

HIGHER EDUCATION: CERTIFIED TITLE IX REGULATIONS BOOTCAMP

May 15, 2024

Let the Journey Begin



WELCOME



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 TEAM



Betsy Smith
Director of Title IX Services



Courtney Bullard
CEO



Celeste Bradley
Director of EEO Services



Amy Buck
Title IX & Equity Specialist/Attorney



Michaela Bland
Title IX & Equity Specialist/Attorney



Lindsay Hatzis
Title IX & Equity Specialist/Attorney



Erica D'Agostino
Title IX & Equity Specialist



Brittany Gates
Title IX & Equity Specialist

TRAINING APPROPRIATE FOR:



Title IX Coordinators

Deputies/Designees

Decisionmakers

Investigators

SMRA

Appellate Decisionmakers

Others involved with Title IX

AGENDA



01 Welcome

02 Background and Overview

03 Let the Journey Begin- the 2024 Title IX Regs

04 Pregnancy Obligations

05 Q&A

BEFORE WE GET STARTED...

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



BACKGROUND & OVERVIEW



WHAT THIS TRAINING DOES AND DOES NOT COVER:

- ✓ Training for your Title IX Team under the 2024 Regulations
- ✓ Includes Coordinators, Designees, Investigators, etc.
- ✗ Specific training required under the regulations for your team members
- ✗ Employee training requirements



REMEMBER YOUR WHY...



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.”



REMINDER:



- Athletics NPRM has been tabled
- 2020 Regulations on Sexual Harassment have been amended and are the focus for today

“The U.S. Department of Education (Department) amends the regulations implementing Title IX of the Education Amendments of 1972 (Title IX). **The purpose of these amendments is to better align the Title IX regulatory requirements with Title IX’s nondiscrimination mandate.** These amendments clarify the scope and application of Title IX and the obligations of recipients of Federal financial assistance from the Department, including elementary schools, secondary schools, postsecondary institutions, and other recipients (referred to below as “recipients” or “schools”) to provide an educational environment free from discrimination on the basis of sex, including through responding to incidents of sex discrimination. These final regulations will enable all recipients to meet their obligations to comply with Title IX while providing them with appropriate discretion and flexibility to account for variations in school size, student populations, and administrative structures.”

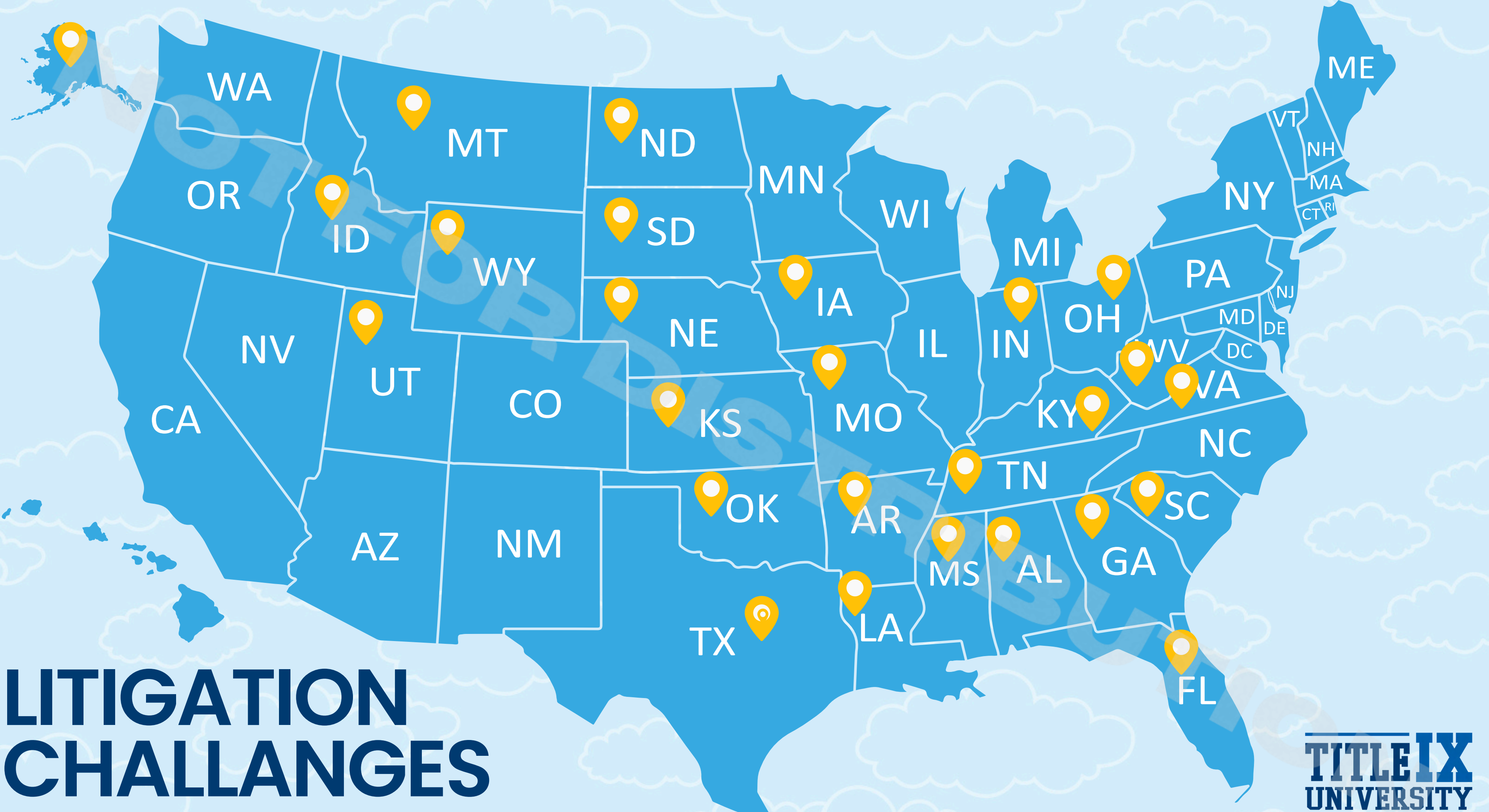


THE LEGALESE OF IT ALL...



- Unofficial and published versions of the regulations
- Unofficial is 1561 pages and the regulations begin on p. 1505
- Preamble - what is it?





LITIGATION CHALLENGES

Caution



The placement of commas, colons, semi-colons, and the use of AND/OR is CRITICAL.

Pause when reading and attempting to understand. The ENTIRE intent of a section can be changed with the misplacement/misunderstanding of punctuation or grammar. Ex: the words “and/or” after the final semicolon in section.

WHAT NEEDS TO HAPPEN BY THE IMPLEMENTATION DEADLINE?

01 Update policies and procedures

02 Disseminate policies and procedures to your community

03 Title IX team reevaluated/identified

04 Title IX team trained BEFORE they do the work

05 Communication with your school community

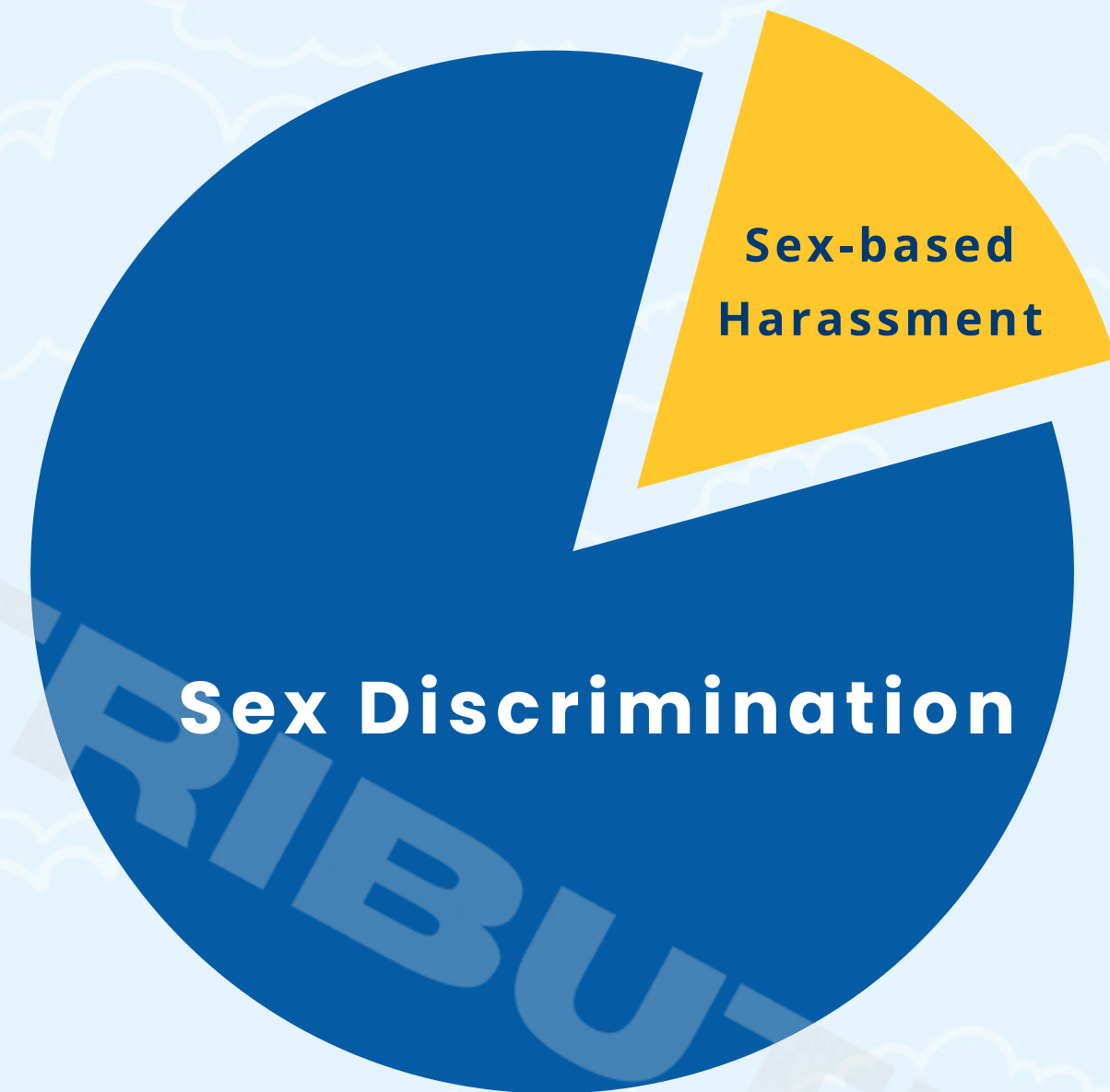
BIG PICTURE

2020 Regulations v. 2024 Regulations



Sex Discrimination

- 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, SOGI, etc.
- Mandatory reporting requirements apply to ALL sex discrimination.



