

# 2024 Title IX Regulations

## Part I

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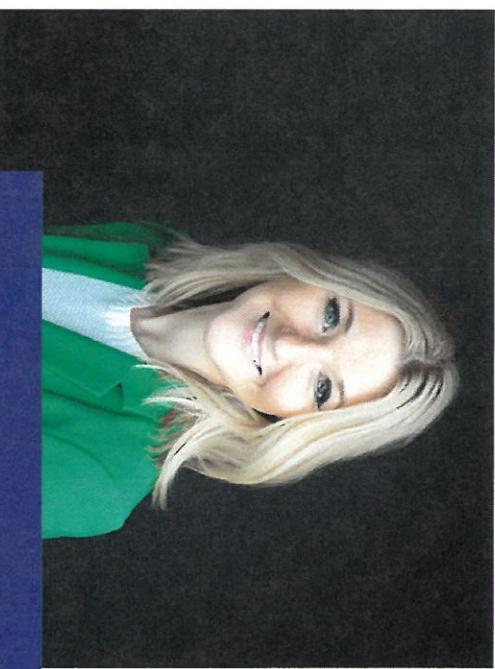
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8/13/24



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# Today's Presenter



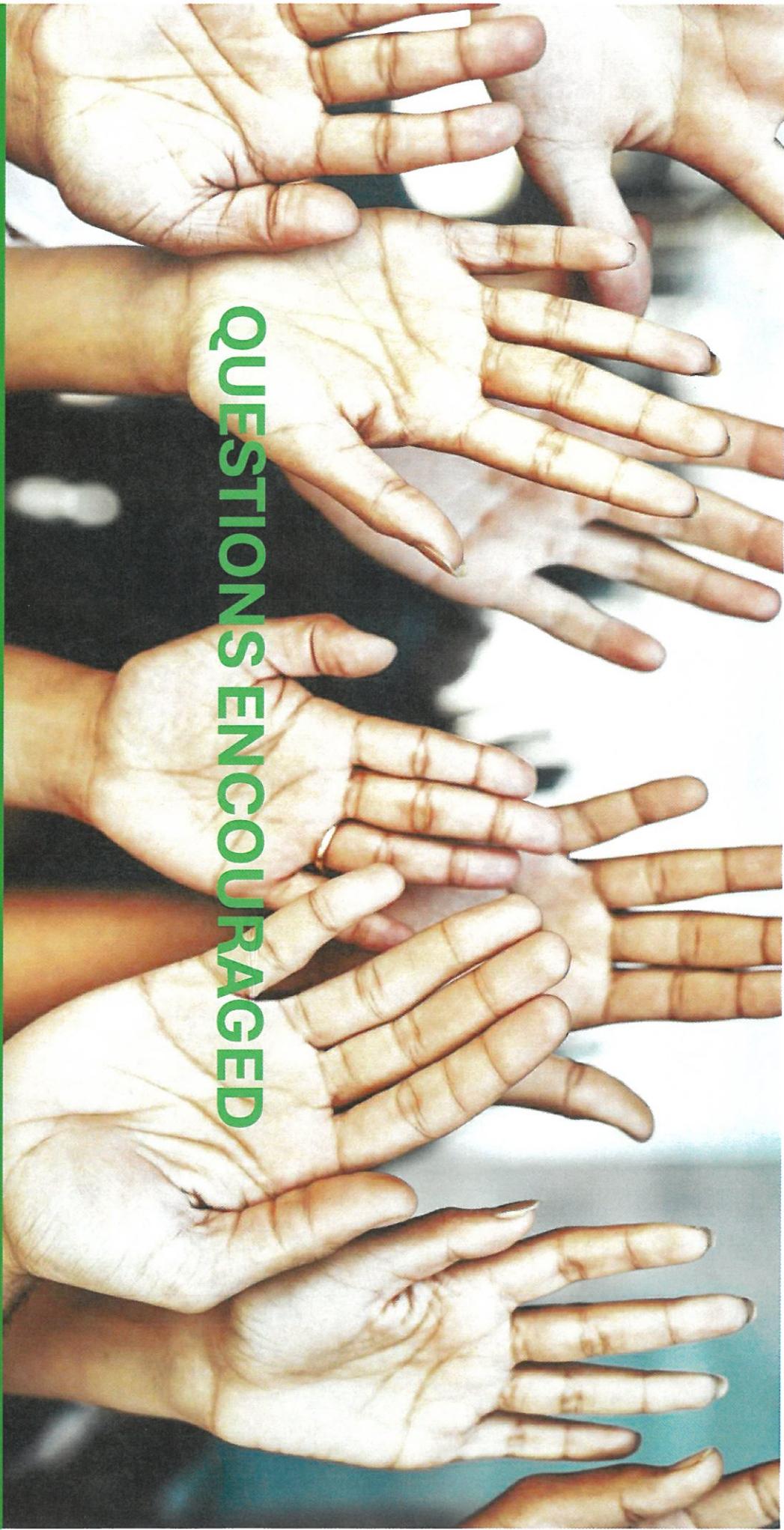
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QUESTIONS ENCOURAGED

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# Agenda – Part I

## Purpose of Title IX

Prohibit sex discrimination in education

## Initial Compliance Responsibilities

Policies, procedures, and trainings, ohh my!

## Obligation to Address Sex Discrimination

Knowledge of conduct triggers duty to address

## Conduct Constituting Sex Discrimination

Disparate treatment and harassment

## Sex-Based Harassment

Types and definitions of sex-based harassment

## Responding to Conduct

Prompt and effective response

## Supportive Measures

Preserving or restoring equal access

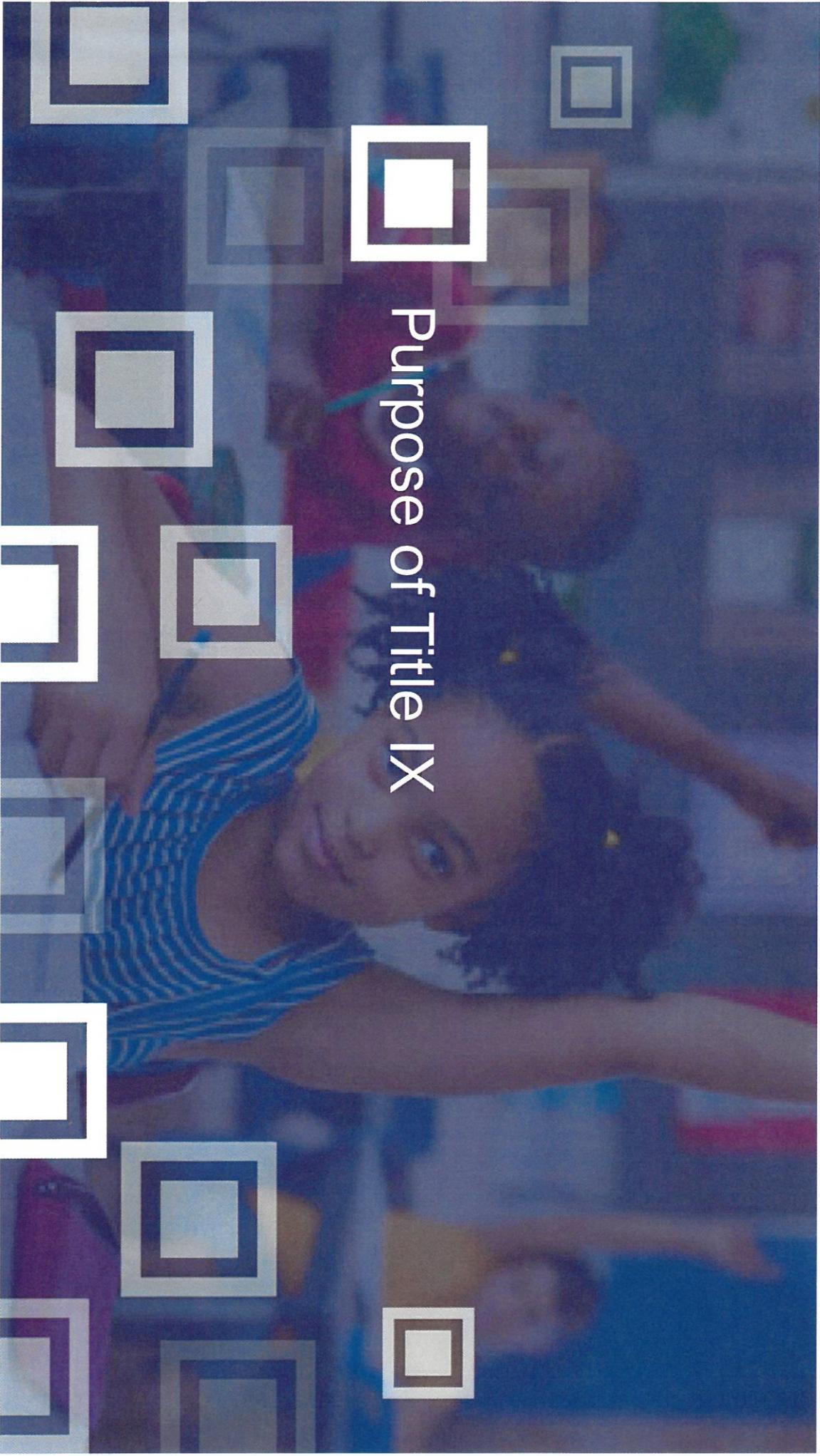
## Emergency Removal & Administrative Leave

Exclusion during the grievance procedure

Welcome to the Wild, Wild West...

Injunction  
Junction

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## Purpose of Title IX

## Title IX of the Education Amendment Acts of 1972

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (20 U.S.C. 1681(a).)

- The U.S. Department of Education has authority to issue rules effectuating this prohibition on sex discrimination consistent with the objectives of the statute. (20 U.S.C. 1682.)

