

Title IX Advisor Training

NJIT

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Introductions



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Title IX Coordinator



TCNJ THE COLLEGE OF
NEW JERSEY

Welcome!

GROUP WARM-UP

Give a thumbs up if you...

*Have ever served as an Advisor
for a Title IX case before.

Type in the chat 1-2 a question(s) you hope
to have answered about the role of an
advisor in a Title IX proceeding.

HEARING REQUIREMENTS

* A "live hearing" is **required**

- Hearing can be done in person or virtually through the use of technology
- Parties must be able to see AND hear each other during the entirety of the hearing (& witnesses when they participate)

* An advisor **must** be present to conduct direct cross examination that's live and in real time

- If an advisor of their choice is not present on the day of the hearing, NJIT will be required to provide one.
- An advisor can be removed for disrupting the proceedings
 - BUT if they are, they must be replaced by another advisor - either chosen by the party or provided by NJIT
- In the event that a party does not show up for the day of the hearing, an advisor must still be present to conduct cross examination.

ROLE OF THE ADVISOR

"Advisor" = a person chosen by either the Respondent or Reporter (party) to accompany and/or assist that individual with any intake meetings, investigation preparations, conference meetings, hearing proceedings, and/or appeals.

The recipient must provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

The recipient may not limit the choice or presence of advisor for either the party in any meeting or grievance proceeding.

ROLE OF THE ADVISOR

The recipient can regulate the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to all parties.

Commonly, the advisor may not participate directly in any proceedings or represent any person involved - with the exception of cross-examination during the formal hearing.

Any cost associated with the participation of an advisor is the responsibility of the individual.

Although **not** required (with the exception of a hearing), parties are encouraged to have an advisor present with them throughout the process

- * Anyone can serve in the role as an advisor - including attorneys, but if the college trains & offers advisors, it may be helpful to provide parties with a list of these individuals & their contact information should they wish to utilize them.



ROLE OF A UNIV. ADVISOR

An Advisor IS...

- à "support"
- an "expert"
- à "sounding board"
- à "reviewer"
- à "listener"
- à "devil's advocate"
- an "educator"

An Advisor is NOT...

- à "prosecutor"
- à "negotiator"
- à "mediator"
- an "investigator"
- à "go-between"
- à "defense attorney"

PHASES OF ADVISOR INVOLVEMENT

1

INTAKE

2

INVESTIGATION

3

FORMAL HEARING ★

4

APPEAL



INTAKE

INTAKE

* Upon receipt of actual knowledge, the college will conduct initial outreach -

- A letter sent to the Reporter informing them of their rights, resources, options, & chance to meet
- Outreach to the Respondent typically only occurs if a Formal Complaint is signed, which then prompts the issuance of a Notice of Allegations letter to both parties

* Once a party reaches out to you, they should...

- Kindly request your assistance
- Provide you with days/times they anticipate college proceedings to take place and would want you present for

* It may be beneficial to request to meet with the party individually prior to deciding whether you'd like to serve as their advisor. This would allow for you to:

- discuss the anticipated time commitment get an overview of the student's circumstances
- determine if you feel comfortable fulfilling that role

CONSIDERATIONS

When determining if you are comfortable fulfilling the role of advisor, some things to consider might be...

- ▶ Does the party's situation, or the circumstances overall, hit too close to home for you?
- ▶ Based on your relationship to the party, and your own personal experiences, would you end up being more invested in the outcome than the process itself?
- ▶ What does your availability look like?
- ▶ Might a conflict of interest be present? (ie. are you a witness to the incident? Do unique power dynamics exist between you and the party?)

INTAKE

- *Advisor can & should help the advisee to understand details within the official outreach they've received, particularly the Notice of Investigation/Allegations letter
 - Familiarize yourself with required contents of this letter so you can help ensure all necessary information is included & clear
- *Advisor can help advisee decide whether they'd like to file a Formal Complaint
- *Party may also wish to argue for or against dismissal of a Formal Complaint -- Advisor can help the party frame their argument/appeal of any dismissal decisions with which they disagree
 - Being familiar with guidelines surrounding jurisdiction and what constitutes sexual harassment (106.30) under the Final Title IX Rule will be necessary

DISMISSAL OF FORMAL COMPLAINTS

MUST DISMISS =

- * If the conduct alleged in the formal complaint would not constitute sexual harassment as defined by 106.30 even if proved;
- * Did not occur in the recipient's education program or activity;
- * Did not occur against a person in the United States; or
- * If Reporter at time of filing the Formal Complaint is not participating or attempting to participate in the education program or activity.



If dismissed, NJIT can address the allegations under the Student Conduct Code or other applicable policy depending on the allegation.

MAY DISMISS =

- * Written request from the complainant seeking withdrawal;
- * The Respondent is no longer enrolled or employed; and/or
- * Specific circumstances prevent gathering of evidence necessary to reach a determination.

