



University
of Idaho

TITLE IX TRAINING

INFORMAL RESOLUTION
PROCESS TRAINING

OCRI

LEARNING OBJECTIVES

- Title IX
 - Brief History
 - Cornerstone cases
 - Jurisdiction
 - Definitions
 - Big 4
 - Education Program & Activities
- Disciplinary Process & Philosophy
 - Board of Regents Policy
 - U of I Policy (FSH)
- Impartiality
 - Prejudgment of the Facts at Issue
 - Conflicts of Interest
 - Bias
 - Tips & Tricks to Serving Impartially
- The Formal Grievance Process
 - The Informal Resolution Process
 - Role as a Facilitator
 - The Agreement
- Questions?

Self - Care

Listening to a disclosure may trigger a memory of a distressing time.

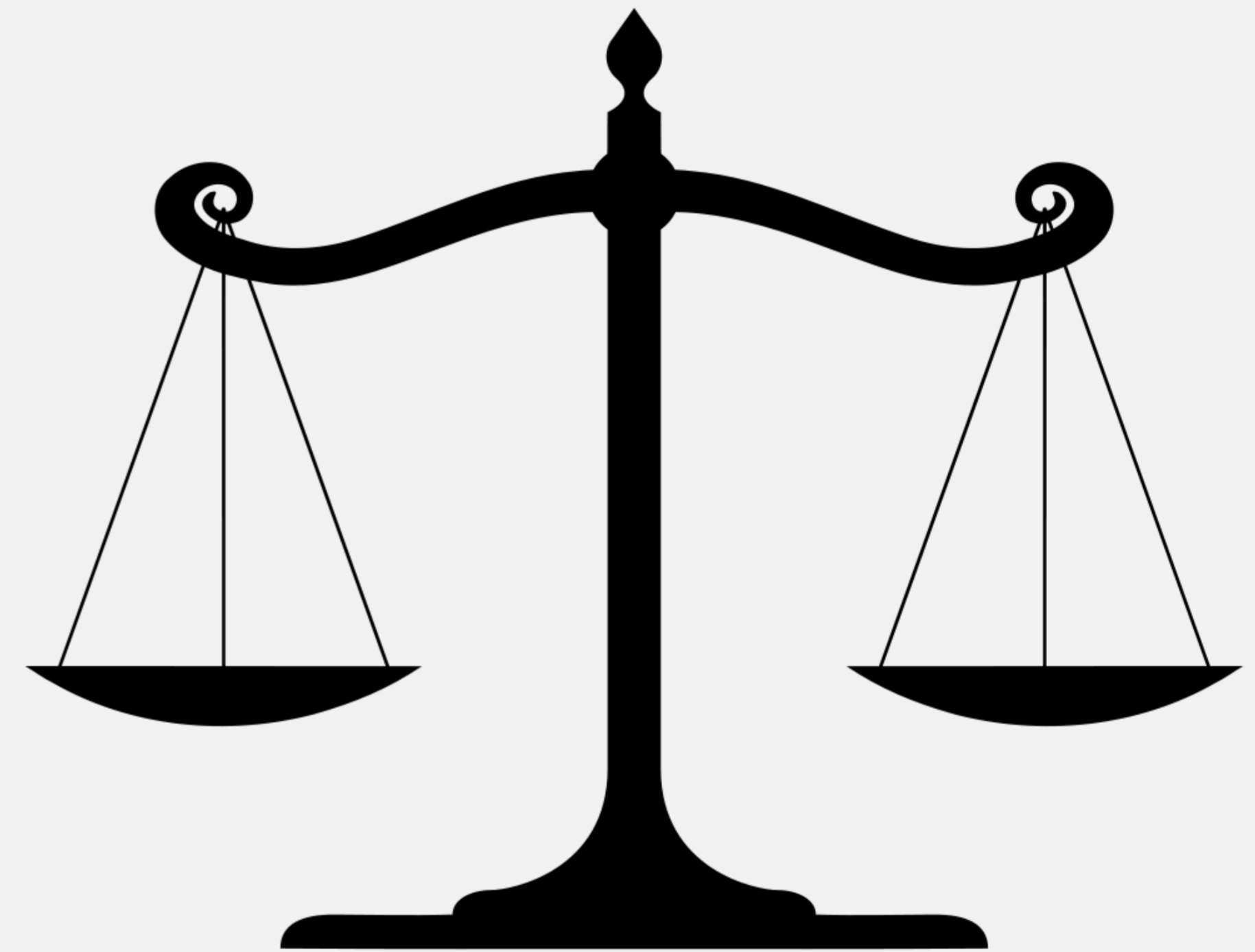
The University offers free counseling sessions through the EAP.

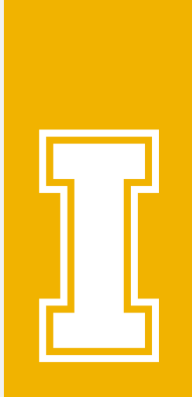


TITLE IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)





TITLE IX HISTORY

1964



Title VI, Civil Rights Act



Covers race, color, or national origin

Title VII, Civil Rights Act



Covers race, sex, color, religion, or national origin in employment

1965



E.O. 11246



Covers race, color, religion, or national origin for federal contractors.

