Title IX Decision-Maker and Appeal Officer Training

July 31, 2025

Northern California ReLIEF

Title IX Training Series – July 2025

July 17	**Title IX Coordinator** Thursday, July 17th 9AM - 12PM
July 24	**Title IX Investigator** Thursday, July 24th 9AM - 12PM
July 31	**Title IX Decision-Maker and Appeal Officer** Thursday, July 31st 9AM - 12PM
Aug 7	**Title IX Informal Resolution Facilitator** Thursday, August 7th 9AM - 12PM

Northern California ReLiEF

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Agenda

- Title IX Law
- Title IX Sexual Harassment under 2020 Title IX Regulations
- Title IX Process Overview
- Title IX Decision-Maker Process
  - Outcome Letter
- Title IX Appeal Process
  - Appeal Outcome Letter

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."

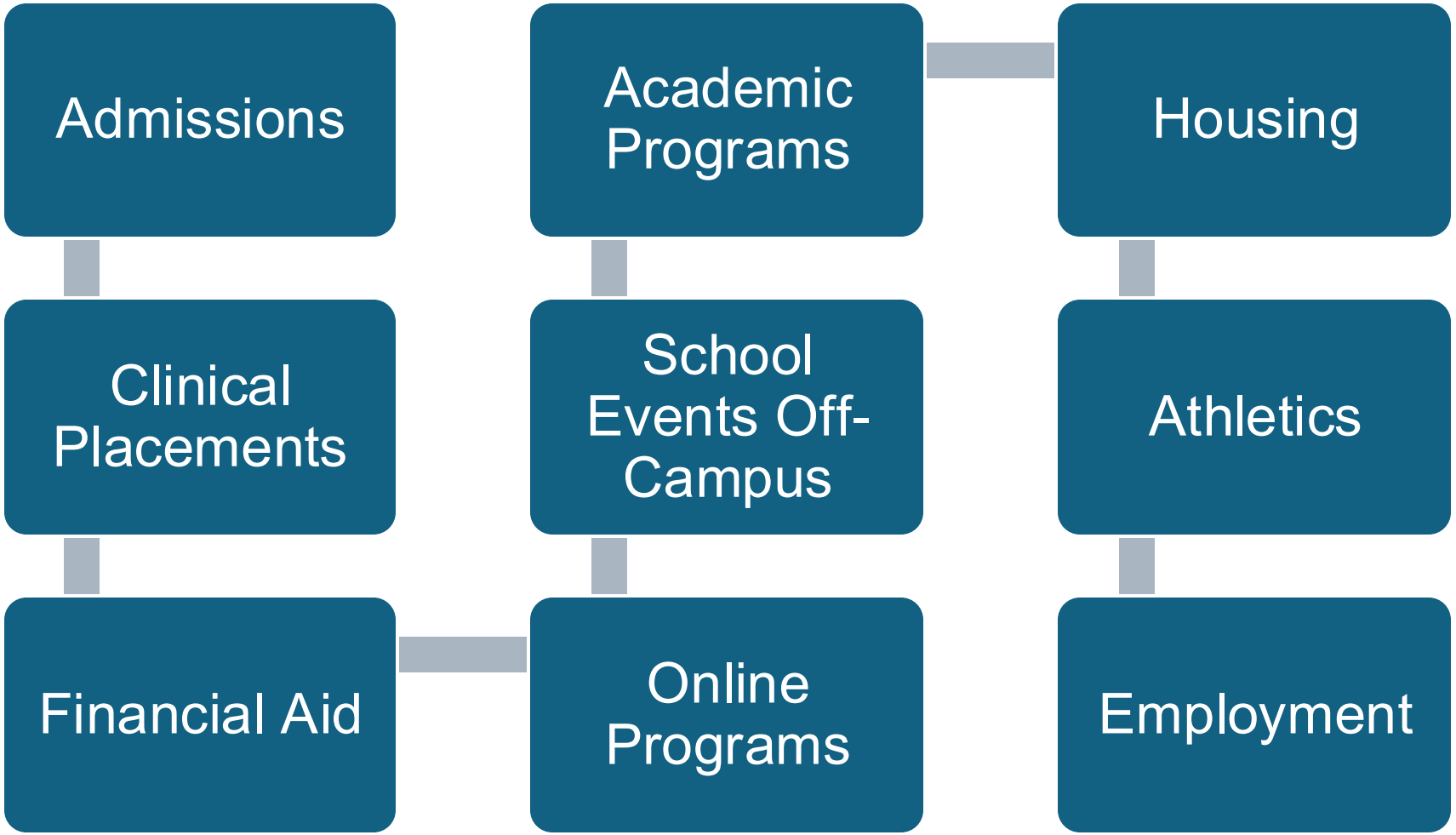
- Title IX of the Education Amendments of 1972

