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2020 Title IX Regulations: K-12 Initial Compliance Training

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Ask Questions

Terminology

Apply to parties in both *reports* and *Formal Complaints* of sexual harassment



Title IX Complainant: A person who is alleged to be the victim of conduct that could constitute sexual harassment

NOT a third party who reports Title IX Sexual Harassment perpetrated against someone else

NOT the Title IX Coordinator, even if the TIXC “signs” a Formal Complaint



Title IX Respondent: A person who has been reported to be the perpetrator of conduct that could constitute sexual harassment



Why Are We Back Here?

Recognize Title IX Sexual Harassment

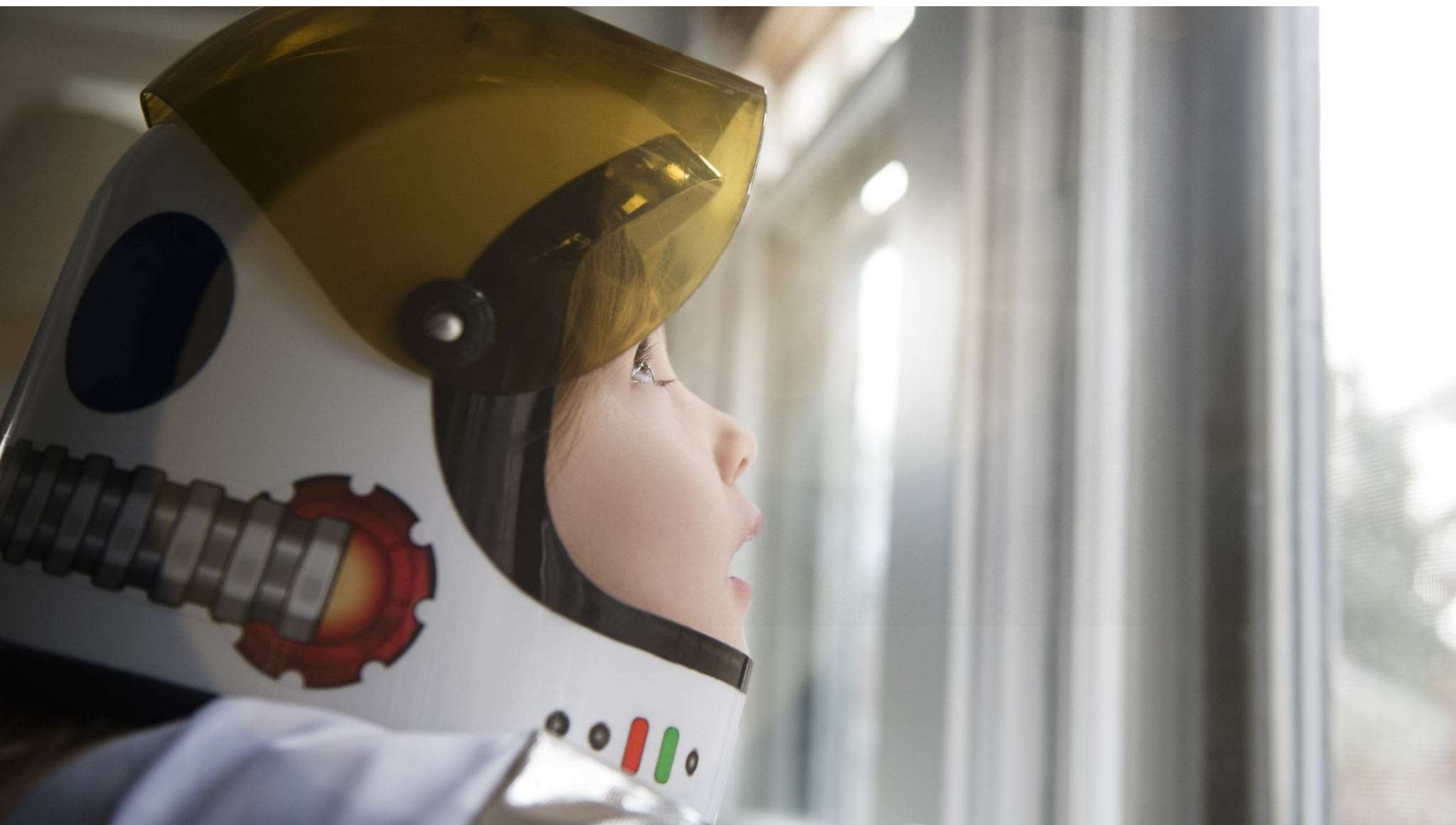


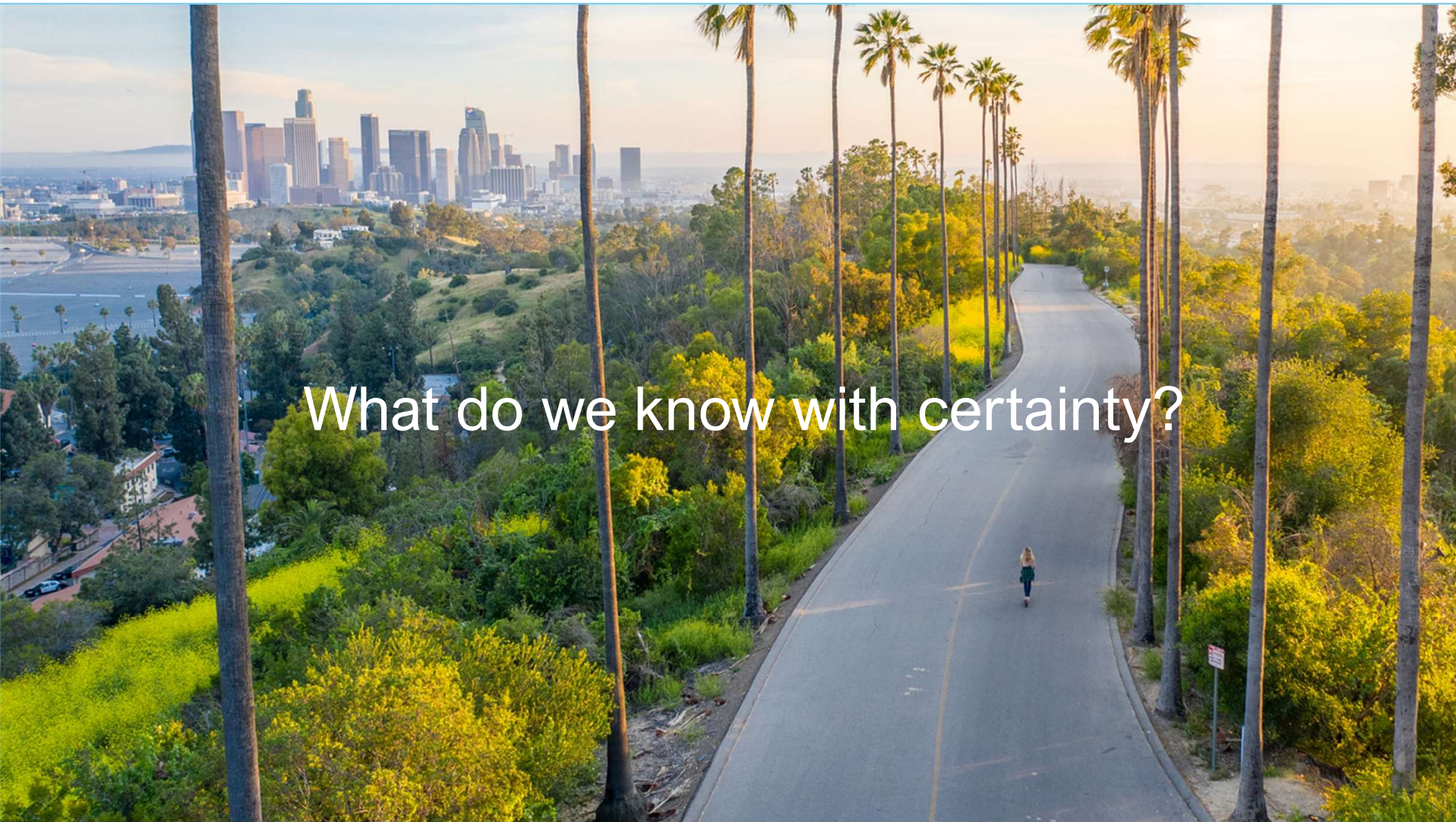
Know the Rules





But not just any action, the right action for the conduct at issue...





What do we know with certainty?



California law has not changed.

California Law

- Discrimination in any education program or activity is prohibited in California on the basis of disability, gender, gender identity, gender expression, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic in the definition of hate crimes, including immigration status. (EC 220)
- California's public schools have an **affirmative obligation to combat** racism, sexism, and other forms of bias, and a responsibility to provide equal educational opportunity. (EC 201(b))





Harassment and assault can have long lasting, detrimental effects on victims



What is Title IX?

Title IX



Title IX Statute

(20 U.S.C. §§ 1681–1688)

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



What falls under Title IX?

