

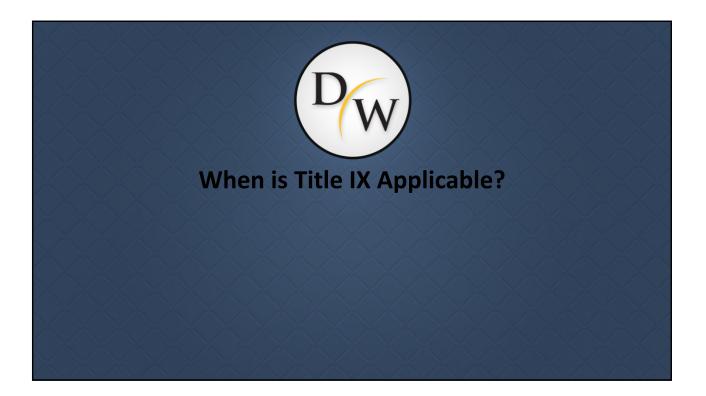
K-12 VLAC Staff Title IX Training

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Agenda

- 1. Overview of Title IX and when it is applicable;
 - a) Reporting responsibilities
 - b) The scope of the education program or activity;
 - c) The definition of sexual harassment provided within Title IX;
- 2. The Title IX grievance process;
- 3. Overarching Title IX grievance process requirements;
- 4. Responsibilities of Staff and Administrators that *are not* the Title IX Coordinator;
- 5. Breakout sessions





Title IX Statute

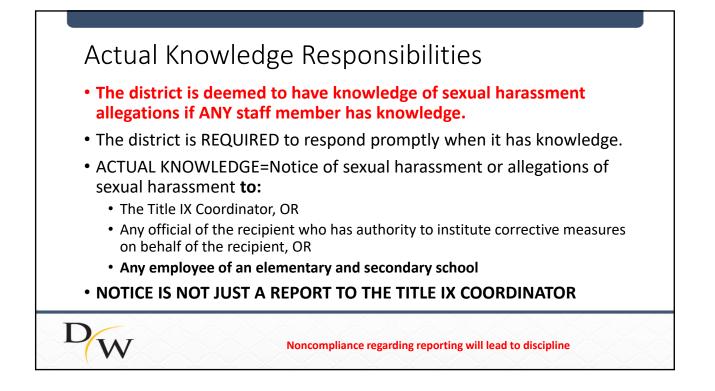
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."



Title IX Regulations

- Provide detailed grievance procedure for Title IX sexual harassment allegations and are adopted by district policy.
- Per district policy, allegations of all other forms of sex discrimination should be addressed under the district's applicable nondiscrimination or anti-harassment policies.
- Focus today is on the Title IX sexual harassment regulations and grievance procedure.

