

Today's Agenda

- ✓ Review foundational legal principles regarding Title IX Compliance
- ✓ Review reporting structure
- ✓ Your questions!

• Title IX

- Title IX of the Education Amendments of 1972 provides that:
- “[n]o 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...”
 - Protected persons:
 - Students of all genders
 - Staff of all genders
 - Applies only to sexual harassment as defined by the August 14, 2020 regulations (see next slide)

• Title IX Definitions

• **Sexual Harassment:** conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee **conditions** the provision of an aid, benefit, or service of the school recipient on an individual's participation in unwelcome sexual conduct; or
- (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 education program or activity; or
- (3) "**Sexual assault**" as defined in the Violence Against Women Act (VAWA) 20 U.S.C. § 12291(a)(10), "domestic violence" as defined in 34 U.S.C. § 12291(a)(8), or "stalking" as defined in 34 U.S.C. § 12291(a)(30).

• Title IX Definitions

- **Complainant** – individual who is alleged to be the victim of
 - conduct that could constitute sexual harassment
- **Respondent** – individual who has been reported to be the
 - perpetrator of conduct that could constitute sexual harassment
- **Actual knowledge** – notice of sexual harassment or
 - allegations of sexual harassment to a recipient's Title IX
 - Coordinator or any official of the recipient who has authority to
 - institute corrective measures on behalf of the recipient, **or to**
 - **any employee of an elementary or secondary school**

• Title IX Definitions

- **Formal Complaint** – 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. 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.

• Title IX Key Terms

- **Formal Resolution** is the processing of a complaint from intake
- by the Title IX Coordinator, to investigation by an Investigator, to
- decision by a Decision-Maker and appeal to an Appeals Officer, if
- requested.

- **Informal Resolution** is the process to resolve a complaint
- without resorting to the formal resolution procedures. This may
- include the use of mediation or other restorative justice
- measures.

•*More on this later!

• Title IX Key Terms

• **Informal Resolutions:**

- Not allowed for allegations of an employee sexually harassing
 - a student
- Parties must consent in writing to participate in an informal
 - resolution process
- School must provide written notice disclosing the allegations
 - and the requirements of the informal resolution process
 - (including when the informal process precludes resuming the
 - formal complaint process)
- At any time prior to agreeing on a resolution, either party can



- Initial Response Once Actual Knowledge is Received
 - Pre-Investigation (Title IX Coordinator)

- **“Supportive measures”**

- 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.**
- Designed to restore or preserve equal access to the
 - recipient’s education program or activity without
 - unreasonably burdening the other party, including
 - measures designed to protect the safety of all parties
 - or the recipient’s educational environment, or deter
 - sexual harassment.
- Must be kept confidential to the extent possible.

- Initial Response Once Actual Knowledge is Received
 - Pre-Investigation (Title IX Coordinator)

- **“Supportive measures”**

- Examples can include:
 - Counseling
 - Course Modifications
 - Schedule changes
 - Increased monitoring or supervision
 - No contact orders
- **A measure that completely removes a student from an activity would likely be considered punitive.**
- Exception – Emergency removals and administrative leave for employees.

- Initial Response Once Actual Knowledge is Received
 - Pre-Investigation (Title IX Coordinator)