# What falls under Title IX?

Recruitment,  
Admissions, and  
Counseling

Financial  
Assistance

Athletics

Sex-Based  
Harassment

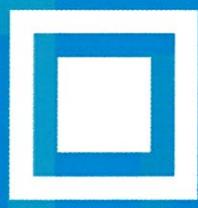
Treatment of  
Pregnant &  
Parenting Students

Discipline

Single-Sex  
Education

Employment

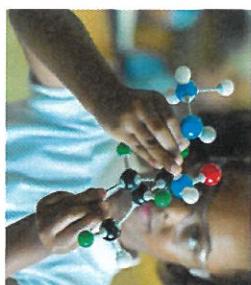
Retaliation



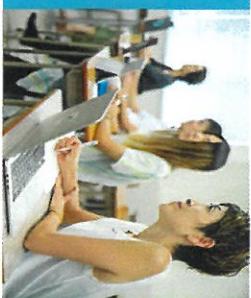
## Initial Compliance Responsibilities

# Schools must:

- Designate A Title IX Coordinator



- Train staff



- Adopt, Publish & Implement Nondiscrimination Policy and Grievance Procedures



- Identify and address barriers to reporting



- Notice of Nondiscrimination



- Recordkeeping



## Designate A Title IX Coordinator

- Title IX Coordinator coordinates efforts to comply with Title IX.
- If more than one Title IX Coordinator, designate one as coordinator with ultimate oversight over responsibilities and compliance.
- Deputies or designees can be delegated responsibilities for specific duties.

The Title IX Coordinator's role is to serve as a confidential advisor to the complainant or any other party.

True or false?



# Notice of Nondiscrimination Must Include:

## Statement of Nondiscrimination

- “[Institution] does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates”

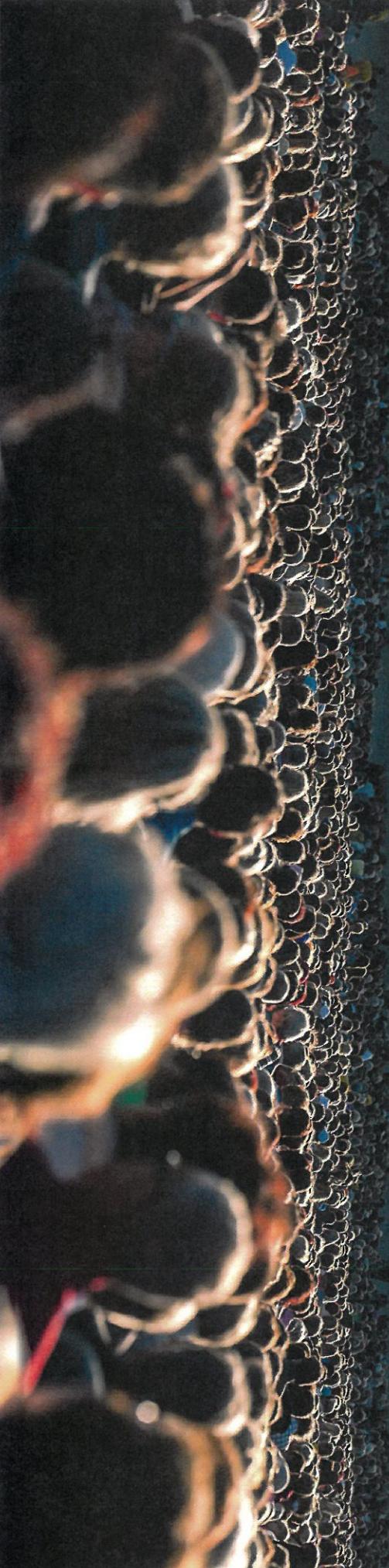
## Direct Inquiries about the Application of Title IX to Title IX Coordinator

## Contact Information of Title IX Coordinator

- Name or title, office address, email address, and telephone number of Title IX Coordinator.

## Location of Nondiscrimination Policy and Grievance Procedures

## How to Report Information and Make a Complaint



TK-12 SCHOOLS MUST REQUIRE ALL  
EMPLOYEES TO REPORT SEX  
DISCRIMINATION



# Annual Training for All

All employees must receive training related to their duties under Title IX promptly upon hiring or a change of position that alters their duties under Title IX, and **annually** thereafter.

(34 C.F.R. § 106.8(d).)

# All Employee Training

All employees must receive training on:

- Obligation to address sex discrimination in education program or activity
- Scope of conduct constituting sex discrimination
- Definition of sex-based harassment
- Notice and information requirements applicable to all employees

(34 C.F.R. § 106.8(d)(1).)



# Additional Annual Training Requirements for Employees Implementing Title IX

## Role or Responsibility

### Investigator/Decisionmaker

### Implement Title IX Procedures

### Modify Supportive Measures

- Response obligations (34 CFR 106.44)

- Grievance procedures

- Serving impartially

- Evaluating relevance

- Impermissible evidence

### Informal Resolution Facilitators

- Informal resolution process
- Serving impartially

### Title IX Coordinator

- All the above
- Title IX compliance responsibilities (34 CFR 106.40(b)(3), 106.44.)
- Duties (34 CFR 106.8(a), 106.44(f).)
- Recordkeeping (34 CFR 106.8(f).)



## Terminology

# Terminology

## Complainant

- A student or employee allegedly subjected to conduct that could constitute sex discrimination under Title IX; or
- Any person allegedly subjected to conduct that could constitute sex discrimination under Title IX while participating or attempting to participate in the school's education program or activity

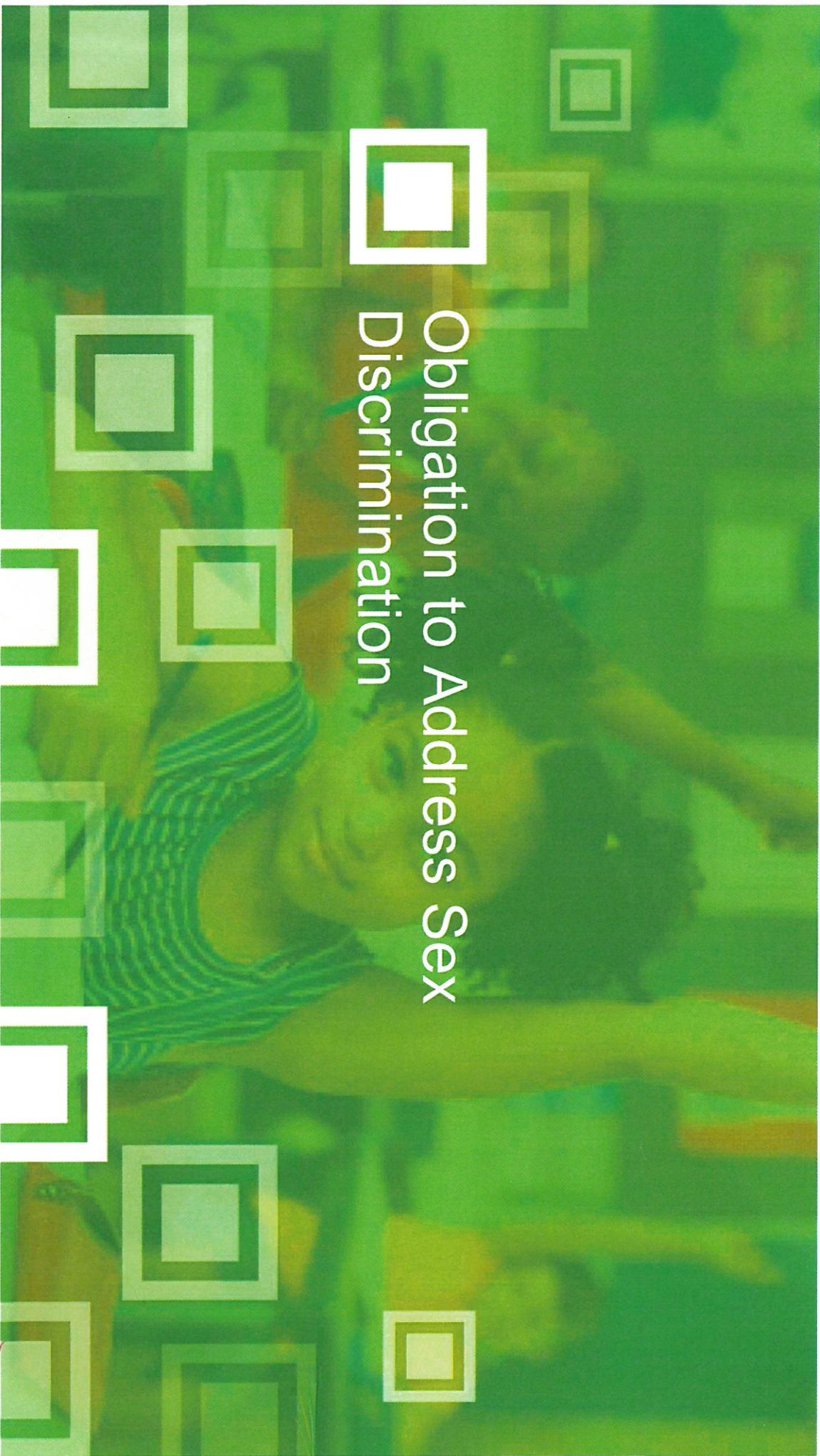
## Respondent

- Person who allegedly violated the school's prohibition against sex discrimination

