

Title IX Training for Coordinators

**Train the Trainer
Oregon School Personnel
Administrators Fall 2023 Conference**

Thompson & Horton

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Join the K-12
Title IX Leadership
Alliance

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Take Care


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Ground Rules

- ✓ Ask questions/share perspective
- ✓ Not legal advice/keep it hypothetical
- ✓ Materials will be available for website posting

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AGENDA

- ✓ Title IX – Sexual Harassment & Beyond
- ✓ Title IX Coordinator Responsibilities
- ✓ The *New New* Title IX Regulations
- ✓ Preliminary Matters in the Title IX Sexual Harassment Grievance Procedure
- ✓ Grievance Procedure Issues
- ✓ Interplay Between Title VI & Title IX

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OSPA Title IX Training Fall 2023

Today

8-9 a.m.

Compliance Certification Part 1

10:15 a.m.-Noon

Compliance Certification Part 2

2:30-3:45 p.m.

Investigation Training

3:45-5 p.m.

Coordinator Training

Tomorrow

9:30-11:30 a.m.

Decision-Maker Training

Noon-1:30 p.m.

Informal Resolution Training



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Polling Access



Option One

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Option Two

- Go to Pollev.com on any browser
- Accept or dismiss cookies
- Enter THLaw411 as the Username
- Skip when asked to enter your name



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

The Patsy T. Mink Equal Opportunity in Education Act, Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a)



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Title IX Basics

- ✓ Conditions the receipt of federal money on a promise not to discriminate
- ✓ Guarantees equal educational opportunity in federally funded educational programs and activities




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Title IX Basics


- ✓ Purpose was to remove barriers that prevent women from participating in educational opportunities and careers based on sex—but the law applies equally regardless of sex or gender
- ✓ Applies to all aspects of educational institutions programs and activities including admissions, all aspect of operations, and employment



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Title IX Regulations

- ✓ Issued by the U.S. Department of Education’s Office for Civil Rights
- ✓ “General statement” with the “effect of law”
- ✓ Think a school board’s policy (law) vs. the district administration’s procedures (regulations)
- ✓ OCR can also issue “guidance” which purportedly does not create new law (but often does in practice!)



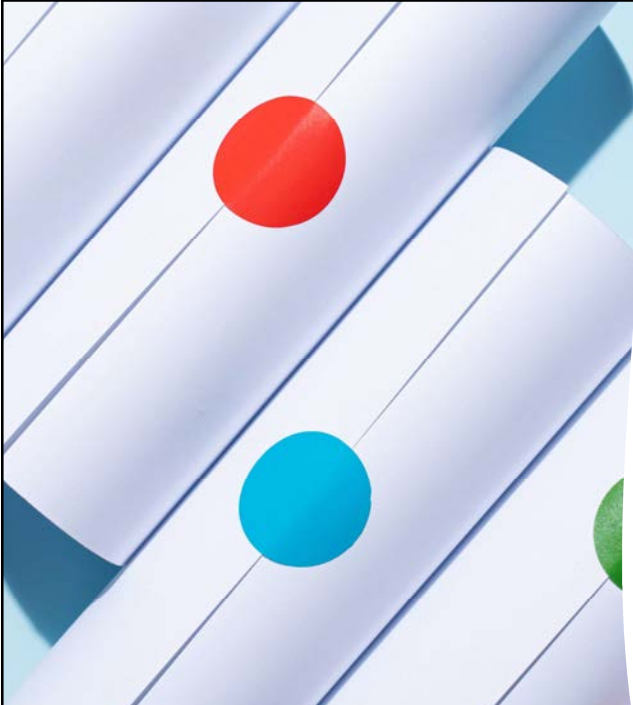
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Regulatory Scope


- ✓ Recruitment, admissions, and counseling
- ✓ Financial assistance
- ✓ Athletics
- ✓ Sex-based harassment (including sexual assault and violence)
- ✓ Treatment of pregnant and parenting students
- ✓ Treatment of LGBTQI+ students
- ✓ Discipline
- ✓ Single-sex education
- ✓ Employment
- ✓ Retaliation

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Key Title IX Procedural Requirements

- ✓ Nondiscrimination notice
- ✓ Grievance procedures
- ✓ Easily understood and widely distributed



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Key Title IX Procedural Requirements

- ✓ Designate a Title IX Coordinator
- ✓ Posting and sharing of contact information



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Title IX Enforcers

		
OCR	DOJ	Federal Courts
<ul style="list-style-type: none">✓ Regional offices✓ Low bar✓ Usually non-monetary remedies	<ul style="list-style-type: none">✓ D.C.✓ Higher profile cases✓ Similar to OCR, but can file lawsuits in federal court	<ul style="list-style-type: none">✓ Individuals can sue✓ Intense process✓ Can lead to money damages



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Train the Trainer Tip

- ✓ Information about the laws, regulations and enforcement agencies is important for the Title IX Coordinator and Deputies to know, but is **less important for others** you will need to train
- ✓ For others, **focus on policy requirements** for authority and internal consequences for repercussions

