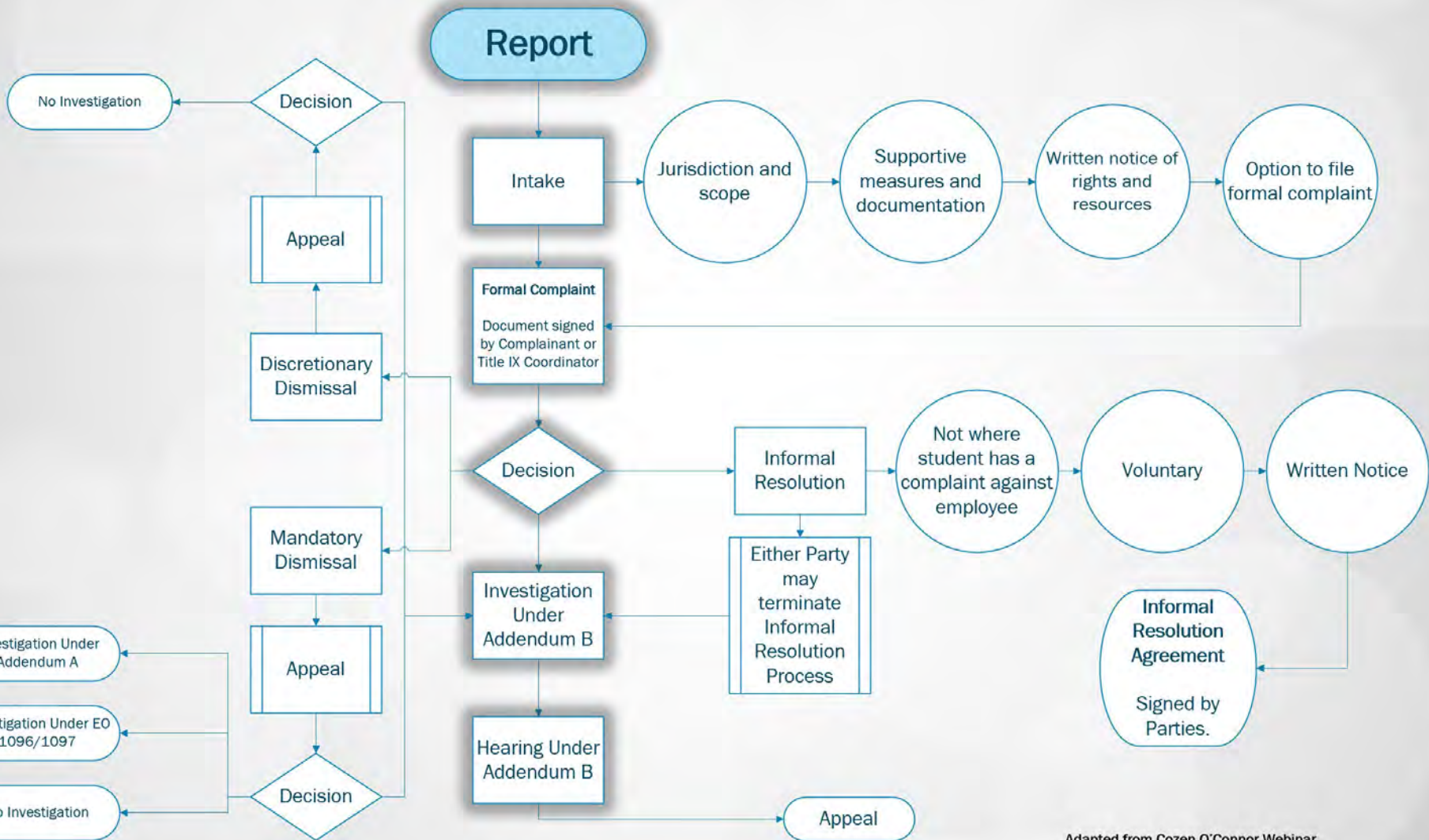


Session 2: Reporting and Intake

Training for Title IX Coordinators, Investigators, Hearing Coordinators, Appeals Managers and Student Conduct Administrators

