

Virtual Certified Decision-Maker Training K-12 Level 1 Session 1





Overview of the Course

Housekeeping, Intro, Agenda

Title IX Process Under New Regulations

Break

Legal Requirements of Resolution; Roles and Responsibilities of a Decision-Maker in the Title IX Process

The Resolution Process

Q & A and Wrap UP



HOUSEKEEPING

- Chat bar
- Breaks
- Understanding



ABOUT US

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PRACTITIONERS



Purpose of ICS Trainings

- 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 and community
- Most decisions will be district specific and the regulations allow for flexibility
- NO ONE HAS DONE THIS BEFORE
- We love when our participants bring information to us and provide their perspectives
- We are all in this together!





TITLE IX PROCESS UNDER NEW REGULATIONS



THE LAW

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.

REGULATIONS VS. GUIDANCE

[The] final regulations represent the Department's interpretation of a recipient's legally binding obligations, rather than best practices, recommendations, or guidance... [and] focus on precise legal compliance requirements governing recipients. p. 18



Title IX Team

THE LAW

- Specific Roles
- Discretion of District
- No Conflicts of Interest

Title IX
Coordinator

Investigator(s)

Decision-
Maker(s)

Appellate
Member(s)

Informal
Resolution
Facilitators?

Advisors

INDIVIDUALS IN TITLE IX RESOLUTION PROCESS



COMPLAINANT/



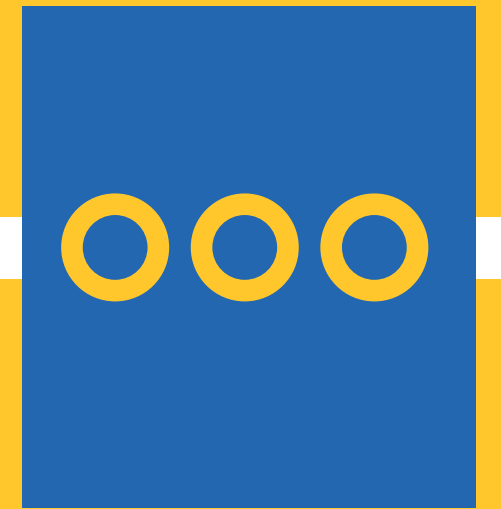
RESPONDENT



ADVISOR



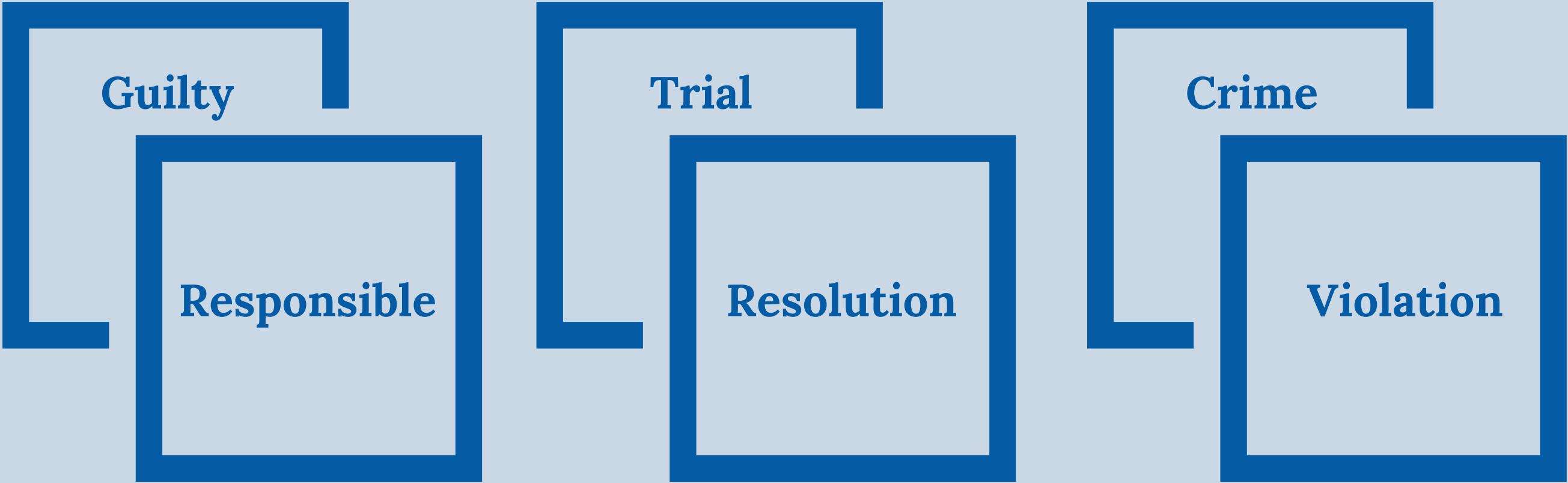
WITNESSES



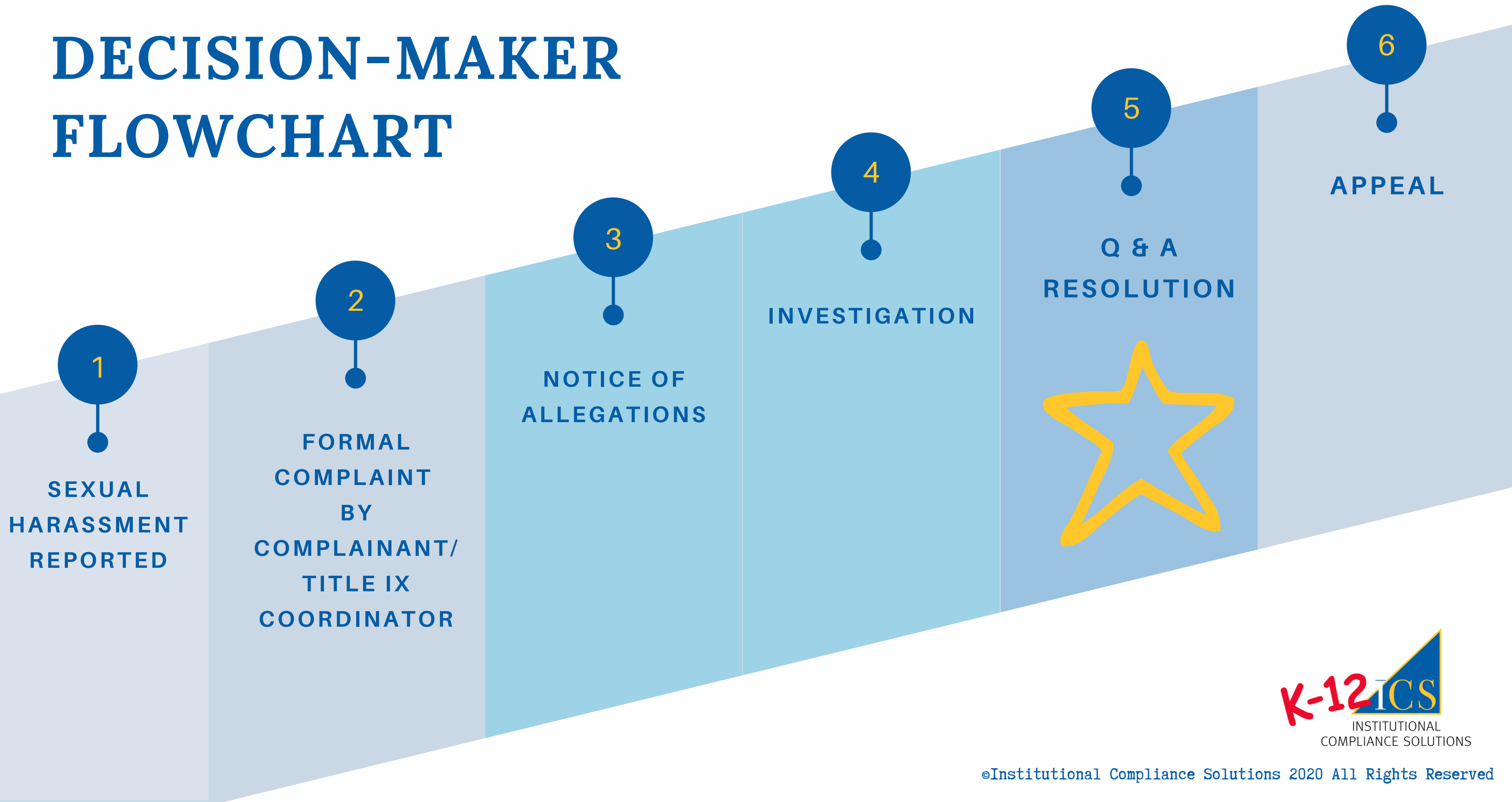
TITLE IX
COORDINATOR/
INVESTIGATOR



LANGUAGE



DECISION-MAKER FLOWCHART





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



PARENTS/ GUARDIANS

“While elementary and 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, and whether to also file a formal complaint.”



PROHIBITED CONDUCT

- Conduct reviewed under Title IX under the new regulations
- Refer to your policy
- Look at EACH element





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.**



SEXUAL ASSAULT

Sexual Assault: 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.

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.

Domestic Violence

Domestic Violence: A felony or misdemeanor crime of violence committed

- by a current or former spouse or intimate partner of the victim;
- by a person with whom the victim shares a child in common;
- by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- by a 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
- 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 in which the crime of violence occurred.

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Dating Violence

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:

(i) The length of the relationship

(ii) The type of relationship

(iii) 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.

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A photograph of a man with a beard and sunglasses on his head, sitting at a white outdoor table. He is looking down at a drink in a glass. A woman is standing next to him, partially visible. The background shows a building with arches and columns.

STALKING

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

- (1) Fear for the person's safety or the safety of others; or
- (2) 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 + Location

IT'S MORE THAN THE BEHAVIOR...
MUST EVALUATE
LOCATION/JURISDICTION AS WELL



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TITLE IX APPLIES TO...

- **Student on Student Sexual Harassment**
- **Employee on Employee Sexual Harassment**
- **Employee on Student Sexual Harassment**
- **Student on Employee Sexual Harassment**

