



LET'S SHINE A LIGHT ON

# TITLE IX

A guide about the major provisions of the Final Rule.





# The Final Rule

## Topics to be Covered

What is Title IX

History of Title IX

Common Words Defined

Major Provisions

How to Serve Impartially

You Need to Decide

Impact of New Requirements





# What is Title IX

Prohibits discrimination on the basis of sex in education programs and activities that receive federal financial assistance.

Some examples:

- Title IX Sexual Harassment
- Failure to provide equal opportunity in athletics
- Discrimination in STEM courses and programs
- Discrimination based on pregnancy

# History of Title IX

## Education Amendments of 1972



1975-US Dept of Education published 34 CFR Part 106, which implements Title IX

Guidance documents were used when law had not specifically addressed an issue

1997-US Dept. of Education published Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties

2001-US Dept. of Education published Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties

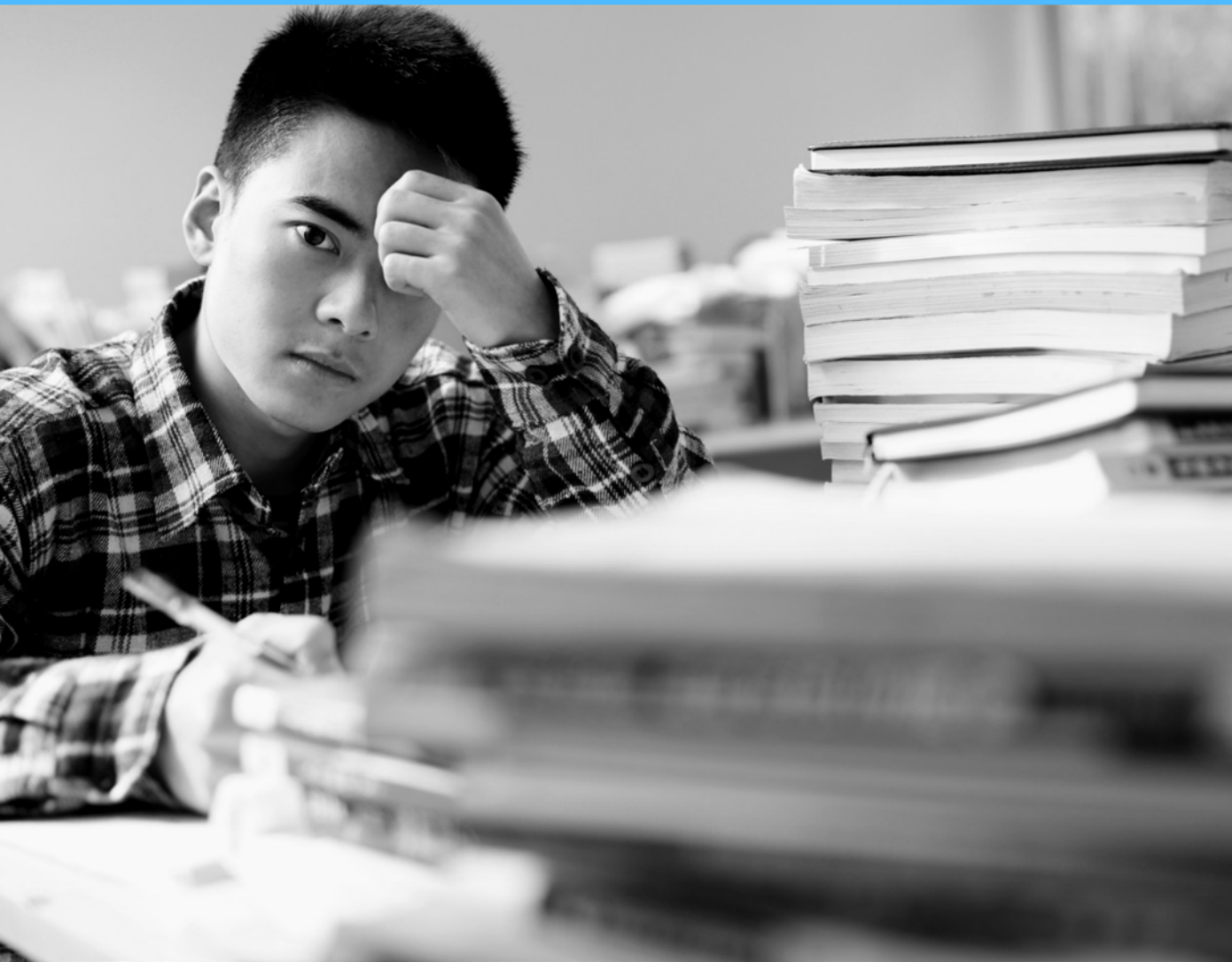
2011 and 2016-Dear Colleague Letters

New Regulations are now law:  
effective August 14, 2020



# Sex Discrimination

Big Picture Law



## Title IX Sexual Harassment

Form of Sex Discrimination



# Clarity

in  
Terms &  
Requirements



## TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Title IX Sexual Harrassment Definition



## TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII Sexual Harrassment Definition



## ARKANSAS CIVIL RIGHTS ACT OF 1993

Court Sexual Harrassment Interpretation



# TITLE IX SEXUAL HARASSMENT MEANS

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

\*Recipient - institution that receives Federal financial assistance

34 CFR 106.30(A)(1-3)



# SEX OFFENSES AS FORMS OF SEXUAL HARRASSMENT:

## SEXUAL ASSAULT

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).

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

Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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-

- (A) fear for his or her safety or the safety of others; or
- (B) suffer substantial emotional distress.

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

## SEXUAL ASSAULT OFFENSES:



### RAPE

The carnal knowledge of a person, 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 or physical incapacity.

### SODOMY

Oral or anal sexual intercourse with another person, 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 or physical incapacity.

### STATUTORY RAPE

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

### INCEST

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

### SEXUAL ASSAULT WITH AN OBJECT

To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, 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 or physical incapacity.

### 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 or physical incapacity.

## CONSENT:

“

THE ASSISTANT SECRETARY WILL NOT REQUIRE RECIPIENTS TO ADOPT A PARTICULAR DEFINITION OF CONSENT WITH RESPECT TO SEXUAL ASSAULT

34 CFR 106.30(a)(103)

”

### RAPE

The carnal knowledge of a person, 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 or physical incapacity.

(NIBRS)

### SODOMY

Oral or anal sexual intercourse with another person, 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 or physical incapacity.

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Nonforcible sexual intercourse with a person who is under the statutory age of *consent*.

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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 or physical incapacity.



# Complainant

Individual who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.

34 CFR §106.3(A)

# Respondent

Individual who has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.

34 CFR §106.3(A)

# Recipient

Institution that receives Federal financial assistance.

34 CFR §106.2(I)



# The Final Rule

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History of Title IX

Common Words Defined

## Major Provisions

How to Serve Impartially

You Need to Decide

Impact of New Requirements



# The Final Rule

## Sections Covered

§ 106.2

§ 106.6

§ 106.8

§ 106.30

§ 106.44

§ 106.45

§ 106.71

[34 C.F.R. Part 106](#)

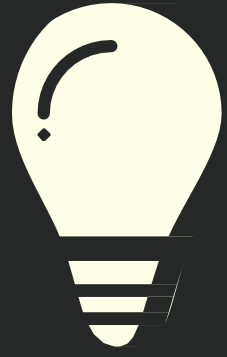


# Title IX Personnel Team

What is their role?



## Title IX Coordinator



# Title IX Coordinator

What is their role?

1

## **COORDINATE**

recipient's efforts to comply with Title IX responsibilities

2

## **"AUTHORIZED"**

to do their job

3

## **RESPONSIBLE**

for effective implementation of supportive measures and remedies

4

## **MUST BE READILY AVAILABLE AND ACCESSIBLE**

§ 106.44(a) and § 106.8(a)

# Title IX Personnel Team

What is their role?



Title IX Coordinator



Investigators





# Investigators

What is their role?

1

**CONDUCT INVESTIGATIONS**

2

**CREATE INVESTIGATIVE REPORT**

# Title IX Personnel Team

What is their role?



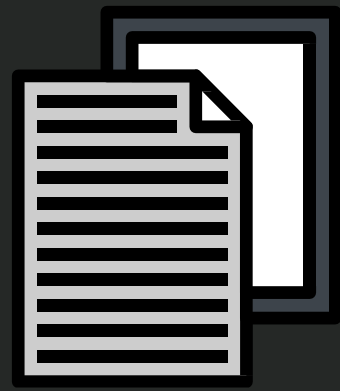
Title IX Coordinator



Investigators



Decision-Makers



# Decision-Makers

What is their role?