HEA



Financial assistance for post-secondary and Higher Ed.

1968



E.O. 11375 (renamed)



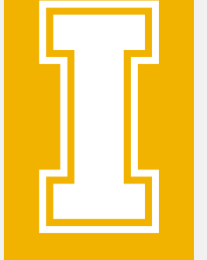
Sex" was added

1972

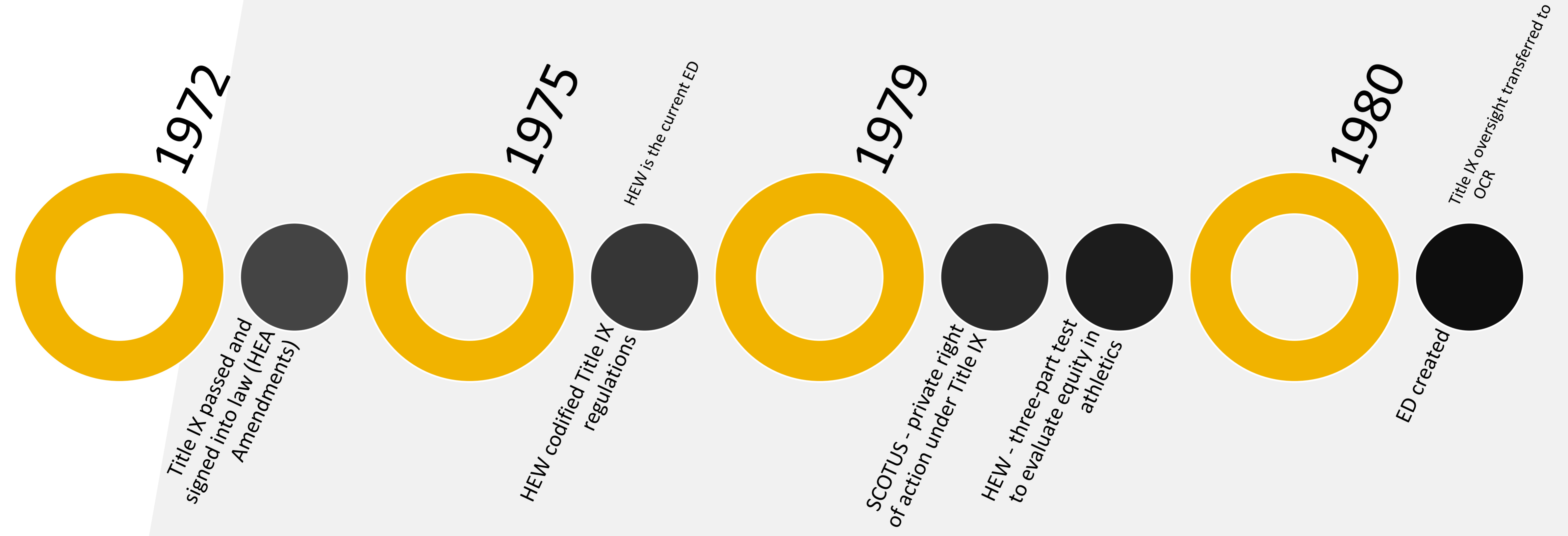


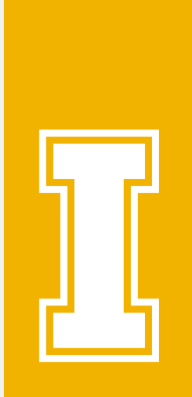
Title IX passed and signed into law (HEA Amendments)



