

# NEW TITLE IX REGULATIONS: OVERVIEW AND RESOURCES

**Elliot Cox, Idaho Office of School Safety  
and Security**

**Dr. Eric Studebaker, State Department of  
Education**



"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance."

# NEW TITLE IX RULES ON SEXUAL HARASSMENT ISSUED 5/6/20

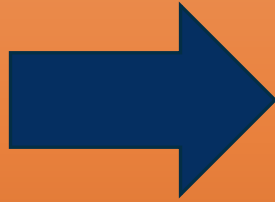
- ▶ **Have the force and effect of law**
- ▶ **Went into effect 8/14/20**
- ▶ **Impact from new presidential administration**
  - ▶ **Executive Order signed March 8, 2021**



# TITLE IX COORDINATOR

## Contact Information

- ▶ **Name/Title**
- ▶ **Office address**
- ▶ **Email address**
- ▶ **Phone number**



1. **Students**
2. **Parents/legal guardians of students**
3. **Employees**
4. **Applicants for admission/employment**
5. **Unions/professional organizations w/CBA or professional agreements**
6. **All handbooks/catalogues made available to above parties**
7. **“Prominently” on website**



# ALL EMPLOYEES ARE MANDATORY REPORTERS

- ▶ **Includes school bus drivers, counselors, etc.**
- ▶ **NO employee can be a confidential resource for TIX purposes**
- ▶ **Double mandatory reporters: child abuse and TIX**



# NEW DEFINITION OF SEXUAL HARASSMENT UNDER TIX

1. *Quid pro quo* by an employee;
2. Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies a person equal access to a school's education program or activity; and/or
3. Sexual assault as defined by the Clery Act, and dating violence, domestic violence and stalking as defined by the Violence Against Women's Act.



# JURISDICTION

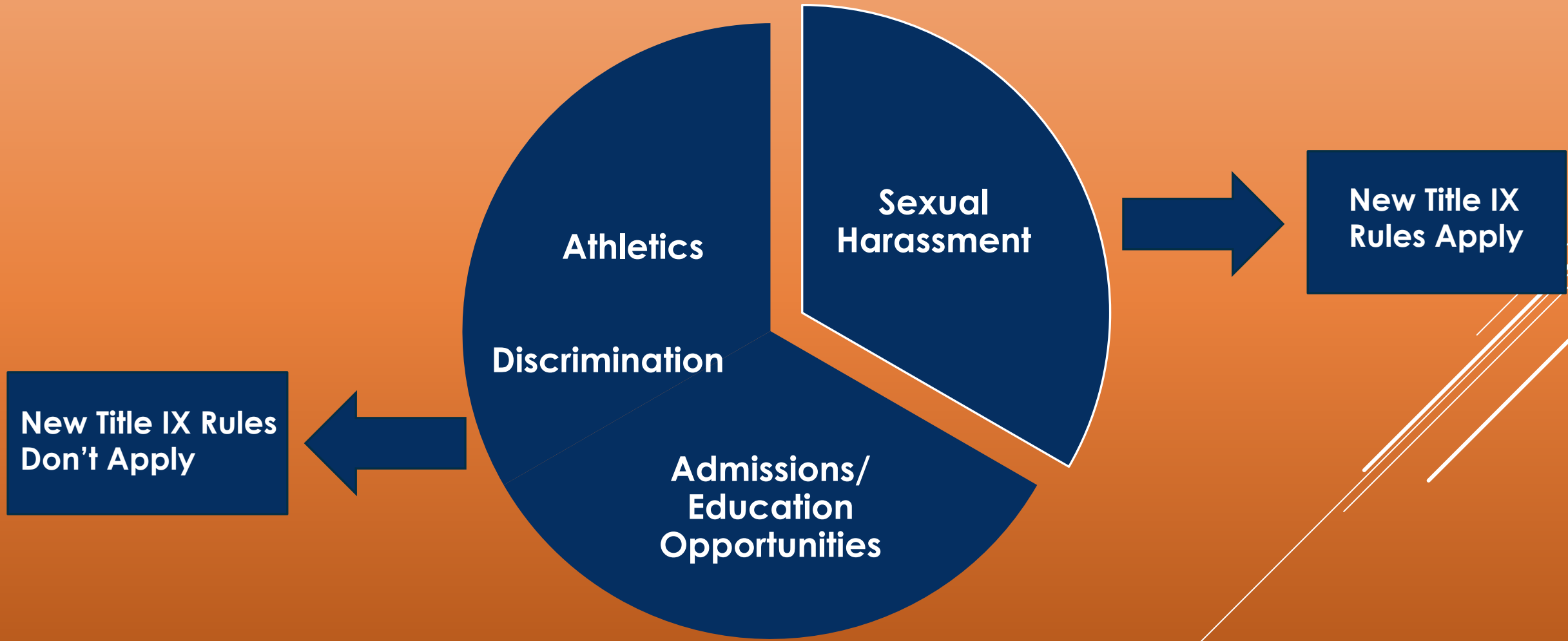
## **TIX Rules Only Apply If All Are True:**

