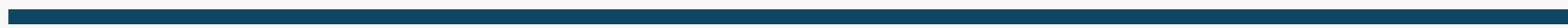
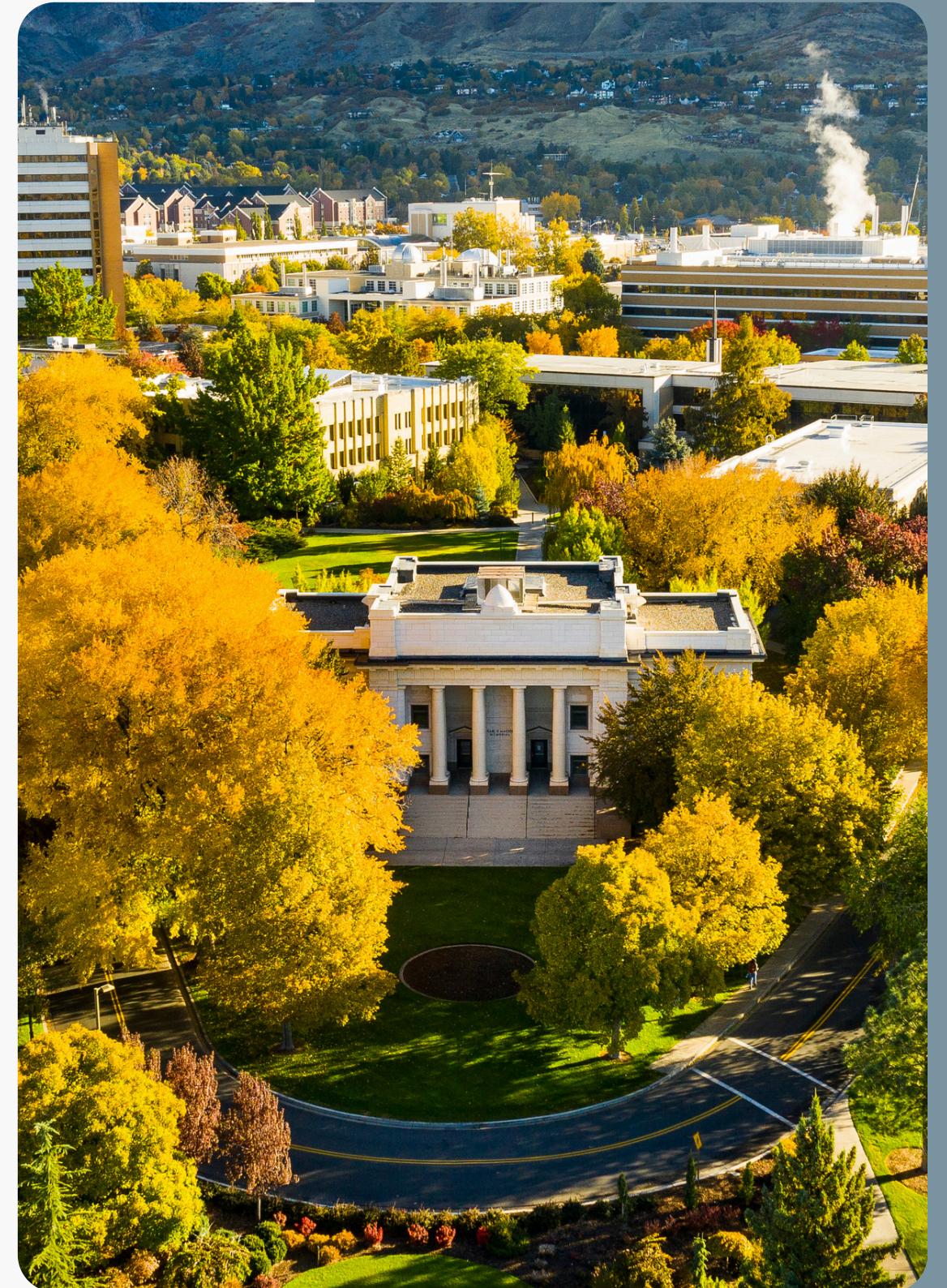


