

SPRING 2024 K-12 VIRTUAL CERTIFIED TITLE IX COORDINATOR TRAINING

TITLE IX
UNIVERSITY
K-12

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS



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ABOUT US

OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.

GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.



ICS TEAM



Betsy Smith
Director of Title IX Services



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Title IX & Equity Specialist/Attorney



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Title IX & Equity Specialist/Attorney



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Title IX & Equity Specialist

BEFORE WE GET STARTED

- Slides
- Recording
- Virtual Environment
- Overview
- Not Legal Advice



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PURPOSE OF ICS TRAINING



This is new for many!
Most decisions will be district specific and the regulations allow for flexibility.



We Are All In This Together!
We love when our participants bring information to us and provide their perspectives.



Not Legal Advice
Designed to provide you with options so that you can make the decisions that make the most sense for you/your district.



AGENDA

01



Introduction:
Title IX Basics &
2020 Regulations Overview

Role of the Title IX
Coordinator Under the
2020 Regulations



02

03



Title IX Process:
From Report to Hearing
and Appeals

From Policy and
Process to Practice-
Case Studies and Hypos



04



Regulations

INTRODUCTION

Title IX Basics and 2020 Regulations Overview

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WHAT IS TITLE IX?



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.



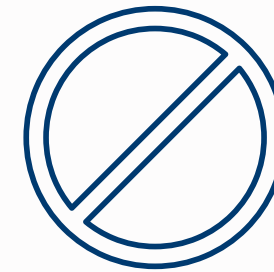
TITLE IX IS



Federal Law



**Enforced by
the Office for
Civil Rights
(OCR)**



**Prohibits
discrimination
based on sex**



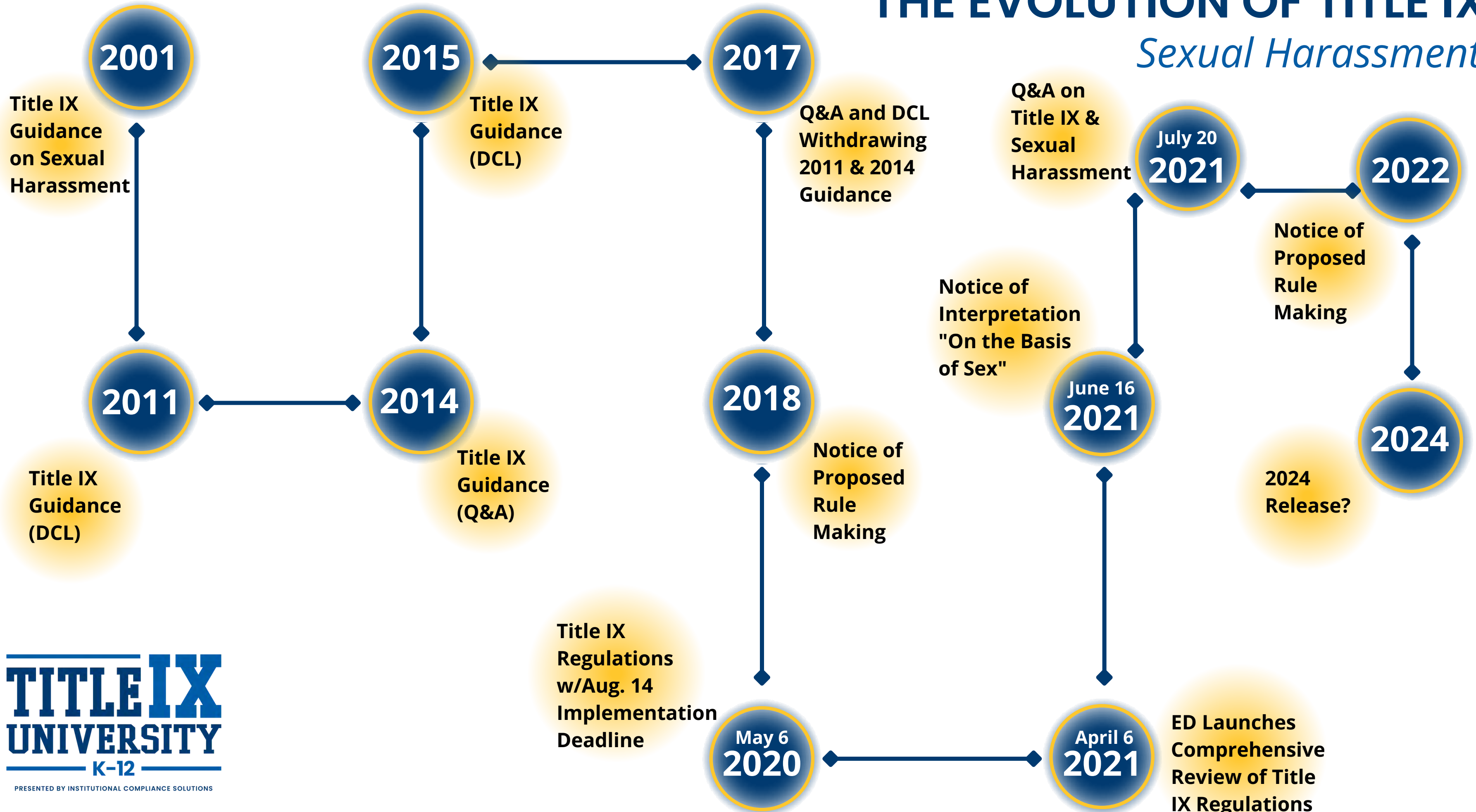
**Historically
viewed as simply
requiring gender-
equity
in athletics**

