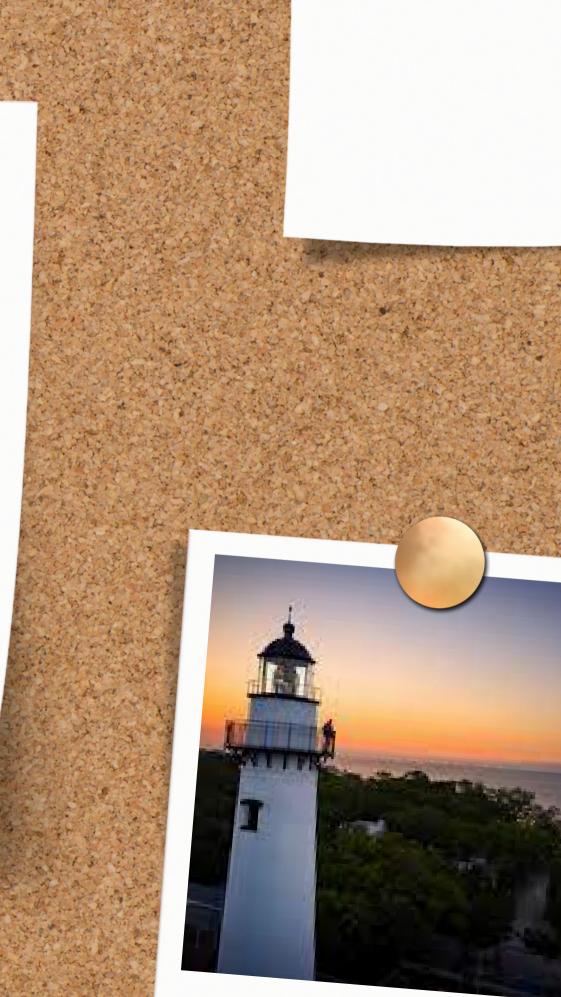


St. Simons Island. Ga October 2023







Betsy Smith Director of Title IX Services



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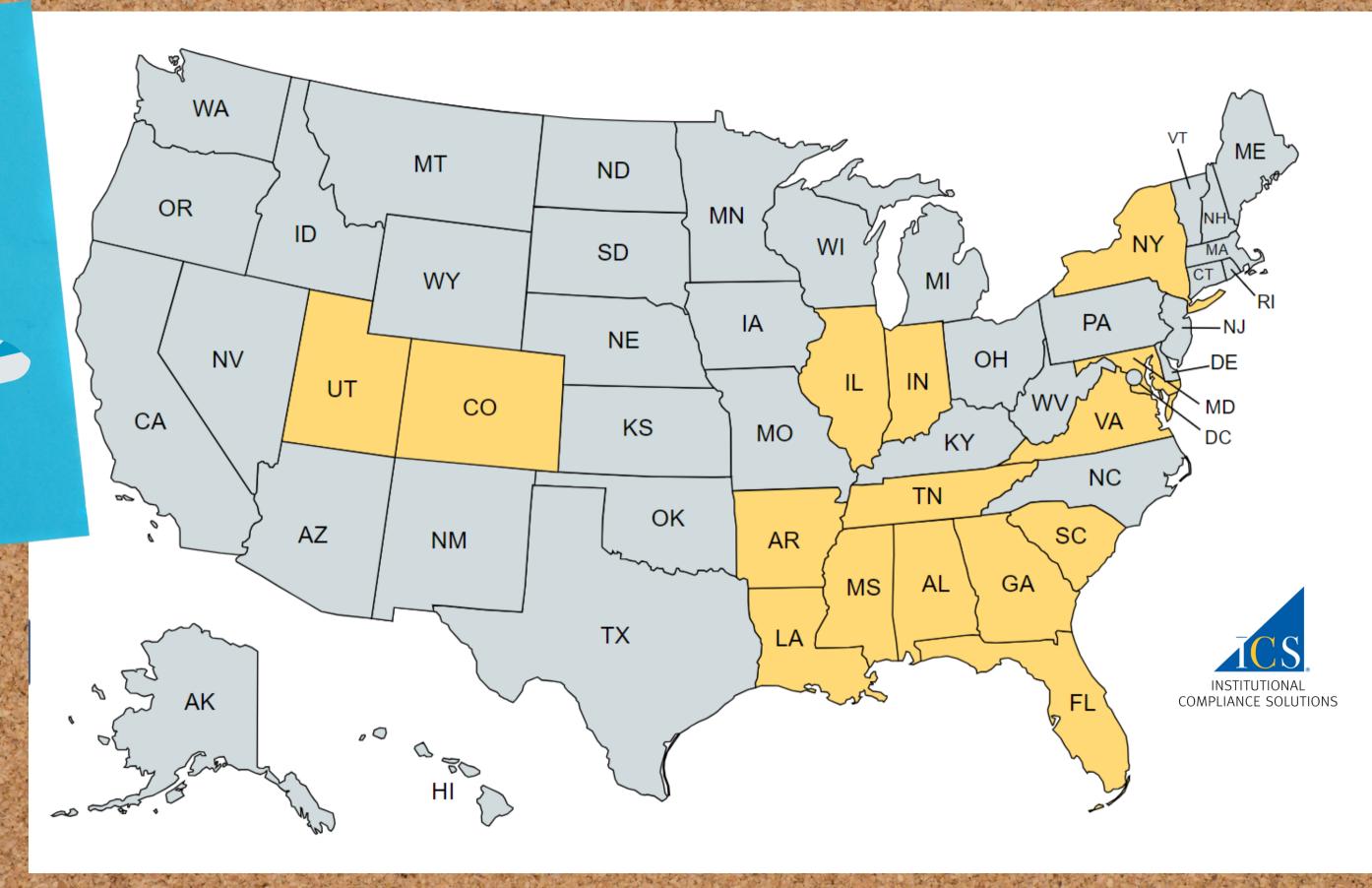
Intro/ Housekeeping

- AgendaBreaks
- · Posting
- Recording
- Interactive
- Connections
- . Workbook



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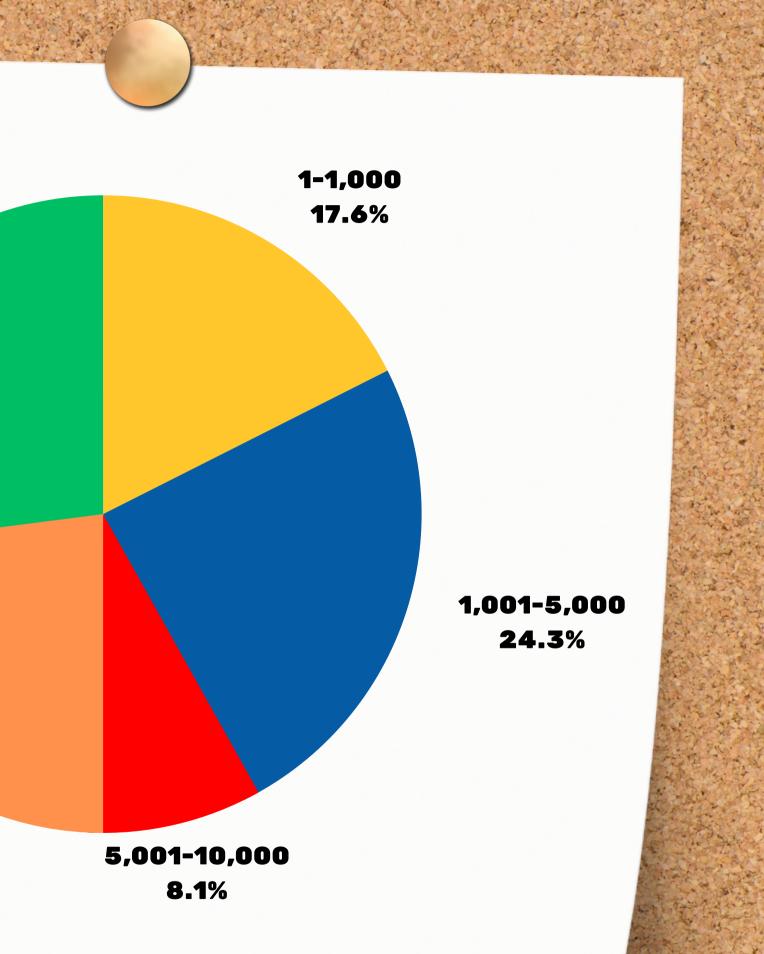
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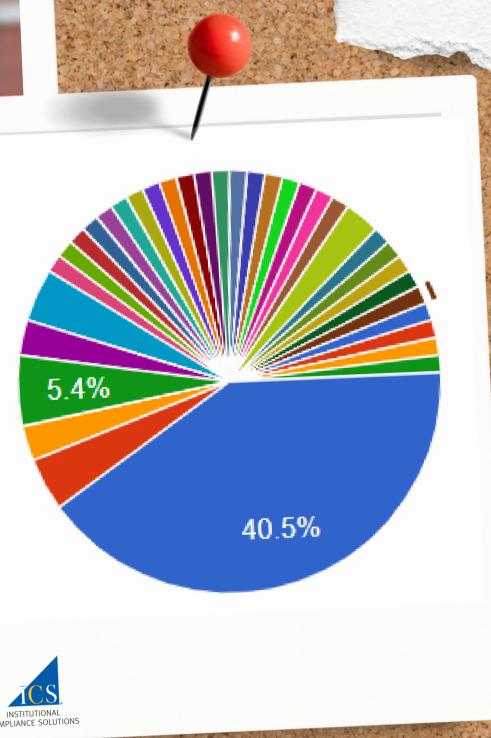
Size of Your Districts

>20,000 27%

10,001-20,000 23%

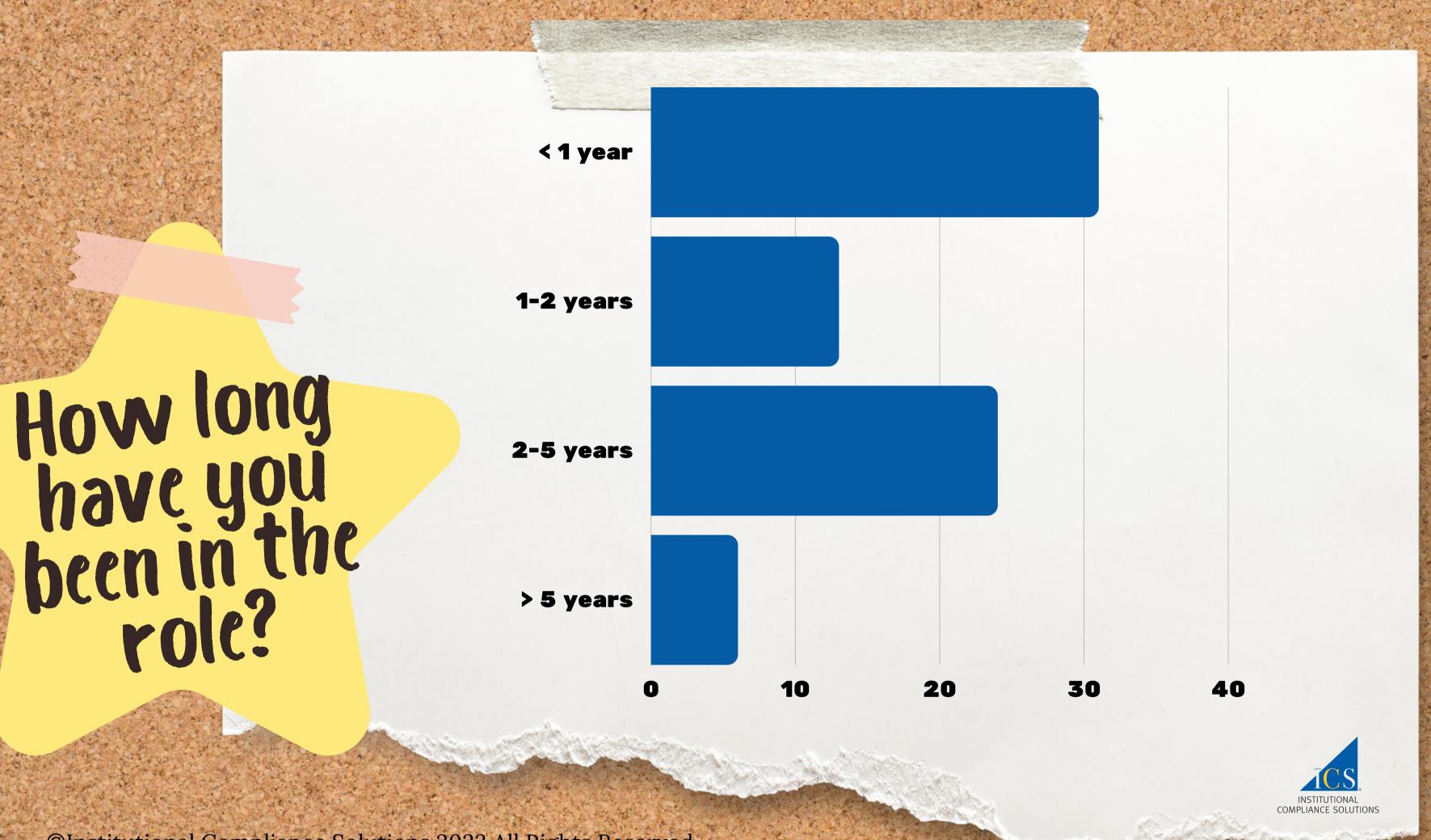






Your Roles in Your District

Title IX Coordinator Compliance Officer Federal Programs Coordinator Administrator (Principal, Assistant Prin... Superintendent Assistant Superintendent Director of HR, Title IX Coordinator Special Education Director



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ABSOLUTELY NOT

9.7%

We are getting there!! 41.7%

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Yes! 48.6%



Your District's Compliance

Completely Compliant 18.3%





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Not Compliant

4.2%

Kind of Compliant 18.3%

Mostly Compliant 59.2%



Part 1

Title IX Coordinator The Who, What, When, Where, Why, & How







Title IX

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.



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The Why



ACCESSI

At its core, Title IX is a law about providing access to students and employees.



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a law ss to es.

