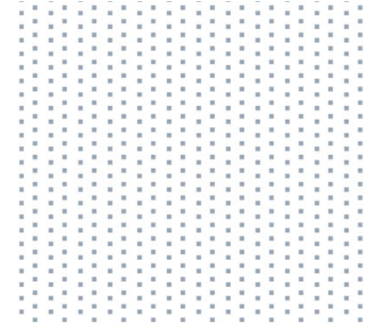
FORMAL SEXUAL HARASSMENT COMPLAINTS

Informal Resolution

- Voluntary and may not be offered unless a formal complaint is filed.
- Must obtain the parties' voluntary, written consent to the informal resolution process.
- May **NOT** offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.



FORMAL SEXUAL HARASSMENT COMPLAINTS



Informal Resolution (cont.)

- Must provide written notice to the parties of:
 - ✓ The allegations
 - ✓ The requirements of the informal resolution process and when it may preclude the parties from resuming a formal complaint on the same allegations
 - ✓ That at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process
 - ✓ Consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

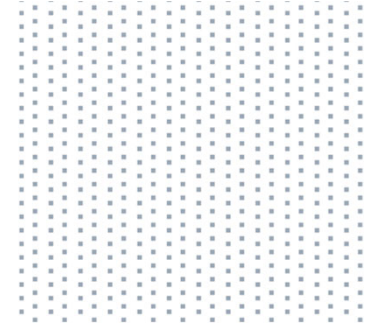
FORMAL SEXUAL HARASSMENT COMPLAINTS

Mandatory dismissal of a formal complaint

- The School must investigate the allegations in a formal complaint and dismiss a formal complaint if the conduct alleged:
 - ✓ Would not constitute sexual harassment even if proved
 - ✓ Did not occur in the School's education program or activity
 - ✓ Did not occur against a person in the U.S.



FORMAL SEXUAL HARASSMENT COMPLAINTS

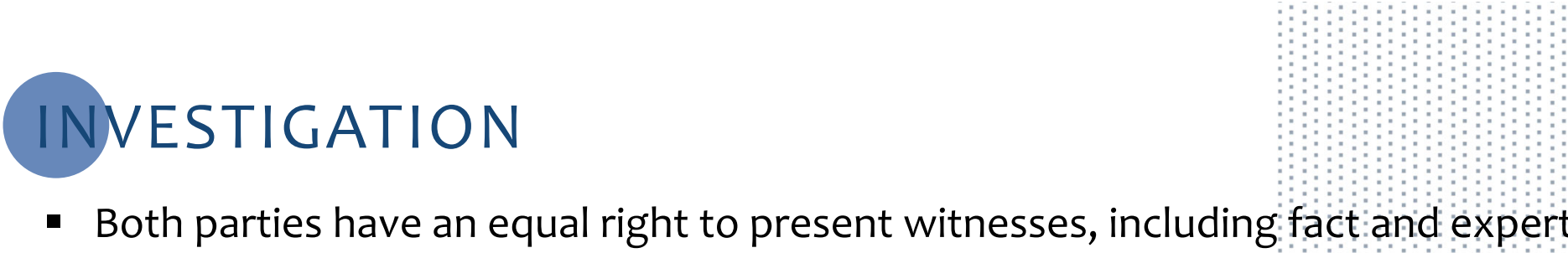


Discretionary dismissal of a formal complaint

- Complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein.
- Respondent is no longer enrolled or employed by the School.
- Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

INVESTIGATION

- Should be completed “promptly” – law does not define a specific timeline. We recommend taking no more than roughly 3 weeks on this portion of the process.
- Both parties have a right to have a parent/guardian or attorney/advisor sit in on their interviews.
- School cannot “gag” or restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.



INVESTIGATION

- Both parties have an equal right to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence (documents, witness statement, character references, etc.)
- Title IX is a VERY transparent process – all relevant evidence submitted by either party or created by the school must be shared equally with both parties, and both parties have an opportunity to comment.
- Investigator must be Title IX-trained; can be same person as the Title IX Coordinator, but cannot be same person as the decision-maker
- Can the school outsource the investigation to a 3rd party investigator? Yes!

