

NAVIGATING TITLE IX SEXUAL HARASSMENT IN K-12 SCHOOLS

A COURSE DESIGNED FOR ELEMENTARY AND
SECONDARY SCHOOL ADMINISTRATORS



COURSE OVERVIEW

1

Title IX Sexual Harassment

2

Responding to Incidents of Sexual Harassment

3

Overview of the Title IX Grievance Process

4

Additional Implementation Considerations

COURSE GOALS

- ➔ Identify the scope and purpose of Title IX.
- ➔ Understand requirements for the grievance procedures prescribed by the Title IX Regulations.
- ➔ Recognize students' rights and due process considerations under Title IX.
- ➔ Analyze challenges K-12 staff may face when incidents of sexual harassment occur.

Lesson Completion

Title IX Solutions, LLC

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Navigating Title IX Sexual Harassment in K-12 Schools

7% complete

Search by lesson title

☐ Course Introduction0/3

Title IX Sexual Harassment1/3


Responding to Incidents of Sexual Harassment1/5

Overview of the Title IX Grievance Process0/7


Additional Implementation0/4

Introduction to Title IX


Risks Associated with Non-Compliance




Potential for legal action




Loss of federal funding



Media attention



Discriminatory and unsafe environment for your learners



MARK INCOMPLETE

CONTINUE →

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Stepping Away



See Overview	Start Course	See Overview	Replay Course	See Overview	Start Course
<div><div>TITLE IX SOLUTIONS, LLC</div><div>UNCHARTED TERRITORY: NAVIGATING LIVE HEARINGS</div><div>Hon. Michael T. Jamison and Susanna Murphy, JD</div><div>0%</div></div> <div>Uncharted Territory: Navigating Live Hearings</div> <div>See Overview Start Course</div>	<div><div>TITLE IX SOLUTIONS, LLC</div><div>PLOTTING THE COURSE</div><div>Title IX Investigation Preparation</div><div>Elizabeth Abdnour, JD</div><div>0%</div></div> <div>Plotting the Course: Title IX Investigation Preparation</div> <div>See Overview Start Course</div>	<div><div>TITLE IX SOLUTIONS, LLC</div><div>EMPHASIZING SUPPORT AND PREVENTION: A NEW DIRECTION FOR TITLE IX</div><div>0%</div></div> <div>Emphasizing Support and Prevention: A New Direction for Title IX</div> <div>See Overview Start Course</div>			

Certificate of Completion

THIS CERTIFICATE OF COMPLETION IS AWARDED TO

Tucker Wood

FOR SUCCESSFULLY COMPLETING



Navigating Title IX Sexual Harassment
in K-12 Schools

Learning Objectives: Identify the scope and purpose of Title IX. • Understand requirements for the grievance procedures prescribed by the Title IX Regulations. • Recognize students' rights and due process considerations under Title IX. • Analyze challenges K-12 staff may face when incidents of sexual harassment occur.



TAWNY ALONZO
Director of Training
Title IX Solutions, LLC

Title IX Posting Requirements

In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.”
34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

Title IX Posting Requirements

Title IX Sexual Harassment

1/3

▼

Responding to Incidents of Sexual Harassment

0/5

▼

Overview of the Title IX Grievance Process

0/6

▼

Additional Implementation Considerations

0/4

▼

Course Wrap-up

0/3

▼

Title IX Posting Requirements

0/2

▲

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

TEXT · PREREQUISITE

Final Combined Course Materials

DOWNLOAD

TEACH ONLINE WITH THINKIFIC

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions Certification Training!

Please follow these instructions as you post the training materials to your school's website to comply with Title IX Regulation 106.45(b)(10)(i)(d).

Contact adrienne@titleixsolutions.com or tawny@titleixsolutions.com with any questions regarding the posting of Title IX Solutions' training materials.

Program materials available for download:

If you haven't done so already, you can find and download the program materials for this course by clicking on the next lesson named "Final Combined Course Materials".

Instructions for posting the above training program materials are outlined below:

Step 1: Publish Authorization & Disclaimer

COMPLETE & CONTINUE →

TITLE IX SOLUTIONS, LLC

Course Support

Expert and practitioner-led

Title IX Solutions, LLC is proud to offer you trainings through our institute.

These trainings will equip you with real-world skills, knowledge, and tools to build your confidence in navigating the Title IX landscape.

What is Title IX Solutions, LLC?

Title IX Solutions' vetted Title IX experts include a network of professional investigators as well as an unparalleled pool of experienced decision-makers, informal resolution facilitators, and advisors. This team provides a full suite of Title IX services or “solutions” to higher education institutions and K-12 school districts. Leveraging their diverse backgrounds and areas of expertise allows for comprehensive, a multidisciplinary approach to Title IX cases. Title IX Solutions establishes best practices in addressing sexual harassment at educational institutions across the United States and abroad.

THANK YOU

TITLE  SOLUTIONS, LLC

Title IX Sexual Harassment



IN THIS CHAPTER



INTRODUCTION TO
TITLE IX



DEFINITION OF SEXUAL
HARASSMENT UNDER
TITLE IX

Introduction to Title IX



Title IX of the Education Amendments of 1972

“

“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[.]”

”

Scope of Title IX

Title IX applies to state and local educational agencies that receive federal funding, including:

- Public or Private Preschools, Elementary and Secondary Schools
 - Districts and Charter Schools
 - Preschools and Pre-K Programs
- Undergraduate Schools, Graduate Schools, Vocational and Professional Schools or Programs
- Libraries and Museums



Recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums.

"Recipient" Defined

34 CFR §106.2 Definitions

"Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof."

Notice of Nondiscrimination

Title IX requires the following individuals be notified that the Recipient does not discriminate on the basis of sex in the education program or activity that it operates, and that is required by Title IX not to discriminate in such a manner:



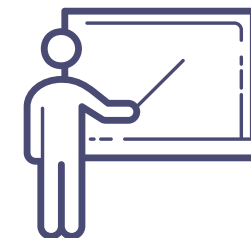
Applicants for admission and employment



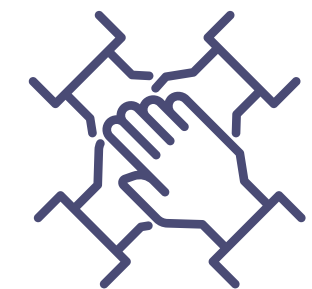
Students



Parents or legal guardians of elementary and secondary school students



Employees



All unions or professional organizations holding collective bargaining agreements with the Recipient

This notification must also state that inquiries about the application of Title IX may be referred to the Recipient's Title IX Coordinator (and include the Title IX Coordinator's contact information) and/or to the Assistant Secretary for Civil Rights of the Department of Education.

Sex Discrimination

Title IX prohibits discrimination on the basis of sex in several key issue areas, such as:



Recruitment &
Admissions



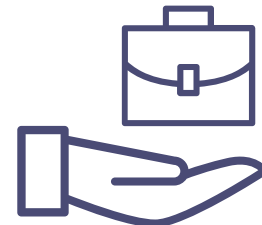
Athletics &
Extracurriculars



Classes &
Schools



Financial Aid,
Scholarships &
Student Employment



Health and Insurance
Benefits & Fringe Benefits



Pregnancy &
Related Conditions

»» Counseling

»» Employment &
Compensation

»» Textbooks & Curricular Materials

»» Job Classification & Structure

»» Treatment of LGBTQI+ Students

»» Marital or Parental Status

»» Housing & Facilities

»» Sexual Harassment

Prohibited Conduct Under Title IX



Retaliation Prohibited

34 CFR §106.71

"No recipient or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation."

Retaliation Prohibited

34 CFR §106.71

"Specific circumstances.

(1) The exercise of rights protected under the First Amendment does not constitute retaliation.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation..., however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith."

School's Required Response to Incidents

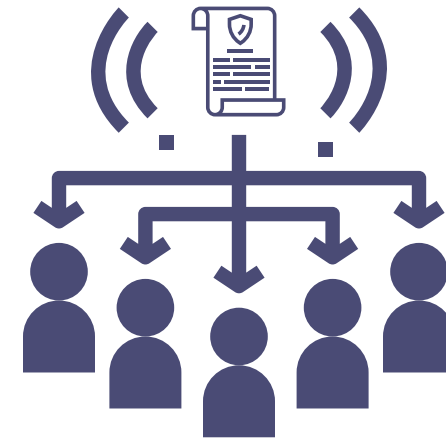


Compliance with the Regulations

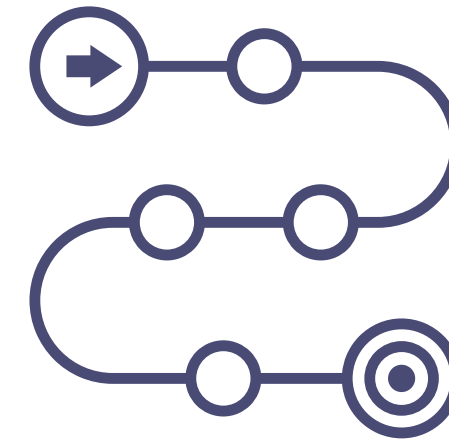
Each recipient must:



Designate a
Title IX
Coordinator



Disseminate
a policy



Adopt and
publish
grievance
procedures

Compliance with the Regulations

Recipients must comply with the requirements of Title IX as outlined under the Regulations.

Recipients may:

- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the Regulations;

and/or

- Provide details regarding policies or procedures which are not addressed in the Regulations.

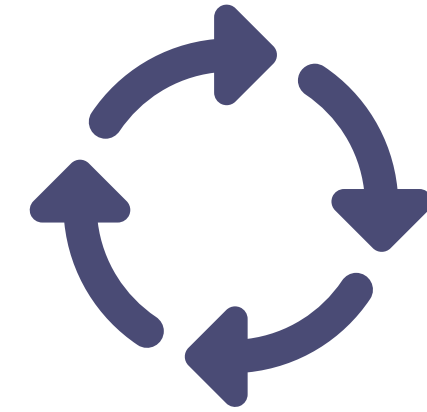
Cornerstones of the Title IX Process



“Prompt and equitable”
grievance procedures for
complaints of sex
discrimination



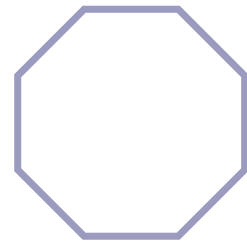
Grievance process that
complies with §106.45
for formal complaints of
sexual harassment



Transparent and
consistent process for
Complainants and
Respondents

The Goal of Title IX

Ultimately, the goal is to:



Stop the harassment or discrimination



Prevent further recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

Risks Associated with Non-Compliance



Potential for legal action



Loss of federal funding



Media attention



**Discriminatory and unsafe
environment for your
learners**

Definition of Sexual Harassment under Title IX



Definitions of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of three types of behavior:

1

**QUID PRO QUO
HARASSMENT**

2

**UNWELCOME
CONDUCT THAT
IS SO “SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE” THAT
IT EFFECTIVELY
DENIES A PERSON
EQUAL ACCESS
TO EDUCATION**

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

1

QUID PRO QUO HARASSMENT

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

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident is considered inherently “offensive” and jeopardizes the individual's equal educational access

2

**“SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE”**

Unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectively offensive that it effectively denies a person equal access to the recipient’s education program or activity.

3

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

Specific offenses defined under the FBI's
Uniform Crime Reporting (U.C.R.) program.

