

Title IX Advisor Training Level 1 Session 1



INSTITUTIONAL
COMPLIANCE SOLUTIONS



Overview of the Course

10:00–10:50 Intro, Title IX Basics, 2020 Regulations Overview

10:50–11:00 Break

11:00–11:50 Your Role in the Title IX Process

11:50–12:00 Wrap up and Questions



HOUSEKEEPING

- Chat bar
- Breaks
- Understanding



ABOUT US

Courtney Bullard

Founder

Institutional Compliance
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Betsy Smith

Senior Investigator & Consultant
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PRACTITIONERS



Purpose of ICS Trainings



- **Not Legal Advice**
- **Designed to provide you with options**
- **Most decisions will be institution specific and the regulations allow for flexibility**
- **NO ONE HAS DONE THIS BEFORE**
- **We love when our participants bring information to us and provide their perspectives**
- **We are all in this together!**





THE LAW

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.



What Is/Is not Title IX Conduct

Is or May be Title IX

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

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)



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.**



SEXUAL ASSAULT

Sexual Assault: 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.

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.



Consent

Consent:

- OCR does not require recipients to adopt a particular definition of consent with respect to sexual assault.

What does this mean?

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

Okay ?
? yes

Domestic Violence

Domestic Violence: A felony or misdemeanor crime of violence committed

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

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Dating Violence

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:

(i) The length of the relationship

(ii) The type of relationship

(iii) 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.

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STALKING

Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (1) Fear for the person's safety or the safety of others; or
- (2) 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.

Conduct + Location

IT'S MORE THAN THE BEHAVIOR...
MUST EVALUATE
LOCATION/JURISDICTION AS WELL

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JURISDICTION

Education Program or Activity

- Locations, events, or circumstances (operations)
- institution exercised substantial control
 - over both the respondent AND the context in which the sexual harassment occurs
- Includes any building owned or controlled by student organization that is OFFICIALLY RECOGNIZED by institution
- 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” and “on campus,” and does not create a distinction between sexual harassment occurring in person versus online.

Title IX Team

**Title IX
Coordinator**

Investigator(s)

Decision-
Maker(s)

Appellate
Member(s)

Informal
Resolution
Facilitators?

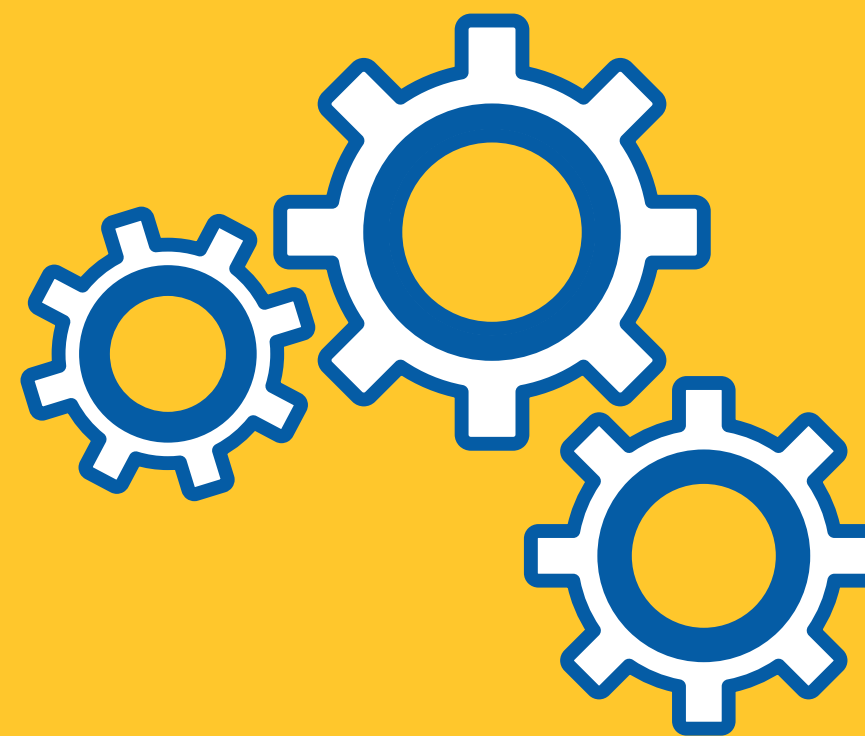
Advisors

THE LAW

Advisors are a necessary and critical member of the team under the new regulations.