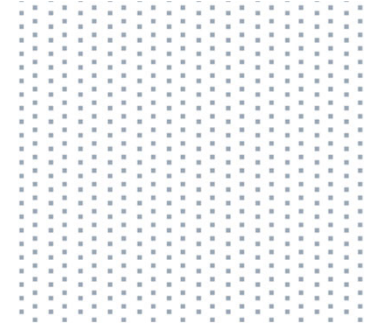
THE INVESTIGATOR

- Must serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
 - ✓ Avoid sex-based biases and stereotypes.
 - E.g., “Boys will be boys”
 - ✓ Whether bias exists is fact-specific, and schools should use a commonsense approach.
 - ✓ Do not make credibility determinations based on a person’s sex or status as a complainant, respondent, or witness.
 - ✓ Treat complainants and respondents equitably.
 - ✓ Respondent is presumed not responsible until a determination is made at the conclusion of the grievance process.

EVIDENCE AND INVESTIGATION REPORT

- Once school completes its investigation, it must provide Complainant and Respondent with a **copy** of all evidence **directly related to the investigation** and allow a **10-day** review and comment period.
- Next, must provide an **investigation report** that summarizes all the relevant evidence, and provide a **second 10-day** review and comment period.
- The comment periods are an opportunity for each party to submit additional evidence, and/or questions to the other party. The school must circulate all comments to both parties, and allow an opportunity for each party to answer any questions posed to them.
- Then, provide the **Letter of Determination** from the decision-maker...

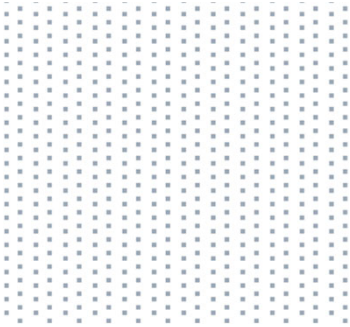
LETTER OF DETERMINATION



- Decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator, must issue a written determination and apply the standard of evidence specified.
- The written determination must:
 1. Identify the allegations potentially constituting sexual harassment
 2. Describe the procedural steps taken, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
 3. Include findings of fact supporting the determination



LETTER OF DETERMINATION



4. Conclusions on the application of the school's code of conduct to the facts
5. State the result, rationale, and determination of responsibility as to each allegation and any disciplinary sanctions imposed on the respondent
6. State whether remedies will be provided to the complainant
7. Include the school's procedures and permissible bases for appeal
8. Be provided to the parties simultaneously
9. Become final on the date that the school provides the parties with the written result of any appeal, or the deadline for appeal

APPEALS

Appeals must be offered for both decision-maker's **determination** AND **dismissal** of the complaint, but only on the following grounds:

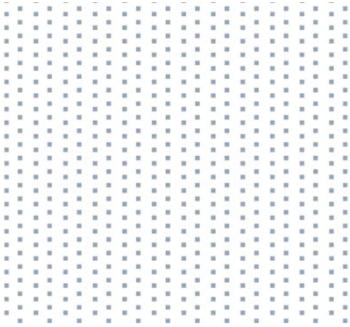
1. procedural irregularity,
 2. new evidence not previously available or considered, or
 3. bias or conflict of interest affected the outcome.
- Decision-maker for an appeal cannot be the same as the initial decision-maker, the investigator, or the Title IX Coordinator and must comply with the required standards.
 - Give both parties a reasonable, equal opportunity to submit a written statement.
 - A written decision describing the result and the rationale must be provided simultaneously to both parties.



RELEVANCE OF EVIDENCE



RELEVANCE OF EVIDENCE



- Investigations and determinations of responsibility must include an objective evaluation of all relevant evidence - inculpatory and exculpatory. The investigative report prepared by the investigator (often working with the school's attorney) must fairly summarize relevant evidence.
- Evidence is relevant if it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.
- Investigator and decision-maker may give **different weight** to evidence or evaluate evidence differently. That's ok.

