

Chadron State College

Title IX Training:

An Integrated and Coordinated Approach

Leslie M. Gomez, Vice Chair, Institutional Response Group

Cara Sawyer, Counsel

Michael J. Stackow, Counsel

The Institutional Response Group | Cozen O'Connor

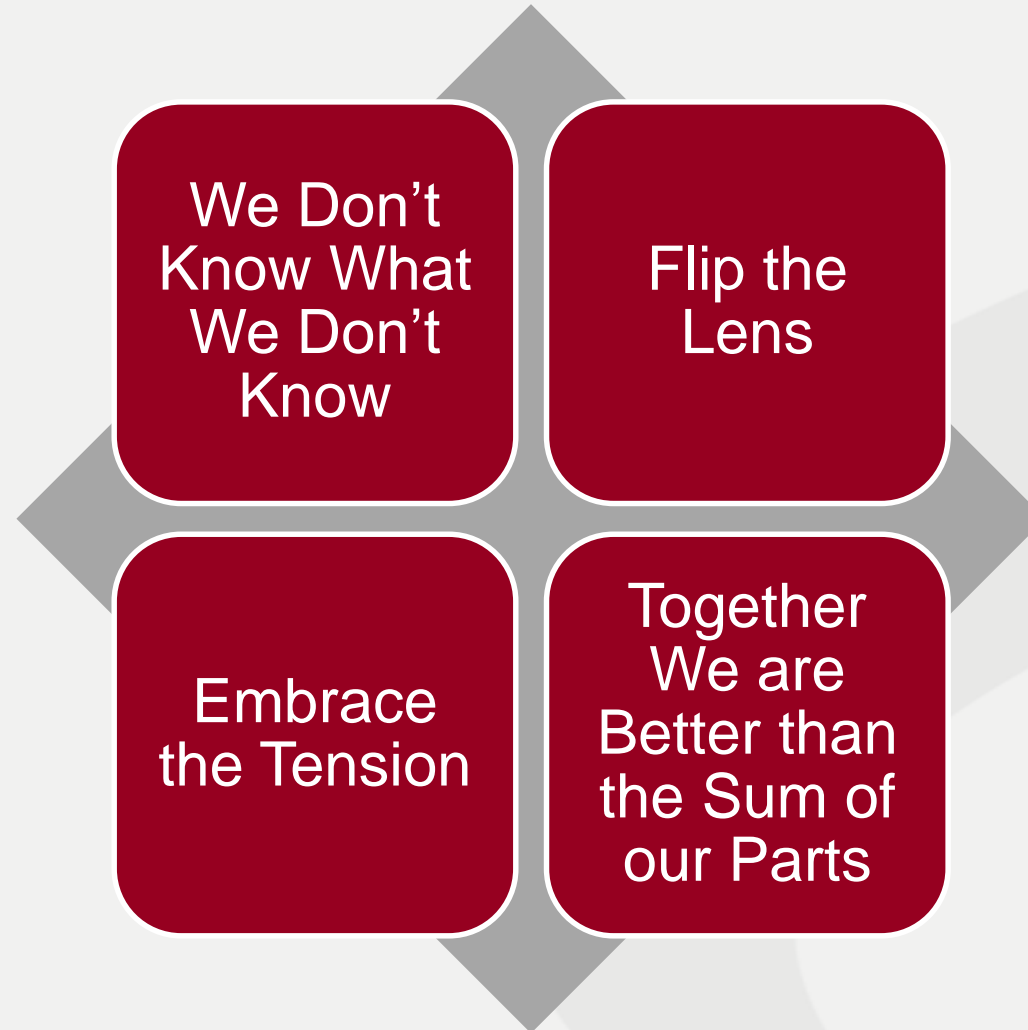
Gina Maisto Smith, Chair

Leslie M. Gomez, Vice Chair

August 4, 2021

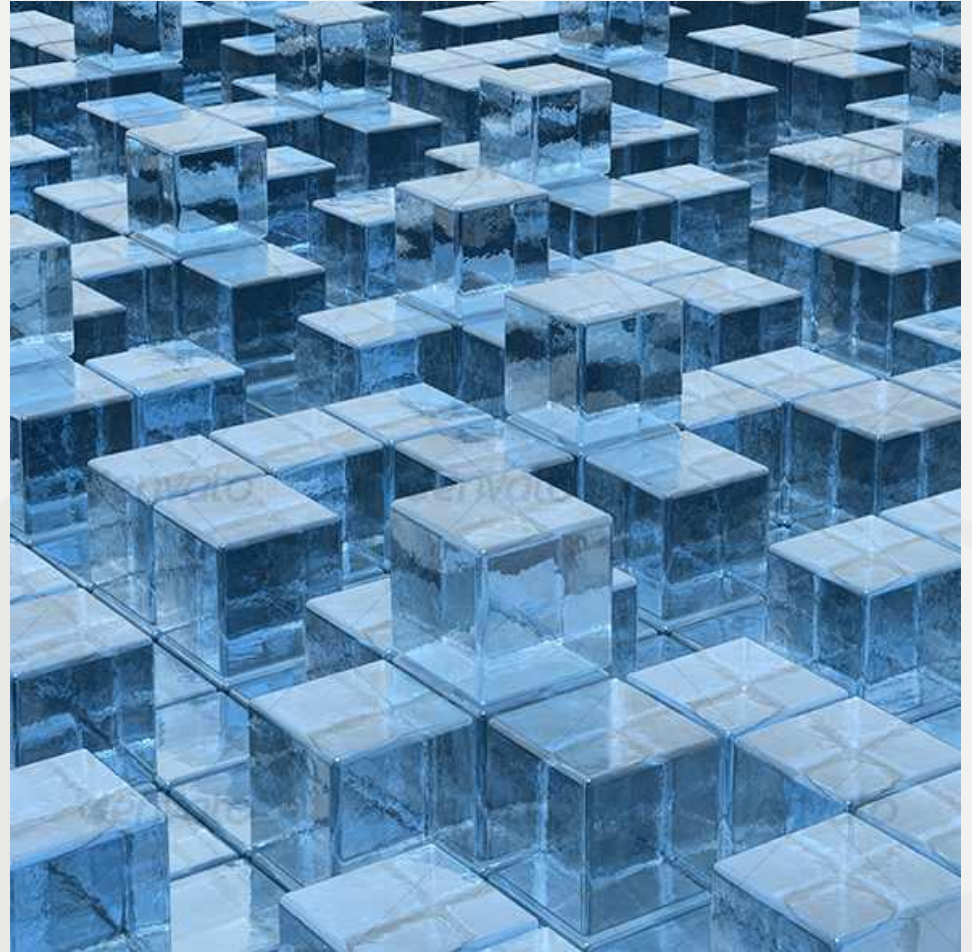


Framing the Conversation

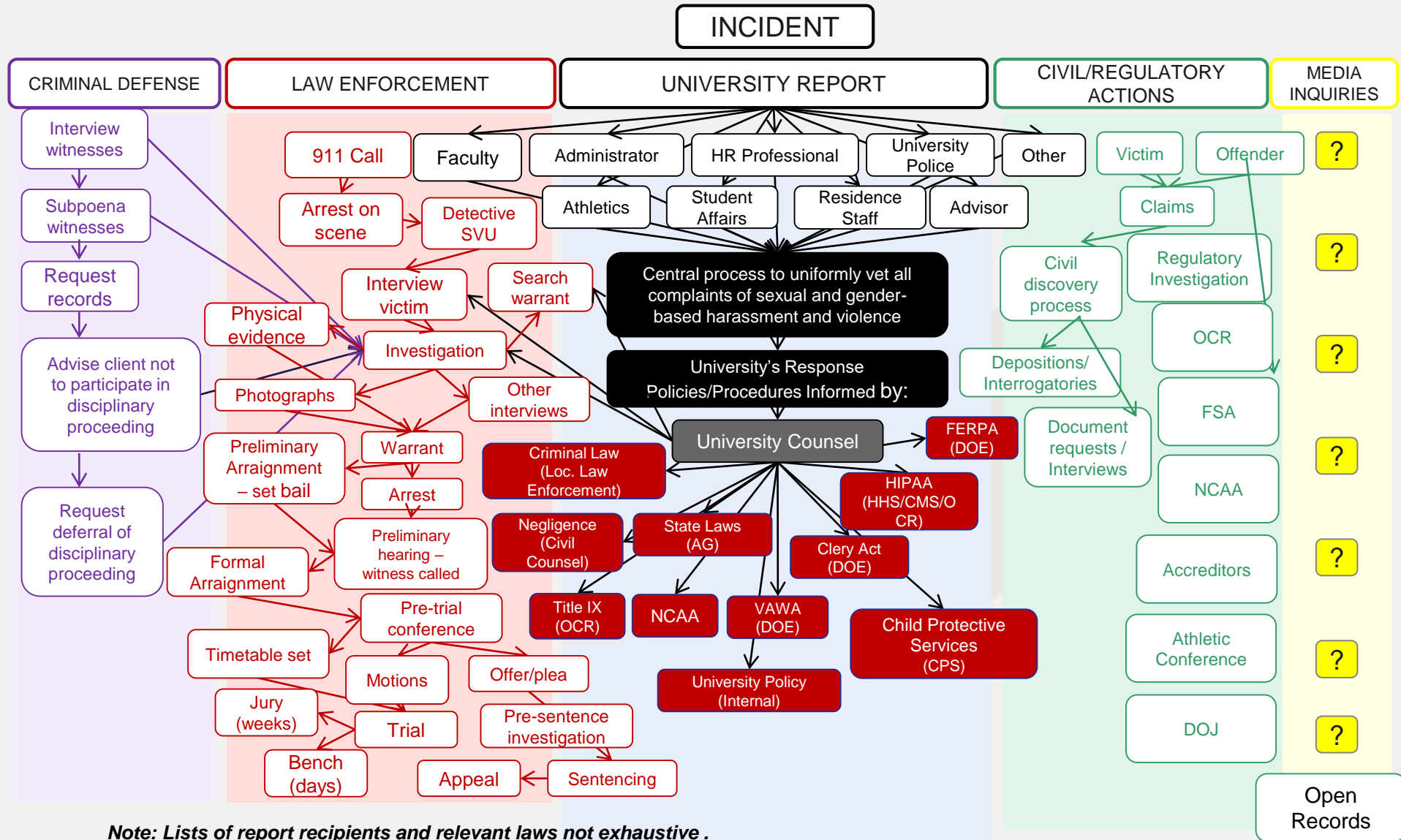


The Context

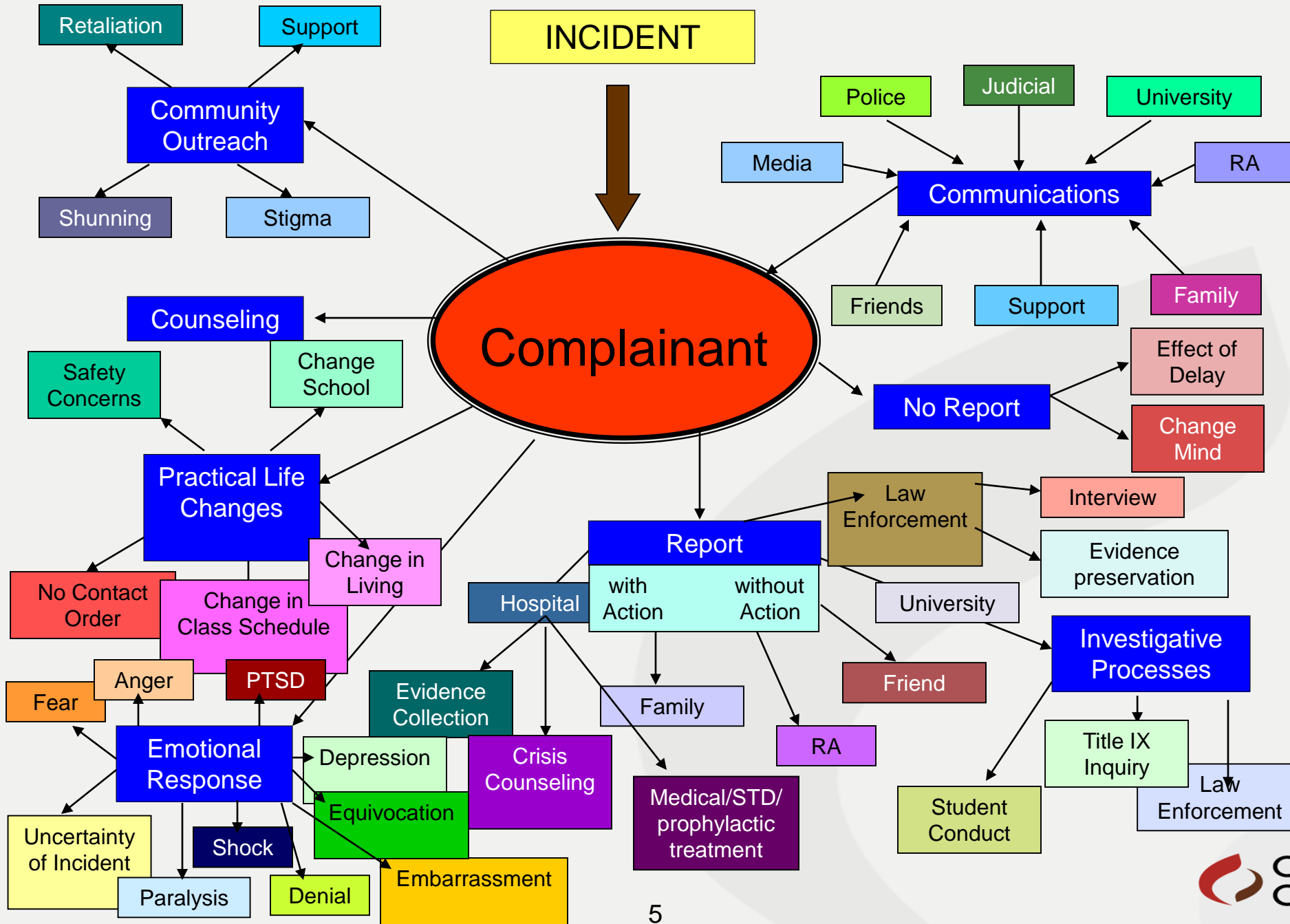
- Regulatory Framework
- Dynamics of Trauma & Sexual and Gender-Based Harassment and Violence
- Individual Culture, Climate, History, Resources, Policies, Procedures, Personnel and Values of the Institution

