

TITLE IX TRAINING
FOR ELEMENTARY
SCHOOL
COUNSELORS



for Twin Rivers Unified School District



Session Speakers

Adrienne
Mathis

Executive Director,
Title IX Solutions, LLC



Session Speakers

Tawny
Alonzo

Director of Training,
Title IX Solutions, LLC



Session Speakers

Stephanie
LaMonaca

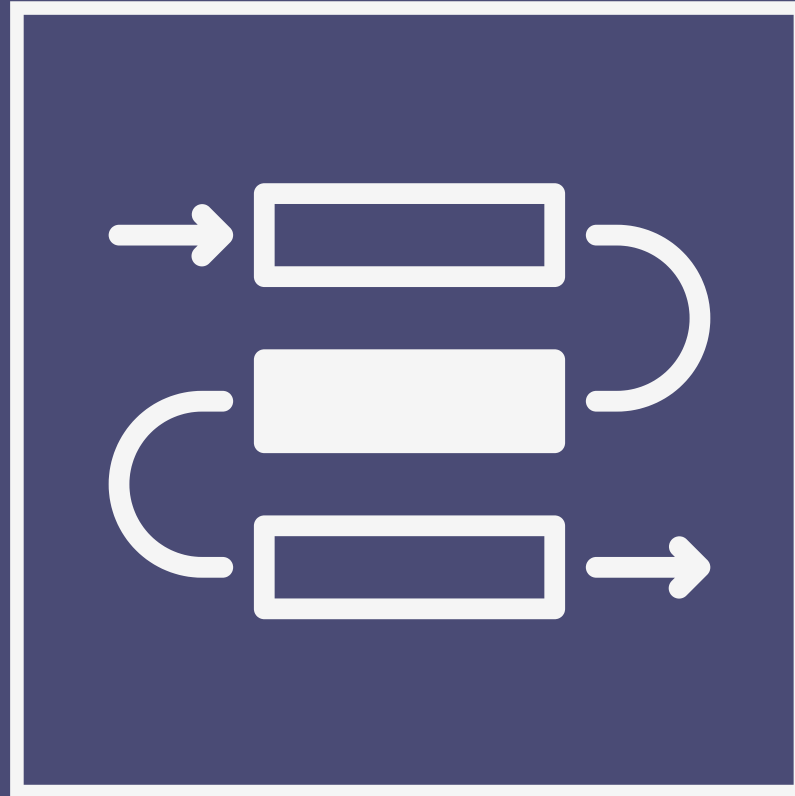
K-12 Title IX Consultant
Title IX Solutions, LLC



In This Session



ACTUAL
KNOWLEDGE AND
REPORTING



TITLE IX
COORDINATOR
INTAKE AND START
OF THE GRIEVANCE
PROCESS



CONCLUSION OF
THE GRIEVANCE
PROCESS

Training Goals

Identify the scope and purpose of Title IX

Recognize students' experiences throughout the Title IX grievance process.

Understand the school counselor's unique role at various points in the Title IX timeline.

Actual Knowledge and Reporting



Overview 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[.]”

”

Title IX Today



MAY 6, 2020

"Final Rule" or "Regulations" are released, requiring all educational institutions to follow specific procedures in response to sexual harassment

Outlines schools' required responses to incidents of sexual harassment

These regulations apply to:

- Public or Private Preschools, Elementary and Secondary Schools
 - Districts & Charter Schools
- Vocational, Professional and Higher Education Institutions

Title IX Grievance Process

REPORT/
REVIEW

FILING OF A
FORMAL
COMPLAINT

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Key Terms

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Definitions of Sexual Harassment

Conduct on the basis of sex that satisfies one or more of three types of behavior:

1

**QUID PRO QUO
HARASSMENT**

2

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

3

**UNWELCOME
CONDUCT THAT
IS SO "SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE" THAT
IT EFFECTIVELY
DENIES A PERSON
EQUAL ACCESS
TO EDUCATION**

1

QUID PRO QUO HARASSMENT

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.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access

2

**SEXUAL
ASSAULT**

**DATING
VIOLENCE**

**DOMESTIC
VIOLENCE**

STALKING

Specific offenses defined under the FBI's
Uniform Crime Reporting (U.C.R) program.

20 U.S.C. 1092 (f)(6)(A)(v)

3

**“SEVERE,
PERVASIVE AND
OBJECTIVELY
OFFENSIVE”**

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.

Consent Defined



The Regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

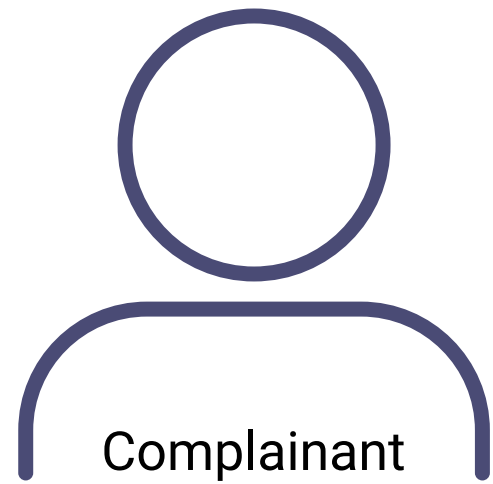
However, Twin Rivers Unified School District policy defines it as...

“positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved. A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 287, or 289, or former Section 288a.”

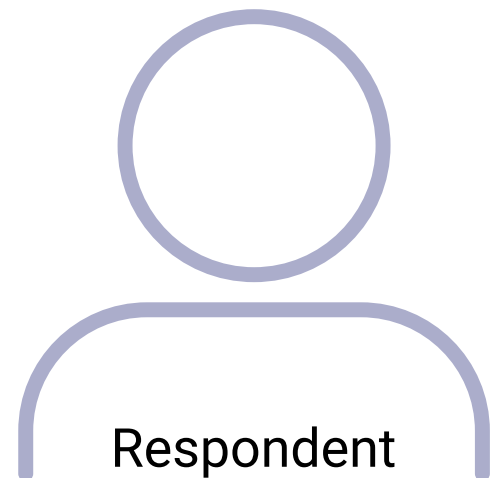


The age of consent in CA is 18

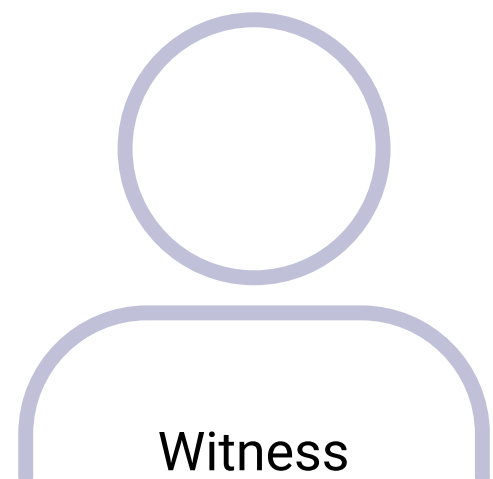
Parties Defined



An individual who is alleged to be the victim of conduct that could constitute sexual harassment.



An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.



An individual who may have observed or have relevant knowledge of an incident that could constitute sexual harassment.

Education Program or Activity Defined

§ 106.44

Recipient's response to sexual harassment.

Locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct or other policies
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

Reporting Requirements

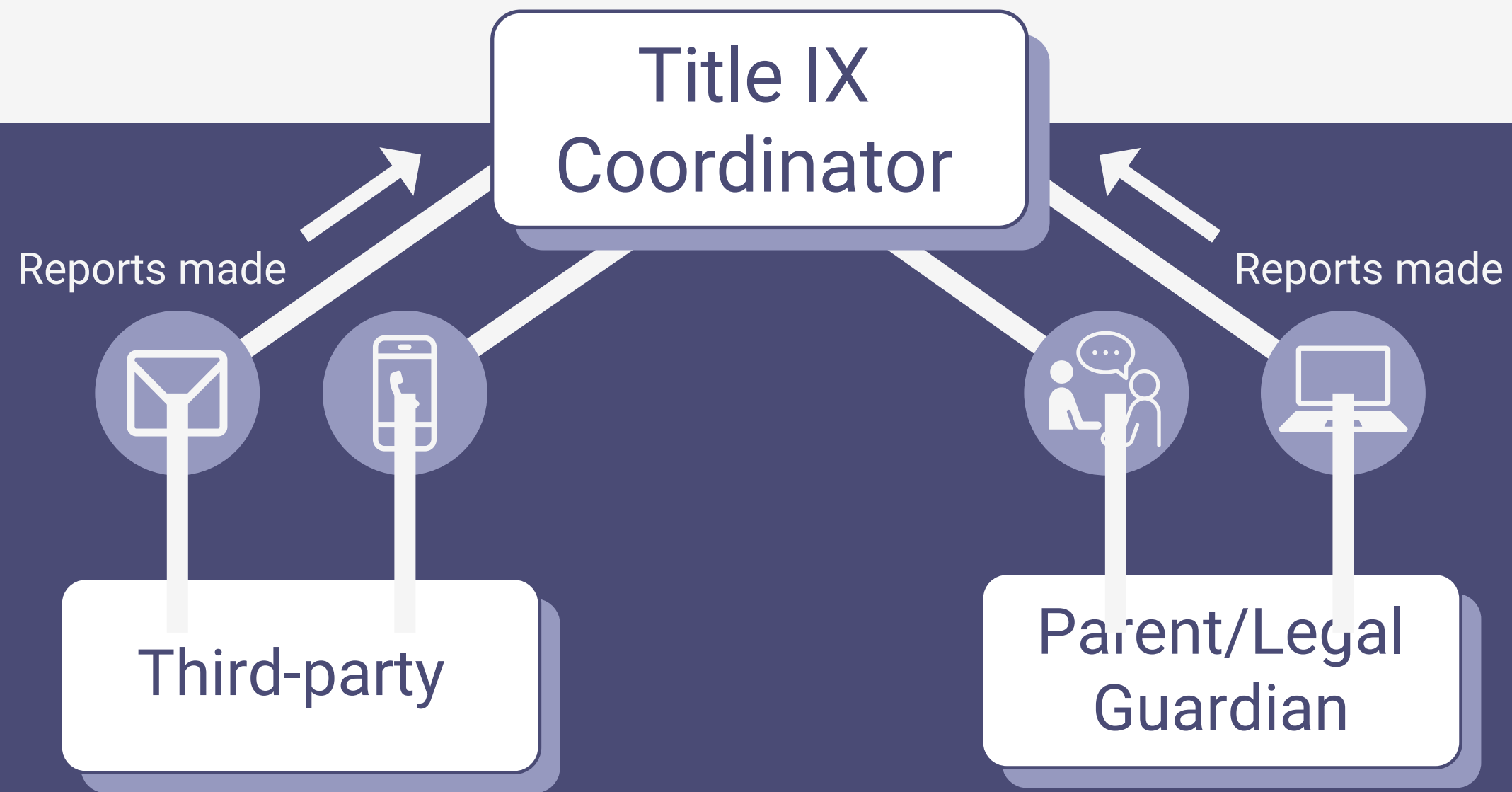


Reporting Incidents of Sexual Harassment

As stated in the Title IX Regulations, any person may report sex discrimination, including sexual harassment, to the Title IX Coordinator.

"Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator."

34 CFR §106.8(a)



External

K-12 Reporting Requirements

Actual Knowledge
§106.30 Definitions.

"Notice 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, or to any employee of an elementary and secondary school"

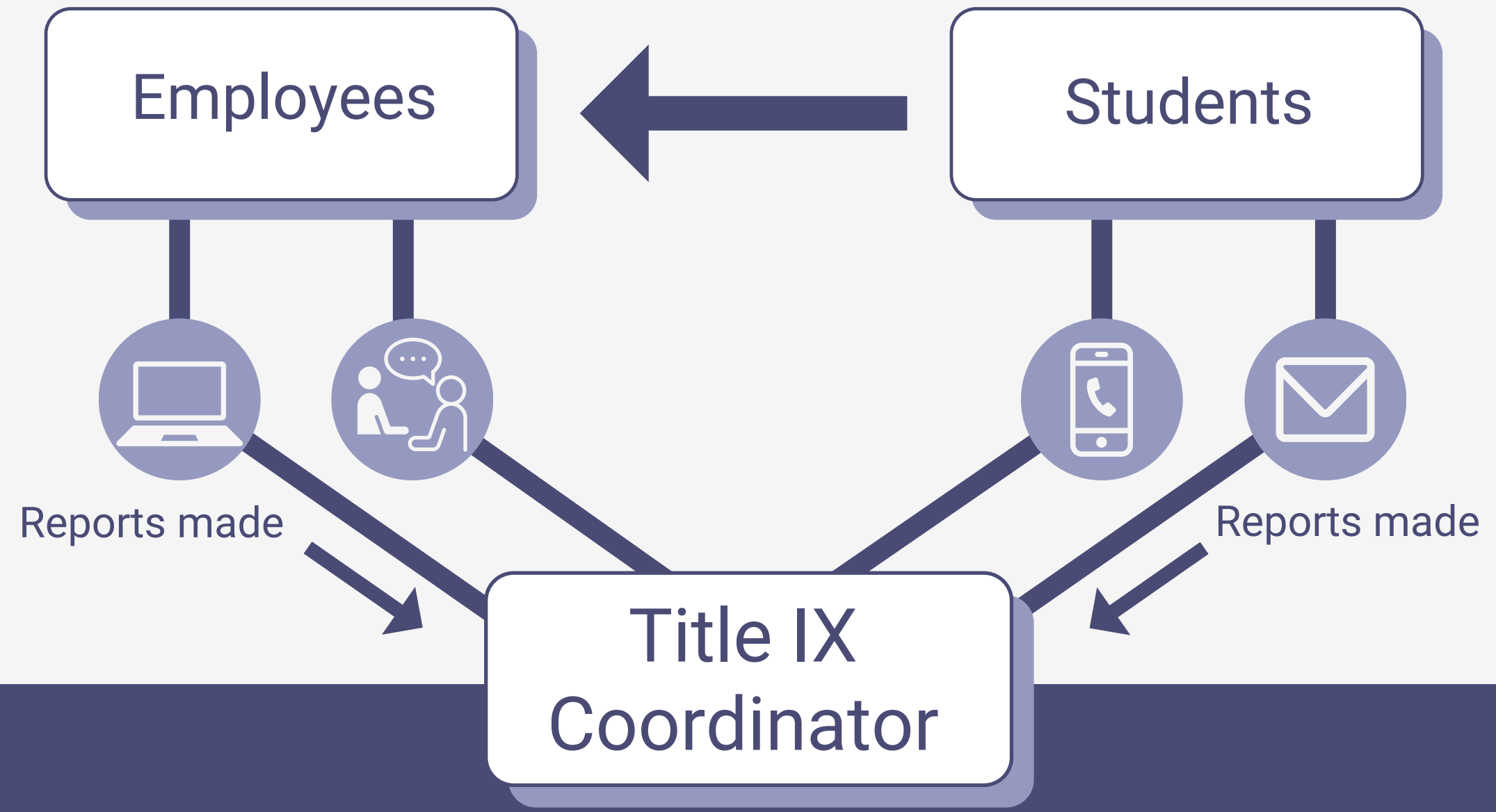


What does this actually mean for employees of your schools?



Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge

Internal



Limits of Reporting



The reporting of an incident does not compel a student to participate in the entire grievance process.

The Complainant (or their parent/legal guardian) has the power to decide whether they will sign a formal complaint and proceed with the grievance process.

Role of an Elementary School Counselor





Counselor Training Point

What do I do if a student shares information with me that could be sexual harassment?

Counselor Reporting Guidance

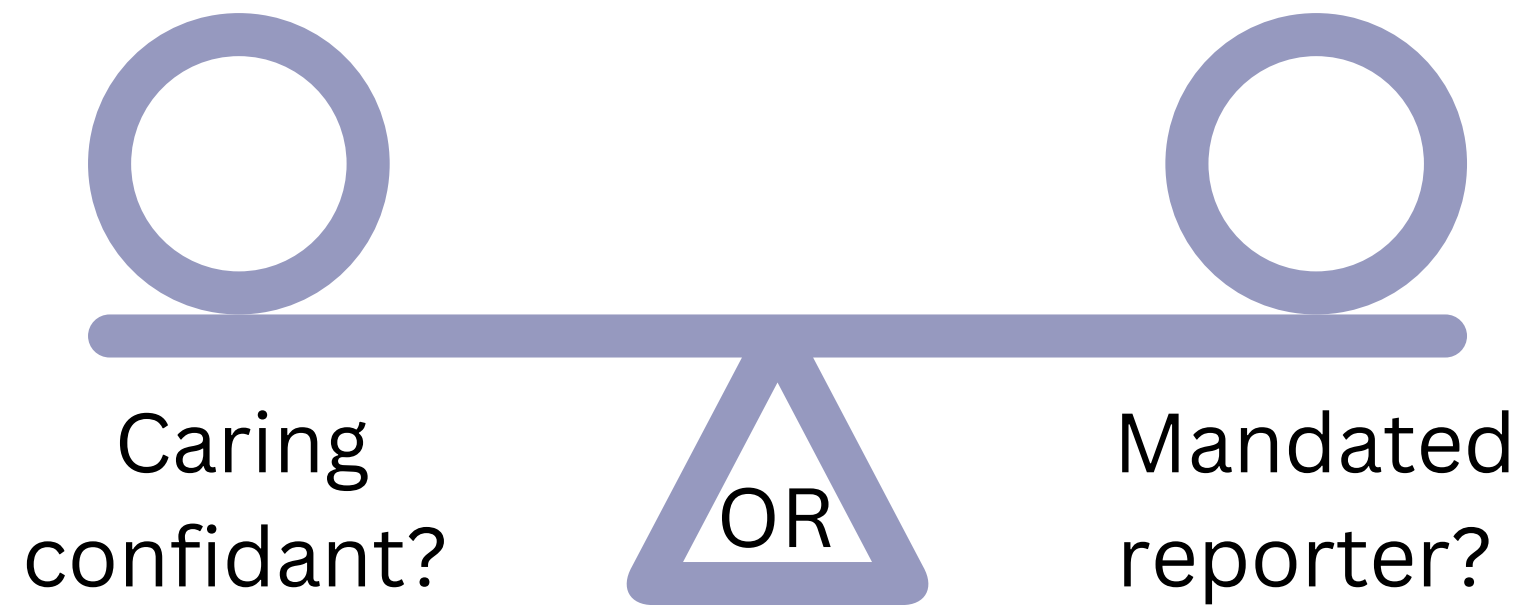
REFER to district policy!



"District employees receiving a report of or witnessing Title IX Sexual Harassment are required to report it to the Title IX Coordinator. An employee who fails to promptly report or forward a report of Title IX Sexual Harassment to the Title IX Coordinator may be disciplined, up to and including dismissal."

Counselors are NOT required to investigate the incident or conduct a review of whether or not it rises to the level of Title IX!

Balancing Support and Requirements



- Limits to confidentiality
 - Health and safety
 - Greater campus community effect
- The hypothetical disclosure
 - "What if my friend..."

Trauma-Informed Care



Reportable Conduct

When the disclosed conduct overlaps with...



Criminal acts



Potential abuse or neglect

Documentation



- Record using internal forms, if available
- Keep process fair and consistent for all
- Secure all files
- Follow school/district recordkeeping policies
- Take care and practice diligence in gathering and documenting information

Questions to Ask



- Where did the act/incident(s) happen?
 - On campus?
 - Location where district exercised substantial control over student/respondent and context in which sex harassment occurred (i.e. class, activity, event, in person, online)?
- Was conduct based on sex?
- Was there physical contact?
 - Was an intimate part of the body touched?
- Was the act/conduct welcome or against the student's will?
- Who was there?



Counselor Training Point

How do I relay the incident to the Title IX Coordinator?

Reporting the Information Known

1

Follow District policy - Contact the Title IX Coordinator promptly if you believe the conduct falls under Title IX (or reasonably close to it).

2

Initiate contact with the parent(s) or legal guardian(s)

Communication with Parents

Ensure communication is:

Timely

Transparent

Private

Informative

Compliant

Provision of Interim Supportive Measures



You may need to provide interim supportive measures to quickly address issues or discomfort the Complainant is experiencing.

We will talk more about supportive measures in a bit.



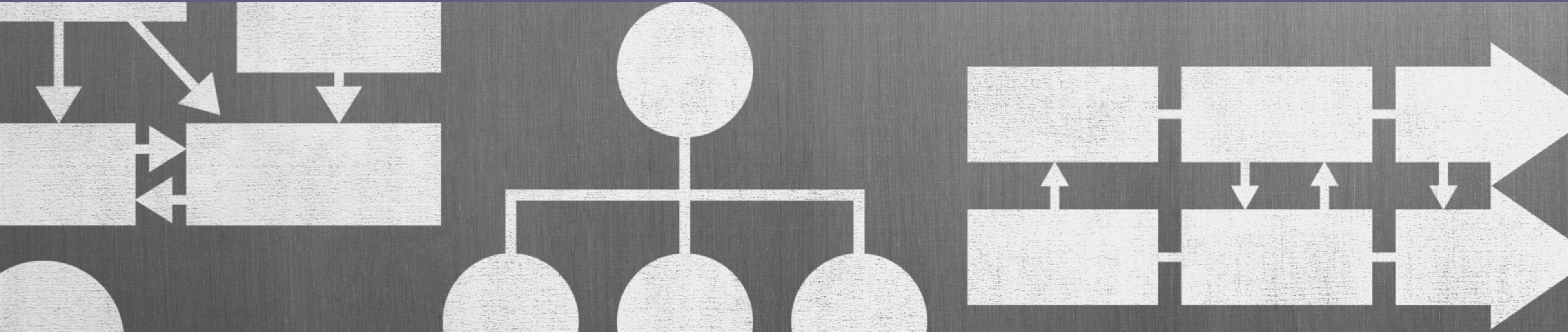
Counselor Case Study

Ricky is a mixed race (African American and Hispanic) boy in the 5th grade. He is not into sports, and prefers the arts, singing, and tap dancing. The bus driver describes him as a "sweet boy".

