

K-12 VIRTUAL CERTIFIED TITLE IX DECISION-MAKER TRAINING

Level 1
Session 1



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at Your
fingertips!”*

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ICS TEAM



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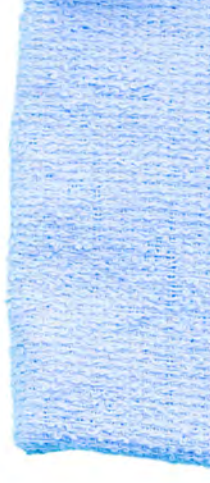
Michaela Bland
Title IX & Equity Specialist/Attorney



Brittany Gates
Title IX & Equity Specialist

Housekeeping

- Chat Bar
- Breaks
- Understanding
- Attendance participation / Certification requirement



PURPOSE OF ICS TRAINING



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!

This is new and complex. Ask questions!



PRACTICAL INFORMATION

Assist your district with the day-to-day implementation of Title IX

Agenda

Session 1

Title IX Process
Under New
Regulations

Session 3

The Resolution
Process

Session 4

Q & A and Wrap Up

Session 2

Legal Requirements of Resolution;
Roles and Responsibilities of a
Decision-Maker in the Title IX Process

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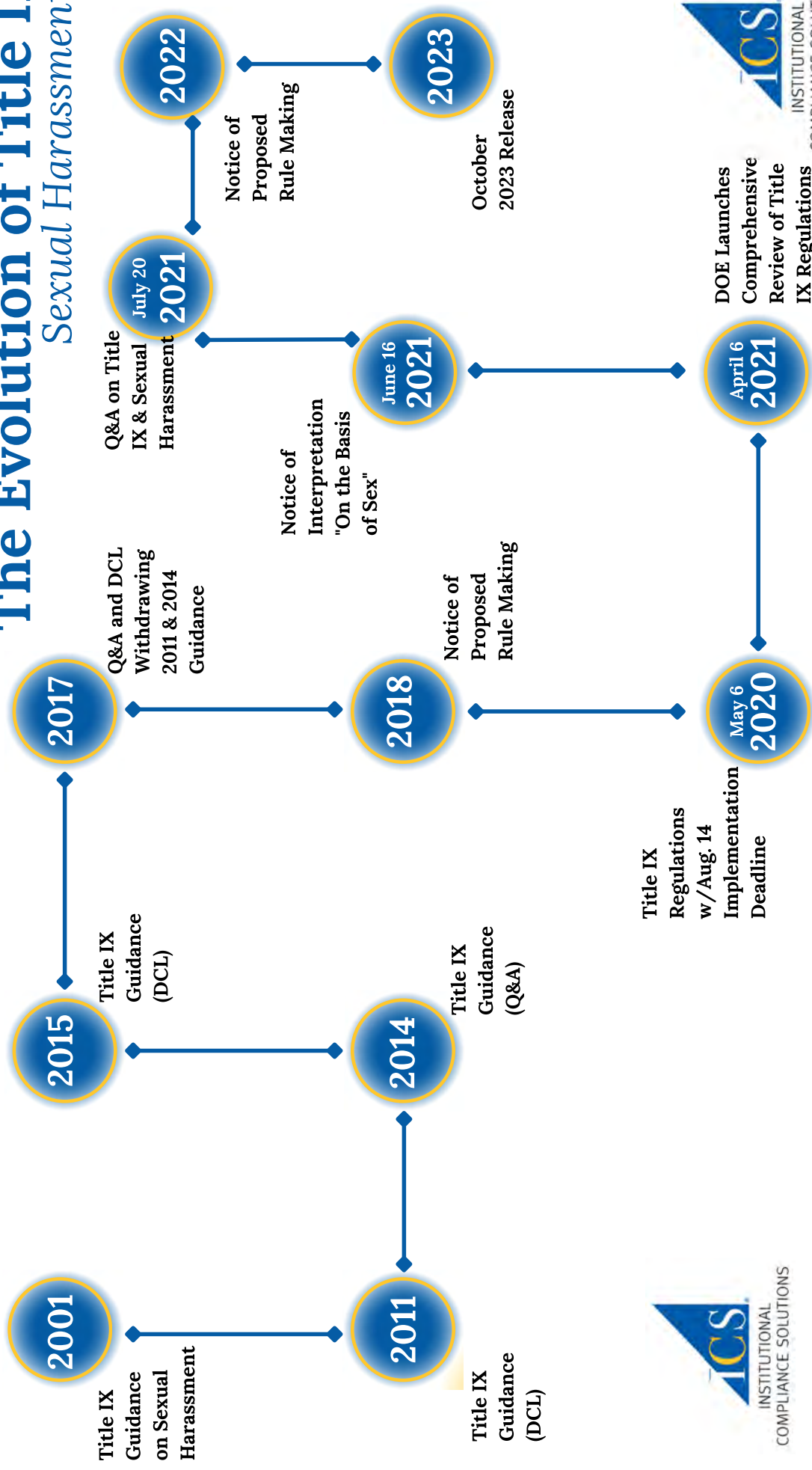


What is Title IX?

“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.”



The Evolution of Title IX Sexual Harassment



So What Now?



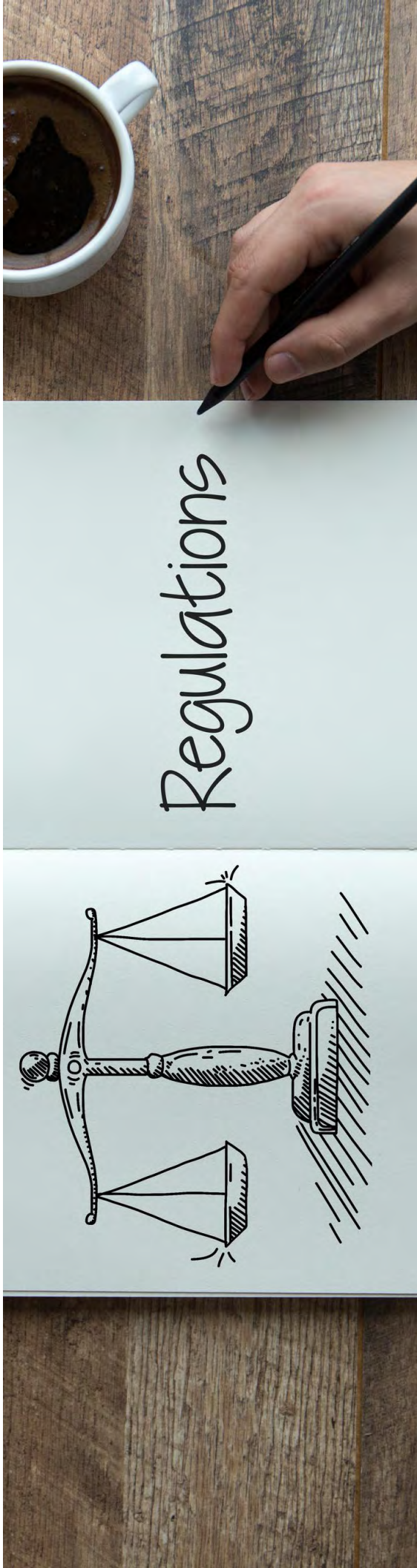
2020 Regulations
Remain in Effect

- Continue the Course
- Follow the Law



Comprehensive Review
of Title IX Regulations

- Comment
- Notice of proposed rulemaking



TITLE IX PROCESS UNDER NEW REGULATIONS

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Title IX Applies To:

- Student on Student
- Employee on Employee
- Student on Employee
- Employee on Student

TITLE IX TEAM

Title IX
Coordinator



Responsible
Employees/
Officials
w/Authority

Advisors Investigator(s)

