



# Overview of the Title IX Regulations

# IN THIS CHAPTER



INTRODUCTION TO  
THE TITLE IX  
REGULATIONS



SEXUAL HARASSMENT  
AND RECIPIENT  
RESPONSE



TITLE IX GRIEVANCE  
PROCESS FOR FORMAL  
COMPLAINTS

# Introduction to the Title IX Regulations



# Title IX Coverage

## Postsecondary Institutions

Includes:

- Undergraduate schools
- Graduate schools
- Vocational schools
- Professional schools/programs

## Elementary and Secondary Schools

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

# What is a Recipient?

## 34 CFR § 106.2 - Definitions.

"Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof."

# Compliance with the Regulations

Recipients must comply with the requirements of Title IX as outlined under the regulations.

Recipients may:

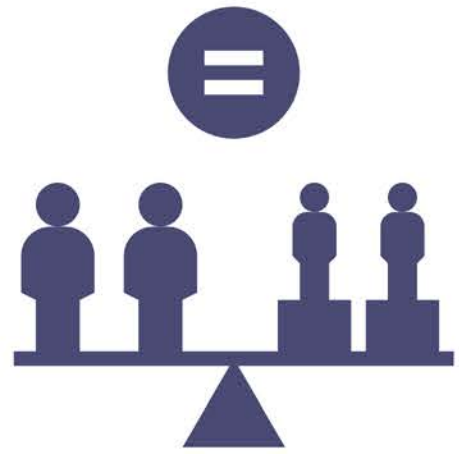
- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

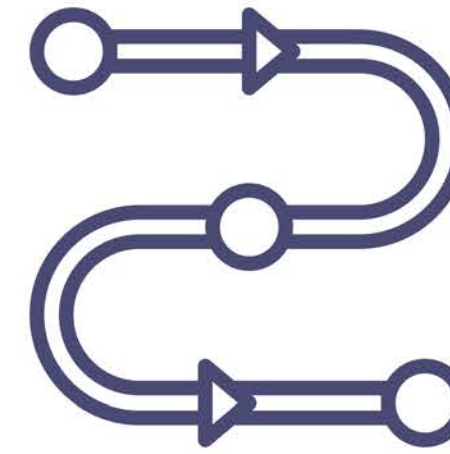
- Provide details regarding policies or procedures which are not addressed in the regulations

# Compliance with the Regulations

Recipients must:



Have “prompt and equitable” grievance procedures for complaints of sex discrimination



Have in place a grievance process that complies with §106.45 for formal complaints of sexual harassment

When is Sexual  
Harassment  
Actionable?



When it denies a  
person equal  
access to education

# Title IX's Application

Regulations apply equally to all persons, regardless of:



