

K-12 Virtual Certified Title IX Coordinator Training



ABOUT US

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HOUSEKEEPING

- Chat bar
- Breaks
- Understanding





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
- 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!



Agenda



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SESSION 1



Introduction:
Title IX Basics and
New Regulations
Overview

SESSION 2



Role of the Title IX
Coordinator Under the
New Regulations

SESSION 3



Title IX Process:
From Report to Hearing
and Appeals

SESSION 4



From Policy and Process
to Practice-
Case Studies and Hypos

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INTRO

INTRODUCTION

Title IX Basics and New Regulations Overview



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



The Impact of the 2020 Election on Title IX Compliance



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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**





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)



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.



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?

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

Okay ?
? yes

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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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 + Education Program or Activity

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

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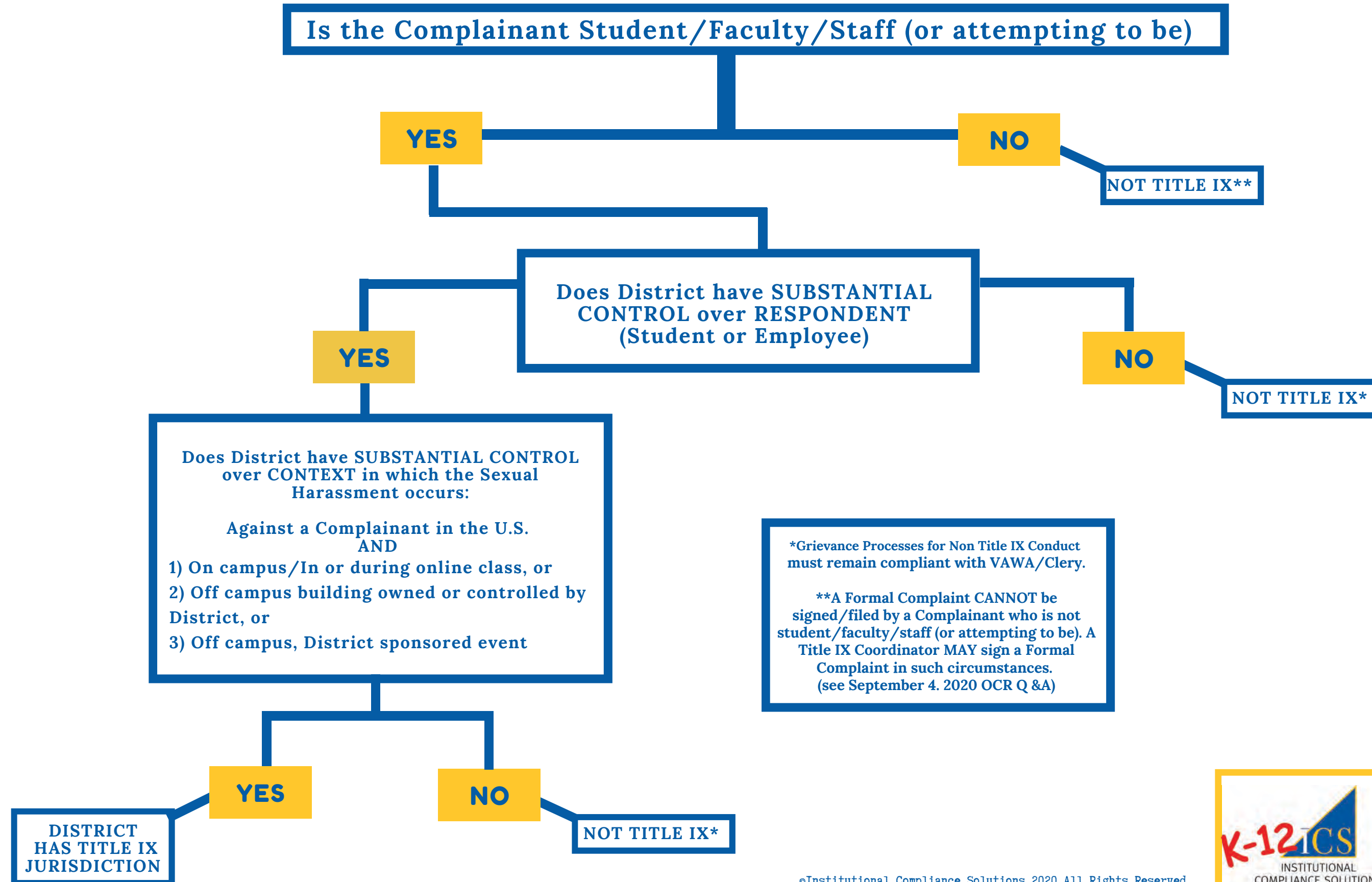


JURISDICTION

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,” and does not create a distinction between sexual harassment occurring in person versus online.**

Jurisdiction/Education Program or Activity





Questions?