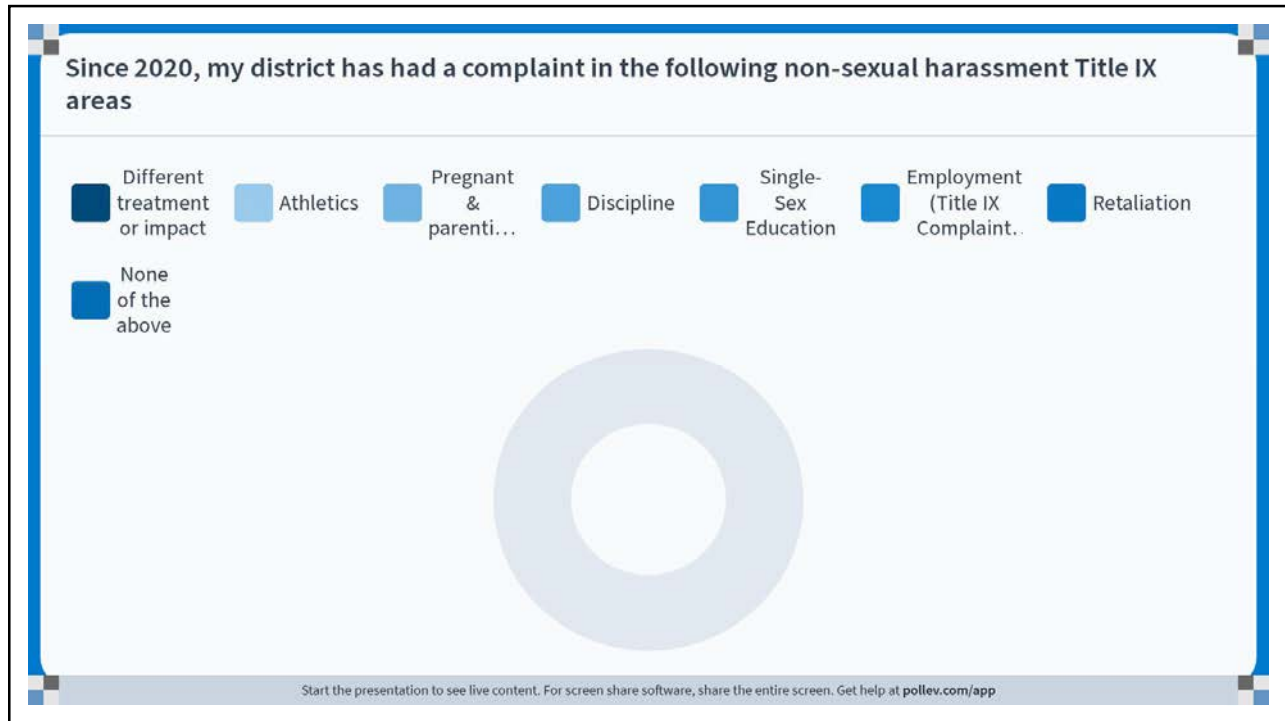
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Title IX Beyond Sexual Harassment

- ✓ Disparate Impact & Treatment
- ✓ Athletics
- ✓ Pregnant & Parenting Students
- ✓ Discipline
- ✓ Single-Sex Education
- ✓ Employment
- ✓ Retaliation



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Remember

- ✓ Different process than sex-based harassment (for now!)
- ✓ Just as important (and risky!)
- ✓ Training is essential (spotting, reporting, responding—or not!)

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Title IX Coordinator Responsibilities

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**The Title IX
Coordinator is
the Title IX
Leader**



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Coordinator Recommendations

- ✓ Authority
- ✓ Full-Time
- ✓ Knowledge
- ✓ Independence
- ✓ Deputies
- ✓ Supported

[2015 OCR Guidance to Coordinators \(rescinded but still useful for some things!\)](#)



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Coordinator Responsibilities

- ✓ Involved in everything Title IX
- ✓ Works closely with District leadership and legal counsel
- ✓ Knows and helps draft/revise the District's policies and procedures
- ✓ Coordinates implementation and administration of grievance processes
- ✓ Monitors outcomes, identify patterns, and assesses effects on the campus climate
- ✓ Develops a method to survey the school climate and analyze information obtained

[2015 OCR Guidance to Coordinators \(rescinded but still useful for some things!\)](#)



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Coordinator Responsibilities

- ✓ Monitor students' participation in athletics to identify disproportionality or negative effects on a gender
- ✓ Regularly assess the adequacy of training opportunities and propose improvements as appropriate
- ✓ Train and provides technical assistance to members of the school community
- ✓ Oversee deputies and other designees
- ✓ Work closely with other members of the school community where job responsibilities intersect with Title IX

[2015 OCR Guidance to Coordinators \(rescinded but still useful for some things!\)](#)



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Train the Trainer Tip

- ✓ Consider training for District leadership (Superintendent, Board Members) on the **scope and risks** of Title IX
- ✓ An under-resourced Title IX office is like **playing the lottery** where losing can cost millions

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<p>New Hanover County school board reaches \$5.75 million settlement in Kelly case, pledges 'programmatic changes'</p> <p>WHQR By Benjamin Schachtman Published June 9, 2023 at 3:10 PM EDT</p>	<p>NYC Schools Reaches \$700K Court Settlement With Student Sex Assault Survivors as Biden Administration Rewrites Title IX Rules By Mark Keierleber August 25, 2021 The74</p>
<p>Boulder Valley School District agrees to pay \$1.2 million to settle lawsuit over sexual assault allegations</p> <p>By Alison Borden and Jenny Brundin · Nov. 1, 2022, 9:06 pm</p> <p>CPR News</p>	<p>County to spend up to \$1 million to audit schools' Title IX compliance BY KYLE MARTIN Daily Post Staff Writer</p>
<p>Central Bucks reportedly plans to spend \$1 million-plus in legal fees in response to allegations of anti-LGBTQ discrimination in schools By Emily Rizzo · March 23, 2023</p> <p>WHYY PBS</p>	<p>October 25, 2020 8:00 am</p> <p>Daily Post</p> <p>T&H</p>

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2022 Proposed Rules

- ✓ Issued by the Biden administration in proposed form on June 23, 2022
- ✓ Comment period ended September 12, 2022
- ✓ Department of ED will review and respond to all comments in the final rule
- ✓ Purported release date for final rule was May or June 2023, with an effective date in August 2023
- ✓ In May the Department backtracked, pushing to October for a final rule, which would mean Dec 2023/Jan 2024 would be the earliest possible effective date; that date recently has been reported to be pushed back again because of regulatory requirement deadlines that have passed
- ✓ Will change many of the requirements for handling complaints and apply to all sex discrimination, not just sex-based harassment



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Train the Trainer Tip

- ✓ Consider training for District leadership (Superintendent, Board Members) on the **broadened scope** of the proposed rules
- ✓ Seek approval now to begin **working through changes** to maximize benefits of proposed rules

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2020 Title IX Rules

- ✓ Issued by the Trump administration's Office for Civil Rights
- ✓ Effective August 14, 2020
- ✓ Will be in effect at least until December 2023
- ✓ Include significant requirements for handling complaints of sexual harassment under Title IX

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The 2020 Title IX Rules

What do they require?