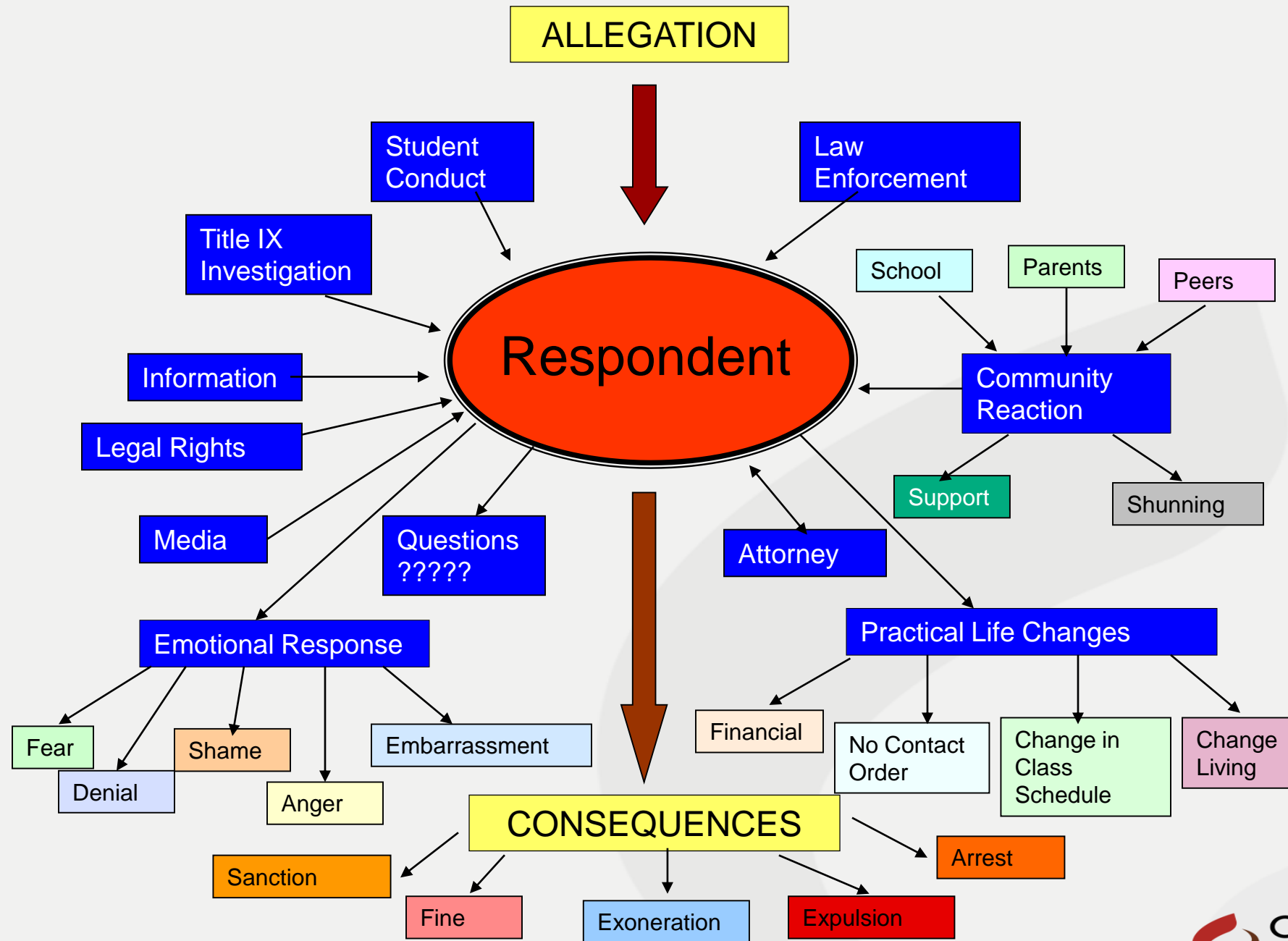


The Challenge of the Context

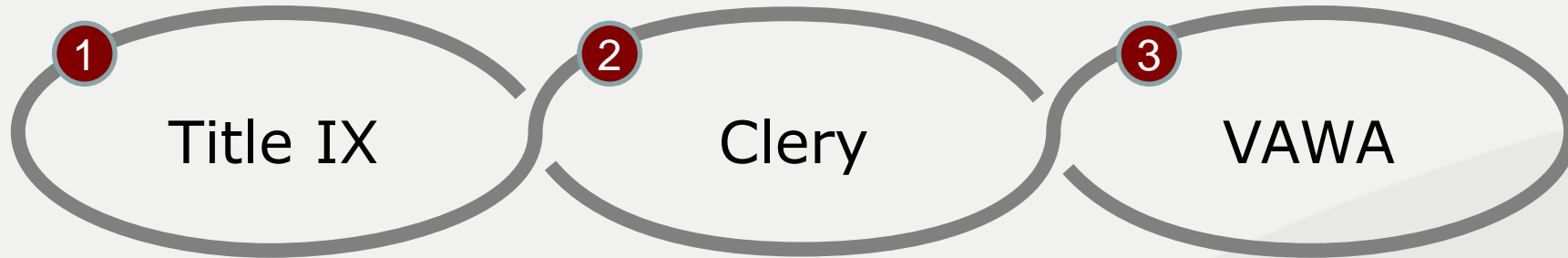


Note: Lists of report recipients and relevant laws not exhaustive.





Federal Regulatory Framework



Title IX of the Education Amendments of 1972

- Prohibits sex discrimination in educational institutions that receive federal funds

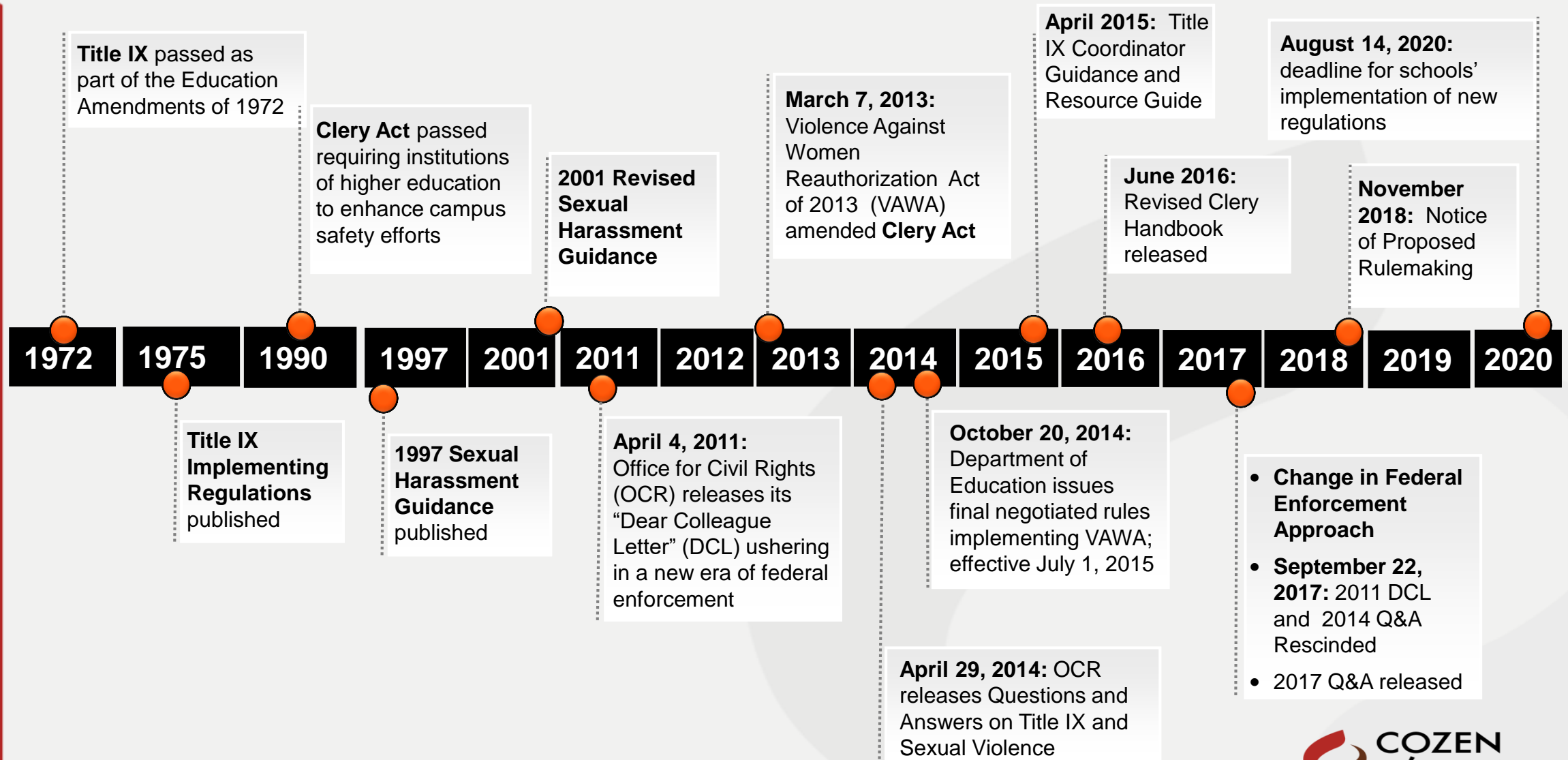
The Jeanne Clery Act (1990)

- Requires reporting of crimes, timely warnings, education/prevention programs, and policies and procedures for sexual assault

The Violence Against Women Reauthorization Act of 2013

- Amends Clery to expand sexual assault requirements and include dating violence, domestic violence, and stalking; applies to all students and employees

Evolution of Federal Legislation and Guidance



Today's Agenda

- Dynamics of intimate partner violence
- Federal regulations and Chadron State College policies
- Effective responses to reports of intimate partner violence
- **Lunch at 12:30 p.m.** (30 minutes)
- Effective responses to reports of intimate partner violence (continued)
- Effective practices in investigations of reports of intimate partner violence
- Hearings in intimate partner violence cases
- Informal resolutions in intimate partner violence cases
- **Conclude by 4:30 p.m.**

- ***We will take occasional breaks throughout the day.***

Questions???

- Please ask questions
 - Raise hand feature
 - Chat
 - Shout it out
 - Email us:
 - csawyer@cozen.com
 - mstackow@cozen.com



DYNAMICS OF INTIMATE PARTNER VIOLENCE

Intimate Partner Violence



Intimate Partner Violence

- Power, control, and authority
 - Anger
 - Threats
 - Social Status
 - Blame
 - Peer Pressure
 - Sexual Coercion
 - Isolation
 - Intimidation

Intimate Partner Violence

- Intimate partner violence (IPV) is often referred to as dating violence, domestic violence, or relationship violence
- IPV includes any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic, or other intimate relationship with the respondent
- It may involve one act or an ongoing pattern of behavior
- IPV may take the form of threats, assault, property damage, stalking, violence, or threat of violence to one's self, one's sexual or romantic partner, family members, or friends

Caveat About Statistics

- Statistics vary greatly in reliability and accuracy.
- For every statistic, there is an exception to the rule.
- While useful for cataloging what we know about human behavior, statistics should never be a substitute for good independent judgment and careful attention to the facts.
- Many statistical analyses are available regarding sexual assault. Any use or reference to statistics is meant to provide information about prevalence and context, not provide an exhaustive list of available research.

Statistics (and their limits)

- Examples of common sources of statistics on sexual and gender-based harassment and violence:
 - [National Intimate Partner and Sexual Violence Survey](#) (ongoing survey by the Centers for Disease Control and Prevention; full reports published in 2010, 2011, and 2015)
 - [American Association of Universities \(AAU\) Climate Survey on Sexual Assault and Sexual Misconduct](#) (2015 survey commissioned by the AAU and conducted by Westat)
- Limitations:
 - Context matters
 - Research methodologies differ
- **Key takeaway:** each individual case must be evaluated on its facts. We cannot punt to statistics for decision-making.

