

October 28,  
2020



**COLORADO**  
COMMUNITY COLLEGE SYSTEM

# Investigator Training

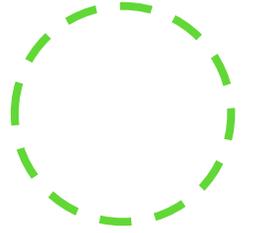
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- **CONDUCTING INVESTIGATIONS PURSUANT TO BOARD POLICY AND SYSTEM PROCEDURE 19-60**

Presented by: Tashana Taylor, CCCS Director of Civil Rights and Investigations



# AGENDA



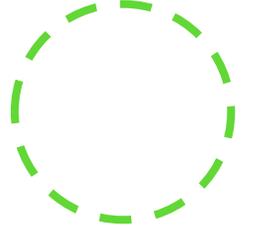
- Refresher:
  - Applicable Laws
  - Key Definitions
  - CCCS Policies and Procedures (New & Repealed)
- Roles & Responsibilities
- Overview of Resolution Process
  - Informal Resolutions
  - Formal Investigations
- Conclusion of Resolution Process
  - Live Hearing
  - Determination Report
  - Final Steps
- ○ Case Examples
  - Title IX
  - Other Civil Rights/Sexual Misconduct



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# Refresher

APPLICABLE LAWS, POLICIES AND  
PROCEDURES

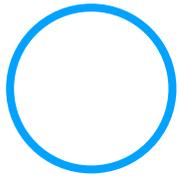


# TITLE IX/EO COORDINATOR

*Designated by each College and the System office to oversee all civil rights complaints, including sexual misconduct.*

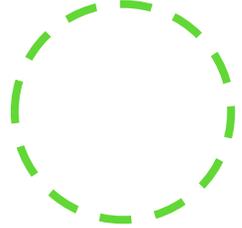
## Applicable Laws:

- Title IX, ADA, Title VI, and Title VII





# TITLE IX & “EQUAL OPPORTUNITY”



## Title IX:

- Prohibits discrimination based on sex.

## American with Disabilities Act (ADA):

- Prohibits discrimination based on disability.

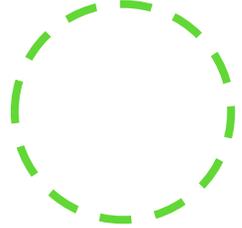
## Title VI:

- Prohibits discrimination on the basis of race, color, and national origin.

## Title VII:

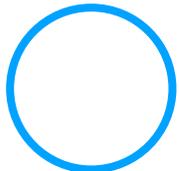
- Prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.





# CCCS COMMITMENT TO CIVIL RIGHTS

Colorado Community College System is committed to creating an inclusive environment by prohibiting **all forms of discrimination and harassment, including sexual misconduct,** in its employment practices and educational programs and activities, specifically on the basis of:

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1. Sex
  2. Gender
  3. Race
  4. Color
  5. Age
  6. Creed
  7. National or Ethnic Origin
  8. Ancestry
  9. Physical or Mental Disability
  10. Familial Status
  11. Veteran or Military Status
  12. Pregnancy Status
  13. Religion
  14. Genetic Information
  15. Gender Identity
  16. Sexual Orientation
- 

# Discrimination

Any distinction, preference, advantage, or detriment given to a person based on one or more actual or perceived protected classes.

# Harassment

A form of Discrimination that includes Quid Pro Quo and Hostile Environment.

# Sexual Misconduct

- Sexual Harassment
- Non-Consensual Sexual Contact
- Non-Consensual Sexual Intercourse
- Sexual Exploitation
- Dating/Domestic Violence
- Stalking

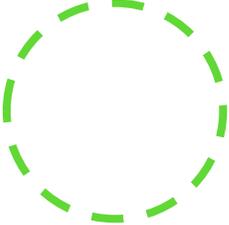
# Retaliation

- Any adverse employment or educational action taken against a person because of the person's participation, or perceived participation, in a complaint or investigation of discrimination and/or harassment.



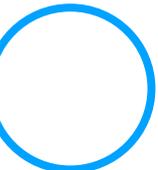
# NEW: BOARD POLICY 19-60

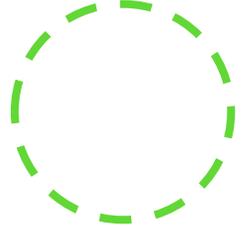
## PROHIBITION OF DISCRIMINATION, HARASSMENT OR RETALIATION



- BP 19-60 states:
    - Individuals affiliated with CCCS shall not discriminate or harass on the basis of sex, gender, race, color, age, creed, national or ethnic origin, ancestry, physical or mental disability, familial status, veteran or military status, pregnancy status, religion, genetic information, gender identity, sexual orientation, or any other protected class, in connection with employment practices or educational programs and activities (including in admissions).
    - Individuals shall not retaliate against any person who opposes discrimination, harassment or retaliation, or participates in any complaint or investigation process.
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**Applies to all conduct alleged to have occurred on or after August 12, 2020**





# NEW: SYSTEM PROCEDURE 19-60

## CIVIL RIGHTS AND SEXUAL MISCONDUCT RESOLUTION PROCESS

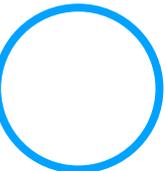
Defines the process by which CCCS shall respond to allegations of discriminatory, harassing, and/or retaliatory behavior, including Sexual Misconduct.

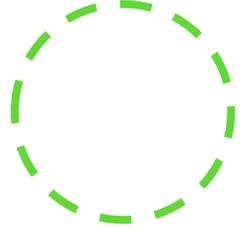
Appendix A: Provides definitions applicable to the procedure.

Appendix B: Details Compliance Requirements, such as training requirements and notice/publication of policies and procedures.



