

# CEDARVILLE UNIVERSITY

## FACULTY AND STAFF TITLE IX TRAINING

AUGUST 7, 2020



# Agenda

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- A Brief History of Title IX
- Overlap between Title IX and Clery
- What is Prohibited Conduct?
- Mandatory Reporting – When To Report
- What Happens When A Report Is Made?
  - Supportive Measures
  - Informal Resolution
  - Formal Investigation/Decision
- Where to Get Help

# Posting these Training Materials

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

# A Brief History of IX

# At the Start



- 1972: “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...”
- Initially, viewed by many as primarily directed at athletics parity due to public disputes regarding regulations and their effects on the NCAA.

# The 1980s



- 1980 – EEOC declares “sexual harassment” to be a form of sex discrimination under Title VII (which deals only with employment)
- 1986 – The United States Supreme Court recognizes a “hostile environment” sexual harassment claim as a form of sex discrimination under Title VII.

# 1997/2001 Guidance



- The U.S. Department of Education’s Office for Civil Rights issues Sexual Harassment Guidance under Title IX.
- This guidance goes through the notice and comment procedures.
- The guidance mentions that a single act can be serious enough to trigger a “hostile environment” for purposes of sexual harassment.

# 2011/2014 Guidance



- The U.S. Department of Education's Office for Civil Rights issues a Dear Colleague Letter in 2011 to address sexual violence as a form of sexual harassment.
- In 2014, OCR issues a Q&A document that expands upon that guidance.



# Clery and VAWA

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- The Clery Act is amended by the Violence Against Women Act to include procedural requirements for cases involving allegations of four crimes:
  - Sexual assault
  - Dating violence
  - Domestic violence
  - Stalking
- These regulations went into effect July 1, 2015.

# Current Administration

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- 2017
  - 2011/2014 guidance is withdrawn and 2001 guidance is reinforced
- 2018 – Proposed regulations issued
- May 6, 2020 – Final regulations released; 100 days to comply
- August 14, 2020 – Compliance deadline!

# What Conduct is Prohibited?

# Sex Discrimination



- 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 in a manner that interferes with an individual's ability to participate in a University education program or activity
- Can discriminate in ways permitted by federal regulations:
  - Chorus participation
  - Single gender housing
  - Sex as a bona fide occupational qualification for employment

# Sexual Harassment - IX



- **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
  - [**Quid pro quo**] An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
  - [**Hostile environment**] Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
  - [**Clery crimes**] Sexual assault, dating violence, domestic violence, or stalking

# Sexual Harassment – Non-IX



- Unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when:
  - [Quid Pro Quo] Submission to or rejection of such conduct is an explicit or implicit condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity; or
  - [Quid Pro Quo] Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual; or
  - [Hostile Environment] Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently severe, pervasive, or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both a subjective and an objective standard.

# Clery Crimes – Non-IX

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- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

# Clery Crimes – Non-IX



- These are not included under “Sexual Harassment – Title IX” when they:
  - Are not on the basis of sex
  - Were not filed by a complainant who is participating or attempting to participate in the University’s educational program or activity
  - Did not occur against a person in the United States
  - Did not occur in the University’s education program or activity



# Sexual Acts not Involving Contact

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- Sexting
- Recording sexual activity without consent
- Sharing a recording or photographs

# Retaliation



Also be aware of [retaliation](#) pursuant § 106.71 (definition of retaliation):

“Intimidation, threats, coercion, or discrimination, **including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances** as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.”

# Mandatory Reporting

# Q&A



- Who is a mandatory reporter?
  - You!
- What must you report?
  - Any information regarding potential Prohibited Conduct.
- How do you make a report?
  - In writing to the Title IX Coordinator
- 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



- A student 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 students 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?



