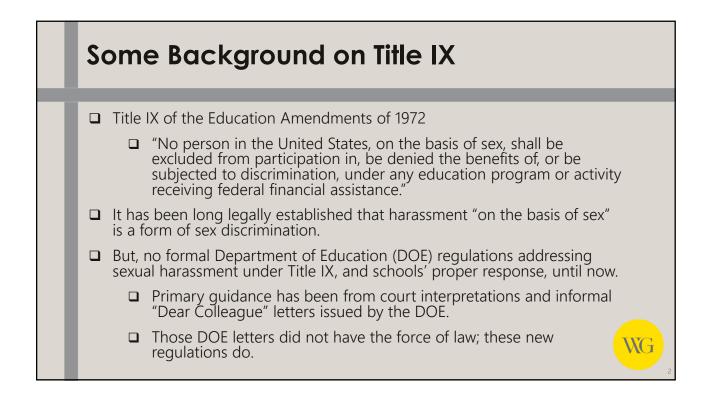


Elena Gallegos and Karla Schultz



WALSH GALLEGOS TREVIÑO RUSSO & KYLE P.C.



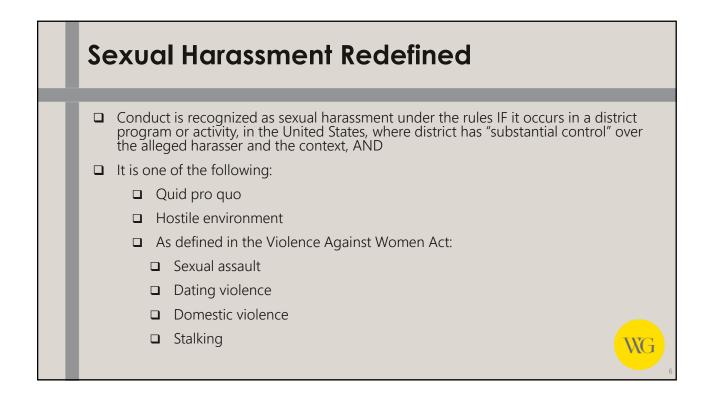


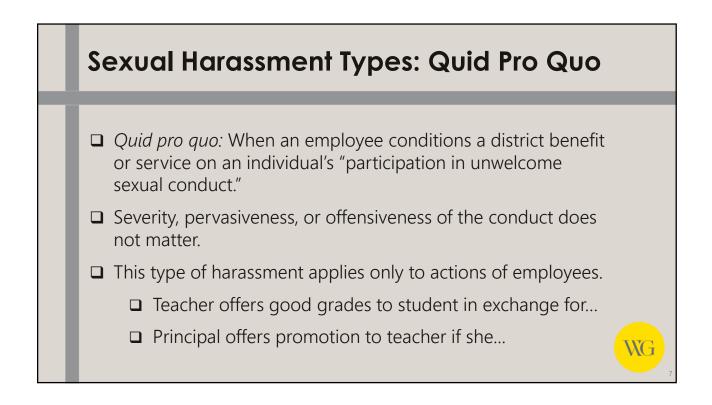
Top Ten, In Brief1. New Terms and Definitions 2. Expanded Role of Title IX Coordinator 3. Change in What Constitutes Notice of Sexual Harassment 4. Limits on District Authority 5. Changes to Duty to Respond 6. Reporting Process and Obligations are New 7. New and More Complex Investigation Process, Plus Appeals 8. Interplay with Rules of Conduct is Complex 9. Training is Important 10. New Record-Keeping Obligations

