



# 2020 TITLE IX APPELLATE DECISION MAKER TRAINING

*A Certificate Course*



# COURSE OVERVIEW

- 1 An Introduction to Title IX
- 2 Role of the Appellate Decision Maker
- 3 Writing an Appellate Decision
- 4 Practice Scenarios
- 5 Expert Title IX Appellate Decision Maker Q&A

# LEARNING OBJECTIVES



Describe the key provisions of Title IX, including its scope, forms of prohibited discrimination, and the steps in the Title IX Grievance Process.



Identify the key elements of the appellate process, including who can appeal, where and how an appeal is filed, and the grounds for appeal.



Explain the specific grounds for appeal—procedural irregularity, new evidence, and conflict of interest or bias—and how they may impact the outcome of a Title IX case.



Analyze an appellate request to determine whether it meets the necessary criteria and if it could have affected the outcome of the original determination.



Compose a well-reasoned appellate decision that clearly outlines the rationale, adheres to procedural guidelines, and maintains impartiality in decision-making.

# LESSON COMPLETION

Title IX Solutions, LLC

< Go to Dashboard

## Level I: Navigating the 2024 Title IX Regulations with Confidence

3% complete

Search by lesson title

- Pre-Training Materials 0/3
- Decoding the 2024 Title IX Regulations: A Roadmap for Educational Institutions 1/6 DRAFT
- Chapter & Speaker Introduction VIDEO • < 1 MIN • PREREQUISITE • DRAFT
- Defining Sex Discrimination & Sex-Based Harassment VIDEO • < 1 MIN • PREREQUISITE • DRAFT
- Revised Scope & Jurisdiction**

### Revised Scope & Jurisdiction

## 106.31 - EDUCATION PROGRAM

Up next  
Policy, Training & Reporting Requirements

CONTINUE →

MARK INCOMPLETE CONTINUE →

Noted Changes

- 106.31(a)(2) was added addressing gender identity

Comments

- There is pending litigation regarding gender identity protection that may impact this part of the regulations.


CANCEL




# STEPPING AWAY




 See Overview

 Coming Soon

 See Overview

 Start Course

 See Overview

 Start Course

**JUNE 27 & 28, 2024**  
**ATLANTA, GA**

**NAVIGATING THE 2024 TITLE IX REGULATIONS WITH CONFIDENCE**

*Training for Higher Education*

0%

June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)

 See Overview

 Start Course

**AN INTRODUCTION TO THE 2024 TITLE IX RULE**

TITLE IX SOLUTIONS, LLC

APRIL 25, 2024

0%

An Introduction to the 2024 Title IX Regulations

 See Overview

 Start Course

**JULY 23 & 24, 2024**  
**LIVE VIRTUAL TRAINING**

**NAVIGATING THE 2024 TITLE IX REGULATIONS WITH CONFIDENCE**

*Intensive for Higher Education*

0%

July 23-24, 2024: Virtual Title IX Training

 See Overview

 Start Course

# CERTIFICATE OF COMPLETION

THIS CERTIFICATION OF COMPLETION IS AWARDED TO:

**CARTER WILSON**

FOR SUCCESSFULLY COMPLETING

*LEVEL I: NAVIGATING THE 2020 TITLE IX REGULATIONS  
WITH CONFIDENCE*

ON JULY 18, 2024

**Learning Objectives:**

- Articulate the key changes outlined in the revised 2024 Title IX regulations, including the updated scope of sex-based harassment and discrimination
- Explain the new requirements for institutions in responding to complaints, including investigation procedures and timelines
- Identify and differentiate the roles of various Title IX personnel within your institution
- Develop strategies for implementing the new Title IX regulations effectively within your educational setting through policy and practice
- Facilitate prompt, equitable, and compliant grievance processes of sex-based harassment and discrimination complaints
- Apply best practices to foster a safe and inclusive education program



INSTITUTE

*Cara Kuhn*

CARA KUHN

Training Coordinator  
Title IX Solutions, LLC

TITLE IX SOLUTIONS, LLC

# POSTING REQUIREMENTS

In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.”  
34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

# POSTING REQUIREMENTS

○ Facilitating Informal Resolution Processes 0/4 ▾

○ Informal Resolution Agreements and Outcomes 0/2 ▾

○ Potential Challenges in Facilitating Informal Resolution Processes 0/2 ▾

○ Understanding Trauma 0/6 ▾

○ Course Wrap-up 0/3 ▾

○ Title IX Posting Requirements 0/2 ▲

○ Instructions for Posting Title IX Solutions Training Materials on Institutional Websites  
INSTRUCTIONS · PREREQUISITE

○ Final Combined Course Materials  
DOWNLOAD

### Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions Certification Training!

Please follow these instructions as you post the training materials to your school's website to comply with Title IX Regulation 106.45(b)(10)(i)(d).

Contact [adrienne@titleixsolutions.com](mailto:adrienne@titleixsolutions.com) or [tawny@titleixsolutions.com](mailto:tawny@titleixsolutions.com) with any questions regarding the posting of Title IX Solutions' training materials.

**Program materials available for download:**

If you haven't done so already, you can find and download the program materials for this course by clicking on the next lesson named "Final Combined Course Materials".

**Instructions for posting the above training program materials are outlined below:**

Step 1: Publish Authorization & Disclaimer

COMPLETE & CONTINUE →

# COURSE SUPPORT

- [Admin](#)
- [My Account](#)
- [Support](#)
- [Sign Out](#)

Search



## Courses

[2022 IX Institute Free Content](#) [2023 IX Institute Free Content](#) [2024 Title IX Training](#) [All Courses](#) [Level II Training](#) [Level I Training](#)

June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)

An Introduction to the 2024 Title IX Regulations

July 23-24, 2024: Virtual Title IX Training  
Use code INTD24REGS to save \$100

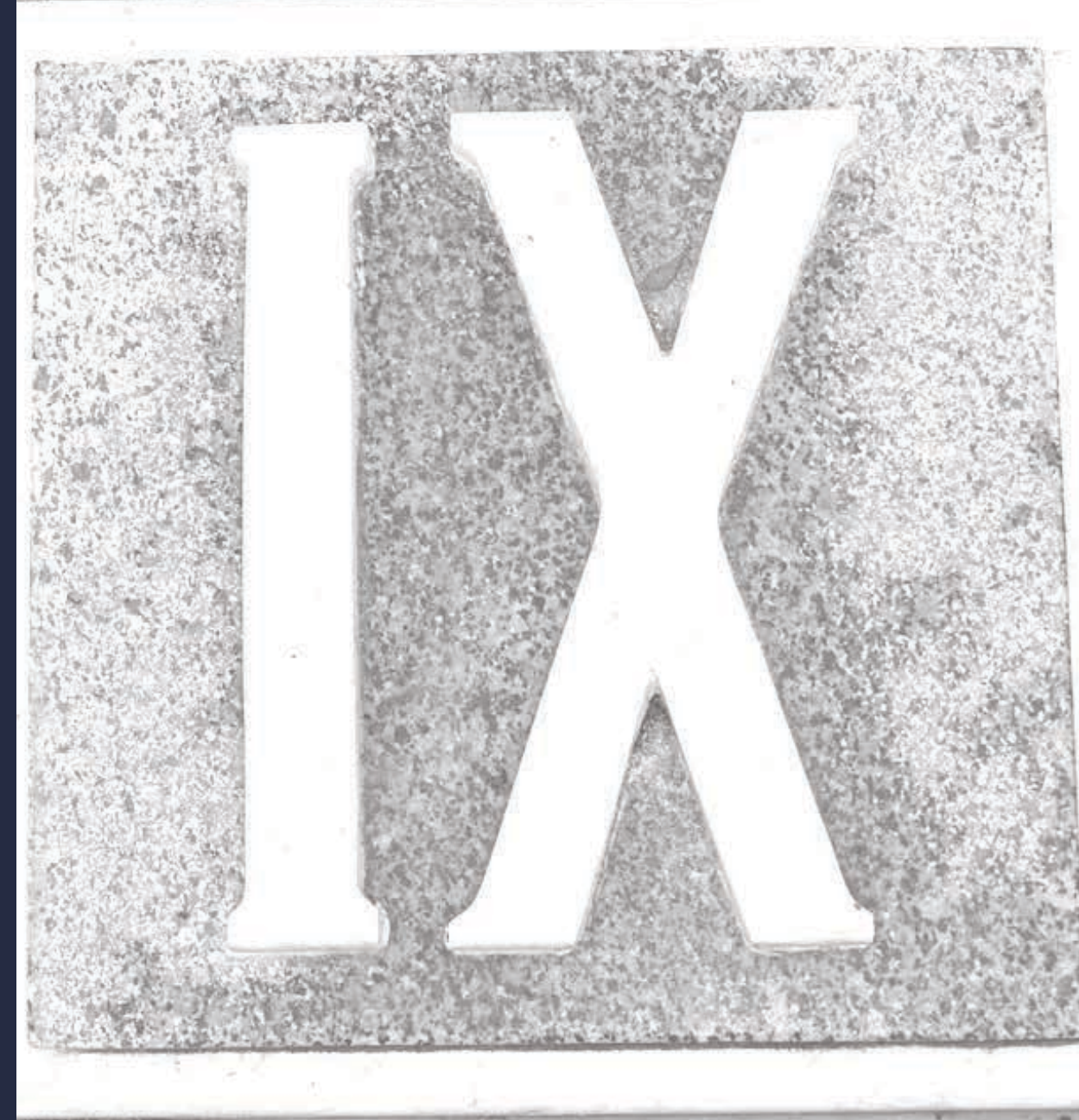
THANK  
YOU!



