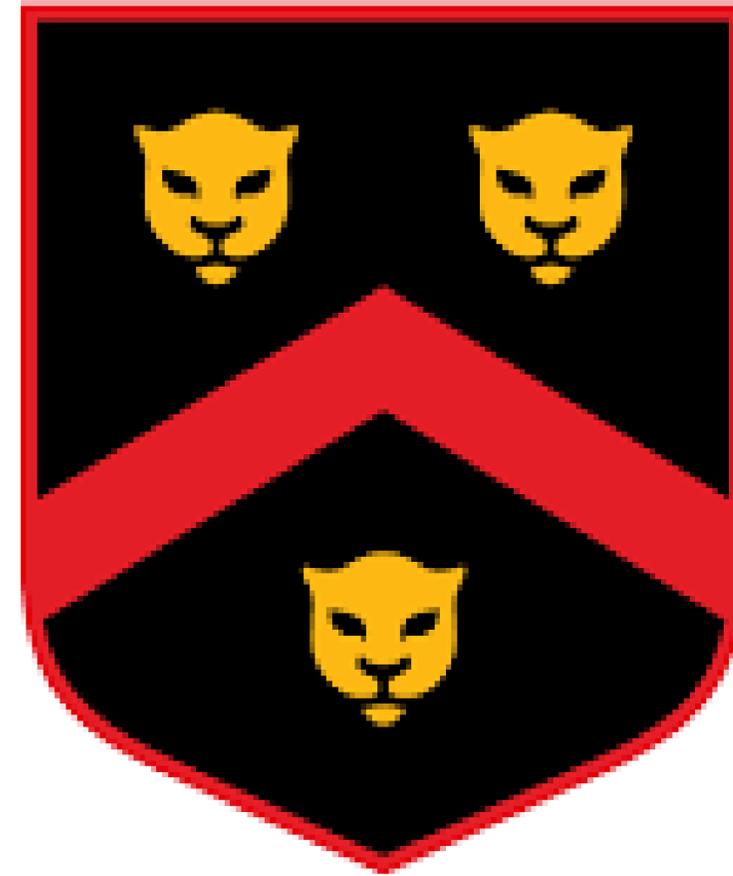


October 28-29, 2021

Title IX for Investigators and Decision Makers



Presented by
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Pronouns: She/Her/Hers

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Image: Photo of Title IX Coordinator



Expectations for Engagement

1 Skill Building

- Defining Title IX
- Understanding Bias
- Understanding policy elements
- Identifying relevant evidence

2 Law and Policies

- Jurisdiction
- Policies
- Overview of Processes

3 Obligations of Title IX Team Members

- Protecting the Privacy of Parties
- Promptness
- Thoroughness
- Impartiality

4 Title IX Process

- Reports/Complaints
- Informal Resolutions
- Investigations
- Hearings
- Appeals

5 Practice!

- Mock Investigation
- Mock Hearing

Agenda



Skill Building

What is 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

Title IX applies to **ANY participant who stands to benefit from a University program or activity

What is 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

This includes...

- Sex assigned at birth
- Gender identity
- Gender expression
- Sexual Orientation
- Pregnancy Related Conditions

What is 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

- A program or activity is defined as

“locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the [alleged conduct] occurs.”

- Conduct that falls outside the scope of this definition may be addressed through the code of conduct or the employee handbook

What is 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

An intentional or unintentional act that adversely affects employment and/or educational opportunities because of a person's membership in a protected class or association with a member(s) of a protected class that is based on sex

- Disparate Treatment
- Disparate Impact
- Sexual Harassment, including Sexual Misconduct, as defined by the DOE

Institutional Obligations Under Title IX

- Institutions are obligated to adopt and publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging any form of prohibited sex discrimination occurring against a person in the United States. 34 CFR 106.8(c)-(d).
- Title IX Sexual Harassment: With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the school against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a).



Understanding Bias

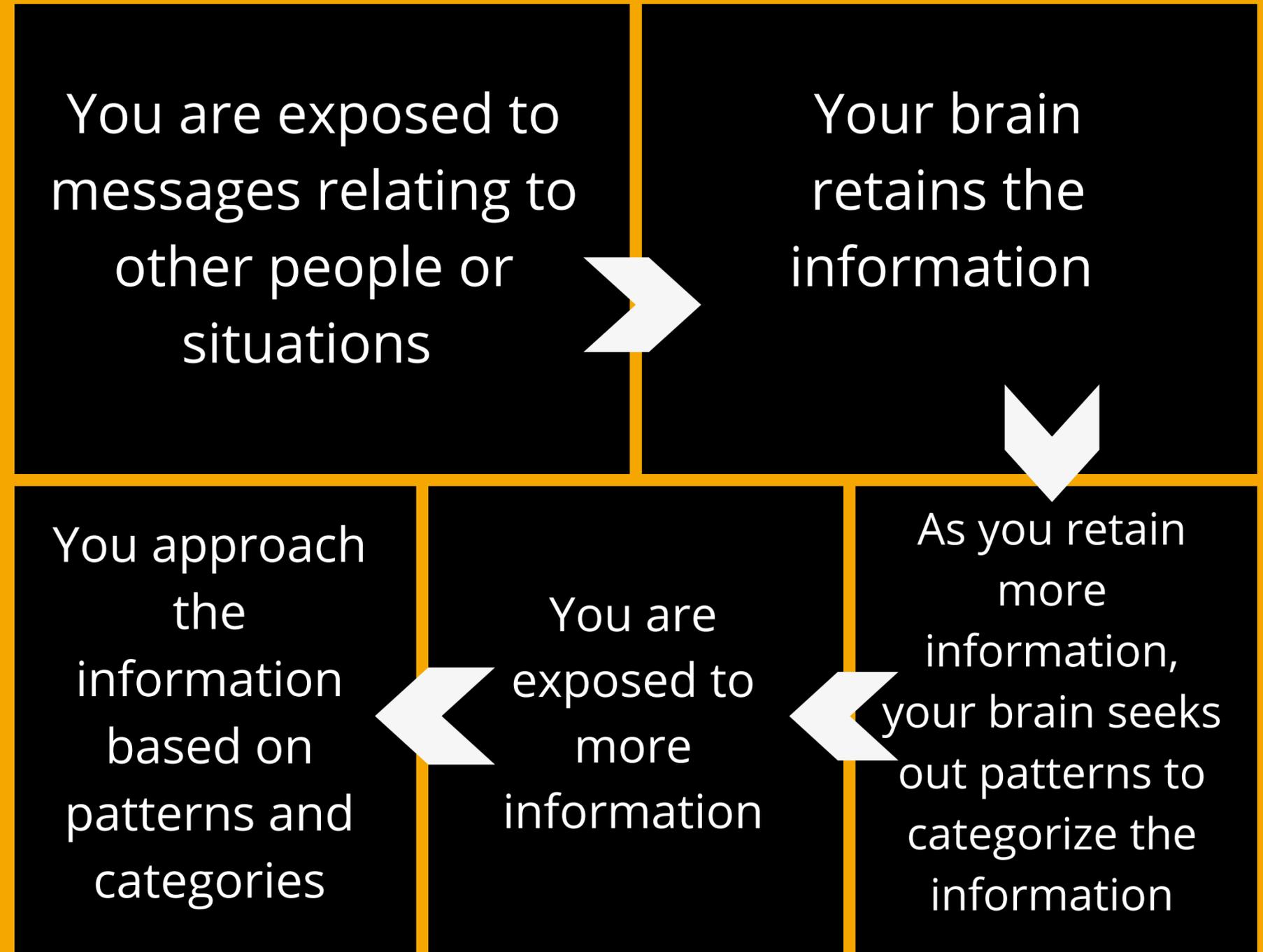


Exploring Bias

- Which two categories did you pick?
Why?
- Would you have categorized differently if you were allowed to use more than 2 categories?
- If I hadn't referred to them as "common household items?"

What is Bias?

Bias: A human trait resulting from our tendency and need to classify individuals into categories as we strive to quickly process information and make sense of the world, i.e., schemas, unconscious beliefs





Implicit Bias

- **Implicit Bias:** Involves all the subconscious feelings, perceptions, attitudes, and stereotypes that have developed as a result of prior influences and imprints
 - **Example:** You treated all items as either cooking and cleaning because I told you that you could only pick two categories (Availability bias)
 - **Example:** You picked cooking and cleaning because I called these items as “common household items” (Stereotyping)
 - **Example:** You picked these categories because I told you that everyone had to agree, so you went along with the group). (Bandwagon)

Exploring Bias

- Group 1: Write down all the cooking supplies.
- Group 2: Write down all the cleaning supplies.
- Group 3: Split the supplies between cooking and cleaning.



Explicit Bias

- Attitudes and beliefs that we have about a person or group on a conscious level.
- Example: “I put the baking soda with the cooking items because I use it to make cookies yesterday.” (Recency Bias)
- Example: I put the baking soda in the cleaning category because I was supposed to be finding things that go in the kitchen (confirmation bias)

Types of Bias



Anchoring Bias
and Contrast
Bias



Stereotyping
Bias



Availability
Bias



Confirmation
Bias



Similarity
Bias/Affinity
Bias



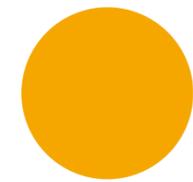
Primacy and
Recency Bias



Bandwagon
Effect



Halo Effect



Discussion on Biases

- How might the anchoring bias show up in a Title IX investigation or hearing?
 - What steps could you take to avoid this type of bias?
- How might the confirmation bias show up in a Title IX investigation or hearing?
 - What steps could you take to avoid this type of bias?

Strategies to Avoid Unconscious Bias

- Challenge stereotypes related to identity characteristics
- Be aware of your own biases
- Challenge assumptions by asking yourself, “why do I believe that?”
- Rely on factual evidence in making decisions



Identifying Policy Elements

Policy

- A policy is a rule or expectation:
 - Example: I am prohibited from eating ice cream.
- Policy definitions are used to better understand specific expectations.
 - Example: Ice cream is defined as a frozen desert, made of sugar and cream, which may be eaten on a cone or in a bowl.

Policy Elements

- Policies are broken down into smaller elements.
- Elements of ice cream:
 - Frozen AND
 - Made of sugar AND
 - Made of cream
 - Able to be eaten out of a cone OR bowl
- To constitute ice cream, a dessert must have all of these elements

Elements Continued

A person may be found responsible for violating a policy ONLY if

- 1) The evidence supports a finding that the alleged conduct occurred and
- 2) Such conduct satisfies each of those policy elements

Hypotheticals

Consider the following policy: I am prohibited from eating ice cream. Ice cream is defined as a frozen desert, made of sugar and cream, which may be eaten on a cone or in a bowl.