SOME CHANGES TO NOTE

10 day review periods-
Now, no required time period for review

Separate investigator/decisionmaker
NOT required

Posting links - still must provide training
materials if asked



On the Basis of Sex



Scope: (EXPANDED)

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

- 1. Sex Stereotypes**
- 2. Sex Characteristics**
- 3. Pregnancy or Related Conditions**
- 4. Sexual Orientation**
- 5. Gender Identity**

APPLICATION

(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?

NOTE: PARTIES

Complainant:

1. 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).
2. 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.

Note: School is NOT a party

Note: It does not matter whether individual is still a student or employee of the school.

Terminology changes

Training requirements

Grievance procedure

Role of Coordinator expanded

Pregnancy requirements

WHAT IS NEW?



Report



Notification

Formal Complaint



Complaint

**Formal Grievance
Process**



**Grievance
Procedures**

**Pregnancy
Accommodations**



Modifications

Language Changes



Definition Changes

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

STUDENT

Person who has gained admission

Admission: Selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient (school).

Note:
This may be different than other definitions of "student" within your policies and handbooks. Recommend that you update all of them to be the same!



ESTABLISH REASONABLY PROMPT TIMEFRAMES FOR THE MAJOR STAGES OF THE GRIEVANCE PROCEDURES

Major Stages Include:

01 Evaluation (whether to dismiss or investigate a complaint)

02 Investigation

03 Determination

04 Appeal

Allow for reasonable extension of timeframes on case-by-case basis for good cause and with notice to the parties that includes reason for delay.

WHAT PROCEDURES/ PROCESS FOR PRE-AUG. 1, 2024 CONDUCT?

- Implementation date of August 1st for 2024 regs
- 2020 regulations apply for reports that come in before August 1st
- “The department will not enforce these final regulations retroactively” p.1354

“The Department will not enforce these final regulations retroactively. Federal agencies authorized by statute to promulgate regulations may only create regulations with retroactive effect when the authorizing statute has expressly granted such authority, which is not the case here. The final regulations apply only to sex discrimination that allegedly occurred on or after August 1, 2024. With respect to sex discrimination that allegedly occurred prior to August 1, 2024, regardless of when the alleged sex discrimination was reported, the Department will evaluate the recipient’s compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sex discrimination occurred.”

p. 1354



LET THE JOURNEY BEGIN 2024 REGS



THE ROLE AND SCOPE OF THE TITLE IX COORDINATOR

- Make room on your plate
- Title IX Team
- Nondiscrimination Policy and Notice
- Training Requirements
- Prevention
- Recordkeeping
- Supportive Measures
- IDEA and Title IX Overlap
- Emergency Removal
- Retaliation
- Informal Resolution



Make Room on Your Plate

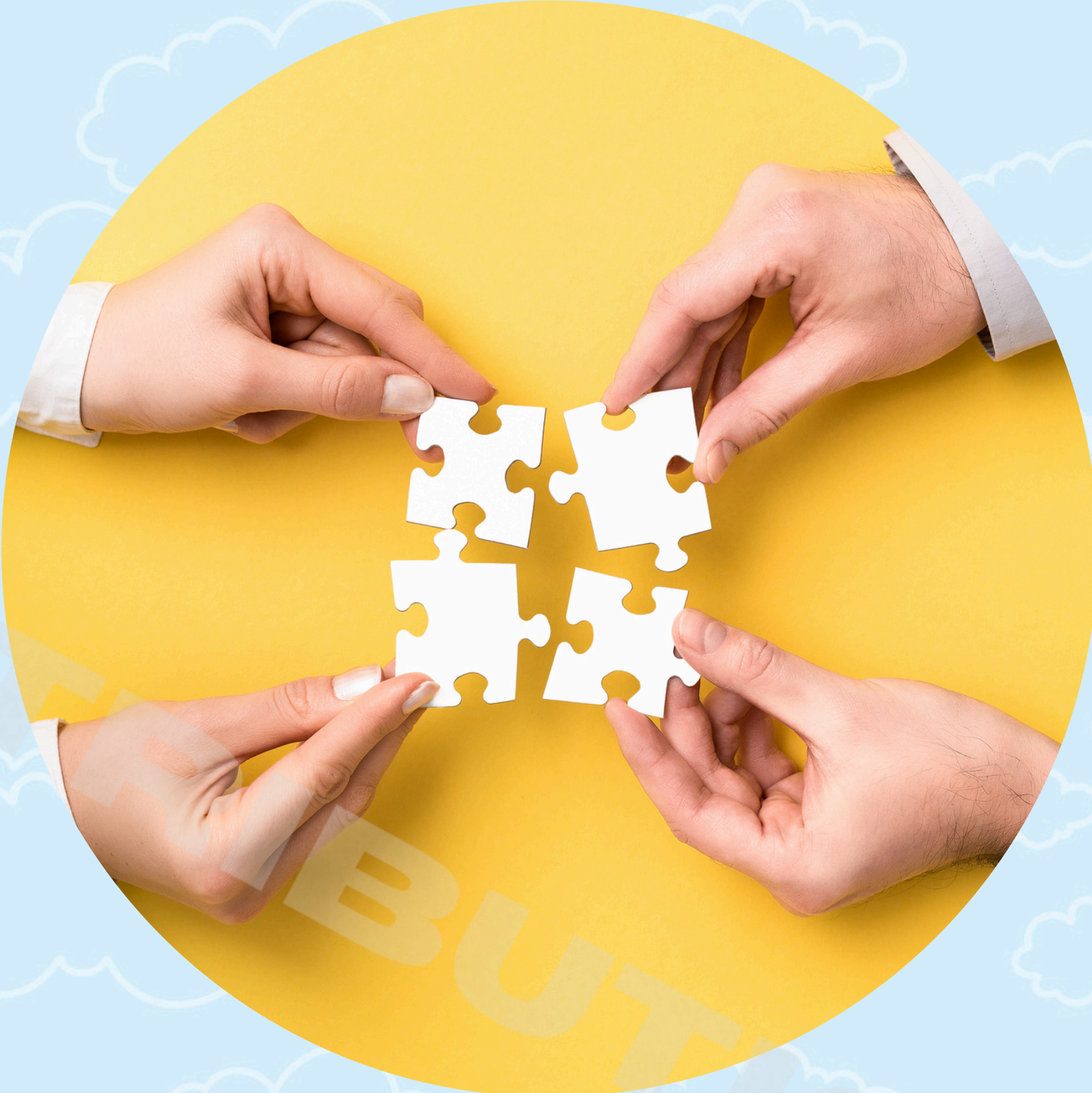


New/Increased Responsibilities

- Required trainings
- Publication of information
- More conduct covered under Title IX and grievance procedures
 - Pregnancy & definition of “on the basis of sex”
- New team members/changing roles
- Initiating more complaints
- Monitoring barriers
- Increased recordkeeping



TITLE IX TEAM



DESIGNATE A TITLE IX COORDINATOR



Title IX Coordinator must coordinate the school's efforts to comply with its responsibilities under Title IX.

Delegate

Designees may be appropriate and Title IX Coordinator may delegate specific duties to one or more designees.

Designees

If more than one coordinator, one must be designated as Coordinator with ultimate oversight... and ensure the school has consistent compliance with its responsibilities.

ROLE & RESPONSIBILITY OVERLAP



Team

**Coordinator can be investigator/decisionmaker (Caution)
*single investigator model is permitted**

Investigator cannot be the informal resolution facilitator

Supportive Measure Review Administrator cannot be the Coordinator or their supervisor

Appellate Decisionmaker(s)

PRACTICAL TIPS / IRL

Should the Coordinator be the Investigator/Decisionmaker?



Consider additional duties on the Coordinator



Coordinator facilitating supportive measures and acting in role can be confusing for parties



Bias/Conflict of Interest

PRACTICAL TIPS/IRL

The case for and against single investigator model



Fewer required positions/humans



The strength of your investigator/DM



Procedural guardrails

*Appeal considerations if you decide on single investigator model

PRACTICAL TIPS/IRL



How should you structure your team to address reports under 2020 versus 2024 regulations during the transition?

ADOPTION, PUBLICATION, AND IMPLEMENTATION



NONDISCRIMINATION POLICY

Must adopt, publish, and implement a policy stating:

The school does not discriminate on the basis of sex and the school prohibits sex discrimination in any education program or activity that it operates as required by Title IX, including admission and employment.

Policy must be provided to:

Students

Parents, guardians or other authorized legal representatives of elementary school & secondary school students

Employees

Applicants for admission & employment

All union & professional organizations holding collective bargaining or professional agreements



GRIEVANCE PROCEDURES

Recipient (School) must adopt, publish, and implement grievance procedures consistent with the regulations.

Must provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating in or attempting to participate in the recipient's (school's) education program or activity, or by the Title IX Coordinator alleging any action that would be prohibited by Title IX.

NOTICE OF NONDISCRIMINATION MUST INCLUDE:

The school does not discriminate on the basis of sex and the school prohibits sex discrimination in any education program or activity that it operates as required by Title IX, including admission and employment.

Title IX
Coordinator
Contact
Information:

- > Name/Title
- > Office Address
- > Email Address
- > Telephone #

A statement that inquiries about the application of Title IX to the recipient (school) may be referred to the Title IX Coordinator, the Office for Civil Rights, or both.

How/where to locate non-discrimination policy (link).

How/where to locate grievance procedures.

How to make a complaint about sex discrimination.

How to report sex discrimination.

*May include exceptions or exemptions that apply to recipient (school).

NOTICE OF NONDISCRIMINATION MUST BE PUBLISHED:

In each:

- handbook,
- catalog,
- announcement,
- bulletin, and
- application form

Made available to students, parents, guardians or other authorized legal representative of elementary school and secondary school students; employees; applicants for admission and employment; all unions and professional organizations holding collective bargaining or professional agreements with recipient (school).

On
website

*Recommend a **STRONG** landing page with all of this information.

If necessary due to the format or size of the publication, may include in those publications a statement that the recipient (school) prohibits sex discrimination in any education program or activity that it operate and that individuals may report concerns or questions to the Title IX Coordinator (providing link to website).

PRACTICAL TIPS/IRL



Grievance procedures must be legally compliant **AND** should reflect your school's culture/structure



This is a massive requirement - need to beef up your website



©Institutional Compliance Solutions 2024 All Rights Reserved



Consider a QR code to your website for publications, etc.

**Make sure to add accessibility requirements

TRAINING REQUIREMENTS

*Training on an employee's responsibilities under Title IX needs to occur **PROMPTLY** upon hiring or change of position that alters their duties - and annually thereafter.*

- *Plan for THIS year...initial training.*
- *Plan for new hires throughout the year.*
- *Plan for supplemental annual training.*

**How will you track this?*

**What are consequences if training is not completed?*



NOTIFICATION REQUIREMENTS FOR EMPLOYEES ARE DIVIDED INTO THREE CATEGORIES:



Confidential
Employees



Employees who have the authority to institute corrective measures on behalf of the institution or have responsibility for administrative leadership, teaching, or advising in the institution's education program or activity



All other
non-confidential
employees



ALL EMPLOYEES MUST BE TRAINED ON:

- The school's obligations to address sex discrimination in its education program or activity.
- The scope of conduct that constitutes sex discrimination under Title IX - including sex-based harassment.
- Reporting requirements.
- All applicable notification and information requirements (where they need to add the link to the website).
- Response to student's pregnancy or related conditions.