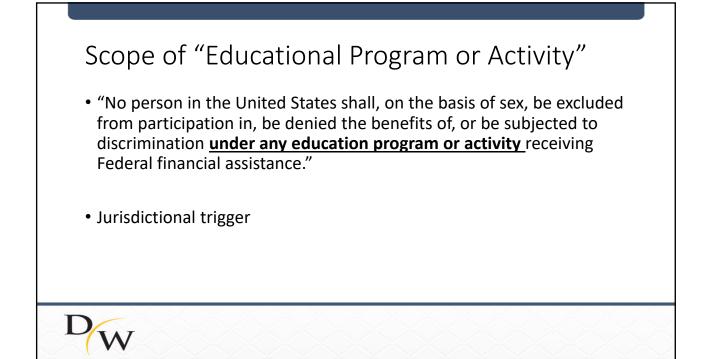


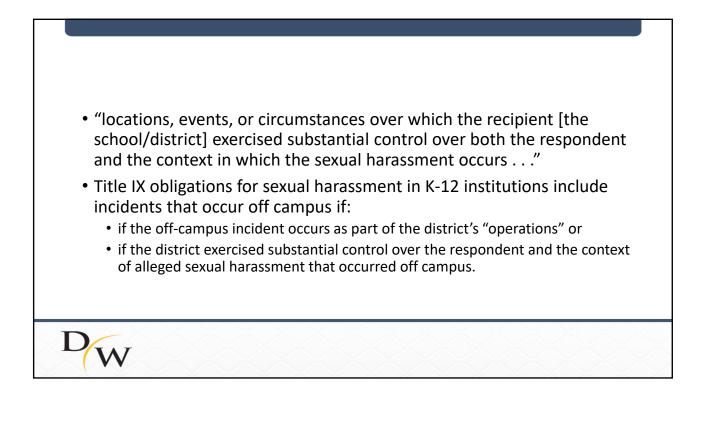


Reports of Sexual Harassment Students may report to any staff member or directly to the Title IX Coordinator. ALL STAFF MUST REPORT any notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator immediately (SAME DAY). Staff to staff, staff to student, student to staff, and student to student sexual harassment all included. Be wary of indirect notice as well (e.g. social networking sites, media). Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator receiving the person's verbal or written report.

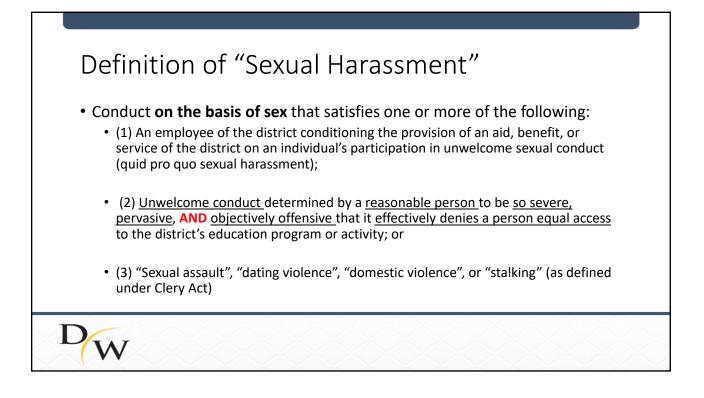
Title IX Sexual Harassment Team Members			
Position	Scope of Responsibility	Requirements	
Title IX Coordinator	Person designated to coordinate and conduct intake reports and complaints, initiate formal complaints if necessary, and implement supportive measurers and remedies, as necessary.	N/A	
Investigator	Person designated to investigate, gather evidence, and compile an investigation report. Dismisses if mandatory or permissive.	May be the Title IX Coordinator.	
Decision-Maker	Person who conducts an objective evaluation of all relevant evidence, administers question and answer period and rules on relevancy, issues a written determination regarding responsibility, dismisses if required.	Must not be the same person as the Title IX Coordinator or the Investigator.	
Appeal Designee	Person designated to handle appeal, if any.	Must not be the same person as the Title IX Coordinator, Investigator, or Decision-Maker.	

Title IX Sexual	Harassment Parties





"the statutory and regulatory definitions of "program or activity" encompass "all of the operations of" [the district], and such "operations" may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the [district]"
"the factual circumstances of online harassment must be analyzed to determine if it occurred in an education program or activity"

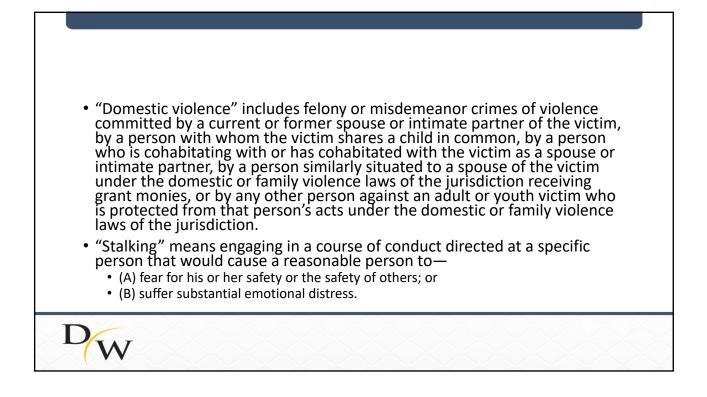


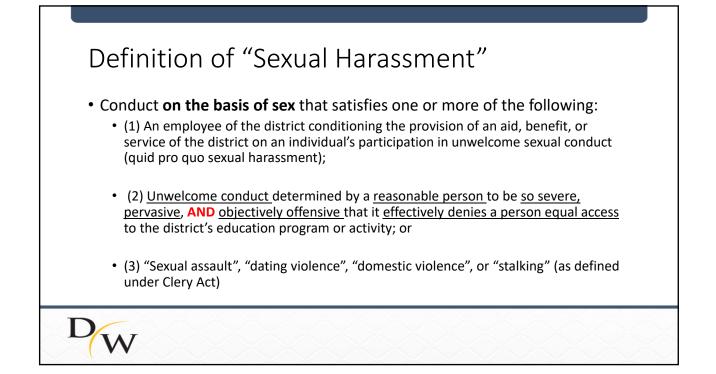
Sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.
"Dating violence" means violence committed by a person—

