



The Student's Court

Austin ISD
Title IX Decision-Maker Training
August 25, 2023

Thompson & Horton
HOUSTON • DALLAS • AUSTIN • FORT WORTH

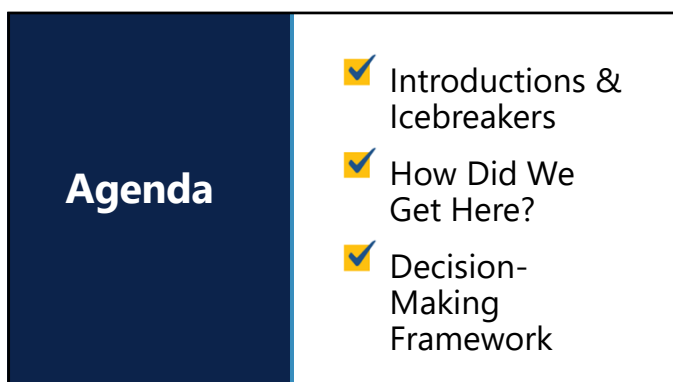
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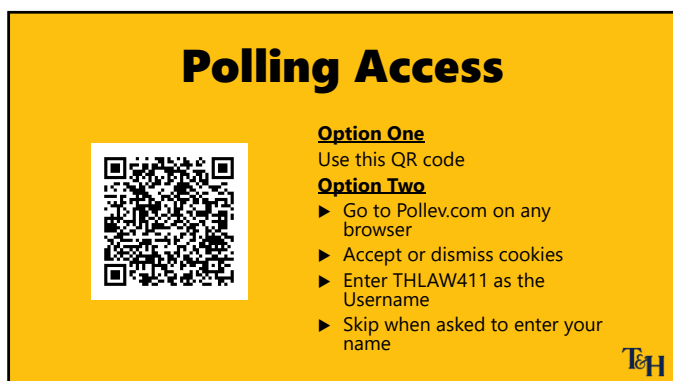
Agenda

- ✓ Introductions & Icebreakers
- ✓ How Did We Get Here?
- ✓ Decision-Making Framework


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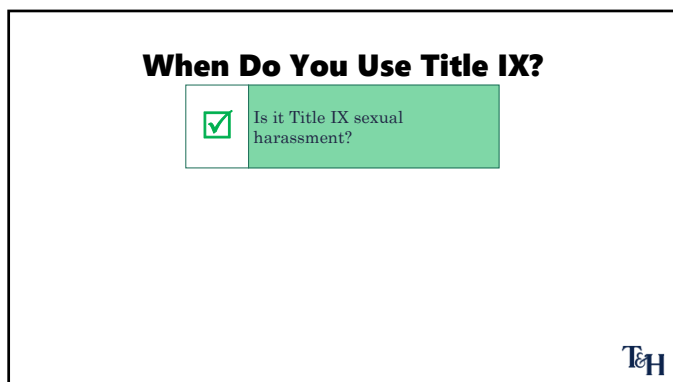
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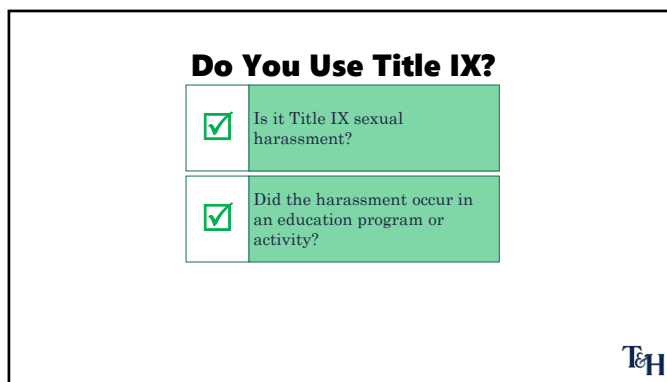
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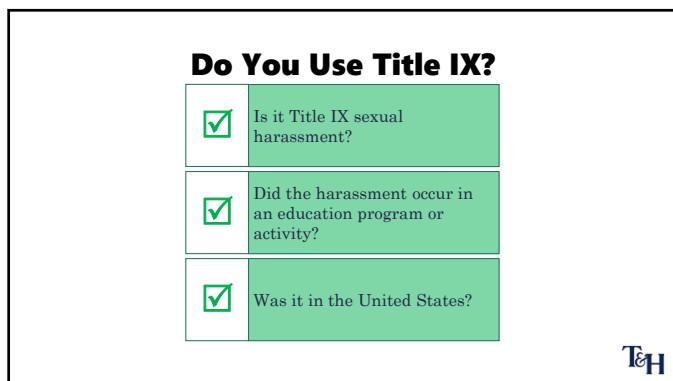
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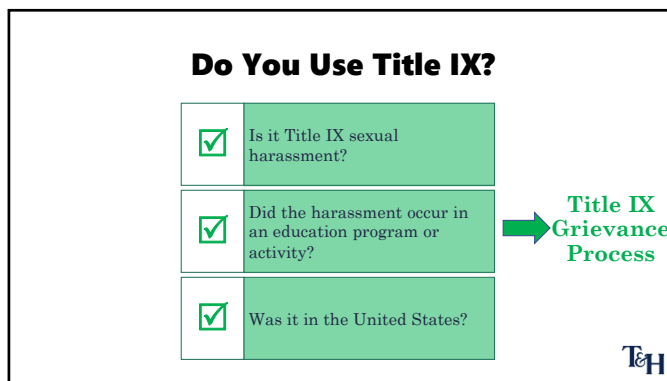
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Do You Use Title IX?

