

# K-12 TITLE IX INVESTIGATOR TRAINING

June 27-29, 2023

Session 1



**Utah State  
Board of  
Education**



**"Compliance at  
Your Fingertips!"**



# Leadership Team



**Betsy Smith**  
Director of Title IX Services



**Courtney Bullard**  
Founder/CEO



**Celeste Bradley**  
Director of EEO Services



# Housekeeping



- Materials
- Technology Breaks



# Agenda

The Why  
Before the How

Report  
Writing

Hypos  
(if time allows)

Investigative  
Techniques



# Purpose of ICS Training

## Level 1



### Not Legal Advice

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



### We Are All In This Together!

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



### This is still very new!

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



A decorative border composed of various metal hardware items, including nuts, bolts, washers, and springs, arranged around the perimeter of the slide.

# Nuts and Bolts of Title IX Compliance



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# What is Title IX?

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



# TITLE IX IS:

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





# What Is/Is Not

## Is or May Be Title IX

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

# Title IX Conduct?

## Is NOT Title IX

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





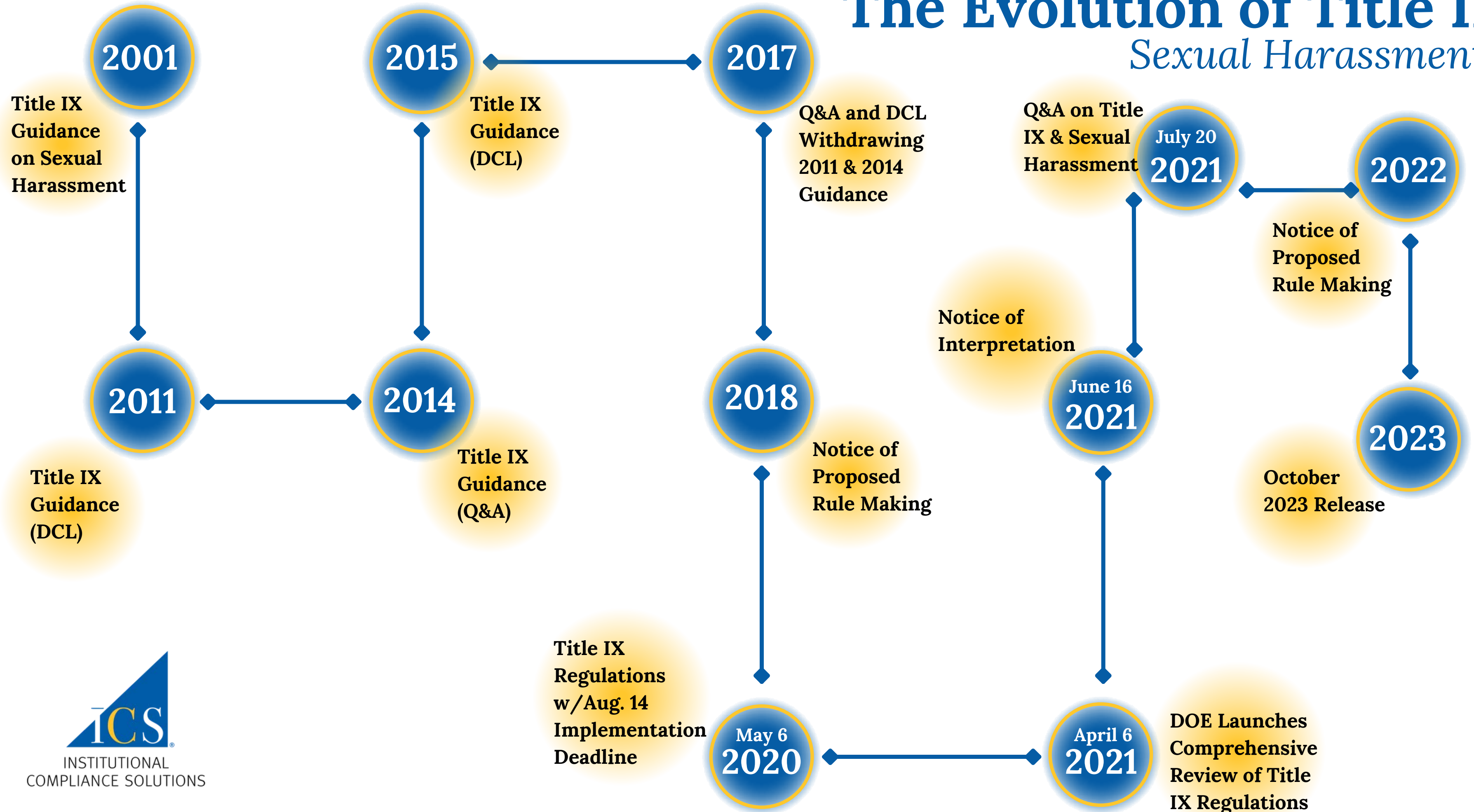
**Title IX Encompasses**

Sexual Harassment  
Pregnancy Discrimination  
Gender Equity in Athletics  
Discrimination based on "sex"



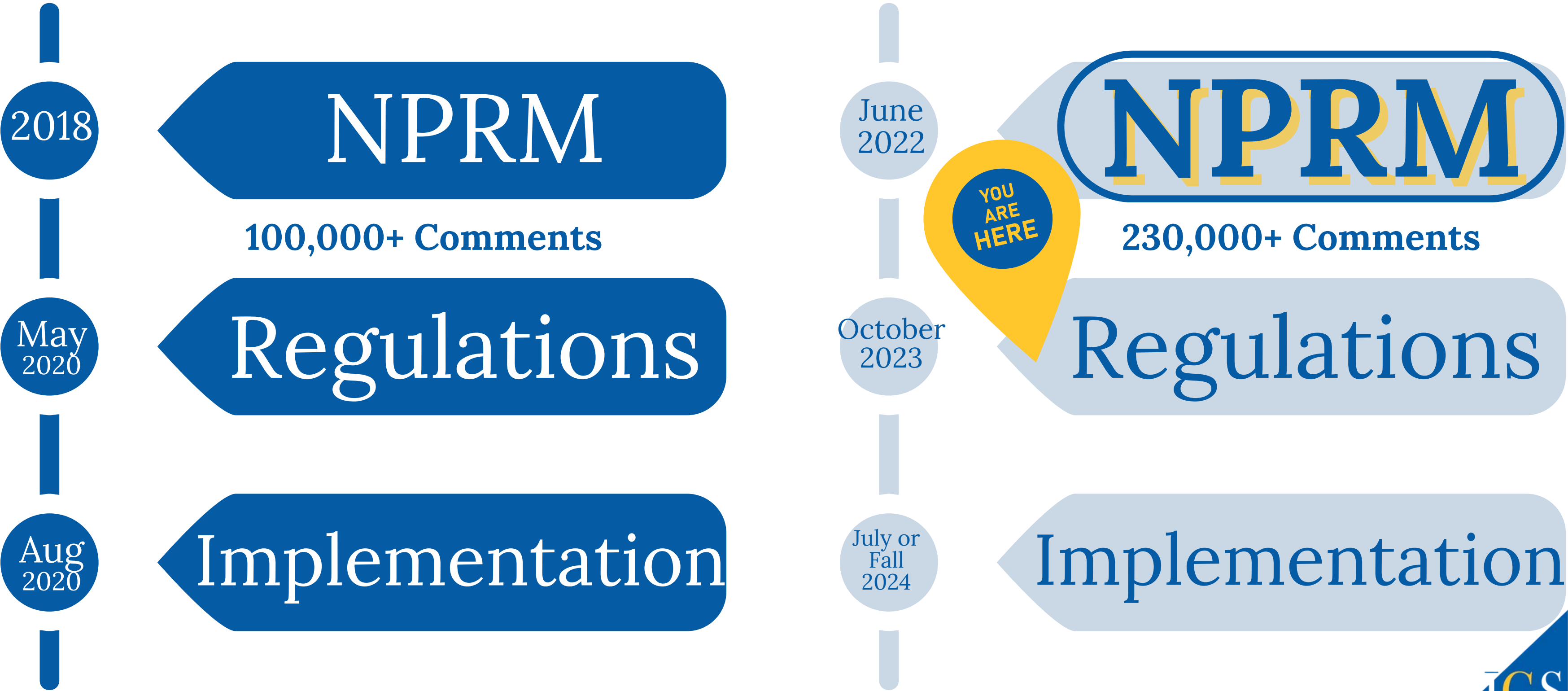
# The Evolution of Title IX

## *Sexual Harassment*





# Title IX Regulations, Then & Now





# Top 10

1

Scope Expanded

2

Mandated Training  
Expanded

3

Additional/Modified  
Definitions

4

Complexity of Title IX  
Coordinator Role

5

Sexual Harassment is now  
Sex Based Harassment

6

Less Prescriptive Grievance  
Process

7

Informal Resolution- Initiated  
without "Formal Complaint"

8

Retaliation Protections

9

Discrimination Based on  
Pregnancy

10

Expands Recordkeeping



# REMINDER

It is a  
proposed rule,  
NOT a final  
rule.

