



Title IX in Practice: K-12 and Higher Education

Boise State University
September 21-22, 2026

Jackie Gharapour Wernz | ECR Solutions PLLC

ABOUT ME

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I have spent two decades helping schools, colleges, and universities navigate complex civil rights and constitutional issues, including Title IX, Title VI, Title VII, Section 504, the ADA, and the First Amendment. I bring a unique mix of experience as outside counsel, in-house civil rights administrator, and civil rights attorney at the U.S. Department of Education's Office for Civil Rights.



20+ years training, guiding, and regulating educational leaders nationwide



Civil rights attorney with the U.S. Department of Education's Office for Civil Rights, serving in the Obama and Trump administrations



Licensed to practice law in Illinois, Texas, and Idaho

Ground Rules

Welcome

- **A general training on federal principles**

Not legal advice—specific matters run through counsel

- **Best practices**

Not every practice discussed in this presentation reflects an industry standard or legal requirement; many are best practices

- **Interactive by design**

Keep a device handy and stay focused—we will have polls, brainstorming, and small-group work throughout

- **Post your training**

The 2020 Title IX rules require posting your training for Title IX on your institution's website.

Have fun

Title IX work is a craft
and today is about
sharpening your skills

AT A GLANCE

Today's Agenda

9:15–10:00 a.m.	10:00–11:00 a.m.	11:00 a.m.– 12:30 p.m.	12:30–1:15 p.m.	1:15–2:30 p.m.	2:30–2:45 p.m.	2:45–5:00 p.m.
Check-in and Breakfast	Building the Legal and Regulatory Foundation	From Report to Response: Getting the Initial Response Right	Lunch Break	Fairness, Impartiality, and Procedural Integrity	Break	Panel: Avoiding Title IX's Costliest Mistakes

AT A GLANCE

Tomorrow’s Agenda

7:15–8:00 a.m.	8:00–10:30 a.m.	10:30–10:45 a.m.	10:45 a.m.– 12:00 p.m.	12:00–1:00 p.m.	1:00–2:00 p.m.	2:00–3:00 p.m.
Check-in and Breakfast	Investigation Workshop	Break	Decision-Writing Workshop Part 1	Lunch Break	Decision-Writing Workshop Part 2	Panel: Stories from the “Bench”

Session 1

**Understanding the Title IX Landscape
Building the Legal and Regulatory Foundation**



TITLE IX BASICS

TITLE IX



1972 civil rights law that prohibits sex discrimination in federally funded education programs.

“

“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

Recipients must not discriminate on the basis of sex in any aid, benefit, or service they provide.

Join the Vevox session

Go to **vevox.app**

Enter the session ID: **176-126-582**

Or scan the QR code





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ID: 176-126-582

Question slide

What is the first word that comes to mind when you think of Title IX?





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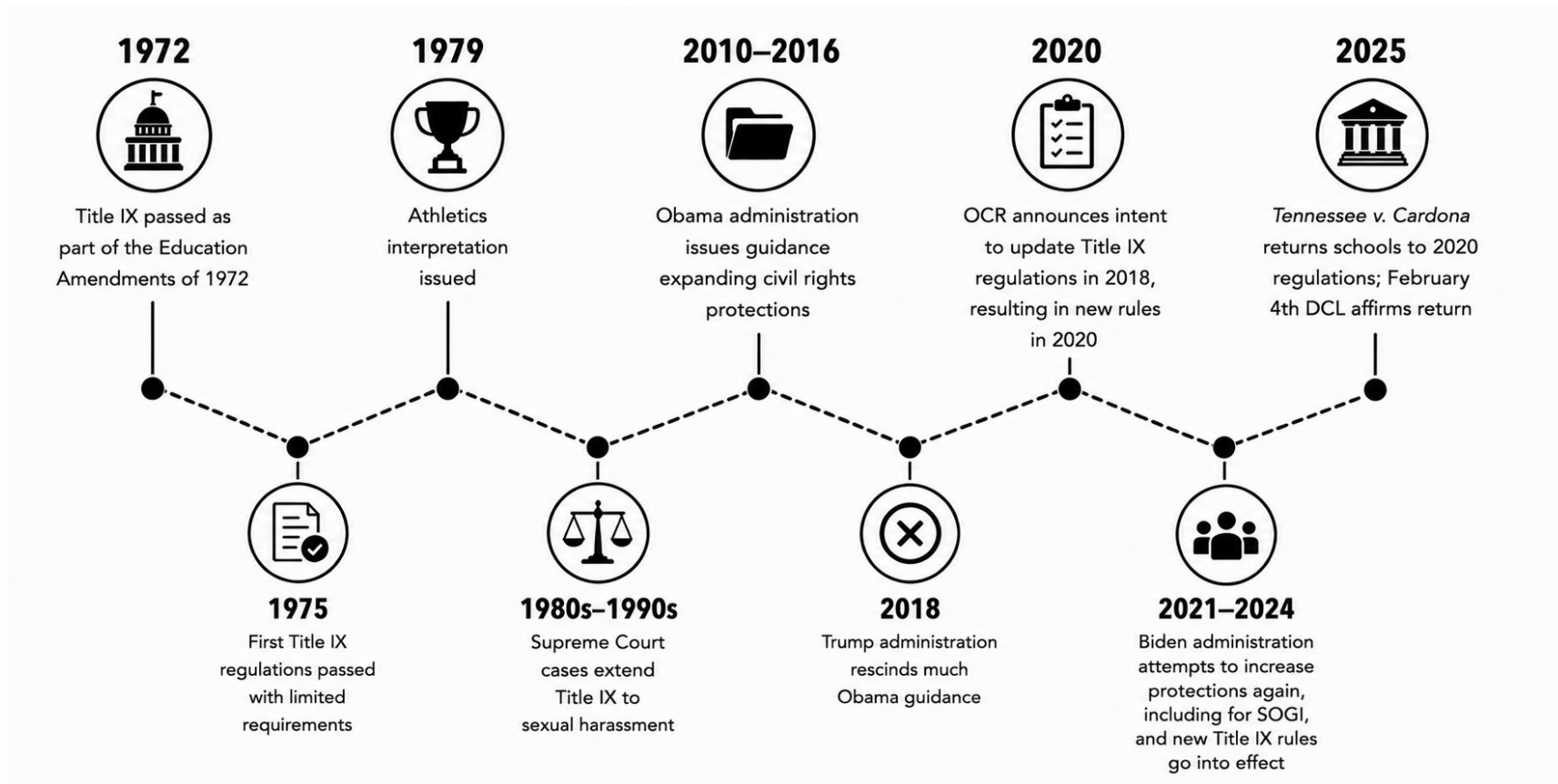
Preparing Results

What is the first word that comes to mind when you think of Title IX?

RESULTS SLIDE

TITLE IX BASICS

Title IX History





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Join at: vevox.app

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Question slide

Which of the following is NOT covered by Title IX

Pregnancy

0%

Parenting

0%

Single-sex Programs

0%

Employment

0%

ALL of the above are covered by Title IX

0%



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RESULTS SLIDE

TITLE IX BASICS

Title IX Coverage

Athletics



Equal opportunities and comparable resources for teams of each sex

Sexual Harassment



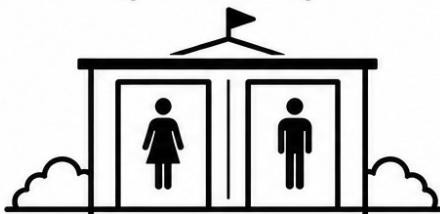
Sexual harassment that meets a specific standard must be addressed through a formal Title IX process

Pregnant and Parenting Students



Full access to programs with reasonable modifications, leave, and other support

Single-Sex Programs



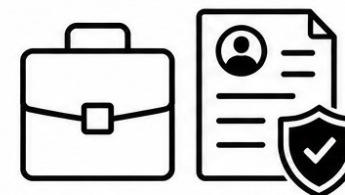
Programs or activities limited to one sex are allowed only in specific, narrow circumstances

Different Treatment



Schools cannot treat students differently because of sex in admissions, academics, discipline, housing, and other programs

Employment



All Title IX requirements apply to employment



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Join at: vevox.app

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Question slide

What is the Supreme Court deciding about Title IX and employment in the upcoming term?

Whether Title IX only applies to students and never employees

0%

Whether employees must always use a school's grievance process before suing

0%

Whether employees can sue under Title IX for sex discrimination in employment

0%

Whether schools can use Title VII to address employment sex discrimination claims

0%





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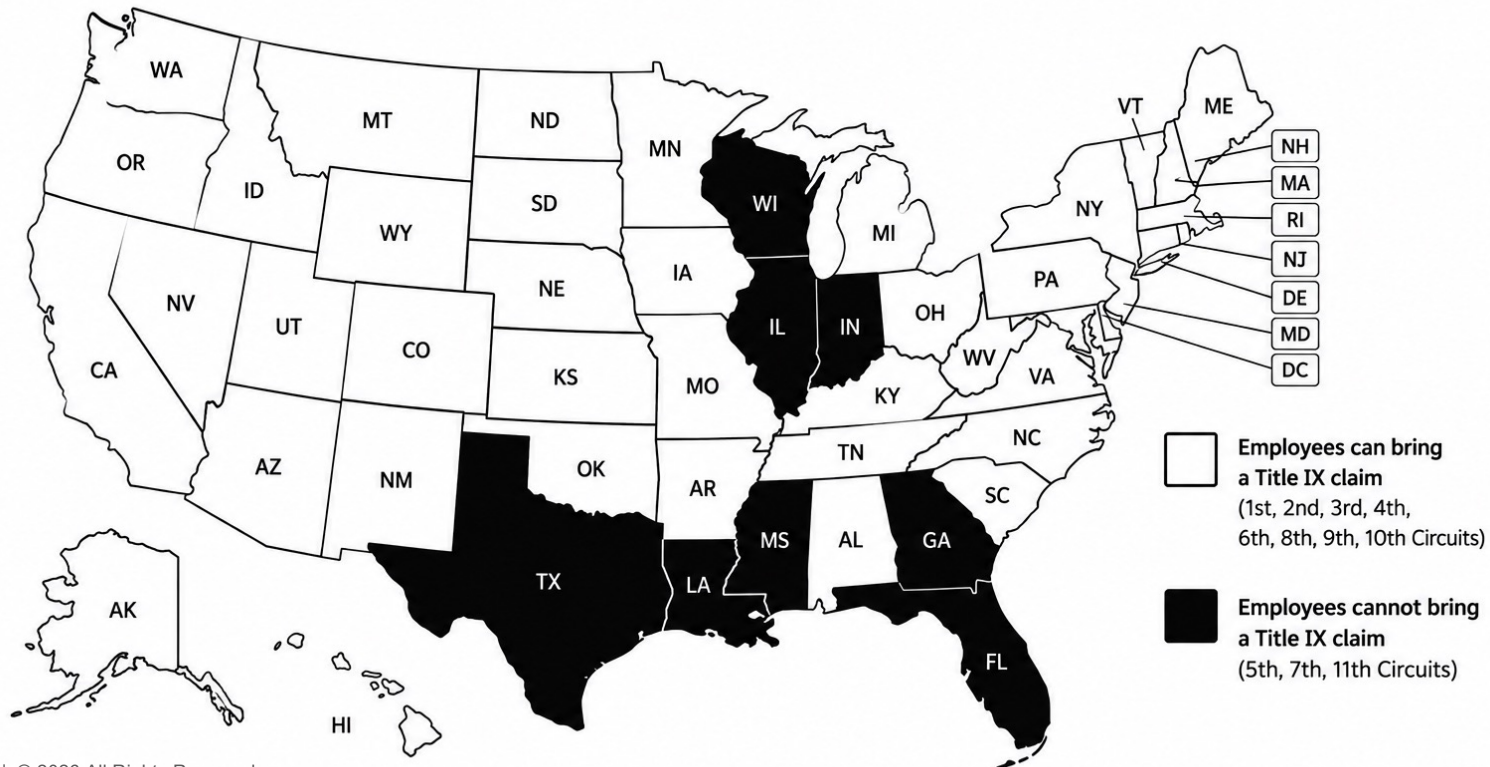
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RESULTS SLIDE

TITLE IX BASICS

Can an Employee Sue for Sex Discrimination Under T9?

Based on current federal circuit court precedent (as of September 2026)



TITLE IX BASICS

Title IX - *Crowther v. Board of Regents*

- ***Cannon v. University of Chicago*** (US 1979) — Title IX includes an implied private right of action, meaning an individual subjected to discrimination prohibited by Title IX may sue even though the statute does not expressly create a private cause of action
- ***North Haven Board of Education v. Bell*** (US 1982) — Title IX applies to employment discrimination by federally funded educational institutions, and federal regulations prohibiting sex discrimination in employment under Title IX are valid
- ***Jackson v. Birmingham Board of Education*** (US 2005) — A male teacher and coach could sue in Federal court alleging that the school retaliated against him for complaining about unequal treatment of the girls' basketball team (Title IX retaliation)

TITLE IX BASICS

Title IX - *Crowther v. Board of Regents*

- Two college professors in Georgia sued under Title IX, alleging they had been subjected to sex discrimination and retaliation under Title IX
- The Eleventh Circuit Court of Appeals held that while Title IX contains an implied right of action for students, the statute does not embrace one for employees
- That put the Eleventh Circuit alongside the Fifth and Seventh Circuits and in conflict with eight other circuits
- Allowing employment discrimination lawsuits under Title IX can have important implications for federally funded schools, such as allowing employees to pursue claims outside Title VII's administrative exhaustion requirements, filing deadlines, and damages limitations

TITLE IX BASICS

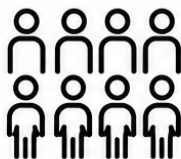
Title IX – Athletics



Schools must provide
EQUITABLE PARTICIPATION
opportunities for each sex based on:



ENROLLMENT



Proportional to the enrollment of each sex



PROGRAM EXPANSION



Expansion of athletic programs and activities for the underrepresented sex



DEMONSTRATED STUDENT INTERESTS AND ABILITIES



Documented interest and abilities of the underrepresented sex



Schools must also provide
EQUITABLE TREATMENT
of programs for each sex with respect to the following 11 benefits, opportunities, and treatment (the “laundry list”):



Equipment and supplies



Scheduling of games and practice times



Travel and per diem allowances



Opportunity to receive coaching and academic tutoring



Assignment and compensation of coaches and tutors



Locker rooms, practice facilities, and competitive facilities



Medical and training facilities and services



Housing and dining facilities and services



Publicity



Recruitment of student-athletes



Support services

TITLE IX BASICS

Title IX - Athletics

- Title IX applies to the entire athletic program, including interscholastic, club, and intramural athletics
- Equal treatment does not require identical programs or identical treatment within like programs, but disparities in facilities, equipment, coaching, scheduling, travel, publicity, and other benefits must not result in an overall advantage for one sex
- Evaluate the program as a whole, while recognizing that a significant disparity in one area may still create a compliance concern
- Booster clubs, donations, and outside funding **do not excuse** inequities when the benefits are provided through the school's athletic program
- Current federal enforcement places particular emphasis on protecting female teams, facilities, and athletic opportunities based on sex, although schools must also consider applicable state law and controlling court decisions



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Question slide

The Supreme Court recently ruled on state laws restricting participation on girls' and women's athletic teams. What did the Court hold?

Title IX requires schools and states to determine eligibility based on biological sex

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Schools must evaluate each transgender athlete individually to determine whether the student has a competitive advantage

0%

Title IX prohibits states from excluding transgender girls who have received puberty blockers or hormone treatment

0%





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0%

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RESULTS SLIDE

TITLE IX BASICS

***West Virginia v. B.P.J.* (June 30, 2026)**

- ***West Virginia v. B.P.J.*** (K-12, W. Virginia) and ***Little v. Hecox*** (PSE, Idaho)
- Upheld Idaho's Fairness in Women's Sports Act
- States may reserve girls' and women's teams for students based on biological sex, but are not required to
- Such policies do not violate Title IX (unanimous) or the Equal Protection Clause (6–3)
- Schools are not required to conduct an individualized assessment of each athlete's physiology, treatment, or competitive advantage

TITLE IX BASICS

After B.P.J.: Intimate Facilities and Social Transition

- The ruling applies to athletics and does not directly decide questions involving pronouns, names, dress codes, harassment, restrooms, or other school programs
 - **School Restrooms (SB 1100)**: Idaho law requiring public school students to use only the restroom, changing facilities, and sleeping facilities corresponding to their “biological sex,” being challenged on the merits in *Roe v. Critchfield*
 - **Public Restrooms (HB 752)**: March 2026 law criminalizing transgender bathroom use in government buildings and private businesses open to the public; on June 16, 2026, the law was partially preliminarily enjoined as to single-occupancy restrooms and multi-occupancy restrooms where no single-occupancy alternative is available—that ruling is being appealed
 - **Pronouns (HB 538)**: Prohibits employees from knowingly using a preferred name or pronoun that does not align with biological sex without written parental permission; prevents school districts from forcing a staff member to use preferred pronouns; says students cannot be disciplined for refusing to use a peer’s preferred pronouns or required to state their own pronouns
 - **Social Transition (HB 822)**: Requires notification to parents within 72 hours if a student asks for assistance to socially transition (changing names, pronouns, dress, appearance)—up to \$100,000 in civil fines

After B.P.J., if a student alleges harassment based on gender identity, their complaint is not covered by Title IX

True: B.J.P. said “based on sex” means based on biological sex, not gender identity

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True, but only if the allegations relate to refusal to use preferred names or pronouns

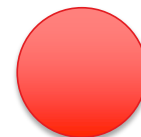
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False: Harassment based on gender identity is always harassment based on sex stereotypes, which has long been covered by Title IX

0%

False, but only if the harassment is alleged to be based on sex stereotypes, which has long been covered by Title IX

0%



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RESULTS SLIDE



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Join at: **vevox.app**

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Question slide

What should a school do if an employee alleges they are being harassed based on their gender identity in the Ninth Circuit?

