



TITLE IX TRAINING NDCEL

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Welcome!

Title IX Provides....

“[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.” [20 U.S.C. § 1681\(a\)](#).

Prohibits
discrimination
on the basis of
sex

Discrimination includes
harassment



Requires equity in
treatment of
complainant/respondent

New Regs effective 8/14/2020



USDOE ISSUED NEW
REGULATIONS IMPLEMENTING
TITLE IX



NEW DEFINITIONS



NEW INVESTIGATION
REQUIREMENTS



General Responsibilities

For Public Elementary/Secondary Schools

Schools must:

1

Have a policy

2

Identify Title
IX
Coordinator

3

Offer
Supportive
Measure

4

Have a
grievance
process

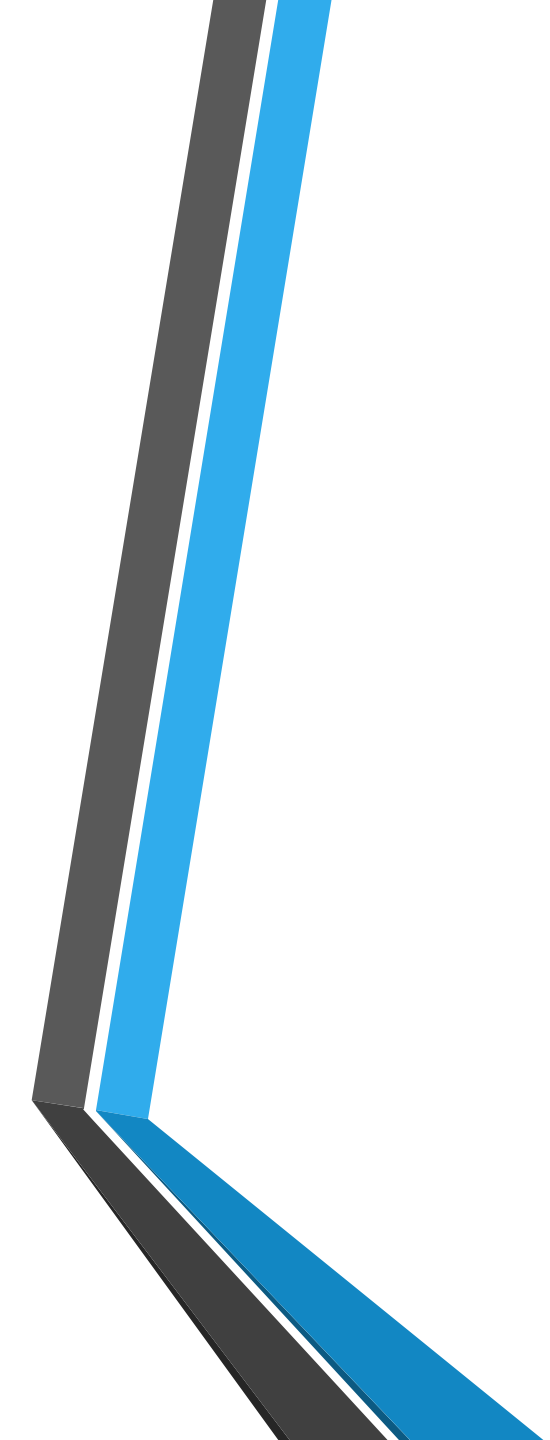
Response to Sex Harassment

- A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must respond promptly in a manner that is not deliberately indifferent..



Recipient

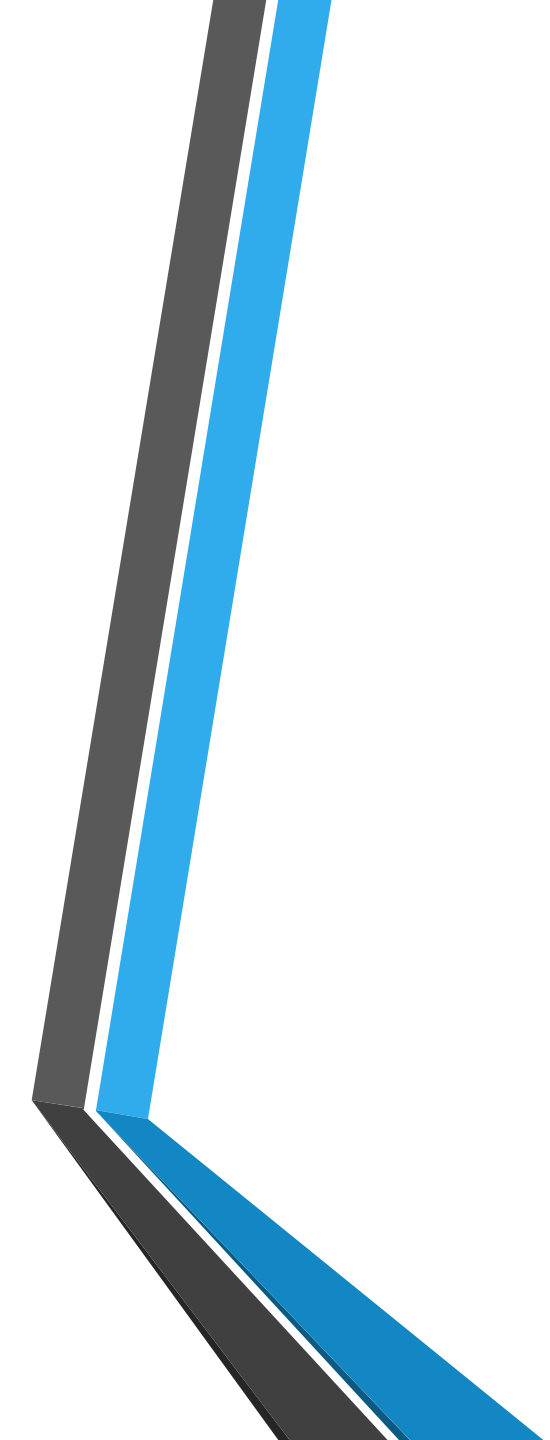
of Federal Funds



1. A school employee **conditions** receipt of a benefit on participating in unwelcome sexual conduct or

2. The conduct is unwelcome and is determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school's education program or activity; or

3. The conduct is **sexual assault**, dating violence, domestic violence, or stalking, as those terms are defined by federal law.

