INSTITUTIONAL
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GCPS
Decision-Maker Training

2020 Regulations

GWINNETT COUNTY PUBLIC SCHOOLS

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ABOUT US

OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.



GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.

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BEFORE WE GET STARTED...

- Not legal advice
- Materials
- Questions
- Repetition
- Breaks
- Posting link
- No recording

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TRAINING AGENDA

01 The What, Who, Where, & When of Title IX

02 Building Your Title IX Team

03 Response to Reported Conduct

04 Polices, Procedures, Recordkeeping

05 Investigative Tips and Tricks

06 Additional “need to know”

07 Closing Thoughts/Questions

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TRAINING OBJECTIVES

- Understand the role and scope of the Title IX Coordinator and Designees
- Learn best practices for your role
- Explain the grievance process you will oversee
- Understand your role as the leader of a Title IX Team
- Learn the current Title IX litigation landscape



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COMPLIANCE + COMPASSION

Compliance is ineffective without compassion. Every decision you make should begin with compassion.

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Impact > Intent

THE “WHAT”

THE “WHERE”

THE “WHO”

THE “WHEN”

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THE “WHAT”

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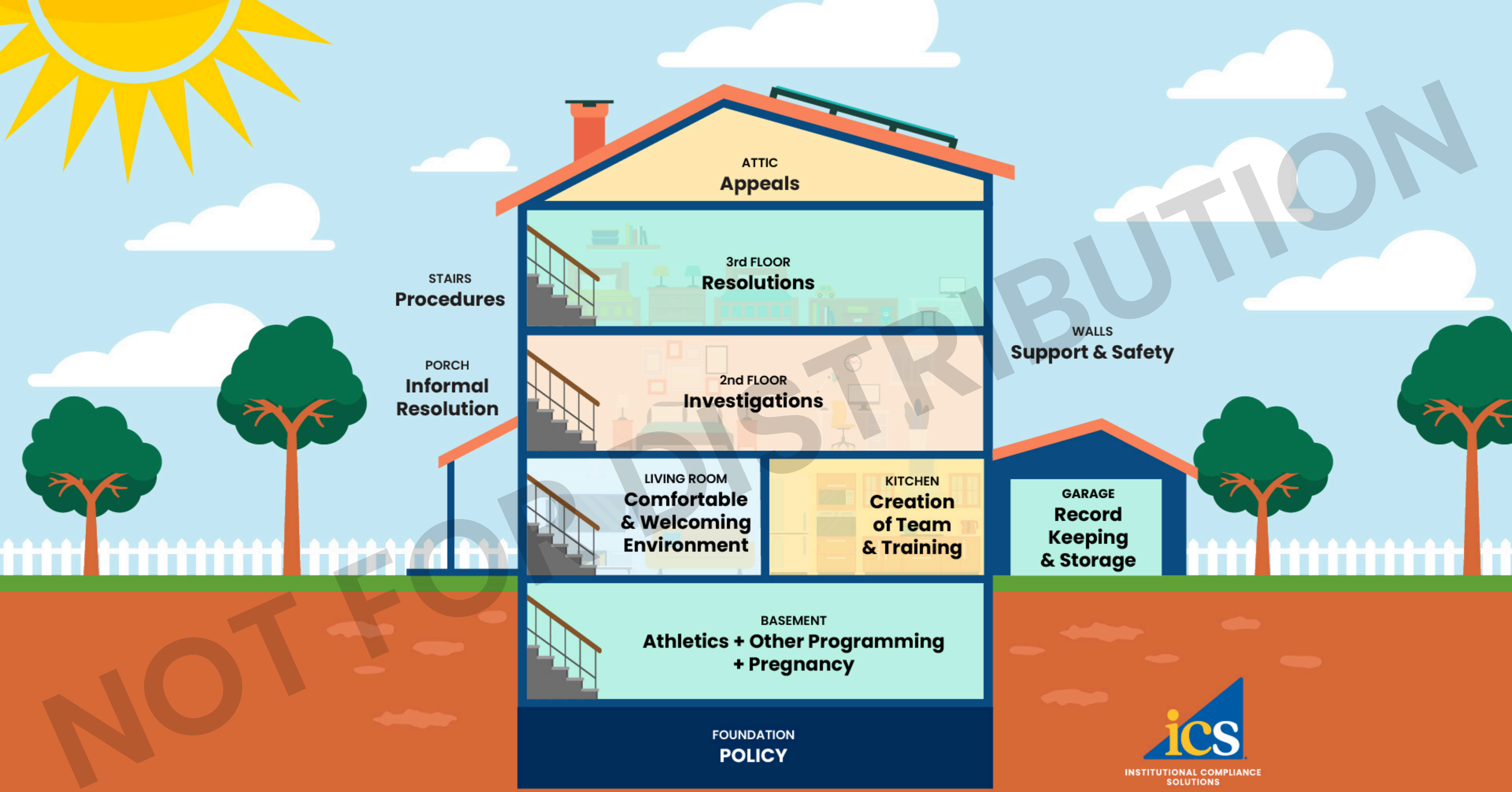
WHAT IS TITLE IX?

Federal civil rights law passed in 1972. Prohibits sex discrimination in education programs. Includes protections for pregnancy and parenting students.

"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."

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WHAT IS HAPPENING?!

2025/ 2026

Executive Orders



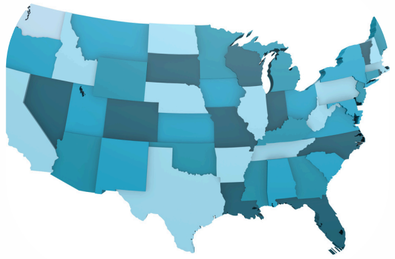
Litigation



Supreme Court



State Laws



Administrative Actions



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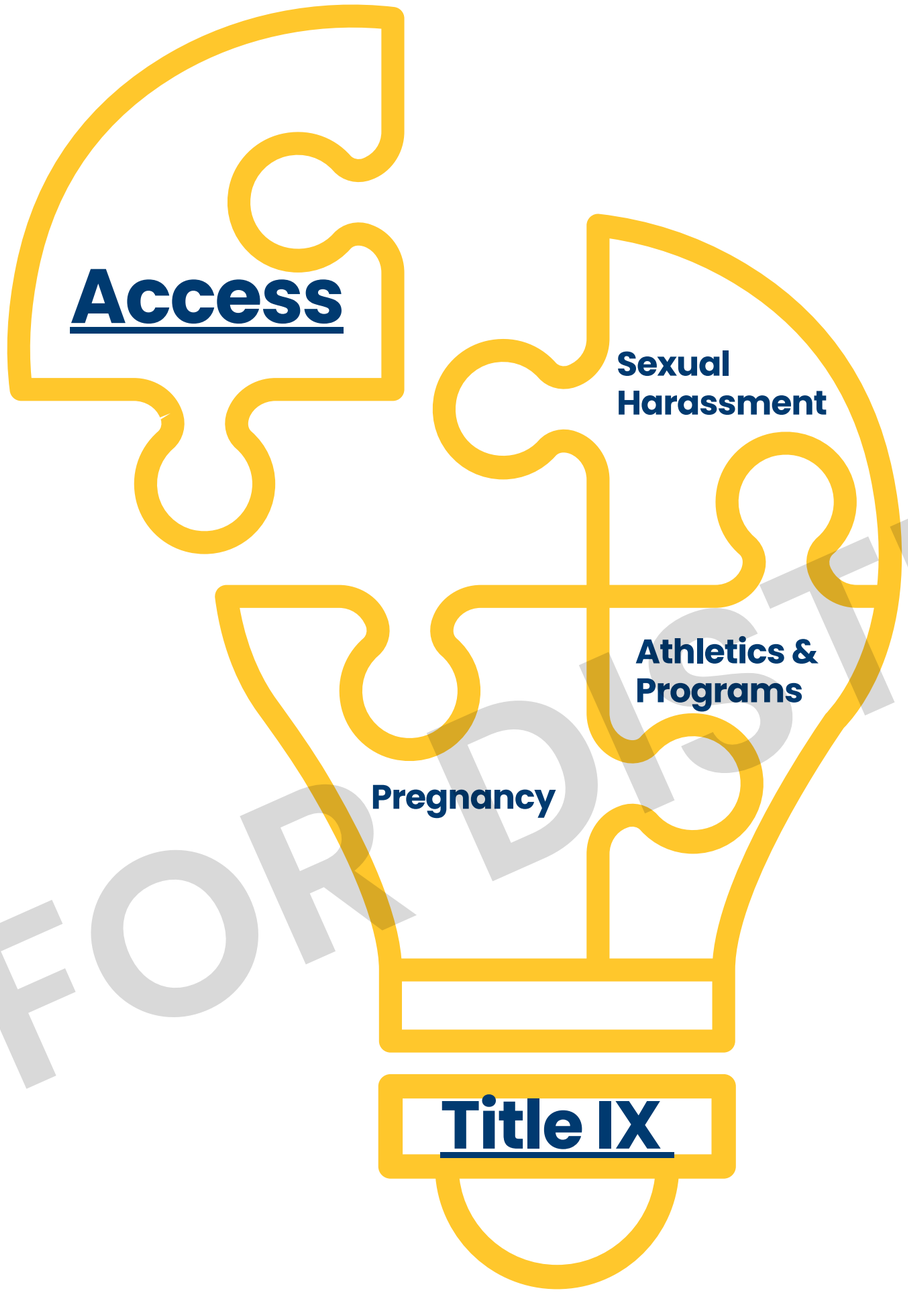
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Federal civil rights laws are enforced by the agency that provides the federal funding - not just the Department of Education.

Many agencies have always had civil rights authority on paper, but active enforcement outside ED OCR has historically been limited and sporadic. What has changed is coordination, expectations, and willingness to enforce.

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TODAY'S FOCUS

- Sexual Harassment Due Process
- Formal Procedures & prescriptive process
  - Including formality in the "informal"
- Narrow definitions
- The importance of location

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LANGUAGE MATTERS

- Notice
- Determination
- Respondent
- Complainant
- Preponderance
- Formal Complaint
- Responsible
- Decision-maker



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SEXUAL HARASSMENT



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QUID PRO QUO



1. An employee of the school
2. Conditioning the provision of an aid, benefit, or service of the recipient
3. On an individual's participation in unwelcome sexual conduct

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Bucket 1 Example:

Amber has coached basketball at the middle school for years. She has applied for the job at the high school. Following her interview, the high school athletic director invites her to his office. He hugs her, grabs her butt, and tells her that she is sure to get the job and his door is always open…

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HOSTILE ENVIRONMENT HARASSMENT



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

1. Severe - can be non verbal through sexual assault (touching/fondling)
2. Pervasive - how often and how widespread
3. Objectively Offensive - behavior that would be offensive to a reasonable person under the circumstances

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Bucket 2 Example:

Lucy makes comments every day for two weeks about Jenny's body- some in writing and some verbally- examples:

- "look at your boobs"
- "those jeans look great on your butt"
- "I wish I could hit that"
- makes sexual noises when she passes in the hallway

Jenny is uncomfortable and has started skipping school to avoid Lucy.

