

Agenda

Review New Title IX Regulations: Scope and Definitions

Roles of New Title IX Team

Intake Process for Reports of Sexual Harassment

Title IX Grievance Process

Retaliation

Practical Application





Davis v. Monroe County Board of Education

526 U.S. 629 (1999)

Ruling: For student-on-student sexual harassment, the educational institution will be liable for damages when:

The institution has “**actual notice**” of the harassment; and

The institution responded to the harassment with indifference

Harassment must be “**severe, pervasive, and objectively offensive,**” and the victim is deprived of educational opportunities or services.

Deliberate indifference defined as a response that is “**clearly unreasonable in light of the known circumstances.**”

The New Regulations apply the *Davis* standard for OCR compliance reviews and for finding institutional liability

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Education Program or Activity

Per **§ 106.44(a)**: An education program or activity includes locations, events, or circumstances over which the recipient exercised ***substantial***

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Title IX Team: Title IX Coordinator

Title IX Coordinator Duties:



Coordinates Title IX compliance and training

Conducts intake meeting with Complainant

Offers supportive measures to Complainant & Respondent

Explains grievance process, accepts formal complaint & determines mandatory dismissal

Evaluates emergency removal

Evaluates use of informal resolution process

Assigns unbiased investigator free from conflicts

Sends notices (e.g., Notice of Allegations)

Considers permissive dismissal of complaint

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Title IX Team: Investigator(s)