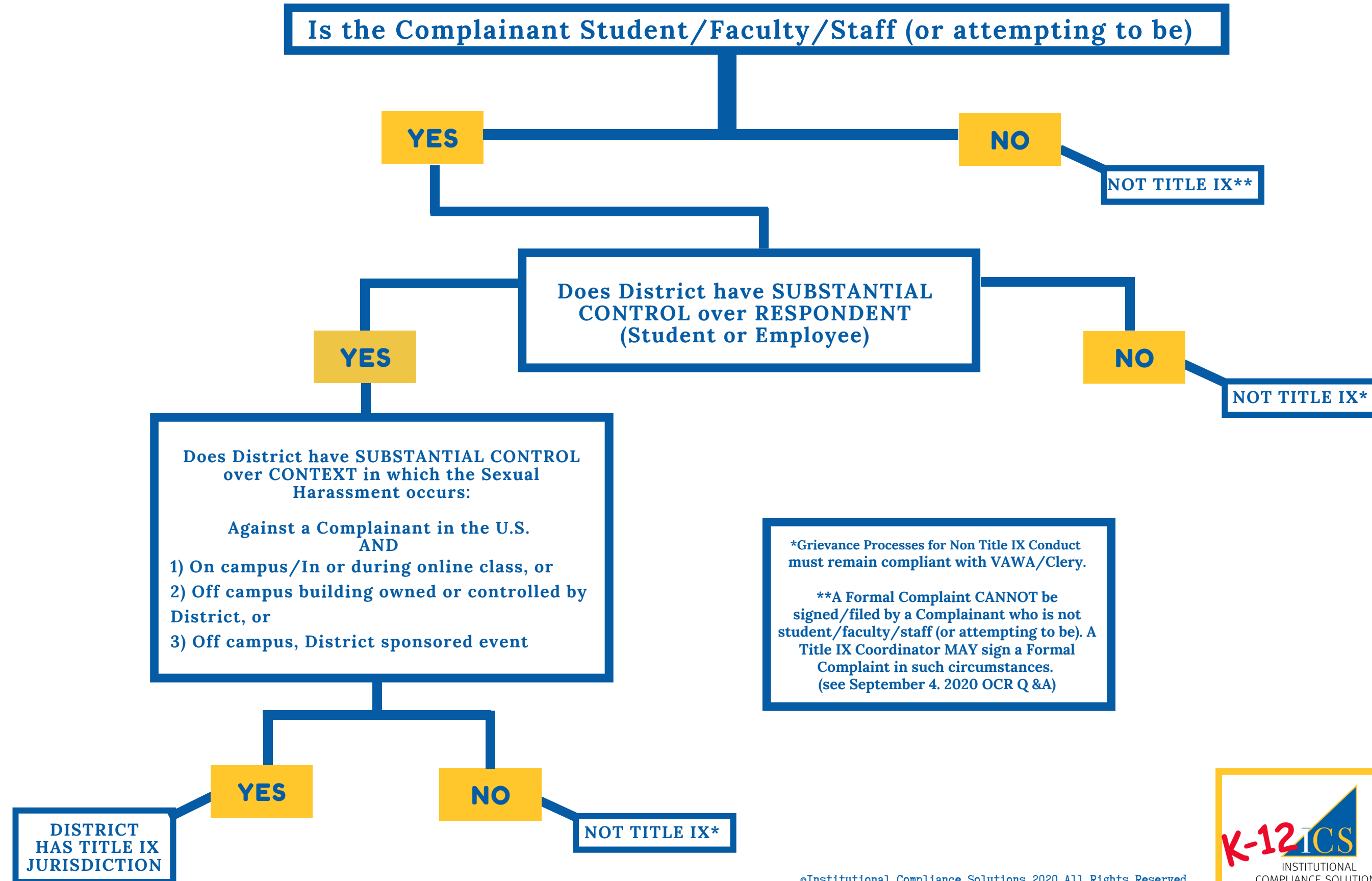


JURISDICTION

Education Program or Activity

- Locations, events, or circumstances (operations)
- School 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 school property” and “on school property,” and does not create a distinction between sexual harassment occurring in person versus online.

Jurisdiction/Education Program or Activity



Overview of Title IX Requirements



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Formal Complaint



- Document (paper, email, or online submission)
 - Signed by Complainant/Parent or Guardian (digital signature is okay) or Title IX Coordinator.
 - Alleging sexual harassment, against the Respondent AND requesting that district investigate.
- Complainant must be participating in, or attempting to participate in an education program or activity of the institution/district with which the formal complaint is filed.

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DISMISSAL OF A FORMAL COMPLAINT

