



Summer Leadership Academy Title IX Training

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Overlapping Laws & Provisions

- Title IX (Federal Law)
- Bullying & Harassing (State Law)
- Child Abuse & Neglect Reporting (State Law/DSS)
- Criminal Law
- NHCS Policies & Procedures





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.”

20 USCA Sec. 1681(a)

June 23, 1972



When you hear "Title IX" what is your first thought?



OCR K-12 Initiative

- On February 26, 2020, the DOE directed OCR **to ensure that school districts understand their obligations under federal law and are prepared to respond effectively to student complaints of sexual harassment and assault**, including sexual acts perpetrated upon students by teachers, staff, and other school personnel
- Focus is teacher-on-student or staff-on-student sexual harassment and assault



OCR K-12 Initiative

- OCR announced an initiative **“to examine the problem of sexual assault** in public elementary and secondary schools.”
- **OCR will be conducting widespread “compliance reviews”** at K–12 schools and school districts
 - To examine how sexual assault cases, including sexual incidents involving teachers and school staff, are handled under Title IX; and,
 - To identify compliance concerns and work with schools to correct any identified noncompliance
- **Raising Public Awareness and Support**
 - Providing technical assistance, training opportunities, and other resources to school districts to raise awareness of these issues

District Title IX Obligations (Sexual Harassment)



“A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must **respond promptly** in a manner that is not deliberately indifferent (deliberately indifferent in light of the known circumstances.”

- A response must include:
 - (1) Promptly explain to each complainant how to **file** formal complaint
 - (2) Offering **supportive measures** for that complainant
 - (3) Imposing **remedies or discipline** on a respondent only after complying with the grievance process



Key Provisions

- Defines sexual harassment to include sexual assault, dating violence, domestic violence, and stalking, as unlawful discrimination on the basis of sex
- Provides a consistent, legally sound framework on which the victim, the accused, and schools can rely
- Requires schools to offer clear, accessible options for any person to report sexual harassment
- Empowers victims to make decisions about how a school responds to incidents of sexual harassment
- Requires the school to offer victims supportive measures, such as class or no contact orders



Key Provisions

- Protects K-12 students by requiring elementary and secondary schools to respond promptly when any school employee has notice of sexual harassment
- Provides "rape shield" protections and ensures victims are not required to divulge any medical, psychological, or similar privileged records
- Requires schools to offer an equal right of appeal for both parties to a Title IX proceeding
- Shields victims from having to come face-to-face with the accused during a hearing and from answering questions posed personally by the accused
- Protects students and employees by prohibiting schools from using Title IX in a manner that deprives students and employees of rights guaranteed by the First Amendment



Definitions

- **Complainant** - Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
 - At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
- **Respondent** - Means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



Definitions

- **Report** - Means an allegation of potential sexual harassment.
- **Formal Complaint** - Means 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.



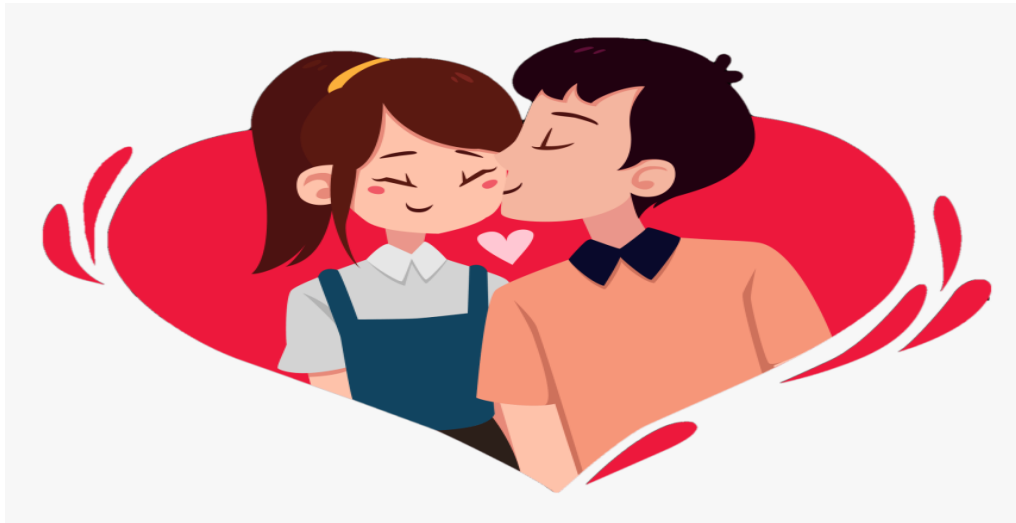


Definitions

- **Sexual Harassment** - Means conduct on the **basis of sex** that satisfies one or more of the following:
 - **(1)** 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**;
 - **(2)** 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
 - Verbal or Expressive Conduct
 - **(3)** (Clery/VAWA Definitions) Any instance of:
 - (i) “**sexual assault**” (Clery Act)
 - (ii) “**dating violence**” (Violence Against Women Act)
 - (iii) “**domestic violence**” (Violence Against Women Act)
 - (iv) “**stalking**” (Violence Against Women Act)

Definitions

- “**On the basis of sex**” – refers to conduct that is **sexual in nature** or conduct (that is not sexual in nature) but targets a particular sex (**gender**).
 - Gender refers to **biological sex**
- Non sexual conduct that targets a particular sex and meets the “Davis” standard, constitute sexual harassment



Non Sexual Harassment Sex Discrimination



- Recipient must adopt and publish grievance procedures that provide for the **prompt and equitable resolution** of student and employee complaints.
 - Regulations recognize a particularly detrimental impact on individuals facing sexual harassment; therefore, DOE mandates a certain approach to resolve sexual harassment (but not for non-sexual sex discrimination)
- NHCS is reviewing procedures for non-sexual sex discrimination complaints that will provide for “prompt and equitable resolution” of such complaints.





Quid Pro Quo Sexual Harassment

- 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**;
- Determining whether unwelcome sexual conduct is proposed, suggested, or directed at a complainant, by a recipient's employee, as part of the employee "conditioning" an educational benefit on participation in the unwelcome conduct, **does not require the employee to expressly tell the complainant that such a bargain is being proposed**, and the **age and position of the complainant is relevant** to this determination.
 - For example, elementary and secondary school students are generally expected to submit to the instructions and directions of teachers, such that if a teacher makes a student feel uncomfortable through sex-based or other sexual conduct (ex. back rubs or touching students' shoulders or thighs), it is likely that elementary and secondary school students will interpret that conduct as implying that the student must submit to the conduct in order to maintain educational benefits (ex. not getting in trouble, or continuing to please the teacher and earn good grades).
 - Intent of employee would be a consideration in determining remedies if found responsible



Sexual Assault

- An offense that meets the definition of **rape, fondling, incest** or **statutory rape**.
- **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.
- **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
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.



Sexual Assault

- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.
- In North Carolina, the **age of consent is 16**.
- Sexual intercourse with someone who is under 16 years of age is only illegal if the defendant is: (1) at least 4 years older than the victim *and* (2) at least 12 years of age (the age at which the defendant can be prosecuted).



Definitions

- **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.
 - (i) The **length** of the relationship (ii) The **type** of relationship (iii) The **frequency of interaction** between the persons involved in the relationship.
- **Domestic Violence:** crimes of violence committed by:
 - (i) a current or former **spouse** or **intimate partner** of the victim
 - (ii) by a person with whom the victim shares a **child in common**
 - (iii) by a person who is **cohabitating** with or has cohabitated with the victim as a spouse or intimate partner
 - (iv) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
 - (v) 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



Definitions

- **Stalking:** Engaging in a course of conduct directed at a specific person, on the **basis of sex**, that would cause a reasonable person to:
 - (i) **fear** for his or her safety or the safety of others; or
 - (ii) suffer substantial **emotional distress**
- Examples
 - Following a victim to and from classes
 - Repeatedly contacting a student despite requests to cease communication
 - Threats of self-harm if a student does not pay attention to the stalker
- **On the basis of sex**
 - When a student stalks an athlete due to celebrity worship rather than sex = **Not on the basis of sex**
 - Not Title IX
 - When a student stalks an athlete due to desires to date the student athlete = **On the basis of sex**

Consent Definition



A student can be a "respondent" in a quid pro quo sexual harassment allegation.