NOTE - If at any time after a Formal Complaint is signed NJIT is required to dismiss the complaint or does so at their discretion, both parties have the opportunity to appeal such decision.

Remember

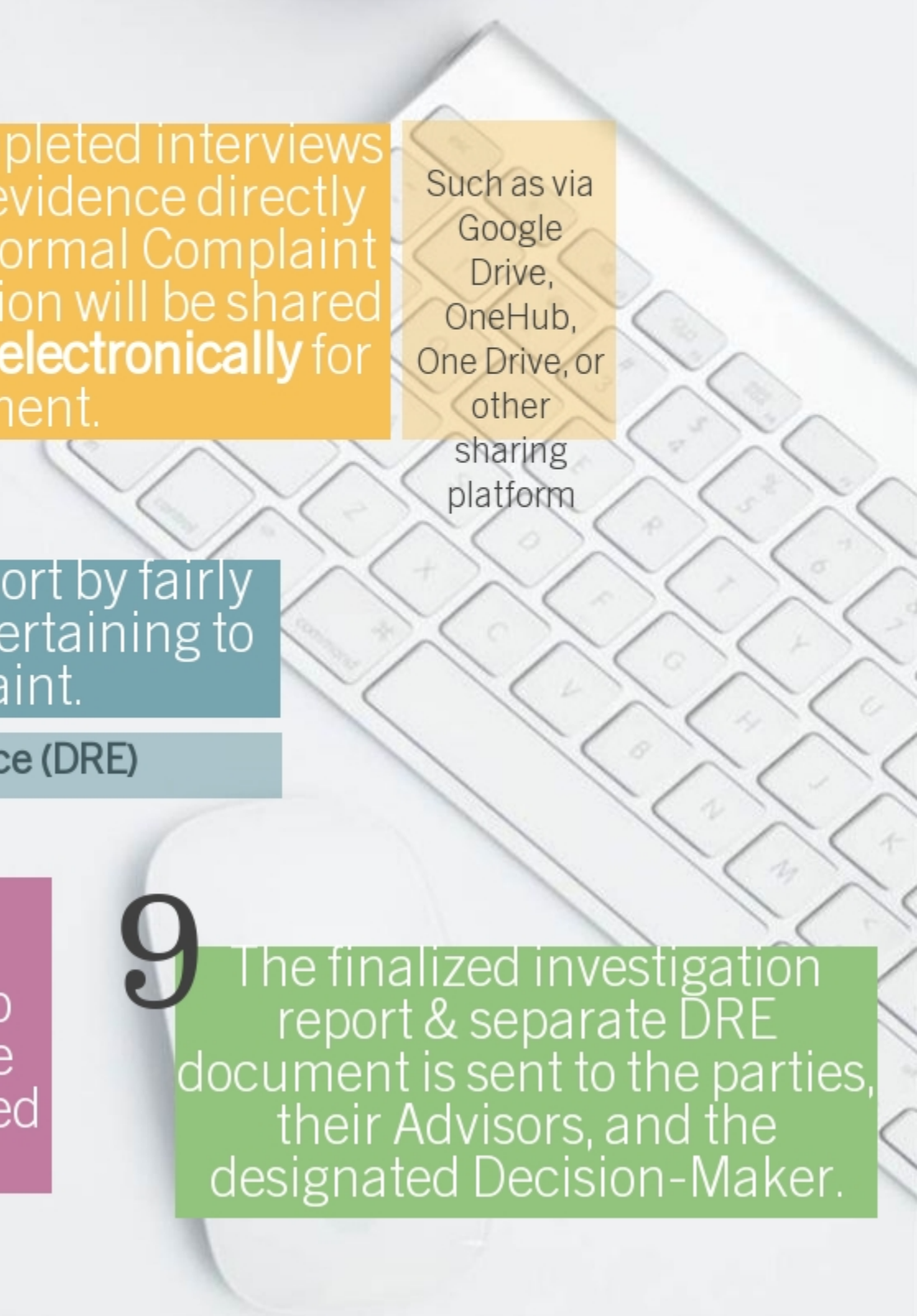
- * You are NOT obligated to serve in the role as the party's Advisor
- * BUT - If you agree to serve as a party's advisor -
 - You should make attending meetings/proceedings a priority and avoid unreasonably delaying the process
 - Make efforts to be professional, objective, and organized - always maintain moral
 - You cannot be an advisor to parties on both sides of the same complaint
 - And are also a witness to the matter, the decision-maker may question your credibility due to your increased access to information that accompanies your dual role
 - Ensure you feel comfortable with applicable/relevant policies/procedures

INVESTIGATION

Process Review



Review & Response



1 Following the notice of allegations, both parties will be interviewed & asked to share any relevant information/documentation regarding the allegations & identify relevant witnesses.

Anyone who is interviewed will have the chance to review/request edits to their documented statement to ensure its accuracy & completeness.

2 Relevant fact & expert witnesses are interviewed as deemed appropriate.

3 Once the Investigator(s) has completed interviews & the gathering of evidence, all evidence directly related to the allegations in the Formal Complaint obtained as part of the investigation will be shared with the parties & their Advisors **electronically** for their review & comment.

