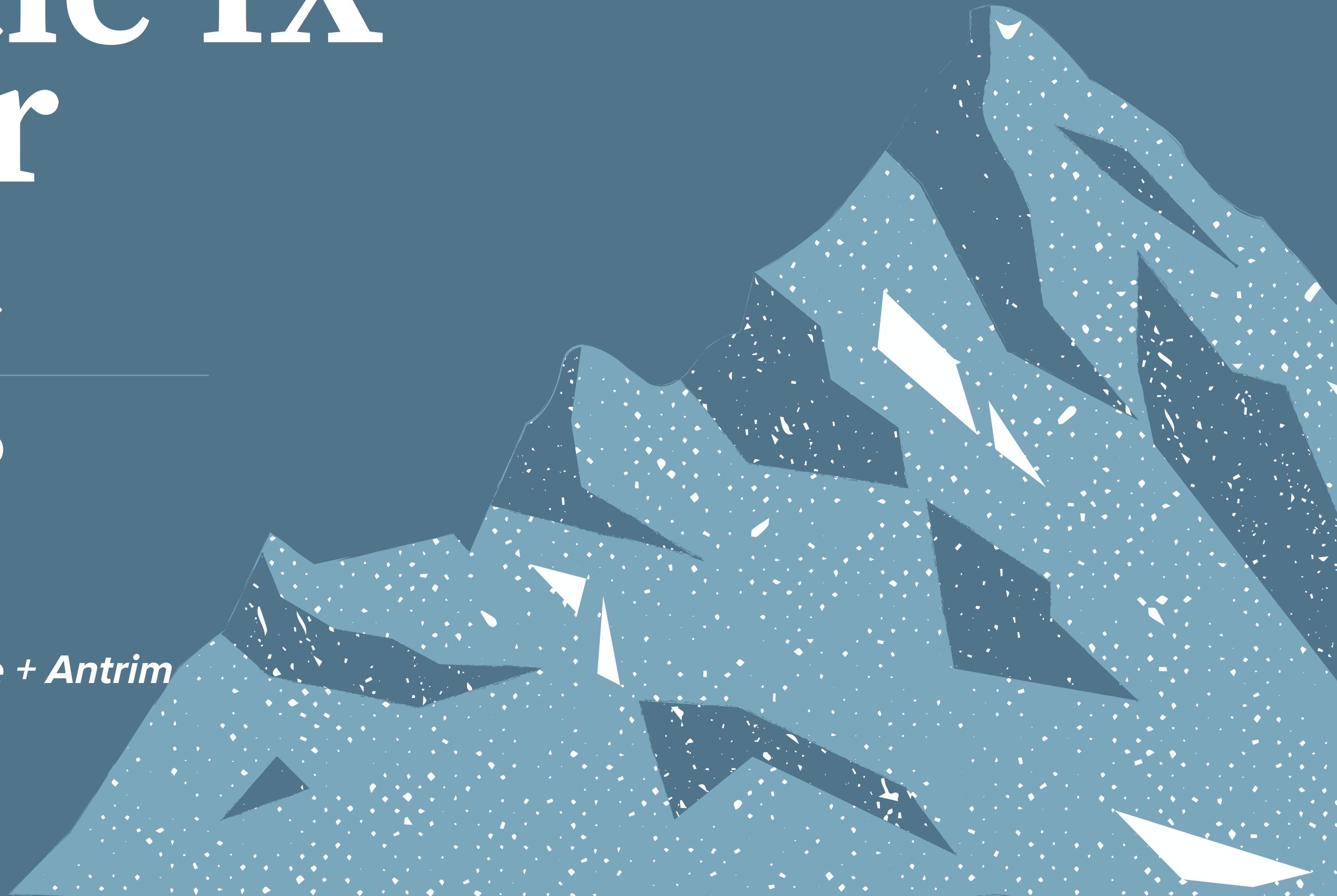


2025 Title IX Summer Summit

Jodie Crosby Ferise, JD, EdD
James Nussbaum, JD

*Presented by Church, Church, Hittle + Antrim
July 23 and 24, 2025*



Meet the team.

Jodie Ferise, JD, EdD

+ More than 20 Years in Higher Ed

- Faculty member, senate president
- Associate provost
- Chief international officer
- General counsel
- Government relations, lobbyist

+ Featured in

- NPR
- CNN
- Bloomberg Law
- AP
- Washington Post
- Boston Globe
- Insider Higher Ed
- Chronicle of Higher Education

+ Title IX Experience

- Training
- Policy development
- Adjudicator/panel chair
- Investigator
- Advisor
- Informal resolution facilitator



Meet the team.

James Nussbaum, JD

- + **10+ years as Higher Education Counsel**
 - In-house counsel responsible for athletics, employment, student affairs
 - Outside counsel for schools in Indiana and across the country
 - Presents for national associations on issues facing higher education

- + **Title IX Experience**
 - Investigator
 - Adjudicator
 - Managing litigation
 - Agency complaints
 - Training
 - Gender equity in athletics

- + **Featured in**
 - Forbes
 - The Hill
 - Inside Higher Ed
 - Bloomberg Law
 - CBS Sports
 - USA Today





Meet the team.



John Pistole
Senior Advisor

- President Emeritus of Anderson University
- 26 year career with the FBI
- Former Administrator of the Transportation Security Administration



Amy Fox
Partner

- Member, National School Boards Association Council of School Attorneys
- Advises schools, colleges and universities



Kelleigh Fagan, JD
Partner

- Co-founder + Chair of the Sports Law practice group at CCHA
- Specializes in complex investigations, Title IX Gender Equity issues and the evolving college sports landscape



Todd Shumaker
Partner

- Former NCAA Enforcement investigator
- Former Chief Compliance Officer for the Office of the Inspector General



Paia LaPalombara
Partner

- 10 years in Ohio State Compliance
- NCAA National Office experience



Meet the team.



Connor Glass
Associate

- Former marketing coordinator for BIG3 Basketball
- Served as a legal extern at the Horizon League



Jane McGill
Attorney

- Former NCAA National Office staffer and DIII college coach



Matt Banker
Senior Advisor

- Former Associate AD at the University of Louisville, assistant commissioner at the Ohio Valley Conference, and NCAA national office staffer



Kara Carlson
Practice Manager

- Former NCAA National Office staffer + assistant registrar at the University of Utah

Subject Matter Experts



Julia Kozicki
Partner
Higher Ed + Greek Life



Steve Lutz
Partner
Business + Transactions
Specialist



Julie Roe Lach
Of Counsel
Athletics Expert



Brent Borg
Partner
Employment +
Litigation Specialist

Housekeeping



Disclaimer on language.

**Sexual harassment could happen to
anyone in any relationship.**



What if I have a
question during
these sessions?

Why am I here?



Our Plan for this Session



**STARTING
POINTS**

**TITLE IX
BASICS**

**THE
GRIEVANCE
PROCESS**

**DEVELOPMENTS
UNDER NEW
ADMINISTRATION**





Section One:

Starting Points

Finding our True North

Every participant, every reporter, every witness, is a member of your campus community. Each is inherently valuable as a human being and worthy of being respected and believed.

Discrimination, harassment, and sexual violence cause extreme damage to individuals and to the campus culture you are trying to develop and maintain.



True North

cch+a
ATTORNEYS AT LAW

Every person deserves access to education and employment that are free from discrimination and harassment.

Fair and equitable adjudication of discrimination and harassment complaints builds campus trust.



Building Campus Trust

- Take every allegation seriously.
- Treat parties and witnesses respectfully and equitably.
- Engage the entire campus community through training + events.
- Be present and involved in the campus community.
- Make yourself accessible to students.



Terms to Know

Complainant, Respondent, and Reporter

Complainant:

An individual within the recipient's community who may have experienced discrimination or harassment (even if they have not submitted a Formal Complaint).

Respondent:

A member of the recipient's community alleged to have engaged in conduct that could constitute discrimination, harassment, or retaliation under this policy.

Reporter:

A member of the recipient's community alleged to have engaged in conduct that could constitute discrimination, harassment, or retaliation under this policy.

Terms to Know

Use Complainant

rather than:

- Victim
- Survivor
- Reporting party
- Accuser
- Plaintiff

Use Respondent

rather than:

- Perpetrator
- Offender
- Responding party
- Accused
- Suspect
- Defendant



Terms to Know

Title IX Coordinator, General

Must appoint a Title IX Coordinator who is responsible for:

- Coordinating and monitoring institutional TIX compliance
- Navigating reports of policy violations as they arise
- Overseeing grievance procedures
- Presenting education and training opportunities
- Monitoring policies and procedures and updating as appropriate

Terms to Know

Decisional and Appellate Officials

*Decisional Official, Hearing Panel,
Decision-Maker, Adjudicator:*

The recipient employee(s) appointed to make a determination regarding a finding of responsibility.

Appellate Official:

The recipient employee appointed to hear appeals under this policy.

Terms to Know

Title IX Advisors

In the context of Title IX, Advisors are those who support Complainant and Respondent throughout the grievance process.



Starting with the Why: What's at Stake

- Campus culture, safety, enrollment, retention, and reputation can all be affected.
- The 2020 Title IX regulations require any TIX Coordinator, Investigator, Adjudicator, or those who facilitate Informal Resolution to be trained.
- It is a frequent source of litigation against institutions of higher education.
- The Department of Education may revoke federal funding if an institution fails to comply.





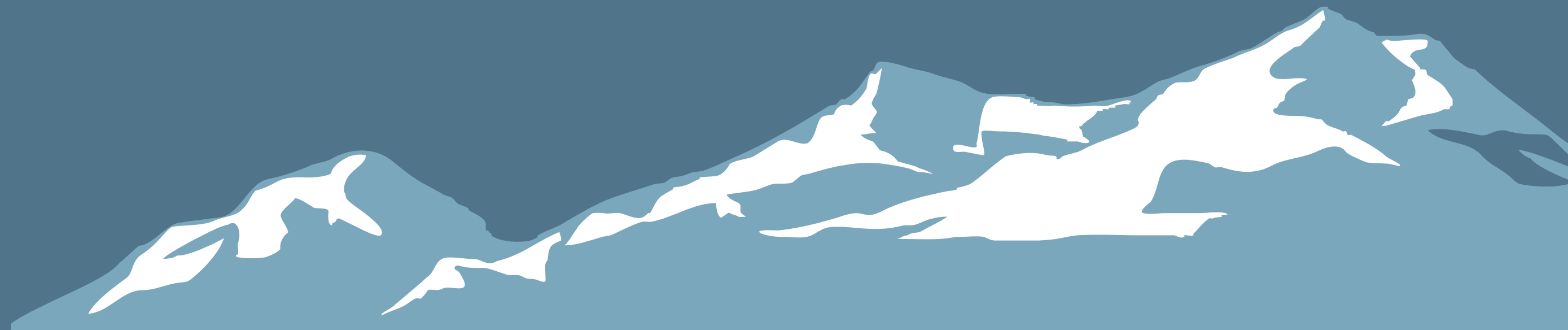
Section Two:

Title IX Basics

Title IX Trivia

Who originally
introduced Title IX
legislation in the
Senate?

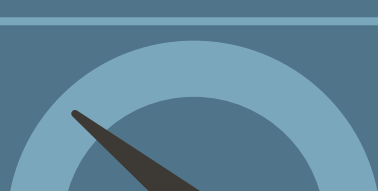
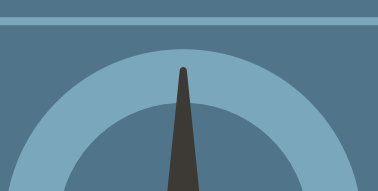
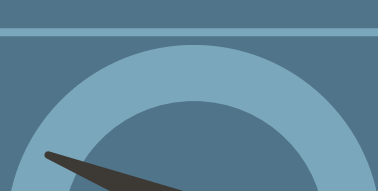
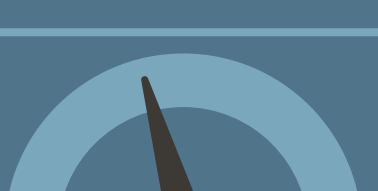
What was his
catalyst for
introducing the bill?



The Difference 50 Years Has Made

1971-72

2021-22

Medical School Graduates	9% 	51% 
Law School Graduates	7% 	56% 
PhD Degree Earners	11% 	56% 
Bachelor's Degree Earners	44% 	59% 
College Faculty	24% 	50% 
College Athletes	15% 	42% 

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.

This is Title IX.

The Journey to Where We Are



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Biden Administration Releases Revised Title IX Rules

The new regulations extended legal protections to L.G.B.T.Q. students and rolled back several policies set under the Trump administration.

May 06, 2020

U.S. Publishes New Regulations on Campus Sexual Assault

Colleges and universities that receive federal funding must be in compliance with new rules by Aug. 14. The regulations rebalance "scales of justice," Education Department says.

August 01, 2024

A New Title IX Era Brings Confusion and Frustration

A spate of lawsuits and court injunctions has complicated colleges' efforts to comply with the Biden administration's overhaul of the 52-year-old law, leaving Title IX coordinators frustrated and uncertain about how to move forward.