Intimate Partner Violence

- 25% of all women and 8% of all men have been victims of IPV
- 64% of violent acts against women (rape, physical assault, and stalking) were perpetrated by an intimate partner
- Women between ages 16 and 24 experience the highest rate of IPV
- 32% of college students are victims of IPV
- 1/3 of college students report physically assaulting a dating partner in previous 12 months

NVAW Survey, 2000

Local IPV Stats

- 33.7% of Nebraska women and 28% of Nebraska men experience intimate partner physical violence, intimate partner sexual violence and/or intimate partner stalking in their lifetimes. (CDC: The National Intimate Partner and Sexual Violence Survey:2010-2012 State Report)

Local IPV Stats



N = No Reports Submitted	Year	Aggravated Domestic Assaults Reported	Aggravated Domestic Assaults Cleared by Arrest or Exceptional Means	Simple Domestic Assaults Reported	Simple Domestic Assaults Cleared by Arrest or Exceptional Means
Dawes County	2017	3	2	16	11
Dawes County S.O.	2020	0	0	3	3
	2019	0	0	1	0
	2018	0	0	0	0
	2017	0	0	1	1
Chadron P.D.	2020	2	2	23	13
	2019	0	0	20	15
	2018	0	0	21	16
	2017	3	2	15	10
State Patrol	2020	0	0	0	0
	2019	0	0	0	0
	2018	0	0	0	0
	2017	0	0	0	0

Prevalence in the LGBTQ Community

- Lesbians and gay men reported intimate partner violence and sexual violence over their lifetimes at levels equal to or higher than those of heterosexual individuals
- Bisexual women (61.1%) report a higher prevalence of rape, physical violence, and/or stalking by an intimate partner compared to both lesbian (43.8%) and heterosexual women (35%)
- Of the bisexual women who experienced intimate partner violence, approximately 90% reported having only male perpetrators, while two-thirds of lesbians reported having only female perpetrators of intimate partner violence

National Intimate Partner and Sexual Violence Survey, Centers for Disease Control and Prevention, Jan. 25, 2013

Stalking

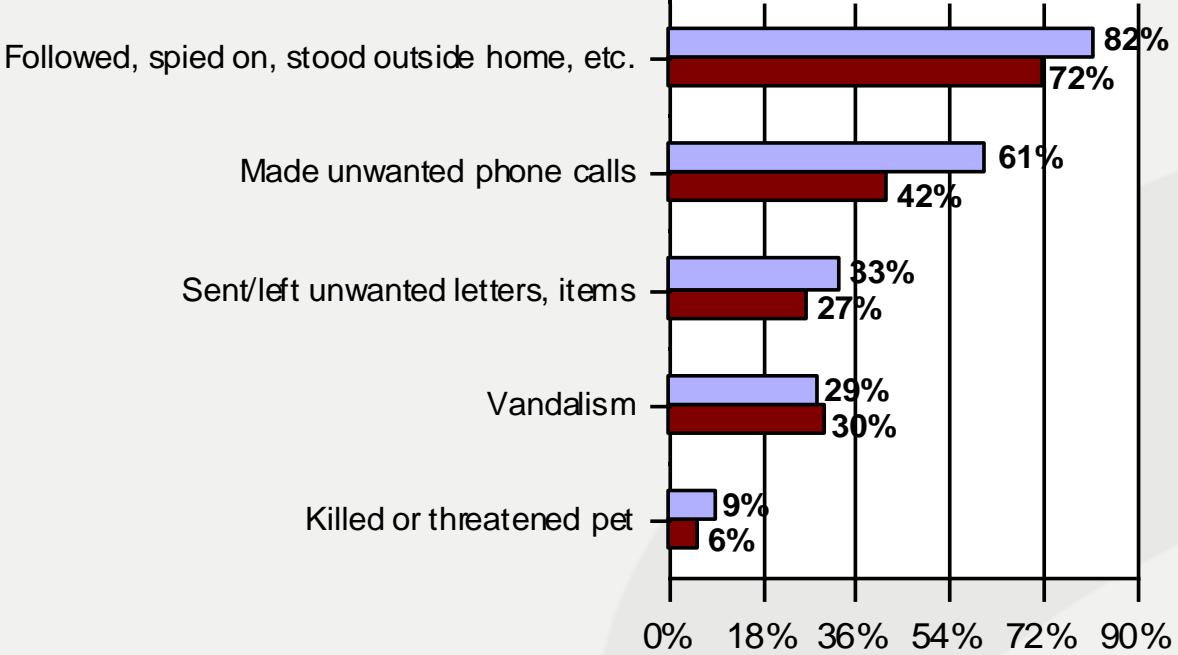
- Between 1 in 6 women and 1 in 19 men have experienced stalking victimization at some point during their lifetime
- 66% of female and 41% of male victims are stalked by a current or former intimate partner
- More than 1/2 of female and 1/3 of male stalking victims indicated that they were stalked before the age of 25
- About 1 in 5 female and 1 in 14 male victims experienced stalking between the ages of 11 and 17

Michele C. Black et al., *The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report* (National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 2011)

Intimate Partner Violence: Stalking

Stalking Behaviors

Percentage of cases



Female Victims (N=625)
Male Victims (N=168)

Case Evaluation

- Nature of sexual and gender-based harassment and violence
 - Delay in reporting
 - Barriers to reporting and proceeding with formal action
 - Reluctance to report to law enforcement
 - Word-against-word credibility
 - Often involve the use of alcohol or other drugs
 - Often involve people who are known to one another
- Evaluate in the context of all available information

Potential Effects of Trauma

- APA DSM-5 defines “trauma” as: “Exposure to actual or threatened death, serious injury, or sexual violence in one (or more) of the following ways: directly experiencing the traumatic event(s)”
- During a traumatic event, the brain may detect a threat to survival
- The body may respond to this threat by producing hormones that can affect a person’s reaction to the event, during and after
- It may also affect a person’s ability:
 - To remember details (some details may be recalled in great detail, others details not - central versus peripheral)
 - To recount incident (memory of sexual assault may be fragmented and impaired)
 - To provide a chronological account
- **Key Takeaway:** Just as it is improper to cede decision making to statistics, it is improper to base a finding of responsibility on whether the Complainant appears to exhibit effects of trauma.

Key Takeaways

- Individuals respond to trauma differently. Our role is never to conclude that a person has or has not experienced trauma.
- We learn about the potential impacts of trauma so that we avoid improper prejudgments about a person or the information they share.
- Just as it is improper to cede decision making to statistics, it is improper to base a finding of responsibility on whether the Complainant appears to exhibit effects of trauma.
- While we do not typically think of Respondents experiencing potential neurobiological impacts of trauma, they may experience stressors that impact the way they present themselves and how they share information. We should avoid improper prejudgments about all people and the information they share.
- Again, each individual case must be evaluated on its facts.

Reactive Coping Mechanisms

- Understand that each individual will react in a unique manner
- While many responses fall within an expected range of response, any response must be evaluated in the context of the individual's context, circumstances, coping mechanisms, and available resources and supports

Reactive Coping Mechanisms

- Limited or no verbal or physical resistance offered
 - Paralyzing fear or terror
 - Disbelief/denial/disassociation
 - Belief that it escalate the offender's actions
- Displaying “non-victim like” behavior after the event
 - Shock/disbelief
 - Rush to normalization
 - Fear of offender reaction

Reactive Coping Mechanisms

- Questioning of event and actions
 - I should/shouldn't have
 - Why did/didn't I
- Effect of complainant's own misconceptions
 - I was drinking
 - I consented to some of the acts
 - I put myself in that position
 - Not enough force/no weapon used
 - Not a stranger
 - I have been abused before – it must just be me

Disclosure

- A process where an individual reveals abuse or assault
- Often significant delays in reporting
- Circumstances of disclosure:
 - Accidental
 - Purposeful
 - Contextual
- On-going, not a one time event
- Stages of disclosure:
 - Denial
 - Tentative
 - Active
 - Recantation
 - Reaffirmation

The Role of Corroboration

- The word of a complainant need not be corroborated, if it is believed by the fact-finder by a preponderance of the evidence (most states have a statute or case law supporting this proposition)
- Complainant's word alone may be sufficient to sustain burden of proof
- The law recognizes the nature of sexual offense
 - Behind closed doors
 - No witnesses
 - No physical evidence

IPV/Victim Resources

- The DOVES Program (24/7 Hotline, Safety Planning and Advocacy, Shelter)
 - 308-436-HELP; 866-95 DOVES
 - 515-599-6620 (Text Line)
- Nebraska Coalition to End Domestic and Sexual Violence nebraskacoalition.org (Resources, Safety Planning and Advocacy)
- National Suicide Prevention Lifeline: 1-800-273-8255
 - Chat Option: suicidepreventionlifeline.org

FEDERAL REGULATIONS AND CHADRON STATE COLLEGE POLICIES

Title IX: August 2020 Regulations

- **May 6, 2020:** New Regulations issued
 - 2033 page document
 - Includes: a preamble, executive summary, overview of public comments, discussion of directed questions, regulatory impact analysis as well as the regulations themselves
- **August 14, 2020:** Deadline to implement new regulations
- **January 15, 2021:** Question & Answer document issued by the Office for Civil Rights (“OCR”)

Title IX: August 2020 Regulations

What is (or Should be) the Same

- Intake and outreach process
- Supportive measures
- Neutral, impartial and trained implementers
- Investigative protocols
 - Notice
 - Opportunity to be heard
- Documentation

What is Significantly Different

- Jurisdiction/scope
- Live hearing
- Cross examination by the advisor
- Proponent of a statement must be subject to cross-examination
- Recipient must provide advisor

Title IX: Review of Regulations

- **April 6, 2021:** OCR Letter to Students, Educators, and other Stakeholders re: Executive Order 14021
 - OCR announced it was undertaking a comprehensive review of existing regulations, orders, guidance, policies, including the August 14, 2020, regulations
- **June 7–11, 2021:** Public Hearing on Title IX
- **July 20, 2021:** OCR issued Question & Answer document with an appendix with sample policy language that conforms to the August 2020 regulations ([July 2021 Q&A](#))

Title IX: Review of Regulations

- **June 15, 2020:** Bostock v. Clayton Cty. decision (140 S.Ct. 1731)
 - Sex discrimination under Title VII includes **sexual orientation and gender identity**; SCOTUS specifically declined to extend holding to Title IX
- **January 8, 2021:** DOE's Office of General Counsel Memorandum to OCR re: Bostock decision
- **March 11, 2021:** Executive Order 14021
 - Sex discrimination under Title IX includes sexual orientation and gender identity.

Title IX: August 2020 Regulations

- August 2020 regulations formally incorporated sexual harassment as a form of sex discrimination
 - Title IX obligations related to **sexual harassment as a form of sex discrimination** had not been formally addressed in the regulations
 - “These final regulations impose, for the first time, **legally binding rules** on recipients with respect to responding to sexual harassment.”

Title IX Regulations issued May 6, 2020; Executive Summary, pp. 15-16

Sexual Harassment: Chadron State College

Definitions

CSC's policy defines sexual harassment as any one of the following:

- Quid pro quo harassment
- Severe, pervasive, and objectively offensive unwelcome conduct
- Sexual assault (Forcible sex offense or Non-forcible sex offense)
- Dating violence
- Domestic violence
- Stalking



Intimate Partner Violence: Chadron State College Definitions

- Dating violence
- Domestic violence
- Stalking
 - The definitions are included in Student Affairs Policy 3020 (Grievance Policy & Procedures for Sexual Harassment & Sex Discrimination) and in Personnel Policy 5011 (Sexual Harassment & Sex Discrimination Policy)



The Clery Act (As Amended by VAWA)

Core Tenets:

- Governs a school's response to **sexual assault, dating violence, domestic violence and stalking** (and other crimes)
- Applies to Clery-defined crimes reported to **campus security authorities** that occur **on Clery geography**
- Requires procedural and educational components that do not fully align with Title IX requirements
- Requires reporting of **crime statistics** through
 - Daily crime log
 - Annual security report
- Includes a duty to warn/**timely warnings**

VAWA: Prompt, Fair, and Impartial Investigation & Resolution

- **Prompt, fair, and impartial process** from the initial investigation to the final result
- Conducted in a manner consistent with the institution's policies and transparent to the accuser and accused
- The accuser and the accused have **equal opportunities** to have others present, including an **advisor of their choice**
- The accuser and accused are given **timely notice of meetings** at which one or the other or both may be present
- The accuser, the accused, and appropriate officials are given **timely and equal access to information** that will be used during informal and formal disciplinary meetings and hearings

VAWA: Prompt, Fair, and Impartial Investigation & Resolution

- Officials are appropriately **trained** and do not have a **conflict of interest or bias** for or against the accuser or the accused
- The proceeding is completed in a **reasonably prompt timeframe**
- Explicit provision noting that institutions may extend their reasonably prompt deadlines for **good cause** with written notice to the accused and accuser of the delay and the reason for the delay
- The accuser and the accused **receive simultaneous notification**, in writing, of the result of the proceeding, the rationale, sanctions, any available appeal procedures, any change to the results that occurs prior to final resolution and when results become final

IPV: Chadron State College Definitions

➤ Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - a. The existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship;
 - ii. The type of relationship;
 - iii. The frequency of interaction between the persons involved in the relationship.
 - b. For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.



IPV: Chadron State College Definitions

➤ Domestic Violence

- A felony or misdemeanor crime of violence committed:
 - a. By a current or former spouse or intimate partner of the Complainant;
 - b. By a person with whom the Complainant shares a child in common;
 - c. By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - d. By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Nebraska;
 - e. By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Nebraska



IPV: Chadron State College Definitions

➤ Stalking

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
 - a. Fear for the person's safety or the safety of others; or
 - b. Suffer substantial emotional distress.
- For the purposes of this definition:
 - c. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
 - d. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.



Retaliation

- CSC's policy defines retaliation as follows:
 - Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under Title IX or 34 CFR Part 106, or because the individual made a complaint or report, testified, assisted, participated, or refused to participate in an investigation, proceeding, or Hearing under this policy.



Advisors

- Guides the Complainant or Respondent through the grievance process; accompanies them to meetings and interviews.
- Reviews the Investigative Report with the party.
- Attends the hearing and questions the other party (“cross-examination”) and any witness.
- If an advisor is an attorney, they may not participate any more than a non-attorney advisor would be permitted to participate.
- **If a party does not have an advisor at the hearing, the Vice President for Student Affairs or their designee shall appoint an advisor for the party without any fee or charge to the party.**



CSC Confidential Resources

- Confidential employees may have to breach confidentiality when they perceive an immediate and serious threat to any person or property.



Law Enforcement Involvement

- A Complainant can choose to report the conduct only to the College, or only to law enforcement, or to both the College and law enforcement.
- The College can pursue disciplinary action against a student or employee regardless of whether or not law enforcement prosecutes an offense.
- If a report is made to law enforcement and the agency pursues an investigation, the College will cooperate with the law enforcement agency.
- A party may request a temporary delay or limited extension of time for “good cause,” which may include concurrent law enforcement activity.



