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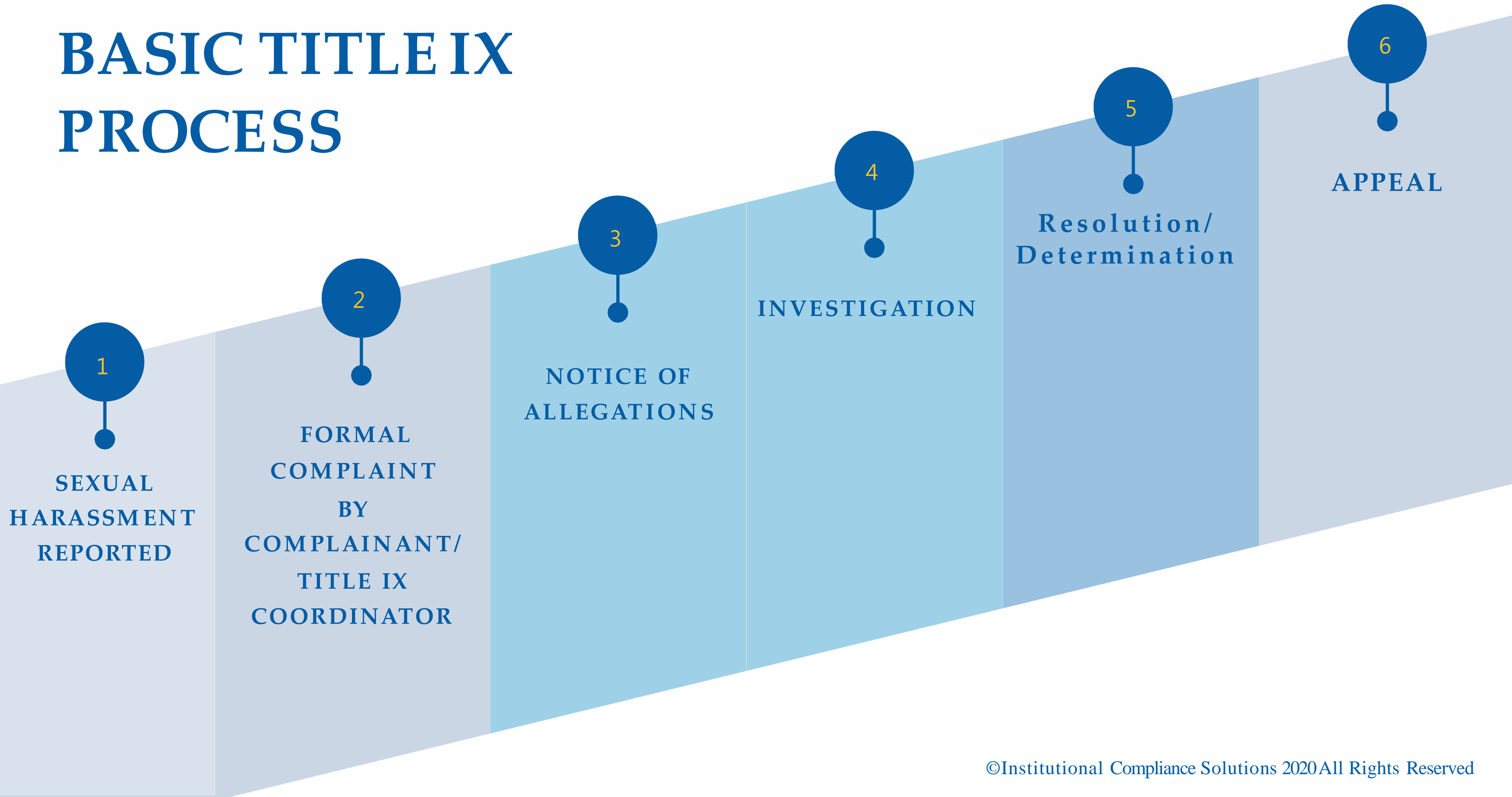


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BASIC TITLE IX PROCESS





Appellate Decision Makers' Role

- Understand District's Specific Process
- Review Appeals
- Make Timely Decisions and Simultaneous Notifications
- Serve Impartially



YOUR ROLE CONT'D

- Review the appeal
- Review the record: file, hearing, investigation, etc.
- Make determination regarding the appeal
- Provide your determination and rationale simultaneously to the parties

What Can Be Appealed?

- DISMISSAL OF A FORMAL COMPLAINT
- DETERMINATION RE: RESPONSIBILITY

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RESPONSIBILITY

Decision-maker must issue a WRITTEN DETERMINATION regarding responsibility - using standard of evidence established by the district.

