



University of Alabama System External Decision- Maker/Advisor Training



Purpose of Today's Training

- Review General Process under Title IX
- Highlight Your Role
- Answer Questions
- Provide Guidance and Examples
- Serve as a Resource
- On-Going Process- this is very new!



THE LAW

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in educational programs or activities operated by recipients of Federal financial assistance.





TITLE IX IS:

- **Federal law**
- **Enforced by the Office for Civil Rights (OCR)**
- **Prohibits Discrimination based on sex**
- **Historically viewed as requiring gender-equity in athletics**



Title IX Applies to...

- Student on Student Sexual Harassment
- Employee on Employee Sexual Harassment
- Employee on Student Sexual Harassment
- Student on Employee Sexual Harassment

****UA System has diverse settings and scenarios!****





**Title IX
Coordinator**



Investigator(s)



**Decision-
Maker(s)
–YOU!!**



**Appellate
Member(s)**

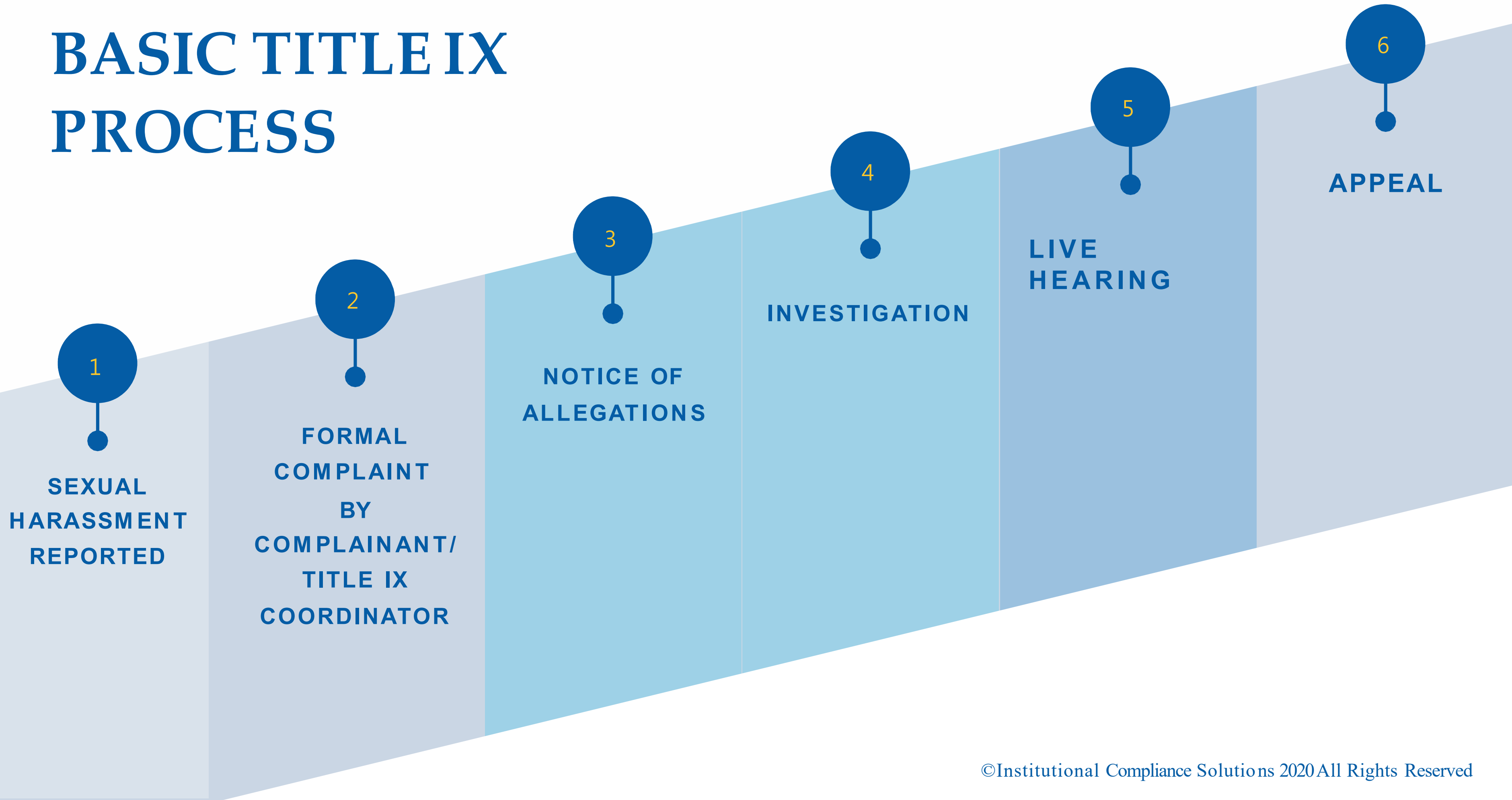


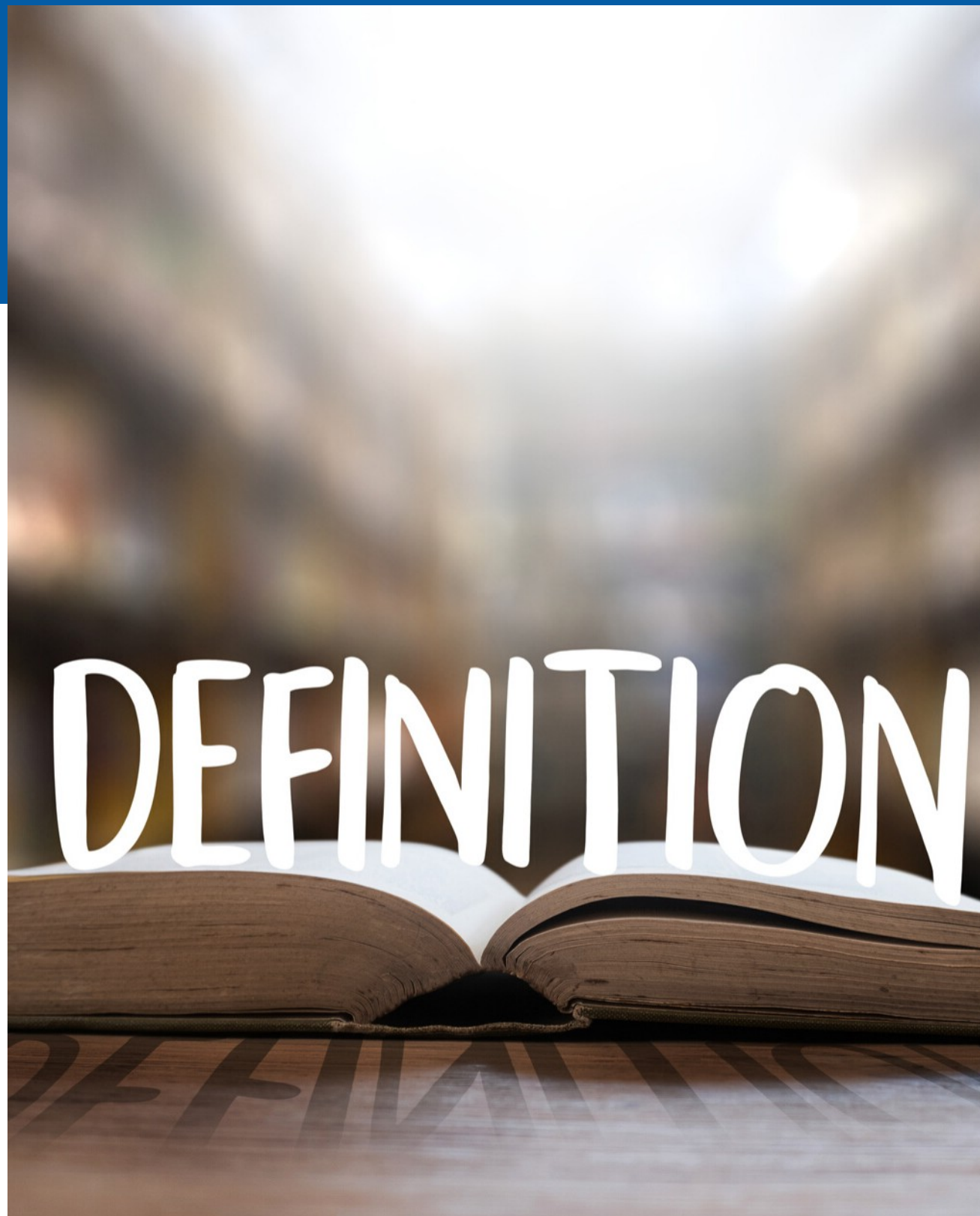
**Informal
Resolution
Facilitators**



**Deputy Title IX
Coordinators**

BASIC TITLE IX PROCESS

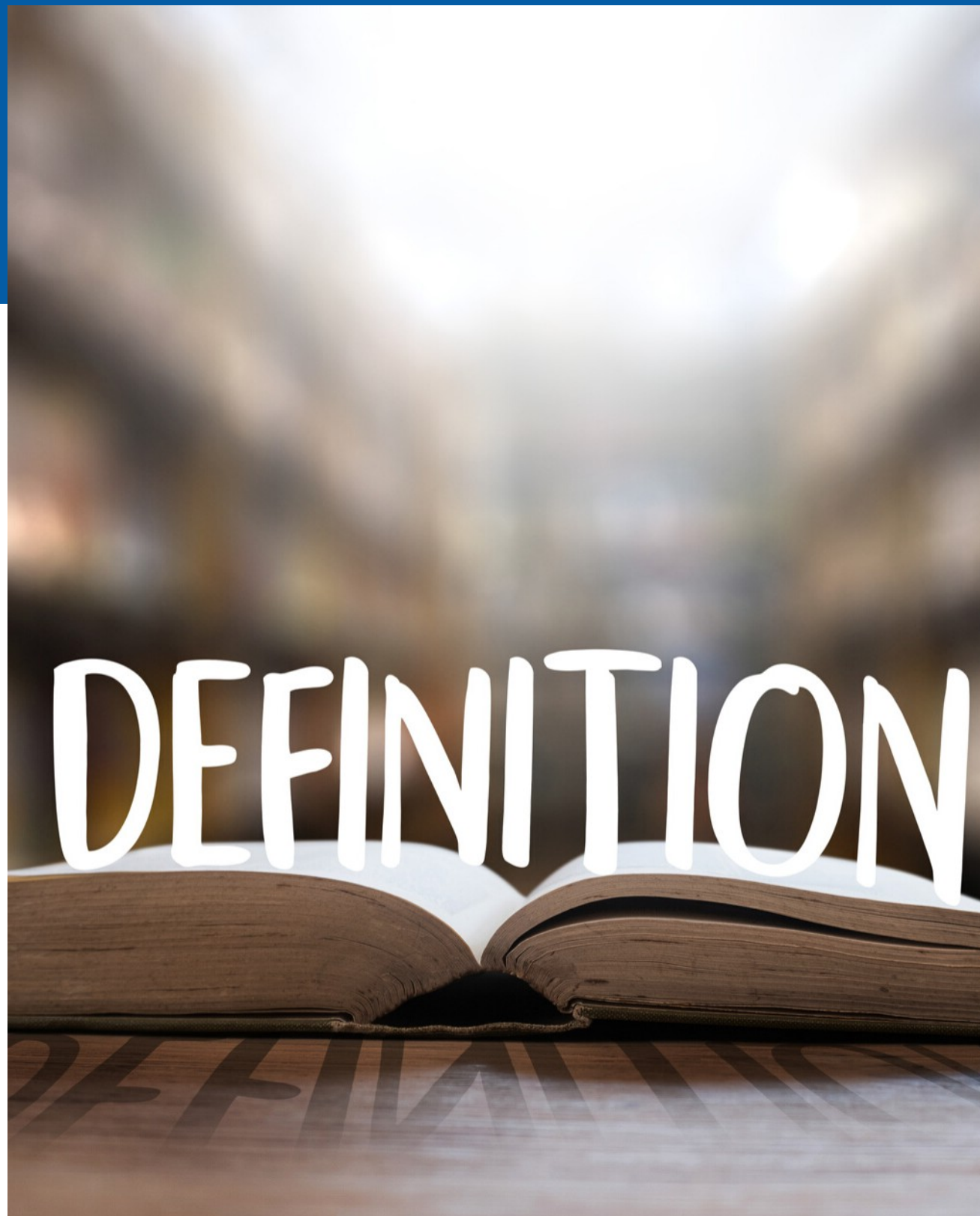




T9 DEFINITIONS OF SEXUAL HARASSMENT

Based on Sex

- ✓ Quid pro quo
- ✓ Severe, pervasive and objectively offensive
- ✓ Sexual Assault, Domestic Violence, Dating Violence, Stalking



Additional Prohibited Conduct:

- ✓ Sexual Discrimination Broader than T9
- ✓ Sexual Violence
- ✓ Sexual Exploitation

INVESTIGATIVE TIMELINE

1

INVESTIGATE

- Notice of Allegations
- Notice of all interviews with sufficient time to prepare

2

OPPORTUNITY TO
INSPECT AND