Decision-
Maker(s)

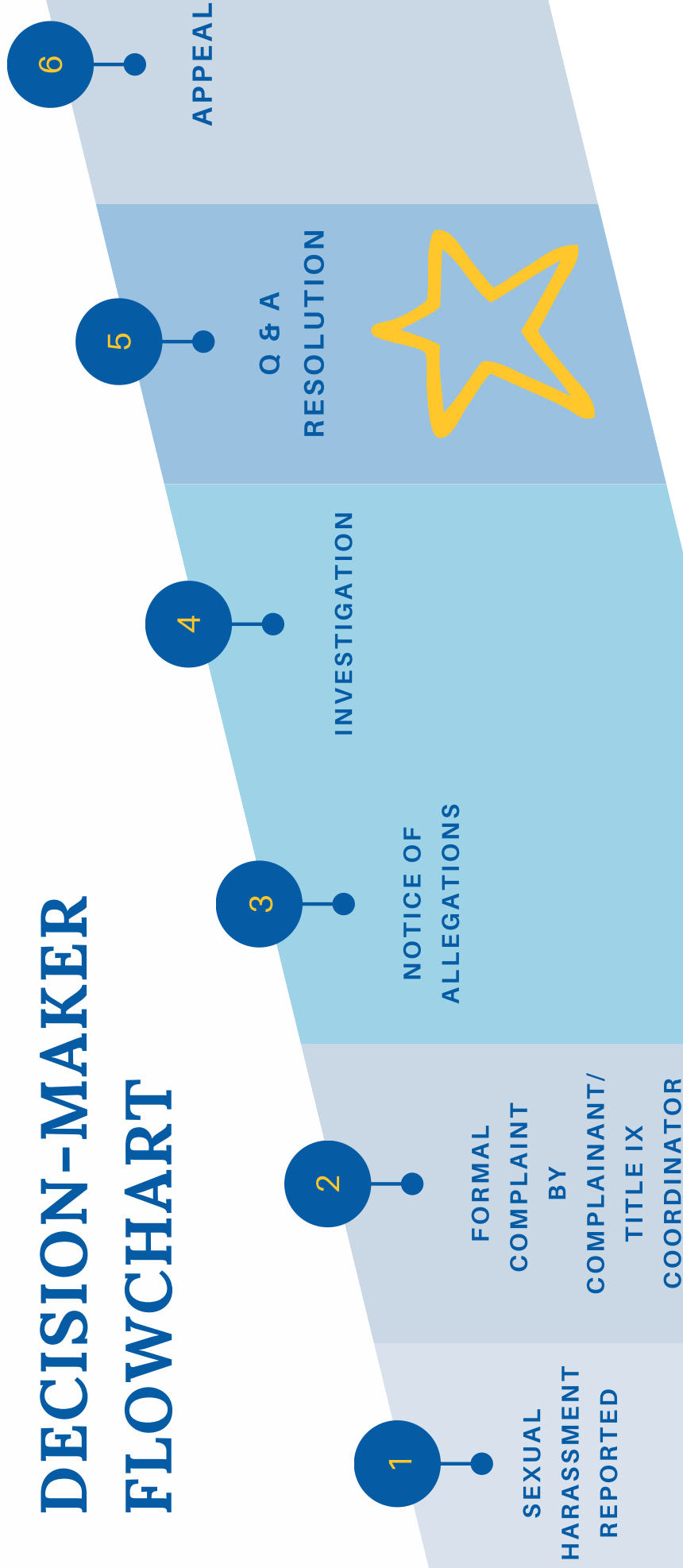
Appellate
Decision-
Maker(s)

Informal
Resolution
Facilitator(s)



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DECISION-MAKER FLOWCHART



Parties in an Investigation



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Reminder - "Parties"



Complainant



Advisors



Respondent



Title IX
Coordinator

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

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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. ”

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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

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LANGUAGE

Guilty

Responsible

Trial

Resolution

Crime

Violation







PROHIBITED CONDUCT

- Conduct reviewed under Title IX under the new regulations
- Refer to your policy
- Look at EACH element

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 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.

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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.



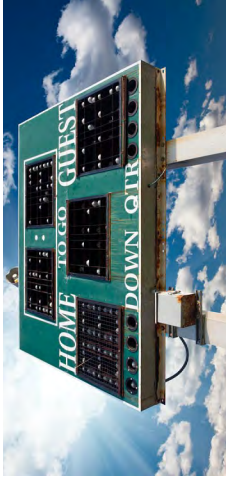
Conduct + Education Program or Activity

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) over which the district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

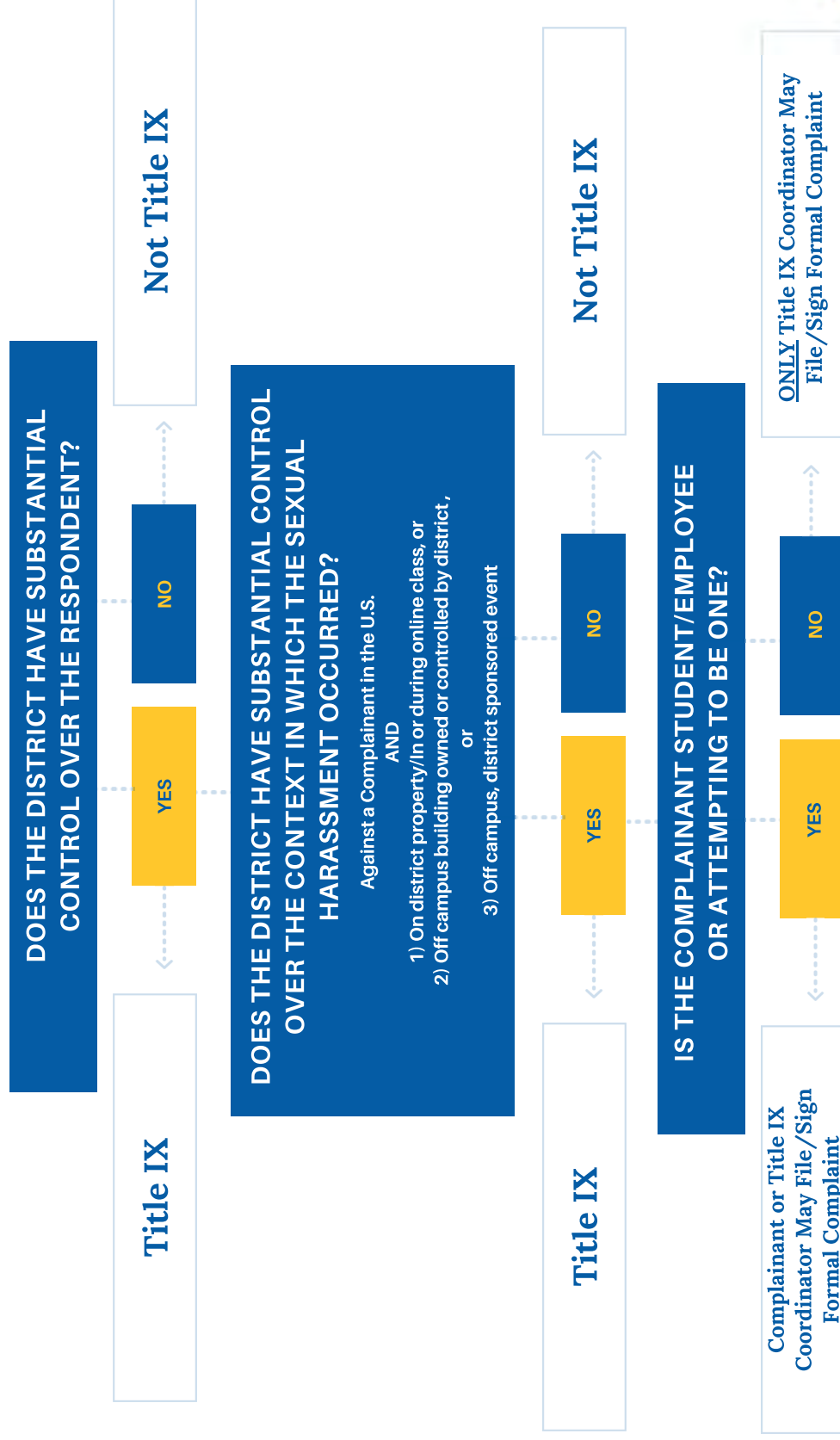


Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

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



Overview of Title IX Requirements

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Formal Complaint

✓ In Writing

- Hard copy
- Electronic
- Online submission

✓ Signed by:

- Complainant or Parent/Guardian
- Title IX Coordinator

✓ Alleging Sexual Harassment

✓ Requesting an Investigation



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 Mandatory Dismissal:

- 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

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)**

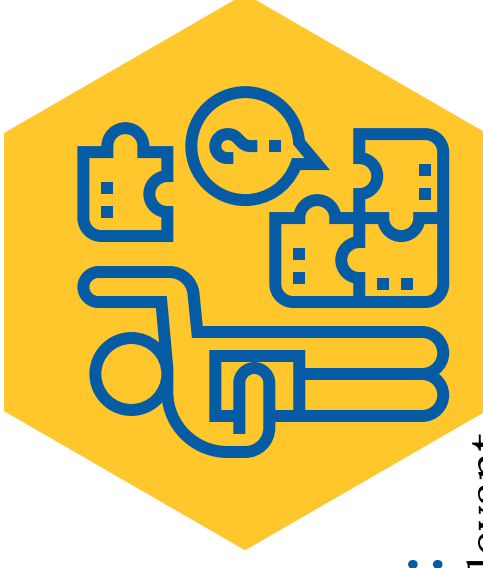
Resolution

✓ Hearing Optional

✓ Q & A regardless of whether offering hearing:

- Afford each party the opportunity to submit written, relevant questions that a party wants to ask of any party or witness
- Provide each party with the answers
- Allow for additional, limited follow-up questions from each party

✓ Decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant



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



Formal Resolution but..

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10. 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
- Provides consequences resulting from informal resolution process including records maintained or shared
- Obtain both parties voluntary, written consent to the informal resolution process

INFORMAL RESOLUTIONS CONTINUED

Facilitators

- MUST be trained and free from conflicts of interest/bias
- MAY be Title IX Coordinator

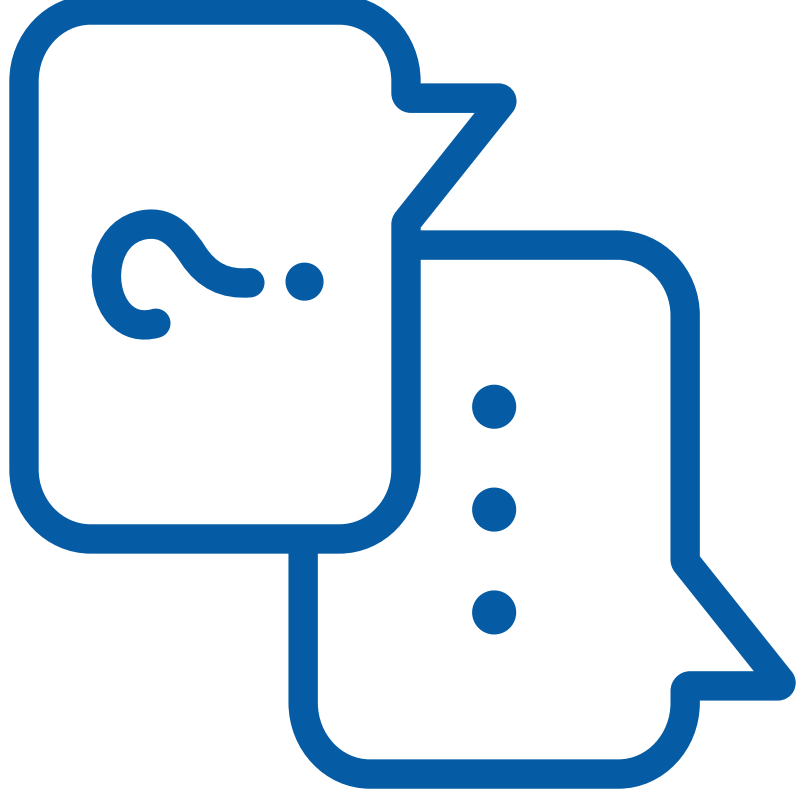
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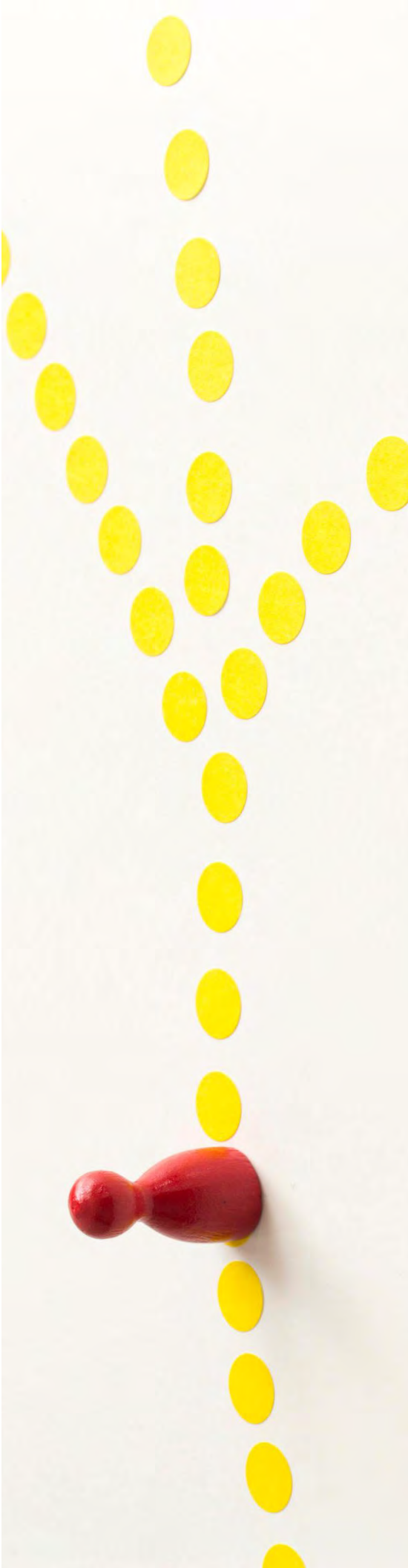
- Agreement on outcome (responsibility and sanctions)
- Arbitration
- Mediation
- Restorative justice
- Other?

Defining this concept may have the unintended effect of limiting parties' freedom to choose the resolution option that is best for them, and [district] flexibility to craft resolution processes that serve the unique educational needs of their communities. p. 1370 of 2033.



QUESTIONS?





