

Sexual Harassment 22-23



This is the course content for Sexual Harassment and Title IX.

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Sexual Harassment Defined

Defined

Sexual Harassment is threatening to cause bodily harm or injury, engaging in sexually intimidating conduct, causing physical damage to property, physically confining or restraining someone, or maliciously taking any action that substantially harms another person's physical or emotional health or safety.



Complete the content above before moving on.

Types

QUID PRO QUO

HOSTILE ENVIRONMENT

GENDER BASED

Literally means “this for that.” In the case of sexual harassment, quid pro quo is when people in power exert influence to receive sexual favors from someone under their authority.

QUID PRO QUO

HOSTILE ENVIRONMENT

GENDER BASED

Created through persistent physical and verbal actions such as unwanted hugging, kissing, rubbing up against a person on purpose, or purposely blocking someone’s way, dirty jokes, stories or names, comments on a person’s body, pressure for dates, etc.

QUID PRO QUO

HOSTILE ENVIRONMENT

GENDER BASED

Department of Education defines this as unwelcome conduct based on a student’s sex, harassing conduct based on a student’s failure to conform to sex stereotypes.



Complete the content above before moving on.

Court Cases/Stories

Department of Justice Case Summaries —

You do not need to read all of these stories but go to the page and look through a few summaries. There are many court cases against school districts that involve sexual harassment.

[Department of Justice Case Summaries](#)

University of Colorado Boulder —

Students have accused a Sociology faculty member at the University of Colorado Boulder of sexual harassment. It was reported by students that the harassment has been going on for over a decade. With the faculty member in a place of authority, students were afraid to cross her for fear of their future careers since she had the ability to make their lives difficult.

Source: Chronicle of Higher Education

Broward County Public School —

A lawsuit is moving forward in Florida against a Broward County Public School Principal who is accused of sexually harassing a teacher. The principal in question had a disciplinary history of similar issues.

Source: Local 10 News

Google —

On November 1, 2018, Google employees across the world staged a walkout protesting the lack of transparency of sexual harassment claims against its executives.

Source: NPR

Eden Prairie ISD —

Eden Prairie ISD was sued by the mother of a 7-year-old who had been verbally harassed by peers. She was the youngest person to win such a lawsuit.

Source: Chicago Tribune

Queen Anne County of Public Schools —

Queen Anne County of Public Schools was cited by the U.S. Department of Education Office for Civil Rights that a student was discriminated against.

Source: Department of Education

Prince George County School District —

Prince George County School District was found to not be taking reasonable steps to ensure that students were not subject to sexual harassment. They had mandated steps to complete in order to help future students.

Source: Department of Education



Complete the content above before moving on.

Federal Law

Federal Laws

The Supreme Court has ruled that sexual harassment can exist if a hostile environment is created where unwelcome sexually harassing conduct is so severe that it affects a person's ability to participate in or benefit from a school setting.

At the federal level, sexual harassment rights and protections are covered under Titles VI and VII of the Civil Rights Act of 1964 and Titles VI and IX of the Education Amendment of 1972.

CONTINUE

Texas Law

Texas Law

The Texas Penal Code addresses sexual harassment under section 39.02, Official Oppression. If a person, under cover of their office, intentionally subjects another to: misconduct, sexual harassment or denies or impedes individual rights they are in violation of the law.

The consequences for violating the law, found in Texas Penal Code Section 12.21, is a fine not to exceed \$4,000, jail time not to exceed 12 months, or both. Be aware authorities can also independently file criminal charges against either students or school district personnel for sexual harassment assault.



Complete the content above before moving on.

What is Title IX Sexual Harassment?

Title IX Protects ALL Students From Harassment From:

- Any school employee
- Another student
- Non-employee third party

Title IX Defines Sexual Harassment As Conduct That Is:

- Sexual in nature
- Unwelcome
- Denies or limits a student's ability to participate or benefit from an educational program

Sexual Harassment is Defined Broadly

- Quid pro quo harassment by a school employee; causes a person to believe they must submit to unwelcome conduct in order to participate in an activity.
- Any unwelcome conduct that a reasonable person would find so severe and pervasive, and objectively offensive that it denies a person equal educational access.
- Any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act.

Examples of Sexual Conduct

- Making sexual propositions
- Touching of a sexual nature
- Sexual visuals
- Sexual jokes
- Spreading sexual rumors

Title IX

- Sexual harassment is expressly recognized as sex discrimination.
- Previously, the Department of Education addressed sexual harassment only through guidance documents. Starting August 14, 2020, it will be addressed as a federal regulation.
- Guidance letters do not have the force of law. Regulations do.

Applies to All Programs

Title IX continues to apply to all the school's education programs or activities. It does not matter whether the programs or activities occur on campus or off campus.

Final Rule Definitions

- A Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

- A Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegations of sexual harassment and includes additional required statements or elements.
- When a formal complaint is filed, the complainant must be participating in, or attempting to participate in, the education program or activity about which the formal complaint is filed.
- This is because Title IX is implicated when a complainant is denied access to a school's education program or activity.

New Definitions

- Supportive Measures refer to “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or respondent before or after a complaint has been filed or where no formal complaint has been filed.” These measures are to restore or preserve equal access to the educational program or activity without unreasonably burdening the other party.
- Actual knowledge means, in part, “notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school.” 34 CFR 106.30(a).



Complete the content above before moving on.

Reporting Sexual Harassment

Reporting and Preventing

- Specifically refer to the employee designated to coordinate the district's Title IX responsibilities as the "Title IX Coordinator."
- Display on their websites the Title IX Coordinator's contact information.
- Provide notification of that contact information to students and employees, the parents or legal guardians of all elementary and secondary school students, and to all job applicants, and to unions.
- Post material used to train Title IX personnel on school district websites or make it available for public inspection.
- A person who is not necessarily the alleged victim or "Complainant" may report sexual harassment to the Title IX Coordinator by any form of communication and may be made at any time.
- A K-12 school with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent. 34 CFR § 106.44(a)

Supportive Measures May Include

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services

- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus, and other similar measures

Supportive measures provided to complainant or respondent should be kept confidential. The Title IX Coordinator is responsible for coordinating the implementation of supportive measures.



Complete the content above before moving on.

Responding to Sexual Harassment

Responding To Sexual Harassment

- Responses to reports include mandatory steps to support complainants, even if they choose not to file a formal grievance.
- The Title IX Coordinator must promptly and confidentially contact the complainant to discuss the availability of supportive measures and explain that those measures are available even if that individual chooses not to participate in the grievance process.
- The Title IX Coordinator must also explain the process for filing a formal complaint.

Schools Must

The Final Rule affirms that districts should respect a complainant's wishes about whether to investigate unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of a complainant is not clearly unreasonable in light of the known circumstances.

Emergency Removal

A school may remove a respondent from its educational programs or activities on an emergency basis, provided it:

- Undertakes an individualized safety and risk analysis;
- Determines that an immediate threat to physical health or safety of any student or other individual arising from the allegations justifies removal (think: threat assessment)

- Provides the respondent with notice and an opportunity to challenge the decisions immediately following removal.

Formal Complaints

The Final Rule requires a consistent grievance process for resolving complaints of sexual harassment, including these new requirements that the process:

- Treats respondents equally by not imposing disciplinary sanctions without following the grievance process prescribed in the Final Rule;
- Includes a presumption that the respondent is not responsible for alleged conduct until a determination regarding responsibility is made at conclusion of grievance process;
- Requires Title IX personnel to be free from conflicts of interest or bias;
- Describes appeal procedures.