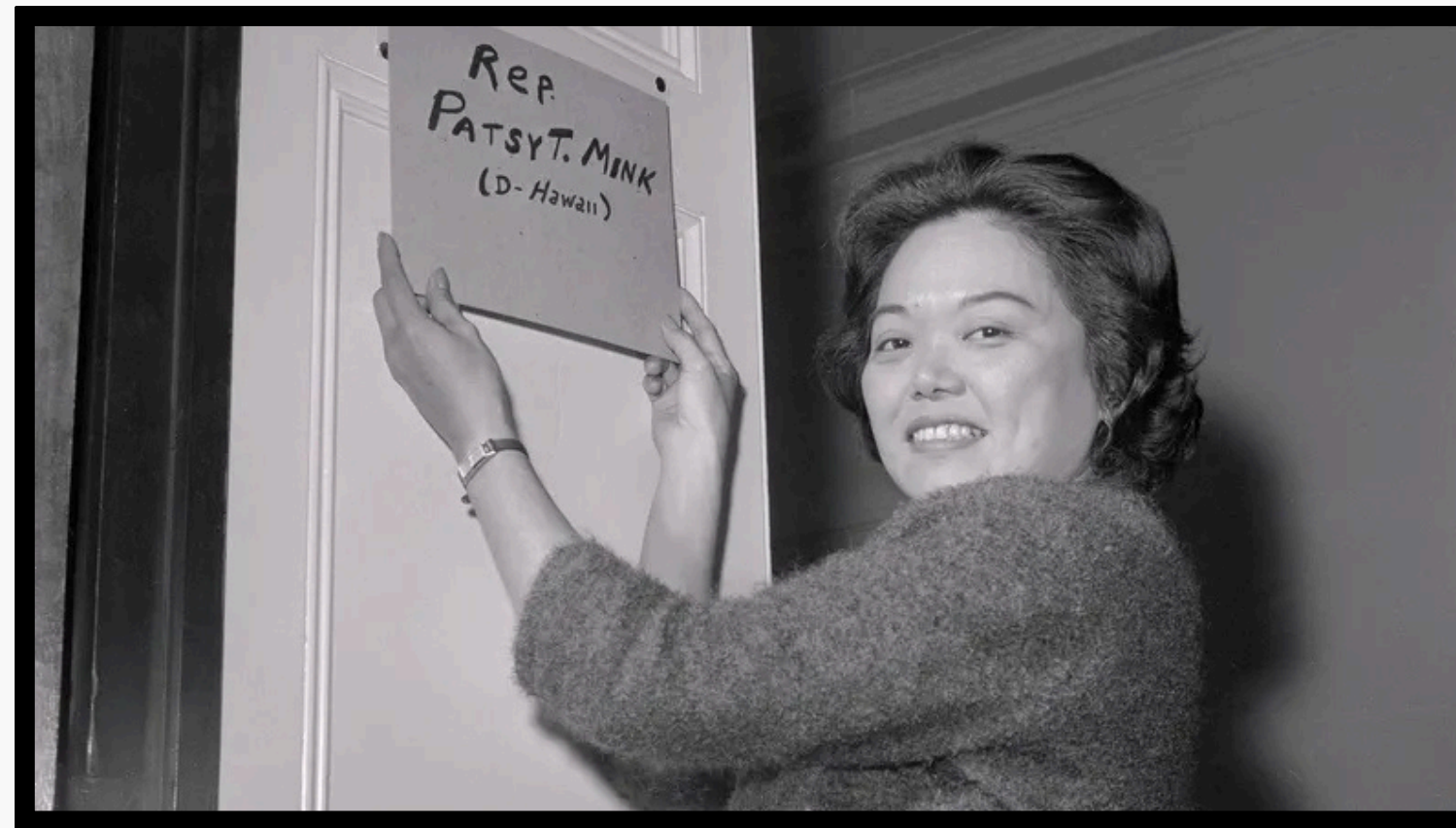
DECISION MAKER TRAINING

BYU Title IX



- This training is being provided in accordance with BYU's Sexual Harassment Policy and the 2020 amendments to the Code of Federal Regulations for Title IX
- This training is being provided to Title IX decision makers who are designated by the university to make determinations regarding responsibility in sexual harassment cases
- As required by policy and federal regulation, this training will be made available online





Pictured:

- Jeanne Clery, Lehigh student who was raped and murdered. Her parents advocated for the passage of the Clery Act which mandates training and crime documentation
- Representative Patsy Takemoto Mink, Co-author of Title IX
- Representative Shirley Chisholm of New York, center left, and the Title IX advocate Margaret Dunkle, leading a 1975 celebration to mark the third anniversary of the bill's passage

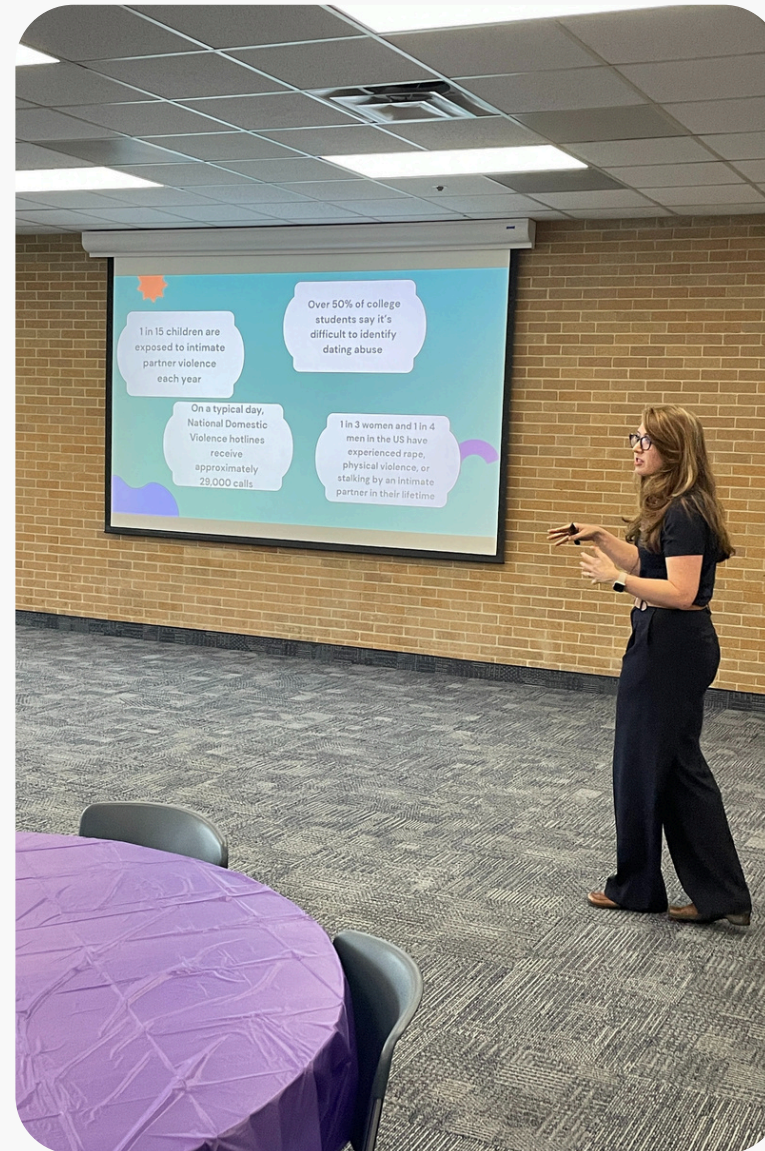




**Brigham Young University is
committed to promoting and maintaining a
safe and respectful environment for the
campus community**



