

# ICS Training

St. Simons Island, Ga  
October 2023







# Betsy Smith

Director of Title IX Services





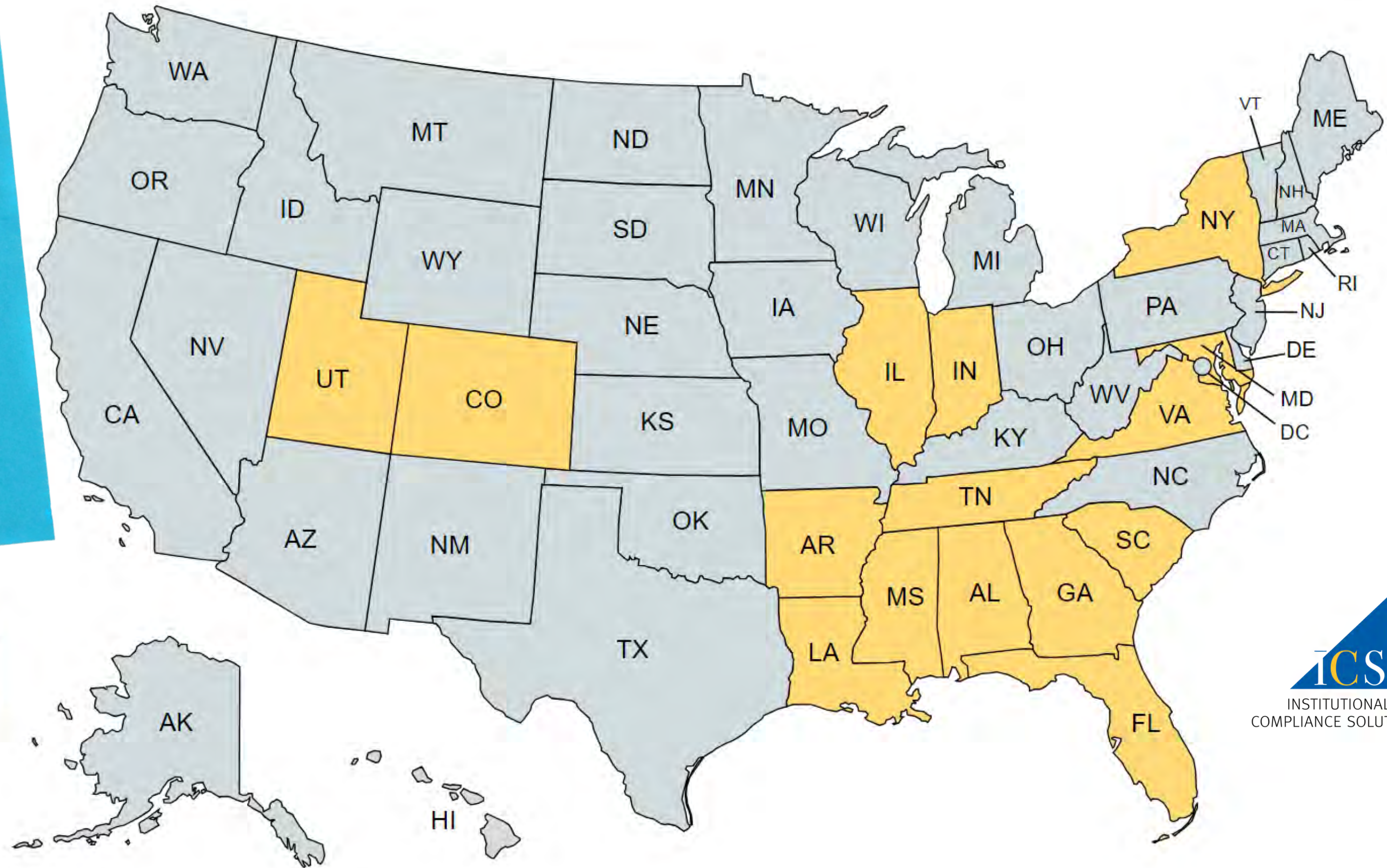
# Intro/ Housekeeping

- Agenda
- Breaks
- Posting
- Recording
- Interactive
- Connections
- Workbook



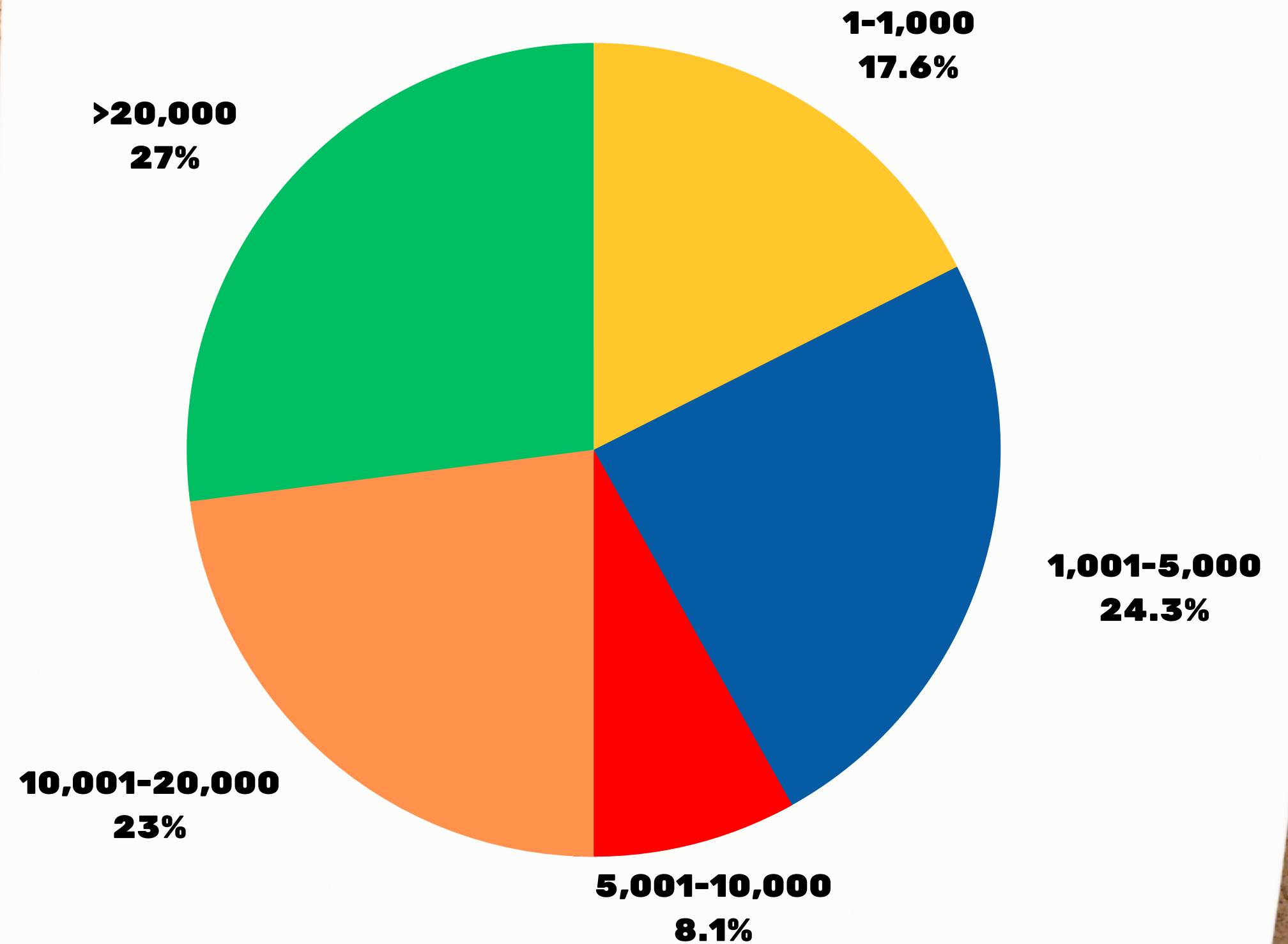


Who is  
HERE?



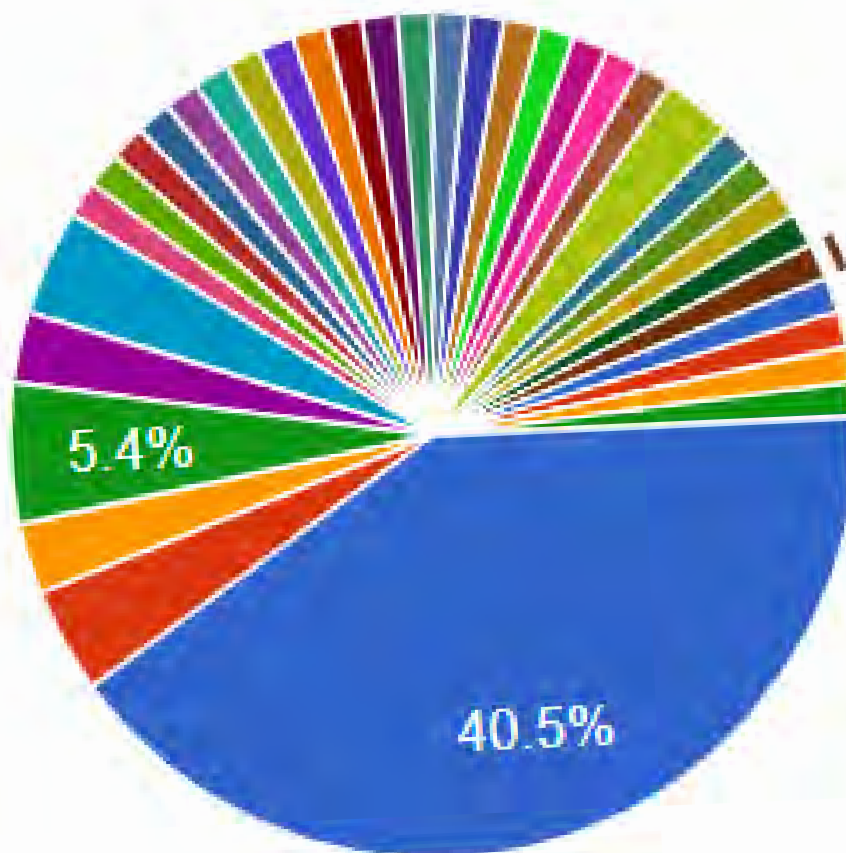


# Size of Your Districts





# 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



How long  
have you  
been in the  
role?

