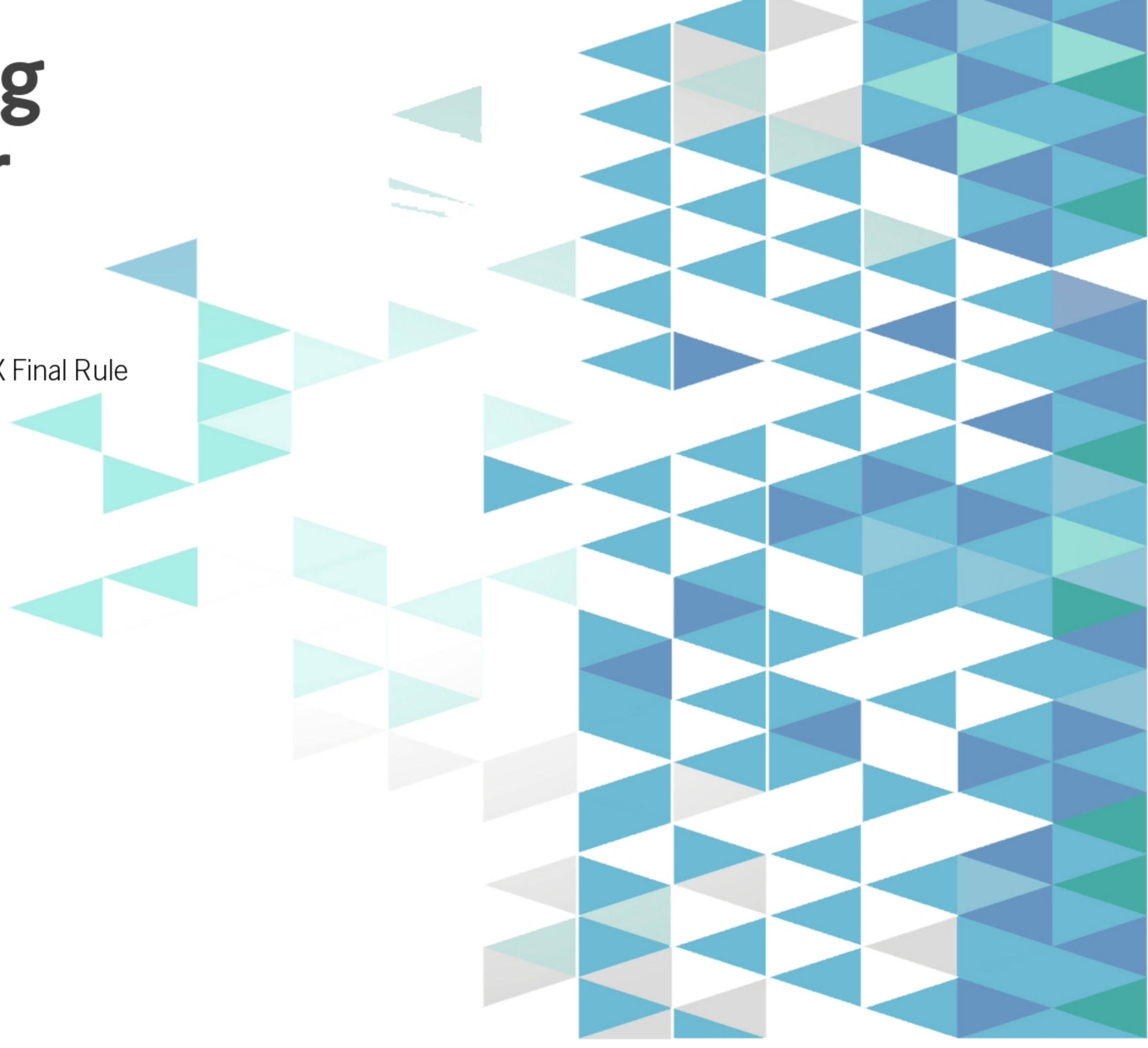


Formal Hearing Administrator Training

Conducting live hearings that comply with 106.45 of the Title IX Final Rule

Chelsea Jacoby, Ed.D.

Title IX Coordinator



Training Agenda

9:30 - 9:35 - Introductions and Welcome

9:35 - 9:50 - Beyond Discipline
Hearing Requirements

9:50 - 10:10 - Hearing Structure & Procedure

10:10 - 10:30 - Preparing for the Hearing

10:30 - 10:35 - Break

10:35 - 10:55 - During the Hearing

10:55 - 11:15 - Consideration of Information & Findings

11:15 - 12:00 - Case Study Eval & Decision Rationale

12:00 - 1:00 - Lunch

1:00 - 1:45 - Debrief

1:45 - 2:35 - Decision Letters - Requirements & Tips
Sanctioning Practices

2:35 - 3:50 - Collaborative Writing & Debrief

3:50 - 4:00 - Appeal Types & Procedures
Wrap-up



Introductions



Chelsea Jacoby, Ed.D.

