

TITLE IX COORDINATOR TRAINING

TITLE  SOLUTIONS, LLC





WELCOME

Training Instructors

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**Part One
(2.20.2024)
Training
Agenda**

Times listed in Eastern

1:00 p.m. – 1:15 p.m. | Welcome

1:15 p.m. – 2:30 p.m. | Overview of the Title IX Regulations

2:30 p.m. – 2:45 p.m. | Break

2:45 p.m. – 3:30 p.m. | Reports and Intake Meetings

3:30 p.m. – 4:15 p.m. | Title IX Incident Evaluation

4:15 p.m. – 4:45 p.m. | Notice of Allegations and the Start of the Grievance Process

4:45 p.m. – 5:00 p.m. | Part One Debrief and Q&A

**Part Two
(2.21.2024)
Training
Agenda**

Times listed in Eastern

1:00 p.m. – 1:15 p.m. | Welcome Back

1:15 p.m. – 2:00 p.m. | Title IX Investigations

2:00 p.m. – 3:00 p.m. | Title IX Decision-Making Processes

3:00 p.m. – 3:15 p.m. | Break

3:15 p.m. – 4:15p.m. | Title IX Outcomes, Sanctions, and Remedies

4:15 p.m. – 4:45p.m. | Additional Requirements and Best Practices

4:45 p.m. – 5:00 p.m. | Part Two Debrief and Q&A

Learning Objectives

As a result of this training, participants will be able to:

Describe the key provisions of Title IX, including its scope, forms of prohibited discrimination, and the responsibilities of educational institutions in ensuring compliance

Understand reporting procedures for complaints of sexual harassment and conduct indicent evaluations to initiate the appropriate response

Oversee compliant, effective, and impartial investigation, adjudication, and/or informal resolution of alleged Title IX violations

Develop a trauma-informed framework for communicating with parties in Title IX complaints

Outline the responsibilities of the Title IX Coordinator that fall outside of the Title IX grievance process

A hand holding a smartphone is shown in a grayscale, slightly blurred background. A dark blue horizontal band is overlaid across the middle of the image. The text "Let's enjoy a quick activity!" is written in a white, serif font across this band. There are white L-shaped corner brackets in the top right and bottom left corners of the blue band.

Let's enjoy a quick activity!



Overview of the Title IX Regulations

In This Session



INTRODUCTION TO
THE TITLE IX
REGULATIONS



DEFINING TITLE IX
SEXUAL HARASSMENT



BASIC REQUIREMENTS
FOR THE TITLE IX
GRIEVANCE PROCESS
FOR FORMAL
COMPLAINTS

Introduction to the Title IX Regulations



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[.]”

”

Title IX Coverage

Postsecondary Institutions

Includes:

- Undergraduate schools
- Graduate schools
- Vocational schools
- Professional schools/programs

Elementary and Secondary Schools

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

Scope of Title IX

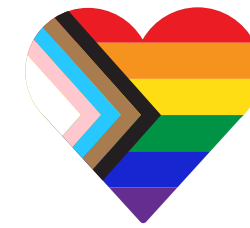
Some key issue areas addressed under Title IX:



Recruitment,
Admissions
& Counseling



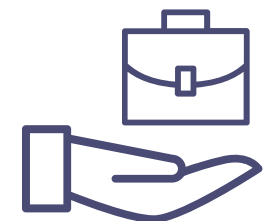
Athletics



Treatment of
LGBTQI+
Students



Financial
Assistance



Employment



Sex-Based
Harassment

Evolution of Title IX

**JUNE 23,
1972**

**TITLE IX
SIGNED INTO
LAW**

1977

**ALEXANDER
V.
YALE**

**1980s - 1990s
U.S. SUPREME COURT
DECISIONS**

APRIL 4, 2011

**DEAR
COLLEAGUE
LETTER
ISSUED**

MAY 7, 2020

**"FINAL" TITLE
IX RULE
RELEASED**

**JUNE 23,
2022**

**CHANGES
TO TITLE IX
PROPOSED**

Evolution of Title IX

JUNE 23, 1972

- Title IX is signed into law
- Follows the Civil Rights Act of 1964 to address discrimination based on sex
- Implementation requires designation of Title IX Coordinator, public grievance procedures, and compliance-oriented district staff
- Most well-known for its impact on:



Admissions



Academic
Opportunities



Athletics

Evolution of Title IX

1977

1980s - 1990s

- Alexander v. Yale
 - First lawsuit using Title IX to argue sexual harassment as discrimination
- U.S. Supreme Court Decisions
 - Sexual harassment and sexual assault = sex discrimination

Evolution of Title IX

APRIL 4, 2011

- U.S. Department of Education's Office for Civil Rights releases "Dear Colleague Letter"
- States sexual harassment of students, including sexual violence, interferes with students' rights to their education free from discrimination and is therefore prohibited by Title IX
- Explains schools' responsibility to take immediate and effective steps to end sexual harassment and violence (references OCR's 2001 Guidance)

Evolution of Title IX

MAY 7, 2020

- DOE releases the "final regulations" governing campus sexual assault under Title IX
- Followed a formal notice-and-comment process
- Explicitly defines sexual harassment and procedural requirements for educational institutions
- Has the "force of law" behind it (unlike the Dear Colleague Letter)
- Currently in effect for primary, secondary, and postsecondary schools

Evolution of Title IX

JUNE 23, 2022

- DOE releases proposed changes to Title IX
- Would modify procedural requirements and expand protections
- New Title IX Regulations have yet to be released (as of February 2024)

What is a Recipient?

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."

Compliance with the Regulations

Recipients must comply with the requirements of Title IX as outlined under the 2020 Regulations.

Recipients may:

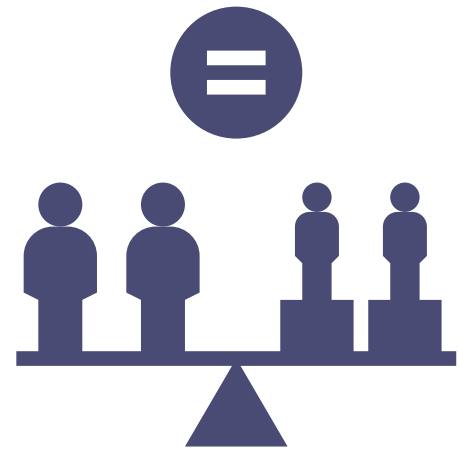
- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

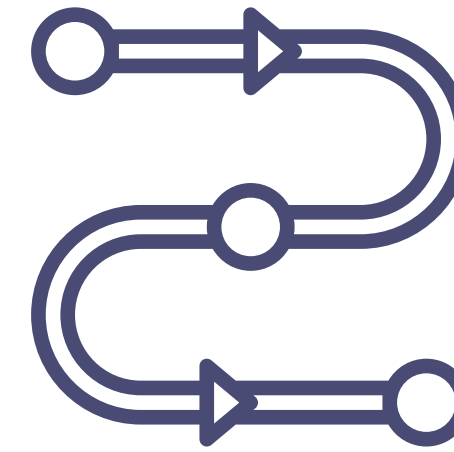
- Provide details regarding policies or procedures which are not addressed in the regulations

Compliance with the Regulations

Recipients must:



Have “prompt and equitable” grievance procedures for complaints of sex discrimination



Have in place a grievance process that complies with §106.45 for formal complaints of sexual harassment



Sex Discrimination

"GENERAL"
GRIEVANCE
PROCEDURES



Retaliation

PROMPT AND
EQUITABLE
GRIEVANCE
PROCEDURES

Sexual Harassment

SPECIFIC
GRIEVANCE
PROCESS
(§106.45)



When is Sexual
Harassment
Actionable?



When it denies a
person equal
access to education

Title IX's Application

Regulations apply equally to all persons, regardless of:



Gender identity or expression



Sexual orientation

Title IX Personnel



Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

Defining Title IX Sexual Harassment



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 of an individual's participation in unwelcome sexual conduct.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes 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 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.

Recipient's Response


Threshold criteria (all four must be met):




Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

Recipient's Response

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

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

We will discuss more about the required response in the sessions to come!

Actual Knowledge Defined

§ 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"



Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge

Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge

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 policies
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

Recipient's Response

Emergency Removal

- ❖ Safety and risk analysis
- ❖ Immediate threat to physical health or safety
- ❖ Provide Respondent with notice and opportunity to challenge the decision



Recipient's Response

Administrative Leave

- ❖ Applies to non-student employees



Confidentiality

- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
 - Identities of these individuals will be known to the individuals conducting the Title IX process

Retaliation

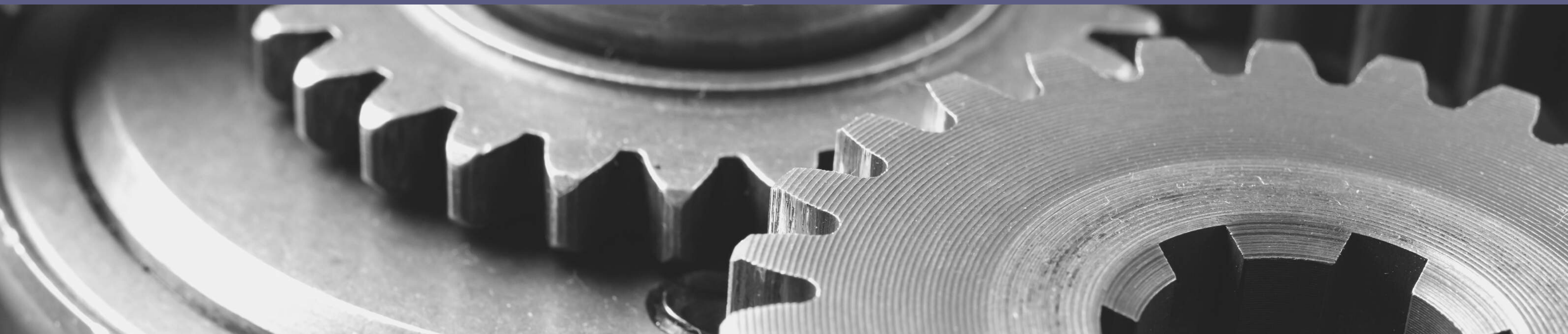
- Intimidating, threatening, coercing, or discriminating against any individual for either of the following reasons:
 - Intention to interfere with the individual's rights under Title IX; or
 - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX

Parental/Guardian Rights

§ 106.6 (d)(3)(g)
Exercise of rights
by parents or
guardians.