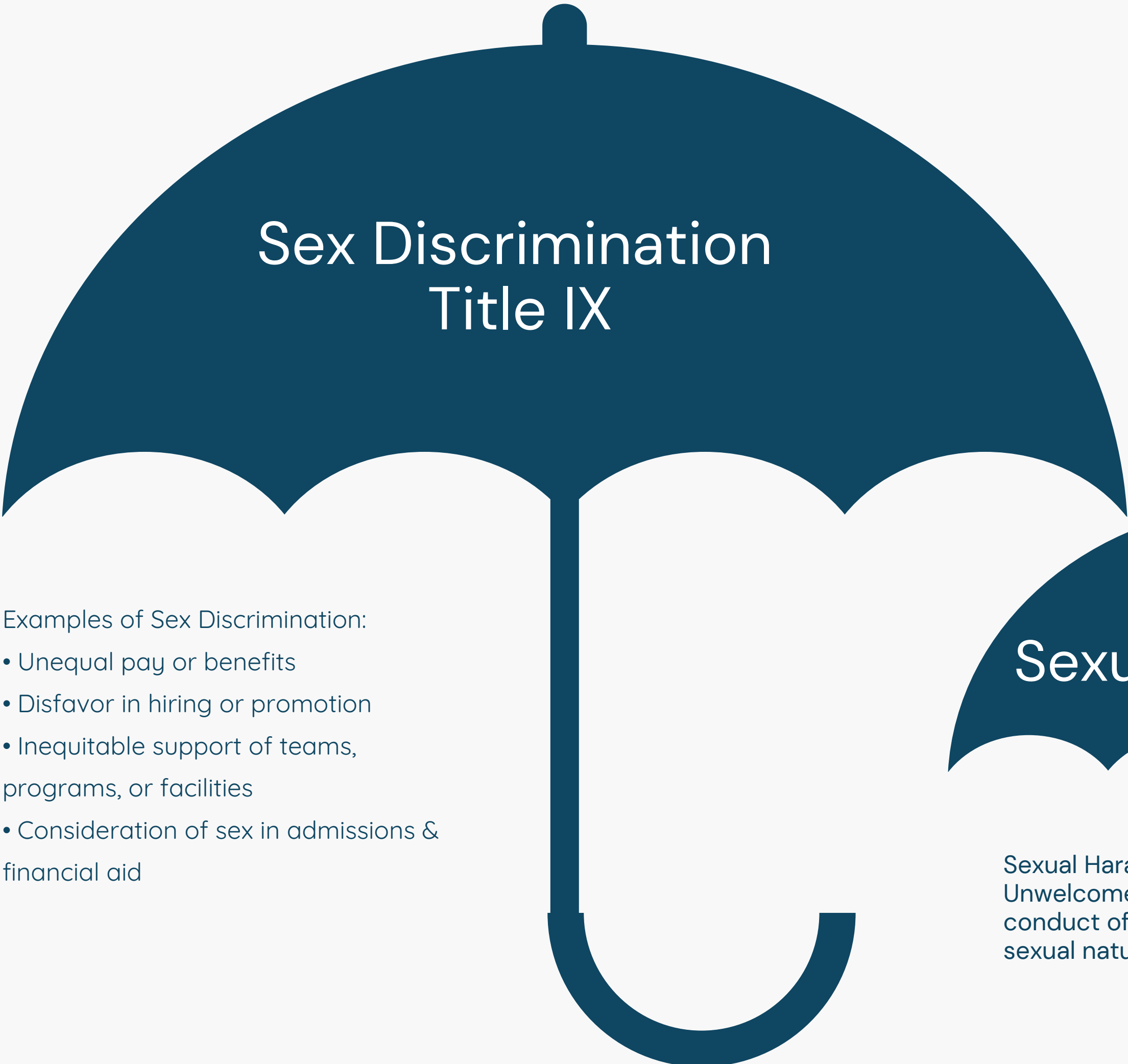
The Title IX Office is dedicated to promoting equitable treatment on the basis of sex by coordinating the university's efforts to prevent and respond to sex discrimination and sexual misconduct.





DEFINING SEXUAL HARASSMENT





Sex Discrimination Title IX

Examples of Sex Discrimination:

- Unequal pay or benefits
- Disfavor in hiring or promotion
- Inequitable support of teams, programs, or facilities
- Consideration of sex in admissions & financial aid



Sexual Harassment

Sexual Harassment:
Unwelcome
conduct of a
sexual nature

Sexual Violence:
Physical sexual acts
against a person's
will

BYU's Sexual Harassment Policy Prohibits:

- Sex discrimination
 - Pregnancy
- Sexual Harassment
- Sexual assault/violence
- Domestic violence
- Dating violence
- Stalking



Involved Parties



Complainant

- An individual alleged to be the victim of sexual harassment
-

Respondent

- An individual alleged to be responsible for sexual harassment

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

A BYU employee or faculty member conditions the provision of an aid, benefit, or service of BYU on an individual's participation in unwelcome sexual conduct

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to BYU's Education Program or Activity

Sexual Assault, Dating Violence, Domestic Violence, or Stalking



SPOO/Hostile Environment

- Reasonable Person standard
- Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced
- Don’t conflate discomfort or being offended with the higher standard of sexual harassment. There is a high bar for meeting this definition



SPOO: Severe

- Physical conduct is more likely to be severe without need for repetition.
- Sexual assault and many dating/domestic violence incidents are almost always sufficiently severe.
- Other physical conduct that does not meet the 34 CFR 106.30 definitions for sexual assault or dating/domestic violence may also rise to the level of “severe”
- Consider the circumstances (e.g., ability for Complainant to escape the harassment)
- Assess whether accompanied by threats or violence
- Assess whether there was a degree of embarrassment or humiliation



