

# University of Alabama System External Decision- Maker/Advisor Training

November 8, 2021 and January 5

2022



# Purpose of Today's Training

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









# Housekeeping

- Chat bar
- Understanding
- Assume basic knowledge of the 2020 Title IX Regulations
- Disclaimer

# What is Title IX?



*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.*





# What Does Title IX Cover?

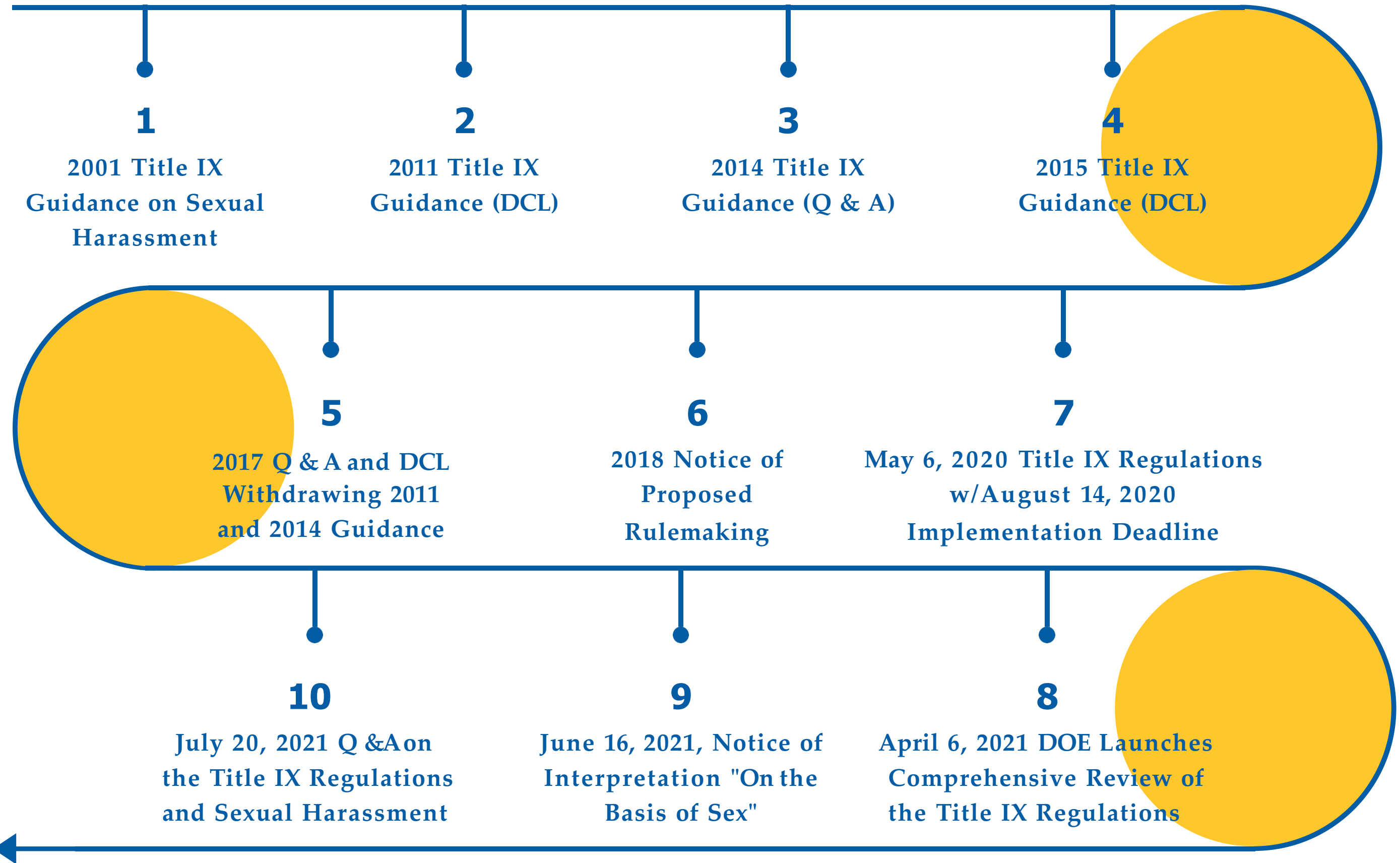


SEXUAL HARASSMENT

EQUITY IN PROGRAMMING  
(INCLUDING ATHLETICS)

DISCRIMINATION ON THE  
BASIS OF SEX (INCLUDING  
PREGNANCY AND SOGI)