February 03, 2025

Department of Education Reverts to Trump's Title IX Rule

Advocates for victims of sexual violence said the decision would put students at greater risk of harassment while conservative lawmakers and advocates applauded the move, arguing it would make students safer.

The Journey to Where We Are

- **Higher Education Act of 1972**
 - 2011 Dear Colleague Letter
 - 2020 Regulations
 - 2024 Regulations
 - 2024 Injunction
 - 2025 Vacatur
- **Clery Act**
 - Requires timely reporting
 - Policies and procedures for sexual assault
- **Violence Against Women Act**
 - Expands to dating violence, domestic violence, and stalking

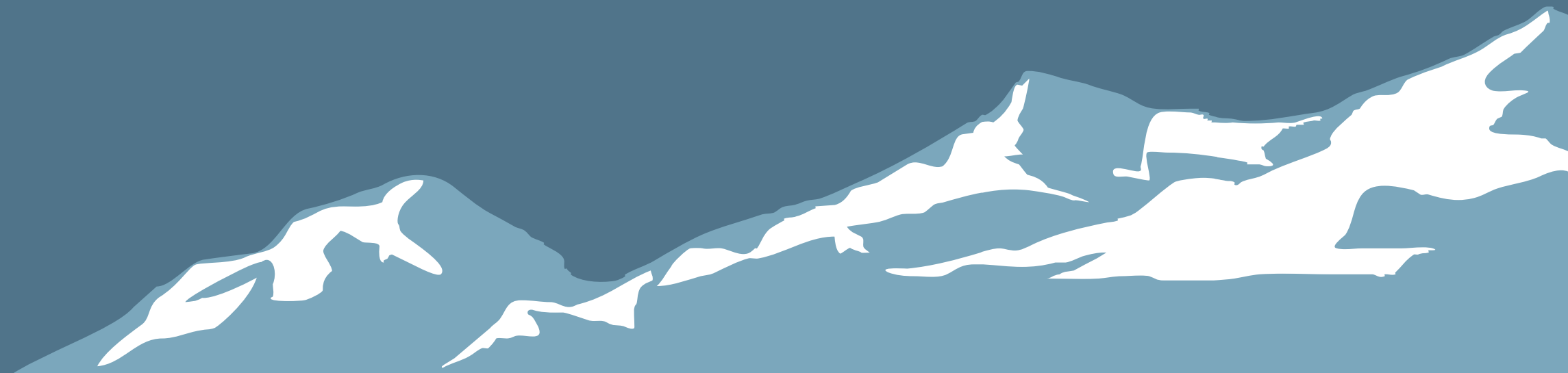


No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

But what does that include?

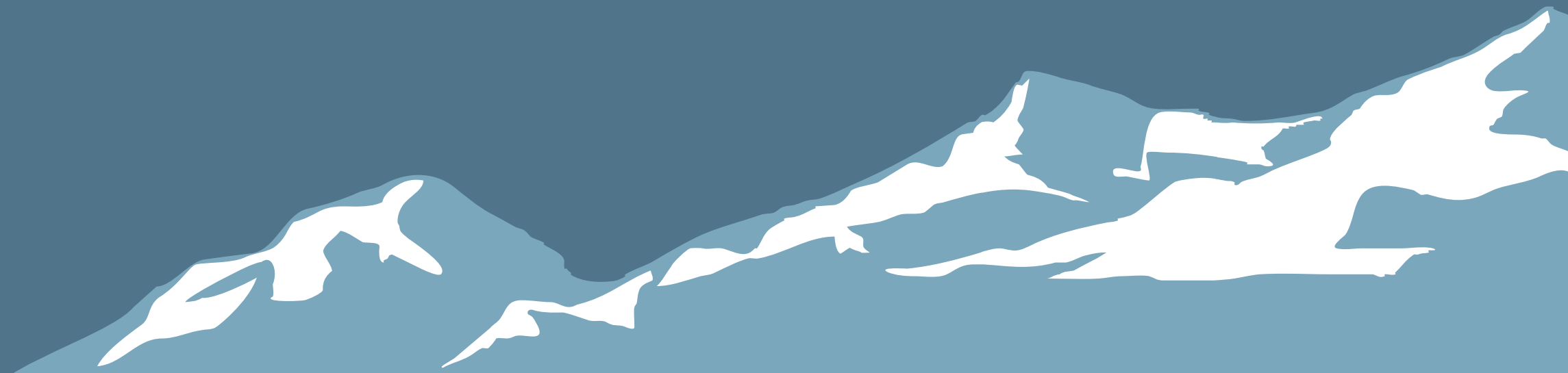
Title IX § 106.30 *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (quid pro quo)



Title IX § 106.30 *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

(2) 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 recipient's education program or activity



Title IX § 106.30 *Sexual harassment* means conduct on the basis of sex that satisfies one or more of the following:

(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v),

“dating violence” as defined in 34 U.S.C. 12291(a)(10),

“domestic violence” as defined in 34 U.S.C. 12291(a)(8), or

“stalking” as defined in 34 U.S.C. 12291(a)(30)

A stylized, light blue mountain range graphic is positioned at the bottom right of the slide, partially overlapping the text area. The mountains are depicted with simple, jagged outlines and a soft, ethereal glow.

Title IX Sexual Assault

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Title IX

Sexual Assault, Forcible

Forcible Rape

Forcible Rape -- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

Title IX

Sexual Assault, Forcible Forcible Sodomy

Forcible Sodomy. -- Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Title IX

Sexual Assault, Forcible

Sexual Assault With An Object

Sexual Assault With An Object -- To use an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will (non-consensually) in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Title IX

Sexual Assault, Forcible

Forcible Fondling

Forcible Fondling -- The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity

Title IX

Sexual Assault, Nonforcible

Incest and Statutory Rape

Incest -- Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Indiana law.

Statutory Rape -- Nonforcible sexual intercourse with a person who is under the statutory age of consent according to Indiana law IC 35-42-4-9.

Consent

“The Assistant Secretary will not require recipients to adopt a particular definition of consent with respect to sexual assault, as referenced in this section.”

Consent

Knowing, voluntary, and clear mutual agreement to engage in specific sexual activity.

Consent must be freely and actively given and communicated by clearly and mutually understandable words or actions to participate in each form of sexual activity.

Consent

Consent may be withdrawn at any time.

Consent to some sexual contact cannot be presumed to be consent for other sexual activity.

Consent cannot be compelled by force, threat, deception, or intimidation.

Consent

Incapacitation

Consent cannot be given by someone who is incapacitated.

Consent does not exist when the individual initiating the sexual activity knew or should have known of the other individual's incapacitation.

Consent cannot be given if the person is not legally old enough to give consent.

Consent

Incapacitation

Incapacitation: When an individual is unable to understand the facts, nature, extent, or implications of the situation due to drugs, alcohol, a mental disability, or being asleep or unconscious. With respect to alcohol and drugs, intoxication or impairment is not equivalent to incapacitation.

Consent

Force

Consent may be withdrawn at any time.

Consent to some sexual contact cannot be presumed to be consent for other sexual activity.

Consent cannot be compelled by force, threat, deception, or intimidation.

Consent

Force

Force: The use of physical violence or the threat of physical violence that causes the fear of death or serious personal injury.

Dating Violence

Violence committed by an individual who is or has been in a social relationship of a romantic or intimate nature with the Complainant. Factors to consider in determining whether such a relationship exists include the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence

Violence that would constitute a felony or misdemeanor crime of violence committed by an individual who:

- is a current or former spouse or intimate partner of Complainant under the family or domestic violence laws of Indiana
- shares a common child with Complainant
- is cohabitating with, or has cohabitated with, Complainant as a spouse or intimate partner or
- commits acts against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Indiana.

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety, the safety of others or suffer substantial emotional distress.

Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered.

Stalking tactics can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.

Stalking

Stalking, continued

For purposes of the stalking definition, a course of conduct requires that there be more than one incident, and the conduct must be directed at a specific person.

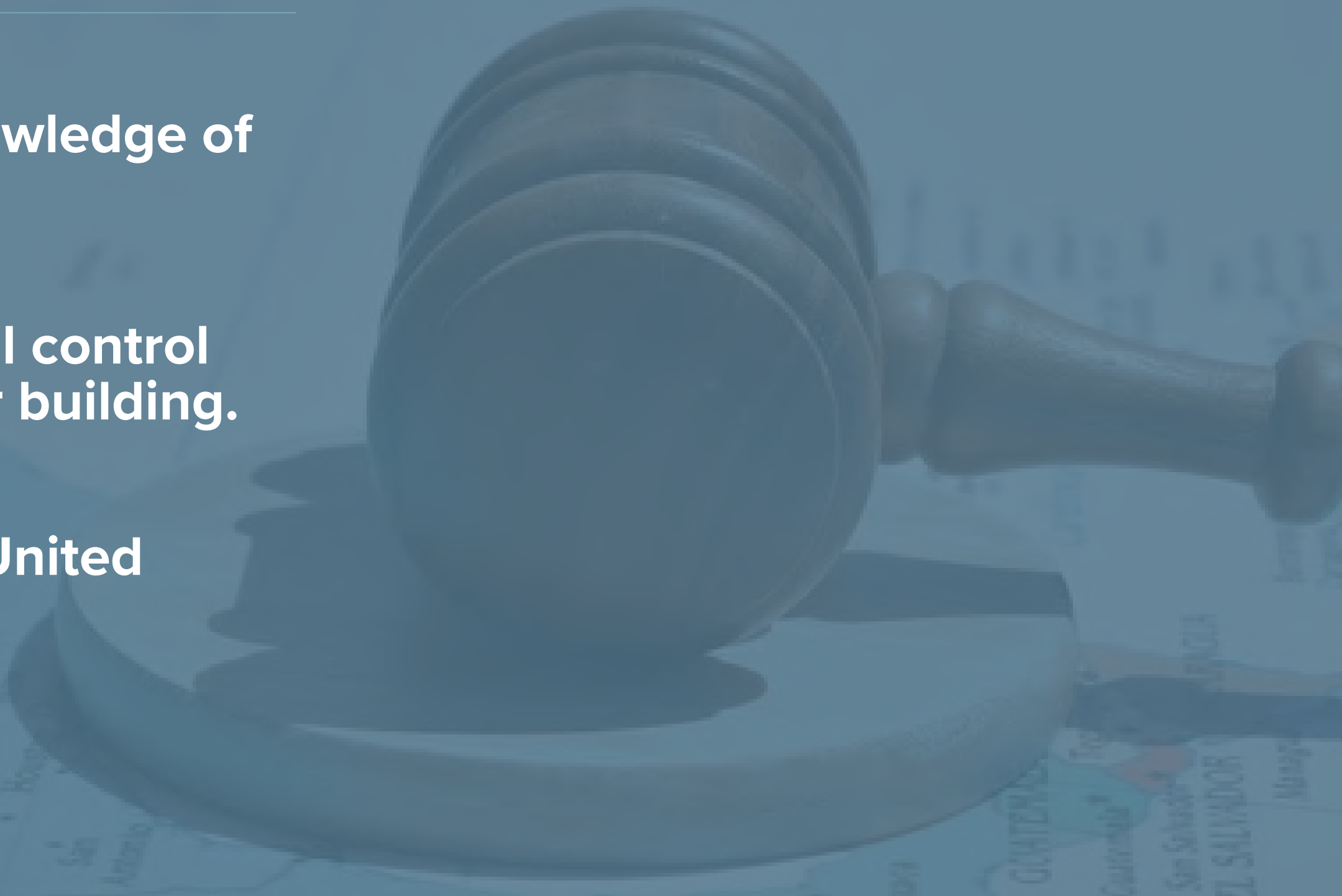
Reasonable person is an objective standard meaning a person in the Complainant's situation and circumstances (having similar characteristics/demographics to the Complainant).

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Title IX

Jurisdictional Limits

- Institution must have actual knowledge of violation.
- Institution must have substantial control over Respondent and context or building.
- Must have occurred within the United States.



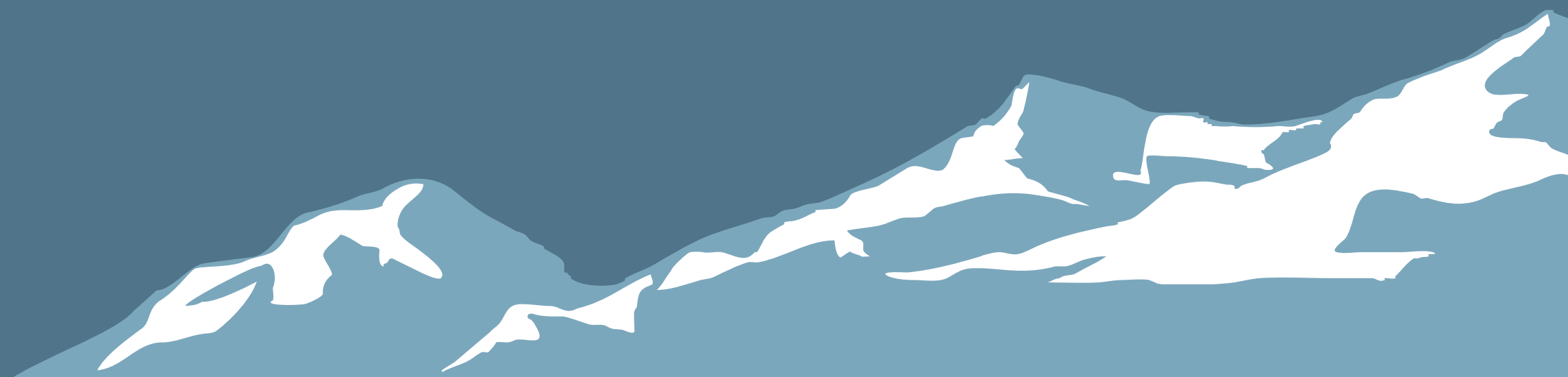


Does this mean
the college is
not responsible
for things that
happen off
campus?

