



1

Title IX
Statute

"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. §§ 1681–1688.

2

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

3

2020 Regulations



4

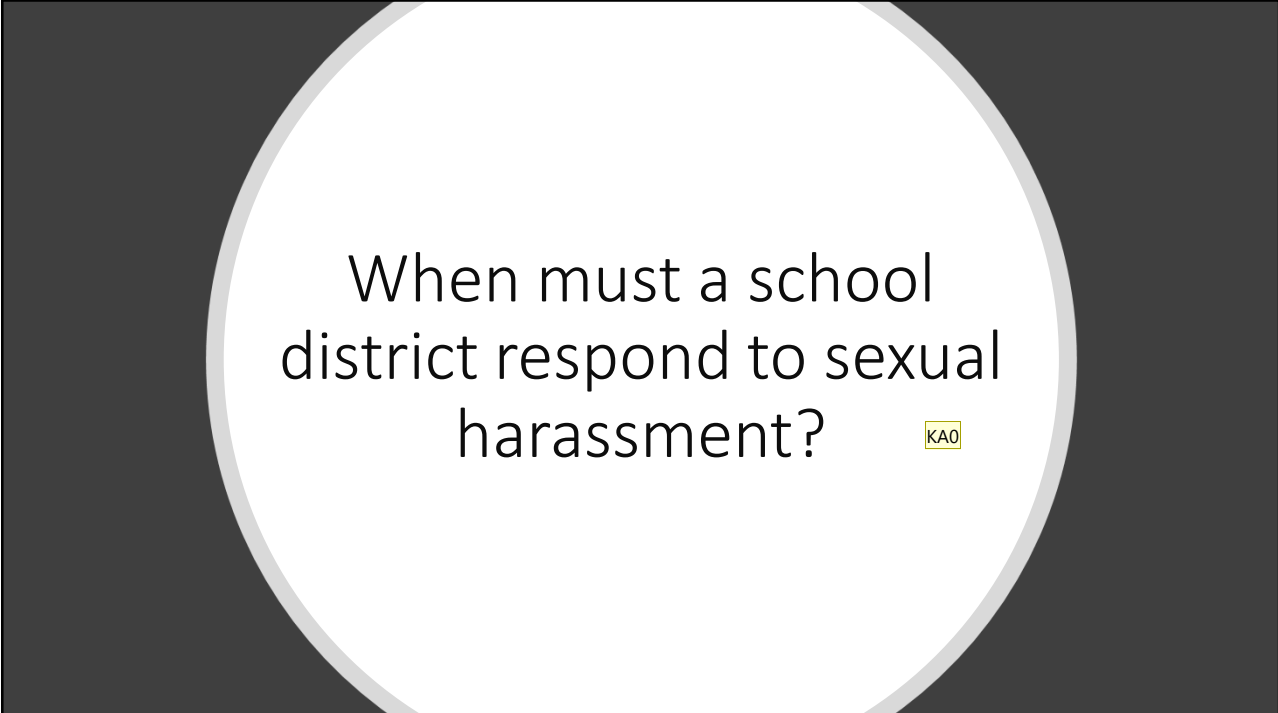


Title IX Regulations

(34 C.F.R. Part 106 – Amended as of 8/14/2020)

- Prohibit discrimination on the basis of sex
- Establish procedural requirements
 - Policy + detailed grievance procedure
 - Designation of Title IX coordinator(s)
 - And many more requirements!

