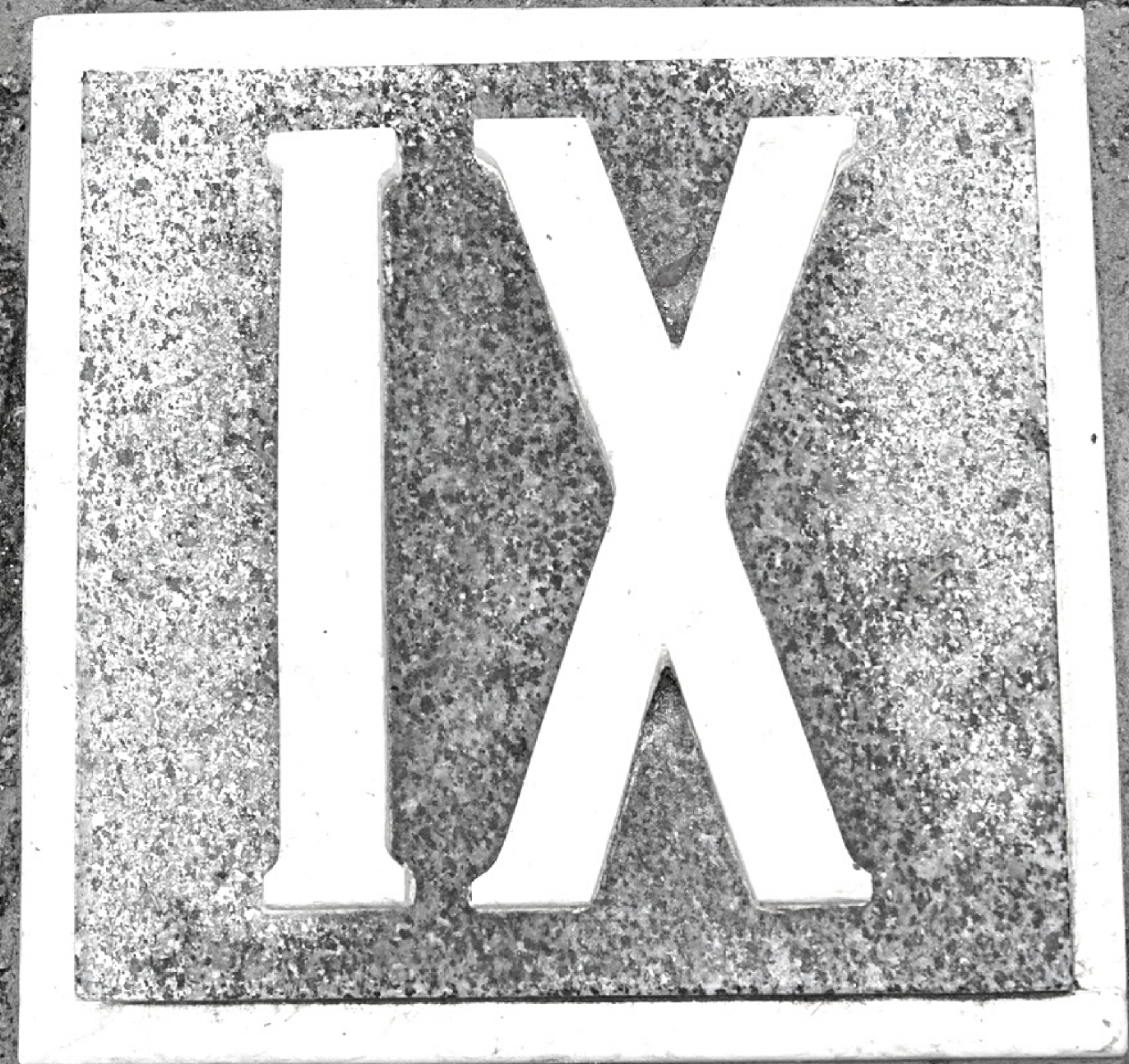
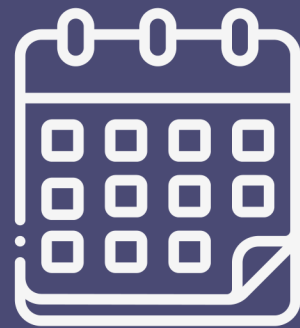


An  
Introduction  
to Title IX



# IN THIS CHAPTER



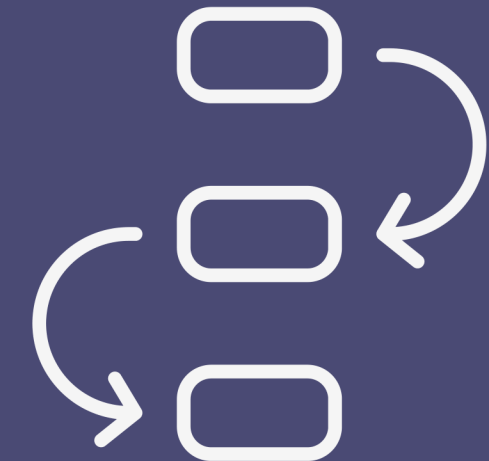
HISTORY OF  
TITLE IX



TITLE IX  
DEFINITIONS



PARTICIPANTS IN  
THE TITLE IX  
PROCESS



OVERVIEW OF THE  
TITLE IX PROCESS

# History of Title IX



# Title IX of the Education Amendments of 1972

“

“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[.]”