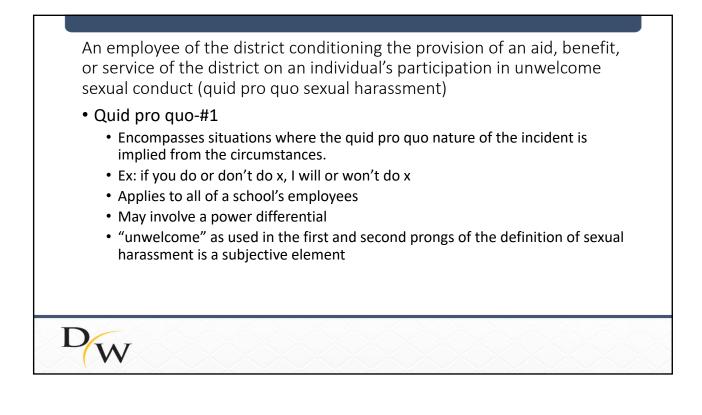
(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.
(ii) The type of relationship.

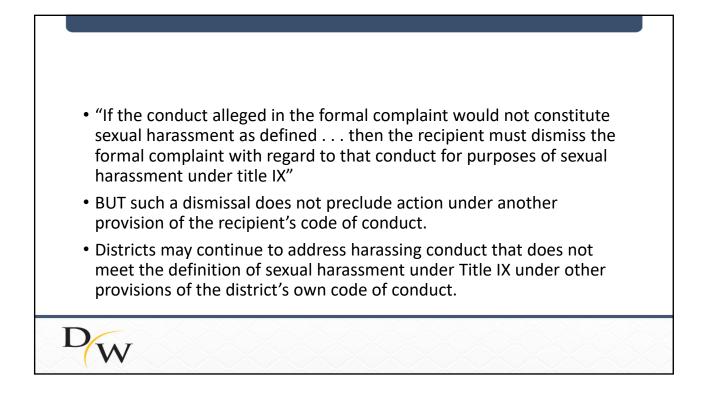
(iii) The frequency of interaction between the persons involved in the relationship.







<u>Unwelcome conduct</u> determined by a <u>reasonable person</u> to be <u>so</u> <u>severe</u>, <u>pervasive</u>, <u>AND</u> <u>objectively offensive</u> that it <u>effectively denies a</u> <u>person equal access</u> to the district's education program or activity
"Catch-all"-#2
Focus factually on the nature of the misconduct itself – not on the victim's response to the misconduct.
Determinations of severity, pervasiveness, and objective offensiveness depends on a constellation of factors including the ages and numbers of parties involved, disability status, positions of authority of involved parties etc.
Whether harassing conduct is "objectively offensive" must be evaluated under a reasonable person standard, as a reasonable person in the complainant's position.
No intent aspect.
Does not require that a complainant has already suffered loss of education before being able to report sexual harassment





Grievance Procedure for Sexual Harassment **Formal Complaints**

- 1. Report
- 2. Supportive measures and information on formal complaint 9. Written determination
- 3. Formal complaint
- 4. Written notice to parties
- 5. Investigation
- 6. Inspection and review of evidence 12. Final written decision on appeal
- 7. Investigative report with review and written response

- 8. Question and Answer period (and hearing if applicable)
- 10. Appeal on certain bases
- 11. Notice of appeal and opportunity to respond

Report Received

Title IX Coordinator must promptly reach out to the individual who is alleged to be the victim of conduct that could constitute sexual harassment (aka the complainant) to:

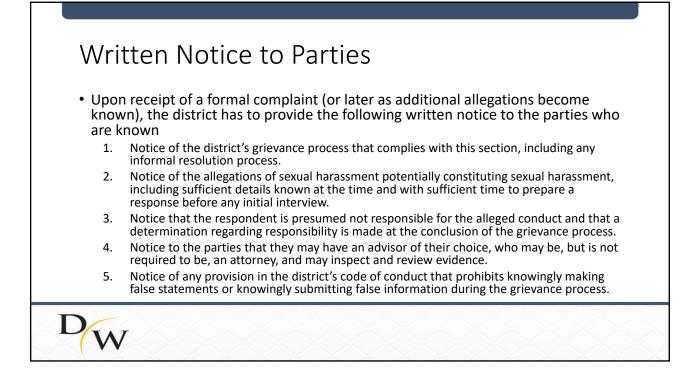
- 1. discuss the availability of supportive measures,
- 2. consider the complainant's wishes with respect to supportive measures,
- 3. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- 4. explain to the complainant the process for filing a formal complaint.

Supportive Measures

- Supportive measures" means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent.
- Such measures are designed to restore or preserve equal access to the district's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the district's educational environment, or deter sexual harassment.
- Supportive measures may include counseling, extensions of deadlines or other courserelated adjustments, modifications of work or class schedules, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring, and other similar measures.
- The district must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the district to provide the supportive measures.

Formal Complaint

- "Formal complaint" means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the district investigate the allegation of sexual harassment.
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the district with which the formal complaint is filed.



Conducting the Investigation

- Requirement 1: Trained Investigator
- Requirement 2: Equitable Treatment of Parties
- Requirement 3: Impartial Assessment (no prejudgment, no bias, no conflict of interest)
- Requirement 4: Evidence Review
- Requirement 5: Detailed Written Investigative Report

Timeline and Notices

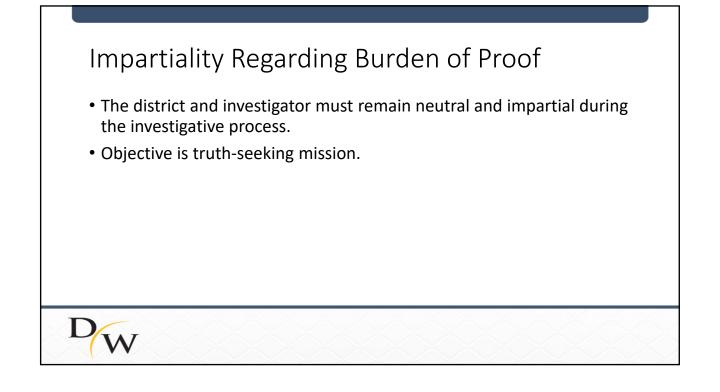
- "Reasonably prompt" (30 working days to gather the evidence).
- Temporary delays can be granted for good cause.
- Investigation should start immediately.
- Written notice of the details regarding investigative meetings, including attendees and the purpose.

The Duty to Investigate

• The thoroughness of the investigation is critical to the district's ability to determine whether or not misconduct or harassment occurred and which type of disciplinary action, if any, is required as a matter of law or organizational policy.

Burden of Proof 106.45(b)(5)(i)

- The district cannot restrict either party's ability to discuss the allegations or gather and present evidence, HOWEVER . . .
- Burden of proof sufficient to reach a determination regarding responsibility, rests on the district.
- Burden of proof is on the district to conduct investigation, interview witnesses, gather evidence.





- The Investigator is to create an investigative report that fairly summarizes relevant evidence.
- Prior to completion of their investigative report, the investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- The parties must have at least ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.

Decision-Maker's Role Starts After the Investigative Report is Finalized

• After finalization of the investigative report, the investigator sends the investigative report to each party, and affords them at least 10 days to review and respond *prior to the determination regarding responsibility.*



Ouestion and Answer Period Sefore issuing a determination of responsibility, the decision-maker nust: afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. The decision-maker reviews the questions prior to submitting them to the party or witness. The decision-maker must explain to the party proposing the question any decision to exclude a question as not relevant.

Written Determination

- Provided simultaneously to the parties;
- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the district's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation
 - A determination regarding responsibility,
 - any disciplinary sanctions the district imposes on the respondent,
 - whether remedies designed to restore or preserve equal access to the district's education
 program or activity will be provided by the district to the complainant;
- Procedures and permissible bases for appeal.



Appeal Bases

Appeal is available after the Decision-Maker issues determination of responsibility OR after Complaint is dismissed.

Required appeal bases include:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; or

(D) Any other bases allowed equally to either party.