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FACT SPECIFIC INQUIRY TO HELP DETERMINE HOSTILE ENVIRONMENT

**Note- this is derived from the 2024 regulations but is still helpful and appropriate for 2020*

- The degree to which the conduct affected the complainant's ability to access the school's education program or activity
- The type, frequency, and duration of the conduct
- The parties' ages, roles within the school's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct
- The location of the conduct and the context in which the conduct occurred
- Other sexual harassment in the school's education program or activity

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SPECIFIC OFFENSES



1. Sexual Assault
    a. Rape
    b. Fondling
    c. Incest
    d. Statutory Rape
2. Dating Violence
3. Domestic Violence
4. Stalking

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SEXUAL ASSAULT



- 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.

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Bucket 3 Sexual Assault Examples:

Rape: Thomas pulls down James' pants in the locker room and puts a pen in James' rectum.

Fondling: Laura grabs Phil's genitals over his shorts and squeezes while making a sexual comment.

Criminal Sexual Contact: Ellen rubbed John's upper thigh in front of the class and asked her if she was a virgin.

Incest: Ms. Jones has been sleeping with her nephew, a 17 year old student. Some of the behaviors occurred in her classroom.

Statutory Rape: Adam, an 18 year old senior, is caught in a sexual act with Dina, a 7th grade student.

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DATING VIOLENCE:



A CRIME COMMITTED BY A PERSON:

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

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

- Length of relationship
- Type of relationship
- Frequency of interaction between the persons involved in the relationship

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Bucket 3 Dating Violence Example:

Aria and Blake were in a dating relationship for about 6 months. After they broke up, Aria slammed Blake against a locker.

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DOMESTIC VIOLENCE:



Felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse of intimate partner of the victim under the family or domestic violence laws of the jurisdiction* of the recipient (school), or a person similarly situated to a spouse of the victim.
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate.
- Shares a child in common with the victim OR
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

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Bucket 3 Domestic Violence Example:

Mr. Smith and Mr. Adams live together and are in a romantic relationship. One day after school, Mr. Adams sees Mr. Smith flirting with another teacher in the hallway. After school, Mr. Adams goes to Mr. Smith's room yelling excessively. Mr. Adams flips Mr. Smith's desk and kicks him. Then leaves the school leaving Mr. Smith without a ride home.

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STALKING:



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

- *Fear for the person's safety or the safety of others OR*
- *Suffer substantial emotional distress*

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Bucket 3 Stalking Example:

Landry leaves notes in Lindsay's locker (after breaking into it) professing his love for her. He sits one table over from her at lunch every day. Landry calls her phone at all hours (during and after school) from multiple numbers. Landry doesn't have a car but he stands in the parking spot assigned to Lindsay every morning. She ignores him, but feels anxious.

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2020 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.



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THE “WHO”



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CONDUCT THAT INVOLVES:

1. Student on student
2. Employee on employee
3. Student on employee
4. Employee on student



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“PARTIES” IN TITLE IX MATTER

COMPLAINANT

…an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

RESPONDENT

…an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

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School and/or Coordinator are NOT a PARTY (Complainant) even if the matter is signed by the Title IX Coordinator

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THE "WHEN"

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THERE IS NO STATUTE OF LIMITATIONS...

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THE “WHERE”

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JURISDICTION 2020

Education Program or Activity



Locations, events, or circumstances (operations) over which the school or 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," & does not create a distinction between sexual harassment occurring in person vs online.

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THE BIG QUESTION IS

Does the District have control?

- Control over the location/event
- Control over the Respondent (employee or student)

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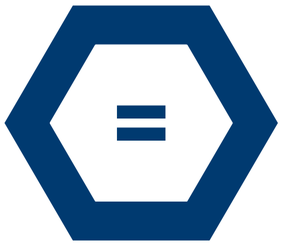
3 BUCKETS



CONTROL OVER RESPONDENT



CONTROL OVER LOCATION / EVENT



TITLE IX

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PERFECTING THE ART OF THE HIGH KICK

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BUILDING YOUR TITLE IX TEAM

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Title IX Team



Coordinator

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Title IX Team



Coordinator

Investigator

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Title IX Team



Coordinator Investigator Decision Maker

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Title IX Team

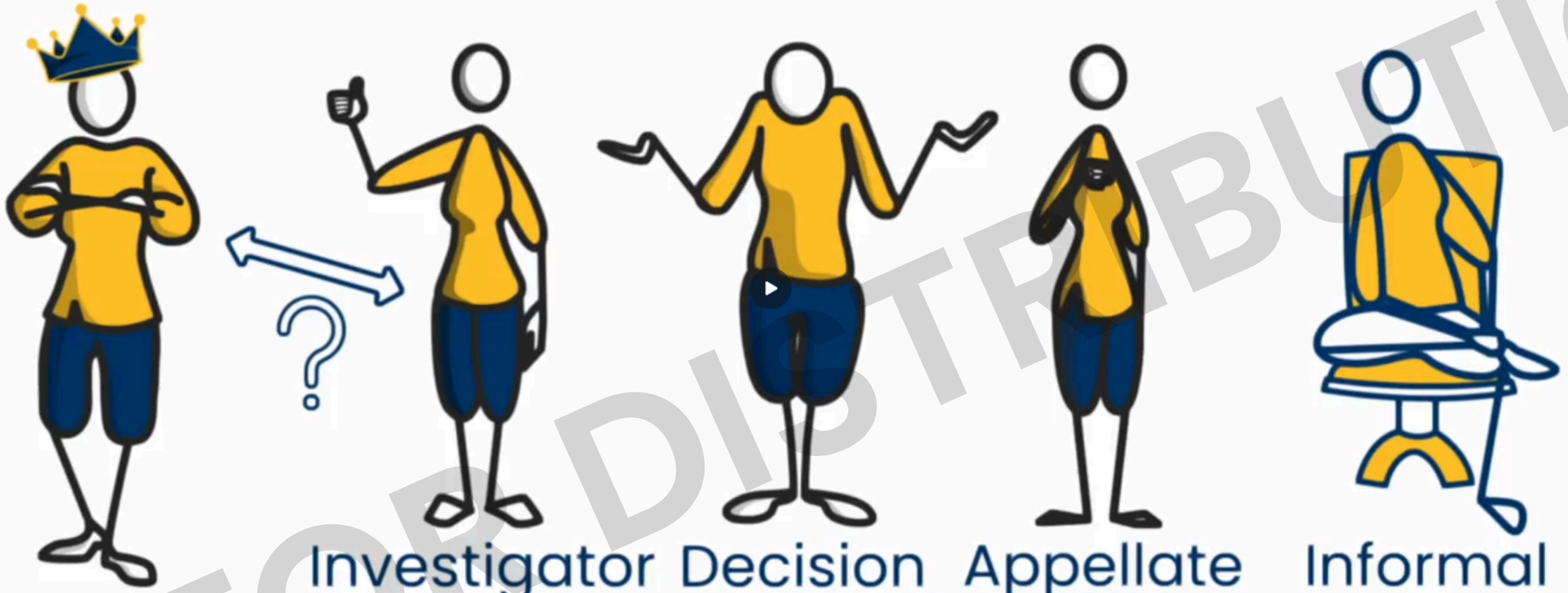


Coordinator | Investigator | Decision Maker | Appellate Decision Maker

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Title IX Team



Coordinator

Investigator

Decision Maker

Appellate Decision Maker

Informal Resolution Facilitator

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Others With Title IX Responsibility

Responsible Employees



Teacher

Bus Driver





Principal

Cafeteria Worker





Custodian

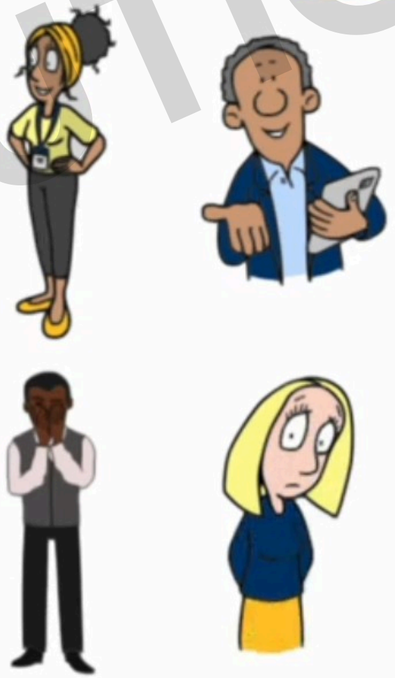


Other

Advisors



Support Team



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RECOGNIZING & AVOIDING CONFLICTS OF INTEREST

Considerations:

- To whom does each team member report?
- How does each team member know the parties or witnesses?

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RESPONSE TO REPORTED CONDUCT

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WHO?

- **Who MUST report?** ALL Employees
- **Who Can report?** Anyone



WHAT?

- **What should be reported?** Sexual behavior, comments or touching

WHERE / HOW?

- **Where/How does someone report?** Online form, In person, Via email?

WHEN?

- **When should someone report?** As soon as possible

WHY?

- **Why do they report? I**t's the right thing to do. It's required by law.

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EVALUATION & TRIAGE

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SAFETY AND SUPPORT FIRST –– ALWAYS

Regardless of whether Title IX or Not…
If it makes it to you, evaluate for safety and supportive needs IMMEDIATELY.



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SUPPORTIVE MEASURES:

Individualized measures offered, as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- Restore or preserve that party's access to the recipient's (school's) education program or activity, including measures that are designed to protect the safety of the parties or the recipient's (school's) educational environment; OR
- Provide support during the recipient's (school's) grievance procedures, or during the informal resolution process.

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SUPPORTIVE MEASURES MAY INCLUDE

but are not limited to:

- EXTENSION OF DEADLINES AND OTHER COURSE RELATED ADJUSTMENTS
- RESTRICTIONS ON CONTACT APPLIED TO ONE OR MORE PARTIES
- LEAVES OF ABSENCE
- CHANGE IN EXTRACURRICULAR OR OTHER ACTIVITY
- COUNSELING
- CAMPUS ESCORT SERVICES
- CHANGE IN CLASS WORK
- TRAINING AND EDUCATION PROGRAMS RELATED TO SEX-BASED HARASSMENT
- INCREASED SECURITY AND MONITORING OF CERTAIN AREAS
- CHANGE IN HOUSING (IF APPLICABLE)

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SUPPORTIVE MEASURES CONTINUED

MAY	MAY NOT	MUST	MUST NOT
Be terminated or modified at the conclusion of grievance procedures or informal resolution.	Unreasonably burden a party.	Be designed to protect the safety of the parties or educational environment or to provide support.	Impose supportive measures for punitive or disciplinary purposes.
Continue at the conclusion of grievance procedures or informal resolution.		Provide the opportunity to seek additional modifications of supportive measures if the circumstances materially change.	Disclose information about supportive measures to individuals other than to whom they apply unless necessary to provide the supportive measure or restore or preserve access.
		Consult with IEP or 504 team in the implementation of supportive measures in K-12 if applicable.	

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Explain Supportive Measures to employees early and often.

Make sure they understand BEFORE you ask them to implement.

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QUESTIONS TO ASK YOURSELF UPON RECEIPT OF REPORT:

On its face, if the allegation is TRUE, does it:

1. Fit within a bucket
2. Do we have control

- Is Respondent a student or employee or attempting to be one?
- Did the behavior occur on our property or at a school related event?
- Did the event occur in the U.S.?

