

# ZANE STATE COLLEGE

## EMPLOYEE TITLE IX TRAINING

JANUARY 10, 2022

with Melissa Carleton, Esq.



# Agenda

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- Sexual Violence on College Campuses
- What is Prohibited Conduct?
- Bystander Intervention
- Mandatory Reporting – When To Report
- What Happens When A Report Is Made?
  - Supportive Measures
  - Informal Resolution
  - Formal Investigation/Decision
- Where to Get Help

# Disclaimer

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- We are talking about some difficult things today. Feel free to take breaks as needed.
- Change is constant in this field. We are always learning, and the law is still evolving. Expect new guidance and case law to be issued regularly after this training.
- Today, we will use the policy terms “complainant” and “respondent,” rather than criminal terms such as “victim,” “perpetrator,” and “survivor.” (Exception: When we talk about bystander intervention.)

# Posting these Training Materials

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- Yes, you may post these slides.
- The College is required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website

# **Sexual Violence on College Campuses**

# Data Disclaimer

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- We will be discussing statistics regarding sexual assault, dating violence, domestic violence, and stalking
- Statistics help us understand the way these crimes may affect the individuals involved, as well as our community.
- Statistics should never influence your decisions with regard to handling a specific case.

# Sexual Assault Data

## Women and Men

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More than 1 in 3 women and 1 in 4 men have experienced sexual violence involving physical contact during their lifetimes.

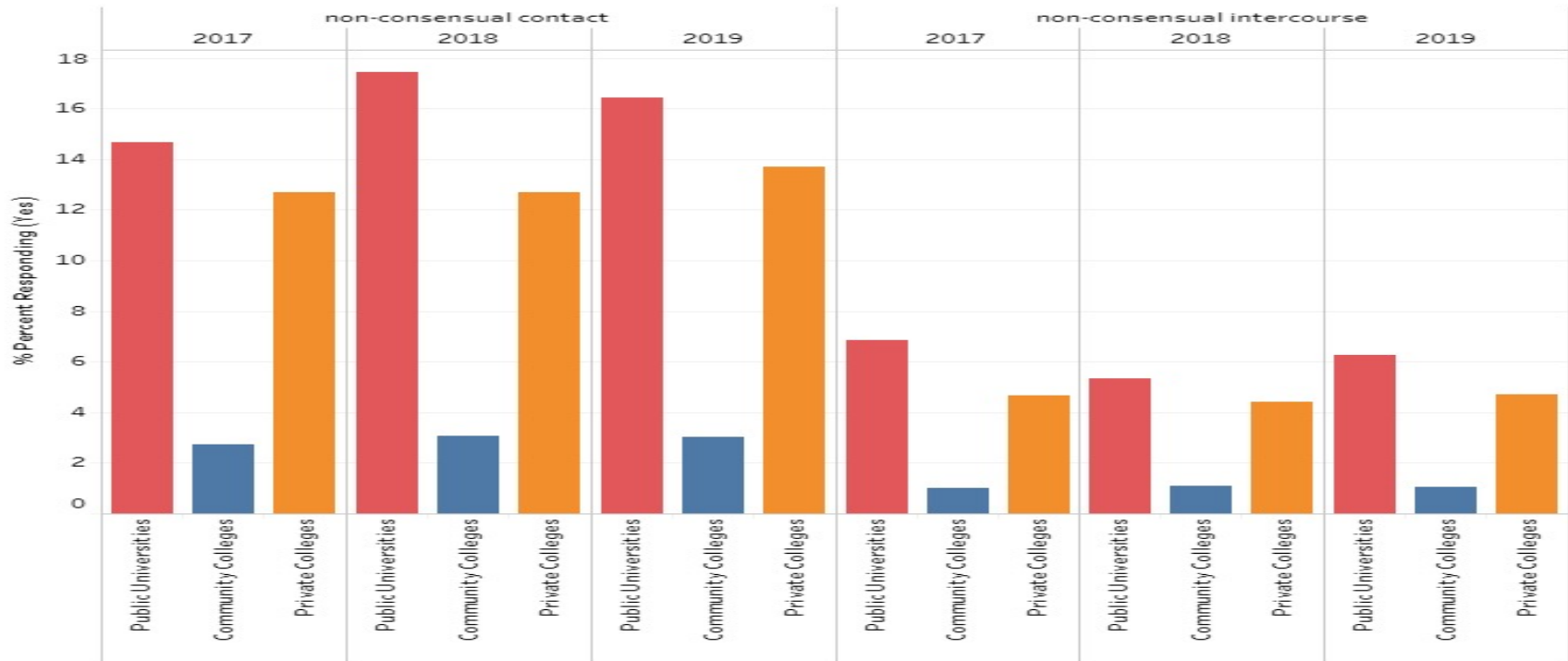
Nearly 1 in 5 women and 1 in 38 men will experience completed or attempted rape during their lifetimes.

Nearly 1 in 14 men was made to penetrate someone (completed or attempted) during his lifetime.

Statistics from [CDC.gov/violenceprevention/sexualviolence/fastfact.html](https://www.cdc.gov/violenceprevention/sexualviolence/fastfact.html) (last accessed July 13, 2021)