## Complaint

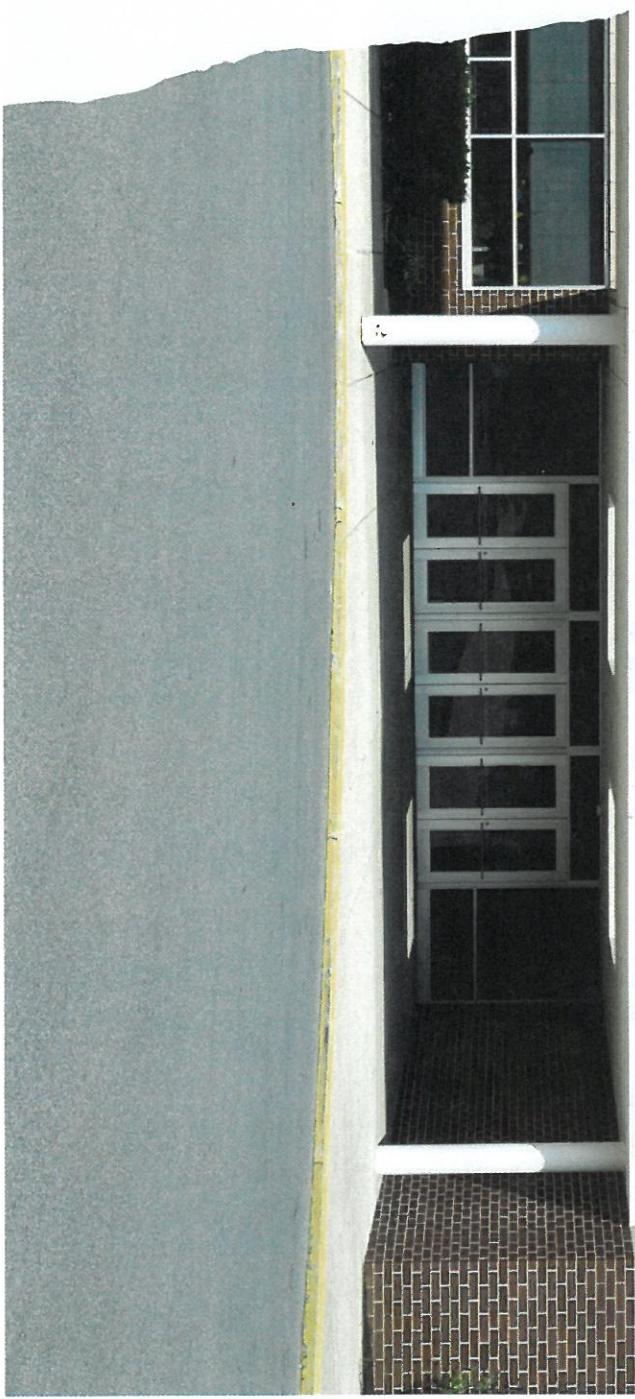
- Oral or written request to school
- Objectively understood as a request to investigate and make a determination about alleged discrimination under Title IX





## Obligation to Address Sex Discrimination

## ELEMENTARY SCHOOL



Schools with **knowledge of conduct** in their educational programs and activities that reasonably may constitute sex discrimination **MUST address it promptly and effectively.**

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When are schools obligated to respond to potential sex discrimination?

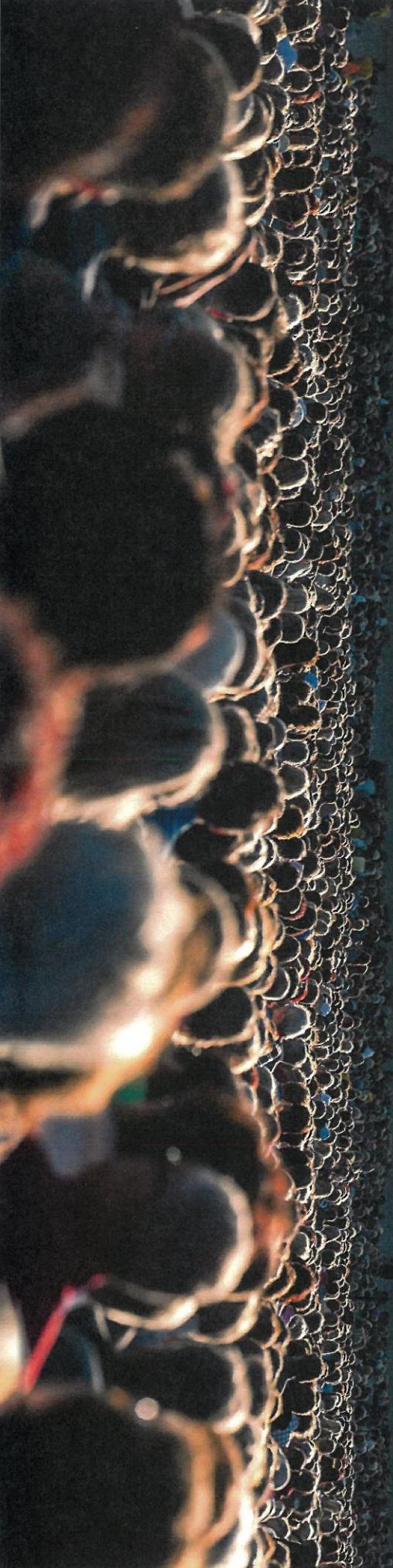
- When it has knowledge of potential sex discrimination.

When do schools have knowledge of potential sex discrimination?

- When any employee has information, through observation or disclosure, about conduct that reasonably may constitute sex discrimination.

What is an employee with knowledge required to do?

- Respond promptly and effectively by notifying the Title IX Coordinator.



TK-12 SCHOOLS MUST REQUIRE ALL  
EMPLOYEES TO REPORT SEX  
DISCRIMINATION

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## **Knowledge of Conduct**

The recipient need not have incontrovertible proof that conduct violates Title IX for it to have an obligation to respond; if the conduct reasonably may be sex discrimination, the recipient must respond in accordance with § 106.44.



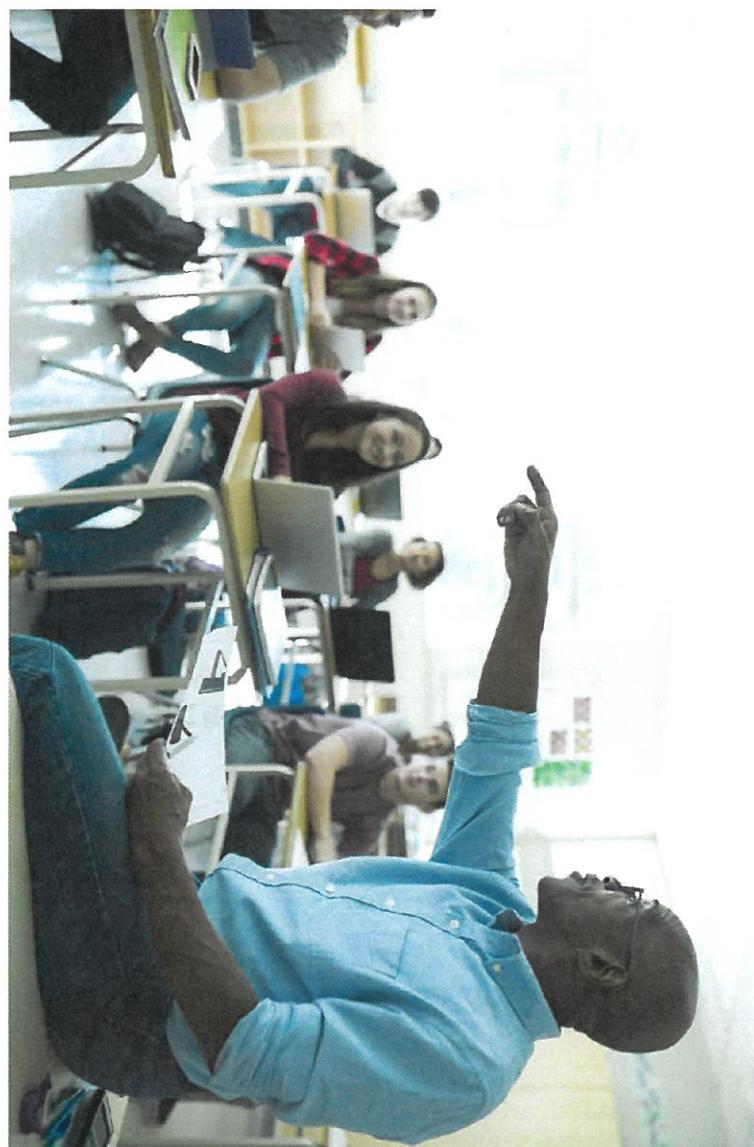
If the only individuals with knowledge of conduct in violation of Title IX are complainant and respondent. Respondent is an employee.

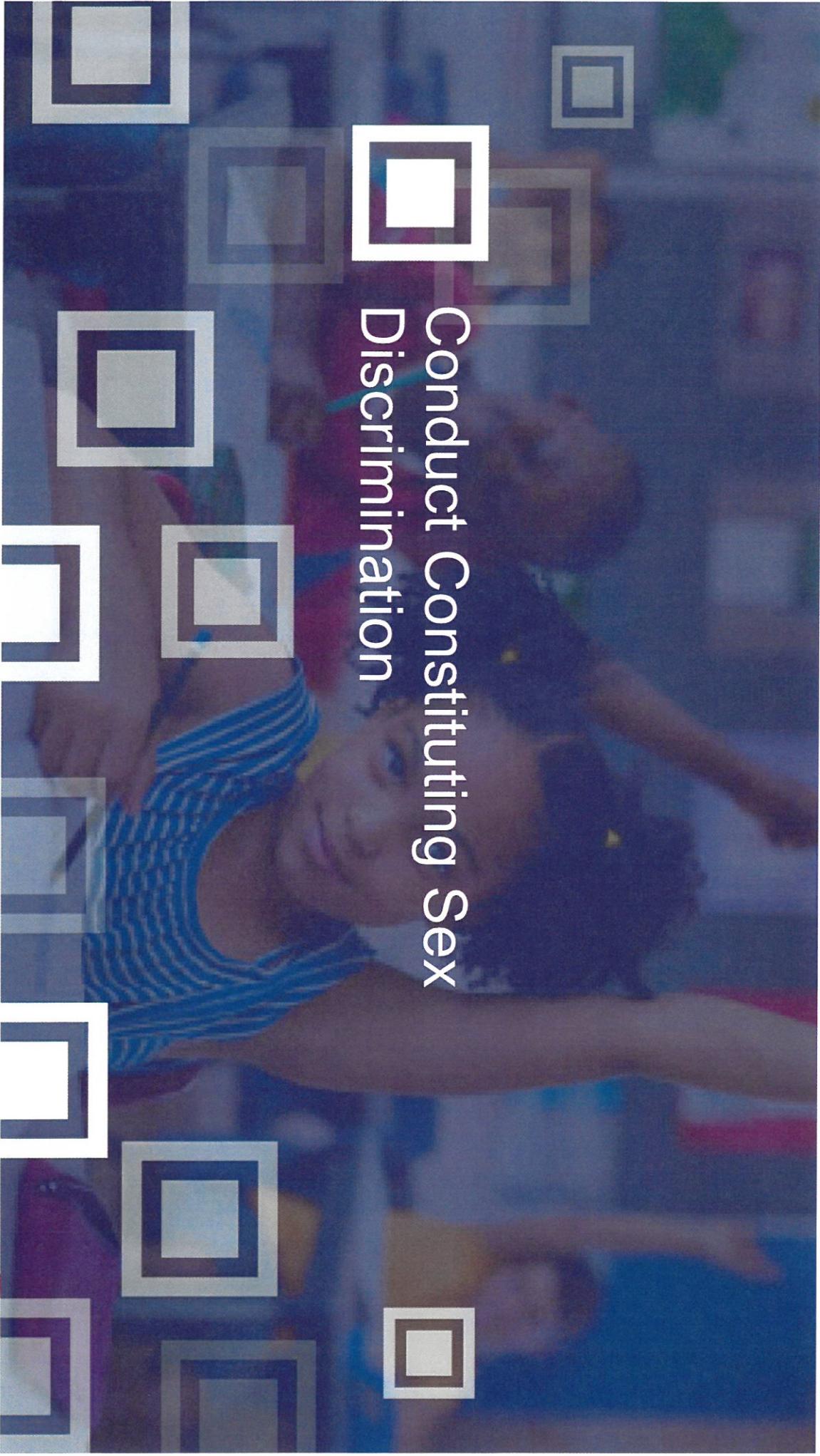
Does the District have knowledge of conduct triggering its duty to respond because Respondent-employee is aware of his conduct?