TITLE IX SOLUTIONS, LLC



AN  
INTRODUCTION  
TO TITLE IX





# SPEAKER

**CARA KUHN**

TRAINING COORDINATOR

TITLE IX SOLUTIONS

# IN THIS CHAPTER

The Roman numeral IX is displayed in a large, white, serif font, centered within a white square border.

HISTORY OF  
TITLE IX



TITLE IX  
DEFINITIONS



PARTICIPANTS IN THE  
TITLE IX PROCESS



OVERVIEW OF THE  
TITLE IX PROCESS

# HISTORY OF TITLE IX



# Title IX of the Education Amendments of 1972

“

“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[.]”

20 U.S.C. §1681(a)

”

# CREATION OF TITLE IX

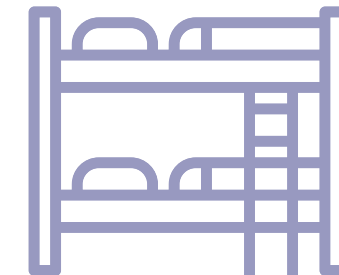
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

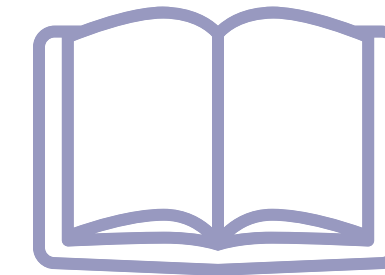
Designed initially to address inequities in:



Admissions



Residence  
Life



Academic  
Opportunities



Extracurricular  
Activities

# WHO IS PROTECTED?

All students regardless of:

- Sexual Orientation
- Gender Identity
- Nationality
- Immigration Status
- Race
- Ability

All genders are included

Employees - faculty, staff, administrators

Applies to:

- State and local educational agencies that receive federal funding
  - Vocational, professional, and higher education institutions

# BRIEF HISTORY OF TITLE IX



**JUNE 23, 1972**

Title IX becomes law and addresses sex-based discrimination



**APRIL 4, 2011**

Guidance expands Title IX to include sexual harassment, dating and domestic violence, sexual assault, and stalking



**AUGUST 14, 2020**

New regulations go into effect, requiring all educational institutions to follow specific procedures in response to sexual harassment

# NOTE ON THE 2024 REGULATIONS

**IN APRIL OF 2024, THE DEPARTMENT OF EDUCATION RELEASED NEW REGULATIONS EXPANDING THE SCOPE OF TITLE IX.**

- Many states have challenged these new regulations through injunctions which has led to different school and states following different Title IX guidance.
- Title IX is a continually evolving landscape which makes training that much more important!



**IN JANUARY OF 2025, THE DEPARTMENT OF EDUCATION ANNOUNCED THAT THE FINAL RULE AND THE 2024 REGULATIONS ARE NO LONGER EFFECTIVE IN ANY JURISDICTION.**

All states and schools are required to follow the 2020 Title IX Regulations

# TITLE IX DEFINITIONS



# ACTUAL KNOWLEDGE

- "[N]otice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient" (Postsecondary)
- Notice of sexual harassment or allegations by ANY employee of an elementary or secondary school
- Includes reports sent to the Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving a person's written or oral report

# REPORT VS. COMPLAINT

## REPORT

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

## FORMAL COMPLAINT

- Required for initiation of the Title IX grievance process
- Can be oral or written
- Cannot be filed anonymously or by a third-party
- Request to the school that **objectively can be understood as a request for the school to investigate** and make a determination

# REPORT VS. COMPLAINT

## REPORT

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

## FORMAL COMPLAINT

- Required for initiation of the Title IX grievance process
- Can be oral or written
- Cannot be filed anonymously or by a third-party
- Request to the school that **objectively can be understood as a request for the school to investigate** and make a determination



# REMINDER:



**MAKING A REPORT OR A COMPLAINT  
TO YOUR INSTITUTION OR  
CONFIDENTIAL RESOURCE IS NOT  
EQUIVALENT TO FILING CHARGES  
WITH LAW ENFORCEMENT.**

# SUPPORTIVE MEASURES

## WHAT?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sex discrimination and sexual harassment

## WHEN?

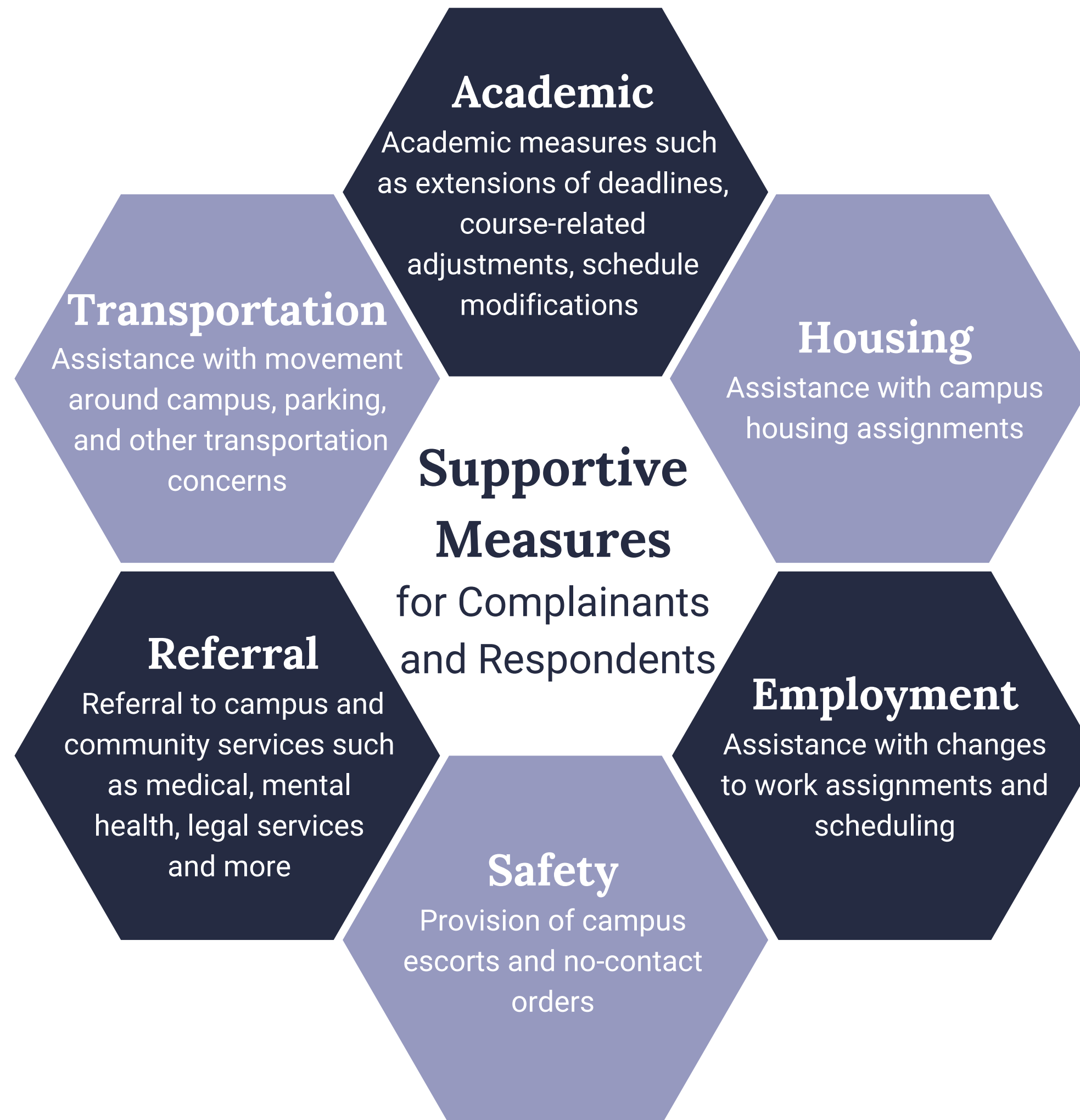
- Available before or after filing a complaint or where no complaint has been filed

## WHY?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

## HOW?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party



# AMNESTY PROVISION

- Not required under Title IX but often included in the policy to encourage reporting
- Individuals may not be subject to disciplinary action for a minor violation of other school policies (e.g., Code of Conduct) when participating in a Title IX investigation

## SCENARIO



**Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.**

# CONFIDENTIALITY

- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
  - Identities of these individuals will be known to the individuals conducting the Title IX process

# RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
  - Interfering with any right or privilege under Title IX
  - Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

# RETALIATION

All persons are prohibited from retaliating against reporting parties, Complainants, Respondents, Witnesses, and others who participate in the Title IX process.



