

TITLE IX SOLUTIONS, LLC

INFORMAL RESOLUTION

2024 Title IX Regulations Workshop



WORKSHOP OBJECTIVES



Understand and apply the new, 2024 Title IX regulations



Identify procedural changes required to implement the 2024 Title IX regulations effectively



Evaluate and apply informal resolution appropriateness



Facilitate an informal resolution process

2020 vs. 2024

2024 regulations clarify that Informal Resolution (IR) is discretionary and narrows the scope of cases **DISQUALIFIED from participation in IR.**

2020

- Cases involving an employee engaged in sexual harassment of a student

2024

- Cases involving alleged sex-based harassment by an employee of an elementary or secondary school student or when doing so *would violate federal, state, or local law.*
 - The recipient has the right to deny the parties IR even if some or all of them wish to participate in it

STATE & LOCAL LAW

Preamble

“With respect to State laws that may impose notification requirements related to sex discrimination or sexual harassment, the obligation to comply with Title IX and the final regulations is not obviated or alleviated by any such State or local law or other requirement. See § 106.6(b)” (p. 344).

“If a State or local law obligates a confidential employee to report sex discrimination, that disclosure is permitted by § 106.44(j) as long as it does not otherwise conflict with Title IX or this part. A disclosure pursuant to a State law requiring confidential employees to report sexual assault of a child, for example, is not prohibited by § 106.44(j) or by any other provision of these regulations” (p. 380).

“In addition, if a Federal, State, or local law requires a confidential employee to report conduct that poses a threat to the safety of the disclosing individual or others, the confidential employee generally may do so in accordance with § 106.44(j)” (p. 381).

2020 vs. 2024

2024 regulations clarify when the Title IX Coordinator may offer an Informal Resolution process

2020

- Permit informal resolution only if a formal complaint alleging sexual harassment has been filed

2024

- The final regulations permit a recipient to offer an IR process if appropriate whenever it receives a complaint of sex discrimination or has information about conduct that reasonably may constitute sex discrimination

2020 vs. 2024

2024 regulations reiterate and more explicitly emphasizes the requirements for individuals acting as an Informal Resolution facilitator

2020

- Must not have a conflict of interest or bias in favor of or against complainants or respondents

2024

- Must not be the same person as the investigator or decisionmaker
- Must not have a conflict of interest or bias in favor of or against complainants or respondents
- Must be trained under § 106.8(d)(3) -- specialized training of the IR process in addition to the training required of other participants.

TRAINING

106.8 - Informal Resolution Facilitators

- In addition to the training requirements in paragraph (d)(1) of this section, all facilitators of an informal resolution process under §106.44(k) must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

Flexibility

- The regulations do not require a recipient to hire outside trainers or purchase outside training materials, but that a recipient may choose to do so.
- The Department declines to require certain training practices or techniques, aside from the requirements of § 106.8(d), to allow a recipient flexibility to determine how to meet training requirements in a manner that best fits its unique educational community.

Training Triggers

- Revised § 106.8(d) to require employees who receive a change of position that alters their duties under Title IX or the final regulations to receive training on such new duties promptly upon such change of position.

INFORMAL RESOLUTION PROCESS

STEP 1

Parties receive information about and invitation to participate.

STEP 2

Meeting is convened.

STEP 3

Facilitator provides opening welcome.

STEP 4

Parties take turns expressing their concerns & responses.

STEP 5

Facilitator assists in discussing possible resolution of concerns.

STEP 6

Facilitator may assist in drafting a written agreement between parties.

BENEFITS

INFORMAL RESOLUTION



Helpful in situations where the parties work or study alongside one another and will continue to do so in the future.



Mollifies the “zero sum” winner/loser dynamic of the grievance process, which can lead to hard feelings, resentments, and future conflict.