”

# Creation of Title IX

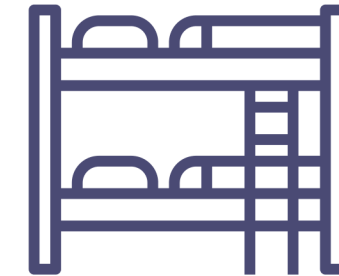
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

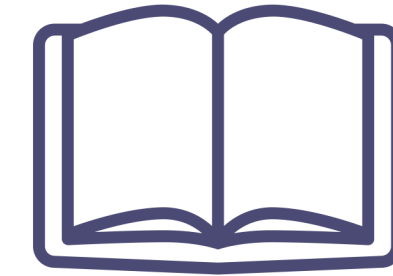
Designed initially to address inequities in:



Admissions



Residence  
Life



Academic  
Opportunities



Extracurricular  
Activities

# Who is Protected?

- All students regardless of:
  - Sexual orientation
  - Gender identity
  - Nationality
  - Immigration status
  - Race
  - Ability
- Boys and men as well as girls and women
- Employees, such as teachers, staff, and administrators
- Recipients include approximately 17,600 local school districts, over 5,000 postsecondary institutions, and charter schools, for-profit schools, libraries, and museums

# Evolution of Title IX



**JUNE 23, 1972**

Title IX becomes law and addresses sex-based discrimination



**APRIL 4, 2011**

Guidance expands Title IX to include sexual harassment, dating and domestic violence, sexual assault, and stalking



**AUGUST 14, 2020**

Newest guidance changes the way schools respond to incidents of discrimination and harassment



# Title IX Today



**JUNE 23, 2022**

Department of Education releases Title IX Notice of Proposed Rulemaking proposing expanded scope and revised guidelines



# Title IX Definitions



# Actual Knowledge

- "[N]otice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient" (Postsecondary)
- Notice of sexual harassment or allegations by ANY employee of an elementary or secondary school
- Includes reports sent to the Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving a person's written or oral report

# Report vs. Formal Complaint

## Report

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

## Formal Complaint

- Alleges Title IX sexual harassment
- Required for initiation of the Title IX grievance process
- Required to be filed and signed by the Complainant (or Title IX Coordinator in certain instances)
- Cannot be filed anonymously or by a third-party

# Report vs. Formal Complaint

**Both reports and formal complaints are:**



A means for the school to obtain "actual knowledge"



NOT equivalent to filing charges with law enforcement

# Supportive Measures

## What?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sexual harassment

## When?

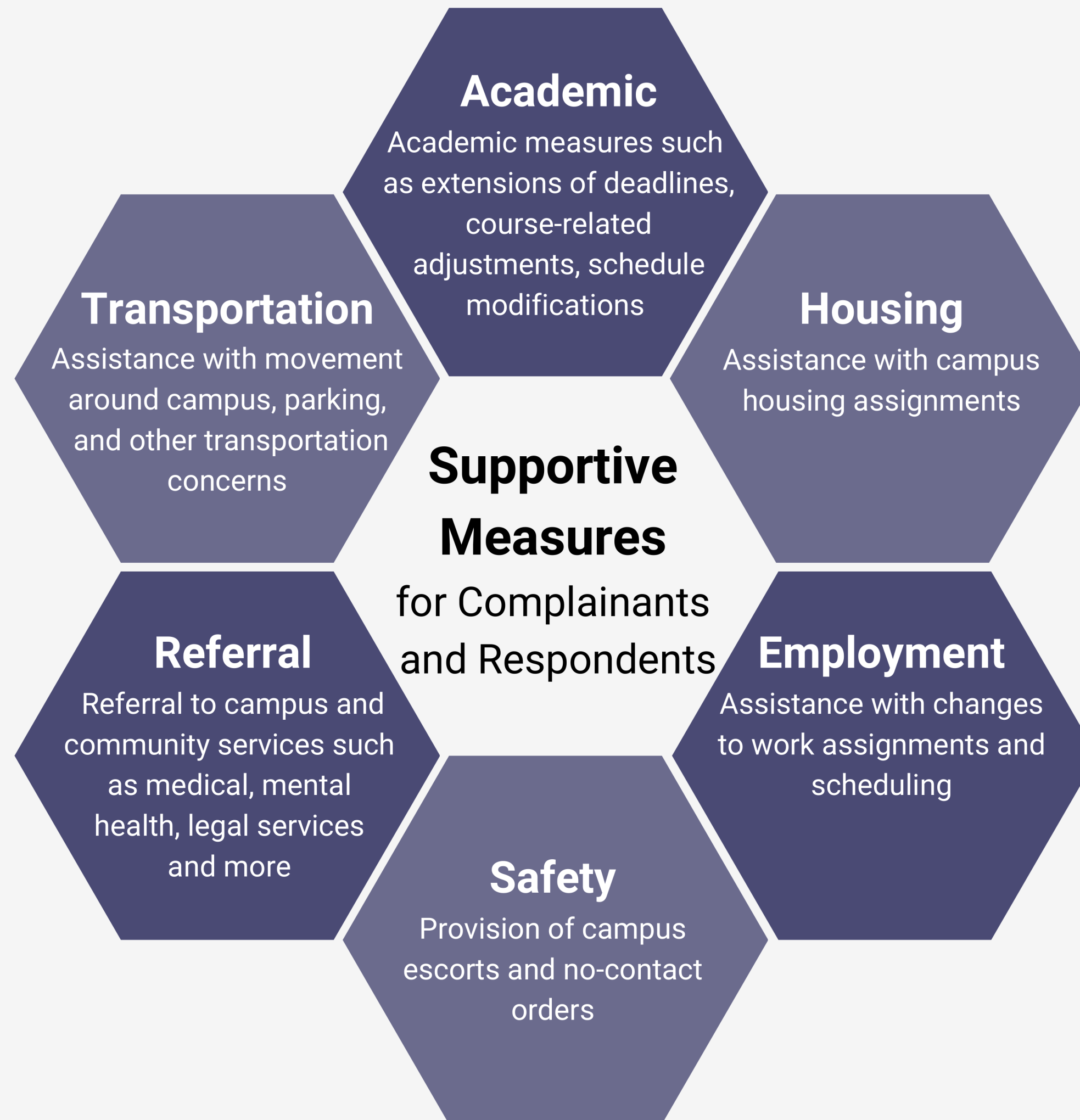
- Available before or after filing a formal complaint or where no formal complaint has been filed