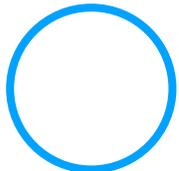
**Applies to all conduct alleged to have occurred on or after August 12, 2020**





# CCCS JURISDICTION

BP 19-60 and SP 19-60 apply to behaviors that take place on a CCCS campus, at CCCS sponsored events, and may also apply to off-campus and online behavior when the Title IX/EO Coordinator determines that the off-campus or online behavior affects a substantial CCCS interest.

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- For Title IX specific cases, the harassing behavior must have occurred in an education program or activity against a person within the United States.
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# REPEALED: BOARD POLICIES AND SYSTEM PROCEDURES (CONDUCT PRIOR TO 8/12/20)



## **BP 3-120 and BP 4-120**

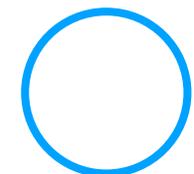
- Provide that individuals affiliated with the System or Colleges shall not be subjected to unlawful discrimination and/or harassment on the basis of protected class or perceived protected class.

## **SP 3-50b and SP 4-31a**

- Civil Rights Grievance and Investigation Process
  - Defines the process by which the System and Colleges shall respond to allegations of civil rights violations.

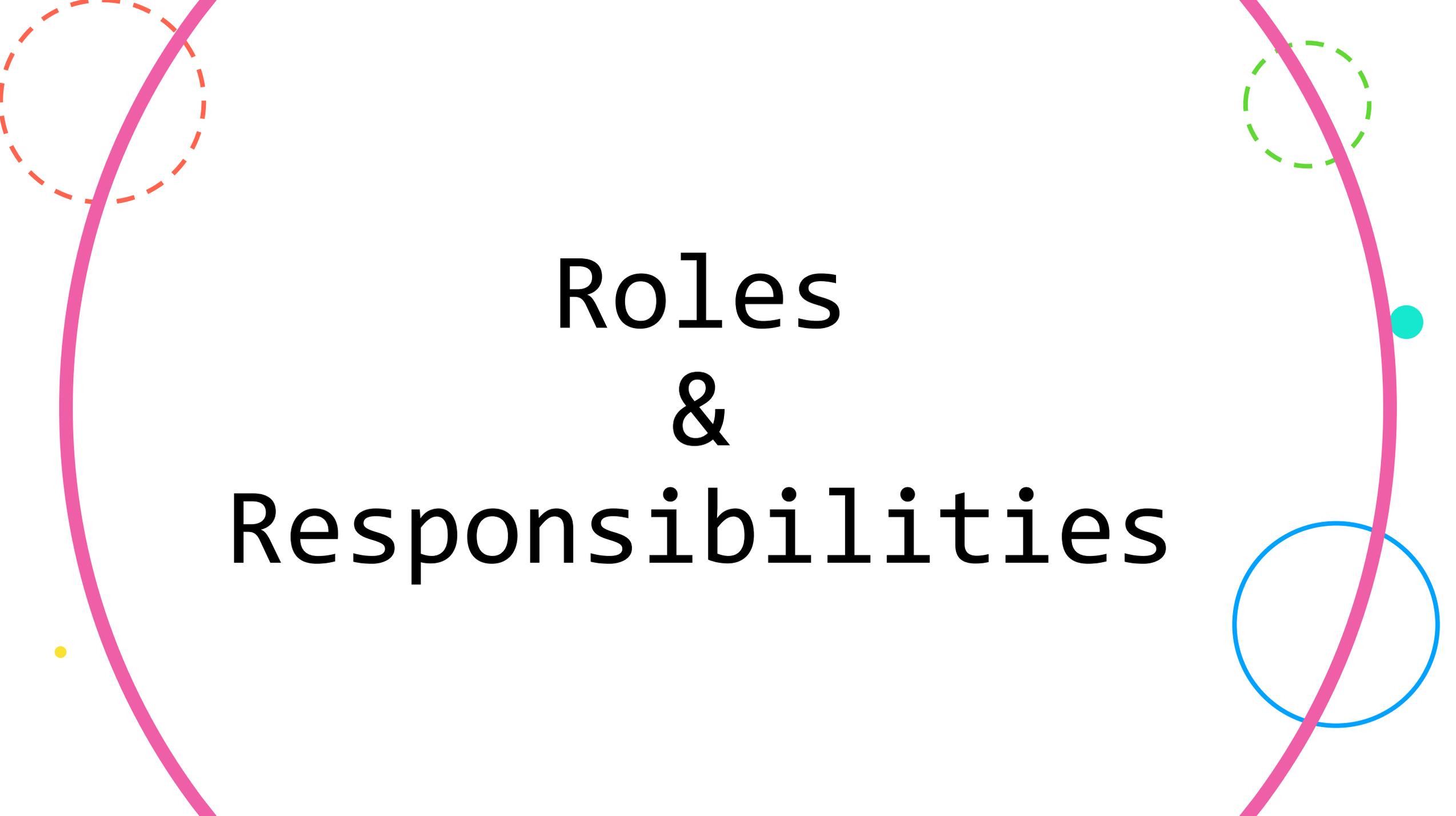
- **SP 3-120a and SP 4-120a**  
Sexual Misconduct Procedure

Provides definitions and expands on the process by which the System and Colleges shall respond to allegations of sexual misconduct.

