



Title IX

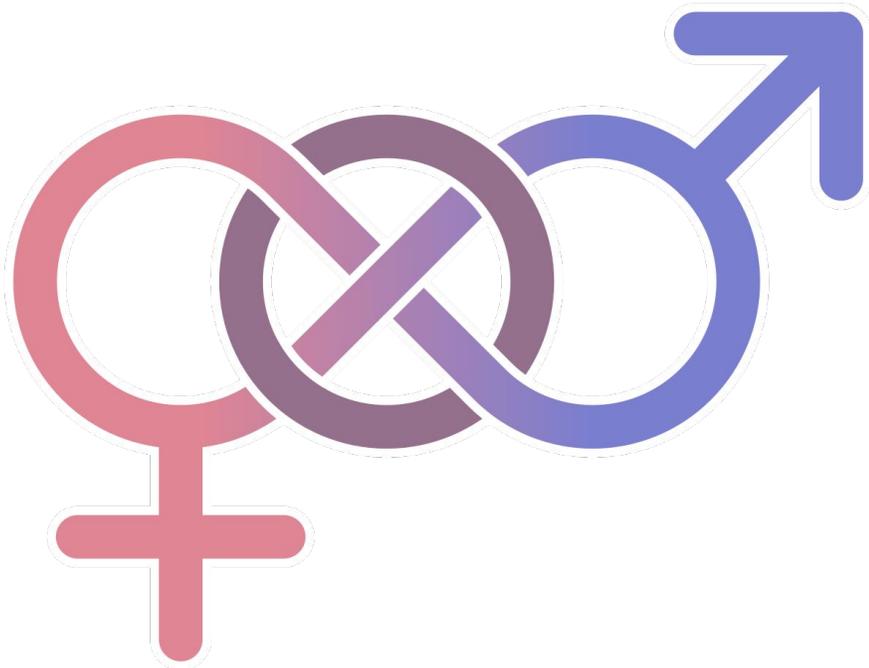
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TITLE IX OVERVIEW

Prohibits Discrimination Based on Sex in ALL school activities



- Treating one sex differently than another (applies to both male and female, **sexual orientation and transgender status**)

or

- **Sexual Harassment**

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DEFINITION OF SEXUAL HARASSMENT

- Quid Pro Quo by an employee
- Any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access;
- Sexual assault – as defined by Clery Act
- Dating violence, domestic violence or stalking as defined in the Violence Against Women Act

Quid Pro Quo

- **Conditioning - good grades, position on a sports team or other benefits on sexual favors. Younger students...tangible items, attention**
- **Involves individuals in unequal positions of power**
 - **Principal/teacher**
 - **Teacher/student**

Severe, Pervasive and Objectively Offensive

An environment where the harassment is so severe, pervasive and objectively offensive that it denies or limits a student's ability to participate in or benefit from the school's program based on sex

- Degree to which conduct affected one or more students
- Type, frequency, and duration of the conduct
- Relationship between harasser and subject of harassment
- Age and sex of the alleged harasser and subject
- Other incidents at school

Sexual Assault

Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Dating Violence, Domestic Violence, Stalking

RULE CHANGES THAT IMPACT ADMINISTRATORS AND STAFF

- **ALL K-12 EMPLOYEES ARE MANDATORY REPORTERS FOR TITLE IX PURPOSES!!!**
- **Will often receive reports first in discipline context, but **NEW RULES PROHIBIT DISCIPLINE OF ACCUSED PRIOR TO FINDING OF RESPONSIBILITY BY TITLE IX OFFICER****
 - School Principal/AP should still conduct investigation and then contact Title IX Coordinator *before imposing discipline*
- **Not every type of harassment rises to the level of Title IX**
- **If you suspect or receive a report, refer it to Title IX Coordinator**
- **Key is how school responds**

Standard 2: Conduct with Students

An educator shall always maintain a professional relationship with all students, both in and outside the classroom. Unethical conduct includes but is not limited to:

1. committing any act of child abuse, including physical and verbal abuse;
2. committing any act of cruelty to children or any act of child endangerment;
3. committing any sexual act with a student or soliciting such from a student;
4. engaging in or permitting harassment of or misconduct toward a student that would violate a state or federal law;
5. soliciting, encouraging, or consummating an inappropriate written, verbal, electronic, or physical relationship with a student;
6. furnishing tobacco, alcohol, or illegal/unauthorized drugs to any student; or
7. failing to prevent the use of alcohol or illegal or unauthorized drugs by students under the educator's supervision (including but not limited to at the educator's residence or any other private setting).

Standard 8: Required Reports

An educator shall file reports of a breach of *one or more of the standards in the Code of Ethics for Educators*, child abuse (O.C.G.A. §19-7-5), **or any other required report**. Unethical conduct includes but is not limited to:

1. failure to report all requested information on documents required by the Commission when applying for or renewing any certificate with the Commission;
2. failure to make a required report of a violation of one or more standards of the Code of Ethics for educators of which they have personal knowledge as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner; and
3. failure to make a required report of **any violation of state or federal law** as soon as possible but no later than ninety (90) days from the date the educator became aware of an alleged breach unless the law or local procedures require reporting sooner. These reports include *but are not limited to*: murder, voluntary manslaughter, aggravated assault, aggravated battery, kidnapping, any sexual offense, any sexual exploitation of a minor, any offense involving a controlled substance and any abuse of a child if an educator has reasonable cause to believe that a child has been abused.

HOW MUST THE DISTRICT RESPOND?

School must respond **promptly** and in a manner that is **not deliberately indifferent**, which means that is not clearly unreasonable in light of the known circumstances.

At a minimum, that requires:

Report to Title IX Coordinator

Title IX Coordinator must reach out to alleged victim to offer and discuss supportive measures (counseling, extensions of deadlines or other course-related adjustments, modifications of class schedules, campus escort services, mutual restrictions on contact between parties, leaves of absence, increased security and monitoring of areas of campus)

***** These must be free of charge and non-disciplinary**

***Supportive/ Interim measures available *with or without* filing formal complaint**

**Explain to victim process for how to
file a formal complaint**

Filing of Formal Complaint Triggers Investigation Obligations

IMPACT ON THE DISCIPLINE PROCESS

- *Under new rules, schools cannot discipline students before a determination of responsibility is made!*
- Respondent (accused) cannot be placed on interim suspension, moved to a different class, etc. **UNLESS** the school conducts an *individualized safety and risk analysis and determines that there is an imminent threat to the physical health or safety to students or employees.*
- Rationale for change is to provide fairness to both sides – in the past, students could be removed from school before a determination is ever made as to the validity of the Title IX claim

DO NOTHING in response to a report of sexual harassment

Davis v. Monroe County (U.S. Supreme Court)

- student-on-student harassment
- Over the course of 5 months, male student attempted to touch female student's breasts and genital areas and made vulgar statements.
- Female student reported after each incident, but no action taken and student never disciplined.
- Other girls reported similar incidents, but no action taken.
- COURT concluded she stated a Title IX claim *due to severity, prolonged period of time it went on, and failure to respond*

FAIL TO TAKE CORRECTIVE/DISCIPLINARY ACTION after investigation

Doe v. Broward County – (11th Circuit)

- Teacher-on-student harassment
- 3 incidents of harassment alleged against same teacher over the course of 3 years.
- 1st student complaint, student alleged teacher told her she was “beautiful, sexy and had a flat stomach,” and gave her his phone number and said he wanted to “do business” with her. Later, he conditioned a better grade in his class on her “doing business” with him.
- School did a formal investigation, but the evidence was “inconclusive,” so school took no corrective action, not even a verbal admonishment
- 2nd student alleged same teacher asked her to pull up her shirt to show him her stomach, said her lips look soft, and her hands feel soft and he tried to touch her leg. Informal investigation conducted, but again concluded the evidence did not support the investigation and no formal investigation was necessary.
- 3rd student alleged sexual assault
- COURT – found that while failure to act after 1st incident may not have been clearly unreasonable based on information gathered in that investigation, when district failed to act after the SECOND complaint, “in light of the known circumstances”, i.e., the first incident, plaintiff could show deliberate indifference.