# Sexual Assault Data

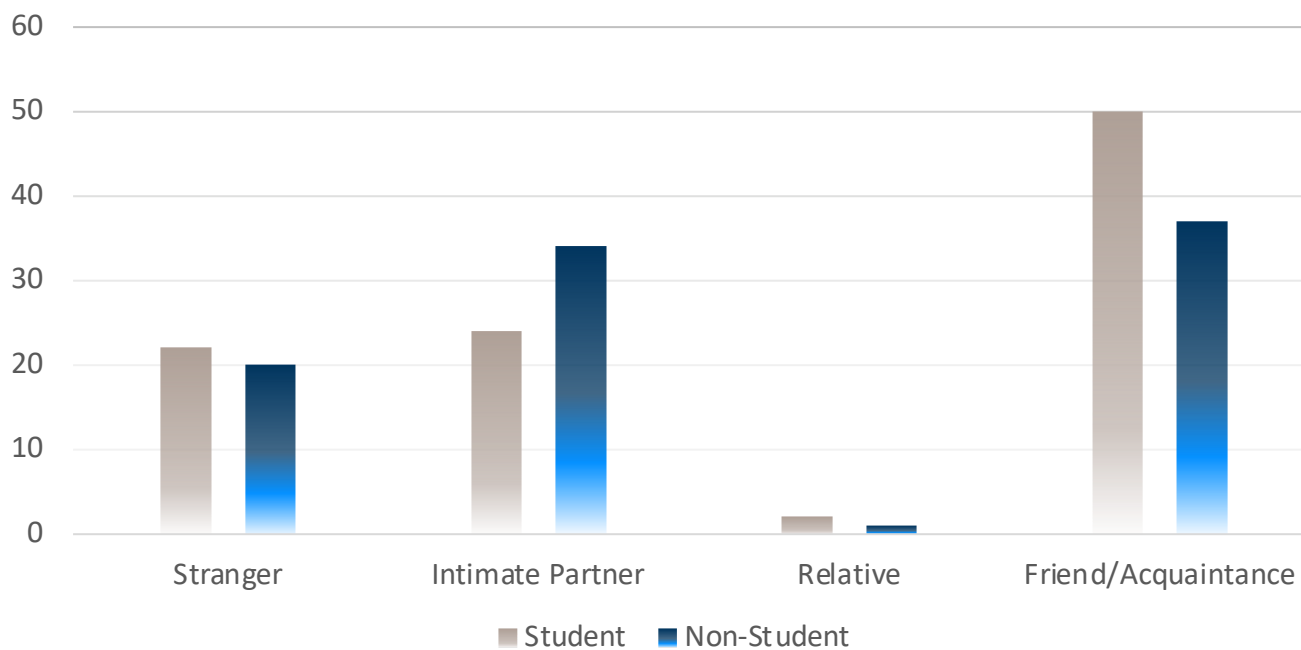
## ODHE Survey



Statistics from ODHE Changing Campus Culture Benchmark Data (last accessed July 13, 2021)



## Sexual Assault Data: Identity of Perpetrator (BJS 2014)



Preamble, p. 300767(Official) notes that “Commenters cited: U.S. Dep’t of Justice, Office of Justice Programs, *Bureau of Justice Statistics Special Report: Rape and Sexual Assault Victimization of College Age Females, 1995-2013* (2014).

# Sexual Assault Data: Timing

## Prevalence Data for Postsecondary Institutions



- More than **50 percent** of college sexual assaults occur in **August, September, October, or November**, and students are at an increased risk during the first few months of their first and second semesters in college.

Preamble, p. 30076 (Official) notes that “Commenters cited: Rape, Abuse & Incest National Network (RAINN), *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>.”

# Sexual Assault Data: Alcohol/Drug Use



“About half of sexual assaults involve survivors drinking alcohol before the assault.”

“Survivors impaired by alcohol are more likely to disclose to informal, but not formal support sources than are non-impaired victims.”

Lorenz, Katherine, and Sarah E Ullman. “Exploring Correlates of Alcohol-Specific Social Reactions in Alcohol-Involved Sexual Assaults.” *Journal of aggression, maltreatment & trauma* vol. 25,10 (2016): 1058-1078.  
doi:10.1080/10926771.2016.1219801.

# Data and Statistics: Reporting Data



About **65 percent** of surveyed rape victims reported the incident to a friend, a family member, or roommate but only **ten percent** reported to police or campus officials.

Preamble, p. 30082 (Official) notes that “Commenters cited: U.S. Dep’t of Justice, Office of Justice Programs, Office for Victims of Crime, *2017 National Crime Victims’ Rights Week Resource Guide: Crime and Victimization Fact Sheets* (2017).

# Data and Statistics: Impact Data (1 of 2)



Approximately **70 percent** of rape or sexual assault victims experience moderate to severe distress, a larger percentage than for any other violent crime.

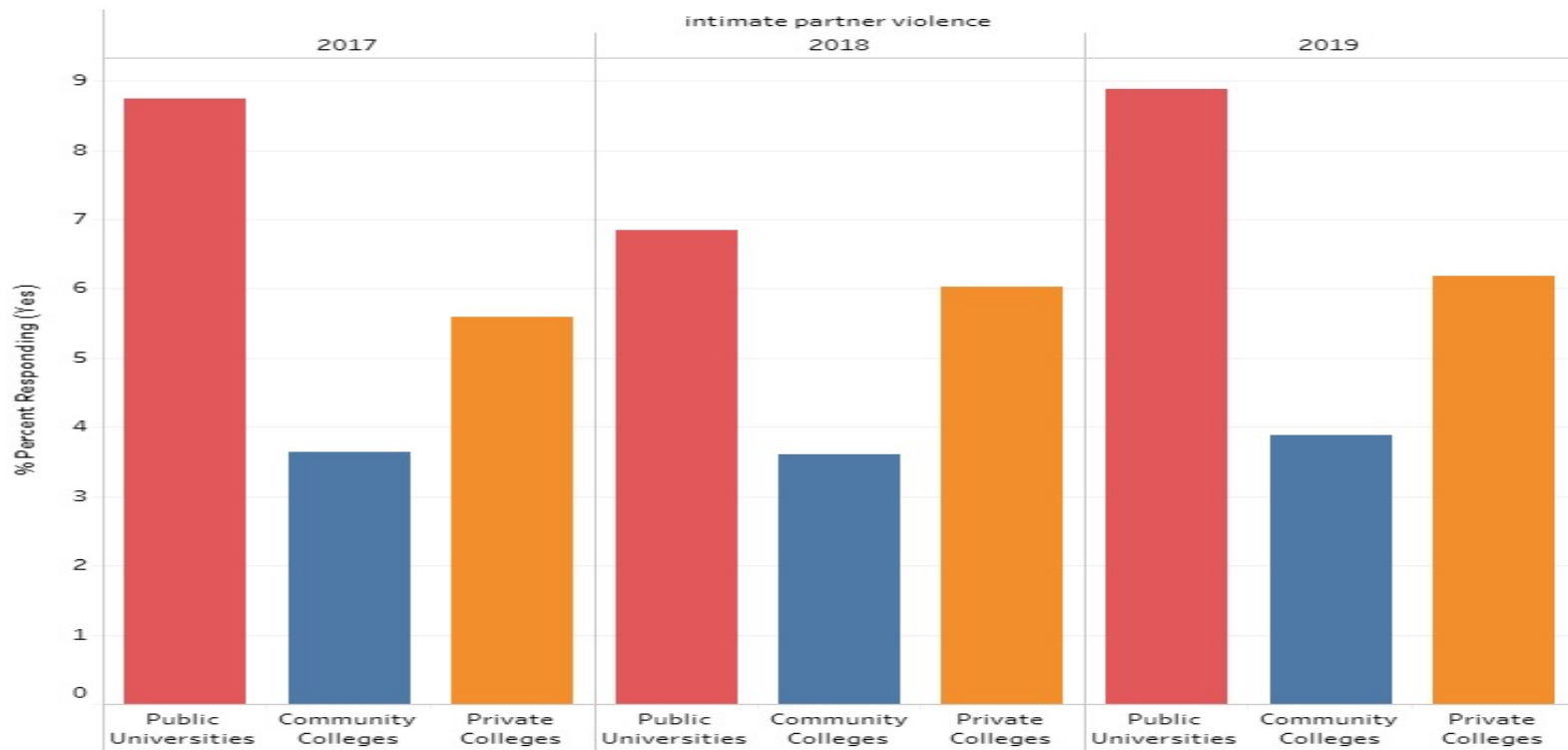
Preamble, p. 30080 (Official) notes that “Commenters cited: U.S. Dep’t of Justice, Bureau of Justice Statistics, *Special Report: Socio-emotional impact of violent crime (2014)*.”

## **Data and Statistics: Impact Data (2 of 2)**

**81% percent** of women and **35% percent** of men report significant short- or long-term impacts of sexual assault, such as post-traumatic stress disorder (PTSD).

Preamble, p. 30080 (Official) notes that “Commenters cited: Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, The National Intimate Partner and Sexual Violence Survey (NISVS); 2010 Summary Report (Nov. 2011).

# ODHE Data



# **Domestic Violence in Muskingum County 2020**

Number of domestic violence charges:

- Dresden Police Department – 7
- Frazeyburg PD – 5
- New Concord PD - 5
- Zanesville PD – 154
- Total – 171

(No charges – 596 total cases for the county)



# **What Conduct is Prohibited?**

# Scope of Policy

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- On College property
- In connection with College activities
- Creates an adverse effect on campus

# Sex/Gender Discrimination

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- Discrimination that occurs when conduct or a policy has the purpose or effect of restricting or denying access to opportunities, programs, or resources in relation to sex, gender, gender identity, gender expression, or sexual orientation in a manner that interferes with an individual's ability to participate in a College education program or activity.
- Can discriminate in ways permitted by federal regulations:
  - Chorus participation
  - Single gender housing, bathrooms, locker rooms
  - Sex as a bona fide occupational qualification for employment

# Sexual Harassment - IX



**Quid Pro Quo**: Conduct on the basis of sex where a College employee conditions the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct

**Unwelcome Conduct**: Unwelcome conduct on the basis of sex determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or

**Clery crimes**: **Sexual assault** (non-consensual sexual intercourse, non-consensual sexual touching for purposes of sexual gratification, incest, statutory rape), **dating violence**, **domestic violence**, or **stalking**

# Sexual Harassment – Title VII



- Unwelcome verbal, nonverbal, or physical conduct based on sex/gender which is sufficiently severe, persistent, or pervasive to have the effect of creating a hostile environment by unreasonably interfering with, denying, or limiting an individual's work, education, or living conditions OR
- Use of a position of authority to engage in unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal, or physical conduct of a sexual nature when (i) an individual's employment or education is conditioned (either explicitly or implicitly) upon submission to such conduct; or (ii) decisions affecting one's education or employment are based upon submission to or rejection of such conduct.

# Retaliation

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Intimidate, threaten, coerce, or discriminate against an individual for purpose of interfering with Title IX rights or participation in the Title IX process

Processing a Title IX case through non-Title IX procedures to interfering with Title IX rights or privileges

# **Bystander Intervention**

# Initial Questions

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1. Is intervention necessary?
2. Is intervention safe?
3. Should you be the one to intervene?
4. What form of intervention is appropriate?
5. How do you implement that form of intervention?



# Methods of Intervention

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1. Direct – Ask the person if they are OK.  
Call out negative behavior.
2. Distract – Works with either involved person to buy time and stop the situation.
3. Delegate – Ask someone else to intervene.
4. Delay – Check in to see if the victim is OK after the fact and assist with reporting.

# Tips

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1. Stay calm
2. Be polite
3. Use your phone – to make calls, to record, etc.
4. Have a distraction plan prior to seeing a situation. Example: “Do you want some gum?” “Don’t I know you?”

# **Mandatory Reporting**

# Q&A



- Who is a mandatory reporter?
  - You! (Unless you learn something in the context of being a confidential resource.)
- What must you report?
  - Any information regarding potential Prohibited Conduct.
- How do you make a report?
  - Through the website
- Can you make a mandatory report anonymously?
  - No. You must provide all known information, including your name and any other names that are relevant.

**Failure to report may result in discipline.**

# Q&A



- Someone told me something that I need to report. How do I tell them that I have to make a mandatory report?
- “I am a mandatory reporter, so I am required to report this to the Title IX Coordinator. The Coordinator will contact you and ask if you want to meet, but you don’t have to respond. Do you want to be here when I make the report so you can get more information about your options?”

# Q&A



- How do I let someone know I'm a mandatory reporter if I don't think they understand my role?
- “You should know I'm a mandatory reporter, so if you tell me something about sexual misconduct, I'm going to have to make a report to the Title IX Coordinator. That just means they'll contact you to see if you want to meet to discuss resources and options, but you don't have to meet. If you don't want that to happen, then let's look at the list of confidential resources and see if that might be a better place for you to get support.”

# Q&A



- What if I am not *sure* if I should make a report?
  - Call the Title IX Coordinator and ask if you should make the report, or
  - Make the report anyway.

# **What Happens When a Report Is Made?**



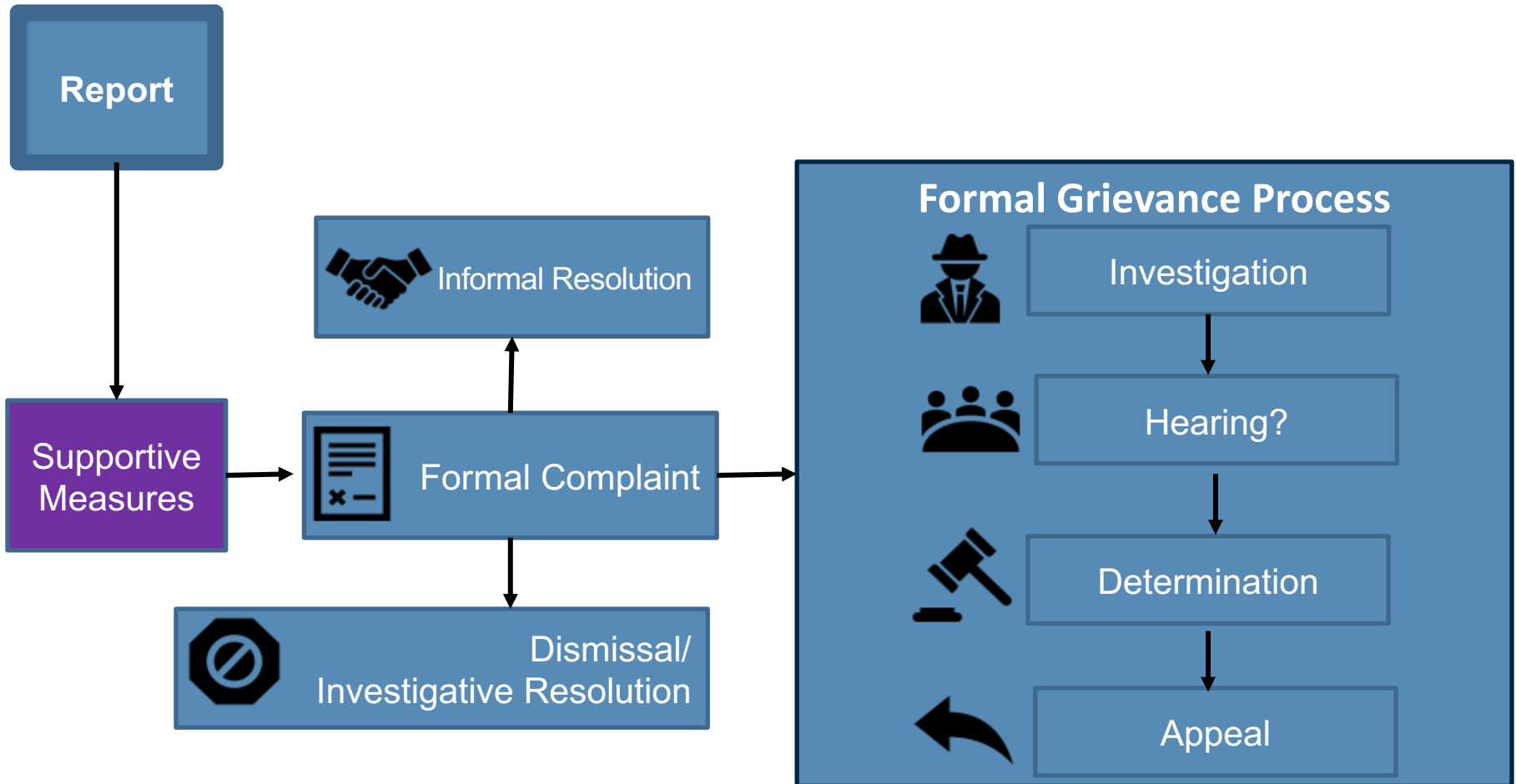
# Overview of the Process: Confidentiality

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College must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who made a report, any complainant, any alleged perpetrator, any respondent, and any witness, unless required by law, permitted by FERPA, or for the purposes of carrying out Regulations grievance process.

# Overview of Title IX Process



# Overview of the Process: Supportive Measures

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- Non-disciplinary and non-punitive
- Individualized
- “As reasonably available”
- Without fee or charge to either party
- Available at any time (regardless of whether a formal complaint is filed)

# Overview of the Process: Supportive Measures

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Designed to:

- ***restore or preserve access*** to the College's education program or activity, without unreasonably burdening the other party;
- protect the safety of all parties and the College's educational environment; and
- deter sexual harassment

# Overview of the Process: Supportive Measures

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- Counseling
- Extensions of deadlines (course-related adjustments)
- Modifications of work/class schedules
- Campus escort services
- Mutual contact restrictions
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- “and other similar measures”

# Overview of the Process: Supportive Measures

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Role of the TIXC upon receiving a report:

- promptly contact the complainant to discuss the availability of supportive measures,
- consider the complainant's wishes with respect to supportive measures,
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint

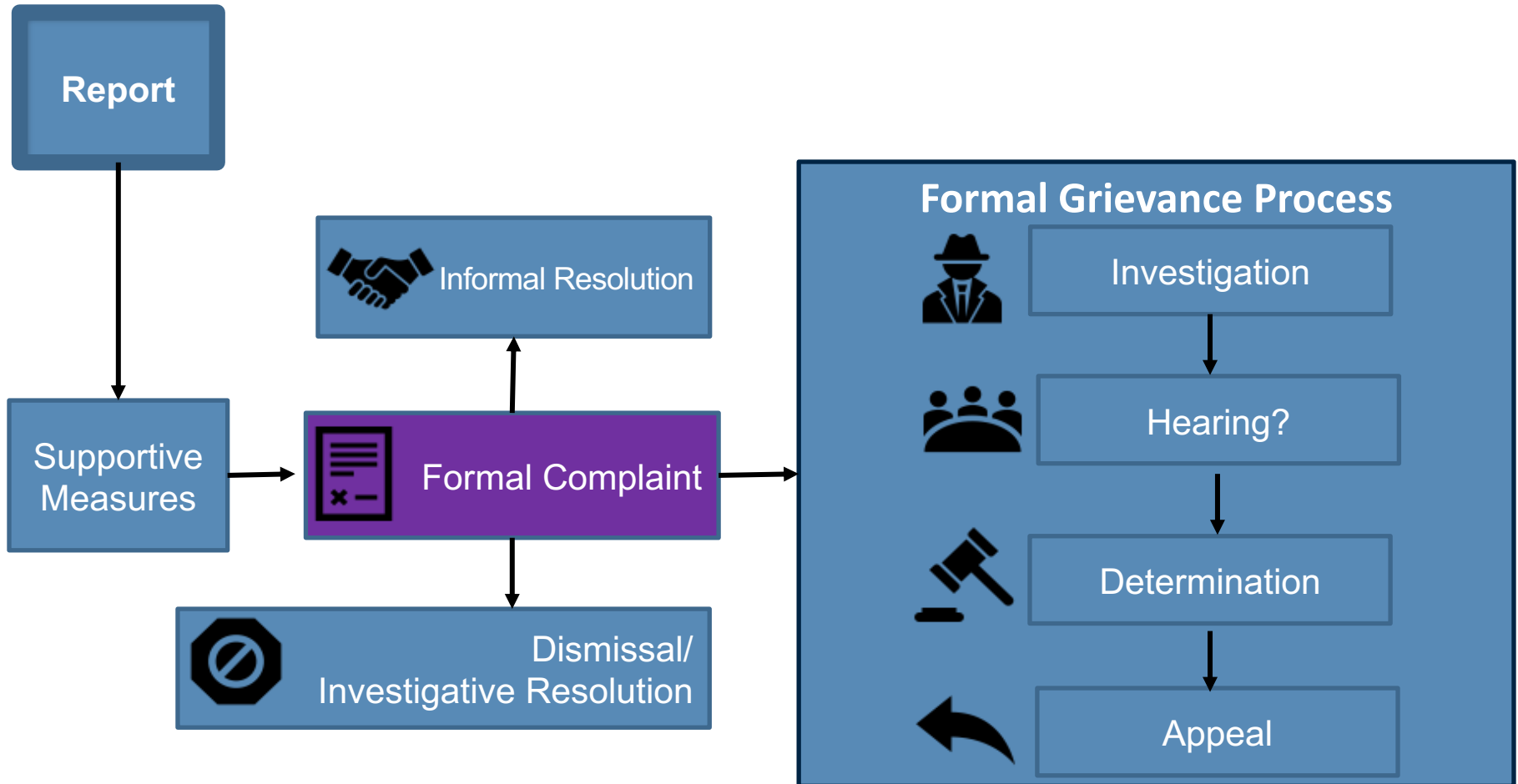
# Overview of the Process: Supportive Measures

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- Must maintain confidentiality to the greatest extent possible
- Note: Title IX Coordinator may ask you to help with accommodations and may not be able to tell you all the details as to *why*.

# Overview of the Process





# Overview of the Process: Formal Complaint

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A document filed by a complainant or signed by the Title IX Coordinator alleging Prohibited Conduct against a respondent and requesting the College investigate the allegations

- In response to a formal complaint, College must follow its policy
- Title IX Coordinator must offer complainant supportive measures (regardless if files formal complaint – if complainant does not want to file a formal complaint)

# Overview of the Process: Formal Complaint

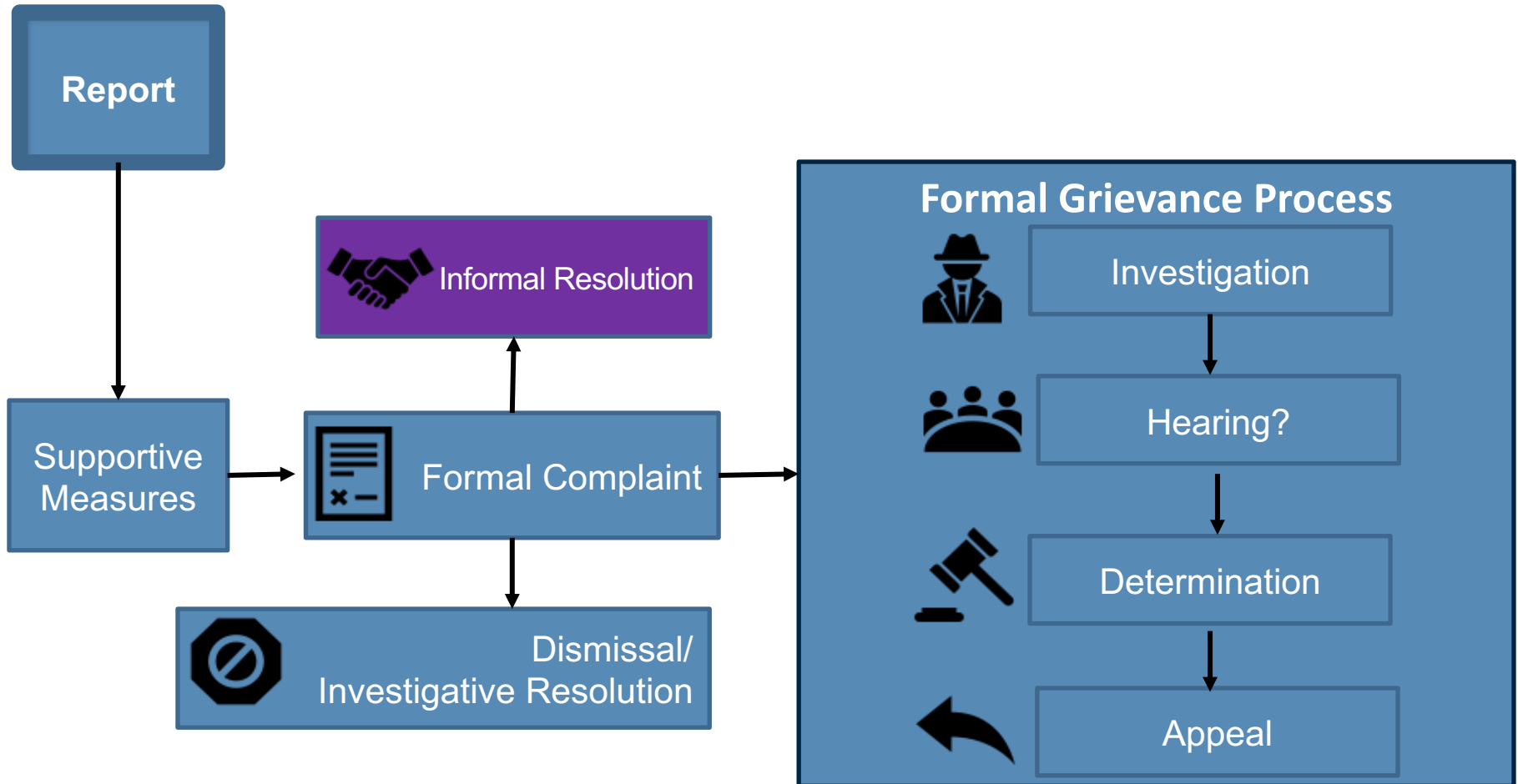
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Once a Formal Complaint is filed, there are four possibilities:

- Informal Resolution
- Formal Grievance Process (Hearing)
- Mandatory Dismissal from Hearing Process and Resolution through Investigative Process
- Formal Complaint is withdrawn

# Overview of the Process



# Overview of the Process: Informal Resolution

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- At any time prior to the determination regarding responsibility, the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication
- College cannot require this and also cannot offer unless a formal complaint is filed

# Overview of the Process: Informal Resolution

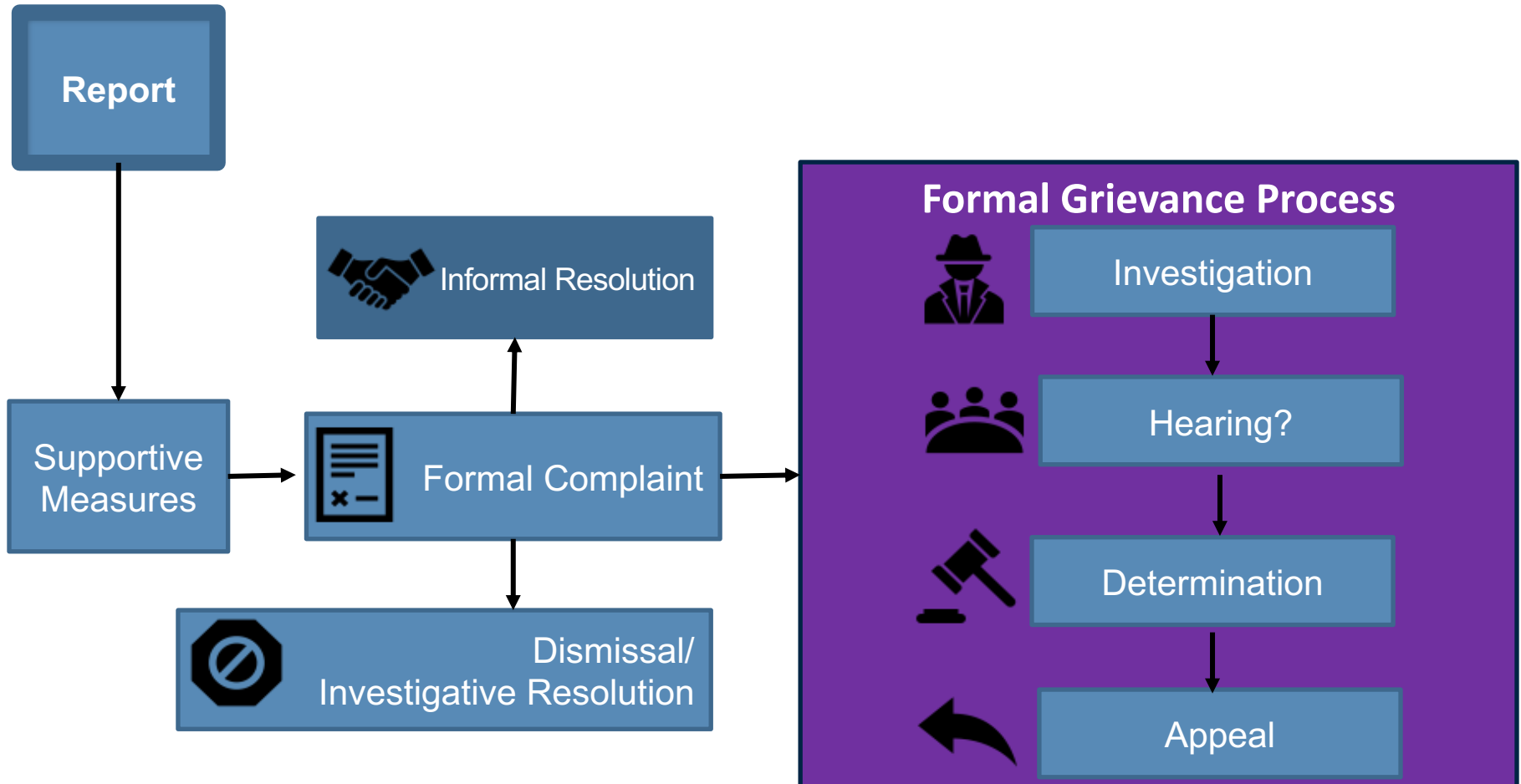
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- College can offer informal resolution if:
  - Provides written notice to the parties
  - Obtains the parties' voluntary, written consent to the informal process

College cannot offer this option in certain cases of employee sexual harassment of a student

# Overview of the Process



# Overview of the Process: Formal Grievance Process

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Basic requirements:

- Treat complainants and respondents equitably
- Follow grievance process
- Only impose any disciplinary sanctions against a respondent after grievance process followed

Includes the presumption that respondent is not responsible for the alleged conduct until a determination regarding responsibility is made through the grievance process

# Overview of the Process: Written Notice

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- College's grievance **process** and informal resolution process
- **Allegations** with sufficient time for review with sufficient detail, such as date, location if known
- Parties may have an **advisor of choice**



# Overview of the Process: Investigation

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- Only of a formal complaint
- Burden of proof and evidence gathering rests with College
- Cannot access, require, disclose, or consider treatment records of a party without that party's voluntary, written consent
- Provide equal opportunity for parties to present witnesses (fact and expert)

# Overview of the Process: Investigation

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- Provide equal opportunity for parties to present inculpatory and exculpatory evidence
- Not restrict ability of either party to discuss or gather and present relevant evidence
- Provide parties same opportunities to have others present during the grievance process, including advisor of choice

# Overview of the Process: Investigation

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- Provide written notice of date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with sufficient time to prepare
- Provide both parties equal opportunity to inspect and review any evidence obtained in the investigation – College must send to party and party’s advisor with at least 10 days to submit a written response before completion of investigation report

# Overview of the Process: Investigation

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- College must make all such evidence subject to inspection and review at any hearing
- Create an investigation report at least 10 days before a hearing that fairly summarizes the relevant evidence and send to each party and party's advisor

# Overview of the Process: Hearings

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- Must provide a live, cross-examination hearing
- Parties must have an advisor and the College must provide an advisor for a party if the party does not have one
- Advisors ask only relevant cross-examination questions—no party-on-party questioning
- May be virtual, but must be recorded or transcribed

# Overview of the Process: Determinations

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- Decision-maker (not Title IX Coordinator or investigator) must issue a written determination regarding responsibility
- Must include
  - Allegations
  - Procedural steps taken from receipt of formal complaint

# Overview of the Process: Determinations

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- Findings of fact
- Conclusions
- Statement of and rationale for each result of each allegation, including determination of responsibility and any disciplinary imposition and whether remedies designed to restore or preserve access to educational program or activity will provided to complainant

# Overview of the Process: Determinations

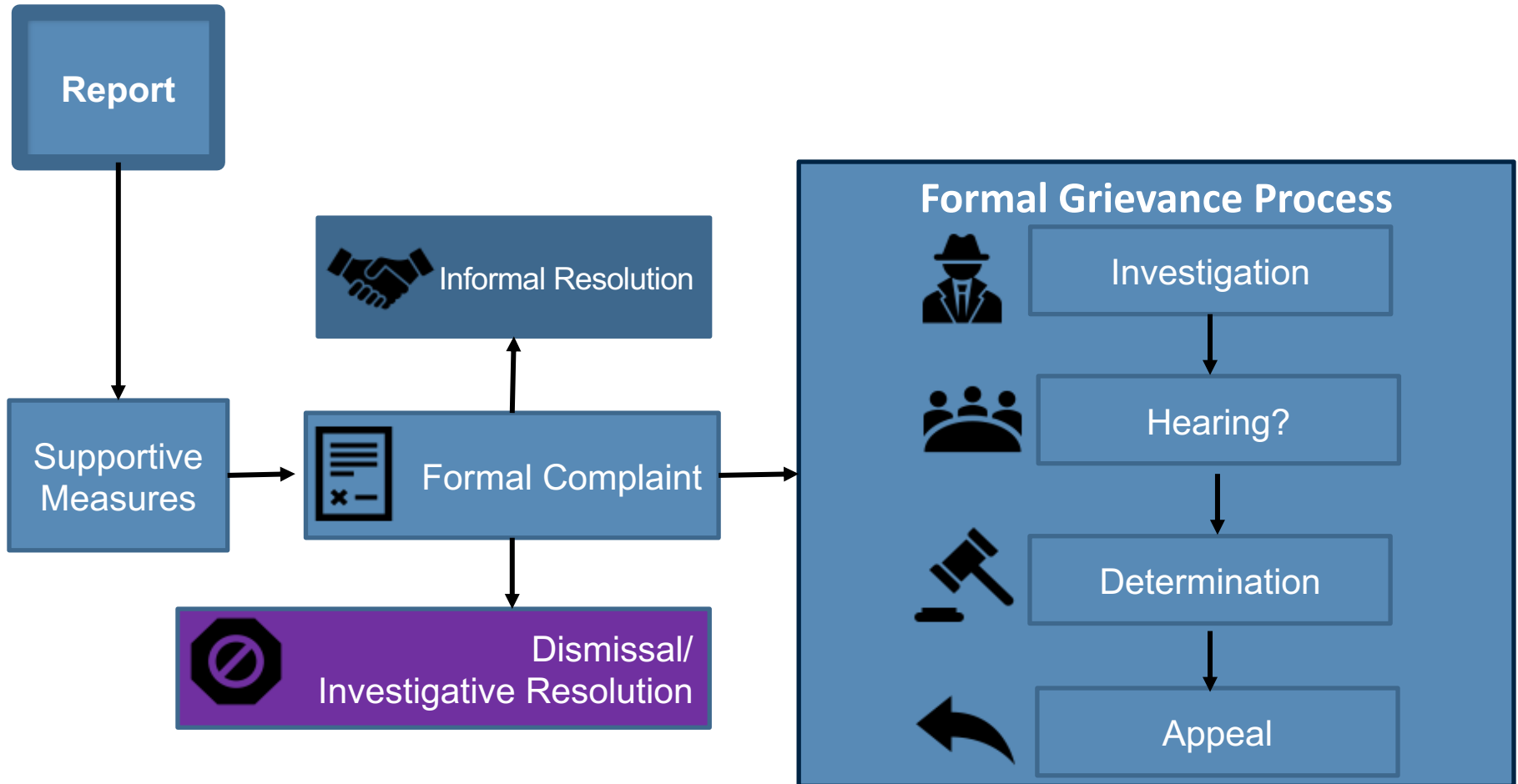
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- Procedures and bases for appeal by both parties
- Provide written determination to parties simultaneously



# Overview of the Process



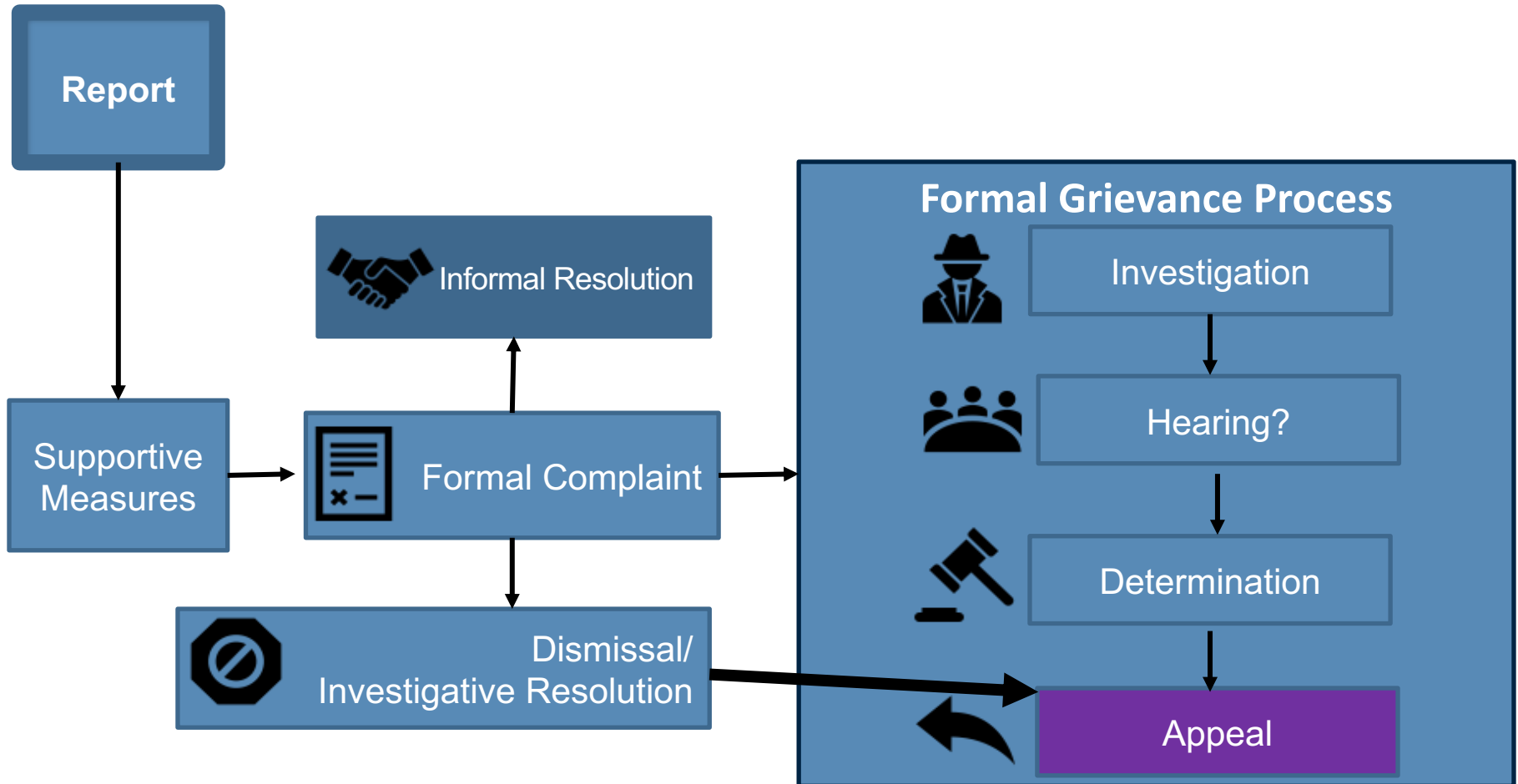
# Overview of the Process: Dismissal/Investigative Resolution

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- College MUST investigate allegations in a formal complaint
- BUT College MUST dismiss from the hearing process is
  - if conduct alleged would **not** constitute Sexual Harassment – Title IX, even if proven, OR
  - Conduct did not occur within College’s education program or activity or in the United States

# Overview of the Process



# Overview of the Process: Appeals

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- College must offer to both parties the following bases of appeal:
  - Procedural irregularity that affected outcome
  - New evidence not reasonably available at the time regarding responsibility or dismissal that could affect outcome
  - Conflict of interest or bias by the Title IX Coordinator, investigator, and/or decision-maker that affected the outcome

# Overview of the Process: Appeals

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- The decision-maker for the appeal cannot be the same decision-maker from the hearing, or the Title IX Coordinator or investigator
- Must provide both parties a reasonable, equal opportunity to submit a written statement in support of or challenging the determination
- Must issue a written decision describing the result of the appeal and rationale and provide the decision simultaneously to the parties

# Where to Get Help

# Confidential Resources

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- Medical providers, mental health providers, hospitals
- Family Health Services of East Central Ohio
- Transitions Inc.: (740) 454-3213 – shelter and services
- Southeastern Ohio Legal Services
- Clergy member in the context of receiving spiritual guidance
- National Sexual Assault Hotline: 800-656-4673
- National Domestic Violence Hotline: 800-799-SAFE (7233)

# Non-Confidential

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Always feel free to ask your Title IX Coordinator for more information about:

- Educational resources
- Confidential resources
- The policy and procedures
- Any other questions relating to sexual misconduct

**Interim Title IX Coordinator: Denise Johnson**

**(740) 588-4407 or [djohnson14@zanestate.edu](mailto:djohnson14@zanestate.edu)**



**Questions?**