Enforced by the Office for Civil Rights (OCR)



Title IX

- Prohibits sex discrimination in educational programs and activities.



Title IX: Scope of the Education Program or Activity

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Off-campus activities covered if one (1) of three (3) requirements are met:

1. The off-campus incident occurs as part of the school's operations;
2. The school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. *The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college.*

TIXGP: Jurisdiction Defined

Occurring in the institution's education program or activity

- includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred

Against a person in the United States

Legal Obligation

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

Failure to respond to a complaint following the Title IX process could be evidence of deliberate indifference.

Reporting Obligations of K12 Employees

Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice about Title IX complaint

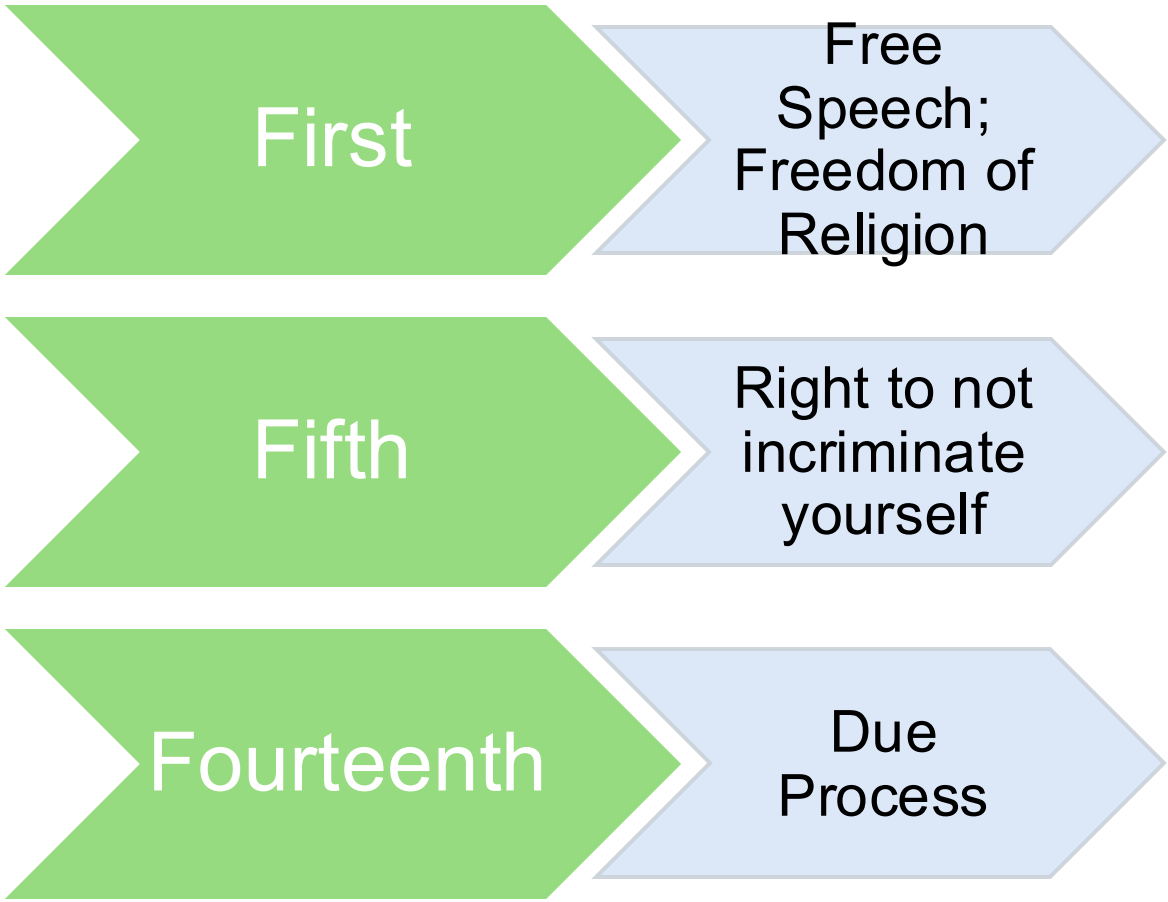
Confidential Employees

Mental Health professionals with a license

No duty to report to Title IX Coordinator

Title IX Enforcement and Federal Constitutional Protections

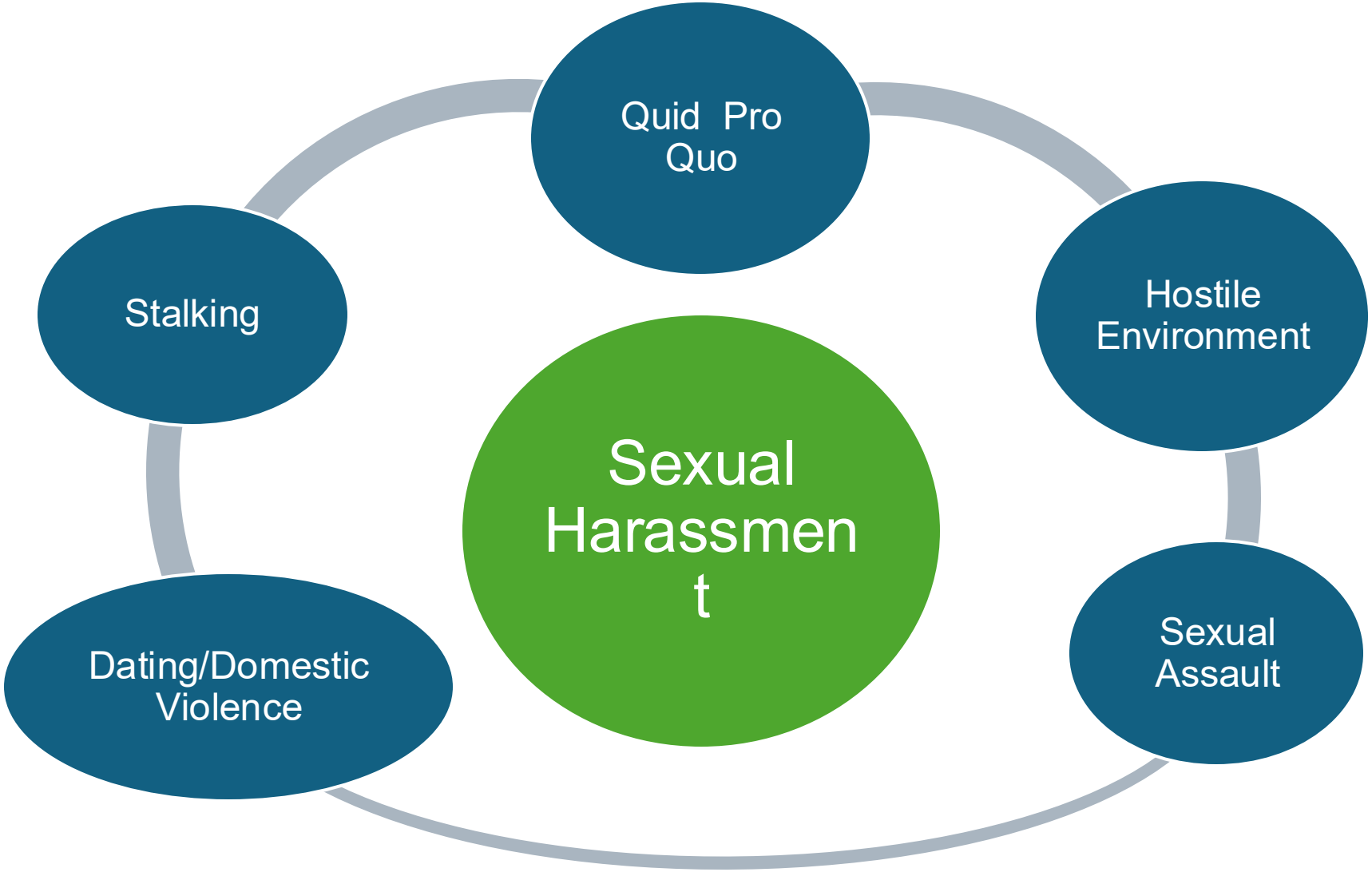
Title IX process may not limit or restrict constitutional protections



Title IX
Sexual Harassment

Important Definitions

Title IX (TIX) Definition of Sexual Harassment



TIX Definition of Sex

- Title IX's definition of "sex" has evolved over the years.
- Recent executive and regulatory guidance has specifically excluded gender identity from this definition.
- Allegations of discrimination/harassment related to non-binary, transgender, and gender non-conforming students and employees are not covered under Title IX.