“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.”

Basic Requirements for the Title IX Grievance Process for Formal Complaints



Title IX Grievance Process

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)

Basic Requirements

A recipient's grievance process MUST:



Treat Complainants and Respondents equally

- Ensure processes do not differ based on status as a Complainant or Respondent
- Communicate rights of the parties

Basic Requirements

A recipient's grievance process MUST:

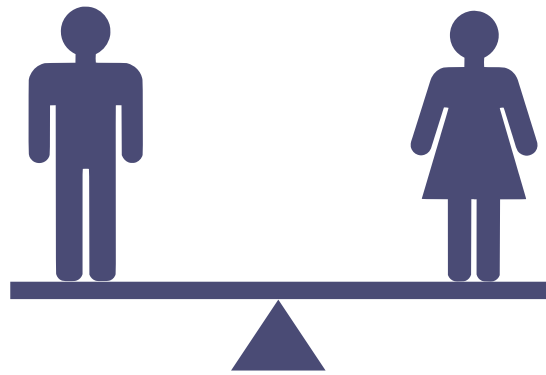


Require objective
evaluation of relevant
evidence

- Consider both inculpatory and exculpatory evidence
 - Inculpatory = Corroborating evidence
 - Exculpatory = Contradictory evidence
- Do not determine credibility based solely on a person's status as a Complainant, Respondent, or witness

Basic Requirements

A recipient's grievance process MUST:



**Require Title IX
personnel not have bias
and conflict of interest**

- Title IX personnel must be trained
- Title IX personnel must “*not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent*”
- Title IX personnel should consider recusing themselves if they are unable to serve impartially.

Basic Requirements

A recipient's grievance process MUST:

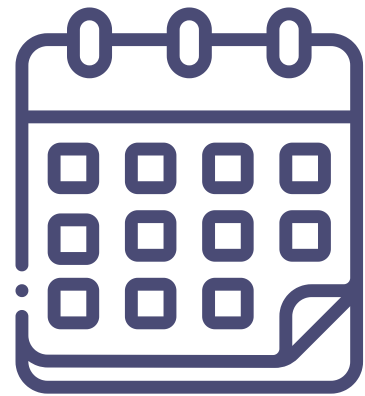


Include a presumption that Respondent is not responsible until a determination is made

- Punitive measures may not be put in place until a finding of responsibility has been issued
- Think "*innocent until proven guilty*" in the criminal justice system

Basic Requirements

A recipient's grievance process MUST:



Include reasonably prompt time frames

- Title IX policies should include reasonably prompt time frames for filing and resolving appeals, informal resolution processes, and more
- The grievance process may be delayed for good cause, which could include:
 - Absence of a party or party's advisor
 - Request from law enforcement to pause for concurrent investigation
 - Acquiring accommodations such as language assistance, disabilities

Basic Requirements

A recipient's grievance process MUST:



Describe range of possible disciplinary sanctions and remedies

- Ensure these ranges are communicated in policy and procedural documents

Basic Requirements

A recipient's grievance process MUST:

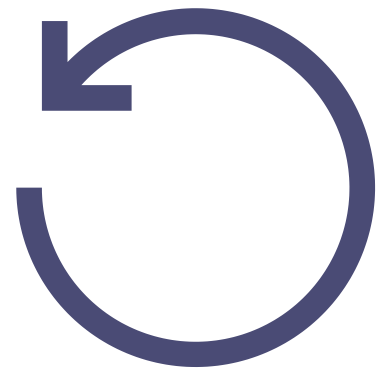


State the standard of evidence

- A school may elect to apply either:
 - The preponderance of evidence (“more likely than not”) standard; or
 - The clear and convincing evidence (“highly probable”) standard
- The same standard of evidence must be used for:
 - Formal complaints against students as is used for formal complaints against employees, including faculty
 - All formal complaints of sexual harassment

Basic Requirements

A recipient's grievance process MUST:



Include the permissible
bases for appeal

- Title IX allows for appeals of the final determination of responsibility

Basic Requirements

A recipient's grievance process MUST:



Describe the range of
supportive measures
available

- Ensure these ranges are communicated in policy

Basic Requirements

A recipient's grievance process MUST:



Not require or rely on
privileged information,
unless waived

- This would include information such as:
 - Medical records
 - Academic records protected under FERPA
 - Conversations with privileged individuals such as counselors or clergy

A black and white photograph of a person's hands writing in a spiral notebook on a desk. A laptop is open in front of them, and a smartphone is visible in the foreground. The scene is overlaid with a dark blue semi-transparent panel on the left side, which contains the text 'Reports and Intake Meetings' in white serif font. The panel also features white L-shaped corner brackets.

