



K12 Title IX Investigator Live Virtual Training

September 11, 2024



About Us

OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.

GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.

ICS SPECIALISTS



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Before We Get Started...

- ✓ Not legal advice
- ✓ Materials
- ✓ Chat Bar and Questions
- ✓ Breaks
- ✓ Posting Link
- ✓ No recording

Agenda

01 Welcome

02 Title IX Overview - How we Got Here

03 Role of an Investigator

04 Title IX Grievance Process - 2020 and 2024

05 Investigative Techniques

06 Report Writing

07 Closing Thought/Questions



Course Appropriate for:

- **Title IX and Equity Investigators**
- **Coordinators/Deputies/Designees**
- **Decisionmakers**
- **Others involved with Title IX**

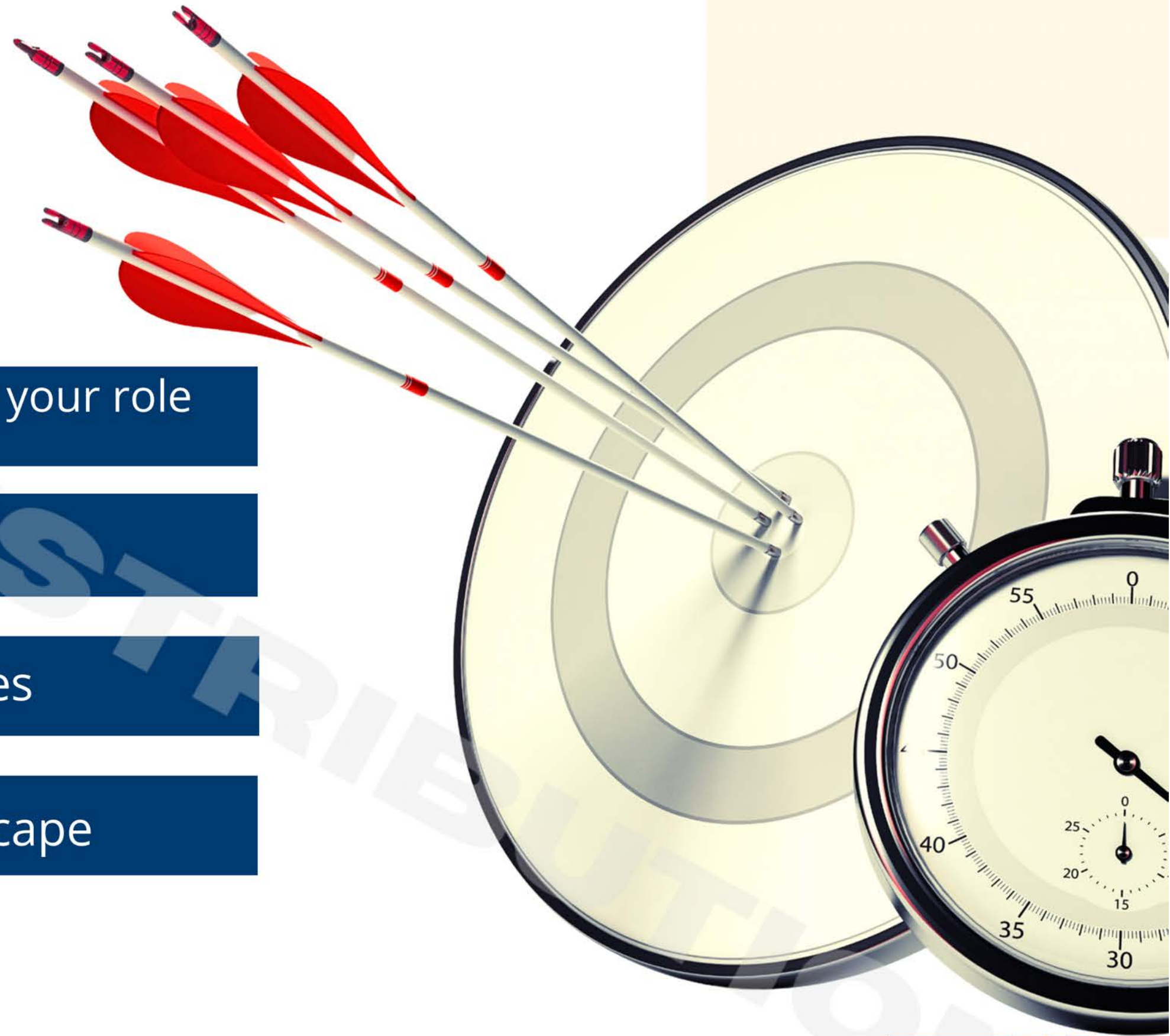
Training Objectives

Understand role of Title IX Investigator and your role at your district

Learn best practices for your role

Explain the grievance process/procedures

Learn the current Title IX litigation landscape





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
requiring gender-
equity
in athletics**

TITLE IX
UNIVERSITY
K-12

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS

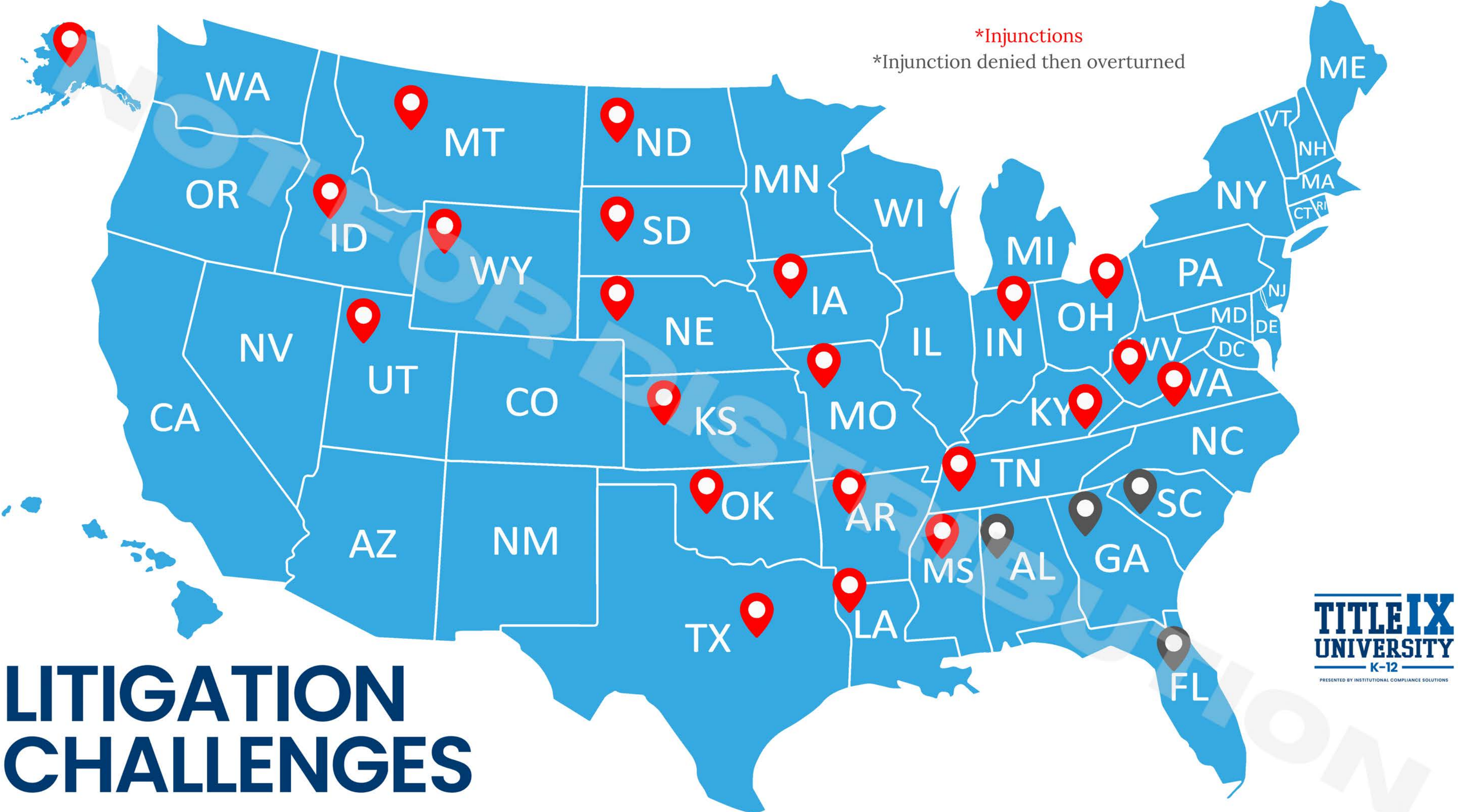
Reminder:



This training focuses on the 2020 and 2024 Title IX Regulations/how a school must respond to and addresses sex discrimination and/or sexual harassment.