20 U.S.C. 1092 (f)(6)(A)(v)

Sexual Assault

Sex Offenses, Forcible:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

Sex Offenses, Nonforcible:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

20 U.S.C. 1092(f)(6)(A)(v)

Dating Violence

Violence committed by a person

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(a)(10)

Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

34 U.S.C. 12291(a)(8)

Stalking

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

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

Consent



The Title IX regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

When is Sexual
Harassment
Actionable?

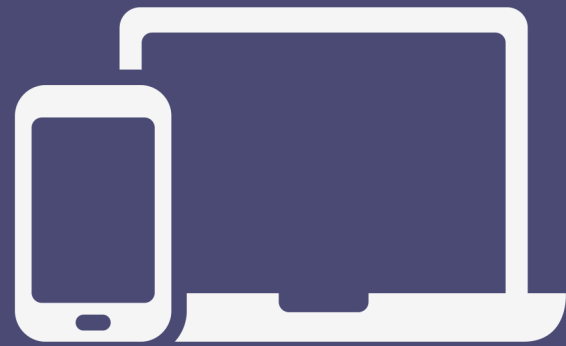


When it denies a
person equal
access to education

Responding to Incidents of Sexual Harassment



IN THIS CHAPTER



REPORTS OF SEXUAL
HARASSMENT



TITLE IX INCIDENT
ASSESSMENT



INSTITUTIONAL
RESPONSE TO SEXUAL
HARASSMENT



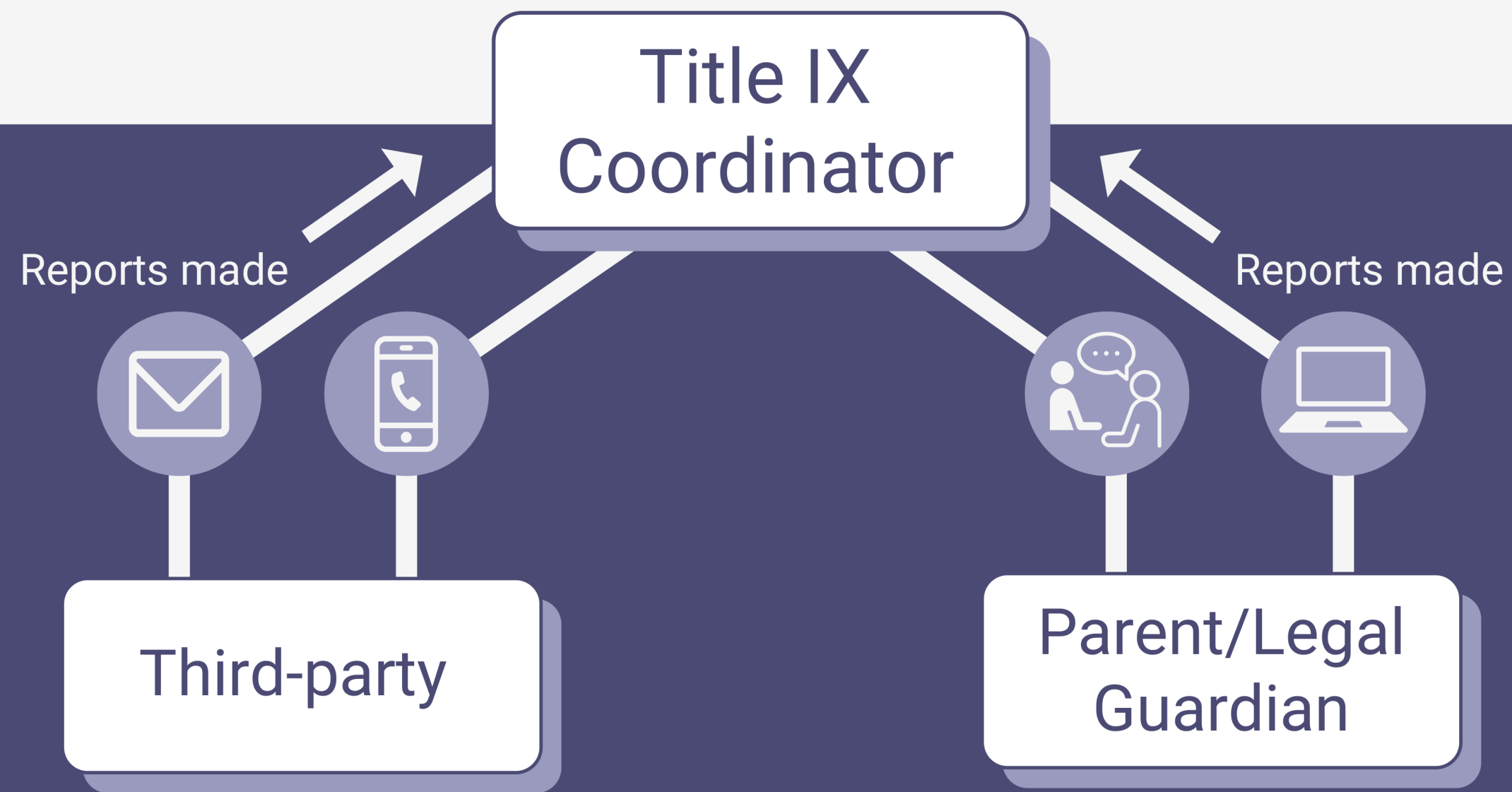
FORMAL
COMPLAINTS

Reports of Sexual Harassment



Reporting Incidents of Sexual Harassment

- ▶▶ Any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator
- ▶▶ At K-12 schools, reporting an incident to any employee requires the school to respond and address the sexual harassment under Title IX
- ▶▶ Students in K-12 schools do not need to report incidents to a specific employee to trigger the school's required response under Title IX



External

External Reporting Considerations

Consider the various individuals outside of the school setting who may report incidents of sexual harassment.



Who are they?

What would their experience be if they sought out information on how to report Title IX sexual harassment?

What do you want them to know?

What information do you want them to have access to?

How can you make the process of reporting easier for them?

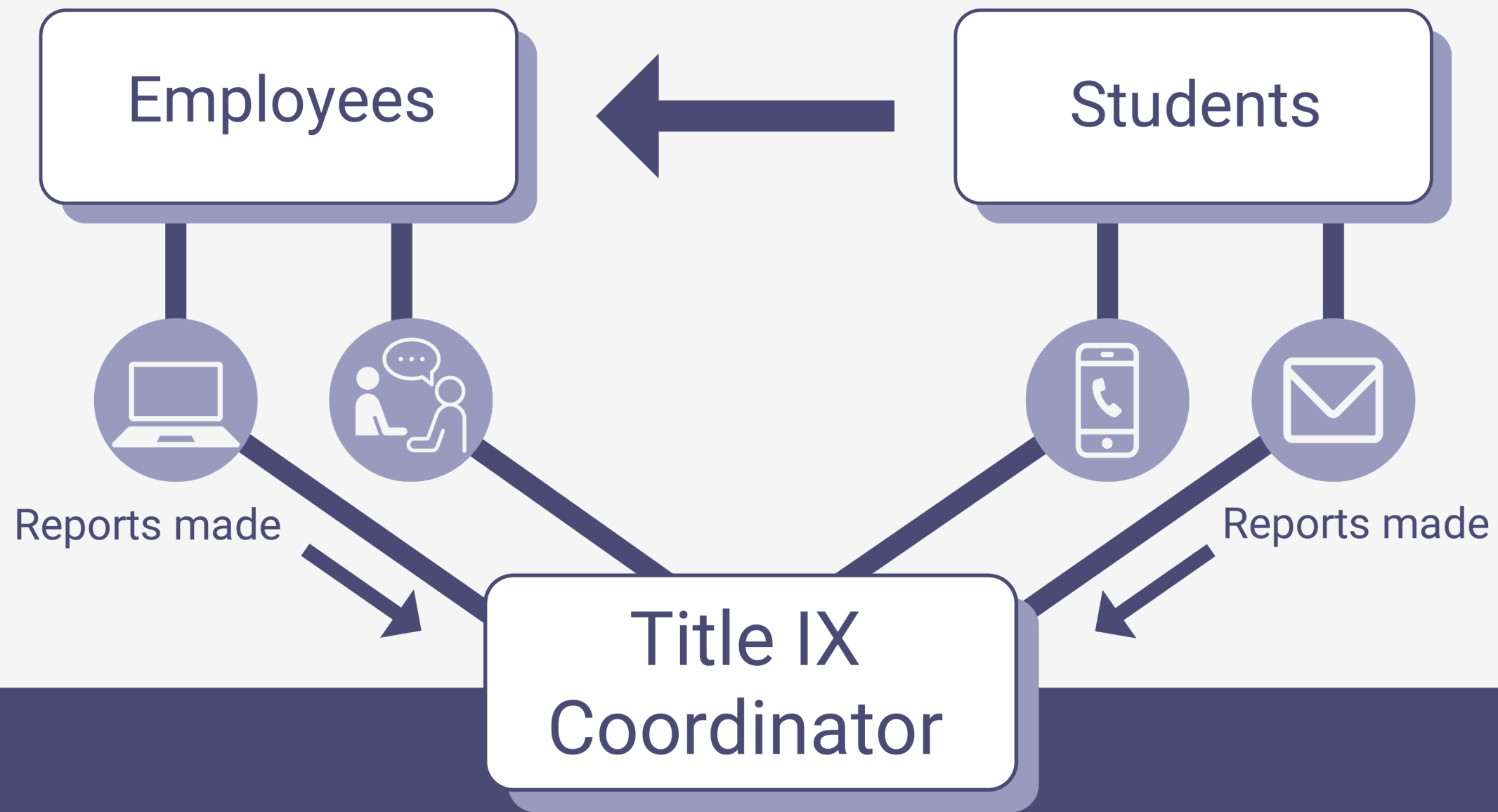
K-12 Employee Reporting Requirements



"Notice of sexual harassment to elementary and secondary school employees, who may include principals, teachers, school counselors, coaches, school bus drivers, and all other employees will obligate the recipient to respond to Title IX sexual harassment."

2020 Preamble to the Title IX Regulations, p. 332-333

Internal



Internal Reporting Considerations

Consider how many employees you have in your district.



From the top down, what is your level of confidence that each employee could articulate their responsibilities under Title IX?
How will you train them?

Consider the way your students interact with each type of employee at your schools.



Do students know employee responsibilities to report under Title IX?
How would you communicate this to them?

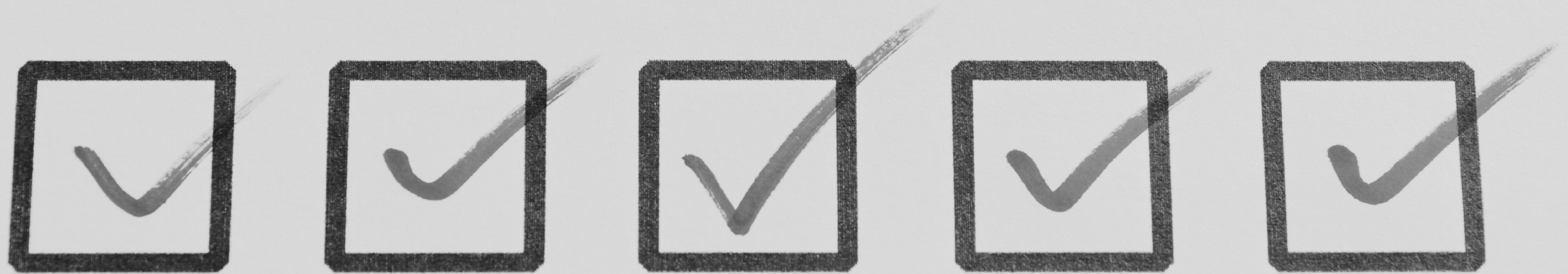
Recipient's Response

Schools must not act in a manner that is deliberately indifferent, meaning:



"...clearly unreasonable in light of the known circumstances."