Education Program or Activity

34 CFR § 106.44 (a)

Education program or activity includes locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.



What if the
respondent becomes
no longer enrolled at
or employed by the
school after the
alleged conduct is
reported?



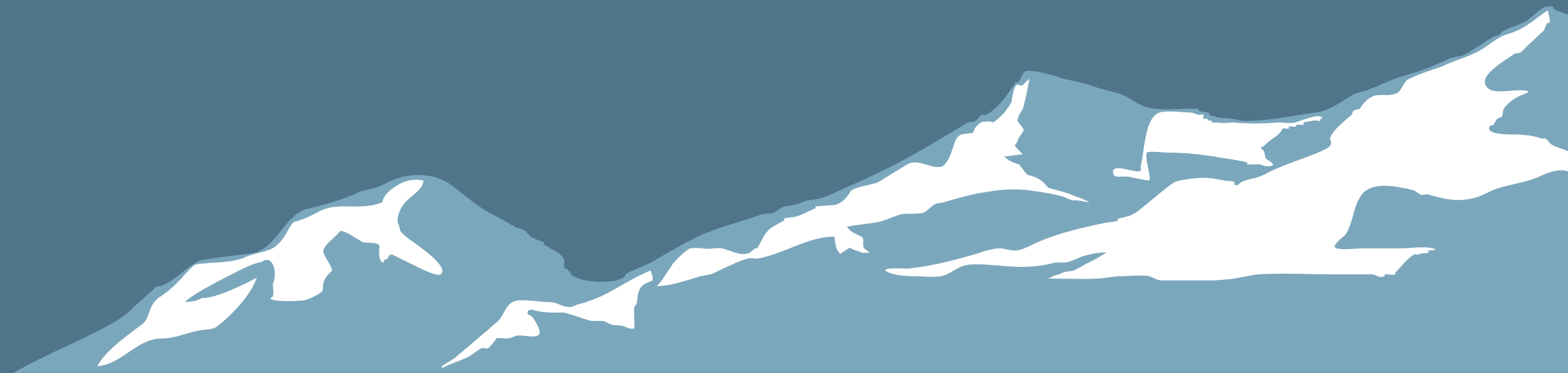
Non-Title IX Sexual Harassment?

- Employee handbook?
- Student code?
- Sexual misconduct policy?
- Non-discrimination policy?



Title VII

“It shall be an unlawful employment practice for an employer...to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin...”



Title VII

Hostile Work Environment

- Unwelcome harassment
- Based on a reason forbidden by Title VII (race, color, religion, sex or national origin)
- So severe OR pervasive that it altered the conditions of employment and created a hostile or abusive work environment

Title VII

Hostile Work Environment, *continued*

- Harassment must be both objectively and subjectively offensive
- Severity and pervasiveness assessed considering the totality of the circumstances including the frequency, the severity, whether it is physically threatening or humiliating or merely offensive, and whether it unreasonably interferes with the employee's work performance

Title IX vs. Title VII

	Title IX	Title VII
Respondents	Employee and Student	Employee
Hostile Environment Sexual Harassment	Severe, Pervasive, AND Objectively Offensive	Severe OR Pervasive
Procedure	Title IX	Other Prohibited Discrimination and Harassment

Retaliation

Treating someone negatively because they exercised their rights under the policy is retaliation.

An institution's response to a Complainant or Respondent may, itself, constitute discrimination on the basis of sex.



Due Process Considerations

One accused of a policy violation is entitled to:

- Notice of the allegations
 - Identity of the Complainant
 - Identity of witnesses
 - Sufficient facts to form a response
- Opportunity to be heard
- Presumption of non-responsibility
- Process free from bias and conflict of interest
- Privacy, but not confidentiality
- Supportive measures



Conflicts of Interest, Bias, and Prejudgment

The grievance process must remain impartial at every level:

- **The Coordinator, Investigator, Decision Maker, Appellate Officer must be free from conflict of interest and bias and must avoid prejudgment of the issues.**
- **Annual training for all roles must include material on avoiding conflict of interest and bias.**
- **Parties must be given an opportunity to object to Investigators and Decision Makers for perceived conflict of interest or bias.**
- **Conflict of interest or bias in the process is a basis for appeal of a Title IX determination.**

Conflicts of Interest

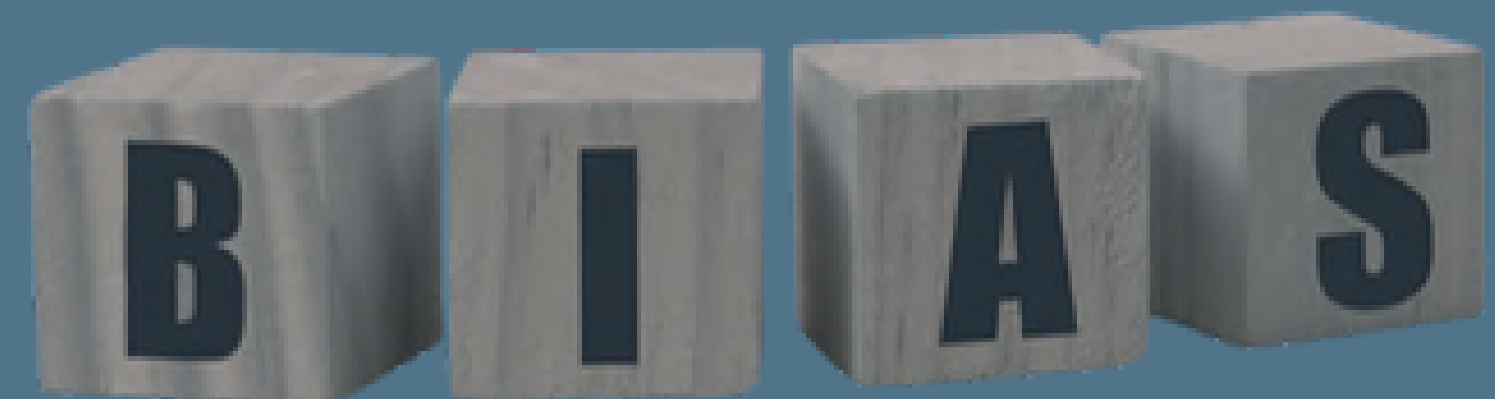
Conflict of interest exists when personal or private interests or loyalties (family, friendship, financial, social, or other) compromise (or could compromise) one's ability to be impartial in their judgment, decisions, or actions.

- Actual conflict (positional responsibilities conflict with personal interest)
- Perceived conflict (reasonable to perceive competing interests might influence outcome)
- Potential conflict (duties and interests might influence outcome)



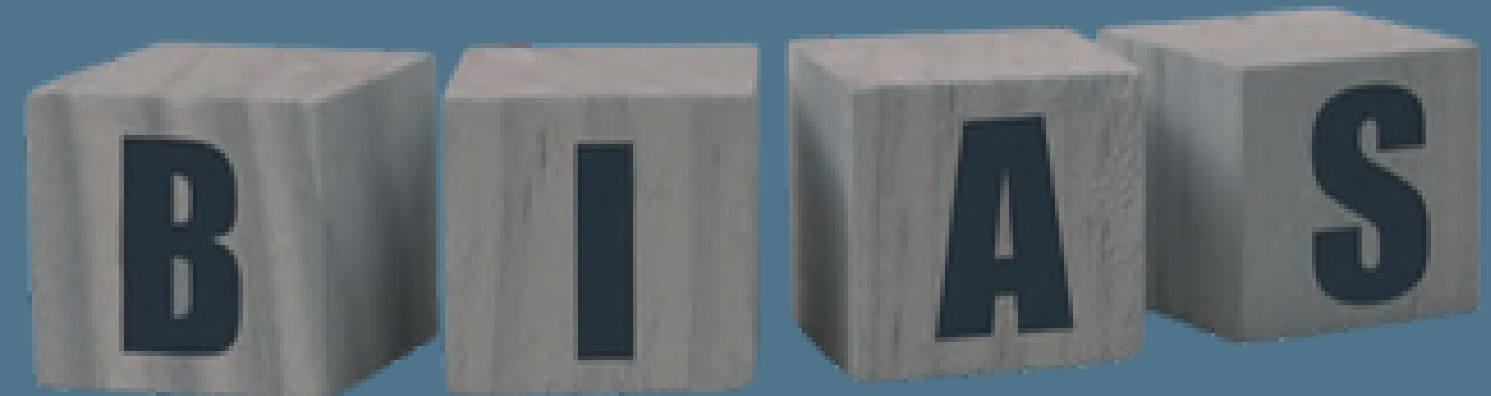
Be Mindful of Implicit Bias

Impermissible mental shortcuts, attitudes, and stereotypes that affect understanding, actions, and decisions in an unconscious manner.



Some Examples of Implicit Bias

- Assuming an accused will always be a man
- Making judgments about racial or ethnic groups, or those for whom English is not a first language
- Applying social stigma or inherent credibility judgments to drug or alcohol use
- Associating behavioral stereotypes with particular activities or groups
- Assigning value to a narrative based on your own lived experience



Prejudgment of the Facts

Prejudgment occurs when one forms an opinion about what has occurred before having all the necessary information.

- This is often based on deeply ingrained notions of what makes something more or less likely to be true.**
- Often involves sex stereotypes and perceptions about drug and alcohol use.**

Prejudgment of the Facts



EXAMPLE

- Drinking automatically damages credibility.
- Crying – or lack thereof – is determinative of truthfulness.
- Men cannot be victims of sexual assault.
- Parties involved in a relationship cannot also experience nonconsensual sex or sexual violence.



Section Three:

The Title IX Grievance Process

The Report and Intake

The Title IX Grievance Process

Who can file a
report?

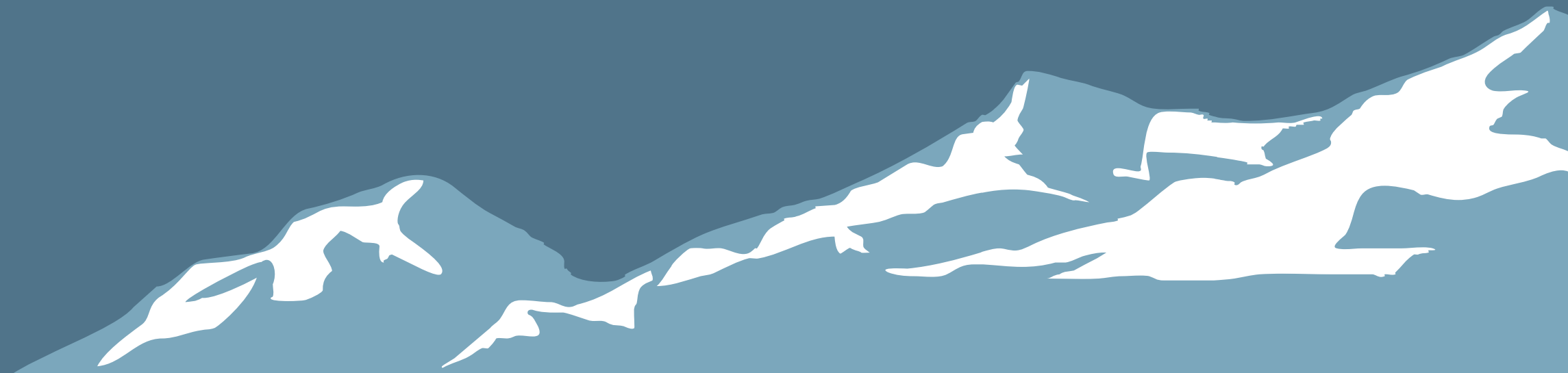
Are there times
when I am
required to file a
report?



Who must report?

“Actual knowledge means notice of sexual harassment or allegations of sexual harassment to a recipient’s Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient...” § 106.30 (a)

School may designate “mandatory reporters” or “responsible employees.”