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



Education  
Program / Activity

# Sexual Harassment

2020 Title IX  
Regulations Have  
Specified Defined  
Terms

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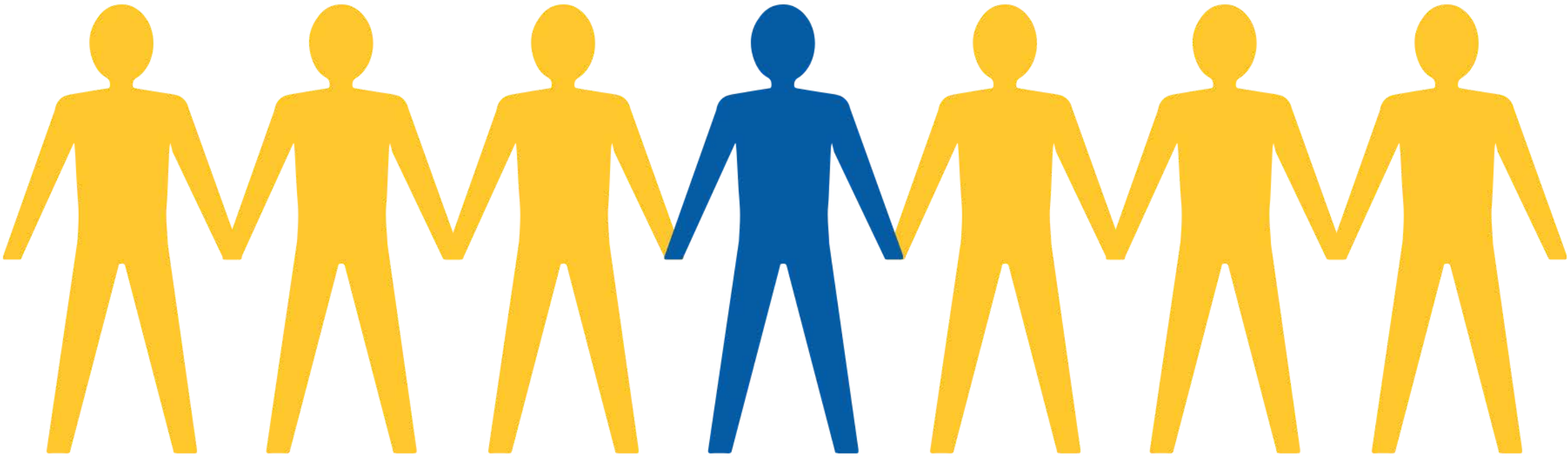
Complainant

Supportive  
Measures



# TITLE IX TEAM

Title IX  
Coordinator



Responsible  
Employees/  
Officials  
w/Authority

Advisors

Investigator(s)

Decision-  
Maker(s)

Appellate  
Decision-  
Maker(s)

Informal  
Resolution  
Facilitator(s)



## INVESTIGATOR

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

# TITLE IX TEAM

## TITLE IX COORDINATOR

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

## DECISION MAKER

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

## APPELLATE DECISION MAKER

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

## INFORMAL RESOLUTION FACILITATOR

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

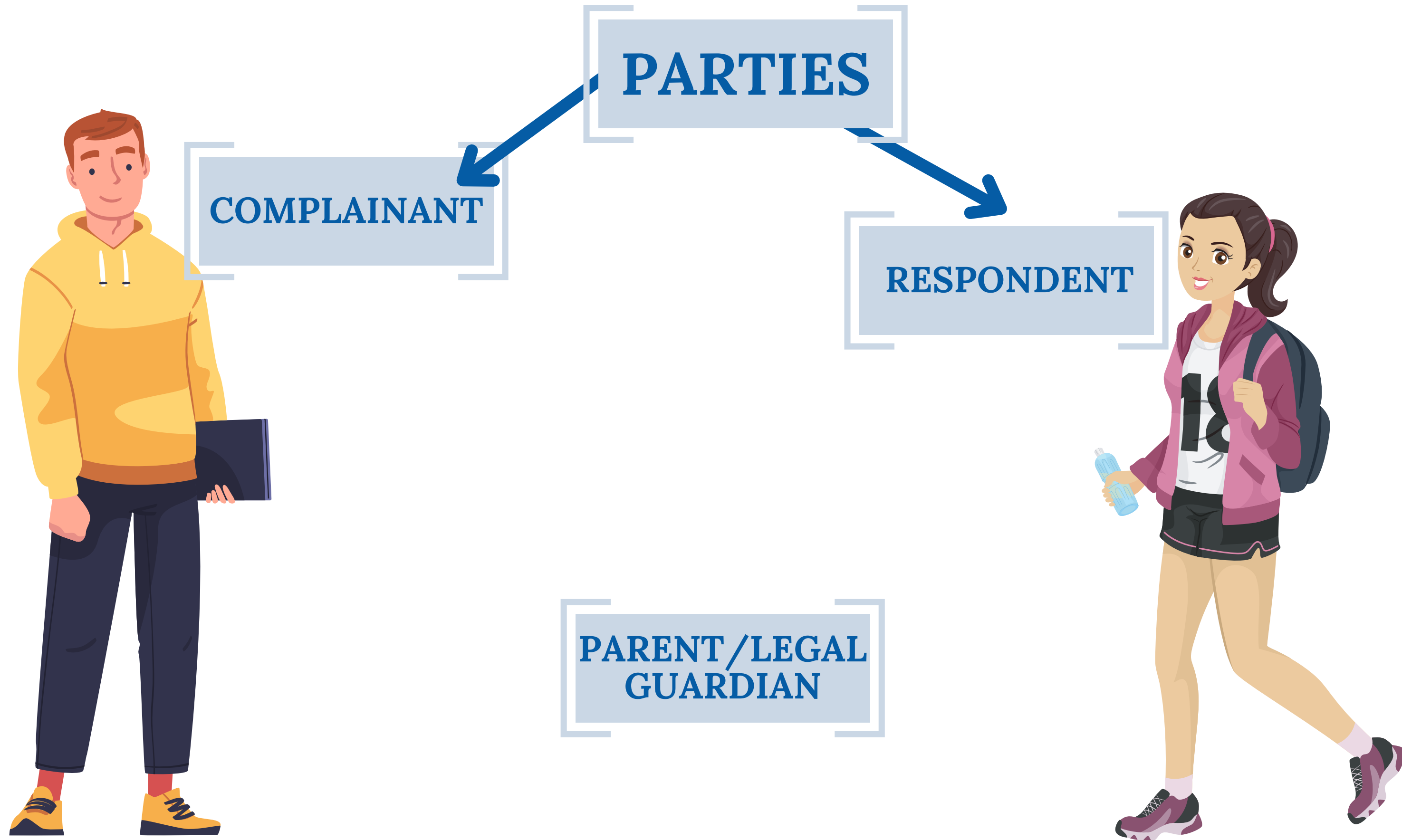


# Individuals in an Investigation





# Formal Title IX Grievance Process



# Title IX Applies To:

- Student on Student

- Employee on Employee

- Student on Employee

- Employee on Student





# INVESTIGATOR'S ROLE IN COMPLIANCE



# 80/20

## COMPLIANCE RULE

Handling of a Report  
Policies, Procedures, Trainings



# TITLE IX COMPLIANCE LAYERS





# Sexual Harassment + Education Program or Activity



# Sexual Harassment



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



# Severe, Pervasive, AND Objectively Offensive



**UNWELCOME  
CONDUCT**



## **SEVERE, PERVASIVE, AND OBJECTIVELY OFFENSIVE**

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



**DENIES EQUAL ACCESS**





# Sexual Assault is:



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

## Fondling

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

## Incest

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

## Rape

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

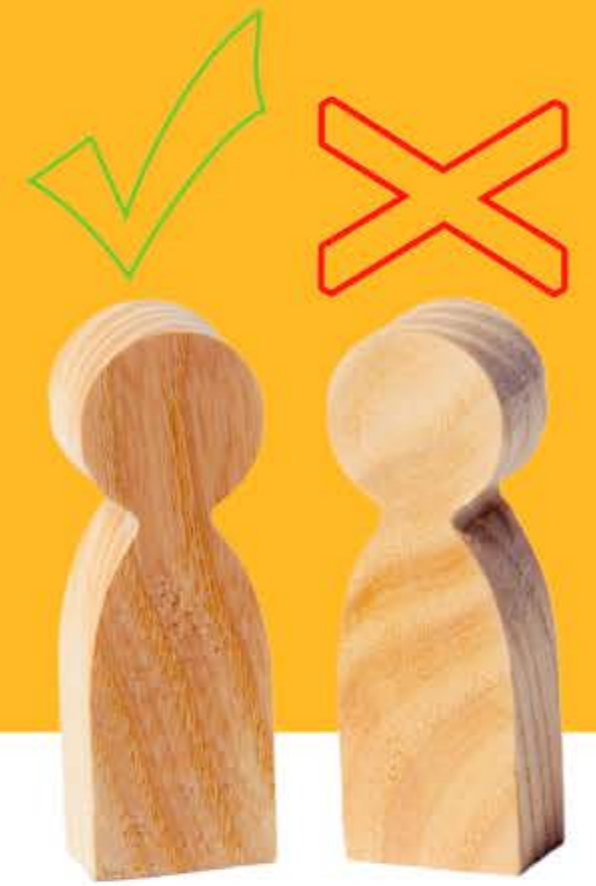
## Statutory Rape

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



# Consent

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



## WHAT DOES THIS MEAN?

### DEFINITION OF CONSENT

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

### SITUATIONAL CLARITY

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



# Domestic Violence

**A FELONY OR MISDEMEANOR CRIME OF VIOLENCE COMMITTED BY A:**

- current or former spouse or intimate partner of the victim
- person with whom the victim shares a child in common
- person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.