- ▶ **School receives federal funds; and**
- ▶ **Meets the new definition of sexual harassment under TIX; and**
- ▶ **Takes place in school's education program/activity; and**
- ▶ **Takes place in the U.S.; and**
- ▶ **Complainant participating/attempting to participate in education program/activity at time of complaint**

## **Education Program/Activity:**

- ▶ **Locations, events, or circumstances over which the school exercises substantial control over both the Respondent and the context in which the sexual harassment occurs**

# Title IX





# THE TIX TEAM

1. **TIX Coordinator\***
2. **Investigator\***
3. **Decision maker\***
4. **Appellate decision maker\***
5. **Informal resolution officer**
6. **Advisors of choice**

**\* = Mandatory positions to fill in K12**

- ▶ **Conflicts of interest must be accounted for**
- ▶ **Must separate all roles, with exception of TIX Coordinator being investigator or informal resolution officer**
- ▶ **Can outsource all roles except TIX Coordinator**

**Incident**



**Notice**



**Intake**



**Complaint**



**Determination  
of  
Responsibility**



**Formal  
Investigation**



**Gatekeeping**



**Appeal**

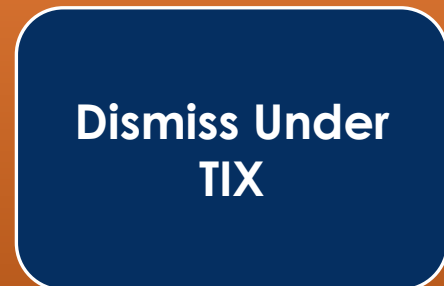


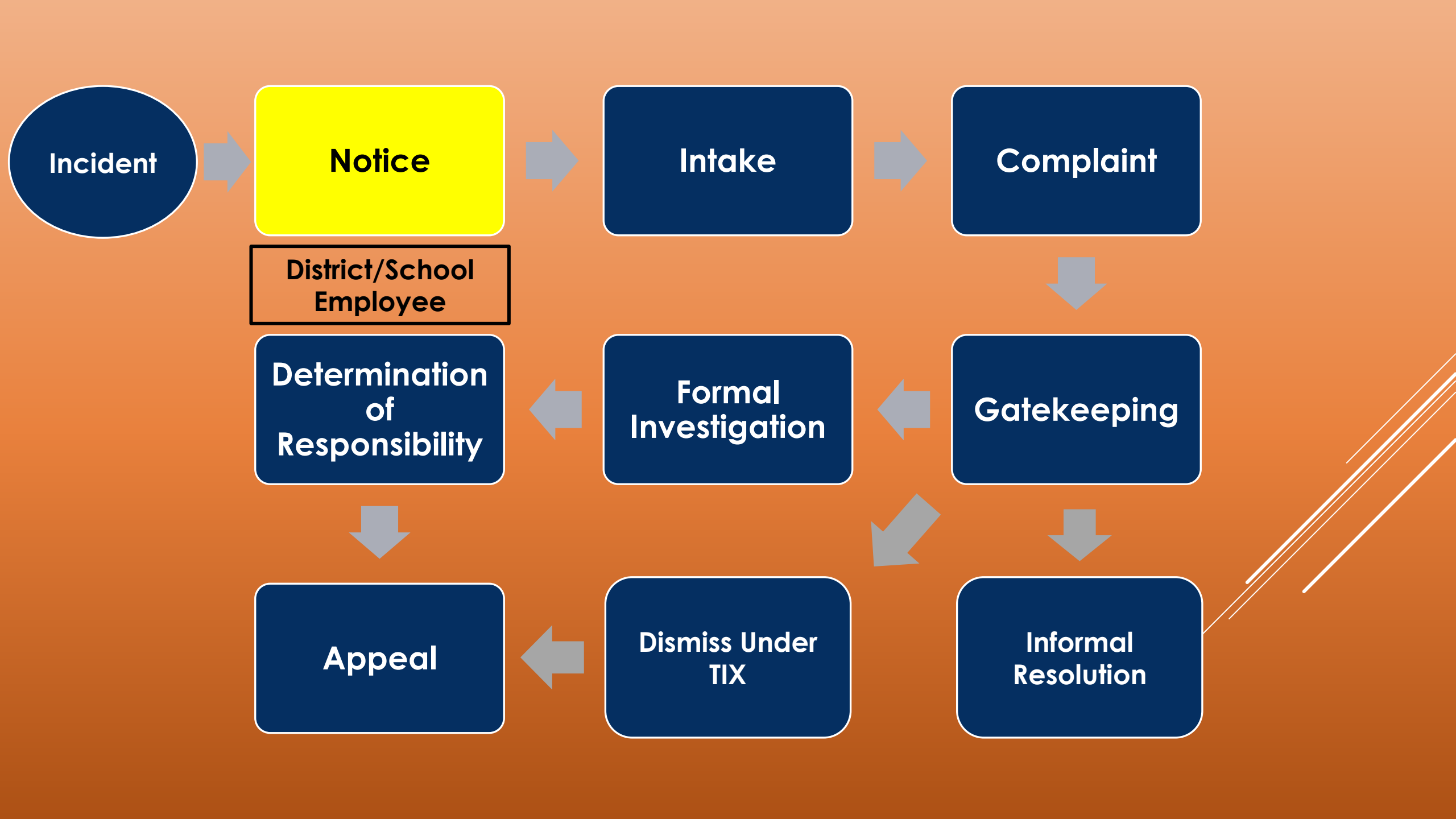
**Dismiss Under  
TIX**



**Informal  
Resolution**







**Incident**

**Notice**

**District/School  
Employee**

**Intake**

**Complaint**

**Determination  
of  
Responsibility**

**Formal  
Investigation**

**Gatekeeping**

**Appeal**

**Dismiss Under  
TIX**

**Informal  
Resolution**

Incident



Notice



Intake



Complaint

TIXC



Determination  
of  
Responsibility



Formal  
Investigation



Gatekeeping



Appeal



Dismiss Under  
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Informal  
Resolution



# PROCEDURES: MINIMUM RESPONSE & SUPPORTIVE MEASURES

**Upon receipt of report, TIXC must contact complainant (and parent) and:**

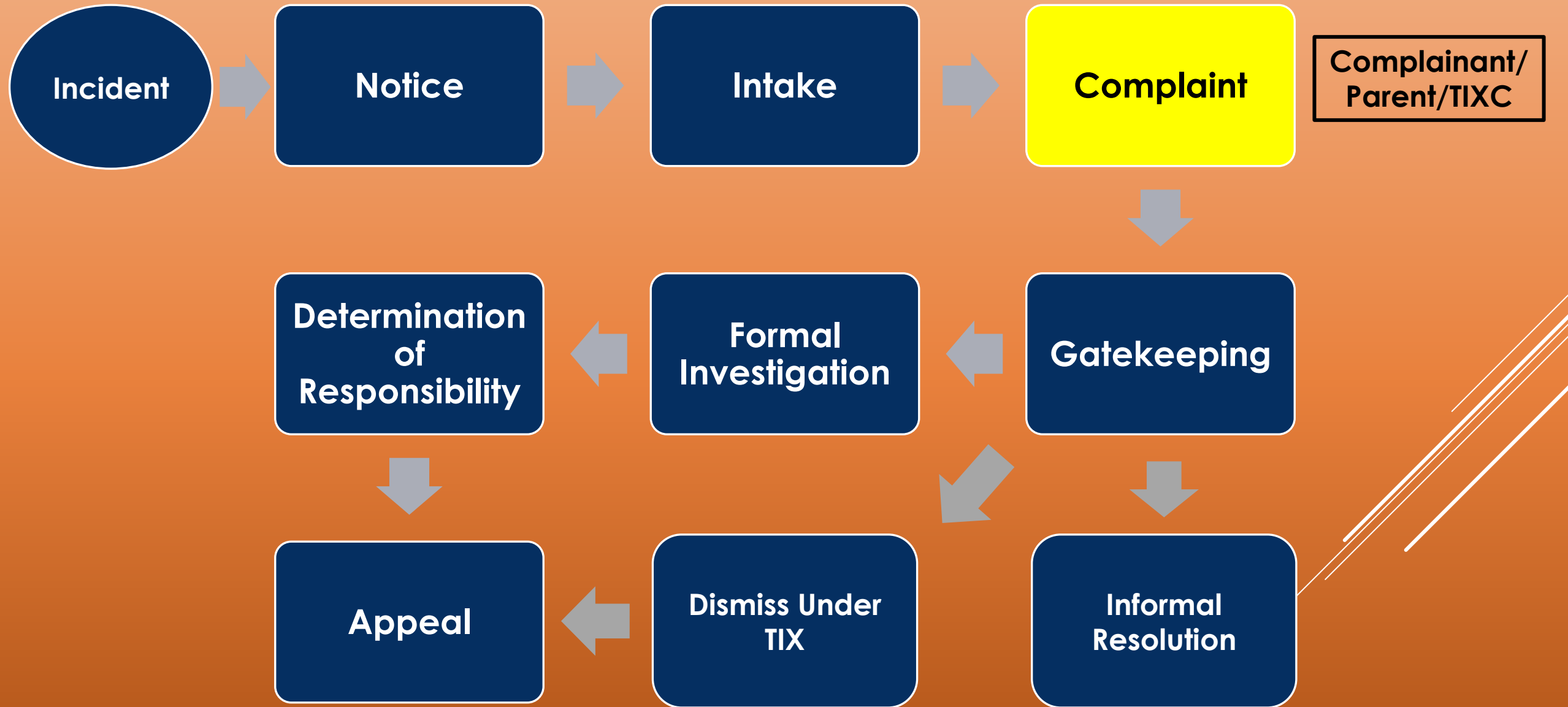
- ▶ **Discuss availability of supportive measures**
- ▶ **Consider complainant's wishes about supportive measures**
- ▶ **Inform complainant measures are available with/without filing a formal complaint**
- ▶ **Explain how to file formal complaint**

**Supportive Measures:**

- ▶ **Counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, etc.**
- ▶ **Free, non-disciplinary/punitive**