Title IX Incident Assessment



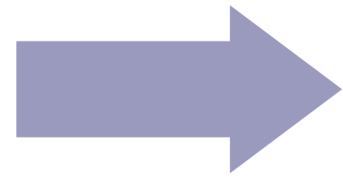
Threshold Criteria

Title IX requires
Recipients to
respond to
incidents that meet
the following four
threshold criteria:

1 INCIDENT MAY CONSTITUTE SEXUAL HARASSMENT AS DEFINED UNDER TITLE IX	2 SCHOOL HAS “ACTUAL KNOWLEDGE” OF THE INCIDENT
3 INCIDENT OCCURRED WITHIN THE SCHOOL’S OWN EDUCATION PROGRAM OR ACTIVITY	4 INCIDENT OCCURRED WITHIN THE UNITED STATES

First Threshold Criteria

**INCIDENT MAY
CONSTITUTE
SEXUAL
HARASSMENT AS
DEFINED UNDER
TITLE IX**



1

**QUID PRO QUO
HARASSMENT**

2

**UNWELCOME
CONDUCT THAT
IS SO “SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE” THAT
IT EFFECTIVELY
DENIES A PERSON
EQUAL ACCESS
TO EDUCATION**

3

**SEXUAL
ASSAULT

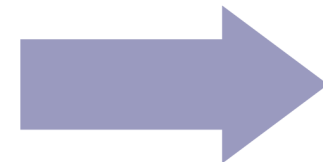
DATING
VIOLENCE

DOMESTIC
VIOLENCE

STALKING**

Second Threshold Criteria

SCHOOL HAS
"ACTUAL
KNOWLEDGE" OF
THE INCIDENT



§ 106.30 Definitions *Actual knowledge*

*"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or **to any employee of an elementary and secondary school.**"*

Actual Knowledge Explained

§ 106.30 Definitions

*"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or **to any employee of an elementary and secondary school.**"*

- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be *"written or oral, by observation, via a newspaper article or other means"*

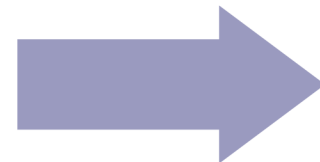


K-12 Institutions - reporting to ANY employee constitutes actual knowledge



Third Threshold Criteria

**INCIDENT
OCCURRED WITHIN
THE SCHOOL'S
OWN EDUCATION
PROGRAM OR
ACTIVITY**



§ 106.44

Recipient's Response to Sexual Harassment Education Program or Activity

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

Education Program or Activity Defined

§ 106.44

Recipient's response to sexual harassment.

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

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct or other district policies
 - Schools must make fact-specific determinations regarding substantial control over the respondent and the context

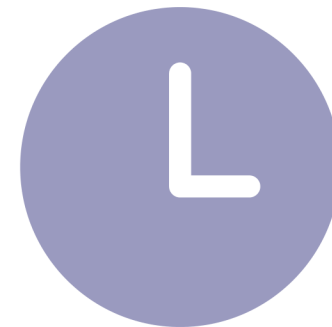
Examples of the Education Program or Activity



Conversations taking place on school-owned technology such as an iPad or Chromebook



School bus ride to a competition or field trip



A school dance or event taking place after school hours on school property



A sporting event taking place at a venue rented by the school district

Fourth Threshold Criteria

**INCIDENT
OCCURRED WITHIN
THE UNITED
STATES**



- Incidents occurring outside the United States are not covered under Title IX
- This includes incidents that fall under the educational program, such as study abroad programs or travel with an extracurricular activity
- These incidents may still be addressed under a different district or school policy

Assessment Rubric

<div>1</div> <div>INCIDENT MAY CONSTITUTE SEXUAL HARASSMENT AS DEFINED UNDER TITLE IX</div>	<div>2</div> <div>SCHOOL HAS “ACTUAL KNOWLEDGE” OF THE INCIDENT</div>
<div>3</div> <div>INCIDENT OCCURRED WITHIN THE SCHOOL’S OWN EDUCATION PROGRAM OR ACTIVITY</div>	<div>4</div> <div>INCIDENT OCCURRED WITHIN THE UNITED STATES</div>

"A Recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent."

Institutional Response to Sexual Harassment



Title IX Grievance Process

WE ARE
HERE



INTAKE/
REVIEW

FORMAL
COMPLAINT
FILED

NOTICE OF
ALLEGATIONS
SENT TO PARTIES

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Following Receipt of a Report

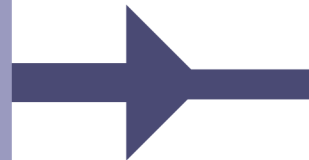


What must the Title IX Coordinator do next to ensure the district is not acting with deliberate indifference?

Following Receipt of a Report

At a minimum...

"The Title IX Coordinator must...



Promptly contact the Complainant to discuss the availability of supportive measures,

Consider the Complainant's wishes with respect to supportive measures,

Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint,

Explain to the Complainant the process for filing a formal complaint."

complete these four important tasks.

Supportive Measures Defined

§ 106.30 Definitions

"Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed."

What?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sexual harassment

When?

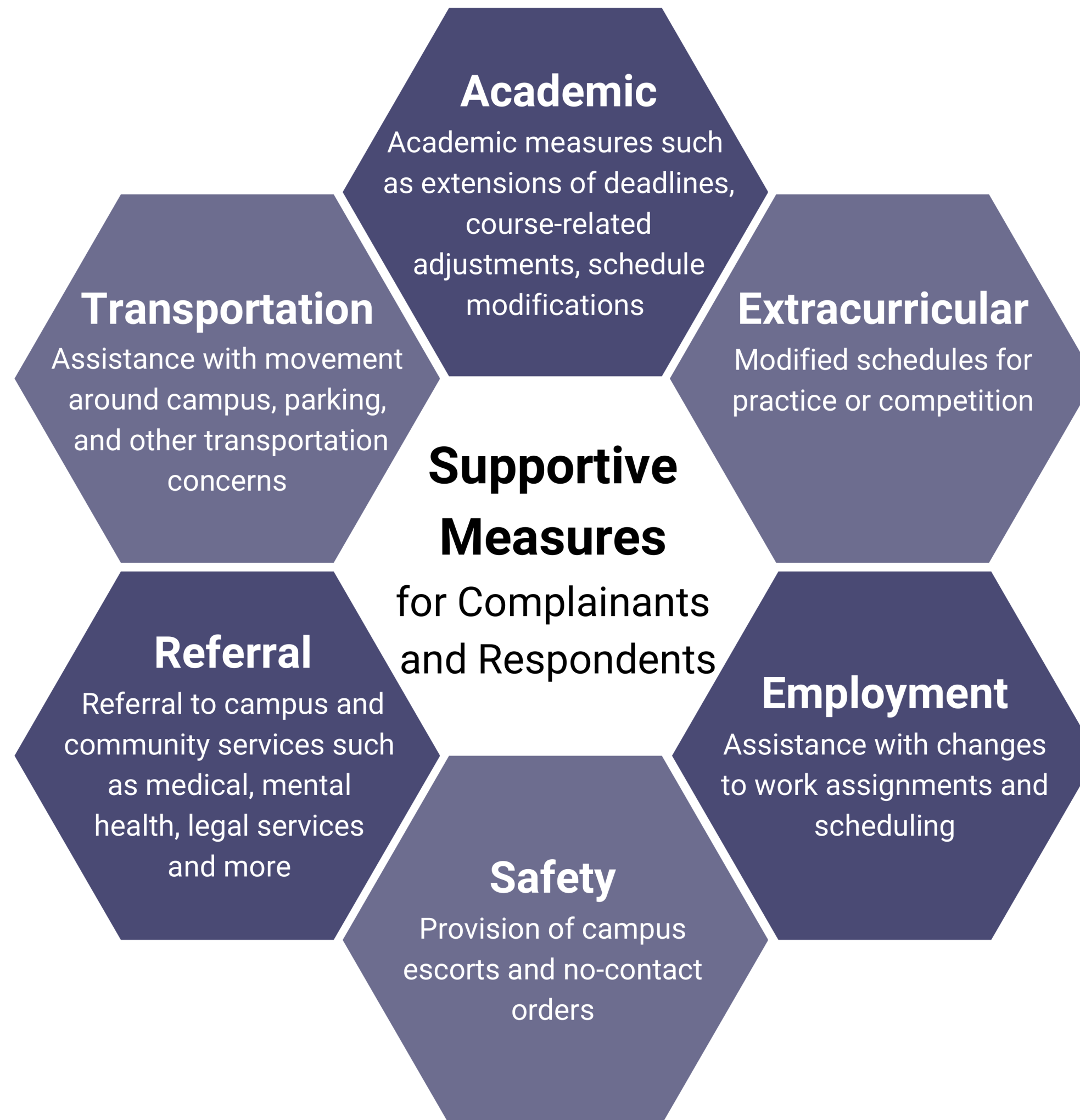
- Available before or after filing a formal complaint or where no formal complaint has been filed

Why?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

How?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party





Describe the range of
supportive measures.

Key Compliance Requirement

Supportive measures are available to Complainants
and Respondents.

Supportive measures must be clearly
communicated to the Parties.

Emergency Removal

§ 106.44

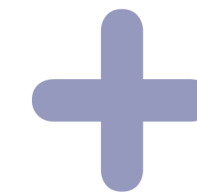
Recipient's response
to sexual harassment

"Nothing in this part precludes a Recipient from removing a Respondent from the recipient's education program or activity on an emergency basis, provided the Respondent..."

