

T I T L E I X



C O N S U L T  
L L C

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# Overview of Training

- Introduction to Title IX law
- Title IX regulations
- Title IX legal obligation
- Title IX Coordinator – responsibilities and notifications
- K-12 Employees with responsibility to report
- Notice of sexual harassment
- Grievance process
  - Informal resolution
- Policies and process
- Flow chart of Title IX process
- State law considerations
- Other compliance issues - complaint files and community outreach



# Title IX Law

- 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.
- Enforced through the Department of Education, Office for Civil Rights (OCR)



**Rescinded** Guidance from OCR  
under Obama administration

2015  
Title IX Coordinator

2011, 2014, 2016

2017  
Q&A on Campus Sexual  
Misconduct

## GUIDANCE ON TITLE IX

2001  
Regulations on Title IX

1998-1999  
Supreme Court decisions on  
Title IX

Final Rules on Title IX  
(effective 8/14/20)

2020

Notice of Interpretation –  
sexual orientation/gender  
identity

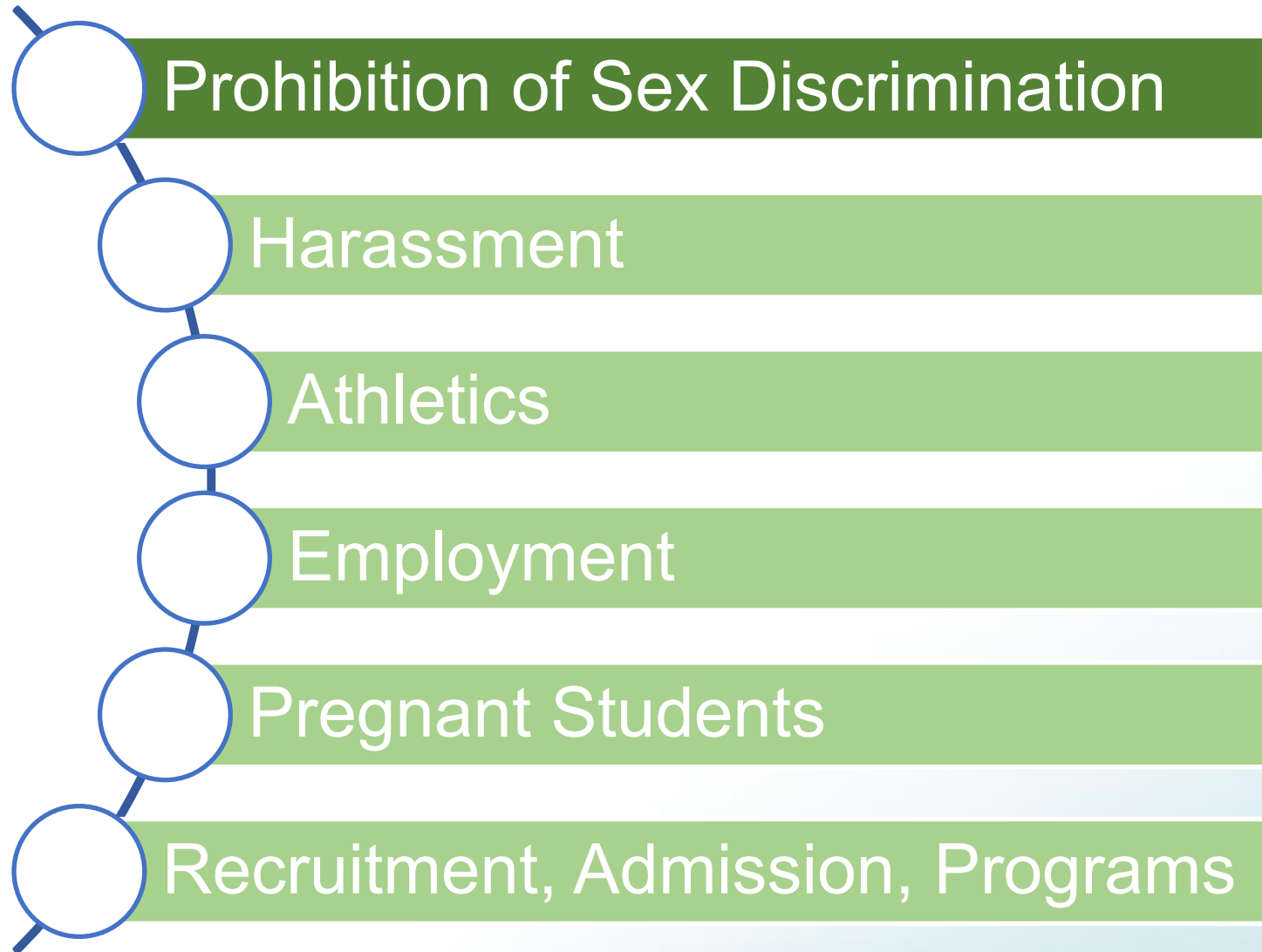
2021  
Q & A

## LEGAL OBLIGATION

Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institutions' education programs or activities against a person in the United States.



# Title IX Covers and Includes





# Title IX Coordinator

Name and title

Office address

Email address

Phone number





# Title IX Coordinator Information

Must be shared with:

- Students
- Parents
- Employees
- Applicants for admission
- Applicants for employment
- Unions and/or parties to collective bargaining agreements

Must promptly display contact information in each handbook or catalog made available to those persons

Must notify these individuals of non-discrimination

Must include notice of grievance procedure



# Title IX Coordinator Responsibilities

- Coordinate the Title IX response on behalf of the school
- Monitor outcomes and identify patterns
- Adoption of Title IX policy and procedure
- Access to relevant data (i.e., participation, budgets)
- Information easily found and in designated publications
- Permitted to conduct investigations
- Permitted to oversee investigations
- Avoiding conflicts of interest, including exclusion from serving as the decision-maker

Appropriate authority, qualifications, training, and time (2015  
*Guidance - rescinded*)



# Coordinate the School's Response

- Receive reports of claims and potential claims
- Provide required notices
- Examine and (re-examine) supportive measures
- Determine appropriateness of a potential removal proceeding
- In some instances, act as investigator
- Identify proper decision-maker
- Decide who will manage an appeal, if necessary
- Coordinate investigation, sharing of information between the parties, final outcome letter, and offering of appeal options
- Ensure proper documentation
- Provide training



