

Title IX

Overview and Decision-Making

Objectives

Understand the role of decision-makers and how decision making works in Title IX.

- Understand the decision-making and appeals process
- Understand how to make a determination
- Understand how to classify evidence
- Understand what goes into an investigative report
- Understand how to serve impartially

Agenda

1. Introduction to Title IX
2. Title IX Process Overview
3. Serving Impartially
4. Evidence
5. Investigative Report - What to Expect
6. Role of Decision Maker
7. Role of Appeal Decision Maker - Will have a separate PD for this!

Introduction to Title IX

Introduction - What is Title IX

Title IX of the Education Amendments (Patsy Mink Act) signed into law in 1972.

It states:

“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 educational program or activity receiving federal financial assistance”

- 20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

Introduction: Title IX - Purpose

End sex based discrimination, including sexual harassment

Prevent it from recurring

Remedy the effects of sex based discrimination/harassment

2020 Regulatory Changes to Title IX

- New regulations focus on sexual harassment
- Protects Due Process for both parties involved
- Commitment to Transparency
- Assure investigations are thorough, reliable, and impartial
- Ensure we provide training to staff members involved in handling Title IX complaint.

Why Are We Here Today

Title IX mandates training for:

- Title IX Coordinator
- Investigators
- Informal resolution mediators
- Decision-makers
- Appeal decision-makers

Training must include:

- Definition of sexual harassment
- Scope of education program
- Information on serving impartially
- How to conduct your assigned parts of a grievance process (hearing and appeals)
- Relevance of questions and evidence

2020 Regulations - What is Sexual Harassment

Sexual Harassment - Defined

- Quid Pro Quo - I'll give you if you give me
or
- Severe, Pervasive, Objectively Offensive (hostile environment)
or
- Sexual Assault; Dating Violence; Domestic Violence; Stalking

2020 Regulations - What is Sexual Harassment

Quid Pro Quo:

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

Employee to Student

Example: I'll give you an "A" on your test if you give me a kiss.

2020 Regulations - What is Sexual Harassment

Severe, Pervasive, and Objectively Offensive:

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.

Severe - The more severe the less it needs to be pervasive, especially if it is physical

Pervasive - Intensity and duration, well-known or openly practiced, public, occur with regularity

Objectively Offensive - reasonable person would find it offensive

2020 Regulations - What is Sexual Harassment

Sexual Assault:

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

Also includes:

- Forcible Rape
- Forcible Sodomy
- Sexual Assault With An Object
- Forcible Fondling
- Incest
- Statutory Rape

Scope of Educational Program

We have a responsibility to address sexual harassment that occurs in the Collegiate's "education program and activities".

Things to consider when determining if harassment happened in our "education program":

- Did it happen in buildings or locations we control or own
- Did it happen at an event we controlled
- Do we have control of over the harasser or context

