

The background features abstract, overlapping geometric shapes in various shades of green, ranging from light lime to dark forest green. The shapes are primarily triangles and polygons, creating a dynamic, layered effect. The central text is positioned on a white background that is partially framed by these green shapes.

# UASSP ASSISTANT **PRINCIPAL'S** CONFERENCE

November 9, 2023

# Agenda

- ❖ Conducting Student Investigations
- ❖ Title IX

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# Topic #1: Conducting Student Investigations

# What Do Assistants Investigate?

- Vaping
- Controlled substances generally
- Physical threats
- Sexual threats/accusations
- Peer-to-peer conflicts (combative behavior, short of fights)
- Fights
- Disruptive behavior
- Kids just hanging out at school—loitering in hallways, parking lots
- Truancy
- Terroristic threats
- Sexting
- Bullying and harassment
- Cyberbullying
- Rumors: Jenny reported that there are nudes of Johnny being shared around the school. Or Peter reported that there's a video of a fight that took place in the girls' bathroom going around. The fight started because Paula called Pam a b&\*#\$ because Pam made out with Paula's boyfriend Paxton and Pat, Pam's boyfriend is now spreading rumors about Paula because Paula was talking trash about Pam.

# So How Do You “Investigate”?

- Admin: Tell me what happened
- Student: I didn't do anything.
- Admin: Okay, well if you did, stop doing it, and if you didn't, don't start.



# An Investigation Includes (probably in this order):

- ▶ Interview with reporter, if there is one.
- ▶ Interview with the victim/complainant, if there is one.
- ▶ Interview with the reported offender.
  - ▶ Sometimes, this is all you need if the offender admits to everything.
  - ▶ If reported offender admits to some aspects of the allegation but not all, your **investigation is not done.** (“Yes, I said I hate trans students and they’re all f-slurs, but I never said I want to kill them all.” Or, “Well yeah, I might have hit him in the back but we were just messing around; he hit me, too.” Or, “Maybe I made fun him, but I don’t remember what I said.”)
- ▶ Interview with student witnesses.
- ▶ Interview with adult witnesses.
- ▶ May include review of security cameras.
- ▶ May include review of police report.
- ▶ **Could include a review of the offender’s disciplinary record: has the student engaged in similar conduct in the past?**

# What Do These Interviews Look Like?



Like This?





# CREATE A SAFE ATMOSPHERE

- ▶ Begin with an explanation about the interview
  - ▶ Build rapport
  - ▶ Explain the process and why you are interviewing this person.
  - ▶ For complainant: Allow the student to tell you what happened and explain the process, consistent with district policies.
  - ▶ **For witnesses: The reason you're here is we are investigating some allegations raised** by a classmate of yours and I understand you might have some information that would be helpful to our investigation.
  - ▶ **For respondent: So the reason you're here is because we are investigating allegations** raised by a classmate that you [FILL IN THE BLANK]. We are trying to find out exactly what, if anything, happened.
- ▶ **Avoid “cross examination” techniques**—we are not trying to catch someone in a lie, we are trying to understand what actually happened. Phrases like, “Here’s what I know so far (based on evidence like text messages), here’s what you’re telling me. Is there something I’m missing?”

# IF THERE IS A COMPLAINANT/VICTIM (Bullying or Harassment)

- ▶ FIRST AND FOREMOST find out how the incident impacted the complainant/victim
  - ▶ Emotional pain?
  - ▶ Physical illness?
  - ▶ Medical care received?
  - ▶ Missed school or work?
  - ▶ Effect on studies/job/extracurricular performance?
  - ▶ **Effects on other aspects of complainant's life?**
- ▶ Make sure to discuss interim/supportive measures:
  - ▶ moving seats,
  - ▶ moving classes,
  - ▶ visiting with a counselor,
  - ▶ extending assignment time to get homework in,
  - ▶ no contact contract,
  - ▶ additional supervision in the area the incident occurred,
  - ▶ ensuring the student has a safe adult to talk to,
  - ▶ creating a safety plan (which may include all of these things),

