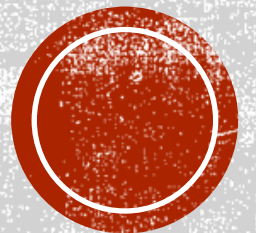


# **TITLE IX COMPLIANCE TRAINING**

## **Practical Solutions for a Complex Process**

Laura Tubbs Booth  
Christian R. Schafer

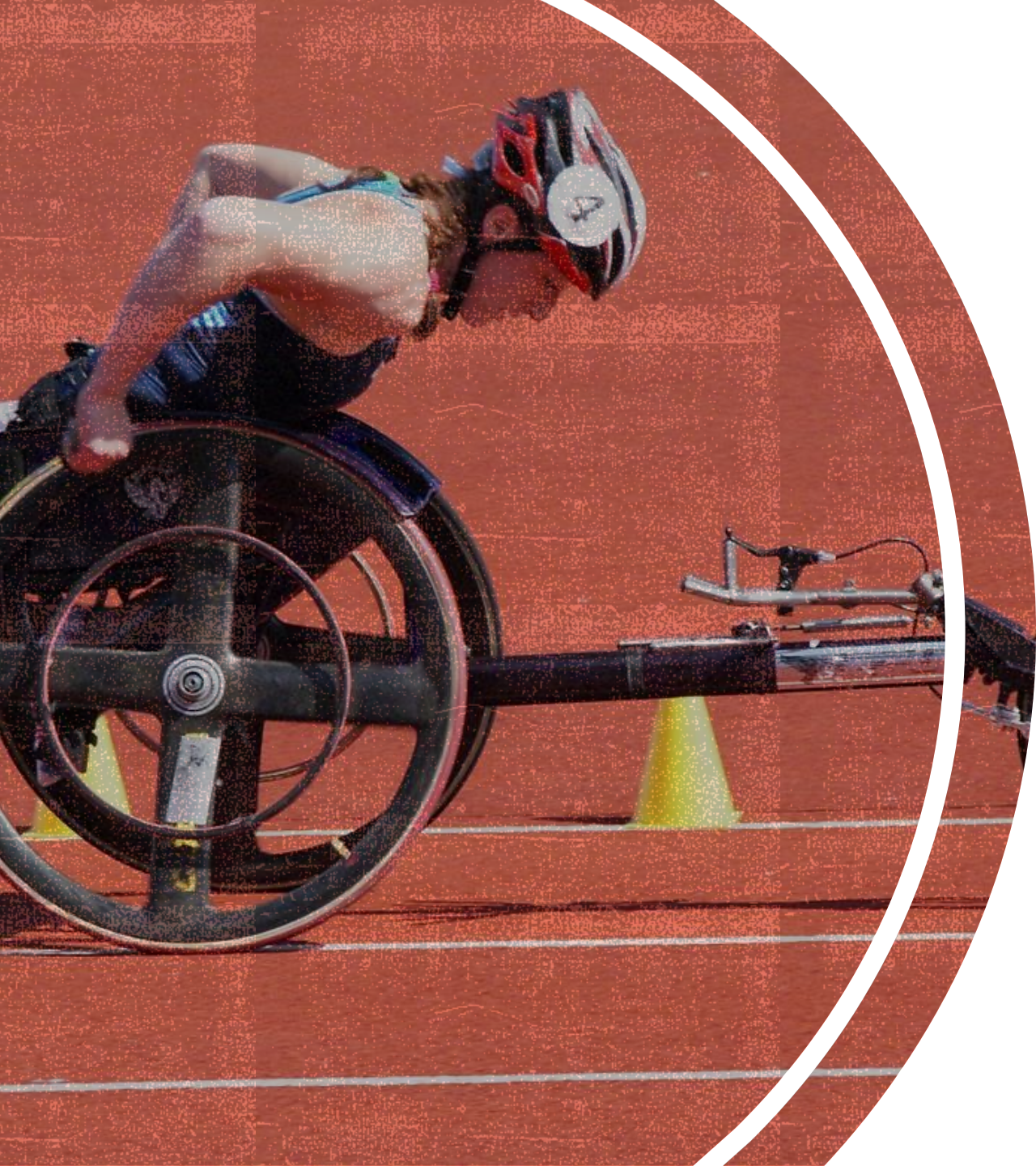




**WELCOME!**







# TITLE IX

What do you think of when you think about Title IX?