-  **Designate**
A Title IX Coordinator
-  **Identify**
The Title IX Coordinator to your community, including by posting contact information (including email) online
-  **Post**
Post all training materials used to train Title IX team members on your district website

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The 2020 Title IX Rules


What do they require?

- Train**
Title IX Coordinator, Investigators, Decision-makers, Appeals Officers, and Informal Resolution Facilitators
- Policy & Procedure**
Have and share publicly a policy prohibiting Title IX sexual harassment and a grievance procedure
- Process**
Use the policy and grievance process any time a report of covered conduct is received

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Two Parts of the Analysis

What Conduct is Covered?	What Process Applies to Covered Conduct?
<ul style="list-style-type: none">✓ "Title IX Sexual Harassment"*<ul style="list-style-type: none">□ "The Big Five"*□ "Title IX Hostile Environment Harassment"*✓ "In an Educational Program or Activity"✓ "Against a person in the United States" <p>* Not regulatory terms</p>	<ul style="list-style-type: none">✓ Supportive Measures/Notice of Process to Complainant✓ Formal Complaint✓ Notice to Parties*/Supportive Measures to Respondent✓ Informal Resolution*✓ Investigation*✓ Hearing*✓ Decision*✓ Appeal* <p>* Only if a formal complaint is on file</p>



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Title IX "Sexual Harassment"

The Title IX "Big Five"

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

*VAWA/Clery Crimes

Title IX "Hostile Environment"

- ✓ Unwelcome Conduct
- ✓ Based on Sex
- ✓ That is so severe
- ✓ And pervasive
- ✓ And objectively offensive
- ✓ That it effectively denies equal access to the educational program or activity

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Train the Trainer Tip

- ✓ Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators must be trained on **"the definition of sexual harassment"**
- ✓ Real world **examples** are critical

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Train the Trainer Tip

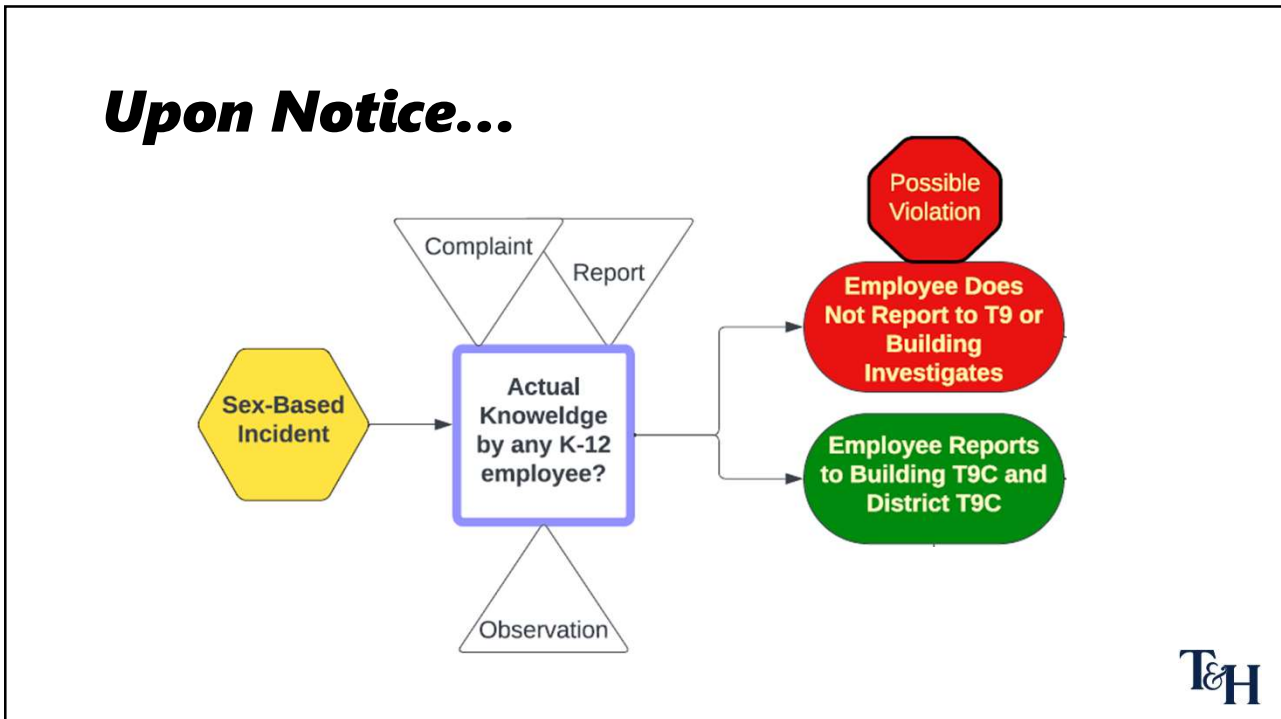
Does it involve a penis?

Does it involve a vagina?

Does it involve an anus or
buttocks?

- ✓ **If yes to any one, contact the Title IX Coordinator**

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The Building Received A Report...

What Can the Building Do?