Reports and Intake Meetings

In This Session



TITLE IX REPORTING

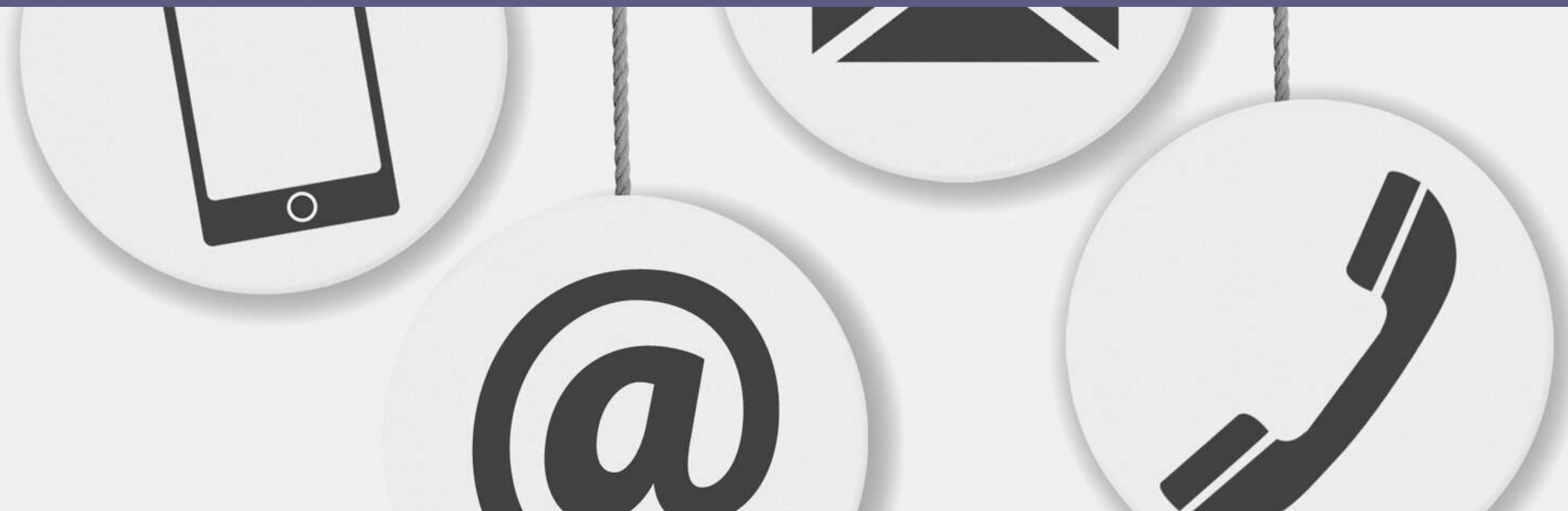


INTAKE MEETINGS



FORMAL
COMPLAINTS

Title IX Reporting

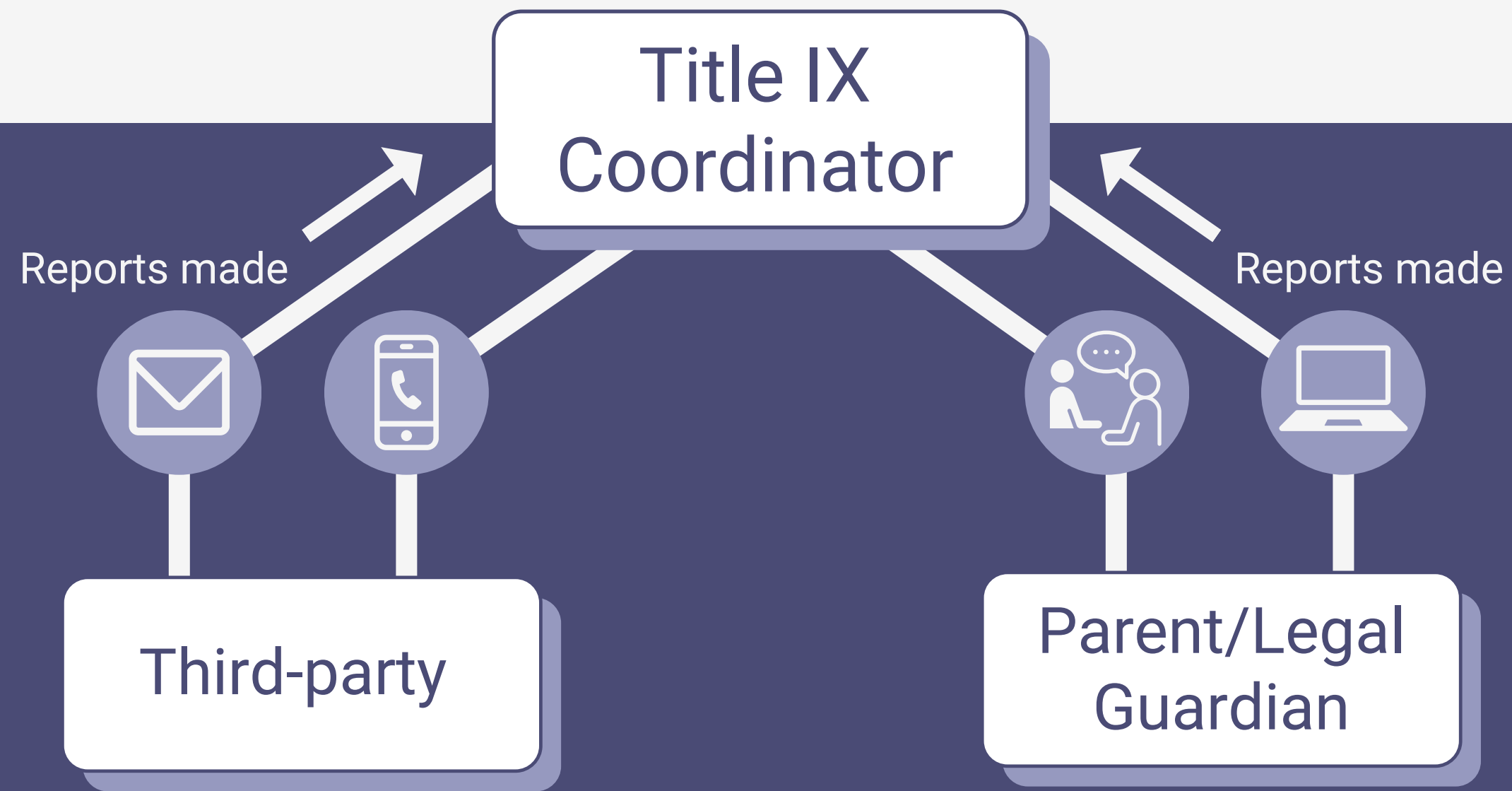


Reporting Incidents of Sexual Harassment

As stated in the Title IX Regulations, any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator.

"Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator."

34 CFR §106.8(a)



External

External Reporting Considerations



Consider the various individuals outside of the school setting who may report incidents of sexual harassment to your Title IX Coordinator.

Who are they?

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

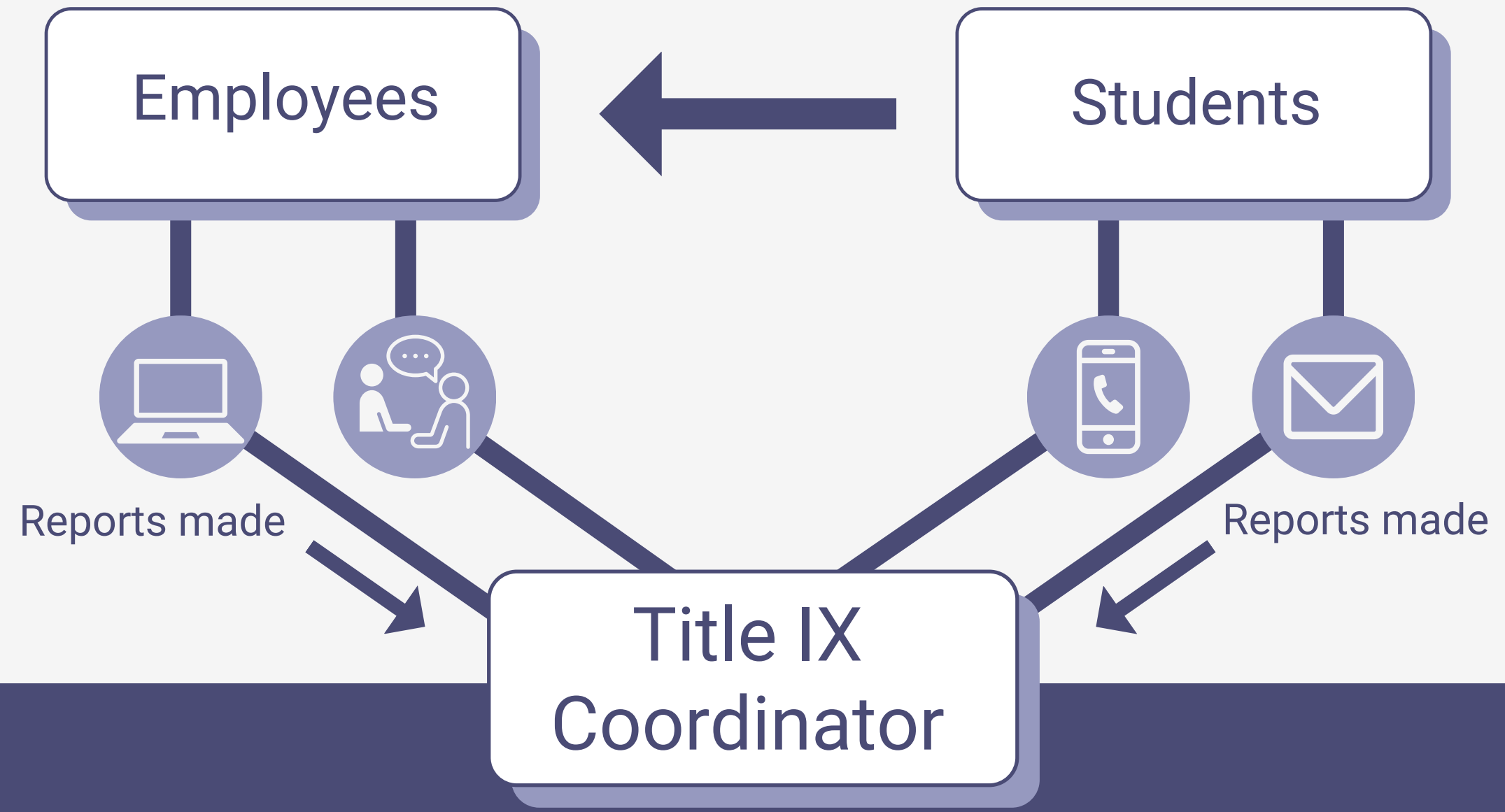


What do you want them to know?

What information do you want them to have access to?

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

Internal



Internal Reporting Considerations



Consider how many employees you have at your institution.

From the top down, what is your level of confidence that each employee could articulate their reporting responsibilities under Title IX?

How will you provide training on these responsibilities?



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

Do students know employee reporting requirements under Title IX?

How would you communicate this to them?

Reporting at K-12 Institutions



"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

Reporting at Postsecondary Institutions

“For all recipients, notice to the recipient’s Title IX Coordinator or to “any official of the recipient who has authority to institute corrective measures on behalf of the recipient” (referred to herein as “officials with authority”) conveys actual knowledge to the recipient and triggers the recipient’s response obligations. Determining whether an individual is an “official with authority” is a legal determination that depends on the specific facts relating to a recipient’s administrative structure and the roles and duties held by officials in the recipient’s own operations.”

(pp.50-51 Preamble to the Title IX Regulations)



Consult institutional policy and other relevant state laws to determine who must report and what they must report.