Quid Pro Quo Harassment

Defines conduct "on the basis of sex" and includes:

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

Hostile Environment Harassment

- Hostile environment - 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 school's education program or activity.

Specific Acts

- Sexual Assault
  - Rape
- Dating Violence
- Domestic Violence
- Stalking

Title IX Sexual Assault

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including
  - Rape
    - Sodomy
    - Sexual Assault with an object
  - Criminal Sexual Contact (formerly Fondling)

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.

Dating/Domestic Violence

Dating violence meaning violence committed by a person:

(1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship;
- The type of relationship; and
- The frequency of interaction between the persons involved in the relationship.

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

(1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;

(2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(3) Shares a child in common with the victim; or

(4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

Stalking

Stalking meaning 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.

Title IX Prohibits Retaliation

- Prohibition against retaliation for any participant in the Title IX reporting and investigation process

- Requires some level of school action

Title IX Roles and Responsibilities

Title IX Roles

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-Maker
- Title IX Appeal Officer
- Title IX Informal Resolution Officer

Training required for all of these administrators of Title IX matters

Parties

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)
- Advisor to parties

Other Participants

- Fact Witnesses
- Expert Witnesses

Title IX Coordinator Role

- Shepherds the Title IX process
- Receives report
- Evaluates the complaint and holds initial meeting with Complainant
  - Supportive Measures
  - Procedure Options – Investigation, Informal Resolution
- Identifies Investigator
- Sends Notice of Allegations Letter
- Provides supportive measures for Respondent
- Engages in regular outreach to the parties about investigation and potential delays
- Shares investigation information with the parties
- Identifies Decision-Maker
- Addresses challenges based on bias or conflict of interest
- Delivers Outcome Letter to parties
- Processes a potential appeal

Title IX Investigator Role

- Policy will define expectations for the Investigator
- Seek clarity about role
  - Investigation
  - Information that will be shared
    - Full file and draft investigation report
    - Managed by TIXC or Investigator
- Gather relevant evidence
- Create and maintain the investigation record
- Develop and revisit your investigation strategy
- Collect the investigatory information into the proper format
- Draft and finalize report

Title IX Decision-Maker Role

- Permitted to be:
  - Anyone trained but NOT
  - Title IX Coordinator
  - Title IX Investigator
- Reviews:
  - All evidence collected in the investigation
  - Parties' responses to the investigation file review
- Permitted to engages in questioning of parties or witnesses
  - Credibility
  - Seeks answers to unanswered, relevant questions
- Determines
  - Policy violation
  - Discipline
- Must avoid
  - Partiality
  - Conflicts of interest
  - Bias
- Respect parties' rights under the process

TIXGP: Informal Resolution

- **Trained facilitators**
- Offered after formal complaint is filed
- Parties participation cannot require a party to waive the right to an investigation and adjudication of a formal complaint.
- Obtains the parties' voluntary, written consent to the informal resolution process
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted, and the matter returns to the Title IX investigation process
- **Never** available when complainant is student and respondent is employee

Title IX Appeal Officer Role

- Appeals permitted in limited circumstances
  - Dismissal from Title IX
  - Outcome
- Upon receipt of an appeal, the matter will be forwarded to the appropriate Appeal Officer
- Both parties are notified of the appeal
- Appeal standard applied to the facts
- Decision shared with parties

Advisors to the Parties

- Parties must be advised that they can have an advisor present for the entire investigation process including the interview.
- Parties select an “advisor of choice.”
- Advisor may be, but need not be, an attorney.
- Advisor provides advice and counsel to the party during the process.
- Advisor has a more active role in cross-examination if a hearing takes place.
  - K12s are not required to hold hearings.