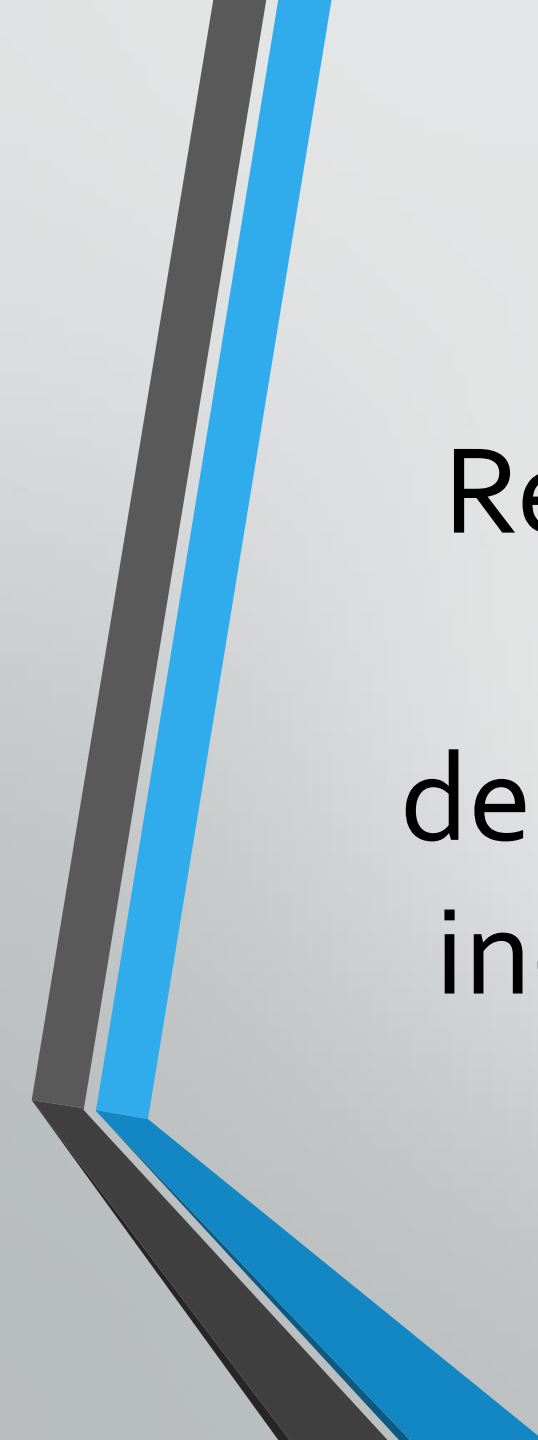
- 
- If an employee of the school knows of sex harassment or
 - Allegations of sex harassment the district has “actual knowledge”



Education Program or Activity



Person in the United States



Response:
not
deliberately
indifferent

- *Davis v. Monroe
County Bd. of Ed.*



Deliberately indifferent

School is deliberately
indifferent if it acted
unreasonably in light
of the known
circumstances

Previously, a formal complaint was not required



As of August 14, 2020, a “formal complaint” is required and means:

The Complainant files a written complaint or

The Title IX Coordinator files a written complaint

No third-party complaints, except parents may file a complaint on behalf of a minor child

Formal complaint

Report vs. formal complaint

Report

- Actual knowledge by school employee of harassment or
- Actual knowledge by employee of report or
- Complainant reports to Title IX Coordinator but no formal report

Formal Complaint

- By the complainant in writing or
- By the Title IX Coordinator

Supportive Measures



School must offer the complainant supportive measures regardless of formal complaint

Remedial Measures & Self- Evaluation

If the USDOE determines a school engaged in discrimination, school can be ordered to take remedial action

Schools should review the policy and MEASURE whether its being equitably enforced on an annual basis



Roles

Each school or school district must have:

Title IX Coordinator

Investigator

Decision-maker

Appeal Decision-Maker



Title IX Coordinator

- Understands law and policy – trained
- Can also be investigator
- May facilitate informal resolution
- MAY NOT be decision maker or appeal decision maker
- Responsible for coordination of grievance process & implementation of remedies



Investigator

- Understands law and policy-trained to investigate
- May not be biased or have conflict of interest
- Must summarize findings in objective way
- May make recommended or proposed findings, but is not required to do so



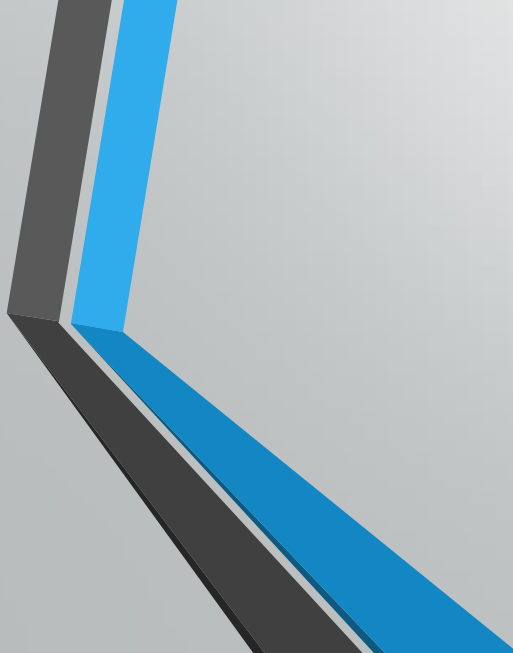
Decision-Maker

- Understands law and policy – trained
- May not be biased or have conflict of interest
- Must issue written report in compliance with requirements
- May not be Title IX Investigator and may not decide appeal



Appeal Decision- Maker

- Must allow for written statement
- Be unbiased and have no conflict of interest
- May not be Title IX Investigator or Decision-Maker

A decorative graphic element in the bottom-left corner consisting of several parallel diagonal lines in shades of blue and grey.