2024 TITLE IX REGULATIONS TIMELINE

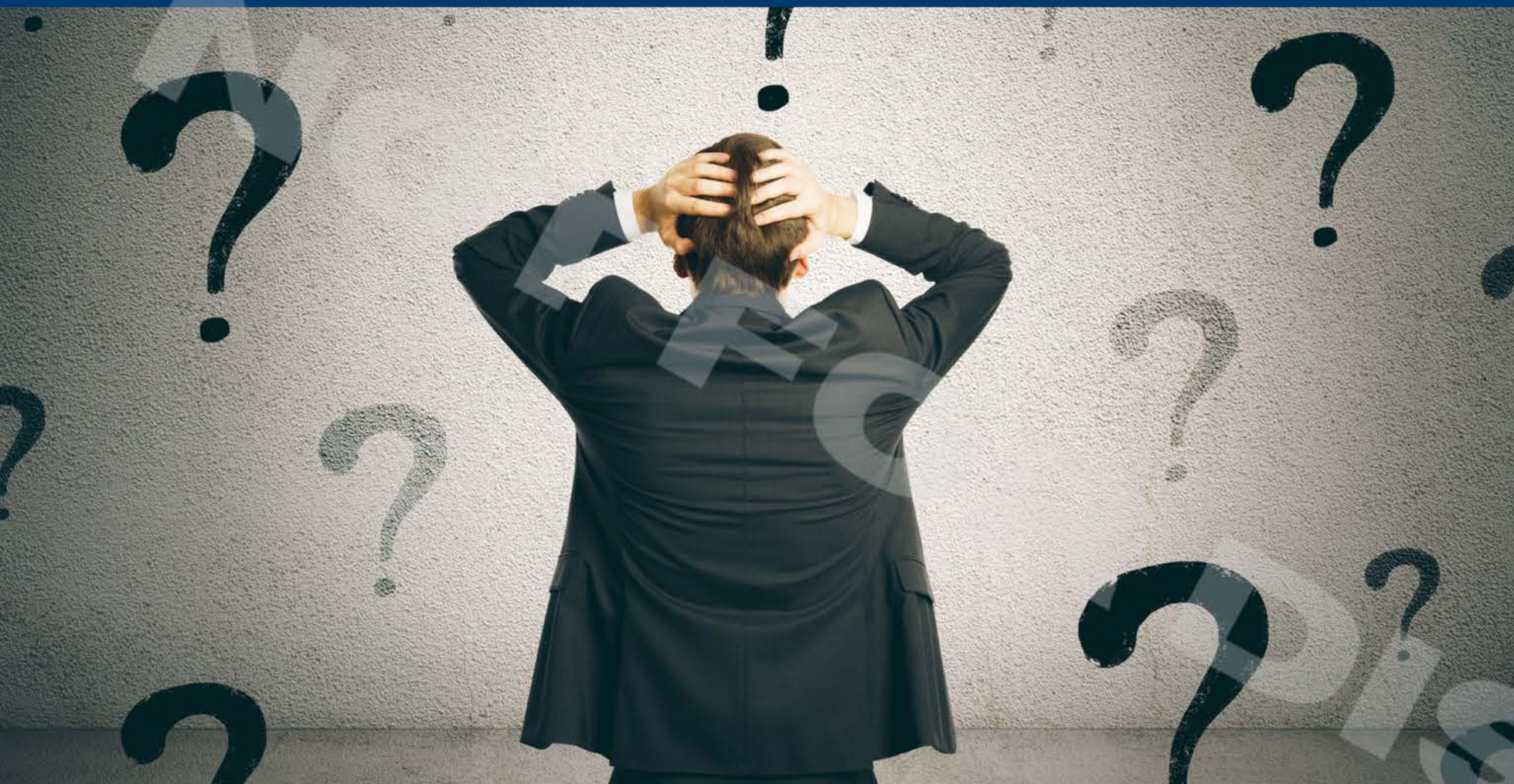




LITIGATION CHALLENGES

What Procedures/ Process for Pre-Aug. 1, 2024 Conduct?

- 2020 regulations apply to conduct that occurs before August 1st
- “The department will not enforce these final regulations retroactively” p.1354



Note:



You may be working under both the 2020 Title IX regulations and the 2024 Title IX regulations during this transition

- *consider how you explain your role under both



Big Picture

2020 Regulations v. 2024 Regulations

Sex Discrimination – 2024



Now, we have required grievance procedures for ALL sex discrimination, more than sex-based harassment (formerly sexual harassment). 34 CFR 106.45

Includes pregnancy and related conditions, athletics, etc.

Mandatory reporting requirements apply to ALL sex discrimination.

Some Differences to Note

2020 - 10 day review periods
2024 - no required time period for review and only ONE required review

2024 - Separate Investigator/ Decisionmaker NOT required

Posting links - (ish) - 2020 Required
2024 - Still must provide training materials if asked

On the Basis of Sex 2024

Scope: (EXPANDED)

- Discrimination on the basis of sex includes discrimination on the basis of:
 - Sex Stereotypes
 - Sex Characteristics
 - Pregnancy or Related Conditions
 - Sexual Orientation
 - Gender Identity



Application 2024

(JURISDICTION - EXPANDED)

ALL sex discrimination that occurs under the school's education program or activity in the U.S., including but not limited to:

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority (What is school's jurisdiction for other policies?).
- Even when some conduct alleged to be contributing to the hostile environment occurs outside of the education program or activity or outside of the US.

Consider: Does the behavior OUTSIDE of education program or activity CONTRIBUTE to a sex-based hostile environment INSIDE the education program or activity?

Jurisdiction 2020

Education Program or Activity



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

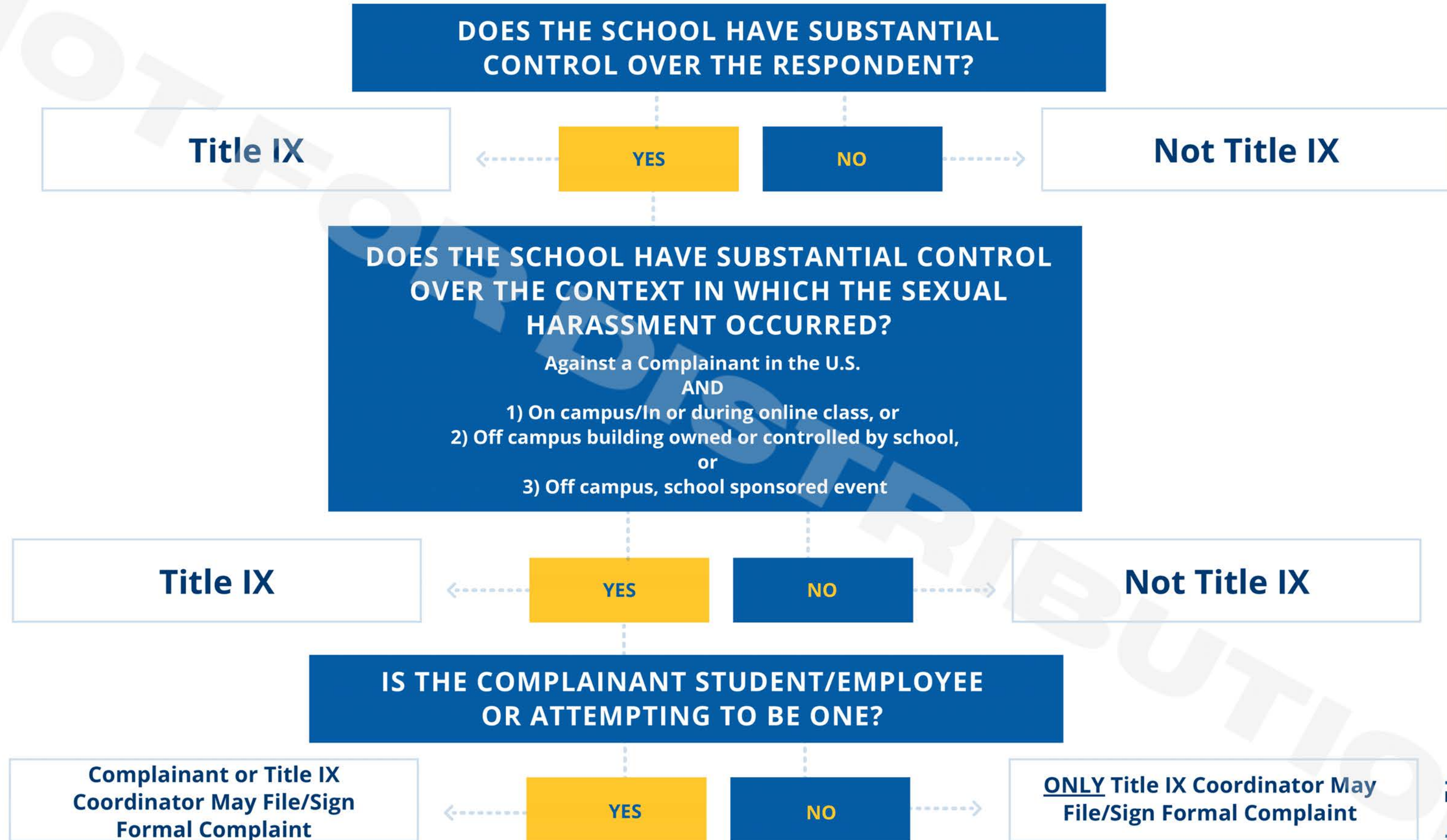


Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

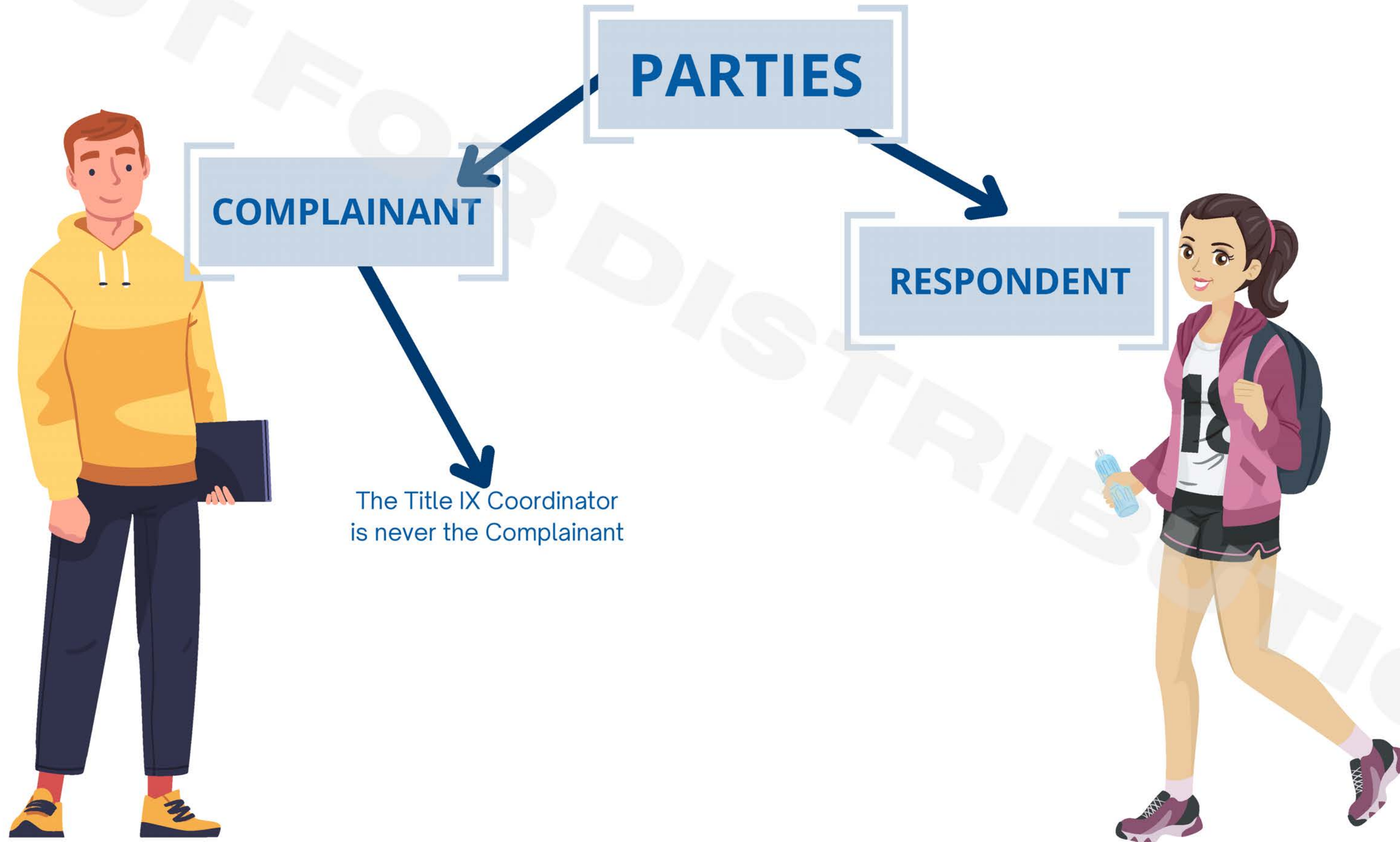


Does not create or apply a geographic test, does not draw a line between "off campus/property" and "on campus/property," & does not create a distinction between sexual harassment occurring in person vs online.