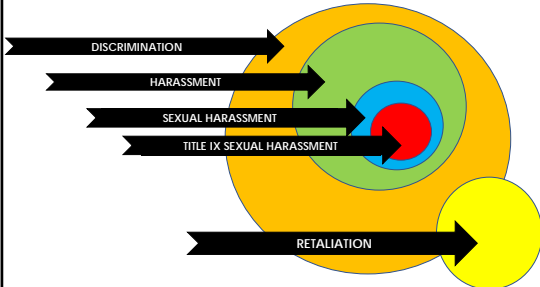

✓	Is it Title IX sexual harassment?
NO	Did the harassment occur in an education program or activity?
✓	Was it in the United States?


 If answer to any question is **NO**, the Title IX Grievance Process does not apply
 Use process for other misconduct



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Please Remember

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Today Is Title IX but...

Complaints of discrimination, harassment, or retaliation based on protected statuses other than sex **should be reported** to the appropriate central administration official, and **must be addressed using the requirements of FFH (Local)**; they will **not** be addressed under the Title IX sexual harassment process we are talking about today, but are still important



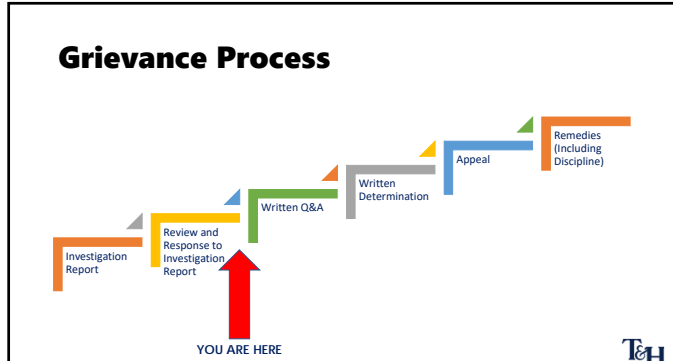

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Grievance Process


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Grievance Process





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Decision-Making Framework



- Part 1** Serving Impartially
- Part 2** Learning the Case
- Part 3** Written Q&A
- Part 4** Written Determination
- Part 5** Closing the File



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Our Scenario

A student, Casey, alleges that another student, Ryan, touched Casey in the genital area on two occasions at school.



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Our Scenario

Casey and Ryan started dating at the beginning of the school year. Casey claims to have never been sexually active and does not want to engage in sexual activity other than kissing. Casey reported that Ryan knew these limitations but wanted more.



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Our Scenario

During the first incident, Ryan and Casey were sitting in the stands out on the field at lunch. Ryan was tickling Casey and, while Casey was protesting, touched Casey's private area.



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Our Scenario

During the second incident, Ryan and Casey were in the hallway "making out." Ryan was rubbing all over Casey's behind, which Casey said they were ok with, but then Ryan began rubbing between Casey's legs allegedly without permission.



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Our Scenario

Casey just reported the incident although it happened last semester. Casey reports that Ryan broke things off recently and started dating another student, Isa, within days of the break-up.



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**PART 1:
Serving
Impartially**



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Serving Impartially



- The new 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 prejudice any matter before them.
- Best practice* is to follow this same guidance for ALL reports of discrimination or harassment.

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Serving Impartially



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Serving Impartially



- The new 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.
- Best practice* is to follow this same guidance for ALL reports of discrimination or harassment.

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Serving Impartially

- The new 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 prejudice any matter before them.
- Best practice* is to follow this same guidance for ALL reports of discrimination or harassment.


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Bias

“[A]n inclination of temperament or outlook, especially a personal and sometimes unreasonable judgment.”

