

# TITLE IX COORDINATOR TRAINING

TITLE  SOLUTIONS, LLC





WELCOME BACK!

# Training Instructors

Tawny  
Alonzo

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Director of Training  
Title IX Solutions, LLC



Elizabeth  
Abdnour

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Advisor and Investigator,  
Title IX Solutions, LLC



**Part Two  
(2.21.2024)  
Training  
Agenda**

**Times listed in Eastern**

**1:00 p.m. – 2:00 p.m. | NOA + 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**



# Questions from yesterday?

# Title IX Investigations



# In This Session



CONDUCTING  
COMPLIANT TITLE  
IX INVESTIGATIONS



UNDERSTANDING  
THE COORDINATOR'S  
ROLE IN TITLE IX  
INVESTIGATIONS

# Conducting Compliant Title IX Investigations





# 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 Title IX Investigation

Gather statements from Parties and witnesses and for the official record

Collect evidence that is directly related to the allegations in the formal complaint

Allow Parties to inspect and review all directly related evidence as it relates to the allegations

Summarize relevant evidence in an investigative report to be provided to the Title IX Decision-Maker

# Initiating the Title IX Investigation

A Recipient must investigate a formal complaint.

- The burden of proof and gathering of evidence sufficient to reach a determination regarding responsibility rests on the school - not on the Parties



*“The Recipient cannot access, consider, disclose, or otherwise use a Party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional which are made and maintained in connection with the provision of treatment to the party, unless the Recipient obtains the party's written, voluntary consent to do so for the grievance process”*

§106.45 (b)(5)(i)



Key document- Waiver of privileged information

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§106.45 (b)(5)(i)



Key document- Waiver of privileged information

IX

# Title IX Requirements

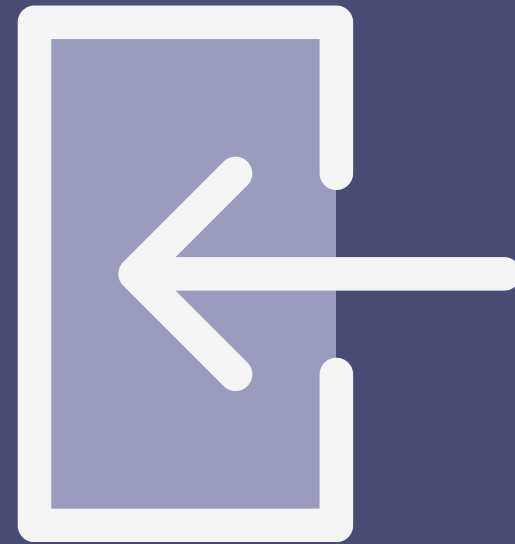
During the investigation, the school must:

*“Provide an equal opportunity for the parties to present witnesses (including fact and expert witnesses), and other inculpatory and exculpatory evidence;”*

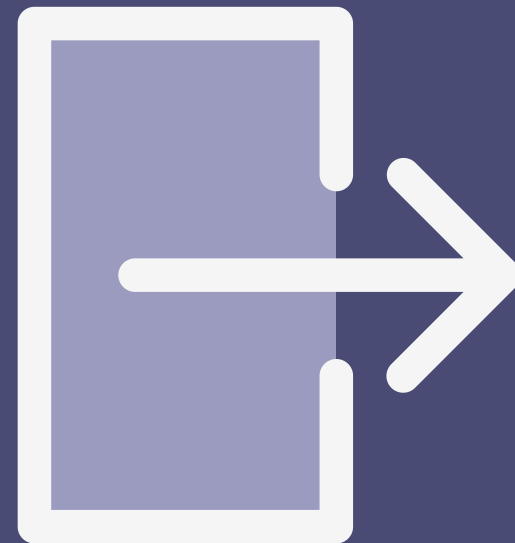
§106.45 (b)(5)(ii)

- Do not restrict the ability of the Parties to present evidence!
  - The Investigator should be open to receiving any and all evidence provided by Parties and/or witnesses.
  - A relevance determination can be made at a later time to determine what will be included in the investigation report.
- Ensure school policy clearly outlines what type of witnesses are permitted.

Inculpatory  
vs.  
Exculpatory



Inculpatory=  
Evidence which tends to  
corroborate the  
allegations



Exculpatory=  
Evidence which tends to  
contradict the allegations

IX

# Title IX Requirements

During the investigation, the school must:

*“Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;”*

§106.45 (b)(5)(iii)

- Gag orders are not allowed!
- A school may place restrictions on discussing specific evidence or sharing the investigation report.

IX

# Title IX Requirements

During the investigation, the school must:

*“Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the recipient may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;”*

§106.45 (b)(5)(iv)



IX

# Title IX Requirements

- Do not deny the Party an opportunity to have an Advisor present!
- Their parent(s) or legal guardian(s) should also be in the room if the Party or witness is a minor.



Key document- Advisor participation agreement

IX

# Title IX Requirements

During the investigation, the school must:

*“Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;”*

§106.45 (b)(5)(v)

- Keep all notices in writing and provide parties ample time to prepare!



Key document- Notice of Meeting/Notice of Interview

IX

# Title IX Requirements

During the investigation, the school must:

*“Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the recipient does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.”*

§106.45 (b)(5)(vi)

- Save everything collected as a part of the investigation!
- The entire investigation file will be provided to the parties and their Advisors.