**< 1 year**



**1-2 years**



**2-5 years**



**> 5 years**



**0**

**10**

**20**

**30**

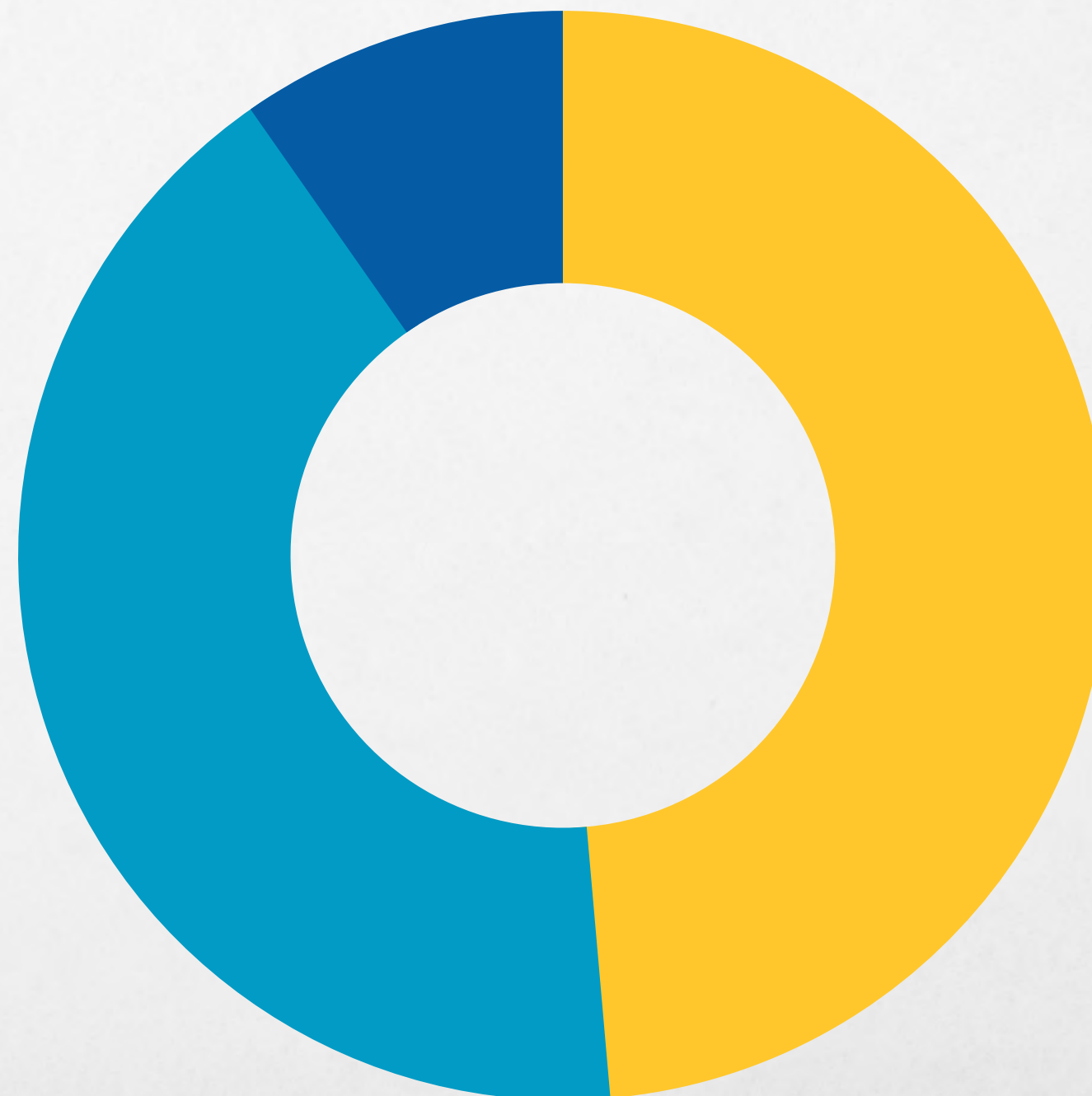
**40**



Does your  
admin  
understand  
the  
complexities

**ABSOLUTELY NOT**  
**9.7%**

**We are getting there!!**  
**41.7%**



**Yes!**  
**48.6%**

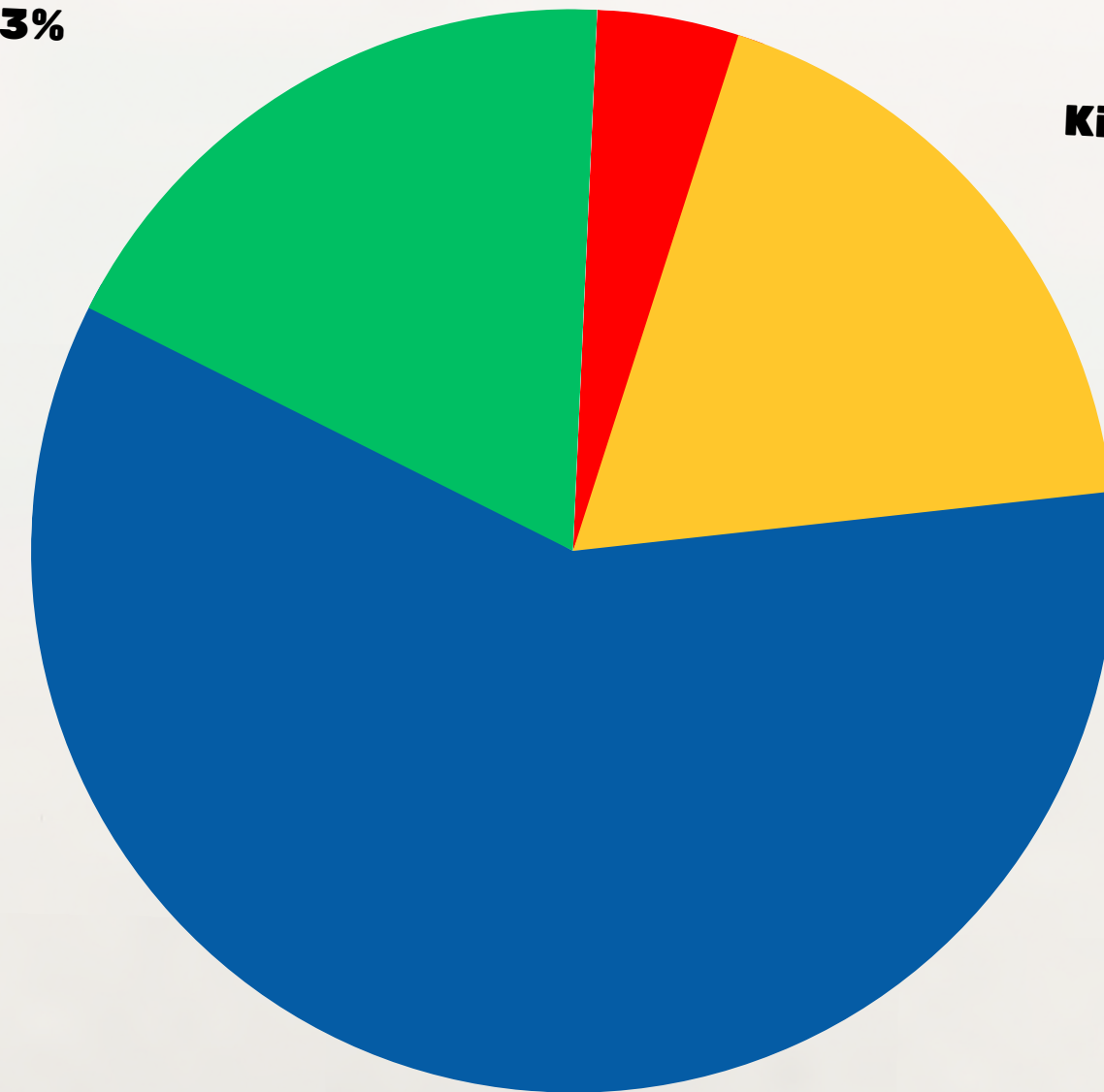


# Your District's Compliance


**Completely Compliant**  
**18.3%**

**Not Compliant**  
**4.2%**

**Kind of Compliant**  
**18.3%**







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



## Part 1





# 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.

**The Why**





# ACCESS!!!!

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

*Vintage*  
**1972**



**Including:**

Athletics/Activities

SOGI

Pregnancy

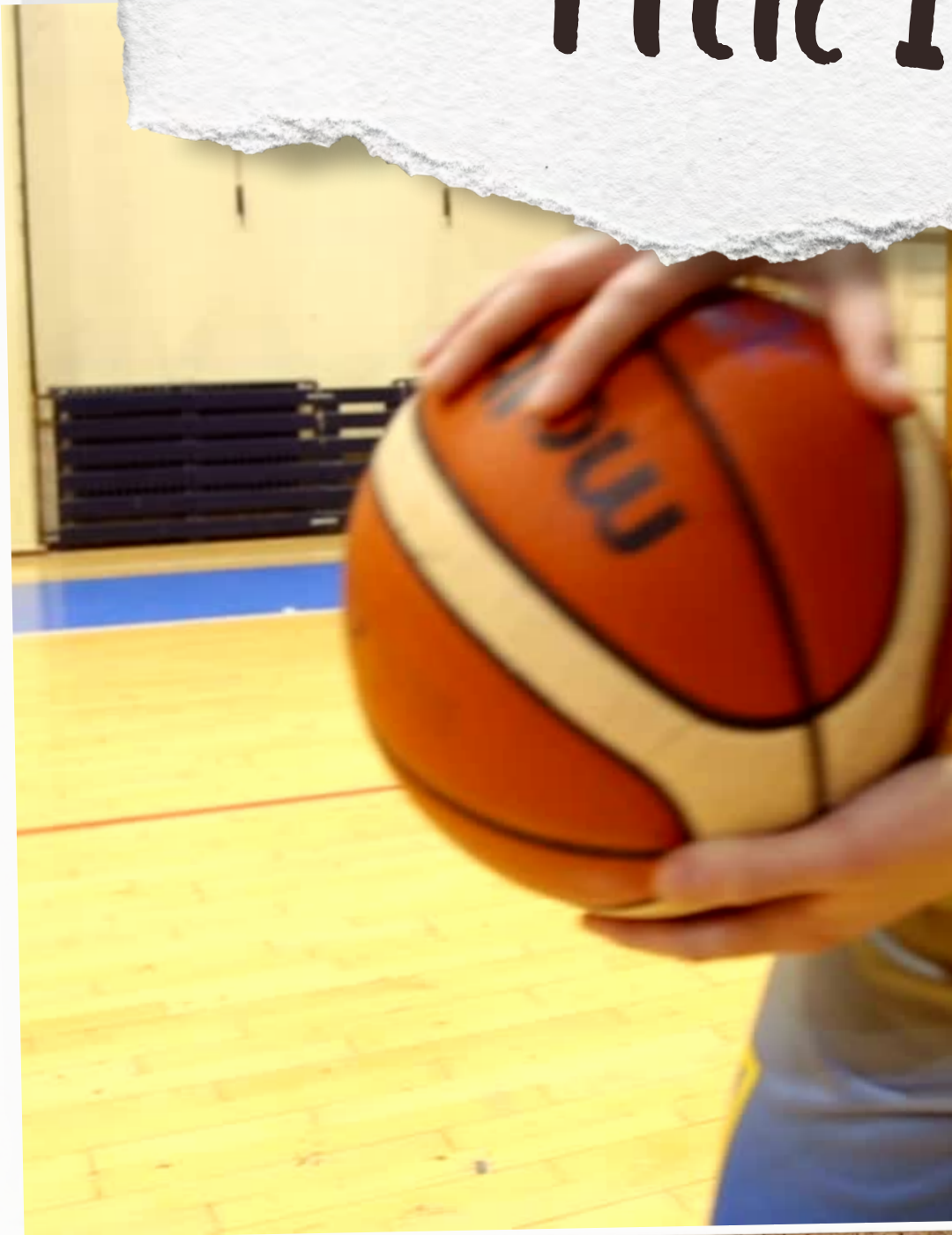
**Sexual  
Harassment**





# Title IX IS:

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



## Is NOT Title IX

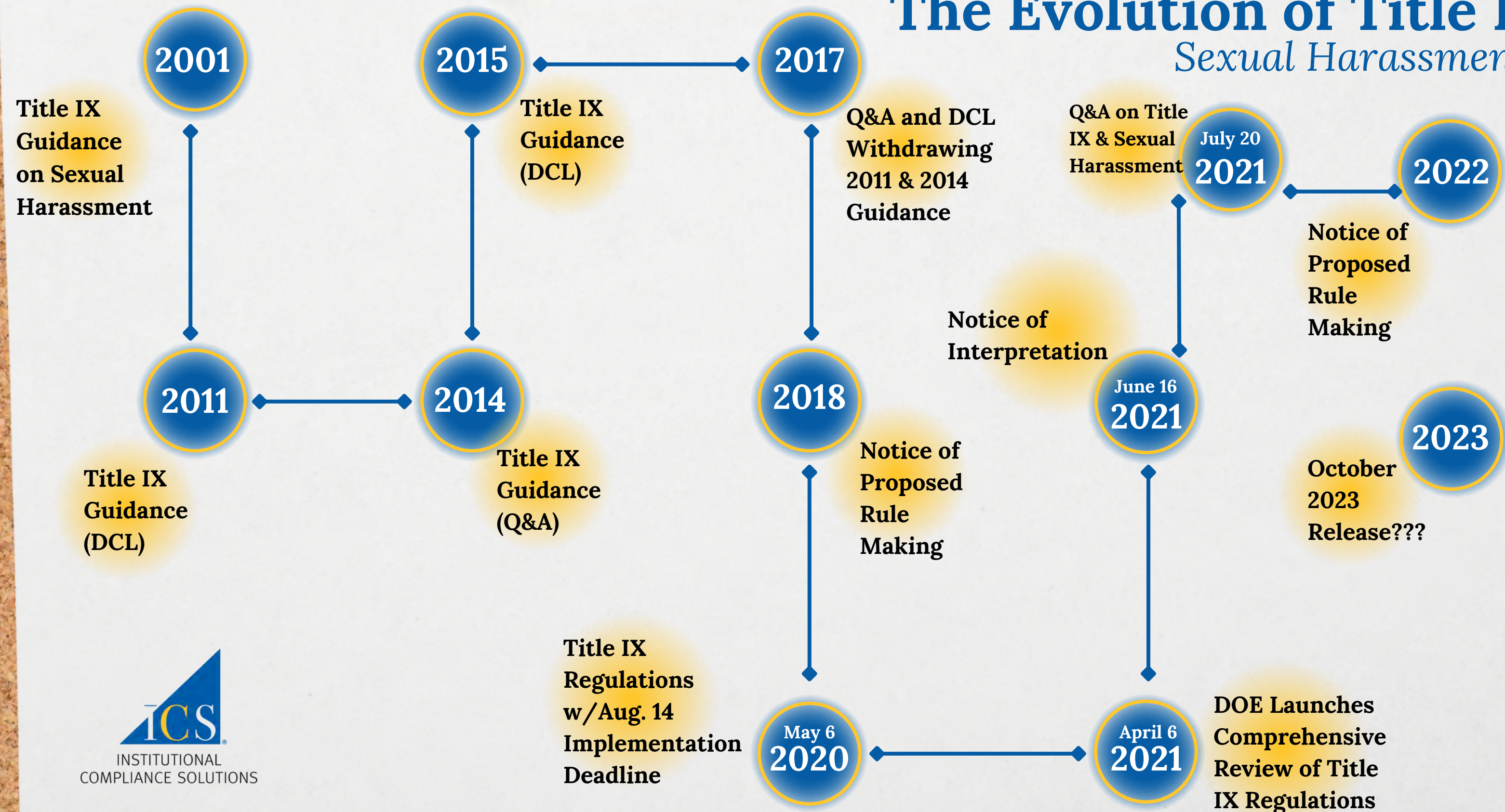
- Disability discrimination (ADA)
- Employment discrimination based on race, religion, or national origin (Title VII)- Note overlap with sex
- Student discrimination based on race, religion, or national origin (Title VI)
- Age Discrimination (ADEA)





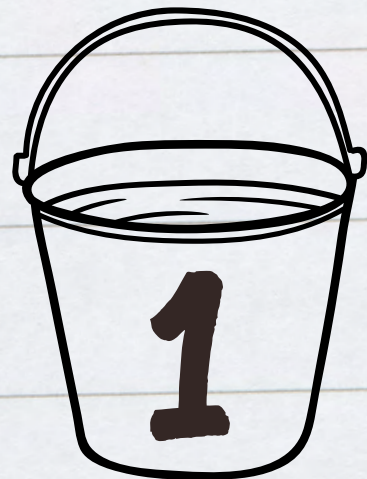
# The Evolution of Title IX

## *Sexual Harassment*

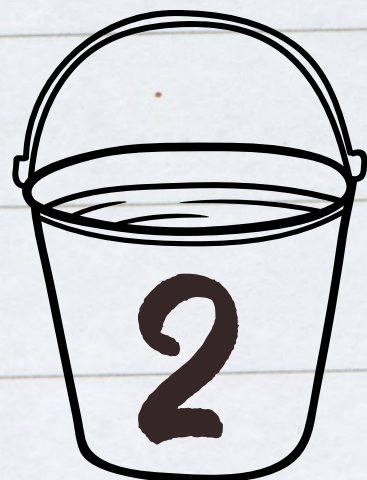




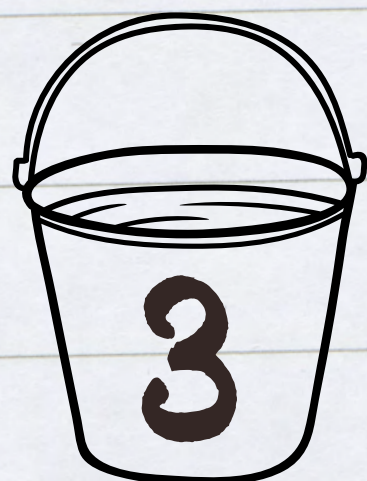
# Sexual Harassment



**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.**

**The What**



# Bucket 1 Deep Dive

- Quid Pro Quo
- Respondent Must Be Employee
- Athletics, Performance Evaluations, Promotions, Grades, Nominations for Awards, etc.