Title IX Process



LANGUAGE



Guilty

Responsible

Trial

Hearing

Crime

Violation

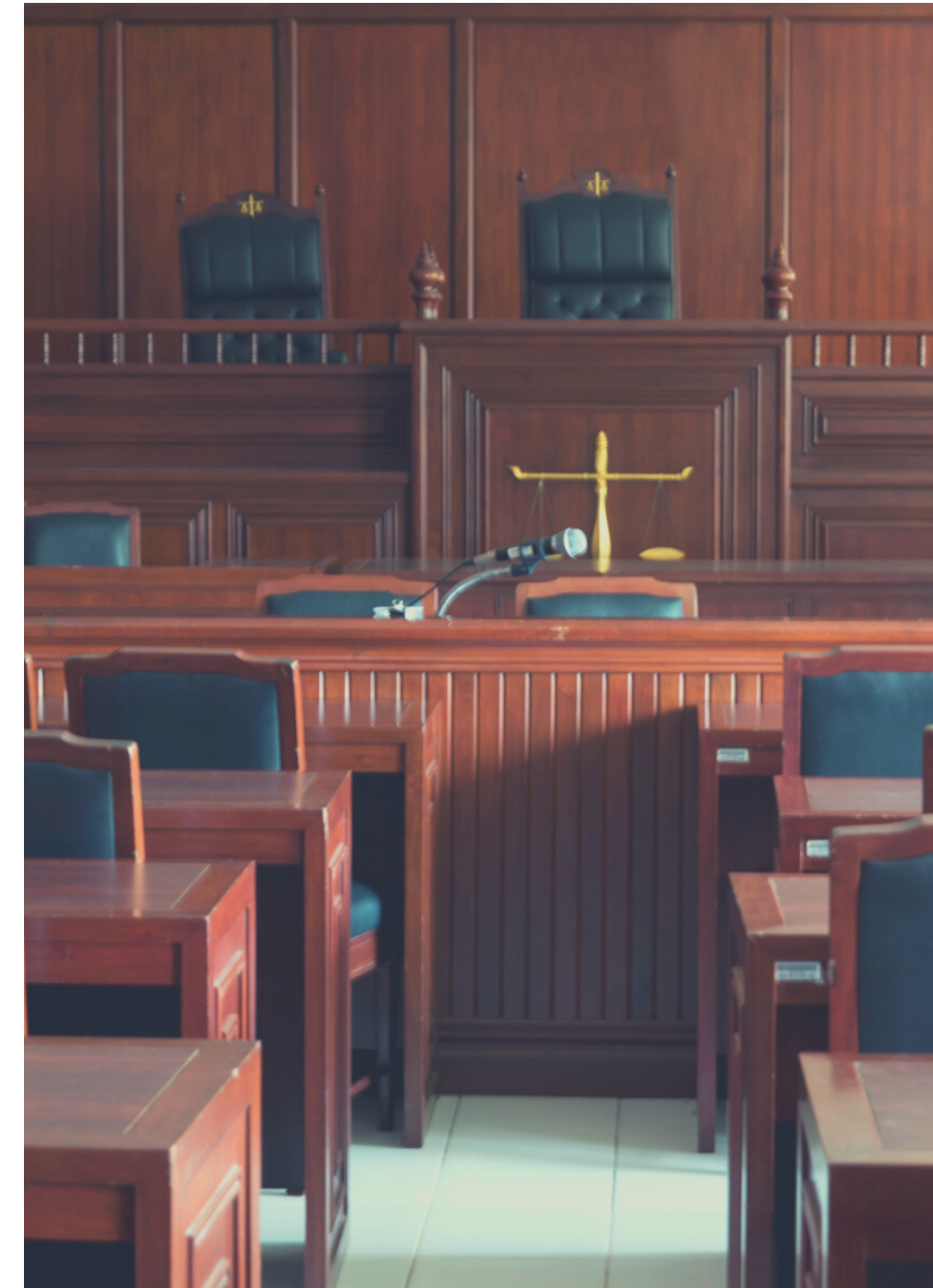
**CAMPUS PROCESS
NOT CRIMINAL
NOT A COURTROOM**



