

LAW OFFICE *of*  
KRISTIE MCCANN

INC.

YOUR PARTNERS IN COMPLIANCE & PREVENTION

# 2020 TITLE IX FUNDAMENTALS TRAINING

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for Title IX Coordinators

# SOME DISCLAIMERS

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The information shared in this training, whether in group discussions or private conversations, is for educational purposes only and does not constitute legal advice or a guarantee of compliance.

While our organization is available for hire to provide legal counsel or advice, our trainings do not offer or constitute legal advice.

For guidance specific to your organization, consult legal counsel to ensure alignment with relevant case law, state and local regulations, and evolving federal standards.





# MEET OUR TEAM



**Kristie McCann, Esq.**  
Owner, Attorney



**Alyssa Roush**  
Civil Rights Specialist

# Learning Objectives

By the end of this training, participants will be able to:

- Describe the scope and requirements of Title IX under the 2020 regulations, including definitions of sexual harassment, jurisdiction, and formal complaints.
- Implement and oversee a fair and equitable grievance process that complies with procedural requirements and ensures due process for all parties.
- Recognize and avoid bias, conflicts of interest, and reliance on sex stereotypes in all aspects of the Title IX process.
- Assess the relevance and credibility of information and evidence without prejudging the facts or parties.
- Identify and prevent retaliation against complainants, respondents, and witnesses participating in the Title IX process.





# Understanding the Law & Regulations



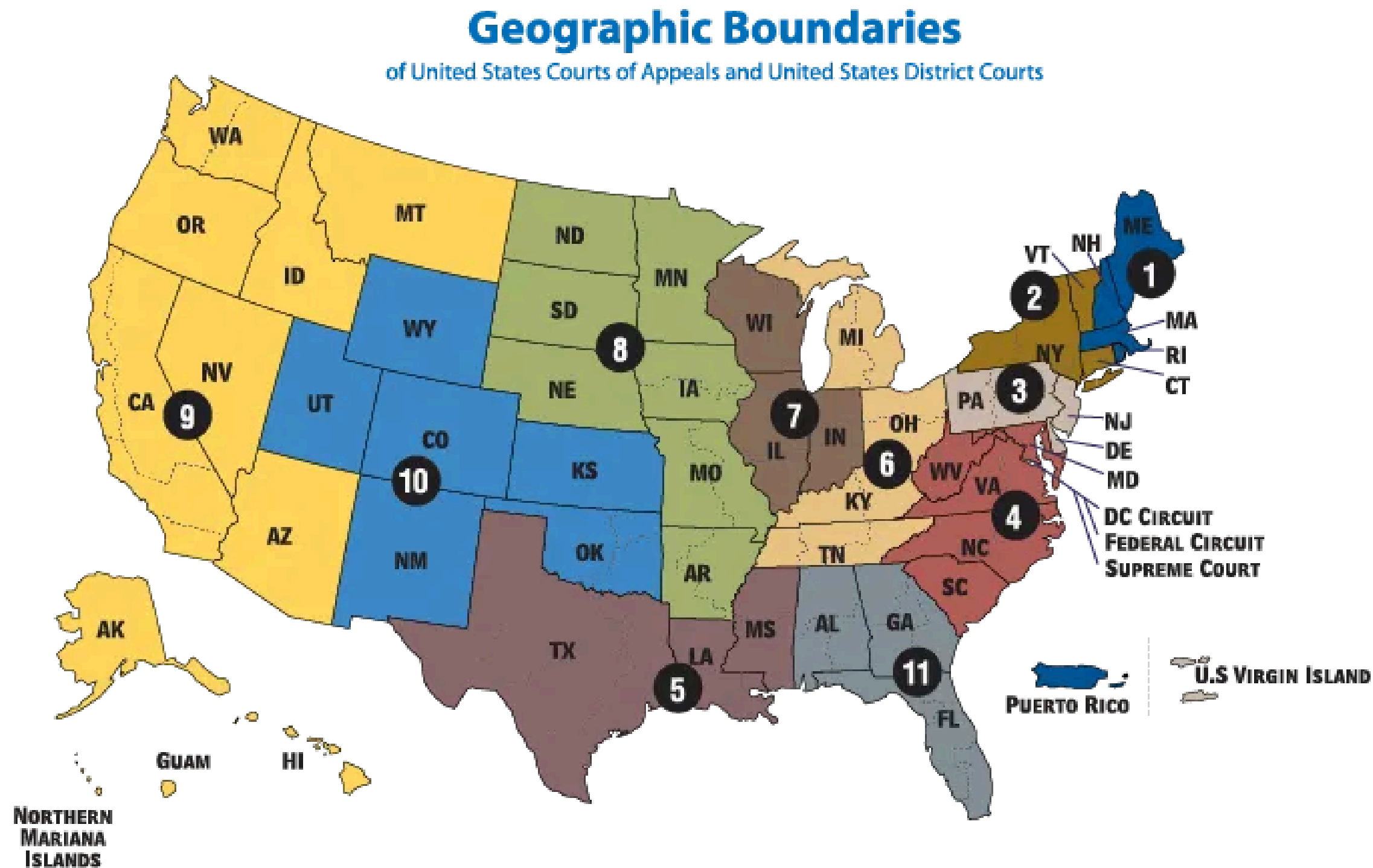
# Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681

“No 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.”

# Statutes, Case Law, & Federal Regulations Set the Floor

- The floor = the bare minimum
- Some states have laws which exceed federal requirements and do not conflict with the TIX regulations
- Considerations for writing your policies and procedures:
  - Federal/State Case Law
  - Federal/State Statutes
  - Federal/State Regulations
  - Collective Bargaining Agreements
  - Insurance Provider Requirements
  - Governing Body Policies/Regulations
  - OCR Resolution Agreements
  - Best Practices/Risk Management requirements

# Do Statutes/Case Law Affect You?



- Federal?
  - Public – YES
  - Private – Probably
- Supreme Court Decision?
  - Public – YES
  - Private – Probably
- Your Circuit Decision?
  - Public – YES
  - Private – Probably
- Not Your Circuit?
  - Public – No
  - Private – No
- State Law?
  - Public – YES
  - Private – Probably



“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the ‘Title IX Coordinator.’” (§ 106.8(a))

## Title IX Coordinator (TIXC)

- Designated TIX compliance authority for the institution
- Should be focused on systemic policy, process, and prevention; assessing campus climate; collaboration with campus and community partners; and training the TIX team rather than managing individual complaints
- Can receive reports
- Can serve as an investigator, informal resolution facilitator, and contact for resources & support so long as they don't have too many roles in a single case  
**(not best practice though)**
- CANNOT serve as a decision-maker

## Deputy TIXC

- Designated to assist with management & implementation of population-specific compliance strategies & programs
- Where the TIXC is not housed in student affairs or human resources, a deputy is frequently designated in HR, Student Affairs, Academic Affairs, and Athletics
- Can receive reports
- Can serve as an investigator, decision-maker, informal resolution facilitator, contact for resources & support, and can be tapped to help with simultaneous letter delivery as needed so long as they don't have too many roles in a single case

# Notification Requirements

“The recipient must notify applicants for admission and employment, students, parents or legal guardians of elementary and secondary school students, employees, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, of the name or title, office address, electronic mail address, and telephone number of the employee or employees designated as the Title IX Coordinator pursuant to this paragraph.” (§ 106.8(a))

- Publish the TIXC’s contact information on institutional websites and in **all** handbooks and catalogs.
- The TIXC’s contact information, and the school’s TIX-based policy, must be prominently displayed on its website, if any, and in each handbook or catalog.
- Contact information includes:
  - Name/Title
  - Office address
  - Email address
  - Telephone number

# How are you notifying your community of Title IX?

- **TIIX Nondiscrimination Statement - must include:**
  - The institution's commitment to nondiscrimination.
  - TIXC's contact information.
  - Explanation that the nondiscrimination policy applies to admissions and employment (if applicable).
  - Clarification that inquiries can be referred to the TIXC, the DOE's OCR, or both.
  - Include the statement in all student handbooks, employee handbooks, and faculty manuals.
- **Institutional Website (Primary Method)**
  - Dedicated TIX Webpage:
    - Include your TIX Nondiscrimination Statement.
    - Provide contact info for the TIXC.
    - Link to the full TIX policy, grievance procedures, and training materials used to train Title IX personnel.
    - Provide resources & support options.
- **Admissions & Employment:**
  - Brochures, catalogs, and application materials should contain the TIX Nondiscrimination Statement.
  - Online application pages should reference TIX compliance and provide TIXC contact info.
  - Include the nondiscrimination statement in job descriptions and postings.
  - Ensure onboarding documents for new employees include TIX compliance policies.
- Ensure **all athletic program materials**, including eligibility requirements, recruitment forms, and media guides, include a TIX compliance statement.



TITLE IX.  
EDUCATION AMENDMENTS  
OF 1972

# Sexual Harassment

Sec. 1681.  
No person in the United States shall, on the basis of sex, be excluded from participation in, or be denied the benefits of, or be subjected to discrimination on the basis of sex.

# Scope & Jurisdiction

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.

- **Actual Knowledge** means notice (i.e. a report) of sexual harassment or allegations of sexual harassment to:
  - a TIXC; 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.

# Scope & Jurisdiction

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.

- **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.
  - “All of the operations of” (20 U.S.C. 1687)



# Scope & Jurisdiction

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**.

- **Deliberate Indifference** means when a school has actual knowledge and its response to harassment is unreasonable and fails to act in a meaningful way.

Stop the Behavior  
Prevent its Recurrence  
Remedy the Effects

# Other Definitions under Title IX 2020 Final Rule

- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

# Title IX Prohibited Conduct

## Hostile Environment Sexual Harassment (2020 TIX)

Occurs when unwelcome conduct is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to an educational program or activity.

## Quid Pro Quo Sexual Harassment (2020 TIX)

Occurs when an employee of the institution conditions the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct.

# Title IX Prohibited Conduct

## Sexual Assault - The Regulatory Runaround

TIX 2020  
Final Rule  
§ 106.30

as  
defined  
in

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

as  
defined  
in

FBI UCR  
Sex Offenses

**Don't give your people the runaround...define these terms in your policy!**

# Title IX Prohibited Conduct

## Rape (except Statutory Rape) (UCR definition)

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.

## Rape (recommended condensed definition)

**Anal, oral, or vaginal penetration**, no matter how slight, with any body part or object, without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.



# Title IX Prohibited Conduct

## Fondling (UCR definition)

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.

## Non-consensual Sexual Contact (non-TIX expanded definition)

The touching of the private body parts of the Complainant by the Respondent, **causing the Complainant to touch the Respondent's or another person's private body parts, or the Respondent causing the Complainant touch the Complainant's own private body parts, intentionally for a sexual purpose without the consent of the Complainant**, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.

This expanded definition of Non-consensual Sexual Contact would be covered under a non-Title IX sexual misconduct or student conduct policy.

# Title IX Prohibited Conduct

## Incest (UCR definition)

Non-forcible sexual intercourse between persons who are **related to each other** within the degrees wherein marriage is prohibited by state law.

## Statutory Rape (UCR)

Non-forcible sexual intercourse with a person who is **under the statutory age** of consent.

- In Rhode Island, Massachusetts, and Connecticut the age of consent is 16
- “Romeo and Juliet” laws

# Title IX Prohibited Conduct

## Dating Violence (Clery definition)

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 determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
- For the purposes of this definition—
  - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - Dating violence does not include acts covered under the definition of domestic violence.

## Domestic Violence (Clery)

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.

Domestic violence, dating violence, sexual assault, and/or stalking also include the following types of abuse, as amended by the VAWA Reauthorization Act of 2022:

- Abuse in Later Life
- Economic Abuse
- Technological Abuse
- Forced Marriage

## Abuse in Later Life (Clery)

Neglect, abandonment, economic abuse, or willful harm of an adult aged 50 or older by an individual in an ongoing relationship of trust with the victim; or domestic violence, dating violence, sexual assault, or stalking of an adult aged 50 or older by any individual; and does not include self-neglect.

## Economic Abuse (Clery)

In the context of domestic violence, dating violence, and abuse in later life, behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled.

## Technological Abuse (Clery)

An act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, that occurs using any form of technology

## Forced Marriage (Clery)

A marriage to which one or both Parties do not or cannot consent, and in which one or more elements of force, fraud, or coercion is present. Forced marriage can be both a cause and a consequence of domestic violence, dating violence, sexual assault, or stalking.



# Non-Exhaustive Examples of Dating & Domestic Violence

- **Physical assault** (hitting, slapping, or punching) or sexual assault
- **Smashing or throwing** a phone, laptop, plates, etc. to intimidate or create fear
- **Punching** a hole in the wall to intimidate
- **Breaking** car windows or slashing tires to prevent someone from leaving
- **Destroying sentimental items**, such as photos, to cause emotional distress
- **Threatening to harm** self, the person, their loved ones, or pets
- Taking away car keys or hiding their phone to **prevent escape or communication**
- **Not allowing** a partner or family member to have their own bank account
- Keeping someone uninformed about household finances or **hiding money** from them.
- **Refusing to pay bills** or provide money for essentials like food, clothing, or medical care
- **Violating a protective order**
- **Isolating** someone from friends, family, or support systems
- Publicly **humiliating** or **embarrassing** someone
- **Monitoring** or **controlling** someone's communication or social interactions
- Ignoring or withholding affection as **punishment**
- Calling someone **derogatory names** or using demeaning language
- Using **guilt** or **manipulation** to control someone's decisions
- **Stalking**/cyberstalking behaviors

# Title IX Prohibited Conduct

## Stalking (Clery)

Engaging in a **course of conduct** directed at a specific person that would cause a **reasonable person** to fear for the person's safety or the safety of others; or suffer **substantial emotional distress**.

**Course of conduct**: 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.

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

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

# Sexual Exploitation (Best Practice to Include; non-TIX)

Occurs when an individual takes non-consensual or abusive sexual advantage of another person, for their own benefit or to benefit someone other than the person being exploited, and the behavior does not otherwise fall under sexual assault, harassment, or stalking.

Including but not limited to:

- Sexual **voyeurism**;
- Invasion of sexual privacy (e.g., **doxxing**);
- Purposefully “**outing**” someone;
- Taking **pictures, video, or audio** recording of another **in a sexual act**, or in any other sexually related activity when there is a **reasonable expectation of privacy** during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or **disseminating sexual pictures** without the photographed person’s consent), including the making or posting of non-consensual pornography;
- Prostituting another person;
- Engaging in **sexual activity** with another person while **knowingly infected with HIV, STD, or STI** without informing the other person of the virus, disease, or infection;
- Causing or attempting to **cause the incapacitation of another person** (through alcohol, drugs, or any other means) for the purpose of compromising that person’s ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity;
- **Misappropriation** of another **person’s identity** on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing); and/or
- **Public indecency** (e.g. flashing, mooning, etc.)

Sometimes, we see higher ed institutions focus only on Title IX (which is important) but forget about other overlapping laws and regulations. Don't forget about your VAWA & Clery requirements!

VAWA (34 C.F.R. § 668.46(b)(11)(v)):

Institutions must provide a written explanation of rights and options “[when a student or employee reports to the institution] that the student or employee has been a victim of dating violence, domestic violence, sexual assault, or stalking, whether the offense occurred on or off campus.

\*\*\*Checklist in Desk Reference\*\*\*

Sometimes, we see higher ed institutions focus only on Title IX (which is important) but forget about other overlapping laws and regulations. Don't forget about your VAWA & Clery requirements!