Including:



Athletics/Activities







Pregnancy

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Sexual Harassment





- Federal Law
- Enforced by OCR
 Historically viewed as applying only to athletics
- Prohibits discrimination on the basis of sex





Is or May Be Title IX

- Discrimination based on gender
- Sexual Harassment

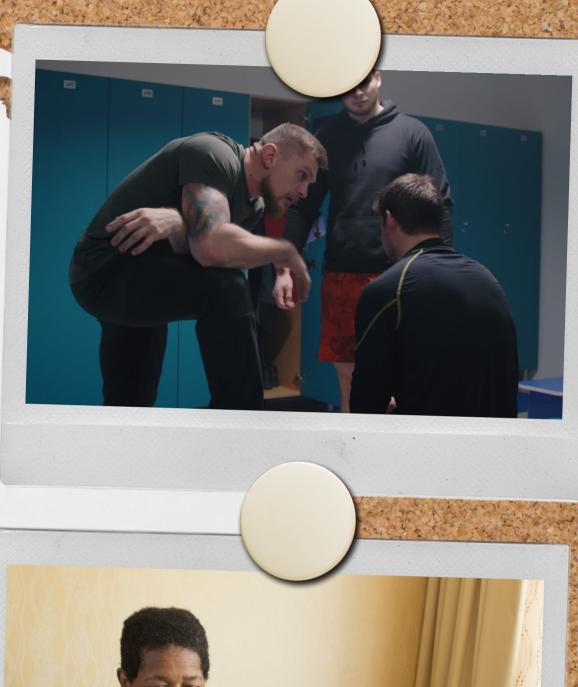
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- Pregnancy discrimination
- Retaliation
- Bullying/Cyber-Bullying when it involves sexual misconduct
- Hazing when it involves sexual misconduct

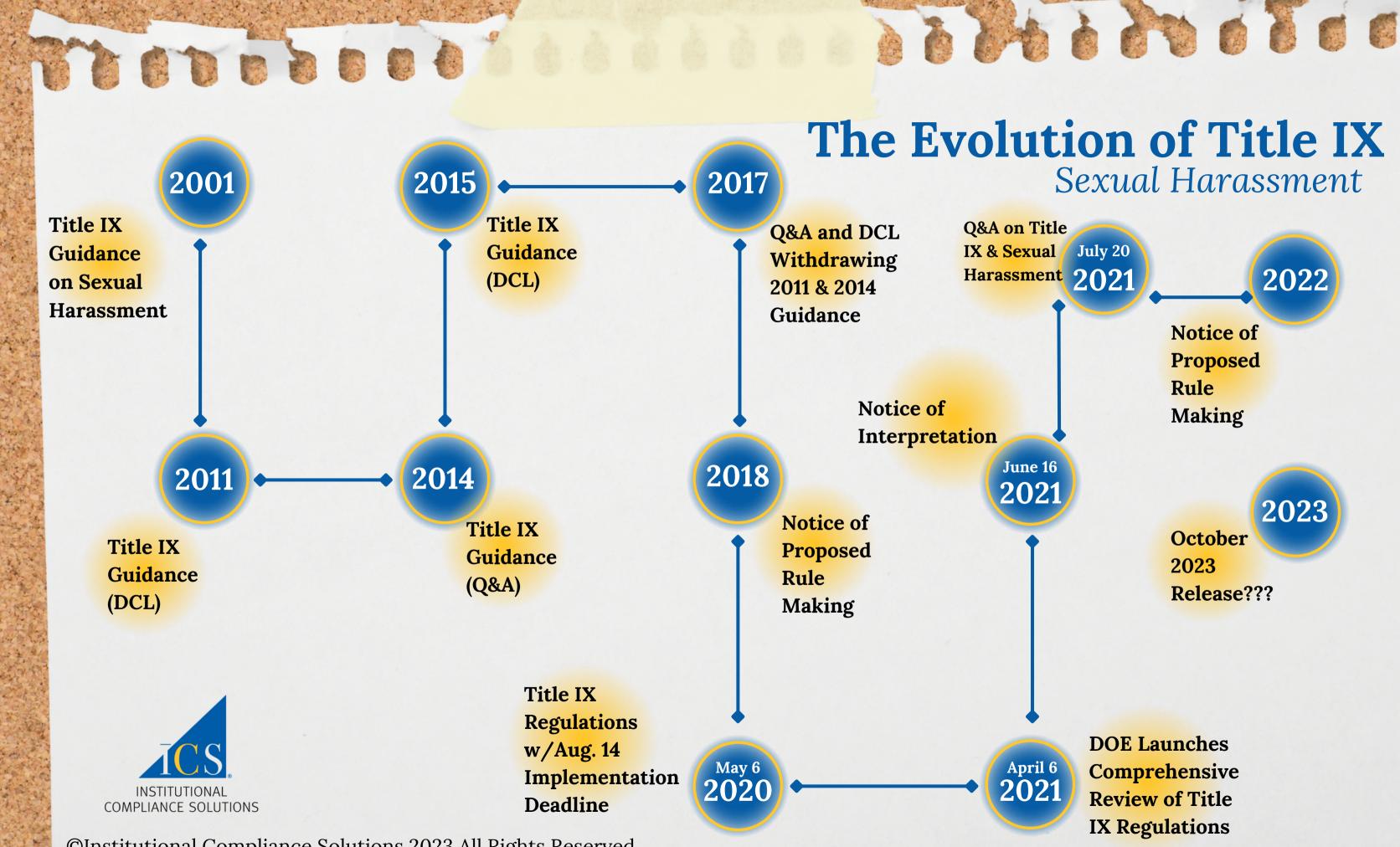
Is NOT Title IX

- Disability discrimination (ADA)
- Employment discrimination based on race, religion, or national origin (Title VII)- Note overlap with sex
- Student discrimination based on race, religion, or national origin (Title VI)
- Age Discrimination (ADEA)









Sexual Harassment

An employee of the district conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

Unwelcome conduct determined by a reasonable person to be so severe, pervasive AND objectively offensive that it effectively denies a person equal access to the recipient's education program or activity

"Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

9

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The What



Quid Pro Quo

Respondent Must Be Employee

Athletics, Performance Evaluations, Awards, etc.

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Bucket 1 Deep Dive

Promotions, Grades, Nominations for



Bucket 2 Deep Dive Unwelcome Conduct

Severe, Pervasive, AND Objectively Offensive
Severe- nonverbal, verbal, touching
Pervasive- how often, how widespread
Objectively Offensive- offensive to reasonable person under the same

- circumstances

Denies Equal Access







- Sexual Assault

 - Rape
 Fondling
 Statutory Rape
 Incest







Sexual Assault

The BIG 4

Rape

() p b p b b b b

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest

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Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape

Sexual intercourse with a person who is under the statutory age of consent.

Consent

The Assistant Secretary did not require districts to adopt a particular definition of consent with respect to sexual assault.



WHAT DOES THIS MEAN?

DEFINITION OF CONSENT



Create/use a definition of consent that makes sense to you and your district. Make sure you can 1) explain it and 2) apply it.

SITUATIONAL CLARITY

Make sure to include situations where consent cannot be obtained/given (ie. coercion, incapacitation) and clearly define those situations.

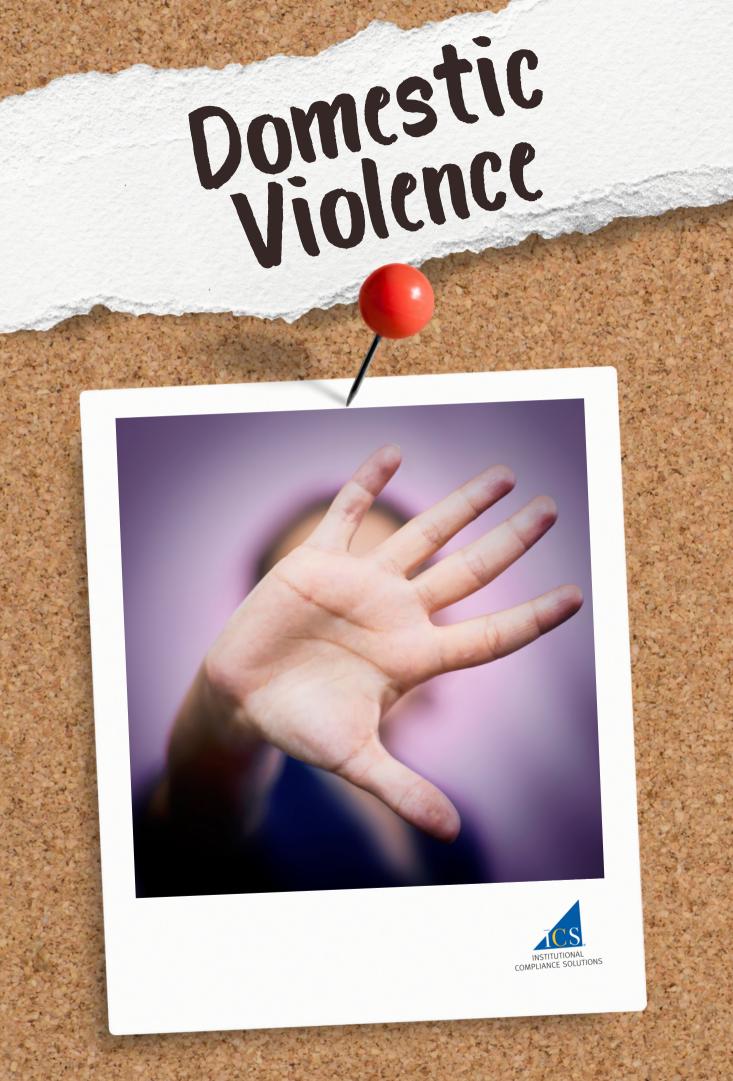


Dating Violence

Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be based upon the reporting party's statement with consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.





- the victim;
- common;
- partner;

A felony or misdemeanor crime of violence committed • by a current or former spouse or intimate partner of

• by a person with whom the victim shares a child in

• by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate

• 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.

Stalking

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 means 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.

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For purposes of the Stalking definition:

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

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



Education Program or Activity

Locations, events, or circumstances (operations) over which the district exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.

Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

Does not create or apply a geographic test, does not draw a line between "off campus/property" and "on campus/property," & does not create a distinction between sexual harassment occurring in person vs online.

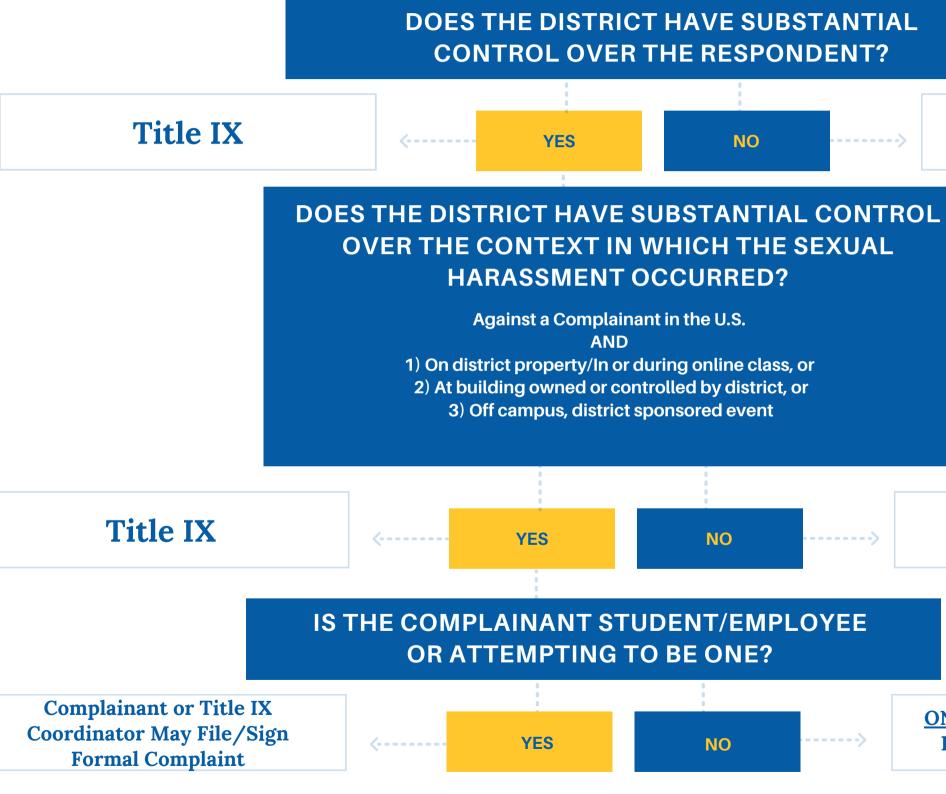




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The Where

Education Program or Activity/Jurisdiction



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Not Title IX

Not Title IX

ONLY Title IX Coordinator May File/Sign Formal Complaint



The Who

Title IX Applies to:

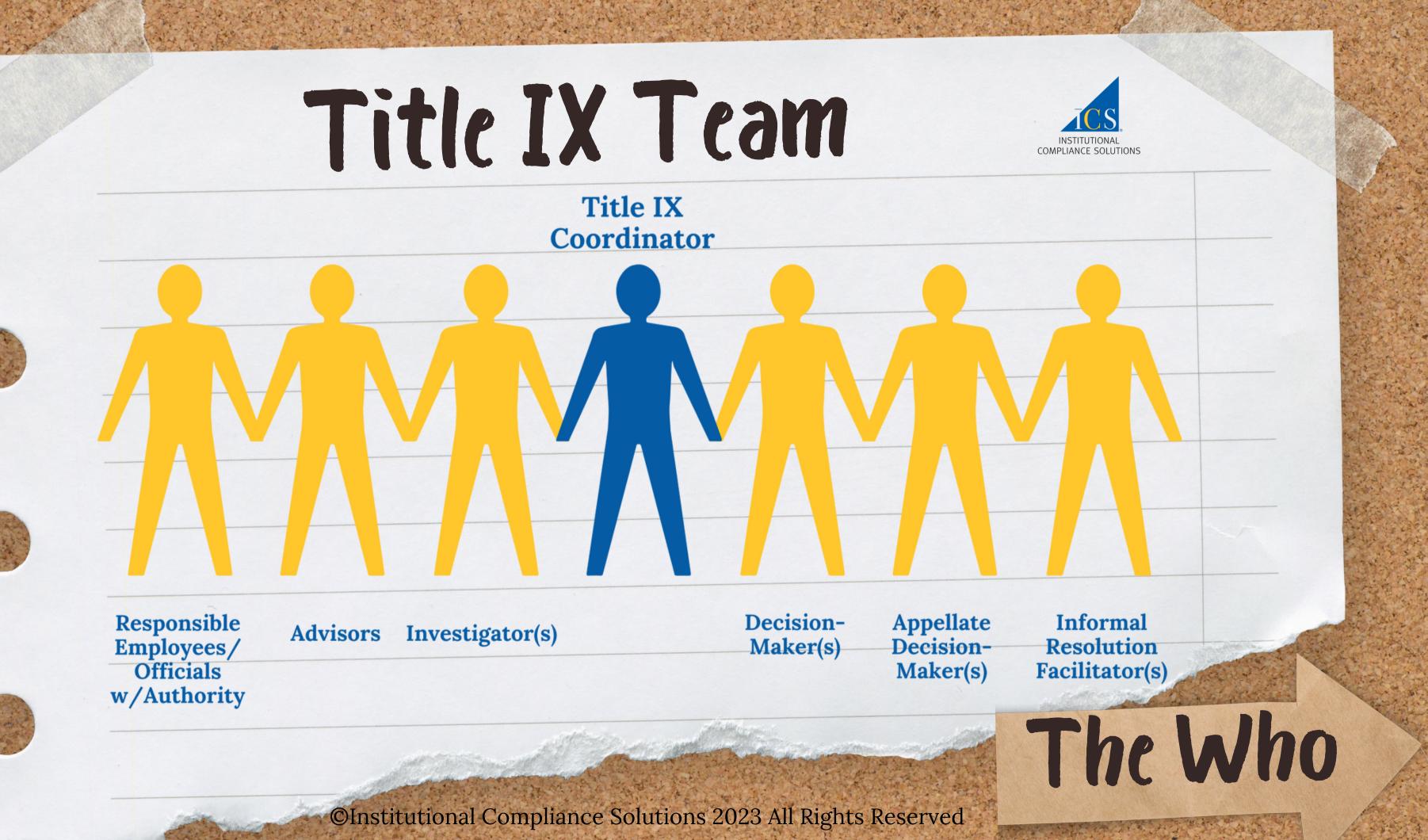
Student on Student Employee on Employee

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Student on Employee **Employee on Student**







INVESTIGATOR

Cannot serve as the Decision-Maker or Appellate Decision-Maker. May be the Title IX Coordinator but if possible, it is recommended that this individual be separate from the Title IX Coordinator. It is not recommended that an Investigator serve as the Informal Resolution facilitator in a case that they have started, or later serve, as an Investigator.

APPELLATE DECISION MAKER

Cannot be the Title IX Coordinator. Cannot serve as the Investigator or Decision-Maker. It is not recommended that an **Appellate Decision- Maker serve** as the Informal Resolution facilitator in a case that they may later serve as an Appellate **Decision-Maker**.

THEIX TEAM

TITLE IX COORDINATOR

Cannot serve as the **Decision-Maker or Appellate Decision-**Maker. May serve as an Investigator-though if possible, it is recommended that another individual serve as an Investigator. May serve as an Informal **Resolution Facilitator.**



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DECISION MAKER

Cannot be the Title IX **Coordinator.** Cannot serve as the Investigator or Appellate Decision-Maker. It is not recommended that a **Decision- Maker serve as the Informal Resolution** facilitator in a case that they may later serve as a Decision-Maker.