Evaluate the initial information you have

Do not make assumptions

Do not make judgments as to credibility or trustworthiness

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Report / Notice Received



Not Title IX

High kick to appropriate process

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Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

Not Title IX



High kick to appropriate process

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Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX



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PRIOR TO INITIAL MEETING WITH COMPLAINANT

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PRIOR TO INITIAL MEETING

- If the parties are students, Guardians- (both Complainant and Respondent) should be NOTIFIED

- Explanation provided as to why it is being evaluated under Title IX

- Initial/urgent supportive measures and safety plans in place

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DURING INITIAL MEETING WITH COMPLAINANT

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DURING MEETING:

- For students, guardians included in the meeting--or, depending on the age, it may ONLY be with guardians
- Build Rapport
- Explain your role
- Explain Title IX and how it compares to other student or employee processes
- Discuss additional supportive measures
- Allow time to make decisions

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OTHER CONSIDERATIONS

- **Where is the meeting happening?**
  - *Virtual, in person, phone*
- **When will it occur? - convenience**

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FORMAL COMPLAINT

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Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

No Formal Complaint

Formal Complaint

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX



High kick to appropriate process

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FORMAL COMPLAINT:
Document (Written)

- Alleging Sexual Harassment
- Requesting investigation
- Signed by:
    - Complainant/Guardian or Title IX Coordinator

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A FEW NOTES ABOUT FORMAL COMPLAINTS:

- ELECTRONIC SIGNATURE IS OKAY
- BE FLEXIBLE, FORM NOT REQUIRED
- ALL DETAILS NOT REQUIRED

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CONSIDERATIONS FOR WHEN A COORDINATOR MAY SIGN A FORMAL COMPLAINT:

(1) The complainant's request not to proceed with formal complaint;

(2) The complainant's reasonable safety concerns regarding initiation of a formal complaint;

(3) The risk that additional acts of sexual harassment would occur if a complaint is not initiated;

(4) The severity of the alleged sexual harassment, including whether the sexual harassment, if established, would require the removal of a respondent from the school or imposition of another disciplinary sanction;

(5) The age and relationship of the parties, including whether the respondent is an employee of the school;

(6) The scope of the alleged sexual harassment, including information suggesting a pattern, ongoing sexual harassment, or sexual harassment alleged to have impacted multiple individuals;

(7) The availability of evidence to assist a decision maker in determining whether sexual harassment occurred; and

(8) Whether the school could end the alleged sexual harassment and prevent its recurrence without initiating its formal grievance procedures

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CONSIDERATIONS FOR WHEN A COORDINATOR MAY SIGN A FORMAL COMPLAINT: CONTINUED

THE CATCH ALL…

(B) If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the school from ensuring equal access on the basis of sex to its education program or activity

**Note: these are derived from the 2024 regulations but are exceptionally helpful and appropriate even under 2020.*

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TRANSPARENCY IS KINDNESS

- If Coordinators KNOWS they plan to sign Formal Complaint regardless of the Complainant's wishes, that should be discussed with Complainant in initial meeting.

- Complainant should be notified once it is signed.

- Coordinator should always discuss this in the intro meeting with Complainant in case it is determined that they need to sign in the future.

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Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

No Formal Complaint

- Supportive Measures Only

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX



High kick to appropriate process

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Report / Notice Received

Title IX



Meet with Complainant & Guardian

- Support
- Discuss Process
- Explain Options

No Formal Complaint

- Supportive Measures Only

Formal Complaint

- Signed by Complainant / Guardian or Coordinator

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX



High kick to appropriate process

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DISMISSAL OF A FORMAL COMPLAINT

Mandatory/MUST Dismiss (High Kick Optional)

- Doesn't fit in a bucket
- Don't have control of location (not in school's education program or activity)
- Didn't happen in U.S.

Permissive/MAY Dismiss (Supportive Measures ONLY)

Use caution with permissive

- Complainant notifies Coordinator IN WRITING that they want to withdraw the Formal Complaint or allegations within it
- Respondent no longer employed by school
- Specific circumstances prevent the school from gathering evidence sufficient to reach a determination

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AFTER DISMISSAL OF A FORMAL COMPLAINT

- MUST promptly sent written notice of dismissal and reason for dismissal to BOTH parties
- BOTH parties receive opportunity to appeal dismissal of a formal complaint

**more information on appeals in the appeals section of the training*

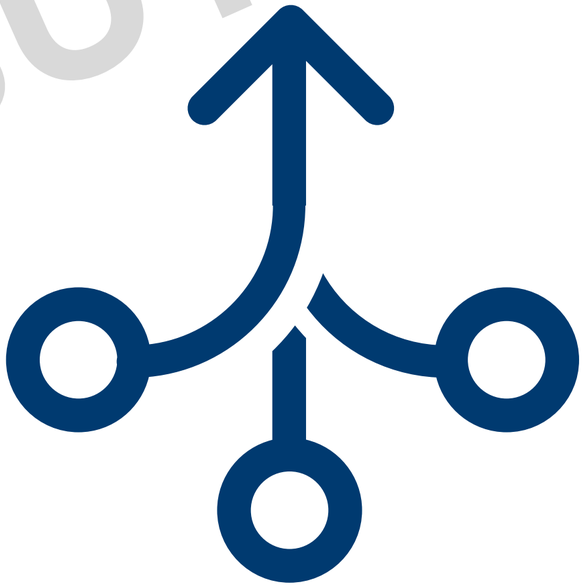
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CONSOLIDATION OF FORMAL COMPLAINTS

School MAY consolidate Formal Complaints when the allegations of sexual harassment arise out of the same facts or circumstances and:

- Allegations are related to more than one Respondent
- Allegations are by more than one Complainant against one or more Respondent
- Allegations by one party against the other party (Cross Complaint)



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GIANT REMINDER!!!

No Investigation before or without a Formal Complaint

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NOTICE OF ALLEGATIONS

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Report / Notice Received

Title IX



Meet with Complainant & Guardian
- Support
- Discuss Process
- Explain Options

No Formal Complaint
- Supportive Measures Only

Formal Complaint
- Signed by Complainant / Guardian or Coordinator

Unclear

Meet with Complainant / Guardian to gather more information

Not Title IX



High kick to appropriate process

Notice of Allegations

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WHEN: AFTER FORMAL COMPLAINT & WITH SUFFICIENT TIME TO PREPARE FOR ANY INTERVIEW

WHAT IS INCLUDED:

- Notice of the school's grievance process
- Notice of the allegations of sexual harassment
- Sufficient details
  - Identities of the parties
  - Conduct that occurred
  - Date
  - Location
- Respondent is presumed not responsible
- Determination is made at the end of the grievance process
- Opportunity to have an advisor of choice (may be an attorney)
- Parties will have opportunity to inspect and review evidence
- Code of Conduct provisions related to false statements or false information

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WHO ARE ADVISORS?



Anyone

- Attorney
- Parent
- Witness---most challenging--- Not prohibited. Not recommended.

What is their purpose?

- Support
- Understanding
- Extra ears
- Should be copied on written correspondence and permitted to attend all meetings
- Potted plant

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UPDATING NOTICE OF ALLEGATIONS

- What if there is something you don't know related to the allegations that is required?
  - Provide as much as possible
  - Update and send to both parties if/when you know
  - example: dates or specific locations
- What if you learn something was wrong in the Notice? Fix it and re-send to both parties
- What if you learn about additional allegations? Add them and re-send to both parties

***<u>Big Take-Away</u>--- Don't forget to update the notice!**

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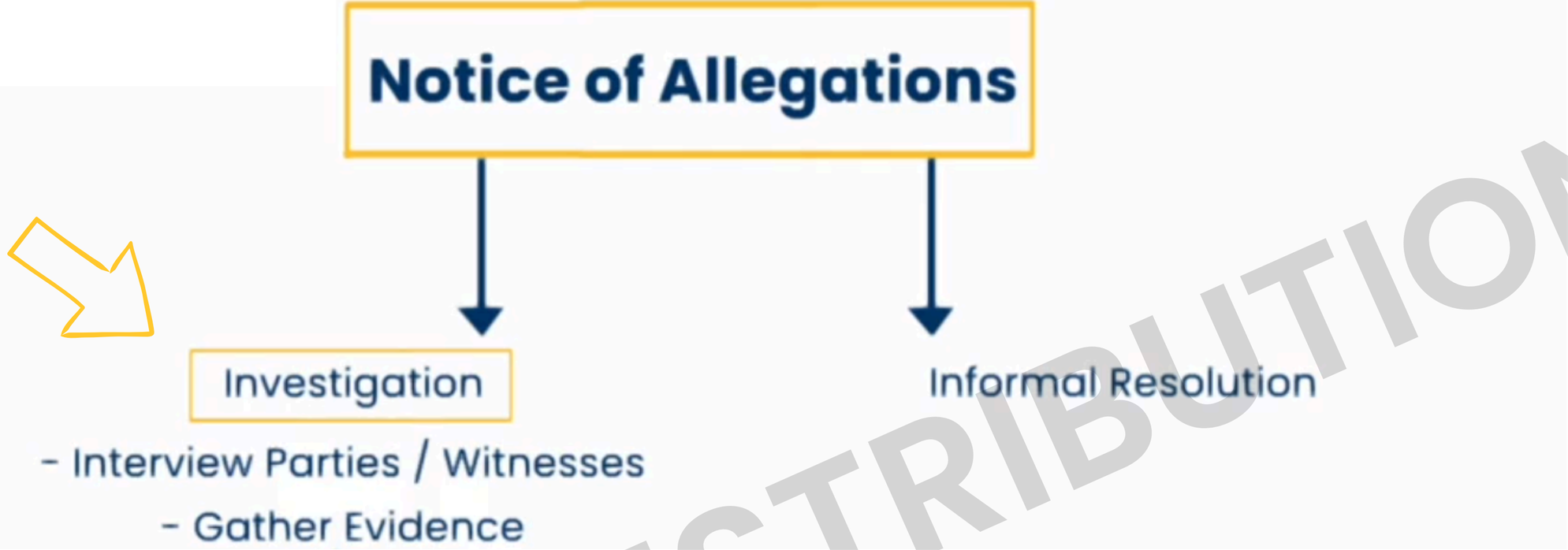
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INVESTIGATION

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QUESTIONS/ DECISIONS TO BE MADE BEFORE STARTING INVESTIGATION

WHO IS SERVING AS YOUR INVESTIGATOR?

- NO CONFLICT OR BIAS
- CAPACITY TO DO THE WORK
- APPROPRIATE SKILL SET
- TRAINED
- UNDERSTANDS PRIVACY

HOW/WHERE WILL YOU STORE THE INFORMATION GATHERED?

WHAT CHALLENGES DO YOU ANTICIPATE?

