



# Title IX Sexual Harassment Training



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# Title IX Overview

Title IX of the Education Amendments of 1972 states that “[n]o 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,” subject to certain exceptions.

Title IX prohibits sex discrimination against both students and employees.

The types of discrimination covered under Title IX include:

- Sexual harassment
- Failure to provide equal opportunity in athletics
- Discrimination in schools’ science, technology, engineering, and math (“STEM”) courses and programs
- Discrimination based on pregnancy
- Retaliation

The United States Department of Education (“DOE”) enforces Title IX through the Office of Civil Rights (“OCR”). Employment discrimination complaints are typically referred to the Equal Employment Opportunity Commission (“EEOC”).

# Title IX Galaxy

Sexual  
Harassment

Employment

Athletics

Discipline

Treatment of Pregnant  
and Parenting Students

Photo Credit: *ESA/Hubble & NASA, J. Lee and the PHANGS-HST Team*

# New Title IX Sexual Harassment Regulations

- On May 6, 2020, the DOE issued new regulations regarding sexual harassment under Title IX, which took effect on August 14, 2020. The new regulations deal primarily with the issue of sexual harassment and outline districts' obligations in responding to allegations of sexual harassment.
- President Biden's Executive Orders
- Planned NPRM
- Stay tuned for changes.

# Definitions

- Complainant: alleged victim
- Respondent: alleged harasser
- Advisor: A person chosen by a party to be present during any grievance proceeding or related meeting. This person may or may not be an attorney.
- Title IX Coordinator: In charge of compliance
- Investigator: Investigates formal complaints of sexual harassment and prepares a written investigative report
- Grievance Decision-Maker (“GDM”): Reviews the investigation materials and issues a written determination regarding responsibility
- Appeal Decision-Maker (“ADM”): Hears the appeal of a dismissal of a formal complaint or a decision by the GDM and issues a written decision.

## Definitions cont'd

- **Formal Complaint:** Document, signed by a complainant or by Title IX Coordinator, alleging sexual harassment against a respondent and requesting that District investigate the allegations.
- **Supportive Measures:** Non-disciplinary, non-punitive, individualized services offered, as appropriate and as reasonably available, to a complainant and/or a respondent. Supportive measures free of charge to the complainant and respondent.
- **Remedies:** When a respondent is found to be responsible for sexual harassment, District is required to provide remedies to the complainant. Remedies must be designed to restore or maintain equal access to District education program or activity. Remedies may include supportive measures. Remedies may also include punishment.
- **Consent:** Not defined by the regulations. Your district can draft its own definition.

## Definitions cont'd

- Sexual Harassment: Broadly defined to include conduct on the basis of sex that satisfies one or more of the following:
  - A District employee conditioning the provision of an aid, benefit, or service of District 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 District's education program or activity (a.k.a. hostile educational environment); or
  - Any of the following:

# Definitions cont'd

- Sexual assault, which is defined as an offense that meets one of the following definitions:
  - 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 or her age or because of his or her temporary or permanent mental incapacity;
  - Incest: Sexual intercourse between two persons who are related to each other within the degrees wherein marriage is prohibited by law; or
  - Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent;



## Definitions cont'd

- 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; and
  - 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 the relationship.
    - The frequency of interaction between the persons involved in the relationship.

## Definitions cont'd

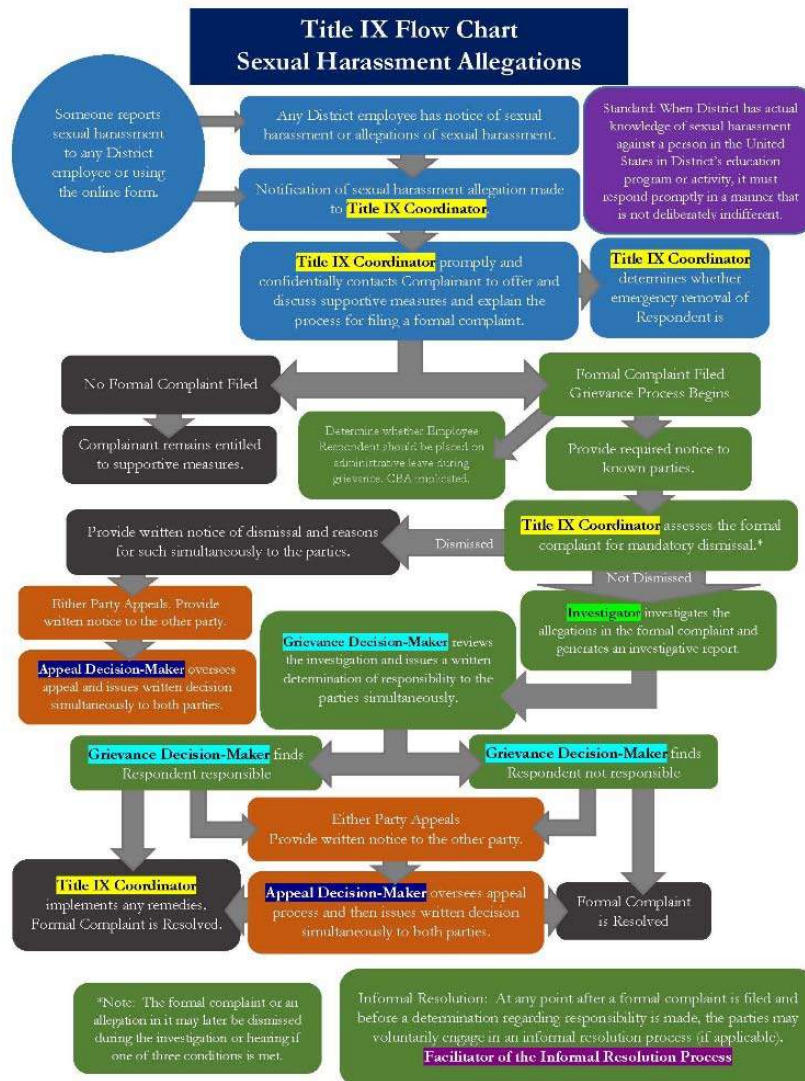
- Domestic violence: Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Ohio's domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under Ohio's domestic or family violence laws.