- It is alleged, and a photo confirms, that I ate a piece of cake. Did I violate this policy?
 - Did the alleged conduct occur?
 - Does the cake constitute ice cream?
 - Is it a desert? and
 - Is it frozen? and
 - Is it made of cream and sugar? and
 - Can it be eaten in a cone or a bowl?

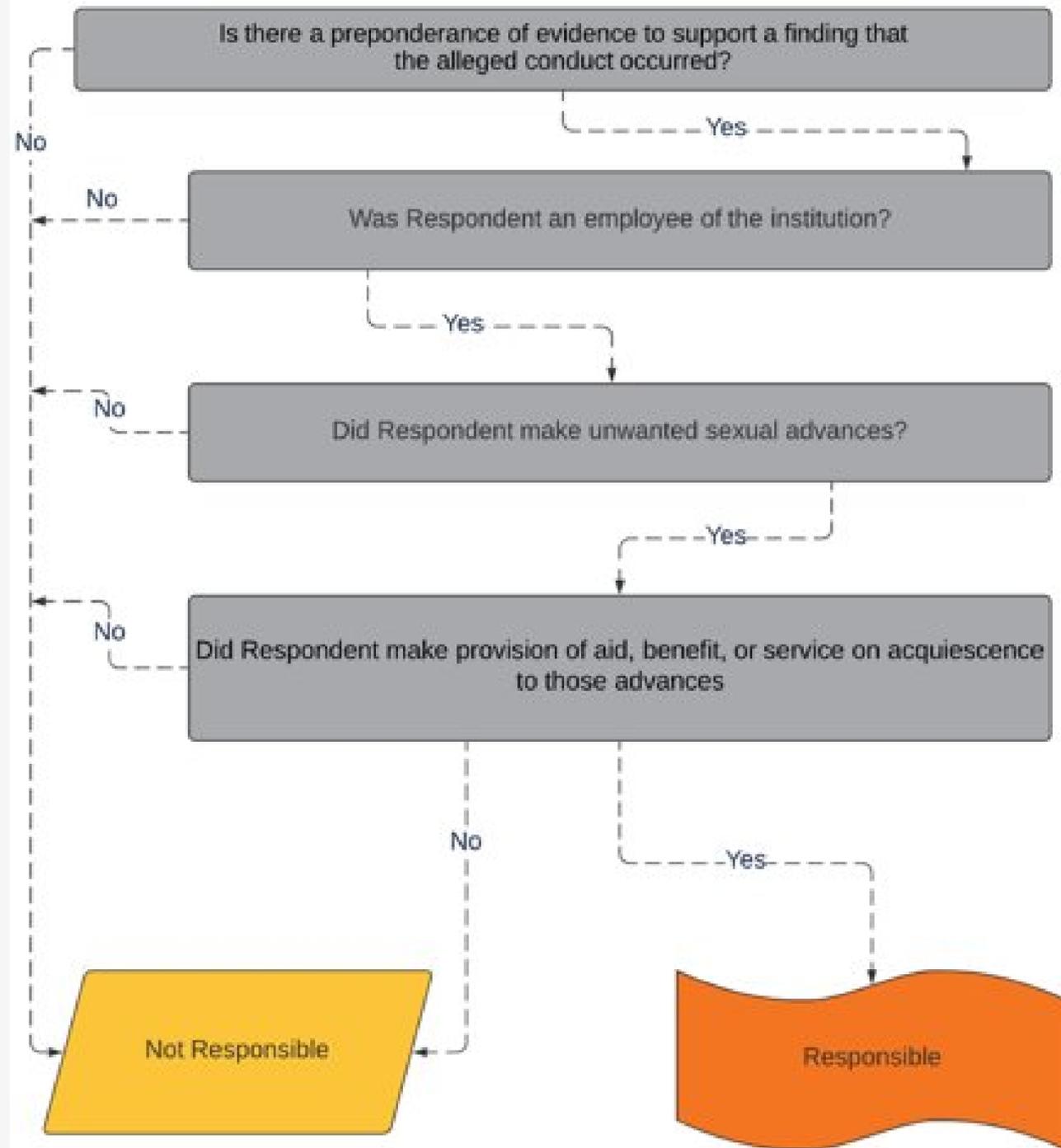


Elements of Title IX Policies

Sexual Harassment

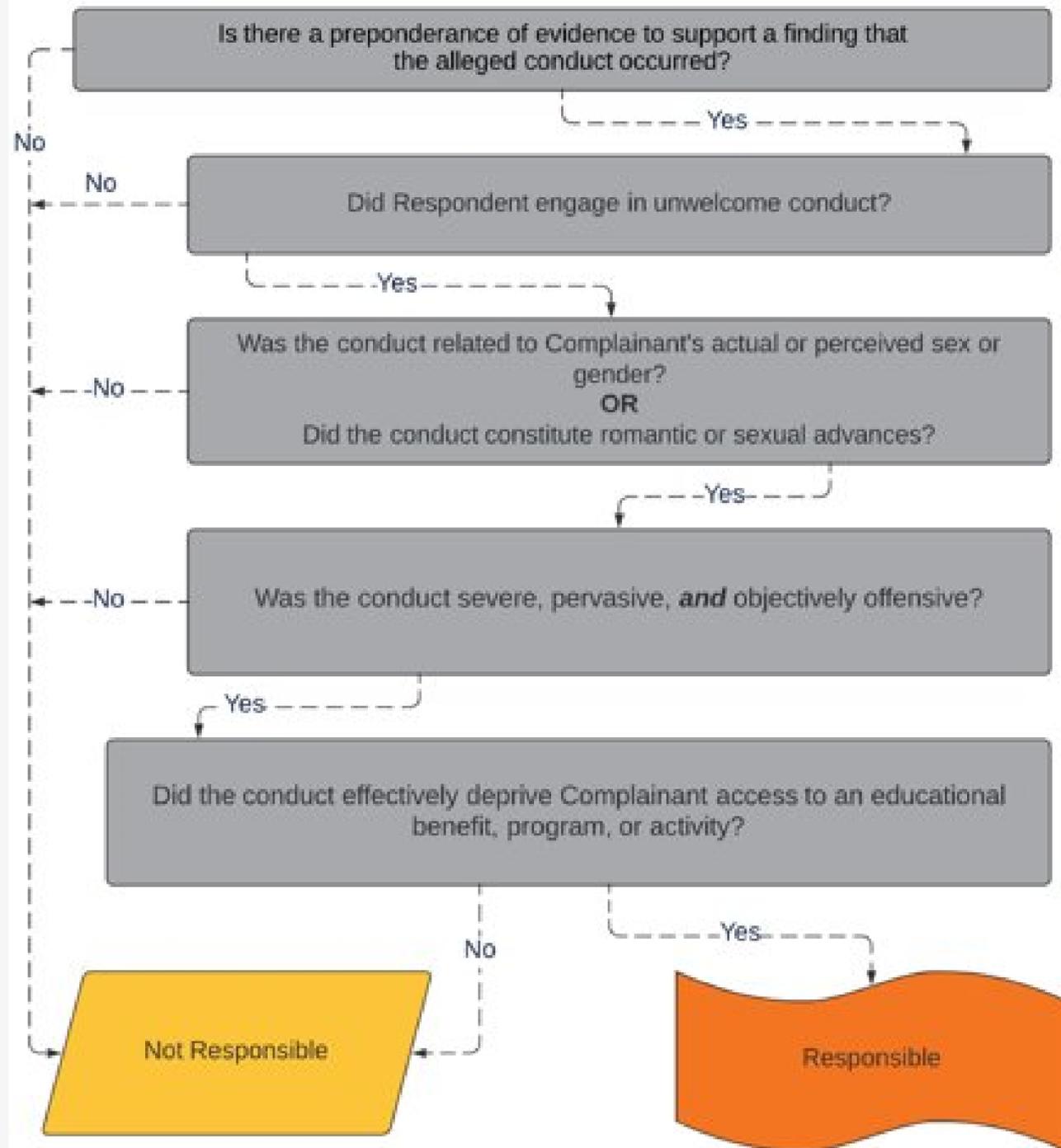
Conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning the provision of an aid, benefit, or service on the individual's participation in unwelcome conduct (**Quid Pro Quo**)
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to their education (**Hostile Environment**)
- Sexual assault, dating violence, domestic violence, or stalking, as defined by University Policy. (**Sexual Misconduct**)



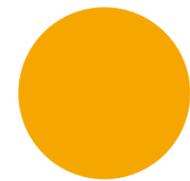
Elements of Quid Pro Quo Sexual Harassment:

- Respondent was an employee of the institution
- Respondent made unwanted sexual advances
- Respondent conditioned provision of aid, benefit, or service on acquiescence to those advances



Elements of Hostile Environment Sexual Harassment:

- Respondent made unwanted sexual advances
- The alleged conduct was objectively severe and pervasive, such that a reasonable person would regard the environment as hostile
- The alleged conduct denied Complainant access to University programs or activities