Title IX Process Overview

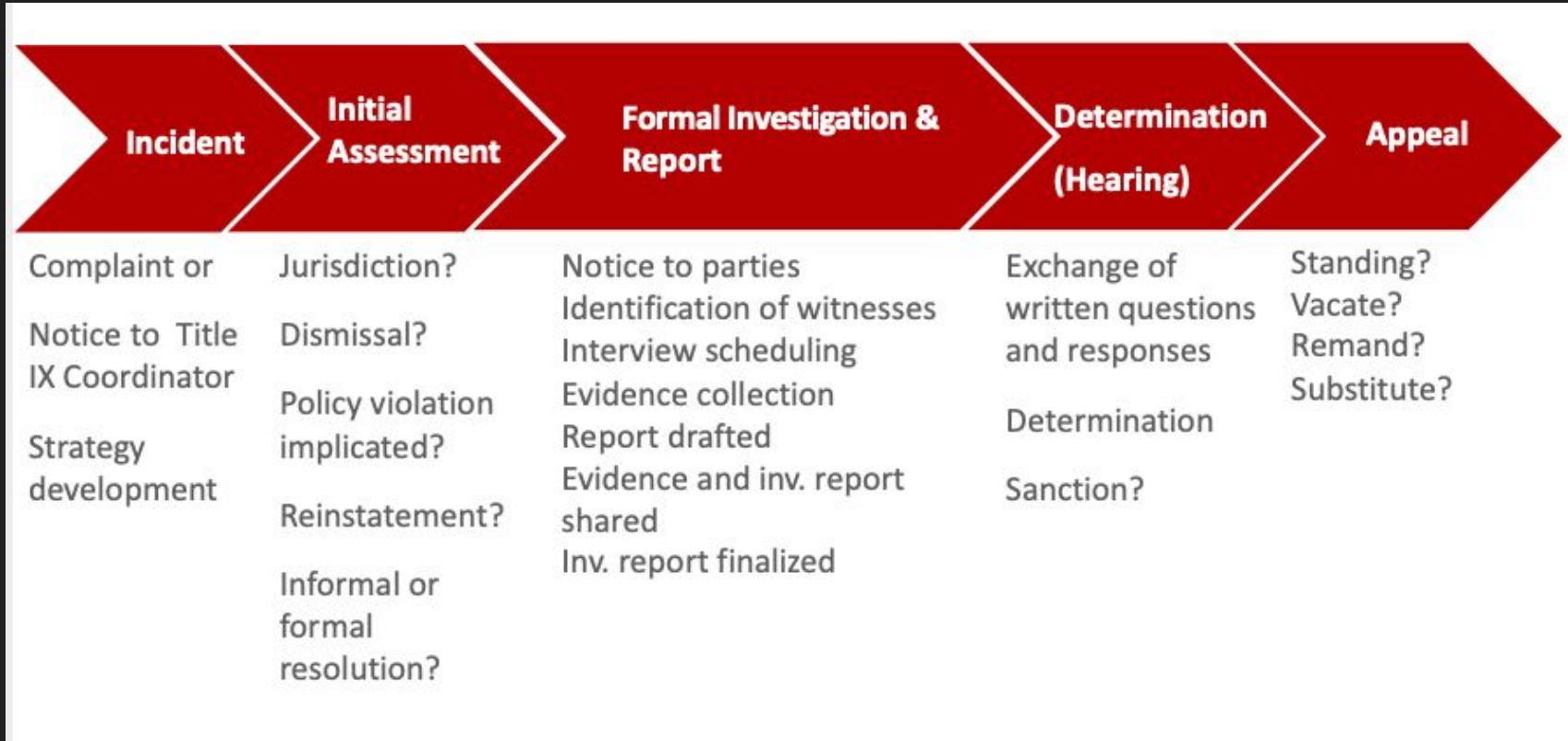
Title IX Vocabulary

Take 3 mins to review this [vocabulary document](#).