## Definitions cont'd

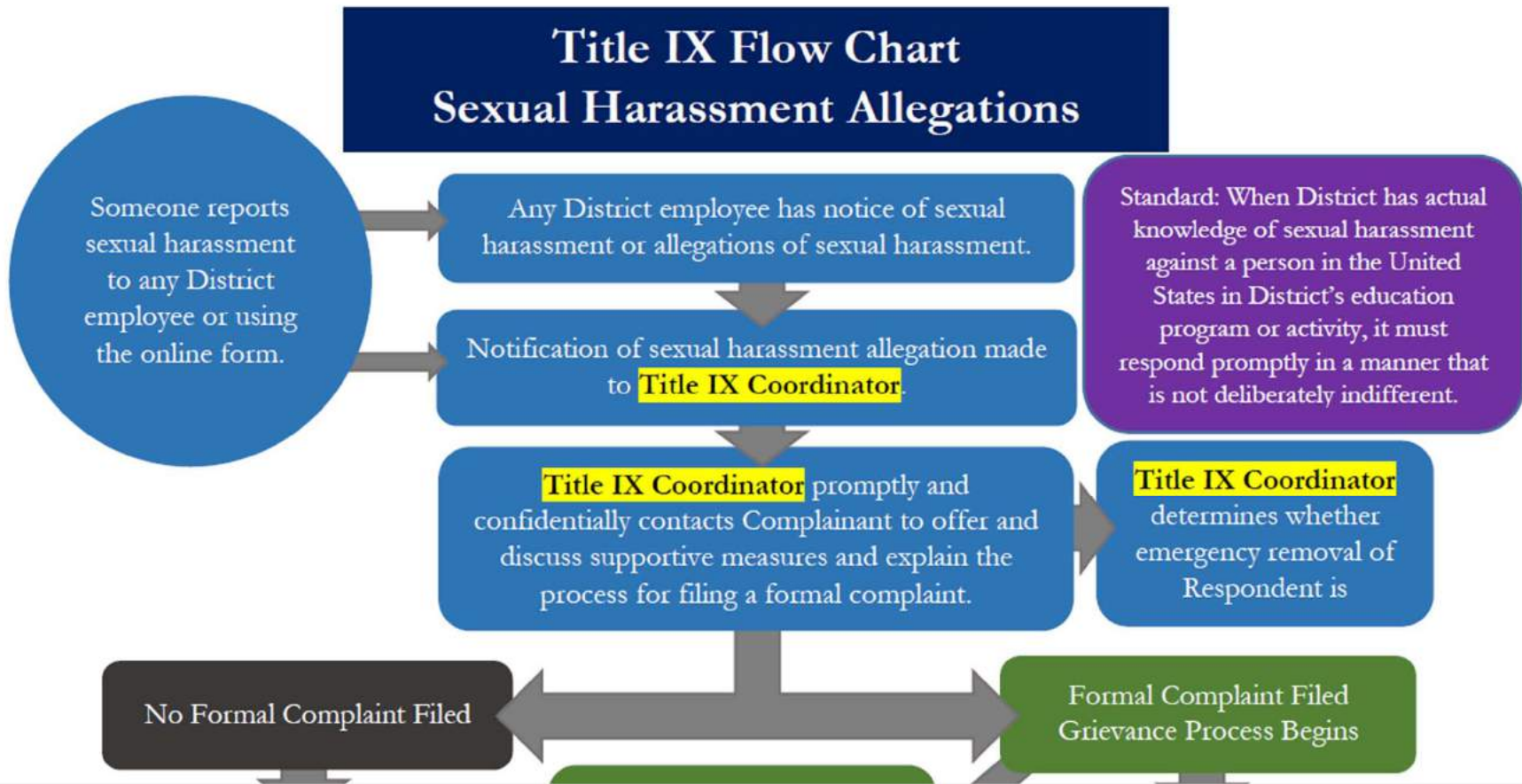
- Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
  - Fear for his or her safety or the safety of others; or
  - Suffer substantial emotional distress.

# Title IX Sexual Harassment Process

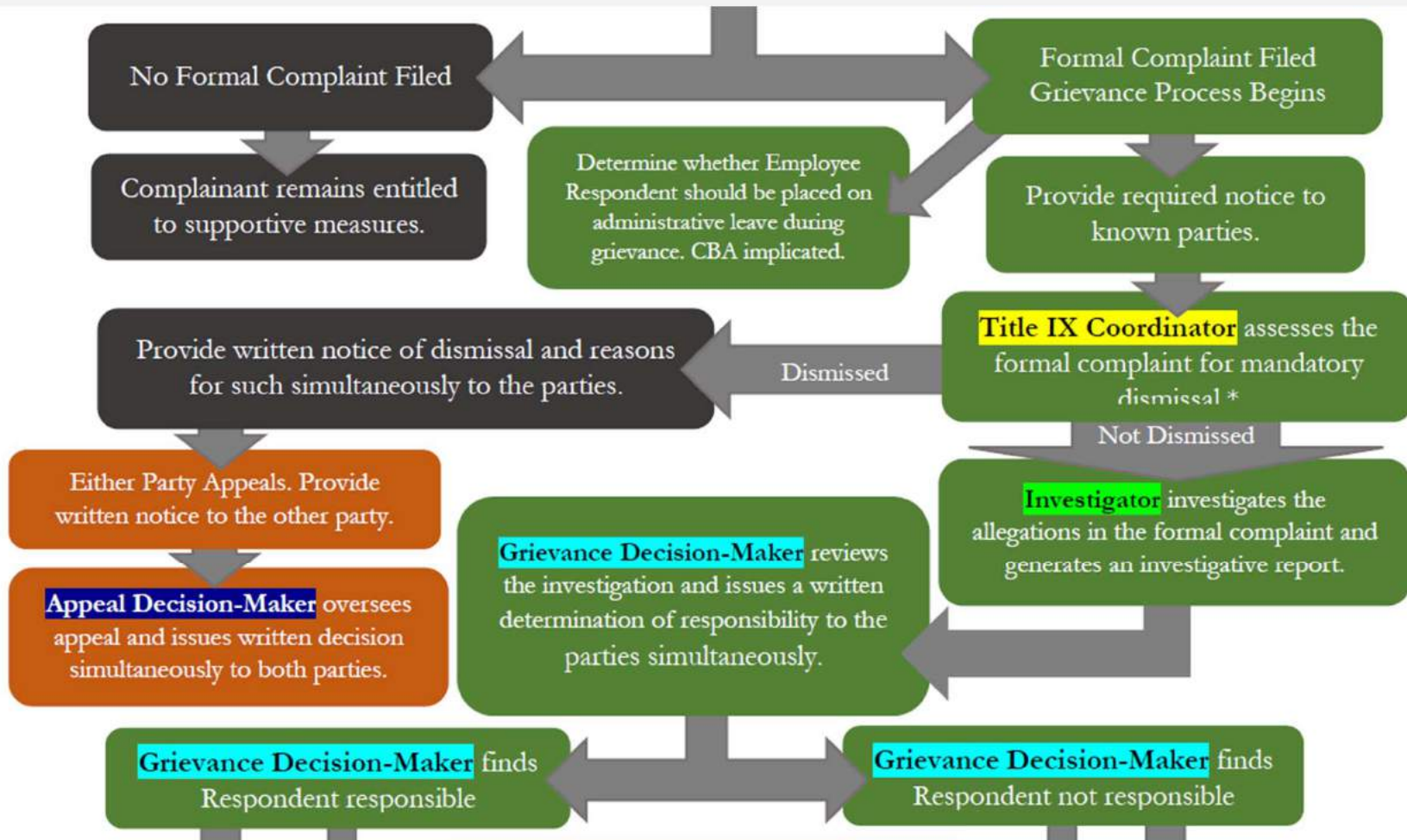
- Two Tiers
  - Initial Report
  - Formal Complaint
    - Grievance Process
      - Investigation
      - Hearing (Optional)
      - Decision Regarding Responsibility
      - Appeal
      - Informal Resolution Process (Optional)



