



K-12 Title IX Administrator Certification Conference

**Austin, Texas and Virtual
September 13–14, 2023**

DAY TWO

Thompson & Horton

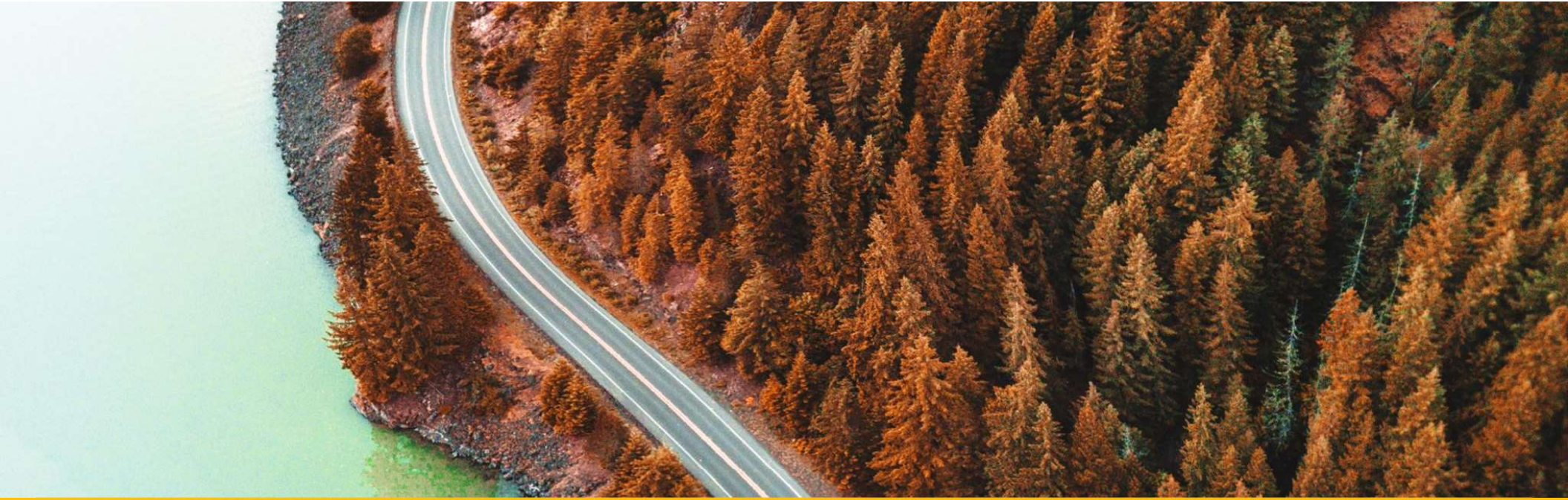
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DAY TWO (8:30 a.m. to 3 p.m.)

- ✓ The Title IX Grievance Process
- ✓ Break & Snack (10 to 10:15 a.m.)
- ✓ Scenarios
- ✓ Break + Get Lunch (11:45 a.m. to 12:15 p.m.)
- ✓ Scenarios
- ✓ Break (1:30 to 1:45 p.m.)
- ✓ Enforcement & Prevention





The Title IX Grievance Process



The Title IX Team

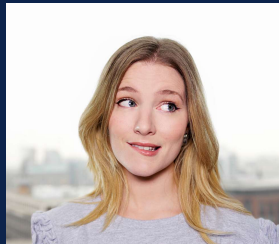


Title IX Coordinator or Deputies

The "Mother Hen"

Oversees the process, serving as a resource for parties and other members of the Title IX Team; keeps the trains on time and the "baby chicks" in line

Best practice is not to serve in other roles



Investigator(s)

The "Indecisive One"

Collects relevant evidence, compiles directly related evidence, and drafts a report summarizing the relevant evidence, **but does not make a decision**

Best practice is not to serve in any other roles



Decision-Maker(s)

The "Judge"

Oversees the hearing (higher ed) or written Q&A process (K-12)
Makes the final determination on the merits, including findings of responsibility and remedies



The Appellate Decision-Maker

The "Second Guesser"

Oversees the written appeal process and makes decision regarding appeal. May uphold the decision/deny the appeal, or grant the appeal and reverse or remand.

Other Key Players

Remember: A minor party's parent is not an advisor and gets to participate just like the party in the process



CP

The Complainant

The Alleged Victim

The person alleged to have been subjected to covered conduct—regardless of whether:

1. Another person (a third party reporter) reports the alleged misconduct
2. The Title IX Coordinator signs a formal complaint on behalf of the institution
3. The Complainant is a minor



RP

The Respondent

The Alleged Perpetrator

The person alleged to have engaged in covered conduct



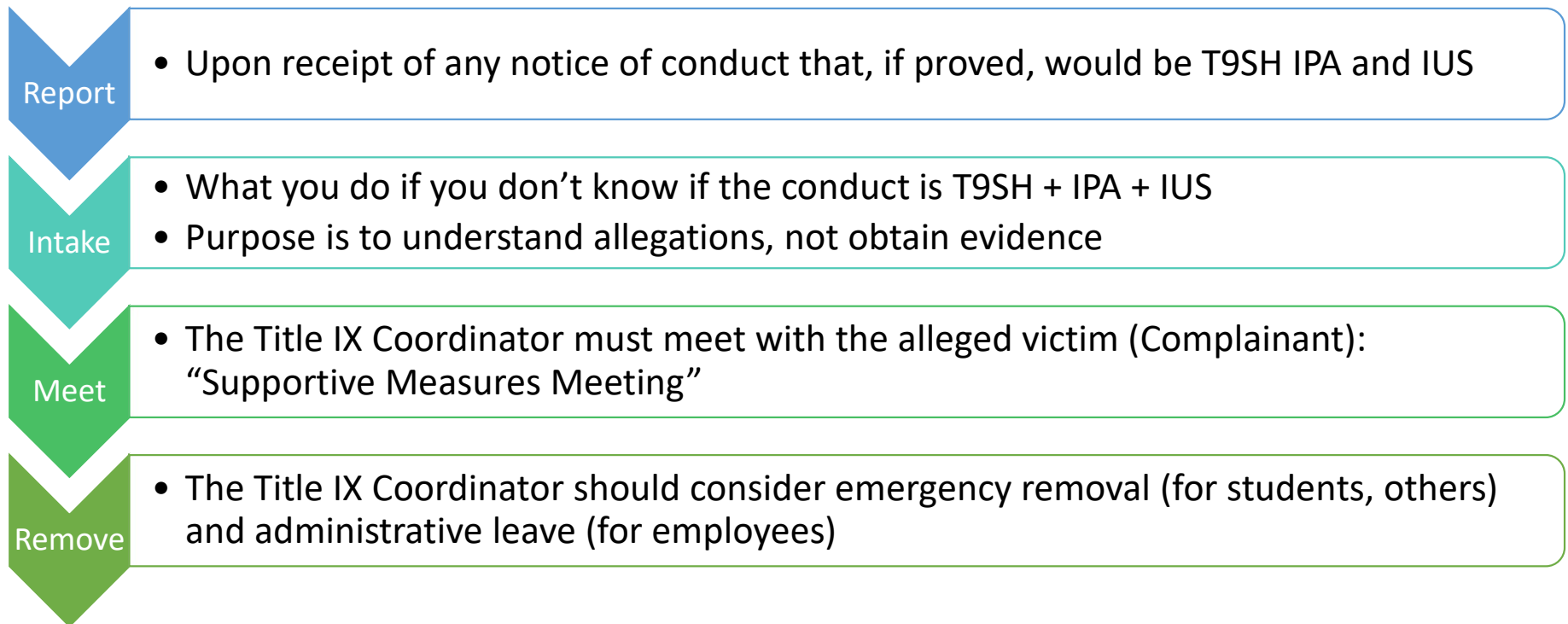
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The Advisor

Chosen: A person who must be allowed to assist the party at all stages of the process