## **EXAMPLE ONE:**

Friends of the Complainant intimidating the Respondent, or vice versa.



## **EXAMPLE TWO:**

School personnel discriminating against an individual for refusing to participate in the Title IX process.

# REMEDIES AND SANCTIONS

## REMEDIES

- Offered to Complainants
- Designed to restore or preserve equal access to the school's education program or activity
- May be the same as supportive measures
- DO NOT need to be "non-punitive" or avoid burdening the respondent

## SANCTIONS

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy
- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

# EDUCATION PROGRAM OR ACTIVITY

## THE EDUCATIONAL PROGRAM OR ACTIVITY INCLUDES ALL OPERATIONS OF THE SCHOOL, BOTH ON OR OFF CAMPUS.

- Includes locations, events, or circumstances over which the school exercises substantial control over both:
  - The Respondent, and
  - The context in which an incident of sexual harassment occurs
- Includes any building owned or controlled by student organizations which are officially recognized by the school (including fraternity & sorority houses)
- Includes computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of the school

# STANDARD OF PROOF

**STANDARD USED TO DETERMINE WHETHER OR NOT A SEXUAL HARASSMENT POLICY VIOLATION OCCURRED.**

## Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

## Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

# STANDARD OF PROOF

## Preponderance of the Evidence

Anything that tips the scale to more than 50/50

## Clear and Convincing

More likely to be true than untrue, substantial evidence to support

## Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Where does your needle point?

# PARTICIPANTS IN THE TITLE IX PROCESS



# OVERVIEW

## TITLE IX PERSONNEL VARY, DEPENDING UPON SEVERAL FACTORS:

- Institution size
- Institution type
  - K-12
  - Community/two-year colleges
  - Four year colleges and universities
  - Public/private
- Institution structure and resources
  - Organizational charts and reporting
  - Full-time/part-time
  - Budget



# TITLE IX PERSONNEL

EXCEPT FOR THE TITLE IX COORDINATOR, TITLE IX PERSONNEL MAY BE INTERNAL OR EXTERNAL.



Title IX  
Coordinator



Deputy  
Coordinators



Title IX  
Investigator



Decision-  
Maker



Informal Resolution  
Facilitator



Advisor



Appellate  
Decision-Maker

# TITLE IX COORDINATOR

EVERY SCHOOL MUST HAVE A DESIGNATED TITLE IX COORDINATOR.

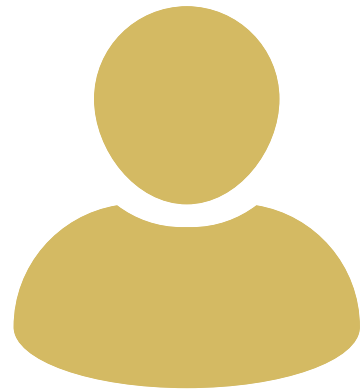
## CAN

- Serve as the Title IX Investigator
- Serve as the Informal Resolution Facilitator
- Have other roles on campus
  - Dean of Students, Director of Human Resources, etc.

## CANNOT

- Serve as the Title IX Decision-Maker
- Serve as the Appeals Decision-Maker

# TITLE IX INVESTIGATOR

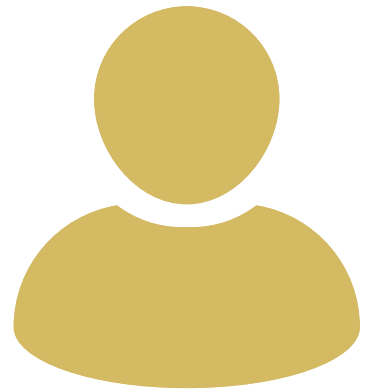


**MAY BE THE TITLE IX COORDINATOR, OTHER SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR.**

## **RESPONSIBILITIES:**

- Collects evidence and interviews the Parties and Witnesses
- Provides all evidence to the Parties and their Advisors for inspection and review
- Creates an investigative report that fairly summarizes relevant evidence
- Sends the investigative report to the Complainant, Respondent, Advisors, and Decision-Maker

# TITLE IX DECISION-MAKER

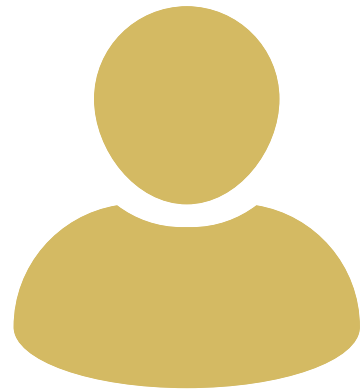


**MAY BE A SINGLE DECISION-MAKER OR A HEARING PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).**

## **RESPONSIBILITIES:**

- Oversees and facilitates the Title IX adjudication process, including a hearing if the school has one
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the credibility assessment process
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

# INFORMAL RESOLUTION FACILITATOR

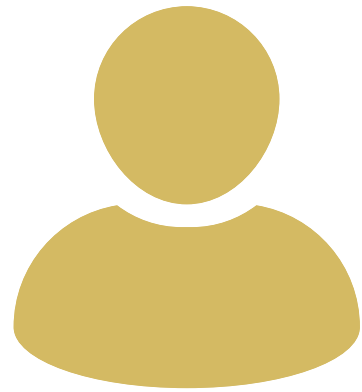


**MAY BE A SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR. CAN BE THE TITLE IX COORDINATOR.**

## **RESPONSIBILITIES:**

- Provides information to the Parties and Advisors about the informal resolution process
- Various forms of informal resolution may be available
- Facilitates the informal resolution process
- Drafts informal resolution settlement agreements at the conclusion of the process (if the complaint is resolved)

# ADVISOR



## COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.



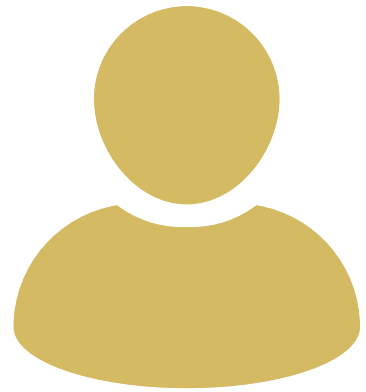
An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.

- School must provide an Advisor for the live hearing if a Party does not have one present
- School cannot limit the choice or presence of the Advisor for either Party in any meeting
- Parties have the option to include the Advisor in any meeting or investigative interview
- Schools may set specific expectations or provide guidelines for Advisors to follow during meetings, investigative interviews, and the hearing

# ADVISOR



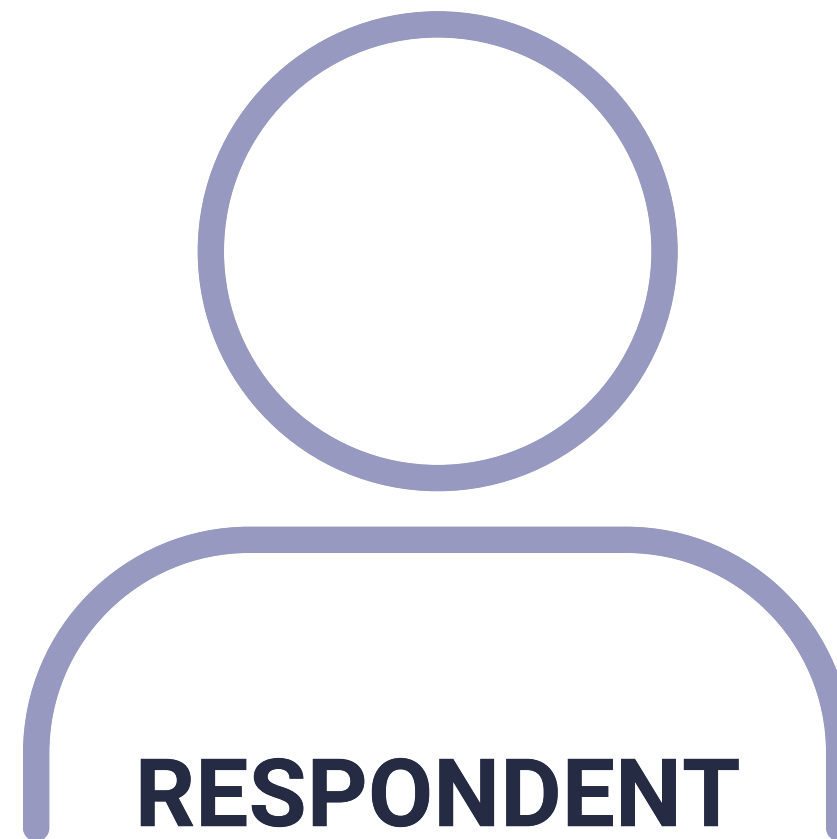
**COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.**