5



When must a school district respond to sexual harassment? KA0

6

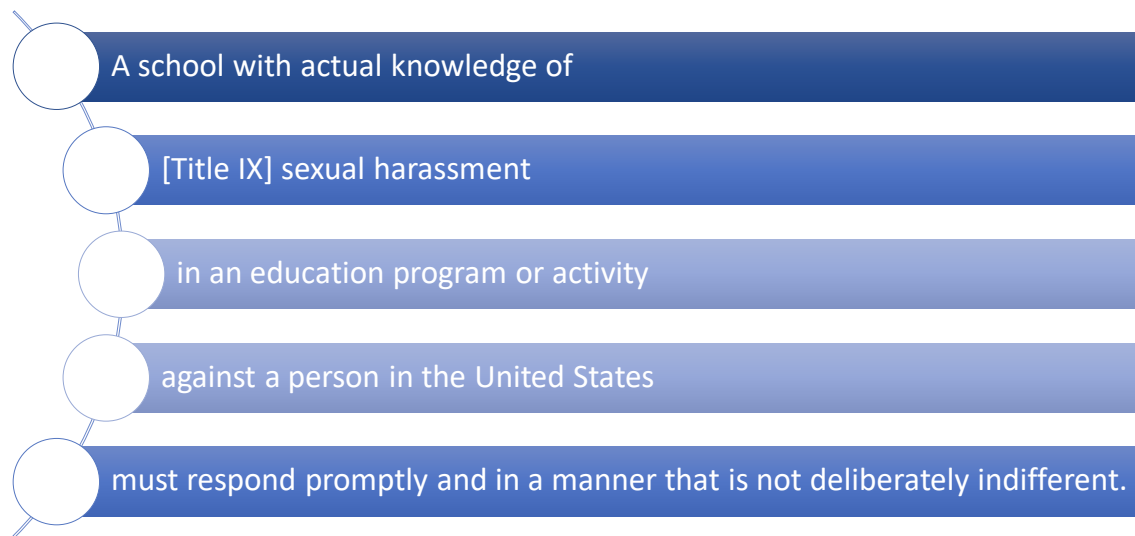
Slide 6

KA0 [@Jenny V. Lee] Was Sexual Harassment capitalized because we are considering it a term of art? I changed it to lowercase, but if there was a reason it was capitalized, feel free to change it back.

Kaitlin Atlas, 2022-08-24T13:01:42.425

JLO 0 [@Kaitlin Atlas] Lower case is fine! Capitalization is a little uneven across all the slides -- most are capitalized like headings, but it's not always consistent so feel free to change as needed.

Jenny V. Lee, 2022-08-24T15:36:37.446



7

KA0

What is Actual Knowledge?

- Sense
- Report



8

Slide 8

KA0 When discussing this slide, we may want to emphasize that a K-12 school district has actual knowledge when ANY of its employees has notice of sexual harassment. I usually summarize it as akin to a mandated reporting obligation under ANCRA - if any employee hears anything that may be sexual harassment, they must report it to the school because that knowledge is imputed on the school.

Kaitlin Atlas, 2022-08-24T13:06:18.395

DK0 0 Agreed!

Dickerson, Amy K., 2022-08-25T18:31:12.819

Any person may report sex discrimination, regardless of whether the person is the alleged victim of the reported conduct

Reports can be made by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator

Or by any means that results in the Title IX Coordinator receiving the person's report

Such a report may be made at any time, including during non-business hours, by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator

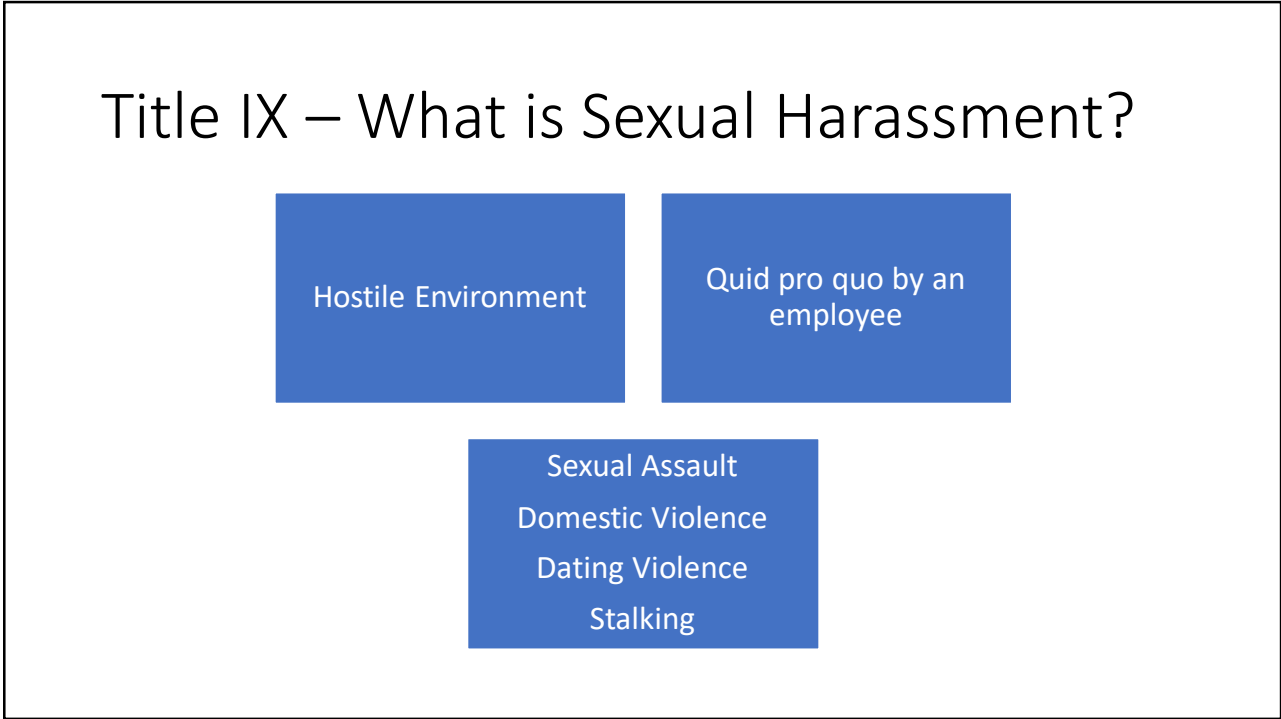
Reporting: Who, How, and When?