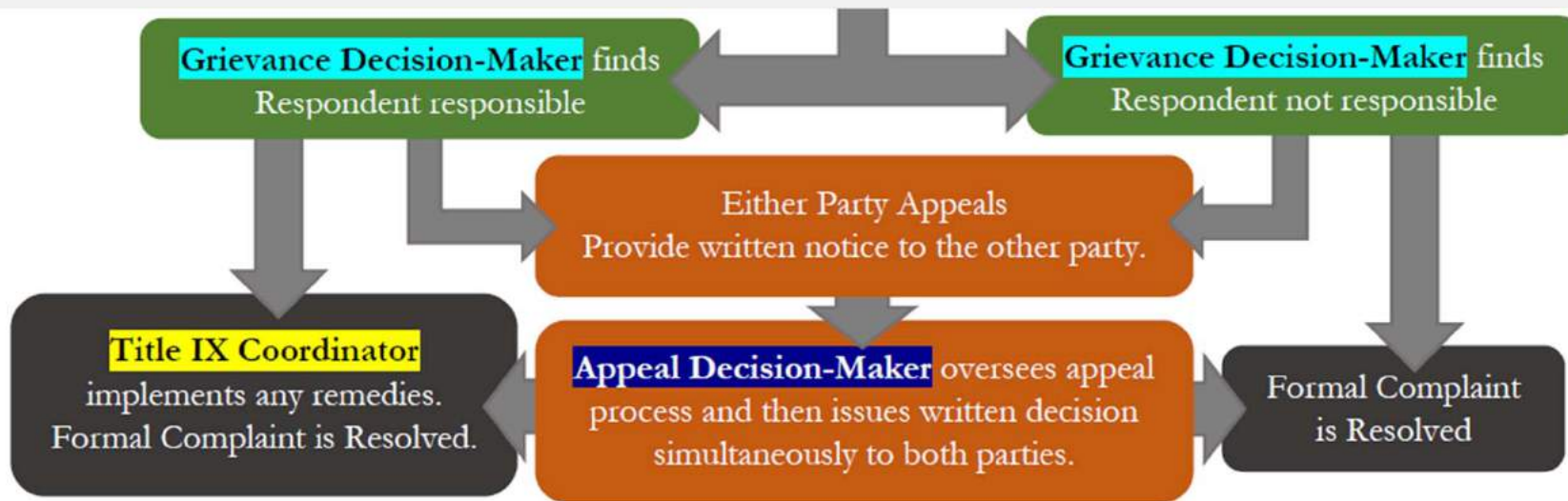
# Tier 1 – Initial Report



# Tier 2 – Grievance Process



## Tier 2 – Grievance Process cont'd



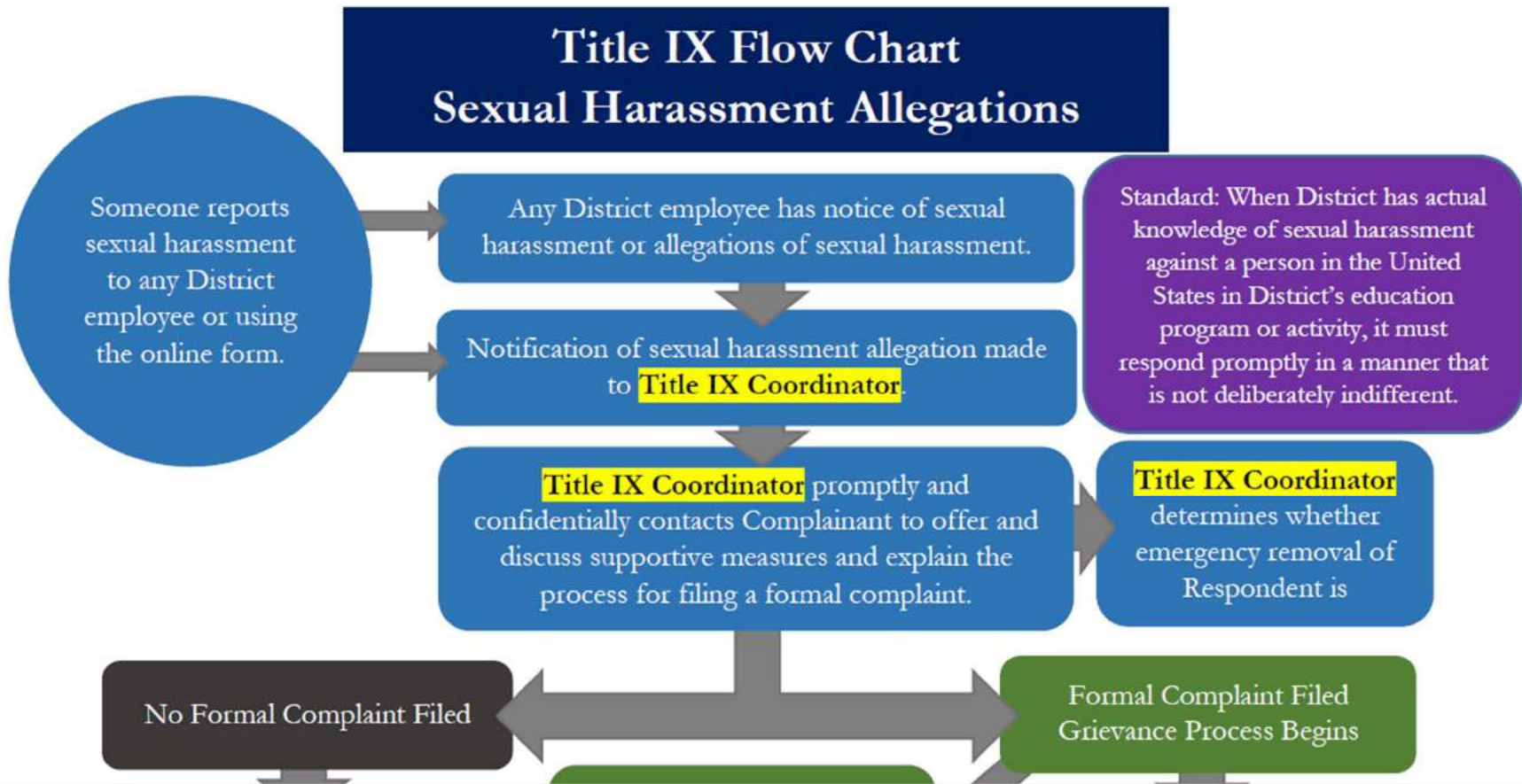
\*Note: The formal complaint or an allegation in it may later be dismissed during the investigation or hearing if one of three conditions is met.

Informal Resolution: At any point after a formal complaint is filed and before a determination regarding responsibility is made, the parties may voluntarily engage in an informal resolution process (if applicable).