Conducts an
individualized
safety and
risk analysis



Determines that an immediate
threat to the physical health or
safety of any student or other
individual arising from the
allegations of sexual
harassment justifies removal



Provides the Respondent
with notice and an
opportunity to challenge
the decision immediately
following the removal

Administrative Leave

§ 106.44

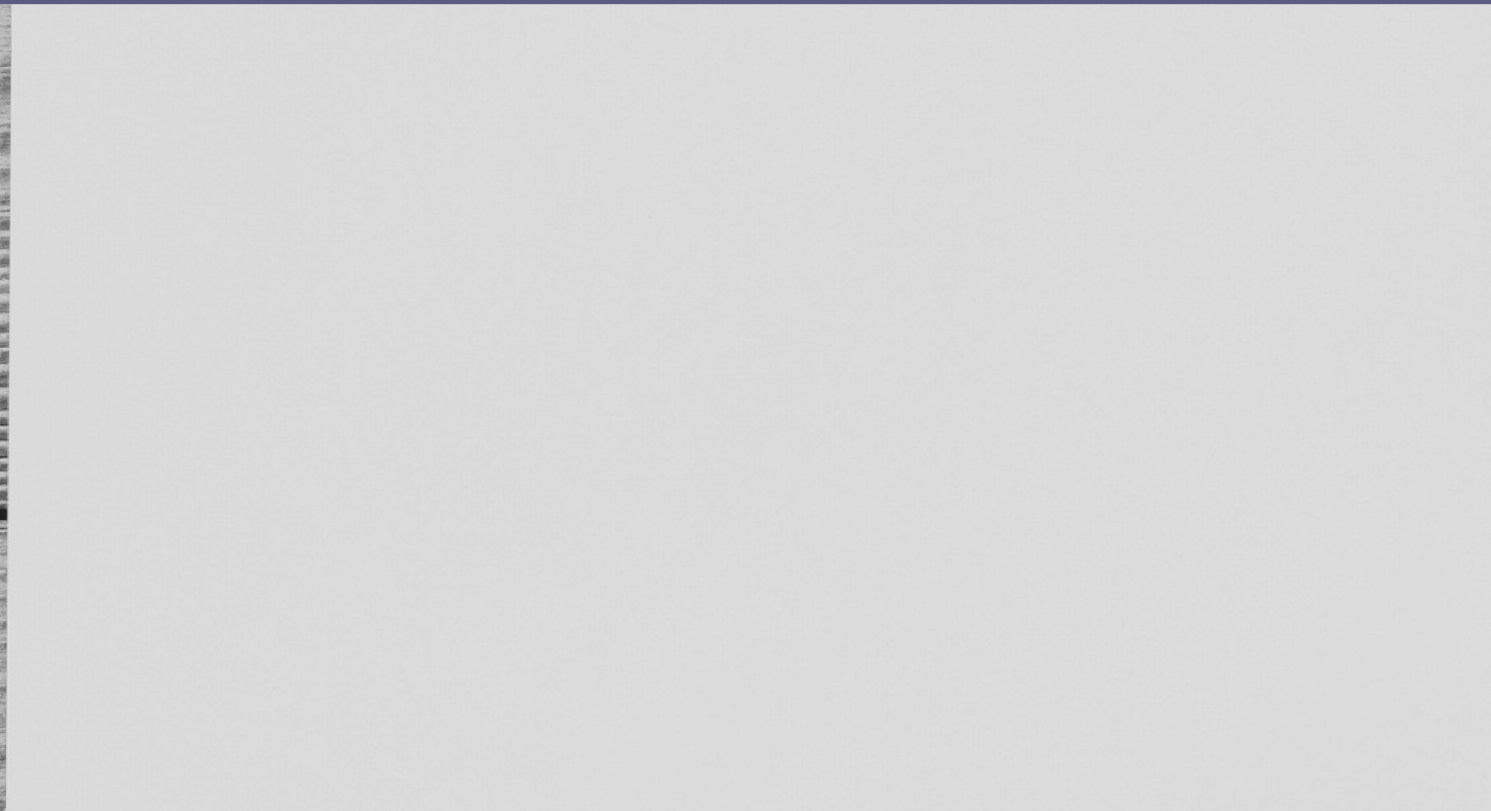
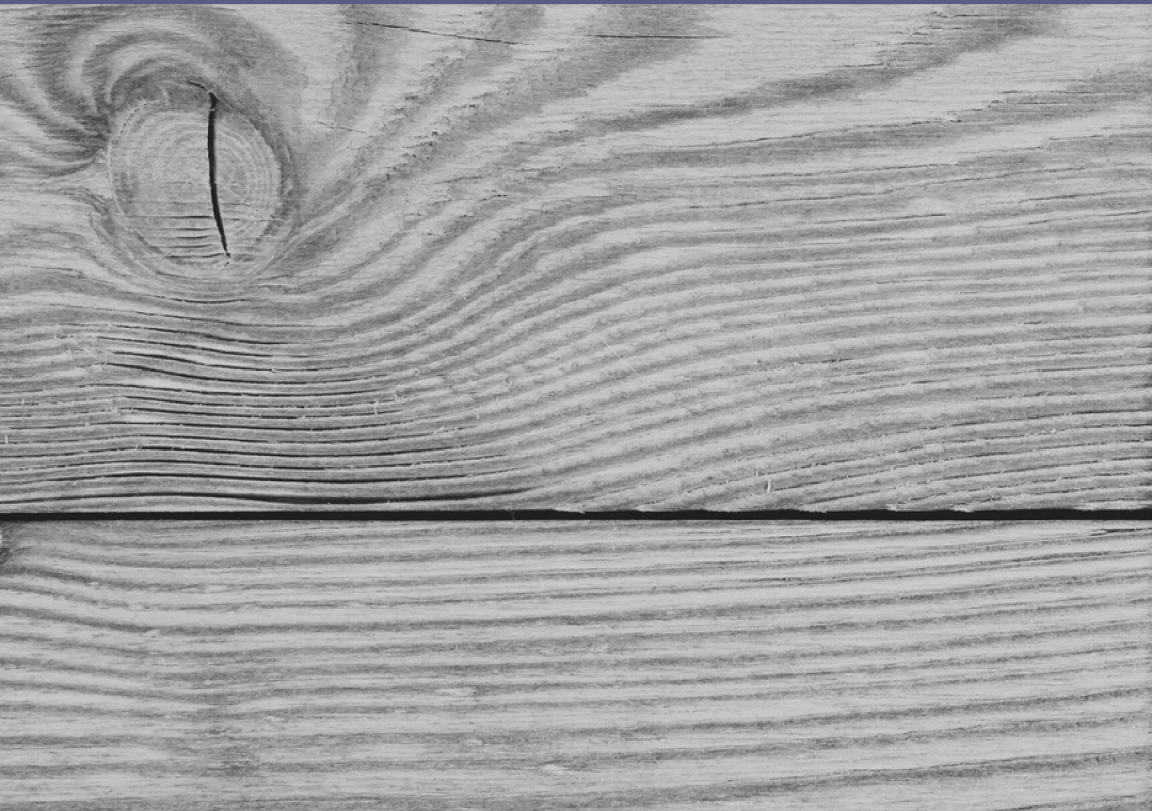
Recipient's response
to sexual harassment

"Nothing in this subpart precludes a recipient from placing a non-student employee Respondent on administrative leave during the pendency of a grievance process..."



Applies to any employee of the school or district

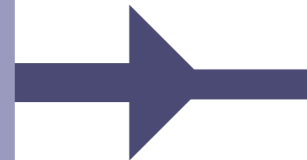
Formal Complaints



Following Receipt of a Report

At a minimum...

"The Title IX Coordinator must..."



Promptly contact the Complainant to discuss the availability of supportive measures,

Consider the Complainant's wishes with respect to supportive measures,

Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint,

Explain to the Complainant the process for filing a formal complaint."

complete these four important tasks.

Title IX Grievance Process

WE ARE
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APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Formal Complaint

Definitions §106.30

"[A] document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the Recipient investigate the allegation of sexual harassment."

- At the time of filing a formal complaint, the Complainant **must be** participating in or attempting to participate in the education program or activity of the Recipient with which the formal complaint is filed
- May be filed with the Title IX Coordinator in person, by mail, by email, or other methods designated by Recipient (e.g. online portal)
- Must contain the Complainant's physical or digital signature (or parent/legal guardian)
- Can be filed by the Title IX Coordinator

Parent and Legal Guardian Rights

Exercise of rights by
parents and guardians
§106.6(g)

“Nothing in this part may be read in derogation of any legal right of a parent or guardian to act on behalf of a 'Complainant,' 'Respondent,' 'Party,' or other individual, subject to paragraph (e) of this section, including but not limited to filing a formal complaint.”



Parents or legal guardians may act on
the behalf of minor students

Formal Complaint by the Title IX Coordinator

"These final regulations obligate a Recipient to initiate a grievance process when a Complainant files, or a Title IX Coordinator signs, a formal complaint, so that the Title IX Coordinator takes into account the wishes of a Complainant and only initiates a grievance process against the Complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances."

(p. 71 Preamble to the Title IX Regulations)

- May be necessary if the allegations are serious and pose risk of further harm to the Complainant or others in the school community.
- Complainants have a right to not participate in the investigation and/or decision-making process.
- If a Title IX Coordinator signs a formal complaint, they are not considered the Complainant or a Party in the process

Report vs. Formal Complaint

Report

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

Formal Complaint

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant or Complainant's parent or guardian (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

Dismissal of a Formal Complaint

School MUST dismiss if the conduct alleged in the formal complaint:

Would not
constitute sexual
harassment as
defined in
§106.30 even if
proved

Did not occur in
the recipient's
education
program or
activity

Did not occur
against a person
in the United
States



Dismissal does not preclude the school from investigating and adjudicating under another provision of the school's Code of Conduct.

Dismissal of a Formal Complaint

School MAY dismiss if the conduct alleged in the formal complaint:

Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein

The Respondent is no longer enrolled or employed by the recipient

Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein



A complaint will not be dismissed because a Complainant remains at or leaves the school.

Consolidation of Formal Complaints

Schools may consolidate formal complaints:

- ❖ Against more than one Respondent
- ❖ By more than one Complainant against one or more Respondents
- ❖ By one party against the other, where the allegations arise out of the same facts or circumstances

Overview of the Title IX Grievance Process



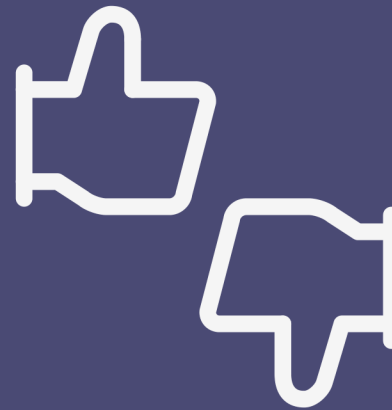
IN THIS CHAPTER



NOTICE OF
ALLEGATIONS AND
THE TITLE IX
INVESTIGATION



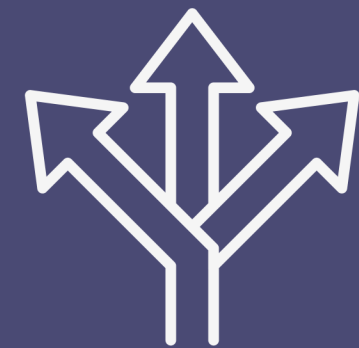
TITLE IX
DECISION-MAKING
PROCESSES



TITLE IX
DETERMINATIONS
REGARDING
RESPONSIBILITY
AND OUTCOMES



TITLE IX APPEALS



INFORMAL
RESOLUTION
OPTIONS

Grievance Process

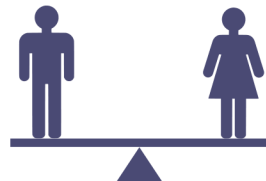
A school's grievance process MUST:



Treat Complainants
and Respondents
equitably



Require objective
evaluation of
relevant evidence



Require Title IX
personnel not have
bias and conflict of
interest



Include a presumption
that Respondent is not
responsible until a
determination is made



Include reasonably
prompt time frames



Describe range of
possible disciplinary
sanctions and
remedies



State the standard
of evidence



Include the
permissible bases
for appeal



Describe the range
of supportive
measures available



Not require or rely on
privileged information,
unless waived



Key Compliance Requirement

Include reasonably prompt time frames for conclusion of the grievance process.

Include reasonable prompt time frames for filing and resolving appeals as well as informal resolution processes, if offered.

Include a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Parties.



Maintain legally recognized privilege.

Recipients must not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Key Compliance Requirement

Notice of Allegations and the Title IX Investigation



Title IX Grievance Process

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(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Notice of Allegations

Upon receipt of a formal complaint, a Recipient must provide a written notice to the parties who are known.