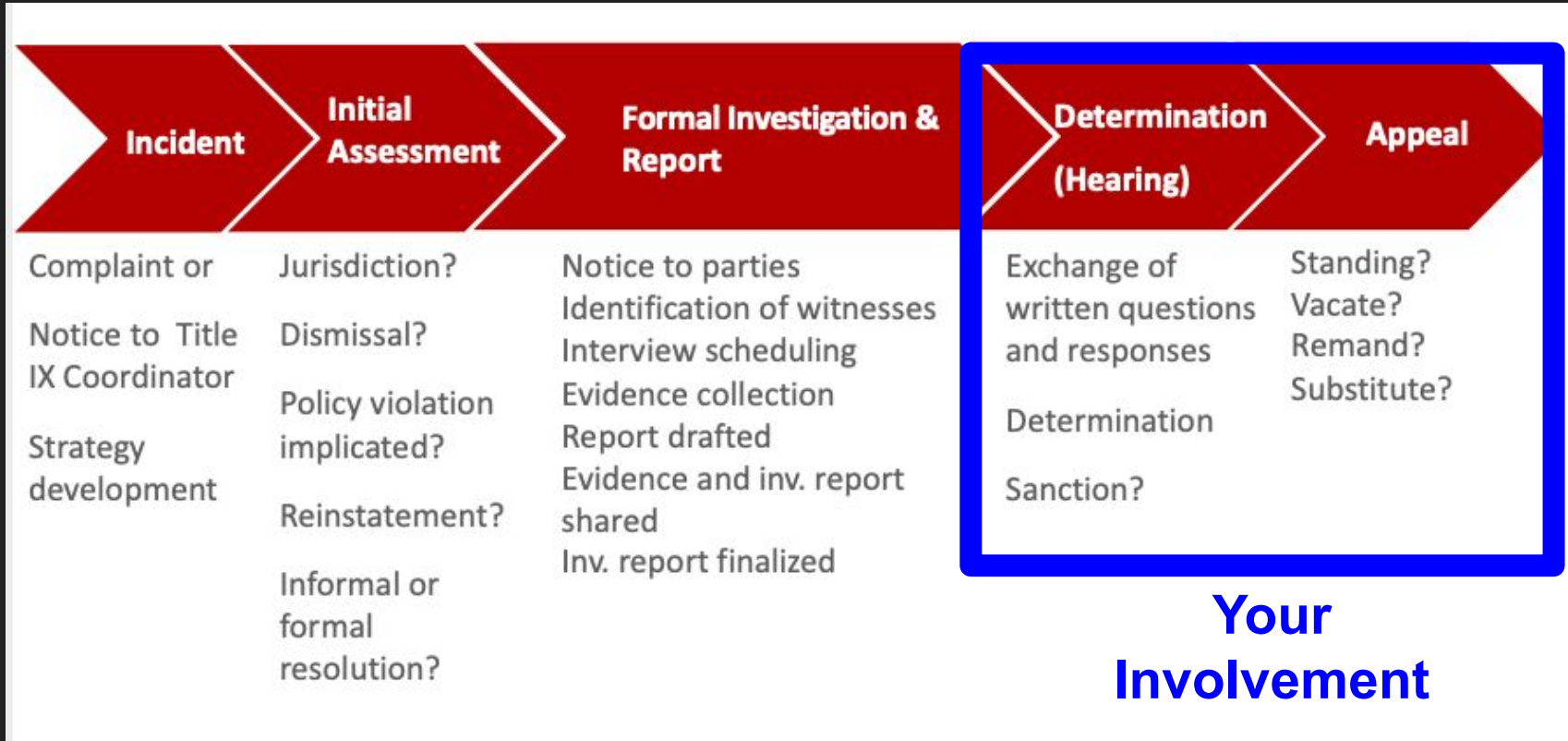
Pop Quiz

You have 2 minutes to complete this [vocabulary quiz](#).

2020 Regulations - Formal Grievance Process



2020 Regulations - Formal Grievance Process



Serving Impartially

Conflict of Interest and Bias

“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”

Presumption of Non-Responsibility

“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”

"The presumption does not imply that the alleged harassment did not occur; the presumption ensures that recipients do not take action against a respondent as though the harassment occurred prior to the allegations being proved."

Sex Stereotyping

Check yourself for sex stereotyping in the way you view, handle, and document a complainant.

Examples of how this might impact a Title IX complaint

Holding a belief that all sexual assault victims are women and all assaulters are men

Holding a “boys will be boys” mentality

Evidence

Role of Investigator

The investigator's job is to:

1. Gather all the evidence in regard to the complaint
2. Determine what evidence is relevant, and therefore necessary, to include
3. Assess the credibility of the evidence
4. Figure out where the evidence agrees and disagrees
5. Share the evidence with the parties
6. Map all this out in a report that is given to the decision-maker and the parties

Examples of Evidence

- Interviews with complainant and respondent
- Interviews with witnesses
- Interviews with expert witnesses
- Video camera footage
- Emails/Text messages
- Photos
- Chats from zoom classes

Organizing Evidence

Three Types of Evidence to Consider

1. **Relevant - Tend to prove or disprove the complaint**
2. Related
3. Not Relevant or Related

Example: Video footage of a teacher grabbing the student's breast.



Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 2 or 3.