- **KEY** in that case was that even though the investigations were inconclusive, the school did not even monitor the teacher or admonish him to be more careful about his interactions with female students after the second incident, thereby allowing the third incident to occur.

FAIL TO CONSIDER PRIOR INSTANCES OF SIMILAR CONDUCT

- **by same student**
- **a pattern of incidents in a particular school**
- **KEY:** system of tracking sexual misconduct to identify patterns

Williams v. Bd. of Regents of University System of GA (UGA)
(11th Cir.)

- Female student raped in male dorm by three males
- Ringleader had been recruited by UGA's athletic department, despite the coach and Athletic Director's actual knowledge of the male student's past sexual misconduct at several other schools
- Despite this knowledge, did not monitor the male student
- Never informed athletes of the sexual harassment policy
- Waited 8 months to conduct disciplinary hearing
- Female student ultimately withdrew from school

FAIL TO TAKE REMEDIAL ACTION TO PREVENT FUTURE HARASSMENT

After a report of harassment is found to be valid:

- Training of students on sexual harassment
- Training of staff on sexual harassment and reporting
- Schedule changes to prevent contact between victim and harasser
- Monitoring of areas of the building
- Monitoring of harasser or restricted access to school

FAIL TO TAKE STEPS AFTER LEARNING ITS REMEDIAL ACTIONS WERE NOT EFFECTIVE

- ***Doe v. Broward County*** - “Although we have recognized that a school district is not deliberately indifferent simply because the measures it takes are not ultimately ineffective in stopping the harassment, where a school has knowledge that its remedial action is inadequate and ineffective, it is required to take reasonable action in light of those circumstances to eliminate the behavior.”

FAIL TO PROVIDE SUPPORTIVE MEASURES

Defined as “individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.”

- Counseling for victim or harasser
- Schedule changes for one or both students
- Excused absences or leaves of absences
- Extensions of time on assignments

DISTRICT'S ACTIONS WERE NOT “CLEARLY UNREASONABLE”