# Safe Atmosphere, cont.

- ▶ When interviewing students, ask them to put phones on the desk so they cannot text/communicate with other students to corroborate stories.
- ▶ Avoid interruptions and allow pauses that encourage communication
- ▶ **Avoid inflammatory words and phrases like “victim”, “perpetrator”**
- ▶ You may record the interview but do so openly and in a non-threatening manner. **“I’d like to record this interview for my own recollection in case I miss anything as we’re talking.”**
- ▶ Consider whether to stay in the room while the interviewee writes his/her **statement; give the person space, but don’t just hand the student a blank piece of paper and walk out.**

# Safe Atmosphere, cont.

- ▶ Ask open-ended questions aimed at the What, When, Where, How.
  - ▶ What happened? What was said during the incident? Before the incident? After the incident? What did you see/hear?
  - ▶ When did it happen?
  - ▶ Where did it happen?
  - ▶ Who was involved? Who else saw or heard it happen?
  - ▶ How did it happen?
  - ▶ Why? (Why did the fight start, for example. Do you know why John would calling you a mother f-er N-word, bleepity, bleep? **Do not ask, “Why did that student sexual assault you?”**)

# Safe Atmosphere, cont.

- ▶ Back-to-back interviews should be avoided—**you don't want students crossing** paths on the way to the office.
- ▶ Ask questions in a straightforward, non-accusatory manner.
- ▶ When asking witnesses questions, do not tell them what happened and ask if they saw/heard it.
  - ▶ **Ask generally, “Did you notice anything out of the ordinary in class/during lunch/in the hallway between 5<sup>th</sup> and 6<sup>th</sup> periods today?”**
  - ▶ Then get more specific: Did you hear someone say something inappropriate to **Tommy?** **OR in the alternative, “Did you hear anyone calling someone a “border hopper”?**

# CONDUCT A TIMELY INVESTIGATION

- ▶ Parties and witnesses should be interviewed as soon as possible.
- ▶ Have students write down what they tell you when they tell it to you, and not later.
- ▶ Solicit witness lists from people you talk to—who saw the incident, who did you tell about the incident, whose name have you heard in connection with this incident and contact those individuals as soon as possible.

# GET THE MOST ACCURATE INFORMATION

- ▶ When witnesses write statements after telling you what happened, review the written statement with the student to ensure the written and verbal statement line up.
- ▶ Consider age of student and whether having student write his/her own statement is more effective than writing and reading back. Be sure what is written reflects what is intended.
- ▶ **When writing down statements from students who cannot or don't want to write,** write verbatim: avoid characterizing or interpreting what the student is telling you.
- ▶ Anytime an interviewee mentions the name of another student who was present or may have heard or seen something, FOLLOW UP
- ▶ Anytime an interviewee tells you something that can be verified (ie, I was out of **class that day because I had a doctor's appointment, so I couldn't have slapped** that kid on the butt that day), VERIFY.

# Getting Accurate Information, cont.

- ▶ Leave some time between interviews to review your notes and the statements by the interviewee.
- ▶ Remember the goals of the interview: learn the facts, establish a timeline, **understand each party's perception. Try to develop an understanding of what is more likely than not to have happened.**
- ▶ Listen carefully and adapt follow-up questions. **It's okay to have a script, but don't be afraid to veer from it based on the responses you get. Do not be thinking about your next question while the interviewee is talking.**



# Getting Accurate Information, cont.

- ▶ Ask clarifying questions about terms that can have multiple meanings or a spectrum of meanings, like a “few”, “couple”, “sometimes”, “yelling/screaming”, etc.
  - ▶ Other words without clear meaning: “bullying”, “harassing”, “ignoring”, “stalking”,
- ▶ Ask witnesses for everything they saw, heard, and any other direct sensory perception. Then, **it’s okay to ask for their opinion and why. These can be indicators of other places to investigate.**
- ▶ **When the interviewee can’t remember** *when* exactly something happened, ask questions that might help trigger the memory:
  - ▶ Was it the fall or winter? (cold outside? Wearing coats yet? Snow on the ground?)
  - ▶ Do you have any scheduled event, like piano lessons or soccer after school on certain day? Do you recall **if what you’re telling me happened on one of those days? Did you go to piano lessons?**
  - ▶ Was it during 1<sup>st</sup> semester or 2d? Think about what teachers and classes you had.
  - ▶ What else was going on in your life at the time? Can we you remember what that other life event occurred?