“[T]o give a settled and often prejudiced outlook to”...a person’s background biases them against others who are not like them


Synonyms – nonobjectivity, one-sidedness, partiality, partisanship, prejudice (Merriam-Webster)



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Bias

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



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Bias Examples

Men are sexually aggressive and likely to sexually assault women

Women often regret their sexual experiences and recast them as assault

Men cannot be sexually assaulted

The #metoo movement has led to many more false sexual assault reports by women




31

Our Scenario

What gender is the alleged victim, Casey?

What gender is the alleged perpetrator, Ryan?




32

Conflict of Interest

A situation in which the concerns or aims of two different parties are incompatible.

"A conflict of interest arises when what is in a person's best interest is not in the best interest of another person or organization to which that individual owes loyalty."
<https://ethicsunwrapped.utexas.edu/glossary/conflict-of-interest>




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Our Scenario

Clearest Conflicts—
Decision-maker:
Is related to Ryan
Formerly dated Isa's parent
invests in a business with Casey's parent

Could be Conflicts—
Decision-maker:
Is Ryan's Coach
Has previously disciplined Casey for dishonesty




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Our Scenario

Less Risk of Conflict—
Decision-maker:
Signed the Formal Complaint
Attends the same place of worship as Casey's parents
Has a history of speaking out on victim or accused rights
Has other responsibilities, e.g. 504 Coordinator, that cover parties

Not a Conflict—Decision-maker:
Is an employee or attorney
Has been trained on trauma informed practices




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Prejudgment

"To judge before hearing or before full and sufficient examination"
"[A]n opinion about a situation or a person that is formed before knowing or considering all of the facts."
Cambridge Dictionary

Synonyms – preconception, assumption, presumption/presupposition, speculation
Merriam-Webster



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Our Scenario

What do you think about the fact that...?

Casey and Ryan were dating

Casey "made out" with Ryan on multiple occasions

Casey only reported Ryan after being "dumped" and Ryan beginning to date Isa



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Prejudgment Examples

A person was described as clearly upset during their interview, so you presume their recollection is credible

A person was drinking at the time of the incident, so you presume they don't remember what happened

A person consented to sexual behavior before, so you presume they consented this time, too



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Serving Impartially

- Evaluate your own relationship to the case, including the parties and witnesses and the subject matter, throughout the process
- Tell the Title IX Coordinator any concerns with impartiality

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Serving Impartially

- Treat parties equally during the process
- Do not assume based on demographics
- Avoid stereotypes; treat parties as individuals, not members of a group or class

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Serving Impartially

- Follow all policies and procedures
- Objectively examine all the evidence before reaching a decision
- Make your own decision; don't let others influence you (including any investigator conclusions)

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Perceptions Matter

- Consider your language – avoid "victim," "perpetrator" ("complainant" and "respondent" is safest), watch your "hes" and "shes"
- Do not make credibility inferences or conclusions based on status
- Consider what others would think, even if you believe you can overcome appearance of bias or conflict

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**PART 2:
Learning
the Case**



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Case File

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




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Our Scenario

Casey and Ryan do not dispute that the touching occurred

Ryan claims the touching was all consensual/ Casey disagrees

There are no witnesses to the behavior



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Our Scenario

Casey told a friend, Wei, right after the second incident what happened and Wei encouraged Casey to report it


After being charged, Ryan tearfully denied the allegations to Ryan's mom



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Our Scenario


No cameras covered either incident directly, but the students were seen on a hallway camera right after the second incident. They were walking arm in arm, cuddling, and laughing as they walked.



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Our Scenario

Neither student has ever been in trouble at school before for any similar behavior, although both have had some disciplinary incidents in the past.




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Our Scenario

Casey's story has been consistent throughout

Ryan seemed incredibly nervous in the initial interview and at first denied ever touching Casey. As the interviewer built rapport, Ryan acknowledged that the touching occurred but said it was consensual.



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PART 3: Written Q&A



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Individuals Involved



- Parties
- Parents/guardians of minor parties
- Each party's advisor (can be but is not required to be an attorney)

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NOTICE



- Send notice of right to submit written, relevant questions and follow up questions (email and U.S. mail)
- Provide timeframe for when responses are due (e.g., within 3 or 5 days of electronic delivery of notice)
- Notice can state that questions and follow-up questions:
 - Should be numbered
 - Should identify the name of the party or witness to whom it should be posed

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Questions Received

Review each question to determine whether it is:


Relevant & Respectful



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Relevant Evidence

Evidence that has value in proving or disproving a fact at issue and includes both inculpatory and exculpatory evidence



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Relevance

Fact or Issue in Dispute

- Facts that help prove or disprove an undisputed issue of fact are not relevant
- Questions about certain topics are never relevant under the Title IX rules (next slide)
- Questions that are duplicative of other questions or evidence are not relevant

Helps Prove or Disprove Issue

- Even if a fact or issue is in dispute, a question is not relevant if it does not “tip the scale” one way or the other in favor of or against the issue in dispute


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Relevance Exceptions

“Rape Shield”	}	Complainant’s sexual predisposition or prior sexual behavior (limited exceptions)
Treatment Records		Records by a physician, psychiatrist, psychologist, or similar professional in provision of treatment
Privileged Info		Attorney-client, physician-patient, priest-penitent, marriage, privilege against self-incrimination, etc.