REVIEW
EVIDENCE
DIRECTLY
RELATED TO
ALLEGATION &
PROVIDE
WRITTEN
RESPONSE

10 days*

3

INVESTIGATIVE
REPORT

4

OPPORTUNITY
TO REVIEW
FINAL REPORT
AND PROVIDE
WRITTEN
RESPONSE

10 days

5

LIVE HEARING
(EXTERNAL DM
FOR UAB and
UAH/Impact
Statement)

6

APPEAL
(INTERNAL)



INSTITUTIONAL
COMPLIANCE SOLUTIONS

INVESTIGATIVE TIMELINE HOSPITAL EMPLOYEES

1

INVESTIGATE

- Notice of Allegations
- Notice of all interviews with sufficient time to prepare

2

OPPORTUNITY TO
INSPECT AND
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OPPORTUNITY
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10 days

5

WRITTEN Q&A

6

APPEAL
(INTERNAL)



INSTITUTIONAL
COMPLIANCE SOLUTIONS

REVIEW POLICIES AND PROCEDURES FOR
EACH CAMPUS WHEN YOU RECEIVE AN
APPOINTMENT IN DETAIL

- Three Distinctive Campuses
- Three Distinctive Processes/Policies – UAB and UAH are the same
- Variety of types of cases
- Crucial you know your role in the process
- Intimately familiar with the Policy/Process/Definitions of Conduct



GENERAL PRINCIPALS

- Not a court proceeding – campus proceeding
- Not adversarial
- Remove advocacy hat
- Not working for UA as attorney
- Equitable for Complainant and Respondent



TYPES OF CASES

- Student on Student Sexual Harassment – Alcohol/Incapacitation/Etc.
- Athletics
- Fraternity/Sorority Matters
- Clinical Matters/Physicians
- Employee HR Issues
- Faculty Matters
- **MOST LIKELY THIS WILL BE COMPLETELY DIFFERENT THAN CASES YOU HAVE SEEN IN PRACTICE**





Questions?



THE HEARING





Hearing Location

- Live v. Virtual
- Special Consideration with Virtual Hearings
 - Breakout Rooms
 - Non-verbals
 - Test it out in advance!