- Assess safety (isolate student with supervision if needed)
- Make required contacts (police, child protected services, complainant's parents/guardians)
- Contact special education if student(s) with disabilities involved

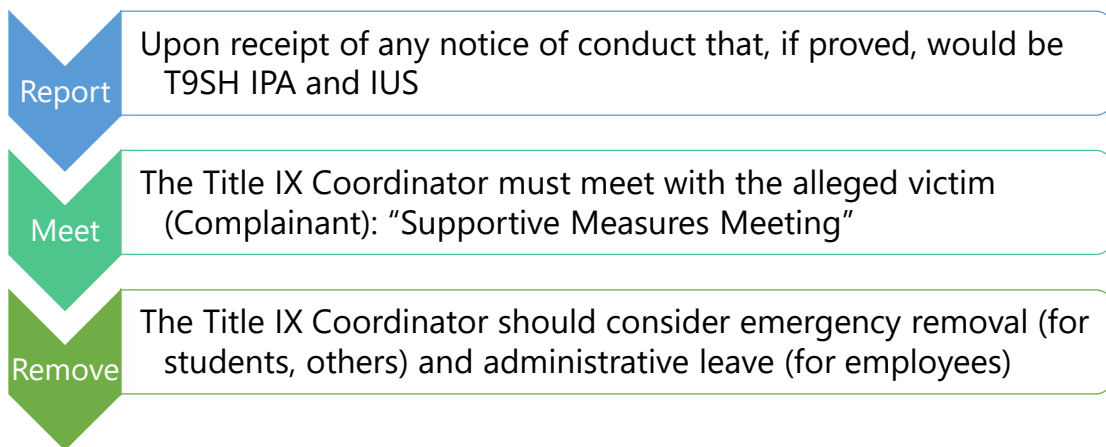
What Shouldn't the Building Do?

- Interview the complainant
- Collect evidence (witness statements, etc.)
- Discipline any student
- Put a stay away/no contact order in place
- Tell the respondent and their parents/guardians details about the report

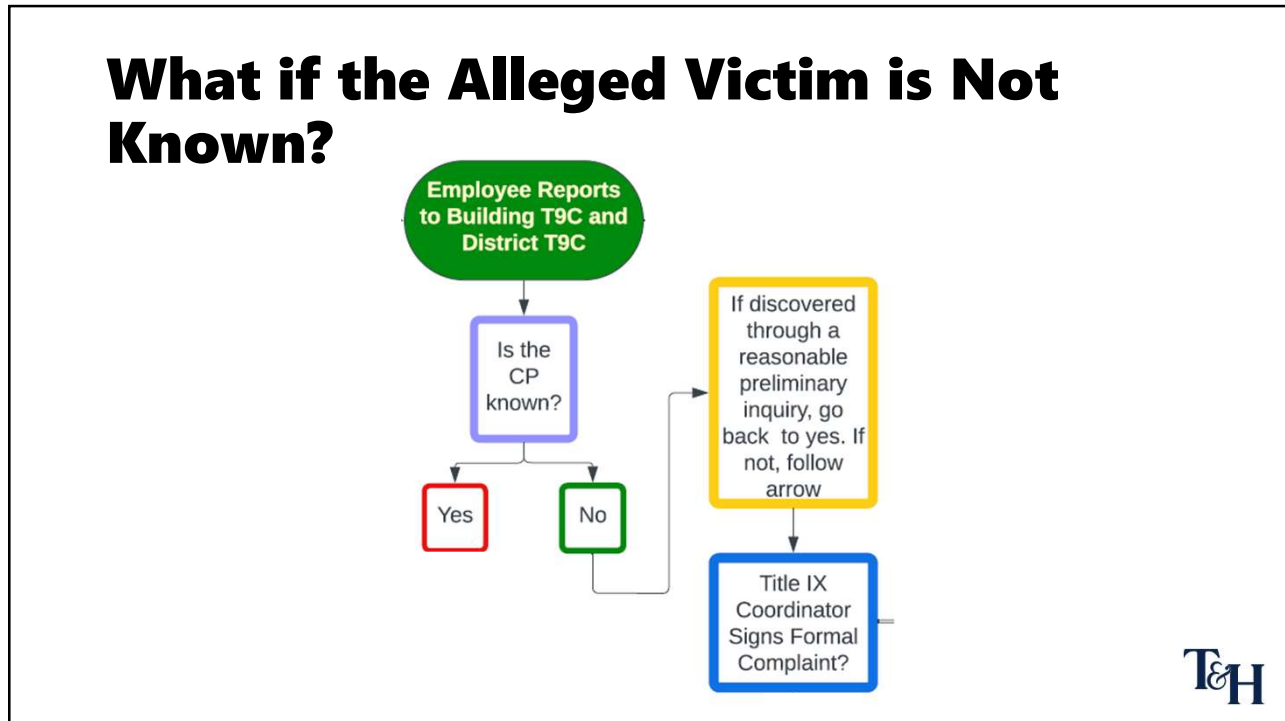


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Pre-Formal Complaint Process



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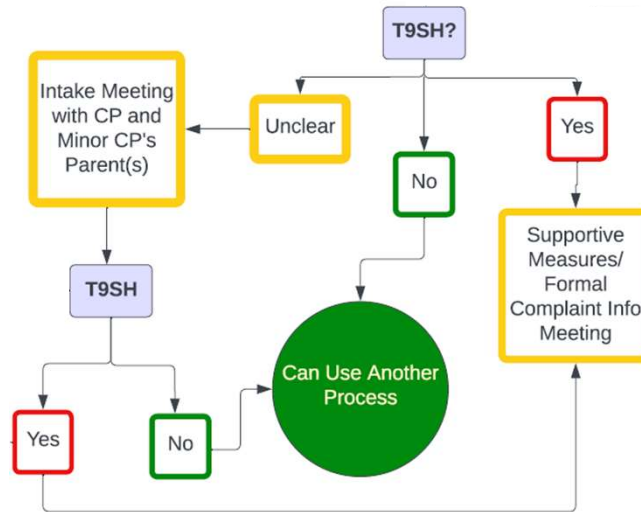
Reasonable Inquiry

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

T&H

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What If It Is Unclear if it's T9Sh?