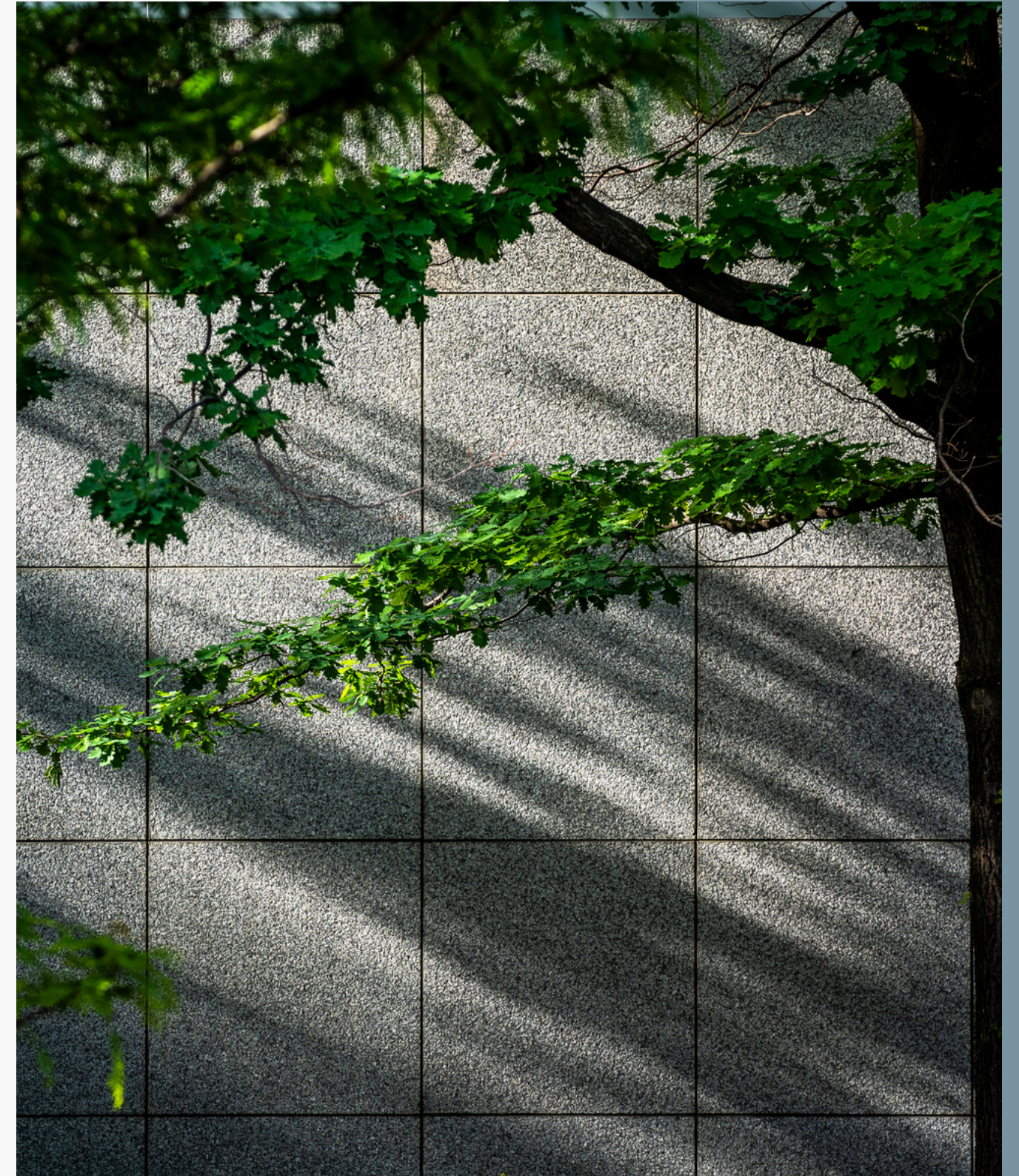
SPOO: Pervasive

- Widespread
- Openly practiced; occurring in public spaces
- Well-known among students or employees—reputation of a department, person, etc.
- Frequency, intensity, and duration of the conduct
- Unreasonable interference with school or job
- Incidents occurring with regularity are more likely to be considered pervasive
- Consider the specific circumstances and facts



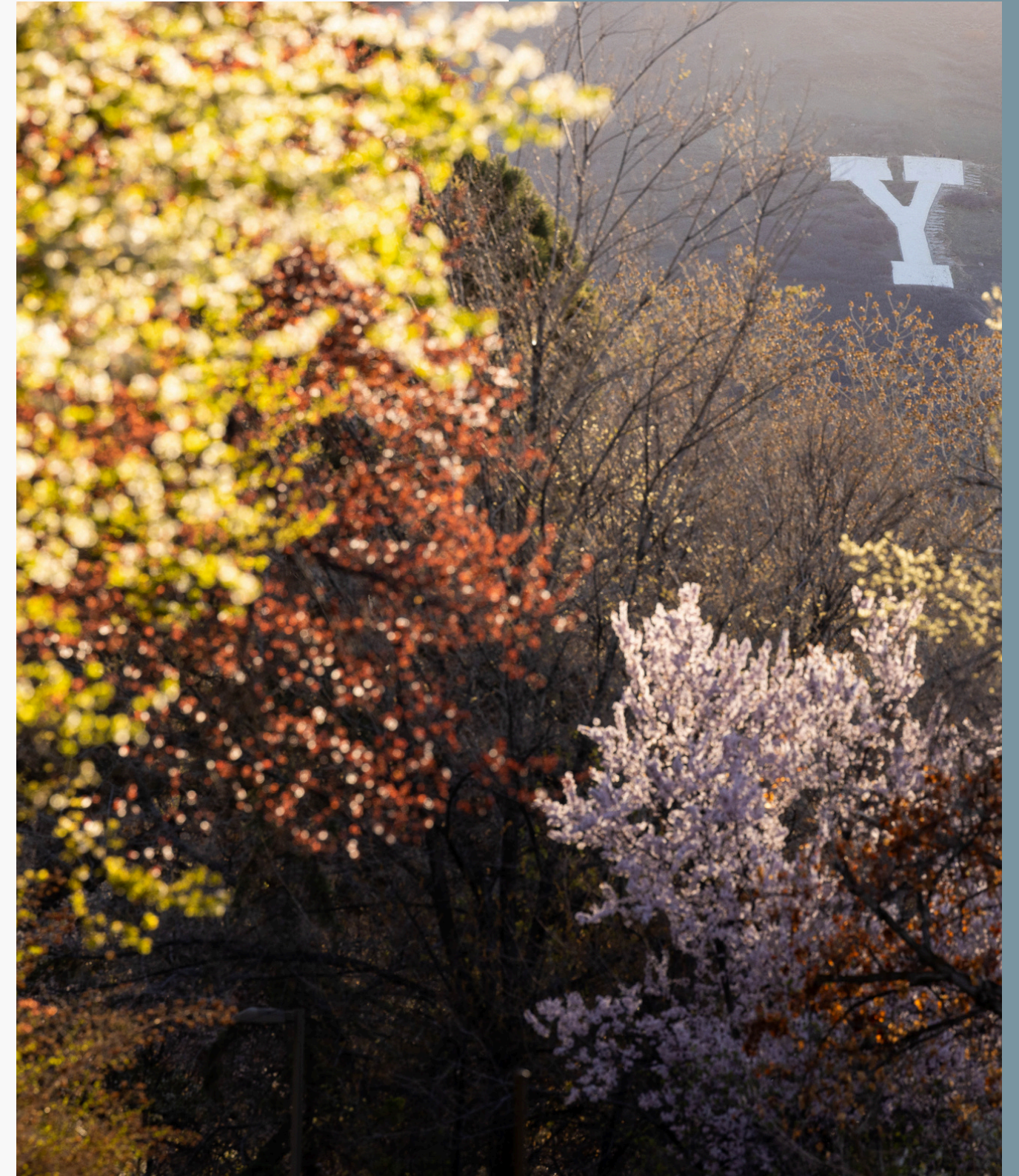
SPOO: Objectively Offensive

- Age and relationships of Complainant and Respondent
- Number of persons involved
- Frequency
- Severity
- Physically threatening
- Humiliating
- Intimidating
- Ridiculing
- Abusive



Conduct Examples

- Sexual comments, references, jokes
- Talking about your or someone else's sex life
- Whistling or catcalling
- Sending sexual language through electronic means
- Sexual gestures with hands or body movements
- Paying unwanted sexual attention to someone
- Touching a person's clothing, hair, any body parts





CONSENT





Consent means a voluntary agreement to engage in sexual activity and is determined by all the relevant facts and circumstances. An act is without consent of a Complainant under any of the following circumstances:

- the Complainant expresses lack of consent through words or conduct
- the Respondent overcomes the Complainant through the actual application of physical force or violence
- (other circumstances listed at <https://policy.byu.edu/view/sexual-harassment-policy>)



*THE SCOPE OF BYU'S
EDUCATION
PROGRAMMING AND
ACTIVITIES*





Education Program or Activity means all of a school's operations, and BYU's Education Program or Activity includes all locations, events, or circumstances over which the university exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurred.