Do not address the case under federal law, because B.P.J. held that “sex” always means biological sex

0%

Address the case only under Title VII, where Bostock is clear that discrimination based on gender identity is discrimination based on sex

0%

Address the case under Title IX if the harassment is based on how the person presents relative to expectations attached to their biological sex

0%





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Join at: **vevox.app**ID: **176-126-582****Results slide**

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RESULTS SLIDE

TITLE IX BASICS

SINGLE SEX PROGRAMS

SINGLE-SEX PROGRAMS

- Title IX generally prohibits separating students by sex, including in classes, extracurricular activities, and other learning opportunities
- A single-sex program is permitted only if
 - Specifically authorized by regulation, such as certain PE activities, human sexuality instruction, or choruses
 - Or justified by an important educational objective, entirely voluntary, paired with a substantially equal coeducational option, and reviewed at least every two years

Important Limits

- CTE programs cannot be offered on a single-sex basis
- Athletics are governed by separate rules
- Significant assistance to a single-sex outside program is generally prohibited unless the organization qualifies as a VYSO and excluded students receive a substantially equal coeducational opportunity

TITLE IX BASICS

Single Sex Programs

Office for Civil Rights Recent Resolution Search

The Office for Civil Rights (OCR) is providing access to resolution documents reached on or after October 1, 2013. The resolution documents cover aspects of laws OCR enforces. You have access to all currently uploaded documents that meet OCR's document upload criteria. Additional documents will be posted on a continual basis. Use the search box below to conduct your search. Search criteria assistance is provided below.

🔍🗑️SearchReset

Order By:

Institution A-Z

Cases ordered by Institution A-Z

[Search by type of discrimination](#)

To further refine your results please select the following criteria below.

State

Clear All

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California (2)

Indiana (1)

Texas (4)

Vermont (2)

Type of Institution

Clear All

Post Secondary (9)

Statute

Clear All

Sex Discrimination (9)

Type of Discrimination

Clear All

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Single Sex Scholarships (9)

Single Sex Campus Programs (1)

Resolved Date (CY)

Clear All

2026 (9)

Topics:

Single Sex Scholarships

Sex Discrimination

2026

Displaying 9 results

ANABAPTIST MENNONITE BIBLICAL SEMINARY (IN) (05252294)

08/05/2026

Letter

Agreement

MIDDLEBURY COLLEGE (VT) (01202268)

05/18/2026

Letter

Agreement

MIDDLEBURY COLLEGE (VT) (01262158)

05/18/2026

Letter

Agreement

MIDDLEBURY INSTITUTE OF INTERNATIONAL STUDIES (CA) (09232600)

05/18/2026

Letter

Agreement

SKYLINE COLLEGE (CA) (09232625)

04/30/2026

Letter

Agreement

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TITLE IX BASICS

PREGNANCY & PARENTING

- Do not exclude or discriminate against a student because of pregnancy, childbirth, termination of pregnancy, recovery, or parental status
- Allow a student with pregnancy or a related condition to continue participating in classes, athletics, extracurricular activities, and other school programs unless there is a legitimate safety risk
- Excuse absences for a student with pregnancy or a related condition as long as medically necessary and restore the student to the same academic and extracurricular status upon return
- Provide the same adjustments and services offered to students with other temporary medical conditions to a student with pregnancy or a related condition; use an “interactive process” framework
- Require medical certification for a student with pregnancy or a related condition only when it is required of students with other medical conditions
- Any separate program for pregnant students must be voluntary and comparable to the school’s regular program

TITLE IX REQUIREMENTS

Title IX's To Do List for Schools

- Designate and authorize Title IX Coordinator (34 C.F.R. § 106.8(a))
- Notify applicants for admission and employment, students, parents or legal guardians, employees, and relevant unions or professional organizations of the Title IX Coordinator's name or title, office address, email address, and telephone number (34 C.F.R. § 106.8(a))
- Notify those groups that the school does not discriminate on the basis of sex, is required by Title IX not to discriminate, and that the prohibition extends to admission and employment, where applicable (34 C.F.R. § 106.8(b)(1))
- State that questions about Title IX may be referred to the Title IX Coordinator, OCR's Assistant Secretary, or both (34 C.F.R. § 106.8(b)(1))
- Prominently display the Title IX Coordinator's contact information and the notice of nondiscrimination on the school's website and in every handbook or catalog provided to the identified groups (34 C.F.R. § 106.8(b)(2)(i))

TITLE IX REQUIREMENTS

Title IX's To Do List for Schools

- Do not use or distribute publications stating that the school treats applicants, students, or employees differently based on sex, except where Title IX permits the different treatment (34 C.F.R. § 106.8(b)(2)(ii))
- Adopt and publish grievance procedures for complaints of sex discrimination, including a grievance process complying with § 106.45 for formal complaints of Title IX sexual harassment, and provide notice of those procedures to the identified groups (34 C.F.R. § 106.8(c))
- Respond appropriately to reports and follow the required grievance process when a formal complaint of Title IX sexual harassment is filed (34 C.F.R. §§ 106.44–106.45)
- Train Title IX Coordinators, investigators, decision-makers, and informal-resolution facilitators (34 C.F.R. § 106.45(b)(1)(iii))
- Maintain required Title IX records and training materials for seven years (34 C.F.R. § 106.45(b)(10))

TITLE IX REQUIREMENTS

Title IX Coordinators

The Designation

Every recipient of federal financial assistance must designate at least one Title IX Coordinator (34 CFR 106.45(b)(1)(iii))

Coordinators may wear other hats, but must have the knowledge, independence, and authority to do the job

You can have more than one Title IX Coordinator, but one should have overarching responsibility for all Title IX issues

Remember: Idaho House Bill 141 places the legal responsibility for Title IX compliance directly on the shoulders of Idaho public higher education institution Presidents

The Training

General topics required for all roles: The definition of Title IX sexual harassment, the scope of the education program or activity, how to conduct an investigation and grievance process, and how to serve impartially

Specific recommendations for coordinators: Although not required, recommended to have coordinators complete all additional training required for investigators and decision-makers

Materials must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment

34 CFR 106.45(b)(1)(iii)

What will OCR look for if it investigates whether a school has posted training materials?

One or more handouts are posted or linked on the school's webpage

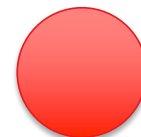
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Posted materials and documentation of who attended which trainings and when

0%

OCR does not address allegations of minimal procedural noncompliance without more

0%



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One or more handouts are posted or linked on the school's webpage

##.##%

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##.##%

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##.##%

RESULTS SLIDE

TITLE IX REQUIREMENTS

Posting of Training Materials

- One of OCR's few published decisions from 2026 is a resolution with Benedict College (SC, OCR Case No. 11-26-2244)
- The complaint alleged that the College is violating Title IX by failing to make publicly available on its website all Title IX training materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process under Title IX
- When OCR initially reviewed the College's website, OCR could not find any evidence indicating that Title IX training materials were posted on the website
- "Although the College recently posted Title IX training materials on its website, OCR could not determine whether the published Title IX materials have been used to train any of its staff who handle Title IX-related complaints."



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Title IX Training Materials

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Latoria Williams
Title IX Coordinator

1600 Harden Street
Columbia, SC 29208

803-705-3227

ATIX
Association of
Title IX Administrators

2020 Title IX Regulations Refresher for Higher Education

Training and Certification Course

HUSCHBLACKWELL

Title IX Sex Discrimination and Sexual Harassment Response

Summer 2025

TITLE IX REQUIREMENTS

Coordinator Responsibilities

- Coordinate the school's overall Title IX compliance
- Receive and assess reports of sex discrimination
- Coordinate supportive measures
- Determine the appropriate responses and processes
- Oversee or conduct investigations and informal resolution processes
- Oversee decisions and appeal processes
- Address retaliation concerns
- Maintain records and monitor trends
- Coordinate training, notices, and required postings

The Coordinator can and likely should delegate responsibilities



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Join at: **vevox.app**

ID: **176-126-582**

Question slide

The Title IX rules require the following to be in an institution's policy...

A statement that as required by Title IX, it does not discriminate based on sex and prohibits such discrimination in its education programs/activities, including in employment

0%

Grievance procedures that comply with the requirements of the Title IX rules

0%

A statement that inquiries about Title IX and the policy can be directed to the Title IX Coordinator or OCR

0%

The name or title, office address, email address, and telephone number of the Title IX Coordinator

0%

All of the above

0%

None of the above

0%



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0%

RESULTS SLIDE

TITLE IX REQUIREMENTS

Notice of Nondiscrimination

Title IX (34 CFR 106.8)

- State that the recipient does not discriminate on the basis of sex and is required by Title IX not to, including in admission and employment
- State that inquiries may be referred to the Title IX Coordinator, OCR's Assistant Secretary, or both
- Include the Title IX Coordinator's name or title, office address, email, and phone number
- Provide the notice to applicants (admission and employment), students, parents/guardians of K-12 students, employees, and unions/professional organizations with agreements with the recipient
- Post it prominently on the website and in each handbook or catalog
- Separately notify the same groups of the grievance procedures and process (how to report, how to file a formal complaint, how the school will respond)

Beyond the Federal Floor—Recommendations

- State law often covers broader protected classes—make sure to comply with any specifics
- Include contact information for every civil rights coordinator (Title IX, Section 504, ADA Title II, etc.)
- Post as a direct link on the homepage or in the footer of every page
- Include a link to (or web address for) the institution's discrimination complaint process and procedures
- Make available in the languages of the communities the institution serves
- Disseminate annually as an individual notice, in plain language

TITLE IX REQUIREMENTS

Scavenger Hunt!

Visit your institution's website and verify the following:

- Is there a direct link to your Title IX nondiscrimination notice (usually in policy) from the homepage or fixed footer on every page?
- Can you find a direct link to the Notice of Nondiscrimination from the homepage or the fixed footer on every page?
- Does the Notice of Nondiscrimination identify your Title IX Coordinator (or Civil Rights Coordinator) and include the required contact information?
- Can you easily locate your Title IX policy?
- Can you easily locate your Title IX grievance procedures for complaints of sex discrimination and Title IX sexual harassment?
- Can a student, parent, or employee determine how to report sex discrimination within one or two clicks?

OTHER LAWS

Other Laws in the Mix

Higher Education

The Clery Act and VAWA require annual security reporting, timely warnings, and their own procedures for sexual assault, dating violence, domestic violence, and stalking — separate from, and in addition to, Title IX

Campus Security Authorities have reporting duties distinct from Title IX, and designated confidential resources may be exempt from them

State campus sexual misconduct statutes, accreditation standards, and athletic association rules can add requirements of their own

K-12

In K-12, harassment, intimidation, and bullying statutes and mandatory child abuse and sexual misconduct reporting laws run alongside the Title IX process

RETALIATION

Retaliation

Spot It

Three initial elements:

1. Protected activity (reporting, participating in a process—even as a witness or respondent)
2. Adverse action
3. Causal connection

Adverse action is broad: discipline, schedule or position changes, lost stipends or roles, grade impacts, exclusion from activities—for students, families, or staff

Causation often shows in timing, statements, and patterns

If these initial factors are shown, consider whether there is evidence of a legitimate, non-retaliatory justification for the adverse action and, if so, whether there is evidence that it is pretext for retaliation

Respond & Prevent

Treat every retaliation concern as a new report; offer the right to file a complaint

Remember that under Title IX, retaliation concerns are not required to be addressed using the Title IX sexual harassment procedures, but you must use a clear, published complaint process to address the behavior

Warn parties about retaliation risks at the start of every case and re-warn if friction surfaces

Use monitoring: regular check-ins with parties throughout the grievance process to check for retaliation concerns

EMPLOYEE MISCONDUCT

Employment Overlap

Remember external reporting requirements—educator licensing boards in K-12, and Clery and state reporting obligations in higher education

HR and the Title IX Coordinator must work together to avoid unnecessary duplication and contradictions

A student's supportive measures should never wait for the police or personnel process

After a finding, sanctions should flow through HR channels consistent with collective bargaining agreements, faculty handbooks, and employee policies, whereas remedies should flow to the complainant through student services

SPEECH AND HARASSMENT

Morgan & Jordan

Morgan, a history teacher who is transgender, reports that during a classroom discussion about polarization in politics, Jordan, a student, stated: “I don’t think men should be able to compete in women’s sports, even if they ‘think’ they are women. It’s just not fair.”

Later that evening, Jordan posted the following on a personal social media account from a personal device at home: “My tr**ny teacher made the mistake of talking politics today in class. I won. Biological sex is real, and no amount of pretending changes that.”

The post receives dozens of comments, many from other students debating the issue online. Some support Jordan, while others criticize Jordan’s views. Morgan receives screenshots of the post from several students and reports feeling targeted and concerned about returning to the classroom.

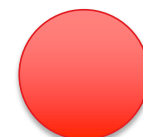
Are Jordan's statements unwelcome conduct based on sex?

Yes

0%

No

0%



Are Jordan's statements unwelcome conduct based on sex?

Yes



0%

No

0%

RESULTS SLIDE

SPEECH AND HARASSMENT

The First Amendment

- **A policy violation is not the end of the inquiry**

A preponderance finding that conduct meets a harassment standard (Title VI, Title VII, Title IX, or another civil rights law) does not, by itself, resolve whether discipline may be imposed.

- **The First Amendment limits public institutions**

A public institution may not impose discipline or restrict speech that is constitutionally protected—even when the conduct satisfies the administrative harassment standard.

- **Two separate questions**

Investigators and decision-makers must *separately* determine whether the expression is constitutionally protected.

FIRST AMENDMENT

Some Speech is Unprotected

- 1 **True Threats:** Serious expressions of intent to commit unlawful violence against a person or group
- 2 **Incitement:** Speech directed to inciting imminent lawless action and likely to produce it
- 3 **Obscenity:** Narrowly defined; offensiveness alone never qualifies
- 4 **Defamation or Fraud:** False statements of fact that meet the applicable legal standards; not just “someone said something bad about me”
- 5 **Speech Integral to Criminal Conduct:** E.g., extortion or solicitation of a crime

If no recognized exception applies, the expression remains constitutionally protected.

FIRST AMENDMENT

Time, Place & Manner Rules Are OK

TPM Rules CAN Support Restriction

Content-neutral rules governing when, where, and how expression **may occur**

Clear written policies that exist before the conduct at issue

Consistent enforcement against comparable expressive activity, regardless of message

Genuine fit the rule must actually apply to the expressive conduct at issue

Equal application to all speakers and subjects

TPM CANNOT Justify Discipline

No clear policy governing the expressive conduct at issue

Inconsistent history the institution has permitted comparable expressive activity in the past

Content-based or **viewpoint-based** invocation of an otherwise neutral rule

CAUTION: If the institution lacks clear, consistently enforced, content-neutral policies—or has historically permitted comparable expressive activity—discipline generally cannot be justified on time, place, and manner grounds.



0/0

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ID: 176-126-582

Question slide

What would most strengthen the school's ability to regulate Jordan's in-class speech without discriminating based on viewpoint?

Several students found Jordan's comment offensive

0%

Morgan reported feeling personally targeted by Jordan's comments

0%

Jordan made the comments during math class while the teacher was instructing students on fractions

0%

No other students made comments opposing Jordan's during the class discussion on politics

0%





0/0

Join at: vevox.app

ID: 176-126-582

Preparing Results

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0%

No other students made comments opposing Jordan's during the class discussion on politics

0%

RESULTS SLIDE

FIRST AMENDMENT

Targeted Discriminatory Harassment

What it is....

In the *Mahanoy* Supreme Court case, the court said “serious or severe bullying or harassment” is one situation in which schools have a stronger regulatory interest in regulating, even when it occurs off campus and online

The harassment must be **targeting particular individuals**, not merely expressing views on a controversial issue.

The Court **did not hold that schools may always punish it**. It also expressly declined to establish a comprehensive rule for off-campus speech, explaining that the case before it did not require doing so.

Whether discipline is constitutionally permissible depends on a careful, fact-specific balancing of the school’s interests and the student’s free speech rights.

What it is not....

Offensive speech (offensiveness alone does not remove constitutional protection)

Distressing speech (even speech that is deeply distressing or reasonably perceived as discriminatory)

Merely Offensive

Merely Unpopular

Merely Controversial

Merely Perceived as Discriminatory

FIRST AMENDMENT

ALWAYS Check for Viewpoint Discrimination

- **The core question**
Would the proposed discipline rest on disagreement with, or disapproval of, the viewpoint expressed?
- **Offensive is not enough**
Public institutions generally may not regulate or punish speech because it is offensive, disturbing, or unpopular.
- **Institutional disagreement is not enough**
Speech may not be punished because it expresses a viewpoint with which the institution disagrees.
- **Public concern gets strong protection**
This includes speech addressing matters of public concern, which receives the strongest constitutional protection.