# Getting Accurate Information, cont.

- ▶ Keep a poker face—**don't roll eyes, or exhibit body language that suggests you don't believe the person**
- ▶ **Don't be afraid of the silence. When you're silent, they will start talking.**
- ▶ **Repeat what you're hearing them say in a non-judgmental, inquisitive way.**
- ▶ **Ask open-ended questions that cannot be answered with a simple "yes" or "no".**
  - ▶ **NOTE: It's okay to ask a yes/no questions as foundational questions. For example, "Were you in class today? Did you hear anyone say the "n" word? Who said it?" THEN "Tell me about that."**
- ▶ **Get details: What was happening in the class when Dave said the "n" word? Who else heard it? What exactly did he say -NOTE DO NOT REPEAT THE WORD!- Did anyone around Dave say something to him? Who was sitting next to Dave? Where was the teacher? Did teacher hear anything? Did teacher say anything? What was the general reaction of the class? Did students stop what they were doing? Did Dave say anything AFTER he said the "n" word?**
- ▶ **→By the end of your interviews, you should have enough information to re-create the entire scenario through stage directions.**

# Getting Accurate Information, cont.

- ▶ Always ask at the conclusion: “Is there anything else you think we should know, or is there anyone else you think we should talk to?”



# ASSESSING CREDIBILITY

- ▶ Did the interviewee answer all your questions?
- ▶ Is there a motive to lie?
  - ▶ It's okay to ask a witness, "Do you have any idea why Tina would say Tonya did that?" Or Respondent, "Any idea why Tina would say that you did this?"
- ▶ Has the person accused of wrongdoing engaged in similar behavior before?
- ▶ Do any of the interviewees have a history of dishonesty?
- ▶ **Is the student's version of events consistent through the telling?**
- ▶ Note biases—is the witness close friends with one of the parties that would cause the witness to lie? Often, the most believable witnesses are those who share information *against* the interest of their friend, or of themselves.
- ▶ Note that a witness may be prone to lie if the witness thinks he/she may get in trouble for participating in some behavior with the respondent.
- ▶ Note body language -avoiding eye contact, defensive stance (but be sensitive to cultural difference)

# HE-SAID-SHE-SAID

- ▶ Often, administrators find themselves in a situation where a complainant is saying a respondent said something, and the two are alone in a hallway with no corroborating witnesses. What do you do?
- ▶ ***When it comes it matters of civil rights, you don't do nothing.***
- ▶ You can follow-up with:
  - ▶ **A review of each party's disciplinary history**—has complainant lied and made up stories about students before? Has respondent said similar things before?
  - ▶ Have other students accused respondent of saying similar things?
  - ▶ What have friends heard these students say?
  - ▶ Is there a history of conflict between these two students?
  - ▶ Is there security footage that would show the altercation?
  - ▶ Can teachers confirm the students were not in the classroom at the time of the alleged altercations?
- ▶ Regardless, put safety measures in place for both students. Contact both **students' parents. Check in on both students in the days following the report, and DOCUMENT** all of this.

True or False: If I can't prove it, I can't say it happened.



# “More Likely Than Not”

- ▶ When you’re investigating an incident at school, the “standard of evidence” you are bound by is “more likely than not.”
- ▶ If you think something happened more than you think it didn’t happen, (even a teeny, tiny bit more), that is all the “proof” you need to draw a conclusion that the thing happened.
- ▶ Administrators need to abandon the belief that “but I can’t prove it...”
- ▶ You don’t have to prove it.
- ▶ BUT you should articulate WHY you think something happened more than you think it didn’t happen.

# LET'S TALK DOCUMENTATION

- ▶ **Regardless of your District's policies, all documentation should include the following in your narrative:**

1. What you were investigating (the allegation)

NOTE #1: Avoid spelling out the full N-word or other well-known slurs (ie, the f-slur as it relates to LGBTQ community; the r-slur as it relates to disability) out of respect for anyone who reviews the document and in attempt to eradicate certain language from your school records.