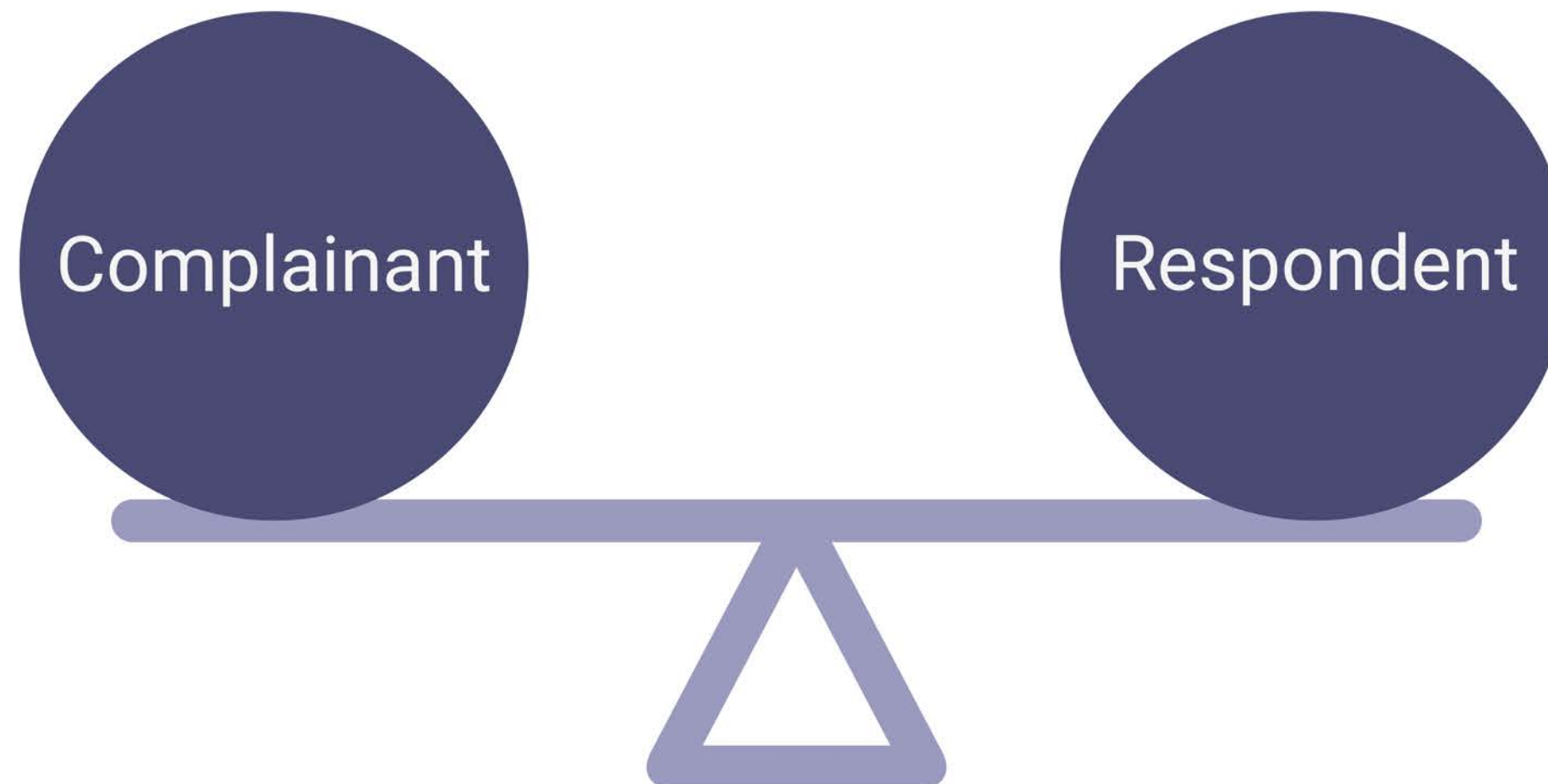
Gender identity or expression



Sexual orientation

# Treatment of the Parties

A school must treat both parties equitably and equally throughout the process including supportive measures, investigations, and the grievance process.



# Bias and Conflict of Interest

§ 106.45 (b)(1)(3)  
Grievance process  
for formal  
complaints of  
sexual harassment.

"...that any individual designated by a recipient as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

# Title IX Personnel



Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

# Sexual Harassment and Recipient Response



# 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**

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

**3**

**SEXUAL  
ASSAULT**

**DATING  
VIOLENCE**

**DOMESTIC  
VIOLENCE**

**STALKING**

**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

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

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.

**3**

**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)

# Sexual Assault

## Sex Offenses, Forcible:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

## Sex Offenses, Nonforcible:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

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

# Dating Violence

## Violence committed by a person

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. where the existence of such a relationship shall be determined based on a 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.

34 U.S.C. 12291(a)(10)

# Domestic Violence

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. 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.

34 U.S.C. 12291(a)(8)

# Stalking

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

- Fear for his or her safety or the safety of others; or
- Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

# Consent




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.

# Recipient's Response


Threshold criteria (all four must be met):



Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

# Actual Knowledge Defined

## § 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"

- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be "written or oral, by observation, via a newspaper article or other means"



Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge

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

# 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

# Recipient's Response

Schools must not act in a manner that is deliberately indifferent, meaning:

"...clearly unreasonable in light of the known circumstances."

# Recipient's Response

## Qualifying Incidents of Sexual Harassment

- Treat Complainants and Respondents equitably by offering supportive measures

? When do they apply?

? What do they include?

- Follow a grievance process that complies with §106.45 of the Title IX Regulations

# Recipient's Response

## Qualifying Incidents of Sexual Harassment

The Title IX Coordinator must promptly contact the Complainant to:

1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.