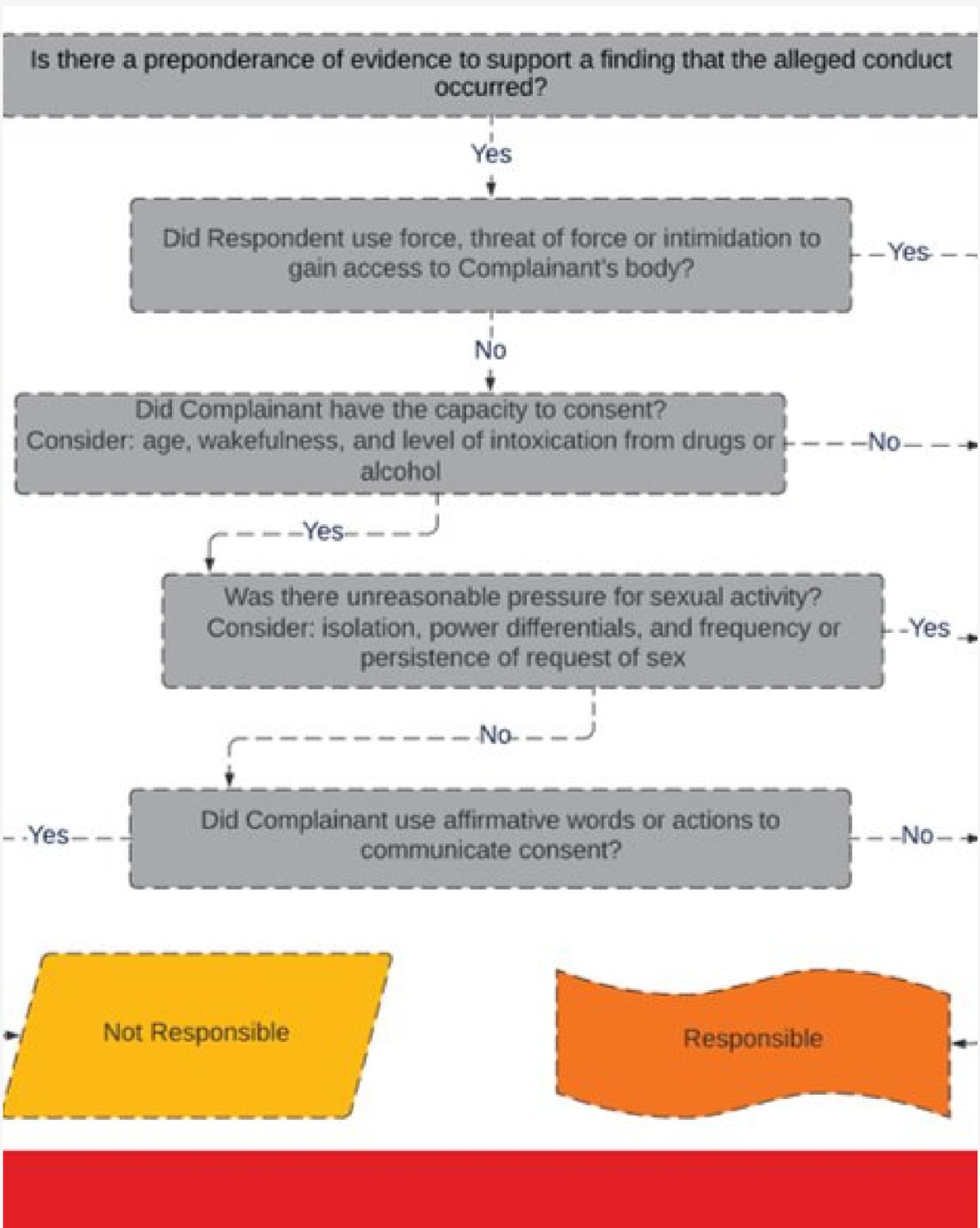


Sexual Assault

- **Sexual Assault – Non-Consensual Sexual Penetration:** The penetration, no matter how slight, of the vagina, anus, with any body part or object, or oral penetration by a sex organ of another person without the consent of the victim. This includes any gender of victim or Respondent.
- **Sexual Assault – Non-Consensual Sexual Contact:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances in which the victim is incapable of giving consent because of their age or temporary or permanent mental incapacity.

● Understanding Consent

- An understandable exchange of **affirmative words or actions, which indicate a willingness to participate in a mutually agreed upon sexual activity at a mutually agreed upon time.** Consent must be informed, freely and actively given.
- It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement.
- Silence, previous sexual relationships or experiences, and/or a current relationship may not, in themselves, be taken to imply consent. While nonverbal consent is possible (through active participation), it is best to obtain verbal consent. Similarly, consent to one form of sexual activity does not imply consent to other forms of sexual activity. **An individual who is incapacitated cannot consent.** Consent to sexual activity may be withdrawn at any time through clear communication.
- **Sexual conduct in the presence of force, coercion, and/or incapacitation is not consensual.**



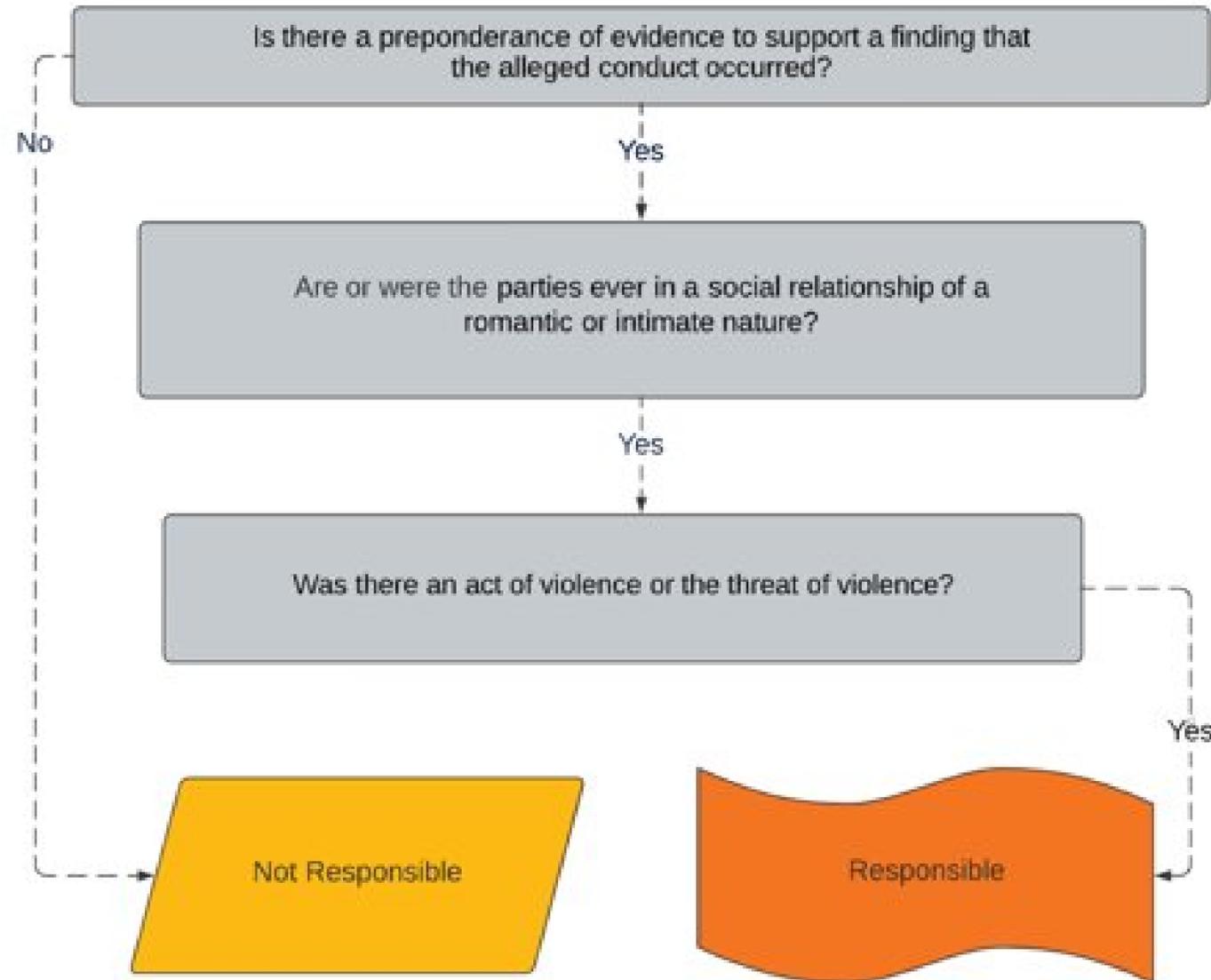
Elements of Sexual Assault

- Respondent engaged in a sexual act
- Complainant did not consent to the sexual act
 - Respondent used force or coercion to gain sexual access to Complainant's body OR
 - Complainant did not have capacity to consent OR
 - Respondent used coercion to gain sexual access to Complainant's body OR
 - Complainant did not use words or actions to communicate consent



Dating Violence

Any act of violence or threatened violence against a person who is, or has been in, a social relationship of a romantic or intimate nature with that person. The existence of such a relationship shall be determined based on the reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition dating violence includes, but is not limited to, sexual or physical abuse, or the threat of such abuse.



Elements of Dating Violence

- There is/was a romantic or intimate relationship between parties
- There is/was presence of violence, including threat of violence, in that relationship

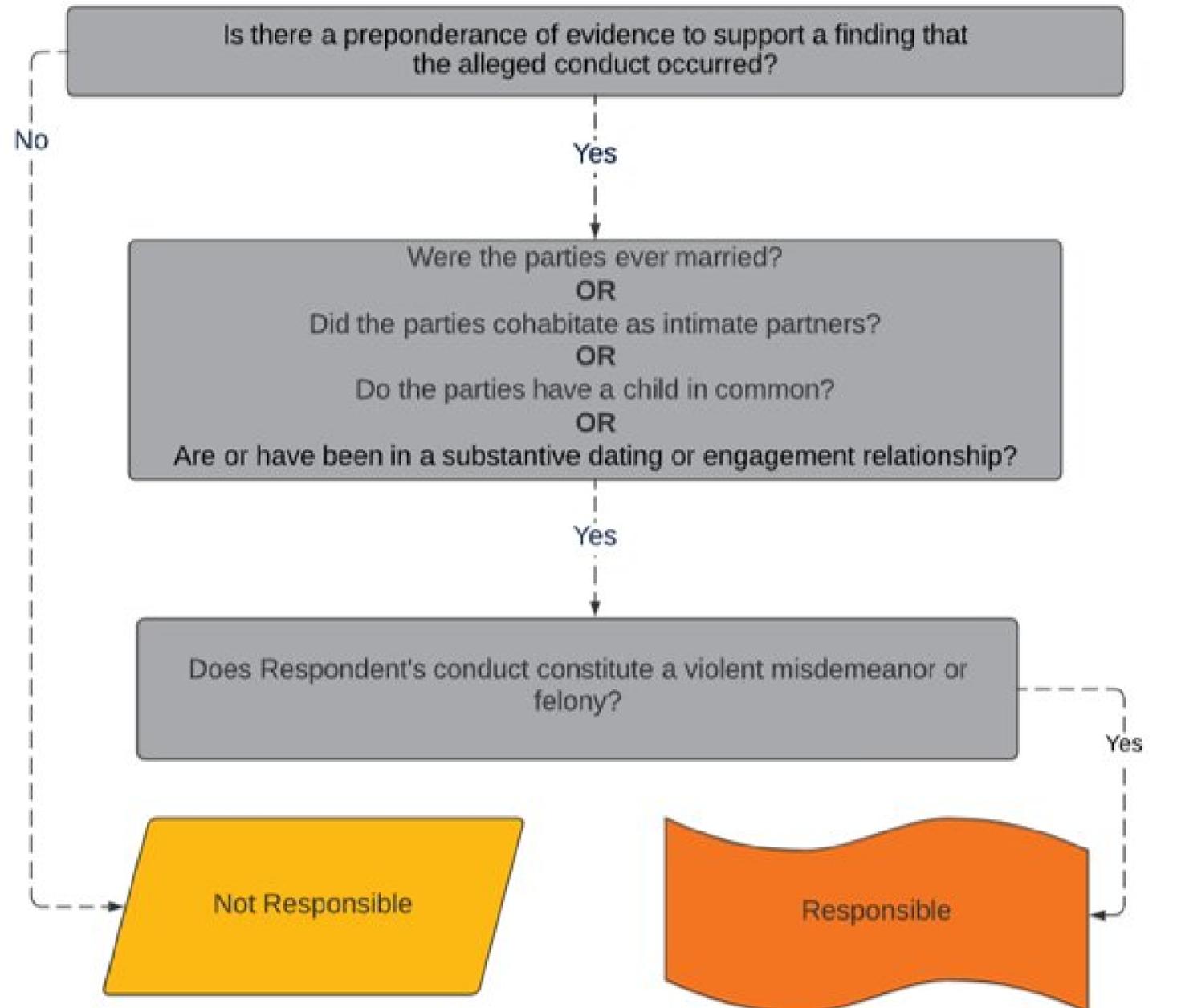


Domestic Violence

Any felony or misdemeanor crime of violence committed by those who:

- are or were married to one another;
- are or were residing together in the same household;
- are or were related by...marriage;
- have a child in common regardless of whether they have ever married or lived together; or
- are or have been in a substantive dating or engagement relationship

Elements of Domestic Violence



- There is/was a qualifying relationship between the parties (marriage, cohabitation, dating, etc.)
- Respondent engaged in conduct that constituted a violent felony or misdemeanor (assault, battery, etc.)