This Notice of Allegations must contain the following:

- Notice of the school's Title IX grievance process
- Notice of the allegations of sexual harassment potentially constituting sexual harassment, as defined under Title IX, including:
 - Sufficient details known at the time, including: a.) identities of the parties involved; b.) the conduct allegedly constituting sexual harassment; c.) the date and location of the alleged incident(s) (if known)
- Sufficient time for the Parties to prepare a response before any initial interview



Notice of Allegations

Upon receipt of a formal complaint, a Recipient must provide a written notice to the parties who are known.

This Notice of Allegations must contain the following:

- Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- Notice that the Parties may have an advisor of their choice, who may or may not be an attorney
- Notice of the right to inspect and review all evidence gathered during the investigation
- Reference to any policy in the school's code of conduct which prohibits knowingly making false statements or knowingly submitting false information during the grievance process





Include a presumption that the Respondent is not responsible.

The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Key Compliance Requirement



PERSONAL AND CONFIDENTIAL

Regarding Case Number: 2023-Q1-0120

Dear Jordan Reynolds:

The Sample Independent School District ("District") Title IX Office has received a Formal Complaint from Alex Baker ("Complainant") alleging that you ("Respondent") have engaged in conduct that may be a violation of Sample Independent School District policy.

Complainant alleges the following:

On March 3, 2023 at approximately 7:00 PM, Complainant and Respondent attended an event honoring graduating senior students held on the Sample High School campus. Following the event, the Complainant alleges the Respondent engaged in the following conduct in band hall:

- Respondent kissed Complainant without consent;
- Respondent placed their hand up Complainant's dress and inside of their underwear without consent

This letter serves as formal notice that the Title IX Office will be conducting a prompt, thorough, and impartial investigation of these allegations in accordance with the procedures detailed in the Sample Independent School District Sexual Harassment Policy, SISD Policy 237.

You are alleged to have engaged in Sexual Harassment as defined in the Sample District Sexual Harassment Policy, specifically:

237(4)(iii) "Sexual assault"- includes any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving affirmative consent.

(b) Fondling: The touching of the private body parts (including genitalia, anus, groin, breast, inner thigh or buttocks) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

237(4)(ii) "Sexual harassment"- means conduct on the basis of sex that satisfies one or more of the following:

(a) An employee of the District conditioning the provision of an aid, benefit, or service of the District on an individual's participation in unwelcome sexual conduct (commonly referred to as a "quid pro quo");

(b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and

Sample Notice of Allegations

Sample Notice of Allegations

objectively offensive that is effectively denies a person equal access to the District's education program or activity (commonly referred to as a sexually or gender-based "hostile environment").

Respondent is considered "not responsible" for violating District policy unless and until the District determines at the conclusion of the grievance process, by a preponderance of the evidence, that the Respondent is responsible for the conduct. The burden is on the District to gather evidence, investigate the allegations, summarize all relevant evidence in an investigation report, conduct a live hearing for the cross-examination of the parties and reach a final determination for all matters alleged.

You may have an advisor of your choice assist or represent you in this process..."

Title IX Grievance Process

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Title IX Investigations



Title IX personnel involved:

- Title IX Coordinator (may also serve as Investigator)
- Title IX Investigator(s)



Objectives of this stage:

- Gather sufficient evidence and interview statements from Parties and witnesses
- Create an investigative report containing relevant evidence and an investigation file containing evidence to share with the Parties, Parties' Advisors, and Decision-Maker

Initiation of the Grievance Process

A Recipient must investigate a formal complaint.

- The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility rests on the school - not on the Parties
 - The Recipient cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional which are made and maintained in connection with the provision of treatment to the Party, unless the Recipient obtains the Party's written, voluntary consent to do so for the grievance process
 - If a minor, the Recipient must obtain the parent or legal guardian's voluntary, written consent



Investigation of Formal Complaints

During the investigation, the District **must**:

- Provide an equal opportunity for the Parties to present witnesses (including fact and expert witnesses), and other inculpatory and exculpatory evidence
- Not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence
- Provide the Parties with the same opportunity to have others present during any grievance proceeding, including the opportunity to be accompanied by an Advisor of their choice
 - The Recipient may establish restrictions regarding the extent to which the Advisor may participate in proceedings, which must apply equally to both Parties

Investigation of Formal Complaints

During the investigation, the District **must**:

- Provide written notice of the date, time, location, participants, and purpose of all investigative interviews or meetings with sufficient time for the Party to prepare
- Provide both Parties an equal opportunity inspect and review any evidence that is obtained as part of the investigation
- Provide each Party and the Party's Advisor at least 10 days to submit a written response to the evidence prior to the completion of the investigative report
- Create an investigative report that fairly summarizes relevant evidence and send to each Party and Party's Advisor (if any) for their review and written response

Investigation of Formal Complaints

- Evidence provided to the Parties must also be available during the decision-making process with each Party having equal access
- Investigative Report must be completed at least ten days prior to a scheduled decision-making process, and;
 - Must provide copies to each Party and their Advisors
- Investigator may include recommended findings or conclusion in the investigative report
 - Decision-Maker is under the independent obligation to objectively evaluate relevant evidence in making a determination

Title IX Decision-Making Processes



Title IX Grievance Process

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Title IX Decision-Making Processes



Title IX personnel involved:

- Title IX Coordinator
- Title IX Decision-Maker(s)



Objectives of this stage:

- Review the investigative report and evidence provided by the Title IX Investigator(s)
- Provide an opportunity for Parties to ask relevant cross-examination questions
- Ask clarifying questions before making a determination regarding responsibility



Require an objective evaluation
of all relevant evidence.

This includes both inculpatory and exculpatory
evidence.

Credibility determinations cannot be based on a
person's status as a Complainant, Respondent,
or witness.

Key Compliance Requirement

Title IX Decision- Making Processes

The Decision-Maker **cannot** be the same person as the Title IX Coordinator or the Investigator.



A postsecondary school must provide for a live hearing.



A live hearing is optional for elementary and secondary schools.

Title IX Decision-Making Requirements for K-12 Schools



Though a live hearing is optional for elementary and secondary schools, there must be a process in place that allows for:

- Review of the investigation report by the Parties
- Opportunity for each Party to submit written, relevant questions that a Party wants asked of any Party or witness to the Decision-Maker
- Receipt of answers to those questions
- Opportunity for each Party to submit limited follow-up questions prior to a determination
- Right of the Decision-Maker to rule on the relevance of each questions and explain any decision to exclude a question as not relevant

This process may be done in writing or in separate meetings with the Parties in which the Decision-Maker "shuttles" questions back and forth.

Written Decision-Making Process

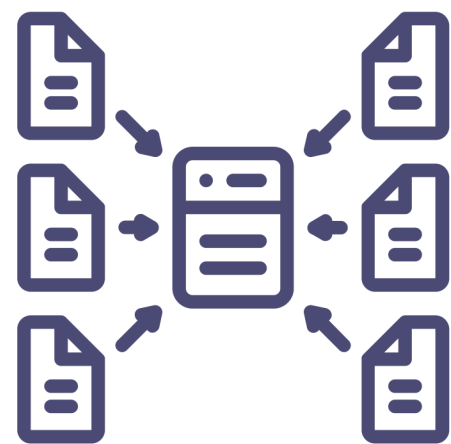
- Title IX does not provide specific guidance regarding the K-12 written decision-making process.
- The order and specific components of the written decision-making process will be determined by the District and the Title IX policy.
- The process must be clearly communicated to the District community, especially the Parties, Advisors, and parents/legal guardians.



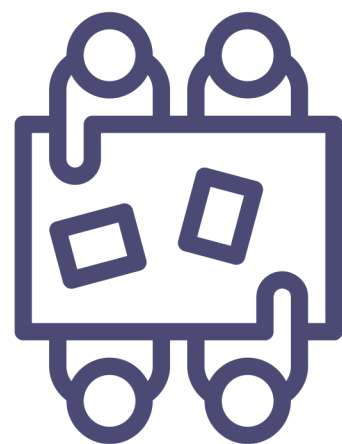
K-12 Title IX administrators **must** consult the District or school Title IX policy to identify the specific decision-making procedures and timelines.

Title IX Hearings

If the Title IX policy allows for hearings, consider the following:



The Recipient may consolidate cases arising from the same facts.



Hearings may occur with Parties present in the same geographic location or live, virtually.



If a Party does not have an Advisor present, one must be provided by the institution.



Only relevant questions may be asked during cross-examination. Decision-Maker will determine relevance.

The Importance of Relevance

The Title IX Regulations make it clear that ALL questions asked during the Title IX decision-making process must be relevant.

What does this mean and how will it be determined?

Directly Related vs. Relevant

Directly Related

Evidence upon which the Recipient does not intend to rely in reaching a determination regarding responsibility.

In other words, evidence that is connected to the allegations, but **does not** tend to prove or tend to disprove the complaint.

Example: A note the Respondent gave the Complainant in their Algebra class asking for help on a practice question. (Provided by the Complainant at their investigative interview.)

Relevant

Evidence that is connected to the allegations that would make a disputed fact more or less probable.

Example: A screenshot of a text message the Respondent sent the Complainant during PE that contained nude images of the Respondent. (Provided by the Complainant at their investigative interview.)

What is Never Relevant Under Title IX?

"Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the respondent and are offered to prove consent."

§106.45(b)(6)(i)



This is often referred to as rape shield protections.

Sexual predisposition = sexual orientation, sexual preferences, propensity to engage or not engage in sexual activity

Prior sexual history = identities of past sexual partners, number of past sexual partners, past sexual interactions with the Respondent which do not satisfy either of the two above exceptions

What is Never Relevant Under Title IX?

Additionally, "a school's grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege."

EXAMPLES:

- Medical records
- Academic records protected under FERPA
- Conversations with privileged individuals such as counselors or clergy

34 CFR §106.8(a)

Title IX Determinations Regarding Responsibility and Outcomes



Title IX Grievance Process

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(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Written Determination Regarding Responsibility



Title IX personnel involved:

- Title IX Coordinator
- Title IX Decision-Maker(s)



Objectives of this stage:

- Apply the appropriate standard of evidence to make a determination regarding responsibility
- Draft a thorough, clear, and compliant written determination
- Issue the written determination to the Parties, Advisors and/or parents and legal guardians, as appropriate



State the standard of evidence used to determine responsibility.