Trained and Knowledgeable

Impartial, unbiased, & free from general or specific conflicts of interest

Investigates formal complaint

Reviews complaint

Gathers, reviews, weighs, and synthesizes evidence

Interviews parties and witnesses







INTAKE PROCESS FOR REPORTS OF SEXUAL HARASSMENT



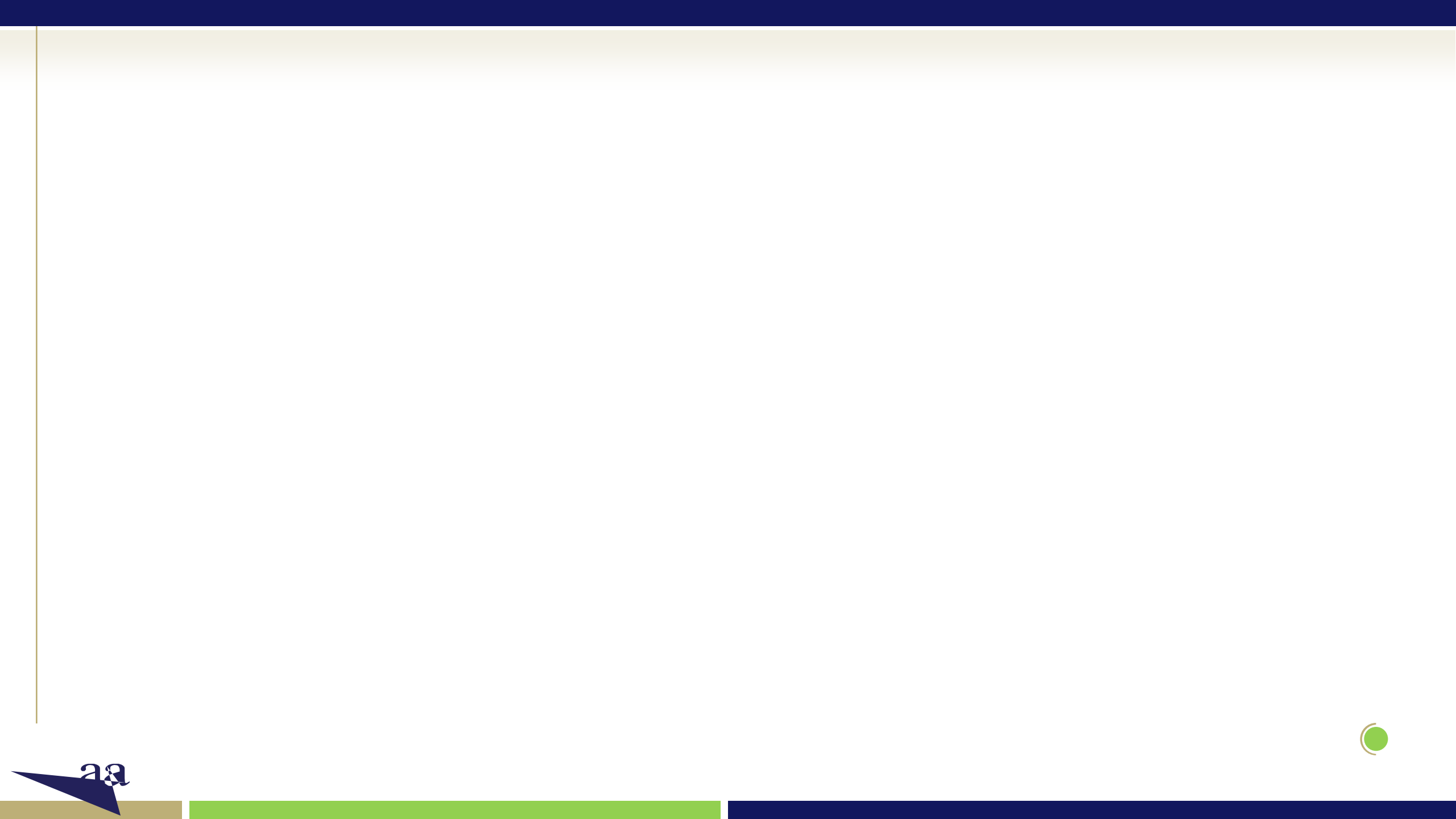
Discuss Advisor of Choice



Grievance Process

1. Basic Requirements
2. Notice of Allegations
3. Dismissal of Formal Complaint
4. Consolidation
5. Investigation
6. Written Questions Between Parties
7. Determination of Responsibility
8. Appeals
9. Informal Resolution
10. Recordkeeping

See 34 CFR § 106.45(b)



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Notice of Allegations

Provide Notice of Allegations to Each Party

Notice of the institution's grievance process and informal resolution process

Identification of relevant Board Policies & Administrative Regulations which contain the grievance process and informal resolution process

Identification of standard of evidence

Right to inspect and review evidence

Notice of allegations with sufficient details, including:

Identification of the parties

Description of alleged conduct allegedly constituting sexual harassment and the date and location of alleged incident

Review Sample Notice of Allegations



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Consolidation of Formal Complaints

A recipient may consolidate formal complaints as to allegations of sexual harassment where the allegations arise out of the same facts or circumstances

Against more than one Respondent;

By more than one complainant against one or more respondents; or

By one party against the other party (cross-claims)

Investigation

1. Presumption

The institution must presume Respondent is *not responsible* for the alleged conduct

2. Evidence Gathering

Investigator for the educational institution has the burden to gather sufficient evidence; the burden to gather evidence is **not** on the Complainant or Respondent

Investigator cannot gather privileged information without voluntary, written consent (e.g., physician or psychiatrist records, etc.)

3. Written Notice with Time to Prepare

Provide written notice to the parties for all interviews with sufficient time for the party to prepare to participate



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Investigation, continued

8. Investigator Prepares Final Investigative Report

Fairly summarize relevant evidence

Relevant evidence may include credibility assessments

9. Provide Investigative Report to Parties

At least 10 days prior to a hearing or other time of determination regarding advisor, if any, in an electronic format or a hard copy, for their review and written response

attach written response(s) to the Investigative Report



Determination of Responsibility

1. Decision-Maker Determines Responsibility per §106.45(b)(7):

Decision-maker must be trained to rule on relevance of questions and repetitive questions

Reminder: The Title IX Coordinator or investigator cannot determine responsibility

2. Written Decision

The written decision must include the findings of fact, conclusion, and the rationale

If the Decision-

Informal Resolution Process

1. Optional Process per §106.45(b)(9)

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Recordkeeping

- 3. For each response required under §106.44, a recipient must create and maintain records for 7 years, including records of:**
- Any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment.
 - If the recipient did not provide supportive measures, it must document why that decision was not clearly unreasonable in light of the known circumstances
 - In each instance, recipient must document:
 - Why its response was not deliberately indifferent
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Hypotheticals 1-3

- 1. Student A offers to name Student B the Vice President of the Chess Club if Student B kisses Student A.**

Is this sexual harassment under Title IX?

Hypothetical 1 - Discussion

1. Student A offers to name Student B the Vice President of the Chess Club if Student B kisses Student A.

Is this sexual harassment under Title IX?

