

T I T L E I X



C O N S U L T
L L C

SJA Title IX Fundamentals Training

8/18/21



Disclaimer

- The information contained herein was developed by Title IX Consult, LLC for the exclusive use of SJA and its employees. Use of these documents by non-SJA employee and/or outside the SJA education environment requires explicit permission of Title IX Consult, LLC.
- ©Title IX Consult, LLC, 2021. Copyrighted material. Express permission to post training materials for those who attended a training provided by Title IX Consult, LLC is granted to comply with 34 C.F.R. § 106.45(b)(10)(i)(D). These training materials are intended for use by licensees only. Use of this material for any other reason without permission is prohibited.
- This training is intended for educational purposes only and does not contain sample forms for use in Title IX investigation and/or decision-making process.



Title IX Training Overview

- Introduction to Title IX law and regulations
- Education institution's legal obligations under Title IX
- Employees' responsibilities to enforce Title IX
- Title IX Coordinator role
- Title IX definitions and grievance process overview
- State law obligations
 - Sexual Harassment in employment
 - Sexual Harassment in education program and activities for students
- Board Policies and Administrative Regulations that govern Title IX /Sexual Harassment at SJA



Title IX Law

- Federal law passed in 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.
 - Prohibits sex discrimination and sexual harassment
- Enforced through the Department of Education, Office for Civil Rights (OCR)



Title IX Covers and Includes

- Prohibition of Sex Discrimination
- Harassment
- Athletics
- Employment
- Pregnant Students
- Recruitment, Admission, Programs



Rescinded Guidance from OCR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



1998-1999
Supreme Court decisions on
Title IX

2001
Regulations on Title IX

2020
Final Rules on Title IX
(effective 8/14/20)

2021
Notice of Interpretation –
sexual orientation/gender
identity

2021
Q & A

2015
Title IX Coordinator

2011, 2014, 2016

2017
Q&A on Campus Sexual
Misconduct

Final Rule on Title IX (effective 08/14/20)

- Has the force and effect of law
- Set Legal standard under Title IX for K-12 school districts
- Defined Title IX Coordinator's Role
- Clarified parties and other administrative roles in Title IX enforcement at the district
- Defined sexual harassment under federal law
- Described compliant grievance process
 - Supportive measures
 - Requirements for the process and informal resolution
 - Due process obligations



Notice of Interpretation - US Department of Education

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



LEGAL OBLIGATION

Educational institution must respond in a manner that isn't deliberately indifferent when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.



Actual Knowledge of Sexual Harassment

- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district, all employees **MUST** report to the **TITLE IX COORDINATOR**
- No employee of the district can promise confidentiality to a party or witness and/or make the decision not to report unless they hold confidential status (ex., licensed mental health counselor)
- Failure to report could lead to an inadequate response
 - Proof of deliberate indifference
 - Legal responsibility for sexual harassment



EXERCISE: What is Actual Notice?

- A student reports to you that another student has been calling her "slut" because of something that happened over the weekend
- You observe two students who are known to be dating in the hall, and one pushes another into the lockers with such force that the pushed student falls
- A male student wore nail polish to school and was met with reactions from fellow classmates calling him "gay" and "a fag"
- An employee seems to be spending a lot of time with a particular student and you have seen the employee leaving campus with the student in a car



TAKEAWAY : Notice = Responsibility to Report

ALWAYS REPORT TO TITLE IX COORDINATOR



Title IX Coordinator's Role

- Title IX Coordinator is tasked with managing the Title IX response on behalf of the school
 - Name, office address, email address, phone number of “Title IX Coordinator” available
 - Distributed to students, employees, applicants for admission and employment, parents and legal guardians, and unions
 - Accepts reports of potential Title IX violations by telephone, email, and verbal reports



SJA Title IX Coordinators

Beth Choiniere

Title IX Coordinator

1000 Main Street,

St. Johnsbury, VT 05819,

bchoiniere@stjacademy.org

titleixcoordinator@stjacademy.org

Sarah Garey

Deputy Coordinator (Students)

1000 Main Street

St. Johnsbury, VT 05819

sgarey@stjacademy.org

Crystal Rutledge

Deputy Coordinator (Employees)

1000 Main Street

St. Johnsbury, VT 05819

crutledge@stjacademy.org



Title IX – Parties and Administrators

Parties

- Complainant – alleged victim/survivor
- Respondent – respond the allegation

Administration of Claims

- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-maker
- Title IX Appeal Officer
- Title IX Advisor
- Title IX Informal Resolution Officer



Title IX Sexual Harassment

Under new regulations



Title IX Definition of Sexual Harassment

Defined conduct on the basis of sex and includes:

- Quid pro quo harassment
- Hostile environment harassment
- Sexual assault
- Dating/domestic violence
- Stalking



Title IX Definition of Sexual Harassment, continued

- **Quid pro quo** - An employee who conditions the receipt of an aid, benefit, or service of the district 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.