# 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



# Bucket 3 Deep Dive

- Sexual Assault
  - Rape
  - Fondling
  - Statutory Rape
  - Incest
- Dating/Domestic Violence
- Stalking



# Sexual Assault

The BIG 4



## Rape

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

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.



**ICS**  
INSTITUTIONAL  
COMPLIANCE SOLUTIONS



# Domestic Violence



**Ics**  
INSTITUTIONAL  
COMPLIANCE SOLUTIONS

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.



# Stalking

**Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:**

- 1 Fear for the person's safety or the safety of others;**
- OR**
- 2 Suffer substantial emotional distress.**



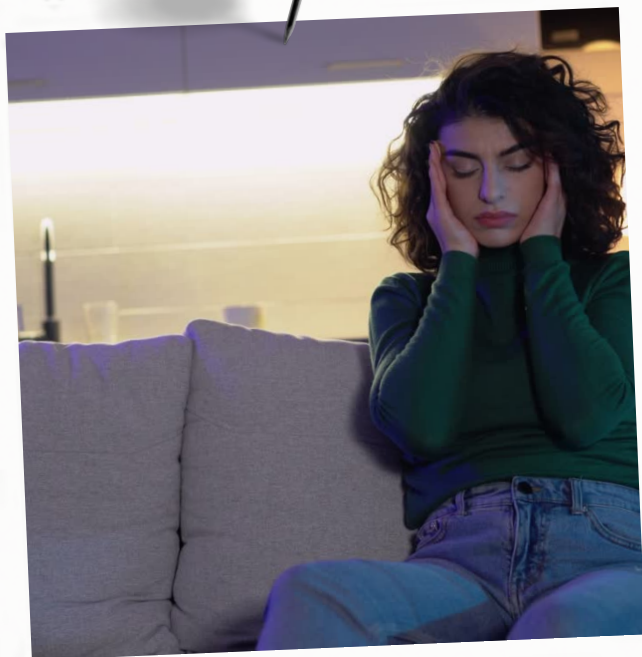


## *For purposes of the Stalking definition:*

**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.

**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.



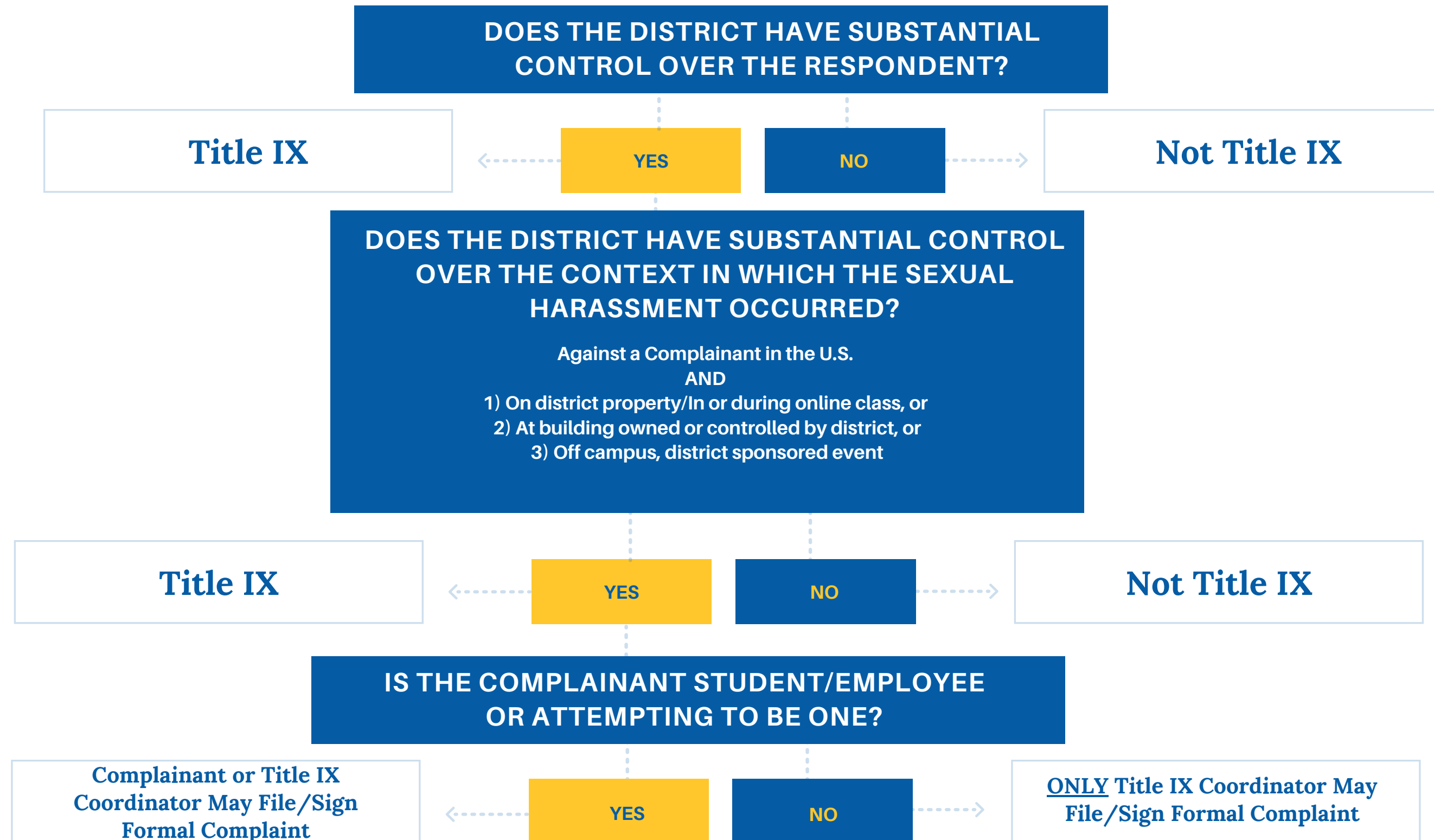


# Education Program or Activity

- 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.



# Education Program or Activity/Jurisdiction





# The Who



## Title IX Applies to:

- Student on Student
  - Employee on Employee
  - Student on Employee
  - Employee on Student





# The Parties



**Complainant:**  
Person who has  
allegedly been  
sexually harassed

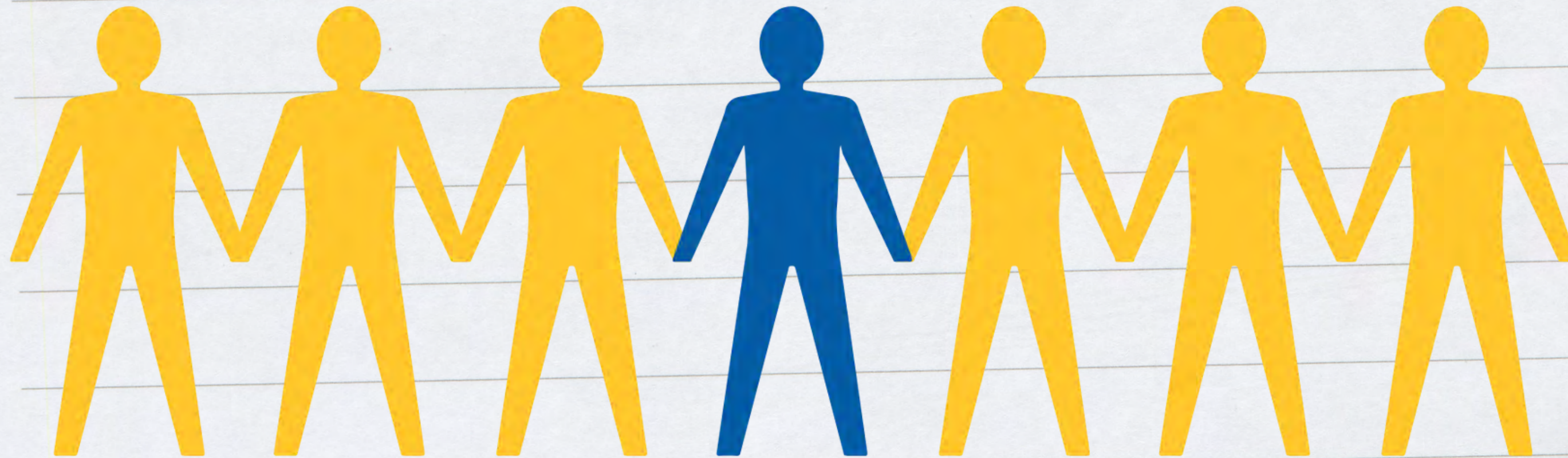
**Respondent:**  
Person who has  
allegedly  
committed sexual  
harassment



# Title IX Team



Title IX  
Coordinator



Responsible  
Employees/  
Officials  
w/Authority

Advisors

Investigator(s)

Decision-  
Maker(s)

Appellate  
Decision-  
Maker(s)

Informal  
Resolution  
Facilitator(s)

The Who



## 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.

# TITLE IX 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.

## 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.





# Training



**ICS**  
INSTITUTIONAL  
COMPLIANCE SOLUTIONS

## REQUIRED

- Title IX Coordinator (robust), Investigators, Decision-Makers, Informal Resolution Facilitators, Appellate Decision-Makers
- Decision-Makers- training on technology issues
- All Employee Training (Highly Recommended)
- **Post training materials**



# 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





# 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





# Coordinator Role

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





# 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 party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party.
- Hearing?
- Written Determination regarding Responsibility/Sanctions/ Remedies





# 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



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# Officials with Authority



- "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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# Parents/ Guardians



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.



# 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





# ANYTIME!



No Statute of  
Limitations!



# Process: Let's Get to Work!

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**Start**

# 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

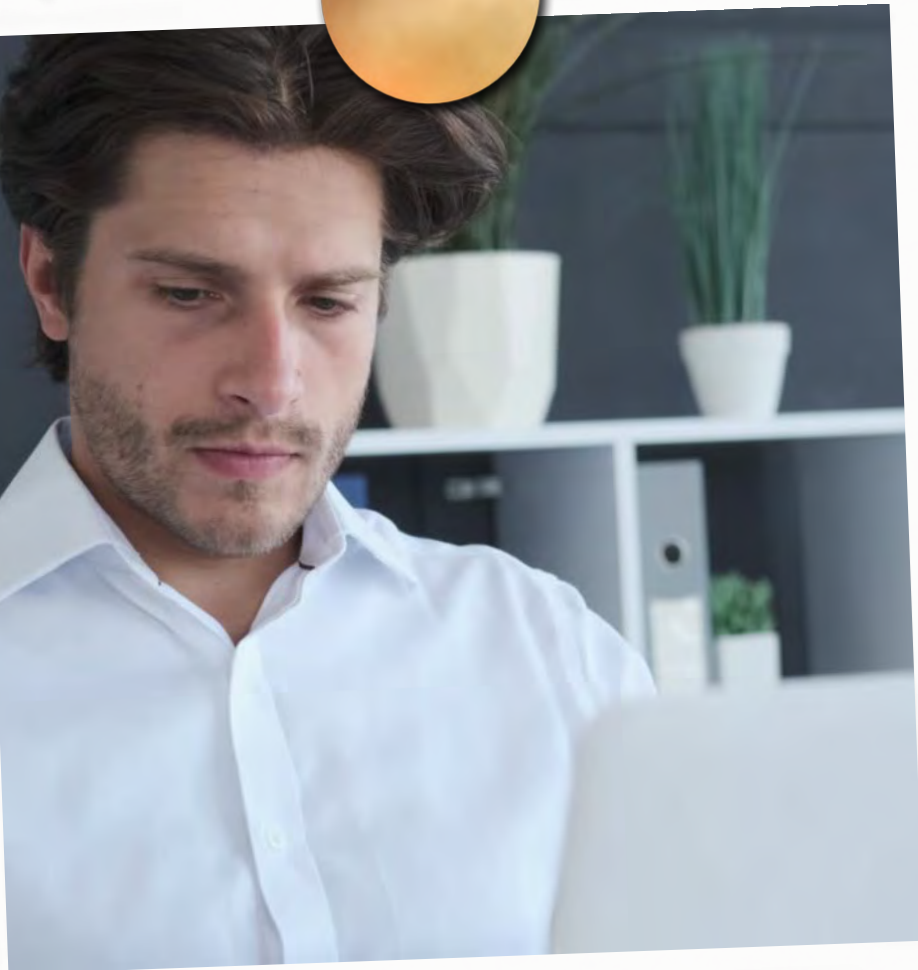
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# Triage:

- Is this Title IX Sexual Harassment?
  - Is Brock (Respondent) a student/employee?
  - Did this happen at school or school related activity?
  - Is Complainant a student/employee?
  - Does this fit into one of our three Title IX buckets?
- Do you need to sign formal complaint even if Lydia doesn't?