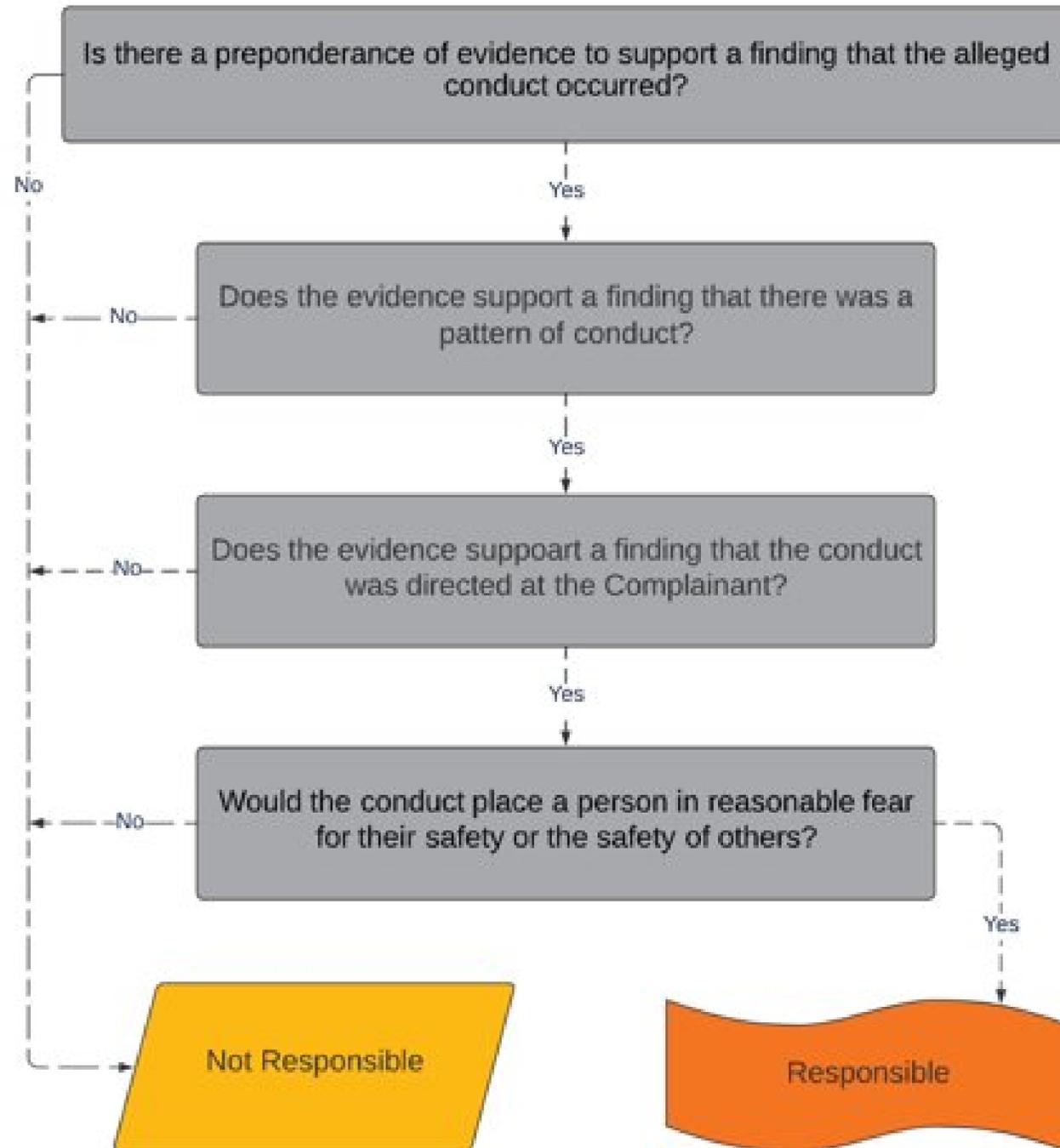


Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Elements of Stalking

- Course of conduct (more than one incident)
- Directed at a specific person
- Conduct would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.



Retaliation

- Any attempt to seek retribution against an individual or group of individuals involved in making a good faith report, filing a Complaint, participating in a disciplinary process, or opposing in a reasonable manner an action believed to constitute a violation of this policy.
- Retaliation can take many forms, including abuse or violence, threats, coercion, and intimidation.
- Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic or University-controlled living environment of an individual or if they hinder or prevent the individual from effectively carrying out their University responsibilities.
- Any individual or group of individuals can engage in retaliation and will be held accountable under this policy.

Elements of Retaliation

- The Complainant participated in a Title IX related proceeding
- The Respondent engaged in conduct that constituted retribution (intimidation, harassment, etc)
- Respondent's conduct was related to Complainant's participation in the Title IX process
- Respondent's conduct had a materially adverse effect on the working, academic or University-controlled living environment of Complainant OR hindered/prevented the Complainant from effectively carrying out their University responsibilities.

Case Study

- Marti and Cris have been friends for years. Marti plays the cello. Cris does not play any instruments.
- Last week, Cris sent Marti a text that said, “heard you’re gay. Are you really?”
- Cris sent Marti several jokes about Harvey Milk, via text. At a party later in the week, witnesses reported that Cris called Marti a slur relating to gender identity.
- Marti’s teachers say that Marti seemed very upset in class.
- Cris’s roommate said Cris is “just a joker.”
- Marti’s roommate stated that Marti is dramatic and “literally cried while watching Ted Lasso.”
- In a Title IX report, Marti indicated that Cris “won’t leave [Marti] alone about [Marti’s sexuality].”

What policy would be implicated by the alleged conduct? What are the elements of that policy?



Understanding Relevance



Defining Relevant Evidence

1 Dictionary Definition

relevance [rel-uh-vuhns] [SHOW IPA](#) 

[SEE SYNONYMS FOR relevance ON THESAURUS.COM](#)

noun

- 1 the condition of being **relevant**, or connected with the matter at hand:
Some traditional institutions of the media lack relevance in this digital age.

2 Legal Definition

Rule 401. Test for Relevant Evidence

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Relevance in Plain Language

Evidence is relevant if it relates to any individual element of a policy.

Evidence is relevant if it would help a decision maker better understand:

1. whether the alleged conduct occurred and/or
2. whether the conduct violated a University policy.

Identifying Relevant Evidence

- Catlin went home last night around 7:00 P.M. She was VERY tired. She stopped at the store to pick up some groceries. She bought some vegetables, some cleaning supplies, and a pint of ice cream.
- When Catlin got home, she put the ice cream on the counter and grabbed a bowl.
- Singing a childhood song about an ice cream man who came to town when spring began, Catlin put the bowl aside and dipped her spoon right into the carton.
- **Thinking of the policy that prohibits the consumption of ice cream, which facts are relevant to whether the policy was violated?**

Case Study

- Marti and Cris have been friends for years. Marti plays the cello. Cris does not play any instruments.
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- In a Title IX report, Marti indicated that Cris “won’t leave [Marti] alone about [Marti’s sexuality].”

Of the information you have, what evidence is relevant to the case? Why?



Obligations of Title IX Team Members

Respect Privacy and Confidentiality

- The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.
- Information may only be shared with individuals who have a legitimate educational need to know.
 - Fair process requires that both parties know the identity of any witnesses as well as the contents of their testimony or statements.
 - Fair process requires that the Respondent know the identity of the Complainant, as well as the contents of their testimony or statements.



Transparency

- Transparency in Title IX processes allows participants to:
 - Manage expectations
 - Know what to expect from the process
 - Meaningfully participate
 - Trust the outcome of the process

Promptness

Regulations

- A [school] shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

University Policy

- The university will make every effort to complete this process within 90 days of receiving a complaint
- The investigator will:
 - Complete the investigation in a reasonably timely manner, without unnecessary deviation from the intended timeline;
 - Document and communicate to parties the source of any reasonable delays, including absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;



Thoroughness

- The burden of gathering evidence and burden of proof must remain on schools, not on the parties. Schools must provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- Schools must not restrict the ability of the parties to discuss the allegations or gather evidence

Impartiality

- Title IX personnel must be free from conflicts of interest or bias against complainants or respondents generally or an individual complainant or respondent
- Any provisions, rules, or practices, other than those in the regulations, must apply equally to both parties.
- Title IX personnel must treat Complainants and Respondent's equitably throughout the process
- Under both the law and University policy, Respondents have the right to be presumed "not responsible" throughout the Title IX process.
 - The University will only impose any disciplinary sanctions against a respondent after grievance process followed