INFORMAL RESOLUTION FACILITATOR

May be the Title IX Coordinator. It is not recommended that an individual who has or will serve as an Investigator, Decision-Maker or **Appellate Decision-Maker in the** same case serve as the Informal **Resolution Facilitator.**



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REQUIRED

- issues
- Recommended)
- Post training materials

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• Title IX Coordinator (robust), Investigators, Decision-Makers, Informal Resolution Facilitators, Appellate Decision-Makers • Decision-Makers- training on technology

• All Employee Training (Highly

0000000000 Coordinator

- Place good employees in the right positions
- Make sure each team member understands their role and is trained
- Ensure that the work is getting done
- Track the process
- Be Available





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Warning:

OCR has found that some of the most egregious and harmful Title IX violations occur when a recipient fails to designate a Title IX coordinator or when a Title IX coordinator has not been sufficiently trained or given the appropriate level of authority to oversee the recipient's compliance with Title IX.

- 2015 DCL

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- Build a Title IX Team
- Coordinate training for Title IX Team and all employees
- involving Sexual Harassment outcomes, remedies and sanctions
- Coordinate response to all complaints • Provide and track Supportive Measures • Monitor investigations, resolutions, • Monitor patterns and trends • Avoid Conflicts of Interest and biases • Update Policies and Procedures • Recordkeeping

Coordinator Role

Investigator

Notice of Allegations Notice of Meetings with sufficient opportunity/time to prepare **Investigation meetings Collects evidence/information (inculpatory and exculpatory)** Provides information/evidence directly related to allegations to parties for review (10 days prior to report) Writes report summarizing relevant evidence **Provides report to parties for review (10 Days)**







Decision Maker

Question and Answer

- Afford each party the opportunity to submit written, relevant questions that a party wants asked of any from each party.
- Hearing?
- Written Determination regarding **Responsibility/Sanctions/Remedies**

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party or witness, provide each party with the answers, and allow for additional, limited follow-up questions







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Appellate Decision Maker

• Understand District Specific **Process Review Appeals** Make Timely Decisions and **Simultaneous Notifications**

Informal Resolution Facilitators

- Meet with students, parents, advisors and facilitate resolutions after Formal Complaint and before determination regarding responsibility
- Informal Resolutions are not required but if using them, facilitators must be trained









"Responsible Employee" is gone, actual knowledge only to Title IX Coordinator or "official with authority"

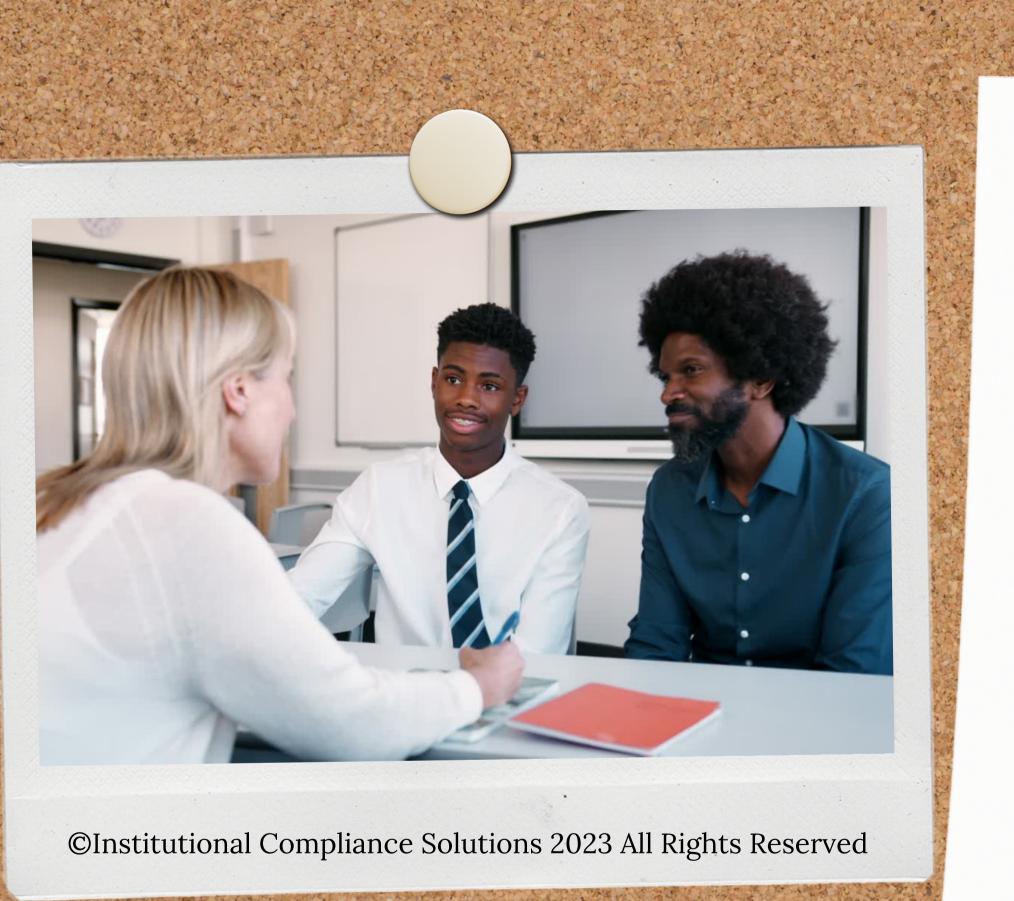
ALL employees are responsible for reporting at K-12 level

Actual Knowledge = NOTICE

Notice without action = deliberate indifference

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Officials with Authority



While elementary & secondary school students retain less control over when disclosure of sexual harassment triggers the school's mandatory response obligations, these students (with involvement of their parents as appropriate) do retain control over whether to accept supportive measures, & whether to also file a formal complaint.



Parents/ Guardians

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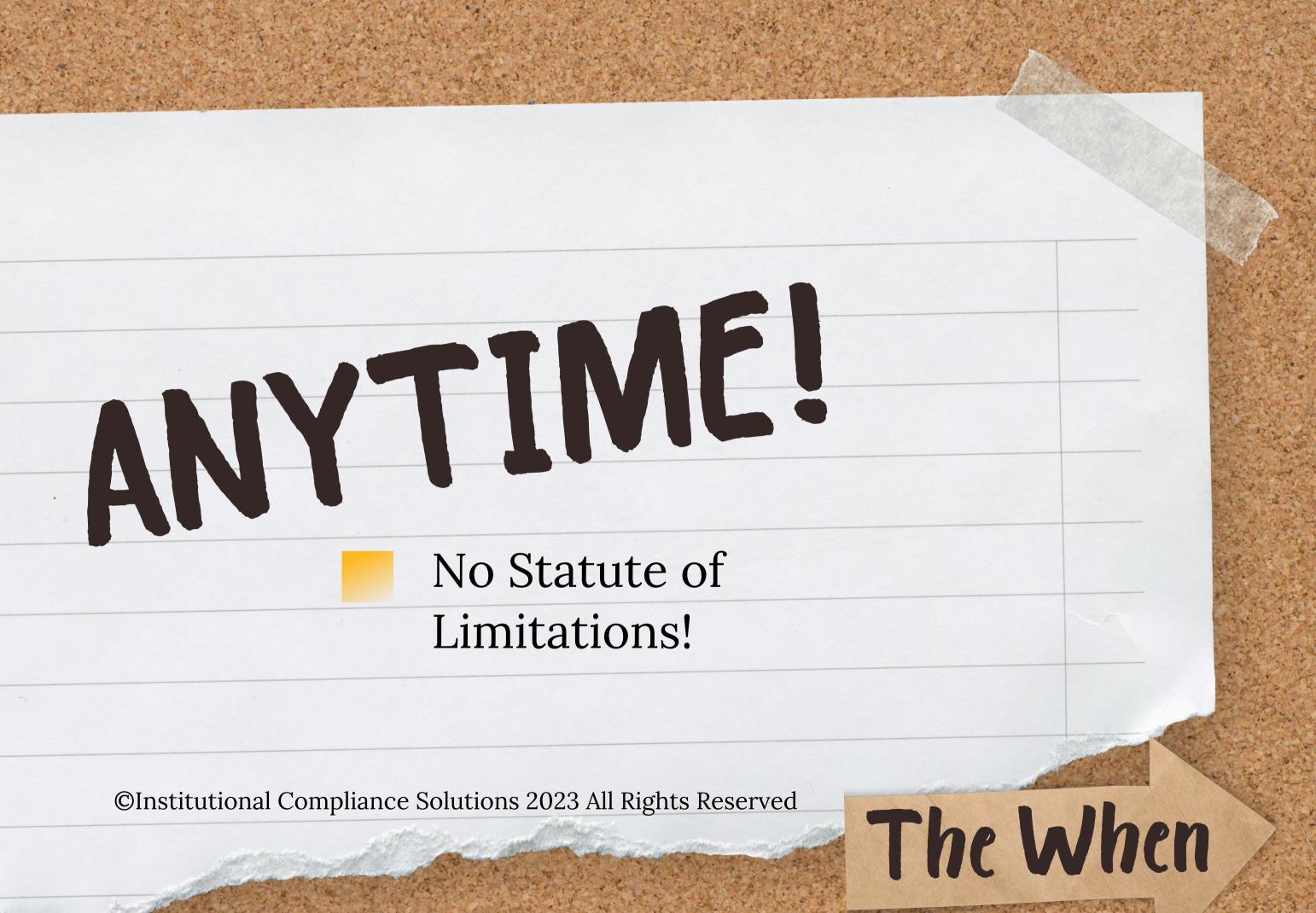
Advisors

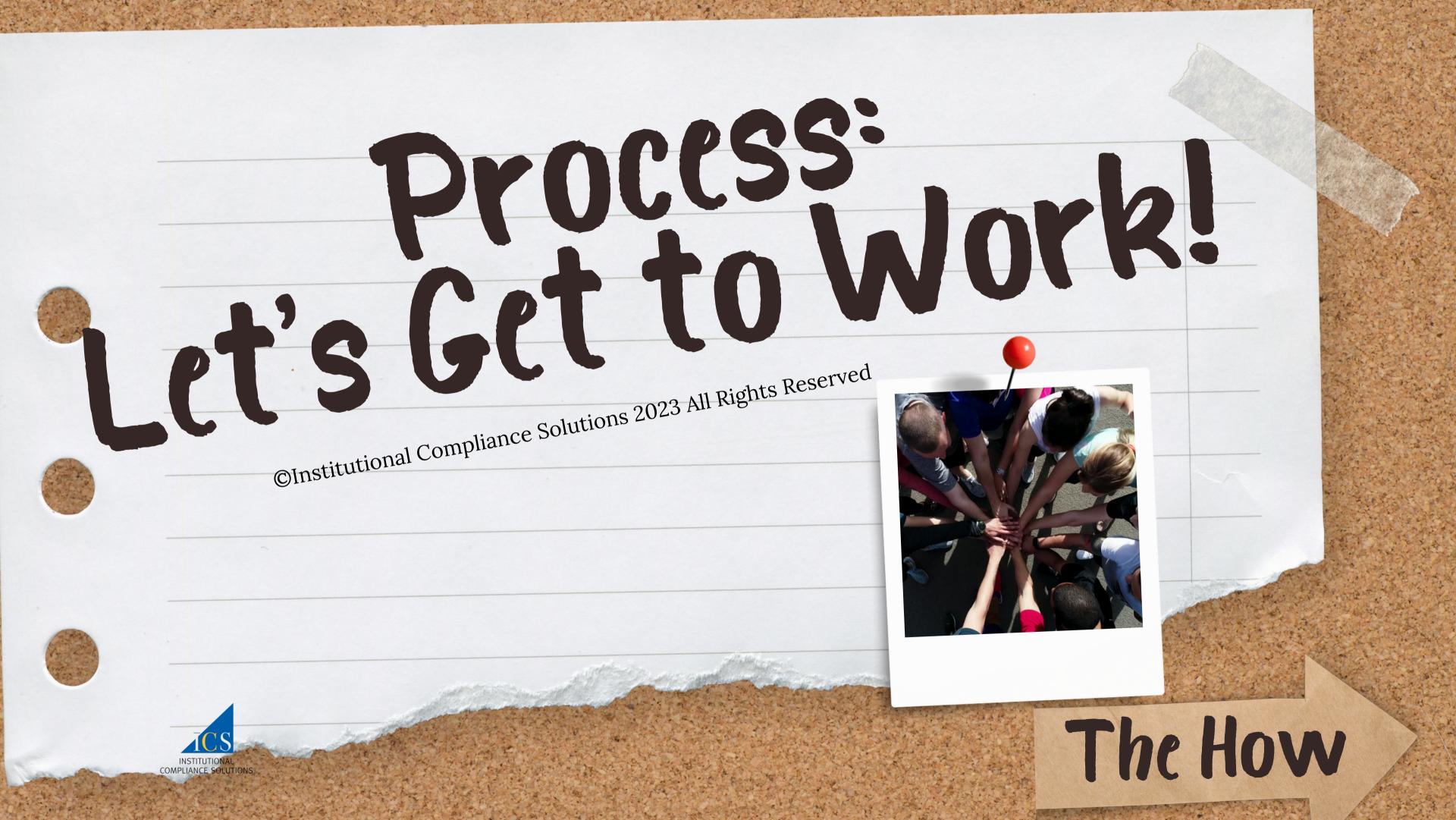
- Of choice
- Can be an attorney, doesn't have to be
- Your policy defines how they can be involved in your process
- Challenges with advisors
- Benefits to advisors



No Statute of Limitations!









Report of Sexual Harassment

Lydia (8th grade) tells her teacher that Brock (9th grade) keeps touching her butt and boobs, calling her sexy, and making moaning noise at her





Triage:

- Is this Title IX Sexual Harassment? • Is Brock (Respondent) a student/employee?
 - Did this happen at school or school related activity?

 - Title IX buckets?
- Do you need to sign formal complaint even if Lydia doesn't?

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Is Complainant a student/employee?
Does this fit into one of our three



Support

- Meet with Lydia/notify guardians
 Evaluate for safety concerns
 Develop supportive measures
 Explain Title IX Process (use flow

- charts)

- support regardless of whether formal complaint is signed)
 If necessary, notify law enforcement/child protective services

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Provide copy of policy and visual aids Provide formal complaint document Allow time to make decision (provide



Supportive Measures

- Without Fee or Charge
- Regardless of whether the Complainant wants to file Formal Complaint
- Designed to restore or preserve access to Education Program or Activity
- Without unduly burdening the Respondent

Including but not limited to:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Escort services
- Mutual no contact directives/restrictions
- Changes in work locations
- Leaves of absence
- Increased security and monitoring of certain areas



Formal Complaint

 In writing
 Allege Sexual Harassment

3. Request investigation

4. Signed by Complaint/Parent/ Guardian **OR** Title IX Coordinator

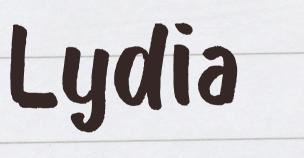
• electronic signature is okay!





Formal Complaint

My name is Lydia. Brock touched my breasts and butt almost every day from the start of school until today (August 30) when we were in Art club. I would like ICS High School to investigate.







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Reminder: Could be signed by guardian or Title IX Coordinator



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Reminder!

The Title IX Coordinator **DOES NOT become a** Complainant if they Sign Formal Complaint

DISMISSED

Must send simultaneous noticeand opportunity for appeal!

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Dismissal of a Formal Complaint

Required: (may proceed with other discipline) • Would not constitute Sexual Harassment as defined in

- Title IX regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

Permissive: (may NOT proceed with other discipline)

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw Formal Complaint or allegations
- Respondent is no longer enrolled or employed by the district
- Specific circumstances prevent the district from gathering evidence sufficient to reach a determination

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Cannot discipline outside of the Formal Title IX **Grievance Process if meets Title IX definition of** Sexual Harassment and falls under education, program, activity.







Sent to BOTH parties

Notice of Allegations Notice of Grievance Process (including informal • Allegations potentially constituting Sexual

- resolution process if one exists)
- Harassment
 - Identities of the parties
 - Conduct constituting Sexual Harassment
 - Date of incident
 - Location of incident
- Statement: Respondent presumed not responsible and responsibility is determined after Grievance **Process**
- Right to Advisor of Choice
- Code of Conduct provision(s) prohibiting false statements or false information in process







Allegations for Lydia and Brock

It is alleged that on multiple occasions between August 1. 2023 and August 23 2023. Brock touched Lydia on the breast and butt while making sexual comments and moaning noises. Lydia did not consent to these touchings and the comments made her uncomportable. These events occurred in Ms. Adams Art room during after school art club at ICS High School.