Recruitment,
Admissions, and
Counseling

Financial
Assistance

Athletics

Sex-Based
Harassment

Treatment of
Pregnant &
Parenting
Students

Discipline

Single-Sex
Education

Employment

Retaliation

Schools must:



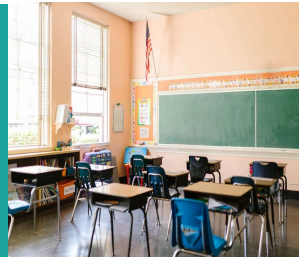
- Designate A Title IX Coordinator



- Train staff



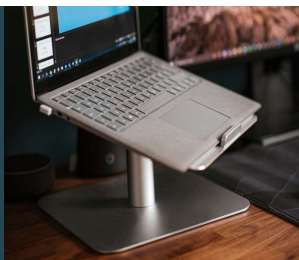
- Adopt, Publish & Implement Nondiscrimination Policy and Grievance Procedures



- Publish training materials



- Notice of Nondiscrimination



- Recordkeeping



When Must a School Respond to Sexual Harassment?

ALWAYS

Employment

- California Fair Employment & Housing Act (FEHA)
- Educ. Code § 212.5
- Title VII
- Title IX

Students

- Educ. Code § 212.5
- Title IX

When must a school respond to Title IX sexual harassment?

A school with actual knowledge of [Title IX] sexual harassment in an education program or activity against a person in the United States must respond as required under the 2020 Title IX rules....

Notice

ACTUAL knowledge

To Title IX Coordinator or
“official with authority” (all
K-12 employees)



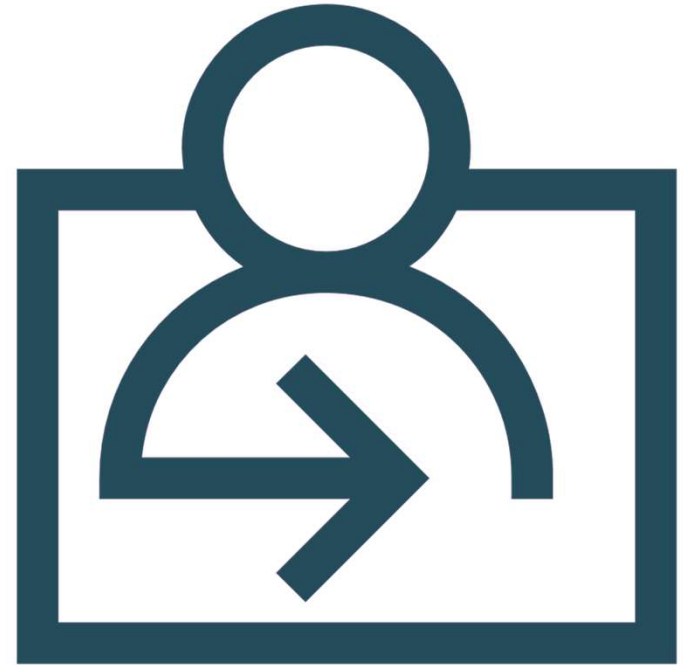
Actual Knowledge

- Sense
- Report



Official with Authority

- Title IX Coordinator
- Any other officials who have been given authority to institute corrective measures by the school district
- K-12: All employees



If the only individuals with knowledge of conduct in violation of Title IX are complainant and respondent. Respondent is an employee.

Does the District have actual knowledge of conduct triggering its duty to respond because Respondent-employee is aware of his conduct?

- A. Yes
- B. No
- C. I really hope not



Reporting Sexual Harassment: Who, How and When?

- Any person may report sex discrimination, including sexual harassment, regardless of whether the person is the alleged victim of the reported conduct
- Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator
- Or by any means that results in the Title IX Coordinator receiving the person's report
- Such a report may be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator



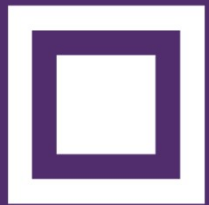


Key Word: “Allegation”

- Once a school has notice of an allegation that, if true, would constitute sexual harassment, it must respond
- “Well, we didn’t believe there was enough evidence it happened” does not get you past your responsibility to use your Title IX procedures

Order of protection: Principal served with order of protection requiring 17-year-old student to have no contact with 16-year-old student due to alleged sexual assault on campus.

Issue Spotting



What is Sexual Harassment?

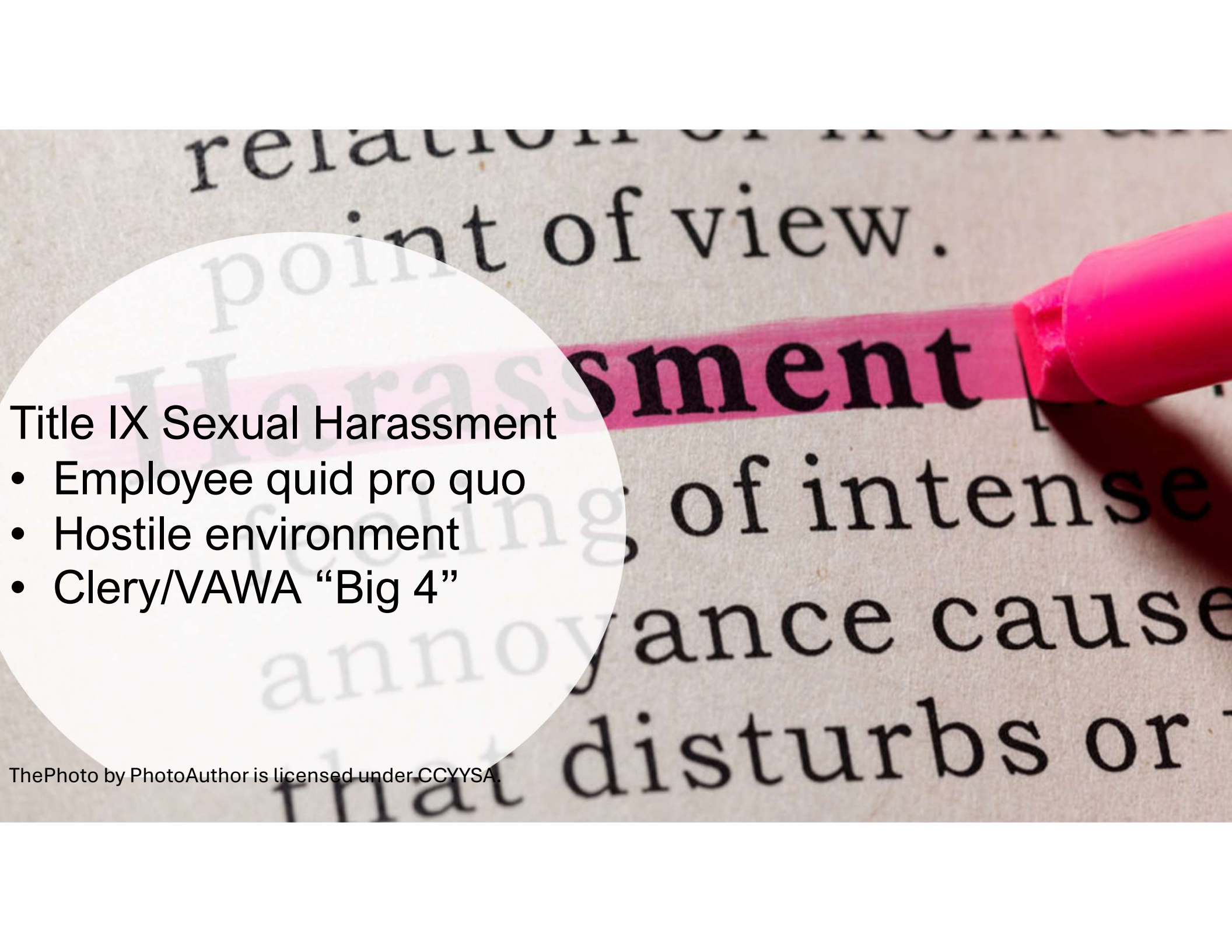
Employment

- California Fair Employment & Housing Act (FEHA)
- Educ. Code § 212.5
- Title VII
- Title IX

Students

- Educ. Code § 212.5
- Title IX

It Depends
Which Law
Applies



Title IX Sexual Harassment

- Employee quid pro quo
- Hostile environment
- Clery/VAWA “Big 4”

Title IX Quid Pro Quo

- **Definition:** An employee of the school conditioning an aid, service, or benefit of the school on an individual's participation in unwelcome sexual conduct
- Only an employee (not a volunteer, another student, etc.)
- Severity and harm presumed



Before a test, Noah, a student, arrives early to school. Noah tells Teacher, Noah is nervous about the test. Teacher tells Noah that they hurt their shoulder playing pickle ball this weekend and unless Noah gives them a shoulder massage before the bell rings, Teacher will give Noah a C on the test. Noah thinks Teacher might be trying to be funny. Noah does not give Teacher a massage. Noah gets an A on the test.

Could this be quid pro quo sexual harassment?