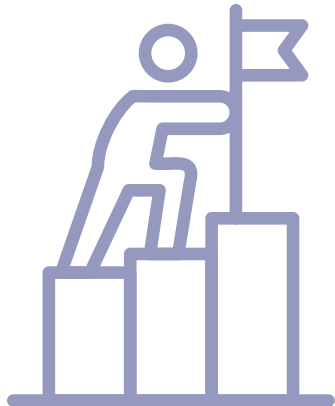
Gives the parties agency by empowering them to direct and govern the resolution to their dispute, thereby allowing them to have some control over their situation.

BENEFITS

INFORMAL RESOLUTION



Teaches the parties to improve communication and interpersonal skills.



Promotes meaningful change in the workplace and/or learning culture by challenging the parties to provide critical feedback with clarity and civility, to accept accountability where appropriate, and to strive for common ground.

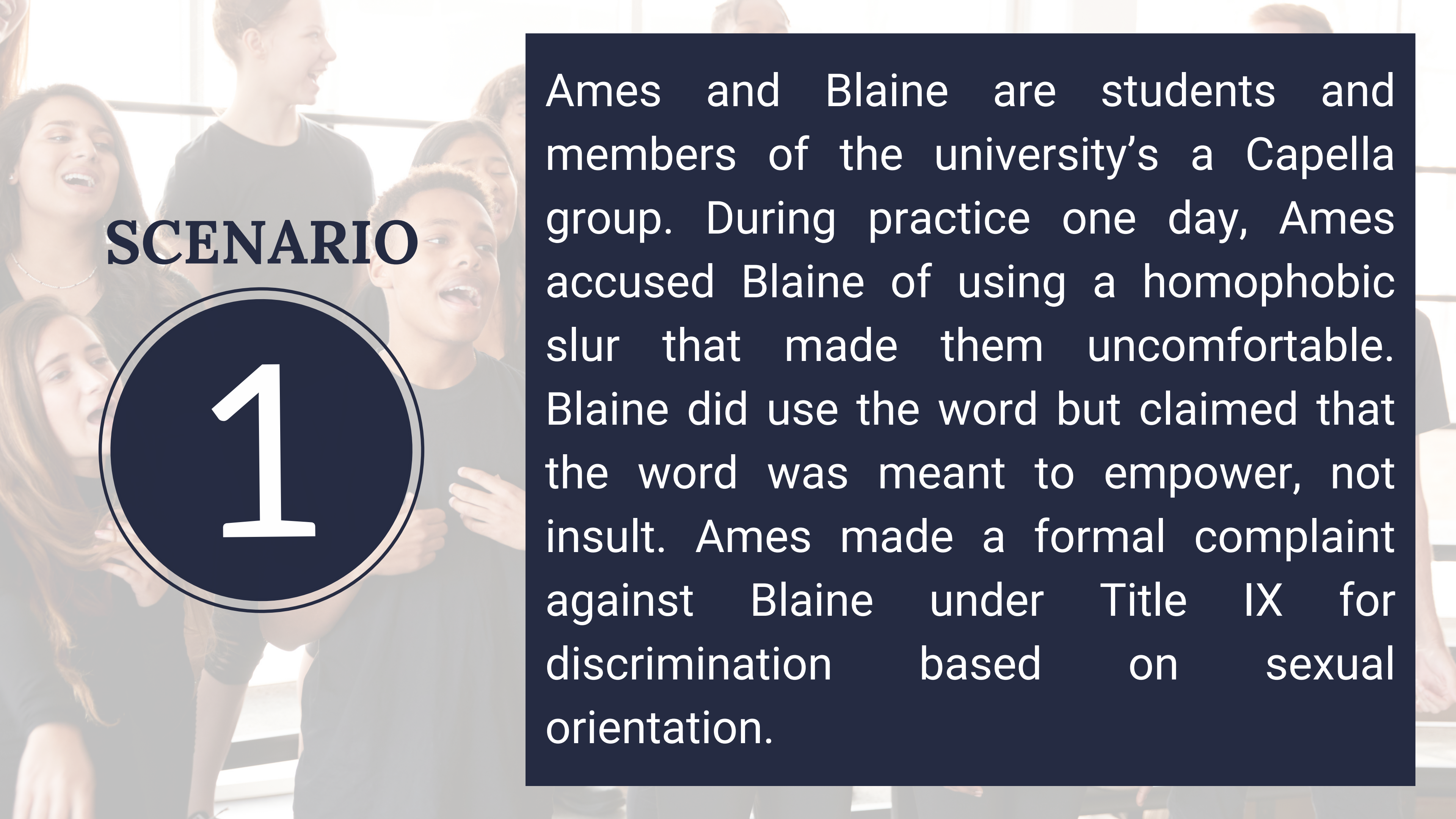


Results in the parties gaining a deeper understanding of the dynamics of their workplace or educational culture, which can lead to greater equity, inclusion, and ultimately greater employee or student satisfaction.



**DO THE FOLLOWING SCENARIOS
LEND THEMSELVES TO INFORMAL
RESOLUTION?**

WHY OR WHY NOT?



SCENARIO

1

Ames and Blaine are students and members of the university's a Capella group. During practice one day, Ames accused Blaine of using a homophobic slur that made them uncomfortable. Blaine did use the word but claimed that the word was meant to empower, not insult. Ames made a formal complaint against Blaine under Title IX for discrimination based on sexual orientation.

DISCUSSION



- Is appropriate for Informal Resolution (IR)
- No serious physical or emotional injury
- Involves students who participate in a club together - they may have an ongoing relationship that will require them to work together collaboratively
- Involves the complicated intersection of the First Amendment and the rights of others to exist in a safe environment.

Inviting these students to collaborate on a joint resolution will minimize the "winner/loser" dynamic, give each of them agency and empowerment to voice their concerns and consider potentially conflicting ideologies, and ultimately promote a deeper understanding of their relationships with each other, their fellow club members, and the university community at large.