Investigation

- Interviews with parties and witnesses
 - Including Notice with sufficient time to prepare for the meeting/interview collected

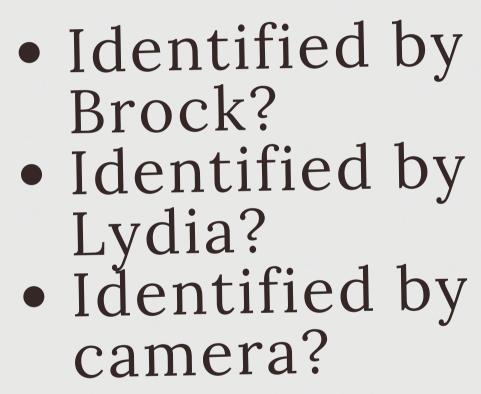
- Document date of meeting and date notice provided • Document when and how evidence/information was related to the allegations" (10 days) relevant evidence"
- Collect evidence and information • Allow parties and advisors to review "evidence directly • Write investigation report that "fairly summarizes Provide opportunity for parties and advisors to review
- the report (10 days)



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Decision-Making

- Hearing Optional (not recommended)
- Q & A Required

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- Afford each party the opportunity to submit written, relevant questions that a party wants to ask of any party or witness.
- Provide each party with the answers.
- Allow for additional, limited follow-up questions from each party
- Decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant









Written Determination

• Identifying the allegations

- Applying appropriate standard of evidence (preponderance vs. clear and convincing)
- Description of procedural steps taken from the receipt of the Formal Complaint through the determination regarding responsibility
- Findings of fact supporting the determination
- Statement of, and rationale for, the result as to each allegation including determination regarding responsibility, any disciplinary sanctions and remedies
- Procedures and permissible bases for Complainant and Respondent to appeal
- Provided to parties simultaneously

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Appeals

- Offered to both parties
- Can appeal dismissal of Formal Complaint or any allegations therein or determination regarding responsibility
- On the Following Basis:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence that was not reasonably available at the time the affect the outcome of the matter
 - the matter
 - Additional basis if offered equally to both parties

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determination regarding responsibility or dismissal was made that could

• Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of



More Appeals Info:

- Written decision describing the result and rationale for the result
- Notify the other party in writing when an appeal is filed
- Provide written decision
- simultaneously to both parties
- Give both parties a reasonable

 opportunity to submit a written
 statement in support of or challenging
 the outcome



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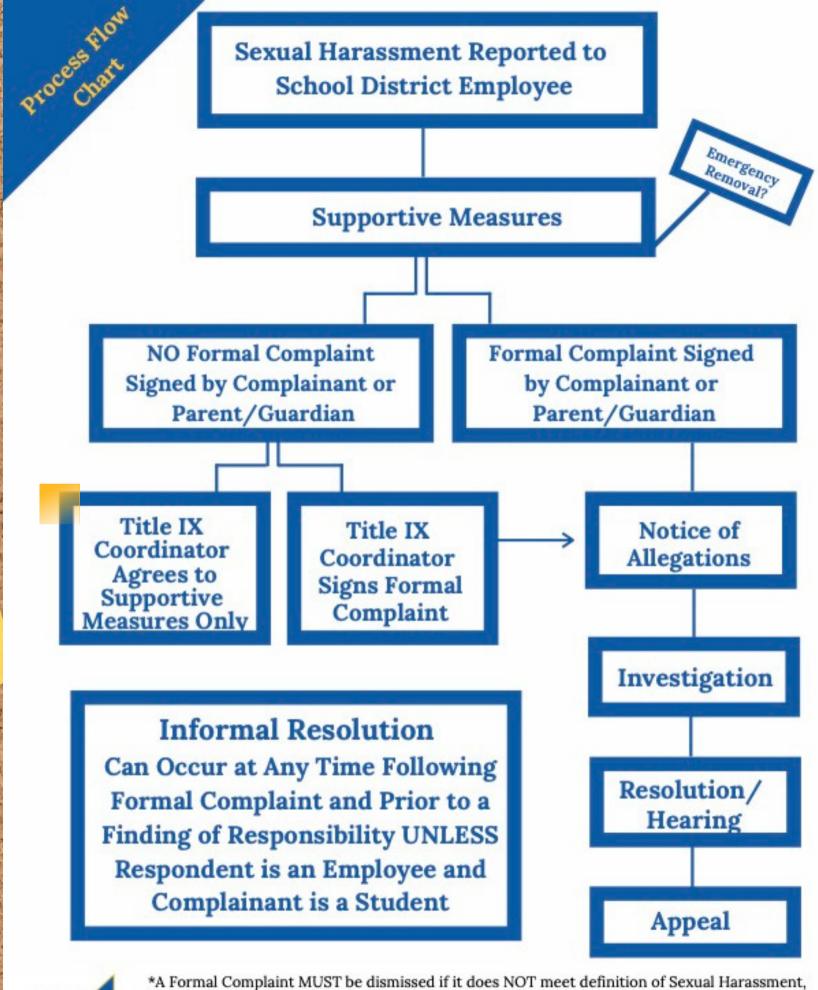
Opportunity to Respond!

Informal Resolution

- Cannot be offered as a condition of enrollment or continued employment
- Cannot be offered to resolve employee on student allegations
- After a Formal Complaint is filed
- Prior to decision regarding responsibility
- Parties cannot be required to participate
- Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations
- Allow any party the **right to withdraw** from the informal resolution process and resume grievance process with respect to Formal Complaint
- Provides consequences resulting from informal resolution process including records maintained or shared
- Obtain both parties voluntary, written consent to the informal resolution process



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K-12 CS

*A Formal Complaint MUST be dismissed if it does NOT meet definition of Sexual Harassment, occur in education program or activity, or in the U.S.

*A Formal Complaint MAY be dismissed at request of Complainant, if Respondent no longer at institution or institution is prevented from gathering evidence.

Process



Emergency Removal

Individualized Safety and Risk Assessment No blanket "rules" for removal **Explained in policy/procedure** Notice and explanation to respondent **Use your BIT Team** Authority to issue Admin leave with pay available; not the same as emergency removal



Deliberate Indifference

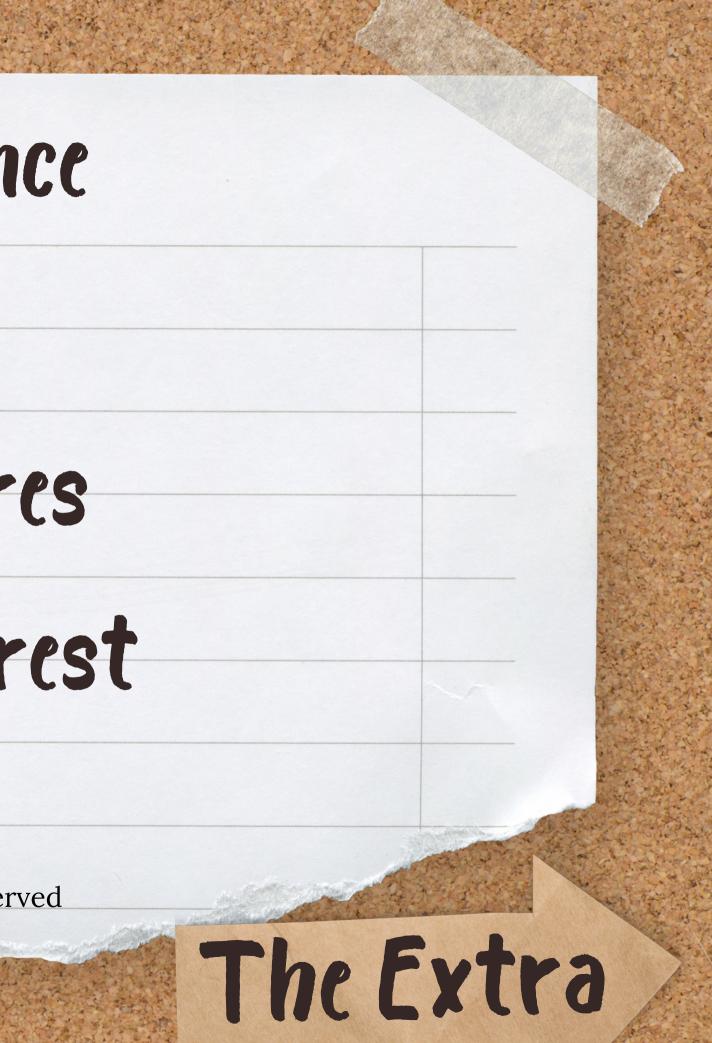
Policy and Procedures

Record-Keeping

Bias/Conflict of Interest

The Future





Deliberate Indifference

- Must promptly offer supportive measures
- Cannot impose discipline without a formal process
 Must investigate
- allegations in a formal complaint







Record Keeping 7 YEARS Note why you made the decisions you made!

Policy & Procedures



Compliant



Easy to find/ Distributed

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Updated



- Generally toward Complainants/Respondents
- compromise one's judgment, decisions, or actions
- Three types of conflicts of Interest
 - Actual
 - Perceived
 - Potential

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Avoid Conflict of Interest/Bias

• Occurs when personal or private interests possibly can



Explicit Bias

"Explicit bias" refers to the attitudes and beliefs we have about a person or group on a conscious level.

- Expressed directly
- Aware of bias
- Operates consciously

Example: Statement- "I don't think a woman would make a good **CEO... Women are too emotional."**





Implicit Bias

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- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
- Expressed indirectly
- Unaware of bias
- Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.





| 1 | Scope Expanded 6 | |
|---|--|--|
| 2 | Mandated Training Expanded | |
| 3 | Additional/Modified Definitions | |
| 4 | Complexity of Title IX Coordinator Role | |
| 5 | Sexual Harassment is now Sex Based Harassment | |
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Less Prescriptive Grievance Process

Informal Resolution-Initiated without "Formal Complaint"

Retaliation Protections

Discrimination Based on

Pregnancy

Expands Recordkeeping

NPRM Top 10

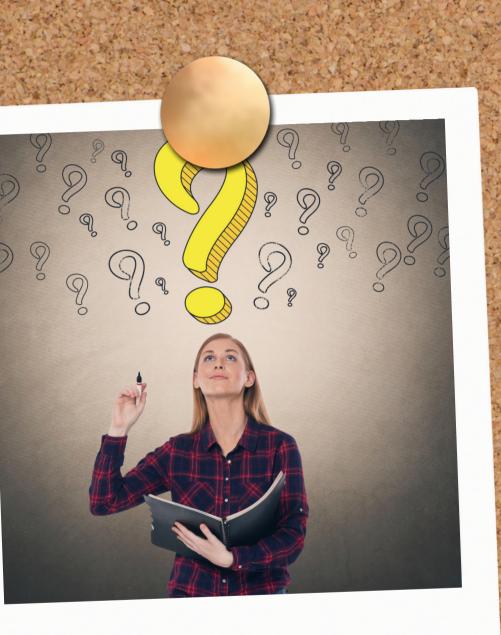
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Coordination of Efforts

- Team Effort!
- You cannot do it all on your own
- Coordination is critical
- No islands or silos







Important Tips!

Title IX Coordinator should touch each part of the process. For example, gatekeeper for appeals to determine if appropriate, or the transition between investigation to decision-making.Some decisions to make:1. Who drafts the initial NOA and any updates?2. Who disseminates the written determination?3. Who determines if an appeal is appropriate?4. Who issues the Notice of Informal Resolution?





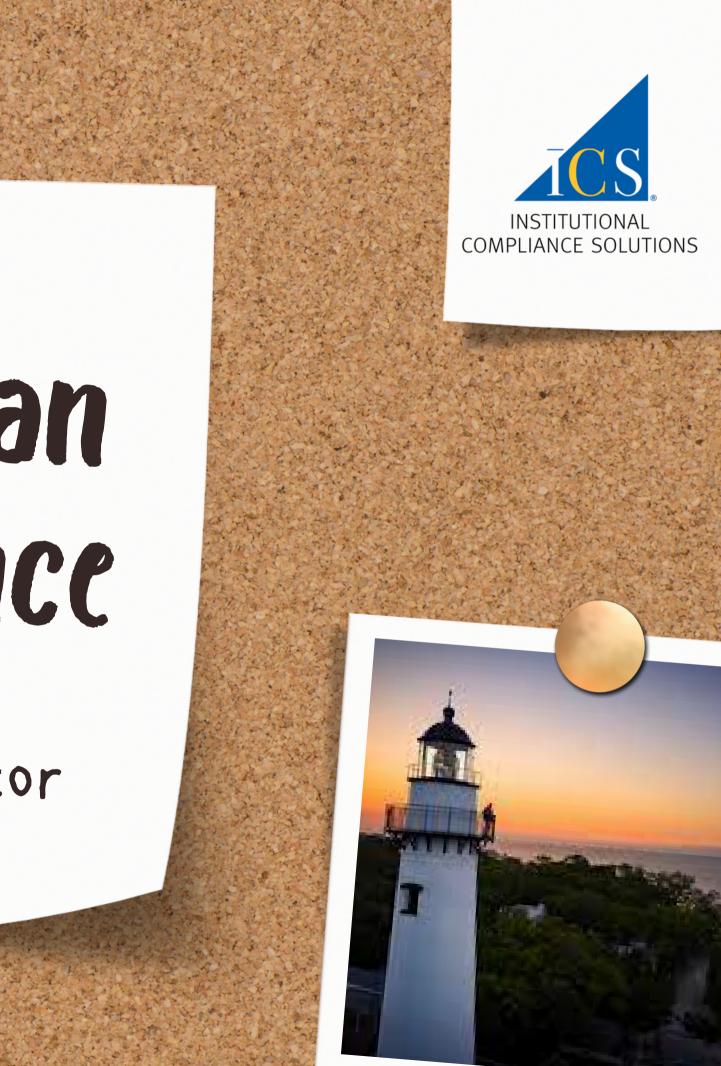
Questions?