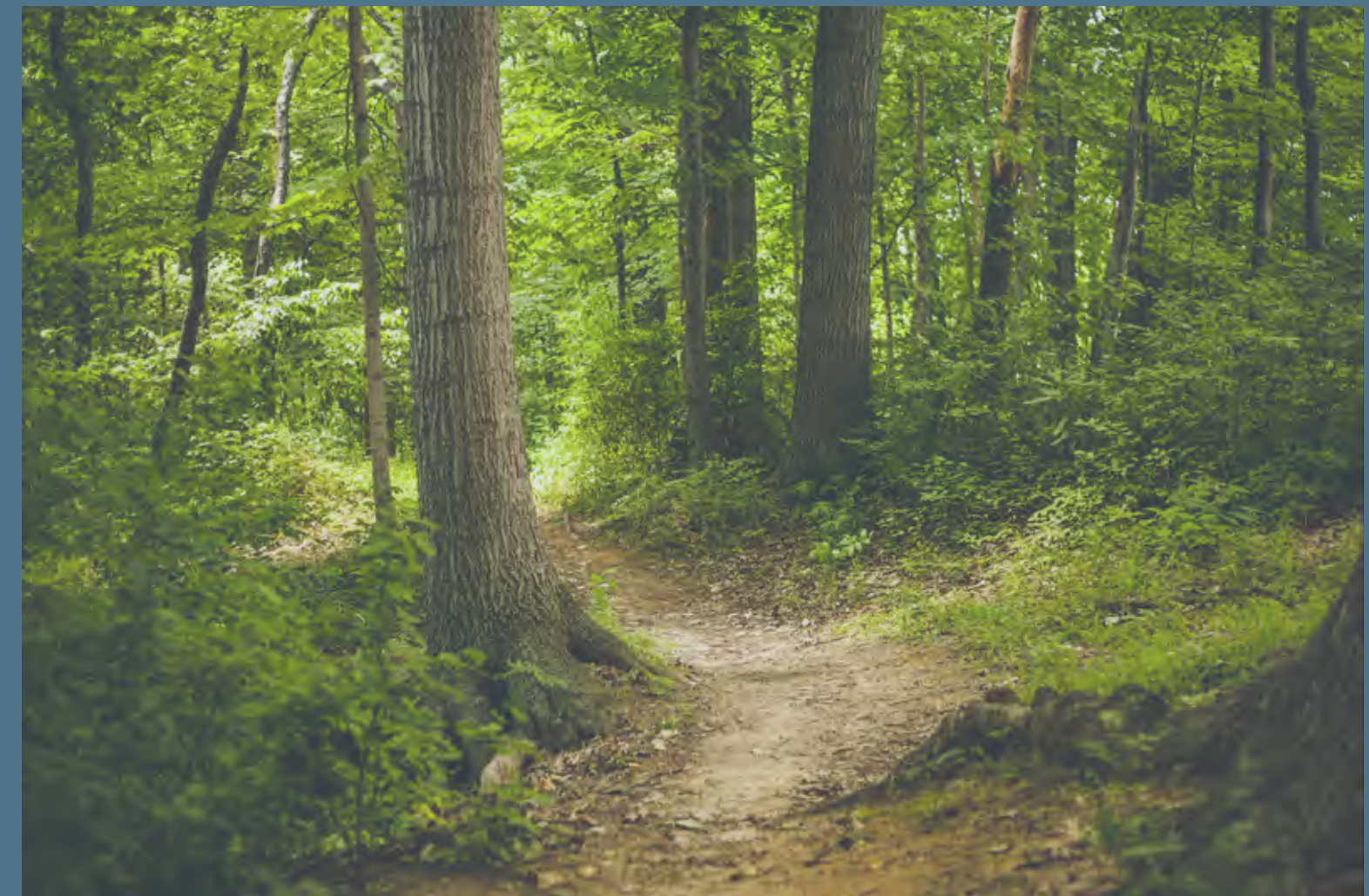


What if a report
is anonymous?

After a Report is Received

TIXC contacts Complainant for an “Initial Assessment”

- Allow them to share details of incident
- Notify them of rights
- Provide options on how to proceed
- Discuss intentions regarding filing formal complaint
- Determine supportive measures needed
- Explore whether any immediate measures are necessary
 - No-contact directives
 - Emergency removal



How must a school respond?

Davis v. Monroe County Board of Education

- Individual private right of action
- “Deliberate indifference standard”



Emergency Removal

- Requires an individualized safety and risk assessment
- May only be implemented when there is an immediate threat to physical health or safety
- Respondent must be given an opportunity to challenge
- May in some instances trigger a timely warning obligation to the campus, if circumstances dictate

Administrative Leave

- Non-student employee may be placed on administrative leave during the grievance process
- Must consider ADA rights
- Follow your employee handbook



What happens when a report is received?



Title IX Coordinator
receives report
and conducts initial
assessment

Supportive
Measures

Supportive Measures

Supportive measures are non-punitive, individualized services offered to all parties involved in a Title IX process.

Supportive measures can be issued before, during, or after the filing of a formal complaint or even in the absence of a formal complaint.



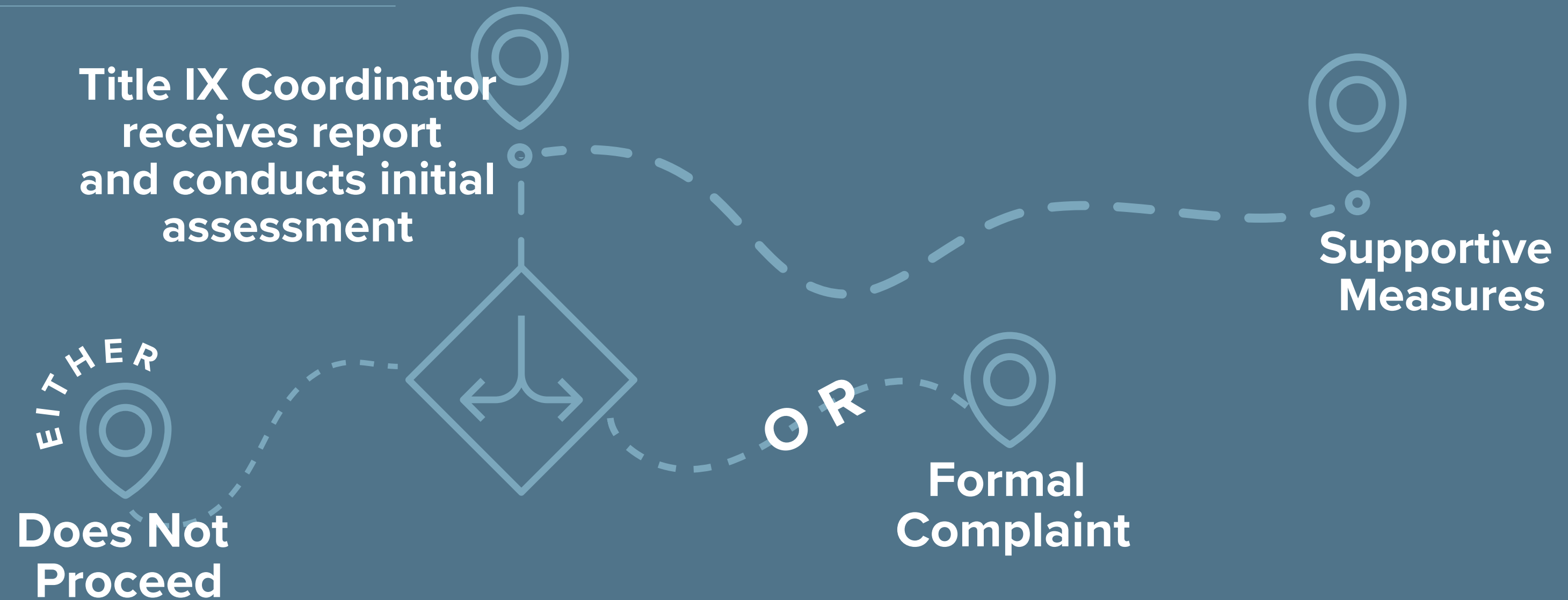
Common Supportive Measures

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
Leave of Absence	Increased Security Monitoring of Certain Areas of Campus	Other Similar Measures



If Complainant and Respondent live in the same building, shouldn't the Respondent be the one to move?

What happens when a report is received?





What if a report comes in but the would-be Complainant does not want to move forward with the process?

Why Not Proceed Under Title IX?

Mandatory Dismissal § 106.45 (b)(3)(i)

The Title IX Coordinator must dismiss a formal complaint if:

- Conduct alleged would not constitute a Title IX violation under the policy even if proven.
- Conduct alleged did not occur in an educational program or activity controlled by recipient.
- Recipient does not have control of the Respondent.
- Conduct alleged did not occur within the United States.
- Complainant was not participating or attempting to participate in an recipient program or activity at the time of the alleged conduct.

Why Not Proceed Under Title IX?

Discretionary Dismissal § 106.45 (b)(3)(ii)

The Title IX Coordinator may dismiss a formal complaint if:

- Complainant indicates in writing they want to withdraw.
- Respondent is no longer enrolled in or employed by recipient.
- Specific circumstances prevent recipient from gathering evidence sufficient to reach a determination as to a formal complaint.



