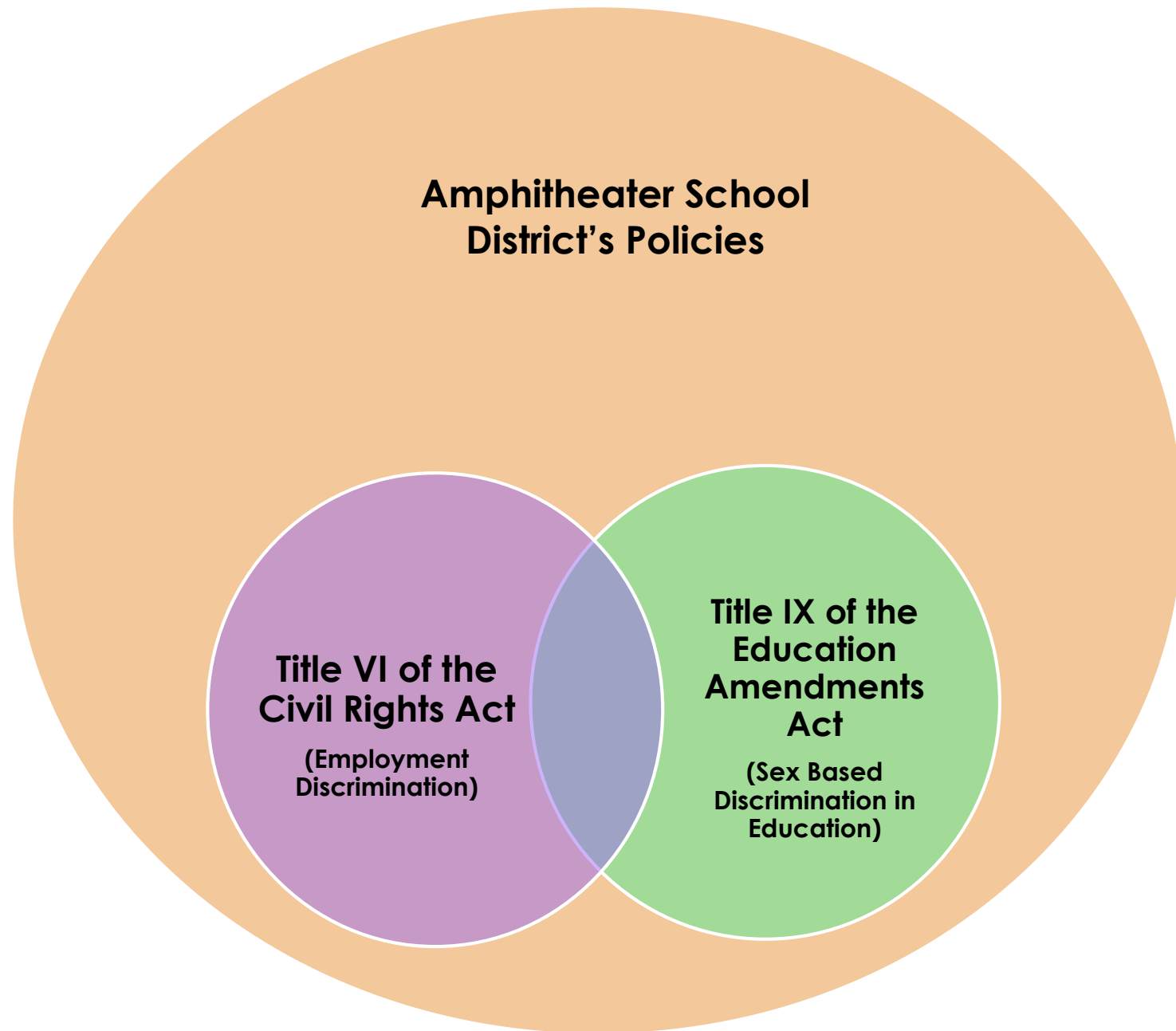


# SEXUAL HARASSMENT

TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972, AS AMENDED

## 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.”**



# ALL EDUCATIONAL PROGRAMS & ACTIVITIES

4

- ▶ We are obligated to address sexual harassment and sexual violence in our jurisdiction
- ▶ We must take immediate action to end the harassment, prevent its recurrence, and provide supportive measures
- ▶ We must have procedures that allow students and staff to report incidences of ILLEGAL sexual harassment
  - ▶ Formal and separate Title IX grievance procedure
  - ▶ Title IX Coordinator and other unbiased persons designated to deal with Title IX issues
- ▶ We must investigate all allegations of ILLEGAL sexual harassment
  - ▶ ALL parties have the same opportunity to tell their side of the story
  - ▶ All parties are to be provided supportive measures to assist in remediation of the negative effects
- ▶ We must provide due process under Title IX BEFORE taking any disciplinary actions
  - ▶ A Respondent may only be removed from school prior to completion of the entire due process steps, if and ONLY if:
    1. A formal Threat Assessment is performed under guidance of the Title IX Coordinator, and
    2. Respondent is found to be an immanent direct threat to the school environment