# The Evolution of Title IX



**EXPECTED**

May 2022  
Title IX Rule

Changes/ Amendments

# Q & A HIGHLIGHTS



THE REGULATIONS  
STILL APPLY



THE Q & A  
IS GUIDANCE



RESPONSE TO SEX  
DISCRIMINATION



NOTICE



COORDINATOR SIGNING  
A FORMAL COMPLAINT



APPLICATION PRE-  
AUGUST 14, 2020



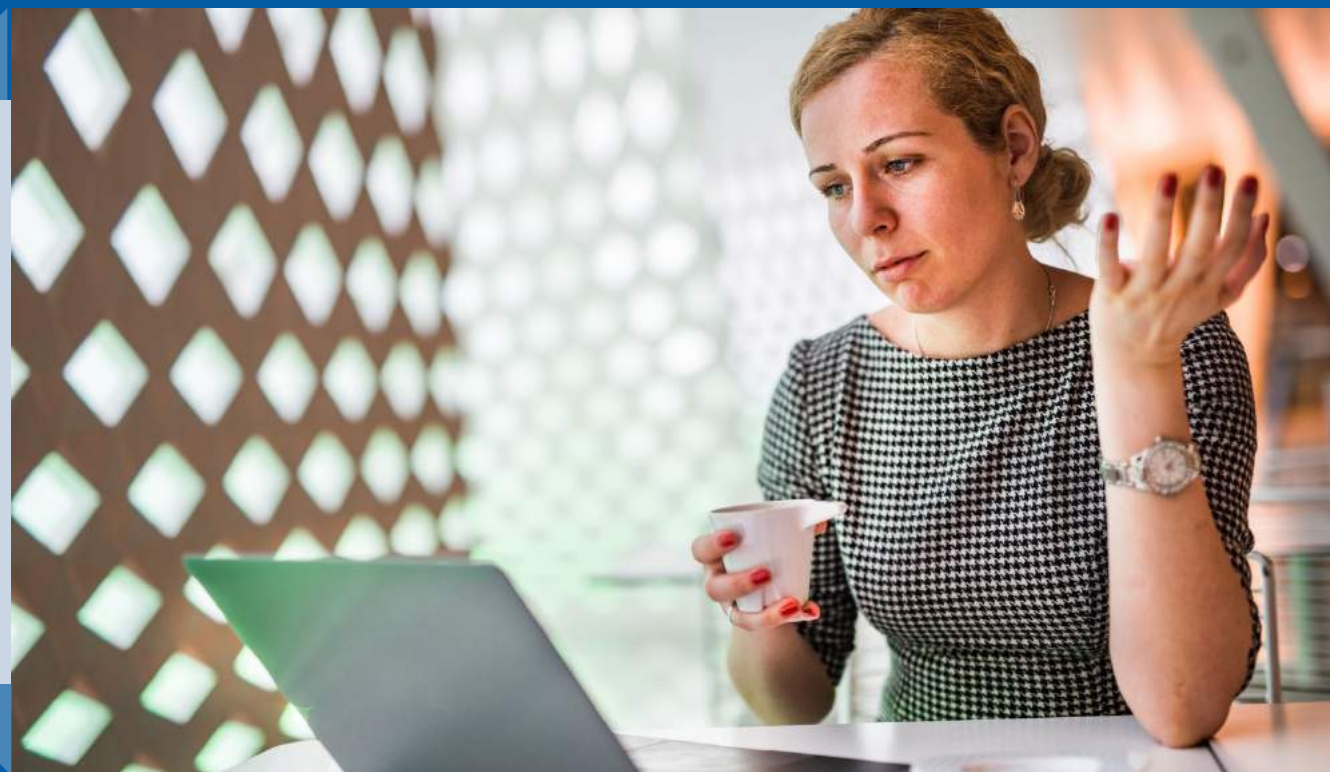
SAMPLE  
LANGUAGE



# Catherine E. Lhamon

Assistant Secretary  
Office for Civil Rights





WHAT NOW?

THOUGHTFUL URGENCY





# 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!\*\***





# CHANGES AND REQUIREMENTS

## OVERVIEW



**Prescriptive  
Title IX  
Process**



**Officials  
with  
Authority**



**Policies  
and  
Procedures**



**Team  
and  
Training**



**Coordinator  
with  
Authority**





# Terminology

- Sexual Harassment
- Complainant
- Respondent
- Formal Complaint
- Education Program/Activity
- Supportive Measures



**Title IX  
Coordinator**



**Investigator(s)**



**Decision-  
Maker(s)  
–YOU!!**



**Appellate  
Member(s)**



**Informal  
Resolution  
Facilitators**



**Deputy Title IX  
Coordinators**

A hand is pointing at a digital screen. Overlaid on the screen is a network diagram consisting of various geometric shapes (squares, octagons, circles) connected by lines. A bright light source is visible behind the hand, creating a lens flare effect. A thick blue vertical bar is positioned to the right of the hand and the network diagram.