STEP ONE

Role of the Title IX Coordinator

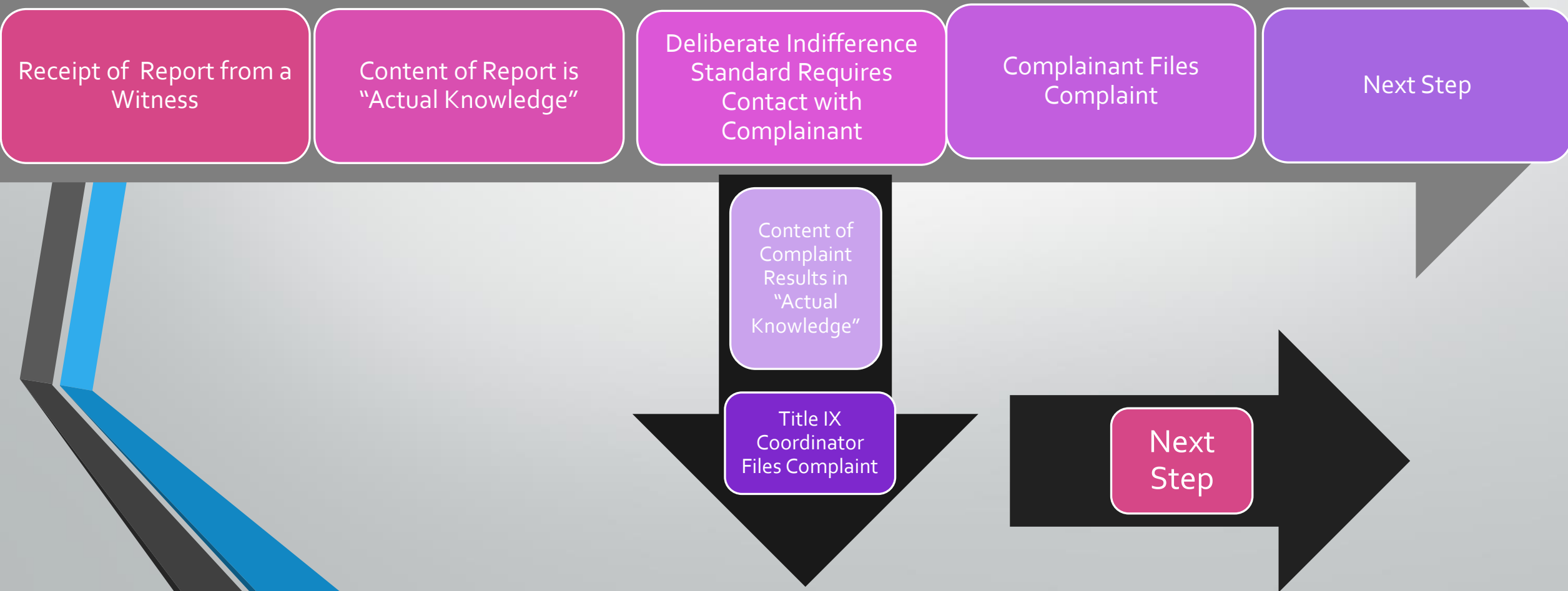
Actions to Take Upon Receipt of a Complaint



Receipt of a "Formal
Complaint" from
Student/Parents or Employee

Next Step

Actions to take upon receipt of a report





MANDATORY DISMISSAL

A formal complaint ***must*** immediately be dismissed if:

- a. The conduct alleged in the formal complaint, even if proven, does not meet the definition of sexual harassment set by these regulations;
- b. The conduct alleged in the formal complaint did not occur in the school or school district's education program or activity; or
- c. The conduct alleged did not occur against a person in the United States.



PERMISSIVE DISMISSAL

A formal complaint *may* be dismissed if:

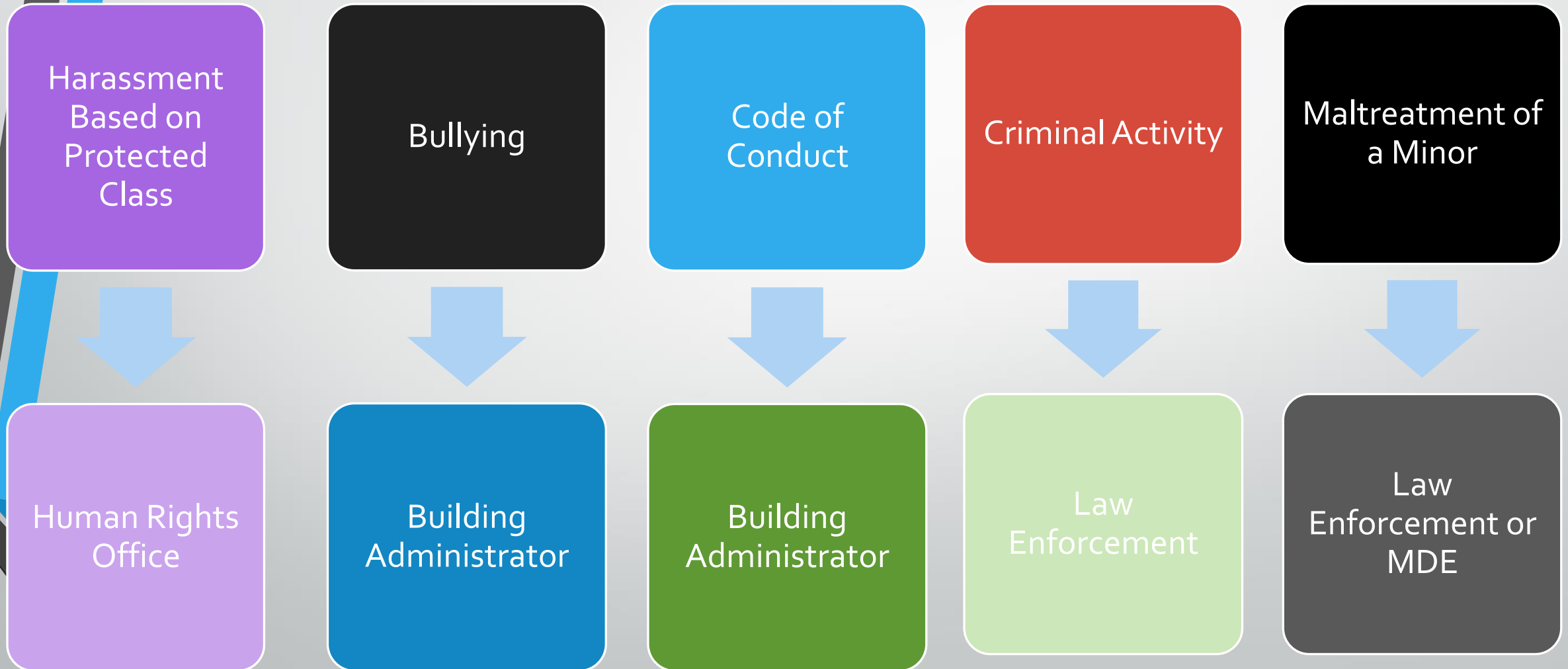
- a. The complainant notifies the Title IX Coordinator, in writing, that they would like to withdraw the complaint;
- b. The respondent is no longer enrolled at or employed by the school; or
- c. Specific circumstances prevent the school or school district from gathering evidence sufficient to reach a determination as to the complaint.