UNLESS written consent from the impacted party or witness

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Relevant?

- **Inculpatory:** Evidence tending to make a disputed fact or issue *more likely to be true*
- **Exculpatory:** Evidence tending to make a disputed fact or issue *less likely to be true*

57

Respectful?

Cannot use profanity or irrelevant, ad hominem attacks

Harassing questions will not be tolerated

No written notice required, but recommend providing

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Notice of Non-Relevance

- Must explain the reason for finding a question not relevant
- Examples:
 - “Complainant’s Question #3 will not be forwarded to the party or witness because it seeks information protected by a legally recognized privilege”
 - “Respondent’s Question #3 will not be forwarded to the party or witness because it includes irrelevant personal attacks”

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Try & Try Again

- Not required to give parties an opportunity to restate their question
- If you do so, we recommend providing only one opportunity and a time-frame for submission (e.g., 2 days)

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Our Scenario

Question 1 (Ryan to Casey):
Isn't it true that you let Wei touch you the same way over the summer before we started dating?

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ATTORNEYS AT LAW

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

Relevant and Appropriate?

Yes

No

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Our Scenario

Question 2 (Casey to Ryan):
Ask Ryan to tell you about the ex they did this same thing to last year.

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Relevant and Appropriate?

Yes

No

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Our Scenario

Question 3 (Casey to Investigator):
I want you to ask the investigator why they didn't interview all my classmates like I asked to see if anyone saw anything.

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Relevant and Appropriate?

Yes

No


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Our Scenario

Question 4 (Decision-Maker to Investigator):

Why did you not interview all Casey's classmates as requested to see if anyone saw anything.



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Relevant and Appropriate?

Yes

No


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Our Scenario

Question 5 (Ryan to Casey):

Why don't you tell them about how you are on three different medications for being crazy and in therapy because you're a pathological liar?



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Relevant and Appropriate?

Yes


No

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Forwarding Questions

- Forward all relevant and respectful questions to the appropriate party or witness
- Include notification of when a response is required (e.g., within 3 days of electronic delivery of the question)




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Forwarding Answers

- Forward all answers to all parties
- Answers must be respectful
- Notice of right to submit limited, relevant follow-up questions within a certain time period (e.g., 2 days of electronic transmission of responses)



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Follow-Up Questions


- Relevant
- Respectful
- Limited to "Follow-Up"

Follow up: to follow with something similar, related, or supplementary (Merriam-Webster)

73

Repeat (and Repeat...)

- Forward all answers to both parties
- Answers must be respectful
- Provide notice of right to submit limited, relevant follow-up questions



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Follow-Up Question?

Initial Question:
When did it happen?

Answer:
Yesterday

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What time of the day did it happen?

Follow-Up

Not Follow-Up

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Who was present?



Follow-Up

Not Follow-Up

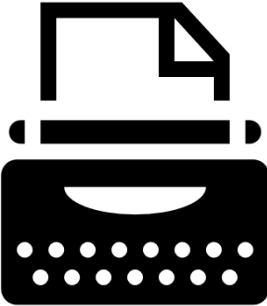
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PART 4: Written Determination




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**Title IX
Written Determination**



The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility containing specific requirements.



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Case File

- Formal Complaint
- Written Notice of Allegations
- Directly Related Evidence
- Party Responses to Directly Related Evidence
- Investigation Report
- Party Responses to Investigation Report
- Relevant Questions & Answers



80

WRITTEN DETERMINATION REQUIREMENT
NUMBER ONE


Identify the allegations potentially constituting sexual harassment



81

Our Scenario


The formal complaint alleges that Ryan Respondent (the “Respondent”) touched or rubbed Casey Complainant (the “Complainant”) in the genital area without consent and for purposes of sexual gratification on September 5, 2023, in the stands outside at lunch and on September 13, 2023, in the hallway at school.



82

WRITTEN DETERMINATION REQUIREMENT
NUMBER TWO

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



83

Procedural Steps

Notifications to the parties

Interviews with parties and witnesses

Site visits


Methods used to gather evidence

Hearings held

84

Procedural Steps

- Much of this information will be in the investigation report, but not all
- Must include all procedural steps in the decision-making process
- Ask the Title IX Coordinator for assistance finding missing steps




85

Our Scenario

The Complainant reported the conduct to the principal on September 8, 2023.