**SEXUAL  
HARASSMENT**

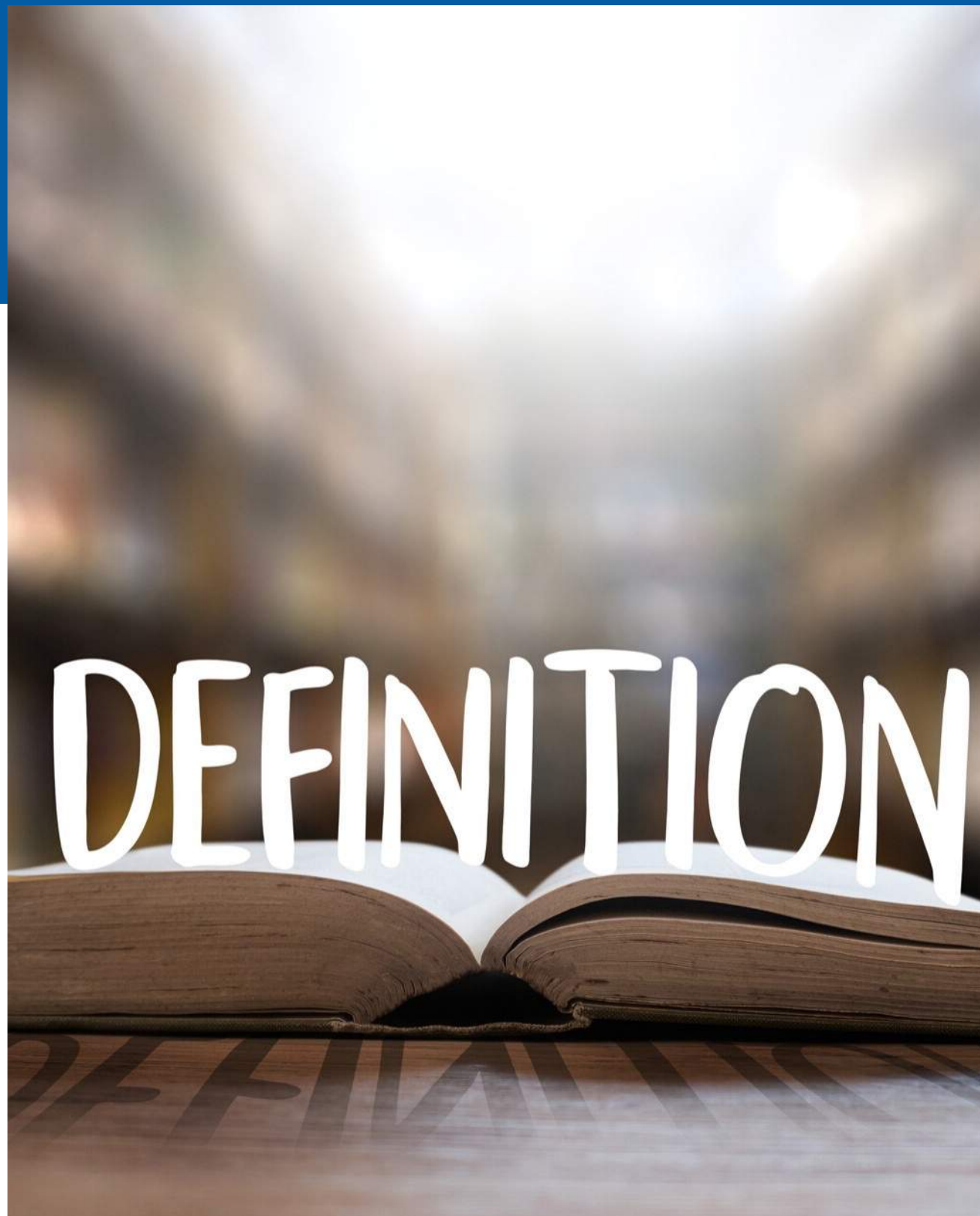
**+**

**EDUCATION  
PROGRAM  
OR ACTIVITY**

**=**

**FORMAL TITLE IX  
PROCESS**

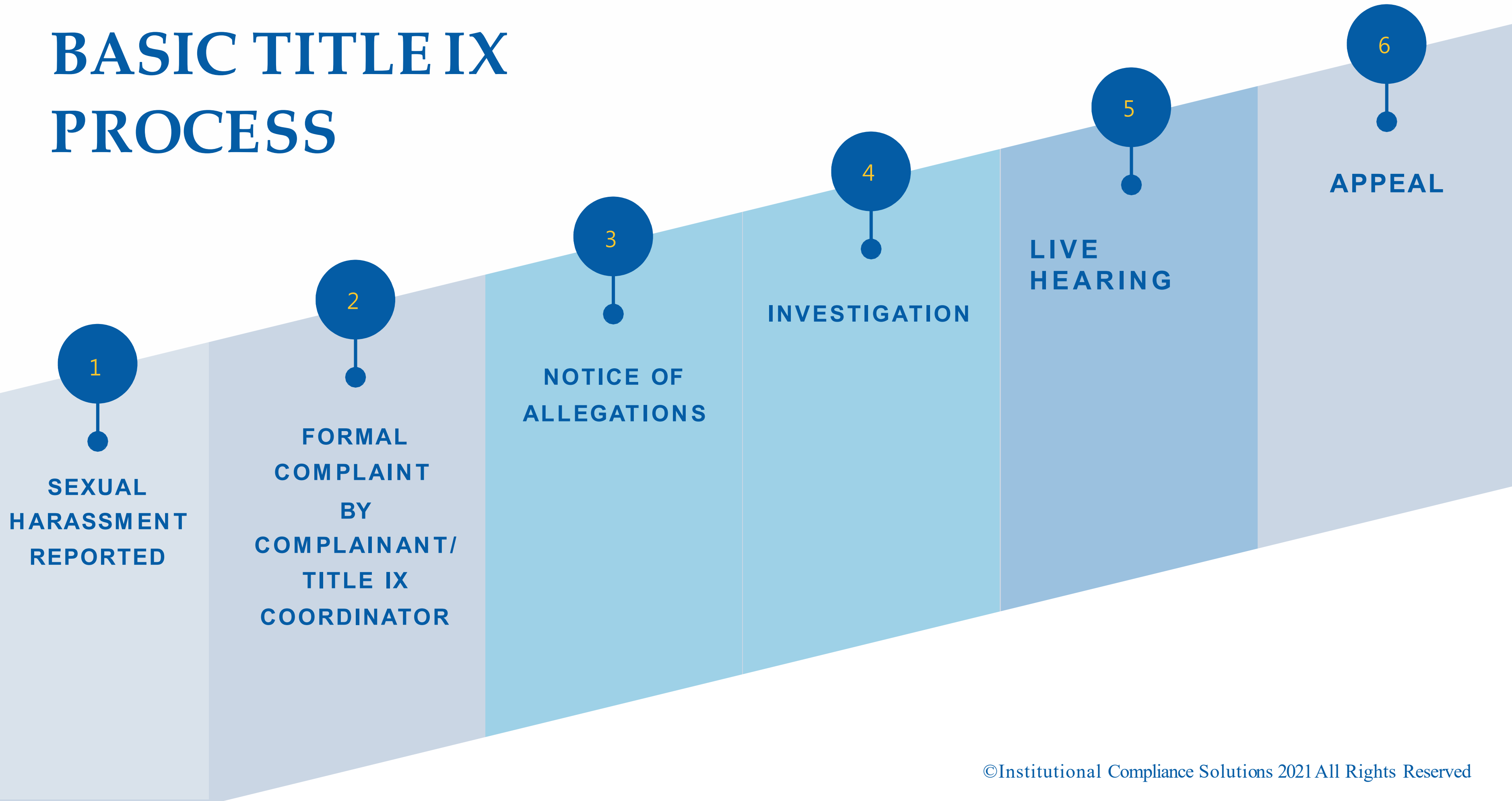




## **Additional Prohibited Conduct:**

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

# BASIC TITLE IX PROCESS



# 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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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?*

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# 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