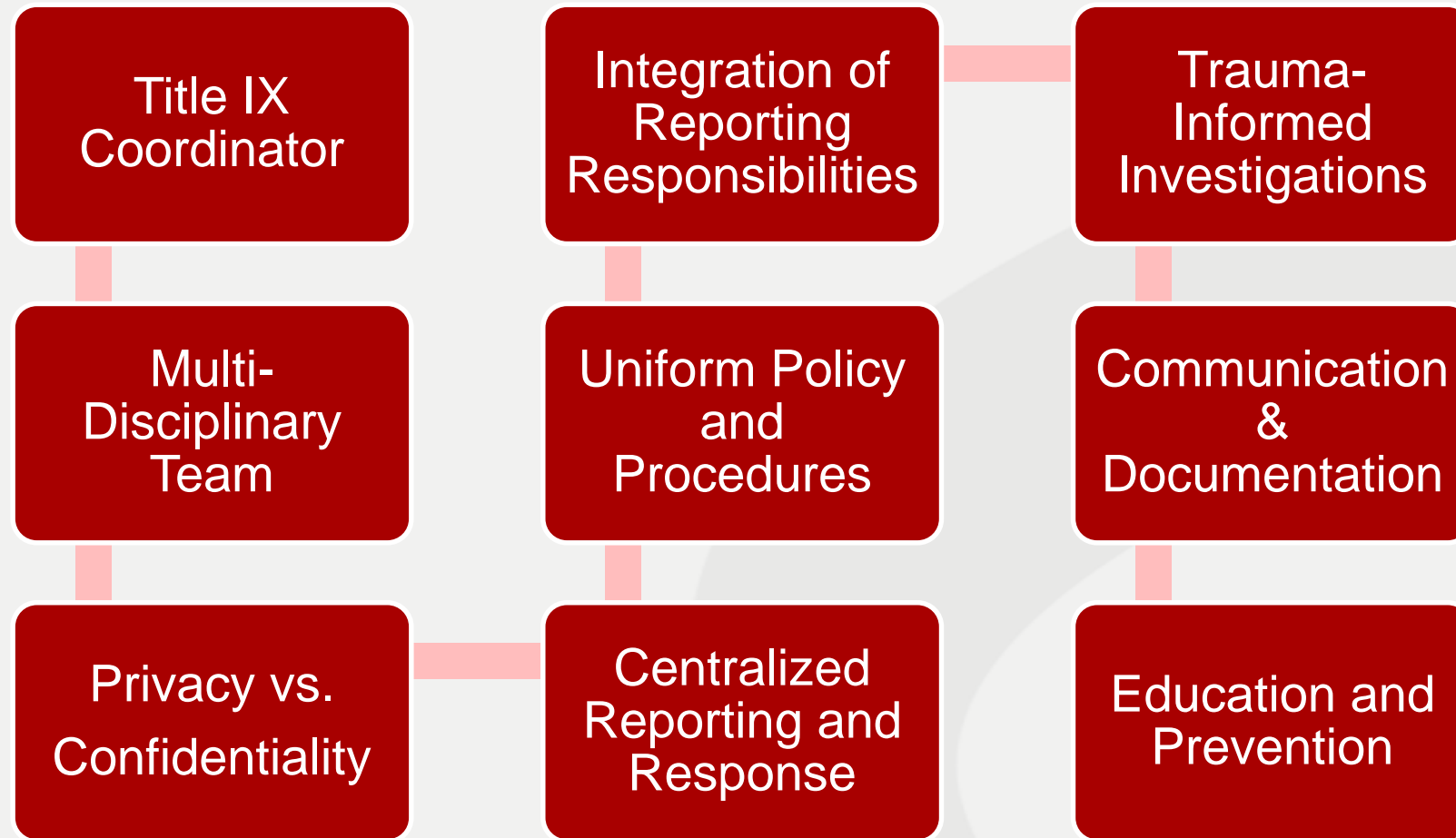
Judicial Orders

- Parties may pursue orders of protection, no contact orders, restraining orders.
- Parties are responsible for notifying the College of such an order and should provide a copy of it to the Title IX Coordinator or designee.
- Parties may discuss options with the Title IX Coordinator or designee regarding enforcing the order.



EFFECTIVE PRACTICES

Key Elements of Effective Practices



Key Elements of Effective Practices

- Title IX Coordinator
 - Independent
 - Appropriately resourced
- Coordinated multi-disciplinary response team
 - Coordination of information
 - Coordination of personnel
- Privacy v. confidentiality
 - Distinction between confidential resources and reporting options
 - Informed reporting
- Integration of reporting responsibilities:
 - “Responsible Employee”
 - Campus Security Authority
 - Mandatory reporter of suspected child abuse

Key Elements of Effective Practices

- Uniform policy and procedures for resolution:
 - Title IX-defined sexual harassment
 - Other forms of sexual misconduct/sexual harassment (non-Title IX)
- Centralized reporting and review process
 - Consistent institutional response
 - Tracking and monitoring of incidents and climate
- Trauma-informed investigations and practices
- Communication and documentation
 - Consistency and transparency
 - At the individual and community level
- Education, prevention and training programs

The Title IX Coordinator

- Coordinates the recipient's compliance with Title IX
- Title IX coordinator must have appropriate authority, access, autonomy, and resources
- Oversees all Title IX complaints
- Identifies and addresses any patterns or systemic problems
- Meets with students and employees as needed
- Should not have other job responsibilities that may create a conflict
- A school may designate more than one coordinator
 - Must have clearly delineated responsibilities
 - Must have titles reflecting supporting role

Personnel

- Individual
 - Personal preparation
 - Values-based approach
 - World class effort
 - Cultural humility
 - Warm-heartedness
 - Listen more, speak less
 - Be collaborative
- Structural
 - The gift of time
 - Tone at the top
 - Team building
 - Resources – budget, staffing, materials, professional development
 - Commitment and consistency
 - Clear expectations and enforcement
 - Development of compassionate compliance

Title IX Multi-Disciplinary Team

- Core stakeholders
 - Title IX Coordinator
 - Student conduct
 - Campus safety/police
 - Human resources
 - Dean of faculty
- Additional campus stakeholders
 - Counseling
 - Health center
 - Advocacy
- Community partners
 - Law enforcement
 - Prosecutor
 - Hospital/Medical Providers
 - Community crisis or advocacy centers
 - Rape Crisis Counselors
 - Domestic Violence Counselors

Policy Considerations

- Easily accessible, identifiable and locatable
- Uniform definitions and high level principles
- Consistent application across the institution
- Sanctioning procedures may vary by respondent (student, staff, faculty, third party)
- Areas of concern:
 - Non-Title IX forms of sexual harassment/sexual misconduct
 - Intersection with tenure processes
 - Intersection with collective bargaining agreements

Privacy vs. Confidentiality

- Ensure policies clearly identify reporting options and support resources both on and off campus
- Delineate confidential resources vs. non-confidential reporting options in policy and training
- Ensure all employees are familiar with Title IX reporting expectations
- Offer clear and easy to follow guidance about what happens when a report is received
- Foster a climate that encourages reporting by providing consistency in message, policy, procedure, and outcome

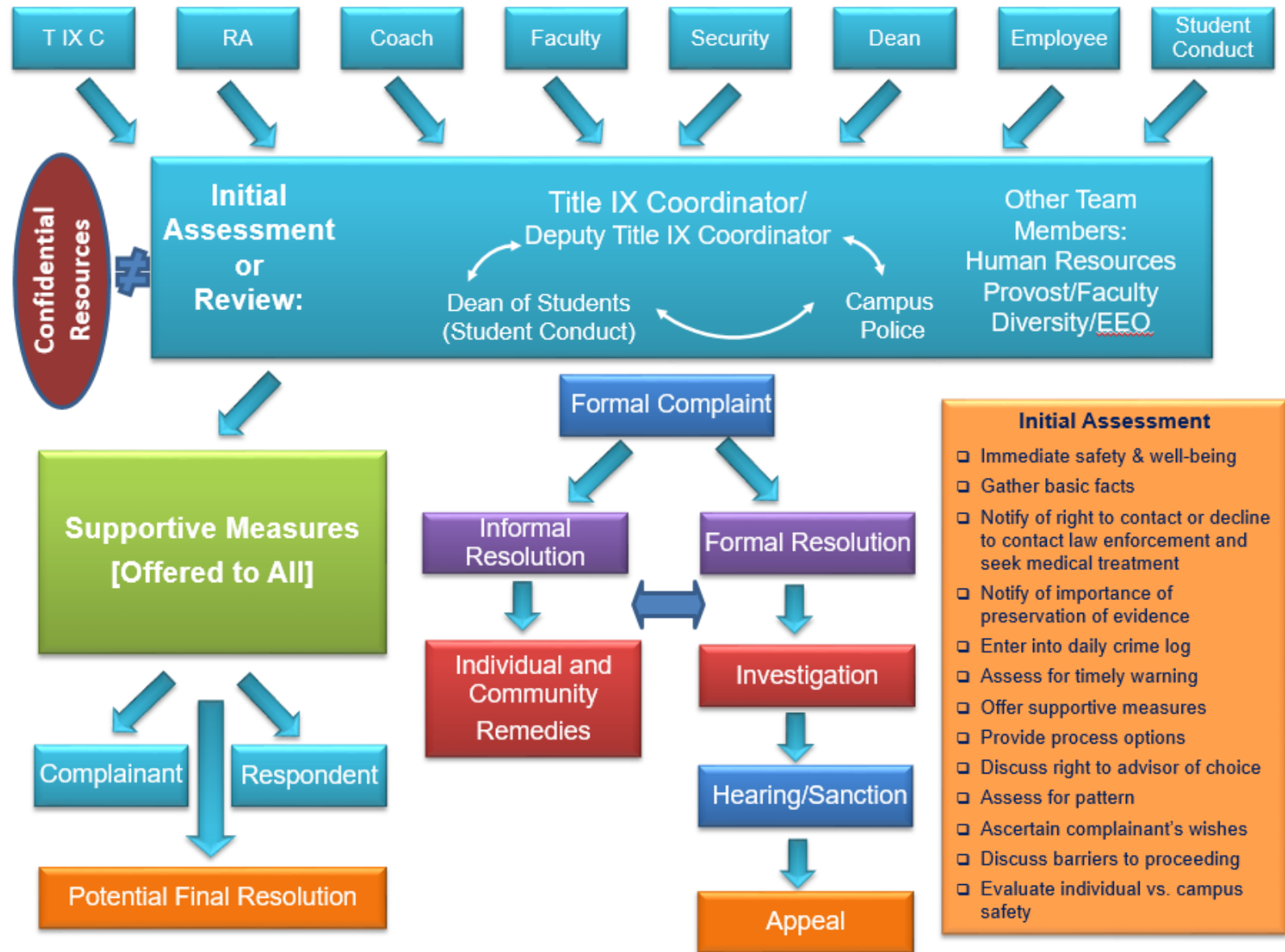
Confidential Resources

- Students or employees wishing to obtain confidential assistance may do so by speaking with professionals who are obligated by law to maintain confidentiality
- Confidential resources generally include medical providers, mental health providers, clergy, and rape crisis counselors
- Exceptions to confidentiality include:
 - Mandatory child abuse reporting
 - Tarasoff imminent risk of harm to self or others
 - State felony or sexual assault reporting

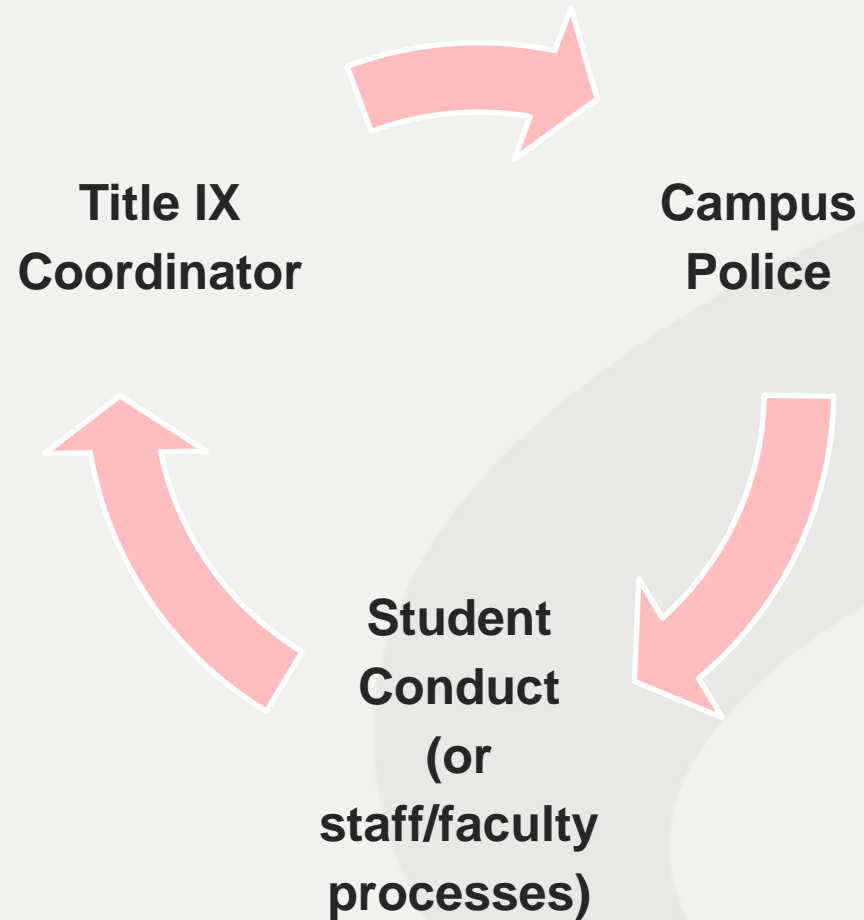
Confidential Resources vs. Reporting Options

- Confidential Resources
 - Medical services
 - HIPAA
 - Mental health/counseling
 - Clergy
 - Rape crisis counselor
- Structural Challenges
 - Employees with multiple hats, e.g., counselor and administrator
- Reporting Options
 - Emergency for safety, physical, or emotional
 - Dedicated campus access points
 - Title IX
 - Campus safety/police
 - Student conduct
 - Human resources
 - To any school employee
 - Anonymous
 - Law enforcement