Office of the Chancellor
The California State University

Addendum B Flowchart - Overview



Adapted from Cozen O'Connor Webinar Slide



Reporting to the Title IX Coordinator

- Under the Title IX Regulations, institutions can maintain their responsible employee reporting requirements if they so choose.
- The CSU will maintain the responsible employee reporting requirement, which requires all employees to report if they have reason to know of allegations of sexual harassment, unless they are in an exempt category.
- The focus of the Regulations is on preventing discrimination by universities, which includes not being “deliberately indifferent” to allegations of sexual harassment, but does not change the Title IX Coordinator’s existing obligations under State law and under CSU policy.

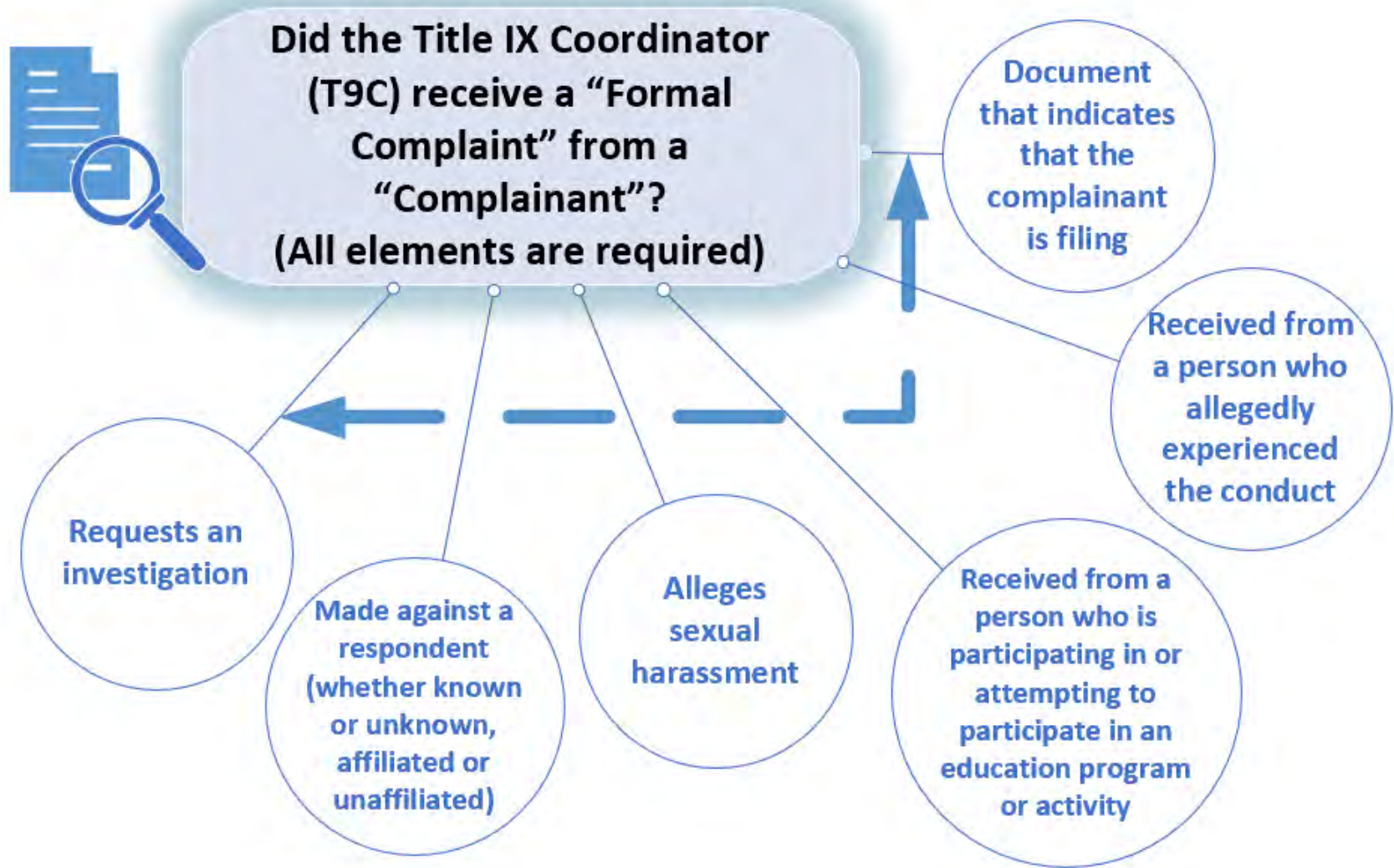
Report vs. Formal Complaint

Report (either directly from Complainant or someone else)

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graph TD; A[Report (either directly from Complainant or someone else)] --> B[Supportive Measures (regardless of whether a Formal Complaint is filed)]; B --> C[Formal Complaint (document signed by Complainant or Title IX Coordinator)];
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Supportive Measures (regardless of whether a Formal Complaint is filed)