# Monitor Outcomes and Identify Patterns

## Intake

- Formal complaints from allegations
- School sites

## Investigation

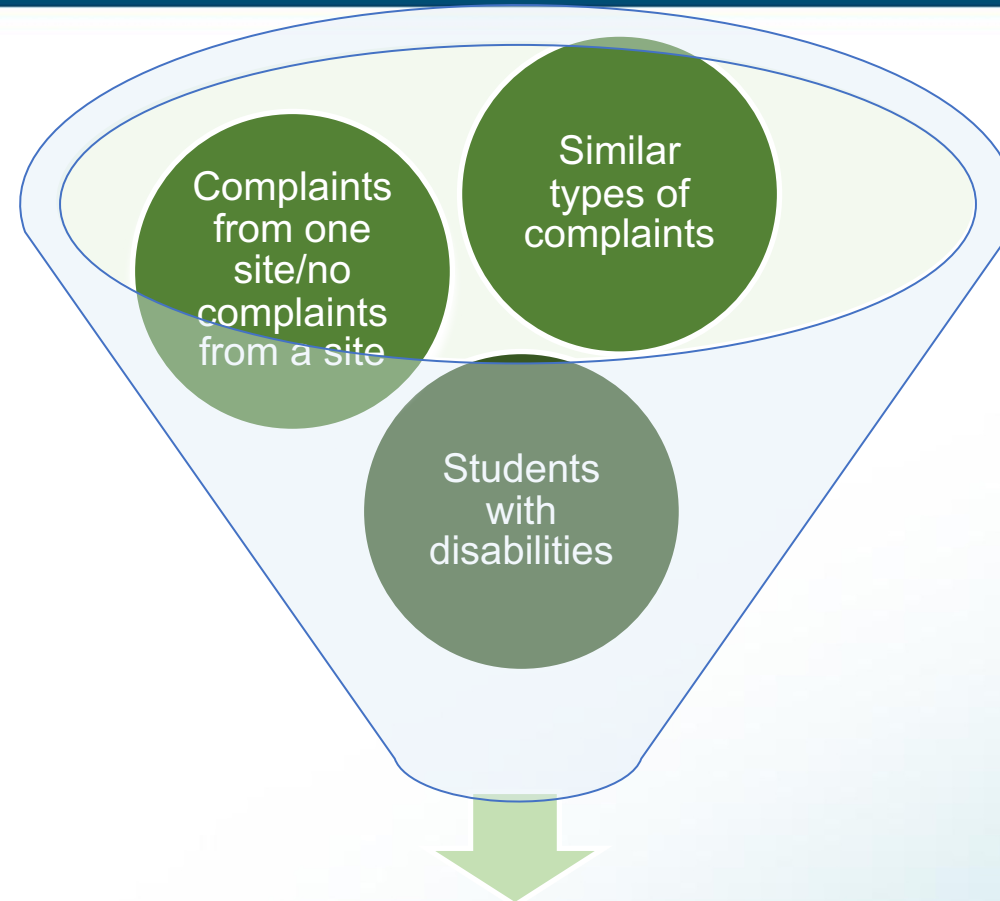
- In-house
- External
- Title IX and state Sexual Harassment

## Outcomes

- Timelines
- Policy violations
- Discipline



# Potential Patterns



# Policy and Procedures Administration

- Review annually
- Take into account the time-consuming board review and approval process
- Set timelines for your process





# Impartiality

- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact decision
- Maintain open mind as to the potential conclusions



# Conflicts of Interest

- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived



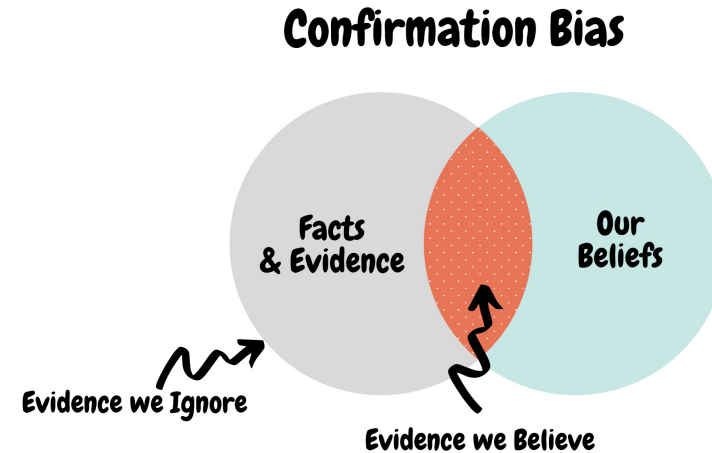
# Stereotypes

- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent



# Bias

- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences
- Unconscious/Implicit
  - For the most part, most people are unaware of these drivers
  - Developed over a period time and can influence many factors in hearing
  - Short cuts developed by the brain and often play a role in:
    - Immediate response to conflict
    - Often mimics fear responses



# Trauma

- Many Title IX causes of action involve trauma
- Title IX Coordinators should understand the impact of trauma on:
  - Reaction to trauma
  - Ability to capture memories
  - Recollection of memories
- Expectations around trauma victim



## LEGAL OBLIGATION

Educational institutions must respond in a manner that is not deliberately indifferent when it has **actual knowledge of sexual harassment** occurring in the institutions' education programs or activities against a person in the United States.