CHECKLIST

**RESPONSIBILITIES WHEN
DISMISSING A COMPLAINT**


Referral of Complaint to Other Staff or Entities





Notice to
parties


1. Grievance/Informal Resolution Process;
2. Allegations;
3. Presumption Respondent Is Not Responsible;
4. Right to an Advisor; and
5. Code of Conduct Prohibits False Statements or Information.



Interim support measures

Supportive measures, offered equally to both parties, are non-disciplinary measures including:

- Counseling
- Modification of deadlines/other adjustments
- Modifications of work or class schedules
- Campus escort services
- Mutual restrictions on contact between parties
- Changes in work or school locations
- Leaves of absence
- Increased security and monitoring



Interim emergency removal of student Respondents

- Mandatory individualized safety and risk analysis
- Immediate threat arising from the allegations of sexual harassment
- The threat must relate to the physical health or safety of any individual
- Requires notice to the respondent and an opportunity for challenge immediately following removal
- The respondent bears the burden of proving the removal decision was incorrect
- Not applicable to offenses outside Title IX



INTERIM REMOVAL OF EMPLOYEES

- Factors to Consider
- Possible Directives to Employees



Informal resolution

- Timing
- Notice
- Non-Applicability to Employees who are alleged to have harassed students

Advanced Maneuvers I: High-Stress Scenarios for Title IX Coordinators





Stressor: Concurrent Law Enforcement/Social Services Activity

- What can be delayed, and for how long?
- Muscle memory: reporting obligations
- Muscle memory: differing standards of proof

Stressor: Public Comment at School Board Meetings

- Muscle memory: data privacy
- Helpful policy statements



Stressor: Media Attention

- Muscle memory: data privacy.
- FERPA, the MGDPA, and the Title IX Regulations themselves make almost all the information related to the investigation confidential



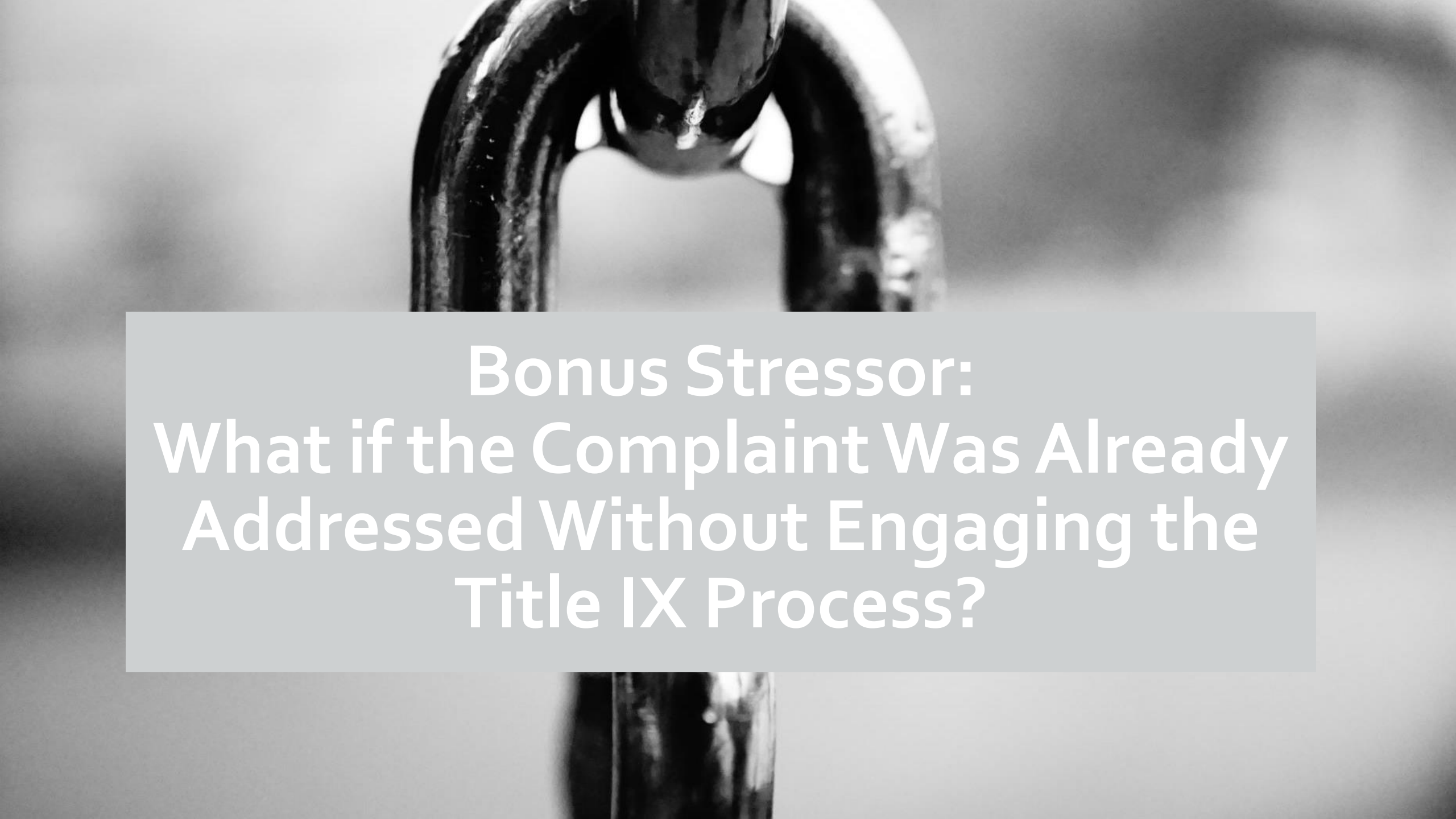
Stressor: Restraining Orders



Muscle Memory: presumption of non-responsibility



Impact on Supportive Measures?