Formal Complaint (document signed by Complainant or Title IX Coordinator)



When did the alleged conduct occur?

On or after August 14, 2020?

“Consistent with the Department’s statements in the preamble to the Title IX Rule regarding non-retroactivity, the Rule does not apply to schools’ responses to sexual harassment that allegedly occurred prior to August 14, 2020. The Department will only enforce the Rule as to sexual harassment that allegedly occurred on or after August 14, 2020. With respect to sexual harassment that allegedly occurred prior to August 14, 2020, OCR will judge the school’s Title IX compliance against the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred. In other words, the Rule governs how schools must respond to sexual harassment that allegedly occurs on or after August 14, 2020.”

OCR Blog – August 5, 2020

Formal Complaint

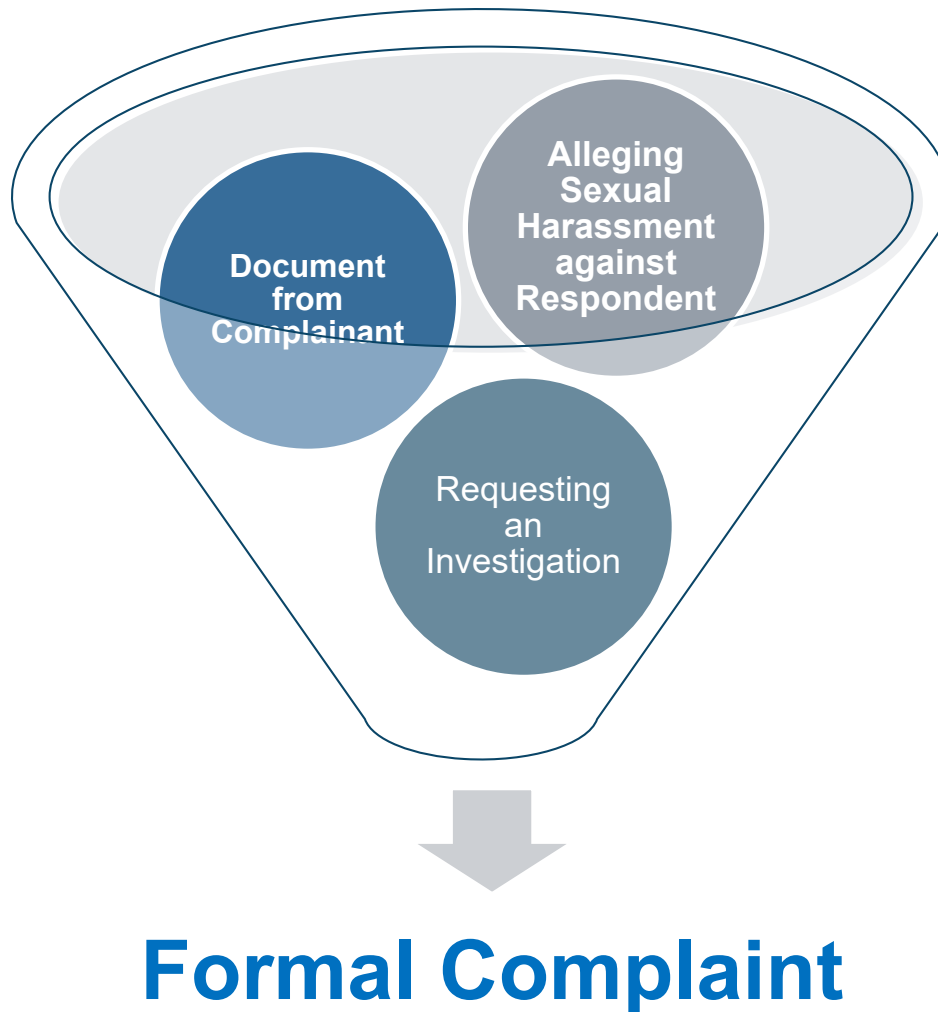
- a document or electronic submission filed by a Complainant that contains the Complainant's physical or digital signature (or document that "otherwise indicates that the complainant is the person filing the formal complaint." An e-mail from the complainant would appear to be sufficient); **OR**
- a document signed by the Title IX Coordinator
- There is no need for the formal complaint to contain a "detailed statement of facts."