9

Officials with Authority

- Title IX Coordinator
- Any official who has authority to institute corrective measures on behalf of the school
- K-12: All employees

10



11

Title IX Quid Pro Quo

Definition: An employee of the school conditioning an aid, service, or benefit of the school on an individual's participation in unwelcome sexual conduct

Only an employee (not a volunteer, another student, etc.)

Severity and harm presumed

Quid = Something

Pro = For

Quo = Something

12

VAWA “Big Four”

Sexual Assault 20 U.S.C. 1092(f)(6)(A)(v)

Domestic Violence 34 U.S.C. 12291(a)(8)

Dating Violence 34 U.S.C. 12291(a)(10)

Stalking 34 U.S.C. 12291(a)(30)

13

Title IX Hostile Environment

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




14



15



16



Program or Activity

Any location, events, or circumstance over which the recipient exhibits substantial control over both the alleged harasser and the “context” in which the harassment occurred



17



Online & Off Campus

Substantial control over the context?



18

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



19

DISMISSALS

Mandatory:

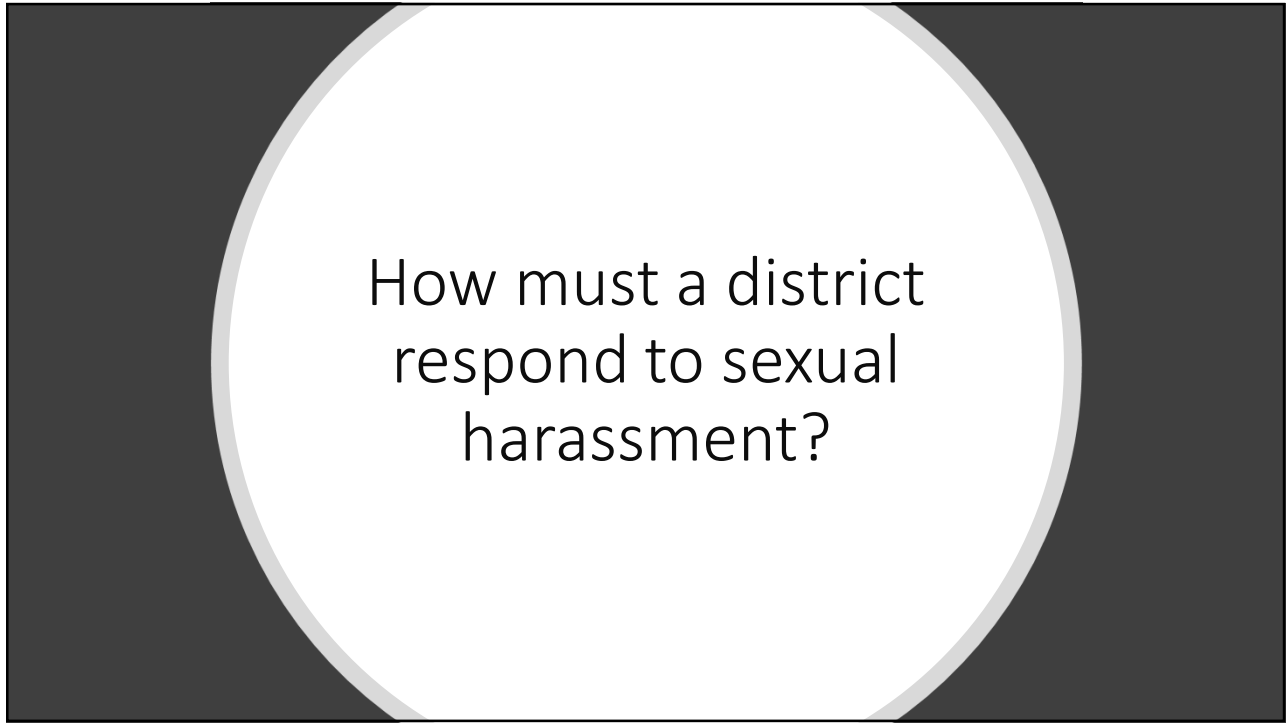
- Not Title IX Sexual Harassment
- Did not occur in the school's program or activity
- Did not occur in the United States
- **Can still address under non-Title IX policy