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IMPORTANT NOTES FOR INVESTIGATIONS:

- **Burdens**
  - **Burden of gathering evidence on School- NOT the parties**
  - **Burden/Standard of Proof Preponderance of the Evidence (more likely than not) or Clear and Convincing Evidence**
- **May NOT** access, consider, disclose or use party's treatment records unless School obtains voluntary WRITTEN consent
- **MUST** provide equal opportunity for parties to:
  - Present witnesses (fact or expert--does not say character)
  - Gather and present relevant evidence
- **May NOT** restrict the ability of the parties to discuss the allegations or gather and present relevant evidence (no gag orders)

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NOTICE OF MEETINGS



MUST provide WRITTEN notice of the

- date
- time
- location
- participants
- purpose
- of all hearings, investigative interviews, or other meetings, with SUFFICIENT TIME for the party to prepare

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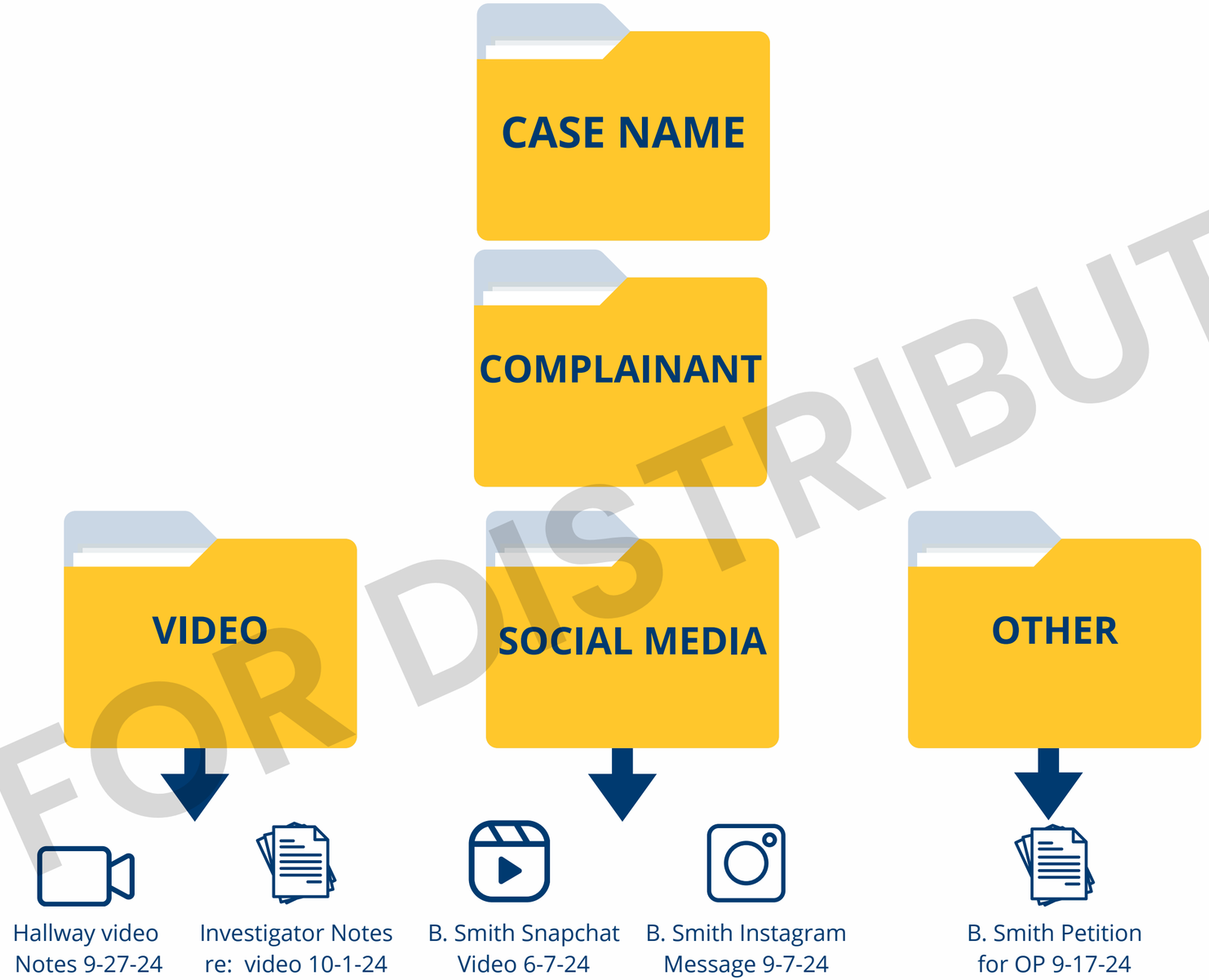
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CREATE A FILE



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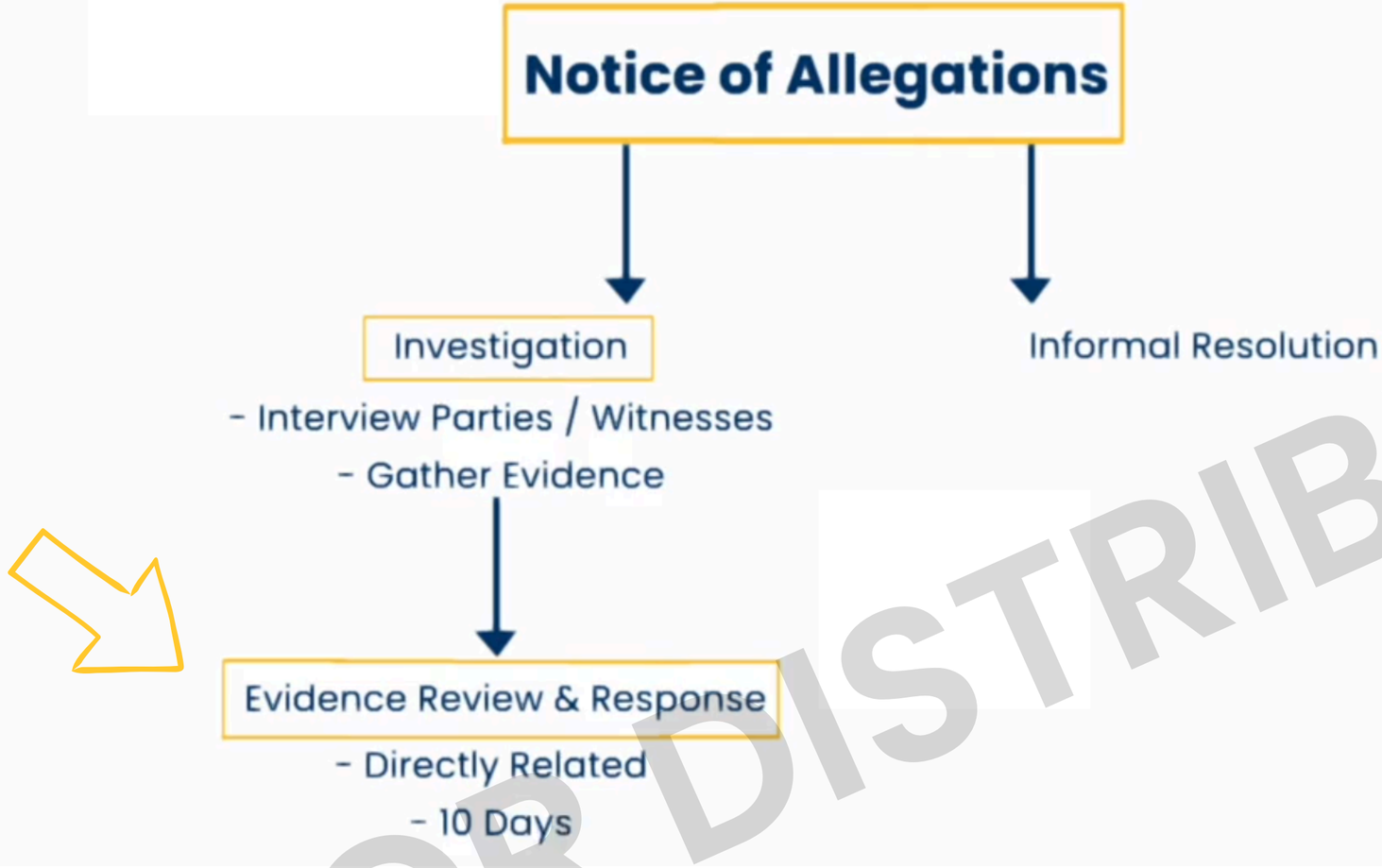
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EVIDENCE REVIEW & RESPONSE

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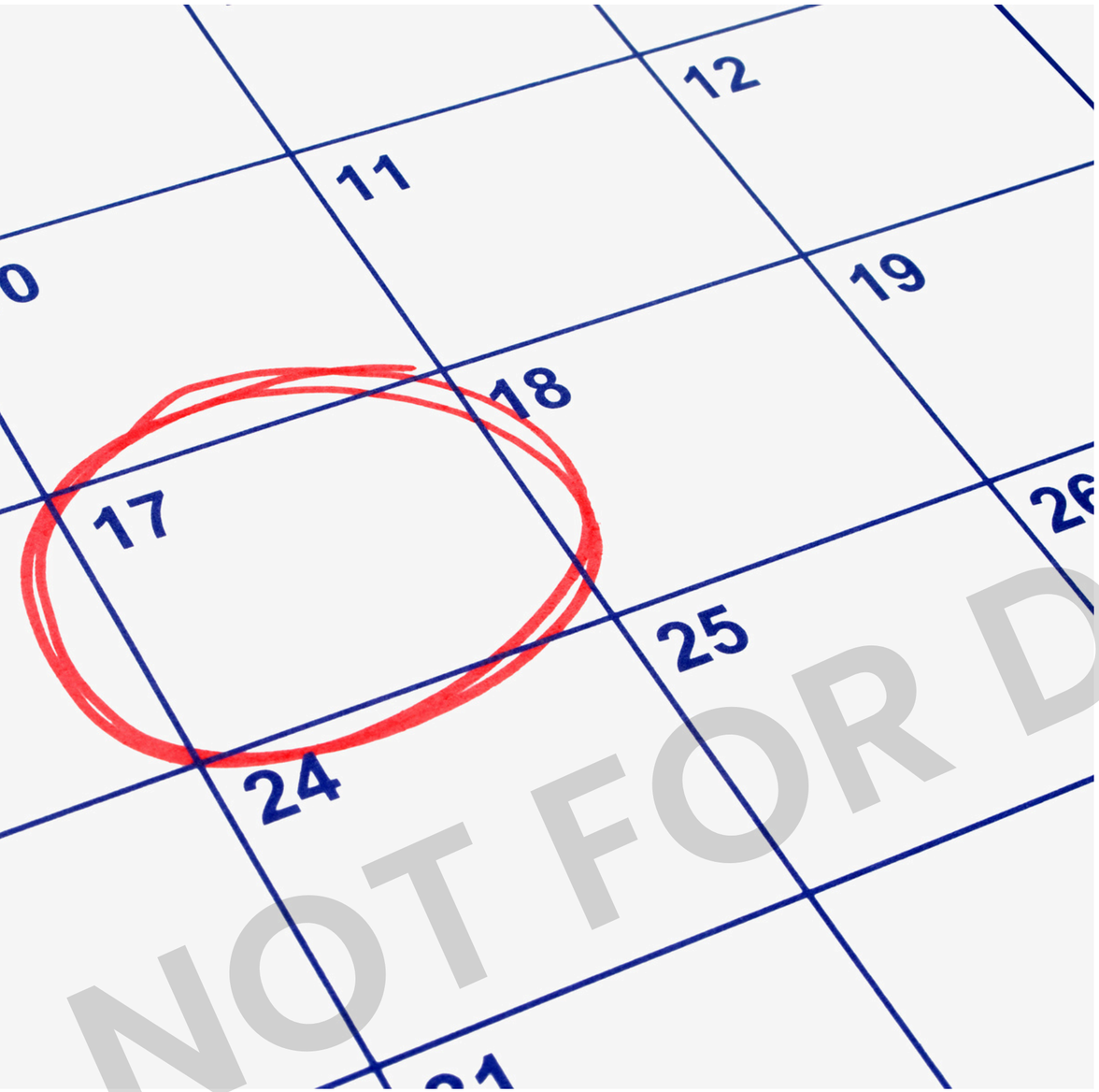
MUST: Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is DIRECTLY RELATED to the allegations. Including:

- The evidence upon which the school does not intend to rely in reaching a determination
- inculpatory or exculpatory evidence

so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

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HOW LONG?