RELEVANCE OF EVIDENCE

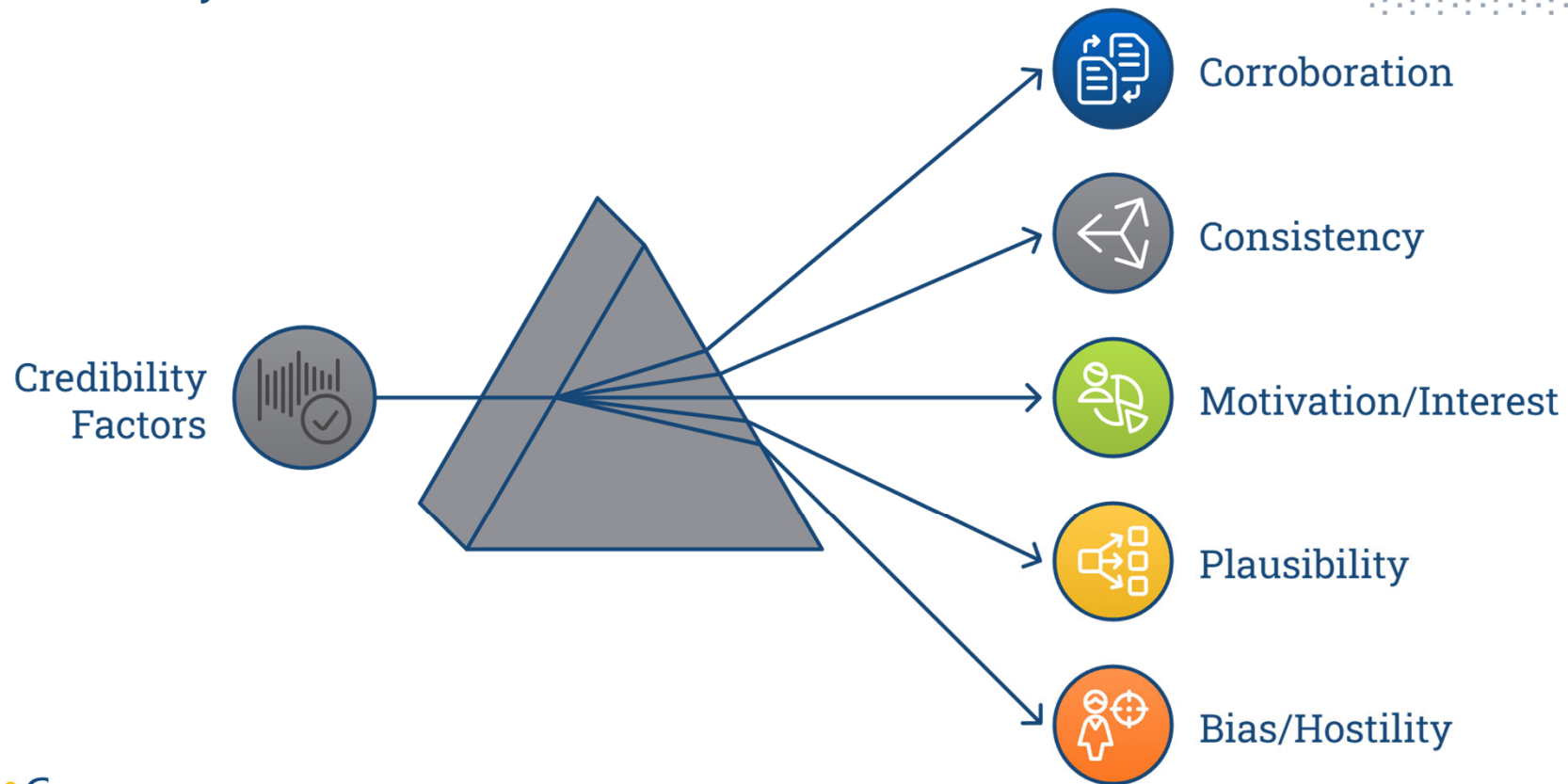
Factors that may affect weight given to relevant evidence:

