

When Title IX & IDEA Collide

October 19, 2022



Background

- Alleged assault on morning bus
- 9th grade girl and 10th grade boy
- IEPs for both students
- Initial report to school counselor 3-4 weeks after incident

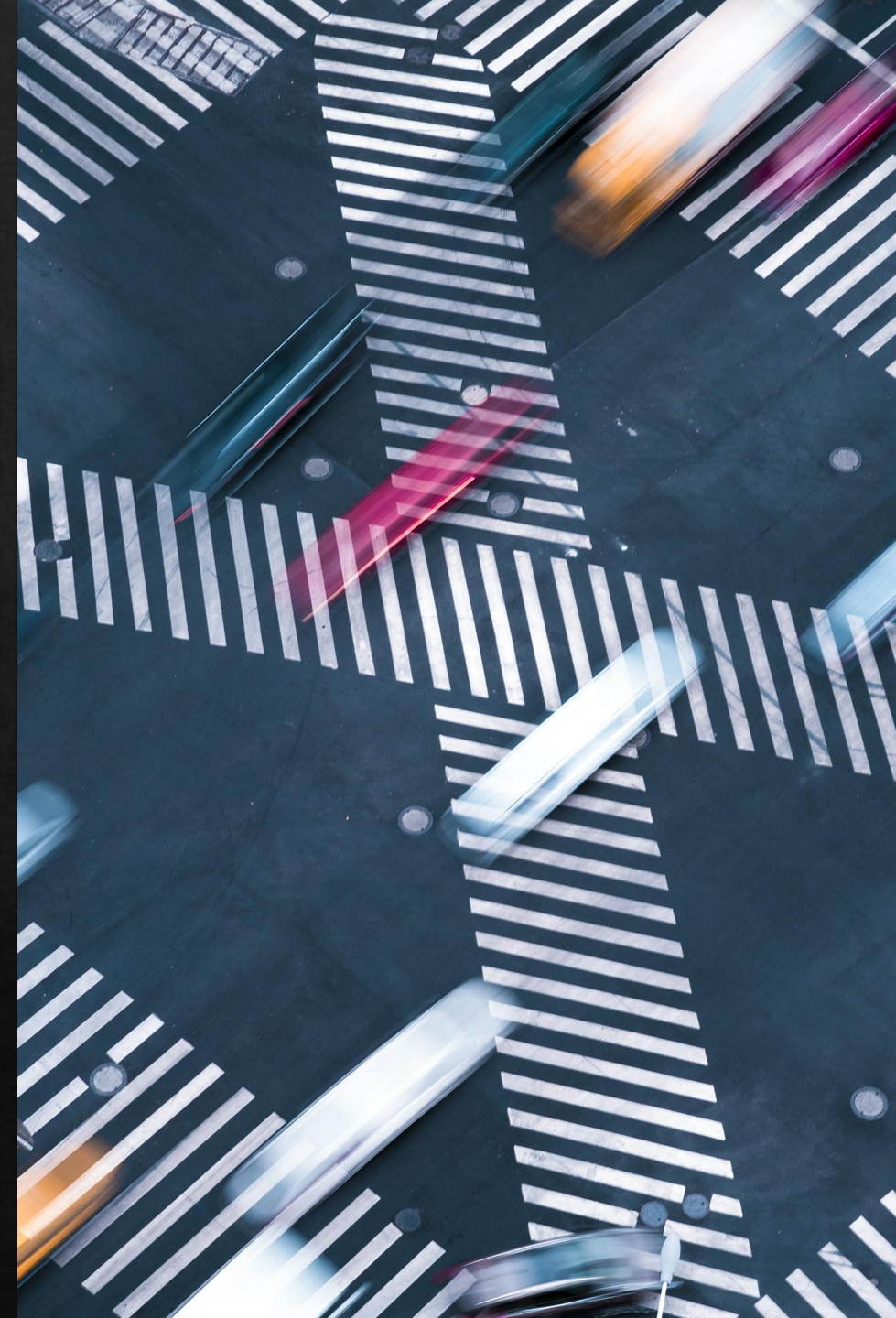


Title IX Process Begins...