**Bonus Stressor:
What if the Complaint Was Already
Addressed Without Engaging the
Title IX Process?**

A man with glasses and a dark suit is seated at a desk, gesturing with his right hand while speaking to a woman whose back is to the camera. She is wearing a blue denim shirt. On the desk are some papers and a white coffee cup. The background shows an office environment with windows.

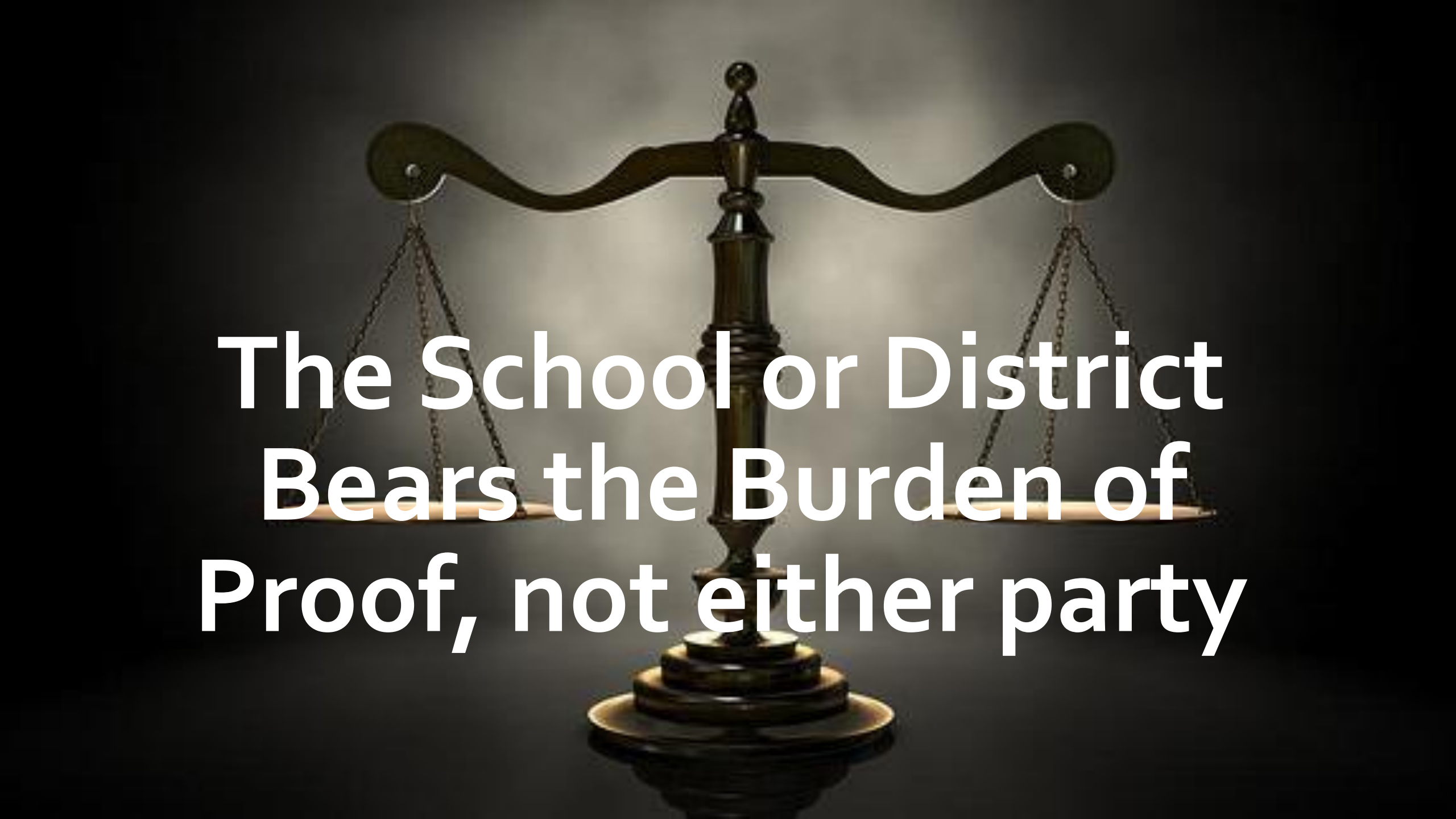
STEP two

Role of the Title IX investigator



Title IX requirements for
investigations

**INDEPENDENT
INVESTIGATION**



**The School or District
Bears the Burden of
Proof, not either party**

Specific types of information and data concerns in a Title IX investigation



Consideration of
privileged information



Review of external
medical records



Interplay between data
privacy laws and Title IX



Practical considerations

Consolidation of multiple complaints

All parties must be given an equal opportunity to present witnesses



Required notices and opportunity to review evidence



Investigation Reports

Steps to take before conducting the investigation



Initial considerations: External reports



- Remember to make any mandated reports under the Maltreatment of Minors Act
- Potential referrals to law enforcement