Director of Title IX Compliance & Sexual Misconduct

Title IX Coordinator

The College of New Jersey

Type in the chat 1-2 words to describe how you feel about serving in the role of a Title IX Hearing Administrator.

Welcome!

MOVING *BEYOND DISCIPLINE*

Fewer Legalisms

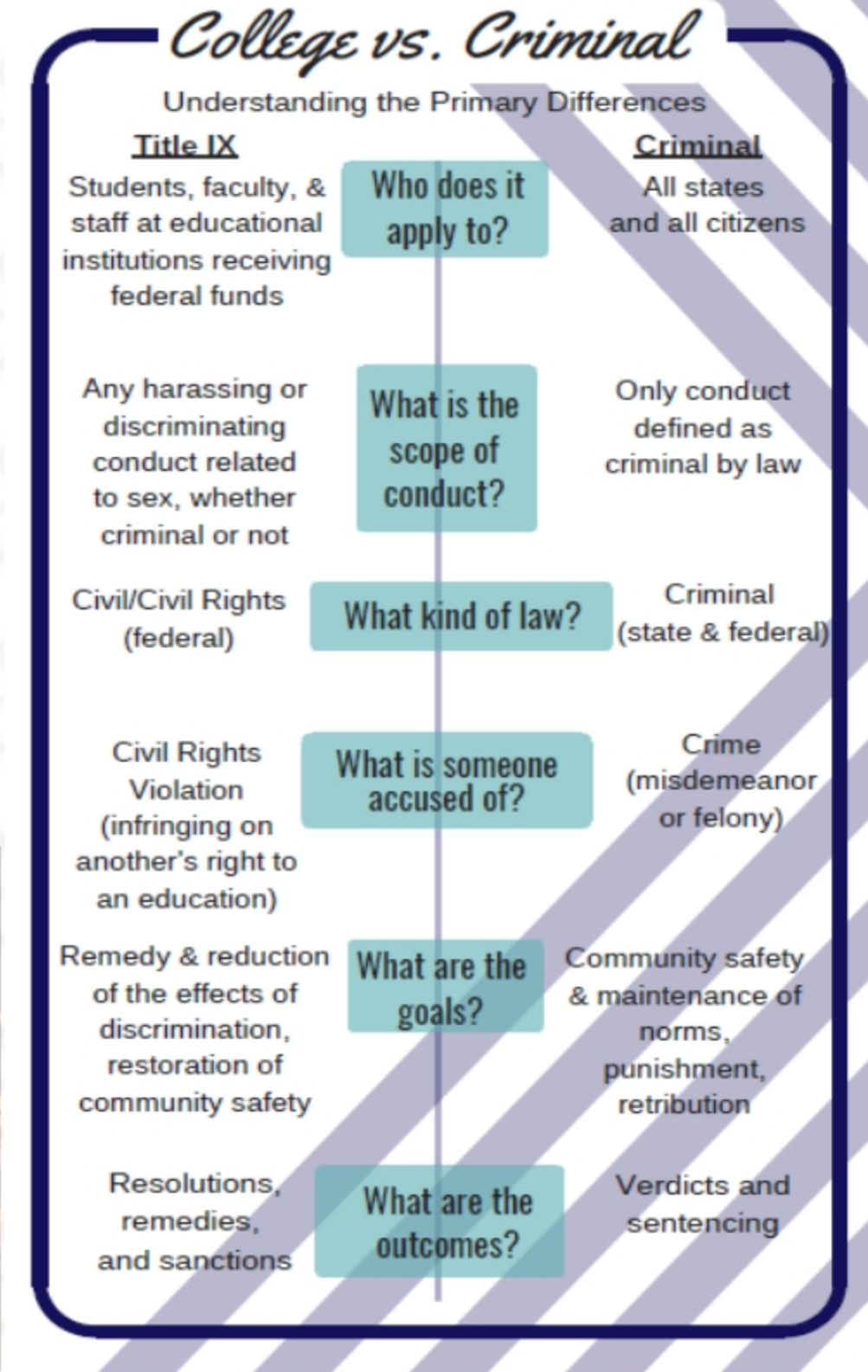
- * One-size-fits-all code and process have to go. Replaced with a multi-layered approach to address different levels of types of incidents.
- * Remove legalistic language from the code of conduct and include language of affirmative expectations and institutional values.
- * All processes, conversations and sanctions should be grounded in student development and serve to educate the student at every level of the process.
- * Sanctions should balance protecting the community with an expanded educational focus

Embracing the Subjective

- * Every student's journey through the conduct process (formal or informal, residential or college, charges or mediation) will not and should not look the same. *And this is okay!*
- * Students will have the same rights, same choices and be subject to the same expectations of behavior...*So we're good!*

"Beyond the Hearing"

- * Alternative dispute resolution, mediation, restorative justice, etc.
- * Proactive, voluntary programs to assist students at risk of leaving the institution, or recently returned from suspension, arrest, etc.
- * Educational Conversations and Residential Education Conference.
- * FYI's and Admonishments.



