

OVERVIEW OF TODAY

- Introductions
- Mock Hearing #1
- Overview of Intake Meeting
- Overview of Investigation Process
- Technology
- Overview of Hearing Process
 - Hearing preparation
 - During hearing
 - After hearing
- Relevance
- Cross Examination
- Mock Hearing #2



INTRODUCTIONS

- Share Name, Title & Office
- Why did you become an advisor?
- What makes you feel supported?



TITLE IX TEAM

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- 410-617-5646

Monica Wojtanowski

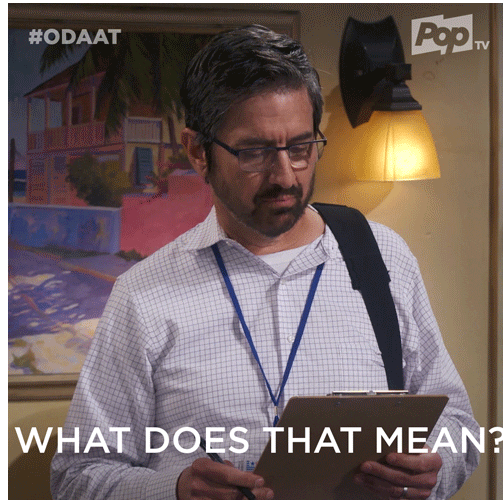
- Deputy Title IX Coordinator for Employees
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Deputy Title IX Coordinator for Students

- Vacant



COMMON TERMS



Complainant = reporting individual/ victim/
injured party

Respondent = Responding party/ accused/
“alleged perpetrator”

Parties – refers collectively to Complainants
and Respondents

Witness- individual who provides evidence;
could be character, expert, or fact

COMMON TERMS



Investigator- person(s) authorized by Recipient to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report

Hearing panel- refers to those who have decision-making and sanctioning authority within the University's hearing process for students

Title IX Coordinator or deputy- official designated by the University to ensure compliance with Title IX and the University's Title IX program.



WHO IS THE ADVISOR?

- Any individuals (up to 2) who assist a party through the formal and informal processes related to sexual misconduct matters
- May be chosen by a party or appointed by the University
- May be an attorney, but does not need to be
- Can be a parent, friend, mentor, criminal defense attorney or faculty, etc.
- No particular advisor qualifications

3 POSSIBLE WAYS TO SELECT ADVISORS



Independent advisor(s) chosen
by the party



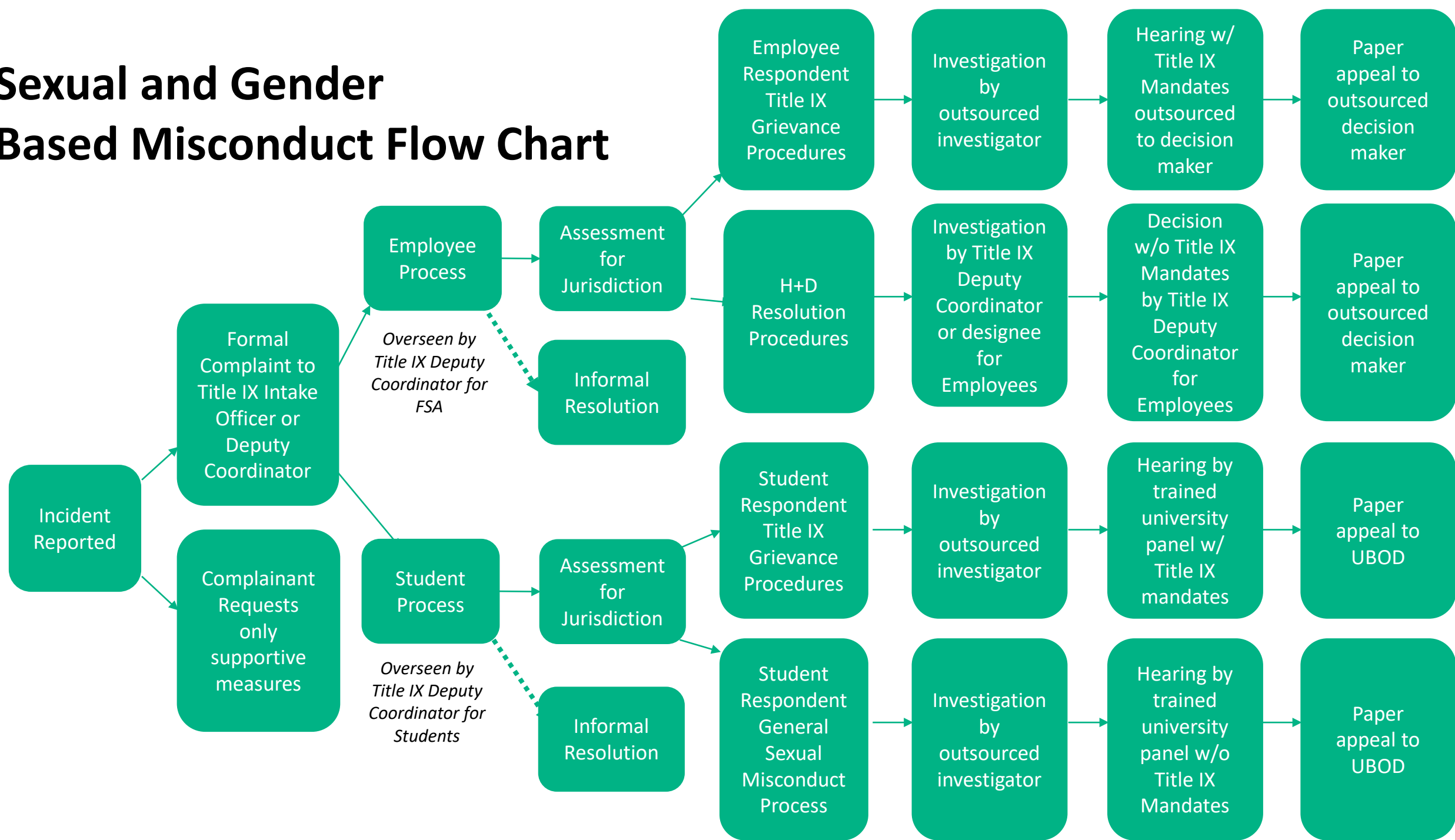
Advisor(s) selected by a party from a
trained pool at the University