True

False

There are 3 categories of sexual harassment under Title IX .

True

False

A "report" means "an allegation of potential sexual harassment."

True

False

The age of consent to sexual activity in North Carolina is 18 years old.

True

False

"Respondent" is the person that files a sexual harassment complaint.

True

False

Title IX was made a law in 1972.

True

False

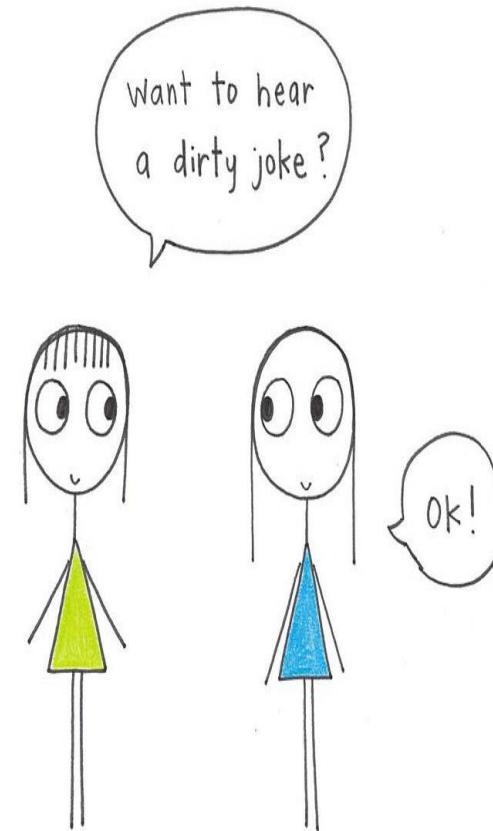
Questions





“Davis Standard” Sexual Harassment

- Davis Test: “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”
 - If conduct meets test, then respondent is responsible for sexual harassment
- Designed to prohibit **verbal or expressive conduct** that is sexually harassing or a **catch all** for allegations that do not meet other prongs. (Implicates First Amendment)
 - Sexual graffiti on school walls (even if not reported but observed by NHCS employee)
 - Sexual jokes
 - Catcalling
 - Verbal and nonverbal behaviors (devoid of sexual content) that convey insulting, hostile, degrading attitudes about a particular sex

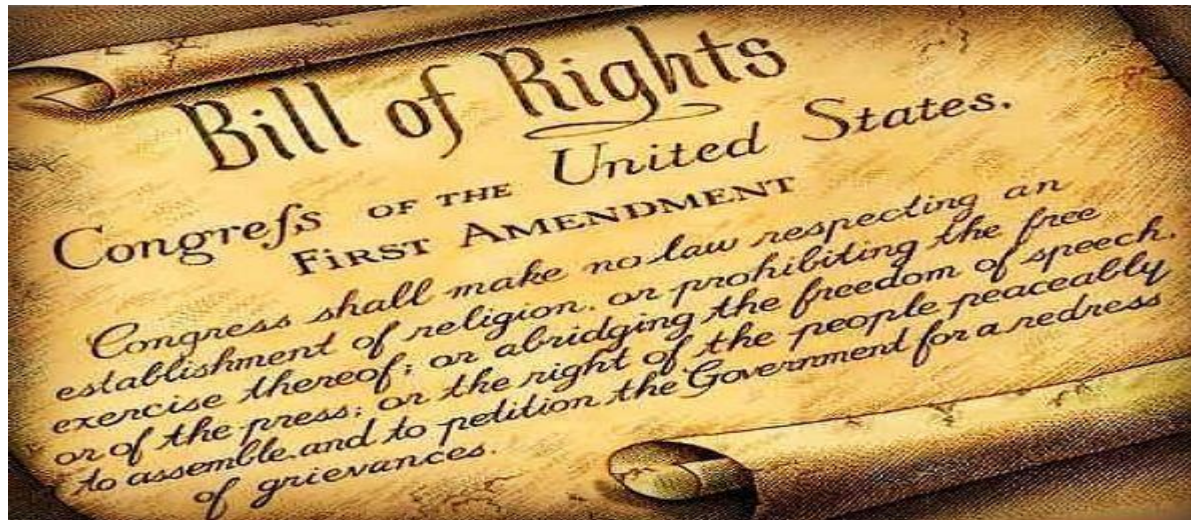




First Amendment – “Davis” Standard

“Schools cannot investigate every matter of offensive speech and should instead utilize institutional speech and provide general programming to foster a respectful educational environment, none of which requires punishing or chilling protected speech.”

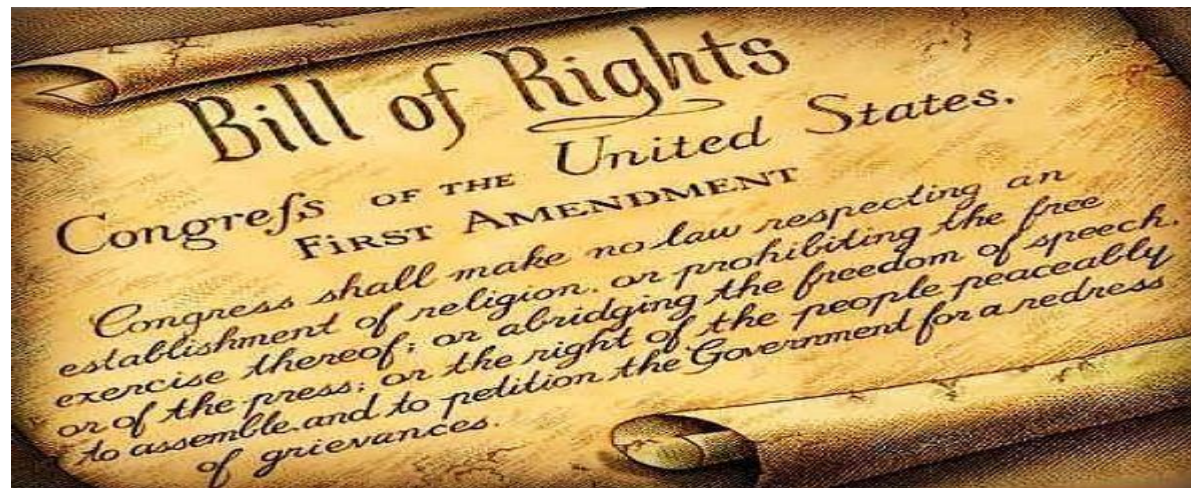
- **Generic harassment vs. discriminatory harassment** depends on “Davis” standard
- If speech **DOES NOT** meet the “Davis” standard (unprotected speech) then it cannot be **regulated** in a way that restricts free speech based on content, even if offensive or inappropriate



First Amendment Protections During An Investigation



- District **cannot restrict** the ability of either party to **discuss the allegations under investigation** or to gather and present relevant evidence for sexual harassment allegations
 - Ex. Respondent talking to friends about the allegations under investigation; gossip about allegations by a party;
 - Applies once a formal complaint has been made
- Be mindful of First Amendment protection vs. retaliation