# Recipient's Response

## Supportive Measures

### § 106.30 Definitions.

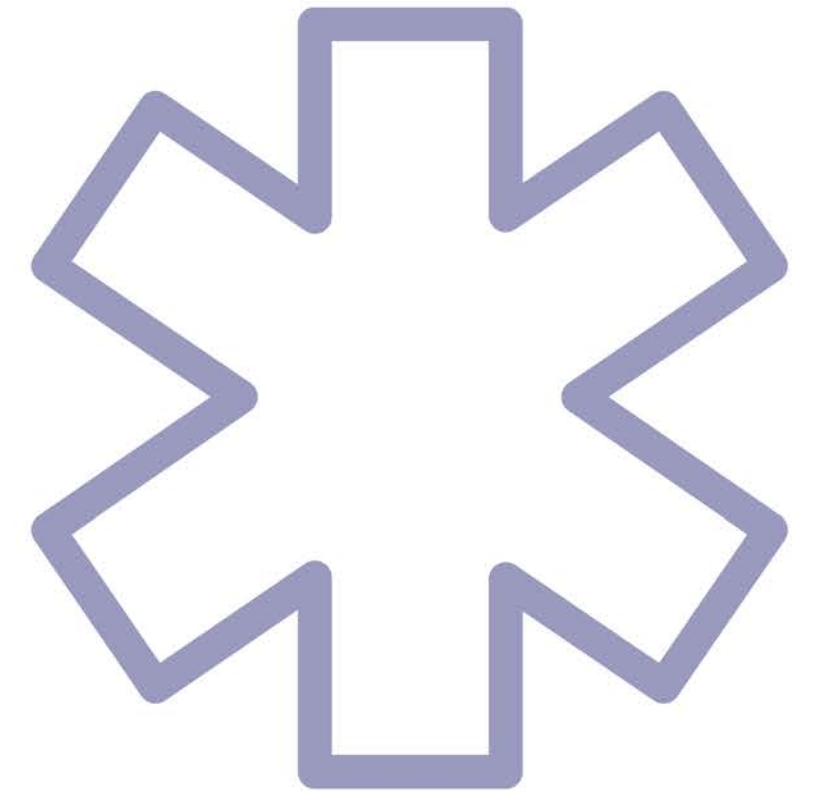
"non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed"

- Intended to restore Complainant's access to educational program or activity

# Recipient's Response

## Emergency Removal

- ❖ Safety and risk analysis
- ❖ Immediate threat to physical health or safety
- ❖ Provide Respondent with notice and opportunity to challenge the decision



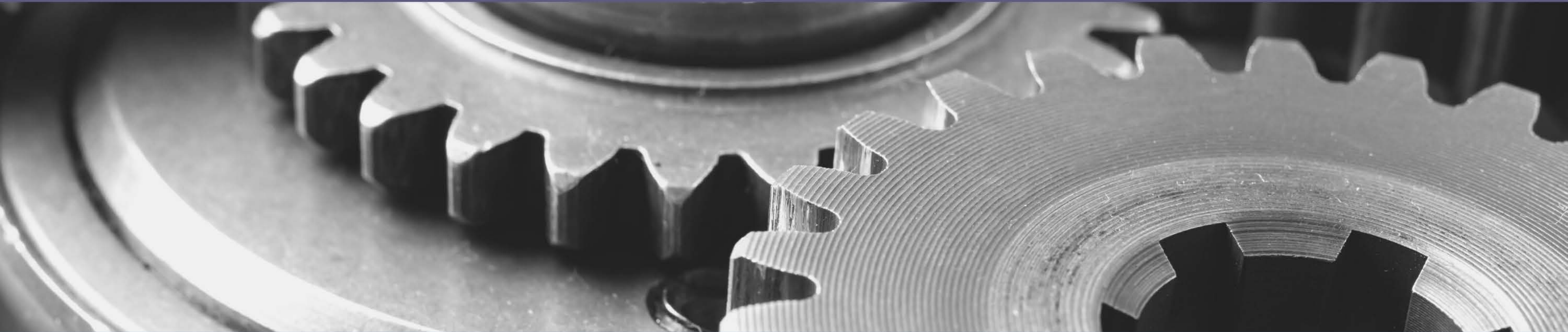
# Recipient's Response

## Administrative Leave

- ❖ Applies to non-student employees



# Title IX Grievance Process for Formal Complaints



# Formal Complaint Defined

## § 106.30 Definitions.

"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"