BYU Sexual Harassment Policy (I. Definitions)





Behavior that occurred in the United States as part of a school's education program or activity

Typically:

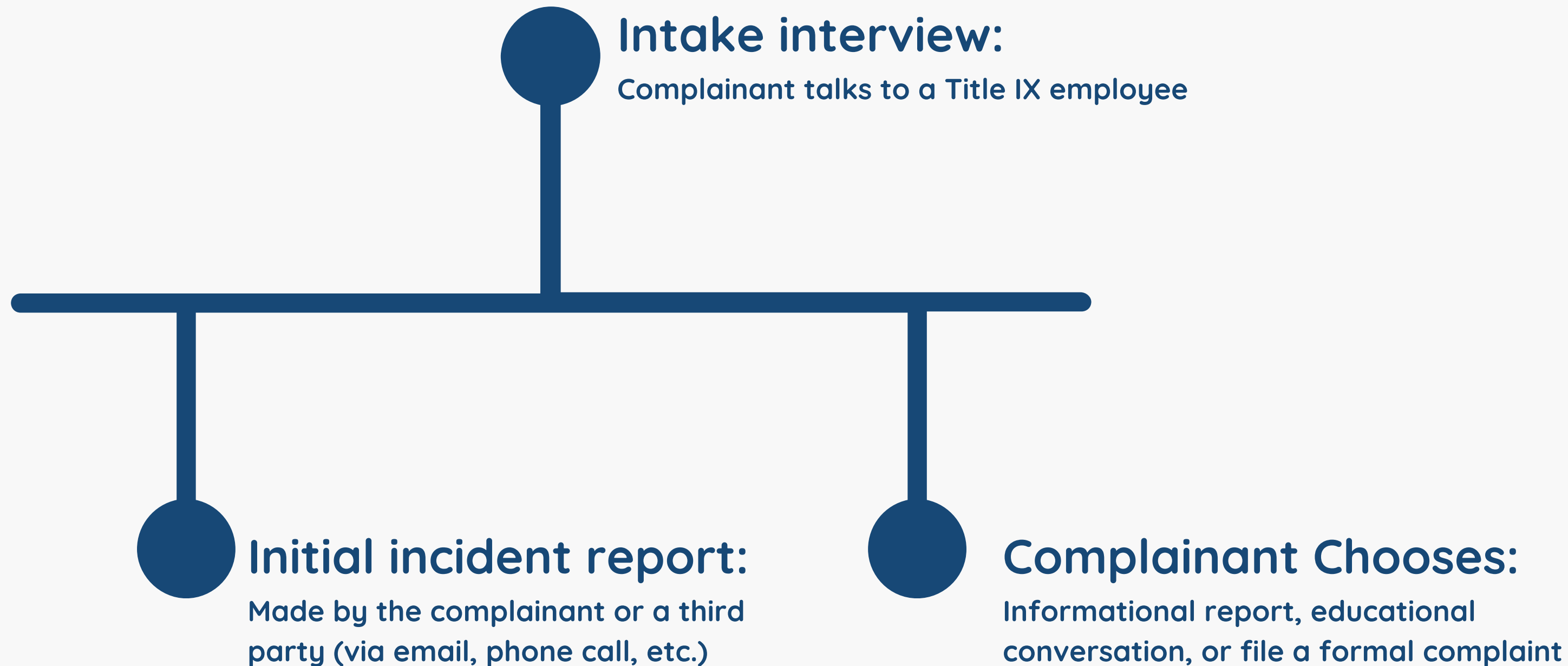
- BYU campus or campus-owned property...
- Where the respondent (alleged perpetrator) is affiliated with BYU...
- And the incident happened in a situation where
- BYU had substantial control



GRIEVANCE PROCEDURES



Intake Process



Supportive Measures

One of the main purposes of Title IX is to ensure that all individuals can enjoy access to BYU's educational programming. As part of that effort, our office can provide supportive measures designed to restore or preserve access to all educational programs and activities without unreasonably burdening the other party.

Supportive measures are meant to protect the safety of all parties and deter sexual harassment, and cannot be punitive towards any party.

Such measures may include, but are not limited to:

- Education on/referrals to Individual and Group Counseling through SASS, Dr. Scott Hosford for Respondents, and CAPS
- Letters to professors
- Mutual no-contact directives
- Extensions on deadlines
- Supporting withdraws and other academic questions
- Referrals to other resources based on needs/preferences





Educational Conversation

- Title IX Office may conduct a one-time educational conversation.



Alternative Resolution

- Instigated by formal complaint
- Not an admission of guilt
- Allows for an alternative process to resolution
- Very customizable



Investigation

- Formal Complaint
- Investigative process
- Determination made

Grievance Procedures

BYU utilizes two primary grievance procedures (Title IX and Non-Title IX) to respond to sexual harassment, depending on the circumstances of the allegations

If the alleged incident(s) of sexual harassment occurred 1) against a person in the United States who 2) is participating in or attempting to participate in a university program or activity, the Title IX grievance procedures will be followed

If a claim of sexual violence is alleged against a BYU employee or student, but the alleged incident(s) did not occur in the United States or did not occur in a university education program or activity, the Non-Title IX grievance procedures will be followed

Formal Complaints that do not fall in either of these categories will be evaluated to determine which university procedures to follow

Title IX

Option to resolve with an alternative resolution (unless harassment is employee on student)

Investigations (information gathering) done by trained personnel in the Title IX Office

Parties may submit written response to Investigative Report

Decision makers review written record and conduct a live hearing with witnesses, questioning, and cross examination

Panel of Decision Makers provides written determination of responsibility.