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LEGAL REQUIREMENTS OF TITLE IX RESOLUTION; ROLES AND RESPONSIBILITIES OF A DECISION-MAKER IN THE TITLE IX PROCESS



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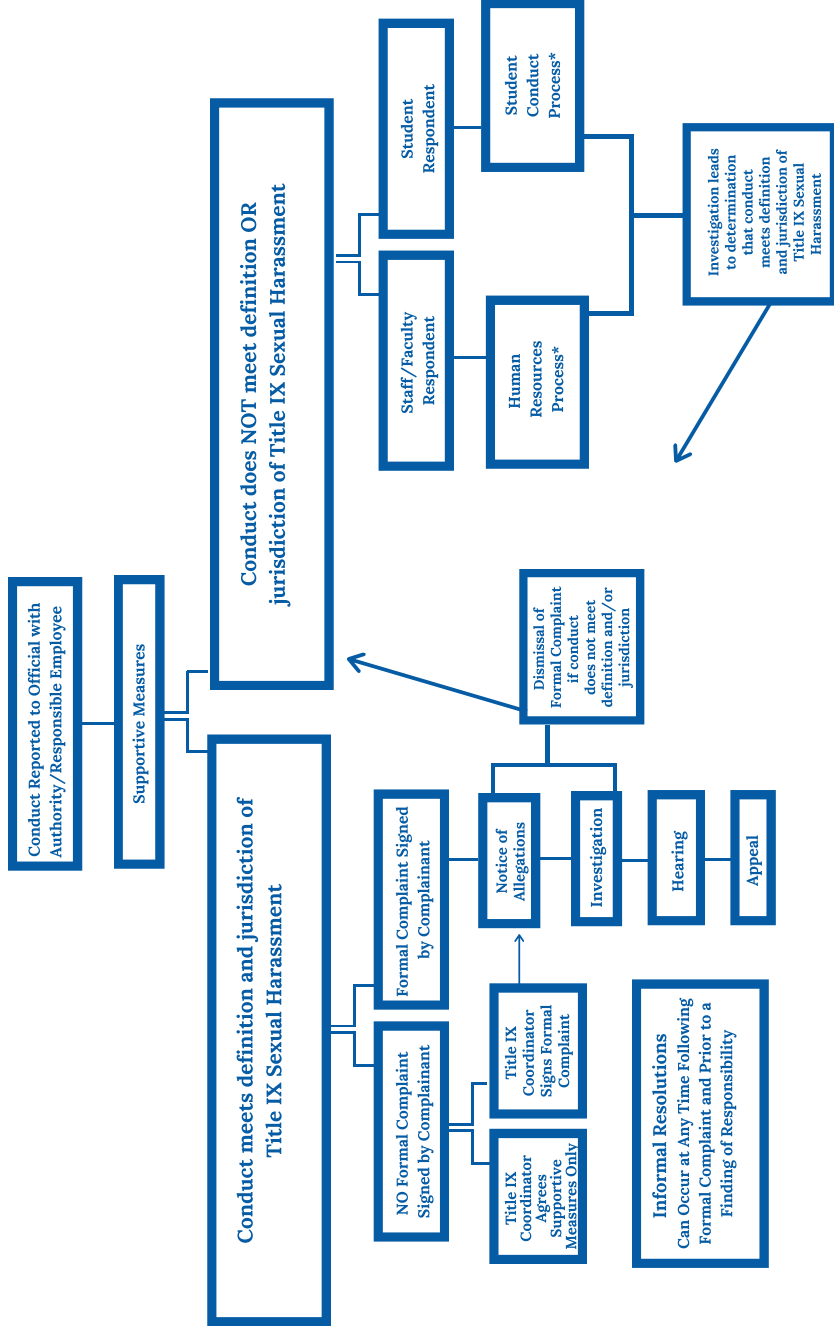
Reasonably Prompt and Equitable

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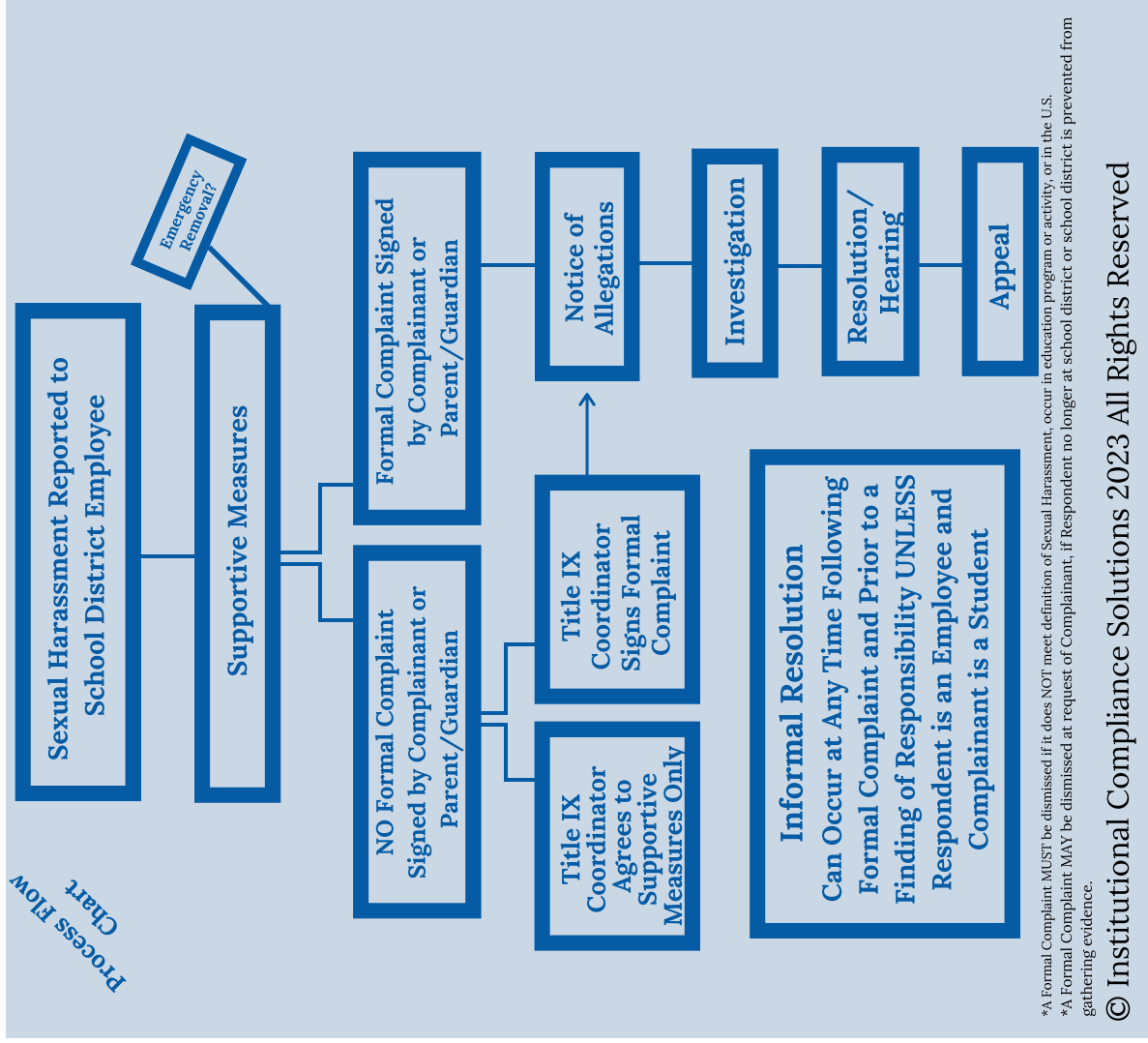


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Title IX Process Flow Chart



General K-12 Process Flow Chart



*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.
 *A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at school district or school district is prevented from gathering evidence.