1

## EVIDENCE

Evaluate evidence and apply the standard of evidence chosen by the recipient

2

## DECISIONS

Reach conclusions whether respondent is responsible for alleged Title IX sexual harassment

Whether remedies will be provided to complainants

Appropriate disciplinary consequences for respondents

3

## WRITTEN DETERMINATION

regarding responsibility

## WRITTEN DECISION

in an appeal

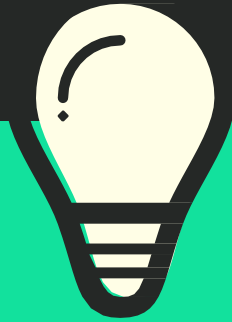
**DETERMINATION**



**APPEALS**

# Title IX Personnel Team

What is their role?



Title IX Coordinator



Investigators



Decision-Makers

DETERMINATION

APPEALS

Title IX Coordinator + Investigators ~~≠~~ Decision-Makers



SEX DISCRIMINATION  
GRIEVANCE PROCEDURE

vs.

TITLE IX SEXUAL HARASSMENT  
GRIEVANCE PROCESS



# REPORTING SEX DISCRIMINATION

## ANY PERSON

may report to the Title IX Coordinator  
(whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Title IX sexual harassment).

## ANY TIME

the report may be made  
(during business and non-business hours).

## VERBAL OR WRITTEN

may be made in person, by mail, by telephone, or by email

(contact information needs to be on website and in each handbook or catalog made available to required parties).

The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient.

# POST ON WEBSITE

## CONTACT INFORMATION

for Title IX Coordinator

\*prominently display

## NON-DISCRIMINATION POLICY

\*prominently display

## TRAINING MATERIALS

used to train the Title IX  
Personnel Team

SEX DISCRIMINATION  
GRIEVANCE PROCEDURE

vs.

TITLE IX SEXUAL HARASSMENT  
GRIEVANCE PROCESS



# General Response to Title IX Sexual Harassment

Actual knowledge means notice (report) of Title IX sexual harassment or allegations of Title IX sexual harassment to a recipient's Title IX Coordinator or to **any** employee of an elementary and secondary school.



# Formal Complaint Guidelines



## 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

## PARENT OR GUARDIAN MAY FILE A FORMAL COMPLAINT

on behalf of complainant

## "DOCUMENT FILED BY A COMPLAINANT" MEANS

a document or electronic submission that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint





"Such measures are designed to

RESTORE OR PRESERVE  
EQUAL ACCESS TO THE  
RECIPIENT'S EDUCATION  
PROGRAM OR ACTIVITY  
WITHOUT UNREASONABLY  
BURDENING THE OTHER  
PARTY,

including measures designed to protect the  
safety of all parties or the recipient's educational  
environment, or deter sexual harassment."

# Supportive Measures are

INDIVIDUALIZED SERVICES

TO BE AVAILABLE TO COMPLAINANT AND  
RESPONDENT

NON-DISCIPLINARY AND NON-PUNITIVE

OFFERED AS APPROPRIATE,  
as reasonably available, and without fee or charge to complainant or  
respondent.

TO BE MAINTAINED AS CONFIDENTIAL

to the extent that maintaining such confidentiality would not impair  
the ability of the recipient to provide the supportive measure.

THE RESPONSIBILITY OF THE TITLE IX  
COORDINATOR

to coordinate the effective implementation.

TO BE DOCUMENTED FOR 7 YEARS

(If no supportive measures were provided to the complainant, the  
reasons must also be documented.)



# General Response to Title IX Sexual Harassment

Section 106.44(a)

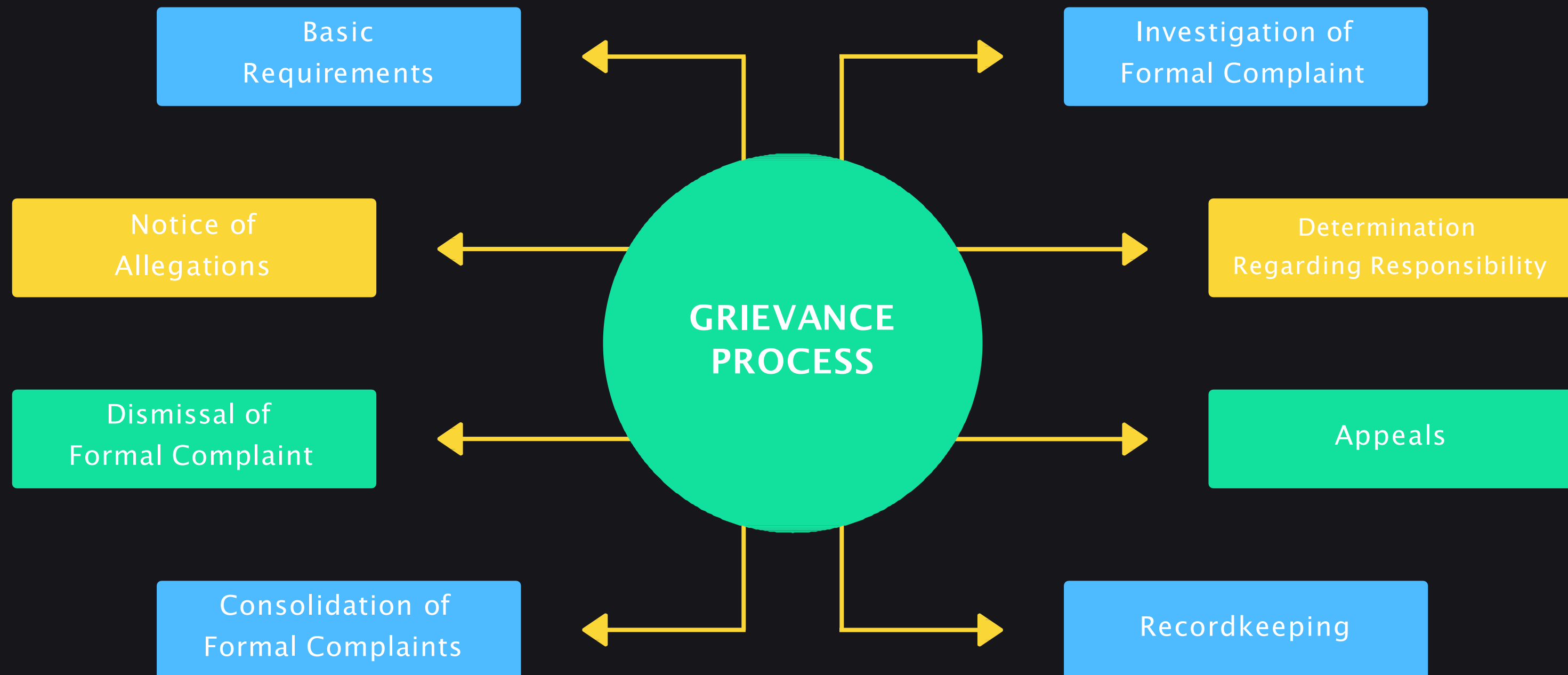
## Report

# Grievance Process for Title IX Sexual Harassment

Section 106.45

## Formal Complaint

# For the purpose of addressing formal complaints of Title IX sexual harassment



"Any provisions, rules, or practices other than those required by this section that a recipient adopts as part of its grievance process for handling formal complaints of sexual harassment as defined in §106.30, must apply equally to both parties."

# BASIC REQUIREMENTS

## OF GRIEVANCE PROCESS

### EQUITABLE

Treat complainants and respondents equitably...

### EVALUATION OF EVIDENCE

Require an objective evaluation of all relevant evidence.

### CONFLICT OF INTEREST OR BIAS

Require Title IX Personnel Team to not have a conflict of interest or bias.

### TRAINING

Recipient must ensure that Title IX Personnel Team receive training.

### NOT RESPONSIBLE

Presumption that respondent is not responsible for alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### REASONABLY PROMPT TIME FRAME

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

[OCR Current COVID-19 Environment Q&A](#)

### DISCIPLINARY SANCTION

Describe the range or list the possible disciplinary sanctions and remedies...

### STANDARD OF EVIDENCE

Preponderance of Evidence or Clear and Convincing Standard.

### APPEAL

Procedures and permissible bases for the complainant and respondent to appeal.

### SUPPORTIVE MEASURES

Describe the range of supportive measures.

### LEGALLY RECOGNIZED PRIVILEGE

Do not require information protected under legally recognized privilege...

# Notice of Allegations

PROVIDED BY THE RECIPIENT

PROVIDED TO THE PARTIES WHO ARE KNOWN

PROVIDED UPON RECEIPT OF A FORMAL COMPLAINT





# Notice of Allegations must contain:

NOTICE OF GRIEVANCE PROCESS

NOTICE OF ALLEGATIONS OF SEXUAL HARASSMENT

INCLUDING SUFFICIENT DETAILS KNOWN AT THE TIME

IDENTITIES OF THE PARTIES INVOLVED IN THE INCIDENT

THE CONDUCT ALLEGEDLY CONSTITUTING TITLE IX SEXUAL HARASSMENT

DATE AND LOCATION OF THE ALLEGED INCIDENT

STATEMENT REGARDING RESPONDENT IS PRESUMED NOT RESPONSIBLE...