Integration and Coordination



Central Review Process Multi-disciplinary Team



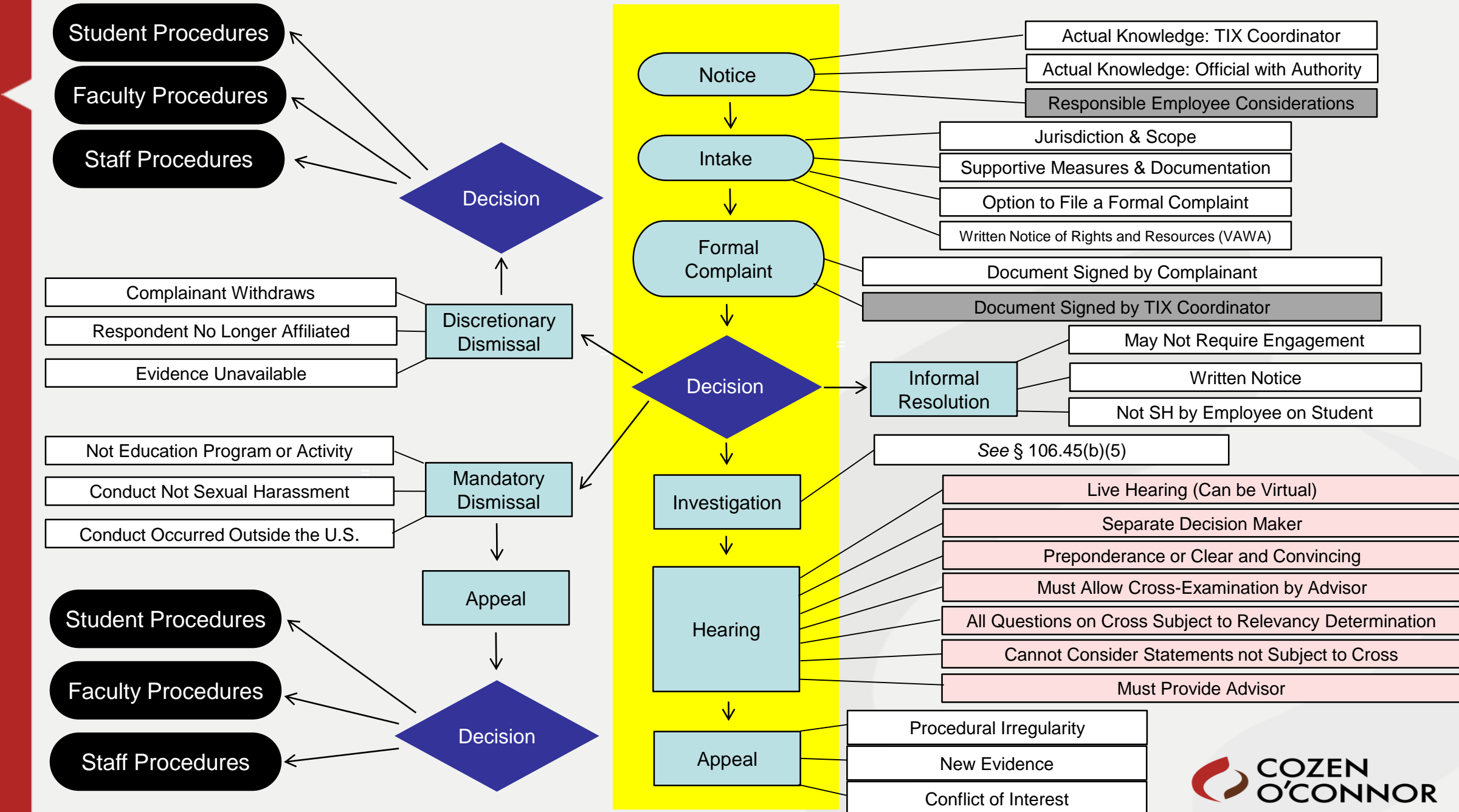
Centralized Review Process

- Coordination of information and personnel
 - Clearly delineated roles and responsibilities
 - Build in regular and open lines of communication
 - Sequence events in advance
- Separate support and advocacy from investigation and adjudication
- Design and use template communications
- Central tracking for patterns
- Documentation/records
- Ensure consistent implementation of:
 - Supportive measures
 - Determination whether to proceed
 - Investigative practices
 - Sanctions
 - Community remedies
- Transparency in outcomes

Title IX Intake and Assessment

- Assess immediate safety and well-being
- Gather basic facts
- Notify of right to contact – or decline to contact – law enforcement and seek medical treatment
- Notify of importance of preservation of evidence
- Tend to Clery responsibilities:
 - Enter into daily crime log
 - Assess for timely warning
- Assess, implement and document supportive measures
- Provide policies, process options, resources and supports, including process for filing a formal complaint
- Assess for pattern and risk
- Ascertain complainant's wishes
- Discuss barriers to proceeding
- Evaluate individual vs. campus safety

EFFECTIVE RESPONSES TO REPORTS OF INTIMATE PARTNER VIOLENCE



Overview of Grievance Process

➤ CSC Policy:

- Complainant's have 2 options:
 - Investigation and hearing, or
 - Informal resolution – if Respondent agrees as well
- All relevant evidence will be objectively evaluated
 - Inculpatory and exculpatory
- Presumption of non-responsibility
- Prohibition against knowingly making false statements or submitted false information
- Burden of proof and gathering evidence is on the College



Steps in the Grievance Process

- 1) Report received
- 2) Outreach to Complainant
- 3) Determination of policy application
- 4) Formal complaint submitted
- 5) Notice of allegations
- 6) Investigation
- 7) Review of evidence and parties' response
- 8) Investigative report prepared
- 9) Pre-hearing conference
- 10) Hearing
- 11) Written determination
- 12) Appeal



1) Report Received

➤ CSC Policy:

- Received by the Title IX Coordinator
- From the alleged victim (Complainant) or by a third party on their behalf (Reporting Party)



1) Report Received

➤ August 2020 regulations:

- Notice to the **Title IX Coordinator** or any official who has **authority to institute corrective measures** on behalf of the recipient
- **Actual knowledge**, not constructive notice or vicarious liability
 - Can come from personal observation, hearing about it from a complainant or third-party, receiving a written or oral complaint, or by any other means
- The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.

Mandatory Reporters

Under CSC's grievance policy, the following individuals are required to report incidents to the Title IX Coordinator

- President
- Vice President
- Academic Deans
- Title IX Coordinator and designees
- Dean of Students
- Housing/Residence Life Staff (Directors, Managers, Assistant Directors, Senior Residence Hall Advisors, Residence Hall Advisors)
- Coaches and assistant coaches
- Campus Security Officers



2) Outreach to Complainant

➤ CSC Policy:

- The Title IX Coordinator will promptly contact the Complainant for the following purposes:
 - To discuss the report, the availability of supportive measures, and the Complainant's wishes regarding supportive measures;
 - To listen to the Complainant's account and ask questions to gain a better understanding of the nature of the alleged incident;
 - To explain this policy and the definition of sexual harassment



2) Outreach to Complainant

- August 2020 regulations:
 - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint
- July 2021 Q & A sample policy:
 - Example Policy 1: The school presumes that reports of prohibited conduct are made in good faith. A finding that the alleged behavior does not constitute a violation of this school's policy or that there is insufficient evidence to establish that the alleged conduct occurred as reported does not mean that the report was made in bad faith.

Supportive Measures

➤ CSC Policy:

- Supportive Measures are designed to restore or preserve equal access to the College's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or to deter Sexual Harassment.
- Non-disciplinary, non-punitive individualized services
- Offered as appropriate and as reasonably available and without fee or charge
- Available to both the Complainant and Respondent



Supportive Measures

➤ CSC Policy:

- Before or after the filing of a Formal Complaint or where no Formal Complaint has been filed
- Requests for Supportive Measures must be made directly to the Title IX Coordinator, who will facilitate implementation
- The College may utilize Supportive Measures as supplemental tools in disciplinary action, sanctions or in Informal Resolutions
- Parties are treated equitably when offered Supportive Measures



Supportive Measures

➤ CSC Policy:

- Supportive Measures are kept confidential to the extent possible without impairing the College's ability to provide them
- Supportive Measures may include but not be limited to:
 - Referral to counseling services
 - Reasonable academic accommodations
 - Changes to on-campus housing or employment situations,
 - Use of Campus Security's escort services
 - Bi-lateral No Contact Orders
 - Other similar measures



Supportive Measures

- August 2020 regulations regarding documentation:
 - Must maintain records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment
 - Must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the recipient's education program or activity
 - If a recipient does not provide a complainant with supportive measures, then the recipient must document the reasons why such a response was not clearly unreasonable in light of the known circumstances

Emergency Removal

➤ CSC Policy:

- The College may remove a Complainant or Respondent from the College's education program or activity on an emergency basis when appropriate.
- Procedure:
 - Conduct an individualized safety and risk analysis prior to removal
 - Immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment
 - Risk justifies removing a Complainant or Respondent



Emergency Removal

➤ CSC Policy:

- The College must provide the party with notice of removal and an opportunity to challenge the decision immediately following removal.
- Decision made by the Vice President for Student Affairs, who will consider the results of the College's safety and risk assessment.



Emergency Removal

- Preamble to the August 2020 regulations:
 - The Department notes that the final regulations expressly allow a recipient to remove a respondent on an emergency basis and do not prescribe cross-examination as a necessary procedure during the post-removal opportunity to challenge the removal.
 - Recipients may also implement supportive measures that restrict students' or employees' contact or communication with others.
 - Recipients thus have avenues for addressing serial predator situations even where no victim chooses to participate in a grievance process.

Administrative Leave

- August 2020 regulations:
 - Nothing in this subpart precludes a recipient from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with § 106.45.
 - This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

3) Determination of Policy Application

➤ CSC Policy:

- Asks whether the reported conduct is redressible by the sexual harassment policy
- Title IX Coordinator makes determination
- If not, the Title IX Coordinator will refer the Complainant to the appropriate College official
- If so, the Title IX Coordinator will facilitate appropriate supportive measures for the parties



Reports vs. Formal Complaints

- Preamble to the August 2020 regulations:
 - The new regulations distinguish and separate a recipient's obligation to **respond to a report** of sexual harassment from a recipient's **obligation to investigate formal complaints** of sexual harassment
 - If students would like supportive measures but do not wish to initiate an investigation...they may make a report of sexual harassment.
 - If students would like supportive measures and also would like the recipient to initiate an investigation...they may file a **formal complaint**.

Title IX Regulations May 19, 2020; Preamble, 85 F.R. 30189

Scenario # 1

An RA was doing rounds and passed by one of their resident's whiteboards outside their room. They noticed that someone wrote, "You're a B----" on the whiteboard in permanent marker. When the RA asked the resident about it, they said, "Oh, that was my ex. It's whatever."

Scenario # 1 Continued

The RA reports the information up to their Residence Life supervisor. The RA reports that when they talked to the resident, the resident reported that the ex has been texting her and calling her all sorts of names. The resident blocked the ex's number earlier that morning after receiving hundreds of texts from him last night. The resident stated that he must have been mad because she blocked him, and wrote that on her whiteboard. The resident stated that they broke up because of his temper when he drinks. She told the RA, "don't tell anyone, but we broke up because he hurt my wrist. He was drunk and being dumb. He tried to get my phone and he sprained my wrist."

Scenario # 2

A student, Lee, reports to you that her roommate, Cam, has been hanging out with a new guy and she has noticed some things that are “off” about him. She said that Cam often posts photos of herself on Instagram, but she has noticed that the new boyfriend always makes a negative comment about how low her top is or how short her skirt is in the photos. Her roommate takes them down quickly after that. Lee said the boyfriend also stops by their dorm unannounced and seems very angry if her roommate is not there. When she tells him that her roommate is at the gym or the library, he says he’s going to go there, “just to be sure.” Lee has also said that Cam does not go with her to their study group anymore. Cam told her that her boyfriend does not want her going since there are men in the group.

4) Formal Complaint Submitted

➤ CSC Policy:

- Filed and signed by a complainant or the Title IX Coordinator
- Alleging sexual harassment against a respondent
- Requesting the College to investigate



Formal Complaint: Required Dismissal

- August 2020 regulations:
 - **Must** dismiss if:
 - Conduct would not constitute sexual harassment even if proved,
 - Conduct did not occur in the recipient's education program or activity, or
 - Conduct did not occur against a person in the United States.
 - Such a dismissal does not preclude action under another provision of the recipient's code of conduct

Title IX Regulations issued May 6, 2020; § 106.45(b)(3)

Formal Complaint: Discretionary Dismissal

- August 2020 regulations:
 - **May** dismiss the formal complaint or any allegations therein if:
 - A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations,
 - The respondent is no longer enrolled or employed by the recipient, or
 - Specific circumstances prevent the recipient from gathering evidence sufficient to reach a determination.