Non-Title IX

Option to resolve with an alternative resolution (unless harassment is employee on student)

Investigations (information gathering) done by trained personnel in the Title IX Office

Parties may submit written response to Preliminary Investigative Report

Decision makers review written record and may question investigator (no live hearing)

Panel of Decision Makers provides written determination of responsibility

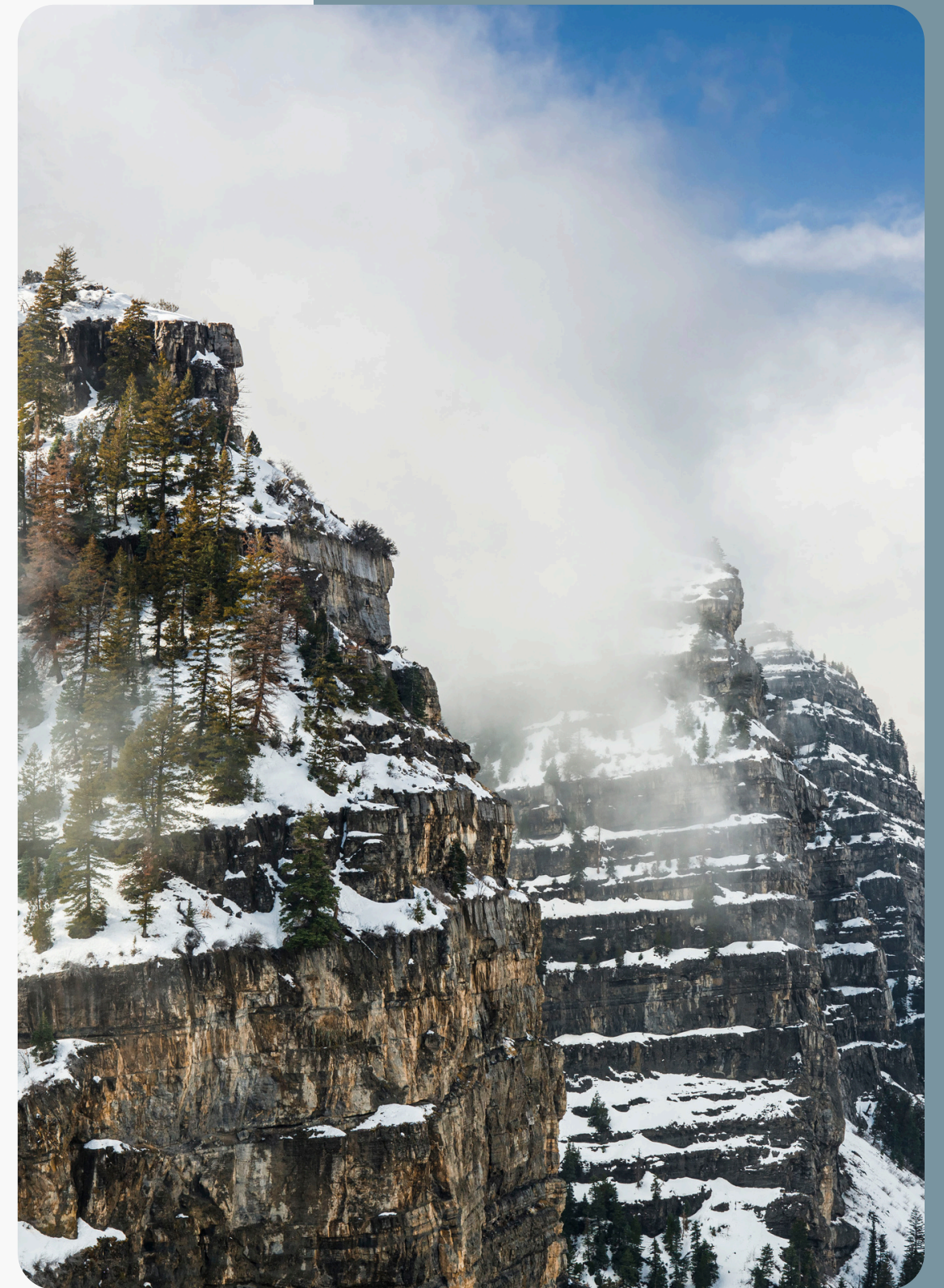


INVESTIGATIONS



Investigations

- Both the complainant and the respondent are treated equitably, and the respondent is presumed innocent until proven otherwise
- Statements and evidence may be submitted by both parties
- All can have a support person with them during interviews and other meetings during the investigation process
- The evidentiary standard used during investigations is a preponderance of the evidence (more likely than not)
- Determinations of responsibility are not made until the conclusion of the investigative process, which is typically 60 days





ROLE OF THE TITLE IX DECISION MAKER





Prepare

- Understand the policy and fully review the case file prior to the hearing or panel meeting



Be Present

- Actively engage and be attentive during the live hearing or decision making panel
- Treat all involved parties with respect and dignity



Evaluate

- Evaluate the evidence in an unbiased way
- Adhere to BYU's policies and procedures

Values Clarification Exercise

Instructions: Individually please take a few minutes to rank these responsibilities of a Decisionmaker. “1” would be the most important responsibility, and “8” is your least important responsibility.

- Finding the truth
- Providing a just result
- Providing an educational process
- Making a safe community
- Upholding the institution’s policy
- Ensuring a fair process
- Protecting the institution from liability
- Punishing misconduct