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Intake

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



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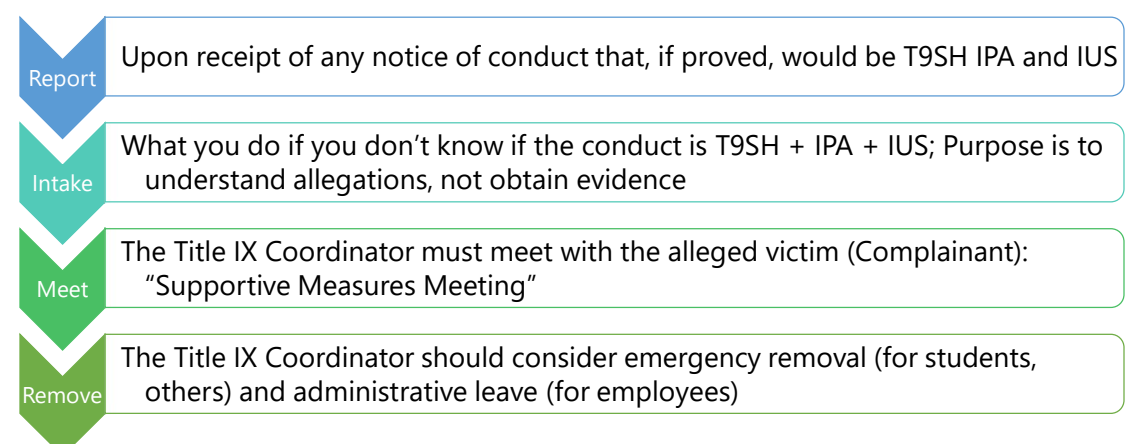
Intake With Complainant

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




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Pre-Formal Complaint Process



- Report** Upon receipt of any notice of conduct that, if proved, would be T9SH IPA and IUS
- Intake** What you do if you don't know if the conduct is T9SH + IPA + IUS; Purpose is to understand allegations, not obtain evidence
- Meet** The Title IX Coordinator must meet with the alleged victim (Complainant): "Supportive Measures Meeting"
- Remove** The Title IX Coordinator should consider emergency removal (for students, others) and administrative leave (for employees)



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Emergency Removals: IDEA, Section 504, and Discipline Implications

- ✓ An emergency removal could implicate placements and services under IDEA and Section 504
- ✓ Title IX Coordinators should reach out to Special Education or Section 504 Staff prior to implementing an emergency removal
- ✓ May need to hold IEP/Section 504 meeting to determine if changes must be made to student's IEP/Section 504 Plan
- ✓ Just because Title IX authorizes a Title IX administrator to remove a student on an emergency basis does not mean that the Constitution and state law allow a Title IX administrator to do so



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Train the Trainer Tip

- ✓ Training for Title IX Team members on **special education** and **student discipline** requirements is important
- ✓ Best practice is to **“cross-train”** administrators and staff who work with student with disabilities and on student discipline to work closely with the Title IX team in relation to supportive measures and removals

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Signing a Formal Complaint

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



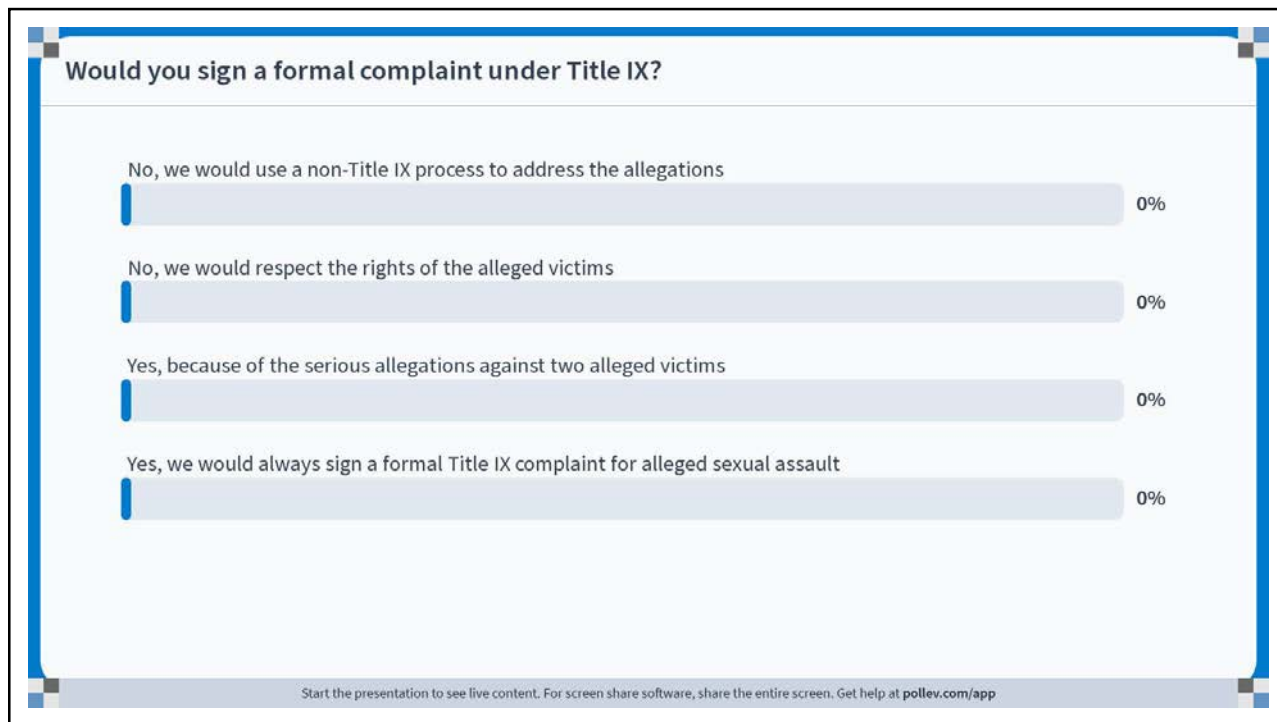
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Scenario