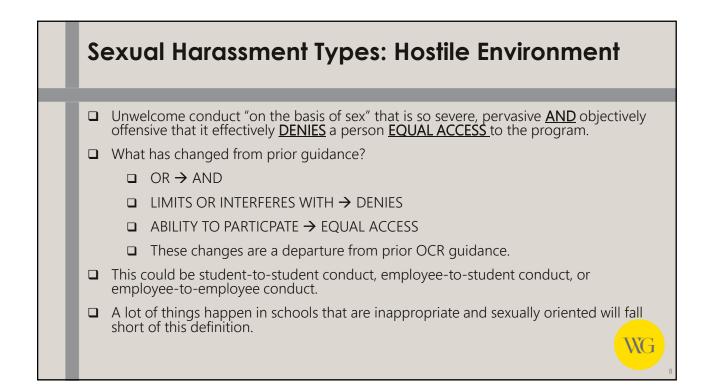
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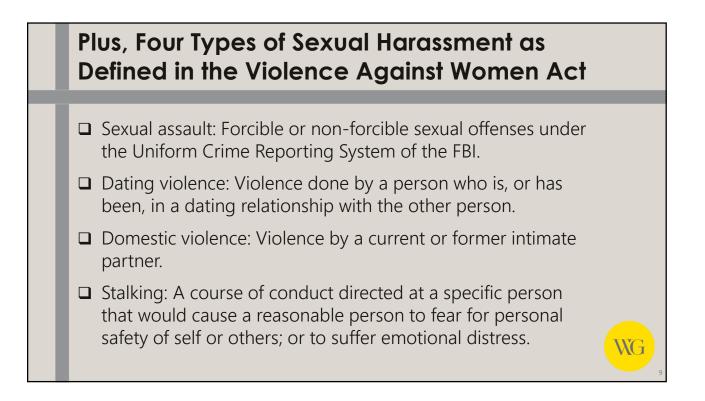
1. New Title IX Definitions and Terminology: 34 CFR 106.30(a).

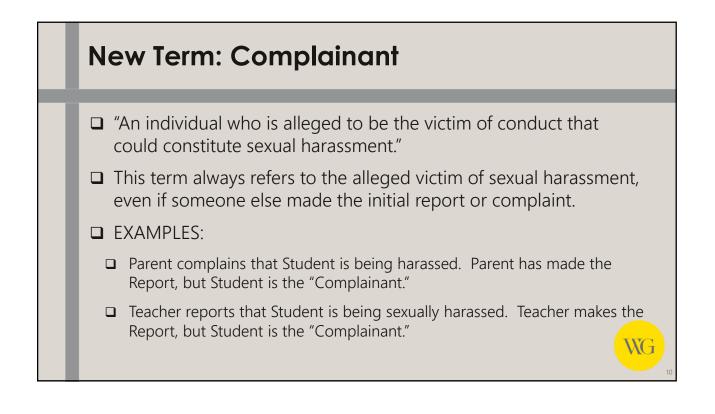
- Sexual Harassment
- □ Complainant
- □ Respondent
- □ Formal Complaint vs. "Report"
- Supportive Measures
- Actual Knowledge
- Substantial Control
- Grievance Process