**TITLE IX  
PROVIDES....**

- “[n]o 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\(a\)](#).



**PROHIBITS  
DISCRIMINATION  
ON THE BASIS OF  
SEX**

- The new regulations codify that discrimination based on sex can include sexual harassment
- What other types of sex discrimination can you think of?

# NEW REGS EFFECTIVE 8/14/2020

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USDOE ISSUED NEW  
REGULATIONS  
IMPLEMENTING TITLE IX



NEW DEFINITIONS

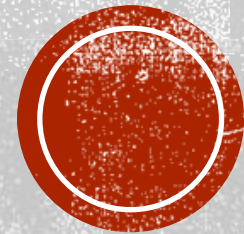


NEW INVESTIGATION  
REQUIREMENTS





# GENERAL RESPONSIBILITIES



# SCHOOLS MUST:

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1

Have a  
policy

2

Disseminate  
policy

3

Identify a  
Title IX  
Coordinator

4

Have a  
grievance  
process







# DEFINITIONS



---

Conduct based  
on sex and ...

# SEX HARASSMENT IS...

Conduct based on sex :

1. And a school employee **conditions** receipt of a benefit on participating in unwelcome sexual conduct or

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

3. **Sexual assault**, dating violence, domestic violence, or stalking, as those terms are defined by federal law.

■





# **ACTUAL KNOWLEDGE**

- If an employee of the district knows of sex harassment or
- Knows of allegations of sex harassment, the district has “actual knowledge”.

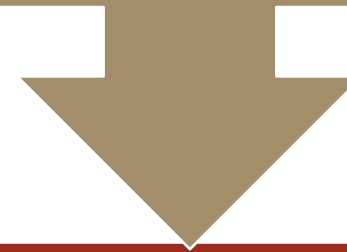
# FORMAL COMPLAINT

- Previously, a formal complaint was not required
- Now a “formal complaint” is required and means:
  - The Complainant files a written complaint or
  - The Title IX Coordinator files a written complaint
  - No third party complaints





Previously, a formal complaint was not required



Now a “formal complaint” is required and means:

The Complainant files a written complaint or

The Title IX Coordinator files a written complaint

No third party complaints



# REPORT VS. FORMAL COMPLAINT

## Report

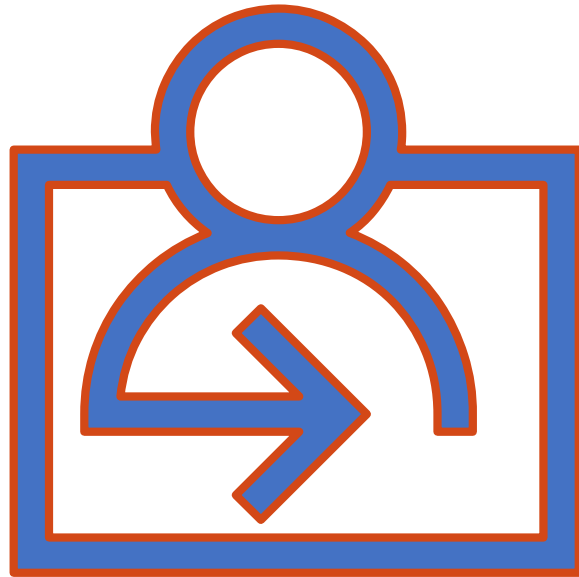
- Actual knowledge by school employee of harassment or
- Actual knowledge by employee of report or
- Complainant reports to Title IX coordinator but no formal report