The Test

The question is not only whether the school can regulate the speech, but whether it would regulate comparable speech expressing the opposite view

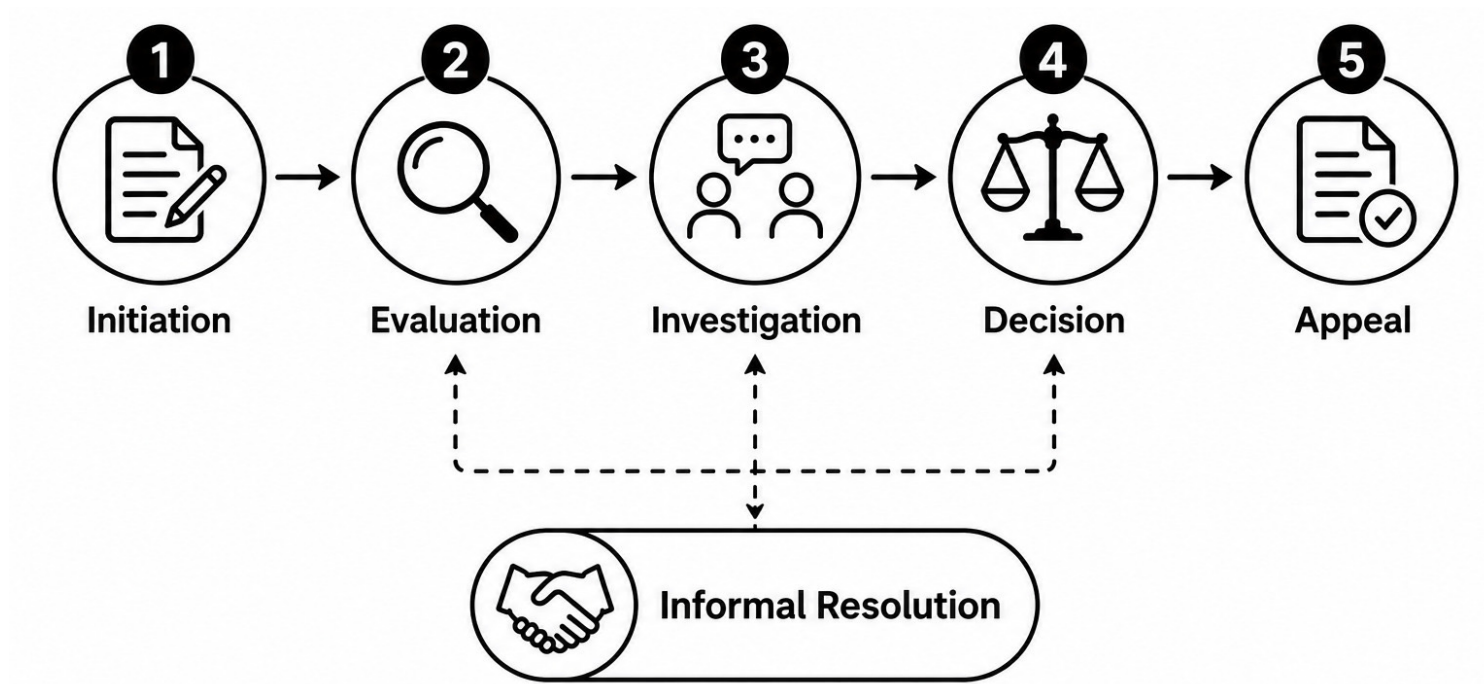
Session 2

**Getting the Initial Response Right
From Report to Response**



THE GRIEVANCE PROCESS

The Title IX Grievance Process



THE GRIEVANCE PROCESS

The 8 Rules of the T9 Grievance Process

1 	EQUITY & REMEDIES Treat both parties equitably. Provide remedies to restore equal access, and follow the grievance process before imposing any disciplinary sanctions.	2 	OBJECTIVE REVIEW Evaluate all relevant evidence (both inculpatory and exculpatory). Credibility cannot be based on a person's status as a complainant, respondent, or witness.
3 	TRAINED & IMPARTIAL PROFESSIONALS No conflicts of interest or bias. Provide required training. Use impartial, non-stereotyped processes.	4 	PRESUMPTION OF NOT RESPONSIBLE The respondent is presumed not responsible until a determination is made at the end of the process.
5 	PROMPT TIMELINES Use reasonably prompt time frames, with limited extensions or delays for good cause and written notice to the parties.	6 	CLEAR SANCTIONS AND REMEDIES Describe the range of possible disciplinary sanctions and remedies.
7 	STANDARD OF EVIDENCE State and apply the same standard (preponderance or clear and convincing) for all formal complaints (students and employees).	8 	PROTECT PRIVILEGED INFORMATION Do not require, allow, rely on, or use questions or evidence that seek privileged information, unless the privilege holder has waived it.

Where are the most mistakes made in civil rights cases?

Evaluation

0%

Investigation

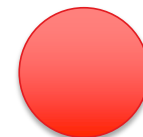
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Decision

0%

Appeal

0%



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Join at: vevox.app

ID: 176-126-582

Preparing Results

Where are the most mistakes made in civil rights cases?

Evaluation



0%

Investigation

0%

Decision

0%

Appeal

0%

RESULTS SLIDE

THE GRIEVANCE PROCESS

A Note on Timing

- The 2020 Title IX rules do not require any particular timeframe for completing the grievance process, but do require reasonably prompt time frames in the grievance procedures—including for appeals and informal resolution
- State law may add its own limits: some states cap the number of steps, set outside deadlines for each step and for the process as a whole, and allow an appeal to a state agency when those deadlines pass
- In practice, it is not uncommon for Title IX investigations to take 60-90+ days and for the entire process to take up to 120-180+ days
- Have realistic timelines in procedures, communicate clearly with parties about the details of the process throughout, and provide frequent updates and extensions in writing with good cause for extensions, if any

INITIATION

What Triggers the Duty to Act

Mandatory Reports

All employees are mandatory reporters in K-12—the institution has “actual knowledge” under Title IX the moment ANY employee has notice of possible Title IX sexual harassment

This includes **teachers, aides, coaches, bus drivers, custodians, administrators, and every other employee**

In higher education, **notice to an “official with authority” triggers the duty**—this is different than a but most institutions designate nearly all employees as responsible employees by policy, with confidential employees the narrow exception

Direct Notice

Direct reports to a principal, dean, HR, or the Title IX Coordinator (by a complainant, respondent, or any third party), including online, email, and voicemail reports and complaints

Indirect reports, including state tip lines, anonymous reports, and notices from law enforcement or child protective services

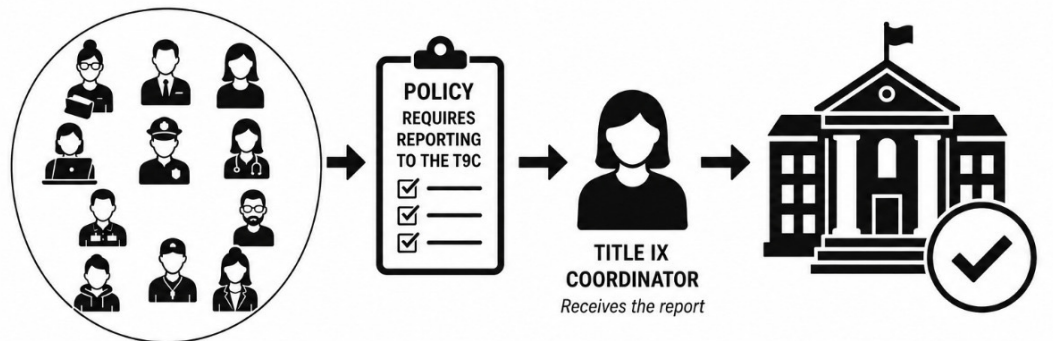
Personal observation, including seeing, hearing, reading (e.g., social media, electronic messages), or otherwise observing or perceiving the conduct

Climate surveys, exit interviews, and clusters of informal complaints that show a **pattern of data** suggesting a problem with one or more respondents or programs

INITIATION

“Actual Knowledge”: Who Has to Know?

- In K-12, notice to ANY employee is actual knowledge to the institution
- Even in higher ed, most employees are “mandatory reporters”
Policy, and often state law, requires employees to promptly forward what they know to the Title IX Coordinator
- **The trap: the employee who stays silent**
What a covered employee knows, the institution knows—“keeping it quiet” still puts the institution on notice and on the clock



INITIATION

Confidentiality and Parallel Reporting Duties

Higher Education

Confidential employees—e.g., licensed counselors, health center staff, and designated advocates—can receive disclosures without triggering the institution's duty to respond, **when policy says so clearly**

Publish who is confidential and who is not, and make clear what happens after a disclosure—best practice is for even confidential employees to report basic, non-identifying data and statistics to Title IX

K-12

There is no confidential employee exception—even a school counselor or social worker's knowledge is the institution's knowledge if they are an employee

Educator licensing bodies may require a separate report when the respondent is a licensed employee

For both K-12 and higher ed, mandatory child abuse reporting runs on its own timeline and to its own agency; a report to the Title IX Coordinator does not satisfy it, and it does not satisfy the requirement to report to Title IX

TRAINING IS ESSENTIAL (AND OFTEN MISSED)

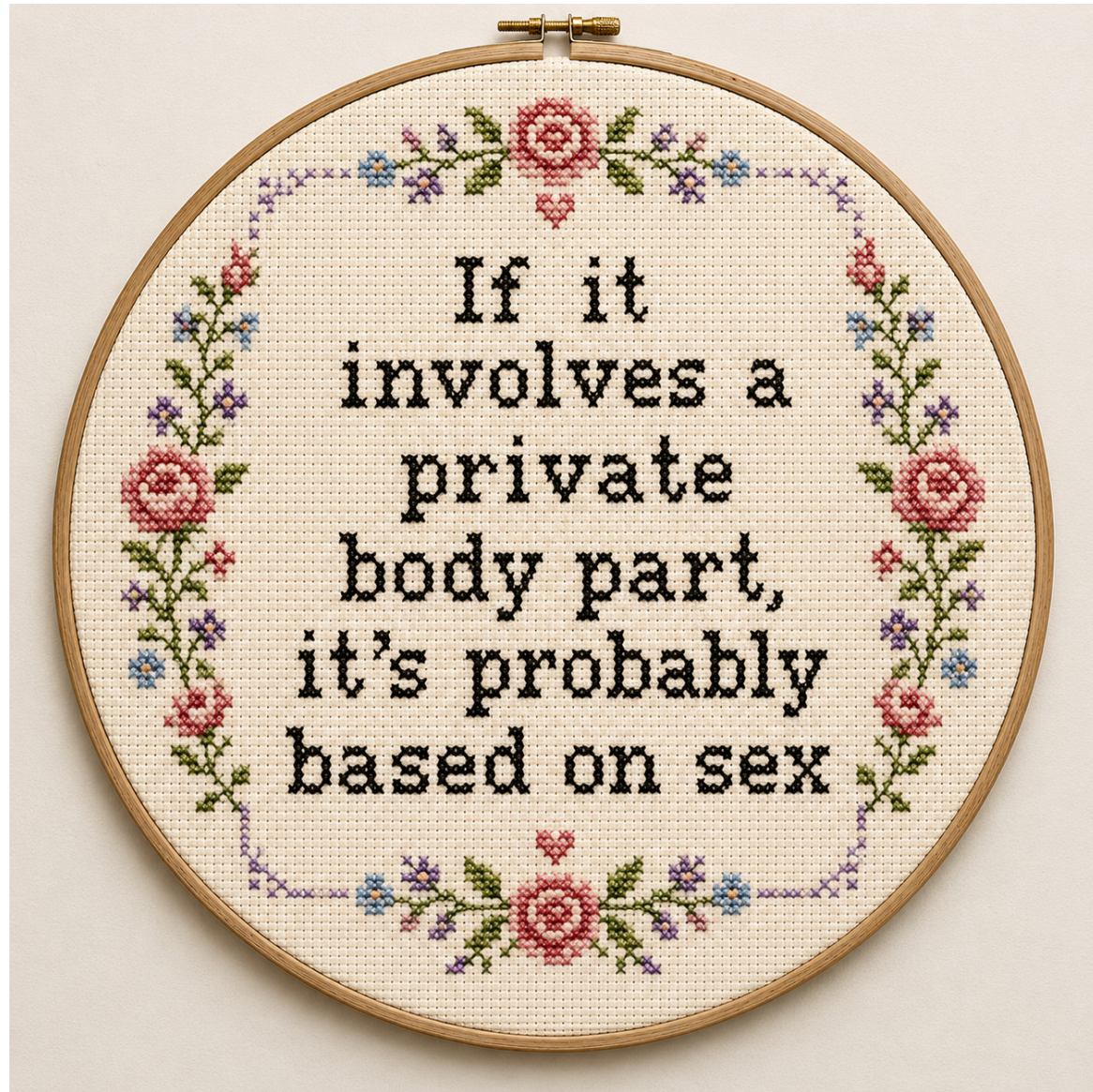
INITIATION

Actual Knowledge of What? Conduct “Based on Sex”

Ask yourself:

- Did the conduct involve or refer to sex, sexual activity, pregnancy, or private body parts?
- Was a person of one sex treated differently from another?
- Does the conduct reflect stereotypes about how boys or girls should look or behave?
- Is sexual conduct directed at someone, even without sexual interest or hostility?
- Is the conduct connected to the person’s actual or perceived sexual orientation or gender identity?
- Is comparable conduct tolerated when directed at one sex but not another?

If changing the person’s sex would likely change the conduct or lead it not to occur, it’s probably based on sex





0/0

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Question slide

Which of the following is NOT likely based on sex?

A teacher expresses their viewpoint online that children cannot be transgender

0%

Older students haze a younger student by poking the younger student in the anus over the clothes

0%

Basketball players slap each other on the butt during sports practice

0%

ALL of the above are likely based on sex

0%

None of the above are likely based on sex

0%





0/0

Join at: vevox.app

ID: 176-126-582

Preparing Results

Which of the following is NOT likely based on sex?

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ALL of the above are likely based on sex



0%

None of the above are likely based on sex

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RESULTS SLIDE

EVALUATION

Title IX Sexual Harassment

The “Big Five”

Sexual Assault (includes rape and criminal sexual contact (formerly “fondling”)—both rely on “consent” constructs)

Domestic Violence

Dating Violence

Stalking (a “course of conduct” aimed at a specific person that would lead a reasonable person to fear for their safety or safety of others or suffer substantial emotional distress)

Employee Quid Pro Quo (an employee of the institution conditioning an aid, benefit, or service of the institution on participation in unwelcome sexual activity)

For all but stalking, one incident is enough!

Hostile Environment Sexual Harassment

Unwelcome Conduct (complainant did not solicit or invite, finds objectionable or offensive)

Based on Sex (federal standard currently ambiguous as to sexual orientation and gender identity)

So Severe

So Pervasive

So Objectively Offensive

Effectively Denies Equal Access

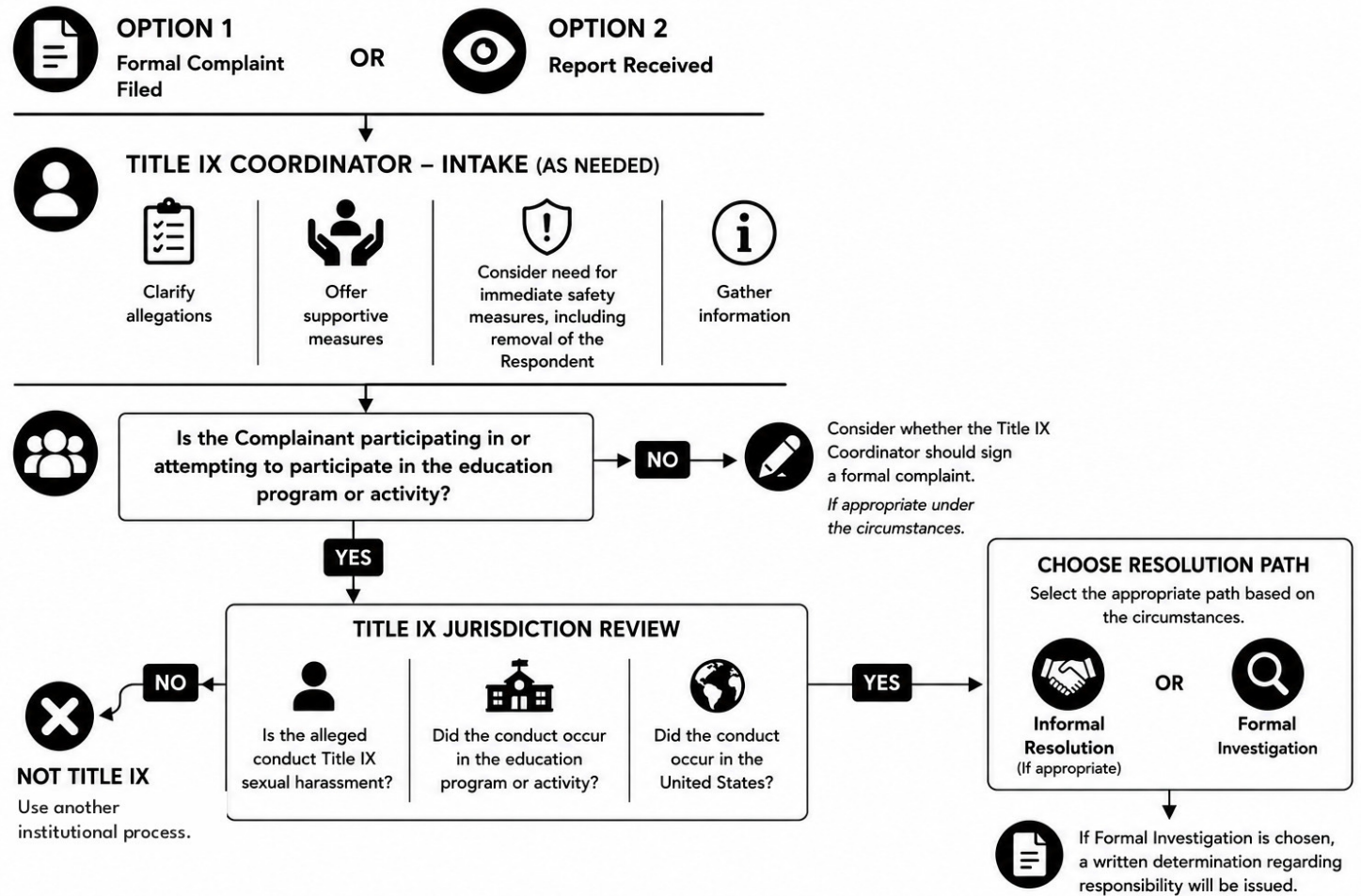
EVALUATION

Title IX Education Program or Activity

- “[I]ncludes locations, events, or circumstances over which the [institution] exercised substantial control over both the respondent and the context in which the sexual harassment occurs”
- In K-12 this reaches classrooms, buses, field trips, and school events; in higher education, think classrooms, residence halls, clinical placements, and student organization houses
- “Operations” can include computer and internet networks, digital platforms, and computer hardware or software owned or operated by or used in the operations of the institution
- If the institution funded, promoted, or sponsored an event or circumstance, it may be part of the education program or activity even if off school grounds and not directly connected to the institution
- Conduct that begins outside of an education program or activity may continue into the education program or activity (“downstream effects”)—but be careful here
- Conduct must also be against a person in the United States to be Title IX sexual harassment

EVALUATION

What If You Don't Know?!



