



# TITLE IX TRAINING K-12 DISTRICTS

Organization of Self-Insured Schools

July 28, 2020

SESSION TWO

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# Overview

- ▶ Litigation Involving Title IX
- ▶ Claims Experience of Comparable District
- ▶ Current Requirements for Policies and Procedures under Title IX
- ▶ Insurance Coverage and Notification Requirements
- ▶ Next Steps to Developing a Compliant Title IX Program

# Litigation of Title IX

# Title IX Litigation

## Complainants

Violation of Title IX

Deliberate Indifference standard

- Re-traumatized
- Continued harassment

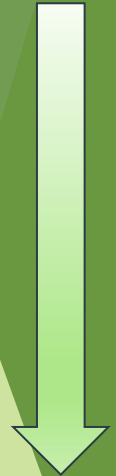
## Respondents

Breach of Contract

- Due Process
- Title IX (different treatment)
- Negligence

## Exoneration

- Expungement of discipline
- Degree from institution
- Readmission





# \$8,998,135

Paid on claims brought by Respondents 2011-2015

United Educators Risk Retention Group

**\$6,359,135**

Defense costs total

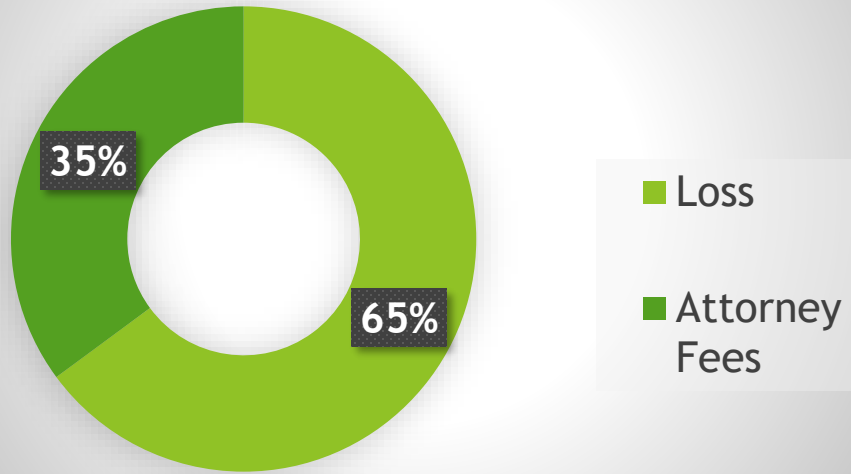
**\$132,488 average**

Cost of defense - Respondent lawsuits

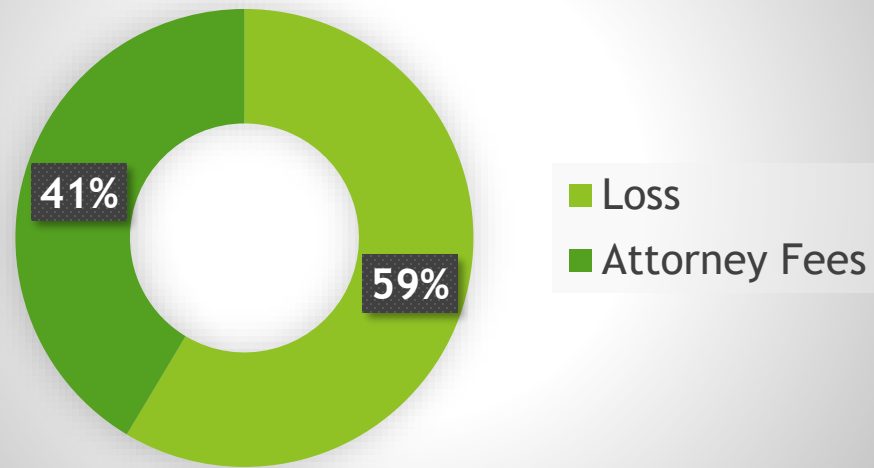
**\$1,076,860**

Highest Respondent lawsuit

## COMPLAINANT LOSS COSTS



## RESPONDENT LOSS COSTS



# What are the Lessons Learned from Litigation around Title IX?

## True or False?

- ▶ Complainants bring the most costly lawsuits after a Title IX investigation is completed.
- ▶ When parties seek to expunge their records of any evidence of the Title IX matter, the litigation is often very costly.
- ▶ The new rules on Title IX do not give parties any new ways to bring litigation.



# Claims Experience for Title IX in K-12 Schools

# Palo Alto Unified School District

- ▶ Students: 12,000
- ▶ Employees: 2,200
  
- ▶ Elementary Schools - 10 schools
- ▶ Middle Schools - 3 schools
- ▶ High Schools - 2 schools
- ▶ Title IX Office manages complaints of discrimination/harassment based upon protected characteristics - Title IX (sex), race, national origin, disability, religion, gender, etc.