VAWA “Big Four”

- Sexual Assault
20 U.S.C. 1092(f)(6)(A)(v)
- Domestic Violence
34 U.S.C. 12291(a)(8)
- Dating Violence
34 U.S.C. 12291(a)(10)
- Stalking
34 U.S.C. 12291(a)(30)



Sexual Assault

- Forcible or nonforcible sex offense under the uniform crime reporting system of the FBI
 - Rape: carnal knowledge without consent
 - Sodomy: oral or anal intercourse without consent
 - Sexual assault with object: use of object to unlawfully penetrate, however slightly, genital or anal opening without consent
 - Fondling: touching of the private body parts of another person for the purpose of sexual gratification without consent
 - Statutory rape
 - Incest

Title IX Hostile Environment

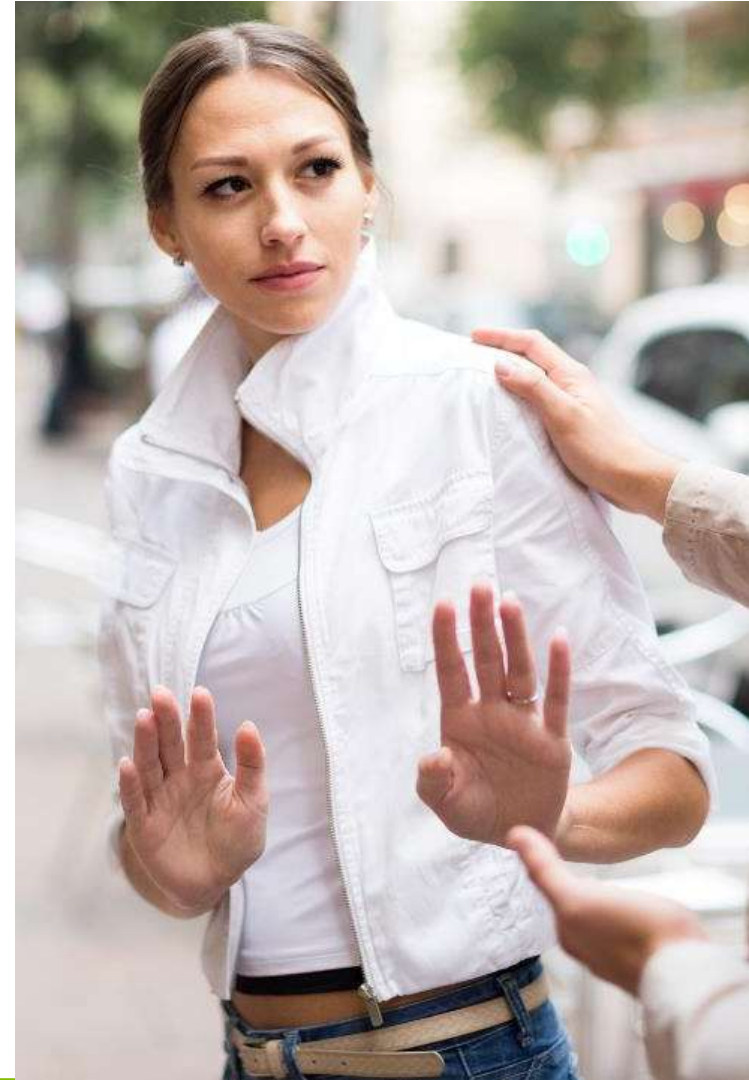


Title IX Hostile Environment

Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to the school's education program or activity**

Unwelcome Conduct

- Consent ≠ Welcome
- Silence ≠ Welcome
- Not requested or invited
- Regarded as undesirable or offensive
- Failure to complain, resist, or object to conduct ≠ welcome
- Acquiescence to the conduct ≠ welcome





What is severe?

Severe

- Extremely serious
- Severely hostile or abusive
- More than juvenile behavior among students
- More than antagonistic, non-consensual, and crass
- Simple acts of teasing and name calling are not enough



What is pervasive?

Pervasive

- Systemic, widespread
 - Occurring on multiple occasions
 - Persistent
 - Openly Practiced
 - Pattern or practice of harassment
 - Sustained and nontrivial
- 



What is objectively offensive?

Objectively Offensive



- Objectively offensive to a reasonable person in complainant's position
- Constellation of surrounding circumstances, expectations, and relationships

ACCESS DENIED

Denial of Equal Access

- Hostile environment - harm is not presumed
 - Effectively denies a person EQUAL access to the school's education program or activity
 - “So undermines and detracts from the victims' educational experience...”
 - Specific manifestation of trauma not required



19-year-old volunteer coach had a sexual relationship with an 18-year-old student on the team. When the relationship ended, the coach said, “I hope you realize you will be getting playing based on your actual performance now.”

Could this be sexual harassment under Title IX?

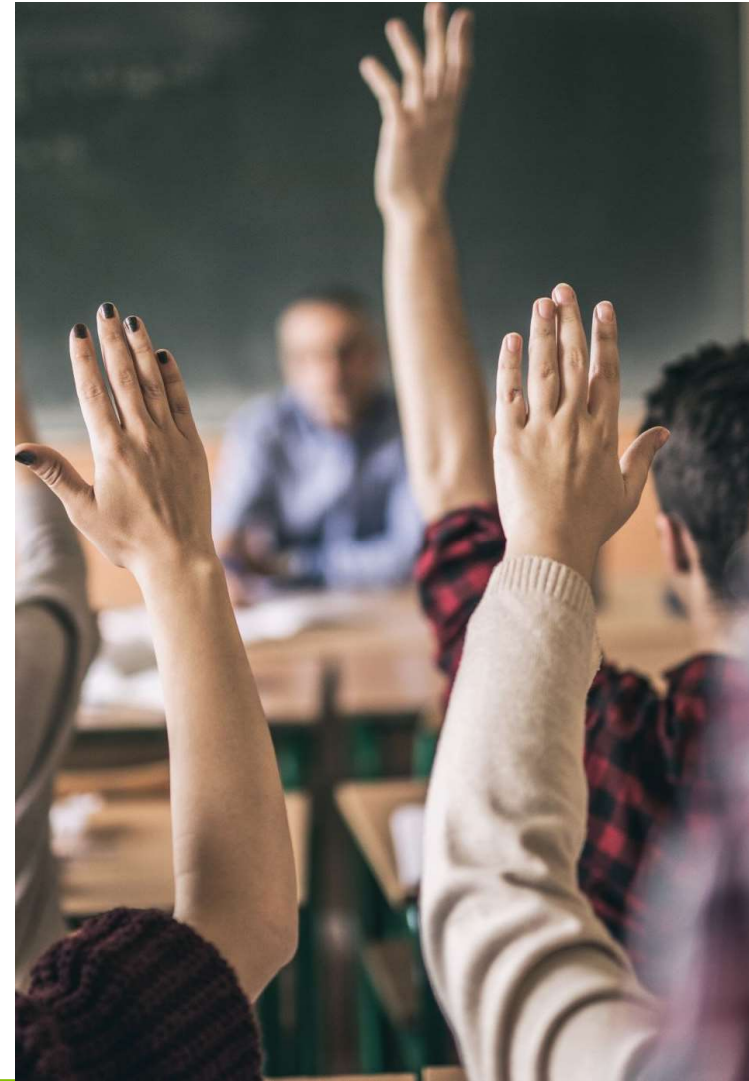
- 
- A woman with blonde hair, wearing a light blue shirt and dark blue polka-dot pants, stands in a classroom. She is looking towards the camera. In the foreground, several students are seated at wooden desks, with their hands raised in the air. A world map is visible on the wall behind the woman. The scene is brightly lit, suggesting a daytime setting.
- A. No, because the relationship was consensual.
 - B. Yes, quid pro quo.
 - C. Yes, hostile environment and quid pro quo.
 - D. No, one comment is not severe or pervasive.

Practical Analysis

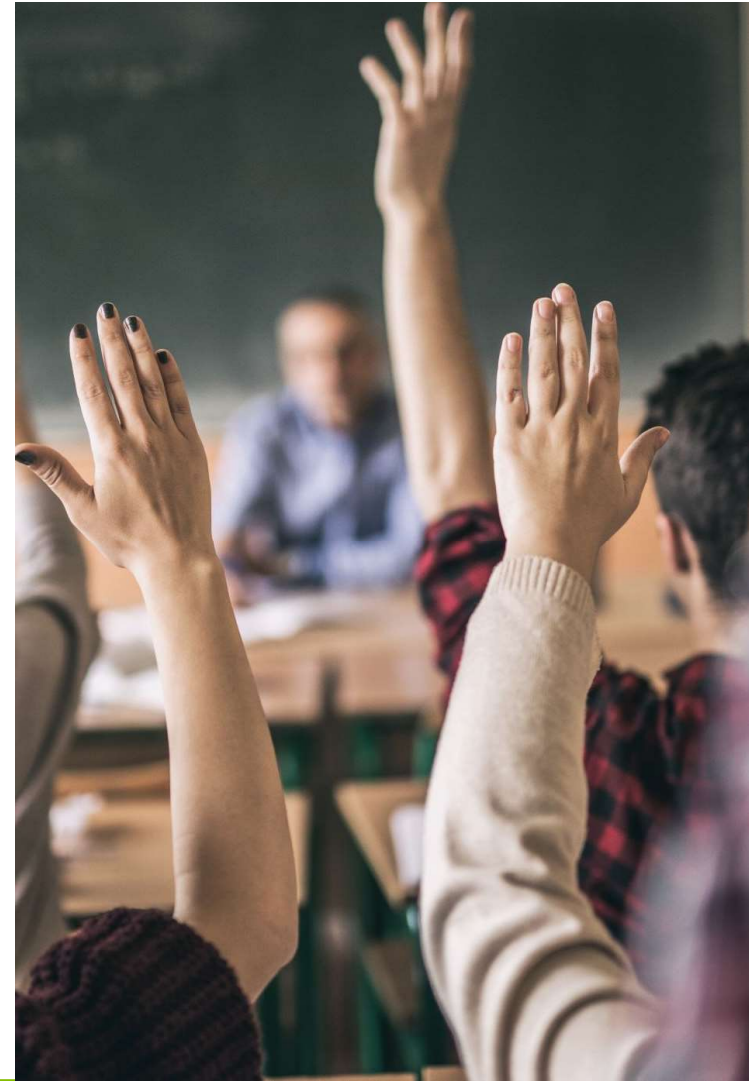


Is this so severe, pervasive, and objectively offensive?