10 days

(business or calendar)

Define in policy

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HOW TO SHARE?

- Written
- Electronic
- Organization is critical:
  - Are the parties able to navigate and understand it?

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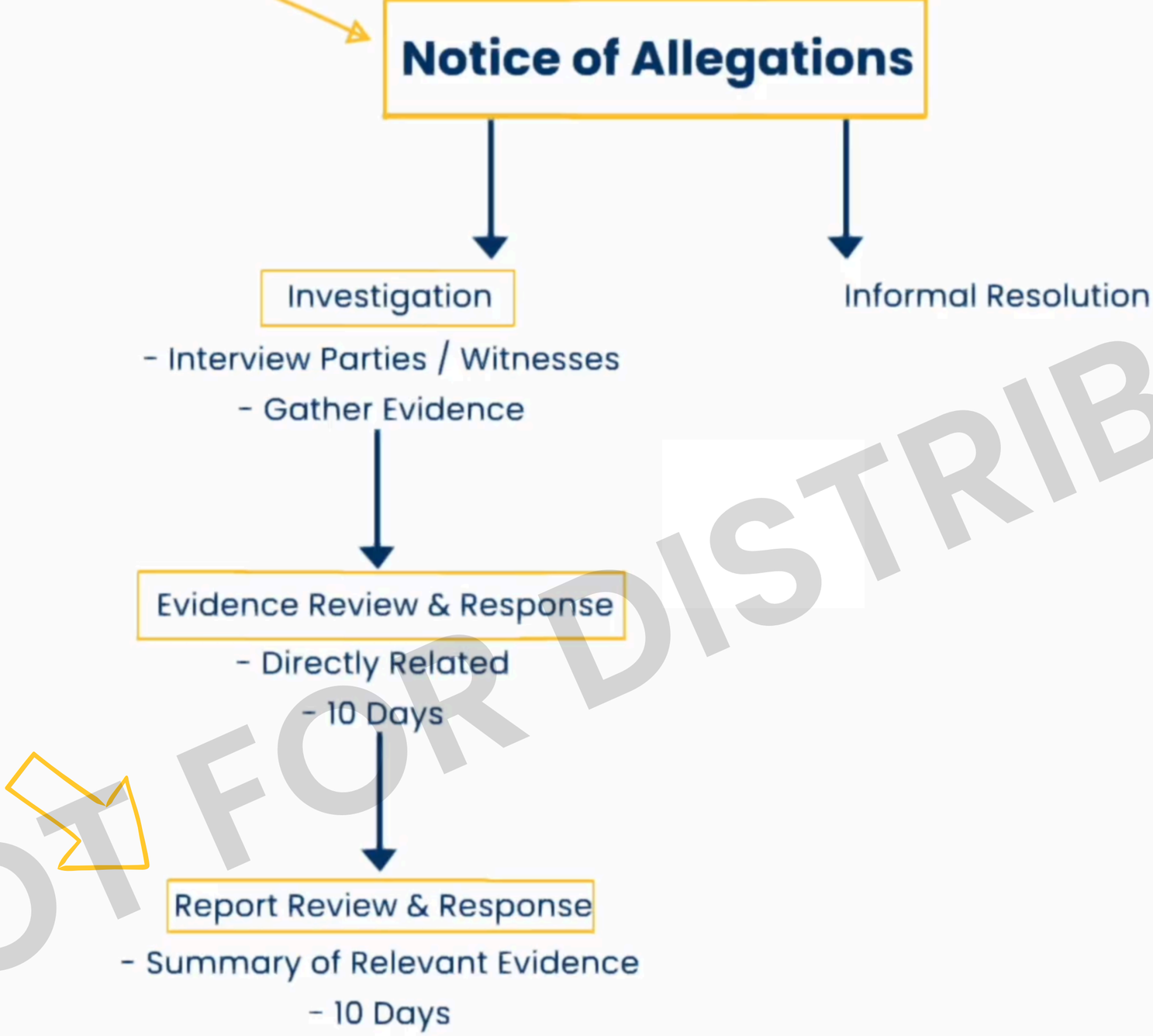
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WRITTEN INVESTIGATION REPORT & RESPONSE

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A TITLE IX REPORT IS A SUMMARY OF RELEVANT EVIDENCE

THIS IS NOT A DUMP OR COPY OF YOUR NOTES.



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REPORT:

Organization of Report

- Only include “relevant” evidence
- SUMMARY of information from each party and witness
- DESCRIPTION of physical or digital evidence
- Timeline(s)
- Consistencies/Inconsistencies



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REPORTS NEED:

- Footnotes
- Page Numbers
- Attachments/Appendix with Page Numbers
- Table of Contents for the Attachments/Appendix



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REVIEW OF REPORT

- Required 10 day review and response period (before determination)
- Consider waiting for response before sending to decision maker

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QUESTION & ANSWER

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Investigation

- Interview Parties / Witnesses
- Gather Evidence

Informal Resolution

Evidence Review & Response

- Directly Related
- 10 Days

Report Review & Response

- Summary of Relevant Evidence
- 10 Days

Question & Answer By Decision Maker

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BEFORE YOU START

- Move matter to Decision Maker (different than the Investigator or Coordinator)
- Notify Parties WHO is serving as the Decision Maker
- Check for Conflict/Bias

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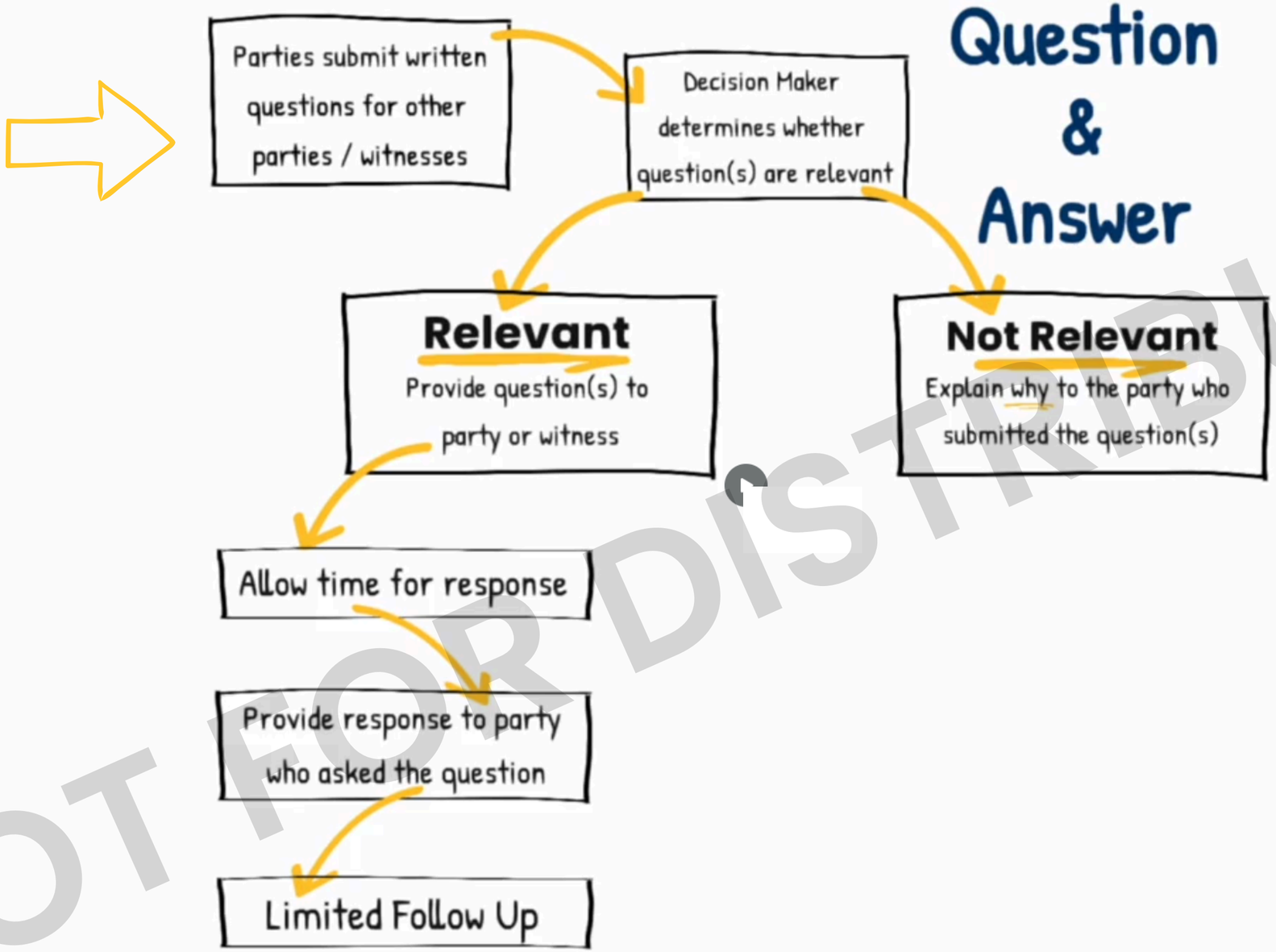
QUESTION & ANSWER

- Parties **MAY** submit WRITTEN questions to the Decision Maker
- Questions **MAY** be posed for other party(s) and/or witnesses
- Questions **MUST** be RELEVANT
- Decision Maker **MUST** determine whether Relevant
- If relevant, Decision Maker **MUST** submit the question to party or witness
- If NOT relevant, Decision Maker **MUST** notify the party who asked the question why it is not relevant.
- **Must** allow time for participants to answer question(s)
- **Must** provide responses to the party who asked the question(s)
- **MAY** allow limited follow up (discretion of Decision Maker)