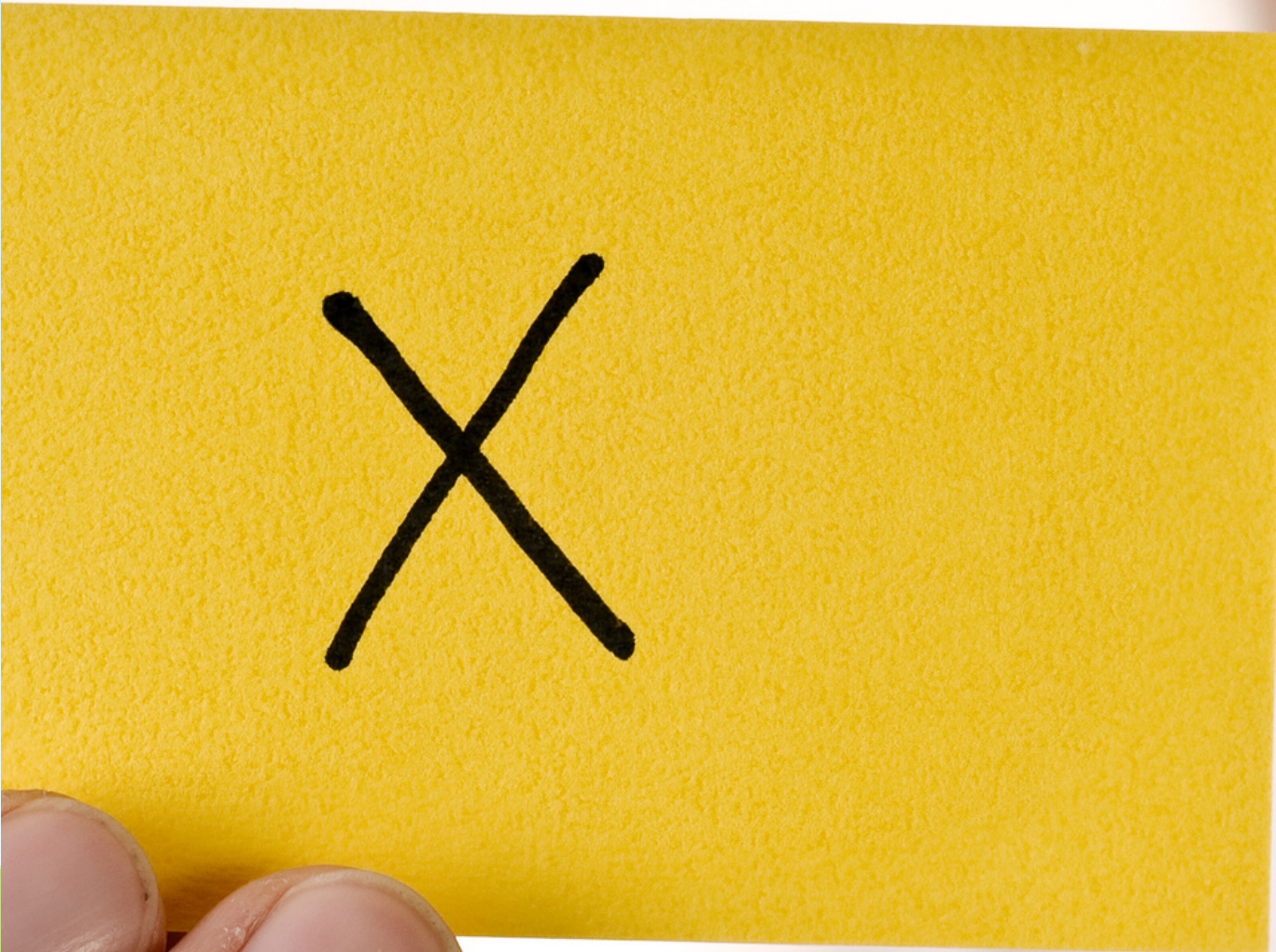
MUST Dismiss if:

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.
 - *May act under another provision of code of conduct

May Dismiss if:

- 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 district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination

*Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties



Response to a Formal Complaint (Grievance Process)

- Treat parties equitably
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- No conflict of interest or bias by Title IX Coordinator, investigator, decision-maker or facilitator of informal resolution process
- Trained Title IX Team
- Presumption that respondent is not responsible
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability)
- Describe range of sanctions and remedies
- Standard of evidence (same for students and employees)
- Procedures and permissible bases for appeals
- Notice of Allegations containing specific information as outlined in regulations



Investigation of Formal Complaint

MUST

- Ensure that burden of proof and burden of gathering evidence with district, not parties (no medical or counseling records w/o written consent of party)
- Provide equal opportunity to present witnesses (including EXPERT), and inculpatory/exculpatory evidence
- Not restrict ability of either party to discuss the allegations or to gather/present relevant evidence
- Provide opportunity for both parties to have advisor (can be attorney and can restrict the extent to which advisor can participate in the process)
- Provide written notice of date, time, location, participants and purpose of all hearings (if provided), investigative interviews, or other meetings with sufficient time to prepare to participate
- Provide equal opportunity to inspect and review evidence obtained as part of investigation (even if not relied on)- sent to party AND advisor (electronic or hard copy) with 10 days to respond prior to completion of investigative report.
- Create investigative report that fairly summarizes relevant evidence
- Provide report to parties AND advisors 10 days prior to hearing for review and written response (before the Q and A).



Resolution

- Live Hearing (Optional)
- Q and 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



DECISION- MAKERS AT HEARING

- YOU MUST BE TRAINED
- YOU have specific requirements for the hearing... we will discuss more in detail.

APPEALS

- Must be offered for BOTH parties
- Must be a new Decision-maker
- Cannot be the Title IX Coordinator
- Specific process and district may limit the basis for appeals...but they must be clearly outlined





**Formal Resolution
but..**



INFORMAL RESOLUTIONS

May NOT:

- Be required/condition of enrollment or employment
- Be offered unless Formal Complaint is filed
- Be offered or facilitated when allegations of employee sexually harassing student

May:

- Be facilitated at any time after Formal Complaint and prior to determination regarding responsibility
- Expel if agreed to in Informal Resolution
- Provide Informal Resolution Process (NOT REQUIRED TO PROVIDE)

Must:

- Provide information regarding Informal Resolution Process in initial Notice of Allegations
- Provide parties written notice of informal resolution with
 - allegations
 - requirements of process (including what information/documents will be shared)
 - circumstances which presume Formal Complaint arising from same allegations
 - right to withdraw/resume grievance process
 - consequences-including records kept/shared
- Obtain voluntary, written consent
- Have reasonably prompt time frames

INFORMAL RESOLUTIONS CONTINUED

Facilitators

- MUST be trained and free from conflicts of interest/bias
- MAY be Title IX Coordinator

Types:

- Agreement on outcome (responsibility and sanctions)
- Arbitration
- Mediation
- Restorative justice
- Other?