Clery requirements kick in when a Clery crime occurs within Clery geography and is reported to a Campus Security Authority (CSA).



# Clery Crimes

- Criminal Offenses: Murder, manslaughter, **sex offenses (rape, fondling, incest, statutory rape)**, robbery, aggravated assault, burglary, motor vehicle theft, arson
  - **VAWA Offenses: Dating violence, domestic violence, stalking**
  - **Hate Crimes:** Any of the above, or larceny, simple assault, intimidation, or vandalism, when motivated by bias
  - Arrests/Disciplinary Referrals: For drug, alcohol, and weapons law violations
- 
- Not all Clery crimes are sex-based or Title IX, but we've provided a general checklist in your in Desk Reference applicable to general Clery crime response actions.

# Retaliation (2020 Title IX)

Intimidation, threats, coercion, or discrimination against someone by another student or employee because the person has reported alleged bias, discrimination, or discriminatory harassment, including sexual misconduct, or has participated in any way in an informal or formal process.

- Prohibited conduct under TIX but not considered “sexual harassment”
- Can resolve under student or employee code of conduct procedures
- Intent and basis matter: Is the conduct **because** they are a complainant/respondent/witness or simply because of personal dynamics or perceived past behavior?
- Not all forms of social exclusion = retaliation.
  - It could still raise other concerns (e.g., bullying, hostile environment)



Other Topics that are Still  
Covered Even Though the 2020  
Regs Don't Mention Them...



# Pregnancy & Related Conditions

- Pregnancy & related conditions are covered by Title IX's "on the basis of sex" provision.
- Can include:
  - Current pregnancy status
  - Past pregnancy or termination (e.g. abortion, miscarriage)
  - Recovery from childbirth
  - Postpartum conditions
  - Breastfeeding and lactation-related needs
  - Pregnancy-related medical conditions or complications
  - Medical treatments related to fertility, miscarriage, or infertility
- For employees: PUMP Act and FLSA apply as well!

# Disparate Treatment Discrimination

Any intentional differential treatment of a person or group of people that is based on an individual's actual or perceived sex and that: excludes an individual from participation in; denies the individual benefits of; or otherwise adversely affects a term or condition of an individual's participation in an educational program or activity.

## Examples of Sex-Based Disparate Treatment

- Female students discouraged or steered away from enrolling in advanced math or science classes.
- Female employees paid less than male colleagues for similar roles and experience.
- The sports teams of one sex receiving better equipment, facilities, or funding than the other sex's teams.
- Employees denied accommodations during pregnancy or reassigned to less desirable roles after returning from maternity leave.

# Disparate Impact Discrimination

Occurs when policies or practices, that may appear to be neutral, intentionally or unintentionally result in a disproportionate impact on a protected group or person that excludes an individual from participation in; denies the individual benefits of; or otherwise adversely affects a term or condition of an individual's participation in an educational program or activity.

## Examples of Sex-Based Disparate Impact

- A school mandates a minimum height and weight to be hired as a hall monitor or security aide, which disproportionately excludes women without being demonstrably necessary for job performance.
- A dress code bans “distracting” clothing like spaghetti straps, leggings, or short skirts — items primarily worn by female students — leading to more frequent discipline or loss of instructional time for girls.

# Hate Crimes

A hate crime is a crime motivated by bias against people or groups on the basis of actual or perceived race, color, religion, national origin, sexual orientation, gender, gender identity, or disability.

- The "crime" in hate crime is **often a violent crime**, such as assault, murder, arson, vandalism, or threats to commit such crimes.
- It may also cover **conspiring** or asking another person to commit such crimes, even if the crime was never carried out.
- Only hate crimes on the basis of sex are covered by Title IX.



# Best Practices from 2024 Title IX Regulations

## (No Longer Required under Title IX)

### Mandatory Reporting (not to be confused with Mandated Reporting):

- Certain staff (like those in leadership, teaching, or advising roles) must report to the Title IX Coordinator if they hear about possible sex discrimination.
- Other staff (who aren't confidential and don't have those roles) must either:
  - Report the information to the Title IX Coordinator, or
  - Give the person who shared the info the Title IX Coordinator's contact details and explain how to file a report.

NOTE: Under Title VII, supervisors who are notified of / have information about sexual harassment in the workplace are mandatory reporters and/or required to take action.

NOTE: Mandatory Reporting applies to the school's policy on reporting sexual harassment, while Mandated Reporting (Child Abuse Reporting) is defined by state law and requires specific individuals (e.g., teachers, counselors, healthcare providers) to report suspected abuse or neglect of minors to state child protection authorities.

# Best Practices from 2024 Title IX Regulations (No Longer Required under Title IX)

## Annual Training Requirement for ALL Employees:

- All employees must be trained on:
  - The recipient's obligation to address sex discrimination in its education program or activity;
  - The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and
  - All applicable notification and information requirements under Title IX.

# Best Practices from 2024 Title IX Regulations

## (No Longer Required under Title IX)

### Barrier Analysis & Monitoring:

- Focuses on systemic and structural factors (e.g., language access, disability, campus climate, cultural norms).
- Promotes inclusive access and helps align with ADA, Title VI, and Section 504 obligations
- Use it to review usage data, gather student feedback, and inform training, outreach, and policy updates
  - Track who is (and isn't) using your process—disaggregate by demographics. Identify patterns (e.g., low reporting from certain groups).
  - Ask about awareness of, comfort, and perceived obstacles (e.g., fear of retaliation, cultural stigma, lack of clarity)
  - Audit intake forms, grievance procedures, and outreach materials for accessibility (e.g., plain language, multiple languages, screen reader compatibility).
  - Is your office space private, safe, and welcoming?

# Recent Executive Orders Impacting Title IX (2025)

## "Defending Women from Gender Ideology Extremism"

- Mandates federal agencies to define "sex" strictly as male or female, based on biological assignment at birth. This redefinition excludes gender identity, sexual orientation, and sex characteristics from Title IX protections.

## "Keeping Men Out of Women's Sports"

- Prohibits transgender women and girls from participating in female sports teams at educational institutions. Non-compliance may result in the revocation of federal funding under Title IX.

**While these federal directives redefine "sex" and OCR's interpretation and enforcement has changed, institutions must also consider state laws and other federal statutes that may offer broader protections.**



# A Balancing Act

- Follow binding federal law, but track how it's being interpreted by current DOE & DOJ guidance.
- Schools in states with anti-discrimination laws that include LGBTQ+ protections may need to comply with both state and federal rules.
- Work with general counsel to assess:
  - Risk of losing federal funding (Title IX enforcement)
  - Risk of state-level lawsuits or penalties
  - Reputational impact and community values
- Consider implementing dual compliance policy/procedures
  - Maintain a Title IX policy that aligns with current federal requirements, while also adopting broader nondiscrimination or equity policies that reflect state laws or institutional values, while still staying compliant.
  - Clearly explain to your community how and when each applies.





CAMPUS SAFETY CENTER

# Risk Assessment & Safety



# Risk Assessment is Critical

- Ensures proactive response to threats to individual or community safety
- Informs decisions around:
  - Emergency removal (34 CFR §106.44(c))
  - No-contact orders and interim measures
  - Housing or classroom separation
- Balances due process with prevention of harm



# What is a Violence Risk Assessment (VRA)?

- A structured, evidence-informed process used to:
  - Evaluate the likelihood that an individual may engage in targeted or repeated violence; and
  - Guide interventions, emergency removals, and safety plans.
- Focuses on understanding risk factors, warning signs, and situational context to manage and reduce potential harm.
- Should be completed by a trained, qualified professional, typically:
  - A forensic psychologist, clinical psychologist, or counselor trained in threat assessment & tools (e.g. HCR-20, SARA-V3, WAVR-21, SIVRA-35);
  - A campus threat assessment team member with VRA training (often from law enforcement, counseling, or student conduct); or
  - In some cases, an external consultant or multidisciplinary Behavioral Intervention Team (BIT).
- A VRA is **not** a finding of responsibility or criminal investigation.
- Always document: the reason for referral, the outcome, and any actions taken.



# Do I need to make a referral for a VRA?



Refer for a VRA to be conducted **immediately** when there is:

- Physical violence resulting in injury (e.g., strangulation, punching, kicking, )
- Threats to kill or seriously harm the Complainant or others
- Use of a lethal weapon or threat involving a weapon
- Violations of no-contact orders tied to this case

# Do I need to make a referral for a VRA?



- If no automatic trigger is met, use a point-based screening (NABITA) to gauge
- Some behaviors that can add up to needing a referral:
  - Pattern of behavior
  - Elements of incapacitation in the reported behavior
  - Recent and/or ongoing behavior
  - Unmanaged mental health or substance issues
  - Detailed knowledge of the complainant's routine, home, or online presence
  - Access to weapons
  - Persistent boundary violations
  - Obsessive focus or rumination
  - Intimidation and/or harassment
  - Social manipulation
  - Gaslighting or psychological control

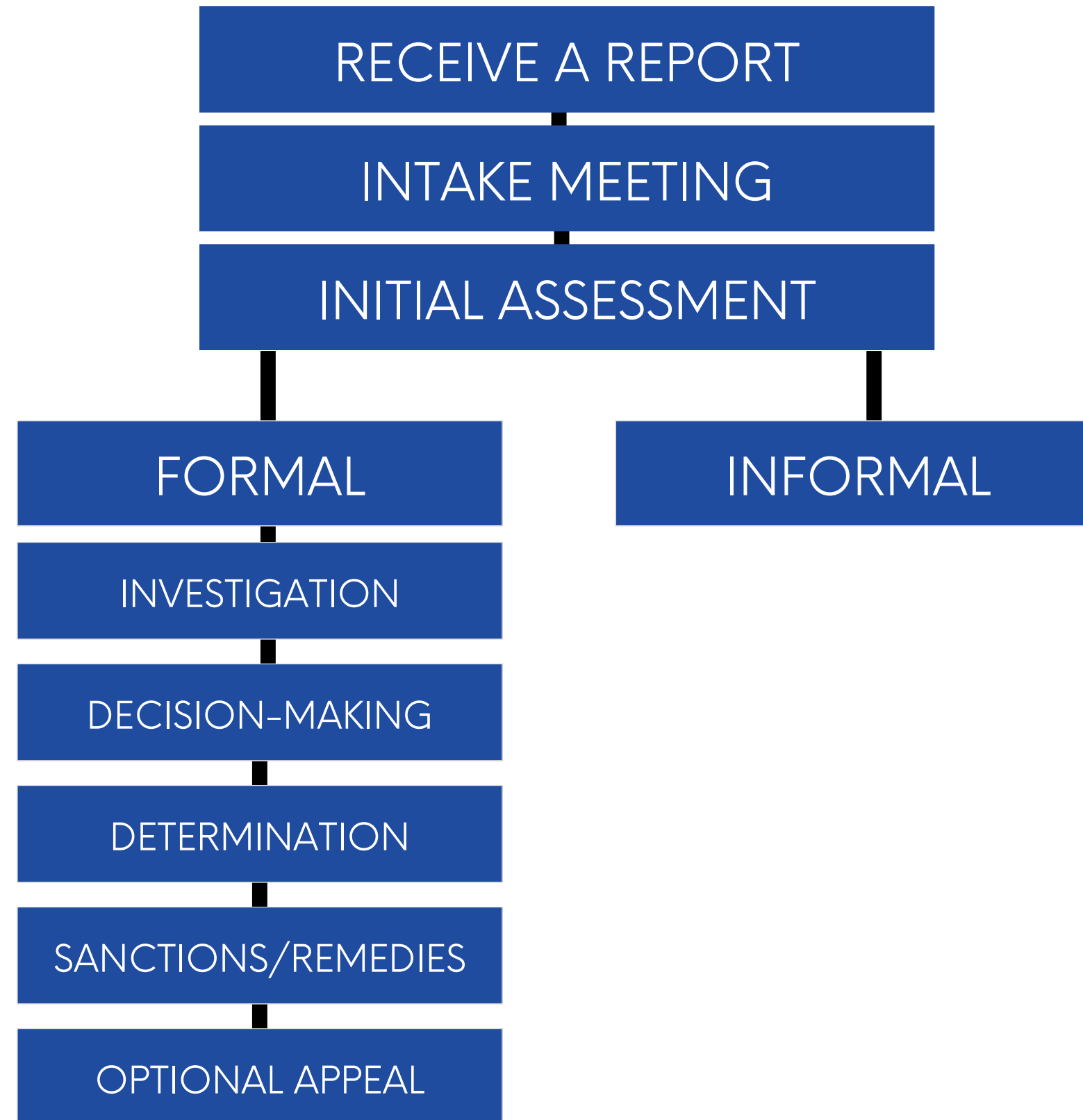


A golden statue of Lady Justice, blindfolded and holding scales of justice, is the background of the image. The statue is positioned on the right side, with its right arm raised holding the top of the scales and its left arm holding the bottom. The scales are balanced. The text 'Ensuring a Fair & Impartial Process' is overlaid in a dark blue serif font, centered horizontally and slightly to the left of the statue's head.

# Ensuring a Fair & Impartial Process



# The Process





# Report vs. Formal Complaint

Report	Formal Complaint
<ul style="list-style-type: none"><li>• a disclosure of sexual harassment or misconduct</li><li>• can be verbal or written</li><li>• does not initiate the grievance process</li><li>• can initiate supportive measures</li><li>• can be made any time in person, mail, telephone, email, or by any other means that results in the institution receiving actual knowledge.</li></ul>	<ul style="list-style-type: none"><li>• a document filed by a Complainant or signed by the TIXC alleging sexual harassment against a Respondent and requesting that the recipient investigate the allegation of sexual harassment</li><li>• must be written</li><li>• schools must proceed or dismiss</li><li>• also initiates supportive measures</li></ul>

# Presumption of Not Responsible

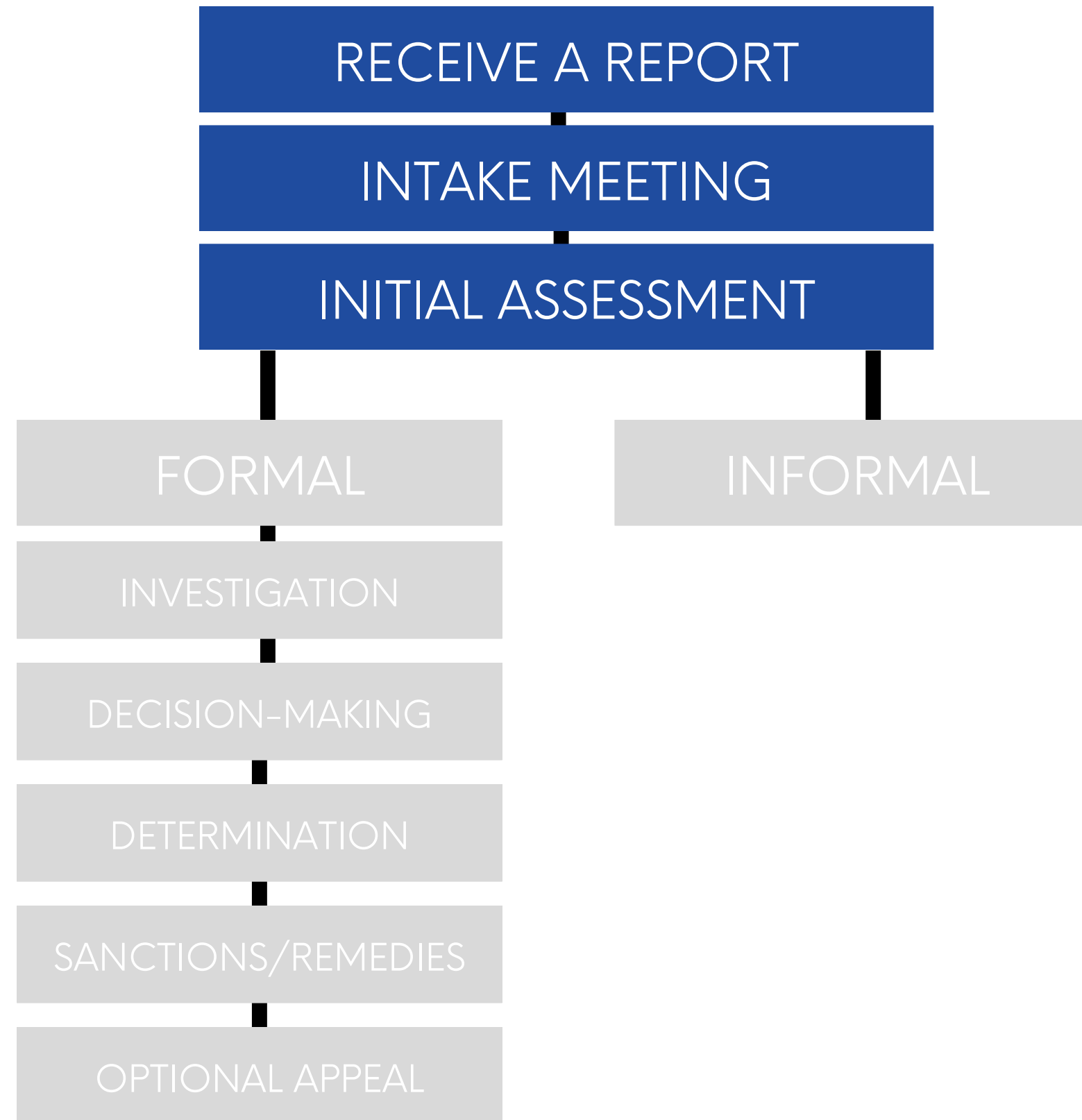
The institution must treat Complainants and Respondents equitably.