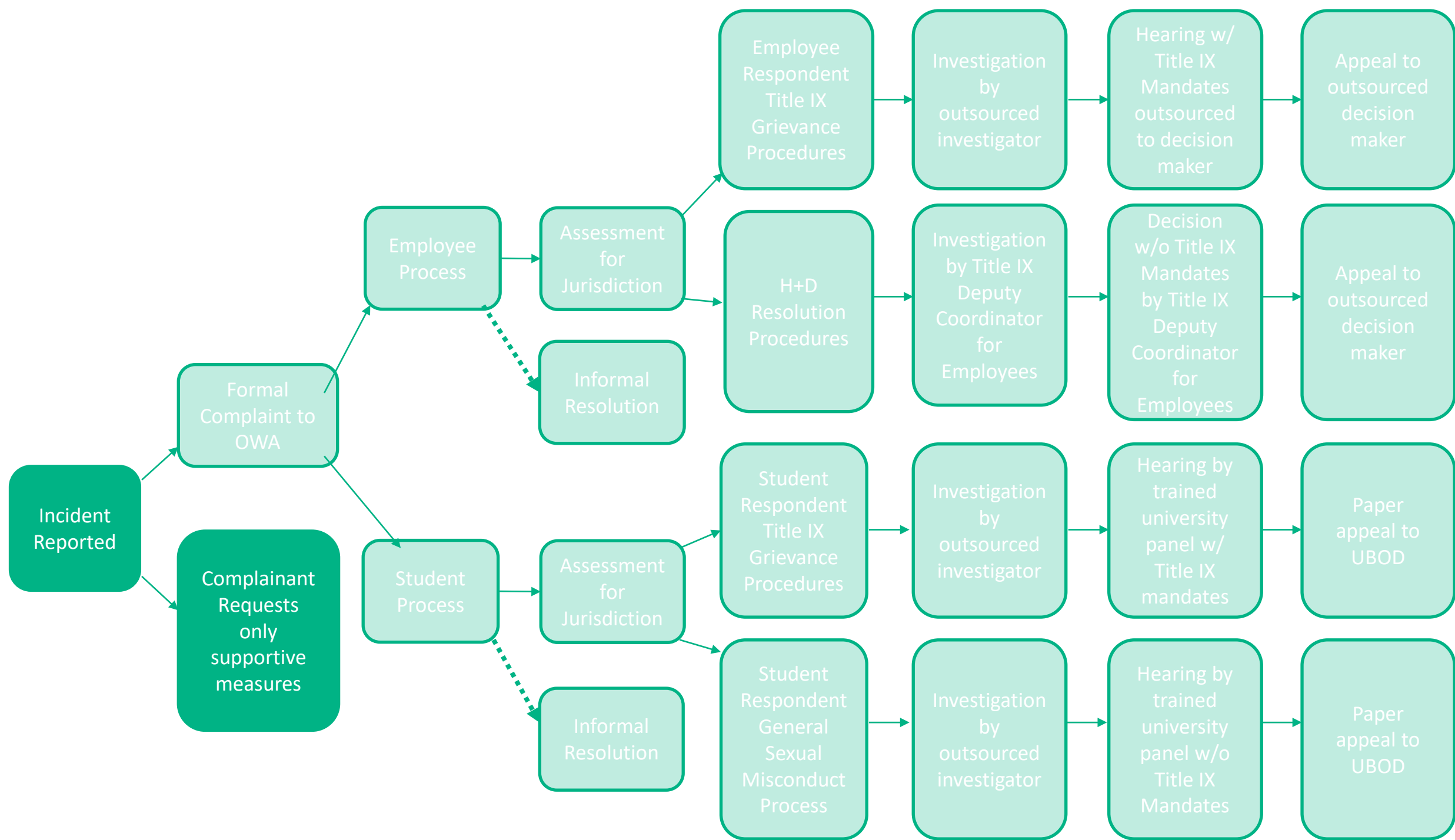


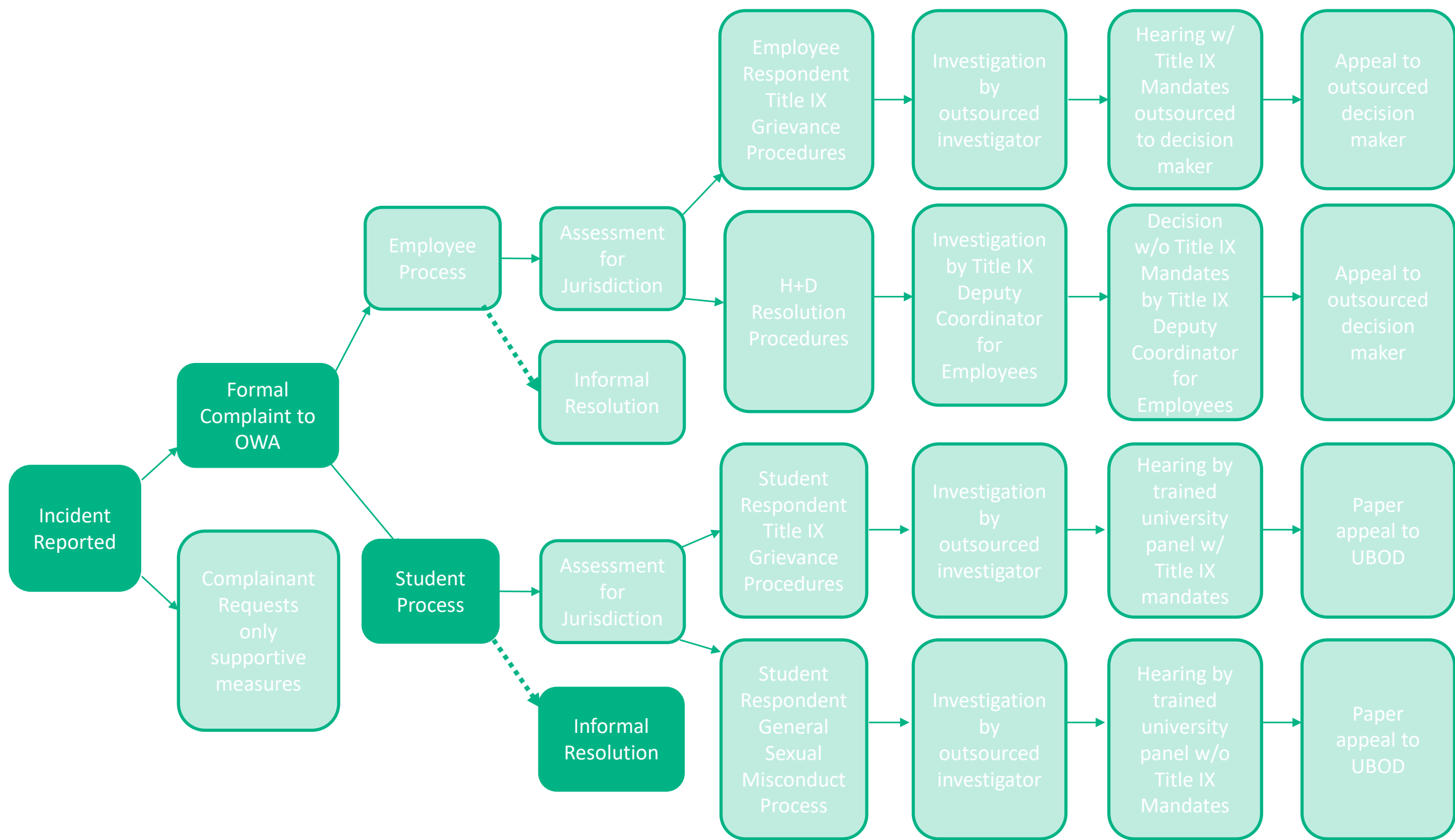
Trained advisor(s) appointed from the
institutional pool and chosen by the
University (Cross-Examination only)