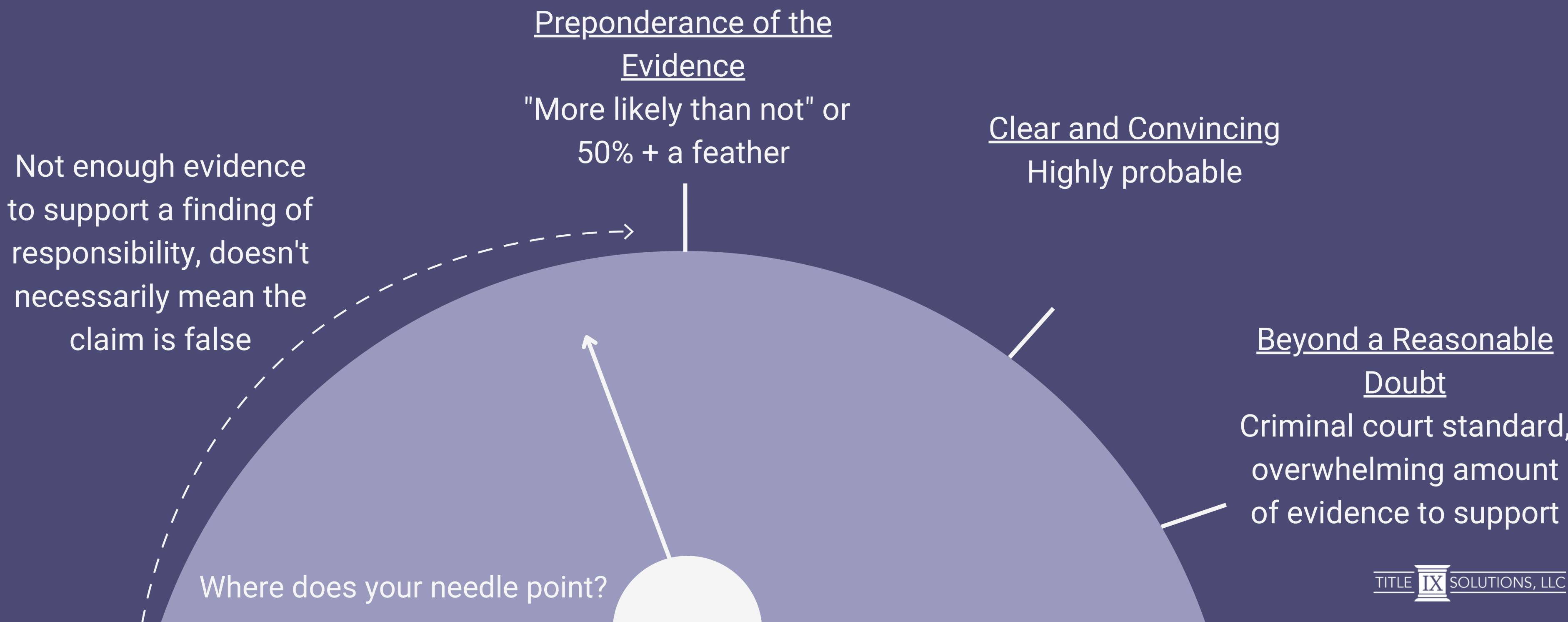
Recipients must apply either the preponderance of the evidence standard or the clear and convincing standard.

The same standard of evidence must be applied to:

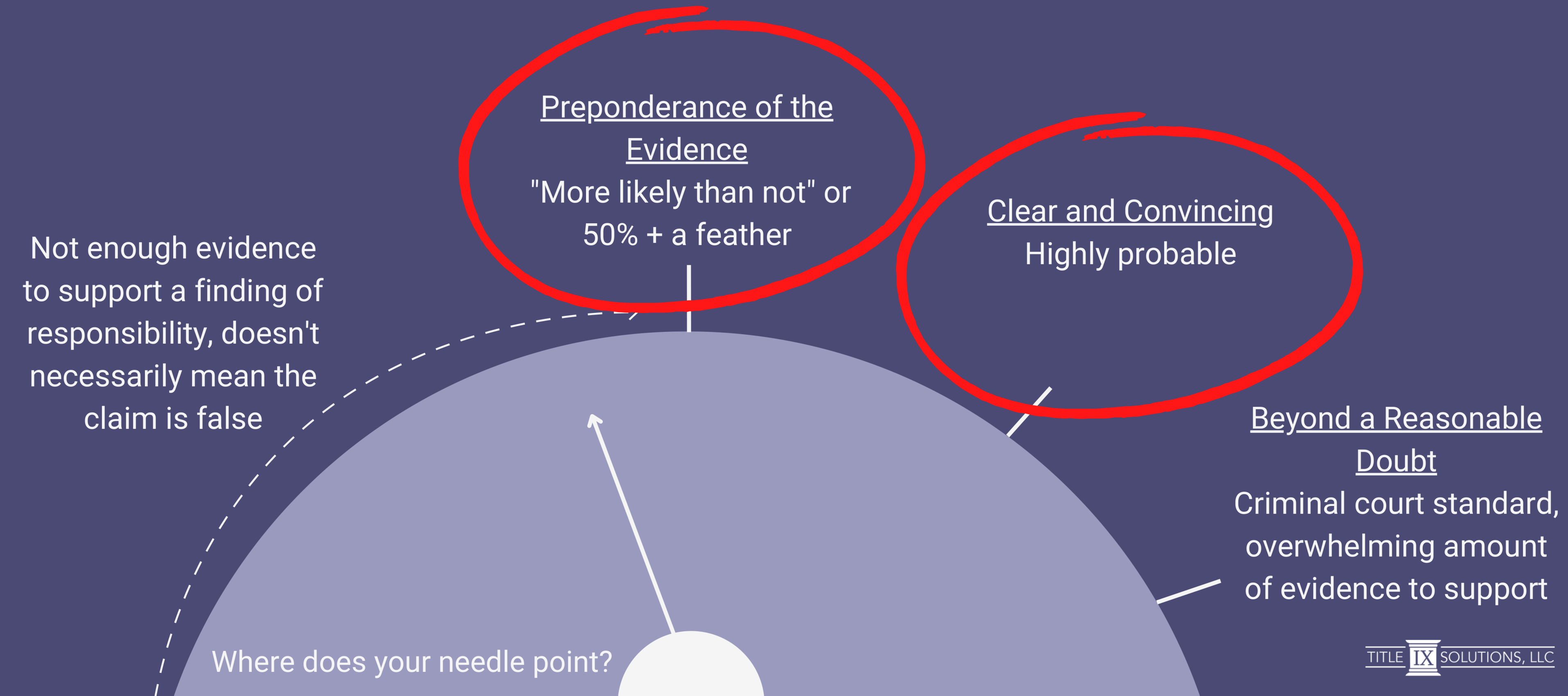
- a.) all formal complaints of sexual harassment; and
- b.) for formal complaints against students as well as against employees.

Key Compliance Requirement

Standards of Evidence



Standards of Evidence



What is a Determination Regarding Responsibility?

- Document drafted and issued by the Decision-Maker after the live hearing or other K-12 decision-making process
- Based upon relevant evidence and testimony obtained during the grievance process that has been applied to the school's standard of proof
- Contains various sections, notably a statement of, and rationale for, the result of each alleged policy violation (i.e., "responsible" or "not responsible" for violating the policy)
- Also referred to as the "Written Determination"

Key Elements of the Written Determination

Title IX states that the written determination must include:

- 1 Identification of the allegations potentially constituting sexual harassment as defined under Title IX;
- 2 Description of the procedural steps taken from receipt of formal complaint through the determination;
- 3 Findings of fact supporting the determination;
- 4 Conclusions regarding the application of school's code of conduct to the facts;

Key Elements of the Written Determination

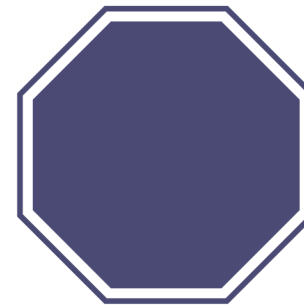
Title IX states that the written determination must include:

- 5 A statement of, and rationale for, the result as to each allegation, including:
 - A determination regarding responsibility;
 - Any disciplinary sanctions the school imposes on the Respondent;
 - Whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided by the school to the Complainant; and
- 6 The school's procedures and permissible bases for the Complainant and Respondent to appeal.

Issuing the Written Determination



The Recipient must provide the written determination to parties simultaneously.



Determination is final after appellate determination (if appeal was filed) or upon expiration of appeal window.



School is responsible for provision of remedies.



Describe the range of possible disciplinary sanctions and remedies.

Recipients must also list the possible disciplinary sanctions and remedies that it may implement following any determination regarding responsibility.

Note students and employees will likely require separate lists of remedies and sanctions.

Key Compliance Requirement

Range of Sanctions

This is a non-exhaustive list of potential sanctions. What are some of the sanctions in your district or school?

Education
or service

Verbal
warning

Written
warning

Removal
from team
or activity

In-school
suspension

Suspension
from school

Expulsion



Employee sanctions will also range from verbal warning to termination.

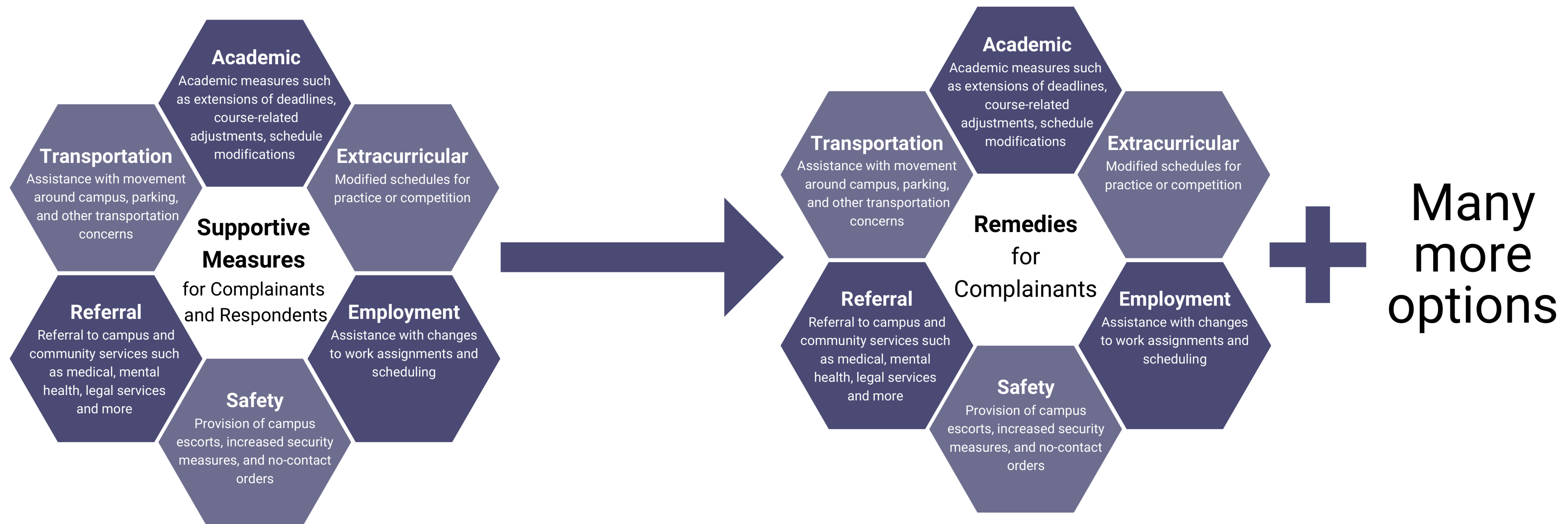
What Are Remedies?

- Implemented following the determination that the Respondent was responsible.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent.

"The details of remedies provided to the Complainant remain part of the Complainant's education record and not the Respondent's education record, unless the remedy also imposes requirements on the Respondent."