TITLE IX PROCESS

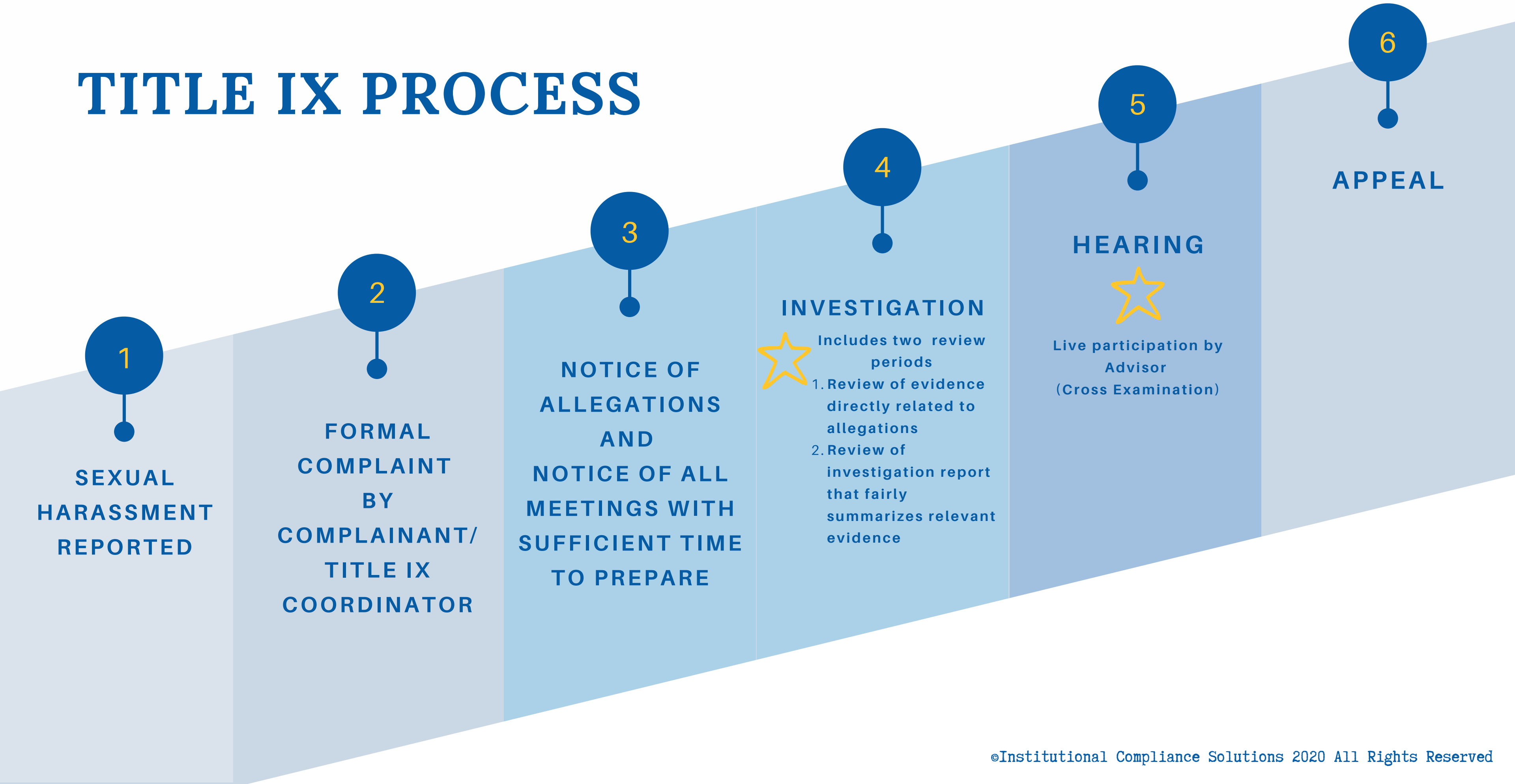


**NOT
CRIMINAL PROCESS**



**NOT
COURTROOM**

TITLE IX PROCESS



Formal Complaint



- Document (paper, email, or online submission)
 - Signed by Complainant (digital signature is okay) or Title IX Coordinator.
 - Alleging sexual harassment, against the Respondent AND requesting that institution investigate.
- Complainant must be participating in, or attempting to participate in an education program or activity of the institution with which the formal complaint is filed.