...alleging sexual harassment against a respondent and requesting an investigation of the allegation of sexual harassment.

At the time that the Formal Complaint is filed, a complainant must be **participating in or attempting to participate** an Education Program or Activity of the CSU.

Alleging Sexual Harassment: Addendum B Prohibited Conduct

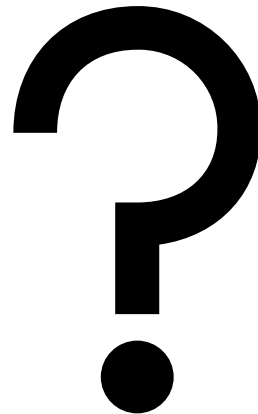




When Should the Title IX Coordinator File a Formal Complaint?

- When the Title IX Coordinator determines that “a non-deliberately indifferent response to the allegations requires an investigation.”
- Decision should be reached “intentionally and thoughtfully by the Title IX Coordinator.”
- “Taking into account the circumstances of the situation including the reasons why the complainant wants or does not want the [university] to investigate.”
- Examples: “pursue a grievance process against a serial sexual perpetrator,” “pattern of alleged sexual harassment by a perpetrator in a position of authority.”
- Signing a Formal Complaint does not mean that the Title IX Coordinator becomes a party to the process.
- Must document reasons why response was not deliberately indifferent (i.e., not clearly unreasonable in light of known circumstances).

**LET'S PAUSE
FOR QUESTIONS**



Supportive Measures

Upon receipt of a report the Title IX Coordinator must:

- Promptly contact Complainant to discuss the availability of supportive measures;
- Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
- Consider the Complainant's wishes regarding supportive measures;
- Explain to the Complainant the process for filing a formal complaint.

Supportive Measures



Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available and without fee or charge to the complainant or respondent.



Before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.



Designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all Parties or the educational environment.

Supportive Measures

May include:

- Counseling
- Accompaniment by a support person at a hearing
- Extensions of deadlines or other course-related adjustments,
- Modifications of work or class schedules
- Campus escorts
- Mutual restrictions on contact between the parties
- Changes in work or housing locations
- Leaves of absence
- increased security and monitoring of certain areas of the campus

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Confidentiality must be maintained regarding supportive measures to the extent that maintaining such confidentiality would not impair the ability to provide the supportive measures.