## **RESPONSIBILITIES:**

- Supports their Party by accompanying them during interviews, meetings, and the credibility assessment process
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

# PARTIES IN THE PROCESS

ASIDE FROM THE TITLE IX PERSONNEL WHO TAKE PART IN THE FACILITATION OF THE GRIEVANCE PROCESS, WE WILL ALSO SEE THESE INDIVIDUALS INVOLVED:



# COMPLAINANT

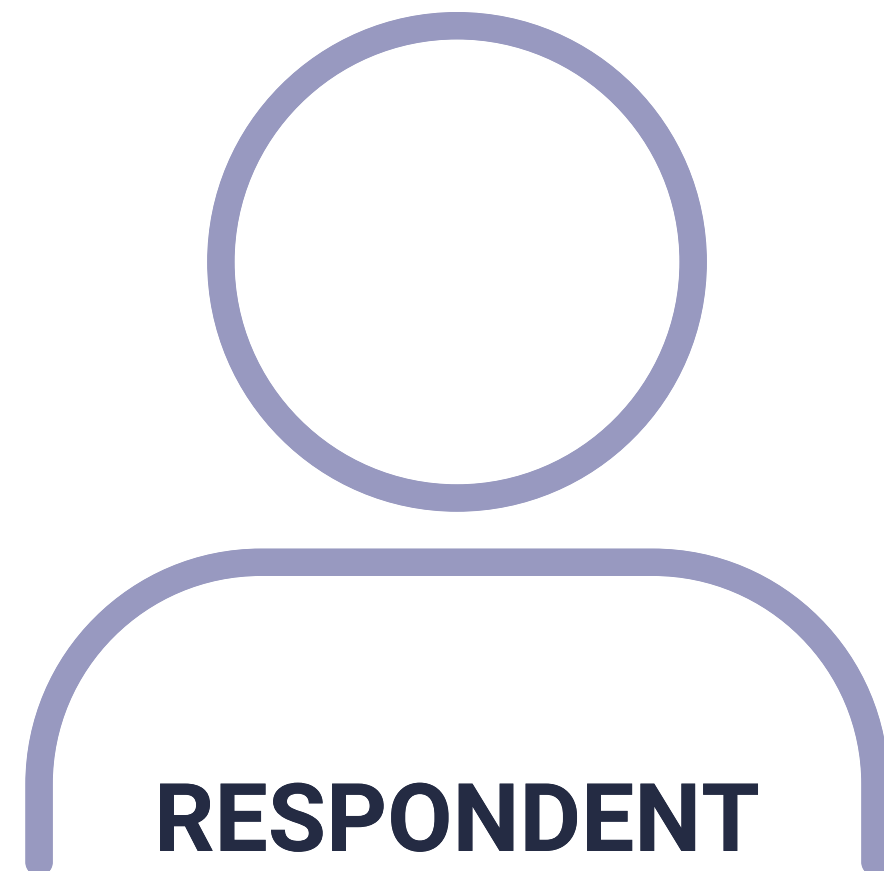
ALLEGED TO BE THE **VICTIM** OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT



- May be a student, employee, or other community member
- Must be participating in or attempting to participate in the school's education program or activity with which the complaint is filed
- There may be more than one Complainant in a case

# RESPONDENT

REPORTED TO BE THE ALLEGED **PERPETRATOR** OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT.



- May be a student, employee, community member, or non-community member
  - The school's ability to respond to incidents perpetrated by non-community member Respondents may be limited
- School may dismiss the complaint if the Respondent is no longer enrolled or employed by the school
- There may be more than one Respondent in a case

# WITNESS

**INDIVIDUALS THAT ARE IDENTIFIED IN THE GRIEVANCE PROCESS AS HAVING INFORMATION THAT MAY SUPPORT OR REFUTE ALLEGATIONS OF SEXUAL HARASSMENT.**



- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

# OVERVIEW OF THE TITLE IX PROCESS



# DURING THE TITLE IX GRIEVANCE PROCESS:

## A SCHOOL MUST:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

# DURING THE TITLE IX GRIEVANCE PROCESS:

## A SCHOOL MUST:

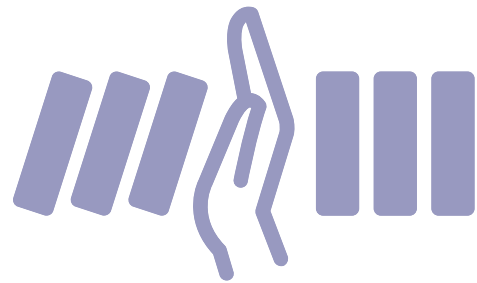
- Include reasonably prompt time frames for the conclusion of the grievance process
- Describe the range of possible disciplinary sanctions and remedies
- State the standard of proof
- Describe the range of supportive measures available to Complainants and Respondents
- Not require or seek the disclosure of information protected under a legally recognized privilege

# GOAL OF TITLE

ULTIMATELY, THE GOAL OF TITLE IX IS TO:



Stop the harassment or discrimination



Prevent future recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

# GRIEVANCE PROCESS

1

2

3

4

5

6

7

**INTAKE &  
REVIEW**

FORMAL  
COMPLAINT

NOTICE OF  
ALLEGATIONS

INVESTIGATION

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

APPEAL



- Title IX Coordinator must respond in a way that's not deliberately indifferent
- Meet with the Complainant to discuss supportive measures and process for a formal complaint

# GRIEVANCE PROCESS

1

INTAKE &  
REVIEW

2

**FORMAL  
COMPLAINT**



- Starts the grievance process
- Must be a written document

3

NOTICE OF  
ALLEGATIONS

4

INVESTIGATION

5

DECISION-  
MAKING  
PROCESS

6

WRITTEN  
DETERMINATION

7

APPEAL

# GRIEVANCE PROCESS

1

INTAKE &  
REVIEW

2

FORMAL  
COMPLAINT

3

**NOTICE OF  
ALLEGATIONS**



- Provided to both parties outlining the grievance procedures, information about the allegations, prohibition of retaliation, and the parties' rights

4

INVESTIGATION

5

DECISION-  
MAKING  
PROCESS

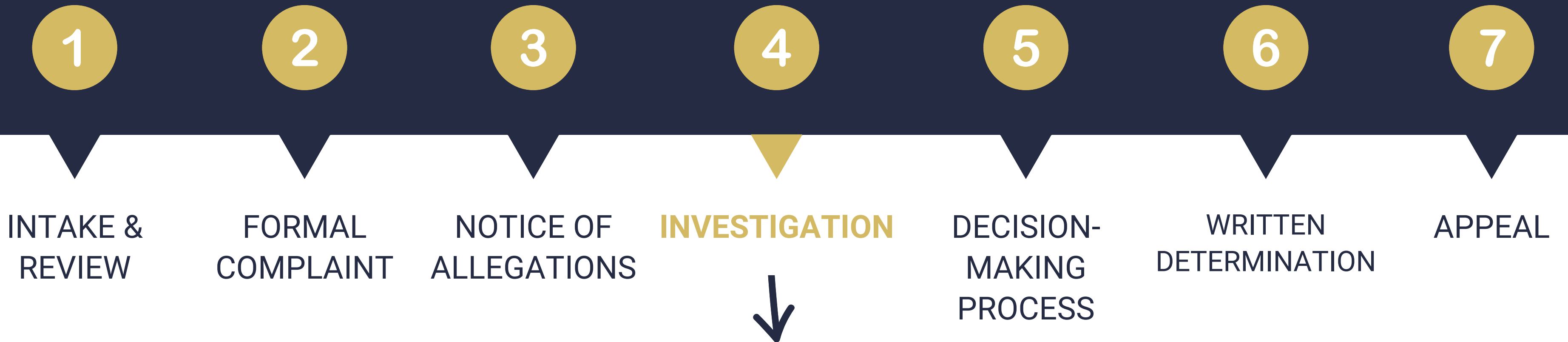
6

WRITTEN  
DETERMINATION

7

APPEAL

# GRIEVANCE PROCESS



- Parties have the opportunity present witnesses and evidence
- Parties also have the right to access, review and respond to evidence gathered during the investigation

# GRIEVANCE PROCESS

1

INTAKE &  
REVIEW

2

FORMAL  
COMPLAINT

3

NOTICE OF  
ALLEGATIONS

4

INVESTIGATION

5

**DECISION  
MAKING  
PROCESS**

6

WRITTEN  
DETERMINATION

7

APPEAL

- Decision-maker has opportunity to question parties and witnesses to evaluate allegations and assess credibility

\*Some conduct does not require a live hearing. The Title IX Coordinator will be able to help identify cases when a live hearing is required and cases when it is not.