IX

# Title IX Requirements

During the investigation, the school **must**:

*“Prior to completion of the investigative report, the recipient must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The recipient must make all such evidence subject to the parties’ inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination;”*

§106.45 (b)(5)(vi)

- Ensure your communicated timelines are compliant with this requirement.

IX

# Title IX Requirements

During the investigation, the school **must**:

*“Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing, or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.”*

- Ensure you follow this timeline.
- Allow ample time for the parties to review and respond to the report.



Key document- Investigation report template

# Elements of the Investigation Report

- ✓ Identify the allegations
- ✓ Identify relevant policies, guidelines, and other standards
- ✓ Explain the procedural steps taken between receipt of the formal complaint and the conclusion of the investigation, including all notifications to the Parties, interviews with the Parties, interviews with other witnesses, dates of all interviews, any site visits, and the methods used to gather evidence
- ✓ Fairly summarize relevant evidence

# Understanding the Coordinator's Role in Title IX Investigations



# Selecting the Investigator(s)

## Factors to Consider:

- Levels of training

*“A recipient also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence...”*

- Conflicts of interest and/or actual and perceived biases
- Experience with Title IX investigations, specific forms of sexual harassment, student or employee cases, etc.
- Availability to conduct an investigation
- Gender balance
- Native language of the parties
- Rapport



# Sharing Known Information With the Investigator(s)

- Initial Report
- Formal Complaint
- Notice of Allegations
- Any meeting notes from interactions with Complainant, Respondent, or Witnesses

# Sending Required Communication

- Notice of Meeting/Notice of Interview
- Notice of Delays for Good Cause
- Investigation file
- Investigation report

# Monitoring Timeline

- Assisting Investigator(s) in investigation interview preparation
  - Order of interviews
  - Creating a cursory timeline
  - Drafting questions
- Being made aware of delays for good cause
- Ensuring required response periods are being observed
  - 10 days for response to investigation file
  - Provision of investigation report 10 days prior to decision-making process

# Providing Support

- Provide administrative support for Investigator(s)
  - Secure rooms
  - Assist with technology
  - Order transcripts
- Review documents
  - Questioning scripts/playbooks
    - May consider having bookend meetings with the Investigator(s) to determine if questions have yielded the necessary information
  - Investigation file
  - Investigation report
- Serve as a resource for parties and Advisors
  - Provide information regarding process-related issues or questions
  - Coordinate and monitor supportive measures

# Key Considerations

As the Investigator prepares to interview Parties and Witnesses, keep in mind the following:

- Title IX is an administrative, not a criminal or even civil, process
- Investigators must remain impartial
  - Impartiality does not mean you cannot have empathy
- Challenging process for all individuals involved can be emotional and time-consuming
- Consistent Communication can alleviate challenges
  - Build in moments for self-care and reflection for you and your Investigation team

Title IX  
Decision-  
Making  
Processes



# In This Session



CONDUCTING  
COMPLIANT TITLE IX  
DECISION-MAKING  
PROCESSES



UNDERSTANDING THE  
COORDINATOR'S ROLE  
IN TITLE IX DECISION-  
MAKING PROCESSES

# Conducting Compliant Title IX Decision-Making Processes





# Title IX Grievance Process

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PROCESS

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

# Purpose of the Decision-Making Process

Review the investigative report, evidence, and parties' responses to the report provided by the Title IX Investigator(s)

Provide an opportunity for Parties' Advisors to ask relevant cross-examination questions of Parties and Witnesses (including to challenge credibility)

Provide an opportunity for the Decision-Maker to ask relevant questions of Parties and Witnesses

Provides an opportunity for Parties and Witnesses to answer questions

Provides an opportunity for the Parties to share additional information before the Decision-Maker makes a determination regarding responsibility

IX

# Title IX Requirements

*“The decision-maker(s)...cannot be the same person(s) as the Title IX Coordinator or the Investigator(s)...”*

§106.45 (b)(7)(i)

- Title IX Decision-Makers must also be free of conflict of interest and bias!
- You may have more than one Decision-Maker, such as a panel.

IX

# Title IX Requirements

*“For postsecondary institutions, the recipient’s grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each Party’s advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.”*

§106.45 (b)(6)(i)

- This is a non-negotiable aspect of the decision-making process in higher ed.
- Advisors play their most critical role in this portion of the grievance process.

IX

# Title IX Requirements

*“If a Party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that Party, an Advisor of the recipient’s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.”*

§106.45 (b)(6)(i)

- Does your school have a pool of trained Advisors?
- A Party may choose to utilize a school-provided Advisor much earlier than at the live hearing.
- This individual may be a parent, friend, coach, or other non-attorney individual.

IX

# Title IX Requirements

*“Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the Party’s advisor of choice and never by a Party personally, notwithstanding the discretion of the recipient under paragraph (b)(5)(iv) of this section to otherwise restrict the extent to which advisors may participate in the proceedings.”*

§106.45 (b)(6)(i)

- Never allow a Party to question or speak to the other Party in the live hearing.
- You may establish rules for the Advisor, however, they must be applied to both Parties’ Advisors.



# Title IX Requirements

*“Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.”*

§106.45 (b)(6)(i)



IX

# Title IX Requirements

*“At the request of either Party, the recipient must provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the decision-maker(s) and Parties to simultaneously see and hear the Party or the witness answering questions.”*

§106.45 (b)(6)(i)

- Parties can be, but are not required to be in the same room.
- Videoconferencing and remote technology is permitted, as long as the hearing is live and in real time.