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




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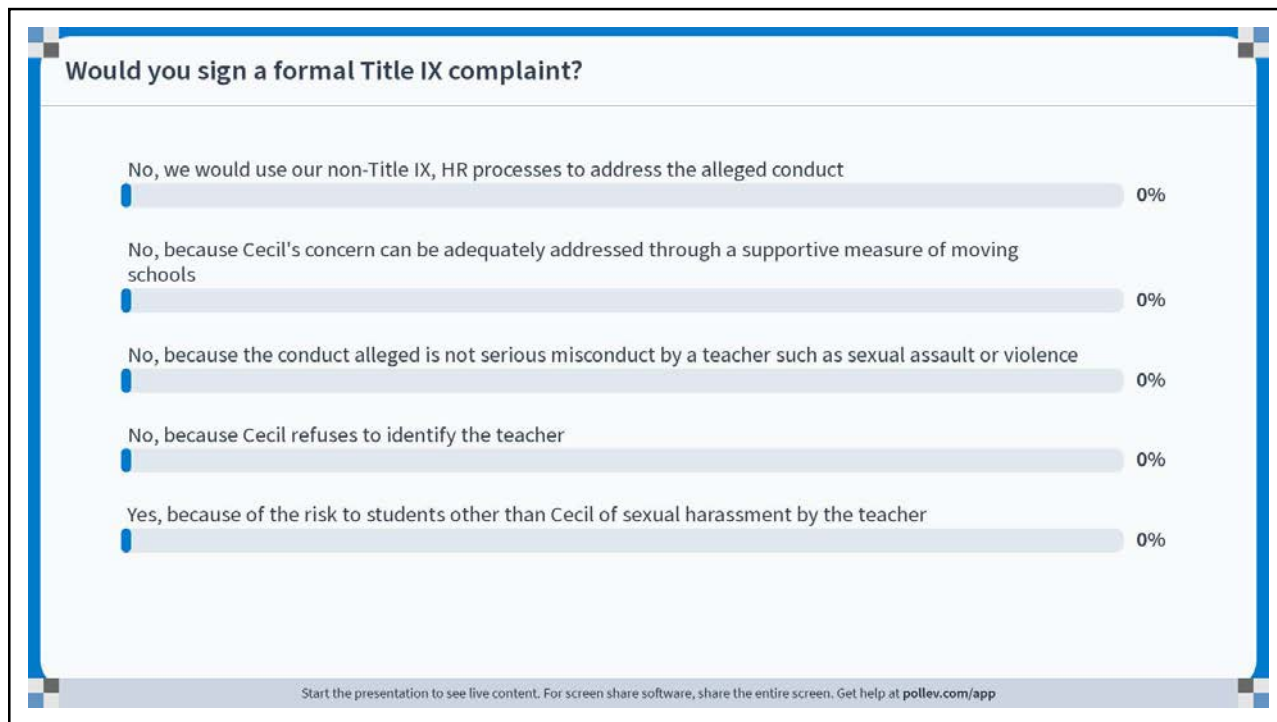
Scenario



High school student Cecil reports that a teacher gave Cecil a lot of attention, asked Cecil repeatedly if they wanted rides home from school, invited Cecil to babysit for the teacher's toddler, and gave Cecil hugs frequently. Cecil did not identify the teacher. Cecil asks to move to another school in the district but does not want to file a formal complaint.



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Mandatory Dismissals (CAN use another process)	Discretionary Dismissals (CANNOT use another process)
<p>The conduct alleged, even if proved, would not be:</p> <ol style="list-style-type: none">1. Title IX Sexual Harassment2. In an education program or activity3. Against a person in the United States	<ol style="list-style-type: none">1. Written request from Complainant (or minor CP's parent)2. Respondent's enrollment or employment ends3. Issues prohibit finding sufficient evidence to reach a determination (non-cooperation of the CP, length of time between incident & report)

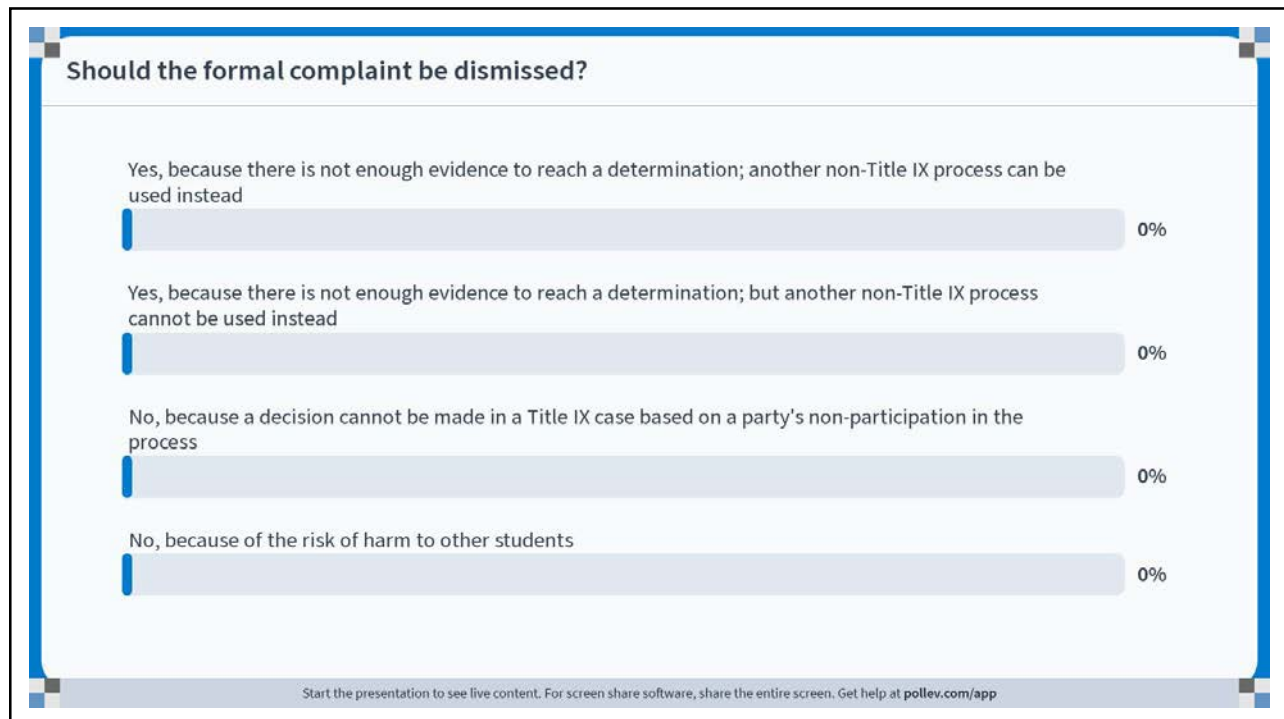
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Compare & Contrast Scenario #1

A student, Chandler, reports that another student, Rabi, grabbed Chandler's butt without consent multiple times at school. The incidents allegedly happened in private with no witnesses, and there were no cameras with relevant footage. Chandler immediately stops participating in the process after filing a formal complaint without explanation.