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Upcoming ICS Events

<https://icslawyer.com/ics-events/k-12/>

- **2020 Year End Review (FREE)**
1-28-2021 1:00-2:00 Eastern
- **Level 2 Investigator**
1-27-2021 10:00-1:00 Eastern
- **Policy to Practice Series**
Thursdays in February
- **Check out other 2021
Professional Development
Opportunities**





THE ROLE OF A TITLE IX COORDINATOR UNDER THE NEW TITLE IX REGULATIONS

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 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

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The recipient of a report of sexual discrimination must inform the Title IX Coordinator regardless of who will conduct the investigation.



**Title IX
Coordinator**



Investigator(s)



**Decision-
Maker(s)**



**Appellate
Member(s)**



**Informal
Resolution
Facilitators?**



**Responsible
Employees/
Officials with
Authority**

Your job is to:

- 1) Place good employees in the right positions
- 2) Make sure each team member understands their role
- 3) Ensure that the work is getting done
- 4) Track the process
- 5) Be Available



"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



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





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.”



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

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)





COORDINATING 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

Burden: remains on the district not the parties

Not: punitive or disciplinary

Confidential: as much as possible

Document: when provided, when not provided and why

Title IX Coordinator: ultimately responsible for effective implementation, but others can also implement

Examples: in section 106.3





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



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

- Schedule meetings with investigators (virtual or in person) to discuss status of cases
- Bring team together regularly to make sure processes are working consistently
- Monitor outcomes, sanctions and remedies
- Remain focused on equity
- Correct in the moment, mistakes will happen
- Remain as transparent as possible
- Use a data tracking system if possible
- 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 CONFLICTS OF INTEREST/BIAS

- Generally toward Complainants/Respondents
- In a specific case
- Legal Definition of conflict of interest
 - 1: a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
 - 2: a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

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, AND PUBLISH POLICIES

Policies must be:

- Compliant
- Clearly displayed and 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

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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:

1. 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.
2. 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.
3. Any appeal and result of appeal.
4. Any informal resolution and result therefrom.
5. All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.

Coordination of Efforts

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





Questions?

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How Can We Help?



1

**COMMUNITY
ACCESS**

2

**TAILORED
TRAINING**

3

**ONGOING
SUPPORT**



TITLE IX PROCESS: FROM REPORT TO HEARING AND APPEALS

1. Report of Sexual Harassment to Employee



- **Is Complainant a Participant in Education Program or Activity?**
- **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
- **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



- Without Fee or Charge
- Regardless of whether the Complainant wants to file Formal Complaint
- Designed to restore or preserve access to Education Program or Activity
- 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. *Formal Complaint*



- **In writing**
 - Hard copy
 - Electronic
 - Online submission
- **Signed by:**
 - Complainant or Parent/Guardian
 - Title IX Coordinator
- **Alleging Sexual Harassment**
- **Requesting an investigation**