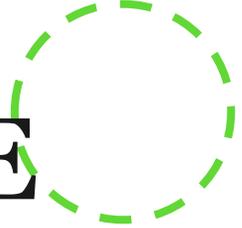




**QUESTIONS?**



# Roles & Responsibilities



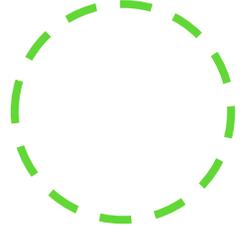
# TITLE IX/EO COORDINATOR ROLE

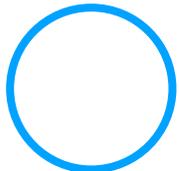
- Point person for campus complaints
- Oversight and coordination of prompt and equitable grievance procedures
- Supervisor of investigations
  - Title IX requires investigations to be adequate, prompt, reliable, impartial, thorough, objective, and independent
- Trainer and/or convener of training for students, employees, investigators, and appellate officers
- Contact for government inquiries, including CCRD and EEOC
- Interaction with OCR investigations
- ■ Ensure College's website includes name and contact information for Title IX/EO Coordinator

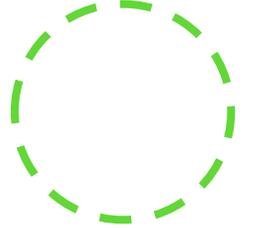




## INVESTIGATOR ROLE

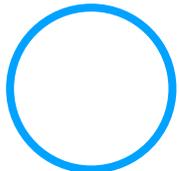


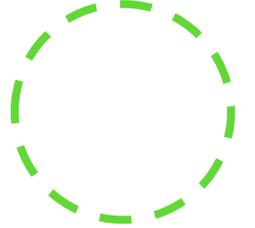
- Disclose all conflicts of interest to the Title IX/EO Coordinator
  - Remain neutral and impartial throughout the fact gathering stage
  - Treat all parties and witnesses with respect
  - Be aware of any bias or perceived bias
  - Do not make promises you can't keep (timelines, confidentiality, etc.)
  - Complete the fact gathering stage
  - Write applicable reports
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# AVOID PREJUDGMENT OF FACTS

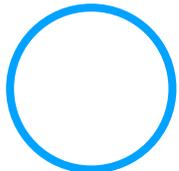
There will be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the resolution process.





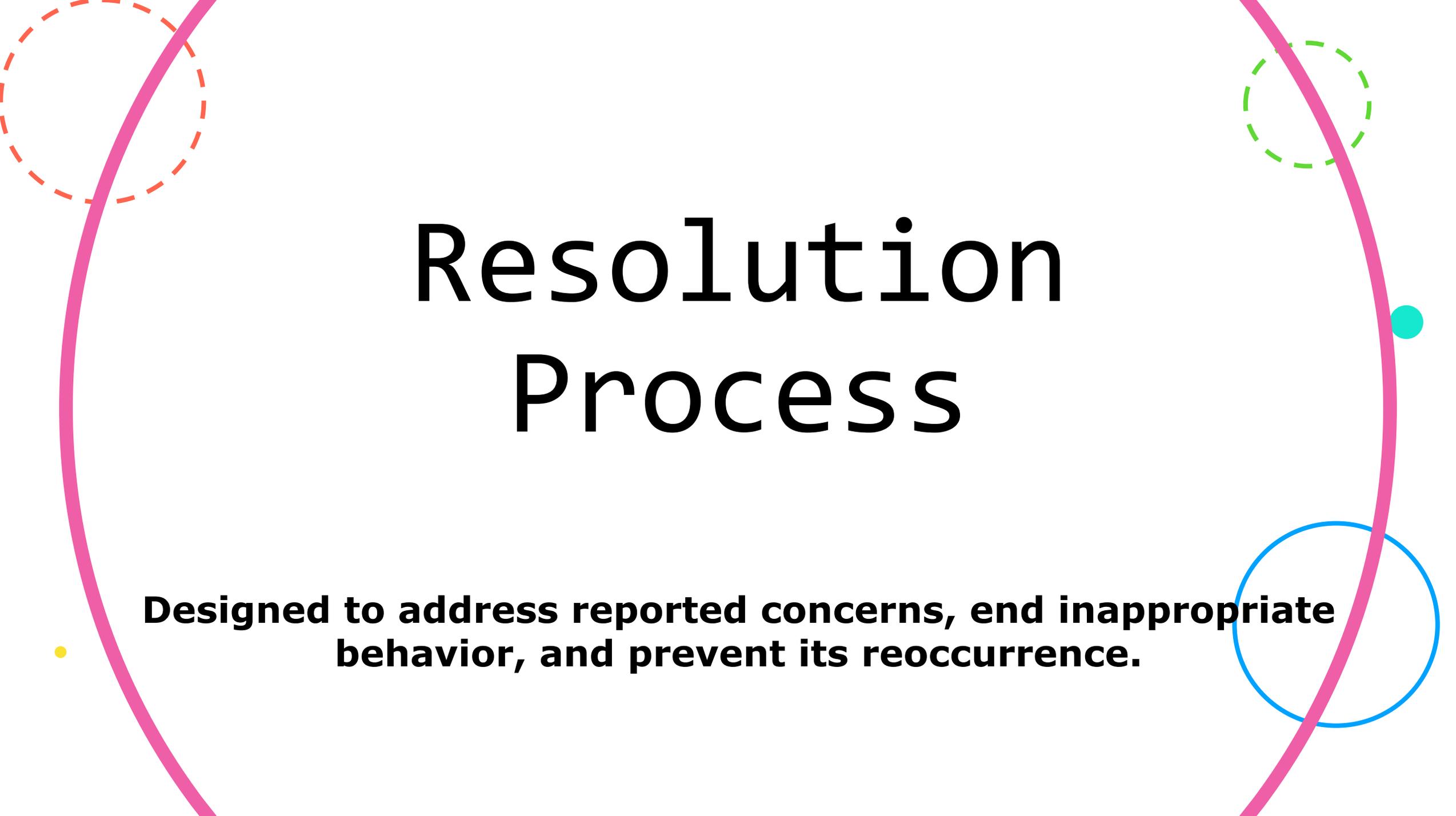
# CREDIBILITY DETERMINATIONS

Any credibility determinations made by investigators will not be based upon a person's status as a Complainant, Respondent, or witness.