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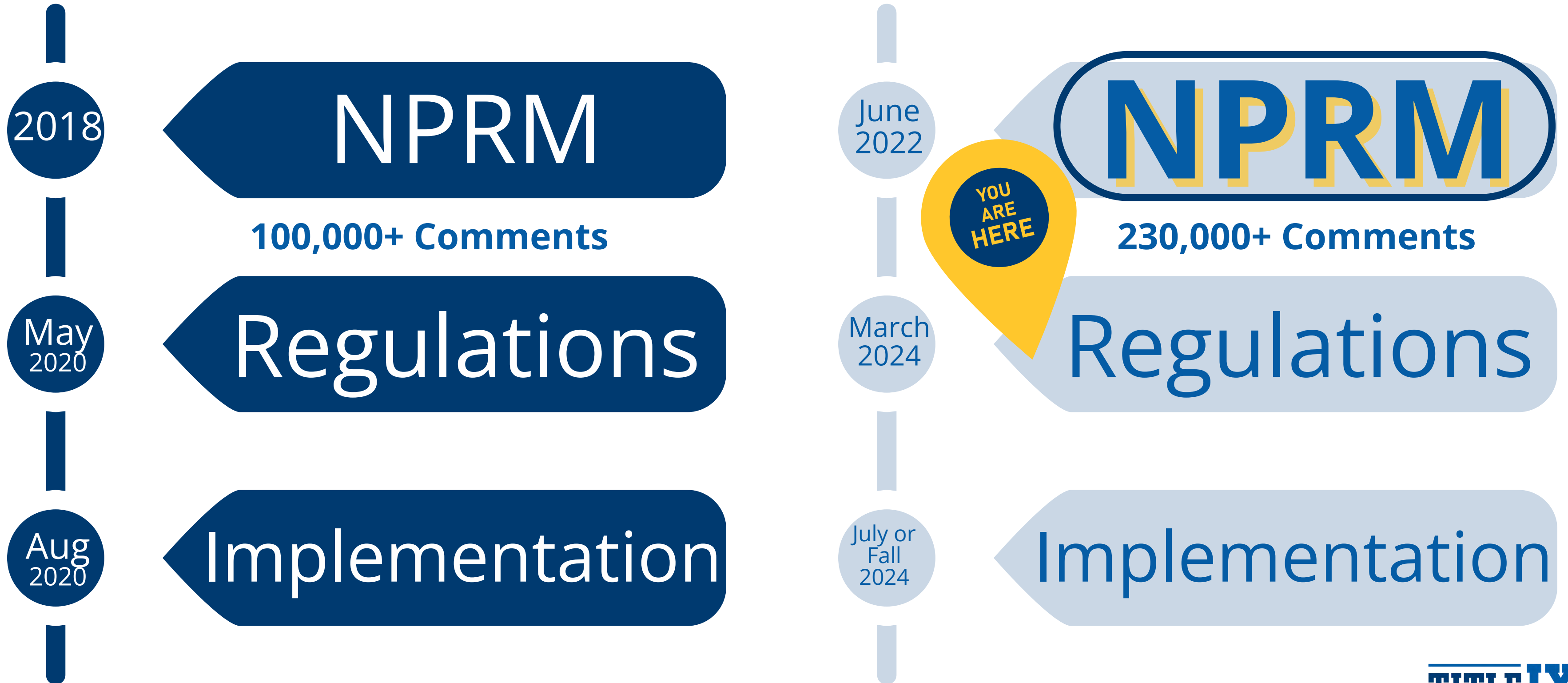
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THE EVOLUTION OF TITLE IX

Sexual Harassment



TITLE IX REGULATIONS, THEN & NOW



TOP 10

1

Scope Expanded

2

Mandated Training Expanded

3

Additional/Modified Definitions

4

Complexity of Title IX Coordinator Role

5

Sexual Harassment is now Sex Based Harassment

6

Less Prescriptive Grievance Process

7

Informal Resolution- Initiated without "Formal Complaint"

8

Retaliation Protections

9

Discrimination Based on Pregnancy

10

Expands Recordkeeping

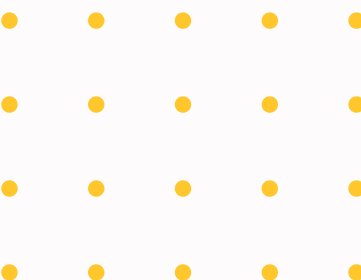
REMINDERS

It is a proposed rule,
NOT a final rule.



Reminder

The 2020
regulations still
apply. Continue
your compliance
efforts under the
2020 Regulations.



Do not forget

Title IX

Encompasses

Sexual Harassment
Pregnancy Discrimination
Gender Equity in Athletics
Discrimination based on SOGI
Discrimination based on "sex"

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WHAT IS/IS NOT TITLE IX CONDUCT?

Is or May Be Title IX

- Discrimination based on gender
- Sexual Harassment
- Pregnancy discrimination
- Retaliation
- Bullying/Cyber-Bullying when it involves sexual misconduct
- Hazing when it involves sexual misconduct

Is **NOT** Title IX

- Disability discrimination (ADA)
- Employment discrimination based on race, religion, or national origin (Title VII)- Note overlap with sex
- Student discrimination based on race, religion, or national origin (Title VI)
- Age Discrimination (ADEA)



TITLE IX APPLIES TO:



Student on
Student



Employee on
Employee



Student on
Employee



Employee on
Student

**Education
Program/Activity**

Sexual Harassment

**2020 TITLE IX
REGULATIONS
HAVE SPECIFIED
DEFINED TERMS**

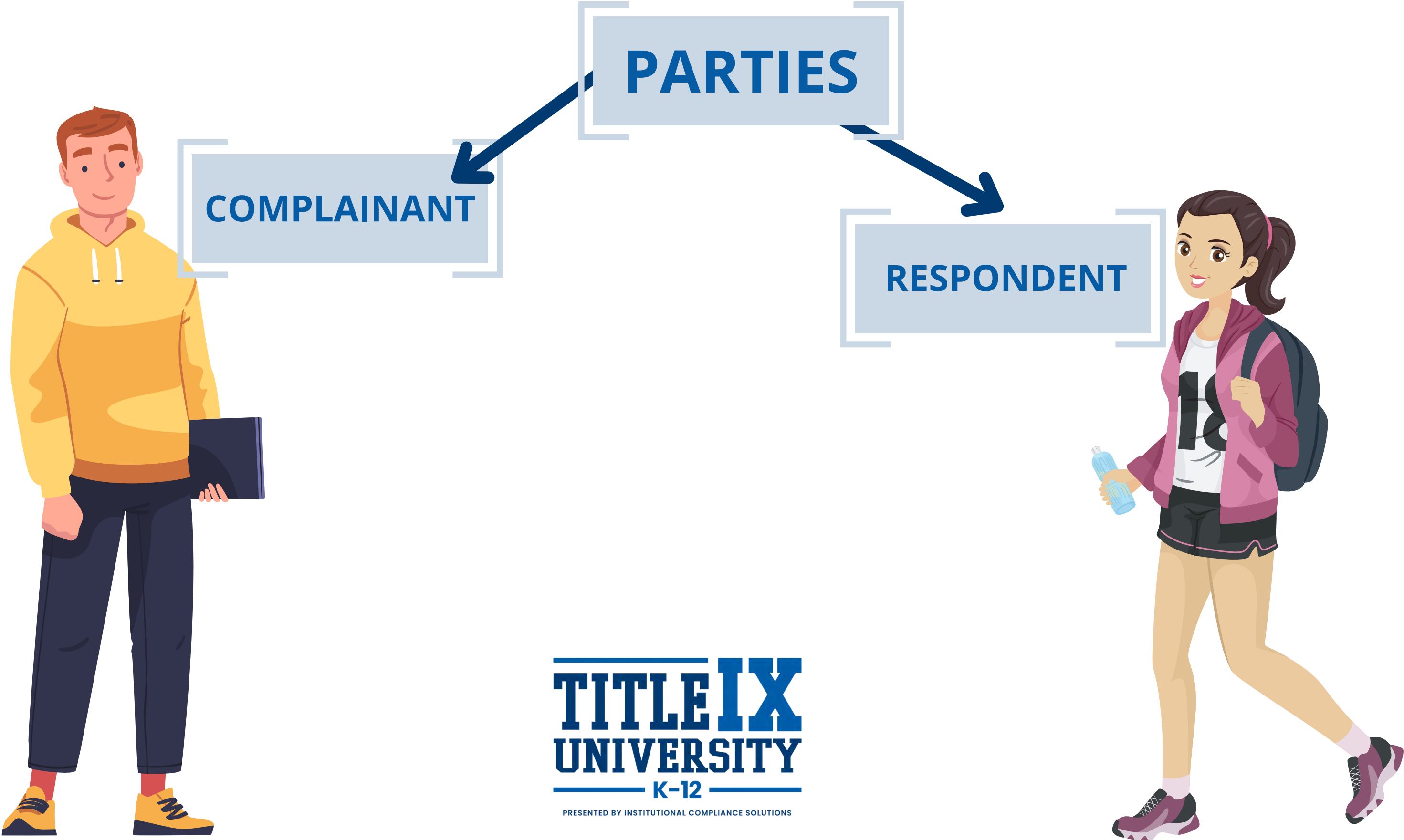
Complainant

**Supportive
Measures**

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FORMAL TITLE IX GRIEVANCE PROCESS



Title IX Regs Formula



TITLE IX
SEXUAL
HARASSMENT



EDUCATION
PROGRAM/
ACTIVITY



TITLE IX
FORMAL
GRIEVANCE
PROCESS

SEXUAL HARASSMENT

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

- An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- 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; or
- "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.



SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE



**UNWELCOME
CONDUCT**



SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE

- Severe- can be non verbal through sexual assault (touching/fondling)
- Pervasive- how often and how widespread
- Objectively Offensive- behavior that would be offensive to a reasonable person under the circumstances



**DENIES
EQUAL ACCESS**

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SEXUAL ASSAULT IS:

An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.
A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Rape

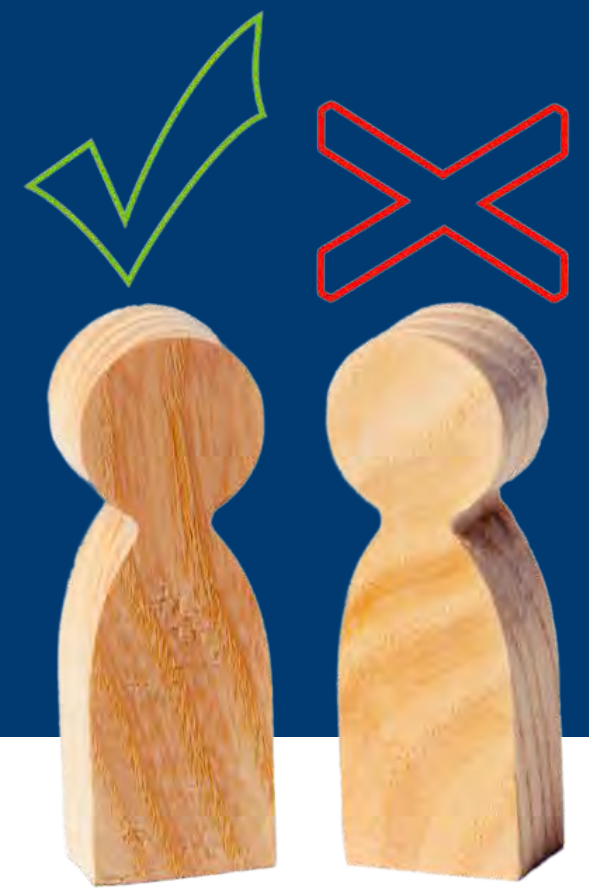
The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent.

CONSENT

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.



WHAT DOES THIS MEAN?

DEFINITION OF CONSENT

Create/use a definition of consent that makes sense to you and your district. Make sure you can 1) explain it and 2) apply it.

SITUATIONAL CLARITY

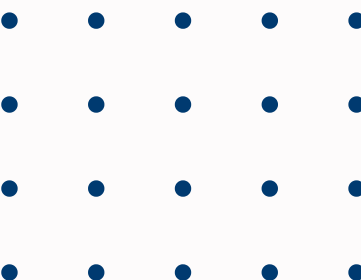
Make sure to include situations where consent cannot be obtained/given (ie. coercion, incapacitation) and clearly define those situations.



DOMESTIC VIOLENCE

A felony or misdemeanor crime of violence committed by a:

- current or former spouse or intimate partner of the victim
- person with whom the victim shares a child in common
- person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or 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 in which the crime of violence occurred.

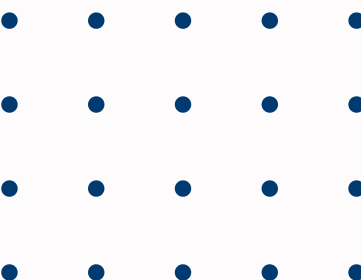




DATING VIOLENCE

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship.
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.





STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

CONDUCT + EDUCATION PROGRAM OR ACTIVITY

It's more than the
behavior...

Must evaluate location/
Jurisdiction as well.



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JURISDICTION

Education Program or Activity



Locations, events, or circumstances (operations) over which the district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