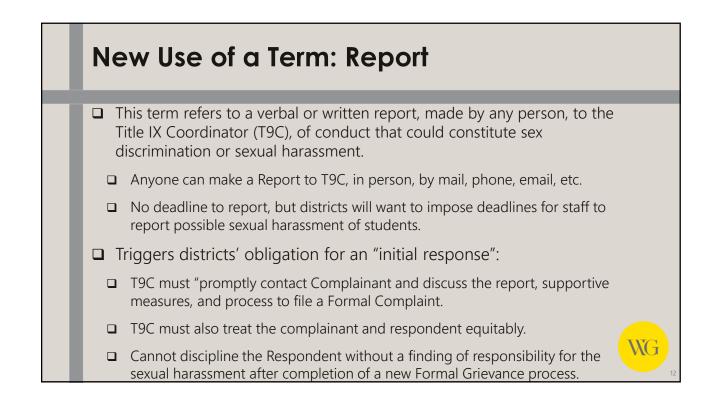


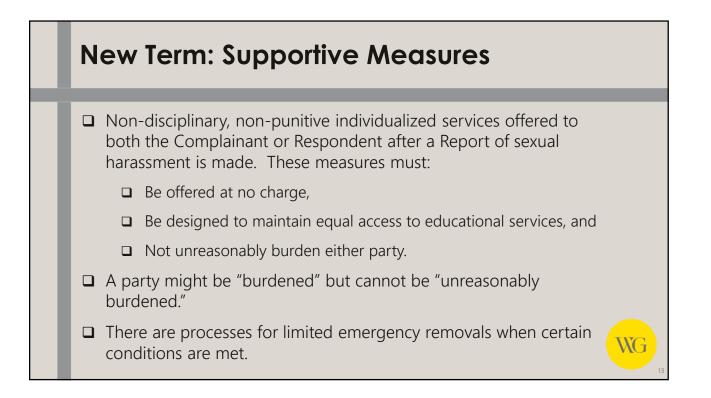


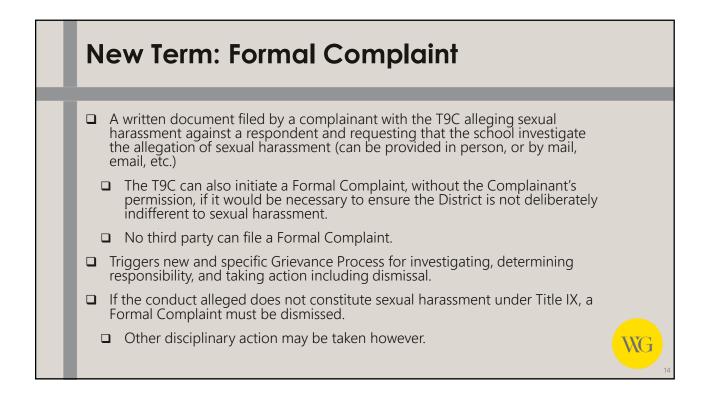


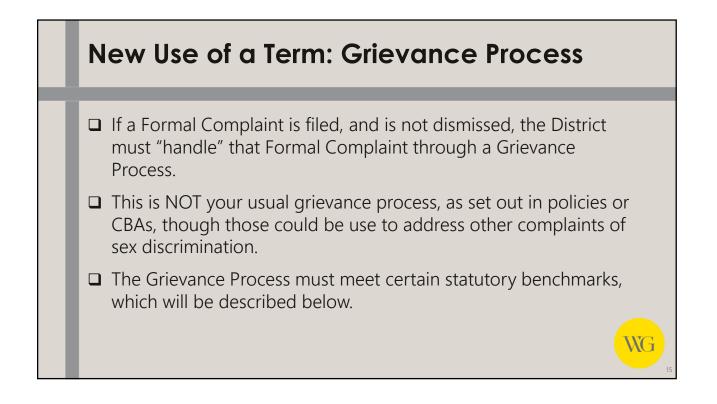


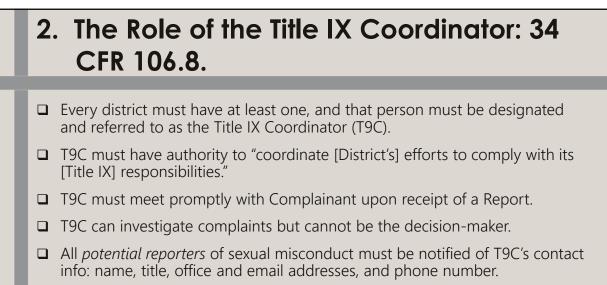
New Term: Respondent "An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment." This term refers to the person accused of sexual harassment. Under the new regulations, this person is presumed to be "not responsible" for the alleged sexual harassment.