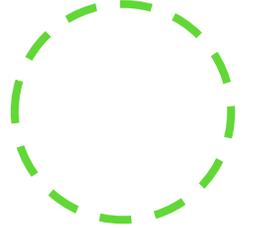


**QUESTIONS?**



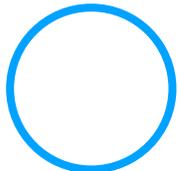
# Resolution Process

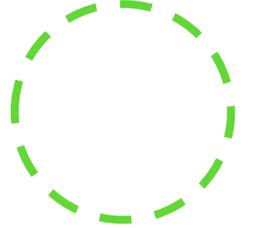
- **Designed to address reported concerns, end inappropriate behavior, and prevent its reoccurrence.**



# PRELIMINARY STEPS

Upon receipt of a complaint, the Title IX/EO Coordinator will review the complaint to determine whether the complaint alleges sufficient information to support that a civil rights violation has occurred.

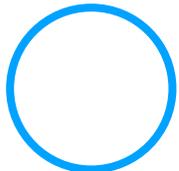
- If the Title IX/EO Coordinator is unable to make this determination in reviewing the complaint alone, the Title IX/EO Coordinator may, at their discretion, reach out to the Complainant or others, as relevant, for clarification and/or additional information.
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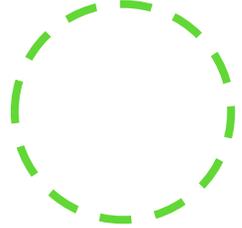


# PRELIMINARY STEPS CONT.

If there is no reasonable cause found to initiate a formal investigation, the Title IX/EO Coordinator shall notify the Complainant and discuss other options for addressing the reported concerns.

If there is reasonable cause and the Complainant wishes to proceed, the Title IX/EO Coordinator will initiate an informal resolution or a formal investigation.

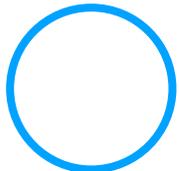
- If the Complainant does not wish to proceed, the Title IX/EO Coordinator reserves the right to initiate an informal or formal, and will consider relevant factors to determine necessary next steps.
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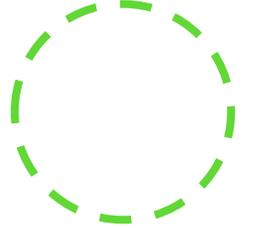


# TIMELINE

CCCS shall make every effort to complete the resolution or investigation process within approximately 90 days from the date the complaint is filed.

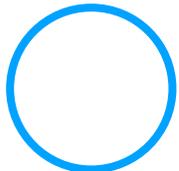
If the complaint cannot be resolved within 90 days, the Title IX/EO Coordinator may extend the timeline when necessary.

- Written notice will be provided to the parties notifying them of the extension.
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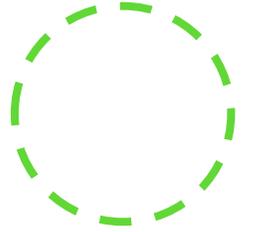
# INTERIM ACTIONS

The Title IX/EO Coordinator may implement interim actions and supportive measures intended to protect the safety and security of the campus community, address the effects of the reported behavior, and prevent further violations, while the complaint is under review or investigation.

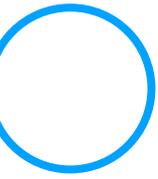
- Examples:
    - Issuing a No Contact Order
    - Placing an employee on administrative leave
    - Campus ban
    - Altering housing/work arrangements
    - Offering adjustments to academic deadlines or course schedules
    - Suspending privileges such as attendance at College activities or participation in College-sponsored organizations
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# Rights of Involved Parties