Kids frequently tease Ricky, calling him names such as "sissy" and "girlie" They openly mock his curly hair and throw objects toward his privates.

Ricky finally reports to counselor stating he doesn't know what to do. He states the things other kids do make him sad. Other kids usually avoid him and he doesn't want to be seen as a snitch. He states that he wishes he "could just disappear".

Title IX Coordinator Intake and Start of the Grievance Process



Title IX
Coordinator's
Response to
Reports

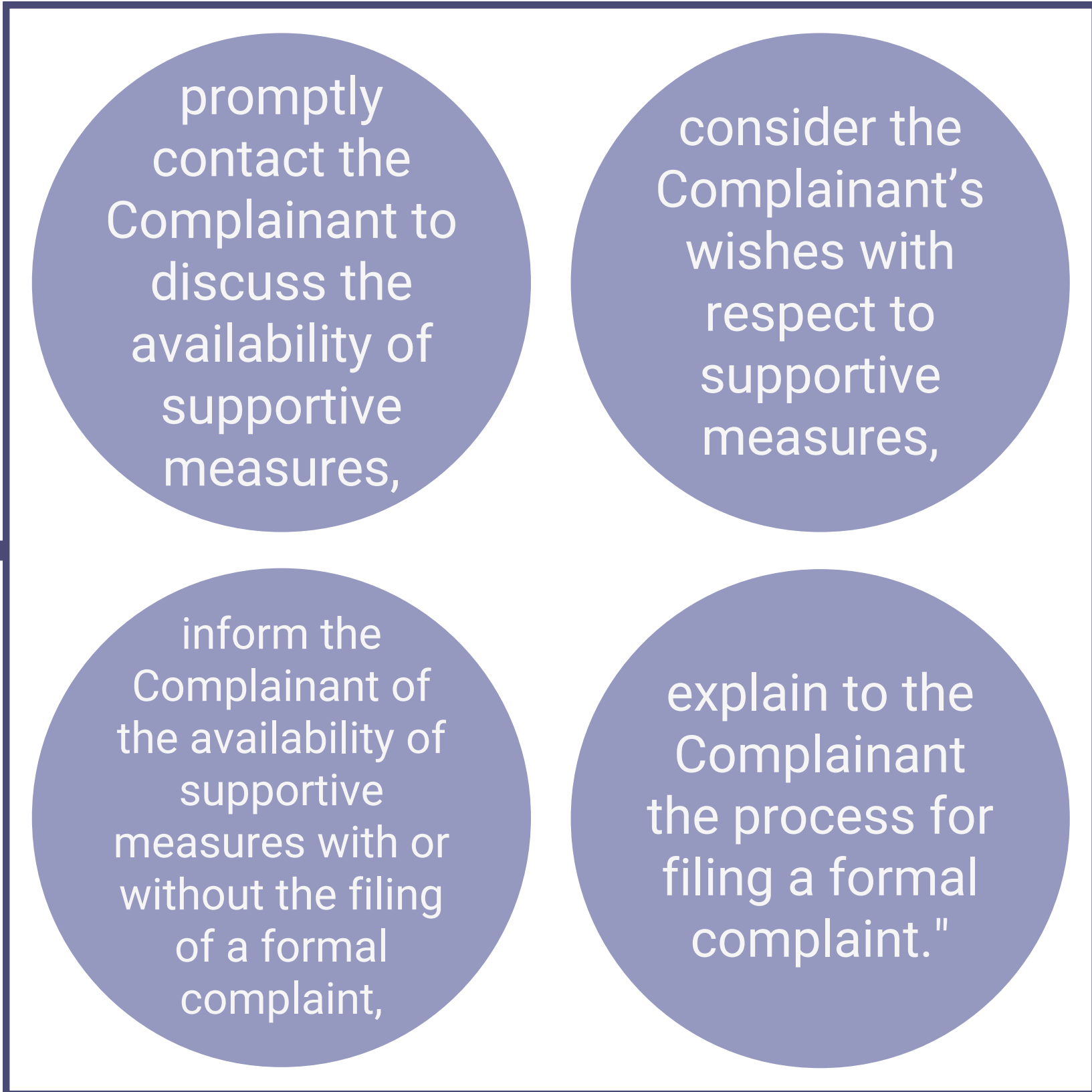
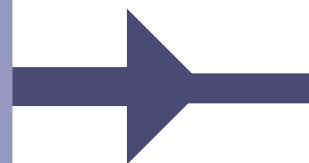


Required Title IX Coordinator Response

(Hint: §106.44 Recipient's response to sexual harassment provides the answer.)

The Title IX Coordinator is responsible for doing....

"The Title IX Coordinator must..."



these four important things.

Promptly contact the Complainant to discuss the availability of supportive measures.



Questions to consider

- 1) What is included in this initial contact?
- 2) What if the Complainant (and their parent/legal guardian) does not respond to the Title IX Coordinator's attempts to contact?

1) What is included in this initial contact?

Introduction, brief explanation of Title IX and the reason for reaching out, request for a meeting, helpful documents (processes, policy, list of supportive measures)

2) What if the Complainant (and their parent/legal guardian) does not respond to the Title IX Coordinator's attempts to contact?

- The Coordinator will attempt contact with the Complainant and parents multiple times and in varied forms
 - Email, phone calls to Complainant and parent, final attempt with a certified letter
- The Coordinator may have to make a decision to close the matter until further contact
- The Coordinator will ensure they have at least provided information about the availability of supportive measures, as well as the process for filing a formal complaint as those are required under Title IX

Consider the Complainant's wishes with respect to supportive measures.



Questions to consider

- 1) What are supportive measures?
- 2) Who coordinates supportive measures?
- 3) What does it mean to "consider" the Complainant's wishes?

1) What are supportive measures?

§ 106.30 Definitions.

"non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed"

- Intended to restore Complainant's access to educational program or activity
- Available throughout the grievance process
- May remain available after the conclusion of the grievance process
 - Remain "Supportive Measures" if Respondent is found not responsible for violating school policy
 - May take the form of "Remedies" if Respondent is found responsible for violating school policy



2) Who is responsible for facilitating the provision of supportive measures?

It is ultimately the responsibility of the Title IX Coordinator. However, they will need to coordinate with all possible partners (academic, administrative, extracurricular, community, health, safety) to understand processes and potential for the measures to be enacted. The Coordinator works with the Complainant to assess needs and communicate timelines.

3) What does it mean to "consider" the Complainant's wishes?

The Title IX Coordinator cannot promise any supportive measure until they know it is feasible. There are some things a Complainant may ask for that are not within the realm of possibility. Always work with the Title IX Coordinator before guaranteeing a specific measure.

Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint.



Questions to consider

- 1) How will the Title IX Coordinator communicate this?
- 2) How long will these supportive measures need to be in place?