**Facilitator of the Informal Resolution Process**



# Tier 1 – Initial Report



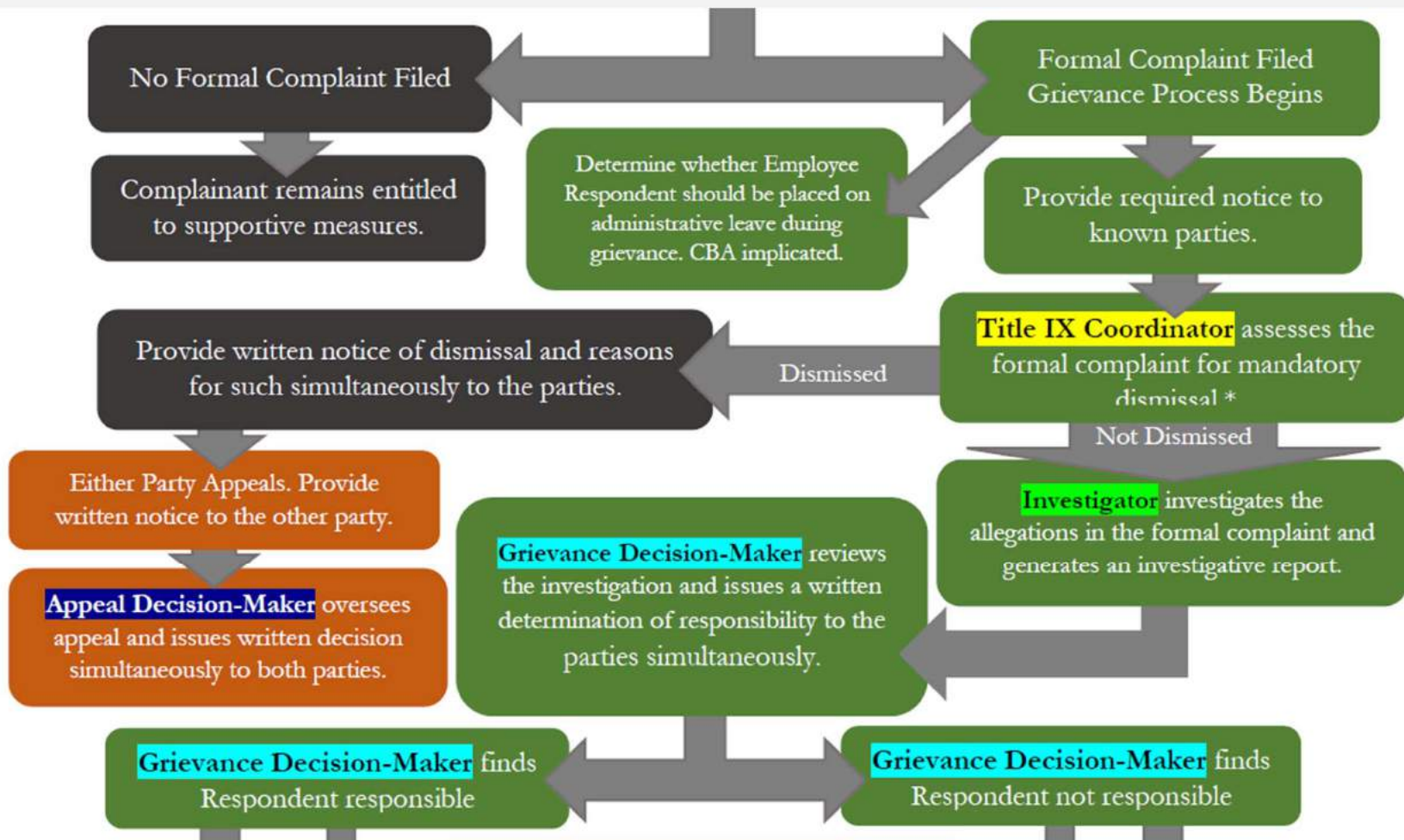
# Emergency Removal

- Applies to any Respondent, either student or employee
- May be utilized without the filing of a formal complaint
- May only be utilized in situations where Respondent poses an immediate threat to the physical health and safety of any individual, not just Complainant, arising from the allegations of sexual harassment
  - Threat of obstructing the investigation or destroying evidence is not enough
- Requires an individualized safety and risk analysis
  - Must be more than generalized, hypothetical, or speculative belief that Respondent may pose a risk.
  - Cannot be based on general assumptions about sex, research profiling sex offense perpetrators, etc.
  - Must examine circumstances arising out of the allegations, such as whether violence was alleged
  - Title IX does not limit the factors District may consider, except as noted above.

## Emergency Removal Cont'd

- Requires District to give Respondent notice of emergency removal (need not be in writing) and an opportunity to challenge the decision immediately following the removal.
- District has discretion to determine scope and conditions of removal. Removal may be from entire program or certain programs or activities.
- No time limit for removal. District may periodically re-assess whether emergency removal remains necessary.
- Respondent retains other rights protected by law. Accommodations may be needed.

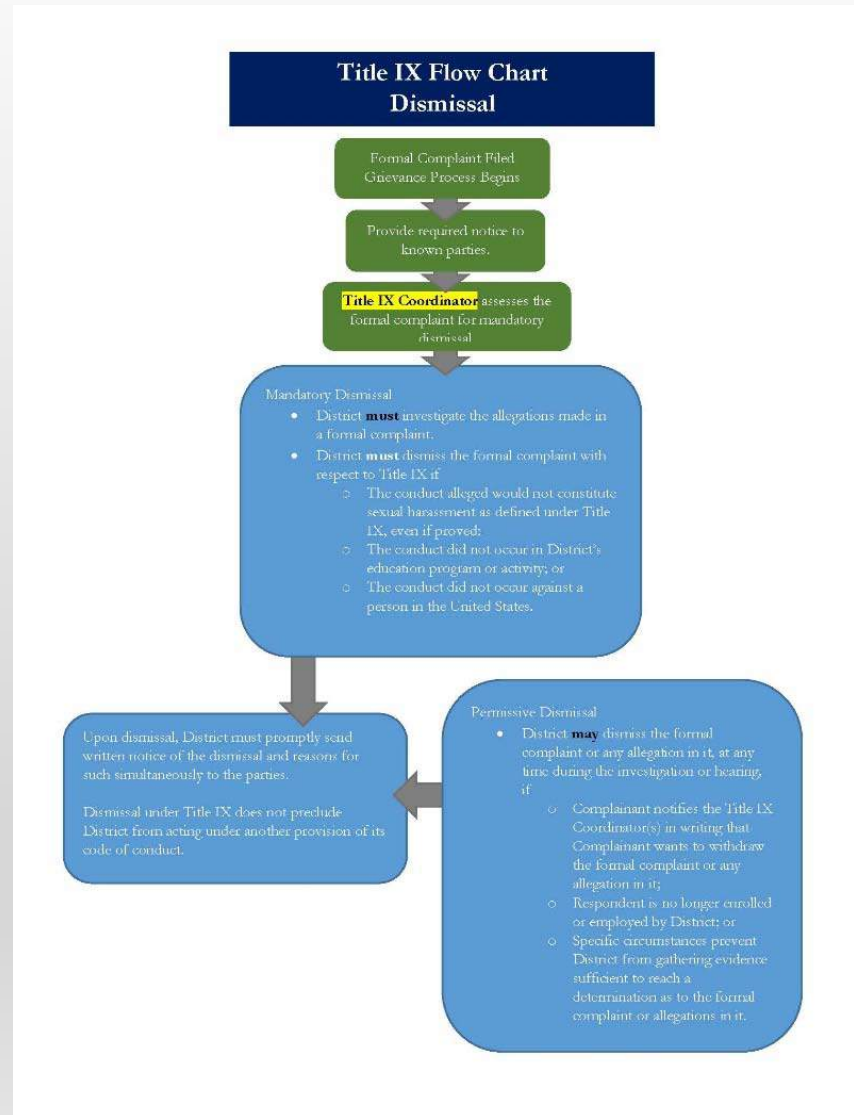
# Tier 2 – Grievance Process



# Grievance Process Basics

- The grievance process begins with the filing of a Formal Complaint.
- All personnel to be free of conflicts of interest and bias.
- Conflict of Interest: You have a conflict of interest when your ability to be an objective investigator or decision-maker is impaired by your own interests or the interests of family members or business associates.
- Bias: Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair. Bias can be general or specific, meaning it can be in favor or against a specific group or class of individuals or may be for or against a particular individual. This includes bias for or against complainants or respondents in general and bias for or against particular complainants or respondents.
- Presumption: Respondent is presumed to not be responsible until proven otherwise.
- Fair and Equitable Treatment: All parties to be treated fairly and equitably.
- Time frame: \_\_\_\_ days to complete grievance process, including appeal.
- Burden: The burden of proof and of gathering evidence remains on District and not on the parties.

# Dismissal



# Mandatory Dismissal

## Mandatory Dismissal

- District **must** investigate the allegations made in a formal complaint.
- District **must** dismiss the formal complaint with respect to Title IX if
  - The conduct alleged would not constitute sexual harassment as defined under Title IX, even if proved;
  - The conduct did not occur in District's education program or activity; or
  - The conduct did not occur against a person in the United States.

Upon dismissal, District must promptly send written notice of the dismissal and reasons for such simultaneously to the parties.

Dismissal under Title IX does not preclude District from acting under another provision of its code of conduct.

Formal Complaint Filed  
Grievance Process Begins

Provide required notice to  
known parties.

**Title IX Coordinator** assesses the  
formal complaint for mandatory  
dismissal

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## Permissive Dismissal

- District **may** dismiss the formal complaint or any allegation in it, at any time during the investigation or hearing, if
  - Complainant notifies the Title IX Coordinator(s) in writing that Complainant wants to withdraw the formal complaint or any allegation in it;