## Obligation to address a sex-based hostile environment in its education program or activity applies...

- When conduct alleged to be contributing to the hostile environment occurred outside the education program or activity or outside the United States
- To conduct over which the school has disciplinary authority





# Conduct Constituting Sex Discrimination

## Discrimination on the Basis of Sex

- Disparate treatment because of a person's sex
- Includes discrimination on the basis of
  - sex stereotypes
  - sex characteristics
  - pregnancy or related conditions
  - sexual orientation
  - gender identity
- Sex-based harassment

(34 CFR 106.10.)

## Examples of Sex Discrimination

- Unequal resources or facilities
- Unequal treatment or expectations
- Failure to accommodate pregnancy or related conditions
- Acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex

Supervisor comments that it is pointless to hire female administrators because they lack commitment to their careers.

Could this be the basis for a Title IX complaint?





## Sex-Based Harassment

# Sex-Based Harassment

A form of sex discrimination that means sexual harassment and other harassment on the basis of sex (including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, gender identity) including:

- Hostile environment harassment
- Sexual assault
- Dating violence
- Stalking
- Domestic violence



“An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity **explicitly or impliedly conditioning** the provision of such an aid, benefit, or service on a person's participation in **unwelcome sexual conduct.**” (34 C.F.R. § 106.2.)

## Quid Pro Quo Harassment

Axon, a student teacher's aide, tells LJ, they will make sure LJ gets an A on the test if LJ makes out with Axon in a staff bathroom after school. Axon has no access to the test and no way to impact LJ's grade in the class.

Is this quid pro quo  
harassment?



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

Could this be quid pro quo sexual harassment?



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## Hostile Environment Harassment

Based on the totality of the circumstances, conduct that is:

- Unwelcome
- Sex-based
- Subjectively and objectively offensive and
- So severe or pervasive
- That it limits or denies a person's ability to participate in or benefit from the education program or activity

\*The degree of the impact

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# Assessing Hostile Environment Harassment

## Fact-Specific Inquiry

Degree of impact on complainant's access

Type, frequency, and duration of conduct

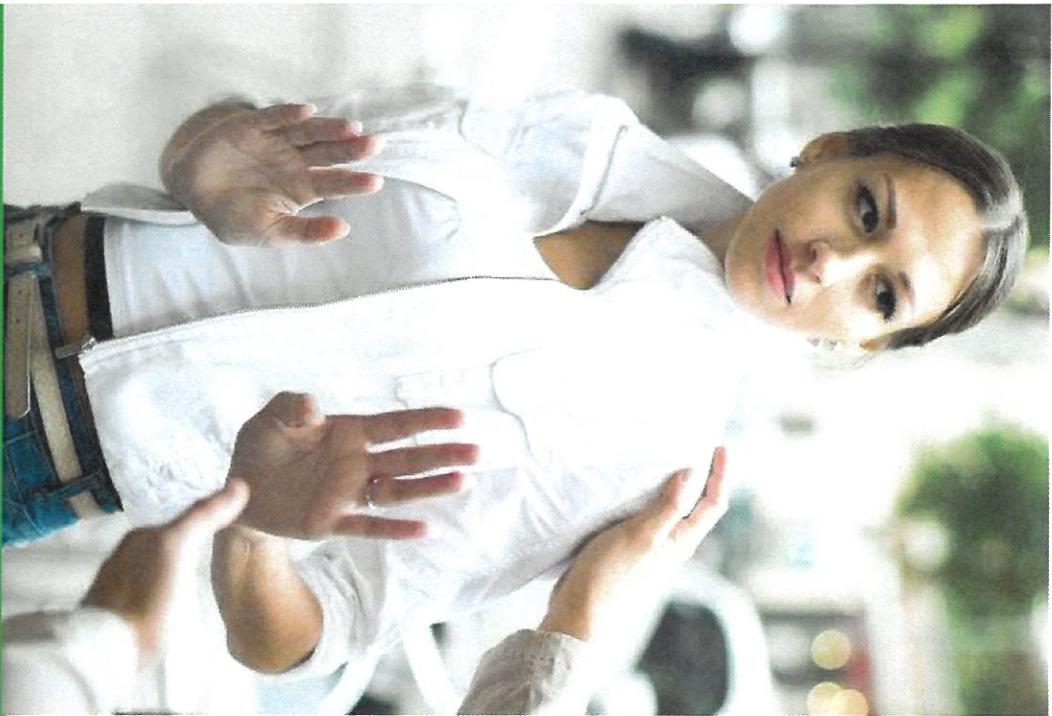
Parties' ages, roles, previous interactions, and other factors relevant to evaluating impact of conduct

Location and context in which conduct occurred

Other sex-based harassment in the education program or activity, if relevant

## Unwelcome Conduct

- Not requested or invited
- Regarded as undesirable or offensive
- Acquiescence to the conduct  $\neq$  welcome
- Failure to complain, resist, or object to conduct  $\neq$  welcome
- Accepting conduct  $\neq$  welcome



# Hostile Environment Harassment So Severe OR Pervasive

## So Severe

- Extremely serious
- Severely hostile or abusive
- Interferes with access or participation
- More than teasing and offensive name calling

## Pervasive

- Occurring on multiple occasions
- Persistent
- Widespread
- Openly practiced
- Well-known
- Pattern or practice of harassment
- Sustained and nontrivial
- Part of a continuous series of events

# Hostile Environment Harassment

## Offensive

- Subjectively offensive to complainant
- Objectively offensive to a reasonable person in complainant's position
- Not a statement of one's opinion on an issue of debate and with which another person disagrees



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# Hostile Environment Harassment Limits or Denies

- Some impact on complainant's ability to participate in or benefit from education program or activity
- Specific manifestation of harm is not required
- Turning away a complainant because they were not traumatized enough is impermissible
- Examples of signs of impact on access:
  - Lower grades
  - Avoiding conduct/person
    - Skipping class
    - Quitting team
    - Refusing to ride the bus
  - Difficulty concentrating
  - Nightmares
  - Increased anxiety
  - Depression



# Online Harassment

Online harassment can include, but is not limited to:

- Unwelcome conduct on social media
- Nonconsensual distribution of intimate images (authentic, altered, and AI generated images)
- Cyberstalking
- Sending sex-based pictures or cartoons
- Soliciting sex-based content



work more slowly  
and I don't feel good  
now. I have to think  
on I have the answer  
+ sort out I have the  
+ help me + give me a  
+ help me + give me a



## Online Harassment

- When a school has information about sex-based harassment that occurred online and created a hostile environment in the education program or activity, the school has an obligation to address that hostile environment.
- Schools are obligated to address all forms of sex discrimination, including sex-based harassment that occurs within the recipient's education program or activity, whether the conduct takes place online, in-person, or both

# Failing to Use Student's Preferred Pronouns

- Whether verbal conduct constitutes sex-based harassment is fact-specific
- An isolated remark, such as a misuse of language, would not constitute harassment under this standard.

SHE / HER

HE / HIM

THEY / THEM

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

# Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

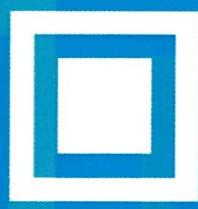
## Dating Violence

Violence committed by a person who is or has been in a romantic or intimate relationship with complainant.

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Felony or misdemeanor crimes committed by:

- A current or former spouse or intimate partner under domestic violence laws
- Cohabitating/cohabitated as spouse or intimate partner
- Shares a child with complainant; or
- Commits acts against minor or adult protected by family or domestic violence law from such acts



## Hypotheticals

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

Could this be sex-based harassment under Title IX?



Jordan gives Finn flowers and asks Finn out on a date in the cafeteria during lunch. Jordan feels embarrassed and reports the conduct.

Would this single incident create a hostile environment?



Avery reports peers repeatedly denigrated him as “girly” over a period of weeks.

Is this enough for a Title IX hostile environment complaint?



At night, for a weeks, Emery has been sending sexual images to Blake on Snapchat and keeps requesting Blake send similar images back. All messaging occurs outside of school on private devices. In class, Teacher overhears Emery telling friends about Blake's conduct.

Is Teacher required to report the conduct to the Title IX Coordinator?

Is the conduct Title IX sex-based harassment?