2020 Education Program or Activity/Jurisdiction



PARTIES IN TITLE IX PROCESS



The Title IX Coordinator
is never the Complainant

Parties 2024



COMPLAINANT:

- A student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part (Part 106: Nondiscrimination on the basis of sex in education programs or activities receiving federal financial assistance).
- (2024 new) A person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX or this part and who was participating or attempting to participate in the recipient's education program or activity at the time of the alleged sex discrimination.



RESPONDENT:

A person who is alleged to have violated the recipient's prohibition on sex discrimination.

What is New?

01 Terminology changes

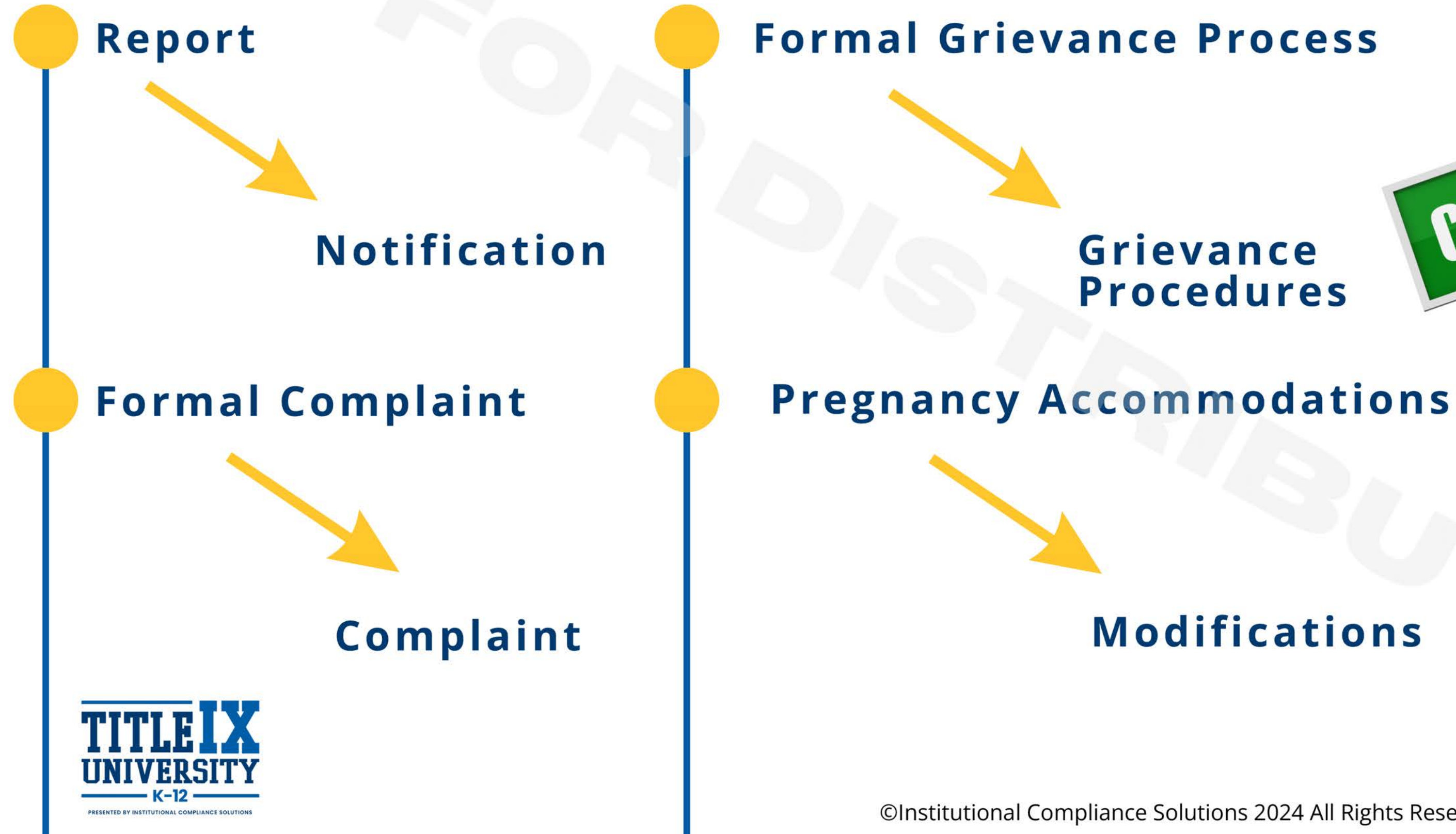
02 Training requirements

03 Grievance procedure

04 Role of Coordinator expanded

05 Pregnancy requirements

Language Changes 2020 v. 2024



Definition Changes 2024

Pages 1505-1515

Complainant: Adds student or employee who WAS participating or attempting to participate in the education program or activity at the time of the alleged sex discrimination.

Complaint: Oral or Written!

Pregnancy or Related Condition: Extensive.

Relevant: When it may aid in showing whether the alleged sex discrimination occurred.

Student
Student with a Disability
Admission

Applicant
Confidential Employee
Supportive Measures

Consent: NO DEFINITION

Establish Reasonably prompt timeframes for the major stages of the grievance procedures

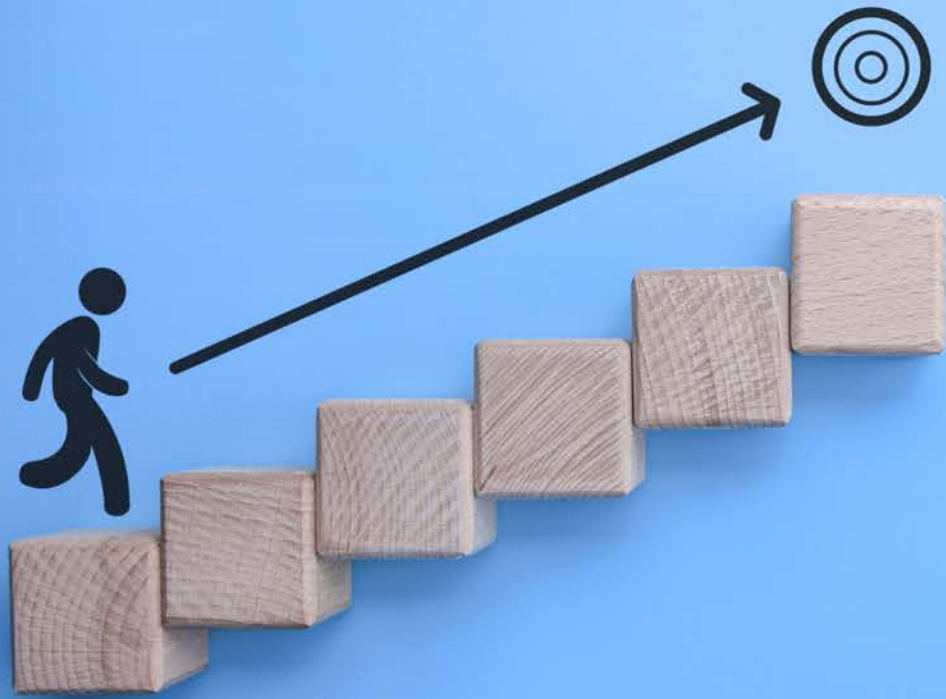
MAJOR STAGES INCLUDE:

- **Evaluation (whether to dismiss or investigate a complaint)**
- ***Investigation***
- **Determination**
- **Appeal**