- Advisors are invited to support the parties through the decision-making and appeal process.

Conflicts of Interest

- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived

Impartiality

- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider all of the evidence as presented
- Maintain an open mind regarding potential conclusions

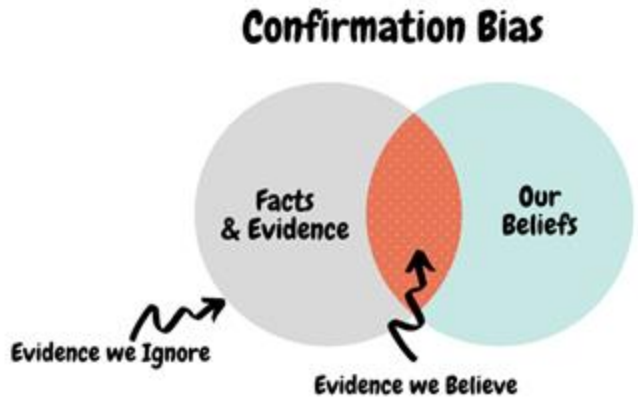
Stereotypes

- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent

- No administrator in the Title IX process can rely on stereotypes to reach a conclusion

Bias

- Over 800 types of bias
- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences
- Unconscious/Implicit
  - For the most part, most people are unaware of these drivers
  - Developed over a period of time and can influence many factors in hearing
  - Shortcuts developed by the brain and often play a role in:
    - Immediate response to conflict
    - Often mimics fear responses



Title IX Investigation Process

Overview of Title IX Grievance Process (TIXGP)

- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
  - Emergency removal
- Offer of formal process (upon signing of Formal Complaint)
  - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process

TIXGP: Dismissal - Mandatory and Permissive

Mandatory dismissal

- 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.

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

TIXGP: Supportive Measures

Supportive measures are:

- **non-disciplinary, non-punitive** individualized services offered as appropriate, as reasonably available
- without fee or charge to the complainant or the respondent
- are designed to **restore or preserve equal access** to the District's education programs or activities
- without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual

TIXGP: Receipt of Formal Complaint

Form completed

Verbal report

Phone call

Email

Other



TIXGP: Emergency Removal Procedure

Step 1	Step 2	Step 3	Step 4	Step 5
Conduct a prompt and individualized safety and risk analysis	Immediate threat to physical health or safety of any student or other individual arising from the allegations of sexual harassment is identified	Evaluate the applicability of disability laws to the removal decision	Consider the appropriateness of supportive measures in lieu of an emergency removal	Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal

TIXGP: No Formal Complaint Filed

Title IX Coordinator may decide to proceed with an investigation

-evidence of deliberate indifference if investigation not initiated

NOTE: Title IX Coordinator does not become Complainant

TIXGP: Notice of Allegations

- Detailed allegations against Respondent and includes important investigation information.

- Normally, this letter will be drafted by the Title IX Coordinator.

TIXGP: Investigation

- Investigator gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions, and provide answers and limited follow-up

TIXGP: Burden of Proof



Preponderance of the evidence



Clear and convincing

TIXGP: Sharing of Investigation Information

- Both parties are given the FULL investigation file to review
- Documents shared or document inspection
  - 10 days for parties to respond to the information
- Investigator prepares a draft investigation report and shares it with both parties
  - 10 days for the parties to respond to the investigation report
- Investigator prepares final investigation report and shares it with both parties and the Decision-Maker

Title IX Investigator Required Information Sharing

- Before investigation report issued, all evidence shared
- Opportunity to question and provide feedback
- Draft investigation report issued and shared
- Opportunity to question and provide feedback on investigation report
- Final investigation report issued

TIXGP: Decision-Maker

- Decision-Maker provides the parties with the opportunity to send questions or comments
  - 10 days to respond
- Decision-Maker must determine:
  - Policy violation
  - Discipline (if found in violation of policy)
- Decision-Maker issues an outcome letter to the parties

- In K-12, discipline decisions against students with disabilities may require a manifestation determination
  - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement

Decision-Maker Process

Evidentiary Review

- RELEVANCE – Applying to the matter in question; affording something to the purpose (Black's Law Dictionary)
- NOT permitted:
  - Sexual history of Complainant (see Rape Shield exception)
  - Privileged communications
  - Medical documentation
- Not repetitive