INFORM PARTIES THAT THEY MAY HAVE AN ADVISOR OF THEIR CHOICE

INFORM PARTIES REGARDING FALSE STATEMENTS OR FALSE INFORMATION

# Additional Allegations

“

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IF, IN THE COURSE OF AN INVESTIGATION, THE RECIPIENT DECIDES TO INVESTIGATE ALLEGATIONS ABOUT THE COMPLAINANT OR RESPONDENT THAT ARE NOT INCLUDED IN THE NOTICE PROVIDED PURSUANT TO PARAGRAPH (B)(2)(I)(B) OF THIS SECTION, THE RECIPIENT MUST PROVIDE NOTICE OF THE ADDITIONAL ALLEGATIONS TO THE PARTIES WHOSE IDENTITIES ARE KNOWN.

- Section 106.45(b)(2)(ii)

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# Dismissing a Formal Complaint

## Must Dismiss

If conduct alleged in a formal complaint would not constitute sexual harassment.

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

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

"Such dismissal does not preclude action under another provision of the recipient's code of conduct."

## May Dismiss

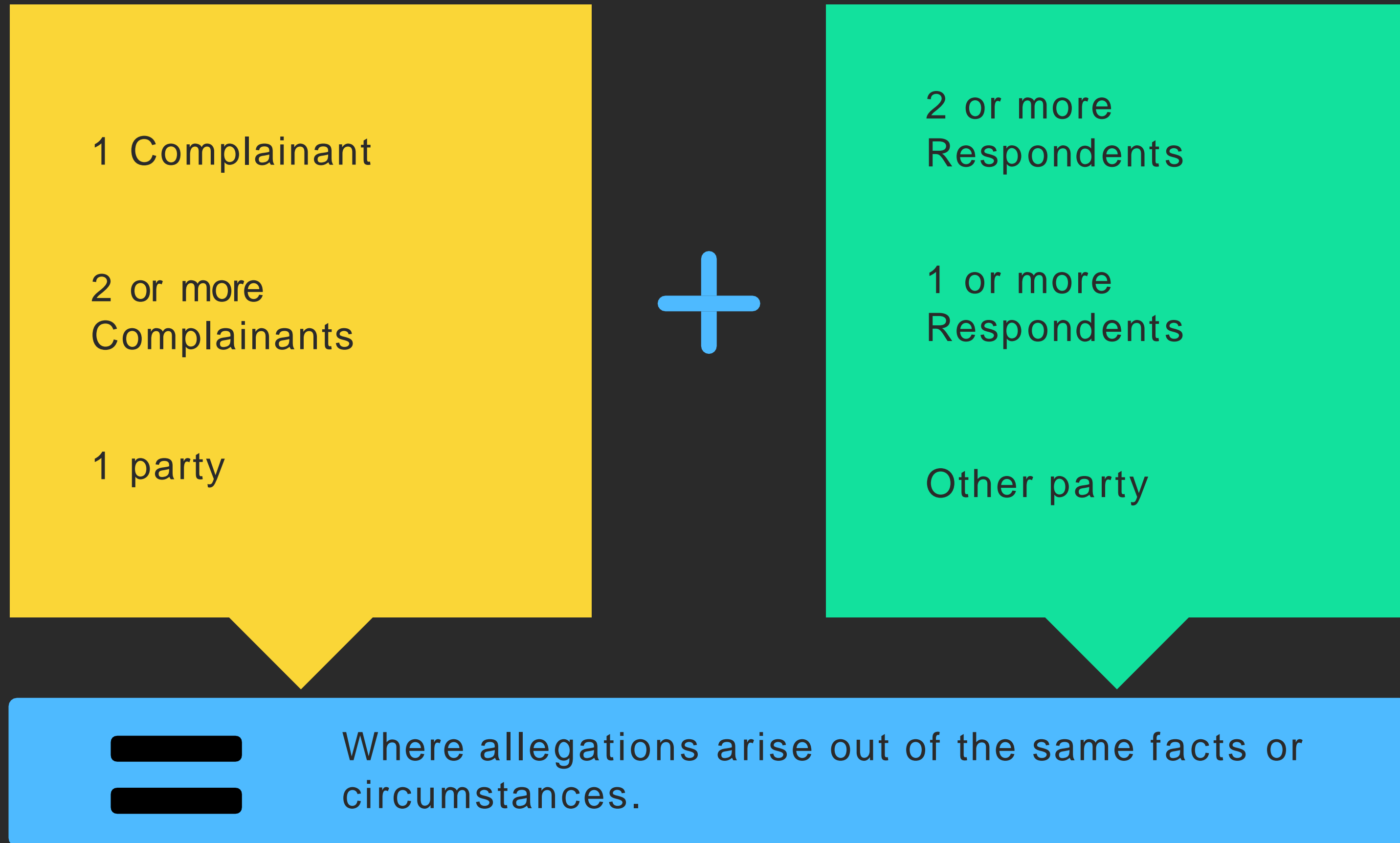
If complainant notifies the Title IX Coordinator in writing that they want to withdraw the formal complaint or any allegations therein.

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

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

Upon dismissal for any reason above, the recipient must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

# Consolidating Formal Complaints

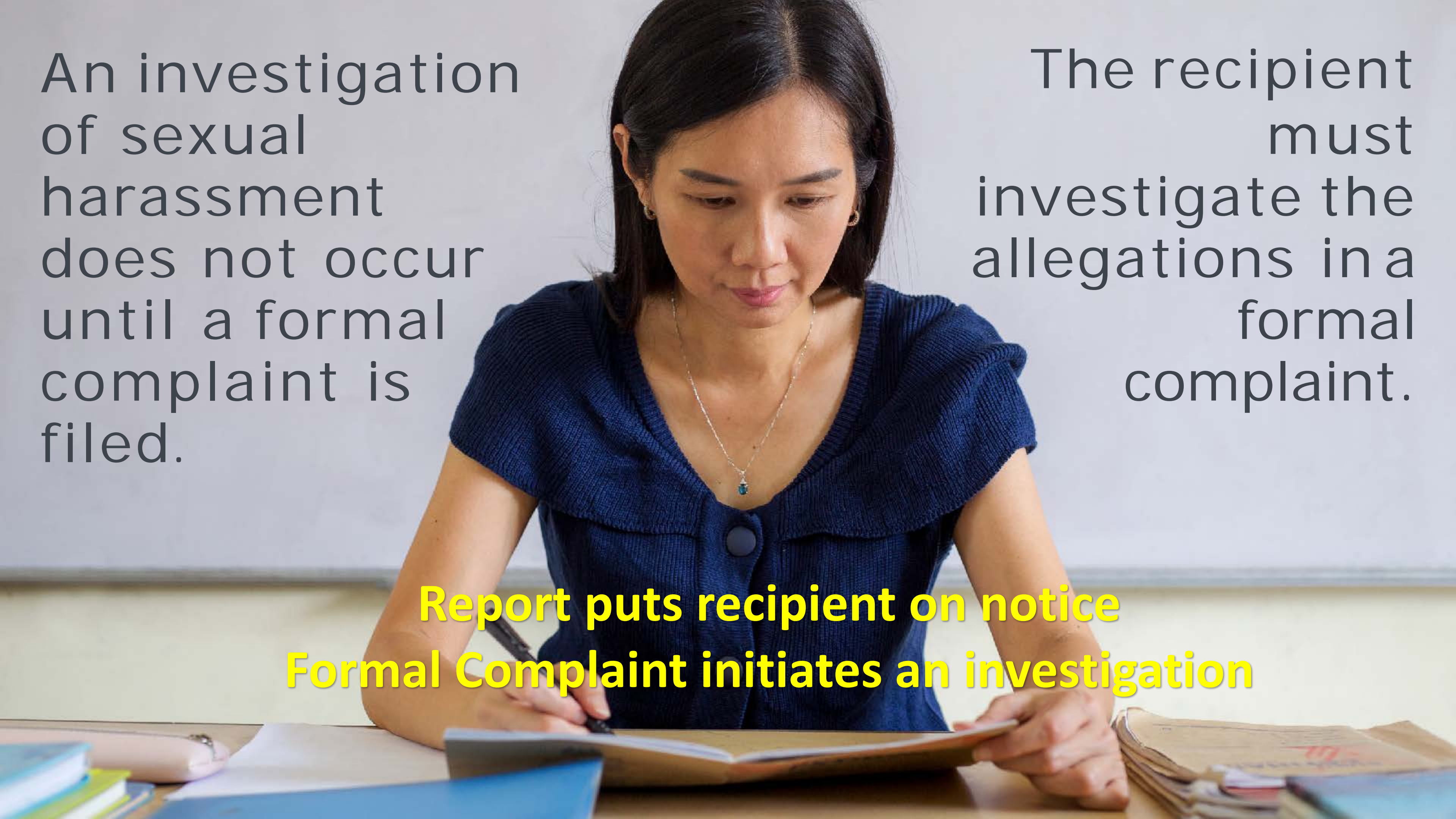




An investigation of sexual harassment does not occur until a formal complaint is filed.