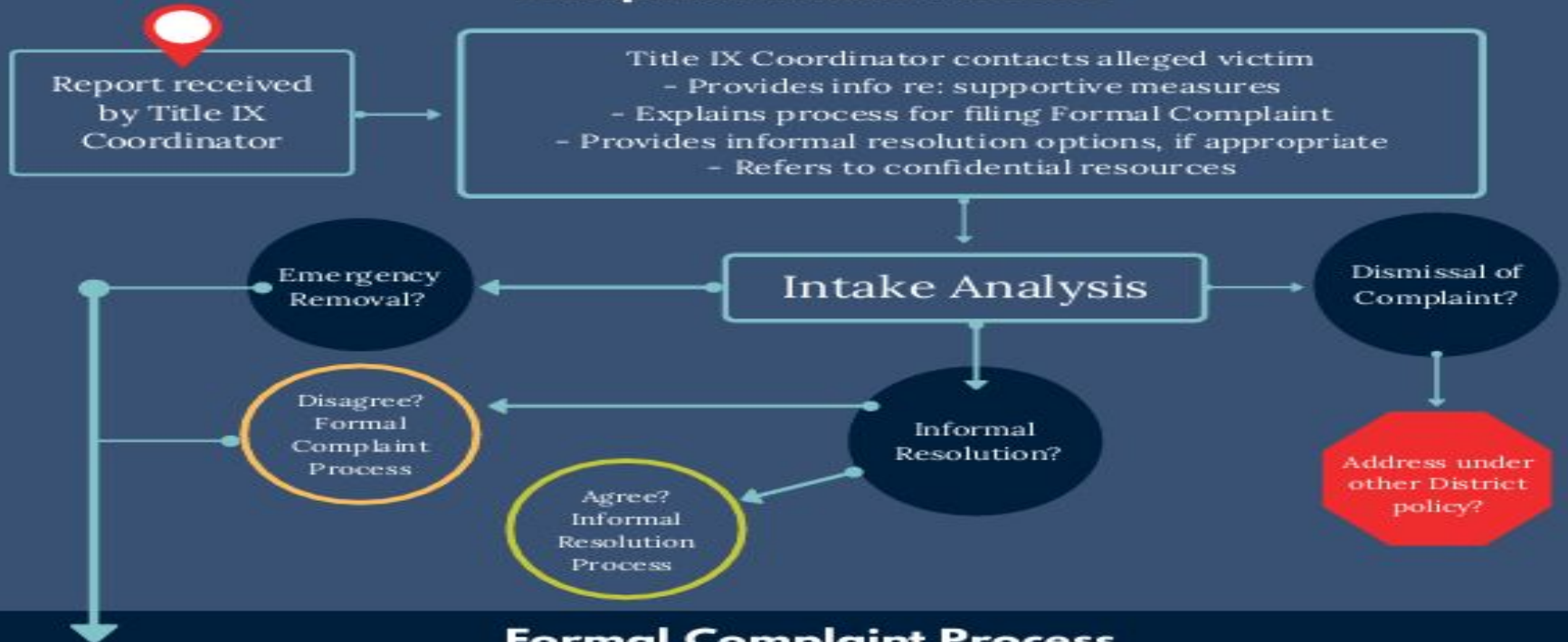
- **Emergency Removal?**

- Need to perform analysis of safety and risk on a case by case basis.
- Establish it is necessary to protect a student or another person from immediate threat to physical health or safety.
- Must give notice to the student and an opportunity for the student to immediately challenge the removal.
- Must consider other protections provided to the student, such as IEP and/or 504 Plan, which could take precedence.

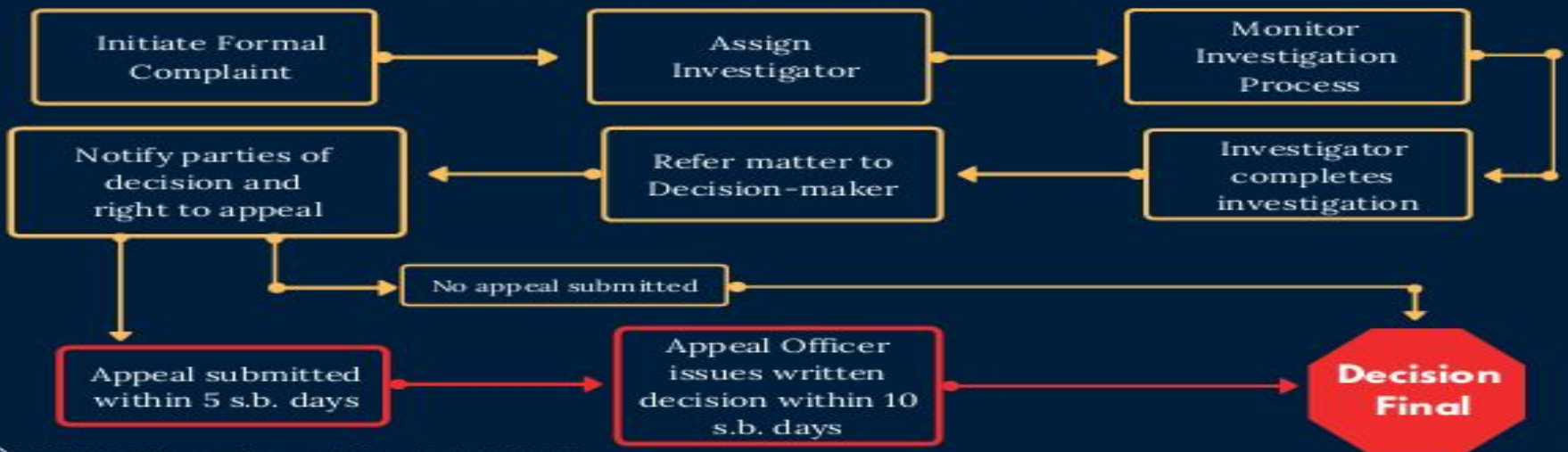


Title IX Process Overview

Complaint Intake Process



Formal Complaint Process



• WHO DO I CALL????

Incident or report that a **STUDENT** engaged in sex-based misconduct* towards another **STUDENT**:

- * **Before proceeding with discipline** – contact Dr. Jessica Meisenheimer. If n/a, contact Ms. Christelle Morgan
- * If assault or abuse – consider report to Children’s Division and law enforcement

What is “**sex-based misconduct**”? Sexual assault, sexual abuse, sexual harassment (or bullying), including sexual orientation or gender identity harassment or retaliation

• WHO DO I CALL???

Incident or report that an **EMPLOYEE** engaged in sex-based misconduct* towards another **STUDENT**:

- * contact Dr. Jessica Meisenheimer **and**
- * contact Ms. Christelle Morgan
If n/a – contact Dr. Sarah Marriott
- * If assault or abuse –report to Dr. Jeremy Tucker, Children’s Division and law enforcement

What is “**sex-based misconduct**”? Sexual assault, sexual abuse, sexual harassment (or bullying), including sexual orientation or gender identity harassment or retaliation

• WHO DO I CALL????

Incident or report that an **EMPLOYEE** engaged in sex-based misconduct* towards another **EMPLOYEE, PATRON or PARENT**:

- * contact Dr. Jessica Meisenheimer **and**
 - * contact Ms. Christelle Morgan
- If n/a – contact Dr. Sarah Marriott

What is “**sex-based misconduct**”? Sexual assault, sexual abuse, sexual harassment (or bullying), including sexual orientation or gender identity harassment or retaliation

QUESTIONS?

Margaret A. Hesse

mhesse@tuethkeeney.com

314-880-3608