# School Year 2018-19 YTD March 15

**89**

Matters on PAUSD  
Public Log

**59**

Report/  
allegation of  
Title IX  
violations  
(Gender/Sex  
harassment/  
discrimination)

**19**

Report/  
allegation of  
harassment  
based on  
national  
origin/race

**8**

Report/  
allegation of  
harassment  
based on  
disability

**0**

Report/  
allegation of  
harassment  
based on  
religion

**3**

Other  
reports/  
allegations

School Year  
2019-20 YTD March 15

103

Matters on PAUSD  
Public Log

68

Report/  
allegation of  
Title IX  
violations  
(Gender/Sex  
harassment/  
discrimination)

17

Report/  
allegation of  
harassment  
based on  
national  
origin/race

7

Report/  
allegation of  
harassment  
based on  
disability

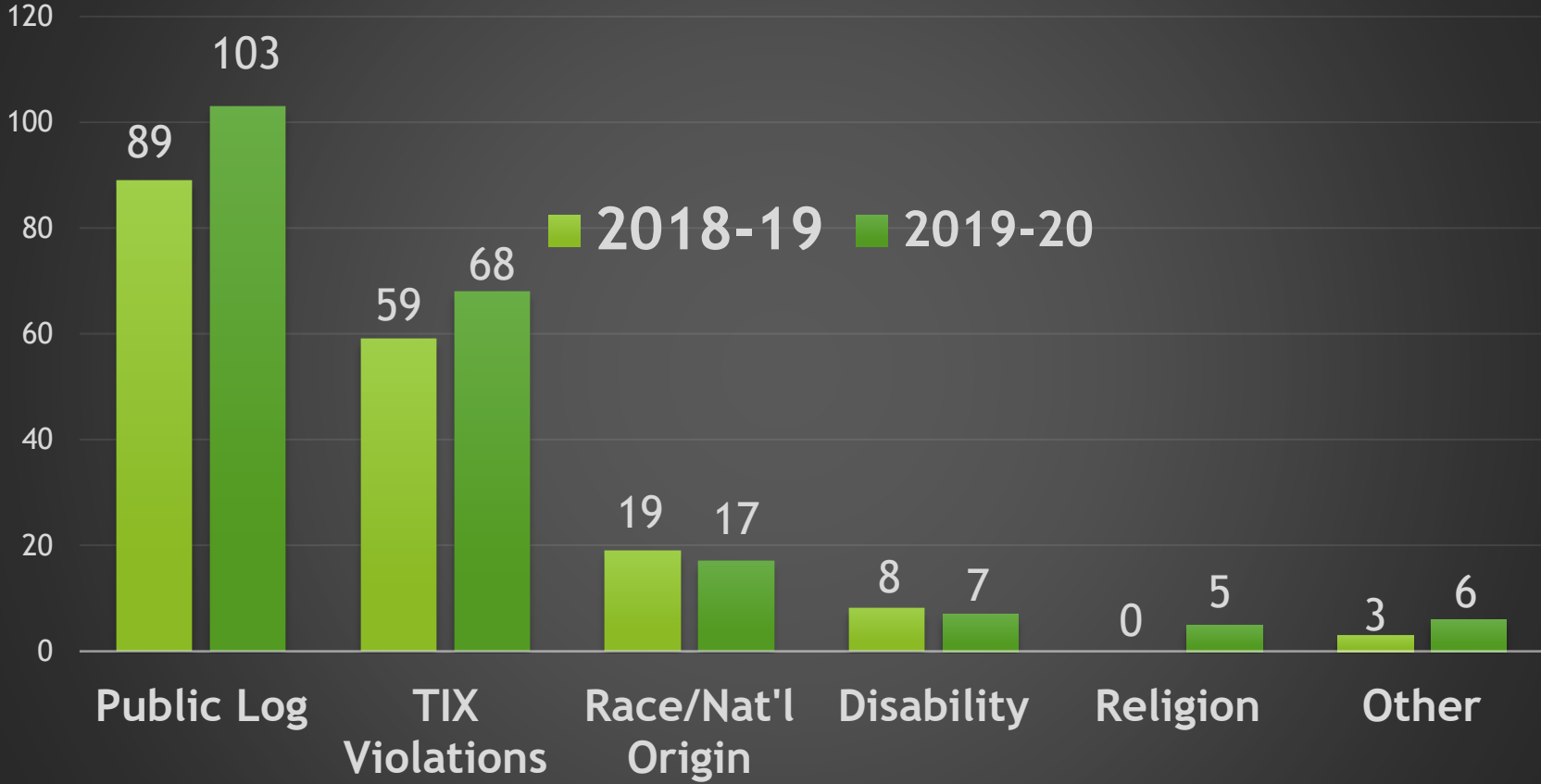
5

Report/  
allegation of  
harassment  
based on  
religion

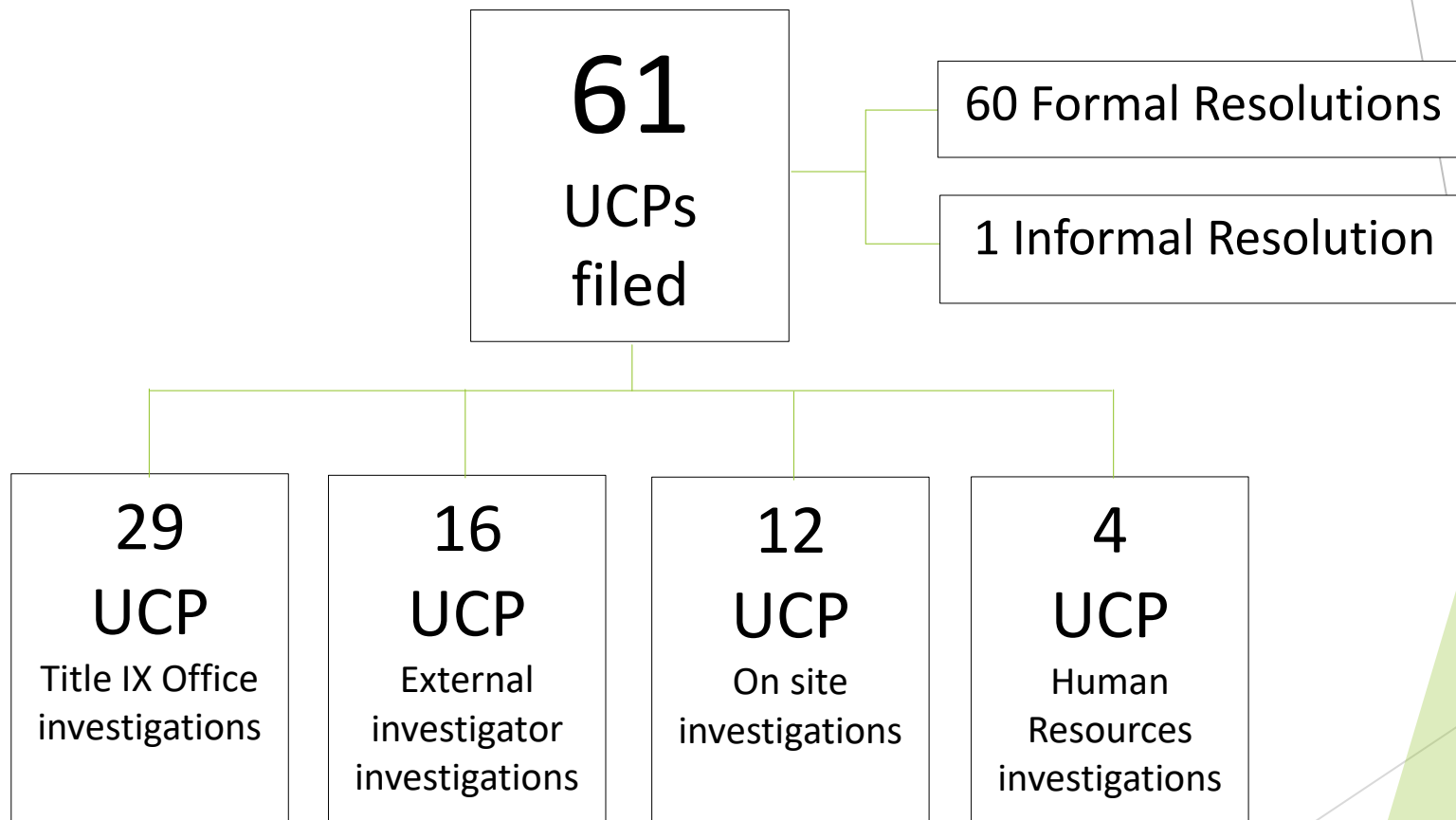
6

Other  
reports/  
allegations

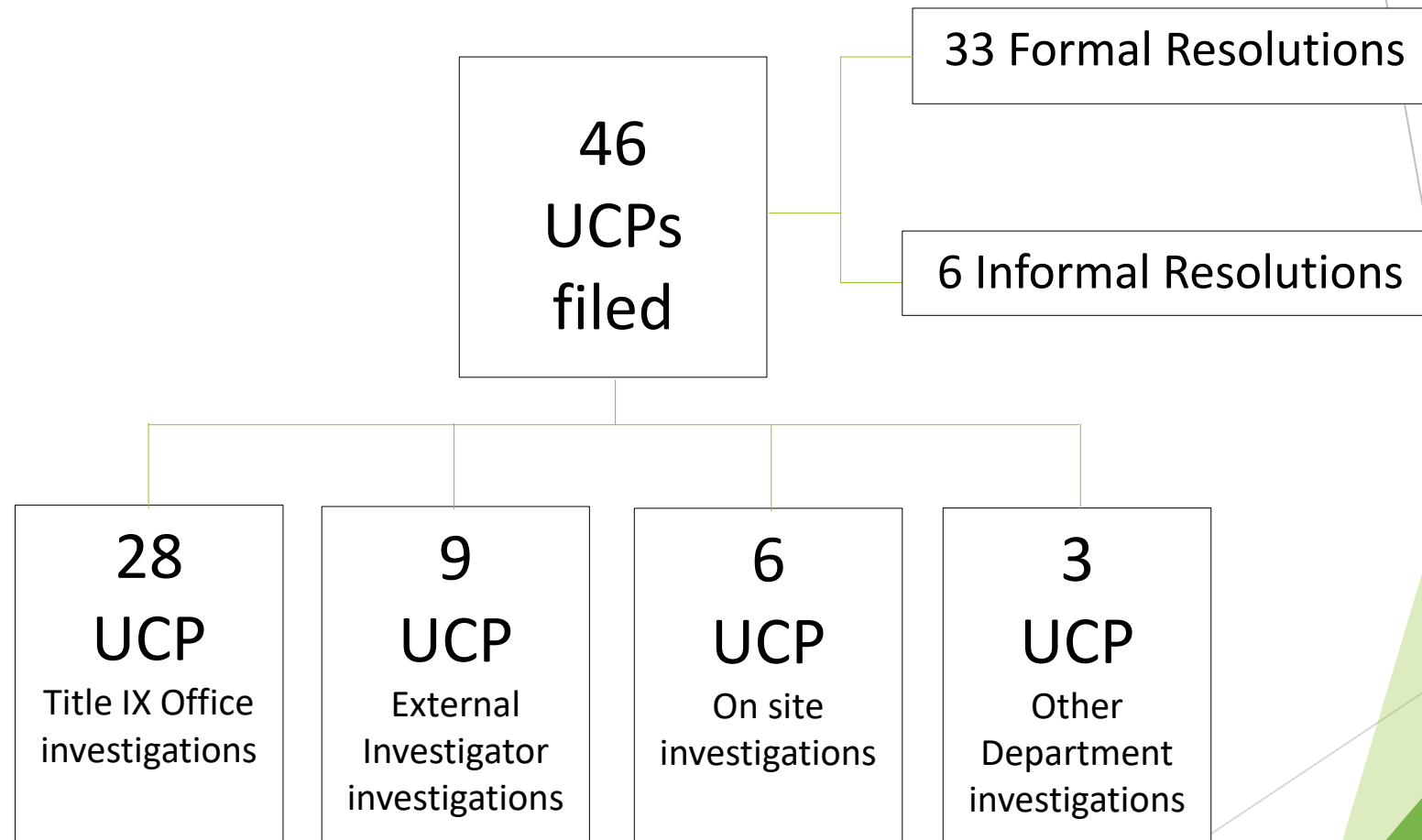
# Title IX Log (YTD March 15) Types of Complaints