The recipient must investigate the allegations in a formal complaint.

**Report puts recipient on notice**  
**Formal Complaint initiates an investigation**





# INVESTIGATION GUIDELINES

## ENSURE

burden of proof and  
burden of gathering  
evidence rest on the  
recipient

## PROVIDE EQUAL OPPORTUNITY

- for parties to present  
witnesses and other  
evidence
- for parties to have others  
present during any  
grievance proceeding
- for parties to inspect and  
review any evidence

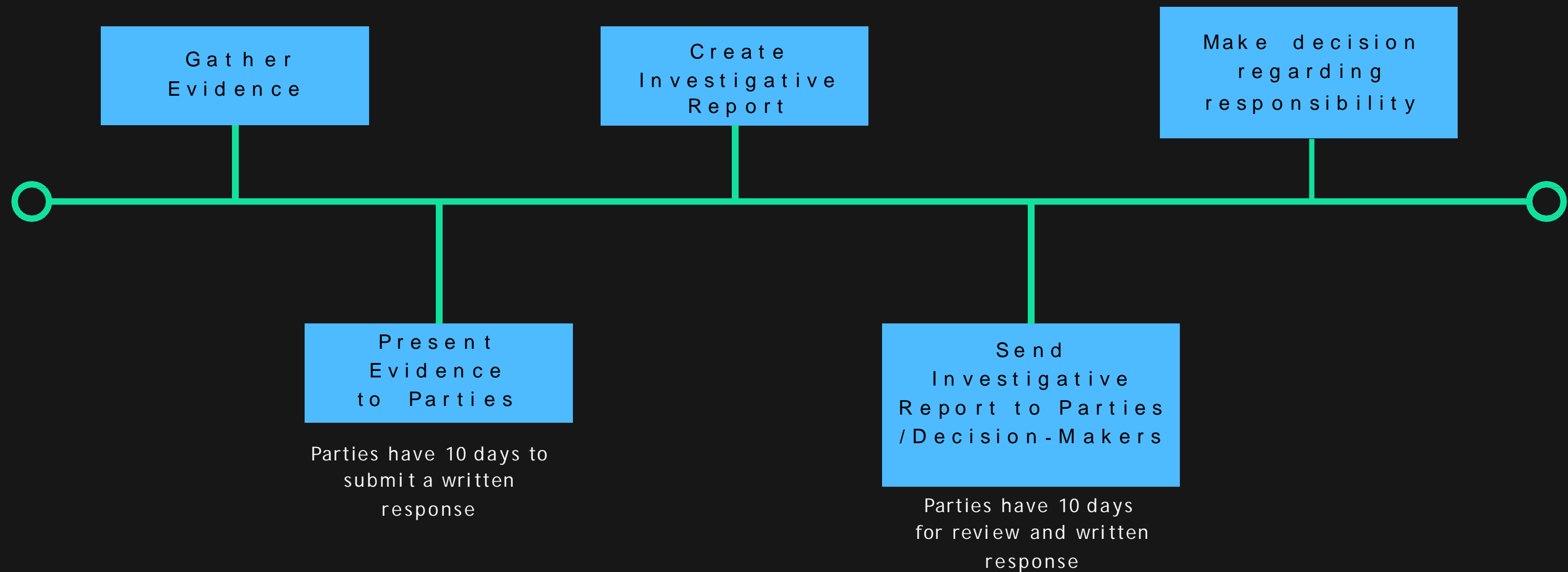
## DO NOT RESTRICT

the ability of either party  
to discuss the allegations  
under investigation or to  
gather and present  
relevant evidence

## PROVIDE WRITTEN NOTICE

to a party whose  
participation is invited or  
expected

# INVESTIGATION TIMELINE



# Title IX Personnel Team

What is their role?



Title IX Coordinator

General  
Response to  
Title IX Sexual  
Harassment

Section 106.44(a)

Report



Title IX Coordinator



Investigators



Decision-Makers

Grievance  
Process for  
Title IX Sexual  
Harassment

Section 106.45

Formal Complaint

# DETERMINATION REGARDING RESPONSIBILITY

*Must be provided  
simultaneously to the  
parties.*

Issued by Decision-Maker

In written form

Standard of Evidence is applied

# DETERMINATION REGARDING RESPONSIBILITY

M U S T I N C L U D E



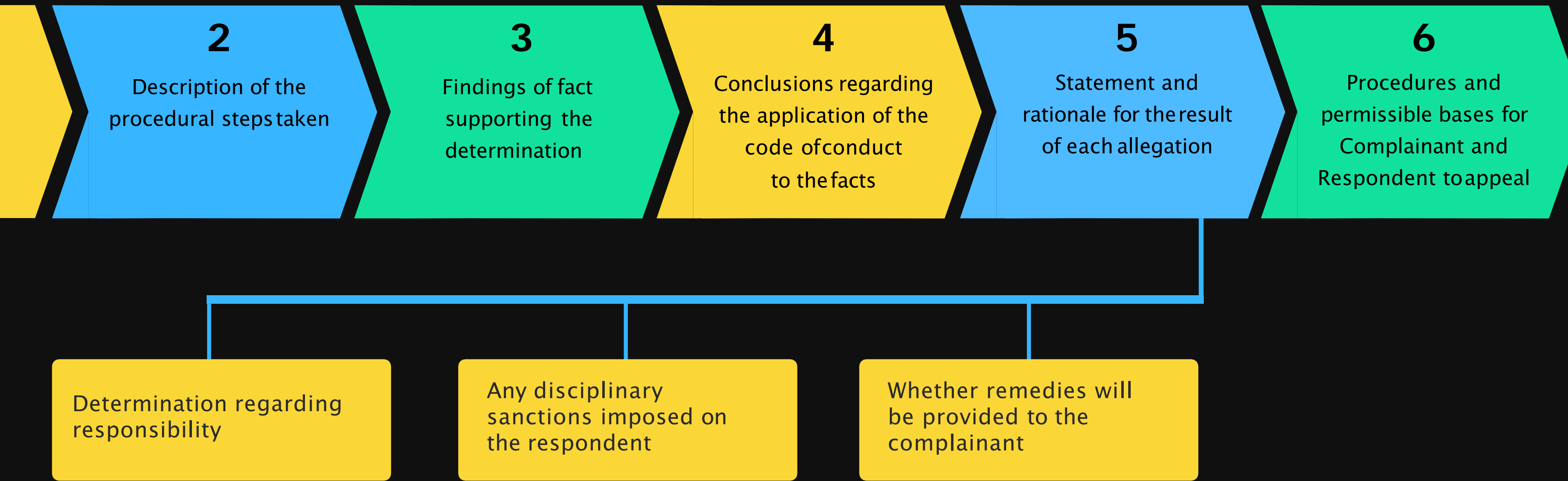
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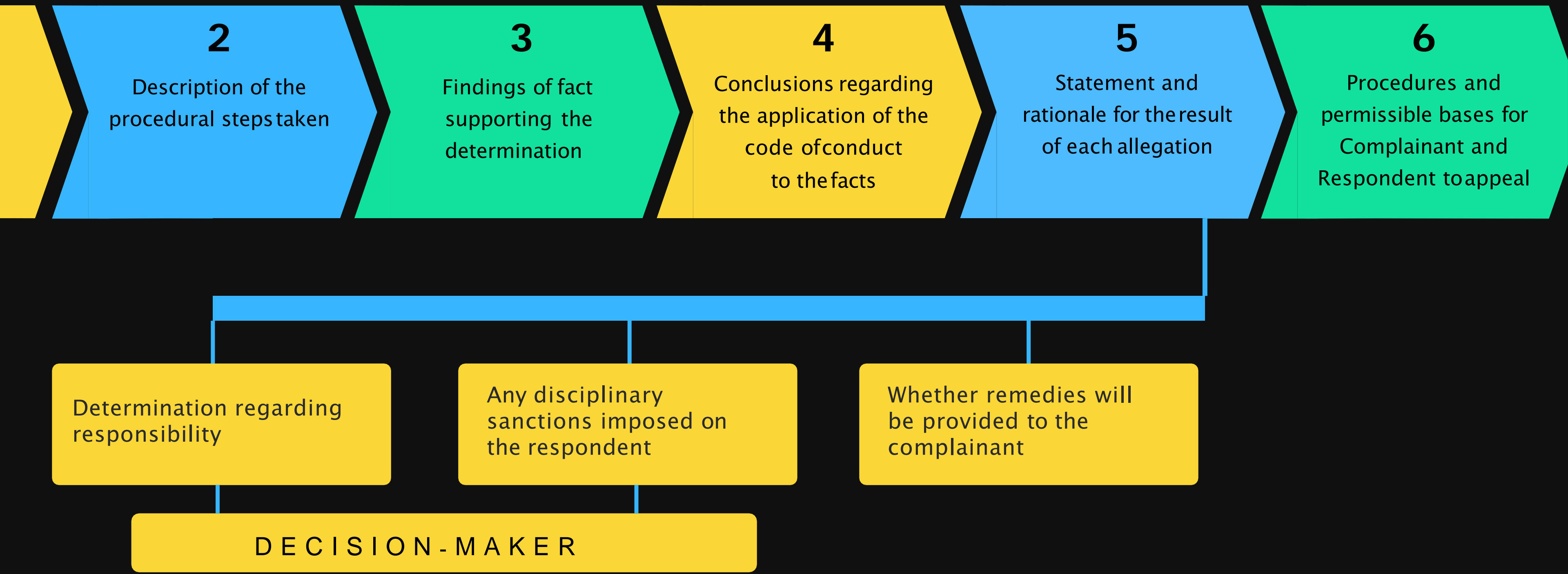
# DETERMINATION REGARDING RESPONSIBILITY