The Title IX Coordinator met with the Complainant on September 15, 2023, to discuss supportive measures and the formal complaint process.

The Complainant signed a formal complaint on September 16, 2023.




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Our Scenario

The Title IX Coordinator sent a notice of allegations on September 18, 2023.

The Title IX Coordinator assigned the investigator to the case and notified the investigator and parties on September 18, 2023.


The Title IX Coordinator verified no law enforcement or CPS involvement on September 18, 2023.



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Our Scenario

Repeat for all steps through the Q&A and written decision.



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WRITTEN DETERMINATION REQUIREMENT
NUMBER THREE

Findings of fact supporting the determination

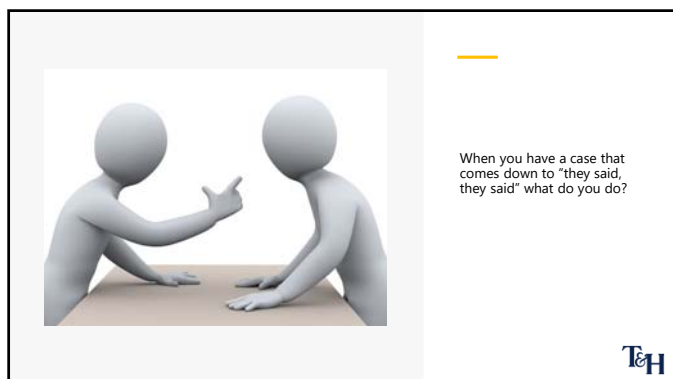


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Findings of Fact

- Identify the undisputed facts related to an issue
- Identify the first disputed fact related to an issue
- Explain your conclusion as to what happened with the first disputed fact
- Explain your reasoning for reaching that conclusion
- Move to the next disputed fact
- Decide the overall issue
- Repeat for any other disputed issues

90



91

In a case that is truly "they said, they said" what is the outcome (using preponderance of the evidence)

The educational institution cannot even investigate because there is no evidence	A
There must be a finding of "sufficient evidence" (in favor of the alleged victim)	B
There must be a finding of "insufficient evidence" (in favor of the alleged respondent)	C
There must be a finding of "inconclusive" (neither for nor against either party)	D

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92

50/50 is Very Rare

Very few cases end in 50/50

More common for a particular disputed fact to end in 50/50, but even that happens less than one might think


What tips the scale one way or another?

T&H

93



94



What is Credibility/Reliability?



In the investigative process, credibility refers to the process of weighing the accuracy and veracity of evidence. A credible witness has testimony worthy of belief.

95

Relevant vs. Credibility/Reliability

Relevant evidence tips the scale (even a feather).


Reliability goes to weight – it can impact how much the scale is tipped – a feather or an elephant.



96

Credible/Reliable ≠ Truthful

- Just because you don't find someone or something reliable does not mean it's not true or is a lie
- We all remember experiences differently and have different perspectives that shape how we view incidents
- An individual's experience is always valid, but that experience may or may not be sufficient to establish the fact or issue in dispute



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Assessing Credibility

According to the U.S. Department of Education's Office for Civil Rights


"Specialized legal training is not a prerequisite for evaluating credibility, as evidenced by the fact that many criminal and civil court trials rely on jurors (for whom no legal training is required) to determine the facts of the case including the credibility of witnesses."

"...[A]ssessing credibility based on factors such as witness demeanor, plausibility, and consistency are functions of common sense..."

But decision-makers must "show their work"




U.S. Department of Education
2020 Title IX Regulations



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Credibility Factors


- Inherent Plausibility
- Motive to Falsify
- Corroboration
- Demeanor
- Past Record



U.S. Equal Employment Opportunity Commission

EEOC Enforcement Guidance:
Vicarious Liability for Unlawful
Harassment by Supervisors (Jun.
18, 1999)


<https://www.eeoc.gov/eeoc/enforcement-guidance-vicarious-liability-unlawful-harassment-supervisors>




99

Credibility Factors

- Body Language & Demeanor
- Specific Details
- Inherent Plausibility
- Internal Consistency
- Corroborative Evidence



U.S. Department of Education 2020
Title IX Regulations



100

Corroboration & Consistency

- Corroborating and inconsistent evidence can be the "star witness" in cases
- Ask parties and witnesses for any evidence they think would support their position or contradict the other position




101


101

Corroboration

- Direct corroboration (eyewitnesses, documentary evidence)
- Secondary corroboration (outcry witnesses, diaries and notes from near the time)



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Internal Consistency	<ul style="list-style-type: none">• Too little<ul style="list-style-type: none">○ There is a difference between "normal" discrepancies and concerning ones○ There is a difference between irrelevant discrepancies and relevant ones○ Use repetition with witnesses regarding details that matter to identify relevant, concerning inconsistencies• Too much<ul style="list-style-type: none">○ Are the details <i>too</i> similar?○ Does the testimony seem rehearsed/memorized? Why might it sound that way?
	