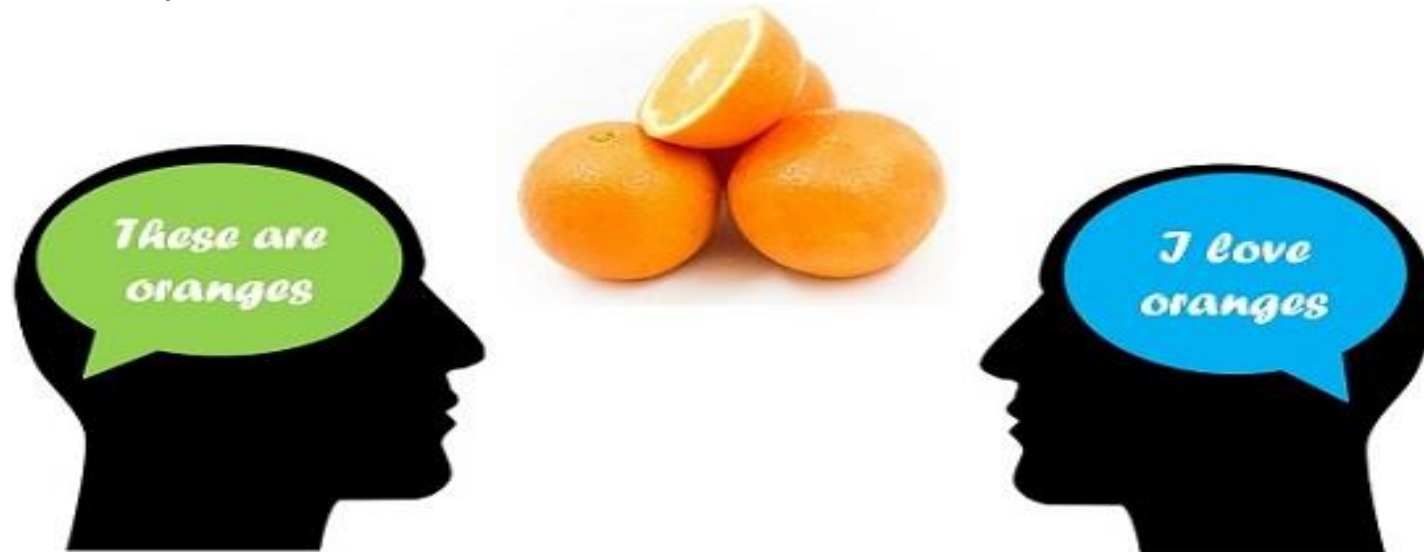
Evaluating under the “Davis” Standard

- Must use a **common sense approach** in determining severity, pervasiveness, and objective offensiveness. ages and abilities of the individuals involved in an incident or course of conduct matters as well.
- **Title IX attaches only to sexual harassment that does meet the Davis standard.**
 - The Supreme Court noted in “Davis” that school children regularly engage in “insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it” yet a school is liable under Title IX for responding to such behavior only when the conduct is “so severe, pervasive, and objectively offensive that it denies its victims the equal access to education that Title IX is designed to protect
- Misbehavior that **does not** meet the “Davis” standard may be handled outside of Title IX
 - Turn to supportive measures or other student conduct provisions unrelated to sex or Title IX
- Fact specific inquiry, not one size fits all



What Does it Mean To Be “Unwelcome”

- **Welcomeness** is evaluated from the perspective of the actual complainant
- **Subjective** approach (**feelings**)
 - Whether the complainant viewed the conduct as unwelcome
 - What clues gleaned from the complainant’s reaction can show that the behavior was unwelcome to Complainant?





Severe, Pervasive, Objectively Offensive, & Denial of Equal Access

- Severe, pervasive, objective offensive, and denies equal access is evaluated **objectively**
 - An imaginary & perfectly reasonable person in complainant's position (including age, disability status, sex, and other characteristics of complainant)
- How would a reasonable person (with complainant's characteristics) classify this behavior?
 - Is the complainant hypersensitive?





What Does It Mean To Be “Severe”

Would the conduct in question be severe to a reasonable person standing in the complainant’s position?

Factors?

- Threat
- A series or course of unwelcome conduct
- Directed at a particular person



What Does It Mean To Be “Pervasive”

Would the conduct in question be pervasive to a reasonable person standing in the complainant’s position?

Factors?

- Widespread
- Openly practiced
- Incident or result well-known to educational community
- Multiple people participating in the victimizing behavior



What Does It Mean To Be “Objectively Offensive”

Would the conduct in question be offensive to a reasonable person standing in the complainant’s position?

- “Objectively” refers to a reasonableness standard
- **Welcomeness = Subjective** approach (feelings)
- **Severe, pervasive, objectively offensive, and denies equal access = Objective** approach (factual evidence)





What Does It Mean To “Deny Equal Access To An Educational Opportunity”

- Would a reasonable person in the complainant’s position deem the alleged harassment as denying a person “equal access”?
- **“Denial of educational opportunity”** = Denial of **equal** access (not total access)
 - “Equal access” compares persons who are subjected to sexual harassment vs. persons not subjected to sexual harassment
- “It is not necessary, however, to show physical exclusion to demonstrate that students have been deprived by the actions of another student(s) of an educational opportunity on the basis of sex. Rather, a plaintiff must establish sexual harassment of students that is so severe, pervasive, and objectively offensive, and that so **undermines and detracts from the victims’ educational experience, that the victim-students are effectively denied equal access to an institution’s resources and opportunities**”
- Signs of unequal educational access can be used to determine if sexual harassment did deny equal access; however, you **cannot infer that no symptoms exhibited by a complainant means that there was no denial of equal access**
 - Ex. dropped out of school, failed a class, had a panic attack, or otherwise reached a “breaking point”

A first grade student tells her teacher that her classmate asked her do you have a wee-wee during recess. Could this conduct be Title IX sexual harassment?

Yes

No

A 10th grade female student wore a shirt to school that read "all men are pigs." A male student reports the female student to administration. Could this conduct be Title IX sexual harassment?

Yes

No

A 6th grade female pulled out her cell phone and excitedly said "look at this" to a male classmate and showed her phone to the male classmate while in the library. The male student was shown a nude photo of an adult male she found on the internet.

Yes

No

On his first day at a new school, a 5th male student approaches a female classmate on the way to the bathroom and says "you're pretty and have a big butt." Could this conduct be Title IX sexual harassment?

Yes

No

A senior male student recently broke up with his girlfriend.

The next day, his ex-girlfriend showed students at lunch sexually provocative pictures the male sent his ex-girlfriend during their relationship. Could this be Title IX sexual harassment?

Yes

No

Questions





Definitions

- **Actual Knowledge** - Means notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or to any employee of an elementary and secondary school.
- A district with actual knowledge of sexual harassment or allegations of sexual harassment in an education program or activity of the recipient against a person in the United States, **must respond promptly in a manner that is not deliberately indifferent** generally and must meet the specific obligations set forth in the regulations.





Actual Knowledge

- Means notice of **sexual harassment** or allegations of sexual harassment to **any employee**.
 - Administrators
 - Teachers/Teaching Assistants
 - Counselors
 - Administrative Assistants
 - Bus Drivers
 - Coaches
 - Cafeteria Workers
 - Central Office Staff
 - Etc.
 - Community Volunteers?





Making a Report of Sex Discrimination

- (1) Contacting Title IX coordinator
- (2) In person (verbal, written, observance)
- (3) Mail
- (4) Telephone
- (5) Electronic mail
- (6) Any other means (catch all): Ethix 360, Say something App

Anonymous reports, 3rd party reports (including rumors)





Definitions

- **“education program or activity”** - Includes locations, events, or circumstances over which the recipient exercised substantial **control over the respondent** and the **context** (circumstances) in which the sexual harassment occurs. That occur within the US.



A 7th grade female student reports to her teacher that a group of males were making sexual comments towards her during lunch. Is this within the district's educational program and activity?

Yes

No

A male sophomore student reports to his teacher that over the weekend he and his girlfriend (classmate) parked in their school's parking lot to talk about their relationship. The talked turned volatile and the female punched the male. Jurisdiction?

Yes

No

A 3rd grade female student is at the bus stop waiting for the school bus. A 3rd grade male student rides the same bus. While at the bus stop, the male student tells the female student she is pretty and attempts to kiss her on the lips. Jurisdiction?

Yes

No

A female high school student reported to school administration that she attended the school's Friday night football game. While at the game, she states a fellow male classmate touched her buttocks without permission.

Jurisdiction?

Yes

No

A male high school senior reports to the principal that he was sexually assaulted over the weekend by his ex-boyfriend who is also a senior at the complainant's school.

Jurisdiction?

Yes

No

A middle school student reports to administration that Friday night he voluntarily sent a nude photo to a classmate and then the classmate shared the photo on Instagram without permission on Saturday. Jurisdiction?