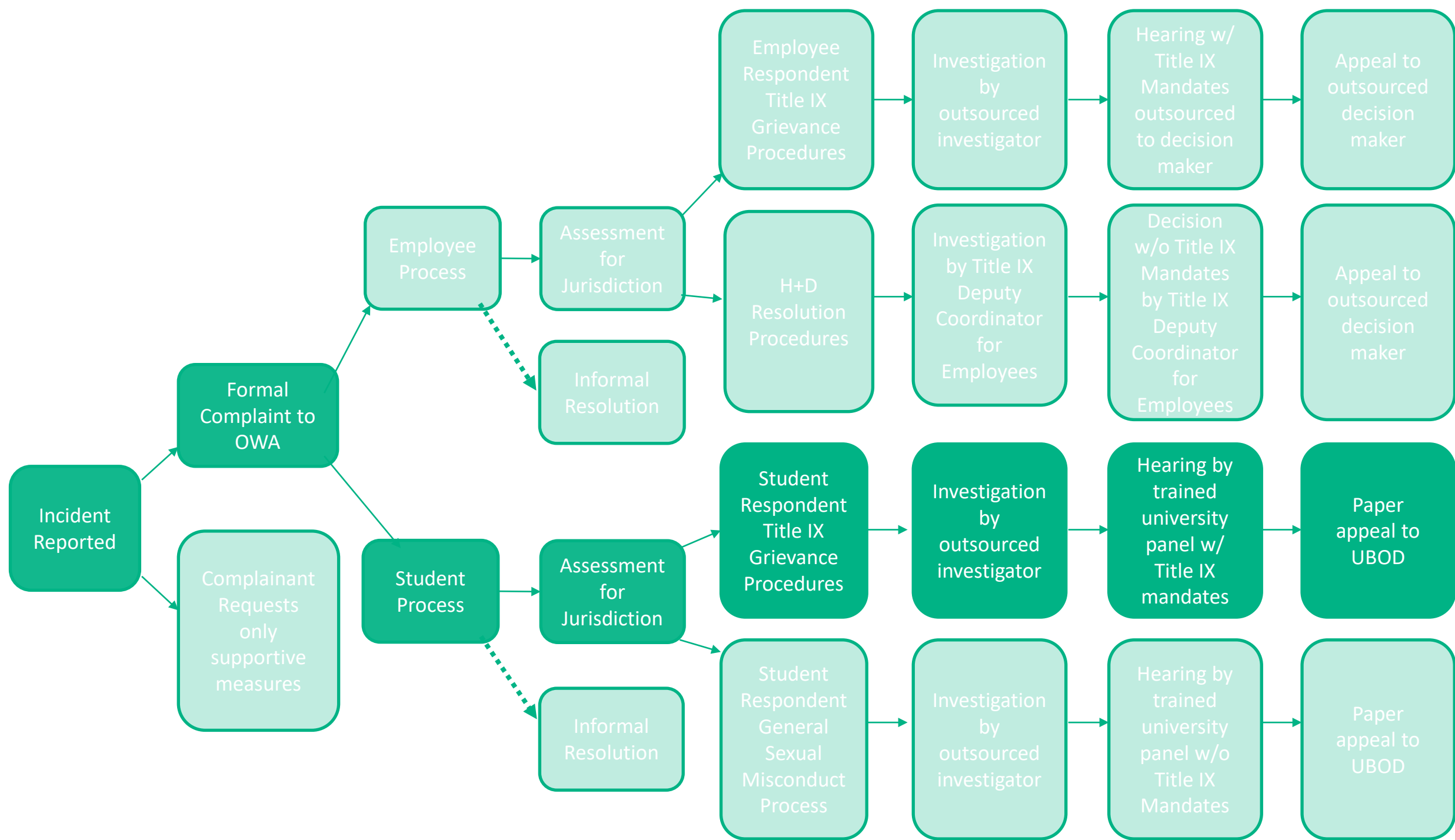


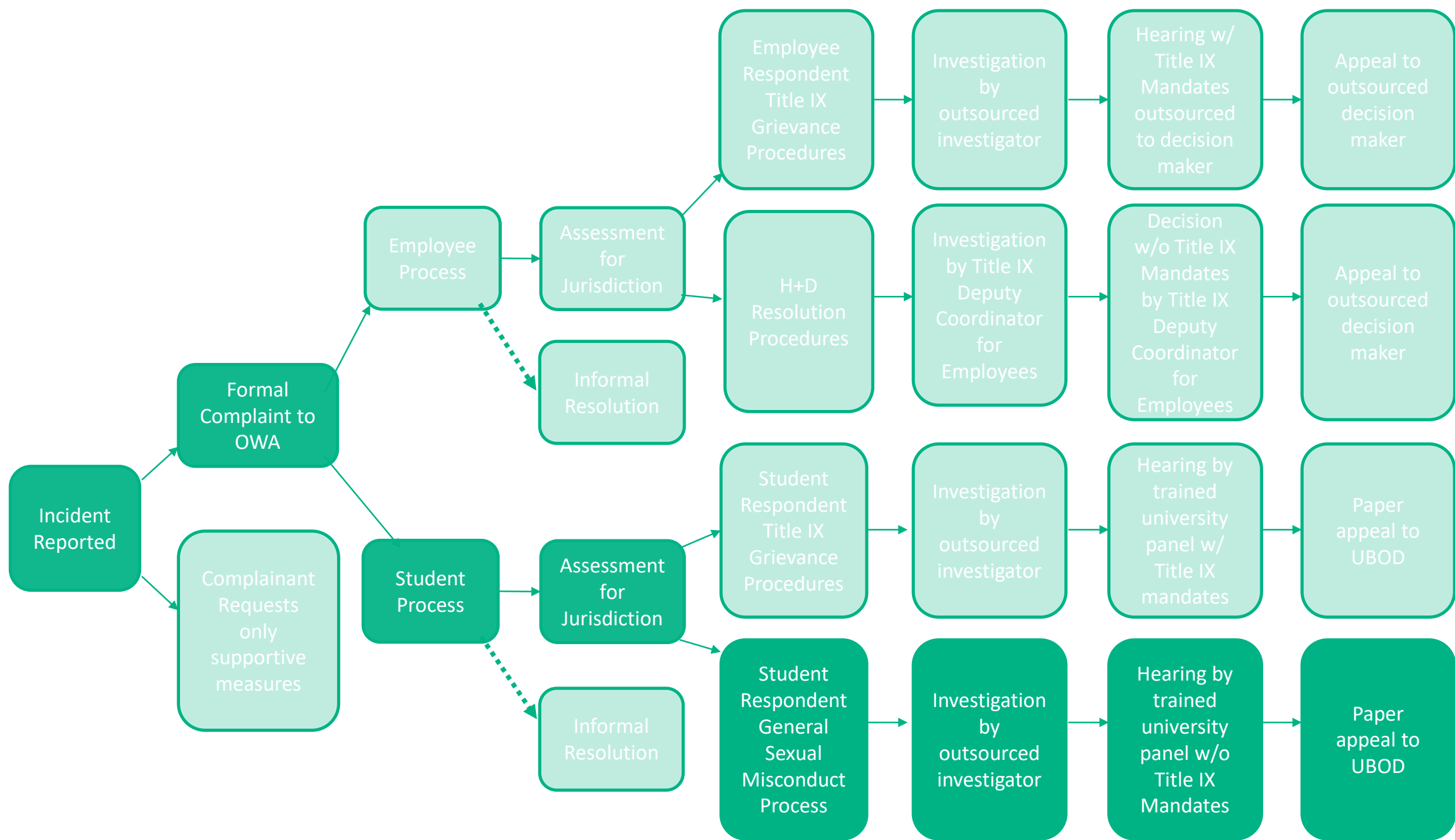
Sexual and Gender Based Misconduct Flow Chart