The Respondent(s) has the right to be **presumed not responsible** for the alleged discrimination until a determination is made at the conclusion of the appropriate process.

## INSTITUTIONS **CANNOT**:

- Implement sanctions without a final determination/outcome
- Allow bias or assumptions about the Respondent to influence the process
- Deny the Respondent access to educational resources based on the allegation(s) alone
- Treat the Respondent with hostility or prejudice during interviews or hearings
- Communicate to others that the Respondent is responsible without a final determination
- Make comments implying responsibility during the process
- Fail to provide the Respondent an equal opportunity to respond to the allegations or present evidence/witnesses

# Intake Meeting & Initial Assessment



# A Guide to Intake Meetings

- The intake is not an investigation, but rather a fact-gathering conversation that supports:
  - Jurisdictional analysis (Does the alleged conduct meet Title IX scope and definitions?)
  - Safety and risk management (Does the person need immediate protective measures?)
  - Determining next steps (Support only? Informal resolution? Formal complaint?)
  - Writing a clear, legally sufficient NOIA (if a formal complaint is filed)



# Trauma-informed Practices

- Start with a warm, non-judgmental tone
- Clarify your neutral role and limits of confidentiality
- Offer virtual meetings and support person options
- Let them set the pace; breaks are okay
- Avoid “why” questions and pressuring language
- Use calm tone, simple language, and give choices
- Ask only what’s needed (who, what, where, when, safety)
- Validate: “Thank you for sharing that”
- Reduce sensory overstimulation in meeting environments (e.g., soft lighting, quiet space)
- Make comfort items available: fidget toys, tissues, bottled water
- Allow students to opt out of questions or pause the meeting if overwhelmed
- Explain supportive measures and resolution options
- Follow up in writing with resources and next steps

\*\*\*Sample Intake Questions/Topics in Desk Reference\*\*\*

Ask, Listen,  
Support



# Supportive Measures (34 C.F.R. § 106.30(a))

**Supportive measures** are **non-disciplinary, non-punitive individualized** services offered as appropriate and **reasonably available**. They are offered, without fee or charge to the Parties, to **restore or preserve access** to the institution's education programs and/or activities, including measures designed to protect the safety of all Parties and/or the institution's educational environment and/or to deter discrimination, discriminatory harassment, and/or retaliation.



The recipient must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.

# Supportive Measures for Students

## K-12 Examples

- Safety plans and increased adult supervision
- Changes in seating or classroom arrangements
- Access to school counselor or mental health professional
- Parent meetings to discuss emotional and academic support, review expectations and rights
- Classroom break pass
- Consideration of temporary schedule changes
- Digital safety support (block/reporting assistance)
- Supervision and behavior monitoring (non-punitive)
- Instruction on appropriate peer interactions and boundaries
- Mutual NCD with adult supervision support

## Higher Ed Examples

- Safety planning
- Academic adjustments (e.g., extensions, excused absences, rescheduling exams)
- Changes to class schedule, course section, or modality
- Housing relocation or room change
- Mutual NCD between parties
- Access to counseling or mental health services
- Campus escort services or increased security support
- Assistance with medical or health referrals
- Temporary work or research assignment changes (e.g., TA/lab placement)
- Changes to extracurricular, athletic, or student leadership involvement
- Access to academic advising or tutoring support

# Example Supportive Measures for Employees

- Adjusted work schedule (e.g., shift changes, flexible hours, staggered breaks)
- Remote work options or modified in-person presence (if appropriate)
- Changes in reporting structure or supervision
- Reassignment of non-essential duties, committee work, or extracurricular responsibilities
- Modified office or workspace location (e.g., different building or area)
- Altered classroom or student duty assignments
- Temporary administrative leave (non-disciplinary and limited in scope)
- NCD between involved parties, monitored by administration
- Option to attend meetings virtually or with a support person present
- Access to Employee Assistance Program (EAP) or external counseling referrals
- Support with leave options, such as FMLA, medical leave, or short-term time off
- Adjusted parking or building access, or other campus/facility accommodations
- Enhanced security measures (e.g., escorts, restricted access)
- Additional planning or transition time between assignments or work locations
- Modifications to joint projects, supervision duties, or co-teaching arrangements



# Initial Assessment

One of the most important steps in the process is conducting the initial assessment after you receive a report or formal complaint.

## Questions You Must Consider:

- Do we have jurisdiction over the situation?
- Do we have jurisdiction over the Respondent?
- If proven as alleged, does the alleged conduct meet the policy definition(s) / violate a policy?
- If dismissed from TIX, which policy does the conduct fall under, if any? (i.e. Student Conduct/HR)
- Do the allegations fit better for an Informal or Formal Resolution?
- What does the Complainant want?



\*\*\*A detailed Initial Assessment Guide can be found in Desk Reference\*\*\*

# Dismissals

## **Mandatory Dismissal**

A Title IX formal complaint **must** be dismissed if:

- The alleged conduct would not constitute sexual harassment as defined in §106.30, even if proven.
- The alleged conduct did not occur in the recipient's education program or activity.
- The alleged conduct did not occur against a person in the United States.

## **Discretionary Dismissal**

A Title IX formal complaint **may** be dismissed if:

- The Complainant notifies the TIXC in writing that they wish to withdraw the complaint or any part of it.
- The Respondent is no longer enrolled or employed by the school.
- Specific circumstances prevent the school from collecting evidence sufficient to make a determination.

Note: Dismissal under Title IX does not preclude the school from addressing the conduct under another policy (e.g., student or employee code of conduct).

Note: Parties have the right to appeal dismissal decisions.

# Scenario

You have received a report from Bella Swan, an undergraduate student living in on-campus housing. She alleges that another student, Edward Cullen, engaged in inappropriate behavior toward her over the summer and into the fall semester.

According to the incident report, Bella alleges that in the summer of 2025:

- Edward repeatedly appeared in places she frequented without prior communication.
- He admitted to entering her residence hall room at night to watch her sleep.
- He stared at her in class, appeared uninvited near her vehicle, and seemed to know where she was even when she hadn't shared her location.

1

Does it rise to the level of Title IX? If so, which prohibited conduct?

2

What type of questions are you asking in an intake?



# Scenario

You have received a report from Bella Swan, an undergraduate student living in on-campus housing. She alleges that another student, Edward Cullen, engaged in inappropriate behavior toward her over the summer and into the fall semester.

According to the incident report, Bella alleges that in the summer of 2025:

- Edward repeatedly appeared in places she frequented without prior communication.
- He admitted to entering her residence hall room at night to watch her sleep.
- He stared at her in class, appeared uninvited near her vehicle, and seemed to know where she was even when she hadn't shared her location.

3

What supportive measures would you offer Bella?

4

If Bella doesn't want to file a Formal Complaint, would you sign one as TIXC? Why?



# When It Doesn't "Rise to the Level"

**Educational  
intervention  
meetings**

**Stop the Behavior  
Prevent its Recurrence  
Remedy the Effects**

**Restorative  
circles**

**Training**

**Reinstatement  
of  
opportunities**

**Policy  
review**

# Accommodations

- Accommodations in the Title IX process are individualized, non-disciplinary measures designed to ensure that all participants can engage equitably and effectively. These adjustments support access, reduce barriers, and promote fairness throughout the process.
- Identify clear, prompt deadlines for providing medical information, evaluating that information, and interacting with the Party.
- Maintain flexibility for case-by-case situations.
- The evaluation and accommodation process may affect deadlines.
  - Consider adding “arranging reasonable accommodations” to your procedure’s reasons for extending the projected time for completing a TIX process.
- Accessibility Services or 504 Coordinator should evaluate disability accommodation requests and related medical documentation if needed – NOT the TIXC.
- Document accommodations considered and granted, as well as the rationale for each decision.
- Inform the Parties, Advisors, Investigator(s) in writing of the extension or delay, if applicable.
- Ensure the accommodations do not fundamentally alter the grievance procedure.
- The process must remain equitable for both parties.

# Accommodations

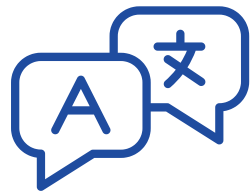
Some accommodations to consider:



Extensions on deadlines, more time to review documents



Auxiliary aids or assistive devices (e.g. note-taker, recording device, hard copies)



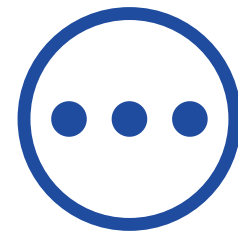
Language services, interpreters & translation



Access to technology



Longer or more frequent breaks during interviews and/or hearings



Other support as deemed reasonable & necessary

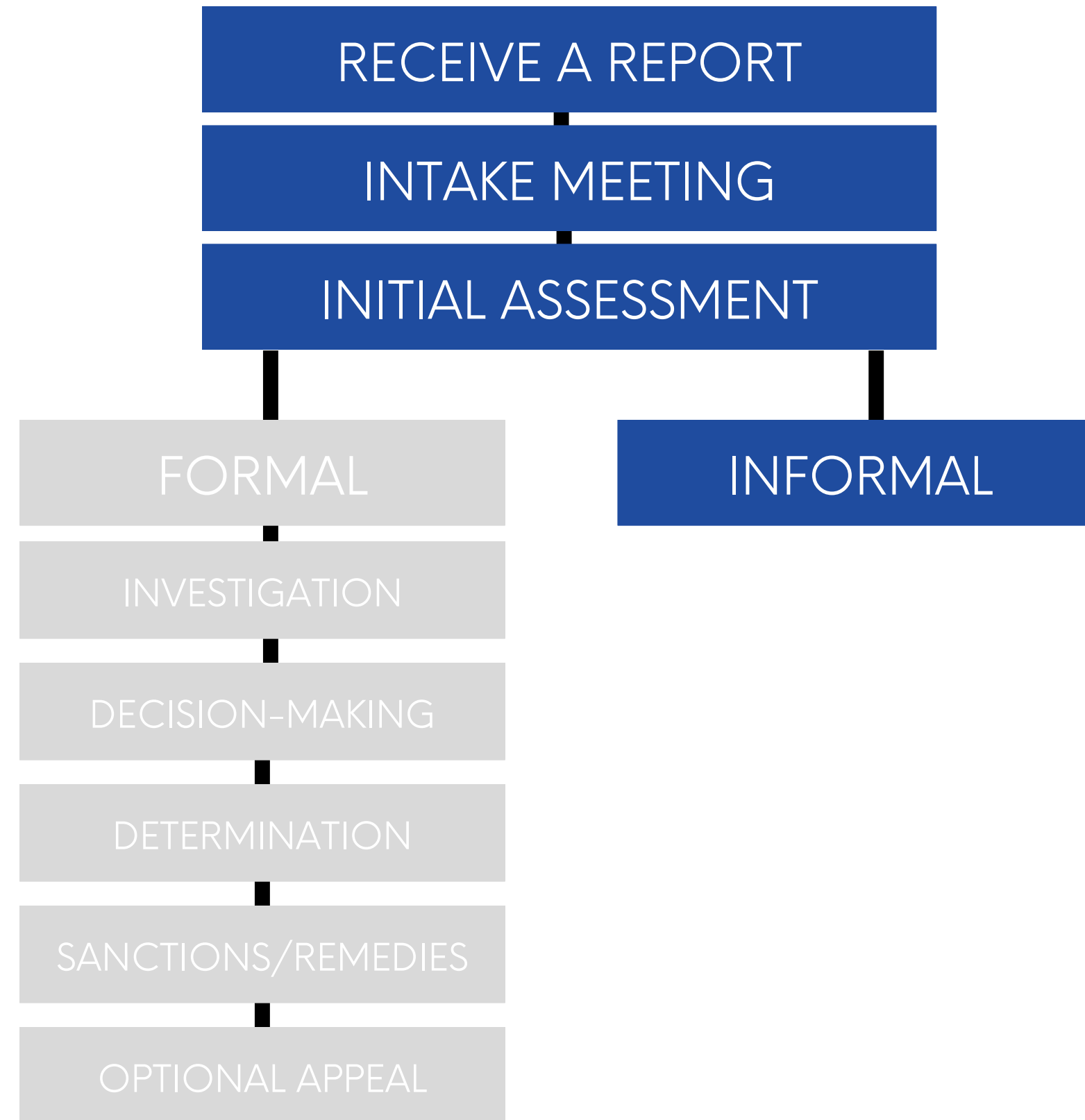


# Informal Resolution





# Informal Resolution



# Informal Resolution

Informal resolution can include mediation, restorative justice, or other types of informal resolution. Informal resolution may be appropriate when:

- Both parties (and their families in cases of minors) voluntarily consent in writing. Typically, schools use consent forms.
- The Title IX Coordinator deems informal resolution appropriate.
- The Respondent is open to accountability and repair.
- There is no threat of physical harm or coercion.
- The conduct, while serious, may be resolved through informal resolution.

Institutions cannot:

- require the parties to participate in an informal resolution process.
- offer an informal resolution process unless a formal complaint is filed.
- use informal resolution in employee–student allegations under Title IX.