# Dating Violence

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

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

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





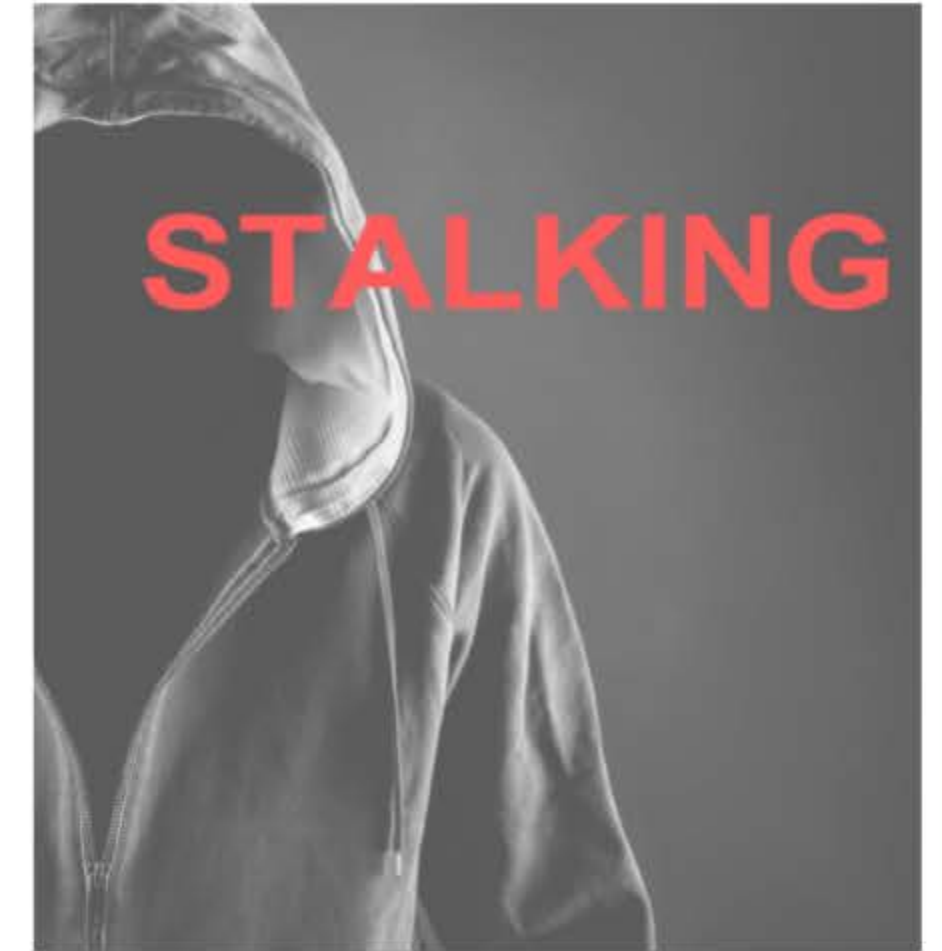
# Stalking

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

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

## **For purposes of this definition:**

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







# REMINDER:

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



# Conduct + Education Program or Activity

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





# Jurisdiction



## Education Program or Activity

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



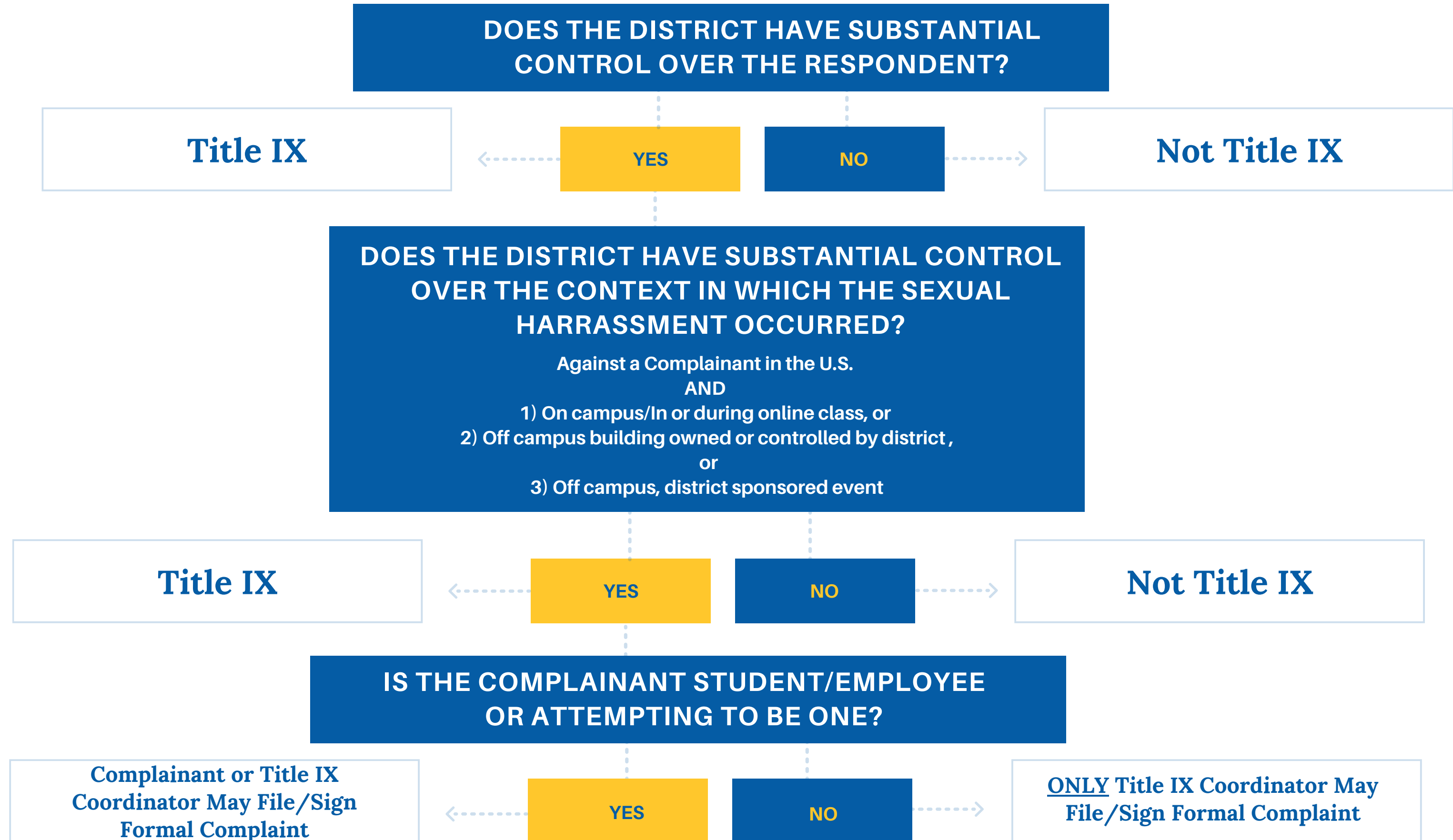
Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

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





# Education Program or Activity/Jurisdiction







# REMINDER:

Your policies and procedures are your guide!!!



# Others Involved in the Process...





# Officials with Authority

- "Responsible Employee" is gone, actual knowledge only to Title IX Coordinator or "official with authority"
- ALL employees are responsible for reporting at K-12 level
- Actual Knowledge = NOTICE
- Notice without action = deliberate indifference





# Parents and Guardians

“

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

”