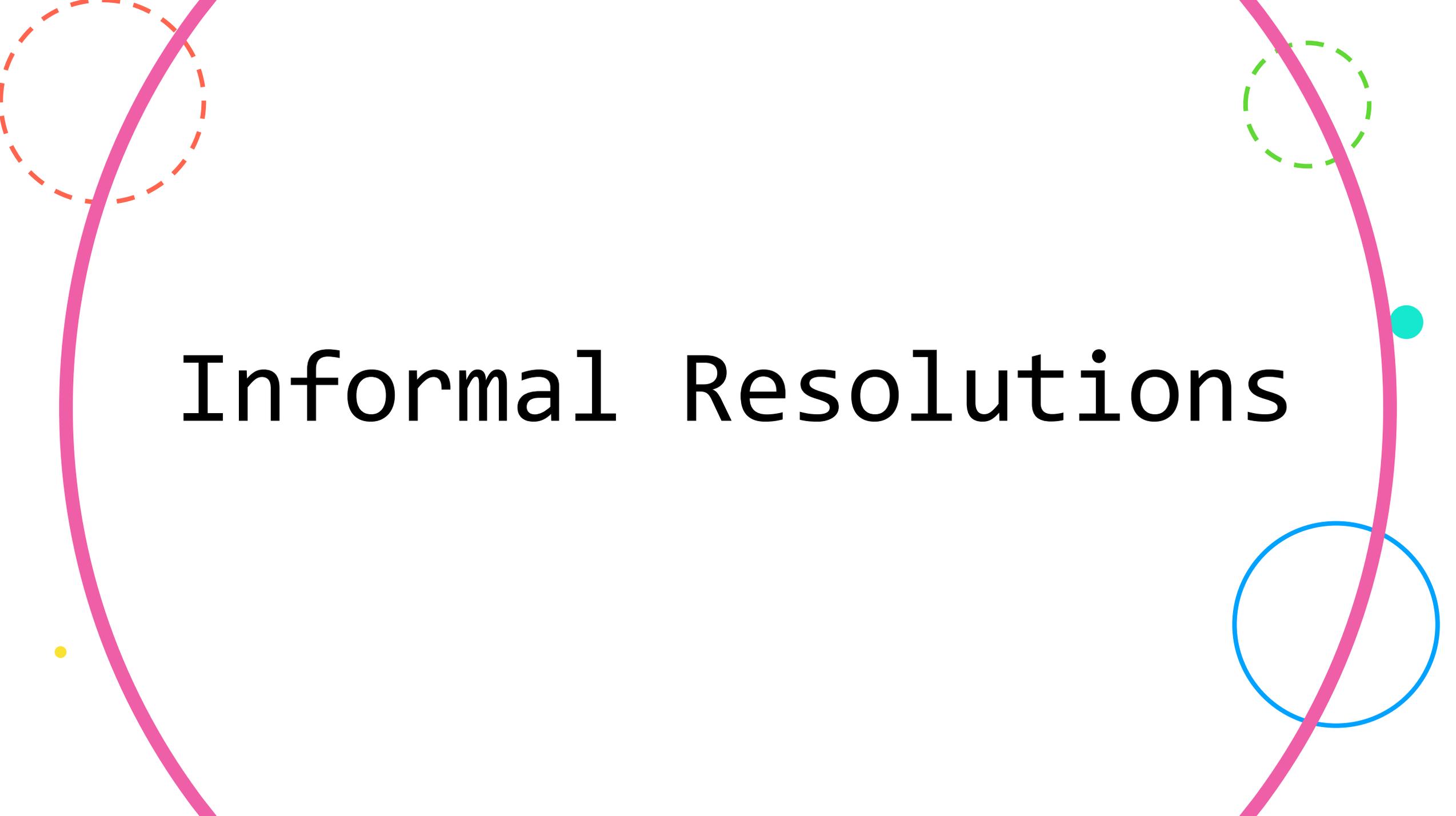


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- To be treated with respect by CCCS employees.
  - To take advantage of Supportive Measures and other resources, such as counseling, psychological services, and health services.
  - To experience a safe living, educational, and work environment.
  - To have an advisor of their choice present at any meeting.
  - To have access to a Title IX/EO Coordinator, investigator(s), hearing officers/decision-maker(s) for Title IX cases, and/or other individuals assisting with the resolution process who do not have a conflict of interest or bias for or against either party.
  - To receive amnesty for minor student misconduct (such as alcohol or drug violations) that is ancillary to the incident.
  - To be free from retaliation.
  - To be informed of the outcome/resolution of the complaint, and the sanctions and rationale for the outcome where permissible.
  - To have assistance in contacting law enforcement, if desired.
  - To request housing, employment, and/or educational modifications, as deemed appropriate and reasonable.
  - To request no further contact with the opposite party, as deemed appropriate, allowable and reasonable.



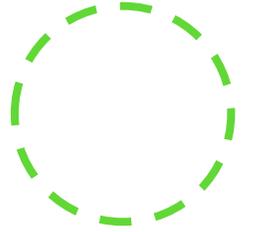


**QUESTIONS?**

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# Informal Resolutions

● THE TITLE IX/EO COORDINATOR, IN CONSULTATION WITH THE  
● PARTIES, MAY DETERMINE THAT AN INFORMAL RESOLUTION IS  
● APPROPRIATE TO RESOLVE THE REPORTED CONCERNS.

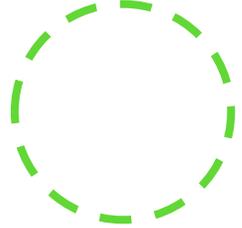


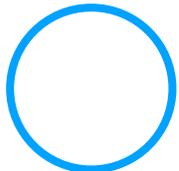
- Notice of the allegations and specific Informal Resolution process will be provided to both parties.
- Informal resolutions do not involve a written investigation report or an opportunity to appeal.
- Informal resolutions are not available in Sexual Harassment cases involving a student Complainant and an employee Respondent.
- At any time during the informal resolution process, the Title IX/EO Coordinator and/or parties may elect to cease the informal resolution process and proceed with a formal investigation.





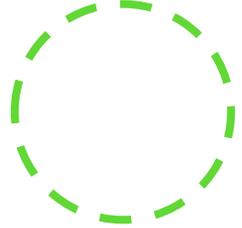
# INFORMAL RESOLUTIONS MAY INCLUDE...



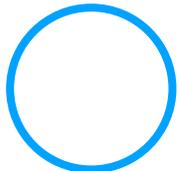
- Interim or long-term remedial measures
  - Referral to other resolution processes
  - Training or educational programming for the parties
  - The Title IX/EO Coordinator or a designee serving as a facilitator to discuss the reported concerns with the Complainant and Respondent (either separately or together) and to identify possible resolutions and/or appropriate future conduct
  - Referral to a Disciplinary Authority to further address the reported behavior, as deemed appropriate
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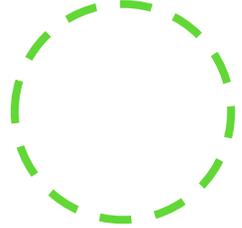
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# Formal Investigations



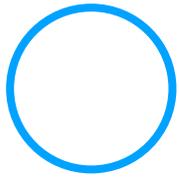
# STEPS FOR ALL INVESTIGATIONS

- Title IX/EO Coordinator will assign investigators.
  - Title IX/EO Coordinator will provide the Notice of Investigation to the Complainant and Respondent.
  - Investigators will conduct interviews of parties and witnesses, as deemed relevant by the Investigators.
  - Throughout the investigation, the Title IX/EO Coordinator will provide regular written updates on the status of the investigation the parties.
  - Following the fact gathering stage, the investigator(s) shall issue a Preliminary Investigation Report to the parties for review.
    - Includes relevant facts as gathered by the investigators, but does not include findings, analysis, or conclusion.
    - Parties have 10 calendar days to review and respond with any changes, clarifications, or questions.
    - Parties may review, upon request, all evidence collected as part of the investigation, whether or not it will be relied upon in reaching a determination.
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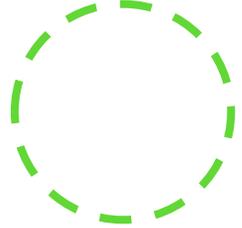
# FINAL INVESTIGATION REPORT

At the conclusion of the fact gathering stage and formal investigation, including any relevant information submitted in response to the Preliminary Investigation Report, the investigator(s) shall issue a Final Investigation Report to the Title IX/EO Coordinator.