Consent Required

“The Final Rule states that the school cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the school obtains that party’s voluntary, written consent to do so.”

Districts Must

- Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on the person’s status as a complainant, respondent, or witness.

- State in their grievance policies “whether the standard of evidence to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard” and then
- Apply that same standard of evidence for all formal complaints of sexual harassment regardless of whether the respondent is a student or an employee.

Evidence Required	
Inculpatory	Evidence that shows or tends to establish guilt.
Exculpatory	Evidence that shows or tends to establish innocence.
Preponderance of the Evidence	Evidence leads to conclusion that the fact at issue is more probably true than not.
Clear and Convincing Evidence	Evidence that the claim is highly probable. It is a higher standard of proof than preponderance of the evidence.

Investigations

- Investigate allegations in any formal complaint and send written notice to both complainants and respondents of the allegations upon receipt of the formal complaint.
- The burden of gathering evidence and burden of proof is the school's responsibility.
- Provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Send written notice of any investigative interviews, meetings or hearings.
- Send to the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, within at least 10 days for the parties to inspect, review, and respond to the evidence.

- Send to the parties, and their advisors, an investigative report that fairly summarizes relevant evidence with at least 10 days for the parties to respond.
- Dismiss allegations that do not meet the definition of sexual harassment or did not occur in a school's education program or activity.
- Hearings including cross-examination are required for post secondary institutions and are optional for K-12 schools. (Several procedural protections are mandated when live hearings are held.)

Written Questions

With or without a hearing, after the school has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party:

- the opportunity to submit written, relevant questions that a party wants asked of any party or witness;
- provide each party with the answers;
- and allow for additional, limited follow-up questions from each party.

However, the Final Rule provides complainants with rape shield protections:

“Questions and evidence about the complainant’s prior sexual behavior are deemed irrelevant “unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.”

Standard of Evidence

When applying either standard (preponderance of the evidence or clear and convincing evidence), the decision-maker(s) – who cannot be the Title IX Coordinator or investigator – must issue a written determination regarding responsibility with:

- Description of all procedural steps taken;
- Findings of fact;

- Conclusions about whether the alleged conduct occurred;
- Rationale for result as to each allegation;
- Any disciplinary sanctions imposed on the respondent; and
- Whether remedies will be provided to the complainant.

Concluding Investigation

Both parties must be offered an appeal from a determination regarding responsibility and from any dismissal of the complaint or allegations therein. Appeals are available on various specified bases.

The Final Rule:

- allows schools to offer informal resolution options (provided a formal complaint has been filed);
- protects against retaliation; and requires that schools keep confidential the identity of the complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.
- The Title IX Coordinator is responsible for effective implementation of any remedies.

Dismissing Formal Complaints

Formal complaints are dismissed for Title IX purposes if:

- The allegations filed in the Formal Complaint:
 - do not meet the Final Rule's definition of sexual harassment,
 - or did not occur in the school district's education program or activity against a person in the United States

Then:

- The school district must dismiss the allegations for purposes of Title IX.
- The conduct may still be addressed in any manner the school deems appropriate under the district's own code of conduct.

Records Retention Requirement

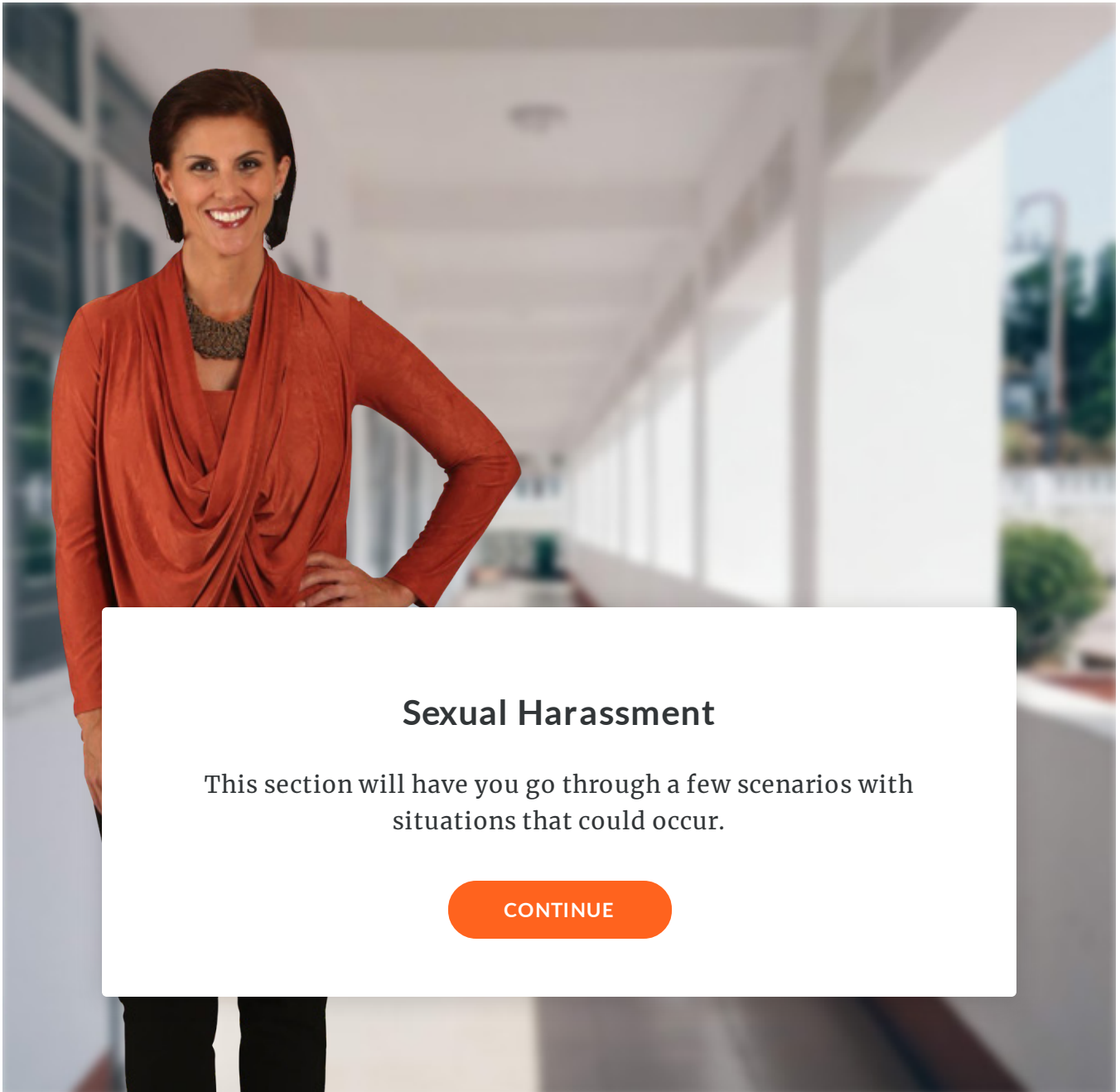
Maintain for a period of 7 years:

- Each sexual harassment investigation
- Any appeal
- Any resolution
- All materials to train Title IX Coordinators, investigators and related personnel
- Actions taken, including supportive measures, in response to a report or formal complaint of sexual harassment



Complete the content above before moving on.

