



INSTITUTIONAL
COMPLIANCE SOLUTIONS

**VIRTUAL CERTIFIED
TITLE IX
INVESTIGATOR
TRAINING**



**Introduction, Why Before How,
Legal Reasons, Expectations**

HOUSEKEEPING

- Chat bar
- Breaks
- Understanding



ABOUT US

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PRACTITIONERS



TODAY

- **THE WHY BEFORE THE HOW**
- **INVESTIGATIVE TECHNIQUES**
- **REPORT WRITING**
- **BREAKOUT SESSIONS**





Purpose of ICS Trainings

- **This is a LEVEL 1 Training**
- **Not Legal Advice**
- **Designed to provide you with options so that you can make the decisions that make the most sense for you/your campus and community**
- **Most decisions will be campus specific and the regulations allow for flexibility**
- **NO ONE HAS DONE THIS BEFORE**
- **We love when our participants bring information to us and provide their perspectives**
- **We are all in this together!**





Nuts and Bolts of Title IX Compliance

THE LAW

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities operated by recipients of Federal financial assistance.





TITLE IX IS:

- **Federal law**
- **Enforced by the Office for Civil Rights (OCR)**
- **Prohibits Discrimination based on sex**
- **Historically viewed as simply requiring gender-equity in athletics**

What Is/Is not Title IX Conduct

Is or May be Title IX

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

Is **NOT** Title IX

- Disability discrimination (ADA)
- Employment discrimination based on race, religion, or national origin (Title VII)- Note overlap with sex
- Student discrimination based on race, religion, or national origin (Title VI)
- Age Discrimination (ADEA)



REGULATIONS VS. GUIDANCE

[The] final regulations represent the Department's interpretation of a recipient's legally binding obligations, rather than best practices, recommendations, or guidance... [and] focus on precise legal compliance requirements governing recipients. p. 18



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Definition
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DEFINED TERMS

- Actual Knowledge
- Complainant/Respondent
- Formal Complaint
- Sexual Harassment
- Supportive Measures



**Title IX
Coordinator**



Investigator(s)



**Decision-
Maker(s)**



**Appellate
Member(s)**



**Informal
Resolution
Facilitators?**



**Responsible
Employees/
Officials with
Authority**

PARTIES IN AN INVESTIGATION



COMPLAINANT/
REPORTER



RESPONDENT



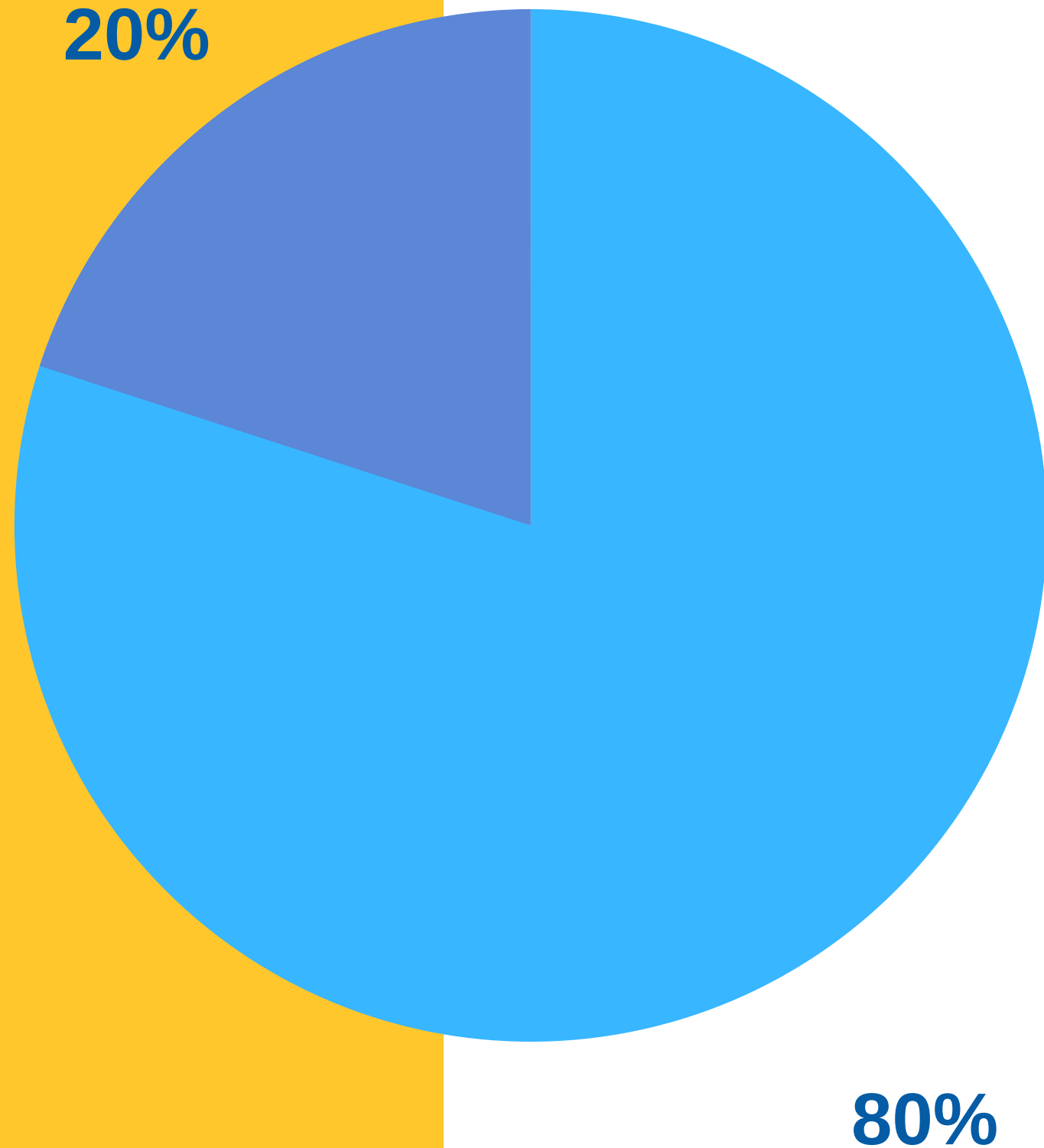
ADVISOR



WITNESSES



INVESTIGATOR'S ROLE IN COMPLIANCE



80/20 COMPLIANCE RULE

- Handling of a Report
 - Policies, Procedures, Trainings
-

TITLE IX COMPLIANCE LAYERS

- Policy
- Responding to complaints of sexual misconduct
- Education, training, prevention efforts





Sexual Harassment + Education Program or Activity



Sexual Harassment

- **Conduct on the basis of sex that satisfies one or more of the following:**
 - **An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;**
 - **Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or**
 - **"Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.**



SEXUAL ASSAULT

Sexual Assault: An offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Crime Reporting system.

A sex offense is any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Dating Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

(i) The length of the relationship

(ii) The type of relationship

(iii) The frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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Domestic Violence

Domestic Violence: A felony or misdemeanor crime of violence committed

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

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STALKING

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

- (1) Fear for the person's safety or the safety of others; or**
- (2) Suffer substantial emotional distress.**

For purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person's property.