# GRIEVANCE PROCESS

1

INTAKE &  
REVIEW

2

FORMAL  
COMPLAINT

3

NOTICE OF  
ALLEGATIONS

4

INVESTIGATION

5

DECISION  
MAKING  
PROCESS

6

WRITTEN  
DETERMINATION

7

APPEAL



- Standard of evidence is used to determine whether a policy violation occurred
- Notification is issued to the parties in writing

# GRIEVANCE PROCESS

1

INTAKE &  
REVIEW

2

FORMAL  
COMPLAINT

3

NOTICE OF  
ALLEGATIONS

4

INVESTIGATION

5

DECISION  
MAKING  
PROCESS

6

WRITTEN  
DETERMINATION

7

**APPEAL**



- Parties have the right to appeal the process on the following bases:
  - Procedural irregularity that would change the outcome
  - New evidence that would change the outcome and that was not reasonably available when the determination was made
  - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias that would change the outcome

# INFORMAL RESOLUTION

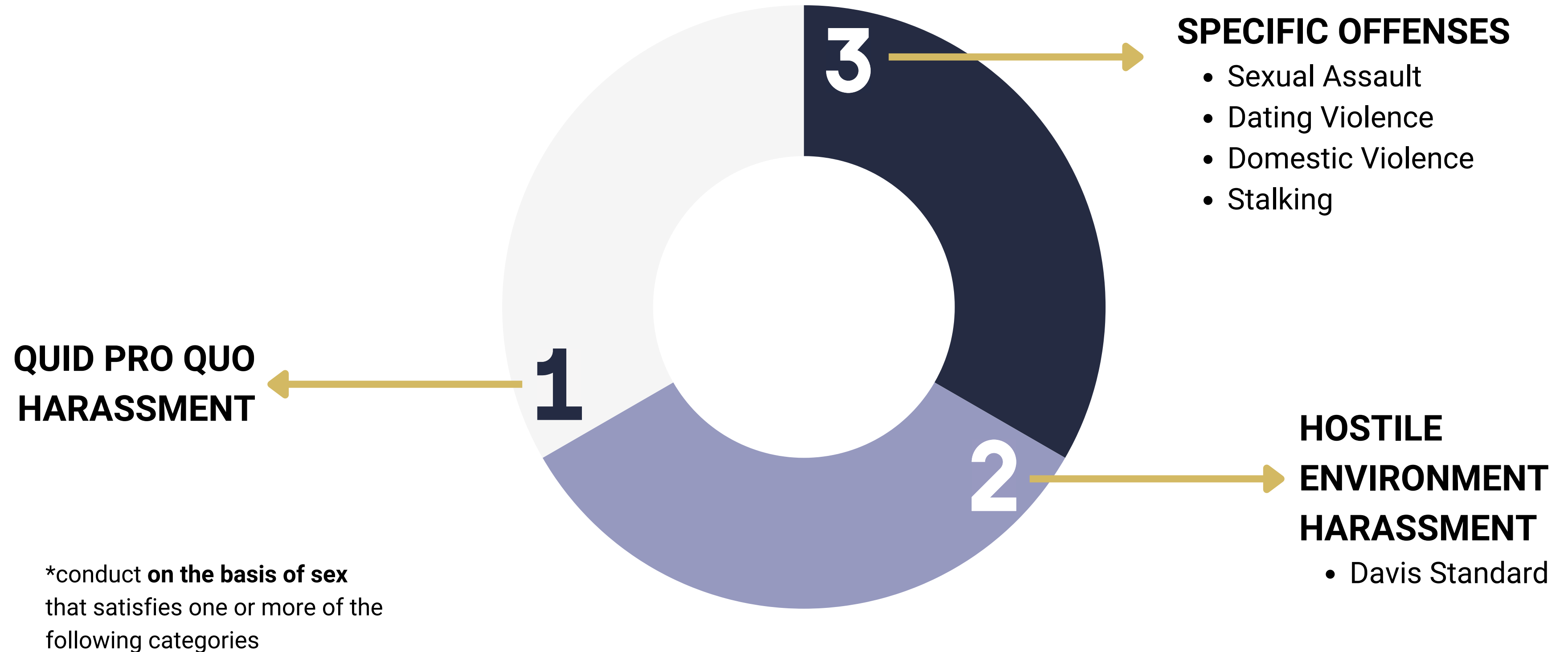
**AT ANY TIME PRIOR TO DETERMINING WHETHER SEXUAL HARASSMENT OCCURRED, A SCHOOL MAY OFFER TO A COMPLAINANT AND RESPONDENT AN INFORMAL RESOLUTION PROCESS.**

- Cannot offer informal resolution if the complaint includes allegations that:
  - An employee engaged in sexual harassment of an elementary school or secondary school student
  - Process would conflict with Federal, State or local law
- Schools cannot require or pressure the parties to participate in an informal resolution process.
- The school must obtain the parties' voluntary consent to the informal resolution process

# DEFINING SEXUAL HARASSMENT



# SEXUAL HARASSMENT



# SEXUAL HARASSMENT

# 1

# QUID PRO QUO

## DEFINITION:

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient of an individual's participation in unwelcome sexual conduct

### SCENARIO



Dr. Smith tells Amy, a graduate student, that her research funding and recommendation letter for a prestigious fellowship depends on them going out for drinks and spending time together after hours. Amy feels uncomfortable but fears rejecting the invitation will jeopardize her academic career.

SEXUAL  
HARASSMENT

2

HOSTILE  
ENVIRONMENT

**DEFINITION:**

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.

SEXUAL  
HARASSMENT

2

HOSTILE  
ENVIRONMENT

**DEFINITION:**

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.

- Severe
- Pervasive
- Objectively Offensive

SEXUAL  
HARASSMENT

2

HOSTILE  
ENVIRONMENT

## EXAMPLES MAY INCLUDE:

- Sexual flirtations, advances, or propositions
- Requests for sexual favors
- Jokes or comments of a sexual nature
- Cyber or electronic harassment of a sexual nature
- Verbal commentary about an individual's body
- Disseminating photos or videos without consent
- Visual conduct such as leering or making gestures
- Unwanted kissing

# SEXUAL HARASSMENT

# 2

# HOSTILE ENVIRONMENT

## DEFINITION:

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.

### SCENARIO



Alex (they/them) regularly faces sexual jokes and unwanted comments about their appearance from peers in the locker room. When asked to stop, Alex's peers continue to harass them, making Alex feel unsafe and uncomfortable.

SEXUAL  
HARASSMENT

3

**SPECIFIC  
OFFENSES**

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

\*As defined by the Clery Act

SEXUAL  
HARASSMENT

3

SEXUAL  
ASSAULT

## DEFINITION:

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

## TYPES OF SEXUAL ASSAULT:

- Rape
- Fondling
- Incest
- Statutory Rape (sex with a minor)

\*as defined in Code of Federal Regulations (Title 34, Part 668, Subpart D, Appendix A)

SEXUAL  
HARASSMENT

3

DATING  
VIOLENCE

## DEFINITION:

Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the victim
- Where the existence of such a relationship shall be determined based on a 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

SEXUAL  
HARASSMENT

3

DOMESTIC  
VIOLENCE

## DEFINITION:

Felony or misdemeanor crimes committed by a person who:

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

SEXUAL  
HARASSMENT

3

STALKING

## DEFINITION:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

## EXAMPLES:

- Repeated, unwanted communication by phone, email, mail, texting, social media, etc.
- Repeatedly leaving or sending the victim unwanted items or presents
- Making direct or indirect threats to harm
- Damaging or threatening to damage personal property
- Repeatedly posting information or spreading rumors about the victim

# CONSENT

**THE REGULATIONS DO NOT INCLUDE A DEFINITION OF CONSENT, BUT IT DOES REQUIRE SCHOOLS TO ADOPT A DEFINITION OF CONSENT.**