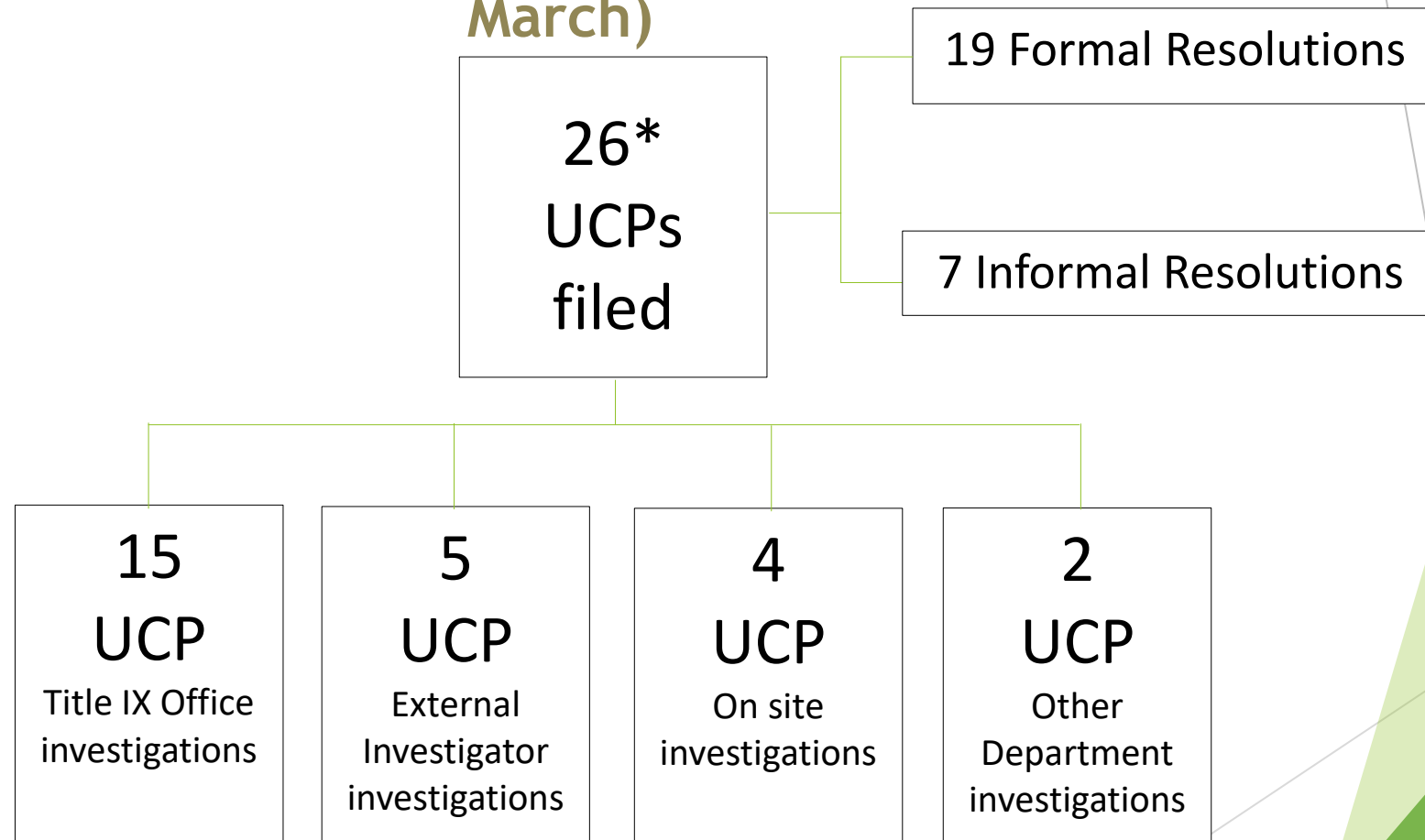
## School Year 2017-2018



## School Year 2018-2019



