

**HIGHER ED TITLE IX  
INFORMAL RESOLUTION  
FACILITATOR TRAINING  
FOUNDATIONS & PRACTICUM**

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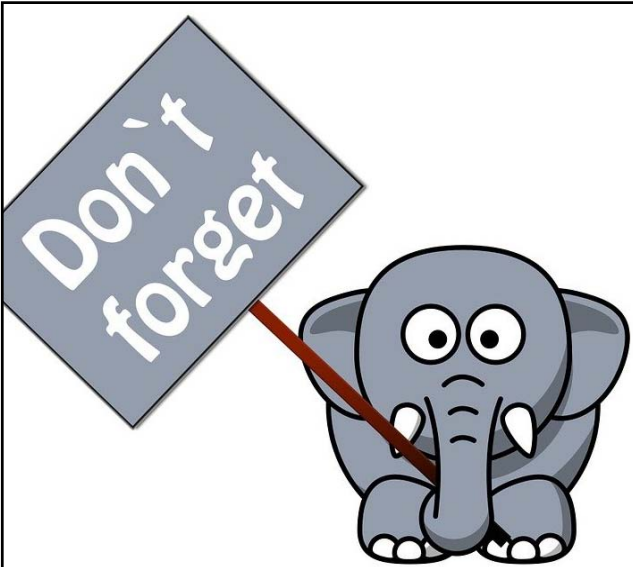


# Foundations




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## Remember

REFERENCES TO A PARTY  
INCLUDE A MINOR  
PARTY'S  
PARENTS/GUARDIANS



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# How Did We Get Here? (To the Informal Resolution, That Is)



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## Do You Use Title IX?



Is Title IX sexual harassment alleged to have occurred?



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## Do You Use Title IX?



Is Title IX sexual harassment alleged to have occurred?



Did the harassment occur in an education program or activity?

7

## Do You Use Title IX?



Is Title IX sexual harassment alleged to have occurred?



Did the harassment occur in an education program or activity?



Was it in the United States?

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## Do You Use Title IX?

<input checked="" type="checkbox"/>	Is Title IX sexual harassment alleged to have occurred?
<input checked="" type="checkbox"/>	Did the harassment occur in an education program or activity?
<input checked="" type="checkbox"/>	Was it in the United States?

**Title IX  
Grievance  
Process**

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## Do You Use Title IX?

<input checked="" type="checkbox"/>	Is Title IX sexual harassment alleged to have occurred?
<b>NO</b>	Did the harassment occur in an education program or activity?
<input checked="" type="checkbox"/>	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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## Refresher: What is Title IX Sexual Harassment?

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## 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”
- ▶ In an “Education Program or Activity”
- ▶ Against a Person “in the United States”

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## Unwelcome Conduct

- ▶ Not solicited or invited, and the target considers it undesirable or offensive
- ▶ Acquiescence—even willing participation—or the failure to complain or report the conduct does not always mean the conduct was welcome
- ▶ Conduct welcomed on one occasion can be unwelcomed on a subsequent occasion
- ▶ Whether conduct is “welcome” can be impacted by age, disability, relationships, culture, and intoxication



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- ▶ Against a Person “in the United States”



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# Based on Sex

- ▶ “Sexual”
- ▶ “Sex-based”
  - Based on gender (e.g., stereotypes of women’s roles)
  - Based on sexual orientation
  - Based on gender identity



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# Title IX Sexual Harassment Is....

- ▶ Unwelcome conduct
- ▶ **Based on sex**
- ▶ That:
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## Reminder: “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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## #2 of the “Big 5”

### Sexual Assault (Clery Definition)

- ▶ **Rape:** Any act of vaginal or anal penetration, however slight, with any body part or object, or oral genital contact without consent
- ▶ **Fondling:** Touching of the private body parts of another person for the purpose of sexual gratification, without consent (above or under clothing)
- ▶ **Incest**
- ▶ **Statutory Rape**



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## What is Consent?

- ▶ “Consent” comes into play in sexual assault cases, including those involving fondling
- ▶ Consent is not defined by OCR/the 2020 Title IX rules
- ▶ Must be defined in your policies/procedures



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## #3 of the “Big 5”

### Domestic Violence (VAWA Definition)

- ▶ Felony or misdemeanor crimes of violence
- ▶ By
  - A current or former romantic partner
  - Spouse
  - Former spouse
  - Intimate partner
  - Person who shares a child
  - A person similarly situated to a spouse
  - An adult against a person protected under domestic or family violence laws of the jurisdiction



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## #4 of the “Big 5”

### Dating Violence (VAWA Definition)

- ▶ Violence committed by a person who has been in a romantic or intimate social relationship with the victim
- ▶ Can include sexual, physical, emotional, or psychological violence
- ▶ Consider the complainant’s description of the length of the relationship, the type of relationship, and the frequency of the interaction



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## #5 of the “Big 5” Stalking (VAWA Definition)

- ▶ A course of conduct based on sex (2+ times)
- ▶ Directed at a specific person
- ▶ That would cause a reasonable person to:
  - Fear for the person’s safety or
  - Fear for the safety of others or
  - Suffer substantial emotional distress
- ▶ Can be direct or indirect



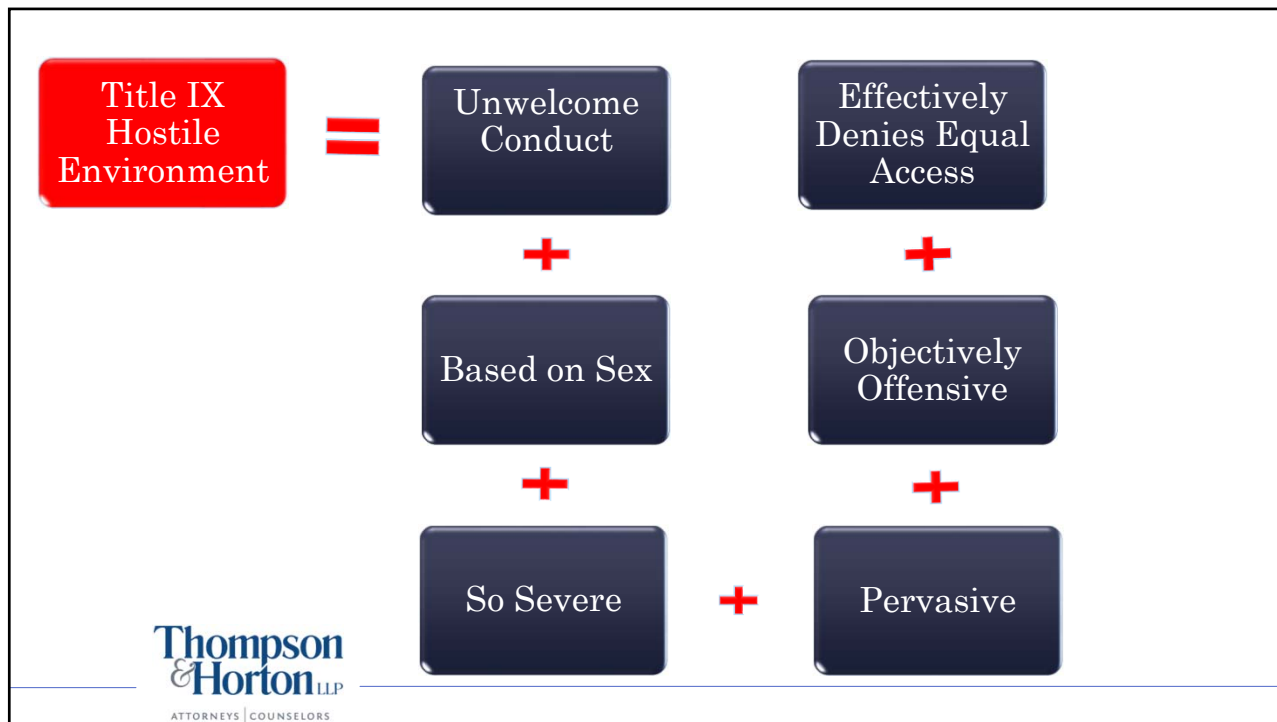
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## “Title IX Sexual Harassment”