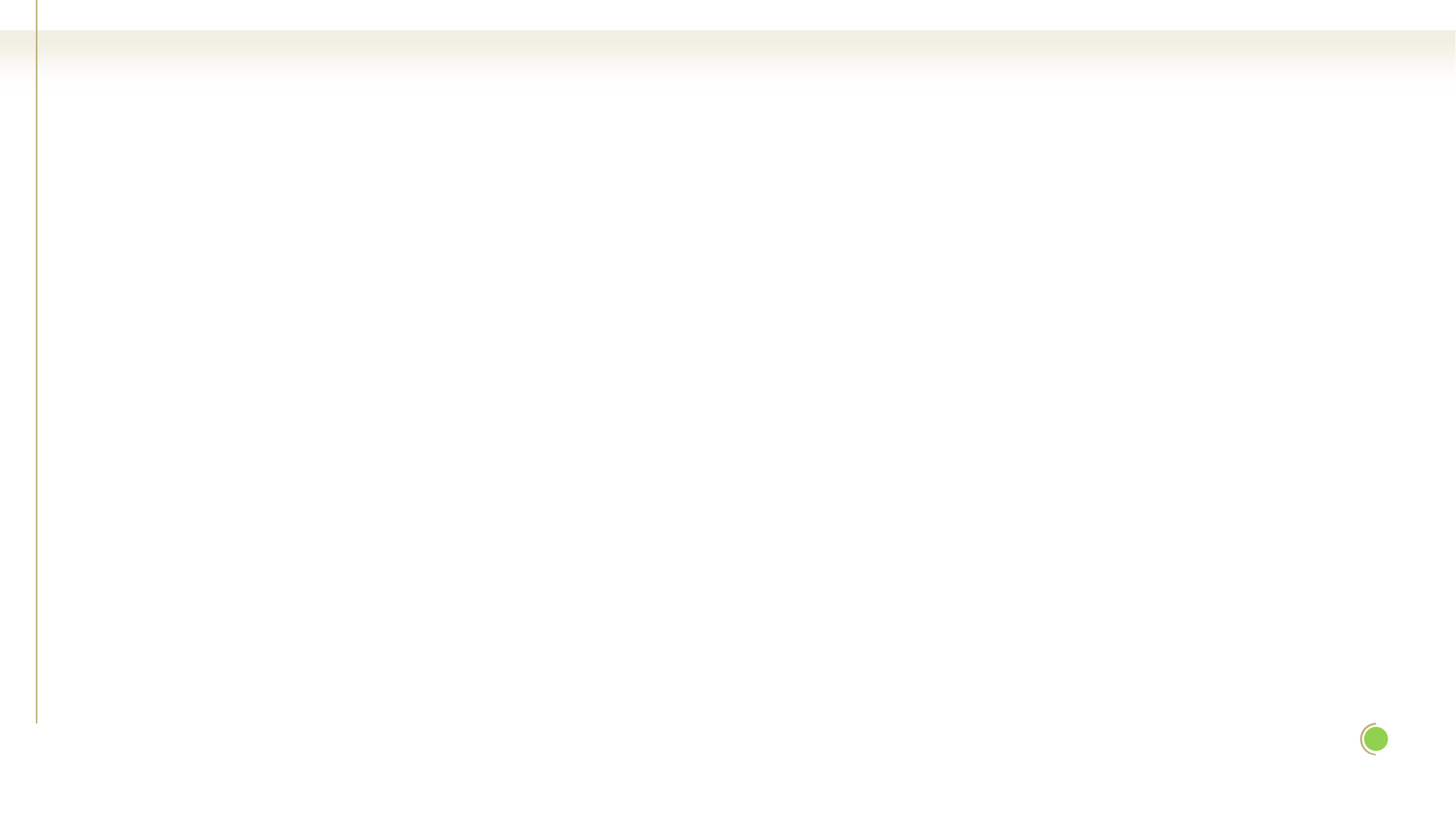
by *an employee*.

However, this may be evidence of hostile environment sexual harassment under Title IX and warrants more questions to determine if there was additional sex-based behavior from Student A towards Student B.

harassment under California law.

Thus, consider notifying the parties of all potential policy violations implicated by the complaint in the Notice of Allegations.







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Question & Answer
Session

Thank You

For questions or comments, please contact:

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