# Actual Knowledge

When sexual harassment or allegations of sexual harassment  
come to the attention of  
**ANY EMPLOYEE**  
of a K-12 district

All employees **MUST** report



## LEGAL OBLIGATION

Educational institutions must respond in a manner that is not deliberately indifferent when it has actual knowledge of sexual harassment **occurring in the institutions' education programs or activities against a person in the United States.**



# Jurisdiction Issues

- Occurring in the institution's education program or activity  
includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurred
- Against a person in the United States



# GP: Dismissal - Mandatory and Permissive

## **Mandatory dismissal**

- Would not constitute sexual harassment as defined in regulations
- Did not occur in education program or activity
- Did not occur against a person in the U.S.

## **Permissive dismissal**

- Complainant notifies Title IX Coordinator in writing that Complainant would like to withdraw formal complaint or allegations
- Respondent is no longer enrolled or employed by school district
- Specific circumstances prevent the school district from gathering evidence sufficient to reach a determination



# 2021 Questions and Answers – Loss of Equal Access

- Skipping class to avoid a harasser
- Declining GPA
- Having difficulty concentrating in class
- Crying at night due to sexual harassment
- Quitting a team due to harassment



# Title IX – Parties and Administrators

## Administration of Claims

### Parties

- Complainant – alleged victim/survivor
  - Respondent – respond the allegation
- Title IX Coordinator
  - Title IX Investigator
  - Title IX Decision-maker
  - Title IX Appeal Officer
  - Title IX Advisor
  - Title IX Informal Resolution Officer





# Definition of Sexual Harassment

## Conduct on the basis of sex:

- **Quid pro quo** - An employee who conditions the receipt of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.
- **Hostile environment** sexual harassment, defined as unwelcome conduct determined by a reasonable person to be so severe, pervasive **and** objectionably offensive that it effectively denies a person equal access to the school's education program or activity (emphasis added).



# Definition of Sexual Harassment, continued

## Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

## Dating/Domestic Violence

## Stalking



# Notice of Interpretation - US Department of Education

- Bostick v. Clayton County
- Prohibition against sex discrimination includes protections for:
  - Sexual orientation
  - Gender identity



# Grievance Process (GP)

- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
  - Emergency removal
- Offer of formal process
  - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - designate the retaliation complaint process



# GP: Emergency Removal Procedure

- Step 1 – Conduct a prompt individualized safety and risk analysis
- Step 2 – Immediate threat to the safety the physical health or safety of any student or other individual Arising from the allegations of sexual harassment
- Step 3 – Evaluate the applicability of disability laws to the removal decision
- Step 4 – Consider the appropriateness of supportive measures in lieu of an emergency removal
- Step 5 – Provide the respondent with notice and an “immediate” opportunity to challenge the emergency removal



# GP: Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent and are designed to restore or preserve equal access to the District's education programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment





# GP: Offer of Formal Process

- Complainant offered formal process
- Complainant must file and request an investigation
- Wishes of complainant are to be respected



# GP: No Formal Complaint Filed

- Title IX Coordinator may decide to proceed with investigation
- Title IX Coordinator does not become Complainant



# GP: Informal Resolution

- Trained facilitators
- After formal complaint is filed
- Process must be detailed in writing
- Described to both parties
- Parties agree in writing
- Either party may end informal resolution before a formal agreement is accepted
- Never available when complainant is student and respondent is employee



# GP: Notice of Allegations

- Detailed allegations against respondent
- Supportive measures offered to respondent
- No supportive measure can appear disciplinary



# GP: Separate Decision-Makers

- Title IX Coordinator may serve as investigator
- Title IX Coordinator may NOT serve as decision-maker
  - Policy violation
  - Discipline
- Hearing panels permitted for K-12s but not required



# GP: Investigation

- Investigation gathers relevant and irrelevant information
- All information must be shared with both parties
- Parties have ability to review investigation report and outcome, provide comments/written questions and provide answers and limited follow-up