Permissive:

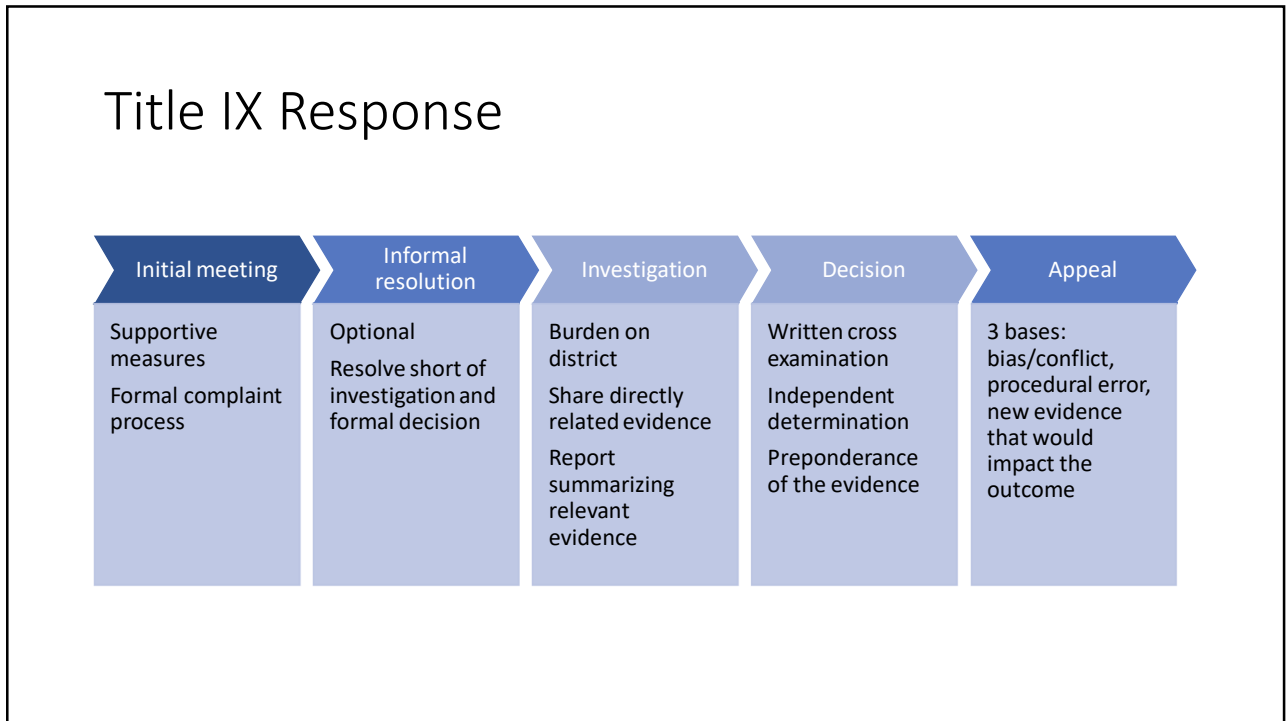
- Complainant requests to withdraw in writing
- Respondent's enrollment or employment ends
- Specific circumstances prevent school from gathering evidence sufficient to reach a determination (e.g., passage of time, lack of cooperation by complainant)