1) How will the Title IX Coordinator communicate this?

After explaining the process for submitting a formal complaint and giving an overview of the grievance process, the Coordinator will simply let the Complainant know they can receive supportive measures by working with them, regardless of which option they choose. This promotes agency in deciding what path is best for the Party moving forward.

2) How long will these supportive measures need to be in place?

There is no expiration date for supportive measures, with or without a formal complaint in place. This will need to be a continued conversation between the Title IX Coordinator and the Complainant (and/or parent/legal guardian).

The Title IX Coordinator will want to consider the impact to the Complainant's education program or activity and how supportive measures might alleviate that impact.

Explain to the Complainant the process for filing a formal complaint.



Questions to consider

- 1) What information does the Complainant need to know to make the most informed decision?
- 2) What happens if the Complainant chooses not to file a formal complaint?

1) What information does the Complainant need to know to make the most informed decision?

The Complainant should be made aware of the policy, rights as a Complainant in a Title IX case, the Title IX grievance procedure, potential outcomes, and resources available. The Title IX Coordinator should provide all of this information to the Complainant so there are no "surprises" if they choose to submit a formal complaint.

Formal Complaint

Formal Complaint §106.30 Definitions.

""means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment."



- Can be a physical document or an electronic document (email, Word document, etc.)
- Must contain a physical or electronic signature of the Complainant (or parent/legal guardian).
- OR it can be signed by the Title IX Coordinator if it is decided the Coordinator will file without the Complainant's participation in the process (following a safety and risk assessment)

Report vs. Formal 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

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant or Complainant's parent or guardian (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

2) What happens if the Complainant chooses not to file a formal complaint?

"These final regulations obligate a recipient to initiate a grievance process when a Complainant files, or a Title IX Coordinator signs, a formal complaint, so that the Title IX Coordinator takes into account the wishes of a Complainant and only initiates a grievance process against the Complainant's wishes if doing so is not clearly unreasonable in light of the known circumstances."

(p. 71 Preamble to the Title IX Regulations)

The Coordinator may have to sign a formal complaint and move forward against the Complainant's wishes. This decision would be made by considering the need to protect the safety of both the Complainant and greater school community. If the allegations are serious and pose risk of further harm to the Complainant or others, an investigation is necessary.

The Title IX Coordinator will inform the Complainant of their right to not participate, but gently remind them that their participation in the Title IX grievance process would be of great help.

Assessment of the Reported Incident

The Title IX Coordinator must conduct a preliminary assessment of the reported incident to determine if it would be considered sexual harassment under Title IX, if proven. Title IX outlines four threshold criteria:

1. Incident constitutes sexual harassment as previously defined

2. School has “actual knowledge” of an allegation of the incident of sexual harassment

3. Conduct occurred within the school’s own education program or activity

4. Alleged harassment occurred within the United States

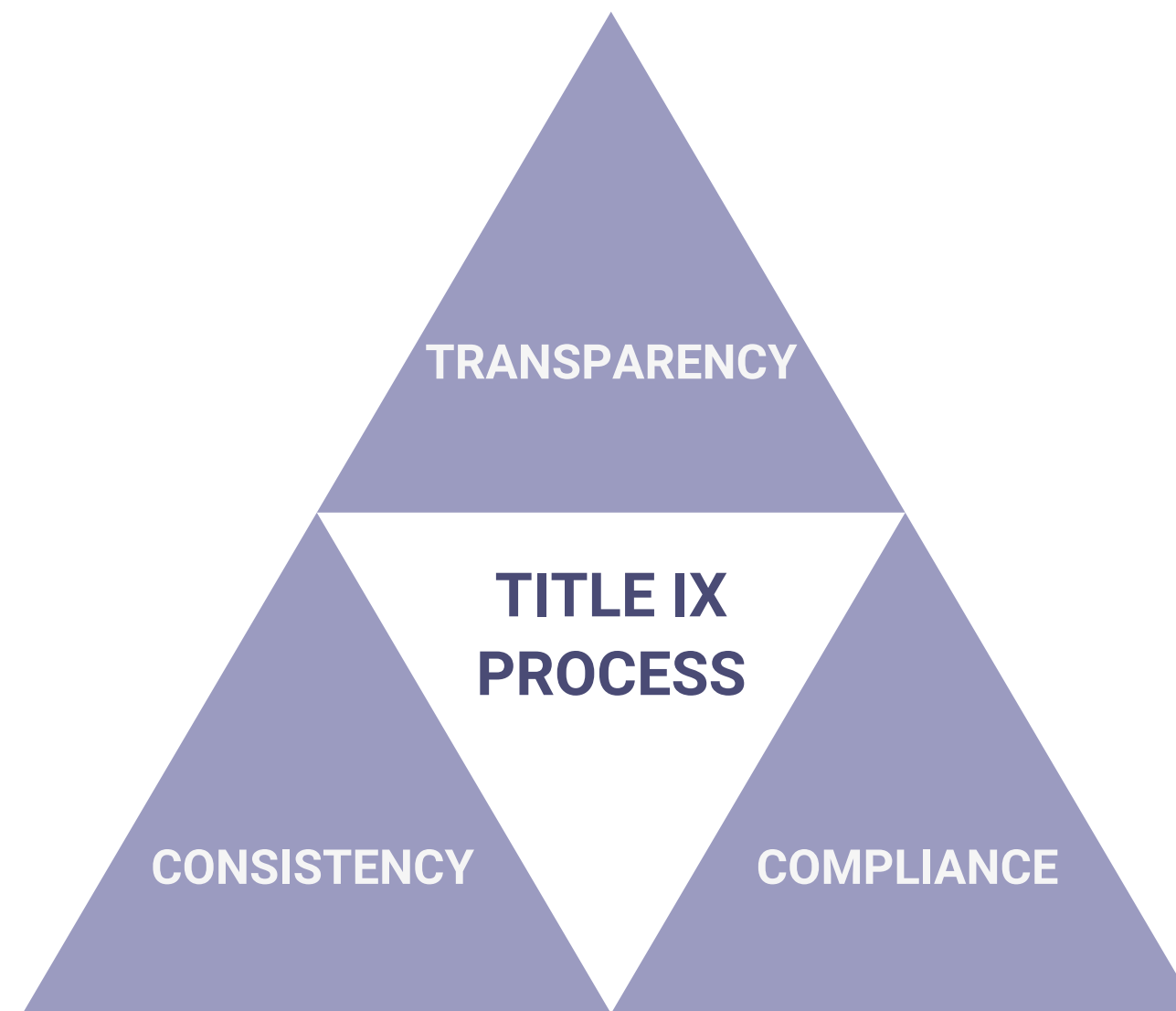
Let's assume the report meets the four threshold criteria and the Complainant wishes to move forward by signing a formal complaint....

What comes next?

The Start of the Title IX Grievance Process

Issuance of the Notice of Allegations

Upon receipt of a formal complaint, the Title IX Coordinator must issue written notice to the Parties, if known. The purpose of the Notice of Allegations is to provide:



This may be the first time the Respondent is hearing of the allegations.

