



K-12 VIRTUAL CERTIFIED TITLE IX INVESTIGATOR TRAINING

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**"COMPLIANCE
AT YOUR
FINGERTIPS!"**

Leadership Team



Betsy Smith
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Director of
DEI/EEO Services

Housekeeping



- Chat bar
- Breaks
- Understanding

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Agenda

The Why
Before the How

Report
Writing

Hypos
(if time allows)

Investigative
Techniques

Purpose of ICS Training

Level 1



Not Legal Advice

Designed to provide you with options so that you can make the decisions that make the most sense for you/your district.



We Are All In This Together!

We love when our participants bring information to us and provide their perspectives.



This is still very new!

Most decisions will be district specific and the regulations allow for flexibility.

The background of the slide is a solid yellow color. It is framed by a decorative border composed of numerous metal hardware items, including hex nuts, flat washers, lock washers, and bolts of various sizes and finishes (some appear to be stainless steel, others galvanized or painted). These items are scattered along the top, bottom, and sides of the slide, creating a mechanical or industrial theme.

Nuts and Bolts of Title IX Compliance

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What is Title IX?

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

TITLE IX IS:

- Federal law
- Enforced by the Office for Civil Rights (OCR)
- Prohibits discrimination based on sex
- Historically viewed as simply requiring gender-equity in athletics



What Is/Is Not

Is or May Be Title IX

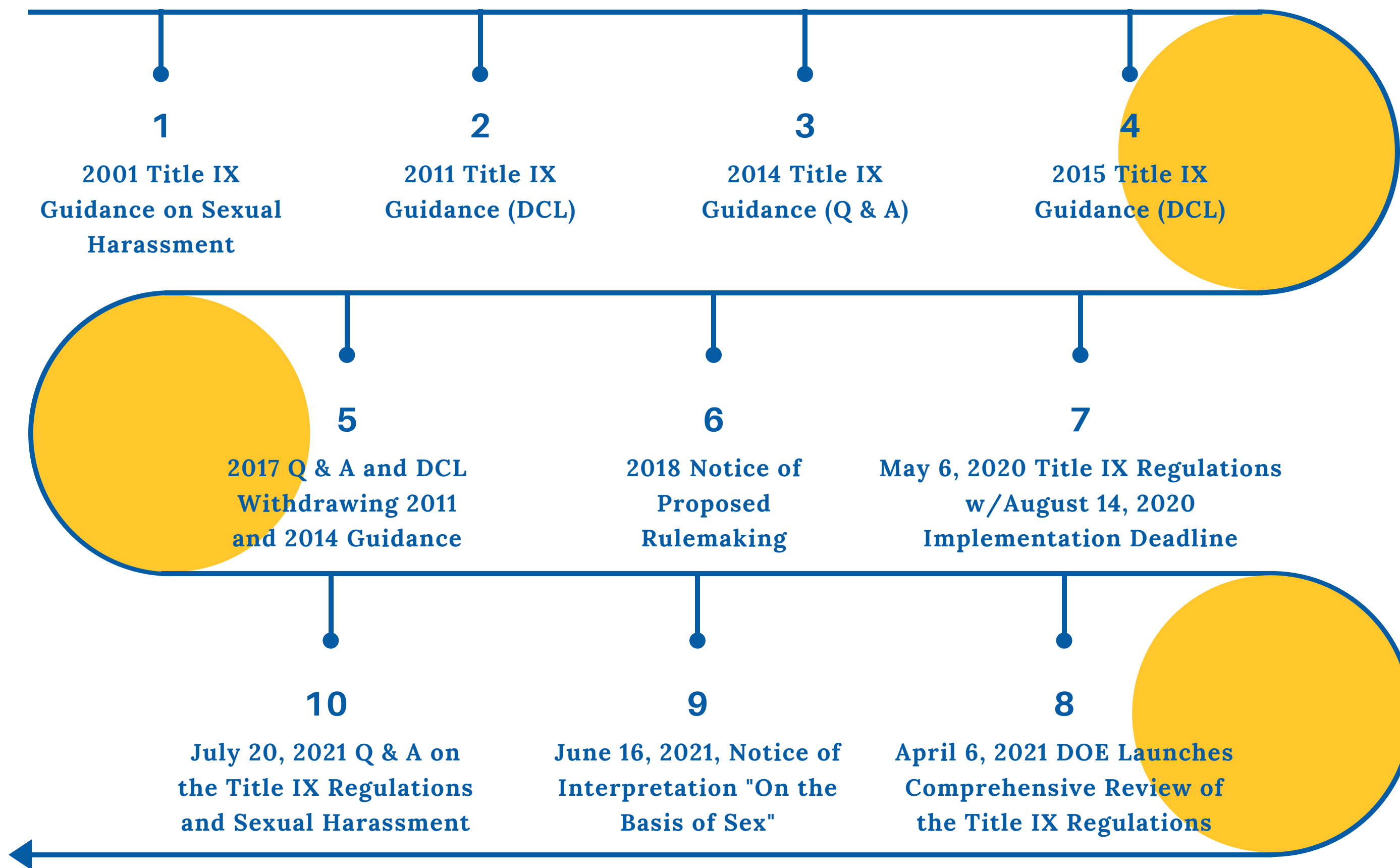
- Discrimination based on gender
- Sexual Harassment
- Pregnancy discrimination
- Retaliation
- Bullying/Cyber-Bullying when it involves sexual misconduct
- Hazing when it involves sexual misconduct

Title IX Conduct?

Is **NOT** Title IX

- Disability discrimination (ADA)
- Employment discrimination based on race, religion, or national origin (Title VII)- Note overlap with sex
- Student discrimination based on race, religion, or national origin (Title VI)
- Age Discrimination (ADEA)