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Actual Knowledge

Actual knowledge means 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

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Conduct + Education Program or Activity

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

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JURISDICTION

Education Program or Activity

- **Locations, events, or circumstances (operations)**
- **institution exercised substantial control**
 - **over both the respondent AND the context in which the sexual harassment occurs**
- **Includes any building owned or controlled by student organization that is OFFICIALLY RECOGNIZED by institution**
- **Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity**
- **Does not create or apply a geographic test, does not draw a line between “off campus” and “on campus,” and does not create a distinction between sexual harassment occurring in person versus online.**

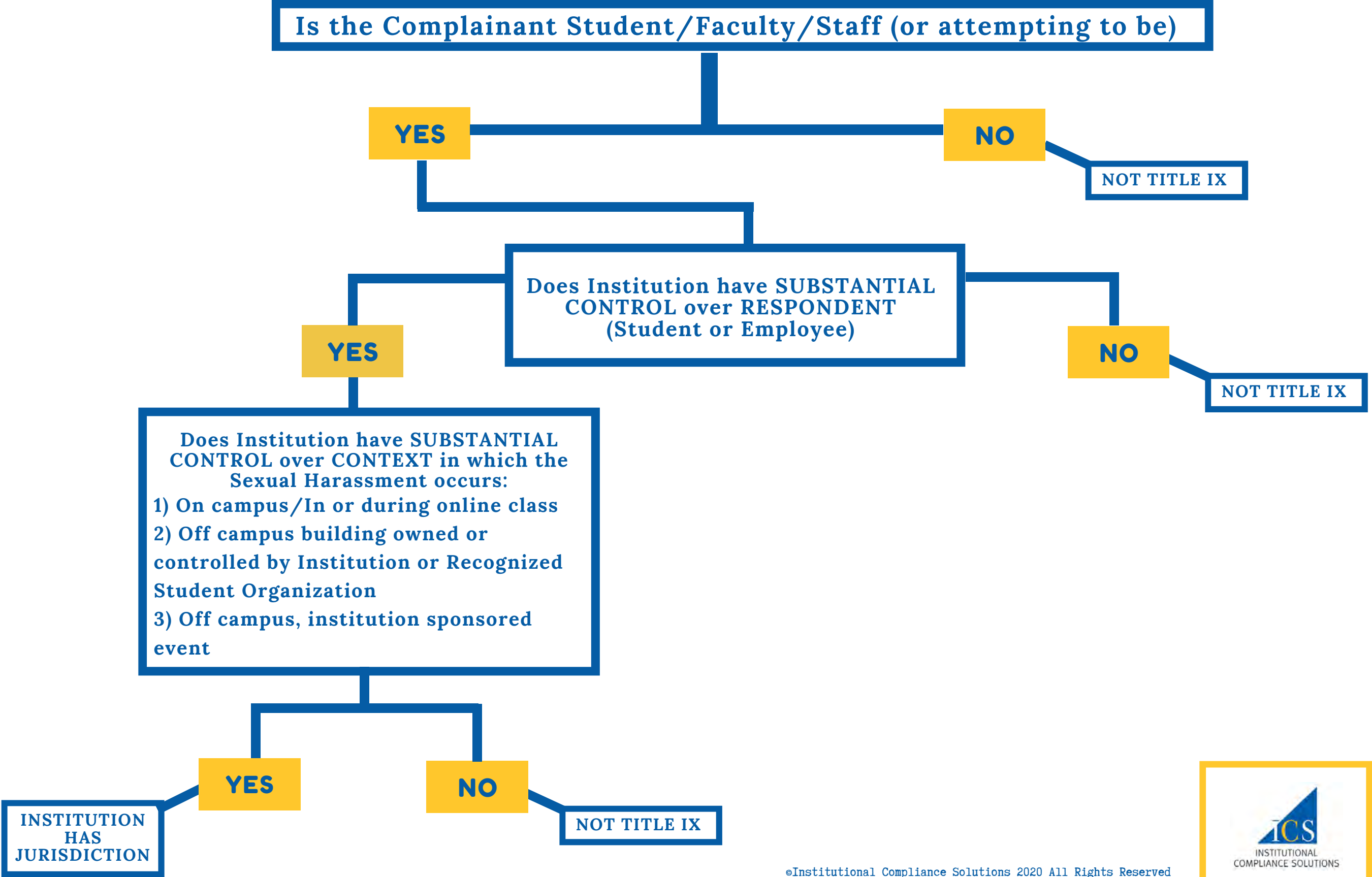
Education Program or Activity Continued

- No single factor to determine exercise of substantial control
- Distinguishable from Clery definitions of non-campus building or property
- May require organization to abide by Title IX policies and procedures
- May have to bifurcate conduct

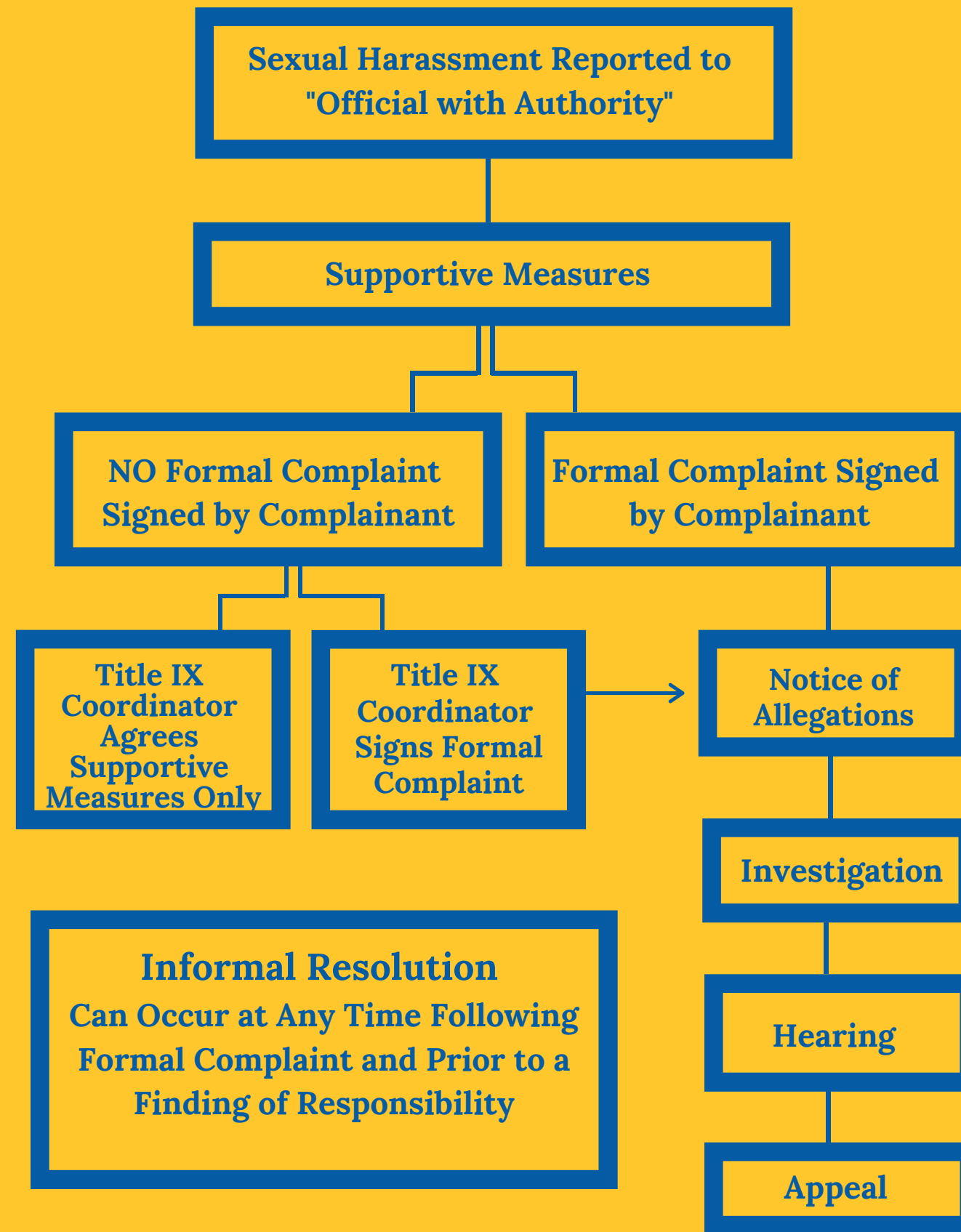
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Jurisdiction/Education Program or Activity



Title IX Process Flow Chart



*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.

*A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at institution or institution is prevented from gathering evidence.