2. Who you talked to

**NOTE:** talk to your legal counsel, but I recommend putting students' first and last names in the report. You can—and must—redact all names other than the student's name when providing a printout of the student's education record. It's very hard to read narratives like:

*“Tony reported that another student hit him. Another other student said he didn't hit him but instead hit another other other student. Another student said he heard him say he's hitting him and then he turned around and he was on the ground but he didn't actually see him hit him.”*



# QUICK SIDE NOTE ABOUT CATEGORIES OF CONDUCT

- ▶ Be sure to document the incident in the correct category. Bullying is different than harassment is different than insubordination is different than fights, and should be documented accurately.
  - ▶ **Don't call it bullying when the conduct is on the basis of a protected class.**
  - ▶ **Don't call it profanity when the slur was directed at someone on the basis of a protected class.**
  - ▶ **Don't call it a "fight" if the fight started because of someone's protected class.**

# DOCUMENTATION, CONT.

3. Full sentence summaries of what each of the witnesses said they saw/heard.
4. A finding of what you think, more likely than not, happened, and why you think that:
  - ▶ For example, “Because Amy, Dave, and Gina all saw Bob initiate the fight, it is more likely than not that Bob did initiate the fight.” Or, less formal: “Bob initiated the fight; 3 witnesses all reported seeing Bob take the first punch.”
  - ▶ It is more likely than not that Graham was throwing food at Jake in the cafeteria and **making fun of Jake’s disability by calling him the r-word** and doing a hand gesture well known for mocking people with disabilities. Graham has a history of making fun of other kids and Jake doesn’t know Graham at all and has no reason to make this up.
  - ▶ Based on the above investigation, it’s likely that Brian was vaping in the bathroom. (Above investigation has: “Security cameras showed Brian walking out of the bathroom moments after the vape alarm went off, and throwing something in the trash. The administrator found a vape in that trash.”)

# DOCUMENTATION, CONT.

- ▶ When it comes to bullying or harassment (civil rights) allegations, you also want to draw a CONCLUSION and cite to your policy:
  - ▶ Yes, the conduct occurred as alleged—Bob initiated a fight with John by throwing the first punch--but it was not bullying under Policy XXX BECAUSE the conduct was part of an ongoing 2 sided conflict between Bob and John all year as the students have been mutually combative both verbally and physically all year. OR
  - ▶ Bob initiated a fight with John, which constitutes bullying under Policy XXX, because Bob intentionally committed a physical act that was one-sided and is a pattern of written and verbal comments toward John.
  - ▶ **Yes, Lauren's use of the N-word wasn't directed at anyone, but is discriminatory language which is a violation of Policy XXXX.**

# Finding v. Conclusion

- ▶ Findings = conduct did/did not occur
- ▶ Conclusion = conduct constitutes bullying/harassment and violated policy XXX

Often, this is fairly straightforward: Livvy was vaping in the bathroom, which is a violation of our Student Conduct Policy.

Sometimes, the conclusion requires more explanation: Adam was using the f-slur and telling students who identify as LGBTQ that they should all die. This is a violation of our harassment/discrimination policy, which prohibits conduct that targets students based on a protected class.

# Why the need to conclude?

- To tell parents—yes, bullying occurred. Or (more often the case), yes, the **conduct occurred but it's not bullying under our policy.** (“However, we will make every effort to ensure your child feels safe at school; let’s talk about a safety plan.”) This way, when the parent says, “My child has been bullied for years now,” there is very clear documentation that the student has been **REPORTING** being bullied for years, but that the student has not in fact been bullied.
- To rely on for escalated discipline: 3rd incident of harassment/violation of policy xxx should result in escalated discipline in order to STOP the behavior.
- To run reports: We have to report all incidents of bullying and harassment to **the state. We cannot do so if we haven't concluded whether it is bullying or harassment.** Checking the box based on an allegation alone is going to overinflate your numbers.