Yes

No

A 6th grade female reported to her teacher that a male student took a picture of her buttocks in the hallway during transition and that night he posted the image on his Snapchat without permission. Jurisdiction?

Yes

No

Q1

Yes

No

Due to COVID-19, students have been attending school remotely. The district provided students without laptops devices to participate in the online schooling during COVID-19. A male student reports that a female student has a crush on him and she has repeatedly asked him to be her boyfriend via Facebook messenger, despite him repeatedly telling her he was uninterested. Jurisdiction?

Q2

Yes

No

Due to COVID-19, students have been attending school remotely. During a Zoom breakout session during Language Arts, a male student begins sending chat messages saying "I love you" and kiss emojis to a female classmate he has a crush on. She reports the incident to the teacher. Is this within the district's educational program and activity?



“education program or activity”

Jurisdiction IS NOT about geography

- Off-campus sexual misconduct is not categorically excluded from Title IX protection under the final regulations
- Conduct that is entirely cyber may implicate Title IX as well

substantial control over the
respondent + context = Jurisdiction





Definitions

Supportive Measures - Means **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





Examples of Support Measures

- Warning to Respondent
- Institutional speech, assembly, program
- Mental health services referral
- Extensions of time or other class related adjustments
- Modification of class schedule
- Campus escort services
- Restrictions on contact between the complainant, respondent, or others (No Contact Order)
- Any reasonable additional measures that is requested by a party
- Any reasonable additional measures the school determines to be necessary to protect safety or educational activities of a party



Supportive Measures

- **Must be offered to Complainant**

- Recipients are obligated to offer supportive measures to a complainant (with or without the filing of a formal complaint) and to engage the complainant in an interactive discussion regarding the complainant's wishes with respect to supportive measures
- If a recipient does not provide supportive measures as part of its response to sexual harassment, the recipient must document why it was reasonable not to provide supportive measures
- Recipients retain discretion to provide supportive measures to any complainant even where the harassment is not discriminatory sexual harassment

- **May be offered to Respondent**

- Not required for 3rd parties
- Goal of supportive measures is to preserve the complainant's equal access to education or protect safety
- School counselors will implement supportive services in coordination with Title IX Coordinator, parties, parents, and school administration



Supportive Measures

Cannot “**unreasonably burden**” either party but can “burden” a respondent if the supportive measure prevents district from acting deliberately indifferent.

Examples of a “burden”

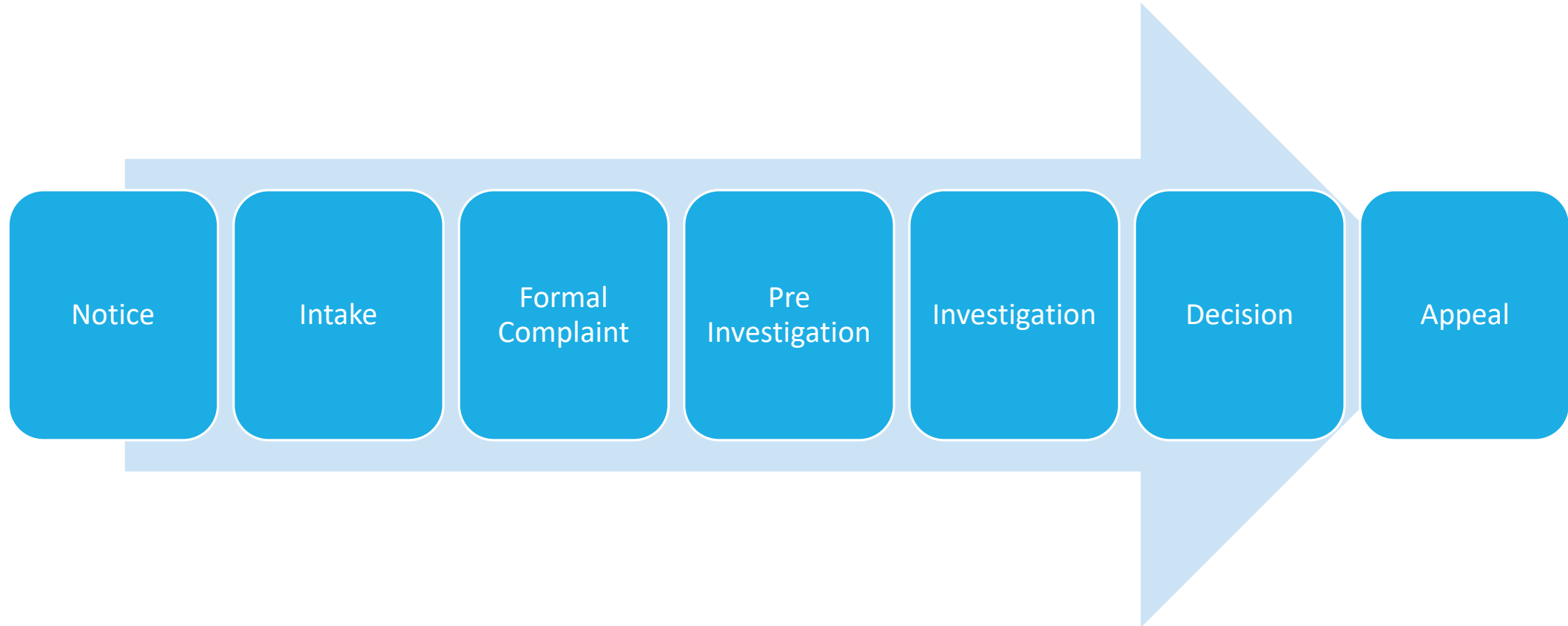
- **Generally Ok (burden):** Changing a class schedule, educational conversations, sending students to the principal’s office, or changing student seating or class assignments
 - Can take action to maintain order, protect student safety, and counsel students about inappropriate behavior
- **General Not Ok (unreasonable burden):** Restricting a respondent from participating on a sports team, holding a student government position, participating in an extracurricular activity
 - If school is restricting a respondent, must have completed grievance process and implementing as a sanction/remedy
 - Generally, if there is no alternative for respondent, the supportive measure might be considered an “unreasonable burden” on respondent