SUPPORTIVE MEASURES

Purpose:

- restoring or preserving equal access
- protecting safety
- deterring sexual harassment

Burden: remains on the institution not the parties

Not: punitive or disciplinary

Confidential: as much as possible

Document: when provided, when not provided and why

Title IX Coordinator: ultimately responsible for effective implementation, but others can also implement

Examples: in section 106.3



Title IX Grievance Process

- Specific requirements
- Focus on equity
- Opportunities for review
- Need for "forms"

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BASIC TITLE IX PROCESS





INVESTIGATION FLOW CHART

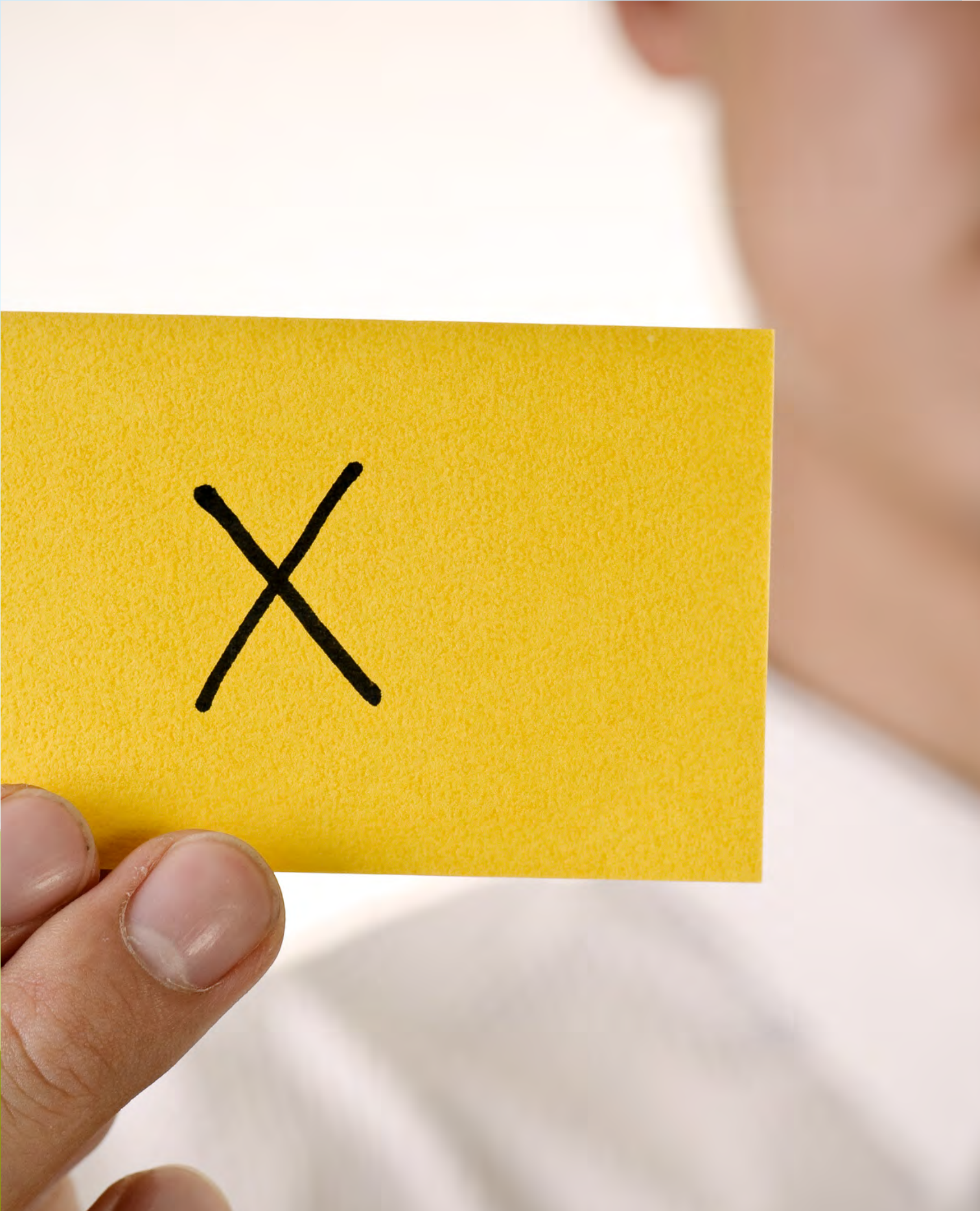


Formal Complaint

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

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DISMISSAL OF A FORMAL COMPLAINT

MUST Dismiss if:

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

May Dismiss if:

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

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

Response to a Formal Complaint (Grievance Process)

- Treat parties equitably
- Require an objective evaluation of all relevant evidence (inculpatory and exculpatory)
- No conflict of interest or bias by Title IX Coordinator, investigator, decision-maker or facilitator of informal resolution process
- Trained Title IX Team
- Presumption that respondent is not responsible
- Include reasonably prompt time frames for process and appeals with written notice for limited extensions with good cause (may include absence of party, witness, or advisor, law enforcement activity or the need for language/accommodation of disability)
- Describe range of sanctions and remedies
- Standard of evidence (same for students and employees)
- Procedures and permissible bases for appeals
- Notice of Allegations containing specific information as outlined in regulations



Notice of Allegations Checklist

- Notice of Grievance Process; Including Informal**

- Allegations Potentially Constituting Sexual Harassment**
 - Identities of the Parties
 - Conduct Constituting Sexual Harassment
 - Date of Incident
 - Location of Incident

- Statement: Respondent Presumed Not Responsible/Responsibility Determined After Process**

- Right to Advisor of Choice**

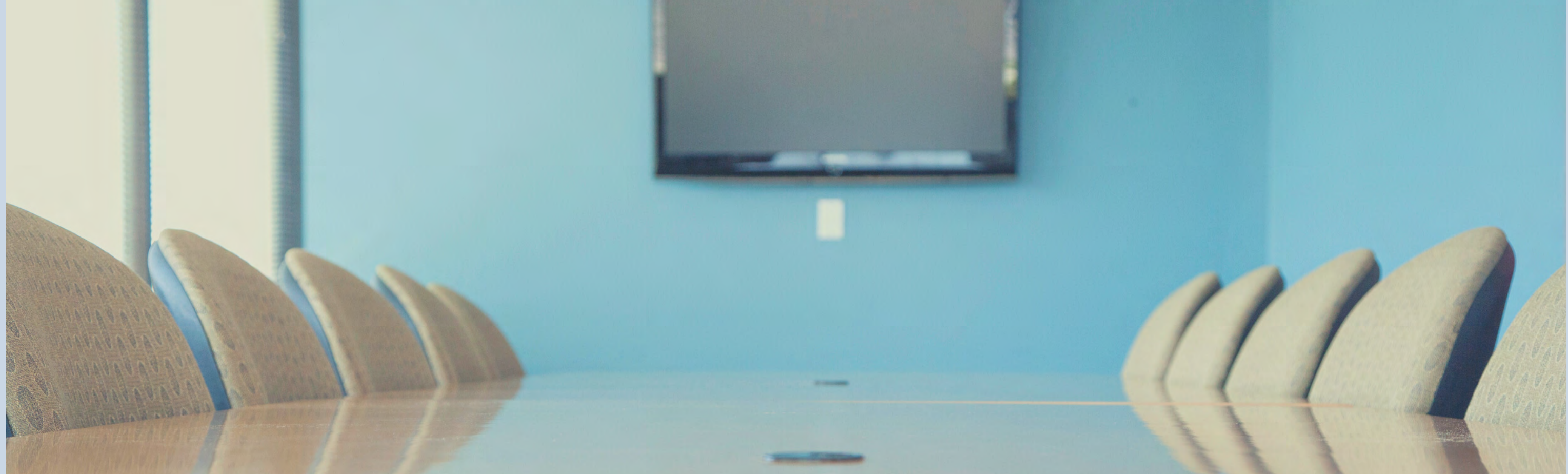
- Code of Conduct Provision Prohibiting False Statements or False Information in Process**