Incident Reported

Formal Complaint to OWA

Complainant Requests only supportive measures

Employee Process

Student Process

Assessment for Jurisdiction

Informal Resolution

Assessment for Jurisdiction

Informal Resolution

Employee Respondent Title IX Grievance Procedures

H+D Resolution Procedures

Student Respondent Title IX Grievance Procedures

Student Respondent General Sexual Misconduct Process

Investigation by outsourced investigator

Investigation by Title IX Deputy Coordinator for Employees

Investigation by outsourced investigator

Investigation by outsourced investigator

Hearing w/ Title IX Mandates outsourced to decision maker

Decision w/o Title IX Mandates by Title IX Deputy Coordinator for Employees

Hearing by trained university panel w/ Title IX mandates

Hearing by trained university panel w/o Title IX Mandates

Appeal to outsourced decision maker

Appeal to outsourced decision maker

Paper appeal to UBOD

Paper appeal to UBOD

ROLE OF ADVISORS PREP FOR INTAKE MEETING

Know the Title IX and related policies and procedures, including definitions of sexual harassment, etc.

Know initial options of reporting

- Report
- Formal complaint
 - Informal resolution
 - Formal resolution

Share role of Advisor – explain keeping information private, not confidential

Encourage party to be honest and truthful

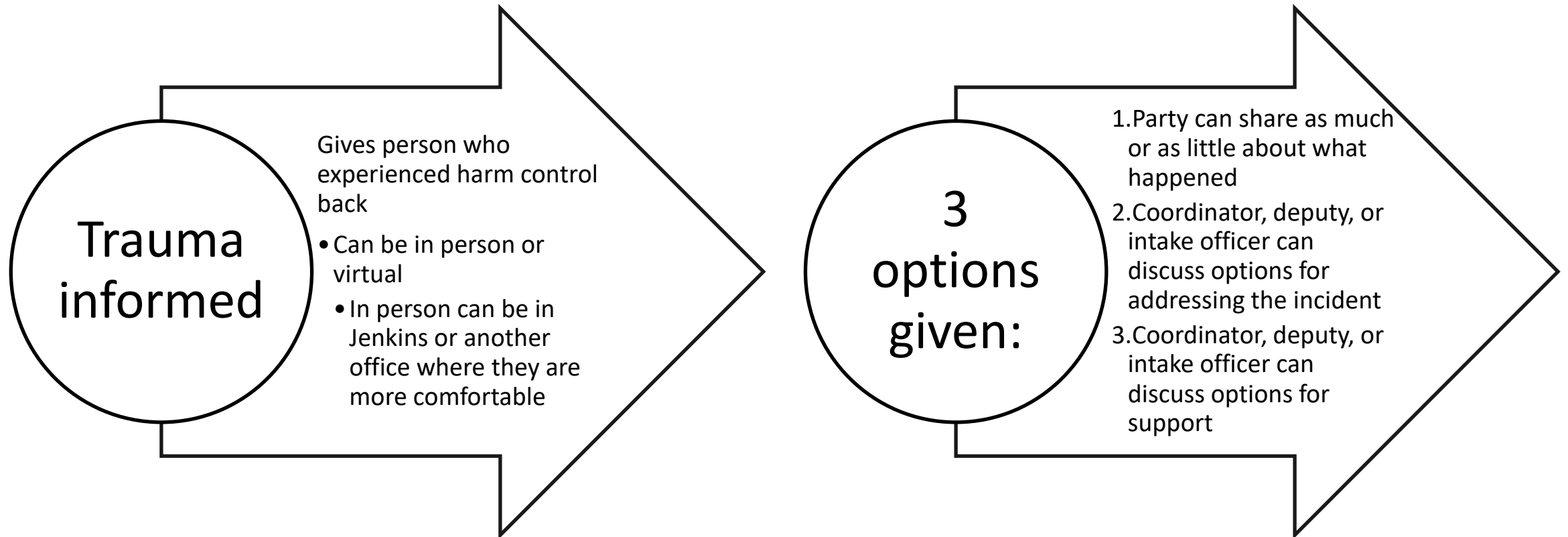
Remind about amnesty policy

Consider supportive measures including academic support, no contact orders, leave of absences etc.

Retaliation against any party, witness or any other individual associated with the parties is strictly prohibited.

Ask party how they would like you to assist during meeting

OVERVIEW OF INTAKE MEETING



FORMAL COMPLAINT FILING

- Formal complaints must be filed with Title IX Coordinator
- Must include
 - identify of parties (if known);
 - conduct alleged;
 - date, time and location of alleged incident (if known);
 - Brief description of the incident.
- Signed by Complainant
- Notice will be given to Respondent



DISMISSAL OF FORMAL COMPLAINTS



Must Dismiss:

- Behavior does not constitute sexual harassment