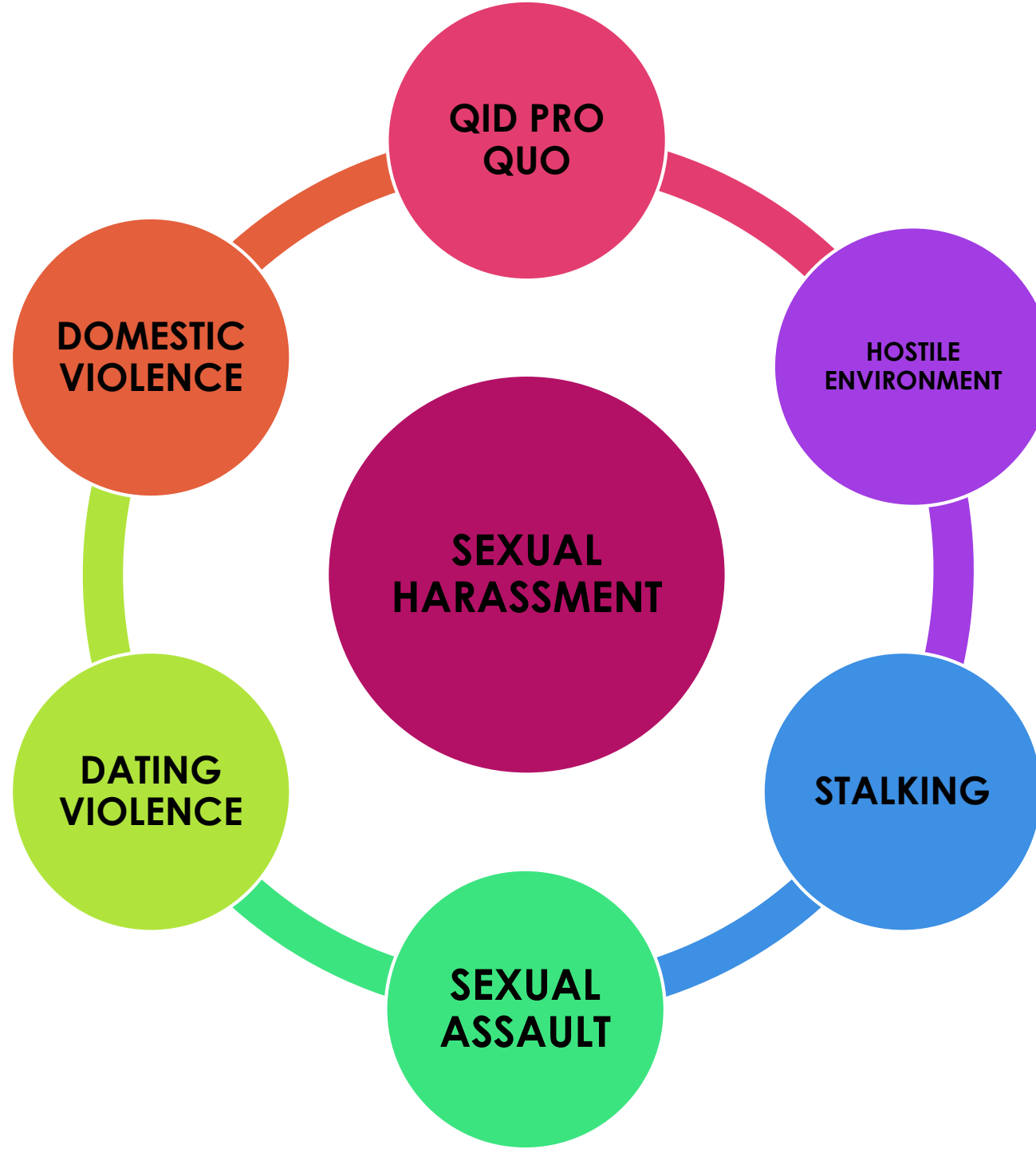
# TERMINOLOGY

- ▶ **Recipient** - School District
- ▶ **Complainant** - Person making the accusation
- ▶ **Respondent** - Person being accused
- ▶ **Title IX Coordinator** - District's Equity and Safety Compliance Officer and Title IX Coordinator (Me)
- ▶ **Complaint** - An un-signed or verbal notice by a Complainant that they feel they have been subjected to sexual harassment
- ▶ **Formal Complaint** - A signed document by a Complainant that states they feel they have been subjected to sexual harassment
  - ▶ The Title IX Coordinator can sign a Formal Complaint even if there are no identified Complainant(s)
- ▶ **Emergency Removal** - After a "Threat Assessment" is completed and if the Respondent is found to be an threat to themselves or others, they may be temporarily removed from attending school in person

# TERMINOLOGY - PART II

- ▶ **Investigation** - The fact-finding process that begins when a Complaint is received and continues through until a final report of the investigation being completed
- ▶ **Investigator** – May be Principals, Assistant Principals, Principal Designees, All Team Dept. Leaders
- ▶ **Hearing** - Formal meeting where evidence is reviewed and a decision is made as to whether consequences are warranted
- ▶ **Hearing Officer** - District employee who runs the Hearing, makes a decision on culpability/consequence. They cannot be involved in any other aspect of the Investigation.
- ▶ **Appeal** - Where a party who disagrees with the Hearing decision submits a written argument to change the decision
- ▶ **Appeal Officer** - The District employee who receives written appeals from the parties.
- ▶ **Governing Board** - If expulsion is recommended, the Governing Board is the only body that can expel the student or discharge and employee.
- ▶ **Downstream Effects** - Issues from harassment outside of school that may bleed into the Complainant's school environment, *i.e.*, fear, unable to concentrate, environment





***TYPES OF  
SEXUAL  
HARASSMENT***

# WHO CAN BE A COMPLAINANT

## MALE OR FEMALE

- STUDENT
- TEACHER
- STAFF

# WHO CAN BE A RESPONDENT

## MALE OR FEMALE

- STUDENT
- TEACHER
- STAFF
- PARENT/GUARDIAN
- VOLUNTEERS
- THIRD-PARTY VENDOR
- GUEST/INVITEE
- STUDENT FROM ANOTHER SCHOOL/DISTRICT
- ANYONE WHO COMES TO OUR SCHOOLS OVER WHOM DISTRICT CAN TAKE ANY REMEDIAL ACTION

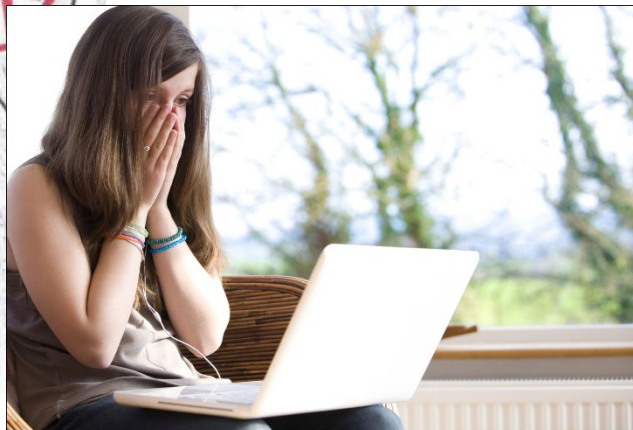
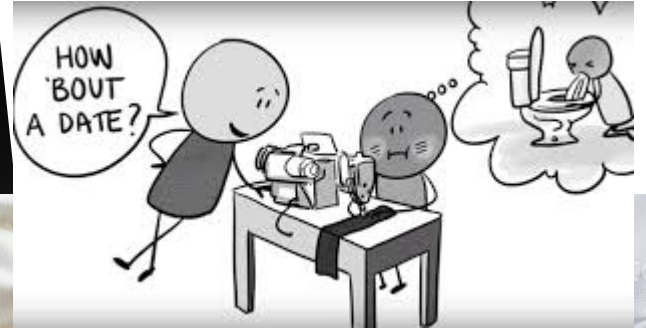
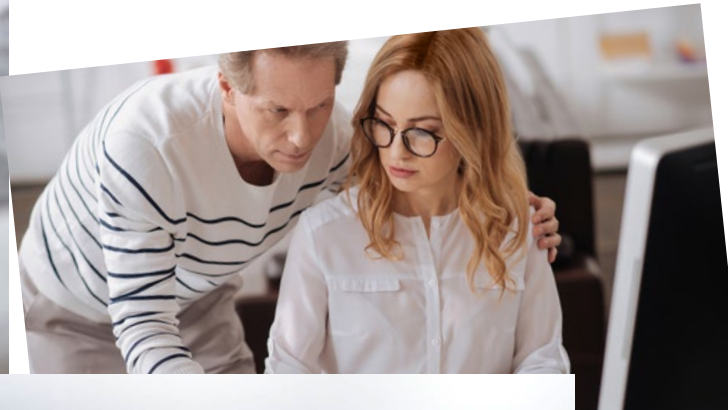
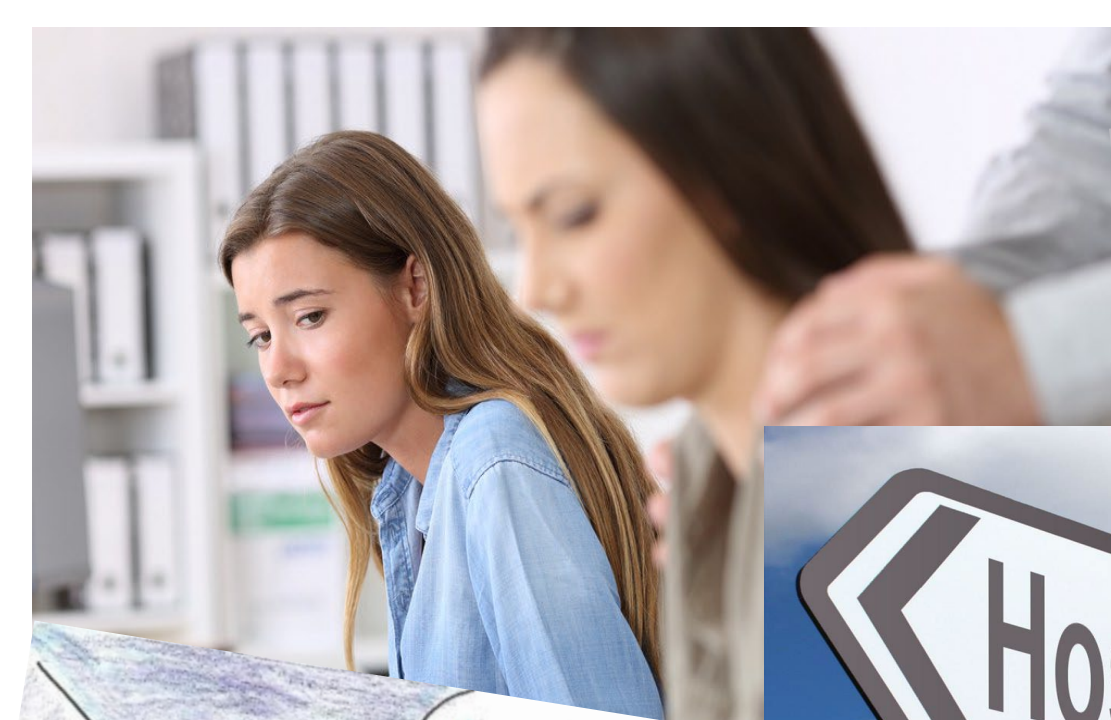
# HOSTILE ENVIRONMENT AND STALKING