Definition of Sexual Harassment, continued

Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

Dating/Domestic Violence

Stalking



Title IX Jurisdiction Issues

- In order for the district to have jurisdiction, the incident must have occurred in the institution's education program or activity, which is defined to include:
 - locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs
- In order for the district to have jurisdiction, the matter must be brought related to an incident that occurred the United States



Title IX Dismissals - 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



EXERCISE: Is this Covered Under Title IX?

- Sexual harassment allegations from a student that took place at a choir/band event over the weekend?
- Sexual touching allegations from a student about an event that took place at a party at the home of another student?
- Online posting of sexual comments about a student that were on another student's Instagram?



TAKEAWAY: Jurisdiction is Complex!

ALWAYS REPORT TO THE TITLE IX COORDINATOR



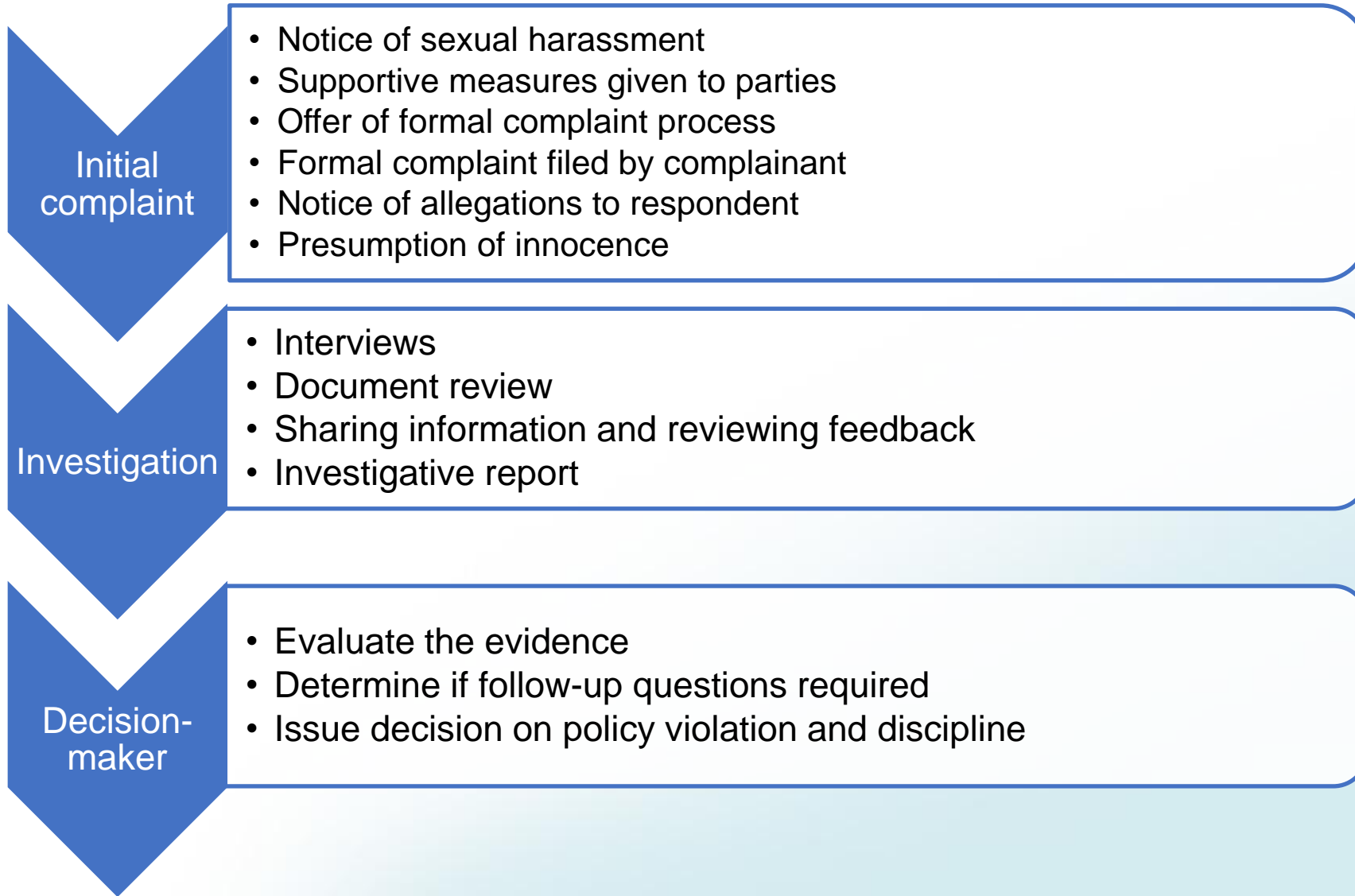
Title IX Grievance Process

- 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



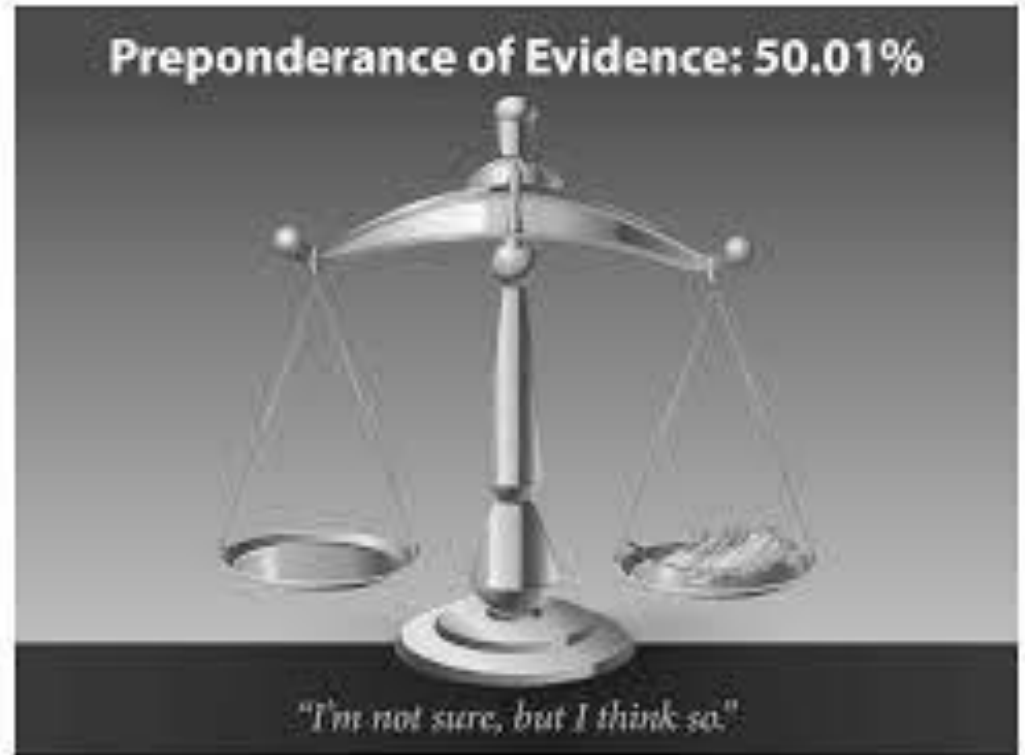
Overview of Title IX Grievance Process

OBLIGATION: Respond promptly in a manner that is not deliberately indifferent



Title IX Burden of Proof

- Preponderance of the evidence standard is used in concluding a potential Title IX violation
- Clear and convincing standard