IX

# Title IX Requirements

*“Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.”*

§106.45 (b)(6)(i)

- This recording and/or transcript must be kept for seven years as required by Title IX Regulations regarding recordkeeping.
- Your school policy may dictate which format is provided to Parties for inspection and review.



## Coordinator Training Point

Let's discuss relevance as it relates to the Title IX grievance process.

# Directly Related vs. Relevant

Neither term is explicitly defined in the Title IX Regulations.

## Directly Related

Evidence that is connected to the complaint but **does not** tend to prove or tend to disprove the complaint or allegations.

Example: A receipt from a lunch date at the campus dining hall between the Complainant and Respondent. (Provided by the Complainant at their investigative interview.)

## Relevant

Evidence pertinent to proving whether facts material to the allegations under investigation are more or less likely to be true.

Example: An email with attached nude images the Respondent allegedly sent to the Complainant later that evening via the Respondent's campus email account. (Provided by the Complainant at their investigative interview.)

# What is Never Relevant Under Title IX?

As outlined in the Title IX Regulations, the following evidence is NEVER relevant:  
Evidence about a Complainant's prior sexual behavior, except when:

Questions and evidence are offered to prove someone other than Respondent committed alleged conduct;" or

Questions and evidence concerning specific incidents of the Complainant's prior sexual behavior with respect to the Respondent are offered to prove consent

# What is Never Relevant Under Title IX?

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

## EXAMPLES:

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



Consider creating a waiver of rights to privacy of these records for Parties who wish to submit privileged information as evidence.

# Refusal to Participate in the Hearing

- It is the right of each Party and Witness not to attend the hearing. They also have the right to refuse answering any or all questions asked during the hearing.
- If the Party refuses to submit to cross-examination, the Decision-Maker:

*"must not rely on any statement of that Party or Witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's or Witness's absence from the live hearing or refusal to answer cross-examination or other questions"*

§106.45 (b)(6)(i)

# Refusal to Participate in the Hearing



A federal court vacated regulatory language in the 2020 amendments that prohibited decision-makers in postsecondary schools from relying on statements by individuals who did not submit to cross-examination during a live hearing. As a result, postsecondary schools are no longer subject to this language.

A Decision-Maker can rely on previous statements of a Party or Witness, even if they choose not to participate in the hearing.

# Decision-Making Process

## PRE-HEARING MEETING

- Meeting before the hearing to walk through guidelines, expectations, and more for Parties, Advisors, and the Decision-Maker
- Led by the Title IX Coordinator and/or Decision-Maker(s)
- Not mandated by Title IX regulations, but permitted
- Prepares all Parties (and the Decision-Maker) for the live hearing
- Seen as a best practice for Title IX hearings
- If allegations involve staff or faculty, pre-hearing meetings are particularly important



# Decision-Making Process

## LIVE HEARING

- This will be the formal opportunity for the Parties to be cross-examined via Advisors
- The Decision-Maker will preside over the hearing, while the Title IX Coordinator may be present to assist with facilitation

# Best Practices: Hearing Order

Opening of the Hearing

Opening Statements

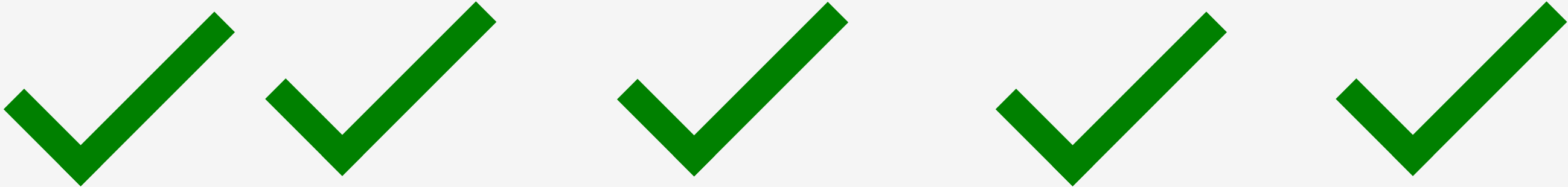
Questioning of Parties and Witnesses

Closing Statements

Closing of the Hearing

# Title IX Grievance Process

WE ARE  
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PROCESS

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

# What is a Determination Regarding Responsibility?

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

IX

# Title IX Requirements

Title IX states that the written determination must include:

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

IX

# Title IX Requirements

Title IX states that the written determination must include:

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

IX

# Title IX Requirements

*“The recipient must provide the written determination to the Parties simultaneously. The determination regarding responsibility becomes final either on the date that the recipient provides the Parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.”*

§106.45 (b)(7)(iii)

- Send these at the same time and document!