103

Plausibility

Does the statement make sense?


Are there more likely alternatives based on the evidence?



104

Our Scenario


In our case, there were no witnesses. But what if Casey says two witnesses (Wei and Wynn) were in the stands and actively engaged in conversation with Casey and Ryan when the touching occurred on September 5?



105


Is it inherently plausible that the witnesses would not have seen the touching?

0%



Yes

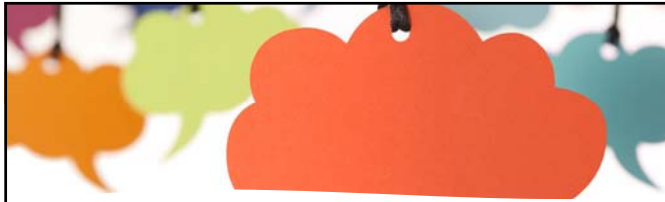
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No


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Source Opportunity


- How did the witness learn the information?
 - If it was firsthand, could the individual have seen/heard what they claim from where they were?
 - If they obtained the information from someone else, who? How did that person obtain the information? Could that individual have seen/heard what they claim from where they were?



107


Source Motive

- Did the witness have reason to lie (or, more likely, embellish)?
 - Friendships
 - Negative History
 - Impact on Witness (consider amnesty)




108

108



Consider the Source

- Corroboration can enhance reliability
- Consider the source of corroboration (same considerations)
 - Friendships
 - Negative History
 - Impact on Witness



109


A Different Scenario

Robin and Carson dispute whether they had a prior romantic relationship prior to an incident of alleged unwelcome sexual behavior.

Robin says Carson has been flirting with Robin a lot lately, but that Robin recently told Carson that they like someone else—Wei

Wei confirms that there is a mutual crush between Wei and Robin, but doesn't know anything about any history between Carson and Robin

Wynn refuses to answer any questions at all, but obliquely refers to "drama" between Carson and Robin in the past




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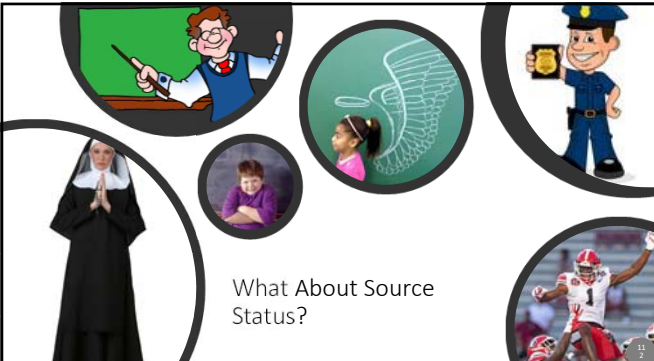
What factual finding will you make about whether Carson and Robin had a past relationship that impacted the report?

Insufficient evidence

Sufficient evidence



111



What About Source Status?

112

Rank these witnesses in order of believability (most believe to least believable)

A nun


A teacher

An administrator

A star athlete

A student with a disciplinary or criminal record

A police officer




113

Credibility and Bias

Do not get sucked into biased thinking when assessing credibility

- Bias for or against complainants (victim blaming) or respondents (assuming responsibility)
- Bias against individuals based on culture, background, religion, etc.




114

Credibility and Bias

Consider how a party or witness's culture, background, religion, or other factors may impact behavior during the process


- o Culture can impact what is considered sexual harassment
- o Culture can also impact how a person responds to behavior (e.g., unwelcomeness may not be shown)



115

Trauma & Credibility

- Be *trauma informed* not *trauma lenient*
- Do not make negative inferences against a party because of trauma justified responses
- But do not use trauma to “fill in the gaps” of evidence



116

WRITTEN DETERMINATION REQUIREMENT
NUMBER FOUR


Use “preponderance of the evidence” standard—more likely than not



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Standard of Evidence

- Austin ISD uses the “preponderance of the evidence” standard
- It is more likely than not (**greater than a 50% chance**) that something is true
- Applies to both findings of fact and the overall question of responsibility
- For findings of fact, ask if there is sufficient evidence to find that it is more likely than not that a disputed fact is true
- Once you have “found” all your facts, look at them as a whole to decide if it is more likely than not that a policy violation occurred




118

Our Scenario

Undisputed Facts:
There is no dispute that...