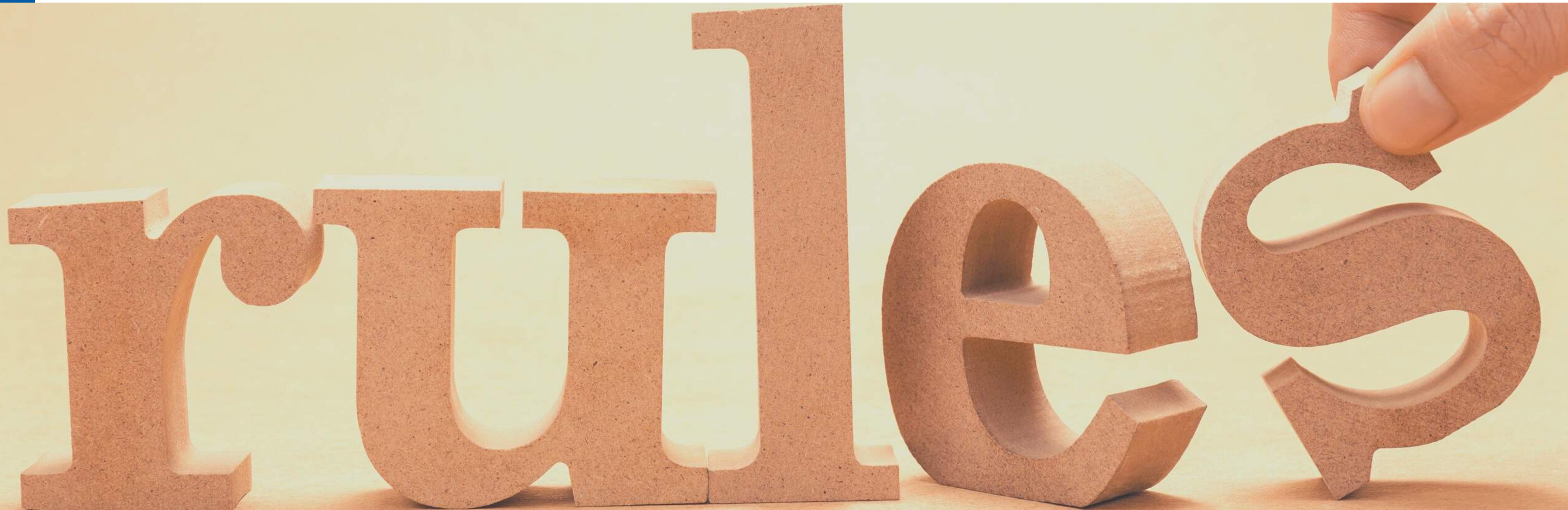




# *Set the Tone, Enforce the Rules*

- 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





**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



# Utilizing Trauma Informed Practices

## WHAT DOES IT MEAN?

- Realizing the prevalence of trauma
- Understanding the impacts of trauma
- Avoiding the creation of additional trauma



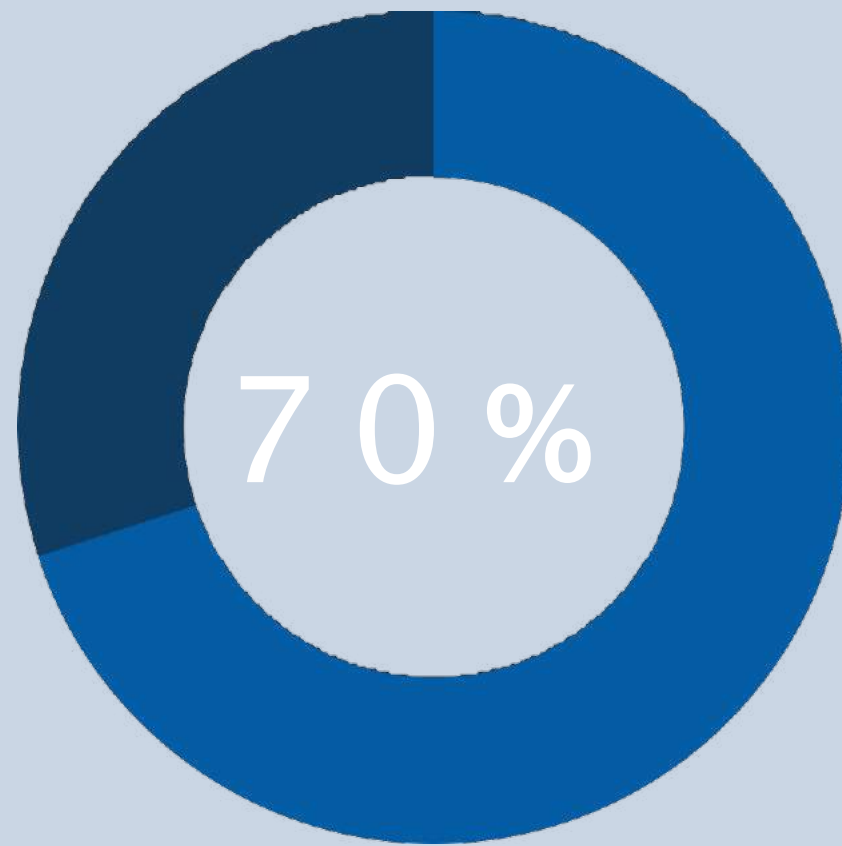


# Using Non-Trauma Informed Practices:

- JEOPARDIZES FUTURE REPORTING
- RESULTS IN PREMATURE JUDGMENT AND ACCUSATIONS OF FALSE REPORTING
- CAN CAUSE ADDITIONAL TRAUMA