CATEGORY 1: CONFIDENTIAL EMPLOYEE

Employee whose communications are privileged or confidential under Federal or State law. Confidential status is only with respect to information received while employee is functioning within the scope of their duties to which privilege applies. Ex. No pastoral privilege when serving as faculty.

OR

Employee who has been designated as confidential under Title IX for the purpose of providing services to individuals related to sex discrimination.

- If the employee has a duty not associated with providing those services, the confidential status is ONLY with respect to information received about sex discrimination in connection with providing those services. Ex. trainer who teaches a class.



CONFIDENTIAL EMPLOYEE REQUIREMENTS

MUST notify all (students and employees) about how to contact confidential employees.

- Who are they
- Email
- Phone
- Location

When a report is made to a Confidential employee, they MUST:

- Explain status as a confidential employee.
- Explain how to contact the Title IX Coordinator.
- Explain how to make a complaint about sex discrimination.
- Explain that the Title IX Coordinator may be able to offer and coordinate supportive measures.
- Explain that the Title IX Coordinator may be able to initiate grievance procedures or informal resolution.



EMPLOYEES ARE REQUIRED TO REPORT OR PROVIDE INFORMATION TO THE TITLE IX COORDNATOR IN 2 SCENARIOS:

1. If they have information about a student (or through a person who has a legal right to act on their behalf) of the student's pregnancy or related conditions; and
2. If they have information about conduct that reasonably may constitute sex discrimination under Title IX.





CATEGORY 2 EMPLOYEES:

MUST notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX.

CATEGORY 3: ALL OTHER NON- CONFIDENTIAL EMPLOYEES

1. Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX; *or*
2. Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination to any person who provides the employee with information about conduct that reasonably may constitute sex discrimination under Title IX.

PRACTICAL TIPS/IRL



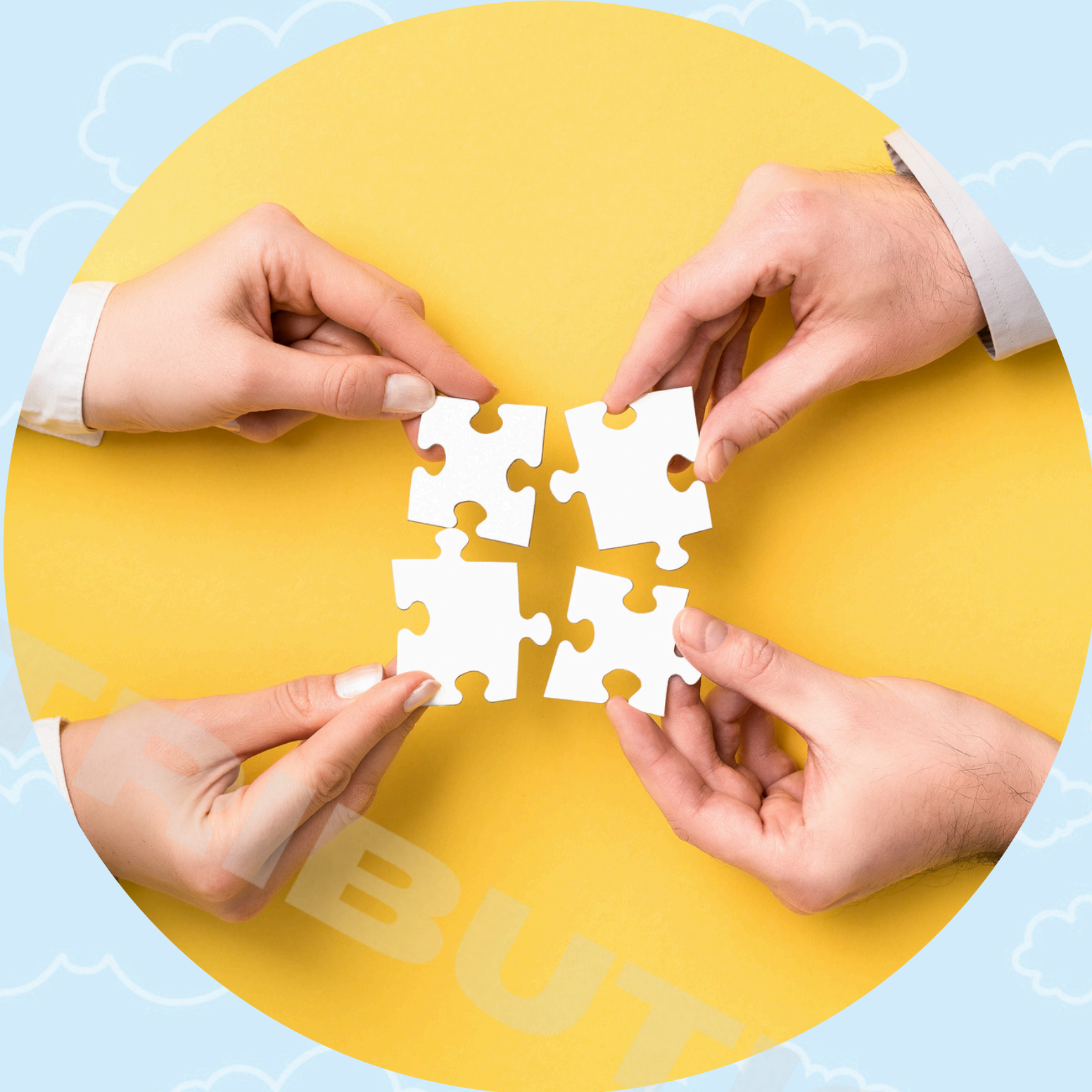
NOTE

Explain that
employee needs
to tell someone

Conversation
when
disclosure
occurs

Expectation that
Responsible
Employee does NOT
investigate

TRAINING FOR THE TITLE IX TEAM



TRAINING FOR COORDINATOR & DESIGNEES

- The school's obligation to address sex discrimination in its education program or activity.
- The scope of conduct that constitutes sex discrimination under Title IX - including sex based harassment.
- Reporting requirements.
- All applicable notification and information requirements (where they need to add the link to the website).
- Response procedures after report received (section 106.44).
- Grievance procedures (section 106.45 and if applicable 106.45).
- How to serve impartially:
 - Avoiding prejudgment of facts.
 - Bias/Conflicts of interest.
- Definition of "relevant."
- Rules and practices associated with the informal resolution process.
- Recordkeeping system.
- Prevention and response requirements regarding pregnancy or related conditions under 106(b)(3).
- General Coordinator requirements 106.44(f):
 - Response protocol (steps to promptly and effectively end sex discrimination in education program or activity, prevent its recurrence, remedy its effects).
- Responsibilities regarding supportive measures 106.44(g).
- Title IX Coordinator specific responsibilities.
- Other training necessary to coordinate compliance.

INVESTIGATOR/ DECISIONMAKER/ SUPPORTIVE MEASURE REVIEW ADMINISTRATORS



- 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 106.45).
- 7 How to serve impartially:
 - Avoiding prejudgment of facts and
 - Bias/Conflicts of interest
- 8 Definition of "relevant."

INFORMAL RESOLUTION FACILITATOR

2

Obligations to address sex discrimination in its education program or activity

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

Reporting requirements

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

Rules and practices associated with the informal resolution process

How to serve impartially:
Avoiding prejudice of facts Bias Conflicts of interest

PRACTICAL TIPS/IRL



NOTE

On hiring, change
of position -
Coordination with
HR important

Massive
requirement for
training of
employees

Mandated training
for employees is
new; specific
requirements for
team is not new but
different

PREVENTION



BARRIERS TO REPORTING



Must monitor for barriers to reporting information about sex discrimination.



Must take steps to address the barriers.



PRACTICAL TIPS / IRL



Data: It is necessary to understand the data related to what is occurring at your school



Assessment: Necessary to understand why individuals are reporting/not reporting



Increased Reporting: Assessing and removing barriers WILL increase reporting/notification

RECORDKEEPING



RECORDKEEPING

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.

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.

SUPPORTIVE MEASURES MAY INCLUDE

but are not limited to:

COUNSELING

RESTRICTIONS ON CONTACT APPLIED TO ONE OR MORE PARTIES

EXTENSION OF DEADLINES AND OTHER COURSE RELATED ADJUSTMENTS

LEAVES OF ABSENCE

CHANGE IN EXTRACURRICULAR OR OTHER ACTIVITY

CAMPUS ESCORT SERVICES

CHANGE IN CLASS WORK


TRAINING AND EDUCATION PROGRAMS RELATED TO SEX-BASED HARASSMENT

INCREASED SECURITY AND MONITORY OF CERTAIN AREAS

CHANGE IN HOUSING (IF APPLICABLE)

SUPPORTIVE MEASURES CONTINUED



MAY	MAY NOT	MUST	MUST NOT
<p>Be terminated or modified at the conclusion of grievance procedures or informal resolution.</p>	<p>Unreasonably burden a party.</p>	<p>Be designed to protect the safety of the parties or educational environment or to provide support.</p>	<p>Impose supportive measures for punitive or disciplinary purposes.</p>
<p>Continue at the conclusion of grievance procedures or informal resolution.</p>		<p>Provide the opportunity to seek additional modifications of supportive measures if the circumstances materially change.</p>	<p>Disclose information about supportive measures to individuals other than to whom they apply unless necessary to provide the supportive measure or restore or preserve access.</p>
		<p>Consult with IEP or 504 team in the implementation of supportive measures in K-12 if applicable.</p>	

SUPPORTIVE MEASURES REVIEW

Parties MUST be provided with timely opportunity to seek modification or reversal of school's decision to provide, deny, modify, or terminate supportive measures applicable to them.



- Must be reviewed by an Impartial Employee (**Supportive Measures Review Administrator**).
- SMRA must NOT be employee who made the challenged decision.
- SMRA MUST have authority to deny, modify, or reverse the decision if the SMRA determines that the previous decision was inconsistent with the definition of supportive measures.

DISABILITY SERVICES/ RESOURCES & TITLE IX OVERLAP



STUDENT WITH A DISABILITY

A student who is an individual with a disability as defined in the Rehabilitation Act of 1973, as amended, 29 U.S.C. 705 (9)(B), (20)(B),

or a child with a disability as defined in the Individuals with Disabilities Act, 20, U.S.C 1401(3).