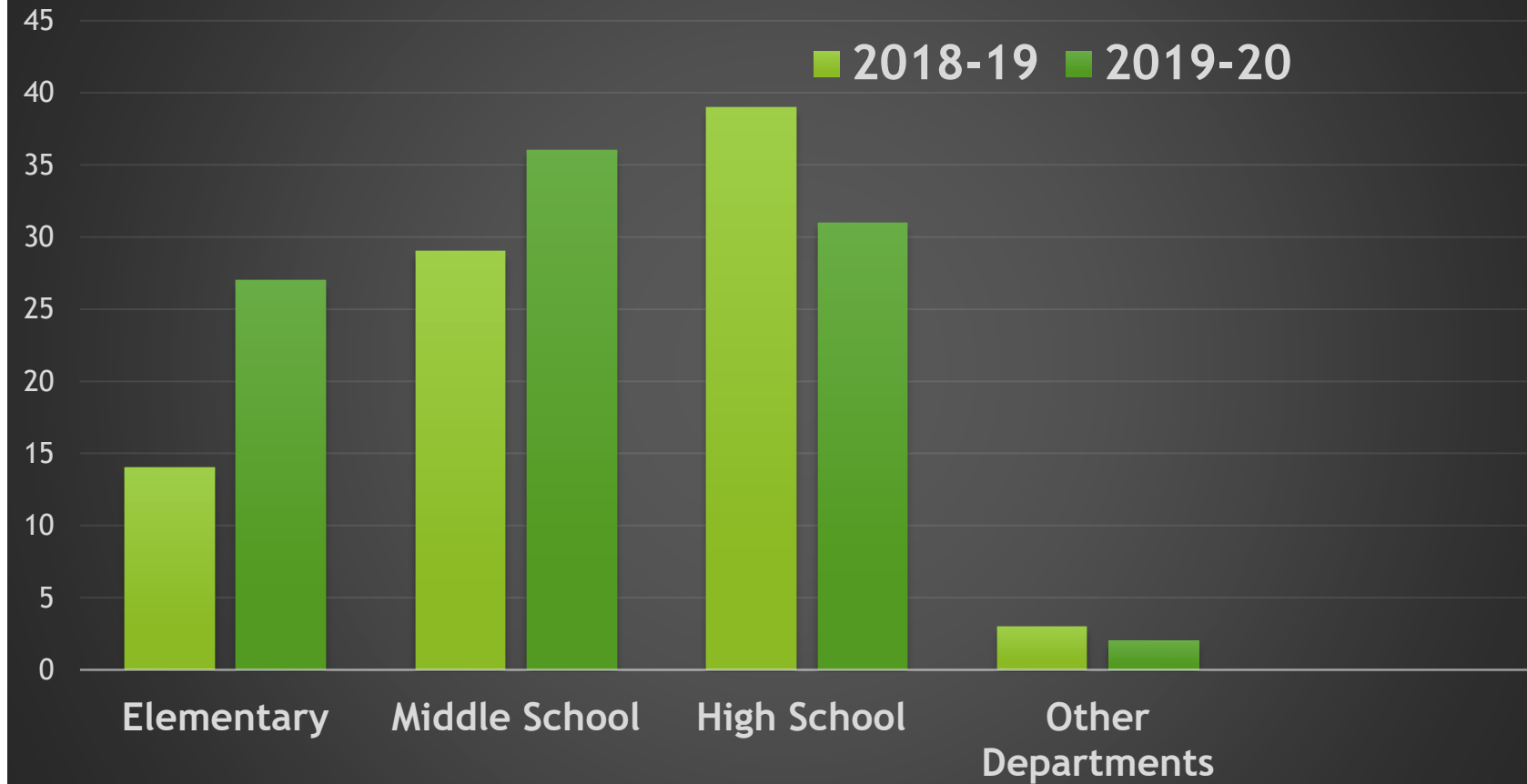
**School Year  
2019-20**  
**(Distance learning starts mid-  
March)**