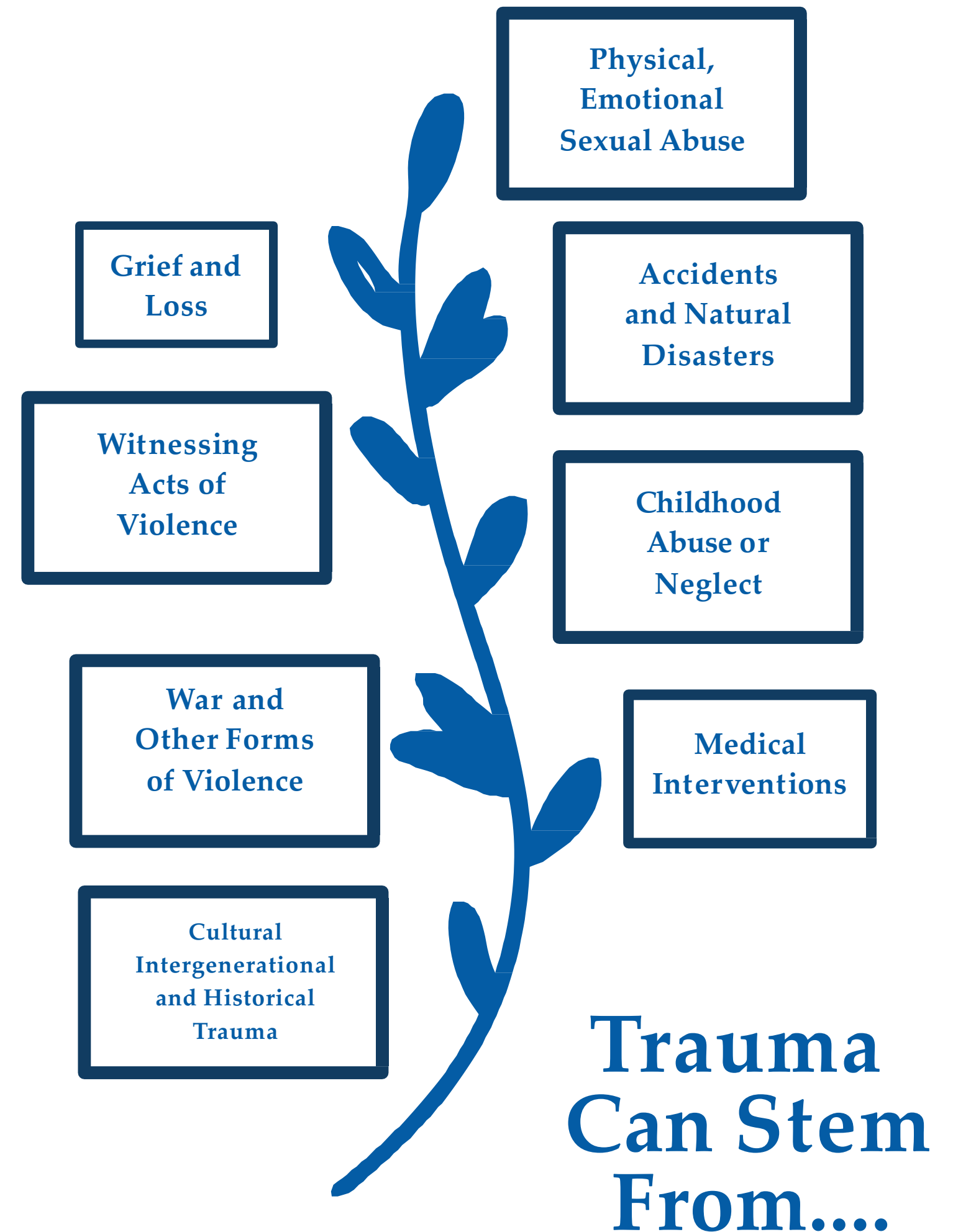
## THE PREVALENCE OF TRAUMA



**70 % of adults in the U.S.  
have experienced some  
type of traumatic event at  
least once in their lives**

223.4 MILLION PEOPLE

National Council for Behavioral Health.