Investigation of Formal Complaint

MUST

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



Hearings

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

Decision-Maker

Determination Regarding Responsibility Checklist

- Identification of the Allegations

- Description of Procedural Steps Taken
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held



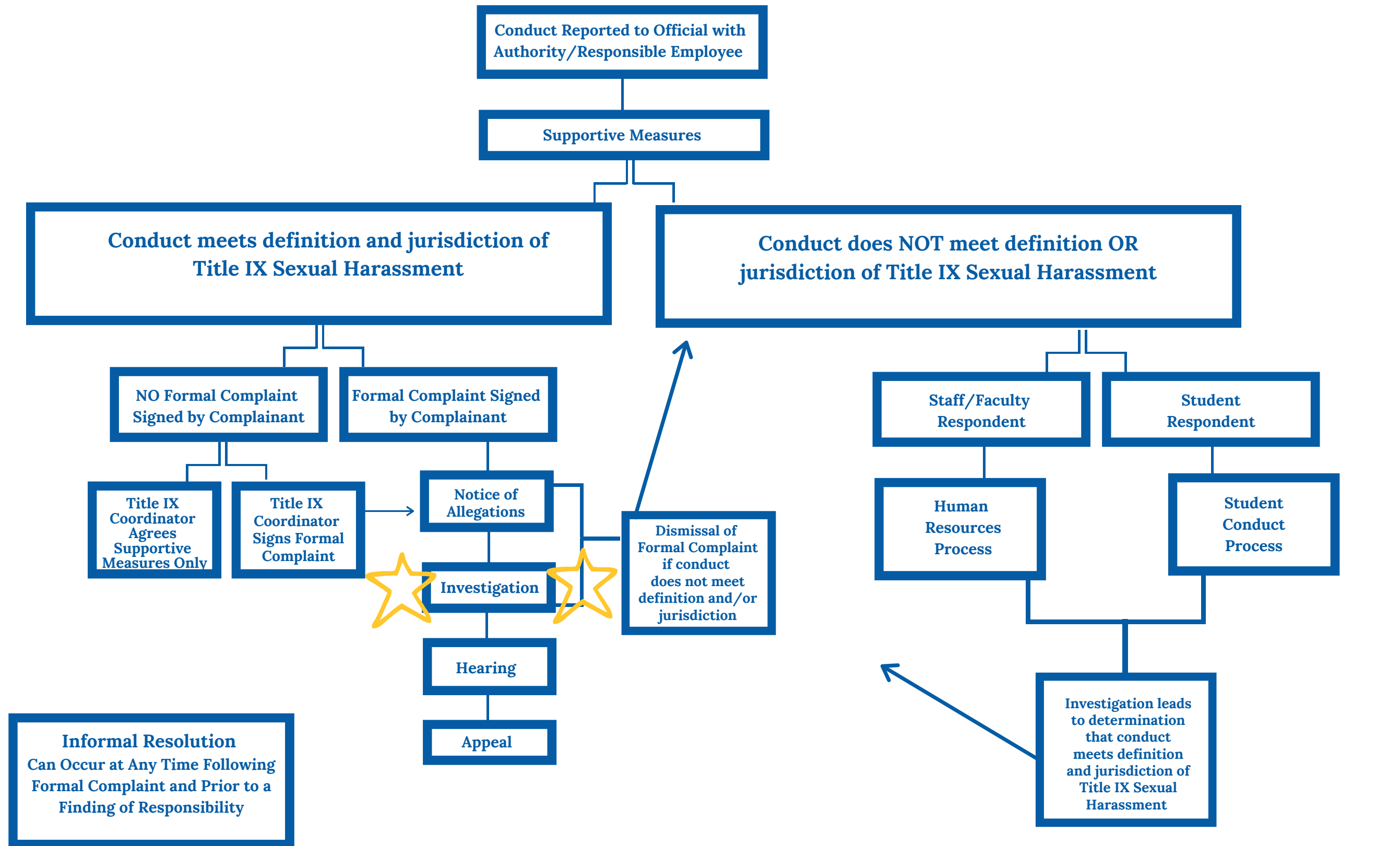
- Findings of Fact Supporting Determination

- Conclusions Regarding the Application of the Code of Conduct to the Facts

- Result of Each Allegation Including Rationale
 - Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant

- Procedures and Permissible Bases for Appeal

Title IX Process Flow Chart





INFORMAL RESOLUTIONS

May NOT:

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

May:

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

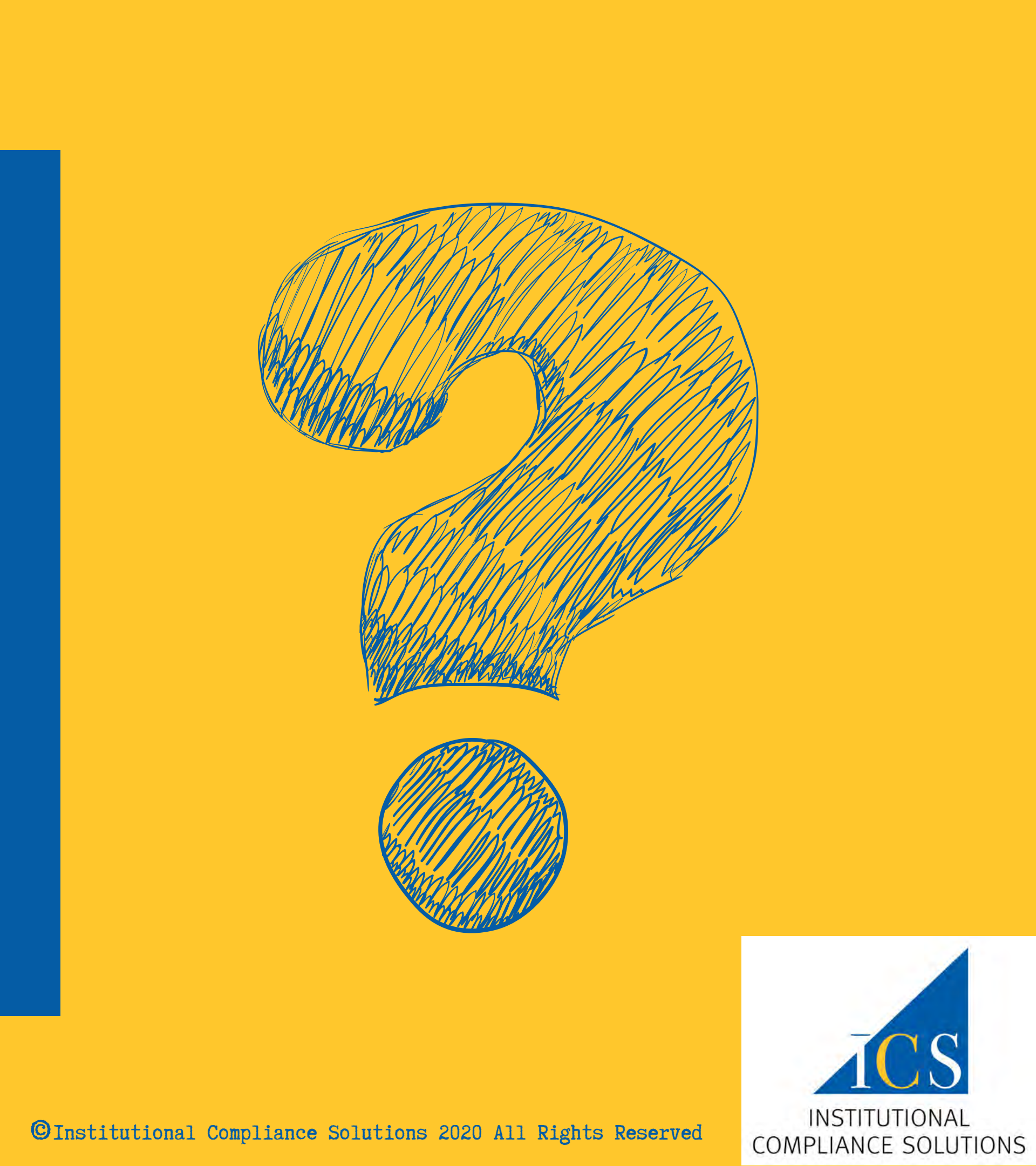
Must:

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

GROUNDS FOR APPEAL

- **MUST offer both parties an appeal re: responsibility, recipient dismissal of formal complaint, or any allegations on following grounds:**
 - **Procedural irregularity that affected the outcome of the matter**
 - **New Evidence**
 - **Conflict of Interest or Bias by Title IX Coordinator, Investigator(s), Decision-Maker(s)- generally toward complainants or respondent or toward specific party**
- **May include additional grounds**
- **New, impartial decision-maker**
- **Cannot be Title IX Coordinator (30577)**







2020 Regulations Require the Following Training for Title IX Investigators

- Definition of Sexual Harassment
- Scope of Education Program/Activity
- Investigation/Grievance Process
 - Hearing
 - Appeals
 - Informal Resolution Process
- How to Serve Impartially
 - Avoiding Prejudgment of the Facts
 - Conflicts of Interest/Bias
- Investigative Report Writing
- Fairly Summarize Relevant Evidence



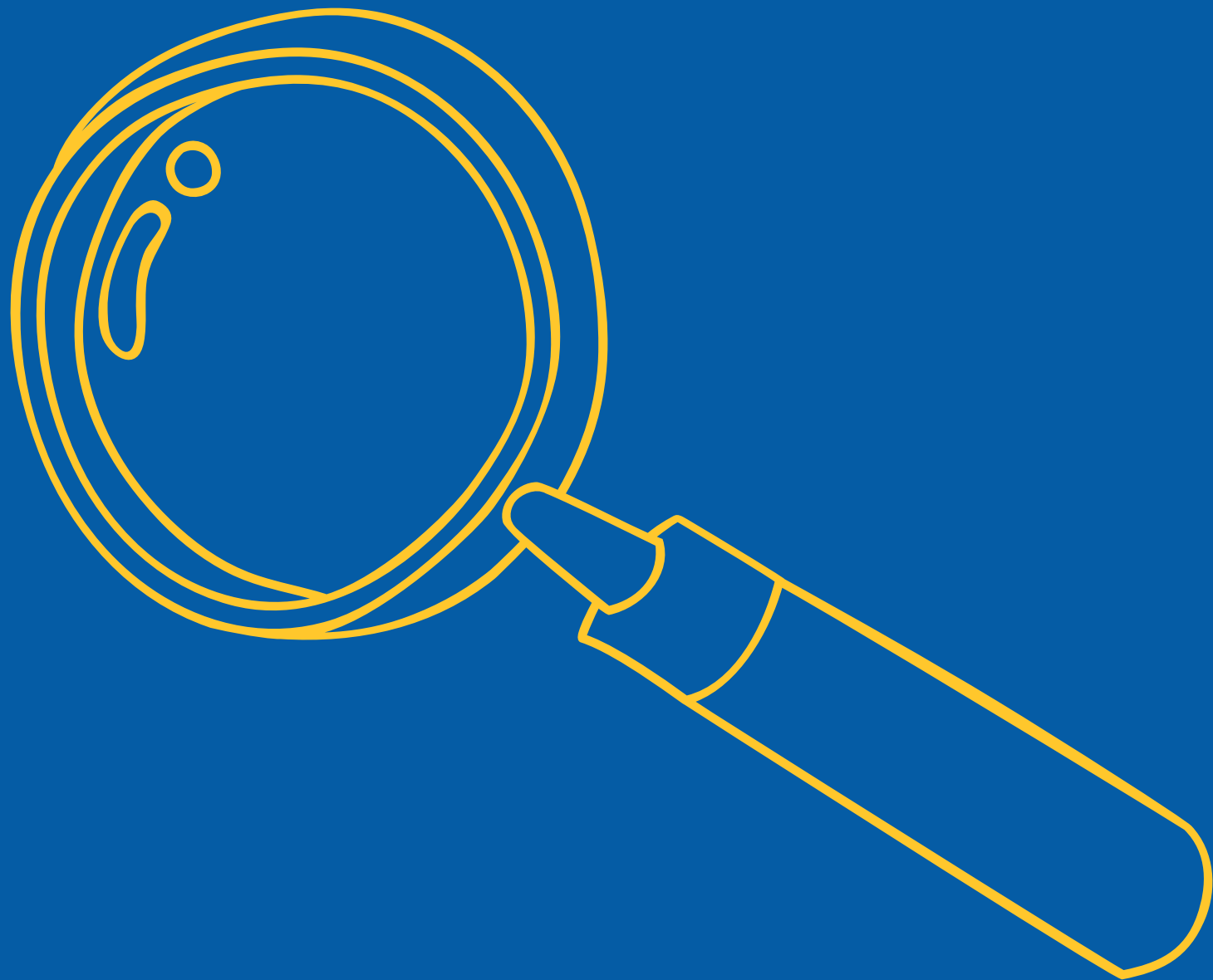
Jeanne Clery Act



CLERY ACT & VIOLENCE AGAINST WOMEN ACT (VAWA)

- VAWA amended the Clery Act to add additional reportable crimes (including Sexual Assault, Dating Violence & Stalking)
- Campus SaVE Act refers to the recent VAWA amendments to the Clery Act = Campus SaVE is the Clery Act
- Enforced by the Department of Education
- Substantial fine \$\$ per violation and loss of eligibility for federal student aid programs

CLERY



Requires a prompt, fair and impartial process from the initial investigation to the final result.

This includes a requirement that any officials involved in the process are trained on issues related to dating violence, domestic violence, sexual assault, and stalking.

Additionally, officials must be trained "on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability."

CLERY AND TITLE IX OVERLAP

THE LAW

Clery Act Geography is not co-extensive with scope of education program or activity under new Title IX regulations

Title IX= building owned or controlled by a student organization that is officially recognized by a post secondary institution vs. Clery = "non campus building or property"