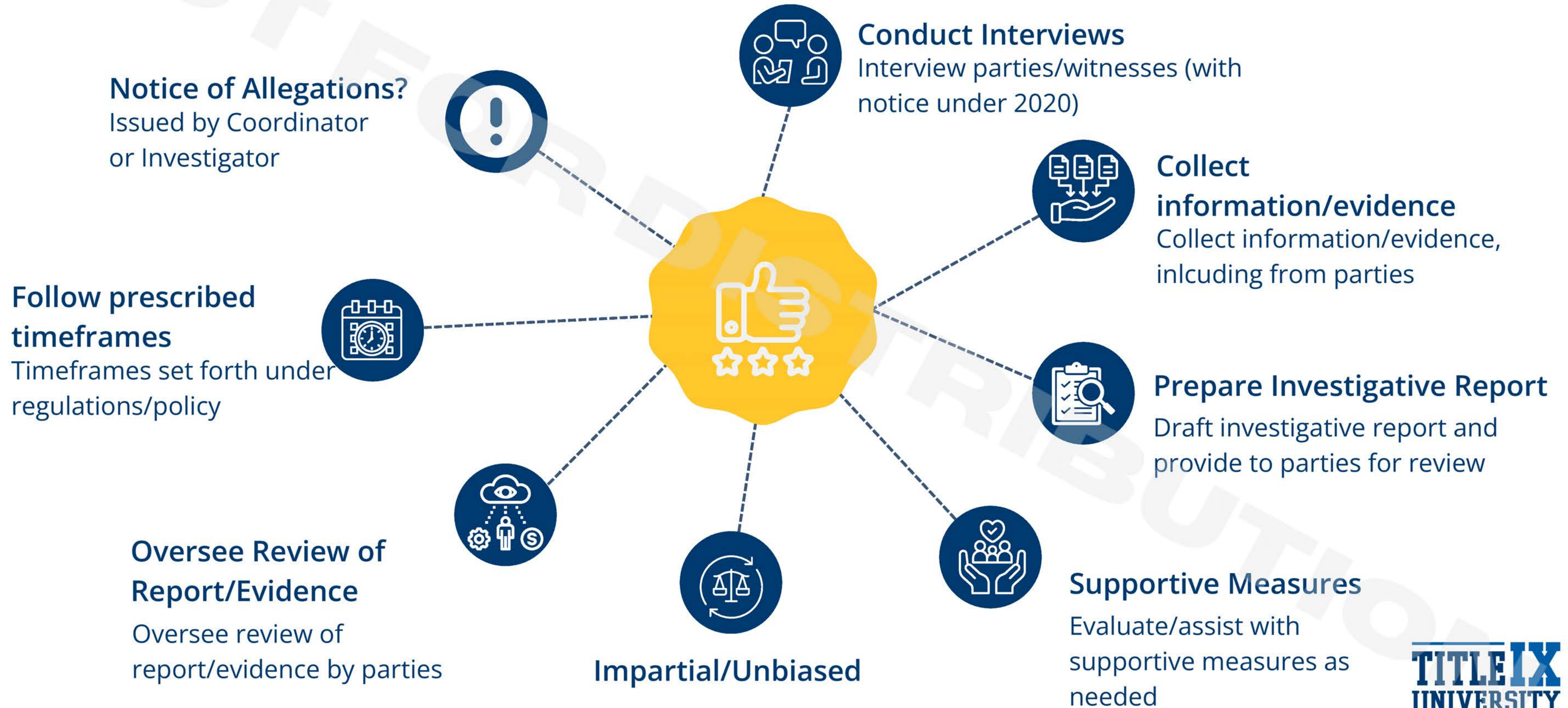


Role and Scope Overview



What is the role/purpose of a Title IX Investigator (why are we doing this work?)

YOUR ROLE AND SCOPE



Note:

You are part of the Title IX Team at your school.
Title IX Coordinator is leader of that team.

Also on the team:

- Deputies/Designees
- Decisionmaker
- Appellate Decisionmaker
- Informal Resolution Facilitator
- Supportive Measure Review Administrator (2024 only)

Role & Responsibility Overlap (2024)

Coordinator can be investigator/decision-maker
*single investigator model is permitted



Investigator cannot be the informal resolution facilitator

Supportive Measure Review Administrator should not be the Coordinator or their supervisor

Appellate Decisionmaker(s)

Roles

and

Responsibilities

Title IX Roles 2020



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.

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.

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.



important!

- Clarify your Role

- Assess any issues with overlap (especially if under 2024 and serving in all roles)

- Consider how you will explain any overlap to parties if under 2024

- Fair and equitable investigation
 - Free from Conflict of Interest/Bias
 - interview parties and witnesses
 - Gather evidence
 - Draft Investigative Report
- *Stay in Your Lane*

1

2

3

4

5



Coordinator



Investigator



Decisionmaker



Decisionmaker Appeals



Informal Resolution
Facilitator

Training Mandate: Investigator/Decision-Maker/ Supportive Measure Review Administrators (2024)

1 The school's obligation to address sex discrimination in its education program or activity.

2 The scope of conduct that constitutes sex discrimination under Title IX - including sex based harassment*.

3 Reporting requirements.

4 All applicable notification and information requirements (where they need to add the link to the website).*



5 Response procedures after report received (section 106.44).

6 Grievance procedures (section 106.45 and if applicable 106.46).

7 How to serve impartially:

- Avoiding prejudgment of facts and
- Bias/Conflicts of interest

8 Definition of "relevant."*
*new or changed in 2024

YOU ARE ALSO A RESPONSIBLE EMPLOYEE.

K-12: **ALL EMPLOYEES** (who are not confidential) **MUST** notify Title IX Coordinator when they have information about conduct that REASONABLY MAY constitute sex discrimination.

Avoiding Conflicts of Interest and Bias

AVOID





Title IX team must serve impartially in their role and avoid prejudgment of the facts as issue, conflicts of interest, and bias.

*applies to 2020 or 2024

Conflict of interest or bias cannot be for or against complainants or respondents generally or the individual complainant or respondent in a matter.



Family friend is a witness in a matter



Child is a party in a matter.



You are a witness in a matter.



Close relationship with a party.





WHY?

Why is this Important?

- Erodes trust in grievance procedures/creates barriers

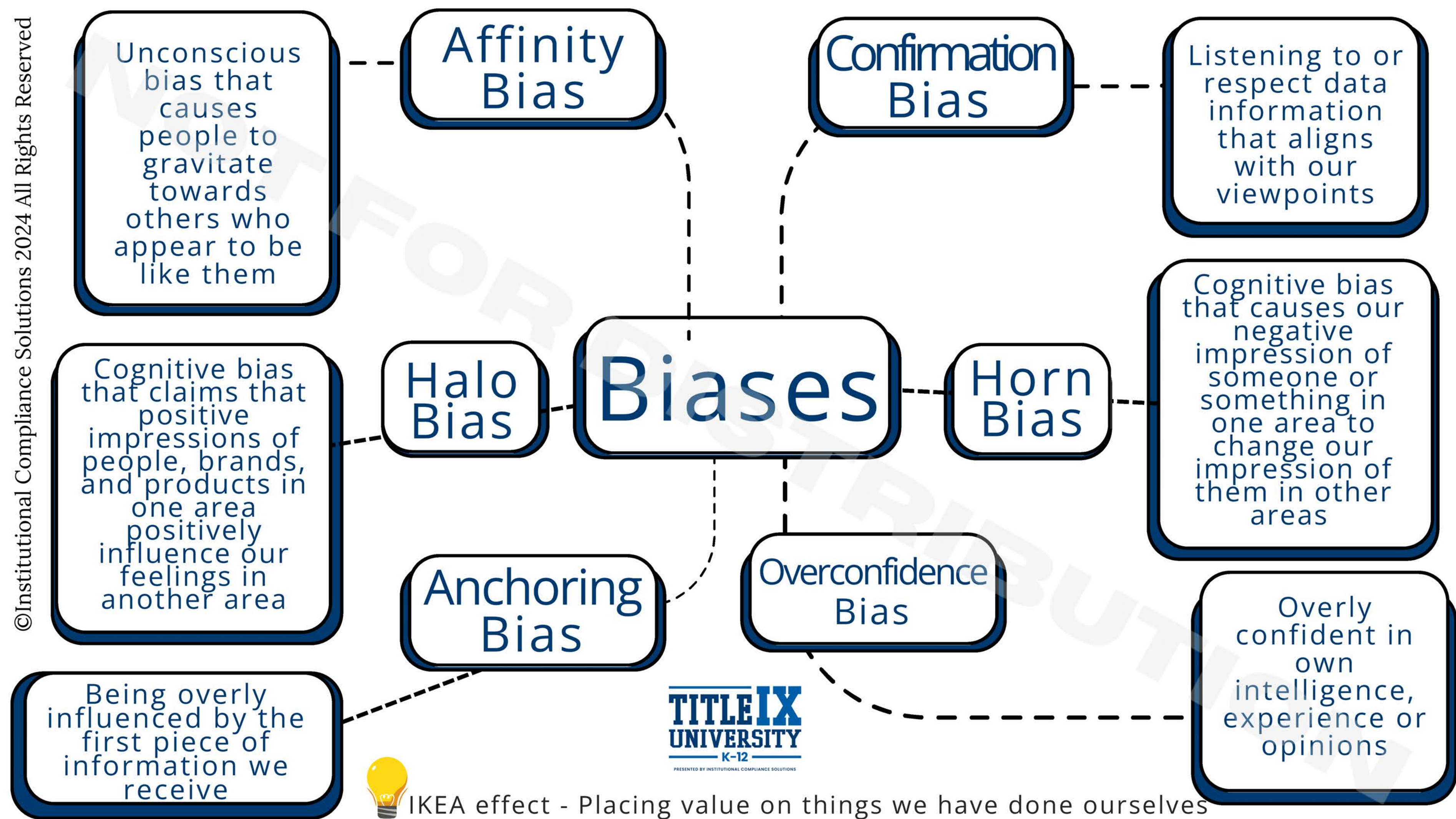
- Decrease ability to ensure a fair and reliable outcome

Ways to Mitigate Bias/Conflict of Interest

- Evaluate situations where serving in overlapping roles
- Training that avoid sex stereotypes
- Be wary of the single investigator model
- Equitable treatment of the parties

M I T I G A T E





In Every Case:

- Evaluate whether have a conflict of interest/bias at the outset of a matter.
- Check biases throughout a matter.
- Notify the Title IX Coordinator if a bias/conflict of interest arises.



What types of cases will you be investigating?

- Who are the parties involved?
- What is the conduct at issue?