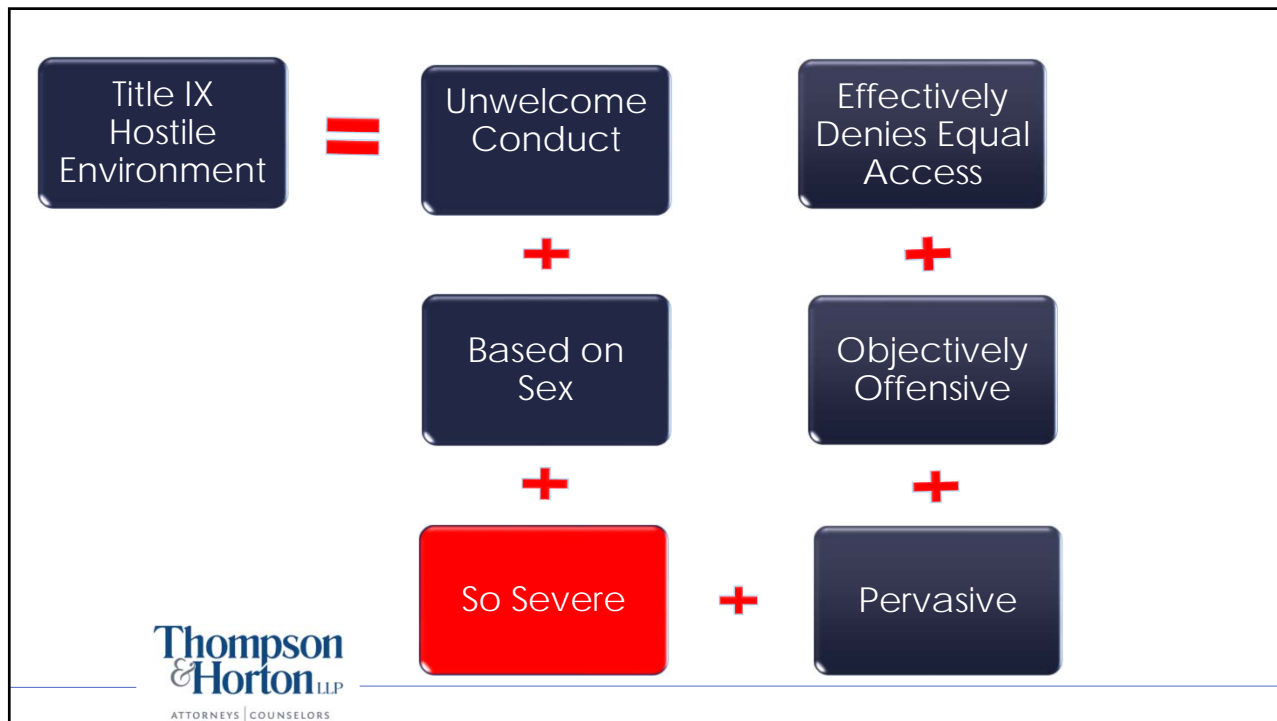
The Title IX “Big 5” OR Title IX “Hostile Environment”



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# Dictionary Definition

## *“Severe”*

- ▶ Very bad, serious, or unpleasant; causing a lot of physical pain or suffering; very harsh (Merriam-Webster)
- ▶ Strict, austere or intense with disastrous consequences. (Black's Law Dictionary)



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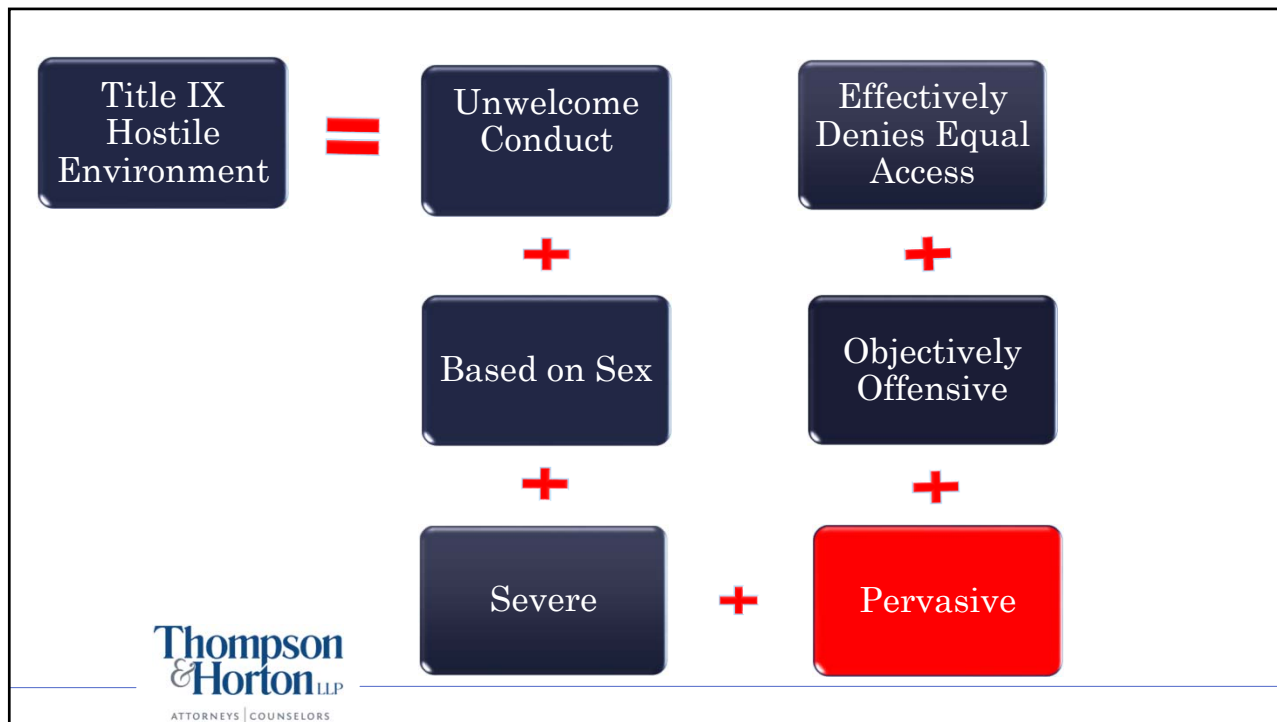
# Case Law Definitions