# Notice of Allegations and Offer of Informal Resolution (§106.45(b)(9)) (NOA)

Before starting Informal Resolution, schools must provide written notice to both parties that includes:

- The specific allegations involved
- A clear explanation of how the Informal Resolution process works, including:
  - That participation is voluntary
  - That it may preclude resuming a formal complaint arising from the same allegations once resolved
  - That either party can withdraw at any time before resolution and resume the formal grievance process
- Potential consequences of participating, including:
  - What records will be maintained
  - What information may be shared

\*\*\*Template & Sample NOA and Consent Form in Desk Reference\*\*\*

# Informal Resolution: Accepted Responsibility



- If the Respondent accepts responsibility for any or all alleged violations, the Resolution Process pauses while the TIXC determines if IR is appropriate.
- The Respondent may voluntarily accept responsibility for violating the policy and agree to enforced actions similar to sanctions.
- The resolution terms must be agreed upon by the Respondent, the Complainant(s), and the TIXC.
- The policy violation goes on the Respondent's record.



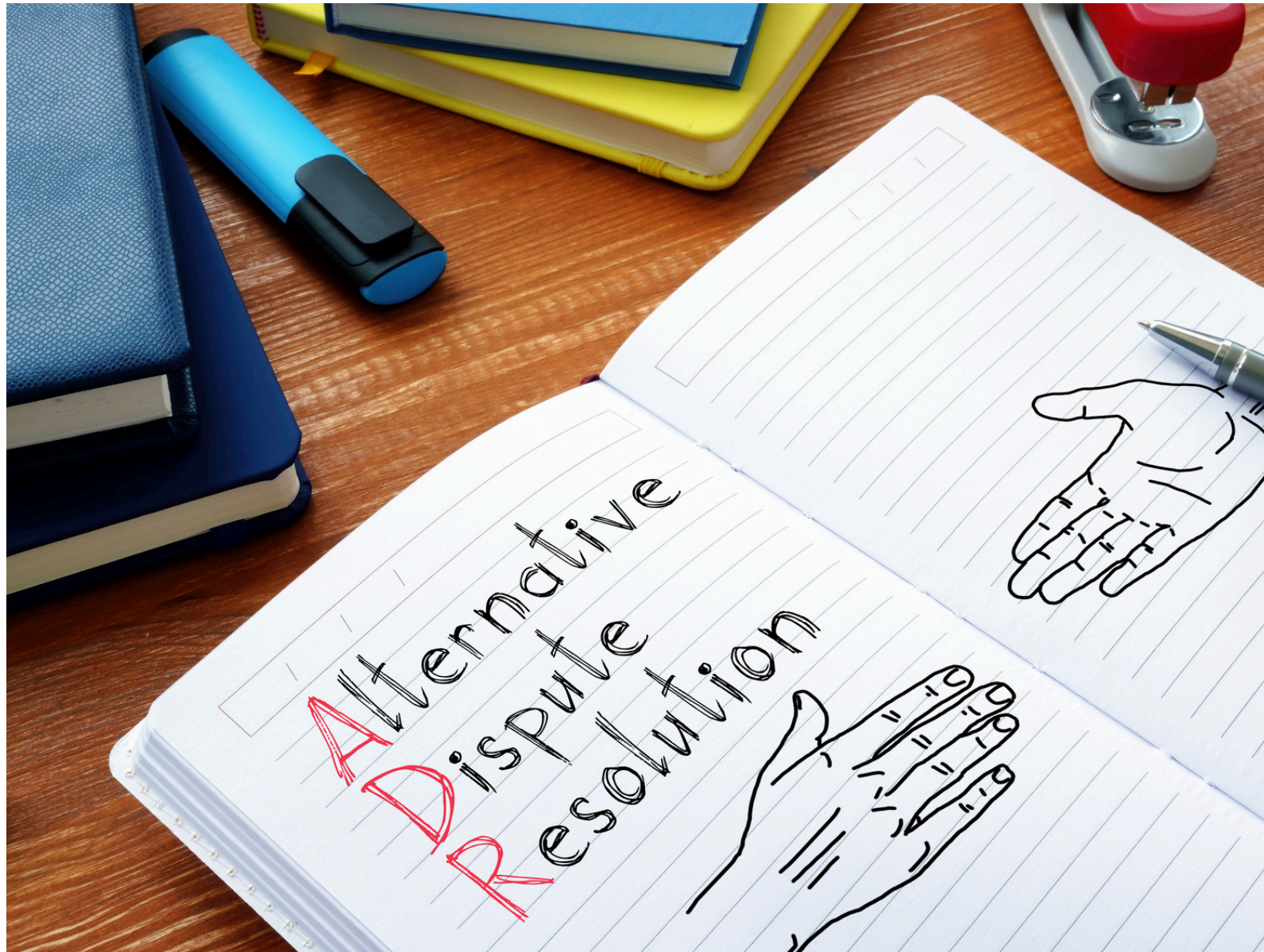
# Informal Resolution: Educational Conversations



- A conversation with the Respondent addresses the Complainant's concerns and institutional expectations in a non-punitive manner.
- The Respondent is not required to attend or provide information.
- If the conversation occurs, it serves as the resolution; if not, alternative steps will be necessary.



# Informal Resolution: Alternative Dispute Resolution



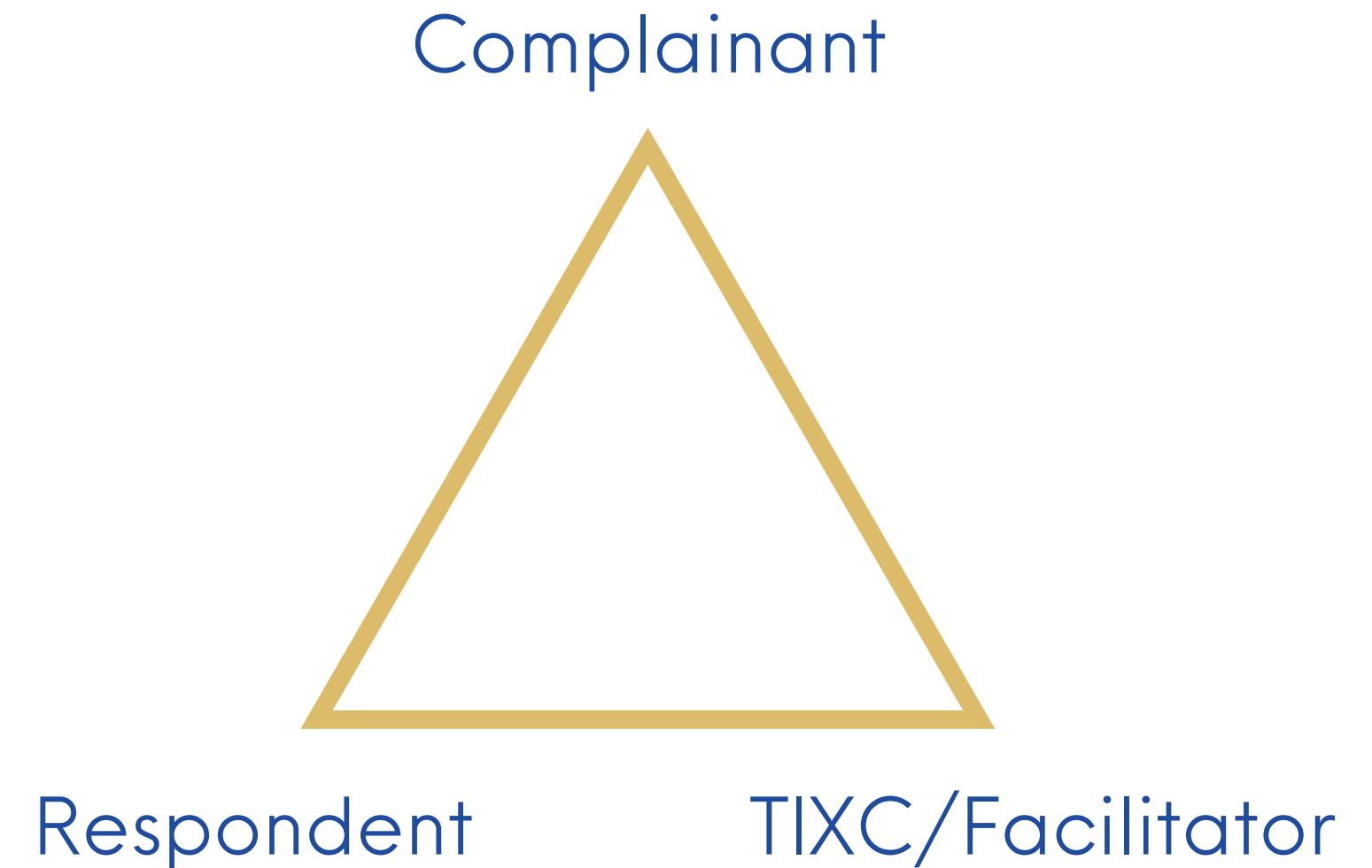
- Concerns can be resolved through mediation, restorative practices, or facilitated dialogue.
- Some resolutions, like mediation, require a signed agreement from all parties.
- Agreements may involve:
  - Educational workshops
  - Counseling
  - Schedule adjustments
  - Housing changes
  - Behavioral expectations.

# Collaboration & Institutional Responsibility

While the 2020 Title IX regulations (34 C.F.R. §106.45(b)(9)) emphasize that informal resolution must be voluntary and party-led, institutions are not permitted to approve or enforce agreements that fall short of their federal obligations.

The TIXC/Facilitator retains the authority — and legal responsibility — to ensure that:

- Any proposed resolution complies with federal civil rights standards;
- The outcome protects both individual and campus-wide safety and equity; and
- Agreements are enforceable under school policy.





# Collaboration & Institutional Responsibility

Stop the Behavior  
Prevent its Recurrence  
Remedy the Effects

If the parties propose terms that are incomplete or inadequate, the TIXC/Facilitator can:

- Recommend adjustments;
- Decline to approve the agreement until revised; or
- Require certain minimum provisions (e.g., no-contact directives, education, support measures).

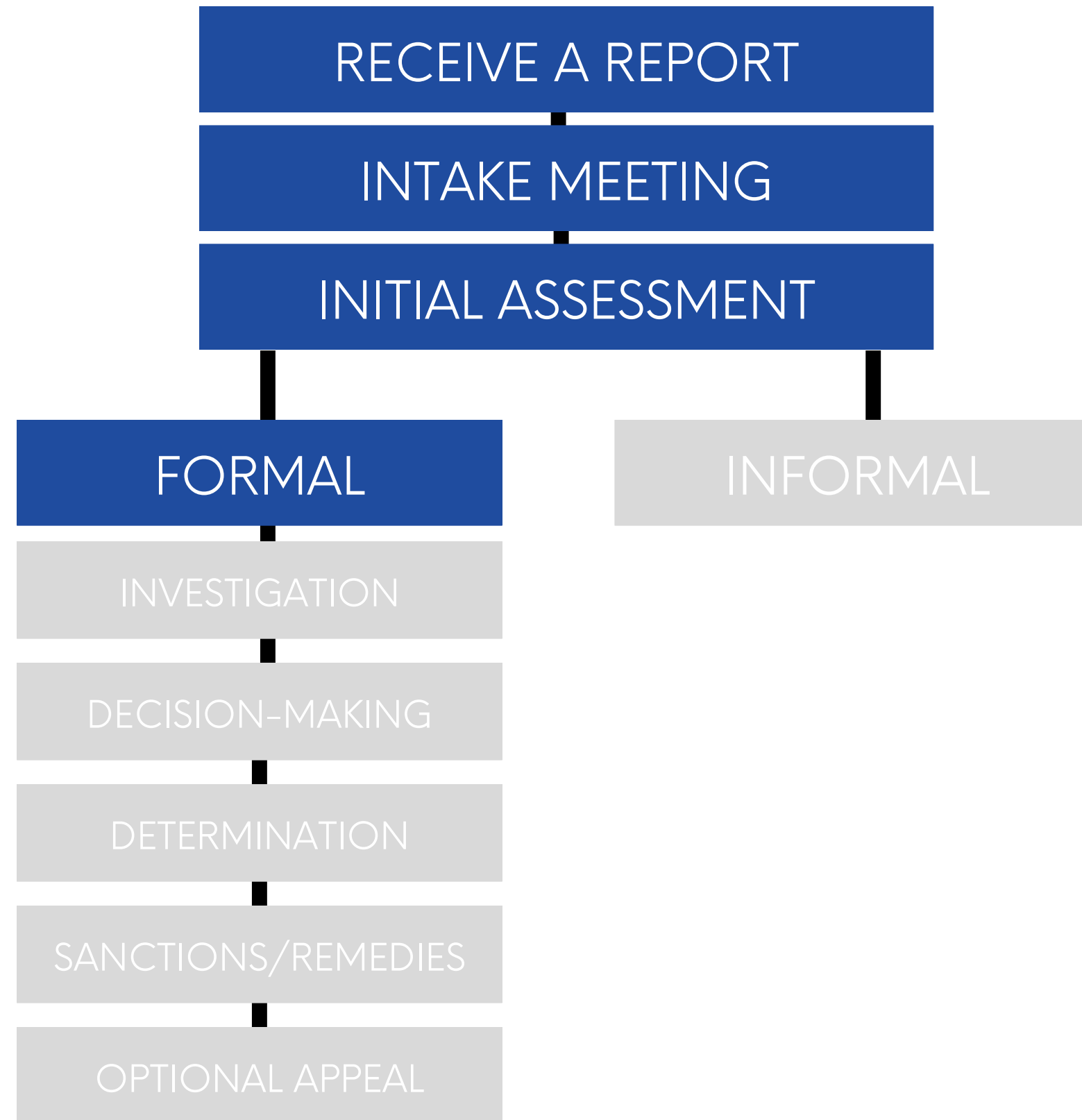
The TIXC/Facilitator's role ensures that resolutions are fair, protective, and legally compliant, even when collaboratively shaped by the parties.



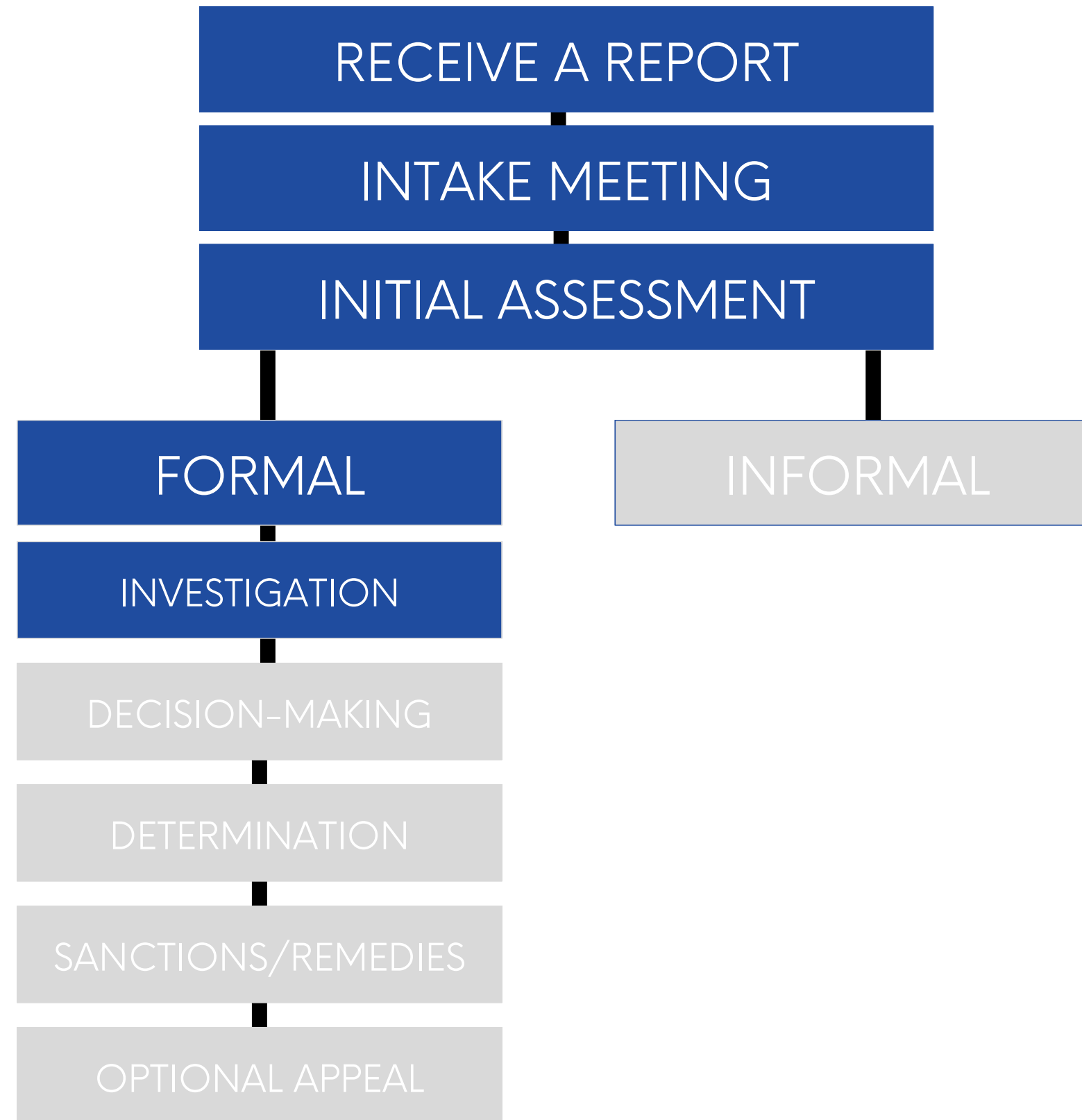
A person's hands are shown writing in a notebook with a pen. The scene is softly lit, and the background is blurred. The text 'Formal Resolution' is overlaid in a large, dark blue, serif font.