20



21



22

Legal Developments

23



Here for 2022-2023

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24



Questions and Answers on Civil Rights and School Reopening in the COVID-19 Environment

Helping schools reopen safely and in ways that support equity among students is a top priority for the Department of Education. The purpose of this Q&A is to help students, families, schools, and the public support all students' rights in educational environments, including in elementary and secondary schools and postsecondary institutions, during the COVID-19 pandemic.¹

This question and answers (Q&A) document provides answers to common questions about schools' responsibilities under the civil rights laws the Office for Civil Rights (OCR) enforces.² These laws prohibit discrimination based on race, color, national origin, sex, disability, and age by state and local recipients of Federal financial assistance.³

- Title VI of the Civil Rights Act of 1964 (Title VI), which prohibits discrimination based on race, color, or national origin;
- Title IX of the Education Amendments Act of 1972 (Title IX), which prohibits discrimination based on sex; and
- Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), which prohibit discrimination based on disability.⁴

25

U.S. Department of Education Confirms Title IX Protects Students from Discrimination Based on Sexual Orientation and Gender Identity

JUNE 16, 2021

Contact: Press Office, (202) 401-1576, press@ed.gov

The U.S. Department of Education's Office for Civil Rights today issued a [Notice of Interpretation](#) explaining that it will enforce Title IX's prohibition on discrimination on the basis of sex to include: (1) discrimination based on sexual orientation; and (2) discrimination based on gender identity. Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any education program or activity offered by a recipient of federal financial assistance.

The Department's interpretation stems from the landmark U.S. Supreme Court decision in *Bostock v. Clayton County*, issued one year ago this week, in which the Supreme Court recognized that it is impossible to discriminate against a person based on their sexual orientation or gender identity without discriminating against that person based on sex.

"The Supreme Court has upheld the right for LGBTQ+ people to live and work without fear of harassment, exclusion, and discrimination – and our LGBTQ+ students have the same rights and deserve the same protections. I'm proud to have directed the Office for Civil Rights to enforce Title IX to protect all students from all forms of sex discrimination," said U.S. Secretary of Education Miguel Cardona. "Today, the Department makes clear that all students—including LGBTQ+ students—deserve the opportunity to learn and thrive in schools that are free from discrimination."

26

- Reiterates information in the preamble to the 2020 amendments
- OCR highlights
- June 2022 updates



Questions and Answers on the
Title IX Regulations on Sexual
Harassment (July 2021)
(Updated June 28, 2022)

27

Non-Title IX Sexual Harassment

Must address sexual misconduct that does not meet the definition of sexual harassment under the 2020 amendments

- Code of conduct
- Prevention efforts

28

Definitions

Sexual assault

Dating violence

Domestic violence

Stalking

29

Sexual Harassment Occurring Prior to 2020 Amendments

Amendments are not
retroactive

Only applicable to
complaints of sexual
harassment occurring on
or after August 14, 2020

30

Denial of Access to Education Program or Activity

Reasonable person standard

No actual loss needed

Does not require total access to be denied

No concrete injury required

31

Notice

No limit to the manner in which an institution may receive notice of sexual harassment


Indirect avenues of information may constitute “actual knowledge”

32

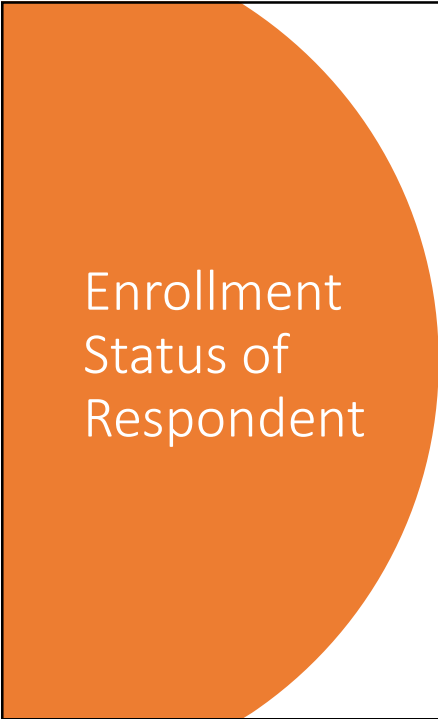


Enrollment Status of Complainant


Institutions are required to accept a formal complaint of sexual harassment from a complainant that is not currently enrolled or attending, as long as they are *attempting to participate* in the school's education program or activity *at the time they file the complaint*.