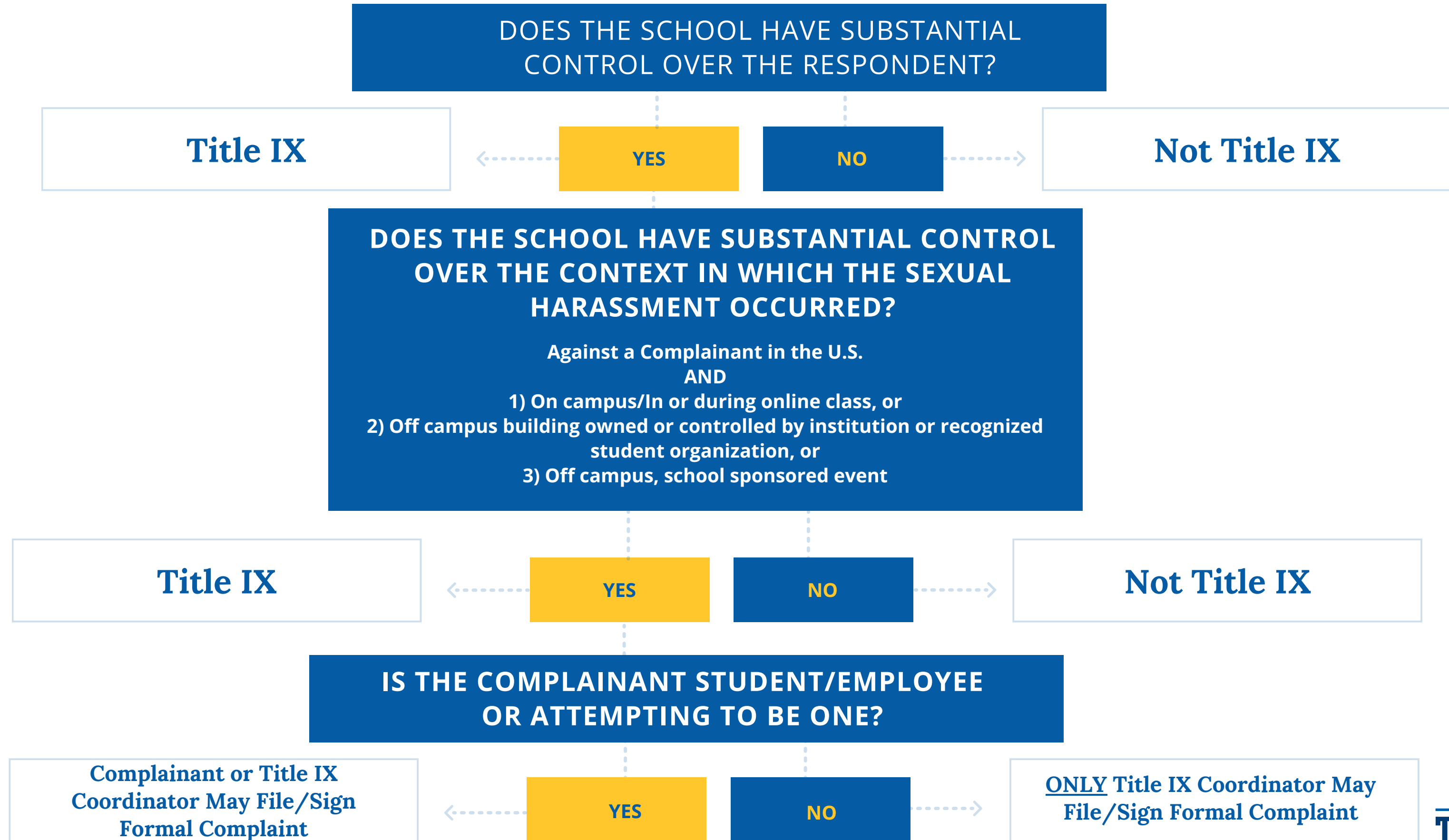


Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.



Does not create or apply a geographic test, does not draw a line between "off campus/property" and "on campus/property," & does not create a distinction between sexual harassment occurring in person vs online.

Education Program or Activity/Jurisdiction



QUESTIONS?



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THE ROLE OF A TITLE IX COORDINATOR UNDER THE 2020 TITLE IX REGULATIONS AND BEYOND



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TITLE IX COORDINATOR

OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX.

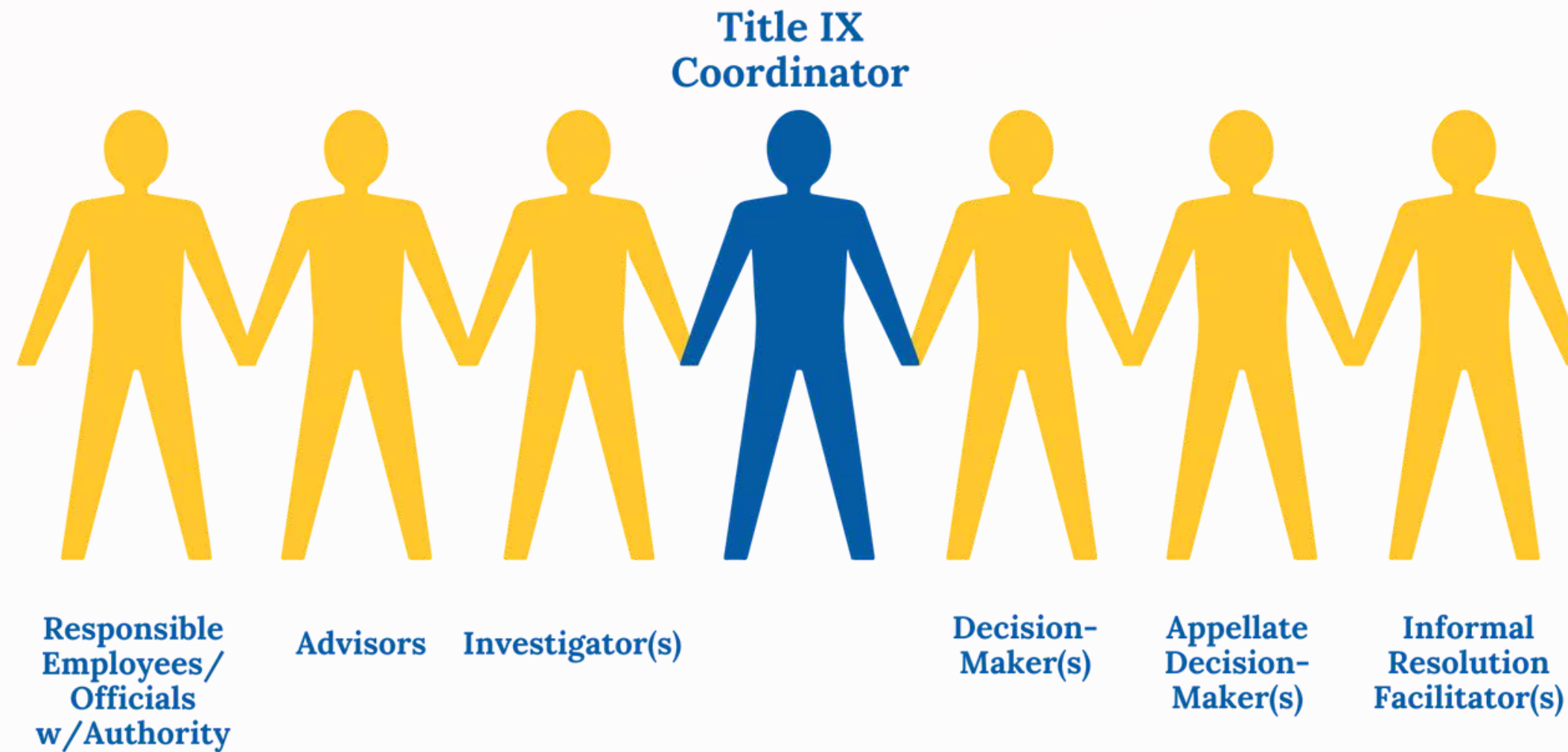
- 2015 DCL



ROLE OF A TITLE IX COORDINATOR

- Build a Title IX Team
- Coordinate training for Title IX Team and all employees
- Coordinate response to all complaints involving Sexual Harassment
- Provide and track Supportive Measures
- Monitor investigations, resolutions, outcomes, remedies and sanctions
- Monitor patterns and trends
- Avoid Conflicts of Interest and biases
- Update Policies and Procedures
- Recordkeeping

TITLE IX TEAM



INVESTIGATOR

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator.

It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

APPELLATE DECISION MAKER

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

TITLE IX TEAM

TITLE IX COORDINATOR

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May serve as an Investigator-though if possible, it is recommended that another individual serve as an Investigator. May serve as an Informal Resolution Facilitator.

DECISION MAKER

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as a Decision-Maker.

INFORMAL RESOLUTION FACILITATOR

May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or Appellate Decision-Maker in the same case serve as the Informal Resolution Facilitator.