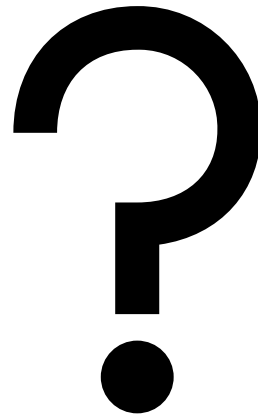
Supportive Measures

- The Title IX Coordinator should document all supportive measures and the facts or circumstances that render certain supportive measures appropriate or inappropriate.
- If supportive measures are not provided, should document why this decision was not clearly unreasonable in light of the known circumstances.
- Maintain record relating to supportive measures for seven years.
- Discretion as to whether to continue supportive measures after a determination of non-responsibility.

Example: Supportive Measures

- A student Complainant tells the Title IX Coordinator that another student seems to be waiting for them outside their classes and they are afraid for their safety. They request that as a supportive measure, they be provided with a campus police officer as a round- the-clock safety escort.
- The Title IX Coordinator may determine that the requested supportive measure is not reasonable with consideration to all the known circumstances of the case.
- The Title IX Coordinator should document the Complainant's request, note why the refusal to grant this supportive measure was not clearly unreasonable in light of the known circumstances, and explain the alternative supportive measures that were discussed with the Complainant as being available, and which were ultimately implemented.

**LET'S PAUSE
FOR QUESTIONS**



Poll Question – Charlie and Cameron

1. A student complainant, Charlie, calls the Title IX Office and tells you that they are being stalked by another student, Cameron. **Has Charlie filed a Formal Complaint?**

Answer 1: Yes

Answer 2: No

2. **What is your next step?**

Answer 1: Explain that supportive measures are available and arrange to meet with Charlie for an intake interview to discuss supportive measures and the Formal Complaint process further.

Answer 2: Send Cameron a Notice of Allegations.

Answer 3: Tell Charlie you need more information before you can do an intake.



Poll Question – Charlie and Cameron

3. You conduct an intake interview. Charlie explains that Cameron has been following them to their car and sending unwanted texts. Charlie does not want an investigation, but they would like a mutual no contact order between them and Cameron. **Next steps?**

Answer 1: You as the Title IX Coordinator file a Formal Complaint.

Answer 2: Inform Charlie that they must file a Formal Complaint in order for you to provide their requested supportive measures.

Answer 3: You arrange for Charlie's requested supportive measures, with consideration as to whether there is an unreasonable burden to Cameron and document this information in the file.

Poll Question – Charlie and Cameron

4. You must keep Charlie's requested supportive measures confidential and do not disclose their concerns or the supportive measures to Cameron.

Answer 1: True

Answer 2: False

Poll Question – Quinn and Jude

1. Faculty member, Quinn, sends an e-mail to you as the Title IX Coordinator stating that they are being sexually harassed by another employee, Jude, who emailed Quinn a picture of their pet hamster. Quinn says they want an investigation. **Formal Complaint?**