# PROCEDURES: EMERGENCY REMOVAL PROVISION

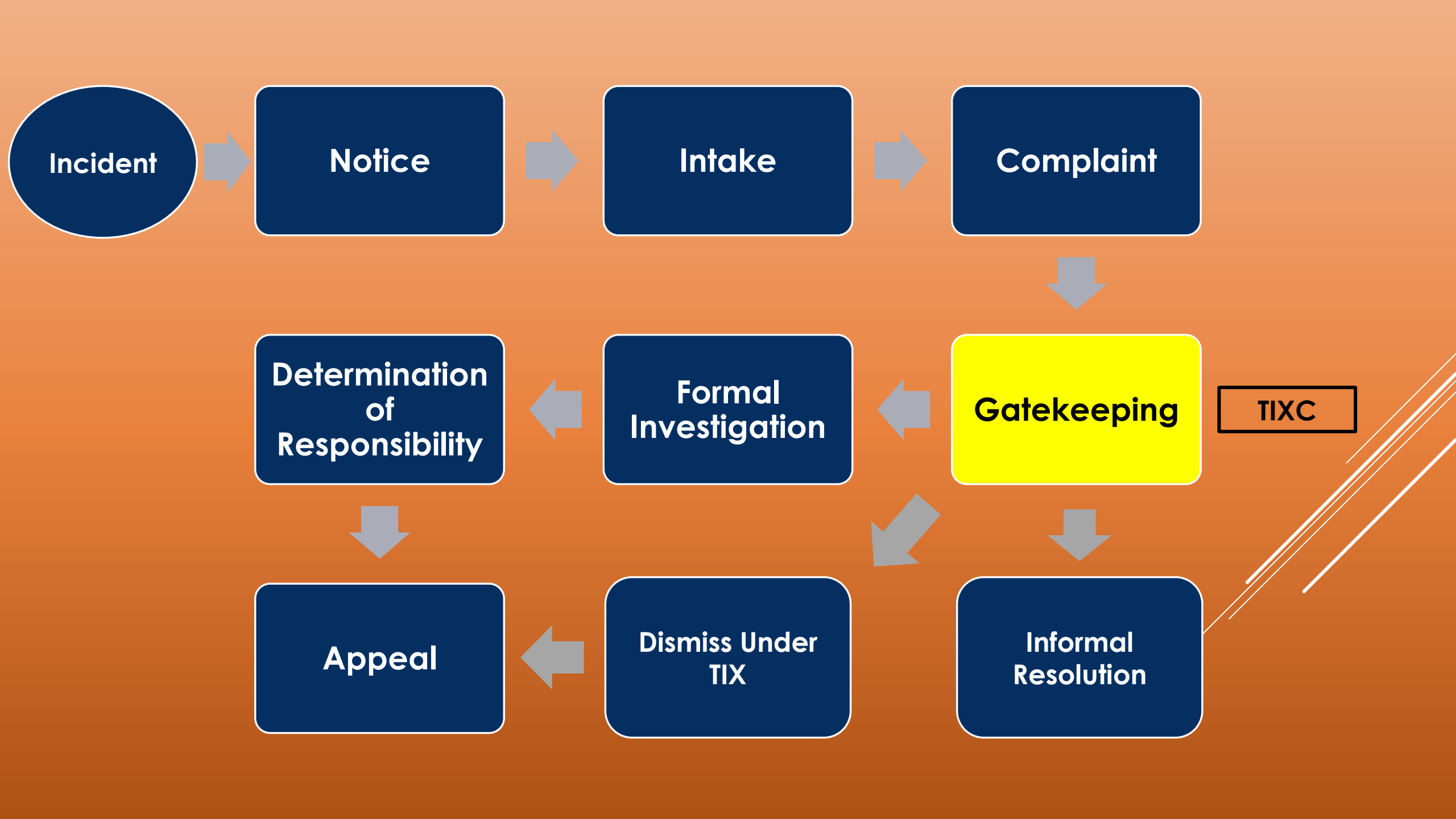
- ▶ **Cannot remove a student respondent from education program/activity before completion of TIX process unless:**
  - ▶ **Conduct an individualized safety and risk analysis, that**
  - ▶ **Determines there is an imminent threat to the physical health or safety of any person arising from the allegation**
- ▶ **If removed, must give notice and the opportunity to immediately challenge the decision**
- ▶ **Sports teams = education program/activity**
- ▶ **Does not apply to employee respondents – can put on admin leave per normal procedures**





# PROCEDURES: FORMAL COMPLAINT

- ▶ **Formal complaint = an assertion by the complainant that a respondent engaged in sexual harassment against them AND are requesting the school to investigate**
- ▶ **If jurisdictional criteria met, formal complaints trigger schools' obligation to investigate, *even if the matter has been referred to law enforcement***
- ▶ **Must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint**
- ▶ **Must be able to file after business hours**
- ▶ **Summary: Receive report = must respond; receive formal complaint (that meets TIX criteria) = must investigate**



Incident

Notice

Intake

Complaint

Determination  
of  
Responsibility

Formal  
Investigation

Gatekeeping

Appeal

Dismiss Under  
TIX

Informal  
Resolution

TIXC



# GATEKEEPING: MANDATORY DISMISSAL

District **MUST** dismiss a formal complaint if any of the following occur:

- ▶ **Conduct does not meet the new definition of sexual harassment under TIX; or**
- ▶ **Conduct did not take place in school's education program/activity; or**
- ▶ **Conduct did not take place in the U.S.; or**
- ▶ **Complainant is not participating/attempting to participate in education program/activity at time of complaint**

# GATEKEEPING: DISCRETIONARY DISMISSAL

District MAY dismiss a formal complaint if any of the following occur:

- ▶ The complainant requests to withdraw the complaint in writing
- ▶ The respondent is no longer enrolled or employed within the district
- ▶ Specific circumstances prevent the district from gathering evidence sufficient to reach a determination

**Incident**



**Notice**



**Intake**



**Complaint**



**Determination  
of  
Responsibility**



**Formal  
Investigation**



**Gatekeeping**



**Appellate  
Decision  
Maker**

**Front End  
Appeal**



**Dismiss Under  
TIX**

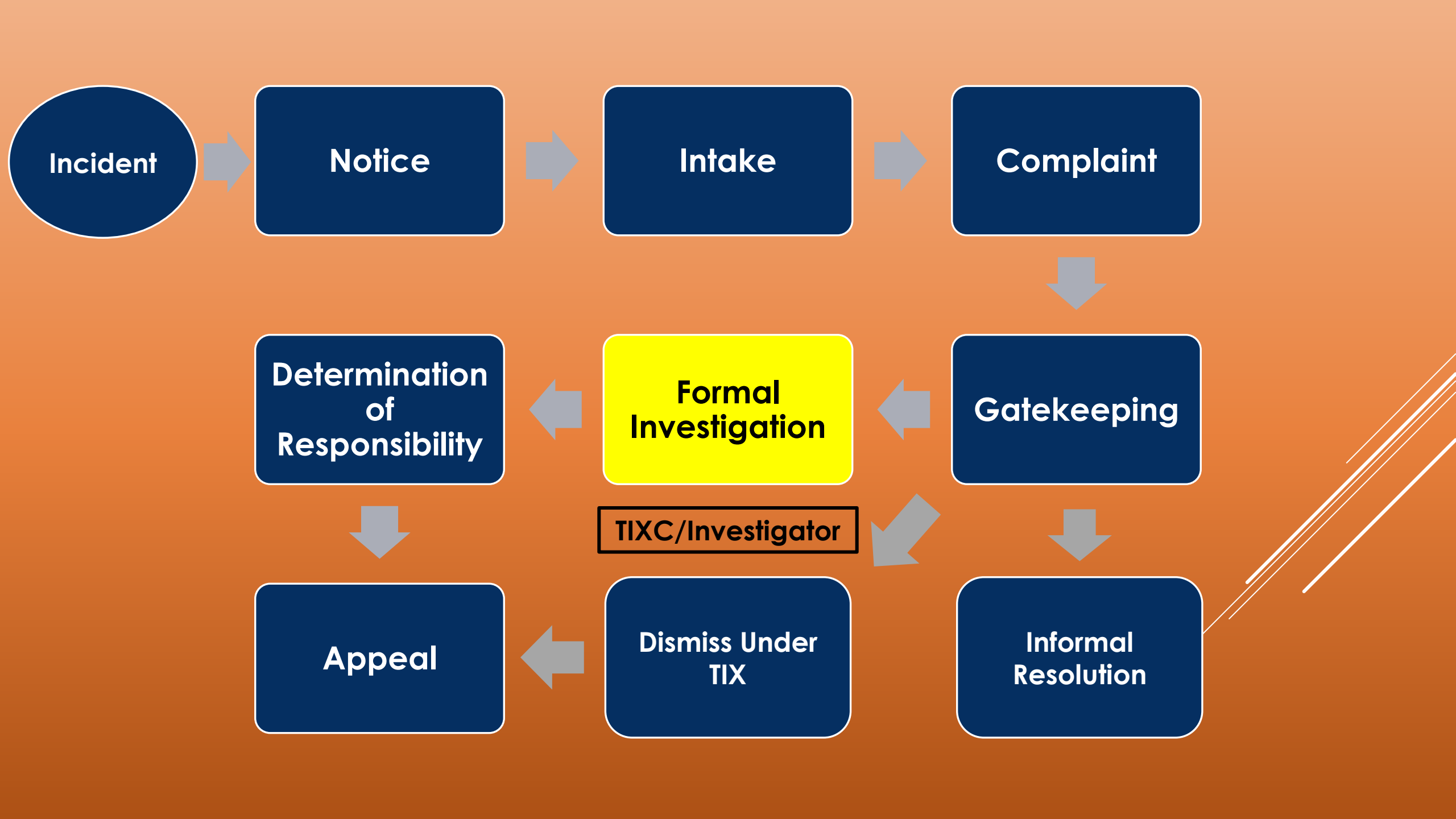
**Informal  
Resolution**



EVEN IF YOU  
DISMISS. . .