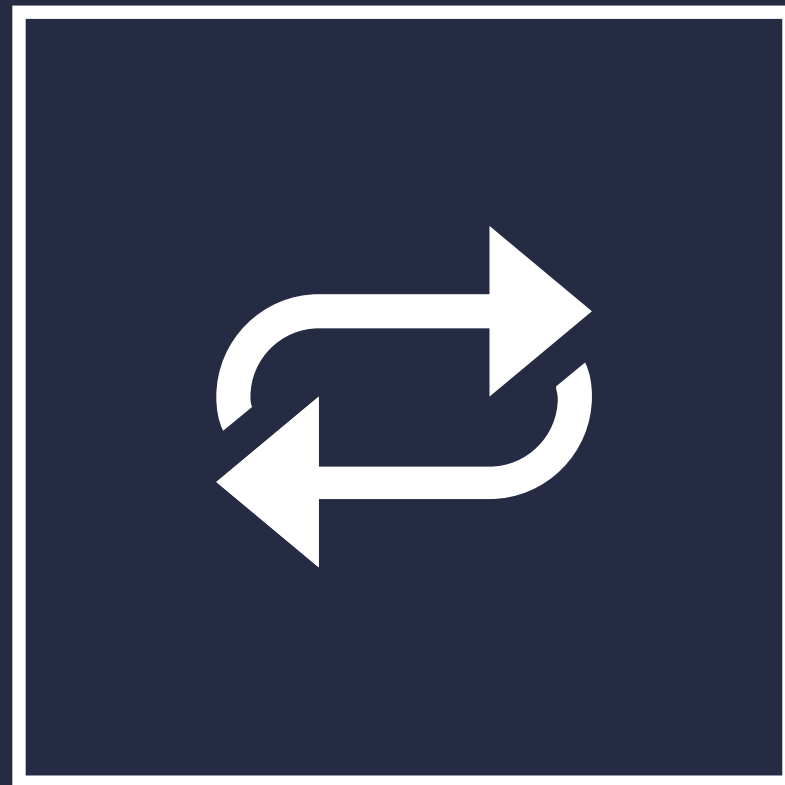
- Regulations do require a school to clearly define consent
- Consent definition must be applied consistently between men and women and between complainants and respondents in particular cases
- Many states have adopted statutes addressing sexual assault on college campuses and those statutes may have a state-specific definition of consent

TITLE IX SOLUTIONS, LLC

---

# ROLE OF THE APPELLATE DECISION MAKER

# IN THIS CHAPTER



THE APPEAL PROCESS



BASES FOR APPEAL



QUALITIES OF AN  
APPELLATE DECISION  
MAKER



# **SPEAKER**

## **THE HONORABLE JUDGE RIEHL**

DECISION-MAKER AND INFORMAL  
RESOLUTION FACILITATOR

# THE APPEAL PROCESS



# GRIEVANCE PROCESS



INTAKE &  
REVIEW

FORMAL  
COMPLAINT

NOTICE OF  
ALLEGATIONS

INVESTIGATION

DECISION-  
MAKING  
PROCESS

WRITTEN  
DETERMINATION

**APPEAL**



**WE ARE HERE**

# APPEALING A DECISION

- 1 Title IX Regulations stipulate that a school must provide an appeal from a determination regarding responsibility and from a recipient's dismissal of a formal complaint or any allegations therein
- 2 The appeal process is available to both the Complainant and Respondent
- 3 The Appellate Decision-Maker must be a separate individual who was not involved in the investigation or the decision to dismiss the complaint.

# APPEALING A DECISION

- 4 Parties must be notified in writing when an appeal is filed
- 5 Appeal procedures must be implemented equally for both Complainant and Respondent
- 6 Parties must have a reasonable opportunity to submit a written statement supporting or challenging the determination
- 7 Parties must be issued simultaneously a written decision describing the result of the appeal and the rationale, drafted by the Appellate Decision-Maker

# KEY ELEMENTS OF APPEAL

## WHO?

- Complainant, Respondent, or School (if the school proceeded with a complaint without a Complainant)
- Appeal is received by the Title IX Office

## WHERE?

- An appeal is filed with the Title IX Office

## WHEN?

- Determined by school policy
- Usually within 5 days of the written determination

## HOW?

- Process for filing an appeal is set forth in the school's policy and outlined in the written determination

# AFTER AN APPEAL IS FILED

## THE TITLE IX COORDINATOR WILL:

- Designate an Appellate Decision Maker
- Ensure proper training of Appellate Decision Maker
- Establish timelines for appeal resolution
- Ensure strict compliance with the process
  - Only one chance to appeal
- Notify the other party in writing of the appeal
- Ensure equal rights for both parties
- Provide an equal opportunity to submit written arguments
  - If no school policy exists, the Appellate Officer should allow written arguments and set parameters in accordance with DOE regulations.

# BASES FOR APPEAL



# BASES OF APPEAL

## PROCEDURAL IRREGULARITY THAT AFFECTED THE OUTCOME OF THE MATTER.

**1**

Respondent was only given four days to inspect evidence and provide a written response when the Title IX Regulations stipulate parties have ten days.

**2**

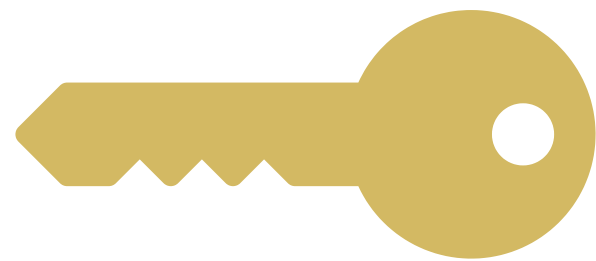
Complainant's Advisor was not allowed to cross-examine one of the Respondent's witnesses who was present during the hearing due to "time constraints"

**3**

The Respondent was not allowed an Advisor in the pre-hearing meeting.

§106.45(b)(8)

**KEY  
CONSIDERATIONS  
AS AN APPELLATE  
DECISION MAKER**



- Review the record and determination for irregularities.
- Assess whether deadlines were met as per school policy.

**IF AN IRREGULARITY IS FOUND,  
DETERMINE IF IT AFFECTED  
THE OUTCOME**

# BASES OF APPEAL

**NEW EVIDENCE THAT WAS NOT REASONABLY AVAILABLE AT THE TIME THE DETERMINATION OR DISMISSAL WAS MADE, WHICH COULD AFFECT THE OUTCOME OF THE MATTER.**

**1**

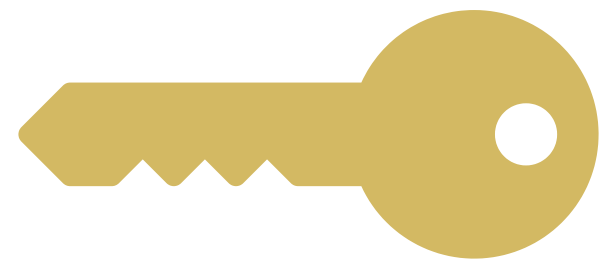
A previously unknown Witness came forward with information regarding the incident after hearing about the incident from a friend.

**2**

A Respondent was able to recover an email containing a conversation with the Complainant he previously believed to be deleted.

§106.45(b)(8)

**KEY  
CONSIDERATIONS  
AS AN APPELLATE  
DECISION MAKER**



**EVIDENCE DISCOVERED AFTER THE  
INVESTIGATION BUT BEFORE, DURING,  
OR AFTER THE HEARING**

- Was the new evidence reasonably available at the time of the determination?
- Could the new evidence affect the outcome?

# BASES OF APPEAL

## CONFLICT OF INTEREST OR BIAS BY THE TITLE IX COORDINATOR, INVESTIGATOR(S) OR DECISION-MAKER(S)

**1**

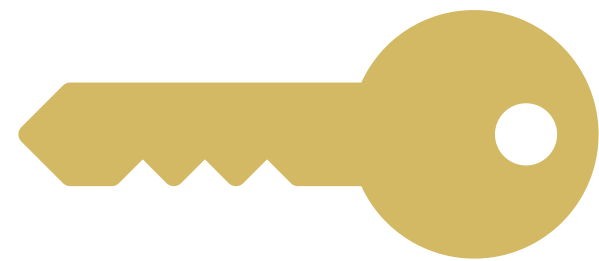
Respondent discovered the Decision-Maker has made several public statements on social media about their unwavering support for sexual assault survivors and their extreme distrust of males.

**2**

Complainant learned the Title IX Investigator is an involved athletic booster for the football team which the Respondent plays on.

§106.45(b)(8)

**KEY  
CONSIDERATIONS  
AS AN APPELLATE  
DECISION MAKER**



- Assess if the Title IX Coordinator, investigator, or Decision-Maker had bias or a conflict of interest.

**IF BIAS OR CONFLICT IS FOUND,  
DETERMINE IF IT AFFECTED  
THE OUTCOME**

# OPTIONAL BASES OF APPEAL

**SCHOOLS MAY PROVIDE OTHER BASES OF APPEAL AS LONG AS THEY APPLY EQUALLY TO BOTH PARTIES.**

## **SANCTIONS BEING INADEQUATE OR EXCESSIVE**

**1**

The Complainant appeals, citing that the sanction of mandatory counseling for stalking was insufficient.