Defining this concept may have the unintended effect of limiting parties' freedom to choose the resolution option that is best for them, and [district] flexibility to craft resolution processes that serve the unique educational needs of their communities. p. 1370 of 2033.





INSTITUTIONAL
COMPLIANCE SOLUTIONS

Questions?

Virtual Certified Decision-Maker Training K-12 Level 1 Session 2



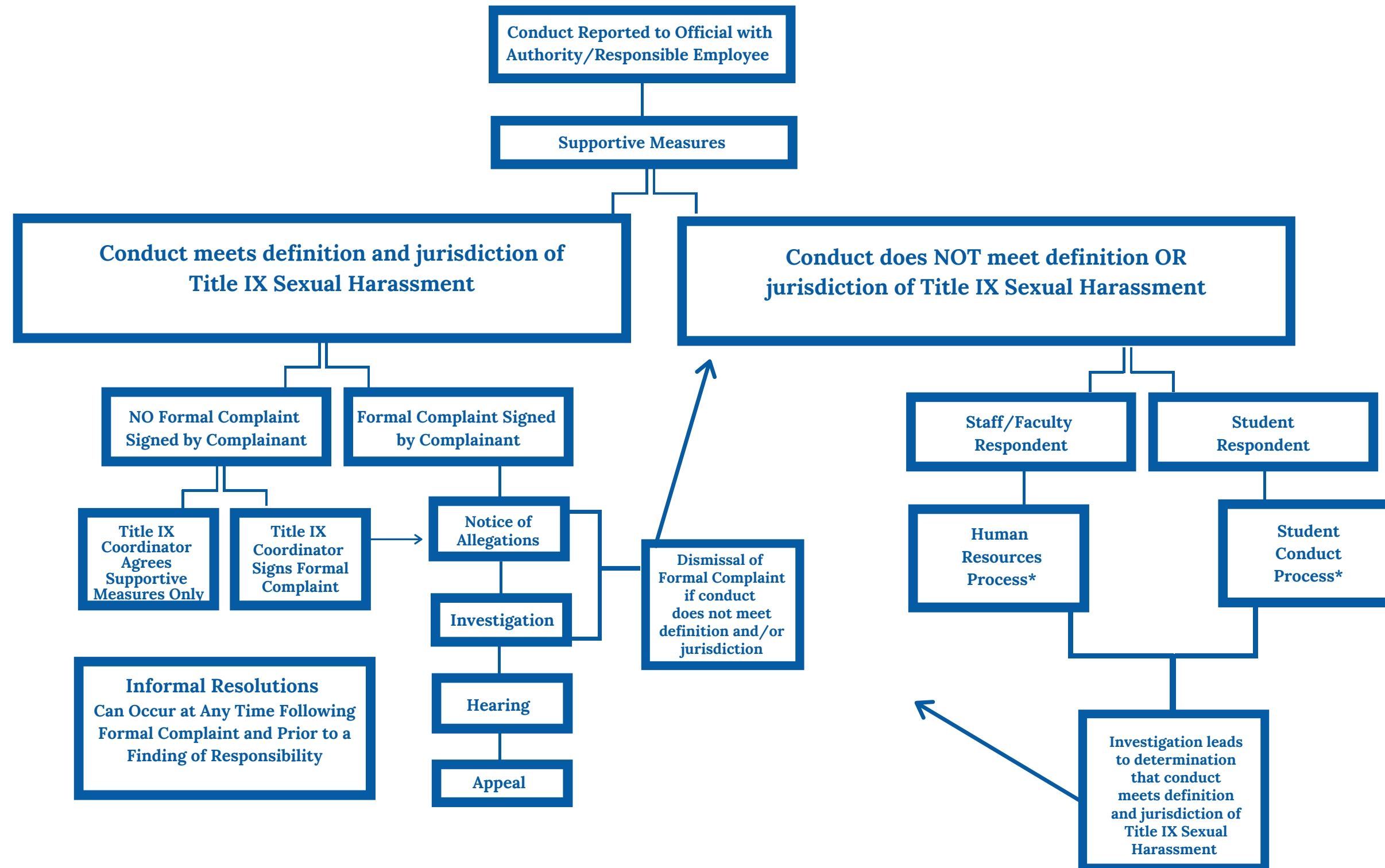


LEGAL REQUIREMENTS OF TITLE IX RESOLUTION; ROLES AND RESPONSIBILITIES OF A DECISION-MAKER IN THE TITLE IX PROCESS

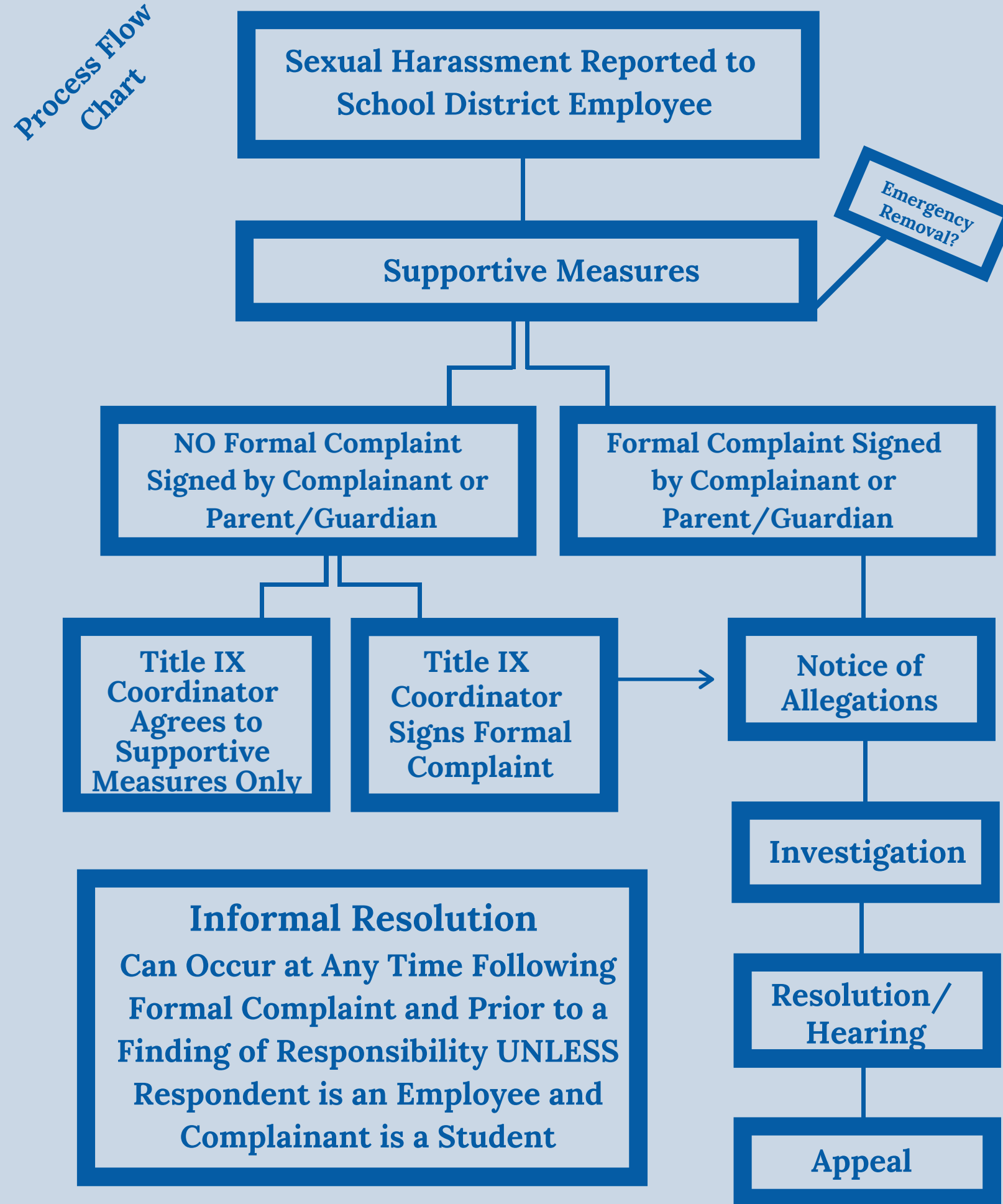
Reasonably Prompt and Equitable



Title IX Process Flow Chart



General K-12 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 school district or school district is prevented from gathering evidence.

INVESTIGATIVE TIMELINE

1

INVESTIGATE

- Notice of Allegations
- Notice of all interviews with sufficient time to prepare

2

OPPORTUNITY
TO INSPECT
AND REVIEW
EVIDENCE
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

6

APPEAL



Types of Resolution

- No Hearing (Only Q & A)
- Live Hearing (+ Q & A)
- Live Hearing under Regulations (+ Q &A)



FREE FROM CONFLICT OF INTEREST OR BIAS

- For or against Complainants or Respondents generally
- Related to an individual Complainant or Respondent
- Whether a reasonable person believes a bias/conflict of interest exists

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.



**BIAS AND/OR
CONFLICT OF
INTEREST =
BASIS FOR
APPEAL!**



AVOID PRE-JUDGMENT OF THE FACTS AT ISSUE

- Suspend your judgment
- Listen/Review ALL information before making a decision
- More difficult than it sounds

Decision-Maker Responsibilities

- Review Hearing Packet
- Q & A
- Evaluate evidence
- Determine if Responsible
- Determine Sanction (if responsible)



Relevant



Irrelevant

Relevance and Your Role

RELEVANCY



- Regulations do not define relevancy
- Regulations define some things that are NOT relevant:
 - Treatment unless parties agree
 - Privileged Information
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the respondent and are offered to prove consent (does not extend to Respondent's)

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Ir relevant

RELEVANCY CONTINUED

- Ordinary Meaning (Not a legal term)
- Does the evidence tend to make a fact more or less likely to be true



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EXAMPLES OF RELEVANCE

- Relevance related to questions
- Relevance related to evidence



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OBJECTIVE EVALUATION OF RELEVANT EVIDENCE

Inculpatory- shows or tends to show a Respondent's involvement in an act, or evidence that can establish responsibility.