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INVESTIGATIVE TIMELINE

1

INVESTIGATE

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

2

INVESTIGATIVE
REPORT

3

OPPORTUNITY
TO REVIEW
FINAL REPORT
AND PROVIDE
WRITTEN
RESPONSE
10 days

4

Q & A
RESOLUTION
/ HEARING

5

APPEAL

6



Types of Resolution

- No Hearing (Only Q & A)
- Live Hearing (+ Q & A)
- Live Hearing under Regulations (+ Q &A)





District Process vs. Law Enforcement

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Decision-Maker Responsibilities

- Neutrality
- Review Information
- Q & A
- Evaluate evidence
- Determine if Responsible
- Determine Sanction (if responsible)



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Avoid Conflict of Interest/Bias

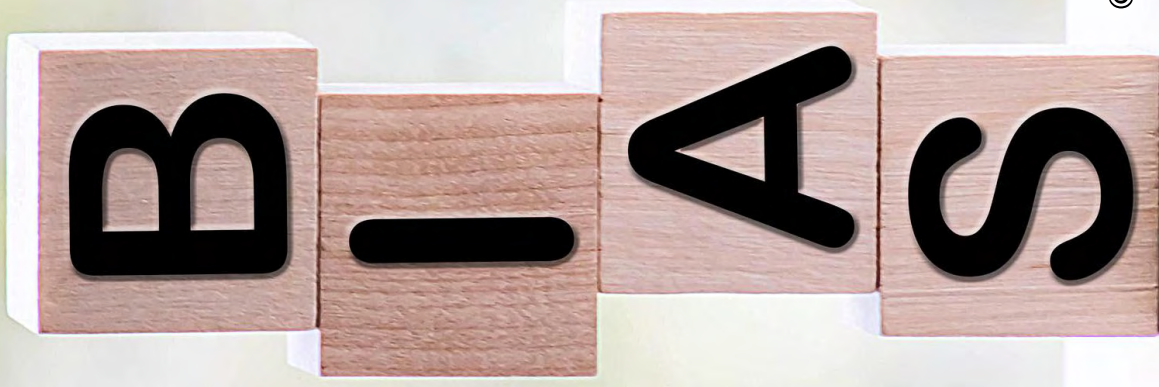
Generally toward Complainants/Respondents

In a specific case

Legal Definition of Conflict of Interest:

- a conflict between the private interest and the official or professional responsibilities of a person in a position of trust
- a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

Explicit Bias



“Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.

- Expressed directly
- Aware of bias
- Operates consciously



Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."

Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
 - Expressed indirectly
 - Unaware of bias
 - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.





BIAS AND/OR CONFLICT OF INTEREST = BASIS FOR APPEAL!

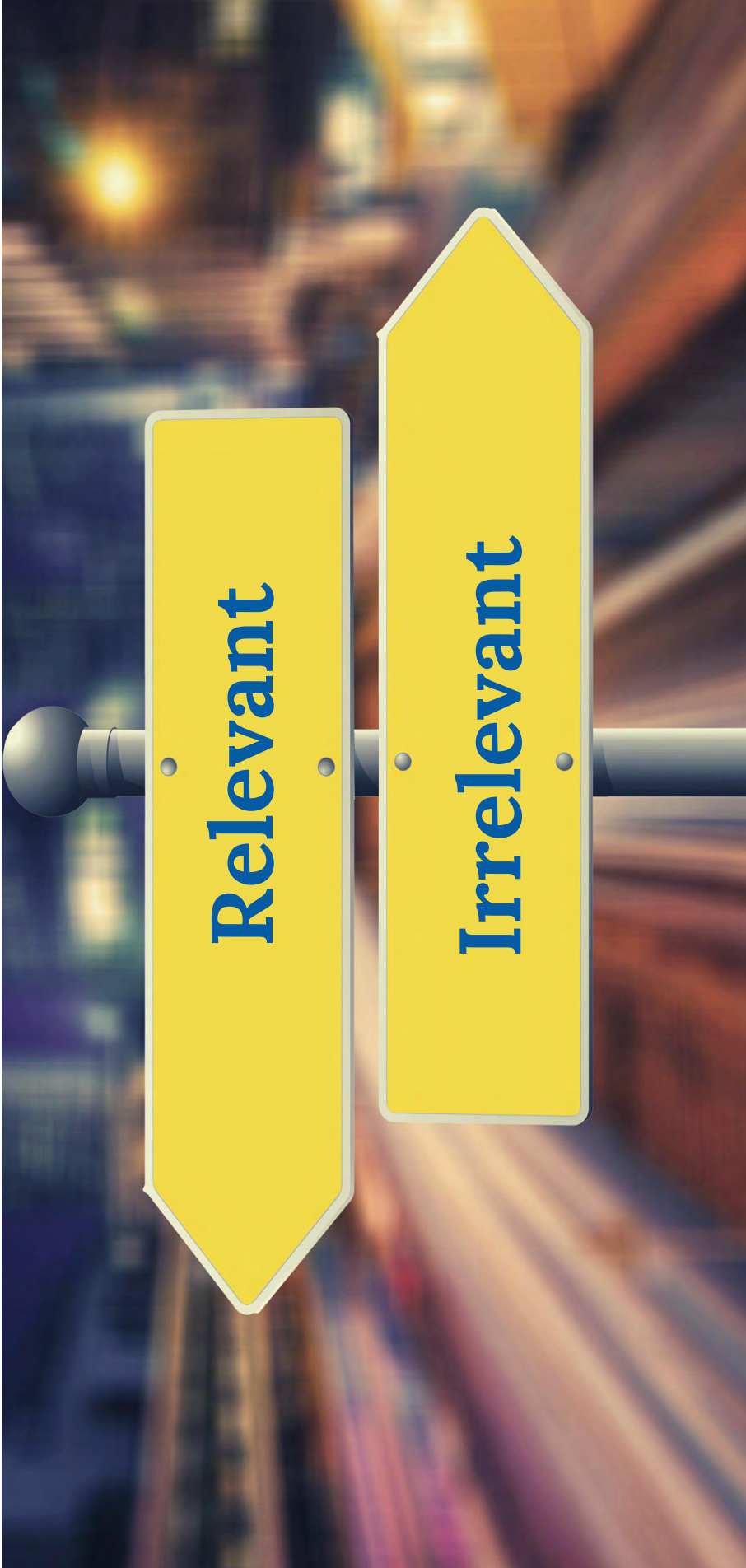




AVOID PRE-JUDGMENT OF THE FACTS AT ISSUE

- Suspend your judgment
- Listen/Review ALL information before making a decision
- More difficult than it sounds





Relevant

Irrelevant

Relevance and Your Role

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If

relevant

Relevancy

- Regulations do not define relevancy
- Regulations define some things that are not relevant:
 - Treatment records unless both 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