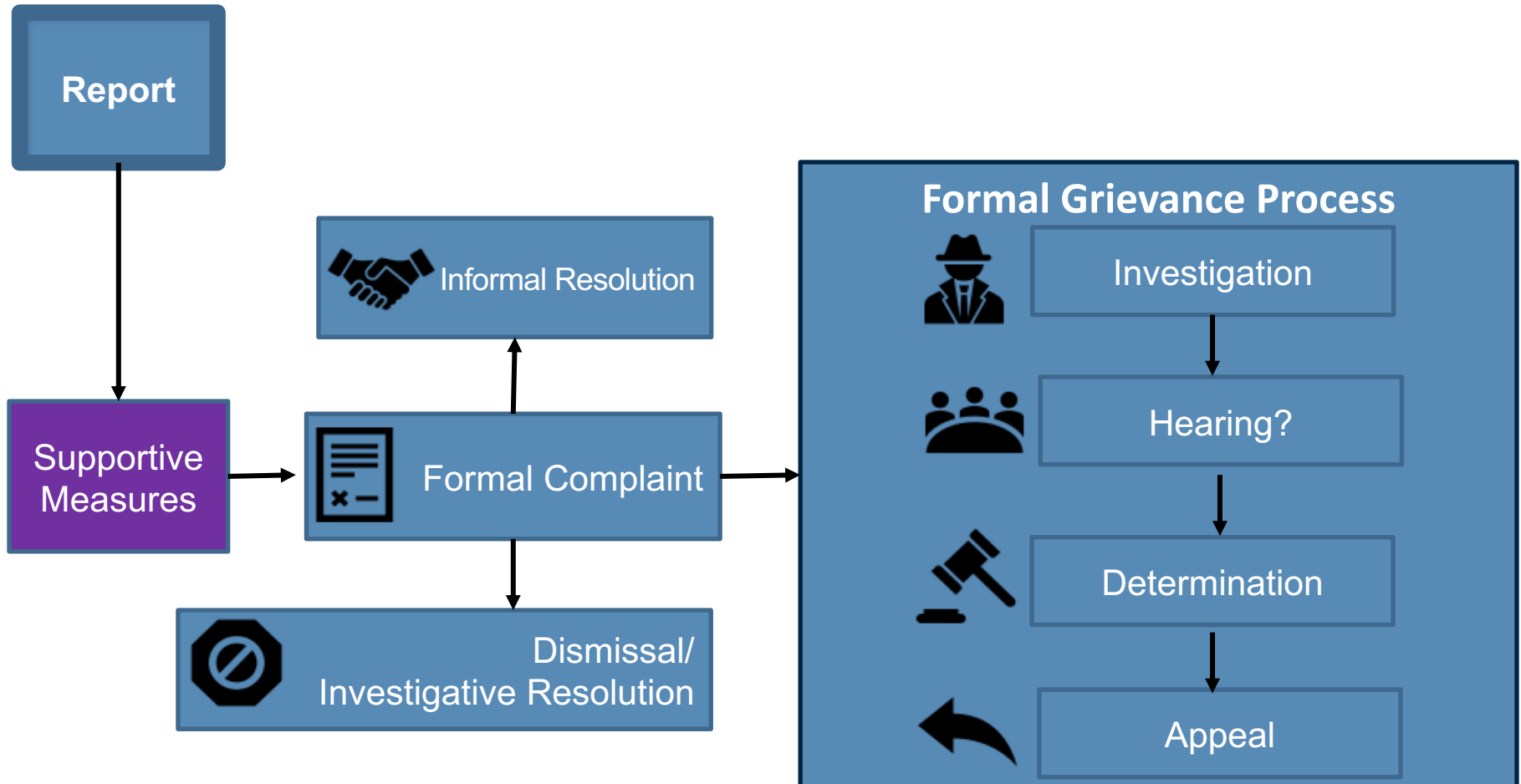
# Overview of the Process: Confidentiality



University **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 the 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 University's education program or activity, without unreasonably burdening the other party;
- protect the safety of all parties and the University'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 as defined in § 106.30,
- 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