# Formal Resolution

# Formal Resolution



# Phase 1: Investigation



# Notice of Investigation and Allegations

Who	What	Where & When	How
<ul style="list-style-type: none"><li>• The identity of the involved parties (if known)</li><li>• Name(s) of Investigator(s) assigned</li></ul>	<ul style="list-style-type: none"><li>• Specific allegations &amp; alleged policy violations</li><li>• Potential sanctions that could result</li><li>• Presumption of Not Responsible</li><li>• That the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence</li><li>• Retaliation &amp; false statement prohibition</li><li>• Privacy info</li><li>• Advisor info</li></ul>	<ul style="list-style-type: none"><li>• The date &amp; location of allegations (if known)</li></ul>	<ul style="list-style-type: none"><li>• To request disability accommodations</li><li>• To request Informal Resolution</li><li>• To raise concerns of any conflict of interest that the Investigator(s) may have</li><li>• A description of the applicable procedures</li></ul>

\*\*\*See Detailed List in Desk Reference\*\*\*



# Collateral Misconduct

- Schools may investigate non-Title IX misconduct (e.g., bullying, tech misuse, non-sex-based harassment) alongside Title IX allegations if they arise from the same facts.
- Title IX procedures must be used when allegations meet the Title IX threshold—these provide the highest due process protections and are legally required.
- It is permitted to apply Title IX procedures to related non-Title IX issues for clarity and consistency. However, the reverse is not allowed.

This trauma-informed practice reduces multiple investigations and re-traumatization & promotes fairness and efficiency for all parties.

**Include all allegations and policies being investigated in the NOIA.**

# Scenario

You have received a report from Bella Swan, an undergraduate student living in on-campus housing. She alleges that another student, Edward Cullen, engaged in inappropriate behavior toward her over the summer and into the fall semester.

According to the incident report, Bella alleges that in the summer of 2025:

- Edward repeatedly appeared in places she frequented without prior communication.
- He admitted to entering her residence hall room at night to watch her sleep.
- He stared at her in class, appeared uninvited near her vehicle, and seemed to know where she was even when she hadn't shared her location.

A formal complaint has been filed requesting an investigation. Bella's housing has been relocated and a temporary NCD has been implemented through the investigation.

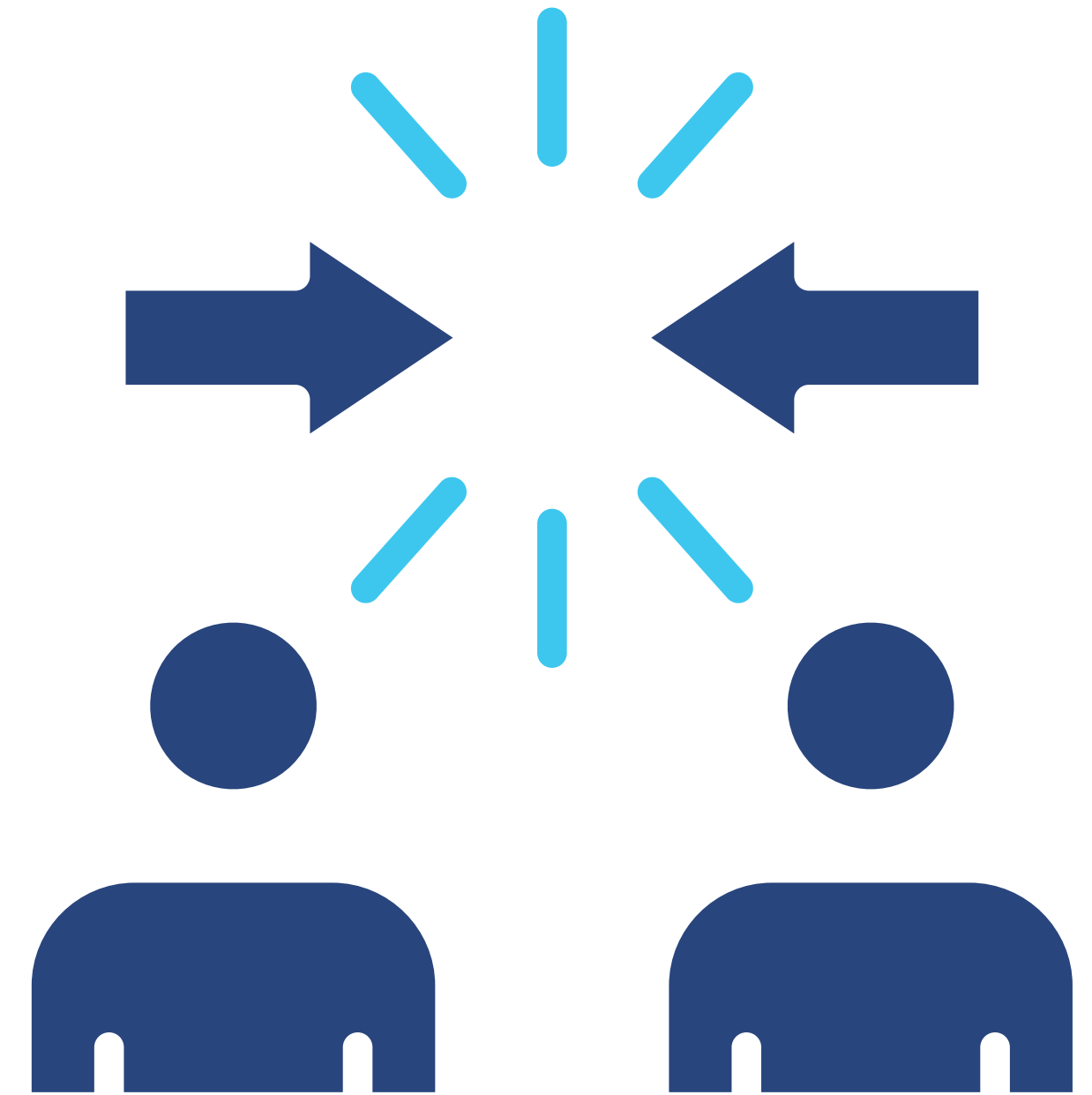


How would you write the Notice of Investigation and Allegations (NOIA)?

\*\*\*Template & Sample NOIA in Desk Reference\*\*\*

# Conflict of Interest and Impartiality

- TIXC, Investigators, and Decision-makers (DMs) must be unbiased and fair.
- No favoritism for one or the other.
- Conflict and bias checks are conducted for Investigators and DMs.
- If a Party feels someone has a bias or conflict of interest, they must raise challenges with TIXC – tell them how to do this.
- Only remove and replace an Investigator or DM in situations of **demonstrated** bias or conflicts of interest.
- **Perceptions** of bias or conflict **are not sufficient** to cause removal.
- Any concerns of bias throughout the process can be raised by the Parties during the appeal process.





# Let's Talk About Bias



Bias refers to a prejudice or predisposition for or against a person or group that may influence impartial judgment. It can be implicit or explicit.

## **Best Practices to Mitigate Bias:**

- Approach each case with an open mind.
- Avoid prejudgment of facts.
- Evaluate each individual and incident independently.
- Focus on facts, evidence, and policy.
- Use neutral language in all communications and documentation.
- Treat all parties equitably.
- Refrain from relying on sex stereotypes.
- Identify and manage any personal conflicts of interest.





# Let's Talk About Bias



An allegation of bias without factual support “no longer passes muster.”  
–Doe v. Univ. of Colorado

## **Demonstrable Bias Examples:**

- Evidence of selective enforcement
- Deviation from procedures that benefits one party
- Biased statements or training materials
- Data showing a pattern of outcomes favoring one gender

# Investigation Procedures

## Steps of an Investigation:

1. Prompt, Thorough, and Impartial Investigation is initiated
2. Investigator conducts interviews & gathers information
3. Investigator writes Draft Report/Evidence Packet
4. Parties and Advisors are sent the Draft Report/Evidence
5. 10 day\* review & comment period
6. Final Investigation Report is sent to Parties and Advisors
7. Process is forwarded to Decision-making stage



\*specify calendar or business days in your procedures

# Parts of an Investigation Report

The goal is to collect relevant inculpatory and exculpatory evidence and to be thorough enough to permit an impartial Decision-maker to determine if it was more likely than not that a policy violation occurred. The Investigator's job is to gather as much information as possible to help the DM do their job.



- Executive Summary & Procedural History
- List of Involved Parties
- Summary of Information Gathered
- Discussion of Undisputed and Disputed Facts
- Evidence:
  - Interview Summaries of Parties and Witnesses
  - Other Relevant Evidence (photos, texts, videos, audio, etc.)
- Relevant Policies & Definitions
- Notice of Investigation & Allegations
- Relevant Reports (TIX, Public Safety, ResLife, Police)

# Types of Evidence

INCULPATORY	EXCULPATORY
Evidence tending to support the proposition a Respondent committed the misconduct as alleged.	Evidence tending to support that the Respondent did not commit the misconduct as alleged.
<ul style="list-style-type: none"><li>• Text messages or emails from the Respondent admitting to the alleged conduct.</li><li>• Testimonies from Witnesses corroborating the Complainant's account or contradicting the Respondent's account.</li><li>• Surveillance footage showing behavior consistent with the Complainant's claims.</li><li>• Evidence of the Respondent making inappropriate or threatening comments to the Complainant.</li><li>• Patterns of similar behavior by the Respondent in other situations.</li><li>• Witnesses stating the Respondent was present and involved during the alleged incident.</li><li>• Audio or video recordings capturing unwelcome or inappropriate behavior.</li><li>• Documentation showing the Respondent ignored explicit verbal or non-verbal signs of discomfort.</li><li>• Statistical analysis showing differential treatment.</li></ul>	<ul style="list-style-type: none"><li>• Testimonies from Witnesses corroborating the Respondent's account or contradicting the Complainant's account.</li><li>• Surveillance footage showing events differently than described by the Complainant.</li><li>• Evidence of the Complainant stating they were not harmed or upset shortly after the incident.</li><li>• Evidence that the Respondent was not present at the time of the alleged incident (i.e., alibi).</li><li>• Social media posts contradicting the Complainant's claims.</li><li>• Communications indicating the Complainant consented to the interaction.</li><li>• Witnesses attesting to the Respondent's respectful behavior toward the Complainant.</li><li>• Documentation of consistent treatment across groups regardless of identity.</li></ul>



# Types of Witnesses

## **Fact Witnesses**

- Have direct, firsthand knowledge of events, behaviors, or communications through observing interactions.
- Central to establishing the facts of the case.

## **Outcry Witnesses**

- Individuals the parties told about the incident shortly after it occurred.
- Their testimony can help establish timing, credibility, and emotional impact.
- Not firsthand observers, but can provide important context.

# Types of Witnesses (cont.)

## **Expert Witnesses (rare)**

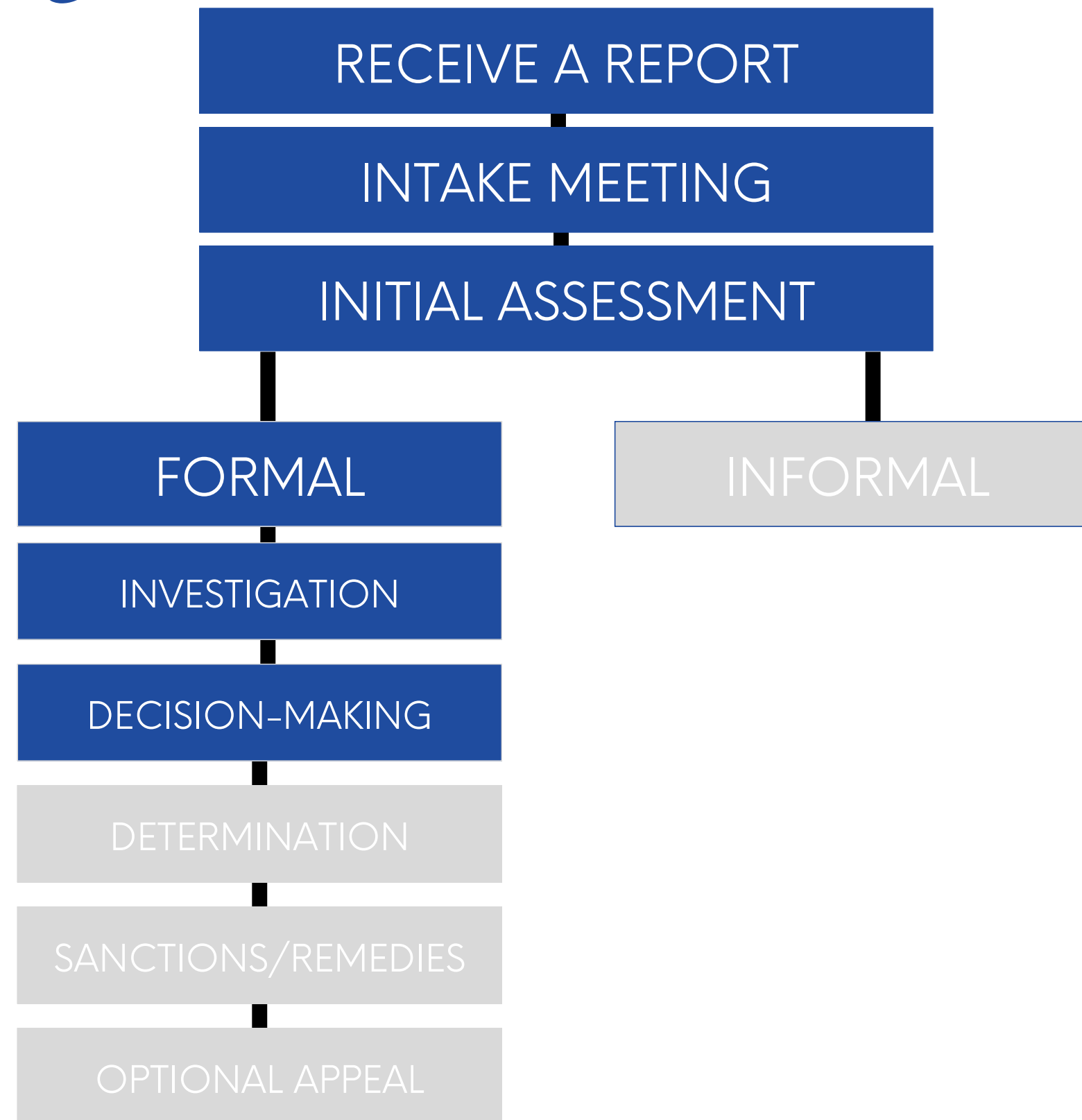
- Offer specialized knowledge relevant to the case (e.g., trauma response, digital evidence, cultural competency).
- Must be qualified and their testimony must be directly relevant.
- May help explain behavior patterns or evidence analysis.