More than Compliance

Title IX Coordinator Training Part 2



TTTLE PROCESS

FORMAL COMPLAINT Signed by Complainant or Title IX Coordinator

5

3

REPORT OF TITLE IX SEXUAL HARASSMENT

> **APPEAL Opportunity for Both Parties to** Appeal

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INVESTIGATION

Notice of Allegations, Notice of Meetings, 10 Day Review Period

REPORT

Summary of All Relevant Evidence, 10 Day Review Period

RESOLUTION

K-12 = Q & A



INSTITUTIONAL COMPLIANCE SOLUTIONS



ABOUT US

OUR TEAM/ **EXPERIENCE**

8 BRAND/LOGO

> WHAT WE DO

REPORTING OPTIONS

TRAINING 6. OPTIONS



How are you seen/viewed/remembered

Start with the Advertising



Review

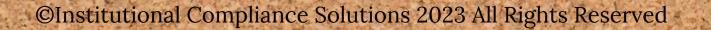
- Evaluate cases from last year/recent years
- Make changes as necessary
- Carry over cases to next academic year





BYTHE NUMBERS

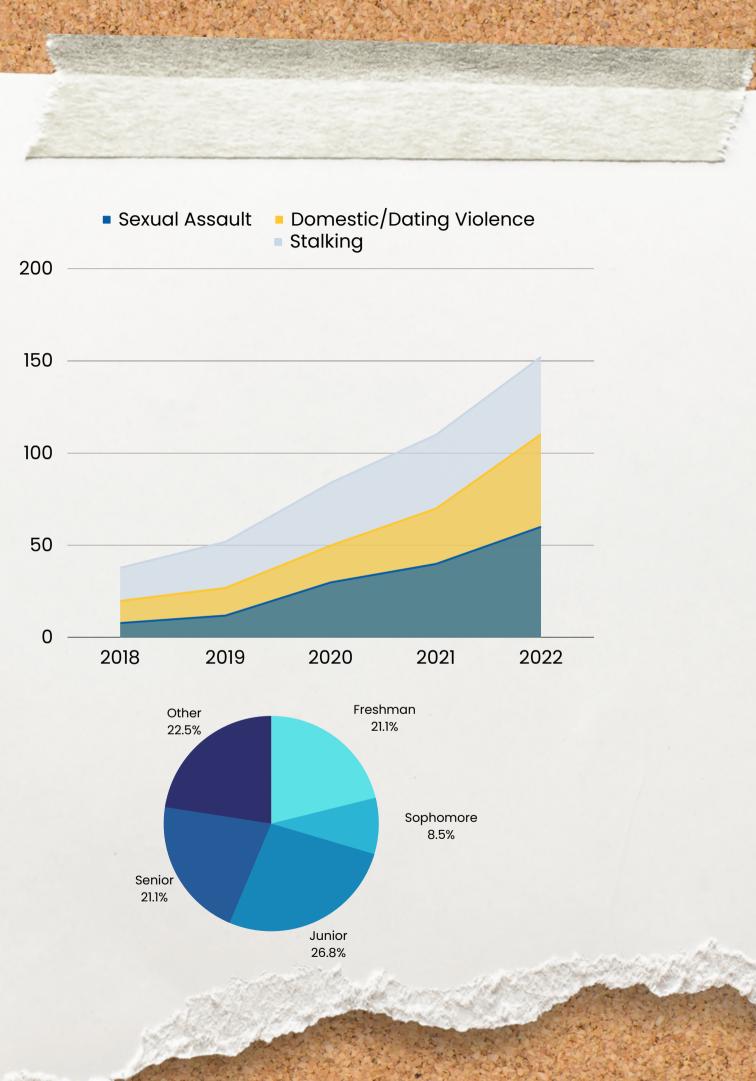
Show them Charts and graphs combined with personality= understanding



INSTITUTIONAL COMPLIANCE SOLUTIONS







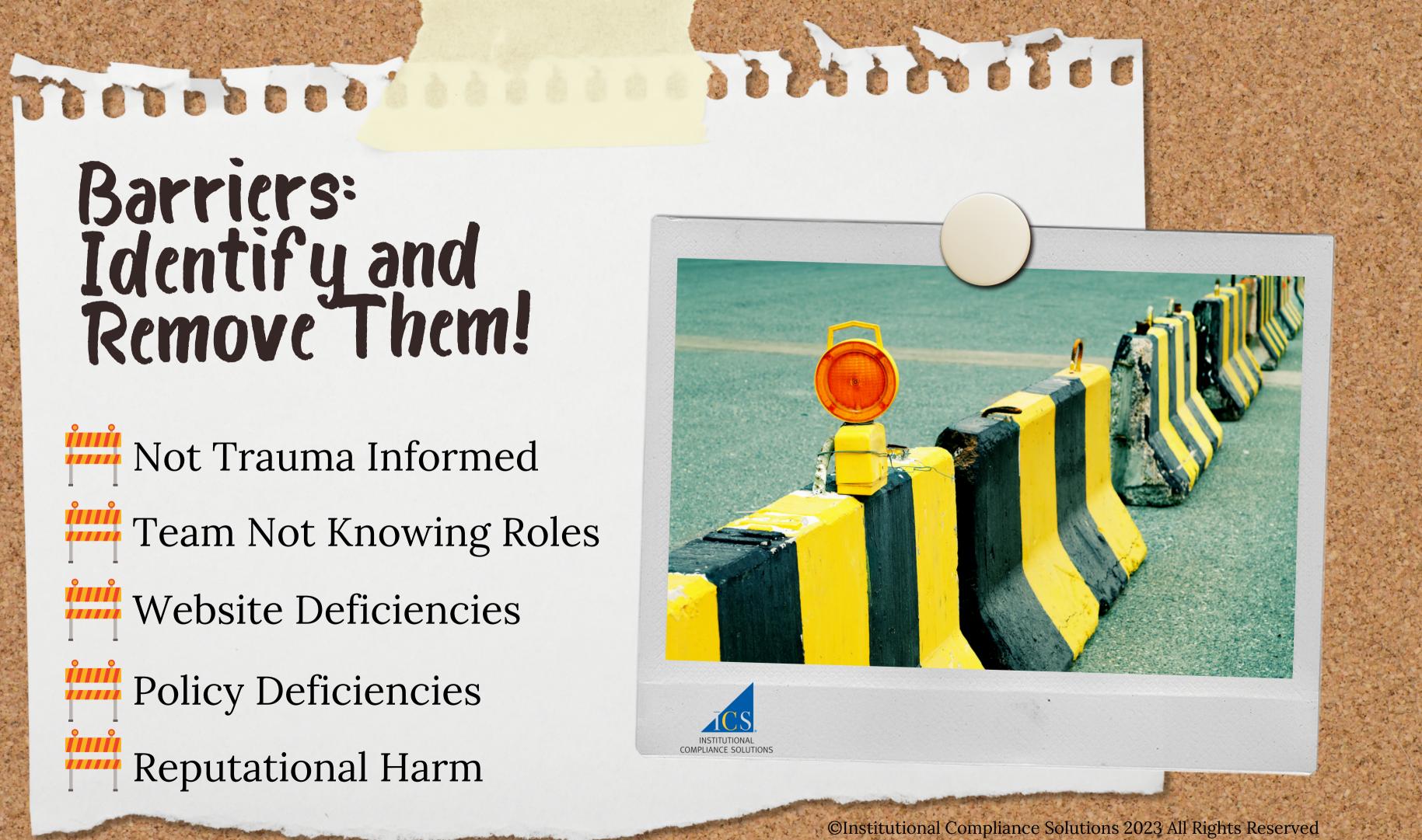
Barriers: Identify and Remove Them!

Not Trauma Informed

Team Not Knowing Roles

Website Deficiencies

Policy Deficiencies Reputational Harm

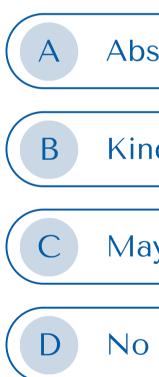


What's Your Rating?

5 STARS



DOES THIS SCHOOL/THIS PERSON CARE ABOUT ME?



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2 THUMBS UP

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Language Matters

REPORT VS. FORMAL COMPLAINT
COMPLAINANT VS. VICTIM
RESPONDENT VS. DEFENDANT
RESPONSIBLE VS. GUILTY
PREPONDERANCE/CLEAR AND CONVINCING VS. BEYOND A REASONABLE DOUBT
HEARING VS. TRIAL
DECISION-MAKER VS. JUDGE 000000000

Translation Options

- Start now re: most
- common languages
 Be prepared if there is a new or different
- languageAsk on the FRONT END!



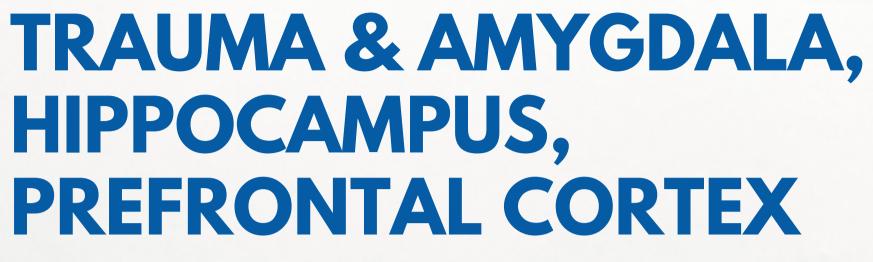












- Brain detects threat- Trauma Triggers Chemical Reaction
- Impacts:
 - Decision-making;
 - Rational thinking;
 - Perception;
 - Planning effective responses;
 - Memory
- During trauma- may function less effectively
- "Survival Mode"- may not be able to think through the situation clearly









Trauma Response



Fight

Flight

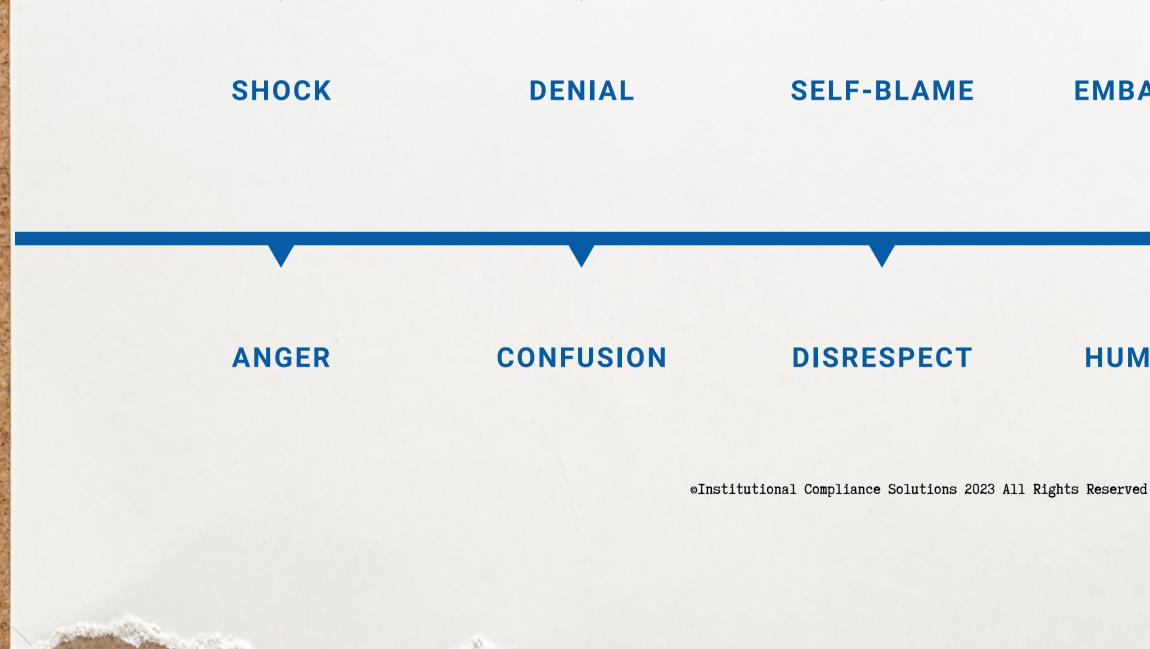
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Freeze



Possible Impacts of Trauma



EMBARRASSMENT

FEAR

HUMILIATION

LIMITED EMOTION





Trauma Informed Necessities



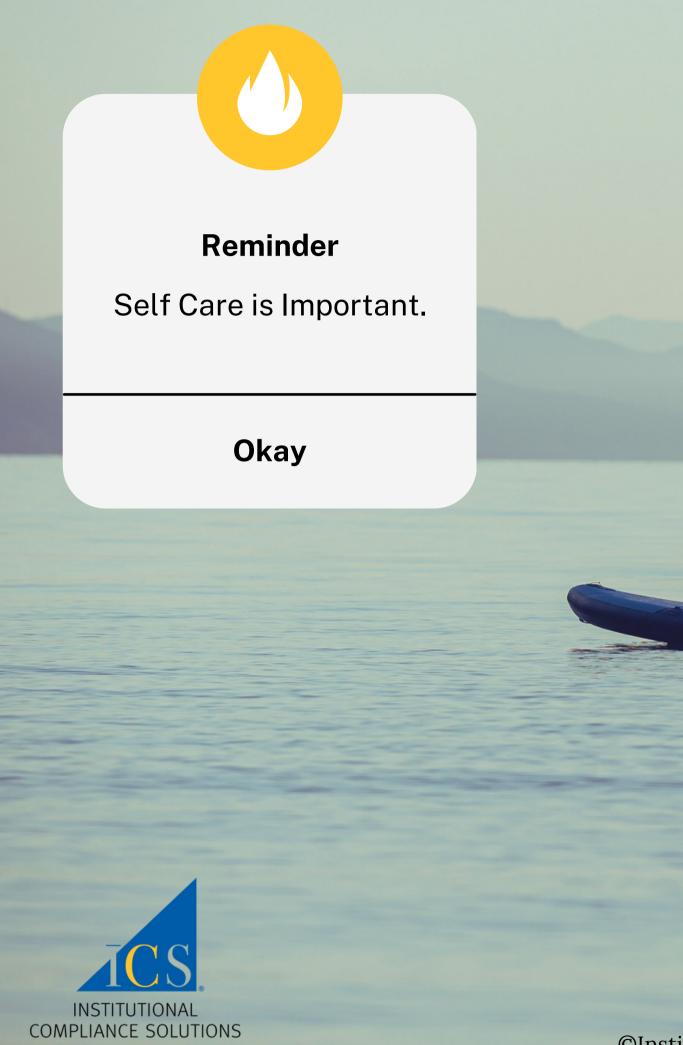
Comfortable



Clear







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Reminder

Be kind to yourself.

Okay

Support First and Throughout

Support



Introduction Step by Step

01



WHO ARE YOU

- What is your role?
- Who do you report to? Private vs.
- Confidential
- What will you do with the information used?
- Identify any conflicts of interest



02

• Make sure it is clear that your main goal is support regardless of which process (if any) is used



03

EXPLANATION OF PROCESS

Report vs. Formal Complaint Flow charts **Transparency**





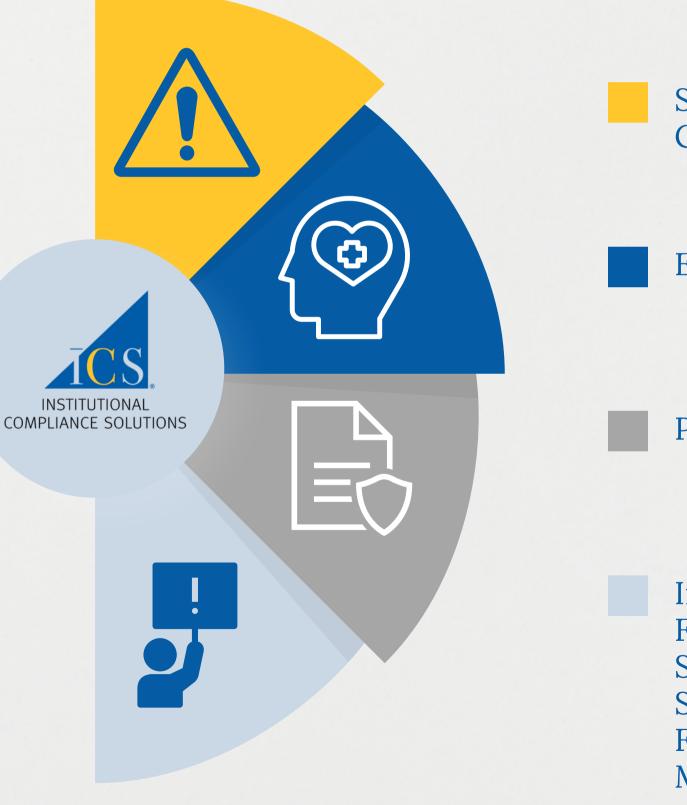


Breaks are okay Water/snack Advisor/advocate





Listen: Keep an ear out for....



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Safety Planning/ Concerns

Emotional Well Being

Potential Policy Violations

Immediate Needs, Future Needs, Supportive vs. Not So Supportive Friends/Family Members



Body Language/ Expression





Support and Connect

Prioritize

Which connection is most critical. Safety is always first. **Be Creative** This is not one size fits all. Period. Be creative. Think outside the box.



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Do the Heavy Lifting

Don't put the burden on the party. Take care of what you can on their behalf. (Class changes, grade requests, etc.)

Make Sure the Door **Remains Open**

While the burden is on YOU, the door should be open for the party to let you know if they need something or if something isn't going well!