A brief data practices interlude

8

9

10

11

4

15

PLAN

18

21

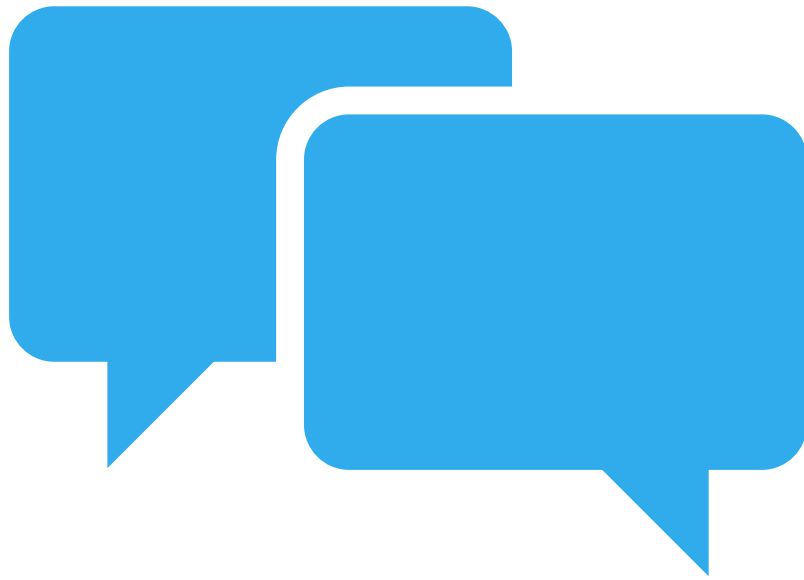
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AHEAD

25



ACT NOW



Interview basics



Required
interview
notice

Opening remarks



Explaining

Explaining the purpose of the interview



Explaining

Explaining the investigation process and your role as investigator

Explaining the *Tennessee* Warning




NOT CONFIDENTIAL



Do not
guarantee
results





Interviewing the Complainant and fact witnesses

Interviewing the Complainant and fact witnesses

- Short, open-ended questions





**The investigator
might have to defend
the interview
questions, so...**

...Watch out
for biases!





INTERVIEWS /01

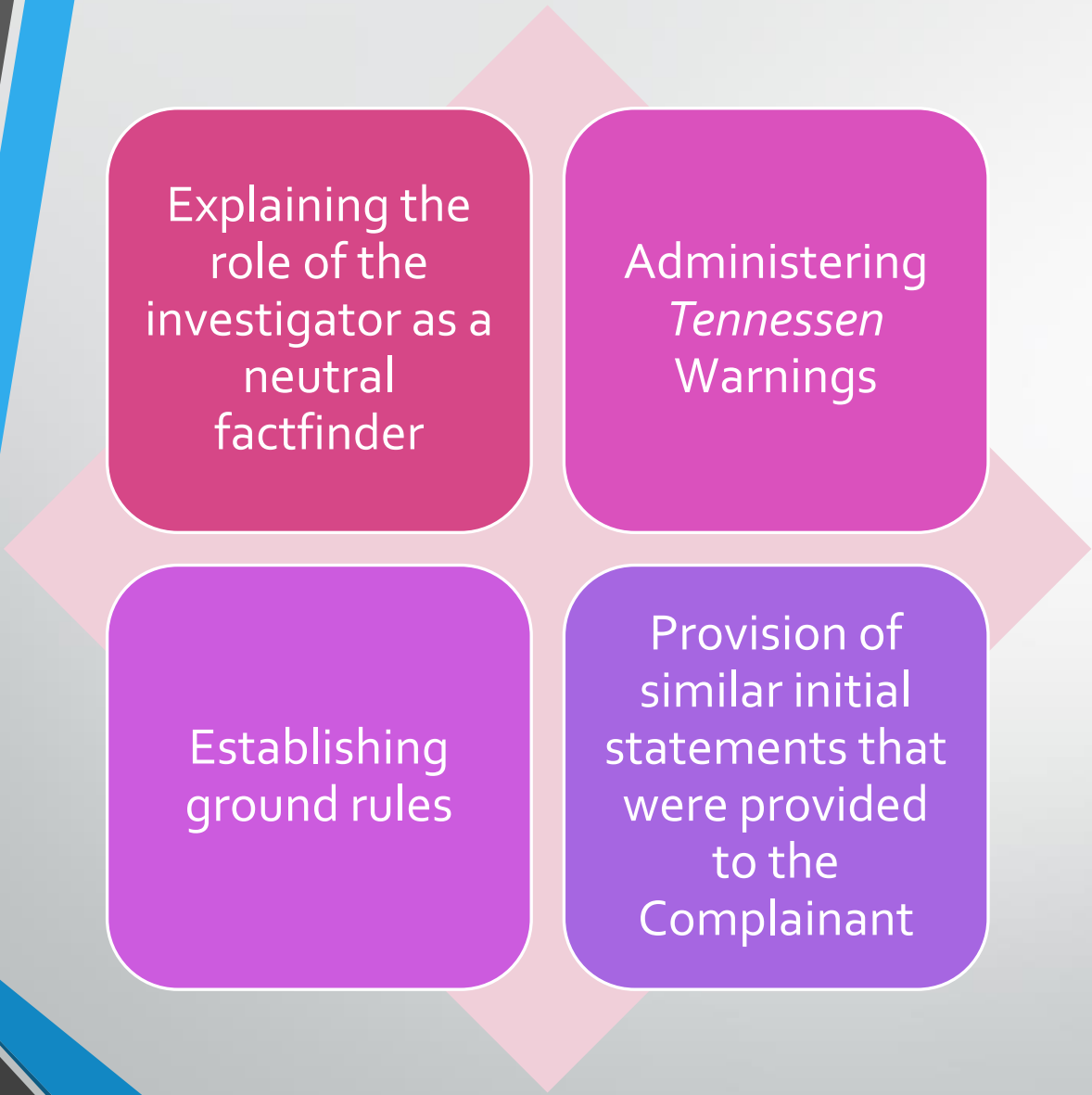
Some specific
tips for
interviewing
witnesses and
complainants



Special considerations for interviewing the respondent

Watch out for bias
in the Respondent
interview too!