## Formal Complaint

- By the complainant in writing or
- By the Title IX Coordinator



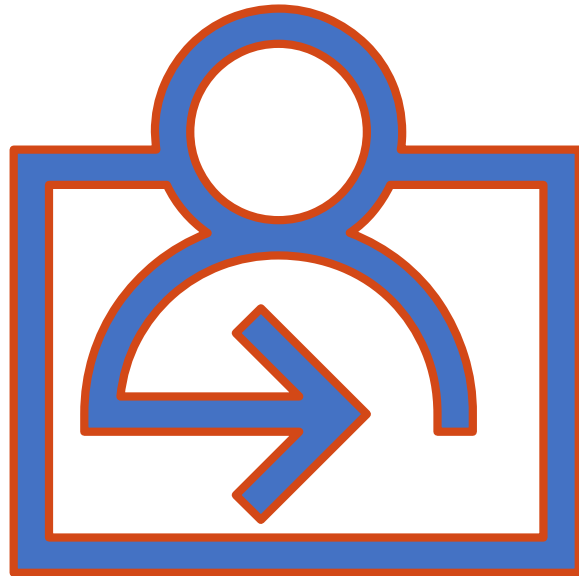
# SUPPORTIVE MEASURES



School must offer the complainant or respondent supportive measures



# SUPPORTIVE MEASURES



**Before** a formal complaint is filed

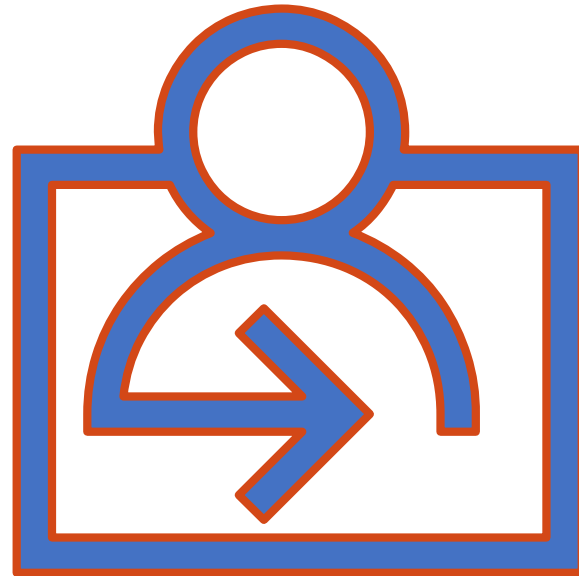
**After** a complaint is filed

Or if **no** complaint is filed





# SUPPORTIVE MEASURES



Non- punitive

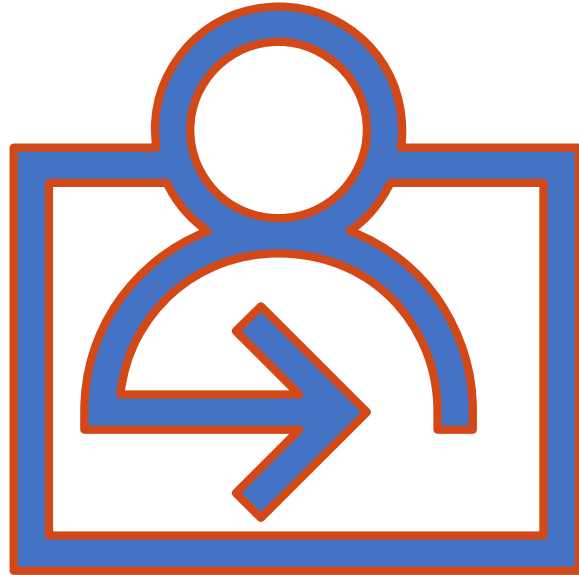
Reasonable

No Fee



# SUPPORTIVE MEASURES

Examples?



# DISTRICT'S OBLIGATION

- To respond when it has “actual knowledge”
- To do so in a way that is not deliberately indifferent
- Contact complainant promptly
  - Assist in filing formal complaint
  - Offer supportive measures with input



# CASE STUDY

- Robin is a fifth grade student
- Reports to parents & teacher three incidents in school by a classmate named Kim
- Mom speaks to teacher
- Eventually parents speak to principal





**CASE STUDY  
CONTINUED...**

Teacher assures parents that she has spoken with principal

Robin reports to physical education teacher when Kim put a door stop in pants and motions toward Robin

P.E. teacher reports to principal

Another student asks to speak to principal but is denied

Robin's grades plummet, does not want to attend school, suicide note.