# Support

- Meet with Lydia/notify guardians
- Evaluate for safety concerns
- Develop supportive measures
- Explain Title IX Process (use flow charts)
- Provide copy of policy and visual aids
- Provide formal complaint document
- Allow time to make decision (provide support regardless of whether formal complaint is signed)
- If necessary, notify law enforcement/child protective services

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# 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

1. In writing
  2. 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.

Lydia

Reminder:  
Could be  
signed by  
guardian or  
Title IX  
Coordinator





# Reminder!

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

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**DISMISSED**



**Must send  
simultaneous notice-  
and opportunity for  
appeal!**

# 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





**ATTENTION**

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





# Notice of Allegations

**Sent to  
BOTH  
parties**

- Notice of Grievance Process (including informal resolution process if one exists)
- Allegations potentially constituting Sexual 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 uncomfortable. These events occurred in Ms. Adams Art room during after school art club at ICS High School.





# Investigation

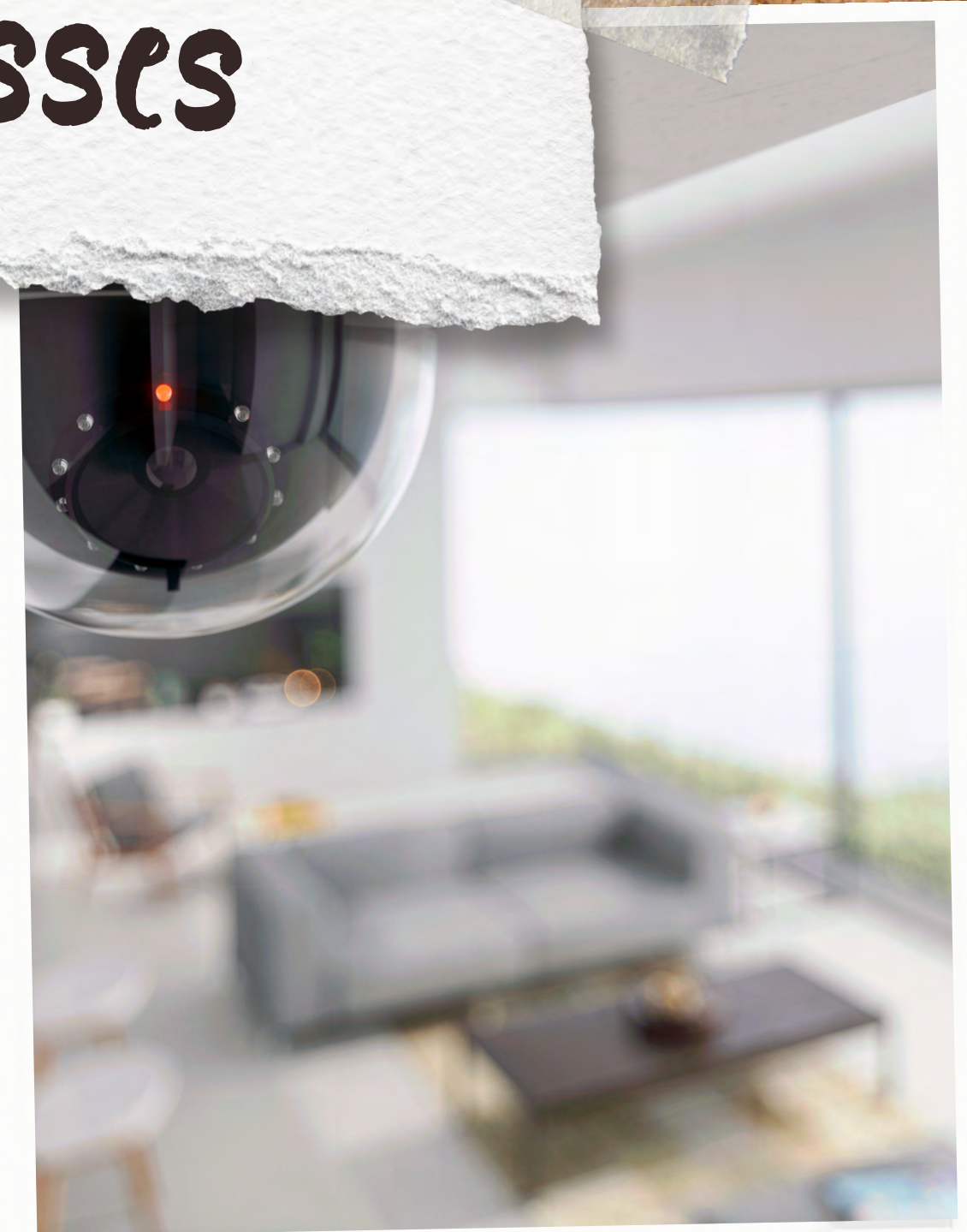
- **Interviews with parties and witnesses**
  - Including Notice with sufficient time to prepare for the meeting/interview
  - Document date of meeting and date notice provided
- **Collect evidence and information**
  - Document when and how evidence/information was collected
- **Allow parties and advisors to review "evidence directly related to the allegations" (10 days)**
- **Write investigation report that "fairly summarizes relevant evidence"**
- **Provide opportunity for parties and advisors to review the report (10 days)**





# Witnesses

- Identified by Brock?
- Identified by Lydia?
- Identified by camera?





# Decision-Making

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



# 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 determination regarding responsibility or dismissal was made that could affect the outcome of the matter
  - 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 the matter
  - Additional basis if offered equally to both parties





# 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



Opportunity  
to Respond!



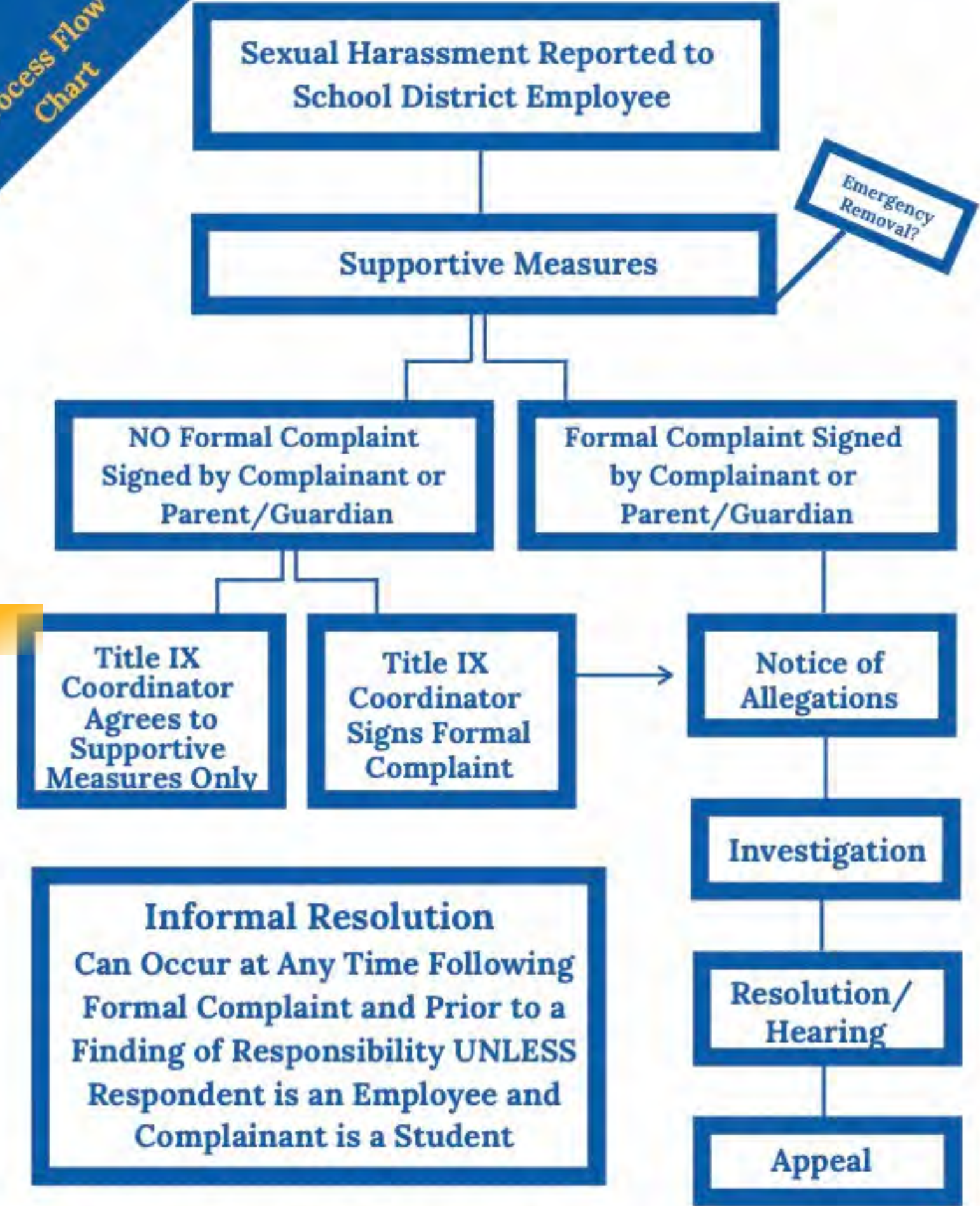
# Informal Resolution

- 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





Process Flow Chart



# 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**

**Record-Keeping**

**Policy and Procedures**

**Bias/Conflict of Interest**

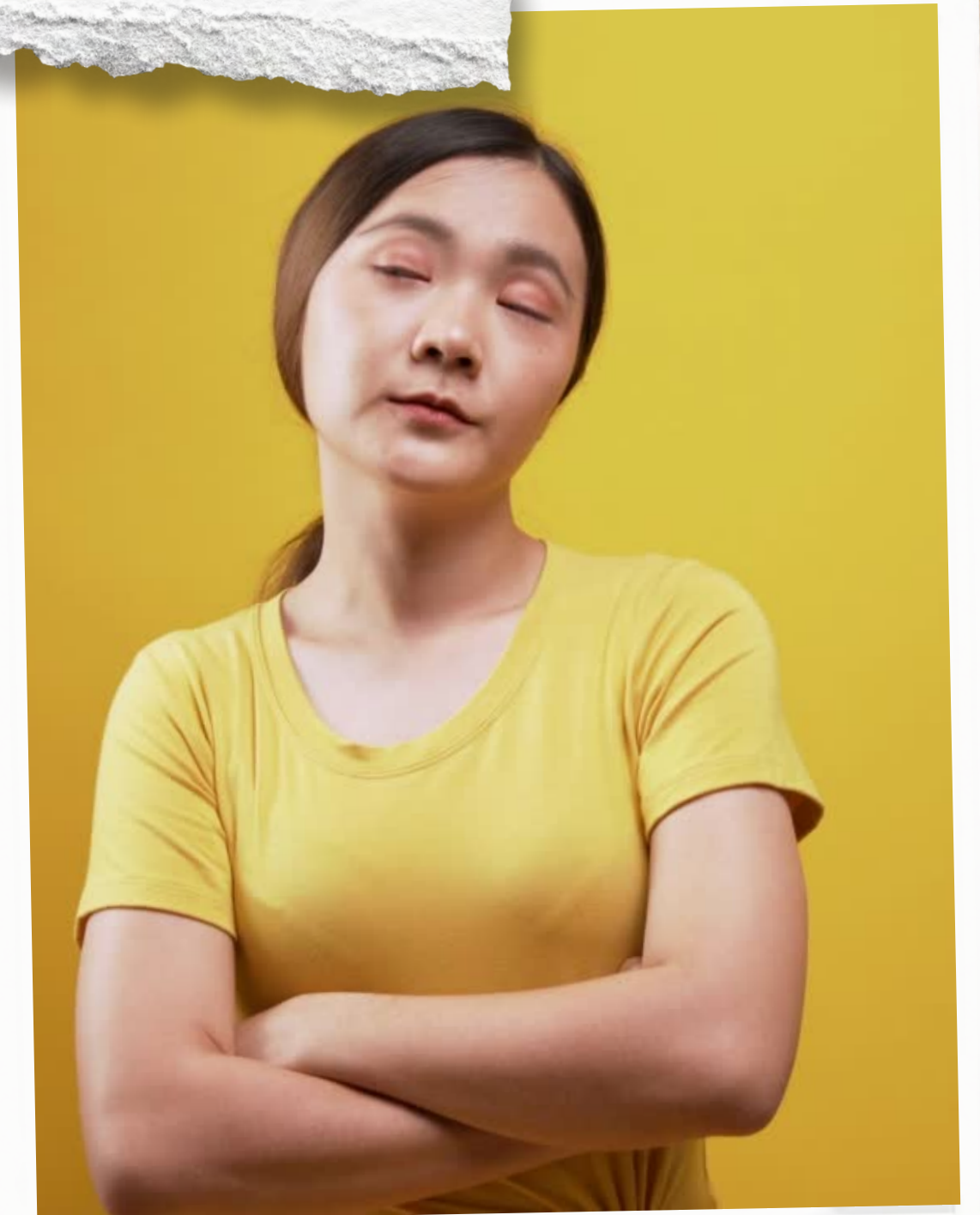
**The Future**

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# 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



Updated



# Avoid Conflict of Interest/Bias

- Generally toward Complainants/Respondents
- Occurs when personal or private interests possibly can compromise one's judgment, decisions, or actions
- Three types of conflicts of Interest
  - Actual
  - Perceived
  - Potential





# 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."**



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# Implicit Bias

- "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

2

Mandated Training  
Expanded

3

Additional/Modified  
Definitions

4

Complexity of Title IX  
Coordinator Role

5

Sexual Harassment is now  
Sex Based Harassment

6

Less Prescriptive Grievance  
Process

7

Informal Resolution- Initiated  
without "Formal Complaint"

8

Retaliation Protections

9

Discrimination Based on  
Pregnancy

10

Expands Recordkeeping



# 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?

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Questions?