M U S T I N C L U D E



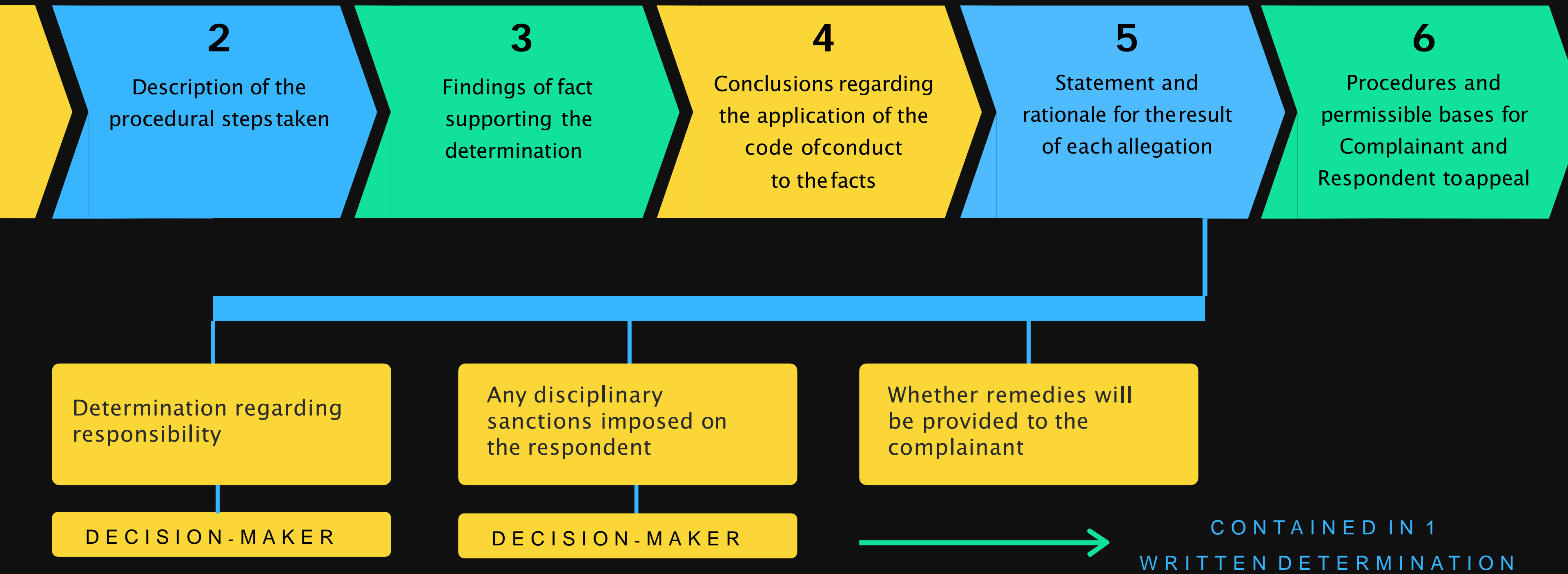
# DETERMINATION REGARDING RESPONSIBILITY

M U S T I N C L U D E



# DETERMINATION REGARDING RESPONSIBILITY

M U S T I N C L U D E



MAY INCLUDE THE SAME

# Remedies

INDIVIDUALIZED SERVICES AS SUPPORTIVE  
MEASURES

PROVIDED TO COMPLAINANT ~~AND RESPONDENT~~

~~NON-DISCIPLINARY AND NON-PUNITIVE~~

OFFERED AS APPROPRIATE,  
as reasonably available, and without fee or charge to complainant ~~or~~  
~~respondent.~~

TO BE MAINTAINED AS CONFIDENTIAL  
to the extent that maintaining such confidentiality would not impair  
the ability of the recipient to provide ~~the supportive measure.~~

THE RESPONSIBILITY OF THE TITLE IX  
COORDINATOR

to coordinate the effective implementation.

TO BE DOCUMENTED FOR 7 YEARS

**"NEED NOT AVOID  
BURDENING THE  
RESPONDENT"**



# Appeals must be offered to both parties

From a determination regarding responsibility

From a recipient's dismissal of a formal complaint or any allegations therein

on the following bases:

Procedural irregularity that affected the outcome of the matter

New evidence that was not reasonably available that could affect the outcome of the matter

Title IX Personnel Team had a conflict of interest or bias towards complainant or respondent that affected the outcome of the matter

"A recipient may offer an appeal equally to both parties on additional bases."



# APPEAL GUIDELINES

Notify other party in writing when an appeal is filed

Implement appeal procedures equally to both parties

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

# **WRITTEN DETERMINATION**

regarding responsibility

# **WRITTEN DECISION**

in an appeal

Must describe the result of the appeal and the rationale for the result

Must be provided simultaneously to both parties

At conclusion of investigation

At conclusion of appeal

# ACTIVITY

JOIN THEKAHOOT

[www.kahoot.it](http://www.kahoot.it)

GAME PIN: **ON SCREEN**



# Serving Impartially

NEUTRAL ✓

FAIR IN ACTIONS ✓

OBJECTIVE CRITERIA ✓



DESIGNATED INDIVIDUALS MUST

*"not have a **conflict of interest**  
or **bias** for or against  
complainants or respondents  
generally or an individual  
complainant or respondent"*

✗ PREJUDGEMENT OF THE FACTS AT ISSUE

✗ CONFLICTS OF INTEREST

✗ BIAS

# Serving Impartially



DESIGNATED INDIVIDUALS MUST

*be trained "how to serve impartially, including by avoiding **prejudgment of the facts at issue, conflicts of interest, and bias**"*



DESIGNATED INDIVIDUALS MUST

Be self-aware



State when they cannot be impartial



Objectively gather and evaluate evidence  
- including inculpatory and exculpatory evidence



CONFIDENTIALITY APPLIES EXCEPT

EXCEPT

EXCEPT

Permitted by FERPA

Required by any law

to carry out the purpose of 34 CFR part 106.

Supportive  
Measures

Schools Must not Restrict  
the Ability of Either Party to:

Discuss Allegations  
under Investigation

Gather and Present  
Relevant Evidence



# Retaliation

“

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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

34 CFR 106.71 (a)

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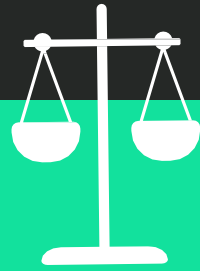
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# You Need to Decide.

Three major items a district must decide



Informal Resolutions



Hearings



Standard of Evidence

# Informal Resolutions

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**"YES OR NO?"**

MAY BE OFFERED

AFTER COMPLAINT/BEFORE DETERMINATION

NO WAIVER OF RIGHTS

NOT EXPLICITLY DEFINED/FLEXIBILITY

VOLUNTARY

NOT EMPLOYEE - STUDENT

INCLUDED IN NOTICE OF ALLEGATIONS

# Hearings

"YES?"

You must  
decide

OR

"NO?"

MAY BE PROVIDED

For recipients that are elementary and secondary schools...the recipient's grievance process may, **but need not**, provide for a hearing.