11

SEVERE

PERVASIVE

OBJECTIVELY OFFENSIVE



# HOSTILE ENVIRONMENT

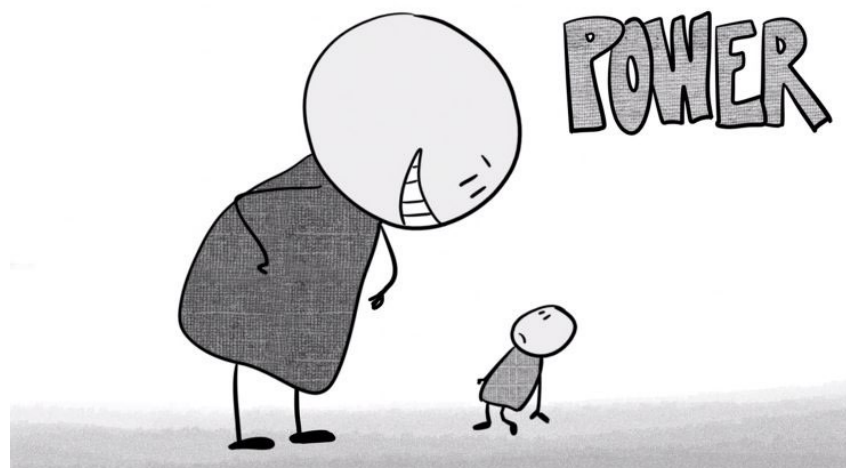
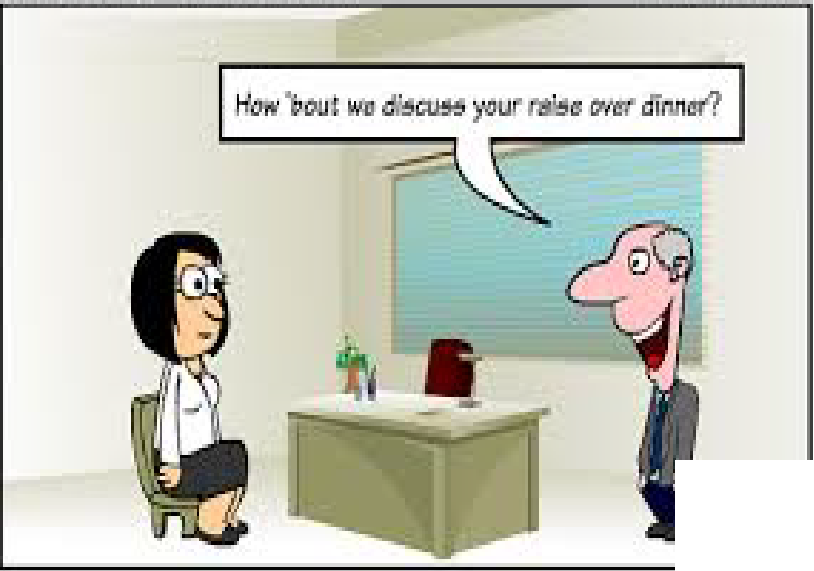
- ▶ Acts whose severity AND persistency AND objectively offensive nature serve to “Poison” or “Taint” the education/employment environment.
  - ▶ Unwelcome Sexual Advances
  - ▶ Objectionable Requests for Sexual Favors
  - ▶ Unwanted Verbal, Nonverbal, or Physical Conduct of a Sexual Nature

# HOSTILE ENVIRONMENT (CONTINUED)

► **District's Student Code of Conduct Rule 9C (Sexual Harassment)**

**“Unwelcome conduct of a sexual nature toward another person which:**

- **Occurs repeatedly;**
- **Interferes with; and/or**
- **Limits another person's participation in the educational process and school program.”**



# QUID PRO QUO

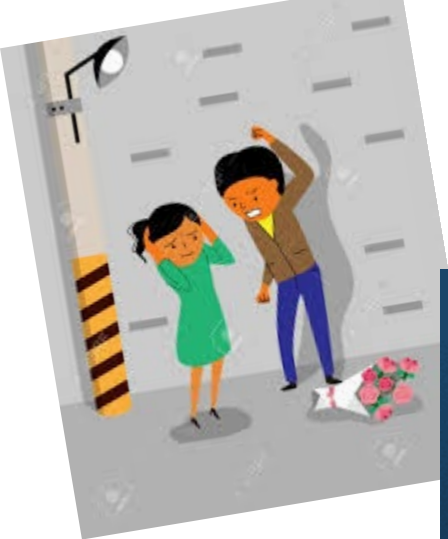
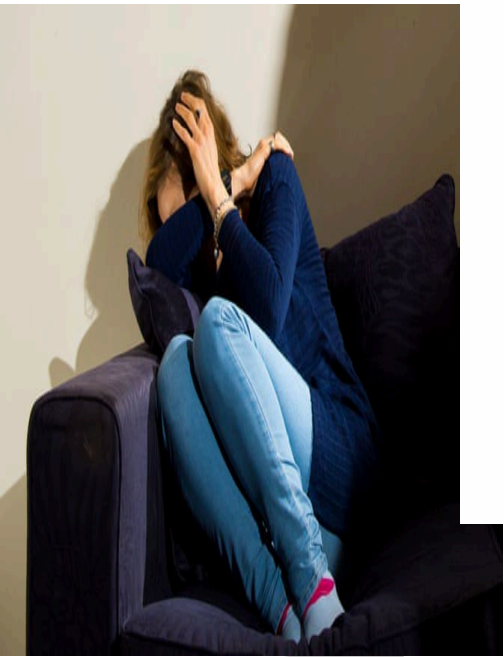
- ▶ Automatically Sexual Harassment (a per se violation)
- ▶ “Something given or received for something else.”
- ▶ Power dynamic: (real or perceived)
  - ▶ Supervisor to Employee
  - ▶ Adult to Student
  - ▶ Bigger Student to Smaller Student
  - ▶ Captain of team and new player