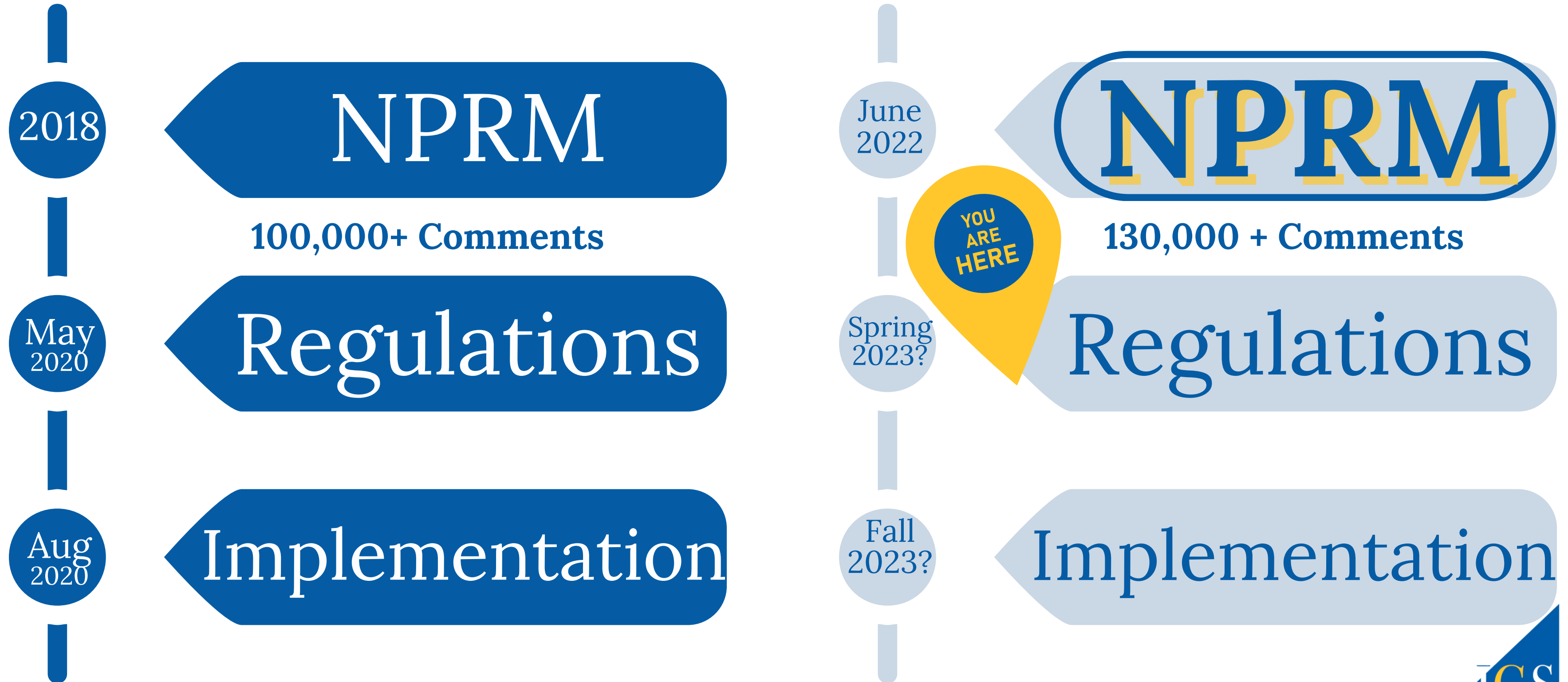
The Evolution of Title IX



June 2022
Title IX Rule

Changes/Amendments

Title IX Regulations, Then & Now



Top 10

1

Scope Expanded

2

Mandated Training
Expanded

3

Additional/Modified
Definitions

4

Complexity of Title IX
Coordinator Role

5

Sexual Harassment is now
Sex Based Harassment

6

Less Prescriptive Grievance
Process

7

Informal Resolution- Initiated
without "Formal Complaint"

8

Retaliation Protections

9

Discrimination Based on
Pregnancy

10

Expands Recordkeeping



REMINDER

It is a
proposed rule,
NOT a final
rule.

The 2020
regulations still
apply. Continue
your compliance
efforts under the
2020 Regulations.

Education
Program/Activity

Sexual Harassment

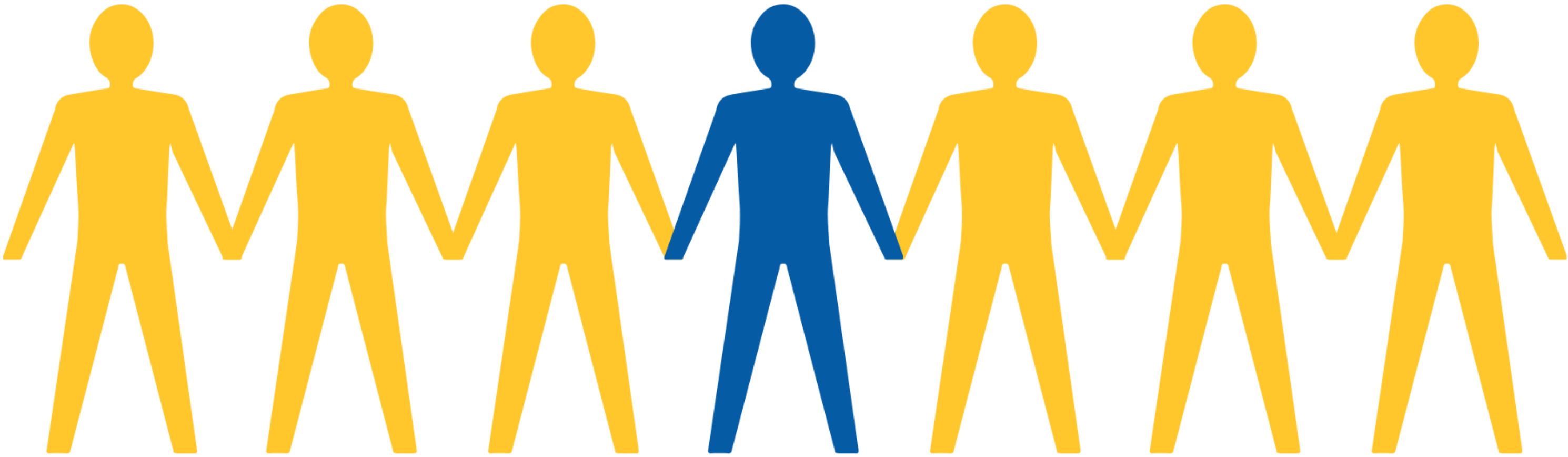
2020 Title IX
Regulations Have
Specified Defined
Terms

Complainant

Supportive
Measures

TITLE IX TEAM

Title IX
Coordinator



Responsible
Employees/
Officials
w/Authority

Advisors

Investigator(s)

Decision-
Maker(s)

Appellate
Decision-
Maker(s)

Informal
Resolution
Facilitator(s)

INVESTIGATOR

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator. It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

TITLE IX TEAM

TITLE IX COORDINATOR

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May serve as an Investigator-though if possible, it is recommended that another individual serve as an Investigator. May serve as an Informal Resolution Facilitator.

DECISION MAKER

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as a Decision-Maker.

APPELLATE DECISION MAKER

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an Appellate Decision-Maker serve as the Informal Resolution facilitator in a case that they may later serve as an Appellate Decision-Maker.

INFORMAL RESOLUTION FACILITATOR

May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or Appellate Decision-Maker in the same case serve as the Informal Resolution Facilitator.