MUST ALLOW QUESTIONING

BY ADVISOR ONLY

LEA PROVIDED ADVISOR

SEPARATE PARTIES

RELEVANT QUESTIONS (INCL. CREDIBILITY)

RECORDING/TRANSCRIPT

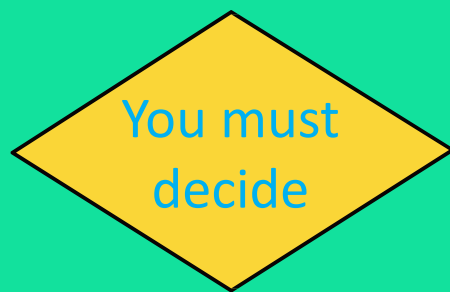
ADDITIONAL QUESTIONS

ALLOW ANSWERS AND FOLLOW-UP

RELEVANT QUESTIONS



# Standard of Evidence



**"WHICH ONE?"**

## **SELECT ONE STANDARD**

The standard must be listed in the grievance process.

## **CONSISTENTLY APPLIED**

It cannot be harder to prove an allegation against a teacher than it is to prove an allegation against a student.

### **PREPONDERANCE OF THE EVIDENCE**

The evidence shows that the allegation is more likely to have occurred than to have not occurred. (>50% chance that the allegations are correct.)

### **CLEAR AND CONVINCING EVIDENCE**

The evidence shows that the allegation is substantially more likely to be true than untrue. (High probability, but still less than “beyond a reasonable doubt”)

# You Need to Decide.

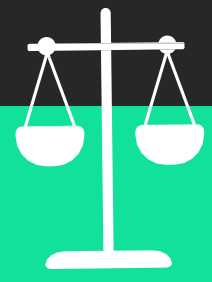
Three major items a district must decide



## Informal Resolutions



Yes      No



## Hearings



Yes      No



## Standard of Evidence



Preponderance  
of Evidence      Clear and  
Convincing

# Impact

## OF NEW REQUIREMENTS

### TRAINING

- In-Depth Training for Personnel Team *(Required)*
- Basic Sexual Harassment Training for All Employees *(Recommended)*

### PERSONNEL TEAM

- Designate and Authorize at Least One Title IX Coordinator
- Title IX Team Creation
  - Internal Employees vs. Regional Center Model
- Single Investigator Model not Allowed
- Flexibility of Assignments

### TIMELINE

- Investigative Time Line
  - Report *(at least 10 days)*
  - Hearing/Determination *(at least 10 days)*
- Appeal *(additional time)*

### DISCIPLINE PROCESSES & POLICIES

- FERPA
- Other Considerations
- Comparison of Policies/Definitions
- Is It Title IX Sexual Harassment?

# Training

REQUIRED

## Personnel Team - In-Depth Training

### ALL Team Members

- Title IX definition of sexual harassment
- Scope of the education program/activity
- Conducting an investigation
- Grievance process
- Hearings *(If conducting hearings)*
- Appeals
- Impartiality
  - Prejudging facts
  - Conflicts of interest
  - Bias
- Informal resolution *(If offering informal resolution)*

### Investigators

- Issues of relevance
  - Evidence

### Decision Makers

- Issues of relevance
  - Evidence
  - Questions
- Technology used in hearings *(if conducting hearings)*

# Training

**RECOMMENDED**

## Basic Sexual Harassment Training

ALL Employees

- Title IX definition of sexual harassment
- Duty to report
- How to report
- Basic grievance process and timeline



# Title IX Personnel Team

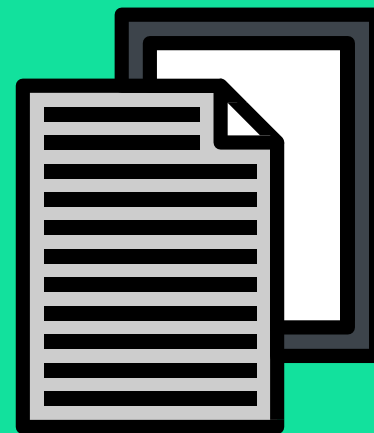
How Do We Do It?



Title IX Coordinator



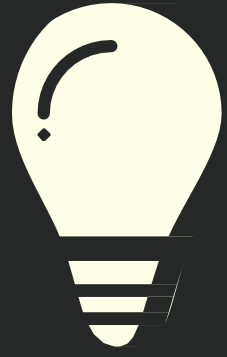
Investigators



Decision-Makers



Informal Resolution Facilitators



# Title IX Coordinator

What is their role?

1

## **COORDINATE**

recipient's efforts to comply with Title IX responsibilities

2

## **"AUTHORIZED"**

to do their job

3

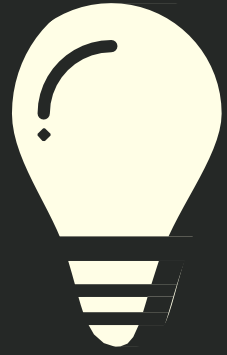
## **RESPONSIBLE**

for effective implementation of supportive measures and remedies

4

## **MUST BE READILY AVAILABLE AND ACCESSIBLE**

106.44(a) and 106.8(a)



# Title IX Coordinator

What is their role?

**MAYBE  
ASSISTANTS?**

**1**

**COORDINATE**

**2**

**RESPONSIBLE**

**Train Title IX Team Personnel**

**Respond to all actual knowledge of Title IX sexual harassment**

**Ensure Due Process throughout.**

**Oversee implementation of:**

Supportive Measures

Remedies

Sanctions

**Ensure Recording of:**

Each investigation

Determination  
Audio/Audiovisual  
Recording  
Sanctions  
Remedies

Appeals and results

Responses

Supportive measures  
Basis for conclusion it was not deliberately indifferent  
Measures taken to restore or preserve equal access.  
Reasons for not providing supportive measures

Informal Resolutions and results

Training Materials

Make viewable to public

# Single Investigator Model

A process where one person interviews all parties and witnesses, gathers and examines the evidence and makes the final determination regarding guilt or innocence of the respondent. Typically, that person would also determine the actions to be taken against the respondent and/or for the complainant.

## Previous

- Title IX did not specify investigation model
- Previous guidance somewhat encouraged model (2014 WH Task Force report)

## Current

- New rules expressly forbid the single investigator model.



# Investigators

~~SINGLE  
INVESTIGATOR  
MODEL~~

1

CONDUCT  
INVESTIGATIONS

2

CREATE  
INVESTIGATIVE REPORT

- CANNOT be a decision maker, for this complaint.
- Can be Title IX Coordinator.
  - Consider the other responsibilities of the Title IX coordinator.
- Principals or Assistant Principals?
  - As long as they have received the required training.
- Title IX does not specify who can or cannot be an investigator, as long as they...
  - have received the appropriate training, AND
  - are not the decision maker in the complaint they are investigating.





# Decision Makers

~~SINGLE  
INVESTIGATOR  
MODEL~~

1

WRITTEN  
DETERMINATION

or

WRITTEN  
DECISION

- Single individual
- Panel of individuals
- Multiple individuals who each adjudicate specific portions of the grievance process.
- First point of appeal cannot go to the original decision maker.
- School principals may be the decision makers for their buildings, provided they are not involved in any way in collecting evidence.
  - If they have interviewed any witnesses are they investigators?
  - Can they be unbiased if they received the initial report?



# Informal Resolution Facilitators

## FACILITATE INFORMAL RESOLUTIONS

- Must be trained.
- Decision-maker, Investigator, Title IX Coordinator, someone else?
  - The rules do not delineate any further information regarding the requirements for who can be an informal resolution facilitator.
  - Impartiality/Bias?
- May be called as witnesses in subsequent formal investigations.
  - Recipient makes this decision.
  - If allowed, it must be clearly disclosed to both parties.

# Title IX Personnel Team

Who?

## Flexibility of assignment

- It appears that the investigator, decision-maker and informal facilitator can be adjusted on a case-by-case basis.
  - We recommend maintaining as much consistency as possible, but situations may demand flexibility.
- All must receive appropriate training!