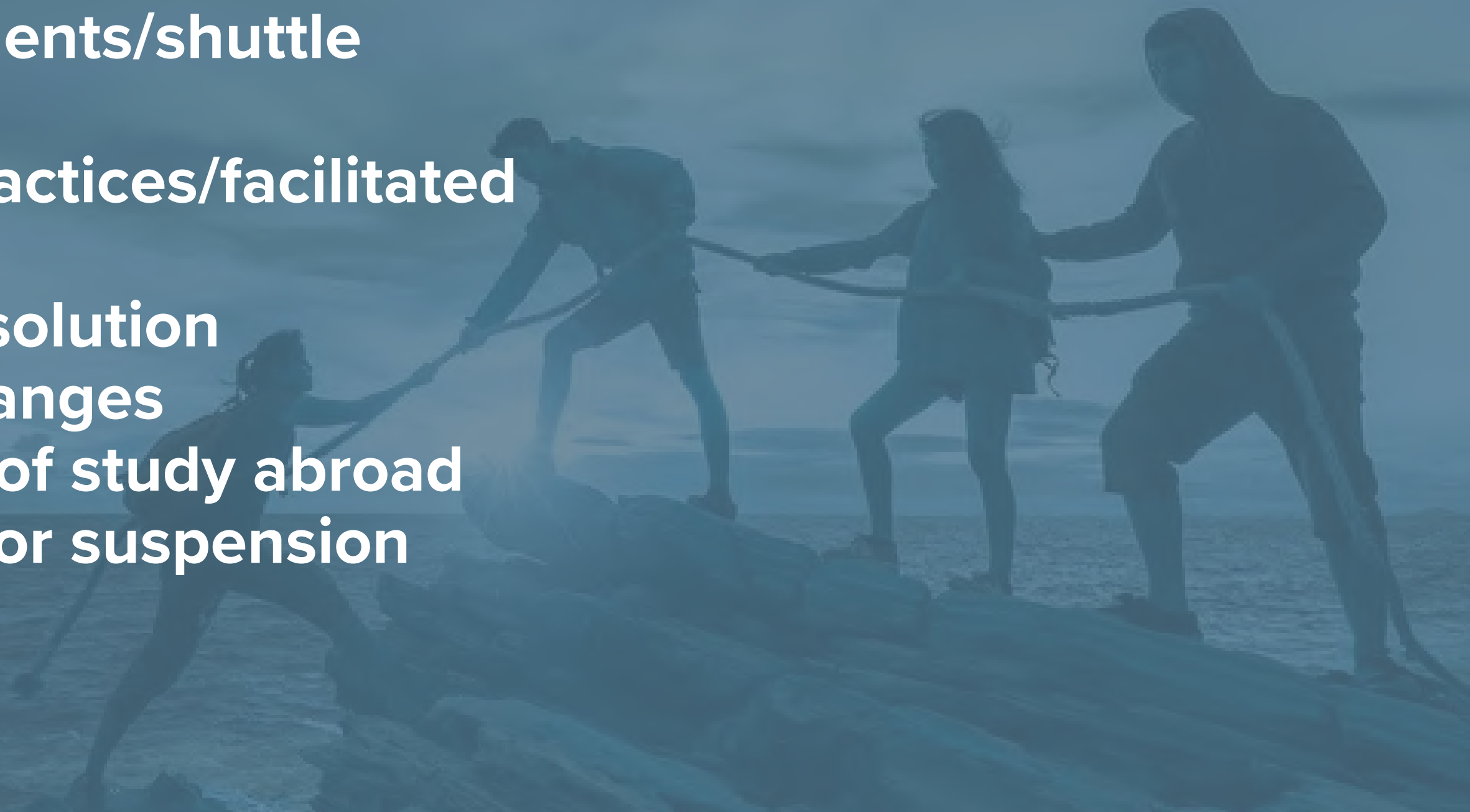
Informal Resolution

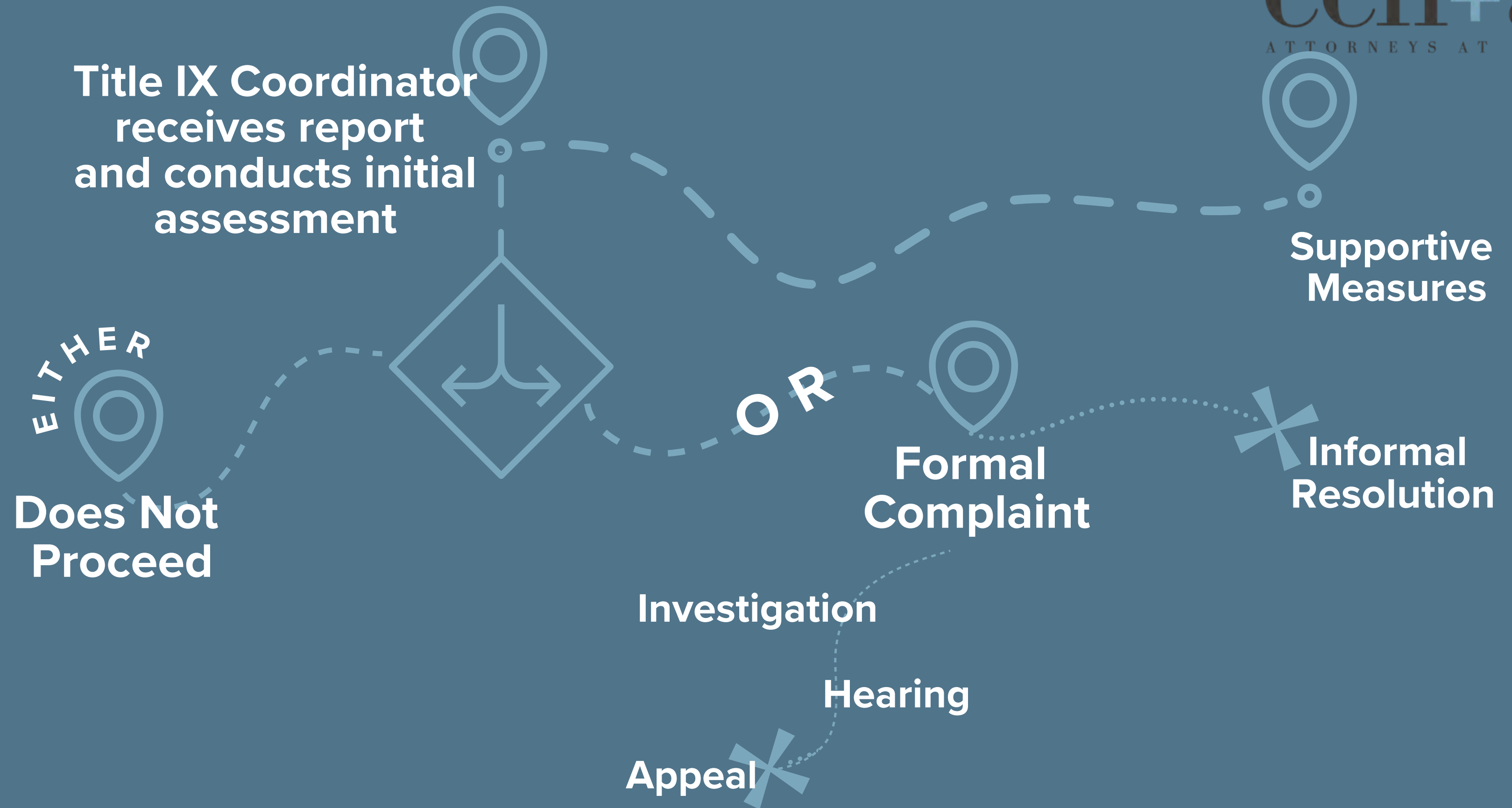


- Available as alternative; regulations call it “informal”
- Must have a formal complaint
- Both parties must agree
- Not available if employee alleged to have commit sexual harassment against a student
- May return to formal process at any time until resolution complete
- Enormous creativity in options for informal resolution techniques

Informal Resolution Examples

- Re-education/training
- Shared statements/shuttle mediation
- Restorative practices/facilitated dialogue
- Negotiated resolution
 - Course changes
 - Forfeiture of study abroad
 - Probation or suspension





Entering the Grievance Process

Overview of the Formal Complaint Process



- **Investigation:** The process begins with an investigation, usually conducted by the Title IX Coordinator. The investigation will likely include interviews with the Complainant, Respondent, and Witnesses; collection of document evidence including education records, emails, texts, social media, and direct messaging.
- **Exchange of Evidence and Draft Investigation Report:** When evidence collection is completed, both parties will have an equal opportunity to inspect and review the evidence obtained that is directly related to the allegations raised in the Complaint along with the Investigator's draft investigation report.
- **Final Investigative Report:** Investigator will author a report summarizing the relevant evidence. Both parties will have an opportunity to review and respond to the investigative report.
- **Hearing:** After the investigative report is provided, a live hearing is conducted by a Decision-Maker(s) in which some form of cross-examination is administered.
- **Determination:** Written determination issued detailing whether the allegations were substantiated and, if so, discipline and remedies for the conduct.

The Formal Complaint Process

Start to Finish

Intake

Notice of allegations

Supportive measures

Appointment of investigator

Opportunity to object

Investigation is completed

Parties review evidence

Final investigative report is issued

Hearing officer appointed

Opportunity to object

Evidence provided to adjudicator

Hearing takes place

Determination report delivered

Opportunity to appeal

Decision becomes final

Notice of Investigation and Allegations



- In writing and mailed/mailed/delivered in person
- Sufficient details known at the time (identities of parties involved, conduct allegedly constituting sexual harassment, date and location of alleged incident)
- Statement that Respondent is presumed not responsible
- Statement that responsibility is determined at the conclusion
- Sufficient time to prepare a response before any initial interview
- Right to Advisor
- Code of conduct regarding false statements
- Amended when new information, allegation, or potential violation known



Role and Qualification of Advisors

- Parties are entitled to (and at hearing must have) Advisor
- Choice of party or provided by institution
- No training required
- Question witnesses on party's behalf
- Non-adversarial



Role and Qualification of Advisors

- 
- May attend meetings with Title IX Coordinator
 - May help party prepare for interview
 - May attend interview (but may not participate)
 - May assist with review of reports, evidence
 - May assist with impact or mitigation statements
 - *Must* attend pre-hearing meeting
 - *Must* attend hearing and conduct cross-examination

Other Expectations of Advisors

- 
- Maintain confidentiality + privacy of issues while serving as advisor
 - Advise ethically, with integrity and in good faith
 - Comply with rules of decorum + policy
 - Not speak on behalf of or answer questions for party advising (except to conduct cross-examination)
 - Prioritize in scheduling



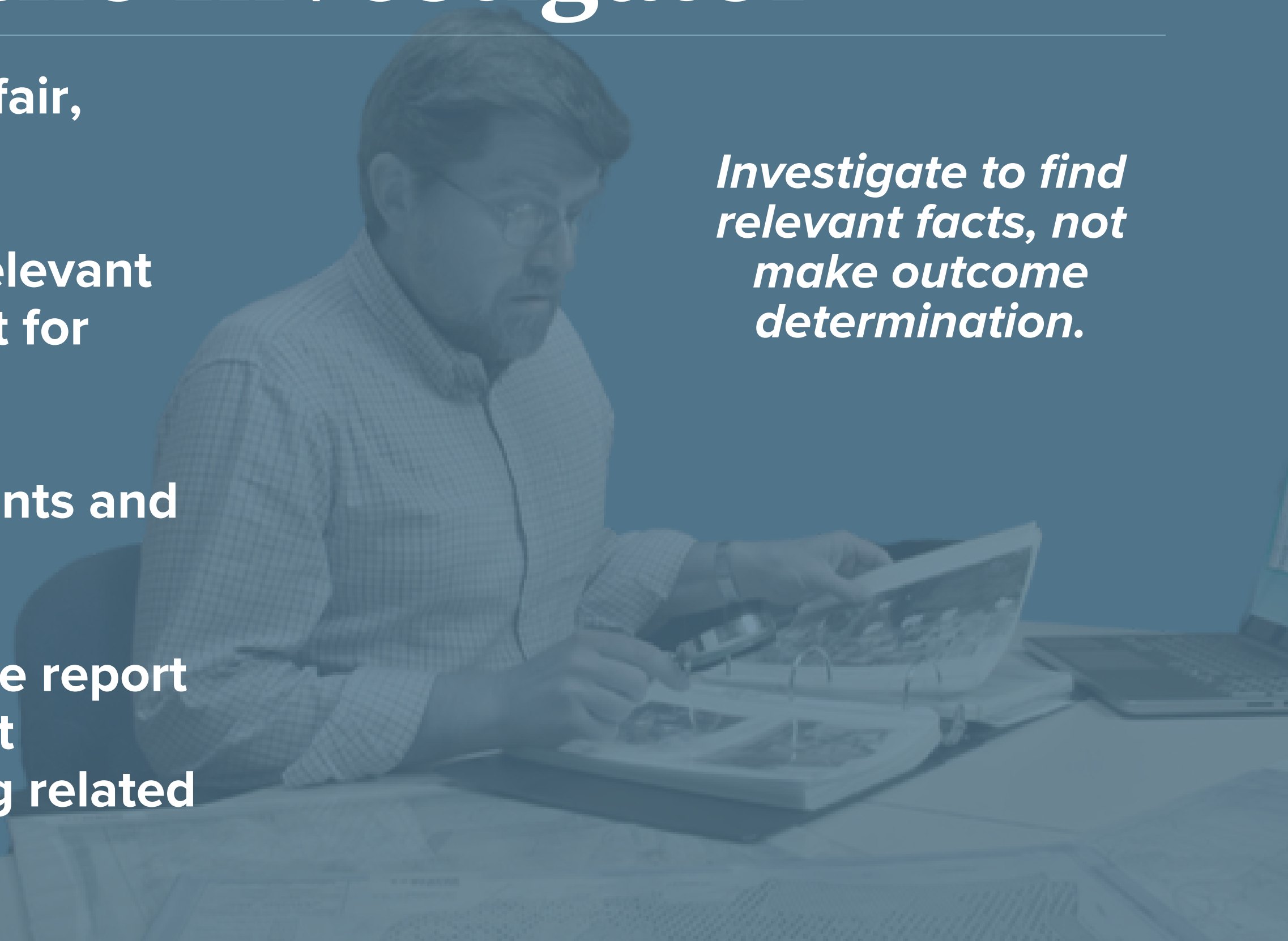
**What if one party
has an attorney
for their advisor
but the other does
not?**

The Investigation Process

Role of the Investigator

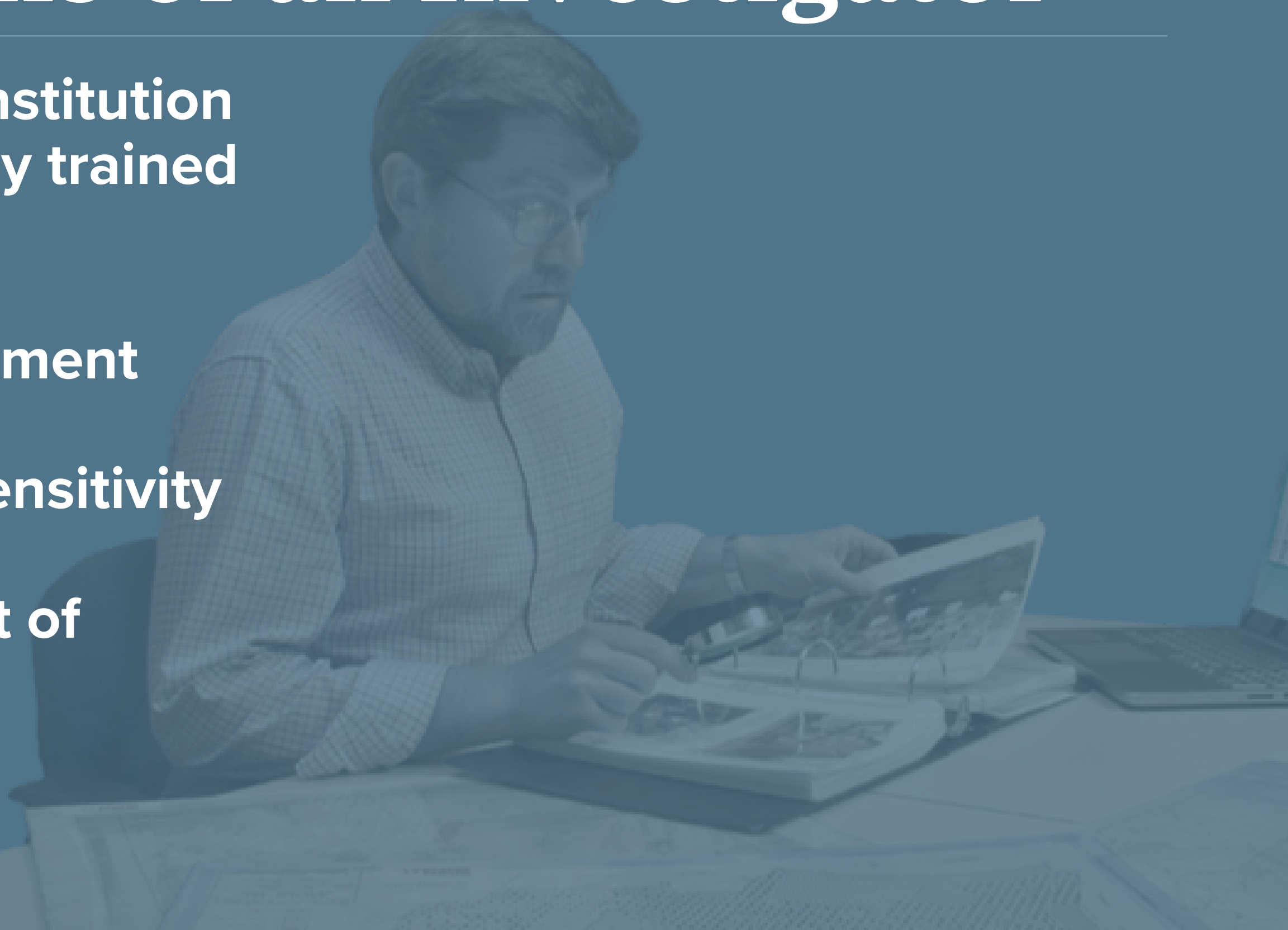
- Conduct prompt, thorough, fair, equitable, and impartial investigation
- Make thorough search for relevant facts and evidence sufficient for adjudicators to reach a determination
- Effectively organize documents and develop comprehensive investigation file
- Prepare preliminary evidence report and final investigation report
- Provide testimony at hearing related to investigation

Investigate to find relevant facts, not make outcome determination.