# Neurobiological Impact of Trauma

HOW DOES TRAUMA IMPACT  
THE BRAIN?





# TRAUMA & AMYGDALA, HIPPOCAMPUS, PREFRONTAL CORTEX



- Brain detects threat – trauma triggers chemical reaction
- Impacts:
  - Decision-making;
  - Rational thinking;
  - Perception;
  - Planning effective responses;
  - Memory
- During trauma – may function less effectively
- “Survival Mode” – may not be able to think through the situation clearly

# Fight, Flight, or Freeze

OR ALL THREE...

Or Something Completely Different...





# Response to Trauma

## THE POSSIBLE IMPACT



SHOCK

DENIAL

SELF-BLAME

EMBARRASMENT

FEAR

ANGER

CONFUSION

DISRESPECT

HUMILIATION

LIMITED EMOTION

# AVOIDING ADDITIONAL TRAUMA







# Investigative Trauma May Trigger Same Reactions

## FIGHT

- Hostile; Angry; Explosive; Annoyed

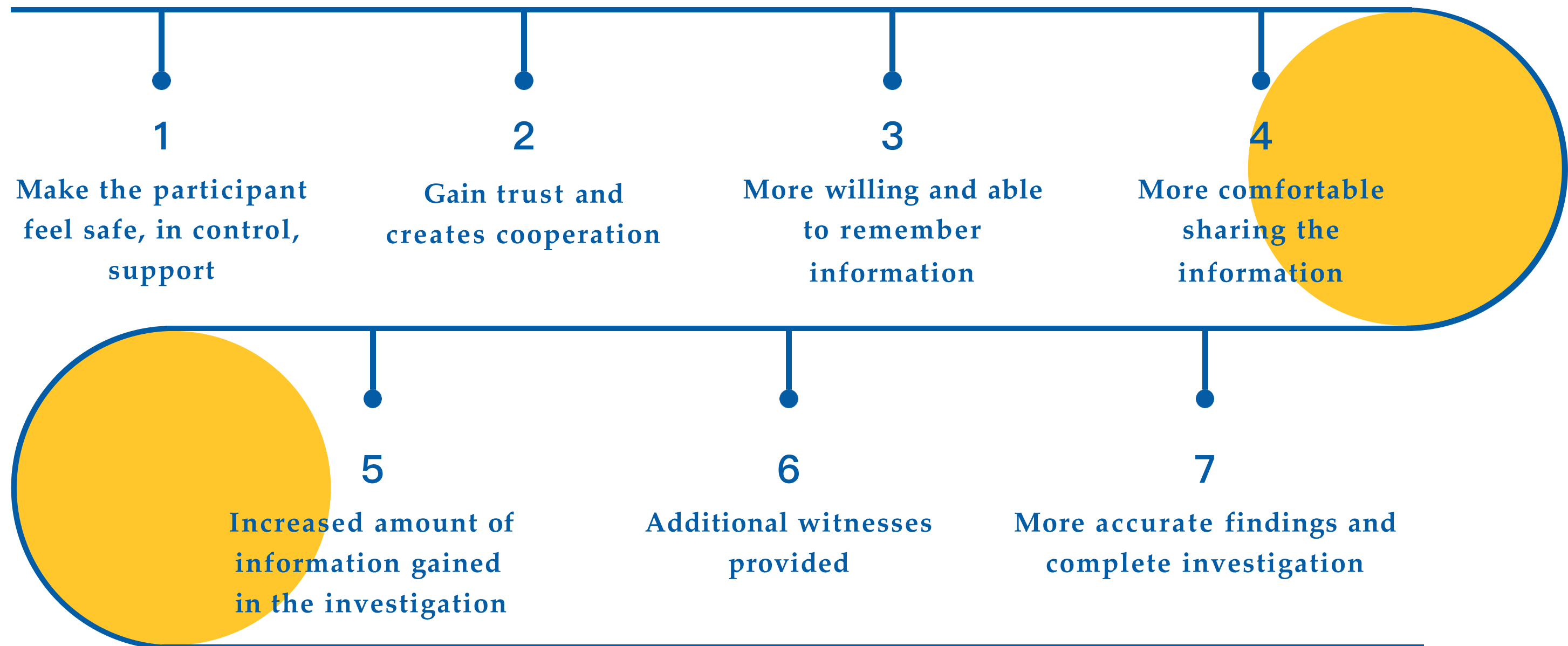
## FLIGHT

- Stop participating; Run Away

## FREEZE

- No Response; Radio Silence

# Leading with Empathy





# Use these types of questions:

Help me  
understand

Do you have any  
additional information  
to share?