- ◆ Title IX Coordinator signs formal complaint
- ◆ Supportive measures for both students
 - ◆ Bus routes changed
 - ◆ Counseling offered
- ◆ Parents notified
- ◆ Investigators identified

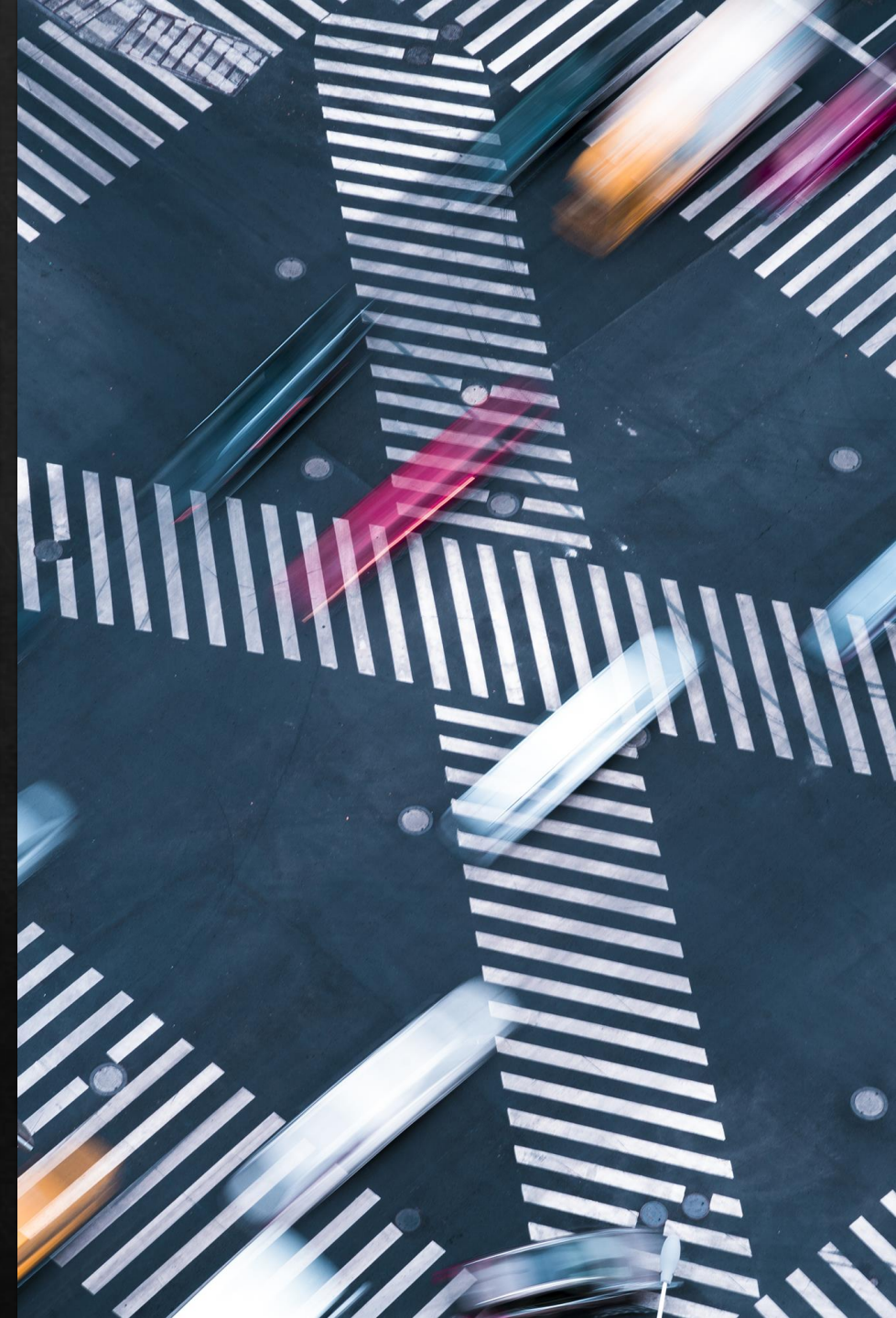
First intersection with IDEA

- ◆ Emergency Removal – 34 CFR 106.44(c)
 - ◆ Individualized safety and risk analysis
 - ◆ Immediate threat to physical health or safety of students justifies removal
 - ◆ Notice and opportunity to challenge decision after removal
- ◆ Change of Placement – 34 CFR 300.536
 - ◆ Suspension of a student for more than 10 consecutive school days
 - ◆ Prior written notice and procedural safeguards sent to parents
 - ◆ Manifestation determination held within 10 days of decision to suspend