Answer 1: Yes

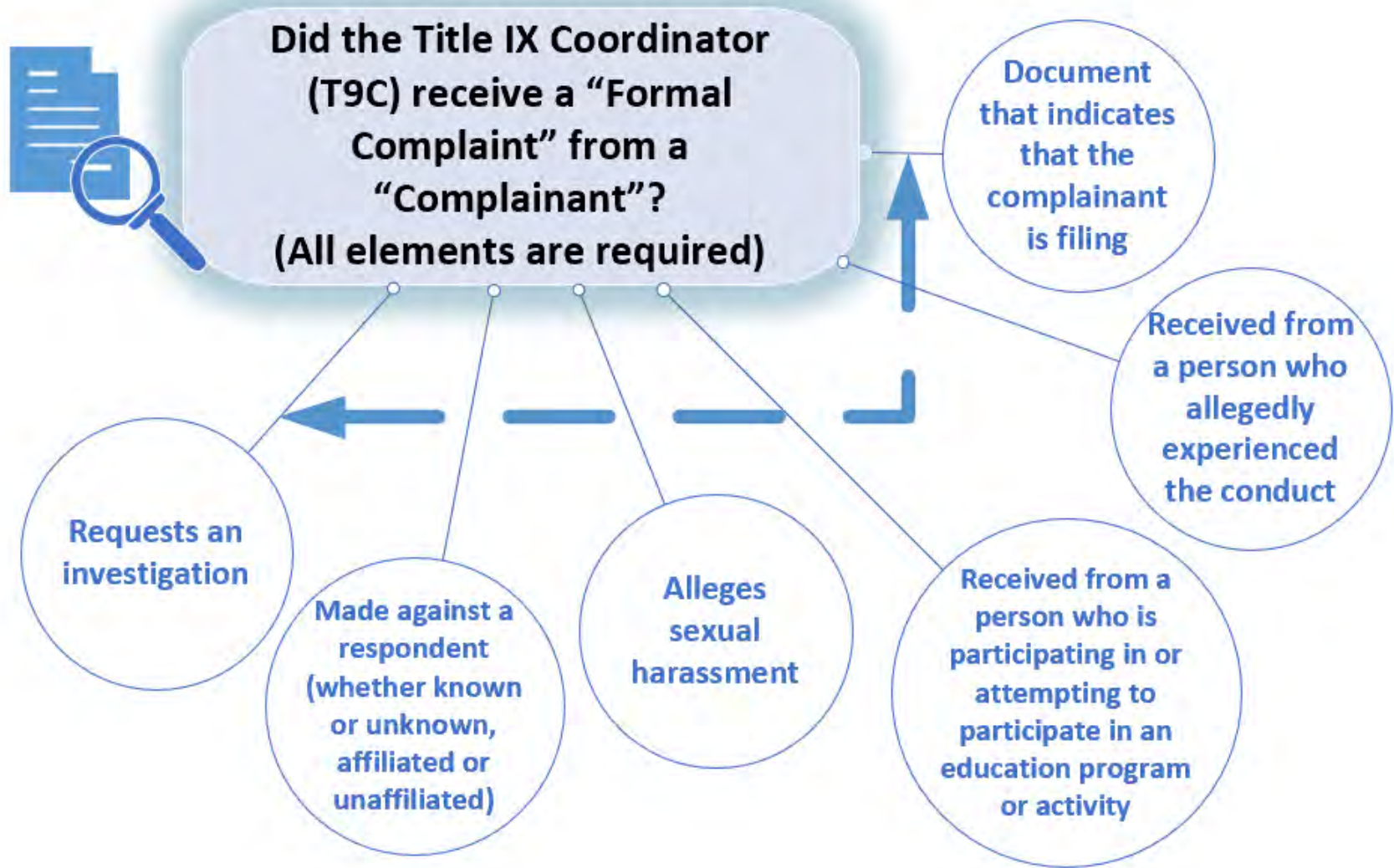
Answer 2: No

2. **What is your next step?**

Answer 1: You refer Quinn to Employee Relations – this is clearly not sexual harassment.

Answer 2: You arrange an intake interview with Quinn to discuss supportive measures and to learn more about their allegations.

Answer 3: You send Quinn a Notice of Dismissal.



Poll Question – Quinn and Jude

3. You meet with Quinn who confirms that their only allegation is that Jude sent them a picture of the pet hamster after they recently had a conversation about their pets. **What is your next step?**

Answer 1: You begin consideration of whether you must dismiss Quinn's complaint, notifying Jude of the allegations against them regardless of whether you dismiss the complaint.

Answer 2: You close Quinn's complaint because it does not fall under any definition of sexual harassment.

Answer 3: You implement a no contact directive between Quinn and Jude as a supportive measure.