## Why?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

## How?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party



# Amnesty Provision

- Not required under Title IX but often included in the policy to encourage reporting
- Individuals may not be subject to disciplinary action for a minor violation of other school policies (e.g., Code of Conduct) when participating in a Title IX investigation

## SCENARIO



Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.

# Confidentiality

- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
  - Identities of these individuals will be known to the individuals conducting the Title IX process

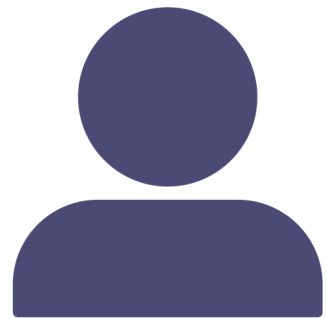


# Retaliation

- Intimidating, threatening, coercing, or discriminating against any individual for either of the following reasons:
  - Intention to interfere with the individual's rights under Title IX; or
  - Because an individual has submitted a report or formal complaint, testified, assisted, or participated or refused to participate in the investigation, proceeding, or hearing under Title IX

# Retaliation

All persons are prohibited from retaliating against reporting parties, Complainants, Respondents, Witnesses, and others who participate in the Title IX process.



## **Example One:**

Friends of the Complainant intimidating the Respondent, or vice versa.



## **Example Two:**

School personnel discriminating against an individual for refusing to participate in the Title IX process.

# Remedies and Sanctions

## REMEDIES

- Offered to Complainants
- Designed to restore or preserve equal access to the school's education program or activity
- May be the same as supportive measures
- DO NOT need to be "non-punitive" or avoid burdening the respondent

## SANCTIONS

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy
- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

# Education Program or Activity

The educational program or activity includes all operations of the school, both on or off campus.

- Includes locations, events, or circumstances over which the school exercises substantial control over both:
  - The Respondent, and
  - The context in which an incident of sexual harassment occurs
- Includes any building owned or controlled by student organizations which are officially recognized by the school (including fraternity & sorority houses)
- Includes computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of the school

# Standard of Evidence

Standard used to determine whether or not a sexual harassment policy violation occurred.

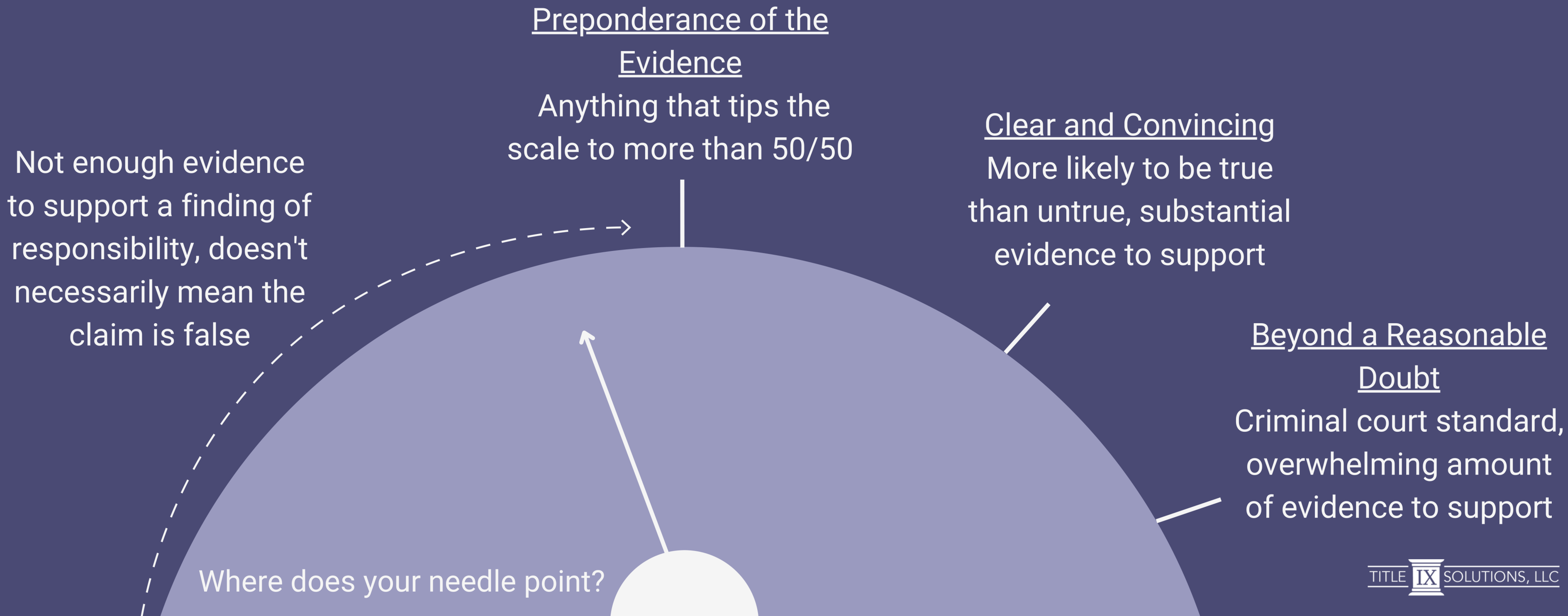
## Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

