



**COZEN
O'CONNOR**

Title IX Training:
An Integrated and Coordinated Approach
San José State University

Presented by:
Peter C. Lim, Member
Interim Title IX and Gender Equity Officer

The Institutional Response Group | Cozen O'Connor
Gina Maisto Smith, Chair
Leslie M. Gomez, Vice Chair

February 24, 2023



OVERVIEW

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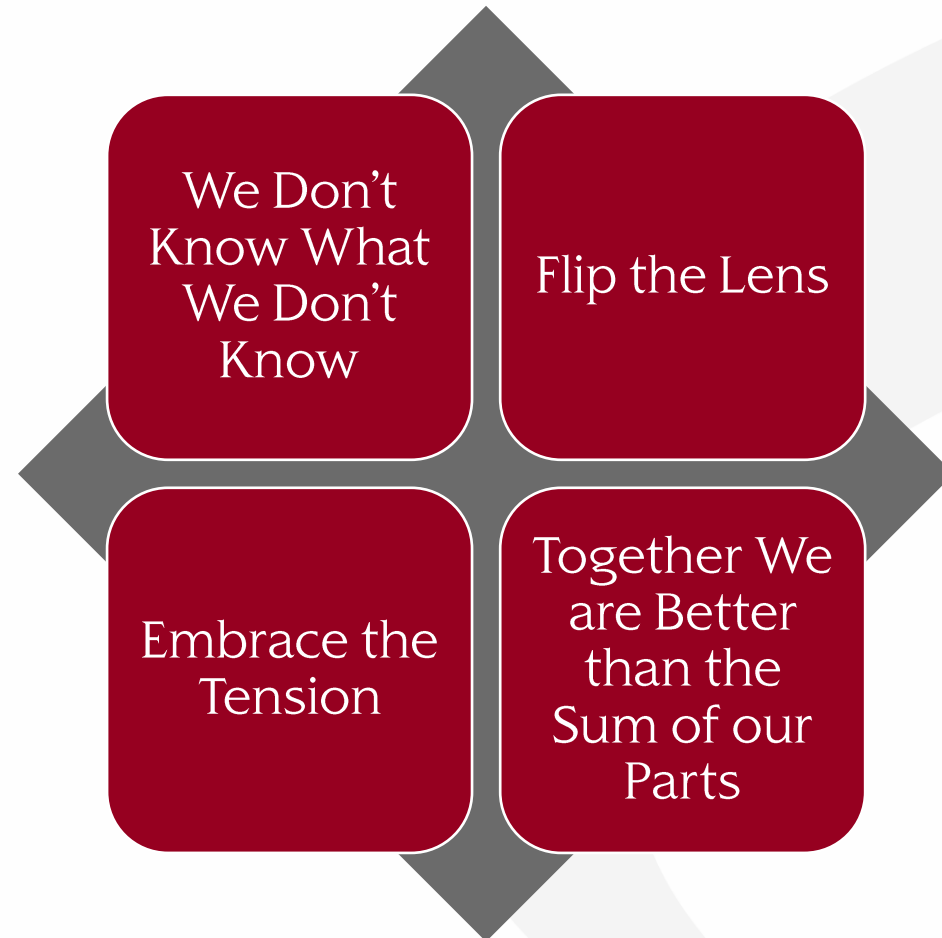


FRAMING THE CONTEXT



FRAMING THE CONTEXT

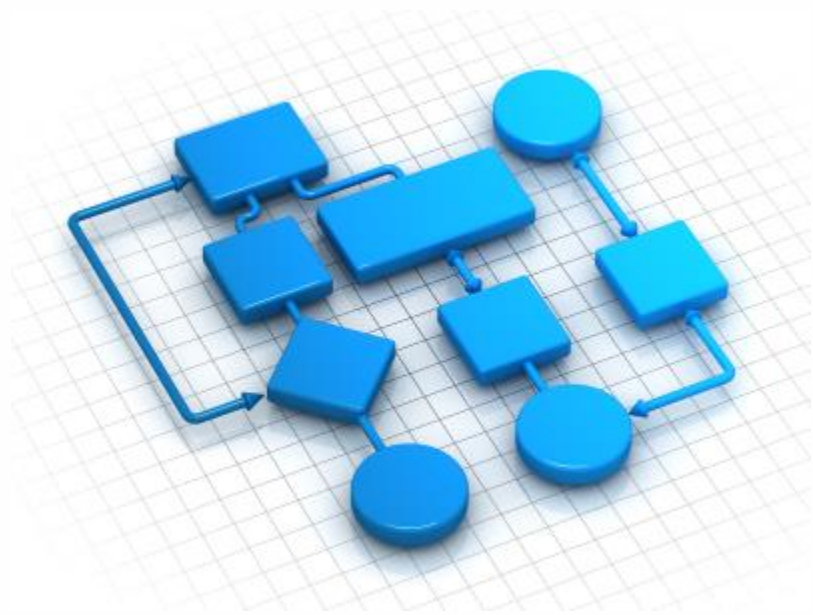
Framing the Conversation





FRAMING THE CONTEXT

The Context



Regulatory Framework

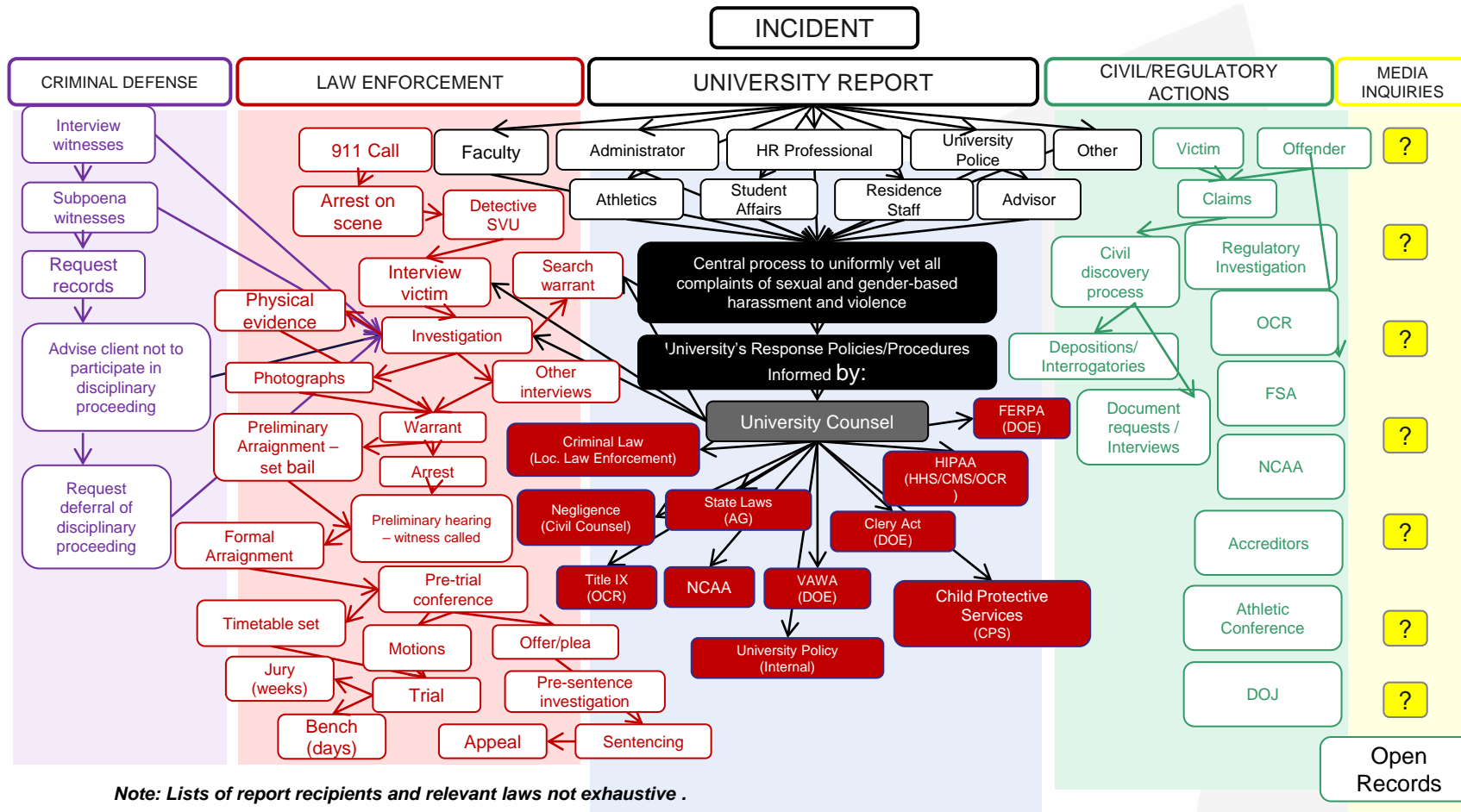
Dynamics of Trauma & Sexual
and Gender-Based Harassment
and Violence

Individual Culture, Climate,
History, Resources, Policies,
Procedures, Personnel and
Values of the Institution



FRAMING THE CONTEXT

The Challenge of the Context





FRAMING THE CONTEXT

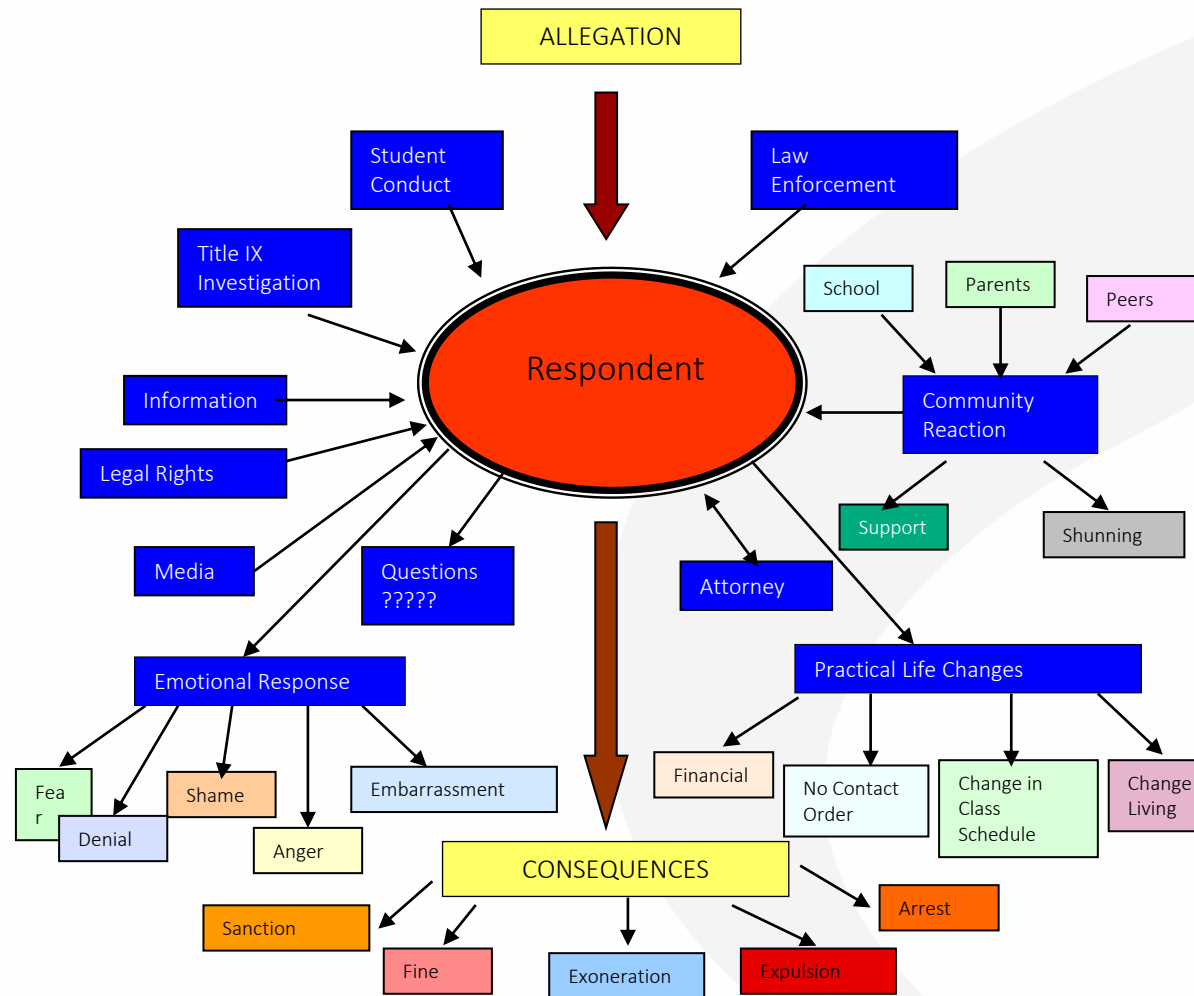
The Challenge of the Context





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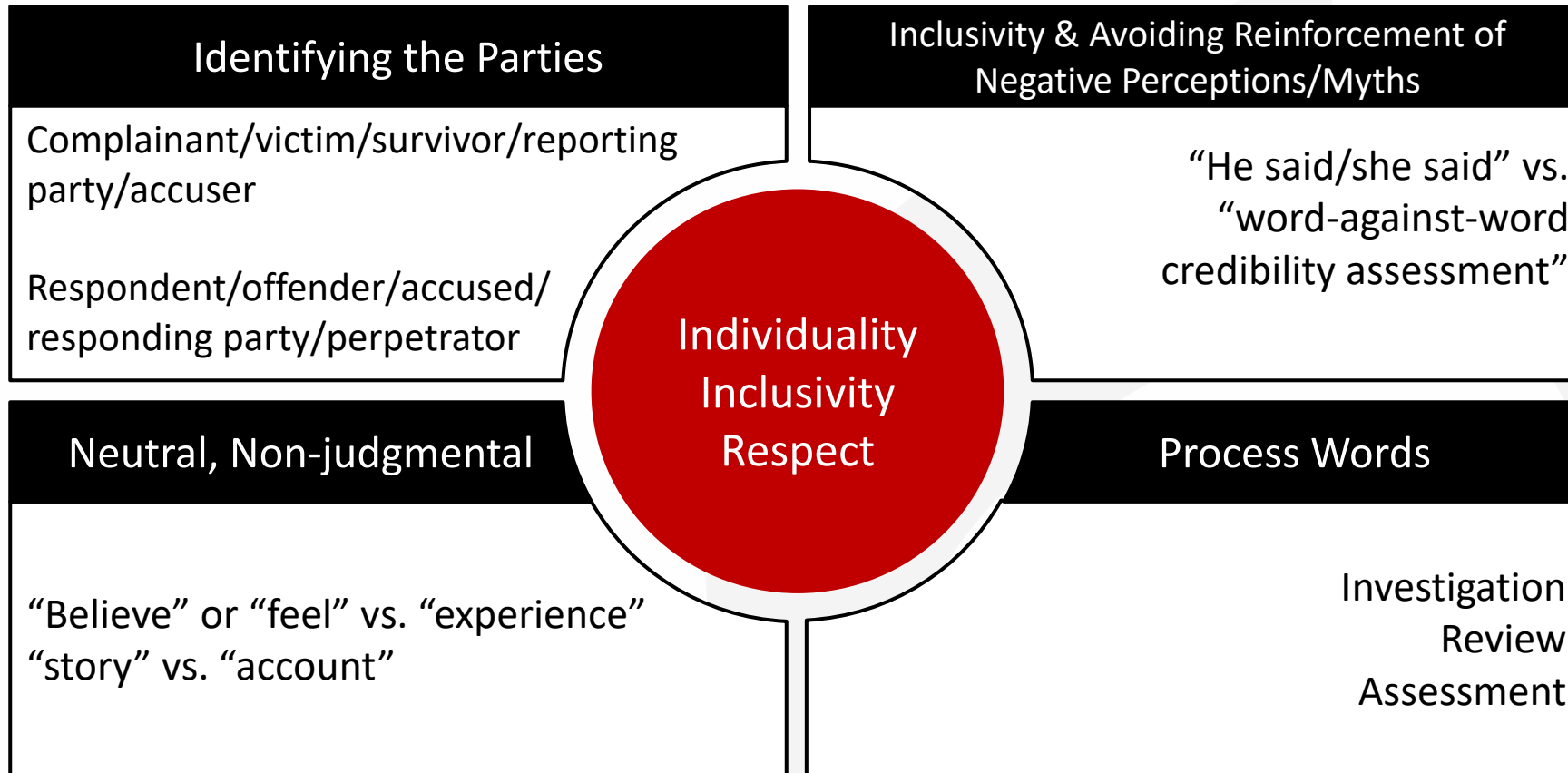
The Challenge of the Context