# QUID PRO QUO (CONTINUED)

► **District's Student Code of Conduct Rule 9C (Sexual Harassment)**

**“Unwelcome conduct of a sexual nature toward another person which:**

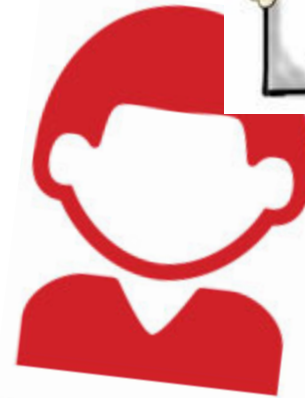
- **Occurs repeatedly;**
- **Interferes with; and/or**
- **Limits another person's participation in the educational process and school program.”**



### Types of abuse



**ONE IN THREE ADOLESCENTS  
IN THE U.S. IS A VICTIM OF  
PHYSICAL, SEXUAL, EMOTIONAL OR  
VERBAL ABUSE FROM A DATING PARTNER.**



# DATING VIOLENCE

- ▶ Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
  - ▶ The existence of such a relationship shall be 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.
  - ▶ Sexual or physical abuse or the threat of such abuse.
  - ▶ Dating violence does not include acts covered under the definition of domestic violence.

# DATING VIOLENCE (CONTINUED)

▶ **District's Student Code of Conduct Rule 9C (Sexual Harassment)**

"Unwelcome conduct of a sexual nature toward another person which:

- Occurs repeatedly;
- Interferes with; and/or
- Limits another person's participation in the educational process and school program."

▶ **District's Student Code of Conduct Rule 9D (Sexual Harassment with Bodily Contact)**

- "Sexual Harassment that includes unwanted physical contact of sexual or non-sexual body parts."

▶ **District's Student Code of Conduct Rule 1D (Assault)**

- "Causing any physical injury to another person, making another person reasonably fearful of physical injury, knowingly touching another person with the intent to hurt, insult or provoke that person."

▶ **District's Student Code of Conduct Rule 1E (Aggravated Assault)**

- "Committing assault which:
  - Causes Serious Physical Injury to another, or
  - Involves a deadly weapon or dangerous instrument; or
  - Is inflicted upon someone 15 years or younger by someone 18 years old or older; or
  - Is an assault of a police officer; or
  - Is an assault of a school employee."

▶ **District's Policy ACAA (Title IX Sexual Harassment)**



# STALKING

- ▶ Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - ▶ Fear for the person's safety or the safety of others
  - ▶ Suffer substantial emotional distress.
- ▶ Typical stalking behaviors include:
  - ▶ Following someone
  - ▶ Sending unwanted gifts
  - ▶ Sending unwanted letters or e-mails
  - ▶ Monitoring phone calls or computer use
  - ▶ Using technology such as hidden cameras or GPS systems to track someone's location.

# STALKING (CONTINUED)

- ▶ District's Student Code of Conduct Rule 9C (Sexual Harassment)
  - “Unwelcome conduct of a sexual nature toward another person which:
    - Occurs repeatedly;
    - Interferes with; and/or
    - Limits another person's participation in the educational process and school program.”
- ▶ District Policy: JICK - EB      Student Violence/Harassment/Intimidation/ Bullying
- ▶ District Policy: JICL:      Dating Abuse
- ▶ District Policy ACAA (Title IX Sexual Harassment)



# SEXUAL ASSULT

- ▶ Rape, Statutory Rape, and Fondling
- ▶ Physical sexual acts perpetrated against a person's will OR where a person is incapable of giving consent due to the victim's youth, disability, or excessive use of drugs or alcohol
- ▶ For the purpose of sexual gratification
  - ▶ Fondling vs. "Slap Butt Fridays"

# Sexual Assault (Continued)

▶ District's Student Code of Conduct Rule 9C (Sexual Harassment)

"Unwelcome conduct of a sexual nature toward another person which:

- Occurs repeatedly;
- Interferes with; and/or
- Limits another person's participation in the educational process and school program."

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  - Is an assault of a police officer; or
  - Is an assault of a school employee."

▶ District Policy ACAA (Title IX Sexual Harassment)

**LOVE  
IS NOT  
ABUSE**



**STOP**  
DOMESTIC VIOLENCE

# DOMESTIC VIOLENCE

- ▶ **Infliction of Physical or Emotional Distress:**
  - ▶ By a current or former spouse or intimate partner of the victim
  - ▶ By a person with whom the victim shares a child in common
  - ▶ By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
  - ▶ By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

# DOMESTIC VIOLENCE (Continued)

- ▶ District's Student Code of Conduct Rule 9C (Sexual Harassment)
  - “Unwelcome conduct of a sexual nature toward another person which:
    - Occurs repeatedly;
    - Interferes with; and/or
    - Limits another person's participation in the educational process and school program.”
- ▶ District's Student Code of Conduct Rule 9D (Sexual Harassment with Bodily Contact)
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    - Is an assault of a police officer; or
    - Is an assault of a school employee.”
- ▶ District's Policy ACAA (Title IX Sexual Harassment)

# LGBTQ+

- ▶ PROTECTED BY TITLE IX
- ▶ SEXUAL ORIENTATION
- ▶ GENDER EXPRESSION
- ▶ GENDER IDENTITY

**ALL RELATE TO A PERSON'S SEXUALITY**



# ENSURING UN-BIASED DUE PROCESS

# PEOPLE ROLES IN DUE PROCESS

- ▶ Title IX Coordinator
- ▶ Investigator
- ▶ Hearing Officer
- ▶ Appeals Officer
- ▶ Governing Board

# REMOVAL OF A RESPONDENT FROM SCHOOL

## GENERAL RULE:

A Respondent may NOT be suspended, removed from school, or have any disciplinary action taken against them until the they have moved through the ENTIRE Title IX Due Process Procedures.

## ONLY EXCEPTION:

A student may ONLY be removed from school, or even placed in ISS, after:

1. Violence Risk Assessment (VRA) is conducted and the Title IX Coordinator signs off on the removal, and
2. There is clear evidence that they are an immediate threat to physical health/safety of themselves or others.

# EMERGENCY REMOVAL OF RESPONDENT

- ▶ Only the Title IX Coordinator can remove a student
- ▶ This is removal due for safety concerns not an expulsion or suspension
- ▶ Only after a Threat Assessment is conducted
- ▶ Respondent has to be found to be a direct threat to the safety of others
  - ▶ Hypotheticals are not allowed
  - ▶ Must be direct objective evidence
- ▶ In most cases removal/expulsion can only be done after Respondent has received Due Process.