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Kendall and Frankie are walking to class, when Kendall leads Frankie by the hand into the stairwell and down the stairs. Kendall kisses Frankie and they make out. Then Kendall asks Frankie to have sex. Frankie says we have to get to class. Kendall responds that they have a sub so they won't miss anything and says "come on, please. It will be so hot" repeatedly. Frankie says nothing. Kendall puts their hand inside Frankie's pants, touching their genitals. Frankie says nothing. Kendall removes both their pants and proceeds with sex. Frankie reports.

Is this Title IX sex-based harassment?



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

Is this Title IX sex-based harassment?



Frequently, when Principal is talking to Admin Assistant (AA), Principal stands behind AA's desk and puts a hand on AA's shoulder. AA moves away or makes excuses to get up. AA reports.

Should AA's report be processed as Title IX sex discrimination?



During executive cabinet, Deputy Superintendent (DS) always asks a female member of cabinet to take notes for the group. One day, the two female cabinet members decide not to bring paper and pens or laptops to cabinet. When DS asks one to take notes and she responds she does have any way to take notes, DS directs a male cabinet member to give her his materials.

Superintendent is present during these interactions every meeting.

Is this Title IX sex discrimination?

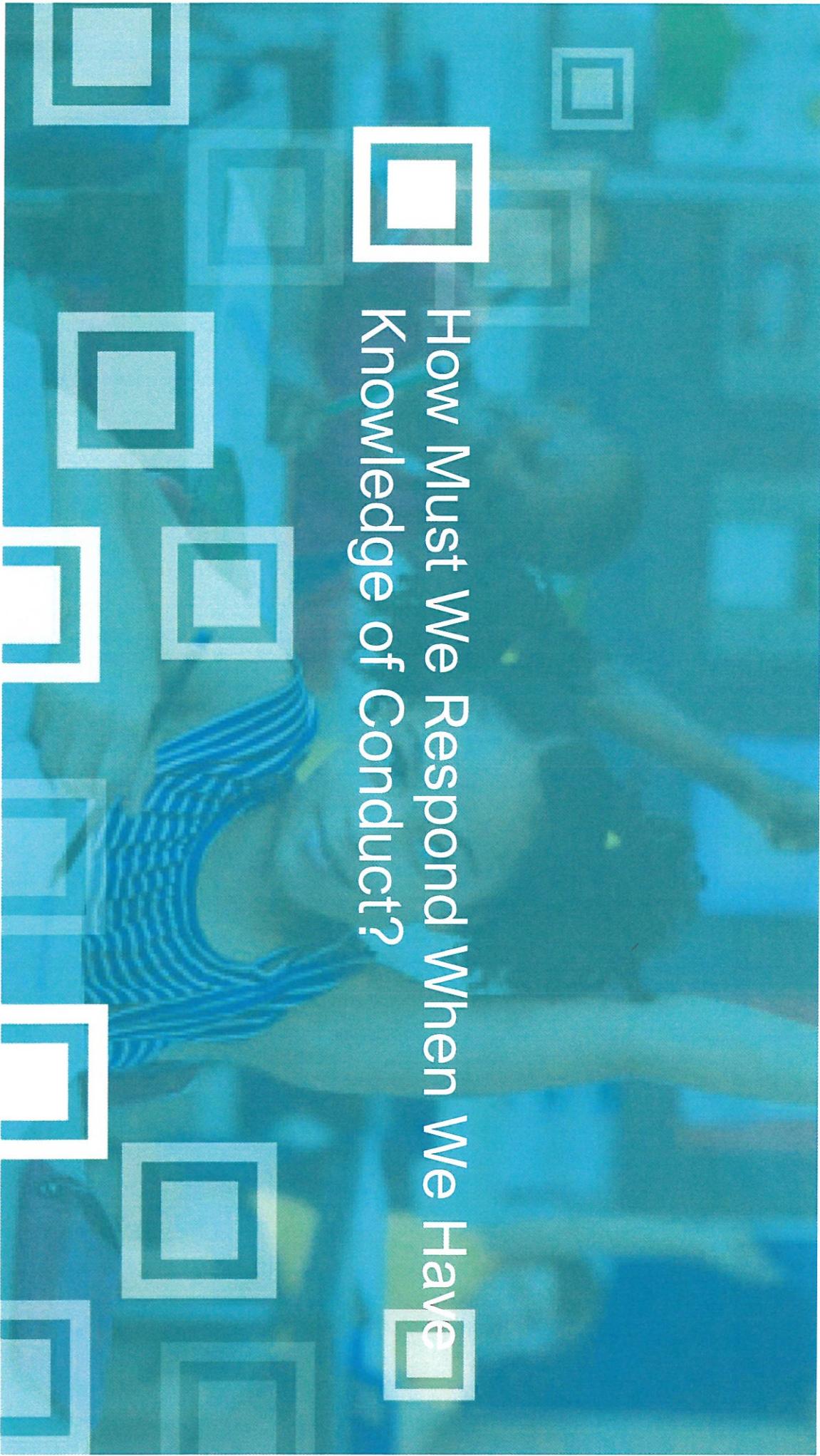


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Over the summer, Harper and Kyle dated for a few weeks. The first week of school, Harper is often walking behind Kyle in the hall and sits near Kyle in the cafeteria, but not at the same table. They do not have classes together. The second week of school, Harper and Kyle have two classes together.

Kyle reports Harper. Is this sex discrimination?





How Must We Respond When We Have  
Knowledge of Conduct?



# Schools with Knowledge of Conduct Must:

**Respond Promptly and Effectively to End Any Sex Discrimination in its Education Program or Activity**

**Prevent Recurrence and Remedy Effects**

**Treat the complainant and respondent equitably.**

**Offer and coordinate supportive measures**

**Notify complainant of the grievance procedures and the informal resolution process, if available and appropriate**  
**(Notify reporting party if complainant is unknown)**

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## Whether to Initiate a Complaint

- If complainant does not initiate a complaint and the matter is not resolved in informal resolution, using the 8 factors on the following slide, the Title IX Coordinator will make a fact-specific determination whether the conduct as alleged presents an imminent and serious threat to the health or safety of a complainant or other person or prevents the recipient from ensuring equal access based on sex to its education program or activity. (§ 106.44(f)(1)(v).)
- If so, Title IX Coordinator may initiate a complaint.
- Before Title IX Coordinator initiates a complaint, they must notify complainant and appropriately address reasonable concerns about complainant's safety or the safety of others. (§ 106.44(f)(1)(vi).)

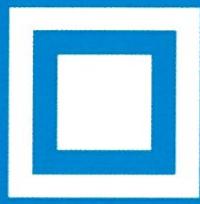
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# Whether to Initiate a Complaint?

## 8 Factors to Consider

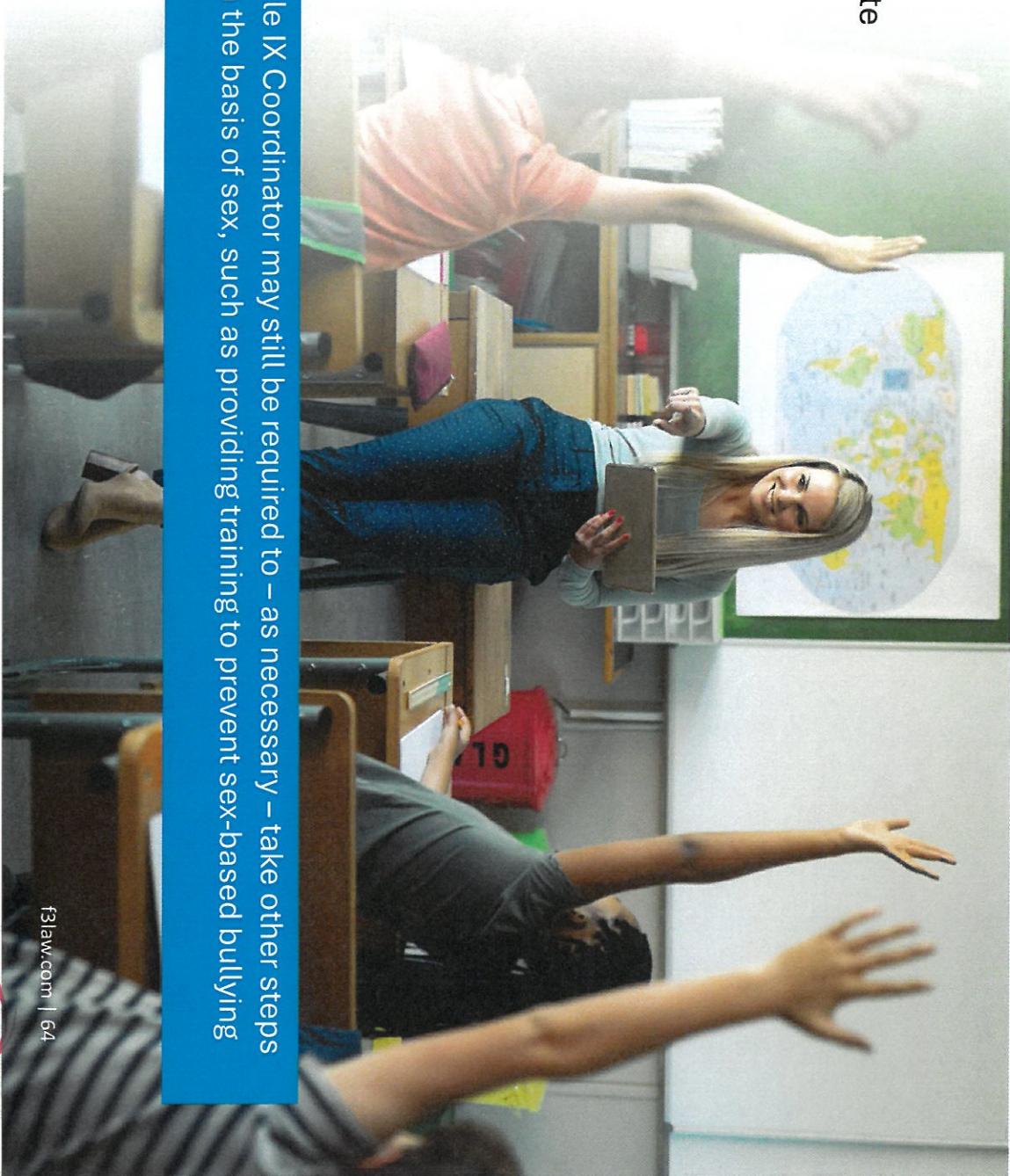
1. Complainant's request not to proceed with initiation of a complaint
2. Complainant's reasonable safety concerns associated with complaint initiation
3. Risk additional acts of sex discrimination would occur if a complaint is not initiated
4. Severity of the alleged sex discrimination
5. Age and relationship of the parties
6. Scope of alleged sex discrimination
7. Availability of evidence
8. Whether the alleged sex discrimination can be ended and recurrence prevented without initiating grievance procedures

Regardless of whether a complaint is initiated, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within the education program or activity, in addition to providing remedies to an individual complainant. (§ 106.44(f)(1)(vii)).