Such as via Google Drive, OneHub, One Drive, or other sharing platform

4 Parties have ten days to review & respond to the evidence.

May allow parties to submit add. info & respond to other evidence provided by a party/witness.

5 Investigator(s) takes into consideration the parties' responses, engages in any additional investigative steps (as needed), and then determines what evidence is relevant.

6 Investigator(s) compile the investigation report by fairly summarizing ONLY the relevant evidence pertaining to the allegations in the Formal Complaint.

Separation of Relevant vs. Directly Related Evidence (DRE)

7 Investigation report & separate DRE document sent to parties & their Advisors. Parties have another ten days to review & respond to the evidence.

8 The investigator(s) considers the parties' viewpoints about whether such DRE is also relevant, and on that basis decide whether to summarize that evidence in the investigative report. The investigation report is then finalized as the Investigator(s) deems appropriate.

9 The finalized investigation report & separate DRE document is sent to the parties, their Advisors, and the designated Decision-Maker.



Common TYPES OF MEETINGS

- Initial overview of resources/options
- Statement collection ★
- Follow-up
- Pre-Hearing Conference ★
- Formal Hearing ★

★ = can be particularly challenging

RECOMMENDATIONS



Be sure that the party is clear about **when** and **where** the specific meeting/proceeding will take place



Note exactly what **type** of meeting will be taking place - preparation (mentally, emotionally, & logistically) is often different depending on the purpose of the meeting



Encourage openness & honesty, but be okay with silence and possible reservations



Consider (if appropriate) encouraging the party to write down any information they want to be sure to share and/or questions they want to remember to ask

INVESTIGATION

- * Adequate notice should be provided to the party prior to any scheduled statement collection to allow for adequate time to prepare
- * Be sure to clarify the institution's expectations for advisors prior to the start of an initial meeting to have a clear understanding of your role/participation
 - For example:
 - Is a "potted plant" approach expected for the advisor?
 - Can the advisor address the investigator(s)? If so, when and under what circumstances?
- * Ensure the investigator(s) has your email/contact information so you can receive applicable investigative materials (during two 10-day review periods) in a timely manner

INVESTIGATION

PRIOR TO/DURING STATEMENT COLLECTION -

- *Encourage party to be as truthful as possible
- *Consider (if appropriate) encouraging the party to write down any information they want to be sure to share and/or questions they want to remember to ask
- *Determine what supplemental evidence they want to share during the interview & have it organized
- *Remind the party that they can request a break if/when necessary
- * Encourage party to ask for clarification if questions posed by the investigator(s) is unclear

10-DAY REVIEW PERIOD -

- *Can assist the party in:
 - Reviewing & commenting on the investigation report. Maintaining objectivity & helping party do so as well will be key
 - Identifying areas of contestation/corroboation, potential additional witnesses and/or relevant questions to be asked of parties/witnesses
 - Beginning to draft questions for parties/witnesses that would be beneficial to ask at a hearing
 - Advocating for the inclusion/exclusion of evidence from the process (relevant vs. directly related vs. privileged)

Remember

✱ Aside from providing assistance during the process, it's important to know available resources that can provide additional support to the party if needed. As such, it's helpful to be familiar with who is on the Title IX team and others at the institution who can help.

✱ Consider:

- What resources are available on-campus & in the local community?
 - Are there any interruptions to service due to COVID-19?
- Who can facilitate connecting the party to these resources?
- Are supportive measures appropriate/warranted?



DURING a meeting & Hearing

- ✓ Remember your role of the Advisor
- ✓ You can politely prompt/nudge or write the party a note(s) if there is something you may want to remind the party of
- ✓ If warranted, you may call a 'time out' in the meeting in order for you to speak with the party privately
- ✓ Remind the party that they too can request a break if/when necessary

FORMAL HEARING

FORMAL HEARING

REQUIREMENTS:

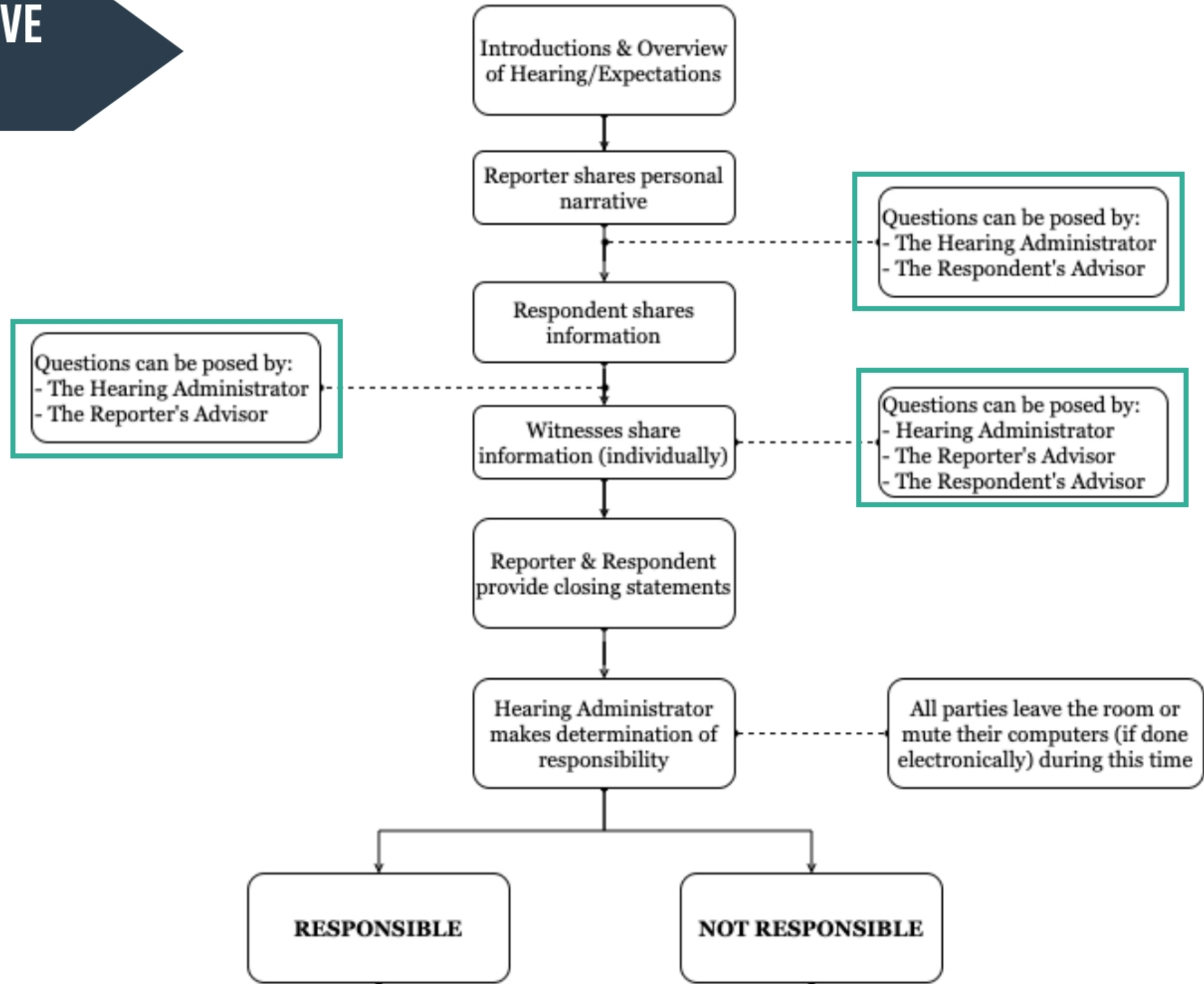
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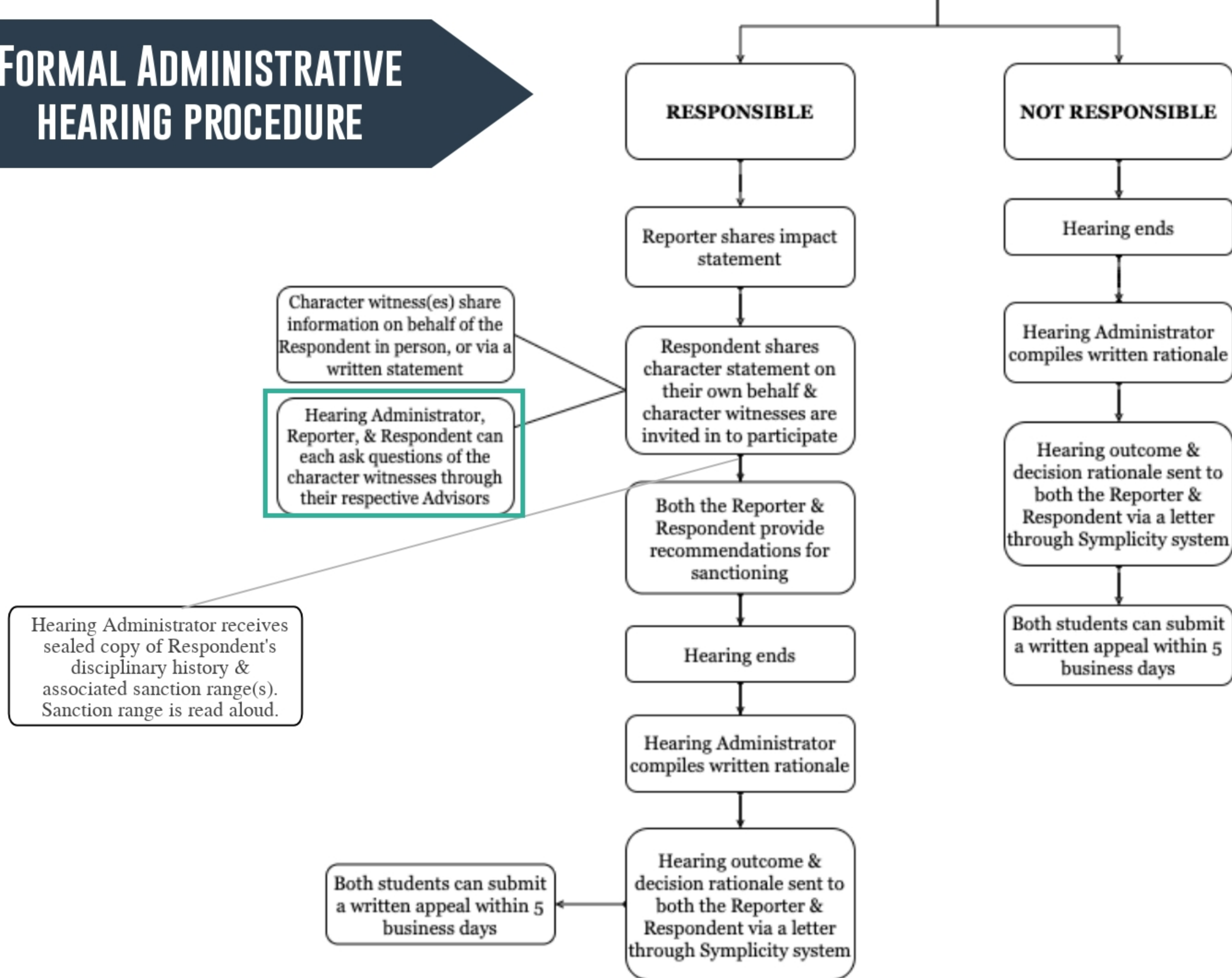