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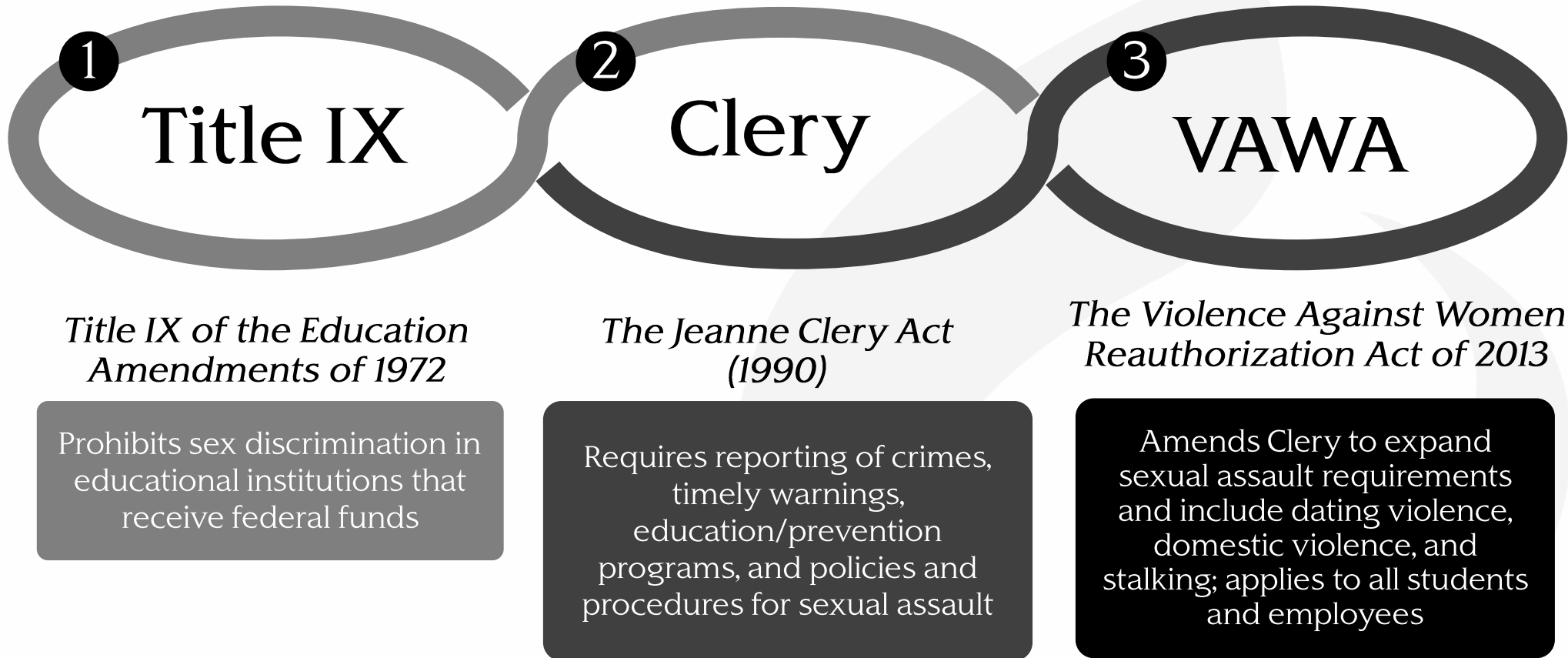
Awareness of the Impact of Language





FRAMING THE CONTEXT

Federal Regulatory Framework





FRAMING THE CONTEXT

Implementation Rubric

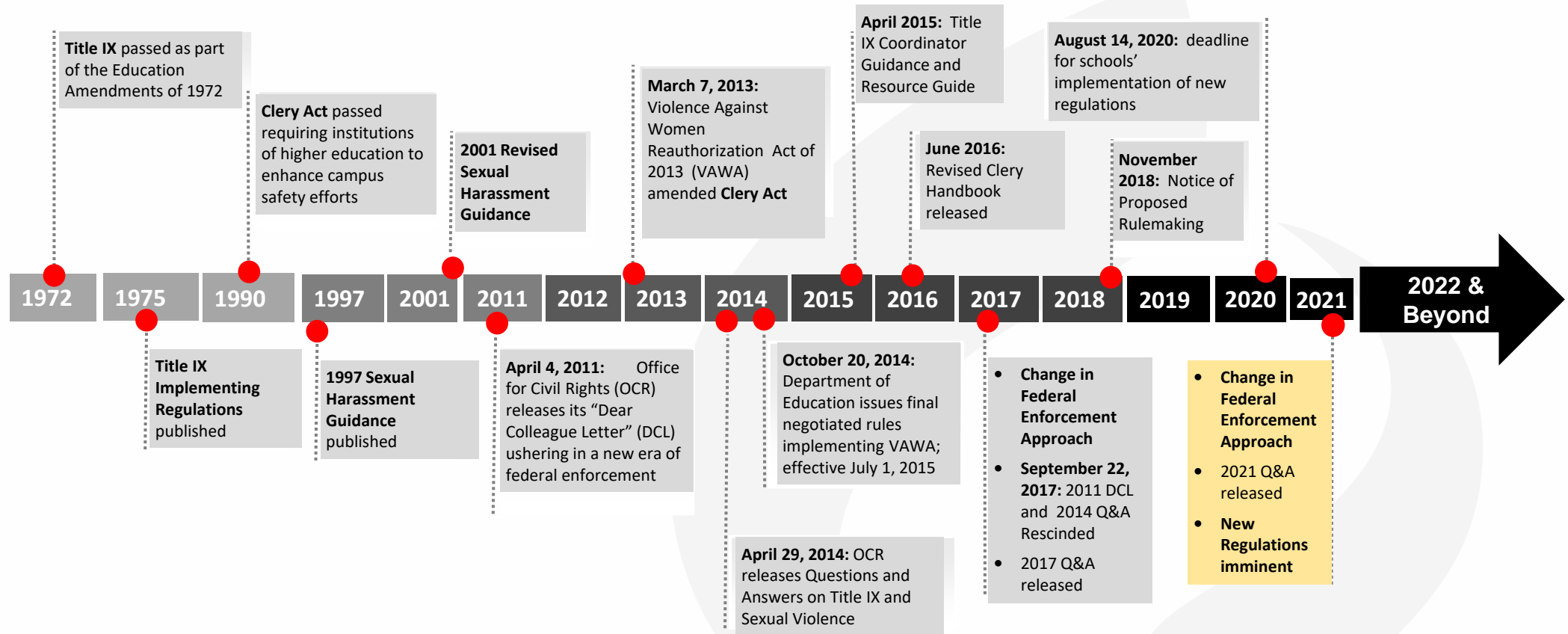


- Law
- Regulations
- Guidance
- Preamble and commentary
- OCR webinars, charts, blog
- Policy
- Higher education experience
- Institutional values



FRAMING THE CONTEXT

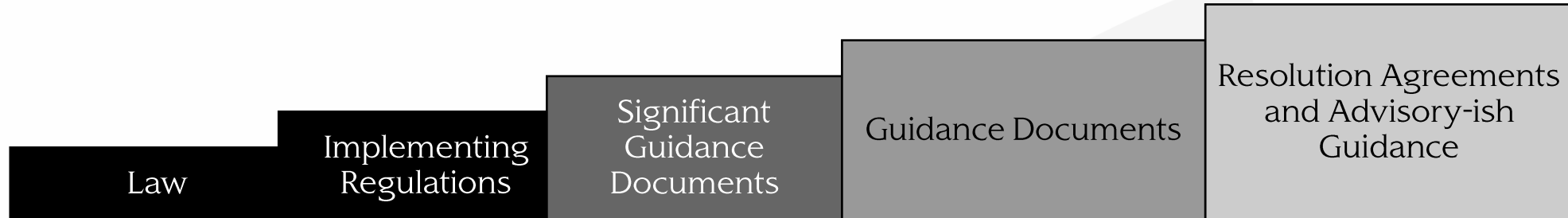
Evolution of Federal Legislation and Guidance





FRAMING THE CONTEXT

The Hierarchy



- Title IX

- Title IX Implementing Regulations (2020)

- 2011 Dear Colleague Letter (Rescinded)
- 2014 Q&A (Rescinded)
- 2017 Q&A (Rescinded)
- Preamble to Title IX Implementing Regulations

- 1997 Sexual Harassment Guidance
- 2001 Revised Sexual Harassment Guidance (Rescinded)
- Dear Colleague Letters
 - Bullying
 - Hazing
 - Title IX Coordinator
 - Retaliation

- Resolution Agreements
- OCR aids and tools
- OCR webinars
- OCR blogs



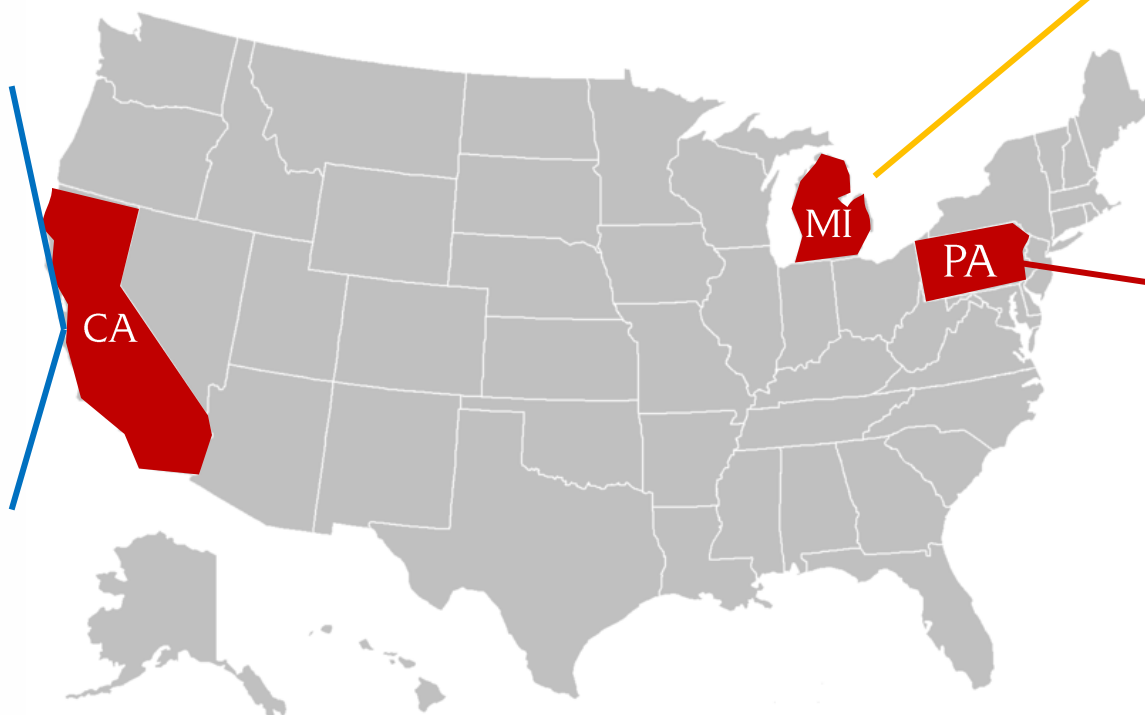
FRAMING THE CONTEXT

Recent Court Cases

When a student accused of sexual misconduct faces severe disciplinary sanctions, and the credibility of witnesses (whether the accusing student, other witnesses, or both) is central to the adjudication of the allegation, fundamental fairness requires, at a minimum, that the university provide a mechanism by which the accused may cross-examine those witnesses.” *Doe v. Allee*, 242 Cal. Rptr. 3d 109, 136 (Cal. Ct. App. 2019)

In a DV case, the state court ruled, “...procedures were unfair because they denied Respondent a meaningful opportunity to cross-examine critical witnesses at an in-person hearing.” *Boormeester v Carry*, No. B290675, 2020 WL 2764406 at *1 (Cal. Ct. App. May 28, 2020)

U.S. Courts of Appeals and U.S. District Courts



“If credibility is in dispute and material to the outcome, due process requires cross-examination.”
Doe v. Baum 903 F.3d 575, 585 (6th Cir. 2018)

“[N]otions of fairness in Pennsylvania law include providing the accused with a chance to test witness credibility through some form of cross-examination and a live, adversarial hearing during which he or she can put on a defense and challenge evidence against him or her.” *Doe v. Univ. of the Sciences*, No. 19-2966, 2020 WL 2786840 at*5 (3d Cir. May 29, 2020)



FRAMING THE CONTEXT

The Courts on Due Process and Fundamental Fairness

Doe v. Brandeis University: 177 F.Supp.3d 561 (D. Mass. March 31, 2016).

Doe v. Regents of the University of California: 5 Cal. App. 5th 1055 (Cal. App. Ct. Nov. 22, 2016), review denied (Feb. 15, 2017).

Doe v. Claremont McKenna College: 25 Cal. App. 5th 1055, (Cal. Ct. App. 2018).

Doe v. Allee (USC): 30 Cal. App. 5th 1036, (Cal. Ct. App. 2019).

Doe v. Purdue University: 2:17-cv-00033 (U.S. District Court of Appeals for the Seventh Circuit, June 28, 2019)

Doe v. Rensselaer Poly. Ins.: 1:20-cv-1185 (N.D.N.Y. Oct. 16, 2020)

Doe. Rectors and Visitors of GMU: 149 F. Supp. 3d 602 (E.D. Va. February 25, 2016) Memorandum Opinion.

Doe v. University of Southern California: 146 Cal. App. 4th 221 (Cal. App. Ct. April 5, 2016).

Doe v. Trustees of Boston College: 2016 WL 5799297 (D. Mass. October 4, 2016)

Doe v. Baum: 903 F.3d 575 (6th Cir. 2018).

Doe v. Rhodes College: 2:19-cv-02336 (Western Dist. Tennessee, June 14, 2019).

Boermeester v. Carry: No. B290675, 2020 WL 2764406 at *1 (Cal. Ct. App. May 28, 2020).

Doe v. Univ. of the Sciences: No. 19-2966, 2020 WL 2786840 (3d Cir. May 29, 2020).