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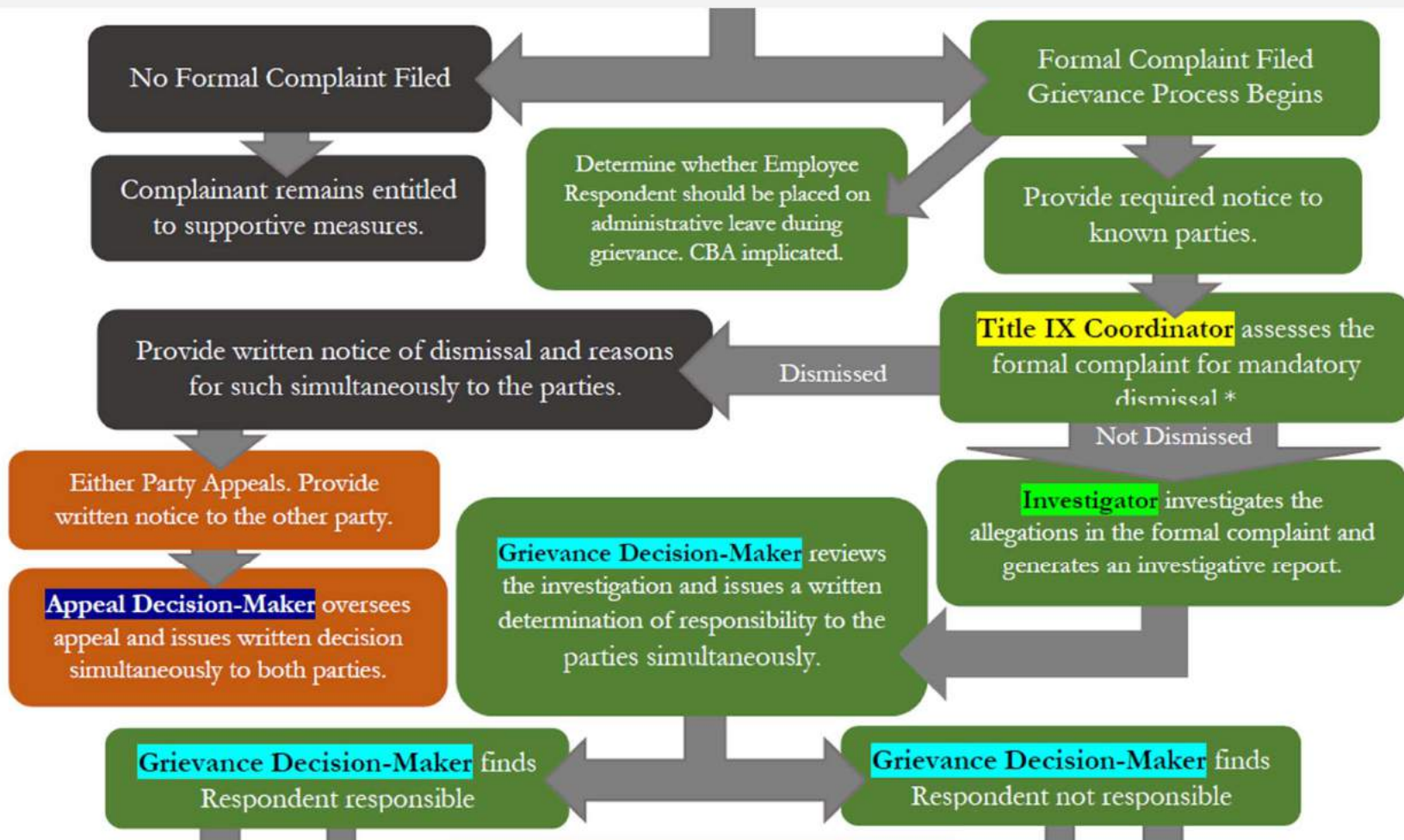
- District **may** dismiss the formal complaint or any allegation in it, at any time during the investigation or hearing, if
  - Complainant notifies the Title IX Coordinator(s) in writing that Complainant wants to withdraw the formal complaint or any allegation in it;
  - Respondent is no longer enrolled or employed by District; or
  - Specific circumstances prevent District from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in it.



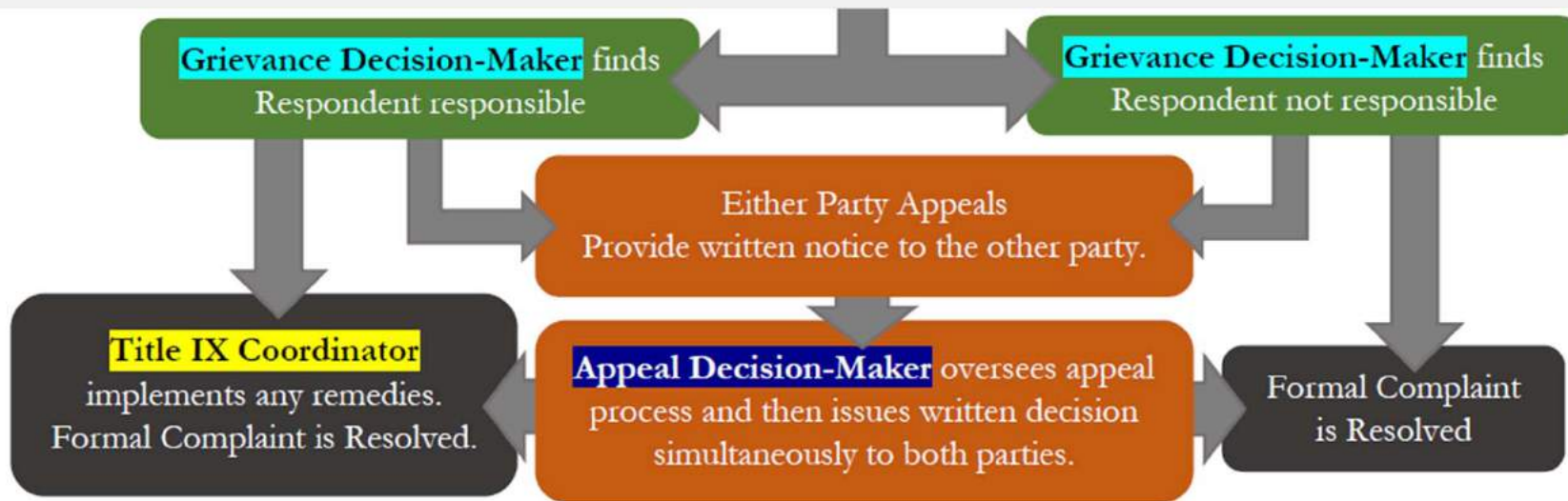
# Administrative Leave

- May only be imposed after the filing of a formal complaint.
- District has flexibility to decide when admin leave is appropriate.
- An employee Respondent may be placed on admin leave even if emergency removal does not apply.
- May be with or without pay or benefits.
- District may still apply with applicable CBAs and state law without violating Title IX.
- Title IX does not require back pay to an employee when the investigation results in a determination that the employee was not responsible.
- Title IX does not negate any of the employee's other rights or legal protections.

# Tier 2 – Grievance Process



## Tier 2 – Grievance Process cont'd



\*Note: The formal complaint or an allegation in it may later be dismissed during the investigation or hearing if one of three conditions is met.

Informal Resolution: At any point after a formal complaint is filed and before a determination regarding responsibility is made, the parties may voluntarily engage in an informal resolution process (if applicable).

**Facilitator of the Informal Resolution Process**

# Retaliation Prohibited

- Neither District nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX's regulations.
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, constitutes retaliation.
- Report any allegations of retaliation to Title IX Coordinator.

# Recordkeeping and One-Year Evaluation/Modification Period

- Maintain records for 7 years, including:
  - Each investigation, including determination regarding responsibility, recordings or transcripts of live hearings, disciplinary sanctions imposed, remedies provided;
  - Appeal and result;
  - Informal resolution process and result; and
  - All training materials.
- By August 14, 2021:
  - Evaluate District's current policies and practices, relevant to Title I regulations, and the effects concerning admissions, treatment of students, employment of personnel;
  - Modify any of policies or practices that do not meet the requirements of Title IX;
  - Take appropriate remedial steps to eliminate the effects of any discrimination which resulted or may have resulted from adherence to the policies and practices.
  - Maintain these evaluation materials for 3 years.