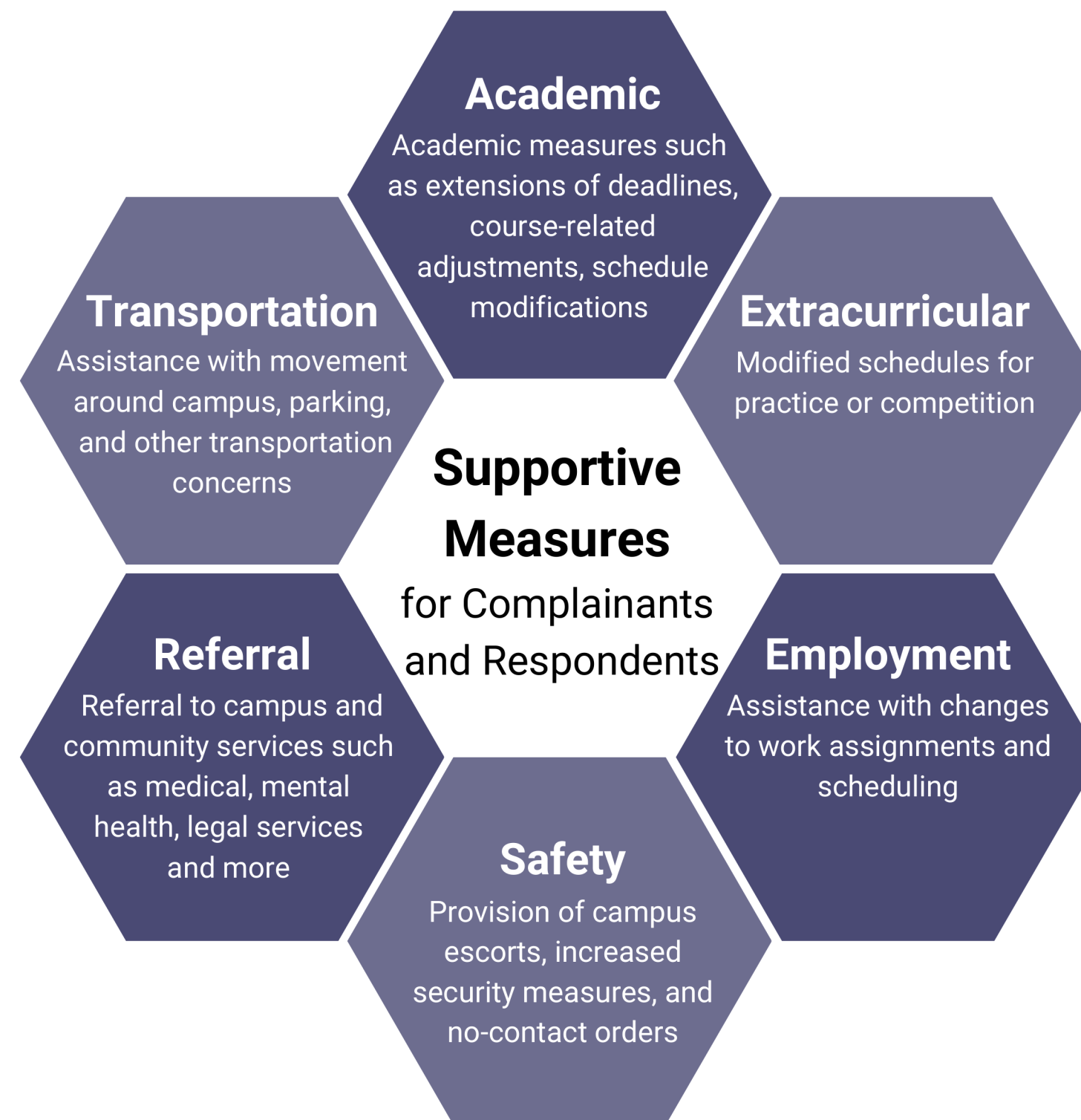
(p. 1458 Preamble to the 2020 Title IX Regulations)

Remedies may simply be a continuation of supportive measures already in place or entirely new measures implemented.



These will be determined on a case-by-case basis.

If a Respondent is found not responsible for violating the Title IX policy, the District may continue to offer supportive measures to the Complainant.





Treat Complainants and Respondents equitably.

Provide remedies to a Complainant where a determination of responsibility for sexual harassment has been made against the Respondent.

Follow the Title IX grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a Respondent.

Key Compliance Requirement

Title IX Appeals



Title IX Grievance Process

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Include the procedures and permissible bases for appeal.

Both Complainants and Respondents have the right to appeal.

Parties can appeal the Recipient's dismissal of a formal complaint or any allegations therein as well as the determination regarding responsibility.

Key Compliance Requirement

Appeals Process



Title IX personnel involved:

- Title IX Coordinator
- Title IX Appellate Decision-Maker(s)



Objectives of this stage:

- Review the investigative report and evidence, written determination, and appeal(s) submitted by the Parties
- Determine whether a Party has a valid basis of appeal
- Issue a written decision describing the result of the appeal and the rationale for the result
 - Provide the decision to the Parties simultaneously

Required Bases for Appeal

Title IX Regulations require every school to utilize these bases for appeal:

- A** Procedural irregularity that affected the outcome of the matter;
- B** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C** 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.

34 CFR §106.45(b)(8)



The bases of appeal, timeline for submitting an appeal, and procedural steps must be clearly communicated in the policy.

Appeal Considerations

- Appellate Decision-Maker cannot have a conflict of interest or bias and cannot be the Title IX Coordinator, Investigator, or Decision-Maker. The Appellate Decision-Maker must be trained as required under Title IX.
- District or school policy can provide additional bases for appeal, which must be applied equally to both Parties.
- Parties must be notified in writing of:
 - The other Party's decision to appeal
 - Appeal decision
- Parties must be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

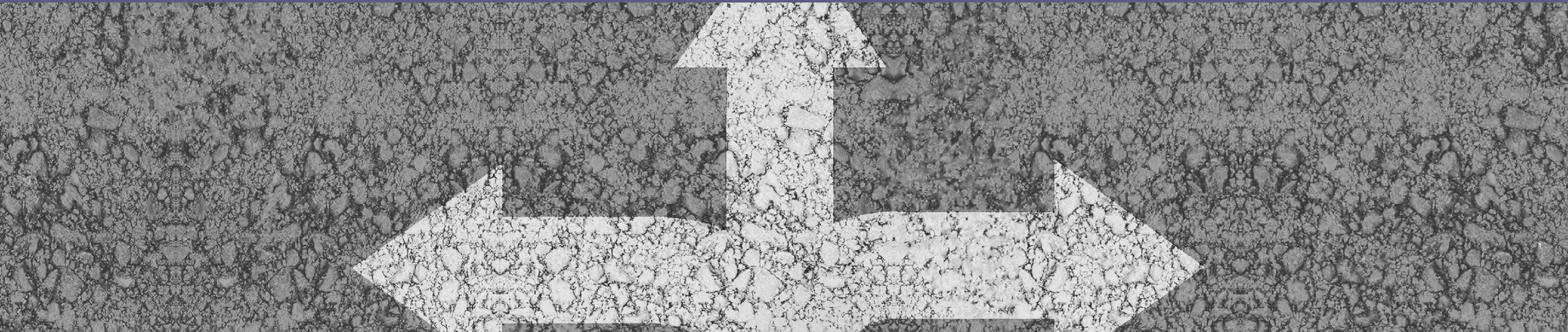
Appeals Process Outcomes

If neither Party appeals the written determination within the timeframe set forth in the Title IX policy, the case will be closed and the written determination remains in effect .

If one or both Parties files an appeal, the Appellate Decision-Maker will review the appeal and issue a written decision describing the result of the appeal and the rationale for the result. In some instances, the Appellate Decision-Maker may call for:

- A new investigation
- A new hearing
- Overturning the decision regarding responsibility
- A different sanction (if sanctions are allowed to be appealed under your policy)

Informal Resolution Options



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Title IX Informal Resolution



Title IX personnel involved:

- Title IX Coordinator
- Title IX Informal Resolution Facilitator(s)



Objectives of this stage:

- Provide an alternate avenue for the resolution of a formal complaint
- Facilitate a process aimed at creating resolution, which includes pre-informal resolution meetings as well as informal resolution meetings
- Draft the written informal resolution agreement and obtain the Parties' signatures (as well as Advisors' and parent or legal guardians' signatures, if appropriate)

Title IX Informal Resolution

Title IX Regulations allow for schools to do the following:

"at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient –"

§106.45(b)(9)

- Provides written notice disclosing the allegations and the requirements of the informal resolution process
- Obtains written consent to participate in the informal resolution from both Parties

Title IX Informal Resolution Restrictions

Institutions may not require a waiver of the right to an investigation and adjudication of formal complaints of sexual harassment under Title IX.

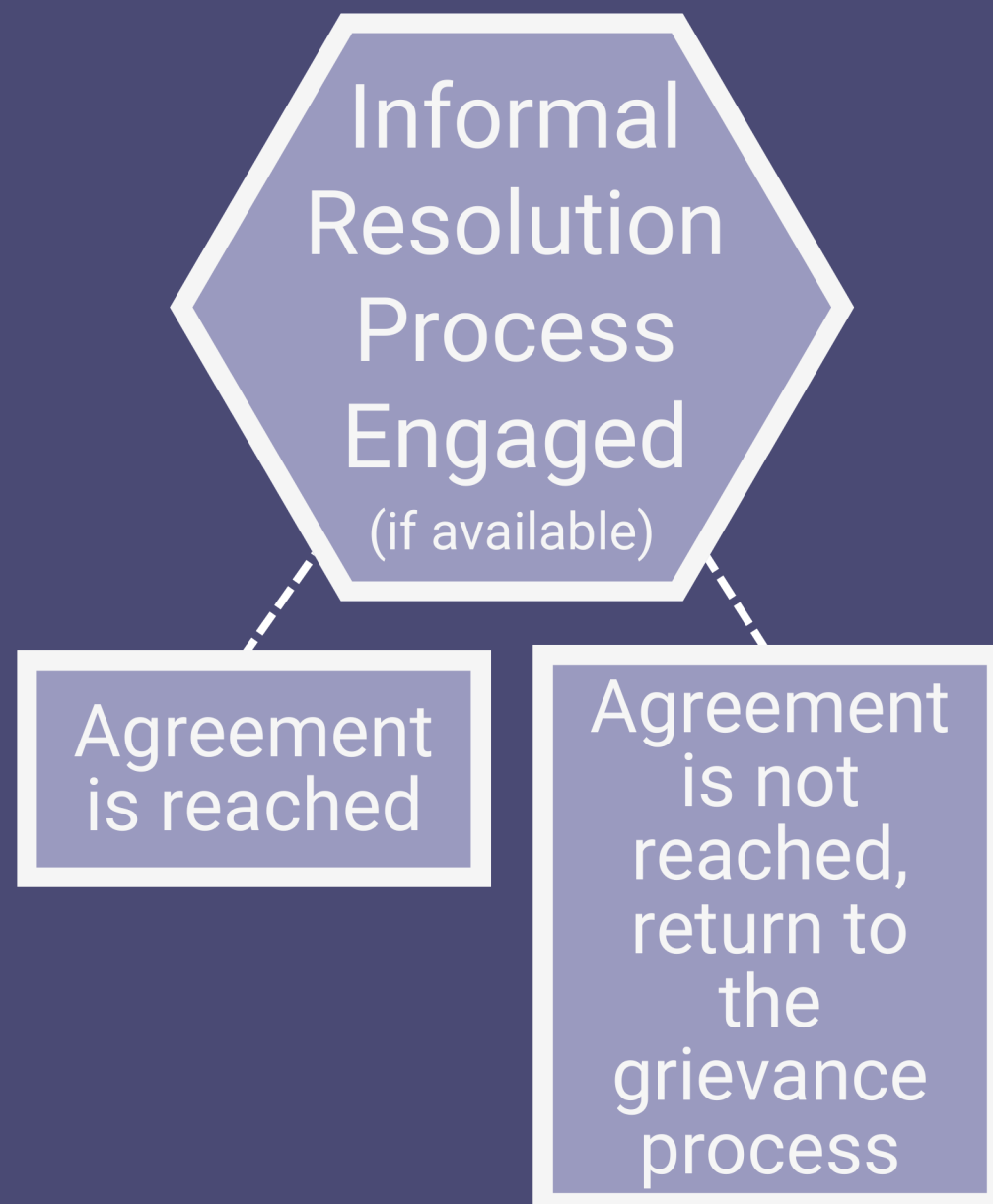
Institutions may not require the Parties to participate in an informal resolution.