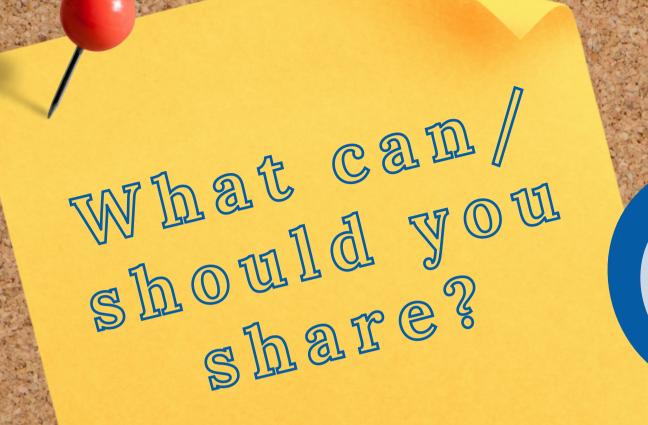


Teachers

Extra-Curricular Sponsors

Athletics







You are working with/assisting the student or employee



Something has happened that has impacted their ability to complete work or has impacted performance



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eeo

Ask for assistance based on the specific needs-lead with, how can we/you help



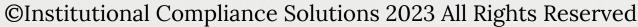


Connect when there is not urgency

Express gratitude and share successes

Remain as transparent as possible while respecting privacy

Clearly explain your role and the legal requirements





Challenges The work presents PLENTY of challenges... here are just a few

Respondent vs. Complainant Imperative that you learn to work with both

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Untruthful

You think (or know) they are being untruthful

Dislike

You just plain dislike the party you are working with

Case Load

There is simply not enough time to adequately do the work

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Pushback

The resources are not willing or able to provide the necessary assistance

Never Enough

You cannot "fix" everything

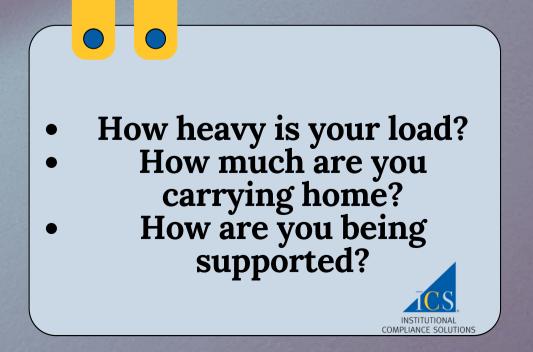
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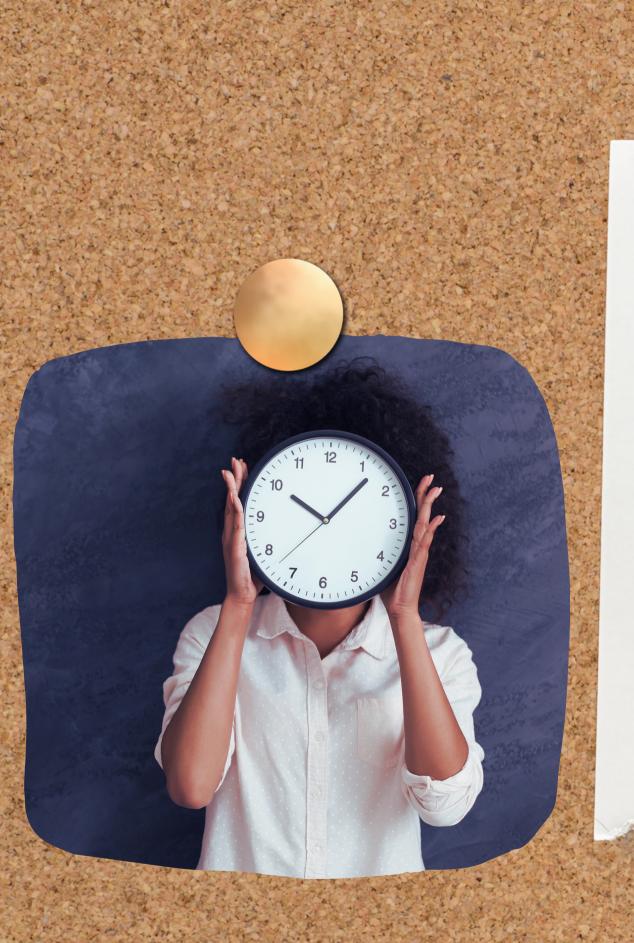
Regular Meetings

- New Reports
- Open Matters
- Investigation Progress
- Concerns from Meetings
- Review Periods
- Release of Report
- Hearing/Resolution Process
- Reports of Retaliation
- Patterns/Trends
- Evaluation of Prior Cases









How are you keeping it all together?

- Set reminders to track your tasks
- Plan your daily schedule (if possible)
- Set aside time for documentation
- Take mind breaks
 - etc.

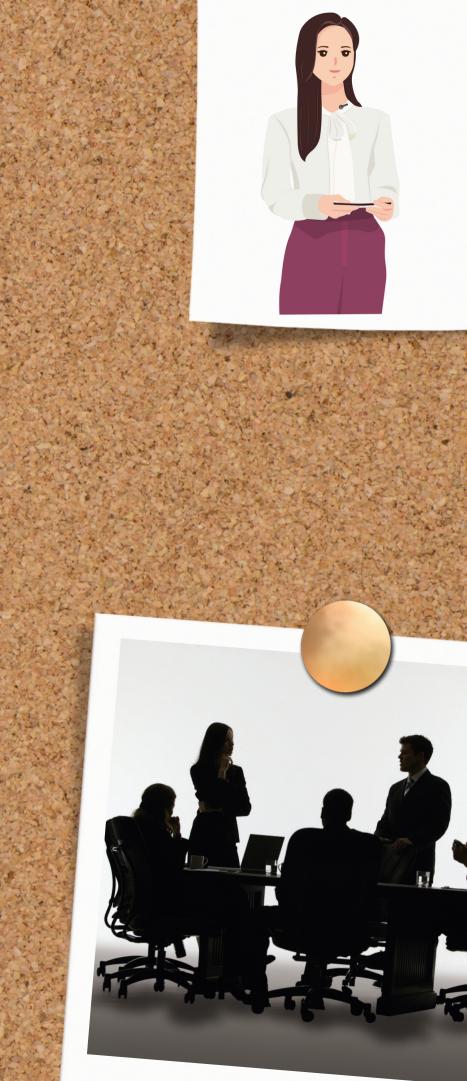
Keep a detailed spreadsheet, updates on the cases, check ins, stage in process, supportive measures offered and provided,

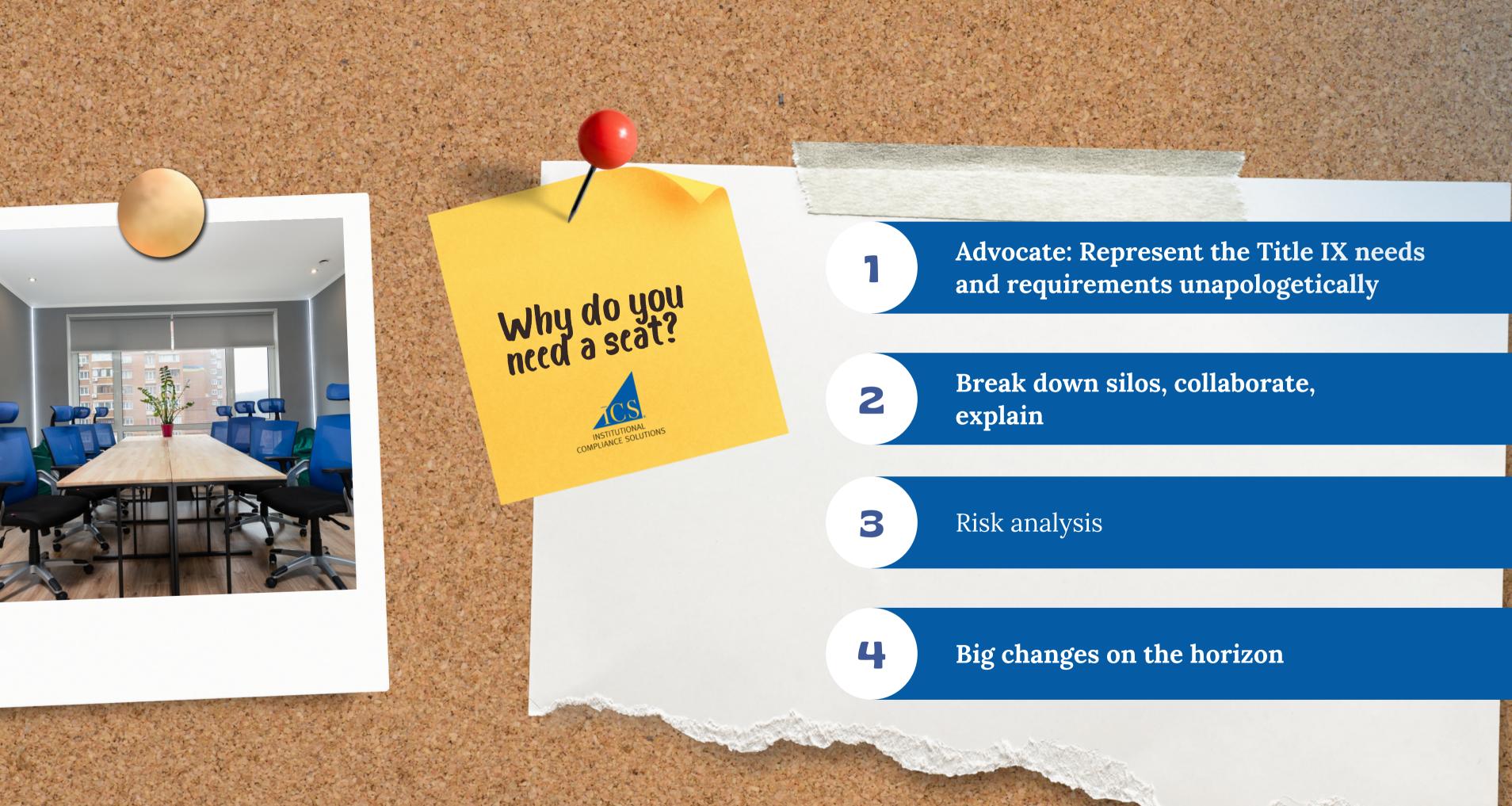


Do You Have a Seat at the Table?











What Table?

All of them... including the HIGHEST ONE!

- Executive Level
- Board
- Parent
- Admissions
- Care/Threat Assessment
- Enrollment
- Facilities
- Safety
- Curriculum

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What to Expect?

- To participate
- To come prepared
- To be questioned
- To be challenged
- To be held accountable for your decisions
- To gain insight into the bigger picture
- To advocate
- To compromise







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Questions?



INSTITUTIONAL COMPLIANCE SOLUTIONS



Title IX Investigator Training





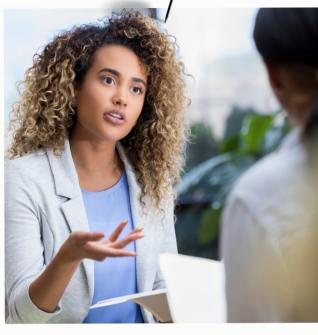
Amy Buck Title IX and Equity Specialist

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INSTITUTIONAL COMPLIANCE SOLUTIONS

Lifecycle of a Report



INTAKE

Title IX Sexual Harassment



Initiate Formal **Grievance** Process



Investigation





Appeals

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TRIAGE

Other





Other?

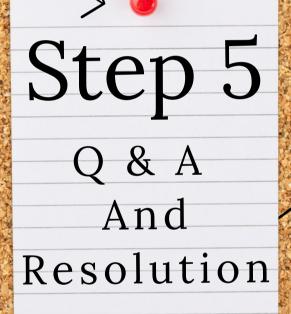
BASIC BASIC TITLE IX TITLE IX PROCESS

Step 1 Sexual Harassment reported Step 2 / Formal Complaint by Complainant/ Title IX Coordinator

Step 3

Notice of Allegations Step 4

Investigation







Steps of the Investigative Process



STEP 1

STEP 2

collected

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INTERVIEWS WITH PARTIES & WITNESSES

Including Notice with sufficient time to prepare for the meeting/interview
Document date of meeting and date notice provided

COLLECT EVIDENCE & **INFORMATION** Document when and how evidence/information was

Steps of the Investigative Process (continued)

STEP 3

STEP 4

STEP 5

PROVIDE OPPORTUNITY FOR PARTIES AND ADVISORS TO **REVIEW REPORT (10 DAYS)**

INSTITUTIONAL COMPLIANCE SOLUTIONS

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ALLOW PARTIES AND ADVISORS TO **REVIEW "EVIDENCE RELATED TO** THE ALLEGATIONS" (10 DAYS)

WRITE INVESTIGATION REPORT THAT "FAIRLY SUMMARIZES **RELEVANT EVIDENCE**"

Before your first Investigative Interview Review your policy



- Recording? Who to interview first?
- What kinds of evidence will you need?
- Where will you interview? Atmosphere Matters!
- Would informal resolution be a good fit?
- Will you need an interpreter?
- Pronouns

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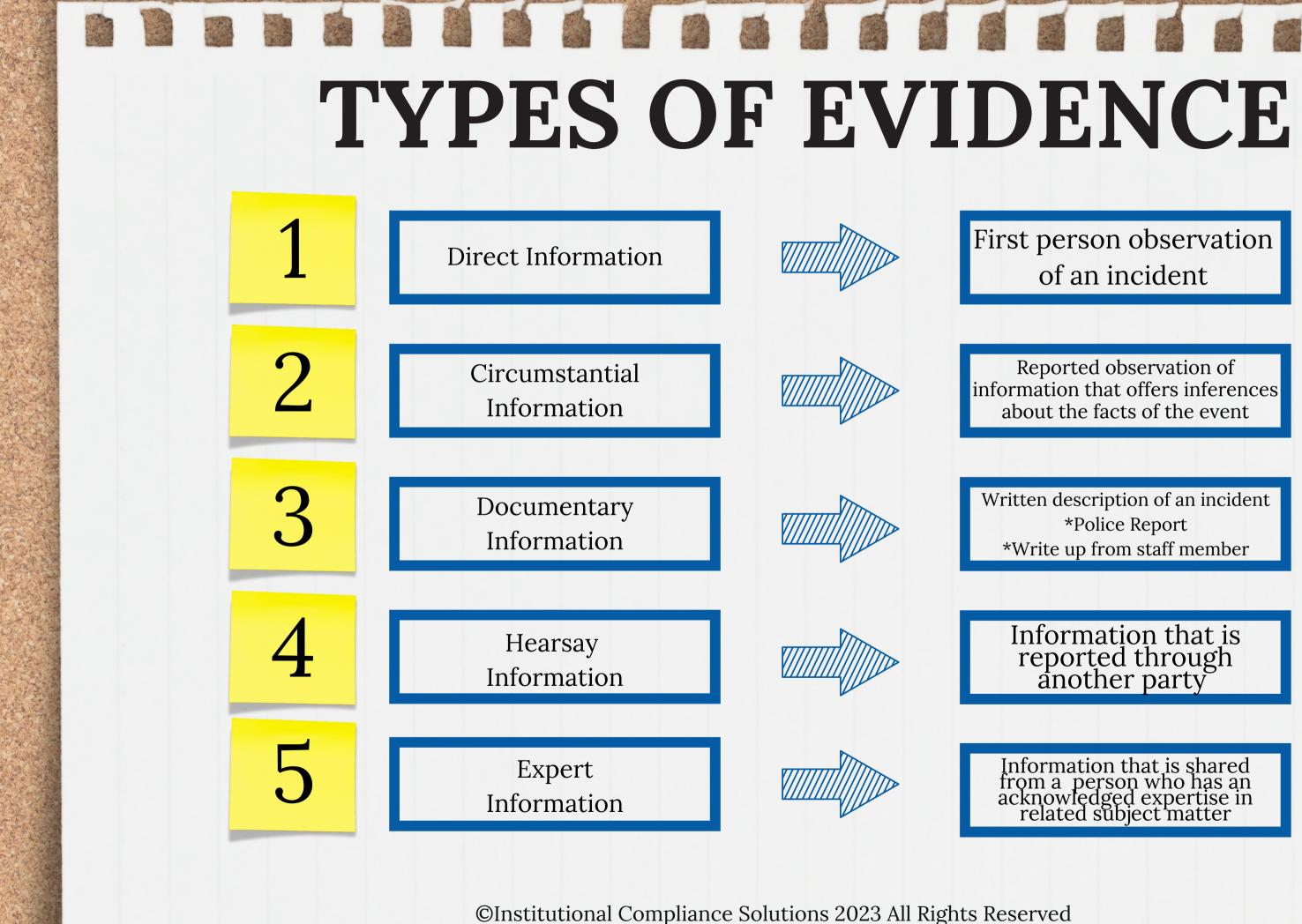
Food for thought...