Appointed: K-12 schools are not required to appoint advisors for parties

The Title IX Process



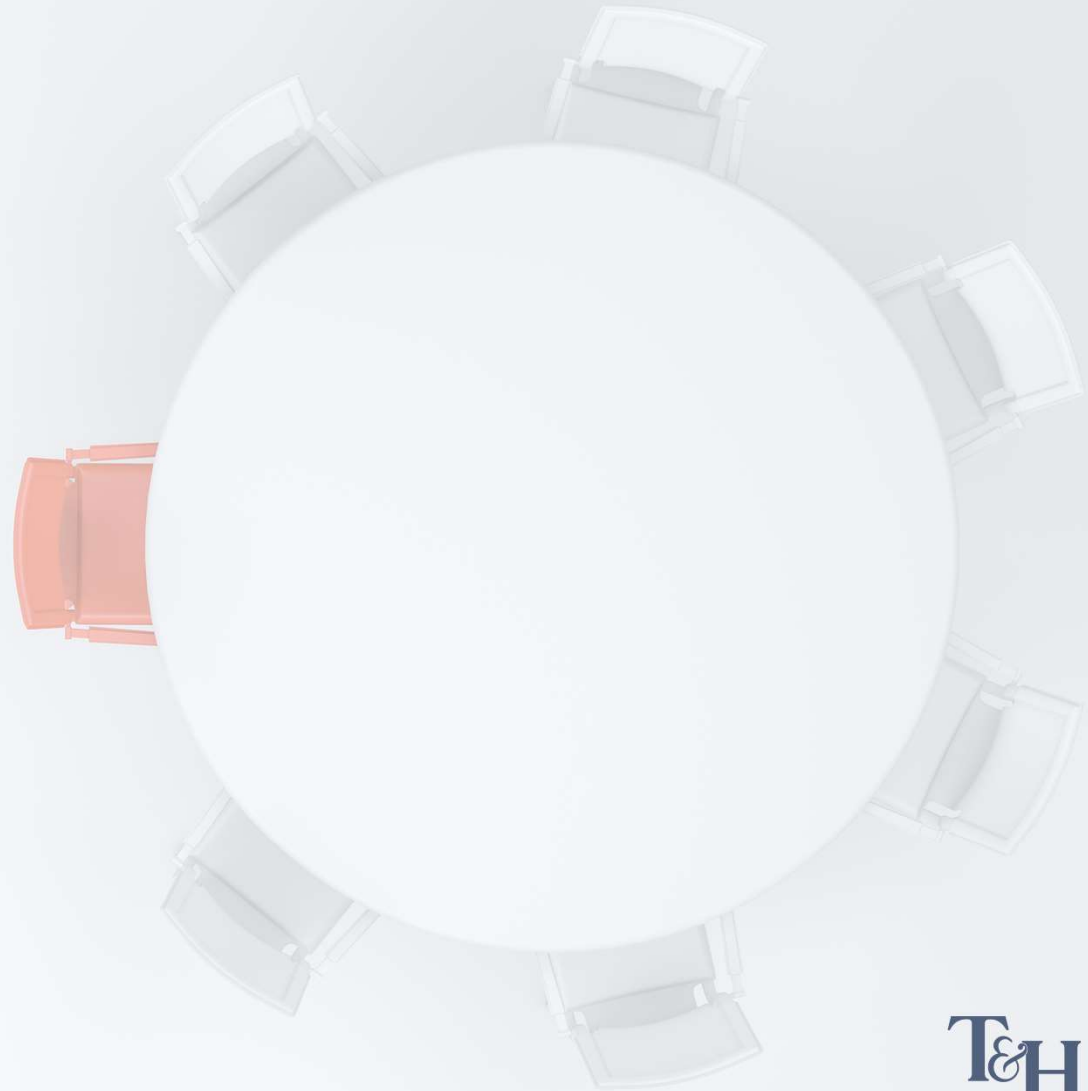
Report vs. Complaint

- A report is someone sharing information that suggests that sex-based harassment has been, is, or might be occurring.
- A complaint is someone sharing information that suggests that sex-based harassment has been, is, or might be occurring **and** asking that the educational institution respond to it.

Both reports and complaints **to any K-12 employee** are "actual notice" triggering the Title IX process. So is any **observation** by any K-12 employee.

Intake

- What happened?
- Who did it?
- When did it happen?
- Where did it happen?
- Who was present?
- Why did it happen?
- How did it happen?
- Anything else you would like to report?



Supportive Measures Meeting

1. Contact the Title IX Complainant (and a minor Complainant's parent/guardian to discuss the availability of "supportive measures"
2. Consider the Title IX Complainant's wishes with respect to supportive measures
3. Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
4. Explain the process for filing a Formal Complaint



Supportive Measures

- Non-punitive, individualized services
- Offered as appropriate, without charge, as reasonably available
- Before or after the filing of a formal complaint, or even if no formal complaint has been filed
- Should be designed to restore or preserve equal access to the education program or activity
- Without “unreasonably” burdening the other party
- Should be confidential

IDEA and Section 504 Implications

- Some supportive measures, such as provision of counseling or changes to class schedules, could implicate placements and services under IDEA and Section 504
- Title IX Coordinators should reach out to Special Education or Section 504 Staff prior to implementing supportive measures for students with or suspected of having a disability
- May need to hold IEP/Section 504 meeting to determine if changes must be made to student's IEP/Section 504 Plan
- **Bottom line: IEP/Section 504 Committees will need to be involved from the beginning for cases involving a disabled party, and the Title IX staff will need to be trained on identifying and addressing SPED/504 implications**

Emergency Removal/ Admin Leave

- Emergency removal is based on an individualized safety and risk analysis
- Only available when necessary to protect a student or other individual from immediate threat to physical health or safety
- Must provide notice and an opportunity to challenge immediately after the removal
- Consider other laws such as state discipline laws and IDEA/Section 504
- Administrative leave for employees is much easier; it is allowed as long as state law, board policy, employee handbooks, collective bargaining agreements, or other applicable rules or requirements are met

Emergency Removal

Special Education/504 Implications

- Before removing a student with a disability, consult with the special education administrator with responsibility for the student's IEP/Section 504 Plan
- MDR requirements and procedural safeguards will be triggered if removal is for **more than 10 days** (it almost always will be)
- Special Ed/Section 504 Committees will need to be involved from the beginning and the Title IX staff will need to be trained on identifying and addressing SPED/504 implications

Polling Access



Option One

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Option Two

- ▶ Go to Pollev.com on any browser
- ▶ Accept or dismiss cookies
- ▶ Enter THLAW411 as the Username
- ▶ Skip when asked to enter your name

Robin allegedly raped Carson at school. Can Robin be removed on an emergency basis?

Yes

No

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Robin allegedly subjected Carson to severe, cruel, demeaning, pervasive, objectively offensive verbal harassment based on sex. Can Robin be removed on an emergency basis?

Yes

No

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

🌐 When poll is active, respond at pollev.com/thlaw411

Robin allegedly fondled Carson at school. Can Robin be removed on an emergency basis?

Yes

No

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

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Robin threatened to sexually assault Carson on multiple occasions. The two dispute whether Robin was being serious. Can Robin be removed on an emergency basis?

Yes

No

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



REMEMBER

Before a formal complaint is filed, the District must maintain confidentiality of the Complainant's name and the details of the report unless necessary to implement supportive measures (confirm in writing!)

What if an emergency removal is warranted but no formal complaint is on file and the CP wants to remain anonymous?

No emergency removal can occur because you must tell the RP the CP's information to do one



An emergency removal can occur but you cannot tell the RP any information, including that the matter involved T9SH



An emergency removal can occur but you cannot tell the RP any information except that the matter involved T9SH



An emergency removal must occur because of the risk to other students and you must shared the CP's information with the RP even if the CP does not want you to





No Formal Complaint? Go No Further!



- NO Notice to the Respondent
- NO Investigation
- NO Determination of Responsibility
- NO Punitive or Disciplinary Consequences

ONLY Supportive Measures

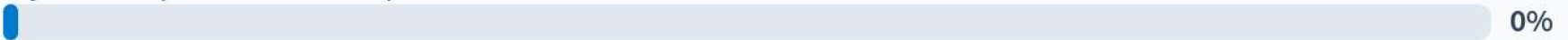


What can be a Formal Complaint?