Parties in an Investigation





INVESTIGATOR'S ROLE IN COMPLIANCE



80/20

COMPLIANCE RULE

Handling of a Report
Policies, Procedures, Trainings

TITLE IX COMPLIANCE LAYERS





Sexual Harassment + Education Program or Activity

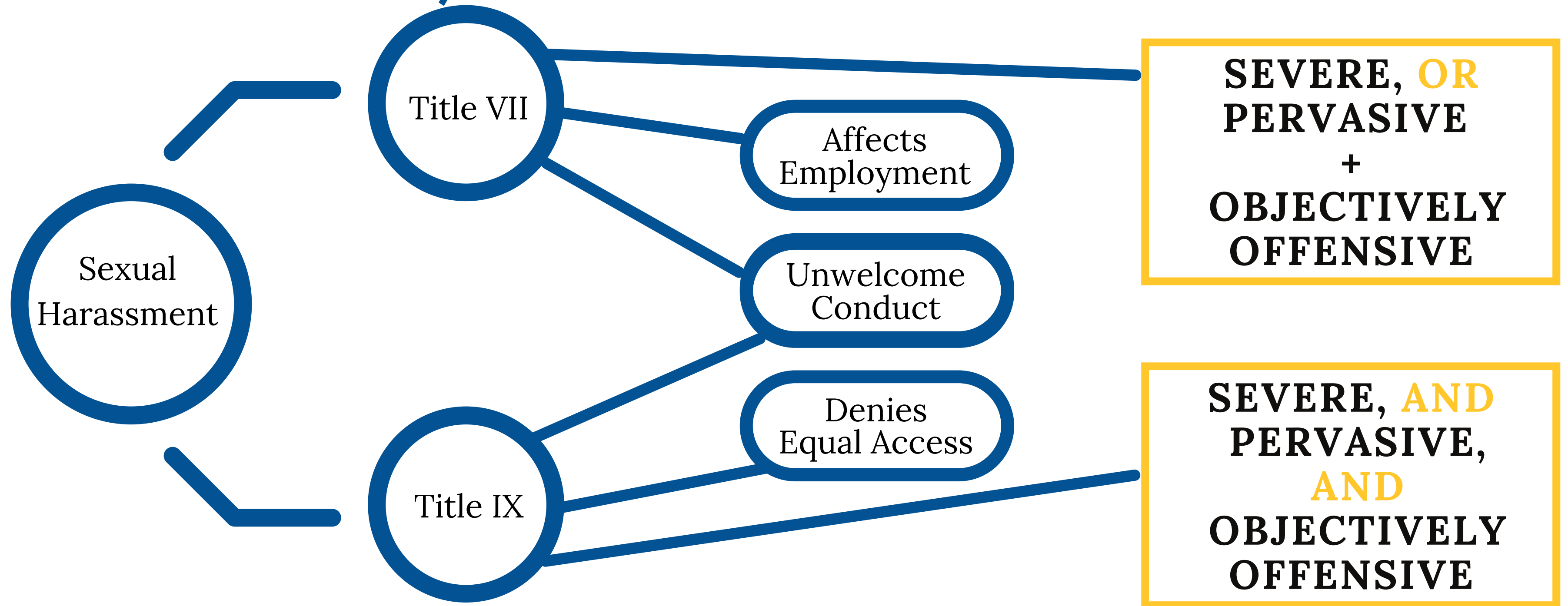
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Sexual Harassment



- Conduct on the basis of sex that satisfies one or more of the following:
 - An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 - Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
 - "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

Title IX/Title VII Sexual Harassment



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

Sexual Assault is:



An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Rape

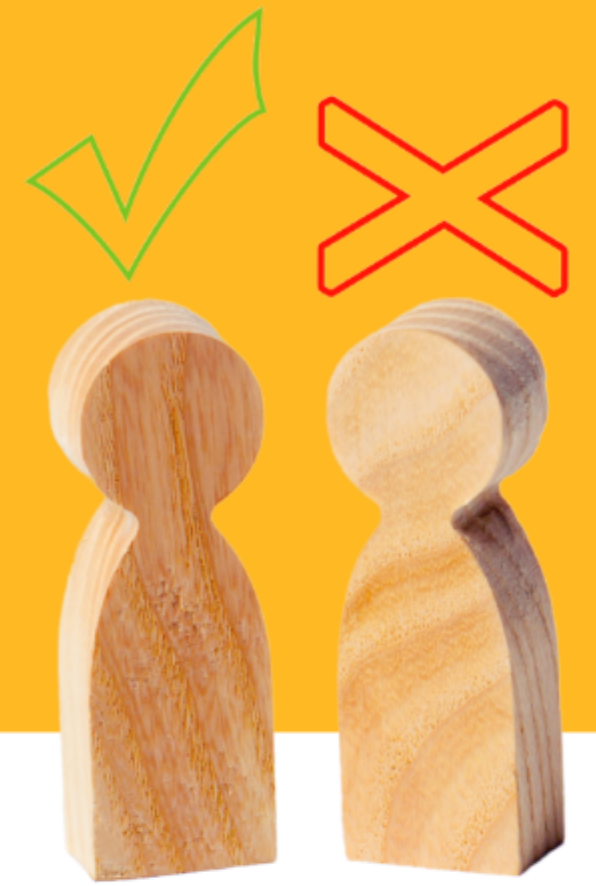
The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent.

Consent

The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault.



WHAT DOES THIS MEAN?

DEFINITION OF CONSENT

Create/use a definition of consent that makes sense to you and your district.
Make sure you can 1) explain it and 2) apply it.

SITUATIONAL CLARITY

Make sure to include situations where consent cannot be obtained/given (ie. coercion, incapacitation) and clearly define those situations.

Domestic Violence

A FELONY OR MISDEMEANOR CRIME OF VIOLENCE COMMITTED BY A:

- current or former spouse or intimate partner of the victim
- person with whom the victim shares a child in common
- person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or 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 in which the crime of violence occurred.



Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

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

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.



Stalking

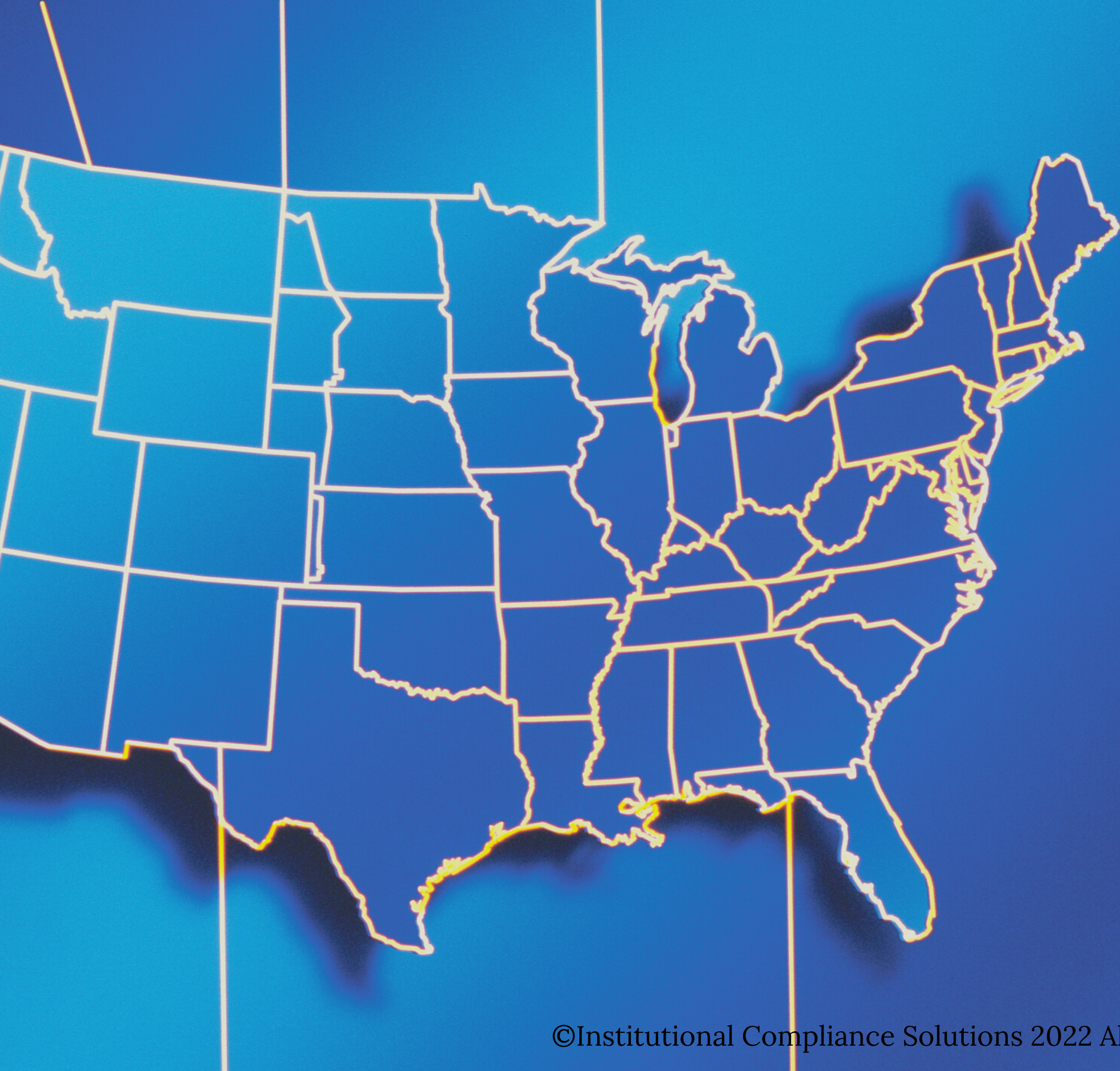
ENGAGING IN A COURSE OF CONDUCT DIRECTED AT A SPECIFIC PERSON THAT WOULD CAUSE A REASONABLE PERSON TO