Discussion: Conflicts of Interest Hypothetical

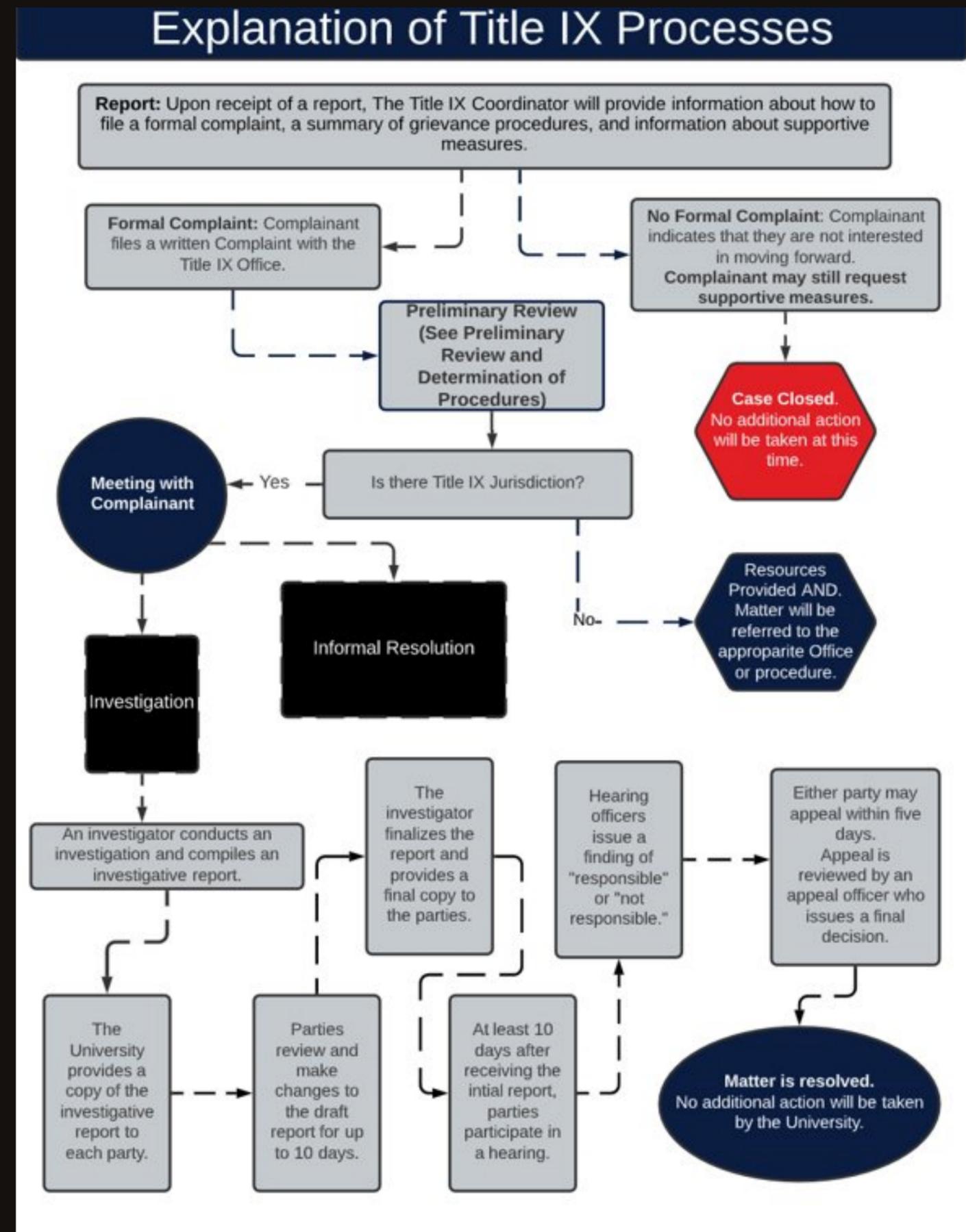
- The Title IX Coordinator asked Professor H to join the Title IX team as a hearing officer. In 1989, Professor H started their career as a Victim advocate at a crises center that provides service to individuals who have been impacted by Dating and Domestic Violence. Professor H earned a PhD in criminal justice in 1994, and has been a professor ever since. H teaches about restorative justice and wrongful convictions. Professor H often wears a “Got Consent?” tee shirt to the gym.

Is there a conflict of interest?

Would your answer change if Professor H were currently serving as a victim advocate?

Would your answer change if Professor H wore a shirt that said, “Title IX Is A Witch Hunt”?

Grievance Procedures



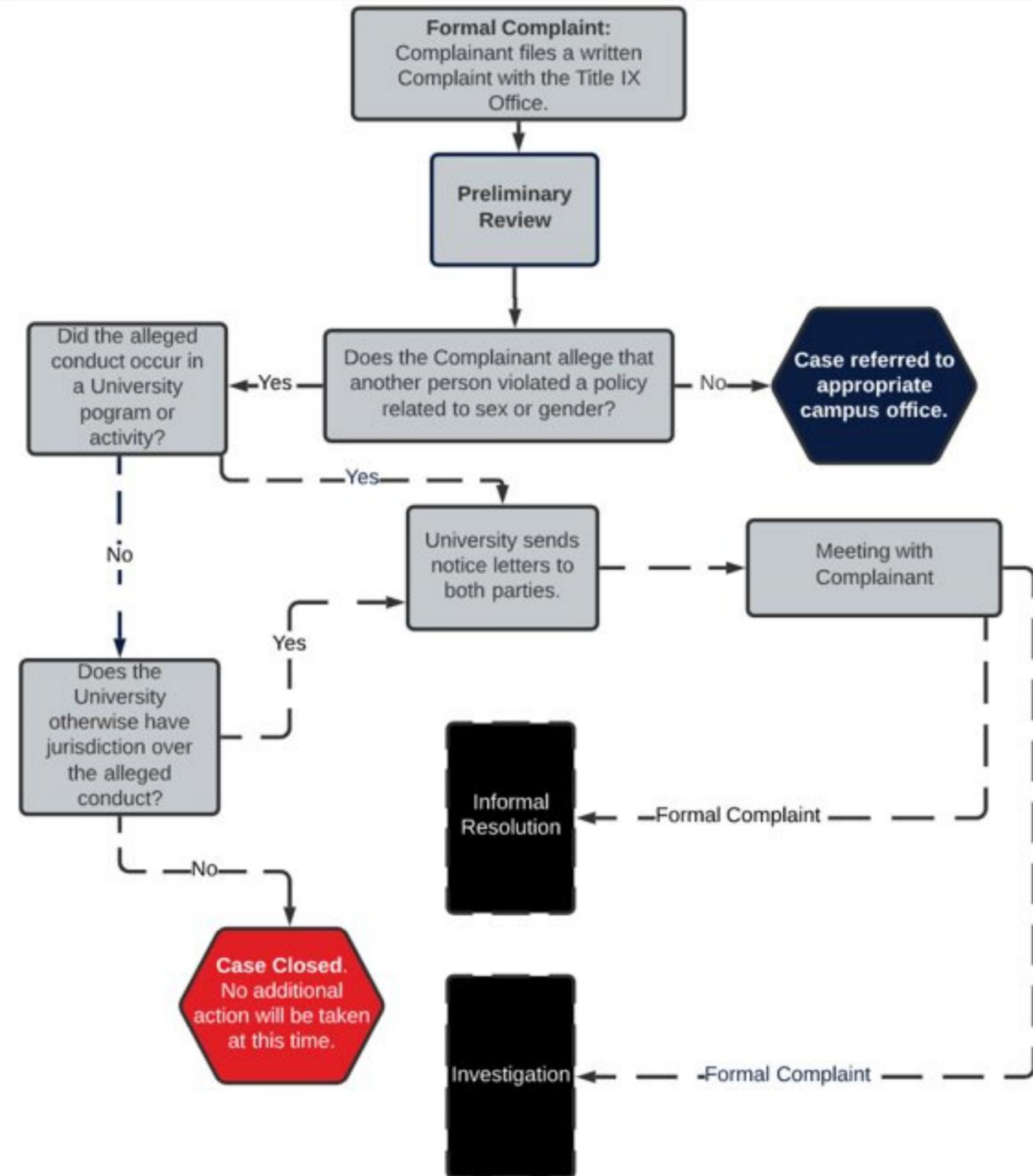
Process
begins upon
receipt of a
report.

Reports may be made:

- By phone
- By email
- Through the US postal service
- Through in person meetings, including walk in meetings
- Through the online reporting form
- Through disclosure to a responsible employee
- Through a Mandated Reporter
 - Mandated reporters must report all relevant details of the incident including the name of the Complainant and Respondent, if known, dates, times, locations, and the names of witnesses.

Formal Complaints

Determination of Procedures

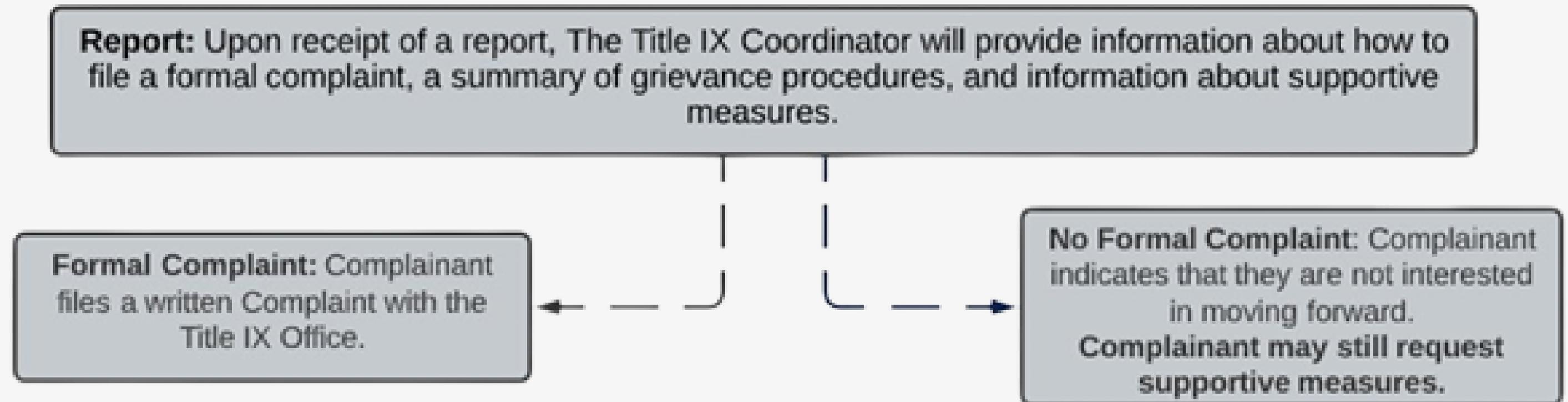


Title IX Grievance Process vs. Institutionally Established Grievance Process

For allegations of discrimination that **DO NOT implicate a Title IX Policy** or which are alleged to have occurred outside the Department of Education's definition of **"Programs or Activities,"** the University will conduct a hearing, pursuant to established grievance procedures.

- There are no procedural differences between a Title IX investigation and an investigation for non-Title IX cases.
- Title IX hearings are recorded. Hearings for non-Title IX cases are not recorded.
- Students have a right to cross examine parties and witnesses through an Advisor in Title IX hearings. Students may submit questions to the hearing officer but are not permitted to conduct a cross examination in an non-Title IX process.

Upon receipt of the report, the Title IX Coordinator sends a letter to the Complainant. The Complainant may file a formal complaint or may choose not to file a formal complaint.

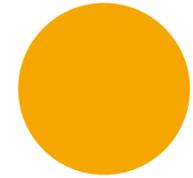


● No Formal Complaint

No Formal Complaint: Complainant indicates that they are not interested in moving forward.
Complainant may still request supportive measures.

Case Closed.
No additional action will be taken at this time.