A complaint of Title IX sexual harassment on the District's Formal Complaint form



A written document requesting that a school respond to a report of sexual harassment, physically signed by the complainant or their parent



An email from the complainant or their parent/guardian requesting that a school respond to a report of sexual harassment



Any request (oral or verbal) that the school district respond to a report of sexual harassment



All of the above



Formal Complaint

- A written document
- Signed by the complainant (or a minor complainant's parent/guardian)
- Or filed by the Title IX Coordinator
- Reporting T9SH IPA + IUS
- Requesting that the School or District respond





Signing a Formal Complaint

- An alleged perpetrator in a position of authority
- Multiple reports of sexual harassment against the same respondent
- Multiple reports of sexual harassment against the same complainant
- Use of extreme violence or weapons

Scenario

Carey reports another student, Romy, forced Carey to have sex at school. Carey also claims that Romy did the same thing to another student two months ago. Romy admits that “they resisted initially but I got them to agree” to the police, raising concerns of coercion. Neither complainant wants to move forward with a complaint, and sexual assault is a required removal to a disciplinary alternative placement under state law.

What should the school district do?

Transfer Romy to the alternative program because it is required under state law and he admitted the conduct



Respect the autonomy of the victims by using only supportive measures to address the situation at school



Sign a formal complaint and use the Title IX process



Scenario

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

Should the Title IX Coordinator sign a formal complaint?

No, because Cecil's concern can be adequately addressed through a supportive measure of moving schools



No, because the conduct alleged is not sexual assault or other serious misconduct by a teacher



No, because Cecil refuses to identify the teacher



Yes, because of the risk to students other than Cecil



No More Confidentiality

- Once a formal complaint has been filed or signed, the school **must** share the Complainant's name with the Respondent (**anonymity is not an option**)
- Compare to the status before a formal complaint is filed, when you **cannot** share the Complainant's name, including with the Respondent, without permission or unless necessary to implement supportive measures
- **Explain this to the complainant (and parents/guardians of a minor complainant) during the supportive measures meeting so they know the consequences of filing a formal complaint**

Whole Group Discussion

How do warn a complainant about the loss of confidentiality and the challenges of the Title IX process without dissuading the complainant from proceeding with the process? What language should you use, what language should you avoid?

Post-Formal Complaint: Preliminary Matters

Notice

- Notice of allegations to both parties + supportive measures for respondent

Dismiss

- Consider mandatory or discretionary dismissal

IR

- Informal resolution
- Only if permitted and voluntarily agreed to by the parties



Notice of Allegations

- Upon receipt of the formal complaint
- Must be provided with sufficient time for the respondent to prepare a response before any initial interview

Notice of Allegations

Must include:

- Notice of grievance process, including right to IR
- Notice of allegations, in sufficient details to allow the respondent to prepare a response, including the names of all known parties, the conduct alleged to have occurred, and the date and location of the conduct, if known
- A statement that the respondent is presumed not responsible
- Notice of the parties rights to have an advisor
- Notice of provision in the code of conduct prohibiting false statement or false evidence

What if the investigator learns of new allegations after the notice of allegations is shared?

The investigator cannot investigate the issue; a new formal complaint must be filed



0%

The investigator can investigate the issue but only if it arises from the same facts and circumstances of the initial allegations



0%

The investigator can investigate but only if a new notice of allegations is provided



0%

The investigator can investigate as long as the alleged conduct is T9SH + IPA + IUS



0%

Dismissals

Mandatory Dismissals (CAN use another process)

The conduct alleged, even if proved, would not be:

1. Title IX Sexual Harassment
2. In an education program or activity
3. Against a person in the United States

Discretionary Dismissals

(CANNOT use another process)

- The complainant or a minor complainant's parent/guardian requests to withdraw the complaint in writing
- The respondent's enrollment or employment ends
- Issues prohibit finding sufficient evidence to reach a determination (e.g., non-cooperation of the CP, length of time between incident & report)



closed

Written Notice and Appeal—Dismissals

- If the school dismisses the complaint or allegations in the complaint, it must promptly send written notice of the dismissal **and** the reason for the dismissal to all parties
- Any party can appeal the dismissal decision

APPEAL

Informal Resolution

- Only after a formal complaint has been filed
- *Can* be offered any time prior to reaching a determination on the merits
- Parties can ask for it or it can be offered
- Cannot be required, explicitly or implicitly
- Both parties must be provided notice of the allegations and their rights and must agree to IR in writing
- Not allowed in cases involving employee-on-student misconduct
- Any party can withdraw prior to a signed agreement
- Once a signed agreement is reached, the T9SH grievance process **is over forever**

What happens if a party violates an informal resolution agreement?

Nothing--once an agreement is signed, the school's role is over



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The school can reopen the sexual harassment investigation



0%

The school can reopen the sexual harassment investigation , but only if the parties agree to that in the agreement



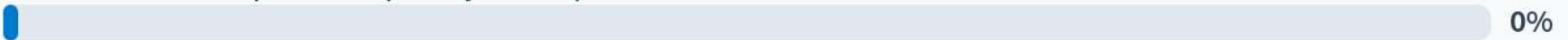
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The school can impose disciplinary consequences, but only if the parties agreed to it in the agreement



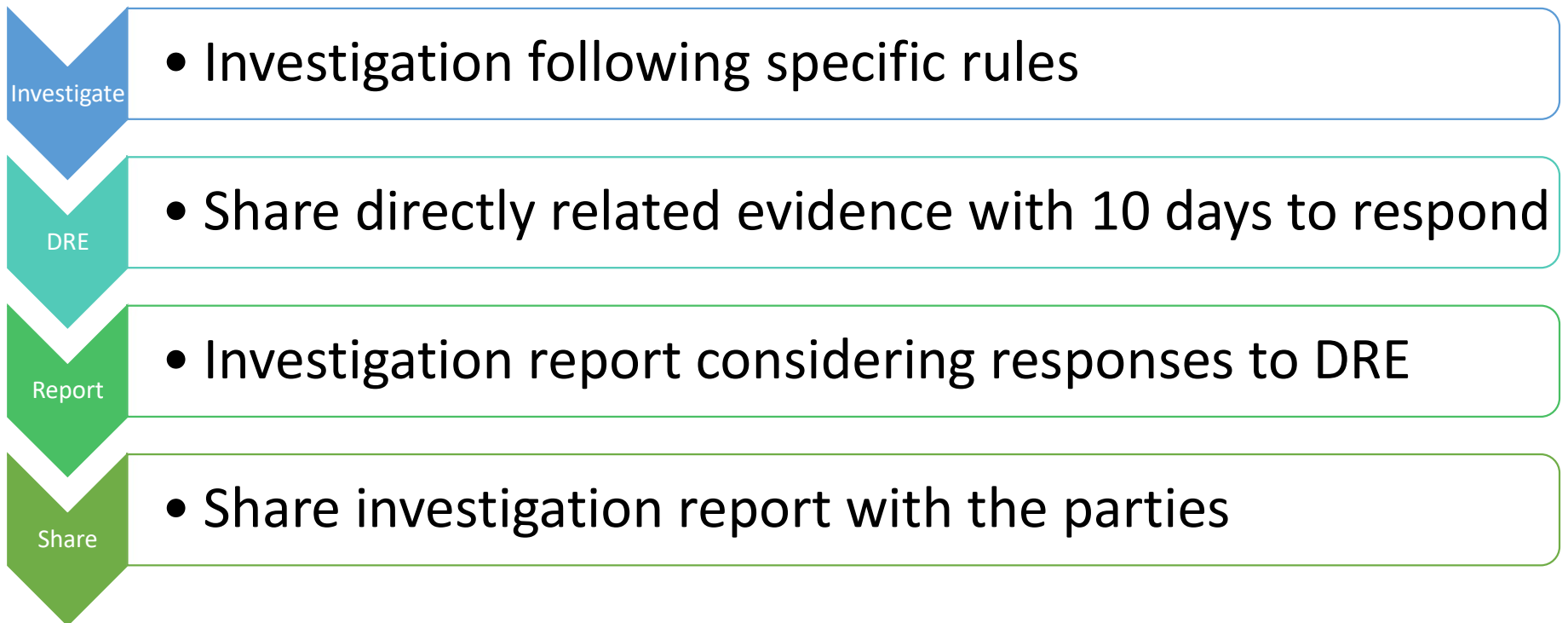
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The school can impose disciplinary consequences under the student code of conduct



0%

Post-Formal Complaint: Investigation



A woman with dark hair, wearing a grey tank top and black leggings, is shown in profile, lifting a barbell with large black weights. She is in a gym setting, and the background is slightly blurred. The text is overlaid on the image.