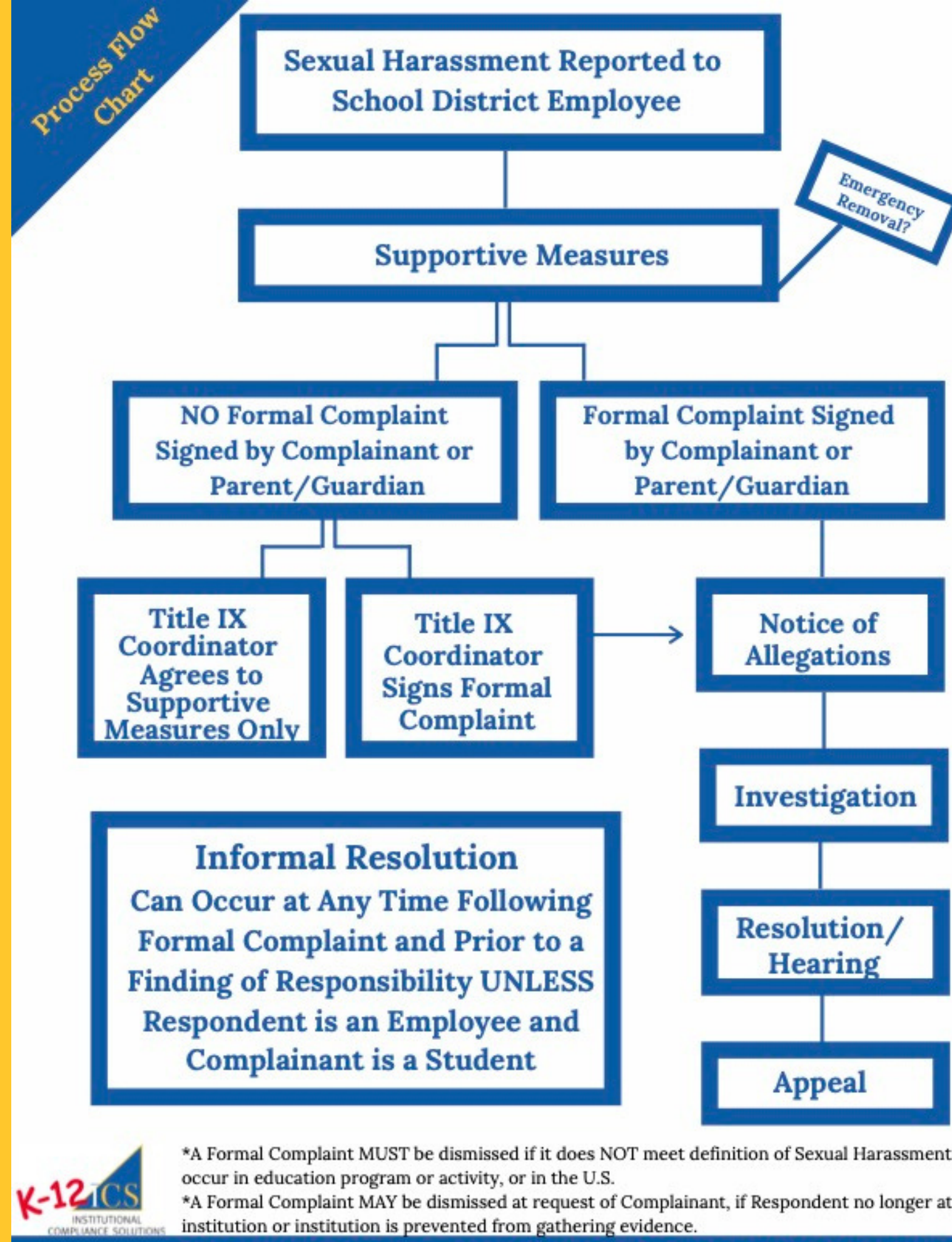
# ADVISORS

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





# General K-12 Process Flow Chart





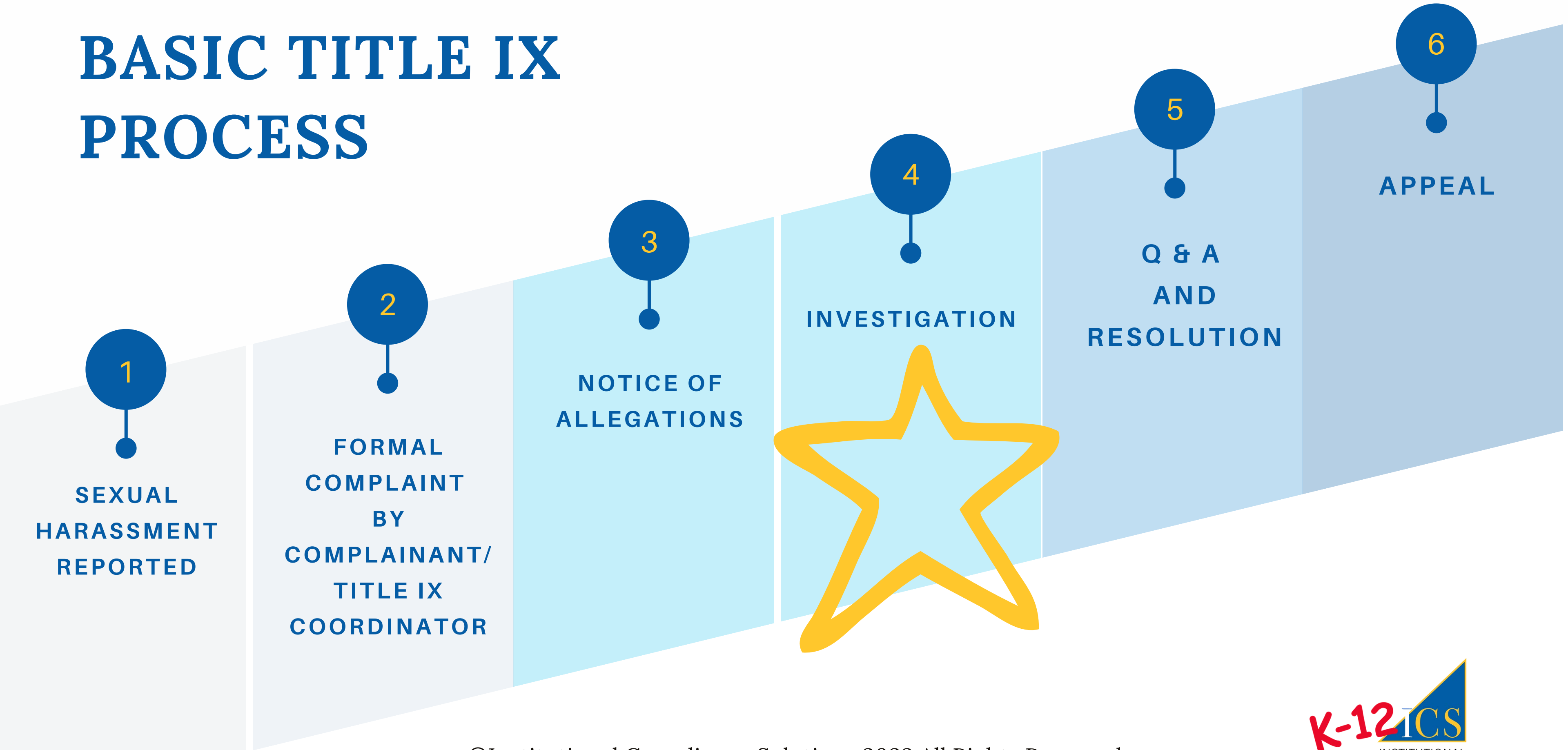
# Title IX Grievance Process

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





# BASIC TITLE IX PROCESS





# K-12 INVESTIGATION FLOWCHART





# Formal Complaint

## ✓ In Writing

- Hard copy
- Electronic
- Online submission

## ✓ Signed by:

- Complainant or Parent/Guardian
- Title IX Coordinator

## ✓ Alleging Sexual Harassment

## ✓ Requesting an Investigation



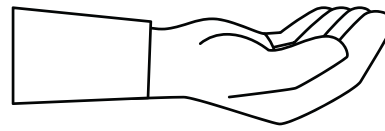


# Supportive Measures



## What

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



## Offered

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



## When?

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



# Supportive Measures Continued



## Purpose

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



## Title IX Coordinator

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



## Not

- punitive or disciplinary



## Document

- when provided, when not provided and why



## Burden

- remains on the district not the parties



## Confidential

- as much as possible



## Examples

- in section 106.3



# Dismissal of Formal Complaint



## ✓ Required Dismissal

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

## ✓ Permissive Dismissal

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

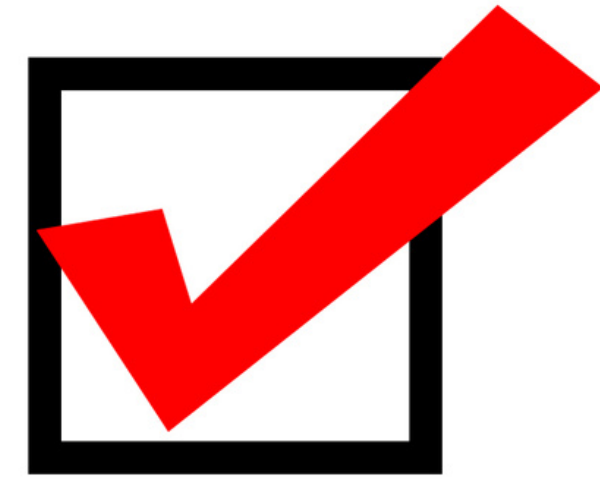
## ✓ If Dismissed:

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



# Response to a Formal Complaint (Grievance Process)

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





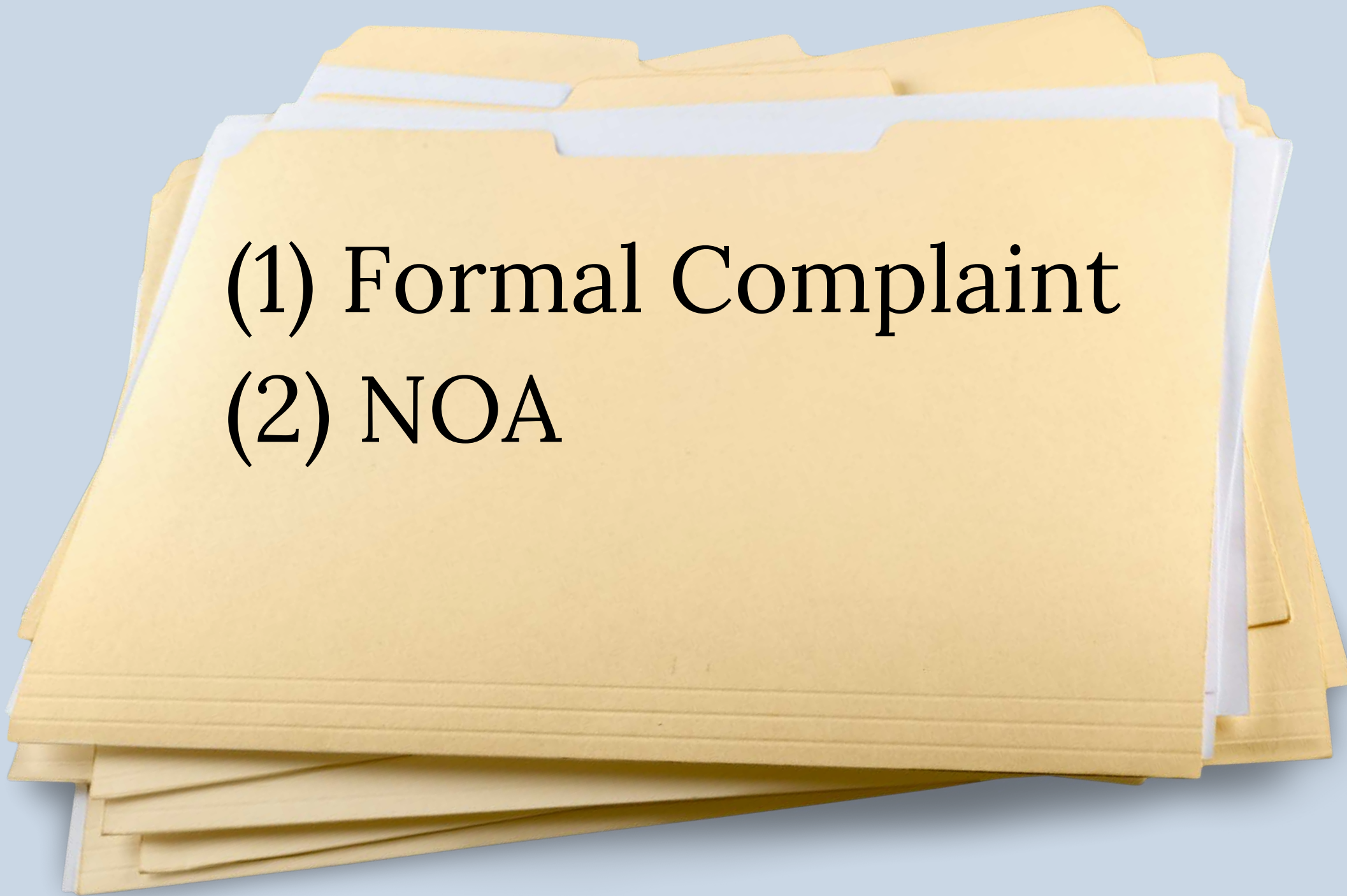


## Notice of Allegations Checklist

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



# THE TWO MOST IMPORTANT DOCUMENTS



(1) Formal Complaint  
(2) NOA





IEP/504

The diagram consists of two large, light-blue circles that overlap in the center. A yellow diamond is positioned within the intersection of these circles. The text 'IEP/504' is located in the left circle, and 'TITLE IX' is in the right circle. The yellow diamond contains the word 'OVERLAP' underlined, followed by a bulleted list of three items: 'Change of placement', 'Interaction for interview/notices', and 'Discipline'.

OVERLAP

- Change of placement
- Interaction for interview/notices
- Discipline

TITLE IX



# Investigation



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

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



## Decision-Maker

### Determination Regarding Responsibility Checklist

☐

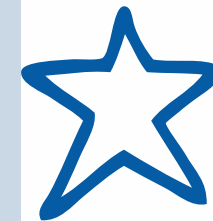
**Identification of the Allegations**

---

☐

**Description of Procedural Steps Taken**

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

☐

**Findings of Fact Supporting Determination**

---

☐

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

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☐

**Result of Each Allegation Including Rationale**

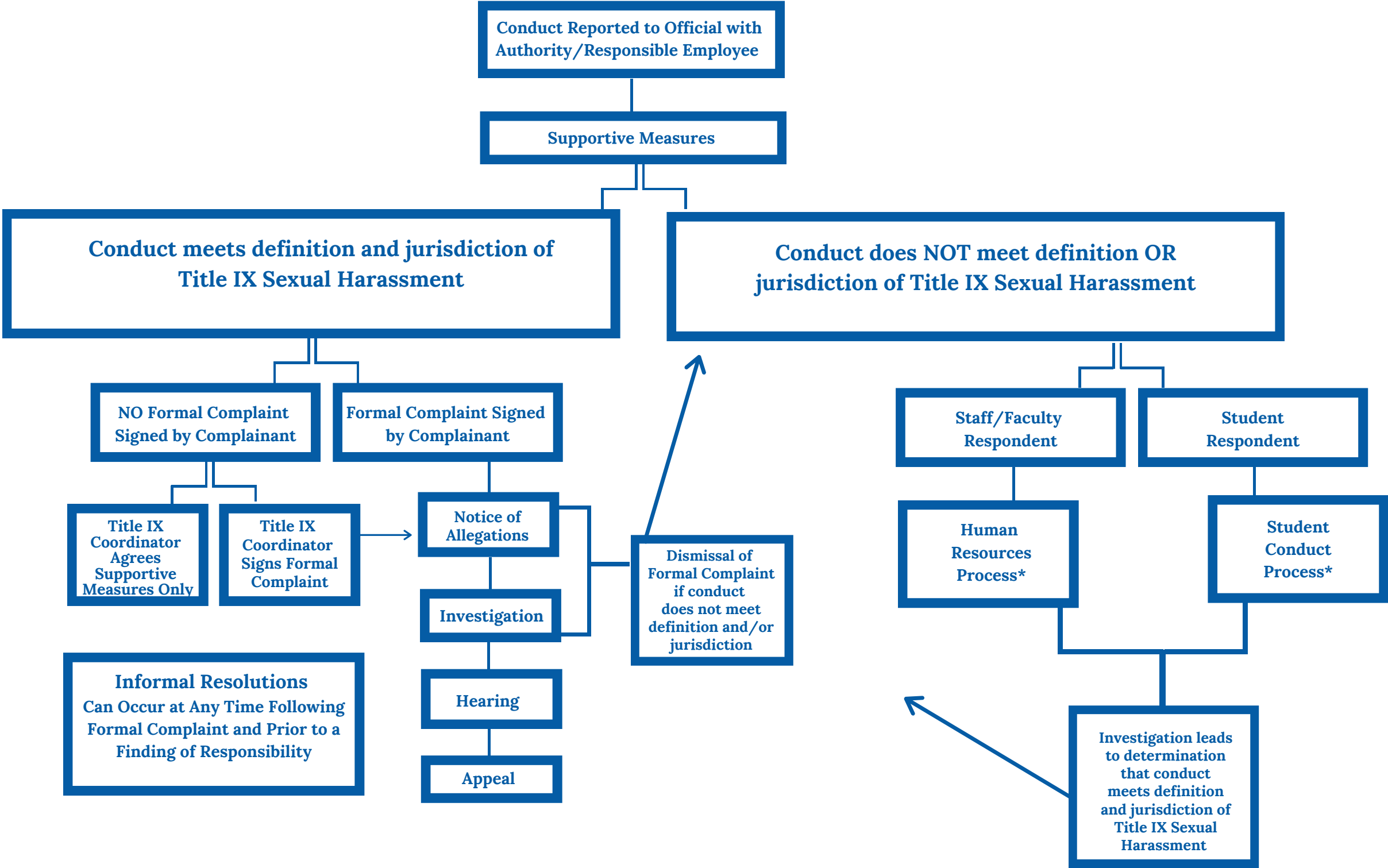
- Determination Regarding Responsibility
  - Disciplinary Sanctions
  - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- 

☐

**Procedures and Permissible Bases for Appeal**



# Title IX Process Flow Chart





# Informal Resolutions



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

→ Cannot be offered to resolve employee on student allegations

→ After a Formal Complaint is filed

→ Prior to decision regarding responsibility

→ Parties cannot be required to participate

## District Must:

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



# Appeals



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









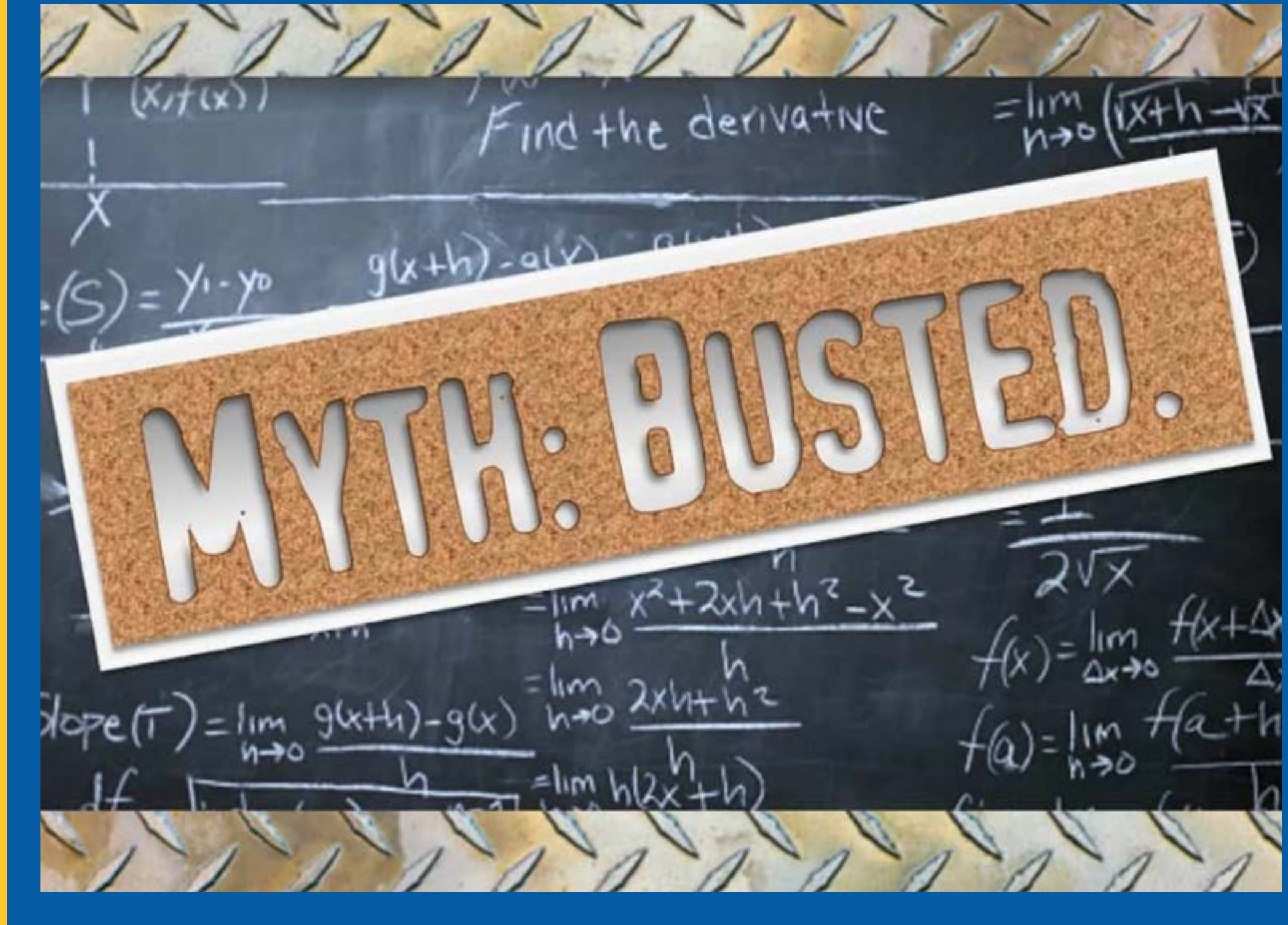
# 2020 Regulations Require the Following Training for Title IX Investigators

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



# MYTH BUSTERS

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












# SERVING IMPARTIALLY- CONFLICTS OF INTEREST, BIAS, RESERVING JUDGMENT



# Avoid Conflict of Interest / Bias

 Generally toward Complainants / Respondents

 Occurs when personal or private interests possibly can compromise one's judgment, decisions, or actions

 Three types of COI:

- Actual
- Perceived
- Potential





# END GAME



CIVIL  
LAWSUIT



CRIMINAL  
INVESTIGATION



TITLE IX  
INVESTIGATION





# During the Investigation: STAY IN YOUR LANE

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



A hand is shown from the wrist up, palm facing up, holding a glowing, translucent brain. The background is a warm sunset or sunrise with orange and yellow hues. A network of white lines and dots is overlaid on the top left corner, suggesting a digital or neural network theme.