# SUPPORTIVE MEASURES

- ▶ Implement once an informal complaint is brought forth
- ▶ Both Complainant and Respondent are eligible
- ▶ Must Coordinate with Title IX Coordinator
- ▶ Must Document what is done or why nothing was done
- ▶ Types:
  - ▶ Counseling
  - ▶ Transfers or reassignments
  - ▶ More time for assignments
  - ▶ One-on-One extra support from teachers
  - ▶ No contact contracts
  - ▶ Discussion about appropriate behaviors
- ▶ NOT DISCIPLINARY (Defined very narrowly)

# “DOWNSTREAM EFFECTS”

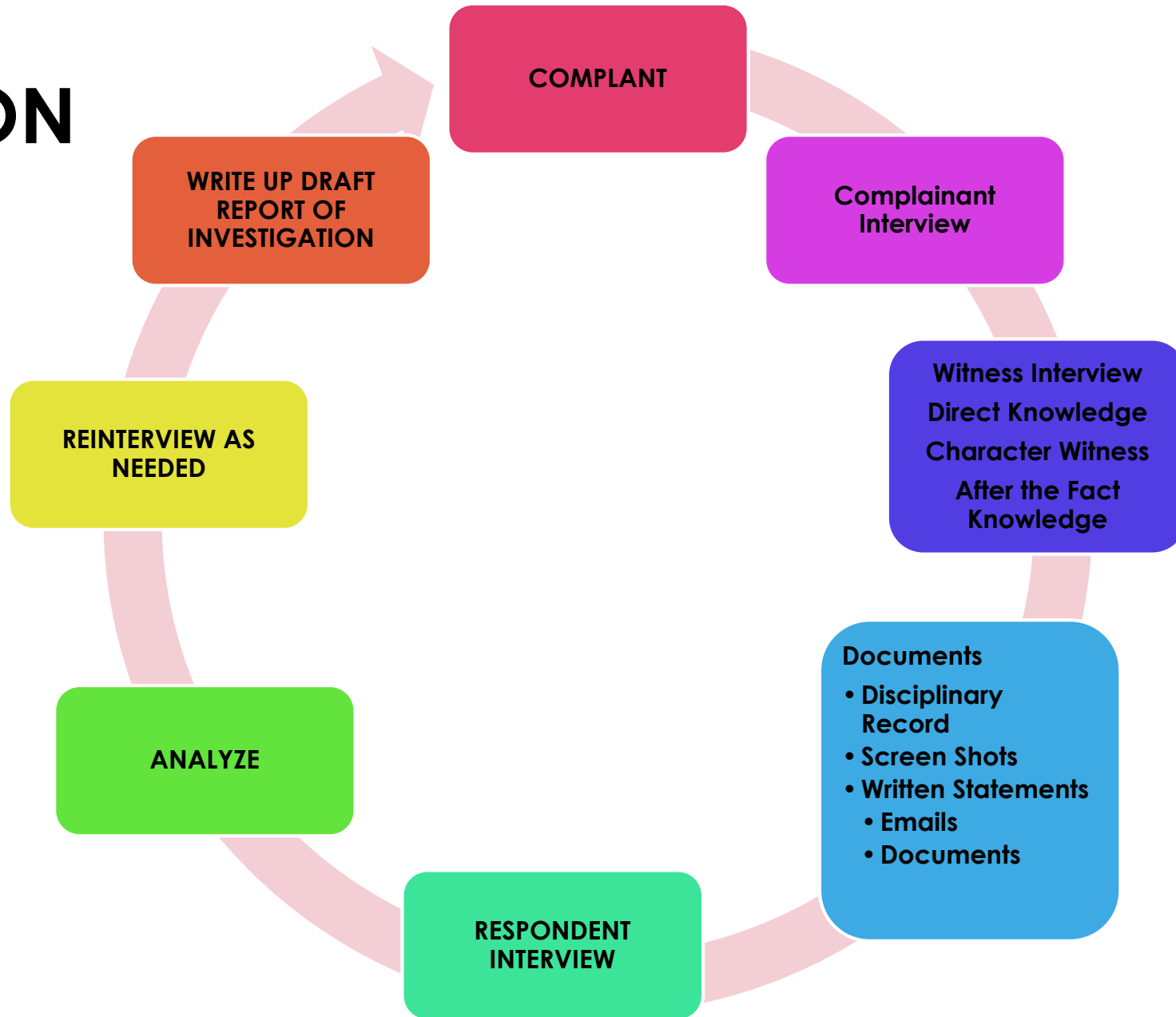
- ▶ Sexual Harassment/Assault/Abuse/Stalking that occurs off campus and away from things the District has control over
- ▶ District is not liable for these acts nor can we discipline the Respondent under Title IX
  - ▶ Look at non-Title IX District policies that may give you authority to discipline the Respondent
- ▶ No Formal Complaint is to be taken
- ▶ District IS responsible for providing Supportive Measures if those “outside” acts negatively impact the student’s educational access
- ▶ Treat as an Informal Complaint.
  - ▶ Document - Document - Document