2017

2018

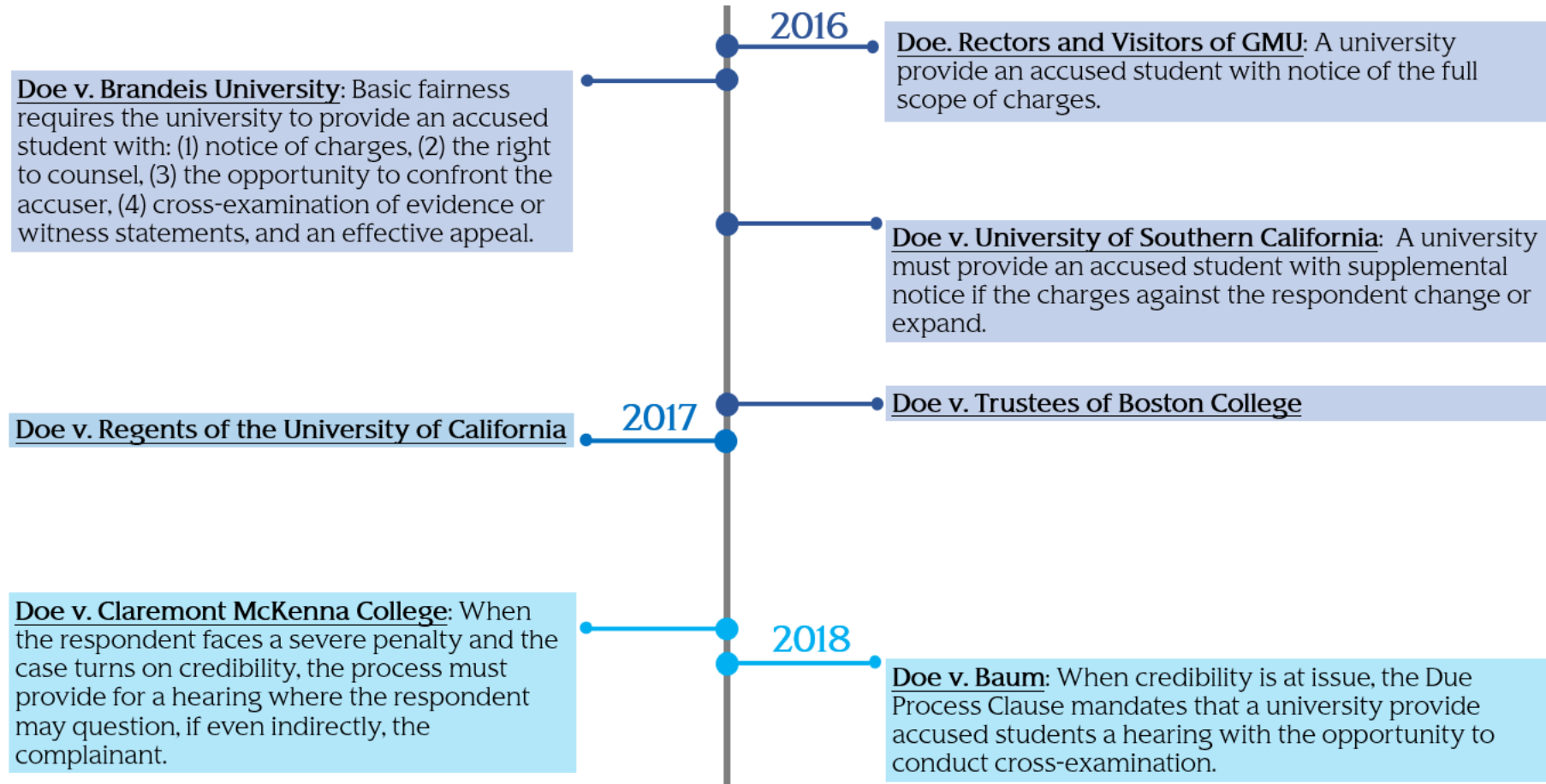
2019

2020



FRAMING THE CONTEXT

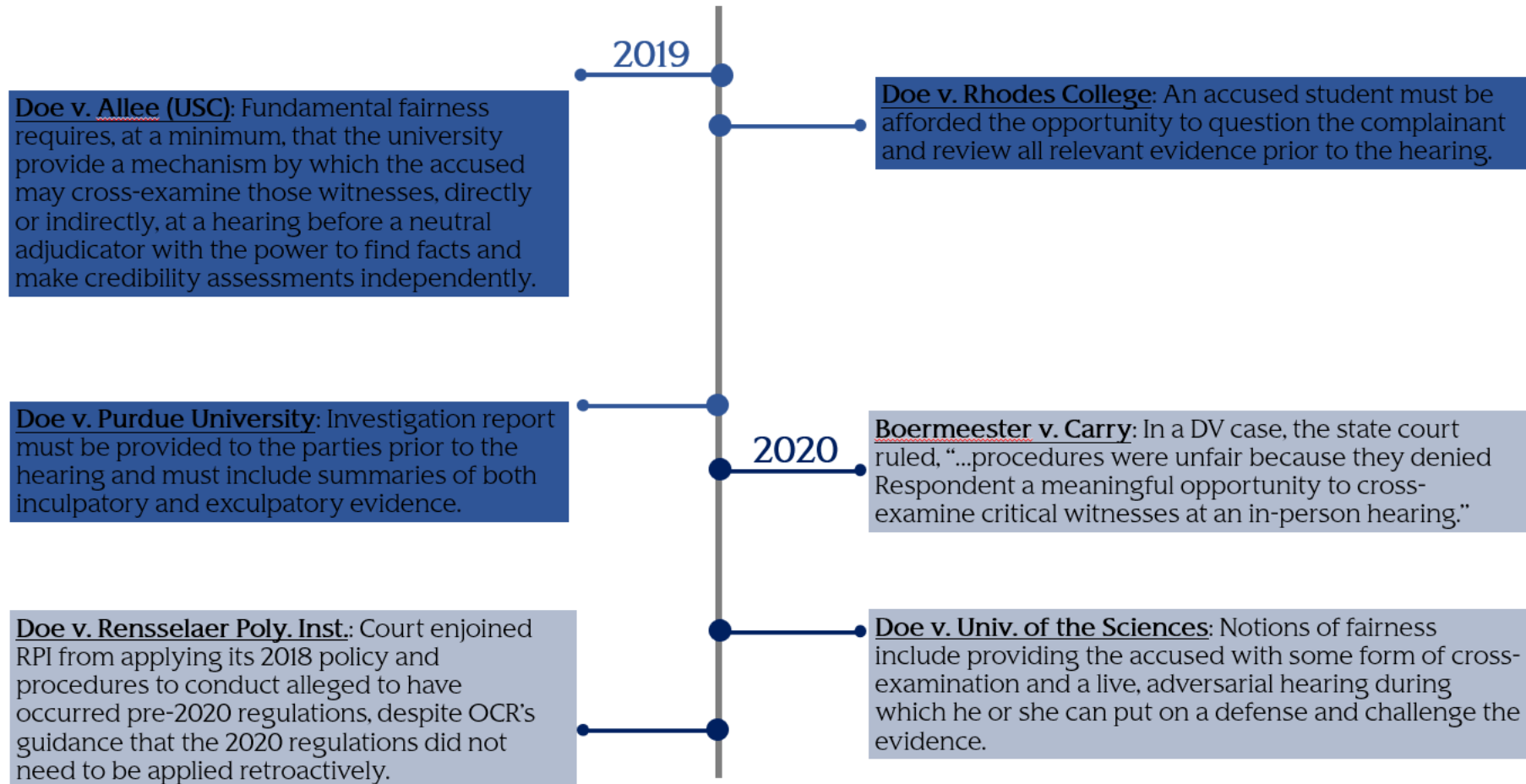
The Courts on Due Process and Fundamental Fairness





FRAMING THE CONTEXT

The Courts on Due Process and Fundamental Fairness





THE CLERY ACT



THE CLERY ACT

The Clery Act (As Amended by VAWA)

Core Tenets:

- Governs a school's response to **sexual assault, dating violence, domestic violence and stalking** (and other crimes)
- Applies to Clery-defined crimes reported to **campus security authorities** that occur **on Clery geography**
- Requires procedural and educational components that do not fully align with Title IX requirements
- Requires reporting of **crime statistics** through
 - Daily crime log
 - Annual security report
- Includes a duty to warn/**timely warnings**



THE CLERY ACT

VAWA: Prompt, Fair, and Impartial Investigation & Resolution

- **Prompt, fair, and impartial process** from the initial investigation to the final result
- Conducted in a manner consistent with the institution's policies and transparent to the accuser and accused
- The accuser and the accused have **equal opportunities** to have others present, including an **advisor of their choice**
- The accuser and accused are given **timely notice of meetings** at which one or the other or both may be present
- The accuser, the accused, and appropriate officials are given **timely and equal access to information** that will be used during informal and formal disciplinary meetings and hearings



THE CLERY ACT

VAWA: Prompt, Fair, and Impartial Investigation & Resolution

- Officials are appropriately **trained** and do not have a **conflict of interest or bias** for or against the accuser or the accused
- The proceeding is completed in a **reasonably prompt timeframe**
- Explicit provision noting that institutions may extend their reasonably prompt deadlines for **good cause** with written notice to the accused and accuser of the delay and the reason for the delay
- The accuser and the accused **receive simultaneous notification**, in writing, of the result of the proceeding, the rationale, sanctions, any available appeal procedures, any change to the results that occurs prior to final resolution and when results become final



THE FINAL TITLE IX REGULATIONS



THE FINAL TITLE IX REGULATIONS



- 2033 page document issued by the U.S. Department of Education, Office for Civil Rights (OCR) on May 6, 2020
- Includes significant resource materials: a preamble, executive summary, overview of public comments, discussion of directed questions, regulatory impact analysis and other content
- Final regulations are located at page 2008-2033
- Official version (2082 pages) were released May 19, 2020
- Regulations implemented as of August 14, 2020



THE FINAL TITLE IX REGULATIONS

Regulations Formally Incorporate Sexual Harassment as a Form of Sex Discrimination

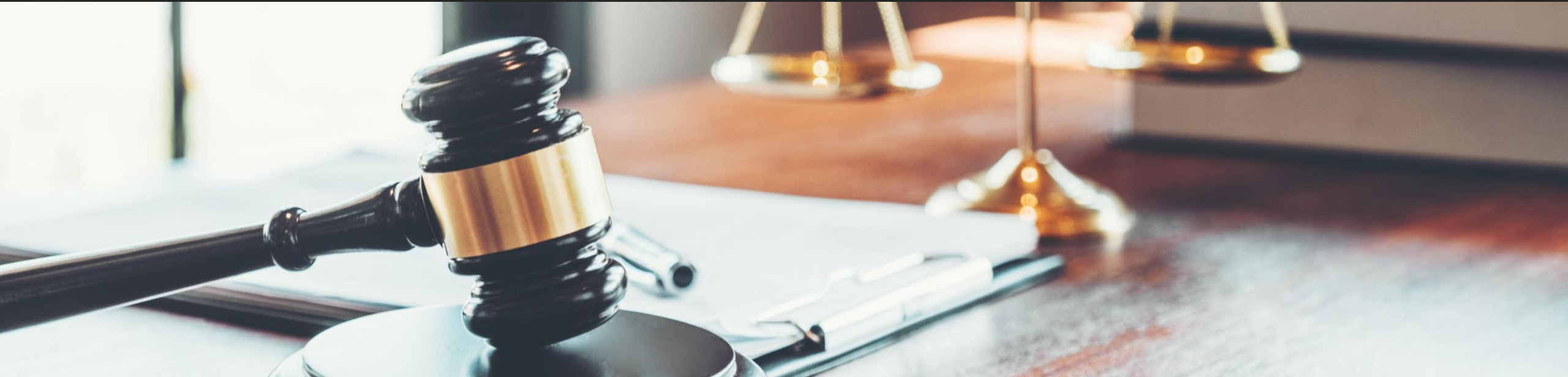


- Title IX obligations related to **sexual harassment as a form of sex discrimination** had not been formally addressed in the regulations
- “These final regulations impose, for the first time, **legally binding rules** on recipients with respect to responding to sexual harassment.”



THE FINAL TITLE IX REGULATIONS

Regulations: “Legally Binding Obligations”

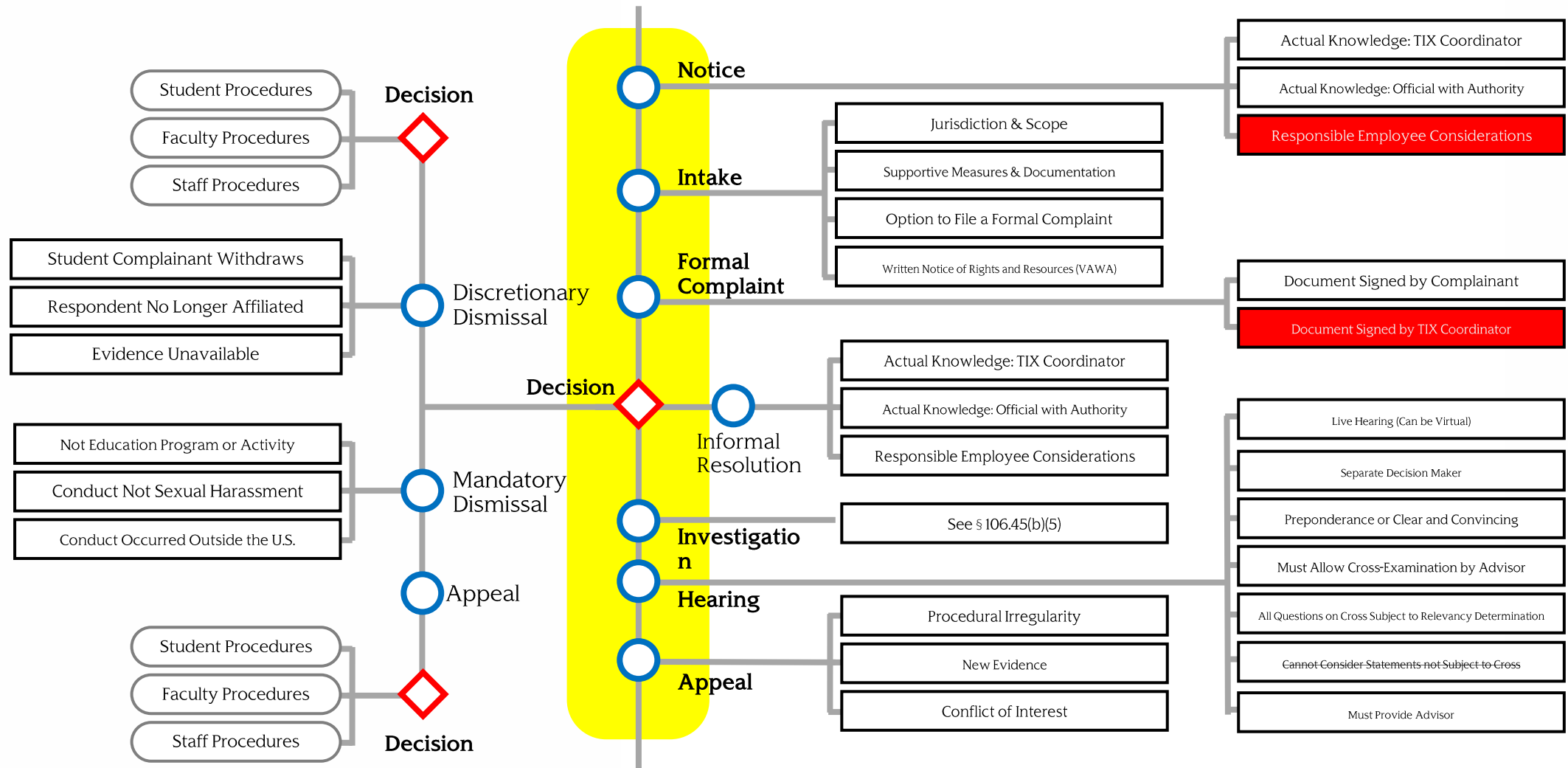


“Because these final regulations represent the Department’s interpretation of a recipient’s legally binding obligations, **rather than best practices**, recommendations, or guidance, these final regulations focus on **precise legal compliance requirements** governing recipients.”



THE FINAL TITLE IX REGULATIONS

Key Provisions: New Title IX Regulations





CSU NONDISCRIMINATION POLICY: PROHIBITED CONDUCT DEFINED



CSU NONDISCRIMINATION POLICY

Prohibited Conduct Defined



<https://calstate.policystat.com/policy/12891658/latest/#autoid-76kv2>



CSU NONDISCRIMINATION POLICY

Prohibited Conducts

1 Discrimination

2 Harassment

3 Sexual Misconduct

4 Sexual Harassment

5 Sexual Exploitation

6 Dating Violence, Domestic Violence

7 Stalking

8 Prohibited Consensual Relationships

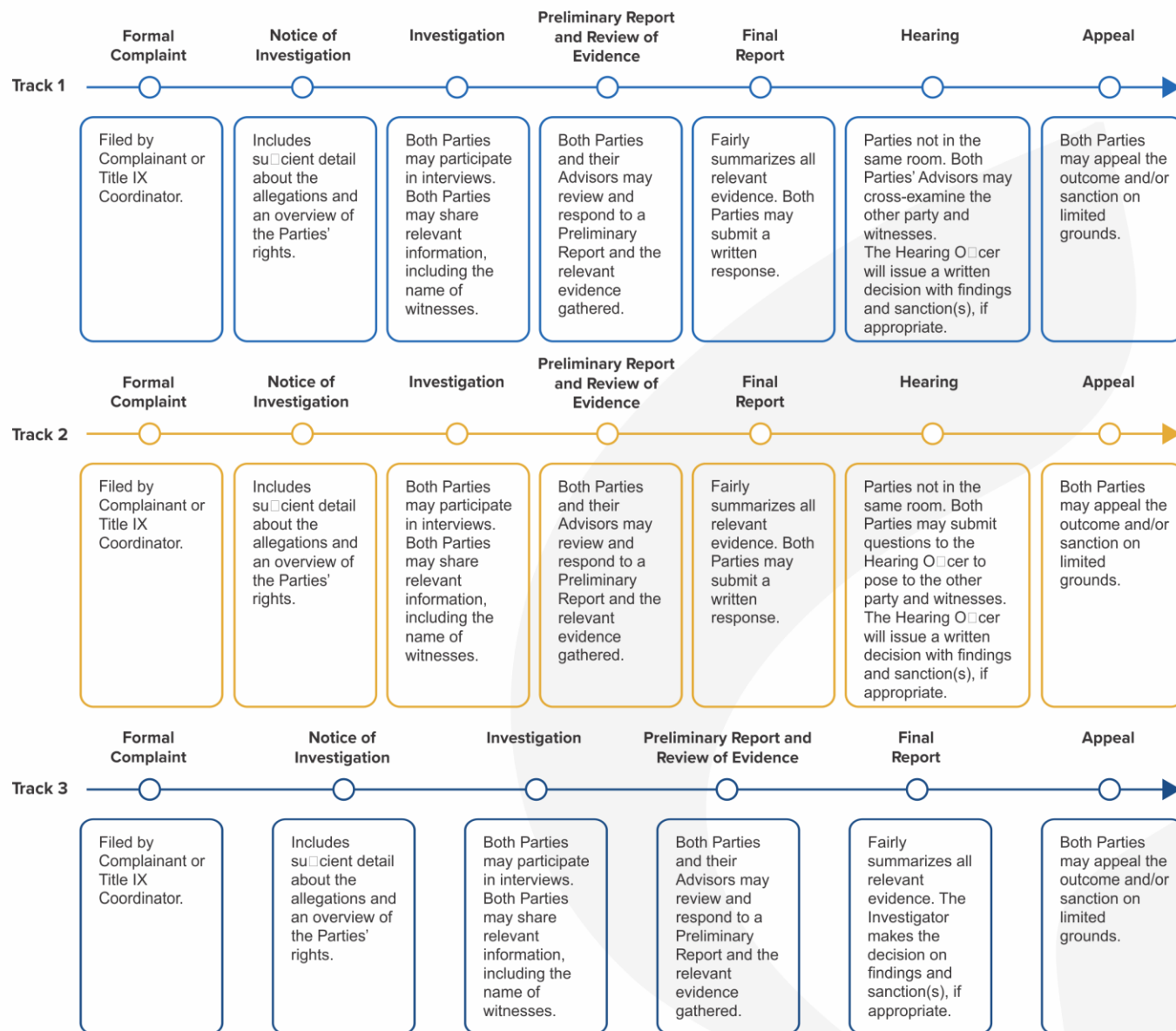
9 Retaliation



CSU NONDISCRIMINATION POLICY: THE THREE-TRACK SYSTEM



THE THREE-TRACK SYSTEM





THE THREE-TRACK SYSTEM

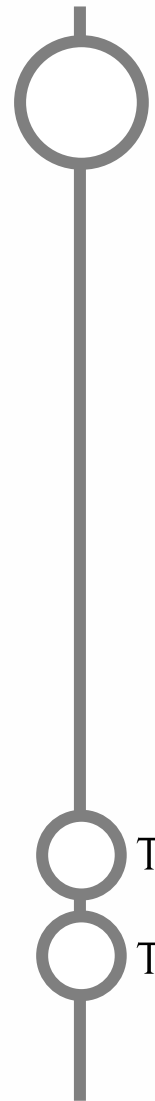
The definition of education program or activity Track 1



Education Program or Activity includes all the operations of the CSU as well as locations, events, or circumstances over which the CSU exercised substantial control over the Respondent (Student, Employee, or Third Party) and the context in which the Sexual Harassment occurs. Education Program or Activity also includes any building owned or controlled by the CSU or a student organization that is officially recognized by the CSU.