Following a Report



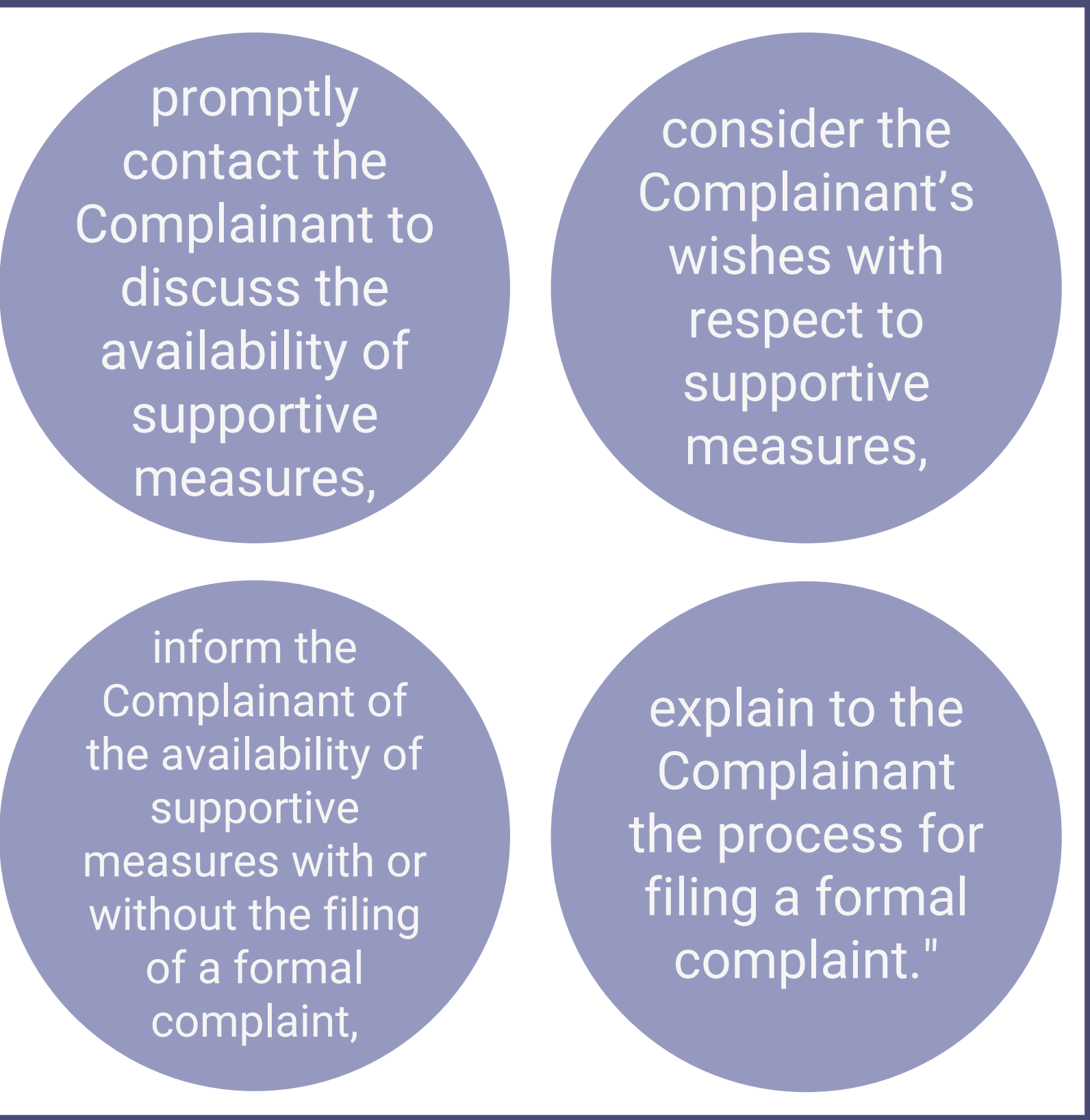
What must the Title IX Coordinator do next to ensure the institution is not acting with deliberate indifference?

What do the Title IX Regulations say?

(Hint: §106.44 Recipient's response to sexual harassment provides the answer.)

The Title IX Coordinator is responsible for doing....

"The Title IX Coordinator must..."



these four important things.

A circular icon with a purple-to-blue gradient background, containing a white circle with the Roman numeral IX inside.

IX

Coordinator Training Point

How should you go about this?

Letter of the Law vs. Spirit of the Law

The Regulations, as they're written, could be satisfied in an email with the following:

- A written statement or graphic sent to the Complainant explaining the availability of supportive measures and providing a few examples
- A brief, written statement explaining the process for filing a formal complaint
- A sentence explaining the availability to utilize supportive measures even if a formal complaint is not filed.

If the Complainant responded to this email and the Coordinator considered their wishes as they relate to supportive measures, they would technically be compliant.

Letter of the Law vs. Spirit of the Law

However, could and technically are not best practice.

"...the Department has tailored a deliberate indifference standard for administrative enforcement purposes by adding specific obligations that every recipient must meet as part of every response to sexual harassment, including offering supportive measures to Complainants through the Title IX Coordinator engaging in an interactive discussion with the Complainant about the complainant's wishes, and explaining to the Complainant the option and process for filing a formal complaint."

(p. 224 Preamble to the Title IX Regulations)

This is meant to be a thoughtful, in-person discussion!

Intake Meetings



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



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



Questions to consider

- 1) What is considered prompt?
- 2) How will I initiate contact?
- 3) Who do I need to include in my initial contact?
- 4) What will be said in my initial contact?
- 5) What if the Complainant does not respond to my attempts to contact?

Recipient's Response

Supportive Measures

§ 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"

- Intended to restore Complainant's access to educational program or activity

1) What is considered prompt?

As soon as you receive the report, you should reach out. (If the report is received after business hours, on the weekend, or a holiday, contact on the first business day you return.) However, If the report suggests an immediate threat or safety risk, ensure immediate communication.

2) How will I initiate contact?

Best practice is to initiate contact in writing for recordkeeping, but in some cases, you may need to make a phone call. *Remember to document date and time, as well as what was shared.*

3) Who do I need to include in my initial contact?

The Complainant, as well as their parent/legal guardian if the party is a minor.

4) What will be said in my initial contact?

Introduction, brief explanation of Title IX and your reason for reaching out, request for meeting, helpful documents (processes, policy, list of supportive measures)

5) What if the Complainant does not respond to my attempts to contact?

- Vary your attempts to contact and document all attempts.
 - Email, phone calls to Complainant and parent, final attempt with a trackable letter or email
 - Some case management systems provide thorough tracking of all communications
- Decide how many attempts you will make before closing the case for non-contact.
- Ensure you have at least provided information about the availability of supportive measures, as well as the process for filing a formal complaint as those are required under Title IX.

Consider the Complainant's wishes with respect to supportive measures



Questions to consider

- 1) How can I inform the Complainant of which supportive measures may be available?
- 2) How can I ensure supportive measures are available?
- 3) What does it mean to "consider" their wishes?
- 4) What materials can I send home with the Complainant?

1) How can I inform the Complainant of which supportive measures may be available?

Provide a general list or infographic of the areas in which supportive measures may be available. Note that the list is not exhaustive and other options may be available upon communication of the Complainant's needs.

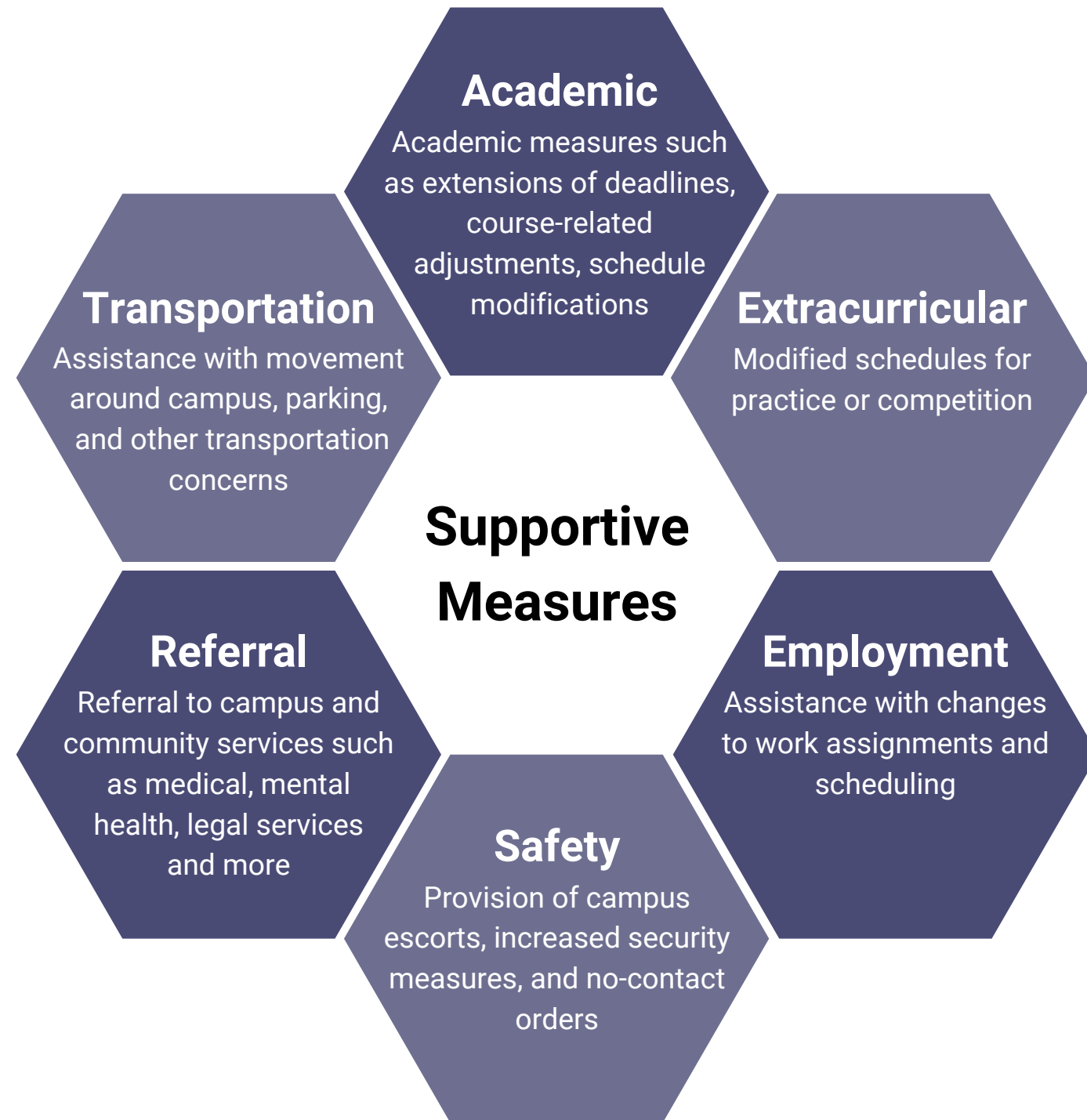
2) How can I ensure supportive measures are available?