- ▶ “Severe” means something more than just juvenile behavior among students, even behavior that is antagonistic, non-consensual, and crass.
- ▶ Simple acts of teasing and name-calling are not enough, even where these comments target differences in gender.

Kollaritsch v. Michigan State Univ. Bd. of Trustees, 944 F.3d 613, 620 (6th Cir. 2019), cert. denied, 141 S. Ct. 554, 208 L. Ed. 2d 175 (2020)



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# Dictionary Definition

***“Pervasive”***  
Spread over a large area, either metaphorically, or in a literal manner. For instance, rumors can be quite pervasive amongst people. (Black’s Law Dictionary)

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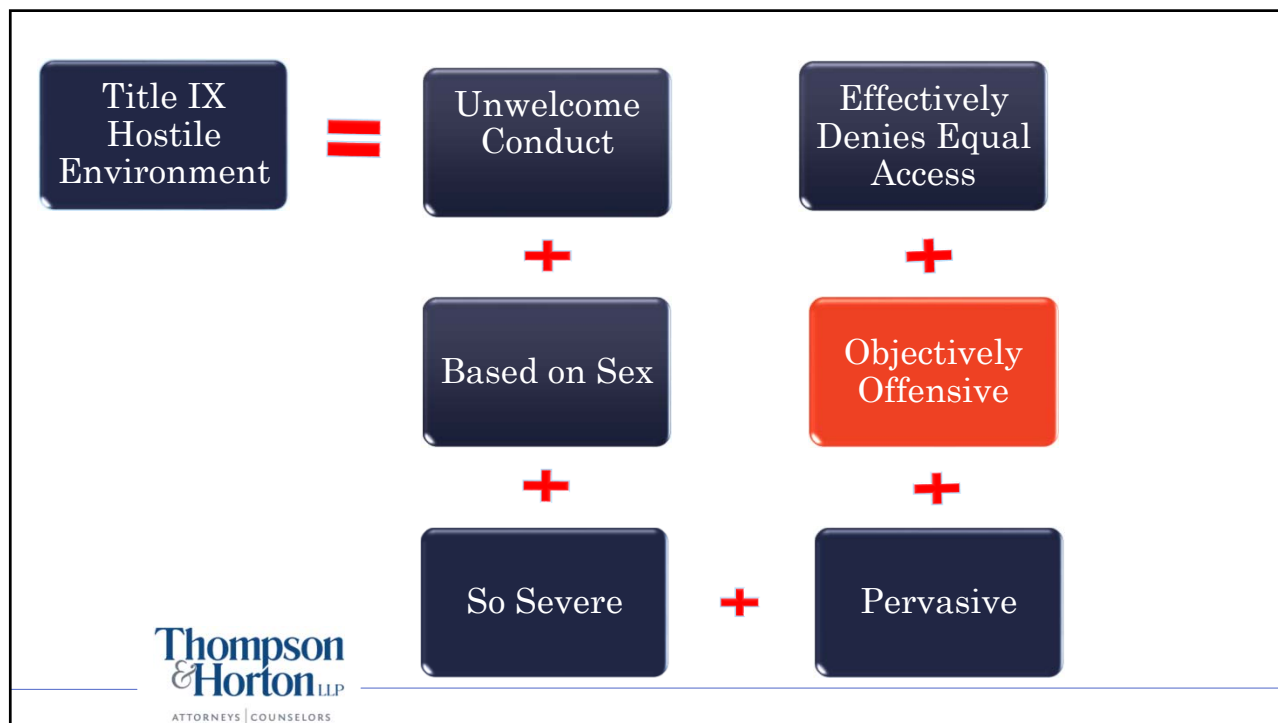
# Case Law Definitions

- ▶ “Pervasive” means “systemic” or “widespread.” For sexual harassment under Title IX, it also means multiple incidents of harassment; one incident of harassment is not usually enough.
- ▶ Most single incidents could be sufficiently severe that it would result in the articulated injury but a single incident would normally fall short of Title IX's requirement of “systemic” harassment.

Kollaritsch v. Michigan State Univ. Bd. of Trustees, 944 F.3d 613, 620 (6th Cir. 2019), cert. denied, 141 S. Ct. 554, 208 L. Ed. 2d 175 (2020)



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# Dictionary Definition

## *“Objectively Offensive”*

- ▶ “Objective”: Existing independently of perception or an individual's conceptions (Reverso)
- ▶ “Offensive”: Unpleasant or disgusting, as to the sense (Reverso)