THE THREE-TRACK SYSTEM



Track 1 applies when the alleged conduct:

- Meets the definition of Sexual Harassment as defined in Article VII.C of the Nondiscrimination Policy; and
- Occurred in the United States; and
- Occurred in an education program or activity at the university, as defined in Track 1

Note: Articles IV through XI are not applicable to complaints under Track 1. Please reference the above link for the applicable Track 1 Procedures.

Track 2

Track 3



THE THREE-TRACK SYSTEM



Track 1



Track 2 applies when the alleged conduct:

- The Complaint is against a Student; and
- The Complaint is one of Sexual Misconduct, Dating Violence, or Domestic Violence; and
- The credibility of one (or both) of the Complainant and the Respondent (“the Parties”), or any witness is central to the determination as to whether the Student violated the Nondiscrimination Policy; and
- The Student is facing a severe disciplinary sanction (expulsion or suspension) if found to be in violation of the Nondiscrimination Policy.



Track 3



THE THREE-TRACK SYSTEM



Track 1



Track 2



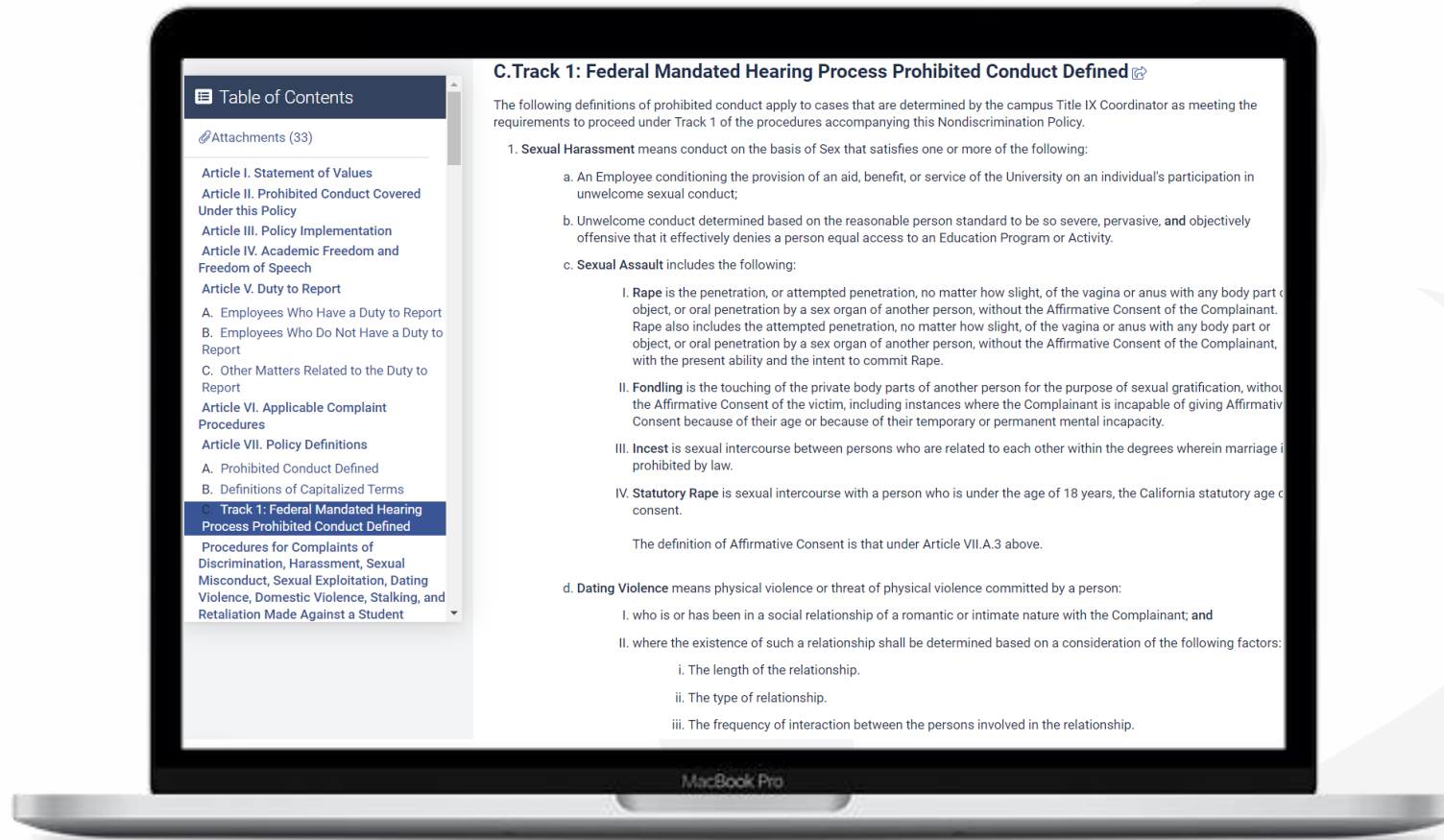
Track 3 applies when the alleged conduct:

- Prior to a Notice of Investigation being sent to the Complainant and the Respondent, the Title IX Coordinator/DHR Administrator will determine which Track applies.
- Under Track 1 or 2, the campus will conduct an investigation, and the Complaint will proceed to a hearing unless otherwise resolved. An Investigator will first interview the Complainant, the Respondent, and any witnesses, and gather any documentary evidence. The hearing will occur once an investigation has finished. During the hearing, a hearing officer listens to the witnesses, including the Complainant and the Respondent, and analyzes the evidence, before deciding whether or not the Respondent violated the Nondiscrimination Policy.
- Under Track 3, an Investigator interviews the Complainant, the Respondent, and any witnesses, gathers any documentary evidence, analyzes the evidence, and decides whether or not the Respondent violated the Nondiscrimination Policy. There is no hearing in Track 3 cases.



THE THREE-TRACK SYSTEM

The Definitions of Prohibited Conduct for Track 1



<https://calstate.policystat.com/policy/12891658/latest/#autoid-76kv2>



THE THREE-TRACK SYSTEM

Narrow Application Under the New Title IX Regulations (Track 1)

The New Title IX Regulations

The Nondiscrimination Policy: Track 1

Sexual Harassment
Definition Narrowed

In the Domestic Education Program
or Activity

Who May File - Definition of
Complainant Narrowed

1) The new regulations narrow the definition of Sexual Harassment and require SJSU to dismiss when the alleged conduct does not meet the new definitions.

2) The new regulations require SJSU to dismiss a Formal Complaint when the conduct did not occur within in an education program or activity in the United States.

3) The new regulations require SJSU to dismiss if the Complainant is not participating in or attempting to participate in the education program or activity at the time the Formal Complaint is filed.

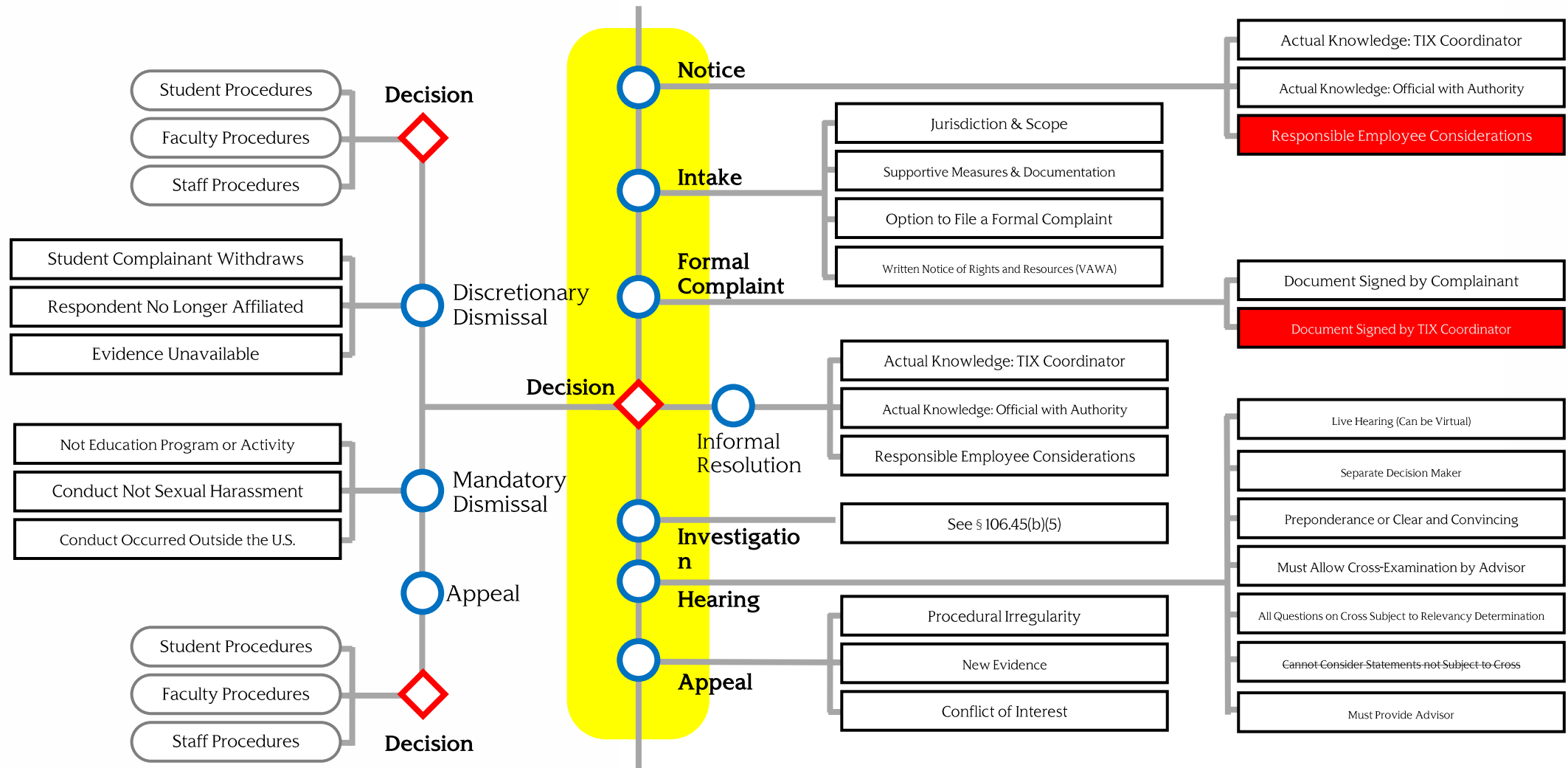


**INVESTIGATIONS UNDER THE CSU
NONDISCRIMINATION POLICY**
(Applies To All 3 Tracks)



INVESTIGATIONS UNDER THE CSU POLICY

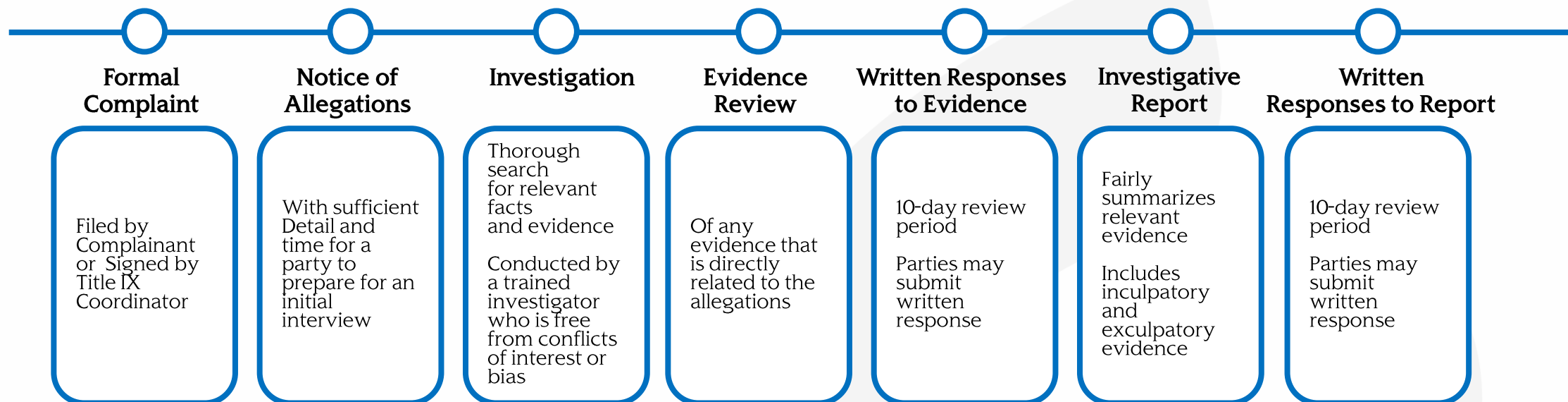
Key Provisions: New Title IX Regulations





INVESTIGATIONS UNDER THE CSU POLICY

Investigation Requirements





CAMPUS LEVEL IMPLEMENTATION



TITLE IX OFFICE UPDATES FALL 2022

Improvements to Title IX Trainings and Educational Programs



Fall 2021	Fall 2022
6 live trainings	42 live trainings
0 tabling events	5 tabling events



TITLE IX OFFICE UPDATES FALL 2022

Fully Staffed Title IX Office



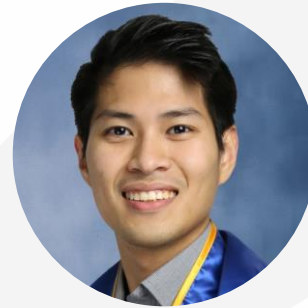
Karina Hernandez
Title IX Analyst



Wendi Liss
Interim Deputy
Title IX
Coordinator



Peter Lim
Interim Title IX
& Gender Equity
Officer
Interim Deputy
Title IX
Coordinator