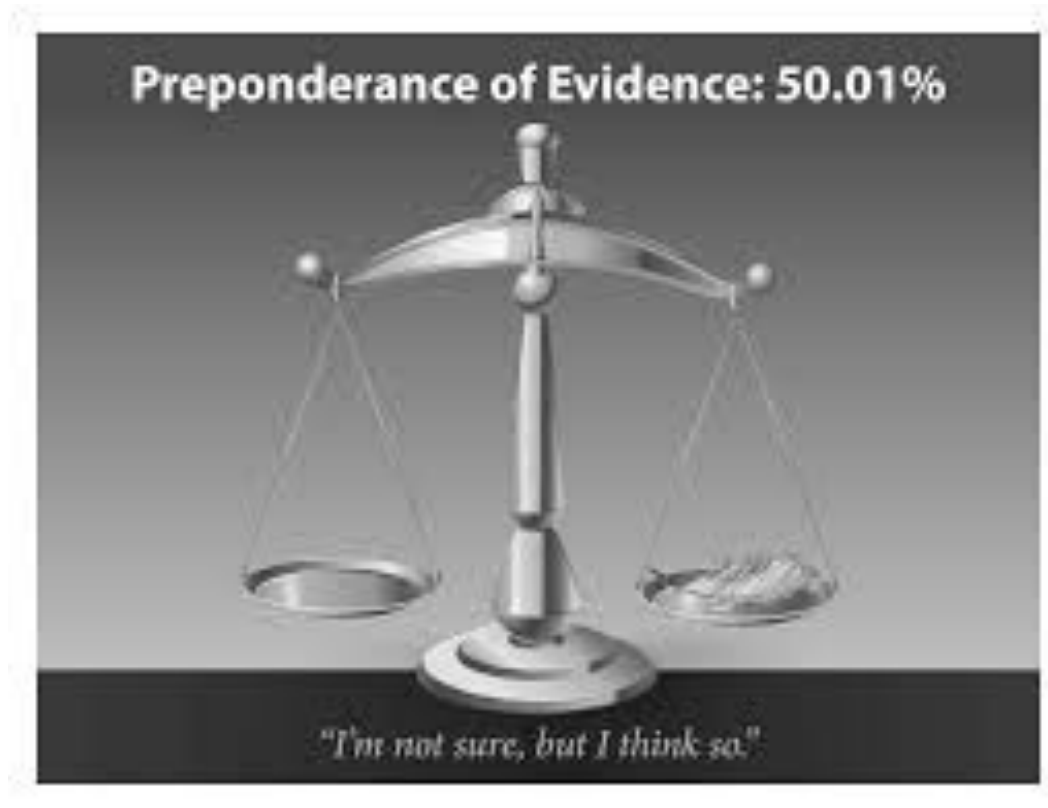
# Rape Shield Protections

- Questions and evidence about a complainant's prior sexual behavior are prohibited unless:
  - offered to prove that someone other than the respondent committed the alleged misconduct, or
  - offered to prove consent.



# Burden of Proof

- Preponderance of the evidence
- Clear and convincing





# GP: Decision-Maker

- Decision-maker must determine:
  - Policy violation
  - Discipline
- In K-12, discipline decisions against students with disabilities may require a manifestation determination
  - A **Manifestation Determination** is a process, required by the Individuals With Disabilities Education Act (IDEA 2004), which is conducted when considering the exclusion of a student with a disability that constitutes a change of placement



# GP: Appeal

- Procedural irregularity in the Title IX grievance process affected the outcome;
- Newly discovered evidence that was not reasonably available at the time of the determination of responsibility or dismissal that could affect the outcome; or
- Due to a bias or conflict of interest by the Title IX Coordinator, investigator, or decision-maker that affected the outcome.