# During the Investigation: SUSPEND YOUR MIND

- Daily Choice
- Reserve judgments until all facts are gathered



# Recordkeeping

## DISTRICTS MUST MAINTAIN THE FOLLOWING RECORDS FOR SEVEN YEARS:

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





# KNOW YOUR POLICIES AND PROCEDURES

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





# Questions?



INSTITUTIONAL  
COMPLIANCE SOLUTIONS



# Connect With Us!



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



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



@TitleIXLawyer



@ICSLawyer

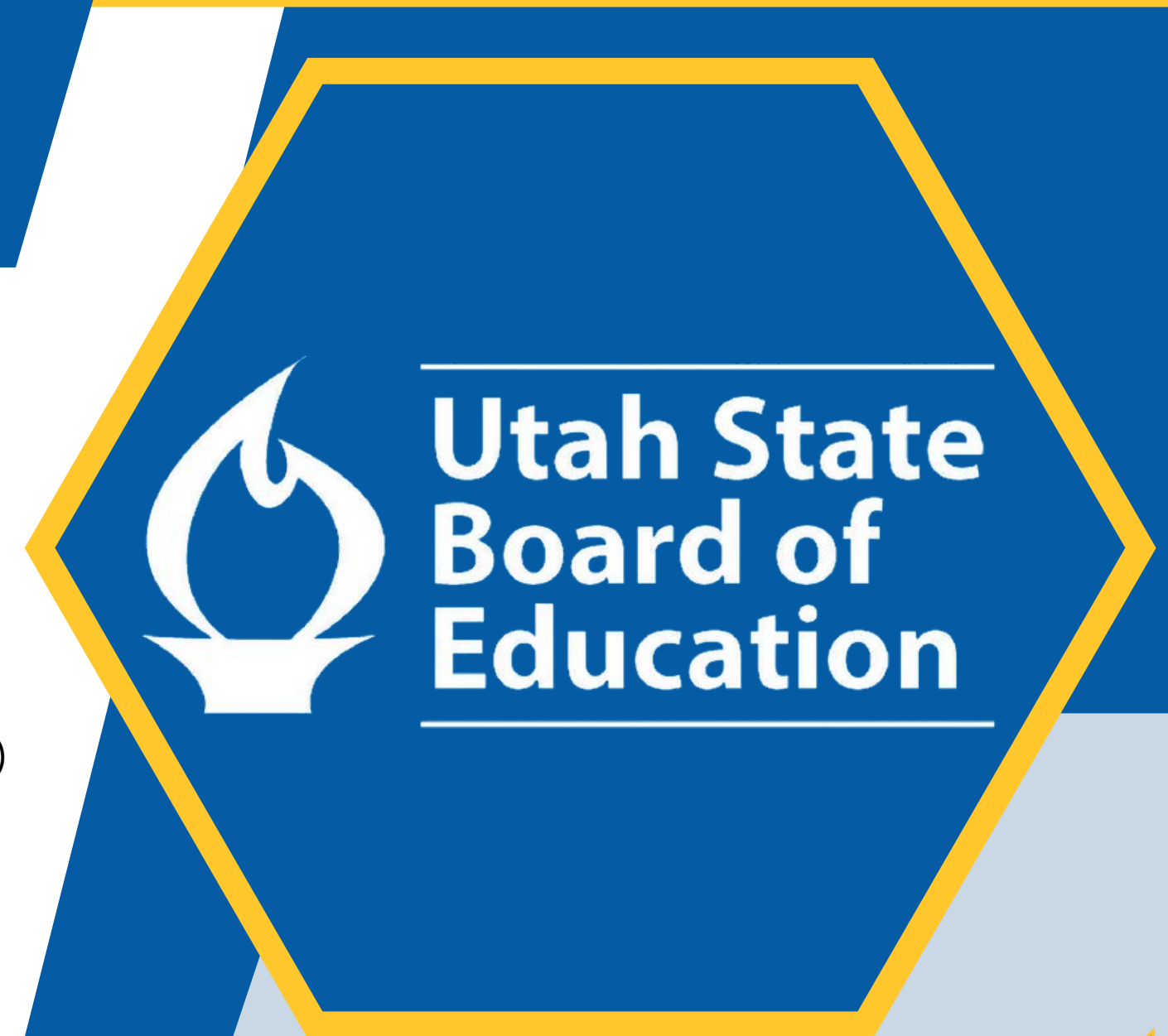
# New Training Dates Released!





# ICS SERVICES DISCOUNTED *FOR UTAH SCHOOLS*

- ✓ Title IX University Access
  - Report Triage Tool access
  - Title IX Process Survival Kit (English/Spanish compliance aids & resources)
  - Virtual training discount
  - Unlimited access to recorded webinars
  - ICS private ListServ
  - Newsletters and monthly alerts
  - Quarterly Zoom Meetings
  - ICS services discount (external investigations, training, consulting, interim Title IX role(s))
  - Term: Annual license agreement
- ✓ Complementary Upgrade to Diamond Community Partner
- ✓ Responsible Employee Training





# K-12 TITLE IX INVESTIGATOR TRAINING

June 27-29, 2023

Session 2 Investigative Techniques



**Utah State  
Board of  
Education**



**"Compliance at  
Your Fingertips!"**





**K-12ICS**  
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# THEMES/END GAME



Fair/Balanced approach



Uncover all relevant  
facts/information  
\*stone analogy



Common sense  
approach- beware of  
rabbit holes



# BE CURIOUS

It is the number one  
skill for an investigator.



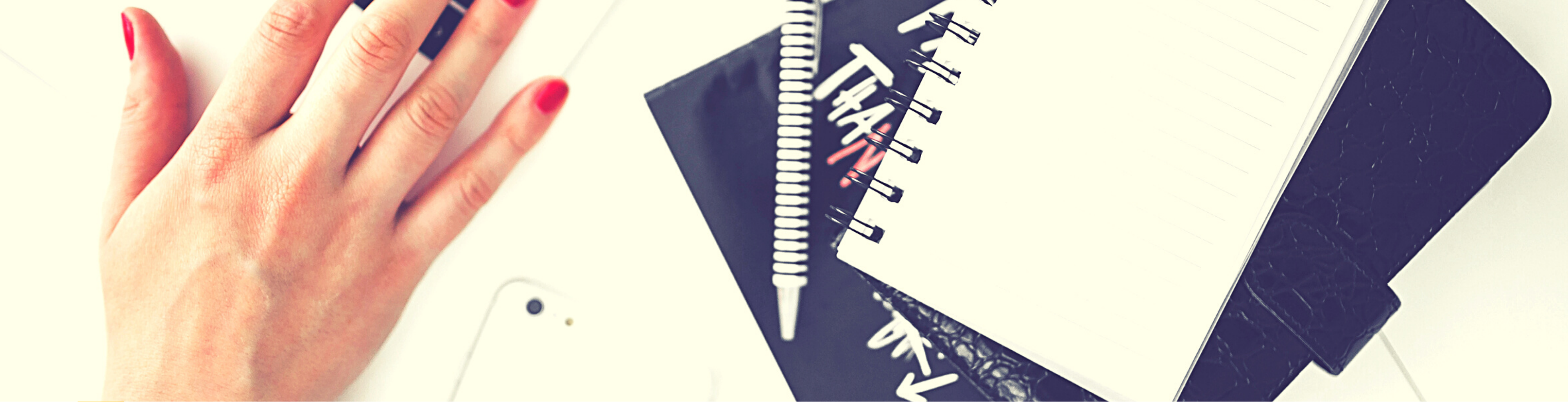




# Timeliness

- Policy must designate reasonably prompt timeline
- Interview witnesses as soon as possible
- Unavoidable delays
- Notice of extensions
- Addressing delays in record keeping/report





# Organize

- Plan order of interviews/when to interview respondent
- In person vs. virtual vs. phone
- Explaining process and your role
- Reassurance/retaliation





# INTERVIEW SKILLS

- Develop rapport
- Observe
- Be professional
- Outline questions/flexibility



A hand is shown in the bottom right corner of the slide, holding a piece of white chalk and drawing a question mark on a dark blue chalkboard. The chalkboard is covered with several other question marks of varying sizes, some of which are already drawn. The lighting is focused on the hand and the chalk, creating a soft glow.