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For purposes of this definition:

- ▶ Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.
- ▶ Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- ▶ Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.





REMINDER:

Even if your policies do not have state definitions written in, you may have to access them to determine correct language for alleged violations

Conduct + Education Program or Activity

It's more than the behavior...
Must evaluate location/
Jurisdiction as well



Jurisdiction



Education Program or Activity

Locations, events, or circumstances (operations) over which the district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

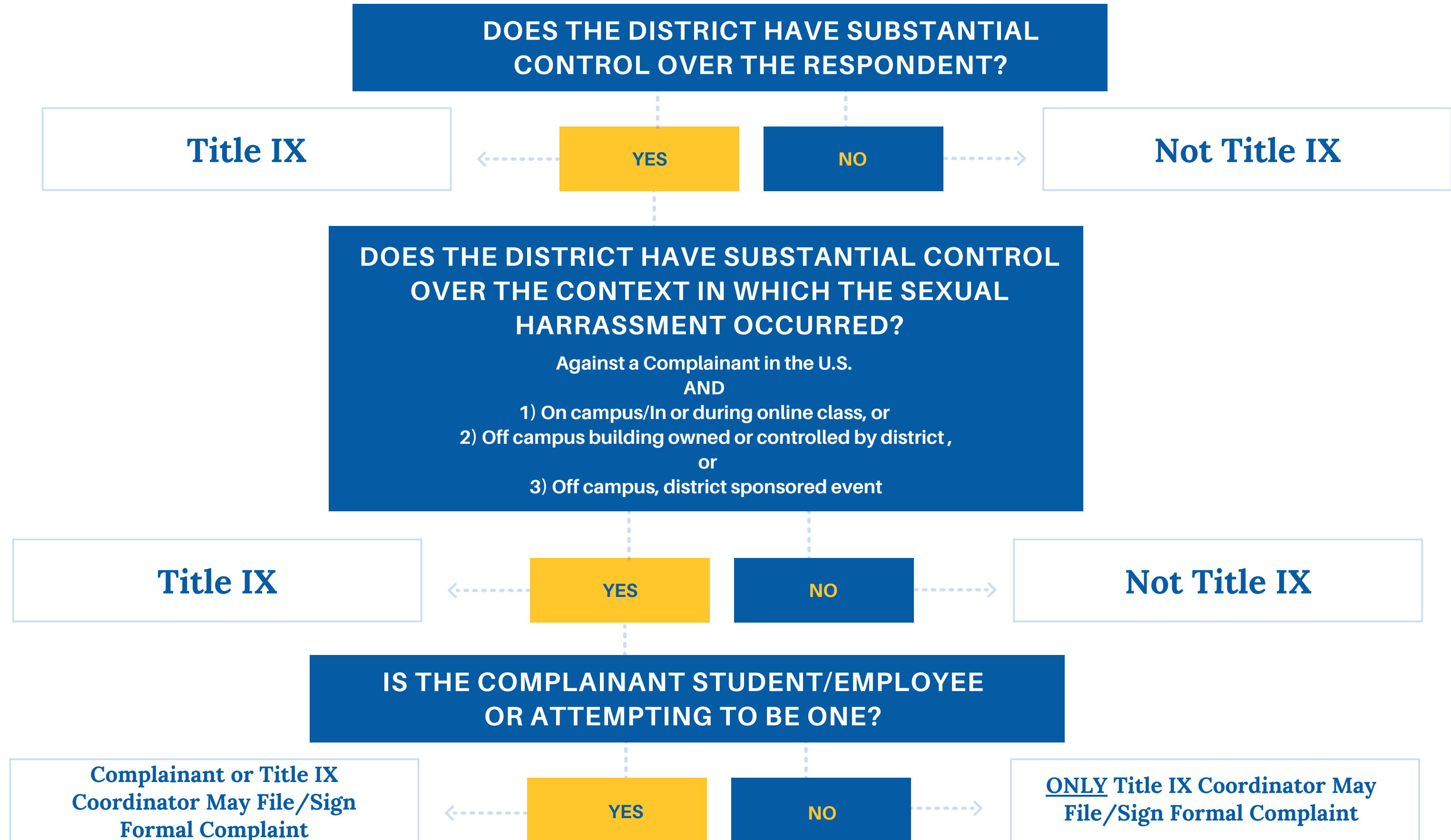


Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

Does not create or apply a geographic test, does not draw a line between “off campus/property” and “on campus/property,” & does not create a distinction between sexual harassment occurring in person vs online.



Education Program or Activity/Jurisdiction



Others Involved in the Process...



Officials with Authority

Yellow hexagon icon: "Responsible Employee" is gone, actual knowledge only to Title IX Coordinator or "official with authority"

Blue hexagon icon: ALL employees are responsible for reporting at K-12 level

Yellow hexagon icon: Actual Knowledge = NOTICE

Blue hexagon icon: Notice without action = deliberate indifference



Parents and Guardians

“

While elementary & secondary school students retain less control over when disclosure of sexual harassment triggers the school's mandatory response obligations, these students (with involvement of their parents as appropriate) do retain control over whether to accept supportive measures, & whether to also file a formal complaint.

