



COMPLIANCE IN COVID – K12 ATHLETICS

Webinar – July 30, 2020

YOUR FACULTY



W. SCOTT LEWIS, J.D.

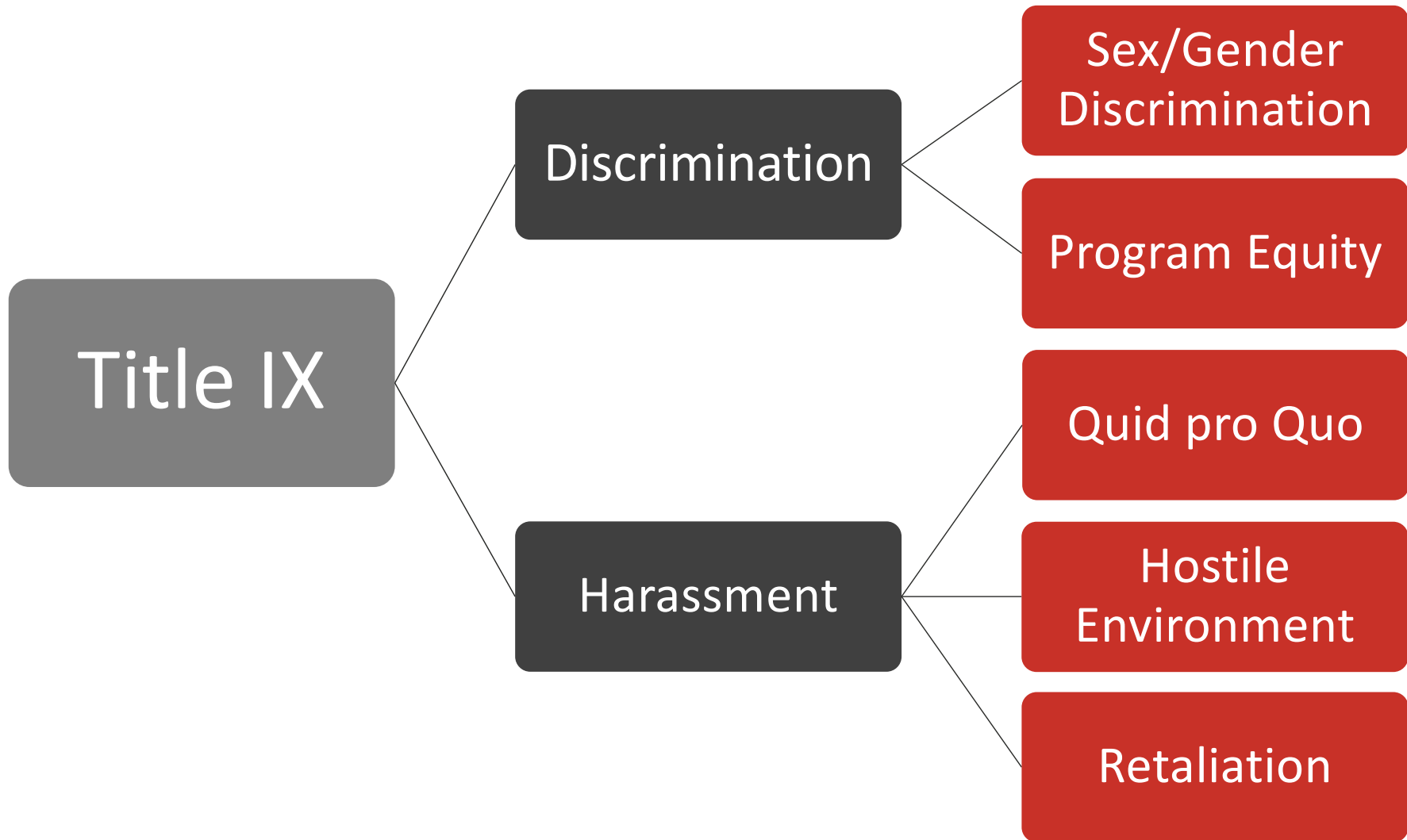


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Title IX and Athletics Consultant



- Title IX DOES require an institution to:
 - Provide an equal opportunity for female and male students to become intercollegiate athletes.
 - Analyzed by means of a three-part test
 - Provide equivalent treatment of participants in the overall women’s program as compared to the overall men’s program.
 - Analyzed according to thirteen (13) different program components.