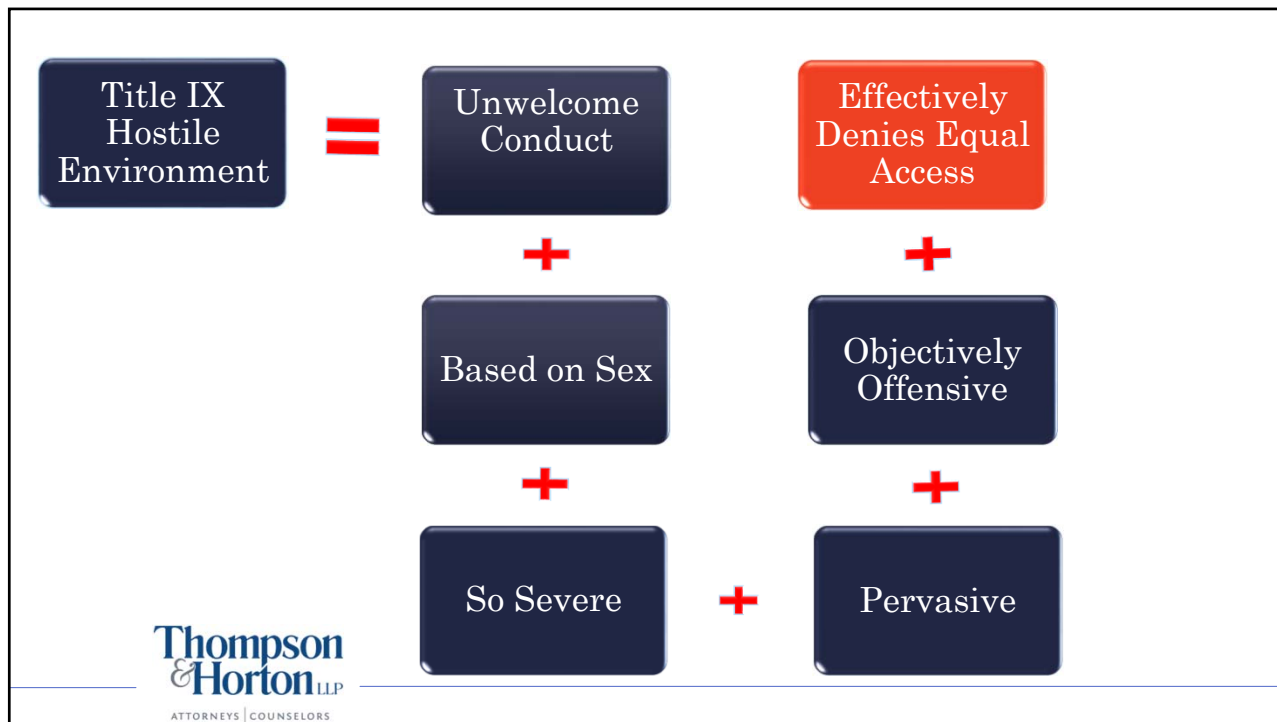
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# Case Law Definitions

- ▶ “Objectively offensive” means behavior that would be offensive to a reasonable person under the circumstances, not merely offensive to the alleged victim, personally or subjectively.
- ▶ Consider the constellation of surrounding circumstances, expectations, and relationships, including, but not limited to, the ages of the harasser and the alleged victim and the number of individuals involved.
- ▶ The alleged victim's perceptions are not determinative. The objective offensiveness is to be judged by reference to a reasonable person of the same age at whom sexually harassing conduct was aimed.



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# Effective Denial

Would a reasonable person in the alleged victim's position be effectively denied equal access to education compared to a similarly situated person who did not suffer the alleged sexual harassment

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# Effective Denial

Examples may include:

- ▶ Skipping class to avoid a harasser
- ▶ A decline in a student's grade point average
- ▶ Difficulty concentrating in class
- ▶ A student who quits a sports team but carries on with other school activities following sexual harassment by teammates



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# Effective Denial of Equal Access

- ▶ No concrete injury is required to prove an effective denial of equal access
- ▶ A complainant need not have already suffered a loss of education
- ▶ Does not require that a person's total or entire educational access has been denied



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## Education Program or Activity



The sexual harassment must occur within the educational program or activity

- Includes situations where conduct occurs as part of the educational institution's "operations"
- "Includes locations, events, or circumstances over which the [educational institution] exercised substantial control over both the respondent and the context in which the sexual harassment occurs"

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## In the United States

- ▶ The Title IX rules do not apply extraterritorially (such as study abroad programs or Spring Break abroad)
- ▶ As with any other conduct that falls outside Title IX, other code of conduct provisions can be used to address such conduct
- ▶ Support, support, support



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## Overview: T9 SH Grievance Process

For any Title IX Sexual Harassment in a program or activity and in the United States of which the school has actual knowledge, the Title IX Coordinator or their designee must

- **Step ½:** Contact Complainant (Intake)
- **Step 1:** Hold a “supportive measures meeting” with the Complainant
- **Step 2:** Consider if emergency removal/administrative leave warranted

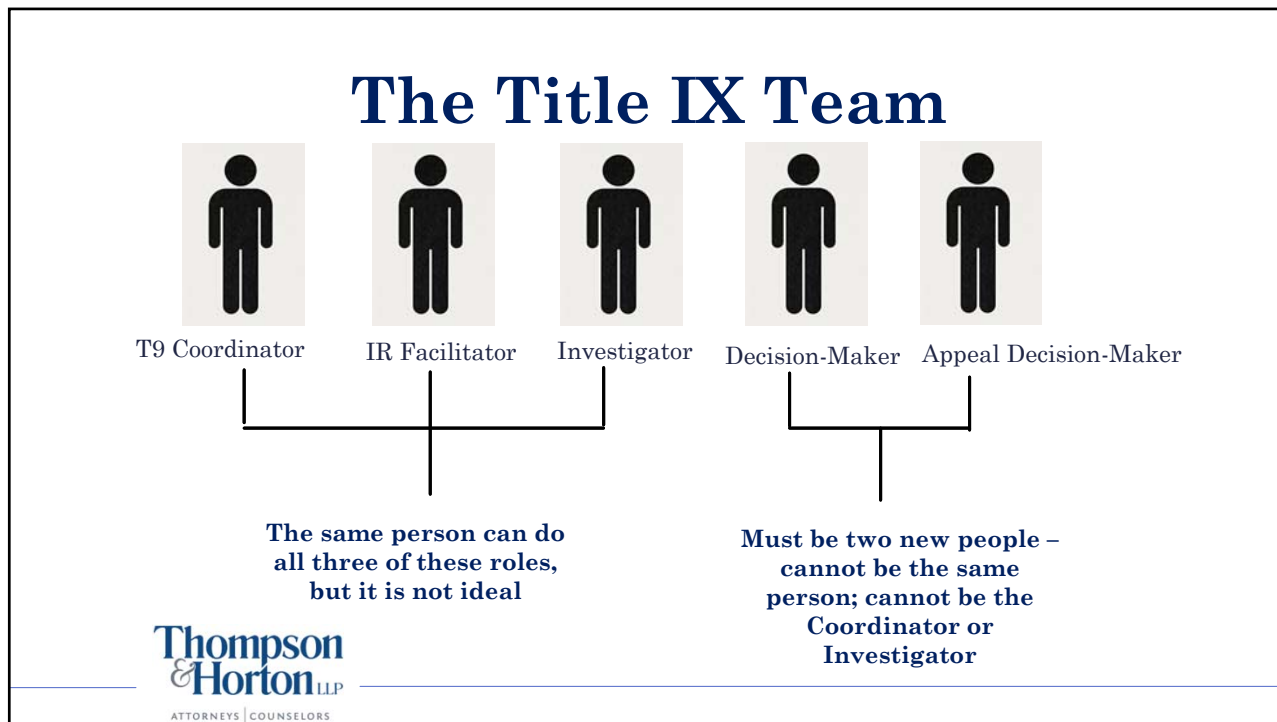
Only if a Title IX Formal Complaint is filed or signed by the Title IX Coordinator or designee