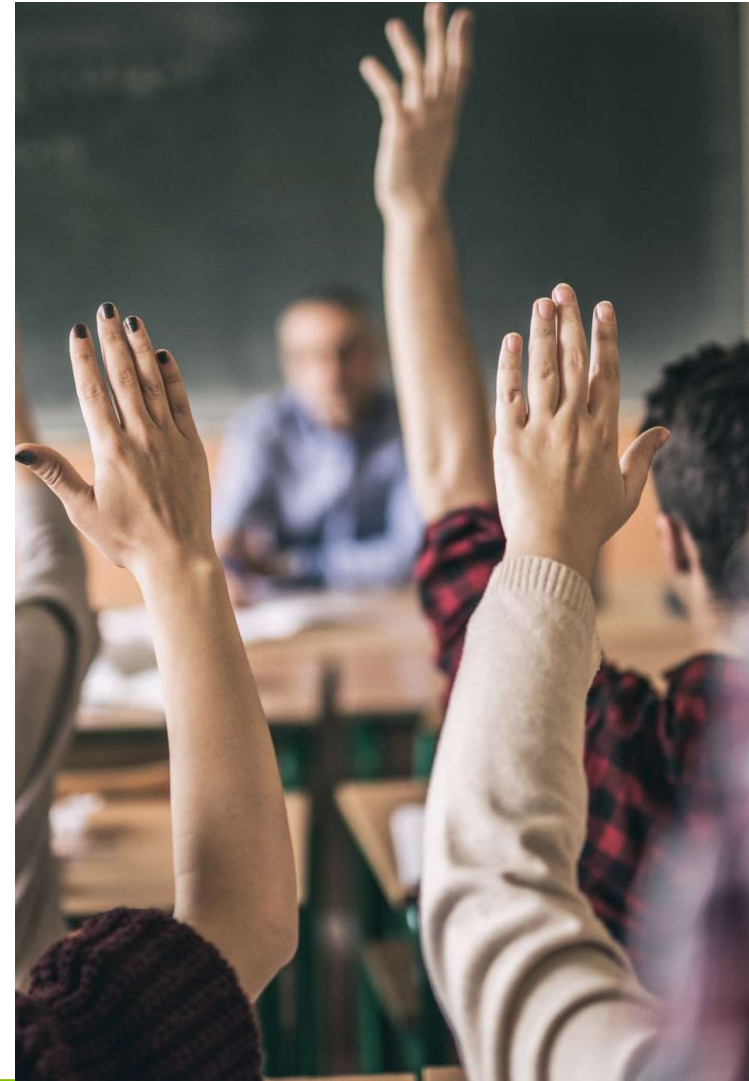
Blake asks Ryan out on a date.



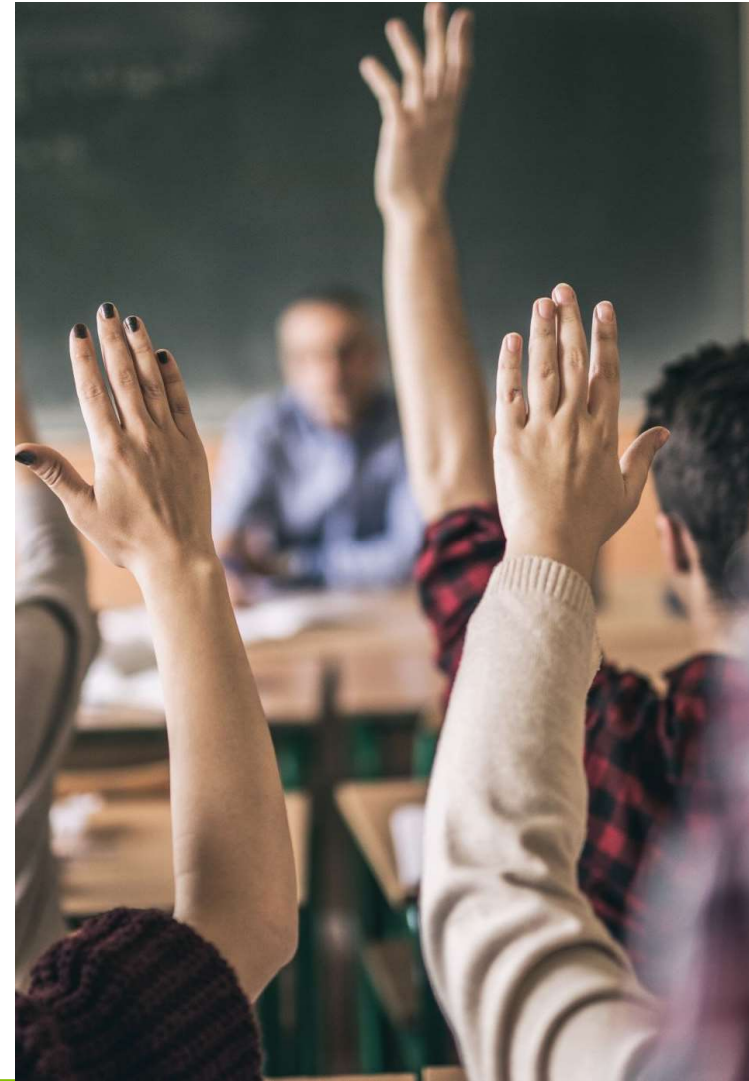
Football players call the only female player on the team “slut” and “run-through” and comment that she is only there for “dick”. One day, after practice, her stuff in her locker is covered in lotion.



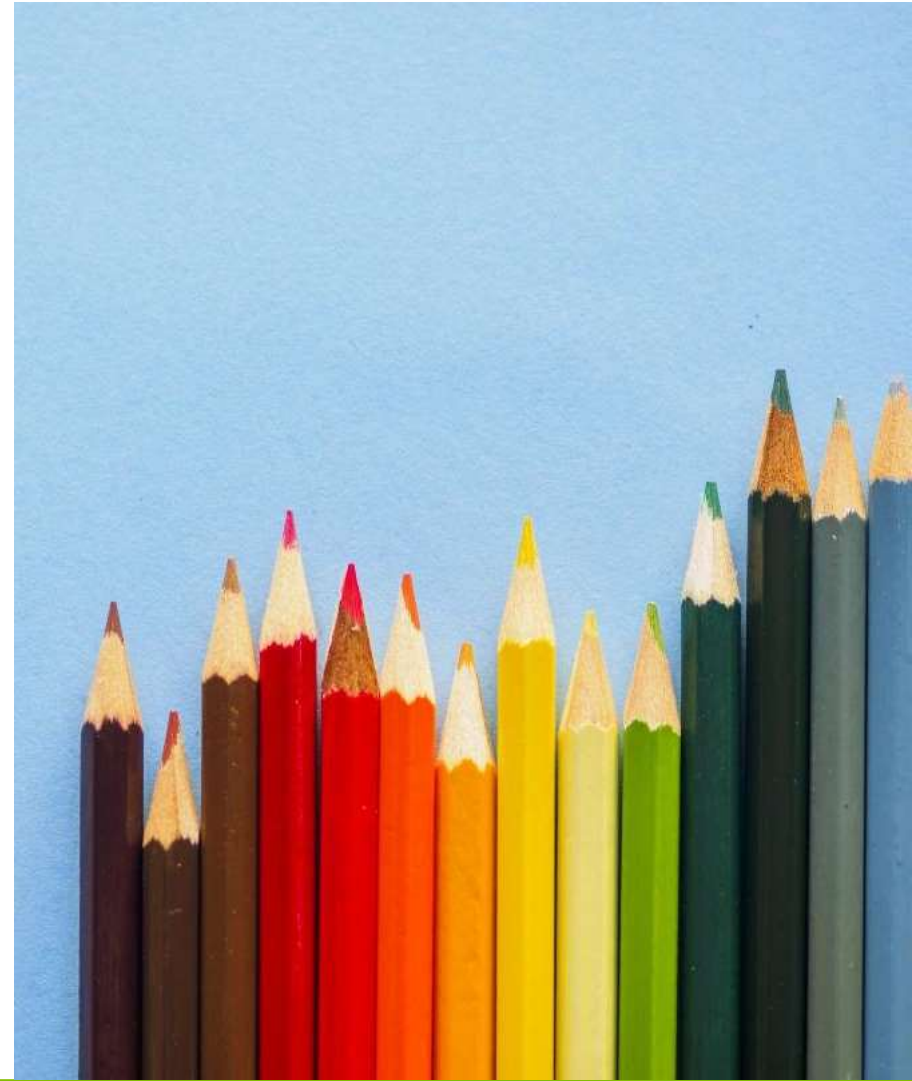
Without permission, a student films a consensual sex act with another student off campus. Student shows the video to other students on campus.



Teacher makes a sexually inappropriate comment to a student in class.



Title IX Sexual Harassment Must Be “In a Program or Activity”





Program or Activity: Any location, event, or circumstance over which the school exhibits substantial control over both the respondent and the “context” in which the harassment occurred

Online & Off Campus

Substantial control over the context?



A map of the United States is shown in the background, with various cities labeled. A large white circle is centered over the map, containing text. The text reads: "Schools need only address sex discrimination occurring against a person *in the United States* under Title IX". The words "in the United States" are italicized. The map shows the Gulf of Mexico to the south and the Atlantic Ocean to the east. A solid green horizontal bar is at the bottom of the image.