Andrew Nguyen
Interim Title IX
Project Manager



Mary Keating
Title IX
Investigator



Arielle Egan
Title IX
Investigator



TITLE IX OFFICE UPDATES FALL 2022

New Location



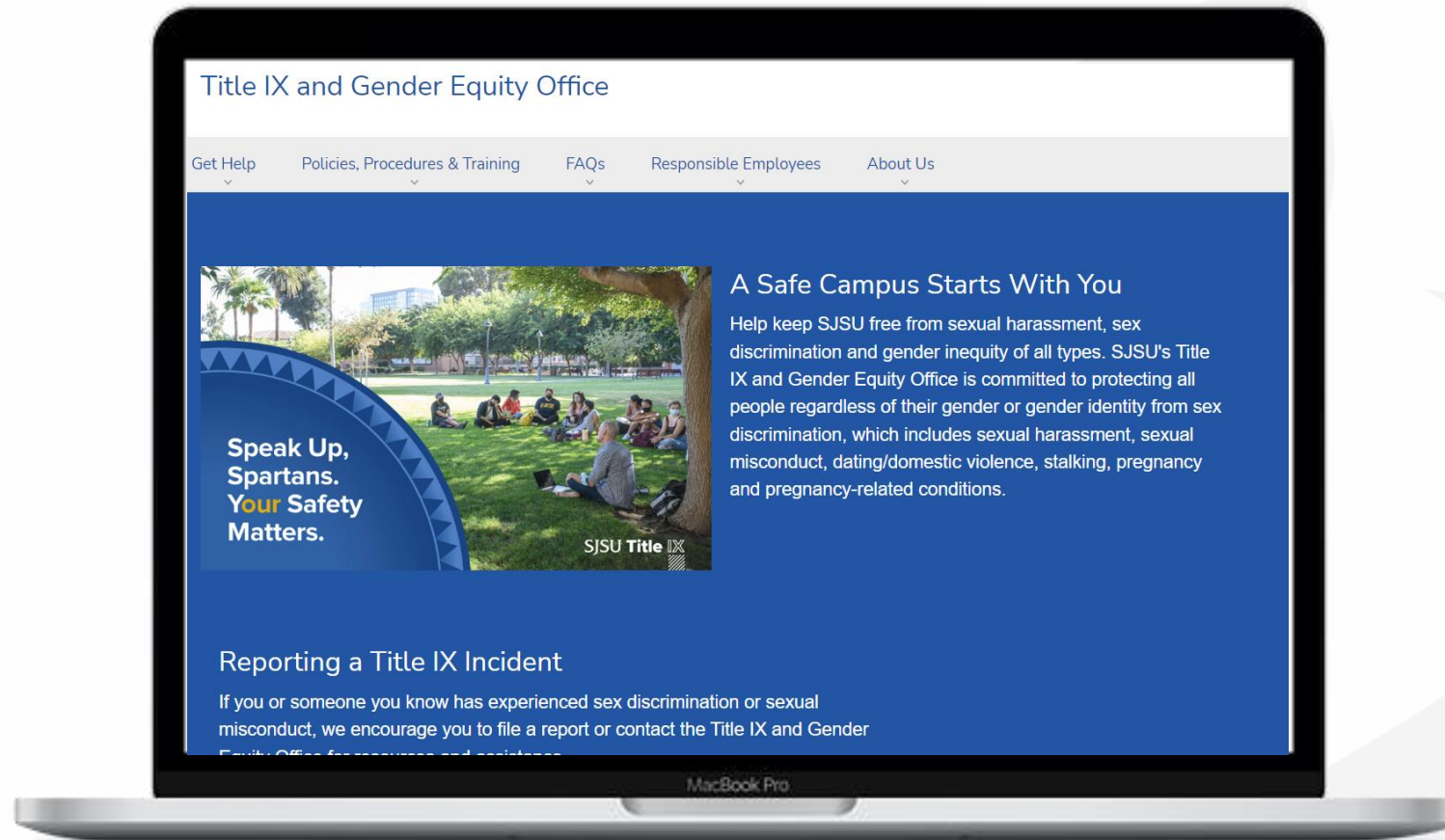
Title IX Office

Clark Hall, First Floor Room 126
1 Washington Sq, San Jose, CA 95192
Phone: 408-924-7290 (8AM – 5PM)
669-877-0620 (after hours, voice/text)
Email: TitleIX@sjsu.edu



TITLE IX OFFICE UPDATES FALL 2022

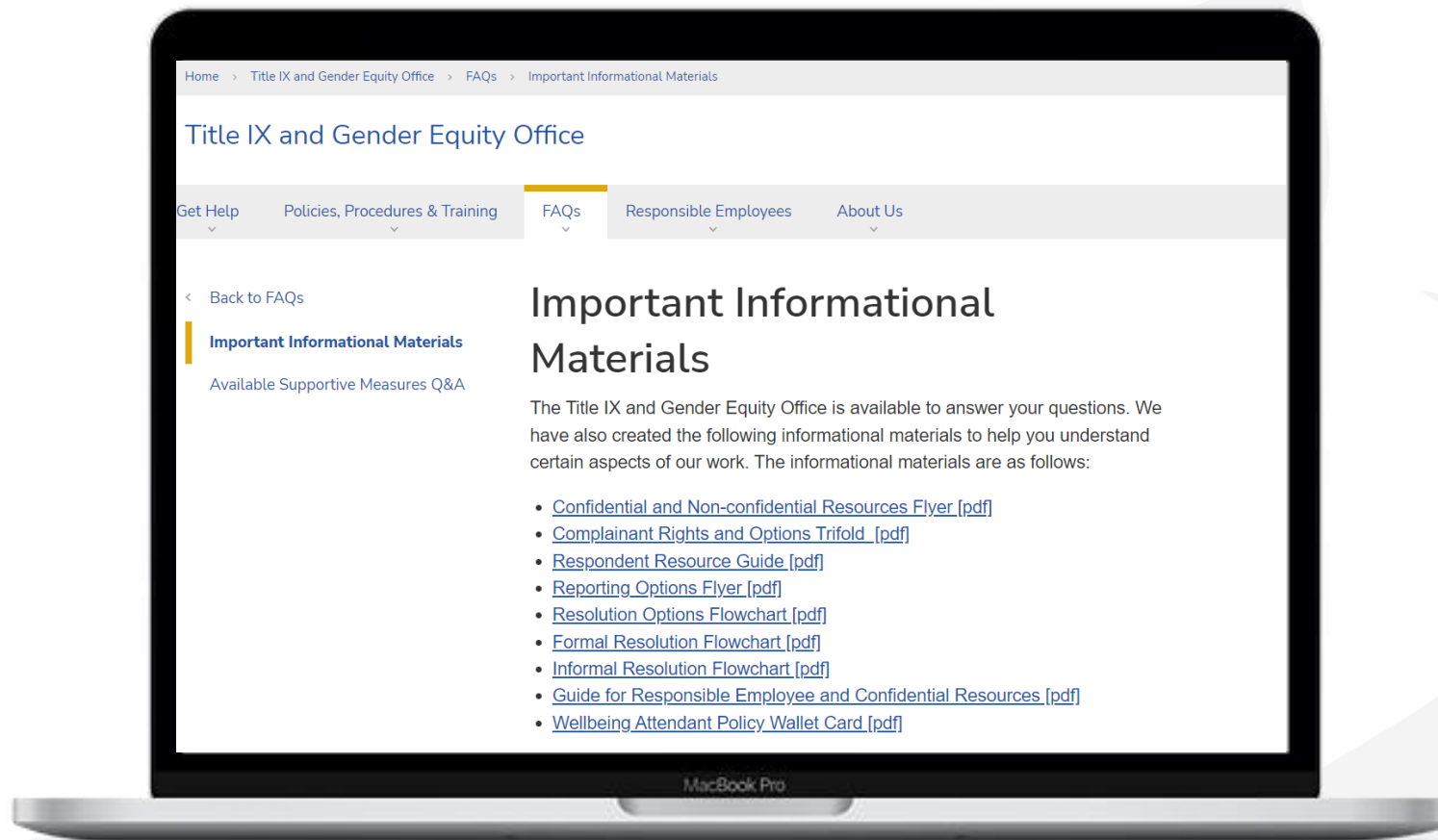
Redesigned Website for the Title IX Office





TITLE IX OFFICE UPDATES FALL 2022

New Title IX Informational Materials





TITLE IX OFFICE UPDATES FALL 2022

Improvements to the Quality and Timeliness of Investigations

Timeframe When the Notice of Investigation Was Issued	Average # of working days to issue the Preliminary Investigation Report	Average # of working days to issue the Final Investigation Report
Reporting Period 1 (09/21/21 to 12/31/21)	165 (Representative sample size = 3 investigations)	184 (Representative sample size = 2 investigations)
Reporting Period 2 (01/01/22 to 06/30/22)	77 (Representative sample size = 7 investigations)	122 (Representative sample size = 6 investigations)
Reporting Period 3 (07/01/22 to 12/31/22)	84 (Representative sample size = 3 investigations)	126 (Representative sample size = 1 investigation)



TITLE IX OFFICE UPDATES FALL 2022

Additional Updates



SJSU

Wellbeing
Attendant
Policy



Steve Perez, Interim President

SJSU campus community,

I am sharing with you the below message received today from CSU Interim Chancellor Jolene Koester providing an update regarding the systemwide assessment of CSU's implementation of Title IX and Discrimination, Harassment and Retaliation (DHR) policies and practices.

Thank you,

Steve Perez
Interim President

- Continued collaboration with the DOJ: October 2022 Campus Visit
- The New Wellbeing Attendant Policy
- The Title IX Office's Marketing Campaign
- Regular Campus-Wide Updates on the Title IX Office

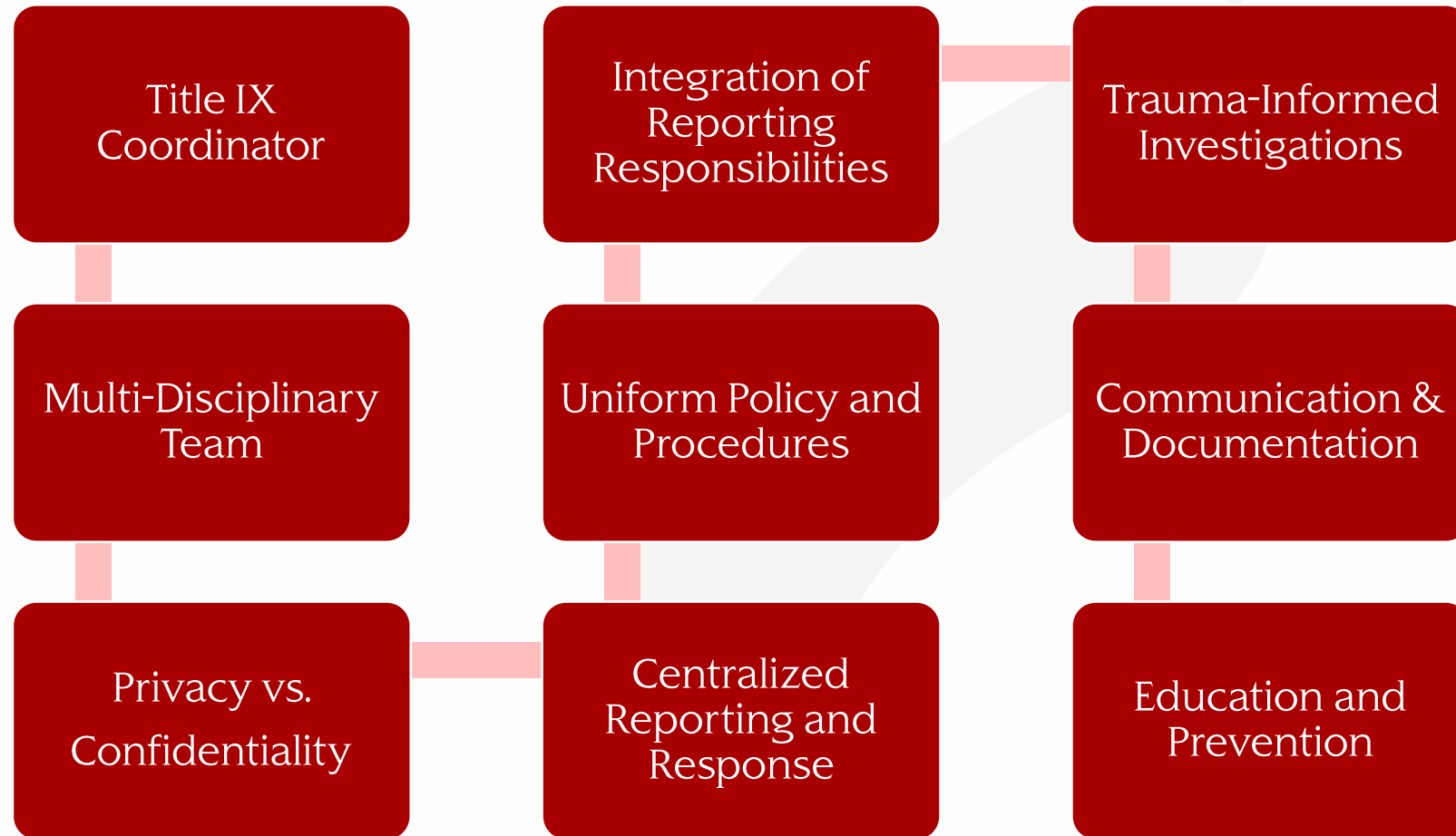


EFFECTIVE PRACTICES: IMPLEMENTATION AT SJSU



EFFECTIVE PRACTICES: IMPLEMENTATION AT SJSU

Key Elements of Effective Practices





Key Elements of Effective Practices

- **Title IX Coordinator**
 1. Independent
 2. Appropriately resourced
- **Coordinated multi-disciplinary response team**
 1. Coordination of information
 2. Coordination of personnel
- **Privacy v. confidentiality**
 1. Distinction between confidential resources and reporting options
 2. Informed reporting
- **Integration of reporting responsibilities:**
 1. Responsible Employee
 2. Campus Security Authority
 3. Mandatory reporter of suspected child abuse



Key Elements of Effective Practices

- **Uniform policy and procedures for resolution:**
 1. Complainant autonomy/agency
 2. Fair and impartial practices
 3. Remedies-based options
 4. Sanctions-based options
- **Centralized reporting and review process**
 1. Consistent institutional responses
 2. Tracking and monitoring of incidents and climate
- **Trauma-informed investigations and practices**
- **Communication**
 1. Consistency and transparency
 2. At the individual and community level
- **Education, prevention and training program**



The Title IX Coordinator

- Coordinates the recipient's compliance with Title IX
- Title IX coordinator must have appropriate authority, access, autonomy, and resources
- Oversees all Title IX complaints
- Identifies and addresses any patterns or systemic problems
- Meets with students and employees as needed
- Should not have other job responsibilities that may create a conflict
- A school may designate more than one coordinator
 1. Must have clearly delineated responsibilities
 2. Must have titles reflecting supporting role



Personnel

Individual

- Personal preparation
- Values-based approach
- World class effort
- Humility
- Cultural competency
- Warm-heartedness
- Listen more, speak less
- Be collaborative

Structural

- The gift of time
- Tone at the top
- Team building
- Resources – budget, staffing, materials, professional development
- Commitment and consistency
- Clear expectations and enforcement
- Development of compassionate compliance



Title IX Multi-Disciplinary Team

Core stakeholders

- Title IX Coordinator
- Student conduct
- Campus safety/police
- Human resources
- Dean of faculty

Additional campus stakeholders

- Counseling
- Health center
- Advocacy

Community partners

- Law enforcement
- Prosecutor
- Hospital/Medical Providers
- Community crisis or advocacy centers
 - Rape Crisis Counselors
 - Domestic Violence Counselors



Policy Considerations

- Easily accessible, identifiable and locatable
- Uniform definitions and high level principles
- Consistent application across the institution
- Procedures may vary by respondent (student, staff, faculty, third party)
- Areas of concern:
 - Intersection between Title IX and Clery
 - Intersection with tenure processes
 - Intersection with collective bargaining agreements



Privacy vs. Confidentiality

- Ensure policies clearly identify reporting options and support resources both on and off campus
- Delineate confidential resources vs. non-confidential reporting options in policy and training
- Ensure all employees are familiar with Title IX reporting expectations
- Offer clear and easy to follow guidance about what happens when a report is received
- Foster a climate that encourages reporting by providing consistency in message, policy, procedure, and outcome



Confidential Resources

- Students or employees wishing to obtain confidential assistance may do so by speaking with professionals who are obligated by law to maintain confidentiality
- Confidential resources generally include medical providers, mental health providers, clergy, and rape crisis counselors
- Exceptions to confidentiality include:
 - Mandatory child abuse reporting
 - Tarasoff imminent risk of harm to self or others
 - State felony or sexual assault reporting



Confidential Resources vs. Reporting Options

Confidential Resources

- Medical services
- HIPAA
- Mental health/counseling
- Clergy
- Rape crisis counselor