Fitzgerald v. Barnstable

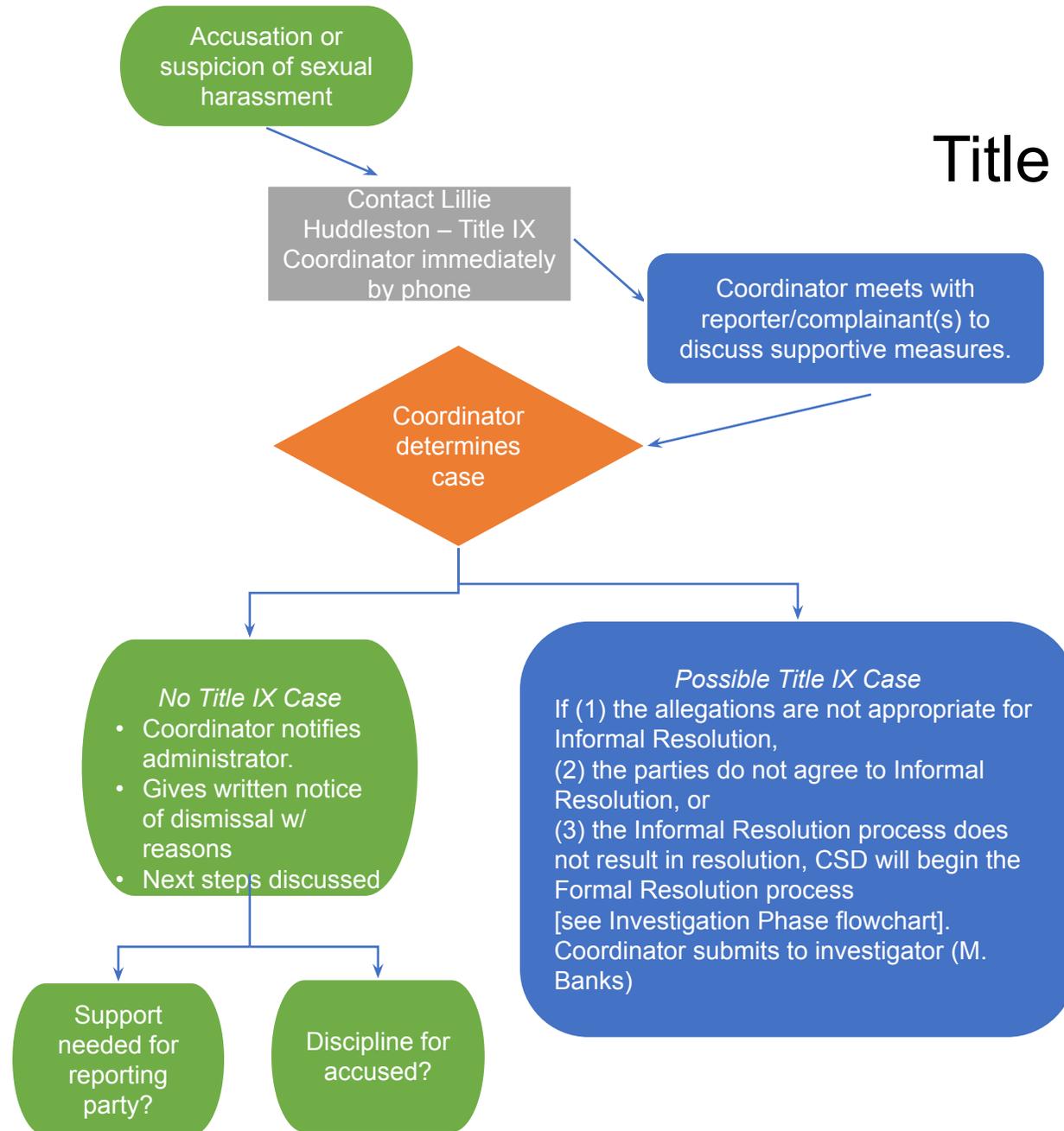
- K5 girl bullied on bus by older male student who asked her to pull her panties down and lift up her dress several times.
- After each incident, the girl told her parents who reported it to the school principal.
- After each incident, the principal investigated, but was unable to corroborate her allegations through the bus driver or any other student
- School and criminal investigation against the male found insufficient evidence to proceed
- School offered to place female student on a different bus, but her parents refused, insisting that boy be removed from the bus. Parents also wanted a monitor placed on the bus, but school said no.

- COURT – concluded the school's response was NOT clearly unreasonable. Merely because it did not give the parents the remedy they sought did not create deliberate indifference.
- Courts do not second guess administrator's disciplinary consequences.
- School promptly responded and investigated after each incident and offered a remedy to the parents to prevent any contact between the students, even though evidence did not support the allegations.
- **KEY: School responded and investigated after each incident and offered supportive measures.**