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TITLE IX COORDINATOR'S JOB IS:

*"Of all the things I've done, the most vital is coordinating those who work with me and aiming their efforts at a certain goal."
- Walt Disney*

01



Place good employees
in the right positions

02

Make sure each team
member understands
their role

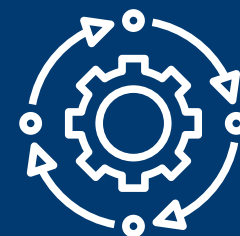


03



Ensure that the work is
getting done

Track the process



04

05



Be Available

Investigations

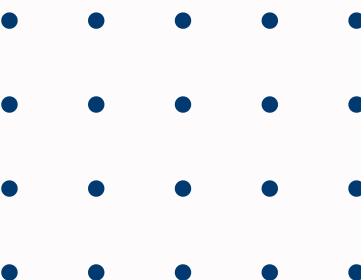
INVESTIGATOR:

- ▶ Notice of Allegations
- ▶ Notice of Meetings with sufficient opportunity/time to prepare
- ▶ Investigation meetings
- ▶ Collects evidence/information (inculpatory and exculpatory)
- ▶ Provides information/evidence directly related to allegations to parties for review (10 days prior to report)
- ▶ Writes report summarizing relevant evidence
- ▶ Provides report to parties for review (10 Days)

DECISION- MAKER

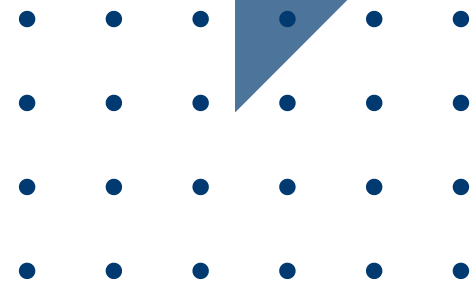
Question and Answer

- Afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- Hearing?
- Written Determination regarding Responsibility/Sanctions/ Remedies



APPELLATE DECISION- MAKERS

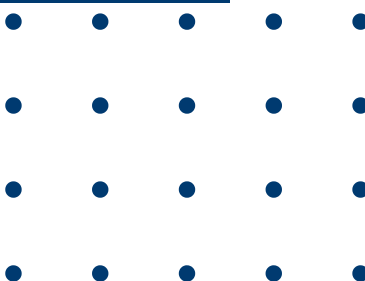
- UNDERSTAND DISTRICT SPECIFIC PROCESS
- REVIEW APPEALS
- MAKE TIMELY DECISIONS AND SIMULTANEOUS NOTIFICATIONS



INFORMAL RESOLUTION FACILITATORS



- Meet with students, parents, advisors and facilitate resolutions after Formal Complaint and before determination regarding responsibility
- Informal Resolutions are not required but if using them, facilitators must be trained



OFFICIALS WITH AUTHORITY

"Responsible Employee" is gone, actual knowledge only to Title IX Coordinator or "official with authority"



ALL employees are responsible for reporting at K-12 level



Actual Knowledge = NOTICE



Notice without action = deliberate indifference



TRAINING, TRAINING, TRAINING

REQUIRED

- Title IX Coordinator (robust), Investigators, Decision-Makers, Informal Resolution Facilitators, Appellate Decision-Makers
- Decision-Makers- training on technology issues
- All Employee Training (Highly Recommended)
- Post training materials

OTHERS INVOLVED IN THE PROCESS



PARENTS AND GUARDIANS

While elementary & secondary school students retain less control over when disclosure of sexual harassment triggers the school's mandatory response obligations, these students (with involvement of their parents as appropriate) do retain control over whether to accept supportive measures, & whether to also file a formal complaint.



ADVISORS

- Of choice
- Can be an attorney, doesn't have to be
- Your policy defines how they can be involved in your process
- Challenges with advisors
- Benefits to advisors



COORDINATED RESPONSE

- ▶ Complainant/Respondent
- ▶ Who is Investigating
- ▶ Timelines
- ▶ Appropriate Notices to Students, Parents, Advisors
- ▶ Supportive Measures
- ▶ Resolution Process and Outcome
- ▶ Appeals

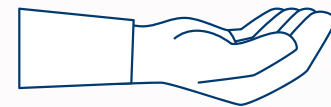


SUPPORTIVE MEASURES



What

- defined term and intentional deviation from "interim measures" individualized services provided to a complainant or respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education
- Non-disciplinary
- non punitive
- individualized services
- interactive process



Offered

- to complainant and respondent (can be refused)
- as appropriate
- as reasonably available
- without fee or charge



When?

- promptly
- before or after the filing of formal complaint OR
- where no formal complaint has been filed

SUPPORTIVE MEASURES CONTINUED

Purpose

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment

Document

- when provided, when not provided and why

Confidential

- as much as possible

Title IX Coordinator

- ultimately responsible for effective implementation, but others can also implement

Burden

- remains on the district not the parties

Examples

- in section 106.3

Not

- punitive or disciplinary

TRACKING SUPPORTIVE MEASURES

- When was the event reported
- When were measures offered to Parties
- What measures were offered
- Were they accepted
- When were they re-evaluated /updated





**TRACK SUPPORTIVE MEASURES
AS STUDENTS MATRICULATE
(I.E. MIDDLE TO HIGH SCHOOL)**



DELIBERATE INDIFFERENCE

"Clearly unreasonable in light of the circumstances"

- ▶ Must promptly offer supportive measures
- ▶ Cannot impose discipline without a formal process
- ▶ Must investigate allegations in a formal complaint



MONITOR OPEN CASES/ BE AVAILABLE FOR YOUR TEAM

01

Schedule meetings with investigators (virtual or in person) to discuss status of cases

02

Bring team together regularly to make sure processes are working consistently

03

Monitor outcomes, sanctions and remedies

04

Remain focused on equity

05

Correct in the moment, mistakes will happen

06

Remain as transparent as possible

07

Use a data tracking system if possible

08

If something isn't working, change it



Tracking patterns and trends related to sexual violence is one of the most important (and often overlooked) roles of a Title IX Coordinator. Adequate trend tracking enables a campus to institute timely and relevant prevention initiatives and provide clear, consistent, and compliant response



2020 OCR INITIATIVE

“Through compliance reviews and raising public awareness about what's actually happening in too many of our nation's schools, we can build on the good work we're already doing to enforce Title IX and protect students. We cannot rest until every student can learn in a safe, nurturing environment where their civil rights are protected.”



BENEFITS OF TRACKING PATTERNS AND TRENDS



Prevention



Consistency



Sustainability
planning



Requesting and
advocating for
additional funds

AVOID CONFLICT OF INTEREST/BIAS



Generally toward
Complainants/
Respondents



Occurs when
personal or private
interests possibly can
compromise one's
judgment, decisions,
or actions



Three types of COI:

- Actual
- Perceived
- Potential

EXPLICIT BIAS

“Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.

- Expressed directly
- Aware of bias
- Operates consciously

Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."



IMPLICIT BIAS

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
 - Expressed indirectly
 - Unaware of bias
 - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.