- **Step 3:** Notice of Allegations
- **Step 4:** Consider if dismissal is required or warranted
- **Step 5:** Informal Resolution (in some cases)
- **Step 6:** Investigation
- **Step 7:** Decision-Making Process
- **Step 8:** Appeal

NOTE: ALL STEPS include strict detailed requirements from the Title IX rules

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# Polling Access

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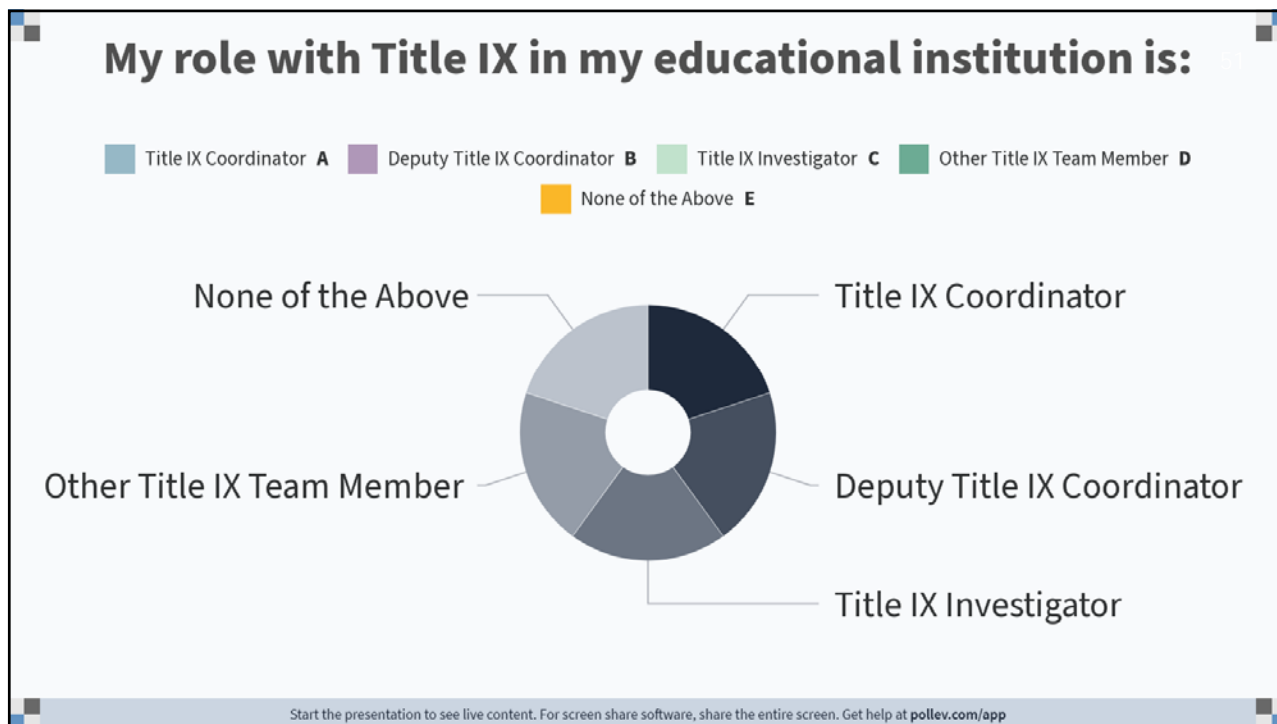
**Option One**  
Use this QR code

**Option Two**

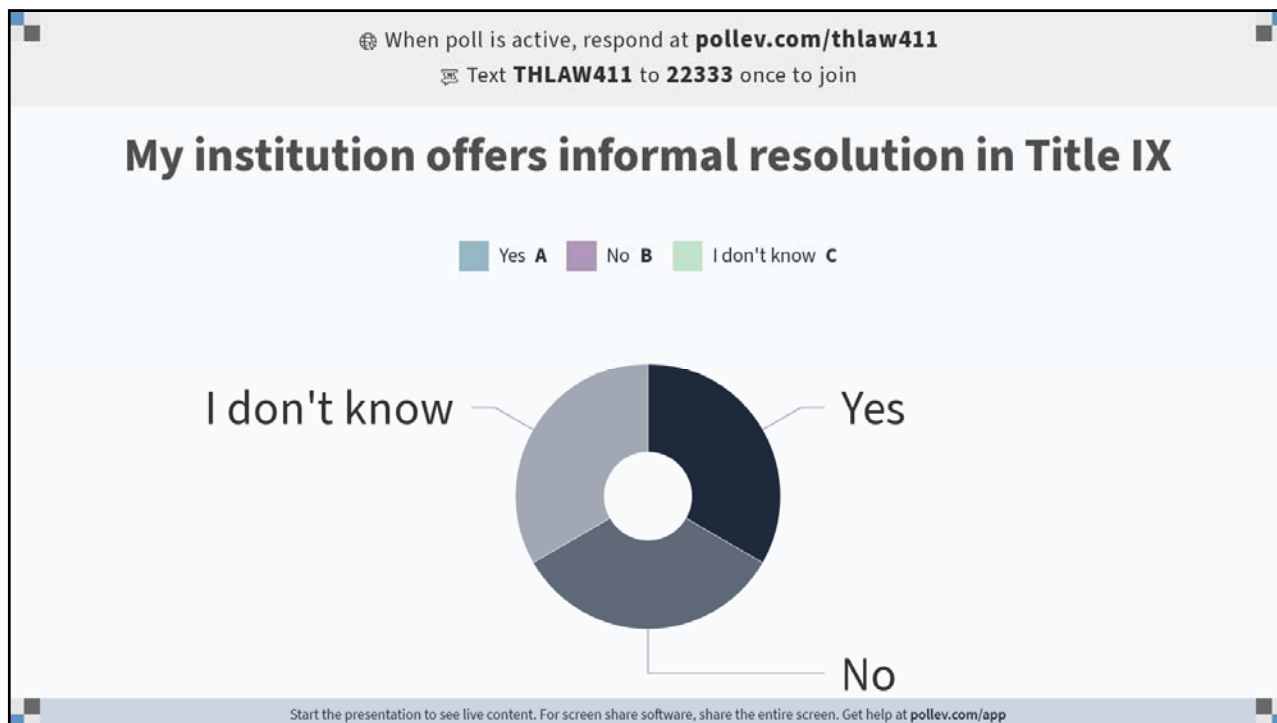
- ▶ Go to Pollev.com on any browser
- ▶ Accept or dismiss cookies
- ▶ Enter THLAW411 as the Username
- ▶ Skip when asked to enter your name

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# Informal Resolution Basics



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# Informal Resolution

A voluntary, structured interaction  
between complainant(s) and  
respondent(s) to resolve the Title IX  
allegations without an investigation,  
hearing, or appeal.