# WHY A CONCLUSION, CONT.

- ▶ To have handy in case of litigation/OCR/DOJ alleging a civil rights violation:
  - ▶ Devin is alleging violation of Title VI of the Civil Rights Act and Equal Protection violation because of ongoing known harassment that has not been addressed by the school.
  - ▶ **You have documented every instance that you are aware of where Devin or Devin's parents report an incident.**
  - ▶ You can show your work: that you DID address it by investigating it and that it WAS or WAS NOT harassment.
  - ▶ (NOTE: If your conclusion is that the conduct WAS harassment, you better be able to show what you did to address the harassment, both to support Devin and to address the conduct of the student who engaged in the policy violation.)

# DOCUMENTATION, CONT.

## 5. Last thing to document—**the School's response.**

- ▶ Nothing will get a school and district sued faster than if the incident is half-way documented: it is documented that something happened, more likely than not, but there is no documentation of what the school did in response to **whatever happened. This screams, “I am deliberately indifferent to misconduct at my school!!! I know it’s happening, but I don’t care! I will bury my head in the sand and ignore it!”** Because we all know, if it isn’t documented... **it didn’t happen!**



# Let's Talk about Parents' Rights Re: Student Investigations

- ▶ Unless an investigation is being conducted by law enforcement, there is no statutory or constitutional right for a parent to be present during a student interview. This is true if the student is the complainant, the respondent, or the witness.\* (However, follow district policies/practices on this point.)
  - ▶ \*EXCEPTION: Title IX allows complainant and respondent to have support person, including parent or an attorney, in the room during interview.
- ▶ You MAY allow parents to be present for non- Title IX interview, but do not have to.
- ▶ Best practice—but not required by law—notify parents of your interview with parties in an incident.
- ▶ Parents of witnesses do not have a statutory or constitutional right to be informed that you spoke to them.
- ▶ Parents of complainant and respondent in a bullying incident *do* have a statutory right to be informed of the bullying incident.



# What Rights Do Students Have?

- ▶ Students do not have a right to have *Miranda* read to them, UNLESS the student is a suspect in a crime AND law enforcement is conducting the interview.
- ▶ Students have a right to refuse to allow you to search, but you may search anyway if you have reasonable suspicion that evidence of misconduct will be **found amongst the student's possession.**
- ▶ Students do NOT have a right to a lawyer. (Again, Title IX excepting)
- ▶ Students generally do not have a right to be notified in advance of an interview (except under Title IX)
- ▶ **Students don't have a right to stay in school if they pose a danger to themselves or others.**
- ▶ Students DO have a right to notice and an opportunity to be heard prior to removal. Sending a student home without telling him/her why, and giving the **student a chance to respond to the allegations is a violation of the student's** due process rights.

# Pitfalls In Investigations

- ▶ Interviewing only the parties accusing each other and failing to interview witnesses
- ▶ Failing to talk to teachers/other adults who might have seen something
- ▶ Failing to address how the student who reported the conduct (presuming they also experienced the conduct) was impacted by the conduct.
- ▶ Failing to find out if there were other students impacted by the conduct (particularly harassment) besides just the kids involved. (For example, it is reported that during history class, following a WWII lesson, a student shouts out **“We should have nuked the entire country! Japs suck!”** You’ll want to find out, in addition to whether this occurred, whether there are any Japanese-American students in the class, and how other class members were impacted by the comment.)
- ▶ Failing to document all the things. (1-5—see next slide for reminder!)

# Summary of Documentation

1. What happened
2. Who you talked to
3. Summary of interviews
4. Findings of Fact (Is it more likely than not that the conduct occurred?) and Conclusions of Policy violations (Does the conduct—if it occurred—violate District policy?)
5. How you responded

# Title IX Review

# Title IX Text

## TITLE IX STATES:

- ▶ **“No person in the United States** on the basis of sex shall 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.”**

# Legal History and Background on Title IX as It Relates to Sexual Harassment



# Cannon v. University of Chicago

441 U.S. 677 (1979)



Supreme court says title IX includes an implied right of action, meaning people can sue under it.