INSTITUTIONAL  
COMPLIANCE SOLUTIONS







# More than Compliance

Title IX Coordinator  
Training Part 2





# TITLE IX PROCESS





1. ABOUT US
2. OUR TEAM/  
EXPERIENCE
3. BRAND/LOGO
4. WHAT WE  
DO
5. REPORTING  
OPTIONS
6. TRAINING  
OPTIONS

# Start with the Advertising

How are you  
seen/viewed/remembered

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# Review

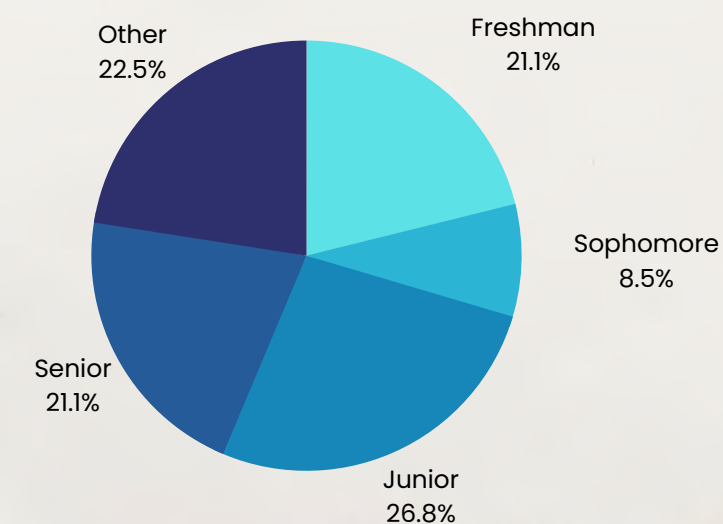
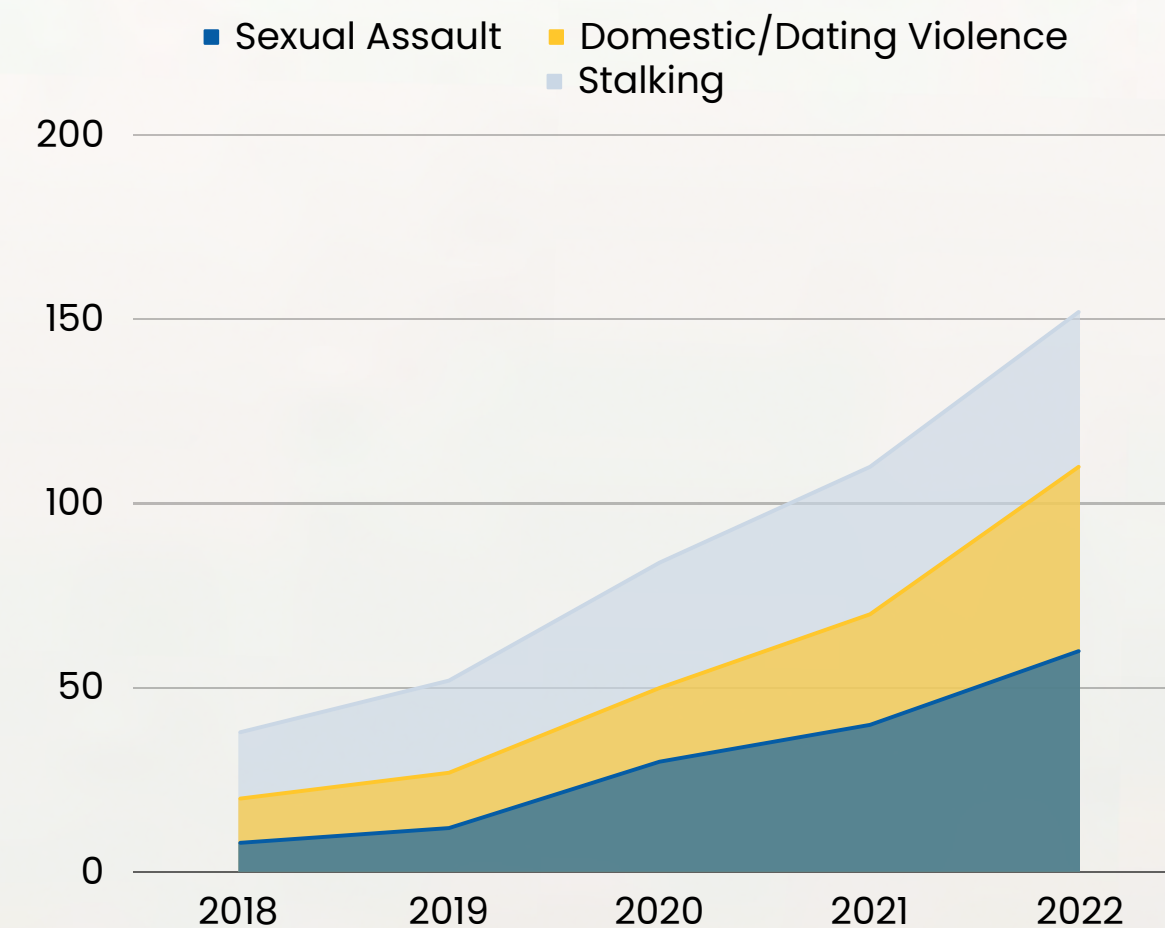
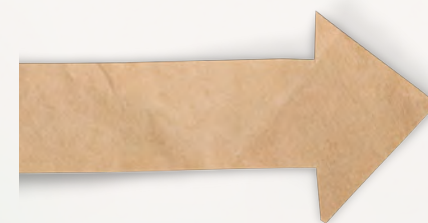
- Evaluate cases from last year/recent years
- Make changes as necessary
- Carry over cases to next academic year

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# BY THE NUMBERS...

Show them  
Charts and graphs combined with  
personality= understanding





# Barriers: Identify and Remove Them!

-  Not Trauma Informed
-  Team Not Knowing Roles
-  Website Deficiencies
-  Policy Deficiencies
-  Reputational Harm





# What's Your Rating?



DOES THIS SCHOOL/THIS PERSON  
CARE ABOUT ME?

A Absolutely

B Kind of

C Maybe

D No Way

5 STARS

2 THUMBS UP



# 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



# Translation Options

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





# Trauma





# TRAUMA & AMYGDALA, HIPPOCAMPUS, PREFRONTAL CORTEX



- 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



**FIRE**

**PULL  
DOWN**

**PRP**











# Trauma Response



Fight



Flight



Freeze



# Possible Impacts of Trauma



**SHOCK**

**DENIAL**

**SELF-BLAME**

**EMBARRASSMENT**

**FEAR**

**ANGER**

**CONFUSION**

**DISRESPECT**

**HUMILIATION**

**LIMITED EMOTION**

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# Trauma Informed Necessities



Comfortable



Clear



Consistent



Convenient



# Transparency = Kindness!

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### Reminder

Self Care is Important.

Okay



### Reminder

Be kind to yourself.

Okay





# Support First and Throughout





# 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

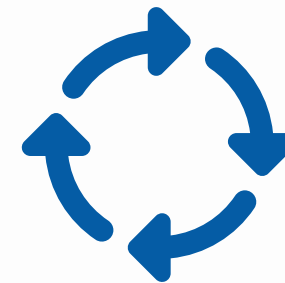
02



### LEAD WITH SUPPORT

- 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

04



### ASSESS FOR COMFORT AND IMMEDIATE NEEDS

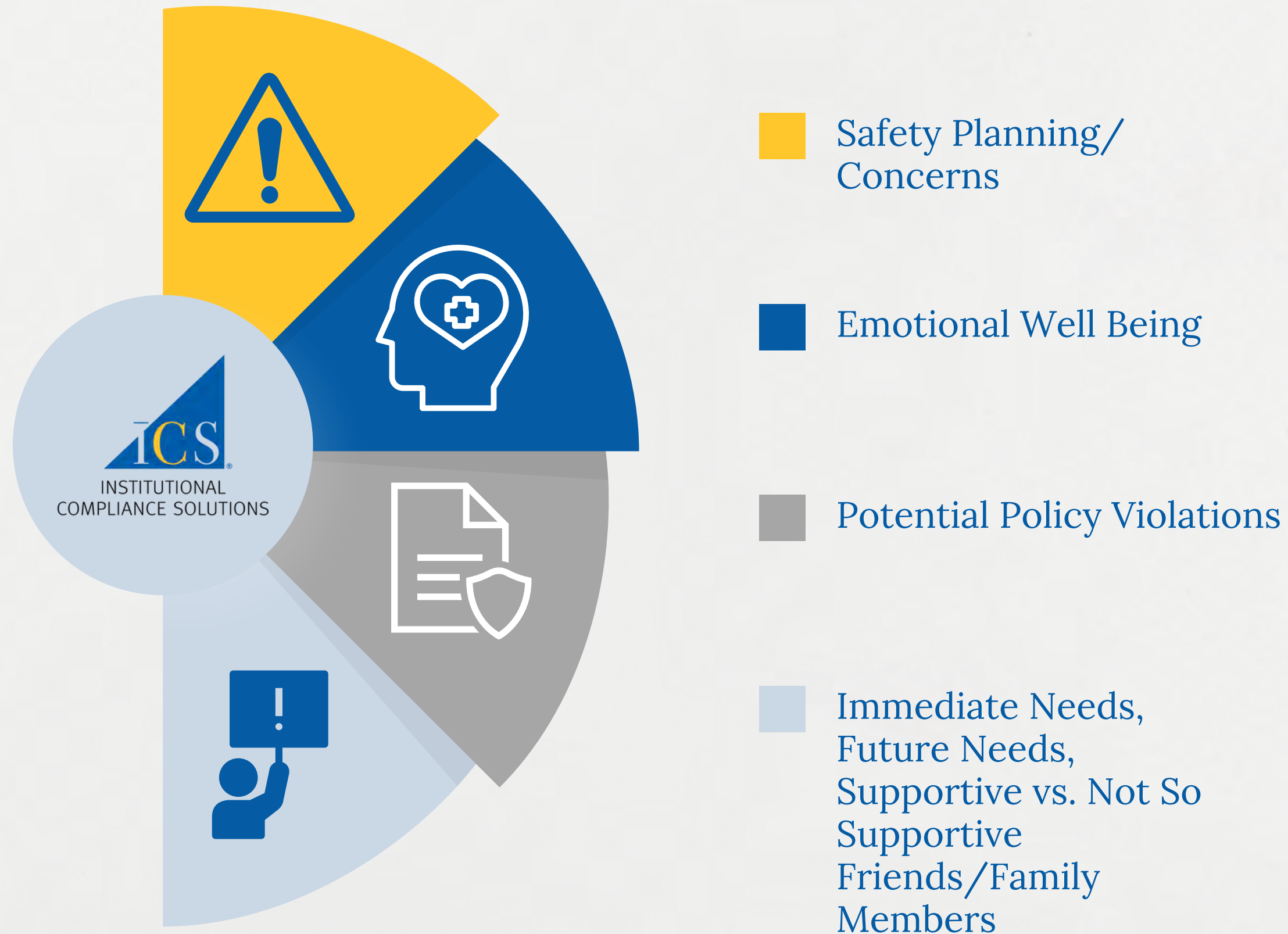
- Breaks are okay
- Water/snack
- Advisor/advocate



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# *Listen: Keep an ear out for....*