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# Potential Benefits

Can lead to a shorter process

Cross-examination not required

Can increase confidentiality



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# Scenario

Students Casey and Ryan were formerly dating. Casey reports that Ryan sexually assaulted Casey, including penetration without consent, on campus during the relationship.



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# Scenario

Both parties have expressed interest in informal resolution.



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## Should you offer Informal Resolution?

Yes, if requested and both parties agree

Yes, if we choose to offer IR for allegations of sexual assault

No, we should not use IR for allegations of sexual assault because of the risk of trauma to the Complainant

No, we cannot use IR for allegations of sexual assault because of the risk of trauma to the Complainant

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# Obama OCR

“Grievance procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints” but “in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.” (2011 Guidance)



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# Trump OCR

Informal resolution can be used in all cases so can be used for sexual assault cases (2017 Q&A)



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# 2020 Title IX Rules

Put some limits on informal resolution, but not related to sexual assault; so, IR can be used for sexual assault cases that meet other rule requirements



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# Scenario

Cleo is a student in Professor Reed's class and claims that the professor regularly makes highly sexualized comments in class, making Cleo uncomfortable.

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## Should the school district offer informal resolution?

Yes, because the 2020 rules allow informal resolution and it is efficient and effective

Yes, but only if the school chooses to offer informal resolution in similar cases

Yes, but only if the parties are given information about the allegations, grievance process, and IR process and agree

No, because the Respondent is an employee

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# Efficient & Effective

- ▶ Flexibility
- ▶ Speed
- ▶ Restorative Nature
- ▶ Similar Outcomes
- ▶ Mutual Agreement (Not Zero Sum)

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# Voluntary

- ▶ Educational institutions **can** offer IR but are not **required** to offer it



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# Informed Consent

T&H Guidebook IR Notice Form



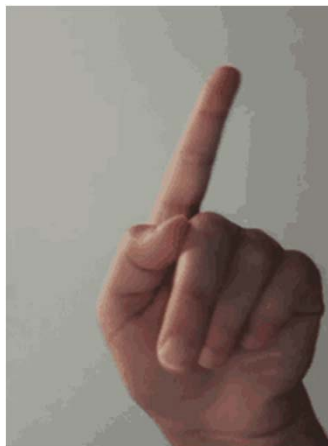
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# IR No Nos

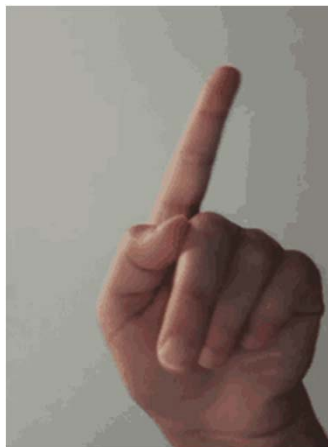
**May not** offer informal resolution if an employee is the respondent



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# IR No Nos

**May not** offer an informal resolution process unless formal complaint is filed or signed



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# IR No Nos

**May not** require parties to participate in an informal resolution process



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# So, When Do We Offer IR?

- ▶ The institution decides!
- ▶ Best practice is to include this information in grievance or IR procedures

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# To IR or Not to IR

Consider if you want to allow it for:

- ▶ sexual assault allegations
- ▶ dating violence allegations
- ▶ if Complainant feels pressured into using it



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# Trauma & Informal Resolution

## Trauma Concerns

Informal Resolution can force parties into a situation that is re-traumatizing

## Potential Benefits

Informal Resolution can promote:

- ✓ Empowerment
- ✓ Recognition
- ✓ True Resolution

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# Consider

- ▶ Identify in procedures or guidelines any situations other than employee-on-student conduct for which IR is “off limits”?
- ▶ For other cases, who decides whether IR is appropriate (Title IX Coordinator?) and what factors do they consider?



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# Some Potential Factors

- ▶ Severity of possible sanction (suspension or expulsion/termination)
- ▶ Nature or severity of the alleged conduct
- ▶ Whether there is an ongoing risk of harm
- ▶ Whether the Respondent is a repeat accused
- ▶ Whether the parties will participate in good faith
- ▶ Whether the parties will comply with terms in good faith



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## Consider These Cases

Student Cole reports student Remi for sexual harassment. Remi is a **teacher's pet** who regularly volunteers to help and who is **much loved** in the community.

Student Cole reports student Remi for sexual harassment. Remi is a **black sheep** and regularly challenges authority and has **many enemies** in the community.



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## Notice & Consent

- ▶ The educational institution can offer IR *or* either party can request it
- ▶ If the educational institution offers, notify both parties and get their consent at the same time
- ▶ If a request is received from one party, notify the other party; you may also still need to get consent from the requesting party if not clearly given in the request



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## Notice & Consent

- ▶ Allegations in formal complaint
- ▶ Notification that it will only proceed with parties' voluntary written consent and cooperation



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# Notice & Consent

- ▶ Requirements for informal resolution process, including circumstances where informal resolution precludes parties from resuming Grievance Process for formal complaint based on or arising from same allegations



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A screenshot of a poll interface. At the top, it says "When poll is active, respond at pollev.com/thlaw411" and "Text THLAW411 to 22333 once to join". The main question is "When can the Title IX process resume after the IR process has begun?". Below the question are three options: "Anytime", "Anytime before an agreement is reached", and "Never". At the bottom, there is a footer: "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](https://pollev.com/thlaw411)  
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**When can the Title IX process resume after the IR process has begun?**

Anytime

Anytime before an agreement is reached

Never

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When poll is active, respond at [pollev.com/thlaw411](https://pollev.com/thlaw411)  
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## What happens if a party violates the IR agreement terms?

Nothing

Whatever is dictated  
in the agreement

The Title IX process  
begins again

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# Notice & Consent

- ▶ Consequences resulting from participation, including records maintained/possibly shared

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# Scenario

After suggesting IR, the Respondent asks if the information shared during the process will make their way back to the investigation and decision-making process should informal resolution fail.



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## Will the information shared in IR get back to the investigation process?

No, because all information shared in informal resolution must be confidential

No, but only if the parties agree that the information shared is confidential

No, but only if the institution's policy says the information shared is confidential

Yes, we cannot offer confidentiality as the directly related evidence must include the IR information

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# Notice & Consent

- ▶ Must obtain consent in writing from the parties before beginning IR



# Scenario

You reach out to a minor student Complainant and their parents as the first step in your informal resolution mediation process. You introduce yourself, describe the process, and ask if they have any questions. They have none. After the phone call ends, the Complainant emails you the following:

*I don't really want to do this; my parents are making me. The Respondent deserves to be expelled and I know that can only happen if there is an investigation.*



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## Who must give voluntary consent to participate in IR?