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



119

Our Scenario

Disputed Facts:
It is disputed whether...


Ryan knew that Casey did not want to engage in sexual activity with Ryan other than kissing.



120

Our Scenario

Evidence About Disputed Facts:
Casey said that Ryan knew that Casey did not want to engage in sexual activity with Ryan other than kissing. Casey said the two discussed it. Ryan says they did not ever discuss it.



121

Our Scenario


Evidence About Disputed Facts:
The parties reported their position on this disputed fact consistently to the investigator and all credibility factors weighed equally between the parties.



122

Our Scenario


Evidence About Disputed Facts:
Despite being asked, neither party presented any witnesses to whom they had said anything that would support or refute the claim.



123

Our Scenario


Evidence About Disputed Facts:
However, the Complainant stated that the Complainant welcomed the Respondent's touching and rubbing of the Complainant's behind during the second incident on September 13, 2023.



124

Our Scenario


Evidence About Disputed Facts:
That evidence corroborates, even if only slightly, the Respondent's position that the Complainant did not limit their physical activity to kissing alone.



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Our Scenario

Finding of Fact:
Based on the totality of the relevant evidence available, there is insufficient evidence to support the Complainant's claim that the Respondent was aware of limitations on their sexual behavior. That does not mean that the Complainant's necessarily consented to the conduct on the days in question. But I will not consider any knowledge by the Respondent of boundaries on touching as evidence of whether there was consent on the days in question.



126

Our Scenario

Repeat for all undisputed and disputed facts




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Our Scenario

Undisputed: Ryan touched Casey as alleged on September 5 (first incident).

Disputed: Whether the touching was consensual




128

Our Scenario

Undisputed: Ryan touched Casey as alleged on September 13 (second incident).


Disputed: Whether the touching was consensual



129

Our Scenario


What you Can't Consider Without Casey's Informed Consent:
Ryan's claim that Casey let another student engage in similar behavior to that which occurred between the parties.



130

Our Scenario


What you Can Consider:
Evidence from Ryan of conduct between Ryan and Casey in the past to show consent to the incidents in question—but consider "weight"



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Our Scenario

What you Can't Consider:
Any other evidence that is not "relevant"—keeping in mind the definitions and exceptions we discussed earlier.



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Don't Forget Our Relevance Exceptions

Unless you have written consent:

- Medical records
- Privileged information
- Information about the Complainant's sexual predisposition or prior sexual behavior ("rape shield")

For consent, use T&H Guidebook Document 36 – Authorization to Use Otherwise Irrelevant Information

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Our Scenario


Balanced Weight:
Both stories have been relatively consistent
Both parties told "outray" witnesses
No *relevant* incidents of past behavior or discipline



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Our Scenario


Be Careful With:
Casey's report after Ryan broke things off
Video showed Ryan and Casey walking arm in arm, cuddling, and laughing as they walked
Ryan's nervousness and initial reluctance to describe the touching to the investigator
Ryan *tearfully* denied the allegations to mom right after being charged



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Preponderance

- A 50ish/49ish case in favor of a disputed fact leads to a finding of "sufficient evidence that the fact occurred as alleged."
- A 51ish/49ish case against a disputed fact leads to a finding of "insufficient evidence that the fact occurred as alleged."



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WRITTEN DETERMINATION REQUIREMENT NUMBER FIVE

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



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Applying Code to Facts

If there is insufficient evidence of an essential element of an allegation, you must find insufficient evidence of sexual harassment under Title IX.

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Our Scenario


Because there is insufficient evidence that the Respondent's touching of the Complainant was unwelcome, I must find insufficient evidence of a violation of the District's code of conduct prohibiting sexual harassment prohibited by Title IX.



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Applying Code to Facts

- If there is sufficient evidence that some or all of the conduct, as alleged, occurred, the Decision-maker must consider whether the conduct *established* constitutes prohibited sexual harassment under Title IX.
- The Title IX Coordinator should have previously determined that the conduct alleged, if true, is covered by Title IX
- However, the written determination must include the analysis of the conduct *established*



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What Title IX Covers

1. "Title IX Sexual Harassment"
2. "in an educational program or activity"
3. "in the United States"

If yes to all: Prohibited by Title IX

If no to any: Not Prohibited by Title IX



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Remember from your Deputy Coordinator Training

Title IX Sexual Harassment Is....