Break



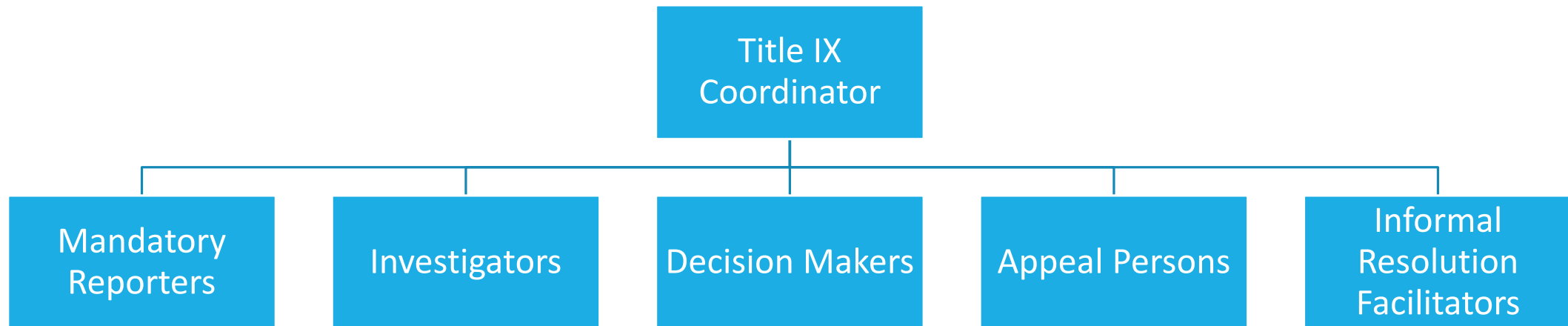


Sexual Harassment Grievance Process





Roles in Grievance Process

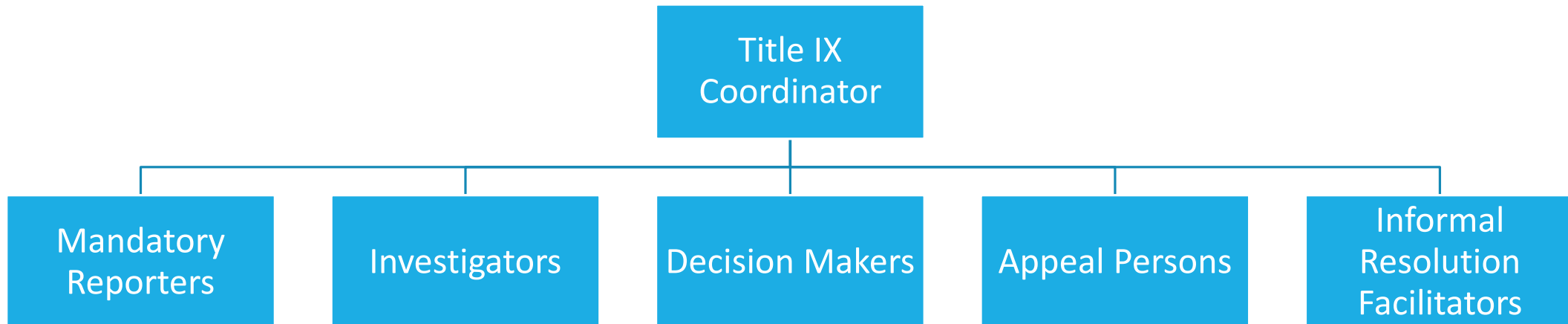




Conflicts & Bias - Roles

Title IX Coordinator, Investigators, Decision Makers, Appeal Persons, Informal Resolution Facilitators must be free from **bias**, **pre-judgment of facts**, and **conflicts of interest**

- Decision Makers: Cannot be the Investigator or Title IX Coordinator
- Appeal Persons: Cannot be the Title IX Coordinator, Investigator, or Decision Maker





Basic Requirements for Grievance Process

- **(1) Treat complainants and respondents equitably** by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent
- **(2) Require an objective evaluation of all relevant evidence** – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a complainant, respondent, or witness
- **(3) Require 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



Basic Requirements for Grievance Process

- (4) Include a **presumption that the respondent is not responsible** for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- (5) 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
- (6) 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



Basic Requirements for Grievance Process

- (7) State whether the **standard of evidence** to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment
- (8) Include the procedures and permissible bases for the complainant and respondent to **appeal**
- (9) Describe the **range of supportive measures** available to complainants and respondents;
- (10) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a **legally recognized privilege**, unless the person holding such privilege has waived the privilege. (doctor/patient, lawyer/client, etc.)



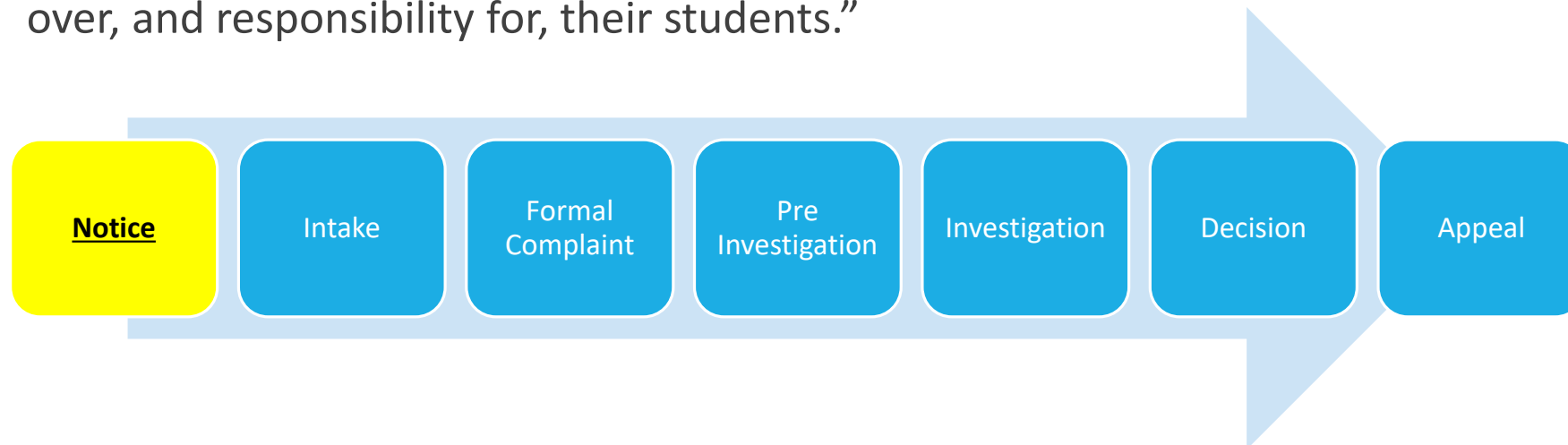
Title IX Coordinator

- New Name (Coordinator NOT Director)
- Responsibilities
 - Oversee all NHCS Title IX responsibilities
 - Ensure compliant sexual harassment grievance procedures
 - Sign formal Title IX complaints
 - Ensure effective implementation of supportive measures
 - Ensure effective implementation of any remedies
 - Receive voluntary withdrawals of Complainant Title IX formal complaints
 - Investigate formal complaints



Mandatory Reporters

- **All employees** are mandatory reporters
 - Remember “Actual knowledge”
 - Administrators; Teachers; Teaching Assistants; Counselors; Administrative Assistants; Bus Drivers; Coaches; Cafeteria Workers; Central Office Staff
- “recipients and their employees stand in a **special relationship** regarding their students, captured by the legal doctrine that school districts act **in loco parentis** with respect to authority over, and responsibility for, their students.”





Mandatory Reporters

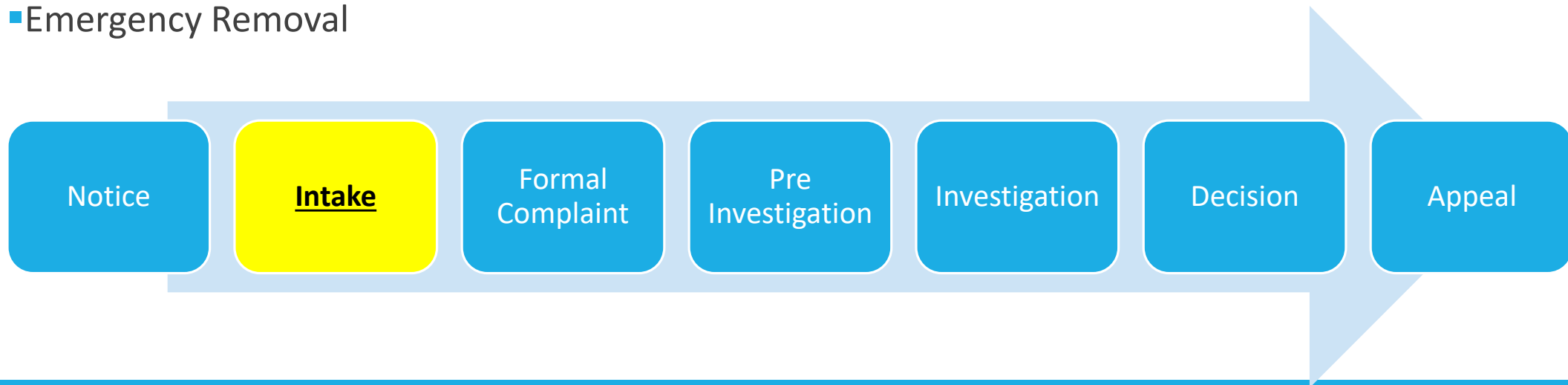
- Notice of sexual harassment to any employee = Actual Knowledge (Notice)
- Must **promptly report** sexual discrimination directly to **lead principal** or **Supervisor**
 - Goal is to get the information in the hands of an individual that can resolve the issue (Title IX Coordinator). Principal upload to Ethix 360
- What to report
 - (1) **Names** (complainant, respondent, witnesses)
 - (2) **Location**
 - (3) **Facts of incident**
 - (4) **How responsible employee learned of incident**