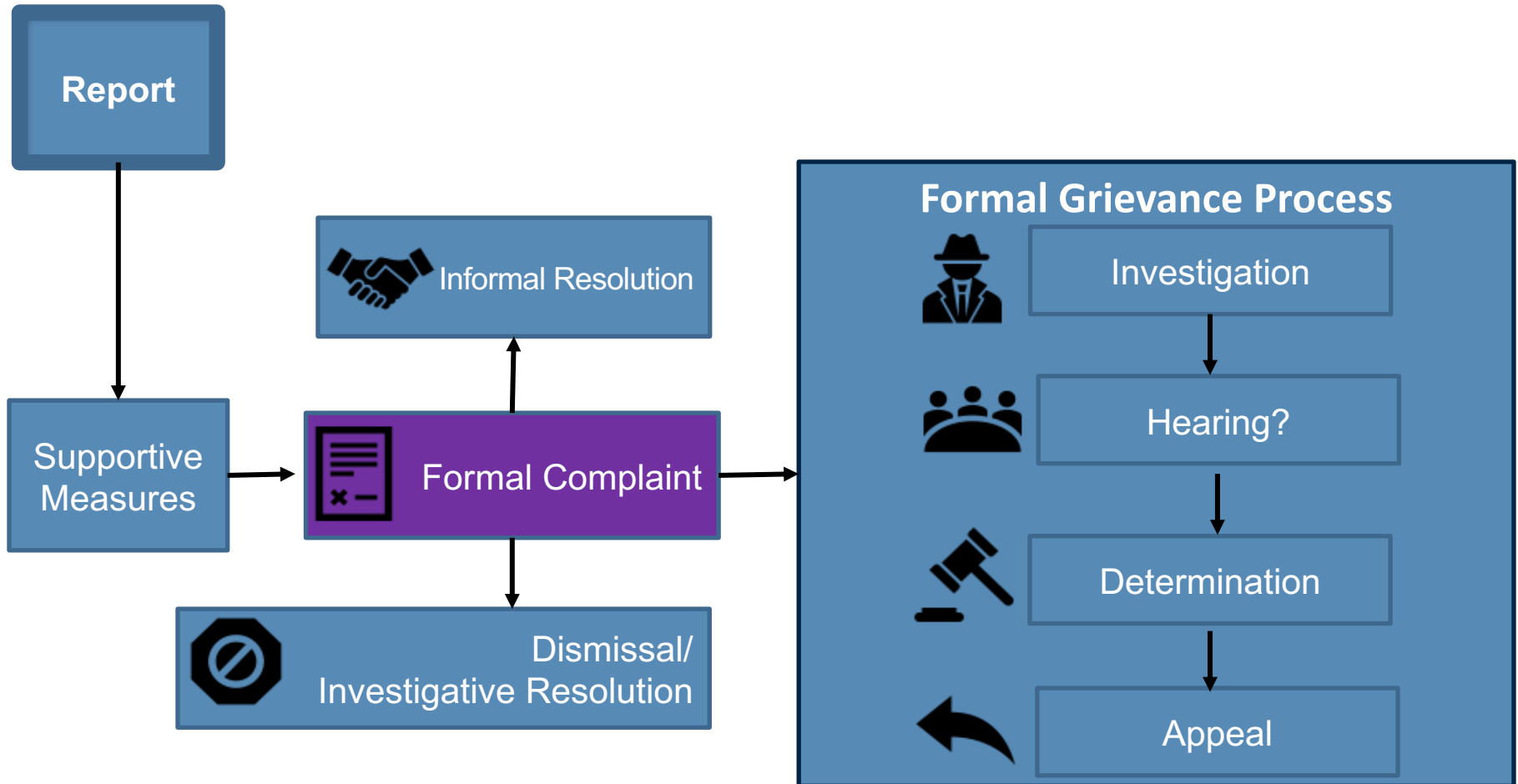
# Overview of the Process: Supportive Measures

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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