DETERMINATIONS

REGARDING

RESPONSIBILITY



Determinations Regarding Responsibility

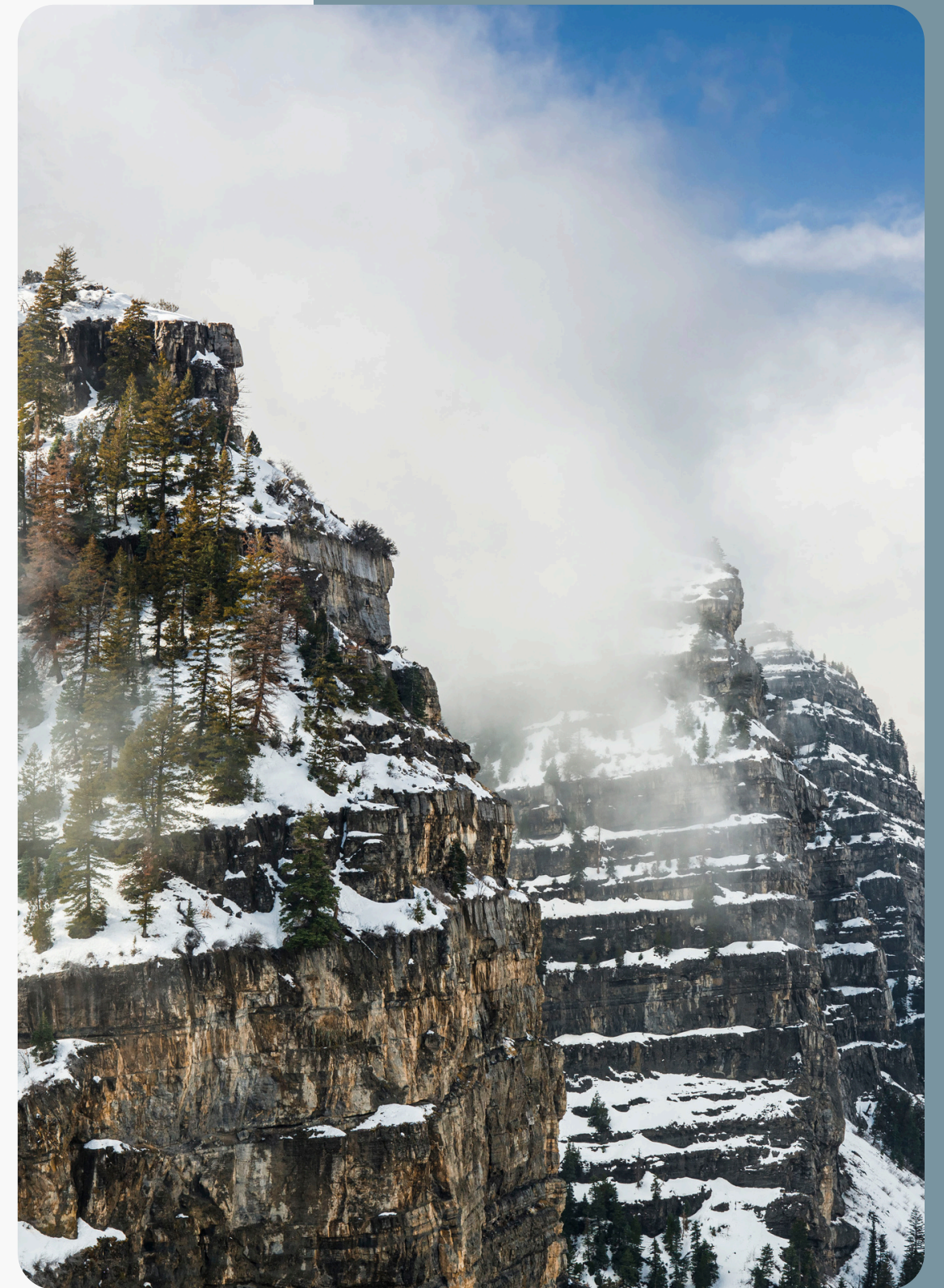
- In Title IX cases, determinations regarding responsibility of the allegations must be unanimous, they do not need to be unanimous for non-Title IX
- In Title IX cases, a Presiding Decision Maker will independently decide questions of relevance or other procedural questions during the live hearing
- Other points in the determination (sanctions, resolutions, etc.) will be determined by majority vote
- Either party unsatisfied with the determination/decision may appeal as outlined in policy
- The written determination will be issued within 10 business days of the hearing



Additional Notes

Determinations regarding responsibility are not intended to evaluate right and wrong, but rather to decide whether or not there has been a violation of the university's Sexual Misconduct Policy, proven by the designated preponderance of the evidence standard

Decisions must be impartial and fair (both the finding and the sanction) and directly related to and based upon the evidence





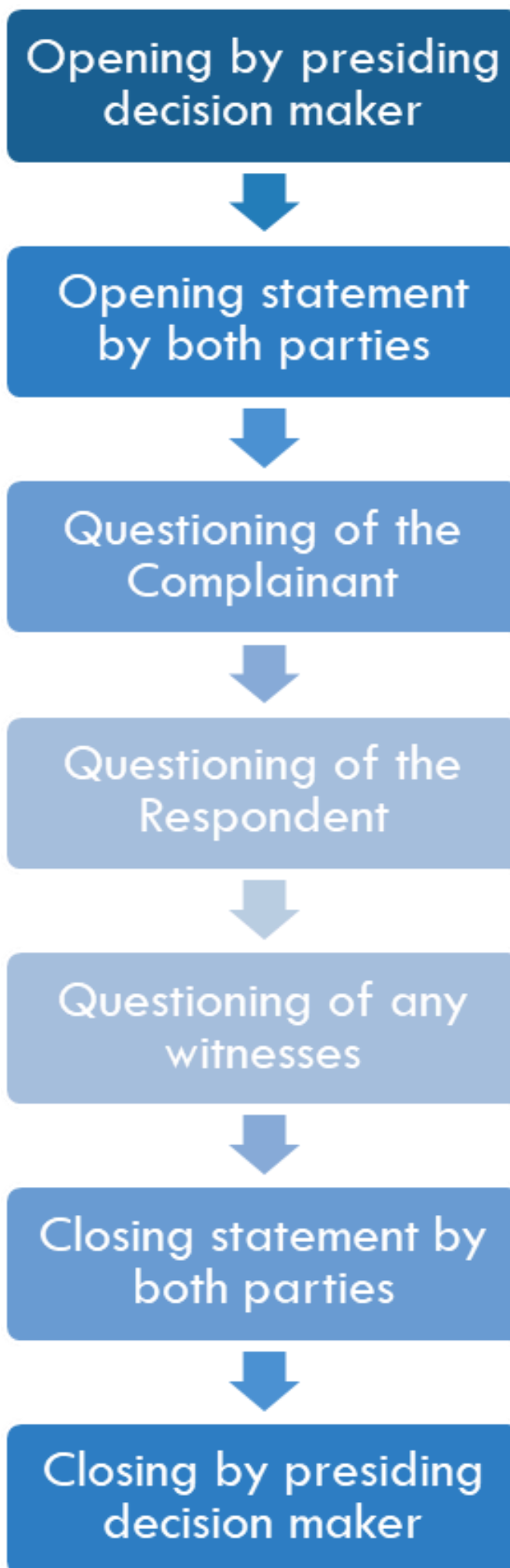
TITLE IX LIVE HEARINGS



Purpose of the Live Hearing

The purpose of the live hearing is to help the decision-makers evaluate and consider evidence on the following questions:

- Does a preponderance of the evidence show (is it more likely than not) that the prohibited conduct occurred as alleged?
- If so, does that conduct constitute a violation of BYU's Sexual Harassment Policy?
- If the policy was violated, what is the appropriate remedy to restore or preserve equal access to BYU's Education Program or Activity?