Considerations

- Jurisdiction
 - Does report implicate sexual harassment?
 - Education program and activity?
- Initial Complainant Intake
- Implementation of Supportive Measures
- Emergency Removal

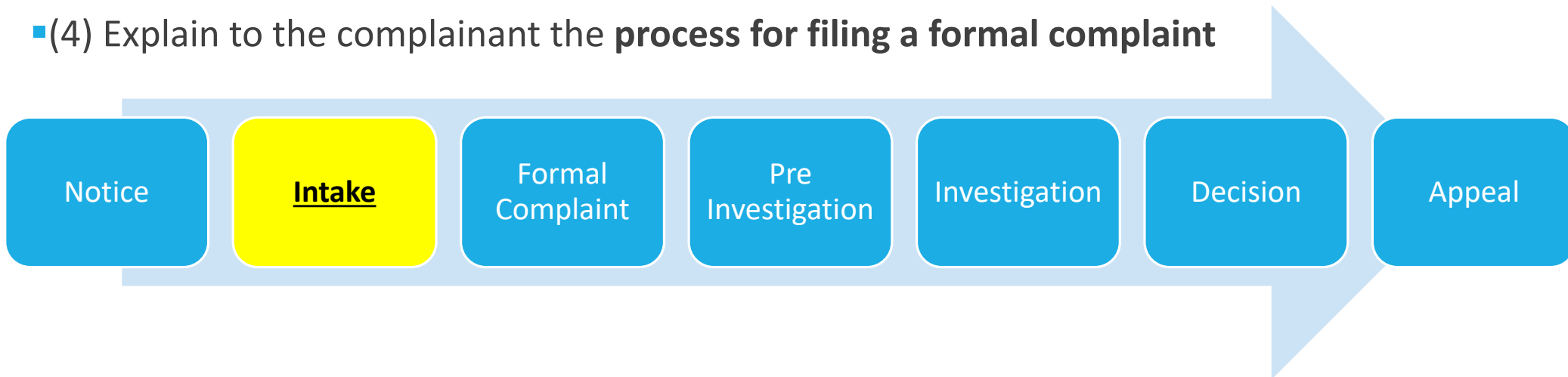




Initial Complainant Contact

(if district has actual knowledge of potential sexual harassment) the Title IX Coordinator must promptly contact the complainant to:

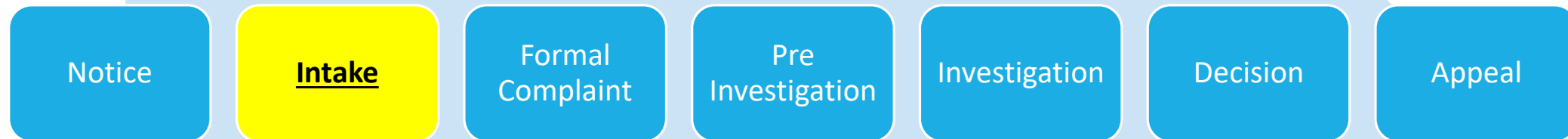
- (1) Discuss the **availability of supportive measures** (with or without filing a formal complaint)
- (2) Discuss the complainant's **wishes** with respect to supportive measures
- (3) **Option** to file formal complaint, and
- (4) Explain to the complainant the **process for filing a formal complaint**





Emergency Removal

- May remove a student or employee from an education program or activity on an emergency basis, provided that the recipient:
 - (1) Undertakes an **individualized safety and risk analysis**;
 - (2) Determines that an **immediate threat to the physical health or safety** of any student or other individual arising from the allegations of sexual harassment justifies removal; and
 - (3) Provides the respondent with **notice** and an **opportunity to challenge** the decision immediately following the removal





Emergency Removal

- Emergency removal is **limited to imminent threats of physical harm** arising out of allegations of sexual harassment
 - Threat to others or threat to themselves
 - The threat must justify the emergency removal
 - If threat does not arise from sexual harassment allegations, follow normal conduct procedures
- “Emergency removal does not authorize a recipient to impose an interim suspension or expulsion on a respondent because the respondent has been accused of sexual harassment.”
 - Emergency removal is not a substitute for reaching a determination as to a respondent’s responsibility for the sexual harassment allegations.
- **IDEA, Section 504, & Americans With Disabilities Act, etc. (disability laws) still apply**
 - Be sure to not violate rights of students/employees with disabilities when removing



Emergency Removal

Due Process

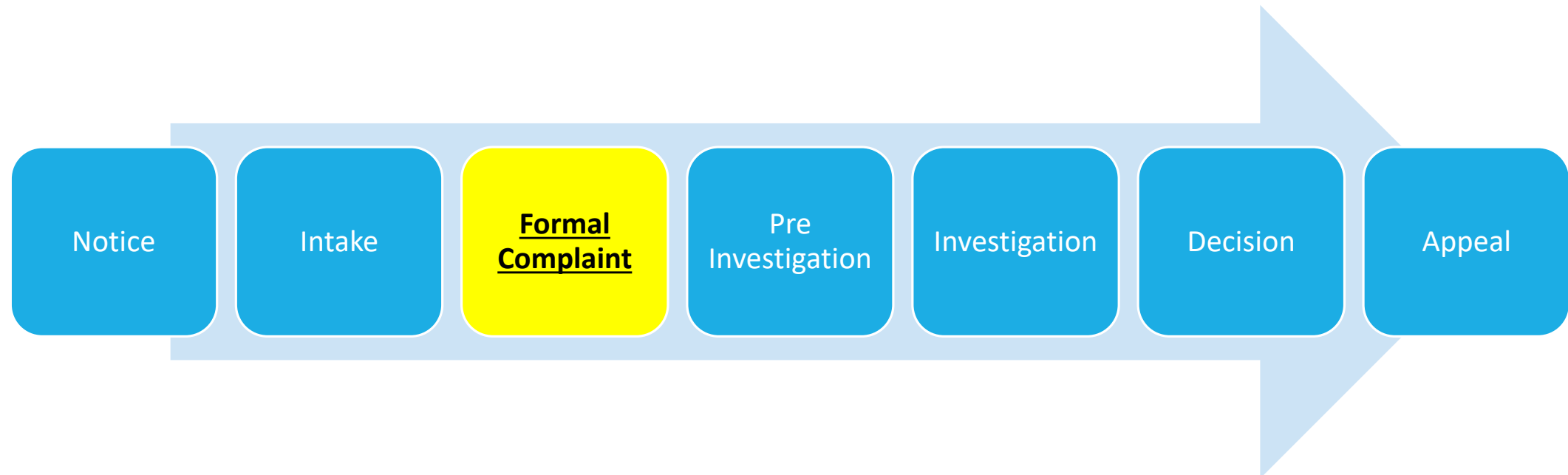
- Must provide respondents the basic features of due process
 - notice of removal & opportunity to challenge
- Schools may provide opportunity to be respond **after** removal has occurred (but must occur **immediately**)





Considerations

- Formal Complaint
 - Notice of Allegations
- Informal Resolution





Formal Complaint

- “Means 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.”
 - Report vs. Formal Complaint
 - Formal Complaint = NHCS must investigate sexual harassment allegation
 - **Filed by Complainant** (or parent/guardian)
 - Filed in person, by mail, or e-mail with the complainant’s physical or digital signature or otherwise indicating that the complainant is the person filing the formal complaint.
 - **Signed by Title IX Coordinator**