# Understanding the Coordinator's Role in the Decision-Making Process





# Selecting the Decision-Maker(s)

## Factors to Consider:

- Levels of training

*“A recipient must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant...”*

- Conflicts of interest and/or actual and perceived biases
- Availability to conduct the decision-making process, including the live hearing

# Sharing Known Information With the Decision- Maker(s)



Formal Complaint



Notice of Allegations



Investigation Report



Investigation File  
(Evidence)

# Sending Required Communication


- Notice of Meeting (for any pre-hearing meetings)
- Notice of Hearing
- Procedural requirements regarding the live hearing
- Written Determination Regarding Responsibility

# Monitoring Timeline

- Pre-hearing meetings
- Assisting Decision-Maker(s) in live hearing preparation
  - Reviewing policy for specific procedural requirements
  - Creating a cursory script or agenda
- Timeline for drafting written determination
- Being made aware of delays for good cause
- Monitoring the duration of the live hearing
- Monitoring for appeal submission following the issuance of the determination

# Providing Support

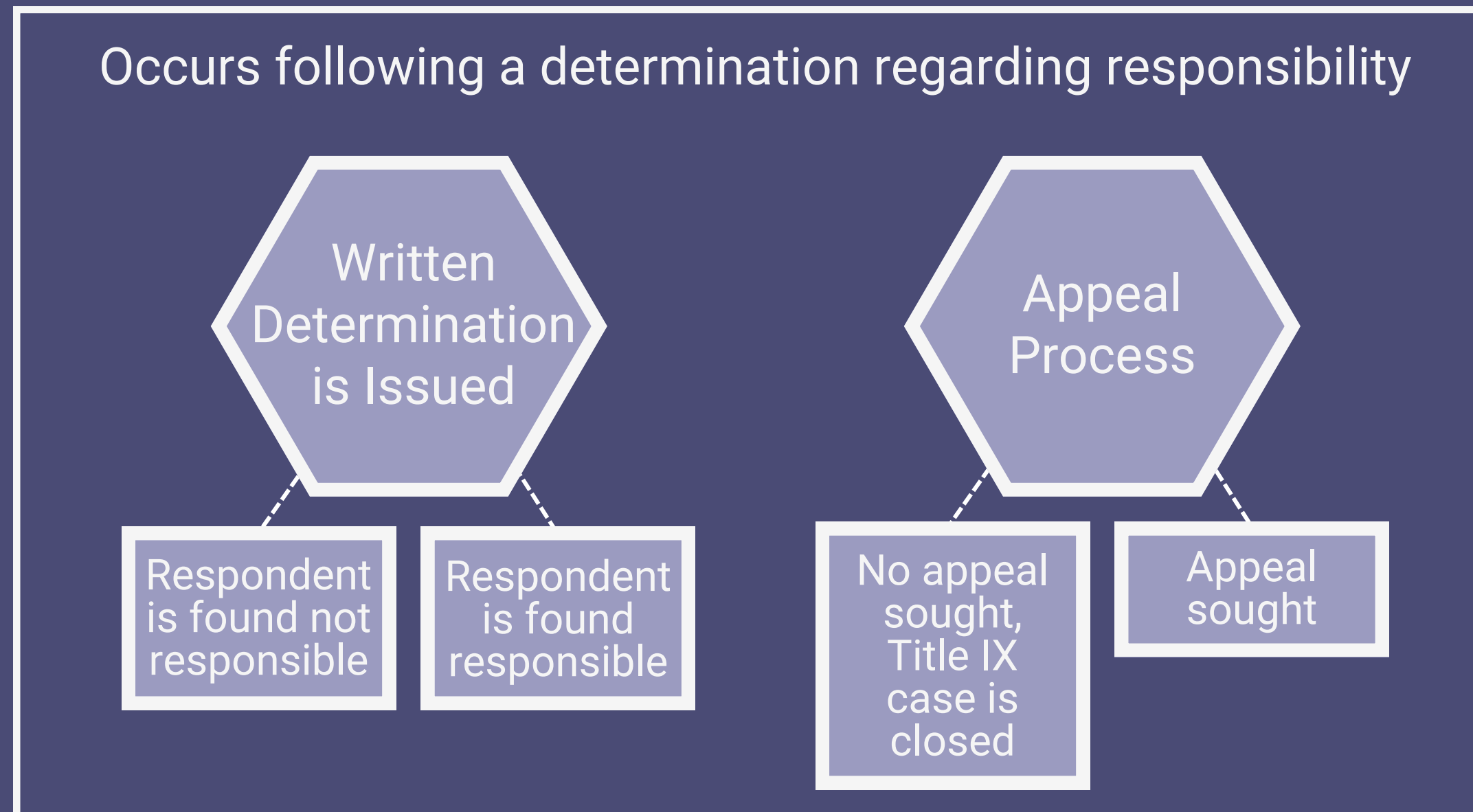
- Provide administrative support for Decision-Maker(s)
  - Secure rooms,
  - Assist with set-up of technology and troubleshoot
  - Creating record of hearing
  - Order transcripts (if needed)
  - Facilitate the hearing
  - Provide evidence to Decision-Maker, parties, and Advisors upon request
  - Coordinate witnesses (if needed)
- Review documents
  - Written determination regarding responsibility
- Serve as a resource for Parties and Advisors
  - Provide information regarding process-related issues or questions
  - Coordinate and monitor supportive measures



Title IX  
Outcomes,  
Sanctions and  
Remedies

# Possible Title IX Outcomes

Aside from initial review, which could include adjudicating a matter under a non-Title IX policy and dismissal of formal complaints, these are the potential outcome points for a Title IX complaint:



# Title IX Requirements

Title IX Regulations require schools to do the following:

"Describe the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that the recipient may implement following any determination of responsibility."

34 CFR §106.45(b)(1)(vi)

"The sanction/remedy must be accompanied by a written rationale detailing the result as to each allegation, a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the school's education program or activity will be provided to the Complainant."

34 CFR §106.45(b)(7)(ii)(E)



# Title IX Requirements

Title IX Regulations require schools to do the following:

Implement sanctions and/or remedies that restore or preserve the Complainant's equal access to the school's education program or activity, if a Respondent is found responsible.

