



2020 TITLE IX COORDINATOR TRAINING

A Certificate Course



COURSE OVERVIEW

1	An Introduction to Title IX	7	Title IX Investigations
2	Overview of the Title IX Regulations	8	Title IX Decision-Making Processes
3	Understanding Trauma	9	The Appeal Process
4	Title IX Incident Evaluation	10	Title IX Informal Resolution Process
5	Report & Intake Meetings	11	Title IX Compliance Beyond the Grievance Process
6	Notice of Allegation & Start of the Grievance Process		

LEARNING OBJECTIVES



Describe the key provisions of Title IX, including its scope, forms of prohibited discrimination, and the responsibilities of educational institutions in ensuring compliance



Understand reporting procedures for complaints of sex discrimination and sex-based harassment and conduct incident evaluations to initiate the appropriate response



Oversee compliant, effective, and impartial investigation, adjudication, and/or informal resolution of alleged Title IX violations



Develop a trauma-informed framework for communicating with parties in Title IX complaints



Outline the responsibilities of the Title IX Coordinator that fall outside of the Title IX grievance process

LESSON COMPLETION

Title IX Solutions, LLC

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Level I: Navigating the 2024 Title IX Regulations with Confidence

3% complete

Search by lesson title

Pre-Training Materials0/3

Decoding the 2024 Title IX Regulations: A Roadmap for Educational Institutions1/6

Chapter & Speaker IntroductionVIDEO • < 1 MIN • PREREQUISITE • DRAFT

Defining Sex Discrimination & Sex-Based HarassmentVIDEO • < 1 MIN • PREREQUISITE • DRAFT

Revised Scope & Jurisdiction

Revised Scope & Jurisdiction

106.31 – EDUCATION PROGRAM

Up next

Policy, Training & Reporting Requirements

CONTINUE →

Noted Changes

- 106.31(a)(2) was added addressing gender identity

Comments

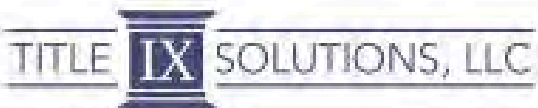
- There is pending litigation regarding gender identity protection that may impact this part of the regulations.

MARK INCOMPLETE

CONTINUE →



STEPPING AWAY



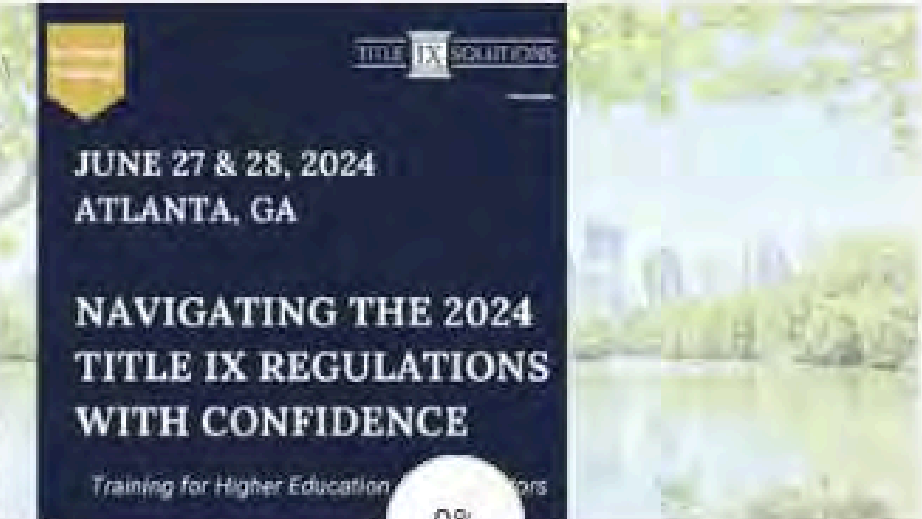
[Courses](#) [Curriculum](#) [Free Resources](#) [FAQs](#) [My Dashboard](#) [Cara K !\[\]\(581a37922a09af6d3412377716caf230_img.jpg\)](#)



See Overview



Coming Soon



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June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)



See Overview



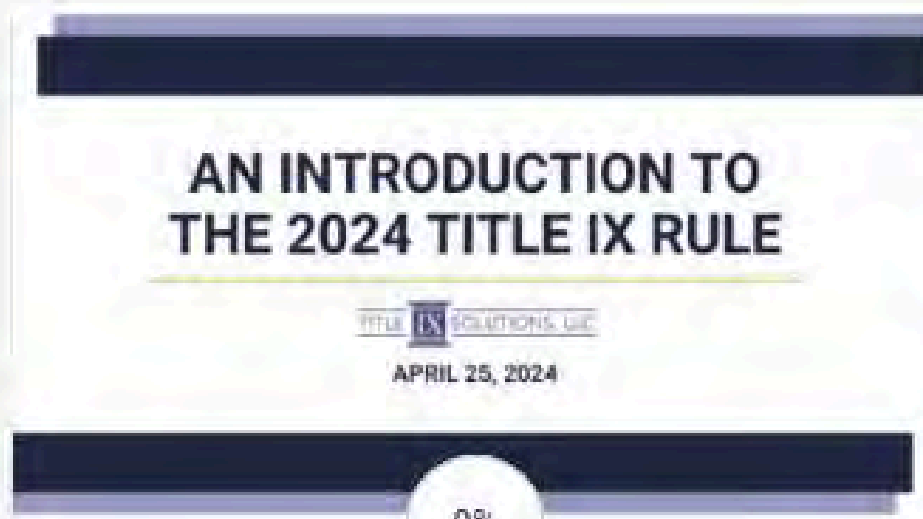
Start Course



See Overview



Start Course



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An Introduction to the 2024 Title IX Regulations



See Overview



Start Course



See Overview



Start Course



0%

July 23-24, 2024: Virtual Title IX Training



See Overview



Start Course



CERTIFICATE OF COMPLETION

THIS CERTIFICATION OF COMPLETION IS AWARDED TO:

CARTER WILSON

FOR SUCCESSFULLY COMPLETING

*LEVEL I: NAVIGATING THE 2020 TITLE IX REGULATIONS
WITH CONFIDENCE*

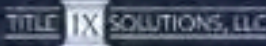
ON JULY 18, 2024

Learning Objectives:

- Articulate the key changes outlined in the revised 2024 Title IX regulations, including the updated scope of sex-based harassment and discrimination
- Explain the new requirements for institutions in responding to complaints, including investigation procedures and timelines
- Identify and differentiate the roles of various Title IX personnel within your institution
- Develop strategies for implementing the new Title IX regulations effectively within your educational setting through policy and practice
- Facilitate prompt, equitable, and compliant grievance processes of sex-based harassment and discrimination complaints
- Apply best practices to foster a safe and inclusive education program



Cara Kuhn
CARA KUHN
Training Coordinator
Title IX Solutions, LLC



POSTING REQUIREMENTS

In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.”
34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

POSTING REQUIREMENTS

Facilitating Informal Resolution Processes

0/4

▼

Informal Resolution Agreements and Outcomes

0/2

▼

Potential Challenges in Facilitating Informal Resolution Processes

0/2

▼

Understanding Trauma

0/6

▼

Course Wrap-up

0/3

▼

Title IX Posting Requirements

0/2

▲

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

INSTRUCTIONS · PREREQUISITE

Final Combined Course Materials

DOWNLOAD

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions Certification Training!

Please follow these instructions as you post the training materials to your school's website to comply with Title IX Regulation 106.45(b)(10)(i)(d).

Contact adrienne@titleixsolutions.com or tawny@titleixsolutions.com with any questions regarding the posting of Title IX Solutions' training materials.

Program materials available for download:

If you haven't done so already, you can find and download the program materials for this course by clicking on the next lesson named "Final Combined Course Materials".

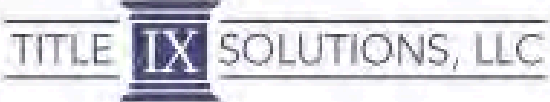
Instructions for posting the above training program materials are outlined below:

Step 1: Publish Authorization & Disclaimer

COMPLETE & CONTINUE →

TITLE IX SOLUTIONS, LLC

COURSE SUPPORT



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Cara K 

Admin

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Support 

Sign Out



Courses

2022 IX Institute Free Content

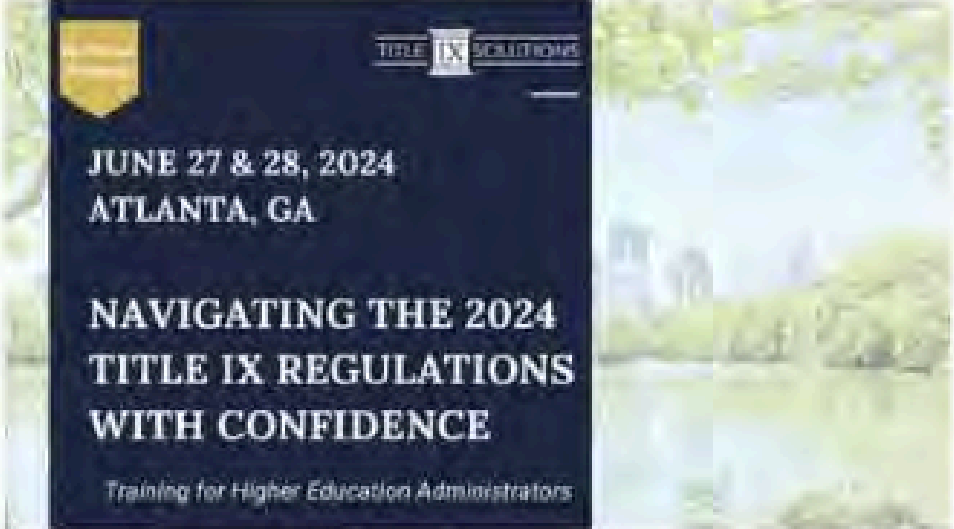
2023 IX Institute Free Content

2024 Title IX Training

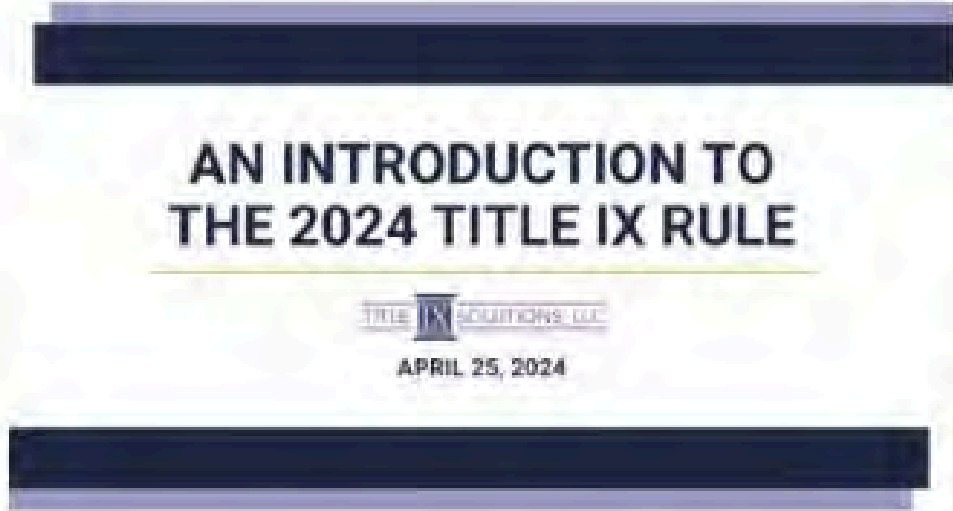
All Courses

Level II Training

Level I Training



June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)



An Introduction to the 2024 Title IX Regulations



July 23-24, 2024: Virtual Title IX Training

Use code INTB24BEGS to save \$100

TITLE IX SOLUTIONS, LLC

THANK YOU!



TITLE IX SOLUTIONS, LLC

AN INTRODUCTION TO TITLE IX



SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

IN THIS CHAPTER

A large, white, serif Roman numeral 'IX' centered within a white square border.

HISTORY OF
TITLE IX



TITLE IX
DEFINITIONS



PARTICIPANTS IN THE
TITLE IX PROCESS



OVERVIEW OF THE
TITLE IX PROCESS

HISTORY OF TITLE IX



Title IX of the Education Amendments of 1972

“

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”

”

20 U.S.C. §1681(a)

CREATION OF TITLE IX

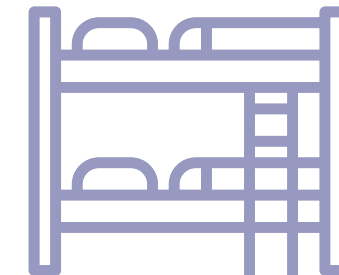
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

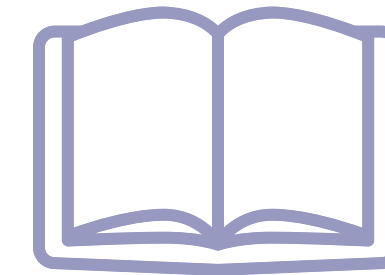
Designed initially to address inequities in:



Admissions



Residence
Life



Academic
Opportunities



Extracurricular
Activities

WHO IS PROTECTED?

All students regardless of:

- Sexual Orientation
- Gender Identity
- Nationality
- Immigration Status
- Race
- Ability

All genders are included

Employees - faculty, staff, administrators

Applies to:

- State and local educational agencies that receive federal funding
 - Vocational, professional, and higher education institutions

BRIEF HISTORY OF TITLE IX



JUNE 23, 1972

Title IX becomes
law and addresses
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discrimination

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APRIL 4, 2011

Guidance expands
Title IX to include
sexual harassment,
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dating and domestic
violence, sexual
assault, and stalking



AUGUST 14, 2020

New regulations go into
effect, requiring all
educational institutions
to follow specific
procedures in response
to sexual harassment

NOTE ON THE 2024 REGULATIONS

IN APRIL OF 2024, THE DEPARTMENT OF EDUCATION RELEASED NEW REGULATIONS EXPANDING THE SCOPE OF TITLE IX.

- Many states have challenged these new regulations through injunctions which has led to different school and states following different Title IX guidance.
- Title IX is a continually evolving landscape which makes training that much more important!

TITLE IX DEFINITIONS



ACTUAL KNOWLEDGE

- "[N]otice 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" (Postsecondary)
- Notice of sexual harassment or allegations by ANY employee of an elementary or secondary school
- Includes reports sent to the Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving a person's written or oral report

REPORT VS. COMPLAINT

REPORT

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

FORMAL COMPLAINT

- Required for initiation of the Title IX grievance process
- Can be oral or written
- Cannot be filed anonymously or by a third-party
- Request to the school that **objectively can be understood as a request for the school to investigate** and make a determination

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REMINDER:



**MAKING A REPORT OR A COMPLAINT
TO YOUR INSTITUTION OR
CONFIDENTIAL RESOURCE IS NOT
EQUIVALENT TO FILING CHARGES
WITH LAW ENFORCEMENT.**

SUPPORTIVE MEASURES

WHAT?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sex discrimination and sexual harassment

WHEN?

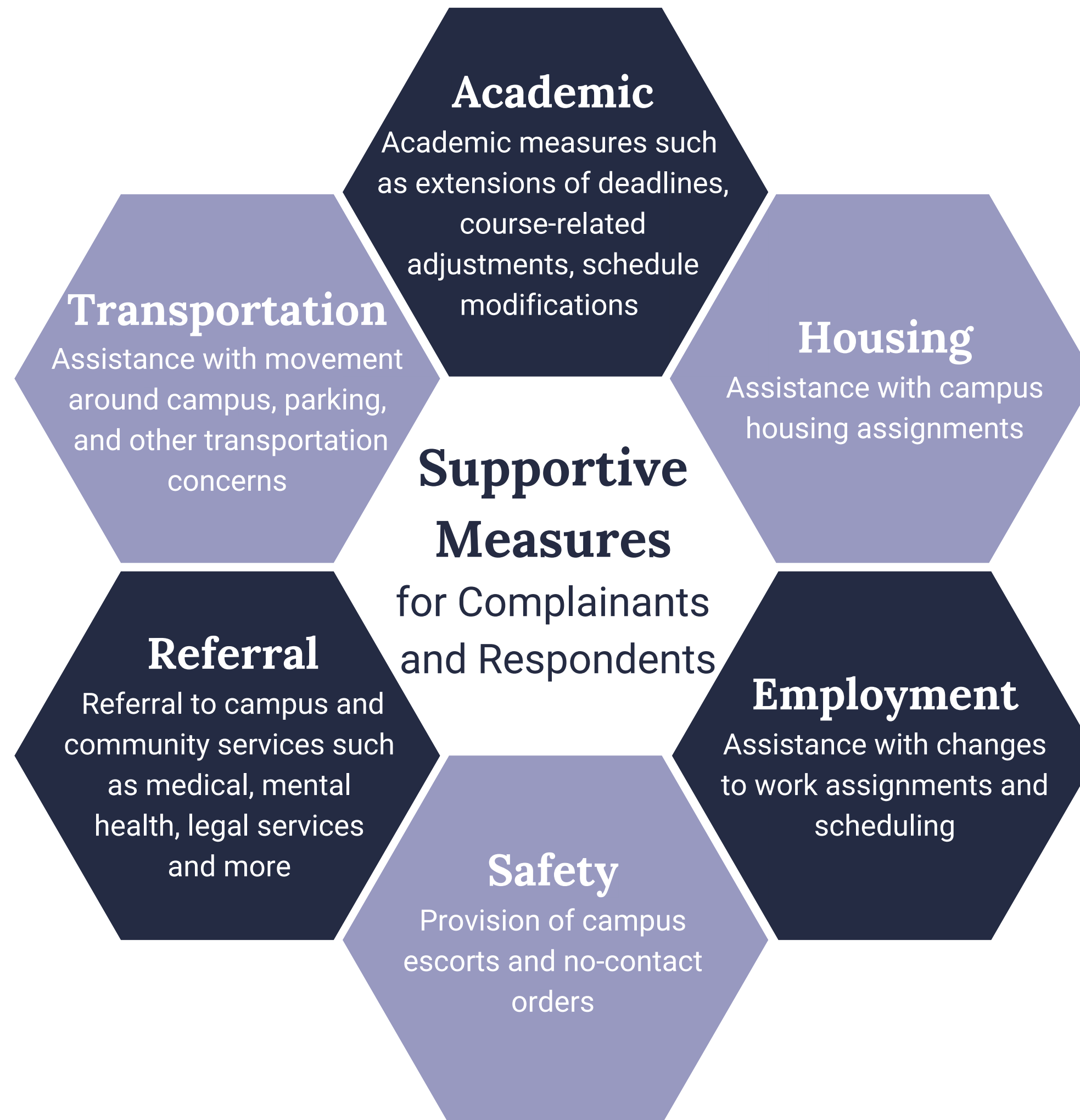
- Available before or after filing a complaint or where no complaint has been filed

WHY?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

HOW?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party



AMNESTY PROVISION

- Not required under Title IX but often included in the policy to encourage reporting
- Individuals may not be subject to disciplinary action for a minor violation of other school polies (e.g., Code of Conduct) when participating in a Title IX investigation

SCENARIO



Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.

CONFIDENTIALITY

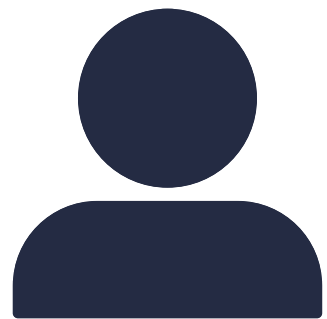
- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
 - Identities of these individuals will be known to the individuals conducting the Title IX process

RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
 - Interfering with any right or privilege under Title IX
 - Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

RETALIATION

All persons are prohibited from retaliating against reporting parties, Complainants, Respondents, Witnesses, and others who participate in the Title IX process.



EXAMPLE ONE:

Friends of the Complainant intimidating the Respondent, or vice versa.



EXAMPLE TWO:

School personnel discriminating against an individual for refusing to participate in the Title IX process.

REMEDIES AND SANCTIONS

REMEDIES

- Offered to Complainants
- Designed to restore or preserve equal access to the school's education program or activity
- May be the same as supportive measures
- DO NOT need to be "non-punitive" or avoid burdening the respondent

SANCTIONS

- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy

EDUCATION PROGRAM OR ACTIVITY

THE EDUCATIONAL PROGRAM OR ACTIVITY INCLUDES ALL OPERATIONS OF THE SCHOOL, BOTH ON OR OFF CAMPUS.

- Includes locations, events, or circumstances over which the school exercises substantial control over both:
 - The Respondent, and
 - The context in which an incident of sexual harassment occurs
- Includes any building owned or controlled by student organizations which are officially recognized by the school (including fraternity & sorority houses)
- Includes computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of the school

STANDARD OF PROOF

STANDARD USED TO DETERMINE WHETHER OR NOT A SEXUAL HARASSMENT POLICY VIOLATION OCCURRED.

Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

STANDARD OF PROOF

Preponderance of the Evidence

Anything that tips the scale to more than 50/50

Clear and Convincing

More likely to be true than untrue, substantial evidence to support

Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Where does your needle point?

PARTICIPANTS IN THE TITLE IX PROCESS



OVERVIEW

TITLE IX PERSONNEL VARY, DEPENDING UPON SEVERAL FACTORS:

- Institution size
- Institution type
 - K-12
 - Community/two-year colleges
 - Four year colleges and universities
 - Public/private
- Institution structure and resources
 - Organizational charts and reporting
 - Full-time/part-time
 - Budget



TITLE IX PERSONNEL

EXCEPT FOR THE TITLE IX COORDINATOR, TITLE IX PERSONNEL MAY BE INTERNAL OR EXTERNAL.



Title IX
Coordinator



Deputy
Coordinators



Title IX
Investigator



Decision-
Maker



Informal Resolution
Facilitator



Advisor



Appellate
Decision-Maker

TITLE IX COORDINATOR

EVERY SCHOOL MUST HAVE A DESIGNATED TITLE IX COORDINATOR.

CAN

- Serve as the Title IX Investigator
- Serve as the Informal Resolution Facilitator
- Have other roles on campus
 - Dean of Students, Director of Human Resources, etc.