CLERY / VAWA REQUIREMENTS

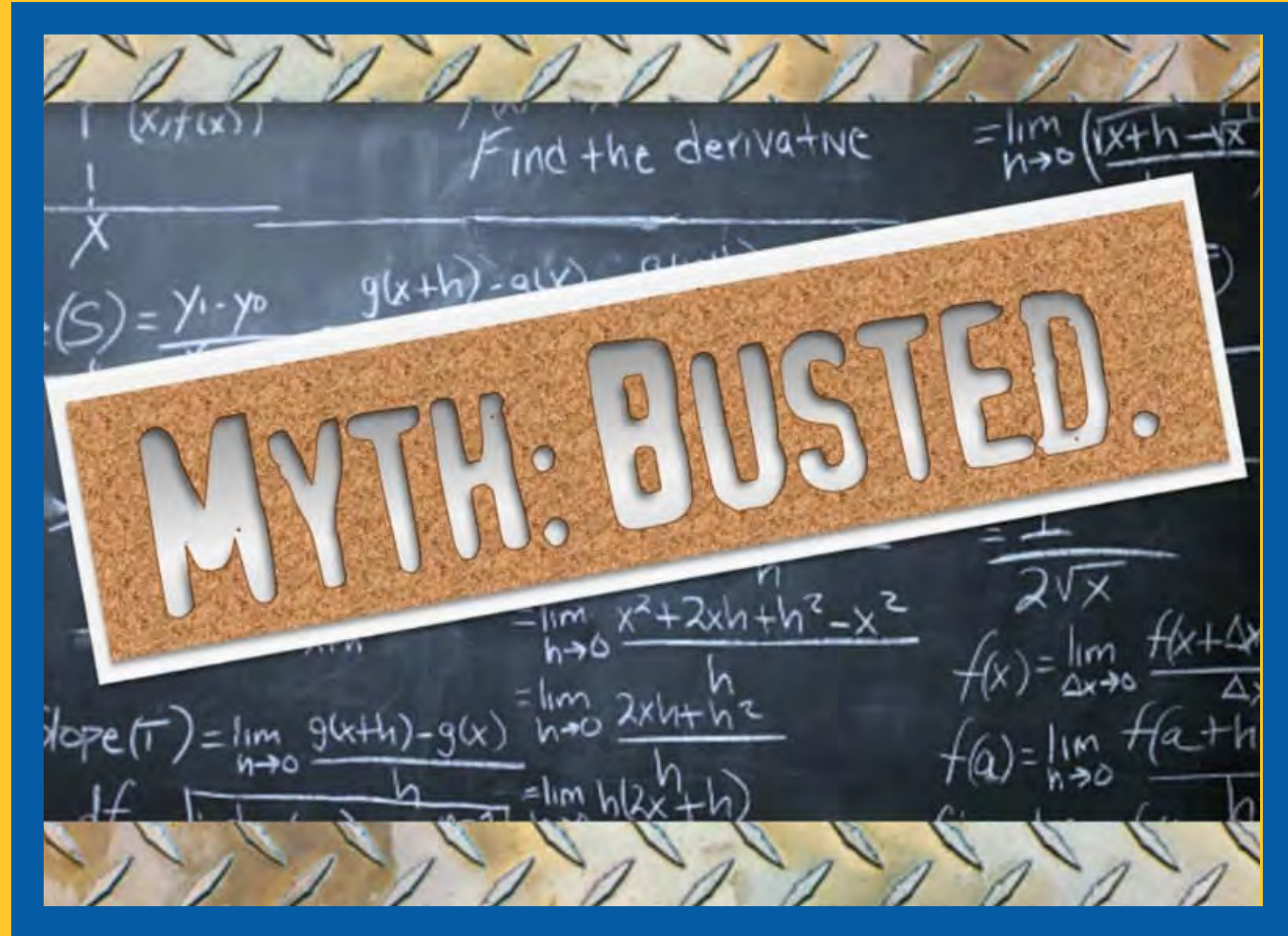
- Conduct/document adequate, reliable, and impartial investigations
- Conduct an investigation and hearing process that protects the safety
- Both parties are entitled to have an advisor of their choice present for all investigative and disciplinary proceedings (note that participation level of advisor may be constrained by the institution)
- Both parties simultaneously informed in writing of the outcome of any disciplinary proceeding that arises from an allegation of Sexual Assault, Domestic Violence, Dating Violence, or Stalking
- Both parties notified of changes in results that occur prior to when results become final, and will be notified when final
- Possible sanctions and protective measures an institution may impose following an institution's disciplinary procedure involving Sexual Assault, Domestic Violence, Dating Violence, or Stalking
- Clery Act prohibitions on and protections against retaliation



IMPORTANT

MYTH BUSTERS

- You must be a _____ to be a good investigator (lawyer, police officer)
- There is only one way to conduct an investigation
- You must be "certified" to be an investigator







SERVING IMPARTIALLY- CONFLICTS OF INTEREST, BIAS, RESERVING JUDGMENT



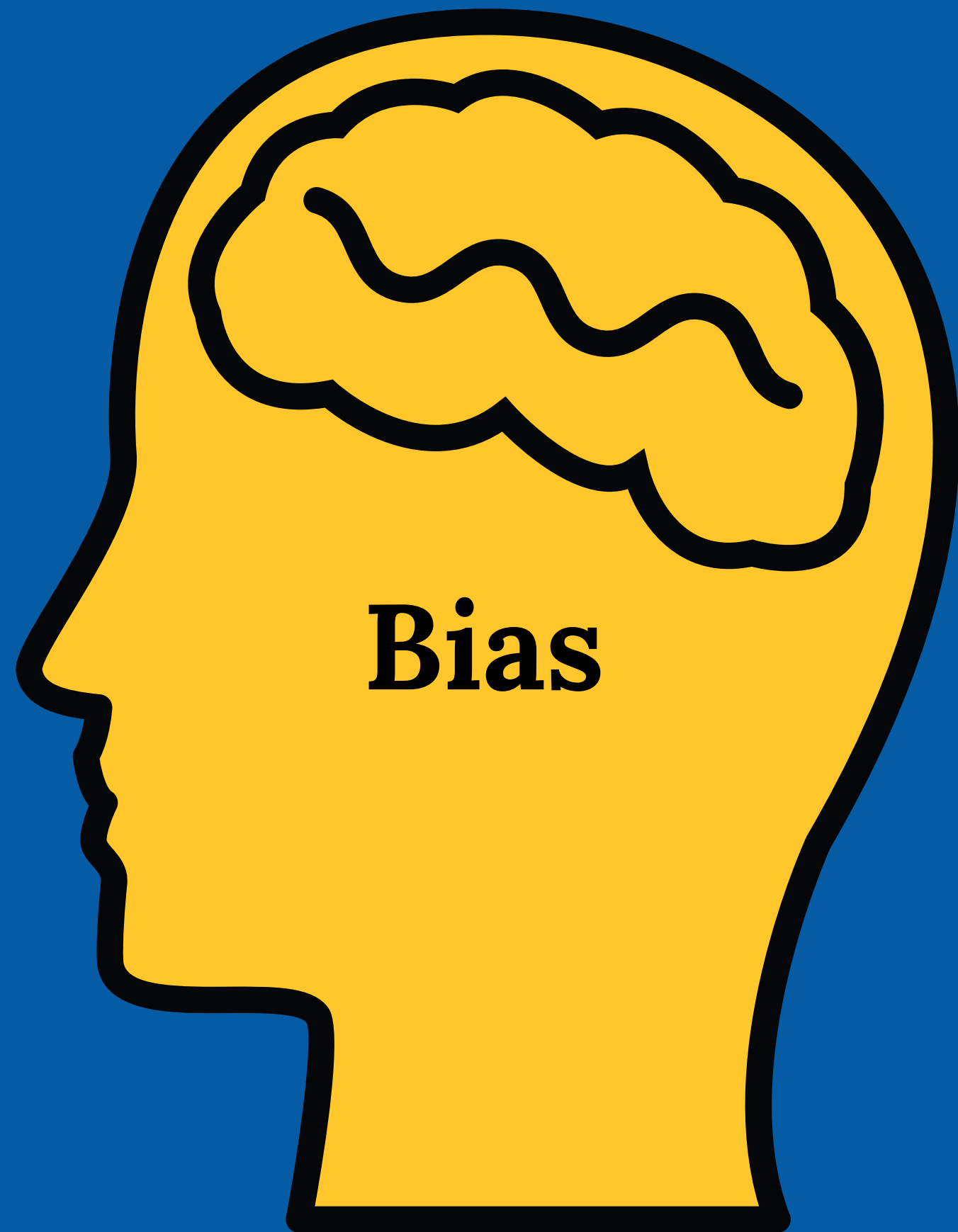
CONFLICTS OF INTEREST/BIAS

- Generally toward Complainants / Respondents
- In a specific case
- Legal Definition of conflict of interest
 - 1: a conflict between the private interests and the official or professional responsibilities of a person in a position of trust
 - 2: a conflict between competing duties (as in an attorney's representation of clients with adverse interests)

Explicit Bias

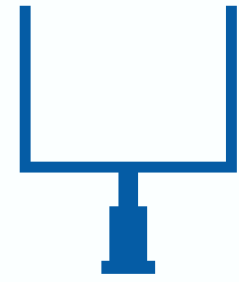
- “Explicit bias” refers to the attitudes and beliefs we have about a person or group on a conscious level.
 - Expressed directly
 - Aware of bias
 - Operates consciously
- Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."