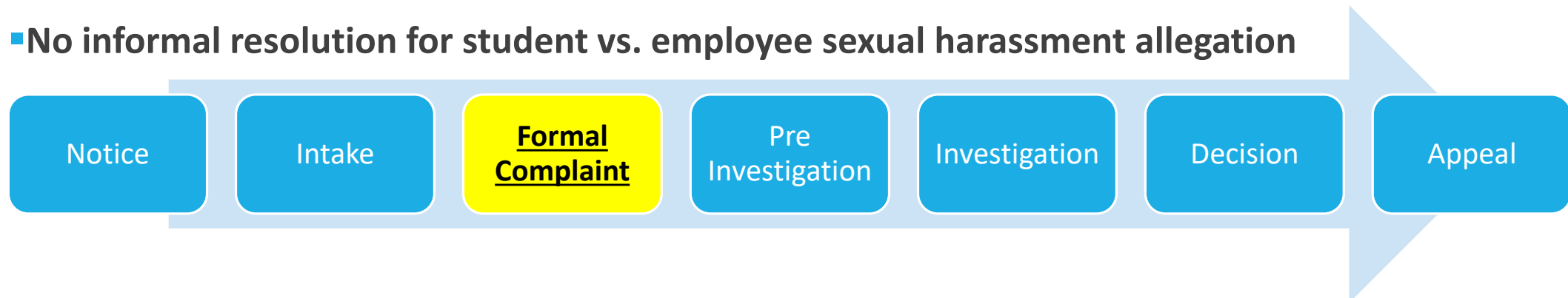
Notice of Allegations

- Upon receipt of a formal complaint, a recipient must provide the following **written notice to the parties** who are known:
 - **(1)** Notice of the recipient's **grievance process**
 - **(2)** A statement that the respondent is **presumed not responsible** for the alleged conduct
 - **(3)** That a **determination** regarding responsibility is made at the **conclusion of the grievance process**
 - **(4)** Parties have a right an **advisor** of their choice (including an attorney)
 - **(5)** Parties may inspect and **review evidence**
 - **(6)** Any provision in the recipient's code of conduct that prohibits knowingly making **false statements** or knowingly submitting false information during the grievance process.
 - **(7)** Notice of the **allegations** of sexual harassment including sufficient details known at the time and with sufficient time to prepare a response before any initial interview
 - (i) The **identities** of the parties involved in the incident, if known
 - (ii) The **conduct** allegedly constituting sexual harassment
 - (iii) The **date and location** of the alleged incident, if known



Informal Resolution

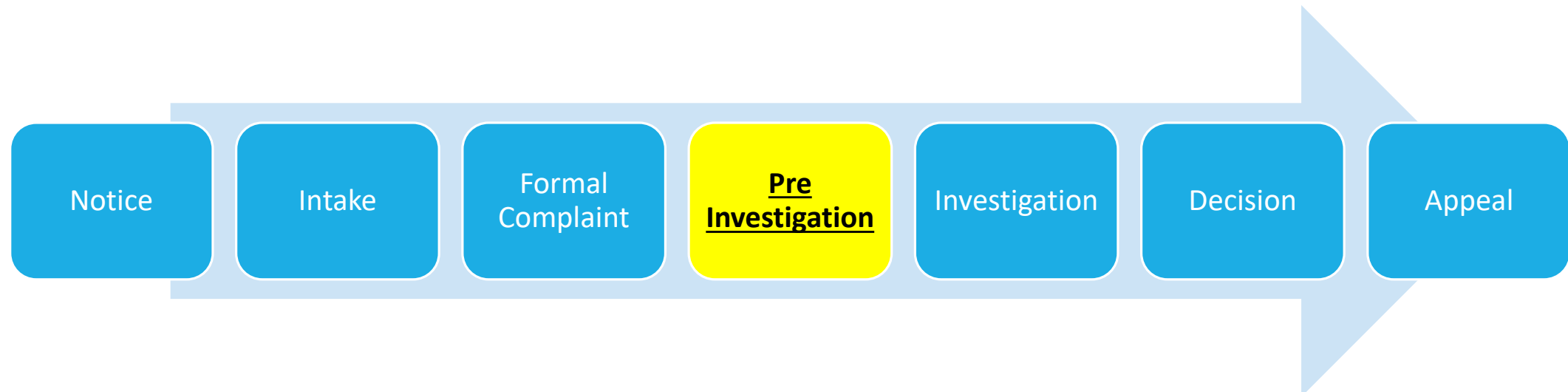
- District has the discretion to facilitate an informal resolution after a formal complaint is filed to resolve incident without an investigation.
- Both parties provide **voluntary** written consent to participate in informal resolution
- Each party has **right to withdraw** from the informal resolution process at any time prior to agreeing to the informal resolution (and start formal process)
- Can implement **discipline** under an informal resolution as long as the respondent agrees to the discipline proposed
- **No informal resolution for student vs. employee sexual harassment allegation**





Considerations

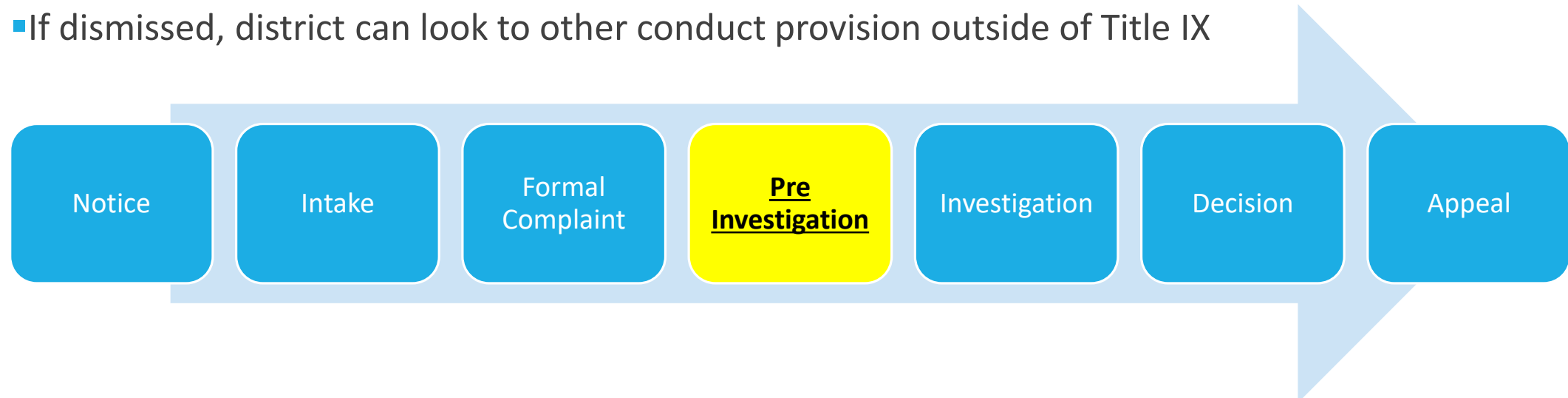
- Dismissal
 - Mandatory Dismissal
 - Discretionary Dismissal





Mandatory Dismissal

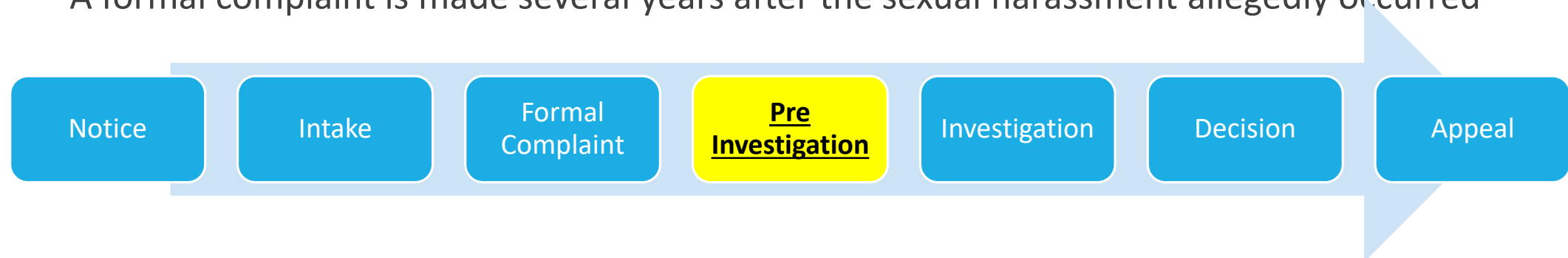
- (1) Complaint that does not describe conduct that meets the definition of “sexual harassment” (**Not Sexual Harassment**)
- (2) Complaint of sexual harassment that did not occur in the school’s **education program or activity**
- (3) Complaint of sexual harassment that did not occur in the United States (**Outside of US**)
- If dismissed, district can look to other conduct provision outside of Title IX