Coordinate with all possible partners (academic, administrative, extracurricular, community, health, safety) to understand processes and potential for measures.

3) What does it mean to "consider" their wishes?

Do not promise any supportive measure until you know it is feasible. There are some things a Complainant may ask for that are not within the realm of possibility.

4) What materials can I send home with the Complainant?



Handout containing

- Explanation of supportive measures
- Information regarding your role in implementing any supportive measures needed
- Range of supportive measures available
- Helpful campus and community resources

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



Questions to consider

- 1) How will I communicate this?
- 2) How long will these supportive measures need to be in place?

1) How will I communicate this?

After explaining the process for submitting a formal complaint and giving an overview of the grievance process, simply let the Complainant know they can receive supportive measures by working with you, regardless of which option they choose. Empathetically inform them that you are there to help them, but you want to give them as much agency as possible to decide what is right for them.

2) How long will these supportive measures need to be in place?

There is no expiration date for supportive measures, with or without a formal complaint in place. This will need to be a continued conversation between the Title IX Coordinator and the Complainant.

You will want to consider the impact to the Complainant's education program or activity and how supportive measures might alleviate that impact.

Explain to the Complainant the process for filing a formal complaint



Questions to consider

- 1) How can I best explain this process?
- 2) What information does the Complainant need to know to make the most informed decision?
- 3) How will I communicate a decision to initiate a formal complaint if it is serious and the Complainant does not wish to move forward?

1) How can I best explain this process?

Share policy and any procedural documents/handouts you have. Be thorough, but do not overwhelm the Complainant with complicated language. Answer any questions they might have regarding what would follow a formal complaint.

2) What information does the Complainant need to know to make the most informed decision?

The Complainant needs to be aware of the policy, rights as a Complainant in a Title IX case, the Title IX grievance procedure, potential outcomes, and resources available. Ensure you have provided all of this information to the Complainant so there are no "surprises" if they choose to submit a formal complaint.

Tips for the Intake Meeting

- Seek more details to help you perform the incident evaluation. However, do not turn this into an investigative interview...that comes later!
- Use empathetic communication and use trauma-informed techniques to allow for choice and voice of the Complainant.
- Practice active listenening. Repeat Complainant's statements back to them. "So what I am hearing you say is..."
- Be prepared. Have all handouts and documents printed and readily available.
- Follow up. If you have not heard from the Complainant following the intake meeting, check in to see if there are any questions to answer.
- Discuss timeline for filing complaint with the Complainant

Formal Complaints



Formal Complaint

Formal Complaint §106.30 Definitions.

"means 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."



- Can be a physical document or an electronic document (email, Word document, etc.)
- Must contain a physical or electronic signature of the Complainant
- OR it can be signed by the Title IX Coordinator if it is decided the Coordinator will file without the Complainant's participation in the process (usually following a safety and risk assessment)

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

Parental/Guardian Rights

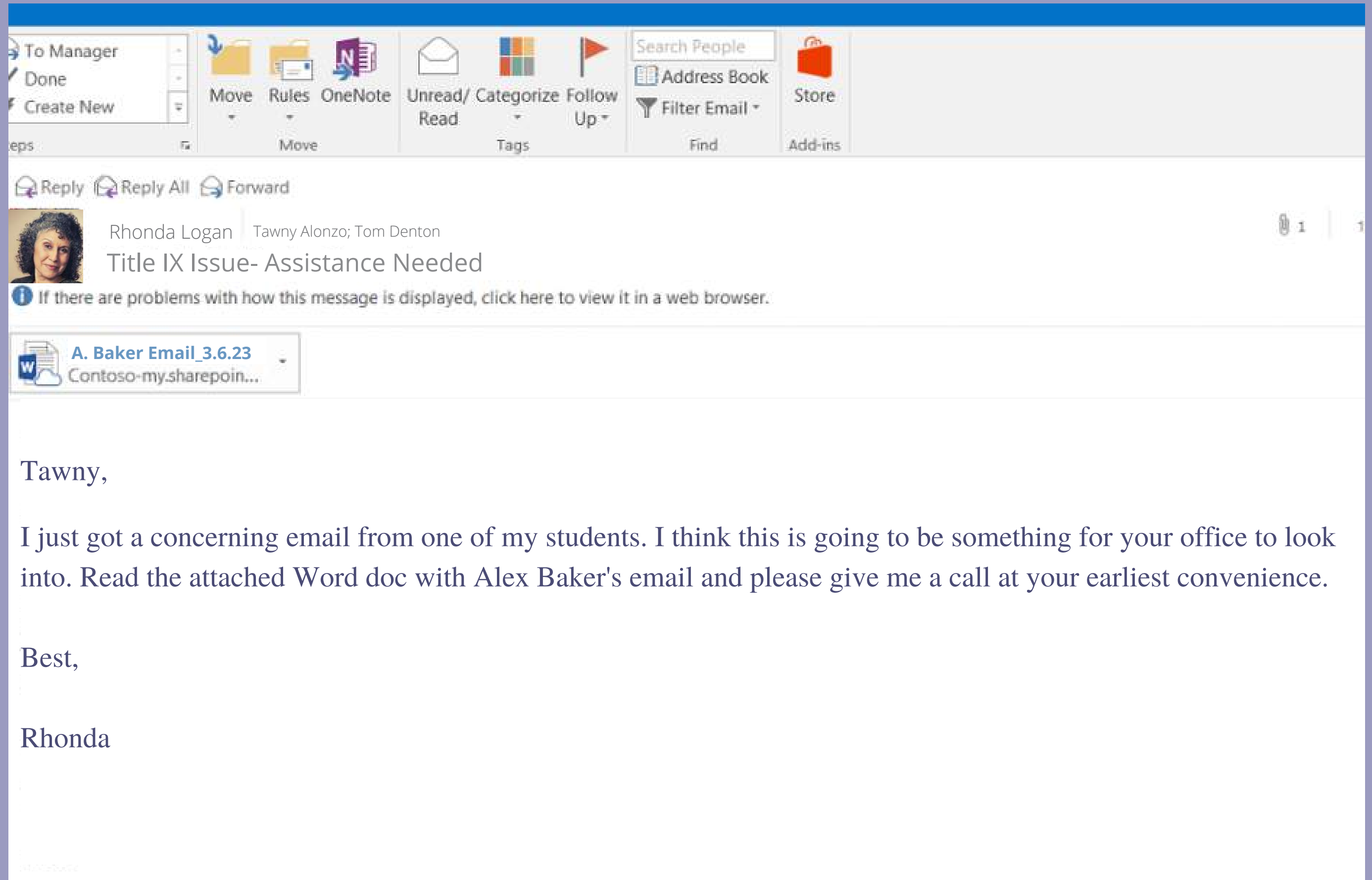
§ 106.6(g)
Exercise of rights
by parents or
guardians.

“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.”



There is no statute of limitations on filing a formal complaint. However, the Complainant “must be participating or attempting to participate in the recipient’s education program or activity” at the time of filing.


Sample initial report of potential concern





To Manager
Done
Create New

Move Rules OneNote Unread/Read Categorize Follow Up Search People Address Book Filter Email Store

Reply Reply All Forward

 Rhonda Logan Tawny Alonzo; Tom Denton
Title IX Issue- Assistance Needed

 If there are problems with how this message is displayed, click here to view it in a web browser.

 A. Baker Email_3.6.23
Contoso-my.sharepoint...

Tawny,

I just got a concerning email from one of my students. I think this is going to be something for your office to look into. Read the attached Word doc with Alex Baker's email and please give me a call at your earliest convenience.

Best,

Rhonda

Sample Formal Complaint

March 10, 2023

To the Sample University Title IX Coordinator,

On the night of March 3rd, a Friday, the Music Department held a celebratory dinner for all seniors who will be graduating this spring. The students, department faculty, and some program alumni were invited to attend the event which was held in the main banquet room in Briggs Hall. The event started at 7 PM. I was seated at a table with two Music Department faculty members, one of which was my professor Dr. Logan, and three other students, one of which was Jordan Reynolds. I thought the dinner was pleasant and overall, conversation seemed pretty normal. However, there was a cash bar provided, with wine and beer, and I saw Jordan Reynolds drinking quite a bit. I noticed Jordan getting louder and more talkative with each drink they had. I saw Jordan drink four beers, but I don't know if they had more than that because I was not around them until we were seated. I don't drink, so I didn't visit the bar.

When the event was over, Dr. Logan asked if she could have some help taking two boxes of table decorations back to the Music Department administrative office also in Briggs Hall. I wanted to be helpful, so I volunteered to take a box back. Jordan immediately jumped in saying they would join me. I was somewhat annoyed because they were clearly intoxicated and had been looking at me strangely all night.