EVALUATION

What Evaluation Is (and Is Not)

Evaluation IS

Assessment of a report or complaint to understand the allegations

Identification of the policy that may have been violated

Consideration of jurisdictional questions

Preservation of evidence that might be lost (direct parties and obtain obvious and internally available evidence—e.g., video surveillance)

Consideration of safety and supportive measures

Evaluation IS NOT

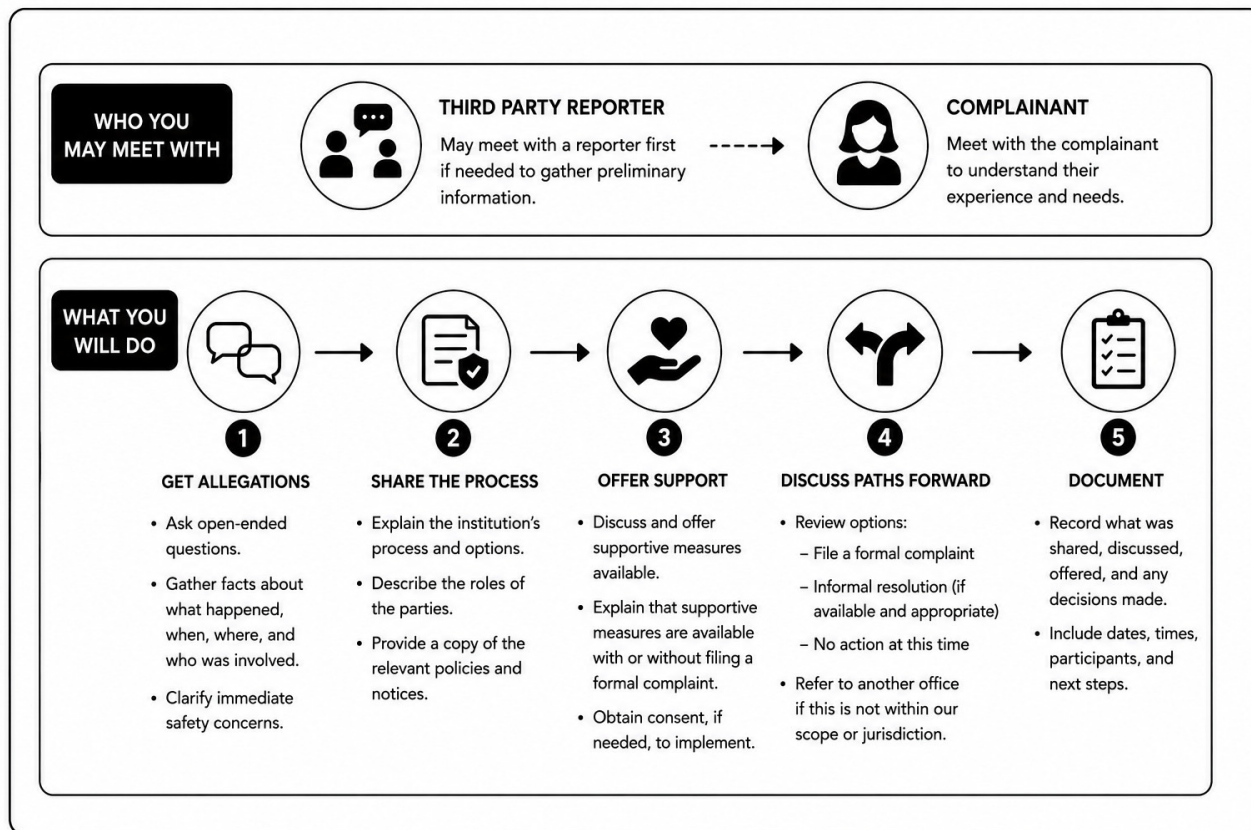
Investigation of the concern

Gathering of evidence

Assessment or **Judgment** of evidence, including existence of evidence, its credibility, or its weight

EVALUATION

How Do You Evaluate? Intake



A NOTE ON NOTES



Good notes protect fairness, support decision-making, and show your work.

GOOD NOTES ALWAYS INCLUDE, NO MATTER HOW INFORMAL THE CASE.



NAMES OF THOSE PRESENT

Name of interviewer, name of interviewee, and anyone else present (e.g., advisors, interpreters, observers).



DATE

The date of the meeting or interview.



TIME / LENGTH

Start time, end time, and total length.



LOCATION

Where the meeting or interview took place (in person, phone, video, other).



SUMMARY OF WHAT WAS DISCUSSED

Key points and information provided.



FULL PICTURE: QUESTIONS ASKED AND ANSWERS GIVEN, IN CONTEXT

Capture the questions asked, the answers given, and the context—tone, demeanor, clarifications, and follow-up.

EVALUATION

Intake Questions

- **Intake questions are aimed at finding out about allegations**
Who, what, when, where, why, how
What happened? Where did it happen? When?
- **“Allegations”**
Facts alleged that, if substantiated, could violate a policy of the institution
- **Documentation Practices**
Prepare professional, clear notes of the intake interview (or record)
Share a summary of the notes (or a transcript) with the complainant
Write allegations and share with the complainant for confirmation
- **What does the complainant want?**
This is a fair question at the intake stage as it may guide which process (formal or informal) you pursue

Evaluation Matters

Evaluation is an important stage. It should not be an afterthought as it prepares for everything that comes after.

EVALUATION

The End of Intake



By the conclusion of intake, the Title IX Coordinator **SHOULD KNOW**



The essential facts needed to identify the applicable grievance process and prepare the Notice of Allegations



Whether the complainant wishes to pursue the Title IX grievance process by filing (or intending to file) a formal complaint



Whether the Title IX Coordinator should sign a formal complaint if the complainant does not



What supportive measures should be offered to the complainant after notice of rights and options



Whether emergency removal or administrative leave should be implemented and, if so, what supportive measures should be offered to the respondent after notice of applicable rights



By the conclusion of intake, the Title IX Coordinator **SHOULD NOT KNOW**



Whether the allegations are true



Whether the complainant or respondent is more credible



Whether the evidence supports a policy violation



Whether the respondent admits or denies the allegations

EVALUATION

Remember Other Policies

- Most schools have policies, either required by state law or adopted voluntarily, that address “lesser sexual harassment” that does not meet the Title IX standards
- This can include conduct that:
 - Is severe but not pervasive; is pervasive or persistent but not severe
 - Does not occur in the US or in the “educational program or activity” (e.g., off campus)
 - Does not “effectively deny” access – “interference” or creating an intimidating, offensive, or hostile environment may be enough
- May not require a “formal complaint”



0/0

Join at: **vevox.app**

ID: **176-126-582**

Question slide

What is a complaint?

Notice of a civil rights concern

0%

Notice of a civil rights concern in writing

0%

Notice of a civil rights concern and a request that the institution help resolve it

0%

Notice of a civil rights concern and a request that the institution investigate it

0%



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Notice of a civil rights concern

0%

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0%

Notice of a civil rights concern and a request that the institution help resolve it



0%

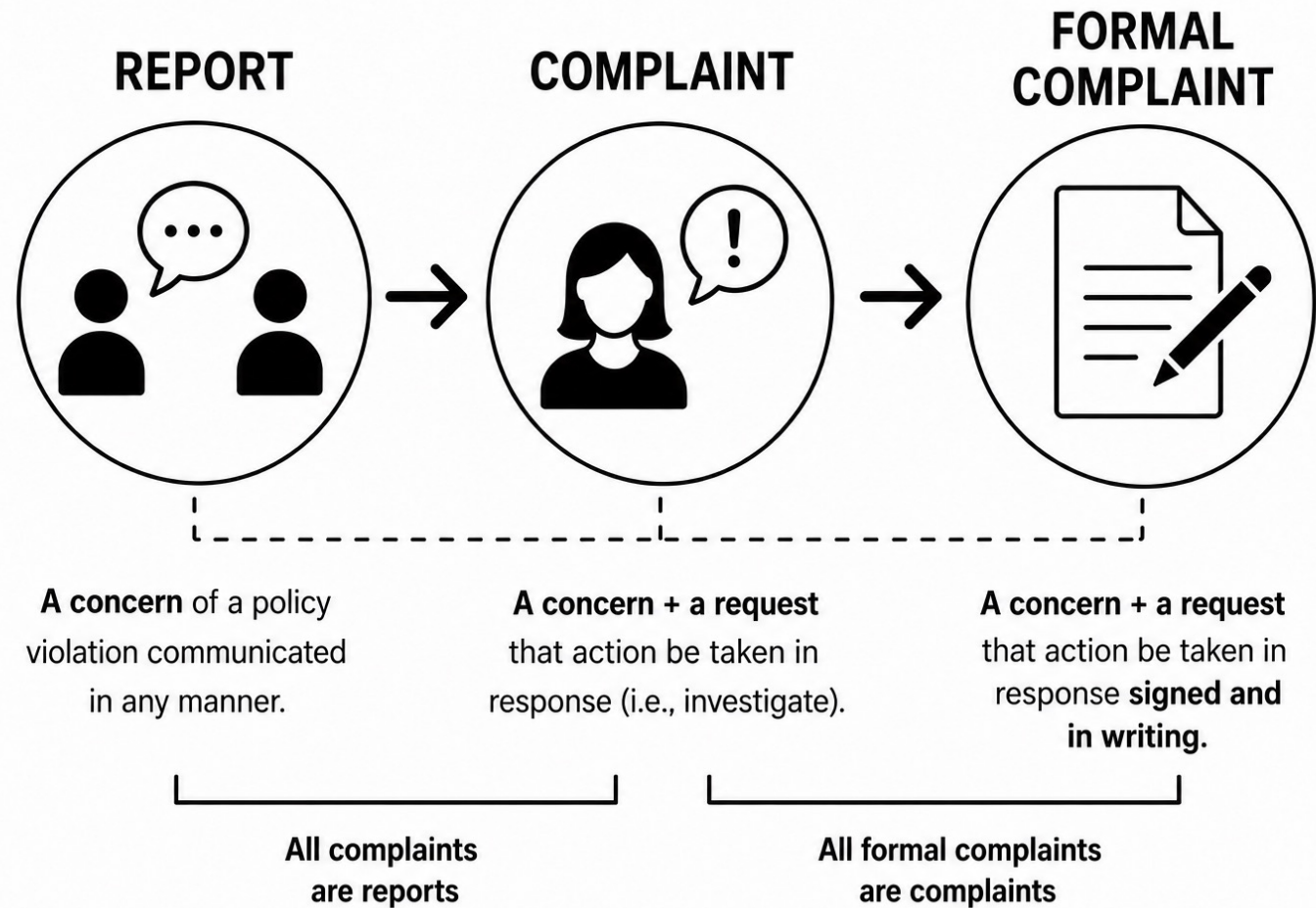
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RESULTS SLIDE

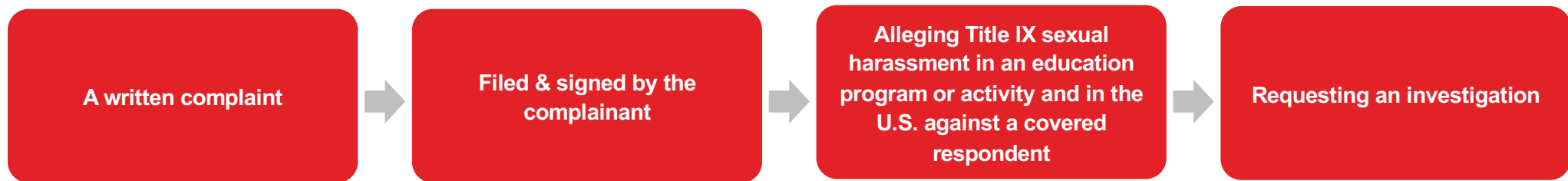
INITIATION

Report vs. Complaint vs. Formal Complaint



INITIATION

The Title IX “Formal Complaint”



The Coordinator can also **sign a formal complaint**, but does not become the complainant if they do



0/0

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Question slide

True or False: Anonymous reports can be dismissed because of a lack of ability to investigate.

True, because you cannot interview the complainant

0%

True, because the report is anonymous

0%

False. If enough information is provided to initiate the process, you should.

0%

False. Every anonymous report must result in an investigation.

0%





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ID: 176-126-582

Preparing Results

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RESULTS SLIDE



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Join at: **vevox.app**

ID: **176-126-582**

Question slide

A news article reports that female students claim male students are sharing AI fake “nudes” of female students; the school has no other information of such conduct. The news article is:

A report of conduct that could be T9SH

0%

A complaint of conduct that could be T9SH

0%

A formal complaint of conduct that could be T9SH

0%

None of the above; it was made to the newspaper (not a school employee) and does not state where the conduct occurred

0%



A student emails a non-OWA and states that they are being severely and pervasively sexually harassed at school by a specific person. The email directly asks for the school to investigate and ends with the student's signature. What is the email?

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A report of conduct that could be T9SH

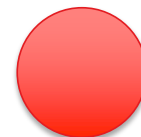
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None of the above because the email does not contain a signature

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##.##%

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##.##%

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##.##%

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##.##%

RESULTS SLIDE



0/0

Join at: vevox.app

ID: 176-126-582

Question slide

You received an oral report and request to investigate, but not in writing. What do you do?

Begin investigating immediately under Title IX because state law allows oral reports

0%

Explain in writing that a formal complaint is required under Title IX, restate the allegations, and ask for the Complainant's confirmation to treat the correspondence as a formal complaint

0%

Notify the Complainant to complete the Institution's formal complaint form because the Complainant's written, signed complaint is required under Title IX

0%

Do not take any further action unless the Complainant files a formal complaint

0%





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Join at: vevox.app

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Preparing Results

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RESULTS SLIDE

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RESULTS SLIDE



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Join at: **vevox.app**

ID: 176-126-582

Question slide

When is a school required to communicate supportive measure and procedural rights to the complainant?

When they receive any information suggesting T9SH is, has been, or may be occurring to the CP

0%

When they receive any report alleging T9SH to the CP

0%

When they receive a report from the CP or verify a report from another source alleging T9SH to the CP

0%

When they receive a signed formal complaint or sign a formal complaint of T9SH against the CP

0%





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Join at: vevox.app

ID: 176-126-582

Results slide

When is a school required to communicate supportive measure and procedural rights to the complainant?

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##.##%

When they receive a signed formal complaint or sign a formal complaint of T9SH against the CP

##.##%

RESULTS SLIDE

INITIATION

Confidentiality



Before a formal complaint is filed, **Title IX requires** the institution to maintain the **confidentiality of the Complainant**.



Information may be shared **only as necessary** to implement supportive measures or with consent (recommended to be in writing).

FOR ALL CASES, RECOMMENDED TO:



LIMIT SHARING.

Share information only with individuals who need to know to provide support or fulfill a legal obligation.



EXPLAIN UP FRONT.

Let the person know how information will be used and with whom it may be shared.



GET CONSENT WHEN POSSIBLE.

Obtain the person's informed consent before sharing information, unless the law requires disclosure.



DOCUMENT CAREFULLY.

Record what was shared, when, how, with whom, and why--e.g., to implement supportive measures.

When is the earliest a school should communicate supportive measures and procedural rights to the respondent?

Upon any notice of T9SH involving the RP

0%

Upon receipt of any report of T9SH involving the RP

0%

When imposing any emergency removal, administrative leave, or supportive measure against the RP

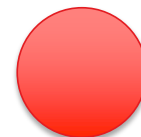
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Upon the signing or filing of any formal complaint of T9SH involving the RP

0%

In the Notice of Allegations involving the RP

0%



When is the earliest a school should communicate supportive measures and procedural rights to the respondent?