SCENARIO

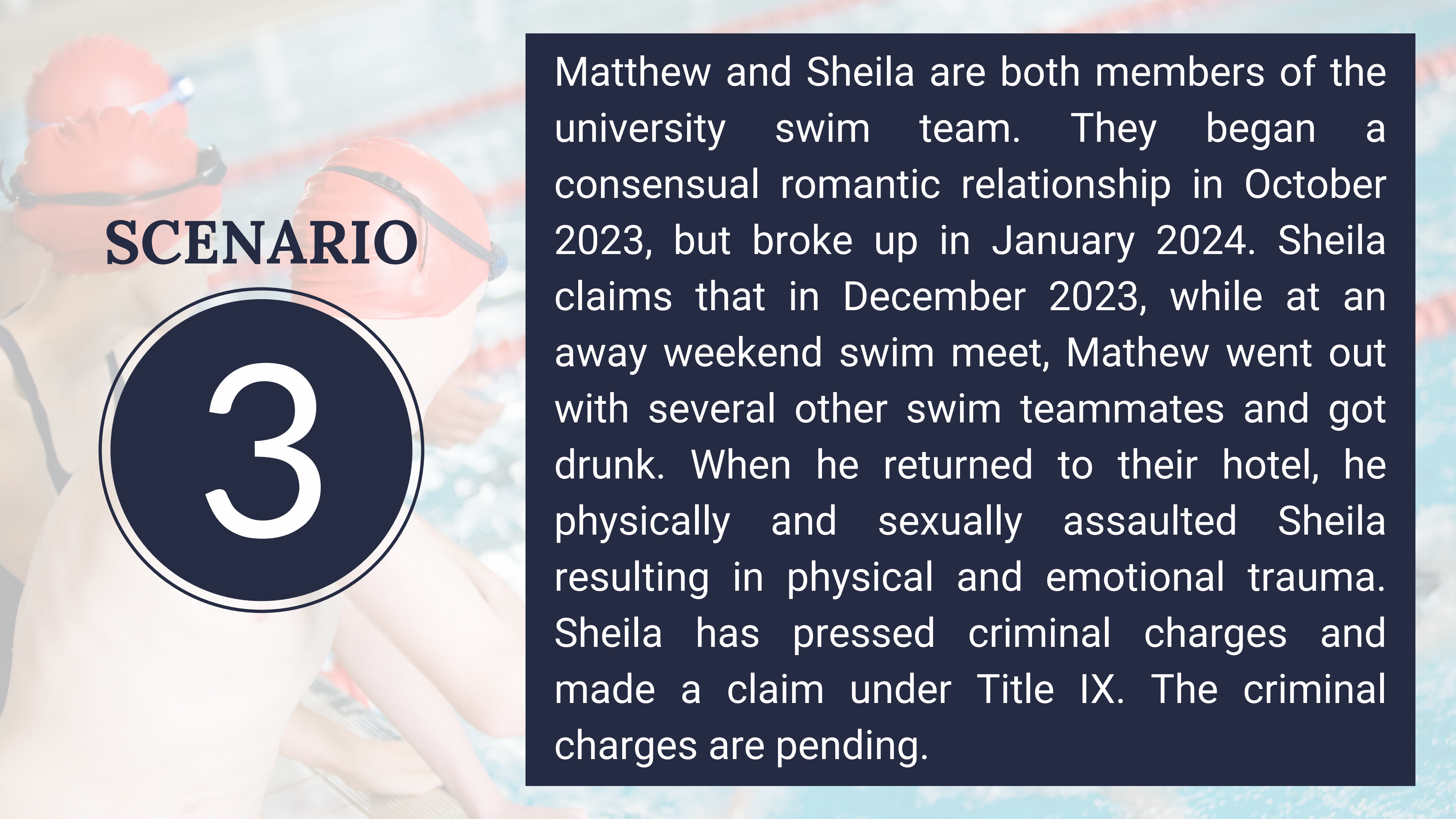
2

Kim is the chair of a high school math department. Celia, a full-time faculty member in the math department, informed Kim in early September that she was pregnant and would be leaving mid-spring semester. Kim became visibly upset and told Celia her pregnancy was going to cause a huge disruption to the department and that she was very inconsiderate for not thinking about her co-workers. She also asked Celia to consider working remotely after giving birth to minimize disruption and told her that she would lose her summer supplemental contract due to the disruption she has caused. Celia feels very uncomfortable and believes she has been retaliated against. She brings a claim under Title IX.

DISCUSSION



- Might be appropriate for Informal Resolution (IR)
- Two individuals will be working alongside each other indefinitely into the future.
- Any opportunity to improve this interpersonal relationship would likely benefit both parties, especially in light of the power and hierarchical differences in their positions.
- Kim must be made aware of the inappropriateness of her comments and nonverbal communication. She needs to be retrained on the requirements of Title IX and other laws.
- Possible that Celia might not be open to IR given the rather glaring inappropriateness of Kim's conduct.

The background of the slide is a blurred photograph of several swimmers in a pool, wearing orange swim caps and goggles. They are positioned in the foreground, with their heads and shoulders visible. The water is a light blue color.

SCENARIO

3

Matthew and Sheila are both members of the university swim team. They began a consensual romantic relationship in October 2023, but broke up in January 2024. Sheila claims that in December 2023, while at an away weekend swim meet, Mathew went out with several other swim teammates and got drunk. When he returned to their hotel, he physically and sexually assaulted Sheila resulting in physical and emotional trauma. Sheila has pressed criminal charges and made a claim under Title IX. The criminal charges are pending.

DISCUSSION



- Likely not appropriate for Informal Resolution (IR)
- Sheila could be emotionally re-traumatized by further contact with Matthew.
- Matthew is facing criminal charges and his criminal attorney would likely not recommend participation in IR.
- This is not a situation where these parties are likely to have significant future contact or where IR presents an opportunity for valuable personal growth for the parties.



QUESTIONS?

Head over to our **2024 New Regulations Thinkific Community** to ask your questions, connect with fellow Title IX Administrators and experts, and see what questions others have!

Can't find the community? Check out our *Community Guidelines* PDF in the Introduction chapter or email Cara Kuhn at cara@titleixsolutions.com.