Your ROLE in moving BEYOND DISCIPLINE!

- * Be an effective & active listener
- * Uphold the rights of ALL parties involved
- * Maintain student confidentiality
- * Balance educating the student with maintaining the safety of the community

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 HEARING ADMINISTRATOR

The Hearing Administrator will...

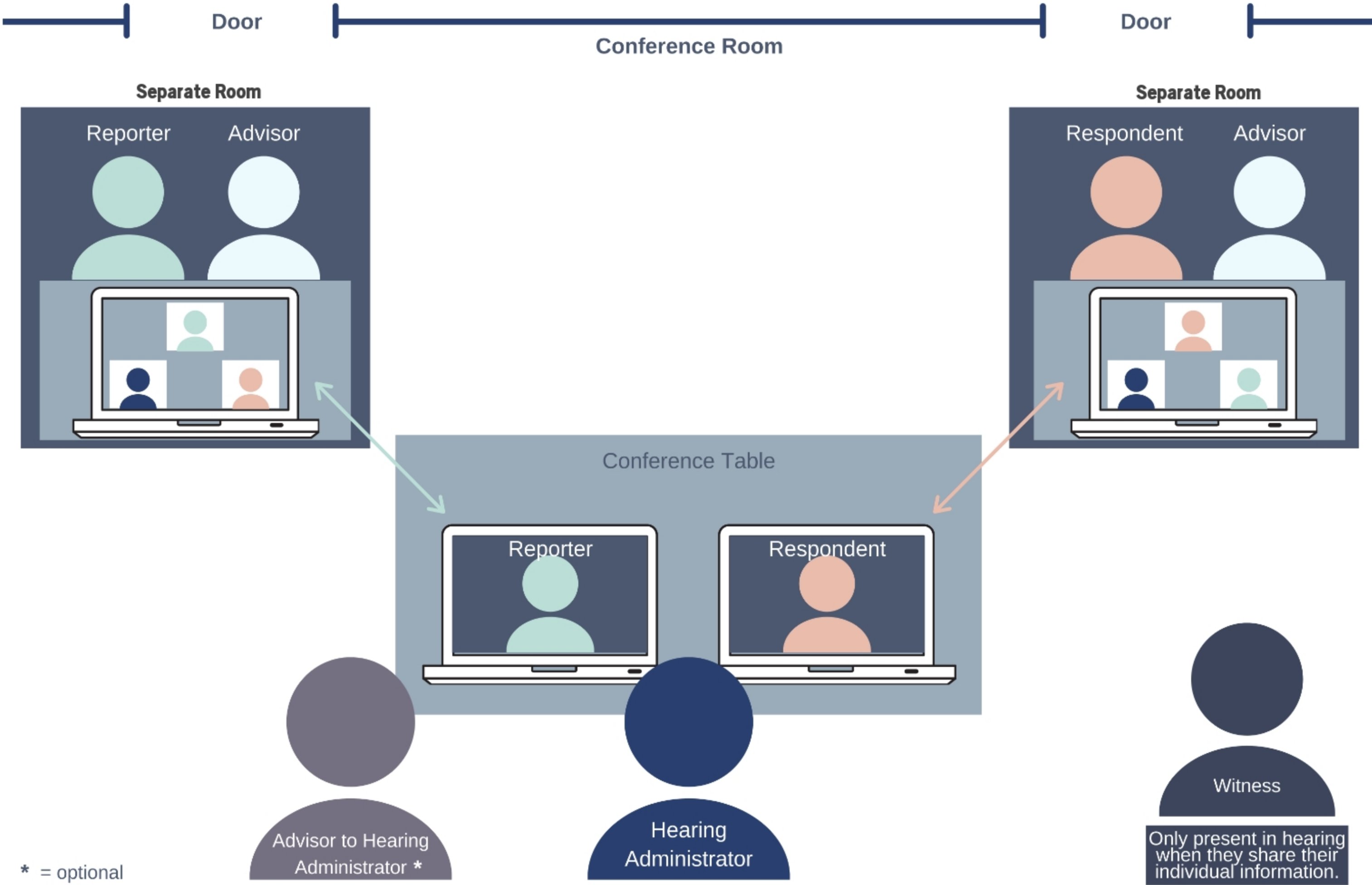
- * have the authority and responsibility of overseeing the formal administrative hearing and objectively evaluating all relevant evidence (both inculpatory and exculpatory) to make an independent determination of responsibility.
- * not be the Investigator, Title IX Coordinator, Advisor, or decision-maker in any other phase of process
- * be free of conflicts of interest or bias
- * be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Reporters, & any technology to be used at the hearing
- * maintain an orderly, fair, and respectful hearing

It's important to understand the importance, gravity, and responsibility that comes along with this role.