- Unwelcome conduct
- Based on sex
- That:
 - Is one of the Title IX "Big Five" or
 - Creates a Title IX "Hostile Environment"

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Title IX Sexual Harassment


The Title IX "Big 5"

- Employee Quid Pro Quo
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking

&

Hostile Environment

Unwelcome conduct based on sex that is so severe, pervasive, and objectively offensive that it effectively denies equal access to the educational program or activity




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Our Scenario

Because the preponderance of the evidence establishes that Respondent touched the private body part of the Complainant without consent and for purposes of sexual gratification, there is sufficient evidence of fondling, which is a type of sexual assault prohibited by Title IX.

Because the preponderance of the evidence establishes that the conduct occurred at school, so occurred in a program or activity of the District.

Because the preponderance of the evidence establishes that the conduct occurred against a person in the United States.



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WRITTEN
DETERMINATION
REQUIREMENT
NUMBER SIX


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



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Result of Allegation



- A determination regarding responsibility
- The reasons for the determination
- A list of sanctions imposed on the respondent
- Whether remedies provided to the complainant (do not list; communicate privately to the complainant)



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What About FERPA?

- OCR believes that schools should share the result as to each allegation including a list of sanctions because sanctions "always directly impact the victim" and so are permitted under FERPA
- Remedies do not directly affect the respondent so should be communicated separately to the Complainant




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Our Scenario

Result of the Allegation


Because the grievance process established that the Respondent engaged in fondling of the Complainant at school, I find sufficient evidence to support the allegation and establish a violation of the District's Title IX Sexual Harassment policy. Based on my finding, I recommend that the Respondent be expelled. Remedies will also be provided to the Complainant, which will be communicated to the Complainant separately.



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WRITTEN
DETERMINATION
REQUIREMENT
NUMBER SEVEN


**Provide the
written
determination to
the parties
simultaneously**



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WRITTEN
DETERMINATION
REQUIREMENT
NUMBER EIGHT

**Decision must
contain the
process for
appeal**



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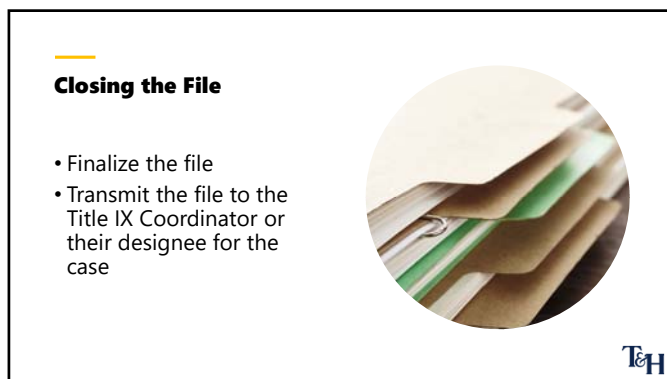


**PART 5:
Closing the
File**




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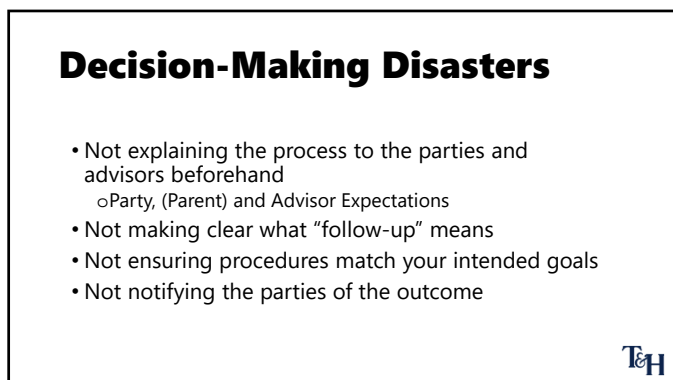
Closing the File

- Finalize the file
- Transmit the file to the Title IX Coordinator or their designee for the case



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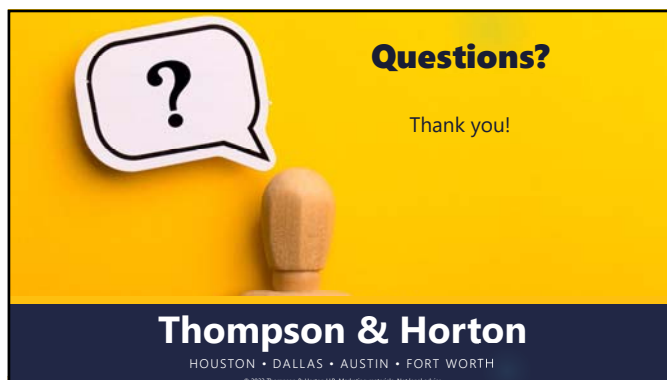


Decision-Making Disasters

- Not explaining the process to the parties and advisors beforehand
 - Party, (Parent) and Advisor Expectations
- Not making clear what “follow-up” means
- Not ensuring procedures match your intended goals
- Not notifying the parties of the outcome

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Questions?

Thank you!

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