Structural Challenges

- Employees with multiple hats, e.g., counselor and administrator

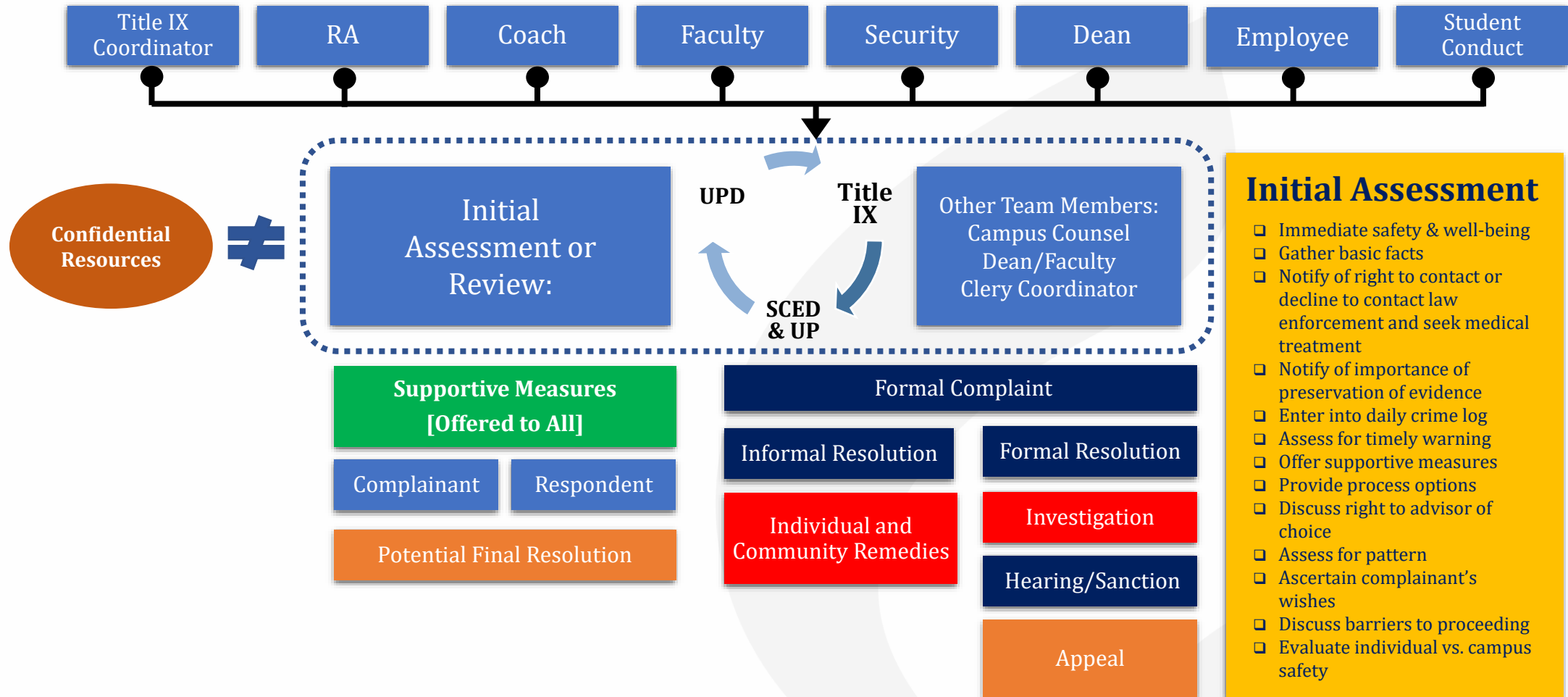
Reporting Options

- Emergency for safety, physical, or emotional
- Dedicated campus access points
 - Title IX
 - Campus safety/police
 - Student conduct
 - Human resources
- To any school employee
- Anonymous
- Law enforcement



EFFECTIVE PRACTICES: IMPLEMENTATION AT SJSU

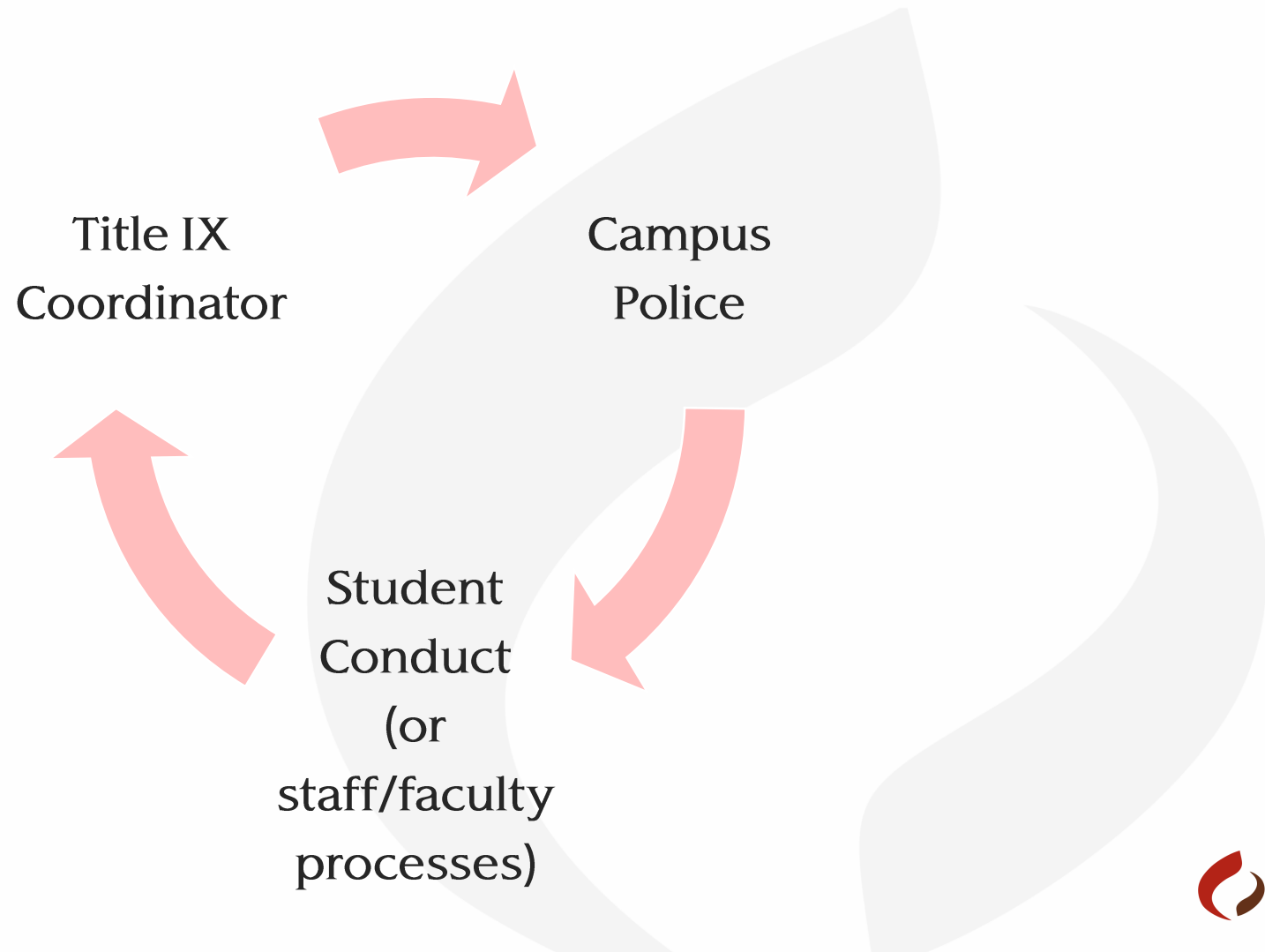
Integration and Coordination





EFFECTIVE PRACTICES: IMPLEMENTATION AT SJSU

Central Review Process Multi-disciplinary Team





Centralized Review Process

- Coordination of information and personnel
 - Clearly delineated roles and responsibilities
 - Build in regular and open lines of communication
 - Sequence events in advance
- Separate support and advocacy from investigation and adjudication
- Design and use template communications
- Central tracking for patterns
- Documentation/records
- Ensure consistent implementation of:
 - Interim measures
 - Determination whether to proceed
 - Investigative practices
 - Sanctions
 - Community remedies
- Transparency in outcomes



Title IX Intake and Assessment

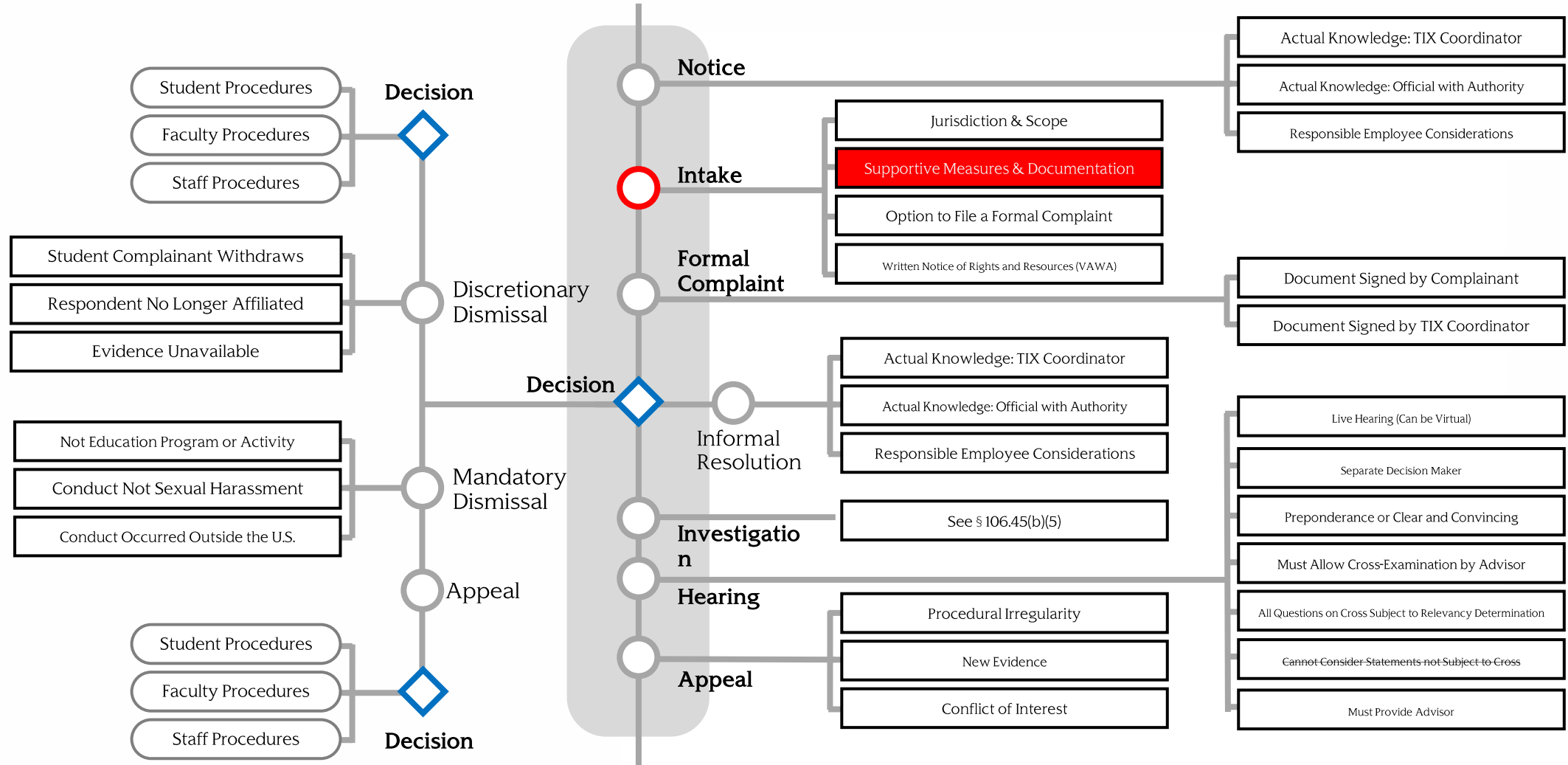
- Assess immediate safety and well-being
- Gather basic facts
- Notify of right to contact law enforcement and seek medical treatment
- Notify of importance of preservation of evidence
- Tend to Clery responsibilities:
 - Enter into daily crime log
 - Assess for timely warning
- Assess and implement interim measures
- Provide policies, process options, resources and supports
- Assess for pattern
- Ascertain complainant's wishes
- Discuss barriers to proceeding
- Evaluate individual vs. campus safety



SUPPORTIVE MEASURES

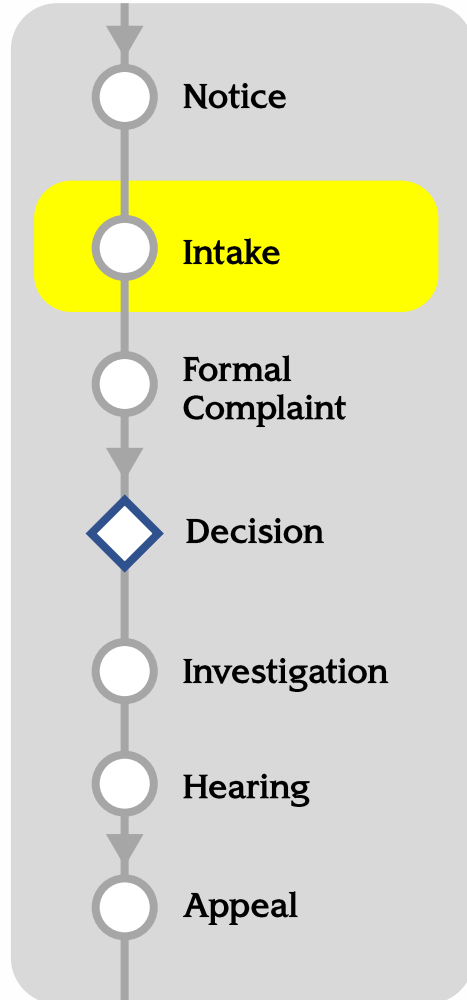


SUPPORTIVE MEASURES





Offering Supportive Measures

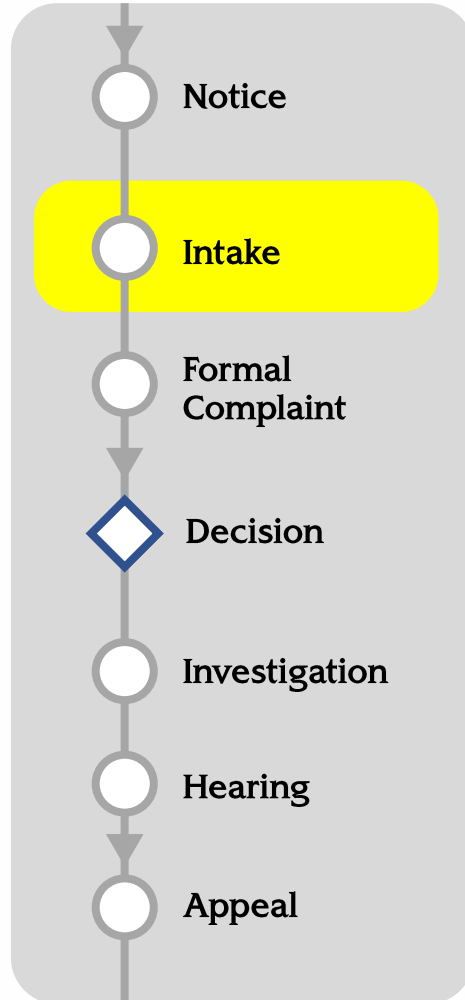


The Title IX Coordinator must promptly contact the complainant to:

- Discuss the **availability** of supportive measures as defined in § 106.30,
- Consider the **complainant's wishes** with respect to supportive measures,
- Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- Explain to the complainant the process for filing a formal complaint.



Supportive Measures

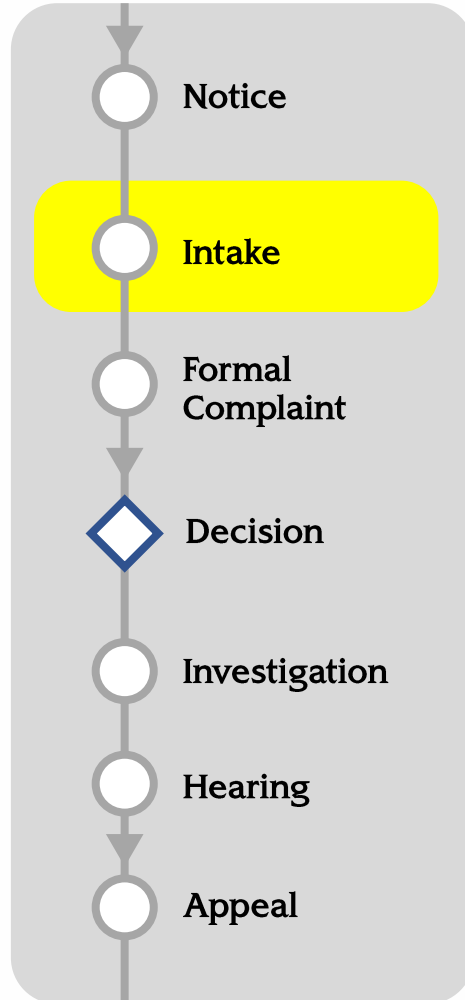


- Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- Designed to restore or preserve equal access to the recipient's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient's educational environment, or deter sexual harassment.