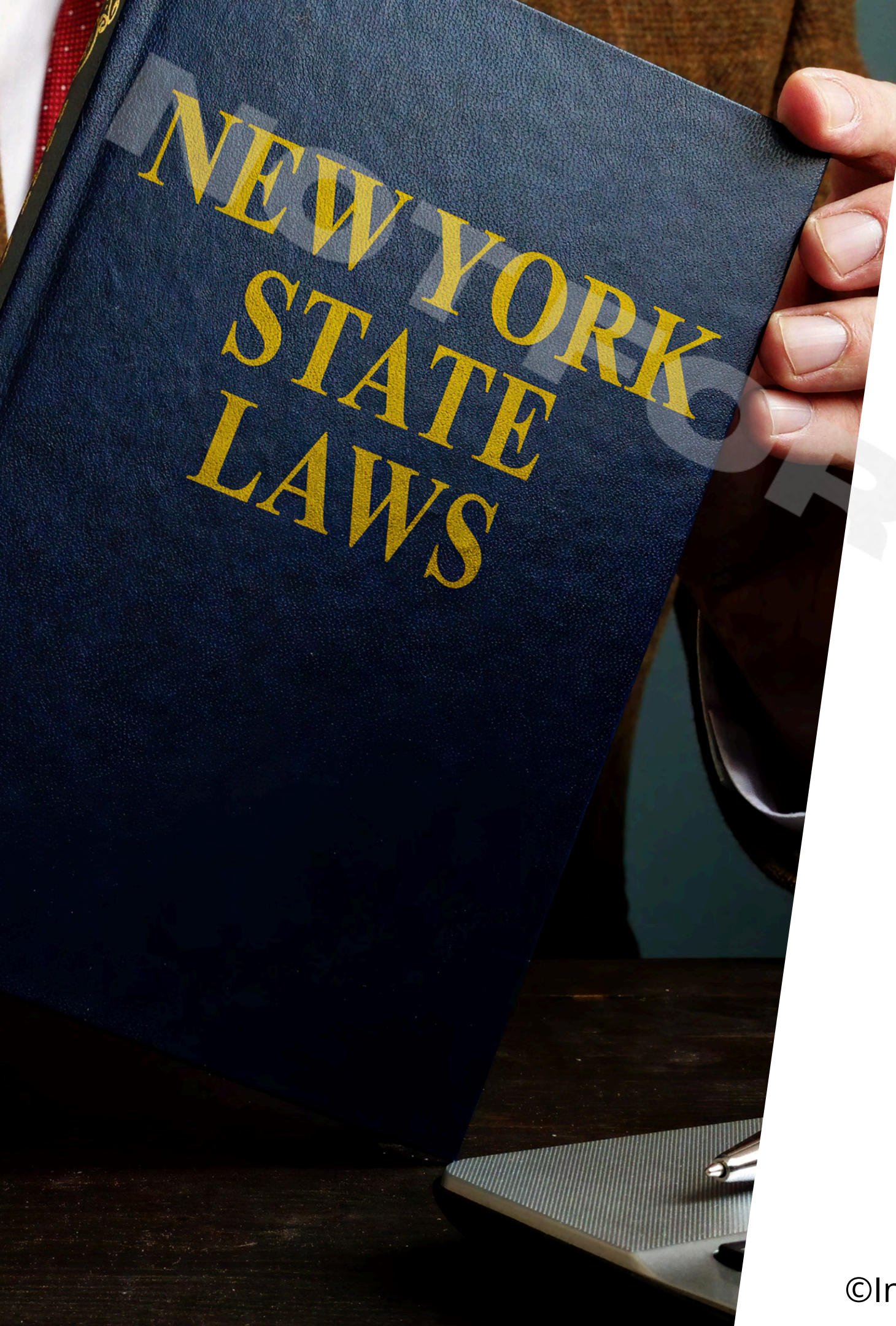


IF A PARTY HAS A DISABILITY THE TITLE IX COORDINATOR...



The Title IX Coordinator **may** consult, as appropriate, with the individual or office that the School has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

- For Grievance Procedures AND
- Supportive Measures



EFFECT OF STATE/ LOCAL LAWS

Must follow these regulations
regardless of conflict with state
or local law or other
requirement.

EMERGENCY REMOVAL



EMERGENCY REMOVAL

In order to remove a student, school must determine:

- Imminent and serious threat to the health or safety of a Complainant or other person arising from the allegations of the sex discrimination justifies removal.

May remove student on an emergency basis AFTER undertaking individualized safety and risk analysis.

Must provide Respondent an opportunity to challenge the decision **IMMEDIATELY** following the removal.



ADMINISTRATIVE LEAVE

May place employee on administrative leave during pendency of the grievance procedures.

RETALIATION



RETALIATION:

Must Prohibit Retaliation
(including peer retaliation)



When informed of retaliation, **MUST** provide supportive measures.



MUST use grievance procedures or informal resolution to resolve.



INFORMAL RESOLUTION



INFORMAL RESOLUTION

- 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

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.





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.

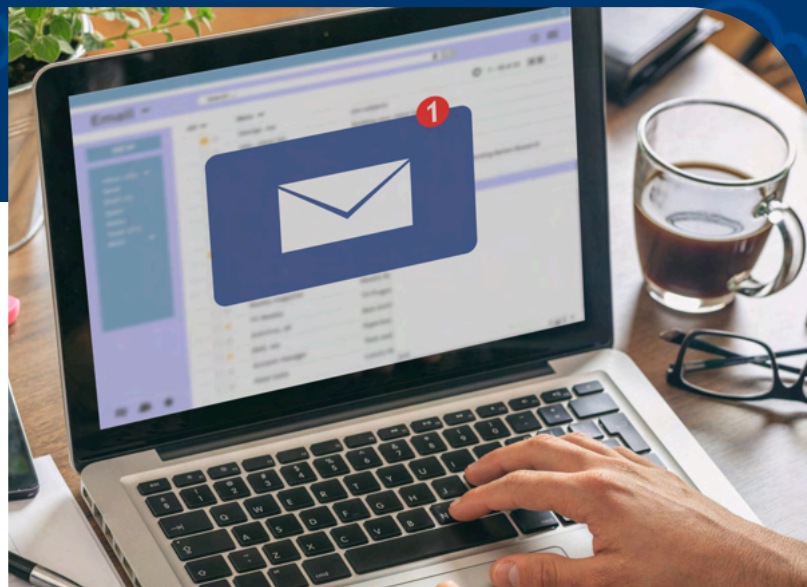
What information the school will retain.

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

INFORMAL RESOLUTION POTENTIAL OUTCOMES:



Potential outcomes include but are not limited to:



Restrictions on contact.



Restrictions on Respondent's participation in one or more programs or activities.



Restrictions on attendance at specific events.



Restrictions that could have been imposed as remedies or **disciplinary sanctions** had the grievance process been used and the Respondent found responsible.



INFORMAL RESOLUTION FACILITATOR

Facilitator of IR **CANNOT** be the investigator or decisionmaker in the grievance procedures.

Must not have conflict or bias (generally toward Complainants or Respondents or an individual party).

PROHIBITED DISCLOSURES OF PERSONALLY IDENTIFIABLE INFORMATION

Must NOT disclose personally identifiable information except:

When school has obtained prior written consent from the person with a legal right to consent to disclose.

When the information is disclosed to a parent, guardian, or other authorized legal representative with the legal right to receive disclosures on behalf of the person whose personally identified information is at issue.

To carry out the purpose of Title IX.

As required by Federal law, Federal regulations, or the terms and conditions of a Federal award, including a grant award or funding agreement.

When required by state or local law or permitted under FERPA AND not otherwise in conflict with Title IX.

QUESTIONS



TITLE IX
UNIVERSITY

HIGHER EDUCATION

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS

TITLE IX “MAJOR STAGES”

- Evaluation
- Investigation
- Determination
- Appeal



TITLE IX MAJOR STAGES



“Reasonably Prompt Timeframes” Required For Each

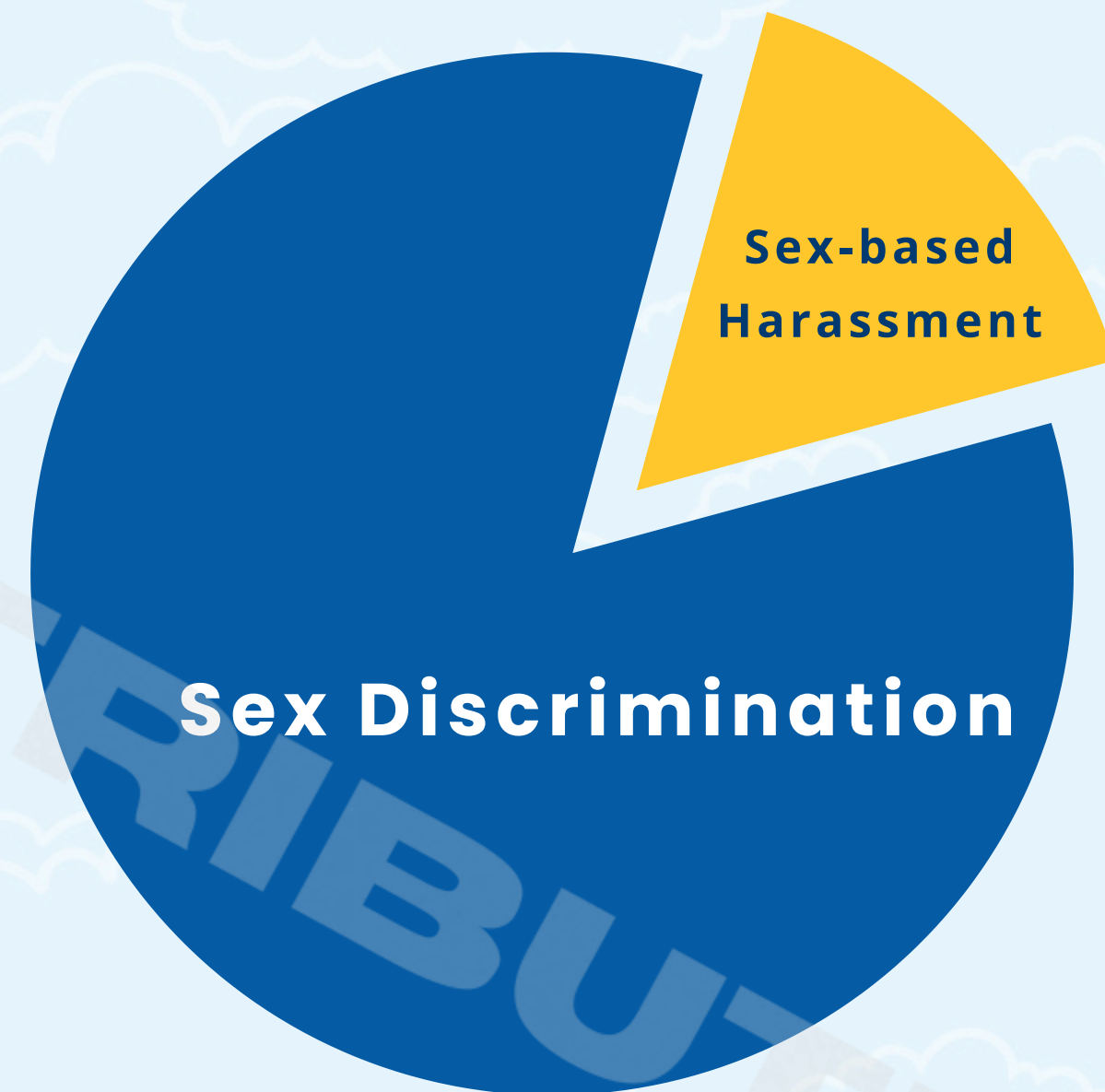


PROHIBITED CONDUCT, APPLICATION & SCOPE



Sex Discrimination

- 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, SOGI, etc.
- Mandatory reporting requirements apply to ALL sex discrimination.