- Did not occur in educational program or activity
- Not in the United States



May Dismiss:

- Complainant withdraws formal complaint
- Respondent no longer enrolled/employed
- Insufficient evidence



Dismissed case may be adjudicated under the Sexual and Gender-Based Misconduct Policy
*dismissal can be appealed

CONSOLIDATION OF COMPLAINTS

Multiple
Respondents

More than one
complaint against
one or more
respondents

Cross
complaint





EMERGENCY REMOVAL

Individualized safety and risk analysis

Immediate threat to physical harm

Notice and Opportunity to challenge

- Complainant may be permitted to participate in meeting
- Process outlined in community standards

INFORMAL RESOLUTION



Option after Formal Complaint is filed

Voluntary by both parties

Any party may withdraw from informal and continue with formal

Focused on restoratively repairing harm

- Facilitated by trained administrator
- RJ conference
- Shuttle mediation

Not allowed for employee/student matters

Not permitted for sexual assault cases

OVERVIEW OF INVESTIGATION PROCESS

Title IX Coordinator coordinates investigation in collaboration with investigator



Notice of Investigation and Allegation

Provided to both parties with information about the process

- Charges
- Rights and responsibilities
- Typically in person



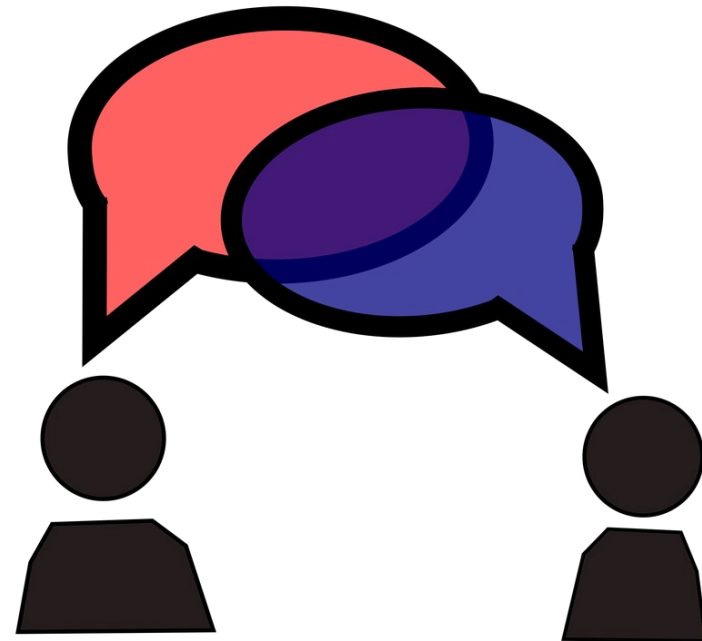
Email introduction to investigator



Party will coordinate interview, usually over Zoom, with investigator

PREPARING FOR INVESTIGATIVE INTERVIEW

- Meet with the party to review the interview process
- Assist organizing all evidence
 - Text messages, videos, pictures, etc.
- Create a document with names, contact information, and relation to case for all witnesses
- Help party think through what and how they want to share their story
- Talk through what support looks like before, during, and after interview
 - Consider academic supportive measures
- Help party think through what if any questions to submit for investigator to ask other party or witnesses
- During meeting with investigator(s), Advisors may not speak for party