- The minor student
- The minor student's parent
- Both the minor student and the student's parent

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## Steps in Informal Resolution Process

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# Step #1: Assign

Upon receipt of Consent from all parties,  
Title IX Coordinator will assign Informal  
Resolution Facilitator

- Recommended that it not be the Title IX Coordinator or Investigator
- Highly recommended that it not be an initial or appellate decision-maker



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# IR Facilitator

- ✓ Must be well trained on informal resolution processes
- ✓ Must be free from conflicts of interest or bias
- ✓ Must not pre-judge

**All Title IX Team Members Should be Trained  
on Bias/Conflicts of Interest**



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# IR Facilitator

- Rules do not define “bias,” “conflict of interest” and pre-judge.
- Department of Education encourages recipients to use an objective, common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists
  - Ask whether a reasonable person would believe bias exists



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# Bias

Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.

Oxford Languages



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# Conflict of Interest

A situation in which a person is in a position to derive personal benefit from actions or decisions made in their official capacity.

Oxford Languages



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# Prejudgment

An opinion about a situation or a person that is formed before knowing or considering all of the facts.

Cambridge English Dictionary



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# Scenario

You are assigned to handle an informal resolution involving Cao and Reece. They are both students and the claim is that Reece made inappropriate sex-based comments to Cao over the first few months of the academic year. As you are reviewing the file, you realize that you know Cao's mother. She volunteers for a community event for which you sit on the board. Last year, she was on the team that you oversaw for the event.



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**Is there an impermissible bias/conflict of interest?**

Yes No

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# Scenario

The night before the mediation, you review all of the evidence provided to prepare for success. However, you also look up the parties on Facebook and sees one of the parties has posted racist and anti-Semitic language all over their Facebook page. You are irate and thinks to yourself, “I really don’t think I can even look this kid in the eye.”



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## What should you do?

Nothing--if you have been trained to overcome biases it's not an issue

Report the issue to the parties and ask for their approval to continue as the facilitator

Report the issue to the T9C to decide whether you can continue

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# Avoiding Bias

- ▶ Do not rely on sex stereotypes such as:
  - Women are “asking for it” based on actions or clothing
  - Men cannot be sexually assaulted
  - Women often decide they were assaulted after the fact due to regret or embarrassment
  - Men are more likely to be sexual aggressors
- ▶ Consider intersection of sex stereotypes with potential bias based on race, ability, sexuality, and gender identity



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# Avoiding Conflict of Interest

- ▶ Consider any benefit or burden that would impact you based on the outcome of the decision
- ▶ Educational institution has flexibility to choose informal resolution facilitator
  - Can use an employee, even one with a role such as 504 or ADA Coordinator
  - Can use an individual with a history of working in certain fields
  - Consider perception based on role, not just whether there really is a conflict



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# Avoiding Pre-Judgment

- ▶ Each case is fact-specific
- ▶ Keep an open mind
- ▶ Listen to facts presented
- ▶ You are not an advocate for either party, even if you believe one is right



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## Perceptions Matter

- Consider your language – avoid “victim,” “perpetrator” (“complainant” and “respondent” is safest)
- 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 of interest



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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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## Step #2: Identify Method

- ▶ Can be mediation or other informal process
- ▶ May or may not include in-person meetings



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When poll is active, respond at [pollev.com/thlaw411](https://pollev.com/thlaw411)  
Text **THLAW411** to **22333** once to join

**I believe face-to-face mediation is appropriate in sexual assault cases.**

True False

Start the presentation to see live content. For screen share software, share the entire screen. Get help at [pollev.com/app](https://pollev.com/app)

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# Remember

- ▶ Parties may have advisor (attorney or non-attorney)
- ▶ Restrictions okay if equally applied
- ▶ Whatever method is used must be reasonably prompt

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## Step #3: Resolve

- ▶ Hold the informal resolution
- ▶ Because “shuttle diplomacy” mediation is the most common type of informal resolution used, we will discuss that method here



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## Mediation Steps



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# Prepare



109

# Introduce



110

# Listen



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# Listen

- ▶ Parties may present arguments, written statements, and other evidence to Informal Resolution Facilitator
  - Maintained by educational institutions
  - May be shared with Title IX Coordinator, investigator(s), decisionmaker(s), or appeal officer(s)
    - Ensure parties understand this from the beginning

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# Listen

- ▶ Prompting questions are okay
  - “Why are we here?”
  - “Tell me more about...”
  - “Help me understand...”
- ▶ Resist urge to fill the silence
- ▶ Reasonable & neutral sympathy is okay
  - “I can tell this is hard for you”
  - “I’m sorry this is difficult”



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# Suggest



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## Be Open to Suggestions

- ▶ Do not shut down any ideas – write them all down
- ▶ Discuss pros/cons and possibility of solution working
- ▶ Suggest, but don't advocate
- ▶ If a party refuses to make further offers, ask questions to understand why



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## Suggestion Language

- ▶ “What terms would help you reach a resolution in this case?”
- ▶ “I want to provide some options to consider, but these are just suggestions to help get/keep the conversation going.”
- ▶ “The other party offered [explain], what is your response?”



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# Broker



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## Step #4: Agree

- ▶ If parties reach mutual agreement to resolution, they must memorialize agreement and obtain signatures from all parties; you can help
- ▶ Formal Title IX Grievance Process does not proceed
- ▶ Final and cannot be appealed through Grievance Process

**If parties cannot reach mutual agreement, proceed with formal Grievance Process**

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# Potential Remedies

- ▶ Counseling
- ▶ Education
- ▶ Mutual avoidance via
  - no-contact agreement
  - class schedule or passing time/site adjustments
- ▶ Often not disciplinary; but can be

**Bottom Line: it depends on  
the specific nature of the  
case**



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# Timeframes

- ▶ During informal resolution, time frames for formal Grievance Process will be placed on hold
- ▶ Will resume if resolution is not reached



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# Withdrawal

- ▶ At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
- ▶ Title IX Coordinator will notify other party



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# Be Prepared

- ▶ Review all relevant information and evidence prior to mediation
- ▶ But do not predetermine outcome
- ▶ Have relevant documents and evidence present



123

# Set Ground Rules

- ▶ Consider developing written information regarding the process and ground rules for informal resolution session
- ▶ Have all parties read and sign



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## Mutually Agreeable Time and Place

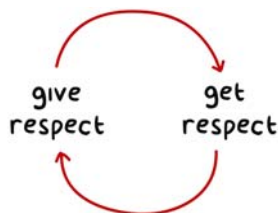
- ▶ Mutually agreeable time and place
- ▶ Begin early if possible
- ▶ Not close proximity to another mediation
- ▶ Neutral, comfortable location
- ▶ No privacy/confidentiality concerns



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## Respect All Parties

- ▶ Equal treatment for all parties
- ▶ Cultural sensitivity
- ▶ Understand emotions are high & acknowledge feelings