"Include the procedures and permissible bases for the complainant and respondent to appeal."

34 CFR §106.45(b)(1)(viii)

# Outcomes Following the Written Determination



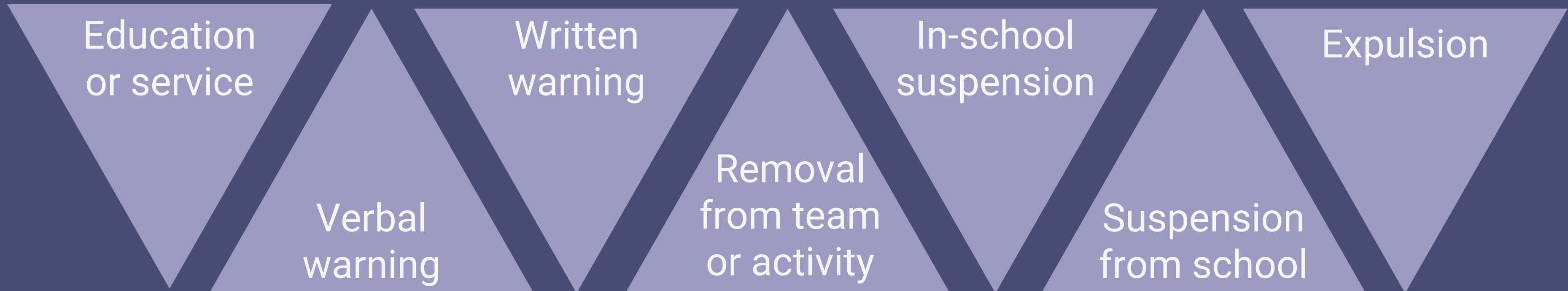
If the Respondent is not found responsible, the school may continue to offer supportive measures to the Complainant where practical.

- Engage in a conversation with the Complainant (and parents/legal guardians, if the Party is a minor) to determine what is needed and for what length of time.
- Revisit this conversation at regular intervals to gauge the need for continued measures.

If the Respondent is found responsible, sanctions and remedies will be put into place.

# Range of Sanctions

This is a non-exhaustive list of potential sanctions. Consult with administrators who are trained on conduct violations to come up with a range for your institution.



Employee sanctions can also range from verbal warning to termination.

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

IX

## Coordinator Training Point

Who will ultimately be responsible for determining student sanctions if the Respondent is found responsible? What if the Respondent is an employee?

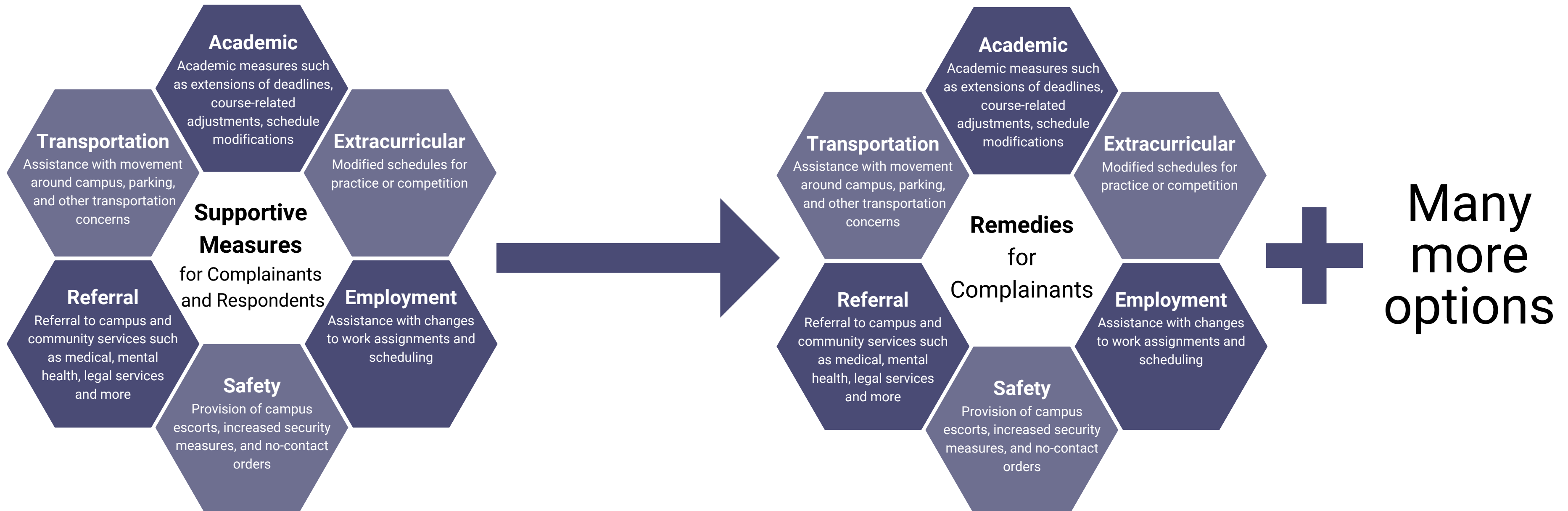
# What Are Remedies?