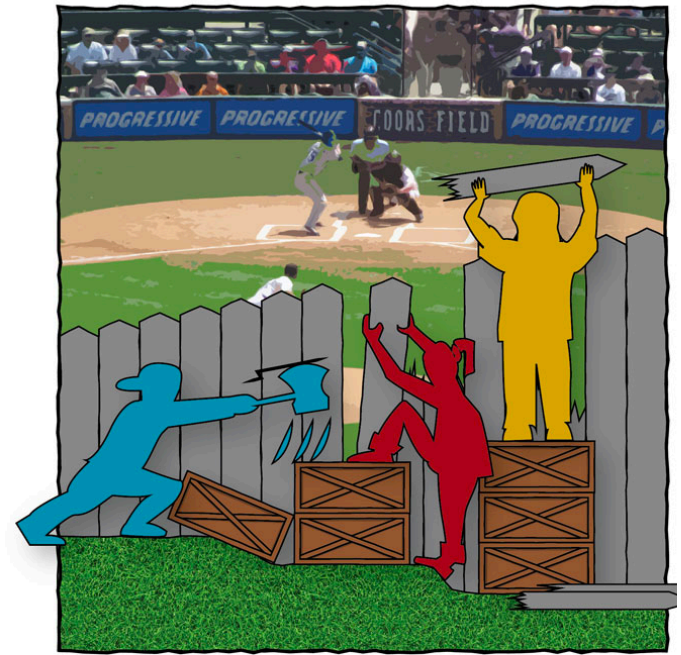
EQUITY DEFINED



EQUALITY



EQUITY



JUSTICE

THE THREE-PART TEST: ACCOMMODATION OF INTERESTS AND ABILITIES

1. Proportionality
2. Program Expansion
3. Full Accommodation

OVERSIGHT OF ATHLETICS GENDER EQUITY: THREE-PART TEST (1979)



Effective accommodation of interests and abilities (this is an “or” test, not an “and” test):

- **Prong 1:** Opportunities for males and females substantially proportionate to their respective enrollments; OR
- **Prong 2:** Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; OR
- **Prong 3:** Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program.

LEVELS OF COMPETITION

1. Equivalently Advanced Competitive Opportunities
2. Upgrades of Competitive Opportunities

LEVELS OF COMPETITION



Compliance is assessed by examining:

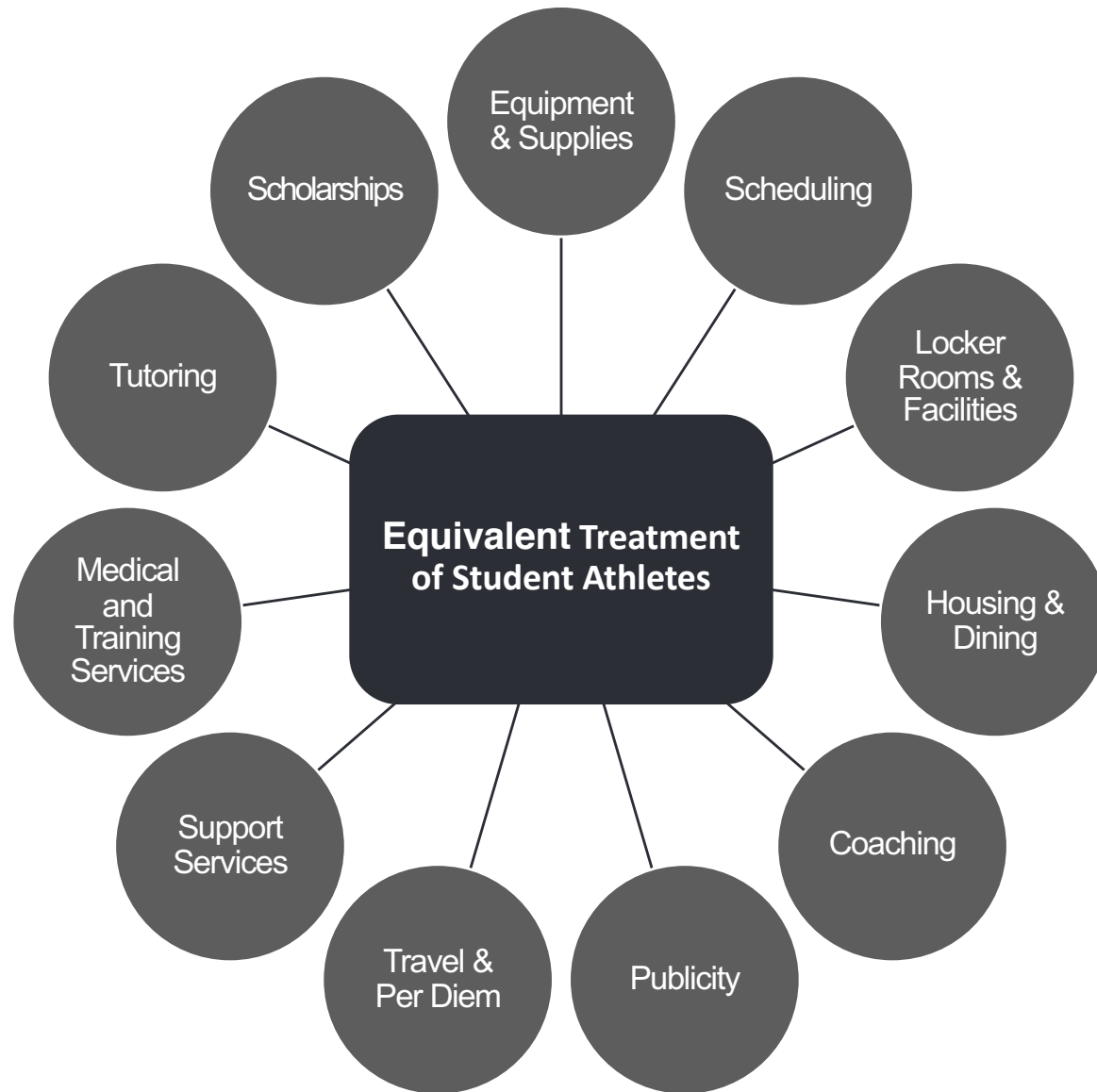
1. Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities; OR
2. Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex.

Source: HEW (1979). Intercollegiate Athletics Policy Interpretation.

“OTHER ATHLETIC BENEFITS AND OPPORTUNITIES”

- Equipment and supplies
- Scheduling (games and practice times)
- Travel and per diem allowance
- Coaches
- Tutors
- Locker rooms and other facilities
- Medical and training services
- Housing and dining services
- Publicity
- Recruitment of student athletes
- Provision of support services

OVERSIGHT OF ATHLETICS GENDER EQUITY



SEASON CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



Options:

- Go on as normal – not truly a viable option
 - Testing concerns, Infections, liability, etc.
 - Public Relations
- Cancelling seasons
- Delaying and/or Shortening Seasons
- “Freezing Seasons”

SEASON CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



Title IX Implications:

- All or some?
- Which sports?
- Why?
- How?