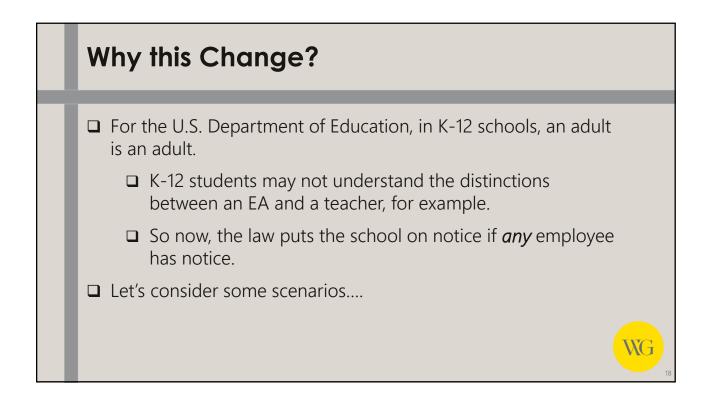


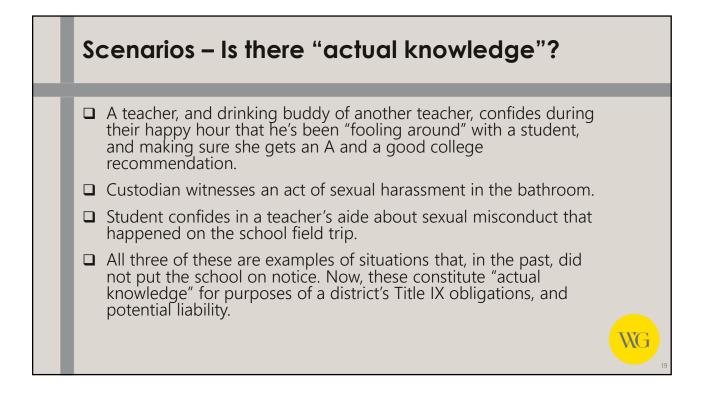


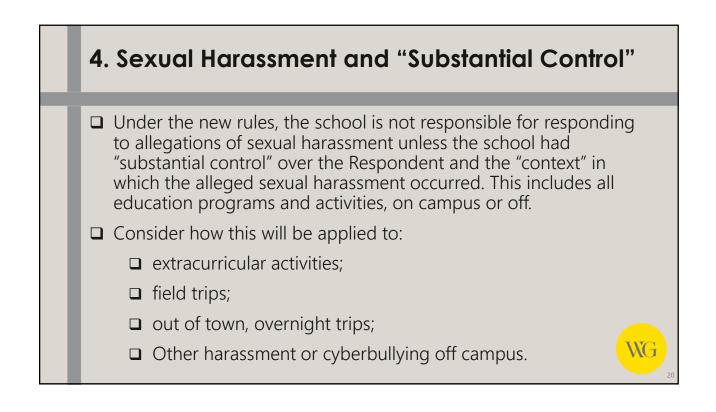


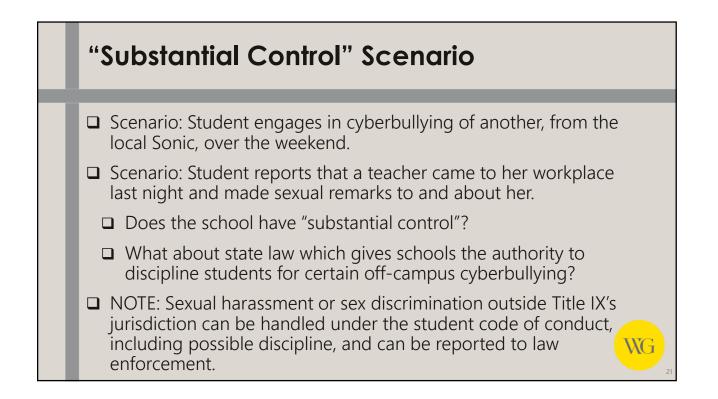
Contact information for the T9C must be prominent on the district website, in handbooks, and similar materials. These locations should also contain district policies and procedures for sexual harassment reports/complaints.

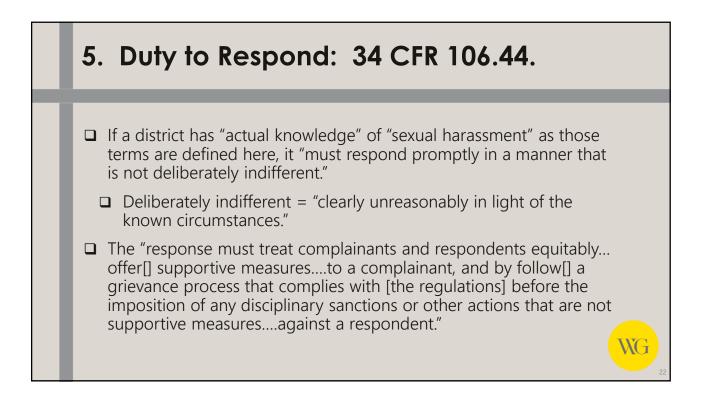
3. Actual Knowledge of Sexual Harassment 34 106.30(a). This term is important because the school's legal duty to respond arises when it has "actual knowledge" of sexual harassment, or of allegations of conduct that, if true, would be sexual harassment. Under the regulations, the school has "actual knowledge" when any employee of the school-other than the perpetrator of the harassment-has notice of sexual harassment. What has changed? Previously, actual knowledge was imputed to the school only when it was known by someone who had the authority to address it. Now, it is any employee. Actual knowledge triggers district duty to respond.