# Body Language/ Expression





# Support and Connect

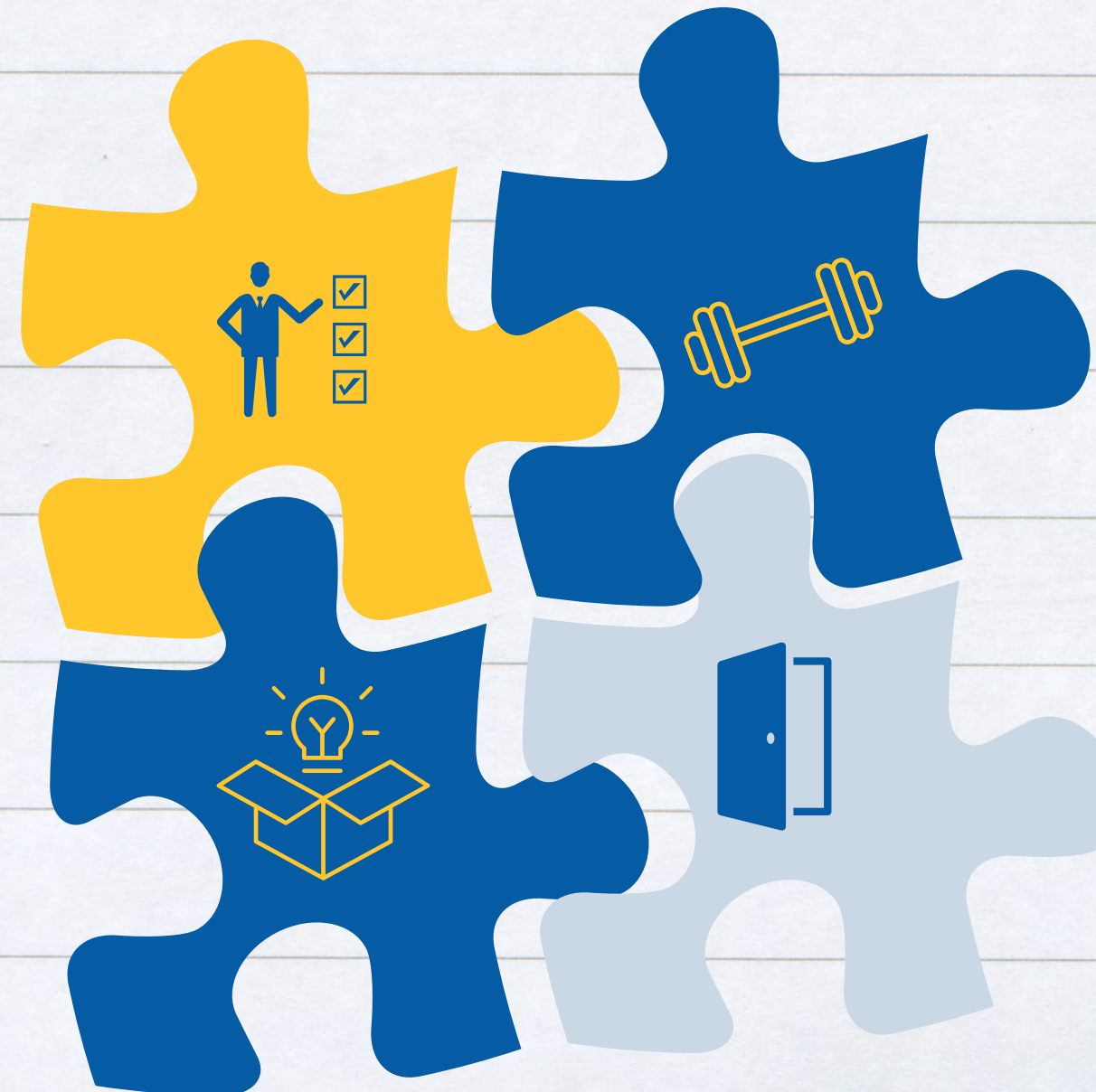
## Prioritize

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.



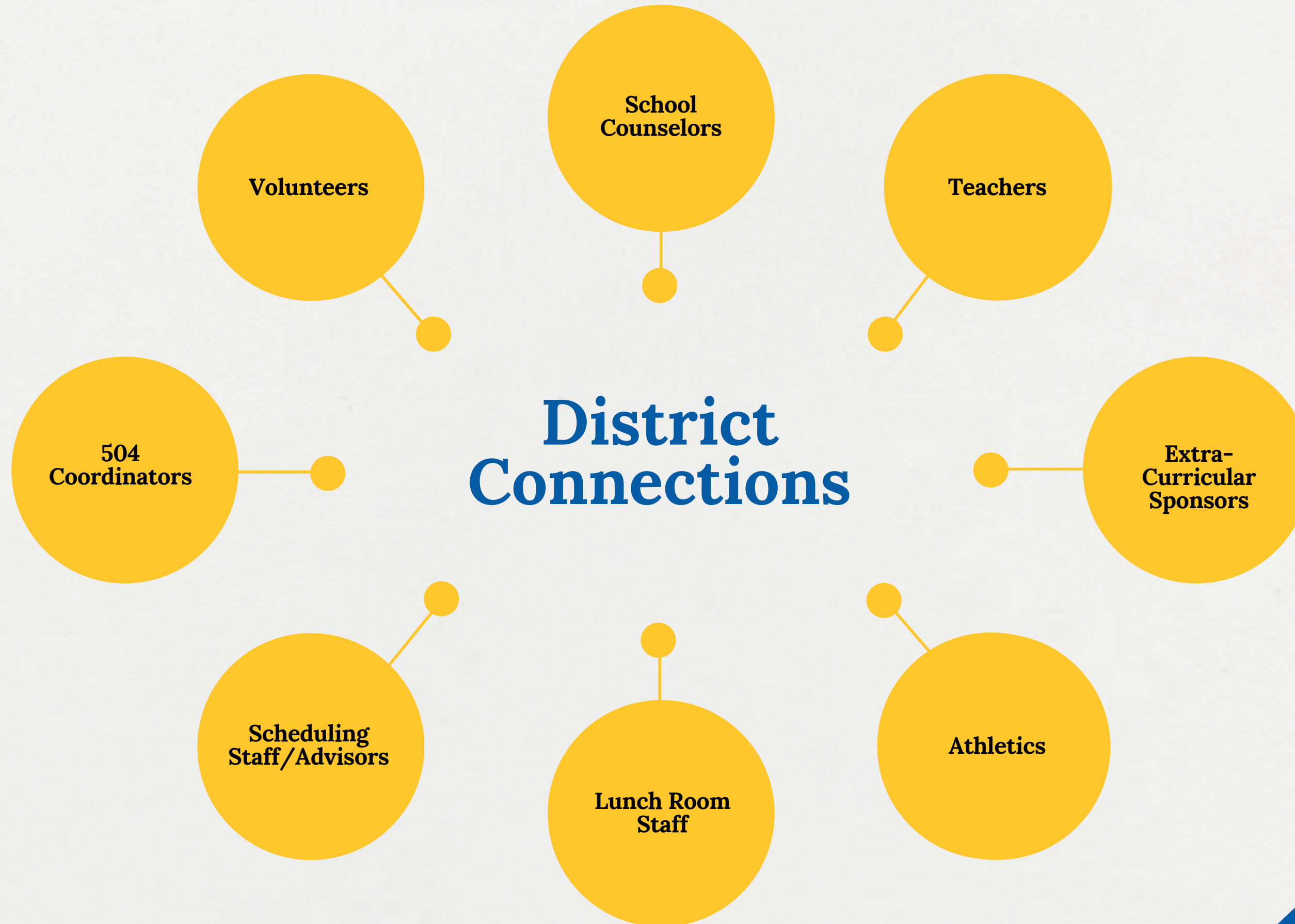
## Do the Heavy Lifting

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!



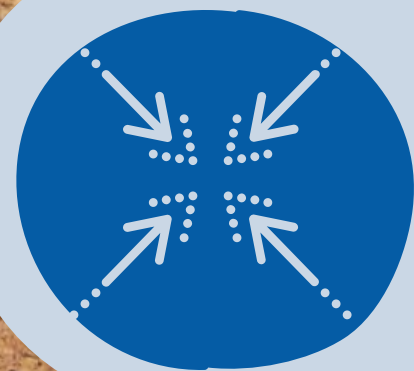




What can/  
should you  
share?



**You are working  
with/assisting the student  
or employee**



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

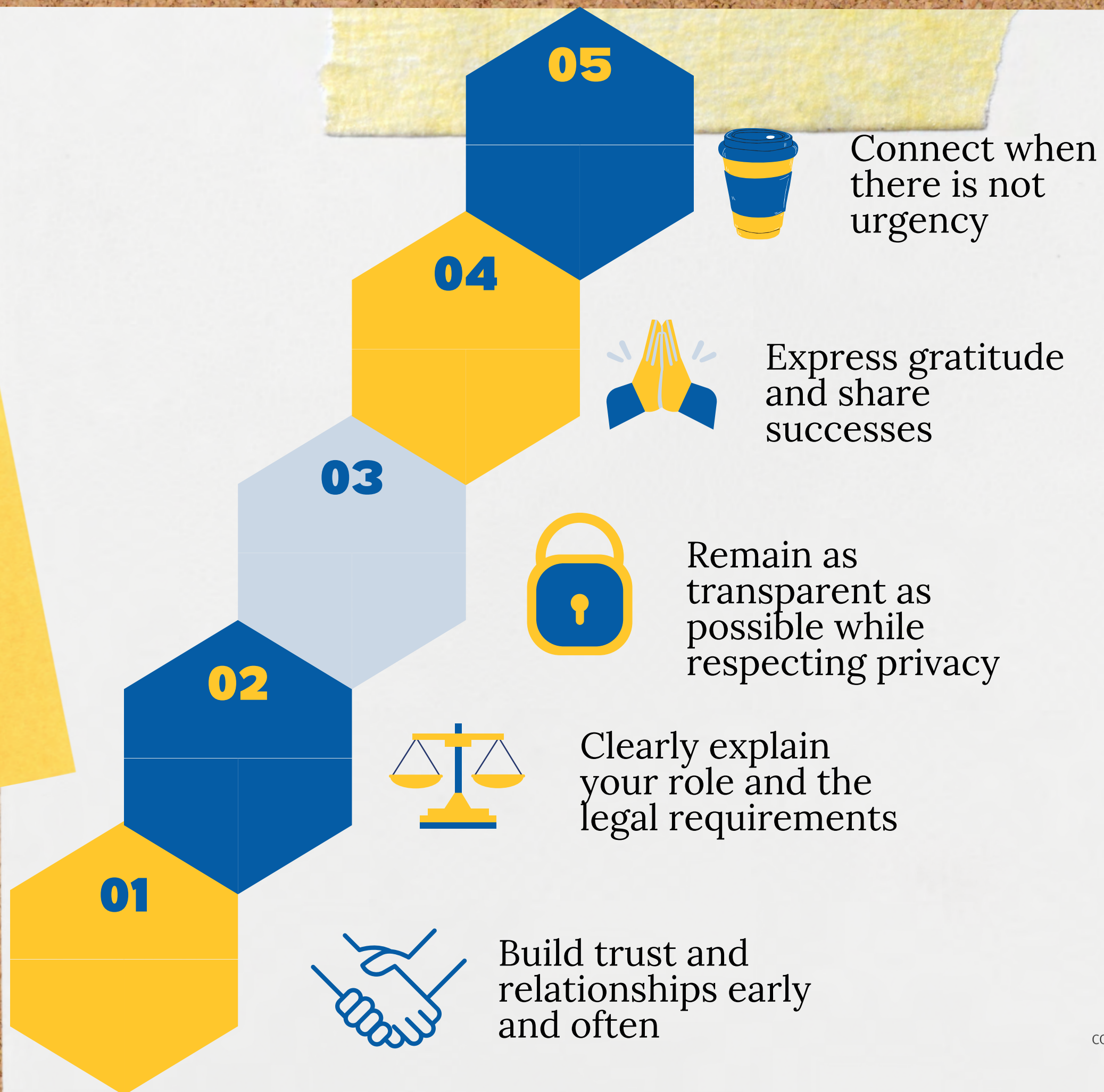


**Ask for assistance based on  
the specific needs- lead with,  
how can we/you help**

**Need to  
know**



Create a culture  
of support  
through  
relationships  
with staff and  
faculty





# Challenges

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



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

## Untruthful

You think (or know) they are being untruthful

## Pushback

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

## Dislike

You just plain dislike the party you are working with

## Case Load

There is simply not enough time to adequately do the work

## Never Enough

You cannot "fix" everything



# 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 heavy is your load?**
- **How much are you carrying home?**
- **How are you being supported?**

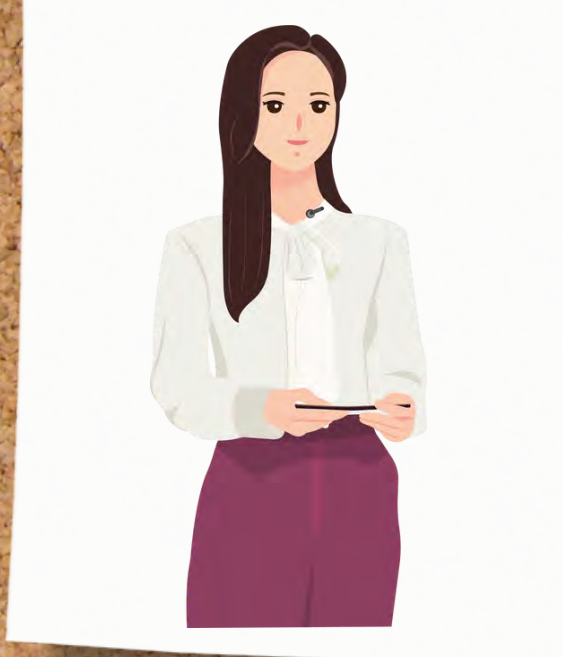




# How are you keeping it all together?

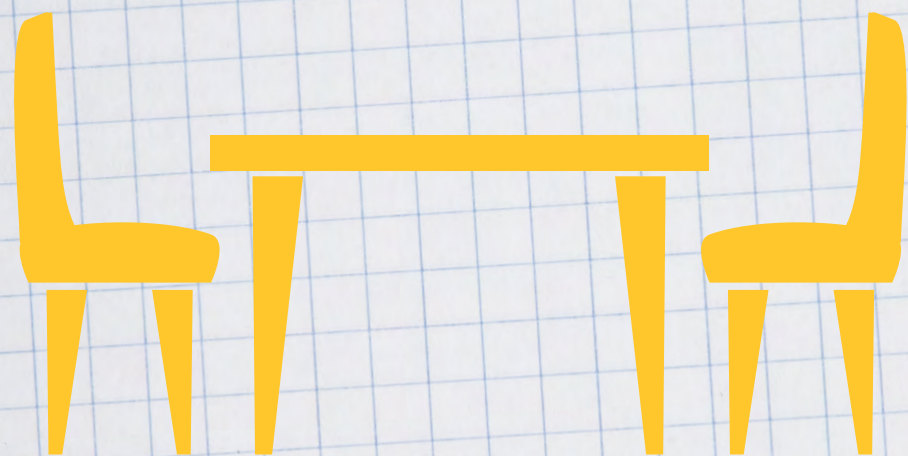
- Set reminders to track your tasks
- Plan your daily schedule (if possible)
- Set aside time for documentation
- Take mind breaks
- Keep a detailed spreadsheet, updates on the cases, check ins, stage in process, supportive measures offered and provided, etc.





