

# TITLE IX DECISION-MAKING PANEL TRAINING

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COMPLIANCE AND INVESTIGATIONS

2022-2023



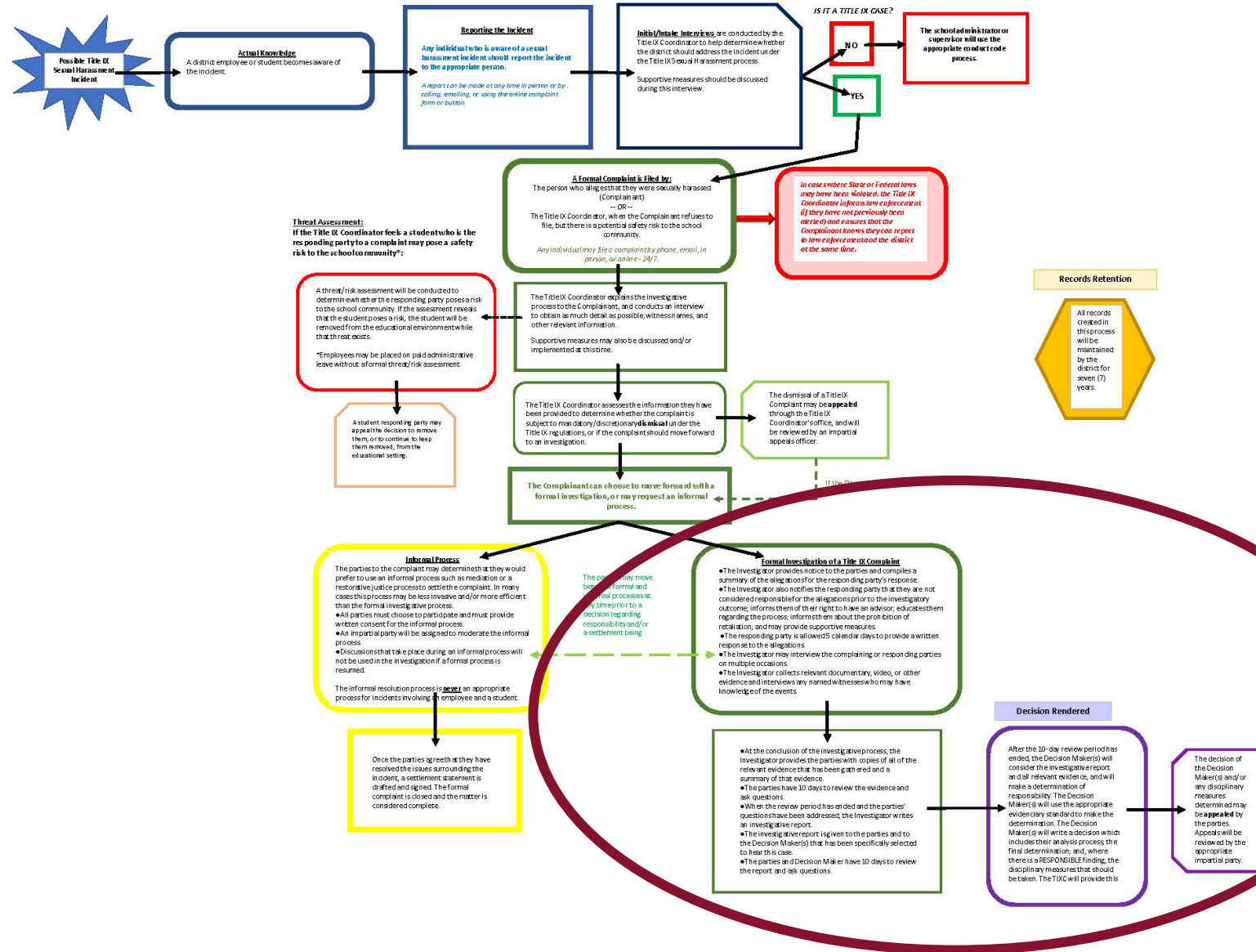
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# TITLE IX SEXUAL HARASSMENT INVESTIGATION FLOWCHART



# TITLE IX INVESTIGATIVE PROCESS

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- Incident
- Intake Interview
- Formal Complaint
- Formal Investigation (Or Informal Resolution)
- Evidence Sharing with Parties
- Investigative Report – Shared with Parties and Decision-Making Panel
- Decision-Making Panel
  - If there is a finding of Responsible, disciplinary determination

# DECISION-MAKING PANEL REQUIREMENTS

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- Confidentiality Agreement
- Disclosure of Potential Conflicts of Interest/Bias
- Available to Meet with the Panel

# CONFIDENTIALITY

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- Panel member will be expected to sign a confidentiality agreement.
- The case will not be discussed outside of the Panel, with a few exceptions (i.e., with individuals who have a legal need to know).
- Supportive measures will be disclosed to those who have a need to know.
  - Administrators, teachers, counselors, etc.