Once finalized, this evidence should be provided to the Parties/Advisors/Decision-makers within the investigation report via secure technology.

Evidence is relevant when it tends to prove or disprove an issue in the complaint.

Organizing Evidence

Three Types of Evidence to Consider

1. Relevant
2. **Related - When it is connected to the complaint but doesn't prove or disprove the complaint**
3. Not Relevant or Related

Complaint: Teacher is sexually harassing a student.

Example: The student once drew a heart and the teacher's name in her notebook in class.



Parties may make case to Investigators/Decision-makers that this evidence should be shifted to Bucket 1 or 3.

Once finalized, this evidence should be provided to the Parties/Advisors/Chair in a separate file via secure technology.

Evidence is directly related when it is connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.

Organizing Evidence

Three Types of Evidence to Consider

1. Relevant
2. Related
3. **Not Relevant or Related - When it isn't relevant or related**

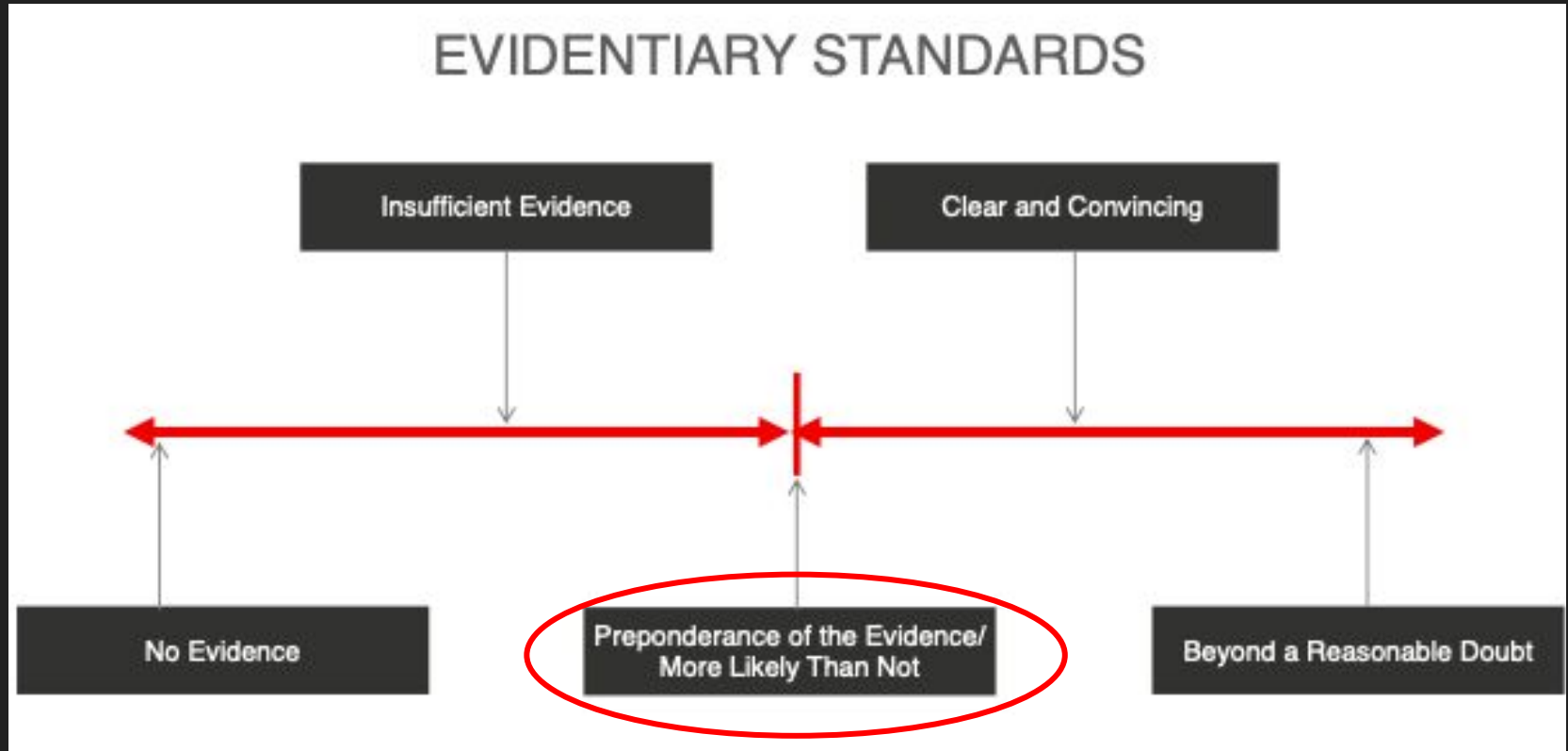
Complaint: Teacher is sexually harassing a student.