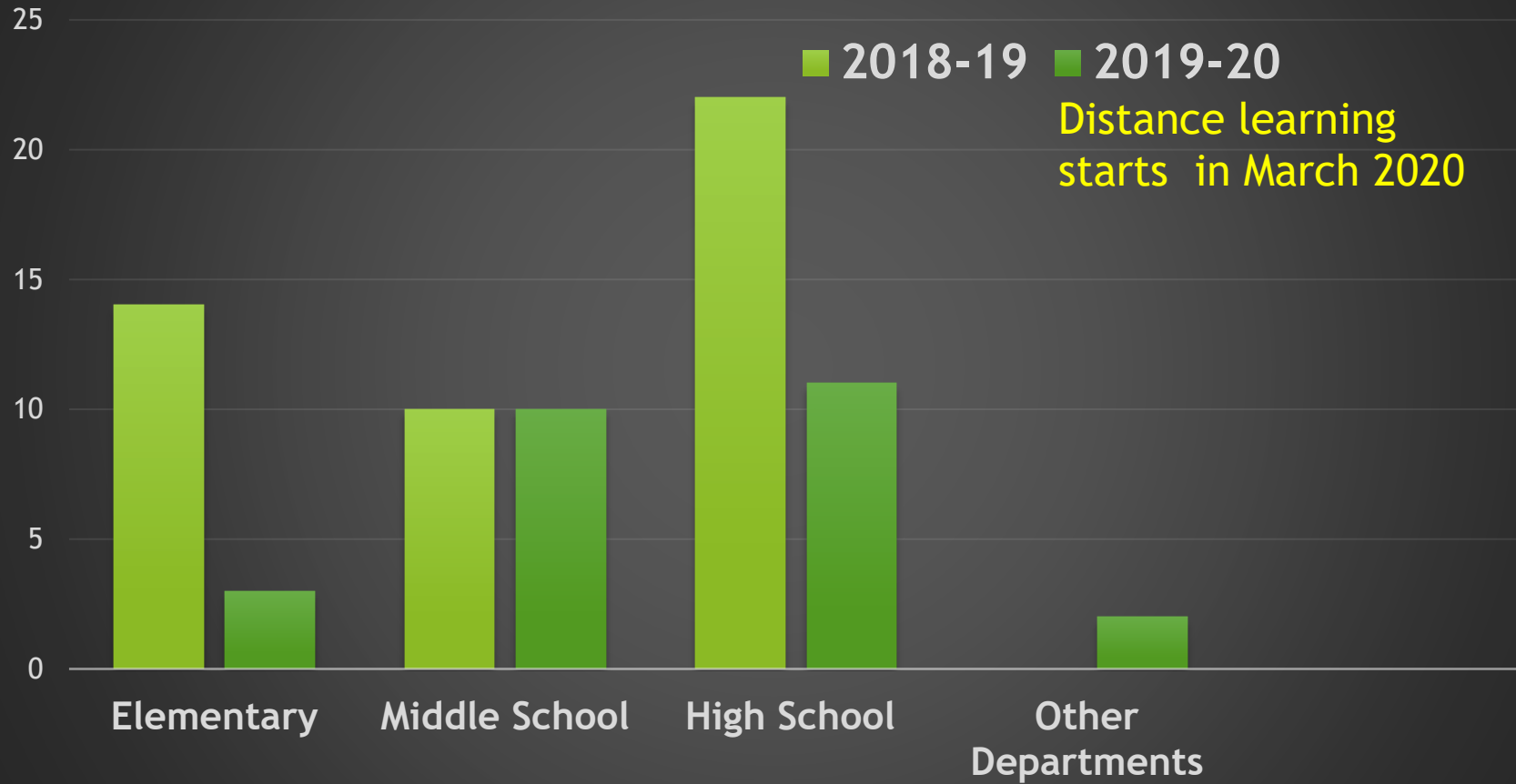
\*Two UCPs were filed with Title IX office that are included on the UCP log but were dismissed as they were complaints about academics. Therefore only 26 UCPs were considered for this analysis.



## Title IX Complaints Log by School Level



## UCPs filed by School Level



# Benefits of Collecting Data

- ▶ Transparency with school community
- ▶ Identify which schools need additional support
- ▶ Evaluate trends for focused risk management effort

# Current Policy and Procedure Requirement under Title IX

# Title IX Timeline

1999

Supreme Court decisions  
on Title IX

2011, 2014, 2016

Guidance from OCR under  
Obama administration  
(rescinded)

2015

Title IX Coordinator (in effect)

2001

Regulations on Title IX

May 2020

Final Rules on Title IX  
(effective 8/14/20)

# Focus on New Rules under Title IX

- ▶ 2001 and 2020 Regulations went through the required notice and comment period and have force of law
- ▶ Some prior guidance did not have force of law
- ▶ Review when policies of your district were adopted

# Title IX Obligations for K-12 School Districts Summary

- ▶ Designate a Title IX Coordinator with responsibility for enforcement
- ▶ Must respond promptly in a manner that is not deliberately indifferent when a school has actual knowledge of sexual harassment in an education program or activity by:
  - ▶ Providing **supportive measures** to complainant (possible victim);
  - ▶ **Investigating** a formal complaint from complainant; and/or
  - ▶ Determining if an investigation is necessary.
- ▶ Adopt a **grievance process** that meets specific requirements
  - ▶ No distinction between face-to-face and online programs/activities

# Revised Definition of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of the following:

- **Quid pro quo** sexual harassment;
- **Hostile environment** sexual harassment, defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added); or
- Sexual assault, dating/domestic violence, or stalking (VAWA definitions)