## Internal Employees vs. Regional Center Models

- Districts can contract out investigative and adjudication duties.
  - Educational Cooperatives may be able to provide these services.
  - District to district agreements.
    - *Must ensure all training used is available publicly.*
- <https://www2.ed.gov/about/offices/list/ocr/docs/qa-titleix-20200904.pdf#page=5>
- **Cannot contract out Title IX coordinator**

# Title IX Timelines

"Reasonably Prompt"

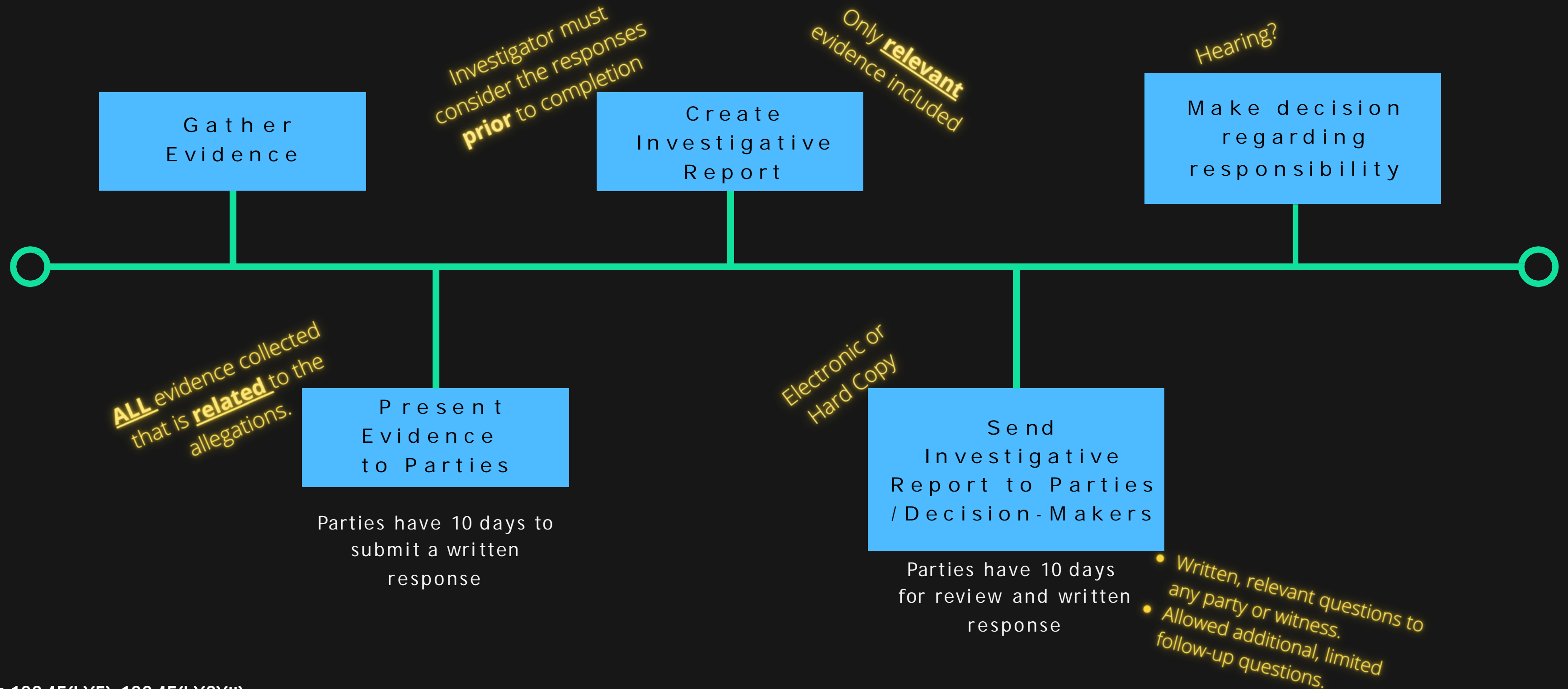
## Investigation Timeline

No less than 20 days

## Appeals Timeline

Not specified

# INVESTIGATION TIMELINE







# Appeals Timeline

**Must be filed and resolved in a “reasonably prompt” time frame.**

Recipient decides and specifies in grievance process.

**10  
days?**

- Commonly used in education policies
  - SpEd/504/Expulsion/Title IX Investigations
- Up to 10 days to file?
- 10 days for parties to respond/resolution?

# WHAT ABOUT FERPA?

The obligation to comply with Title IX is not obviated or alleviated by the FERPA statute or FERPA regulations.

~~I CANNOT TELL YOU WHAT  
ACTION I CAN TAKE AGAINST  
ANOTHER STUDENT~~

## Notice of Allegations

**IDENTITIES** of the parties involved in the incident.

## Determination

Given to **both** parties.

Declaration of responsibility.

**What** sanctions are imposed on ***respondent***.

**If** remedies are offered ***complainant***.

## Supportive Measures

Kept confidential ***so long as*** the confidentiality ***does not deter the ability*** to provide the supports.



# Other Considerations/Questions

## • LOCATIONS

...locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs.”

- School
- Field Trips
- Dances
- Student Events
  - Sports, performances, plays, etc.
  - Home/Away?
- Chromebooks/iPads

## • DATING VIOLENCE •

School Dance?  
School Event?

Effectively deny access?

## • STALKING •

Students can stalk other students.  
When is it stalking vs. annoyance?

Reasonable person clause?

## • DUAL-ENROLLMENT •

K-12 Rules?  
Post-Secondary Rules?  
Both?

## • DOMESTIC VIOLENCE •

Staff on child who is also a student at your school?

Does it have to happen at school?



# Discipline Policy Definitions

## District A

**“Sexual harassment”** means conduct on the basis of sex that satisfies one or more of the following:

- A District employee:
  - Conditions the provision of an aid, benefit, or service of the District on an individual’s participation in sexual conduct; or uses the rejection of sexual conduct as the basis for academic decisions affecting that individual;
- The conduct is:
  - Unwelcome; and
  - Determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District’s education program or activity; or
  - Constitutes:
    - Sexual assault;
    - Dating violence
    - Domestic violence; or
    - Stalking.
- Depending upon such circumstances, examples of sexual harassment include, but are not limited to:
  - Making sexual propositions or pressuring for sexual activities;
  - Unwelcome touching;
  - Writing graffiti of a sexual nature;
  - Displaying or distributing sexually explicit drawings, pictures, or written materials;
  - Performing sexual gestures or touching oneself sexually in front of others;
  - Telling sexual or crude jokes;
  - Spreading rumors related to a person’s alleged sexual activities;
  - Discussions of sexual experiences;
  - Rating other students as to sexual activity or performance;
  - Circulating or showing emails or Web sites of a sexual nature;
  - Intimidation by words, actions, insults, or name calling; and
  - Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

# Discipline Policy Definitions

## District B

**“Sexual harassment”** means conduct that is:

Of a sexual nature, including, but not limited to:

- Sexual advances;
- Requests for sexual favors;
- Sexual violence; or
- Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome; and denies or limits a student’s ability to participate in or benefit from any of the District’s educational programs or activities through any or all of the following methods: Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual’s education; Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or such conduct has the purpose or effect of substantially interfering with an individual’s academic performance or creates an intimidating, hostile, or offensive academic environment.

The terms “intimidating,” “hostile,” and “offensive” include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student’s ability to participate in, or benefit from, an educational program or activity.

Within the educational environment, sexual harassment is prohibited between any of the following: students; employees and students; and non-employees and students.

Actionable sexual harassment is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- Making sexual propositions or pressuring for sexual activities;
- Unwelcome touching;
- Writing graffiti of a sexual nature;
- Displaying or distributing sexually explicit drawings, pictures, or written materials;
- Performing sexual gestures or touching oneself sexually in front of others;
- Telling sexual or crude jokes;
- Spreading rumors related to a person’s alleged sexual activities;
- Discussions of sexual experiences;
- Rating other students as to sexual activity or performance;
- Circulating or showing emails or Web sites of a sexual nature;
- Intimidation by words, actions, insults, or name calling; and
- Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

**Sexual harassment**, as governed by policy 4.27, is also a form of bullying



# Discipline Policy Definitions

## District C

**Sexual Harassment** Sexual harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct or other verbal or physical conduct of a sexual nature. It also includes conduct that is not sexual in nature, but that is engaged in because of the gender of the victim. It includes conduct that is also criminal in nature such as rape, sexual assault, stalking, and similar offenses. Under this policy, sexual harassment is prohibited regardless of the sex of the harasser, i.e., sexual harassment may occur even if the harasser and the person being harassed are the same sex.

**Sexual Misconduct** to engage in or attempt to engage in a sexual act with another person, to touch in a sexually offensive manner or send sexually explicit pictures/sexting on District property or a school related activity is prohibited.

**Sexual Orientation Harassment** Harassment on the basis of sexual orientation is unwelcome verbal, written, physical conduct directed at the characteristics of a person's sexual orientation or gender identity or expression such as negative name-calling and imitating mannerisms.

**Sexual Harassment** unwelcome sexual advances, request for sexual favors, sexually motivated physical conduct or the verbal/physical conduct of a sexual nature.

# Discipline Policy Definitions

## District D

**Sexual Harassment** is unwanted verbal, written or physical behavior of a sexual nature; physical intimidation and mockery or scorn based on perceived sexual orientation. Such behavior is illegal if it created an environment that is hostile or intimidating.

**Sexual harassment** is any unwelcome sexual advance, request for sexual favors and other verbal or physical conduct of a sexual nature.

**Sexual Activity or Sexual Misconduct** to include possession of or distribution of pornographic media. Students shall not touch other students in a sexual manner.