OVERVIEW OF INVESTIGATION PROCESS



- Preliminary Investigation Draft Report* will be provided to both Parties and Advisors for review and comment for 10 days
 - Note errors
 - Note any questions for the investigator(s)
 - Suggest additional witnesses or evidence that should be obtained
 - Argue for or against any evidence or summaries
 - Raise any issues of bias or conflict of interest that must be addressed
 - Raise concerns about the evidence that is contained in the report or that there is evidence that was not considered directly relevant by the Investigator(s) and should be in the report.
- After all comments are reviewed and addressed by Investigator(s), then the Investigation Summary Report is issued and sent to the Parties, Advisors and Office of Student Conduct for a hearing before a hearing panel or to external Decision-Makers for Employee cases

*Party and advisor must sign agreement regarding evidence



TECHNOLOGY OVERVIEW



Regulations require parties to be seen and heard when answering questions in Title IX cases

- Regulations do not require parties to watch or listen
- We will utilize Zoom or similar platforms to conduct the hearings
- Parties not answering questions may be asked to turn off their cameras and mute themselves
- Parties and their advisors will be able to connect via phone or breakout room
- A practice session may be conducted in the pre-hearing conference



Regulations do not apply to non-Title IX cases

- We are only required for parties to be heard
- This may be done through phone and/or a combination of zoom and breakout rooms



OVERVIEW OF HEARING

- Pre-hearing conference
- Day of hearing preparation
- Agenda for hearing
- Cross examination
- Hearing outcome



PRE-HEARING CONFERENCE



Pre-hearing Conference scheduled

- After investigation report has been finalized and before scheduled hearing
- Optional, but encouraged

Prior to or during conference, student will be asked to complete a panel member strike list

Student should submit questions or topics about which they wish ask at the hearing 2 business days prior to conference

- Chair will rule on relevance and document ruling
- Does not preclude questions from being asked, especially based on testimony provided

Chair may consider arguments for relevance and document ruling

Chair will conduct a technology overview

Chair will review the hearing agenda

Chair will review advisor roles and responsibilities

PRE-HEARING PREPARATION



Review documents with advisee



Suggest drafting an opening and closing statement



Discuss style and role during a hearing

- Note taking
- What do they need?
- How will you know they need a break?



Discuss when, where, and how you will meet on the day of the hearing



Assist in preparing cross examination questions for other parties



Assist in drafting or reviewing an impact statement (complainant) or mitigation statement (respondent)



Be aware of own concerns regarding case



Ask party to remind important witnesses of their participation





PRE-HEARING PREPARATION



- Parties may have up to 2 advisors
 - Discuss roles with party and other advisor
 - Only one advisor can conduct cross examination



DAY OF HEARING PREPARATION



Check in with advisee at least 30 minutes prior to hearing



Chair will meet with party and advisor immediately prior to the hearing and review the agenda and any additional details



Plan to bring water and snacks



If using electronics, ensure it is charged or bring charger



Ensure party has access to relevant documents (printed or electronic)



Ensure party has a method to take notes



Ask party to remind important witnesses of their participation



ROLE DURING HEARING



Listen to and take notes about what is being said during hearing



Pay attention to non-verbals of your advisee for suggesting breaks



Assist advisee in understanding questions if a disconnect is noticed



Cross-examination during Title IX process or suggested questions during non-Title IX process



Remind advisee of items they've previously mentioned, but did not raise during hearing



Advisor cannot address the panel or other parties except for Cross Examination during Title IX hearing or in private meetings



HEARING AGENDA



Introduction

- Panel, parties, and advisors introduce themselves
- Rights and responsibilities are reviewed
- Charges are read and respondent pleads responsible or not responsible

Investigator will present a summary of the investigation and be questioned by panel

- Cross examinations by parties' advisor (Title IX hearing)
- Suggested questions by parties (non-Title IX hearing)

Respondent opening statement and questions by panel

- Cross examination by complainant advisor (Title IX hearing)
- Suggested questions by parties (non-Title IX hearing)

Complainant opening statement and questions by panel

- Cross examination by respondent advisor (Title IX Hearing)
- Suggested questions by parties (non-Title IX hearing)

Witness testimony and question by panel

- Cross examination by parties' advisors (Title IX hearing)
- Suggested questions by parties (non-Title IX hearing)

Closing statement by complainant

Closing statement by respondent

Closed deliberation

RELEVANCE

- Chair determines relevance
- Relevance can be defined as directly related to the issue and helps prove (inculpatory) or disprove (exculpatory) the allegation
- The following is irrelevant:
 - Sexual predisposition or prior sexual behavior
 - Unless such questions and evidence about the complainant's prior sexual behavior are offered to prove:
 - That someone other than the respondent committed the conduct alleged by the complainant
 - Consent when the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent
 - Privileged information
 - Medical Records
 - Duplicative or abusive questions



CROSS EXAMINATION

 Advisors will have the opportunity to cross examine the investigator, other party, and all witnesses during Title IX hearings

 Parties have the option to participate or not in cross examination

- Evidence from report still relied upon
- May affect credibility

 Advisor will ask question verbally and live

 Chair will determine and state if the question is relevant or ask the advisor to rephrase

 If the question is relevant, the person will be asked to answer

 If the question is not relevant, the person will be asked not to answer

CROSS EXAMINATION



- Purpose is to highlight points that support your advisee's position and challenge points that do not support your advisee's position.
- When questioning a witness who is not favorable, you may want to ask leading or closed-ended questions
 - Closed-ended questions help to pin down a point, but don't allow a party to expand
 - Didn't you say "you don't remember exactly what was said"?
- When questioning a witness who is favorable, you may want to ask open ended questions
 - Open ended questions allow a party to expand, but can be challenging to pin down a point
 - May not be helpful if a party seems chatty and willing to share even damaging information
 - What was your reaction when they told you about the assault?
- You don't have to ask any questions; you could simply ask "Is there any information contained in your statement in the investigation report that you wish to elaborate on, clarify, or correct?"