Other Evidence Issues

- Hearsay
- Documents (paper, digital) no longer exist
- No one has admitted the behavior
- Not “convinced” this happened
- Credibility and honesty
  - Investigator or Decision-Maker assessment
- Expert testimony
  - Policy will advise whether experts are permitted
  - Expert testimony will require unique preparation
    - Qualifications, Expected Testimony, Reliance/Challenges

Credibility

- In Title IX investigations, the Decision-Maker has ultimate responsibility for credibility determinations and may explore credibility issues with parties after your investigation report is complete
- However, in the course of an investigation, investigators are gathering important information that may impact credibility determinations, including:
  - Corroboration
  - Feasibility
  - Motivation for truthfulness/untruthfulness
  - Consistency
  - Reviewed/coached testimony

Credibility Considerations

1. Inherent plausibility
2. Motive to lie (based on the existence of a bias, interest or other motive)
3. Corroboration
4. Extent a witness was able to perceive, recollect or communicate about the matter
5. History of honesty/dishonesty
6. Habit/consistency
7. Inconsistent statements
8. Manner of testimony
9. Demeanor

https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/DFEH-Workplace-Harassment-Guide.pdf

REMEMBER –
Decision-Maker holds ultimate responsibility for credibility determinations and can challenge any conclusions/recommendations made by the Title IX Investigator.

Reviewing the Final Investigation Report

Key Investigation Report Sections

- Allegations
- Applicable Policies
- Procedural History
- Interview Summaries
- Factual Findings/Recommended Factual Findings *(might be allowed/required, check policy)*
- Recommended Findings of Policy Violation *(might be allowed/required, check policy)*