ARTICULATING DECISION/RATIONALE

- Articulate what they believe happened based on:
 - Standard of evidence
 - Elements of alleged violation
 - Connect rationale to each element
 - Identify facts supporting each element(s)
 - Identify facts that do not support the element(s)
 - Include any admissions that occur during the hearing
 - If using a formula to weigh evidence/information, make sure to follow explicitly





Decision-Maker

Determination Regarding Responsibility Checklist

- ☐ Identification of the Allegations

- ☐ Description of Procedural Steps Taken
 - Notifications to the Parties
 - Interviews with Parties and Witnesses
 - Site Visits
 - Methods Used to Gather Other Evidence
 - Hearings Held

- ☐ Findings of Fact Supporting Determination

- ☐ Conclusions Regarding the Application of the Code of Conduct to the Facts

- ☐ Result of Each Allegation Including Rationale
 - Determination Regarding Responsibility
 - Disciplinary Sanctions
 - Whether Remedies Designed to Restore or Preserve Equal Access to Education Program or Activity Provided to the Complainant

- ☐ Procedures and Permissible Bases for Appeal

APPEALS

- MUST offer both parties an appeal re: responsibility, recipient dismissal of formal complaint, or any allegations on following bases:
 - Procedural irregularity that affected the outcome of the matter
 - New Evidence
 - Conflict of Interest or Bias by Title IX Coordinator, Investigator(s), Decision-Maker(s)- generally toward complainants or respondent or toward specific party
 - May include additional bases
- Must be included in Written Determination





Formal Complaint Analysis

- ✓ Is Complainant a Participant in Education Program or Activity?
- ✓ Does the report meet the definition of Sexual Harassment?
 - Based on Sex
 - Quid pro quo
 - Severe, pervasive and objectively offensive
 - Sexual Assault, Domestic Violence, Dating Violence, Stalking
- ✓ Education Program or Activity/Jurisdiction?
 - Does district have substantial control over the Respondent
AND
 - Does school have substantial control over the context in which the conduct occurred (on campus property or during sponsored event)
- ✓ Conduct occur against a person in the U.S.

Formal Complaint Analysis



Title IX Coordinator may:

- ✓ Dismiss the Formal Complaint in its entirety
- ✓ Dismiss certain allegations within the Formal Complaint that do not meet definition Sexual Harassment and/or fall within scope or activity of district and allow the remaining allegations to proceed to investigation

*Either way, appeal must be offered





Permissive Dismissal of a Formal Complaint

- ✓ Complainant no longer wishes to go forward and wants to withdraw the Formal Complaint (must notify Title IX Coordinator in writing)
- ✓ Respondent no longer enrolled or employed by the district
- ✓ Specific circumstances that prevent the recipient from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein



Grounds for Appeal

- 3 provided by regs
- Others per policy



PROCEDURAL IRREGULARITY

- Regulations require specific procedures in a formal Title IX grievance process, and each step has specific requirements - be sure to familiarize yourself with those processes!
- Irregularity alone not enough - must also have affected the outcome
- Focus on due process rights of Respondent - improper notice, insufficient time to prepare, for example
- Similarly, must also have same for Complainant

A photograph of a piece of white paper with the word 'Appeal' printed in a bold, black, serif font. The paper is torn at the top and bottom edges, revealing a brown, textured cardboard-like material underneath.

INVESTIGATIVE TIMELINE

1

INVESTIGATE

- Notice of Allegations
- Notice of all interviews with sufficient time to prepare

2

OPPORTUNITY TO
INSPECT AND
REVIEW
EVIDENCE
DIRECTLY
RELATED TO
ALLEGATION &
PROVIDE
WRITTEN
RESPONSE

10 days

3

INVESTIGATIVE
REPORT

4

OPPORTUNITY
TO REVIEW
FINAL REPORT
AND PROVIDE
WRITTEN
RESPONSE

10 days

5

RESOLUTION/
DETERMINATION

6

APPEAL



NEW EVIDENCE

New evidence not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.



Conflicts of Interest/Bias

- ✓ Title IX Coordinator
 - ✓ Investigator
 - ✓ Decision-Maker





“Could affect the outcome of the matter”

Ground + Outcome

Review of the Record

- Formal Complaint
- Notice of Allegations
- Notice of Meetings
- Evidence Directly Related to the Allegations (10 Days for Parties to Review and Respond)
- Written Responses to Evidence Directly Related to the Allegations
- Investigation Report that Fairly Summarizes Relevant Evidence (10 Days for Parties to Review and Respond)
- Written Responses to Investigative Report from both parties
- Notice of Hearing (if one occurred)
- Hearing Transcript/Audio/Audiovisual Recording (if one occurred)
- Written Determination by Decision-Maker





Equal Appeal Procedures for Both Parties

- Appellate decision-maker cannot be the same as the decision-maker regarding responsibility, or the Title IX Coordinator
- Appellate decision-maker must be trained
- Parties must have a reasonable, equal opportunity to submit written statement in support of or challenging the outcome



WRITTEN DECISION

1. Appellate decision-maker must issue a written decision describing the result of the appeal and the rationale for the result
2. Appellate decision-maker must provide the written decision simultaneously to both sides/parties
3. Appeal information (and the entire Title IX file) must be maintained for at least 7 years



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



Appeals Checklist

☐

Provide Equal Opportunity to Appeal

- Determination of Responsibility
- Dismissal of Formal Complaint

☐

Based Upon Proper Grounds

- Procedural Irregularity that Affected Outcome
- New Evidence that Was Not Reasonably Available at the Time of the Determination that Could Affect Outcome
- Conflict or Bias by Title IX Coordinator, Investigator, or Decision-Maker

☐

Notify the Other Party in Writing

☐

Decision-Maker NOT Same as Prior Decision Makers, Investigators, or Title IX Coordinator

☐

Provide Equal Opportunity to Submit Written Statement

☐

Issue Written Decision and Rationale

☐

Provide the Written Decision Simultaneously



QUESTIONS???

How Can We Help?



1

COMMUNITY
ACCESS

2

TAILORED
TRAINING

3

ONGOING
SUPPORT