YOU STILL NEED  
TO DO  
SOMETHING

- ▶ **Even if complaint is dismissed, this doesn't mean you don't do anything. See *Farmer v. Kansas State University***
- ▶ **At minimum, provide supportive measures**





# PROCEDURES: WRITTEN NOTICE – INITIAL AND ONGOING

Upon receipt of formal complaint, school must provide written notice to *both* parties with sufficient details and time to prepare a response before any initial interview that includes:

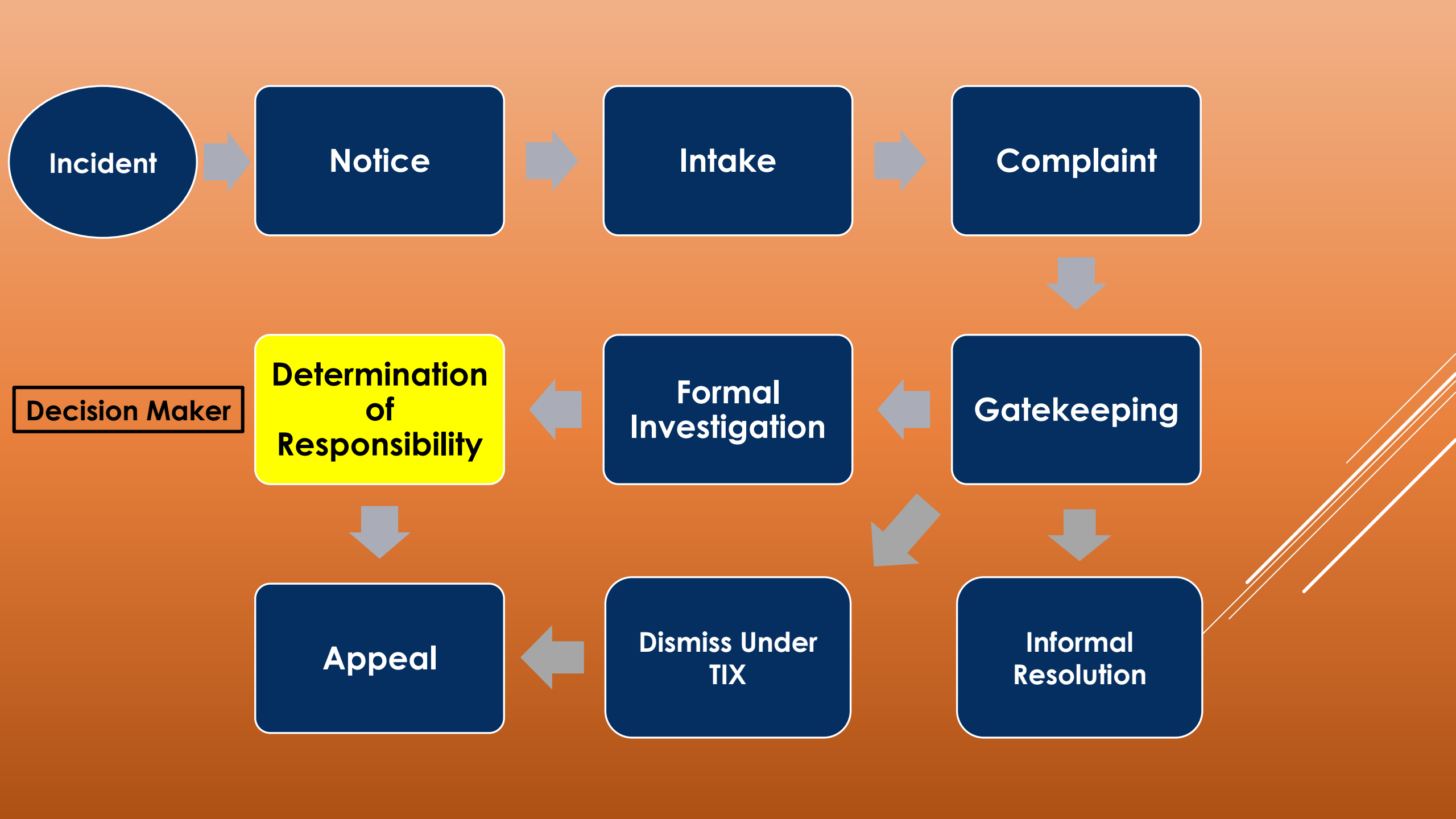
- ▶ Notice of grievance process, including informal resolution options
- ▶ Allegations of conduct with sufficient details known at time, including:
  - ▶ Identities of parties
  - ▶ Date/location of alleged incident
  - ▶ Statement presuming non-responsibility
  - ▶ Inform parties they may be assisted by *advisor of their choice, including attorneys*
  - ▶ May inspect/review all evidence
  - ▶ Any provision re: prohibiting knowingly providing false statements/information

# PROCEDURES: INVESTIGATION

- ▶ **Burden of proof and burden of gathering evidence rests with the school, not the parties**
- ▶ **Both parties must have equal opportunity to present fact/expert witnesses and inculpatory/exculpatory evidence**
- ▶ **Investigator must interview all relevant witnesses and collect evidence**
- ▶ **Produce a written investigation report that fairly summarizes all relevant evidence – inculpatory and exculpatory**