Institutions may not offer an informal resolution process unless a formal complaint is filed.

Institutions may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Informal Resolution Outcomes



An agreement must be reached by both Parties, with help from a facilitator. Conditions of the agreement could include things such as:

- Education/Training
- Counseling Restrictions on Contact Accommodations for academics, work-place, or extracurricular activities
- Disciplinary action
- Voluntary removal
- Acceptance of responsibility

If the Parties cannot come to an agreement, the matter resumes where it left off in the Title IX grievance process.



Does your policy outline options for the informal resolution of formal complaints?

Additional Implementation Considerations



IN THIS CHAPTER



TITLE IX PERSONNEL



CONFIDENTIALITY



RECORDKEEPING

Title IX Personnel



Title IX Roles

Except for the Title IX Coordinator, Title IX personnel may be internal (from the campus community) or external (local attorneys, consultants, etc.).



Title IX
Coordinator



Deputy
Coordinators



Investigator



Decision-
Maker



Informal
Resolution
Facilitator



Appellate
Decision-Maker



Require all Title IX personnel have specific training.

Applies to an individual designated as a Title IX Coordinator, Investigator, Decision-Maker, Appeals Decision-Maker and Informal Resolution Facilitator.

Includes training on the definition of Title IX sexual harassment, scope of the school's education program or activity, how to conduct the grievance process, and how to serve impartially, including prejudgment of facts at issue, conflicts of interest, and bias.

Key Compliance Requirement



Require all Title IX personnel have specific training.

Decision-Makers and Investigators must receive additional training on issues of relevance to adequately fulfill their roles.

Materials used to train Title IX personnel must not rely on sex stereotypes and must promote impartial investigations and adjudication of formal complaints of sexual harassment.

Key Compliance Requirement



Require that all Title IX
personnel not have a conflict
of interest or bias.

Key Compliance Requirement

Applies to an individual designated as a Title IX Coordinator, Investigator, Decision-Maker, Appeals Decision-Maker and Informal Resolution Facilitator.

Includes not having a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

What constitutes a conflict of interest?

- Conflicts of interest arise when there is a real or perceived personal or private interest that may prevent a Title IX Coordinator, Investigator, or Decision-Maker from carrying out their role impartially.
- Conflicts of interest are not explicitly defined under the Title IX regulations.
- Conflicts of interest may be more difficult to navigate within smaller institutions or school districts.

Examples of Potential Conflicts



Personal relationship with a Party or parent/guardian of a Party

Example: A Title IX Investigator is close family friend and has known the Party for years and outside of the academic program.



Position of power over a Party not related to the Title IX process

Example: The assigned Title IX Decision-Maker is one of the Party's coaches in a school-sanctioned sport.

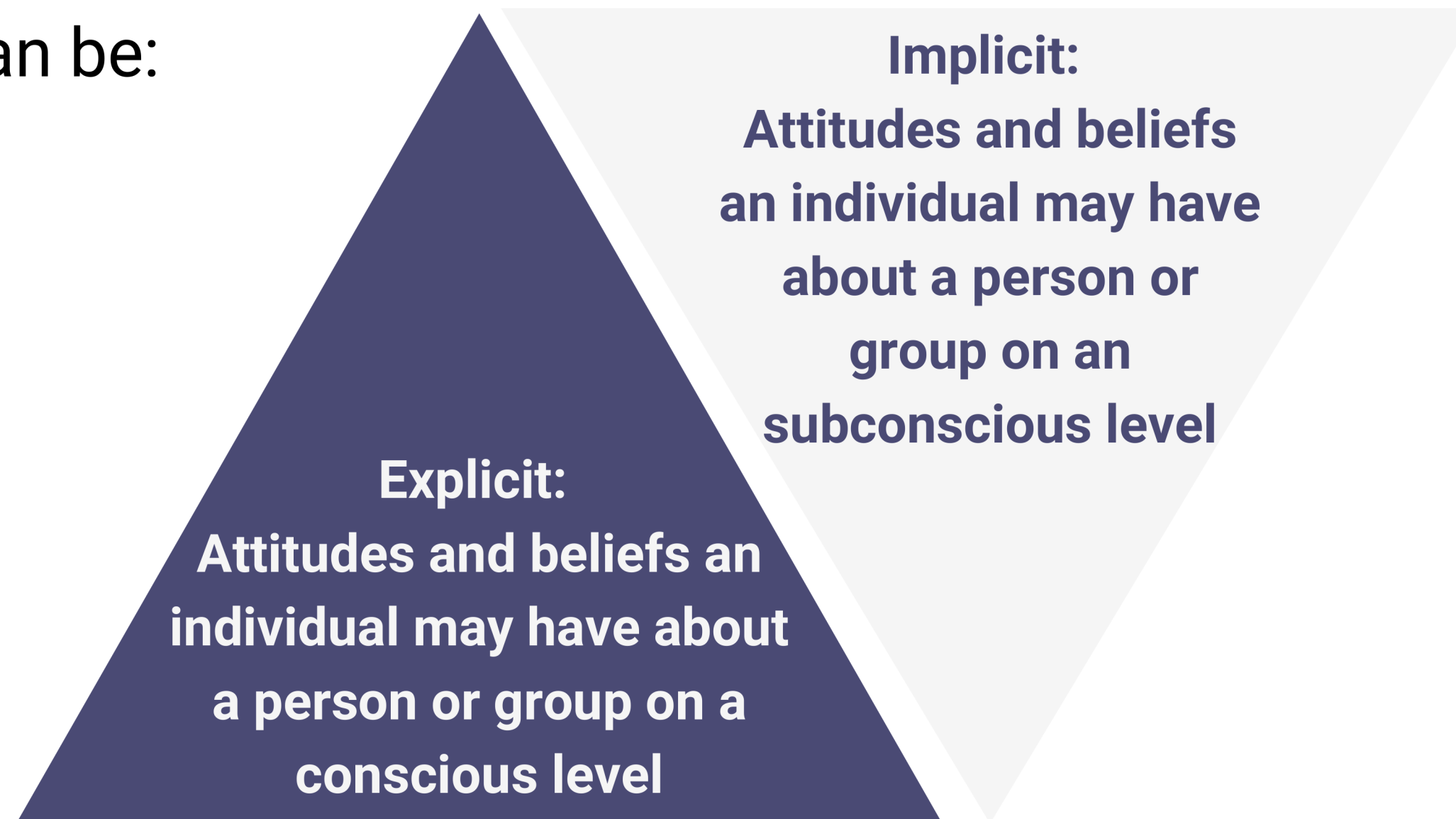


Previous knowledge about a Party that could impact the ability to investigate or adjudicate the case

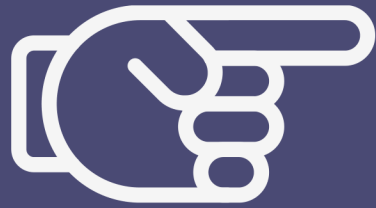
Example: An Informal Resolution Facilitator is a former teacher of a Party and had a difficult experience with the Party.

What constitutes a bias?

- Title IX Regulations specifically reference "bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent."
- Biases can be:



Examples of Potential Biases



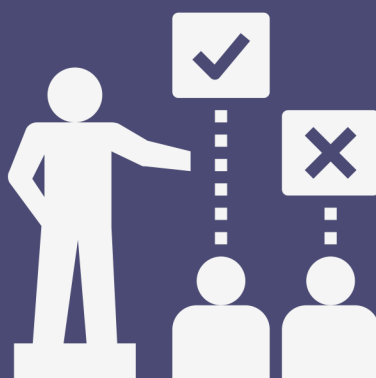
Prejudgment

Example: A Decision-Maker, upon hearing the summary of an upcoming case and before hearing all relevant facts, has formed an opinion believing the Respondent to be responsible for the alleged conduct.



Bias for or against Complainants or Respondents generally

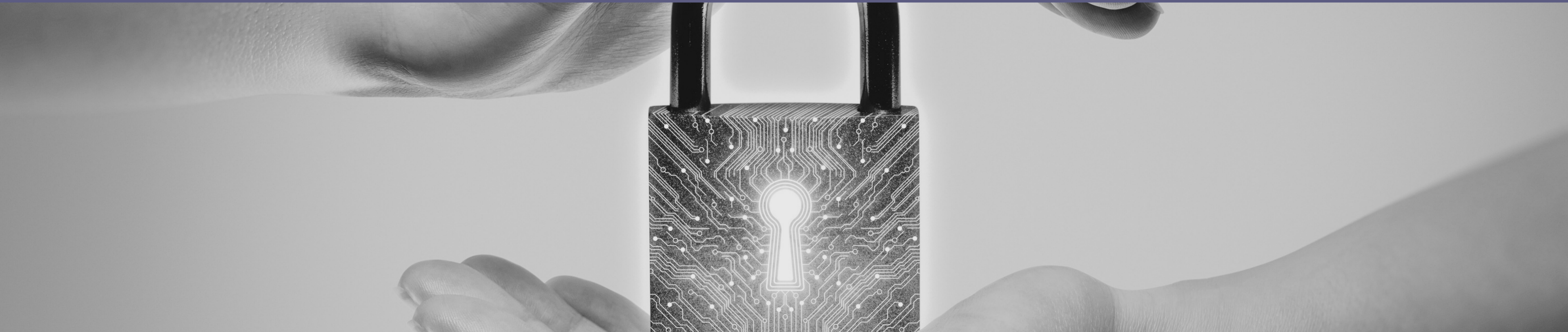
Example: A Title IX Investigator also serves as a volunteer advocate at the local Rape Crisis Center and frequently and publicly makes posts on social media about "believing all survivors."



Bias for or against a specific Complainant or Respondent

Example: A Title IX Coordinator has a known set of religious beliefs that create bias against a Complainant who identifies as a member of the LGBTQ+ community.

Confidentiality



Confidentiality Requirements

“

The Recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

”

Recordkeeping



Recordkeeping Requirements

Recipients must maintain for a period of seven years records of the following:

- Each sexual harassment investigation and any determination regarding responsibility
 - Any audio or audiovisual recording or transcript of the live hearing
 - Any disciplinary sanctions imposed upon the Respondent
 - Any remedies provided to the Complainant
- Any appeal and the result therefrom
- Any informal resolution and the result therefrom
- All materials used to train Title IX Coordinators, investigators, Decision-Makers, and Informal Resolution Facilitators
 - Training materials must be made publicly available on the Recipient's website



Recordkeeping Requirements

For each response to a report of sexual harassment, the Recipient must create and maintain for a period of seven years the following:

- Records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment
- Documentation of the basis for its conclusion that its response was not deliberately indifferent
- Documentation that the Recipient has taken measures designed to restore or preserve equal access to their education program or activity
- If no supportive measures are provided, Recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances