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Compare & Contrast Scenario #2

What if the same alleged incidents happened, and Chandler immediately stopped participating as in Scenario #1. But unlike Scenario #1, there were reportedly several witnesses in the area when the incidents occurred and video surveillance in the building also caught some of the conduct on tape.



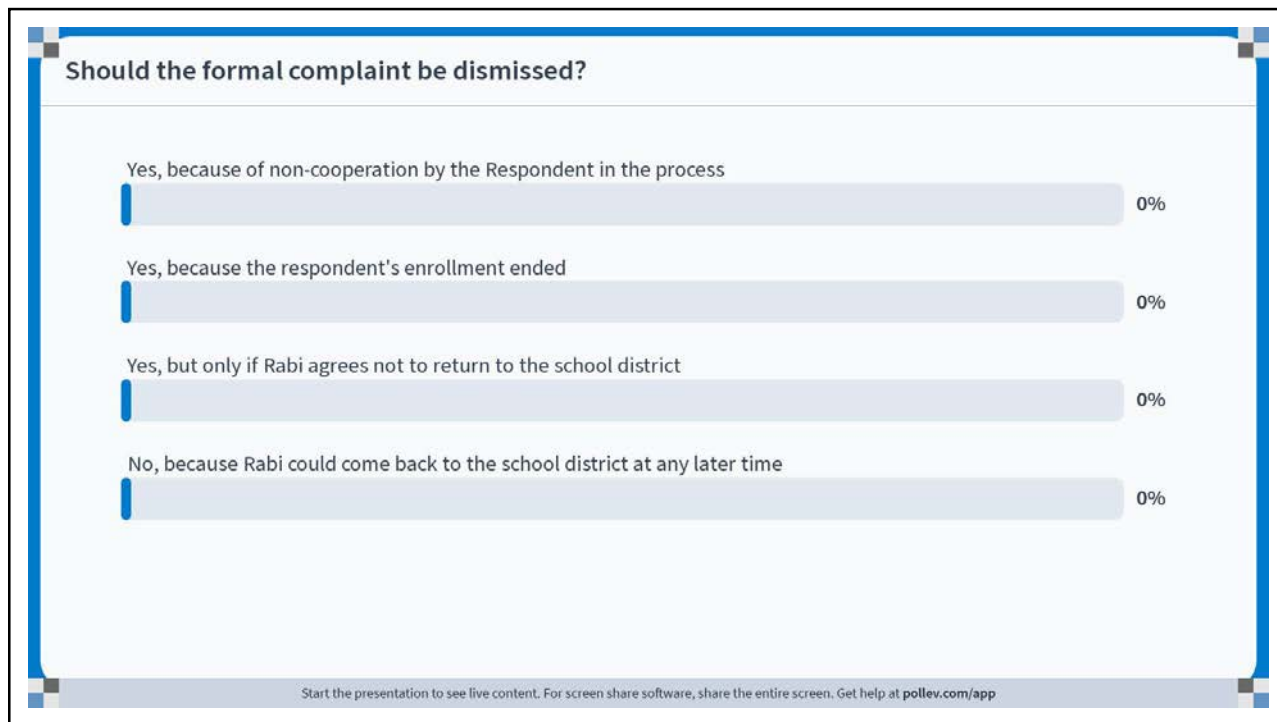
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Compare & Contrast Scenario #3

Same scenario but this time Chandler does not stop participating. Instead, Rabi's parents decide to withdraw Rabi from school and send Rabi to a local private school.




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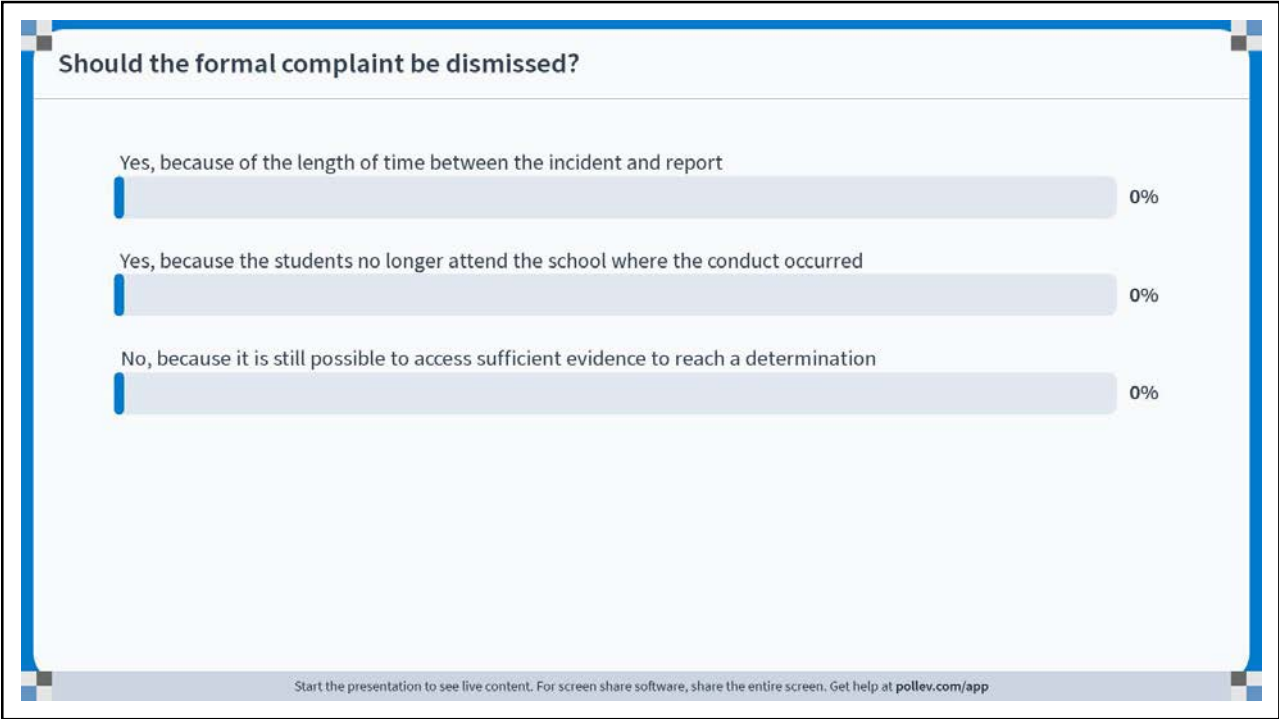
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Compare & Contrast Scenario #4