Schools need only
address sex
discrimination
occurring against
a person *in the
United States*
under Title IX



How Must You Respond to Title IX Sexual Harassment?

BUT ALWAYS
consider whether
another non-"sexual
harassment" policy or
procedure applies

Title IX Sexual
Harassment AR

Proceed under
another policy

Conduct that, if true, would be "Title IX
Sexual Harassment"
REMEMBER: If you find no responsibility,
consider whether another sexual harassment
policy should be used

Dismissal under Title IX Process
OR
Conduct that, even if true, would
not "Title IX Sexual Harassment"

Board Policies on Harassment

Option 1: **AR 4119.12/4219.12/4319.12 (Personnel) & AR 5145.71 (Students) Title IX Sexual Harassment Complaint Procedures** (for TIX Sexual Harassment *only*)

Option 2: **AR 4119.11/4219.11/4319.11 (Personnel) & AR 5145.7 Sexual Harassment** (for any other violation of law, including other types of “sexual harassment”)

Option 3: Other Board policies prohibiting conduct, e.g., bullying, nondiscrimination



Title IX Sexual Harassment Complaint Procedures

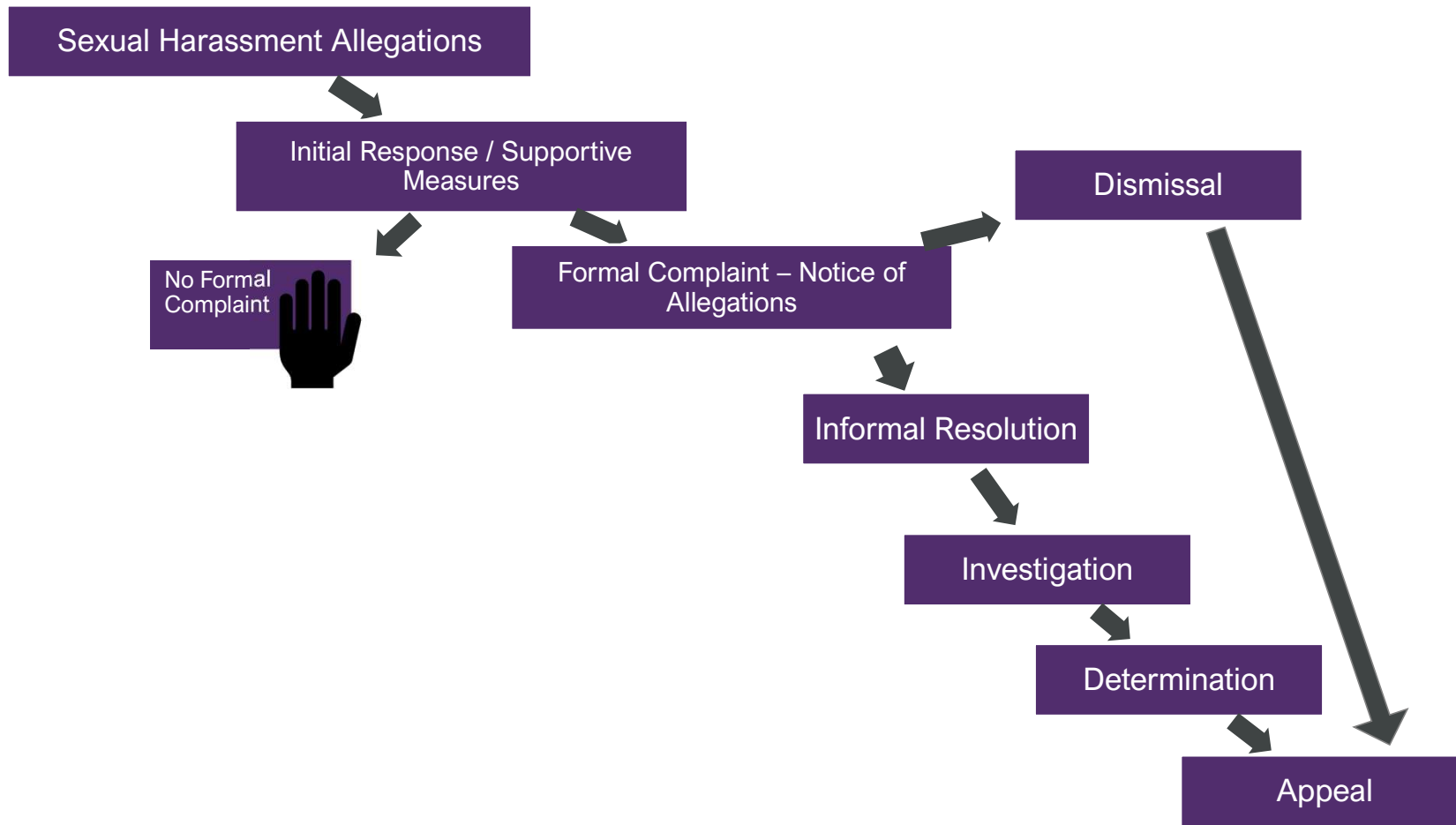
1. Initial Response/
Supportive
Measures

2. Informal
Resolution
(Voluntary)

3. Investigation

4. Decision

5. Appeal



Written Notice Required

- Informal resolution notice
- Notice at start of investigation
- Dismissal notice
- Interview notices
- Report
- Notice which proposed questions not asked on cross and why
- Written determination and notice of appeal rights



Written Notice Recommended

- Document information to complainant at initial meeting, including supportive measures requested/provided
- Document that review of evidence provided to both parties
- Document opportunity to ask questions, answers, follow-up questions, etc.





Initial Response/Supportive Measures

Initial Response

- Title IX Coordinator or designee must promptly, **even if no Formal Complaint is filed:**
- Contact the Title IX Complainant to discuss the availability of “supportive measures”
- Consider the Title IX Complainant’s wishes with respect to supportive measures
- Inform the Title IX Complainant of the availability of supportive measures with or without the filing of a formal complaint
- Explain the process for filing a Formal Complaint

Formal Complaint

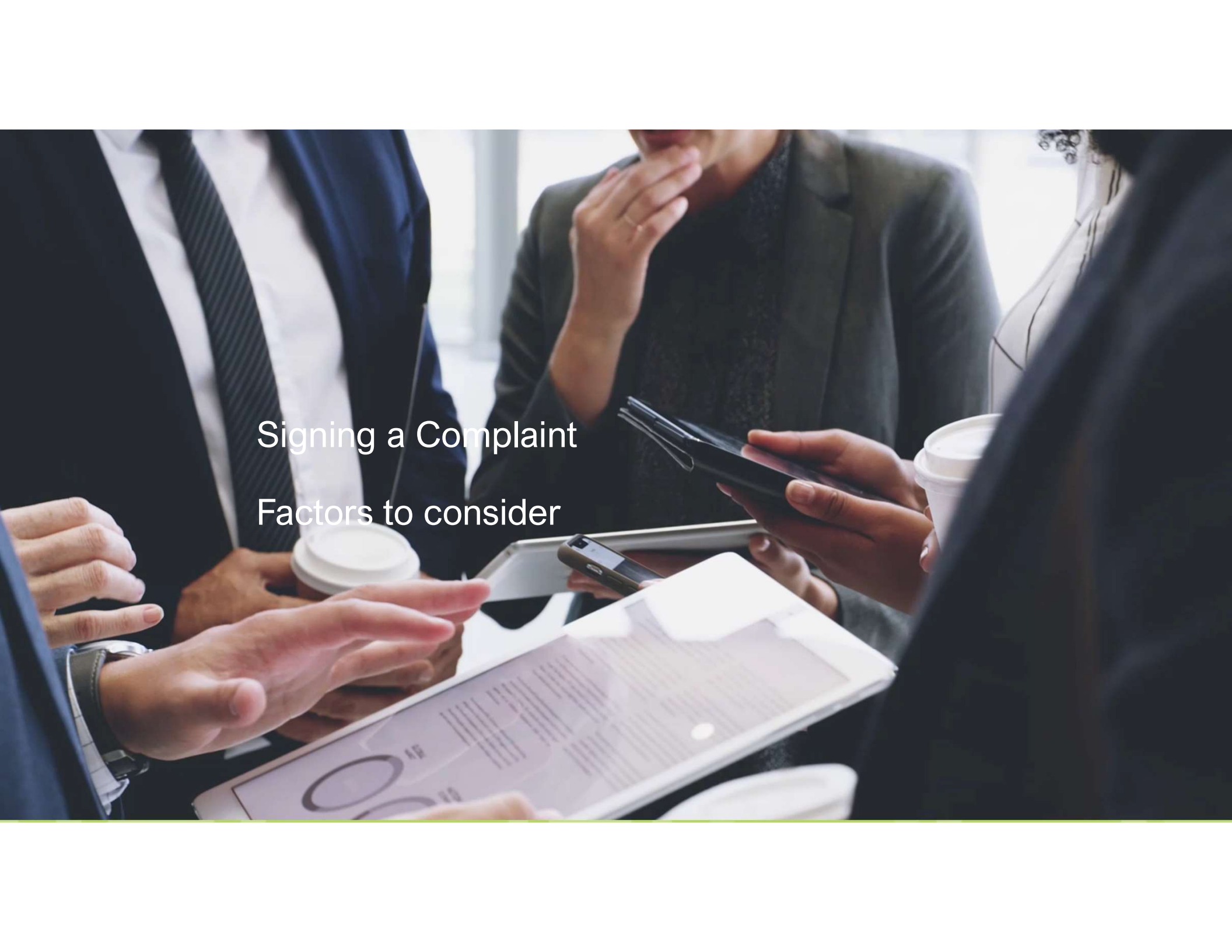
- Defined as a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment. 34 C.F.R. § 106.30(a).