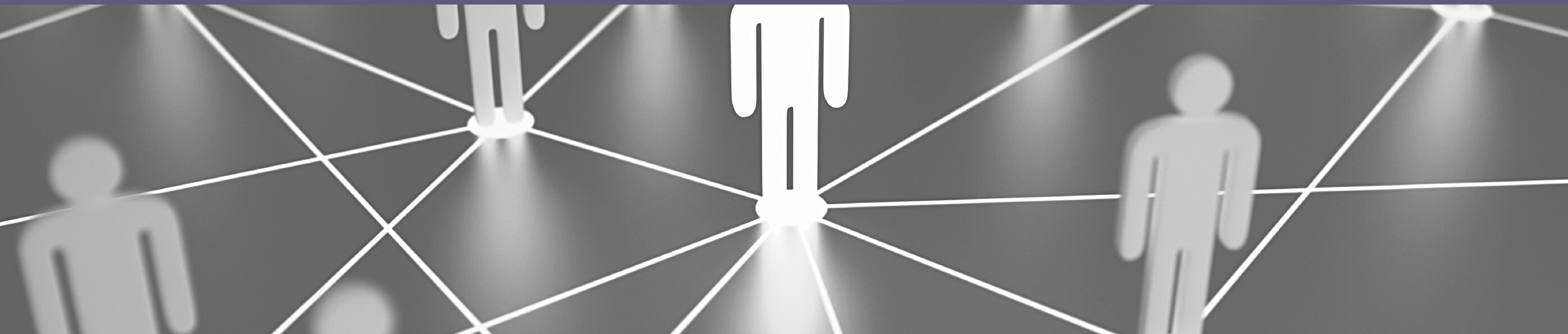
## Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

# Standard of Evidence



# Participants in the Title IX Process



# Overview

Title IX personnel vary, depending upon several factors:

- Institution size
- Institution type
  - K-12
  - Community/two-year colleges
  - Four year colleges and universities
  - Public/private
- Institution structure and resources
  - Organizational charts and reporting
  - Full-time/part-time
  - Budget





# Title IX Personnel

Except for the Title IX Coordinator, Title IX personnel may be internal (from the campus community) or external (local attorneys, consultants, etc.).



Title IX  
Coordinator



Deputy  
Coordinators



Title IX  
Investigator



Decision-  
Maker



Informal Resolution  
Facilitator



Advisor



Appellate  
Decision-Maker

# Title IX Coordinator

Every school must have a Title IX Coordinator.

## CAN

- Serve as the Title IX Investigator
- Serve as the Informal Resolution Facilitator
- Have other roles on campus
  - Dean of Students, Director of Human Resources, etc.

## CANNOT

- Serve as the Title IX Decision-Maker
- Serve as the Appeals Decision-Maker

# Title IX Coordinator

## Responsibilities:

- Ensures compliance with federal, state, and local law, as well as other school policies
- Receives reports of sexual harassment
- Creates, reviews, and implements policy and procedures
- Facilitates and oversees grievance process including hearings, informal resolution processes, and appeals
- Creates/monitors training of Title IX staff and campus community

# Title IX Investigator

**May be the Title IX Coordinator, other school employee, or independent contractor.**

## Responsibilities:

- Collects evidence and interviews the Parties and Witnesses
- Provides all evidence to the Parties and their Advisors for inspection and review
- Creates an investigative report that fairly summarizes relevant evidence
- Sends the investigative report to the Complainant, Respondent, Advisors, and Decision-Maker

# Title IX Decision-Maker (Hearing Officer)

**May be a single Decision-Maker or a hearing panel, school employee(s), or independent contractor(s).**

**May NOT be the Title IX Coordinator or Title IX Investigator.**

## Responsibilities:

- Oversees and facilitates the Title IX hearing
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the hearing
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

# Appellate Decision-Maker

**May be a single Appellate Decision-Maker or Appellate Panel, school employee(s), or independent contractor(s).**

**May NOT be the Title IX Coordinator, Investigator, or Decision-Maker.**

## Responsibilities:

- Reviews the appeal from the Party & the other Party's response (if any)
- Drafts and issues the final determination

Specific appellate procedures vary at every school, so refer to the school's policy for details.

# Informal Resolution Facilitator

**May be the Title IX Coordinator, school employee, or independent contractor.**

## Responsibilities:

- Provides information to the Parties and Advisors about the informal resolution process
  - Various forms of informal resolution may be available
- Facilitates the informal resolution process
- Drafts informal resolution settlement agreements at the conclusion of the process (if the complaint is resolved)

# Advisor

## Complainant and Respondent have the right to an Advisor of their choice.



An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.