DISMISSAL OF A FORMAL COMPLAINT

MUST Dismiss if:

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.
 - *May act under another provision of code of conduct

May Dismiss if:

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

*Must promptly send written notice of dismissal and reasons for dismissal simultaneously to parties

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



**NOTICE
OF
ALLEGATIONS**



Investigation of Formal Complaint

MUST

- Ensure that burden of proof and burden of gathering evidence with institution, not parties (no medical or counseling records w/o written consent of party)
- Provide equal opportunity to present witnesses (including EXPERT), and inculpatory/exculpatory evidence
- Not restrict ability of either party to discuss the allegations or to gather/present relevant evidence
- Provide opportunity for both parties to have advisor
- Provide written notice of date, time, location, participants and purpose of all hearings, investigative interviews, or other meetings with sufficient time to prepare to participate
- Provide equal opportunity to inspect and review evidence obtained as part of investigation (even if not relied on)- sent to party AND advisor (electronic or hard copy) with 10 days to respond prior to completion of investigative report.
- Create investigative report that fairly summarizes **relevant** evidence
 - Report may or may not have a finding/recommendation
- Provide report to parties AND advisors 10 days prior to hearing/resolution for review and written response

Institution Must: "objectively evaluate all RELEVANT evidence."

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

Not Relevant:

- evidence about a Complainant's prior sexual history 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
- any party's medical, psychological, and similar records unless the party has given voluntary, written consent
- information protected by any legally recognized privilege

Relevance



A close-up photograph of a hand holding a light blue puzzle piece. The hand is positioned on the left side of the frame, with the thumb and index finger gripping the piece. The puzzle piece is being held up, and its shape is clearly visible. The background is a solid light blue color. The overall image conveys a sense of fitting pieces together or solving a problem.

RELEVANCY

- Regulations do not prescribe rules governing how admissible, relevant evidence must be evaluated for weight or credibility.
- Institutions have discretion to adopt and apply rules about evaluation of evidence.
 - Rules must apply to both parties.
 - Ex: weight or credibility given to prior bad acts so long as applied equally to complainants and respondents.
 - Rules should be reflected in training materials and provided on website.



Hearings

- **Live Hearing (in same room or using technology in separate rooms- not only via telephone)**
 - **Permit ADVISOR to ask the other party and witnesses RELEVANT questions (including those challenging credibility)**
- **Cross-Examination**
 - **Directly, orally, in real time by ADVISOR**
 - **If a party or witness does not submit to cross-examination, the decision-maker(s) must not rely on any statement of that party or witness**
- **Recording (audio, visual, or transcript) made available to parties for inspection and review**
- **Written determination regarding responsibility and sanctions with rationale**
- **Decision provided to parties simultaneously**
- **Effective implementation of remedies (Title IX Coordinator)**
- **Burden of proof (Clear and Convincing or Preponderance of the Evidence)**

Written Determination Regarding Responsibility

☐

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

INDIVIDUALS IN TITLE IX HEARINGS



COMPLAINANT



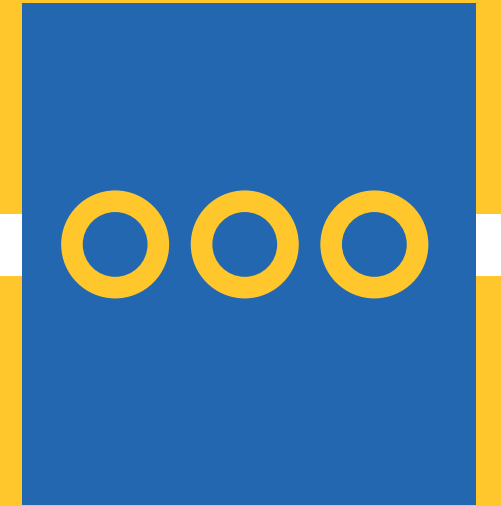
RESPONDENT



ADVISOR



WITNESSES



TITLE IX
COORDINATOR/
INVESTIGATOR/
HEARING
FACILITATOR



Rules of Decorum

- Set by the institution
- Designed to maintain order in the hearing
- Enforced by the decision-maker
- Advisor can be removed for failing to follow
- Reminder: not a courtroom

BASES FOR APPEALS

- 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;
- The 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;
- Other bases as determined by institution.