”

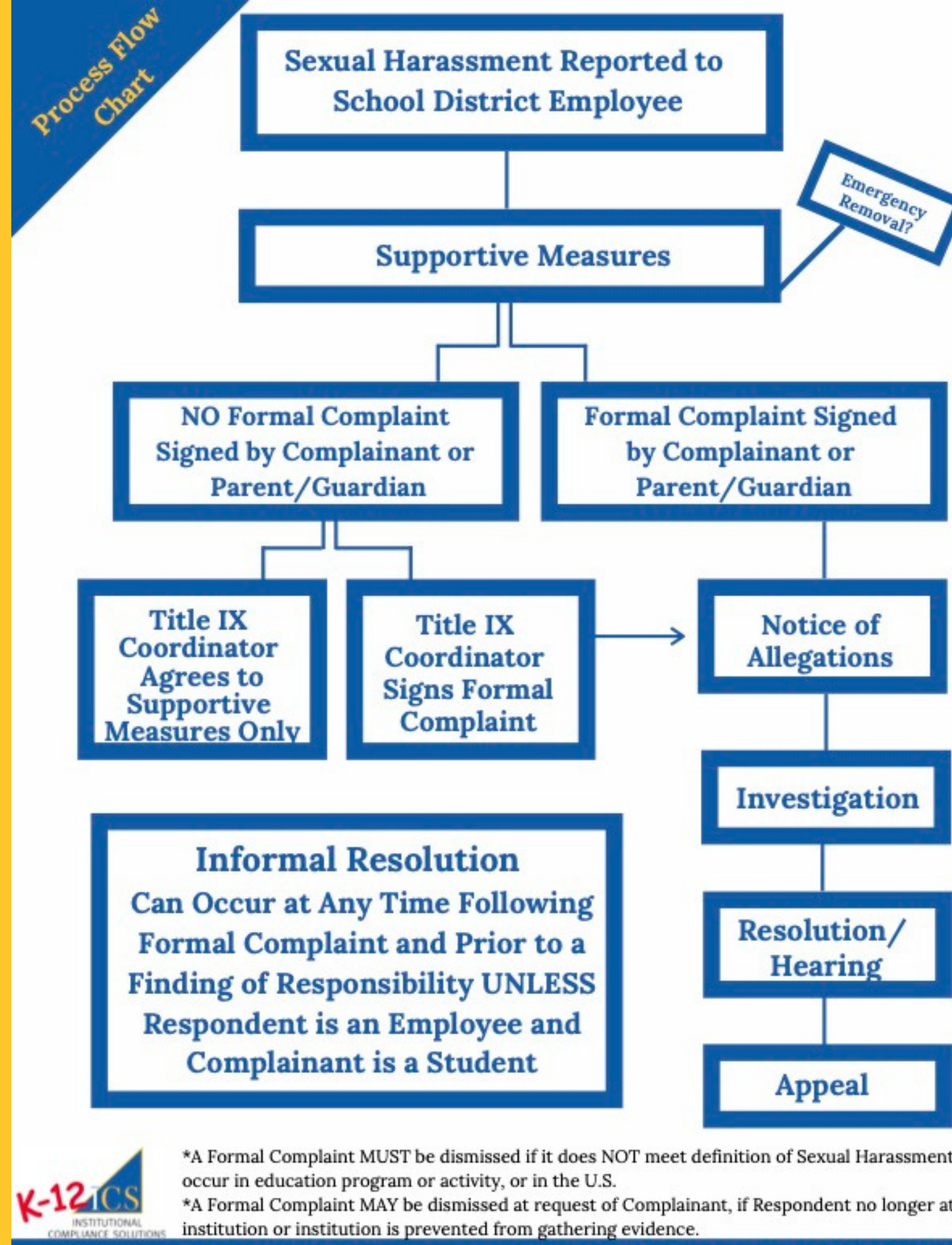
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ADVISORS

- Of choice
- Can be an attorney, doesn't have to be
- Your policy defines how they can be involved in your process
- Challenges with advisors
- Benefits to advisors

General K-12 Process Flow Chart



Supportive Measures



What

- defined term and intentional deviation from "interim measures"
- individualized services provided to a complainant or respondent that are non-punitive, non-disciplinary, and do not unreasonably burden the other party yet are designed to restore or preserve a person's equal access to education
- Non-disciplinary
 - non punitive
 - individualized services
 - interactive process



Offered

- to complainant and respondent (can be refused)
- as appropriate
- as reasonably available
- without fee or charge



When?

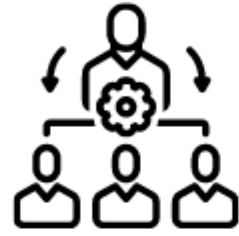
- promptly
- before or after the filing of formal complaint OR
- where no formal complaint has been filed

Supportive Measures Continued



Purpose

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment



Title IX Coordinator

- ultimately responsible for effective implementation, but others can also implement