Title IX Regulations issued May 6, 2020; § 106.45(b)(3)

Dismissal of Formal Complaint

- August 2020 regulations:
 - Must offer both parties an **appeal** from a recipient's dismissal of a formal complaint or any allegations therein
 - Effective practice: Establish criteria for when the Title IX Coordinator files the formal complaint

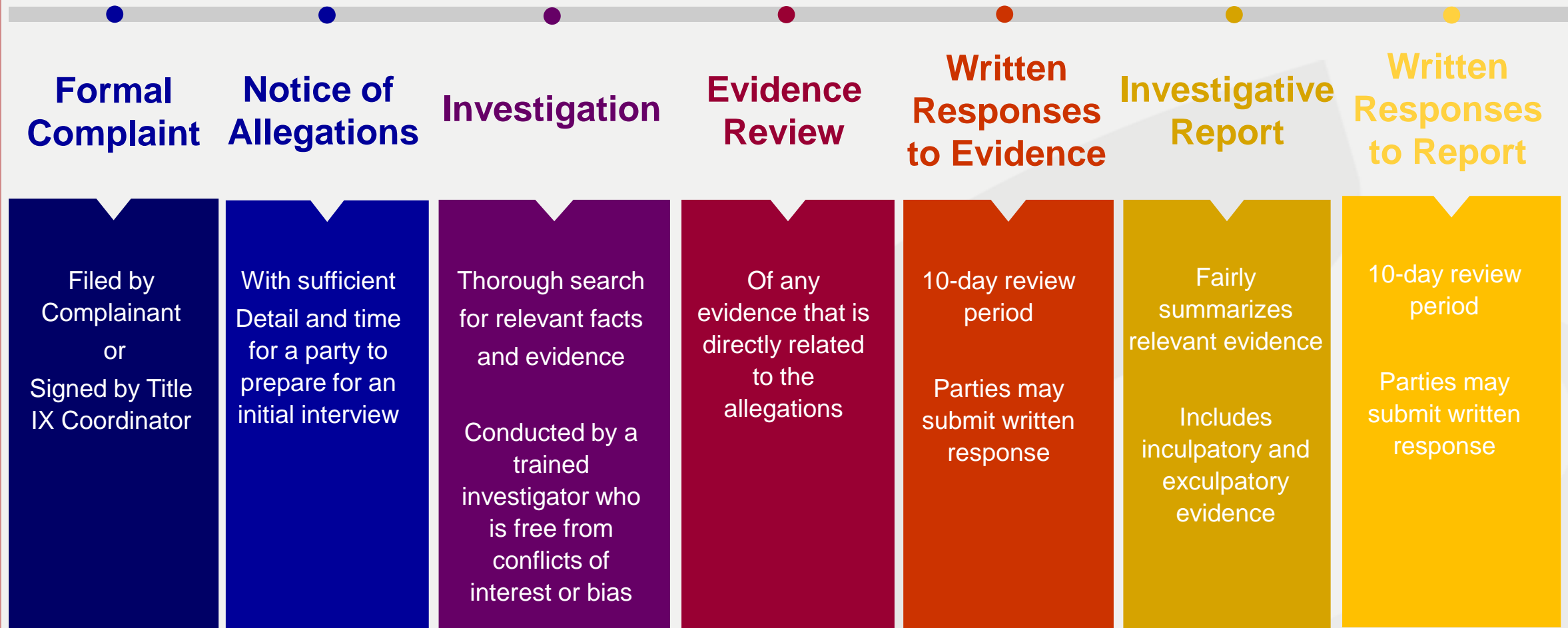
Title IX Regulations issued May 6, 2020; §§ 106.45(b)(3) and 106.45(b)(8)

The Obligation to Investigate

- Preamble to the August 2020 regulations:
 - Once a formal complaint is filed, a recipient **must** investigate the allegations in that complaint
 - The Department believes that where a complainant has chosen to file a formal complaint, or the Title IX Coordinator has decided to sign a formal complaint, the recipient must investigate those allegations regardless of the merits of the allegations. (emphasis in original)

Title IX Regulations May 19, 2020 §106.30 Definitions and §106.45(b)(3)
Dismissal of a formal complaint; 85 F.R. 30574

Investigation Requirements



5) Notice of Allegations

➤ CSC policy:

- All parties are provided notice
- Notice is in writing
- Notice of the allegations and that the College will conduct an investigation
- Include sufficient details, known at the time, and
- Allow sufficient time for the Respondent to prepare a response before any initial interview



Written Notice of Allegations

- August 2020 regulations:
 - The notice of the allegations must:
 - Be provided with sufficient time for a party to prepare a response before an initial interview
- Preamble to the August 2020 regulations:
 - While the initial notice must be sent “upon receipt” of a formal complaint, with “sufficient time” for a party to prepare for an initial interview, such provisions do not dictate a specific time frame for sending the notice, leaving recipients flexibility to, for instance, inquire of the complainant details about the allegations that should be included in the written notice that may have been omitted in the formal complaint.

Supplemental Notice

- August 2020 regulations and Preamble:
 - If during the investigation, the recipient decides to investigate allegations about the complainant or respondent that are not included in the original notice, the recipient must provide notice of the additional allegations to the parties whose identities are known.
 - The Preamble makes it clear that any supplemental notice must be in writing.
 - Although § 106.45(b)(2) requires subsequent written notice to the parties as the recipient discovers additional potential violations...

Separating Support from Investigations

- Separate support/advocacy/intake functions from investigative/adjudicative functions to reduce potential for conflict of interest or perception of bias
- Conflation of roles can:
 - Impact thorough assessment of the facts
 - Create distrust/confusion by complainant
 - Give appearance of bias/lack of impartiality

Separating Support from Investigations

- Reinforce neutrality in language and communications
- Ensure sufficient resources for timely response
- Consider creative models for separation of intake from support from investigation from decision-making



EFFECTIVE PRACTICES IN INVESTIGATIONS OF REPORTS OF INTIMATE PARTNER VIOLENCE

6) Investigation

➤ CSC policy:

- Burden of proof and gathering evidence rests on the College, not the parties.
- **Throughout the process the College will provide the parties with regular status updates and information regarding next steps.**



6) Investigation

➤ CSC policy:

- Gather evidence
 - If a party wishes for their medical records, prior educational records, or other records that are external to the College to be considered in the grievance process they must provide written consent for those records to be released to the College and make arrangements for the records to be sent to the College.
- Interview the parties and any witnesses
- Review and assess all related written statements, reports, and other written material



6) Investigation

➤ CSC policy:

- Synthesize areas of dispute and agreement between the parties
- Prepare an investigative report that organizes, assesses, and fairly summarizes the relevant evidence and synthesizes areas of dispute and agreement between the parties
- Review of applicable College policies



Opportunity to Participate

- August 2020 regulations:
 - Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - Provide an equal opportunity for the parties to present witnesses and evidence
 - Fact and expert witnesses
 - Inculpatory and exculpatory evidence

Title IX Regulations May 19, 2020; §106.45(b)(5)(ii) ; 85 F.R. 30422-23.

Practical Considerations for Remote Interviews

- Developing rapport
 - Allow additional time for the interview
 - Conversational language and tone
 - Avoid distractions
- Privacy considerations
 - Ensuring a private setting
 - Facilitating the presence of advisor of choice
- Sharing documents

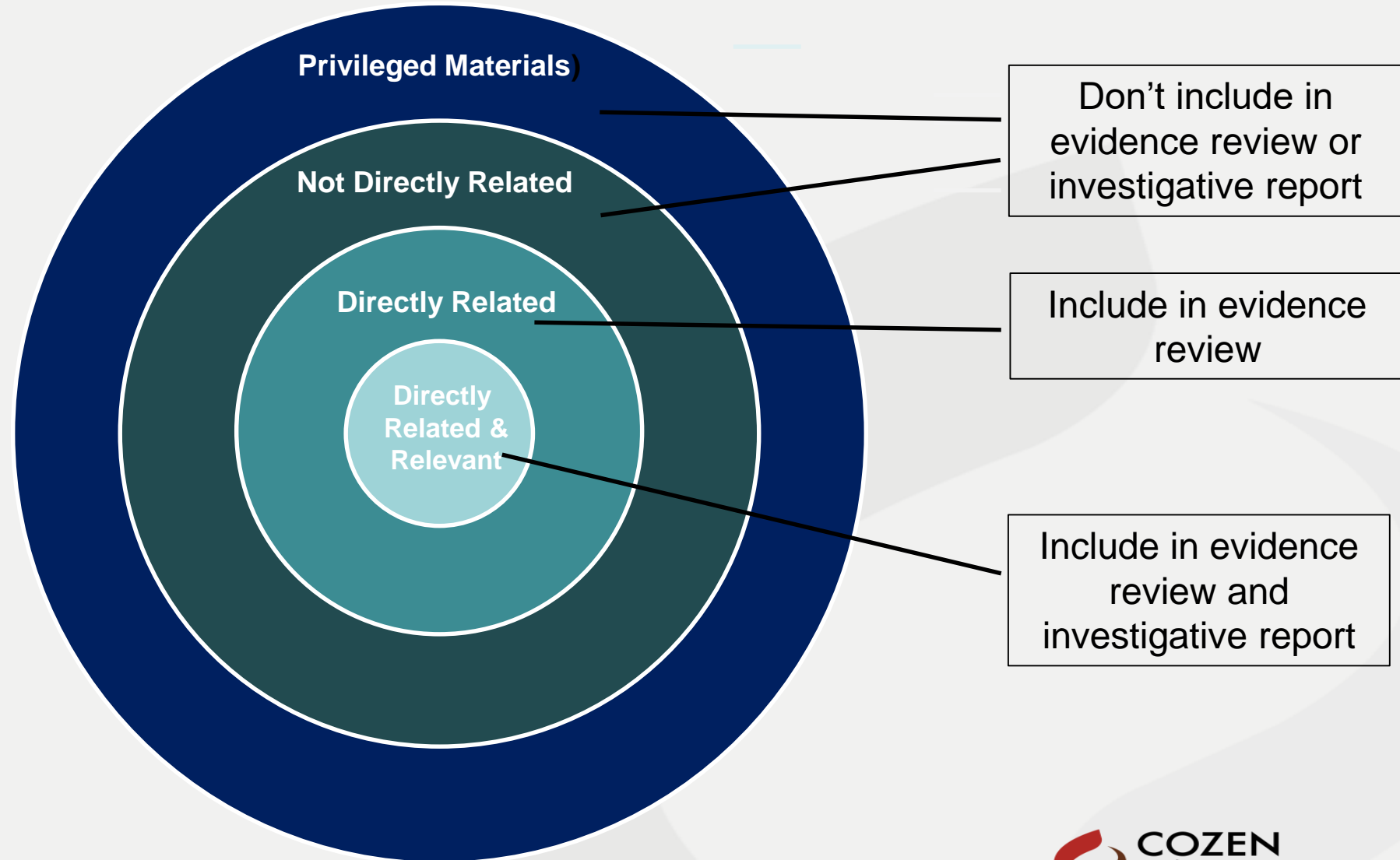
7) Inspection and Review of Evidence and Parties' Response

➤ CSC policy:

- All evidence that is **directly related** to the allegations
- Electronic copy to the parties and their advisors
- Prior to the completion of the investigative report
- Parties have 10 days to submit a written response
 - To correct or clarify the evidence or provide additional information
 - Will be considered prior to the completion of the investigative report
 - Will be included in the investigative report
- Failure to submit a written response will be considered as confirmation that the evidence is accurate for purposes of the remaining process steps



Evidentiary Levels for Inclusion



Investigation Requirements



8) Investigative Report Prepared

➤ CSC policy:

- Investigative report
 - Organizes and fairly summarizes the relevant evidence
 - Highlights key issues
- Also prepare a file containing any additional evidence that is directly related to the allegations
 - Not intended to rely on this evidence in making a determination
 - Provided to the parties and their advisors



8) Investigative Report Prepared

- CSC policy:
 - The investigative report and file containing additional evidence
 - Provided to the parties and advisors at least 10 days before any hearing
 - Opportunity to identify any inaccuracies in the investigative report or the additional evidence prior to the hearing



Investigative Report

- August 2020 regulations and preamble:
 - Create an **investigative report** that fairly summarizes relevant evidence and
 - Requirement to provide to parties ahead of time:
 - This opportunity allows the parties to “effectively provide context to the evidence included in the report” and to “advance their own interests for consideration by the decision-maker.”
 - A valuable part of this process is giving the parties (and advisors who are providing assistance and advice to the parties) adequate time to review, assess, and respond to the investigative report in order to fairly prepare for the live hearing or submit arguments to a decision-maker where a hearing is not required or otherwise provided.

Title IX Regulations May 19, 2020; §§ 106.45(b)(5)(vii); Preamble 85
F.R.30254, 30307, 30309

Investigative Report

- August 2020 regulations and preamble:
 - Investigator may redact information from the report
 - Recipients may permit or require the investigator to redact from the investigative report information that is not relevant, which is contained in documents or evidence that is relevant.

Investigative Report: Findings?

- Preamble to the August 2020 regulations:
 - § 106.45(b)(7)(i) prevents an investigator from actually making a determination regarding responsibility.
 - If an investigator's determination regarding credibility is actually a determination regarding responsibility, then §106.45(b)(7)(i) would prohibit it.