Qualifications of an Investigator

- Internal or external to institution
- Appropriately + regularly trained
- Not an Adjudicator
- Respectful of privacy
- Of appropriate temperament
- Able to engender trust
- Capable of balancing sensitivity and directness
- Free from bias + conflict of interest



Rights of the Parties in an Investigation

- Present their statements and evidence, and identify witnesses
- Discuss the allegations under investigation
- Opportunity to review and comment on the draft investigation reports and evidence
- Be accompanied by an Advisor of their choice to any meeting, interview, hearing, etc.
- Written notice of the date, time, location and purpose of meetings, interviews, hearings, etc., with sufficient notice to prepare



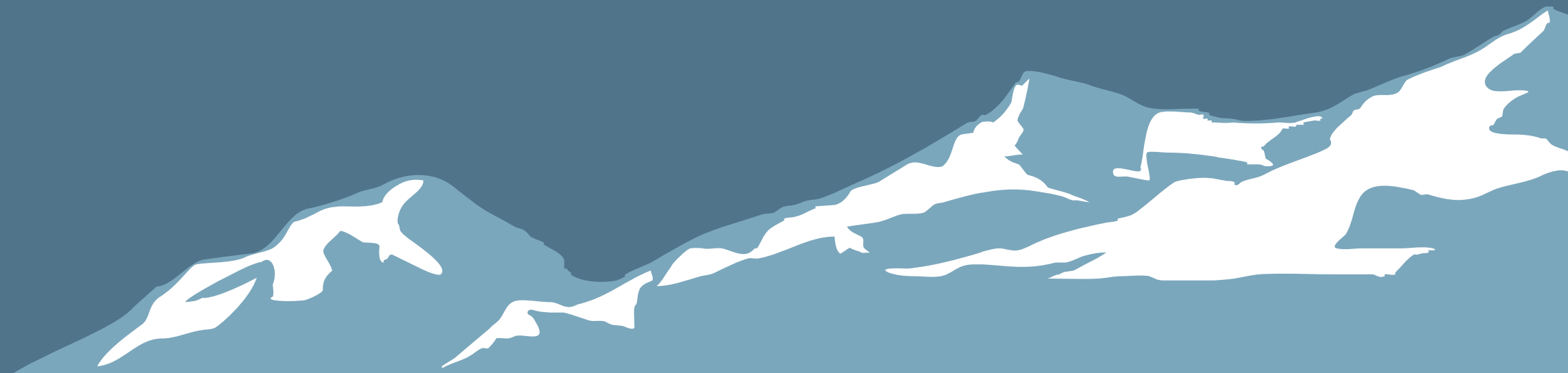
What happens if a party or witness declines to participate in the investigation?



Are there any
additional
considerations for
parties with
particular needs?

It's All About the Process

OCR and courts will generally not second-guess the outcome of a Title IX process, as long as the investigation is done according to policy and appropriate standards.



The Hearing

Standard of Evidence

**Preponderance of the Evidence =
More Likely Than Not**

**Remember that the burden is always
upon the institution, not the parties, to
prove that a violation has occurred.**



Who is the Decision Maker?

**Decisional Official, Hearing Panel,
Decision Maker, Adjudicator**

**The recipient employee(s) appointed to
make a determination regarding a finding
of responsibility.**



Responsibilities of Decisional Official

- Conduct hearing based on policy and regulations
- Hear relevant evidence
- Manage decorum and procedure
- Render pre-hearing and in-hearing procedural determinations regarding relevance and testimony
- Draft determination report
- Determine appropriate sanctions, if any



Hearing Coordinator's Role

- Notice of hearing 10 business days prior to the hearing
 - *List of what is required in the notice in the policy (see issue on party not participating in hearing)*
- Pre-hearing coordination
- Coordinating hearing logistics
 - *Flow of rooms*
 - *Witnesses*
 - *Parties*
 - *Recording*
- Managing objections re: conflicts and bias

Pre-hearing

- Separate meeting(s) with parties and advisors
- Invite questions/topics ahead of time (can rule on relevance ahead of time but still opportunity during hearing)
 - If include or exclude based on relevance, document decision
- Witness presence (full agreement if witness does not need to attend hearing)
- Hearing arguments on relevance or directly related but not relevant and rule on arguments
 - Exchange rulings prior to hearing



What happens if a party or witness declines to participate in the hearing?

Hearing Tips

Breaking the ice

- Recording disclosure
- Purpose of hearing
- Technology disclosures
- Introductions
- Not legal proceeding
- Truthfulness is expected
- Introductory questions

Trauma-Informed tone setting

- Recognition of difficulty
- Need for breaks, pauses
- Reassurance of decorum
- Discussion of amnesty
- View options
- What to expect
- No preconceived notions

Typical Hearing Flow

- Explanation of proceedings
- Summary of charges
- Opening statements
 - Complainant
 - Respondent
- Investigator presentation and questioning
- Questioning of witnesses
- Questioning of parties



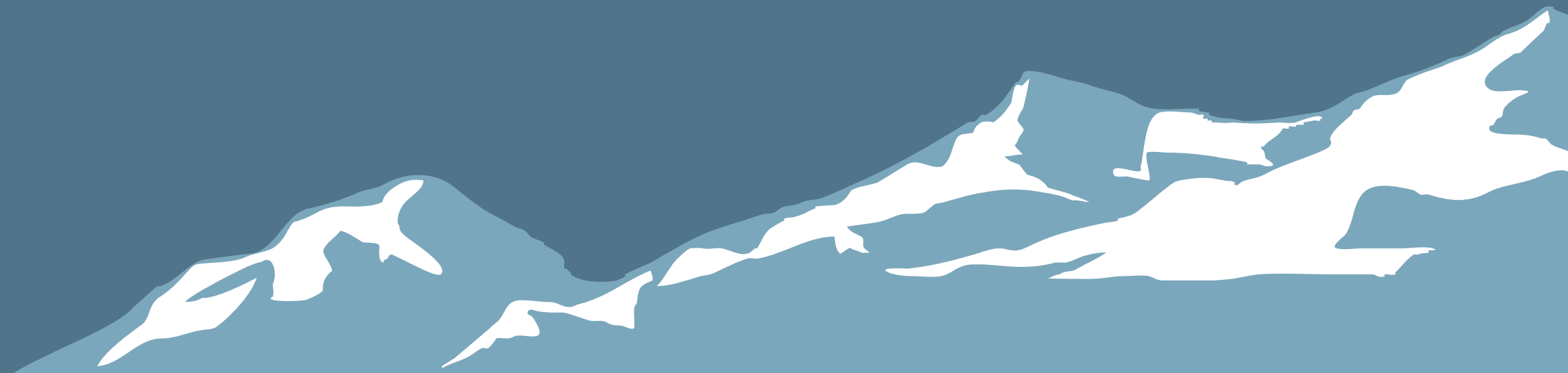
Investigator Presentation and Questioning

- Investigator presents summary of Final Investigation Report.
 - Facts that are contested
 - Facts that are uncontested
- Investigator should not be asked for, nor should they give, their assessment or opinion of credibility, responsibility, or appropriate outcomes.
- Investigator may be asked about exclusions or perceived irregularities in investigation process.

Testimony and Cross-Examination

For Title IX, the institution cannot compel participation of parties or witnesses:

You are not required to answer my questions. If you choose not to answer some or all of my questions, I will still consider statements you have made in making a determination of responsibility.



Evidentiary Considerations: Relevance

Only relevant questions are allowed.

- *"Questions must be submitted in writing to the Chair for a relevance determination before they are asked."*

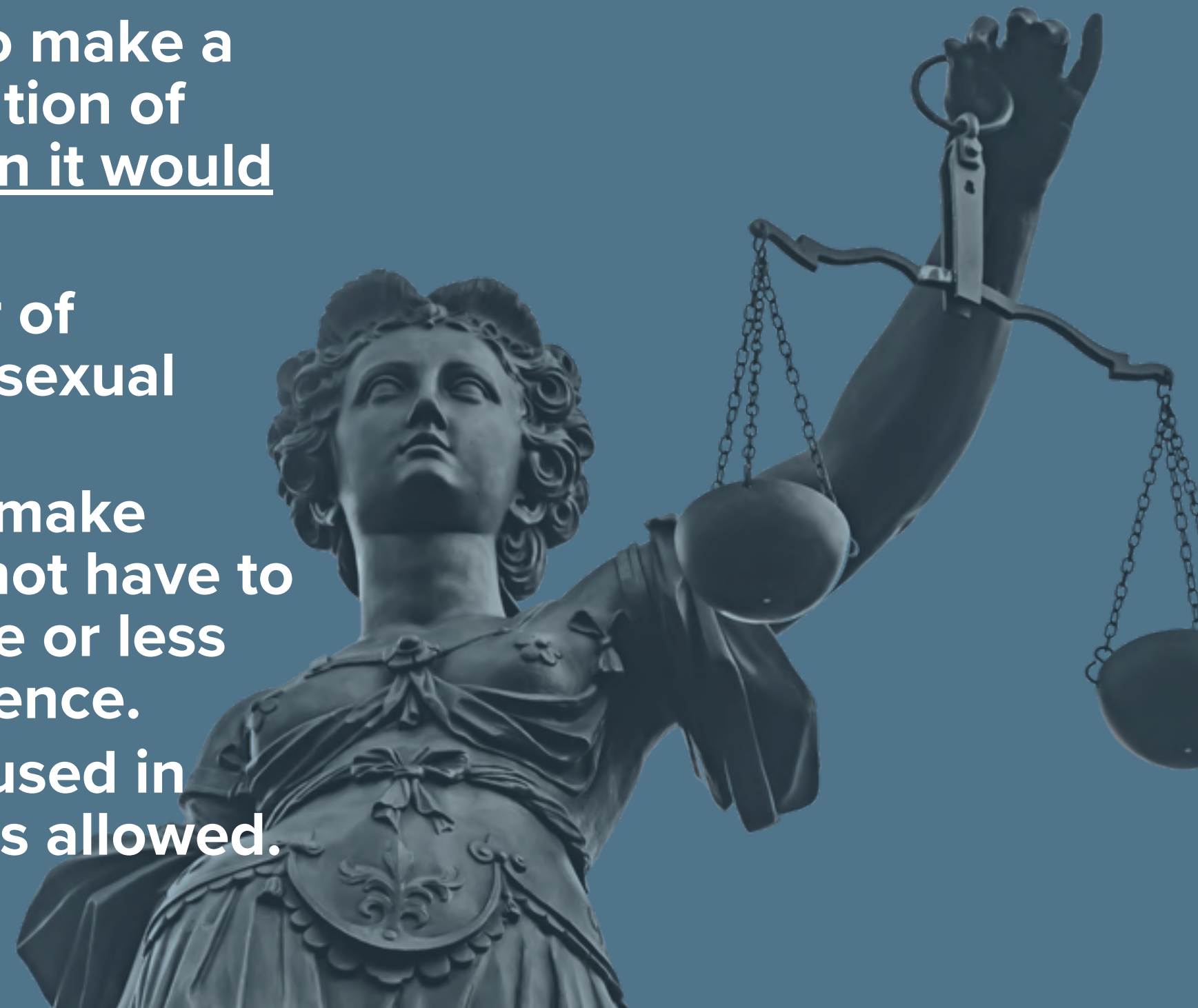
Repetitious questions are not allowed.

- *"Questions should be framed in a manner that seeks new information or clarification."*

Relevance Determinations

Evidence is relevant if it has “any tendency” to make a fact that is “of consequence” to the determination of sexual harassment “more or less probable than it would be without the evidence.”