Investigation Rule #1

The burden of proof is on the school



Investigation Rule #2

Evidence that is off limits:

1. Medical treatment records
2. Privileged information
3. Information about the CP's past sexual history unless to show
 - a. Someone other than the RP engaged in the misconduct
 - b. Behavior between the parties in the past or future to show consent in the instance in question



Investigation Rule #3

No restrictions of rights of the parties to discuss allegations or gather or present evidence



Investigation Rule #4

Same opportunities to have advisors (attorney or non-attorney)

Investigation Rule #5

Written notice to parties of the date, time, participants, purpose, and location of each investigative interview or other meeting with sufficient time to prepare



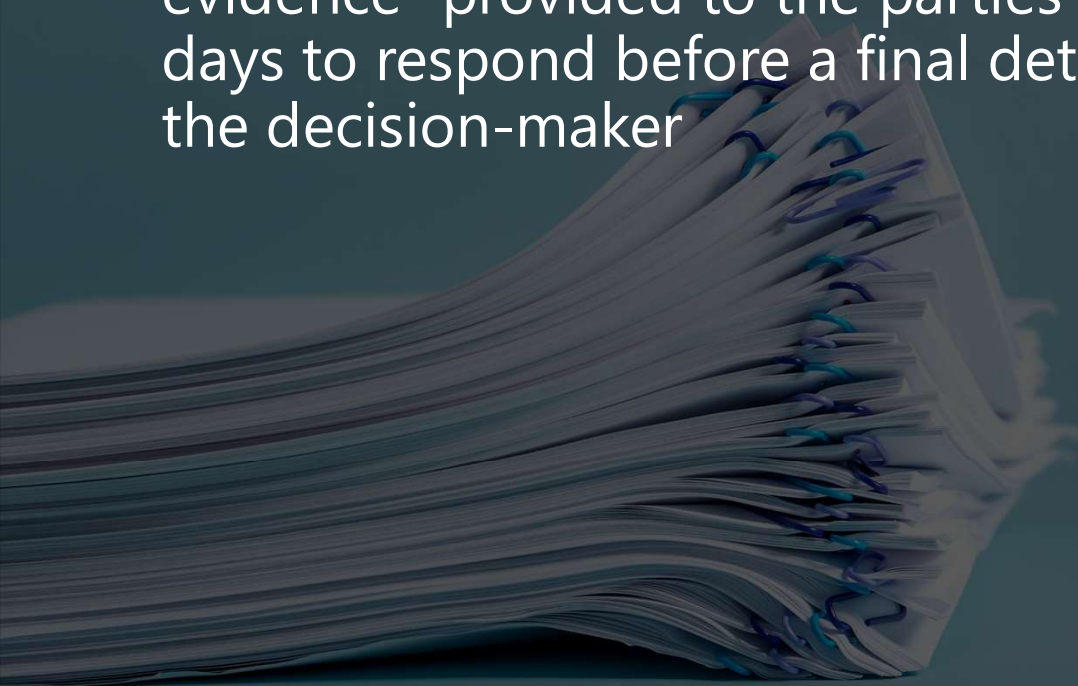


Investigation Rule #6

All directly related evidence provided to parties and their advisors with 10 days to respond before the investigation report is finalized

Investigation Rule #7

Written investigative report “fairly summarizing the relevant evidence” provided to the parties and advisors with at least 10 days to respond before a final determination of responsibility by the decision-maker





Relevance

- Does the evidence go toward a fact or issue in dispute in the case?
- Does the evidence make that disputed fact or issue more or less likely to be true (is it *inculpatory* or *exculpatory*)?

The Investigation Report

Key Requirements:

1. Allegations
2. Applicable policies, procedures, and standards
3. Summary of all relevant evidence, including documentary evidence and interviews
4. Credibility determinations when necessary



Post-Formal Complaint: Decision and Appeal

Q&A

- Decision-maker oversees Q&A process for parties
- Must explain reason for deciding questions are irrelevant or inappropriate

Decide

- Written determination with factual findings and application of the facts to the policies

Share

- The written determination is provided to the parties with the right to appeal

Appeal

- If timely sought by a party

The Written Determination

Key Requirements:

1. Allegations
2. Applicable policies, procedures, and standards
3. Procedural steps taken
4. Findings of fact based on relevant evidence
5. Application of facts found to the policy
6. A statement of the result, with rationale, for each allegation
7. Consequences for the Respondent (can be punitive or disciplinary) and remedies for the CP (should not be provided to the RP)
8. Appeal processes



Appeal Bases



Both parties have equal right to appeal based on:

- A procedural issue that affected the outcome
- New evidence that could have affected the outcome if known at the time
- Bias/conflict of interest that affected the outcome

Appeal Requirements

- Notification of appeal to both parties in writing
- Both parties treated equally during the appeal process
- Both parties provided same opportunity to submit a written statement for or against the appeal
- A written determination issued simultaneously to both parties



Appeal Recommendations

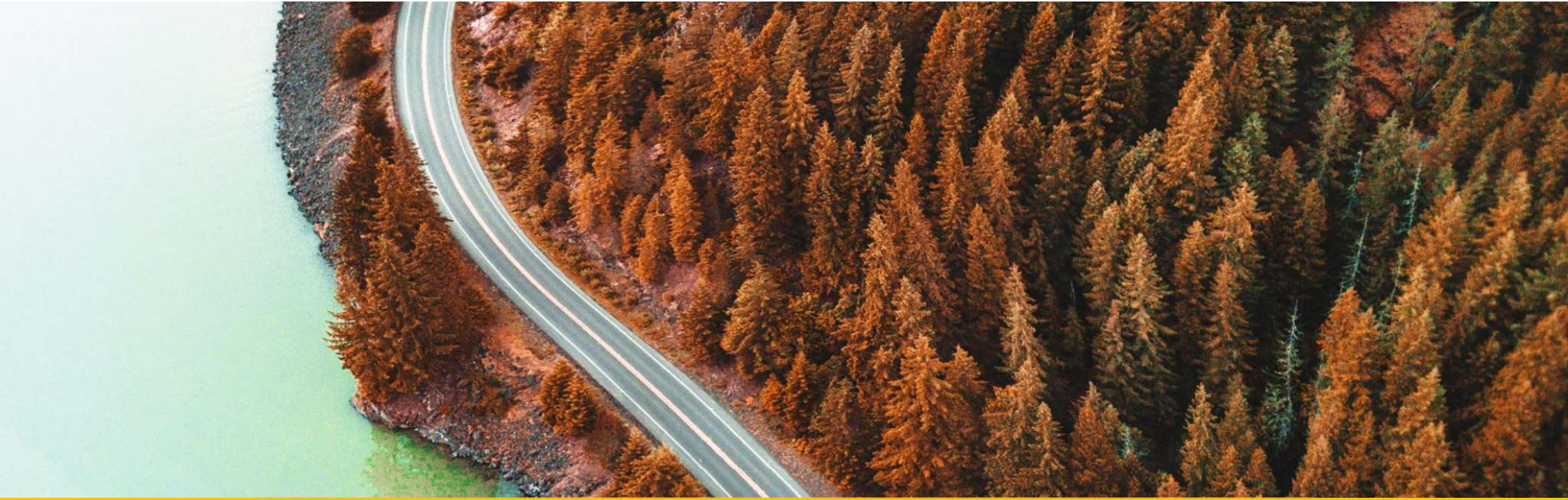
- This should not be a one-pager
- Write it as if a person who has never heard of the case can understand what has happened so far, who is involved, what the issues are, and what your deciding





BREAK

15 Minutes



Scenario Workshop



A student, Casey, reports to Teacher Thomas that another student, Riley, is engaging making comments that Casey does not like during at school. These comments occur in person in classrooms, during lunch, and at sporting events and other activities at school.



Casey says that Riley regularly makes disruptive comments in class with sex-based opinions like LGBTQ people should not be able to adopt children or get married, that transgender "is not real" and that boys are boys and girls are girls, and that parents who let their children transition genders are committing "child abuse."



Casey says that outside of class, Riley has used slurs such as "fa**ot" and "dyk*" when talking to straight people, and mocks gay people for by using a lisp when pretending to talk like a gay man or making fun of a gay woman's short hairstyles and "butch" clothes.



Casey does not identify as LGBTQ but finds the discussions to be personally offensive. Casey does not believe that any individuals who do have heard Riley make the comments outside of class. However, there are LGBTQ students in classes where Riley has made comments.