Upon any notice of T9SH involving the RP

###.###%

Upon receipt of any report of T9SH involving the RP

###.###%

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###.###%

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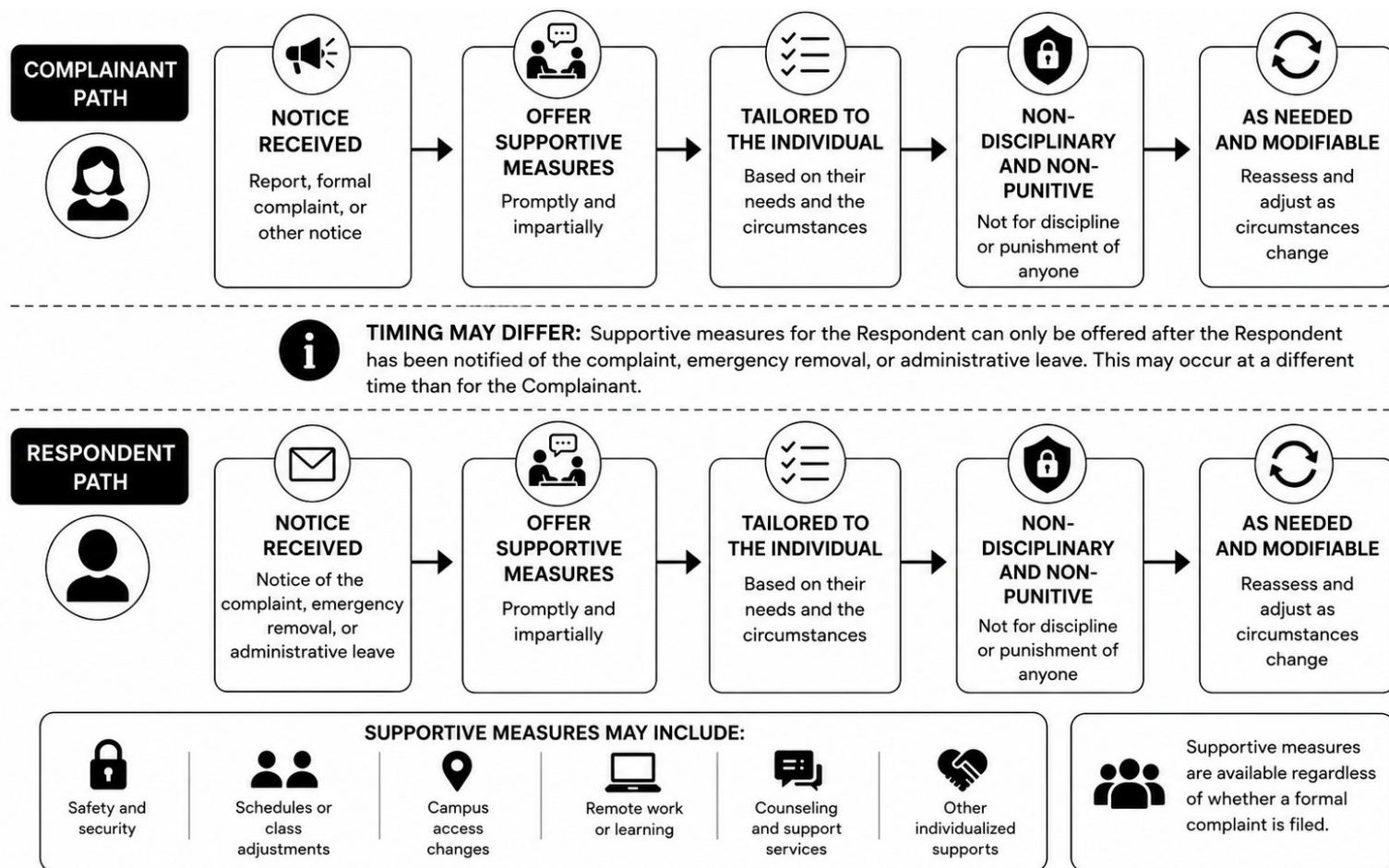
In the Notice of Allegations involving the RP

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RESULTS SLIDE

INITIATION

Supportive Measures



INITIATION

“Supportive Measures Meeting” - Complainant

- **Ask what the Complainant needs to access school or work**
Do not require the Complainant or their parents to come up with supportive measures; be creative
- **Discuss confidentiality (and limits), mandatory reporting obligations, retaliation protections, and next steps for conduct**
Remember that lack of clarity often leads to complaints of lack of care
- **Explain the right to make outside reports or complaints**
Examples include OCR, the EEOC or a state civil rights agency (employment), educator licensing boards, law enforcement, and child protective services (abuse or criminal conduct)
- **Confirm measures or explain next steps for supports**
Do not commit if you are unsure if you can provide measures; explain how you will confirm

Write it Down!

Regardless of whether you meet or speak in person, send a written follow-up message with all details to the Complainant and/or a minor Complainant's parents

When can a school consider an emergency removal or administrative leave?

At any time after receipt of information suggesting T9SH

0%

Only after receiving a report of T9SH

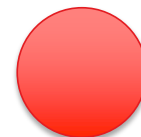
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Only after receiving a formal complaint of T9SH

0%

Only after sending a Notice of Allegations to the RP

0%



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##.##%

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##.##%

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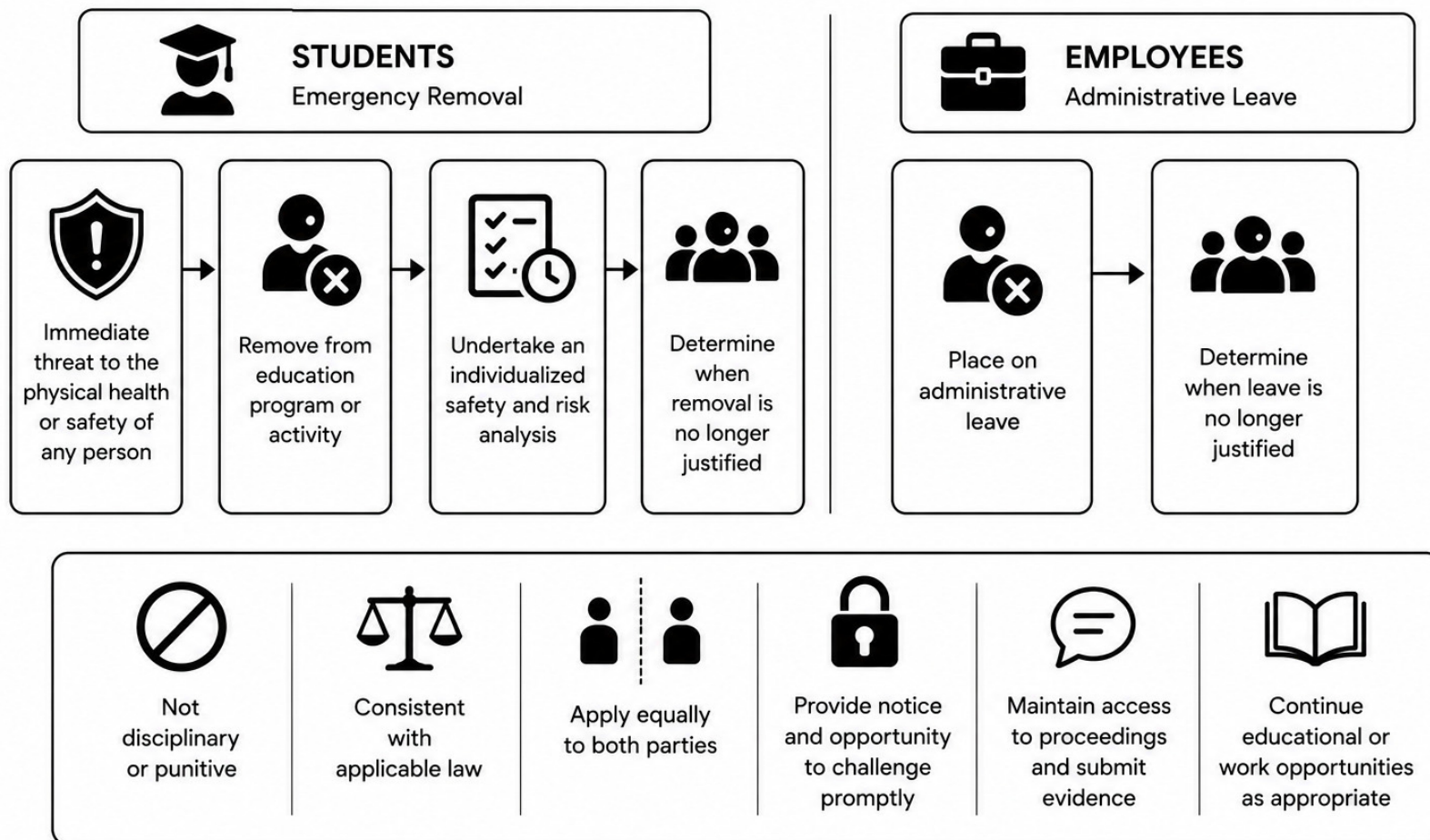
Only after sending a Notice of Allegations to the RP

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RESULTS SLIDE

INITIATION

Removals



What if no formal complaint is filed or signed within a few days of the removal?

Reverse the removal immediately and allow the Respondent back

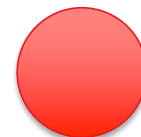
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Contact the Complainant to explain that you need a formal complaint by a firm deadline or the Respondent will be returned

0%

Nothing - there is no limit in the regulations for how long a RP can be removed before a formal complaint is filed

0%



What if no formal complaint is filed or signed within a few days of the removal?

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##.##%

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RESULTS SLIDE

INITIATION

NO FORMAL COMPLAINT?

In a Title IX case, if you do not receive a formal complaint, your response is limited to offering supportive measures to the parties who know about the reported conduct



Offer supportive measures to the complainant and respondent (if the RP knows about the report)



Remember confidentiality limitations may mean the respondent does not know and may never know about the reported conduct



Do not take any further action (e.g., investigation, fact-finding, or determination of responsibility)



DO NOT DISCIPLINE UNDER ANOTHER POLICY

Do not use another policy to address Title IX sexual harassment



####

Join at: vevox.app

ID: 176-126-582

Question slide

True or False. If law enforcement is involved, the institution must pause its involvement.

True. Institution involvement can ruin a law enforcement process.

0%

True, but only if requested by law enforcement.

0%

False. There is no requirement to delay, even if requested by law enforcement.

0%



True or False. If law enforcement is involved, the institution must pause its involvement.

True. Institution involvement can ruin a law enforcement process.

0%

True, but only if requested by law enforcement.

0%

False. There is no requirement to delay, even if requested by law enforcement.

0%

RESULTS SLIDE

INITIATION

Concurrent Law Enforcement Activity

- **Institutional responsibility is independent**
The institution has independent obligations under Title IX and other applicable policies, even if law enforcement is involved
- **Temporary delays may be appropriate**
If requested by law enforcement, the institution may briefly pause parts of the process to allow police to collect evidence
- **What should not be delayed**
Supportive measures and notice of right to file a complaint, evaluation of a complaint, notice of allegations to respondent (unless requested not to provide by law enforcement), notice of delay for law enforcement purposes
- **Coordinate, but remain independent**
May communicate and coordinate with law enforcement, but should make independent decisions

Document It

Document law enforcement's request, the decision to delay (to both law enforcement and parties), and the decision to recommence



####

Join at: vevox.app

ID: 176-126-582

Question slide

The respondent pled guilty or was convicted. Which statement is most accurate?

The institution must accept the criminal findings and find a policy violation.

0%

The institution may not use any of the information from the criminal process.

0%

The institution may consider relevant evidence from the law enforcement process but must make its own determination.

0%

The institution must consider relevant evidence from the law enforcement process in making its determination.

0%



The respondent pled guilty or was convicted. Which statement is most accurate?

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0%

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0%

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0%

The institution must consider relevant evidence from the law enforcement process in making its determination.

0%

RESULTS SLIDE

EVALUATION

Notice of Allegations

 Grievance Process Notice of the Title IX grievance process, including any informal resolution process.	 Allegations Description of the allegations of sexual harassment with enough detail to allow a response before any initial interview.	 Identities Identities of the parties involved, if known.	 Date and Location Date and location of the alleged conduct, if known.	 Presumption Statement that the respondent is presumed not responsible until a determination is made at the conclusion of the grievance process.	 Advisor Notice that the parties may have an advisor of their choice, who may be but is not required to be an attorney.	 Evidence Notice that the parties may inspect and review evidence.	 False Statements Notice of any code of conduct provision that prohibits knowingly making false statements or submitting false information.
 Additional Allegations If the recipient later decides to investigate allegations not included in the original notice, notice must be provided to the parties.							

EVALUATION

Notice of Allegations

What it should contain (required for Title IX)

Detailed allegations (who, what, when, where, why, how)—detailed enough to prepare a response

The specific policy provisions allegedly violated

The presumption of non-responsibility and the standard of proof

Advisor rights, retaliation prohibition, and prohibitions against false statements

Drafting Traps

Drafting allegations that are too vague increases the risk of poor investigations, appeals, administrative complaints, and litigation

Failing to supplement the notice when new allegations or material facts emerge during the investigation

Defining the scope or applicable policies too narrowly, leaving no clear path to address issues that may remain if initial policy violations are not found

EVALUATION

Multiple Complaints

- Three students submit formal complaints against the same respondent, Alex.
- Jamie alleges that Alex repeatedly made sexual comments and jokes about Jamie during a group project and later sent Jamie unwanted sexual messages.
- Morgan alleges that, several months later, Alex repeatedly touched Morgan in a sexual manner during an extracurricular activity despite Morgan moving away and telling Alex to stop.
- Taylor alleges that Alex repeatedly made sexual gestures and comments toward Taylor while they were attending an event and later shared a sexualized image of Taylor with other students.
- The incidents occurred at different times and locations, involved different witnesses, and relied on largely different evidence, but were filed at the same time.

Should the complaints be consolidated?

Yes, because they involve multiple complaints against a single respondent

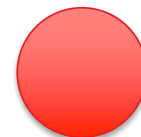
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Yes, because the cases involve the same facts and circumstances

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No, because the cases are too distinct

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Join at: vevox.app

ID: 176-126-582

Results slide

Should the complaints be consolidated?

Yes, because they involve multiple complaints against a single respondent

##.##%

Yes, because the cases involve the same facts and circumstances

##.##%

No, because the cases are too distinct

##.##%

RESULTS SLIDE

EVALUATION

Consolidation

WHEN CAN COMPLAINTS BE CONSOLIDATED?

A recipient may consolidate formal complaints when the allegations arise out of the same facts or circumstances and involve:



More than one respondent



More than one complainant against one or more respondents



One party against the other party

KEY REQUIREMENT



SAME FACTS OR CIRCUMSTANCES

The allegations of sexual harassment must arise out of the same facts or circumstances.

MULTIPLE PARTIES

When a grievance process involves more than one complainant or more than one respondent, references to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.



A formal complaint is filed, but the conduct alleged, even if substantiated, would not be Title IX sexual misconduct in an education program or activity or in the U.S. No notice of allegation was sent. What should you do?

Notify the Complainant in writing that you are dismissing the complaint and will address it under a non-Title IX policy, if appropriate

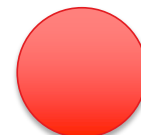
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Issues a notice of allegation to the Respondent. Then issue notices of dismissal to both parties.

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Issues notices of allegations and dismissals to both parties.

0%



A formal complaint is filed, but the conduct alleged, even if substantiated, would not be Title IX sexual misconduct in an education program or activity or in the U.S. No notice of allegation was sent. What should you do?

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0%

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0%

Issues notices of allegations and dismissals to both parties.

0%

RESULTS SLIDE

EVALUATION

Dismissal

MUST DISMISS

(Does not meet Title IX scope)



Even if true, the conduct would not constitute sexual harassment under §106.30.



The conduct did not occur in the recipient's education program or activity.



The conduct did not occur against a person in the United States.

MAY DISMISS

(At any time)



The complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint or an allegation.



The respondent is no longer enrolled or employed by the recipient.



Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination.

NOTICE REQUIRED

(For all dismissals)



Promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

EVALUATION

Dismissal

- Title IX *requires* that notices of allegations be sent to both parties promptly upon receipt of a formal complaint
- It is appropriate to dismiss a formal complaint if the alleged facts, if substantiated, would not constitute a violation of policy; Title IX requires the dismissal to be in writing *to both parties*
- For Title IX, if you dismiss for a *jurisdictional* basis, you *may* use another policy to address the alleged conduct, but if you dismiss for a *permissive/discretionary* basis, you *may not*—the Title IX process is the appropriate process to use for alleged conduct that, if proved, would be Title IX sexual harassment
- Best practice is to notify the parties in the dismissal document or in an email or other written communication shortly thereafter what, if any, other process will be used



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Join at: vevox.app

ID: 176-126-582

Question slide

Formal complaint: “My daughter has been severely sexually harassed at school all year. Everyone knows what happened. The institution needs to investigate.” The institution asks for details about who was involved, what happened, when it occurred, and why the parent believes it was harassment. The parent never responds, but ongoing news reports make clear the parent is still alleging discrimination occurred. What do you do?

Offer supportive measures, but do not investigate unless the parent provides additional information

0%

Try your best to investigate because you have a formal complaint and it is clear that the parent believes harassment occurred under Title IX

0%

Dismiss the complaint because the parent refused to cooperate

0%

In writing explain what information is needed, provide a deadline to supply it, and if not received dismiss in writing

0%





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Join at: vevox.app

ID: 176-126-582

Preparing Results

Formal complaint: “My daughter has been severely sexually harassed at school all year. Everyone knows what happened. The institution needs to investigate.” The institution asks for details about who was involved, what happened, when it occurred, and why the parent believes it was harassment. The parent never responds, but ongoing news reports make clear the parent is still alleging discrimination occurred. What do you do?

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0%

Dismiss the complaint because the parent refused to cooperate

0%

In writing explain what information is needed, provide a deadline to supply it, and if not received dismiss in writing

0%

RESULTS SLIDE

EVALUATION

Dismissal of Conclusory Allegations

- OCR's [Case Processing Manual](#) allows dismissal of an allegation that, on its face or as clarified, lacks sufficient factual detail (e.g., who, what, where, when, how), or is so speculative, conclusory or incoherent that OCR cannot infer that discrimination or retaliation may have occurred or may be occurring
- It provides that this provision applies where the complaint allegation (including any additional information provided by the complainant) does not provide sufficient information to raise the allegation above the level of speculation, stating: "The complaint must provide more than bare conclusions of alleged violations of the laws and regulations enforced by OCR."
- Before dismissing for this basis, OCR will contact the complainant either by telephone or in writing to explain the information necessary to open an investigation, request that the information be received within 14 calendar days, and inform the complainant that the allegation(s) will be dismissed if the information is not received by that date. It can then dismiss if no request for more time and appropriate information is not received by the deadline.