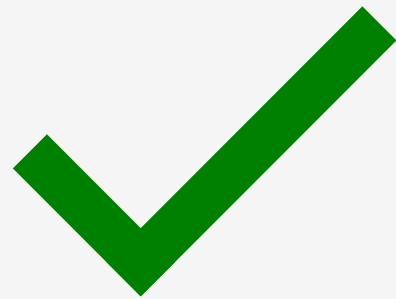
Potential for Emergency Removal

Schools may determine that the Respondent needs to be removed on an emergency basis, which requires:

- ❖ An immediate safety and risk analysis;
- ❖ Determination of an immediate threat to physical health or safety of any student or person arising out of the allegations; and
- ❖ Notice to the Respondent and an opportunity to challenge the decision immediately after removal



Title IX Grievance Process



REPORT/
REVIEW

FILING OF A
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WRITTEN
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APPEALS
PROCESS

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

Title IX Grievance Process

INVESTIGATION

Consists
of:

- Investigative interviews
- Opportunity to inspect evidence
- Provision of the investigation report to the Parties
- Response by Parties to the investigation report

Title IX Grievance Process

DECISION-MAKING PROCESS

Consists
of:

- Submission of questions by Parties for written cross-examination
- Issuance of questions by the Decision-Maker
- Provision of response to questions

Title IX Grievance Process

WRITTEN DETERMINATION

Consists
of:

- Issuance of the Title IX Decision-Maker's written determination regarding responsibility
 - Responsible or not responsible for conduct alleged that would constitute a policy violation
 - Sanctions
 - Remedies

Title IX Grievance Process

APPEALS
PROCESS

Consists
of:

- Review of an appeal raised by either Party
- Finality to the case

Title IX Grievance Process

Consists
of:

INFORMAL RESOLUTION
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

- Options such as:
 - Mediation
 - Restorative Justice
 - Acceptance of responsibility
- Agreement between Parties



Counselor Training Point

How does a school counselor participate at this point in the process?

Role of the School Counselor

Following the escalation to the Title IX Coordinator, a counselor can:

- Facilitate next steps
- Assist in the support process
 - Complainant support
 - Respondent support
 - Other affected individuals?
- Communicate with parents



Be proactive and check-in with the Parties about the process.

Counseling as a Supportive Measure

Referral

Referral to campus and community services such as medical, mental health, legal services and more

ou could be part of a supportive measure put in place!

Complainant

- Regular check-ins
- Change in classes
- Considerations for IEPs/504
- Ongoing discussions about needs

Respondent

- Regular check-ins
- Change in classes
- Leave of absence
- Considerations for IEPs/504
- Discussions about topics such as anger management and boundaries

Discovery of New Allegations

While serving in a support role, you may learn of additional allegations aside from what was learned in the initial report.

Share with the Title IX Coordinator

- New facts
- New Respondents or witnesses
- Any new information that could affect resolution or adjudication

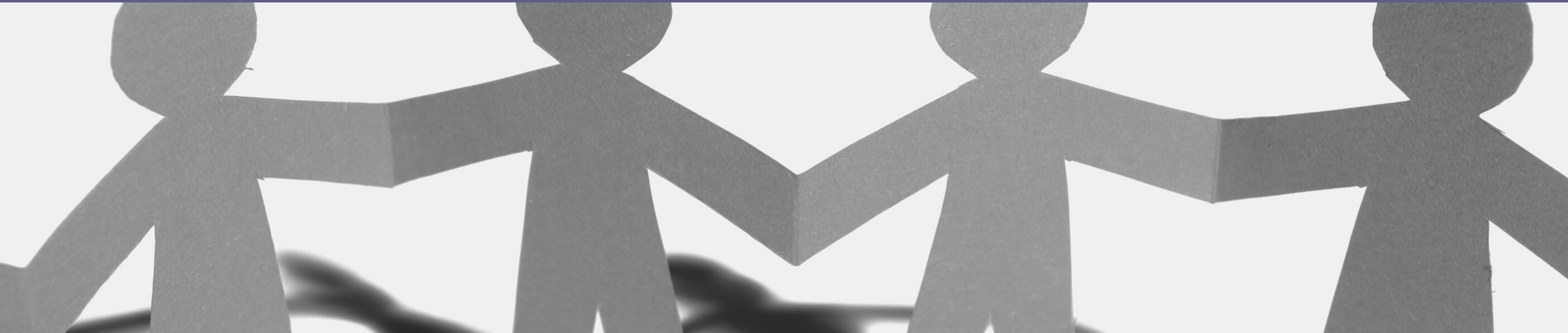


Counselor Case Study

Ariel reports to counselor that her drama teacher Mr. Beau touched her buttocks as she left class. She said he occasionally brushes up against her and makes her uncomfortable. It is known that Mr. Beau is expressive and frequently uses his hands to demonstrate what needs to be done during scenes in play or skit. Ariel identifies as pansexual.

Ariel states that she doesn't want to tell her parents because they will "freak out".