Dr. Logan informed me that the main office was unlocked and that we could place the boxes behind the main reception desk. Dr. Logan said she would lock up later when she gathered her personal belongings from her office. Jordan and I walked down the hall to the Music Department office where it was extremely dark. We put the boxes behind the reception desk as Dr. Logan instructed us to do. I felt weird about being in there with them, so I immediately made my way to the door so I could go to my car and go home. Jordan ran to the door and pushed it closed, pinning me between themselves and the door. I was terrified. Jordan told me we should "take advantage of the privacy" and started telling me how attracted they are to me. I froze and couldn't say anything or even more. Jordan forcefully began kissing my neck and had my arms held down to my side. Jordan started pulling my dress up and put their hand inside my underwear. I started to squirm around and felt myself crying. Jordan said something like, "You'll enjoy it if you just let it happen," and told me we should keep going. As they started to unbuckle their belt, I had enough space to push them away and ran out the door as fast as I could.

As I was running down the hall, I passed Dr. Logan, who I think saw me crying. I couldn't stop because I was afraid Jordan would follow me into the parking lot. I missed classes on Monday because I didn't want to risk bumping into Jordan on campus. One of the classes I missed was Dr. Logan's capstone class, which I never skip. I emailed her to tell her I was sick, but she asked if my absence had anything to do with what she saw Friday night. I didn't know what to do, so I just broke down and told her everything.

I would like to file a formal complaint against Jordan Reynolds. I feel unsafe and scared.

Signed,



Alex Baker

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

Explain to the Complainant the process for filing a formal complaint



Questions to consider

- 1) How can I best explain this process?
- 2) What information does the Complainant need to know to make the most informed decision?
- 3) How will I communicate a decision to initiate a formal complaint if it is serious and the Complainant does not wish to move forward?

3) How will I communicate a decision to initiate a formal complaint if it is serious and the Complainant does not wish to move forward?

"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)

Explain the need to protect the safety of both the Complainant and greater school community. If the allegations are serious and pose risk of further harm to the Complainant or others, an investigation is necessary.

Inform the Complainant of their right to not participate, but gently inform them that their participation in the Title IX grievance process would be of great help.




If Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

A circular icon with a white border containing the Roman numeral IX, representing Title IX. The icon is set against a dark blue background.

IX

Coordinator Training Point

What criteria would be relevant in helping a Title IX Coordinator decide whether to move forward with a complaint?

A black and white photograph of a person's hand holding a pen, writing on a document. The document features a bar chart with several vertical bars of varying heights. The background is blurred, showing what appears to be a desk or office environment.

Title IX Incident Evaluation

In This Session



CONDUCTING A
TITLE IX INCIDENT
EVALUATION



UNDERSTANDING
SAFETY & RISK
ASSESSMENTS

Conducting a Title IX Incident Evaluation



Title IX Incident Evaluations

Also referred to as a "preliminary assessment" of an incident.

Who

Conducted by
the Title IX
Coordinator

What

Analysis of the alleged
incident to determine if
the misconduct could be
considered sexual
harassment under Title IX,
if proven

When

- ▶ Upon learning of an
alleged incident
- ▶ During and after the
intake meeting
- ▶ Throughout the Title IX
process

Why

To determine how
the school will
address the alleged
incident and identify
which grievance
procedures to
implement

HOW

First, consider whether the conduct was sex-based, including, based upon gender identity and/or sexual orientation.

If so, utilize the four "threshold criteria" outlined in the Title IX Regulations.

Four Threshold Criteria

The following must be considered when evaluating potential Title IX incidents:

- 1** School has “actual knowledge” of an allegation of the incident of sexual harassment
- 2** Alleged harassment occurred within the United States
- 3** Incident constitutes sexual harassment as previously defined
- 4** Conduct occurred within the school’s own education program or activity

1. Does the school have "actual knowledge"?



Recall how the Title IX Regulations define this:

“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.”

2. Did the incident occur in the U.S.?

Incidents may occur during school-sponsored programs abroad. However, the Department of Education requires incidents to occur in the U.S. to be considered "sexual harassment" under Title IX.

YES

Incident may be considered Title IX sexual harassment.

NO

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.

3. Would the incident constitute sexual harassment?



Reminder: Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of three types of behavior:

1 QUID PRO QUO HARASSMENT

Is the alleged Respondent an employee?
Does the incident involve the conditioning of an aid, opportunity, benefit, etc. upon the Complainant's participation in the unwelcome conduct?

2 SEXUAL ASSAULT DOMESTIC VIOLENCE DATING VIOLENCE STALKING

Is consent in question?
What is the relationship and dynamic between the parties?

How was the conduct unwelcome?
What would make this conduct severe, pervasive, and offensive?
How has the Complainant's access to education been impacted?

3 "SEVERE, PERVASIVE AND OBJECTIVELY OFFENSIVE" CONDUCT

3. Would the incident constitute sexual harassment?

Keep in mind that this is a preliminary assessment of the incident - not a definitive determination as to whether the Respondent is responsible for the alleged misconduct.

YES

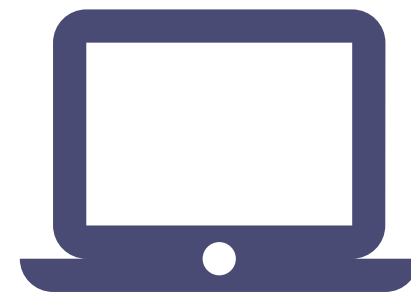
Incident may be considered Title IX sexual harassment.

NO

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.

4. Did the incident occur within the school's own education program or activity?



Locations, events, or circumstances over which:

Institution exercised substantial control over the Respondent



Institution exercised substantial control over the context in which the sexual harassment occurred

4. Did the incident occur within the school's own education program or activity?

This can be a difficult question to answer at this stage of the process.

YES

Incident may be considered Title IX sexual harassment.

NO

Determine if other school policies apply to the incident and are therefore initiated.

Continue to offer supportive measures.

What if I'm unsure about a Title IX threshold criterion?



CONSULT WITH OTHER TITLE IX ADMINISTRATORS

Discuss general details within the confidential circle of colleagues.



REVIEW PAST TITLE IX CASES

Have cases with similar circumstances been addressed under Title IX? Why or why not?



ERR ON THE SIDE OF CAUTION

It is preferable to initiate the Title IX grievance process and learn more about the incident as the process unfolds.

**What if I find
out a criterion
isn't met after
initiating the
Title IX
process?**



**THE SCHOOL MAY BE REQUIRED
TO DISMISS THE FORMAL
COMPLAINT UNDER TITLE IX**

Upon dismissal of a formal complaint, the school must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties.

If Title IX Does Not Apply

- Identify other school policies that may address the alleged misconduct (student/employee handbook, nondiscrimination or bullying policy, etc.)
- Offer the Complainant supportive measures
- Invite the Complainant to an intake meeting
- Keep an open mind - you may learn more about an incident after meeting with the Complainant and then determine that Title IX does apply to the incident
- Document your evaluation process and next steps

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



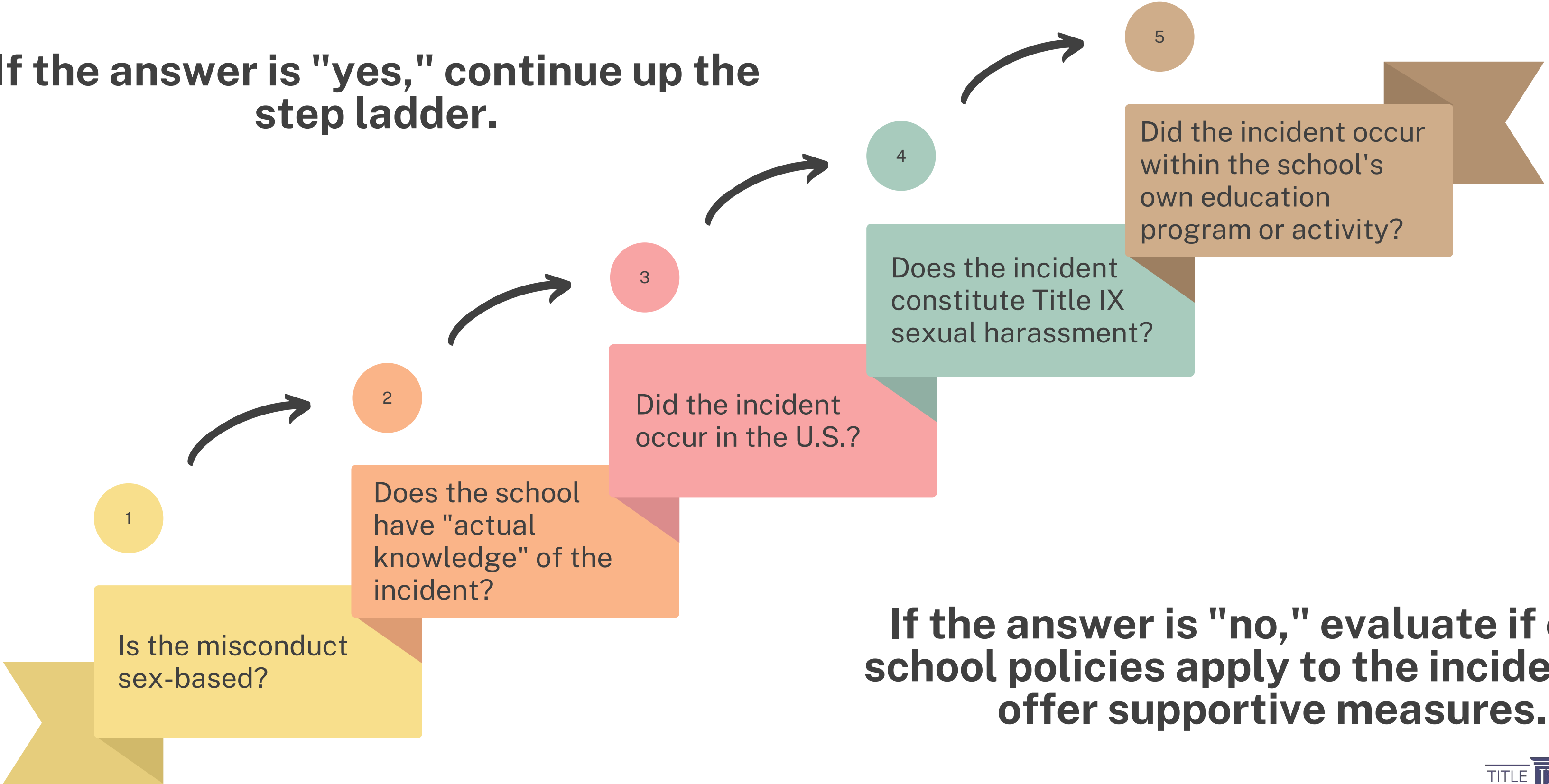
A complaint will not be dismissed because a Complainant remains at or leaves the school.