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

- In response to a formal complaint, University must follow a grievance process (set by 106.45)
- 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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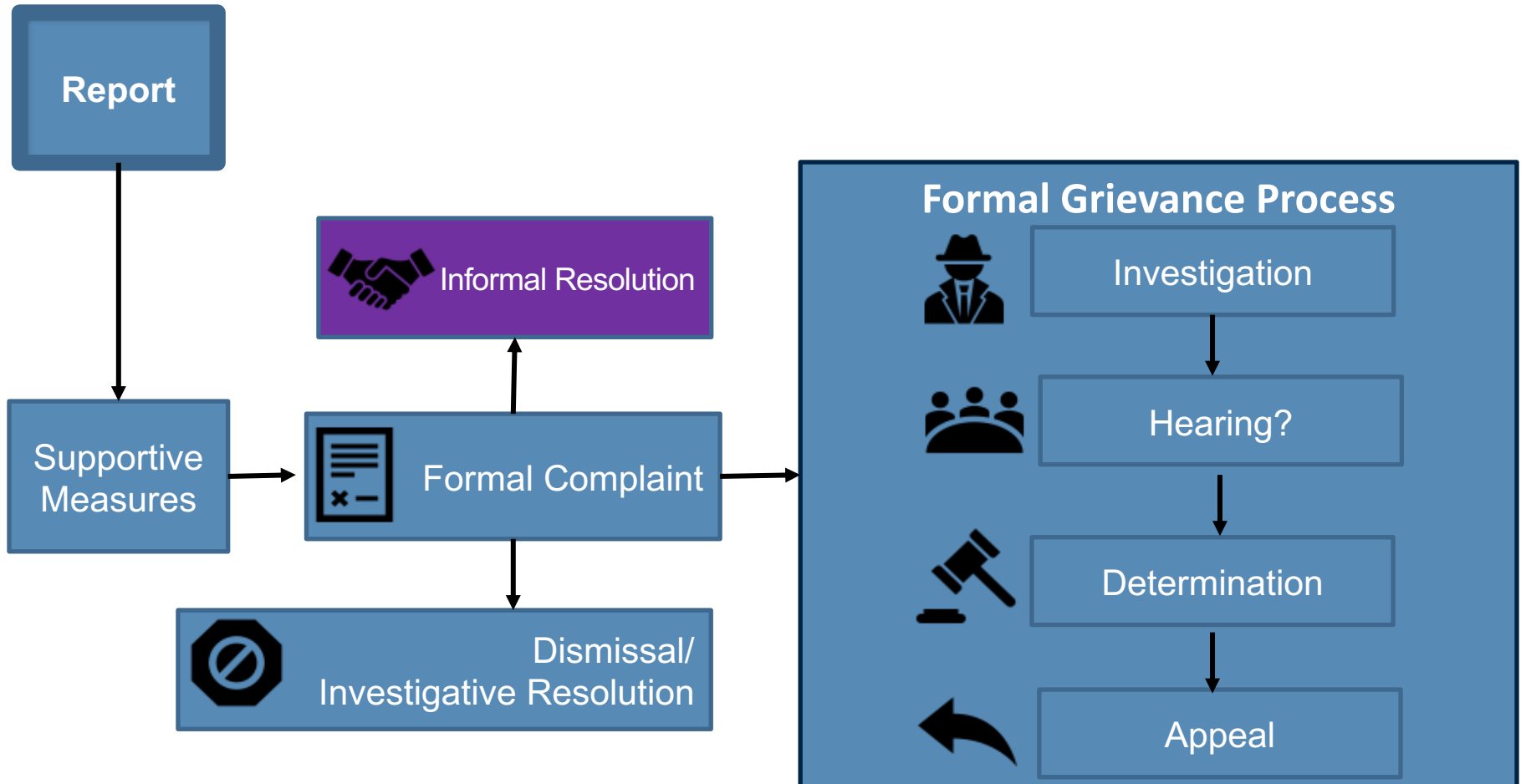


Once a Formal Complaint is filed, there are four possibilities:

- 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 University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication
- University cannot require this and also cannot offer unless a formal complaint is filed