\* Facts based on *Davis v. Monroe Cty Bd of Education*, 526 U.S. 629 (1999)

# ROLES





**STEP ONE**

**ROLE OF THE TITLE IX COORDINATOR**

# TITLE IX COORDINATOR

- **Receives complaints by**
  - Phone
  - Email
  - Mail
  - In-person





# TITLE IX COORDINATOR

- **Contact information given to:**
  - Applicants for admission/ employment
  - Students
  - Parents/guardians
  - Unions/professional organizations



# NOTICE

- Of non – discrimination
- Of contact information
- On website, handbooks or catalogs
- Materials given to applicants



# GRIEVANCE PROCEDURE

- Required
- See sample



# ACTIONS TO TAKE UPON RECEIPT OF A COMPLAINT

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Receipt of a “Formal Complaint” from Robin/Parents

Next Step





Receipt of Report  
from Teacher

Content of Report  
Translates to “Actual  
Knowledge”

Title IX Coordinator  
Files Complaint

Or Parent files  
Complaint

# **ACTIONS TO TAKE UPON RECEIPT OF A REPORT**



**DISTRICT'S  
OBLIGATION**

**To act in a  
way that is  
not  
deliberately  
indifferent**



# WHAT SUPPORTIVE MEASURES CAN BE OFFERED?

- What supportive measures would be appropriate for Robin?
- For Kim?



# **EQUITABLE TREATMENT**

- **Title IX coordinator and District must treat respondent and complainant equitably**





# IMMEDIATE DISMISSAL

A formal complaint ***must*** immediately be dismissed if:

- a. The conduct alleged in the formal complaint, even if proven, does not meet the definition of sexual harassment set by this policy;
- b. The conduct alleged in the formal complaint did not occur in the school or school district's education program or activity; or
- c. The conduct alleged did not occur against a person in the United States.



# PERMISSIVE DISMISSAL

A formal complaint **may** be dismissed if:

- a. The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
- b. The respondent is no longer enrolled at or employed by the school; or
- c. Specific circumstances prevent the school or school district from gathering evidence sufficient to reach a determination as to the complaint.





CASE CLOSED

**ARE THERE GROUNDS TO IMMEDIATELY  
DISMISS ROBIN'S COMPLAINT?**



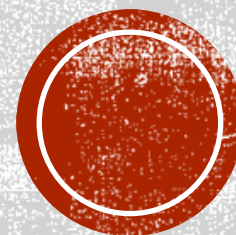
# RESPONSIBILITIES WHEN DISMISSING A COMPLAINT

- Notify both parties in writing
- Include reasons for dismissal
- Consider other disciplinary issues
  - Harassment based on other protected status?
  - Bullying?
  - Maltreatment issues?





**SHOULD ANY OF ROBIN'S CLAIMS BE  
REFERRED?**





## **CONTENTS OF NOTICE**

1. Notice of this grievance process, including any informal resolution process;
2. Notice of the allegations, including sufficient details to the extent they are known at the time.
3. A statement that the respondent is presumed not responsible and that a determination regarding responsibility will be made at the conclusion of the grievance process;
4. Notice that the parties may have an advisor of their choice, subject to the requirements of Section IV of this Process; and
5. Notice informing the parties of any provision of the code of conduct that prohibits knowingly making false statements or submitting false information during the grievance process.

# INTERIM EMERGENCY REMOVAL

- Mandatory individualized safety and risk analysis
- Respondent poses an immediate threat arising from the allegations of sexual harassment
- The threat must relate to the physical health or safety of any student or other individual, including the respondent themselves



# INTERIM EMERGENCY REMOVAL

- Procedural requirements of emergency removal
- A respondent who is removed on an emergency basis must be notified of the school or school district's decision
- A respondent must be provided with an opportunity to challenge the decision immediately following removal.
- The respondent bears the burden of proving that the removal decision was incorrect.







**WOULD AN INTERIM REMOVAL BE APPROPRIATE GIVEN ROBIN'S COMPLAINT?**





A man in a dark suit, white shirt, and glasses is sitting at a table, pointing his right index finger towards a laptop screen. He is looking at the screen with a focused expression. The background is slightly blurred, showing an office setting. The text is overlaid on the left side of the image.