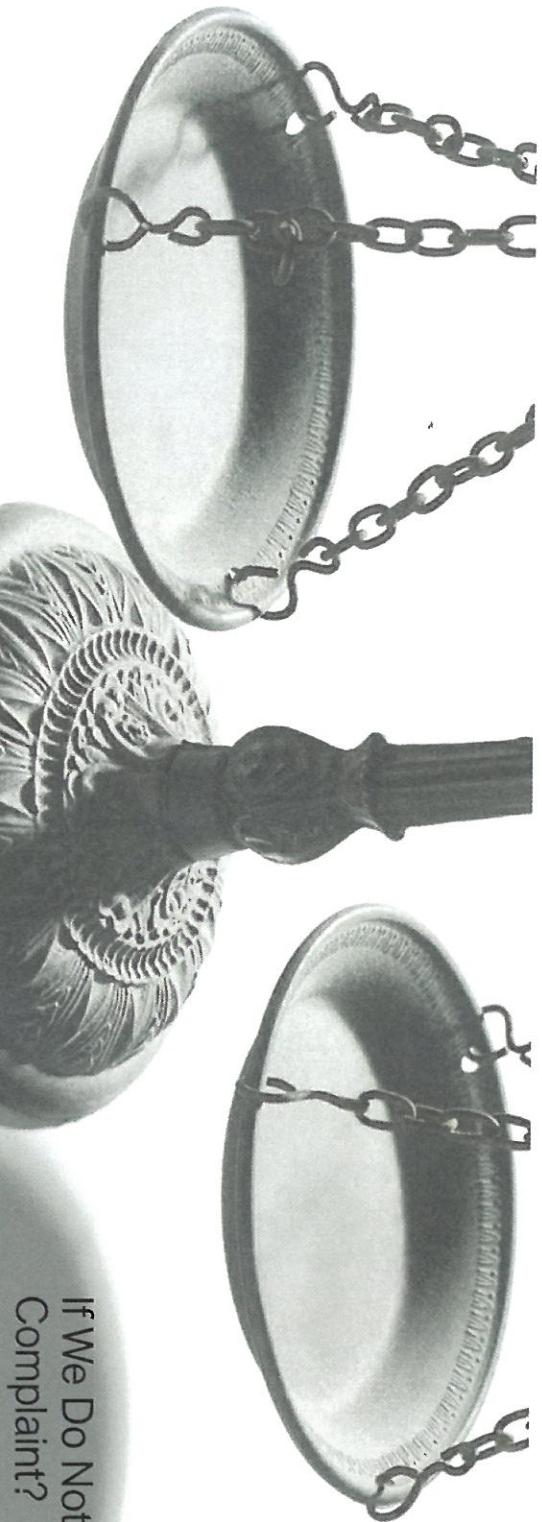


Minor student and their parents disagree about whether to initiate a complaint. Student wants to initiate a complaint.

What would you do?



If a complaint is not initiated, the Title IX Coordinator may still be required to – as necessary – take other steps generally to ensure equal access on the basis of sex, such as providing training to prevent sex-based bullying and harassment in school.



#### If We Do Not Initiate a Complaint?

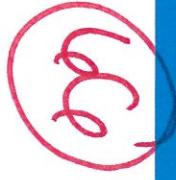
- Still may take non-disciplinary and non-punitive prompt and effective steps to address the alleged conduct

#### If We Initiate a Complaint?

- Notify the Complainant first.
- Address any safety concerns with the Complainant.



## Supportive Measures



# Supportive Measures

- Supportive measures are intended to preserve or **restore** a **complainant's** or **respondent's access** to the recipient's education program or activity and may be provided to the complainant or respondent, as appropriate, after the Title IX Coordinator has been notified of **any conduct** that may constitute sex discrimination under Title IX.
- Supportive Measures encompass a wide range of accommodations, resources, and supports intended to **restore** or **preserve equal access** to education, **protect safety**, or **provide support** during the grievance procedures or informal resolution process, as long as such measures are not unreasonably burdensome and are not imposed for punitive or disciplinary reasons.

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# What are Supportive Measures?

- Supportive measures are intended to
  - Preserve equal access to education, *i.e.*, assist students to stay in school and to receive support and resources.
  - Ensure the safety of the parties and the campus (as long as they're not disciplinary or punitive in nature).
  - Provide support during the grievance procedure or informal resolution process.
- Supportive measures must be designed to protect the safety of the parties or the educational environment.

## What are **NOT** Supportive Measures?

- Punitive or disciplinary in nature.
- Unreasonably burden either party.
- Supportive measures *do not require a preliminary determination that a Respondent engaged in sex-based discrimination.*
- Supportive measures *do not require a complainant to initiate a grievance or engage in an informal resolution process.*



# Examples of Supportive Measures

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

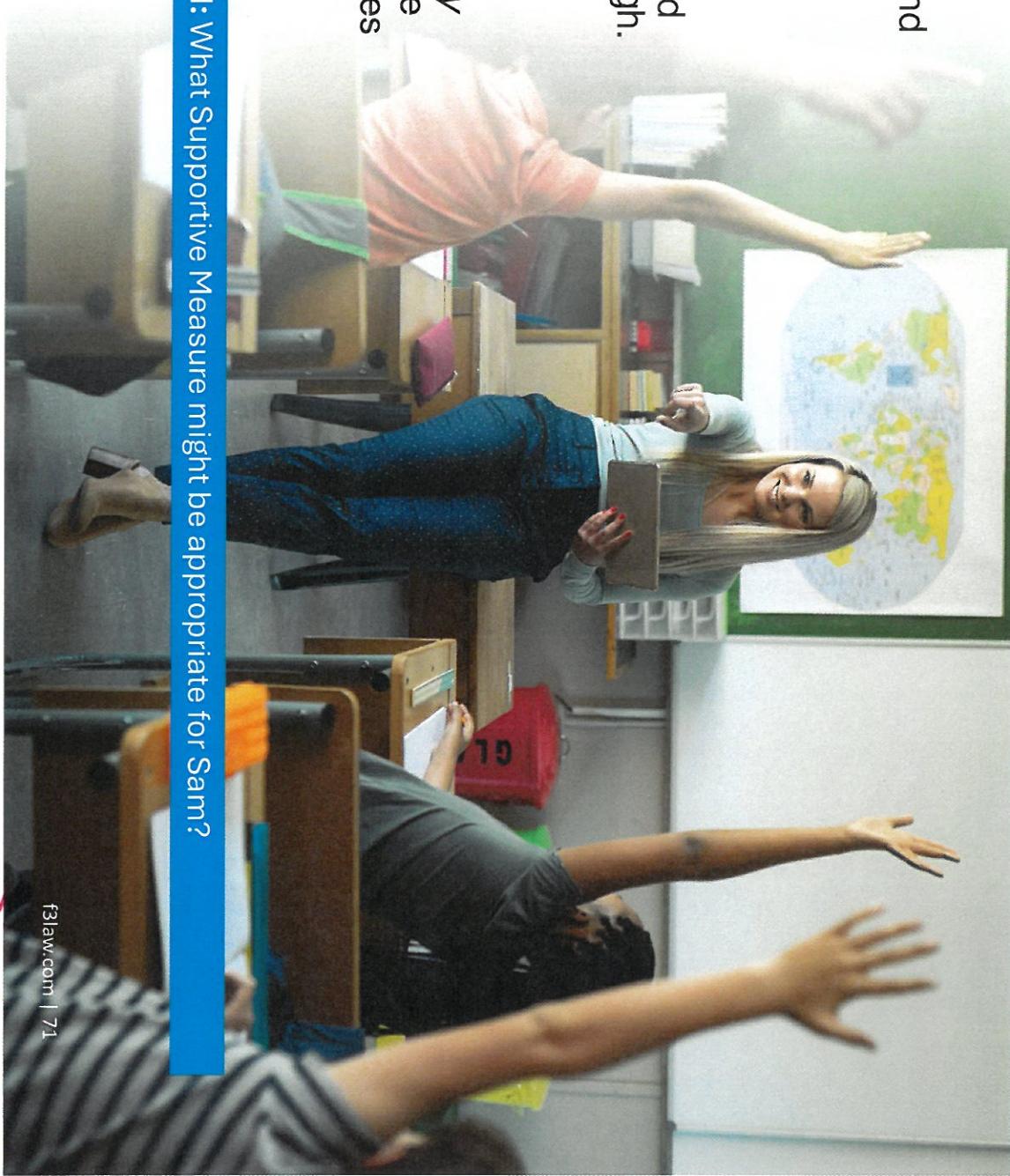


Sam identifies as non-binary and is a Complainant in a Title IX grievance related to gender identity. Sam tells the Title IX Coordinator that they think it would be helpful to talk to someone about what happened and what they are going through.

#### TRUE OR FALSE:

The Title IX Coordinator *may* but is *not required* to provide Sam with Supportive Measures for a gender identity based complaint.

#### BONUS QUESTION: What Supportive Measure might be appropriate for Sam?



Adele is classmates with Sam, and Sam thinks Adele might have some information that would support their complaint based on gender identity. Adele tells the Title IX Coordinator that she is willing to help but she's been discriminated against before and finds this to be very triggering. Adele says that it would be a lot easier if she could have someone to talk to about it.