EXAMPLES OF RELEVANCE

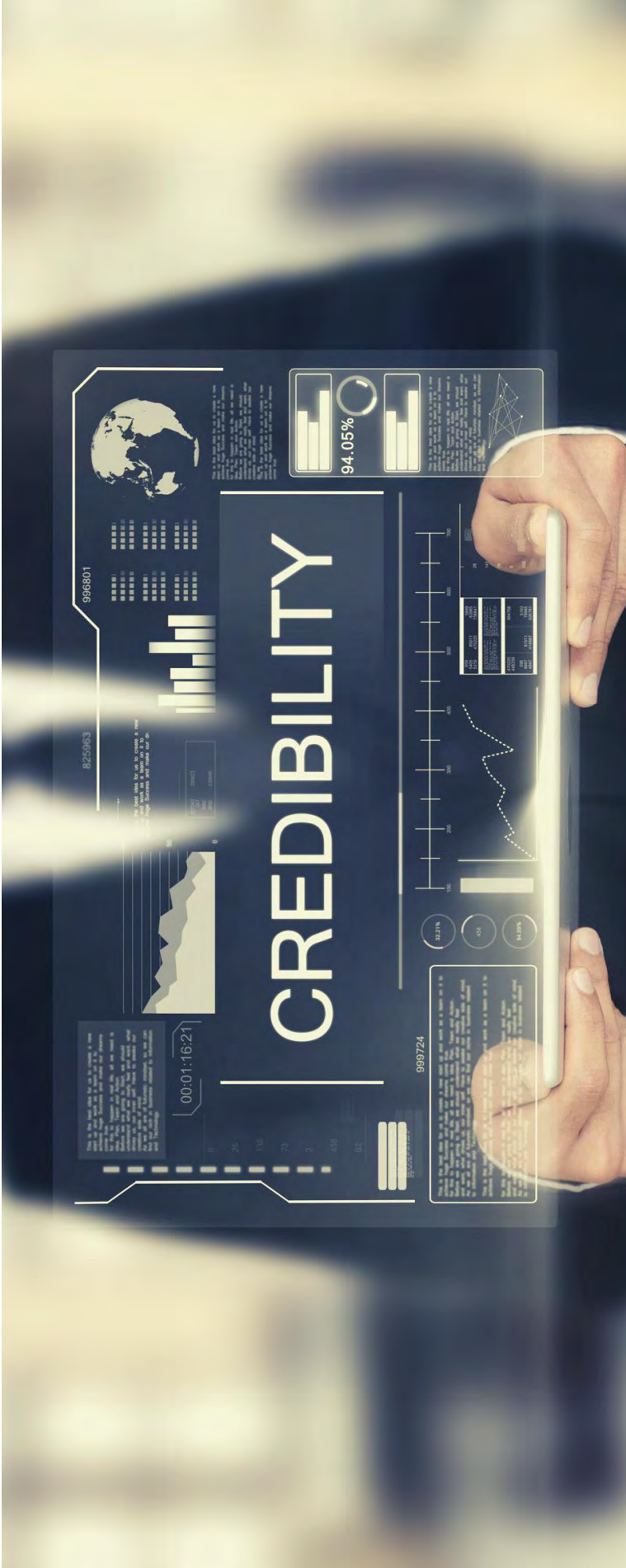
- Relevance related to questions
- Relevance related to evidence





OBJECTIVE EVALUATION OF RELEVANT EVIDENCE

Inculpatory- shows or tends to show a Respondent's involvement in an act, or evidence that can establish respondee responsibility.
Exculpatory- tends to exonerate Respondent of responsibility, favorable to a Respondent



Credibility determinations cannot be based on a party's role as a Complainant or Respondent



RESPONSIBILITY

Presumption of NOT RESPONSIBLE

Until a determination is made regarding responsibility at the end of the grievance procedures

Burden of Proof

- Discretion of District
- Must be Consistent Throughout ALL Processes ie. Faculty, Staff and Students
- Clear and Convincing vs. Preponderance of the Evidence



REMEDY REQUIREMENTS

No disciplinary sanctions prior to grievance process

Does not include supportive measures

Remedies designed to restore or preserve equal access to education program or activity

May include supportive measures

Remedies need not avoid burdening Respondent

Need not be non-disciplinary or non-punitive

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UNDERSTAND RANGE OF SANCTIONS

Examples:

Developmental/Educational

Probation

Expulsion

Termination



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OTHER PROCESSES TO CONSIDER

- ADA
- IDEA
- 504



UNDERSTAND TECH USED IN LIVE HEARINGS (IF YOU HAVE ONE) & FOR Q & A

- When parties are in the same room?
- When parties are participating virtually
- Recording
 - Audio only?
 - Video and Audio?
 - Transcription?
- Access to documents
- Protection of documents

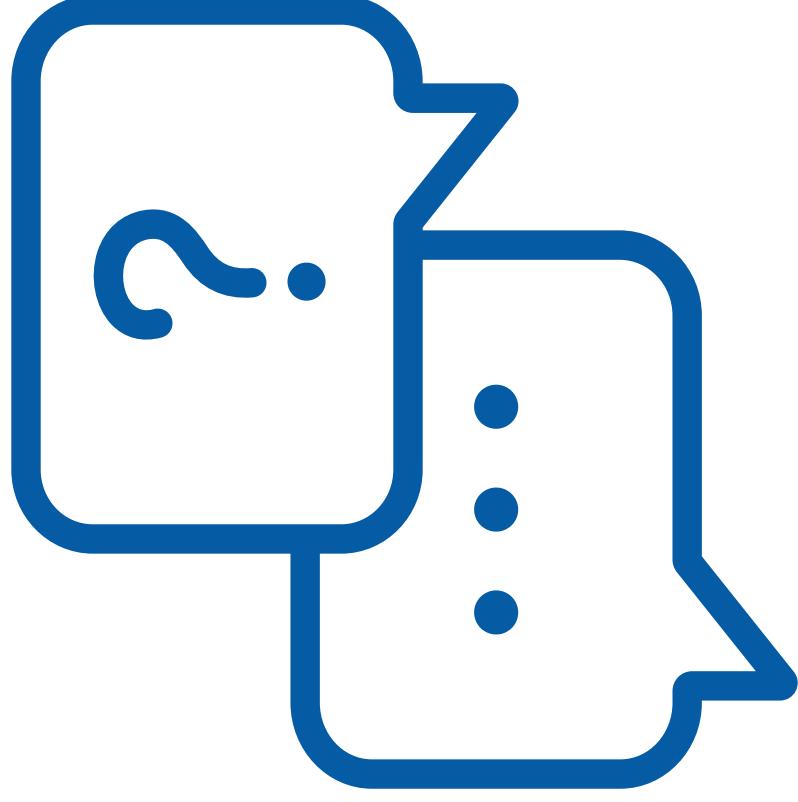


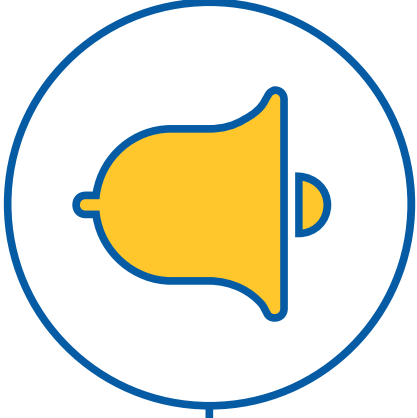
KNOW YOUR POLICIES AND PROCEDURES

- Working knowledge of your policies
- Structure of the resolution process
- Use policy consistent language
- What are the elements of the alleged violation?
- What are your findings?
- What is your rationale?
- What happens after resolution?



QUESTIONS?



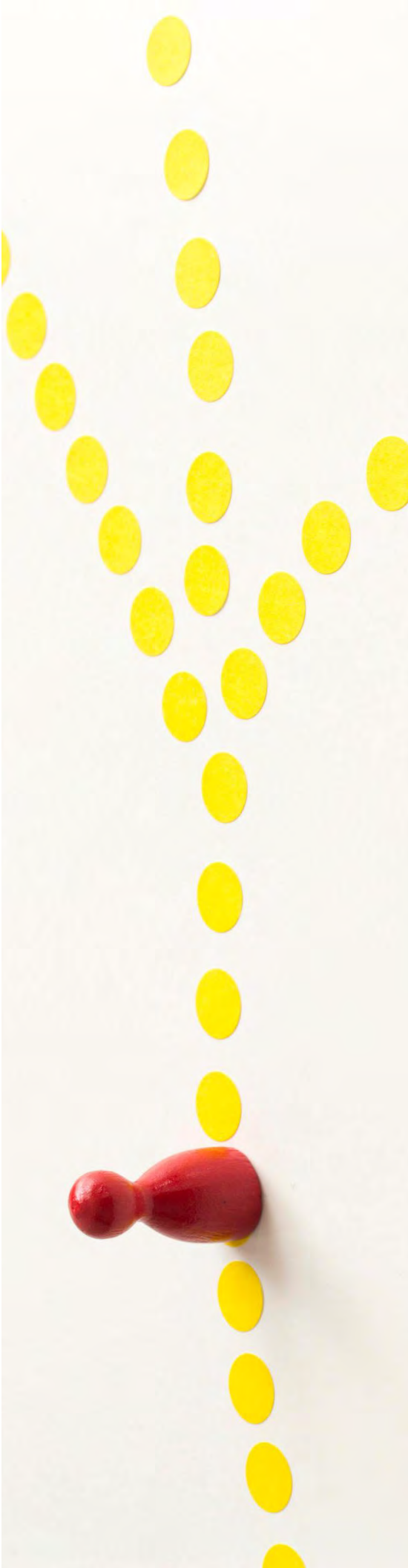


ATTENDANCE LINK REMINDER!