Appeal

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- Different decision-maker
- Notice to the other party
- Opportunity for both parties to submit a written statement in support of, or challenging, outcome
- Written decision describing the result of the appeal and the rationale for the result and provided simultaneously to the parties

Final Decision

- The written determination of responsibility is considered final when
 - The date to file an appeal has expired and no appeal was filed, or
 - The appeal process is complete if an appeal was filed
- Only when the written determination of responsibility is final may sanctions and/or remedies be applied.



Overarching Requirements for Sexual Harassment Grievance Procedure

- Have Presumption that Respondent 8. is Not Responsible
- 2. Follow Grievance Procedure Before Imposing Sanctions
- 3. No Bias or Conflict of Interest
- 4. Exclude Privileged Information
- 5. Consider All Relevant Evidence Under Proper Standard
- 6. Follow Reasonably Prompt Timelines
- 7. Removal/Administrative Leave Permitted in Certain Instances

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- 8. Remember Grounds for Dismissal
- 9. Informal Resolution Process After Formal Complaint Is Optional
- 10. Keep Records
- 11. No Retaliation
- 12. Maintain Confidentiality

Privileged Evidence Excluded

- Precludes a recipient from using information or evidence protected by a legally recognized privilege unless the holder of the privilege has waived the privilege.
 - Medical records
 - Mental health treatment records
 - Attorney-client communications
 - Spousal privilege

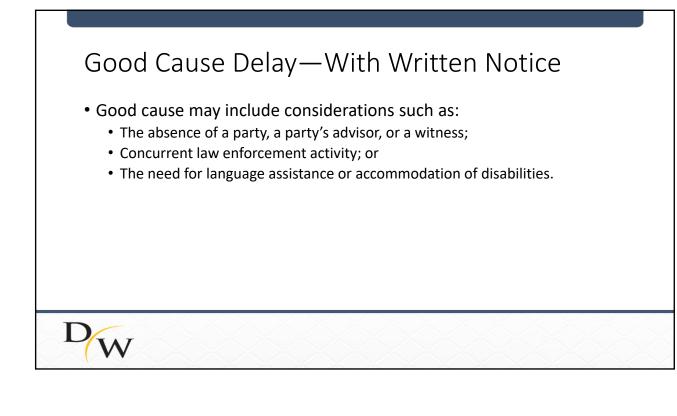
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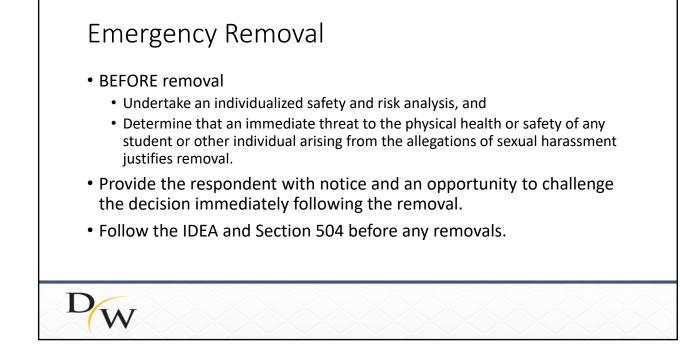


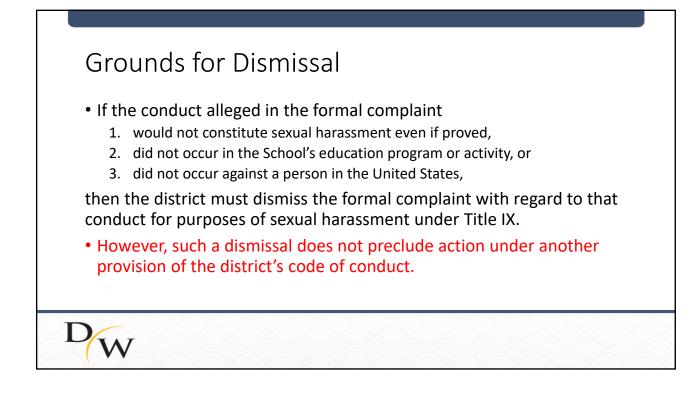
When investigating, the district "cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the recipient obtains that party's voluntary, written consent to do so for a grievance process under this section."