# Franklin v. Gwinnett County Public Schools

## 503 U.S. 60 (1992)



- ▶ Sexual harassment constitutes sex discrimination under title IX
- ▶ Title IX not only provides equitable remedies to require fair treatment, it also provides for damages awards (i.e., District can be sued for money)



# Gebser v. Lago Vista Independent School Dist. 524 U.S. 274 (1998)

A school is not liable for monetary damages for teacher-student sexual harassment unless a school district official who “at a minimum has authority to institute corrective measures on the district’s behalf” has actual notice of, and is deliberately indifferent to, the teacher’s misconduct.



# Davis v. Monroe County Board of Education 536 U.S. 629 (1999)

A school board may be held liable in cases of student-on-student harassment, but only where the district is deliberately indifferent to sexual harassment, of which the district has actual knowledge, and that harassment is so *severe, pervasive, and objectively offensive* that it can be said to deprive the victims of access to the educational opportunities or benefits provided by the school.



# Department of Education The Office for Civil Rights



# OCR Guidance

- ▶ From 2001-2017, OCR issued several guidance documents regarding sexual harassment and Title IX, heavily focused on the rights of the victim and the obligation of schools to take prompt and effective steps reasonably calculated to end any harassment and prevent harassment from occurring again.
- ▶ Schools were required to engage in prompt, thorough, and impartial investigation while providing interim supportive measure to the victim, informing the victim of the progress of the investigation, and informing the victim of the outcome of the investigation.
- ▶ Victim was the focus.

# Changes to the regulations

- ▶ **Responding to complaints that the Department of Education's guidance did not adequately protect the rights of those accused of sexual harassment or sexual violence**, in 2017, the U.S. Department of Education Secretary Betsy DeVos rescinded the Obama-era guidelines which encouraged colleges and universities to more aggressively investigate campus sexual assaults.
- ▶ In October, 2018, DOE proposed new regulations for the first time since 1997.
- ▶ The regulations were open to public comment, and the DOE received over 124,000 responses.
- ▶ The regulations were published May 6, 2020, and made effective August 14, 2020.

# Overview of the new regulations

- Definition of sexual harassment has changed—it is reserved for only very serious sexual conduct
- Respondents will get written notice before first investigative interview
- **Parties will be able to have a parent and/or attorney at interview (an “advisor”)**
- Gag orders prohibited
- The person who investigates the allegation and the person who makes the final decision must be different people
- Both parties have extensive opportunity to respond to evidence presented against them
- Appeal must be offered

# New(ISH) Definition of Sexual Harassment

## Quid Pro Quo

- When an employee conditions some benefit in exchange for unwelcome sexual conduct

## Hostile Environment

- Conduct that is so severe, pervasive, AND objectively offensive that
- It denies equal access to educational program

## Violence Against Woman Act Big 4

- Sexual assault
- Dating violence
- Domestic violence
- Stalking

# STOP EVERYTHING!

Before proceeding with an investigation of any allegation of a sexual misconduct or a suspension, STOP, and CONTACT YOUR TITLE IX COORDINATOR.





# Quid Pro Quo

- ▶ Principal promises bad evaluation if teacher **doesn't give him massage**
- ▶ Teacher offers student higher grade if student kisses her
- ▶ Coach implies athlete will start if she lets him sit close and rub her legs
- ▶ \*MUST BE BY AN EMPLOYEE\*



# SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE

## MUST MEET ALL FOUR ELEMENTS

- ▶ Severe = reasonable person considers it severe
  - ▶ Most physical contact will be considered severe
  - ▶ Non-physical contact associated by threats of violence
- ▶ Pervasive = pattern or widespread dissemination
- ▶ Objectively Offensive = reasonable person is offended
  - ▶ **“I know it when I see it”**
- ▶ Denies Access = undermines or detracts from educational experience
  - ▶ Could include dropping out of activities, grades dropping, skipping certain classes (or all classes), staying in for lunch, opting for online school

## Figuring out “SPOO”—What Constitutes Severe, Pervasive, and Objectively Offensive?

- ▶ This conduct is NOT conduct that would otherwise meet the definition of sexual assault. If the conduct meets the definition of sexual assault, no need to go through this analysis.
- ▶ Severe: Consider the age, the impact on the Complainant, and the school community at large
- ▶ Pervasive: Could mean it happened multiple times, could mean something was disseminated to multiple people, or it could mean the impact was widespread
- ▶ Objectively Offensive: If 9 out of 10 people in a room find it offensive, it probably is.
- ▶ SPOO + deprives the Complainant equal access to educational opportunities. = Title IX route.
- ▶ NOTE: This is typically behavior that is *really* bad (**“shocks the conscience”**) and would generally result in long-term removal from school.