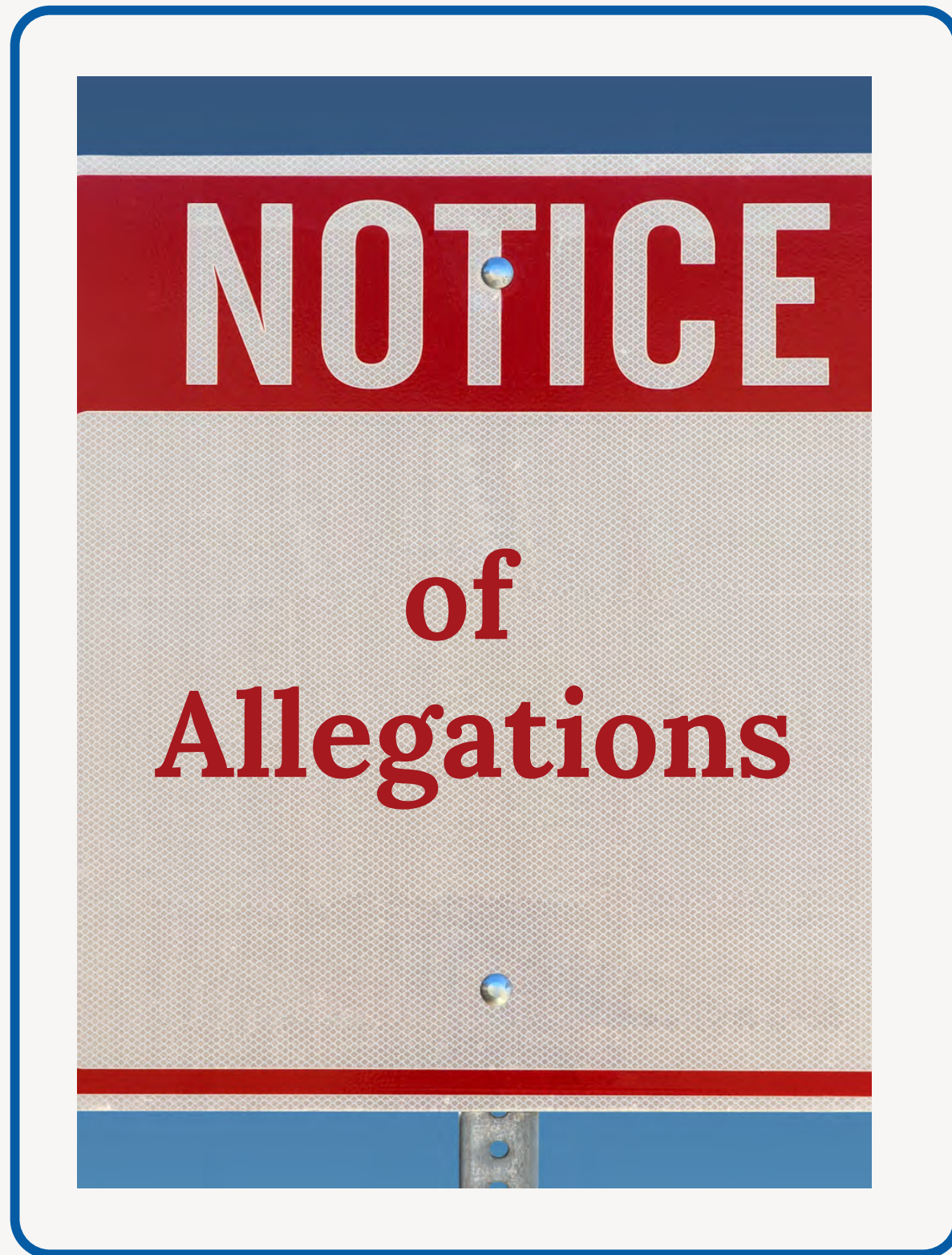
4. Dismissal of Formal Complaint



DISMISSED

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

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**

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)

PARTIES IN AN INVESTIGATION



COMPLAINANT/
REPORTER



RESPONDENT

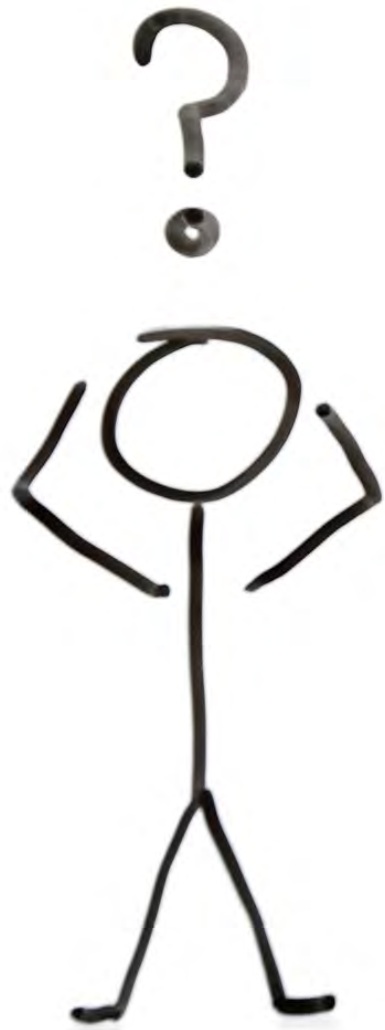


ADVISOR



WITNESSES

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



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**

9. Appeals



- Offered to both parties
- Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility
- On the following bases:
 - 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 bases if offered equally to both parties
- Notify the other party in writing when an appeal is filed
- Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome
- Written decision describing the result and rationale for the result
- Provide written decision simultaneously to both parties