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Question & Answer



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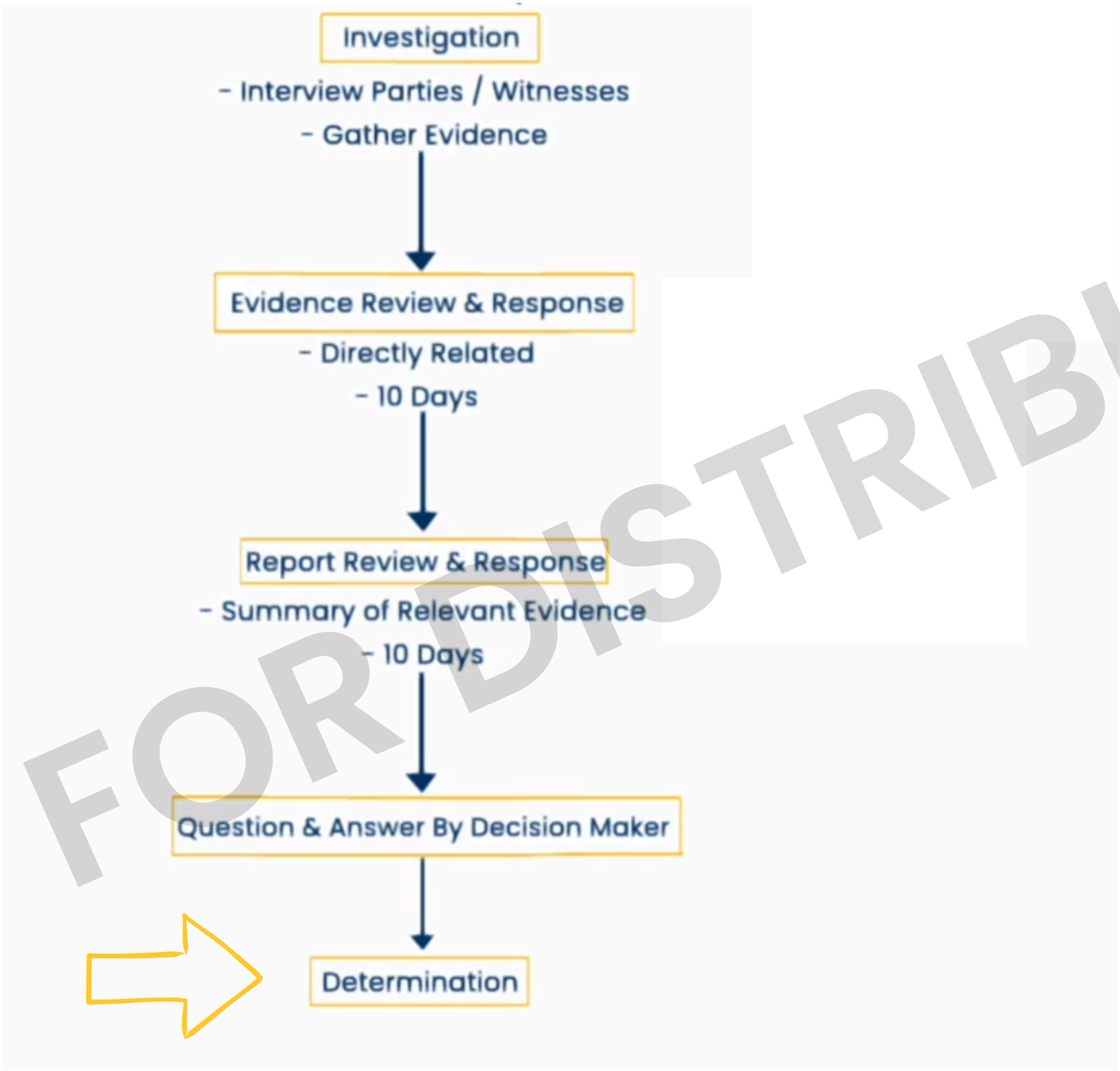
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DETERMINATION

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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 Basis for Appeal

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EASY BUTTON

Drop in your timelines:
You should have them from the investigative report (procedural steps taken)



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USE THE ALLEGATIONS

- WHAT DO THEY SAY?
- DROP THEM IN THE REPORT
- INCLUDE THE DEFINITIONS
- BREAK THEM INTO ELEMENTS
- THEN - PUT THE PIECES TOGETHER

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EXAMPLE:

Allegation: On January 7, 2026 Laura grabbed Phil's genitals over his shorts and squeezed while making a sexual comment.

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.

Elements:

Touching
Of private body part
Of ANOTHER person
For the purpose of sexual gratification
Consent

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DEVELOPING FINDINGS OF FACT:

- WHAT IS UNCONTESTED?
- WHAT IS A FACT THAT HAS DEVELOPED THROUGH CONSISTENCIES AND INCONSISTENCIES DESPITE BEING CONTESTED
- WHAT IS STILL UNCLEAR DESPITE ALL OF THE INFORMATION

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- **USE THE EVIDENCE**
- **USE THE SUMMARIES IN THE REPORT AND NOTES FROM THE INVESTIGATOR**

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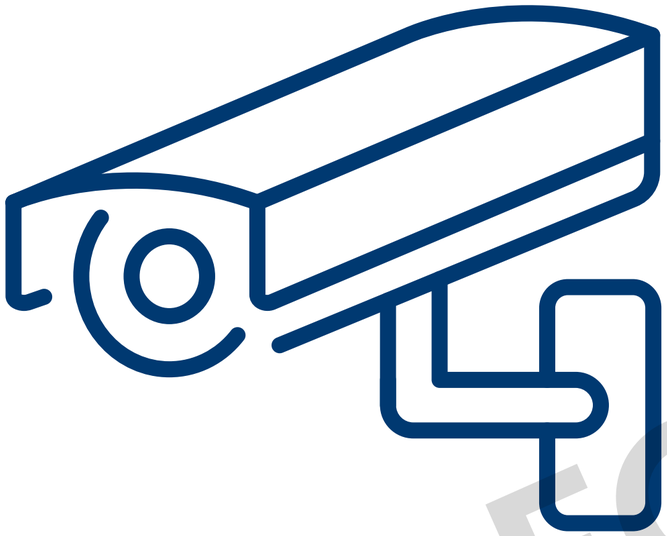


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EVALUATING EVIDENCE



- Don’t just rely on the description of a video, audio recording, or other evidence
- Watch it--Review it--Multiple times
- Look for consistencies and inconsistencies

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SOCIAL MEDIA

- Facebook
- Discord
- X - formerly known as Twitter
- Snapchat
- Instagram
- YouTube

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INDEPENDENT INVESTIGATIVE ACTIONS-- DID THE INVESTIGATOR...

Think outside the box 

 Make the phone call

Find the witness 

 Visit the location

Google the term 

 Take the photo

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WHO ARE THE WITNESSES AND WHO IDENTIFIED THEM?

- Witnesses identified by the Complainant
- Witnesses identified by the Respondent
- Witnesses identified by you
- Witnesses identified by other witnesses

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TYPES OF WITNESSES

- Eye Witnesses
- Fact Witnesses
- Expert Witnesses
- Hearsay Witnesses
- Character Witnesses

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MEMORY

- How much do witnesses actually remember?
- What impacts memory?

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MOST IMPORTANT QUESTIONS REGARDING POTENTIAL BIAS

- How do witnesses know the Complainant?
- How do Witnesses know the respondent?
- How do witnesses know the other witnesses?

How long?

In what capacity?

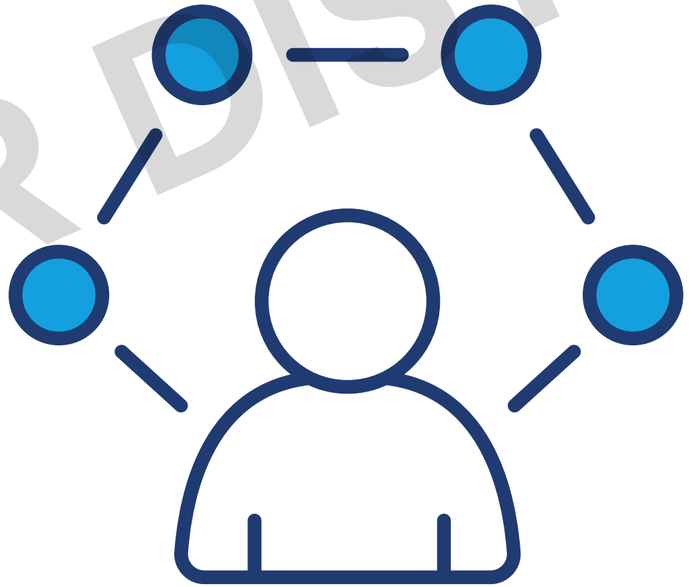
Describe your relationship with them

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CONNECT THE FACTS TO THE ELEMENTS

This is your opportunity to connect the dots…or… put the puzzle together.



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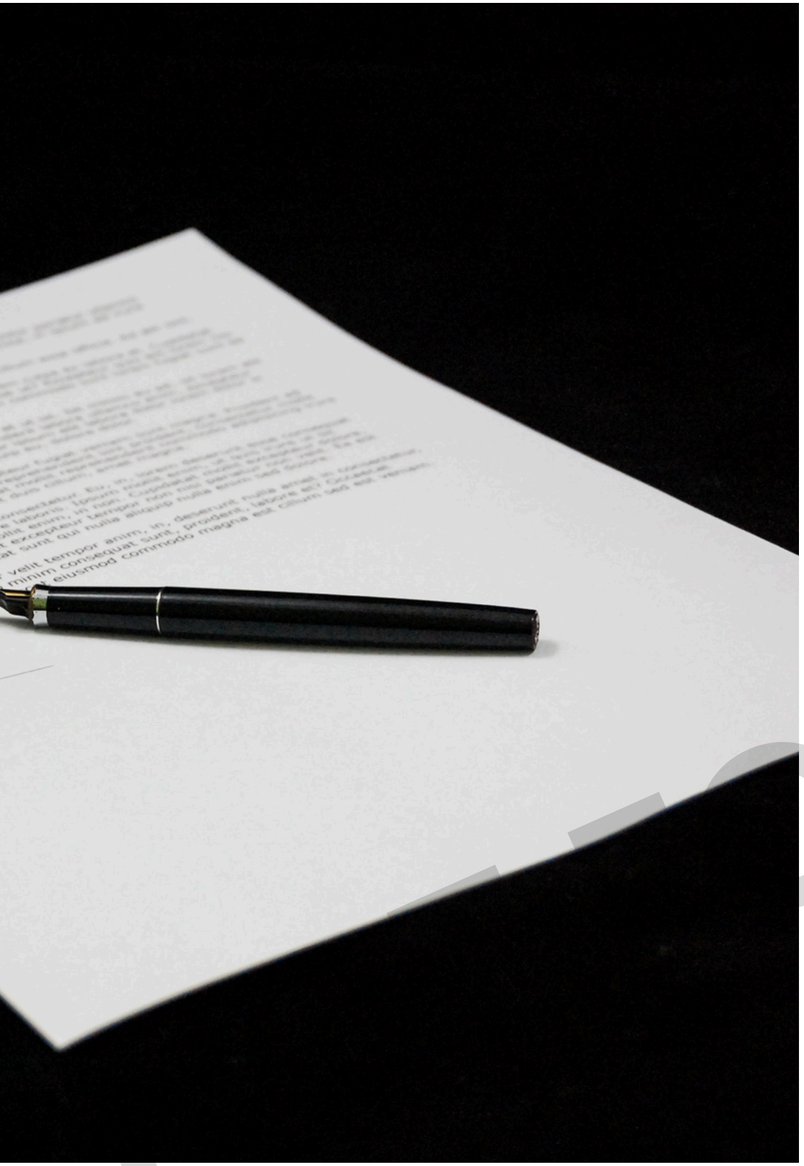
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DETERMINE RESPONSIBLITY USING PREPONDERANCE OF THE EVIDENCE OR CLEAR AND CONVINCING

- Example Language: A preponderance of the evidence supports (or does not support a finding of responsibility for fondling.
- NEVER: The Respondent did not prove…
- Make sure to include your WHY--Summarize your rationale

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INCLUDE THE SANCTIONS IF THERE IS A FINDING OF RESPONSIBILITY

- Within the parameters of your code
- IF a finding, review prior discipline
- Discuss with administrators or human resources to ensure your sanctions can be carried out
- Make sure to be equitable (would you include the same sanction if the sex of the Respondent was different??