Not

- punitive or disciplinary



Document

- when provided, when not provided and why



Burden

- remains on the district not the parties



Confidential

- as much as possible

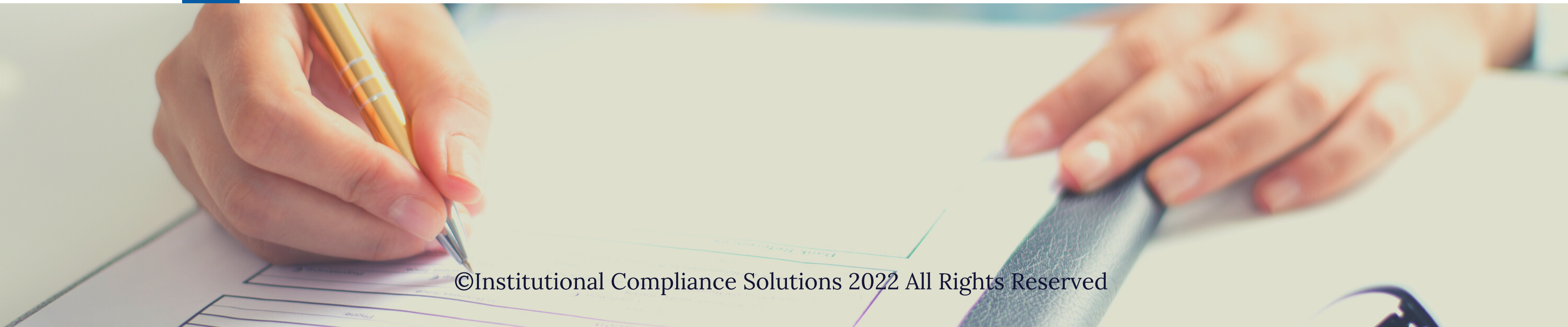


Examples

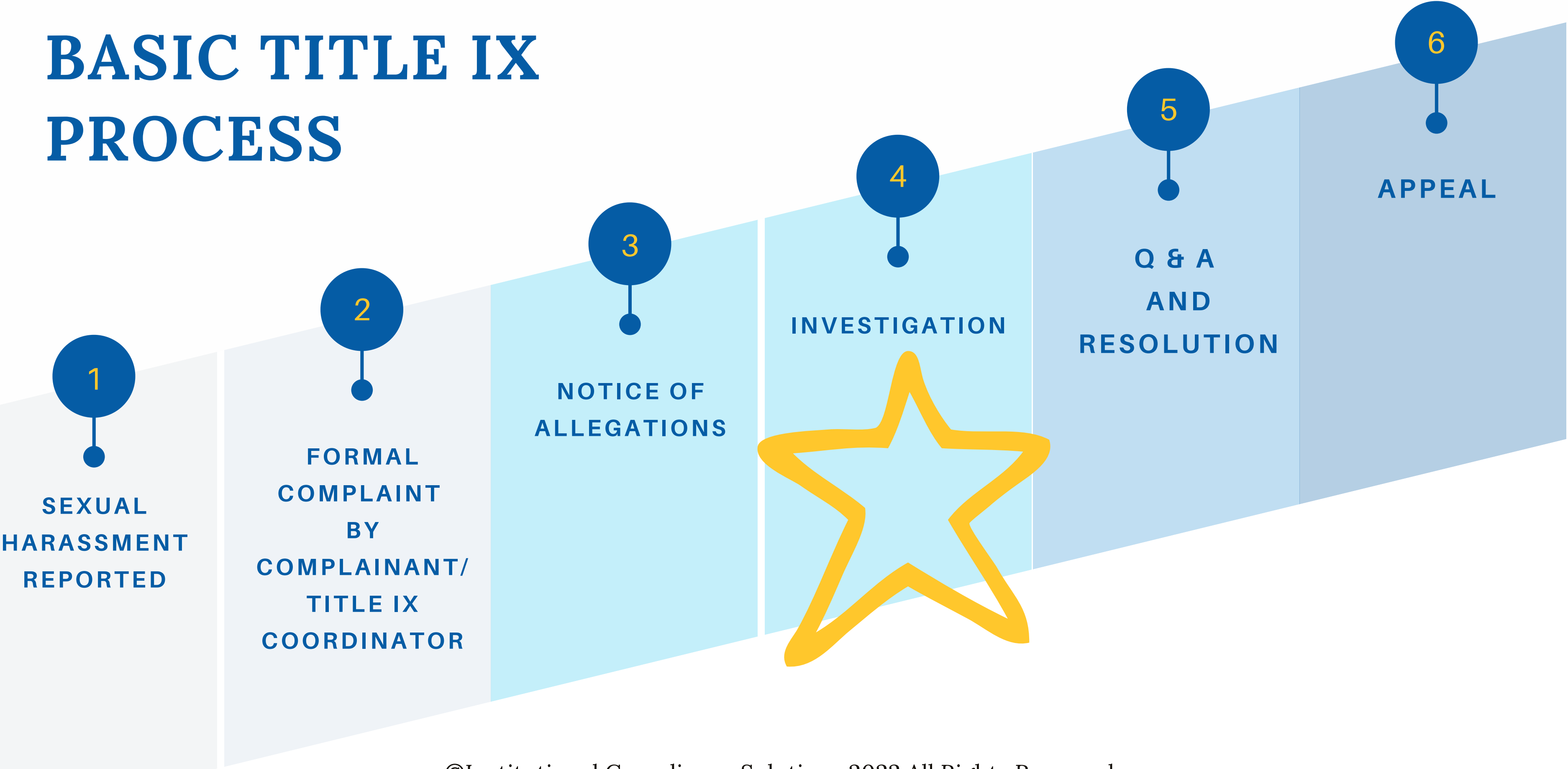
- in section 106.3

Title IX Grievance Process

- Specific requirements
- Focus on equity
- Opportunities for review
- Need for "forms"



BASIC TITLE IX PROCESS



K-12 INVESTIGATION FLOWCHART



Formal Complaint

✓ In Writing

- Hard copy
- Electronic
- Online submission

✓ Signed by:

- Complainant or Parent/Guardian
- Title IX Coordinator

✓ Alleging Sexual Harassment

✓ Requesting an Investigation



Dismissal of Formal Complaint



✓ Required Dismissal

- Would not constitute Sexual Harassment as defined in Title IX regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

✓ Permissive Dismissal

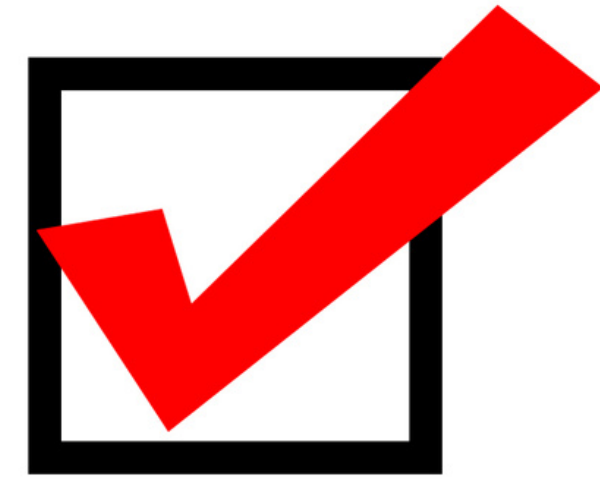
- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw Formal Complaint or allegations
- Respondent is no longer enrolled or employed by the district
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination

✓ If Dismissed:

- Must Promptly send written notice of dismissal and reasons for dismissal simultaneously to parties
- May proceed with disciplinary process outside of Title IX

Response to a Formal Complaint (Grievance Process)

- Treat parties equitably
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- No conflict of interest or bias by Title IX Coordinator, investigator, decision-maker or facilitator of informal resolution process
- Trained Title IX Team
- Presumption that respondent is not responsible
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability)
- Describe range of sanctions and remedies
- Standard of evidence (same for students and employees)
- Procedures and permissible bases for appeals
- Notice of Allegations containing specific information as outlined in regulations





Notice of Allegations Checklist

- ☐ Notice of Grievance Process; Including Informal
- ☐ Allegations Potentially Constituting Sexual Harassment
 - Identities of the Parties
 - Conduct Constituting Sexual Harassment
 - Date of Incident
 - Location of Incident
- ☐ Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process
- ☐ Right to Advisor of Choice
- ☐ Code of Conduct Provision Prohibiting False Statements or False Information in Process

Investigation



- ✓ **Interviews with parties and witnesses**
 - Including Notice with sufficient time to prepare for the meeting/interview
 - Document date of meeting and date notice provided
- ✓ **Collect evidence and information**

Document when and how evidence/information was collected
- ✓ **Allow parties and advisors to review "evidence directly related to the allegations" (10 days)**
- ✓ **Write investigation report that "fairly summarizes relevant evidence"**
- ✓ **Provide opportunity for parties and advisors to review the report (10 days)**