- The evidence must be directed to a matter of consequence, essentially the definition of sexual harassment.
- The evidence must be probative – it must make something more or less probable. It does not have to be undisputed. Whether something is more or less likely is guided by logic and human experience.
- Technical rules of evidence are not those used in court proceedings, and hearsay evidence is allowed.



Irrelevant Evidence

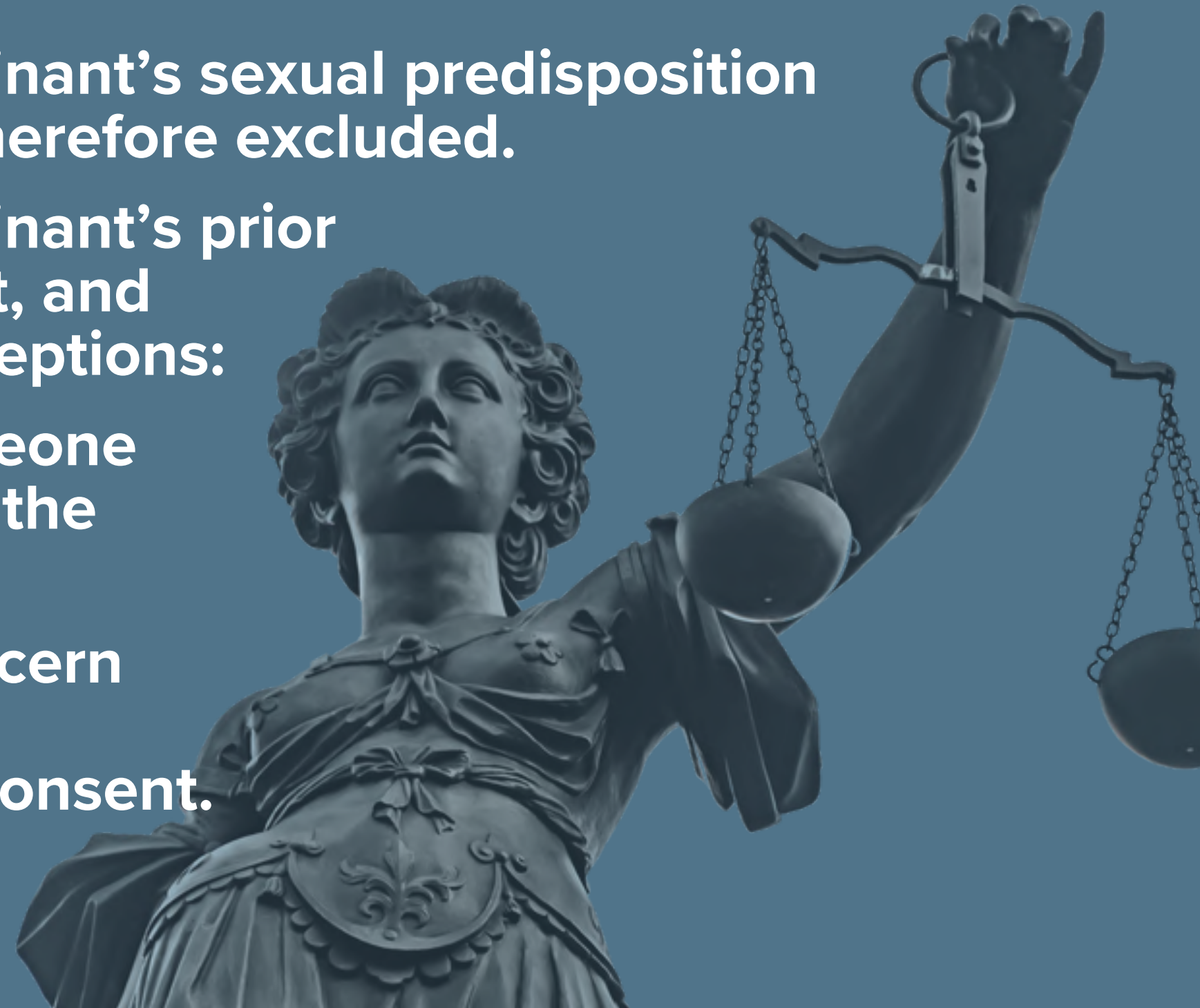
Investigation does NOT consider:

- Incidents not directly related to alleged conduct, unless a pattern
- Character of the parties
- Complainant's sexual predisposition or prior sexual behavior (but see next slide)
- Respondent's disciplinary record (but can be considered if there is a finding in the sanctions process)



Evidence that Must Be Deemed Irrelevant - with Exceptions

- Questions and evidence about a Complainant's sexual predisposition must always be deemed irrelevant and therefore excluded.
- Questions and evidence about a Complainant's prior sexual history must be deemed irrelevant, and therefore excluded - with two limited exceptions:
 - Where Respondent contends that someone other than the Respondent committed the misconduct.
 - Where the question(s) or evidence concern incidents between the Complainant + Respondent and are offered to prove consent.



Decision

**If finding of responsibility, then consider
impact and/or mitigation statements**

Determination of sanctions

Sanctions

- **Factors in determining sanctions**
 - **Nature, severity and circumstances of violations**
 - **Respondent's disciplinary history**
 - **Need for sanctions to end discrimination and/or prevent future discrimination**
 - **Need for sanctions to remedy the effects to Complainant and/or community**
 - **Impact on parties**
 - **Other information deemed relevant**
- **Student sanctions → Student Code**
- **Employee sanctions → Employee Handbook**

Drafting the Determination

- Use neutral tone.
- Provide as much detail as possible but rely on factual evidence.
- Indicate why certain evidence was or was not determined to be credible.
- Reconcile inconsistent evidence and indicate how determination was made.



What to Include

- Identification of the allegations potentially constituting policy violation
- A description of the procedural steps taken, including all witnesses interviewed
- Precise policy language defining elements of alleged violations
- Findings of fact supporting the determination
- Conclusions regarding the application of the policy to the facts
- Determination for each allegation and the rationale for the finding
- Any disciplinary sanctions imposed including aggravating + mitigating circumstances warranting the sanctions imposed
- Procedures + permissible grounds for either party to appeal

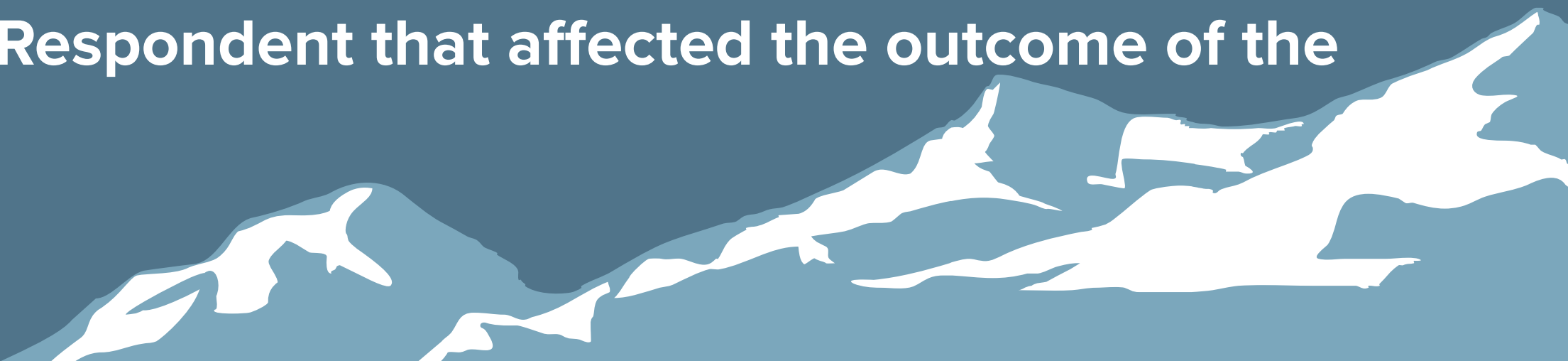
Distribution of Report

- Policy requires determination report within ten (10) business days unless extension is granted.
- Once the report is completed, it must be shared with the parties and their Advisors simultaneously.
- Clearly reflect bases and process for appeal; both in cover letter and in determination.

Appeals

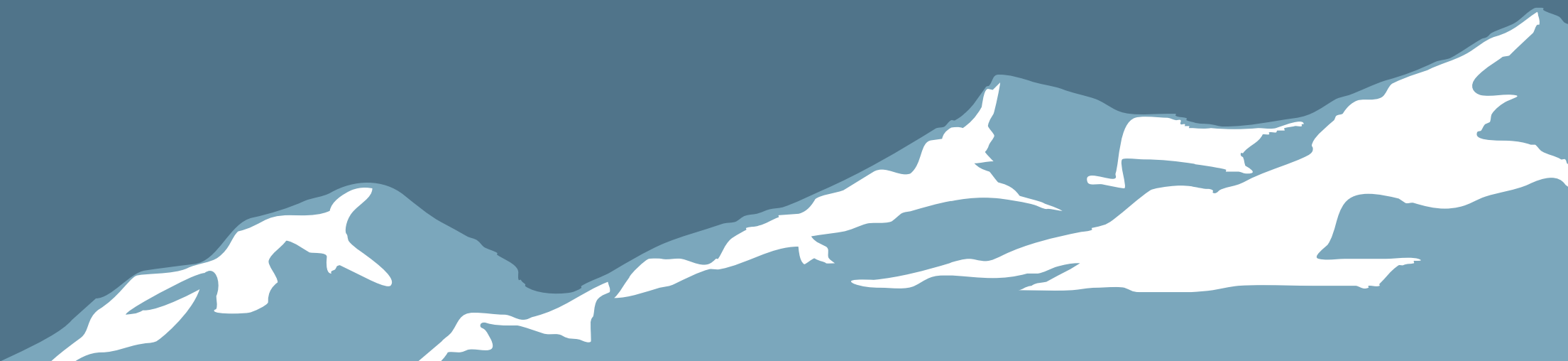
Appeals - § 106.45 (b) 8

Both parties may appeal determinations regarding responsibility or the dismissal of a formal complaint, on the following bases:

- Procedural irregularity affected the outcome of the matter
 - New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter, or
 - The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- 
- A stylized, light blue mountain range graphic is positioned at the bottom right of the slide, partially overlapping the bottom edge of the text area.

Notification of Right to Appeal

Provide following information, in bold print, in both cover email and at conclusion of determination report:

- **Name of Appeals Officer or Appeal Panel Chair**
 - **Requirement that appeal must be completed in writing**
 - **Email address to which appeal should be sent**
 - **The timeframe in which appeal must be filed**
 - **Permissible grounds for appeal**
- 
- A stylized, light blue mountain range graphic is positioned at the bottom right of the slide, extending from the center towards the right edge. The mountains are depicted with simple, jagged peaks and valleys, creating a sense of depth and landscape.

Elements of Appeal

- Appeals officer should not be same as Decision Maker, Investigator, or Coordinator.
 - Preponderance standard still applies.
 - Both parties may provide statement to Appeals Officer(s) in support of position.
 - Appeals Officer is not required to review all relevant evidence but may determine appeal from Determination Report and statements.
 - Appeal decisions are to be deferential to original determination.
- 
- A stylized, light blue mountain range graphic is positioned at the bottom right of the slide, partially overlapping the bottom edge of the text area.

If Appeal is Upheld

- Must describe the result and rationale for the result.
- May send back to Investigator to explore newly discovered evidence.
- May order new hearing with corrections to defect(s).
- May overturn (limited circumstances).