Scenarios



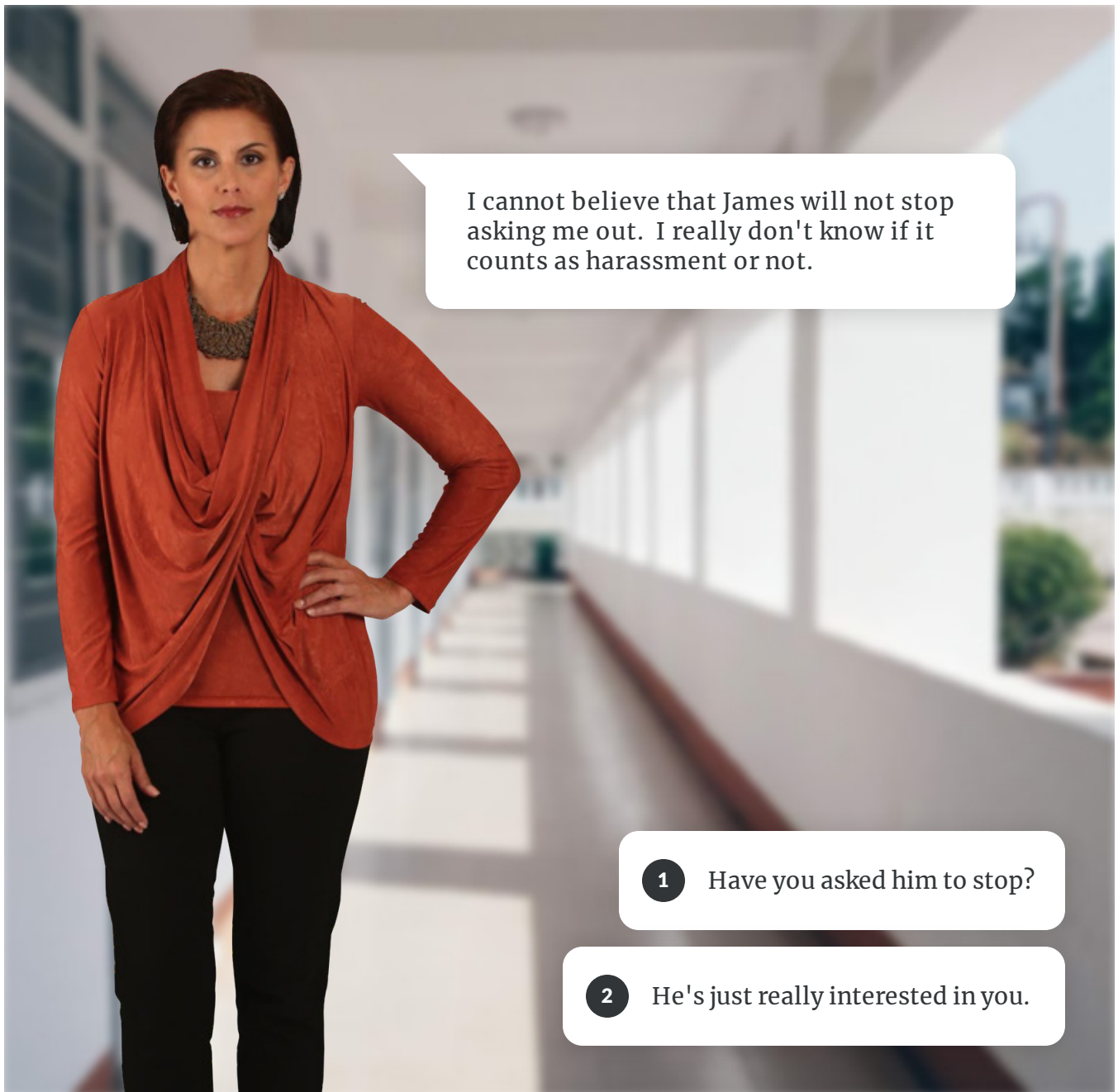
Sexual Harassment

This section will have you go through a few scenarios with situations that could occur.

[CONTINUE](#)

Scene 1 Slide 1

[Continue](#) → [Next Slide](#)



I cannot believe that James will not stop asking me out. I really don't know if it counts as harassment or not.

1 Have you asked him to stop?

2 He's just really interested in you.

Scene 1 Slide 2

0 → Scene 1 Slide 3

1 → Scene 1 Slide 4



Yes, I have asked him to stop. What am I supposed to do?

1

If you have asked him to stop, and he hasn't, then it's time to talk to Human Resources.

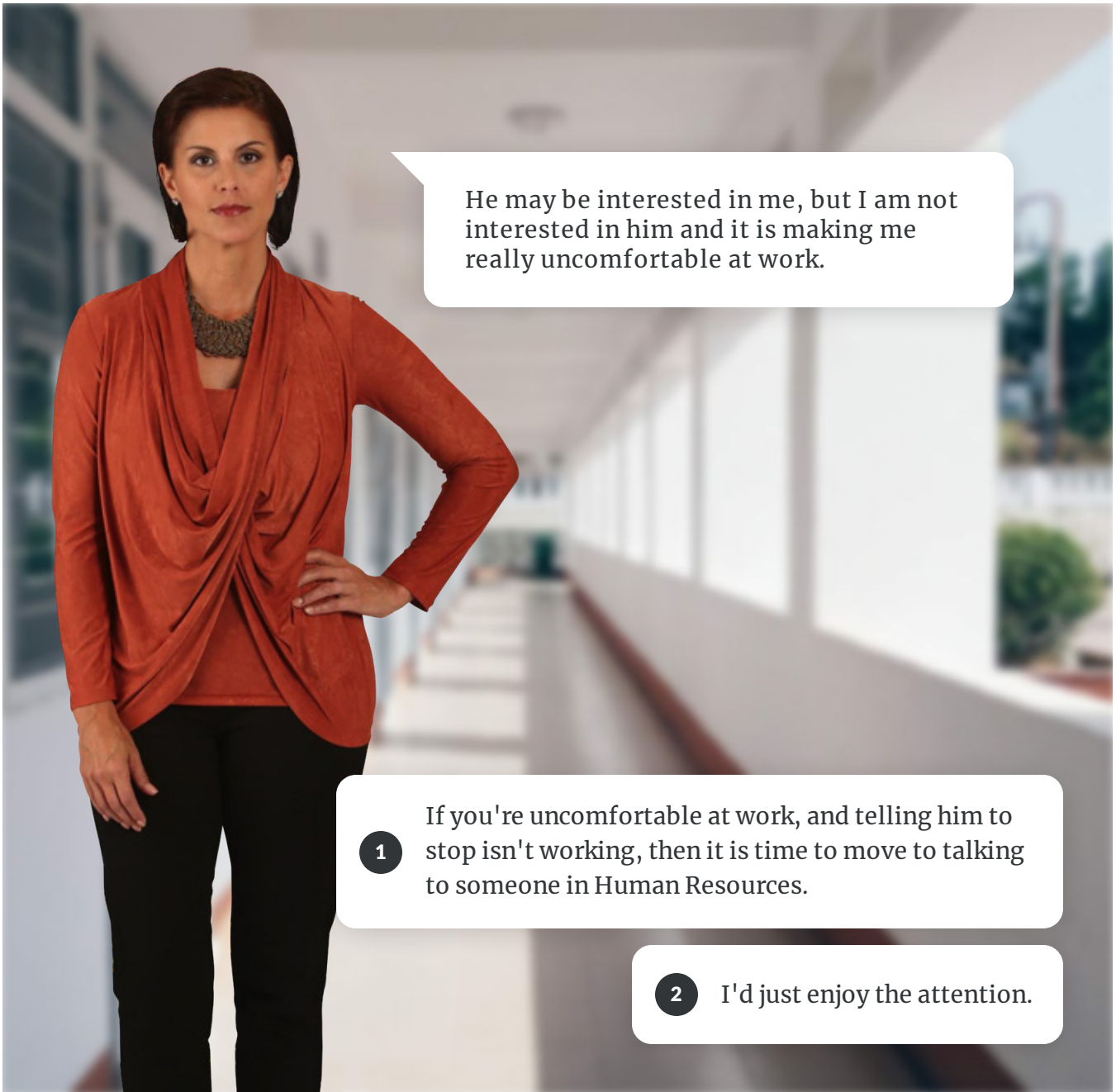
2

I'm not sure, what is it that you want to do?