Parties involved:

01 Student on student

02 Employee on employee

03 Student on employee

04 Employee on student

**Will you be investigating only student cases or only employee cases?*

Conduct at issue:

- Sex discrimination
- Sex-based harassment
- Sexual harassment

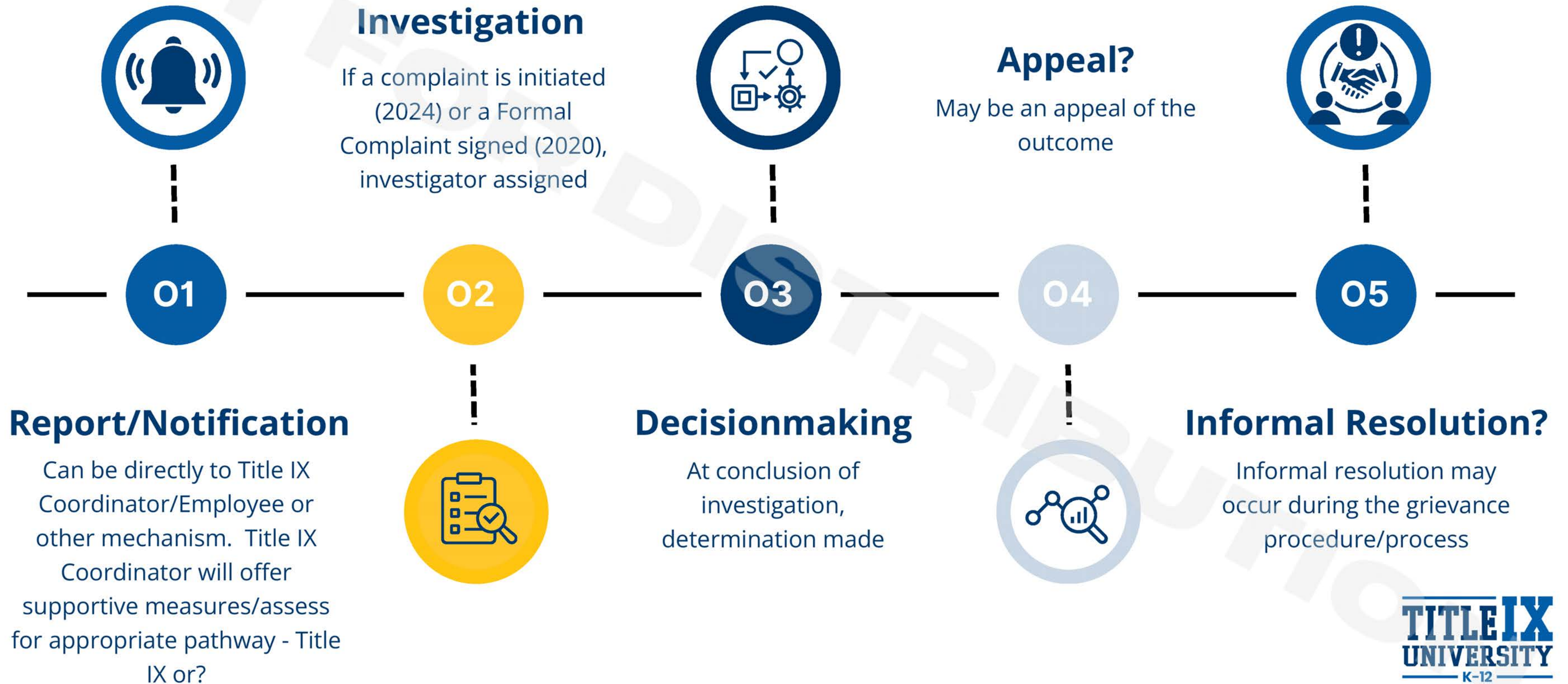
****overlapping areas?***



Overview

Overview of the Process

Report/Notification Pathway Overview



2024

Investigation:

Meetings with parties and witnesses
Collection of evidence
.45

Complaint:

Request for investigation from party or
initiated by Title IX Coordinator

Notification:

Notice that sex discrimination
allegedly occurred.

Decisionmaking:

.45
Including sanctions and rationale

Appeal:

Of evidence and/or
report*

Review:

Of evidence and/or
report*

Notice of Allegations:

Sent to both parties
.45

Evaluation:

Supportive measures
Is it Title IX?
When did conduct occur?

INVESTIGATIVE TIMELINE 2020

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



Before a
matter is
investigated....

Title IX Coordinator will:

- Offer Supportive Measures
- Triage/evaluate conduct for Title IX
- Determine if initiating a Complaint/a Formal Complaint
- Consider Emergency Removal/Admin Leave of Respondent



Supportive Measures



Supportive Measures:



Individualized measures offered, as appropriate, as reasonably available, without unreasonably burdening a complainant or respondent, not for punitive or disciplinary reasons, and without fee or charge to the complainant or respondent to:

- Restore or preserve that party's access to the recipient's (school's) education program or activity, including measures that are designed to protect the safety of the parties or the recipient's (school's) educational environment; OR
- Provide support during the recipient's (school's) grievance procedures, or during the informal resolution process.



Support

- Supportive measures fundamental
- Support first, support always
- Ensure access
- Offer, offer, offer!

Role of Investigator with supportive measures?



COMPLAINT – 2024

NOTE: not just informing of incident but “request to investigate”

...an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.

- Can be initiated by:
 - Complainant
 - Parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant
 - Title IX Coordinator (after considering factors)
- If it is for anything OTHER than sex-based harassment:
 - ANY student or employee; OR
 - Any person other than a student or employee who was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination.

Formal Complaint– 2020

✓ In Writing

- Hard copy
- Electronic
- Online submission

✓ Signed by:

- Complainant or Parent/Guardian
- Title IX Coordinator

✓ Alleging Sexual Harassment

✓ Requesting an Investigation



If a Complainant/Parent/Legal Guardian Does Not Want to Initiate a Complaint /Sign a Formal Complaint:

YES

NO

- Title IX Coordinator may initiate/sign
- Title IX Coordinator does not become the Complainant/a party
- Provide all notices as Investigator as if Complainant is participating

Consolidation of Complaints

School MAY consolidate:

- Complaints related to more than one Respondent.
- Complaints related to or more than one Complainant against one or more Respondents.
- Complaints by one party against another party.



If a complaint is initiated (2024)/Formal Complaint signed (2020), you will be assigned as an Investigator.

When you are assigned as an investigator, consider:

Student/Employee?

1

What policies may be implicated?

2

Capacity

3

When did the conduct occur (2020 v. 2024)?

4

5

Add IEP/ADA involvement?

6

Notice of Allegations

7

Conflict of interest/bias?

8

Timeframes outlined in your policies/procedures



Notice of Allegations 2024

Upon initiation of grievance procedures (after Complaint), school MUST provide Notice of Allegations to parties (whose identities are known)

NOTE: Notice MUST be amended if necessary with additional allegations or needs to be consolidated



Notice Of Allegations 2024

UPON INITIATION OF GRIEVANCE PROCEDURES (AFTER COMPLAINT), SCHOOL MUST PROVIDE NOTICE OF ALLEGATIONS TO PARTIES (WHOSE IDENTITIES ARE KNOWN). NOTICE MUST INCLUDE:

- Grievance Procedures and Informal Resolution Process.
- Sufficient Information available at the time to allow parties to respond.
 - Identities of the parties
 - Conduct alleged to constitute sex discrimination
 - Date(s)
 - Location(s)
- Statement that retaliation is prohibited.
- Statement that parties are entitled to equal opportunity to access the RELEVANT and not otherwise impermissible evidence OR an ACCURATE description of the evidence.
 - If description provided, the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any party.
- Notice MUST be amended, if necessary, with additional allegations or needs to be consolidated.

NOTICE OF ALLEGATIONS 2020



- Notice of Grievance Process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual Harassment
 - Identities of the parties
 - Conduct constituting Sexual Harassment
 - Date of incident
 - Location of incident
- Statement: Respondent presumed not responsible and responsibility is determined after Grievance Process
- Right to Advisor of Choice
- Code of Conduct provision(s) prohibiting false statements or false information in process

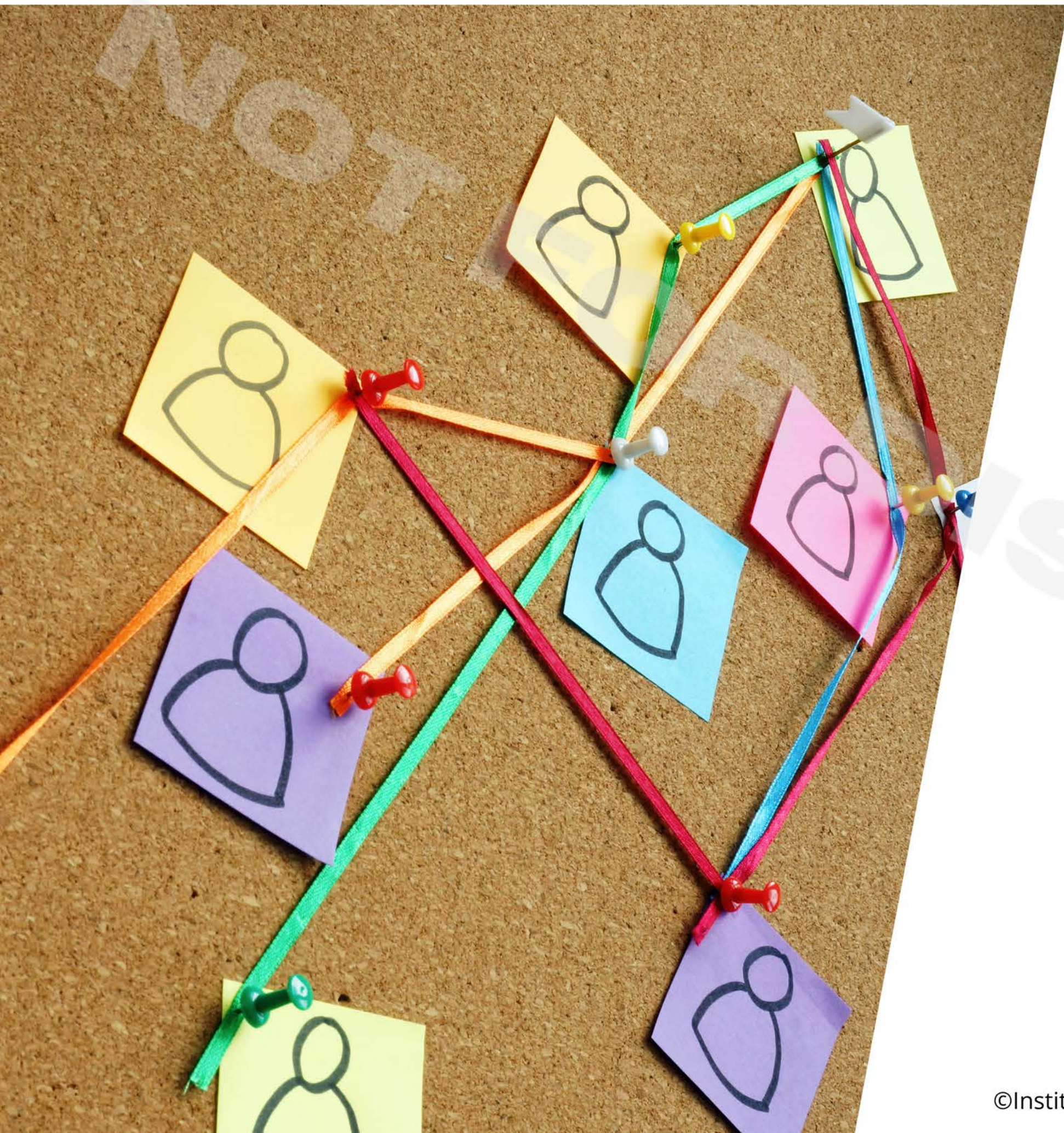
What is your role re: Notice of Allegations as Investigator?