Let's Practice Evaluating Incidents



Title IX
Grievance
Process

If the answer is "yes," continue up the step ladder.



If the answer is "no," evaluate if other school policies apply to the incident and offer supportive measures.

- Joseph reports that his classmate, Joanna, pulled his backpack and made him fall on the bus.
- Melissa told her teacher that Mr. Jones, the Math Olympiad advisor, asked her to sit on his lap yesterday.
- Mr. Smith is an English teacher. Last weekend, he went to a concert with the Associate Director of Human Resources. On Monday, Mr. Smith reported that the Associate Director of Human Resources sexually assaulted him in the car on the way home from the concert.
- Jessica's brother reported that her boyfriend assaulted Jessica last night.

- Joseph reports that his classmate, Joanna, pulled his backpack and made him fall, **and then kissed him** on the bus.
- Melissa told her teacher that Mr. Jones, the Math Olympiad advisor, asked her to sit on his lap yesterday **before he would let her sign up for math team.**
- Mr. Smith is an English teacher. Last weekend, he went to a concert with the Associate Director of Human Resources. On Monday, Mr. Smith reported that the Associate Director of Human Resources sexually assaulted him in the car on the way home from the concert **and is now sending him explicit messages to his school email address.**
- Jessica's brother reported that her boyfriend assaulted Jessica **in the stairwell during the on-campus basketball game last night.**

Understanding Safety and Risk Assessments



What is a Safety & Risk Assessment?

Based on the details of a report, it may be necessary for the Title IX Coordinator to conduct a safety and risk assessment or contact the appropriate authorities at their institution to conduct such an assessment

- ❖ Required before Emergency Removal of a Respondent
- ❖ An individualized safety and risk analysis conducted by the Title IX Coordinator to determine if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
- ❖ If Emergency Removal is necessary, the Title IX Coordinator must provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal
- ❖ Document the basis for this individualized outcome with facts specific to the report



Let's practice evaluating
incidents.

Jonathan, a first-year student at your institution, scheduled a meeting with his Graduate Hall Director. In this meeting, Jonathan shares that his roommate, Seth, has been coming back to their on-campus room intoxicated and will get into bed with him. Jonathan informs you that Seth put his hands down Jonathan's pants last night. He asks if there is any way someone can help him switch rooms.

The Graduate Hall Director fills out an incident form as is instructed by policy and forwards it to you, the Title IX Coordinator.

Munira has been an employee of your school for five years. She phones you to tell you that she has been experiencing harassment from a new co-worker, Ashton. Ashton has been making snide comments about Munira's hijab as well criticizing her openly for taking approved breaks for prayer. She wants to file a complaint against Ashton and is looking for your guidance.

Calli and Marshall are members of student senate. They informed their faculty advisor that two other members of student senate, Rebecca and Aiden, started a text chat where those invited rate the attractiveness of others in the organization. Calli and Marshall are uncomfortable with the content of the chat as Rebecca and Aiden make frequent sexual comments.

The faculty advisor calls you, the Title IX Coordinator, to tell you about the incident.

Addison and Bailey have been dating for two years. They are currently on a study abroad experience in Argentina. While in Argentina, Addison and Bailey get into an argument. Addison physically assaults Bailey, resulting in Addison's arrest.

Stacey, the Director of Study Abroad Experiences notifies you of the incident. When Stacey spoke with Bailey, she learned that the relationship has been abusive for months and this is not the first time Addison has physically assaulted Bailey.

Bryson is the star wide receiver on the football team. He has been getting a great deal of attention on national media for his on-field accomplishments.

His mother calls you, the Title IX Coordinator, with a concern that her son is being stalked by an admirer.

Bryson comes in to speak with you and tells you that an older woman, who he believes to be a local resident, has been showing up all over campus and places he frequents in town. She has been leaving cryptic notes on his car and has been posting messages on his girlfriends Instagram page saying, "You will be out of the picture soon." He is fearful for his safety, as well as his girlfriend's.

Raina is a sophomore in Mr. Pruitt's Art Appreciation class at Legacy High School. She visits her high school, Mrs. Bradbury in tears after class one day. She discloses to Mrs. Bradbury that Mr. Pruitt showed the class several works of art with nudity in them, which was jarring and offensive to her. She would like to drop the class. Mrs. Bradbury is not quite certain whether this is a Title IX issue or not, but she reports it to the Title IX Coordinator out of an abundance of caution.

Notice of
Allegations and
Start of the
Grievance Process



In This Session



DRAFTING THE
NOTICE OF
ALLEGATIONS



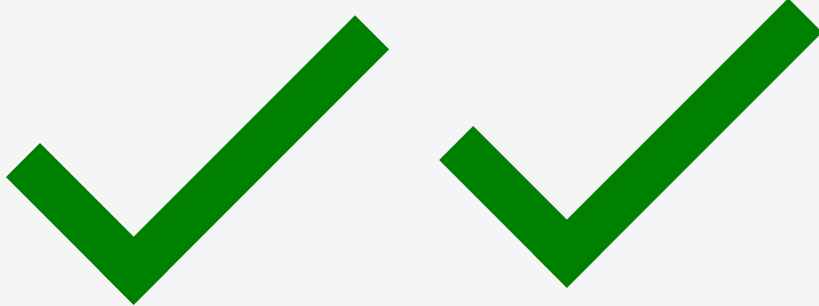
INITIATING THE TITLE
IX GRIEVANCE
PROCESS