## **Character Witnesses**

- Speak to the general character of a party (e.g., honesty, behavior, reputation).
- Often of limited relevance; may be excluded at the institution's discretion unless tied to credibility.

All relevant witnesses should be interviewed during the investigation phase.

# Phase 2: Decision-making



# Notice of Decision-making Process

At least 10 days following the final investigation report, move to the Decision-making phase.

Institutions are required to give both parties written notice of the determination process, including:

- “Date, time, location, participants, and purpose of all hearings... or other meetings, with sufficient time for the party to prepare to participate”;
- Who will make the decision;
- What will happen next (e.g., opportunity to submit questions);
- How evidence and findings will be reviewed; and
- When and how the determination will be made.



# Notice of Decision-making Process

The Notice should also detail:

- Disclosures related to policy and procedures
- Advisor information
- Hearing/meeting decorum
- Hearing/meeting information
- How to prep for a hearing/meeting
- Hearing agenda (if applicable)

\*\*\*Templates in Desk Reference\*\*\*

# K-12 Due Process

“With or without a hearing, after the recipient has sent the investigative report to the parties pursuant to paragraph (b)(5)(vii) of this section and before reaching a determination regarding responsibility, the decision-maker( s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.” (§ 106.45(b)(6)(ii))

- Option #1: host a live hearing
- Option #2: have the DM meet individually with the Parties to ask questions.
  - Each Party submits written, relevant questions they want to be asked of the other Party or Witnesses.
  - The DM asks those questions during the separate meetings, records the responses, and shares answers with the other Party.
  - Parties are then allowed to submit limited follow-up questions for further clarification.
  - The DM must screen questions for relevance & if a question is excluded, the DM must explain why to the Party who submitted it.

# Live Hearings (§106.45(b)(5)(iv))

- For post-secondary institutions, the recipient's grievance process must provide for a live hearing.
- 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 that challenge credibility.
- Cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice.
- A party may not conduct cross-examination personally.
- If a party does not have an advisor present at the live hearing, the recipient must provide without fee or charge to that party, an advisor of the recipient's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

# Live Hearings

May be conducted with all parties physically present in the same geographic location or, at the recipient's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. Recipients must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review." (§ 106.45(b)(6)(i))

- Required for higher ed, optional for K-12
- Sample agenda:
  1. Introductions
  2. Opening Statements (if any)
  3. Party Questions from Hearing Panelists
  4. Consent to Cross-Examination (Questioning) from Other Party's Advisor
  5. Witness Questions from Hearing Panel & Parties' Advisors
  6. Closing Statements (if any)
  7. Conclusion



# Cross-Examination

- 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(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

# Determining Relevancy

Is it relevant?

It is relevant if it has a tendency to make a material fact more or less likely to be true.

**Could be relevant if the answer to any of the below questions is “yes”:**

- Does it directly relate to proving or disproving an element of the allegations or defenses?
- Does it help to clarify, confirm, or disprove a material fact in the case?
- Is it related to the time frame of the alleged incident?
- Does it have a logical connection to the events under investigation?
- Does it comply with the narrow exceptions allowed under Title IX regulations regarding sexual history?

**Could be irrelevant if the answer to any of the below questions is “yes”**

- Does it involve unrelated personal history, character, or other info that does not pertain to the case?
- Could it unfairly bias the decision-making process or focus on inflammatory but irrelevant details?
- Has the information already been addressed through prior evidence or questioning?
- Does it unnecessarily invade the privacy of either Party without adding substantive value to the case?
- Does it attempt to introduce legally protected information without consent?
- Does it rely on stereotypes or assumptions rather than facts?
- Is the question abusive?

# Impermissible Questions & Evidence

- **Questions or Evidence About Complainant's Prior Sexual History**
  - Excluded unless offered to prove that someone other than the Respondent committed the alleged conduct.
  - Admissible only if it relates to specific incidents of the Complainant's past sexual behavior that are directly relevant to consent.
- **Privileged Information**
  - Attorney-client communications, medical or psychological records, unless the Party voluntarily waives privilege in writing.
- **Questions or Evidence Based on Stereotypes or Bias**
  - Relying on gender-based assumptions, cultural stereotypes, or irrelevant personal characteristics.
- **Questions that Harass or Intimidate**
  - Aggressive, overly personal, or designed to embarrass or badger the party.



# Pre-Hearing Conferences

## TIXC with the Party & Advisor

- Zoom or in person meeting with TIXC, or can be an email if requested
- Review Hearing Process & agenda
- Ask clarifying questions about procedure
- Opportunity for Party to request relevant Witnesses be present for the Hearing
  - Relevancy will be determined by DM
- Opportunity for Party to submit the questions or topics they wish to be asked or discussed at the Hearing
  - Allows DM to review questions ahead of time for relevance
  - Helps avoid improper evidence being introduced during the Hearing
  - Provides recommendations for better phrasing of questions, if needed
  - Parties can still submit questions or topics for the first time during the Hearing or request reconsideration of a Pre-Hearing relevancy decision if new information or testimony is presented



# Pre-Hearing Conferences

## TIXC with the DM

- Zoom or in person meeting with TIXC
- Review Hearing Process & agenda
- Ask clarifying questions about procedure
- TIXC will submit requested questions/topics to DM to determine relevancy
  - DM review questions for relevance
  - DM document and share their reasoning for including or excluding questions/evidence with TIXC
  - A summary of relevancy rulings will be provided to all Parties and Advisors before or during the Hearing
- DM will make determination about which Witnesses are relevant to question at the Hearing
- TIXC will invite Witnesses to participate as appropriate
- Witnesses can only be dismissed from Hearing with all Parties' consent

# Roles of Hearing Participants

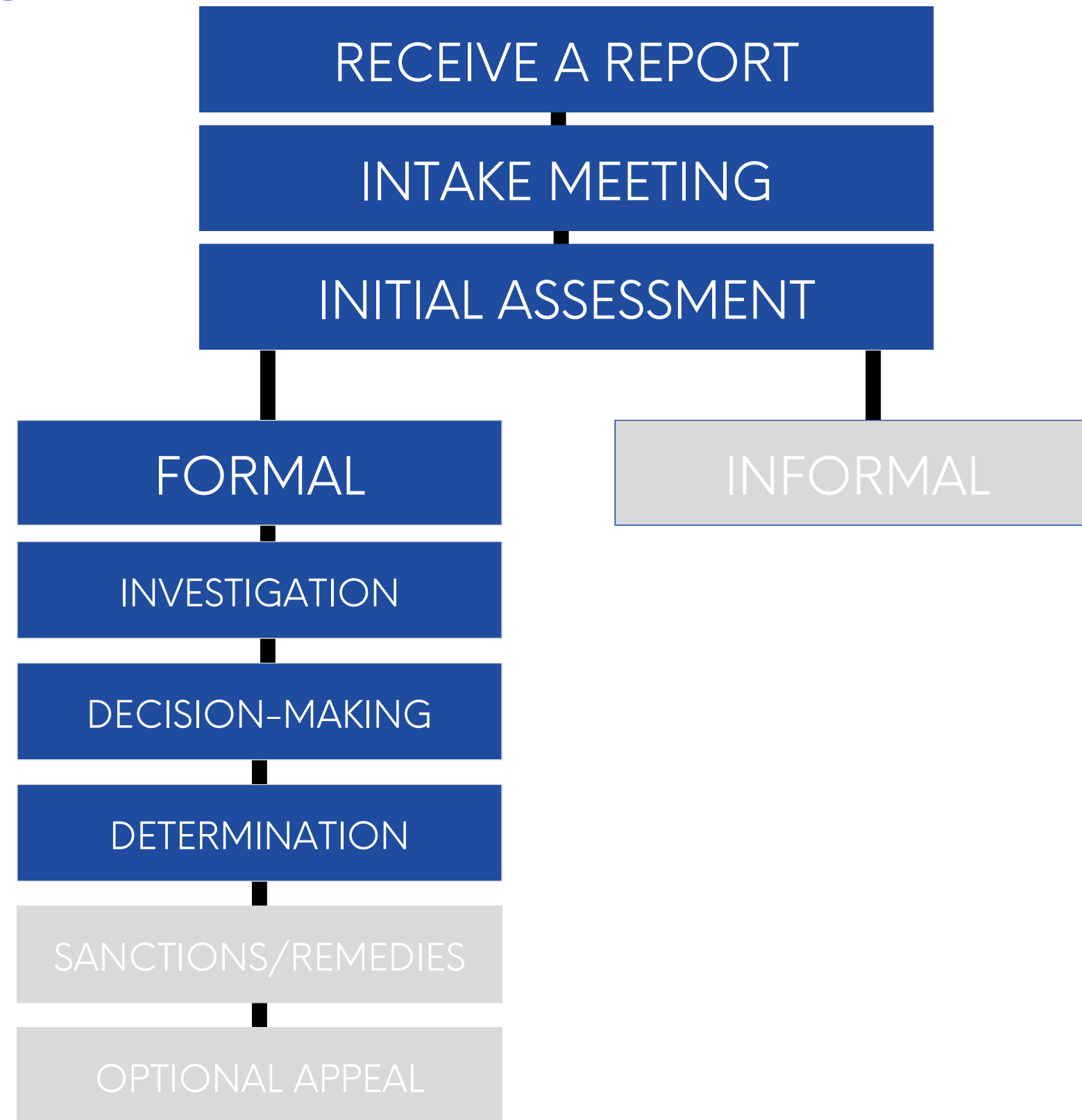
DECISION-MAKERS (DM)

Hearing Chair	Hearing Panelists	Advisor(s)	TIX Staff
<ul style="list-style-type: none"><li>• Review evidence.</li><li>• Facilitate Hearing and use Hearing Script.</li><li>• Ask questions of Parties &amp; Witnesses to clarify points.</li><li>• Make final relevancy determinations on behalf of Hearing Panel.</li><li>• Write the Outcome Letter with the help of Panelists.</li><li>• If Panelists disagree on a decision or ruling, the Hearing Chair may have the final say.</li></ul>	<ul style="list-style-type: none"><li>• Review evidence.</li><li>• Contribute to the rationale of the Outcome Letter.</li><li>• Ask questions of Parties &amp; Witnesses to clarify points.</li></ul>	<ul style="list-style-type: none"><li>• Serve as a support person for Party.</li><li>• Facilitate all questioning from Parties.</li></ul>	<ul style="list-style-type: none"><li>• Tech support.</li><li>• Logistics.</li><li>• Moderator if virtual.</li><li>• Facilitates private spaces (in-person) and Breakout Rooms (virtual).</li><li>• Answer questions about procedures &amp; impermissibility of evidence &amp; questioning.</li></ul>

# Roles of Hearing Participants

Parties	Witnesses	Investigator (if applicable)
<ul style="list-style-type: none"><li>• May make a brief opening or closing statement (if permitted by institutional policy)</li><li>• May answer questions from DMs.</li><li>• May submit to cross-examination.</li></ul>	<ul style="list-style-type: none"><li>• May be called by either party or the DMs to provide relevant information.</li><li>• May answer questions from DMs.</li><li>• May submit to cross-examination.</li></ul>	<ul style="list-style-type: none"><li>• If dictated by your procedures, may be called to explain the investigation process or clarify aspects of the report.</li></ul>

# Phase 3: Determination

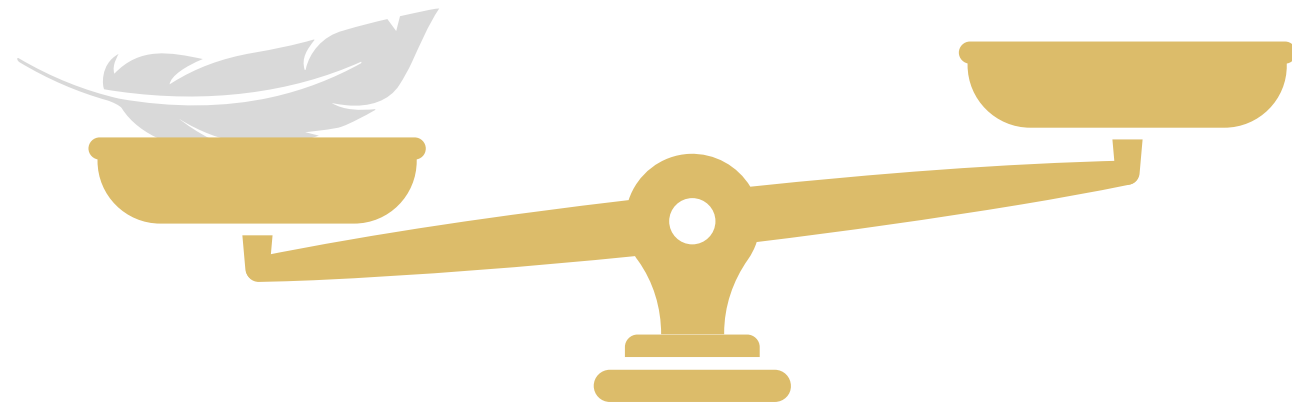




# Standards of Evidence

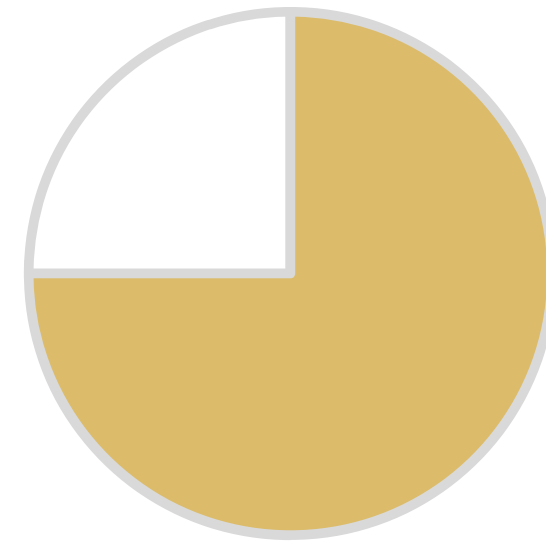
Preponderance of the Evidence

“More likely than not”



Clear & Convincing

“Highly probable”



# Applying Policy to Findings of Fact & Rationales

- The alleged behavior must meet **ALL** criteria of the policy definition **AND** the related definitions.
- If there is a single element that is not met or if there is not sufficient evidence to suggest “more likely than not,” the determination **must be** “Not Responsible.”
- Having your DMs use charts to assess each element is very helpful!