NOTICE

Notice of Allegations tells you WHAT you are investigating, and it should be updated if needed

2020: Formal Complaint and NOA are very important for investigator



Conduct at Issue

Is this Title IX conduct/jurisdiction?

2020 vs. 2024 Evaluation

2020

Sexual Harassment



Education Program
or Activity



Formal Grievance
Process

2024

Sex Discrimination



Application



Grievance
Procedure

On the Basis of Sex 2024

Scope: (EXPANDED)

Discrimination on the basis of sex includes discrimination on the basis of:

- Sex Stereotypes
- Sex Characteristics
- Pregnancy or Related Conditions
- Sexual Orientation
- Gender Identity

Application 2024

(JURISDICTION - EXPANDED)

ALL sex discrimination that occurs under the school's education program or activity in the U.S., including but not limited to:

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority (What is school's jurisdiction for other policies?).
- Even when some conduct alleged to be contributing to the hostile environment occurs outside of the education program or activity or outside of the US.

Consider: Does the behavior OUTSIDE of education program or activity CONTRIBUTE to a sex-based hostile environment INSIDE the education program or activity?

Sex-Based Harassment 2024



Sex Based Harassment 2024

*A form of sex discrimination. Sexual harassment and other harassment **on the basis of sex** that is:*



Quid Pro Quo Harassment: An employee, agent, or other person authorized to provide an aid, benefit, or service, under the school's education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit or service, on a person's participation in unwelcome sexual conduct.



Hostile Environment Harassment: Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the school's education program or activity.



Specific Offenses

- a. Sexual Assault
- b. Dating Violence
- c. Domestic Violence
- d. Stalking

HOSTILE ENVIRONMENT HARASSMENT



Hostile Environment Harassment

1. Unwelcome
2. Sex-based Conduct
3. Subjectively AND Objectively Offensive
4. Severe OR Pervasive
5. Limits or Denies Ability to Participate (Access)

Fact Specific Inquiry

1. Degree to which conduct affected access
2. Type, frequency, and duration of conduct
3. Ages, roles, previous interactions, other factors about each party
4. Location of the conduct and context in which it occurred
5. Other sex-based harassment

Subjective:

Related to or based on beliefs, attitudes and opinions instead of verifiable evidence. Black's Law Dictionary.

Objective:

Neutral: An unbiased attitude or opinion that is based on factual evidence. Black's Law Dictionary



Sexual Assault

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.

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.

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



Dating Violence:

A CRIME COMMITTED BY A PERSON:

Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- Length of relationship
- Type of relationship
- Frequency of interaction between the persons involved in the relationship



Domestic Violence:

Felony or misdemeanor crimes committed by a person who:

- Is a current or former spouse of intimate partner of the victim under the family or domestic violence laws of the jurisdiction* of the recipient (school), or a person similarly situated to a spouse of the victim.
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner.
- Shares a child in common with the victim OR
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



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



☐ YES
☐ NO
☐ MAYBE



Consent:

- Not defined under regulations — but you need to have one.
- The Assistant Secretary will not require a recipient to adopt A PARTICULAR definition of consent.

2024: Other Title IX Conduct subject to grievance procedures

01 Discrimination based on "sex"

02 Failure to provide pregnancy accommodations

03 Discrimination based on pregnancy

04 Gender-equity in athletics

05 Discrimination based on sexual orientation
or gender identity

Parental, Family, or Marital Status:

Must NOT adopt or implement policy, practice or procedures concerning student's current, potential, or past parental, family, or marital status that treats students differently on the basis of sex.


Employee (106.57)

Parental, family, or marital status: (General Rule)



Must NOT adopt or implement a policy, practice, or procedure, or take employment action on the basis of sex:

- Concerning the current, potential, or past parental, family, or marital status of an employee or application for employment which treats persons differently OR
- That is based on whether an employee or application for employment is the HEAD OF HOUSEHOLD or principal wage earner in the applicant's family unit.

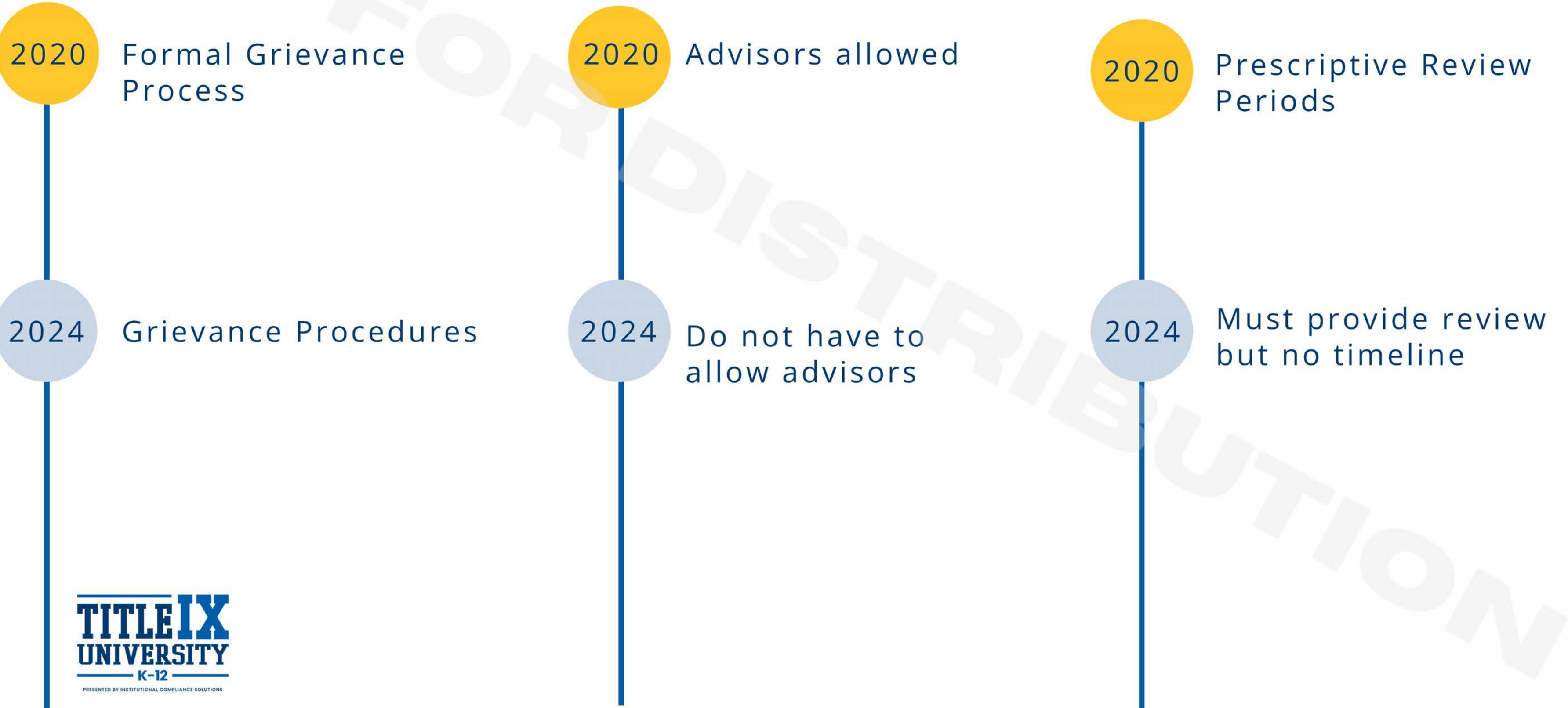


2020 – Title IX
Conduct outside of
Title IX Sexual
Harassment may
have a process –
refer to
policy/procedures

PROCEEDURE

Grievance Procedures

2020 v. 2024 Differences Overview





Basic Requirements of Grievance Procedures 2024

- **Grievance Procedures MUST be in writing.**
- **If allegations against a school regarding the school's policy or practice, the school is NOT considered a Respondent.**
- **Complaint initiates Grievance Process.**

If K-12 or Employee on Employee AND Allegations Include Sex- Based Harassment ++

- Grievance procedures must ALSO:
- Describe the range of supportive measures available to Complainants and Respondents.
- List or describe the range of potential disciplinary sanctions that the school may impose and the remedies that the school may provide following a determination that sex-based harassment occurred.

Complaint
Oral or written
request to
investigate



Notice of Allegations**

Investigation
Review of report or
evidence - if report only,
allow for review of
evidence upon request



Questions of parties and witnesses
assessing credibility

Determination



Appeal - same as any
comparable proceeding

2024 Grievance Procedures

INVESTIGATION

2024

1

Burden on school
(NOT the parties) to
conduct investigation
that gathers
sufficient evidence.

Preponderance of
Evidence Unless Clear
and Convincing for all
other proceedings.

2

Provide opportunity
for parties to present
FACT witnesses
(note, doesn't say
character witnesses)
that are relevant and
not otherwise
impermissible.

3

Provide opportunity
to present
**inculpatory and
exculpatory**
evidence that is
relevant and not
otherwise
impermissible.

4

Provide **opportunity
to access** the
relevant and not
otherwise
impermissible
evidence.

- Actual evidence
OR an accurate
description.
- If accurate
description, must
provide
opportunity to
review the
evidence upon
request.

5

Provide reasonable
**opportunity to
respond** to the
evidence or accurate
description.

6

Take reasonable
steps to **prevent** and
address the parties'
**unauthorized
disclosure** of
evidence.

Questioning Parties and Witnesses 2024



Must provide a process that allows the decisionmaker to question the parties and witnesses to adequately assess credibility to the extent credibility is in dispute and relevant to evaluating the allegations.

Review of Evidence K-12 (2024)

1

Must provide an equal opportunity to access evidence that is:

- Relevant to the allegations of sex-based harassment and
- Not otherwise impermissible.

2

Must provide as either the evidence or an accurate summary in an investigative report.

- If providing the report, must also allow equal opportunity to access the evidence upon the request of either party.

3

Must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report.

4

Must take reasonable steps to prevent the unauthorized disclosure of information and evidence obtained solely through the grievance procedure.

Relevant 2024

Relevant: related to the allegations of sex discrimination.

Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.

Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

Require objective evaluation of ALL RELEVANT Evidence and not otherwise impermissible	Relevant	Exclude the following types of evidence (Impermissible evidence)
Include inculpatory and exculpatory evidence.	Questions are relevant when they seek evidence that may aid in sowing whether the alleged sex discrimination occurred.	Evidence protected under privilege as recognized by Federal or State law OR evidence provided to a confidential employee – unless the person with whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality.
Provide that credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.	Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.	A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with treatment to the party or witness — unless the school obtains the party’s or witness’s voluntary, written, consent for use in the grievance procedures.
<div>2024</div> <div><div><div>TITLEIX</div><div>UNIVERSITY</div><div>K-12</div></div><div>PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS</div></div>		<p>Evidence that relates to the COMPLAINANT’s sexual interests or prior sexual conduct – UNLESS:</p> <ul style="list-style-type: none">◦ Evidence about the Complainant’s prior sexual conduct is offered to prove that someone OTHER than the Respondent committed the alleged conduct OR◦ Evidence about specific incidents of the Complainant’s prior sexual conduct WITH THE RESPONDENT that is offered to PROVE CONSENT to the alleged sex-based harassment.<ul style="list-style-type: none">▪ Prior consensual sexual conduct between the parties does NOT, by itself demonstrate or imply consent to the alleged sex-based harassment OR preclude determination that sex-based harassment occurred.

Written Determination

- Must use preponderance of the evidence — unless school uses clear and convincing standard in ALL other comparable proceedings.

- Notify the parties IN WRITING of the determination.

- Include a rationale in the determination.
- Include permissible basis for appeal (if applicable).
- If determination that sex discrimination occurred, MUST require Title IX Coordinator to:
 - Coordinate the provision and implementation of remedies to Complainant and others who had access denied.
 - Coordinate disciplinary sanctions.
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.



2020

Decision-Maker
Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations
- ☐ Description of Procedural Steps Taken
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held
- ☐ Findings of Fact Supporting Determination
- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts
- ☐ Result of Each Allegation Including Rationale
 - Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant
- ☐ Procedures and Permissible Bases for Appeal

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TITLE IX
UNIVERSITY
K-12

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS

Include (and follow) a presumption that Respondent is not responsible for the alleged conduct UNTIL a determination is made at the conclusion of the grievance procedures.

Challenges:

- already have a lot of information,
- know the parties,
- have video,
- etc.



MAY NOT discipline Respondent for sex discrimination UNLESS there is a determination AT THE CONCLUSION OF THIS PROCESS that Respondent engaged in sex discrimination.

MAY NOT discipline a party or witness for a false statement or for engaging in consensual sexual conduct based SOLELY on determination of whether sex discrimination occur.



NO



Determination Becomes Final

The date the parties are provided with the written determination of the result of any appeal.

OR

The date when an appeal would no longer be considered timely (day after appeal deadline).



Appeals 2020 v. 2024

DISMISSED

2020 - Appeal required of a determination

2024 - MUST offer appeal that AT A MINIMUM is the same as the school offers in ALL OTHER COMPARABLE PROCEEDINGS (including other discrimination complaints)

If a Party Appeals:

Notify the parties of the appeal

Provide the parties a reasonable and equal opportunity to make a statement in support of or challenging the outcome

Ensure that the appellate decisionmaker has been trained



APPEALS 2020



- 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



Informal Resolution

Informal Resolution-2024

- Higher Ed - ANY situation—even when student Complainant and employee Respondent*
- K-12 - NOT when student Complainant and employee Respondent

1	WHEN	Any time prior to resolution.*
2	DISCRETION	Title IX Coordinator has discretion to allow or disallow Informal Resolution.
3	PARTICIPATION	May NOT pressure the parties to participate.
4	CONSENT	Must obtain VOLUNTARY consent from the parties.
5	NO WAIVER	May NOT require a waiver of the right to investigation/ determination as a condition of enrollment or employment.

Coordinator Discretion 2024



Coordinator MAY decline Information Resolution when the alleged conduct would present a FUTURE risk of harm to others (or in other circumstances within the Coordinator's discretion).

Consider:

Violence

Prior Behavior

Multiple Complainants

Etc.

Informal Resolution Continued (2024)..

Prior to initiation of Informal Resolution, MUST provide the parties:

The allegations.

The requirements of the IR process.

Explanation that prior to agreeing to a resolution, any party has the right to withdraw from the IR process and initiate or resume grievance procedures.

Agreement at the end of the IR process precludes the parties from initiating or resuming grievance procedures arising from the same allegations.

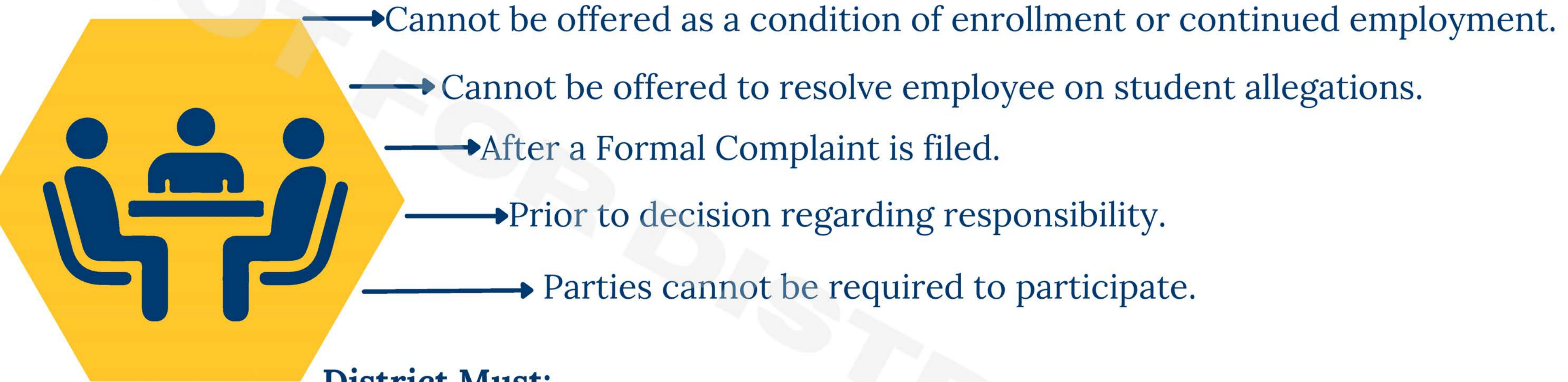
Opportunity to seek additional modifications of supportive measures if the circumstances materially change.

The potential terms that may be requested or offered in an informal agreement.

What information the school will retain.

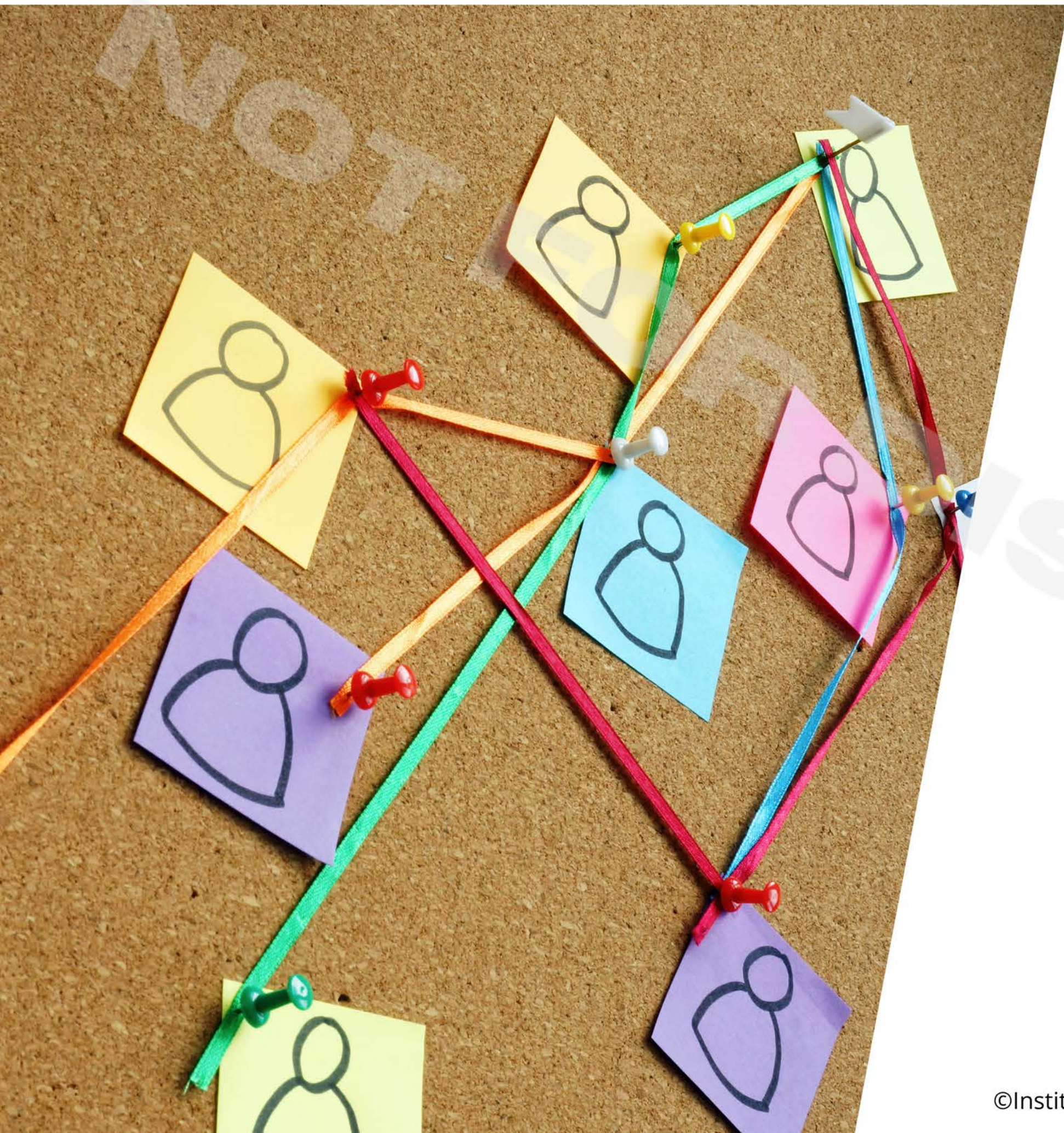
Whether and how the school could disclose the information if the parties move out of IR and into the grievance process.