Exculpatory- tends to exonerate Respondent of responsibility, favorable to a Respondent



Credibility determinations cannot be based on a party's role as a Complainant or Respondent

RESPONSIBILITY

Presumption of NOT RESPONSIBLE

- Until a determination is made regarding responsibility at the end of the grievance procedures





Burden of Proof

- Discretion of District
- Must be Consistent Throughout ALL Processes ie. Faculty, Staff and Students
- Clear and Convincing vs. Preponderance of the Evidence



District Process vs. Law Enforcement

REMEDY REQUIREMENTS

No disciplinary sanctions prior to grievance process

Does not include supportive measures

Remedies designed to restore or preserve equal access to education program or activity

May include supportive measures

Remedies need not avoid burdening Respondent

Need not be non-disciplinary or non-punitive



UNDERSTAND RANGE OF SANCTIONS

Examples:

Developmental/Educational

Probation

Expulsion

Termination



OTHER PROCESSES TO CONSIDER

- ADA
- IDEA
- 504



UNDERSTAND THE TECHNOLOGY TO BE USED IN A LIVE HEARING (IF YOU HAVE ONE)

- When parties are in the same room?
- When parties are participating virtually
- Recording
 - Audio only?
 - Video and Audio?
 - Transcription?
- Access to documents
- Protection of documents



KNOW YOUR POLICIES AND PROCEDURES

- Working knowledge of your policies
- Structure of the resolution process
- Use policy consistent language
- What are the elements of the alleged violation?
- What are your findings?
- What is your rationale?
- What happens after resolution?





Questions?



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Facebook:
Institutional Compliance Solutions
Groups:
Title IX Coordinators Closed Group
K-12 Title IX Coordinators

CONNECT WITH US!



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THE RESOLUTION





BE PREPARED

PRE-RESOLUTION PREPARATION

- Review all documents, evidence, statements, information provided to you, as the decision-maker prior to the Q &A.
- Do not pre-judge, keep an open mind.
- Review resolution/hearing process, rules of decorum (if hearing), role of advisor, prior to the Q & A and hearing (if one occurs).
- Test technology prior to the hearing or resolution (if emailing, triple check email addresses).
- Do not discuss the case.
- Give the process your full, undivided attention.
- Use a script if conducting a hearing.

CONSOLIDATION OF COMPLAINTS

- Multiple Complainants
- Multiple Respondents
- Multiple Violations
- Violations of Code of Conduct plus Title IX



BE PREPARED FOR DELAYS

- Party doesn't appear/participate
- Advisor doesn't appear/dismissed
- Parties move to informal resolution
- Witness doesn't appear/participate
- Technology issues
- Illness
- Emergency
- Other





Create Comfortable Space

- Private space
- Comfortable
- Quiet
- Convenient
- Access to technology (internet connection)
- Desk/table space
- Sufficient space between parties (if hearing)
- Private room for breaks/discussion with advisor(if hearing)
- Waiting room for witnesses if hearing (and virtual waiting rooms if appearing virtually)

Set the Tone, Enforce the Rules

- The parties and advisors must abide by the rules of decorum set by the district
 - Provide the rules to the parties prior to the hearing/resolution process
- The decision maker must-
 - set the tone for the process
 - ensure that the rules are clearly outlined
 - ensure that the rules are explicitly followed
 - have the ability to take breaks as necessary (if hearing)

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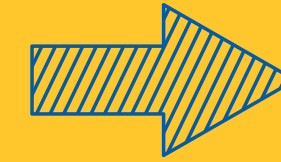
ADVISORS

- Can be parent/guardian (or in addition to parent/guardian)
- Of the party's choice
- Attorney? Can be, but doesn't have to be
- Does not have to be trained.
- Must follow rules of decorum if you have them
- Potentially slow down the resolution process

Types of Information/ Evidence

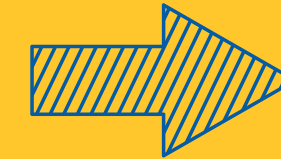


**Direct
Information/Evidence**



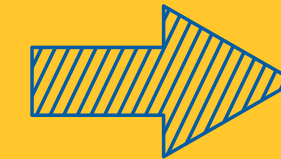
**First person observation of an
incident**