# Applying Policy to Findings of Fact & Rationales

## EXAMPLE ANALYSIS:

### Hostile Environment Sexual Harassment (2020 Title IX)

POLICY CRITERIA	MORE LIKELY THAN NOT	NO / NOT ENOUGH INFO
unwelcome sex-based conduct	✓	
is determined by a reasonable person	✓	
to be so severe, pervasive, and objectively offensive	✓	
that it effectively denies a person equal access to an educational program or activity.	✓	

It must meet all criteria = “Responsible”

# Applying Policy to Findings of Fact & Rationales

## EXAMPLE ANALYSIS:

### Hostile Environment Sexual Harassment (2020 Title IX)

POLICY CRITERIA	MORE LIKELY THAN NOT	NO / NOT ENOUGH INFO
unwelcome sex-based conduct	✓	
is determined by a reasonable person	✓	
to be so severe, pervasive, and objectively offensive		✓
that it effectively denies a person equal access to an educational program or activity.	✓	

If “no” or “not enough info” is checked for any of the boxes = “Not Responsible”



# Sample Definitions for Analysis

## Coercion

The use of pressure, intimidation, emotional manipulation, or threats to compel someone to engage in sexual activity.

# Sample Definitions for Analysis

## Consent – Define this for your institution!!

Conscious, informed, freely and voluntarily given, mutually understandable words or actions which indicate a willingness to participate in a specific mutually agreed upon sexual activity.

- The presence of a “yes,” not the absence of a “no.”
- It is the responsibility of the person seeking to initiate sexual contact or activity to obtain consent.
- Can be withdrawn at any time, in a way that is reasonably understandable.
- Silence or lack of resistance  $\neq$  consent. Resistance is not required but it is a clear demonstration of non-consent.
- Incapacitated, unconscious  $\neq$  consent.
- Uninformed or deceived  $\neq$  consent.
- Compelled, coerced, forced, threatened, power dynamic  $\neq$  consent.
- Consent to some sexual activity  $\neq$  consent for other sexual activity.
- A current or previous intimate relationship  $\neq$  consent.
- If an individual expresses conditions or limitations on the scope of their consent, those conditions and limitations must be respected.

# Sample Definitions for Analysis

## Incapacitation

A state where a person cannot make rational, reasonable decisions or understand the nature of the sexual interaction (i.e., the who, what, when, where, why, and how), provided that the Respondent knew or reasonably should have known of the person's incapacity. Incapacity may result from disorientation, helplessness, sleep, unconsciousness, the effects of alcohol or drugs, temporary or permanent mental or physical health conditions, involuntary physical restraint, or the use of incapacitating substances.

- A person who is not incapacitated at the beginning of sexual activity, may, by virtue of alcohol or drug ingestion **prior to, or during**, the activity, reach a state of incapacitation as the activity continues and progresses.
- Someone who is **sleeping** or completely **passed out** is incapacitated.
- Incapacitation is determined through consideration of all relevant indicators of a person's state and is **not** synonymous with intoxication, impairment, blackout, and/or being drunk.
- Also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.
- Did the person initiating sexual activity know that the other Party was incapacitated? **Should they have?**

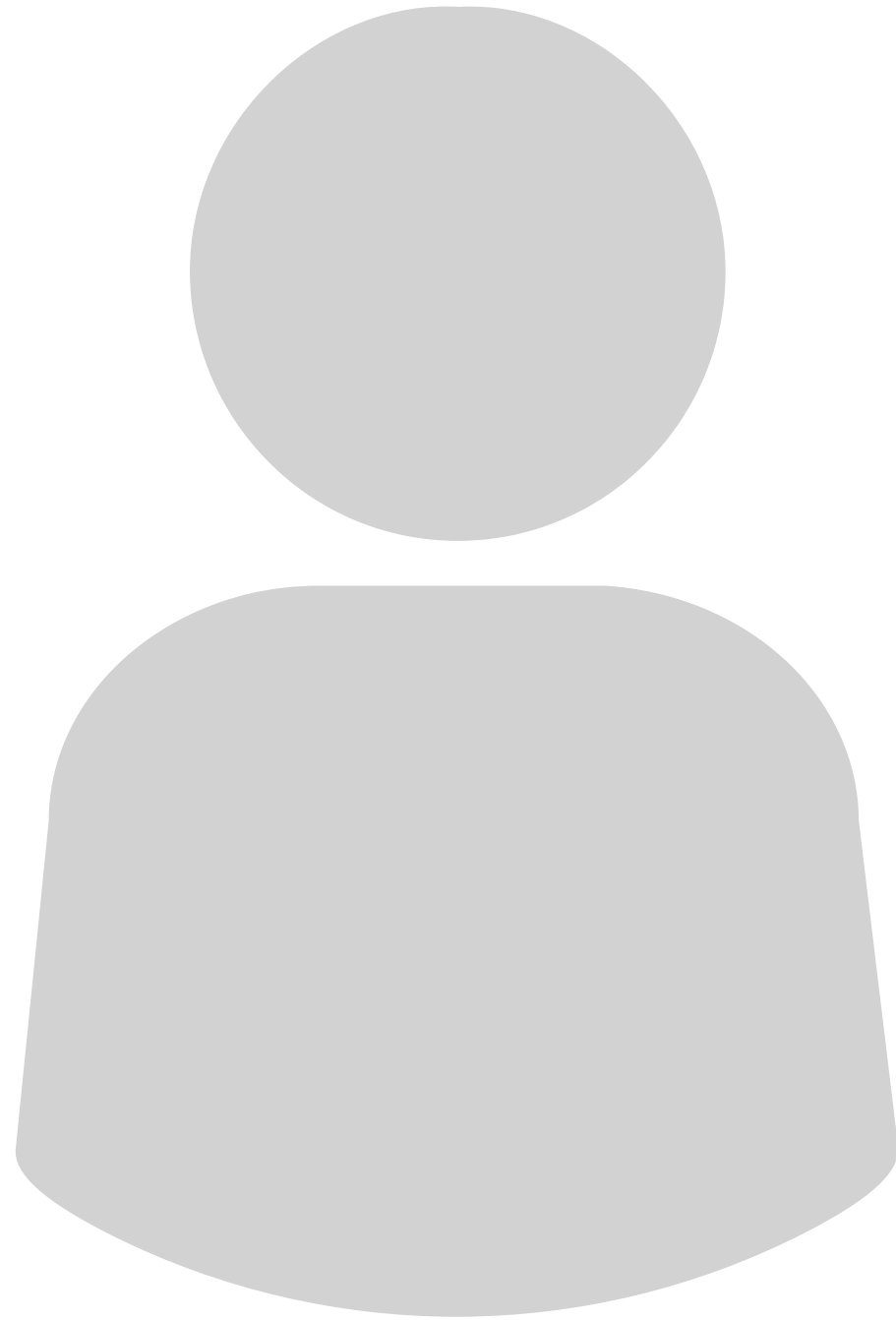
# Incapacitation Analysis

The totality of the circumstances must be analyzed:

- Nature & amount of alcohol/drugs consumed
- Timeframe of consumption
- Tolerance level
- Body size and composition
- Food intake before and during substance use
- Fatigue, illness, or dehydration
- Interactions of alcohol with other drugs (prescription, over-the-counter, or illicit)
- Observable indicators of impairment
- Communication or behavioral cues
- Perceptions and observations of others



# Sample Definitions for Analysis



## Reasonable Person

The "reasonable person standard" evaluates situations based on how a typical person from the same protected class (e.g., sex, race, ability) in the same circumstances would perceive or respond to the facts.

- Take into account the totality of the circumstances, including the person's background, context of the interaction, and the dynamics at play.
- Focus on the perceptions and experiences of the Party based on their identity and how they would reasonably interpret the situation.

# Sample Definitions for Analysis

## Force

The use of physical violence, physical restraint, and/or threats of bodily harm to gain compliance. The use of force negates the possibility of voluntary consent and renders any subsequent conduct non-consensual.

## Violence

Intentionally or recklessly causing the Complainant physical, emotional, or psychological harm.

- Legitimate use of violence for self-defense would not meet this definition because the purpose is safety, not harm.
- Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

# Sample Definitions for Analysis

## Romantic or Sexual Relationship

A social relationship of a romantic or intimate nature between two individuals. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved. A dating relationship may exist regardless of whether the relationship is sexual in nature, and it does not require exclusivity or formal labeling by the individuals involved.

# What Counts as a “Relationship”?

In Title IX terms, what matters most is not the label, but whether the interaction has:

- Romantic or sexual intent or history, and
- A pattern or context that elevates it above casual acquaintance.

To operationalize this in policy or investigations, a fact-specific inquiry is used. Title IX Coordinators, Investigators, and Decision-makers typically consider:

- Whether the individuals engaged in sexual activity, even once.
- Whether they exchanged romantic or flirtatious communication (texts, DMs, etc.).
- Whether there was emotional intimacy or shared expectations of exclusivity.
- The duration and frequency of interaction (e.g., multiple dates vs. a single encounter).
- How the individuals self-identified the connection, but is not the sole deciding factor.

A single hookup may or may not constitute a “dating relationship” under Title IX—it depends on the surrounding facts. However, patterns of sexual or emotional interaction, even without formal commitment, often do meet the threshold for investigations involving dating violence, stalking, or sexual harassment.

\*\*\*“Is there a Dating Relationship” Guide in Desk Reference\*\*\*



# Deliberations

After the Hearing/Questioning Process, the DM has **ten (10) days** to deliberate and write an outcome letter. The DM will:

- Carefully analyze all of the **evidence** presented
- Use the correct evidence standard
- Consider the **consistency, plausibility, and corroboration**
- Evaluate any potential **biases, motives, or inconsistencies**
- Compare the facts & focus on **RELEVANT evidence**
- Discuss **differing viewpoints** among Panelists (if applicable)
- Document findings clearly, **citing specific evidence** to support conclusions
- Decide whether it is more likely than not that a policy violation occurred
  - A final determination = **majority** (2/3) decision for panels

# Writing the Outcome Letter

YOU don't write outcome letters. Your decision-maker(s) write it, but you are the checks and balances & responsible for **making sure it is compliant.**

So let's take it step by step...

# Outcome Letter Requirements (§106.45(b)(7)(ii))

The written determination must include:

- Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the recipient'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 the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- The recipient's procedures and permissible bases for the complainant and respondent to appeal.

# Outcome Letter Requirements



**If the Outcome Letter doesn't have all of these pieces, or pieces feel insufficient or incomplete, send it back to your decision-maker(s) with that feedback!**



# Outline the Procedural History

- This can be pulled together from the Investigation Report

## **Procedural History**

Following receipt of the formal complaint filed by the Complainant on August 6, 2025, the Title IX Office issued a Notice of Investigation and Allegations (NOIA) to both parties on August 7, 2025, outlining the alleged conduct and potential policy violations. The Investigator, Kristie McCann, Esq. of the Law Office of Kristie McCann, Inc., conducted interviews with both parties, as well as with multiple witnesses identified by each party. These included peers, faculty members, and residential staff familiar with the events and parties involved. The investigation included a review of digital communications, campus surveillance footage (where available), class seating records, residential hall access logs, photographs, and descriptive accounts of relevant campus locations. Both parties were given the opportunity to review and respond to the preliminary investigation report and all directly related evidence. A live hearing was held on November 10, 2025, during which both parties, their advisors, and identified witnesses participated. The Decision-maker reviewed the complete investigation report, evidence and testimony presented at the hearing, and all written submissions prior to making this determination.

# Summarize the Allegations

- This can be pulled directly from the NOIA and/or Investigation Report

## **Summary of Allegations**

The formal complaint alleged that during the summer of 2025, the Respondent engaged in a pattern of stalking behavior that caused emotional distress. The alleged conduct included multiple unauthorized entries into the Complainant's on-campus residence hall room while she was asleep, persistent presence outside her residence hall, repeated following in campus parking areas and walkways, uninvited appearances at off-campus locations, and prolonged staring during shared class sessions. These actions were alleged to be unwelcome, ongoing, and distressing to a degree that significantly affected the Complainant's sense of safety and well-being.

# Make Findings of Fact

- What happened? DMs need to:
  - Use SPECIFIC evidence from Investigation Report & Hearing
  - Use plausibility, credibility, and “more likely than not”
  - Focus on the facts
    - Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties
    - Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains
  - State clearly which facts are accepted and which are rejected (**findings**)

## Findings of Fact

Based on the information gathered during the investigation and presented at the hearing, it is more likely than not that the Respondent engaged in a course of conduct directed toward the Complainant. The Respondent admitted during the investigation to entering the Complainant's room at night without her consent to "watch over her." Video surveillance confirmed his presence outside the residence hall on multiple evenings. Witnesses confirmed that the Complainant disclosed the Respondent's behavior and appeared confused and emotionally distressed. Further evidence showed that the Respondent repeatedly followed or appeared near the Complainant around campus and in public spaces, including in proximity to her parked vehicle and during academic activities. Class enrollment and seating records confirmed his consistent presence near her in a shared course. The conduct, taken as a whole, demonstrated a consistent pattern of uninvited, targeted attention.

# Explain Findings

- Why/how did the DM decide what happened?
- They've clearly stated which facts are accepted and which are rejected (**findings**), now they state the reasons why (**rationale**) and credibility analyses for the Complainant, Respondent, and any witnesses.
- Note: As TIXC, you must review the findings & make sure specific evidence has been cited and the DM's rationale is clear and understandable.

The Complainant's statements throughout the process were found to be credible, consistent, and corroborated by both physical evidence and third-party accounts. She provided a detailed narrative that remained stable across interviews and aligned with known facts, such as surveillance footage and class records. Witnesses Angela Weber and Jessica Stanley were also found to be credible and reliable. Both provided timely, independent accounts of what the Complainant shared with them during the relevant time period, and their recollections were consistent with one another and with the Complainant's description of events. Their testimony demonstrated no indication of bias, exaggeration, or coordination, and was offered with appropriate specificity. The Respondent's statements, while cooperative, affirmed key elements of the alleged conduct—including his unauthorized entry into the Complainant's room—and reflected a lack of awareness or concern regarding personal boundaries and the impact of his behavior. While he denied intending harm, his narrative did not meaningfully dispute the allegations of a pattern of targeted, unwanted attention.



# Make Determinations

- Does what happened violate the policy? Does it meet the threshold of a policy violation?
- This requires an analysis of each applicable policy definition.
- Use appropriate evidence standard (e.g., preponderance of the evidence).