Process Review



Structure of a Formal Administrative Hearing

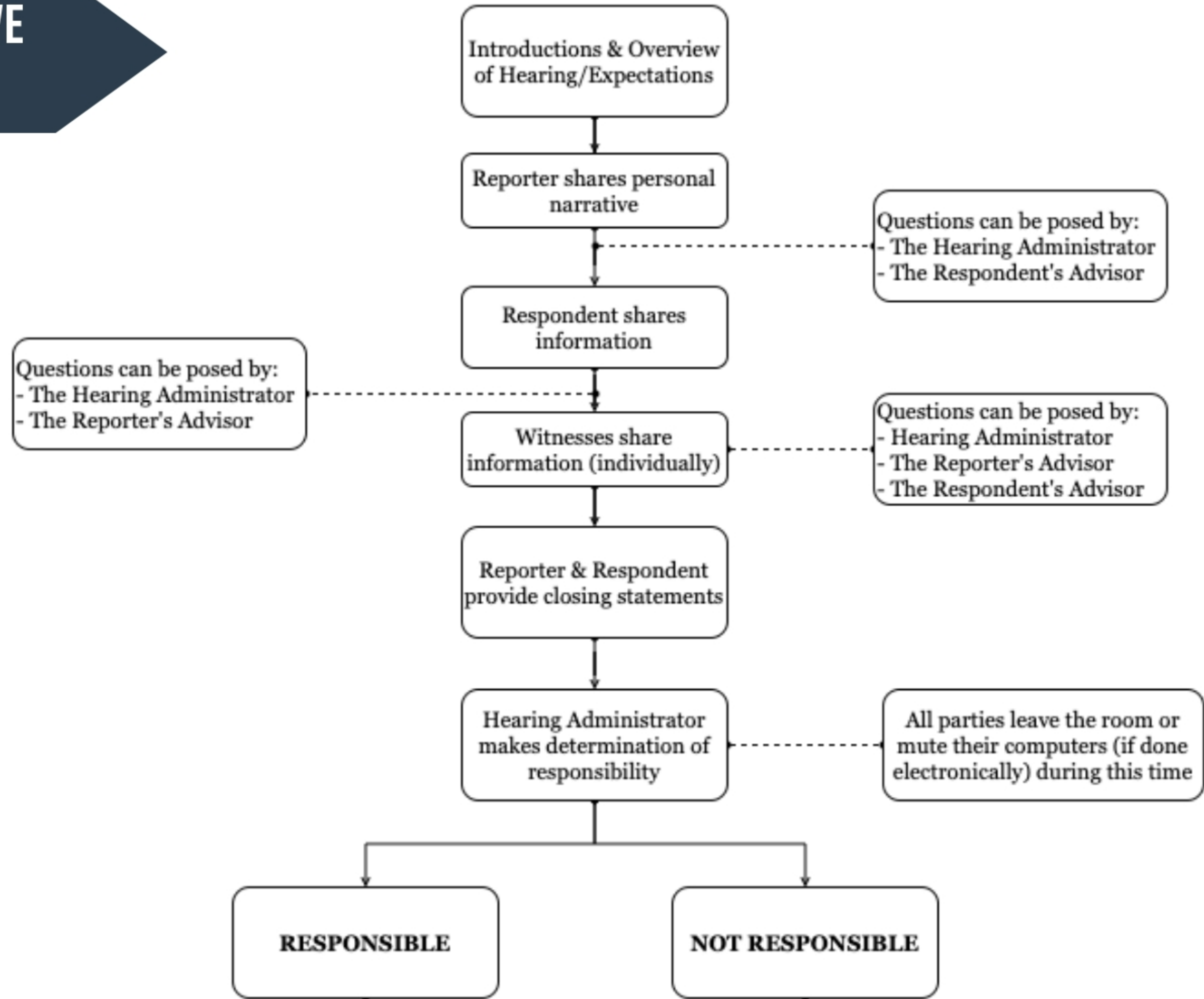


Formal Administrative Hearing

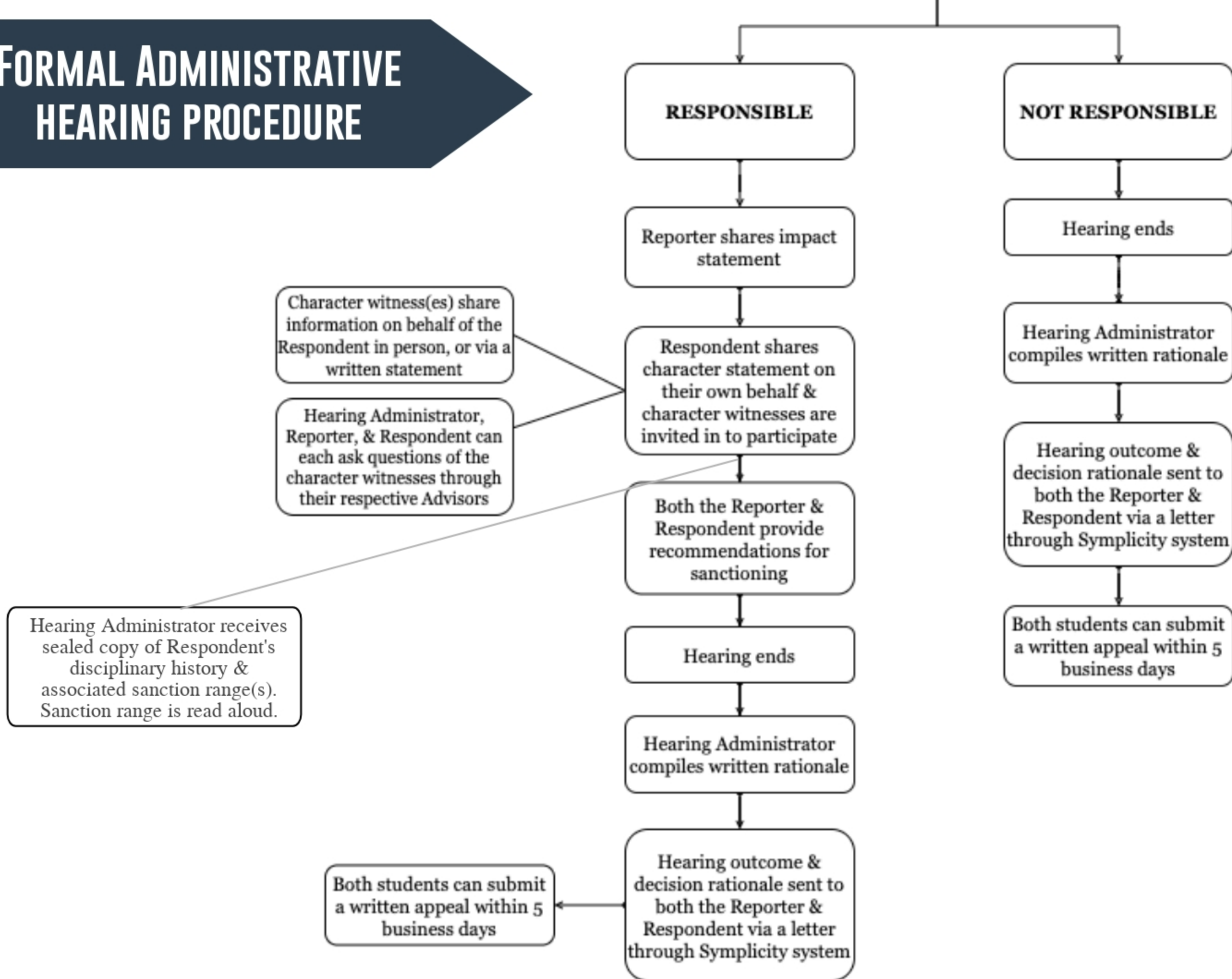
(In-person, same location arrangement)



FORMAL ADMINISTRATIVE HEARING PROCEDURE



FORMAL ADMINISTRATIVE HEARING PROCEDURE



Hearing procedures should be outlined in your hearing script.

PREPARING FOR THE HEARING

Prior to the hearing, the hearing administrator will receive:

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

Recommendations when preparing -

- * Thoroughly review ALL materials provided, included relevant policy definitions
- * Identify areas of corroboration and contestation
- * **Draft relevant questions** for parties/witnesses that you hope to have answered during the hearing
- * Organize yourself and the necessary hearing materials in a way that works best for you & will allow for efficiency during the hearing
- * Ensure you feel comfortable with any/all technology being used to conduct the hearing

Ask yourself...

- * Is the answer to this question important to making a decision? Do I really need to know this information?
- * What information is lacking or may need additional clarity?
- * What do I need to learn from the hearing that is necessary to make a decision?



**PREPARATION
IS KEY!**



time
for
a
break

Questions? Comments? Concerns?



DURING THE HEARING

✱ All questions must be vetted through the decision maker for relevancy PRIOR to a party/witness answering

- The decision maker must provide an immediate rationale for why a questions is not relevant.
- If there is no “objection” of relevancy, the party or witness is free to answer the question.
- Make sure to be consistent in these decisions.

✱ If a party or witness does **not** submit to cross examination, any of their statements provided in the investigation report **cannot** be considered by the decision maker.

- This would also include any text message conversations provided by another party or witness where the non participating individual sent messages.
- The exclusion to this would be any video or 'non-statement' evidence

DURING THE HEARING

- ✱ Document as much information that's shared by the parties & witnesses as possible.
- ✱ Keep running log of information that was NOT tested by cross-examination.
- ✱ Ask for explanation regarding relevance, as needed.
- ✱ Equitably enforce established rules of decorum.
- ✱ Maintain composure, professionalism, & empathy.
- ✱ Remember to allow for breaks upon request of the parties AND when you may need one.

CONSIDERATION OF INFORMATION FOR DETERMINATION OF RESPONSIBILITY

* REMEMBER --> If a party or witness does **not** submit to cross examination, any of their statements provided in the investigation report **cannot** be considered by the decision maker.