# Jurisdiction for Title IX

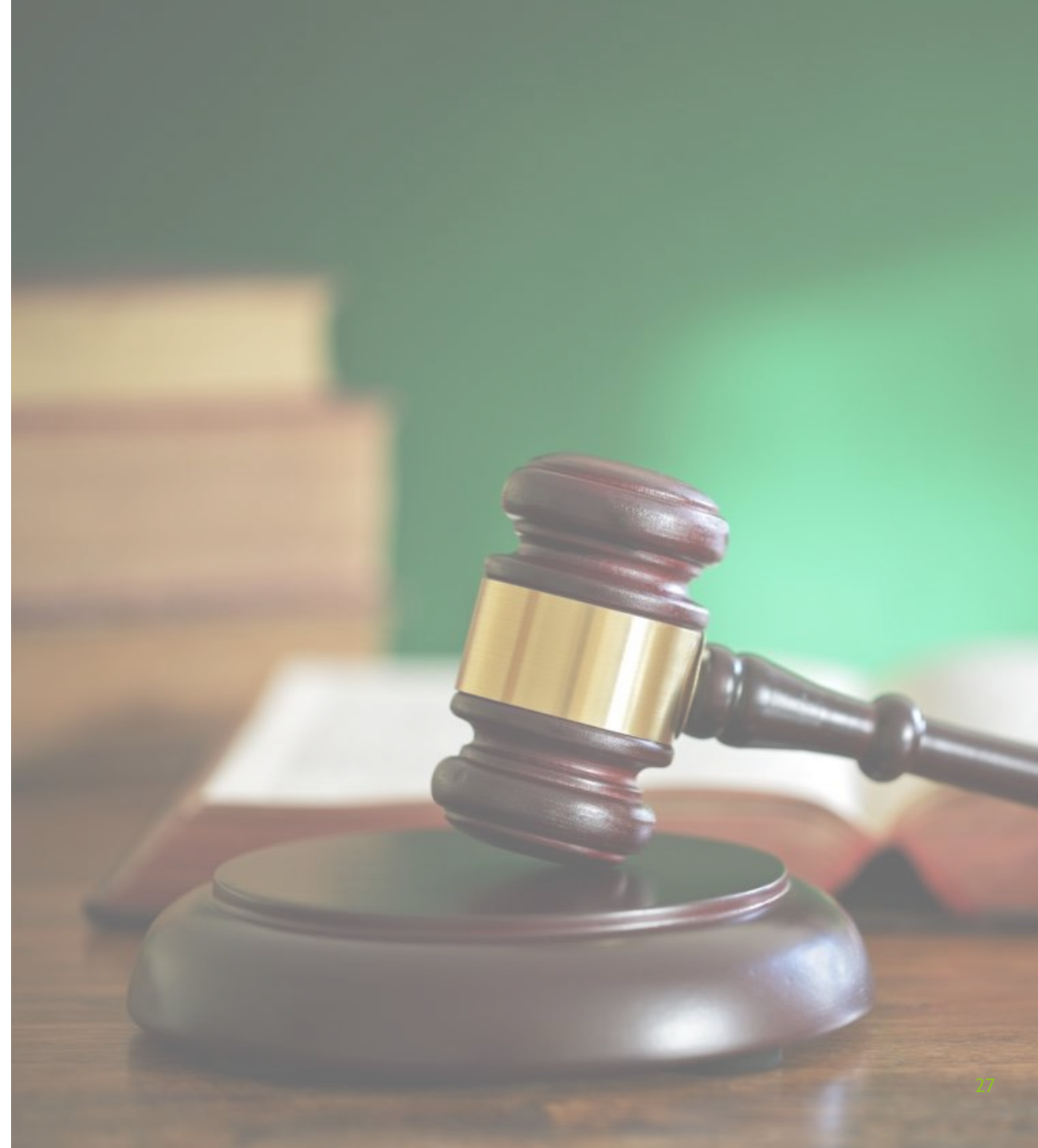
- **Complainant must:**
  - be currently enrolled, or
  - attempting to enroll
- **Sexual harassment must occur:**
  - in a school's "education program or activity" and must be in the United States
  - includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the contexts in which the sexual harassment occurred

# Dismissal of Some Actions Required/Permitted

- **Sexual harassment complaint **MUST** be dismissed if:**
  - would not fit within the definition of sexual harassment
  - did not occur in an education program or activity of the school
  - did not occur in the United States
- **Sexual harassment complaint **MAY** be dismissed if:**
  - complainant withdraws formal complaint in writing
  - respondent is no longer enrolled as a student or employed by school
  - circumstances prevent school from gathering evidence that would be sufficient to reach a determination

## Schools may not restrict the rights afforded under:

- **First Amendment**  
Free Speech
- **Fifth Amendment**  
Protection against Self-Incrimination
- **Fourteenth Amendment**  
Due Process