Conclusion of the Grievance Process

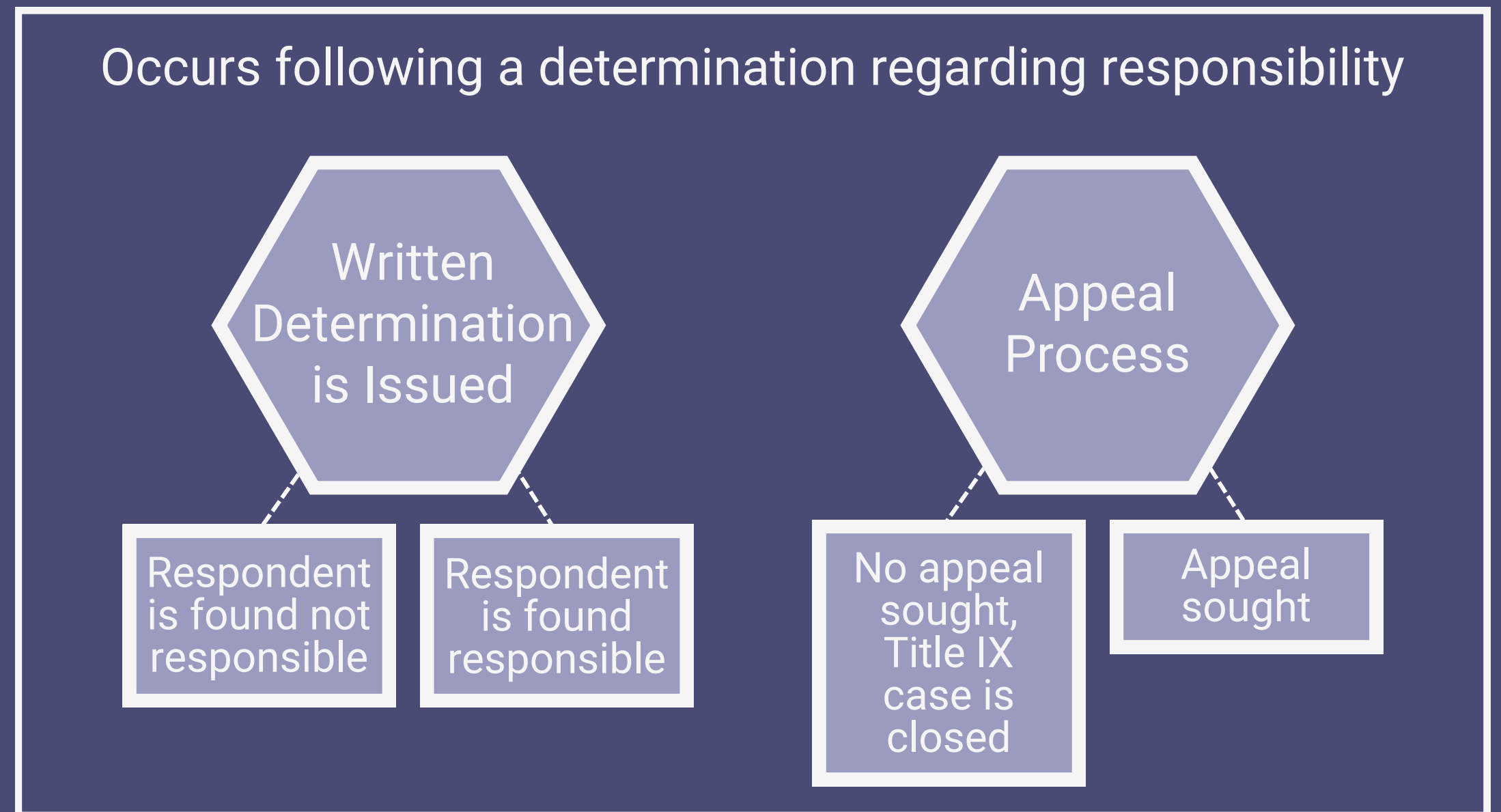
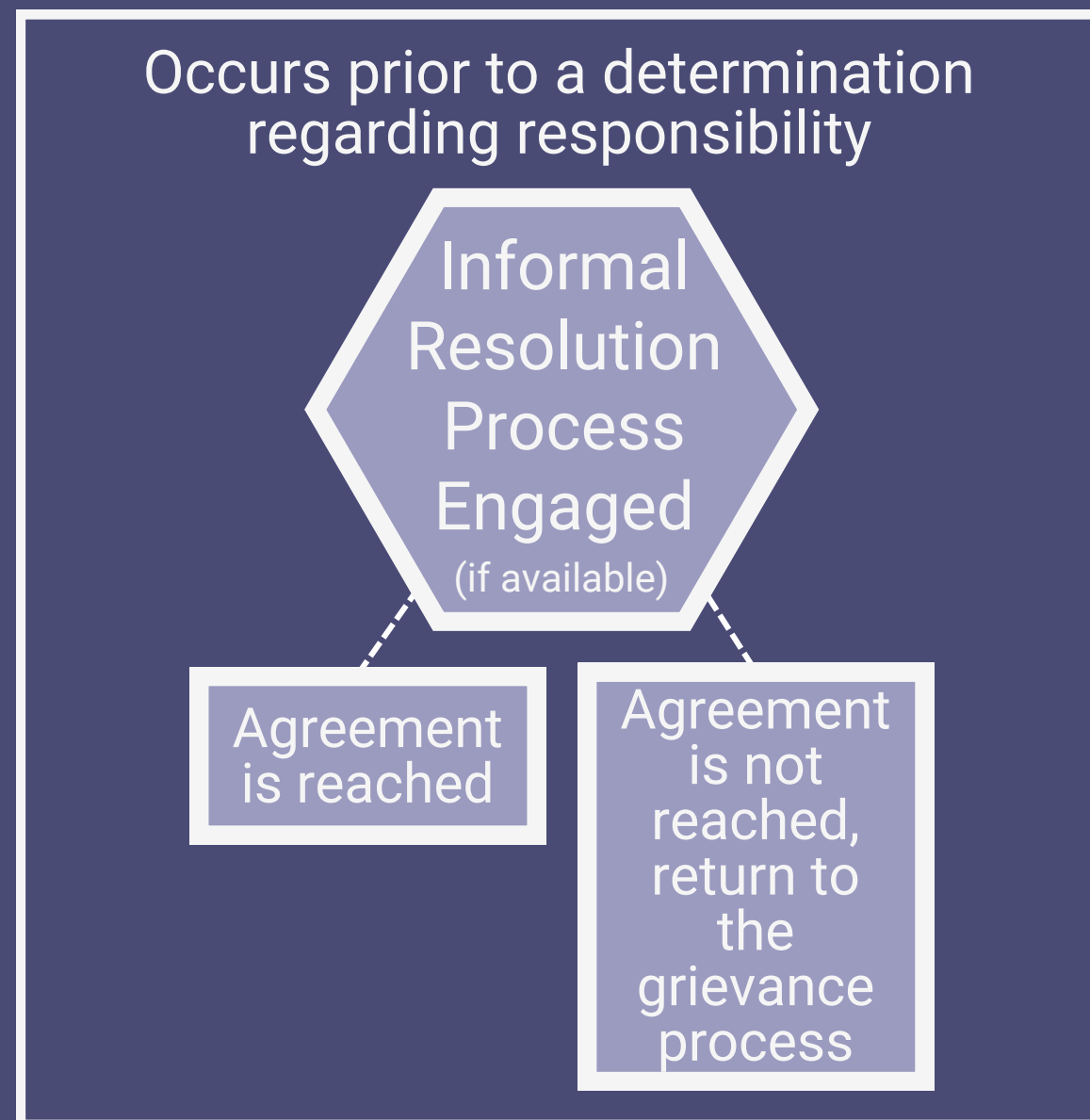