EVALUATION

Dismissal of Conclusory Allegations

- If the available information is not enough to determine whether the reported conduct may constitute sex discrimination or which grievance process applies, the Title IX Coordinator should seek clarification before deciding whether to proceed.
- Clarification may be needed regarding:
 - Who was involved
 - What conduct is alleged
 - When and where it occurred
 - Whether the conduct may fall within the school's Title IX policy
 - Whether the complainant wishes to pursue formal resolution
- Before declining to initiate a grievance process, the Coordinator should:
 - Explain what additional information is needed
 - Provide a reasonable opportunity to supply it
 - Make and document reasonable follow-up efforts
- If sufficient information is still not provided, the Coordinator may decline to initiate the grievance process at that time, document the basis for the decision, and advise that the matter may be reconsidered if additional information becomes available.

ROLES

Who Does What: Roles in a Title IX Case

The Institution's Team

Title IX Coordinator—receives reports, explains processes, oversees supportive measures, weighs signing a formal complaint, decides/implements dismissals, keeps the process moving and helps other roles do their jobs

Investigator—gathers evidence for and against, shares directly related evidence, writes the report

Decision-maker—oversees written Q&A process, writes final determination

Appellate decision-maker—reviews limited challenges to dismissals and final determinations

Informal resolution facilitator—facilitates informal resolutions between parties

The Parties and Others

Complainant—the person allegedly subject to Title IX sexual harassment

Respondent—the person who allegedly engaged in Title IX sexual harassment

Parent/Guardian of Minor Party—can participate in the process and act on a party's behalf, including filing a formal complaint, except standing in for the party in an interview

Advisor—any person, in addition to a minor complainant's parents/guardians, who supports a party by attending meetings, engaging in communications, or otherwise participating in the process with the party (can be, but need not be, an attorney)

ROLES

T9 Roles

	 TITLE IX COORDINATOR	 INVESTIGATOR	 DECISION-MAKER	 APPEAL OFFICER	 INFORMAL RESOLUTION FACILITATOR
 TITLE IX COORDINATOR	✓	✓	×	×	✓
 INVESTIGATOR	✓	✓	×	×	✓
 DECISION-MAKER	×	×	✓	×	✓
 APPEAL OFFICER	×	×	×	✓	✓
 INFORMAL RESOLUTION FACILITATOR	✓	✓	✓	✓	✓



Can serve in this role



Allowed, but not recommended



Cannot serve in this role



IMPORTANT FOR EVERY ROLE:

- Must be trained
- Free of conflicts and bias
- Roles can't double up where regulations prohibit it



SMALL-TEAM REALITY:

When you run out of hats, look outside—shared services, neighboring institutions, or outside investigators.



0/0

Join at: vevox.app

ID: 176-126-582

Question slide

When a parent files a formal complaint about their child, the parent should be referred to as:

The Reporting Party

0%

The Reporting Parent

0%

The Complainant

0%

The Complainant's Parent

0%



When a parent files a formal complaint about their child, the parent should be referred to as:

The Reporting Party

0%

The Reporting Parent

0%

The Complainant

0%

The Complainant's Parent

0%

RESULTS SLIDE

When a Title IX Coordinator signs a formal complaint on behalf of the institution, the person alleged to have been subjected to the alleged conduct is called:

Alleged victim

0%

Claimant

0%

Complainant

0%

Affected Party

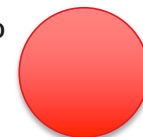
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Impacted Party

0%

Accuser

0%



When a Title IX Coordinator signs a formal complaint on behalf of the institution, the person alleged to have been subjected to the alleged conduct is called:

Alleged victim

0%

Claimant

0%

Complainant

0%

Affected Party

0%

Impacted Party

0%

Accuser

0%

RESULTS SLIDE

Session 3

**Building a Legally Sound Grievance Process
Fairness, Impartiality, and Procedural Integrity**



THE GRIEVANCE PROCESS

The 8 Rules of T9 Investigations

1  Recipient Bears the Burden The recipient (not the parties) has the burden of proof and the burden of gathering evidence.  Cannot access, disclose, or use a party's treatment records (e.g., medical, counseling) without the party's voluntary, written consent (or parent consent if not an eligible student).	2  Present Evidence Provide an equal opportunity for both parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.	3  No Restrictions on Discussion Do not restrict either party's ability to discuss the allegations under investigation or to gather and present relevant evidence.	4  Advisor of Choice Provide the same opportunity for both parties to have an advisor of their choice, who may be, but is not required to be, an attorney. You may set limits on advisor participation, but any limits must apply equally to both parties.	5  Notice of Meetings Provide written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings to any party whose participation is invited or expected, with sufficient time to prepare.
6  Access to Evidence Provide both parties an equal opportunity to inspect and review all evidence obtained as part of the investigation that is directly related to the allegations, including evidence the recipient does not intend to rely on and all inculpatory and exculpatory evidence.	7  10-Day Review and Response Before completing the investigative report, send the evidence to each party (and advisor, if any) in an electronic format or hard copy, and provide at least 10 days for a written response, which the investigator must consider.	8  Investigative Report Create an investigative report that fairly summarizes relevant evidence. At least 10 days prior to a hearing (if required) or other time of determination, send the report to each party (and advisor, if any) in an electronic format or hard copy for their review and written response.		

INVESTIGATION

Why Investigate?

- **A safe, fair school**
Addressing misconduct promptly can help with deterrence
- **Morale & trust**
People report more where complaints are handled credibly
- **Reputation**
External accountability can create long-lasting damage
- **Compliance**
Many laws require specific investigatory responses (e.g., Title IX)
- **Legal protection**
Prompt, appropriate, documented action is the backbone of every defense.

The Key

An investigation is the institution proving—to the parties, to OCR/DOJ/etc., and to a jury—that it took the report seriously

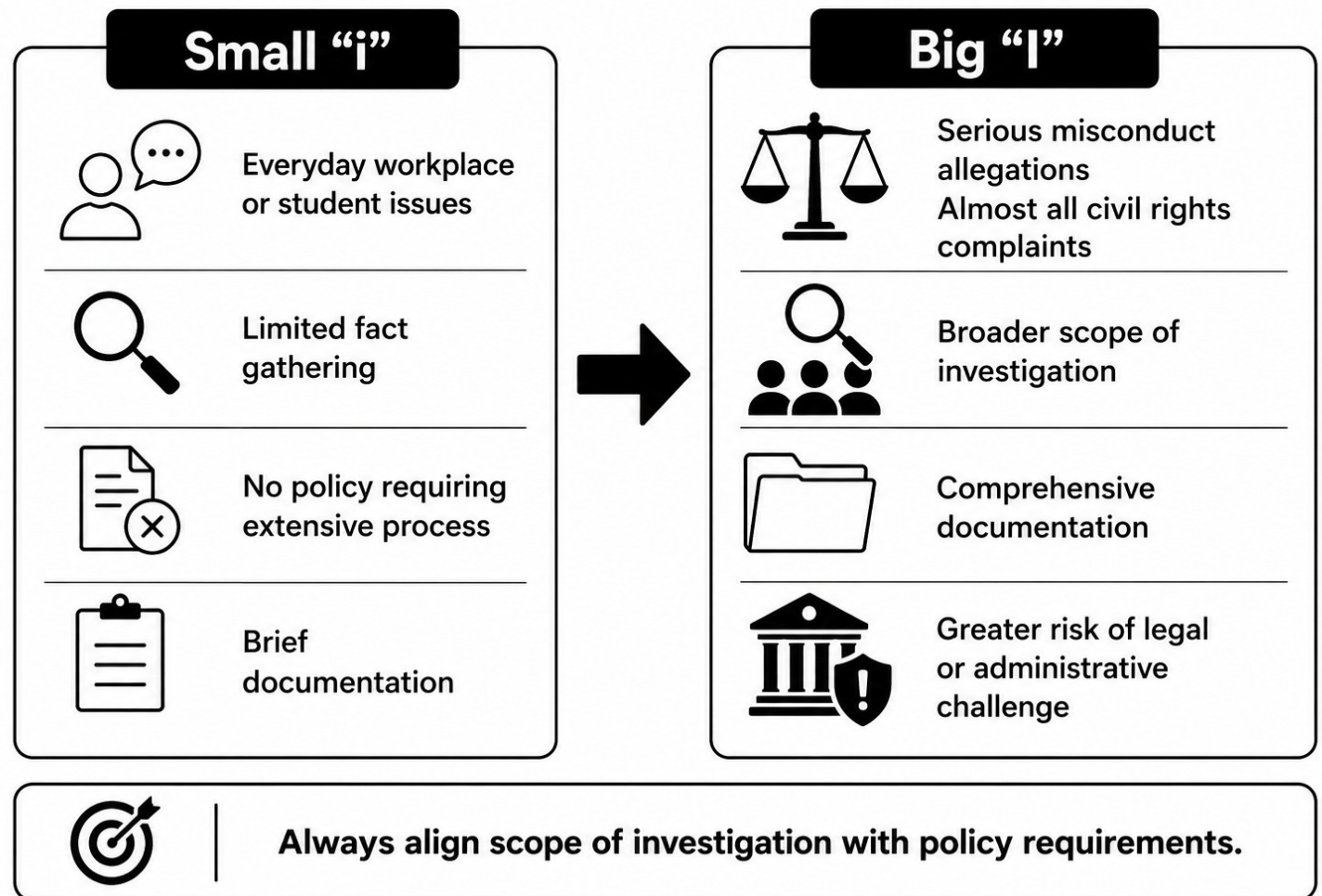
INVESTIGATION

Hallmarks of Every Investigation



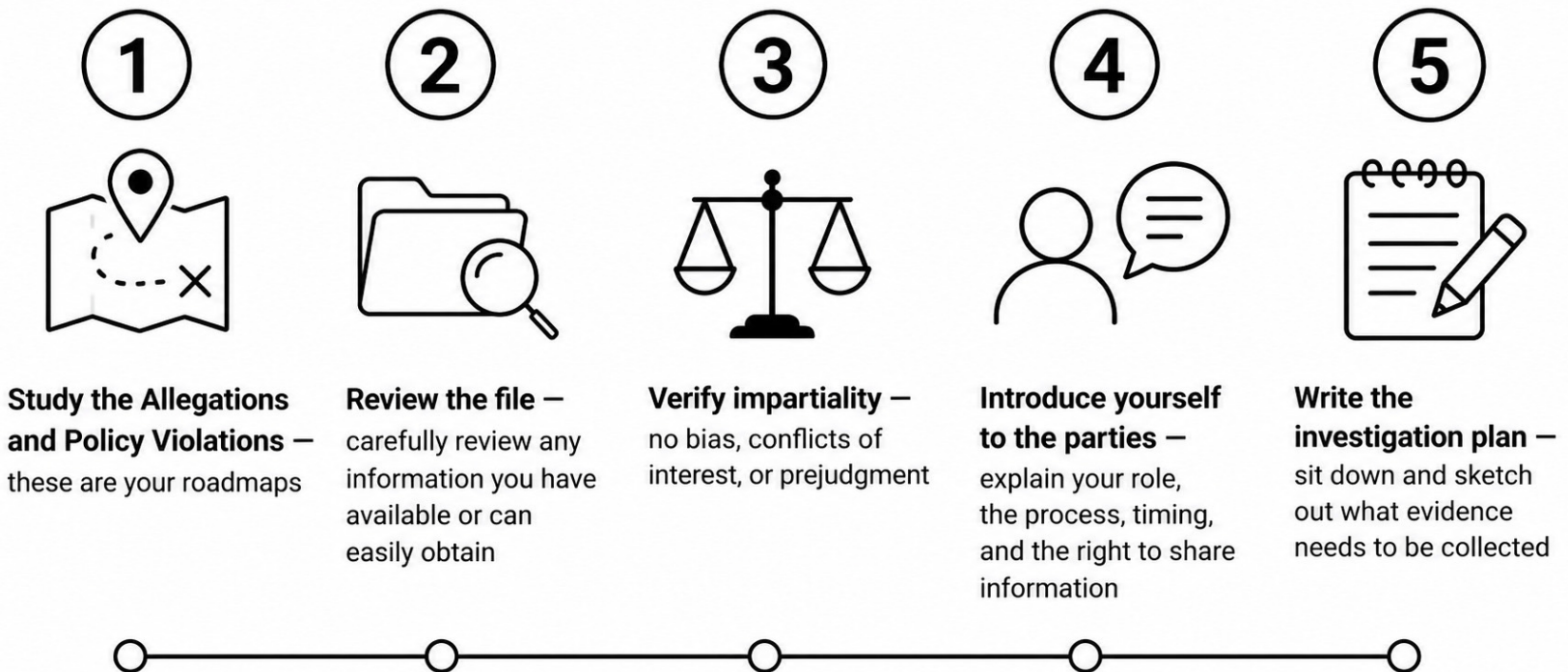
INVESTIGATION

Investigation Scope



INVESTIGATION

Getting Ready to Investigate



INVESTIGATION

Impartial Means Three Things

Three partiality traps

Bias: Leanings about the people—“believe women,” “women often lie about sexual assault,” judgment based on race, color, national origin, sexuality, etc.

Conflict of interest: A stake in the outcome; need not be financial

Prejudgment: Deciding before the evidence is in—“this is going to be they said, they said”

How to avoid the traps

Recognize your biases so you can put them to the side

Have a blank mind—No theories until the evidence is in

Treat parties the same to the greatest extent possible

Even if you know you are impartial, sometimes it is worth considering even the appearance of impropriety



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Join at: vevox.app

ID: 176-126-582

Question slide

Which should be avoided to protect impartiality?

The same investigator is assigned to cross-complaints by parties against each other

0%

The investigator recommends a supportive measure for one party but not the other

0%

The investigator repeatedly firmly redirects one party for unprofessional behavior

0%

All of the above should be avoided inherently

0%

None of the above should be avoided inherently

0%



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0%

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0%

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0%

None of the above should be avoided inherently

0%

RESULTS SLIDE

Investigation

Practice – Investigation Plan



Jordan filed a Title IX complaint against another student in February.

Two weeks later, Jordan's teacher removed Jordan from a student leadership position, explaining that Jordan was "no longer a good fit for the team."

Jordan alleges the removal was retaliation for filing the Title IX complaint.

INVESTIGATION

The Investigation Plan

1 IDENTIFY THE ELEMENTS IN THE ALLEGATION



READ THE ALLEGATION CAREFULLY

Understand exactly what conduct is being alleged.



IDENTIFY THE APPLICABLE POLICY AND ELEMENTS

Look to the policy definition and any guidance to list each required element.



BREAK THE ALLEGATION INTO DISCRETE ELEMENTS

Write each element as a question that must be answered.

Investigation

Practice – Investigation Plan

 STEP 1: TITLE IX RETALIATION ELEMENTS			
1		PROTECTED ACTIVITY Did Jordan engage in protected activity under Title IX (e.g., filing a complaint)?	
2		ADVERSE ACTION Would a reasonable student find the teacher's removal from the leadership position materially adverse?	
3		CAUSAL CONNECTION Is there evidence that the removal was because of Jordan's protected activity?	
4		LEGITIMATE, NON-RETALIATORY REASON WAS PROVIDED Does the evidence support a legitimate, non-retaliatory reason for the removal?	
5		PRETEXT Is there evidence that the stated reason is a pretext for retaliation?	

➔

 STEP 2: PRETEXT ANALYSIS		
To address Step 1, #5 (pretext), consider:		
	Was there documentation of performance or conduct issues before the complaint?	
	What was the timing between the protected activity and the removal?	
	What evidence supports the reason given ("no longer a good fit for the team")?	
	How has the school treated other students in similar situations?	
	Have the explanations for the removal been consistent over time?	

Investigation

Practice – Investigation Plan



Jordan filed a Title IX complaint against another student in February.

Two weeks later, Jordan's teacher removed Jordan from a student leadership position, explaining that Jordan was "no longer a good fit for the team."

The investigator interviews Jordan, who says, "I was removed because I filed the complaint."

The investigator interviews the teacher, who says, "Absolutely not. It was because of Jordan's declining performance and professionalism."



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Join at: vevox.app

ID: 176-126-582

Question slide

What should the investigator do if the parties provide conflicting accounts?

Require the Complainant to provide some additional evidence to support their claim

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Require the Respondent to provide some additional evidence refuting the claim

0%

Actively seek additional relevant evidence that could corroborate or refute those facts

0%





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Join at: vevox.app

ID: 176-126-582

Preparing Results

What should the investigator do if the parties provide conflicting accounts?