Scene 1 Slide 3

0 → Scene 1 Slide 5

1 → Scene 1 Slide 6



He may be interested in me, but I am not interested in him and it is making me really uncomfortable at work.

1

If you're uncomfortable at work, and telling him to stop isn't working, then it is time to move to talking to someone in Human Resources.

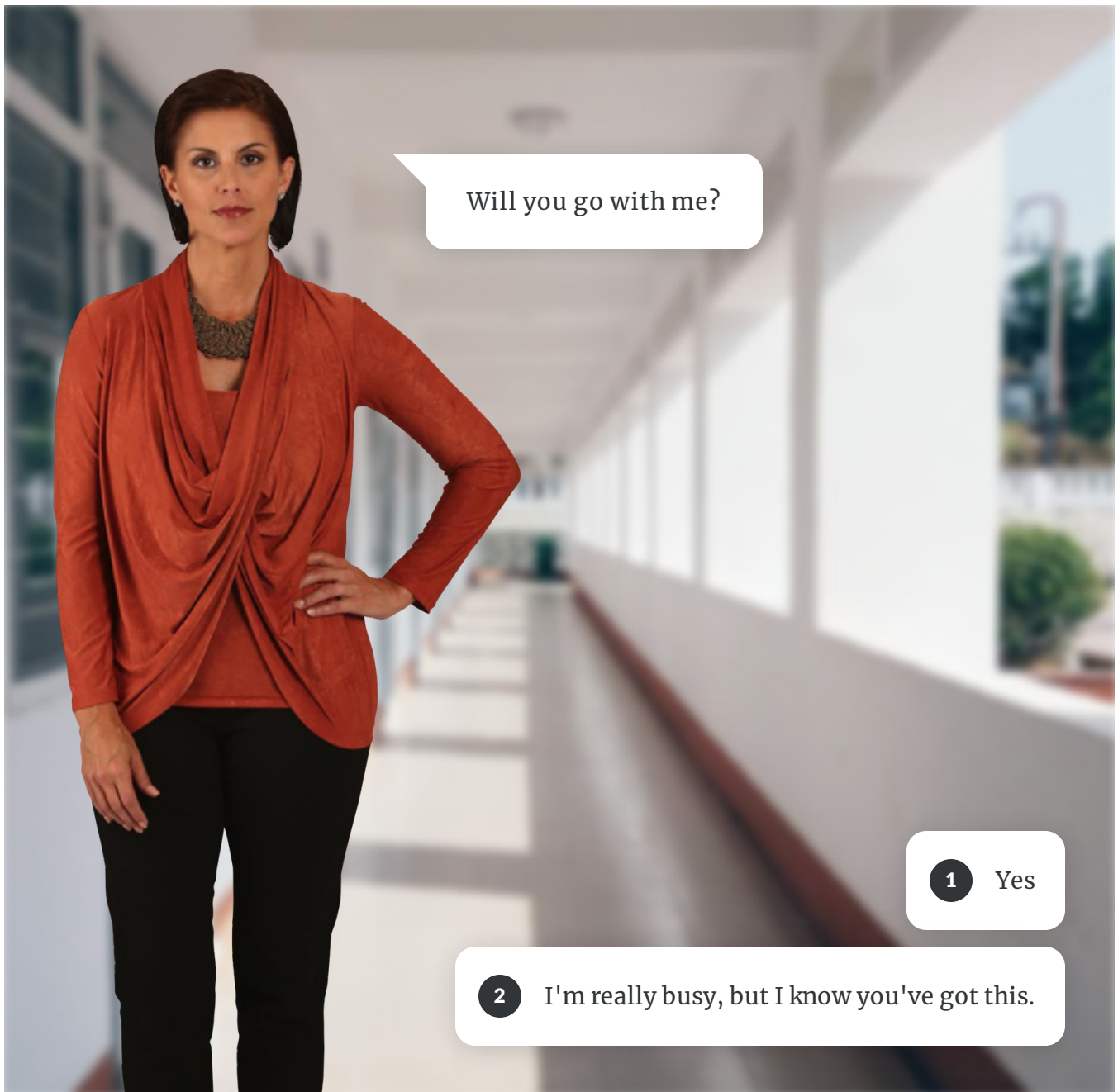
2

I'd just enjoy the attention.