- This would also include any text message conversations provided by another party or witness where the non participating individual sent messages.
- The exclusion to this would be any video or 'non-statement' evidence

* Comb through your log/notes of information that was not tested by cross-examination during the hearing & ensure that you do not rely on that evidence when making a determination of responsibility.

* Carefully review the language of the alleged violation(s) and ensure that there is sufficient evidence to support **EACH** component of the violation.

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! Cannot draw negative inference solely on refusal to participate or answer questions.

VIOLATION MAPPING

SEXUAL ASSAULT:

Sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.

ELEMENTS NEEDED FOR RESPONSIBLE FINDING:

- i. Touching of the private body parts
- ii. Of an individual's body

AND

- ii. for the purpose of sexual gratification.

VIOLATION MAPPING

STALKING:

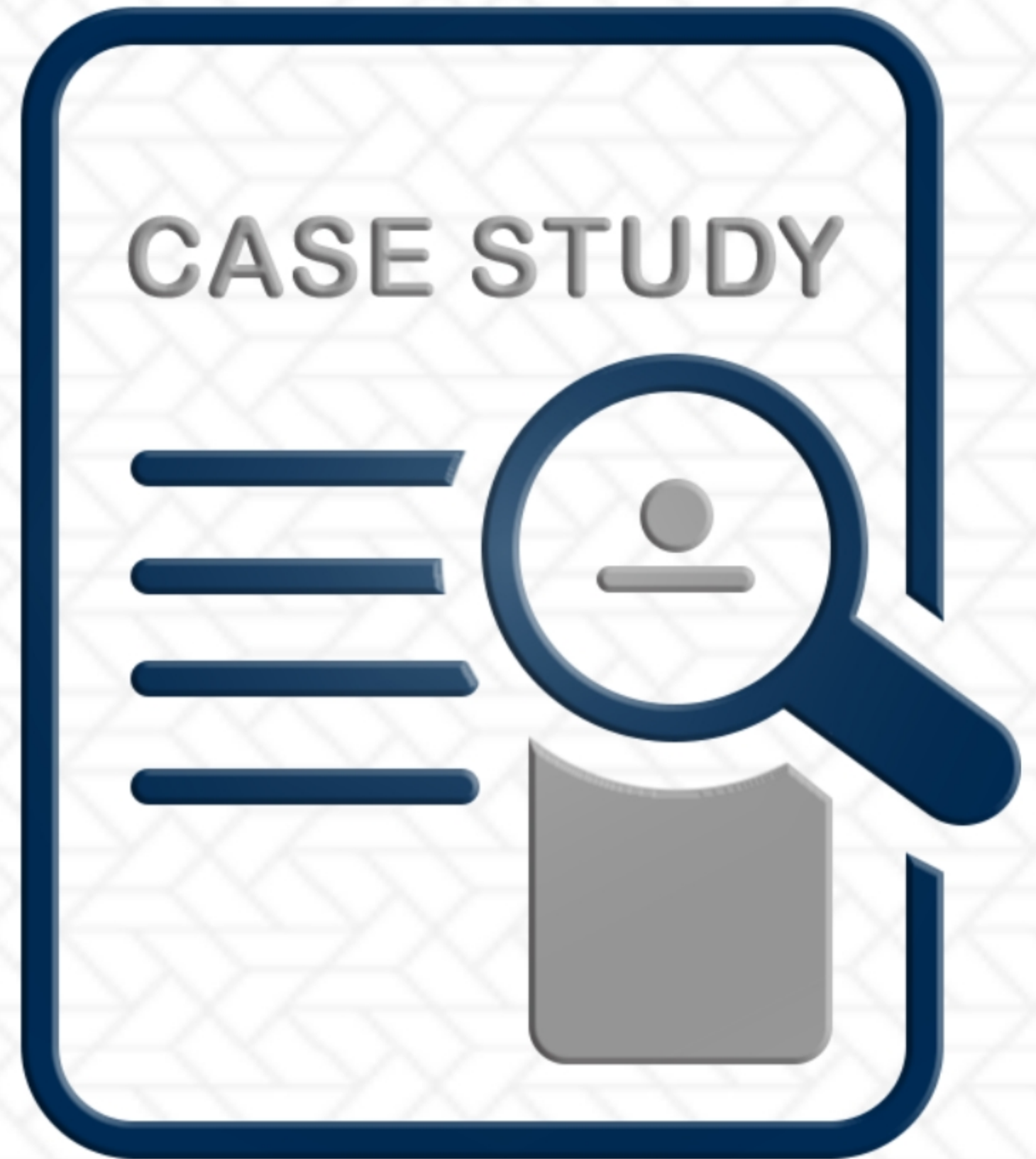
Engaging in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for their own safety or the safety of others or suffer substantial emotional distress

ELEMENTS NEEDED FOR RESPONSIBLE FINDING:

- i. Two or more instances of course of conduct
- ii. Directed at a specific person
- AND
- ii. cause a reasonable person to fear for their own safety
- OR
- iv. the safety of others
- OR
- v. suffer substantial emotional distress

Course of conduct means two or more instances including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish.