With or without a formal complaint, institutions with actual knowledge of Title IX sexual harassment occurring in an education program or activity of the school against a person in the United States must respond promptly in a manner that is not deliberately indifferent and complies with 34 CFR 106.44(a)



A Note on Supportive Measures

- Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to complainant or respondent **before or after the filing of a formal complaint or where no formal complaint has been filed.**
- Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party
- 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.

● Formal Complaints

Formal Complaint:
Complainant files a written Complaint with the Title IX Office.

- Formal Complaint is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting the recipient investigate the allegation of sexual harassment
- In response to a formal complaint, a recipient must follow a grievance process (set by 106.45)
- Title IX Coordinator must offer complainant supportive measures regardless of whether Complainant files formal complaint

Note on Emergency Removal

The university may, in emergency circumstances, limit or prohibit a respondent from accessing campus during the Title IX investigative process.

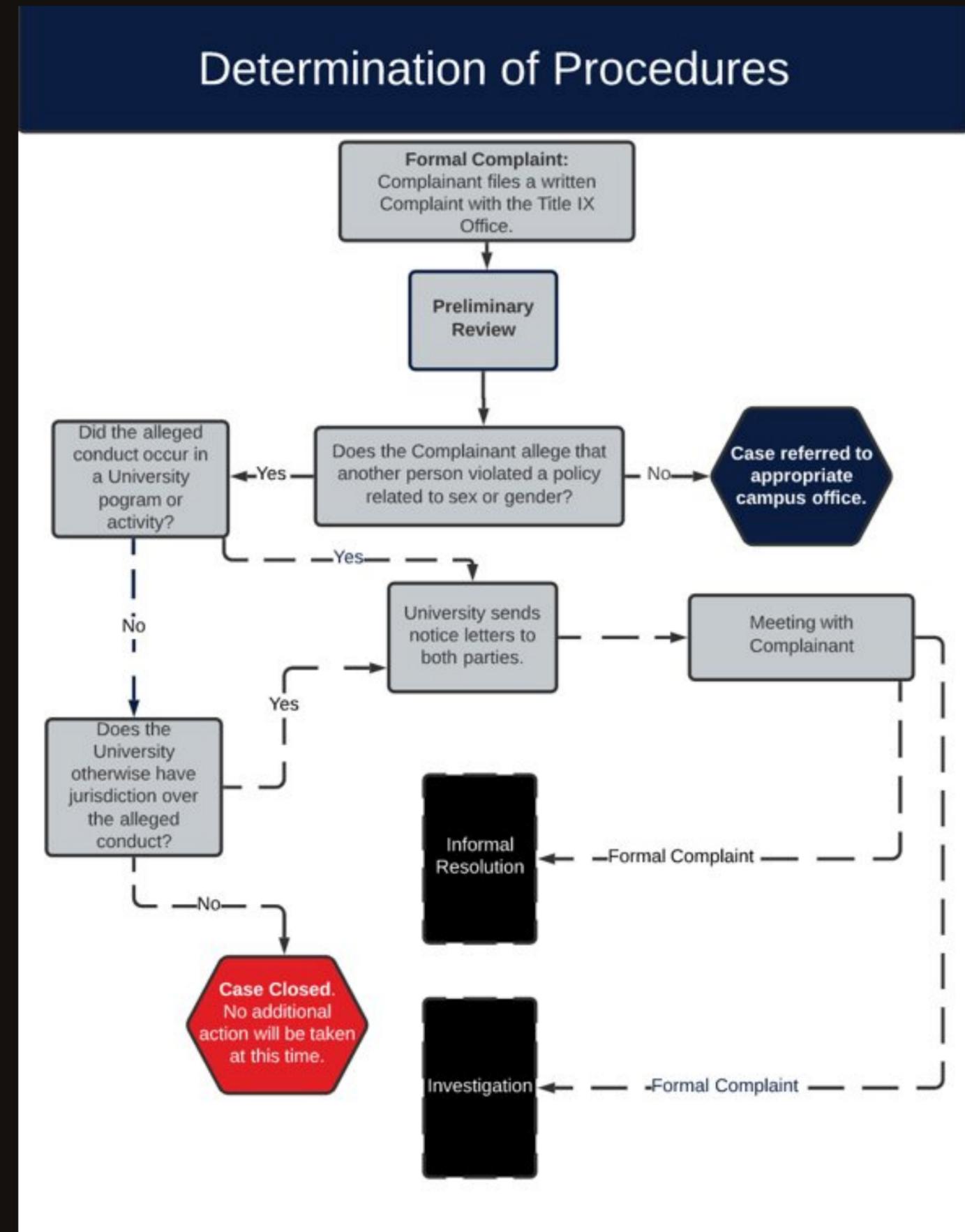
Prior to issuing an interim removal of a respondent, the Title IX coordinator or designee must:

undertake an individualized safety and risk analysis, which determines whether the presence of respondent poses an immediate threat to the physical health or safety of any individual within the Wentworth community;

provide respondent with notice of alleged conduct; and

provide respondent with notice of removal and information about how to challenge the removal

Determination of Procedures



Formal
Complaint

**Title IX Preliminary
Review**

Does the University
have Title IX
jurisdiction?

No



Dismissed,
referred to
another campus
office/procedure,
as appropriate

Dismissal of Complaints

Schools may dismiss a formal complaint of sexual harassment if, at any time:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw;
- The respondent is no longer enrolled or employed by the school; or
- Specific circumstances prevent the school from gathering sufficient evidence to reach a determination.

Upon a required or optional dismissal, schools must promptly and simultaneously send written notice to the parties.

**Formal
Complaint**

Preliminary Review

Did the alleged conduct occur
in a University
Program/Activity
AND
Did the complainant allege
that another person violated a
policy relating to sex or
gender?

Yes →

**Informal
Resolution *or*
Investigation**

Notice Letters/Introduction Letters

The university must send a written letter to the Complainant and to the Respondent prior to moving forward with a Title IX process. The letter includes:

- A summary of the alleged conduct, including date and location
- A description of the policy that the alleged conduct implicates
- Information about grievance process, including a copy of the University's Policies and Procedures
- Contact information for public safety
- Contact information for confidential resources

Investigators will be provided with a template for these letters

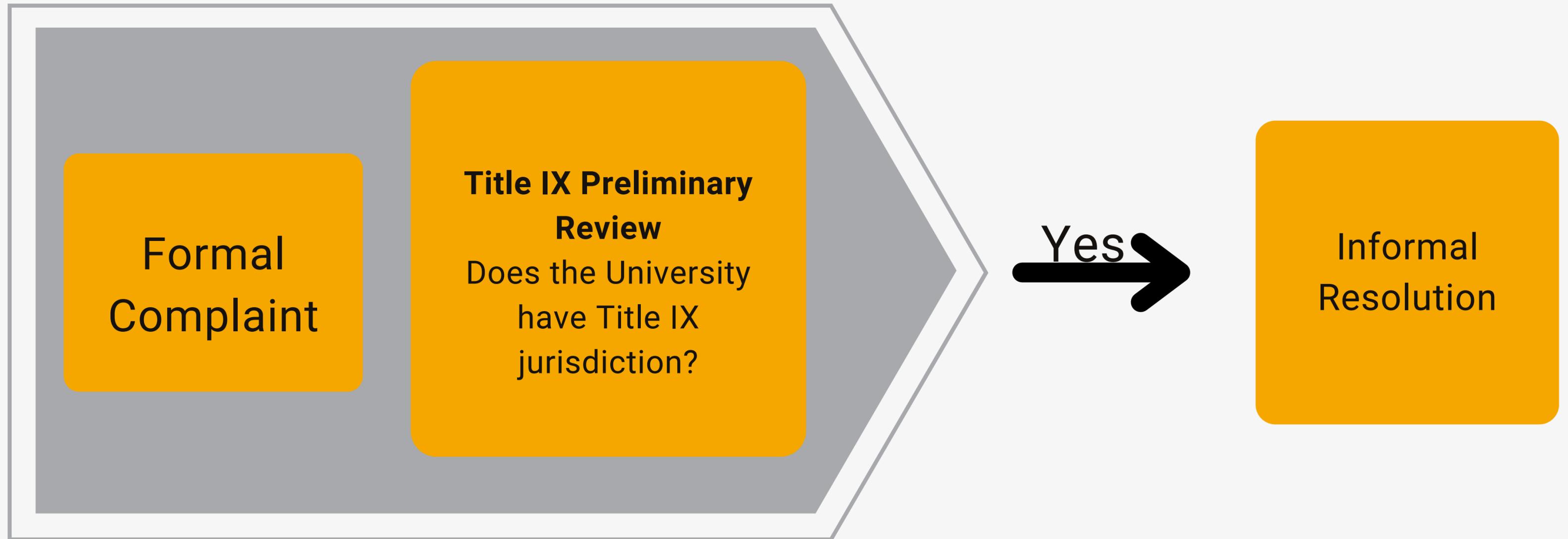


Advisors

- Advisors serve as a moral and emotional support for students during the grievance procedures and can assist with meeting preparation.
- Advisors are not permitted to advocate for a student or speak on their behalf during a hearing, except for the purpose of conducting a cross examination on relevant evidence.
- Parties who intend to conduct a cross examination of the opposite party or any witnesses must bring an advisor to the hearing.
- If a party does not have an Advisor, the university will, upon request, provide a trained Advisor to conduct any cross examinations.

Parties have a right to an Advisor of their choice throughout the entire process.