2020- Informal Resolution



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.
- Provides consequences resulting from informal resolution process including records maintained or shared.
- Obtain both parties voluntary, written consent to the informal resolution process.



Investigative Techniques



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/reporting



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



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



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



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 2020

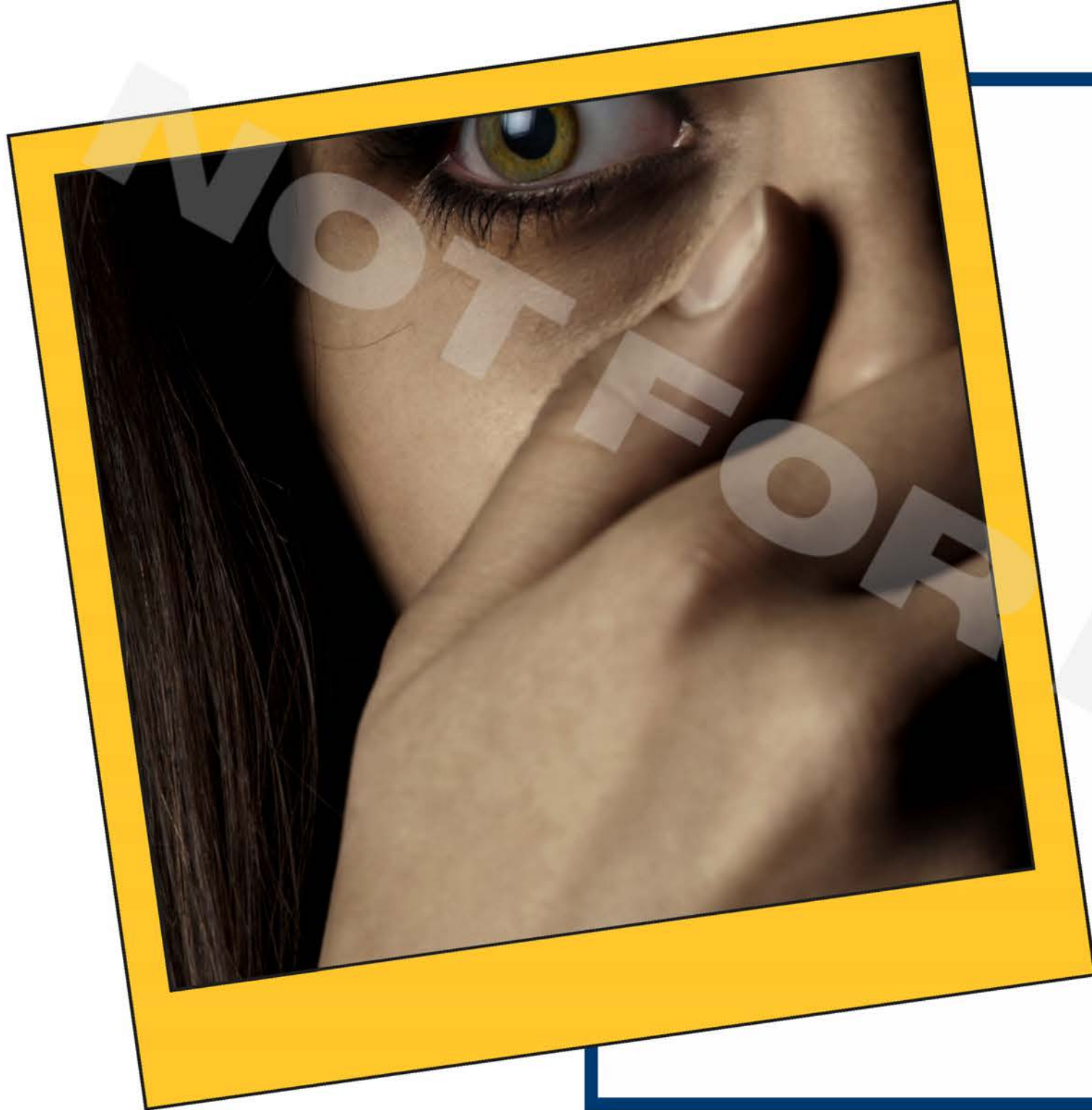
- Of choice
- Can be an attorney, does not have to be
- Your policy defines how they can be involved in your process
- Challenges with advisors
- Benefits to advisors

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

- Must use preponderance of the evidence -- unless school uses clear and convincing standard in ALL other comparable proceedings.
- 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

Recordkeeping Requirements

NOTIFICATION

For EACH Notification (Report) of information that may reasonably constitute sex discrimination, the following actions MUST be documented:

- How it responded promptly and effectively.
- Barriers and how they are addressed.
- Notifications to the Title IX Coordinator.
- Supportive Measures.
- Notification to the Complainant (or reporter) of the Grievance Procedures.
- Evaluation of whether to initiate Complaint.
- Steps to effectuate the remedies to ensure that sex discrimination does not continue or recur.

COMPLAINT

For EACH Complaint of sex discrimination, the following actions MUST be documented:

- Records documenting, or informal resolution process.
- Records documenting grievance procedures.

TRAINING MATERIALS

Training materials must be made available upon request for inspection by members of the public.

Parallel criminal investigations



Cannot wait to initiate Title IX process because of a criminal investigation (only a small delay is allowed)



Develop relationship with law enforcement now to explain Title IX obligations of district/school





Any Questions?

REPORT

Report Writing

Report Content

- ✓ How reported
- ✓ Date of Formal Complaint
- ✓ Who investigated
- ✓ Policy
- ✓ Timelines (of events and of investigation)
- ✓ Information from parties and witnesses
- ✓ Physical Evidence
- ✓ Summary of Relevant Information
- ✓ Note for your record: Information not included or witnesses not interviewed and why



Who is Your Audience?



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

Organization is Key

By party/witness?

By time/chronological?

By event?

Organize

Report Must:

Fairly summarize relevant evidence

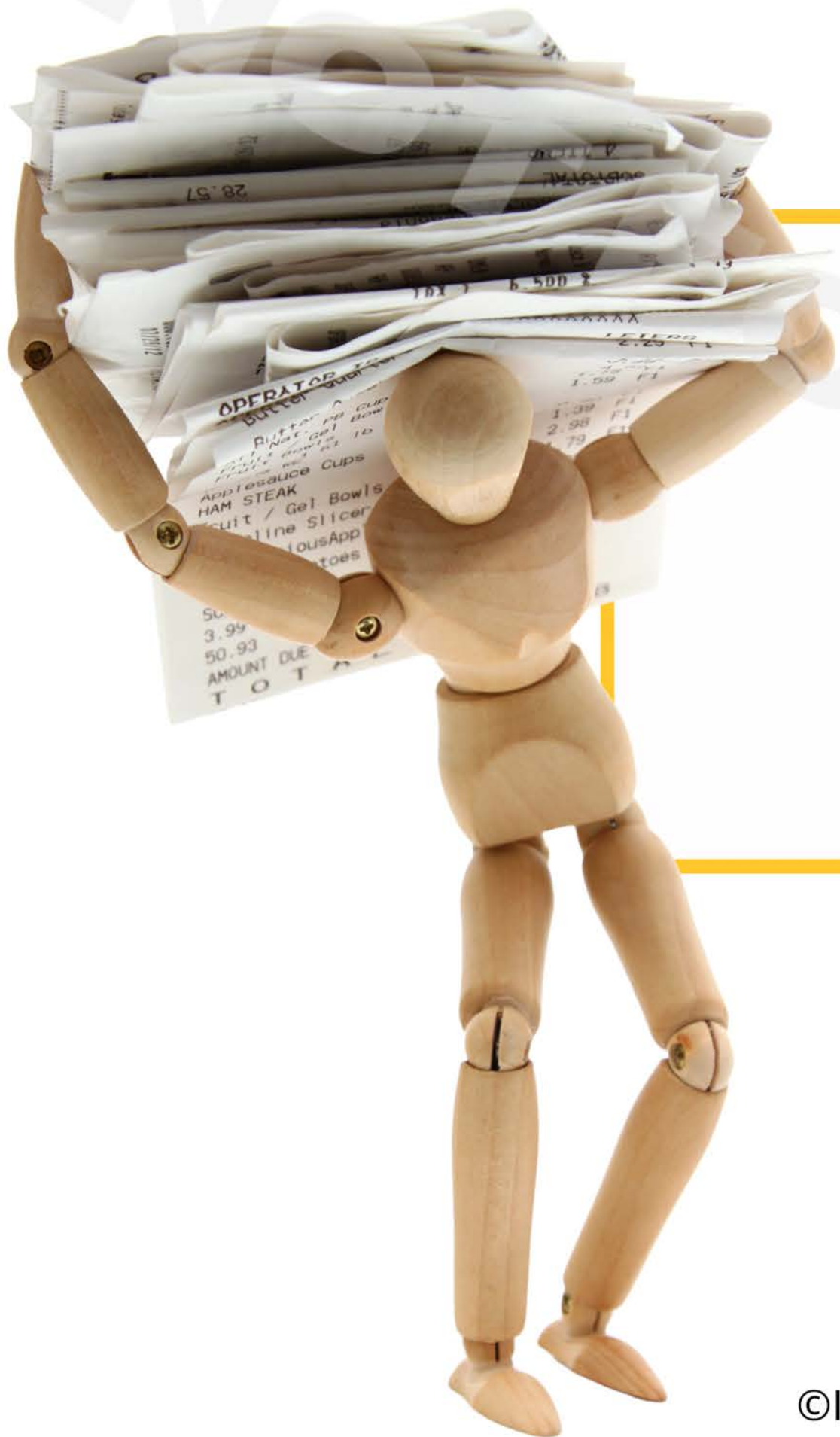
Be provided to parties AND advisors

Hard copy or electronic



Credibility Determinations

Only if required by your policy



Burden

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



Document, Document, Document

- Consistent
- Thorough
- Clear
- Timely



Draft Report- Template



Any Questions?



Final Thoughts

You have a vital role

1

Stay in your lane

2



3

Get clarity on your role
in each/every case

4

Refer often to policies
and procedures for
timelines/definitions/etc

Your Homework:

Get clarity on
your role

Templates/
forms

Bookmark
policies/
procedures

Use correct
language



Any Questions?



Upcoming Trainings



Here's Your Easy Button!



COMMUNITY
PARTNERS



TITLE IX
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