Title IX Regulations § 106.30(a)



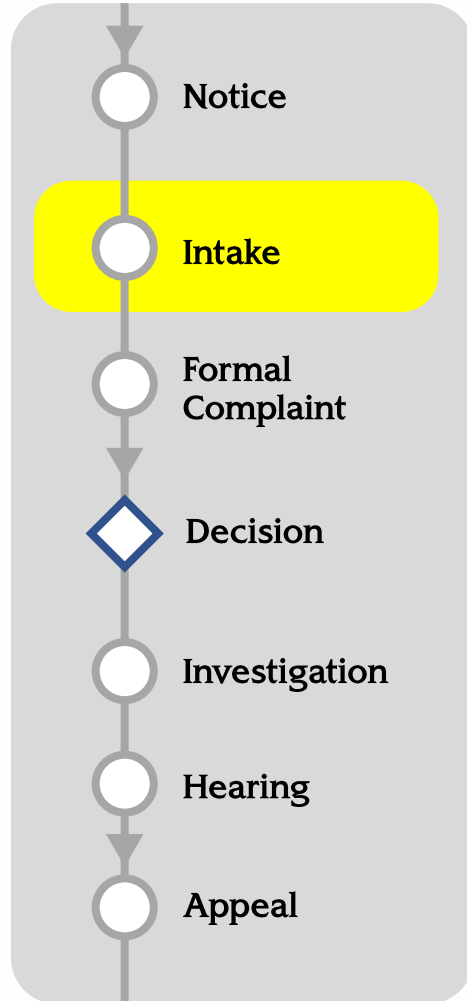
Supportive Measures



May include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.



Supportive Measures

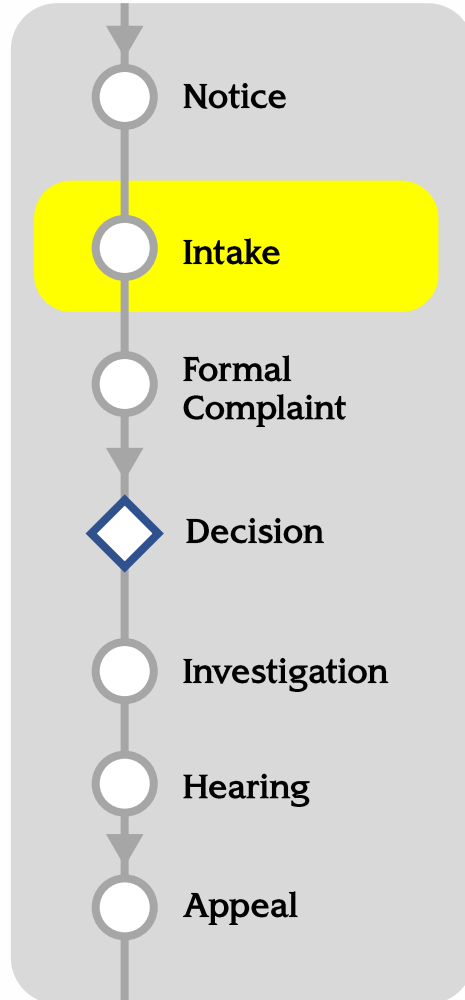


- Must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures.
- The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Title IX Regulations § 106.30(a)



Documentation

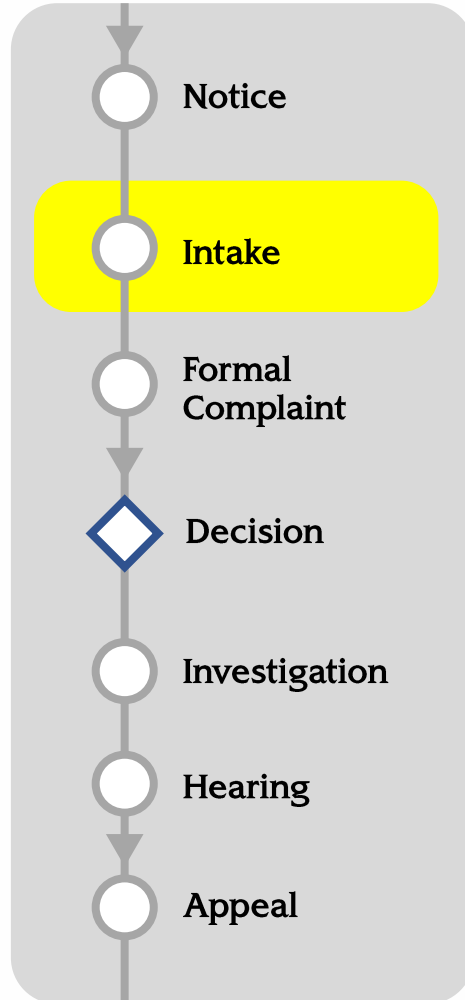


- Must maintain records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
- Must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity
- If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances

Title IX Regulations § § 106.45(b)(10)(i)-(ii)



Emergency Removal for Students

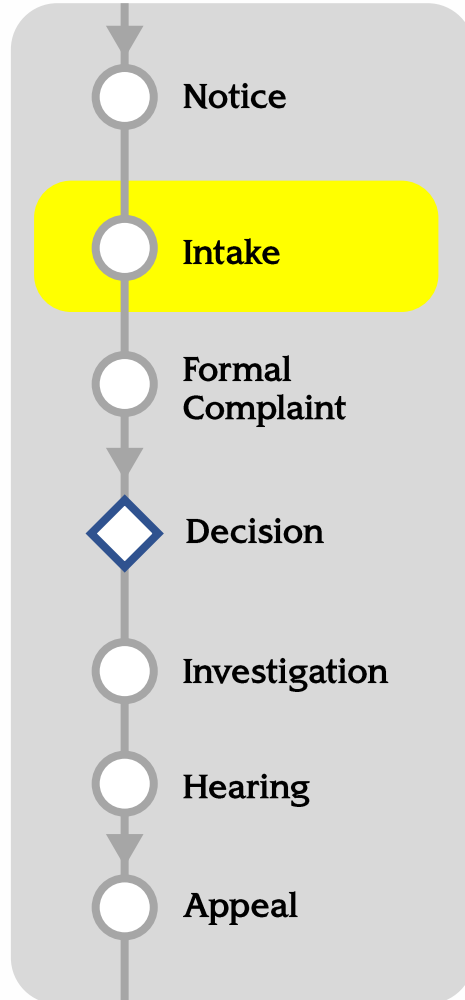


- Must undertake an individualized safety and risk analysis and determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
- Must provide the respondent with notice and an opportunity to challenge the decision immediately following the removal

Title IX Regulations § 106.44(c)



Emergency Removal

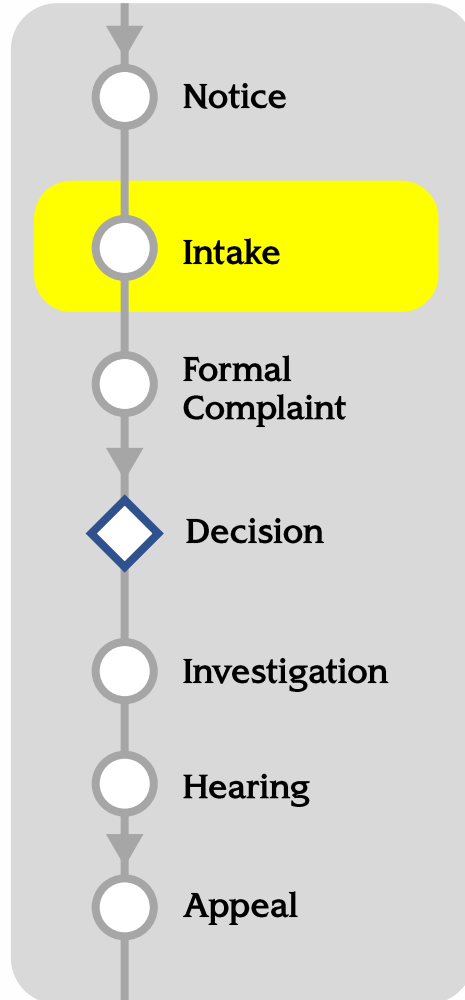


Where a respondent poses an immediate threat to the physical health or safety of the complainant (or anyone else), § 106.44(c) allows emergency removals of respondents prior to the conclusion of a grievance process (or even where no grievance process is pending), thus protecting the safety of a recipient's community where an immediate threat exist.

Title IX Regulations; Preamble 85 F.R. 30231



Emergency Removal

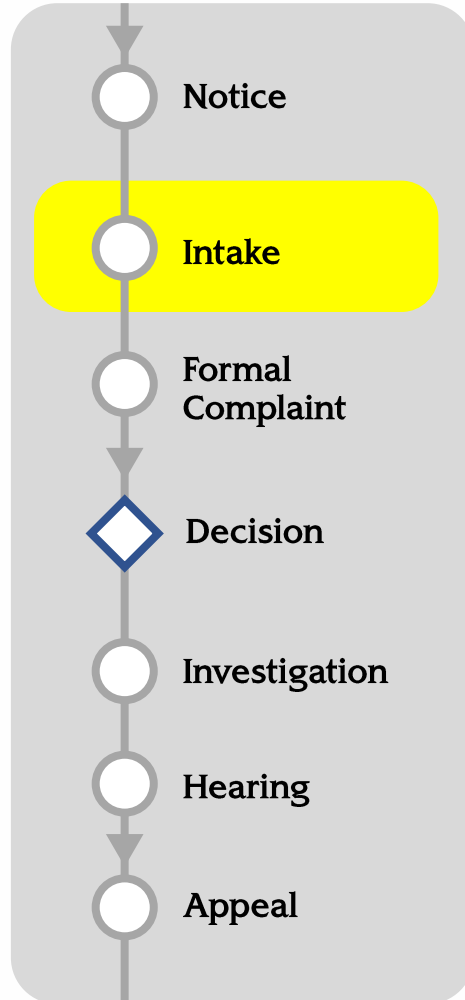


- The Department notes that the final regulations expressly allow a recipient to remove a respondent on an emergency basis and do not prescribe cross-examination as a necessary procedure during the post-removal opportunity to challenge the removal.
- Recipients may also implement supportive measures that restrict students' or employees' contact or communication with others.
- Recipients thus have avenues for addressing serial predator situations even where no victim chooses to participate in a grievance process.

Title IX Regulations; Preamble 85 F.R. 30348



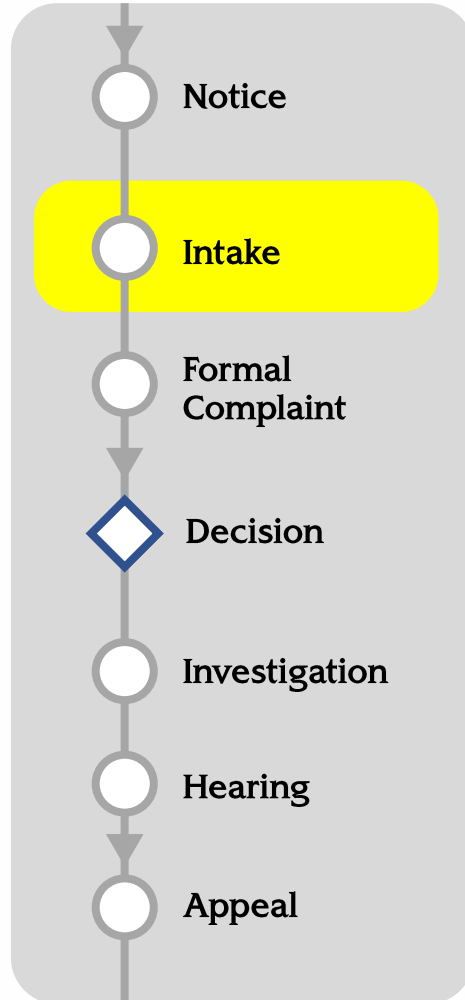
Administrative Leave



- Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45.
- This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.



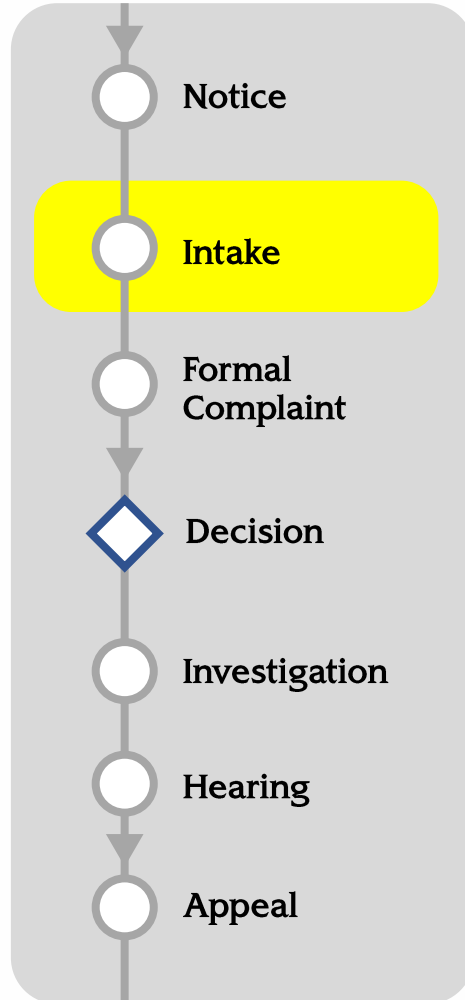
Practical Considerations & Challenges



- Limited scope allowable for emergency removal
 - Can you remove under code of conduct for lesser standard?
- What are the criteria for appropriate and reasonably available?
- What are measures to protect safety or deter sexual harassment?
- What supportive measures do you have to offer to a non-student/non-employee?
- Ensuring accurate documentation



Offering Supportive Measures



- Criteria for when the Title IX Coordinator files the formal complaint
- Process for evaluating dismissal
- Appeal from dismissal
- Proceeding under other policies
 - Policy frameworks
 - When is charging under a code of conduct retaliation?
- Timing of analysis for dismissal



OBLIGATION TO INVESTIGATE



OBLIGATION TO INVESTIGATE


Understanding Two Key Provisions





OBLIGATION TO INVESTIGATE

Reports vs. Formal Complaints



Reports

The new regulations distinguish and separate a recipient's obligation to **respond to a report** of sexual harassment from a recipient's **obligation to investigate formal complaints** of sexual harassment

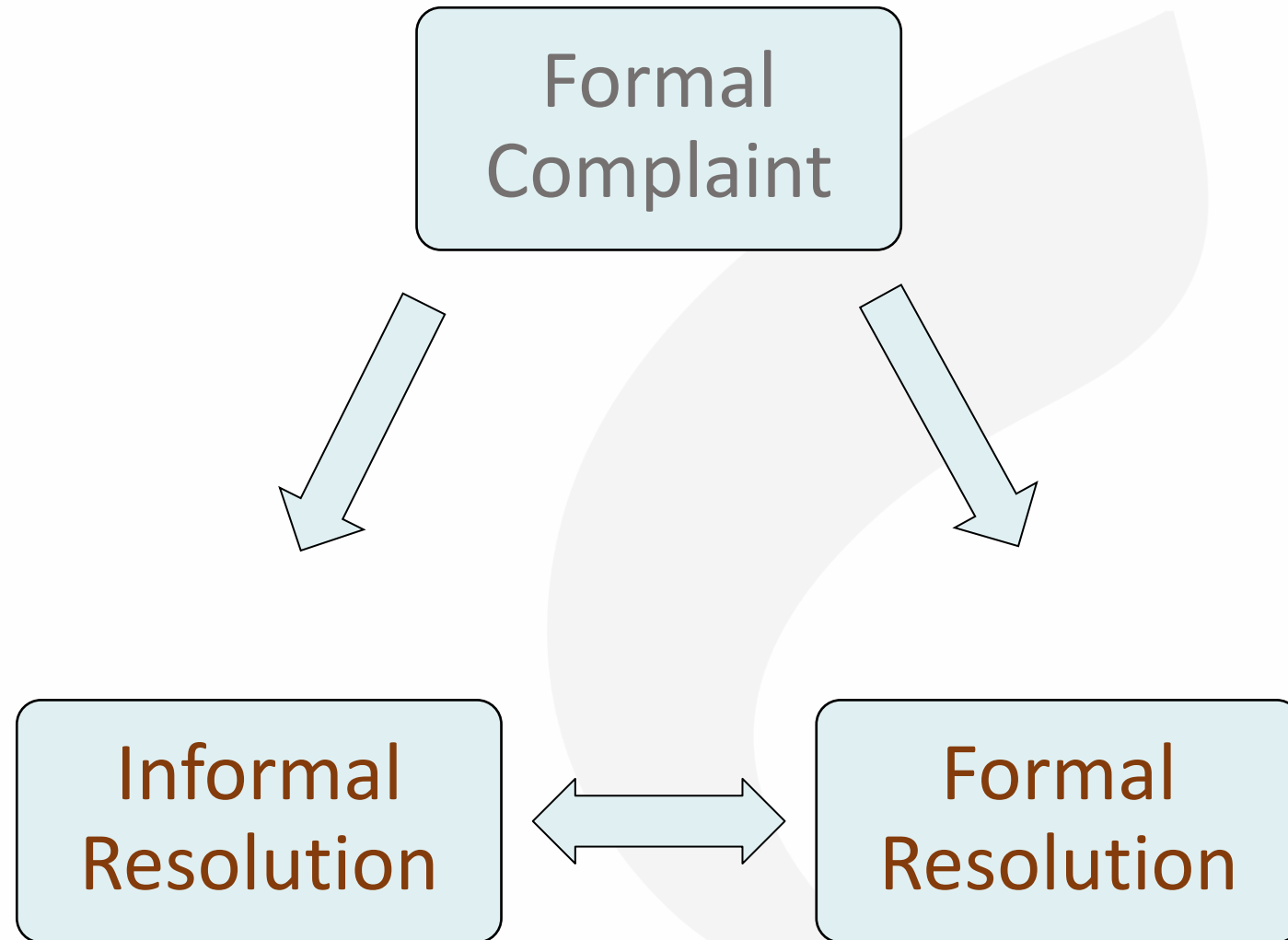
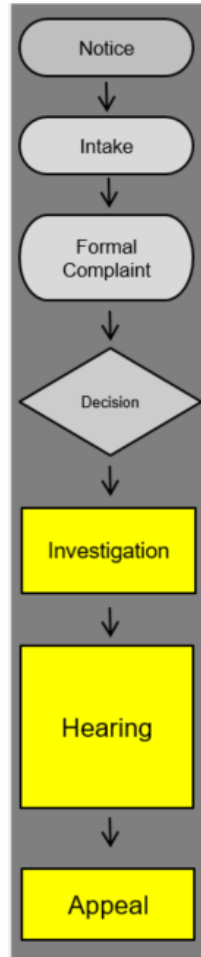
If students would like supportive measures but do not wish to initiate an investigation...they may make a report of sexual harassment.