APPLICATION

(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



Sex Based Harassment

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

On the Basis of Sex



Scope: (EXPANDED)

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

- 1. Sex Stereotypes**
- 2. Sex Characteristics**
- 3. Pregnancy or Related Conditions**
- 4. Sexual Orientation**
- 5. Gender Identity**

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:

1. Length of relationship
2. Type of relationship
3. 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.



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



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.



EVALUATION "TRIAGE"



NOTIFICATION

Notification (report) the Title IX Coordinator receives information about conduct that reasonably may constitute sex discrimination.



Note:
Notification
initiates
action



EXCEPTION: PUBLIC AWARENESS EVENTS

When Title IX Coordinator is informed or notified about sex-based harassment that is provided at a public awareness event:

Coordinator NOT required to act in response UNLESS there is an imminent or serious threat to the health or safety of Complainant or others.

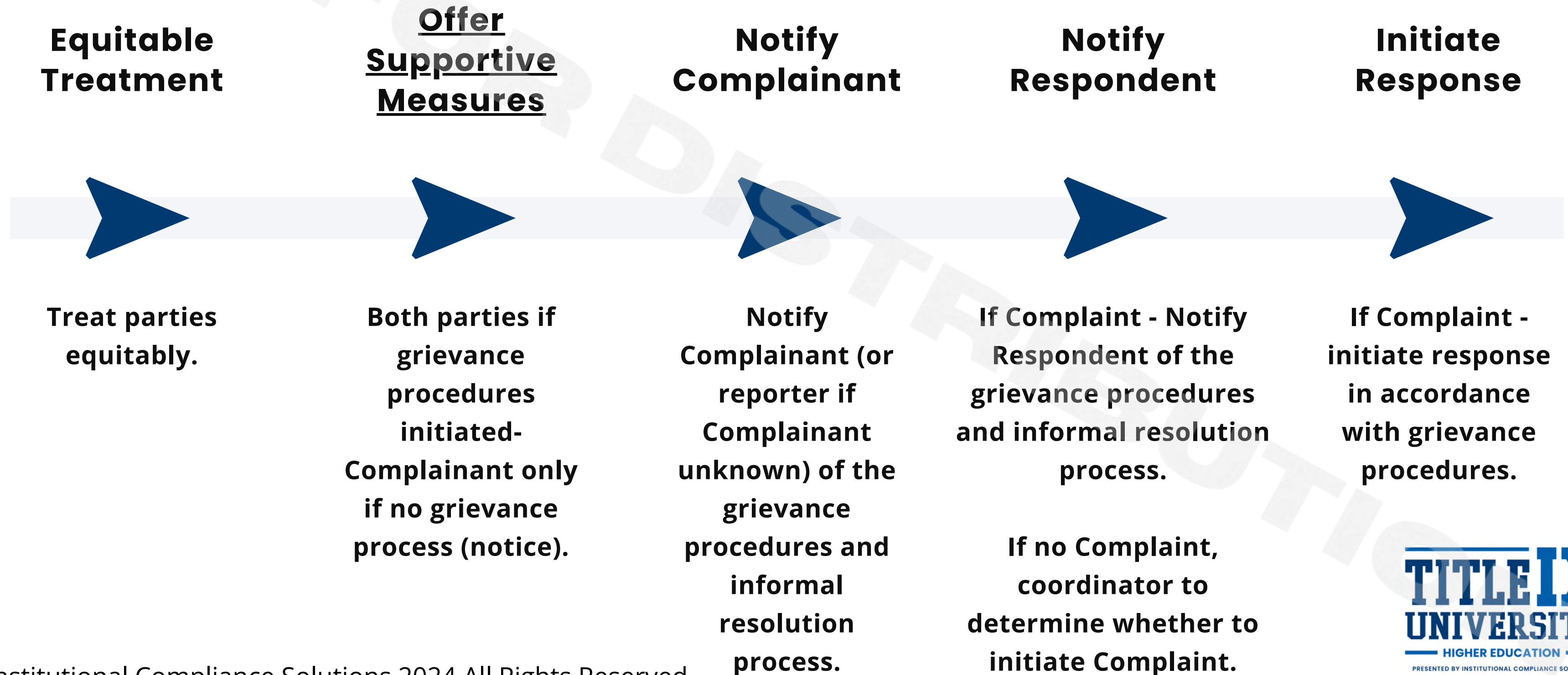
MUST use the information to inform its prevention efforts.

INTAKE OF REPORTS- AFTER NOTIFICATION



COORDINATION OF COMPLIANCE

(106.44(f))



COMPLAINT

...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.





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



REGARDLESS OF WHETHER COMPLAINT OR NOT:

Must take appropriate prompt and effective steps to:

-  effectuate the remedies provided to an individual Complainant **and**
-  ensure that sex discrimination does not continue or recur within the school's education program or activity.



COMPLAINT

...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.

NOTE

not just informing of incident but "request to investigate"

- 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.

Factors to Determine Whether Coordinator Should Initiate Complaint - Fact Specific Determination

1. The Complainant's request not to proceed with the initiation of a Complaint.
2. The Complainant's reasonable safety concerns regarding initiation of a Complaint.
3. The risk that additional acts of sex discrimination would occur if a Complaint is not initiated.
4. The severity of the alleged sex discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.
5. Whether the school could end the alleged sex discrimination and prevent its recurrence without initiating its grievance procedures.
6. The availability of evidence to assist a decisionmaker in determining whether sex discrimination occurred.
7. The scope of the alleged sex discrimination, including information suggesting a pattern, ongoing sex discrimination, or sex discrimination alleged to have impacted multiple individuals.
8. The age and relationship of the parties, including whether the Respondent is an employee of the school.



FACTORS ++

Coordinator MAY initiate Complaint, if, after considering the factors, the Coordinator determines the conduct, as alleged:

- presents an imminent and serious threat to the health and safety of the Complainant or other person, OR
- the conduct prevents the school from ensuring equal access

IF COORDINATOR INITIATES COMPLAINT...



Must notify Complainant before doing so.



Address reasonable concerns about Complainant's safety or the safety of others.



DISMISSAL OF COMPLAINT

Complaint **MAY** be dismissed if:

- Unable to identify the Respondent after taking reasonable steps to identify them.
- The Respondent is NOT participating in the education, program or activity and is NOT employed by the school.
- The Complainant **VOLUNTARILY** withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and without Complainant's withdrawn allegations, the conduct that remains in the Complaint, would not constitute sex discrimination under Title IX even if proven.
 - Must obtain withdrawal in writing.
- Even if proven, the conduct would NOT constitute sex discrimination under Title IX.
 - Must make reasonable efforts to clarify the allegations with the Complainant.



AFTER DISMISSAL

After dismissal, the school **MUST:**



- Promptly notify the Complainant of the dismissal, the basis for dismissal, and the right to appeal.
- **IF** Respondent has already been notified of the allegations, notify Respondent of the dismissal, the basis for dismissal, and the right to appeal.
- Offer supportive measures to the Complainant and Respondent (if Respondent has been notified).
- Require the Title IX Coordinator to take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur.



BASIS FOR APPEAL OF DISMISSAL

- Procedural irregularity that would change the outcome.
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made.
- The Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for or against complaints or respondents generally or the individual complaint or respondent that would change the outcome.

IF THE DISMISSAL IS APPEALED, THE SCHOOL MUST:

- Notify the parties of any appeal, including Notice of Allegations if Notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the parties;
- Ensure that the decisionmaker of the appeal did not take part in an investigation of the allegations or dismissal of the complaint;
- Ensure that the appellate decisionmaker has been trained;
- Provide parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the parties of the result of the appeal and the rationale for the result.

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.

NOTE

If higher ed Sex-Based Harassment and one or more of the parties is a student, must use .46 requirements.



GRIEVANCE PROCEDURES

Basics

BASICS

BASIC REQUIREMENTS OF GRIEVANCE PROCEDURES



- 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.

Door # 1 (§106.45)

- All employee on employee sex discrimination.
- Sex discrimination that is NOT sex-based harassment.

p. 1540

Door # 2 (§106.46)

- Sex-based harassment involving a student as a complainant or respondent.

p. 1550

OR

WHICH DOOR APPLIES FOR STUDENT EMPLOYEES?

- When a party is BOTH a student and an employee, the school must make a fact-specific inquiry.
 - Consider whether the party's primary relationship with the school is to receive an education **and**
 - Whether the alleged Sex-Based Harassment occurred while the party was performing employment-related work

.45 (Door #1) Grievance Procedures (After Complaint)- Basic Principles

- For: K-12 (All Sex Discrimination)
 - Higher Ed (All Employee on Employee Sex Discrimination)
 - Higher Ed (Non Sex-Based Harassment for Students and Employees)
-
- Parties Treated Equitably.
 - No Bias or Conflict by Title IX Coordinator, Investigator, or Decisionmaker.
 - Presumption of Not Responsible.
 - Established reasonably prompt time frames for each major stage (evaluation, investigation, determination, and appeal (if any)).
 - Reasonable steps to protect privacy of parties.
 - Objective evaluation of relevant and not otherwise impermissible evidence.
 - Articulate principles for how the school will determine which procedures apply.
 - *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.

GRIEVANCE PROCEDURES DOOR #1 (.45)

* Section .45- Application

Basic Grievance Procedures

- **Applies to K-12**
 - All Sex Discrimination regardless of whether student or employee parties
- **Applies to Higher Ed**
 - (employee on employee) - All Employee on Employee Sex Discrimination
 - (students) - Sex Discrimination – other than Sex-Based Harassment



GRIEVANCE PROCEDURES DOOR #2 (.46)

MUST be applied to Higher Ed Complaints of Sex-Based Harassment when one of the parties is a student:

- **Student Complainant vs. Student Respondent**
- **Student Complainant vs. Employee Respondent**
- **Employee Complainant vs. Student Respondent**



When a party is BOTH a student and an employee, the school must make a fact-specific inquiry as to which procedures apply.

GRIEVANCE PROCEDURES

Investigation Phase -
After Complaint



NOTICE OF ALLEGATIONS



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 .45 (Door #1)

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.

IF 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.





Notice Of Allegations .46 (Door #2)

- 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.
 - Parties are entitled to an 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.
 - Respondent is presumed not Responsible until a determination is made at the conclusion of the grievance process.
 - Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker.
 - Parties may have an advisor of their choice.
 - Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes the evidence. If provided with report, school will provide access to evidence upon request of the party.
- Code of conduct provision that prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure (if applicable).

NOTE: SAFETY CONCERNS/DELAY OF NOTICE

If REASONABLE concern for the safety of any person as a result of providing notice of allegations, the school may REASONABLY delay providing written notice of the allegations in order to address safety concerns appropriately.