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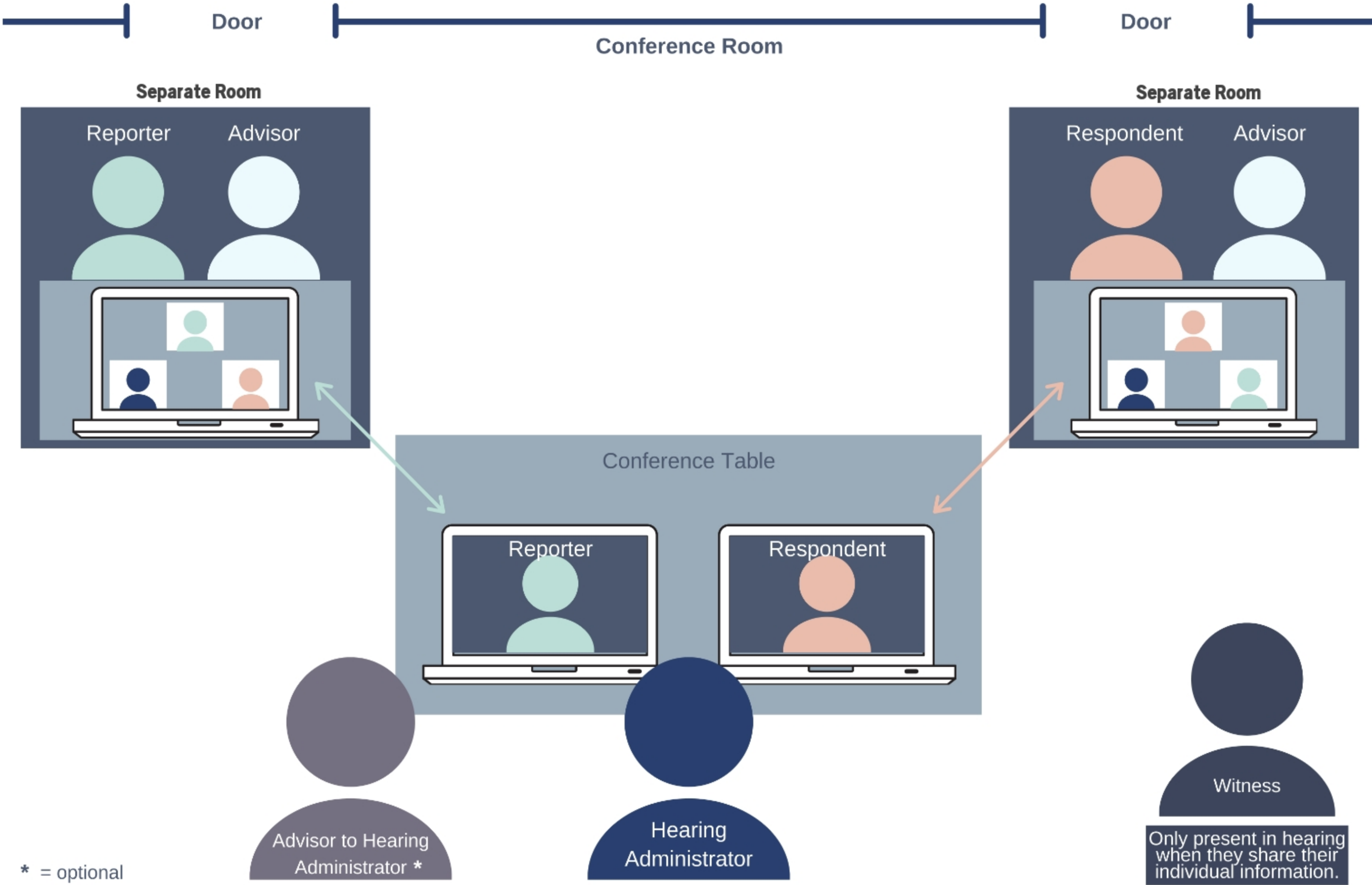
FORMAL ADMINISTRATIVE HEARING PROCEDURE