- School must provide an Advisor for the live hearing if a Party does not have one present
- School cannot limit the choice or presence of the Advisor for either Party in any meeting
- Parties have the option to include the Advisor in any meeting or investigative interview
- Schools may set specific expectations or provide guidelines for Advisors to follow during meetings, investigative interviews, and the hearing



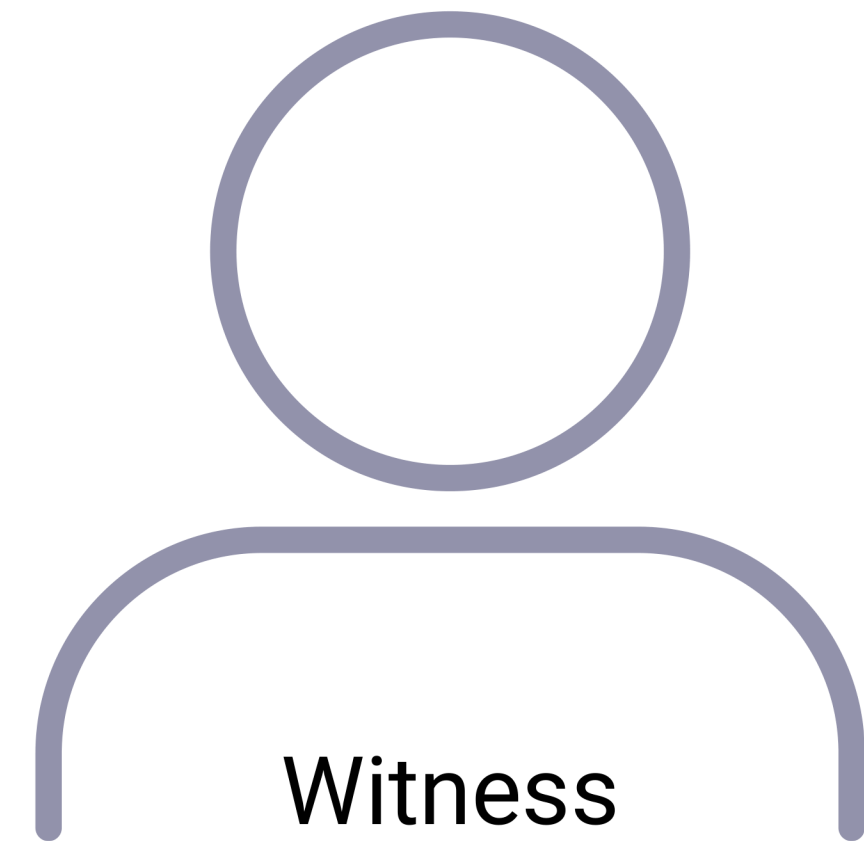
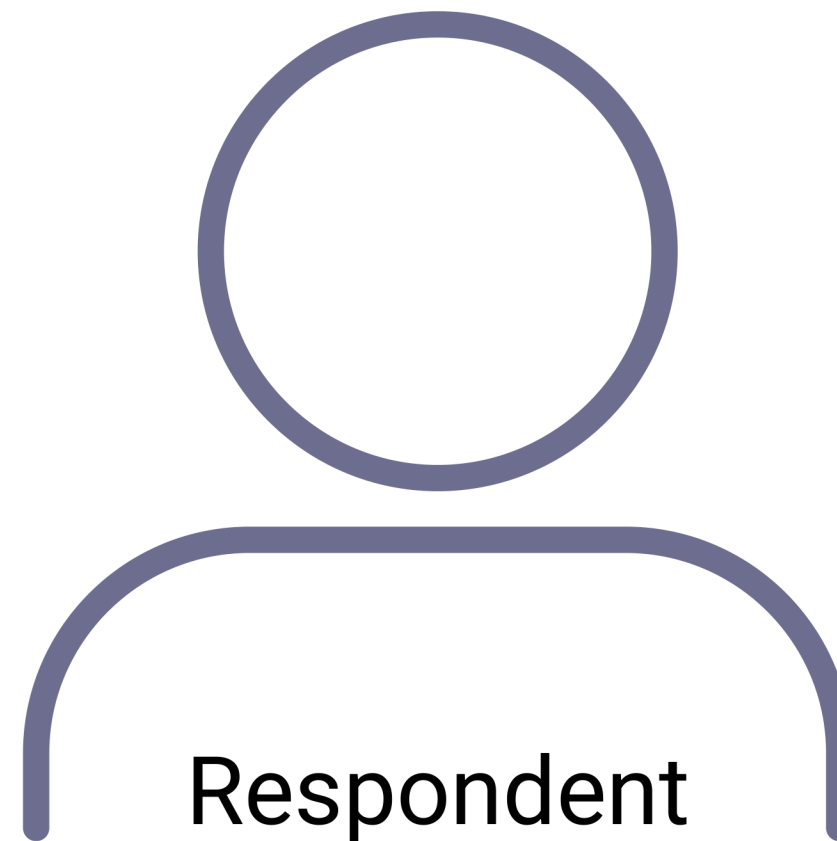
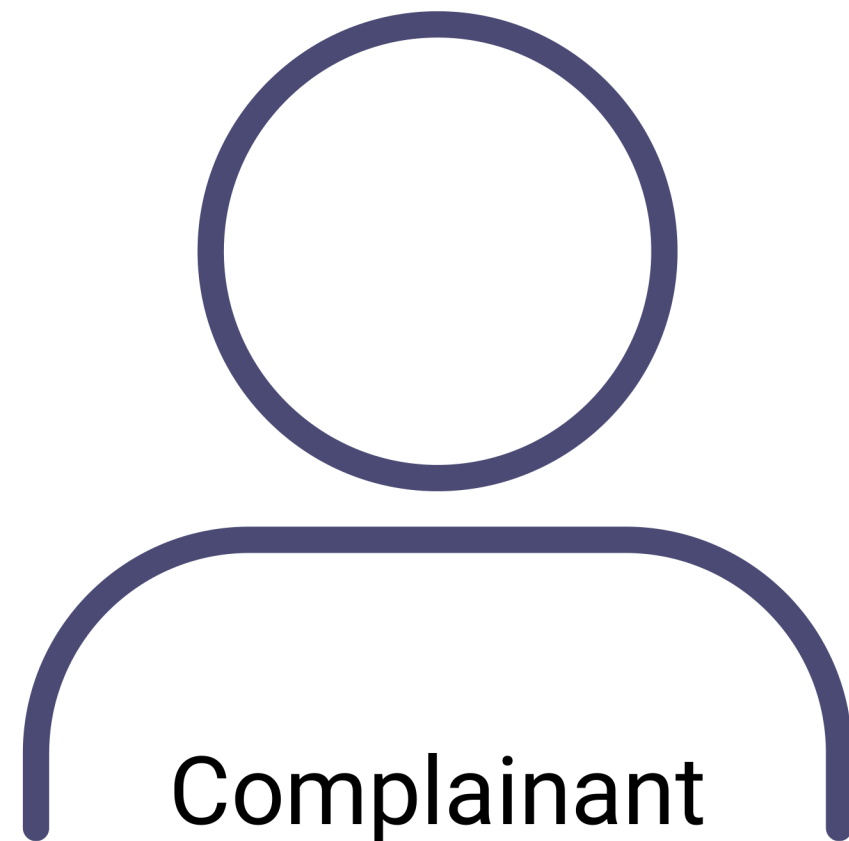
# Advisor