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

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

(p. 1458 Preamble to the Title IX Regulations)

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



# Appealing a Decision

- Title IX Regulations stipulate that a school must provide the Parties an equal opportunity to appeal the determination regarding responsibility
- The appeal process is available to both the Complainant and Respondent
- The Appellate Decision-Maker cannot be the Decision-Maker that made the determination, the Title IX Coordinator, or the Title IX Investigator for the case
  - The Appellate Decision-Maker must be trained in accordance with Title IX

# Title IX Requirements

Title IX Regulations require schools to do the following:

- Notify the other Party in writing when an appeal is filed
- Implement appeal procedures equally for both Parties
  - The school policy should contain specific procedures and timelines
- Provide both Parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome
- Issue a written decision describing the result of the appeal and the rationale for the result
  - Provide the written decision simultaneously to both Parties

34 CFR §106.45(b)(8)(ii-iii)



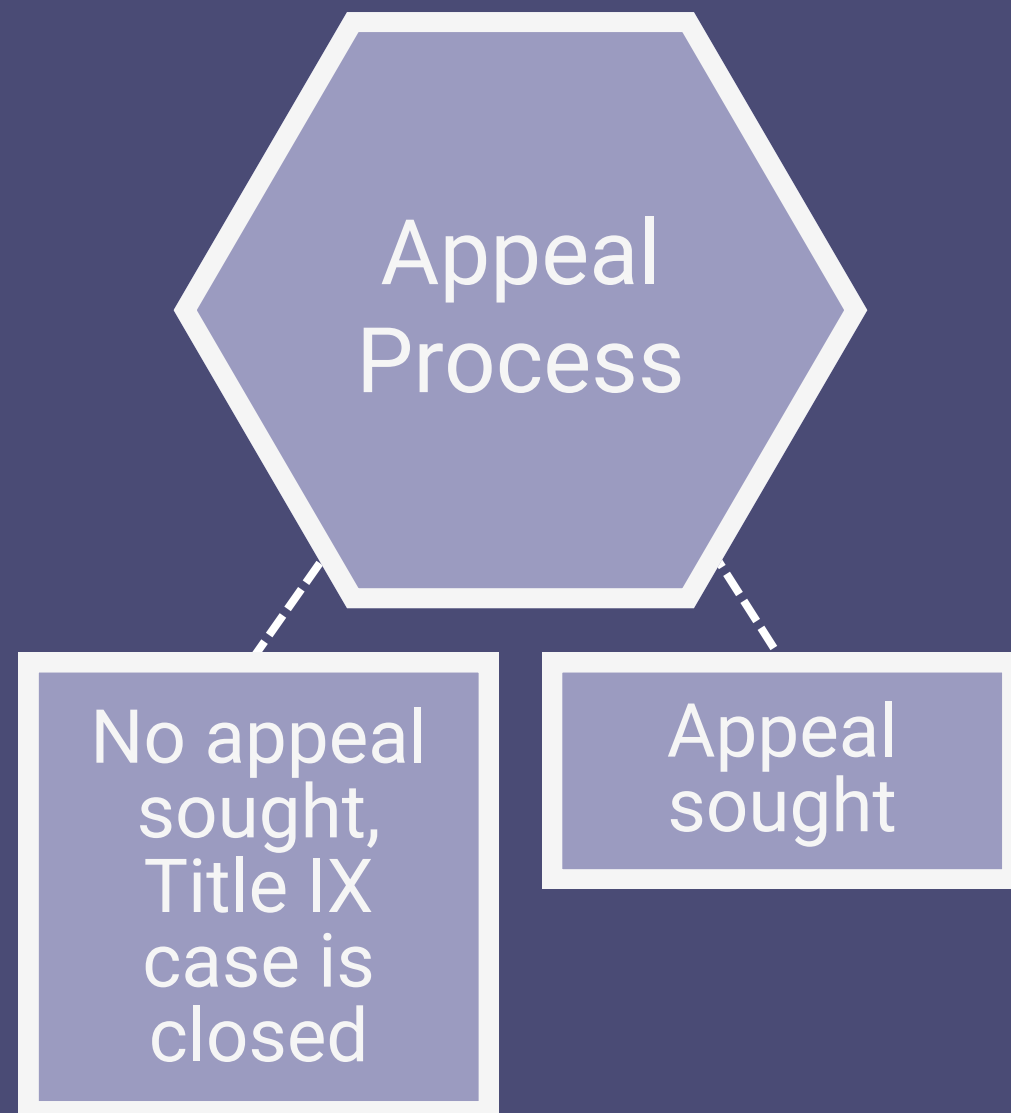
# Required Bases for Appeal

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

- A** Procedural irregularity that affected the outcome of the matter;
- B** New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- C** The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

34 CFR §106.45(b)(8)

# Appeal Process Outcomes



If one or both Parties does not seek an appeal or does not submit an appeal within the time allotted in the policy, the case will be closed and the determination stands.

If one or both Parties seeks an appeal, the basis of appeal will be reviewed. If it is approved, an Appellate Decision-Maker will make a determination, which could result in:

- Determination upheld
- Determination remanded back to the Hearing Officer for review
- A new investigation
- A new hearing
- Overturning the decision regarding responsibility

# Informal Resolution Options

# Informal Resolution Cornerstones

Informal resolution under Title IX provides Parties the opportunity to resolve complaints outside of the formal grievance process.

Informal resolution processes are to be:

## TRANSPARENT

- Provide clear, consistent communication to the Parties

## SAFE

- Provide emotional and physical safety
- Conduct safety and risk analysis (optional)
- Put safety measures in place (optional)

## VOLUNTARY

- Obtain voluntary, written consent
- Highlight right to withdraw prior to the agreement

# Informal Resolution Participation

- Under Title IX, schools must obtain the Parties' written, voluntary consent to participate in the informal resolution process
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student
- Advisors are permitted to participate, but the school may impose restrictions on participation
- Emergency removal may be considered, if appropriate

# INFORMAL RESOLUTION

(MAY BE INITIATED IN THIS WINDOW)



A party may withdraw from the informal resolution process at any time and proceed with the formal grievance process.

