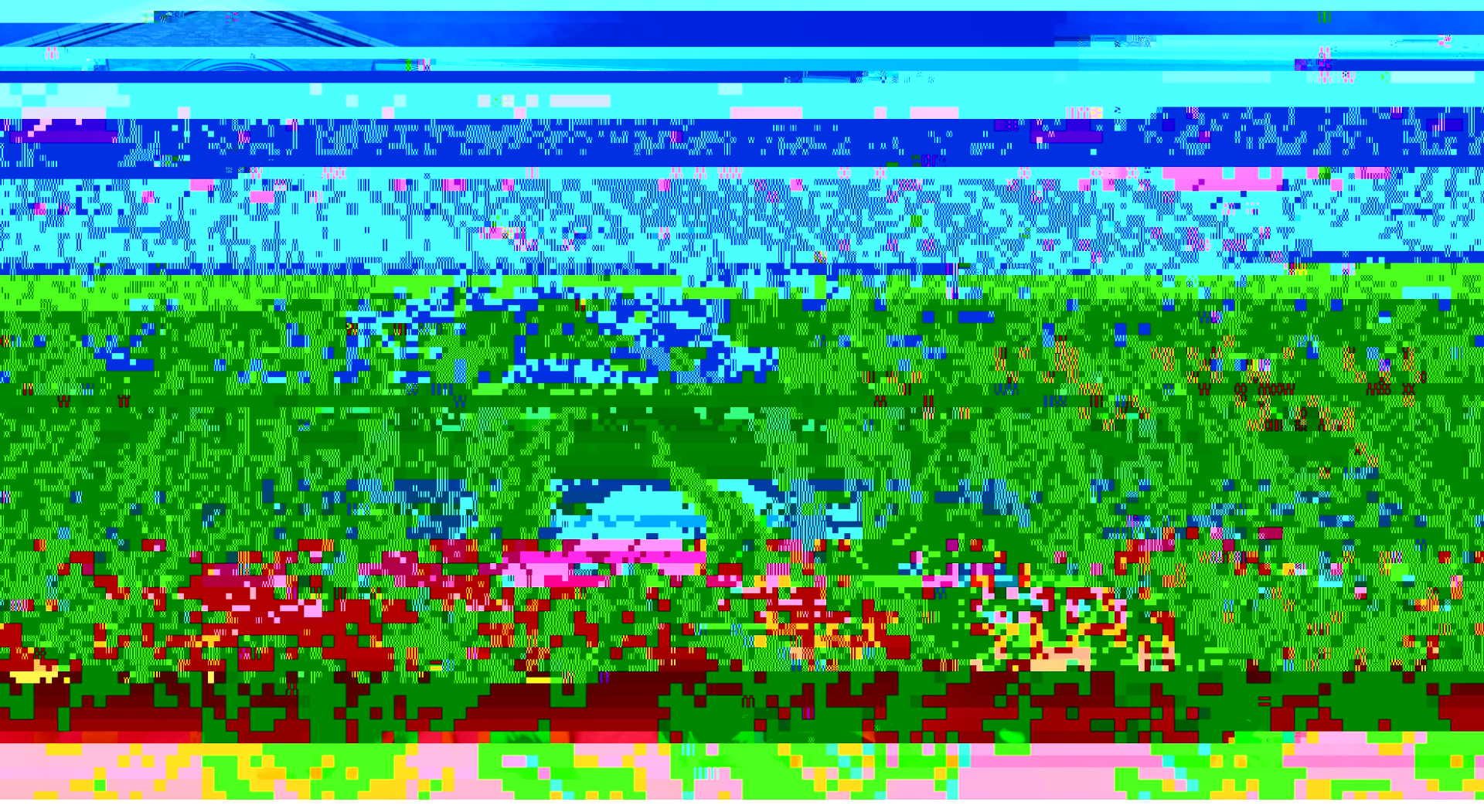


# Title IX

## Conduct Panel Training





# Training Areas of Focus

## Training Goals:

- Understand legal changes

- Understand distinctions from the regular conduct panel process



Title IX requires (20 USC § 1681)