# Overview of the Process: Informal Resolution

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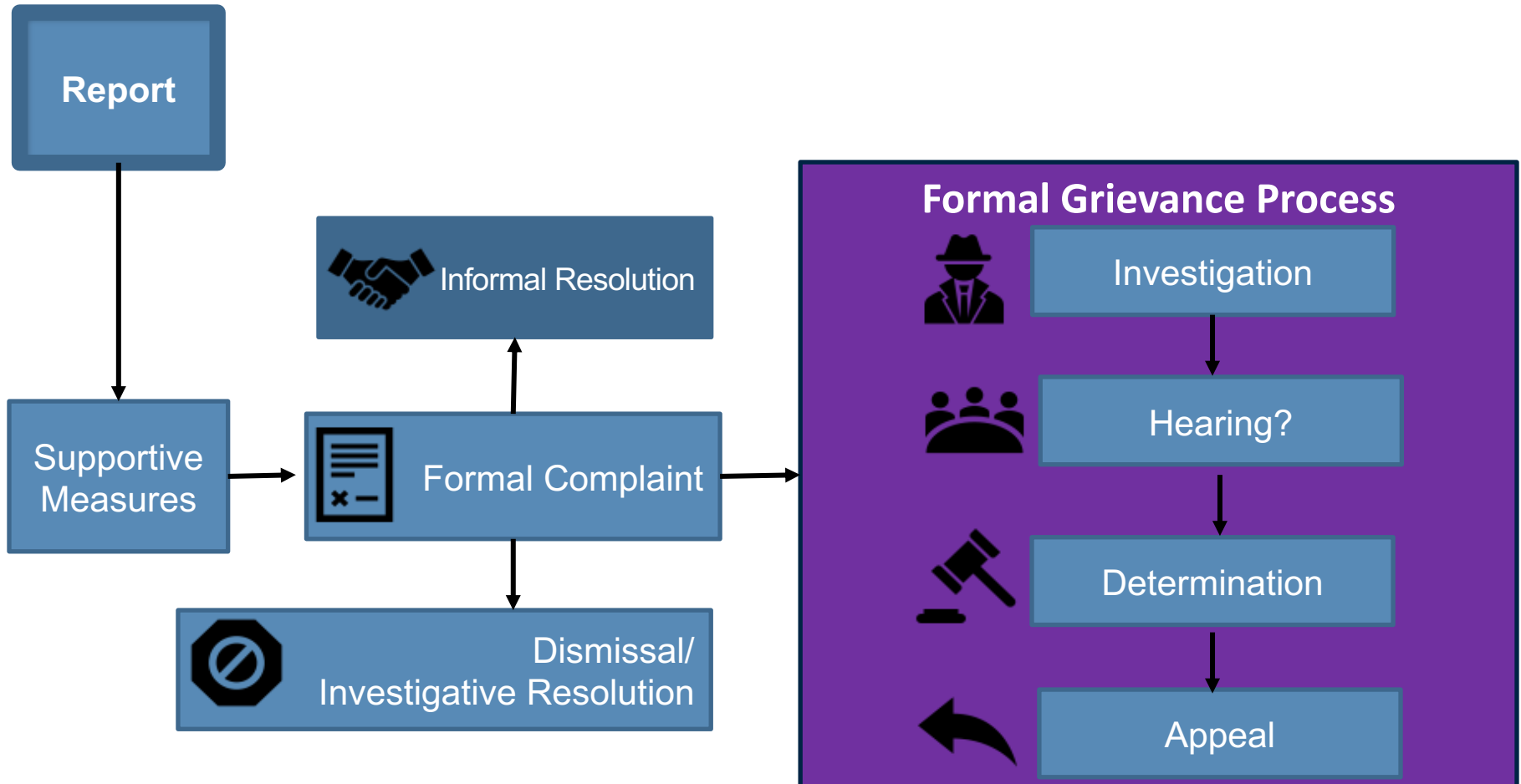


- University can offer informal resolution if:
  - Provides written notice to the parties
  - Obtains the parties' voluntary, written consent to the informal process

University 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



- University'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 University
- 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



- 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



- 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 – University 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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- University 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