# CONFLICTS OF INTEREST/BIAS

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- No member of the Panel may be seated if they:
  - participated in the intake, investigation, or informal resolution of the complaint;
  - have a direct relationship with any of the parties or the witnesses that would compromise objectivity;
  - are a direct report to or of anyone else who is a decision-maker in the process; or
  - cannot, for any other reason, function independently and impartially as a Panel member.

# DECISION-MAKING PANEL RESPONSIBILITIES

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- Screen “Cross Examination” Questions
- Field Questions for Relevance
- Examine All Evidence – Make Relevance Determinations
- Make the Decision of Responsible/Not Responsible
  - If Responsible, Determine Appropriate Discipline
- Create the Final Determination Report
- Be Available for Questions in the Event of an Appeal

# SCREENING QUESTIONS

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- During the 10-day review period, each party may ask the Panel questions and/or ask the Panel to direct questions to the other party, witness(es), or Investigator.
- Questions must be screened for relevance.
  - What does this mean?
    - It means that something matters, that there is a point to the question, and that point may help you answer the ultimate question: Are the allegations true?
- If the question is relevant, the Panel Chair will forward the question to the appropriate person and will provide a deadline for an answer.
- If the question is not relevant, the Panel Chair will let the questioning party know it is not relevant, why it is not relevant, and that it will not be asked.



# EXAMPLES OF IRRELEVANT QUESTIONS

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- From Responding Party to Complaining Party:
  - How many sexual partners have you had?
  - Don't you have a reputation for being the school slut?
  - What color/type of clothing were you wearing?
- From Complaining Party to Responding Party:
  - How many times have you been in trouble for smoking/skipping class/fighting?
  - Were you in the location of the event on an unrelated day?
  - Where do you live?

# EXAMPLES OF POTENTIALLY RELEVANT QUESTIONS

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- From Responding Party to Complaining Party:
  - How many times have you been disciplined for lying?
  - Did you tell someone you were trying to get the Responding Party in trouble?
- From Complaining Party to Responding Party:
  - Weren't you suspended last year for grabbing another person's butt?
  - How many times have you been disciplined for making inappropriate sexual comments at school?



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# RESPONDING TO QUESTIONS

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- The parties will direct any questions to the Panel Chair, who will copy the entire Panel and all appropriate parties on responses.
- The Panel must determine whether the question is going to help them make a determination and must be able to articulate the reasons for their determination.
- The Chair will be responsible to direct questions to the Investigator and will copy the entire Panel on the correspondence.
- The Panel will determine whether a question is appropriate,
- The Chair will document all questions, all responses, and/or reason(s) why questions were not asked.

# EXAMINING THE EVIDENCE AND INVESTIGATIVE REPORT

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- The Panel will determine which evidence is relevant and which evidence is not relevant.
- The Panel will analyze all evidence and the investigative report to help determine whether the allegations are true.

# DETERMINATION MEETING

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- The Chair will lead the discussion and will document all questions received, whether they were asked, why/why not, and all responses.
- A scribe will take notes during the meeting.
- The Panel will complete and document the review of the evidence.
- The Panel will make and document credibility determinations.
- The Panel will make determinations related to the “Undisputed Facts” and the “Disputed Facts” contained in the investigative report.

# MAKING THE DETERMINATION

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- The Panel must determine the following:
  - Are the allegations raised by the Complainant actually true?
  - If the allegations are true, do they rise to the level of a violation of the District's sexual harassment policy?
  - If allegations of other policy violations are included, are these allegations true?
  - If the allegations of other policy violations are true, do they rise to the level of a policy violation?
  - Is the Responding Party "Responsible" or "Not Responsible" for the alleged behaviors?

# RESPONSIBLE FINDING

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- If the Panel makes a determination that the Respondent is “Responsible,” the Panel must determine appropriate disciplinary actions.
  - If the student has an IEP or a 504 plan, the Panel must pause this discussion to arrange a manifestation determination hearing.
- The Panel must also determine any appropriate remedies/consequences.



# FINAL DETERMINATION REPORT

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- The Panel is responsible to write a report that includes:
  - the original allegations
  - the procedural steps
  - findings of fact to support the determination
  - conclusions about whether a Board Policy has been violated
  - a statement of, and rationale for, the result of each allegation, including:
    - a determination regarding responsibility
    - any disciplinary sanctions the District will impose on the Responding Party
    - whether remedies designed to restore or preserve equal access to the District's education program will be provided to the Complaining Party
  - appeal rights

# APPEALS

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- In the event of an appeal by either party, the Panel must be available to answer any questions the appeal officer may have.
- If the appeal officer determines that there has been an error in the process that impacted the determination or that new evidence that was not reasonably available at the time of the determination has arisen, the Panel will re-convene to correct the process error or consider the new information.
- If the appeal officer determines that a member(s) of the Panel had an undisclosed conflict of interest or was biased toward/against a party, a new Panel will be convened to examine the evidence and make a determination.

# QUESTIONS??



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