# Do You Have a Seat at the Table?

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Why do you  
need a seat?



1

Advocate: Represent the Title IX needs and requirements unapologetically

2

Break down silos, collaborate, explain

3

Risk analysis

4

Big changes on the horizon



# What Table?

**All of them... including the  
HIGHEST ONE!**

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





# 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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# TITLE IX



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# Questions?



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# Title IX Investigator Training







# Amy Buck

Title IX and Equity Specialist



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# Lifecycle of a Report



**INTAKE**



**TRIAGE**

Title IX Sexual  
Harassment



Initiate Formal  
Grievance Process



Investigation

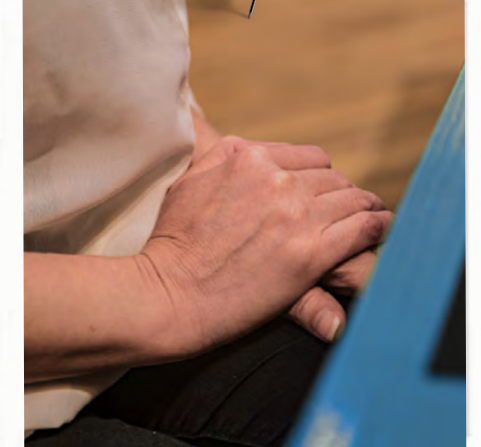


Resolution



Appeals

Other



Other?



# BASIC 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

## Step 5

Q & A  
And  
Resolution

## Step 6

Appeal



# Steps of the Investigative Process



STEP 1

## INTERVIEWS WITH PARTIES & WITNESSES

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

STEP 2

## COLLECT EVIDENCE & INFORMATION

Document when and how evidence/information was collected



# Steps of the Investigative Process (continued)



STEP 3

ALLOW PARTIES AND ADVISORS TO REVIEW “EVIDENCE RELATED TO THE ALLEGATIONS” (10 DAYS)

STEP 4

WRITE INVESTIGATION REPORT THAT “FAIRLY SUMMARIZES RELEVANT EVIDENCE”


STEP 5

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



# 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



*Food for  
thought...*





# 504/IEP Considerations

- Communication style?
- Interview techniques
- Other Considerations - Coordinating with Sped Team



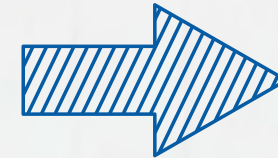
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# TYPES OF EVIDENCE

1

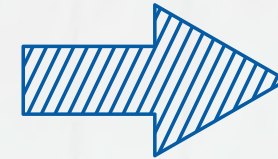
Direct Information



First person observation  
of an incident

2

Circumstantial  
Information



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

3

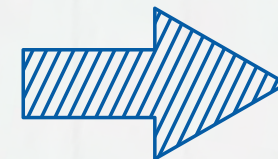
Documentary  
Information



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

4

Hearsay  
Information



Information that is  
reported through  
another party

5

Expert  
Information



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

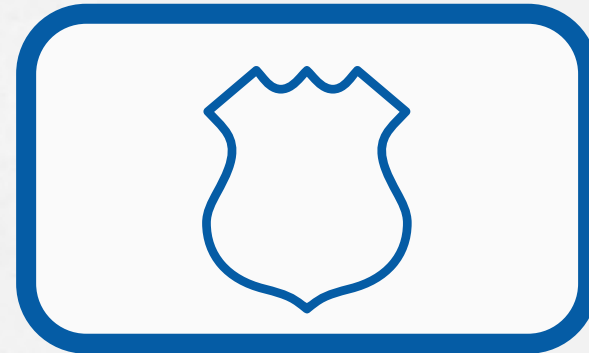


# IDENTIFYING TYPES OF EVIDENCE

**Physical  
Evidence**



**Police  
Report**



**Other?**



**Video**



**Social  
Media**

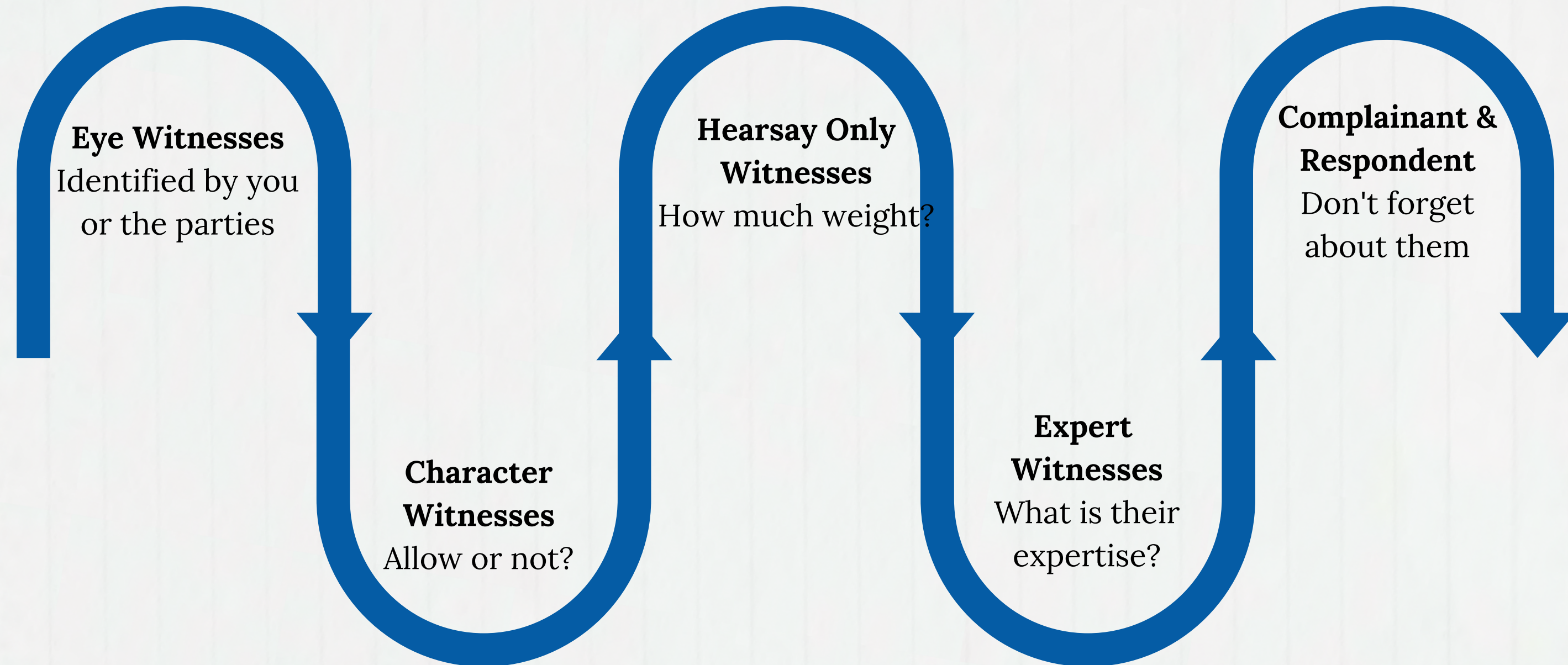


**Text  
Messages**





# TYPES OF WITNESSES







# BURDEN

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

How will you show that you tried?



# INTERVIEW SKILLS

1

PROFESSIONALISM

4

OUTLINE

2

OBSERVATION

5

FLEXIBILITY

3

RAPPORT

6

TRAUMA INFORMED  
PRACTICES



**Explain your  
role as neutral  
fact-finder**

**Private as  
possible**

# **Introduction in Investigative Meeting**

**Explain  
process and  
purpose: tell  
me your story**

**Retaliation**

**Presumed not  
responsible/  
you're not in  
trouble**

**Recording or  
taking notes?**

**Confirm  
pronouns?**

**Room for  
Questions**





## INVESTIGATION FLOW CHART

**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

Opportunity  
to Clarify

Circling  
Techniques

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



# Note-Taking

- ✓ DETAIL VS. AWKWARD PAUSES
- ✓ USE 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?

Extensions  
and equity

Interview  
quickly

Note in  
Report



# Relevance

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





# NOT RELEVANT

1

**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.

2

**Privileged Information**

3

**Treatment records unless parties agree**



# **“PROBLEM” WITNESSES**



**The “Hulk”**



**The Rabbit Chaser**



**The “Turtle”**



**The Big Reveal**



**The Other/New  
Complainant**



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

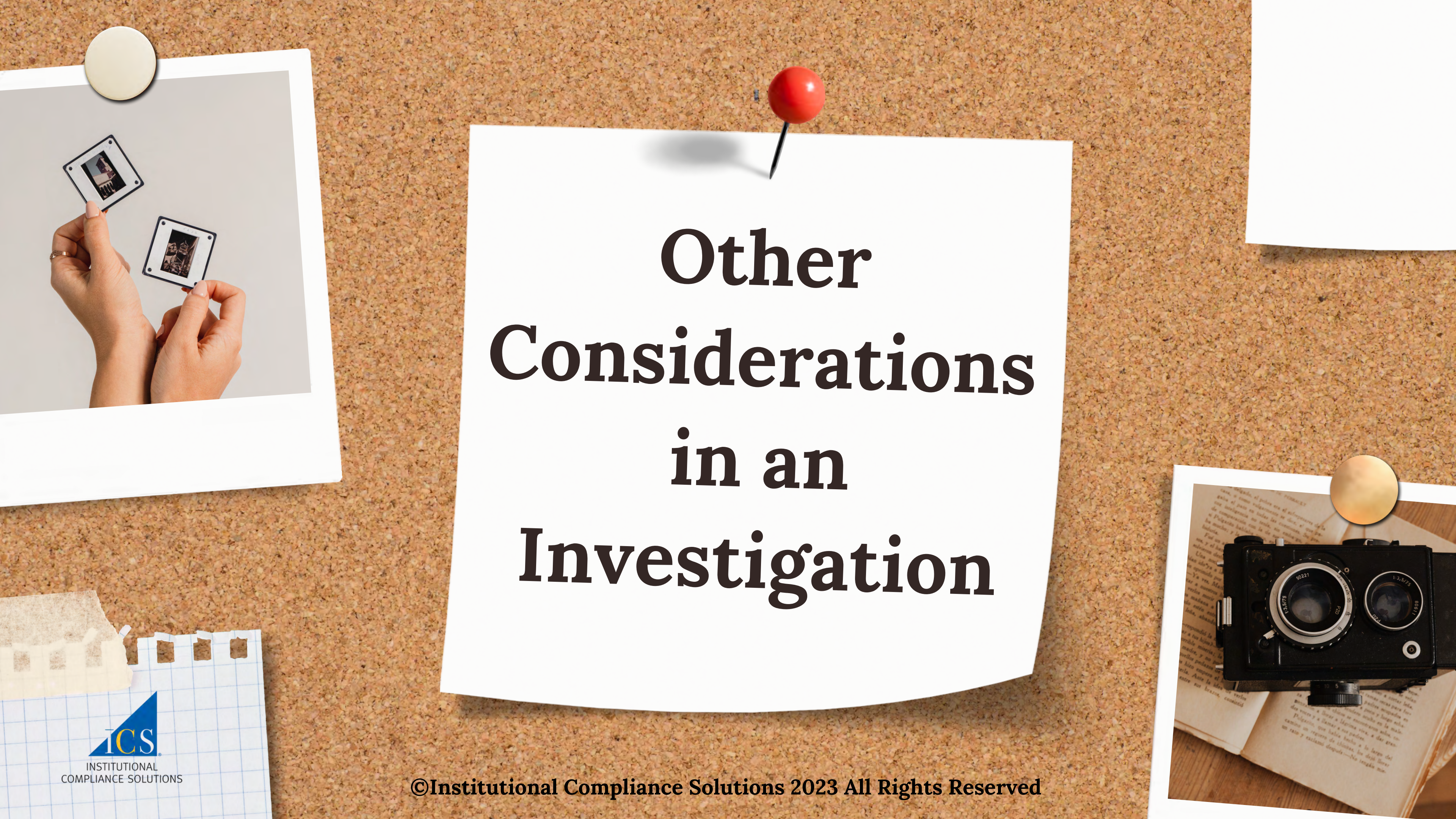
Mr. X is just a friendly guy.  
He touches the Assistant  
Coach, Stephanie's, butt  
all the time at practice

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

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

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





# Other Considerations in an Investigation





# Remember! Supportive Measures

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# 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?