#### TRUE OR FALSE:

The Title IX Coordinator *may* but *is not required* to provide Adele with Supportive Measures as a Witness in a Title IX matter.

**BONUS QUESTION:** Adele is Deaf and communicates primarily using American Sign Language (ASL); and, as such, requires an ASL interpreter to participate. Is Adele entitled to supportive measures?

Sam is grateful for the Supportive Measures offered, and they are finding meeting with a counselor to be very beneficial in many ways. But, after thinking through their options, Sam decides not to move forward with a grievance against the Respondent, Rick. Rick was never notified of the allegations against him, and no action will be taken.

**TRUE OR FALSE:**

Since both Parties are entitled to Supportive Measures, the Title IX Coordinator must ask Rick if he needs any support.

**BONUS QUESTION:** Does the Title IX Coordinator need to continue to offer Supportive Measures to Sam?



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# No Contact Orders

## What is a No Contact Order?

- An Order issued by the Title IX Coordinator that provides restrictions on contact as to one or more Parties.
- Can be unilateral or mutual.
- Can apply to all contact, including electronic communication, non-verbal communication, and communicating through a third party.
- A Title IX Coordinator does not have the authority or jurisdiction to issue an NCO as to a Respondent who is not under their jurisdiction (*i.e.*, a third-party who is neither a student nor employee).

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# No Contact Orders

## How Do We Determine if a No Contact Order is an Appropriate Supportive Measure?

- Needs of Complainant and Respondent
- Ages of Parties
- Nature of allegations and continued impact on Parties
- Whether the Parties continue to interact directly in the educational program
- Whether other steps have already been taken to mitigate contact (e.g., TRO)
- Remember! Cannot be punitive or disciplinary or unreasonably burdensome

## Liam's Story

Liam is a student who recently broke off a relationship with Niall, an older guy who isn't in school anymore. When Liam broke up with Niall, Niall ran over Liam's laptop with his car, and since then, Niall has been texting him hundreds of times a day and is threatening to send naked pictures of Liam to Liam's professors.

Liam is having trouble keeping up in classes because he is stressed out and doesn't have a laptop, and he finds it hard to concentrate because he is very scared of what Niall might do. Liam tells you that his friend told him that the Title IX office could get him a restraining order. Liam would like to know if that is possible.

## How Can We Help Liam?



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# Supportive Measures

## What Does May Not Be Disciplinary or Punitive in Nature Mean?

- A punitive or disciplinary measure is one that is intended to punish a respondent for conduct that violates Title IX, whereas a supportive measure is one that is intended to fulfill the purposes of supportive measures
- Suspension or expulsion
- Reduction in hours, pay, or other benefits of employment
- Important! The fact that a Supportive Measure could also, in some cases, be disciplinary after a finding of responsibility does not automatically render it punitive
- Important! The fact that a Supportive Measure may be burdensome in some way does not make it punitive



# Supportive Measures

## What Does Must Not Be Unreasonably Burdensome Mean?

- We must engage in a fact-specific inquiry to determine if a Supportive Measure constitutes a reasonable burden on a Party.
- The fact-specific inquiry must take into account the nature of educational programs, activities, opportunities, and benefits in which the party is participating – not solely those components which are “academic” in nature.

## Some Guidance from the Department of Education

- Definitely Unreasonably Burdensome: Suspension and Expulsion
- Usually Not Unreasonably Burdensome in K-12: Adjustments to class/work schedules
- Likely Not Unreasonably Burdensome: In the K-12 context, actions taken to quickly intervene and correct behavior, such as educational conversations and changing students’ seating

## Changing the Route

Title IX Coordinator issued a No Contact Order to Respondent Rae directing Rae to have no contact with Complainant Carly. Rae was assigned a specific route on campus. Rae objects to this because they can no longer walk with friends between 1<sup>st</sup> and 2<sup>nd</sup> period.

Is this Supportive Measure an unreasonable burden for Rae? Why or why not?



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# Supportive Measures

## Is an Involuntary Change Always Punitive or Burdensome?

- Changes to class schedule through supportive measures may not constitute an unreasonable burden.
- Supportive measures may include changes in work schedules or work assignments that are not imposed for punitive reasons, so complainant and respondent are not working on the same projects or at the same time.
- Whether such an involuntary change would constitute an unreasonable burden is a fact-specific analysis that depends on the particular circumstances involved.

# Supportive Measures

## When is a Supportive Measure Over?

- We determine the appropriate length of time for any given supportive measure.
- Supportive measures may be modified or terminated as appropriate
- Parties may seek modification or termination of supportive measures if they believe it does not qualify as a supportive measure or circumstances have changed materially
- Circumstances may have “changed materially” if respondent is found not responsible or informal resolution reached or the grievance process concludes
- Whether a supportive measure constitutes an unreasonable burden may change after determination, particularly after a determination of non-responsibility
  - Consider whether measures continue to meet the definition of “supportive measures,” when evaluating whether to continue, modify or terminate supportive measures

# Appealing Supportive Measures

## What if a Party disagrees with a Supportive Measure?

- Either Party has the right to appeal the decision to provide, deny, modify, or terminate supportive measures when such measures are applicable to them.
- A party must have the opportunity to seek additional modification or termination of a supportive measure “applicable to them” if circumstances change materially.

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# Appealing Supportive Measures

## The Process

- The Process Must:
  - Provide parties a timely opportunity to seek...
  - From an appropriate and impartial employee...
  - Modification or reversal of the decision to provide, deny, modify, or terminate supportive measures...
  - When such measures are “applicable to them.”
- Full due process is not required, just *one* independent reviewer:
  - May be Title IX Coordinator or Delegate (an alternate and impartial administrator)
  - Neither Title IX Coordinator nor any other employee will be permitted to both provide and review the same supportive measures

## Changing Classes

Complainant Carly has one class, Biology, with Respondent Rae. Title IX Coordinator approves Carly's request to drop Biology without penalty as a Supportive Measure. The next day, Rae realizes Carly dropped the class, and as a result, Rae's lab group now only has 3 members instead of 4. Carly was really good at Biology, so their group is going to have to do a lot more work without Carly. Rae wants to appeal because she doesn't think Carly should just be able to drop the class and leave the group struggling.

Is Rae entitled to appeal this Supportive Measure?



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# Supportive Measures & Confidentiality

## Who Gets to Know What?

- Must maintain supportive measures as confidential, to the extent confidentiality does not impair the ability to provide the supportive measures.
- Do Not disclose information to a party regarding a supportive measure provided to another party!
- May Also Disclose:
  - With prior written consent from the party receiving the supportive measure allowing disclosure
  - To parents of minors

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## Carly's Counseling Services

Title IX Coordinator arranged for Complainant Carly to receive counseling services, free of charge. Title IX Coordinator thinks Respondent Rae could benefit from counseling too, and that she might be more willing to go if she knows Carly is going.

**Can the Title IX Coordinator tell Rae that Carly is receiving counseling as a Supportive Measure?**



# Supportive Measures & Students With Disabilities

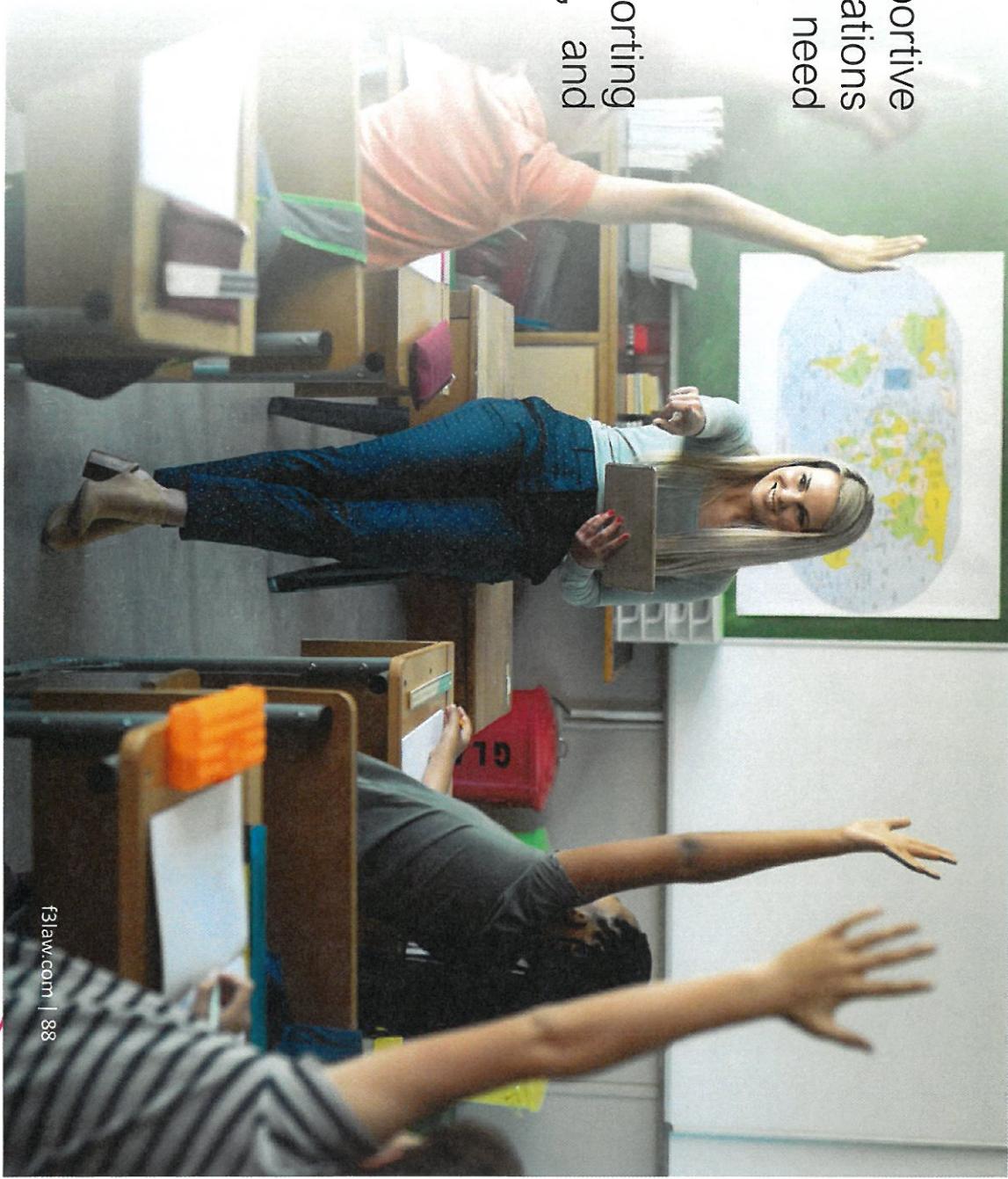
## **Students with Individualized Education Programs and Section 504 Plans**

- Students with IEPs or Section 504 Plans may already be receiving accommodations and support.
- Supportive measures may “intersect with decisions made by the IEP team or Section 504 team” in a “variety of ways.”
- To determine how to best comply with relevant laws protecting students with disabilities while carrying out obligations under Title IX, Title IX Coordinator is required to consult with at least one team member, as appropriate, of the student’s IEP or Section 504 Team.
- Title IX Coordinator is not required to consult with a student’s entire IEP or 504 Team, but is not precluded from doing so if appropriate



In addition to Supportive Measures, what accommodations or supports might a student need to engage in the process?