- Must provide a live, cross-examination hearing
- Parties must have an advisor and the University 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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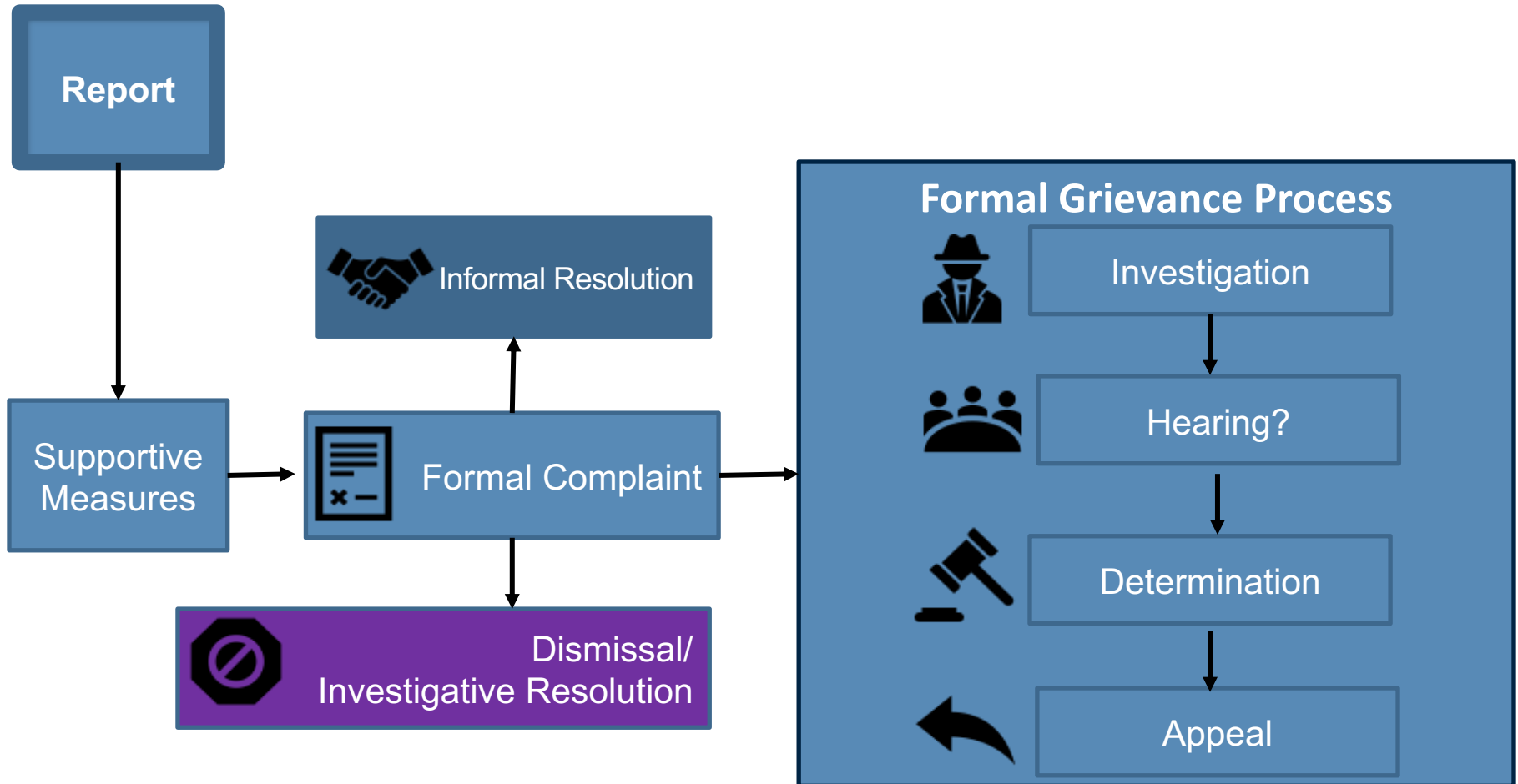


- Procedures and bases for appeal by both parties
- Provide written determination to parties simultaneously





# Overview of the Process



# Overview of the Process: Dismissal/Investigative Resolution



- University MUST investigate allegations in a formal complaint
- BUT University 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 University's education program or activity or in the United States



# Overview of the Process: Dismissal/Investigative Resolution



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# Overview of the Process: Dismissal/Investigative Resolution