**Public Display of Affection**- A public display of affection is inappropriate school behavior. Refusal to comply with reasonable expectations of school staff will lead to disciplinary action. Students shall not touch other students in a sexual manner.

# Discipline Policy Definitions

## District E

**“Sexual harassment”** means conduct that is:

- Of a sexual nature, including, but not limited to:
  - Sexual advances;
  - Requests for sexual favors;
  - Sexual violence; or
  - Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- Unwelcome; and
- denies or limits a student’s ability to participate in or benefit from any of the District’s educational programs or activities through any or all of the following methods:
  - Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual’s education;
  - Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or
  - Such conduct has the purpose or effect of substantially interfering with an individual’s academic performance or creates an intimidating, hostile, or offensive academic environment.

**Immorality** Students shall abstain from any indecent or immoral act, this shall also include possessing, viewing, distributing, or electronically transmitting sexually explicit or vulgar images or representations, whether electronically, on a data storage device, or in hard copy form. A student guilty of such conduct will face a minimum punishment of suspension and a maximum punishment of expulsion.

# Discipline Policy Definitions

## District F

**Sexual harassment:** Any unwanted and unwelcome sexual behavior (physical or verbal). Examples can include: petting, pinching, grabbing, indecent gesture, sexual remarks, jokes, innuendoes, photographs, illustrations, cartoons, or making someone the target of sexual rumors

**“Sexual harassment”** means conduct that is:

Of a sexual nature, including, but not limited to:

- ♦ Sexual advances;
- ♦ Requests for sexual favors;
- ♦ Sexual violence; or
- ♦ Other personally offensive verbal, visual, or physical conduct of a sexual nature;
- ♦ Unwelcome; and denies or limits a student’s ability to participate in or benefit from any of the District’s educational programs or activities through any or all of the following methods:  
Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual’s education; Submission to, or rejection of, such conduct by an individual is used as the basis for academic decisions affecting that individual; and/or such conduct has the purpose or effect of substantially interfering with an individual’s academic performance or creates an intimidating, hostile, or offensive academic environment.

The terms “intimidating,” “hostile,” and “offensive” include conduct of a sexual nature that has the effect of humiliation or embarrassment and is sufficiently severe, persistent, or pervasive that it limits the student’s ability to participate in, or benefit from, an educational program or activity. Within the educational environment, sexual harassment is prohibited between any of the following: students; employees and students; and non-employees and students.

**Sexual Misconduct:** Any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female.

**Actionable sexual harassment** is generally established when an individual is exposed to a pattern of objectionable behaviors or when a single, serious act is committed. What is, or is not, sexual harassment will depend upon all of the surrounding circumstances and may occur regardless of the sex(es) of the individuals involved. Depending upon such circumstances, examples of sexual harassment include, but are not limited to:

- ♦ Making sexual propositions or pressuring for sexual activities;
- ♦ Unwelcome touching;
- ♦ Writing graffiti of a sexual nature;
- ♦ Displaying or distributing sexually explicit drawings, pictures, or written materials;
- ♦ Performing sexual gestures or touching oneself sexually in front of others;
- ♦ Telling sexual or crude jokes;
- ♦ Spreading rumors related to a person’s alleged sexual activities;
- ♦ Discussions of sexual experiences;
- ♦ Rating other students as to sexual activity or performance;
- ♦ Circulating or showing emails or Web sites of a sexual nature;
- ♦ Intimidation by words, actions, insults, or name calling; and
- ♦ Teasing or name-calling related to sexual characteristics or the belief or perception that an individual is not conforming to expected gender roles or conduct or is homosexual, regardless of whether or not the student self-identifies as homosexual or transgender.

# Discipline Policy Definitions

## District G

**Sexual Harassment** Is when a student engages repetitively in behavior that involves unwelcome sexual advances, unwelcome touching that is sexual in nature, unwelcome requests for sexual favors from or offers sexual favors to another student such that the conduct has the purpose or effect of interfering with the other's performance in the school environment.

**Sexual Behavior** Mutual sexual acts including sexual intercourse, fondling, nudity, etc...

**Sexual Misconduct** Engaging in sexual activity; possession or distribution of pornographic materials



# Is it Title IX Sexual Harassment?

## Title IX Preamble

"Signs of enduring unequal educational access due to severe, pervasive, and objectively offensive sexual harassment may include:

- ***skipping class to avoid a harasser***
- ***a decline in a student's grade point average, or***
- ***having difficulty concentrating in class***

however,

**no concrete injury is required**

to conclude that serious harassment would deprive a reasonable person in the complainant's position of the ability to access the recipient's education program or activity on an equal basis with persons who are not suffering such harassment."

### Davis v. Monroe

Landmark Supreme Court case. 1999. It stated that for Title IX offenses it must be:

- ***Severe Pervasive – AND***
- ***Objectively Offensive - THAT***
- ***Denies Equal Access to Education***

### Davis v. Monroe

Courts must bear in mind that schools are ***unlike the adult workplace and that children may regularly interact in a manner that would be unacceptable among adults.***

It is thus understandable that, in the school setting, students often engage in insults, banter, teasing, shoving, pushing, and gender-specific conduct that is upsetting to the students subjected to it.

### Davis v. Monroe

Whether gender-oriented conduct rises to the level of actionable "harassment" thus ***"depends on a constellation of surrounding circumstances, expectations, and relationships,*** ...including, but not limited to, the ages of the harasser and the victim and the number of individuals involved.

### Davis v. Monroe

***Damages are not available for simple acts of teasing and name-calling among school children, however,***

even where these comments target differences in gender.

# Is it Title IX Sexual Harassment?

A young man repeatedly grabs and rubs his crotch whenever a young woman enters into their English class.

# Is it Title IX Sexual Harassment?

A student yells across the cafeteria calling another student a "THOT."

# Is it Title IX Sexual Harassment?

A student from another school in the district is at a evening extracurricular activity at your school. The student meets a student from your school and repeatedly sends text messages and calls asking for sexual favors.

# Is it Title IX Sexual Harassment?

You receive a call from the parent of a student in a neighboring school district. The parent states that one of your students is constantly texting their child inappropriate pictures during the school day.

# Is it Title IX Sexual Harassment?

A substitute teacher, hired through a temp agency, is accused of only helping the young women who have low cut shirts and lean forward when working with them.



# Is it Title IX Sexual Harassment?

A teacher who worked at your school last year, but is now employed by another school district is accused of sending text messages this year to many of the students at your school requesting “nudes.”

# Is it Title IX Sexual Harassment?

A virtual student sends sexually explicit messages and images to another virtual student using the school provided device.

# Is it Title IX Sexual Harassment?

A virtual student sends sexually explicit messages and images to another virtual student on their cell phones during school time.

# Not Title IX Sexual Harassment?

(Have to Dismiss?)

If it is not sexual harassment as defined by Title IX and you must dismiss the complaint, remember that **“a dismissal does not preclude action under another provision of the recipient's code of conduct.”**

The U.S. Department of Education recently released new Title IX requirements that will become effective Friday, August 14, 2020. The Final Rule defines sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) as unlawful sex discrimination, and imposes important legal obligations on school districts and charter schools.

# TITLE IX SEXUAL HARASSMENT: GETTING STARTED CHECKLIST

*This non-exhaustive list serves as a starting point for school districts and charter schools.*

## Superintendent and Principal:

### Develop

- Process for responding to sexual harassment
- Process for filing a formal complaint
- Process for responding to formal complaints
- Grievance process
- Appeal process

### Determine

- The supportive measures the school will use
- If school will conduct hearings
- Standard of Evidence
- If school will offer informal resolution option

Schools must determine whether they will use the preponderance of evidence standard or the clear and convincing standard for all formal complaints of sexual harassment.

## Title IX Coordinator:

Appoint and authorize a Title IX Coordinator

Display the Title IX Coordinator's contact information on School's Website

Notify the following groups of the Title IX Coordinator's contact information

- Students
- Parents or Legal Guardians
- Employees
- Applicants for Admission and Employment
- Unions

The Title IX Coordinator's contact information needs to include name or title, office address, e-mail address, and telephone number.

## Title IX Personnel Team:

Appoint a Title IX Personnel Team

- Title IX Coordinator
- Investigators
- Decision-Makers

Train the Title IX Personnel Team

- Definition of Sexual Harassment
- Scope of school's education program or activity
- "How to" of school's processes
- How to serve impartially
- Confidentiality Training

Train Decision-Makers and Investigators on issues of relevance

Post materials used to train the Title IX Personnel Team on the school's website

The Title IX Coordinator and the Investigators cannot be Decision-Makers.



# EQUITY ASSISTANCE CENTER TEAM

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Division of Elementary and Secondary Education  
Legal Services  
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