Require the Complainant to provide some additional evidence to support their claim

0%

Require the Respondent to provide some additional evidence refuting the claim

0%

Actively seek additional relevant evidence that could corroborate or refute those facts



0%

RESULTS SLIDE

INVESTIGATION

Identifying Evidence

- The institution, not the parties, is responsible for conducting a thorough investigation and developing the evidentiary record
- Use the allegations to identify reasonably available sources of relevant information, including witnesses, documents, electronic records, and other evidence the parties may not have identified
- Do not count on parties to confirm witness availability; explain the importance of witnesses to the case if they are reluctant to share contact names

INVESTIGATION

The Investigation Plan

 POLICY ELEMENT (What must be proven?)	 KEY QUESTION (What do we need to answer?)	 WHAT SHOULD YOU LOOK FOR? (Types of information to look for)	 WHY DOES IT MATTER? (What does it help establish?)	 WHERE MIGHT YOU FIND IT? (Potential sources)
1  Protected Activity Did the Complainant engage in activity protected by the policy?	What protected activity occurred?	- Complaint or report - Emails or messages - Statements to school officials - Witnesses to the report	Determines whether the Complainant engaged in activity protected by Title IX.	- Complainant - Title IX records - Emails - Witnesses
2  Materially Adverse Action Did the Complainant experience an action that would deter a reasonable person?	What action allegedly harmed the Complainant?	- Discipline - Loss of opportunities or benefits - Schedule or assignment changes - Exclusion or isolation - Negative evaluations - Changes in treatment	Determines whether the action could deter a reasonable person from engaging in protected activity.	- Parties - Supervisors - Personnel/student records - Emails - Witnesses
3  Knowledge Did the Respondent know about the Complainant's protected activity?	How did the Respondent learn about the protected activity?	- Emails - Meetings or conversations - Witness testimony - Timeline of awareness	Determines whether the Respondent knew of the protected activity before taking the adverse action.	- Respondent - Witnesses - Emails - University records
4  Causal Connection Is there a link between the protected activity and the adverse action?	What evidence links the protected activity to the adverse action?	- Timing between events - Statements or comments - Inconsistent explanations - Comparator evidence (others not engaged in protected activity) - Pattern of behavior	Determines whether the adverse action was likely because of the protected activity rather than for another legitimate reason.	- Parties - Witnesses - Emails - Personnel/student records

Investigation

Practice – Investigation Plan



Jordan files a Title IX complaint alleging that four other students—Sam, Casey, Devon, and Riley—engaged in sex-based harassment during the fall semester.

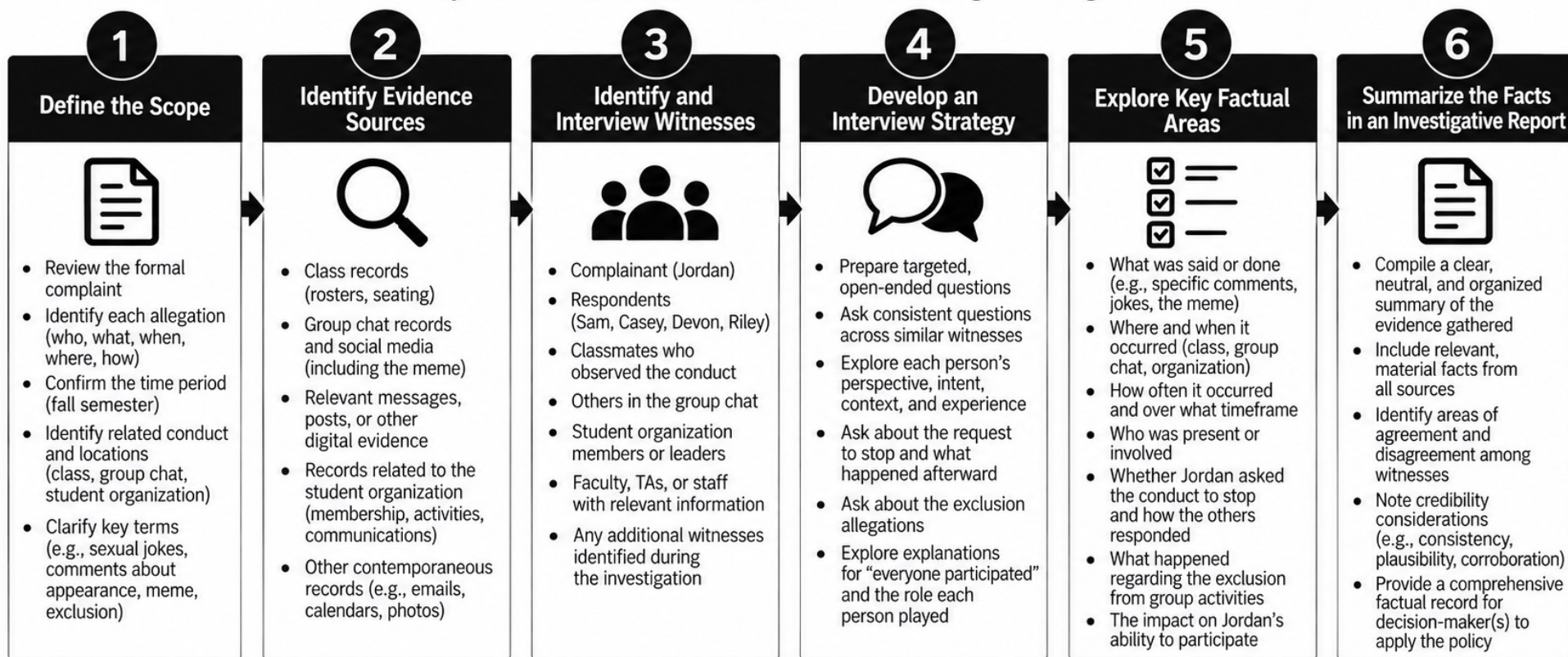
Jordan alleges that the group repeatedly made sexual jokes during class and in a group chat, commented on Jordan's body and appearance, and created and shared a meme comparing Jordan to a sexualized image. Jordan states that after asking the group to stop, the students continued the conduct and began excluding Jordan from group activities.

Jordan alleges that the conduct occurred over several months, caused significant emotional distress, and interfered with Jordan's ability to participate in class and in a student organization.

Sam, Casey, Devon, and Riley deny harassing Jordan. They state that the comments were jokes, that everyone in the group participated in similar humor, including Jordan, and that Jordan was not intentionally excluded.

INVESTIGATION

The Investigation Plan



INVESTIGATION

Types of Evidence



Communications

Texts, group chats, direct messages, emails, social media posts



Documents

Written materials, memos, notes, syllabi, policies



Photos and Videos

Images, videos, screenshots, memes, or other digital media



Witness Testimony

Classmates, friends, faculty, staff, or others with relevant information



Institutional Records

Class rosters, seating charts, student organization records, event records, access logs



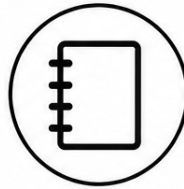
Audio Recordings

Recordings (if lawfully obtained and admissible)



Electronic Metadata

Timestamps, sender information, location data, device information



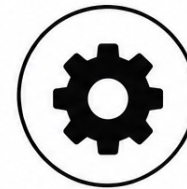
Contemporaneous Notes

Personal notes, journal entries, or records made at or near the time



Physical Evidence

Items or materials (e.g., flyers, objects, clothing)



Other Evidence

Any additional information relevant to understanding what occurred

TITLE IX TIPS

Directly Related vs. Relevant

Directly Related Evidence

Title IX requires that the school share all evidence directly related to the allegations with both parties—whether it supports or undermines the allegations

That includes evidence the institution doesn't intend to rely on to reach a determination if it's "directly related"

Must give both parties a 10-day opportunity to respond in writing; the investigator must consider those responses before finalizing the investigation report

Relevant

Title IX requires that the investigator summarize all relevant evidence in the investigation report

Relevant evidence tends to make a material fact more or less likely to be true; ask whether the evidence helps answer a question the decision-maker must resolve

Information that is unrelated, duplicative, or does not bear on the allegations generally should not be relied upon

Not relevant: Privileged information, treatment records without written consent, and evidence about a complainant's sexual predisposition or prior sexual behavior (except the limited Title IX exceptions)

The respondent was cited for cheating on an exam six months before alleged verbal sexual harassment

Directly related

0%

Relevant

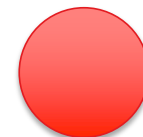
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Both

0%

Neither

0%



The respondent was cited for cheating on an exam six months before alleged verbal sexual harassment

Directly related		0%
Relevant		0%
Both		0%
Neither	<input checked="" type="text"/>	0%

RESULTS SLIDE

The respondent was cited for underage drinking six months before an alleged incident

Directly Related

0%

Relevant

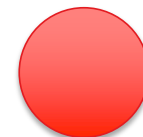
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Both

0%

Neither

0%



The respondent was cited for underage drinking six months before an alleged incident



RESULTS SLIDE

The respondent was cited for underage drinking six months before an alleged sexual assault involving alcohol

Directly Related

0%

Relevant

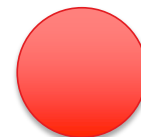
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Both

0%

Neither

0%



The respondent was cited for underage drinking six months before an alleged sexual assault involving alcohol

Directly Related

0%

Relevant

0%

Both

0%

Neither

0%

RESULTS SLIDE

The complainant says the respondent in a sexual harassment case has a reputation for being “creepy” and has several witnesses who wish to testify to support that claim.

Directly Related

0%

Relevant

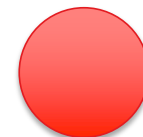
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Both

0%

Neither

0%



The complainant says the respondent in a sexual harassment case has a reputation for being “creepy” and has several witnesses who wish to testify to support that claim.

Directly Related



0%

Relevant

0%

Both

0%

Neither

0%

RESULTS SLIDE

A witness says that the complainant told a friend who told the witness's sister that they consented but later the complainant denies consenting

Directly Related

0%

Relevant

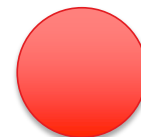
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Both

0%

Neither

0%



A witness says that the complainant told a friend who told the witness's sister that they consented but later the complainant denies consenting

Directly Related

0%

Relevant

0%

Both

0%

Neither

0%

RESULTS SLIDE



0/0

Join at: vevox.app

ID: 176-126-582

Question slide

The complainant has previously filed another similar Title IX complaint against someone else

Directly Related

0%

Relevant

0%

Both

0%

Neither

0%



The complainant has previously filed another similar Title IX complaint against someone else

Directly Related		0%
Relevant		0%
Both	<input checked="" type="text"/>	0%
Neither		0%

RESULTS SLIDE

The complainant wants to share counseling records that disclose emotional distress. The respondent wants to ask quesitons about it.

Directly Related

0%

Relevant

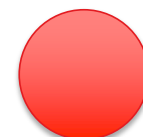
0%

Both

0%

Neither

0%



The complainant wants to share counseling records that disclose emotional distress. The respondent wants to ask quesitons about it.

Directly Related		0%
Relevant		0%
Both	<input checked="" type="text"/>	0%
Neither		0%

RESULTS SLIDE

The respondent describes information the complainant previously shared about the complainant’s medical records to show a mental health impairment that can lead to false allegations

Directly Related		0%
Relevant		0%
Both		0%
Neither		0%



The respondent describes information the complainant previously shared about the complainant's medical records to show a mental health impairment that can lead to false allegations

Directly Related



0%

Relevant

0%

Both

0%

Neither

0%

RESULTS SLIDE

INVESTIGATION

Preparing for Interviews

Prepare

An outline per interviewee, mapped to elements

Documents ready to show, exhibits marked and dated

A standard intro: role, process, confidentiality limits, no-retaliation, expectations

Set the conditions

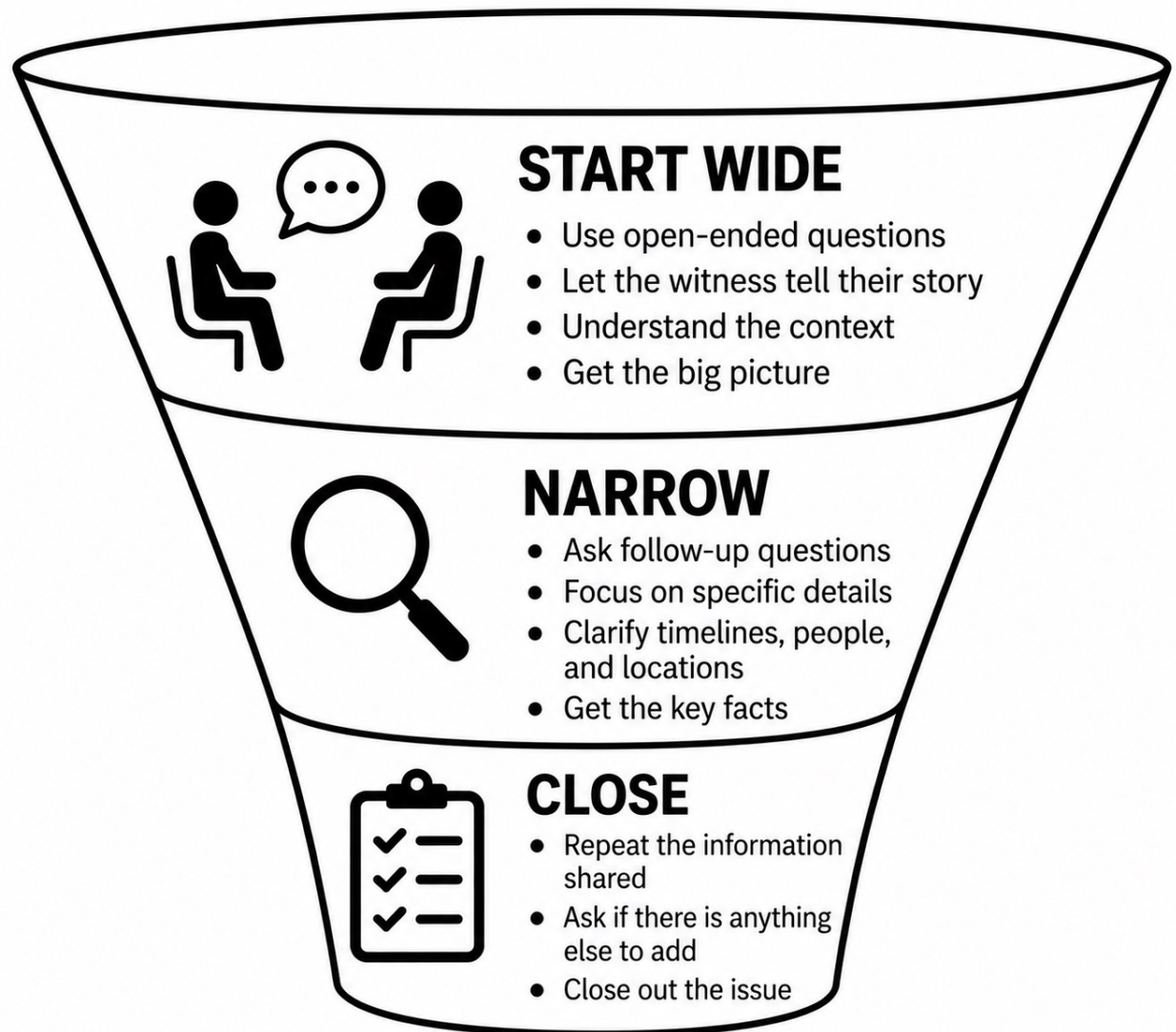
Advisors & support persons: Same rules for every party, roles explained up front

Recording or notetaker: Be consistent between parties, obtain consent

Logistics: Neutral space, enough time, interpreters and accommodations resolved beforehand

INVESTIGATION

Questioning Techniques – The “Funnel”



INVESTIGATION

Questioning Techniques – Questions to Avoid

LEADING QUESTIONS



- Suggest the answer or assume facts not in evidence.

EXAMPLE

"You were at the party at 10 p.m., correct?"

COMPOUND QUESTIONS



- Ask more than one question at a time.

EXAMPLE

"Did you see him enter the room and what was he wearing?"

JUDGING QUESTIONS



- Express an opinion about the witness or the facts.

EXAMPLE

"That was a very irresponsible thing to do, wasn't it?"

PROMISING QUESTIONS



- Promise a benefit or imply a reward for the answer.

EXAMPLE

"If you help us, we can make sure you don't get in trouble, okay?"

INVESTIGATION

Challenges During the Investigation

Working with People

Reluctant witnesses: Explain retaliation protections, encourage participation, and document all outreach efforts

Anonymous reports or limited evidence: Investigate what you reasonably can, document limitations, and avoid filling gaps with assumptions

Attorneys and advisors: Set expectations early, maintain control of the interview, and enforce participation rules consistently

Trauma, emotion, and conflict: Allow parties and witnesses space to be heard while maintaining neutrality and keeping the interview focused

Navigating Process

FERPA and confidentiality: Know when records may be shared for investigative purposes and route requests appropriately

Parents and family members: Parents and guardians may act on behalf of their student in the **K-12** Title IX process, and FERPA rights belong to parents of minors—keep them informed while centering the student

Accommodations and accessibility: Identify and provide appropriate accommodations so all participants can meaningfully engage in the process

INVESTIGATION

Notetaking

- Document interviews, phone calls, and evidence as you go; interview notes, evidence logs, dates and times for meetings and other procedural steps
- Verbatim transcription is not required, but thorough notes are; consider recording interviews or using a second note taker in civil rights investigations
- Write your notes as though someone else will need to understand and evaluate your investigation months later—good documentation is the best evidence that your investigation was fair, thorough, and impartial

A NOTE ON NOTES



Good notes protect fairness,
support decision-making,
and show your work.

**GOOD NOTES ALWAYS INCLUDE,
NO MATTER HOW INFORMAL THE CASE.**



NAMES OF THOSE PRESENT

Name of interviewer, name of interviewee,
and anyone else present (e.g., advisors,
interpreters, observers).



DATE

The date of the meeting or interview.



TIME / LENGTH

Start time, end time,
and total length.



LOCATION

Where the meeting or interview
took place (in person, phone,
video, other).



SUMMARY OF WHAT WAS DISCUSSED

Key points and information provided.



FULL PICTURE: QUESTIONS ASKED AND ANSWERS GIVEN, IN CONTEXT

Capture the questions asked, the answers
given, and the context—tone, demeanor,
clarifications, and follow-up.