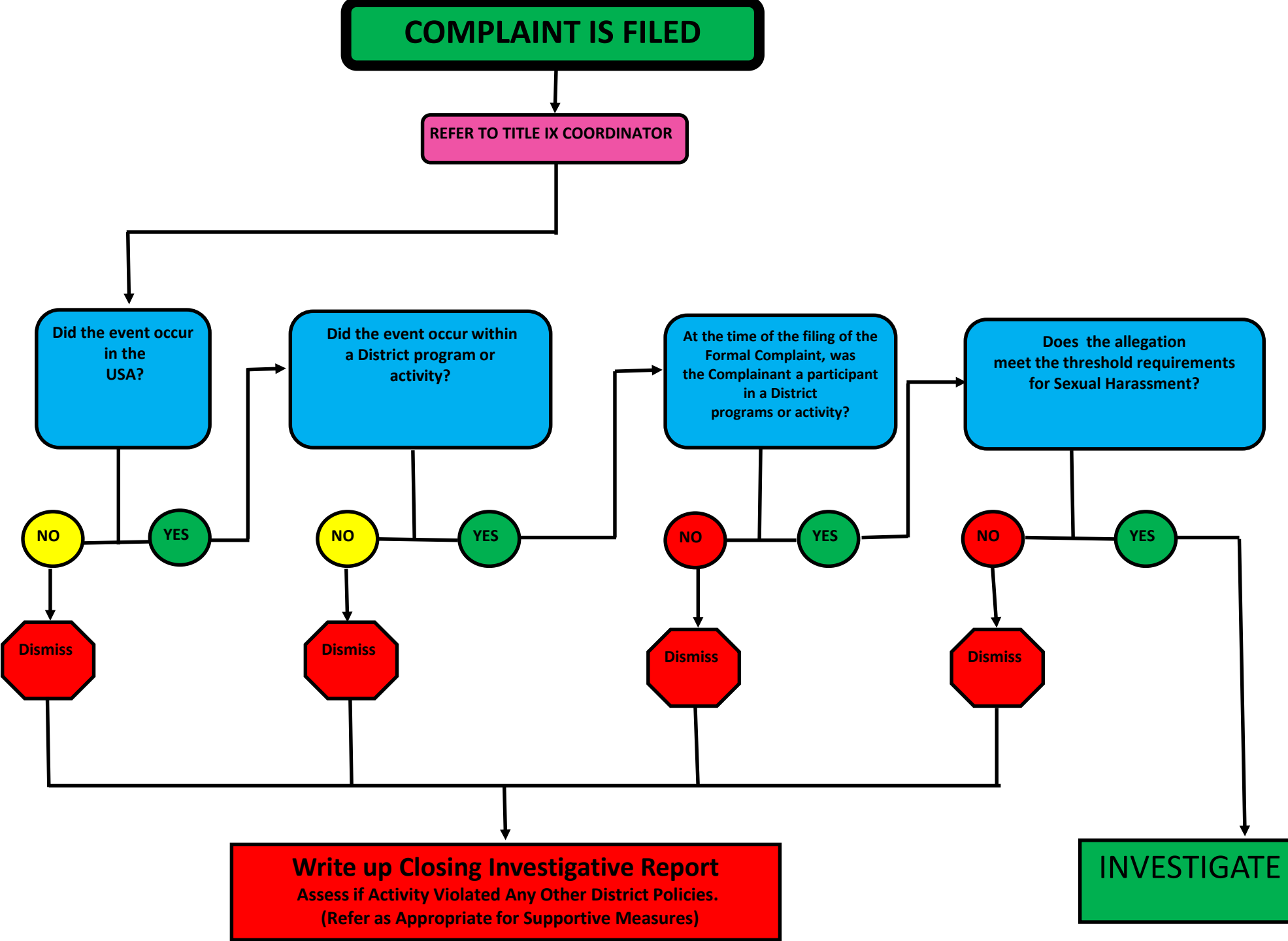
# INVESTIGATIONS

# INVESTIGATIONS MUSTS:

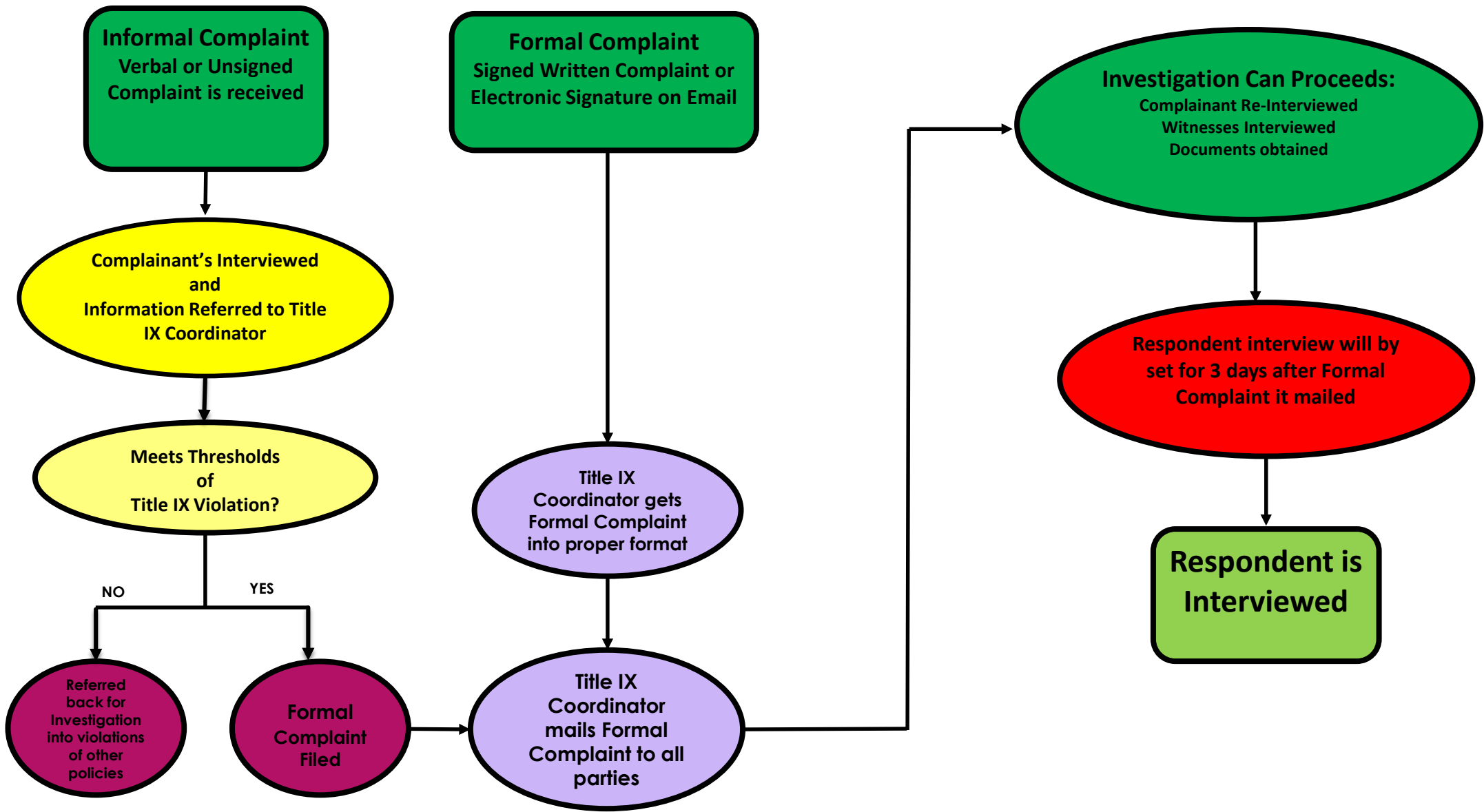
- ▶ Neutral
- ▶ Non-Judgmental
- ▶ Empathic
- ▶ Listen – Do Not Talk or Plant Ideas
- ▶ Ask Open-Ended Questions
- ▶ Moments of Silence are OK – Do Not Rush to Fill Silent Moments
- ▶ Interview both Complainant's and Respondent's Witnesses
- ▶ Re-interviewing is OK
- ▶ Document...Document...Document.
  - ▶ If it is not written down, it was not said
- ▶ If someone has an Advisor, give them a couple of days to permit the Advisor to attend
- ▶ This process will last 2-8 weeks

# GENERAL INVESTIGATION STEPS





# INITIAL INQUIRY AND FORMAL COMPLAINT



# INFORMAL RESOLUTION

- ▶ “At any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication.”
  - ▶ A Formal Complaint must have been filed
  - ▶ Voluntary for Complainant and Respondent
  - ▶ Employee in charge of discussions must be trained in Title IX processes
  - ▶ No adverse inference or harm to withdrawal from the informal resolution process...Moves back to Investigation
  - ▶ Not all attempted Informal Resolutions will be successful
  - ▶ Written invitation and resolution goes to Complainant and Respondent
- ▶ Never available when an employee is accused of sexual harassment of a student

# ADVISORS

- ▶ Respondent and Complainant can Pick Anyone They Choose
  - ▶ Lawyer
  - ▶ Friend
  - ▶ Religious Leader
  - ▶ Teacher/Administrator
  - ▶ Anyone they choose
- ▶ They each get only one
- ▶ Do not help them find an Advisor
- ▶ Do not pay an Advisor for time spent Advising – Cannot Advise on Work Time
- ▶ Parents are not counted as Advisors
- ▶ District must be notified in advance
- ▶ All communications sent to the Respondent and Complainant will also be sent to their respective Advisor