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PRE-RESOLUTION PREPARATION

- Review all documents, evidence, statements, information provided to you, as the decision-maker prior to the Q &A.
- Do not pre-judge, keep an open mind.
- Review resolution/hearing process, rules of decorum (if hearing), role of advisor, prior to the Q & A and hearing (if one occurs).
- Test technology prior to the hearing or resolution (if emailing, triple check email addresses).
- Do not discuss the case.
- Give the process your full, undivided attention.
- Use a script if conducting a hearing.



CONSOLIDATION OF COMPLAINTS

- Multiple Complainants
- Multiple Respondents
- Multiple Violations
- Violations of Code of Conduct plus Title IX

BE PREPARED FOR DELAYS

- Party doesn't appear / participate
- Advisor doesn't appear / dismissed
- Parties move to informal resolution
- Witness doesn't appear / participate
- Technology issues
- Illness
- Emergency
- Other



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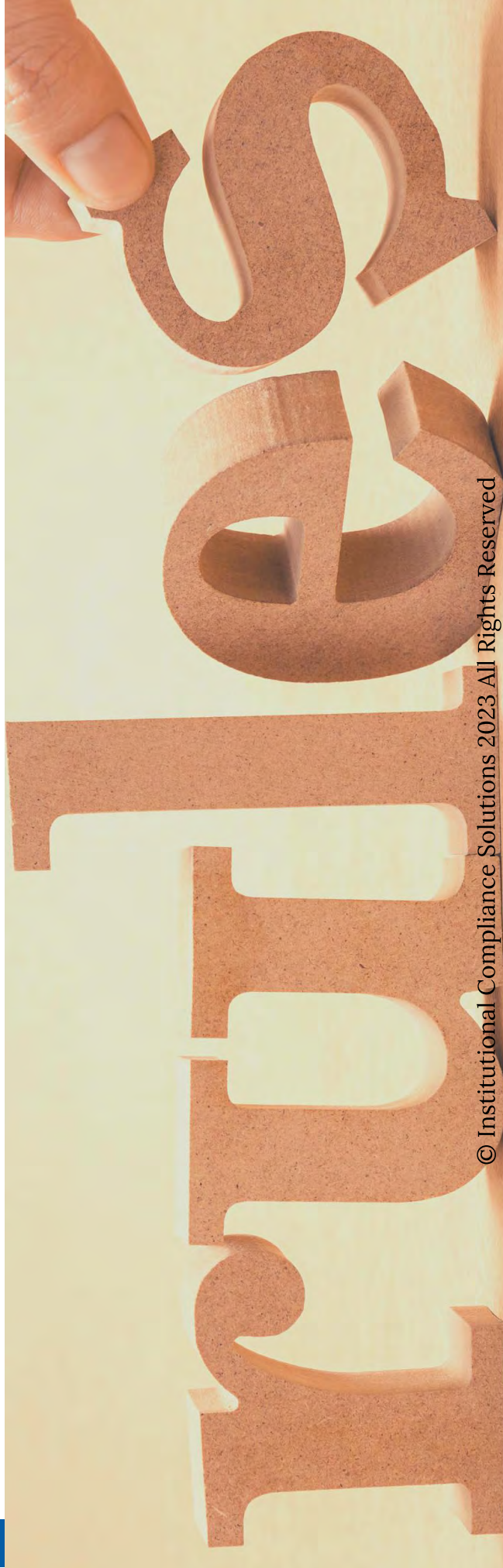
Create a Comfortable Space



- Private space
- Comfortable
- Quiet
- Convenient
- Access to technology (internet connection)
- Desk/table space
- Sufficient space between parties (if hearing)
- Private room for breaks/discussion with advisor (if hearing)
- Waiting room for witnesses if hearing (and virtual waiting rooms if appearing virtually)

Set the Tone, Enforce the Rules

- The parties and advisors must abide by the rules of decorum set by the district
 - Provide the rules to the parties prior to the hearing/resolution process
- The decision maker must-
 - set the tone for the process
 - ensure that the rules are clearly outlined
 - ensure that the rules are explicitly followed
 - have the ability to take breaks as necessary (if hearing)