# Supportive Measures

- ▶ Upon actual knowledge of sexual harassment, a school must offer supportive measures to a complainant
- ▶ Upon filing of a formal complaint, a school must offer supportive measures to respondent
- ▶ Supportive measures are individualized services that are non-punitive, non-disciplinary, and do not unreasonably burden the other party.
  - ▶ Designed to restore or preserve a person's equal access to education
- ▶ No disciplinary measures can be taken until investigation is completed
- ▶ Interim removal is a possibility if:
  - ▶ An individual assessment of the immediate threat to physical health or safety of any other student based on the sexual harassment allegations is made, and
  - ▶ Respondent is given the chance for immediate challenge to decision after removal

# Formal Complaints

- Schools are **required to investigate formal complaints** received in writing from complainant.
- The **Title IX Coordinator may file and sign a formal complaint.**
- If the complainant does not file a formal complaint, **the wishes of the complainant should be respected.**
- Unless the Title IX Coordinator decides to initiate the complaint and it **“is clearly not unreasonable in light of the known circumstances.”**

# Investigate Allegations of Sexual Harassment

- ▶ Preliminary investigation if complainant is unknown
- ▶ Formal complaint from complainant triggers responsibility to investigate allegations
  - ▶ Documented complaint signed by complainant or Title IX Coordinator
  - ▶ Alleging sexual harassment and asking school to investigate
- ▶ Informal resolution possible after the formal complaint has been filed
  - ▶ Parties know the allegations
  - ▶ Informal process is reviewed
  - ▶ Both parties consent - participation cannot be a condition of continued enrollment
  - ▶ Never available for allegations against an employee

# Grievance Process Highlights

- ▶ Fair, equitable, without bias or conflict of interest, not reliant upon stereotypes
- ▶ Advisors for the parties are permitted
- ▶ Separate decision-maker(s) in process
  - ▶ Investigator separate from the ultimate decision-maker
- ▶ Standard of evidence - preponderance or clear and convincing
- ▶ Notice of allegations and notice of any Title IX meeting/procedural process
- ▶ Burden on the school to gather evidence
- ▶ Cannot violate any constitutional protections
- ▶ Share all information with parties
  - ▶ All parties get access to all evidence and have 10 days to respond before investigation report issued
  - ▶ Investigation report shared and 10 days to respond
- ▶ Final report issued and parties advised of outcomes
- ▶ Appeal allowed for both parties and grounds for appeal included in the New Rules

# Under the New Rules on Title IX

## True or False

- ▶ As long as the district knows who holds responsibility for Title IX, it does not need to name a coordinator for its external audience.
- ▶ The same person in the Title IX Office can handle intake of complaints, investigation of complaints, policy violation decisions, and sanctioning students who violate policies.
- ▶ Appeals can be offered to just one party.



# Insurance Coverage and Notice Requirements

# Title IX Matters

- ▶ Broadly think of sexual harassment
- ▶ Specific early reporting requirements
- ▶ Failure to report could negatively impact coverage

# Insurance Contacts

- ▶ Erik Knak
  - ▶ Erik@knakco.com
  
- ▶ Donna Murry
  - ▶ dmurry@keenana.com

# Next Steps in Developing a Compliant Program

# OCR Dear Colleague Letter on Title IX Coordinators and Title IX Resource Guide (2015) NOTICE OF NONDISCRIMINATION

- ▶ A district must post a notice of nondiscrimination stating that it does not discriminate on the basis of sex and that questions regarding Title IX may be referred to:
  - ▶ Title IX coordinator (internal)
  - ▶ OCR - including contact information for local office (external)
- ▶ Title IX Coordinator contact - Name, office address, telephone number, and email
- ▶ Notice and Title IX Coordinator contact information should be widely distributed and easily found on the recipient's website and in various publications, including:
  - ▶ “bulletins, announcements, publications, catalogs, application forms, or recruitment materials distributed to the school community, including all applicants for admission and employment, students and parents or guardians of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements”

## TITLE IX COORDINATOR

- Name, office address, email address, phone number of **Title IX Coordinator** available
- Distributed to students, employees, applicants for admission and employment, parents and legal guardians, and unions
- Reports by telephone, mail, email, and verbally to Title IX Coordinator



# Policy Change Highlights

- ▶ Identify which policies must change
- ▶ Examine when policies were last revised
- ▶ Review definitions
- ▶ Analyze what will/will not be investigated under current policies
- ▶ Explore grievance process to ensure proper process for parties
- ▶ Include details of support measures
- ▶ Adopt process for immediate removal and appeal of such decision
- ▶ Examine your appeal process

# Other K-12 Title IX Obligations

- ▶ Prohibition on retaliation
- ▶ Training for all participants in the process
  - ▶ Nonbiased
  - ▶ Does not rely on stereotypes
  - ▶ Prohibit conflict of interests in the Title IX process
  - ▶ Posted online
- ▶ Retention of records
  - ▶ Formal and informal resolutions
  - ▶ Supportive measures (including in cases where no formal complaint filed)
  - ▶ Training



# Next Steps

## True or False

- ▶ The effective date on New Rules on Title IX have been delayed by the Department of Education due to the coronavirus pandemic
- ▶ Reporting Title IX matters to insurance carrier follows the same rules as reporting a slip and fall on school grounds
- ▶ Most school policies and procedures that were adopted between 2011-2016 will be compliant with the New Rules

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