- May be filed by parent or guardian who has a legal right to act on behalf of an individual
- At the time of filing, complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed
- May be filed in person, by mail, or by electronic mail
  - Can use the contact information required to be listed for the Title IX Coordinator or any additional method designated by the school
- Must contain the Complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint
- If Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party

# Dismissal of a Formal Complaint

School MUST dismiss if the conduct alleged in the formal complaint:

Would not constitute sexual harassment as defined in §106.30 even if proved

Did not occur in the recipient's education program or activity

Did not occur against a person in the United States



Dismissal does not preclude the school from investigating and adjudicating under another provision of the school's Code of Conduct.

# Dismissal of a Formal Complaint

School MAY dismiss if the conduct alleged in the formal complaint:

Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein

The Respondent is no longer enrolled or employed by the recipient

Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein



A complaint will not be dismissed because a Complainant remains at or leaves the school.

# Consolidation of Formal Complaints

Schools may consolidate formal complaints:

- ❖ Against more than one Respondent
- ❖ By more than one Complainant against one or more Respondents
- ❖ By one party against the other, where the allegations arise out of the same facts or circumstances

# Grievance Process

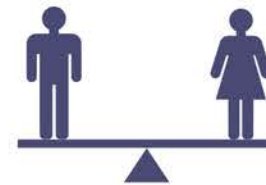
A recipients grievance process MUST:



Treat Complainants and Respondents equally



Require objective evaluation of relevant evidence



Require Title IX personnel not have bias and conflict of interest



Include a presumption that Respondent is not responsible until a determination is made



Include reasonably prompt time frames



Describe range of possible disciplinary sanctions and remedies



State the standard of evidence



Include the permissible bases for appeal



Describe the range of supportive measures available



Not require or rely on privileged information, unless waived

# Grievance Process

## Notice of Allegations must contain:

- Notice of the school's grievance process
- Sufficient details of the allegations, including:
  - Identities of the parties involved;
  - The conduct allegedly constituting sexual harassment;
  - The date and location of the alleged incident(s)
- Sufficient time period for the parties to prepare a response before interview
- Presumption of not responsible
- Determination of responsibility at the conclusion of the grievance process
- Allowance of an Advisor
- Right to inspect and review all evidence gathered during the investigation
- Reference to any policy in the school's code of conduct which prohibits knowingly making false statements

# Grievance Process

A recipient must investigate a formal complaint.

- The Title IX Coordinator may also serve as the Investigator
- Burden of proof and gathering of evidence is on the school
- Medical and similar privileged records are not available unless the party (or parent/guardian) provides written consent for release
- Both Parties must be given the equal opportunity to present witnesses and evidence
- Neither party may be restricted in their ability to discuss the allegations or gather and present relevant evidence

# Investigation of Formal Complaints

- Both parties have the right to an Advisor throughout the grievance process
- School must give written notice of any meeting in which the party is required to participate
- Parties and their Advisors must be given equal access to inspect and review all evidence gathered
- Parties must be given at least ten days to file a written response regarding the investigation evidence
- School may require the parties to submit any additional evidence prior to the finalization of the investigation report

# Investigation of Formal Complaints

- Evidence provided to the parties must also be available at the hearing with each party having equal access
- Investigator must complete a report that fairly summarizes relevant information at least ten days prior to a scheduled hearing, and;
  - Must provide copies to each party and their Advisors
- Investigator may include recommended findings or conclusion in the investigative report
  - Decision-Maker is under the independent obligation to objectively evaluate relevant evidence in making a determination

# Grievance Process

## Hearings

- The Decision-Maker in a hearing cannot be the same person as the Title IX Coordinator or the Investigator



A postsecondary school must provide for a live hearing

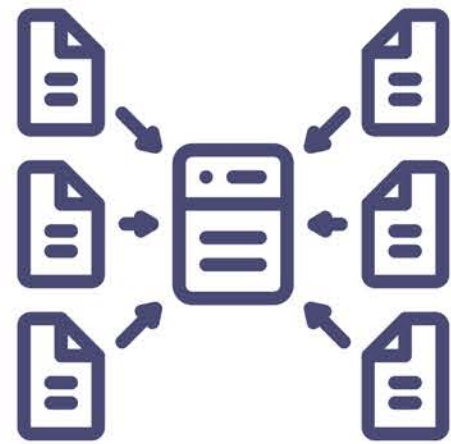


A live hearing is optional for elementary and secondary schools, though the parties must be given the opportunity to:

- Review the investigation report
- Submit written relevant questions of any party or witness to the Decision-Maker
- Receive answers to those questions
- Submit limited follow-up questions prior to a determination by the Decision-Maker

# Grievance Process

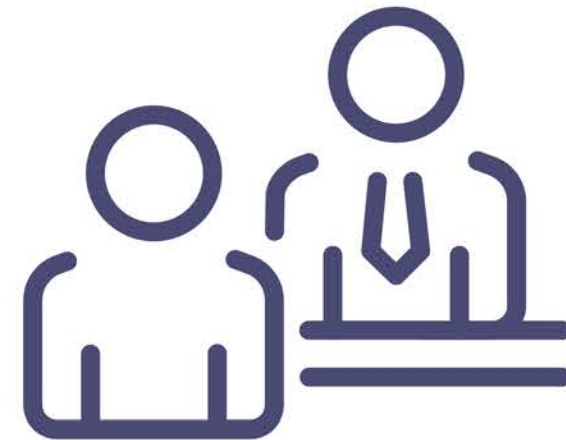
## Hearings



The recipient may consolidate cases arising from the same facts



Hearings may occur with parties present in the same geographic location or live, virtually



If a party does not have an Advisor, one must be provided by the institution



Only relevant questions may be asked during cross-examination. Decision-Maker will determine relevance

# Grievance Process

## Written Determination

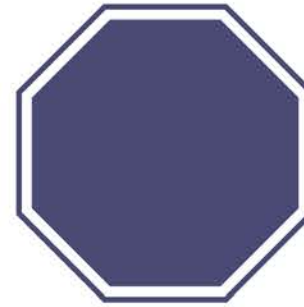
- Made by a Decision-Maker(s) who is/are not the Title IX Coordinator or Investigator
  - Must not have bias or conflict of interest.
- Determination reached by applying standard of evidence adopted by the school
- Written determination must include:
  - Identification of the allegations
  - Description of the procedural steps taken
  - Findings of fact supporting the determination
  - Conclusions regarding the application of the recipient's code of conduct to the facts
  - Statement of, and rationale for, the result as to each allegation, including:
    - A determination regarding responsibility
    - Any disciplinary sanctions the recipient imposes on the Respondent
    - Whether remedies designed to restore or preserve equal access to education program
  - Bases for appeal

# Grievance Process

## Written Determination



The recipient must provide the written determination to parties simultaneously



Determination is final after appeal determination (if appeal was filed) or upon expiration of appeal window



School is responsible for provision of remedies

# Grievance Process

## Standard of Evidence

- A school may elect to apply either:
  - The preponderance of evidence (“more likely than not”); or
  - The clear and convincing evidence (“highly probable”) standard
- The same standard of evidence must be used for:
  - Formal complaints against students as is used for formal complaints against employees, including faculty
  - All formal complaints of sexual harassment

# Grievance Process

## Appeals

- Must offer an appeal process with the following bases of appeal
  - Procedural irregularity
  - New evidence, not previously available, that could affect the outcome
  - The Title IX Coordinator, Investigator or Decision-Maker had a conflict of interest or bias
- Can provide additional bases, but must do so equally to both parties
- Appeal Decision-Maker cannot have a conflict of interest and cannot be the Title IX Coordinator, Investigator, or Decision-Maker, must be trained
- Parties must be notified in writing of
  - Other party's decision to appeal
  - Decision rendered upon review of the appeal
- Parties must be offered opportunity to provide written argument

# Grievance Process

## Informal Resolution

- School may offer informal resolutions of alleged incidents
  - Mediation, restorative justice, or other forms of alternative dispute resolution
- Does not require a full investigation or adjudication
- Must be voluntary, with the parties being fully informed of the process and options and the parties must consent in writing to the process
- Informal resolution cannot be offered or facilitated by a recipient in a case involving an employee's sexual harassment of a student