Example: The student is left-handed.



Evidence should be maintained by the Investigator(s), but disregarded for purposes of the process. Parties/Advisors/Decision-makers don't get to see or know about it.

Standard of Evidence



Standard → Preponderance of Evidence

Evidentiary standards establish the threshold for what degree of proof is needed to make a determination of a party's responsibility

- Ex: the criminal standard of proof “**beyond a reasonable doubt**” requires near-certainty
 - ◆ Can also think of this as requiring a finding that, even if there is not conclusive/indisputable evidence, there is no other logical or reasonable explanation other than the alleged conduct occurred.
 - ◆ This is the highest burden of proof.
- The next lower burden of proof is known as the “**clear and convincing**” evidence standard
 - ◆ It requires a finding that something is substantially more likely than not to be true, or there is a high probability that it is true.
- Our burden of proof is the “**preponderance of evidence**” standard, which requires finding that the alleged conduct is more likely than not to have occurred
 - ◆ This standard of proof is lower than both “beyond reasonable doubt” and “clear and convincing” evidence
 - ◆ Can also think of this as 51% or greater likelihood
 - ◆ Under this standard, if the relevant evidence demonstrates that the alleged conduct is more likely than not to have occurred, you are required to find that the party is responsible; otherwise, you are required to find that they are not responsible.

What Evidence Is Not Allowed

The investigator is not entitled to information that is privileged (medical files, therapy notes, etc) unless the party consents to sharing that information.

The investigator is not allowed to include evidence of the complainant's past sexual history except when:

- It proves consent between the complainant and the respondent

Or

- It proves that someone else beside the respondent committed the alleged conduct

Investigative Report

What to Expect - Investigative Report

Main Report

1. Procedural history and timeline
2. Synopsis of all **relevant** evidence
 - a. How it connects
 - b. How it relates to the claim
 - c. Notes on credibility

Appendix

1. Related evidence

What to Expect - Investigative Report

This report will not:

1. Tell you whether or not the respondent is responsible
2. Recommend sanctions against the respondent
3. Tell you if something is credible or not

Decision-Maker

Decision-Maker Role

Here is what the decision-maker has to do:

1. Serve impartially
2. Review complainant and respondent's written response to the investigation
3. Facilitate a question and answer period for the complainant and respondent
4. Review the final investigative report
5. Determine whether the respondent has violated policies
6. If respondent is responsible, determine sanctions
7. If necessary, determine remedies for complaint
8. Share your decision and rationale in a written document

Review Written Response to Formal Investigation

Once the investigation is complete and shared both parties have 10 days in which they can submit written response to the report. A determination cannot be made before this time period end.

These responses will most likely be in regard to the evidence, how it was presented, and statements around credibility in the report.

The decision-maker must review these response and consider them in their determination.

Facilitate a Question and Answer Period

Once the final investigative report is finished and shared the parties are allowed to ask questions in two rounds.

Round 1 Process:

- The complainant and respondent submit written questions to the decision-maker.
 - Questions may be asked of any witness or the other party
- The decision-maker determines if the questions are relevant.
 - If not you document why you chose not to answer them, and share that with the parties.
- The decision-maker finds the answers and share written answer back with both parties.