Section Four:

Developments Under the New Administration

Temporary Regional Injunctions

Summer 2024



Controversy Over 2024 Regulations

- Decreased procedural requirements
- Expanded protections for LGBTQ+, particularly related to gender identity



Nationwide Permanent Injunction

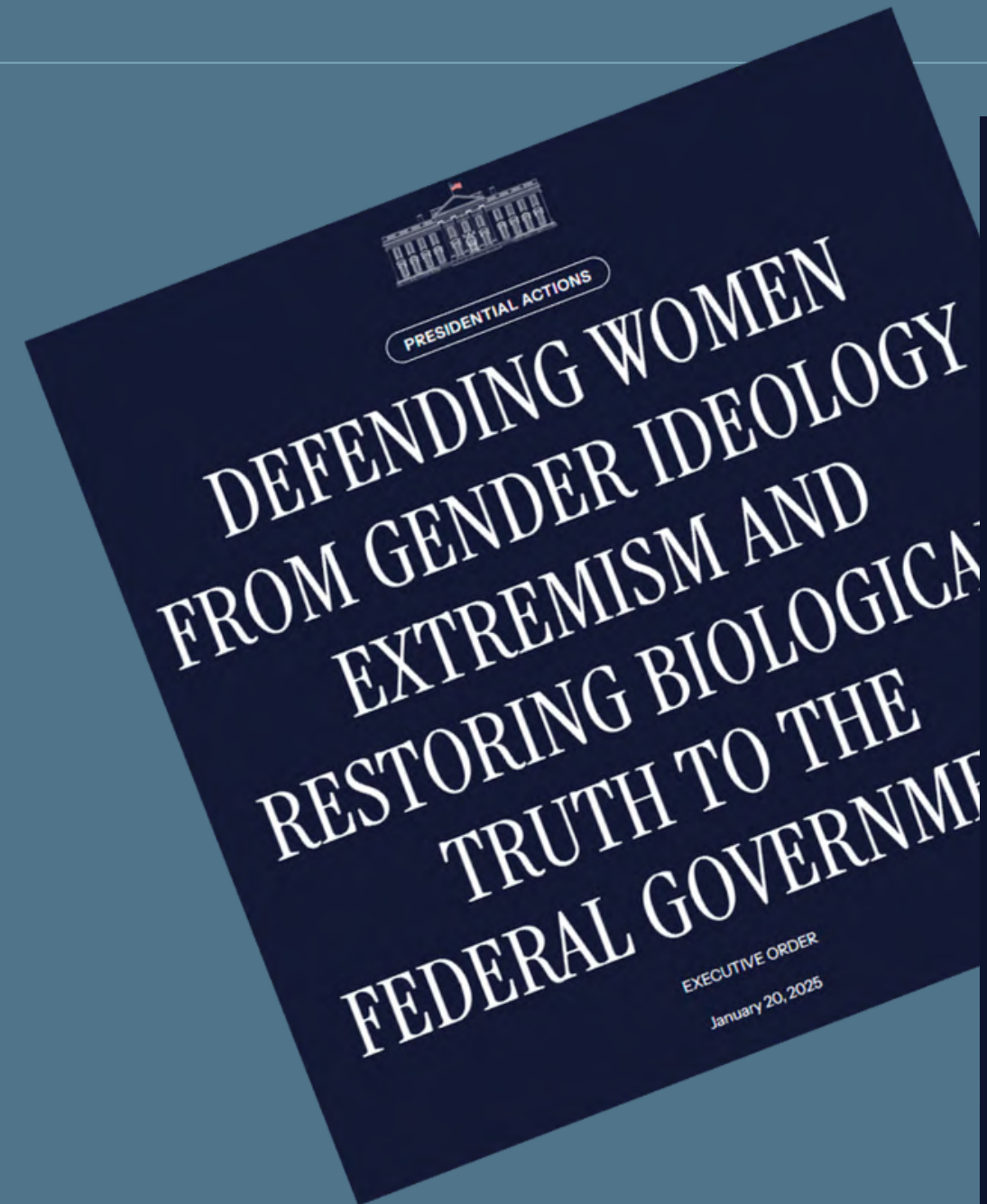
January 2025

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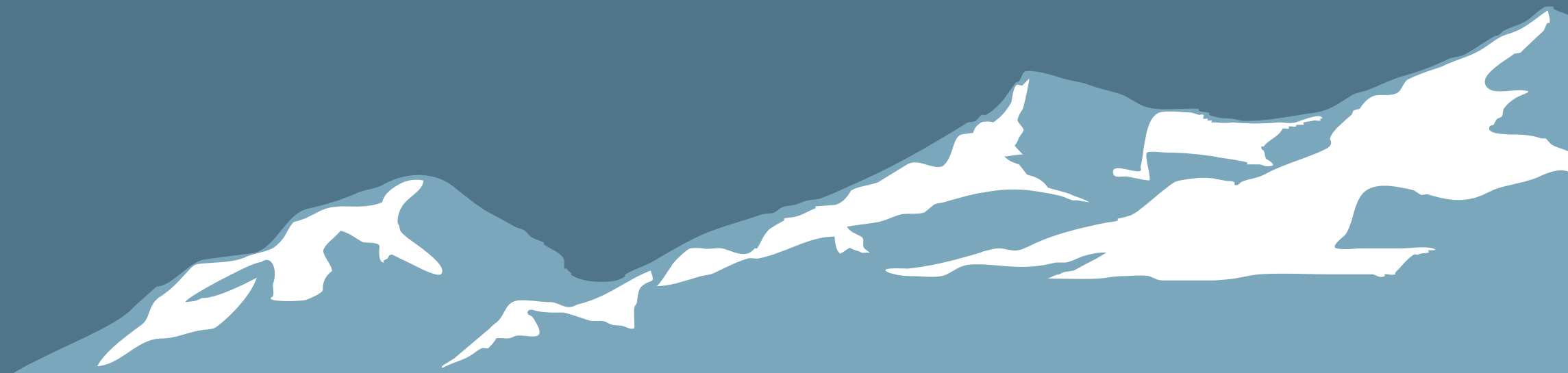
2025 Executive Orders

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Executive Orders

- Do not have the force of law
- Can affect government contracts
- Can indicate agency interpretation and enforcement priorities



UPenn Resolution Agreement

PRESS RELEASE

U.S. Department of Education Announces the University of Pennsylvania Has Entered into a Resolution Agreement to Resolve its Title IX Violations

JULY 1, 2025

Today, the U.S. Department of Education (the Department) announced the University of Pennsylvania (UPenn) has entered into a Resolution Agreement to comply with Title IX of the Education Amendments of 1972 (Title IX). This action follows the Department's Office for Civil Rights' (OCR's) investigation that found UPenn violated Title IX by allowing a male to compete in female athletic programs and occupy female-only intimate facilities.

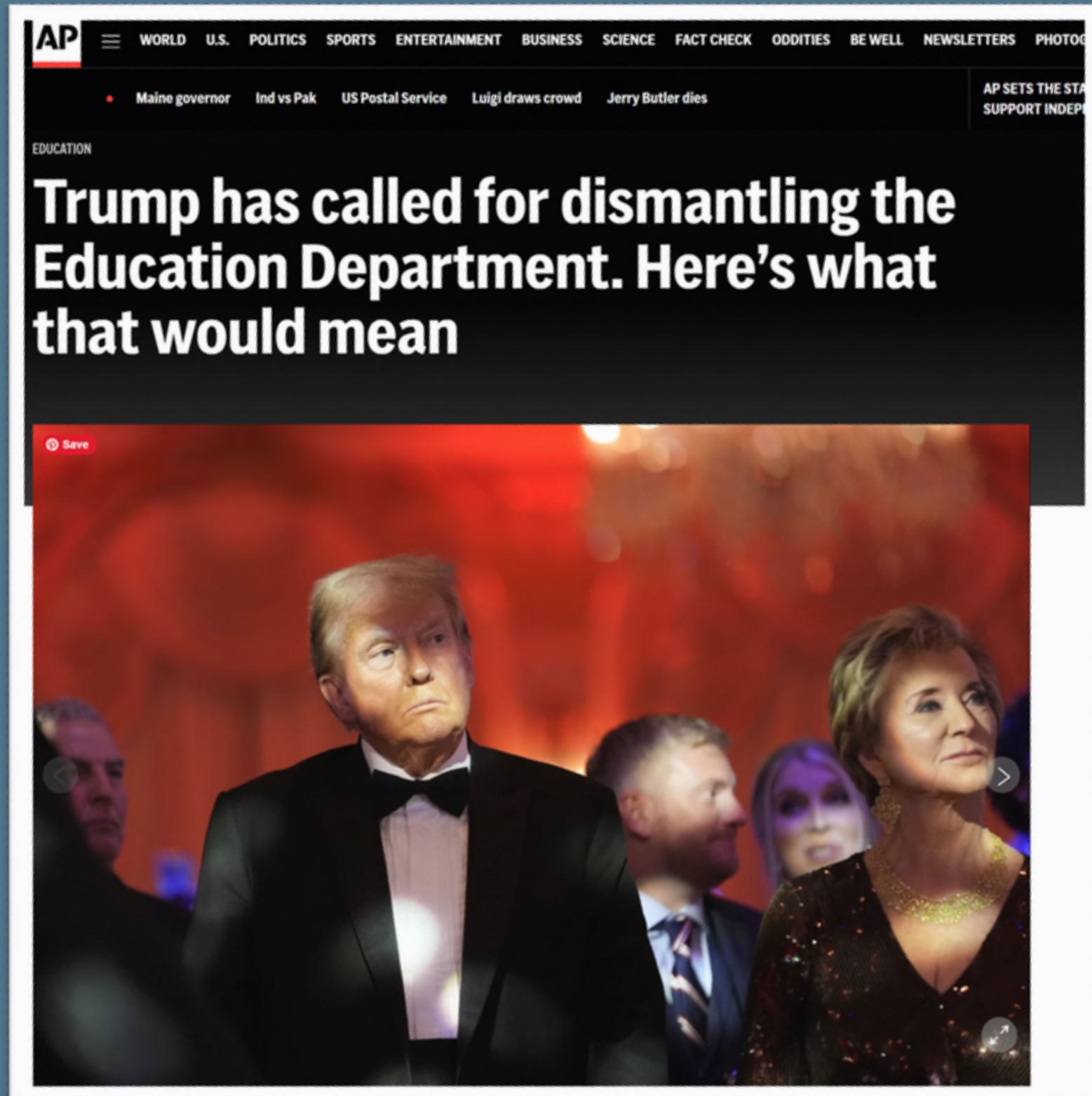
Department of Energy

Why did the Energy Department issue a Title IX rule?

The proposed athletics rule would rescind a prior requirement on coed sports tryouts — but only for schools receiving Energy Department grants.

Published June 16, 2025

Current Status of Department of Education and Office of Civil Rights



False Claims Act Enforcement

PRESS RELEASE

Justice Department Establishes Civil Rights Fraud Initiative

Monday, May 19, 2025

For Immediate Release

Today, the Department of Justice announced the establishment of the Civil Rights Fraud Initiative, which will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws. Violations of the False Claims Act can result in treble damages and significant penalties.

“Institutions that take federal money only to allow anti-Semitism and promote divisive DEI policies are putting their access to federal funds at risk,” said Attorney General Pamela Bondi. “This Department of Justice will not tolerate these violations of civil rights – inaction is not an option.”

“America has watched a tidal wave of anti-Semitism sweep our universities and seen public institutions codify inherently divisive policies like DEI at an unprecedented rate,” said Deputy Attorney General Todd Blanche. “In advancing the initiative, the Department of Justice’s Civil Fraud Section and Civil Rights Division will work in concert – alongside other Department components and government agencies – to identify and root out instances in which recipients of federal funds fail to uphold their basic obligations under federal civil rights laws. The days of using federal funds to further discrimination are over.”

The Department strongly encourages anyone with knowledge of discrimination by federal funding recipients to consider filing a qui tam action under the False Claims Act. See 31 U.S.C. § 3730. When a qui tam action is successful, the whistleblower typically receives a portion of the monetary recovery. The Department also encourages the public to report instances of such discrimination to the appropriate federal authorities. Please visit <https://www.justice.gov/civil/report-fraud> for more information.

False Claims Act Enforcement

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Losing The Chevron Doctrine

What was the Chevron Doctrine, how did the Loper Bright case change it, and why does it even matter?

Chevron v. Natural Resources Defense Council (1984):

If a statute is silent or ambiguous on an issue and an agency's interpretation is reasonable, the court must defer to that interpretation, even if it would have reached a different outcome.



Losing The Chevron Doctrine

What was the Chevron Doctrine, how did the Loper Bright case change it, and why does it even matter?

Loper Bright Enterprises v. Raimondo & Relentless Inc. v. Department of Commerce (2024):

- Courts must “decide legal questions by applying their own judgment.”
- Agency interpretations of statutes are not entitled to deference.



Recent Transgender Case Law

***Whitaker v. Kenosha Consolidated School District* (2017):** The 7th Circuit held that a school district could not discriminate against a transgender student in the use of the restroom matching their gender identity.

***Bostock v. Clayton County* (2020):** Supreme Court held that Title VII prohibits an employer from discriminating against an individual on the basis of sexual orientation.

***A.C. v. Metropolitan School District of Martinsville* (2023):** 7th Circuit held that school district failed to provide A.C. with access to restroom consistent with his gender in violation of his rights under Title IX, the law prohibiting sex discrimination in educational programs, and the Equal Protection Clause.

Recent Transgender Case Law

***Kluge v. Brownsburg Community School Corp.* (2023):** Former teacher brought action alleging that public school corporation's decision to terminate his employment for refusing to follow school's guidelines for addressing transgender students by their chosen first names and pronouns in school's database was result of discrimination on basis of his religious beliefs in violation of the First Amendment. 7th Circuit entered summary judgment for the school.

Pregnancy Protections

- Equal access and accommodations to participate
- Leave for pregnancy, childbirth, postpartum conditions, termination of pregnancy, and related conditions
- Time off for physician appointments

Where is this going?

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Want to keep climbing?

- Basic training to comply with annual requirements
- Series of two-hour modules, delivered live, virtually
- Practical modules that cover topics like informal resolution, supportive measures, report writing, forms + websites, etc.



Want to keep climbing?

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- Annual Basics - August 19
- Effective Intakes + Supportive Measures - September 16
- Pregnancy Protections on Campus - October 21
- Investigation Report Writing - November 18

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- “Exceptional” “Personalized”
- “The best training I’ve had on this topic”



Want to keep climbing?

2025 Higher Education Legal Seminar

- One-day training on November 6, 2025
- Appropriate for campus leadership + counsel
- Delivered live on Ivy Tech's downtown Indianapolis campus

Questions?

Feel free to reach out!



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jnussbaum@cchalaw.com