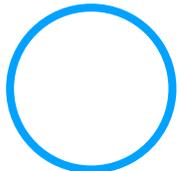
- Report should detail the factual findings and summarize the relevant evidence.
  - **Report will not contain any determinations as to whether the conduct is in violation of applicable policies.**
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# FINAL INVESTIGATION REPORT CONT.



Upon receipt of the Final Investigation Report, the Title IX/EO Coordinator shall proceed as follows:

- For cases involving Sexual Harassment within the United States, the Title IX/EO Coordinator shall initiate a live hearing.
  - For other civil rights cases (non-Sexual Harassment or Sexual Harassment outside of the United States), the Title IX/EO Coordinator will obtain a written Determination Report from the investigators.
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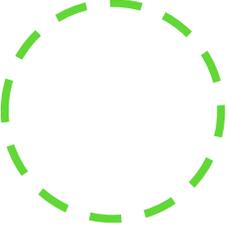
**QUESTIONS?**

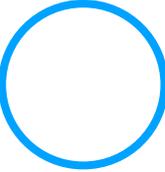


**Live Hearing:**  
Title IX Cases



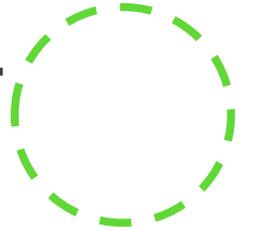
# LIVE HEARING FOR SEXUAL HARASSMENT CASES



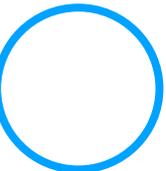
- A Live Hearing must be scheduled no earlier than ten days after issuance of the Final Investigation Report.
  - A Hearing Officer will oversee the hearing, make determinations as to the relevance of evidence/questioning, determine whether evidence will be permitted, and make the final determination regarding the allegations.
    - A Hearing Officer must be a different individual than any investigator or Title IX/EO Coordinator assigned to the case.
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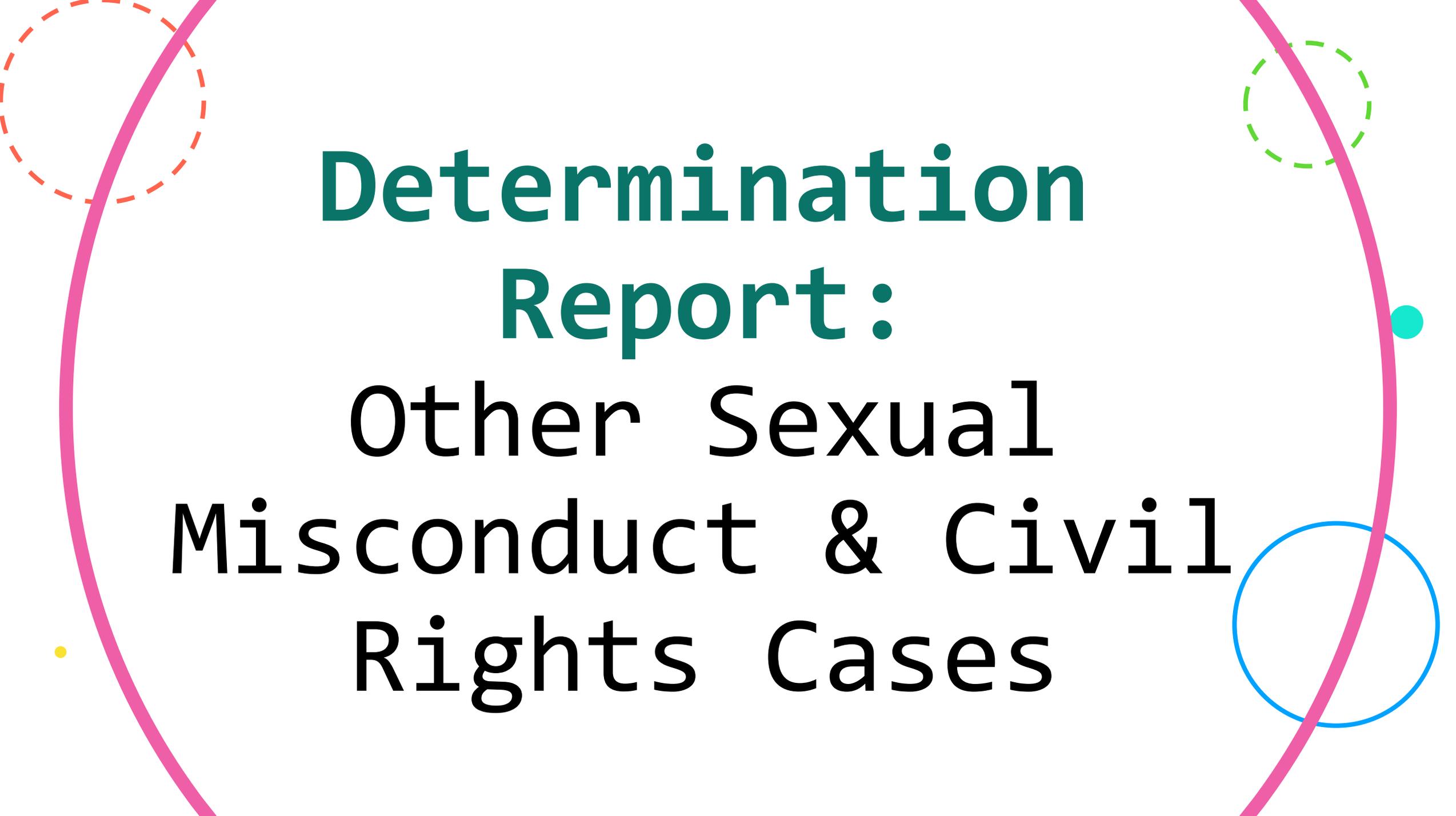