# Title IX and Sexual Harassment

Policies and Process



# Title IX New Regulations Impact District Policies

## Review Policies

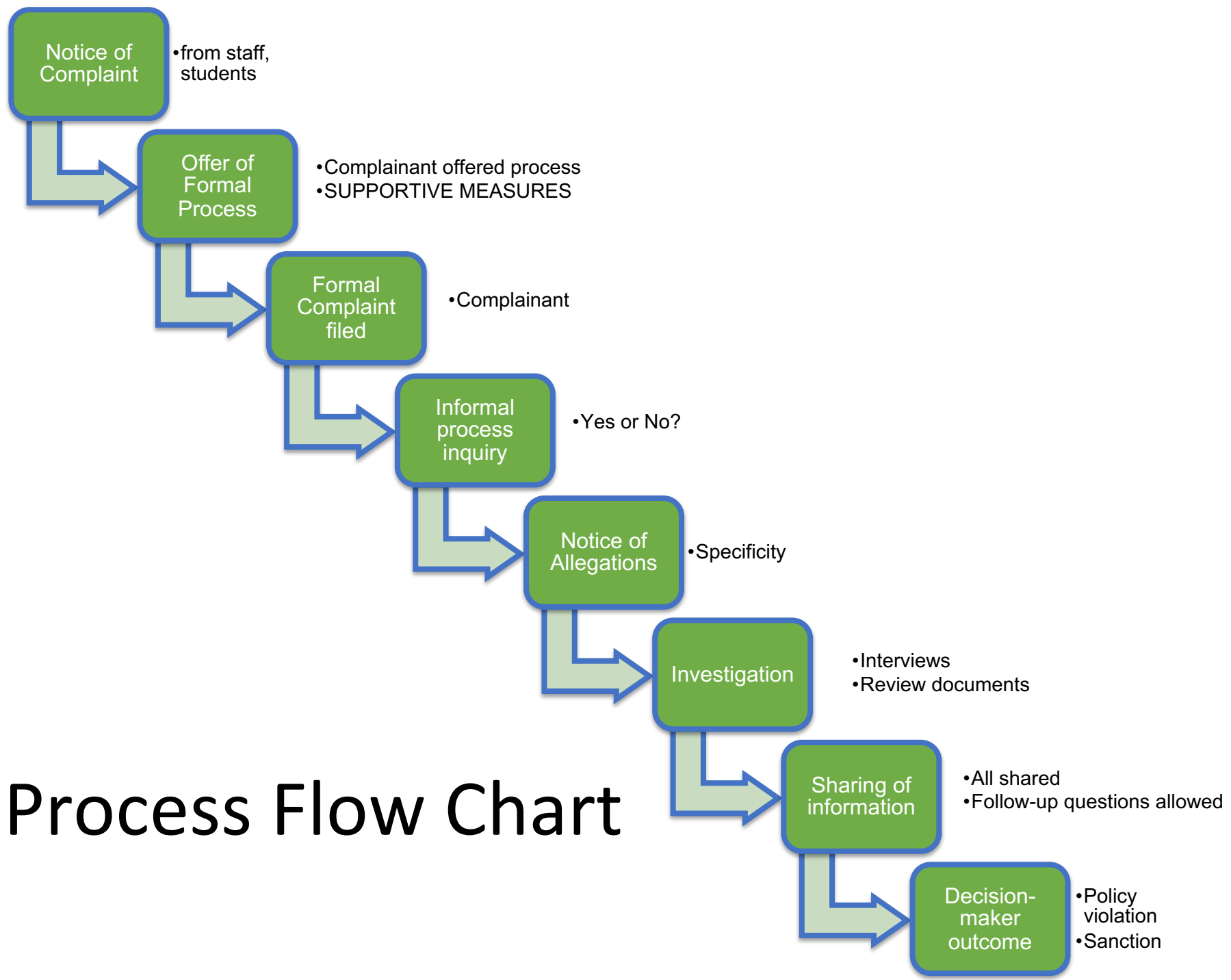
- Employee policies
- Title IX and Sexual Harassment
- Nondiscrimination

## Student Policies

- Title IX and Sexual Harassment
- Nondiscrimination

## Process





# Title IX Process Flow Chart

# Other Considerations

- Title IX and state law interaction
- Title IX file review
- Community outreach
  - Climate surveys
  - Focus groups
  - Student/parents special interest groups



# QUESTIONS?

and other feedback