Explaining the
role of the
investigator as a
neutral
factfinder

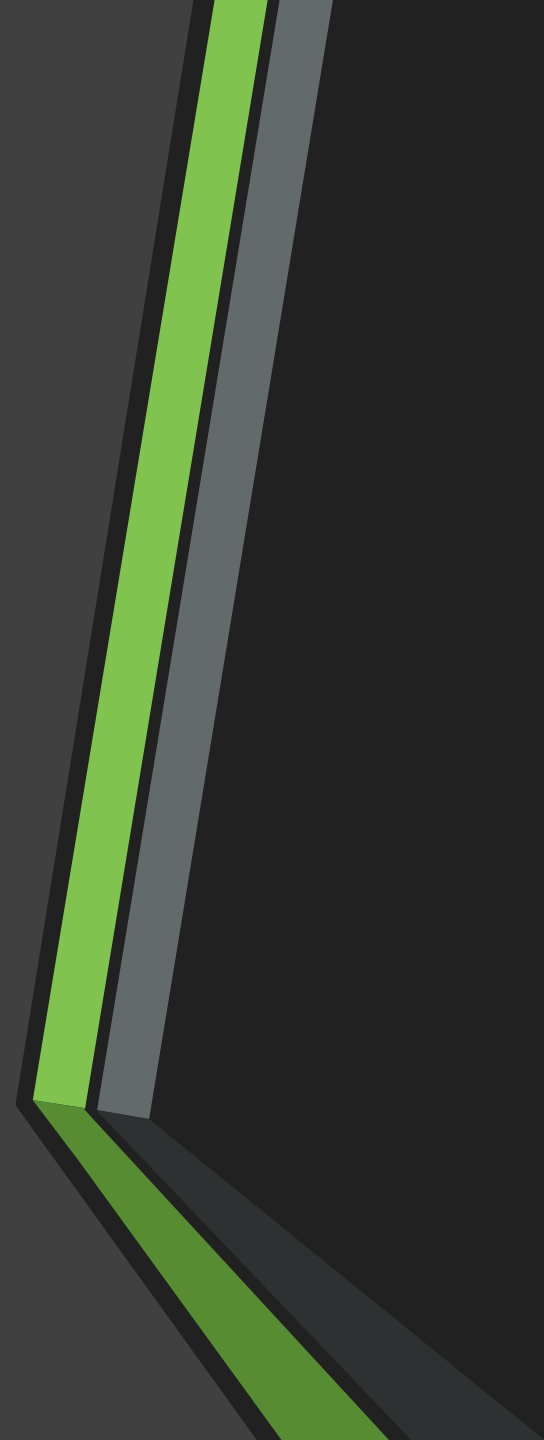
Administering
Tennesen
Warnings

Establishing
ground rules

Provision of
similar initial
statements that
were provided
to the
Complainant

Opening remarks

Specific strategies for interviewing the Respondent



A close-up shot of a person's hand holding a small white card. The person is wearing a dark suit jacket, a white shirt, and a patterned tie. The card has the words "Trust me." written on it in a casual, handwritten style. The background is blurred, focusing attention on the hand and the card.

Trust me.

Was the witness or party
credible?



A close-up photograph of a white, dome-shaped security camera. The camera is mounted on a dark metal bracket. The lens of the camera is visible, showing a reflection of a blue sign with a white arrow pointing downwards. The background is a blurred blue and white lattice structure.

Surveillance footage



Social media in investigations



Coordinating an investigation
with law enforcement



**Investigation
conclusions must be
based on relevant
evidence**

**DO YOU REALLY WANT TO
INCLUDE THAT AS PART
OF THE EVIDENCE?**

Written investigation reports

Time frame for
completing
investigation
reports

Time frame for
providing
investigation
reports to parties

An investigation
must “fairly
summarize” the
relevant evidence

The investigator
does not decide if
harassment
occured

Strategies for writing an investigation report



A wooden gavel with a dark handle and a light-colored head rests on a dark wooden block. In the foreground, a rectangular sign with a green background and a wooden border is placed diagonally. The sign has the words "CONFLICT OF INTEREST" written in a large, dark, serif font. The entire scene is set on a dark wooden surface.

AVOIDING CONFLICTS OF INTEREST



One more
word
about
biases

An aerial photograph of a boat's wake in deep blue water. The wake is a white, frothy trail that curves from the top right towards the bottom center of the frame. The water is a rich, dark blue, and the wake's path is clearly defined by the white foam. The text is overlaid on the left side of the image, partially obscuring the wake.

Advanced Maneuvers II: High-Stress Scenarios for Investigators

Stressor: Escalated Advisors



Stressor: Advisors who are Likely Witnesses

Technically, no right to limit
who can be an advisor



Step Three:

Role of the Title IX decision-maker



STANDARD OF REVIEW

Preponderance of the Evidence

“Preponderance of the evidence” means that the respondent will be found responsible only if it is more likely than not that he or she engaged in the conduct constituting sexual harassment.

Clear and Convincing Evidence

“Clear and convincing evidence” means that the respondent will be found responsible only if it is highly more likely to be true that the respondent engaged in the conduct constituting sexual harassment.