## Responsibilities:

- Supports their Party by accompanying them during interviews, meetings, and the hearing
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

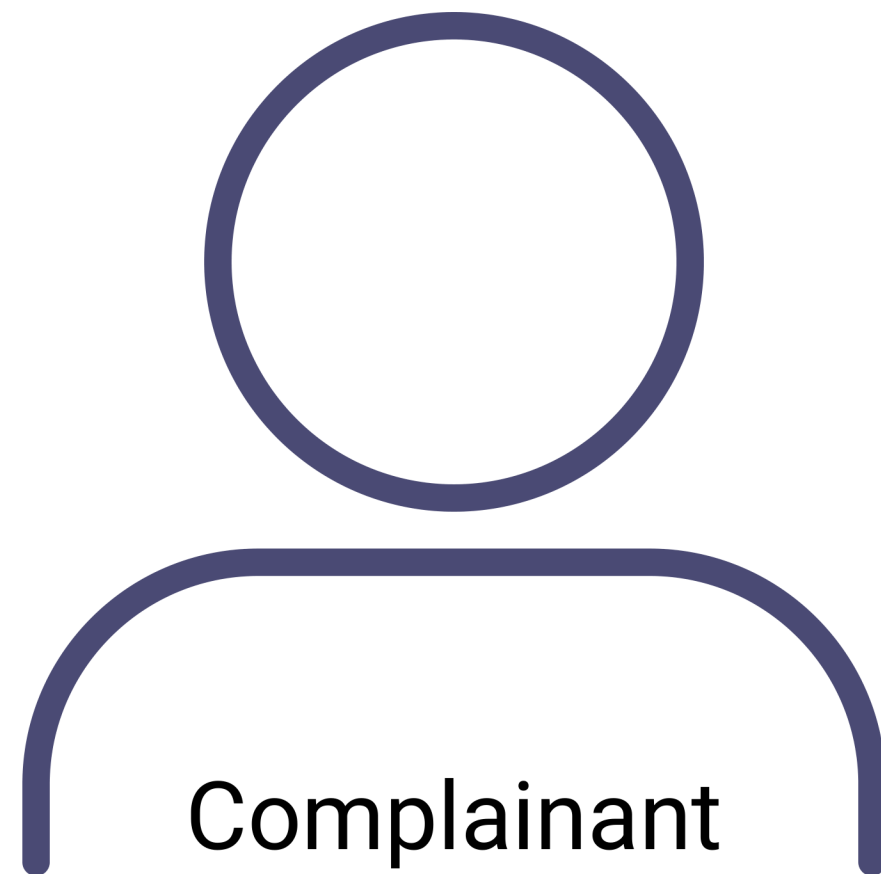
# Parties in the Process

**Aside from the Title IX personnel who take part in the facilitation of the grievance process, we will also see these individuals involved:**