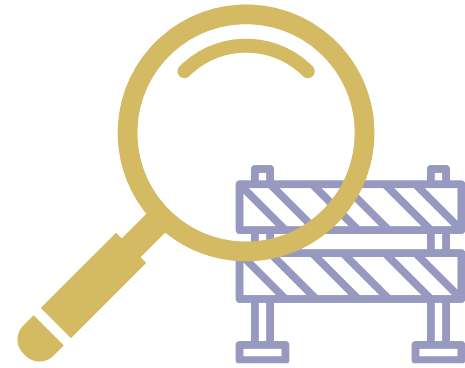
CANNOT

- Serve as the Title IX Decision-Maker
- Serve as the Appeals Decision-Maker

TITLE IX COORDINATOR



Ensure Compliance



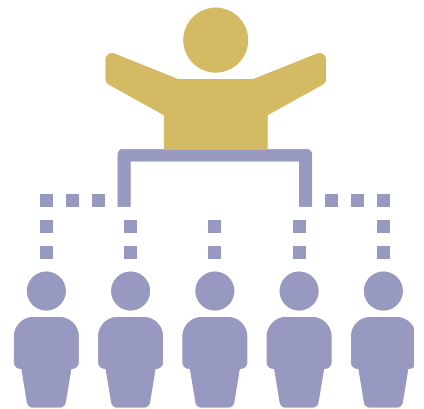
Monitors barriers
to reporting



Receive reports



Training



Oversees grievance
procedures



Offers supportive
measures

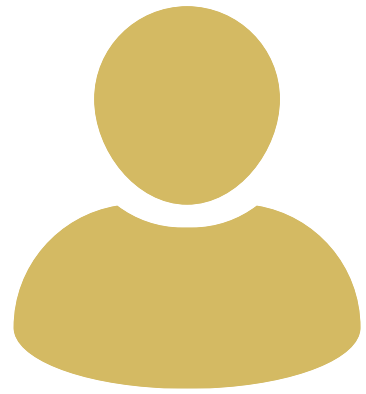


Creates policy and
procedures



Determine initiation
of complaint

TITLE IX INVESTIGATOR

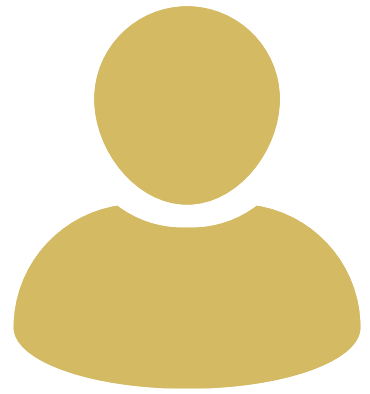


MAY BE THE TITLE IX COORDINATOR, OTHER SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR.

RESPONSIBILITIES:

- Collects evidence and interviews the Parties and Witnesses
- Provides all evidence to the Parties and their Advisors for inspection and review
- Creates an investigative report that fairly summarizes relevant evidence
- Sends the investigative report to the Complainant, Respondent, Advisors, and Decision-Maker

TITLE IX DECISION-MAKER

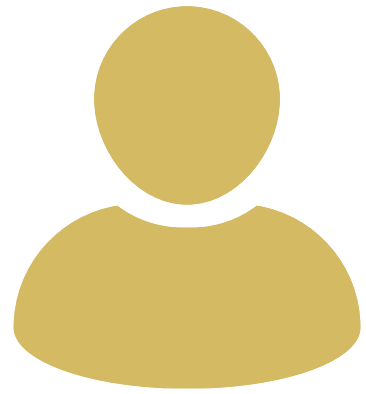


MAY BE A SINGLE DECISION-MAKER OR A HEARING PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).

RESPONSIBILITIES:

- Oversees and facilitates the Title IX adjudication process, including a hearing if the school has one
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the credibility assessment process
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

APPELLATE DECISION-MAKER



MAY BE A SINGLE APPELLATE DECISION-MAKER OR APPELLATE PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).

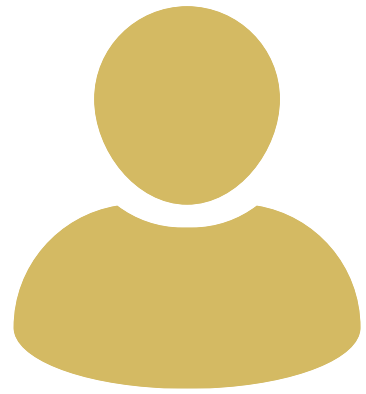
RESPONSIBILITIES:

- Reviews the appeal from the Party & the other Party's response (if any)
- Drafts and issues the final determination



Specific appellate procedures vary at every school, so refer to the school's policy for details.

INFORMAL RESOLUTION FACILITATOR

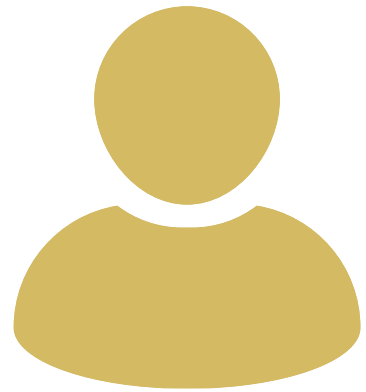


MAY BE A SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR. CANNOT BE THE TITLE IX COORDINATOR.

RESPONSIBILITIES:

- Provides information to the Parties and Advisors about the informal resolution process
- Various forms of informal resolution may be available
- Facilitates the informal resolution process
- Drafts informal resolution settlement agreements at the conclusion of the process (if the complaint is resolved)

ADVISOR



COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.



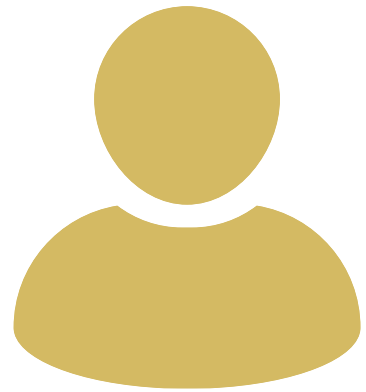
An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.

- School must provide an Advisor for the live hearing if a Party does not have one present
- School cannot limit the choice or presence of the Advisor for either Party in any meeting
- Parties have the option to include the Advisor in any meeting or investigative interview
- Schools may set specific expectations or provide guidelines for Advisors to follow during meetings, investigative interviews, and the hearing

ADVISOR



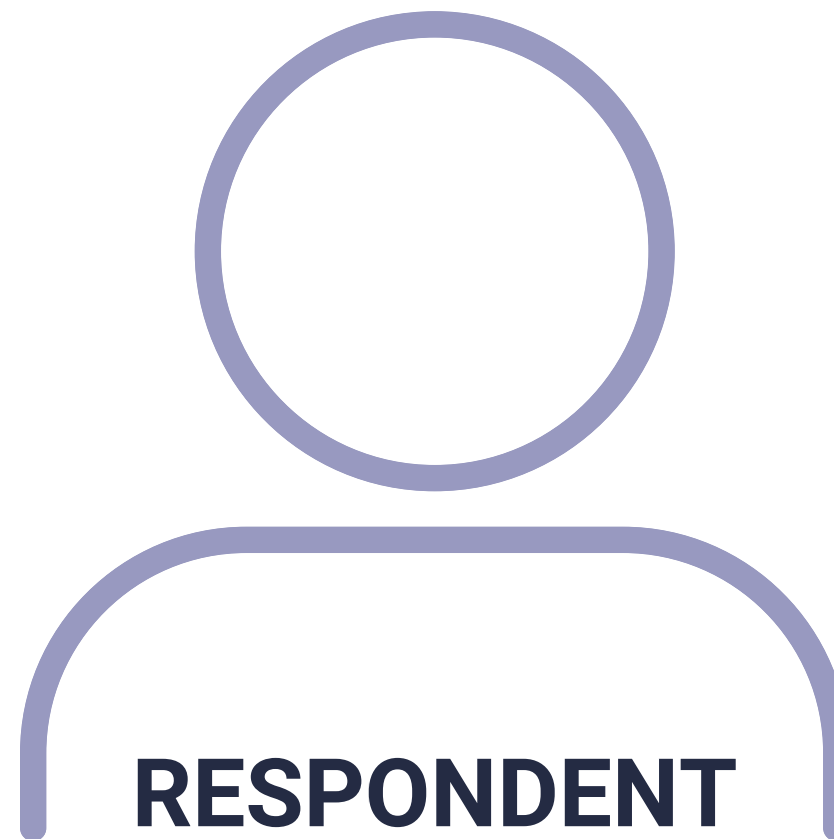
COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.

RESPONSIBILITIES:

- Supports their Party by accompanying them during interviews, meetings, and the credibility assessment process
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

PARTIES IN THE PROCESS

ASIDE FROM THE TITLE IX PERSONNEL WHO TAKE PART IN THE FACILITATION OF THE GRIEVANCE PROCESS, WE WILL ALSO SEE THESE INDIVIDUALS INVOLVED:



COMPLAINANT

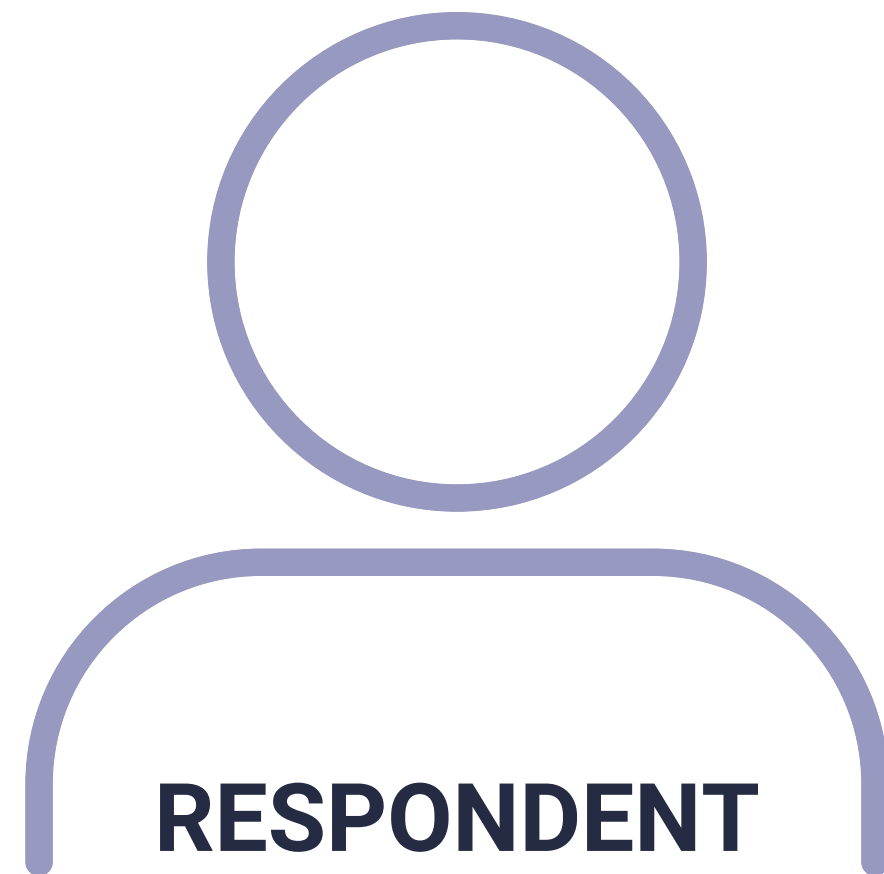
ALLEGED TO BE THE **VICTIM** OF CONDUCT THAT COULD
CONSTITUTE SEXUAL HARASSMENT



- May be a student, employee, or other community member
- Must be participating in or attempting to participate in the school's education program or activity with which the complaint is filed
- There may be more than one Complainant in a case

RESPONDENT

REPORTED TO BE THE ALLEGED **PERPETRATOR** OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT.



- May be a student, employee, community member, or non-community member
 - The school's ability to respond to incidents perpetrated by non-community member Respondents may be limited
- School may dismiss the complaint if the Respondent is no longer enrolled or employed by the school
- There may be more than one Respondent in a case

WITNESS

**INDIVIDUALS THAT ARE IDENTIFIED IN THE GRIEVANCE PROCESS AS
HAVING INFORMATION THAT MAY SUPPORT OR REFUTE ALLEGATIONS OF
SEXUAL HARASSMENT.**



- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

OVERVIEW OF THE TITLE IX PROCESS



DURING THE TITLE IX GRIEVANCE PROCESS:

A SCHOOL MUST:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

DURING THE TITLE IX GRIEVANCE PROCESS:

A SCHOOL MUST:

- Include reasonably prompt time frames for the conclusion of the grievance process
- Describe the range of possible disciplinary sanctions and remedies
- State the standard of proof
- Describe the range of supportive measures available to Complainants and Respondents
- Not require or seek the disclosure of information protected under a legally recognized privilege

GOAL OF TITLE

ULTIMATELY, THE GOAL OF TITLE IX IS TO:



Stop the harassment or discrimination



Prevent future recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

GRIEVANCE PROCESS



- Title IX Coordinator must respond in a way that's not deliberately indifferent
- Meet with the Complainant to discuss supportive measures and process for a formal complaint

GRIEVANCE PROCESS



GRIEVANCE PROCESS



- Provided to both parties outlining the grievance procedures, information about the allegations, prohibition of retaliation, and the parties' rights

GRIEVANCE PROCESS



- Parties have the opportunity present witnesses and evidence
- Parties also have the right to access, review and respond to evidence gathered during the investigation

GRIEVANCE PROCESS



- Decision-maker has opportunity to question parties and witnesses to evaluate allegations and assess credibility

*Some conduct does not require a live hearing. The Title IX Coordinator will be able to help identify cases when a live hearing is required and cases when it is not.

GRIEVANCE PROCESS



- Standard of evidence is used to determine whether a policy violation occurred
- Notification is issued to the parties in writing

GRIEVANCE PROCESS



- Parties have the right to appeal the process on the following bases:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the determination was made
 - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias that would change the outcome

INFORMAL RESOLUTION

AT ANY TIME PRIOR TO DETERMINING WHETHER SEXUAL HARASSMENT OCCURRED, A SCHOOL MAY OFFER TO A COMPLAINANT AND RESPONDENT AN INFORMAL RESOLUTION PROCESS.

- Cannot offer informal resolution if the complaint includes allegations that:
 - An employee engaged in sexual harassment of an elementary school or secondary school student
 - Process would conflict with Federal, State or local law
- Schools cannot require or pressure the parties to participate in an informal resolution process.
- The school must obtain the parties' voluntary consent to the informal resolution process

TITLE IX SOLUTIONS, LLC

OVERVIEW OF THE TITLE IX REGULATIONS

TITLE IX SOLUTIONS, LLC

IN THIS CHAPTER



INTRODUCTION TO
THE TITLE IX
REGULATIONS



SEXUAL HARASSMENT
AND RECIPIENT
RESPONSE



TITLE IX GRIEVANCE
PROCESS FOR
FORMAL COMPLAINTS

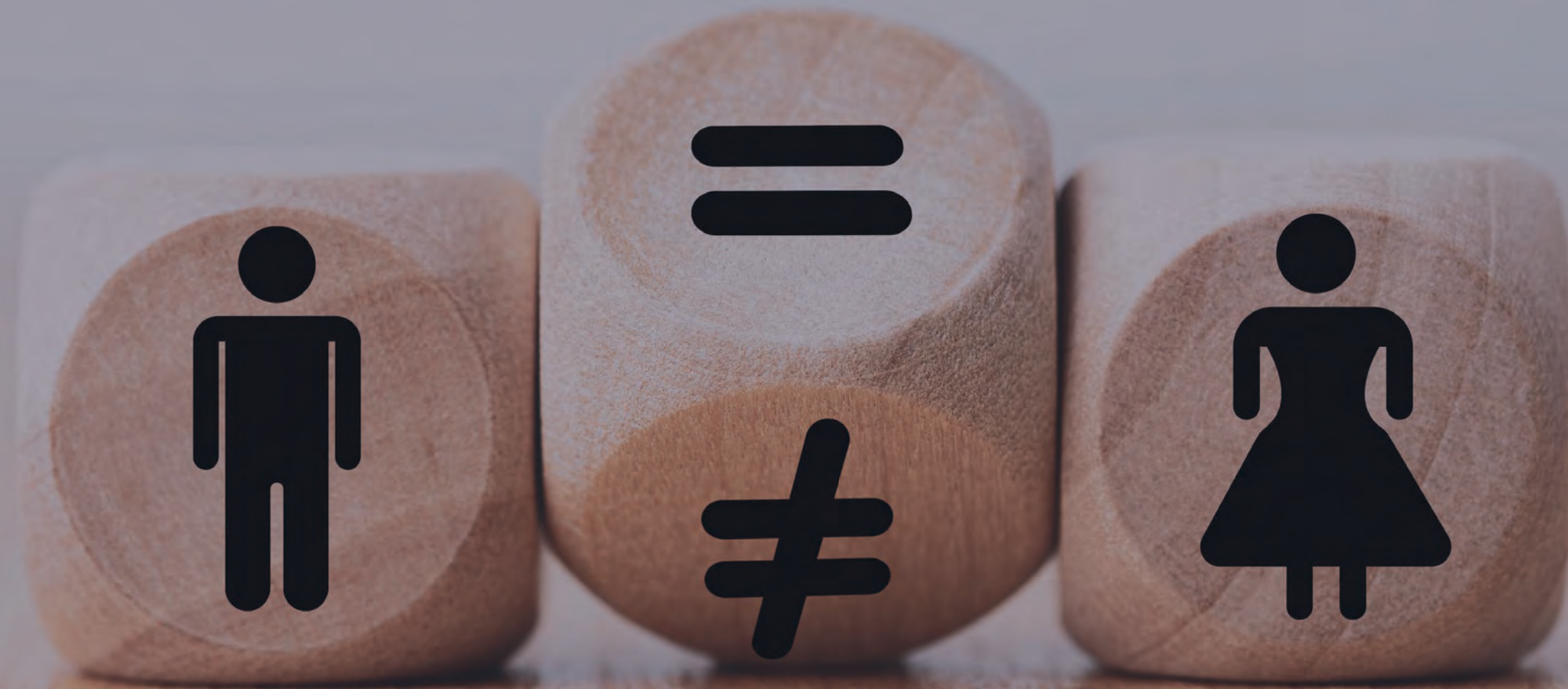


SPEAKER

PATRICK MATHIS, J.D.

CO-FOUNDER & MANAGING MEMBER
TITLE IX SOLUTIONS

INTRODUCTION TO THE TITLE IX REGULATIONS



TITLE IX COVERAGE

POSTSECONDARY INSTITUTIONS

Includes:

- Undergraduate schools
- Graduate schools
- Vocational schools
- Professional schools/programs

ELEMENTARY & SECONDARY SCHOOLS

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

WHAT IS A RECIPIENT?

§106.2

Definitions

"Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof."

COMPLIANCE WITH THE REGULATIONS

RECIPIENTS MUST COMPLY WITH THE REQUIREMENTS OF TITLE IX AS OUTLINED UNDER THE REGULATIONS.

Recipients may:

- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

- Provide details regarding policies or procedures which are not addressed in the regulations

SCHOOL'S REQUIRED RESPONSE

**PROMPT AND
EQUITABLE
GRIEVANCE
PROCEDURES**



Sex Discrimination



Sexual Harassment

(§106.45)

ALWAYS REFER TO YOUR SCHOOL'S TITLE IX POLICY!

WHEN IS SEX- BASED HARASSMENT ACTIONABLE?



When it denies a
person equal
access to education

TITLE IX'S APPLICATION

**REGULATIONS APPLY EQUALLY TO ALL PERSONS,
REGARDLESS OF:**



Gender Identity or Expression

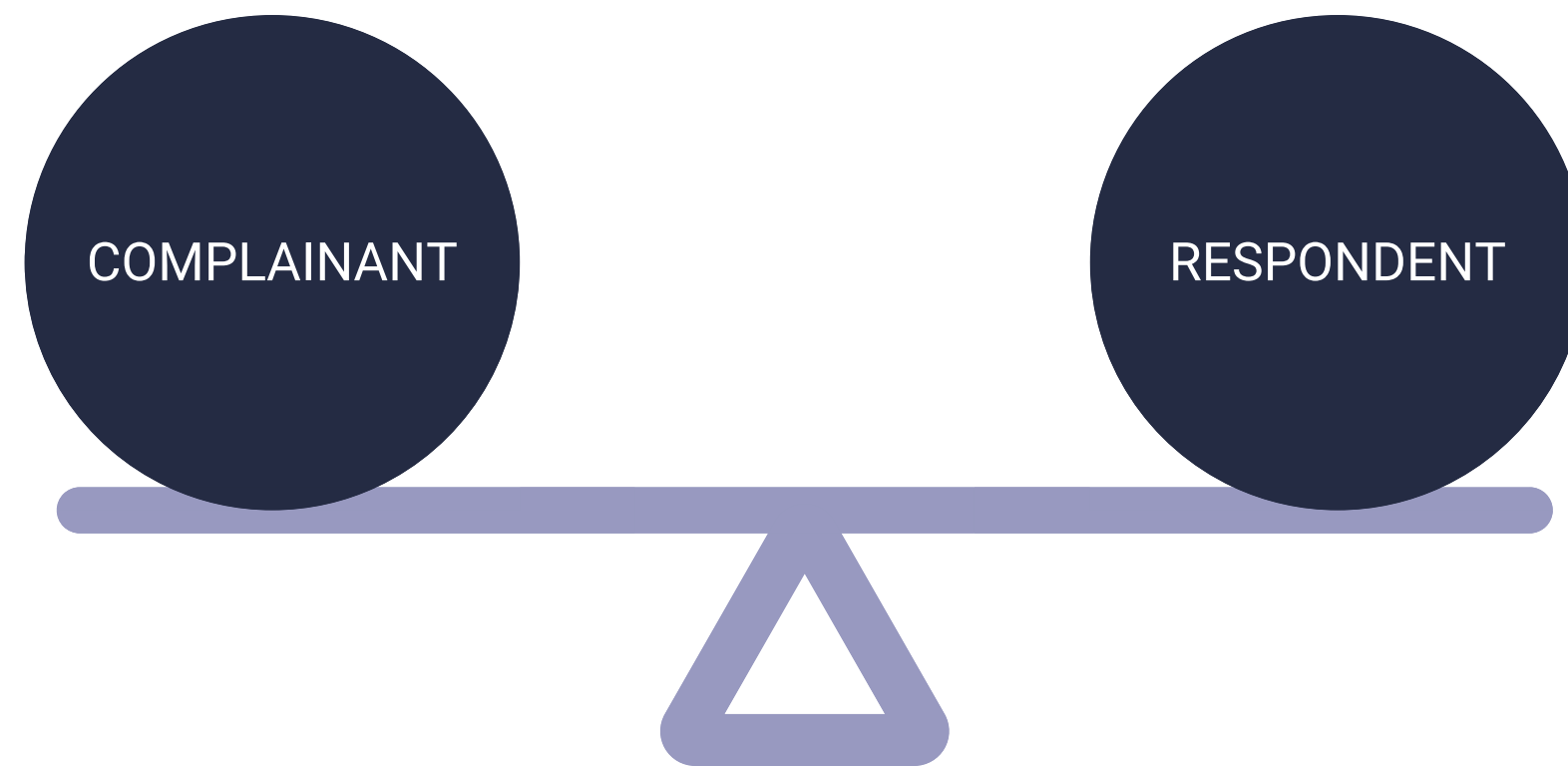


Sexual Orientation

TREATMENT OF THE PARTIES

A SCHOOL MUST TREAT BOTH PARTIES EQUITABLY AND EQUALLY THROUGHOUT THE PROCESS.

This includes supportive measures, investigations, and the grievance process



BIAS AND CONFLICT OF INTEREST

§106.45 (b)(1)(3)

Grievance
process for
formal
complaints of
sexual
harassment

"...that any individual designated by a recipient as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

TITLE IX PERSONNEL

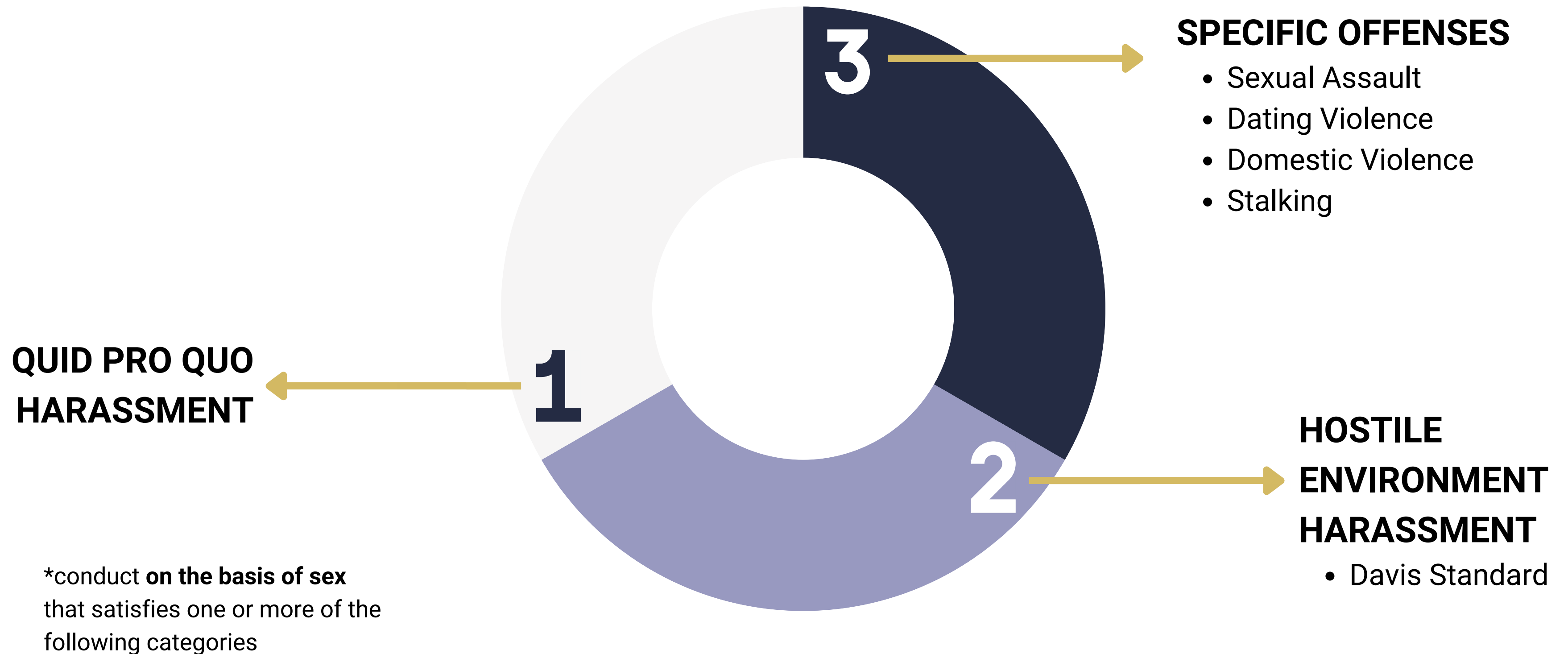


Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

SEXUAL HARASSMENT AND RECIPIENT RESPONSE



SEXUAL HARASSMENT



SEXUAL HARASSMENT

1

QUID PRO QUO

DEFINITION:

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient of an individual's participation in unwelcome sexual conduct.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

DEFINITION:

Unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity.

SEXUAL
HARASSMENT

3

DEFINED
ACTS

SPECIFIC OFFENSES DEFINED UNDER THE FBI'S UNIFORM CRIME REPORTING (U.C.R) PROGRAM.

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

SEXUAL ASSAULT

SEX OFFENSES, FORCIBLE:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

SEX OFFENSES, NONFORCIBLE:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

20 U.S.C. 1092(f)(6)(A)(v)

DATING VIOLENCE

VIOLENCE COMMITTED BY A PERSON:

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(a)(10)

DOMESTIC VIOLENCE

FELONY OR MISDEMEANOR CRIMES OF VIOLENCE COMMITTED BY A CURRENT OR FORMER SPOUSE OR INTIMATE PARTNER OF THE VICTIM:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

34 U.S.C. 12291(a)(8)

STALKING

ENGAGING IN A COURSE OF CONDUCT DIRECTED AT A SPECIFIC PERSON
THAT WOULD CAUSE A REASONABLE PERSON TO:

1

Fear for his or her safety or the safety
of others; or

2

Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

CONSENT



The Regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

RECIPIENT'S RESPONSE

THRESHOLD CRITERIA (ALL FOUR MUST BE MET):



Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

ACTUAL KNOWLEDGE DEFINED

§ 106.30 Definitions

"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"

- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be "written or oral, by observation, via a newspaper article or other means"



Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge

Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge

EDUCATION PROGRAM OR ACTIVITY DEFINED

§ 106.11 Application

Recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient's disciplinary authority.

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct or other policies
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

RECIPIENT'S RESPONSE

Schools must not act in a manner that is deliberately indifferent, meaning:

"...clearly unreasonable in light of the known circumstances."

RECIPIENT'S RESPONSE

QUALIFYING INCIDENTS OF SEXUAL HARASSMENT

- Treat Complainants and Respondents equitably by offering supportive measures

 **WHEN DO THEY APPLY?**

 **WHAT DO THEY INCLUDE?**

- Follow a grievance process that complies with §106.45 of the Title IX Regulations

RECIPIENT'S RESPONSE

QUALIFYING INCIDENTS OF SEXUAL HARASSMENT

The Title IX Coordinator must promptly contact the Complainant to:

1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.

RECIPIENT'S RESPONSE

SUPPORTIVE MEASURES

§ 106.30 Definitions.

"non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed"

- Intended to restore Complainant's access to educational program or activity

RECIPIENT'S RESPONSE

EMERGENCY REMOVAL

-  Safety and risk analysis
-  Immediate threat to physical health or safety
-  Provide Respondent with notice and opportunity to challenge the decision

RECIPIENT'S RESPONSE

ADMINISTRATIVE LEAVE



- Applies to non-student employees

TITLE IX GRIEVANCE PROCESS FOR FORMAL COMPLAINTS



GRIEVANCE PROCESS



BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**TREAT COMPLAINANTS AND
RESPONDENTS EQUALLY**

- Ensure processes do not differ based on status as a Complainant or Respondent
- Communicate rights of the parties

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

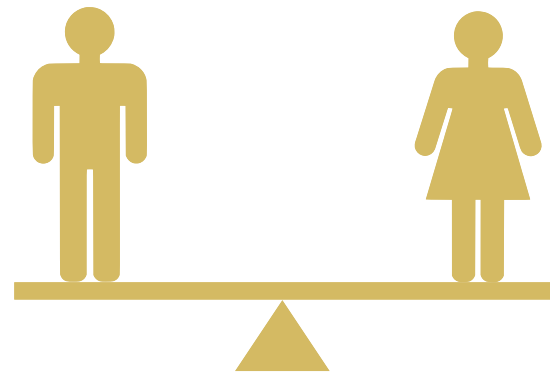


**REQUIRE OBJECTIVE
EVALUATION OF
RELEVANT EVIDENCE**

- Consider both inculpatory and exculpatory evidence
 - Inculpatory = Corroborating evidence
 - Exculpatory = Contradictory evidence
- Do not determine credibility based solely on a person's status as a Complainant, Respondent, or witness

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**REQUIRE TITLE IX
PERSONNEL NOT HAVE BIAS
AND CONFLICT OF INTEREST**

- Title IX personnel must be trained
- Title IX personnel must *“not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent”*
- Title IX personnel should consider recusing themselves if they are unable to serve impartially.

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

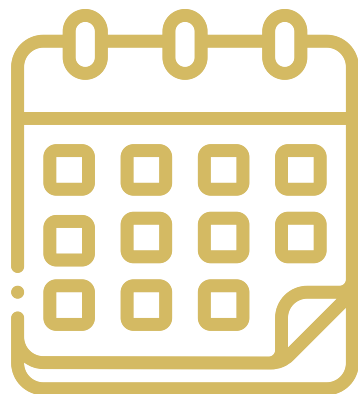


**INCLUDE A PRESUMPTION
THAT RESPONDENT IS NOT
RESPONSIBLE UNTIL A
DETERMINATION IS MADE**

- Punitive measures may not be put in place until a finding of responsibility has been issued
- Think "*innocent until proven guilty*" in the criminal justice system

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

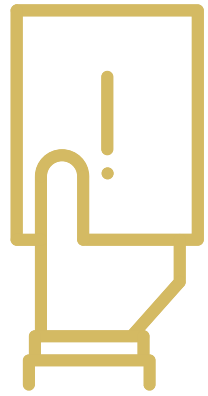


**INCLUDE REASONABLY
PROMPT TIME FRAMES**

- Title IX policies should include reasonably prompt time frames for filing and resolving appeals, informal resolution processes, and more
- The grievance process may be delayed for good cause, which could include:
 - Absence of a party or party's advisor
 - Request from law enforcement to pause for concurrent investigation
 - Acquiring accommodations such as language assistance, disabilities

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**DESCRIBE RANGE OF
POSSIBLE DISCIPLINARY
SANCTIONS AND REMEDIES**

- Ensure these ranges are communicated in policy and procedural documents

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

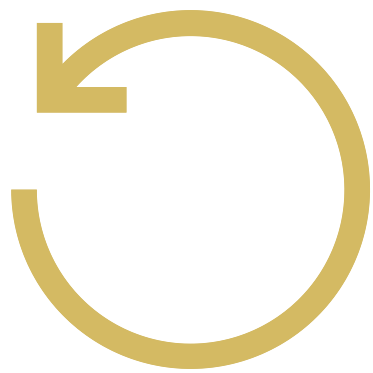


STATE THE STANDARD OF EVIDENCE

- A school may elect to apply either:
 - The preponderance of evidence (“more likely than not”) standard; or
 - The clear and convincing evidence (“highly probable”) standard
- The same standard of evidence must be used for:
 - Formal complaints against students as is used for formal complaints against employees, including faculty
 - All formal complaints of sexual harassment

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**INCLUDE THE PERMISSIBLE
BASES FOR APPEAL**

- Title IX allows for appeals of the final determination of responsibility

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**DESCRIBE THE RANGE OF
SUPPORTIVE MEASURES
AVAILABLE**

- Ensure these ranges are communicated in policy

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**NOT REQUIRE OR RELY ON
PRIVILEGED INFORMATION,
UNLESS WAIVED**

- This would include information such as:
 - Medical records
 - Academic records protected under FERPA
 - Conversations with privileged individuals such as counselors or clergy

TITLE IX SOLUTIONS, LLC

UNDERSTANDING TRAUMA

Dr. Jessica Groleau, Ph.D



IN THIS CHAPTER



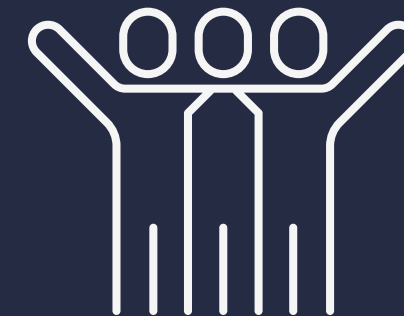
INTRODUCTION TO
TRAUMA



RECOGNIZING
PERSONAL BIAS



TRAUMA-INFORMED
COMMUNICATION



PROMOTING
EMPOWERMENT



UNDERSTANDING
TRAUMA AS AN
COORDINATOR

SPEAKER



DR. JESSICA GROLEAU, PH.D

LICENSED CLINICAL PSYCHOLOGIST

UNDERSTANDING TRAUMA



WHAT IS TRAUMA?

DEFINITION OF TRAUMA

- Subjective
- Real or perceived threat
- Manifests differently in each person

CONSIDER EACH PARTY'S EXPERIENCES

- One or both Parties have likely already experienced trauma, either:
 - Prior to the incident (childhood experiences, family history, collective memory, etc.)
 - During the incident
 - As a result of being accused of the alleged incident
 - Through a combination of these experiences
- One or both Parties may be currently experiencing trauma during the Title IX grievance process

NEUROBIOLOGY OF TRAUMA

BRAIN STEM ("REPTILIAN BRAIN")

- Involuntary survival processes (heartbeat, breathing, etc.)

LIMBIC SYSTEM ("EMOTIONAL BRAIN")

- Regulates the body's stress response
- Plays an important role in memory and learning

FRONTAL LOBES ("EXECUTIVE BRAIN")

- Responsible for cognitive skills including ability to rationalize, plan, self-monitor, and control one's responses
- Important for voluntary movement

NEUROBIOLOGY OF TRAUMA

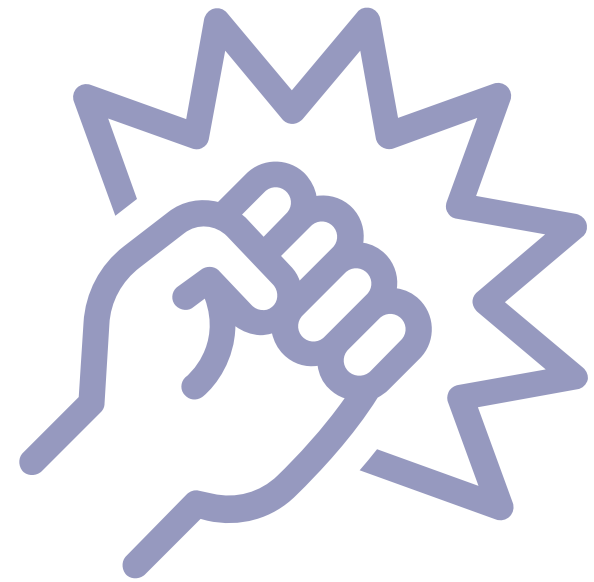
LIMBIC SYSTEM RESPONSE

- Amygdala (“fear center”) is activated
 - All resources are re-directed toward survival

DISCONNECTION OF FRONTAL LOBES

- Executive functioning goes “offline”
- Interferes with cognition, voluntary muscle movement, and ability to process the experience later on
 - This is functional and protective

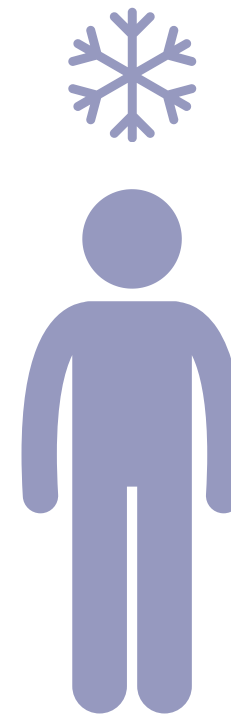
HUMAN STRESS RESPONSE



FIGHT



FLIGHT

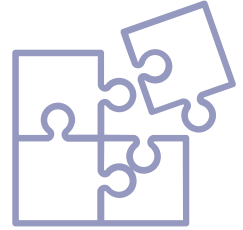


FREEZE

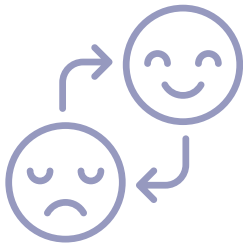


FAWN

WHAT DOES THIS MEAN FOR TITLE IX?



Fragmented, incomplete memories are common



Emotional dysregulation is expected

- Can appear in a variety of ways: inappropriate affect (laughter), extreme anxiety, numbing/disconnection



The fawn or freeze responses may appear to be consent



Discussing the event is retraumatizing

- Try to limit the number of interviews, questions, etc.

RECOGNIZING PERSONAL BIAS



PERSONAL BIAS

A TENDENCY, INCLINATION, OR PREJUDICE TOWARD OR AGAINST SOMETHING OR SOMEONE.

- Biases are universal
 - We are all products of our own personal histories, cultures, and many other factors that shape the ways in which we see the world
 - Biases are automatic and often outside of conscious control
- Biases are not always bad
 - i.e. an inclination toward healthy lifestyle behaviors
- Biases can be based on stereotypes or inaccurate information



It is crucial that you understand your biases in order to be most effective in your role.

BIAS VS. CONFLICT OF INTEREST

BIAS

- Having a personal history with sexual misconduct
- Holding stereotyped gender beliefs about sexual violence
 - i.e. perpetrators are males
- Internalization of rape culture
 - Often leads to skepticism or blaming of the Complainant

CONFLICT OF INTEREST

- Having a personal relationship with one or more parties
- Holding multiple relationships with one or more parties
- There is any way in which you could benefit (or be harmed) from the outcome of the investigation

RECOGNIZING PERSONAL BIAS

IS YOUR PERSONAL BIAS AFFECTING YOUR ABILITY TO BE OBJECTIVE?

✓ Introspection

- Implicit Bias Tests

- <https://implicit.harvard.edu/implicit/selectatest.html>

✓ Having implicit bias does not make you a bad person (we all have it)

- Managing your implicit biases will make you a better Title IX professional

✓ Questions to ask yourself:

- What does the information at hand cause me to believe about those involved? Why?

- When should an individual recuse themselves from a case because they are unable to overcome personal bias?

IMPLICIT BIAS TESTS

Project Implicit

- Race IAT ('Black - White' IAT)
- Weapons IAT ('Weapons - Harmless Objects' IAT)
- Age IAT ('Young - Old' IAT)
- Transgender IAT ('Transgender People - Cisgender People' IAT).
- Gender-Science IAT ('Gender - Science' IAT)
- Gender-Career IAT ('Gender - Career' IAT)
- Asian IAT ('Asian - European American' IAT)
- Disability IAT ('Physically Disabled - Physically Abled' IAT)
- Native IAT *Native American* ('Native - White American' IAT).

Project Implicit

- Native IAT *Native American* ('Native - White American' IAT).
- Presidents IAT ('Presidential Popularity' IAT)
- Religion IAT ('Religions' IAT).
- Weight IAT ('Fat - Thin' IAT)
- Arab-Muslim IAT ('Arab Muslim - Other People' IAT).
- Skin-tone IAT ('Light Skin - Dark Skin' IAT)
- Sexuality IAT ('Gay - Straight' IAT)

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RECOGNIZING PERSONAL BIAS

IS YOUR PERSONAL BIAS AFFECTING YOUR ABILITY TO BE OBJECTIVE?

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✓ Questions to ask yourself:

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- When should an individual recuse themselves from a case because they are unable to overcome personal bias?

TRAUMA-INFORMED COMMUNICATION



FOUNDATIONS OF A TRAUMA-INFORMED APPROACH



EMPATHY

- The ability to understand and share the feelings of another
 - Doesn't mean that you fully "get it" – because you don't
 - You can try to put yourself in your party's shoes
- Not the same as sympathy!
 - Sympathy is rarely helpful in these situations
 - Most trauma survivors report that sympathy exacerbates feelings of shame/embarrassment

COMMUNICATING EMPATHY

“I can see how painful this is for you to talk about.”

“That sounds incredibly scary.”

“There are resources here on campus to support you through this.”

VALIDATION

Recognition or affirmation that a person or their feelings, opinions, and experiences are real or worthwhile.

DO

Share your own similar reactions, if you have them:

"I would feel really angry too."

"It makes sense that you would feel that way."

DON'T

Tell someone how they should feel:

"You shouldn't let this bother you so much."

Question their responses:

"Are you sure that is what happened?"

Validation ≠ Agreement

ACTIVE LISTENING

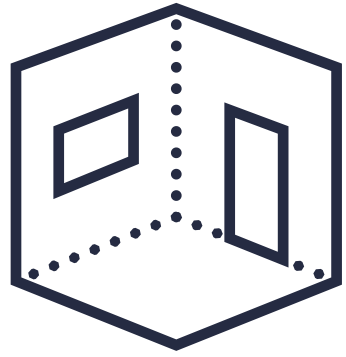
A COMMUNICATION TECHNIQUE THAT SERVES THE FOLLOWING PURPOSES:

1. Ensures that you understand what the other person is saying accurately
2. Communicates to the other person that you are listening

STRATEGIES FOR ACTIVE LISTENING

- Avoid distractions
 - Cell phones, emails, knocks on the door
- Use frequent brief paraphrases of what you heard
- Use nonverbal cues
 - Nodding, smiling or frowning, leaning forward
- Remain neutral and nonjudgmental
- Use phrases to communicate your desire to understand:
 - *"Did I understand that correctly?"*
 - *"I want to make sure I am hearing you."*
- Ask open-ended questions:
 - *"Can you tell me more about..."*

ADDITIONAL STRATEGIES



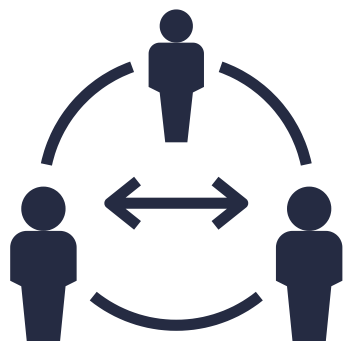
CONSIDER THE ENVIRONMENT

- Allow each Party to choose the meeting place, if possible
- Consider comfortable seating, tissues, water, privacy, etc.



FOCUS ON EACH PARTY AND THEIR NEEDS

- Refrain from sharing own stories & experiences
- Create an open space for them to talk (no judgement)
- Aim to understand each Party's perspective



KEEP A HEALTHY EMOTIONAL DISTANCE

- Self-care is crucial
- Boundaries are okay (and even healing!)
- Direct each Party to campus resources that can provide support

DE-ESCALATION

CONFRONTATION IS POSSIBLE

- Title IX processes may be intense, and emotions may run high
- Confrontation may occur between you and either Party or their Advisor

STRATEGIES FOR DE-ESCALATION

- Keep personal emotions in check
- Create physical space
- Allow for silence & patience for decisions
- Practice validation, active listening & empathy

PROMOTING EMPOWERMENT



EMPOWERMENT

EMPOWERMENT = VOICE AND CHOICE

- ① What could empowerment look like for each Party?
- ② How can you, as an administrator in the Title IX process, identify resources to help empower a Party?
 - You need to be neutral and objective, but you can refer each Party to other sources of support or advocacy
- ③ What may each Party consider to be possible obstacles to empowerment?
- ④ How may you address them?

TOOLS FOR EMPOWERMENT

ASK THE PARTY:

How are you feeling?

Do you feel safe?

How can I help you feel safer?

What do you need right now?

What do you need throughout the duration of the Title IX process?

How do you feel about participating in the Title IX process?

What steps of the Title IX process concern you?



Remember the foundations of empathy, validation, and listening.
How can you best support each Party and address their needs?

UNDERSTANDING TRAUMA AS A COORDINATOR





COORDINATOR QUESTION AND ANSWER

1. What can I do to minimize re-traumatization throughout the Title IX process?
2. What tips do you have for managing my own stress in this role?

TITLE IX SOLUTIONS, LLC

TITLE IX INCIDENT EVALUATION

IN THIS CHAPTER



CONDUCTING A TITLE IX
INCIDENT EVALUATION



UNDERSTANDING
SAFETY & RISK
ASSESSMENTS



SPEAKER

KATHRYN STATZ

CONSULTANT & INVESTIGATOR

CONDUCTING A TITLE IX INCIDENT EVALUATION



TITLE IX INCIDENT EVALUATIONS

ALSO REFERRED TO AS A "PRELIMINARY ASSESSMENT" OF AN INCIDENT

WHO

Conducted by
the Title IX
Coordinator

WHAT

Analysis of the
alleged incident to
determine if the
misconduct could be
considered sexual
harassment under
Title IX, if proven

WHEN

- Upon learning of
an alleged incident
- During and after
the intake meeting
- Throughout the
Title IX process

WHY

To determine how
the school will
address the alleged
incident and identify
which grievance
procedures to
implement

HOW

- First, consider whether the conduct was sex-based, including, based upon gender identity and/or sexual orientation.
- If so, utilize the four "threshold criteria" outlined in the Title IX Regulations.

1

DOES THE SCHOOL HAVE "ACTUAL KNOWLEDGE"?

RECALL HOW THE TITLE IX REGULATIONS DEFINE THIS:

“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.”

2

DID THE INCIDENT OCCUR IN THE UNITED STATES?

INCIDENTS MAY OCCUR DURING SCHOOL-SPONSORED PROGRAMS ABROAD. HOWEVER, THE DEPARTMENT OF EDUCATION REQUIRES INCIDENTS TO OCCUR IN THE U.S. TO BE CONSIDERED "SEXUAL HARASSMENT" UNDER TITLE IX.

YES

Incident may be considered Title IX sexual harassment.

NO

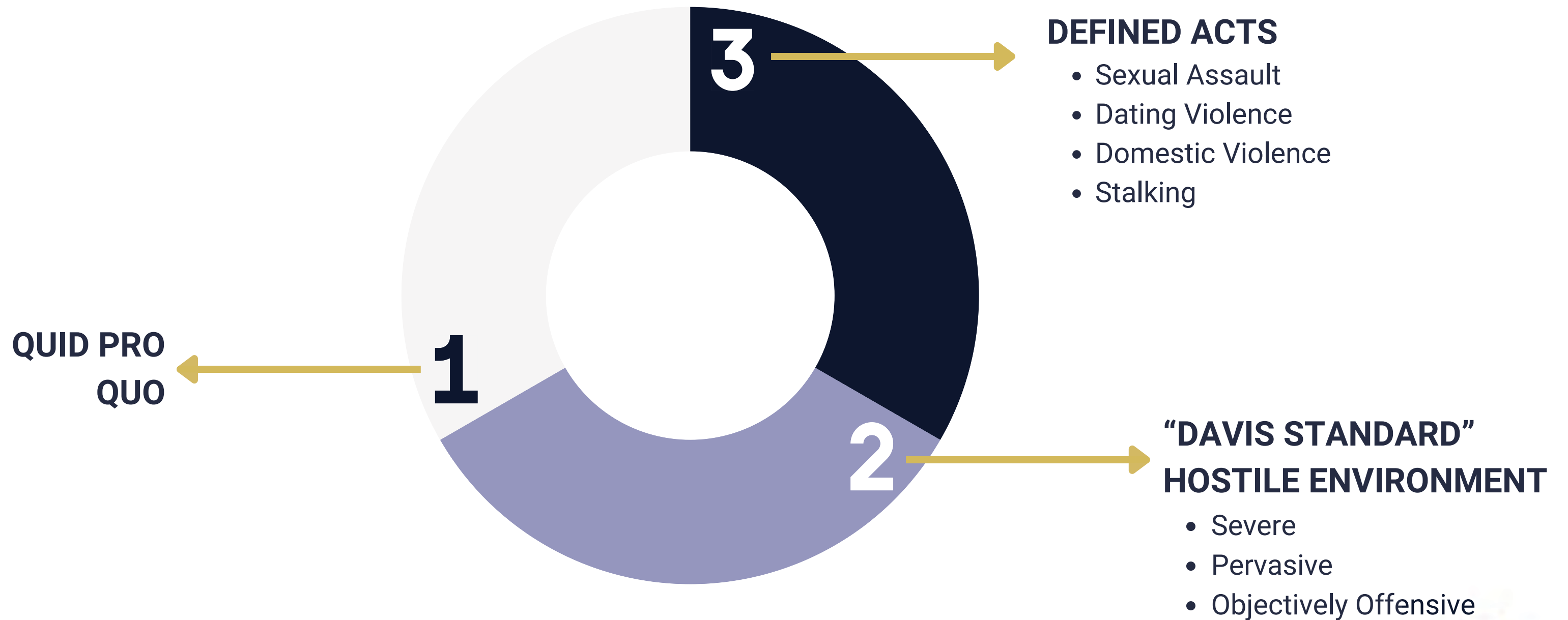
Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.

3

WOULD THE INCIDENT CONSTITUTE SEXUAL HARASSMENT?

SEXUAL HARASSMENT IS DEFINED AS CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THREE TYPES OF BEHAVIOR:



3

WOULD THE INCIDENT CONSTITUTE SEXUAL HARASSMENT?

KEEP IN MIND THAT THIS IS A PRELIMINARY ASSESSMENT OF THE INCIDENT - NOT A DEFINITIVE DETERMINATION AS TO WHETHER THE RESPONDENT IS RESPONSIBLE FOR THE ALLEGED MISCONDUCT.

YES

Incident may be considered Title IX sexual harassment.

NO

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.

4

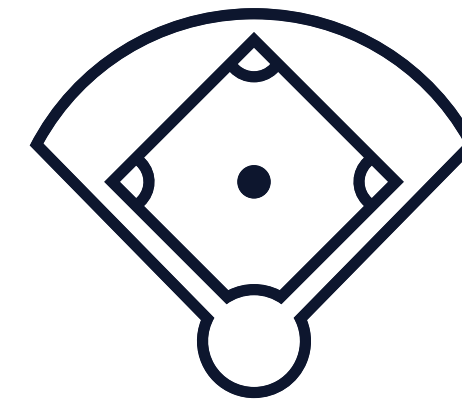
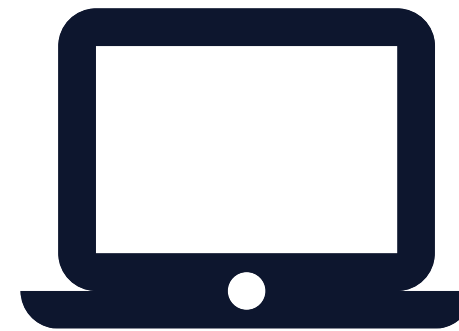
DID THE INCIDENT OCCUR WITHIN THE SCHOOL'S EDUCATION PROGRAM OR ACTIVITY?

LOCATIONS, EVENTS, OR CIRCUMSTANCES OVER WHICH:

Institution exercised substantial control over the Respondent

&

Institution exercised substantial control over the context in which the sexual harassment occurred



4

DID THE INCIDENT OCCUR WITHIN THE SCHOOL'S EDUCATION PROGRAM OR ACTIVITY?

THIS CAN BE A DIFFICULT QUESTION TO ANSWER AT THIS STAGE OF THE PROCESS.

YES

Incident may be considered Title IX sexual harassment.

NO

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.

WHAT IF I'M UNSURE ABOUT A TITLE IX THRESHOLD CRITERION?



CONSULT WITH OTHER TITLE IX ADMINISTRATORS

- Discuss general details within the confidential circle of colleagues.



REVIEW PAST TITLE IX CASES

- Have cases with similar circumstances been addressed under Title IX? Why or why not?



ERR ON THE SIDE OF CAUTION

- It is preferable to initiate the Title IX grievance process and learn more about the incident as the process unfolds.

**WHAT IF I
FIND OUT A
CRITERION
ISN'T MET
AFTER
INITIATING
THE TITLE IX
PROCESS?**



**THE SCHOOL MAY BE REQUIRED TO
DISMISS THE FORMAL COMPLAINT
UNDER TITLE IX**

- Upon dismissal of a formal complaint, the school must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties.

IF TITLE IX DOES NOT APPLY

- Identify other school policies that may address the alleged misconduct
 - Student/employee handbook, nondiscrimination or bullying policy, etc.
- Offer the Complainant supportive measures
- Invite the Complainant to an intake meeting
- Keep an open mind - you may learn more about an incident after meeting with the Complainant and then determine that Title IX does apply to the incident
- Document your evaluation process and next steps

DISMISSAL

**SCHOOL MUST DISMISS IF THE CONDUCT ALLEGED
IN THE FORMAL COMPLAINT:**

Would not
constitute sexual
harassment as
defined in
§106.30 even if
proved

Did not occur in
the recipient's
education
program or
activity

Did not occur
against a person
in the United
States



Dismissal does not preclude the school from investigating and adjudicating under another provision of the school's Code of Conduct.

DISMISSAL

SCHOOL MAY DISMISS IF THE CONDUCT ALLEGED IN THE FORMAL COMPLAINT:

Complainant
notifies the Title IX
Coordinator that
they would like to
withdraw the formal
complaint

The Respondent
is no longer
enrolled or
employed by the
recipient

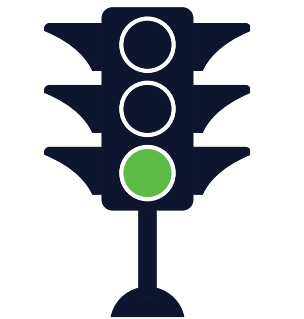
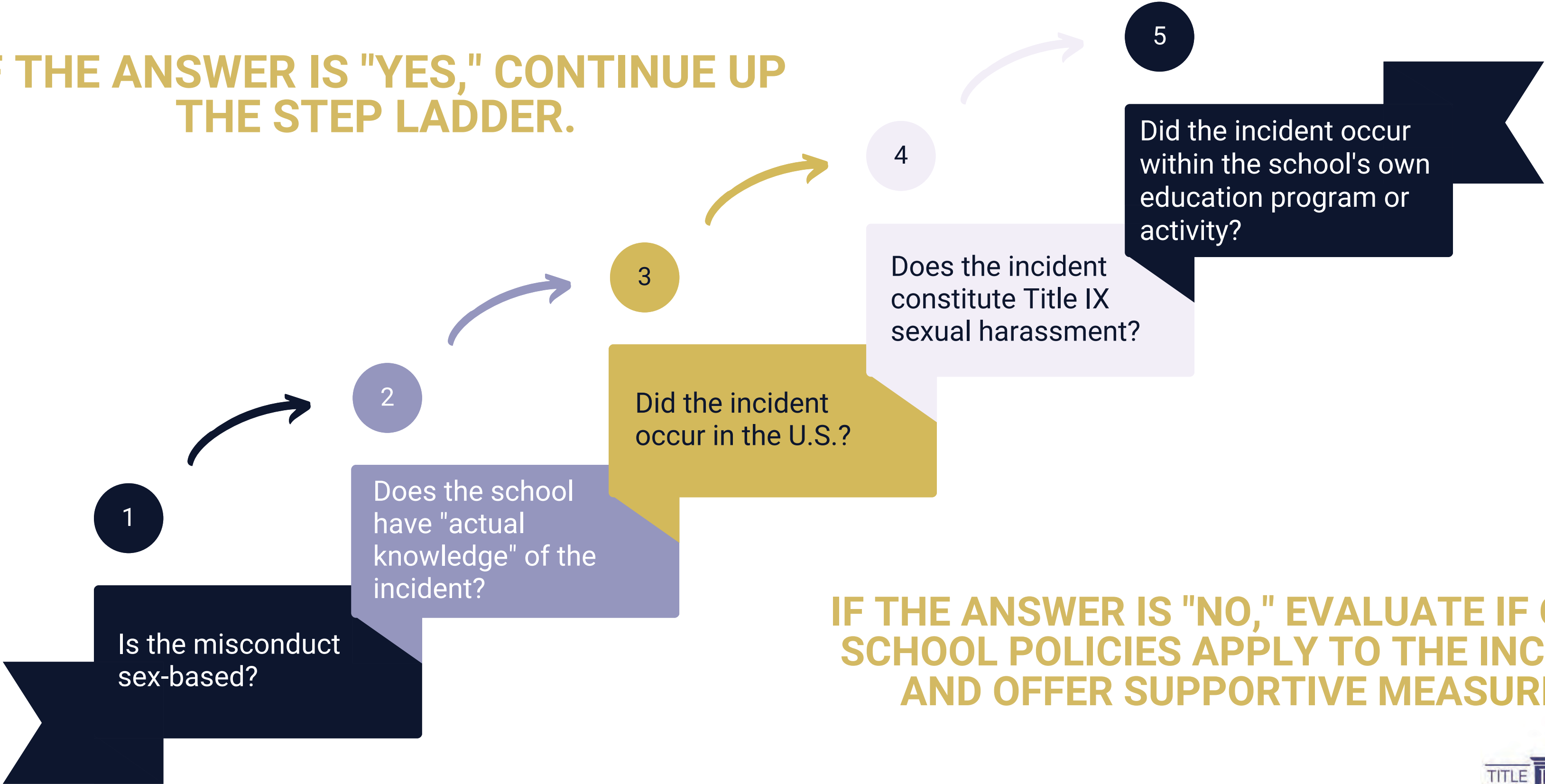
Specific
circumstances
prevent the recipient
from gathering
evidence sufficient
to reach a
determination



A complaint will not be dismissed because a Complainant remains at or leaves the school.

LET'S PRACTICE!

IF THE ANSWER IS "YES," CONTINUE UP THE STEP LADDER.



Title IX
Grievance
Process

IF THE ANSWER IS "NO," EVALUATE IF OTHER SCHOOL POLICIES APPLY TO THE INCIDENT AND OFFER SUPPORTIVE MEASURES.

- Joseph reports that his classmate, Joanna, pulled his backpack and made him fall on the bus.
- Melissa told her teacher that Mr. Jones, the Math Olympiad advisor, asked her to sit on his lap yesterday.
- Mr. Smith is an English teacher. Last weekend, he went to a concert with the Associate Director of Human Resources. On Monday, Mr. Smith reported that the Associate Director of Human Resources sexually assaulted him in the car on the way home from the concert.
- Jessica's brother reported that her boyfriend assaulted Jessica last night.

- Joseph reports that his classmate, Joanna, pulled his backpack and made him fall, **and then kissed him** on the bus.
- Melissa told her teacher that Mr. Jones, the Math Olympiad advisor, asked her to sit on his lap yesterday **before he would let her sign up for math team.**
- Mr. Smith is an English teacher. Last weekend, he went to a concert with the Associate Director of Human Resources. On Monday, Mr. Smith reported that the Associate Director of Human Resources sexually assaulted him in the car on the way home from the concert **and is now sending him explicit messages to his school email address.**
- Jessica's brother reported that her boyfriend assaulted Jessica **in the stairwell during the on-campus basketball game last night.**

UNDERSTANDING SAFETY AND RISK ASSESSMENTS



SAFETY & RISK ASSESSMENT

BASED ON THE DETAILS OF A REPORT, IT MAY BE NECESSARY FOR THE TITLE IX COORDINATOR TO CONDUCT A SAFETY AND RISK ASSESSMENT OR CONTACT THE APPROPRIATE AUTHORITIES AT THEIR INSTITUTION TO CONDUCT SUCH AN ASSESSMENT

- Required before Emergency Removal of a Respondent
- An individualized safety and risk analysis conducted by the Title IX Coordinator to determine if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
- If Emergency Removal is necessary, the Title IX Coordinator must provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal



Document the basis for this individualized outcome with facts specific to the report

TITLE IX SOLUTIONS, LLC

REPORTS AND INTAKE MEETINGS



IN THIS CHAPTER



TITLE IX REPORTING



INTAKE MEETINGS



COMPLAINTS

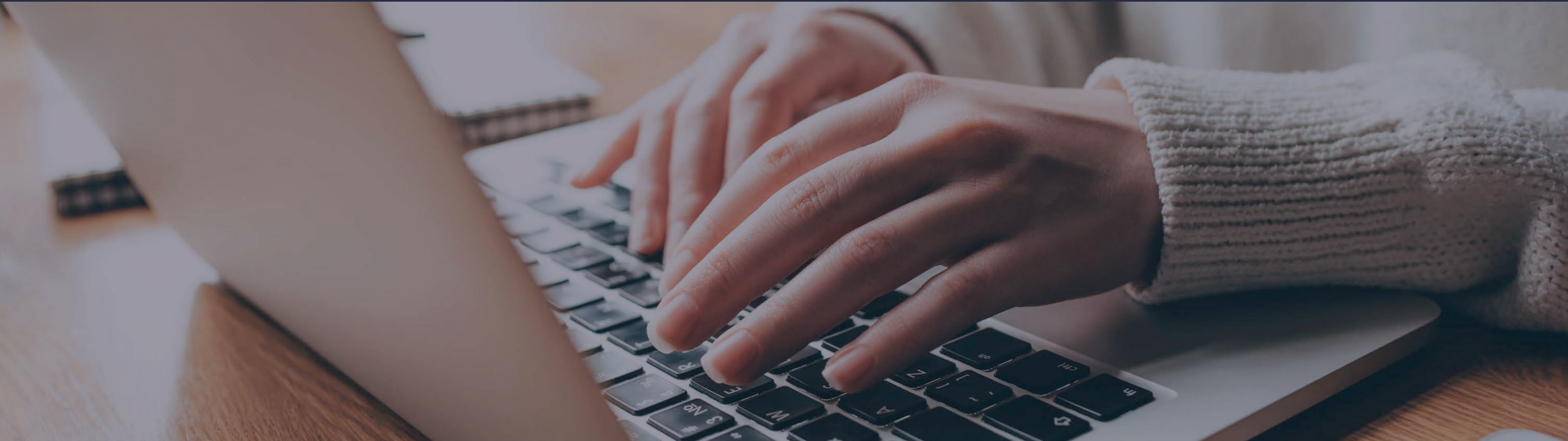


SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR
TITLE IX SOLUTIONS

TITLE IX REPORTING



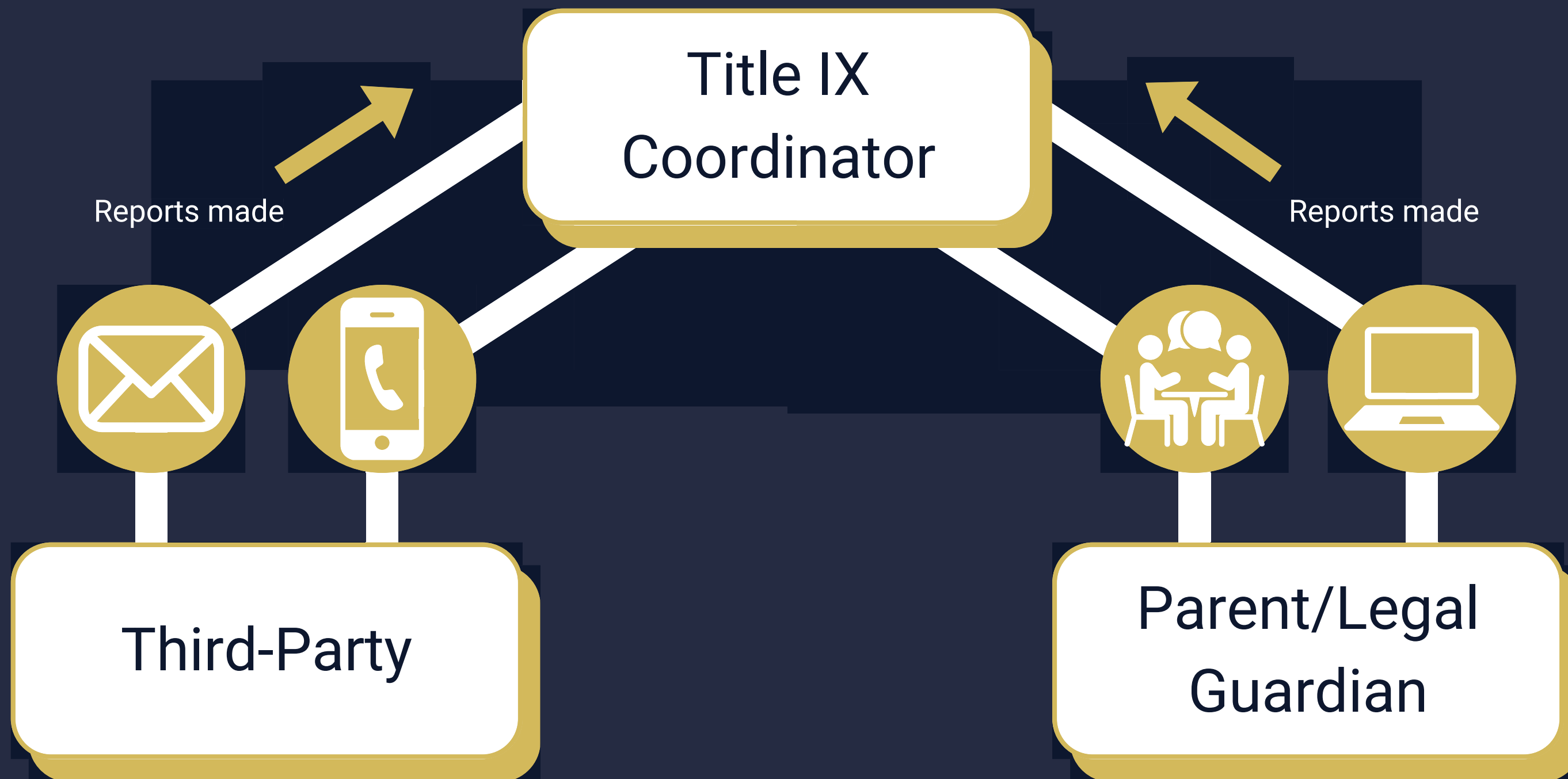
REPORTING INCIDENTS OF SEXUAL HARASSMENT

AS STATED IN THE TITLE IX
REGULATIONS, ANY PERSON MAY REPORT
SEX DISCRIMINATION, INCLUDING SEXUAL
HARASSMENT, TO THE TITLE IX COORDINATOR.

"Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator."

34 CFR §106.8(a)

EXTERNAL

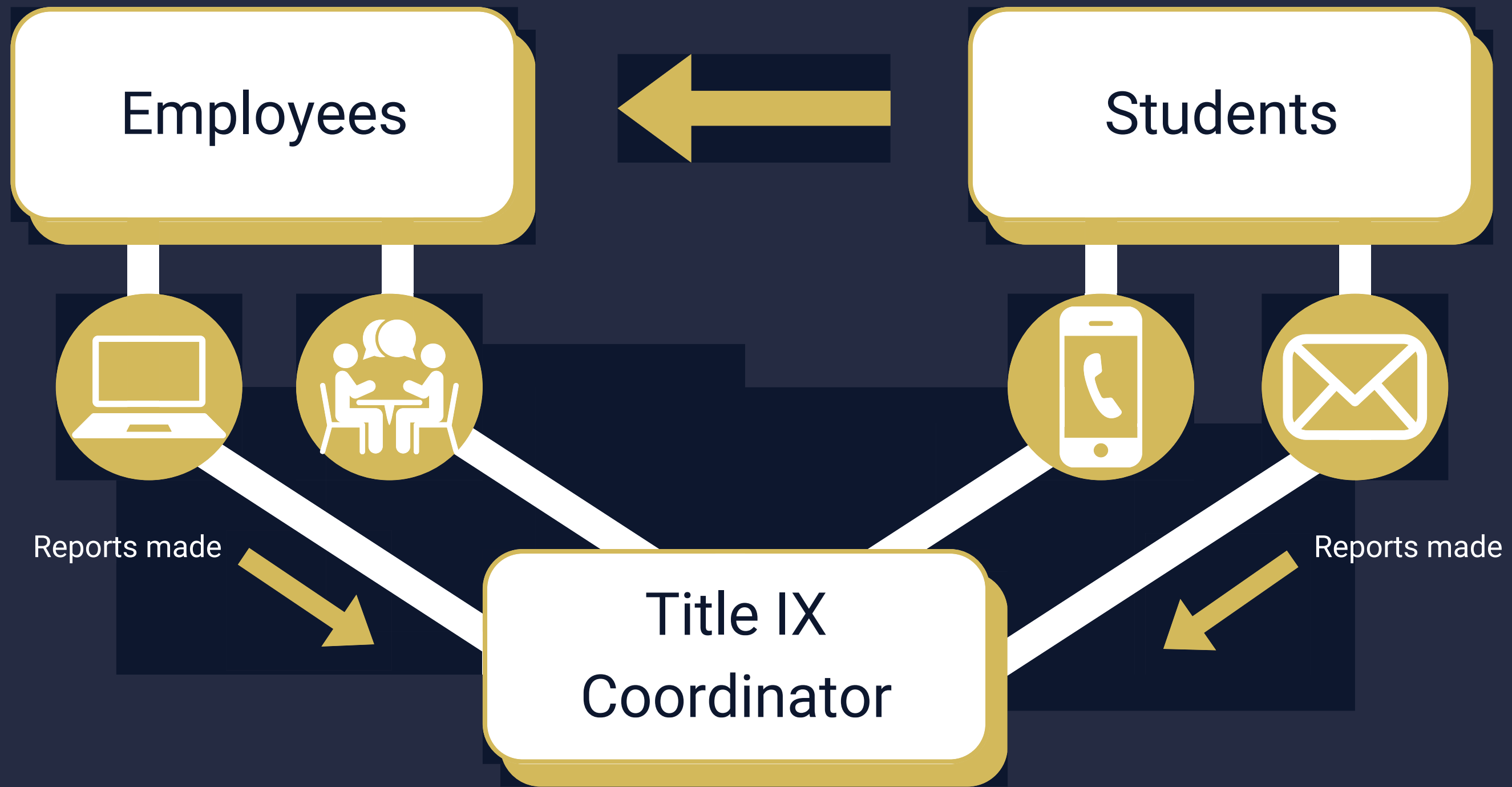


EXTERNAL REPORTING CONSIDERATIONS



Consider the various individuals outside of the school setting who may report incidents of sexual harassment to your Title IX Coordinator.

- Who are they?
- What would their experience be if they sought out information on how to report Title IX sexual harassment?
- What do you want them to know?
- What information do you want them to have access to?
- How can you make the process of reporting easier for them?



INTERNAL

INTERNAL REPORTING CONSIDERATIONS



Consider how many employees you have at your institution.

- From the top down, what is your level of confidence that each employee could articulate their reporting responsibilities under Title IX?
- How will you provide training on these responsibilities?



Consider the way your students interact with each type of employee at your institution.

- Do students know employee reporting requirements under Title IX?
- How would you communicate this to them?

REPORTING AT POSTSECONDARY

“For all recipients, notice to the recipient’s Title IX Coordinator or to ‘any official of the recipient who has authority to institute corrective measures on behalf of the recipient’ (referred to herein as ‘officials with authority’) conveys actual knowledge to the recipient and triggers the recipient’s response obligations. Determining whether an individual is an ‘official with authority’ is a legal determination that depends on the specific facts relating to a recipient’s administrative structure and the roles and duties held by officials in the recipient’s own operations.”

(pp.50-51 Preamble to the Title IX Regulations)



Consult institutional policy and other relevant state laws to determine who must report and what they must report.

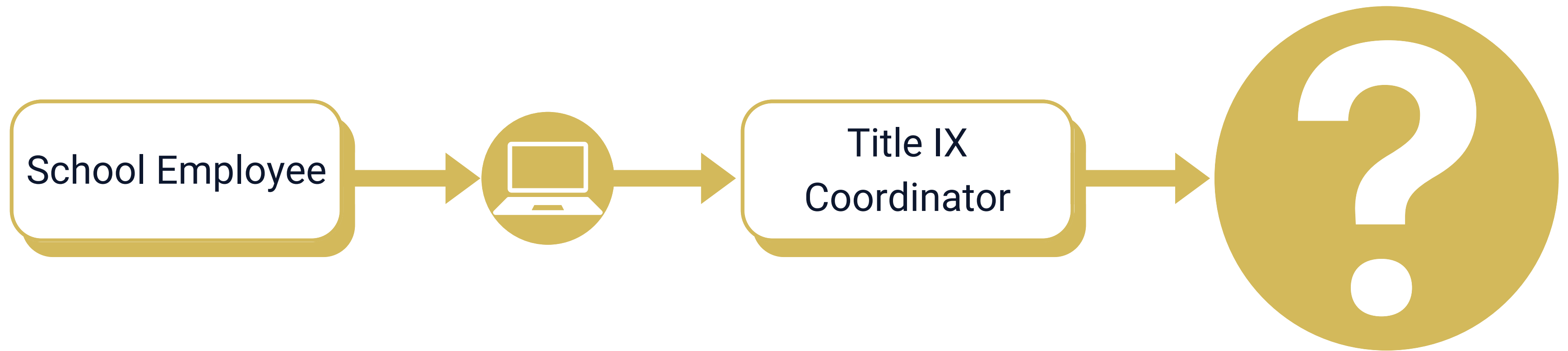
REPORTING AT K-12 INSTITUTIONS



"Notice of sexual harassment to elementary and secondary school employees, who may include principals, teachers, school counselors, coaches, school bus drivers, and all other employees will obligate the recipient to respond to Title IX sexual harassment."

2020 Preamble to the Title IX Regulations, p. 332-333

FOLLOWING A REPORT



What **must** the Title IX Coordinator do next to ensure the school is not acting with deliberate indifference?

WHAT DOES TITLE IX REQUIRE?

Hint: §106.44 Recipient's response to sexual harassment provides the answer.

The Title IX Coordinator must...

1 Promptly contact the Complainant to discuss the availability of supportive measures

2 Consider the Complainant's wishes with respect to supportive measures

3 Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint

4 Explain to the Complainant the process for filing a formal complaint



TRAINING POINT

**HOW SHOULD YOU GO
ABOUT THIS?**

LETTER OF THE LAW VS. SPIRIT OF THE LAW

THE REGULATIONS, AS THEY'RE WRITTEN, COULD BE SATISFIED IN AN EMAIL WITH THE FOLLOWING:

- A written statement or graphic sent to the Complainant explaining the availability of supportive measures and providing a few examples
- A brief, written statement explaining the process for filing a formal complaint
- A sentence explaining the availability to utilize supportive measures even if a formal complaint is not filed.

If the Complainant responded to this email and the Coordinator considered their wishes as they relate to supportive measures, they would technically be compliant.

LETTER OF THE LAW VS. SPIRIT OF THE LAW

HOWEVER, COULD AND TECHNICALLY
ARE NOT BEST PRACTICE.

"...the Department has tailored a deliberate indifference standard for administrative enforcement purposes by adding specific obligations that every recipient must meet as part of every response to sexual harassment, including offering supportive measures to Complainants through the Title IX Coordinator engaging in an interactive discussion with the Complainant about the complainant's wishes, and explaining to the Complainant the option and process for filing a formal complaint."

(p. 224 Preamble to the Title IX Regulations)

This is meant to be a thoughtful, in-person discussion!

INTAKE MEETINGS



GRIEVANCE PROCESS



**INTAKE &
REVIEW**

FORMAL
COMPLAINT

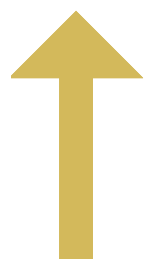
NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

1 Promptly
contact the
Complainant to
discuss the availability
of supportive
measures



QUESTIONS TO CONSIDER:

1. What is considered prompt?
2. How will I initiate contact?
3. Who do I need to include in my initial contact?
4. What will be said in my initial contact?
5. What if the Complainant does not respond to my attempts to contact?

1. WHAT IS CONSIDERED PROMPT?

As soon as you receive the report, you should reach out. If the report is received after business hours, on the weekend, or a holiday, contact on the first business day you return. However, if the report suggests an immediate threat or safety risk, ensure immediate communication.

2. HOW WILL I INITIATE CONTACT?

Best practice is to initiate contact in writing for recordkeeping, but in some cases, you may need to make a phone call.

*Remember to document date and time, as well as what was shared.

3. WHO DO I NEED TO INCLUDE IN MY INITIAL CONTACT?

The Complainant, as well as their parent or legal guardian if the party is a minor.

4. WHAT WILL BE SAID IN MY INITIAL CONTACT?

Introduction, brief explanation of Title IX and your reason for reaching out, request for meeting, and helpful documents (processes, policy, list of supportive measures)

5. WHAT IF THE COMPLAINANT DOES NOT RESPOND TO MY ATTEMPTS TO CONTACT?

- Vary your attempts to contact and document all attempts
 - Email, phone calls to Complainant and parent, final attempt with a trackable letter or email
 - Some case management systems provide thorough tracking of all communications
- Decide how many attempts you will make before closing the case for non-contact
- Ensure you have at least provided information about the availability of supportive measures, as well as the process for filing a formal complaint as those are required under Title IX

2

Consider
the Complainant's
wishes with respect
to supportive
measures



QUESTIONS TO CONSIDER:

1. How can I inform the Complainant of which supportive measures may be available?
2. How can I ensure supportive measures are available?
3. What does it mean to "consider" their wishes?
4. What materials can I send home with the Complainant?

1. HOW CAN I INFORM THE COMPLAINANT OF WHICH SUPPORTIVE MEASURES MAY BE AVAILABLE?

Provide a general list or infographic of the areas in which supportive measures may be available and listen to their concerns. Help Complainants understand that the list is not exhaustive, and other options may be available after discussing their individual needs.

2. HOW CAN I ENSURE SUPPORTIVE MEASURES ARE AVAILABLE?

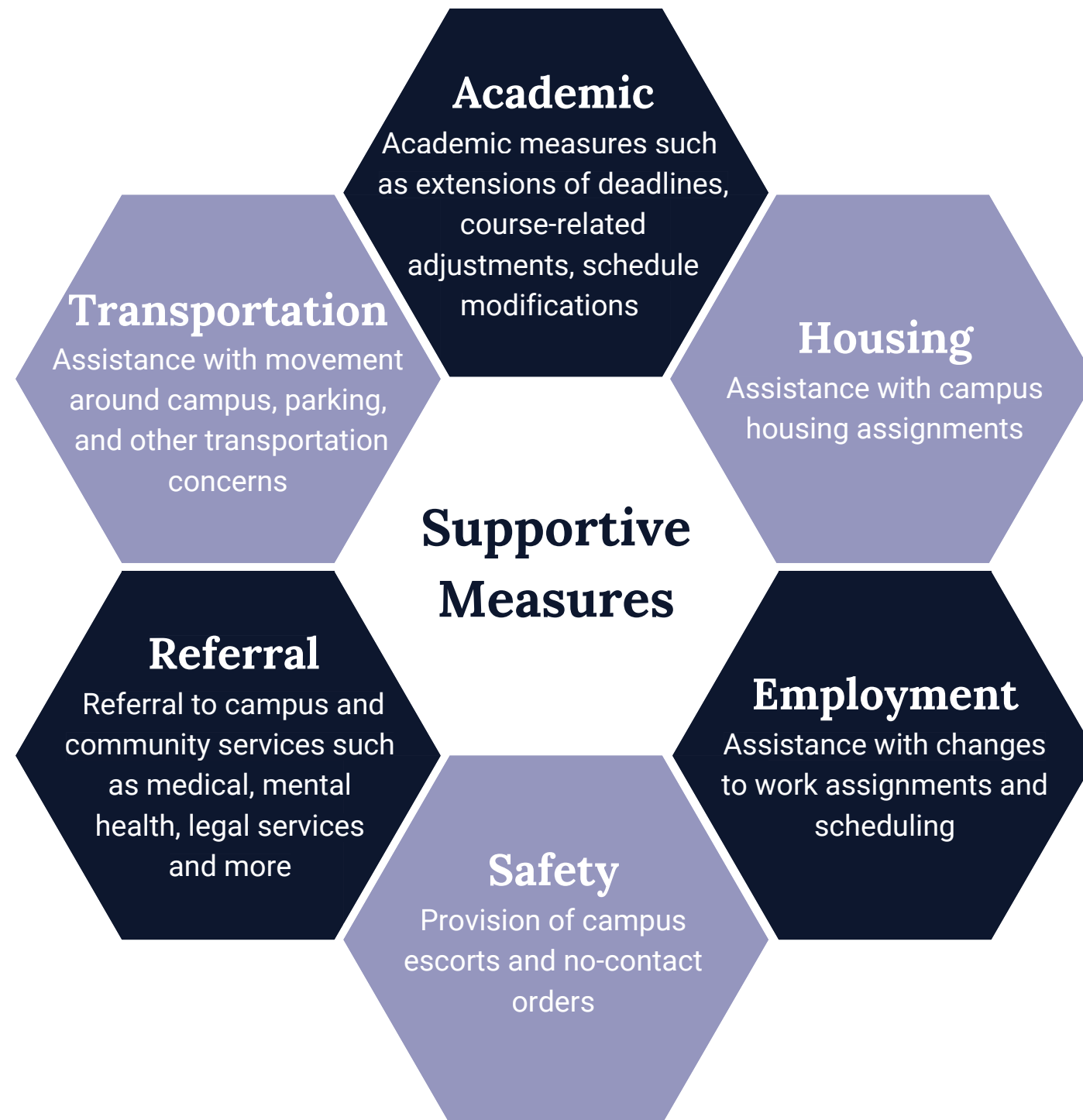
Best practice is to initiate contact in writing for recordkeeping, but in some cases, you may need to make a phone call.

*Remember to document date and time, as well as what was shared.

3. WHAT DOES IT MEAN TO "CONSIDER" THEIR WISHES?

Be mindful of their requests. Do not promise any supportive measure until you know it is feasible. Complainants may request measures that are not possible.

4. WHAT MATERIALS CAN I SEND HOME WITH THE COMPLAINANT?



Handout containing

- Explanation of supportive measures
- Information regarding your role in implementing any supportive measures needed
- Range of supportive measures available
- Helpful campus and community resources

3

Inform the
Complainant
of the availability of
supportive measures
with or without the
filing of a formal
complaint



QUESTIONS TO CONSIDER:

1. How will I communicate this?
2. How long will these supportive measures need to be in place?

1. HOW WILL I COMMUNICATE THIS?

After explaining the process for filing a formal complaint and the grievance process, simply let the Complainant know they can receive supportive measures by working with you, even if they choose not to file a formal complaint. Explain that you are a resource for them, and they have the right to decide if they would like to file a formal complaint.

2. HOW LONG WILL THESE SUPPORTIVE MEASURES NEED TO BE IN PLACE?

There is no specific expiration date for supportive measures. If a formal complaint is not filed, the implementation of supportive measures will need to be a continued conversation between the Title IX Coordinator and the Complainant. They may be impacted by the Respondent's presence on campus. If a formal complaint is filed, supportive measures are available during the grievance process and after the conclusion if the Respondent is found not responsible for violating the Title IX policy. Remedies are available to Complainants if a Respondent is found responsible.

4

Explain to
the Complainant
the process for
filing a formal
complaint



QUESTIONS TO CONSIDER:

1. How can I best explain this process?
2. What information does the Complainant need to know to make the most informed decision?
3. How will I communicate the school's decision to initiate a formal complaint when the Complainant does not wish to move forward?

1. HOW CAN I BEST EXPLAIN THIS PROCESS?

Walk them through the Title IX policy and process. Answer any questions they may have. Be thorough, but try not overwhelm the Complainant with complicated language. Let them review the policy and handouts. Make yourself available for follow up questions and even follow-up meeting.

2. WHAT INFORMATION DOES THE COMPLAINANT NEED TO KNOW TO MAKE THE MOST INFORMED DECISION?

The Complainant needs to be aware of the policy, their rights as a Complainant, the Respondent's rights, the Title IX grievance procedures, potential outcomes, timeline for the process, and available resources. Ensure you have provided all of this information to the Complainant so there are no "surprises" if they choose to file a formal complaint.

3. HOW WILL I COMMUNICATE THE SCHOOL'S DECISION TO INITIATE A FORMAL COMPLAINT WHEN THE COMPLAINANT DOES NOT WISH TO MOVE FORWARD?

"These final regulations obligate a recipient to initiate a grievance process when a Complainant files, or a Title IX Coordinator signs, a formal complaint, so that the Title IX Coordinator takes into account the wishes of a Complainant and only initiates a grievance process against the Complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances."

(p. 71 Preamble to the Title IX Regulations)

Explain the need to protect the safety of both the Complainant and greater school community. If the allegations are serious and pose risk of further harm to the Complainant or others, an investigation is necessary.

Inform the Complainant of their right to not participate, but gently inform them that their participation in the Title IX grievance process would be of great help.

HELPFUL TIPS FOR INTAKE MEETINGS



SEEK MORE DETAILS TO HELP YOU PERFORM THE INCIDENT EVALUATION

- However, do not turn this into an investigative interview...that comes later!



USE TRAUMA-INFORMED TECHNIQUES

- Practice active listening by repeating the Complainant's statements back to them:
 - "So what I am hearing you say is..."



BE PREPARED

- Have all handouts and documents printed and readily available.



FOLLOW UP

- If you have not heard from the Complainant following the intake meeting, check in to see if there are any questions to answer.



DISCUSS TIMELINE FOR FILING COMPLAINT WITH THE COMPLAINANT

FORMAL COMPLAINTS



FORMAL COMPLAINT

§106.30 DEFINITIONS.

"A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment."



- Can be a physical document or an electronic document (email, Word document, etc.)
- Must contain a physical or electronic signature of the Complainant
- Can be signed by the Title IX Coordinator if it is decided the Coordinator will file without the Complainant's participation in the process (usually following a safety and risk assessment)

REPORT VS. FORMAL COMPLAINT

REPORT

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

COMPLAINT

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant or Complainant's parent or guardian (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

PARENTS & GUARDIANS

EXERCISE OF RIGHTS BY PARENTS OR GUARDIANS

“Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a ‘complainant,’ ‘respondent,’ ‘party,’ or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.”

§ 106.6(g)

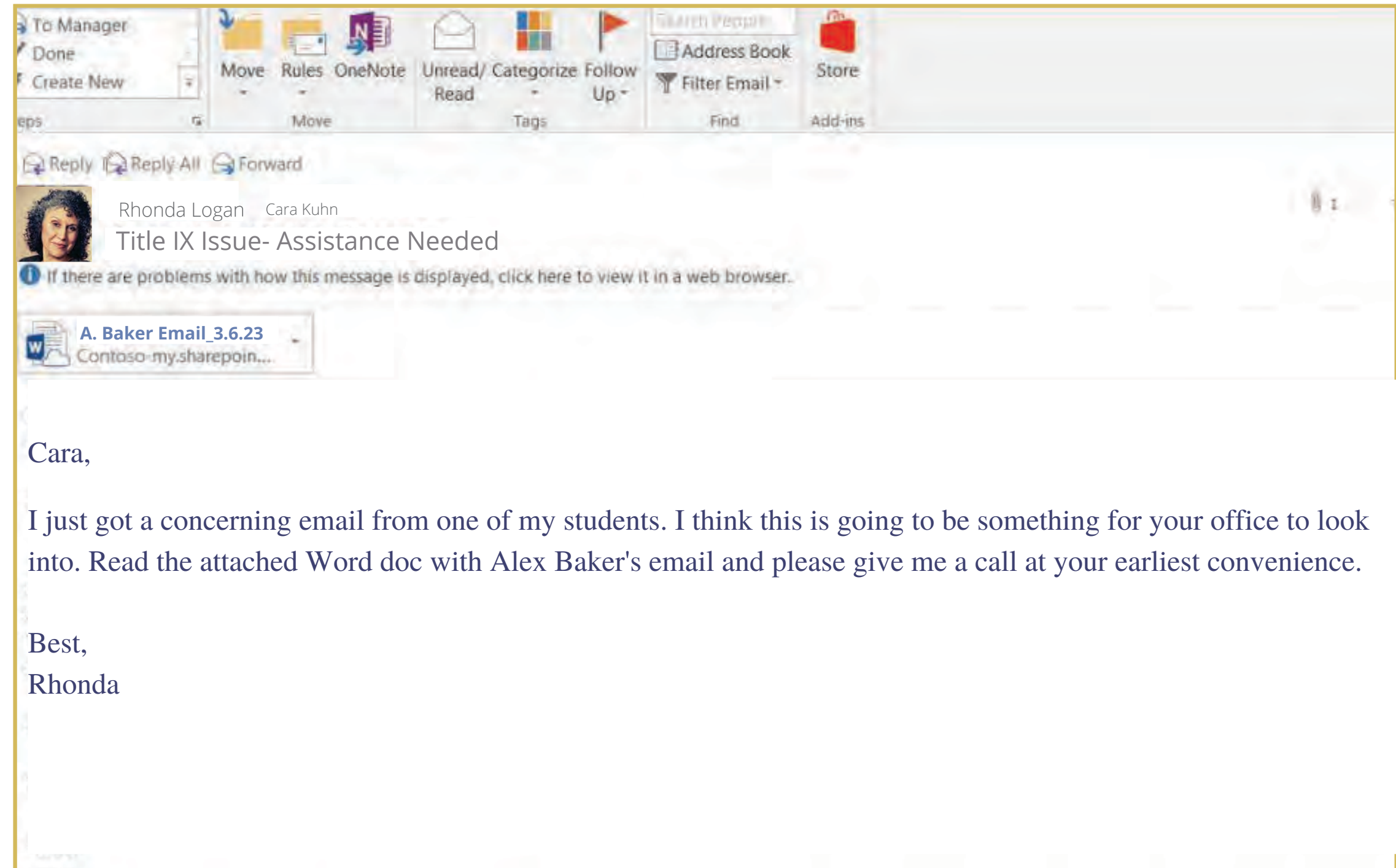


REMINDER:



**THERE IS NO STATUTE OF LIMITATIONS
ON FILING A FORMAL COMPLAINT.
HOWEVER, THE COMPLAINANT “MUST
BE PARTICIPATING OR ATTEMPTING
TO PARTICIPATE IN THE RECIPIENT’S
EDUCATION PROGRAM OR ACTIVITY”
AT THE TIME OF FILING.**

SAMPLE INITIAL REPORT OF POTENTIAL CONCERN



SAMPLE FORMAL COMPLAINT

March 10, 2023

To the Sample University Title IX Coordinator,

On the night of March 3rd, a Friday, the Music Department held a celebratory dinner for all seniors who will be graduating this spring. The students, department faculty, and some program alumni were invited to attend the event which was held in the main banquet room in Briggs Hall. The event started at 7 PM. I was seated at a table with two Music Department faculty members, one of which was my professor Dr. Logan, and three other students, one of which was Jordan Reynolds. I thought the dinner was pleasant and overall, conversation seemed pretty normal. However, there was a cash bar provided, with wine and beer, and I saw Jordan Reynolds drinking quite a bit. I noticed Jordan getting louder and more talkative with each drink they had. I saw Jordan drink four beers, but I don't know if they had more than that because I was not around them until we were seated. I don't drink, so I didn't visit the bar.

When the event was over, Dr. Logan asked if she could have some help taking two boxes of table decorations back to the Music Department administrative office also in Briggs Hall. I wanted to be helpful, so I volunteered to take a box back. Jordan immediately jumped in saying they would join me. I was somewhat annoyed because they were clearly intoxicated and had been looking at me strangely all night.

Dr. Logan informed me that the main office was unlocked and that we could place the boxes behind the main reception desk. Dr. Logan said she would lock up later when she gathered her personal belongings from her office. Jordan and I walked down the hall to the Music Department office where it was extremely dark. We put the boxes behind the reception desk as Dr. Logan instructed us to do. I felt weird about being in there with them, so I immediately made my way to the door so I could go to my car and go home. Jordan ran to the door and pushed it closed, pinning me between themselves and the door. I was terrified. Jordan told me we should "take advantage of the privacy" and started telling me how attracted they are to me. I froze and couldn't say anything or even more. Jordan forcefully began kissing my neck and had my arms held down to my side. Jordan started pulling my dress up and put their hand inside my underwear. I started to squirm around and felt myself crying. Jordan said something like, "You'll enjoy it if you just let it happen," and told me we should keep going. As they started to unbuckle their belt, I had enough space to push them away and ran out the door as fast as I could.

As I was running down the hall, I passed Dr. Logan, who I think saw me crying. I couldn't stop because I was afraid Jordan would follow me into the parking lot. I missed classes on Monday because I didn't want to risk bumping into Jordan on campus. One of the classes I missed was Dr. Logan's capstone class, which I never skip. I emailed her to tell her I was sick, but she asked if my absence had anything to do with what she saw Friday night. I didn't know what to do, so I just broke down and told her everything.

I would like to file a formal complaint against Jordan Reynolds. I feel unsafe and scared.

Signed,



Alex Baker

CONSOLIDATION OF FORMAL COMPLAINTS

SCHOOLS MAY CONSOLIDATE FORMAL COMPLAINTS:

- Against more than one Respondent
- By more than one Complainant against one or more Respondents
- By one party against the other, where the allegations arise out of the same facts or circumstances



REMINDER:



**IF TITLE IX COORDINATOR
SIGNS A FORMAL COMPLAINT,
THE TITLE IX COORDINATOR IS
NOT A COMPLAINANT OR
OTHERWISE A PARTY.**



TRAINING POINT

**WHAT CRITERIA WOULD BE
RELEVANT IN HELPING A TITLE IX
COORDINATOR DECIDE WHETHER
TO FILE A FORMAL COMPLAINT?**

FACTORS TO CONSIDER

WHEN DETERMINING WHETHER TO FILE A FORMAL COMPLAINT, COORDINATORS MAY CONSIDER:

- The Complainant's request not to proceed with filing a formal complaint
- The Complainant's reasonable safety concerns regarding filing of a formal complaint
- The risk that additional acts of sexual harassment would occur if a complaint is not initiated
- The severity of the allegations
- The age and relationship of the parties, including whether the Respondent is an employee of the school
- The scope of the allegations, including information suggesting a pattern, ongoing sexual harassment, or conduct alleged to have impacted multiple individuals
- Additional case-specific factors

TITLE IX SOLUTIONS, LLC

NOTICE OF ALLEGATIONS AND START OF THE GRIEVANCE PROCESS



IN THIS CHAPTER



DRAFTING THE NOTICE
OF ALLEGATIONS



INITIATING THE TITLE IX
GRIEVANCE PROCESS



SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR
TITLE IX SOLUTIONS

DRAFTING THE NOTICE OF ALLEGATIONS



GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

**NOTICE OF
ALLEGATIONS**

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

PURPOSE OF THE NOTICE OF ALLEGATIONS

CONSISTENT

TRANSPARENT

COMPLIANT

ELEMENTS OF THE NOTICE OF ALLEGATIONS

UPON RECEIPT OF A FORMAL COMPLAINT, THE TITLE IX COORDINATOR MUST ISSUE WRITTEN NOTICE TO THE PARTIES, IF KNOWN.

THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 1** Notice of the allegations potentially constituting sexual harassment under Title IX, including:
 - Sufficient details known at the time, such as:
 - Identities of the Parties involved in the incident (if known)
 - Description of the conduct allegedly constituting Title IX sexual harassment
 - Date and location of the alleged incident (if known)

HELPFUL HINT



IDENTITIES OF STUDENTS CAN BE SENSITIVE.

Although names must be included in the Notice, consider defining the appropriate individuals as "Complainant" and "Respondent" in the opening paragraph and then refer to the students with such terms throughout the Notice.

ELEMENTS OF THE NOTICE OF ALLEGATIONS

THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 2 Statement that if, during the course of an investigation, the school decides to investigate allegations about the Complainant or Respondent that are not included in the Notice, the school will provide written Notice of the additional allegations to the parties whose identities are known
- 3 Statement that the Respondent is presumed not responsible for the alleged conduct unless and until the determination of responsibility is final

ELEMENTS OF THE NOTICE OF ALLEGATIONS

THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 4 Notice and copy of the school's Title IX grievance process
- 5 Statement that the Parties have the right to inspect and review evidence collected during the investigation
- 6 Statement that a determination of responsibility is made at the conclusion of the grievance process
- 7 Option for informal resolution, if appropriate and permitted

NOTICE OF ALLEGATIONS ELEMENTS

- Provide basic information about Title IX and the school's requirements under the Regulations
- Include an overview of the Title IX process and explain what happens next (e.g., interview with an Investigator)
- Summarize the Parties' rights under Title IX (e.g., right to participate or refuse to participate in the process, right of a parent or guardian to act on behalf of a party, right to supportive measures, etc.)

HELPFUL HINT



MAKE THE TITLE IX POLICY AND PROCEDURES ACCESSIBLE TO THE PARTIES

Include a hyperlinked URL to the applicable policy in the Notice, attach a digital copy of the policy to the email, and attach physical copy of the policy to the printed letter to the Complainant and Respondent.

ELEMENTS OF THE NOTICE OF ALLEGATIONS

THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 8 Statement that the Parties have a right to an Advisor of their choice.



An Advisor may be, but is not required to be, an attorney.



A Party's Advisor may be a friend, teacher, parent, professor, etc.



Parties have the option to include the Advisor in any meeting or interview.

HELPFUL HINT



ASK THE PARTY TO SHARE THE NAME OF THEIR CHOSEN ADVISOR

This allows the Title IX Coordinator to communicate with the Advisor and share information about the Title IX process. This also helps the Title IX Coordinator recognize if a Party is unable to find an Advisor and therefore assist in identifying an Advisor, if necessary.

ELEMENTS OF THE NOTICE OF ALLEGATIONS

THE NOTICE MUST CONTAIN THE FOLLOWING INFORMATION:

- 10 Notice to expect an initial interview with the Title IX Coordinator or Investigator
 - Provide sufficient time for the Party to prepare for any initial interview
- 11 Reference to any provision in the school's code of conduct or other policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

ADDITIONAL ELEMENTS TO INCLUDE

- Provide the name and contact information of the Title IX Coordinator and Investigator
- Include a statement that retaliation is prohibited, and define retaliation under Title IX
- Relay confidentiality expectations, as outlined under Title IX and school policy (sometimes referred to as “privacy” within a policy)
- Provide a list of campus and community support resources
- Provide information about disability services and the process for requesting reasonable accommodations

RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
 - Intention to interfere with the individual's rights under Title IX; or
 - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX

CONFIDENTIALITY

TITLE IX STATES EACH SCHOOL OR “RECIPIENT” MUST:

- Keep confidential the identity of:
 - Any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment,
 - Any complainant
 - Any individual who has been reported to be the perpetrator of sex discrimination
 - Any respondent
 - Any witness
- Except as may be permitted by the FERPA statute or FERPA regulations, or as required by law, or to carry out the purposes of any investigation, hearing, or judicial proceeding arising thereunder.

PRACTICAL TIPS

- Prepare the Notice of Allegations on school letterhead, then attach it to an email
- Consider the reading level of the Parties and do your best to use accessible language
- Make yourself available to Parties and the Advisors so they can ask questions, discuss the process, etc.
- Proofread this Notice! Misspellings impact trust and confidence
- Send these notices to both the Complainant and Respondent at the same time

INITIATING THE TITLE IX GRIEVANCE PROCESS



NEXT STEPS

A COMPLAINT HAS BEEN INITIATED. NOW WHAT?

In addition to preparing the Notice of Allegations, the Title IX Coordinator is responsible for initiating the Title IX process.

Key responsibilities include:



Engaging Title IX
team members



Contacting Parties'
Advisors



Communicating
with the Parties



ENGAGING TITLE IX TEAM MEMBERS

SHARE WITH TEAM MEMBERS THE FOLLOWING INFORMATION:

- Date of the formal complaint
- Potential timeline of the grievance process and their expected participation
- Confidentiality requirements
- Reminder that all Title IX personnel are prohibited from having a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent participating in the process
 - Provide the names of the Complainant & Respondent
 - Inform Title IX personnel that they must contact you immediately and recuse themselves from the case if they have a conflict of interest or bias
- Copy of the Title IX or Sexual Harassment Policy



CONTACTING PARTIES' ADVISORS

WITH THE PARTY'S PERMISSION, CONTACT EACH ADVISOR TO PROVIDE THE FOLLOWING INFORMATION:

- Explain your role as the Title IX Coordinator
- Explain their role and responsibilities as an Advisor
- Provide a copy of the Title IX or Sexual Harassment policy
- Provide Advisor guidelines and explain confidentiality and information sharing
- Invite to a meeting or phone call to answer questions and discuss process



COMMUNICATING WITH THE PARTIES

**FACILITATE A TRANSPARENT AND
EQUITABLE PROCESS BY PROVIDING
REGULAR UPDATES TO THE PARTIES.**

SUPPORTIVE MEASURES

- Check in to confirm supportive measures are meeting the Parties' needs and/or offer alternative measures

STATUS UPDATES

- Provide status updates, explain which stage of the Title IX process is taking place, and outline what to expect in the coming weeks



COMMUNICATING WITH THE PARTIES

**FACILITATE A TRANSPARENT AND
EQUITABLE PROCESS BY PROVIDING
REGULAR UPDATES TO THE PARTIES.**

INTRODUCTIONS

- Share the name of the Title IX Investigator, Decision-Maker, Appellate Decision-Maker, and Informal Resolution Facilitator, when appropriate

AVAILABILITY

- Reiterate the Title IX Coordinator's role and availability to answer questions in person, via email, etc.



CONSIDER THE FOLLOWING QUESTIONS:

- Is it possible to confer with colleagues about a difficult case while maintaining the required level of confidentiality?
- Who might be appropriate or inappropriate to share information with?
- Is another another safety and risk assessment necessary?
- How can we move the process forward?

TITLE IX SOLUTIONS, LLC



TITLE IX INVESTIGATIONS



IN THIS CHAPTER



CONDUCTING
COMPLIANT TITLE IX
INVESTIGATIONS



UNDERSTANDING THE
COORDINATOR'S ROLE IN
TITLE IX INVESTIGATIONS



SPEAKER

SUSANNA MURPHY

LEAD INVESTIGATOR

TITLE IX SOLUTIONS

CONDUCTING COMPLIANT TITLE IX INVESTIGATIONS



GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

PURPOSE OF INVESTIGATIONS

Gather statements from Parties and witnesses and for the official record

Collect evidence that is directly related to the allegations in the formal complaint

Allow Parties to inspect and review all directly related evidence as it relates to the allegations

Summarize relevant evidence in an investigative report to be provided to the Title IX Decision-Maker

INITIATING THE INVESTIGATION

A SCHOOL MUST INVESTIGATE A FORMAL COMPLAINT

- The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility rests on the school - not on the Parties

“The Recipient 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 which are made and maintained in connection with the provision of treatment to the party, unless the Recipient obtains the party's written, voluntary consent to do so for the grievance process”

§106.45 (b)(5)(i)



KEY DOCUMENT: WAIVER OF PRIVILEGED INFORMATION

TITLE IX REQUIREMENTS

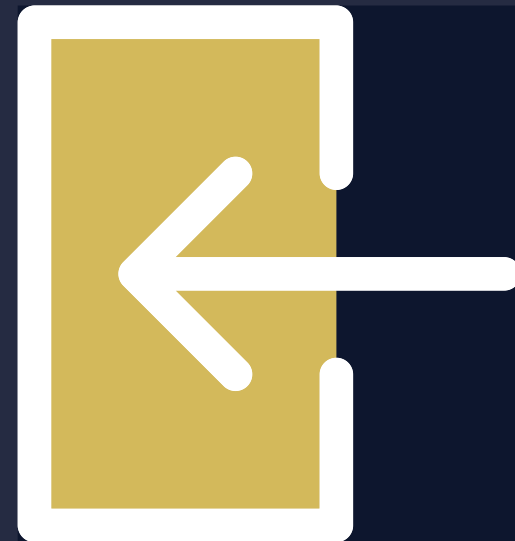
DURING THE INVESTIGATION, THE SCHOOL MUST:

“Provide an equal opportunity for the parties to present witnesses (including fact and expert witnesses), and other inculpatory and exculpatory evidence;”

§106.45 (b)(5)(ii)

- Do not restrict the ability of the Parties to present evidence!
 - The Investigator should be open to receiving any and all evidence provided by Parties and/or witnesses.
 - A relevance determination can be made at a later time to determine what will be included in the investigation report.
- Ensure school policy clearly outlines what type of witnesses are permitted.

INCULPATORY VS. EXCULPATORY



INCULPATORY

Evidence which tends to corroborate the allegations



EXCULPATORY

Evidence which tends to contradict the allegations

TITLE IX REQUIREMENTS

DURING THE INVESTIGATION, THE SCHOOL MUST:

“Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;”

§106.45 (b)(5)(iii)

- Gag orders are not allowed!
- A school may place restrictions on discussing specific evidence or sharing the investigation report.

TITLE IX REQUIREMENTS

DURING THE INVESTIGATION, THE SCHOOL MUST:

“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;”

§106.45 (b)(5)(i)



KEY DOCUMENT: ADVISOR PARTICIPATION AGREEMENT

TITLE IX REQUIREMENTS

DURING THE INVESTIGATION, THE SCHOOL MUST:

- Keep all notices in writing and provide parties ample time to prepare!

“Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;”

§106.45 (b)(5)(v)



KEY DOCUMENT: NOTICE OF MEETING/NOTICE OF INTERVIEW

TITLE IX REQUIREMENTS

DURING THE INVESTIGATION, THE SCHOOL MUST:

- Save everything collected as a part of the investigation!
- The entire investigation file will be provided to the parties and their Advisors.

“Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”

§106.45 (b)(5)(vi)

TITLE IX REQUIREMENTS

DURING THE INVESTIGATION, THE SCHOOL MUST:

- Ensure your communicated timelines are compliant with this requirement.

“Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;”

§106.45 (b)(5)(vi)

TITLE IX REQUIREMENTS

DURING THE INVESTIGATION, THE SCHOOL MUST:

- Ensure you follow this timeline.
- Allow ample time for the parties to review and respond to the report.

“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”



KEY DOCUMENT: INVESTIGATION REPORT TEMPLATE

ELEMENTS OF INVESTIGATION REPORT

AT THE CONCLUSION OF THE INVESTIGATION, THE INVESTIGATOR WILL PREPARE A WRITTEN REPORT WHICH WILL:

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the procedural steps taken between receipt of the formal complaint and the conclusion of the investigation, including all notifications to the Parties, interviews with the Parties, interviews with other Witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- ✓ Fairly summarize relevant evidence

UNDERSTANDING THE COORDINATOR'S ROLE IN TITLE IX INVESTIGATIONS



SELECTING THE INVESTIGATOR

FACTORS TO CONSIDER:

- Levels of training

“A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence...”

- Conflicts of interest and/or actual and perceived biases
- Experience with Title IX investigations, specific forms of sexual harassment, student or employee cases, etc.
- Availability to conduct an investigation
- Gender balance
- Native language of the parties
- Rapport

SHARING KNOWN INFORMATION WITH THE INVESTIGATOR



Initial Report



Formal Complaint



Notice of Allegations



Any meeting notes from interactions
with Complainant, Respondent, or
Witnesses

SENDING REQUIRED COMMUNICATION



Notice of Meeting/Notice of Interview



Notice of Delays for Good Cause



Investigation file



Investigation report

MONITORING TIMELINE

- Assisting Investigator(s) in investigation interview preparation
 - Order of interviews
 - Creating a cursory timeline
 - Drafting questions
- Being made aware of delays for good cause
- Ensuring required response periods are being observed
 - 10 days for response to investigation file
 - Provision of investigation report 10 days prior to decision-making process

PROVIDING SUPPORT

- Provide administrative support for the Investigator(s)
 - Secure rooms
 - Assist with technology
 - Order transcripts
- Review documents
 - Questioning scripts/playbooks
 - May consider having bookend meetings with the Investigator(s) to determine if questions have yielded the necessary information
 - Investigation file
 - Investigation report
- Serve as a resource for parties and Advisors
 - Provide information regarding process-related issues or questions
 - Coordinate and monitor supportive measures



KEY CONSIDERATIONS

AS THE INVESTIGATOR PREPARES TO INTERVIEW PARTIES AND WITNESSES, KEEP IN MIND THE FOLLOWING:

- Title IX is an administrative, not a criminal or even civil, process
- Investigators must remain impartial
 - Impartiality does not mean you cannot have empathy
- Challenging process for all individuals involved can be emotional and time-consuming
- Consistent Communication can alleviate challenges
 - Build in moments for self-care and reflection for you and your Investigation team

TITLE IX SOLUTIONS, LLC

TITLE IX DECISION- MAKING PROCESSES



IN THIS CHAPTER



CONDUCTING
COMPLIANT TITLE IX
DECISION-MAKING
PROCESSES



SANCTIONS AND
REMEDIES



UNDERSTANDING THE
COORDINATOR'S ROLE
IN DECISION-MAKING
PROCESSES



SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR
TITLE IX SOLUTIONS

CONDUCTING COMPLIANT DECISION-MAKING PROCESSES



GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

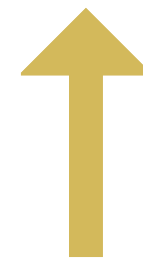
NOTICE OF
ALLEGATIONS

INVESTIGATION

**DECISION-
MAKING
PROCESS**

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

PURPOSE OF DECISION-MAKING PROCESS

Review the investigative report, evidence, and parties' responses to the report provided by the investigators

Provide an opportunity for Parties' Advisors to ask relevant cross-examination questions of Parties and Witnesses

Provide an opportunity for the Decision-Maker to ask relevant questions of Parties and Witnesses

Provides an opportunity for Parties and Witnesses to answer questions

Provides an opportunity for the Parties to share additional information before a determination regarding responsibility

TITLE IX REQUIREMENTS

“The decision-maker(s)...cannot be the same person(s) as the Title IX Coordinator or the Investigator(s)...”

§106.45 (b)(7)(i)

- Title IX Decision-Makers must also be free of conflict of interest and bias!
- You may have more than one Decision-Maker, such as a panel.

TITLE IX REQUIREMENTS

“For postsecondary institutions, the recipient’s grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each Party’s advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”

§106.45 (b)(5)(i)

- This is a non-negotiable aspect of the decision-making process in higher ed.
- Advisors play their most critical role in this portion of the grievance process.

TITLE IX REQUIREMENTS

“If a Party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that Party, an Advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.”

§106.45 (b)(6)(i)

- Does your school have a pool of trained Advisors?
- A Party may choose to utilize a school-provided Advisor much earlier than at the live hearing.
- This individual may be a parent, friend, coach, or other non-attorney individual.

TITLE IX REQUIREMENTS

“Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the Party’s advisor of choice and never by a Party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.”

§106.45 (b)(6)(i)

- Never allow a Party to question or speak to the other Party in the live hearing.
- You may establish rules for the Advisor, however, they must be applied to both Parties’ Advisors.

TITLE IX REQUIREMENTS

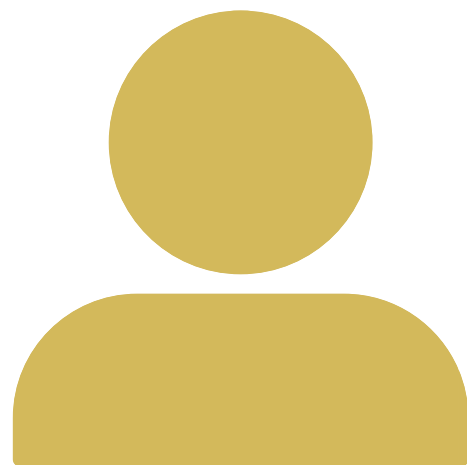
“Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”

§106.45 (b)(5)(i)



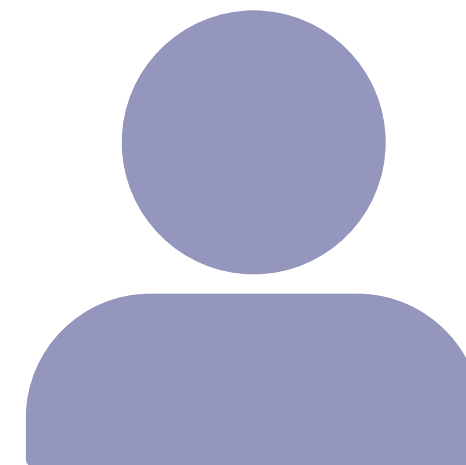
RESPONDENT'S
ADVISOR

How many drinks
did you consume
at the party?



DECISION-MAKER

Relevant. Please
answer.



COMPLAINANT

Three.

TITLE IX REQUIREMENTS

“At the request of either Party, the recipient must provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions.”

§106.45 (b)(5)(i)

- Parties can be, but are not required to be in the same room.
- Videoconferencing and remote technology is permitted, as long as the hearing is live and in real time.

TITLE IX REQUIREMENTS

“Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.”

§106.45 (b)(7)(i)

- This recording and/or transcript must be kept for seven years as required by Title IX Regulations regarding recordkeeping.
- Your school policy may dictate which format is provided to Parties for inspection and review.



TRAINING POINT

**LET'S DISCUSS RELEVANCE AS
IT RELATES TO THE TITLE IX
GRIEVANCE PROCESS.**

DIRECTLY RELATED VS. RELEVANT

Neither term is explicitly defined in the Title IX Regulations.

DIRECTLY RELATED

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: A receipt from a lunch date at the campus dining hall between the Complainant and Respondent.

- Provided by the Complainant at their investigative interview

RELEVANT

Evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

Example: An email with attached nude images the Respondent allegedly sent to the Complainant later that evening via the Respondent's campus email account.

- Provided by the Complainant at their investigative interview

WHAT IS NEVER RELEVANT?

AS OUTLINED IN THE TITLE IX REGULATIONS, THE FOLLOWING EVIDENCE IS NEVER RELEVANT:

- Evidence about a Complainant's prior sexual behavior, except when:

1

Questions and evidence are offered to prove someone other than Respondent committed alleged conduct

2

Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent

WHAT IS NEVER RELEVANT?

AS OUTLINED IN THE TITLE IX REGULATIONS, THE FOLLOWING EVIDENCE IS NEVER RELEVANT:

- Additionally, a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

EXAMPLES:



- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy



Consider creating a waiver of rights to privacy of these records for Parties who wish to submit privileged information as evidence.

REFUSAL TO PARTICIPATE

- It is the right of each Party and Witness not to attend the hearing. They also have the right to refuse answering any or all questions asked during the hearing.
- If the Party refuses to submit to cross-examination, the Decision-Maker:

"must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live hearing or refusal to answer cross-examination or other questions"

§106.45 (b)(6)(i)



A federal court vacated regulatory language in the 2020 amendments that prohibited decision-makers in postsecondary schools from relying on statements by individuals who did not submit to cross-examination during a live hearing. As a result, postsecondary schools are no longer subject to this language.

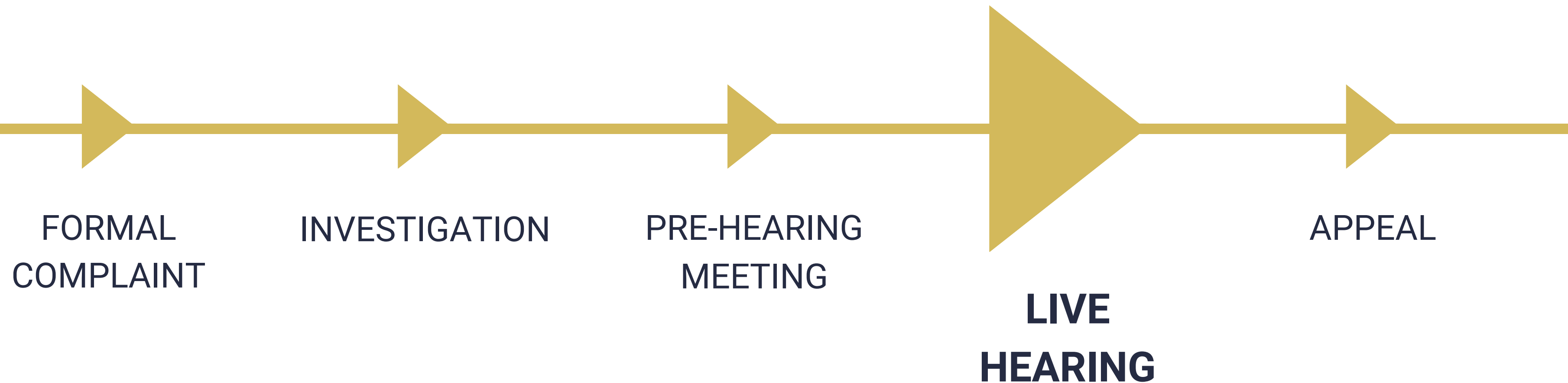
A DECISION-MAKER CAN RELY ON PREVIOUS STATEMENTS OF A PARTY OR WITNESS, EVEN IF THEY CHOOSE NOT TO PARTICIPATE IN THE HEARING.

PRE-HEARING MEETING



- Meeting before the hearing to walk through guidelines, expectations, and more for Parties, Advisors, and the Decision-Maker
- Led by the Title IX Coordinator and/or Decision-Maker(s)
- Not mandated by Title IX regulations, but permitted
- Prepares all Parties (and the Decision-Maker) for the live hearing
- If allegations involve staff or faculty, pre-hearing meetings are particularly important

LIVE HEARING



- This will be the formal opportunity for the Parties to be cross-examined via Advisors
- The Decision-Maker will preside over the hearing, while the Title IX Coordinator may be present to assist with facilitation

HEARING AGENDA

- ➊ Opening of the Hearing
- ➋ Opening Statements
- ➌ Introduction of Testimonial Evidence
- ➍ Closing Statements
- ➎ Closing of the Hearing

GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

DETERMINATION REGARDING RESPONSIBILITY

- Drafted and issued by the Decision-Maker after the credibility assessment process
- Based upon relevant evidence and testimony obtained during the grievance process applied to the school's standard of proof
- Contains various sections, notably a statement of, and rationale for, the result of each alleged policy violation (i.e., "responsible" or "not responsible" for violating the policy)
- Also referred to as the "Written Determination"

KEY ELEMENTS

TITLE IX STATES THAT THE WRITTEN DETERMINATION MUST INCLUDE:

- 1 Identification of the allegations potentially constituting sexual harassment as defined under Title IX
- 2 Description of the procedural steps taken from receipt of formal complaint through the determination
- 3 Findings of fact supporting the determination
- 4 Conclusions regarding the application of school's code of conduct to the facts

KEY ELEMENTS

TITLE IX STATES THAT THE WRITTEN DETERMINATION MUST INCLUDE:

- 5 A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility;
 - Any disciplinary sanctions the school imposes on the Respondent;
 - Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant; and
- 6 The school's procedures and permissible bases for the Complainant and Respondent to appeal.

TITLE IX REQUIREMENTS

“The recipient must provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.”

§106.45 (b)(5)(i)

- Send these at the same time and document!

SANCTIONS AND REMEDIES



OUTCOMES

WRITTEN DETERMINATION IS ISSUED

RESPONDENT IS NOT FOUND RESPONSIBLE

- School may continue to offer supportive measures to the Complainant where practical.
- Engage in a conversation with the Complainant to determine what is needed and for what length of time.

RESPONDENT IS FOUND RESPONSIBLE

- Sanctions and remedies will be put into place by the school

WHAT ARE SANCTIONS?

- Disciplinary sanctions are punitive measures implemented for the Respondent following a determination of responsibility
- Refer to the school policy for a list or range of possible disciplinary sanctions
- Title IX does not prescribe specific sanctions for each type of conduct
 - Discretion is left to schools to determine sanctions on a case by case basis
 - Some schools may have specific guidelines or matrices for sanctioning according to each policy violation
- All sanctions must be included in and issued with the final written determination

TITLE IX REQUIREMENTS

"Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility."

§106.45(b)(1)(vi)

"A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant"

§106.45(b)(7)(ii)(E)



SANCTIONS

- Verbal or written warning
- Mandatory education or counseling
- Community service
- Removal from campus housing
- Removal from extracurricular activity or sports team
- Disciplinary probation
- Withholding of diploma
- Expulsion
- Termination from employment
- Loss of faculty tenure

WHAT ARE REMEDIES?

- Implemented following the determination that the Respondent was responsible.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent.

"The details of remedies provided to the Complainant remain part of the Complainant's education record and not the Respondent's education record, unless the remedy also imposes requirements on the Respondent."

(p. 1458 Preamble to the Title IX Regulations)



REMEDIES

- Academic accommodations or adjustments
- Housing adjustments
- Increased security or safety measures
- Education and prevention efforts
- Changes in work assignment or role
- No-contact orders
- Medical or counseling services

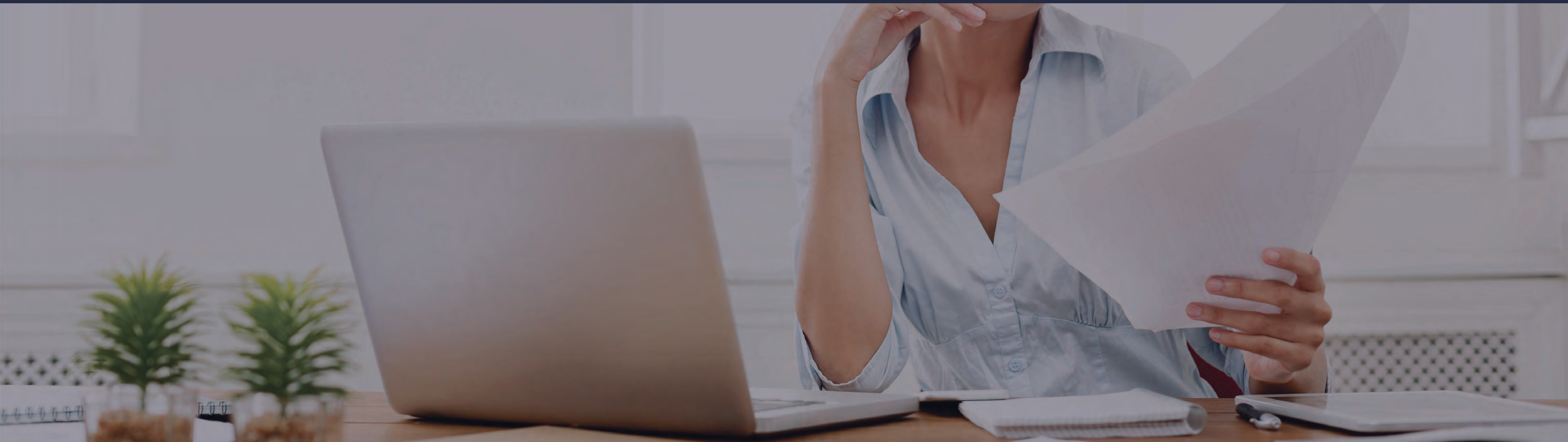


TRAINING POINT

**WHO WILL ULTIMATELY BE RESPONSIBLE FOR
DETERMINING STUDENT SANCTIONS IF THE
RESPONDENT IS FOUND RESPONSIBLE?**

WHAT IF THE RESPONDENT IS AN EMPLOYEE?

UNDERSTANDING THE COORDINATOR'S ROLE IN THE DECISION-MAKING PROCESS



SELECTING THE DECISION- MAKER

FACTORS TO CONSIDER:

- Levels of training

“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant...”

- Conflicts of interest and/or actual and perceived biases
- Availability to conduct the decision-making process, including the live hearing

SHARING KNOWN INFORMATION WITH THE DECISION- MAKERS



Formal Complaint



Notice of Allegations



Investigation Report



Investigation File (Evidence)

SENDING REQUIRED COMMUNICATION



Notice of Meeting (pre-hearings)



Notice of Hearing



Procedural requirements regarding the credibility assessment process



Written Determination Regarding Responsibility

MONITORING TIMELINE

- Pre-hearing meetings
- Assisting Decision-Maker(s) in live hearing preparation
 - Reviewing policy for specific procedural requirements
 - Creating a cursory script or agenda
- Timeline for drafting written determination
- Being made aware of delays for good cause
- Monitoring the duration of the live hearing
- Monitoring for appeal submission following the issuance of the determination

PROVIDING SUPPORT

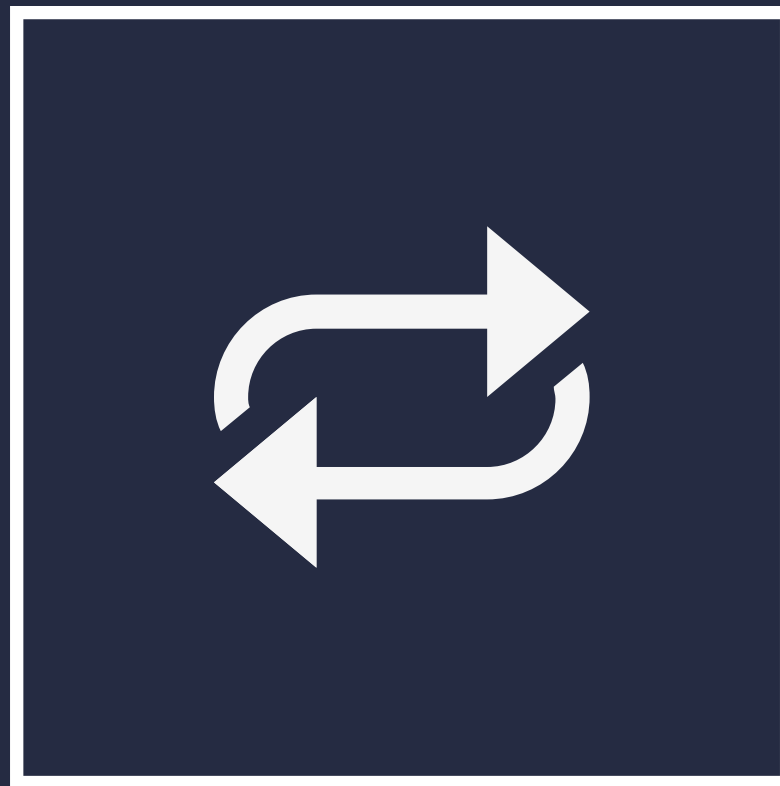
- Provide administrative support for Decision-Maker(s)
 - Secure rooms
 - Assist with set-up of technology and troubleshoot
 - Creating record of hearing
 - Order transcripts (if needed)
 - Facilitate the hearing
 - Provide evidence to Decision-Maker, parties, and Advisors upon request
 - Coordinate witnesses (if needed)
- Review documents
 - Written determination regarding responsibility
- Serve as a resource for Parties and Advisors
 - Provide information regarding process-related issues or questions
 - Coordinate and monitor supportive measures

TITLE IX SOLUTIONS, LLC

THE APPEAL PROCESS



IN THIS CHAPTER



THE APPEAL PROCESS



UNDERSTANDING THE
COORDINATOR'S ROLE IN
TITLE IX APPEALS



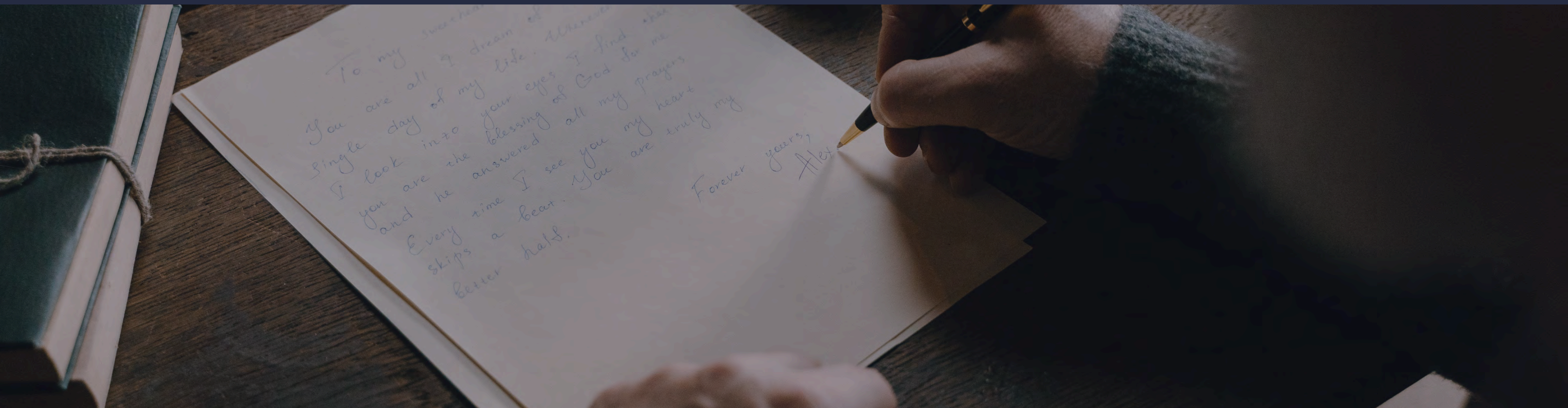
SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

THE APPEAL PROCESS



GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

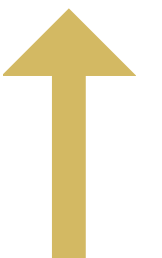
NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



WE ARE HERE

PURPOSE OF APPEAL PROCESS

Provide an opportunity for parties to appeal the determination on limited grounds

Determine whether a party has a valid basis for appeal

If valid, conduct a review to determine whether the concern requires a return to a previous stage of the grievance process, the decision stands, or the decision is overturned

Provide finality to the grievance process

APPEALING A DECISION

- 1 Title IX Regulations stipulate that a school must provide an appeal from a determination regarding responsibility and from a recipient's dismissal of a formal complaint or any allegations therein
- 2 The appeal process is available to both the Complainant and Respondent
- 3 The Appellate Decision-Maker must be a separate individual who was not involved in the investigation or the decision to dismiss the complaint.

APPEALING A DECISION

- 4 Parties must be notified in writing when an appeal is filed
- 5 Appeal procedures must be implemented equally for both Complainant and Respondent
- 6 Parties must have a reasonable opportunity to submit a written statement supporting or challenging the determination
- 7 Parties must be issued simultaneously a written decision describing the result of the appeal and the rationale, drafted by the Appellate Decision-Maker

BASES OF APPEAL

PROCEDURAL IRREGULARITY THAT AFFECTED THE OUTCOME OF THE MATTER.

1

Respondent was only given four days to inspect evidence and provide a written response when the Title IX Regulations stipulate parties have ten days.

2

Complainant was not allowed to cross-examine one of the Respondent's witnesses who was present during the hearing due to "time constraints"

3

The Respondent was not allowed an Advisor in the pre-hearing meeting.

§106.45(b)(8)

BASES OF APPEAL

NEW EVIDENCE THAT WAS NOT REASONABLY AVAILABLE AT THE TIME THE DETERMINATION OR DISMISSAL WAS MADE, WHICH COULD AFFECT THE OUTCOME OF THE MATTER.

1

A previously unknown Witness came forward with information regarding the incident after hearing about the incident from a friend.

2

A Respondent was able to recover an email containing a conversation with the Complainant he previously believed to be deleted.

§106.45(b)(8)

BASES OF APPEAL

CONFLICT OF INTEREST OR BIAS BY THE TITLE IX COORDINATOR, INVESTIGATOR(S) OR DECISION-MAKER(S)

1

Respondent discovered the Decision-Maker has made several public statements on social media about their unwavering support for sexual assault survivors and their extreme distrust of males.

2

Complainant learned the Title IX Investigator is an involved athletic booster for the football team which the Respondent plays on.

§106.45(b)(8)

OPTIONAL BASES OF APPEAL

SCHOOLS MAY PROVIDE OTHER BASES OF APPEAL AS LONG AS THEY APPLY EQUALLY TO BOTH PARTIES.

SANCTIONS BEING INADEQUATE OR EXCESSIVE

1

The Complainant appeals, citing that the sanction of mandatory counseling for stalking was insufficient.

2

Respondent appeals, stating a sanction of termination of employment was excessive for his offense of sexual harassment as a previous co-worker received a written warning for a similar offense.

§106.45(b)(8)



Review your school policy to identify if additional bases exist

APPEAL OUTCOMES

IF A REQUEST FOR APPEAL IS DENIED, THE ORIGINAL DETERMINATION STANDS AND THE TITLE IX GRIEVANCE PROCESS CONCLUDES.

- This does not mean Parties will not seek action or resolution outside of Title IX (*e.g. filing a complaint with the Office for Civil Rights or pursuing legal action*)



If the Parties do not submit their appeal within the timeframe specified in the policy, the original determination stands and the Title IX grievance process concludes.

APPEAL OUTCOMES

IF A REQUEST FOR APPEAL IS ACCEPTED, THE APPELLATE DECISION-MAKER WILL REVIEW AND CONSIDER THE INFORMATION.

AT THE CONCLUSION OF THEIR REVIEW, THE FOLLOWING ARE POSSIBLE:

Appellate Decision-Maker
upholds original determination

- Title IX grievance process ends

Appellate Decision-Maker
determines the appeal was valid
under one of the listed bases

- New investigation may take place
- New hearing may take place
- If policy allows sanctions to be appealed, a new sanction may be imposed

UNDERSTANDING THE COORDINATOR'S ROLE IN TITLE IX APPEALS



SELECTING THE APPELLEATE DECISION- MAKER(S)

FACTORS TO CONSIDER:

- Levels of training

“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant...”

- Conflicts of interest and/or actual and perceived biases
- Availability to conduct the appellate decision-making process

**SHARING
KNOWN
INFORMATION
WITH THE
APPELLATE
DECISION-
MAKER(S)**



Written Determination Regarding Responsibility



Appeal Basis



Investigation Report & File



New Evidence (if shared)

SENDING REQUIRED COMMUNICATION



Notice of Appeal



Procedural requirements regarding
the appeal process



Appellate determination

MONITORING TIMELINE

- Deadline for submitting appeal
- Deadline for response to appeal
- Other appellate timelines specified in institutional policy
 - Timeline for appellate determinations

PROVIDING SUPPORT

- Provide administrative support for Appellate Decision-Maker(s)
- Review documents
 - Appellate determination
- Serve as a resource for Parties and Advisors
- Provide information regarding process-related issues or questions
- Coordinate and monitor supportive measures

TITLE IX SOLUTIONS, LLC

TITLE IX INFORMAL RESOLUTION PROCESSES

IN THIS CHAPTER



AN INTRODUCTION TO
INFORMAL RESOLUTION



THE INFORMAL
RESOLUTION
FACILITATOR



SPEAKER

CJ LARKIN

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR

AN INTRODUCTION TO INFORMAL RESOLUTION





WHAT IS INFORMAL RESOLUTION UNDER TITLE IX?

INFORMAL RESOLUTION PILLARS

TRANSPARENT

SAFE

VOLUNTARY

INFORMAL RESOLUTION PILLARS

TRANSPARENT

INFORMAL RESOLUTION UNDER TITLE IX PROVIDES PARTIES THE OPPORTUNITY TO RESOLVE COMPLAINTS OUTSIDE OF THE FORMAL GRIEVANCE PROCESS.

- Provide clear, consistent communication to the Parties

INFORMAL RESOLUTION PILLARS

INFORMAL RESOLUTION UNDER TITLE IX PROVIDES PARTIES THE OPPORTUNITY TO RESOLVE COMPLAINTS OUTSIDE OF THE FORMAL GRIEVANCE PROCESS.

SAFE

- Provide emotional and physical safety
- Conduct safety and risk analysis (optional)
- Put safety measures in place (optional)

INFORMAL RESOLUTION PILLARS

VOLUNTARY

INFORMAL RESOLUTION UNDER TITLE IX PROVIDES PARTIES THE OPPORTUNITY TO RESOLVE COMPLAINTS OUTSIDE OF THE FORMAL GRIEVANCE PROCESS.

- Obtain voluntary, written consent
- Highlight right to withdraw prior to the agreement



WHO IS INVOLVED IN THE INFORMAL RESOLUTION PROCESS?

INFORMAL RESOLUTION PARTICIPATION

- Under Title IX, schools must obtain the Parties' written, voluntary consent to participate in the informal resolution process
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student
- Advisors are permitted to participate, but the school may impose restrictions on participation
- Emergency Removal may be considered, if appropriate



WHEN CAN INFORMAL RESOLUTION TAKE PLACE?

GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



A Party may withdraw from the informal resolution process at any time and proceed with the formal grievance process.