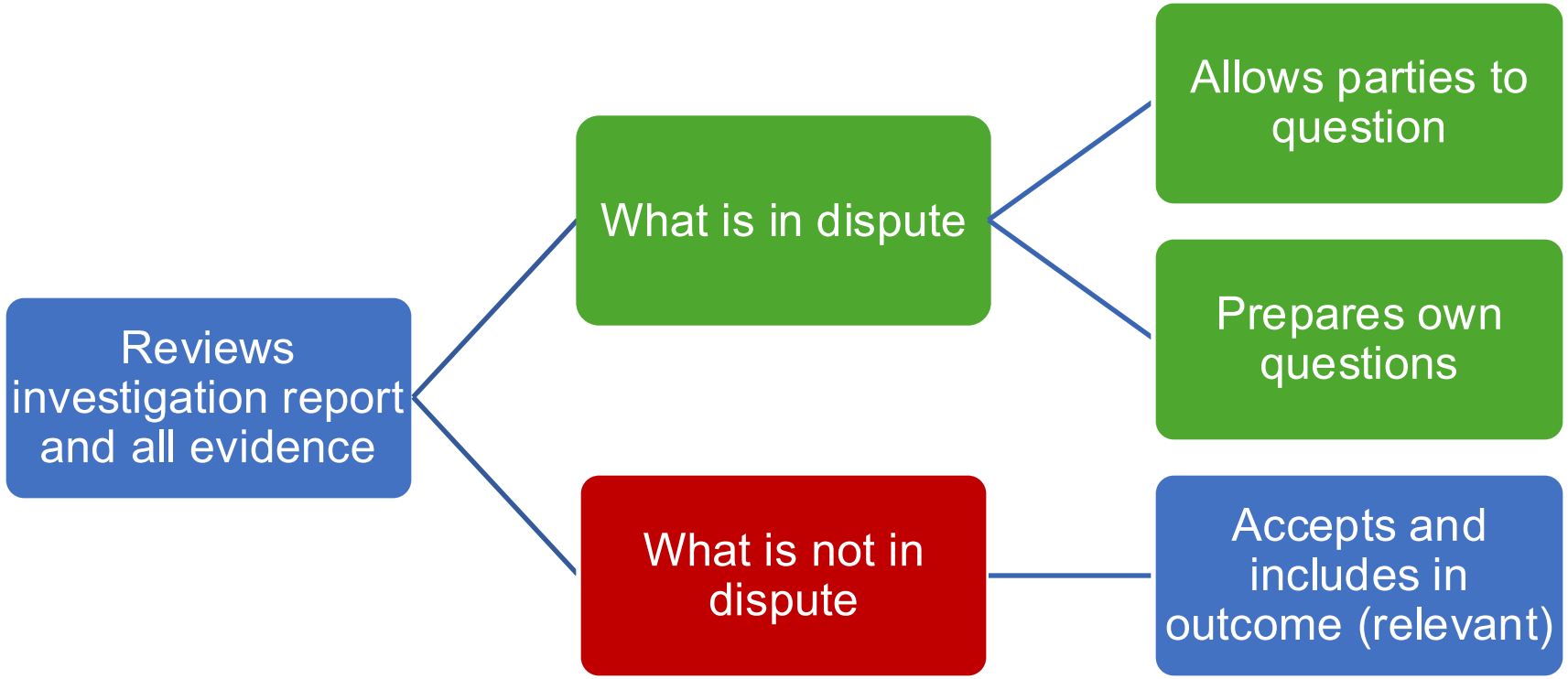
TIX Decision-Maker: Role and Timing

- Decision-Maker review of final investigation report
  - Decision-Maker outreach to the parties for additional information
    - Paper version of cross-examination
  - 10 days to respond

- Outcome Letter issued by Decision-Maker
  - Details Policy violation and discipline (if necessary)



Initial Analysis for Decision-Maker



Decision-Maker Steps

- Receipt of final investigation report
  - *Is it finalized?*
- Outreach to parties to determine if follow-up questions are requested
  - Some discretion about submitting
  - Limited follow-up – facilitated cross-examination
  - Articulate and document decisions restricting this process
- Decision-Maker discretion regarding about what follow-up is necessary
  - Decision-Maker can ALSO conduct follow-up
- Outreach to parties with follow-up, as designated by Decision-Maker
- Conclusion and outcome letter

TIXGP: Investigator in Decision-Maker Process and Beyond

- Parties may submit questions to Decision-Maker for Investigator.
- Decision-Maker may have independent questions for Investigator.
- Revisions and reviews to the report may be necessary, although unlikely.
- Future challenges to the investigation could be filed through DoE, California Department of Education, and/or litigation.

- REMEMBER: Keep adequate records and share all information with Title IX Coordinator for record-keeping purposes.

TIXGP: Decision-Maker Questions for the Parties or Witnesses

- Questions for just one party
  - Is this fair and equitable?
- Meetings and record-keeping
  - Organize, keep to specific questions
  - Advisors must be invited (not necessarily present)
  - Recording or transcript?
  - Response of other party
  - Provide clarity as to how this process will terminate
- REMEMBER: Keep adequate records and share all information with the other party.
  - Share records with Title IX Coordinator so file is complete.

Writing the Outcome Letter

Final Decision Requirements

Under Title IX regulations, Decision-Maker must issue a written determination regarding responsibility that has to include:

- Findings of fact
- Conclusions as to all allegations
- Rationale for reaching the decision
- Sanctions if the Respondent is found responsible for Policy violations must be included in the written determination
- Right to appeal

Others to consider:

- Allegations and Procedural Steps
- Categories that highlight compliance with state law (UCP)

- Avoid developing an early hypothesis.
- Try to disprove your theory.

Title IX Appeal Process

TIXGP: Appeal Grounds

Procedural Review

Procedural irregularity in the Title IX grievance process that materially affected the outcome.

New Information

Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could materially affect the outcome.

Conflict of Interest or Bias

Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that materially affected the outcome.

Appeals Permitted

- Dismissal from Title IX
- Outcome of Investigation contained in Decision-Maker letter

Appeal Process

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties
2. Ensure that the decisionmaker(s) for the appeal is trained in accordance with 34 CFR 106.45 and is not the same decisionmaker(s) who reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
4. Issue a written decision describing the result of the appeal and the rationale for the result
5. Provide the written decision simultaneously to both parties

Appeals

- An appeal shall be filed in writing within 10 calendar days of receiving the notice of the decision or dismissal, stating the grounds for the appeal and including any relevant documentation in support of the appeal. Appeals submitted after this deadline are not timely and shall not be considered.

- A written decision shall be provided to the parties within 20 calendar days from the receipt of the appeal.

- Check your policy to confirm the timing, as some discretion does exist in the regulations.

Appeal of Outcome

Questions?

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