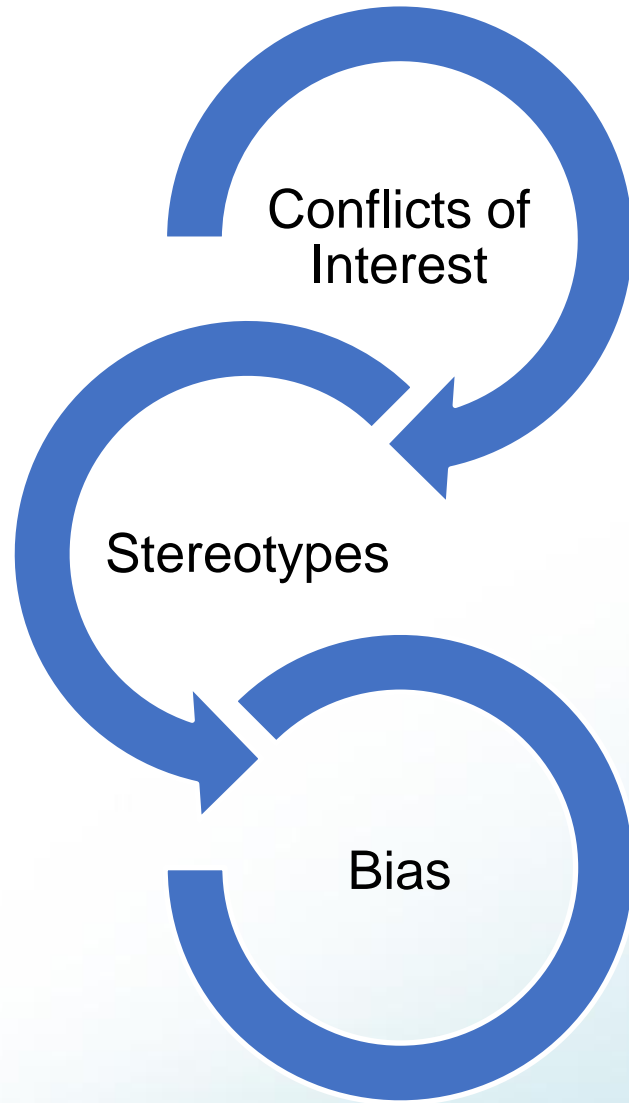


Title IX Ensures Constitutional Protections

- Under Title IX, schools may not restrict the rights afforded under:
 - First Amendment (Free Speech)
 - Fifth Amendment (Protection against Self-Incrimination)
 - Fourteen Amendment (Due Process)



Title IX Process MUST avoid



Important Process Considerations

- Supportive measures
- Removal of student
- Interview of student accused of Title IX wrongdoing
- Student confidentiality
- On-campus and off-campus behavior



EXERCISE: CAN YOU PROVIDE THIS SUPPORTIVE MEASURE?

- Remove Respondent from a shared class?
- Remove Respondent from a team?
- Prohibit Respondent from attending the prom?
- Remove Respondent from the debate team?
- Limit where Respondent can eat lunch?



TAKEAWAY:

Supportive Measures are TIX
Coordinator decisions

ALWAYS REPORT TO THE TITLE IX COORDINATOR



Title IX Prohibition Against Retaliation

- Prohibition against retaliation for any participant in the Title IX investigation process
- Requires some level of school action