# LIVE HEARING FOR SEXUAL HARASSMENT CASES CONT.



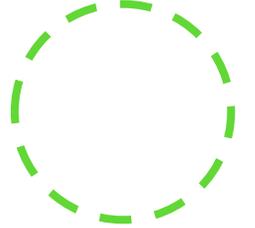
- At the hearing, the Complainant and Respondent must be accompanied by an advisor.
- The advisor is responsible for questioning the witnesses; the Complainant and Respondent are not permitted to ask questions directly.
- If the party does not provide their own, CCCS will provide an advisor at no charge.
- Following the hearing, the Hearing Officer will issue a Determination Report to the Title IX/EO Coordinator.
  - The report will state whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation.



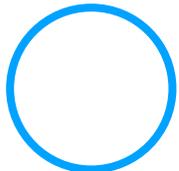


# Determination Report:

Other Sexual  
Misconduct & Civil  
Rights Cases

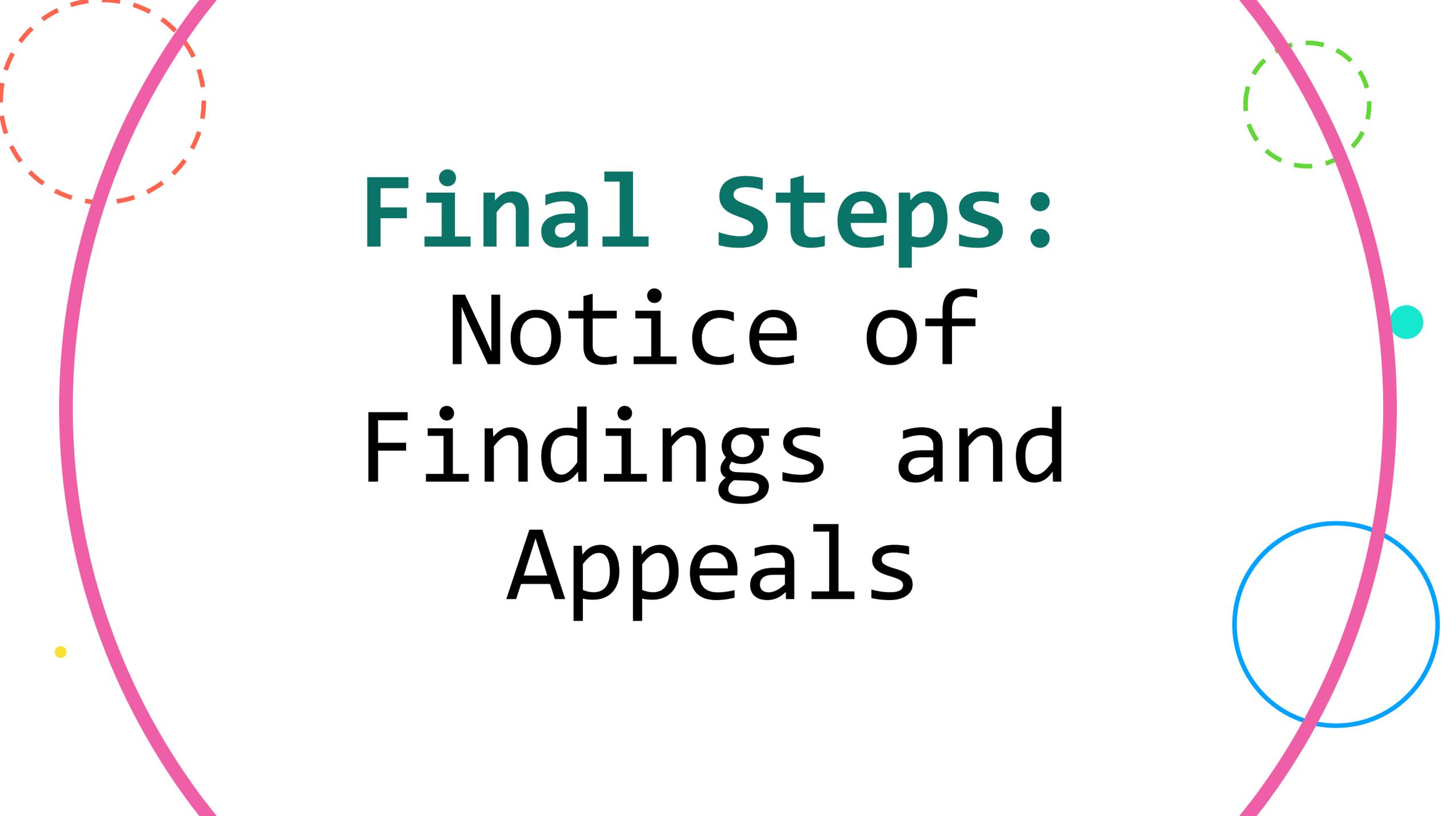


# DETERMINATION REPORT

- The Determination Report for other civil rights cases (non-Sexual Harassment or Sexual Harassment outside the United States) should include:
    - Whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation. The determination shall include a summary of all evidence and information used to reach these conclusions.
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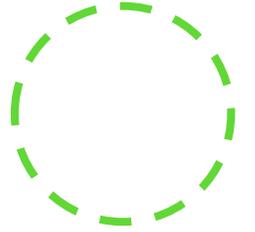
**QUESTIONS?**



**Final Steps:**  
Notice of  
Findings and  
Appeals



# ONCE A DETERMINATION REPORT IS RECEIVED (EITHER FROM THE INVESTIGATORS OR HEARING OFFICER)...



The Title IX/EO Coordinator will provide a Notice of Finding to the Complainant and Respondent notifying them of the findings. The parties will also receive a copy of the Final Investigation Report and Determination Report.