# Complainant

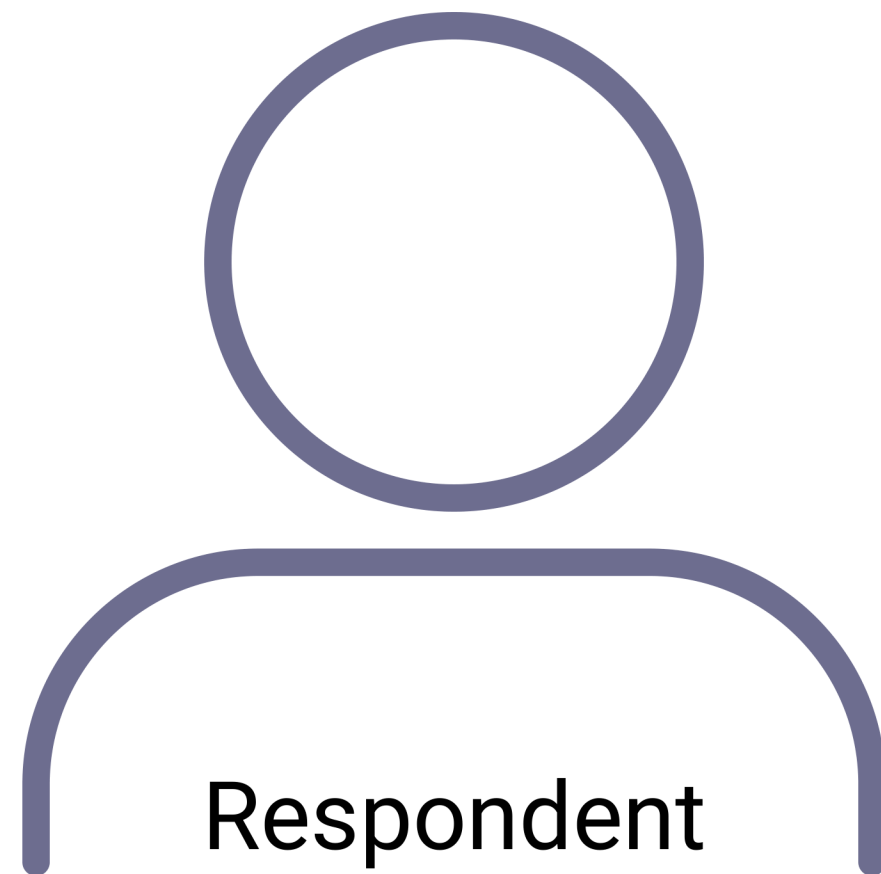
**Alleged to be the victim of conduct that could constitute sexual harassment.**



- May be a student, employee, or other community member
- Must be participating in or attempting to participate in the school's education program or activity with which the formal complaint is filed
- There may be more than one Complainant in a case

# Respondent

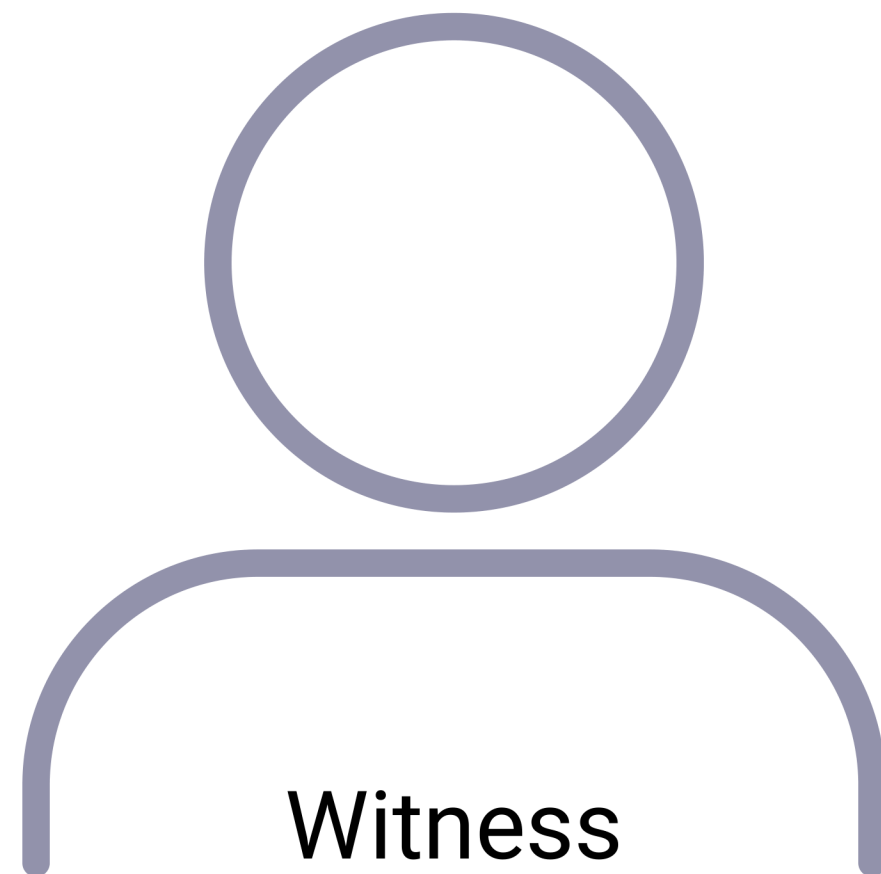
**Reported to be the alleged perpetrator of conduct that could constitute sexual harassment.**



- May be a student, employee, community member, or non-community member
  - The school's ability to respond to incidents perpetrated by non-community member Respondents may be limited
- School may dismiss the complaint if the Respondent is no longer enrolled or employed by the school
- There may be more than one Respondent in a case