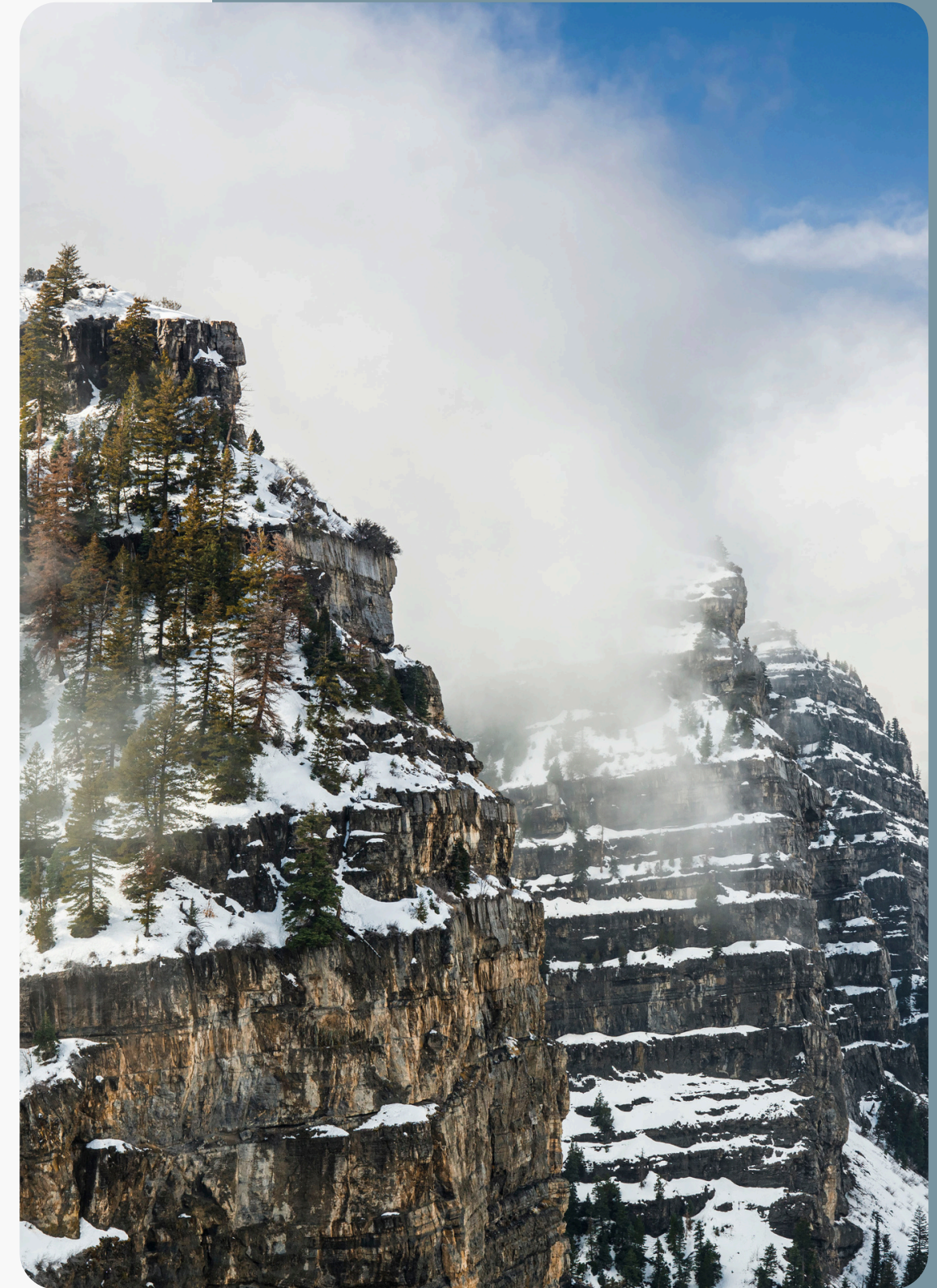
Standard Hearing Format

The Investigation Record will be available during the hearing and may be referred to during the hearing, including for purposes of cross-examination

Questioning of parties and witnesses will generally occur first by the hearing panel, then by the party's advisor, and then by the other party's advisor

Relevancy Determinations During a Live Hearing

- Only relevant questions may be asked of a Party or witness
- The Presiding Decision Maker will determine relevancy
- Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and may not be asked, unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent
- Legally privileged information is protected, regardless of relevancy





NON TITLE IX PANEL MEETINGS



Preparing for the Panel Meeting



Review the Sexual Harassment Policy
and corresponding Sexual
Harassment Grievance Procedures
(Non-Title IX Sexual Violence)



Review the investigative file, final
investigatory report, and any other
provided investigation materials

Prepare any questions you would like
to ask the investigator, if needed





ASSESSING CREDIBILITY



- **Corroboration:** Is there witness testimony (such as testimony by eye-witnesses, people who saw the person soon after the alleged incident(s); or people who discussed the incident(s) with the parties around the time that they occurred); or physical evidence (such as written documentation) that corroborates the party's testimony?
- **Consistency:** Is the person's testimony materially consistent over time? Is it consistent between interviews? With witnesses? With law enforcement? Etc.
- **Inherent Plausibility:** Is the testimony believable on its face? Does it make sense?
- **Motive to Falsify:** Did the person have a reason to lie?
- **Pattern Behavior/Past Record:** Does the Respondent have a history of similar behavior in the past?
- **Effect on the Complainant:** While not determinative, what is the effect of the incident(s) on the Complainant's behavior? How might a reasonable person react to the situation (Note that there is no "right way" to respond to an incident, but an adverse reaction by the Complainant immediately following an incident can bolster credibility).
- **Demeanor:** Did the person seem to be telling the truth or lying?



SERVING IMPARTIALLY IN THE TITLE IX PROCESS







Everyone involved in a Title IX hearing, including advisors and especially decision makers, must support an objective evaluation of the evidence



Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that actually affects the outcome of the proceeding



All advisors and decision makers should ensure they do not have a conflict of interest prior to participating (which may include a family, business, or personal relationship with any of the parties, witnesses, investigators, etc.)



Decision Makers Do Not:

Rely on sex stereotypes

Make credibility determinations based on the sex or gender of a party or witness

Make credibility determinations based on a person's role as Complainant or Respondent

Decision Makers Do:

Approach the investigation and live hearing with an open mind and without any preconceived notions

Consider participation in the process as an objective review of the facts and circumstances

Treat all parties, witnesses, and other involved administrators with respect



FAQ





Is this a legal proceeding?

No. Title IX investigations and hearings as discussed in this training are NOT civil or criminal legal proceedings. They are internal investigative processes and have only internal administrative repercussions. You will be making decisions only on matters related to a BYU policy violation, not external laws.



As a decision maker, am I responsible for any part of the investigation?

No. Investigative duties are performed by qualified investigators from the university's Title IX Office. The results of the investigation will be provided to you, the parties, and the parties' advisors prior to the live hearing.



What resources will I have?

In addition to this training, you will have access to BYU policies, procedures, and materials relevant to the case in which you are involved. Should you need clarification or have process questions, you can consult with BYU's Title IX Coordinator or BYU's Office of General Counsel.



How do we determine sanctions?

If the panel determine there are findings, they must then determine the sanction for the Respondent. Sanctions range from suspension withheld to expulsion.



Thank you