Confidentiality

- Not required to maintain anonymity of Complainant after formal complaint is filed
- Both parties must be identified (if identity is known) in written notice of allegations
- Using party initials or withholding Complainant's identity is insufficient



A photograph of a business meeting. Several people in professional attire are gathered around a table. One person is holding a tablet displaying a document with text and diagrams. Another person is holding a smartphone. There are coffee cups on the table. The scene is brightly lit, likely from a window in the background.

Signing a Complaint

Factors to consider

Supportive Measures

- **Non-punitive**, individualized services, offered as appropriate and without charge to a complainant or a respondent before or after the filing of a formal complaint, or where no complaint has been filed. (34 CFR106.30(a).)
- **Should be designed to restore or preserve equal access to the education program or activity without “unreasonably” burdening the other party**

Examples of Supportive Measures

- Extensions
- Changes in class, work, extracurricular or other activity (regardless of whether there is a comparable alternative)
- Campus escort / increased security & monitoring
- Excused absences
- Testing accommodations
- Parking accommodations
- Referral to and coordination of campus and/or community resources and support
- Training and education
- Contact Restrictions/No Contact Directives
- Counseling or specialized training or support groups



Emergency Removals / Admin Leave

Immediate emergency removal

(34 C.F.R. 106.44(c))

- Conduct an individualized safety and risk analysis to determine if emergency removal is necessary to protect a student or other individual from **immediate threat to physical health or safety arising from the allegations of sexual harassment**
- **Notice, opportunity to challenge** provided “immediately” provided the removal
- Consider other laws, e.g., “change in placement” under IDEA

Employee administrative leave

(34 C.F.R. 106.44(c))

- Still permitted consistent with state law, board policy, handbooks and collective bargaining agreements

Dismissals

- **Mandatory if conduct alleged:**
 - Not sexual harassment, even if true
 - Did not occur in the school's program or activity
 - Did not occur in the United states
 - **can still address under non-Title IX policy
- **Permissive if:**
 - Complainant requests to withdraw in writing
 - Respondent's enrollment or employment ends
 - Specific circumstances prevent school from gathering evidence sufficient to reach a determination (e.g., passage of time, lack of cooperation by complainant)





Informal Resolution (Voluntary)

Informal Resolution

INFORMAL RESOLUTION IS NOT PERMITTED UNDER THE FOLLOWING CONDITIONS:

- Cannot condition enrollment, employment, or any right on waiver of right to investigation and adjudication of formal complaints under grievance procedure
- Cannot require use of informal resolution process
- Cannot offer informal resolution process until formal complaint is filed
- Not available to resolve allegations that employee sexually harassed a student

INFORMAL RESOLUTION MAY MOVE FORWARD UNDER THE FOLLOWING CONDITIONS:

- Any time prior to reaching a determination, either party may request informal resolution
- Requires voluntary, written consent from both parties
- Any party has a right to withdraw prior to agreement

Informal Resolution Facilitators



Should we use Title IX Coordinator or investigator(s) or decisionmakers

Written Notice Required

- To both parties
- Allegations
- Requirements of informal resolution process (including circumstances under which the party cannot resume a formal complaint arising from the allegations)
- Resulting consequences of participating (e.g., records)





Investigation

Written Notice of Allegations

- Written notice to known parties “upon receipt of written complaint”
- In sufficient time to allow respondent to prepare a response before any **initial** interview
- Must include:
 - Notice of grievance process, including any informal resolution process
 - Notice of allegations, in sufficient detail to allow respondent to prepare a response (names of known parties, conduct alleged, date and location of conduct, if known)

Written Notice of Allegations

- Must include:
 - Statement that respondent presumed not responsible and that responsibility determined at conclusion of grievance process
 - Notice of parties' rights to have an attorney or non-attorney advisor and to inspect and review evidence
 - Notice of any provision in the code of conduct that prohibits knowingly making false statements or providing false evidence during the grievance process
- Must be supplemented if new allegations opened for investigation

- Who should investigate?
- Can be the Title IX Coordinator...
But should it?
- Trained
- Unbiased
 - No actual or perceived conflict of interest
 - Check “institutional interests”
 - Presumption that Respondent is not responsible



Who should investigate?

- No “one size fits all” approach
- May need to designate
- Consider the perception of bias
 - Your friendship or other relationship with the accused or their family
 - Your sex/gender identity
 - Your personal conflicts (even if just perceived)
 - Personality conflicts



Investigation

34 C.F.R. 106.45(b)(5)

- Burden of proof on school
- Certain treatment records cannot be obtained without voluntary, written consent
- No restriction of rights of parties to discuss allegations or gather or present evidence
- Same opportunities for others present during interviews or related proceedings (e.g., attorney or non-attorney advisor)
- Written notice to parties of date, time, participants, purpose, and location of each investigative interview with sufficient time to prepare
- All evidence provided to parties and their advisors with 10 days to respond before report
- Written investigative report “fairly summarizes the relevant evidence” provided to parties and advisors at least 10 days before hearing or other determination of responsibility





Investigation Best Practices

- Coordinate with law enforcement if mutually agreed
- Consult with Title IX Coordinator and/or counsel as needed
- Open-ended questions followed by more tailored follow up
- Allow ample time, don't interrupt or rush
- Ask for other witnesses, evidence, incidents

Notice to Parties in Interviews

- What to expect about future contact (timing, updates, encourage follow-up to you)
- Written copy of policies/procedures
- Notify of retaliation rights – provide specific examples
- No “Gag” order but can warn of retaliation risks



Gathering Evidence



Gathering evidence

During an investigation complainants are required to provide evidence to support their allegations.

True or false?



Medical Records

- Notice of allegations should not divulge either party's medical information
- Prohibited from accessing or using medical, psychological, or similar records in grievance process without a party's (or parent's) voluntary, written consent



Opportunity to Review Evidence

- Before the investigatory report is completed, evidence relating to the allegations must be sent to each party and advisor and should include all evidence (including that which the school does not intend to rely upon and exculpatory and inculpatory evidence)
- Parties have 10 days to provide a written response



Investigation Report Writing

- Fairly summarizes the relevant evidence
- Provide the report to the parties and their advisors, if any, for their review and written response, at least 10 days before a hearing or determination of responsibility



Investigative Report Should Include

Applicable policies and procedures



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graph TD; A[Applicable policies and procedures] --> B[Timeline of investigation]; B --> C[Description of allegations]; C --> D[Unbiased summary of evidence gathered, including interviews]; D --> E[Facts need for credibility determination(s)];
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Timeline of investigation

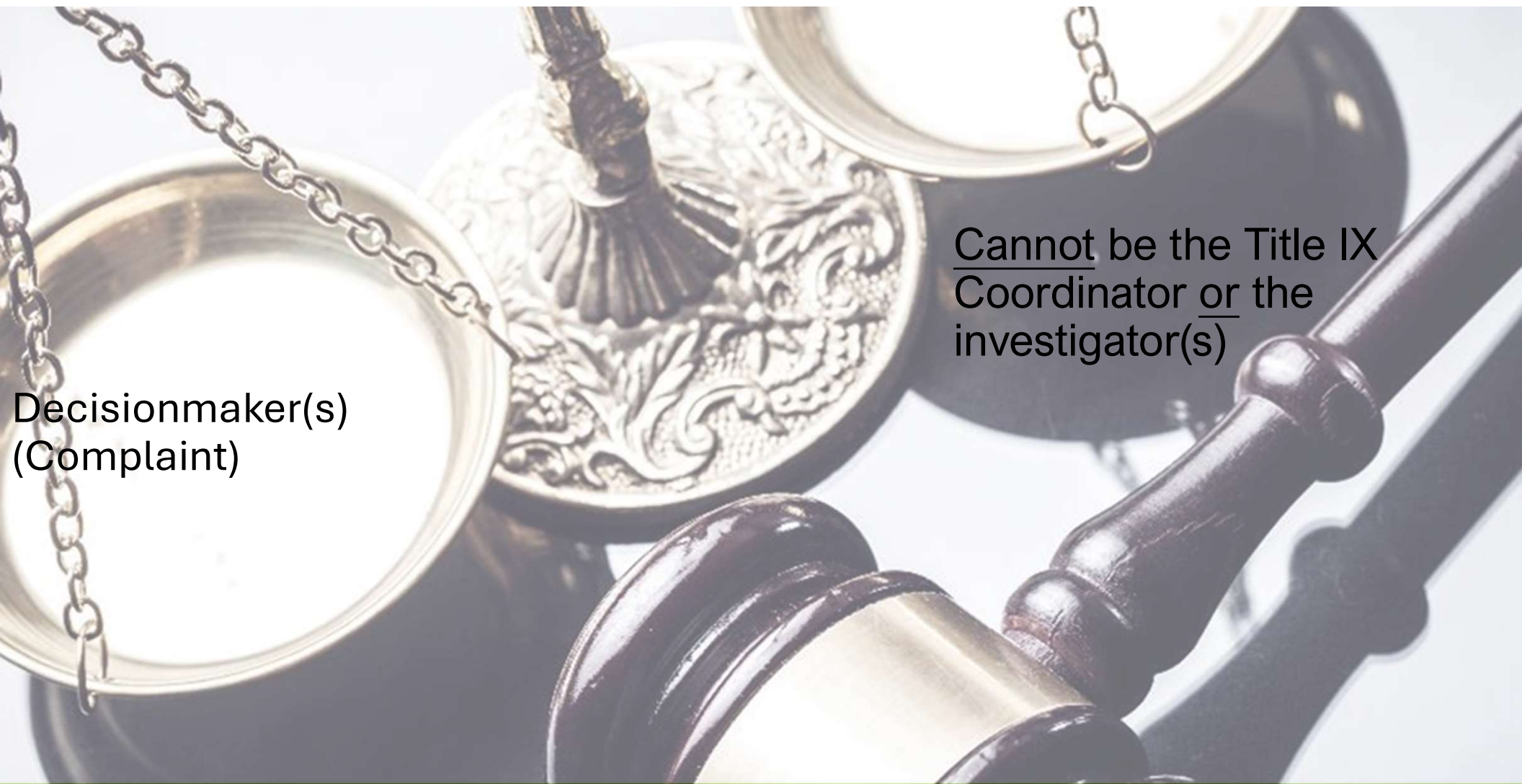
Description of allegations

Unbiased summary of evidence gathered, including interviews

Facts need for credibility determination(s)