NOTE

These must be based on INDIVIDUALIZED safety and risk analysis (not speculation or stereotypes)



Door # 1 (§106.45)

- All employee on employee sex discrimination.
- Sex discrimination that is NOT sex-based harassment.

p. 1540

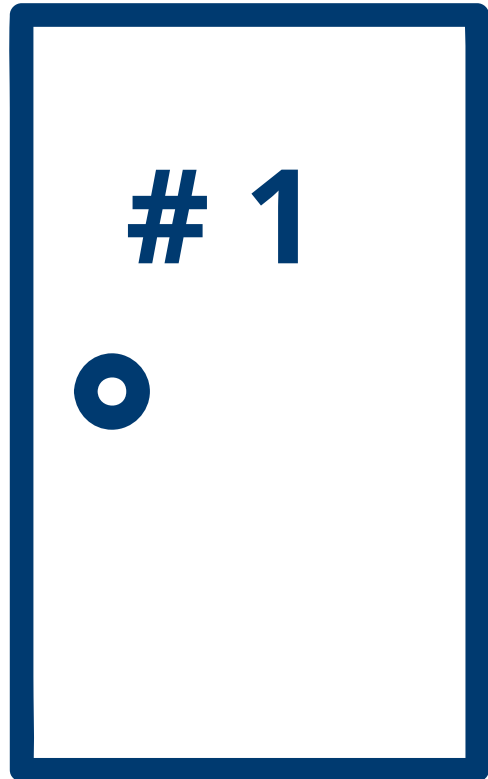
Door # 2 (§106.46)

- Sex-based harassment involving a student as a complainant or respondent.

p. 1550

OR

Door #1 (106.45)



Complaint
Oral or written
request to
investigate



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



Determination



Notice of Allegations



Questions of parties and witnesses
assessing credibility



Appeal - same as any
comparable proceeding

Door #2 (106.46)

Notice of Allegations (more requirements than Door #1)
Notice of Meetings with sufficient time to prepare.
Advisor may have advisor of choice

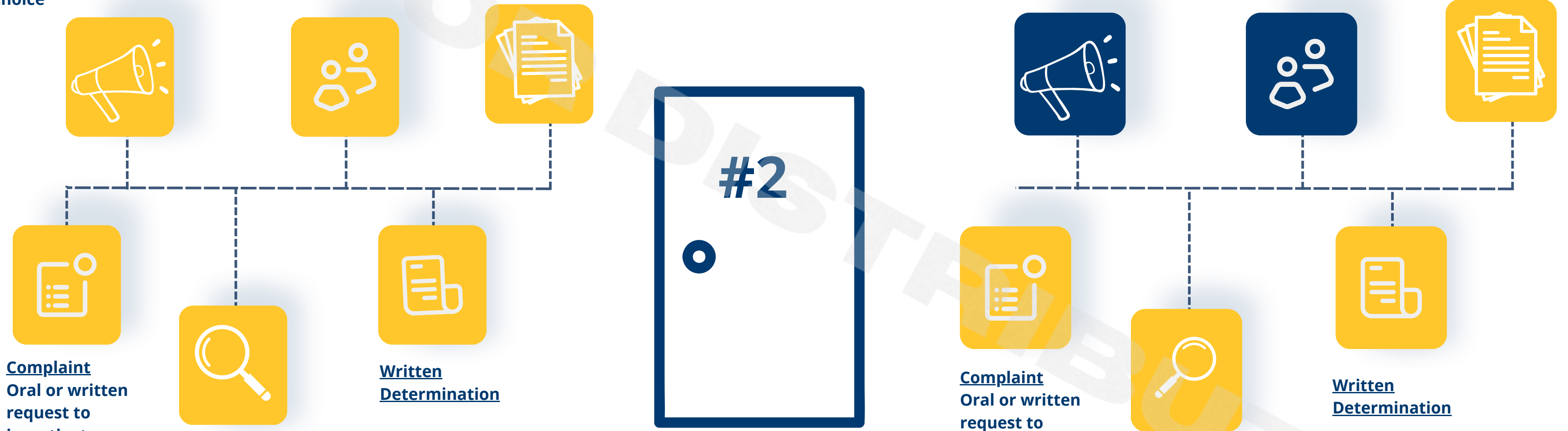
Questioning questions presented by both parties to investigator or decisionmaker
Transcript of meeting so parties can provide follow up questions.

Appeal - 3 bases required

Notice of Allegations (more requirements than Door #1)
Notice of Meetings with sufficient time to prepare.
Advisor may have advisor of choice, school to provide for hearing.

Live Hearing (Following Investigation): questions presented by parties to decisionmaker to ask OR asked by advisors.

Appeal - 3 bases required



Complaint
 Oral or written request to investigate.

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

Written Determination

Path A

Path B

Complaint
 Oral or written request to investigate.

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

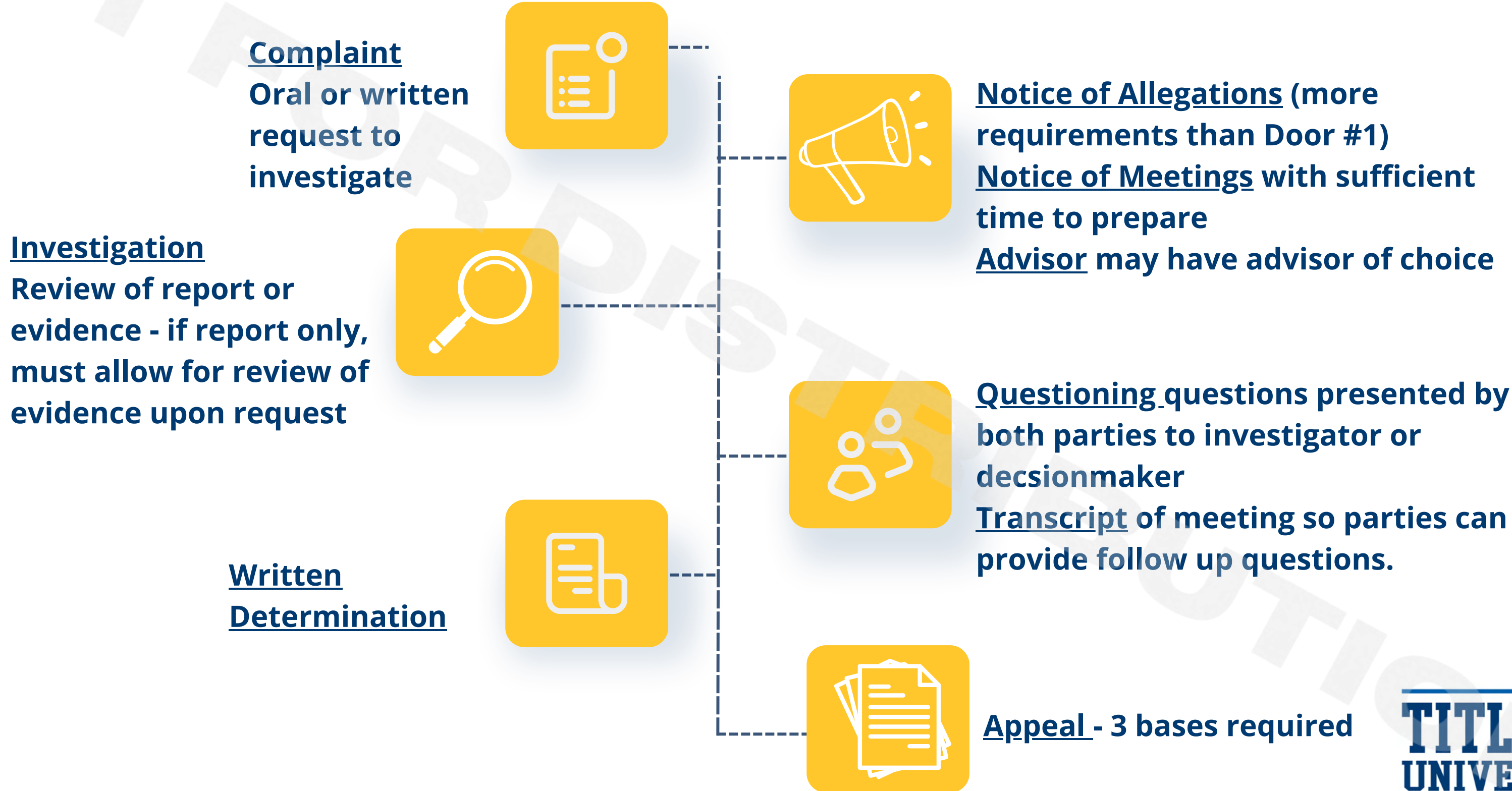
Written Determination



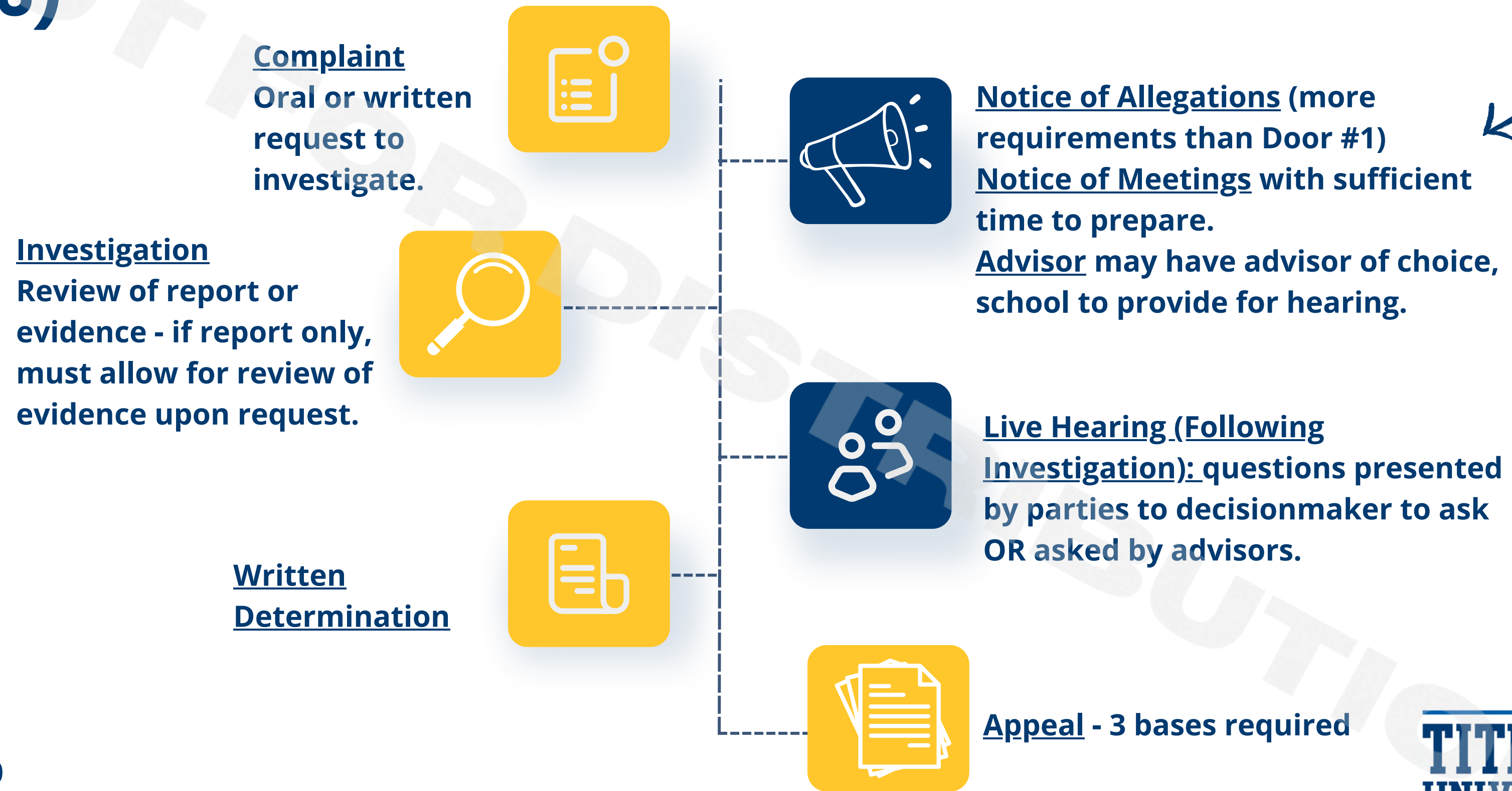
Door #2

Path A – No LIVE HEARING

(106.46)



Door # 2 Path B- Live Hearing (106.46)



p. 1550
§106.46



INVESTIGATION DOOR #1 (.45)

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.