Hearing Structure

- Institution Specific
- Get Clarity Prior to Hearing on Structure and Role




Set the Tone, Enforce the Rules

- The parties and advisors must abide by the rules of decorum set by the institution
 - Provide the rules to the parties prior to the hearing
- The decision maker must-
 - set the tone for the hearing
 - ensure that the rules are clearly outlined
 - ensure that the rules are explicitly followed
 - have the ability to take breaks as necessary

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QUESTIONING WITNESSES (106.45(b)(6)(i))

- Advisor must be permitted to ask relevant questions (including follow up questions and questions challenging credibility) of the other party and witnesses
- Never by a party directly Conducted live
- Orally
- In real time
- May be submitted in advance, but not required

A signpost with two yellow directional signs. The top sign points left and says 'Relevant'. The bottom sign points right and says 'Irrelevant'. The background is a blurred city street at night with lights and buildings.

Relevant

Irrelevant

Relevance and Your Role

RELEVANCY

- Regulations do not define relevancy
- Regulations define some things that are NOT relevant:
 - Treatment unless parties agree
 - Privileged Information
 - Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior unless they are offered to prove that someone other than Respondent committed the sexual harassment, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with the respondent and are offered to prove consent (does not extend to Respondent's)

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Ir relevant



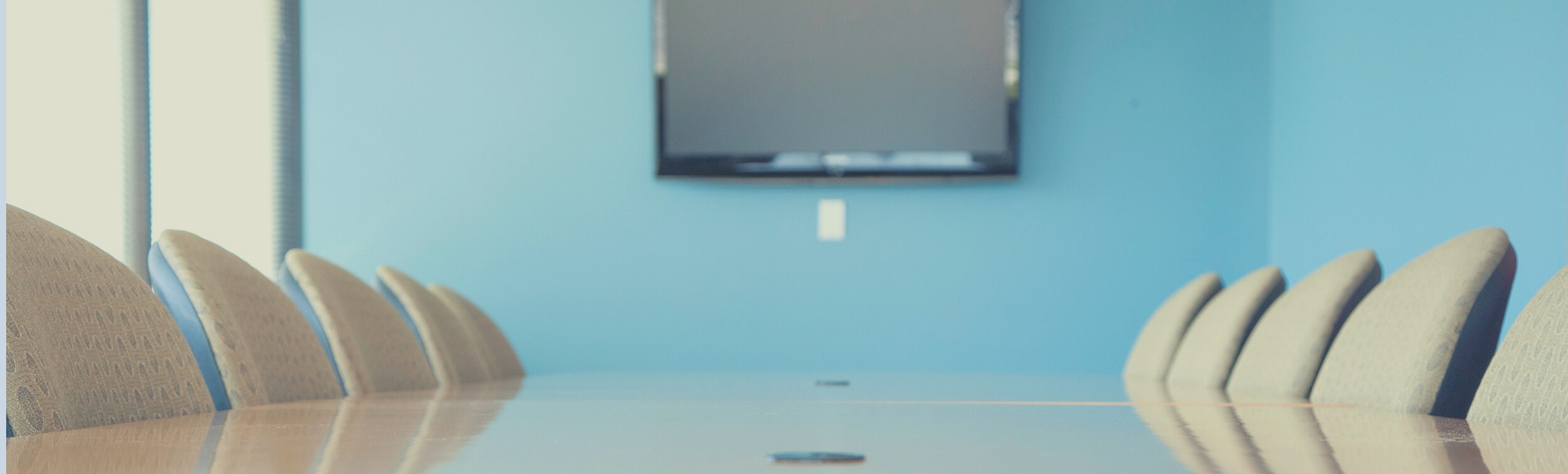
QUESTIONING WITNESSES CONTINUED... DECISION- MAKER

- Decision-maker must decide whether the question is relevant **BEFORE** it is answered.
- Decision-maker must **EXPLAIN** any decision to exclude a question as not relevant.
- Decision-maker may ask any additional/follow up questions



QUESTIONING WITNESSES CONTINUED... DECISION- MAKER

- Advisors of choice –may be a student, faculty, staff member unfamiliar with process
- Burden on institution, not parties