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied



Additional guidance documents provided by the DOE to help explain regs

Key guidance:



## Prohibited Title IX conduct:

Sexual Harassment

Sexual Assault

Dating Violence

Domestic Violence

Stalking

## Must occur:

On campus

Off campus where TCU has substantial control over

respondent



# Big Picture Considerations

Sexual harassment definition

Required investigations

Live hearing

Informal resolutions

Preponderance of the evidence standard

Formal complaint initiation



## Sexual Harassment (§ 106.44(a)):

Unwelcome conduct that a reasonable person determines is so severe, pervasive, and objectively offensive that it effectively denies a student or

activity.

**Quid pro quo**

some benefit in exchange for unwelcomed sexual conduct

Sexual assault

Dating violence

Stalking



## Education Program or Activity (§ 106.44(a)):

Locations, events, or circumstances over which TCU exercised substantial control over both the respondent and the context in which the sexual harassment occurs

Also includes buildings owned or controlled by a student organization officially recognized by TCU



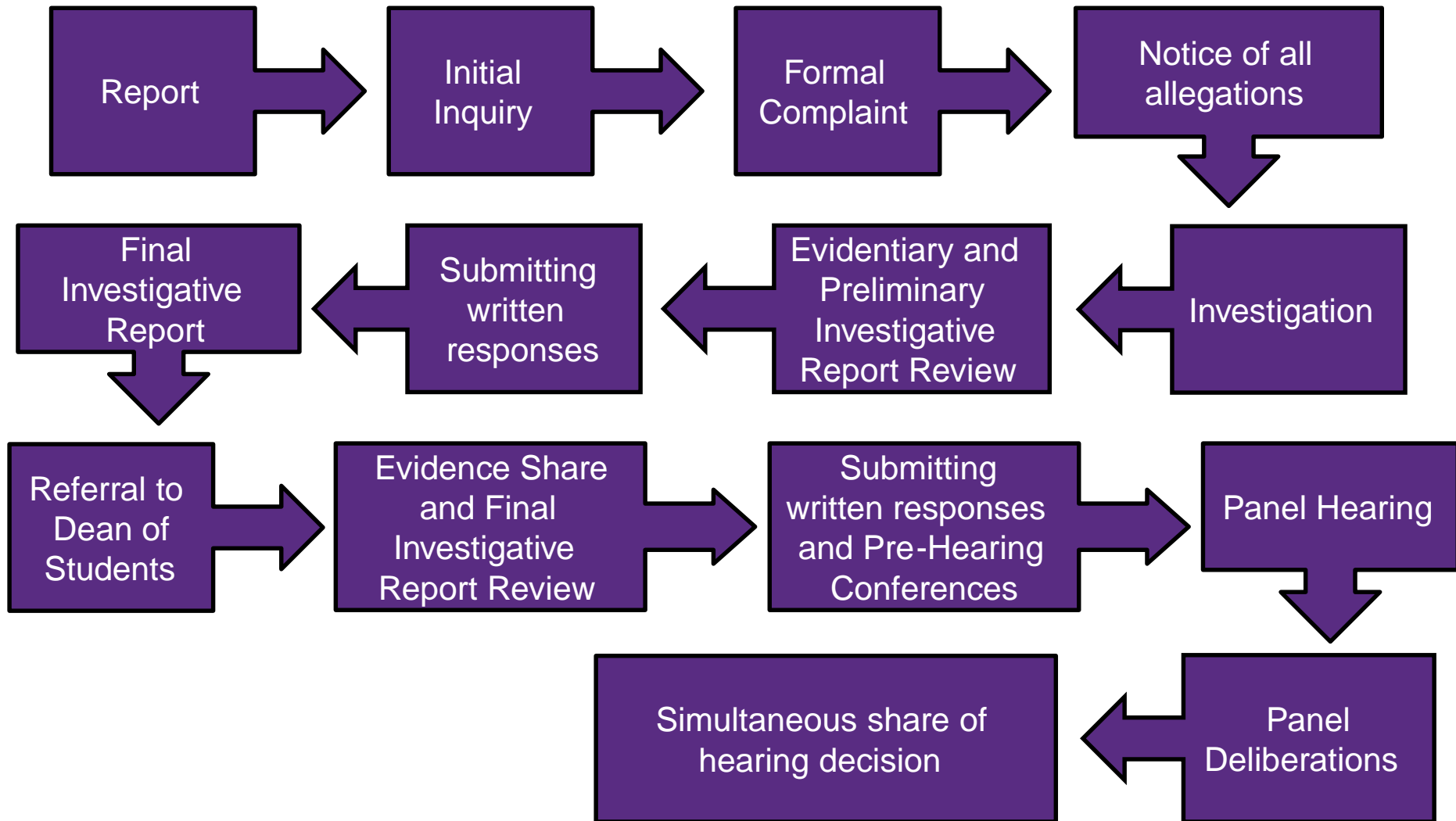


# Key Definitions

Relevant:



# Resolution Process Overview







# Title IX Hearing Panel Highlights

## Flow of the hearing

Resolution of party evidentiary responses/concerns

Opening statements

Direct and cross examination of parties

Direct and cross examination of witnesses

Closing statements

Parties and advisors excused

Panel deliberation





# Title IX Hearing Panel Topics

## Relevancy

-examination and other

(34 C.F.R. § 106.45(b)(6)(i))

Panel Chair relevancy determination required for every question

Panel Chair must provide rationale

All relevant questions are permissible during cross-examination



# Title IX Hearing Panel Topics

## Relevancy determination considerations

Does it help determine if an allegation is more likely to be true than not true?

This is not a matter of legal, evidentiary standards

Must include inculpatory and exculpatory evidence

Evidence of prior or subsequent misconduct is not prohibited



# Title IX Hearing Panel Topics

## Irrelevant information

Information which is protected by a legally recognized privilege, unless waived (34 C.F.R. § 106.45(b)(1)(x))