.46 INVESTIGATION DOOR #2 (.46)

ADDITIONAL REQUIREMENTS

1

Provide **Notice of Meetings** to all parties who are invited or expected to participate in meetings with sufficient time to prepare.
Date; Time; Location; Participants; and Purpose of meeting.

2

Provide parties with same opportunity to have **additional individuals** in the meeting (if any).

3

Provide opportunity to be **accompanied by an advisor** of their choice (may be attorney).

- MAY establish restrictions regarding the extent the advisor may participate.

4

Provide parties and advisors with **equal opportunity to access the evidence or investigative report** that accurately summarizes the evidence.

- If provide report only, must provide access to evidence upon request of either party.

5

Discretion to determine whether parties may present **expert witnesses** (as long as determination applies equally to the parties).

6

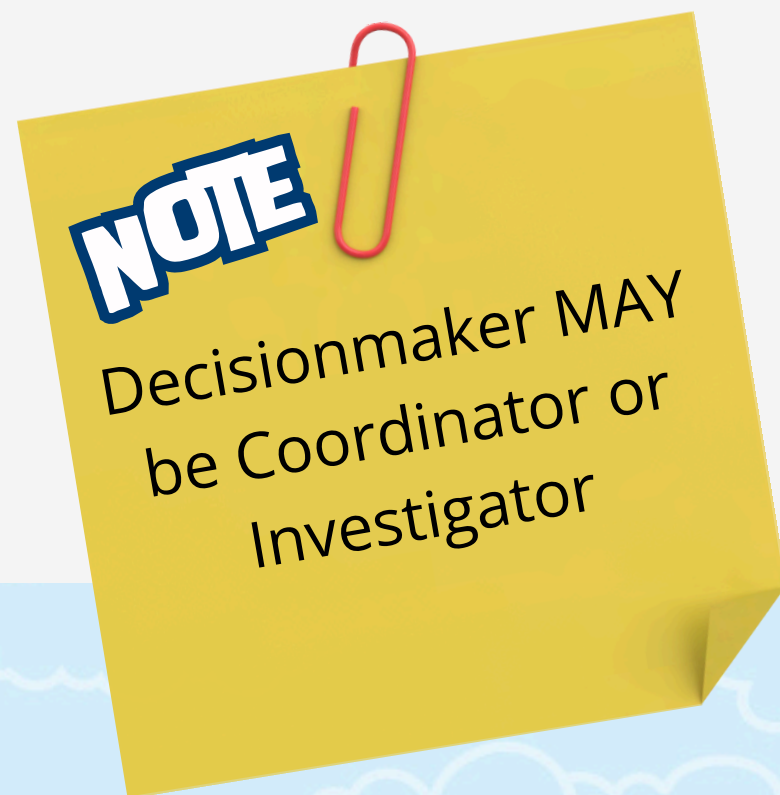
Allow for **reasonable extension** of timeframes on case-by-case basis for good cause and provide written notice with reason for delay.

GRIEVANCE PROCEDURES

Determination



No Bias or Conflict of Interest to specific parties or toward Complainants or Respondents generally



REVIEW OF EVIDENCE

Must provide an equal opportunity to access evidence that is:

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

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.

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

- If live hearing, must provide ability to review the evidence before the live hearing. It is at school's discretion whether to provide the opportunity to respond prior to the live hearing, during the live hearing, or both.

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



QUESTIONING PARTIES AND WITNESSES

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.

NO LIVE HEARING DOOR # 2, PATH A

MUST DO!

Allow investigator or decisionmaker to ask questions during meeting with party or witness;

Allow each party to propose questions the party wants to ask of any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings; and

Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonably opportunity to propose follow up questions.



LIVE HEARING DOOR # 2, PATH B

MUST DO!

Allow party to provide questions that the party wants to ask of any party or witness and have the questions asked by the decisionmaker.

OR

Allow each party's advisor to ask any party or witness questions.

Questions may NEVER be asked directly by a party.

- If the school permits questions to be asked by an advisor, school MUST provide advisor. Advisor may be of the school's choice, without fee the party, and for purposes of advisor-conducted questioning.
- Must NOT appointment a confidential employee.
- May appoint an attorney.



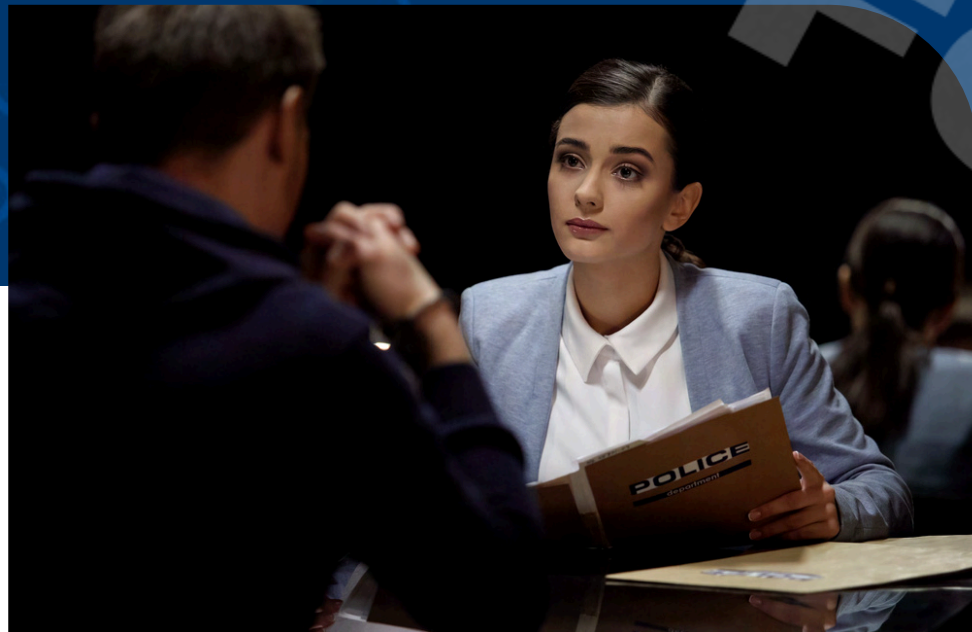
QUESTIONING PROCEDURES AND LIMITATIONS: (DOOR # 2 – BOTH PATHWAYS)



Decisionmaker MUST:

- Determine whether a proposed question is relevant and not otherwise impermissible prior to the question being posed AND
- Explain any decision to exclude a question as not relevant or otherwise impermissible.
- Ask questions that are relevant and not otherwise impermissible.
- NOT permit questions that are unclear or harassing of the party or witness being questioned.
 - If decisionmaker determines it is unclear or harassment, allow for party to clarify or revise the question.

LIVE HEARING PROCEDURES:



Parties MAY be physically present in the same location.



At discretion of the school MAY or at the request of either party MUST use technology to have the parties present at separate locations.

- **MUST be able to see and hear the party or witness while that person is speaking.**



MUST create audio or audiovisual recording or transcript of any live hearing and make it available to the parties for inspection or review.

RELEVANT




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.

<p>Require objective evaluation of ALL RELEVANT Evidence and not otherwise impermissible</p>	<p>Relevant</p>	<p>Exclude the following types of evidence (Impermissible evidence)</p>
<p>Include inculpatory and exculpatory evidence.</p>	<p>Questions are relevant when they seek evidence that may aid in sowing whether the alleged sex discrimination occurred.</p>	<p>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.</p>
<p>Provide that credibility determinations MUST NOT be based on status as Complainant, Respondent, or witness.</p>	<p>Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.</p>	<p>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.</p>
 <p>TITLE IX UNIVERSITY HIGHER EDUCATION <small>PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS</small></p>		<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.



REFUSAL TO RESPOND:

Decisionmaker **MAY** choose to place less or no weight on statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible.

Decisionmaker **MUST NOT** draw an inference about whether the sex-based harassment occurred based **SOLELY** on a party's or witness's refusal to respond.

.45 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.



WRITTEN DETERMINATION DOOR #2 (.46)



Written determination must:

- Be provided in writing.
- Be provided to the parties simultaneously.

Must Include:

- Description of the alleged sex-based harassment.
- Information about the policies and procedures used to evaluate the allegations.
- Decisionmakers evaluation of the relevant and not otherwise impermissible evidence.
- Determination whether sex-based harassment occurred and rationale
 - If there is a finding of responsibility, must include:
 - Disciplinary sanctions that will be imposed on Respondent.
 - Whether additional remedies will be provided to Complainant and to the extent appropriate other students.
- Appeal procedures.



GRIEVANCE PROCEDURES

A few more things...





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.

REQUIRE REASONABLE STEPS TO PROTECT THE PRIVACY OF THE PARTIES AND WITNESSES DURING THE GRIEVANCE PROCEDURES.



Cannot restrict the party to:



Obtain and present evidence (including by speaking to witnesses).



Otherwise prepare for or participate in grievance procedures.

- However: must provide notice, information, evidence, etc.



Consult with family members, confidential resources, or advisors.



Articulate principles for how the school will determine which procedures apply.



MAY NOT discipline Respondent for sex discrimination UNLESS there is a determination AT THE CONCLUSION OF THIS PROCESS (.45 or .46) 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.



Any additional procedures a school adopts must be applied equally to all parties.

Use caution here. It's already complicated.



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).