FORMAL ADMINISTRATIVE HEARING PROCEDURE



Structure of a Formal Administrative Hearing



FORMAL HEARING

Prior to the hearing, you and the party will receive:

- * the final investigation report
- * directly related evidence document
- * any additional supplemental evidence/information

Recommendations when preparing -

- * Thoroughly review ALL materials provided, included relevant policy definitions
- * Identify areas of corroboration and contestation -- this can help in drafting questions for parties/witnesses
- * Compile a list of relevant questions for parties/witnesses that the party hopes to have answered during the hearing
 - Use the investigation report as a roadmap & include refer to specific page numbers whenever possible
 - Avoid complex or multi-part questions, or those with technical/legal jargon
- * Organize yourself and the necessary hearing materials in a way that works best for you and the party & will allow for efficiency during the hearing
- * Ensure you & the party feel comfortable with any/all technology being used to conduct the hearing

PREPARING FOR HEARING

Ask the party & yourself...

- * Is the answer to this question relevant to making a decision?
- * Is it important for the decision-maker to know/consider this information?
- * What information is lacking or may need additional clarity?



FORMAL HEARING

Recommendations when preparing (cont.) -

PREPARING FOR HEARING

- * Can help the party draft their opening & closing statements and rehearse them, if needed.
- * Determine w/ the party methods of communication during the hearing between the two of you & how you can best offer support outside of cross-examination capacity.
- * Participating in a formal hearing can be very overwhelming and stressful for all involved so be sure to encourage the party to get a good night's sleep & eat a good meal the day of the hearing.
- * Review what to expect in terms of the hearing and identify areas that may be particularly challenging or times where requesting a break may be helpful, if it's not already built in, and how you may be able to provide additional support.
- * Discuss a plan with the party for what they will do after the hearing, what supports may be helpful, and encourage self-care.
- * In your communications with the party, be realistic and objective -- avoid sugar coating things and making false promises ---> this is unhelpful in managing expectations.

FORMAL HEARING

DURING THE HEARING

- ✱ Adhere to the prescribed rules of decorum
- ✱ Each party's advisor is expected to conduct cross-examination of the other party and witnesses. Advisors are permitted to pose relevant questions and follow-up questions, including those challenging credibility
- ✱ Encourage your advisee to ask for clarification if they find a question posed to be unclear To the extent reasonable, the party can also request to pause & confer with you prior to answering if needed.
- ✱ The decision-maker has the opportunity to ask questions of the parties & witnesses before advisors, so there is a chance they may ask questions you've prepared. Consider whether re-asking the question is necessary.
- ✱ The Final Rule is unclear about whether the advisor needs to ask each witness about one thing or everything.
 - Review the policy/consult with your Title IX Coordinator prior to the hearing to confirm the institution's interpretation.
- ✱ Remember to pause after asking a question to allow the decision-maker the chance to determine its relevance.

Recommendation

If you choose to ask the question again, explain your purposes for doing so. This will be helpful for the decision-maker when determine the relevance of the question.

Note that they may rule as not relevant due to duplicative nature.

Relevant vs. Directly Related

"The Department notes that the universe of evidence given to the parties for inspection and review under § 106.45(b)(5)(vi) must consist of all evidence directly related to the allegations; determinations as to whether evidence is "relevant" are made when finalizing the investigative report, pursuant to § 106.45(b)(5)(vii) (requiring creation of an investigative report that "fairly summarizes all relevant evidence")." (p. 1041)

"The Department declines to define certain terms in this provision such as "upon request," "relevant," or "evidence directly related to the allegations," as these terms should be interpreted using their plain and ordinary meaning." (p. 1017)

Relevant Evidence

NJIT "information that tends to make a material fact at issue more or less probable and the fact is of consequence in determining the action."

Evidence is relevant when it tends to prove or disprove an issue in the complaint.

Only "relevant" evidence can be subject to the decision-maker's objective evaluation in reaching a determination, and relevant evidence must be considered, subject to the rape shield and legally recognized privilege exceptions contained in the final regulations.

Directly Related Evidence

Evidence that is connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation).