Facilitate a Question and Answer Period

Round 2 Process:

- The complainant and respondent submit a 2nd round of written questions to the decision-maker.
 - Questions may be asked of any witness or the other party
- The decision-maker determines if the questions are relevant.
 - If not you document why you chose not to answer them, and share that with the parties.
- The decision-maker finds the answers and share written answer back with parties.
- The decision-maker considers the answers provided when making a determination

Making A Determination

Using the information provided in the investigative report and information from the parties written responses, the decision-maker will use the preponderance of evidence standard determine whether or not the respondent is responsible for violating policy.

Sanctions

If the party is responsible and based on Collegiate's policies determine what the appropriate sanctions are.

Things to consider when issue sanctions:

- Prior conduct of respondent
- Precedent set in prior grievance process determinations
- Primary concern is safety, but should also be education if possible
- Should consider impact of education access on the parties
- Use caution when considering attitude, aggravation, mitigation, contrition, etc

Sanctions

Examples of Student Sanctions

- Schedule changes
- Busing Changes
- Service Hours
- Loss of Privileges
- Counseling
- No Contact Order
- Suspension
- Expulsion

Examples of Employee Sanctions

- Training
- Probation
- Written Warning
- Counseling
- Loss of Pay
- Termination
- Loss of Privileges
- Loss of Supervisory duties

Remedies

Remedies are aimed at the complainant and are designed to restore or preserve their equal access to the Collegiate's education program or activity.

Examples may include:

- Allowing a student to retake a course
- Allowing a student to submit coursework late
- Providing Counselling
- Providing an escort to/from classes
- Rewriting policy
- Training

Documentation - Written Determination

Must include:

1. Identification of allegations that meet definition of sexual harassment
2. Description of all the procedural steps taken to this point
3. Finding of fact supporting determination
4. Conclusion regarding application of code of conduct (CA's policies)
5. Determination of responsibility and rationale
6. Imposed sanctions and rationale, if applicable
7. Imposed remedies and rationale, if applicable
8. How a party can appeal and what they can appeal for

Documentation - Written Determination

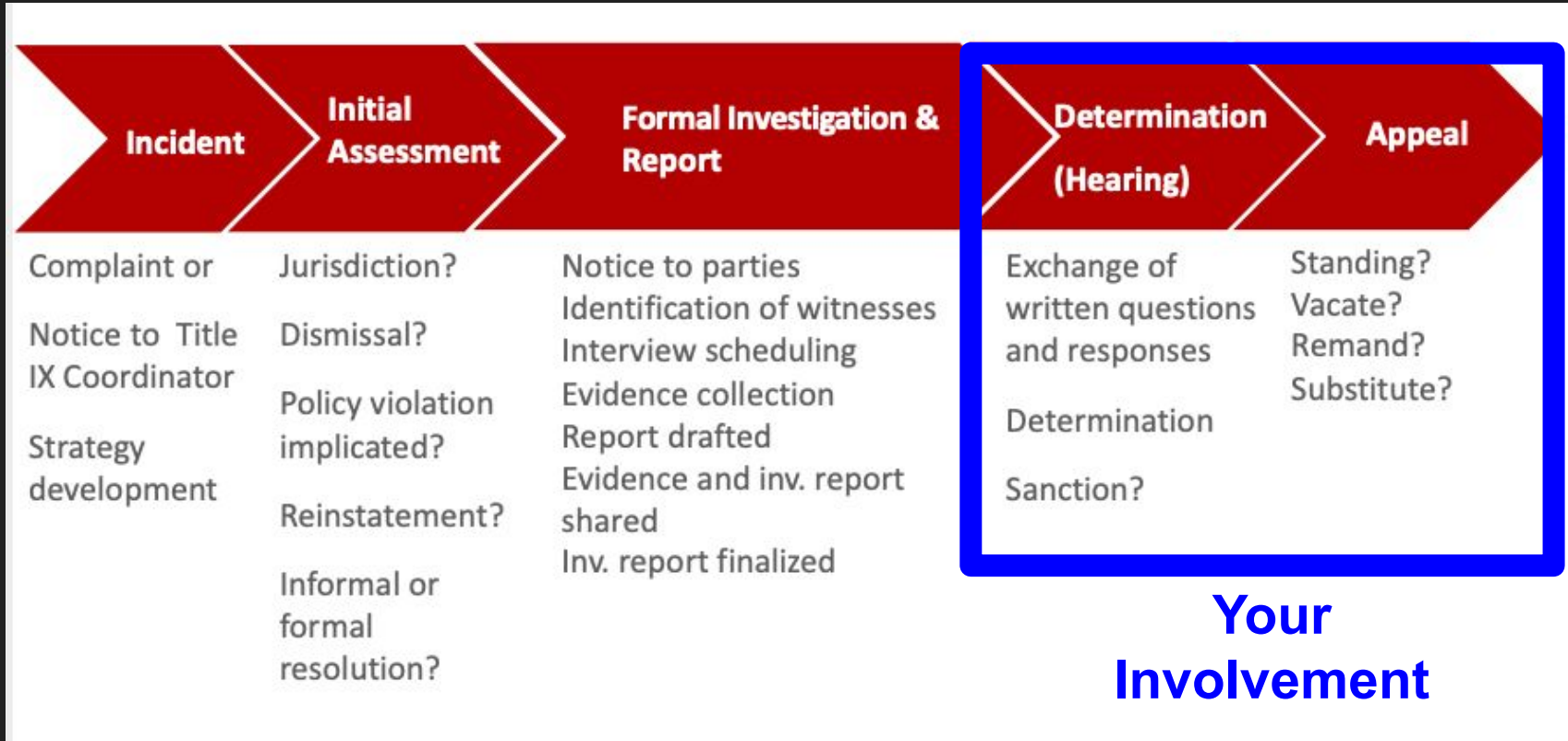
Once the written determination is complete it must be shared with both parties simultaneously.