Scene 1 Slide 4

0 → Scene 1 Slide 5

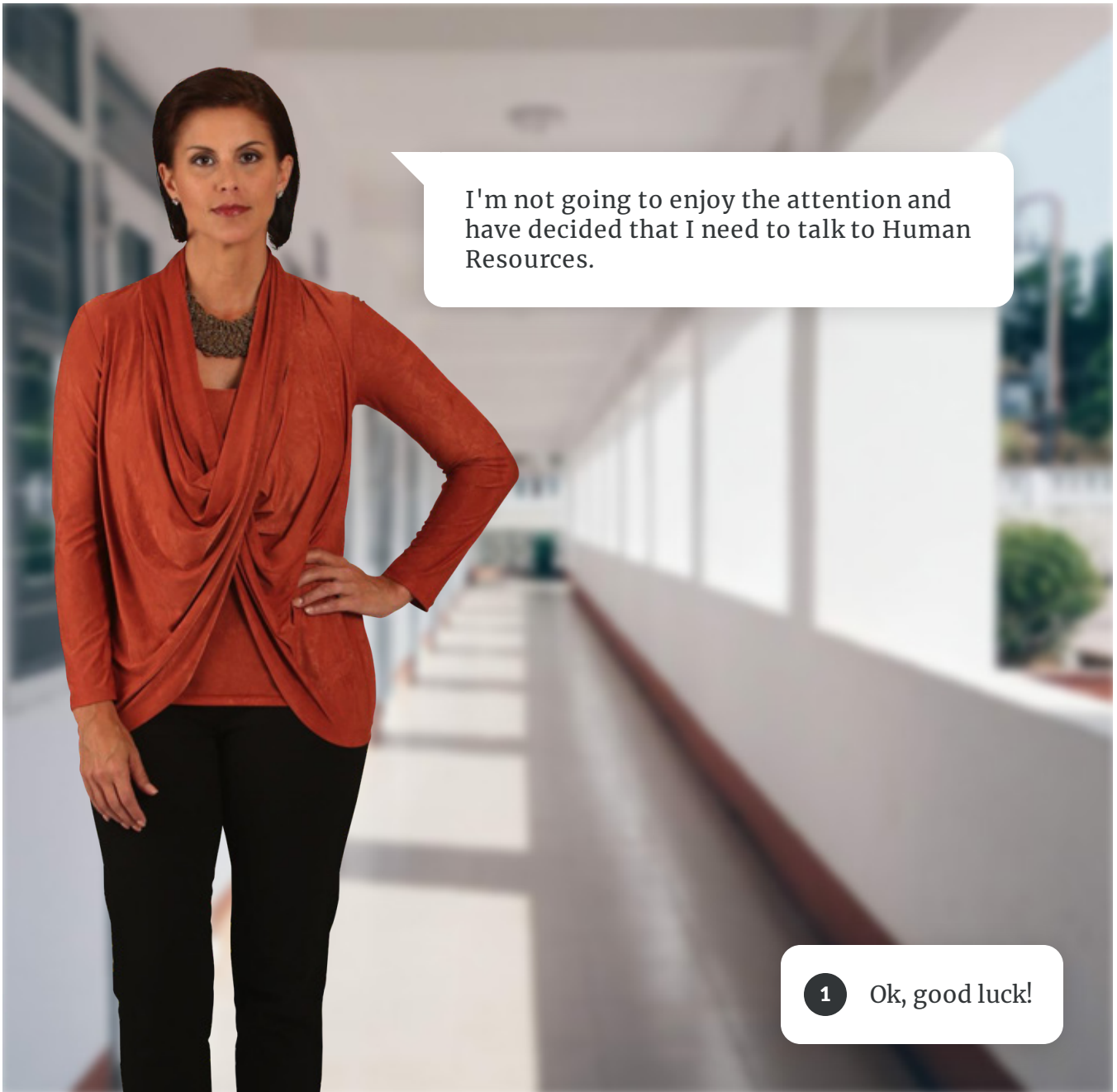
1 → Scene 1 Slide 6



Scene 1 Slide 5

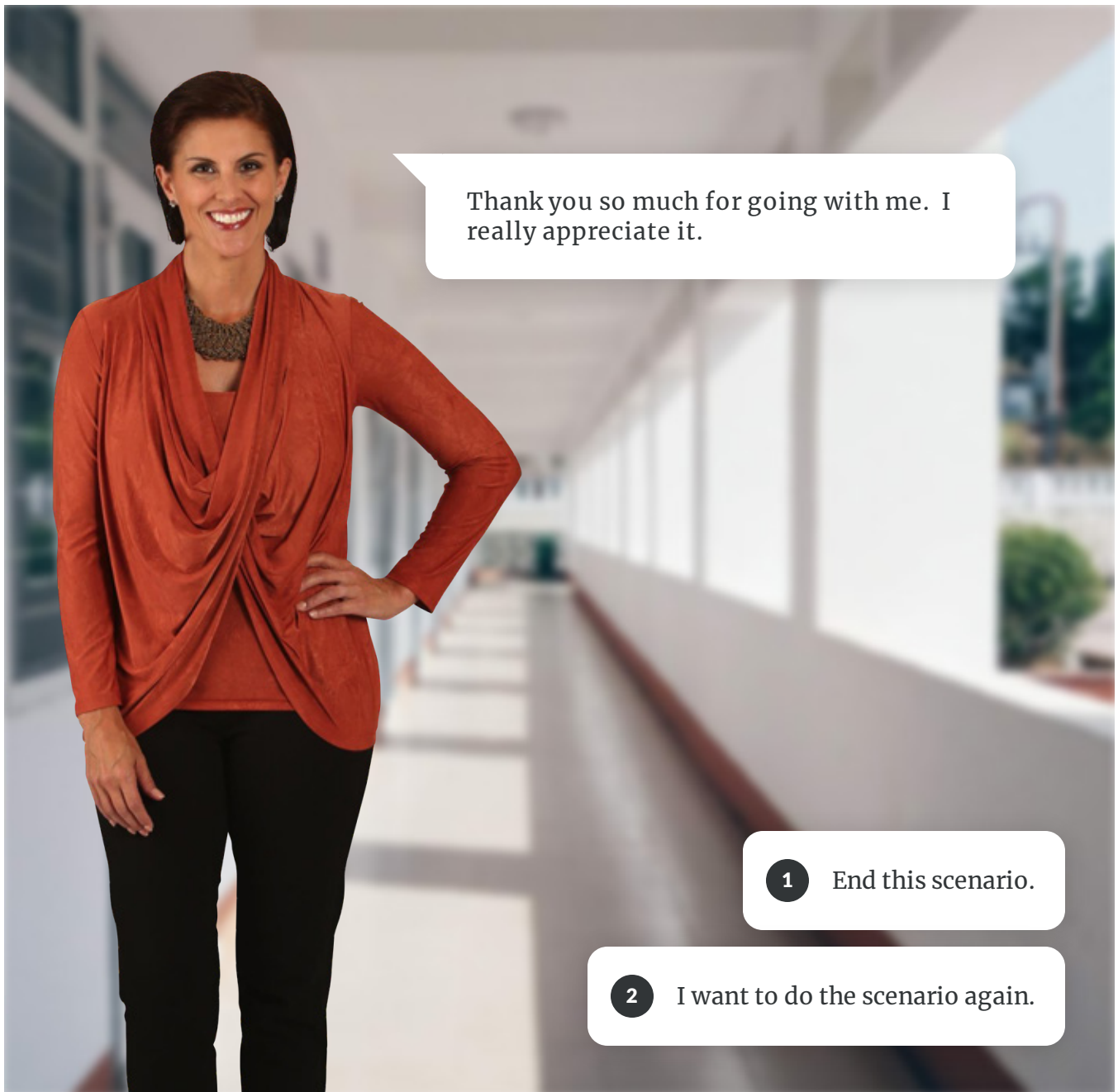
0 → Scene 1 Slide 7

1 → Scene 1 Slide 8



Scene 1 Slide 6

0 → Scene 1 Slide 8



Thank you so much for going with me. I really appreciate it.

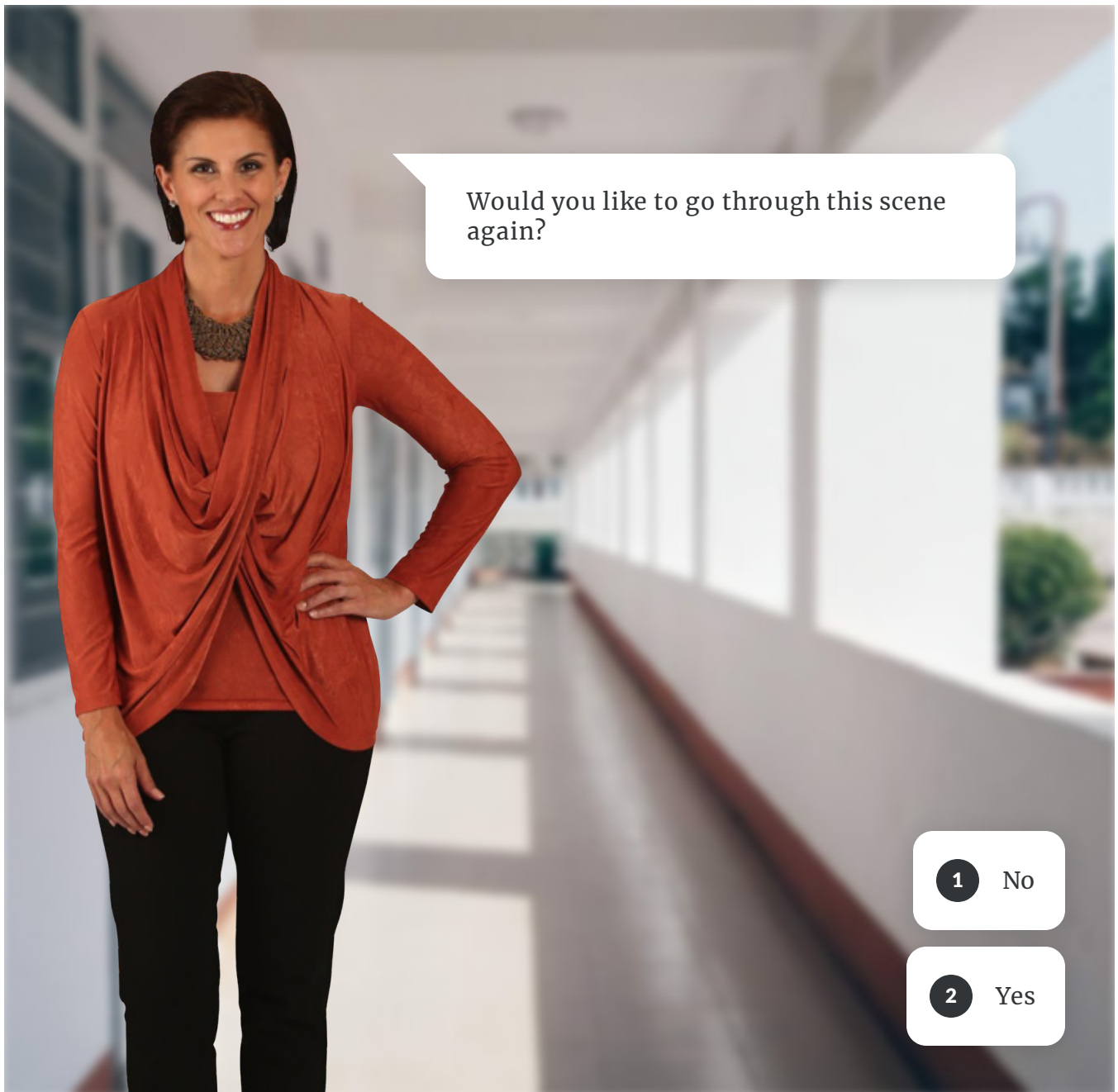
1 End this scenario.