# Post Initial Investigation to Hearing

Investigator Decides  
when Investigation is  
Completed

Brief Title IX Coordinator  
of Evidence

Relevant Docs Sent to  
Complainant and  
Respondent

They are  
Given 10  
Days to  
Respond

Investigator Reviews  
Rebuttals

Follow Investigation as  
Needed

Final ROI Written & Sent  
to Title IX Coordinator for  
Mailing

They are  
Given 10  
Days to  
Prepare

ROI's Mailed to Parties &  
Hearing  
Schedule

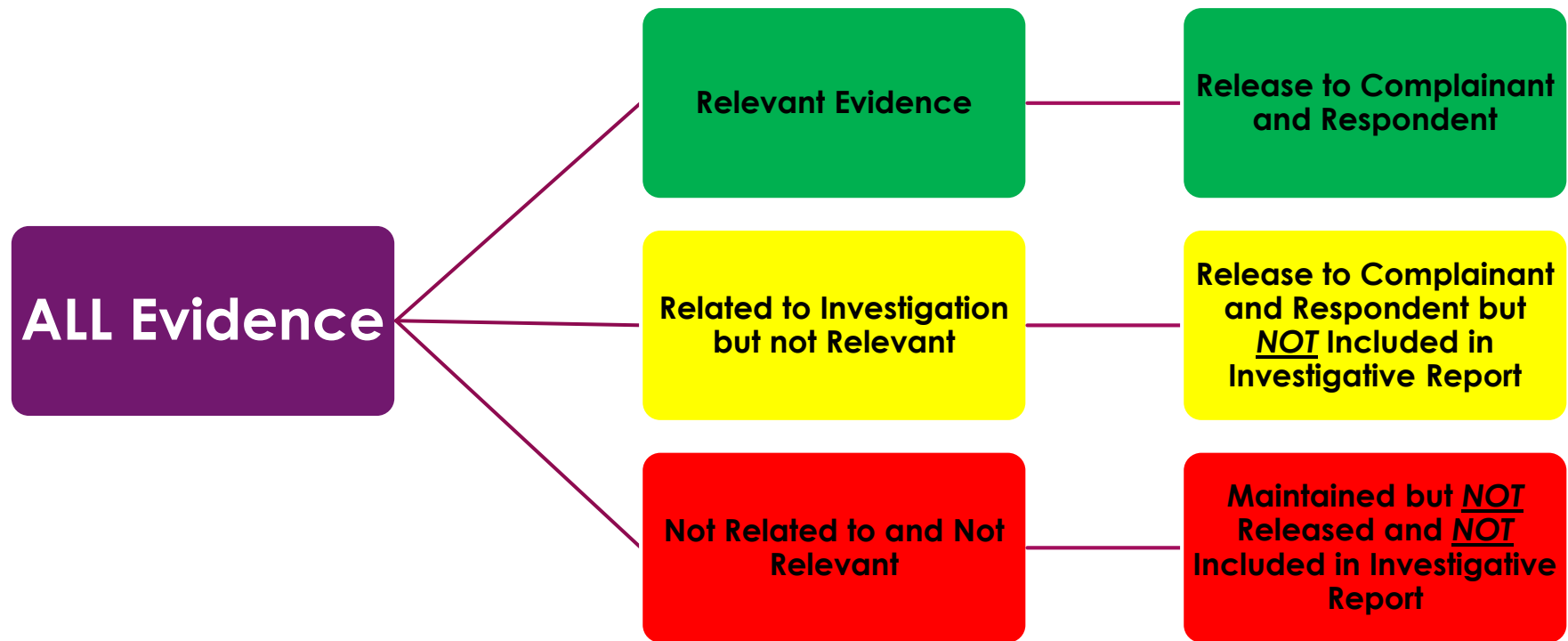
# REPORT OF INVESTIGATION

- ▶ Report of Investigation will specify:
  - ▶ Date of Report
  - ▶ Case Name (**Complainant's Name** v. **Respondent's Name**)
  - ▶ Name of Investigator
  - ▶ Parties Names
  - ▶ Location of alleged harassment
  - ▶ Date(s) of alleged harassment
  - ▶ Summary of the Complainant's allegations
  - ▶ Summary of the Respondent's rebuttal of allegations
  - ▶ The legal standard used ("Preponderance of Evidence")
  - ▶ Listing of all relevant evidence (ie: Sally Smith's witness statement; screen shot submitted by John Doe, etc.)

# REPORT OF INVESTIGATION

- ▶ **The Specific Policies violated**
  - ▶ **All relevant evidence for each violation**
    - ▶ **Sections of witnesses statements that address that allegation (supporting or not supporting the evidence)**
    - ▶ **Explanation of documentary evidence that addresses that allegation (supporting or not supporting the evidence)**
- ▶ **Any relevant evidence that could not be obtained and why (ie: Sam Smith refused to be interviewed; Fran Jones could not be located, etc.)**
- ▶ **Explanation of why someone was not interviewed (ie: The Respondent claim that John Jones could only talk about Complainant's past sexual activities)**
- ▶ **All Relevant Documents will be mailed to both Respondent, Complainant, and all Advisors (if any).**
- ▶ **There will be form letter attachments explaining privacy issues, rights to appeal, and anti-retaliation language.**
- ▶ **Any unusual events during the Investigation (ie: delays, translators, withdrawal from school)**