Can you tell me a  
little more?

Questions for  
clarity

# NOT these types of questions:

The "Why"  
Questions  
Why didn't you?

Leading  
Questions

Blaming  
questions

Interrogating  
questions

# FRAMING THE QUESTION EXAMPLES

- Why didn't you ask for help?
- Why did you drink if you didn't want to?
- Why didn't you report right away?



- Was there anyone around or available?
- What happened after you had the drink?
- Was there anything in particular that helped you decide to report?







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## TREAT THE PARTIES EQUITABLY, INTERVIEW THEM UNIQUELY

- Ensure that the complaint and response are being taken seriously
- No prejudgments
- Prohibitions against retaliation
- Ask hard questions, but acknowledge that they are hard

# Don't go Overboard

**IT CAN GO TOO FAR...**

You cannot lead with your emotions

**ACKNOWLEDGE CONFLICTS OF INTEREST AND/OR BIASES**

Truly reflect on how they are impacting your ability to serve in role

**IF YOU FIND YOURSELF HERE, TAKE A BREAK**

From the hearing, the witness/party, the project





*Questions?*

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# Victim Rights Law Center et al. v. Cardona,

No. 1:20-cv-11104, 2021 WL 3185743  
(D. Mass. July 28, 2021)





August 24, 2021

# Letter to Students, Educators, and other Stakeholders re: "Statements"

*"In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process."*

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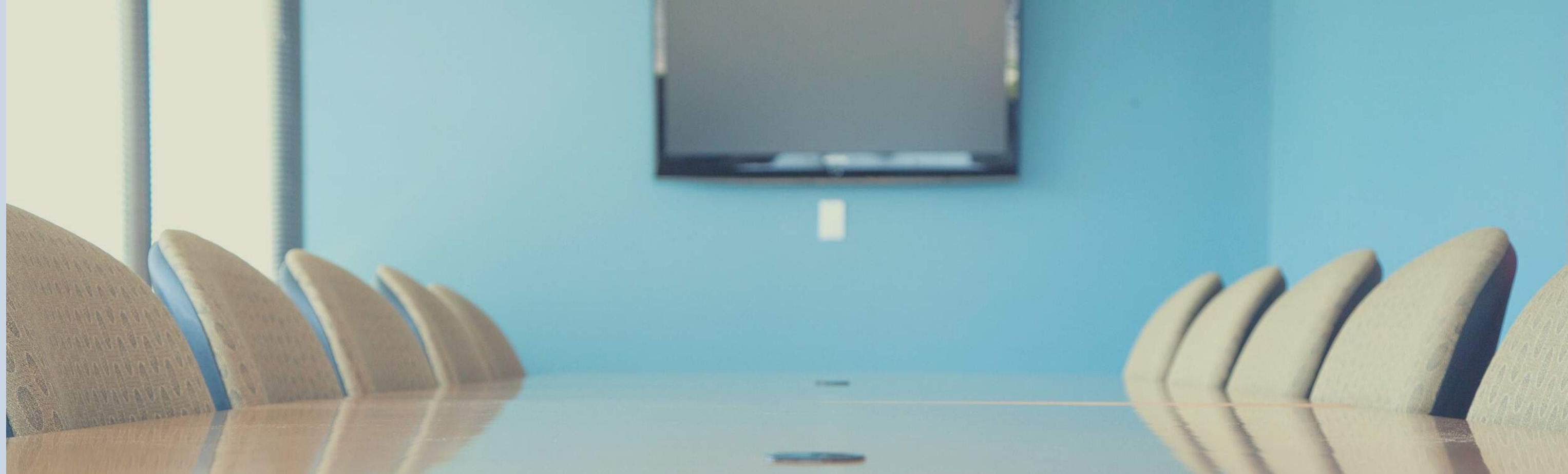




# RESPONSIBILITY

**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

# Reminders



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- 1 **Presumption of Not Responsible**
- 2 **Cure any procedural issues immediately**
- 3 **Not a criminal proceeding**
- 4 **Do not prejudice/ conflicts of interest**
- 5 **Burden on institution- not the parties**



# Guidance: Discrimination Sexual Orientation/Gender Identity

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# *Bostock v. Clayton County*

2020: Supreme Court held Title VII prohibition on discrimination based on sex covers discrimination on the basis of gender identity and sexual orientation







# 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?*

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