8) Investigative Report Prepared

➤ CSC policy:

- Prior to the Pre-Hearing Conference:
 - Parties and/or Hearing Panel members who wish to call a witness during the hearing must submit in writing the witness name(s) and contact information
 - The Hearing Chairperson is responsible for summoning the witness in writing



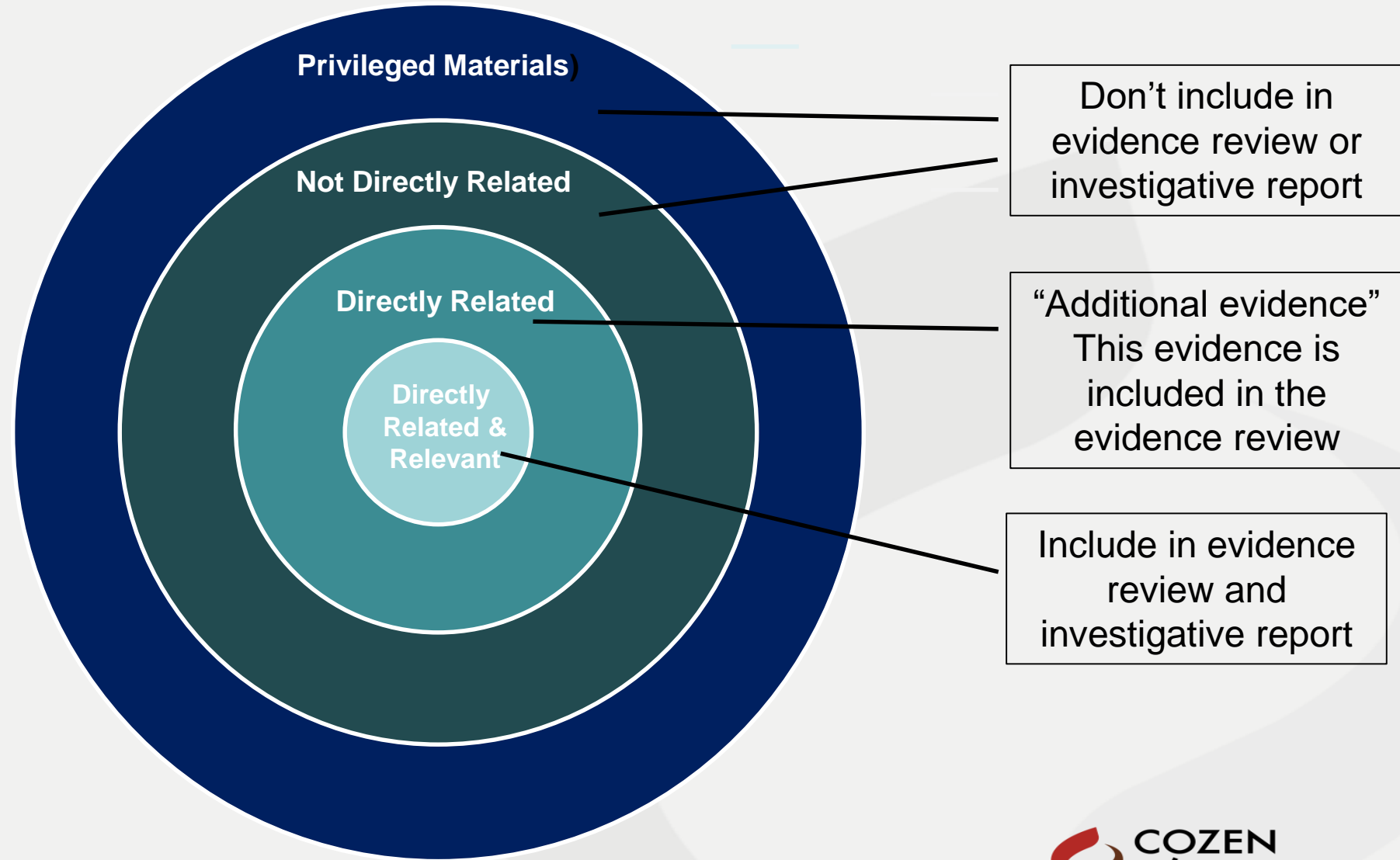
8) Investigative Report Prepared

➤ CSC policy:

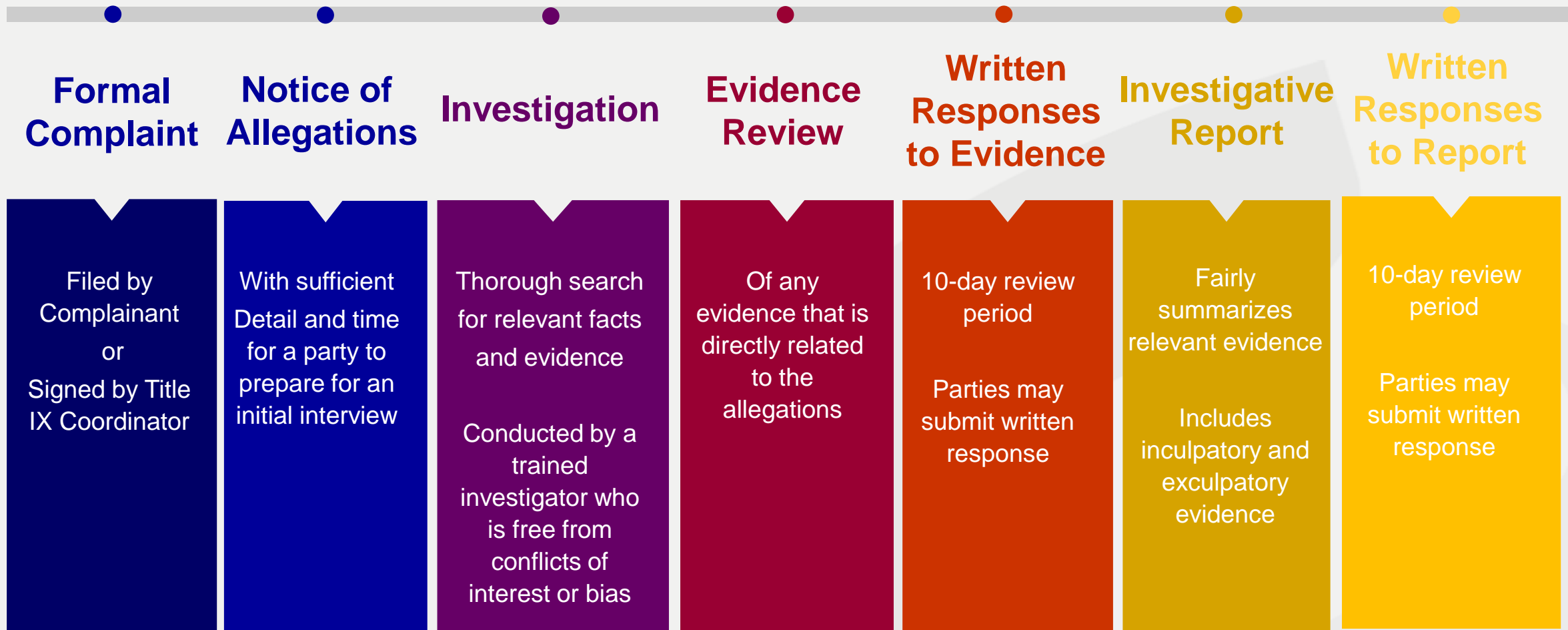
- “Additional evidence”
 - All the evidence directly related to the allegation, including evidence upon which the College does not intend to rely in making a determination of responsibility and exculpatory and inculpatory evidence.



Evidentiary Levels for Inclusion



Recap of Investigation Requirements



9) Pre-Hearing Conference

➤ CSC policy:

- The Pre-Hearing Conference:
 - Takes place after the parties have had 10 calendar days to review and respond to the investigative report and additional evidence
 - Hearing Chairperson directs the conference
 - Title IX Coordinator or designee is present



9) Pre-Hearing Conference

➤ CSC policy:

- Parties and their advisors will:
 - Be notified of the hearing date, time and location
 - Opportunity to inspect and review the investigative report and the additional evidence
 - Confirm the list of witnesses the party and/or the Hearing Panel wishes to call at the Hearing.
 - Submit in writing any evidence they intend to use or questions they intend to ask (through their advisor) of the other party and any witnesses at the hearing.



9) Pre-Hearing Conference

➤ CSC policy:

• Hearing Chairperson will:

- Review the submitted questions and evidence and make a determination regarding their relevancy
 - The parties may provide reasons why they believe the question or evidence is relevant or not relevant and their rationale will be taken into consideration by the Hearing Chairperson
- If a question or evidence is not relevant, explain and document the decision in the **Pre-Hearing Conference Summary**.



9) Pre-Hearing Conference

- CSC policy:
 - Hearing Chairperson will:
 - Advise the parties that they may still resolve the matter informally
 - Review hearing procedures
 - Prepare a Pre-Hearing Conference Summary
 - Documents relevancy determinations
 - Lists approved questions and evidence
 - Provided to the parties before the hearing
 - Becomes a part of the record provided to the Hearing Panel



Review of Investigative Report

- Preamble to the August 2020 regulations:
 - At least 10 days prior to the determination of responsibility (hearing)
 - The parties then have equal opportunity to review the investigative report; if a party disagrees with an investigator's determination about relevance, the party can make that argument in the party's written response to the investigative report and to the decision-maker at any hearing held.

HEARINGS IN INTIMATE PARTNER VIOLENCE CASES

10) Hearing

➤ **CSC policy:**

- Hearing elements:
 - Live hearing
 - Either party may request to be located in separate rooms during the hearing
 - Technology that will enable the Hearing Panel and parties to simultaneously see and hearing the party or witness
 - The College shall create an audio or audio-visual recording of the hearing and make it available to the parties for inspection and review
 - Three-person Hearing Panel with one individual designated as the Hearing Chairperson
 - Title IX Coordinator present to answer questions or clarify information; no other role



10) Hearing

➤ **CSC policy:**

- Hearing elements:
 - Hearing Panel can call witnesses
 - Each party's advisor will be permitted to present evidence and question the other party and any witnesses
 - Includes questions to test party or witness' credibility
 - For any questions or evidence presented which was not approved at the Pre-Hearing Conference, the Hearing Chairperson will determine relevancy and explain any decision to not allow a question or evidence
 - If a party or witness does not submit to cross-examination, the Hearing Panel must not rely on any statement made by that party or witness



10) Hearing

➤ **CSC policy:**

- Hearing elements:
 - The Hearing Panel may not draw an inference about the determination regarding responsibility based solely on a party or witness' absence from the hearing or refusal to answer cross-examination or other question
 - After the hearing, the Hearing Panel will convene in private within 48 hours to vote
 - Preponderance of the evidence standard



10) Hearing

➤ August 2020 regulations:

- Live hearing (which can be virtual)
- Separate decision-maker
- Standard of proof
 - Preponderance of the evidence, or
 - Clear and convincing evidence
- Must allow for cross-examination by advisor
- All questions on cross-examination are subject to relevancy determination
- Cannot consider statements not subject to cross-examination
- Must provide advisor

Cross-Examination

Previous Guidance

- No cross-examination required
- Cross-examination of one party by the other party was “strongly discouraged”



August 2020 Regulations

- Right to cross-examination during live hearing, *i.e.*, directly, orally, and in real time
- Prohibited cross-examination of one party by the other party (must be done by an advisor)
- Parties must be provided advisors who can, but are not required to be, attorneys
- Must allow for pause before witness/party gives answers
- Can be done remotely / separate rooms via technology
- Only relevant questions allowed
- Parties can refuse to submit to cross-examination

10) Hearing

Protecting the Well-Being of the Parties

➤ July 2021 Q & A:

- A school is permitted to grant breaks to the parties during a live hearing.
- The regulations require a pause in the cross-examination process each time before a party or witness answers a cross-examination question.
 - Allows the decision-maker to determine if the question is relevant.
 - Helps ensure that the pace of the cross-examination does not place undue pressure on a party or a witness to answer immediately.

10) Hearing

Rules of Decorum

➤ July 2021 Q & A:

- If the manner in which an advisor attempts to ask the question is harassing, intimidating, or abusive (e.g., advisor yells, screams, or comes too close to a witness), the preamble explains that a school may enforce a rule requiring that relevant questions must be asked in a respectful, non-abusive manner.

10) Hearing

Rules of Decorum

➤ July 2021 Q & A:

- A school also may require a party to use a different advisor if the party's advisor refuses to comply with the school's rules of decorum.
 - For example, the preamble explains that if a party's advisor of choice yells at others in violation of a school's rules of decorum, the school may remove the advisor and require a replacement. The school has this authority even when the advisor is asking a question that is relevant to the hearing.

10) Hearing

Evaluating Responses

➤ July 2021 Q & A:

- The preamble adds that the 2020 amendments “protect against a party being unfairly judged due to inability to recount each specific detail of an incident in sequence” because “decision-makers must be trained to serve impartially without prejudging the facts.”

10) Hearing

Statements not subject to cross-examination

➤ July 2021 Q & A:

- If a party does not subject themselves to cross-examination, the decision-maker must not rely on any statement from that individual in their decision-making about whether the respondent had committed sexual harassment in violation of school policy.
- The preamble explains that cross-examination differs from questions posed by a neutral fact-finder and that if a party or witness submits to cross-examination by a party's advisor, but does not answer a question posed by the decision-maker, the decision-maker may still rely on all of that person's statements.

10) Hearing

Statements not subject to cross-examination

➤ Preamble to August 2020 regulations:

- “Statements”
 - No definition provided
 - It should be interpreted using its ordinary meaning
 - Does not include evidence, such as a videos of the incident itself, where the party or witness has no intent to make an assertion regarding whether or not the alleged harassment occurred or discuss factual details related to the alleged harassment, or where the evidence does not contain such factual assertions by the party or witness.

10) Hearing

Statements not subject to cross-examination

➤ Preamble to August 2020 regulations:

- [I]n the postsecondary context, **only statements that have been tested for credibility** will be considered by the decision-maker in reaching a determination regarding responsibility.
- Because party and witness statements so often raise **credibility** questions in the context of sexual harassment allegations, the **decision-maker must consider only those statements that have benefitted from the truth-seeking function of cross-examination.**

10) Hearing

Statements not subject to cross-examination

➤ Preamble to August 2020 regulations:

- The prohibition on reliance on “statements” applies not only to statements made during the hearing, but also to **any statement of the party or witness** who does not submit to cross-examination.

10) Hearing

Statements: Text messages and emails

➤ July 2021 Q & A:

- The decision-maker may consider certain types of statements by a party where the statement itself is the alleged harassment, even if the party does not submit to cross-examination. For example, the decision-maker may consider a text message, email, or audio or video recording created and sent by a respondent as a form of alleged sexual harassment even if the respondent does not submit to cross-examination.

11) Written Determination

➤ CSC policy:

- Within 10 days of the end of the hearing:
 - A written determination regarding responsibility and any disciplinary action
 - Hearing Chairperson provides the written determination simultaneously to the parties



11) Written Determination

➤ August 2020 regulations:

- Require that the ultimate determination regarding responsibility be made by an individual who did not participate in the case as an investigator or Title IX Coordinator
- Decision-maker must independently and objectively evaluate the evidence

Content for Written Determination

- August 2020 regulations:
 - Must issue a simultaneous written determination regarding responsibility, including
 - Identification of the allegations
 - Description of the procedural steps taken from the receipt of the formal complaint through the determination
 - Findings of fact supporting the determination
 - Conclusions regarding the application of the recipient's code of conduct to the facts
 - Rationale
 - Appeal procedures

12) Appeal

➤ **CSC policy:**

- Both parties may appeal (dismissal of a formal complaint or a responsibility finding)
- Basis for appeal – had to have affected the outcome, and:
 - Procedural irregularity, or
 - New evidence not reasonably available at the time determination made, or
 - Conflict of interest or bias
- Written submission to the President within five days
- The parties have five days to submit a written statement in support of, or challenging, the decision



12) Appeal

- August 2020 regulations:
- As to all appeals, the recipient must:
 - Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 - Ensure that the decision-maker(s) for the appeal complies with the standards set forth in paragraph (b)(1)(iii) of this section [regarding no conflict of interest or bias, and properly trained];
 - Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging the outcome;
 - Issue a written decision describing the result of the appeal and the rationale for the result; and
 - Provide written decision simultaneously.