# Types of Questions

- Who, what, when, where, why
- Open ended
- Repeat, repeat, repeat
- Circling techniques
- Clarity on timelines/who is involved etc.
- Openings
- Closing questions
- Opportunity to provide clarification after interview



Ir relevant

# Relevancy

- Regulations do not define relevancy
- Regulations define some things that are not relevant:
  - Treatment unless parties agree
  - Privileged Information
  - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the respondent and are offered to prove consent.



# Relevancy Continued

- Ordinary Meaning (Not a legal term)
- Does the evidence tend to make a fact more or less likely to be true





# Note Taking

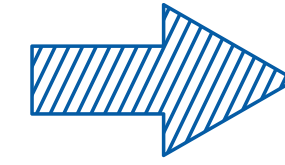
- Explain your role as note taker
- Note taker vs. dual investigator
- Use quotations if possible
- Ask for a pause or clarification if necessary





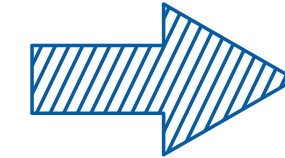
# Types of Information/ Evidence

Direct Information/  
Evidence



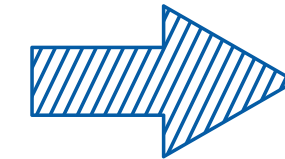
First person  
observation of an  
incident

Circumstantial  
Information/Evidence



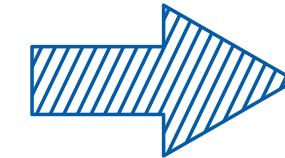
Reported observation of  
information that offers  
inferences about the facts  
of the event

Documentary  
Information/Evidence



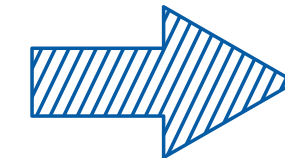
Written description of an  
incident  
\*Police Report  
\*Write up from staff member

Hearsay  
Information/Evidence



Information that is  
reported through  
another party

Expert  
Information/Evidence



Information that is shared  
from a person who has an  
acknowledged expertise in  
related subject matter





# Complainants

- Trauma informed practices
- Managing expectations
- Reluctant complainants and retaliation
- Interim/support measures
- Next Steps
- Bias/Conflict of Interest



# Respondents

- Trauma informed practices
- No presumption of responsibility
- Managing expectations
- Interim/support measures
- Simultaneous and ongoing criminal investigations
- Next Steps
- Bias/Conflicts of Interest





# ADVISORS

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





# WORKING WITH ADVISORS, CONTINUED

- Set expectations for each meeting
- Communicate often
- Communicate clearly
- Create a "guide"
- Allow time for questions
- Be kind, understanding, and patient (this is new for them too)
- Follow up in writing





# IDENTIFYING OTHER EVIDENCE

- Videos
- Social Media
- Text Messages
- Physical Evidence
- Applications
- SANE Exam
- Other?





# Witnesses

- Eye Witness
- Character Witnesses???
- Hearsay issues
- Witnesses identified by the parties
- Experts







# THE ATMOSPHERE MATTERS

Consider the look and feel of the office/  
interview location

- not too formal but still professional
- not intimidating





# Standard of Proof

- All standards related to sexual harassment must be the same
- Preponderance of the Evidence - 50% plus a feather - more likely than not
- Clear and Convincing
- School investigation vs. Criminal investigation



# Creating and Maintaining Your File

- Be Consistent!
- Allow an extra 15-30 minutes after each meeting to scan, save, and update
- Scan your notes immediately
- Keep an electronic copy
- Add information to your draft report as you investigate...especially timelines







# Your Investigative File Continued

- 7 years
- Contingency and Sustainability planning (what will happen to your file if you leave or change roles)
- Anyone should be able to pick up your file and understand what happened





# Investigate as Though You Will be Investigated

- Have a clear/organized plan- but remain flexible
- Document Document Document (delays, objections EVERYTHING)
  - Duplication of documentation
  - To record or not to record?
  - Inclusivity vs. Exclusivity





# INTRODUCTION:

*You are wearing a different hat...*

- Everyone must understand your role
- You will ask hard questions
- You will talk about difficult topics
- You will provide breaks if necessary
- You will keep the information as private as possible (privacy vs. confidentiality)
- Expectations for the truth and consequences for failure to tell the truth



# Questions?

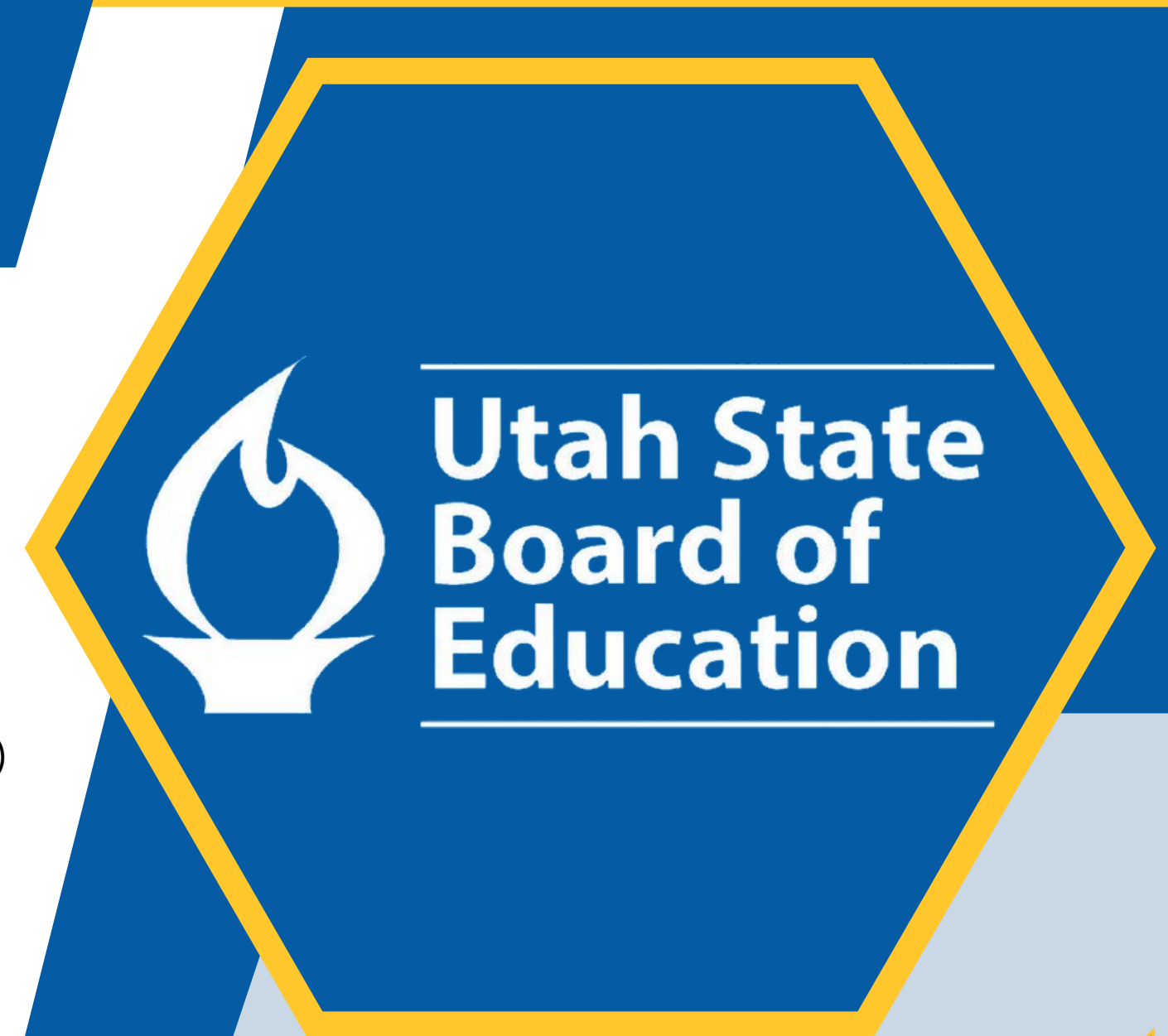


INSTITUTIONAL  
COMPLIANCE SOLUTIONS



# ICS SERVICES DISCOUNTED *FOR UTAH SCHOOLS*

- ✓ Title IX University Access
  - Report Triage Tool access
  - Title IX Process Survival Kit (English/Spanish compliance aids & resources)
  - Virtual training discount
  - Unlimited access to recorded webinars
  - ICS private ListServ
  - Newsletters and monthly alerts
  - Quarterly Zoom Meetings
  - ICS services discount (external investigations, training, consulting, interim Title IX role(s))
  - Term: Annual license agreement
- ✓ Complementary Upgrade to Diamond Community Partner
- ✓ Responsible Employee Training





# K-12 TITLE IX INVESTIGATOR TRAINING

June 27-29, 2023

Session 3 Report Writing



**Utah State  
Board of  
Education**



**"Compliance at  
Your Fingertips!"**



# REQUIREMENTS

- Fair summary of relevant evidence
- Provided to parties AND advisors
- Hard copy or electronic
- 10 days to review and respond



# REPORT CONTENT



## Intro

- Who/How Reported
- Who Investigated
- Allegations
- Policy
- Burden/Standard of Proof
- Definitions
- Timeline of Events
- List of Parties and Witnesses



## Info From Parties and Witnesses

- Fair Summary of Relevant Evidence and Information
- By Party
- By Allegation
- Chronological
- If Something Isn't Included, Note Reason



## Timeline of Investigation

- Reported
- Formal Complaint
- Notice of Allegations
- Notice of Meetings
- Dates of Meetings
- Dates of Collection of Evidence
- Delays



## Appendix

- Screenshots
- Emails
- Photos
- Policy
- Notices
- Transcripts (if Recorded)
- Etc.