2 I want to do the scenario again.

Scene 1 Slide 7

0 → Scene 2 Slide 1

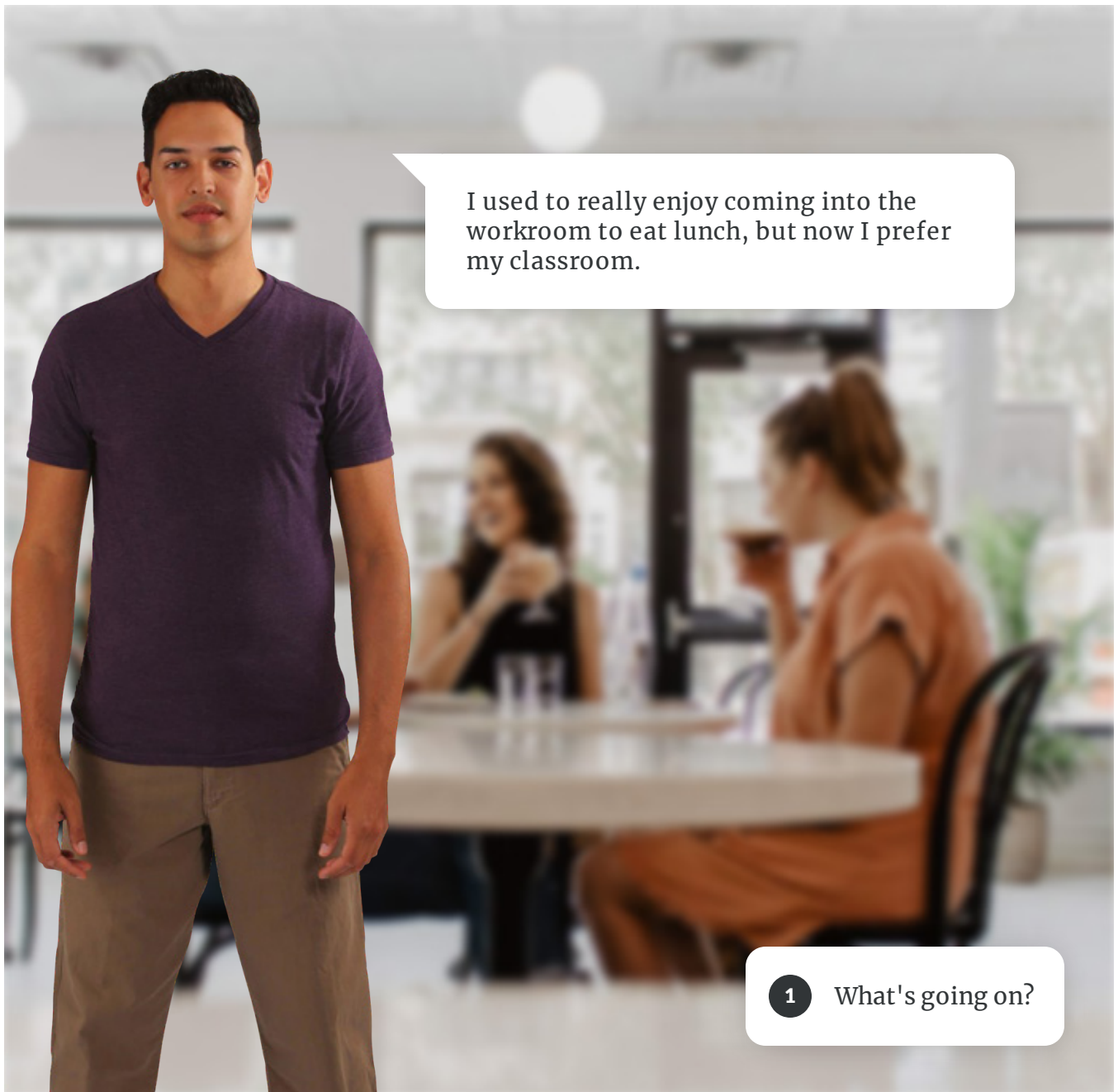
1 → Scene 1 Slide 1



Scene 1 Slide 8

0 → Scene 2 Slide 1

1 → Scene 1 Slide 1



I used to really enjoy coming into the workroom to eat lunch, but now I prefer my classroom.

1 What's going on?

Scene 2 Slide 1

0 → Scene 2 Slide 2



There is a group of teachers that talks about me and how they think I would look without a shirt, and I've heard more. It's just too much.

1

That is harassment, without a doubt. Have you asked them to stop?

2

Well, are they good looking too?

Scene 2 Slide 2

0 → Scene 2 Slide 3

1 → Next Slide



Yes, I have asked them to stop, but they don't.

1

If it is persistent, then you really need to talk to Human Resources.

2

What do they say when you ask them to stop?

Scene 2 Slide 3

0 → Scene 2 Slide 6

1 → Scene 2 Slide 5



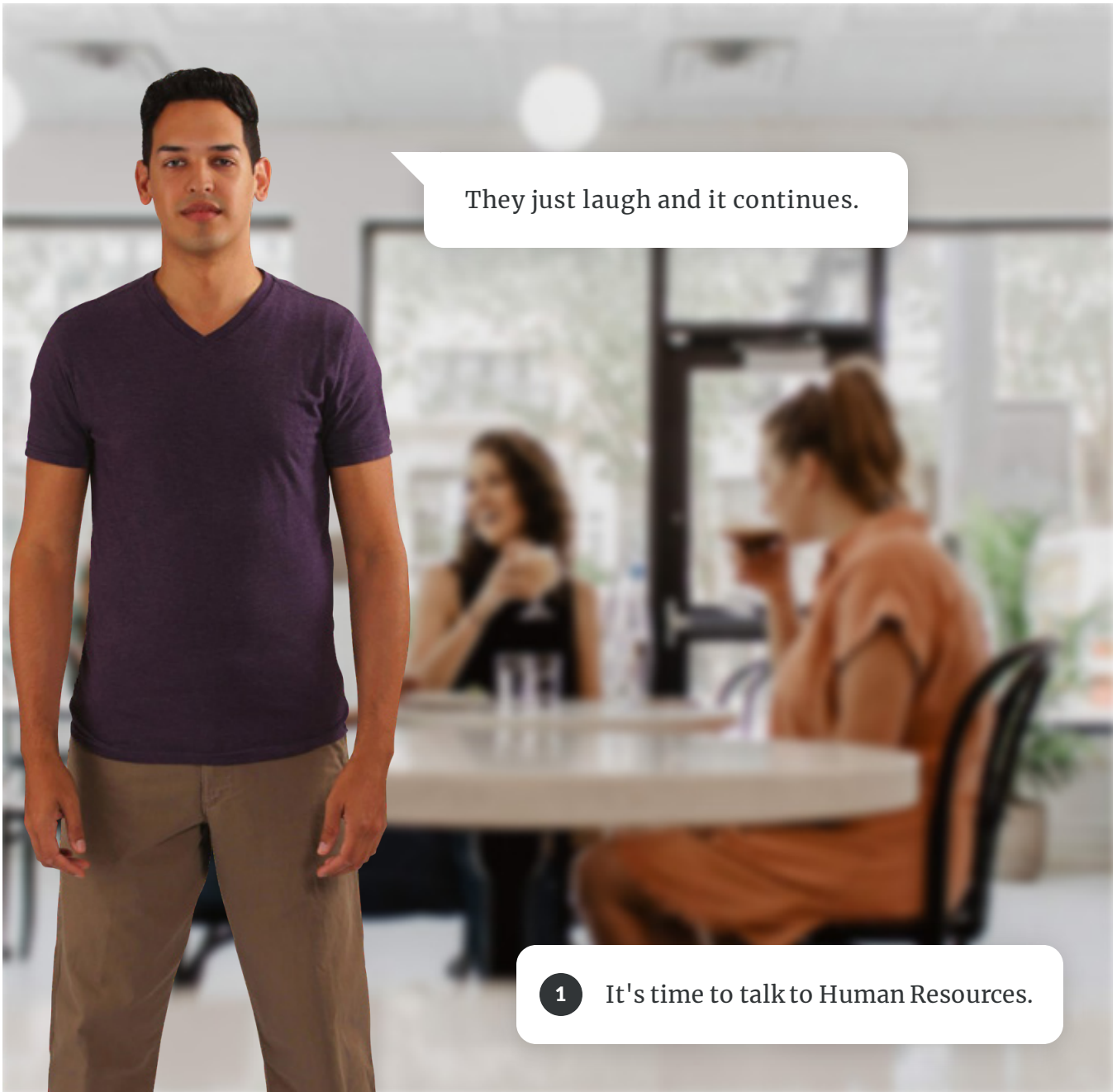
I can't believe you asked me that. That's not appropriate either and is harassment.

1

If it's harassment then you need to talk to Human Resources.

Scene 2 Slide 4

0 → Scene 2 Slide 6

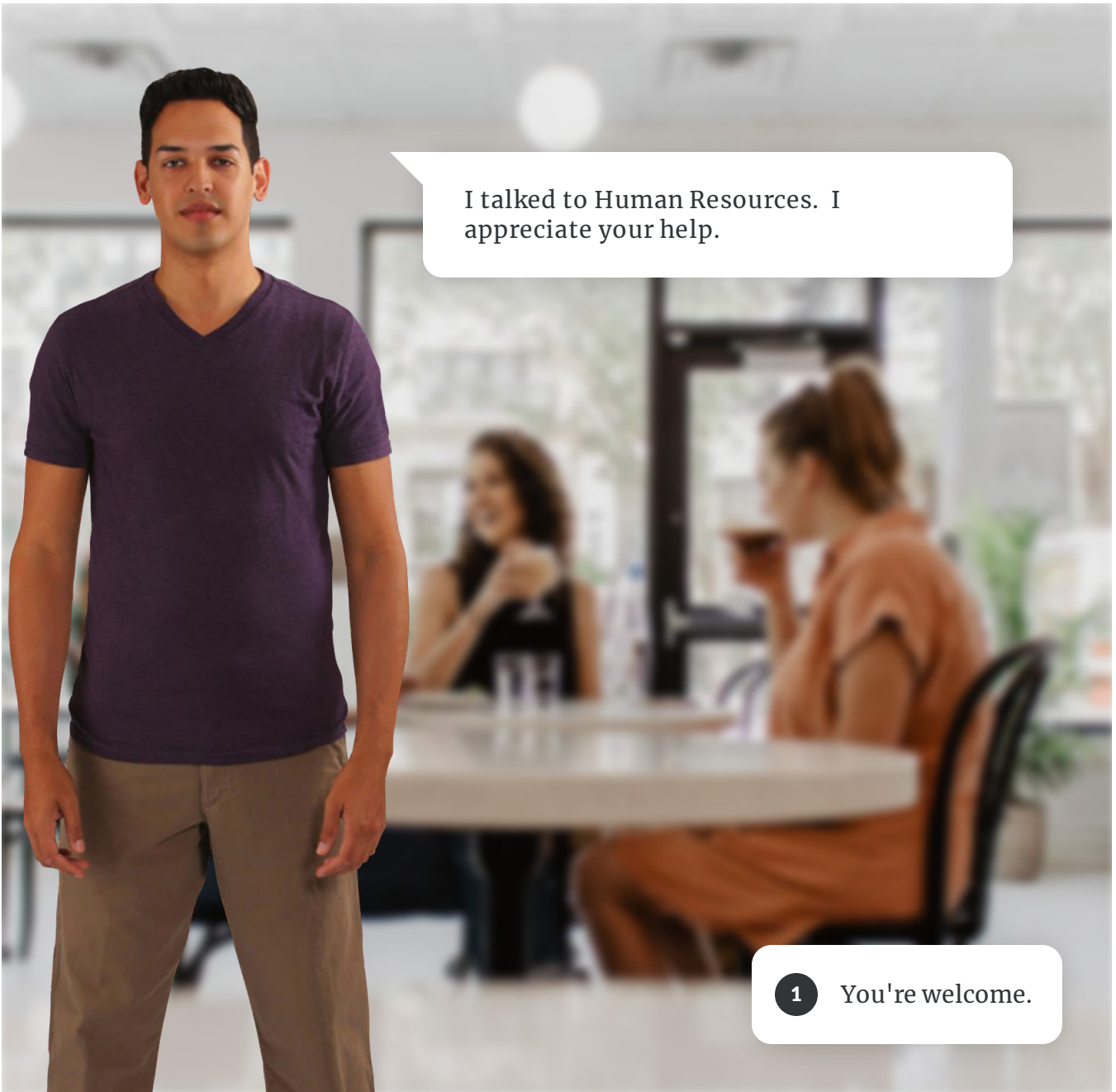


They just laugh and it continues.

1 It's time to talk to Human Resources.

Scene 2 Slide 5

0 → Scene 2 Slide 6

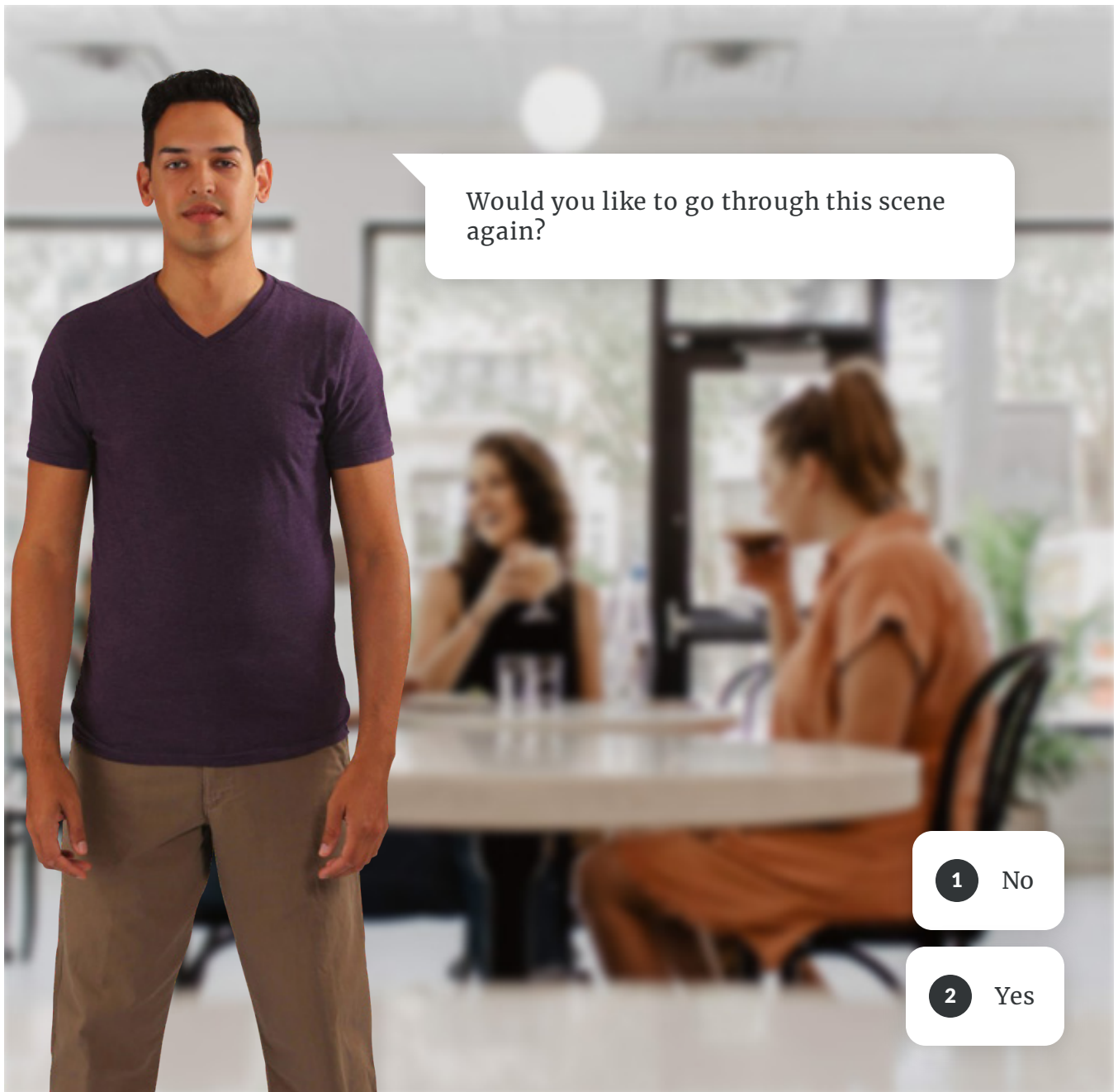


I talked to Human Resources. I appreciate your help.

1 You're welcome.

Scene 2 Slide 6

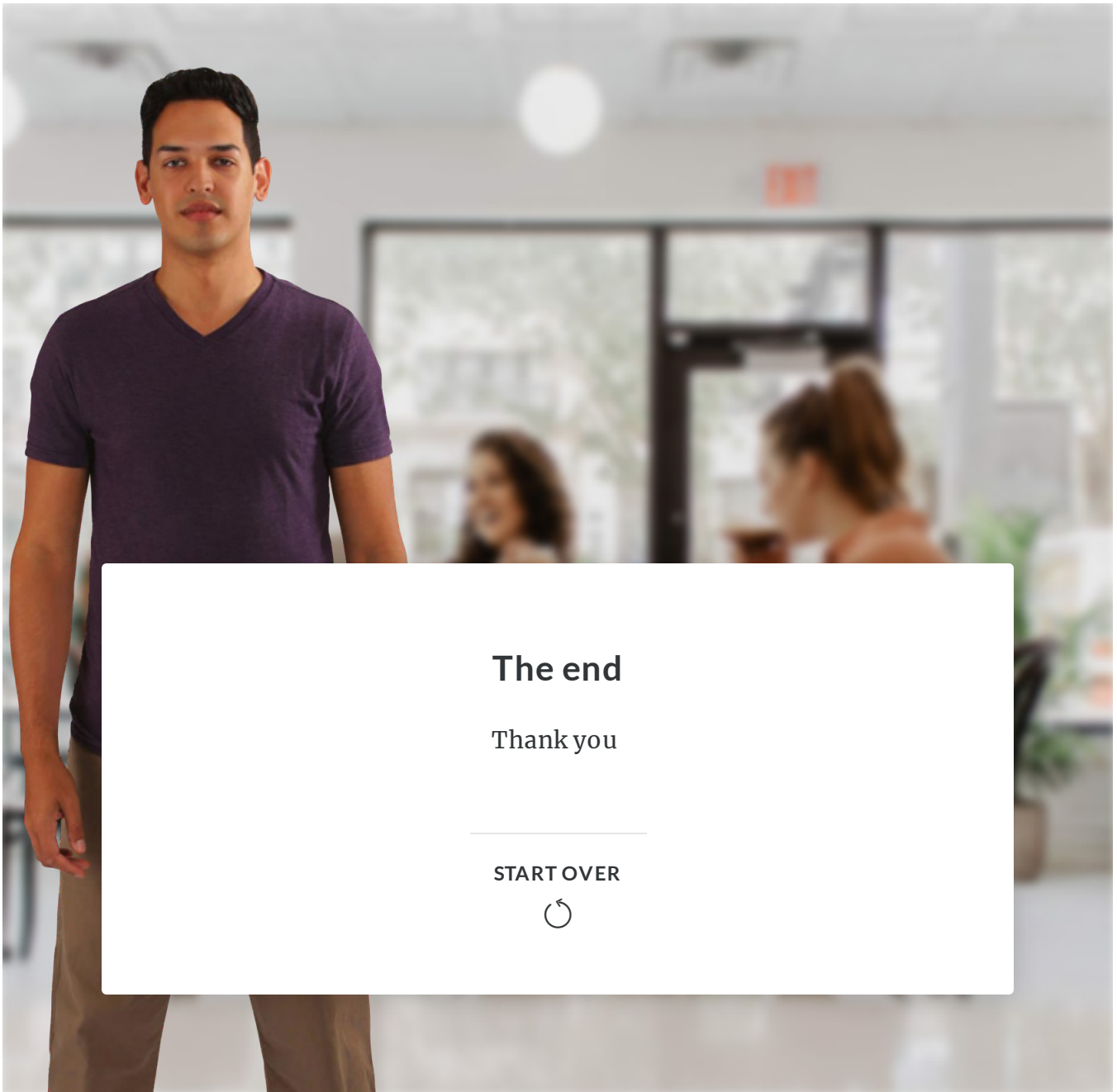
0 → Next Slide



Scene 2 Slide 7

0 → Scene 2 Slide 8

1 → Scene 2 Slide 1



Scene 2 Slide 8

Continue → End of Scenario



Complete the content above before moving on.