If students would like supportive measures and also would like the recipient to initiate an investigation...they may file a formal complaint.



OBLIGATION TO INVESTIGATE

Resolution Process





OBLIGATION TO INVESTIGATE

Complainant Agency & Autonomy



- “The final regulations promote clarity as to recipient’s legal obligations, and **promote respect for each complainant’s autonomy**, by distinguishing between a complainant’s report of sexual harassment, on the one hand, and the filing of a formal complaint that has initiated a grievance process against a respondent, on the other hand.”
- “The Department acknowledges that a recipient should **respect the complainant’s autonomy and wishes** with respect to a formal complaint and grievance process to the extent **possible.**”



OBLIGATION TO INVESTIGATE

Reinforcing Agency & Autonomy



AUTONOMY

Balancing a recipient's obligation to respond to instances of sexual harassment with a complainant's autonomy

A rigid requirement such as an investigation in every circumstance may chill reporting of sexual harassment...

A student may receive supportive measures irrespective of whether the student files a formal complaint...these final regulations encourage students to report sexual harassment while allowing them to exercise some control over their report.

Title IX Regulations; Preamble 85 F.R. 30190



OBLIGATION TO INVESTIGATE

- Formal complaint:
A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and Requesting that the recipient investigate the allegation of sexual harassment
- Once a formal complaint is filed, a recipient **must** investigate the allegations in that complaint
The Department believes that where a complainant has chosen to file a formal complaint, or the Title IX Coordinator has decided to sign a formal complaint, the recipient must investigate those allegations regardless of the merits of the allegations. (emphasis in original)

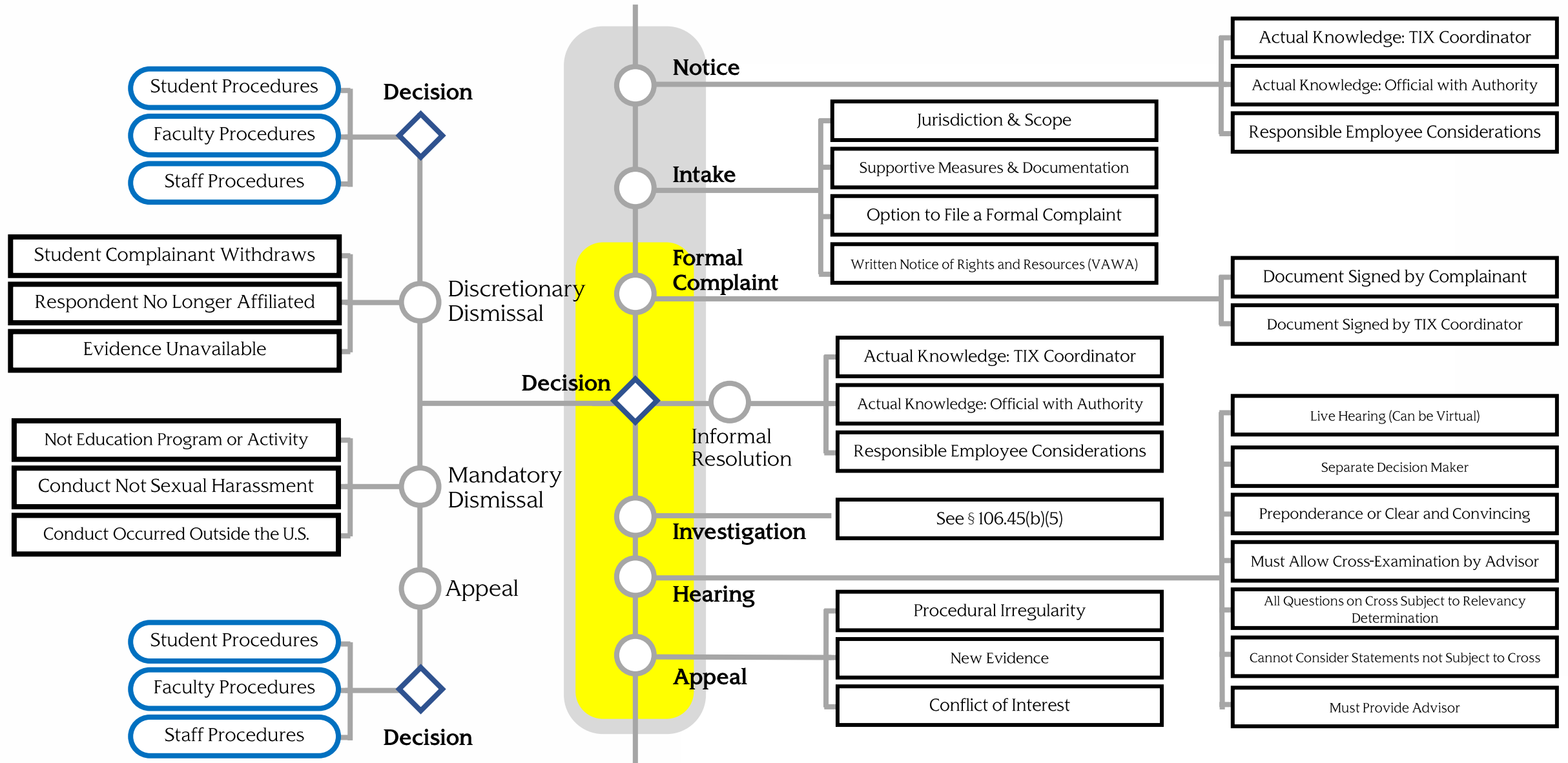
Title IX Regulations §106.30 Definitions and §106.45(b)(3) Dismissal of a formal complaint; 85 F.R. 30574



BASIC REQUIREMENTS OF GRIEVANCE PROCESSES



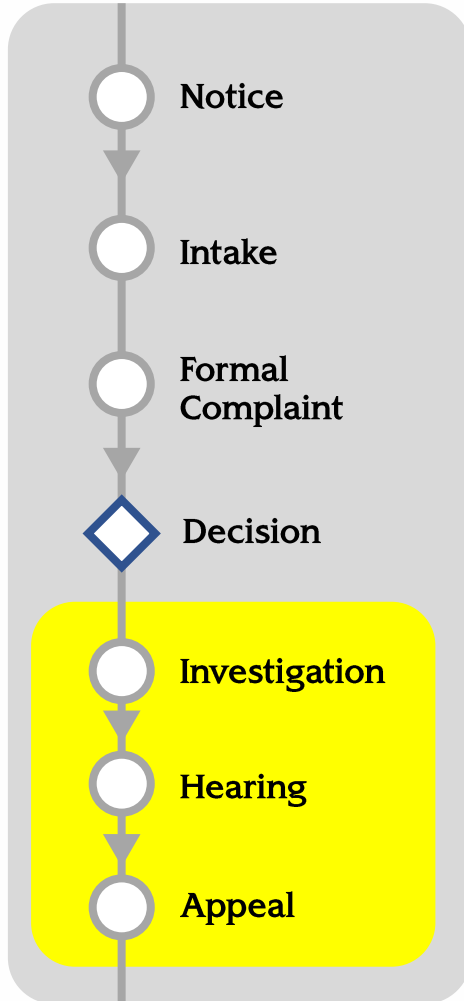
BASIC REQUIREMENTS OF GRIEVANCE PROCESSES





BASIC REQUIREMENTS OF GRIEVANCE PROCESSES

Basic Requirements



Treat complainants and respondents equitably by providing **remedies** to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a **grievance process** that complies with this section before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.

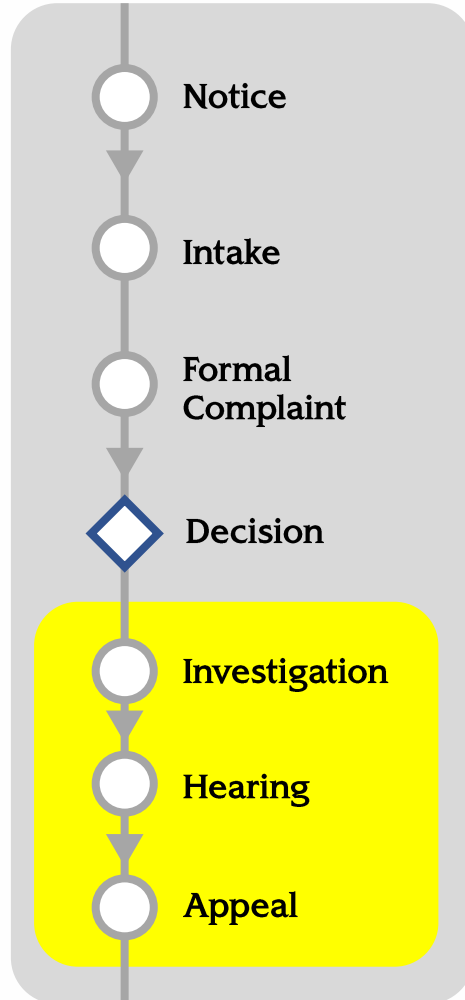
Relevant Regulations Sections:

Equitable Treatment: §§ 106.44(a) and 106.45(b)(1)(i)



BASIC REQUIREMENTS OF GRIEVANCE PROCESSES

Basic Requirements



- Require an objective evaluation of all relevant evidence
 - Including both inculpatory and exculpatory evidence
 - Credibility determinations may not be based on a person's status
- Implementers must be trained and free from conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

Relevant Regulations Sections:

Equitable Treatment: §§ 106.44(a) and 106.45(b)(1)(i)

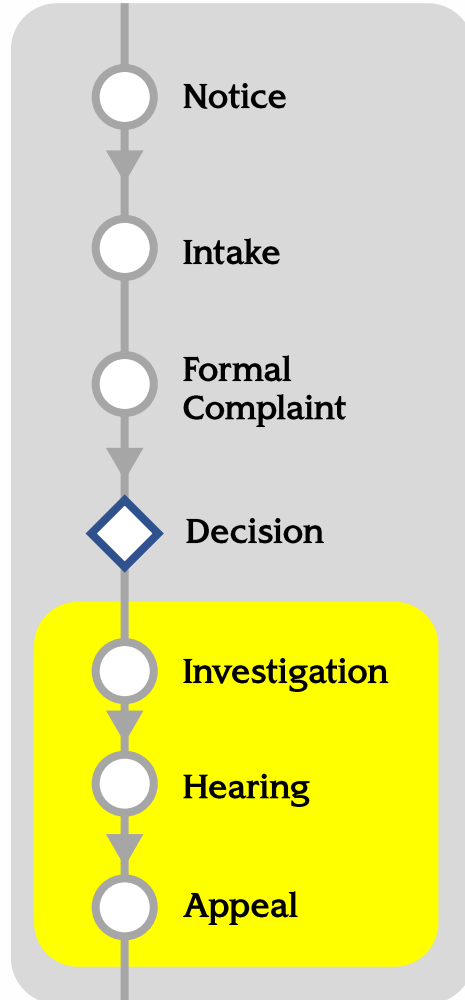
Objective evaluation of all relevant evidence: § 106.45(b)(1)(ii)

Training and avoidance of conflicts or bias: § 106.45(b)(1)(iii)



BASIC REQUIREMENTS OF GRIEVANCE PROCESSES

Basic Requirements



- **Presumption that the respondent is not responsible** for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- Include reasonably prompt time frames for conclusion of the grievance process with permissible delay for good cause
- Describe the range (or list) of possible disciplinary sanctions and remedies

Relevant Regulations Sections:

Equitable Treatment: §§ 106.44(a) and 106.45(b)(1)(i)

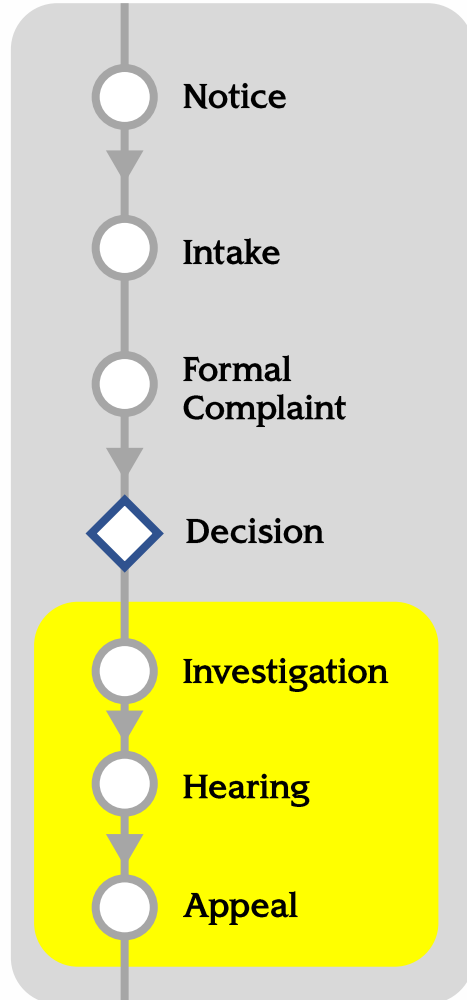
Objective evaluation of all relevant evidence: § 106.45(b)(1)(ii)

Training and avoidance of conflicts or bias: § 106.45(b)(1)(iii)



BASIC REQUIREMENTS OF GRIEVANCE PROCESSES

Basic Requirements



State whether the **standard of evidence** to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard,

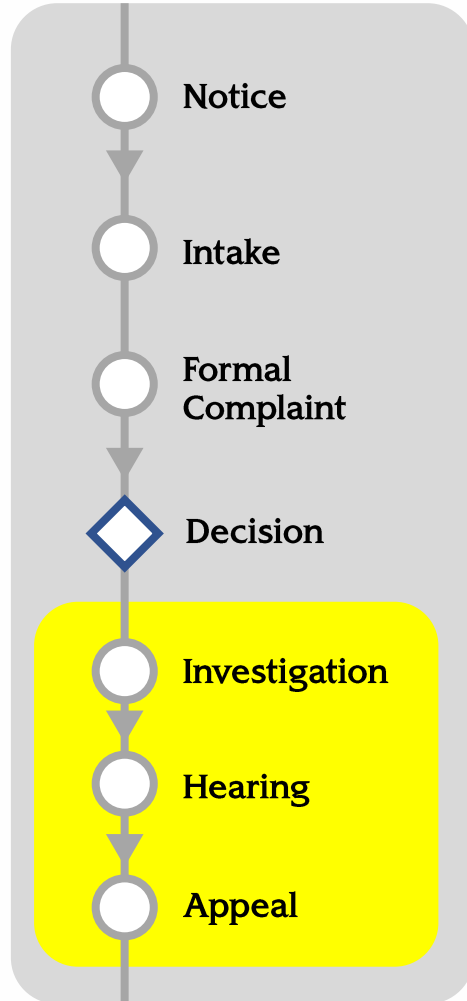
- Apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty
- Apply the same standard of evidence to all formal complaints of sexual harassment

Title IX Regulations §§ 106.45(b)(1)(vii) and 106.45(b)(7)(i)



BASIC REQUIREMENTS OF GRIEVANCE PROCESSES

Practical Considerations & Challenges



How does the standard of evidence alignment impact:

- Faculty codes
- Staff procedures
- Collective bargaining agreements

Creating an evidentiary code