# PROCEDURES: INVESTIGATION REPORT

- ▶ **Prior to the completion of the report, all evidence directly related to allegations must be provided to the parties and advisors**
- ▶ **Parties must have at least 10 days to review and submit written responses prior to finalizing investigation report**
- ▶ **After receiving responses, investigator finalizes report**
- ▶ **Parties must receive finalized report to review and submit written responses 10 days prior to the time of the determination of responsibility made by a separate decision maker**
- ▶ **Minimum 25(ish) days to complete investigation now**



Incident

Notice

Intake

Complaint

Determination  
of  
Responsibility

Decision Maker

Formal  
Investigation

Gatekeeping

Appeal

Dismiss Under  
TIX

Informal  
Resolution

# PROCEDURES: QUESTIONS POSED BY PARTIES

Live hearing and cross examination not required for K-12, but is permissible if school chooses to do so.

- ▶ With or without a hearing, after the final investigative report has been sent to the parties, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party
- ▶ Rape shield protection: 2 exceptions (1) to prove someone else committed the offense, (2) to prove consent
- ▶ Decision maker must explain reasoning for why a question was considered not relevant

# PROCEDURES: BURDEN OF PROOF, DECISION AND SANCTIONS

- ▶ **After Q&A process concludes, decision maker makes a finding of responsibility based on either preponderance of evidence or clear and convincing standard, determines sanctions and issues a written determination**
- ▶ **Burden of proof for determining formal complaints of sexual harassment must be the same across the board (students and employees)**

# PROCEDURES: WRITTEN DETERMINATION

**After a finding is made the decision maker must issue both parties a written determination letter simultaneously that includes:**

- ▶ **The allegations**
- ▶ **Procedural steps taken up to that point**
- ▶ **Findings of fact supporting determination**
- ▶ **Determination on, and rationale for, each allegation**
- ▶ **Disciplinary sanctions for respondent**
- ▶ **Remedies for complainant**
- ▶ **Procedures/bases for appeal**