# WHO IS YOUR AUDIENCE?

## AUDIENCE

- What is the intent of the report?
- Who needs to understand/use it?
- Where/how will it be used?



# ORGANIZATION

## Easy to Follow, Clear, Concise

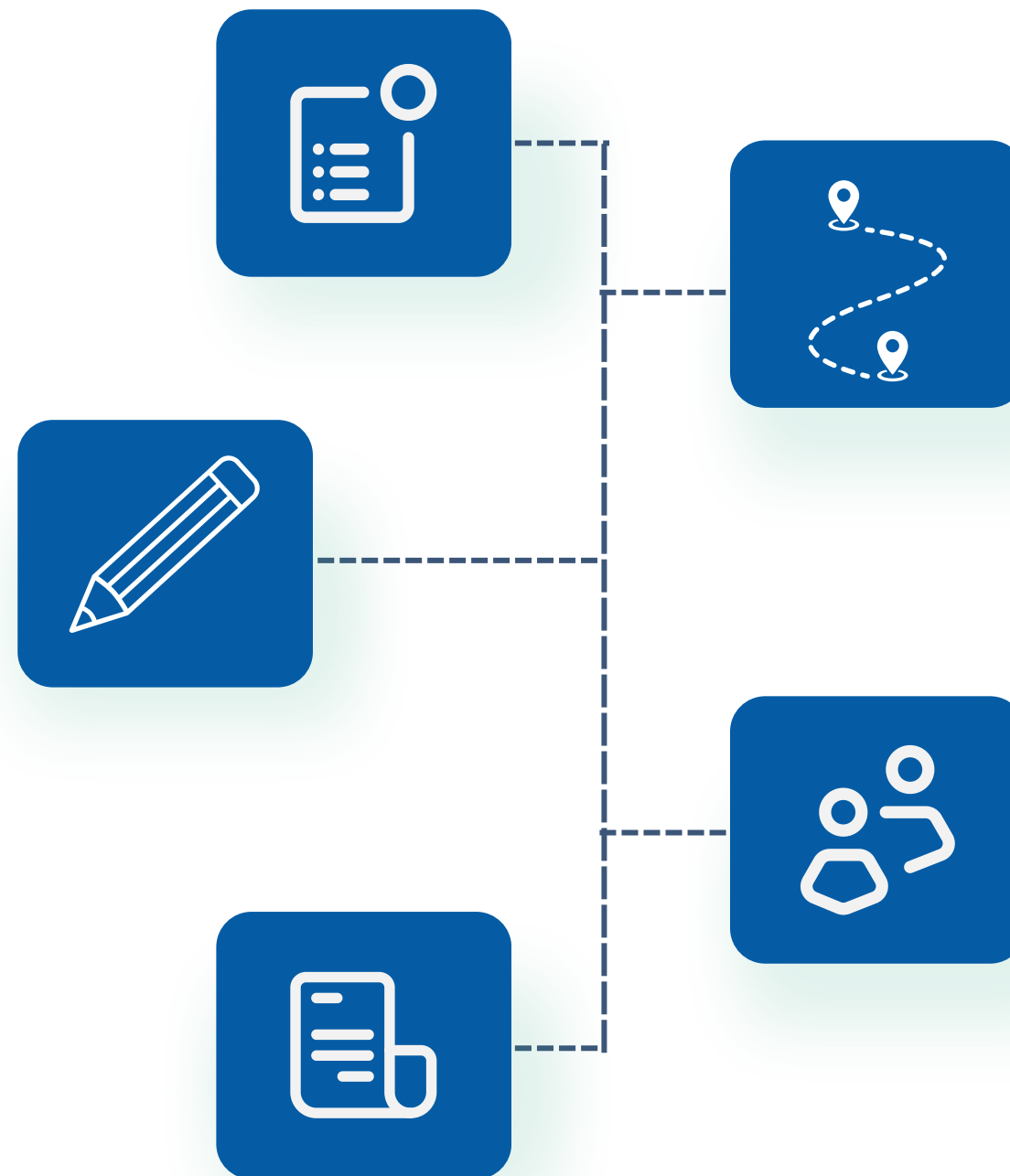
Can the reader follow the report and understand who reported/said what?

## Includes the Basics

Assume the reader knows NOTHING

## Consistent but Not Identical

There is room for a little flexibility



## Roadmap for the Decision-Maker

This report will guide the decision maker, help them ask questions, and provide a road map for their process

## Reviewed by Colleague

Trusted, Title IX counterpart



## hoy

and 18th centuries. [C15: < MDu. *hoe*]  
**hoy** ('hɔɪ) *interj.* a cry used to attract attention or drive animals. [C14: var. of HEY]  
**hoya** ('hɔɪ) *n.* any plant of the genus *Hoya*, of E Asia and Australia, esp. the waxplant. [C19: after Thomas Hoy (died 1821), E gardener]  
**hoyden or hoiden** ('hɔɪd'n) *n.* a wild boisterous girl; tomboy. [C16: perhaps < MDu. *heidijn* heathen] — **hoydenish** or **hoidenish** *adj.*  
**Hoyle** ('hɔɪl) *n.* an authoritative book of rules for card games. [after Sir Edmund Hoyle, 18th-century E authority on games, its compiler]  
**H.P.** *abbrev. for:* 1. Brit. hire purchase. 2. Also: hp horsepower. 3. high Houses of Parliament.  
**h.p.**  
**H.Q. or h.q.** *abbrev. for*  
**hr. or hr** *abbrev. for*  
**H.R.H.** *abbrev. for*  
**H.S.** (in Britain) *abbr.*  
**H.S.H.** *abbrev. for*  
 Highness.  
**HT** *Physics. abbrev.*  
**ht.** *abbrev. for height*  
**hub** ('hʌb) *n.* 1. the propeller, fan, etc., of 2. the focal point. [C17]

**hubble-bubble** ('hʌbəl) *n.* name for hookah. sound. [C17: rhyming]

**hubbub** ('hʌbʌb) *n.* voices. 1. tumult, or hubbub

**hubby** ('hʌbi) *n., pl. -bys* husband. [C17: by the

**hubcap** ('hʌb.kep) *n.* the hub of a wheel

**hubris** ('hʌbrɪs) *n.* pride or arrogance; excess of ambition, or the transgressor's refusal to be rebuked *adj.*

**huckaback** ('hʌk.ə.bæk) *n.* linen or cotton fabric

**huckleberry** ('hʌk.əl.ber.ri) *n.* American shrub having small blue berries

**huckleberry** ('hʌk.əl.ber.ri) *n.* the fruit of the huckleberry shrub

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**hug** (hag) *vb.* hugging, hugged. (also *intr.*) to clasp tightly; usually with affection. 2. to keep close to a shore, etc. 3. to cling to (beliefs, etc.); cherish, etc. 4. to congratulate (oneself). — *n.* 5. a tight or fond embrace. [C16: prob. of Scand. origin] — **hug-able** *adj.*  
**huge** ('hju:dʒ) *adj.* extremely large. [C13: < OF *abuge*, < ?] — **hugely** *adv.* — **hugeness** *n.*  
**huggermugger** ('hʌg.ə.mʌg.ə) *n.* 1. confusion. 2. Rare. secrecy. — *adj.* 3. in confusion. 4. in confusion. — *adv.* Arch. 5. with secrecy. 6. (intr.) to act secretly. [C17: < ?]  
**Huguenot** ('hju:ɡə.nɒt) *n.* a member of a Protestant sect esp. study of Ancient Greece

## humanitarian

cultural movement of the Renaissance, based on classical studies. 3. interest in the welfare of people. — **humanist** *n.* — **humanistic** *adj.*  
**humanitarian** ('hju:mənɪ'teəriən) *adj.* 1. having the interests of mankind at heart. — *n.* 2. a philanthropist. — **humanitarianism** *n.*  
**humanity** ('hju:mənɪti) *n., pl. -ties.* 1. the human race. 2. the quality of being human. 3. the kindness or mercy. 4. (pl.) (usually preceded by the) the study of literature, philosophy, and the arts esp. study of Ancient Greece

## hunchback

**hummingbird** ('hʌmɪŋ.bɜ:d) *n.* a very small American bird having a brilliant iridescent plumage, long slender bill, and wings specialized for very powerful vibrating flight.  
**hummock** ('hʌm.ək) *n.* 1. a hillock; knoll. 2. a ridge or mound of ice in an ice field. 3. Chiefly southern U.S. a wooded area lying above the level of an adjacent marsh. [C16: < ?; cf. HUMP]

# LANGUAGE MATTERS

- Allegations (not charges)
- Complainant/Respondent
- Anatomically Correct
- Consistent/Inconsistent





# BURDEN

Burden to collect/gather evidence is  
on the school district (investigator  
... NOT THE PARTIES

How will you show that you tried?





# QUOTES: WHEN WILL YOU USE THEM?

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# DOCUMENTATION









# INVESTIGATIVE TIMELINE

1  
INVESTIGATE

2  
OPPORTUNITY  
TO INSPECT AND  
REVIEW  
EVIDENCE  
RELATED TO  
ALLEGATIONS  
AND PROVIDE  
WRITTEN  
RESPONSE  
10 days

3  
INVESTIGATIVE  
REPORT

4  
OPPORTUNITY  
TO REVIEW  
FINAL REPORT  
AND PROVIDE  
WRITTEN  
RESPONSE  
10 days

5  
Q & A  
RESOLUTION  
/ HEARING

6  
APPEAL





# Draft Report- Template

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# Questions?



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# Connect With Us!



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



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



@TitleIXLawyer



@ICSLawyer

# New Training Dates Released!





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