Upon receiving the Notice of Findings, the parties will be advised of their right to appeal within 10 calendar days of service of the decision.

- If the appeal is timely and meets the limited grounds for appeal, an Appellate Officer will be assigned.
- Written notice of the outcome of the appeal will be provided simultaneously to the parties.

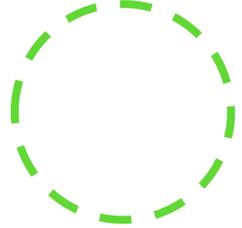
Once the appeal process has been exhausted:

- If the Respondent is found not in violation, the complaint shall be closed with no further disciplinary action.
- If the Respondent is found in violation, the findings will be provided to the Disciplinary Authority to proceed in accordance with applicable policies.





**QUESTIONS?**

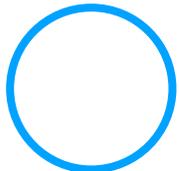


# CASE EXAMPLE: TITLE IX

Student A reported that Student B sexually assaulted them. According to Student A, Student B was a good friend of theirs last semester. This semester, however, Student B wanted to be more than friends. Last week, the students were spending time together in an on-campus coffee shop. Student A reported that when no one was around, Student B started kissing them on the neck and lips, and touching their inner thigh without Student A's consent.

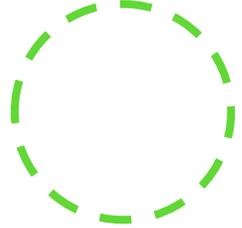
The Title IX/EO Coordinator initiated a formal investigation and assigned two investigators to investigate the case.

- **What happens next?!**





# STEPS FOR TITLE IX CASE EXAMPLE



- Review the Notice of Investigation and any accompanying documentation.
  - Interview Student A, Student B, and any relevant witnesses (including expert witnesses).
  - Gather and objectively evaluate all relevant evidence including...
    - Inculpatory Evidence
      - Incriminating or tending to show responsibility of a violation.
    - Exculpatory Evidence
      - Exonerating or tending to negate responsibility of a violation.
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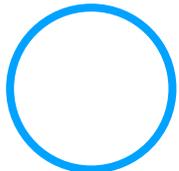
Following the fact gathering stage, issue a Preliminary Investigation Report to Student A and Student B.

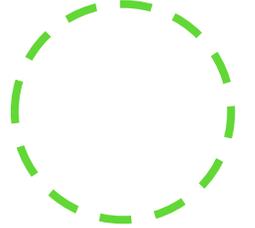
- Allow each party 10 calendar days to review and respond with any changes, clarifications, or questions.

Issue a Final Investigation Report to the Title IX/EO Coordinator detailing the factual findings and summarizing the relevant evidence.

- **DO NOT** include a determination re: policy violation.

Title IX/EO Coordinator shall initiate a live hearing and the Hearing Officer will be the ultimate Decision Maker.

- Investigators may be called as witnesses during live hearing.
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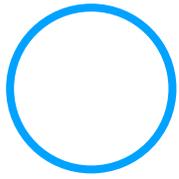
# CASE EXAMPLE: NON-TITLE IX

Employee A reported that their Supervisor recently removed several of their job duties and as a result, also reduced their pay. Employee A believes that their Supervisor did this because Employee A reported harassment concerns a few months ago to Human Resources. Specifically, Employee A reported that Employee B, Supervisor's best friend, used several racial slurs towards Employee A during a holiday staff party.

The Title IX/EO Coordinator initiated a formal investigation and assigned two investigators to investigate the case.

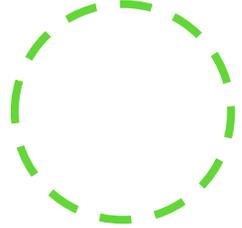


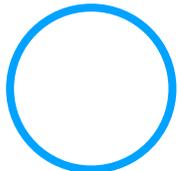
## **What happens next?!**





# STEPS FOR NON-TITLE IX CASE EXAMPLE



- Review the Notice of Investigation and any accompanying documentation.
  - Interview Employee A, Supervisor, and any relevant witnesses.
  - Gather and objectively evaluate all relevant evidence including...
    - Inculpatory Evidence
      - Incriminating or tending to show responsibility of a violation.
    - Exculpatory Evidence
      - Exonerating or tending to negate responsibility of a violation.
  - Following the fact gathering stage, issue a Preliminary Investigation Report to Employee A and Supervisor.
    - Allow each party 10 calendar days to review and respond with any changes, clarifications, or questions.
  - Issue a Final Investigation Report to the Title IX/EO Coordinator detailing the factual findings and summarizing the relevant evidence.
    - **DO NOT** include determination re: policy violation.
  - Title IX/EO Coordinator will review the Final Investigation Report and request a written Determination Report from the investigators.
  - Investigators will provide a written Determination Report to the Title IX/EO Coordinator to be shared with Employee A and Supervisor.
    - Preponderance of the evidence standard.
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**QUESTIONS?**

**Thank you for attending!**

Feel free to contact me with any questions.

**Tashana Taylor**

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**COLORADO**  
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