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504/IEP Considerations • Communication style? • Interview techniques Other Considerations -Coordinating with Sped Team





First person observation of an incident

Reported observation of information that offers inferences about the facts of the event

Written description of an incident *Police Report *Write up from staff member

Information that is reported through another party

Information that is shared from a person who has an acknowledged expertise in related subject matter





TYPES OF WITNESSES

Eye Witnesses Identified by you or the parties

Hearsay Only Witnesses How much weight?

Character Witnesses Allow or not?

Expert Witnesses What is their expertise?

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Complainant & Respondent Don't forget about them





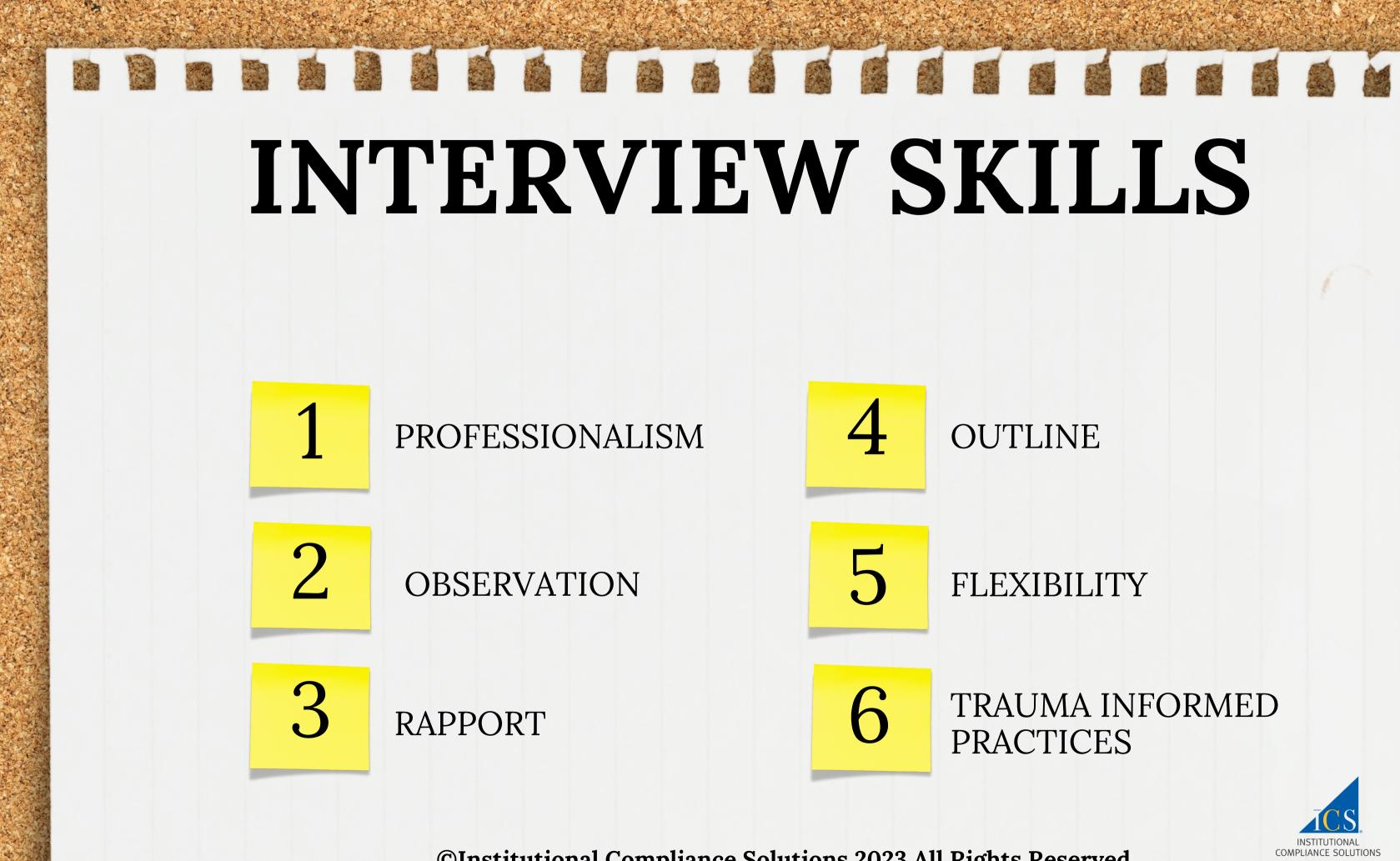
BURDEN

Burden to collect/gather evidence is on the school district (investigator)... NOT THE PARTIES

How will you show that you tried?







Explain your role as neutral fact-finder

Introduction in Investigative Meeting

Presumed not responsible/ you're not in trouble

Recording or taking notes?

Private as

possible

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Confirm pronouns?

Room for Questions



Retaliation

Explain process and purpose: tell me your story and the second

Notice of Allegations

Investigation

Notice to parties of all meetings and interviews with time to prepare.

Review

Opportunity for parties to inspect, review, and respond to all evidence directly related to allegations- relevant or not Written Response: 10 days

Investigative Report

- Considers responses to evidence
- Determines what evidence is relevant
- Summarizes the relevant evidence
- May include recommended finding

Review

Opportunity for parties to review the investigative report. Can provide written response. 10 days

Question and Answer/Resolution



TYPES OF QUESTIONS

Lead with... HELP ME **UNDERSTAND**

Open Ended

Circling Techniques

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Opportunity to Clarify

- Who • What
- When
- Where
- Why
- How





Note-Taking

✓DETAIL VS. AWKWARD PAUSES **VUSE QUOTATIONS WHEN POSSIBLE** ✓ UPDATE REPORT IN REAL TIME ✓ TAKE 10-15 MINUTES TO CLEAN UP NOTES AFTER INTERVIEW

✓GIVE NOTICE IF AN EXTRA PERSON IS SERVING IN THIS ROLE





TIMELINE AND DELAYS



What does your policy say?

> Interview quickly

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Extensions and equity

Note in Report



Relevance

- Regulations do not define relevancy
- Does the evidence tend to make a fact more or less likely to be true?





NOLREJEXAND Man Talla Frence

Questions and evidence about the **Complainant's sexual predisposition** or prior sexual behavior unless

1) they are offered to prove that someone other than Respondent committed the sexual harassment, or

2) if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the Respondent and are offered to prove consent.

Privileged Information

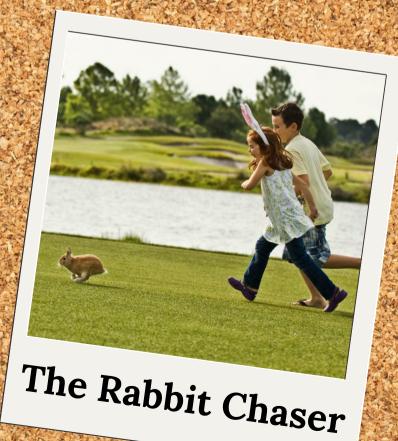
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Treatment records unless parties agree

"PROBLEM" WITNESSES



The "Hulk"





The "Turtle"

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The Big Reveal

The Other/New Complainant



I saw the Complainant and Mr. X kissing behind the bleachers

Mr. X is just a friendly guy. He touches the Assistant Coach, Stephanie's, butt all the time at practice

I don't know...I don't want to share information that could get someone in trouble

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This is a waste of my time...it's not like anything is going to happen as a result of this investigation

Did you also know that at practice Mr. X plays Taylor Swift for warmups. I can't believe he's also a Swiftie!





Other Considerations in an Investigation







Remember! Supportive

Measures





REDUCING BIAS IN INVESTIGATIONS

Was there equity during process?

Were questions fair to all parties?

Was information written in an unbiased manner?

Did you weigh information objectively?

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parties? in an

STAY IN YOUR LANE

Fact gatherer -Burden on you to collect/ask

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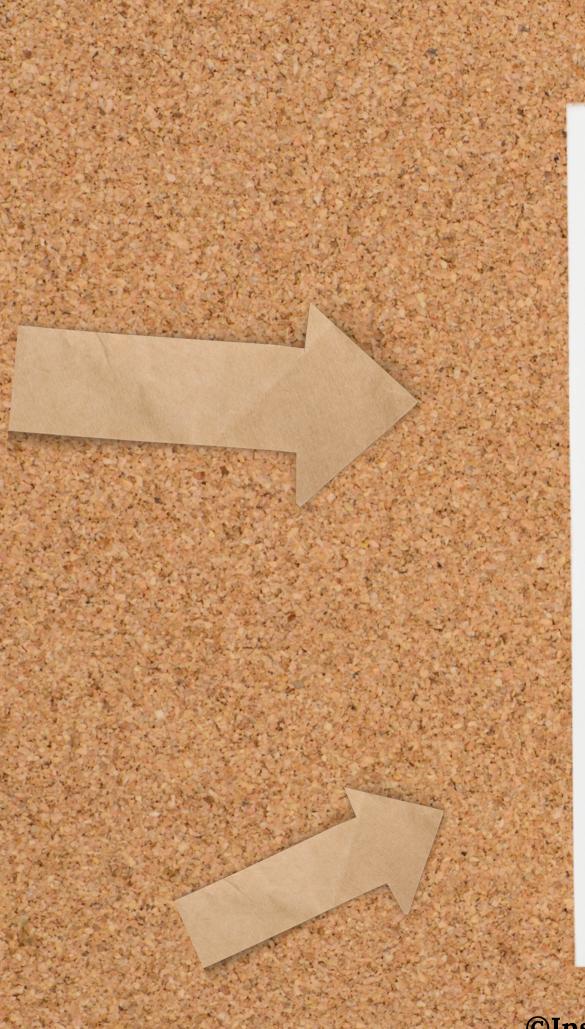
Investigating Title IX Policy (not criminal law or unrelated policies)

FORMAL V. INFORMAL

and the













Title IX Investigative Report Writing



REQUIREMENTS

- Fair summary of relevant evidence
- Provided to parties AND advisors
- Hard copy or electronic
- 10 days to review and respond

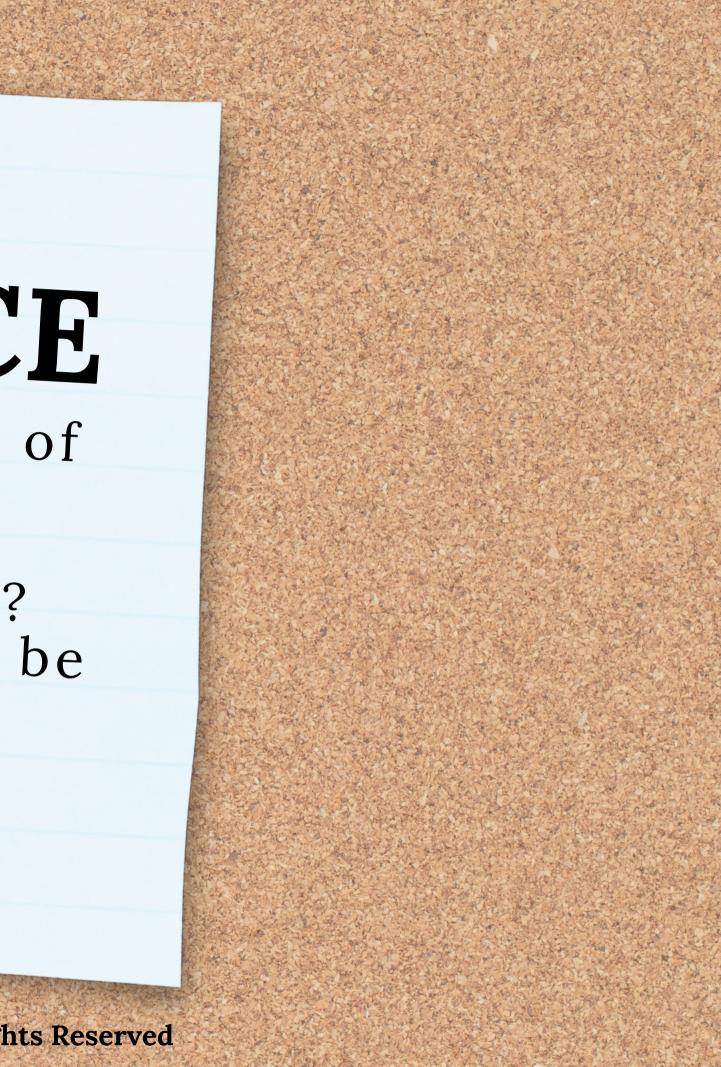




AUDIENCE

- What is the intent of the report?Who needs to
- understand/use it?
 Where/how will it be used?





REPORT CONTENT



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Definitions

 Timeline of Events List of Parties and Witnesses

Policy
Burden/Standard of Proof

Intro Who/How Reported
Who Investigated • Summary of Allegations Look to Notice of Allegations

When was the report received?

SUMMARY OF ALLEGATIONS

1

How was the report received?

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What is alleged?

Jurisdiction - how was it within the Education Program or Activity? Did the district exercise Control over Respondent?

DEFINITIONS

Define the conduct/ allegations at issue.

Include other relevant definitions (consent, course of conduct, reasonable person, substantial emotional distress, etc.).

May include state definitions here. Look to your policy for language/ guidance.

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Include burden of proof (Preponderance of the Evidence) here.



STANDARD OF PROOF

All standards related to sexual harassment must be the same

Clear and Convincingthe evidence is highly and substantially more likely to be true than untrue.

Preponderance of the Evidence - 50% plus a feather - more likely than not

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School investigation vs. Criminal investigation

COMPLIANCE SOLUTIONS

REPORT CONTENT



INFO FROM PARTIES AND WITNESSES • Fair Summary of Relevant Evidence and Information By Party
By Allegation
Chronological • If Something Isn't Included, Note Reason

- Bulk of the report
- Should include:
 - Timeline of Events
 - Information provided by
 - Complainant, Respondent, and Witnesses
 - Summary of Additional Relevant
 - **Evidence and Information**
 - social media, videos, etc.
 - list what it is, how it was
 - obtained, what it was received





SUMMARY OF RELEVANT **EVIDENCE AND INFORMATION**



REPORT CONTENT



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Delays

Reported

IMELINE OF ESTIGATION

• Formal Complaint Notice of Allegations Notice of Meetings • Dates of Collection of Evidence Dates of Meetings

TIMELINE OF INVES

Caller .

| Date/Time | Event |
|-----------|--------------------------------------|
| | Incident Reported to School District |
| | Formal Complaint |
| | Notice of Allegations |
| | Notice of Meetings |
| | Meetings/Interviews |
| | Site Visits |
| | Other Evidence Gathered (including |
| | gather it) |
| | Date parties/witnesses provide evide |
| | Date for Review of Evidence Directly |
| | Allegations |
| | End of <u>10 day</u> period |
| | Date written response(s) received |
| | Date of Report |
| | Date written response(s) received |
| | Delays and reason (including if move |
| | resolution and back to formal Grieva |

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• Emails

APPENDIX

Screenshots

Policy Notices Transcripts (if Recorded) Etc.

- Formal Complaint and Notices to each Party
- Title IX Policy
- Code of Conduct
- Emails
- Text Messages/Snapchats/etc.
- Photos
- Written responses from parties
- Map of school

APPENDICES/ ATTACHMENTS



COMPLIANCE SOLUTIONS

ORGANIZATION

Easy to Follow, Clear, Concise

Can the reader follow the report and understand who reported/said what?