Relevancy

"The final regulations do not define relevance, and the ordinary meaning of the word should be understood and applied."

The proposed rules do not speak to:

- * Admissibility of hearsay
- * Prior bad acts
- * Character evidence
- * Polygraph (lie detector) results
- * Standards for authentication of evidence,
or
- * Similar issues concerning evidence

HOWEVER the final rule requires recipients to gather & evaluate relevant evidence with the understanding that...

This includes both exculpatory & exculpatory evidence;

The final rule deems questions & evidence about a complainant's prior sexual behavior to be irrelevant with two exceptions; and

Preclude use of any information protected by a legally recognized privilege (e.g. attorney-client).



Relevancy

RAPE SHIELD

Questions & evidence about the Complainant's sexual predisposition or prior sexual behavior are **not** relevant, UNLESS such questions/evidence are offered to:

- 1** Prove that someone other than the Respondent committed the conduct alleged by the Complainant
- 2** Prove consent, if the questions/evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent.

PRIVILEGED INFORMATION

Cannot require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

Examples

Records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party.

MUST obtain voluntary, written consent from the party prior to seeking disclosure of/utilizing privileged information in the formal grievance process.



Remember

- * In order for a party or witness's testimony provided during the investigation and/or the hearing to be considered by the decision-maker, they must submit to cross-examination during the hearing.
- * This is an educational, not a court room proceeding.
- * Maintain professionalism and do your best to stay cool, calm, & collected.
- * You may be appointed as an advisor to a party if their advisor does not appear, is removed from the hearing for violating the rules of decorum, or is otherwise unable to participate.
 - * Be sure to consult with your Title IX Coordinator as to how to best prepare and serve in the role of advisor during the hearing should this occur, as to best support the party. (e.g. is it possible a break be granted during the hearing to allow for you to review materials/consult with the party? Will the hearing be adjourned and rescheduled for a later time?)
- * It's better for both you and your advisee to be OVER prepared than UNDER prepared.

DETERMINATION OF FINDINGS

More Likely Than Not (MLTN) standard

- *aka Preponderance of the Evidence
- *50.1% or above, given the believable information = *Responsible*
- *50% or below = *Not Responsible*

Getting to MLTN

- *Finding of Fact
- *Witness credibility
- *Type & Weight of Information (Believable)
- *When student(s) decline to provide information...IT'S OK!

Decision Rationale

- *Must accompany EVERY charged violation
- *Given **X**, **Y**, and **Z** factors, I find that it is...
- *MLTN; or
- *NOT MLTN...
- *that student (name) violated (insert code violation)

NOTE - The mental health status and/or presence of a disability does not negate behavior. Students will be held responsible for their behavior, however these factors may be considered either aggravating or mitigating factors for sanctioning.

SANCTIONING PRACTICES

STATUS SANCTIONS

- *Warning
- *Reprimand
- *Disciplinary probation
- *Loss of privileges
- *Discretionary sanctions
- *Suspension
- *Expulsion
- *Reassignment of housing
- *Suspension from Housing
- *Expulsion from Housing



EDUCATIONAL SANCTIONS

- *Resiliency
 - Personal Mission Statement
 - Board of Directors
 - Values Shield
- *Alcohol & Drug Education Program
 - Basics
 - Choices
 - Marijuana 101
- *Reflection paper
- *Research paper or presentation
- *Master Education Plan
- *Service to the College or Community

ADMINISTRATIVE DIRECTIVES

- *Administrative relocation of housing
- *Loss of privileges
 - Guest privileges
 - Restriction for a College event/program
 - Restriction of area or building
- *Restitution (College property only)
- *Parental Notification
- *Extension of No Contact Directive

Additional possibilities to consider



APPEALS

APPEAL PROCEDURES

*Must be submitted **in writing within 5 days** of receiving the decision.

*Both parties may appeal on the following grounds:

GROUND FOR APPEALS:

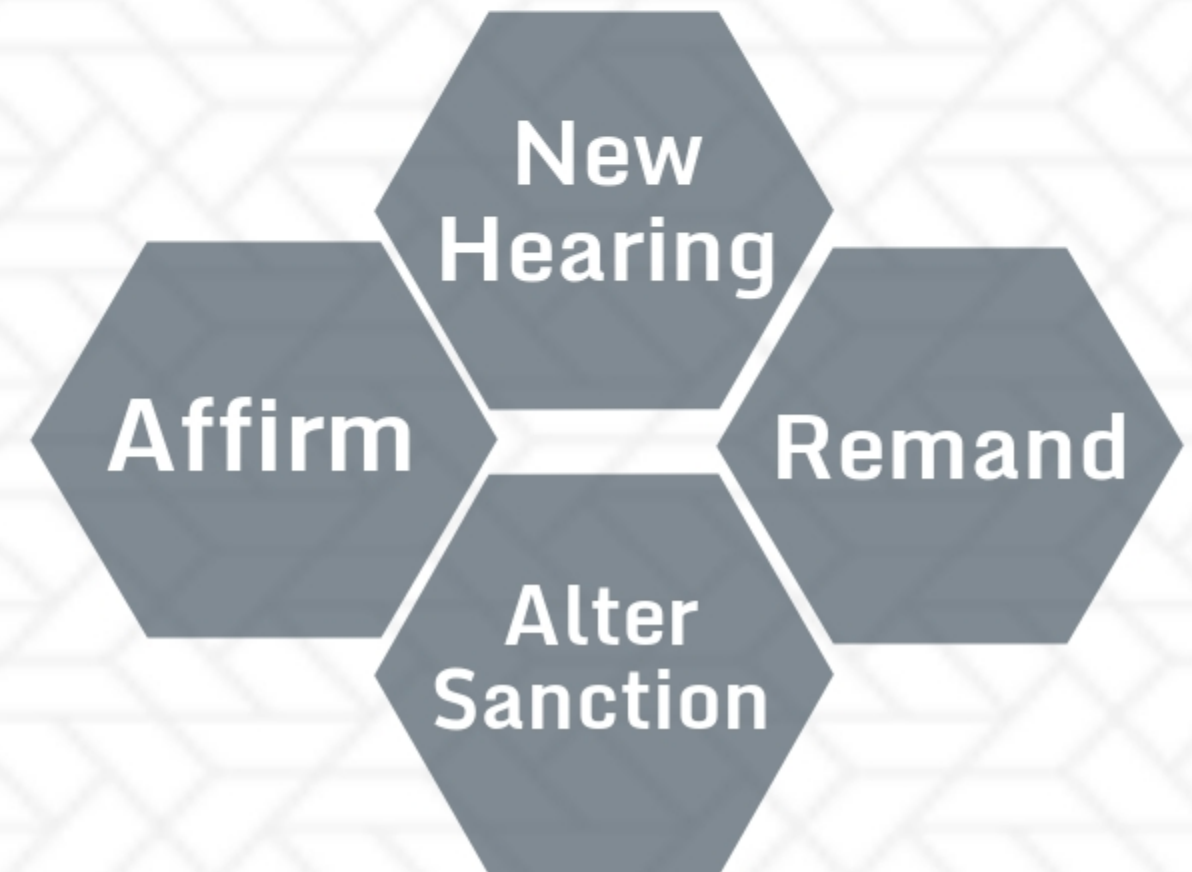
Process Review

New Information
Review

Conflict Interest
or Bias

Must have had an affect on the outcome of the matter.

POSSIBLE APPEAL DECISIONS:



OVERVIEW OF APPEAL TYPES

EACH OF THE APPEAL OPTIONS ARE USED TO DETERMINE WHETHER....



Process Review

The investigation process was conducted in accordance with published procedures and without bias on the part of the Investigator(s).

Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.



Conflict or Bias

A conflict of interest or bias for or against the individual Complainant or Respondents or more generally against complaints and respondents by the Title IX Coordinator, investigator(s), or decision-maker(s) that affected the outcome of the matter.



New Information Review

New information, submitted within the 5-day appeal window, is sufficient to alter a decision or other relevant facts not brought out in the original investigation, because such information was not known to the Student appealing at the time of the original investigation.

APPEALS





- * Ask if the party feels comfortable sharing their decision letter with you to review & use it as a roadmap for drafting the appeal
- * Offer insight as to what grounds for appeal might be most appropriate to choose given their expressed concerns
- * You shouldn't be the one writing the appeal, that is the responsibility of the party -- HOWEVER, you may offer assistance by reviewing the appeal once written and offering recommendations for improvement, as needed.
- * Revisit the associated policy for information on definitions and appeal procedures.
- * Ensure that the person reviewing the appeal is not the same person as the decision-maker that made the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

INFORMAL RESOLUTION

INFORMAL RESOLUTION

- * An informal resolution, that does not involve a full investigation and adjudication, may be offered at any time prior to reaching a determination regarding responsibility.
- * Requires a Formal Complaint to have been signed by the Reporter and written Notice of Allegations to be sent to both parties.
- * Both parties must voluntarily agree, and consent in writing to participate in this type of process - must be free of any coercion or conditioning on behalf of the college.
- * Option is unavailable for instances where an employee has been accused of sexually harassing a student.
- * Informal resolutions can take a variety of forms and are unique to each individual case.
- * If asked to be an advisor, it'd be recommended to consult with the Title IX personnel overseeing the process to understand what the process will entail and how you can best offer guidance/support to the party along the way.

Remember

-  Maintain confidentiality of information shared with you as part of the process to the greatest extent possible.
-  Even as an advisor, you are ***not*** alone -- there are staff on campus who are there to support you throughout every step of the process as well.
-  Confidence in this role and the processes come with time & practice.
-  The role you'll play as an advisor to those involved in a Title IX proceeding is invaluable, and your assistance is greatly appreciated.

Thank you!

questions





thank
you

Contact Me



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