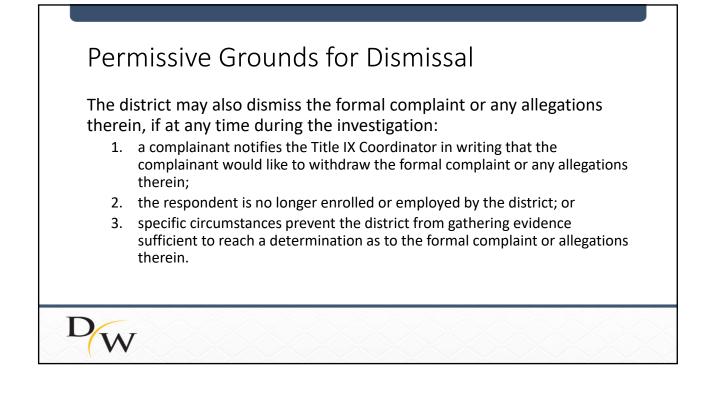
Evidence

- Objective evaluation of all relevant evidence including both inculpatory and exculpatory evidence
- The standard of evidence to be used to determine responsibility is preponderance of the evidence standard.









Informal Resolution

- · Cannot require that the student or employee waive their right to the grievance process
- ONLY AFTER A FORMAL COMPLAINT IS FILED--Cannot go forward with an informal process for sexual harassment allegations prior to there being a formal complaint
- Obtain voluntary written consent—cannot require participation
- · Not permitted for allegations that an employee sexually harassed a student
- Written notice to the parties is required, disclosing:
 - 1. the allegations,
 - 2. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations,
 - 3. that 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, and
 - 4. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

Recordkeeping

- Keep for 7 years
- Investigation Records
- Appeal Records
- Informal Resolution Records
- Training Materials

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• Response to all reports and formal complaints

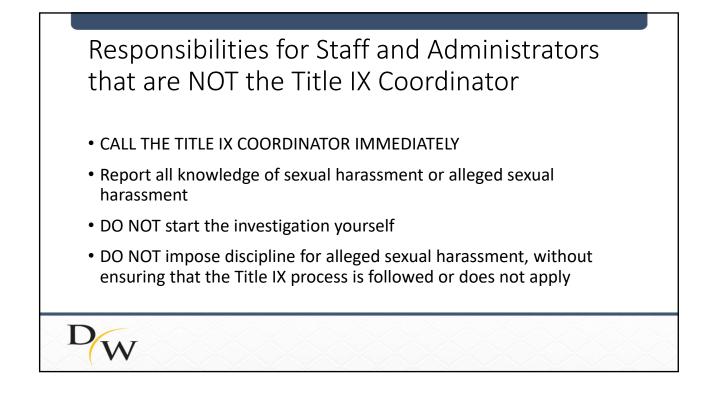
 No Retaliation Provision Added For All Sex Discrimination Complaints
 No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.
 Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual

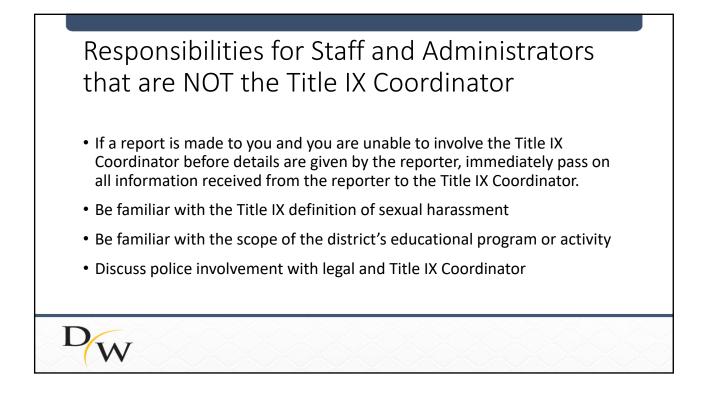
- sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination complaints not alleging sexual harassment