Includes the Basics

Assume the reader knows NOTHING

Consistent but Not Identical

There is room for a little flexibility

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:::

Roadmap for the Decision-Maker

This report will guide the decision maker, help them ask questions, and provide a road map for their process

Reviewed by Colleague

Trusted, Title IX counterpart



LANGUAGE MATTERS

- Allegations (not charges)
 Complainant/Respondent
 Anatomically Correct
 Consistent/Inconsistent



10 DAY REVIEW • Evidence "directly related to the

- - allegations"
- Notes (may have to be redacted)
- Photos

- Screenshots
- Other



TITLE IX INVESTIGATIVE FILE

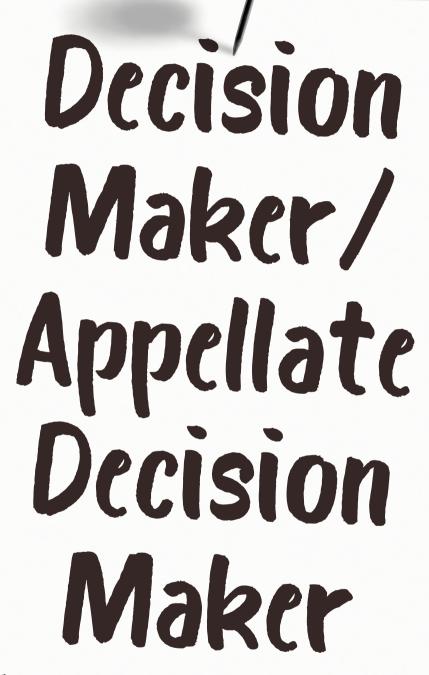
- 7 years
- Contingency and Sustainability planning (what will happen to your file if you leave or change roles)
- Anyone should be able to pick up your file and understand what happened

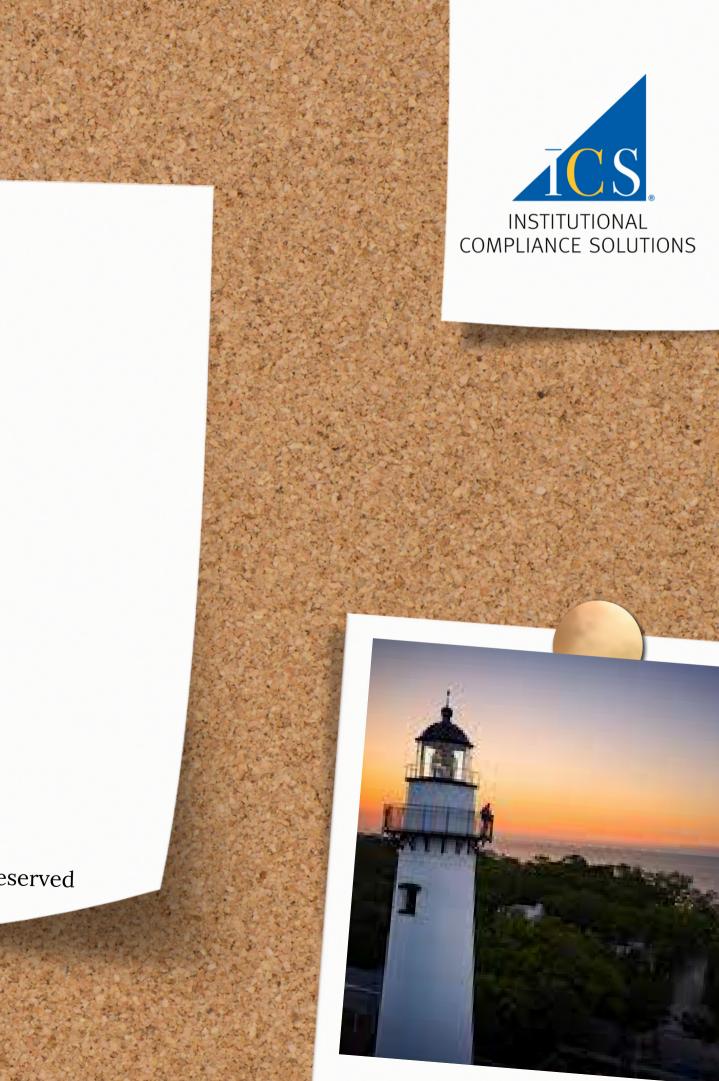


00000000000 000000000 **BE PREPARED TO BE INVESTIGATED!** DOCUMENT, DOCUMENT, BE PREPARED **DOCUMENT!**

(delays, objections EVERYTHING)

- Duplication of
 - documentation
- To record or not to record?
- Inclusivity vs. Exclusivity





Decision Maker Responsibilities



- Neutrality
- Review Information
- Q & A
- Evaluate evidence
- Determine if Responsible
- Determine Sanction (if responsible)

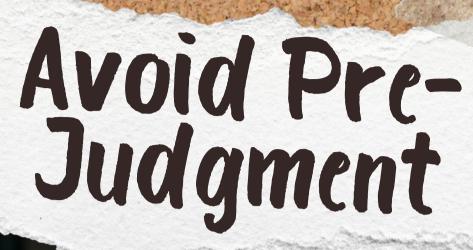
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COMPLIANCE SOLUTIONS

- Suspend your judgment
- Listen/Review ALL information before making a decision
- More difficult than it sounds





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Pause

Decision Maker Guide



Provide

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Review Responses and Determine Responsibility and Sanction

Draft Notice of Determination

> Provide Notice of Determination to Parties Simultaneously



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- Regulations do not define relevancy • Regulations define some things that
- are NOT relevant:
 - Treatment unless parties agree
 - Privileged Information
 - Questions and evidence about the **Complainant's sexual predisposition** or prior sexual behavior...unless...



Relevancy

000000000 Presumption of NOT Responsible

Burden remains on the district





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Written Determination MUST Include:

Identification of all allegations potentially constituting Sexual Harassment



Description of procedural steps taken from the receipt of the Formal Complaint through the determination



Findings of fact supporting the determination



Statement of and rationale for the result of each allegation (including sanction)

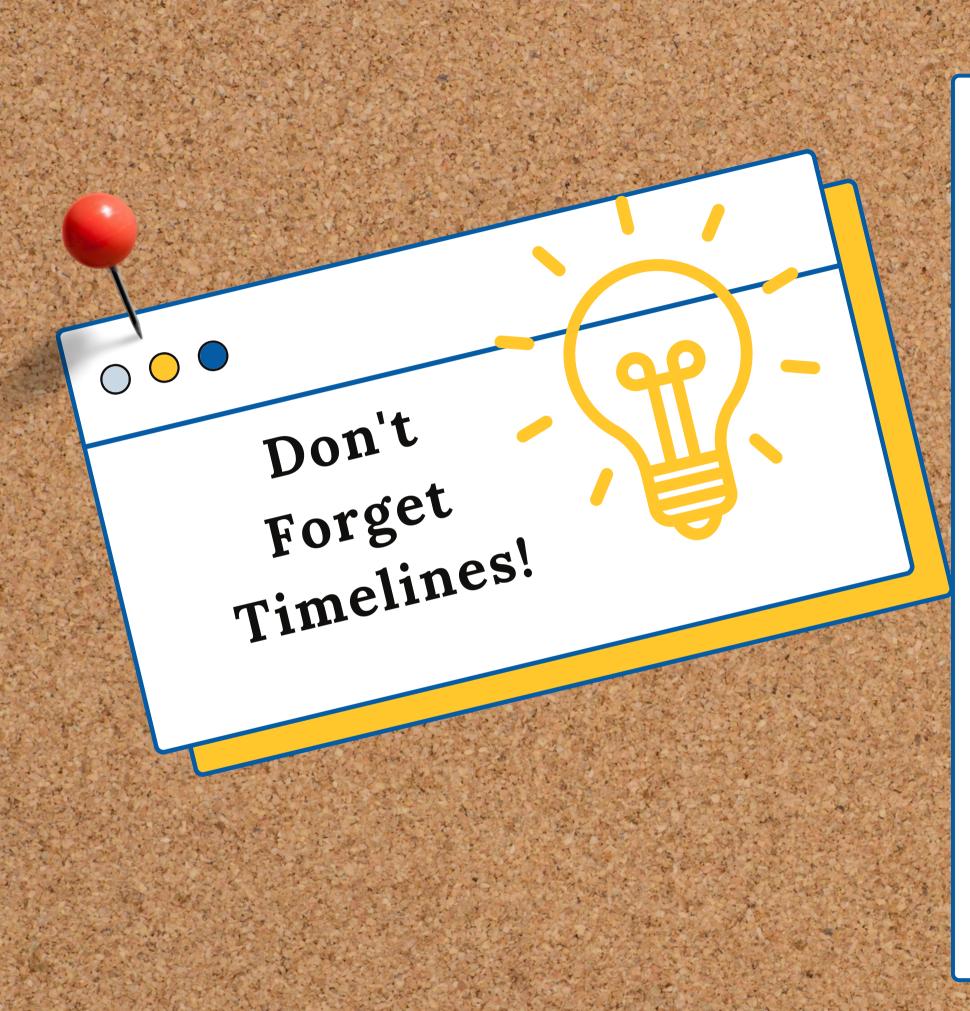




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Procedures and permissible basis for appeal



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Timeline of all events

- Report
- Formal Complaint
- Notices
- Meetings
- Reviews
- Report

Written Determination



Example: Fondling

Pull out your fondling definition: Cindy and Tim were in the hallway at school. Tim grabs Cindy's butt and boobs as she walks by. Cindy reports that he says, "I'd like to hit that." There is video that shows the event and it also shows Tim saying something. Tim says he didn't say anything at all.

FINDINGS OF FACT TO SUPPORT THE DETERMINATION/ CONCLUSIONS

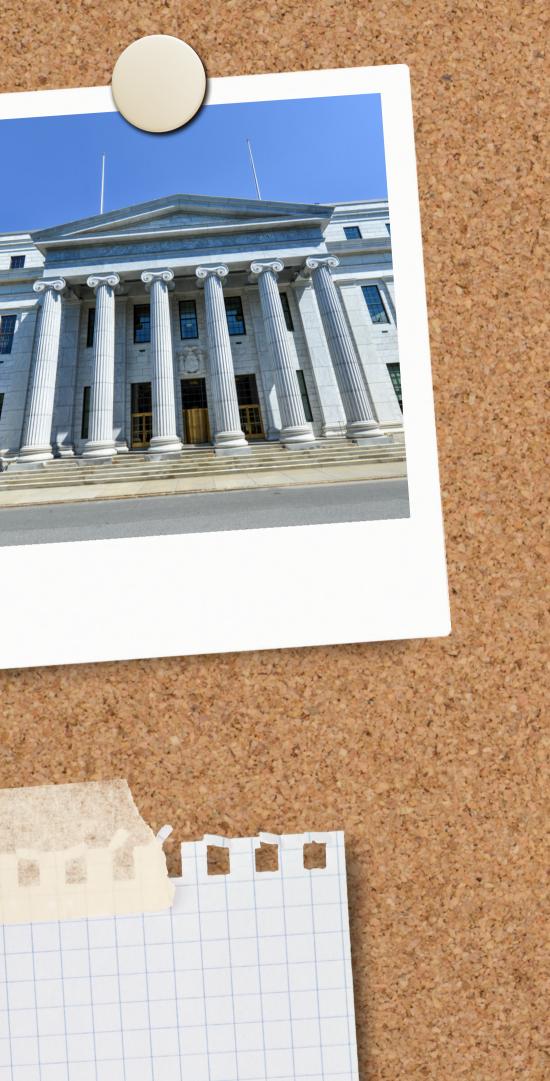
- Separate Each Element
- contrast

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• Establish that facts that are consistent or in

• Write them in determination





Appeals

INSTITUTIONAL COMPLIANCE SOLUTIONS





Appeals

- Must offer both parties an appeal re: responsibility, district dismissal of formal complaint, or any allegation on the following:
 - matter
 - New Evidence
 - Conflict of Interest or Bias by Title IX Coordinator, **Investigator(s)**, **Decision-Maker(s)**
 - toward specific party
- May include additional bases
- Must be included in written determination

• Procedural irregularity that affected the outcome of the

Generally toward Complainants or Respondents or



Role of Appellate Decision Maker

- Review Appeals
- Make Timely Decisions and **Simultaneous Notifications**

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KNOW YOUR

Understand District Specific Process



Possible Outcomes

- Uphold the entire determination made by the Decision-Maker
- Uphold a portion of the determination and overturn/remand a portion
- Overturn the determination made by the Decision-Maker in its entirety and/or remand
- Send the matter back to the Decision-Maker/Investigator/Title IX Coordinator for reconsideration due to new evidence/procedural
- error/conflict of interest/bias (remand)
- Overturn Formal Complaint Dismissal and remand back to Title IX Coordinator
- Any others dictated by your policy/procedure





Written Decision

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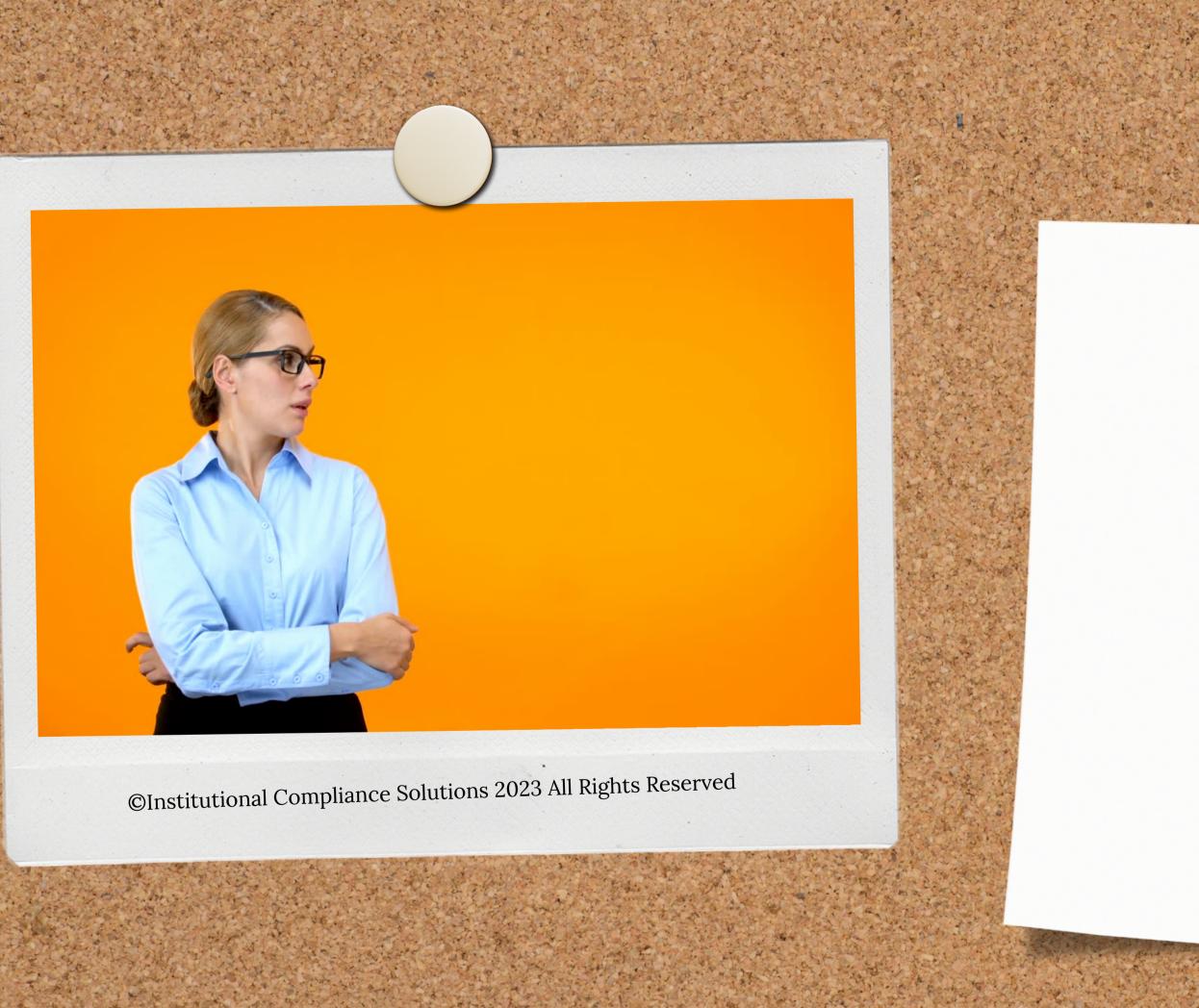
years

• Appellate decision-maker must issue a written decision describing the result of the appeal and the rationale for the result

• Appellate decision-maker must provide the written decision simultaneously to both sides/parties

• Appeal information (and the entire Title IX file) must be maintained for at least 7





Questions?



INSTITUTIONAL COMPLIANCE SOLUTIONS