Adapted from ATIXA Guide to Effective Advising in Formal Title IX Proceedings



CROSS-EXAMINATION



Appointed advisor

- Ask the questions the party suggests
- Consult with Title IX Coordinator if conflicts arise



Selected advisor

- Work with the party to come up with questions
- Help the party understand relevance
- Help the party phrase questions appropriately
- Help the party understand the process and point of cross-examination



QUESTIONS FROM PARTIES DURING NON-TITLE IX HEARINGS

- After each party provides testimony, the chair will allow the other party to suggest questions
- The chair can ask the questions as suggested, decline to ask them, or rephrase them to get the same information.
- Questions should be submitted in advance
- Repetitive or blaming questions will not be asked
- Leading and abusive questions will be rephrased



ADVISING AFTER THE HEARING

- Ask them what they need in the moment (i.e. break, food, etc.)
 - Consider academic supports
- Reflect on the hearing or plan a time to reflection on the hearing
- Remind them of the timelines (10 business days for the outcome)



OUTCOME

Normally within 10 business days of hearing

Be prepared for any outcome and to manage response to any outcome

Outcome is usually sent virtually with option for “in person” meeting

Outcome letter will include:

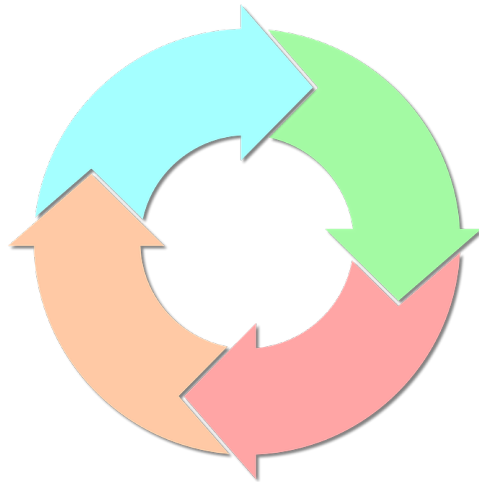
- Whether the respondent was responsible or not for each charge
- A detailed rationale for the findings
- Sanctions for the outcome, if any
- A detailed rationale for the sanctions, if any
- A list of procedural steps taken from formal complaint to determination
- Whether complainant received remedies
- Procedures for appeal

Chair will review outcome and answer questions

Assist advisee in asking questions about the outcome and the appeal



APPEAL PROCESS



Parties may appeal dismissal or hearing outcome

Grounds for appeals

- The party alleges that there were procedural irregularities that affected the outcome of the matter;
- The party alleges new evidence that was not reasonably available when the determination of responsibility or dismissal of the complaint was made that could affect the outcome of the matter;
- The party alleges the Title IX Coordinator or Deputies, investigators, or hearing panel had a conflict of interest or bias for or against the complainant(s) or respondent(s) generally, or the individual complainant or respondent that affected the outcome of the matter.
- The party alleges that the sanctions imposed are grossly disproportionate to the findings of responsibility.

DISMISSAL APPEAL PROCESS



- Appealed to Dean of Students (student cases) or Title IX coordinator (employee cases)
- Recipient will appoint an independent decision maker to decide the appeal
- Outcome is given to parties



HEARING OUTCOME APPEAL PROCESS

Paper appeal process

Appeals from both parties will be reviewed by same panel

Appeal must be submitted within 5 business days of the outcome to the Dean of Students

No appeal submitted means the party waived their right to appeal

Burden is on the party to provide support to appeal

Dean of Students will determine if the burden has been met

Other party will be given opportunity to submit a written response to the appeal

Appeals will be decided by panel selected from UBOD (modified when warranted)

POSSIBLE OUTCOMES OF APPEAL



- Affirm the original decision
- Affirm the original decision of responsibility for some or all charges and change the sanction
 - Sanction may be reduced or increased
- Reverse the original decision of responsibility for some or all charges and change the sanction
 - Sanction may be reduced or increased
- Remand to original hearing panel
 - Cases of new evidence
- Outcome will be communicated in writing within 5 days of the panel meeting

PRACTICE



LOYOLA
UNIVERSITY MARYLAND

MORE THAN READY. LOYOLA READY.

WRAP UP

- ❖ If you don't know, please reach out to Title IX
- ❖ It's okay if you decline the advisor role at any point in the process. Just let us know.
- ❖ Supporting the parties helps the process
- ❖ You are not required to act as an "attorney."
- ❖ Thank you!

Questions or Concerns