UPDATE DISSEMINATE, & PUBLISH POLICIES

Policies must be:

- ▶ Compliant
- ▶ Clearly displayed & distributed



**K-12 Title IX Coordinator
Notification, Dissemination, and Publication Checklist
Section 106.8**

- 1. **Prepare the following information related to Title IX Coordinator:**
 - Name OR Title
 - Office Address
 - E-mail Address
 - Telephone Number

- 2. **Prepare the following notifications:**
 - The district does not discriminate on the basis of sex
 - The district is required by Title IX not to discriminate on the basis of sex
 - The requirement not to discriminate based on sex extends to admission and employment
 - Inquiries should be referred to Title IX Coordinator

- 3. **Prepare the following:**
 - District's grievance procedures and process
 - How to report or file a complaint of sex discrimination
 - How to file a Formal Complaint of Sexual Harassment
 - How district will respond to reports

- 4. **Notify the following of the information in boxes 1-3:**
 - Applicants for admission and employment
 - Students
 - Employees
 - Unions or professional organizations with collective bargaining or professional agreements

- 5. **Publish/promptly display the information in boxes 1-3:**
 - On website
 - In all handbooks/catalogs and make them available to those identified in box 4

RECORDKEEPING

DISTRICTS MUST MAINTAIN THE FOLLOWING RECORDS FOR SEVEN YEARS:

- Records and action taken in response to a report or Formal Complaint, including:
 - Supportive measures,
 - The basis for district's conclusion that its response was not deliberately indifferent,
 - Measures taken to restore and preserve equal access to district's Education Program or Activity,
 - Reasons why district's response was not clearly unreasonable in light of the known circumstances if district does not provide a Complainant with supportive measures.
- Each Sexual Harassment investigation including:
 - Any determination regarding responsibility and all audio or audiovisual recording or transcript,
 - Disciplinary sanctions imposed on the Respondent, and
 - Any remedies provided to the Complainant.
- Any appeal and result of appeal.
- Any informal resolution and result therefrom.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.



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COORDINATION OF EFFORTS

- Team Effort!
- You cannot do it all on your own
- Coordination is critical
- No islands or silos

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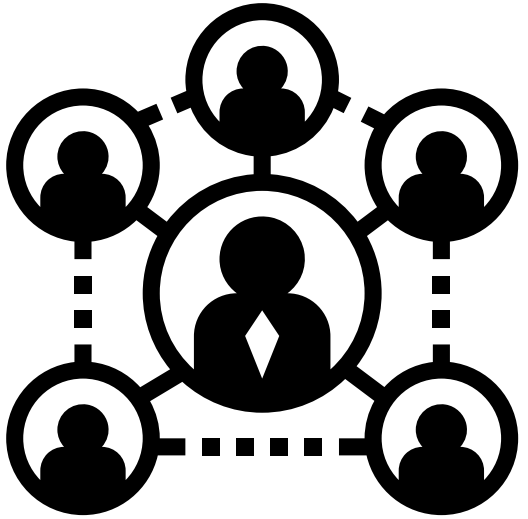
QUESTIONS?



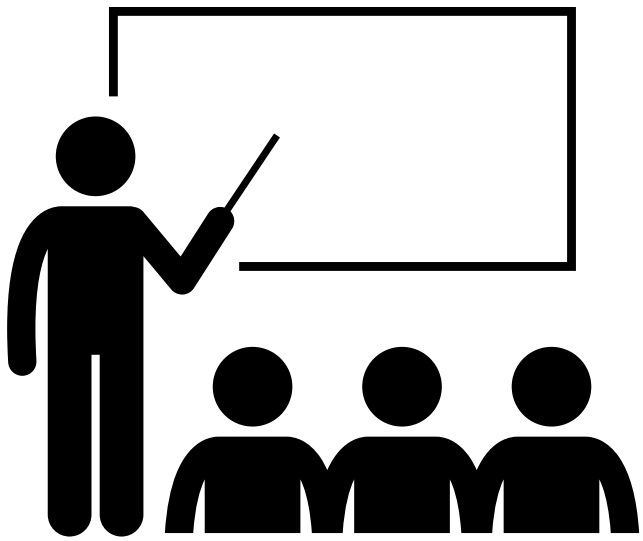
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How Can We Help?



**Community
Access**



**Tailored
Training**



**Ongoing
Support**



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TITLE IX PROCESS: FROM REPORT TO RESOLUTION & APPEALS

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1. REPORT OF SEXUAL HARASSMENT TO EMPLOYEE



1. Is Complainant a Participant in Education Program or Activity?
2. Does the report meet the definition of Sexual Harassment?
 - Based on Sex
 - Quid pro quo
 - Severe, pervasive and objectively offensive
 - Sexual Assault, Domestic Violence, Dating Violence, Stalking
3. Education Program or Activity/Jurisdiction?
 - Does district have substantial control over the Respondent AND
 - Does district have substantial control over the context in which the conduct occurred (on district property or during sponsored event)

2. INITIAL MEETING WITH COMPLAINANT – SUPPORTIVE MEASURES



1. Without Fee or Charge
2. Regardless of whether the Complainant wants to file Formal Complaint
3. Designed to restore or preserve access to Education Program or Activity
4. Without unduly burdening the Respondent

Including but not limited to:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Escort services
- Mutual no contact directives/restrictions
- Changes in work locations
- Leaves of absence
- Increased security and monitoring of certain areas

3. INITIAL MEETING WITH COMPLAINANT – FORMAL COMPLAINT



➤ **In Writing**

- Hard copy
- Electronic
- Online submission

➤ **Signed by:**

- Complainant or Parent/Guardian
- Title IX Coordinator

➤ **Alleging Sexual Harassment**

➤ **Requesting an Investigation**

4. DISMISSAL OF FORMAL COMPLAINT



➤ Required Dismissal

- Would not constitute Sexual Harassment as defined in Title IX regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.



➤ Permissive Dismissal

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw Formal Complaint or allegations
- Respondent is no longer enrolled or employed by the district
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination

➤ If Mandatory Dismissal:

- Must Promptly send written notice of dismissal and reasons for dismissal simultaneously to parties
- May proceed with disciplinary process outside of Title IX

Beware



Cannot discipline outside of the Formal Title IX Grievance Process if meets Title IX definition of Sexual Harassment and falls under education, program, activity.

5. NOTICE OF ALLEGATIONS



- **Notice of Grievance Process (including informal resolution process if one exists)**
- **Allegations potentially constituting Sexual Harassment**
 - Identities of the parties
 - Conduct constituting Sexual Harassment
 - Date of incident
 - Location of incident
- **Statement: Respondent presumed not responsible and responsibility is determined after Grievance Process**
- **Right to Advisor of Choice**
- **Code of Conduct provision(s) prohibiting false statements or false information in process**

Notice of Allegations Checklist

- Notice of Grievance Process; Including Informal
- Allegations Potentially Constituting Sexual Harassment
 - Identities of the Parties
 - Conduct Constituting Sexual Harassment
 - Date of Incident
 - Location of Incident
- Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- Right to Advisor of Choice
- Code of Conduct Provision Prohibiting False Statements or False Information in Process

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6. INVESTIGATION



➤ Interviews with parties and witnesses

- Including Notice with sufficient time to prepare for the meeting/interview
- Document date of meeting and date notice provided

➤ Collect evidence and information

Document when and how evidence/information was collected

➤ Allow parties and advisors to review "evidence directly related to the allegations" (10 days)

➤ Write investigation report that "fairly summarizes relevant evidence"

➤ Provide opportunity for parties and advisors to review the report (10 days)



PEOPLE IN AN INVESTIGATION

REMEMBER!

The Title IX Coordinator
DOES NOT become a
Complainant if they Sign
Formal Complaint:
Reporter
vs.
Complainant



Can you delay/defer a Title IX investigation due to a law enforcement investigation and/or family services?