Riley also refuses to use preferred pronouns with a student, Charlie, who is transgender. Casey says Riley does this both inside and outside of class.



Riley also refuses to use preferred name and pronouns with a student who is transgender. Casey says Riley does this both inside and outside of class.



Teacher Thompson reports the conduct to an assistant principal/dean, who calls in Riley and tells Riley to stop saying things that might hurt LGBTQ students and to use Charlie's preferred name and pronouns.



Riley's parent calls furious the next day saying that the school is unfairly silencing Riley's "Free Speech." Riley's parent threatens to sue.



Evaluate the Complaint

Is the alleged conduct "Title IX Sexual Harassment"?

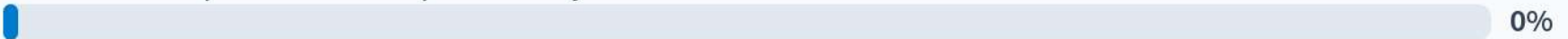


What could violate Title IX?

Teacher Thompson failed to notify the alleged victim of the Title IX Coordinator's name when they reported the conduct



Teacher Thompson failed to report directly to the Title IX Coordinator



The Principal investigated at all, when the alleged perpetrator's conduct is protected by the First Amendment



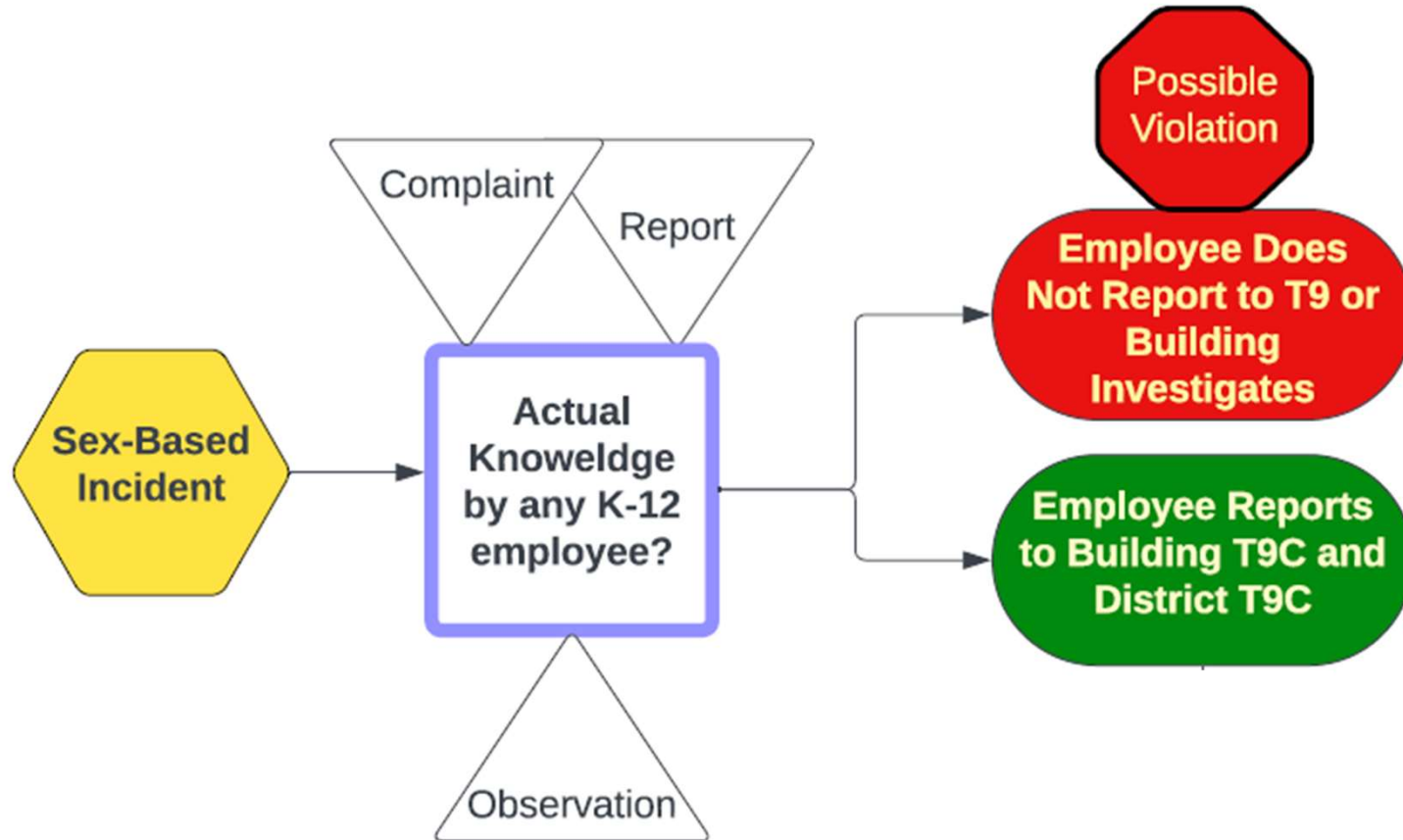
The Principal limited the alleged perpetrator's actions



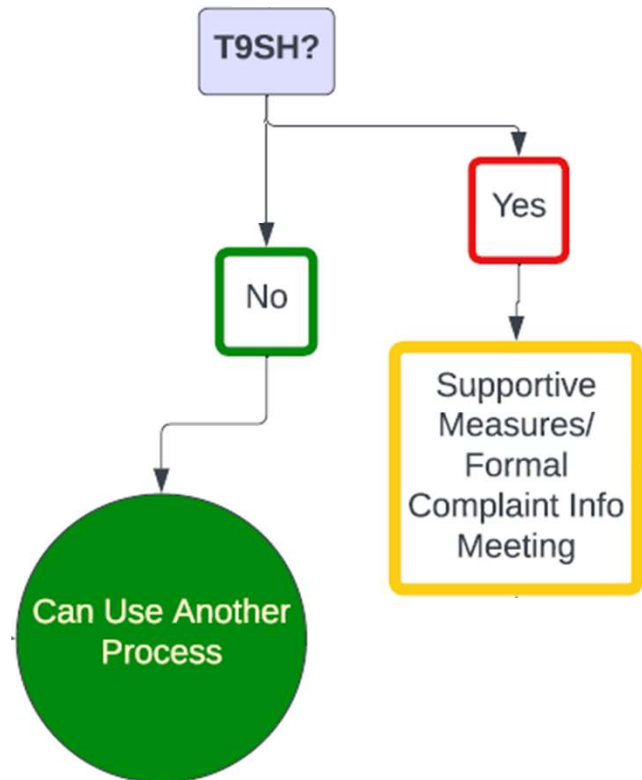
None of the above; the response was reasonable in light of the known circumstances



Upon Notice...



Is the Alleged Conduct Title IX Sexual Harassment?



If the Alleged Conduct is not Sexual Harassment...

You can use another policy, procedure/regulation, or rule to address the conduct, because it does not fall under Title IX

Just because conduct is not "Title IX Sexual Harassment" does not mean you will ignore it, you will just use another process to address it—not the Title IX sexual harassment grievance process

If the Alleged Conduct is Sexual Harassment...