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DETERMINE SANCTION

- Consider severity of behavior
- Prior Misconduct



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WHAT ARE THE SANCTION OPTIONS?

Warning to Expulsion or Termination, Consider:

- Discipline PLUS
  - Educational Opportunities
  - Restorative Opportunities

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DETERMINE RESPONSIBLITY USING PREPONDERANCE OF THE EVIDENCE STANDARD

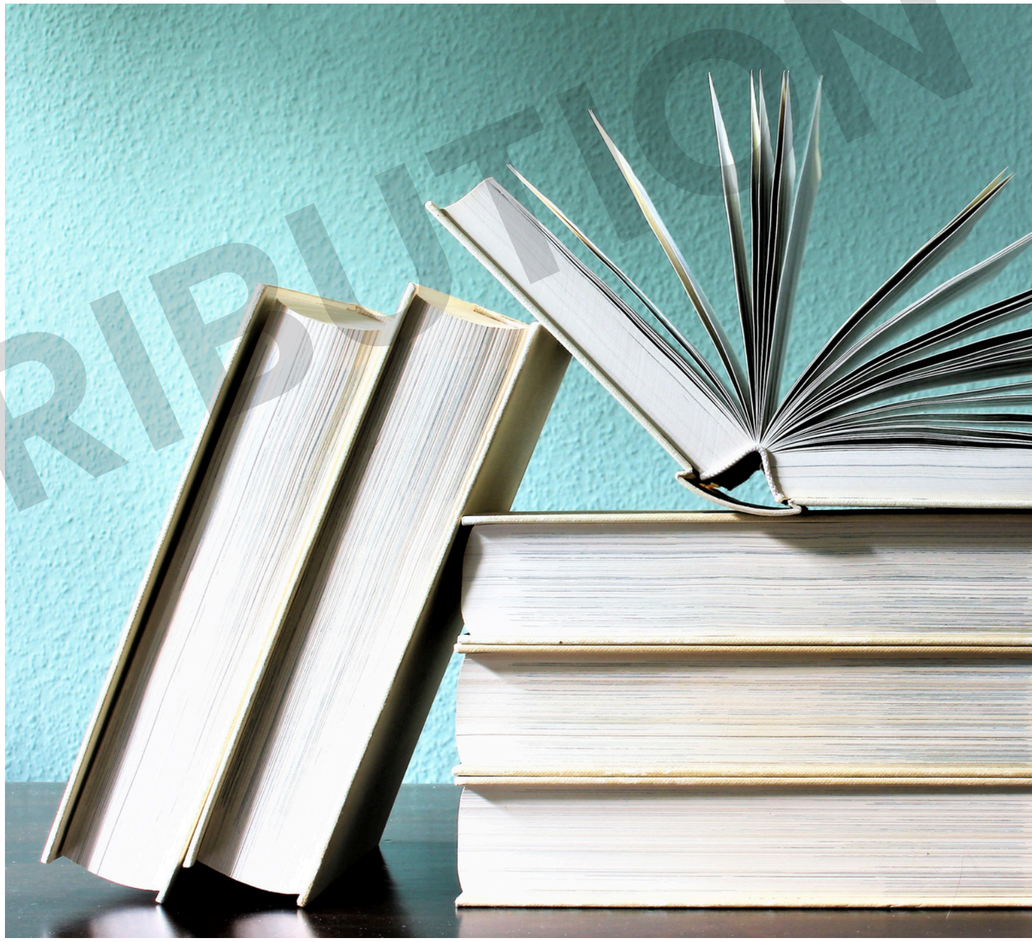
- Example Language: A preponderance of the evidence supports (or does not support a finding of responsibility for fondling.
- NEVER: The Respondent did not prove…
- Make sure to include your WHY--Summarize your rationale

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Consider more than punitive sanctions… include:

- Educational opportunities
- Restorative practices



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APPEAL OPTIONS

- Need to be included in the determination.
- Link to policy, who to appeal to, etc.

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DETERMINATION MUST HAVES

- Page numbers
- Footnotes?
- Timeline(s)
    - Investigation
    - Events
- Appendix/Attachments WITH PAGE NUMBERS
    - Table of Contents for appendix/attachments

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REMINDER!

- Who is the audience for your Determination?
- Judge. Family.

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SUPPORTIVE MEASURES CAN AND SHOULD REMAIN IN PLACE REGARDLESS OF OUTCOME.

REMEDIES TO PREVENT FUTURE BEHAVIOR CAN AND SHOULD OCCUR REGARDLESS OF OUTCOME.



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NOTIFY PARTIES OF DECISION

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REMINDER!

- Make sure supports are in place when sending notification of determination.
- Send to BOTH parties and advisors/guardians simultaneously. Include Appeal Options.

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DELIVERY OF THE DETERMINATION...

The importance of support

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THE DELIVERY OF THE DETERMINATION CAN BE TRAUMATIC



- It will impact BOTH parties, regardless of the outcome
- Changing the trajectory of individual's lives

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CONSIDERATIONS

- What is the best way to deliver the Determination
- Are there support resources immediately available
- Do you need to provide a heads up that it is coming
- Next Steps
- Appeal Options

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WRAP AROUND SUPPORT



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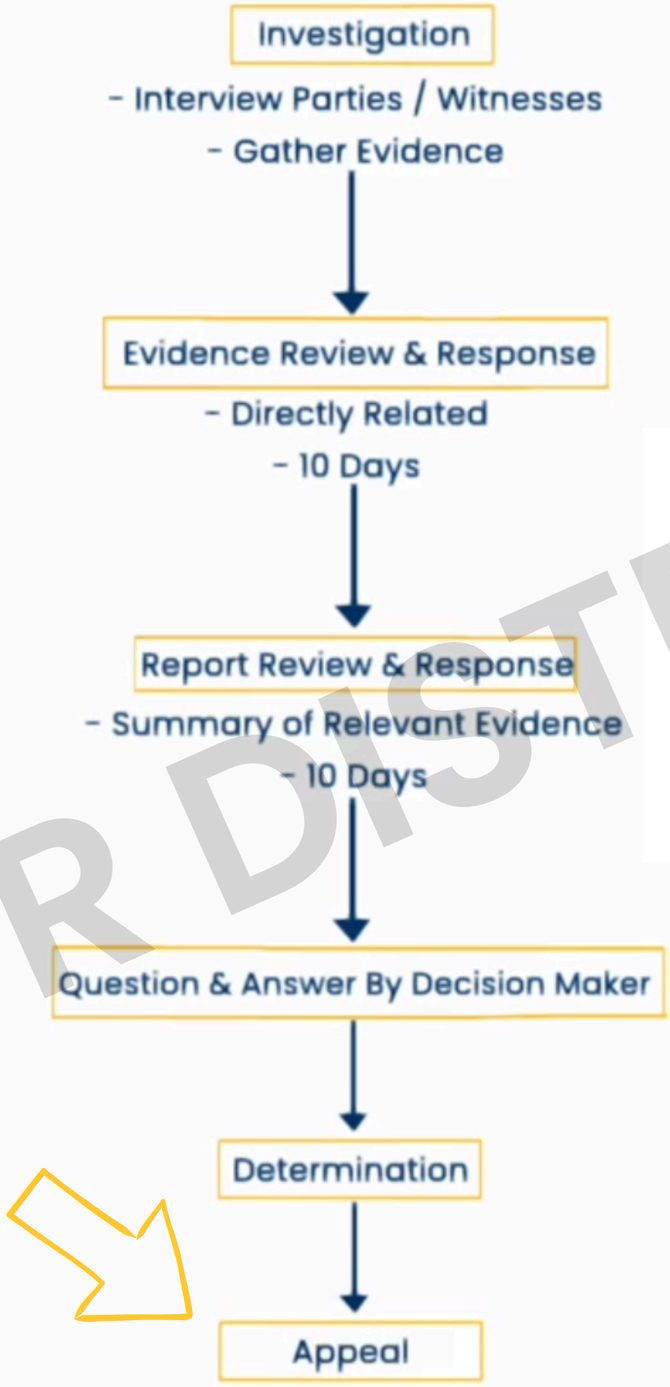
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APPEAL

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APPEALS

-Offered to both parties.

-Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility.

-On the Following Basis:

- 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 basis if offered equally to both parties.

-Written decision describing the result and rationale for the result.

-Notify the other party in writing when an appeal is filed.

-Provide written decision simultaneously to both parties.

-Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome.

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IF APPEAL IS FILED

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WHO WILL SERVE AS YOUR APPELLATE OFFICER?

- Building Level (not recommended)
- Central/District Office Level
- Superintendent/Director of Schools



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IF A PARTY APPEALS :

01 Notify the parties of the appeal.

02 Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome.

03 Notify the parties of the result of the appeal and the rationale for the result.

04 Ensure that the Appellate Decision Maker has been trained.

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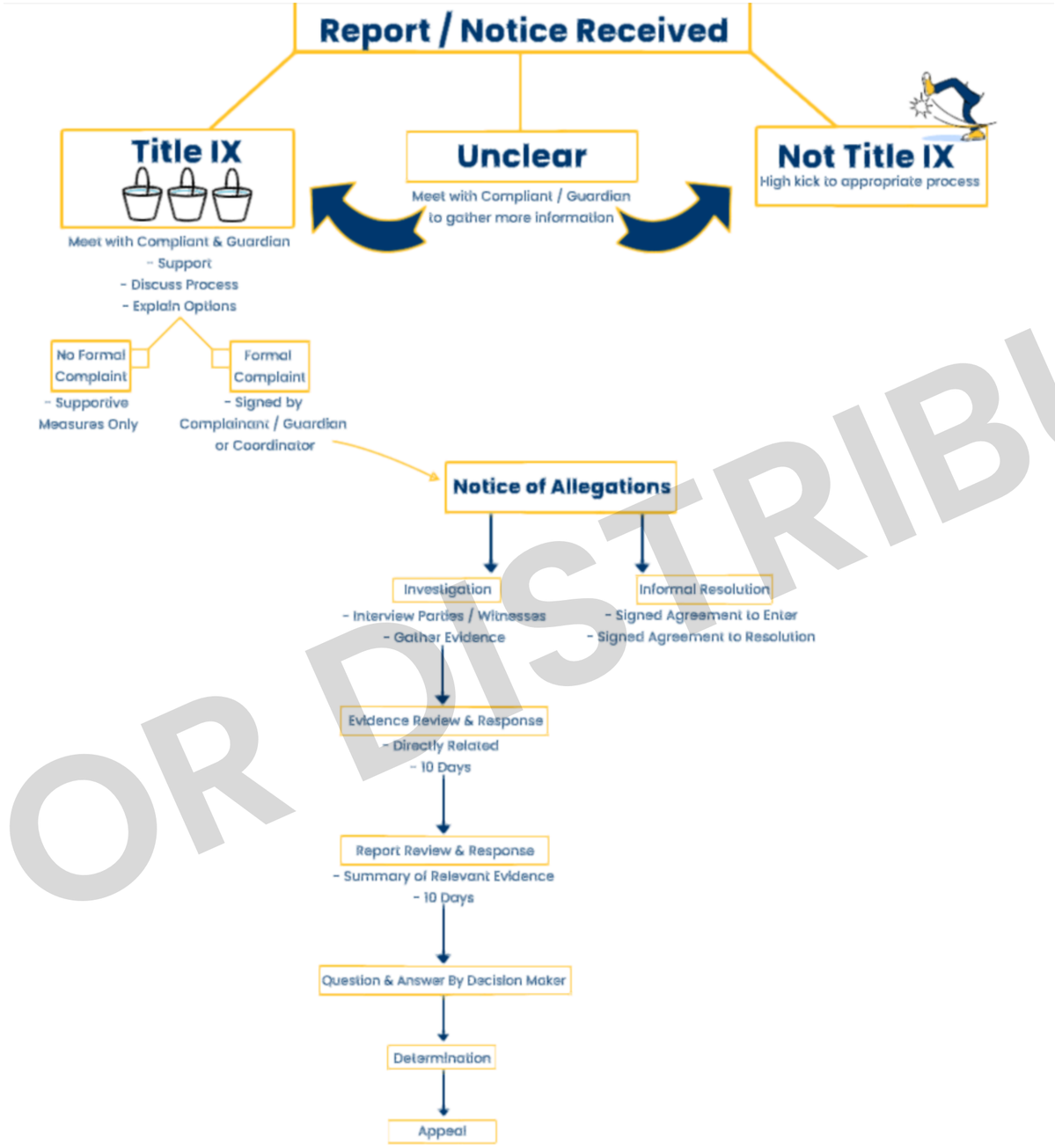
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APPELLATE DECISION OPTIONS