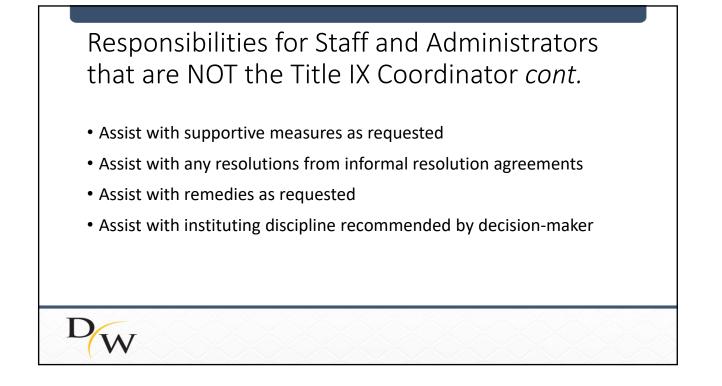
Maintain Confidentiality

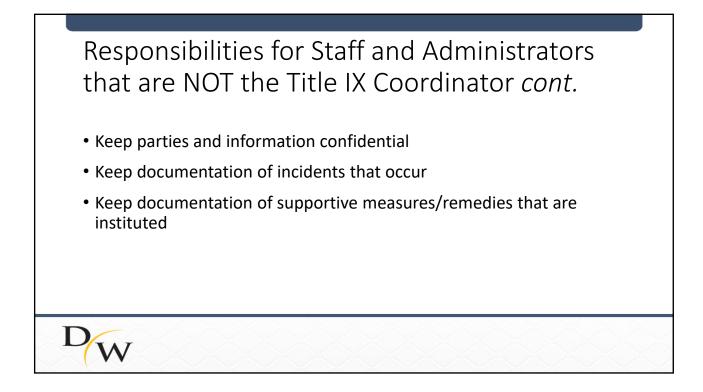
 The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by [FERPA], or as required by law, or to carry out the purposes of [Title IX], including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