APPEALS

- Must be offered for BOTH parties
- Must be a new Decision-maker
- Cannot be the Title IX Coordinator
- Appeals can occur
 - After the dismissal of a Formal Complaint or any of the allegations within it; or
 - After determination of Responsibility





INFORMAL RESOLUTIONS

May NOT:

- Be required/condition of enrollment or employment
- Be offered unless Formal Complaint is filed
- Be offered or facilitated when allegations of employee sexually harassing student

May:

- Be facilitated at any time after Formal Complaint and prior to determination regarding responsibility
- Expel if agreed to in Informal Resolution
- Provide Informal Resolution Process (NOT REQUIRED TO PROVIDE)

Must:

- Provide information regarding Informal Resolution Process in initial Notice of Allegations
- Provide parties written notice of informal resolution with
 - allegations
 - requirements of process (including what information/documents will be shared)
 - circumstances which presume Formal Complaint arising from same allegations
 - right to withdraw/resume grievance process
 - consequences-including records kept/shared
- Obtain voluntary, written consent
- Have reasonably prompt time frames

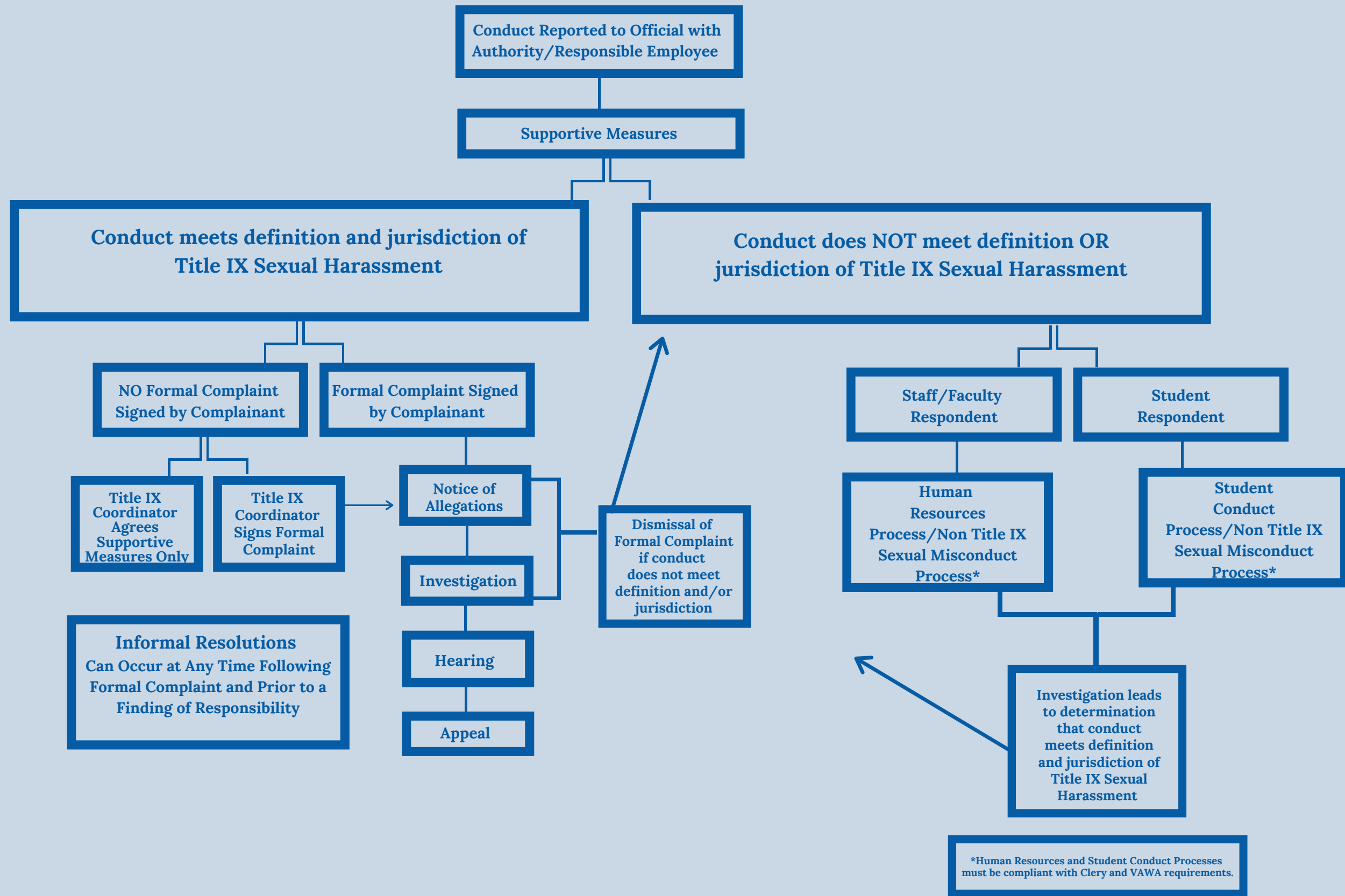


Types of Informal Resolution

- Resolution by Agreement
 - Mediation
 - Restorative Justice Practices
 - Conflict Coaching
 - Facilitated Dialogue
 - Other
- 



Title IX Process Flow Chart





INSTITUTIONAL
COMPLIANCE SOLUTIONS

Questions?

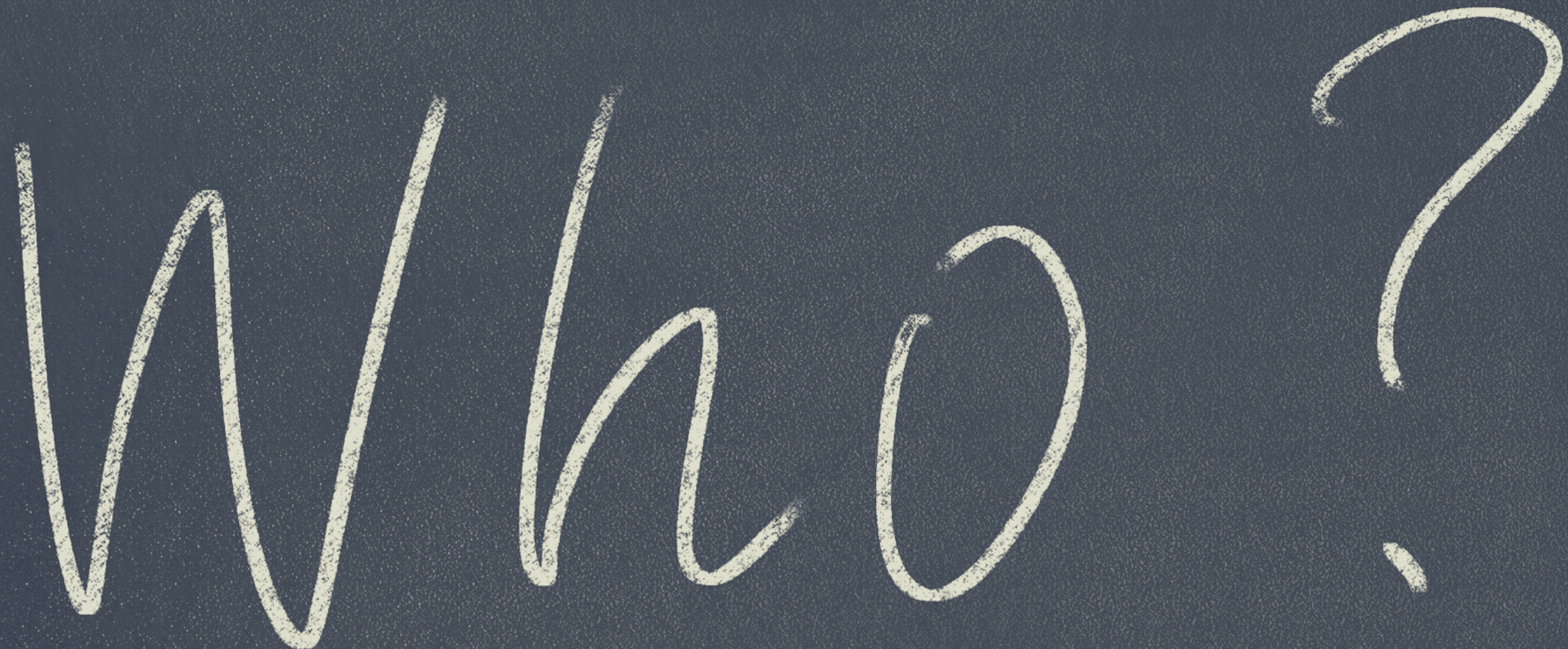
Title IX Advisor Training Level 1 Session 2



Who Can Serve as an Advisor?