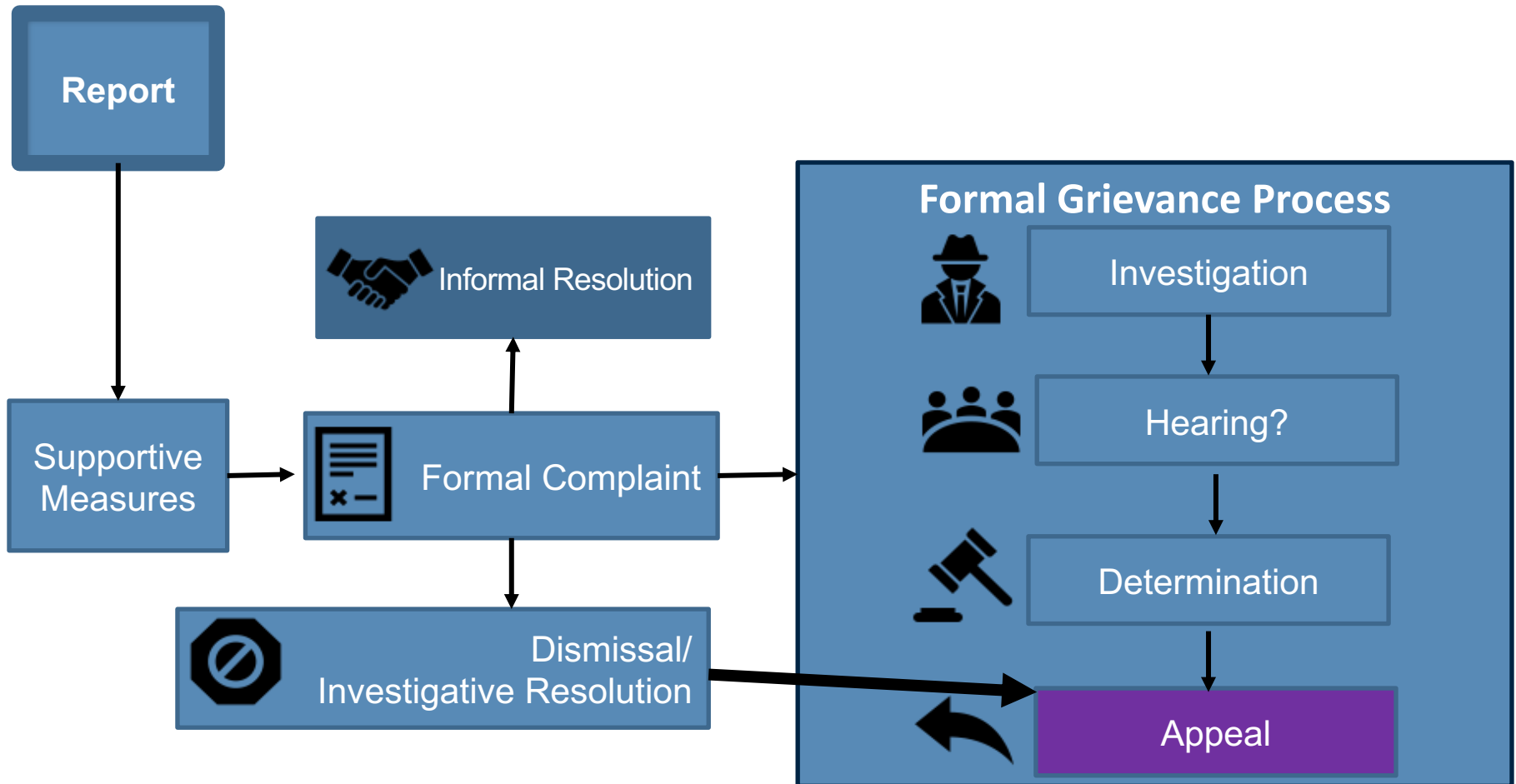
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- Cases not eligible for a hearing:
  - Investigation
  - Decision (by investigator, without hearing)
  - Appeal



# Overview of the Process



# Overview of the Process: Appeals



- University 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



- 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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- Office of Counseling Services
- Cedarville University Medical Services
- Other Hospitals or Medical Providers
- Legal Aid of Western Ohio
- Greene County Violence Prevention
- 24-Hour Hotlines listed in Policy

# 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

# Questions?