- First-hand v. hearsay
- Direct evidence v. circumstantial evidence
- Physical or documentary evidence v. testimonial

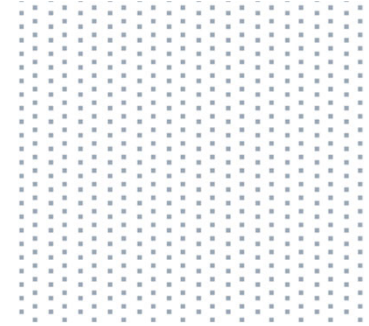


RELEVANCE OF EVIDENCE

Credibility Factors:



RELEVANCE OF EVIDENCE

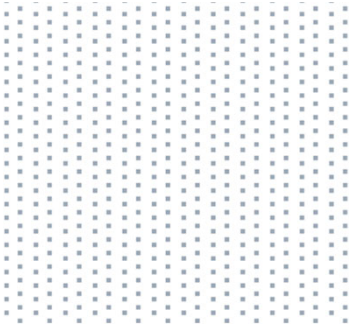


Irrelevant evidence under Title IX includes:

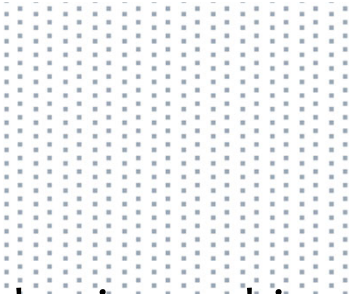
- Information protected under a legally recognized privilege
- Evidence about the complainant's sexual predisposition
- Evidence about the complainant's prior sexual behavior except when:
 - ✓ Used to prove that someone other than the respondent committed the conduct alleged; or
 - ✓ Relating to specific incidents of the complainant's prior sexual behavior with respect to the respondent and used to prove consent.



RELEVANCE OF EVIDENCE

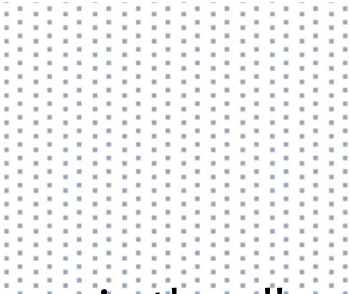


- A party's treatment records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional/paraprofessional acting or assisting in the professional's/paraprofessional's capacity, unless the school obtains voluntary, **written consent to use such records** for the grievance process from the party (if the party is an “eligible student”) or the party's parent/guardian (if the party is a minor)



RELEVANCE OF EVIDENCE

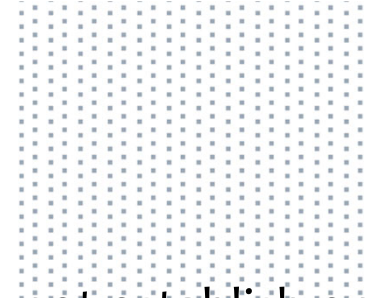
- Remember, the standard of evidence applied by the decision-maker in reaching his/her determination is “preponderance of the evidence”, or “more likely than not.”
- Also known as “50% and a feather.”
- The job of the decision-maker is to determine, weighing all of the relevant evidence and comments from the parties, whether:
 - 1) the respondent engaged in the alleged conduct, and
 - 2) whether that conduct legally meets the definition of “sexual harassment” or “sexual assault” as defined by Title IX regulations



RELEVANCE OF EVIDENCE

- It is possible for a determination to be that Respondent DID engage in the alleged conduct, but that the conduct itself, though against school rules, did not actually rise to the level of sexual harassment or assault **as defined under Title IX.**
 - Example: “butt-slapping”/ other innocuous touching, especially between younger students, that fails to meet either the pervasive or the severe prongs, or that the totality of the evidence establishes to be more aligned with juvenile play than sexual harassment or assault.