Case Study



TASK -

- * Read through the investigation report
- * Complete the Case Study Evaluation & Decision Rationale worksheet



45 min

A wooden plate with a green ribbon tied around a card that says "Time for lunch." The plate is set on a bamboo mat, with a wooden fork and spoon visible on either side. The card is made of light brown paper and has a white rectangular label in the center. The text "Time for lunch." is written in a black, serif font. The green ribbon is tied in a bow around the top of the card. The wooden plate is light-colored and has a smooth finish. The bamboo mat has a natural, woven texture. The wooden fork and spoon are also light-colored and have a smooth finish. The overall scene is bright and clean, with a focus on natural materials and a simple, elegant design.

Time for lunch.

Questions? Comments? Concerns?



Case Study

DEBRIEFING



45 min



Responsible

vs

Not Responsible

COMMUNICATING DETERMINED LEVEL OF RESPONSIBILITY

If the Respondent is found...

RESPONSIBLE

Decision rationale & Sanction rationale

Things to consider:

- *Character statements
- *Impact statements
- *Recommendations for sanctioning
- *Disciplinary History & Sanction range(s)
- *Aggravating & mitigating factors

NOT RESPONSIBLE

Decision rationale ONLY



TIPS FOR RATIONALE WRITING

* Must accompany every decision (both for each violation AND the decision in total)

* Per the Title IX Final Rule, notice of the outcome must be sent to both parties simultaneously & must include:

* a summary of the allegations

* the procedural steps taken

* findings of fact

* decision/rationale for each violation

* specific remedies & sanctions applied

* associated sanctioning rationale (if applicable)



* Infuse policy definitions and direct quotes within your rationale whenever possible.

* If referencing quotes/information from the investigation report, include page #s for easy reference.

* Avoid phrases such as, "I believe" or "I think" -- it's not about what you believe or think, it's about what evidence exists and whether it meets the preponderance of evidence standard.

* Clearly articulate information that was NOT relied upon when making a determination.

* Why are the sanctions you assigned appropriate for this case?

* How do they maximize the education of the student in this case or this stage of their development?

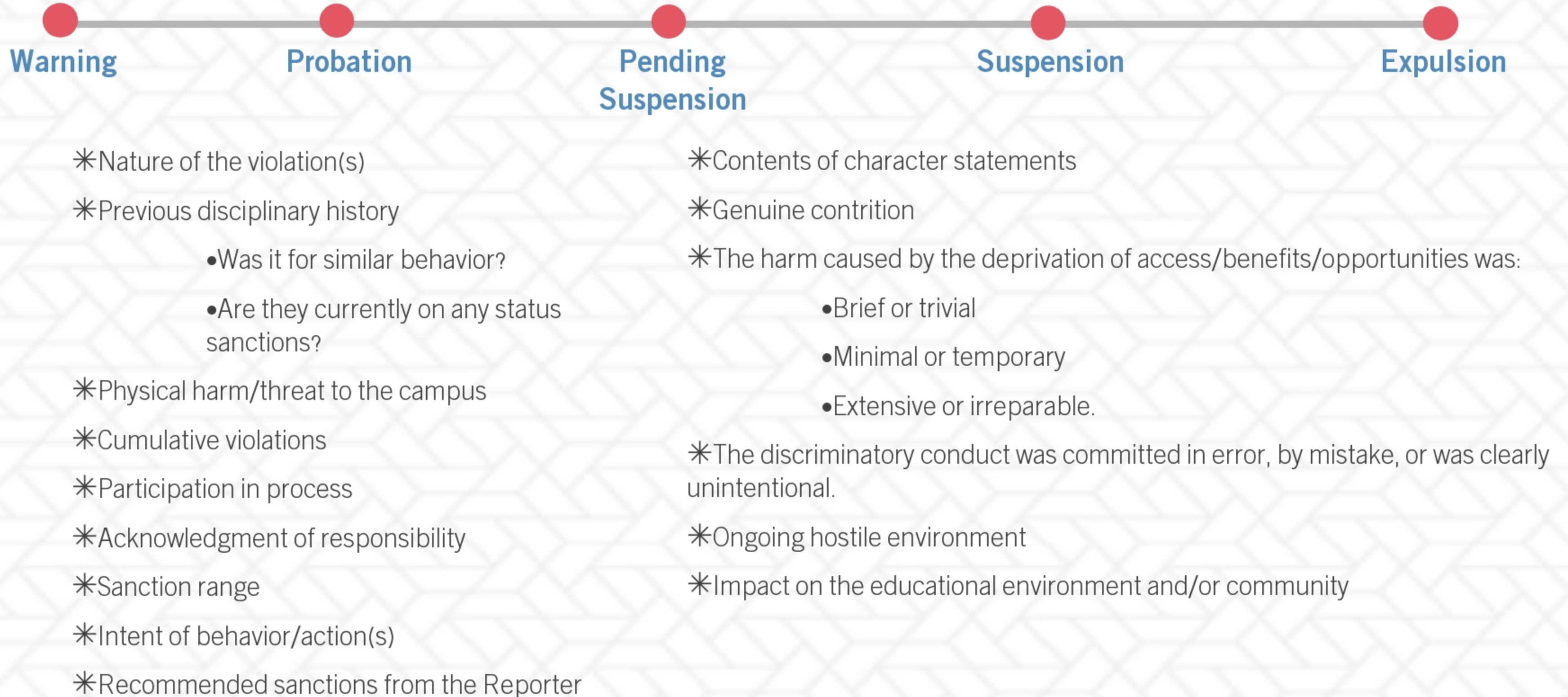
* How did you weigh...