The Title IX Coordinator must promptly contact the complainant confidentially to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Key Terms: Supportive Measures

- Non-disciplinary, non-punitive individualized services offered to either party, as appropriate and reasonably available, before or after the filing of a formal complaint or where no formal complaint has been filed
- Individualized services to restore or preserve equal access to education, protect student and employee safety, or deter sexual harassment
- Must be offered even if a complainant does not wish to initiate or participate in a grievance process

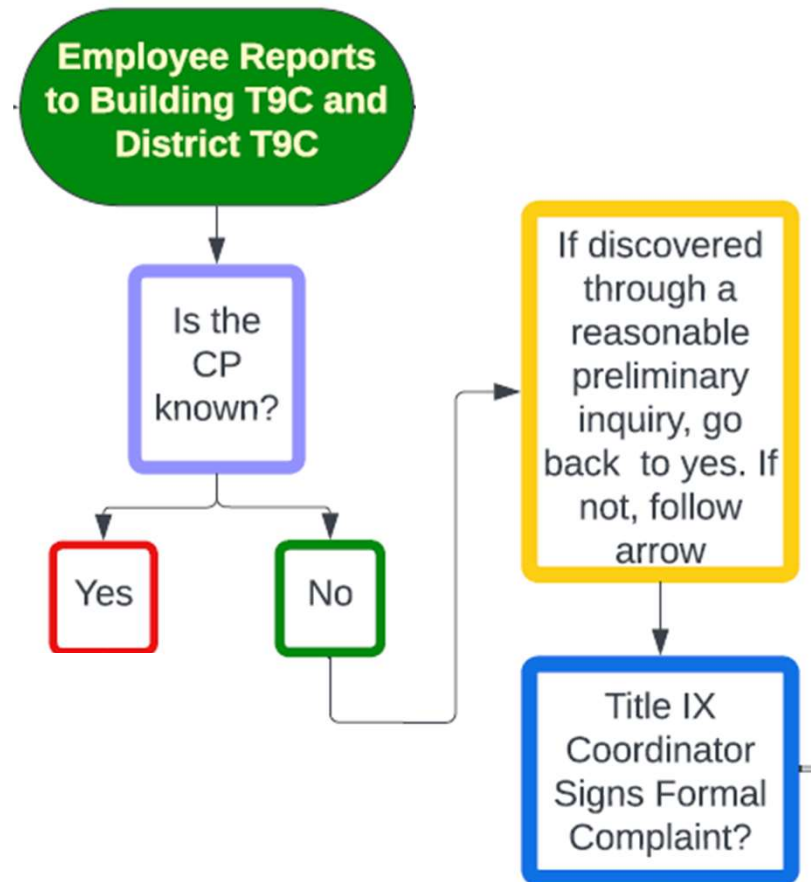
Group Discussion

Discuss with your group and come up with a list of supportive measures

Think outside the box! What has worked/not worked for you in the past?

Get ready to report back so we can create a solid list!

What if the Alleged Victim is Not Known?

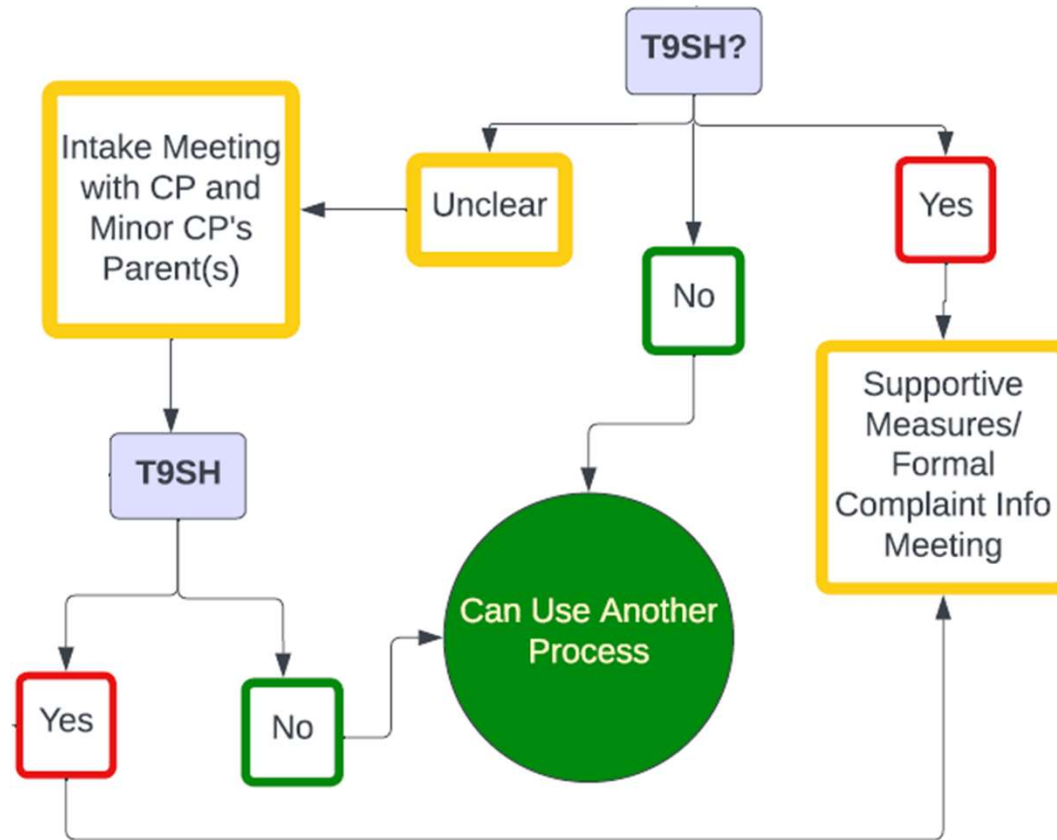




Reasonable Inquiry

- A reasonable inquiry is not an investigation—the idea here is to see if you are able to identify the alleged victim, not evidence to support the allegation
- A similar inquiry may be required if the alleged perpetrator is not known, but that would be later in the process

What If It Is Unclear if it's T9Sh?



Intake

- The purpose is to understand what the party alleges, not to collect evidence to support or refute those allegations
- Can discuss supportive measures (because you can offer those for any conduct, regardless of whether it is T9SH)
- Only discuss ability to file a T9 Formal Complaint if you determine during intake that the conduct, if proved, would be T9SH + IPA + IUS. Otherwise, use “yes, and” approach!

Practice

- Imagine that the full information we provided above was not reported to your office immediately. You need to do intake!
- Split up into groups and discuss what questions you will ask

Practice

- Practice an intake interview

Scenario

Carey reports to a building administrator Riley sexually assaulted them on school grounds last week.

So, you received a report ... what *can* you do?

Assess Safety: If a student is in immediate danger or is an immediate danger to self or others, remove the student from the environment immediately. Move the student to a safe area with adequate supervision and immediately contact the Title IX Coordinator for what to do next.

Consider Law Enforcement, Medical, and Parental Contact: If allegations include a serious crime, alleged injury, or evidence that needs to be collected (like photographs on an electronic device), follow standard building procedures to contact police, medical, and parent(s)/ guardian(s).

Consider Reporting Abuse, Neglect, or Exploitation: Anyone who has a reasonable cause to believe a child, a person 65 years or older, or an adult with disabilities is being abused, neglected, or exploited must report it to DFPS. If in doubt, report. Report at 1-800-252-5400 or the Texas Abuse Hotline.

Consider Contacting Special Education: If a party is a student with a 504 plan or an IEP, contact relevant special education administration to consider impacts on special education placement and services.

So, you received a report ... what can't you do?

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

Do not conduct investigation interviews (asking for or collecting evidence)—only conduct intake meetings with the reporting party and the complainant/family. An intake meeting means asking what is alleged to have happened, not asking for evidence to support the allegations.

Do not discipline either party, including the alleged perpetrator. See the step above “assessing safety” for immediate steps to take to keep your community safe. Contact the Title IX Coordinator to authorize suspensions or other removals from school or activities.

Do not violate the confidentiality of the alleged victim by telling the alleged perpetrator the alleged victim's name or that a report has been made. We cannot share such information until the Title IX Coordinator says Title IX is not implicated, a Title IX formal complaint is filed, or the alleged victim and their parent(s)/guardian(s) allow it.

Scenario

What if Carey receives services as a student with an intellectual disability and was discovered in a bathroom on campus with Riley, a student without a known disability. The two had their clothes off. After being told there would be consequences imposed for the on-campus sexual behavior, Carey's parent claimed that the conduct was sexual assault, harassment, and abuse. Riley reported that the conduct was a mutual two-sided interaction. Numerous employees reported first-hand knowledge that Carey and Riley had been "a thing" all school year.

🌐 When poll is active, respond at pollev.com/thlaw411

📱 Text **THLAW411** to **22333** once to join

Does the incident trigger the Title IX sexual harassment process?

No, because Carey only alleged the conduct was sexual assault after being confronted with consequences for the mutual behavior

No, because multiple employees reported that Carey and Riley had been "a thing" all year

Yes, because Carey claims the conduct was sexual assault

Coordinator Considerations

- Consider training for disability services professionals/special education administrators on Title IX
- Use hypothetical cases to increase ability for issue-spotting in cases involving students with disabilities and sex

Scenario

Chen reports that on the occasion in question, Ricki told Chen that if they did not have sex, Ricki would share a sex video the two had made previously. Accordingly, Chen agreed to have sex.