**Circumstantial
Information/Evidence**



**Reported observation of
information that offers
inferences about the facts of the
event**

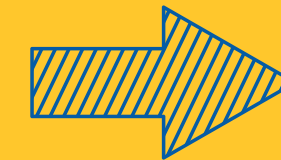
**Documentary
Information/Evidence**



**Written description of an
incident**

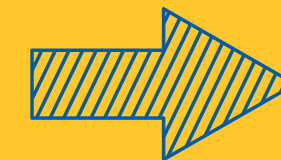
- Police Report
- Write Up

**Hearsay
Information/Evidence**

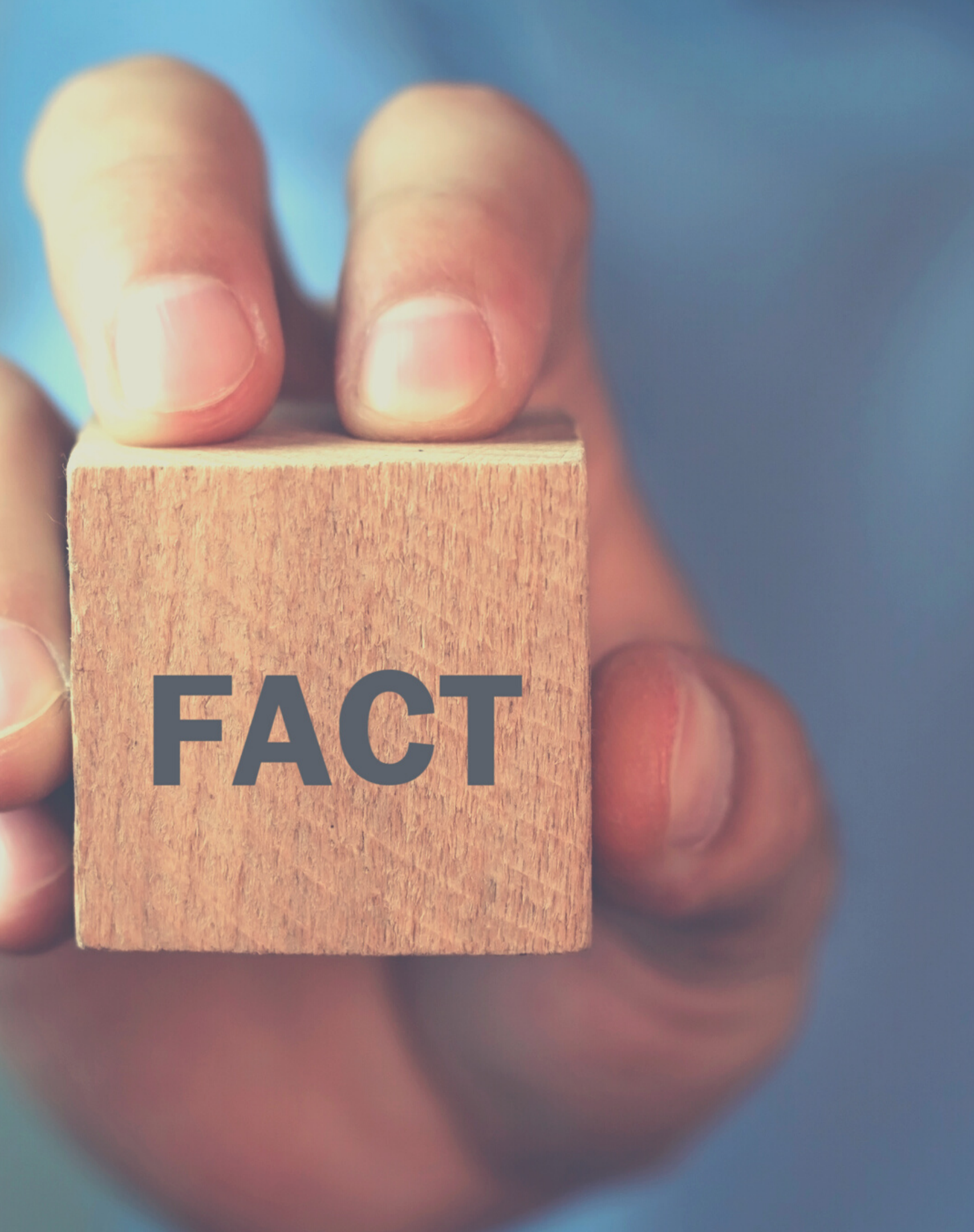


**Information that is reported
through another party**

**Expert
Information/Evidence**



**Information that is shared from a
person who has an acknowledged
expertise in related subject
matter**



FACT FINDING

- Is the information a FACT?
- Is the information disputed?
 - If no-this information can be considered a "fact"
- Does the other evidence corroborate the information?
 - Consistencies
 - Inconsistencies



Evaluating Witnesses/ Reviewing Evidence

- Focus on behavior, not character.
- What information is known?
- What information is unknown?
- What questions could clarify your unknowns?





Additional Information regarding questioning

- What if advisors DO NOT ask cross questions of opposing party or witness?
- What if a party refuses to answer a decision-maker's question(s)?



INSTITUTIONAL
COMPLIANCE SOLUTIONS

RESPONSIBILITY

Decision-maker must issue a WRITTEN DETERMINATION regarding responsibility- using standard of evidence established by the district.



Standards of Proof

- Preponderance Evidence Standard: understood to mean concluding that a fact is more likely than not to be true
- Clear and Convincing Evidence Standard: understood to mean concluding that a fact is highly probable to be true
 - Definitions provided by Department in preamble to the regulations



Written Determination MUST Include:

- Identification of ALL allegations potentially constituting sexual harassment
- Description of the procedural steps taken from the receipt of formal complaint through the determination including:
 - notice to parties
 - interviews with parties and witnesses
 - site visits
 - methods used to gather evidence
 - hearings held (if any)
- Findings of fact supporting the determination
- Statement of, and rationale for the result as to each allegation including:
 - determination regarding responsibility
 - any disciplinary sanction
 - whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the Complainant.
- District's procedures and permissible bases for the Complainant and Respondent to appeal

ARTICULATING DECISION/RATIONALE

- Articulate what you believe happened based on:
 - Standard of evidence
 - Elements of alleged violation
 - Connect rationale to each element
 - Identify facts supporting each element(s)
 - Identify facts that do not support the element(s)
 - Include any admissions that occur during the hearing/resolution process
 - If using a formula to weigh evidence/information, make sure to follow explicitly





EXAMPLE: SEXUAL ASSAULT/FONDLING

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.

1. Touching
2. Private body parts
3. Of another person
4. For the purpose of sexual gratification
5. Without Consent (insert definition of consent) of the victim

APPEALS

- **MUST** offer both parties an appeal re: responsibility, recipient dismissal of formal complaint, or any allegations on following bases:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence
 - Conflict of Interest or Bias by Title IX Coordinator, Investigator(s), Decision-Maker(s)- generally toward complainants or respondent or toward specific party
 - May include additional bases
- **Must** be included in Notice of Outcome







Questions?

How Can We Help?



1

**COMMUNITY
ACCESS**

2

**TAILORED
TRAINING**

3

**ONGOING
SUPPORT**