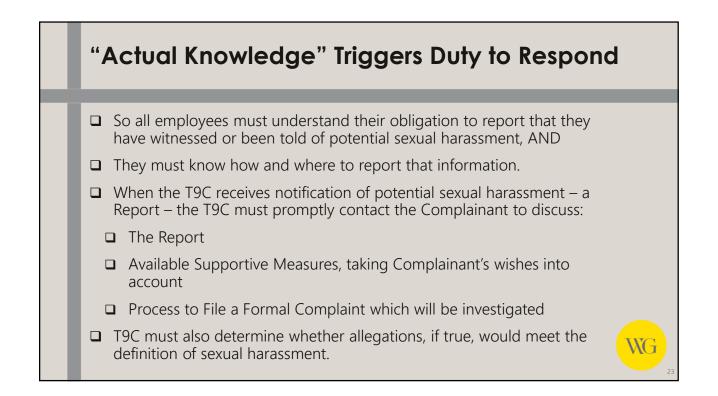


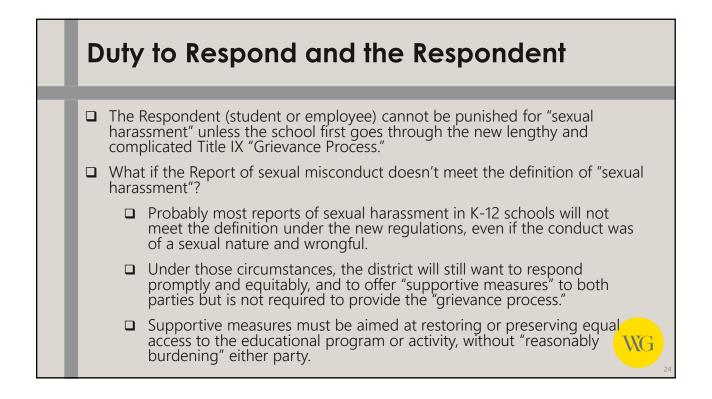


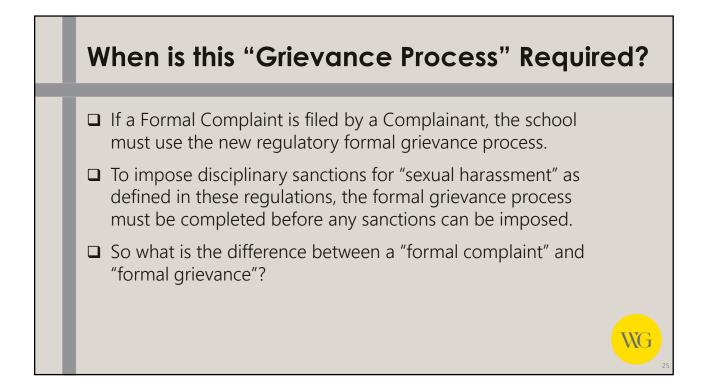


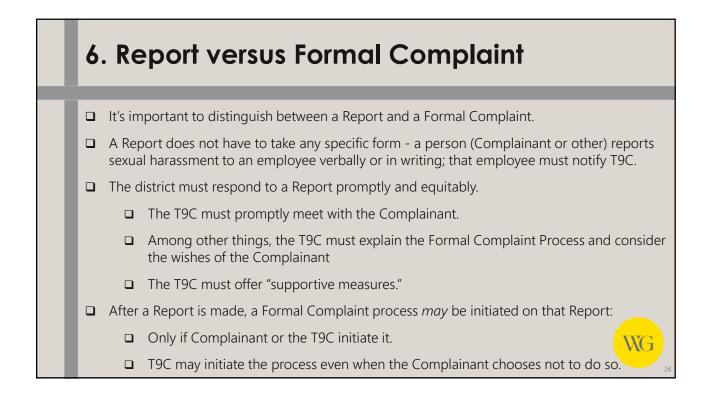








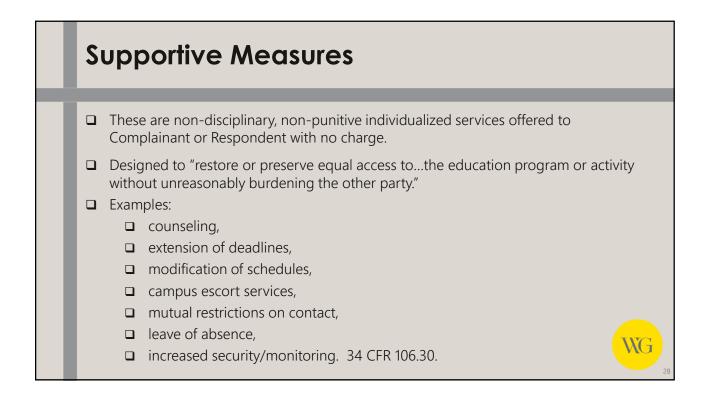


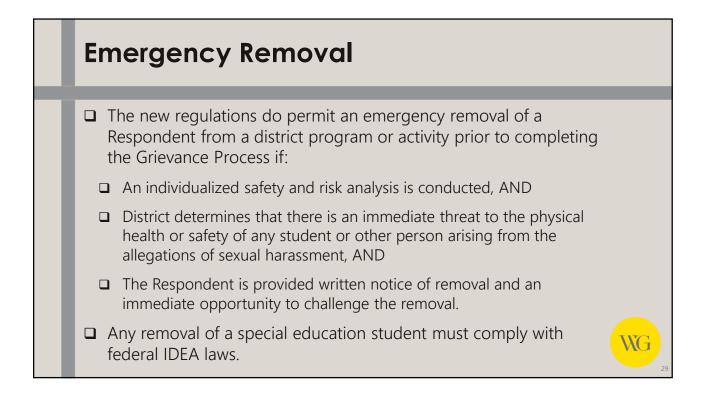


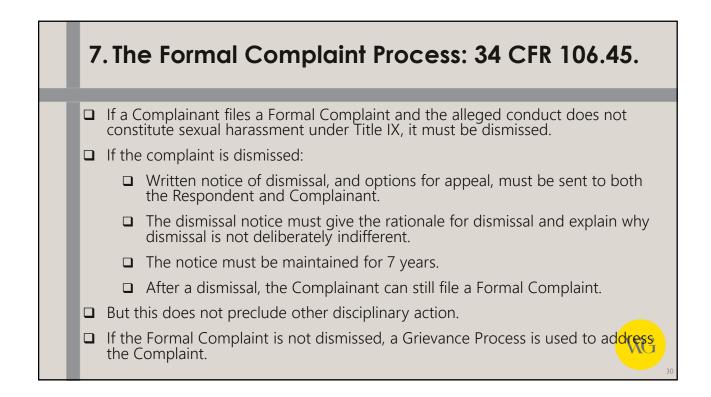
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What if There is no Formal Complaint?

- If neither the Complainant nor the T9C makes a Formal Complaint, you still have a Report. The district still has a duty to seek a "prompt and equitable resolution."
- □ Supportive Measures must be offered to both parties.
- Let's look at what counts as supportive measures in more detail.