CSD Title IX Process

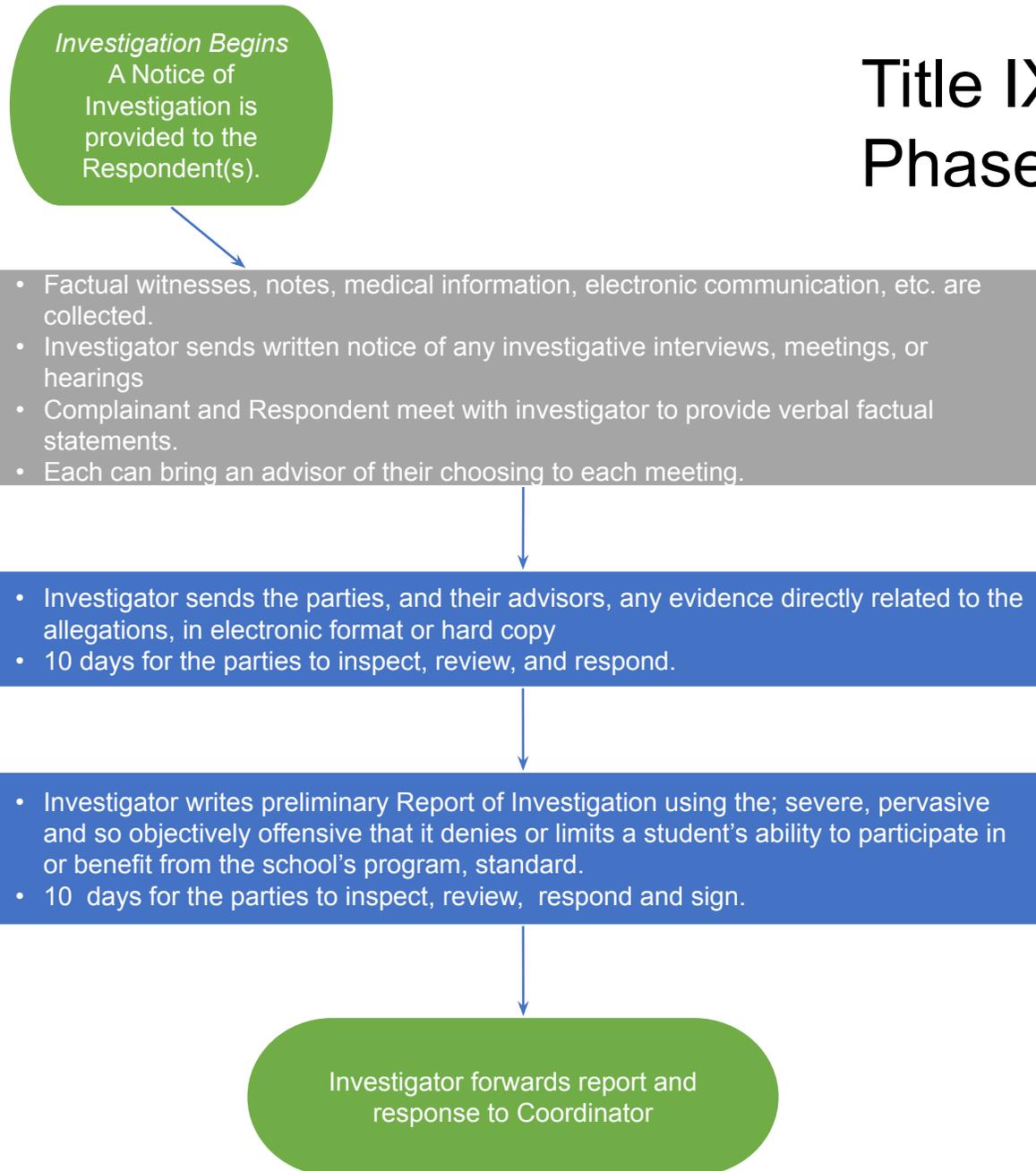


Title IX: Initial Phase



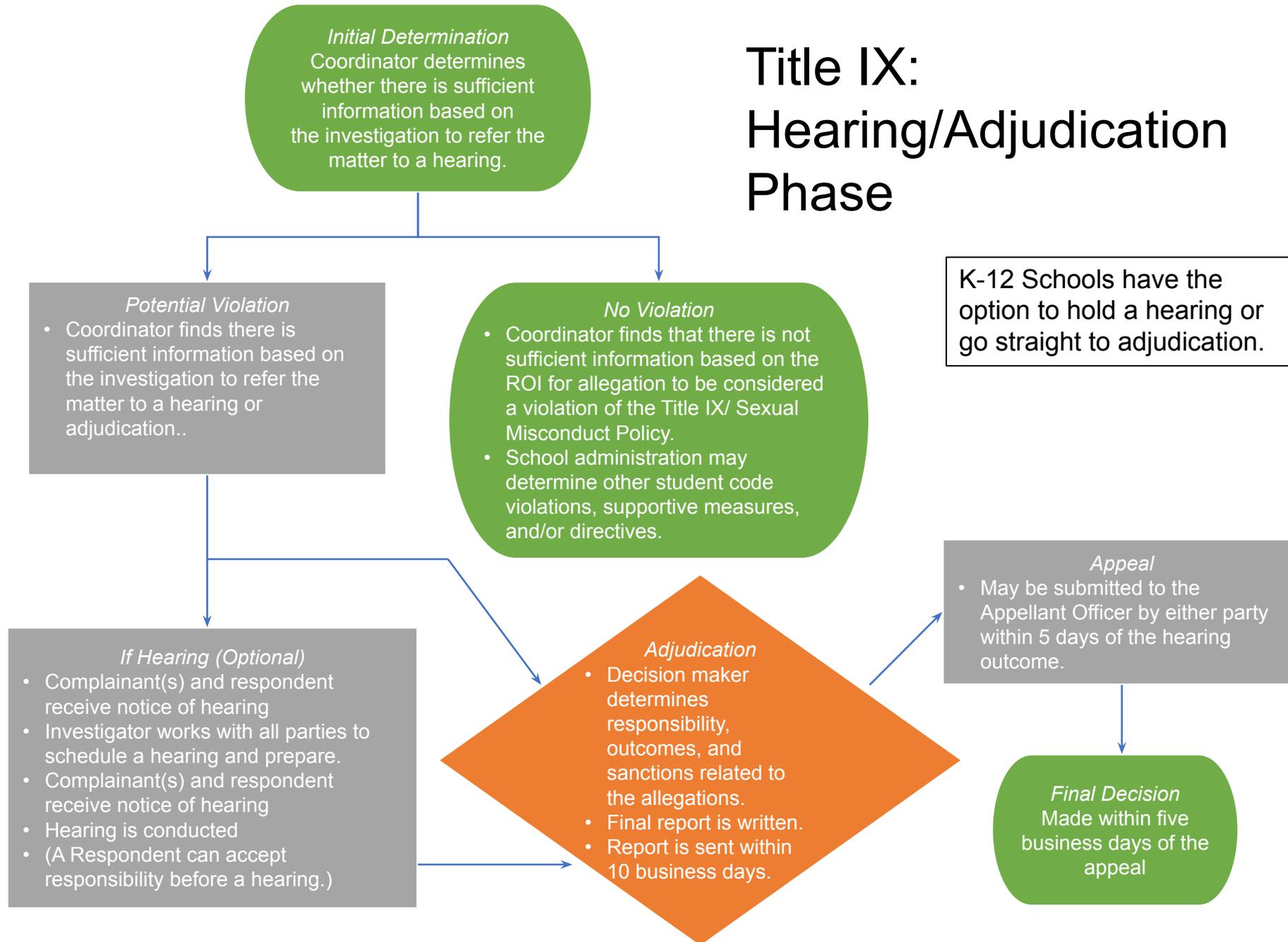
- Do not discipline accused student until you hear from coordinator.
- If Title IX is possible, unless imminent threat, you may not discipline the accused until conclusion of case (finding of responsibility).
- You may, however, remove a reporting party from a harmful situation.

Title IX: Investigation Phase



• Schools must not restrict the ability of the parties to discuss the allegations or gather evidence (e.g., no “gag orders”).

Title IX: Hearing/Adjudication Phase



Updated guidance proposed

LOADING 2022



Questions