The determination becomes final either:

- Five days after the determination is shared with the parties, if no appeal is filed
- Or
- The parties receive the appeal determination

Appeal Decision-Maker

Recap - 2020 Regulations - Formal Grievance Process



Appeal Decision-Maker Role

Here is what the decision-maker has to do:

1. Serve Impartially
2. Determine if appeal meets the criteria for appeal
3. Allow both parties to submit written statements challenge or supporting the appeal
4. If appeal is denied, provide a written rationale to both parties.
5. If appeal is accepted, review necessary information
6. Provide a written determination providing a rationale for your decision

Criteria for Appeal

There are only three reasons a party can appeal a determination:

1. New evidence is presented that wasn't reasonably available prior to the determination and that could influence the outcome
2. A procedural irregularity occurred that may influence the outcome
3. Title IX investigator, Coordinator, or Decision-maker has a conflict of interest or bias which may have influenced the outcome

Information Reviewed or Gathered in Appeal

Some or all of these things may be reviewed or done by the appeal decision-maker in an appeal:

1. Procedural Documents: Final Investigative Report, Written Determination, Evidence
2. Interview witnesses, investigator, or parties, if needed
3. Review any new evidence
4. Each party has 5 calendar days to file an appeal of the determination. If an appeal is filed, the other party has 5 days to file a response.

Written Appeal Determination

This document must provide your decision and a rationale for your decision.

This document must be shared with the parties simultaneously.

Questions?

Title IX Resources (UPDATE!!!!)

Incident Response Resources

[Title IX Vocabulary](#)

[Grievance Process Overview](#)

[Title IX Decision-maker and Appeal Guidance](#)

[Title IX Training and Guidance Folder](#)

[Title IX Resource Folder](#)

Launchpad - Title IX (coming soon)

General Title IX Resources

[Office of Civil Rights - Title IX](#)

[Office of Civil Rights - Title IX Guidance](#)

[ATIXA - 2020 Regulations Resource Center](#)

[Electronic Code of Federal Regulations - 106.45](#)

[Title IX Process 1 Pager](#)

Objectives - Did we hit this?

Understand the role of decision-makers and how decision making works in Title IX.

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