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# Inspire Trust

- ▶ Ensure confidentiality (where possible)
  - Be transparent when not possible
- ▶ Sincerity and fairness



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# Be Approachable

- ▶ Friendly yet firm
- ▶ Empathetic yet impartial
- ▶ Listen carefully – cues
- ▶ Convey sense of optimism



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# Remain Impartial

- ▶ Commitment to aid all parties
- ▶ Avoid accusatory language/placing blame on any party during discussions
- ▶ Do not invest emotionally
- ▶ Stay objective; focus on facts
- ▶ No consideration of external factors



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# Remain Impartial

- ▶ Remind that you do not have material interest in outcome
- ▶ Be consistent
- ▶ Communicate effectively
- ▶ Transparency



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# Be Inclusive

- ▶ Allow both sides to be fairly represented
- ▶ Communicate with any party necessary to address conflict
- ▶ Do not allow advisors (or parents) to steamroll process



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# Focus on Resolution

- ▶ Encourage parties to not react defensively
- ▶ Focus discussion on possible solutions as opposed to “rehashing” defensive statements or explanations

**SOLVED**

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# Prepare

- ▶ Formal Complaint
- ▶ Written Notice of Allegations
- ▶ Any Directly Related Evidence Gathered So Far
- ▶ Any Other Communications with the Parties



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# Initial Report

Student Wallis said a friend, freshman student Cameron, told Wallis that a sophomore student in their Biology class, Riley, had been sending inappropriate email messages to Cameron. Wallis encouraged Cameron to report, but Cameron refused.

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# Intake

Cameron says the messages came via social media, school email accounts, and in-person. They began with requests for dates, but soon evolved into comments about Cameron's clothing choices, their "obvious" desire for Riley, and incessant requests for connection – even after Cameron asked Riley to stop and blocked them on social media. Cameron said the semester is almost over and hopes to not have any classes with Ryan after this, and so is initially not interested in filing a formal complaint.



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# Formal Complaint

**To:** Title IX Coordinator

**From:** Cameron Complainant

**Re:** Formal Title IX Complaint

I recently learned that Riley Respondent has been doing the same thing to my friend, Carson. I also learned that Riley is involved in theater, which means that if I make the spring play, I'll still have to see them. I am nervous about the investigation and hearing process, but have decided to file a formal complaint after all. I am really concerned about this disturbing pattern of behavior and that I won't be able to fully enjoy my college experience if I have to worry about interacting with them in theater productions.



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## Intake #2: Carson

Carson says Riley also engaged in a pattern of escalating behavior with her, sending messages that increased in frequency and urgency, and became more sexually explicit over time. However, Carson has largely been able to avoid Riley and is not interested in pursuing a formal complaint.



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## Notice of Allegations

On [dates], Riley Respondent engaged in unwelcome sex-based conduct toward Cameron Complainant, sending messages via the college's email and messaging system that included sexual flirtation and advances, propositions or requests for sexual activity, verbal abuse of a sexual nature, and suggestive comments, even after the Complainant asked the Respondent to stop.



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## Brainstorm: Introductions

The Title IX Coordinator thinks this would be a good case for informal resolution and has asked you to talk to the Complainant & Respondent to explain the IR process and see if you can get both parties to consent.



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## Brainstorm: Introductions

What topics do you need to cover?



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## Brainstorm: Introductions

What questions do you anticipate from the parties?



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## More About the Complainant

- ▶ It is very important to Cameron that they avoid an investigation against someone with whom they expect to interact regularly over the next few years.
- ▶ Cameron is very concerned about confidentiality, including:
  - ▶ Whether they can request that information you share with the IR facilitator not be shared with Riley?
  - ▶ Whether there will be consequences if Riley violates confidentiality.
- ▶ Cameron is concerned about enforcement of the agreement.
- ▶ Cameron is concerned about Carson's role and whether they have to agree on remedies to get them.



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## More About the Respondent

- ▶ Riley thought it was all harmless fun and flirting – after all, in the movies being persistent always eventually results in the couple getting together in the end.
- ▶ Riley's parents have told them this could ruin their college career and their future.
- ▶ Riley is nervous about being confronted directly by Cameron but think that this might be better than having to go through an investigation.
- ▶ Riley's priority is to not have to give up any of your extra-curricular activities, especially theater.
- ▶ Riley's advocate (their parent's neighbor, who is helping out as a favor), is an attorney who wants to participate in the IR process.
- ▶ Riley's advocate insists that Riley not admit they did anything wrong and not apologize.



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## Writing Practice: Ground Rules

Given the concerns expressed by the parties and their advocates, what ground rules will you put in place?



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## Brainstorm Remedies

What suggestions might you make to the parties for restorative remedies?



## Brainstorm Consequences

What about consequences for violating the agreement?

## Brainstorm Challenges

What challenges do you anticipate in coming to an agreement?



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## Role Play: Listen & Suggest

**IR Facilitator:** Use Notes from Breakout Session

**Complainant Script:** [14. Listen & Suggest - Complainant Script.docx](#)

**Respondent Script:** [15. Listen & Suggest - Respondent Script.docx](#)



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# Group Writing Practice: Resolution Agreement

[Sample Informal Resolution  
Agreement.docx](#)



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## Documenting the Agreement

This agreement documents the terms of the informal resolution of a Formal Complaint under Title IX of the Education Amendments of 1972 involving Complainant [Complainant First and Last Name] against Respondent [Respondent's Name] under [District Name]'s Title IX grievance process. The informal resolution process is voluntary, structured mediation between the parties, conducted by a trained facilitator, with the goal of resolving the allegations in a mutually agreeable manner. It cannot be offered unless a Formal Complaint is on file, and cannot be used in cases involving allegations that an employee sexually harassed a student. Parties may end the informal resolution process at any time prior to reaching an agreement, but once an agreement is reached the Title IX Formal Complaint is closed and cannot be reopened, even if a party fails to comply with the terms of the agreement. All parties, the informal resolution facilitator, and the Title IX Coordinator must accept the terms in the agreement for it to be finalized.



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# Documenting the Agreement

The parties have agreed to the following specific actions to resolve the allegations:



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# Documenting the Agreement

If for any reason a party does not adhere to any of the terms, the parties agree that the following consequences will apply:



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# Documenting the Agreement

For the purpose of consideration in the event of any further allegations of misconduct, and/or a background check, the Respondent's institutional record will indicate:



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# Documenting the Agreement

The outcome of this informal resolution agreement will be shared with:




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# Documenting the Agreement

The outcome of this informal resolution agreement includes the following additional understandings:

- ▶



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## K-12 TITLE IX INFORMAL RESOLUTION FACILITATOR TRAINING FOUNDATIONS & PRACTICUM

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