Informal Resolutions



Informal Resolution

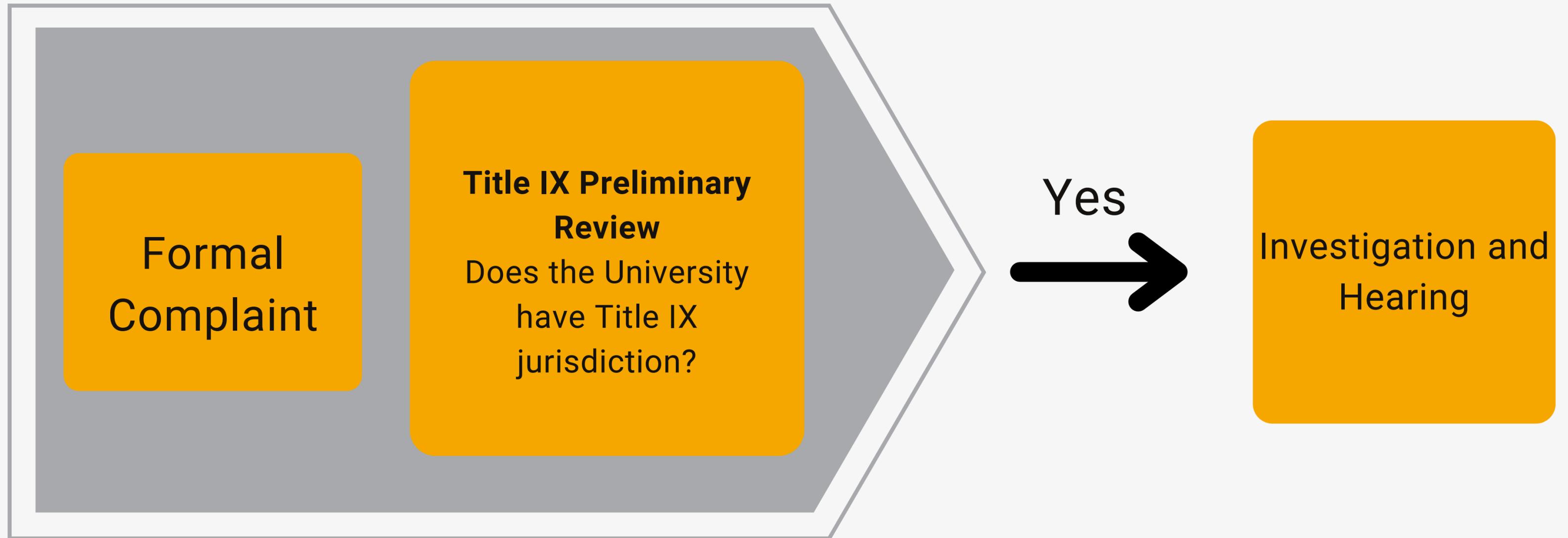
- At any time prior to reaching a determination regarding responsibility, the university may suggest to the parties the possibility of facilitating an informal resolution process.
- Upon request and written agreement by the Parties and the Title IX Coordinator that the IRP is appropriate, the Title IX Coordinator will provide to the parties a written notice disclosing the allegations, and the requirements of the IRP, including when the Parties are precluded from resuming a Formal Resolution Process and any consequences resulting from participating in the IRP. Parties may withdraw from the IRP at any time prior to agreeing to a resolution an
- Participation in this process does not constitute a finding of responsibility for a policy violation, but will be included as part of the student's conduct file and an employee's personnel file
- All agreements reached during the IRP, which outline the requirements of the Complainant and Respondent, must be approved by the Title IX Coordinator and signed by the Respondent and Complainant.
- Failure to reach an agreement may result in the case being referred to a formal resolution process;
- Failure to fulfill the requirements of the signed agreement may result in subsequent policy violations or the case being referred to formal resolution;
- Successful completion of requirements contained in the signed agreement will preclude the parties from resuming any formal complaint arising from the same allegations;
- If either party withdraws from the IRP process and requests resolution through a formal process, the information obtained during this process will not be available without signed written consent of both parties;

Informal Resolution Options

Informal Resolution options are designed to address the harm that has been caused, and what is needed to repair the harm and restore trust

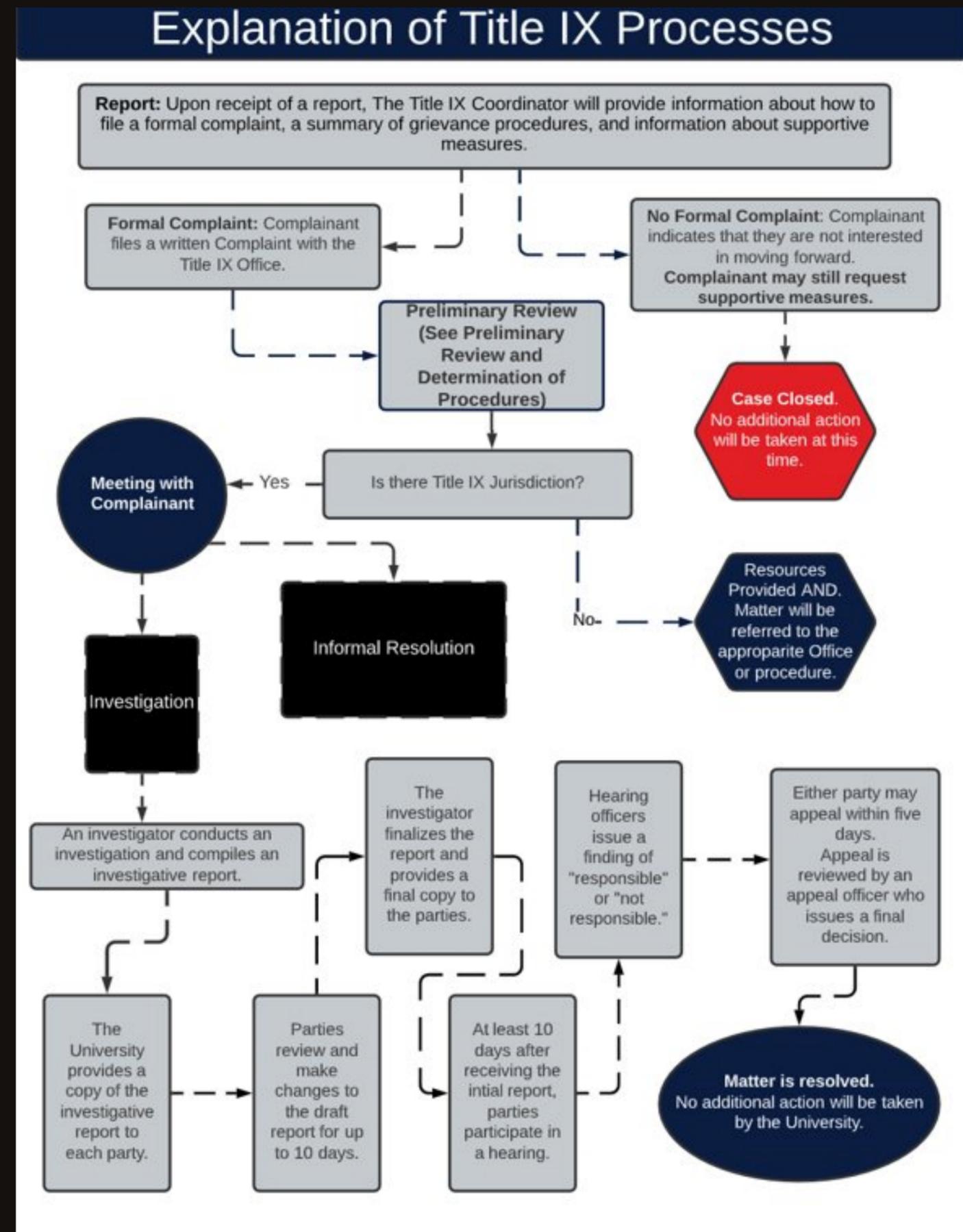
- Placing a Respondent on notice that, if such behavior has occurred or is occurring, such conduct should cease immediately
- A written warning;
- Education and/or training for a Respondent and/or department;
- Permanent Supportive Measures for Complainant;
- Mediation, Restorative Justice, or other informal communication between the Complainant and Respondent;
- Messaging to the campus community;
- Events and/or trainings offered to the campus community or particular departments;
- Referral and/or collaboration with another University department in order to address the allegations and eliminate any potential Prohibited Conduct.

Investigations and Hearings



Investigations

Investigation Flow Chart



Generating an Investigative Plan

An investigative plan is an outline of the steps you will take to complete the investigation. In making your plan, ask:

- What information was reported?
 - *You can find this in the incident report or initial police reports.*
- Which policy does the alleged conduct implicate?
- What information would a panel need to determine whether the alleged conduct occurred?
- What information would a panel need in order to determine whether this policy was or was not violated?
 - *Think about the elements of the policy you are working with.*
- Who do I need to speak with in order to get this information?
- Is there any documentary evidence or physical evidence that I need to gather?
 - *Documentary evidence may include text messages, video surveillance, social media posts, receipts, snapchat messages, phone records, pictures, etc.*

Your investigative plan should include a timeline for notifying parties, speaking to witnesses, gathering evidence, and completing the investigative summary.

Interviewing Parties

Under the regulations, you must provide the parties with written notice of any meetings.

Parties may have an Advisor of choice in the meeting with them.

Begin each meeting by reviewing the rights of parties and by providing an overview of the Title IX Grievance Process

Review applicable policy and summarize the allegations

Invite the party to provide information relating to the allegations

During the interview, you will likely ask questions related to

- whether the alleged conduct occurred
- elements of the policy
- Credibility

You may also need to ask clarification questions

When asking questions...

Avoid	Avoid using language that is indicative of fault or blame <ul style="list-style-type: none">• Ex: What were you thinking getting drunk• Ex: Why would you wear something like that out?
Avoid	Avoid making promises about a specific outcome Ex: There's no way anyone could find you responsible for this OR "We'll make it right."
Avoid	Avoid questions that assume responsibility. <ul style="list-style-type: none">• Ex: Why did you hurt that person?• Ex: Where were you when you violated our policy?
Ask	Ask only relevant questions. <ul style="list-style-type: none">• BE PREPARED TO EXPLAIN WHY YOU ARE ASKING A SPECIFIC QUESTION

Amnesty Policy

The University has a special concern for incidents of Prohibited Conduct. Such incidents damage not only individuals, but also the free and open academic environment of the University. The University is aware that individuals may not report Prohibited Conduct out of concern that they, or witnesses, might be charged with violations of the Universities' policies. Accordingly, the University will not pursue discipline violations related to drug or alcohol use against an individual who, in good faith, reports, witnesses or possesses personal knowledge of Prohibited Conduct. While amnesty is typically limited to violations involving the use of alcohol and drugs and any policies related to Covid-19, determinations regarding amnesty for other forms of prohibited conduct will be made on a case-by-case basis.

When might you, as an investigator, tell a student about this policy?



Gathering Evidence

- Documentary evidence is any documentation that is relevant to the investigation.
- Physical evidence refers to tangible items related to the allegations. For the purpose of a Title IX investigation, parties generally provide images of the physical evidence.
- Parties and witnesses may provide evidence to the investigator.
- The investigator must, as necessary and feasible, seek relevant documentary information.



Gathering Evidence: Privileged Information

- In writing the report, the investigator may not include a party's medical, psychological, and other treatment records without the party's voluntary, written consent
-

You are interviewing Sam, who is a student at WIT.

After you review Sam's rights, provide a summary of the Title IX process, and discuss the allegations/policy, Sam provides the following statement.

"I came here from a party at my friend Chase's house. I was there with this person I've been talking to. Their name is Tee. Tee got really mad at me because I was giving my other friend a hug. Tee started acting all wild. I think Tee pushed me into a wall, but everything's just blurry. They told me that I was being... you know. Tee said a bad word- it's a slur. Tee busted up my phone too".

Discussion:

Does this complaint fall under Title IX?

What policy does this Complaint implicate?

What questions would you ask the Complainant?