What unique barriers to reporting might this population face, and how can we address them?





# Emergency Removal & Administrative Leave

# Emergency Removals

## When Can We Remove a Respondent?

- When we determine a respondent poses an imminent and serious threat to the health or safety of members of the community.
- What Changed? The 2024 Amendments eliminate the requirement that the threat must be “physical” in nature.
- Why? Limiting emergency removals to circumstances in which a respondent poses a threat to the physical health or safety of any student, or other individuals, fails to account for the significant non-physical harms some respondents pose to complainants and other individuals.

# Emergency Removals

## When Can We Remove a Respondent?

- Serious. The Federal Regulations do not define “serious” in this context because “it is a familiar term that is adequately flexible to inform an individualized assessment of the unique facts and circumstances of the health and safety risks posed by a Respondent.
- Imminent. “Imminent” threats are those that while not active, are likely to occur soon but not immediately, and thus are appropriate for an individualized risk assessment.
- Purpose: Emergency Removal is not to prevent continuing sex discrimination. The purpose is to protect against imminent and serious threats to health or safety that arise from allegations of sex discrimination.
- Emergency Removal can be implemented related to all prohibited conduct under Title IX.. Application is not limited to allegations of sex-based harassment.



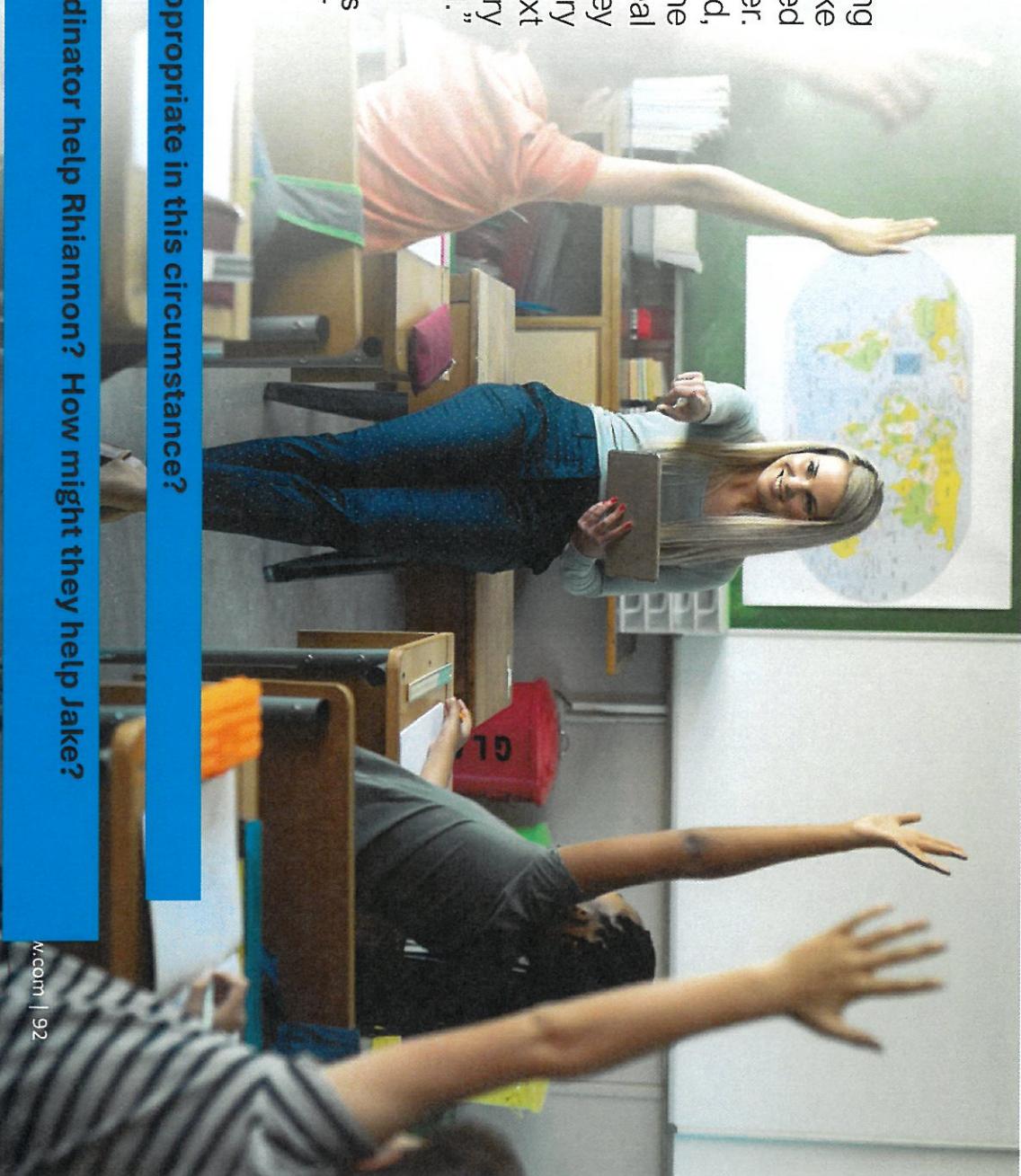
### Rhiannon's Story

Rhiannon broke up with Jake during fall semester. All winter break, Jake texted Rhiannon saying he missed her and couldn't live without her. When Rhiannon didn't respond, Jake's texts escalated, and he threatened to harm himself and steal and harm Rhiannon's dog. Now, they are back at school and after every class period, she receives a text message from him, stating "every breath you take, I'll be watching you."

What kind of impact might Jake's actions have on Rhiannon's ability to access her education?

**Would emergency removal be appropriate in this circumstance?**

**How else might the Title IX Coordinator help Rhiannon? How might they help Jake?**



# Emergency Removals

## Balancing a Safe Campus with the Rights of a Respondent

- Emergency removal is a significant hardship for a Respondent.
- Title IX Coordinator must balance maintaining a safe campus with Respondent's.
- In the event of a genuine emergency, schools must have the authority to remove a Respondent while providing notice and opportunity for the Respondent to challenge that decision immediately following the removal.
- There is no minimum or maximum time for an Emergency Removal, but it is not appropriate to permanently remove a Respondent.
- Emergency Removal may not be used as a substitution for the grievance procedures under Title IX.
- If the school is seeking permanent expulsion or removal of an individual, they must initiate the appropriate Title IX procedures.

# Emergency Removals

## Balancing a Safe Campus with Respondent's Rights

- Prior to Emergency Removal, we must:
  1. Undertake an individualized safety and risk analysis;
  2. Determine an imminent and serious threat to the health or safety of a complainant, or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal; and
  3. Provide respondent notice and an opportunity to challenge the removal immediately.

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# Emergency Removals

## Partial Removal and Accommodations

- As long as the Emergency Removal requirements are met, a respondent may be removed from one or more parts of the educational program.
- For example, a respondent may be removed from all education programs and activities or from “certain classes, teams, clubs, organizations, and activities.”
- Partial removal may be preferable and sufficient to address the imminent and serious safety risk and may reduce the burden of removal on a Respondent.
- Schools may also “accommodate students who have been removed on an emergency basis with alternative means to continue academic coursework during a removal period.”

# Emergency Removals

## Students with Disabilities

- In some cases, a respondent student with a disability subject to Emergency Removal may be treated differently than a respondent student without a disability to comply with applicable Federal disability laws.
- The Emergency Removal provision does not modify any rights under the ADA, IDEA or Section 504 including, as applicable, the right to a Manifestation Determination.
- Nothing requires removal of a respondent where the alleged conduct is a manifestation of their disability and the IDEA would constrain the ability to remove the student.
- Nothing prevents a Title IX Coordinator from consulting with a student's IEP team prior to making a decision about Emergency Removal.
- Remember: Schools may have on-going obligations under IDEA to provide services to a student under an Emergency Removal.



# Administrative Leave

- Employee-respondents (including student-employees) may be placed on administrative leave from employment while the grievance procedures are pending.
- Administrative leave means a temporary separation from one's employment, generally with pay and benefits.
- Administrative leave **does not presume a respondent's responsibility**. A Respondent may only be found responsible after the conclusion of the grievance procedure.
- Placing an employee on administrative leave does not deprive the employee of other rights available under Title IX.
  - If, for example, an employee believes that they have been subject to sex discrimination or retaliation through the application of an employer's administrative leave policy, the employee would have recourse under Title IX
- May not be retaliatory, punitive or disciplinary in nature.

# Administrative Leave

## What About Volunteers, Agents, and Others?

- Because administrative leave means a temporary separation from one's employment, generally with pay and benefits, it is assumed that it applies to *employees*.
- Nothing precludes using administrative leave to exclude volunteers, agents, and others who provide an aid, benefit, or service.
- These non-employees may also be removed as a Supportive Measure, but only for non-punitive and non-disciplinary reasons.



See you next week!

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