- Anyone
- No legal background required
- Not recommended that a witness serve as an advisor

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A large, handwritten word "Who?" in a light yellow or white chalk-like font, set against a dark, textured background that resembles a chalkboard. The letters are slightly irregular and the question mark is large and prominent.



WHAT IS YOUR ROLE

Your role is important, required, and will look exceptionally different depending upon the parameters set by your institution.

LEARN YOUR POLICY AND PROCESS

- Know it better than the participants
- Ask questions NOW before you are involved in a case
- If something is unclear, ask for clarity both from participants (for factual questions) and Title IX Coordinator (for policy and process questions)
- Review the policy and process often when serving as an advisor in a case





Remain Available

- Within reason
- Make sure the party has your contact information
- Set realistic expectations for your response to participants and/or review of information
- If you cannot take on the amount of time necessary to fulfill your role, do not take it on
- Be prepared for meetings and appointments
- Only reschedule when absolutely necessary



PROVIDE SUPPORT

- Check in on the party
- Stop a meeting/hearing if the party needs a break
- Give the party space if they need it
- Listen
- Look for signs of distress
- Refer the party to the Title IX Coordinator if need additional supportive measures
- Don't try to be their counselor or friend
- Advisor vs. Advocate



**GENERALLY NOT SPEAK ON
BEHALF OF PARTY...
EXCEPT AT HEARING FOR CROSS-
EXAMINATION/QUESTIONING**

This may be challenging. Make sure to understand whether you are permitted to ask questions during meetings, via email, or via phone or if you are only permitted to be present.

Once You Are Notified...



- Make sure all documents are signed to allow you to view documents, evidence and information (institution specific requirements on how this is done)
- Meet with the party
- Review the information
- Regulations require that you are copied on review of evidence and report (unless party expressly requests that you are not)

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Pre-Meetings and Interviews

- Meet with party to discuss the purpose of the meeting (if cannot meet in person use phone call or virtual meeting)
- Discuss your role, what the party should expect, and ask whether they would like for you to take notes or help in any other way
- Review information/evidence



MEETINGS/ INTERVIEWS

- Be on time
- Listen
- Take notes if you have agreed to for the party
- Ask for breaks if necessary
- Make sure that the process is explained and that the party understands what to expect regarding next steps