INTAKE/  
REVIEW

NOTICE OF  
ALLEGATIONS  
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN  
DETERMINATION

APPEALS  
PROCESS

## Title IX Grievance Process

# Reasonably Prompt Time Frames

*"Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action."*

§106.45 (b)(1)(v)

# Informal Resolution Location



VIRTUAL



ON CAMPUS



OFF CAMPUS



IN WRITING



# Benefits of Informal Resolution

Informal resolution has the potential to:

- Empower Complainants and Respondents to address incidents through a process that best suits their needs
  - Parties determine the outcome
  - Resolution can be creative
- Enhance institutional and Party autonomy by providing schools and Parties with flexibility in addressing unique situations
- Provide a more timely and less expensive option than the live hearing or decision-making process
- Present an opportunity to educate and change behavior
- Allow for confidential results
- Yield remedies which are more customized to the needs of the unique situation and involved parties

# Goals for the Parties



- Undergo a less intimidating process than the grievance process
- Explore potential for less harsh outcomes
- Provide input regarding outcomes of the process
- Minimize re-traumatization
- Reduce embarrassment for both Parties
- Allow an opportunity for interaction and open dialogue
- Participate in a more personal experience

# What do the Title IX Regulations say about informal resolution?

*"A recipient may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the Parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed."*

§ 106.45(9)

# What does this mean?

- ◆ Schools cannot take away a Parties' right to an investigation and adjudication process following a formal complaint of sexual harassment.
- ◆ Schools cannot require any Party to participate in an informal resolution process. It is a 100% optional process and requires buy-in from both Parties.
- ◆ The informal resolution process can only take place once a formal complaint has been filed.

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

§ 106.45(9)

Final Complaint  
Received

INTAKE/  
REVIEW

NOTICE OF  
ALLEGATIONS  
SENT TO PARTIES

INVESTIGATION

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

APPEALS  
PROCESS

RECALL: Informal Resolution can happen  
at any point within this timeframe.

# Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

*"The allegations,"*

§ 106.45(9)

which can be pulled directly from:



The Formal  
Complaint



The Notice of  
Allegations

# Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

*"Requirements of the informal resolution process, including:*

- Circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations,"*

§ 106.45(9)

which can be pulled directly from:



Institutional Policy

# Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

*"Requirements of the informal resolution process, including:*

- At any time prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,"*

which can be pulled directly from:

§ 106.45(9)



Title IX Regulations



# Title IX Requirements for Informal Resolution

Written notice of informal resolution provided to the Parties must include:

*"Requirements of the informal resolution process, including:*

- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared."*

§ 106.45(9)

This can be pulled directly from:



Institutional Policy

# Types of Informal Resolution

The Title IX Regulations do not specify the exact processes institutions must use to carry out the informal resolution function.

Instead, they provide flexibility for institutions to determine which processes best suit their needs and provide the opportunity to craft custom institutional processes.

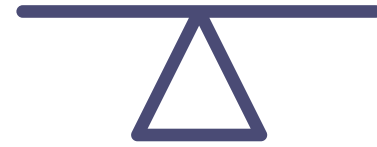
**Common  
school-based  
informal  
resolution  
processes**

**Joint sessions,  
private  
meetings, or  
combination**

**Mediation**

**Restorative  
Justice**

# What is the role of the Informal Resolution Facilitator?



Serving neutrally, impartially



Facilitating the conversation between  
Parties



Providing physical and emotional  
safety

# Training Informal Resolution Facilitators

*"The same [training] requirements that apply to Title IX Coordinators, Investigators, and Decision-Makers now also apply to any individuals who facilitate informal resolution processes."*

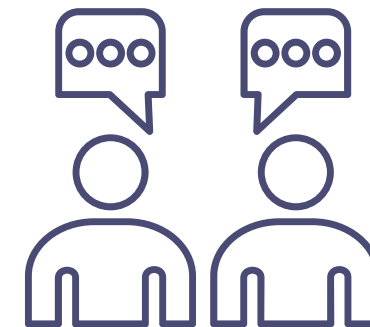
(Preamble to the 2020 Title IX Regulations, p. 1369)



Title IX  
definition of  
sexual  
harassment



Scope of the  
education  
program or  
activity



How to  
conduct  
informal  
resolution  
processes



How to serve  
impartially

# Who may serve as the Informal Resolution Facilitator?

The Title IX Coordinator is not precluded from serving as the Informal Resolution Facilitator.

## Potential Challenges

- Perceived or actual conflict of interest and/or bias
- Confusion of dual role

## Questions to Consider



Why has the Title IX Coordinator been assigned as the IR Facilitator?



Is the Title IX Coordinator truly comfortable fulfilling this role?



Does the Coordinator have the necessary skills to fulfill this role?

# Who may serve as the Informal Resolution Facilitator?


The Investigator and Decision-Maker may not serve as the Informal Resolution Facilitator in the same case.