**2**

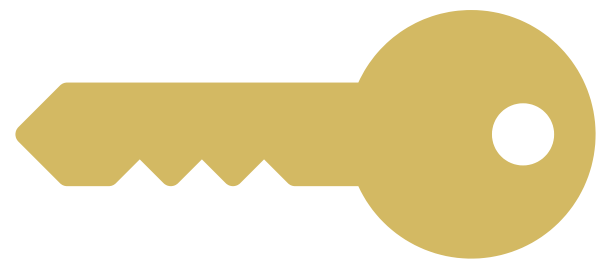
Respondent appeals, stating a sanction of termination of employment was excessive for his offense of sexual harassment as a previous co-worker received a written warning for a similar offense.

§106.45(b)(8)



Review your school policy to identify if additional bases exist

**KEY  
CONSIDERATIONS  
AS AN APPELLATE  
DECISION MAKER**



- Must be equally available to both parties
- Must be clearly stated in the school's policy



# REMINDER:



The first three grounds for appeal require that the irregularity, evidence, or bias could have or did affect the outcome.

Optional outcomes (if allowed by school policy) do not have to affect the outcome.

# APPEAL DENIED

**IF A REQUEST FOR APPEAL IS DENIED, THE ORIGINAL DETERMINATION STANDS AND THE TITLE IX GRIEVANCE PROCESS CONCLUDES.**

- This does not mean Parties will not seek action or resolution outside of Title IX (*e.g. filing a complaint with the Office for Civil Rights or pursuing legal action*)

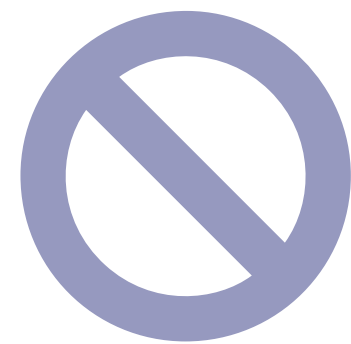


If the Parties do not submit their appeal within the timeframe specified in the policy, the original determination stands and the Title IX grievance process concludes.

# APPEAL ACCEPTED

IF A REQUEST FOR APPEAL IS ACCEPTED, THE POSSIBLE OUTCOMES INCLUDE:

AFFIRM DETERMINATION



No valid grounds for appeal.

REVERSE DETERMINATION



At least one valid ground for appeal is met.

REMAND DETERMINATION



Record is incomplete. Return to the Decision-Maker for further review.

# QUALITIES OF AN APPELLATE DECISION MAKER



# THE APPELLATE DECISION MAKER

## WHAT ARE THE QUALITIES OF A GOOD APPELLATE DECISION MAKER AND WHAT DO THEY DO?

- Determined by school policy
  - Could be a school official, panel, or external contractor
- Reviews the appeal and drafts the appellate decision
- Must be free of bias or conflict of interest
- Cannot be the Title IX Coordinator, Investigator, or Decision Maker
- Must be trained in Title IX policy and procedure



### **BEST PRACTICE**

Use an external contractor to reduce bias and conflict of interest claims



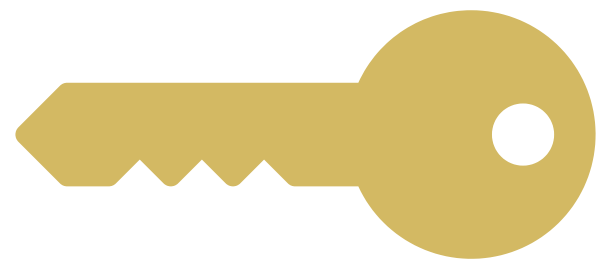
## JUDGE RIEHL TIP:



**YOU SHOULD NOT PUT YOURSELF IN THE SHOES OF THE DECISION MAKER BECAUSE THEY WILL NOT FIT.**

Do not fall into the trap of “If I was the decision maker I would have done it differently so their decision must be wrong!”

# KEY REMINDERS FOR THE APPELLATE DECISION MAKER



- Do not re-decide the case—give deference to the Decision-Maker’s findings.
- Follow the school’s policy and bases for appeal.
- Stay in your lane—review based on the grounds for appeal, not personal opinions.



## QUESTIONS TO CONSIDER:

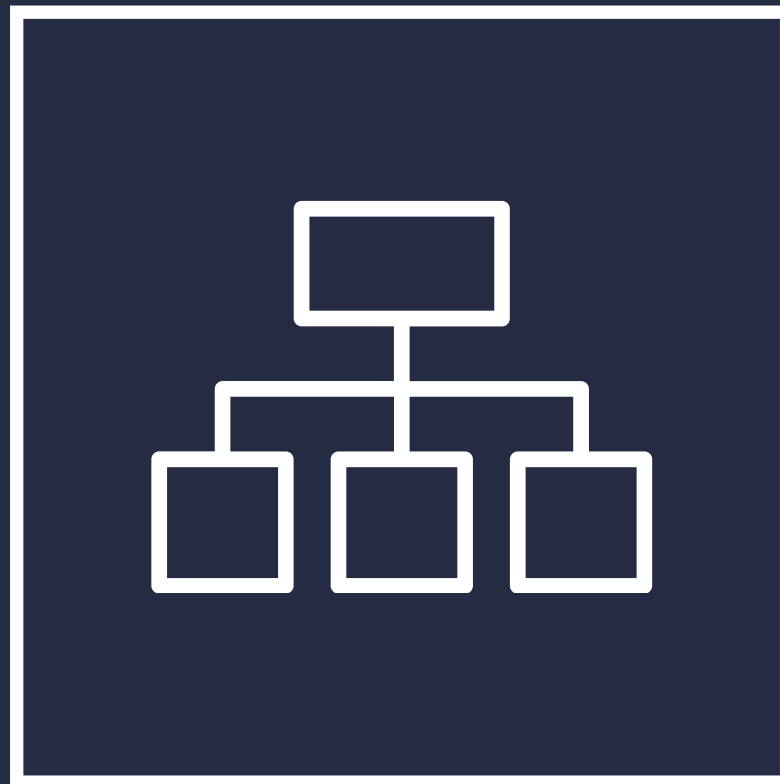
- What if an appeal is filed late?
  - 2 days late? 10 days late? Is it ever too late?
- What if a Complainant appeals the sanctions imposed on the Respondent?
  - Does it change if the Respondent appeals based on the severity of the sanction?
- What if a Complainant appeals the school's dismissal of their formal complaint?
- Can the school file an appeal of a determination?

TITLE IX SOLUTIONS, LLC

# WRITING AN APPELLATE DECISION



# IN THIS CHAPTER



STRUCTURE OF AN  
APPELLATE DECISION



APPEAL OUTCOMES



# SPEAKER

## THE HONORABLE JUDGE RIEHL

DECISION-MAKER AND INFORMAL  
RESOLUTION FACILITATOR

# STRUCTURE OF AN APPELLATE DECISION



# APPELLATE DECISION STRUCTURE

## EXAMPLE STRUCTURE

- 1 Header of Decision
- 2 Introduction
- 3 Factual and Procedural Background
- 4 Procedural History
- 5 Relevant Policy
- 6 Issues on Appeal
- 7 Issues Raised on Appeal
- 8 Standards of Review on Appeal
- 9 Analysis of Issues Raised on Appeal
- 10 Conclusion

# HEADER OF DECISION

## EXAMPLE:

1

To: Title IX Coordinator

From: [Your Name]

Date: [Date of Final Appeal Decision]

Re: Appeal by Complainant/Respondent  
from Determination of Decision Maker

# INTRODUCTION

2

## SUMMARIZE ALLEGATIONS, FINDINGS, AND IF THE APPEAL WAS TIMELY FILED.

This is the Decision of the Appellate Officer appointed by Sample University to decide the Appeal submitted by the Complainant challenging the Determination by the Title IX Adjudicator dated August 22, 2024 (“Determination”). As described by the Adjudicator in her Determination, the following allegations of sexual harassment are at issue:

**[INSERT ALLEGATION HERE]**

The Adjudicator determined...**[insert adjudicators findings here]**.

The Complainant timely filed her Appeal of Outcome, and the Respondent timely filed his response to Complainant’s Appeal.