33



Enrollment Status of Respondent

- Required to take action even if a Respondent has left the school prior to the complaint being filed:
 - Inform complainant of supportive measures
 - Discretion to assess facts prior to complaint dismissal
- 

34

Signing a Formal Complaint as a Title IX Coordinator

- OCR may find a school to be **deliberately indifferent** if it has **actual knowledge** of a pattern of alleged sexual harassment by a **perpetrator in a position of authority** if the school's Title IX Coordinator does not sign a formal complaint, regardless of the complainant's relationship with the school or interest in participating in the Title IX grievance process.

35

Written Cross-Examination Questions

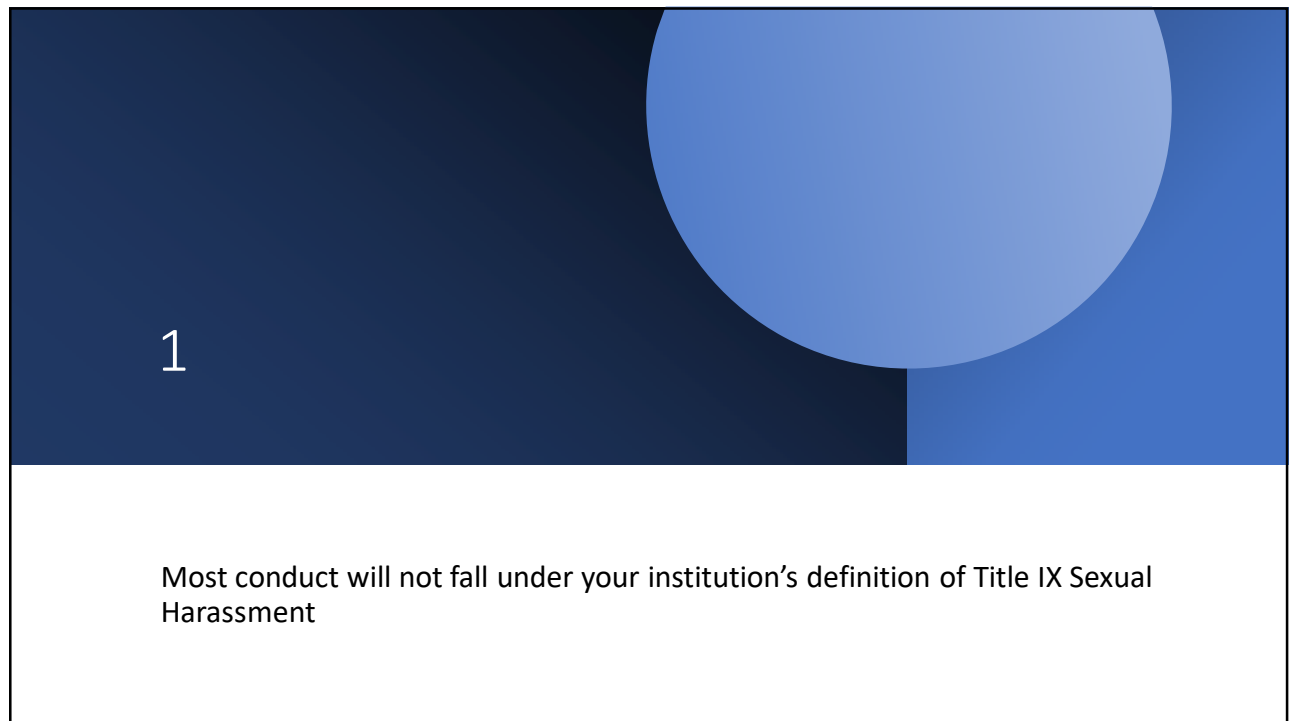
K-12 schools must provide parties the opportunity to submit written, relevant questions

Parents/guardians may act on behalf of a party

36



37




38

Slide 37

KAO For the next several slides, do we want to have the formatting consistent with the formatting from the rest of the presentation?


Kaitlin Atlas, 2022-08-24T13:18:29.071



2

“Actual knowledge” may occur both directly and indirectly.

39



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Identifying and training personnel for on your Title IX team is crucial.

40



4

Carefully consider, but don't automatically disregard, obligations to respond to conduct occurring off-campus

41



5

Consider and communicate the availability of supportive measures more often than not.

42



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