STATE LAW - Sexual Harassment



State Law Distinctions

- Definitions of sexual harassment
 - Quid pro quo
 - Hostile environment



VT State Law Definition of Sexual Harassment

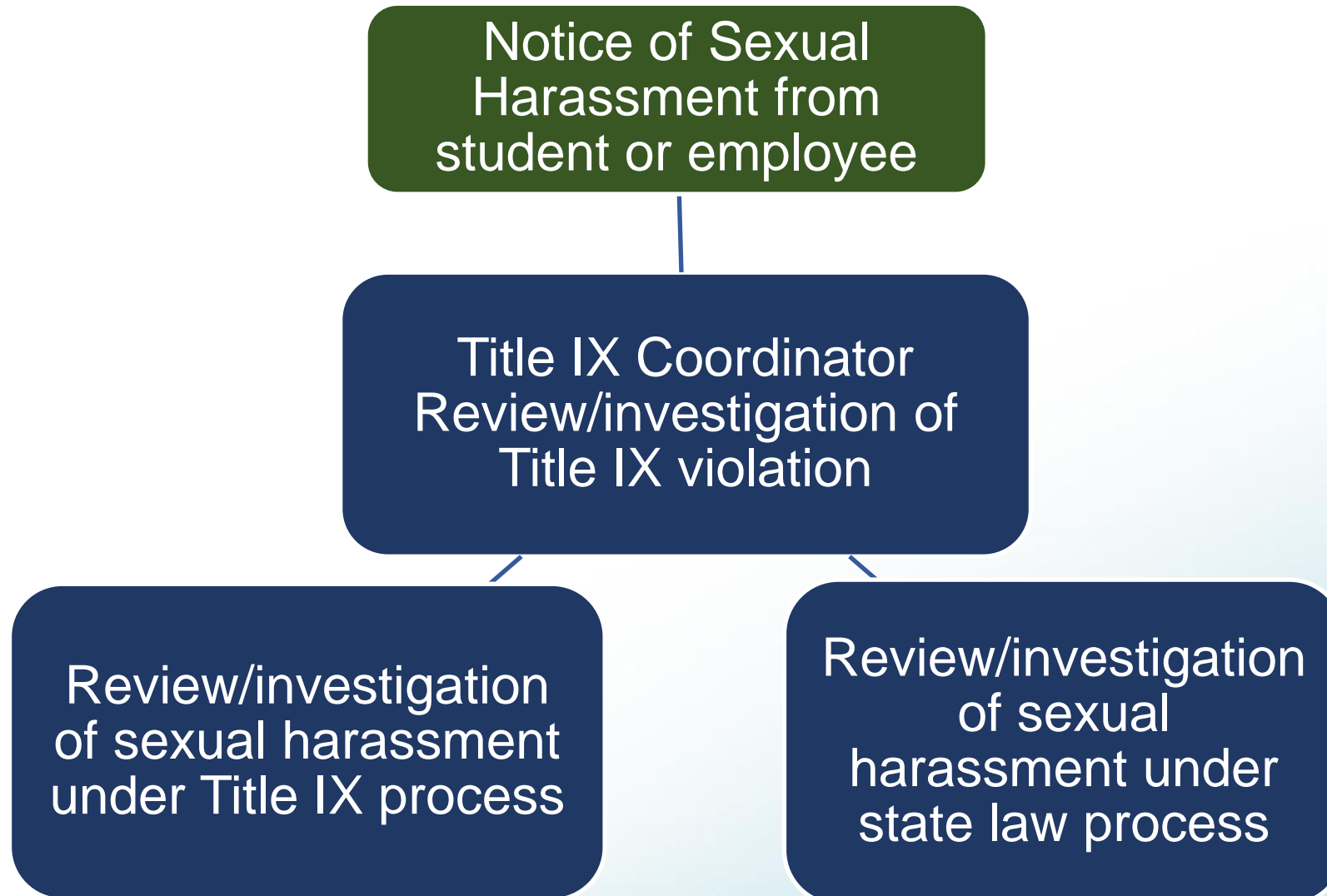
Sexual harassment means unwelcome conduct of a sexual nature, that includes sexual violence/sexual assault, sexual advances, requests for sexual favors, and other verbal, written, visual or physical conduct of a sexual nature, and includes situations when one or both of the following occur:

- (i) Submission to that conduct is made either explicitly or implicitly a term or condition of a student's education, academic status, or progress; or
- (ii) Submission to or rejection of such conduct by a student is used as a component of the basis for decisions affecting that student.

Sexual harassment may also include student-on-student conduct or conduct of a non-employee third party that creates a hostile environment. A hostile environment exists where the harassing conduct is severe, persistent or pervasive so as to deny or limit the student's ability to participate in or benefit from the educational program on the basis of sex.



Sexual Harassment Process



SJA Policies on Sexual Harassment

Review:

- Title IX Policy
- Harassment, Hazing and Bullying Policy
- Harassment Hazing and Bullying Procedure



Final Reminder

When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district, all employees **MUST** report this information to the Title IX Coordinator.

- No employee of the district can promise confidentiality to a party or witness and/or make the decision not to report
- Failure to report could lead to an inadequate response
 - Proof of deliberate indifference
 - Legal responsibility for sexual harassment



SJA Title IX Coordinators

Beth Choiniere

Title IX Coordinator

1000 Main Street,

St. Johnsbury, VT 05819,

bchoiniere@stjacademy.org

titleixcoordinator@stjacademy.org

Sarah Garey

Deputy Coordinator (Students)

1000 Main Street

St. Johnsbury, VT 05819

sgarey@stjacademy.org

Crystal Rutledge

Deputy Coordinator (Employees)

1000 Main Street

St. Johnsbury, VT 05819

crutledge@stjacademy.org



The End

Questions: megan@titleixconsult.com