Parallel Tracks: Response to Title IX and Criminal Matters - ICS Lawyer

7. RESOLUTION



➤ Hearing Optional

➤ Q & A regardless of whether offering hearing:

- Afford each party the opportunity to submit written, relevant questions that a party wants to ask of any party or witness
- Provide each party with the answers
- Allow for additional, limited follow-up questions from each party

➤ Decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant

8. DETERMINATION REGARDING RESPONSIBILITY



- Written Determination
- Applying appropriate standard of evidence (preponderance vs. clear and convincing)
- Findings of fact supporting the determination
- Conclusions regarding application of code of conduct/definitions to the facts
- Procedures and permissible bases for Complainant and Respondent to appeal
- Provide to parties simultaneously
- Identifying the allegations
- Description of procedural steps taken from the receipt of the Formal Complaint through the determination regarding responsibility
- Statement of, and rationale for, the result as to each allegation including determination regarding responsibility, any disciplinary sanctions and remedies

Decision-Maker

Determination Regarding Responsibility Checklist

- Identification of the Allegations
- Description of Procedural Steps Taken
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held
- Findings of Fact Supporting Determination
- Conclusions Regarding the Application of the Code of Conduct to the Facts
- Result of Each Allegation Including Rationale
 - Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- Procedures and Permissible Bases for Appeal

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9. APPEALS



- Offered to both parties
- Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility
- On the Following Basis:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter
 - Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter
 - Additional basis if offered equally to both parties
- Written decision describing the result and rationale for the result
- Notify the other party in writing when an appeal is filed
- Provide written decision simultaneously to both parties
- Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome

Appeals Checklist

- Provide Equal Opportunity to Appeal**
 - Determination of Responsibility
 - Dismissal of Formal Complaint
- Based Upon Proper Grounds**
 - Procedural Irregularity that Affected Outcome
 - New Evidence that Was Not Reasonably Available at the Time of the Determination that Could Affect Outcome
 - Conflict or Bias by Title IX Coordinator, Investigator, or Decision-Maker
- Notify the Other Party in Writing**
- Decision-Maker NOT Same as Prior Decision Makers, Investigators, or Title IX Coordinator**
- Provide Equal Opportunity to Submit Written Statement**
- Issue Written Decision and Rationale**
- Provide the Written Decision Simultaneously**

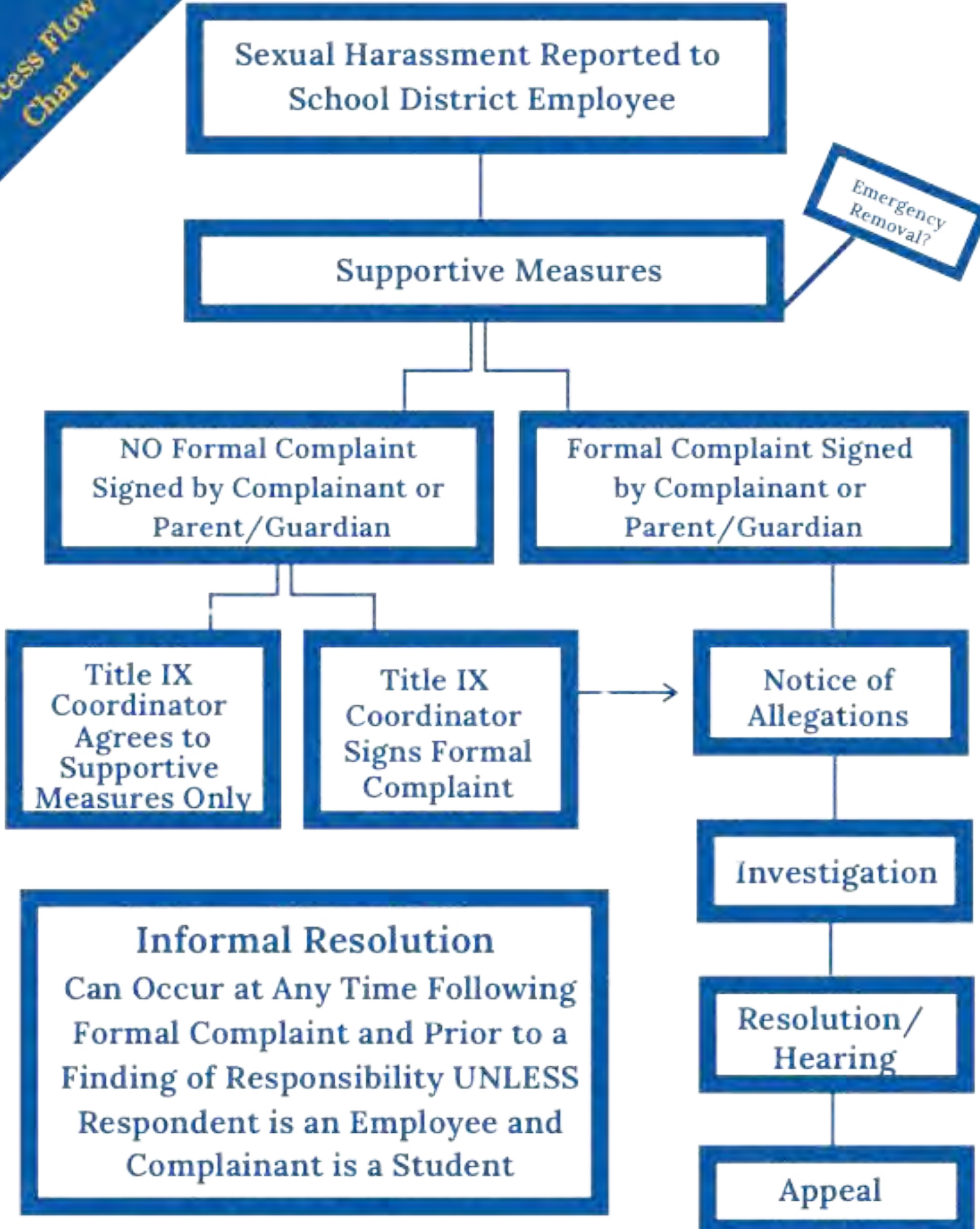
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10. INFORMAL RESOLUTIONS



- Cannot be offered as a condition of enrollment or continued employment
 - Cannot be offered to resolve employee on student allegations
 - After a Formal Complaint is filed
 - Prior to decision regarding responsibility
 - Parties cannot be required to participate
- District Must:
 - Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations
 - Allow any party the right to withdraw from the informal resolution process and resume grievance process with respect to Formal Complaint
 - Provides consequences resulting from informal resolution process including records maintained or shared
 - Obtain both parties voluntary, written consent to the informal resolution process

Process Flow Chart



*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.
 *A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at institution or institution is prevented from gathering evidence.