Potential Title IX Outcomes

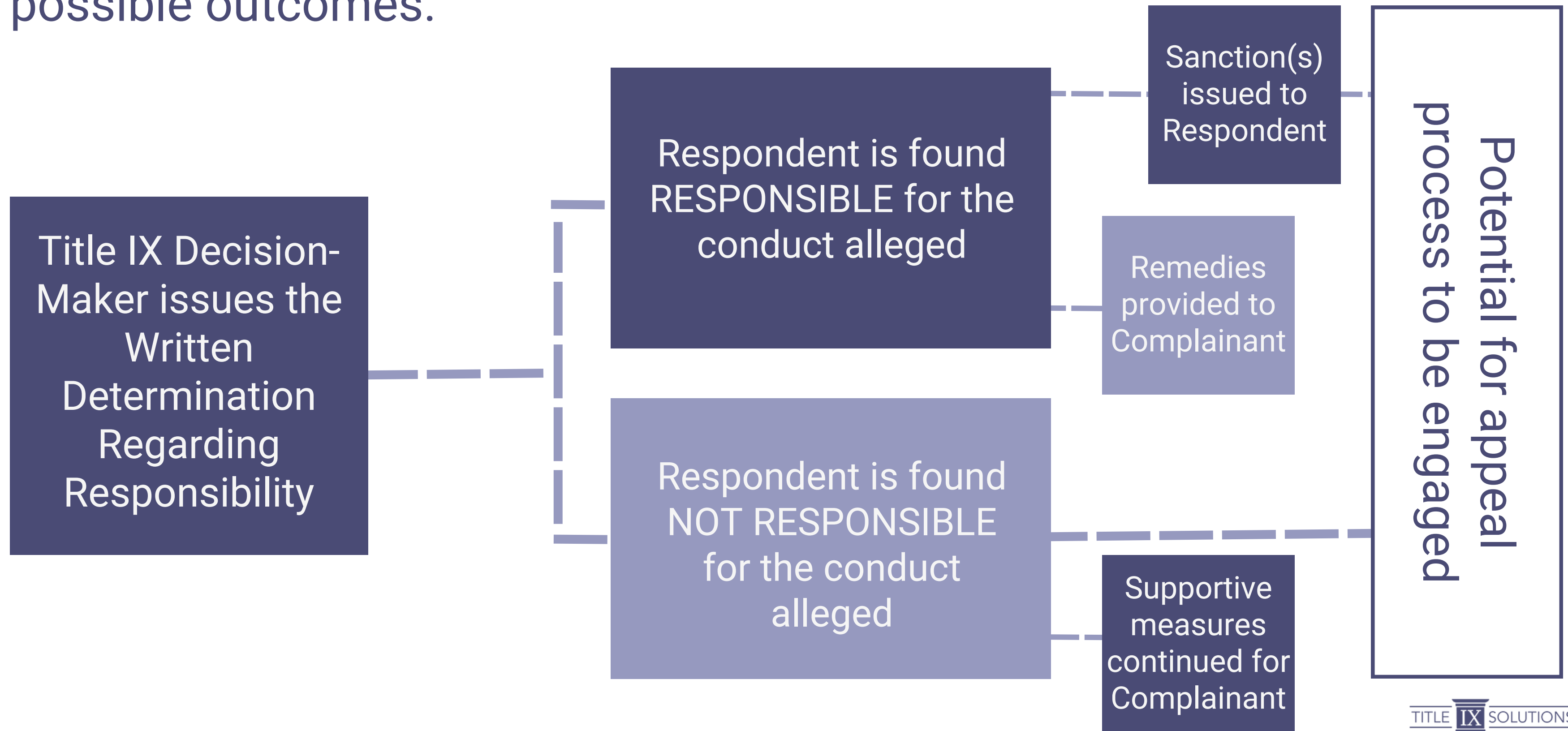


Possible Title IX Outcomes

Aside from initial review, which could include adjudicating a matter under a non-Title IX policy and dismissal of formal complaints, these are the potential outcome points for a Title IX complaint:



Following the investigation and decision-making process, the Decision-Maker must render a determination. There are several possible outcomes.



Examples of Sanctions

If the Decision-Maker finds the Respondent responsible for the conduct alleged, the Respondent will receive a sanction or sanctions.

This is a non-exhaustive list of potential sanctions. Decision-Makers or other administrators may recommend additional options.

Education
or service

Verbal
warning

Written
warning

Removal
from team
or activity

In-school
suspension

Withholding
of diploma

Suspension
from school

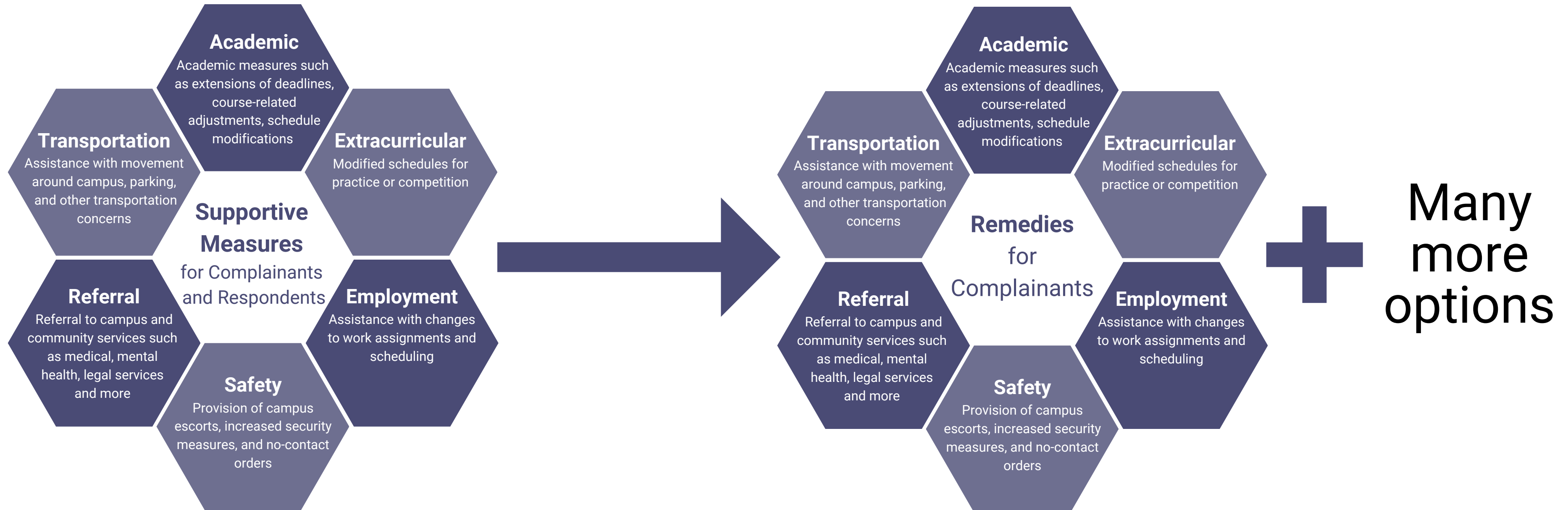
Expulsion

What are Remedies?

If the Decision-Maker finds the Respondent responsible for the conduct alleged, they may also choose to provide remedies to the Complainant.

- Implemented following the determination that the Respondent was responsible for the conduct alleged.
- Intended to restore Complainant's access to the educational program or activity.
- Unlike supportive measures, remedies can burden the Respondent

Remedies may simply be a continuation of supportive measures already in place or entirely new measures implemented.



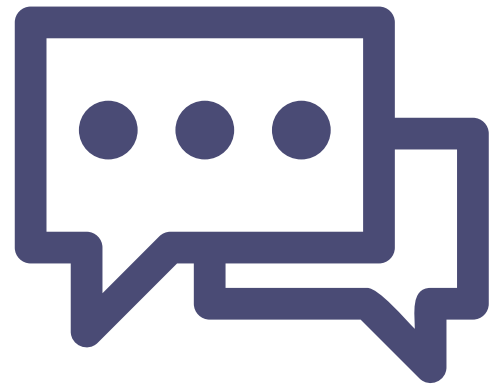
These will be determined on a case-by-case basis.



Counselor Training Point

What is the role of the counselor once the Title IX grievance process has concluded?

Role of the Counselor Following the Process



Counseling Resource



Educational Resource



Safe Space



Counselor Case Study

Using our previous scenarios, how might counselors support parties after the Title IX grievance process has concluded?

Recall Ricky and his experiences with the comments and unwelcome conduct from other children

Recall Ariel and her experience with Mr. Beau

Counselor Resources

Trauma Informed Care:

<https://www.traumainformedcare.chcs.org/what-is-trauma-informed-care/>

<https://www.health.harvard.edu/blog/trauma-informed-care-what-it-is-and-why-its-important-2018101613562>

Reporting Sexual Conduct of Minors:

https://www.marinhhs.org/sites/default/files/files/servicepages/2022_11/mandatedreporterguidebook.pdf

<https://www.cde.ca.gov/ls/ss/ap/childabuserreportingguide.asp>

Counselor Resources

Tarasoff case and the Duty to Warn:

https://en.wikipedia.org/wiki/Tarasoff_v._Regents_of_the_University_of_California

Professional Standards - Reportable Conduct:

https://www.capda.ca/_Library/resources_ethics_codes_and_practice_guidelines/national-association-of-school-psychologists-principles-of-professional-ethics-2010.pdf

Questions?
Comments?