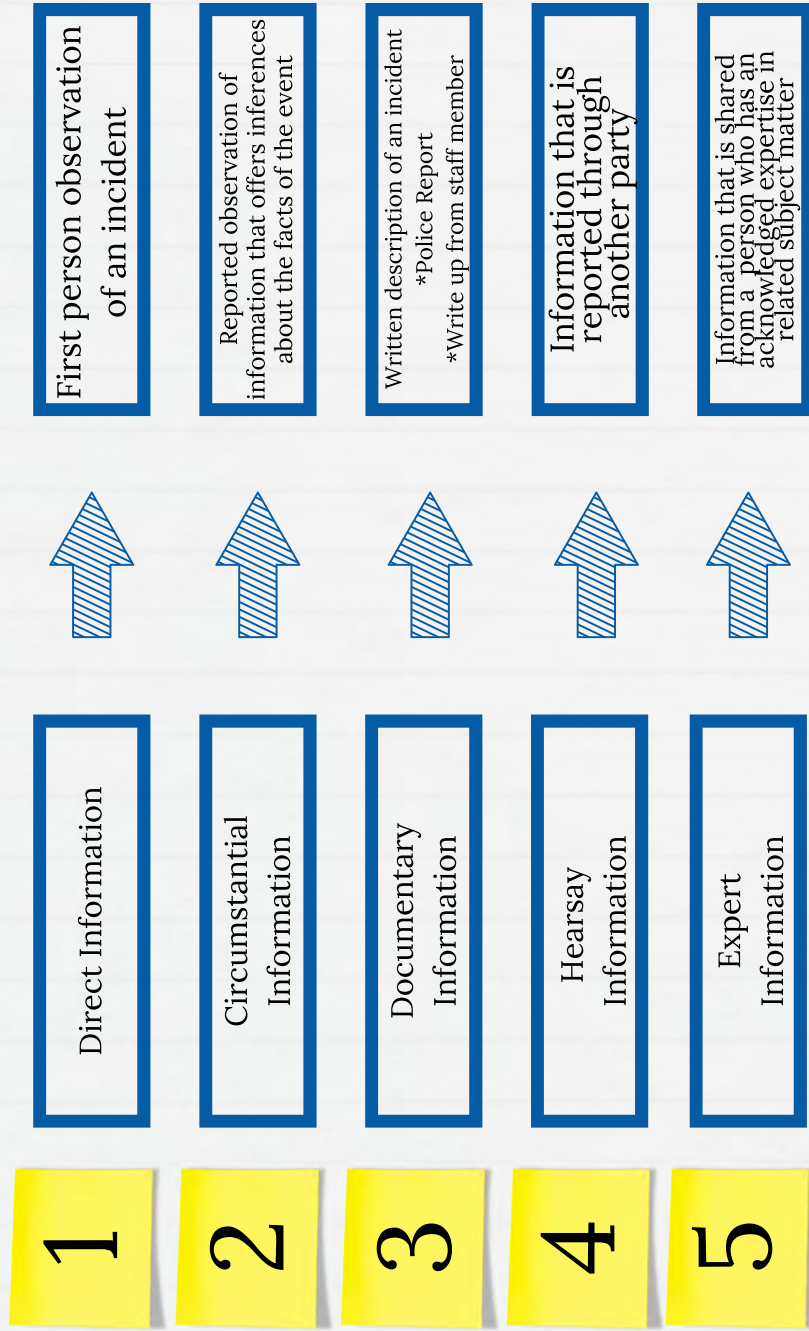
ADVISORS



- 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

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TYPES OF EVIDENCE





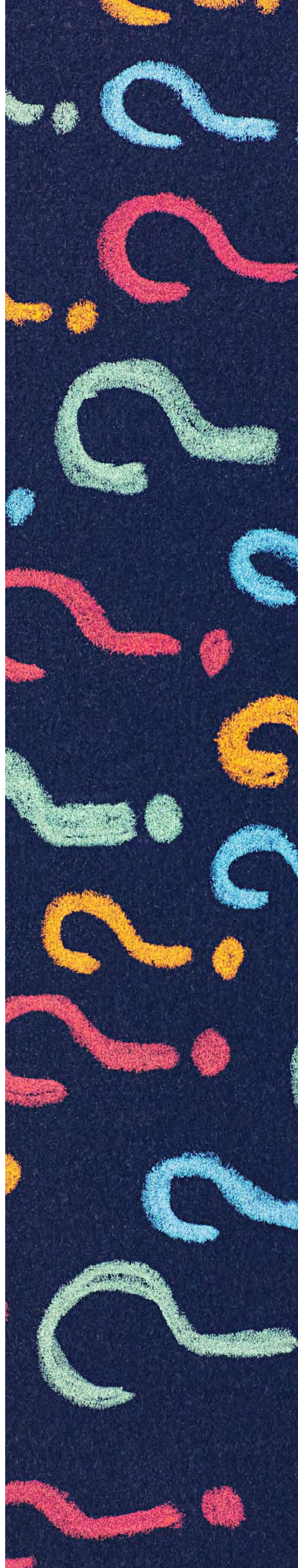
FACT FINDING

- Is the information a FACT?
- Is the information disputed?
 - If no-this information can be considered a "fact"
- Does the other evidence corroborate the information?
 - Consistencies
 - Inconsistencies



Evaluating Witnesses / Reviewing Evidence

- Focus on behavior, not character.
- What information is known?
- What information is unknown?
- What questions could clarify your unknowns?



Additional Q&A Information

- Decision-maker asking questions?
- What if a party refuses to answer the questions?

RESPONSIBILITY

Decision-maker must issue a WRITTEN DETERMINATION regarding responsibility- using standard of evidence established by the district.

STANDARD OF PROOF

1

All standards related to sexual harassment must be the same

2

Preponderance of the Evidence - 50% plus a feather - more likely than not

3

Clear and Convincing- the evidence is highly and substantially more likely to be true than untrue.

4

School investigation vs. Criminal investigation

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! Identification of ALL allegations potentially constituting sexual harassment

! Description of the procedural steps taken from the receipt of formal complaint through the determination including:

- o notice to parties
- o interviews with parties and witnesses
- o site visits
- o methods used to gather evidence
- o hearings held (if any)

! Findings of fact supporting the determination

! Statement of, and rationale for the result as to each allegation including:

- o determination regarding responsibility
- o any disciplinary sanction
- o whether remedies designed to restore or preserve equal access to the district's education program or activity will be provided by the district to the Complainant.

! District's procedures and permissible bases for the Complainant and Respondent to appeal

K-12 INVESTIGATION FLOWCHART



ARTICULATING DECISION/ RATIONALE

- Articulate what you believe happened based on:
 - Standard of evidence
 - Elements of alleged violation
 - Connect rationale to each element
 - Identify facts supporting each element(s)
 - Identify facts that do not support the element(s)
 - Include any admissions that occur during the hearing/resolution process
 - If using a formula to weigh evidence/information, make sure to follow explicitly





EXAMPLE: SEXUAL ASSAULT / FONDLING

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.

1. Touching
2. Private body parts
3. Of another person
4. For the purpose of sexual gratification
5. Without Consent (insert definition of consent) of the victim

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Appeals



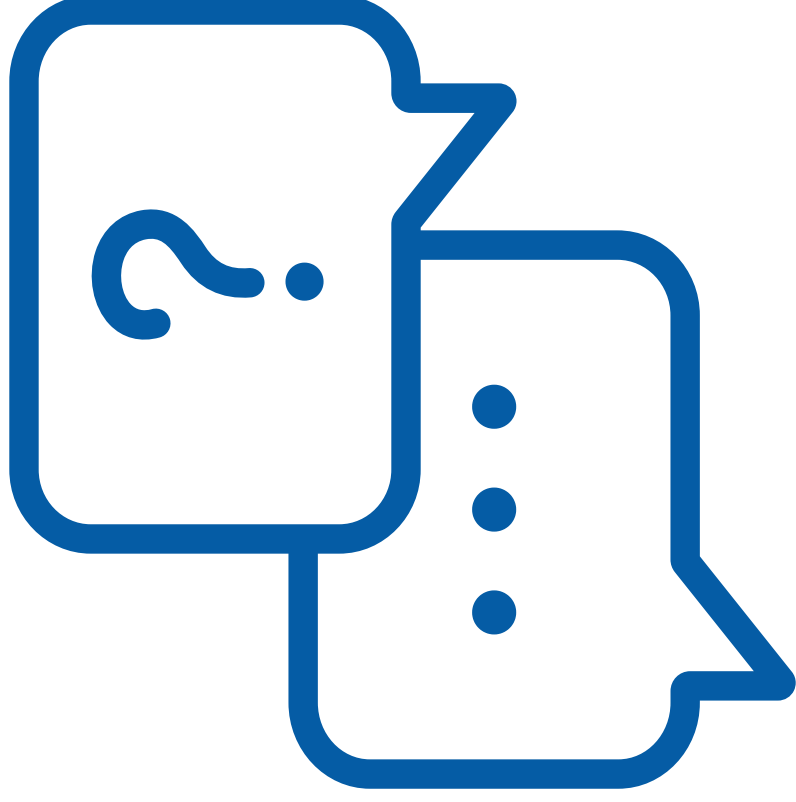
- ✓ Offered to both parties
- ✓ Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility
- ✓ On the Following Basis:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence that was not reasonably available at the time the 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



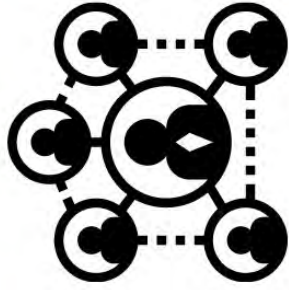
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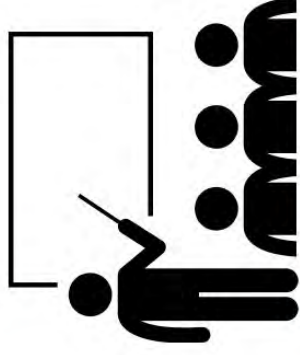
QUESTIONS?



How Can We Help?



**Community
Access**



**Tailored
Training**



**Ongoing
Support**