Treatment records of a party, unless voluntarily waived in writing (34 C.F.R. § 106.45(b)(5)(i))





## Irrelevant information (cont.)

### Complainant

BUT

permitted if (34 C.F.R. § 106.45(b)(6)(i)):

Offered to prove someone else committed the alleged conduct





# Title IX Hearing Panel Topics

## Role of advisors

Conduct cross examination of opposing party and of witnesses

Parties can choose their own advisor

TCU required to provide an advisor at no cost to party

Can be an attorney

Advisor will be assigned to a party if they attend hearing alone

Can challenge relevancy determinations by Panel Chair



# Title IX Hearing Panel Topics

## Absent party

From pre-hearing evidentiary review process

From the hearing

Absent witness

No inference regarding responsibility permitted

C.F.R. § 106.45(b)(6)(i))

Role of an advisor when their party is absent from the hearing

Neither the party nor their advisor appear at the hearing



## Making a determination

Presume respondent is not responsible

Keep an open mind

Consider relevant evidence only

Focus on evidence credibility and weight

Ensure no bias or prejudice

Reasonable inferences permissible

Utilize the preponderance of the evidence standard

Evidence, not impact



# Title IX Hearing Panel Topics

## Written hearing decision

- Clear and unambiguous

- Tell the story of the case

- Neutral tone

- Clear party references

- Simultaneous sharing



# Title IX Hearing Panel Topics

Written deliberation report must include (34 C.F.R. § 106.45(b)(7)(ii)):

- Identification of the allegations

- Description of procedural steps in case

- Panel conclusions regarding the applicability of TCU Code of Conduct to the case facts

- Determination of responsibility for each allegation with rationale

- Imposed outcomes (sanctions)

- Whether remedies will be provided



# Title IX Hearing Panel Topics

Written deliberation report must include  
(34 C.F.R. § 106.45(b)(7)(ii)) (cont.):

Factual findings that support responsibility  
determination and all panel conclusions

Panel excluded information with rationale

Appeal procedures and bases



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Questions?