## **Determinations** ***Stalking***

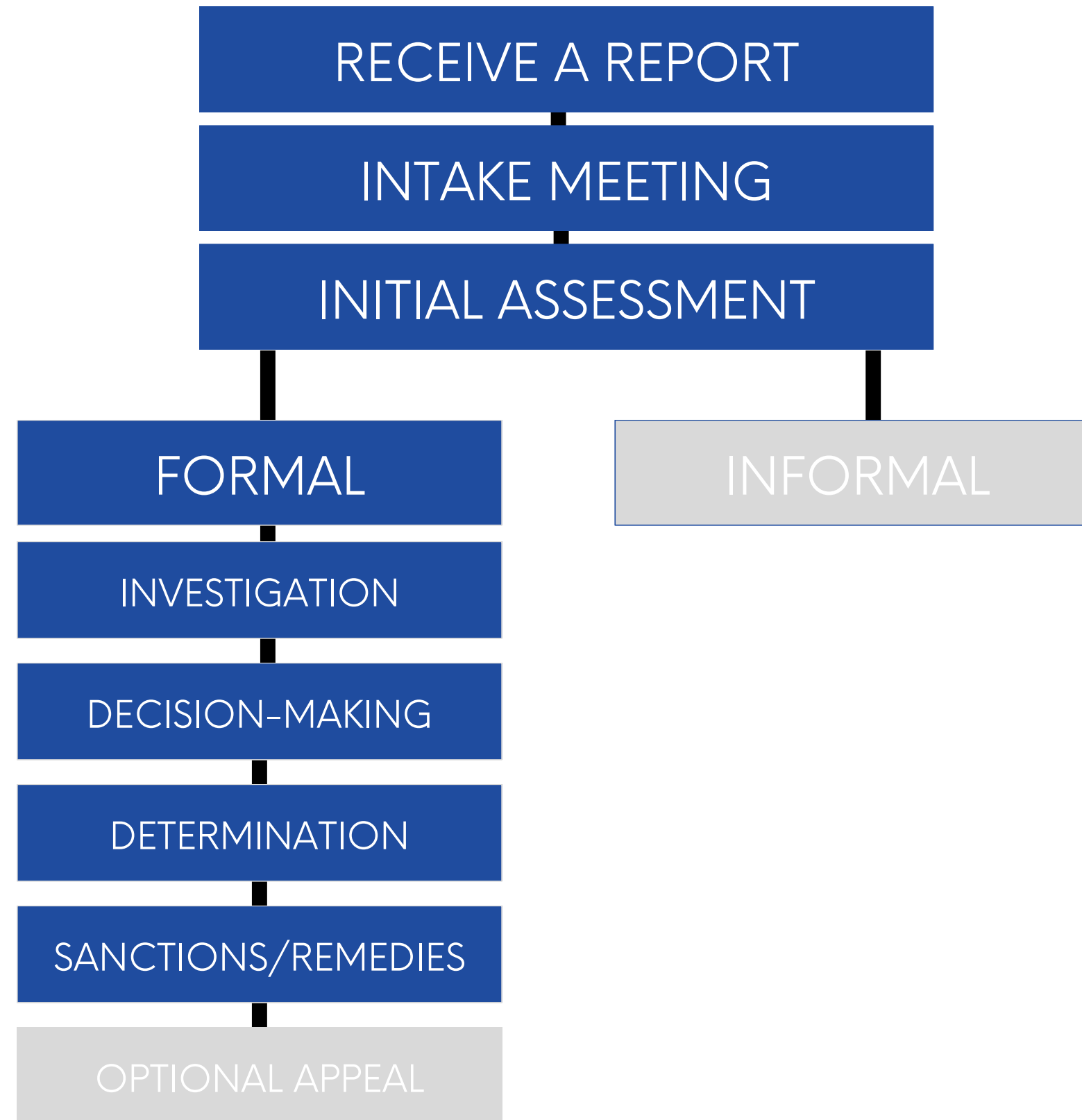
Based on the findings of fact as previously outlined, there is a preponderance of the evidence to suggest that the Respondent engaged in stalking, therefore the Hearing Panel finds the Respondent **Responsible** for violating Forks University's Title IX Policy.

# Explain Determinations

- What's the DMs rationale for the determination?

The conduct established through the investigation—including repeated uninvited proximity to the Complainant, intrusion into her personal living space, and sustained observation—meets this definition. While the factual details are discussed in the earlier “Findings of Fact” section, the University emphasizes that the pattern, frequency, and personal nature of the Respondent’s behavior exceeded what would be considered normal or appropriate interaction between students. The Respondent’s own admissions, coupled with third-party witness testimony and physical evidence, support the conclusion that his behavior was intentional, targeted, and continuous in nature.

# Phase 4: Sanctions & Remedies



# Sanctions & Remedies

Sanctions refer to disciplinary consequences imposed on a Respondent **after a determination of responsibility** has been made at the conclusion of the grievance process.

NOTE: The Respondent's past conduct record can inform the sanctioning phase!

Remedies are actions **designed to restore or preserve equal access** to the recipient's education program or activity. Remedies may include the same individualized services as supportive measures; however, remedies may be disciplinary or punitive and need not avoid burdening the Respondent once a finding of responsibility has been made.



# Factors to Consider for Sanctions

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- The need for sanction(s) to bring an end to the behavior;
- The need for sanction(s) to prevent the future recurrence of the behavior;
- The need to remedy the effects of the behavior on the Complainant and/or the community;
- The impact on the Parties; and
- Any other information deemed relevant by the Hearing Panelists.

**Sanctions issued are intended to be educational in nature and should be proportionate with the violations found to have occurred.**

Stop the Behavior  
Prevent its Recurrence  
Remedy the Effects

# Sanctions

## **Example Sanctions for Students**

- Formal warning or written reprimand
- Educational sanctions (e.g., reflective essays, workshops on consent/boundaries)
- Probation (behavioral or disciplinary)
- Loss of privileges (e.g., restricted access to campus events or facilities)
- No-contact directives
- Restitution (for property damage or related harm)
- Removal from campus housing or reassignment
- Suspension (temporary removal from enrollment for a specified time)
- Expulsion (permanent separation from the institution)

# Sanctions

## **Example Sanctions for Employees**

- Written or verbal warnings
- Mandatory training or coaching
- Reassignment or altered work duties
- Loss of supervisory responsibilities
- Performance improvement plans ("PIP")
- Suspension with or without pay
- Denial of promotion or pay increase
- Termination of employment

# Sanctions

## **Example Sanctions for Student or Employee Groups/Organizations**

- Formal warning or probation
- Loss of event hosting privileges
- Restriction on recruitment or new membership
- Mandatory educational programs or training
- Loss of funding or university recognition
- Suspension of organization activities
- Permanent disbandment or removal of charter



# Remedies

- Implemented after a finding of responsibility
- Focused on the Complainant (to restore access)
- Can overlap with sanctions (e.g., housing reassignment or permanent no-contact order)
- May impact the Respondent but are not considered sanctions unless explicitly disciplinary
- May include:
  - Academic accommodations
  - Housing changes
  - Counseling services
  - Ongoing safety planning
  - No-contact orders
  - Extensions of supportive measures with increased scope or permanence
  - Alteration of work arrangements for employees
  - Provision of campus safety escorts

Stop the Behavior  
Prevent its Recurrence  
Remedy the Effects

# Recommendations for findings of “Not Responsible”

Non-punitive, non-disciplinary actions/options for the Respondent and/or department/school community:

- Referral to counseling and/or health services;
- Referral to the Employee Assistance Program;
- Course and registration adjustments;
- Education to the individual and/or the community;
- Audits;
- Climate surveys;
- Policy modification and/or trainings

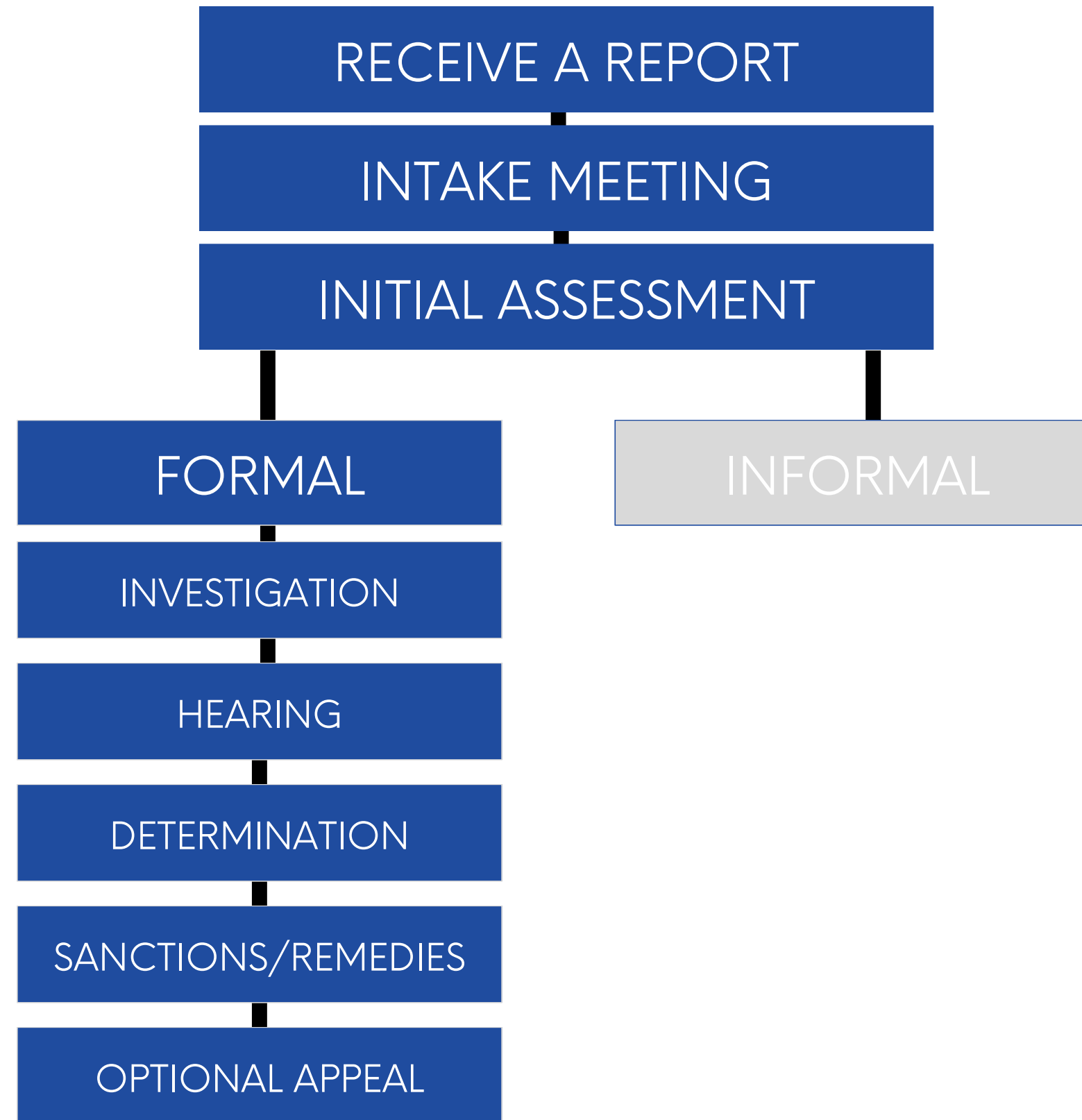




# Appeals



# Phase 5: Appeal





# Appeals

“A recipient must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein...”

# Appeals – § 106.45(b)(8)

As to all appeals, the recipient must:

- (A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
- (B) Ensure that the decision-maker( s) for the appeal is not the same person as the decision-maker( s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- (C) Ensure that the decision-maker( s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section;
- (D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
- (E) Issue a written decision describing the result of the appeal and the rationale for the result; and
- (F) Provide the written decision simultaneously to both parties.

# Appeal Grounds

## **Procedural irregularity** that would affect the outcome:

- Someone was not interviewed
- I was not allowed to ask questions of the other Party or Witnesses
- My question was deemed not relevant
- Burden was put on me to prove consent
- Misinterpretation or inappropriate application of the policy definitions
- Missing deadlines to provide Parties materials / not giving correct review periods
- Errors at hearing
- Would it change the outcome?

## **New evidence** that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made:

- How do you know it's new and wasn't reasonably available?
  - "I forgot to turn this in"
- It is new, but is it relevant? Would it change the outcome?

## TIXC, Investigator(s), or Decision-maker(s) had a **conflict of interest or bias** for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome.

- An allegation of bias without factual support "no longer passes muster" -Doe v. Univ. of Colorado

# Appeals

- Institutions may add additional grounds for appeal in their own policies, but they must include at least these three.
- Appeals must be offered equitably to both parties.
- Specify the appeal period timeframe in your policy & procedures as well as your outcome letters.



# Appeal Notice

- Typically, one letter is sent to both parties at the time the appeal is filed that includes:
  - Notice that an appeal was filed
  - The stated ground(s) for appeal
  - A summary of the substance of the appeal (what the procedural irregularity was and how it allegedly impacted the outcome; what the new evidence is, why it wasn't available earlier, and how it might affect the decision; or what the alleged conflict of interest or bias was, and how it may have influenced the outcome)
    - This does not mean you must share the full appeal letter, but you should give enough information so the other party can prepare a meaningful response.
  - A timeline and instructions for submitting a written statement in support of or opposing the outcome

\*\*\*Template & Sample Appeal Notice in Desk Reference\*\*\*

# What Happens During an Appeal?

- A neutral Appellate Decision-maker reviews the request (must be different from investigator, original decision-maker, or Title IX Coordinator).
- The non-appealing party is notified of the appeal.
- Both parties may submit a written statement in support of or challenging the appeal.
- The Appellate Decision-maker(s) review the existing record (investigation report, party responses to report, hearing recording/transcript, outcome letter, related procedural communications, etc.)
- The Appellate Decision-maker(s) may consult with TIX personnel for clarification, but not to gather new evidence
- A written determination with rationale is shared simultaneously with both parties.

# Differences in Responsibility

## HEARING DECISION-MAKER

- Determine What Happened
- Findings of Fact
- Findings of Policy
- Determine sanctions & remedies or recommendations

## APPELLATE DECISION-MAKER

- Review the Appeal
- Determine Whether Grounds for Appeal Have Been Met
- Make Decision Regarding Merits of Appeal

# Possible Appeal Outcomes

## #1: Affirm the original finding and sanction

- The Appeal Decision-maker finds that:
  - The appeal ground(s) do not affect the outcome; or
  - The original process and decision were sound and supported by the record.
- Result:
  - No changes are made to the finding or sanction.
  - Both parties receive a written decision with rationale.
- This is the most common outcome when no procedural, evidentiary, or bias-related issues are found.



# Possible Appeal Outcomes

## #2: Modify the Finding and/or Sanction

- The Appeal Decision-maker determines that:
  - A valid ground for appeal exists; **AND**
  - The evidence supports a change in the outcome or sanction without needing a full remand
- Examples:
  - Change from “Responsible” to “Not Responsible” (or vice versa)
  - Adjusting a sanction (e.g., lengthening or reducing suspension)
- A modification must be supported by the existing record and explained in the written decision.

# Possible Appeal Outcomes

## #3: Remand for Further Action

- The Appeal Decision-maker finds that:
  - A procedural error, conflict of interest, or new evidence significantly impacted the outcome; or
  - The case requires additional investigation, a new hearing, or review by a different decision-maker.
- Result:
  - The case is sent back to an appropriate stage of the process.
  - May involve re-opening the investigation or reconvening a hearing, potentially with a new investigator or decision-maker(s).
- A remand is used when fairness or due process concerns cannot be resolved through simple modification.

\*\*\*Template & Sample Appeal Outcome Letter in Desk Reference\*\*\*

# Key Takeaways

- Title IX Coordinator work is complex! Title IX has legal, procedural, and emotional dimensions. No one is expected to know everything off the top of their head.
- When in doubt, check the regs. They are your roadmap. Use them. Bookmark them.
- Communicate. Communicate. Communicate. Keep all parties informed at every step: timelines, expectations, rights, and options.
- Ask questions. You're not alone.
- Equity is non-negotiable. Both parties must be treated fairly, respectfully, and with equal opportunity from start to finish.
- Mistakes happen & most can be fixed. What matters is transparency, timeliness, and corrective action when needed.
- Document everything. If it's not written down, it didn't happen. Keep a clear record of notes, emails, and decisions.
- Take care of your mental & physical health. This work is hard!





# THANK YOU

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