First intersection with IDEA

- ◇ Cannot change placement if threat is due to
 - ◇ Disability
 - ◇ Implementation failure
- ◇ “34 CFR 106.44(c) does not require a district to remove a student where the district has determined that the threat posed by the student, arising from the sexual harassment allegations, is a manifestation of a disability such that the district’s discretion to remove the student is constrained by IDEA requirements.”
 - Dep’t Education comments to 2020 regulations
- ◇ Exception for infliction of serious bodily harm
 - ◇ 45 school days without manifestation determination
 - ◇ High bar to meet



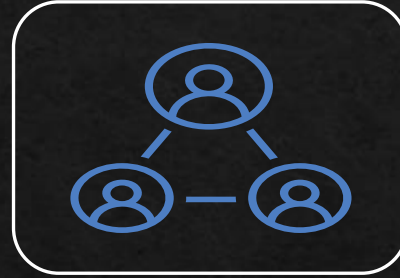
Investigation

- ◇ November 2021 – April 2022
- ◇ Two investigators
 - ◇ Director of Schools
 - ◇ High School administrator
- ◇ 16 witnesses interviewed
- ◇ 43-page investigative report
- ◇ Determination – respondent not responsible

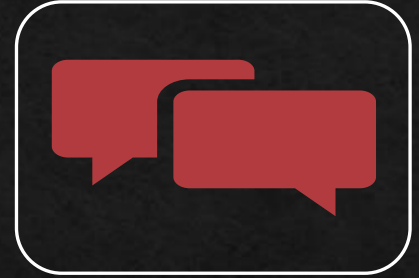
Investigative Report



Timeline of investigation



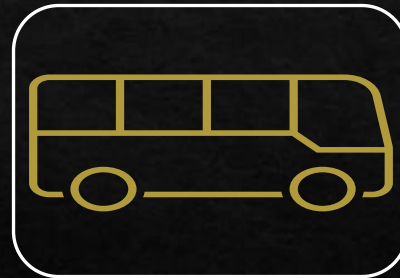
Witness chart



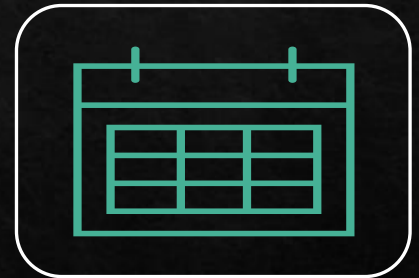
Interview summaries



Credibility assessment



Bus footage analysis



Timeline of incident

Aftermath of Determination

Respondent's Re-entry

- ◆ Safety plans for both students
 - ◆ Behavior contract
 - ◆ Education on consent and healthy relationships
 - ◆ Confidentiality
- ◆ Bus route and schedule changes to ensure no contact
- ◆ Staff assigned to shadow both students

Compensatory Services

- ◆ Opportunity to complete missing work for full credit
- ◆ No penalty for work never completed
- ◆ Twice weekly tutoring from teachers
- ◆ TCAP scores showed no decline
- ◆ Significant mental health concerns



Criminal Investigation

- ◇ Complainant Appeals
 - ◇ Cited new information from criminal investigation
 - ◇ FOIA request for criminal record denied because Respondent is a juvenile
 - ◇ Determination upheld
- ◇ Criminal Charges for Respondent
 - ◇ Detective investigated allegations through spring semester
 - ◇ Boy charged with rape in May
 - ◇ School assumes boy is entered into diversion program because no adjudication made

Current School Year

- ◆ IEP meetings for both students prior to first day of class
 - ◆ Safety plans loosened
 - ◆ Alleviate staffing burden
 - ◆ Achieve least restrictive environment for both students
- ◆ Girl's behavior escalates
 - ◆ Intentionally enters areas where boy is present
 - ◆ Violates confidentiality provision of safety plan
 - ◆ Ignores another student's safety plan

Retaliation Concerns



IEP addendum meeting for girl:

- Determine appropriate behavior supports
- Address discipline issues

Retaliation prohibited by 34 CFR 106.71

“Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.”