Decision-Maker

Determination Regarding Responsibility Checklist

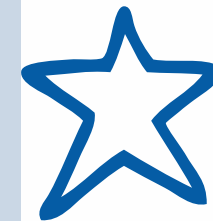
☐

Identification of the Allegations

☐

Description of Procedural Steps Taken

- Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held
-

☐

Findings of Fact Supporting Determination

☐

Conclusions Regarding the Application of the Code of Conduct to the Facts

☐

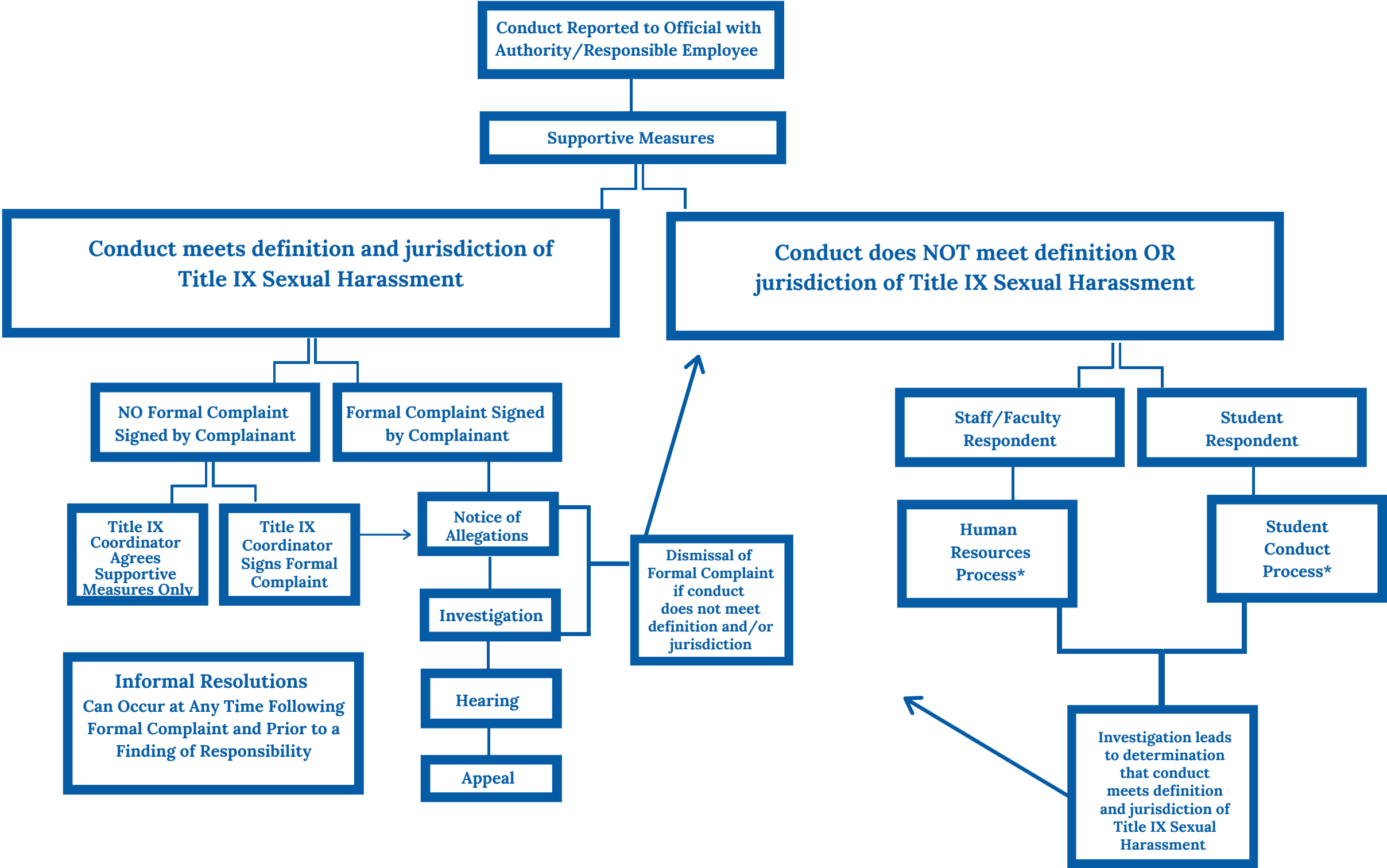
Result of Each Allegation Including Rationale

- Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
-

☐

Procedures and Permissible Bases for Appeal

Title IX Process Flow Chart



Informal Resolutions



→ Cannot be offered as a condition of enrollment or continued employment

→ Cannot be offered to resolve employee on student allegations

→ After a Formal Complaint is filed

→ Prior to decision regarding responsibility

→ Parties cannot be required to participate

District Must:

- Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations
- Allow any party the right to withdraw from the informal resolution process and resume grievance process with respect to Formal Complaint
- Provide consequences resulting from informal resolution process including records maintained or shared
- Obtain both parties voluntary, written consent to the informal resolution process

Appeals



- ✓ Offered to both parties
- ✓ Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility
- ✓ On the Following Basis:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter
 - Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter
 - Additional basis if offered equally to both parties
- ✓ Written decision describing the result and rationale for the result
- ✓ Notify the other party in writing when an appeal is filed
- ✓ Provide written decision simultaneously to both parties
- ✓ Give both parties a reasonable opportunity to submit a written statement in support of or challenging the outcome