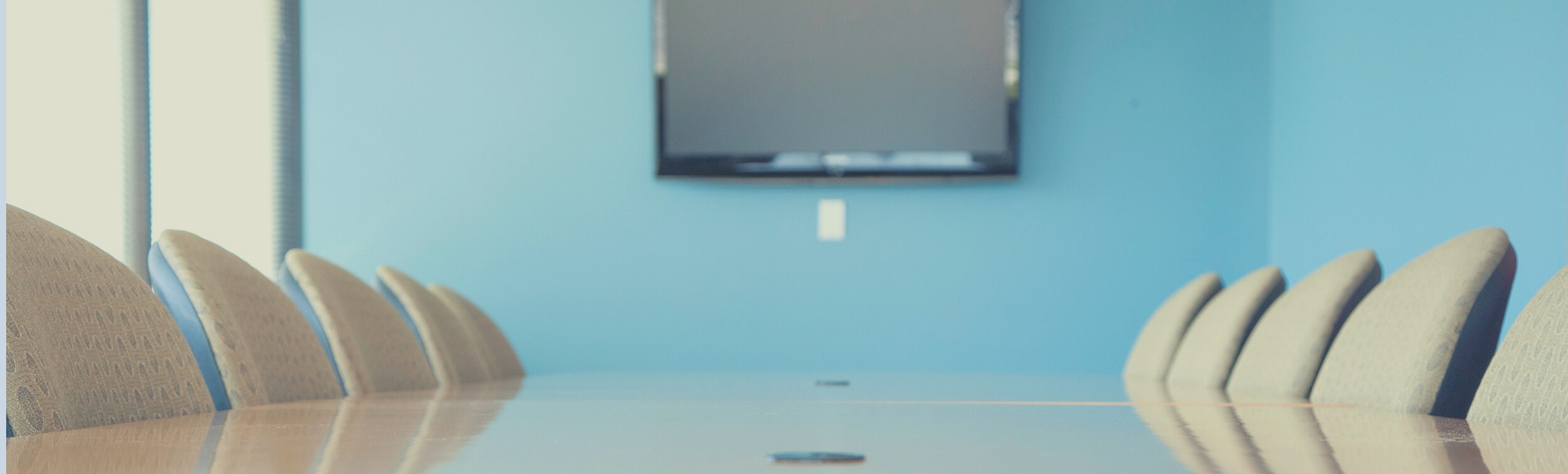


If party or witness does NOT submit to cross examination 106.45(b)(6)(i)

- Decision-maker(s) must NOT rely on any statement of that party or witness in reaching a determination regarding responsibility
 - “Statements” has its ordinary meaning, but would not include evidence (such as videos) that do not constitute a person’s intent to make factual assertions, or to the extent that such evidence does not contain a person’s statements.
- Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's/witness's absence from the live hearing or refusal to answer cross examination other questions.

RESPONSIBILITY

Decision-maker must issue a WRITTEN DETERMINATION regarding responsibility- using preponderance standard set by UA. 106.45(b)(7)



Special Considerations

- Party shows up without an advisor
- Party continues to attempt to address other party directly
- Advisor removed because fails to follow rules of decorum
- Party asks for informal resolution

WRITTEN DETERMINATION

- Consult with specific campus re: Sanction and Remedies
- Provide Determination with all required elements including sanctioning (all one document)





FINAL THOUGHTS/REMINDERS

- Campus Proceeding – Be Kind
- Variety of Cases – Students, Employees, Clinicians, Physicians, Faculty
- Consult Title IX Coordinator/GC Office on Process/Procedures
- Remember your Role
- Be Prepared – Conversant on Policy, Process, Conduct being Evaluated, Requirements in Written Determination, Review of Hearing Packet, Role of Everyone in the Hearing (Appellate Options)
- EQUITABLE TREATMENT OF BOTH PARTIES – extensions, breaks, delays, time, etc.



Questions?