Drafting the Notice of Allegations



Title IX Grievance Process

WE ARE
HERE

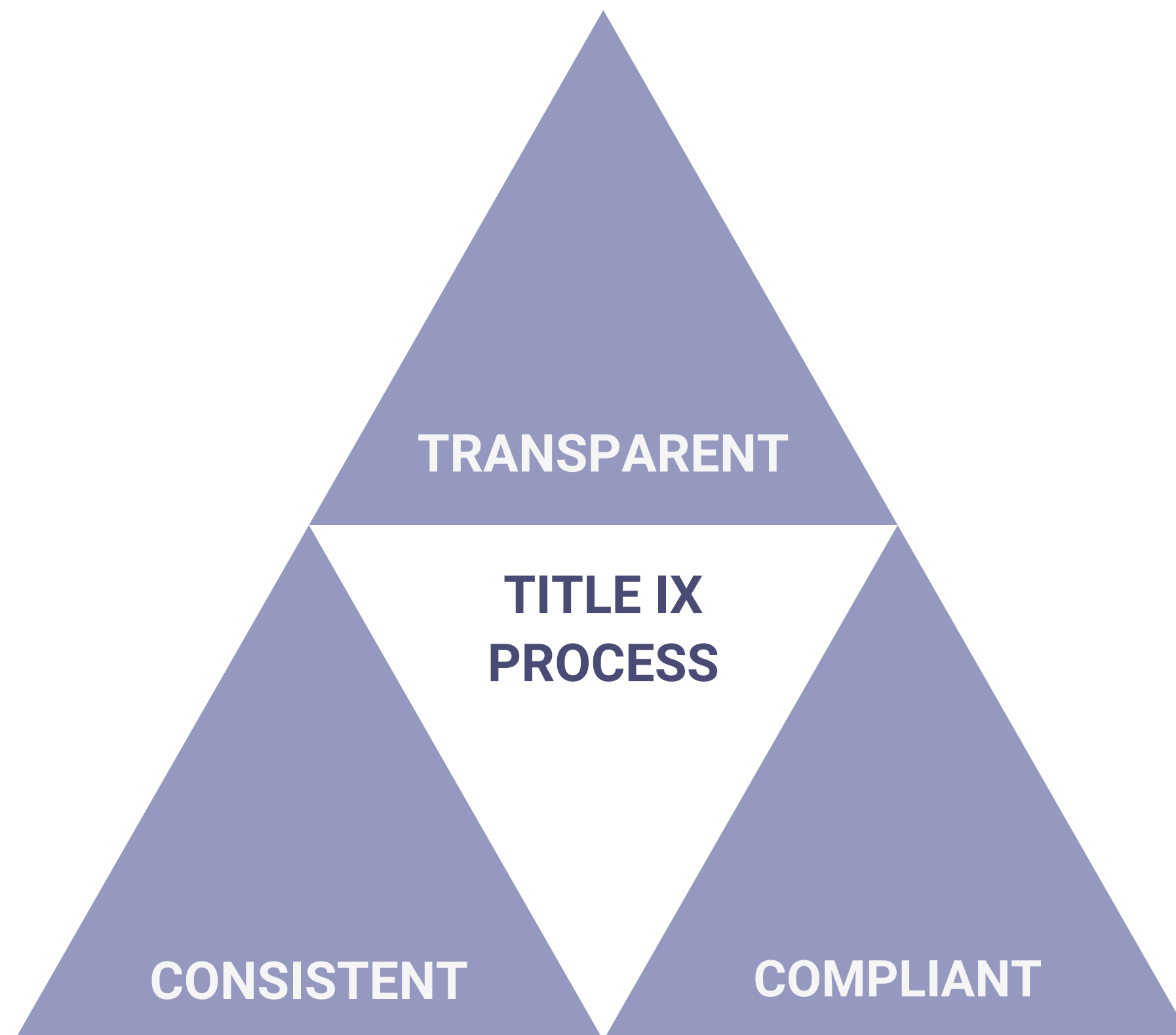


- INTAKE/
REVIEW
- FORMAL
COMPLAINT
FILED
- NOTICE OF
ALLEGATIONS
SENT TO PARTIES
- INVESTIGATION
- DECISION-
MAKING
PROCESS
- WRITTEN
DETERMINATION
- APPEALS
PROCESS



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

Purpose of the Notice of Allegations



Elements of the Notice of Allegations

Upon receipt of a formal complaint, the Title IX Coordinator must issue written notice to the Parties, if known. The Notice must contain the following information:

1. Notice of the allegations potentially constituting sexual harassment under Title IX, including:
 - Sufficient details known at the time, such as:
 - Identities of the Parties involved in the incident (if known)
 - Description of the conduct allegedly constituting Title IX sexual harassment
 - Date and location of the alleged incident (if known)

Helpful Hint



IDENTITIES OF STUDENTS CAN BE SENSITIVE.

Although names must be included in the Notice, consider defining the appropriate individuals as "Complainant" and "Respondent" in the opening paragraph and then refer to the students with such terms throughout the Notice.



Elements of the Notice of Allegations

2. Statement that if, during the course of an investigation, the school decides to investigate allegations about the Complainant or Respondent that are not included in the Notice, the school will provide written Notice of the additional allegations to the parties whose identities are known
3. Statement that the Respondent is presumed not responsible for the alleged conduct unless and until the determination of responsibility is final

Elements of the Notice of Allegations

4. Notice and copy of the school's Title IX grievance process
5. Statement that the Parties have the right to inspect and review evidence collected during the investigation
6. Statement that a determination of responsibility is made at the conclusion of the grievance process
7. Option for informal resolution, if appropriate and permitted

Contextualizing These Elements

- Provide basic information about Title IX and the school's requirements under the Regulations
- Include an overview of the Title IX process and explain what happens next (e.g., interview with an Investigator)
- Summarize the Parties' rights under Title IX (e.g., right to participate or refuse to participate in the process, right of a parent or guardian to act on behalf of a party, right to supportive measures, etc.)

Helpful Hint



MAKE THE TITLE IX POLICY AND PROCEDURES ACCESSIBLE TO THE PARTIES

Include a hyperlinked URL to the applicable policy in the Notice, attach a digital copy of the policy to the email, and attach physical copy of the policy to the printed letter to the Complainant and Respondent.

Elements of the Notice of Allegations

8.

Statement that the Parties have a right to an Advisor of their choice.



An Advisor may be, but is not required to be, an attorney.



A Party's Advisor may be a friend, teacher, parent, professor, etc.



Parties have the option to include the Advisor in any meeting or interview.

Helpful Hint



ASK THE PARTY TO SHARE THE NAME OF THEIR CHOSEN ADVISOR

This allows the Title IX Coordinator to communicate with the Advisor and share information about the Title IX process. This also helps the Title IX Coordinator recognize if a Party is unable to find an Advisor and therefore assist in identifying an Advisor, if necessary.

Elements of the Notice of Allegations

9.

Notice to expect an initial interview with the Title IX Coordinator or Investigator

- Provide sufficient time for the Party to prepare for any initial interview

10.

Reference to any provision in the school's code of conduct or other policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

Additional Elements to Include

- Provide the name and contact information of the Title IX Coordinator and Investigator (if known)
- Include a statement that retaliation is prohibited, and define retaliation under Title IX
- Relay confidentiality expectations, as outlined under Title IX and school policy (sometimes referred to as “privacy” within a policy)
- Provide a list of campus and community support resources
- Provide information about disability services and the process for requesting reasonable accommodations



Recall...

Retaliation

- Intimidating, threatening, coercing, or discriminating against any individual for either of the following reasons:
 - Intention to interfere with the individual's rights under Title IX; or
 - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX



Recall...

Confidentiality

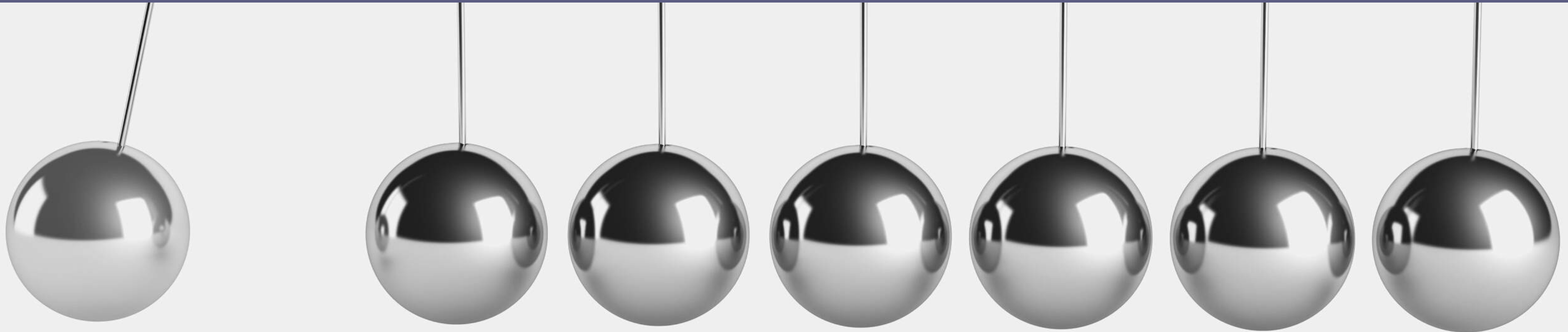
Title IX states each school or “recipient” must:

- 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
 - 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.

Practical Tips

- Prepare the Notice of Allegations on school letterhead, then attach it to an email
- Consider the reading level of the Parties and do your best to use accessible language
- Make yourself available to Parties and the Advisors so they can ask questions, discuss the process, etc.
- Proofread this Notice! Misspellings impact trust and confidence
- Send these notices to both the Complainant and Respondent at the same time

Initiating the Title IX Grievance Process



A formal complaint has been filed. Now what?

In addition to preparing the Notice of Allegations, the Title IX Coordinator is responsible for initiating the Title IX process. Key responsibilities include:

- Engaging Title IX team members
- Contacting Parties' Advisors
- Communicating with the Parties

Engaging Title IX Team Members

Select team members:



Title IX
Investigator



Decision-
Maker



Appellate
Decision-Maker



Informal Resolution
Facilitator
(optional)

Share with team members the following information:

- Date of the formal complaint
- Potential timeline of the grievance process and their expected participation
- Confidentiality requirements
- Reminder that all Title IX personnel are prohibited from having a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent participating in the process
 - Provide the names of the Complainant & Respondent
 - Inform Title IX personnel that they must contact you immediately and recuse themselves from the case if they have a conflict of interest or bias
- Copy of the Title IX or Sexual Harassment Policy

Contacting the Parties' Advisors

With the Party's permission, contact each Advisor to provide the following information:



Explain your role as the Title IX Coordinator



Explain their role and responsibilities as an Advisor



Provide a copy of the Title IX or Sexual Harassment policy



Provide Advisor guidelines and explain confidentiality and information sharing



Invite to a meeting or phone call to answer questions and discuss process

What if a Party doesn't have an Advisor?

Communicating with the Parties

Facilitate a transparent and equitable process by providing regular updates to the Parties.

Supportive Measures

Check in to confirm supportive measures are meeting the Parties' needs and/or offer alternative measures

Status Updates

Provide status updates, explain which stage of the Title IX process is taking place, and outline what to expect in the coming weeks

Introductions

Share the name of the Title IX Investigator, Decision-Maker, Appellate Decision-Maker, and Informal Resolution Facilitator, when appropriate

Availability

Reiterate the Title IX Coordinator's role and availability to answer questions in person, via email, etc.

Note: Schools must send written notice of procedural delays to the Parties and include reasons for delay.

What else should
we do when
initiating the Title
IX grievance
process?

Consider the following questions:

- › Is it possible to confer with colleagues about a difficult case while maintaining the required level of confidentiality? Who might be appropriate or inappropriate to share information with?
- › Is another safety and risk assessment necessary?
- › How can we move the process forward?

Questions?

TITLE  SOLUTIONS, LLC