# LET'S WALK THROUGH A FEW

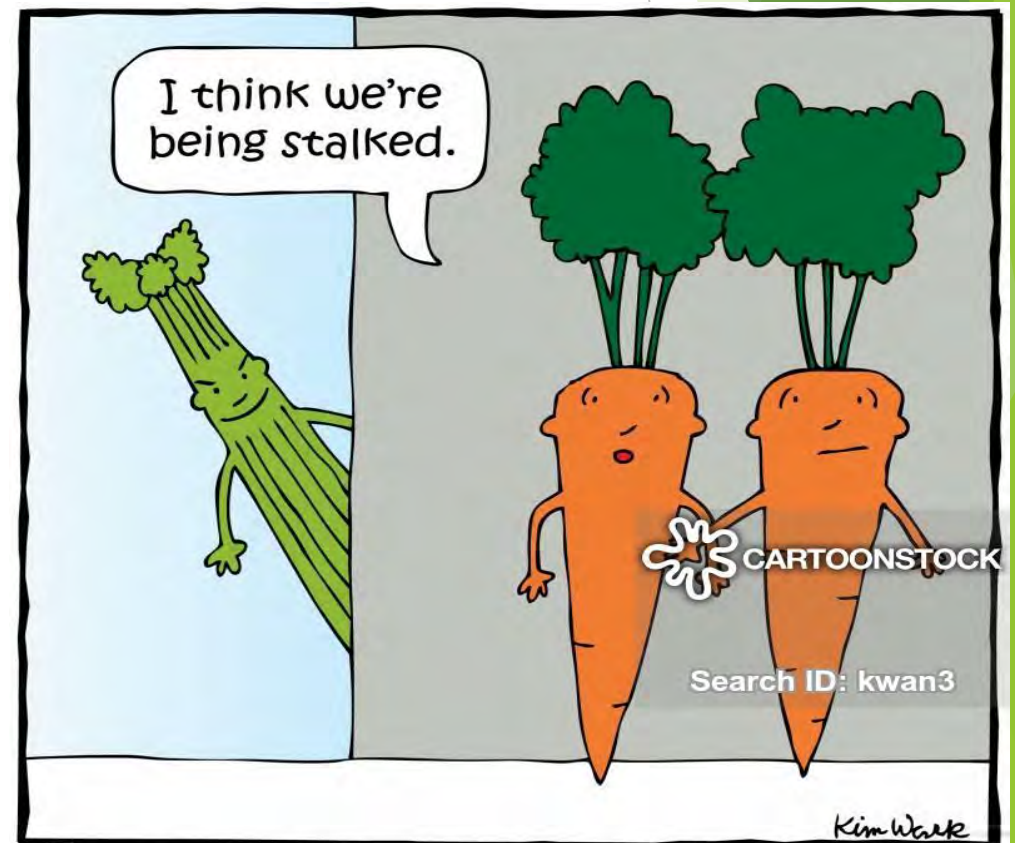
- ▶ Student exposes himself in front of a teacher and begins to masturbate. At school.
- ▶ 9<sup>th</sup> grade boy and 10<sup>th</sup> grade girl have consensual sex off campus. Boy films he and girl having sex, **with girl's knowledge and reluctant consent. Boy promises to erase video, but instead takes it to school and shows 5-7 kids at lunch and 2 others in math class. Girl goes to different school but decides that she can't go to school in person anymore and opts for online.**
- ▶ 8<sup>th</sup> grade girl reports that 8<sup>th</sup> grade boy has touched her private parts in art class several times over the course of one week. She reports that he reaches under the table and puts his hand on her thigh, moving it up until he is touching her crotch area, and that he has reached around her shoulders and put his hand down her shirt and grabbed her breast.