Procedures required prior to A decision

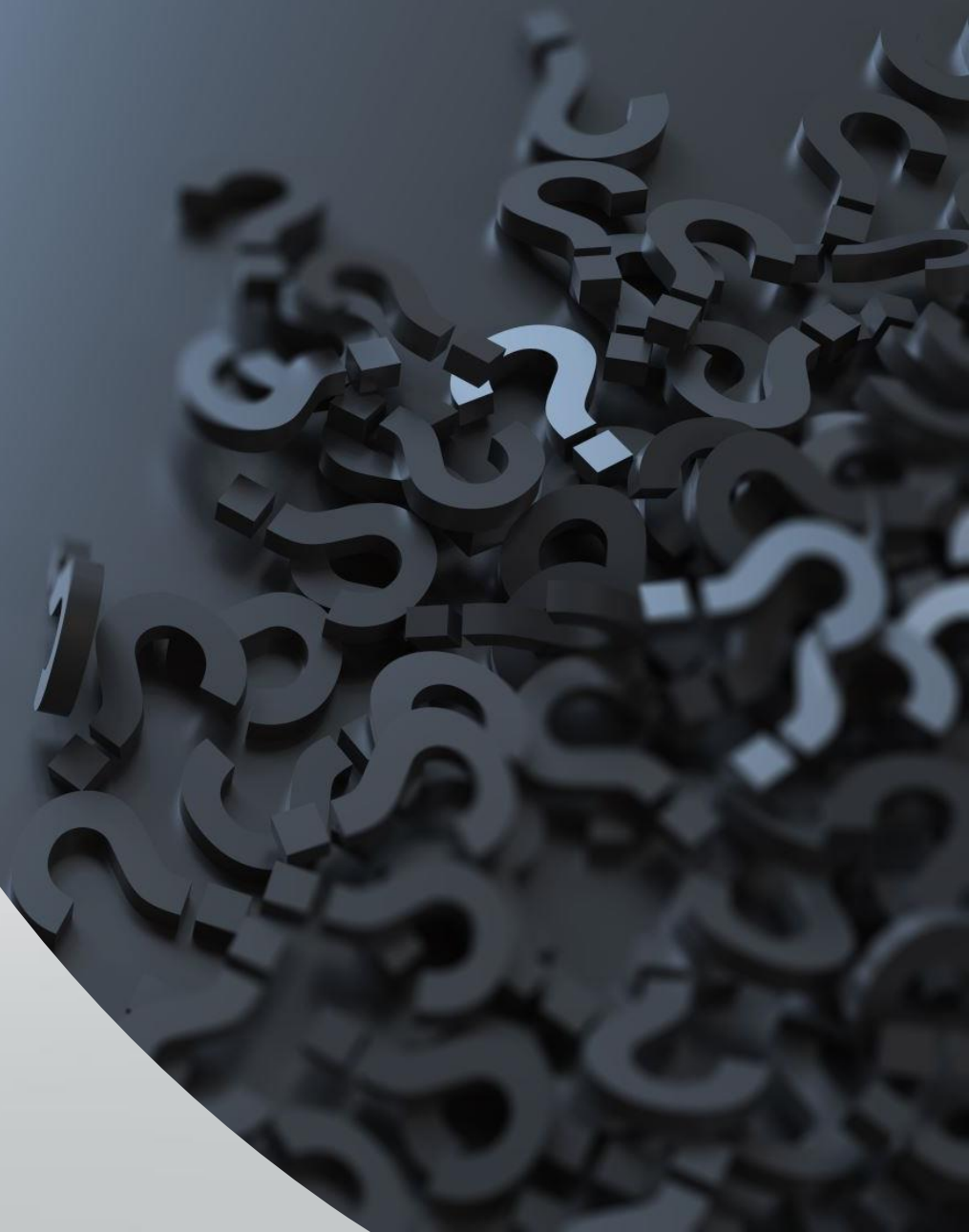
- Opportunity for Parties to Respond to the Report
- Notification of the Right to a Hearing and/or Written Questions

Submission of Written Questions

All schools must allow for an exchange of written relevant questions, regardless of whether a live hearing is also offered.

relevancy

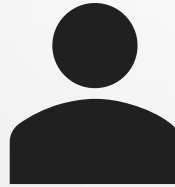
"Relevant evidence" means evidence having any tendency to make the existence of any fact more probable or less probable than it would be without the evidence.



LIVE HEARINGS



Recording



**Appointment of
Advisor**



Questioning

The Determination

- Identification of the allegations
- Description of the procedural steps taken
- Findings of fact
- Conclusions applying the code of conduct/policy
- Assignment of responsibility, rationale, sanctions and remedies
- The procedure for appealing the determination of responsibility





STEP FOUR

Implementation of the Decision and the Appeals Process (Role of the Appellate Decision-Maker)



POTENTIAL REMEDIES

May include but are not limited to:

Education

Continued supportive measures

Discipline

Restorative Justice

A high-angle, close-up shot of three people's legs and feet as they stand on a dark, heavily scratched ice surface, likely an ice skating rink. The skaters are wearing dark pants and white sneakers. The ice is covered in a dense network of fine, light-colored scratches and scuffs, creating a complex, web-like pattern. The text is overlaid in the center of the image.

Advanced Maneuvers II: High-Stress Scenarios for Title IX Decision-Makers



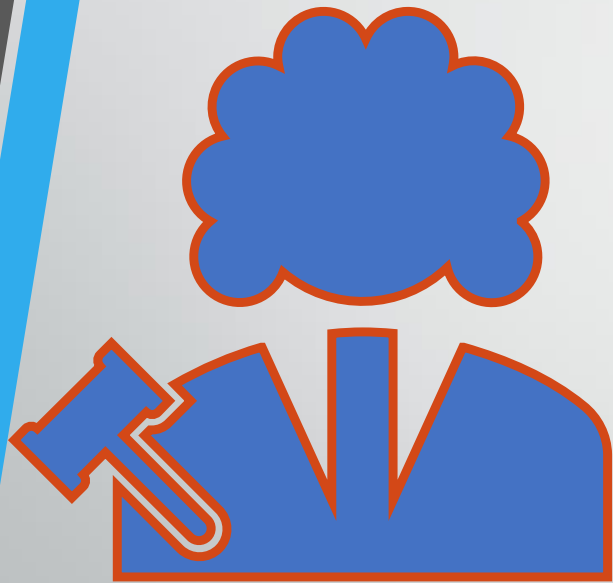
Stressor: Cross-Examination

Muscle Memory: Is it Relevant?


Stressor:
Investigator
Errors



Step Four: Appeals



- Either party may appeal:
 - Determination of Responsibility or
 - Dismissal



Appeal on the
basis of...

Procedural irregularity that
impacted outcome

New evidence not available
at the time of investigation
that could impact outcome

Conflict of Interest or Bias on
part of investigator, Title IX
Coordinator



Ensure appeal decision
maker is not the investigator
or Title IX Coordinator

And employs same
standards as decision
maker



Provide notice to both parties



Ensure each party has reasonable opportunity to
submit written statement



Issue a written decision

School Must....

Bonus Stressor: Allegations of Submitting Materially False Information

- The fact that a complaint was or was not substantiated does not *per se* mean that one of the parties lied.
- Generally, school will want to have some objective, concrete evidence.





Legal Update



Questions