Red Flags:

- More boy's than girl's sports
- Team success as rationale
- Football and economics
- “More fun to watch”

SPORT CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



Options:

- Go on as normal – Is this a viable option?
 - Finances, in-person vs. online attendance, enrollment
- Eliminating teams – varsity and/or JV
- “Furloughing” teams (delayed/cancelled seasons)
- “”Demoting” teams
 - Level of competition
 - Club level
 - Intramural

Title IX Implications

ATHLETE CHOICES IN COVID TIMES – TITLE IX IMPLCATIONS



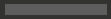
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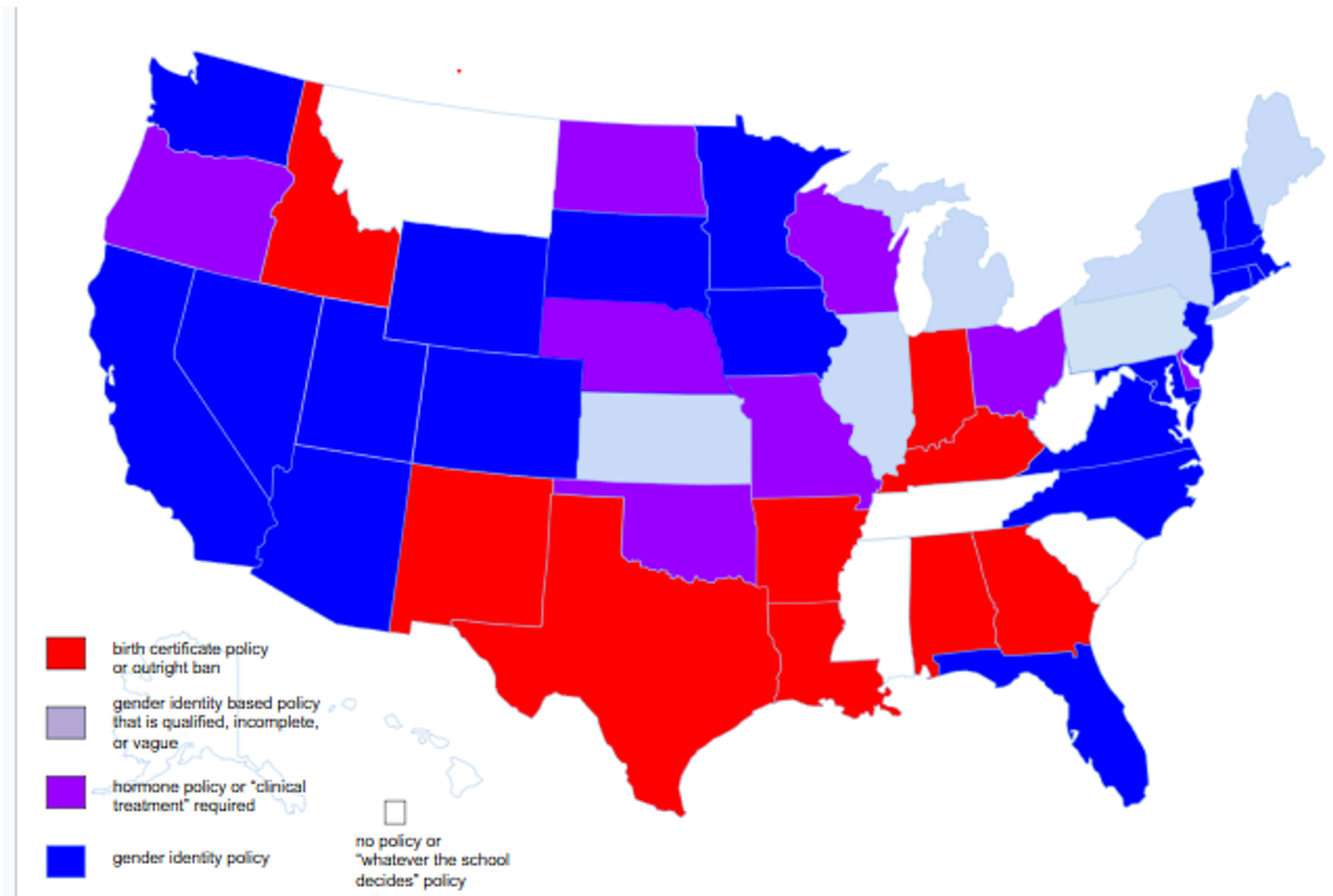
- If no season:
 - Transfer (state by state implications)
 - Work out or practice only
 - Shift to different competition level
 - Shift to club