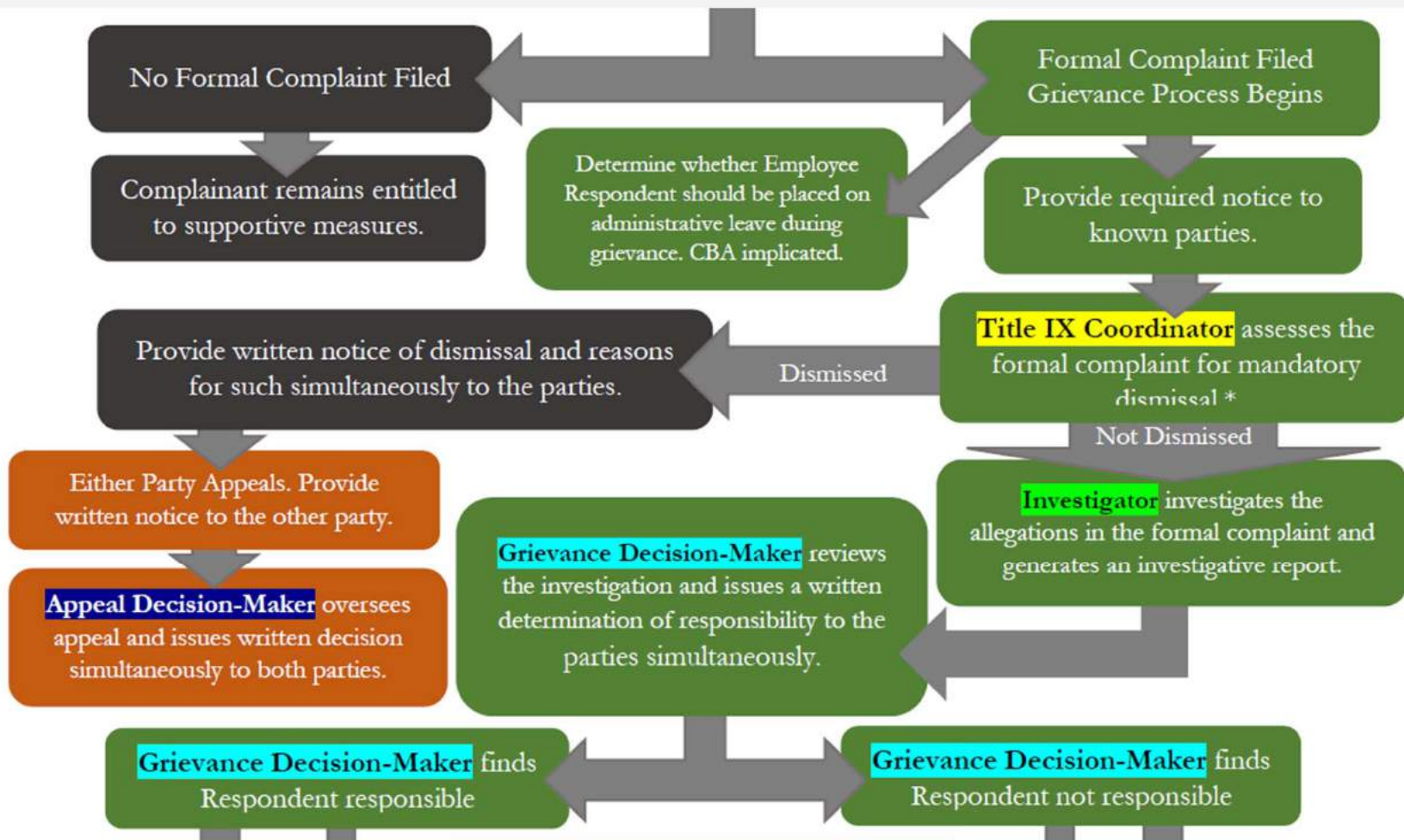
Questions?

Break

Investigation



# Tier 2 – Grievance Process



# Evidence

District's grievance process must objectively evaluate all relevant evidence. Evidence is relevant unless the regulations state it is not or that it may otherwise not be used.

Evidence that is not relevant or may otherwise not be used:

- Information protected under a legally recognized privilege, unless the privilege has been waived.
- Questions about Complainant's sexual predisposition or prior sexual behavior. This information is not relevant, unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the conduct alleged by Complainant, or if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent.
- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless District obtains that party's, or the party's parent's, voluntary, written consent to do so for a grievance process.



# Title IX - Investigations

By: Amy M. Natyshak

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# Investigation

- Why it's the heart of the process

# Investigator

- Title IX Coordinator names Investigator and provides notice to the Investigator of the Complaint
  - The Investigator must have received training on:
    - Definition of Sexual Harassment
    - Scope of the District's education program / activity
    - How to conduct an investigation and implement the grievance process that is outlined in policy
    - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
  - Maintain documentation of training for 7 years.
-

# Investigator

- Impartiality - avoiding prejudgment of the facts at issue, conflicts of interest, and bias
    - Is a paid staff member biased in favor of the District?
    - What is the investigator's relationship with the decision-maker, the complainant, and the respondent?
    - Has Investigator publicly been supportive of any side?
-

# Investigator

- The regulations “leave recipients flexibility to use their own employees, or to outsource Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient’s own employees are expected to perform functions free from conflicts of interest and bias.”
  - Discretion is provided to Districts, but this means the appointment of investigators and decision-makers should be intentional and well reasoned by the District.
  - Bottom line: Open minds, active listening, consideration of all evidence and testimony, no prejudgment.
-

# Investigation Process – Changes in Regs

- Burden of proof and burden of gathering evidence is on school
  - Equal opportunity to present witnesses and evidence
  - May not prohibit parties from discussing allegations or gathering/presenting evidence
  - Provide same opportunity to have others present including advisor of choice
  - Written notice of any hearings/interviews/meetings
  - Provide same opportunity to inspect and review evidence directly related to the allegations
-



# Summary of Investigation process

1. Contact complainant and discuss/offer “supportive measures” if that has not already happened.
  2. Review the complaint.
  3. Notify parent/guardian of complainant and respondent (accused) of allegations (including basic details), assumption that respondent is not responsible, applicable policy/procedures.
  4. Identify sources of evidence and investigate – plan to allow parties sufficient time to prepare.
  5. Present parties all evidence directly related to allegations at least 10 days before finalizing report. Allow a written response.
-

# Investigation process

6. Draft final report and present to parties at least 10 days before sending to decision-maker. Allow a written response.
  7. Send notice and report to decision-maker.
  8. Do all of this in a reasonably prompt time frame.
-

## Other Possible Steps

- Police involvement
- Children's services
- Union involvement
- Public relations response
- ODE Office for Professional Conduct

# Additional Possible Steps

- Other possible action to avoid further discrimination/harassment:
    - Employee paid administrative leave or reassign employee to different location within the building or to a different building.
    - Separate students.
    - Implement safety plan during school hours.
-

# Initial Review

- Review notes and information collected by the Title IX Coordinator
- Review Notices to Complainant and Respondent
- Review Policy/Code of Conduct
- Define Scope of Investigation
  - What elements do you think will be disputed?
  - Agreed upon?

# Sources of Evidence

- Student/employee files, other written documentation
  - Surveillance video
  - Statement from Complainant
  - Statement from Respondent
  - Statements from witnesses
  - Interviews with Complainant, Respondent, witnesses
  - Evidence obtained by Complainant, Respondent, witnesses
-

# Sources of Evidence

(cont'd):

- Consultation with staff
  - Involvement of parents
  - Follow-up conversations with Complainant, Respondent, witnesses
  - Police Reports
  - Electronic communications
  - Digital images – pictures, video, audio
  - Reviewing evidence leads to more evidence.
-

# Create Witness List

- If there is a criminal investigation, work with law enforcement to ensure permission to question witnesses
- Who should be included?
- Who should NOT be included?



# Interview Order

- Generally:
    - Complainant
    - Other witnesses
    - Respondent
  - Be flexible
-

# Setting Up the Interview

- Identify yourself, your role, and a general outline of what you're investigating
- Consider requesting the TIX Coordinator check in with those who fail to respond or refuse to participate
- Don't give up on the interview till you've tried at least 3 times, in at least 2 different methods.

# Draft Questions for Each Witness

- Refer to the policy
- Consider what information they are likely to have related to each element
- Consider what information they are likely to have that may assist the decision-maker in determining credibility
- Be flexible

# Questions - Witness Interviews

- Who, when, where, why, how. General to specific questions.
  - Ask if others have knowledge of the issues.
  - Seek clarification of times, other facts if needed.
  - Let the witness talk.
  - Ask open-ended questions
-

# Organizing for the Interview

- What should you have with you?
  - Allegations
  - Investigation log
  - Investigation notes cover sheet
  - Prepared questions
  - Evidence you may need to reference or show witness
  - Policy or Handbook

# Note-taking Tips

- Use symbols in the margin to easily skim during the interview:
  - Follow-up questions
  - Potential evidence
  - Potential witness
- Try to record exact quotes when possible

# Interview - Opening

- Make introductions
- Create comfortable atmosphere
- Summarize why they are being interviewed
- Explain retaliation policy
- Invite questions

# Interview – Rules to Share

- Retaliation is strictly prohibited and will be dealt with swiftly
    - Give explicit instructions about who to contact if someone experiences retaliation.
    - NOTE: “Gag orders” are no longer allowed
    - Parties are allowed an “advisor” of their own choosing
    - Provide copy of the policy.
-



# Tips for Witness Interviews

- Stress the need for factual information.
  - Elicit and record facts and first-hand knowledge – avoid giving significance to conclusion, innuendo, and unreliable hearsay
    - What makes you say that?
    - When did you learn that?
  - Remain flexible
  - Ask if additional people have relevant information
  - Make arrangements for follow-up with the witness and request that he/she communicate any additional relevant information
-

# One Approach...

- Elicit a monologue about the incident
  - What happened earlier that day before the incident?
  - What happened with regard to the incident?
  - What happened next?