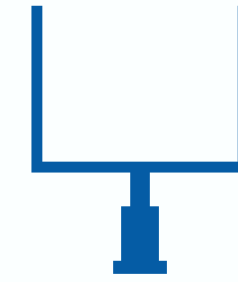


Implicit Bias

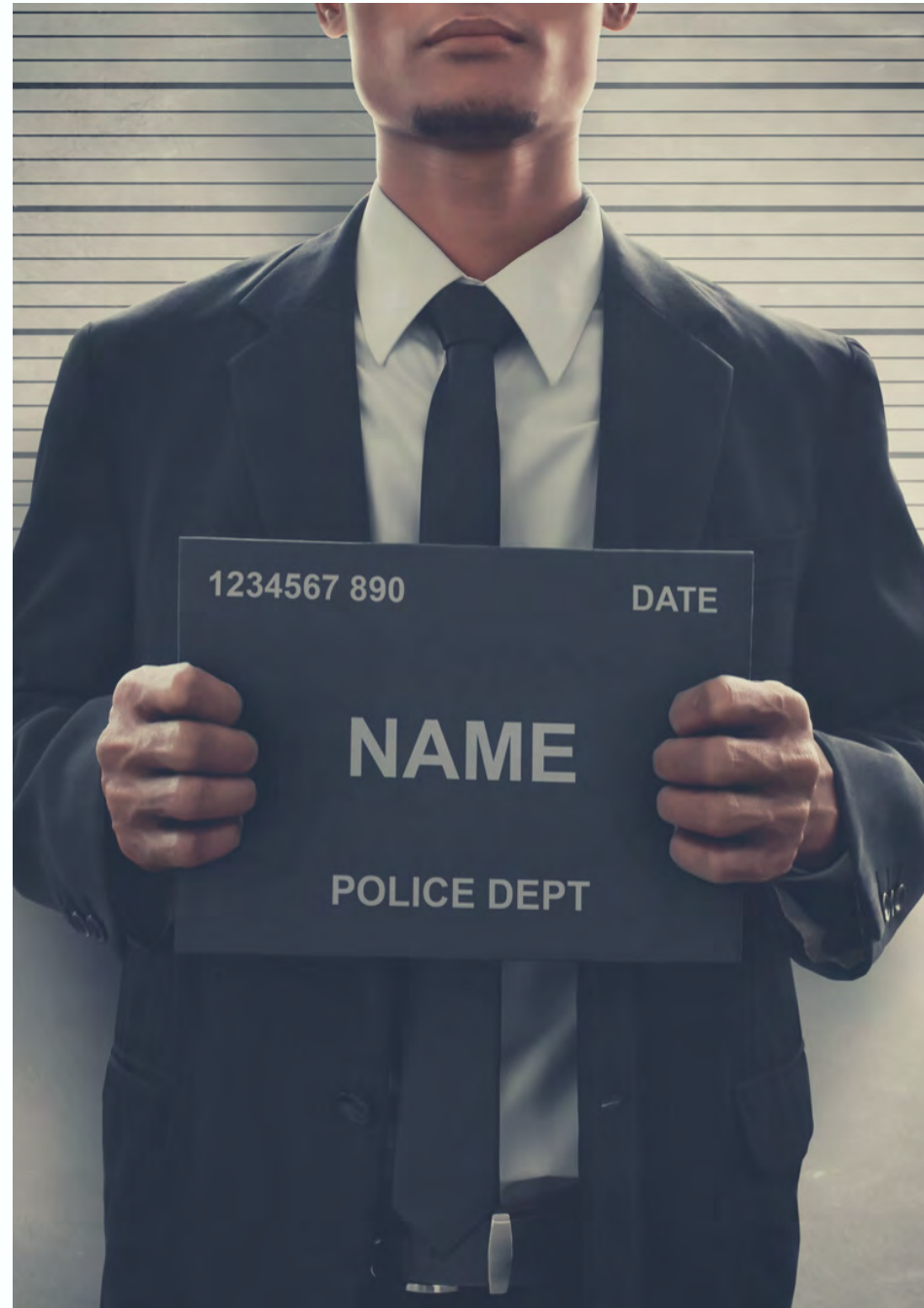
- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
 - Expressed indirectly
 - Unaware of bias
 - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because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



END GAME



**CIVIL
LAWSUIT**



**CRIMINAL
INVESTIGATION**



**TITLE IX
INVESTIGATION**



During the Investigation:

STAY IN YOUR LANE

- Your role as fact gatherer
- Burden on you to gather information- not on parties to provide it
- Investigating violations of specific policy: not law or policies outside of your charge/responsibility
 - Ex: Discovering a management issue while investigating harassment complaint



During the Investigation: SUSPEND YOUR MIND

- Daily Choice
- Reserve judgments until all facts are gathered

KNOW YOUR POLICIES AND PROCEDURES

- Working knowledge of your policies.
- Use policy consistent language
- Who is the point of contact for complainant/respondent?
- Who is the point of contact re: retaliation?
- What it is the hearing and/or appeal process?
- Informal resolutions?





INSTITUTIONAL
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Questions?



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Investigative Techniques

VIRTUAL CERTIFIED TITLE IX INVESTIGATOR TRAINING





TITLE IX INVESTIGATIVE TECHNIQUES



THEMES / END GAME



**Fair/Balanced
approach**



**Uncover all relevant
facts/information**

- stone analogy



**Common sense
approach- beware
of rabbit holes**



BE CURIOUS

It is the number one skill for an investigator.



Timeliness

- **Policy must designate reasonably prompt timeline**
- **Interview witnesses as soon as possible**
- **Unavoidable delays**
- **Notice of extensions**
- **Addressing delays in record keeping/report**



Organize

- Plan order of interviews/when to interview respondent
- In person vs. virtual vs. phone
- Explaining process and your role
- Reassurance/retaliation

INTERVIEW SKILLS

- **Develop rapport**
- **Observe**
- **Be professional**
- **Outline questions / flexibility**



Types of Questions

- Who, what, when, where, why
- Open ended
- Repeat, repeat, repeat
- Circling techniques
- Clarity on timelines/who is involved etc.
- Openings
- Closing questions
- Opportunity to provide clarification after interview

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Relevancy

- Regulations do not define relevancy
- Regulations define some things that are not relevant:
 - Treatment unless parties agree
 - Privileged Information
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the respondent and are offered to prove consent.

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Ir relevant

Relevancy Continued

- Ordinary Meaning (Not a legal term)
- Does the evidence tend to make a fact more or less likely to be true

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RELEVANT

Note Taking

- Explain your role as note taker
- Note taker vs. dual investigator
- Use quotations if possible
- Ask for a pause or clarification if necessary

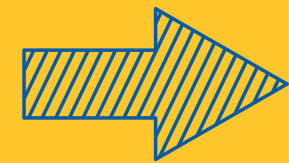
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Types of Information/Evidence

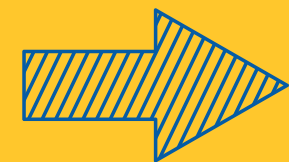


Direct Information/Evidence



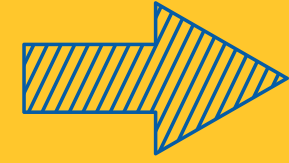
First person observation of an incident

Circumstantial Information/Evidence



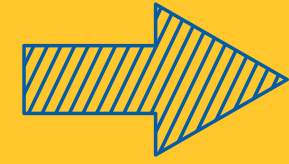
Reported observation of information that offers inferences about the facts of the event

Documentary Information/Evidence



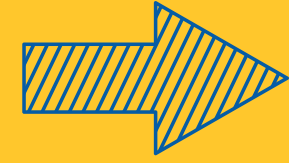
Written description of an incident
• Police Report
• Residence Hall Report

Hearsay Information/Evidence



Information that is reported through another party

Expert Information/Evidence



Information that is shared from a person who has an acknowledged expertise in related subject matter



Complainants

- Trauma informed practices
- Managing expectations
- Reluctant complainants and retaliation
- Interim/support measures
- Next Steps
- Bias/Conflict of Interest



Respondents

- **Trauma informed practices**
- **No presumption of responsibility**
- **Managing expectations**
- **Interim/support measures**
- **Simultaneous and ongoing criminal investigations**
- **Next Steps**
- **Bias/Conflicts of Interest**

ADVISORS

- Of the party's choice
- Attorney? Can be, but doesn't have to be
- Does not have to be trained.
- If none, **MUST** have one provided for purposes of the hearing (cross examination)
- May be present **EVEN** if party is not
- **Must** follow rules of decorum if you have them
- **Potentially** slow down the hearing process

IDENTIFYING OTHER EVIDENCE

- Videos
- Social Media
- Text Messages
- Physical Evidence
- University ID Activity
- Applications
- SANE Exam
- Other?



