

Title IX:


A Guide for Decision Makers in Sexual Harassment Cases.



Title IX provides 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”



A blurred photograph of the interior of a school bus. In the foreground, a man in a light blue button-down shirt and a woman in a white t-shirt are seated. The man is looking towards the right, and the woman is looking forward. The background shows other passengers and the bus's interior structure, including windows and overhead lights. The overall image has a dark, semi-transparent overlay.

**Title IX Prohibits Sexual Harassment within
the Scope of the School's Education
Program or Activity**

Sexual Harassment

106.30 Sexual Harassment means 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" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Education Program or Activity

A school's education program or activity includes 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.

Key Individuals

Parties

Complainant: an individual participating or attempting to participate in the school's education program or activity who is alleged to be the victim of conduct that could constitute sexual harassment.

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



Complainants and Respondents may be male or female, of the same gender as one another or different genders. Complainants and Respondents may be students, teachers, staff members, or anyone participating in or attempting to participate in the school's education program

Title IX Coordinator: the responsible employee of the school with major responsibility for Title IX compliance efforts

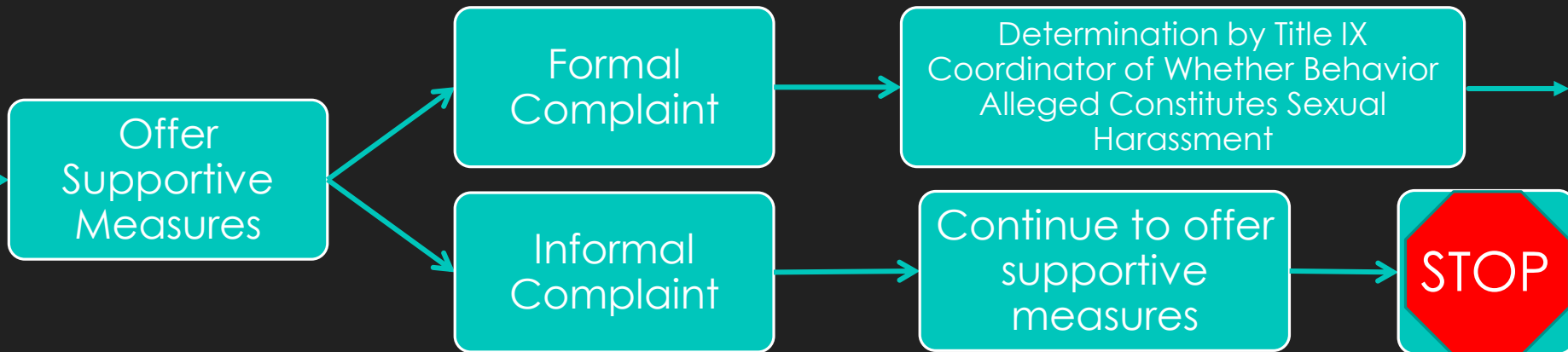
Investigator: an individual who investigates formal complaints

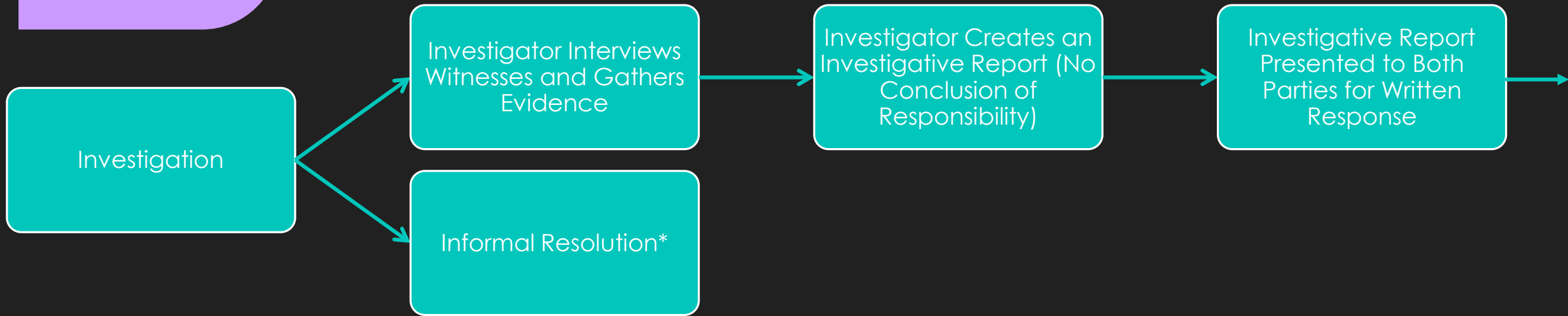
Facilitator: an individual who facilitates the informal resolution process

Decision-Maker: an individual who conducts a hearing after a formal investigation and makes a ruling or an individual who reviews an appeal of a ruling and makes a ruling on the appeal

Advisors: Complainants and Respondents are permitted to have an advisor of his/her choice throughout the process. The advisor may be, but does not need to be, an attorney.

Process Overview





*Not available if the Respondent is an employee and the Complainant is a student



Remedies

Remedies must be designed to restore or preserve equal access to the school's education program or activity. Such remedies may include "supportive measures" or discipline for Respondents only *after* a determination of responsibility for sexual harassment has been made against the Respondent.



Supportive Measures

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

Examples: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas on campus, and other similar measures.

Throughout the Process...

- The school must provide reasonably prompt time frames to complete the grievance process
- All evidence must be evaluated objectively
- Complainants and Respondents are to be treated equally throughout the process
 - Respondents are presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- All Title IX Coordinators, Investigators, Facilitators, and Decision-Makers must be properly trained



Confidentiality

The school must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute or regulations, 20 U.S.C. 1232g and 34 CFR part 99, or as required by law, or to carry out the purposes of [34 CFR part 106], including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.



What is your role?

Decision-Makers



CONDUCT A HEARING
AND MAKE A RULING

OR



REVIEW AN APPEAL
AND MAKE A RULING



Mechanics of a Hearing...

What do you need to do to prepare for a hearing?

What do you need to do first?



- ✓ Determine whether or not you may have a bias or conflict of interest for which you should recuse yourself from the matter.
- ✓ Find out if any of the parties have requested that the hearing occur with parties located in separate rooms with technology enabling you and the parties to simultaneously see and hear the party or the witness answering the questions.
- ✓ If a party does not have an advisor one must be appointed.

Plan ahead...

- How many days are needed for the hearing? How long each day?
- Who will be present? (Keep in mind confidentiality requirements)
- How and when will breaks be given?
- How will evidence be presented? (i.e. digital evidence, physical evidence, etc.)
- Are there any disabilities that may need accommodating?

Be familiar with the room...

- Where will you sit?
- Where will the parties and their advisors sit?
- Where will the witnesses sit?
- Where will witnesses wait to be called up to testify?
- How will the hearing be recorded? (i.e. audio only or audiovisual) Where are the microphones?

Technology

You must be trained on and familiar with any of the technology to be used at the live hearing.



Burden of Proof

In recognition that Title IX governs schools, not parties, the Department obligates the school to carry both the burden of proof and the burden of collecting evidence sufficient to reach a determination regarding responsibility, while also providing parties equal opportunity (but not the burden or obligation) to gather and present witnesses and other evidence, review and challenge the evidence collected, and question other parties and witnesses.





- At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Working with Advisors

Decorum

“A judge should be patient, dignified, respectful, and courteous to litigants, [] witnesses, [advisors], and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge’s control, including [advisors] to the extent consistent with their role in the adversary process.”

-Code of Conduct for United States Judges



Why?

Because it's the law.

Questions?



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