Decision



Decisionmaker(s)
(Complaint)

Cannot be the Title IX
Coordinator or the
investigator(s)

Determinations
of Responsibility
34 C.F.R.
106.45(b)(6)

- Live hearing with live cross by party advisors required for higher ed, **not K-12**
- Hearings permitted for K-12, with each party allowed to submit written, relevant questions to be asked of another party or witness to the decisionmaker, who will provide each party with the answers and the opportunity for follow-up questions

Relevance

- Rape shield laws
 - Treatment records
 - Legally privileged information
 - Improper inference
- 

Rulings on Relevance in Written “Cross”

- Provide reasoning for irrelevance
- Admit and consider all relevant evidence
- Exceptions
 - Sexual behavior (except in limited situations)
 - Legal privilege
 - Treatment records

The Decision



When one party makes an allegation and the other party denies the allegation, there is no way to discern the truth.

True or false?



Written Determination

Identify	Identify the allegations
Describe	Describe procedural steps taken
Cite	Cite potential policy violations
Summarize	Fairly summarize all relevant evidence
Provide	Provide statement of result, with rationale, for each allegation
Appeal	Appeal procedures

A close-up photograph of a hand holding a single white feather. The hand is positioned in the lower-left quadrant, with the thumb and index finger gripping the base of the feather. The feather is long and white, with dark, fine lines visible on its vane. The background is dark and out of focus, featuring several bright, circular bokeh lights. The text "Standard of Proof: Preponderance of the Evidence" is overlaid on the right side of the image in a white, sans-serif font.

Standard of Proof:
Preponderance of the
Evidence

Remedies & Sanctions

- Disciplinary action against respondent
- Counseling for respondent/victim
- Changes to services or policies
- Remedies for complainant and others
- Etc.!!

Factors for Evaluating Evidence

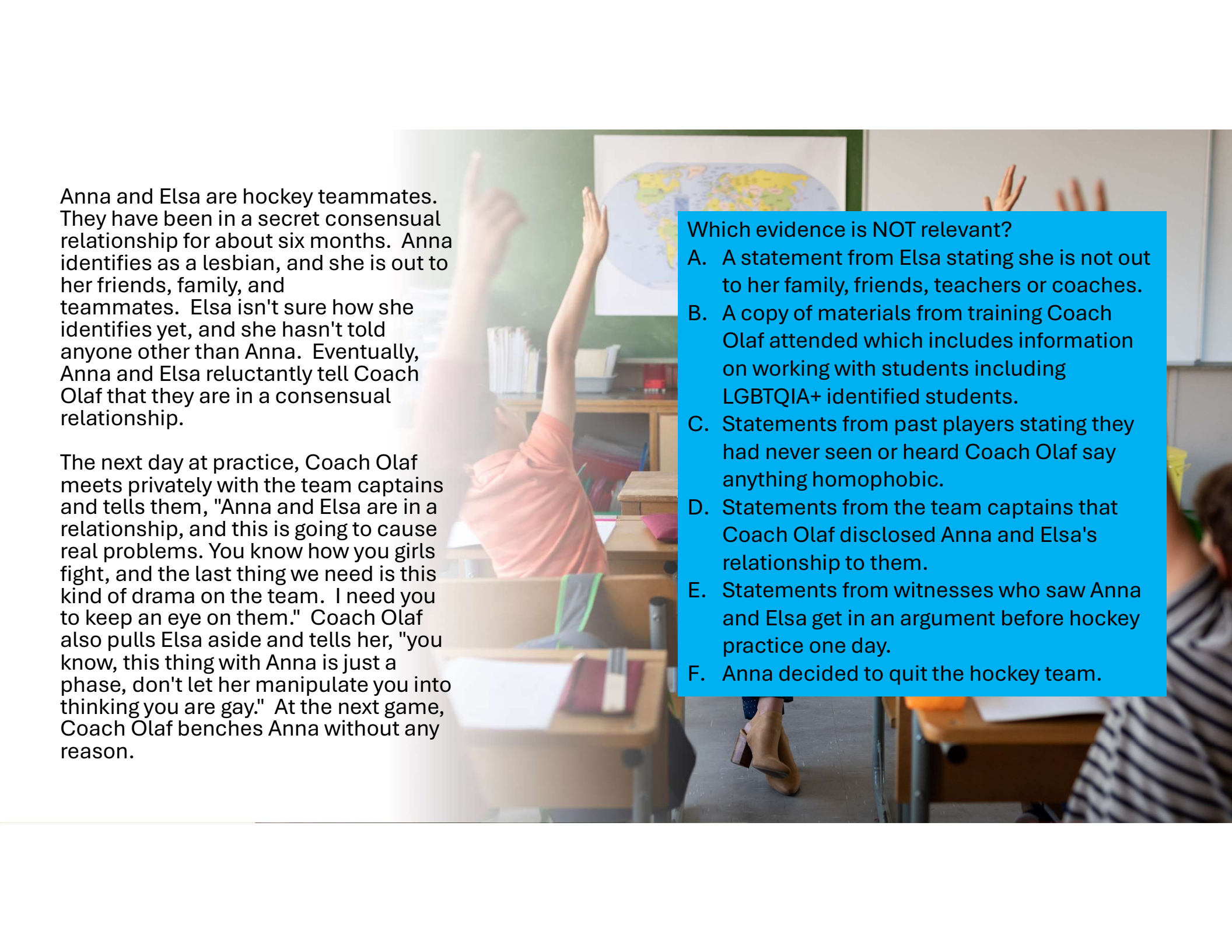
- **Weight of Evidence**
 - Weight of evidence is the believability or persuasiveness of evidence in probative value, not the quantity or amount of evidence.
 - Evaluate evidence as a whole based on your own judgment.
- **Assessing Credibility:** The extent to which the decisionmaker can rely on testimony to be accurate and helpful in their understanding of the case.
- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?



Factors for Evaluating Evidence

- **Motive to falsify:** Did the person have a reason to lie? Is there evidence supporting an alleged motive to lie?
- **Corroboration:** Is there corroborating evidence or witness testimony? (E.g., witness who observed any of the conduct alleged, witnesses who either party soon after the alleged conduct, or witnesses who discussed with either party around the time the conduct allegedly occurred, or physical evidence)
- **Past record:** Prior conduct by respondent? History of similar behavior?
- None of the above factors are determinative as to credibility.