Witnesses

- Eye Witness
- Character Witnesses???
- Hearsay issues
- Witnesses identified by the parties
- Experts

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THE ATMOSPHERE MATTERS

Consider the look and feel of the office/interview location

- not too formal but still professional
- not intimidating



Standard of Proof

- All standards related to sexual harassment must be the same
- Preponderance of the Evidence
 - 50% plus a feather
 - more likely than not
- Clear and Convincing
- School investigation vs. Criminal investigation



Investigate as Though You Will be Investigated

- **Have a clear/organized plan- but remain flexible**
- **Document Document Document (delays, objections EVERYTHING)**
 - **Duplication of documentation**
 - **To record or not to record?**
 - **Inclusivity vs. Exclusivity**



INTRODUCTION PRACTICE



INSTITUTIONAL
COMPLIANCE SOLUTIONS

Questions?



INSTITUTIONAL
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Report Writing

**VIRTUAL CERTIFIED
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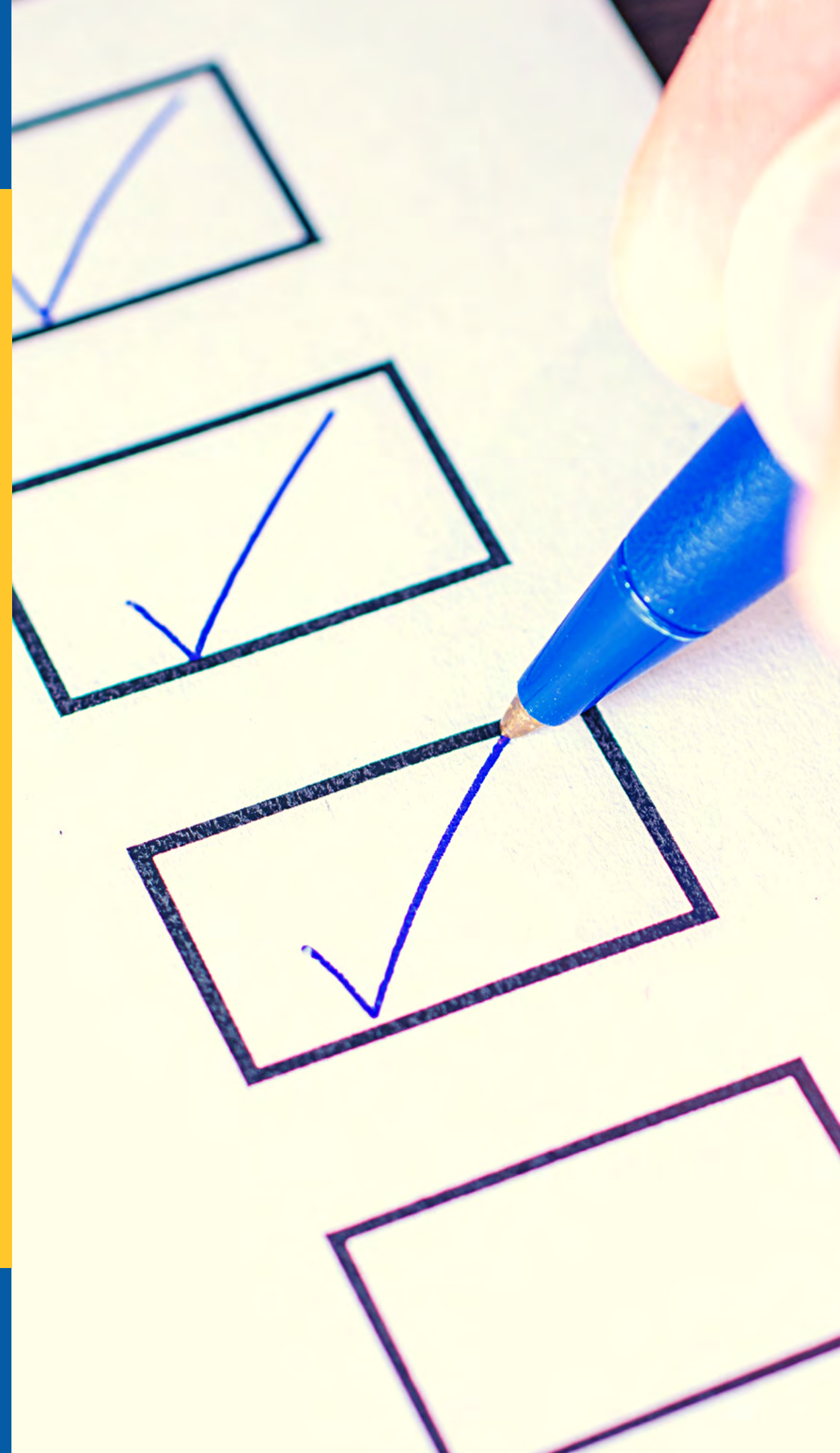




REPORT WRITING

REPORT CONTENT

- How reported
- Date of Formal Complaint
- Who investigated
- Policy
- Timelines (of events and of investigation)
- Information from parties and witnesses
- Information not included or witnesses not interviewed and why
- Physical Evidence
- Summary of Relevant Information





Decision-Maker

Determination Regarding Responsibility Checklist

- Identification of the Allegations**

- Description of Procedural Steps Taken**
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held

- Findings of Fact Supporting Determination**

- Conclusions Regarding the Application of the Code of Conduct to the Facts**

- Result of Each Allegation Including Rationale**
 - Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant

- Procedures and Permissible Bases for Appeal**

WHO IS YOUR AUDIENCE?



**What is the intent of the report
Who needs to understand/use it
Where/how will it be used**

ORGANIZATION IS KEY

- By party/witness?
- By time/chronological?
- By event?



A top-down view of a wooden desk. On the left is a spiral-bound notebook with blue grid paper. A silver pen lies diagonally across the notebook. Below the notebook is a tablet with a black screen. To the right of the notebook is a white coffee cup filled with dark coffee, sitting on a matching saucer. A vertical blue bar is positioned to the right of the coffee cup, extending down the page.

REPORT MUST

- Fairly summarize relevant evidence
- Be provided to parties AND advisors
- Hard copy or electronic

CREDIBILITY DETERMINATIONS

- Only if required by your policy

manager
cred-ible

witnesses.
sible to be
are

cred

Burden

Burden to collect/gather evidence is on the Institution (investigator)... NOT THE PARTIES

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Document Document Document

- CONSISTENT,
- THOROUGH,
- CLEAR,
- TIMELY

INVESTIGATIVE TIMELINE

1
INVESTIGATE

2
OPPORTUNITY
TO INSPECT AND
REVIEW
EVIDENCE
RELATED TO
ALLEGATIONS
AND PROVIDE
WRITTEN
RESPONSE
10 days

3
INVESTIGATIVE
REPORT

4
OPPORTUNITY
TO REVIEW
FINAL REPORT
AND PROVIDE
WRITTEN
RESPONSE
10 days

5
HEARING

6
APPEAL



INSTITUTIONAL
COMPLIANCE SOLUTIONS

Questions?