Post-Meetings and Interviews

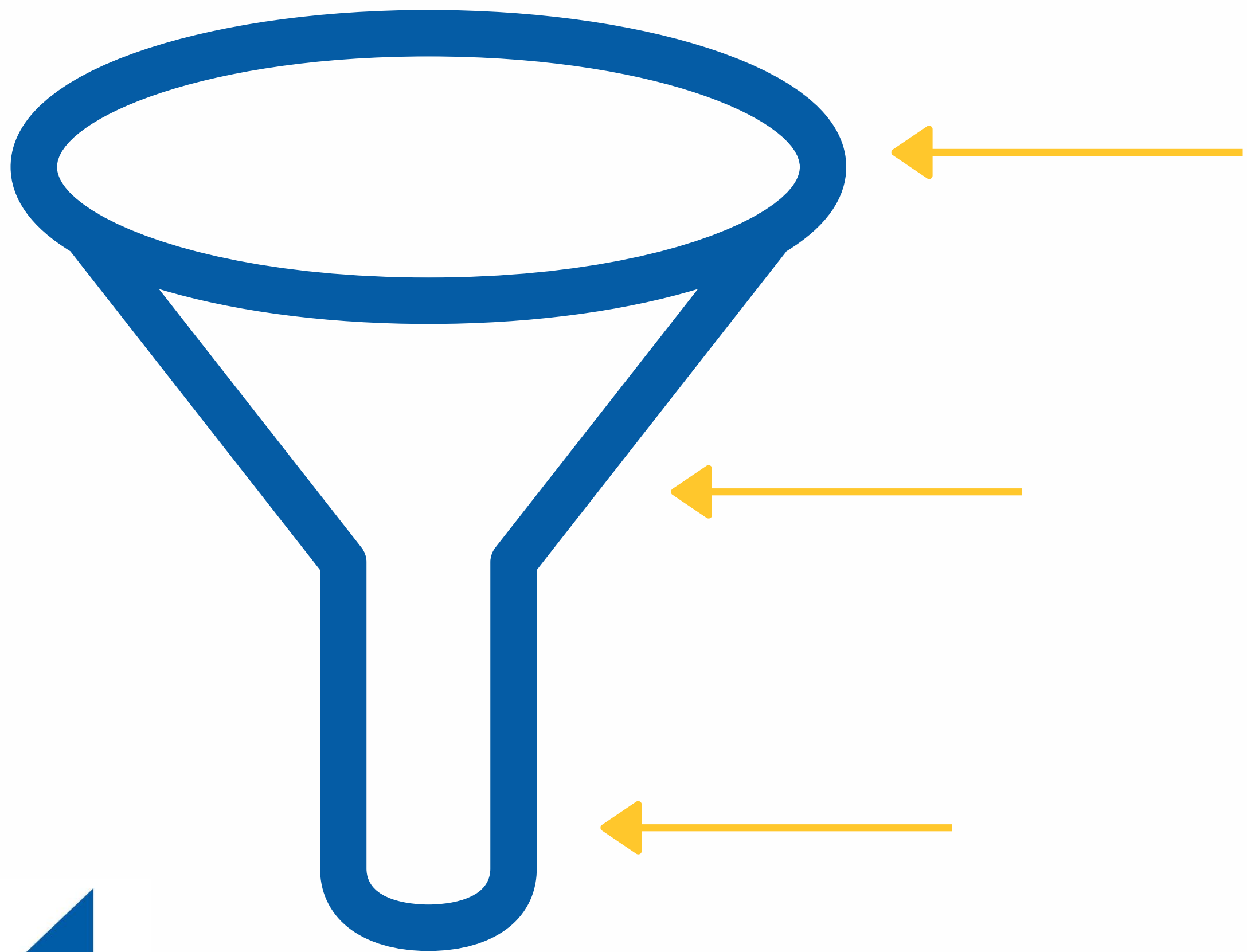
- Check in on the party
- Connect with Title IX Coordinator if necessary
- Provide the party with your notes
- Provide an email/communication with next steps



AFTER INVESTIGATION

- Review and written response of evidence "directly related to the allegation(s)" - 10 day period for review and response (Advisors provided simultaneously with the parties)
- Investigation report that "fairly summarizes relevant evidence" - 10 day period for review and response (Advisors provided simultaneously with the parties)
 - May or may not have finding/determination
- Notice of Live Hearing





**All
Evidence**

**Directly
Related to
Allegation(s)**

**Relevant
Evidence**



PRE-HEARING CONFERENCE / MEETING

- Some institutions may require a pre hearing conference/meeting with the parties and advisors
- Used to prepare parties, discuss structure of hearing and provide questions to decision-maker
- Even if questions are provided to the decision-maker at the pre-hearing, they need to be asked directly, orally and live during the hearing by advisors
- Decision-maker may discuss relevancy
- May discuss witnesses and order of the hearing
- Rules of Decorum and expectations for hearing

THE HEARING

- May be a panel (with a chairperson) or an individual decision-maker
- May include rules of decorum
- Opening statements by parties (not required in regulations)
- Questioning of parties and witnesses
 - Most likely will start with questions from the decision-maker
 - Questions from the advisors
 - After each question is asked, and before it is answered, the decision-maker (or chair) will make a ruling about relevancy
 - If deemed not relevant, decision-maker will provide reasoning
 - It is up to institution whether there can be additional discussion and/or objection on the ruling of the decision maker
- Closing statements (not required in regulations)
- Written determination provided to the parties and advisors



In the Hearing...

- Follow the Rules of Decorum!
- Know the facts/be prepared
- Help your party remain calm
- Be kind
- Ask appropriate questions
- Use an appropriate tone
- Ask follow up questions as necessary

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AFTER THE HEARING

- Check on the party
- Review notice of determination
- Discuss options with the party
- Review an appeal if one is filed
- Review response by party if there is an appeal





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Questions?