**STEP TWO**  
**ROLE OF THE TITLE IX**  
**INVESTIGATOR**





**STEP THREE**  
**ROLE OF THE TITLE IX**  
**DECISION MAKER**



# STANDARD OF REVIEW

## **Preponderance of the Evidence**

“Preponderance of the evidence” means that the respondent will be found responsible only if it is more likely than not that he or she engaged in the conduct constituting sexual harassment.

## **Clear and Convincing Evidence**

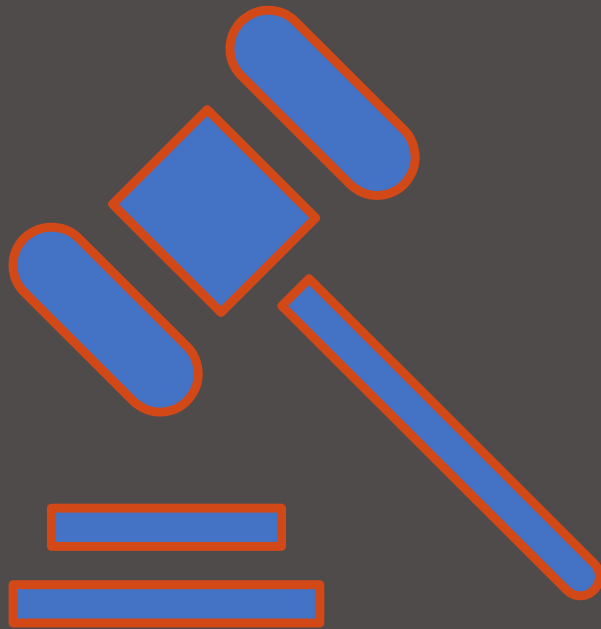
“Clear and convincing evidence” means that the respondent will be found responsible only if it is substantially more likely than not that he or she engaged in the conduct constituting sexual harassment.





# **PROCEDURES REQUIRED PRIOR TO A DECISION**

- **Opportunity for Parties to Respond to Report**
- **Notification of Rights to a Hearing/Written Cross-Examination**



# LIVE HEARING REQUIREMENTS

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## **Recording**



## **Appointment of Advisor/Representative**



## **Questioning**

Each party's advisor is allowed to ask relevant questions of the other party or parties and witnesses.

The Decision Maker must decide whether each question is relevant before the party or witness answers the question



## **Additional Written Cross- Examination**



# SUBMISSION OF WRITTEN QUESTIONS

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All schools must allow for an exchange of written questions, regardless of whether a live hearing is also offered.

After the investigation report has been sent to the parties, and before the decision-maker makes a determination regarding responsibility, the parties must be permitted to submit written, relevant questions to be asked of any other party or witness. *Id.*



# RELEVANCY

- The Decision Maker makes determinations as to what is relevant, and may exclude irrelevant questions, so long as the party asking the question receives an explanation as to why their question is not relevant.
- "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