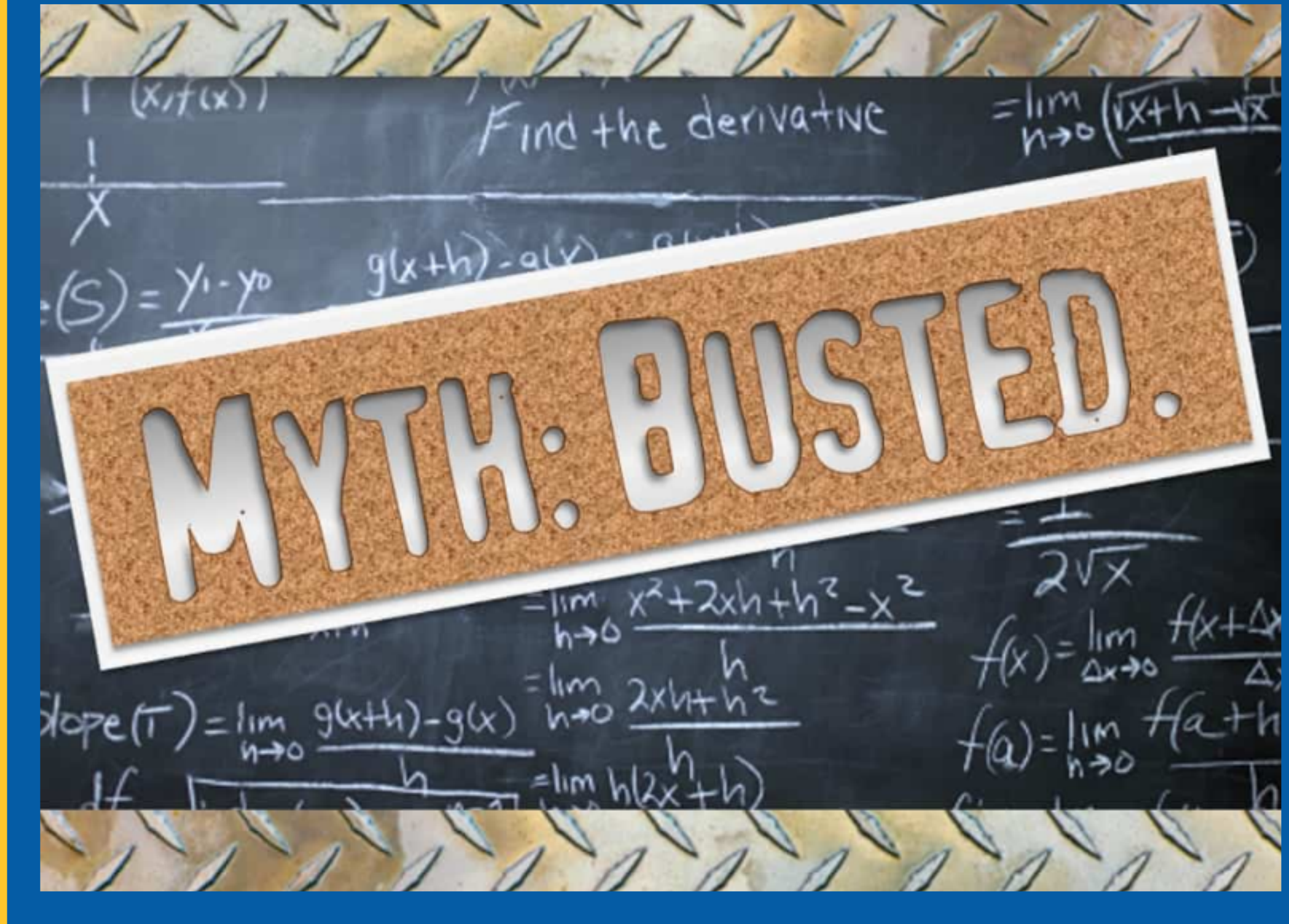


2020 Regulations Require the Following Training for Title IX Investigators

- Definition of Sexual Harassment
- Scope of Education Program/Activity
- Investigation/Grievance Process
 - Hearing
 - Appeals
 - Informal Resolution Process
- How to Serve Impartially
 - Avoiding Prejudgment of the Facts
 - Conflicts of Interest/Bias
- Investigative Report Writing
- Fairly Summarize Relevant Evidence

MYTH BUSTERS

- You must be a _____ to be a good investigator (lawyer, police officer)
- There is only one way to conduct an investigation
- You must be "certified" to be an investigator







SERVING IMPARTIALLY- CONFLICTS OF INTEREST, BIAS, RESERVING JUDGMENT

Avoid Conflict of Interest/Bias

 Generally toward Complainants/Respondents

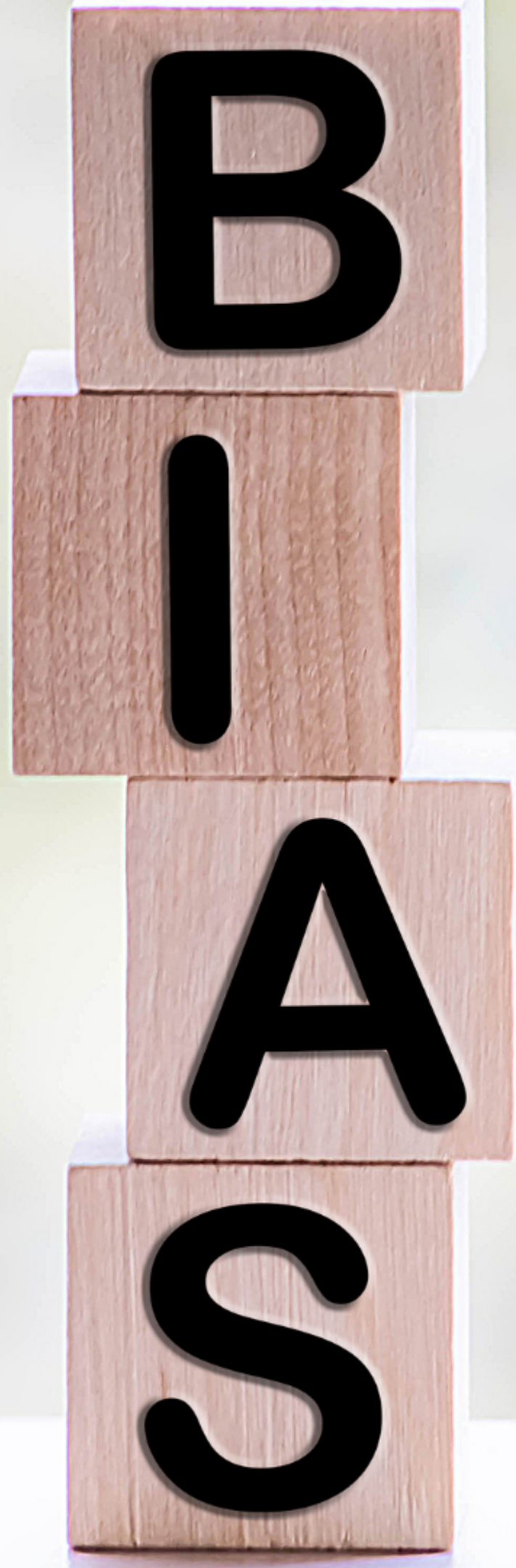
 In a specific case

 Legal Definition of conflict of interest

- 1: a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
- 2: a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

BIAS

Explicit Bias



“Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.

- Expressed directly
- Aware of bias
- Operates consciously



Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."

Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
 - Expressed indirectly
 - Unaware of bias
 - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.

END GAME



CIVIL
LAWSUIT



CRIMINAL
INVESTIGATION



TITLE IX
INVESTIGATION



During the Investigation: STAY IN YOUR LANE

- Your role as fact gatherer
- Burden on you to gather information- not on parties to provide it
- Investigating violations of specific policy: not law or policies outside of your charge/responsibility
 - Ex: Discovering a management issue while investigating harassment complaint

A hand holding a glowing brain against a sunset background with a network overlay.

During the Investigation: SUSPEND YOUR MIND

- Daily Choice
- Reserve judgments until all facts are gathered

Recordkeeping

DISTRICTS MUST MAINTAIN THE FOLLOWING RECORDS FOR SEVEN YEARS:

- Records and action taken in response to a report or Formal Complaint, including:
 - Supportive measures,
 - The basis for district's conclusion that its response was not deliberately indifferent,
 - Measures taken to restore and preserve equal access to district's Education Program or Activity,
 - Reasons why district's response was not clearly unreasonable in light of the known circumstances if district does not provide a Complainant with supportive measures.
- Each Sexual Harassment investigation including:
 - Any determination regarding responsibility and all audio or audiovisual recording or transcript,
 - Disciplinary sanctions imposed on the Respondent, and
 - Any remedies provided to the Complainant.
- Any appeal and result of appeal.
- Any informal resolution and result therefrom.
- All materials used to train Title IX Coordinators, investigators, decision-makers, and informal resolution facilitators.



KNOW YOUR POLICIES AND PROCEDURES

- Working knowledge of your policies.
- Use policy consistent language.
- Who is the point of contact for complainant/respondent?
- Who is the point of contact re: retaliation?
- What is the hearing/resolution and/or appeal process?
- Informal resolutions?



Questions?



INSTITUTIONAL
COMPLIANCE SOLUTIONS

Connect With Us!



- Institutional Compliance Solutions
- Courtney Bullard
- Betsy Smith
- Celeste Bradley



Institutional Compliance Solutions
Groups:
Title IX Coordinators Closed Group
K-12 Title IX Coordinators



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Civil Rights

**VIRTUAL CERTIFIED
CIVIL RIGHTS
INVESTIGATOR
TRAINING**

OCTOBER 26

**NEW
TRAINING!**