**INFORMAL RESOLUTION
WINDOW**



**SHOULD THERE BE A DEFINED AMOUNT
OF TIME FOR THE INFORMAL
RESOLUTION PROCESS TO OCCUR?**

REASONABLY PROMPT TIME FRAMES

"Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action."

§106.45 (b)(1)(v)



Consult the institution's policy to determine if specific timeframes are in place for informal resolution processes.



WHERE CAN INFORMAL RESOLUTION TAKE PLACE?

INFORMAL RESOLUTION LOCATION



VIRTUAL



ON CAMPUS



OFF CAMPUS



IN WRITING



WHY IS INFORMAL RESOLUTION PERMITTED UNDER TITLE IX?

BENEFITS TO PARTIES & INSTITUTIONS

INFORMAL RESOLUTION HAS THE POTENTIAL TO:

- Empower Complainants and Respondents to address incidents through a process that best suits their needs
 - Parties determine the outcome and resolution can be creative
- Enhance institutional and Party autonomy by providing schools and Parties with flexibility in addressing unique situations
- Provide a more timely and less expensive option than the live hearing or decision-making process
- Present an opportunity to educate and change behavior
- Allow for confidential results
- Yield remedies which are more customized to the needs of the unique situation and involved Parties

TO COMPARE:

IN THE AMERICAN LEGAL SYSTEM, INFORMAL OR ALTERNATIVE DISPUTE RESOLUTION HAS THE POTENTIAL TO:



- Shorten the timeframe of the grievance process
- Provide greater Party control over outcomes, which may improve Parties' sense of justice and increase compliance with outcomes
- Yield remedies more customized to the needs of unique situation



**WHAT ARE THE GOALS OF THE
PARTIES AND INSTITUTIONS AS
THEY PARTICIPATE IN INFORMAL
RESOLUTION PROCESSES?**

GOALS FOR THE PARTIES



Undergo a less intimidating process than the grievance process



Explore potential for less harsh outcomes



Provide input regarding outcomes of the process



Minimize re-traumatization



Reduce embarrassment for both Parties



Allow an opportunity for interaction and open dialogue



Participate in a more personal experience

- ✓ Provide an opportunity for early intervention and resolution
- ✓ Present a less intimidating process
- ✓ Offer a more conciliatory process
- ✓ Allow for more healing
- ✓ Demonstrate that they are using the full range of Title IX options or responses
- ✓ This is also a chance to comport with a school mission or philosophy

GOALS FOR THE INSTITUTION





WHAT SHOULD INFORMAL RESOLUTION PROCESSES LOOK LIKE?

WHAT DO THE REGULATIONS SAY?

"A recipient **may not** require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient **may not** require the Parties to participate in an informal resolution process under this section and **may not** offer an informal resolution process unless a formal complaint is filed."

§ 106.45(9)

WHAT DOES THIS MEAN? —



SCHOOLS CANNOT TAKE AWAY A PARTIES' RIGHT TO AN INVESTIGATION AND ADJUDICATION PROCESS FOLLOWING A FORMAL COMPLAINT OF SEXUAL HARASSMENT.



SCHOOLS CANNOT REQUIRE ANY PARTY TO PARTICIPATE IN AN INFORMAL RESOLUTION PROCESS. IT IS A 100% OPTIONAL PROCESS AND REQUIRES BUY-IN FROM BOTH PARTIES.



THE INFORMAL RESOLUTION PROCESS CAN ONLY TAKE PLACE ONCE A FORMAL COMPLAINT HAS BEEN FILED.

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL

**RECALL: INFORMAL RESOLUTION CAN HAPPEN
AT ANY POINT WITHIN THIS TIMEFRAME.**

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)

Provides to the Parties a written notice

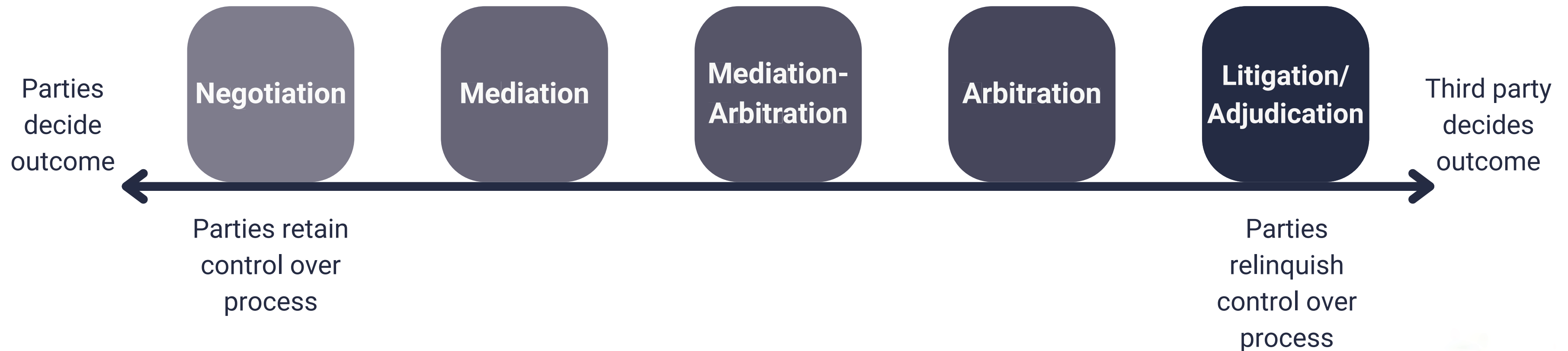
Obtains the Parties' voluntary, written consent to the informal resolution process

Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

TYPES OF INFORMAL RESOLUTION

THE TITLE IX REGULATIONS DO NOT SPECIFY THE EXACT PROCESSES INSTITUTIONS MUST USE TO CARRY OUT INFORMAL RESOLUTION.

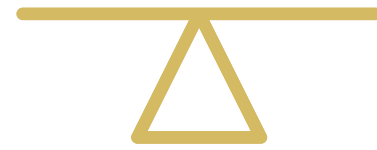
Instead, they provide flexibility for institutions to determine which processes best suit their needs and provide the opportunity to craft custom institutional processes.



THE INFORMAL RESOLUTION FACILITATOR



WHAT IS THE ROLE OF THE INFORMAL RESOLUTION FACILITATOR?



Serving neutrally, impartially



Facilitating the conversation
between Parties



Providing physical and
emotional safety

TRAINING INFORMAL RESOLUTION FACILITATORS

FACTORS TO CONSIDER:

- Levels of training

"The same [training] requirements that apply to Title IX Coordinators, Investigators, and Decision-Makers now also apply to any individuals who facilitate informal resolution processes."

- Title IX definition of sexual harassment
- Scope of the education program or activity
- How to conduct informal resolution processes
- How to serve impartially

INTERNAL VS. EXTERNAL

INTERNAL

- Trained teachers or professors
- Administrators
- Counselors

ALWAYS CHECK FOR BIAS AND CONFLICTS OF INTEREST WHEN SELECTING AN INTERNAL INFORMAL RESOLUTION FACILITATOR

EXTERNAL

- Consultants
- Local mediators

SELECTING AN EXTERNAL INFORMAL RESOLUTION FACILITATOR MAY REDUCE POTENTIAL FOR BIAS AND CONFLICT OF INTEREST, BUT IT IS STILL IMPORTANT TO CONFIRM A BIAS OR CONFLICT IS NOT PRESENT

WHO MAY SERVE AS THE INFORMAL RESOLUTION FACILITATOR?

FACTORS TO CONSIDER:

- The Title IX Coordinator is not precluded from serving as the Informal Resolution Facilitator
- Potential challenges include:
 - Perceived or actual conflict of interest and/or bias
 - Confusion of dual role



Questions to Consider:

- Why has the Title IX Coordinator been assigned as the Informal Resolution Facilitator?
- Is the Title IX Coordinator truly comfortable fulfilling this role?
- Does the Coordinator have the necessary skills to fulfill this role?

WHO MAY SERVE AS THE INFORMAL RESOLUTION FACILITATOR?

THE INVESTIGATOR AND DECISION- MAKER MAY NOT SERVE AS THE INFORMAL RESOLUTION FACILITATOR IN THE SAME CASE.

- Allows Investigators and Decision-Makers to remain unbiased should the Parties return to the formal grievance process
- Eliminates role confusion
- Ensures Facilitators are present to facilitate the conversation – not gather evidence or make a decision prior to or after



Best Practice: Separate this role from all other Title IX roles and provide clarity on the responsibilities of the Informal Resolution Facilitator.

CONFLICT OF INTEREST

- Conflicts of interest arise when there is a real or perceived personal or private interest that may prevent a Title IX Coordinator, Investigator, Decision-Maker, or Informal Resolution Facilitator from carrying out their role impartially
- Conflicts of interest are not explicitly defined under the Title IX Regulations
- Conflicts of interest may be more difficult to navigate within smaller institutions or school districts

EXAMPLES OF POTENTIAL CONFLICT



PERSONAL RELATIONSHIP WITH A PARTY OR PARENT/GUARDIAN OF A PARTY

Example: An Informal Resolution Facilitator is a close family friend and has known the Party for years outside of the academic program.



POSITION OF POWER OVER A PARTY NOT RELATED TO THE TITLE IX PROCESS

Example: The assigned Informal Resolution Facilitator is one of the Party's instructors in a course in which they are currently enrolled.

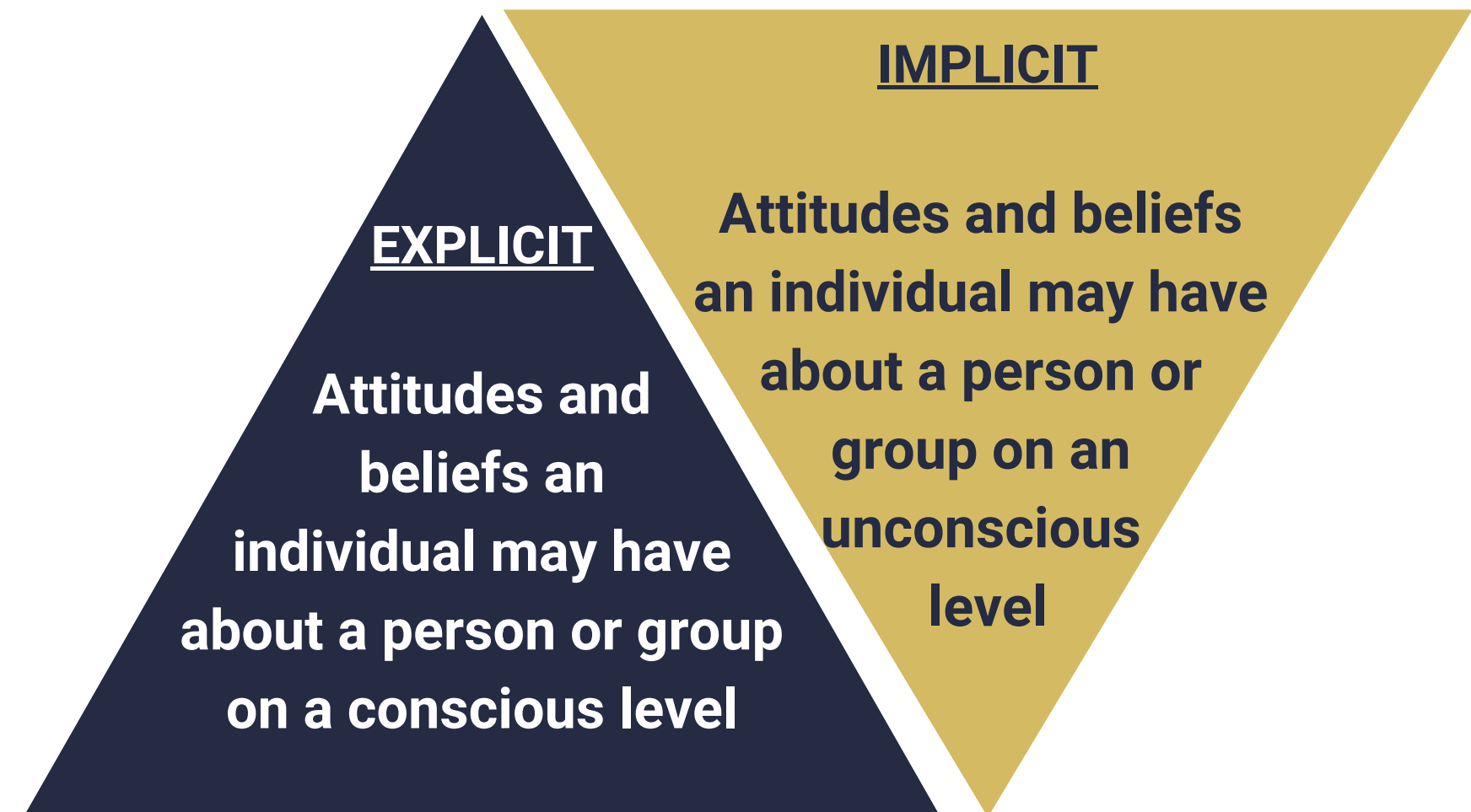


PREVIOUS KNOWLEDGE ABOUT A PARTY THAT COULD IMPACT THE ABILITY TO ADJUDICATE THE CASE

Example: An Informal Resolution Facilitator was a former conduct officer who adjudicated other code of conduct violations involving a Party.

WHAT CONSTITUTES A BIAS?

FACILITATORS MUST AVOID BOTH EXPLICIT & IMPLICIT BIASES:



- Title IX Regulations specifically references "bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent."
- Recusal may be required if the Informal Resolution Facilitator believes they cannot be impartial due to personal views or experiences

CONFLICT OF INTEREST VS. BIAS

CONFLICT OF INTEREST =

The Informal Resolution Facilitator has their own agenda, needs, or interests

BIAS =

Prejudices and beliefs that may favor one of the Parties

A CONFLICT OF INTEREST CAN CAUSE THE INFORMAL RESOLUTION FACILITATOR TO HAVE A BIAS.

IDENTIFYING BIAS

**A LEGITIMATE CLAIM OF BIAS CAN BE
THE BASIS FOR AN APPEAL.**

Consider personal
biases and how they
may affect your
ability to serve
objectively

Recuse yourself
from a case if biases
may impact the
process or
determination



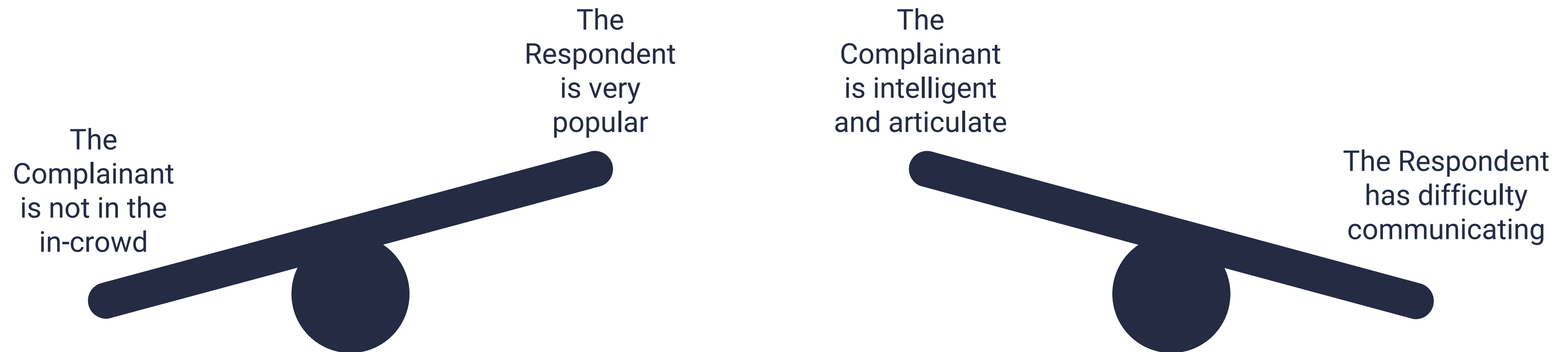
What are the necessary skills and characteristics of an Informal Resolution Facilitator?

- Active listener
- Emotionally stable
- Calm demeanor
- Empathetic
- Clear professional and ethical boundaries
- Prepared
- Competent – with the process
- Competent – with the subject matter
- Scrupulously neutral
- Cautious and precise with language
- Willing to face unpleasant facts or emotions
- Intuitive
- Insightful
- Interested in people and human nature
- Resourceful
- Analytical
- Logical
- Good oral communicator
- Documents clearly and thoroughly
- Resilient
- Persistent
- Comfortable with diversity
- Respectful
- Has faith in mediation process
- Sense of humor
- Optimistic
- Helpful
- Authentic
- Self-confidence (without arrogance)
- Open-minded
- Prefers asking to telling
- Makes appropriate process and option suggestions
- Assists with evaluation options

(C.J. Larkin, Washington University School of Law, 2010 (amended 2012))

POWER BALANCING

THE INFORMAL RESOLUTION FACILITATOR SHOULD BE SENSITIVE TO ONE PARTY HAVING MORE POWER THAN THE OTHER PARTY AFFECTING THE PROCESS AND OUTCOME.



The Facilitator may need to assist the “power-down” participant to fully participate in the process. This assistance could be perceived as (or may actually be) undermining the Facilitator’s neutrality. Power-balancing must be handled with awareness.

EXAMPLES

- Slowing down the conversation
- Checking for comprehension
- Asking if assistance or additional information is needed
 - Parent or legal guardian
 - An adult support person or advisor
 - Third-party assistance or accommodations
- Reframing power-up Party's statements to be less threatening, demanding, etc.
- Asking power-down Party if they feel so and how to empower
- Asking power-up Party if they are aware of power differences



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COMPLIANCE BEYOND THE GRIEVANCE PROCESS



IN THIS CHAPTER



COMPLIANCE BEYOND
THE GRIEVANCE PROCESS



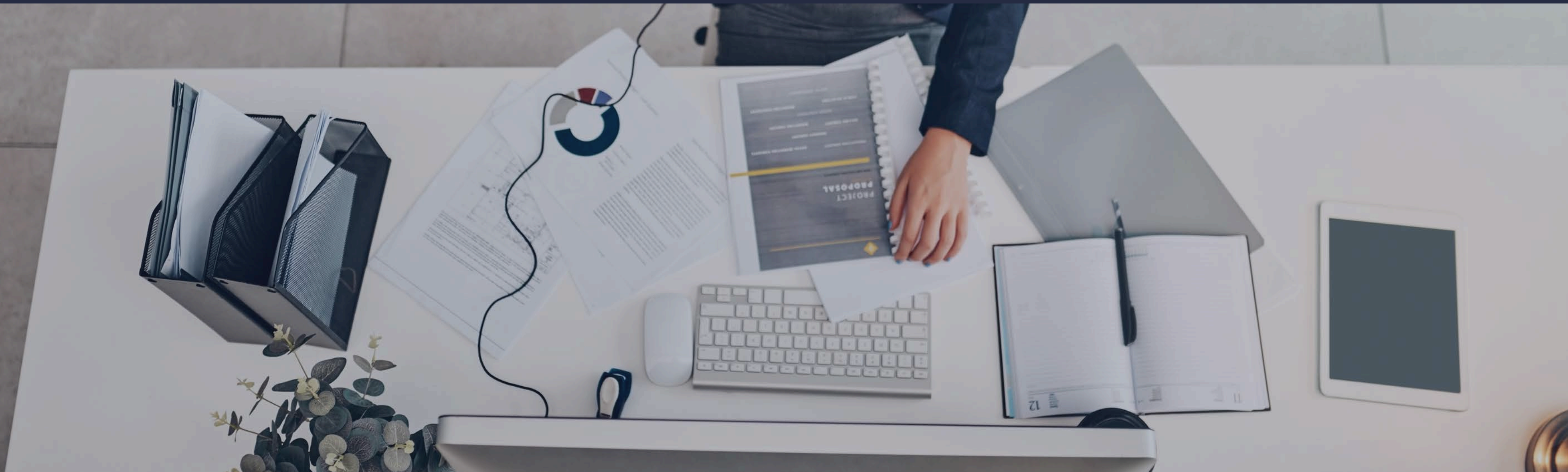
SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

TITLE IX COMPLIANCE BEYOND THE GRIEVANCE PROCESS



TITLE IX REQUIREMENTS

OTHER THAN FACILITATING A PROMPT AND EQUITABLE GRIEVANCE PROCESS, THE TITLE IX COORDINATOR IS RESPONSIBLE FOR:



Providing proper notice to all students, prospective students, parents, employees, and unions

- Title IX Coordinator name
- contact information
- how and where to report



Disseminating a nondiscrimination notice and compliant policy.

TITLE IX REQUIREMENTS

OTHER THAN FACILITATING A PROMPT AND EQUITABLE GRIEVANCE PROCESS, THE TITLE IX COORDINATOR IS RESPONSIBLE FOR:



Ensuring the school's Title IX policy is compliant with the grievance procedure requirements under Title IX Regulations.



Training Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process, and publishing the training

TITLE IX REQUIREMENTS

OTHER THAN FACILITATING A PROMPT AND EQUITABLE GRIEVANCE PROCESS, THE TITLE IX COORDINATOR IS RESPONSIBLE FOR:



Ensuring Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process does not have not have a conflict of interest or bias.



Following requirements for Title IX recordkeeping.



NOTICE OF COORDINATOR & POLICY DISSIMINATION

BEST PRACTICE INCLUDES:

- Publishing in visible places, such as:
 - Institutional websites
 - Pamphlets
 - Student code of conduct manuals
 - Employee manuals
 - Materials shared by faculty to students
 - Collective bargaining agreements
- Performing checks to ensure information is accurate and up-to-date



TITLE IX POLICY COMPLIANCE

BEST PRACTICE INCLUDES:

- Conducting benchmarking and developing a checklist of Title IX policy requirements and any relevant state requirements.
- Forming a Title IX team to review the school's Title IX policy, and reviewing annually.



TITLE IX TRAINING

BEST PRACTICE INCLUDES:

- Posting training materials such as recordings or powerpoint slides on the Title IX website or making available to inspect.
- Training annually to remain current on Title IX trends and regulatory changes.
- Ensuring students and employees are aware of their rights and responsibilities under Title IX by creating engaging trainings.



TITLE IX RECORD- KEEPING

BEST PRACTICE INCLUDES:

- Developing a recordkeeping system and providing training on recordkeeping.
 - All emails related to a report or complaint
 - Handwritten and typed notes
 - Memos of phone calls
 - Investigation recordings or transcripts
 - Investigation report, including all evidence obtained
 - Written determination
 - Appeals documentation
 - Internal communications about the report or complaint
- Records must be kept for seven years.

HELPFUL TIPS —



ADVOCATE FOR THE TITLE IX COORDINATOR TO HAVE PROPER AUTHORITY, TRAINING, AND RESOURCES.



PUT TIME, ENERGY, AND RESOURCES INTO PREVENTION EDUCATION AND EFFORTS.

- Awareness, visibility, communication, and cultural understanding is all prevention.



REMEMBER THAT TITLE IX IS ABOUT PRESERVING OR REMEDY IN ACCESS TO EDUCATION, IT IS NOT A CRIMINAL OR LEGAL PROCESS.



RESEARCH AND DEVELOP RELATIONSHIPS WITH CAMPUS AND COMMUNITY PARTNERS.