# BACKGROUND

## 3

### RECAP THE DECISION MAKER'S FINDINGS AND DESCRIBE THE INCIDENT.

#### Adjudicators' Findings of Fact

- Complainant and Respondent status at the University
- Timeline of the incident
  - Include dates, times, locations, and witnesses

# PROCEDURAL HISTORY

4

## INCLUDE:

- Date of Complainant's report to the institution
- Date of formal complaint filing
- Date final investigation was completed
- Pre-hearing conference date (if applicable)
- Witness list and who testified
- Hearing date and attendance

# RELEVANT POLICY

5

## INCLUDE FULL POLICY LANGUAGE RELEVANT TO THE APPEAL.

The Sample University Sexual Misconduct Policy, Effective August 1, 2024 (“Policy”), sets forth and defines the specific types of conduct that are prohibited by the University. The Policy provides:

- **Sexual harassment** is defined in the Title IX regulations to be conduct on the basis of sex that satisfies one or more of the following...
- **Sexual assault** is defined as an act of sexually motivated physical contact directed towards another person when the other person does not consent or is incapable of giving consent. This includes but is not limited to rape, sodomy, sexual battery, fondling, incest, and statutory rape

# ISSUES ON APPEAL

## 6

### RECITE THE BASES FOR APPEAL AS SET FORTH IN THE TITLE IX REGULATIONS...

The right to appeal is an important right established by the Regulations of the United States Department of Education (DOE) in disputes involving alleged sexual misconduct under Title IX. As stated by the DOE: “[B]oth respondents and complainants face potentially life-altering consequences from the outcomes of Title IX proceedings. Both parties have a strong interest in accurate determinations regarding responsibility and it is important to protect complainants’ right to appeal as well as respondents’ right to appeal.”

The DOE Regulations require that appeals be allowed on three bases:

- **List appeal bases here**

# ISSUES ON APPEAL

## 6

### AND SCHOOL POLICY.

The Sample University policies adopted to comply with the procedural requirements of the DOE Title IX Regulations add two additional grounds for appeal:

- The determination cannot reasonably be supported by the evidence; or
- The severity of the sanction.

The Complainant has raised both procedural and substantive issues on appeal.

# ISSUES RAISED ON APPEAL

7

## DIRECTLY STATE THE ISSUES RAISED BY THE APPEALING PARTY.

The Adjudicator's findings cannot reasonably be supported by the evidence in that:

- The Adjudicator failed to appropriately consider numerous inconsistencies and falsehoods which significantly undermine Respondent's credibility.

The Adjudicator was biased against the Complainant in a way that affected the outcome of the matter.

- The Adjudicator wrongly held Complainant's processing of the first assault against her.

The Adjudicator Committed procedural irregularities that affected the outcome.

- It was a procedural irregularity to rely on the erroneously redacted statement of Jane Smith.

# STANDARDS OF REVIEW



8

## PROCEDURAL VIOLATIONS:

- Due deference is given to the Decision Maker
- Reversal only if there was an abuse of discretion

## FACTUAL FINDINGS:

- Cannot be reversed just because you disagree

# STANDARDS OF REVIEW

## 8

### PROCEDURAL VIOLATIONS:

#### Review of Alleged Procedural Violations

- Under both the regulations of the DOE and the Sample's policies, an appealing party may base their appeal on a "procedural irregularity that affected the outcome of the matter." In analyzing an alleged procedural irregularity an Appellate Officer must determine if a procedural violation occurred and, if so, whether it was significant enough to have "affected the outcome of the matter."

### FACTUAL FINDINGS:

#### Review of Factual Findings

- Complainant argues in support of her position that the evidence does not support the Determination by the Adjudicator. This type of issue is not included in the DOE Title IX regulations as a basis for appeal, but schools are not precluded from allowing additional bases for appeal in their own policies. The Sample University Policy allows an Appeal on the ground that: "The determination cannot reasonably be supported by the evidence."

# ANALYSIS OF ISSUES RAISED

**STATE THE ISSUE(S) AND ANALYZE IT USING THE DECISION MAKER'S FINDINGS.**

- Make a finding as to each of the issues
- Explain Decision Maker's findings as supported by the evidence and not erroneous or were erroneous and not supported by the evidence and could have affected the outcome.

# ANALYSIS OF ISSUES RAISED

**Issue 2C: There was a visible tear on Complainant's face, consistent with the fact that she was just assaulted.**

The Complainant asserts that she had been visibly crying in the bathroom following a nonconsensual sexual assault. Complainant left Respondent's room at 6:47 a.m. to use the restroom. While in the restroom, Complainant responded to two text messages, sent a text message and then took a "selfie" of herself. She returned to Respondent's room at 6:52 a.m. and fell asleep in his bed. None of the text messages sent by the Complainant reference a sexual assault that had just occurred (p.15).

The Adjudicator determined that there were two equally reasonable interpretations in this instance. One interpretation supports the Respondent and the other supports the Complainant.

Having made that determination, the Adjudicator viewed the interpretations as being neutral rather than supporting or refuting either party's account of the morning in question. This left the parties in an equal position as to credibility.

As Appellate Officer, I find that the Adjudicator's determination was reasonable and supported by the evidence in this case with regard to this point.

# CONCLUSION

10

## AFFIRM

- You find that the Adjudicator's findings were supported by the evidence

## REVERSE

- You find that the Adjudicator's findings were not supported by the evidence and in violation of one of the bases for appeal and that such determination could have affected the outcome

## REMAND

- Need further findings or evidence/ you just don't know

# APPEAL OUTCOMES



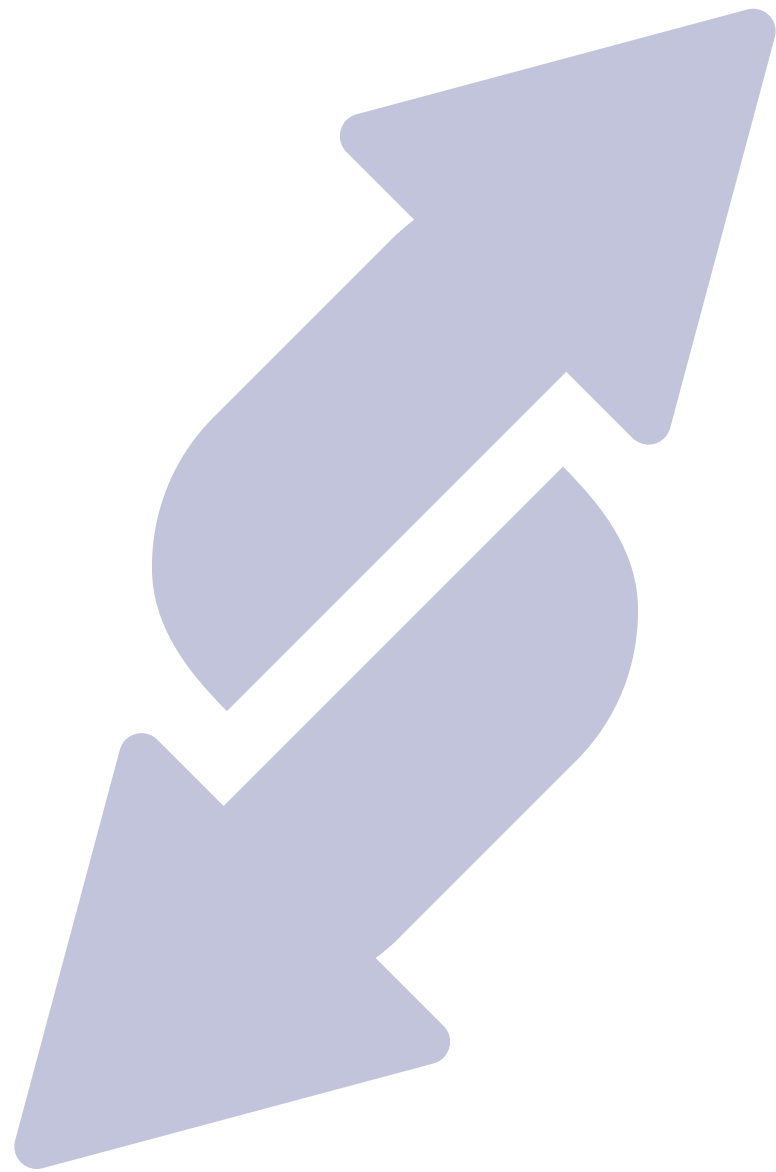
# APPELLATE DECISION AFFIRMED



## IF THE APPELLATE DECISION-MAKER UPHOLDS ORIGINAL DETERMINATION:

- Title IX grievance process ends
- Sanctions, as determined in the written determination, are upheld and enforced
- Remedies, as determined in the written determination, are offered to the Complainant

# APPELLATE DECISION REVERSED



**IF THE APPELLATE DECISION-MAKER DETERMINES THE APPEAL WAS VALID UNDER ONE OF THE LISTED BASES, THEY MAY REQUIRE:**

- A new investigation to take place
- A new hearing to take place
- If policy allows sanctions to be appealed, a new sanction may be imposed

# APPELLATE DECISION REMANDED



## IF THE APPELLATE DECISION-MAKER FINDS THAT THE DETERMINATION WAS INCOMPLETE:

- Return to the Investigator for further investigation
- Return to a hearing for further cross examination and questioning
- Return to the Decision Maker for further review
- Return to the Coordinator for additional considerations