Title IX Regulations May 19, 2020 §106.45 (b)(8)

INFORMAL RESOLUTION IN INTIMATE PARTNER VIOLENCE CASES

Informal Resolution

➤ CSC Policy:

- Both parties have to agree (voluntary and written consent)
- Any time prior to a determination regarding responsibility
- The Title IX Coordinator/Designee will facilitate this process
- The Title IX Coordinator/Designee can present a framework of potential remedies to guide the parties in negotiation, but the parties themselves must come to an agreement
- Informal Resolution may be accomplished through mediation and other forms of facilitation
 - Parties communicating through the Title IX Coordinator/Designee to minimize contact with each other
 - Parties communicating directly with each other and the Title IX Coordinator/Designee



Informal Resolution

➤ CSC Policy:

- The Title IX Coordinator will use their discretion to ensure that the Informal Resolution is appropriate for the College. The parties may not bind the College to a resolution that the College does not deem appropriate
- The Informal Resolution process cannot be used to resolve allegations that an employee (including a student-employee) sexually harassed a student if the alleged harassment occurred in the context of their employment



Informal Resolution

➤ July 2021 Q & A:

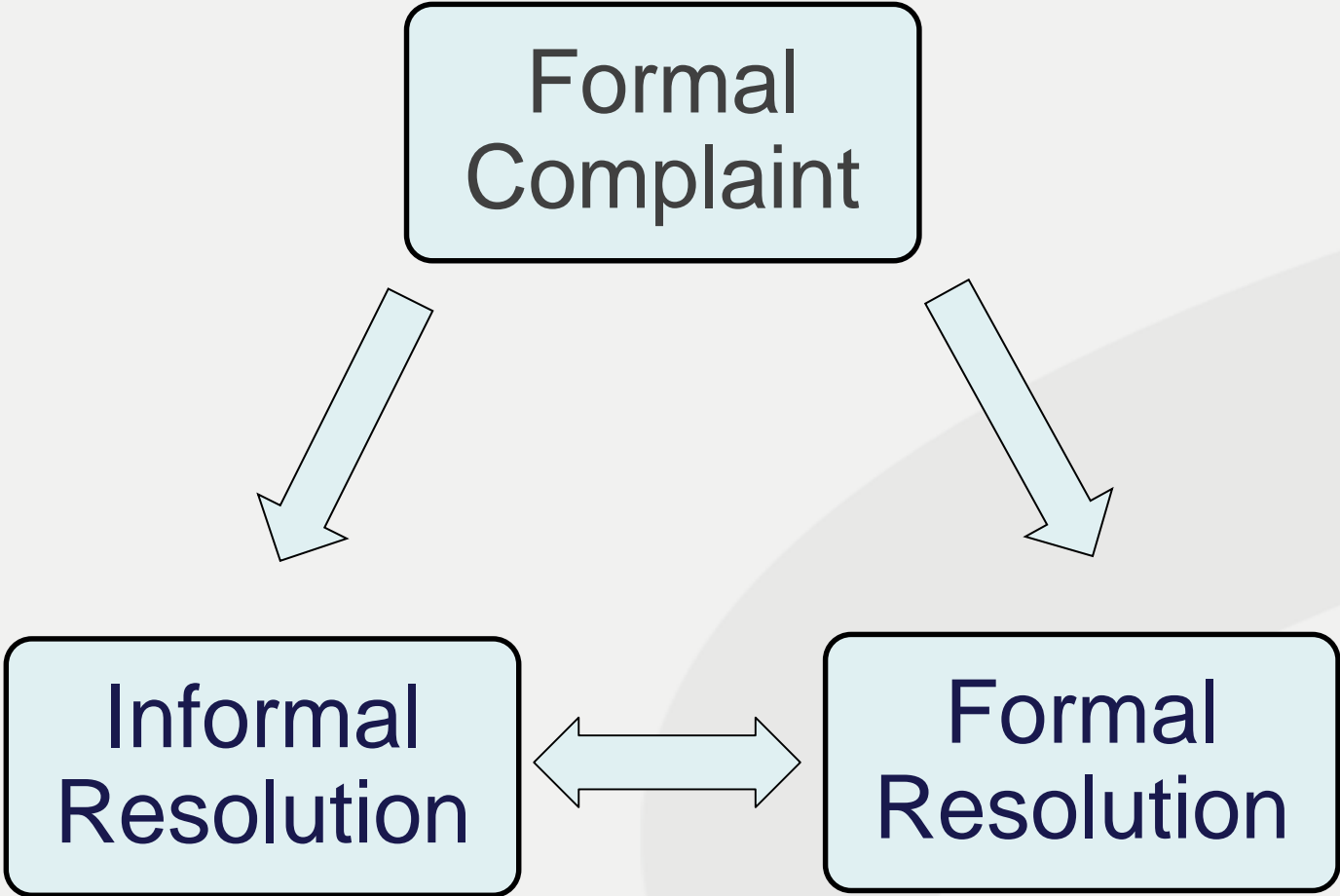
- A school is not required to offer an informal resolution process but may facilitate an informal resolution process at any time prior to reaching a determination regarding responsibility, subject to certain conditions.
- The amendments do not require that the parties interact directly with each other as part of an informal resolution process
 - Mediations are often conducted with the parties in separate rooms and the mediator conversing with each party separately.

Informal Resolution

➤ July 2021 Q & A:

- The parties' participation in mediation or restorative justice, if offered, should remain a decision for each individual party to make in a particular case, and neither party should be pressured to participate in the process.
- A school is not permitted to offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Informal Resolution



FORENSIC INTERVIEWING

The Interview

- Recognize the impact of trauma on memory
 - Allow the witness to give a narrative
 - Use open-ended free recall questions
 - Build in an opportunity for follow up
- Consider timing and location
- Allow a support person to be present
- Be transparent about how information will be used
- Develop rapport and allow for closure
- Allow sufficient time for thorough exploration of the issues

Forensic Interviewing

- Narrative and follow up
- Corroboration
- Questioning techniques
- Informed and sensitive communications

Narrative and Follow Up

- Invest in learning the language of your witness
- Allow your witness to give a narrative
- Refrain from interrupting or from asking clarifying questions
- Go back and follow up to clarify details
- Explore areas of inquiry that can be corroborated
- Identify circumstances of disclosure and prompt complaint witnesses
- Set the stage for a follow-up interview

Narrative and Follow Up

- Look beyond the initial set of information
- Ask yourself:
 - What would I want to know?
 - What is missing here?
 - What questions do I still have?
 - How can I corroborate my victim/witness?
- Organization, knowledge, and fluency

Corroboration

- Exhaustive search for corroboration
- Assess import of lack of corroboration
- Question opportunity, access, means, and motive
- Test the sensory and emotional details
- Take the claims/defenses to their logical ends and explore logical inconsistencies
 - Denial
 - Identity
 - Consent

Questioning Techniques

- Be alert to your non-verbal communication
- Pay attention to tone of voice and volume level
- Avoid asking questions that imply a value judgment
- Maintain attentive posture and good eye contact
- Exercise reflective listening in framing next question

Questioning Techniques

- Thoroughly prepare for interview by listing all questions and/or subject matters to be covered but. . . LISTEN!
 - Pay attention to what the witness says and respond accordingly
- Explore the entire incident and investigative process with witness
- Frame questions about sensitive areas with an explanation of why you are exploring that area of inquiry
 - Manner of dress
 - Alcohol or other drug consumption
 - Prior sexual history

Questioning Techniques

- Focus on sensory details
- Pay attention to emotional cues and responses
- Look for any evidence of motive/bias/interest, even where not immediately apparent
- Listen for “ring of truth” answers
- Rely upon maps, photos, charts where available
- Create running timeline
- Pay close attention to the circumstances of the disclosure

The Continuum Approach

- Open-ended
 - Calls for narrative or recall
- Focused
 - Directs the witness to a particular area of focus
- Multiple choice
 - Provides a range of options, “or some other way”
- Yes/No
 - Seeks to clarify a specific point
- Leading
 - Assumes the answer . . .

Some Useful Phrases

- **Could you/would you be willing to** tell us more about....?
- **How** did you feel about...?
- **What** did you do after...?
- **What happened** then?
- **Can you** explain to me what you meant when you said....?
- **How** did ...?
- **Can you help me understand** ...?

Informed and Sensitive Communication

- Using open and conversational communication style
- Listen – don't assume!
- Embrace the uncomfortable, the pause, and the silence
 - Take a break
 - Offer reassurance
 - Reschedule
- Support the witness by:
 - Demonstrating acceptance
 - Using reflective listening
 - Avoiding emphasis on “you”
 - Explaining the purpose of the questions
 - Allowing a support person to be present

EVALUATING CREDIBILITY

Evaluating Credibility

- Investigating Credibility in the context of:
 - Sexual Assault
 - Dating violence
 - Domestic violence
 - Stalking
 - Other forms of sexual and gender-based harassment and violence
- Common Challenges
 - Consent
 - Alcohol/incapacitation
 - History of the individual and community relationships

Evaluating Credibility



Credibility Factors

- Assessing credibility factors:
 - Demeanor
 - Interest
 - Detail
 - Corroboration
 - Common sense
- Testing inherent plausibility in light of the known information, relationships, and circumstances of the disclosure

Demeanor

- Demeanor may be informative, not determinative
- Assessing demeanor requires individual assessment as to how demeanor supports or detracts from overall reliability of information
- Fact-finders should not place undue reliance on demeanor as an indicator of candor or evasion.
- Demeanor is one factor to observe in the context of the totality of the information

Demeanor

- Claimant/Respondent may be affected by emotional component of sexual assault allegations
- Range of behaviors and emotional reactions vary
- Elicit and consider information from witnesses as to demeanor after the reported incident, during the disclosure, and in response to the report
- Note changes in demeanor and explanations for significant changes
- Consider demeanor during proceedings

Interest

- If Respondent and Claimant know each other:
 - Understand the context and history of any prior relationships
 - Understand significant events or markers in relationship
- Explore effects of incident:
 - Emotional: fear, intimidation, worry, anxiety
 - Actual: financial, time, participation in the process
- Is there any particular animus/motive/ill will for/or against any party or witness?

Interest

- How will the party/witness be impacted by their participation in the process?
 - Was information provided “against” interests?
- How will the party/witness be impacted by any particular outcome?
 - Will information shared impact current or future relationships?

Detail

- Explore all details of event – before, during, and after
- Surrounding details – seemingly insignificant facts that may have greater import
- Sensory details – using the five senses to describe the physical reality of the crime
- Behavioral changes and responses
- Emotional cues and indicators
- Listen for “ring of truth” language on the periphery
- Evaluate panoramic view of events from all parties/witnesses

Corroboration

- Freeze frame and explore critical junctures
- Cross-reference Claimant and Respondent accounts with all other evidence and witnesses' statements
- Look to attendant details and behavior pre- and post-incident by both parties
- Focus on resolution of conflicts through believable evidence and common sense
- Outline case by issue and cross reference with all available evidence including timelines

Corroboration

- Verify any statements obtained from witnesses by the first responding witness
- Obtain statements from witnesses not interviewed in the preliminary investigation
- Re-photograph injuries as appropriate
- Determine whether a search warrant is needed for any aspect of the investigation
- Identify and contact others who may have been harmed by the Respondent or observed relevant behaviors

Corroboration

- Consider other attendant details such as:
 - Size, age, power, authority and/or social status differential for Claimant and Respondent
 - Location of incident
 - Isolation of Claimant
 - Potential witnesses or reasons for lack of witnesses
 - Any change in either party's demeanor, personality, or routine after the incident
 - E.g., roommate noticed that Claimant began wearing baggy clothes, stopped attending class regularly, ceased eating
 - E.g., friends noticed Respondent became withdrawn and went home every weekend

Evaluating Changes in Account

- Explore all circumstances of each account
- Understand the who, what, and where of the interview
- Ask the “why” (without asking why); questions to explore:
 - State of mind
 - Life circumstances at the time
 - Perception of interviewer/process
 - Changes in interest or motivation
- Inquire directly about inconsistencies
- Attempt to reconcile where possible

Synthesis

- Testing inherent plausibility of the conflicting accounts in light of the known information
- How does it all fit together?
- Does it make sense in the context of:
 - These individuals?
 - The setting?
 - The community?
 - The activity?
 - The relationships?

Integrated Analysis

Dynamics of Sexual Assault	Informed understanding of dynamics of sexual and gender-based harassment and interpersonal violence.
Demeanor	Did the witness speak in a convincing manner? Was he/she uncertain, confused, self-contradictory or evasive? How did he/she look, act and speak while testifying / reporting?
Interest / Motive / Bias	Did the witness have any interest in the outcome of the case, bias, prejudice, or other motive that might affect his/her testimony?
Detail	Use direct quotes from testimony or statements. How well could the witness remember and describe the things about which he/she testified? Was the ability of the witness to see, hear, know, remember, or describe those things affected by youth or old age or by any physical, mental or intellectual deficiency?
Corroboration	How well did the testimony of the witness square with the other evidence in the case, including the testimony of other witnesses? Was it contradicted or supported by the other testimony and evidence?
Common Sense	Does it all add up? (Gut check) Is there something missing?

Use of Slides

- This PowerPoint presentation is not intended to be used as a stand-alone teaching tool.
- These materials are meant to provide a framework for informed discussion, not to provide legal advice regarding specific institutions or contexts.
- All rights are reserved to Cozen O'Connor.