- Affirm the Decision Maker's determination regarding the Respondent's responsibility and affirm the Disciplinary Sanctions and Remedies, if applicable;
- Affirm the Decision Maker's determination regarding the Respondent's responsibility and amend the Disciplinary Sanctions and Remedies, if applicable;
- Remand the process back to the question and answer stage for the Decision Maker to remedy any procedural irregularity or consider any new evidence;
- Reverse the Decision Maker's determination of the Respondent's responsibility and amend the Disciplinary Sanctions and Remedies, if applicable; or
- Affirm or amend the sanctions and/or Remedies outlined in the determination issued under this Policy.

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A FEW MORE THINGS ABOUT GRIEVANCE PROCEDURES

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DETERMINATION BECOMES FINAL

THE DATE THE PARTIES ARE PROVIDED WITH THE WRITTEN DETERMINATION OF THE RESULT OF ANY APPEAL.

OR

THE DATE WHEN AN APPEAL WOULD NO LONGER BE CONSIDERED TIMELY (DAY AFTER APPEAL DEADLINE).



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- Any additional procedures a school adopts must be applied equally to all parties.
- Use caution here. It's already complicated.



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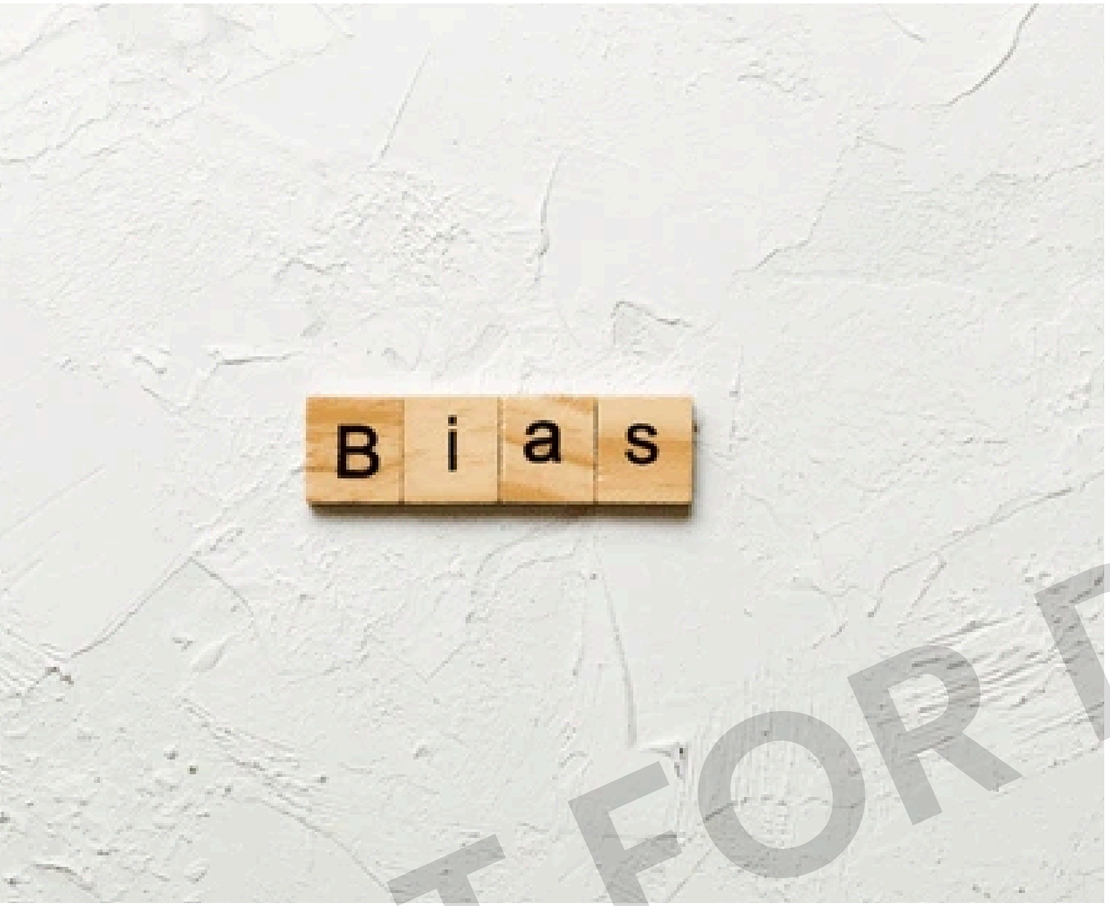
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- MAY NOT discipline Respondent for sex discrimination UNLESS there is a determination AT THE CONCLUSION OF THIS PROCESS that Respondent engaged in sex discrimination.
- MAY NOT discipline a party or witness for a false statement, or for engaging in consensual sexual conduct based SOLELY on determination of whether sex discrimination occured.

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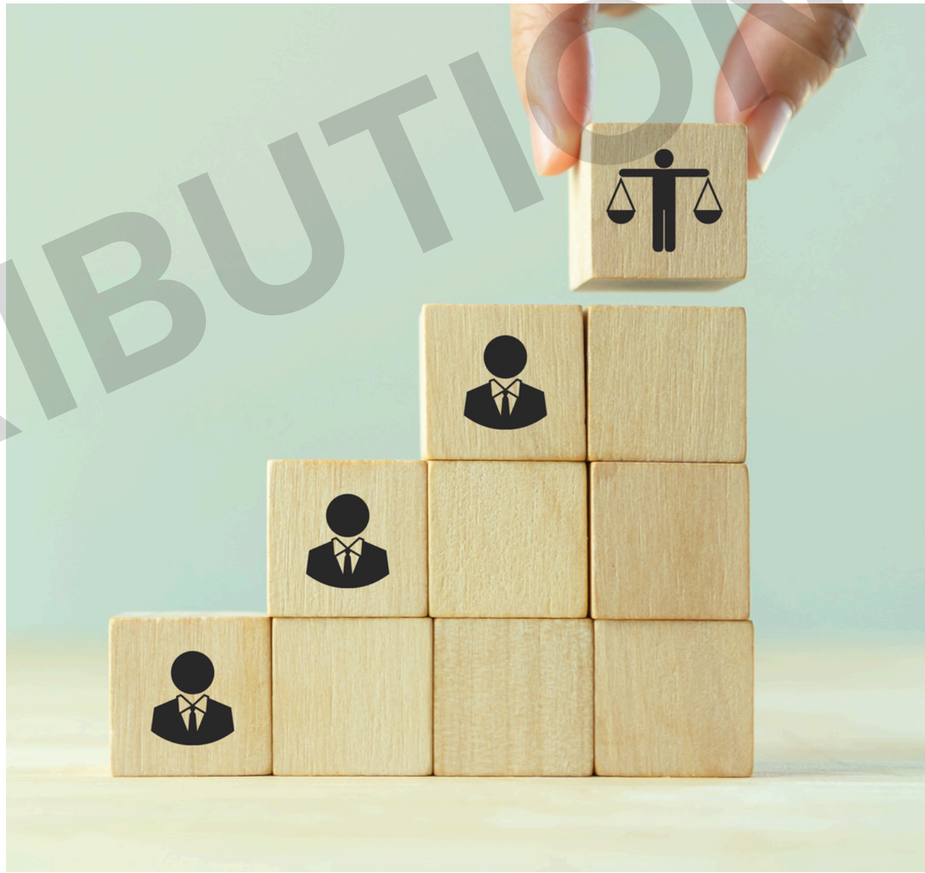
AVOIDING CONFLICTS OF INTEREST/BIAS

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Title IX Team Must Serve Impartially In Their Role and Avoid:

- Prejudgment of the facts at issue
- Conflicts of interest
- Bias



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Conflict of interest or bias cannot be for or against complainants or respondents generally or the individual complainant or respondent in a matter.

- Family friend is a witness in a matter.
- Child is a party in a matter.
- You are a witness in a matter.
- Close relationship with a party.

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WHY IS THIS IMPORTANT?

- Erodes trust in grievance procedures/creates barriers.
- Decreases ability to ensure a fair and reliable outcome.

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IN EVERY CASE:

1. **EVALUATE WHETHER A CONFLICT OF INTEREST/BIAS EXISTS AT THE OUTSET OF A MATTER.**

2. **CHECK BIASES THROUGHOUT A MATTER.**

3. **NOTIFY THE TITLE IX COORDINATOR IF A BIAS/CONFLICT OF INTEREST ARISES.** *WHAT IF YOU ARE THE COORDINATOR?

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EMERGENCY REMOVAL

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EMERGENCY REMOVAL

May remove student on an emergency basis AFTER undertaking individualized safety and risk analysis.

In order to remove a student, the school must:

- undertake an individualized safety and risk analysis,
- determine that an immediate threat to the **physical health or safety** of any student or other individual arising from the allegations of sexual harassment justifies removal, and
- provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- Must provide Respondent an opportunity to challenge the decision IMMEDIATELY following the removal.

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ADMINISTRATIVE LEAVE

May place employee on administrative leave during pendency of the grievance procedures.

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RETALIATION

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RETALIATION

Must Prohibit Retaliation (including peer retaliation)

- When informed of retaliation, MUST provide supportive measures.
- Allegations of retaliation do not have to through the formal grievance process.

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RETALIATION

Must Prohibit Retaliation
(including peer retaliation)

- When informed of retaliation, MUST provide supportive measures.
- May use grievance procedures, other processes, or informal resolution to resolve.

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HELP US HELP YOU

Please fill out the survey.

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YOU'VE GOT THIS!



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QUESTIONS?



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