GRIEVANCE PROCEDURES

Appeals





APPEALS DOOR #1 (.45)

K- 12, employee on employee, or student sex discrimination appeals

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

APPEALS

DOOR #2 (.46)

MUST be offered:

1 After determination regarding whether sex-based harassment occurred

2 Dismissal of a Complaint

Basis for appeal:

- Procedural irregularity that would change the outcome.
- New Evidence that would change the outcome and was not reasonably available when the determination whether sex-based harassment occurred or dismissal was made.
- Title IX Coordinator, Investigator, or Decisionmaker had a conflict of interest or bias for complainants or respondents generally or the individual complainant or respondent that would change the outcome.
- May offer additional bases, but must be provided equally to all parties.

IF A PARTY APPEALS:



MUST DO!

01 Notify the parties of the appeal

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

03 Notify the parties of the result of the appeal and the rationale for the result

04 Ensure that the appellate decisionmaker has been trained

ATTENDANCE



TITLE IX
UNIVERSITY

HIGHER EDUCATION

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS

PREGNANCY OBLIGATIONS



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.

PREGNANCY OBLIGATIONS

Students



ADMISSIONS (106.21)



When determining whether a person satisfied policy or criterion for admission, or in making offer of admission:

School **MUST** treat pregnancy or related conditions the same as any other temporary medical conditions.

School **MUST NOT**:

- Implement policy, practice or procedure concerning the current, potential, or past parental, family, or marital status of a student or application that treats a person differently on the basis of sex;
- Discriminate against any person on the basis of the current, potential, or past pregnancy or related conditions, or adopt or implement any policy, practice, or procedure that so discriminates; and
- Make a pre-admission inquiry as to the marital status of an applicant for admission (including Miss or Mrs.)
 - May ask to self identify their sex but **ONLY** if the question is asked of ALL applicants AND if response is NOT used as a basis for discrimination.



PREGNANCY OR RELATED CONDITIONS (106.4)

Must NOT discriminate against any student on the basis of the student's current, potential, or past pregnancy or related conditions.

It is NOT discrimination when a student is allowed to voluntarily participate in a separate portion of the education program or activity provided the school ensures that the separate portion is comparable.

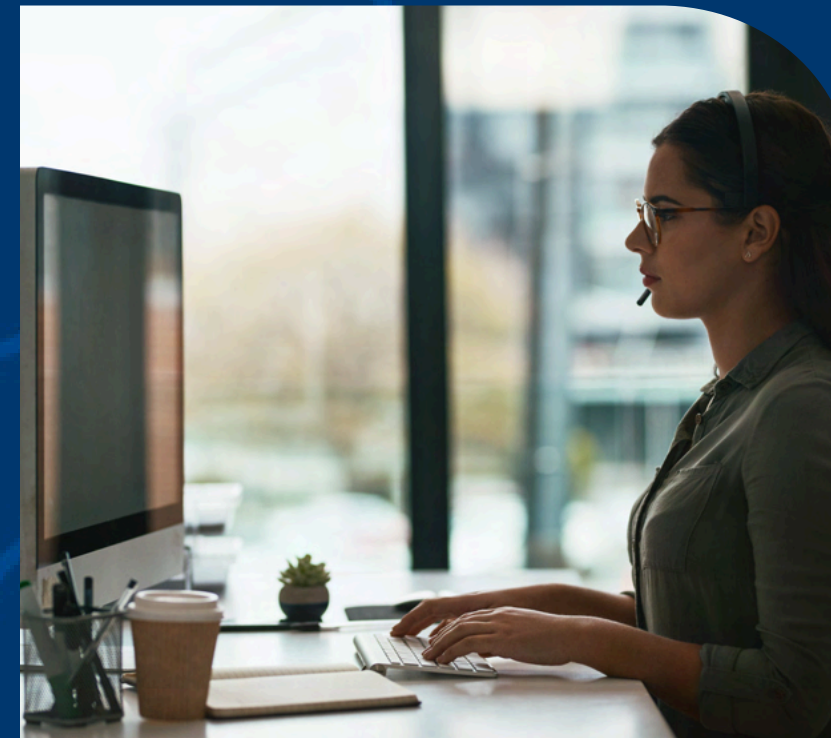
PREGNANCY OR RELATED CONDITION (P.1510)



- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation;
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical condition

NOTIFICATION, PREGNANCY

When a student (or person who has the legal right to act on behalf of the student) informs ANY employee of the student's pregnancy or related conditions, the employee must:



Promptly provide that person with the Title IX Coordinator's contact information and



Inform the person that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access



COORDINATOR RESPONSE TO PREGNANCY OR RELATED CONDITIONS NOTIFICATION P. 1526

Provide information about the school's obligations

Provide reasonable modifications. Note – called modifications not supportive measures

Voluntary access to separate and comparable portion of program or activity

Voluntary leaves of absence

Lactation space

Limitation on supporting documentation

Comparable treatment to other temporary medical conditions

Certification to participate



COORDINATOR RESPONSE TO PREGNANCY OR RELATED CONDITIONS NOTIFICATION

PROVIDE INFORMATION ABOUT
THE SCHOOL'S OBLIGATIONS

Explain Obligations

&

Provide Notice of
Nondiscrimination (Website)

COORDINATOR RESPONSE TO PREGNANCY OR RELATED CONDITIONS NOTIFICATION

PROVIDE REASONABLE MODIFICATIONS

Make reasonable modifications to school's policies, practices or procedures to prevent sex discrimination and ensure equal access.

Modifications must be individualized.

Consult with the student to determine appropriate modifications.

- A modification is not reasonable if school can demonstrate would fundamentally alter the nature of its education program or activity. (High bar)

Student may accept OR decline each modification offered. If accepted, school **MUST** implement it.



Examples of modifications:

- **Breaks during class to express breast milk.**
- **Breastfeed or attend to health needs associated with pregnancy or related condition including:**
 - **Eating/Drinking.**
 - **Using the restroom.**
 - **Intermittent absences to attend medical appointments.**
 - **Access to online or homebound education.**
 - **Changes in schedule or course sequence.**
 - **Extensions of time for coursework or rescheduling of tests and exams.**
 - **Allowing the student to sit or stand.**
 - **Allowing the student to keep water nearby.**
 - **Counseling.**
 - **Changes in physical space or supplies.**
 - **Ex. Access to a larger desk or footrest.**
 - **Elevator Access.**
 - **Other.**

MUST ALLOW OR ENSURE:



- Must allow the student to **voluntarily access any separate and comparable portion** of the education program or activity.
- Must allow the student to **voluntarily take a leave of absence**, to cover, at the minimum, the period of time deemed medically necessary by the student's licensed healthcare provider.
 - If the student qualifies for a leave under a leave policy by the school that allows a greater time than medically necessary, the school must allow the student to take leave under that policy instead, if the student chooses.
 - Upon return, the student must be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the leave began.
- Must ensure that the student can **access a lactation space** that may be used by a student for expressing breast milk or breastfeeding and **MUST**:
 - Not be a bathroom;
 - Be clean;
 - Be shielded from view;
 - Be free from intrusion from others.

Limitation on supporting documentation

- **Must NOT require supporting documentation unless:**
 - The documentation is necessary and reasonable for the school to determine the reasonable modifications to make or whether to take additional specific actions.
- **NOT NECESSARY WHEN :**
 - A student's need for a specific modification is obvious (such as when a student may need a bigger uniform or desk etc.).
 - A student has previously provided sufficient supporting documentation.
 - When the reasonable modification is allowing the student to carry or keep water nearby, sit or stand, take breaks to eat, drink or use the restroom.
 - When the student has lactation needs.
 - When the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

EQUAL TREATMENT & CERTIFICATION TO PARTICIPATE

- **Must** treat pregnancy or related condition in the same manner and under the same policies as any other temporary medical conditions with respect to medical or hospital benefit, service, plan or policy.
- **Must NOT** require a student who is pregnant or has related conditions to provide certification from healthcare provider or other person that they are physically able to participate in class, program, or extracurricular UNLESS:
 - The certified level of physical ability or health is necessary for participation;
 - The school requires certification of ALL students participating in the class, program, or extracurricular activity; AND
 - The information obtained is NOT used as a basis for discrimination.

PREGNANCY OBLIGATIONS

Employees



EMPLOYEE (106.57)

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

Must NOT adopt or implement a policy, practice, or procedures, 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.



EMPLOYEE PREGNANCY OR RELATED CONDITIONS

MUST treat pregnancy or related conditions as any other temporary medical conditions for ALL job-related purposes.

- Commencement
- Duration and extensions of leave
- Payment of disability income
- Accrual of seniority and any other benefit or service
- Reinstatement
- Other fringe benefits offered to employees

MUST NOT discriminate against employee or applicant on basis of current, potential, or past pregnancy or related conditions.

If no leave policy or if employee has insufficient leave or accrued time to qualify for leave under the policy, a school **MUST** treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion, the employee shall be reinstated to the status held when the leave began or a comparable position, without decrease in rate of pay or loss of promotional opportunities or privileges.



LACTATION SPACE



MUST provide a reasonable time for employee to express breast milk or breastfeed as needed.

MUST ensure access to lactation space:

- Other than bathroom
- Clean
- Shielded from view
- Free from intrusion

PRE – EMPLOYMENT INQUIRIES –

Marital Status: No pre-employment inquiries as to marital status — including whether application is Miss or Mrs.

- Sex: May ask to self identify their sex but only if this question is asked of ALL applicants and if the response is NOT used as a basis for discrimination.



REMINDER

Title IX Coordinator can appoint a designee for these obligations but the ultimate responsibility is with the Title IX Coordinator.

PRACTICAL TIPS / IRL



Make new friends-
coordination with other
offices imperative



New training requirement for
employees



Do not forget the
recordkeeping
implications

QUESTIONS



TITLE IX
UNIVERSITY

HIGHER EDUCATION

PRESENTED BY INSTITUTIONAL COMPLIANCE SOLUTIONS

De Minimis Harm

p. 1524



When there is a circumstance (limited) in which Title IX permits different treatment or separation on the basis of sex, a school must NOT carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than “de minimus” (minimal) harm.

Adopting a policy or engaging in a practice that prevents a person from participating in an education program or activity consistent with the person’s gender identity subjects a person to more than “**de minimis**” harm on the basis of sex.



Does this include extracurricular?
Sports?

FERPA AND TITLE IX

Title IX requirements are not
alleviated by FERPA

FERPA
FAMILY EDUCATION
RIGHTS AND PRIVACY

THE DEVIL IS IN THE DETAILS



- **Definitions**
- **Placement of Commas and Other Punctuation**
- **Language Changes/Additions**



FINAL THOUGHTS



REMEMBER!



This is a lot!

↑ Shift

Requires a shift in thinking



Revert back to the webinar overarching themes

The BIG Themes “unpacked”



- The Devil is in the Details
- Make Room on Your Plate
- The What and Where Expanded
- Training, Training and A LOT More Training
- Publish it EVERYWHERE
- Make New Friends
- Grievance Procedures ++
- Finish Strong



***CONTINUE
THE JOURNEY
WITH US!***



HIGHER ED



YOUR ICS IMPLEMENTATION FORMULA

Community Partner



Policy Support



Title IX Employee Training



SMOOTH IMPLEMENTATION!