- ▶ Three different girls report that boy harassed them by engaging in the following conduct:
  - ▶ Girl 1 reported boy messaged her, called her names, used swear words, stated he was watching her, **sometimes repeating messages within a short time or blaming girl for boy's depression and suicidal thoughts.**
  - ▶ Girl 2 reported boy sent ongoing direct messages, emails and texts to her and classmates at times **containing inappropriate comments such as "nice ass", and telling girl she looked pretty when she was home and not in the vicinity of the boy, and reporting to classmates that he'd had sex with the girl**
  - ▶ Girl 3 reported that boy sent a message to a peer stating that they had slept together. **When girl emailed boy and asked him to stop, he said he wouldn't and was going to commit suicide. Girl also said** boy is telling peers that she and another girl (Girl 2) got him suspended.
- ▶ 4<sup>th</sup> grade boys playing "squirrel tap" repeatedly at recess.

- ▶ Girl #1 showed friends at school pictures of the breasts of Girl #2 taken during a sleepover. Both girls are in high school.
- ▶ Boy #1 grabbed and twisted the penis of Boy #2. Both boys are in elementary school.
- ▶ Boy #1 peeked over the bathroom stall and watched Boy #2 urinating. Boy #1 then commented on **the size of Boy #1's penis to the class. Both boys are in elementary school.**
- ▶ High school boy cornered high school girl in the band practice room, asked to see her breasts, she refused and he groped her.
- ▶ Girl send inappropriate sexual messages through text to boy. Boy opened and reviewed the messages at school.
- ▶ Notification by police that they are investigating possible rape by boy at the high school against girl at the high school. No indication the rape took place at school or at a school-related activity.

# Violence Against Women Act Big 4

- ▶ Sexual Assault
- ▶ Dating Violence
- ▶ Domestic Violence
- ▶ Stalking



# Sexual Assault Defined

**“any sexual act directed against another person, without the consent of the that person including instances where the person is incapable of giving consent, such as forcible rape, forcible sodomy, sexual assault with an object, forcible fondling\*.”**

\*NOTE: Fondling requires that the touching be *for the purposes of sexual gratification.*



# Sexual Assault in Schools

- ▶ **Butt slaps (“Ass Grab Game”)?**
- ▶ Playing doctor?
- ▶ Crowded hallway?
- ▶ Squirrel tapping (grabbing or touching male genitalia over the pants in a joking manner)?



# Sexual Intent?

## Factors In Determining Intent:

- ▶ Age and maturity of students?
- ▶ Disability?
- ▶ Experience or understanding?
- ▶ Control or coercion?
- ▶ Attitude of both students?
- ▶ Concealment?
- ▶ Where did it happen?
- ▶ How long did it last?

# Dating Violence

**“violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship”**

\*For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Importantly, sexual harassment under the dating violence prong does not have to be sexual in nature.

# Stalking

“engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person’s safety or the safety of others; or suffer substantial emotional distress”

- ▶ Must be two or more acts (on district property or during school sponsored activities), including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates **to or about a person, or interferes with a person’s property.**

# Sexual harassment v. sexual misconduct

- ▶ Allegations of conduct that meets the definition of sexual harassment **MUST** be handled by the Title IX Coordinator **BEFORE** you engage in any investigative work.
- ▶ Allegations of sexual misconduct can be handled at the school level, just like you handle every other situation.

BUT REMEMBER!!!

- ▶ Call your District Title IX Coordinator just make sure!



# Train Your Staff to Report

- ▶ **Previously, a school was not deemed to have “actual knowledge” of sexual harassment unless someone with authority knew.**
- ▶ Now, the new regulations impute actual knowledge to an LEA when ANY EMPLOYEE knows.
- ▶ Make sure your employees know:
  - ▶ What to report
  - ▶ When to report it (immediately!)
  - ▶ And to whom they report
- ▶ You may train your staff on the new definition of sexual harassment, OR you may just tell your staff if you know of or even suspect any conduct that is sexual in nature occurring at our schools, report it!