## Rationale

- Allows Investigators and Decision-Makers to remain unbiased should the Parties return to the formal grievance process
- Eliminates role confusion
- Ensures Facilitators are present to facilitate the conversation – not gather evidence or make a decision prior to or after

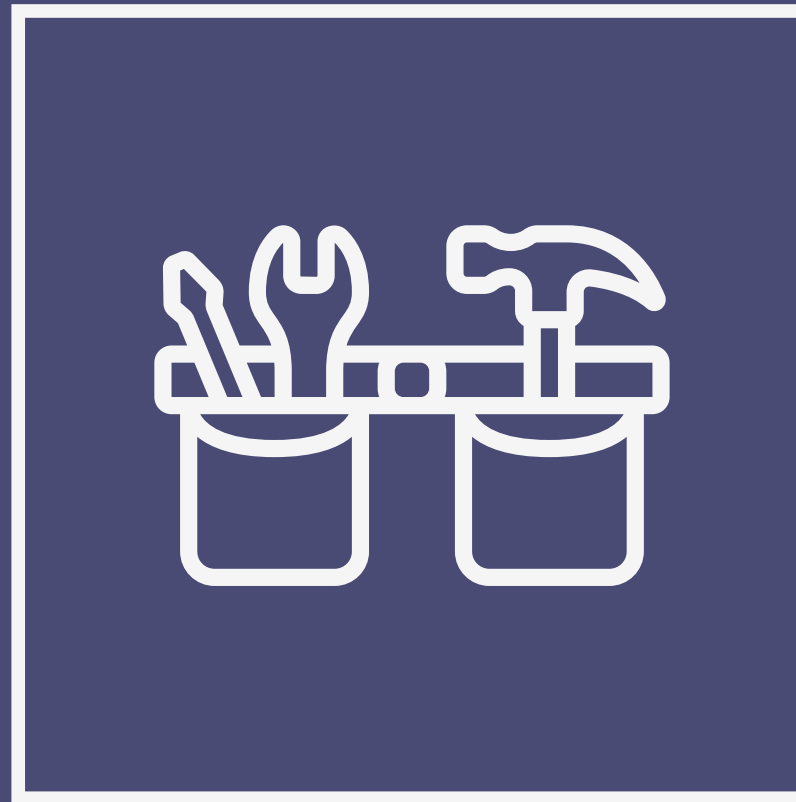


Best Practice: Separate this role from all other Title IX roles and provide clarity on the responsibilities of the Informal Resolution Facilitator.



Additional  
Requirements  
and Best  
Practices

# In This Chapter



TITLE IX  
COMPLIANCE  
BEYOND THE  
GRIEVANCE PROCESS



# Title IX Compliance Beyond the Grievance Process

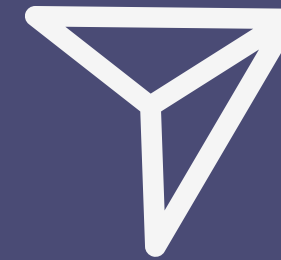


# Title IX Requirements for Coordinators

Other than facilitating a prompt and equitable grievance process, under current Title IX regulations, the Title IX Coordinator is responsible for:



Providing proper notice to all students, prospective students, parents, employees, unions and professional organization of the Title IX Coordinator name and contact information and how and where to report.



Disseminating a nondiscrimination notice and compliant policy.

# Title IX Requirements for Coordinators

Other than facilitating a prompt and equitable grievance process, under current Title IX regulations, the Title IX Coordinator is responsible for:



Ensuring the school's Title IX policy is compliant with the grievance procedure requirements under Title IX Regulations.



Training Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process, and publishing the training

# Title IX Requirements for Coordinators

Other than facilitating a prompt and equitable grievance process, under current Title IX regulations, the Title IX Coordinator is responsible for:



Ensuring Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process does not have a conflict of interest or bias for or against Complainants or Respondents.



Following requirements for Title IX recordkeeping.

# Notice of Coordinator and Dissemination of Policy

## Best practice includes:

- Publishing in visible places, such as:
  - Institutional websites
  - Pamphlets
  - Student code of conduct manuals
  - Employee manuals
  - Materials shared by faculty to students
  - Collective bargaining agreements
- Performing checks to ensure information is accurate and up-to-date

# Title IX Policy Compliance

## Best practice includes:

- Conducting benchmarking and developing a checklist of Title IX policy requirements and any relevant state requirements.
- Forming a Title IX team to review the school's Title IX policy, and reviewing annually.

# Title IX Training

## Best practice includes:

- Posting training materials such as recordings or powerpoint slides on the Title IX website or making available to inspect.
- Training annually to remain current on Title IX trends and regulatory changes.
- Ensuring students and employees are aware of their rights and responsibilities under Title IX by creating engaging trainings.

# Title IX Recordkeeping

## Best practice includes:

- Developing a recordkeeping system and providing training on recordkeeping. Records include:
  - All emails related to a report or complaint
  - Handwritten and typed notes
  - Memos of phone calls
  - Investigation recordings or transcripts
  - Investigation report, including all evidence obtained
  - Written determination
  - Appeals documentation
  - Internal communications about the report or complaint

Records must be kept for seven years.



# Tips for Coordinators



Advocate for the Title IX Coordinator to have proper authority, training, and resources.



Put time, energy, and resources into prevention education and efforts.

- Awareness is prevention
- Visibility is prevention
- Communication is prevention
- Cultural understanding is prevention



Remember that Title IX is about preserving or remedy in access to education, it is not a criminal or legal process.



Research and develop relationships with campus and community partners.

Thank you!

TITLE  SOLUTIONS, LLC