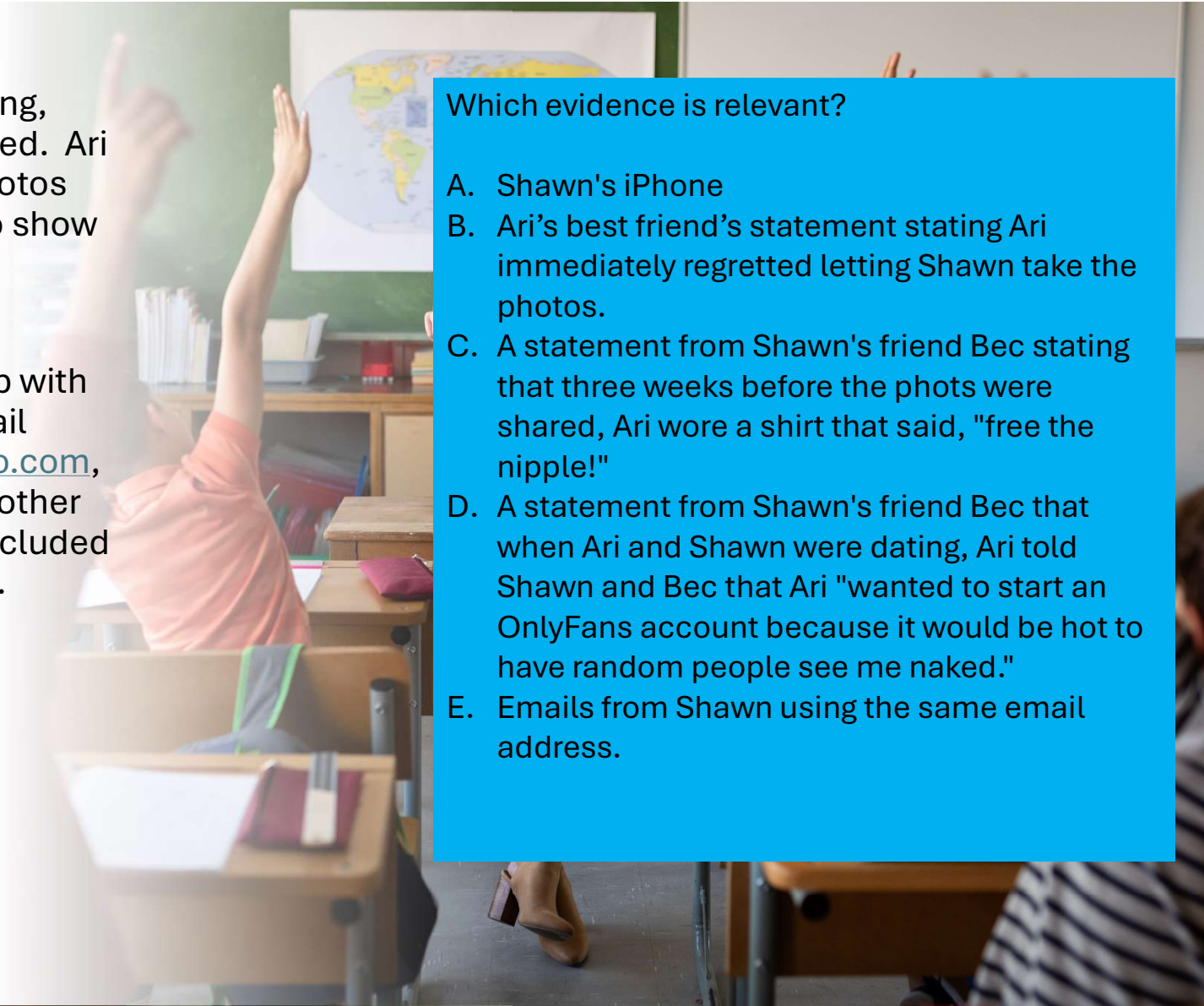
A background image of a classroom. In the foreground, a student in an orange shirt is seen from behind, sitting at a desk and raising their right hand. Other students' hands are visible in the background, also raised. A world map is on the wall, and a teacher's desk with papers is visible in the middle ground.

Anna and Elsa are hockey teammates. They have been in a secret consensual relationship for about six months. Anna identifies as a lesbian, and she is out to her friends, family, and teammates. Elsa isn't sure how she identifies yet, and she hasn't told anyone other than Anna. Eventually, Anna and Elsa reluctantly tell Coach Olaf that they are in a consensual relationship.

The next day at practice, Coach Olaf meets privately with the team captains and tells them, "Anna and Elsa are in a relationship, and this is going to cause real problems. You know how you girls fight, and the last thing we need is this kind of drama on the team. I need you to keep an eye on them." Coach Olaf also pulls Elsa aside and tells her, "you know, this thing with Anna is just a phase, don't let her manipulate you into thinking you are gay." At the next game, Coach Olaf benches Anna without any reason.

Which evidence is NOT relevant?

- A. A statement from Elsa stating she is not out to her family, friends, teachers or coaches.
- B. A copy of materials from training Coach Olaf attended which includes information on working with students including LGBTQIA+ identified students.
- C. Statements from past players stating they had never seen or heard Coach Olaf say anything homophobic.
- D. Statements from the team captains that Coach Olaf disclosed Anna and Elsa's relationship to them.
- E. Statements from witnesses who saw Anna and Elsa get in an argument before hockey practice one day.
- F. Anna decided to quit the hockey team.

A background image of a classroom. A student in an orange shirt is seen from behind, sitting at a desk and raising their right hand. In the background, there is a green chalkboard with a world map hanging on it. Other students are partially visible in the foreground and background.

While Shawn and Ari were dating, Shawn took pictures of Ari naked. Ari agreed to Shawn taking the photos after Shawn promised never to show anyone the pictures.

About a week after Ari broke up with Shawn, someone with the email address, Goose2002@woohoo.com, sent a group text to Ari and 28 other students from school which included pictures of Ari taken by Shawn.

Which evidence is relevant?

- A. Shawn's iPhone
- B. Ari's best friend's statement stating Ari immediately regretted letting Shawn take the photos.
- C. A statement from Shawn's friend Bec stating that three weeks before the photos were shared, Ari wore a shirt that said, "free the nipple!"
- D. A statement from Shawn's friend Bec that when Ari and Shawn were dating, Ari told Shawn and Bec that Ari "wanted to start an OnlyFans account because it would be hot to have random people see me naked."
- E. Emails from Shawn using the same email address.

Credibility Considerations

Consistency

Accuracy

Memory

Implausibility

Inconsistency

Unreliability

Ulterior motives

Opportunity/ability
of witness to
observe or know
things testified

Interest in
outcome

Bias or prejudice

Contradictory
evidence

Reasonableness in
light of all evidence

Any other factors
that bear on
believability

Charlie reports having consensual sex with Noah in Charlie's car in the school parking lot during a football game. Charlie says Noah agreed to wear a condom but removed it during sex. During the investigation interview, Noah says, "I was wearing a condom the entire time. I love condoms, they make sex great and safe!"

What evidence might help you decide who is more credible in this situation?

- A. A text message from Noah to Charlie which says, "ok I'll pay for half the Plan B."
- B. A statement from Charlie's friend Mo stating Charlie called Mo that night, crying, and worried about STIs and pregnancy because Noah removed the condom mid-sex.
- C. A statement from Noah's friend Ash stating Noah frequently talks about hating wearing condoms "because you can't feel anything."
- D. Evidence that Charlie is taking hormonal birth control.
- E. A second statement from Noah stating, "it might have slipped off, but even if that happened, I know Charlie was fine with it."
- F. A second statement from Noah stating, "the condom might have slipped off, I don't know, I feel really bad about it. Please don't tell anyone, but it was my first time having sex, I know I acted all cool about it before, but I never actually used a condom before, and to be honest, I didn't know how to use a condom."



Appeal

Appeal Process

- Available to both parties
- Appeal of dismissal or written determination
- Three bases for appeal
 - Procedural issue
 - New Evidence
 - Bias or Conflict of Interest
- Must affect the outcome





Appeal Process

- Notify parties of appeal in writing
- Apply procedures equally for both parties
- Provide equal opportunity to submit written statement
- Issue written decision to both parties



Appeal
Decisionmaker(s)

Cannot be the Title IX
Coordinator or the
investigator(s) or the
decisionmaker
(complaint)



Bias, Conflicts of Interest, and Other Fairness Concerns

Tissues

In preparing for an interview with Complainant, Investigator moves the box of tissues from the bookshelf to the table near where Complainant will be sitting for the interview. Before interviewing witnesses, Investigator moves the tissues back to the bookshelf.

Investigator's actions reflect a lack of impartiality. True or False?



Bias, Conflict of Interest, Prejudgment

The Title IX Coordinator, investigator, decision-maker, or informal resolution facilitator must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against any individual Complainant or Respondent. And that they must not prejudge any matter before them.





Bias

- Prejudice for or against one person or group
- An affinity or habitual attraction to something
- The property of not being in balance
- A particular point of view from which something is seen or presented

Wordhippo.com



Conflict of Interest & Prejudgment

- A conflict between the private interests and the official responsibilities of a person in a position of trust

Merriam-Webster.com

- Prejudgment is a judgment made before the evidence has been presented

Wordhippo.com



Avoiding Prejudgment

- Keep an open mind throughout the investigation process
- Wait until you have all facts and evidence (there are two or more sides to every story)
- Seek additional facts and/or witnesses – facts are your friends!
- Be particularly cautious about checking your assumptions in situations involving sexual assault, drugs, or alcohol use



Recordkeeping

Recordkeeping

Must maintain the following for 7 years:

- Sexual harassment investigation documents, including:
 - Determination regarding responsibility
 - Recordings or transcripts of live hearing
 - Disciplinary sanctions imposed on Respondent
 - Remedies provided to Complainant
- Appeal and result
- Informal resolution and result
- **Actions taken in response to a report of sexual harassment**
- Actions taken in response to a formal complaint of sexual harassment





Recordkeeping

Responses to formal and informal complaints and actions taken in response should include:

- The basis for the school's conclusion that its response was not deliberately indifferent
 - Documentation that it has taken measures designed to restore or preserve equal access to the school's education program or activity
 - Supportive measures or if no supportive measures are provided, document the reasons why such a response was not clearly unreasonable in light of the known circumstances
- 

QUESTIONS?

QUESTIONS?





Areas of Service

- Business
 - Communications & Media Relations
 - Education Technology
 - Employment Law
 - Facilities & Construction
 - Governance & Leadership
 - Government Affairs & Public Policy
 - Interscholastic Activities
 - Investigations
 - Labor Relations & Negotiations
 - Litigation
 - Next Level Client Services
 - Real Estate & Property
 - Special Education
 - Student Rights & Discipline
 - Title IX
 - Virtual Learning
- 



F3 Law

Business
Communications & Media Relations
Education Technology
Employment Law
Facilities & Construction
Governance & Leadership
Government Affairs & Public Policy
Interscholastic Activities
Investigations

Labor Relations & Negotiations
Litigation
Next Level Client Services
Real Estate & Property
Special Education
Student Rights & Discipline
Title IX
Virtual Learning

Inland Empire
Fresno
Los Angeles
Midwest
Oakland
Sacramento
San Diego



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Thank you

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