# STAY IN YOUR LANE



**Fact gatherer -**  
Burden on you  
to collect/ask



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





# FORMAL V. INFORMAL







# QUESTIONS?





# 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



## Intro

- Who/How Reported
- Who Investigated
- Summary of Allegations
- Policy
- Burden/Standard of Proof
- Definitions
- Timeline of Events
- List of Parties and Witnesses



Look to  
Notice of  
Allegations

When was the  
report  
received?

How was the  
report  
received?

# SUMMARY OF ALLEGATIONS



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.).

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

May include  
state definitions  
here.

Look to your  
policy for  
language/  
guidance.



# STANDARD OF PROOF

1

All standards related to sexual harassment must be the same

3

Clear and Convincing-  
the evidence is highly  
and substantially  
more likely to be true  
than untrue.

2

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

4

School investigation  
vs. Criminal  
investigation



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# REPORT CONTENT




## INFO FROM PARTIES AND WITNESSES

- Fair Summary of Relevant Evidence
  - 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



## TIMELINE OF INVESTIGATION

- Reported
- Formal Complaint
- Notice of Allegations
- Notice of Meetings
- Dates of Meetings
- Dates of Collection of Evidence
- Delays



# TIMELINE OF INVESTIGATION

Date/Time	Event
	Incident Reported to School District
	Formal Complaint
	Notice of Allegations
	Notice of Meetings
	Meetings/Interviews
	Site Visits
	Other Evidence Gathered (including methods used to gather it)
	Date parties/witnesses provide evidence
	Date for Review of Evidence Directly Related to 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 moved to informal resolution and back to formal Grievance Process).



# REPORT CONTENT




## APPENDIX

- Screenshots
- Emails
- Photos
- Policy Notices
- Transcripts (if Recorded) Etc.



# APPENDICES/ ATTACHMENTS

- 
- 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



# 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



## 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



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# 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



**BE PREPARED TO BE INVESTIGATED!**

**DOCUMENT,  
DOCUMENT,  
DOCUMENT!**

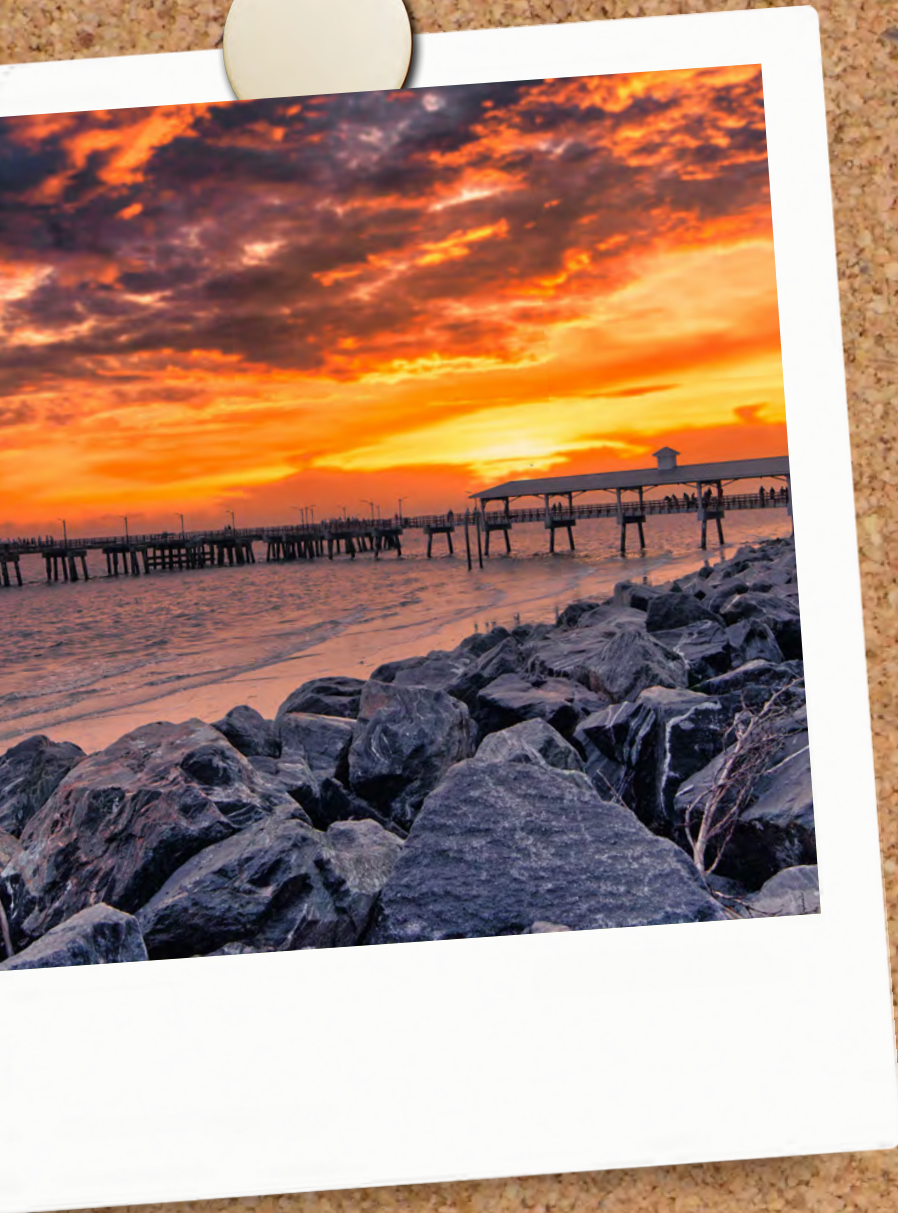
(delays, objections EVERYTHING)

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



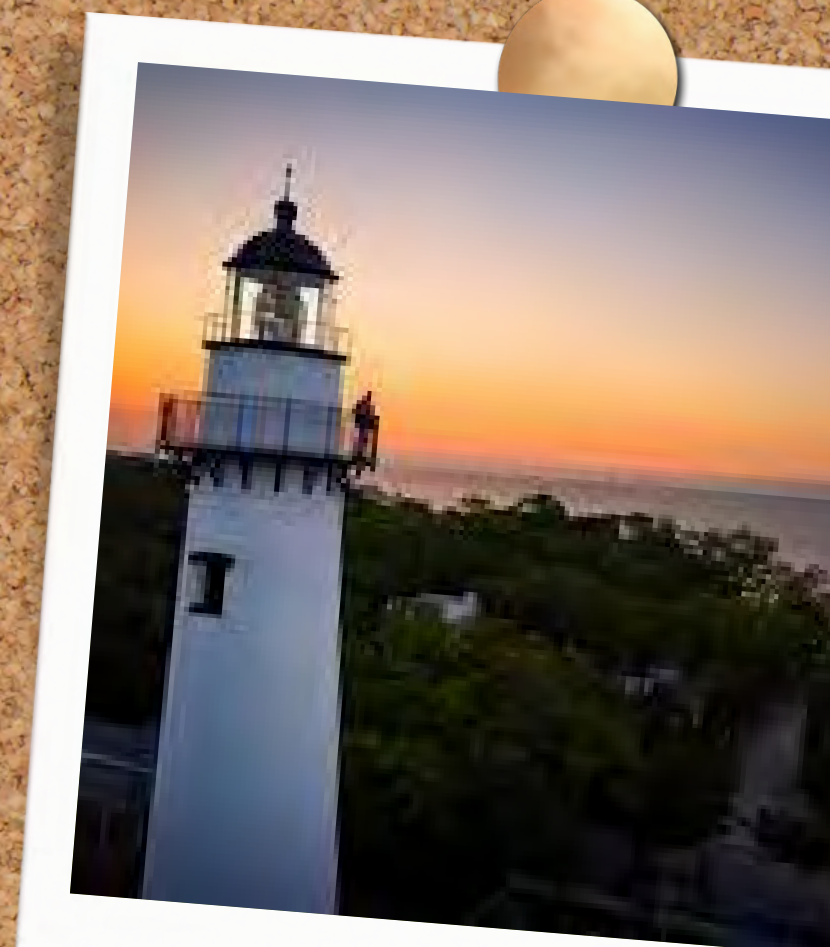
**BE  
PREPARED**





# Decision Maker/ Appellate Decision Maker

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# Decision Maker Responsibilities

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

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# Avoid Pre-Judgment

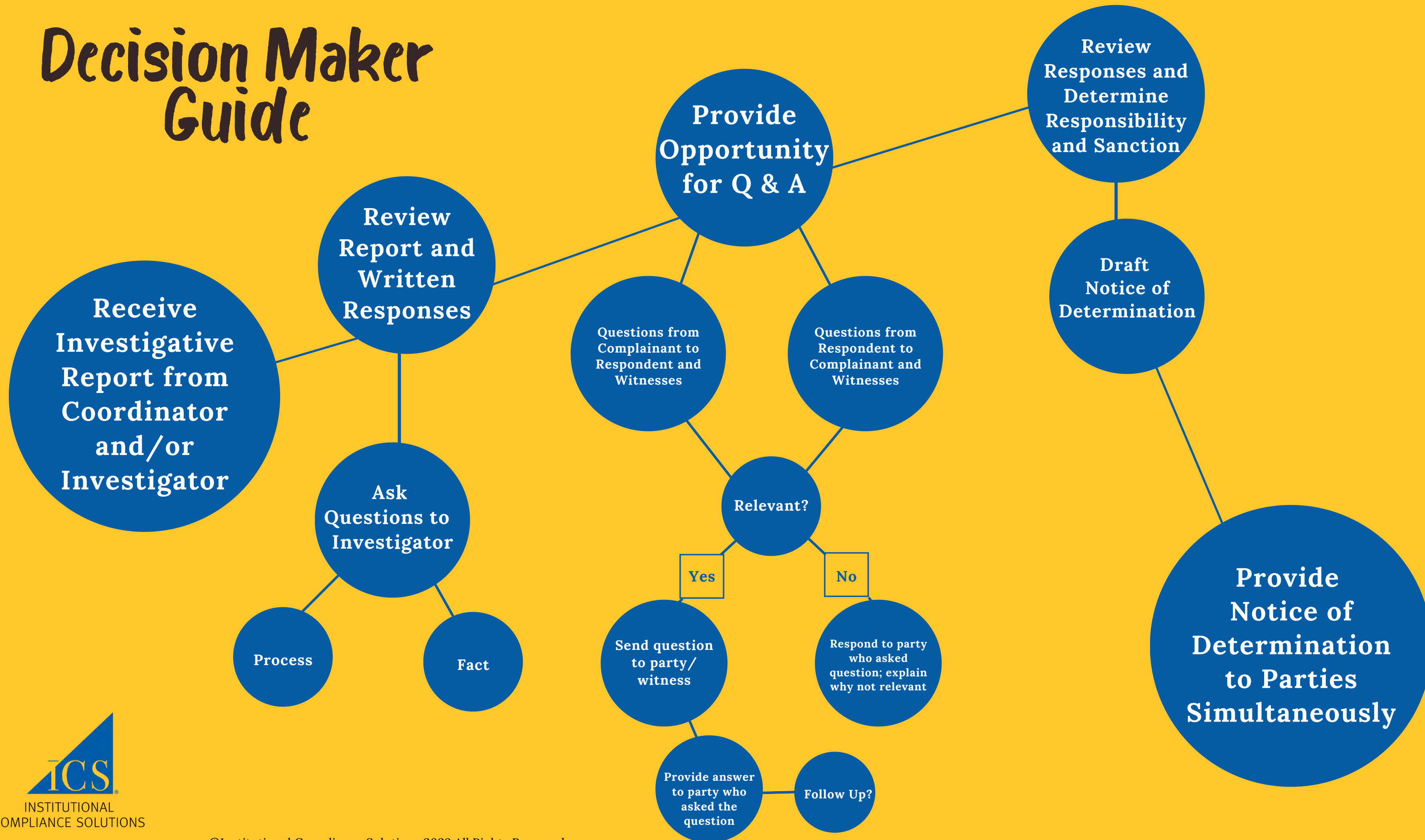
- Suspend your judgment
- Listen/Review ALL information before making a decision
- More difficult than it sounds



**Pause**



# Decision Maker Guide





# Relevancy

- 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...





# Presumption of NOT Responsible

Burden remains on  
the district

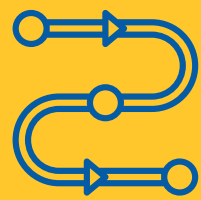




# Written Determination MUST Include:



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)



Procedures and permissible basis for appeal





**Don't  
Forget  
Timelines!**



# Written Determination

## Timeline of all events

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



# 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
- Establish that facts that are consistent or in contrast
- Write them in determination





# Appeals



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# Appeals

- Must offer both parties an appeal re: responsibility, district dismissal of formal complaint, or any allegation on the following:
  - 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 Respondents or toward specific party
- May include additional bases
- Must be included in written determination





KNOW YOUR  
ROLE

# Role of Appellate Decision Maker

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



# 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

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# Written Decision

- 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 years







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# Questions?



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