🌐 When poll is active, respond at pollev.com/thlaw411

Was there consent?

Yes

No

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Scenario

Chen reports that the two often engaged in “rough sex” that involved hitting, choking, and tying each other up. On the occasions in question, while Ricki was choking Chen, Chen became afraid and wanted to stop. Chen tried to protest and hit Ricki, but Ricki said that was often part of the role-playing the two would do during rough sex and so did not stop.

🌐 When poll is active, respond at pollev.com/thlaw411

Was there consent?

Yes

No

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

Scenario

The school receives notice that a teacher, Teacher Thompson, was arrested over the weekend allegedly for having a sexual relationship with a student, Carson. Teacher Thompson is in custody and is awaiting trial. The school district defers to law enforcement and eventually Teacher Thompson is convicted. Teacher Thompson never set foot in the school after the arrest was reported and their teaching license was suspended.

Did the school respond appropriately

Yes, schools must always defer to law enforcement when they are involved in a case



Yes, it was reasonable in light of the known circumstances to defer to the police because there was no risk to the student after the report



No, the school should have done its own investigation immediately upon learning of the report



No, the school should have done its own investigation after learning of the conviction



Police Results as Evidence?

- Police evidence may be useful for fact-gathering
- But the standards for and purposes of criminal investigations are different from school investigations
- Police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX



This Photo by Unknown Author is licensed under CC BY-SA

A woman with glasses and a yellow shirt is talking on a mobile phone. She is sitting at a desk with a laptop. In the background, there is a bookshelf and a window with a potted plant.

When the Police Call

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



RECORDS

Recordkeeping

A photograph of a white keyboard, a calendar, and several brown folders with purple and teal sticky tabs on a wooden surface. The keyboard is in the foreground, partially overlapping the calendar and folders. The calendar shows dates 16, 17, 23, 24, 25, 30, and 31. The folders are stacked, with several purple and teal sticky tabs visible. The background is a light-colored wooden surface.

- All records related to the process must be maintained for 7 years
- Provide your final file to the Title IX Coordinator

SERVING IMPARTIALLY

Serving Impartially

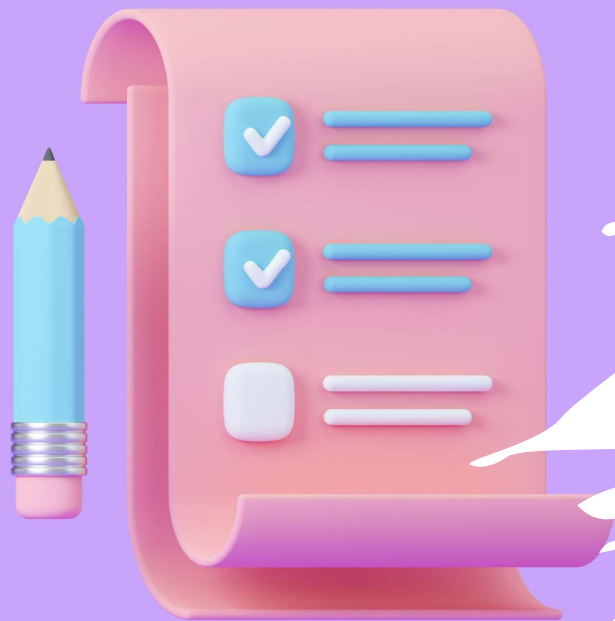
The 2020 Title IX regulations require that any individual involved in the Title IX process—Title IX Coordinator, investigator, decisionmaker, appellate decisionmaker, or informal resolution facilitator—not be biased, have a conflict of interest, or prejudge any matter before them



Impartial Approach

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





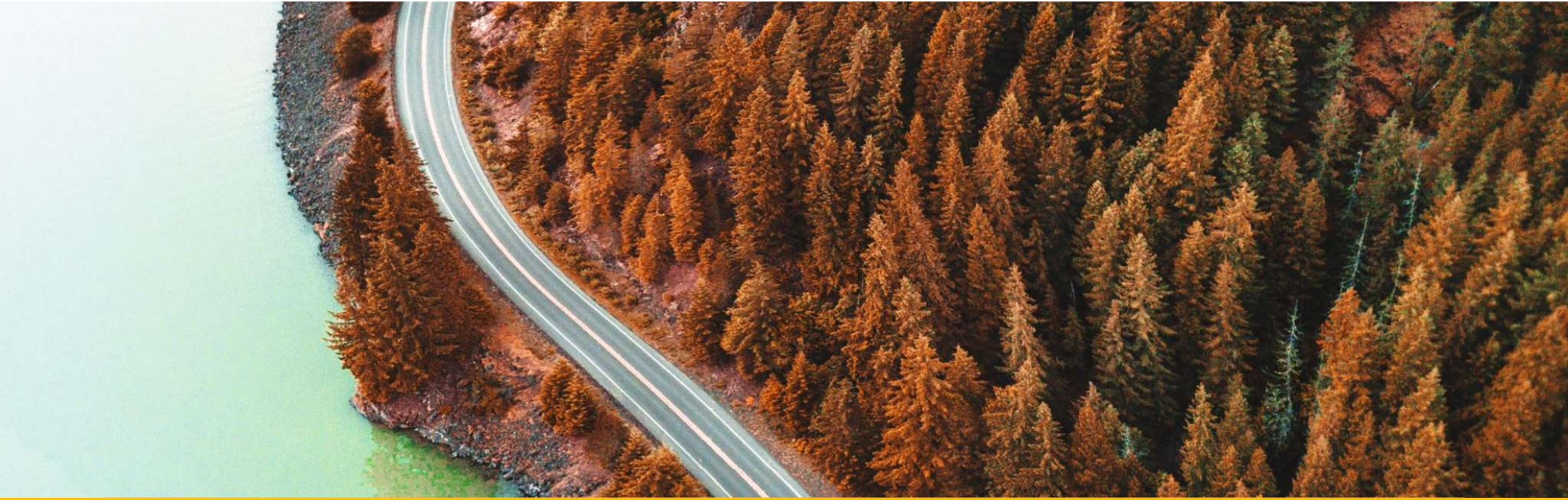
Impartiality Do's and Don't's

- Ensure your team is open with the Title IX Coordinator about any concerns
- Team should follow the process “to the T” and include all relevant evidence in the investigative report, written decision, and appeal decision
- Do 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)

Trauma Informed Investigations



- Science shows trauma can have a neurological effect, particularly on memory
- Trauma can impact either party
- There is a difference between being trauma-informed and trauma-lenient – do not use apparent existence of trauma as *evidence* of alleged conduct



Prevention & Enforcement



Prevention & Enforcement

- ✓ Information Collection and Reporting Duties
- ✓ Title IX Training, Policies, and Audits
- ✓ The OCR Complaint Process



**THIS IS
OUR AGENDA**

Information Collection and Reporting Duties



The Civil Rights Data Collection

- The CRDC is a generally biennial survey of data from public schools and other local educational agencies that OCR requires from schools
- The CRDC gathers information about student access to educational programs, activities, and staff and school climate factors, such as student discipline and harassment or bullying incidents, from public schools serving students in prekindergarten through 12th grade. The data are disaggregated by race/ethnicity, sex, English learner (EL), and disability.
- Failure to report incidents is not always seen a good thing

Title IX Training, Policies and Audits



Title IX – Required Training

Who: Title IX sexual harassment team members (coordinators, investigators, decision-makers, and informal resolution facilitators) (aka “the Title IX Team”)

What: Be adequately trained on:

- The definition of sexual harassment under Title IX
- The scope of the education program or activity
- How to conduct the investigation and grievance processes, including hearings (if used), appeals, and informal resolution
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias

Title IX – Required Training

Who: Title IX sexual harassment investigators

What: In addition to the general training requirements, must be trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence

Title IX – Required Training

When and How Much:

- According to the preamble to the 2020 Title IX regs, OCR estimates that a new Title IX Team member needs up to 8 hours of initial training, with additional training each subsequent year
- At least one Title IX organization that often serves as an expert witness for plaintiffs/student complainants has stated that all roles require far more than 8 hours; unlikely this is based on anything, but be prepared for the argument in future disputes

Title IX – Required Training

Who: Title IX sexual harassment decision-makers

What: In addition to the general requirements, must be trained on:

- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant
- Technology at live hearings (if used)