RELEVANCE OF EVIDENCE

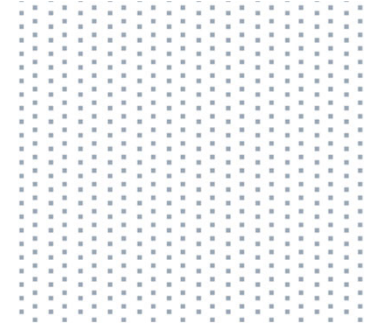


- Also possible for a determination to be that “the evidence does not establish one way or the other whether the Respondent engaged in the conduct.”
 - This is more common in “he said she said” scenarios where harassment or assault is alleged but there are limited or sometimes no witnesses or other corroborating facts.
- In these types of cases, CREDIBILITY considerations can make or break the case:
 - Look at consistency of the narratives provided. Did one of the parties change their story or provide inconsistent accounts at various times or to various people, or is there other evidence that their account is less than credible?
 - Witnesses: witnesses who directly observed something can be more credible than those who provide hearsay/second-hand description of accounts relayed to them by another source.



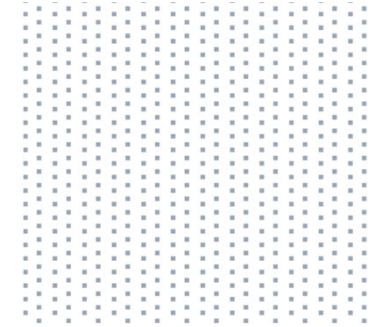
POLICY, NOTICE AND TRAINING
REQUIREMENTS

POLICY AND NOTICE REQUIREMENTS



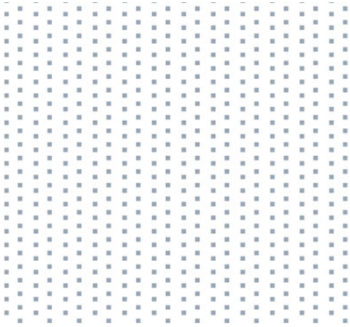
- The School must provide notice of the School's Title IX policy and grievance procedures and process to (1) applicants for admission and employment, (2) students, parents/guardians, employees, and (3) all unions or professional organizations holding collective bargaining or professional agreements with the School.
- Must prominently display the contact information for the Title IX Coordinator(s) and the School's Title IX policy on its website, if any, and in each handbook that it makes available to the stakeholders listed above.

POLICY AND NOTICE REQUIREMENTS



The notice must state:

- The name or title, office address, electronic mail address, and telephone number of the employee(s) designated as the Title IX Coordinator(s).
- That the School does not discriminate on the basis of sex in its education program or activity and is required by Title IX and Part 106 not to discriminate in such a manner.
- For certain institutions, that the requirement not to discriminate in the education program or activity extends to admission and employment.
- That inquiries about the application of Title IX and Part 106 to the School may be referred to the Title IX Coordinator(s), to the Assistant Secretary for Civil Rights of the Department of Education, or both.



TRAINING REQUIREMENTS

Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must receive training on all the following:

- The definition of sexual harassment in 34 CFR § 106.30
- The scope of the School's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias

TRAINING REQUIREMENTS

- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- Training materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.





HYPOTHETICALS

HYPOTHETICAL

Title IX triggered?

A PE teacher tells Andrew that if he massages her shoulders during class everyday, she will get an A in the class. Though not totally comfortable with it, Andrea goes along with it since she hates PE and it's an easy A.

YES! This is quid pro quo harassment.

Next steps if Andrea verbally discloses?

- Meet with the family
- Provide the policy and explain the grievance process and how to initiate a formal complaint
- If family declines to make a formal, written complaint, the school still has responsibility to promptly address the misconduct in a way that is not deliberately indifferent! Offer supportive measures, class change? Discipline for the teacher?