EMERGENCY REMOVAL/ADMIN LEAVE

- ✓ Individualized Safety and Risk Assessment
- ✓ No blanket "rules" for removal
- ✓ Explained in policy/procedure
- ✓ Admin leave with pay available; not the same as emergency removal
- ✓ Notice and explanation to respondent
- ✓ Use your BIT Team
- ✓ Authority to issue

INVESTIGATIVE TIMELINE

1
INVESTIGATE

2
OPPORTUNITY
TO INSPECT AND
REVIEW
EVIDENCE
RELATED TO
ALLEGATIONS
AND PROVIDE
WRITTEN
RESPONSE
10 days

3
INVESTIGATIVE
REPORT

4
OPPORTUNITY
TO REVIEW
FINAL REPORT
AND PROVIDE
WRITTEN
RESPONSE
10 days

5
Q & A
RESOLUTION/
HEARING

6
APPEAL



K-12 INVESTIGATION FLOWCHART





TITLE IX COORDINATOR SHOULD TOUCH EACH PART OF THE PROCESS. FOR EXAMPLE, GATEKEEPER FOR APPEALS TO DETERMINE IF APPROPRIATE, OR THE TRANSITION BETWEEN INVESTIGATION TO DECISION-MAKING. SOME QUESTIONS TO ASK:

- 1. WHO DRAFTS THE INITIAL NOA AND ANY UPDATES?**
- 2. WHO DISSEMINATES THE WRITTEN DETERMINATION?**
- 3. WHO DETERMINES IF AN APPEAL IS APPROPRIATE?**
- 4. WHO ISSUES THE NOTICE OF INFORMAL RESOLUTION?**



ATTENDANCE LINK!



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QUESTIONS?



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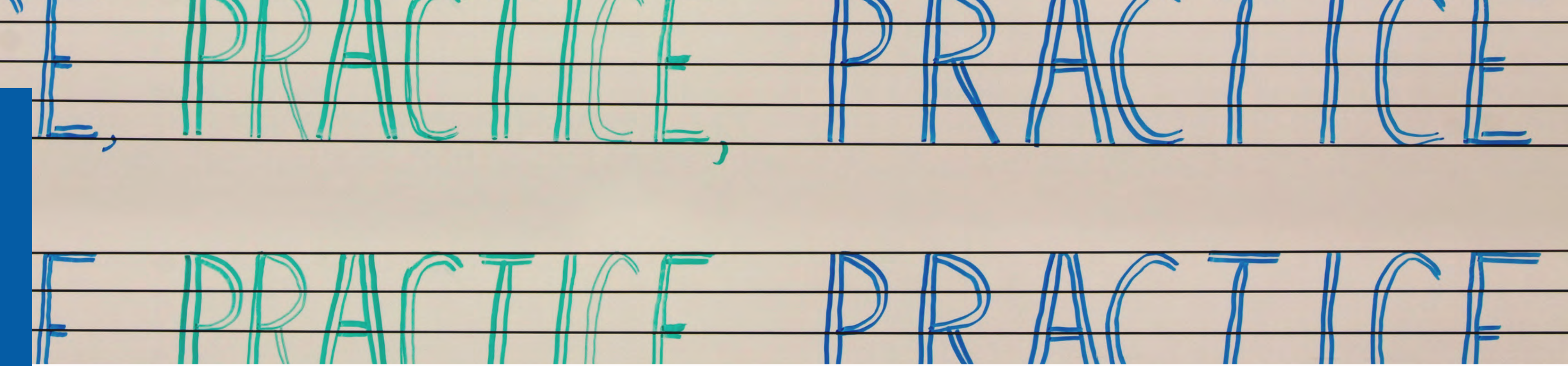


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FROM POLICY AND PROCESS TO PRACTICE: CASE STUDIES AND HYPOTHOSIS



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POLICIES

PROCEDURE

PROCEDURAL HYPOS

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Formal Complaint *does not* rise to Title IX Sexual Harassment and/or Program or Activity

- Supportive Measures?
- Informal Resolution/Alternative Resolution offered?
- Conduct assessed under other policies/procedures?

Allegations *do* rise to Title IX Sexual Harassment and Program/Activity, but Complainant/Parent/Guardian does not want to proceed with a Formal Complaint

- Supportive Measures?
- Informal Resolution offered?
- Conduct assessment under other policies/procedures?
- Formal Complaint filed by Title IX Coordinator?

During investigation of a Formal Complaint,
Complainant no longer wishes to go forward.

- Informal Resolution offered?
- Dismissed?
- What if the Respondent is an employee vs. a student?



SUBSTANTIVE HYPOS

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Sally, a 1st grader, alleges that Tommy (a 1st grader) showed her his privates on the playground.

Sally's mother comes in during drop off and makes a report. Mom is given information on how to file a Formal Complaint.

- Meet definition of Sexual Harassment?
- Why/why not/need more info?
- What if Tommy was an 8th grader?

Sam is a Junior at ICS High School. Ms. Smith observes that Sam has been spending a lot of time with his math teacher, Ms. Brown, outside of classroom time. Ms. Smith often observes Sam in Ms. Brown's classroom before the start of school, during lunch period, and also after school. Ms. Smith has heard rumors that Sam and Ms. Brown are in a relationship. Ms. Smith reports the information to the Title IX Coordinator. The Title IX Coordinator talks to Sam who says Ms. Brown is a family friend and there is nothing inappropriate going on. The Title IX Coordinator talks to Sam's friend, Alex, who says Sam and Ms. Brown have kissed according to Sam.

- Any concerns with the actions of the Title IX Coordinator?
- Should the Title IX Coordinator file a Formal Complaint?
- Sexual Harassment?

Ralph complains to his teacher that he is being called names by his wrestling teammates. Ralph says they call him names like “pussy” and “faggot” because they think he is gay. They also tell him he has “man boobs” and make humping gestures towards him saying he likes to “do it” with boys. The Title IX Coordinator talks to Ralph who says this is happening about once a week during practices after school.

- Meet definition of sexual harassment?
- Why or why not?

Using the previous hypo, assume that the name calling, and gestures occurred at a friend's house during a team sleepover and that the conduct alleged also includes the boys physically humping Ralph, but the behavior has never happened on school grounds.

- Jurisdiction?
- Dismissal of Formal Complaint? Why or why not?

Campbell reports to the Title IX Coordinator that her boyfriend, Ben, is threatening to kill her through text messages if she breaks up with him. She says that he has been abusive to her before by slapping her and locking her in his car until she agreed to stay with him one time when they went to dinner at local Italian restaurant. Campbell does not want to file a Formal Complaint but wants you to change him out of the English class that they are in together. She wants Ben kicked out of school but does not want him to know that it was because of her allegations.

- Meet definition of Sexual Harassment? Why or why not?
- Can you move Ben as a supportive measure?
- If Campbell does not want to file a Formal Complaint, but her mother files one on her behalf, investigate?

Tyler works maintenance at the school. He alleges that Charlotte, a kindergarten teacher, keeps hitting on him. He files a Formal Complaint that states that Charlotte has asked him on a date three times. Each time Tyler has turned her down and said he is not interested. Charlotte also routinely makes comments to him about how he is hot and has a "nice ass."

Max is dual enrolled at ABC High School and DEF College. He files a Formal Complaint with your school district alleging that he was sexually assaulted by a DEF College student one after an event on campus. Title IX Coordinator does a follow up with Max, who states that the incident occurred at a house party off campus.

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Questions?