Who else would you need to talk to? Is there any evidence yo

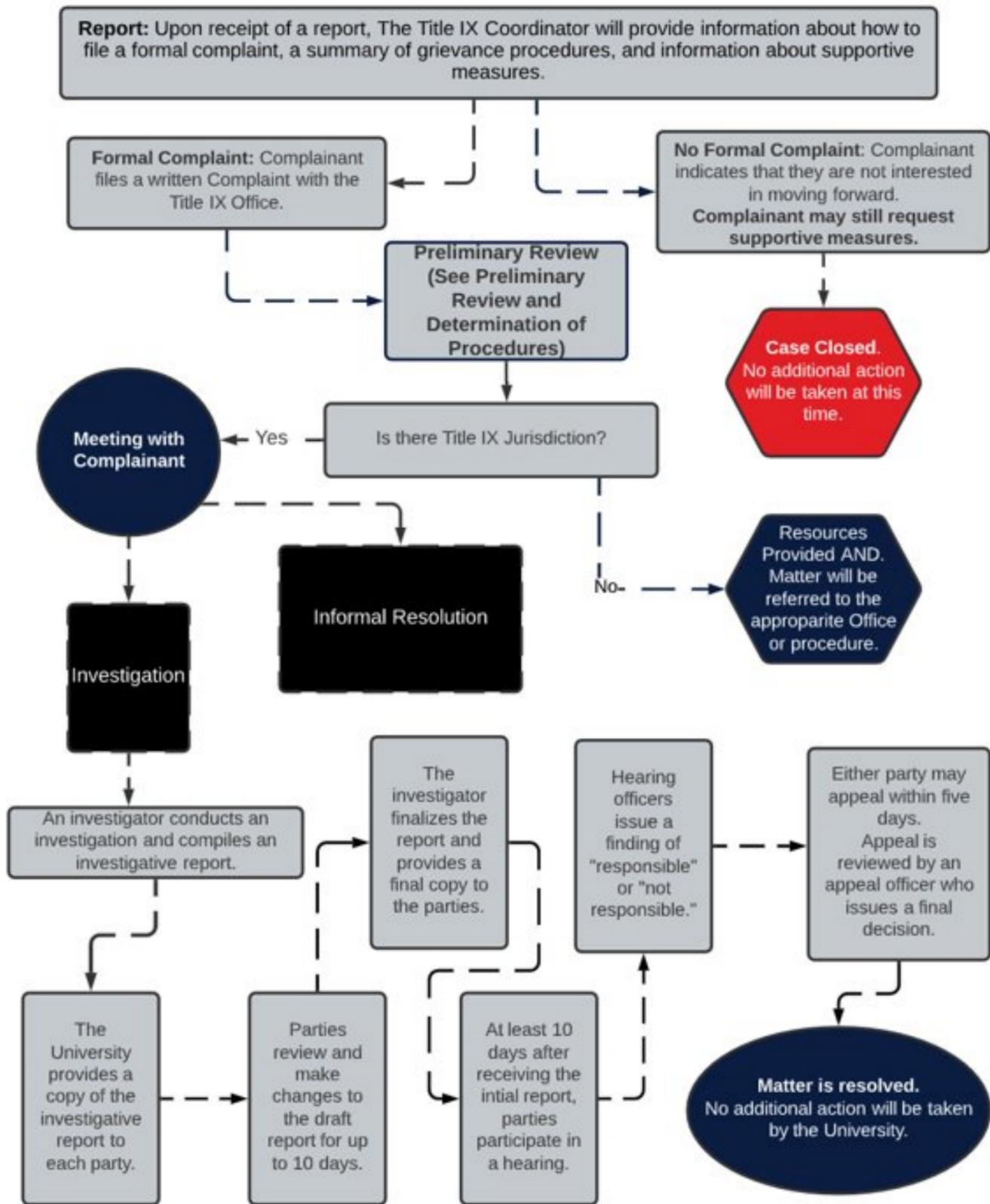
- Overview
- Policy Basis For Jurisdiction
- Standard of Evidence
- Investigator and Scope of the Investigation
 - Investigator's Name/Role
 - Parties and interview dates
 - Scope of the investigation
- Summary of the investigation
 - Facts as set forth by parties
 - Undisputed facts
- Application of facts to policy
- Credibility Assessment: Template language
ONLY
- Appendices
 - Statements
 - Exhibits

Drafting an Investigative Report

Investigators must include all evidence provided.

Investigators will be provided with a template that can be used in drafting this report.

Explanation of Title IX Processes



Procedures for Report Review

- Parties have 10 days to review a draft version of the report. During this time, parties may provide changes, additions, and corrections to the report.
- Report must be provided to BOTH parties and their Advisors.
- The investigator must incorporate changes into the final report and provide a finalized copy to parties and their Advisors.
- Once parties have received the report, the Title IX Coordinator will schedule a hearing.
- Parties have a minimum of 10 days to prepare for the hearing after they receive the report.

Hearings

Scope of Decision Makers' Authority

- The decision maker(s) have the authority to adjudicate alleged violations of the Student Code of Conduct or the Employee Handbook that are related to the same incident under review, though may not be directly related to gender-based conduct
 - Decision-maker(s) are annually trained and authorized to determine emergency removals, conduct hearings, and/or review appeals.
 - Decision-maker(s) may only serve one role within a case and are free from conflict of interest or bias.



Requirements of the Decision Maker

- The decision maker(s) are independent decision maker.
- The Chair of the Hearing is responsible for conducting an administrative hearing, pursuant to an established hearing script.
- Through the administrative hearing, the decision makers are required to objectively evaluate all relevant evidence, both inculpatory and exculpatory.
- Any individual who serves as a decision maker shall be trained annually pursuant to the training requirements under applicable state and federal law.
- The decision makers are expected to serve impartially, avoid prejudgment of facts at issue avoiding prejudgment of the facts at issue, and be free of conflicts of interest, and bias.
- The decision makers must avoid credibility determinations based on a person's status as a complainant, respondent or witness



Requirements of the Decision Maker

- The Chair of the Hearing is appointed by the Title IX Coordinator
- The Chair is responsible for conducting the hearing, pursuant to an established hearing script
- With support of the panel, the Chair or designee is responsible for synthesizing the decision of the panel into a written decision letter
- With support of the panel, the Chair is responsible for screening pre-submitted questions for relevance and for asking pre-submitted relevant questions during the Hearing
- With support of the panel, the Chair is responsible for documenting and communicating relevancy determinations throughout the Hearing.



Parties at the Hearing

- •A panel of three decision-maker(s), including the Chair of the hearing
- •Advisor for Complainant(s)
- •Advisor for Respondent(s)
- •Witnesses (only one at any one time)
- •Title IX Coordinator
- Investigators, as necessary
- University Counsel



Structure of the Hearing

- Preliminary matters
- Hearing
- Findings and Impact Statements
- Sanctions (as applicable)



Structure of the Hearing

I. Purpose of the Hearing

II. Introductions of Decision Maker(s)

III. Introduction of Coordinator

IV. Introduction of Title IX Investigator

V. Review of Procedural Matters

- Scope of the Hearing
- Review of Rights
- Expectations for Conduct of Parties During the Hearing
- Review of Advisor's Role in the Title IX Process
- Notification of Advisors
- Opportunity to ask Procedural Questions

VI. Reading of Charges

VII. Entry of plea (responsible or not responsible):



Conducting the Hearing

I. Opening Statements

II. Questions from the hearing officer for Investigators, Complainant, and Respondent:

- Cross examination through Advisors, as requested

III. Questions from the hearing officer for Witnesses

- Cross examination through Advisors, as requested

IV. Additional Questions from the hearing officer, as necessary



Decision Makers' Questions Parties and Witnesses

- Ask clarifying questions, as needed
 - Ex: What did you mean when you said _____?
- Ask questions related to:
 - whether the alleged conduct occurred
 - elements of the policy
 - credibility

If someone were to ask, “Why do you need to know that?” You should be able to tell them that your question relates to one of the above reasons.

Avoid

Avoid using language that is indicative of fault or blame

- Ex: What were you thinking getting drunk
- Ex: Why would you wear something like that out?

Avoid

Avoid making promises about a specific outcome

Ex: There's no way anyone could find you responsible for this OR "We'll make it right."

Avoid

Avoid questions that assume responsibility.

- Ex: Why did you hurt that person?
- Ex: Where were you when you violated our policy?

Ask

Ask only relevant questions.

- BE PREPARED TO EXPLAIN WHY YOU ARE ASKING A SPECIFIC QUESTION

When asking questions of the parties...

Managing a Cross Examination

- Under the regulations, parties have a right to cross examination. - *Note evidence may be considered whether or not parties participate in a cross examination.*
- Parties are allowed to ask RELEVANT questions of the other party through their Advisor.
 - The party will submit a question to the decision maker. The decision maker must determine whether or not that question is relevant.
 - If the question IS relevant, the Advisor may ask it.
 - If the question is NOT relevant, the Advisor may not ask it.
 -
- If the decision maker deems a question to be irrelevant, they must document why they made that decision.
 - Preserve this documentation and submit it to the Title IX Coordinator.

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● Questions pertaining to sexual predisposition or prior sexual behavior

- Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to
 - prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent



Findings and Impact Statements

I. Announcement of the hearing officer's Decision

II. Submission of Impact Statements

- Impact Statement from Complainant
- Impact Statement from Respondent
-

III. Communication of prior conduct code violations involving the Respondent, as applicable

If the Respondent is found "Not responsible," the hearing ends here.



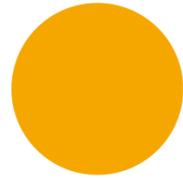
Sanctions

- I. Specification of sanctioning parameters
- II. Announcement of Sanctions
- III. Conclusion



Range of Sanctions- Students

- **Warning:** A written notice that the Respondent has violated the Policy and a warning that another violation will likely result in a more severe sanction, which could include University Probation, Temporary or Permanent Residence Hall Suspension, University Suspension, or University Expulsion.
- **University Probation:** A set period of time during which the Respondent is given the opportunity to modify behavior to complete specific assignments, meet with designated persons, and demonstrate a positive contribution to the University community in an effort to regain privileges within the University community.
- **University Suspension:** A separation from the University for a designated period. Students who are suspended from the University are restricted from all University premises and activities, including, but not limited to, course registration, class attendance, participation in co-curricular activities and University
- **University Expulsion:** A permanent separation from the University. Students are prevented and prohibited from completing any academic progress towards a Wentworth degree including registering for coursework, attending classes, or being present in or on Wentworth property.



Additional Sanctions

- Loss of Privileges: Denial of specified privileges for a designated period of time.
- Restitution: Compensation for loss of or damage to University property or services rendered. This may take the form of appropriate service and/or monetary or material replacement.
- Educational Initiatives: Projects; participation in health or safety programs, including restorative justice workshops (the student may be required to pay a fee); service to the University or to the larger community; seminars; and other assignments as warranted.

Note: Remedies involving employees may include mandatory education or professional development, formal written warnings, temporary separation, or termination of employment.