HYPOTHETICAL

Title IX triggered?

- Jane is an openly lesbian student. Richard, who is homophobic, targets and taunts Jane, making sexually oriented or sex-based gestures at her, making “faux” sexual advances, and constantly making comments about Jane’s sexuality and sexual experiences.

Yes!

- Does it matter that Richard’s sexual advances and gestures are meant to ridicule versus being motivated by sexual desire? No.
- Even under the 2020 Rule, conduct directed at gay or lesbian students that would otherwise constitute sexual harassment if the student was heterosexual **is still sexual harassment!**
- **What other complaint process is triggered here?**
 - **UCP!** (if Richard is targeting Jane because she is lesbian, this constitutes harassment and discrimination on the basis of sexual orientation).

HYPOTHETICAL

Title IX triggered?

- **Tommy is a gay student. A group of peers constantly heckle Tommy with comments based on his sexual orientation (e.g., “gay people can’t sit at this table, bye!”)**

Under 2020 Rule: No. the group’s conduct does not involve verbal, nonverbal, or physical acts that are sexual in nature. E.g. – this is likely not sexual harassment.

Under 2024 Rule: Yes! The group’s verbal comments constitute sex-based discrimination on the basis of sexual orientation. Remember, under the 2024 Rule, ALL sex-based discrimination allegations (not just sexual harassment) were subject to the Title IX grievance process.

How do we handle now??? ADDRESS VIA THE UCP!!

HYPOTHETICAL

Title IX triggered?

Sally is a transgender girl (assigned male at birth and formerly went by Simon). A group of peers consistently and intentionally misgender Sally by “deadnaming” her, using incorrect pronouns, and deliberately excluding her from recess games. Sally files a complaint with the Title IX Coordinator alleging sex discrimination on the basis of gender identity.

Under 2020: No. Discrimination on the basis of gender identity on its own, without an allegation of assault or severe and pervasive, objectively offensive unwelcome verbal, nonverbal, or physical conduct of a sexual nature, is not sufficient to constitute sexual harassment. **BUT... this is a UCP complaint.**

Under 2024: Yes! sex-based discrimination includes harassment based on gender identity or nonconformance with sex stereotypes.

HYPOTHETICAL

Title IX triggered?

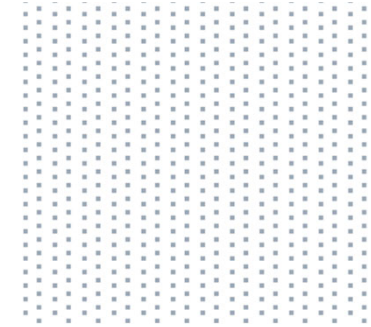
Tom is a transgender male and in 11th grade. There are a group of boys who suspect that Tom really is a girl. One day they follow Tom into the boy's bathroom and corner him. They begin verbally taunting him with anti-gay slurs and grab his breast area to "prove" he is not a boy. Another student walks into the bathroom, the boys stop their harassment of Tom and leave. Tom reports the incident to you.

Under 2020 Rule: Yes! Nonconsensual touching of an intimate body part (breasts) = reasonable evidence of potential sexual assault. What if the complaint is not in writing? Meet with the family and discuss the Title IX policy and process.

Under 2024 Rule: Yes! 1) potential assault, and 2) sex discrimination on basis of transgender status

HYPOTHETICAL

Title IX triggered?



A group of 7th graders decide they want to play “slap butt Friday.” However, they don’t want to get in trouble, so they all get matching wristbands to identify who is playing. They agree that they will only play the game with other students wearing the wristband. On Friday during lunch, ten 7th graders (boys and girls) are running around the playground slapping each other’s bottoms, laughing and having a fun time. They do not slap the bottoms of anyone not wearing a wristband.

Likely No

- Quid pro quo harassment: NO
- Hostile environment: not severe or objectively offensive. Participating consensually – so the conduct is not unwelcome
- Assault? No evidence that conduct was for purpose of sexual gratification

THANK YOU

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