Discretionary Dismissal

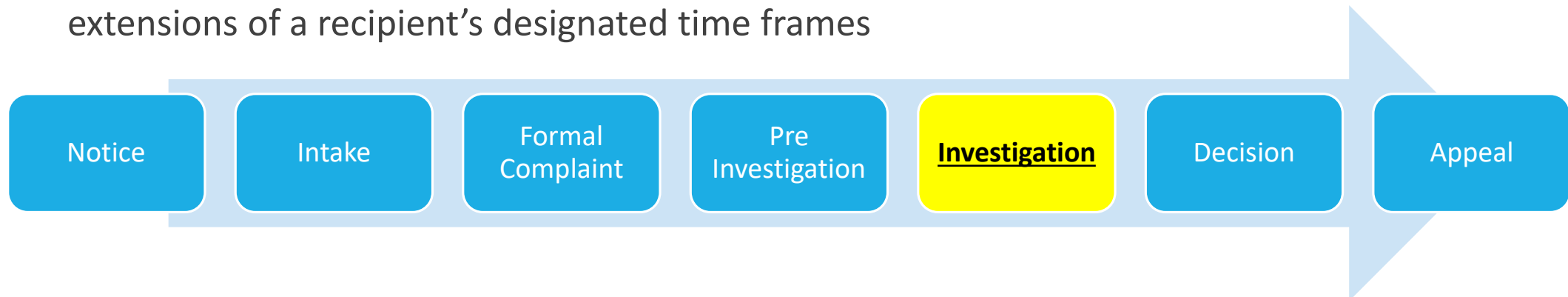
- The final regulations allows a district (in its discretion) to dismiss a formal complaint, if:
 - (1) The complainant notifies the Title IX Coordinator in writing that the complainant wishes to **withdraw** formal complaint
 - (2) The respondent is no longer **enrolled/employed** by the recipient, or
 - (3) **Specific circumstances** prevent the recipient from collecting evidence sufficient to reach a determination
 - Complainant has ceased participating in the process
 - A formal complaint is made several years after the sexual harassment allegedly occurred





Investigations

- Districts must investigate when complainant **files a formal complaint** or **Title IX Coordinator** signs a complaint
- Both parties must have an **equal opportunity** to gather, present, and review relevant evidence and be also provided an **investigative report**
- Regulations allow for **good cause, short-term delays** or extensions of designated time frames
- Districts must investigate sexual harassment complaints regardless of **law enforcement** activity
 - Concurrent law enforcement activity may constitute good cause for short-term delays or extensions of a recipient's designated time frames





Investigator

The investigator must impartially **gather all relevant evidence** and **create an investigative report** that summarizes the relevant evidence

- The parties have an **equal opportunity to review** the evidence and the investigative report. (the investigative report cannot be finalized until the evidence is shared with the parties)
 - The investigator must share the evidence with the parties and the parties have at least **10 days** to review and submit a written response to the evidence. If a response to the evidence is provided, the investigator must consider the written response before finalizing the investigative report.
 - Once the investigative report is finalized, the investigator must send the finalized investigative report to the parties and provide an additional **10 days** (at least) for review of the finalized investigative report.
 - During this time, parties can submit written questions (evaluated by the decision maker) to be asked of other parties and witnesses. If written questions are submitted, the decision maker must include the answers in his/her determination of responsibility.





Decision





Decision Maker(s)

- The decision maker must:
 - **(1)** 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.
 - The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
 - **(2) Assess the relevant evidence**, including party and witness credibility
 - **(3)** Decide if the district has met a **burden of proof** showing the respondent to be responsible for the alleged sexual harassment
 - **(4)** Provide **written determination**

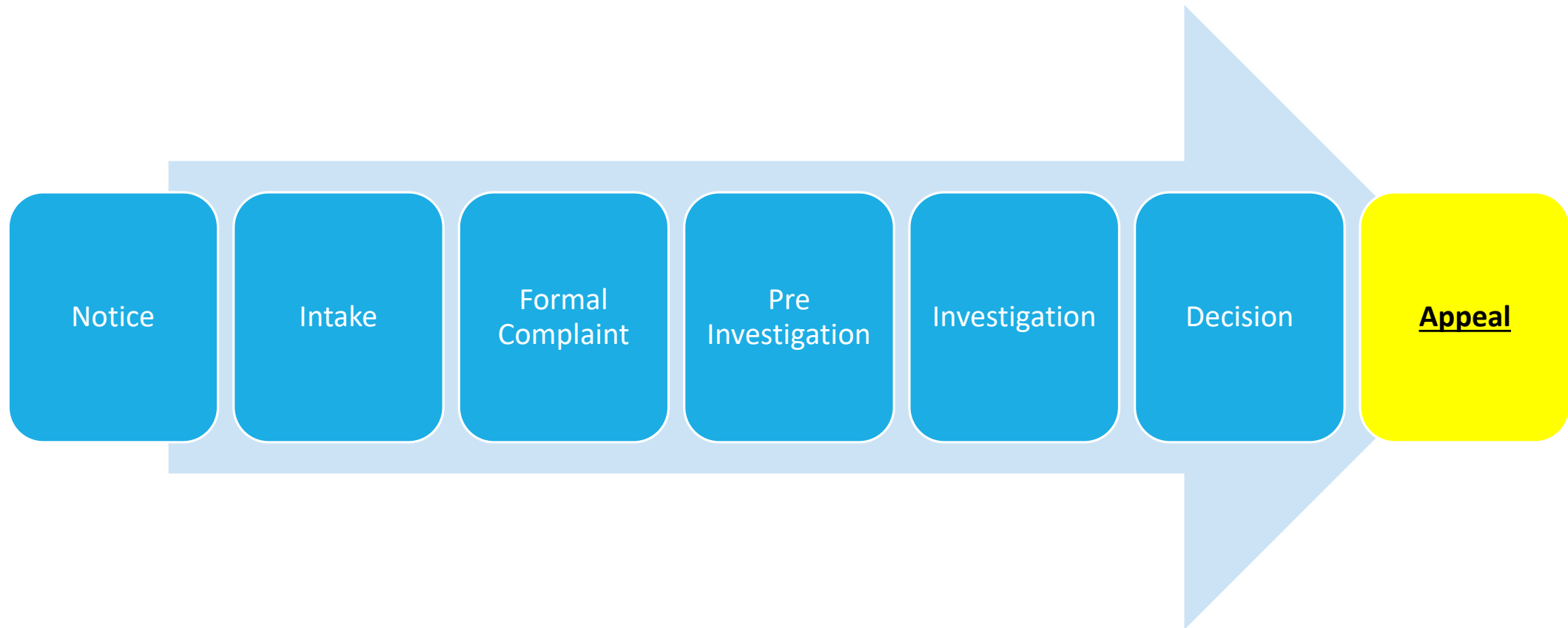


Written Determination of Responsibility

- (1) Identification of the **allegations** potentially constituting sexual harassment
- (2) A description of the **procedural steps taken** from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held
- (3) **Findings of fact** supporting the determination
- (4) Conclusions regarding the application of the recipient's code of conduct to the facts (**analyze facts to policy**)
- (5) State **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
- (6) The recipient's procedures and permissible bases for the complainant and respondent to **appeal**



Sexual Harassment Grievance Process





Appeal

A recipient must offer **both parties** an appeal from a **determination** regarding responsibility, and from a recipient's **dismissal** of a formal complaint or any allegations

- Reasons:

- (1) **Procedural irregularity** that affected the outcome of the matter
- (2) **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
- (3) The Title IX Coordinator, investigator(s), or decision-maker(s) 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
- (4) Any **additional reasons** provided by the district



Retaliation

■ Prohibition

- No recipient or other person may **intimidate, threaten, coerce, or discriminate** against any individual for the purpose of **interfering** with any right or privilege secured by **title IX** or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

■ Definition

- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes Retaliation
- The exercise of rights protected under the First Amendment does not constitute retaliation

Questions