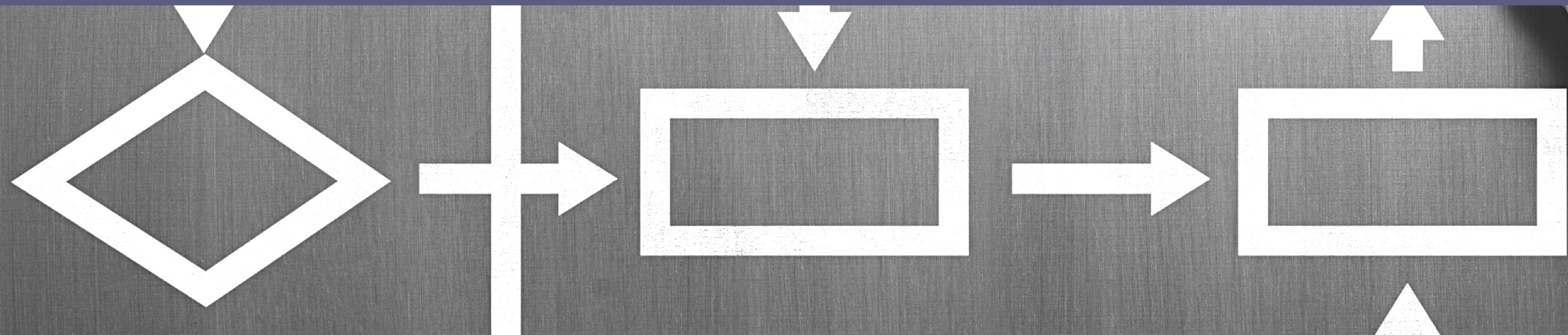
# Witness

**Individuals that are identified in the grievance process as having information that may support or refute allegations of sexual harassment.**



- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

# Overview of the Title IX Process



During the  
Title IX  
Grievance  
Process a  
School Must:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

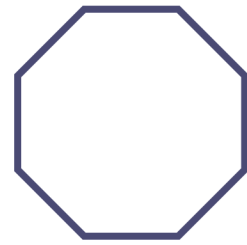
# During the Title IX Grievance Process a School Must:

- Include reasonably prompt time frames for the conclusion of the grievance process
- Describe the range of possible disciplinary sanctions and remedies
- State the standard of evidence
- Describe the range of supportive measures available to Complainants and Respondents
- Not require or seek the disclosure of information protected under a legally recognized privilege



# Title IX Requirements

**Ultimately, the goal is to:**



Stop the harassment or discrimination



Prevent further recurrence of harassment or discrimination



Remedy the effects of harassment or discrimination

# Leading up to the Title IX Process

- 1 The report is submitted to the Title IX Coordinator:**
  - Any person may report sexual harassment
  - Responsible employees and mandatory reporting
- 2 Upon receipt of a report, the Title IX Coordinator must:**
  - Respond in a manner that is not deliberately indifferent
  - Contact and attempt to meet with the Complainant (if known)
  - Discuss the availability of supportive measures and consider the Complainant's wishes with respect to them
  - Explain the process for filing a formal complaint

## They may also:



- Conduct a safety and risk analysis
- Assess information from the report and conversation with the Complainant to determine if the alleged incident would be considered sexual harassment under Title IX

# Leading up to the Title IX Process

- 3** **If the alleged incident is preliminarily determined to violate Title IX:**
  - Complainant or Title IX Coordinator may file a formal complaint
  - If a Complainant does not wish to file a formal complaint, but a risk assessment determined the potential for more harm to the Complainant or greater campus community, the Title IX Coordinator may choose to file
  - If the alleged incident does not potentially violate Title IX on its face, it may be adjudicated under a different institutional policy
  
- 4** **After a formal complaint is filed, the Title IX grievance process begins.**

# Title IX Grievance Process

INTAKE/  
REVIEW

NOTICE OF  
ALLEGATIONS  
SENT TO PARTIES

INVESTIGATION

HEARING

WRITTEN  
DETERMINATION

APPEALS  
PROCESS

INFORMAL RESOLUTION  
(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

# Title IX Grievance Process

## INTAKE/ REVIEW

- Title IX Coordinator provides a gatekeeping function
  - Conducts a jurisdictional review to decide whether a report falls under Title IX or another policy
- Conversations with Reporting Party and/or Complainant
- Information-giving stage
- Supportive measures may be implemented

# Title IX Grievance Process

## NOTICE OF ALLEGATIONS SENT TO PARTIES

- Title IX Coordinator notifies Parties of allegations that may constitute Title IX sexual harassment
  - Informs Parties of rights and options under the grievance process
  - Presumes the Respondent is not responsible
- Preparation for the investigation stage

# Title IX Grievance Process

## INVESTIGATION

- Title IX Investigator's primary function
- Information-gathering stage which includes:
  - Interviewing of Witnesses and Parties
  - Gathering evidence
  - Inspecting and reviewing evidence
  - Drafting investigation report
- May require the most time during grievance process

# Title IX Grievance Process

## INFORMAL RESOLUTION

(OPTIONAL, BUT MAY BE INITIATED IN THIS WINDOW)

- May take place any time after a formal complaint is filed and any time prior to reaching a determination regarding responsibility
- Informal process of resolving a complaint that must be continually agreed upon by both Parties
- Could include:
  - Mediation or Restorative Justice
  - Education
  - Acceptance of Responsibility
- Cannot be used for employee on student complaints



# Title IX Grievance Process

## HEARING

- The decision-making stage of the grievance process
- Facilitated by either a single Decision-Maker or panel
- Includes:
  - Pre-hearing meeting
  - Live hearing or written decision-making process with cross-examination by the Parties' Advisors
- Must be provided in postsecondary, may be provided in elementary and secondary, but not required

# Title IX Grievance Process

## WRITTEN DETERMINATION

- Prepared by the Decision-Maker(s)
- Applies the standard of proof outlined in the Title IX sexual harassment policy
- Determines if the Respondent is responsible or not responsible for violating the Title IX sexual harassment policy
- May address multiple allegations
- Includes sanctions and remedies if a Respondent is found responsible

# Title IX Grievance Process

## APPEALS PROCESS

- Allowed under the Title IX Regulations for the following reasons:
  - Procedural irregularity
  - New evidence not available during the investigation
  - Conflict of interest or bias by Title IX Coordinator, Investigator, or Decision-Maker(s)
- Institutional policies may contain additional bases for appeal