What if the alleged conduct occurred when Chandler and Rabi were in middle school. They are now in high school at another school in the District. All parties and witnesses continue to attend District schools but are spread out at schools across the District.



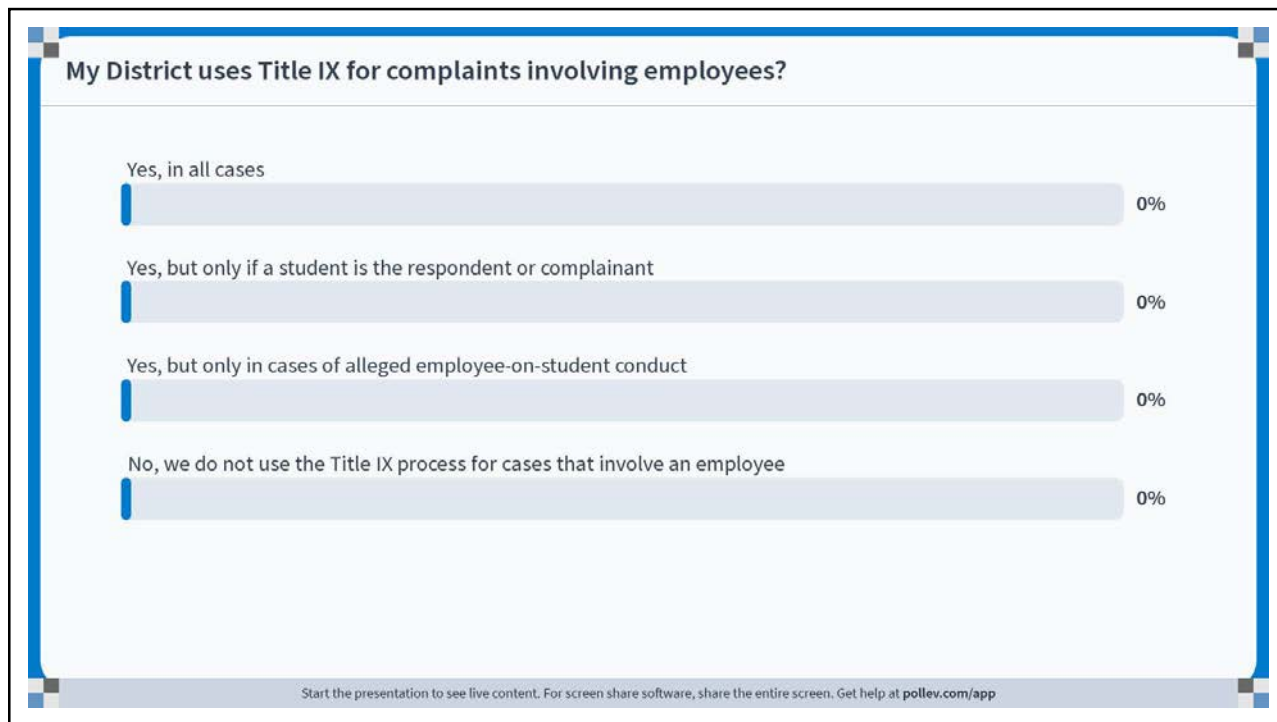
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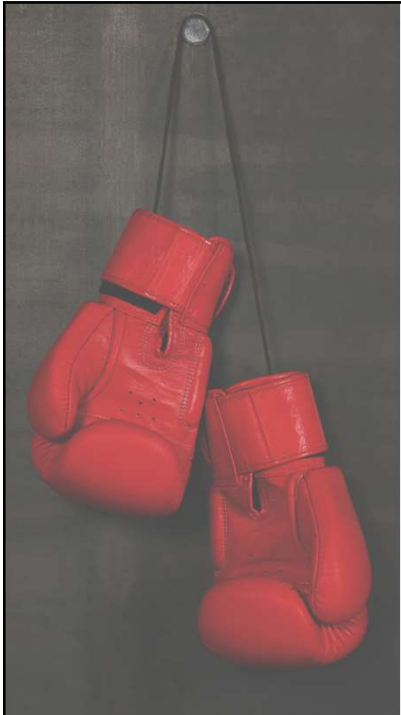
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Title IX v. Title VII

- Title VII of the Civil Rights Act of 1964
- Before the 2020 Title IX rules, most educational institutions used Title VII, not Title IX, for complaints by an employee
- There are some key differences between the two laws



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Some Key Differences

Issue	Title IX	Title VII
Definition of sexual harassment	Severe, pervasive, and objectively offensive Effective denial of access	Severe or pervasive Impact on access
Notice required for employer responsibility	Actual knowledge (actual notice)	Actual or constructive (should have known)
Country Jurisdiction	In the U.S. only	Can cover outside of the U.S.
Who Investigates	No single investigator model (different investigator and decisionmaker)	Same person often investigates and decides responsibility
Investigation Information Shared	Sharing directly related evidence and full final report required	Neither required
Right to Confront Other Party	Required (Written Q&A)	Not required

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According to the DOE

- The Title IX regulations apply to employee claims of sex-based harassment
- OCR recognizes that there are different obligations required by the laws
- Schools can address behavior prohibited by Title VII that is not prohibited by Title IX through its HR processes, but for conduct covered by Title IX OCR may expect schools to use the Title IX process



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Thank You!
Questions?

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