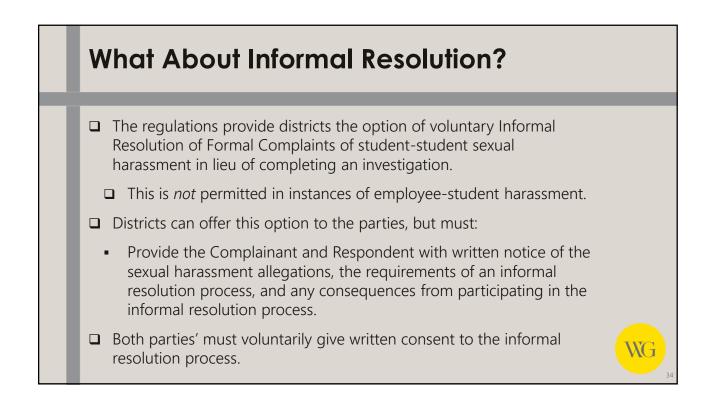


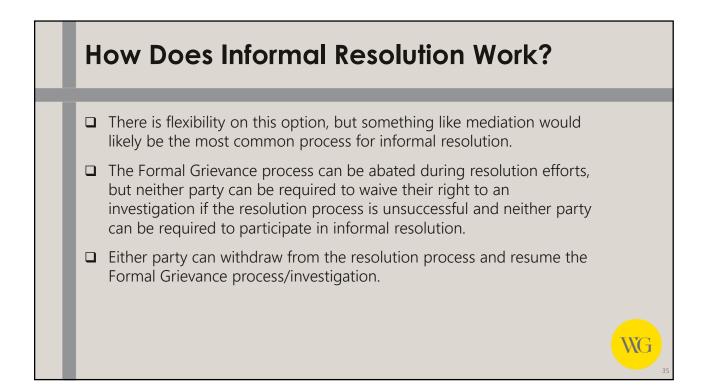
Notice of allegations

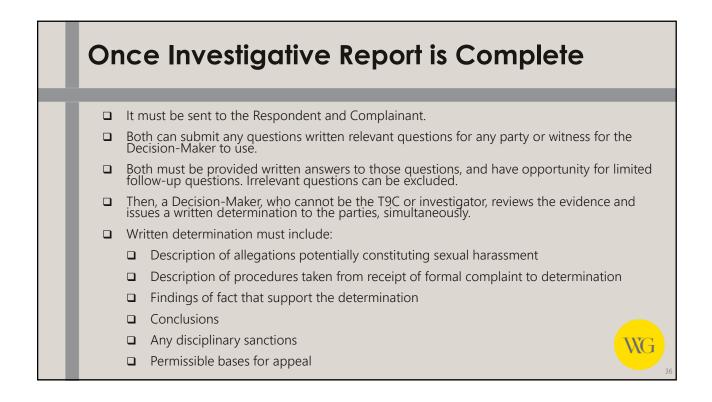
- Upon receipt of a Formal Complaint, written notice must be given to known parties.
- Notice must include:
 - Description of grievance process, and any informal resolution process.
 - □ Sufficiently detailed notice of the allegations, including alleged conduct, names of the parties, date and location of the alleged conduct.
 - □ A statement that the Respondent is presumed not responsible for the conduct until a determination has been made at the end of the grievance process.
 - Notification that parties can have an advisor of their choice (attorney or not) and will have an opportunity to inspect the evidence.
 - Statement that knowingly providing false information during the grievance process is prohibited.

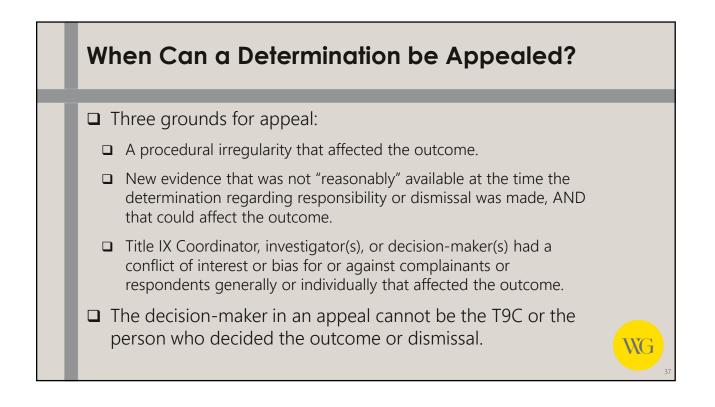


More Grievance Process Requirements All T9Cs, investigators, decision-makers, and any person who facilitates an informal resolution process, must receive training on the definition of sexual harassment, the scope of the district's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially. "Reasonably prompt" time frames for the grievance process unless there is "good cause" for and written notice of the delay. Written description of possible outcomes (discipline and remedies) and supportive measures must be provided to both the Complainant and Respondent. May not request or use privileged information. Protect Constitutional rights of free speech, due process. State whether the standard of proof of sexual harassment will be "preponderance of the evidence" or "clear and convincing." District chooses, but must always use the same standard. Evidence of a party's prior sexual behavior or "predisposition" cannot be considered unless to prove consent or that another person committed the offense. WG A fair investigative report.