# Details

- Ask the witness to describe details of important moments
  - What could they see? Feel? Smell? Taste? Hear?
  - Where was the other person? How were they positioned?
  - Where were you? How positioned?
  - What did you say to the other person? Them to you?
  - Describe other person's tone, demeanor, body language

# Witness Interviews

- Do you, as impartial Investigator, have “confirmation bias?”
    - What other biases do you hold?
  - Investigator must evaluate credibility of witnesses
-

# How to Determine Credibility

- Gather facts to assist decision-maker
- Ask questions to test memory
- Identify where the witness may corroborate or contradict their testimony, or other witnesses, and physical evidence
- Be sensitive to potential trauma experienced by witnesses

# Interviewing the Respondent (Alleged Offender)

- Adequate notice of interview to allow time to prepare.
  - Adequate notice of charges/policies/code of conduct alleged violated.
  - Stress the objectivity of the investigation and that this is the alleged offender's opportunity to tell their story.
  - Document (there may be critical admissions).
  - Ask if there is additional information that should be considered.
  - Close by providing the alleged offender with an update on status and plans.
  - Provide a timeframe for the completion of the investigation.
-

# Interviewing a Respondent Employee

- Extend same rights and fair process offered to Claimant
    - Be prepared for a more vigorous response
  - Control the interview
    - Union representation
      - Objections and clarifying questions by representative
      - Treat employee with dignity, decency and respect.
  - Right to compel discussion/5<sup>th</sup> Amendment assertion
-

# Interviewing a Respondent Employee

- Other evidence – emails, texts, photos, etc.
    - Anything else to add?
    - Statements
  - Confidential issues (FERPA – not per Title IX)
  - **No retaliation** against Complainant.
-



# When Consent is at Issue

- Be mindful of the wording and tone of your questions
- Ask questions about what happened to determine whether there was spoken/unspoken consent
- Ask questions to identify whether alcohol/drugs may have played a role regarding consent

# Closing the Interview

- Closing questions
- Request copies of all evidence potentially available to the witness
- Discuss confidentiality – but do not prohibit a party from discussing allegations
- Inform the witness of next steps and how to reach you

# After the Witness Leaves

- Update investigation log
- Review notes, make corrections/clarifications
- Update witness list
- Update list of evidence to be obtained
- Write down questions to ask other witnesses
- If time, write portion of report relating to this interview

# Document and Retain

- Effective documentation is critical to your investigation
    - With multiple witnesses and additional evidence, important information can get lost along the way.
  - Know that what you write will be produced.
    - At a minimum any relevant records are going to be produced to the complainant, the respondent, and their advisors.
  - Make sure you preserve evidence along the way.
  - Remember – the parties must be provided all relevant evidence at least 10 days prior to the final report. Don't allow your summaries to get backlogged.
-

# Physical Evidence

- Follow up on anything identified during interviews
- Is law enforcement involved? Could they be?
- Ensure physical evidence is in a secure location and documented in the investigation log

# Inspection and Review of Evidence

## Provide ALL Directly Related Evidence to both parties and advisors

- Include everything directly related to allegations, even if you don't expect decision-maker to rely on it
  - Allow 10 days to review
  - Allow written response
  - Follow up where necessary
  - Consider responses when preparing report
-

# Create Investigative Report

- Summarize facts
- No determination of responsibility
- Provide to parties and advisors
- Allow 10 days to review

# Finalize the Investigation Report

- Once all follow-up interviews are completed, evidence is collected, and the parties have had 10 days to review and respond, promptly draft a factual investigation report with signature and date (lawyers and/or outside company can help).
  - Include your process
  - Draw conclusions: Set forth a factual finding on each allegation made and investigated, citing your authority as an investigator, and reference all relevant facts determined by the process.
  - Address how you reached factual conclusions in areas of dispute (but record contrary assertions).
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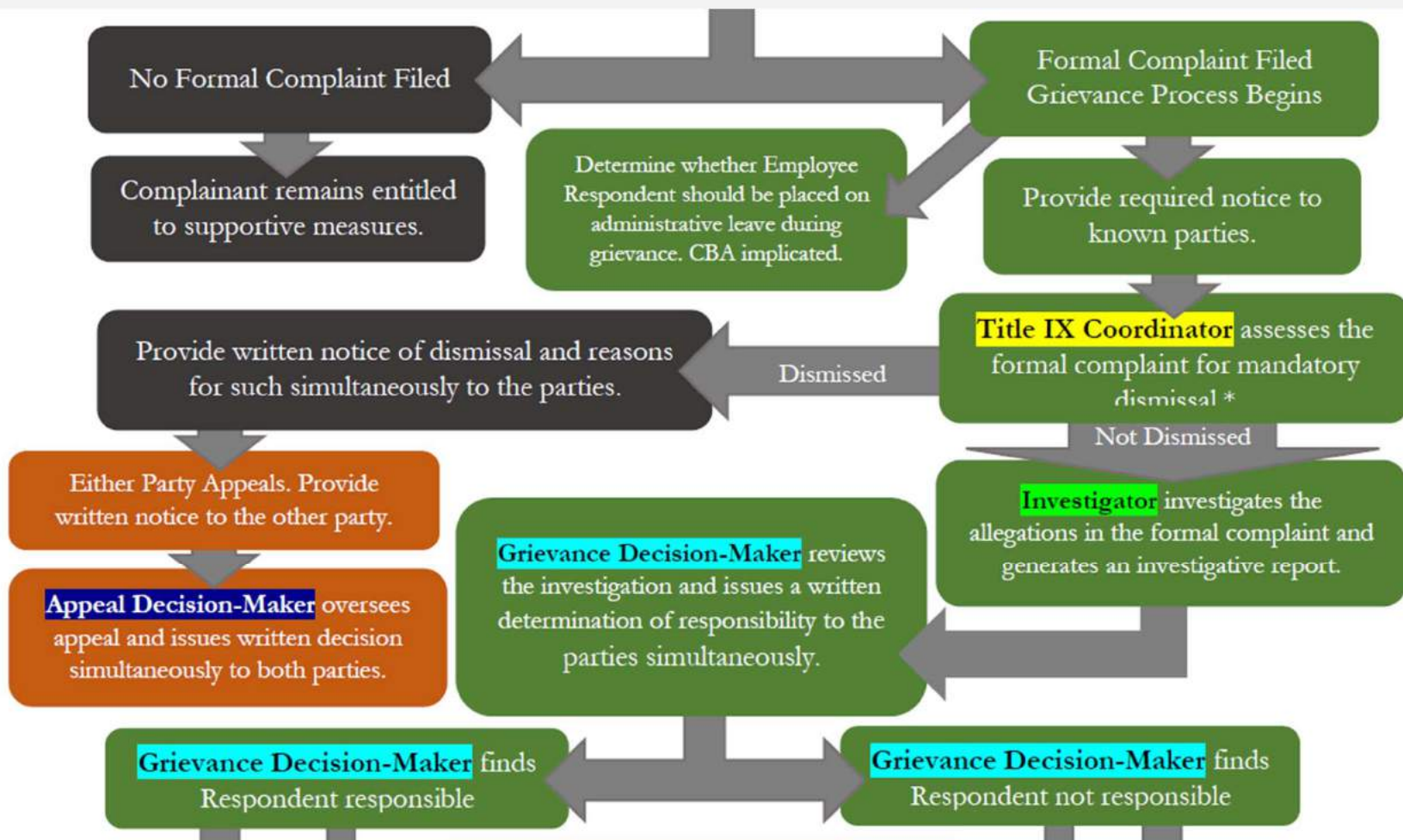
# Finalize the Investigation Report

- This report does not determine responsibility. It just provides factual findings and gathers evidence from the investigation.
- Cite relevant board policy, work rules, directives, law. Be specific.
- Emphasize admissions by the parties, corroboration by witnesses, and direct evidence while downplaying unreliable circumstantial evidence, hearsay, and/or innuendo.
- Attach relevant documentation relied upon in the report (email, text, photos, interview summaries).
- Provide the report to the parties. Allow 10 days for a written response.
- Provide the investigation report to the decision-maker.