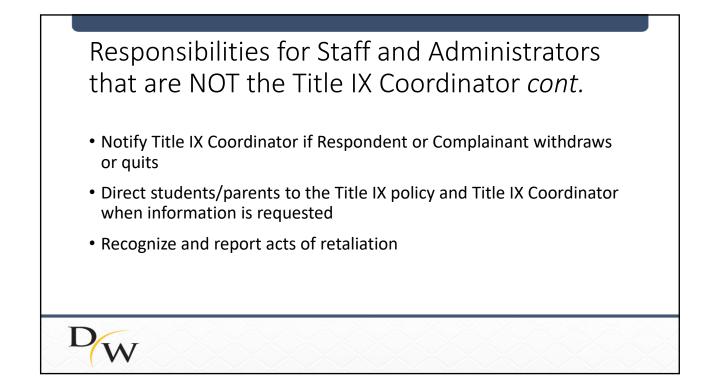


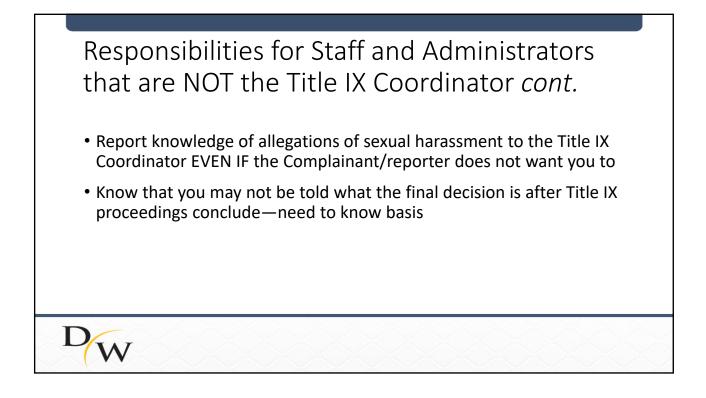








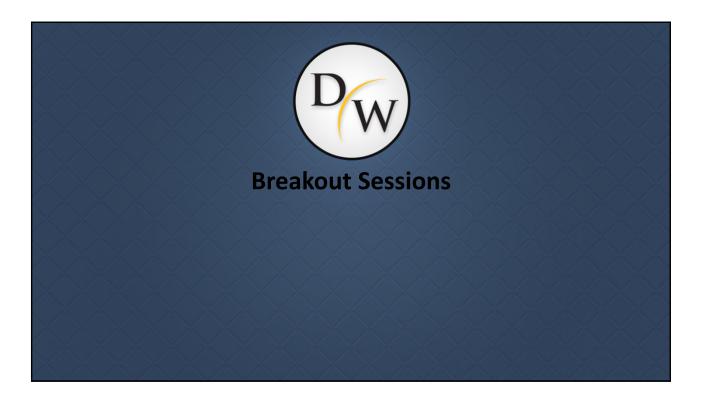


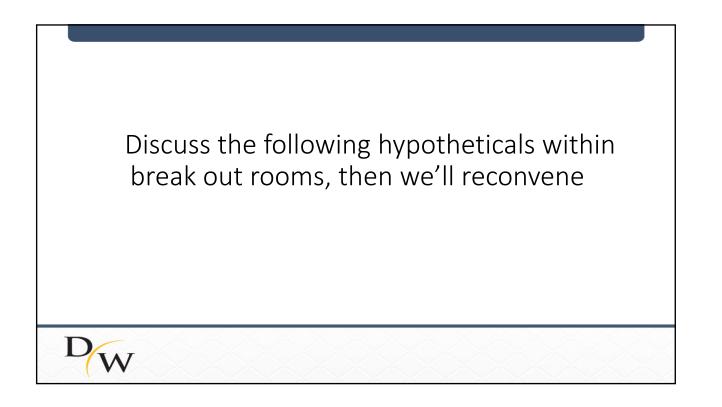


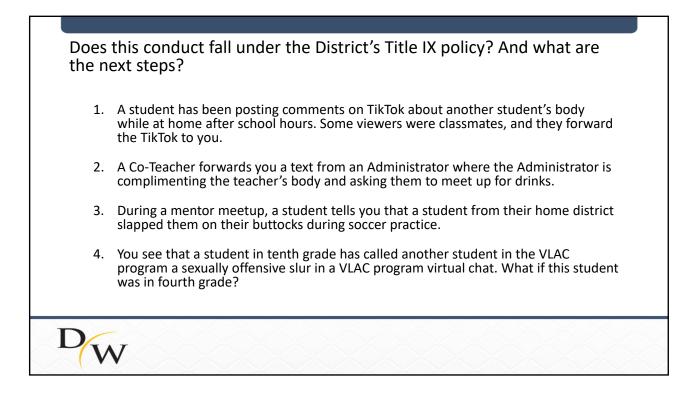
If you are the witness in a Title IX investigation...

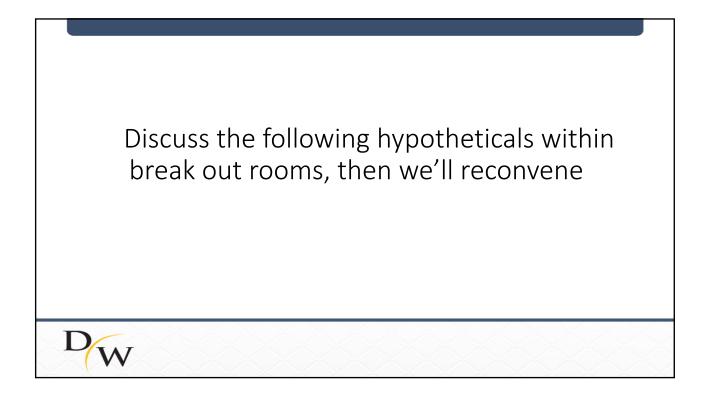
- Be honest
- What you say is being notated and will be shared with the parties and the decision-maker.
- You cannot be retaliated against for participating in the process. Report any retaliation.
- Provide answers based on personal knowledge. Do not guess or give opinions.

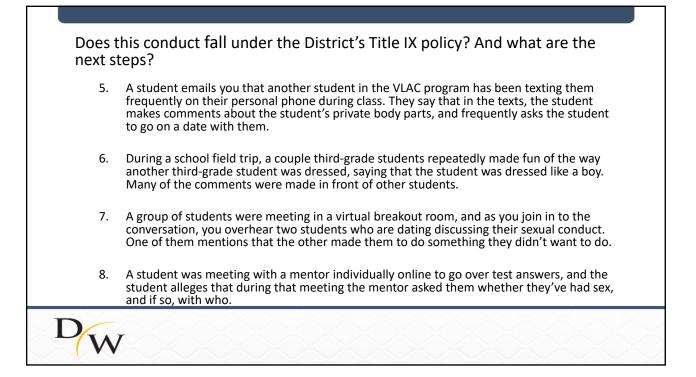












Disclaimer These training materials are informational in nature and should not be construed as legal advice and are not provided to address specific grievance situations. Consult with your legal counsel as necessary to address specific Title IX report and grievance situations and investigations.