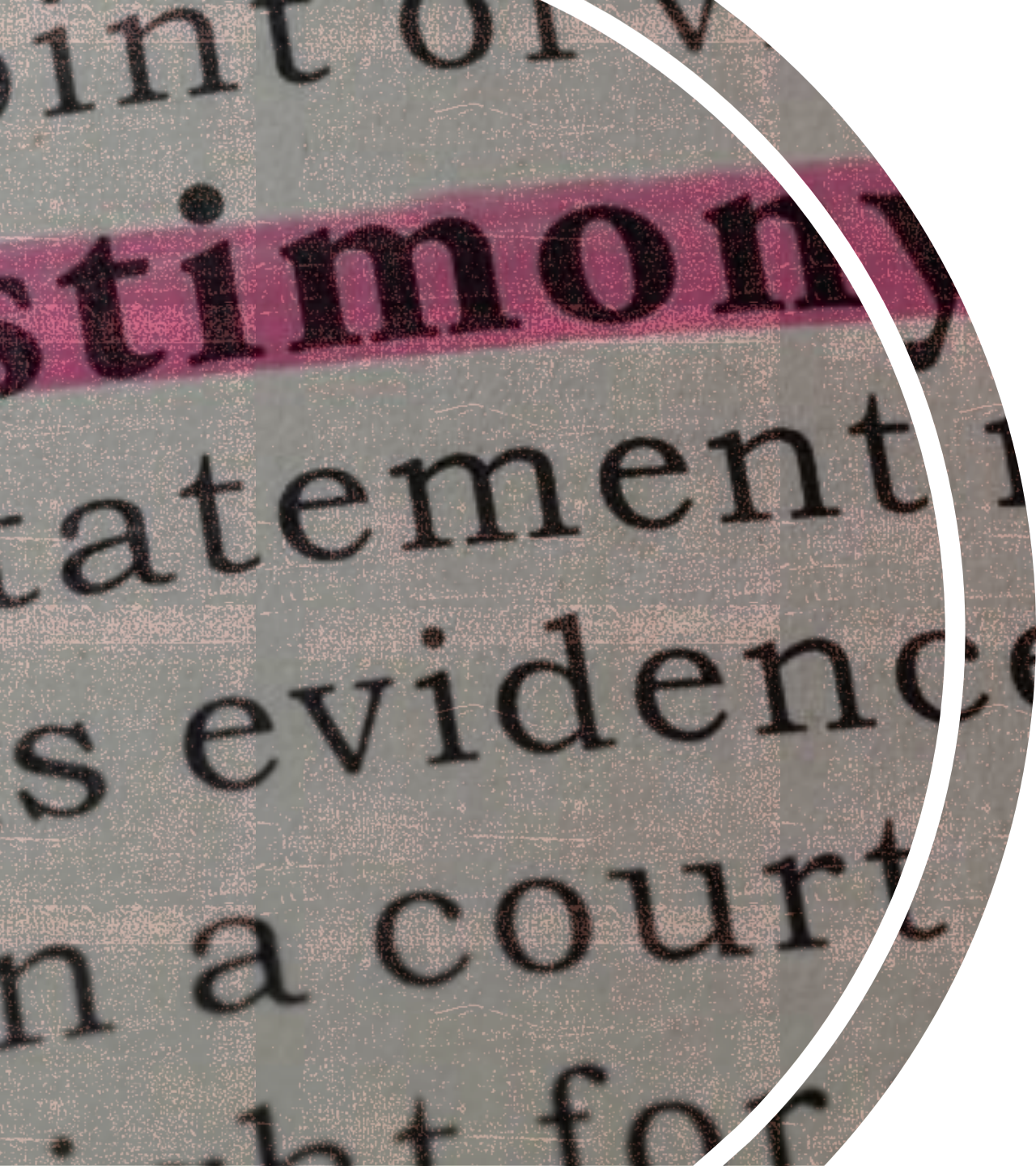




# EVIDENCE THAT MAY BE EXCLUDED

1. The probative value of the evidence is outweighed by other factors
2. Certain character evidence
3. Evidence of prior wrong acts
4. Most evidence of past sexual conduct
5. Habit, routine, practice
6. Compromise or offers to compromise
7. Evidence of guilty pleas





**WHAT EVIDENCE MAY  
BE APPROPRIATE TO  
EXCLUDE IN ROBIN'S  
CASE?**



# THE DETERMINATION

## Contents of the Determination

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken including any notifications, interviews, hearings, and other methods used to gather evidence, if applicable;
3. Findings of fact supporting the determination;
4. Conclusions applying the code of conduct or policies to the facts found by the decision-maker;
5. A statement of the result as to each allegation, including:
  - a determination regarding responsibility;
  - the rationale for the result;
  - any disciplinary sanctions imposed on the respondent,
  - any remedies designed to restore or preserve the complainant's equal access to education programs or activities; and
  - \_\_\_\_\_
6. The procedure for appealing the determination of responsibility.





**REPORT**

# **DETERMINATION OF ROBIN'S CLAIMS**





**STEP FOUR**  
**IMPLEMENTATION OF THE DECISION AND THE APPEALS PROCESS**  
**(ROLE OF THE APPELLATE DECISION MAKER)**



**Questions**