## To close...

- The investigation process involves a lot of work – preparation, conducting, and documenting. It's tedious work and takes more time than you ever thought it would.
- Documentation is the key to success.
- Interpretations of facts and circumstances may evolve over time, as evidence continues to be gathered, so avoid a rush to judgment.
- Good investigators must be impartial and unbiased.

# Determination Regarding Responsibility



# Determination Regarding Responsibility

- The Grievance Decision-Maker must issue a written determination regarding responsibility.
- The standard of evidence to be applied is either the **Preponderance of the Evidence or Clear and Convincing Evidence** standard.
  - **Preponderance of the evidence** is the greater weight of the evidence. That is, evidence that you believe because it outweighs in your mind the evidence opposed to it. A preponderance means evidence that is more probable, more persuasive, or of greater probative value.
  - **Clear and convincing evidence** is an intermediate standard that requires more than a mere preponderance of the evidence, but not such certainty as is required for beyond a reasonable doubt (criminal cases). It does not mean clear and unequivocal.

# Evidence

- District's grievance process must objectively evaluate all relevant evidence. Evidence is relevant unless the regulations state it is not or that it may otherwise not be used.
- Evidence that is not relevant or may otherwise not be used:
  - Information protected under a legally recognized privilege, unless the privilege has been waived.
  - Questions about Complainant's sexual predisposition or prior sexual behavior. This information is not relevant, unless such questions and evidence about Complainant's prior sexual behavior are offered to prove that someone other than Respondent committed the conduct alleged by Complainant, or if the questions and evidence concern specific incidents of Complainant's prior sexual behavior with respect to Respondent and are offered to prove consent.
  - A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless District obtains that party's, or the party's parent's, voluntary, written consent to do so for a grievance process.

# Determination Regarding Responsibility cont'd

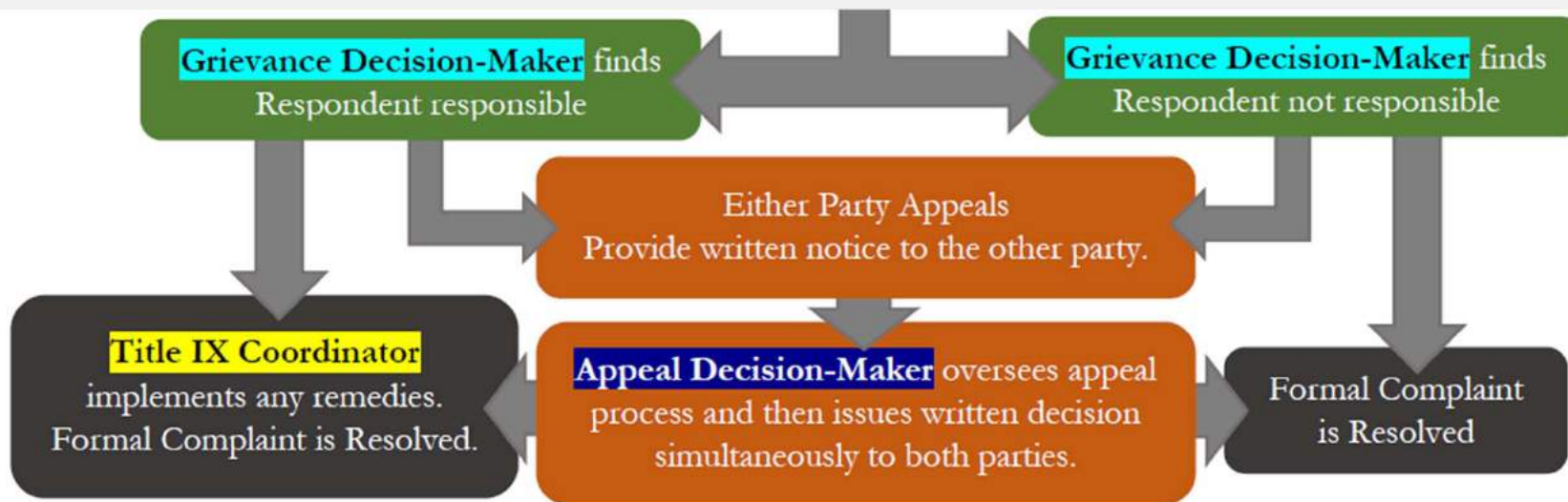
- The written determination must include:
  - Identification of the allegations potentially constituting sexual harassment as defined under Title IX;
  - A description of the procedural steps taken by District from the receipt of the formal complaint through the determination regarding responsibility, including notices made to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence;
  - Findings of fact supporting the determination;
  - Conclusions regarding the application of District's code of conduct to the facts;
  - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions District imposes on Respondent, and whether remedies designed to restore or preserve equal access to District's education program or activity will be provided by District to Complainant; and
  - District's procedures and permissible bases for Complainant and Respondent to appeal.

## Determination Regarding Responsibility cont'd

- District must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that District provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- Title IX Coordinator is responsible for effective implementation of any remedies.



Appeal



\*Note: The formal complaint or an allegation in it may later be dismissed during the investigation or hearing if one of three conditions is met.

Informal Resolution: At any point after a formal complaint is filed and before a determination regarding responsibility is made, the parties may voluntarily engage in an informal resolution process (if applicable).

**Facilitator of the Informal Resolution Process**

# Appeal

- District must offer both parties an appeal from a determination regarding responsibility, and from District's dismissal of a formal complaint or any allegations therein, on the following bases:
- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Appeal cont'd

- As to all appeals, District must:
  - Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - Ensure that the decision-maker for the appeal is not the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator;
  - Ensure that the decision-maker for the appeal is free of conflicts of interest or bias and is trained as set forth in Title IX and its regulations;
  - Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - Issue a written decision describing the result of the appeal and the rationale for the result; and
  - Provide the written decision simultaneously to both parties.

# Informal Resolution Process (Optional)

# Informal Resolution Process cont'd

- District has discretion to choose the Informal Resolution Process it wants.
- District may have multiple Informal Resolution Processes from which to choose.
- Informal Resolution Process only available after formal complaint filed and before determination regarding responsibility made.
- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process.
- District may not require informal resolution or waiver of the right to an investigation and adjudication of the formal complaint.

## Informal Resolution Process cont'd

- District must
  - Provide to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
  - Obtain the parties' voluntary, written consent to the informal resolution process; and
  - Not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

# Homework

- Adopt Grievance Process
  - Title IX Coordinator(s)
  - Other Roles
    - Investigators
    - Decision-Makers
    - Informal Resolution Facilitators
  - Hearings?
  - Informal Resolution Process?
  - Timeline(s)
  - Evidentiary Standard
  - Definition of Consent
- Training
- Publish
  - Title IX Coordinator
  - Grievance Process
  - Training Materials
- Recordkeeping
- Evaluation



# Resources

- Resources
  - Your Marshall Melhorn Team
  - To-Do List
  - Training Materials
  - Regulations
  - Title IX Public Comments (more than 124,000 comments)
    - <https://www2.ed.gov/about/offices/list/ocr/docs/titleix-regs-unofficial.pdf>

Questions?

# Contact us

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