# RELEASE OF ALL REVELENT DOCUMENTS



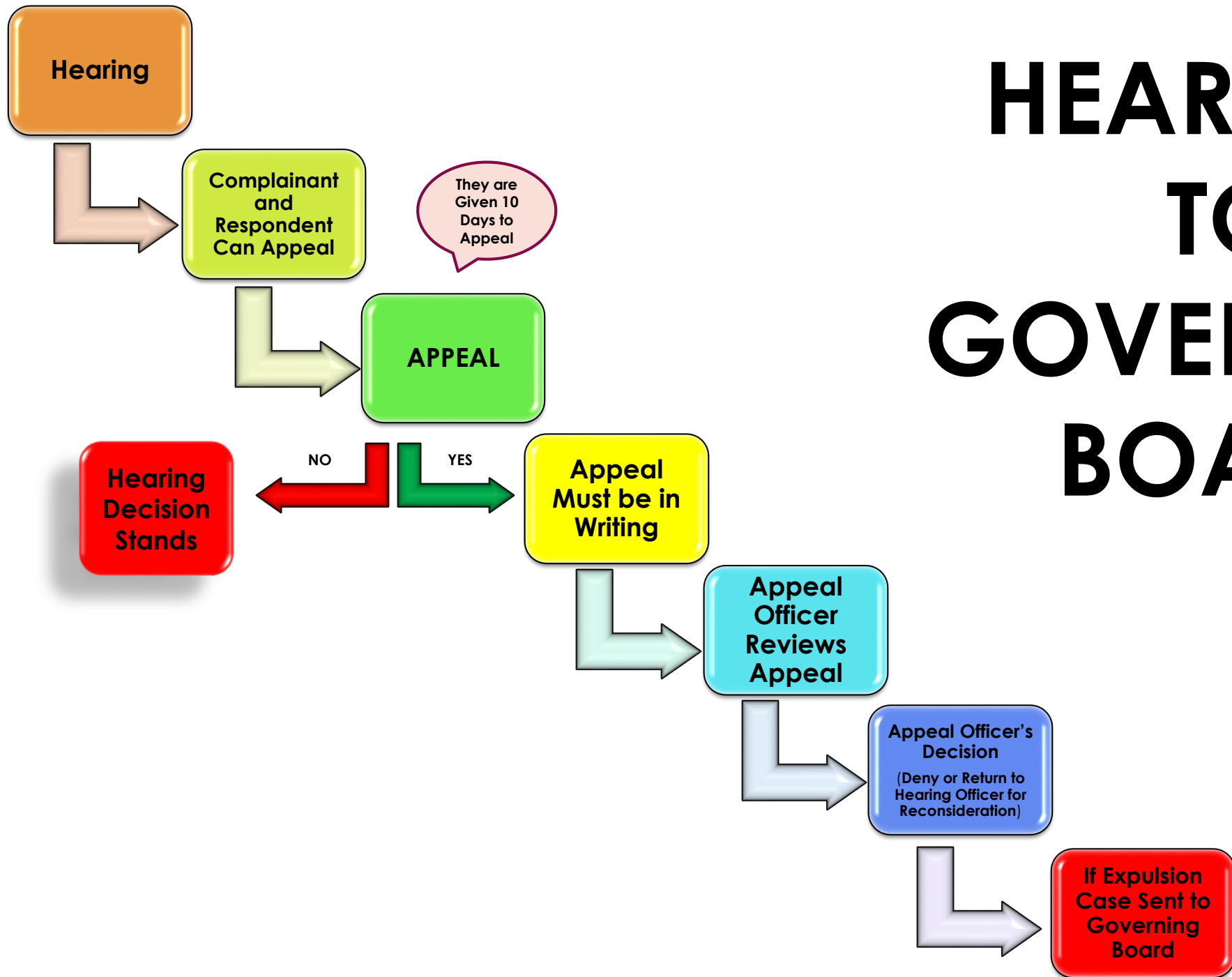
# HEARINGS

# WHO CAN BE A HEARING OFFICER

- ▶ Cannot be the Title IX Coordinator, Investigator, Appeals Officer, or District's lawyer
- ▶ Requirement for training on Title IX and Hearing processes
- ▶ Optional Additional Training Videos for Investigators and Hearing Officers at <https://sites.ed.gov/titleix/>
  - [OCR Webinar: Title IX Regulations Addressing Sexual Harassment](#)
  - [OCR Webinar on Due Process Protections under the New Title IX Regulations](#)
  - [OCR Webinar on New Title IX Protections Against Sexual Assault](#)
  - [Conducting and Adjudicating Title IX Hearings: An OCR Training Webinar](#)

# HEARINGS TO GOVERNING BOARD

50



# STEP BY STEP HEARING'S PROCESS:

- ▶ Hearing Officer will be assigned after Final Report of Investigative is sent to all parties
- ▶ Hearings must wait 10 days after parties receive the Final Report of Investigative before a hearing can occur
- ▶ Hearings are similar to what we do now for due process employee and/or student discipline hearings
  - ▶ Hearing Officer will be appointed by Title IX Coordinator
  - ▶ Hearing Officer must be impartial so that fair hearing occurs – cannot have any bias, predisposition or conflict of interest
  - ▶ Script identifying general procedures will read at beginning so all hearing processes are same
  - ▶ Hearing may be held through written interrogatory or live. It can be held virtually (everyone must be able to see and hear each other).
- ▶ Respondent does not have to appear. No adverse inference will be made if they do not attend
- ▶ Evidence is reviewed by Investigator
- ▶ Respondent, Parents/Guardians can ask questions and provide relevant information.
- ▶ Disabilities must be accommodated for those attending the hearing.

# WHAT TO EXPECT IN A LIVE HEARING

- ▶ **Limited Persons Allowed in the Hearing Room**
  - Hearing Officer
  - Complainant and Respondent
  - An attorney or other designated “Advisor” for each party
  - Investigator
  - Attorney for the District (if needed)
  - Parents of Complainant and Respondent
- ▶ **All other witnesses should remain outside of the Hearing room until they testify**
- ▶ **Hearing Officer is responsible to record the Hearing**
- ▶ **Start by explaining Hearing procedures**
  - Recipient/Investigator will present evidence first
  - Respondent presents evidence
  - Investigator/Complainant may present rebutting evidence (if requested)
  - Opening and Closing Statements are allowed
  - This is an administrative hearing so court-room rules of evidence do not apply
- **Complainant will only be asked questions that have not already been admitted as evidence.**

# RESPONSIBILITY OF THE HEARING OFFICER

- ▶ Weigh all relevant evidence, and decide whether it meets the school's standard of proof for sexual harassment allegations
- ▶ Determine the relevance of each cross-examination question before a party or witness answers, and explain any decision to exclude a question as not relevant
- ▶ After a decision has been reached, decision-makers must issue a written determination, which includes among other elements, the facts and reasons for conclusions reached in the case.

# CROSS-EXAMINATION

- ▶ Party may opt not to answer cross-examination questions. Hearing Officer cannot make any inference, positive or negative, from a party's decision not to answer a cross-examination question or to participate in a cross-examination. If this occurs, the Hearing Officer cannot consider that party's statement in its entirety as evidence.
- ▶ Complainant's past sexual history is not relevant and should not be introduced as evidence at the Hearing
  - ▶ NOTE: There are two (2) very limited exceptions to this rule:
    1. If the evidence is offered to establish that someone other than the Respondent committed the event in question, or
    2. If the evidence is about past sexual behavior between the parties and is being offered to prove consent.

# STANDARD OF PROOF

- ▶ Preponderance of Evidence is used for Title IX Complaints in this District
  - ▶ Hearing Officer must determine whether it is more likely than not that the Respondent committed the alleged sexual harassment
  - ▶ This is the same standard of proof used in the District's Student Code of Conduct

# HEARING OFFICER'S WRITTEN DETERMINATION

56

- ▶ Single document – cannot be piecemeal
- ▶ Determination must:
  - Identify allegations potentially constituting sexual harassment
  - Describe procedural steps taken since receipt of the formal complaint, including any notifications to the parties and witnesses, site visits, methods used to gather evidence, and hearings held;
  - List findings of fact supporting the determination;
  - List conclusions as to how District's policies, including the Code of Conduct, apply to those facts;
  - Provide a rationale for the result of each allegation, including:
    - Determination regarding responsibility,
    - Any disciplinary sanctions (*although the recommended discipline cannot be enforced until after the appeal deadline has expired*), and
    - Whether remedies designed to restore or provide equal access to the District's programs and activities will be provided to the Complainant, and
  - Identify the appeal procedures available to both parties
- Must be sent to parties simultaneously

# APPEALS

# WHO CAN APPEAL:

- ▶ **Respondent and Complainant**
  - ▶ Regardless of the outcome

# WHAT CAN BE APPEALED:

- ▶ Appeals are limited to the following grounds:
  - ▶ Procedural irregularity that affected the outcome of the matter;
  - ▶ New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
  - ▶ The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.
- ▶ Appeal Hearing Officer will be selected from pool by Title IX Coordinator
  - ▶ They must be different from Investigator and Hearing Officer

# How to Contact the Office of Civil Rights

**U.S. DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS  
LYNDON BAINES JOHNSON  
DEPARTMENT OF EDUCATION BLDG  
400 MARYLAND AVENUE, SW  
WASHINGTON, DC 20202-1100**

**TELEPHONE: 800-421-3481**

**FAX: 202-453-6012**

**TDD: 800-877-8339**

**EMAIL: [OCR@ED.GOV](mailto:OCR@ED.GOV)**

# THANK YOU

## DAVID RUCKER

Equity and Safety Compliance Officer  
and Title IX Coordinator

Amphitheater Public Schools  
701 W. Wetmore Road  
Tucson, AZ 85705  
(520) 699-5164

[drucker@amphi.com](mailto:drucker@amphi.com)