- Aggravating factors?

- Mitigating factors?

SANCTIONING FACTORS

Violations involving Prohibited Conduct often include “mitigating” and/or “aggravating” factors, which tend to render a violation either more or less egregious than other violations of the same policy. As a result, a one-size-fits-all approach to sanctioning, is ineffective.



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

Rationale Writing



45 min

TASK -

- * Break into pairs
- * Compare & provide constructive feedback on individual drafts
- * Collaboratively construct a rough draft of **DECISION** rationale



30 min

Rationale Writing

DEBRIEFING



45 min

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:

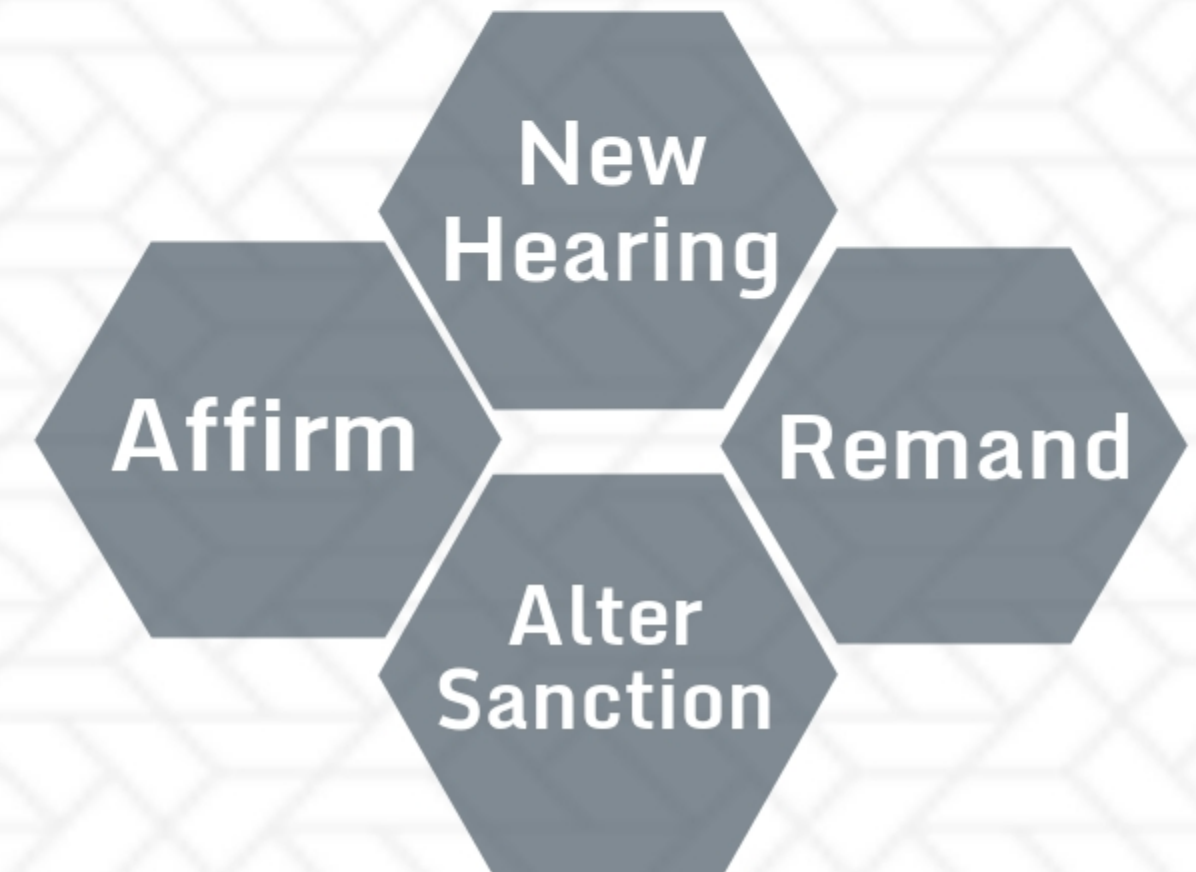
Process Review

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.

Questions? Comments? Concerns?



A decorative border of watercolor flowers and leaves in shades of yellow, pink, and green surrounds the central text.

thank
you

Contact Me



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