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

☐

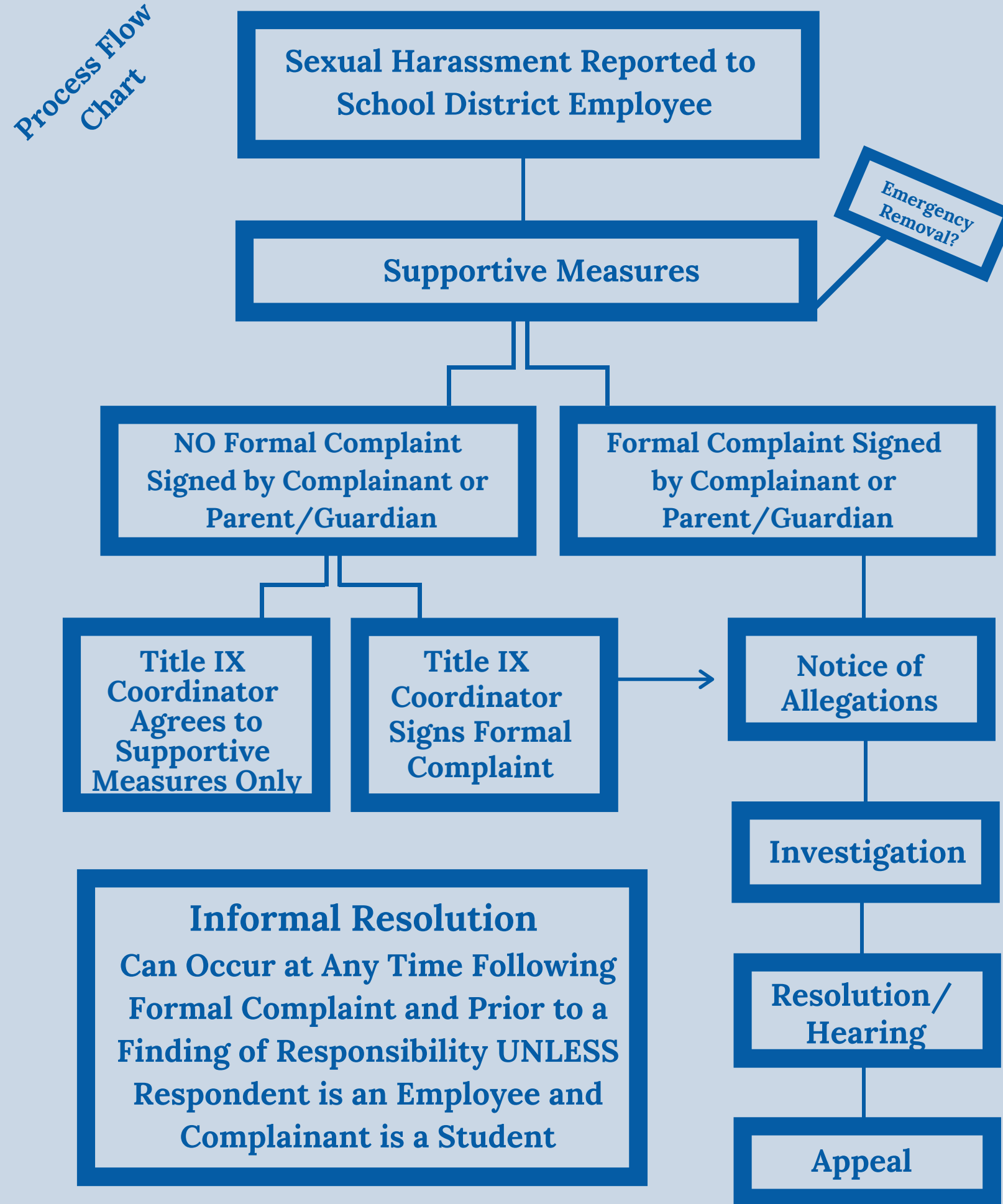
Provide the Written Decision Simultaneously

10. Informal Resolution



- 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

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.

INVESTIGATION/ RESOLUTION TIMELINE

1

INVESTIGATE

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

2

OPPORTUNITY TO
INSPECT AND
REVIEW
EVIDENCE
DIRECTLY
RELATED TO
ALLEGATION &
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





Questions?

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Groups:
Title IX Coordinators Closed Group
K-12 Title IX Coordinators

CONNECT WITH US!



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