Concerns:

- State rules
- Parent demands/donations/lawsuits
- Transferring in and out

INCLUSION - LGBTQ+





HECOX V. LITTLE (FILED APRIL 2020)



Idaho HB 500:

- Designates all high school/college sport on the basis of “biological” sex
- Male athletes are banned from female teams
- Female athletes whose sex is “disputed” must submit to medical examination

Arguments:

- Idaho law violates equal protection rights of female athletes by subjecting them, but not male athletes, to gender scrutiny.
- Idaho law violates equal protection rights of transgender athletes because their categorical exclusion from women’s sport is not tied to a valid objective.
- Idaho law violates due process rights of female athletes by invading their privacy with intrusive medical intervention.

HIGH SCHOOL

Connecticut high school transgender athletes 'no longer want to remain silent' following Title IX complaint



By DAN BRECHLIN
HARTFORD COURANT | JUN 20, 2019 | 6:00 AM



- Plaintiffs: cisgender girls who competed against transgender athletes in track
- Argument: CIAC's inclusive policy violates their rights under Title IX by diminishing opportunities for girls.
- Title IX prohibits discrimination on the basis of sex, but permits separate athletics teams as long as the overall quantity and quality of opportunity is equitable.
- Title IX does not define "sex" but courts in Title IX cases about bathrooms and locker rooms have held that sex discrimination includes discrimination against transgender students. See also *Bostock v. Clayton County* (Title VII),
- Separately, OCR issued a ruling letter in May, concluding that CIAC policy violates Title IX. No analysis of "sex."

STUDENT ATHLETES AND RACIAL JUSTICE

Athletes Speak Out In Support Of Racial Justice As Sports Return

Here & Now – wbur – June 18, 2020

Iowa became the first state to resume high school sports this week and the members of one baseball team knelt during the National Anthem to support the protests against racial injustice.

High school ADs, coaches address race relations and social activism with student-athletes

Rory Sharrock Tallahassee Democrat



If Washington can bury the Redskins name, why is Lamar still standing by its Savages?

“Honestly, it makes it hard for me to proud of the town that I grew up in,” explained Stephanie Davis, who graduated from Lamar High in 2006. By SEAN KEELER The Denver Post July 26, 2020



William Amos Hough High School Football Players Willing to Sit Out Season After Racist Videos Surface

By Katy Solt Cornelius -- Jun. 30, 2020

SEXUAL HARASSMENT, SEXUAL VIOLENCE AND INTIMATE PARTNER VIOLENCE AND SPORT

UNDERSTANDING THE THREE FORMS OF SEXUAL HARASSMENT



Sexual Harassment is

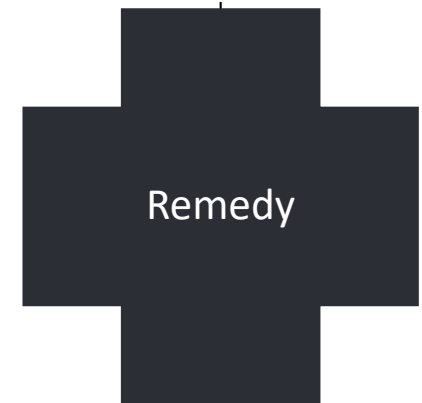
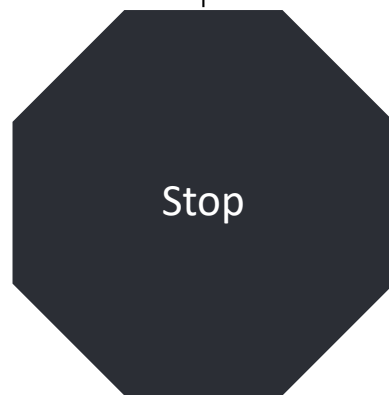
Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials
(**quid pro quo**),

The creation of a **hostile environment**,
or

Retaliation

Sexual Harassment



QUESTIONS?



CONTACT INFORMATION

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