Don't Forget

Any materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process must:

1. Not rely on sex stereotypes
2. Promote impartial investigations and adjudications of formal complaints of sexual harassment
3. Be posted online on a District's website (posting a link to a broad page with several trainings may not be enough)

Title IX – Recommended Training

Recommended to train all employees in K-12 on

- Recognizing sexual harassment (consider covering all civil rights issues, including race, color, national origin, and disability)
- Reporting sexual harassment

Title IX Policies and Procedures

- Should be reviewed every year to implement changes learned from your grievance process and updates in law, regulations, legal cases, and OCR policies
- Read carefully your state school board's association policy services policy, they often say you must do additional steps (e.g., regulations). Make sure to complete key definitions – including consent – and internal deadlines
- Look at the interactions between Title IX policies and other policies (e.g., student and employee disciplinary policies and procedures)

Title IX Audits

- Audits look at issues that might be raised in an internal, OCR, or court complaint *before* a complaint is actually raised
- Significantly cheaper than an actual complaint, and can often be protected by attorney client privilege
- OCR guidance and other documents can provide good roadmaps (e.g., recent athletics guidance fact sheets)

The OCR Complaint Process

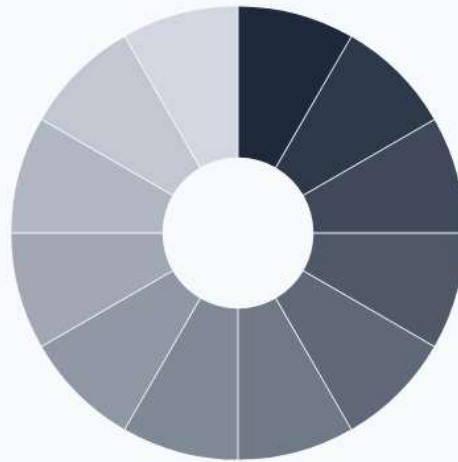




What is your OCR region?

114

- Boston (CT, ME, MA, NH, RI, VT... **A** ■ Chicago (IL, IN, IA, MN, ND, W... **B** ■ New York (NJ, NY, PR, VI) **C** ■ Cleveland (MI, OH) **D**
■ Philadelphia (DE, MD, KY, PA, ... **E** ■ Kansas City (AR, KS, MO, NE, O... **F** ■ Atlanta (AL, FL, GA, TN) **G** ■ Denver (AZ, CO, NM, UT, WY) **H**
■ Dallas (LA, MS, TX) **I** ■ San Francisco (CA) **J** ■ DC (NC, SC, VA, DC) **K** ■ Seattle (AL, American Samoa, G... **L**





OCR's Method

- Investigates complaints – either filed by complainants or initiated by OCR
- Issues letters of findings and, if a violation is found, enters into resolution agreements with parties
- Monitors agreements by reviewing and responding to revisions of policies, training materials, remedies or consequences for parties or others

**My educational institution has been subject to a
"compliance review" or "directed investigation"**

True

False

How the heck
should I know?

Anatomy of an OCR Complaint

Evaluation

Mediation

Investigation

Resolution

Monitoring

Enforcement

An illustration of a person in a dark blue suit holding a clipboard with a red clip. The clipboard has a checklist with several rows of red stars and checkboxes. One checkbox is checked with a red checkmark. The person is holding a pen over the clipboard. The word "Evaluation" is written in white text across the center of the image.

Evaluation

Evaluation Tips

OCR provides support to complainants during evaluation, but not to recipients (schools, colleges, and universities)



Evaluation

- The process by which OCR determines if a complaint will be investigated
- OCR considers whether there is a violation of a law that it enforces against an educational institution that receives financial assistance from ED
- There is no review of the merits of the complaint

Section 108 Dismissals

- Subject matter jurisdiction (CPM §§ 104, 108(a))
- Personal jurisdiction over school or institution (CPM §§ 105, 108(b))
- Timeliness (CPM §§ 106, 108(c))
 - But see exceptions

Section 108 Dismissals

- Lack of detail (CPM § 108(d))
 - 20 (formerly 14) calendar days to supplement
- No consent (CPM § 108(e))
- Failure to state a claim (CPM § 108(f))

What You Don't Know Might Hurt You



RAPID RESOLUTION



WHAT DO YOU NEED TO
KNOW TO RESPOND?



MUST KNOW THE RIGHT
QUESTIONS TO ASK.

A photograph showing a group of people in a circle, with their hands raised in a gesture of agreement or participation. The image is dimly lit and has a blueish tint. The word "Mediation" is overlaid in white text in the center.

Mediation

Mediation

Benefits:

- Early resolution
- Agreement remains private
- No finding of violation by OCR
- No monitoring



What You Don't Know Might Hurt You



IS YOUR CASE A GOOD
CANDIDATE?



HOW TO ADVOCATE
DURING MEDIATION



WHAT SHOULD BE IN AN
AGREEMENT

A magnifying glass with a black handle and frame is positioned over a document. The document has a dark blue background with a lighter blue geometric pattern. The word "Investigation" is written in white, sans-serif font across the center of the magnifying glass's lens.

Investigation



First Impressions

- Notice of Allegations (NOA) or Notice of Investigation (NOI) + Data Request
- Educational Institution's "Narrative and Data Response"
 - OCR doesn't care about case law!



Interviews/ "On-Site Visit"

- Front scheduling issues early
- "On-Sites" are becoming less common – consider whether one might be important for your case
- Prepare for interviews! (make sure everyone sees the "forest")

What about....

Interviews of students under age 18? Focus groups of students?

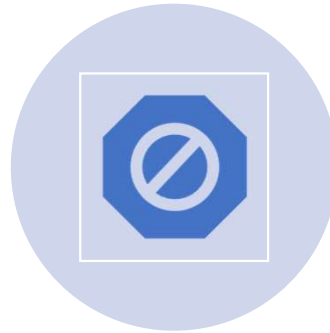
Sharing records for students unrelated to the case?

Refusing to provide records?

What You Don't Know Might Hurt You



MANAGING THE
TIMEFRAMES



LIMITING DATA REQUESTED



CONTROLLING INTERVIEWS
AND ON-SITES

A referee in a black and white striped uniform is seen from behind, with both arms raised in a gesture of celebration or acknowledgment. The referee is wearing a dark cap and a watch on their left wrist. The background is a large, dark stadium filled with spectators, illuminated by bright lights that create a bokeh effect. The overall atmosphere is one of triumph and excitement.

Resolution

Investigative Determinations



INSUFFICIENT EVIDENCE
DETERMINATION



NON-COMPLIANCE
DETERMINATION



MIXED DETERMINATION



302 Resolution (Voluntary)

- Based on educational institution's request
- Before the conclusion of the investigation (new)
- Must have "identified concerns"
 - But cannot be used if finding can be made
- Resolution letter must include OCR's compliance concerns

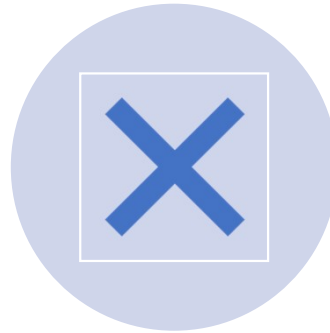
303 Resolution

- OCR will contact the educational institution to ask if they will enter into an agreement; will share draft agreement (not draft letter)
- Must notify the complainant that they will negotiate an agreement
- 90-day negotiation period
 - Cannot be extended
 - Must be ended at end of 90 days or if clear no agreement will be signed
 - Impasse letter (10 days) then Letter of Impending Enforcement

What You Don't Know Might Hurt You



TIME PRESSURES FOR
FINAL DECISION



LACK OF ACCESS TO THE
LETTER



PROPOSING CHANGES TO
THE AGREEMENT



Monitoring

Monitoring

Submit	Submit data as required to show compliance
Request	Request extensions of time if needed
Monitor	Stay on top of OCR because they may not stay on top of you

A close-up photograph of a wooden gavel resting on a stack of books. The gavel has a dark wood handle and a light-colored wooden head with a rounded top. The books are stacked in the background, with their pages visible. The word "Enforcement" is overlaid in white, sans-serif font across the center of the image.

Enforcement



**Questions?
Thank you!**

**K-12 Title IX Administrator Certification Conference
September 13–14, 2023**

DAY TWO

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