Poll Question – Andy and Davey

1. Andy, a Residential Life staff member e-mails the Title IX Office stating that a student, Davey, told Andy they were recently sexually assaulted by another student. Andy is concerned and asks that you immediately begin an investigation. **Formal Complaint?**

Answer 1: Yes

Answer 2: No

Grievances and Formal Complaints

- The Federal Regulations specify that universities’ “contractual arrangements with employees must conform to Federal law, as a condition of receipt of Federal funds.”
- While the CFA Collective Bargaining Agreement indicates that faculty should file a grievance under Article 16, if a faculty member files a Formal Complaint but declines to file a grievance, the Addendum B process should proceed in the normal way.
- The faculty member should be notified that in order to receive all the rights to which they are entitled under the CBA, they should file a grievance.
- Template – EO 1096/Grievance – confirm in writing.

Grievances and Formal Complaints

- **Question: What if a faculty member files a Formal Complaint, it gets dismissed, the appeal window passes and the dismissal stands, and they still decline to file a grievance?**
- If the dismissal has resulted in the case being referred into the single investigator model under EO 1096 (or, rarely, Addendum A), you would proceed with this process, again reminding the faculty member in writing that in order to receive all processes to which they are entitled under the CBA, they should file a grievance.
- Note that they should consult Faculty Affairs/their union representative regarding the grievance time frame.
- Template – EO 1096/Grievance – confirm in writing.

To discuss with complainants:

- If a complainant files a Formal Complaint, you will need to send a Notice of Allegations to the respondent.
- Provision of supportive measures alone does not require that the respondent be notified of the allegations, with some exceptions.
- It is possible that their Formal Complaint made be dismissed if it does not fall under the scope of Addendum B – this does not necessarily mean their complaint will not be addressed; it may instead be handled under the EO 1096/1097 single investigator model or Addendum A.
- Both complainant and respondent will have the opportunity to appeal any dismissal decision.

Emergency Removal

- A Respondent may be removed from an education program or activity on an emergency basis before an investigation concludes or where no investigation or hearing is pending.
- Individualized safety and risk analysis prior to removal.
- The president or vice president designee, in consultation with the Title IX Coordinator, will determine whether there is an immediate threat to the **physical** health or safety of any student or other individual **arising from the allegations of sexual harassment**.
- Includes threat to self.
- An assessment that the Respondent poses a threat of obstructing the Sexual Harassment investigation or destroying relevant evidence does not justify Emergency Removal.
- Respondent will be provided with notice of removal and given an opportunity to challenge the decision immediately following the removal.
- CSU Executive Order 1098, Article VI- right to a hearing within 10 Working Days of a request by the Respondent for such a hearing.

Emergency Removal

- **“Arising from the allegations of sexual harassment”**
 - Could include situations where a Respondent threatens physical violence against a Complainant in response to the Complainant’s allegations.
 - Or where a Respondent reacts to being accused of sexual harassment by threatening physical self-harm.
 - Do not need to meet the requirements for Emergency Removal to address emergency situations that do NOT arise from sexual harassment allegations under Title IX and should instead use EO 1098 interim suspension process.
 - Example provided by OCR is where a student has brought a weapon to school unrelated to any sexual harassment allegations.

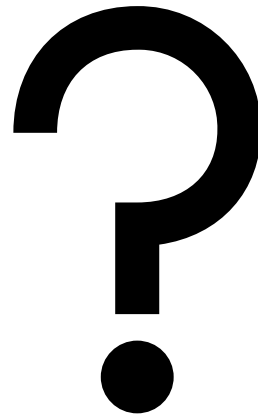
Emergency Removal Continued

- An emergency removal does not require a full hearing or impose any additional due process requirements.
- Emergency removal can, under the Regulations, be used for students, employees and student-employees → we will use emergency removal for **students** and **student-employees**.
- Employee concerns should be addressed through Administrative Leave.

Administrative Leave

- Addendum B: Campus may place **non-student employees** on administrative leave while the Formal Complaint process is pending.
- It is not required that there be “an immediate threat to the physical health or safety of any student or other individual” for administrative leave.
- Do not have to perform an individualized safety and risk analysis prior to removal.

ADDITIONAL QUESTIONS





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