**Incident**



**Notice**



**Intake**



**Complaint**



**Determination  
of  
Responsibility**



**Formal  
Investigation**



**Gatekeeping**



**Appellate  
Decision  
Maker**

**Back End  
Appeal**



**Dismiss Under  
TIX**

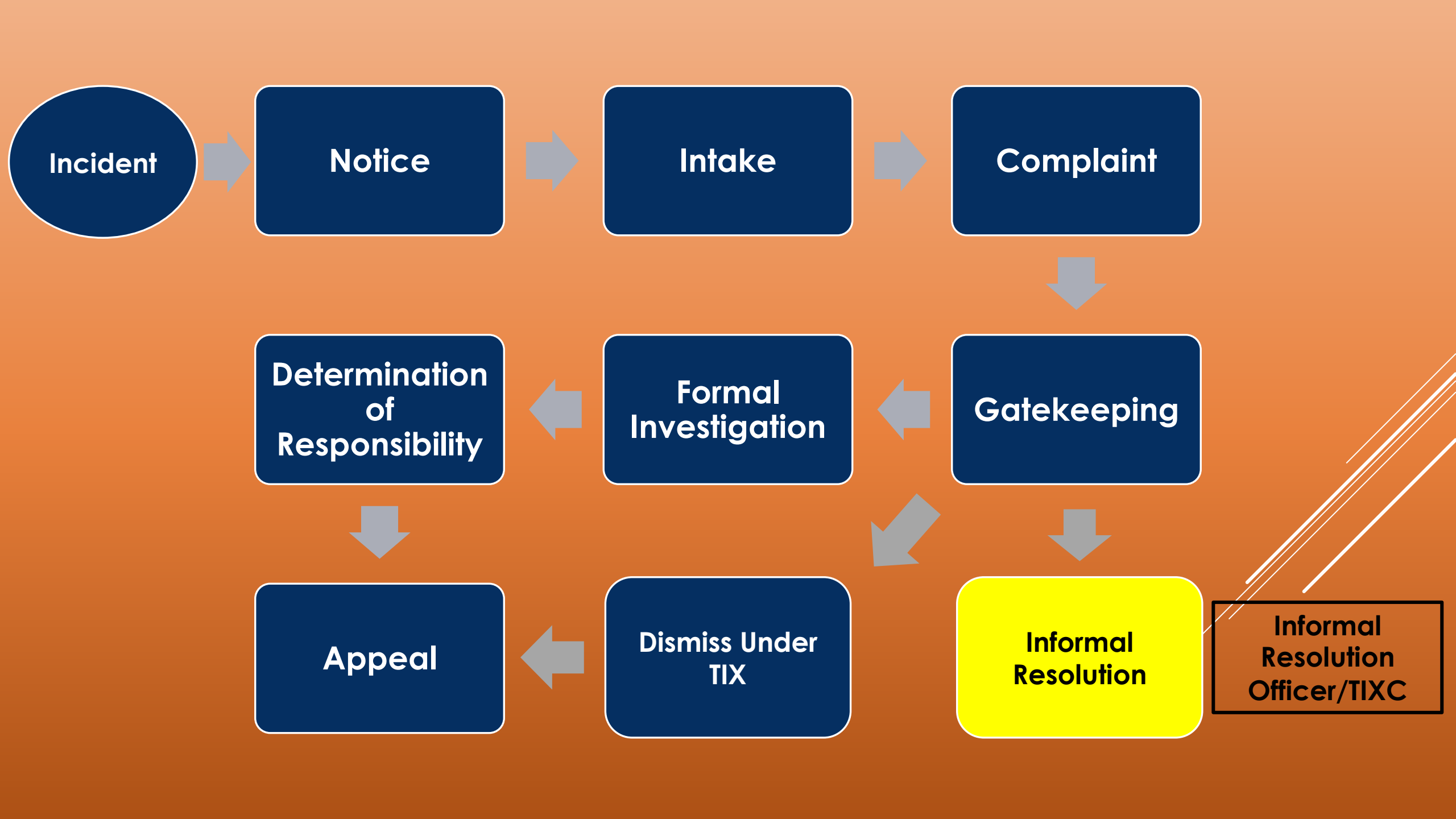
**Informal  
Resolution**





# PROCEDURES: APPEAL OF DETERMINATION

- ▶ School must offer both parties an appeal from a determination regarding responsibility, and from a school's dismissal of a formal complaint or any allegations therein, on the following bases: (1) procedural irregularity that affected the outcome of the matter, (2) newly discovered evidence that could affect the outcome of the matter, and/or (3) TIX personnel had a conflict of interest or bias that affected the outcome.
- ▶ May offer an appeal equally to both parties on additional bases (like an appeal about sanctions)
- ▶ All parties receive written notification of any appeal
- ▶ Written appeal decision with rationale delivered simultaneously to both parties by appeal decision maker



**Incident**

**Notice**

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**Complaint**

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**Gatekeeping**

**Appeal**

**Dismiss Under  
TIX**

**Informal  
Resolution**

**Informal  
Resolution  
Officer/TIXC**

# PROCEDURES: INFORMAL RESOLUTION

- ▶ **School/District and parties will determine when informal resolution is appropriate, if used at all**
- ▶ **May be used for all offenses**
- ▶ **Can be used at any time prior to a final determination being made**

# PROCEDURES: INFORMAL RESOLUTION REQUIREMENTS

- ▶ **Must file formal complaint first**
- ▶ **Must provide detailed notice to the parties, including:**
  - ▶ **Allegations**
  - ▶ **Requirements of the process**
  - ▶ **Circumstances that would preclude informal resolution**
  - ▶ **Consequences of participation**
- ▶ **Must obtain voluntary, written consent**
- ▶ **Cannot be used in cases where employee allegedly sexually harassed a student**

# RECORDS

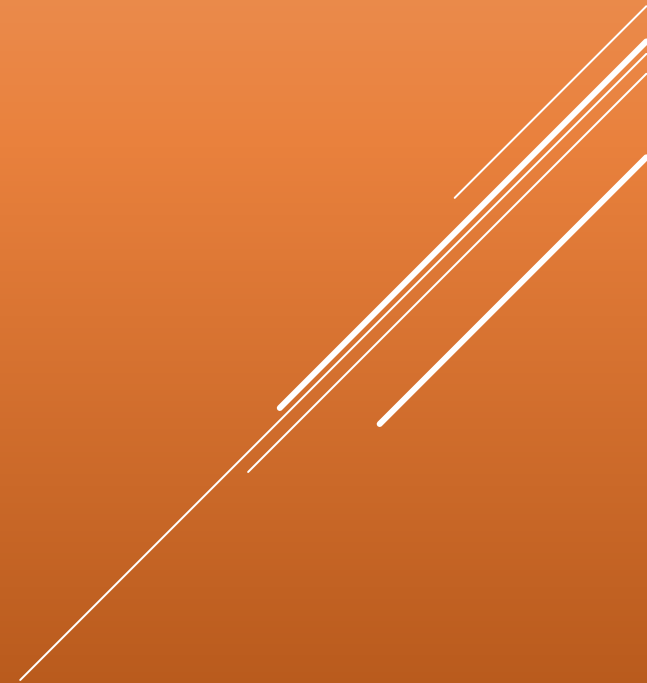
**The following records must be retained for 7 years:**

- ▶ **Each sexual harassment investigation, including finding**
- ▶ **Disciplinary sanctions imposed on respondents**
- ▶ **Remedies provided to complainants**
- ▶ **Appeals and their results**
- ▶ **Informal resolutions and their results**
- ▶ **All materials used to train TIX team**
- ▶ **Records of any actions, including supportive measures offered, taken in response to any report/formal complaint of sexual harassment**

# TRAINING

- ▶ **Training of all TIX personnel must include: (1) training on the definition of sexual harassment under the new rules, (2) the scope of the school's education program or activity, (3) how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, (4) and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias**
- ▶ **Decision-makers and investigators must receive training on issues of relevance, including how to apply the rape shield protections**
- ▶ **Materials used to train TIX personnel must be posted on school website**

# RESOURCES



# QUESTIONS?

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(208) 332-6961