INVESTIGATION

Investigation Reports – Summary of the Investigation

- **Basic Structure**

Every complaint should have a written document explaining the allegations and the procedural steps taken, and summarizing the evidence collected

- **Best if evidence is summarized by disputed fact/issue**

Your file should contain interview and evidence summaries; that's not the point of a report

- **Better to be too thorough than not enough**

Someone who picks up the report a year later and has never heard of the case should ideally be able to catch up by reading just the report

**Yes—Some Reports Include
Decisions**

Not allowed in Title IX

We will discuss this in the next
section

INVESTIGATION

Example – Evidence Chart

Exhibit No.	Date	Description of Evidence	Source
Ex. 1	02/13/2025 – 02/14/2025	Text messages between Complainant and Respondent	Complainant
Ex. 2	02/14/2025	Email from Respondent to Complainant	Respondent
Ex. 3	02/15/2025	Incident report submitted by Complainant	Complainant
Ex. 4	02/14/2025	Surveillance video – Building Lobby	Investigator
Ex. 5	02/24/2025	Interview Summary – Witness A	Witness A

INVESTIGATION

Report Style – Side by Side Examples

 COMPLAINANT JAMIE - The Complainant said Alex made sexual jokes during study group meetings, commented on her body, and sent inappropriate direct messages. - The Complainant said she told Alex to stop, but the conduct continued. - The Complainant said the conduct caused her to stop attending the study group.	1 Sexual Jokes during Study Group  Complainant: said Alex made sexual jokes during study group meetings. Respondent: denied making sexual jokes; said the group's joking was general and everyone participated, including the Complainant. Morgan: said she heard Alex make sexual jokes during study group meetings. Taylor: said he heard some sexual jokes during study group meetings but did not recall all details.
 RESPONDENT ALEX - The Respondent denied making sexual jokes or comments about the Complainant's body. - The Respondent said the group's joking was general and everyone participated, including the Complainant. - The Respondent acknowledged sending a direct message but stated it was intended as a joke. - The Respondent denied that the Complainant asked him to stop and stated she voluntarily left the study group.	2 Comments about Complainant's Body  Complainant: said Alex commented on her body. Respondent: denied making comments about the Complainant's body. Morgan: did not recall a specific comment about the Complainant's body but said she observed the Complainant look uncomfortable. Taylor: did not recall hearing comments about the Complainant's body.
 WITNESS 1 MORGAN - Morgan said she heard Alex make sexual jokes during study group meetings. - Morgan said she observed the Complainant look uncomfortable. - Morgan said she heard the Complainant tell Alex to stop and later heard similar jokes. - Morgan did not recall a specific comment about the Complainant's body.	3 Inappropriate Direct Messages (DMs)  Complainant: said Alex sent inappropriate direct messages. Respondent: acknowledged sending a message but stated it was intended as a joke. Morgan: was not aware of the direct messages. Taylor: was not aware of the direct messages.
 WITNESS 2 TAYLOR - Taylor said he heard some sexual jokes during study group meetings but did not recall all of the details. - Taylor did not recall hearing comments about the Complainant's body. - Taylor was not aware of the direct messages. - Taylor was not sure whether Alex stopped after being asked to stop. - Taylor said the Complainant stopped attending the study group, but he did not recall the circumstances.	4 Request to Stop and Whether Conduct Continued  Complainant: said she told Alex to stop, but the conduct continued. Respondent: denied being asked to stop and stated the joking continued as part of general group humor. Morgan: said she heard the Complainant tell Alex to stop and later heard similar jokes. Taylor: was not sure whether Alex stopped after being asked to stop.
	5 Stopping Attendance at Study Group  Complainant: said she stopped attending the study group because of the conduct. Respondent: stated the Complainant voluntarily left the study group. Morgan: confirmed the Complainant did not attend later meetings. Taylor: said the Complainant stopped attending but did not recall the circumstances.

DETERMINATION

The Decision-Maker's Job

- **Oversee the questioning process in K-12 cases and the hearing in higher ed**

In K-12, a written question-and-answer process is required; in higher education, the 2020 rules require a live hearing with cross-examination

- **Makes relevance determinations**

The decision-maker must determine whether each question is relevant before it is answered and must explain to the questioning party any decision to exclude a question as not relevant

- **Writes the written determination**

The written determination must be independent; if it reads like a rubber stamp on the investigation report, the decision may be subject to challenge

Something missing?

If the investigation leaves gaps that cannot be filled through questioning, the decision-maker can send the case back to investigation

DETERMINATION

Live Hearing or Written Questions

Higher education: the live hearing

Required: postsecondary institutions must hold a live hearing; either party may ask to be in a separate room with technology

Cross-examination: conducted orally and in real time by each party's advisor—never by a party personally

Relevance first: the decision-maker rules on each question before it is answered, and explains any exclusion on the record

K-12: written questions

Each party submits written, relevant questions for the other party and for witnesses

The decision-maker screens the questions for relevance, sends relevant questions, and provides the answers to both parties

Limited follow-up questions—technically no limits on the number of rounds other than that the questions must be relevant and follow-up questions

DETERMINATION

Advisors and Cross-Examination

Higher education

A party may be accompanied by an advisor of choice, who may be but need not be an attorney

If a party has no advisor at the hearing, the institution must provide one, free of charge, to conduct cross-examination

The hearing must be recorded or transcribed, and the recording or transcript made available to the parties for inspection and review

Both sectors

Apply advisor rules identically to both parties—any restriction on participation must be equal and written down in advance

After Victim Rights Law Center v. Cardona, the Department does not enforce the provision barring reliance on statements of a party or witness who does not submit to cross-examination; confirm what your own policy says

Train decision-makers on controlling a hearing without favoring a party, on the rape shield protections, and on the limits of trauma-informed questioning

THE GRIEVANCE PROCESS

The 6 Rules of T9 Decisions

1



The Allegations

Identification of the allegations potentially constituting sexual harassment as defined in §106.30.

2



The Process

A description of the procedural steps taken from the receipt of the formal complaint through the determination (including notifications, interviews, site visits, evidence gathering, and hearings).

3



Findings of Fact

Findings of fact supporting the determination.

4



Conclusions

Conclusions regarding the application of the recipient's code of conduct to the facts.

5



The Result

A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant to restore or preserve equal access.

6



Appeal Information

The recipient's procedures and permissible bases for the complainant and respondent to appeal.

THE GRIEVANCE PROCESS

The Rules of T9 Appeals

REQUIRED GROUNDS FOR APPEAL			A recipient must offer both parties an appeal from a determination regarding responsibility, and from a dismissal of a formal complaint or any allegations therein, on the following bases:	
	Procedural Irregularity A procedural irregularity that affected the outcome of the matter.		New Evidence New evidence that was not reasonably available at the time of the determination or dismissal, and could affect the outcome of the matter.	
			Conflict of Interest or Bias The Title IX Coordinator, investigator(s), or decision-maker(s) 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.	
A recipient may offer an appeal equally to both parties on additional bases.				
REQUIREMENTS FOR ALL APPEALS				
As to all appeals, the recipient must:				
	Notify the Other Party Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.		Meet Required Standards Ensure that the decision-maker(s) for the appeal complies with the standards set forth in § 106.45(b)(1)(iii).	
		Opportunity to Submit a Statement Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.		Written Decision Issue a written decision describing the result of the appeal and the rationale for the result.
				Provide Simultaneously Provide the written decision to both parties at the same time.

DETERMINATION

Writing the Determination

- **A required skeleton**

Allegations, procedural history, findings of fact, per-allegation rationale, result, sanctions, remedies, appeal rights

- **Answer the losing side**

The best determinations engage the strongest contrary arguments head-on

- **Plain language**

The parties, their lawyers, a federal agency, and possibly a court will read it—write for all four

Survivability test

A determination succeeds when every conclusion traces to a finding, and every finding to evidence.

DETERMINATION

Credibility Is an Analysis, Not an Instinct

- **Plausibility**
Does the account hang together against the undisputed facts?
- **Corroboration**
What independent evidence supports or contradicts each version?
- **Consistency**
Within an account and over time—but expect peripheral drift
- **Motive**
To fabricate or to minimize; needs to be more than just party status
- **Detail & Specificity**
Lived accounts carry texture; scripts stay smooth and general

Key rules

Credible ≠ Truthful

People are honestly wrong,
often--ask my husband ;)

Demeanor is the least reliable
factor: nerves and apathy are
not always signs of deception

What is the result when the case is truly “they said, they said” (equipoise) under a preponderance standard?

Dismissal - circumstances prevent gathering sufficient evidence

0%

Sufficient evidence finding (in favor of complainant)

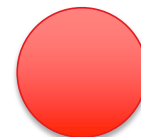
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Insufficient evidence finding (in favor of respondent)

0%

Finding of inconclusive (neither for or against either party)

0%



What is the result when the case is truly “they said, they said” (equipoise) under a preponderance standard?

Dismissal - circumstances prevent gathering sufficient evidence

0%

Sufficient evidence finding (in favor of complainant)

0%

Insufficient evidence finding (in favor of respondent)

0%

Finding of inconclusive (neither for or against either party)

0%

RESULTS SLIDE

DETERMINATION

Preponderance in Practice

50/50 is very rare

More likely than not — 50.01% necessary to establish a disputed fact

True equipoise is rare; make sure “they said, they said” does not mean “we stopped looking”

Contemporaneous disclosures, patterns, and small documentary anchors break most ties

Write the weighing down

Say which evidence you credited and why

Address the contrary evidence

If evidence truly is insufficient, say so plainly, explaining why

DETERMINATION

Two Parts to any Determination

Factual Findings

Address each disputed fact separately and show how the evidence was weighed

Make findings specific, dated, and tied to the source

Explain credibility determinations instead of simply stating them

Application to Policy

Work through each policy element and state whether the evidence satisfies it

Apply the policy definitions as written; use outside sources only when the policy leaves a gap

If the conduct does not meet that standard, say so and identify any other policy that may apply

DETERMINATION

Sanctions & Remedies That Fit

Sanctions

Consider the seriousness of the conduct, whether it was isolated or part of a pattern, and any power imbalance before turning to mitigating factors

Strive for consistency; similar cases should generally result in similar outcomes

Coordinate with student services or HR before communicating sanctions, being mindful of state law, collective bargaining, and other policy requirements

Remedies

Consider remedies for the complainant, such as schedule changes, housing, academic support, and no-contact directives

Consider broader remedies when appropriate, including training, climate initiatives, or monitoring to address systemic concerns

Remedies serve a different purpose than sanctions and should be considered even when sanctions are limited or unnecessary

APPEAL

Appeals Are Not Do-Overs

Title IX Appeals

Procedural irregularity that affected the outcome

New evidence, not reasonably available earlier, that could affect the outcome

Conflict of interest or bias—coordinator, investigator, or decision-maker

All Appeals

Focus on the stated grounds for appeal, not whether you would have reached the same outcome

Tailor the remedy to the error; some issues require additional investigation or a new decision-maker, while others do not affect the outcome

Clearly explain the basis for your decision, your analysis, and the result of the appeal



0/0

Join at: vevox.app

ID: 176-126-582

Question slide

The coordinator dismisses a CSC case because the facts described by the complainant, if substantiated, would “obviously” not meet the sexual intent standard. Appeal outcome?

Appeal granted - procedural error affecting the outcome

0%

Appeal granted - bias affecting the outcome

0%

Appeal denied - procedural error but no effect on outcome

0%

Appeal denied - no procedural error

0%



The coordinator dismisses a CSC case because the facts described by the complainant, if substantiated, would “obviously” not meet the sexual intent standard. Appeal outcome?

Appeal granted - procedural error affecting the outcome

0%

Appeal granted - bias affecting the outcome

0%

Appeal denied - procedural error but no effect on outcome

0%

Appeal denied - no procedural error

0%

RESULTS SLIDE



0/0

Join at: vevox.app

ID: 176-126-582

Question slide

A disruptive advisor is ejected mid-process after repeated warnings and the process proceeds with an appointed advisor only. Appeal outcome?

Appeal granted - procedural error affecting the outcome

0%

Appeal granted - bias affecting the outcome

0%

Appeal denied - procedural error but no effect on outcome

0%

Appeal denied - no procedural error

0%



A disruptive advisor is ejected mid-process after repeated warnings and the process proceeds with an appointed advisor only. Appeal outcome?

Appeal granted - procedural error affecting the outcome

0%

Appeal granted - bias affecting the outcome

0%

Appeal denied - procedural error but no effect on outcome

0%

Appeal denied - no procedural error

0%

RESULTS SLIDE



0/0

Join at: vevox.app

ID: 176-126-582

Question slide

After an insufficient evidence finding, the respondent texts a witness gloating about getting off and “double jeopardy.” Appeal result?

Appeal granted - new evidence that could affect the outcome

0%

Appeal denied - new evidence but could not affect the outcome

0%

Appeal denied - not new evidence as the respondent knew the information before the decision

0%





0/0

Join at: **vevox.app**

ID: **176-126-582**

Preparing Results

After an insufficient evidence finding, the respondent texts a witness gloating about getting off and “double jeopardy.” Appeal result?

Appeal granted - new evidence that could affect the outcome



0%

Appeal denied - new evidence but could not affect the outcome

0%

Appeal denied - not new evidence as the respondent knew the information before the decision

0%

RESULTS SLIDE

INFORMAL RESOLUTION

Requirements of IR

 Cannot Require A recipient may not require, as a condition of enrollment, employment, or any other right, a waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.	 Cannot Require Participation A recipient may not require the parties to participate in an informal resolution process.	 Only After a Formal Complaint A recipient may not offer an informal resolution process unless a formal complaint is filed.	 When It Can Be Offered At any time prior to reaching a determination regarding responsibility, a recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.
REQUIREMENTS IF AN INFORMAL RESOLUTION PROCESS IS OFFERED The recipient must:			
1  Provide Written Notice Provide the parties a written notice disclosing: • The allegations • The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations • That any party may withdraw at any time prior to agreeing to a resolution and resume the grievance process • Any consequences of participating, including the records that will be maintained or could be shared	2  Obtain Voluntary, Written Consent Obtain the parties' voluntary, written consent to the informal resolution process.	3  Prohibited for Employee–Student Allegations Do not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.	

INFORMAL RESOLUTION

What is Informal Resolution?

- An alternative to a formal determination that focuses on resolving concerns rather than determining whether a policy violation occurred
- May include mediation, facilitated dialogue, agreed-upon remedies, educational measures, or other tailored solutions
- Should be voluntary, appropriate for the circumstances, and based on the informed agreement of all participants

INFORMAL RESOLUTION

When Informal Resolution Is on the Table

Availability of IR

An option after a formal complaint has been filed, but before a determination is reached

Requires the voluntary, informed, written consent of all parties, and any party may withdraw at any time before an agreement is reached

Under the 2020 Title IX regulations, it may not be used to resolve allegations that an employee sexually harassed a student

Provide written notice of the allegations and IR requirements, and obtain each party's voluntary written consent—then document both

Factors to Consider

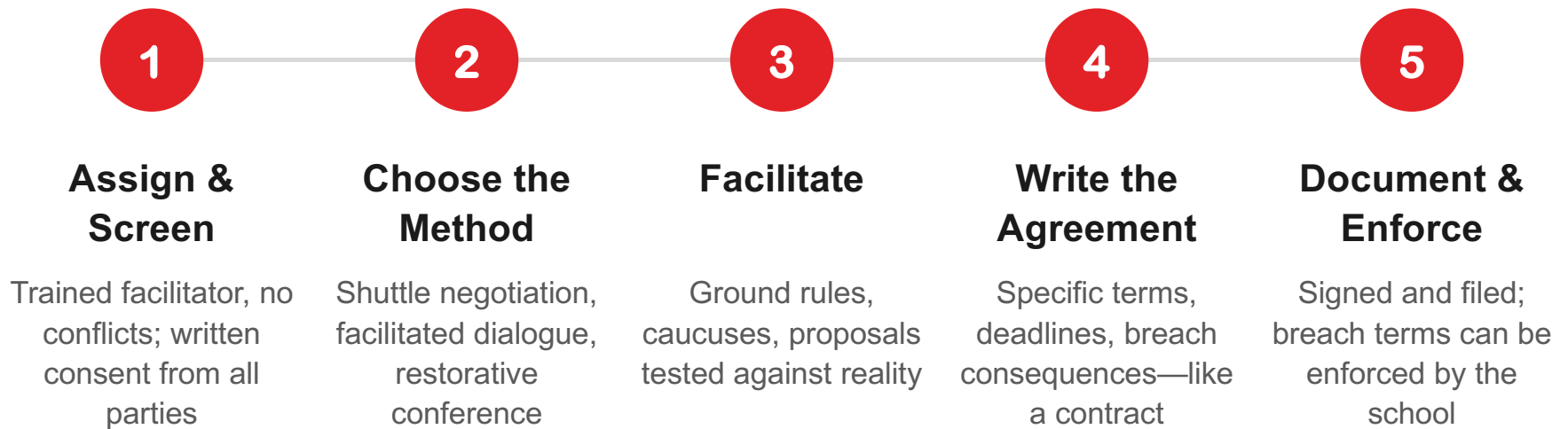
Consider the nature of the allegations, the parties' relationship, any power imbalance, community safety, and the complainant's goals

Informal resolution works best when both parties genuinely want to resolve the matter without a formal determination

Do not use informal resolution if there are concerns about coercion, pressure, or an attempt to manipulate the process

INFORMAL RESOLUTION

Informal Resolution, Step by Step



AFTER THE DECISION

Closing the File

What the file contains

Keep complete records, including notices, interview notes, evidence, reports, determinations, appeals, and key communications

Document the reason for significant discretionary decisions, including dismissals, delays, extensions, and sanctions

Follow your institution's record retention requirements. Under the 2020 Title IX regulations, records must be retained for at least seven years, but other laws or policies may require longer retention

After the outcome

Share information as required by law and institutional policy. Avoid assuming that nothing can be disclosed.

Make sure remedies are actually implemented and document when they are completed.

Follow up when appropriate to assess whether remedies are effective and whether there are concerns about recurrence or retaliation.