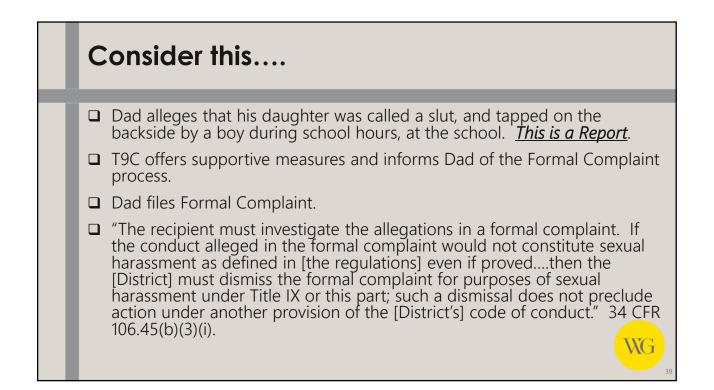


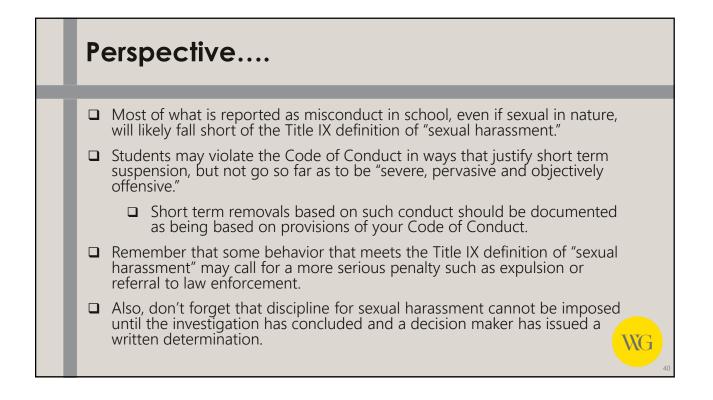


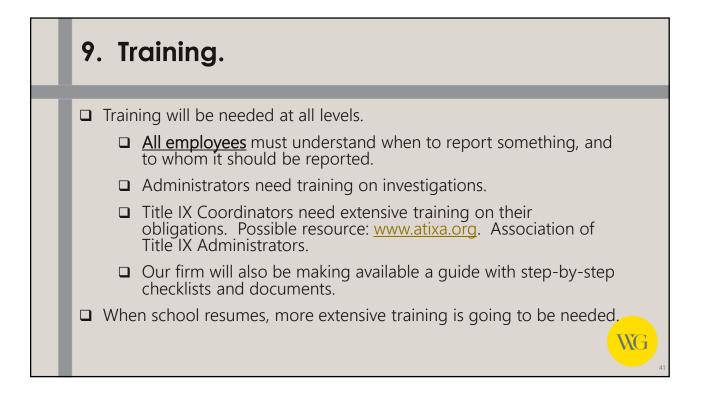
8. How does all this mesh with Student Standards of Conduct?

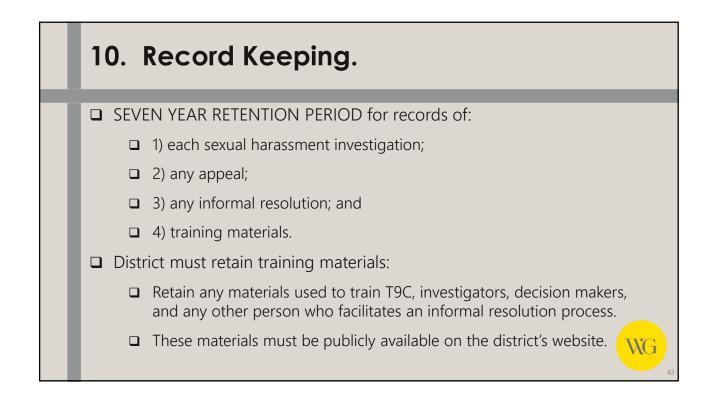
- □ The regulations permit the use of "emergency removal" which could include out of school suspension.
- But remember: This applies only when the removal is based on allegations that meet the definition of "sexual harassment" and the conditions for emergency removal exist.
- Conduct that might not constitute sexual harassment under Title IX, could still constitute misconduct – e.g. bullying, assault, etc. – and can be disciplined once a Title IX report has been dismissed or a determination has been made.

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Records of Investigations?

"For each response required under 106.44, a recipient must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the recipient must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity. If a recipient does not provide a complainant with supportive measure, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances." 34 CFR 106.45(b)(10)(D)(ii).