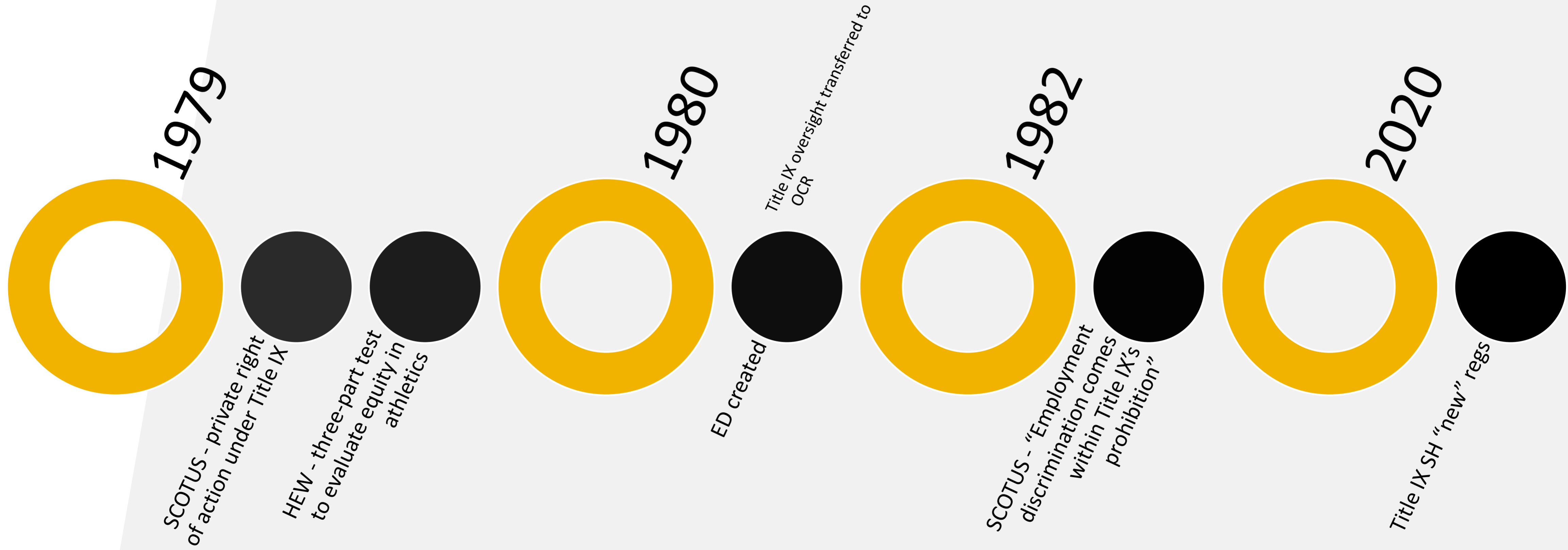


TITLE IX HISTORY





TITLE IX HISTORY





CORNERSTONE CASES

FRANKLIN V. GWINNETT PUBLIC SCHOOLS

- Lower courts said Title IX does not allow for monetary relief/damages
- SCOTUS overturned:
 - SH → sex discrimination under Title IX
 - Private right for recovery of monetary damages under Title IX
- Did not address institutional liability

GEBSER V. LAGO VISTA INDEP. SCHOOL

- SCOTUS ruled individuals can only recover monetary damages when:
 - An official of the educational institution had “actual notice” of harassment;
 - The official had authority to “institute corrective measures” to resolve the harassment problem; AND
 - The official “failed to adequately respond” to the harassment and, in failing to respond, acted with “deliberate indifference.”

DAVIS V. MONROE COUNTY BD. OF ED.

- SCOTUS expanded on Gebser:
 - Peer-to-peer: The institution must have “actual notice” of the harassment; and the institution must have responded to the harassment with “deliberate indifference.”
- Additionally, SCOTUS held:
 - Harassment must be “severe, pervasive, and objectively offensive,” and the indifference “systemic,” to the extent that the victim is deprived of educational opportunities or services.
 - Deliberate indifference is a response that is “clearly unreasonable in light of the known circumstances.”



WHEN DOES TIX APPLY?

WHEN DOES TITLE IX APPLY?

- New regs highlight the Davis case:
 - Title IX applies, and jurisdiction is required, when the U of I has:
 - Control over the Respondent AND control over the context of the harassment
 - “Education program or activity” means... – locations, events, or circumstances under substantial control – any building owned or controlled by an officially recognized student organization

WHEN DOES TITLE IX APPLY?

PERSONAL JURISDICTION

- At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the U of I's education program or activity
- “Attempting to participate” can include dual enrollment students, alumni, prospective students/employees, medical residents, etc.
- When is a student a “student”?
 - Upon application? Once admitted? Once registered? Upon matriculation?
 - What about winter and summer breaks?
 - When is an employee an employee?
 - Exempt vs. Non-Exempt Employees

WHEN DOES TITLE IX APPLY?

PERSONAL JURISDICTION

- Only when the Respondent is affiliated with the institution
- If Respondent is not affiliated with the institution, the institution lacks authority to take disciplinary action
 - External vendors
 - Guest speakers
 - Prospective/former students
 - Former employee
 - WSU student

WHEN DOES TITLE IX APPLY?

COVERED PROGRAMS

- All institutions with a program(s) that receives federal funding (e.g., U of I)
- The entire institution must comply:
 - All programs using facilities of the U of I (e.g., athletics camps, FFA, etc.)
 - Includes branch or satellite campuses

WHEN DOES TITLE IX APPLY?

GEOGRAPHIC JURISDICTION

- Must dismiss if the behavior did not occur against a person in the U.S.
- Off-site/off-campus incidents apply when the property is:
 - Owned or controlled by the UI; or
 - Used for a program/event sponsored or an organization recognized by UI; or
 - Owned or controlled by an organization recognized by U of I
- Theoretically, SH covers in-program effects of out-of-program behavior, but not the behavior itself
- The U of I can still assert jurisdiction over incidents off-campus or on campus property, but not under Title IX

WHEN DOES TITLE IX APPLY?

SUBJECT MATTER

- Sexual Harassment (new regs definitions)
- Sex/Gender discrimination
 - Bostock Case now includes sexual orientation and gender identity (based on biological sex)
 - Other policy violation that is sex/gender-based that causes a discriminatory effect (e.g., hazing, bullying, arson, vandalism, theft, etc.)
- Pregnant and parenting discrimination
- Retaliation

WHEN DOES TITLE IX APPLY?

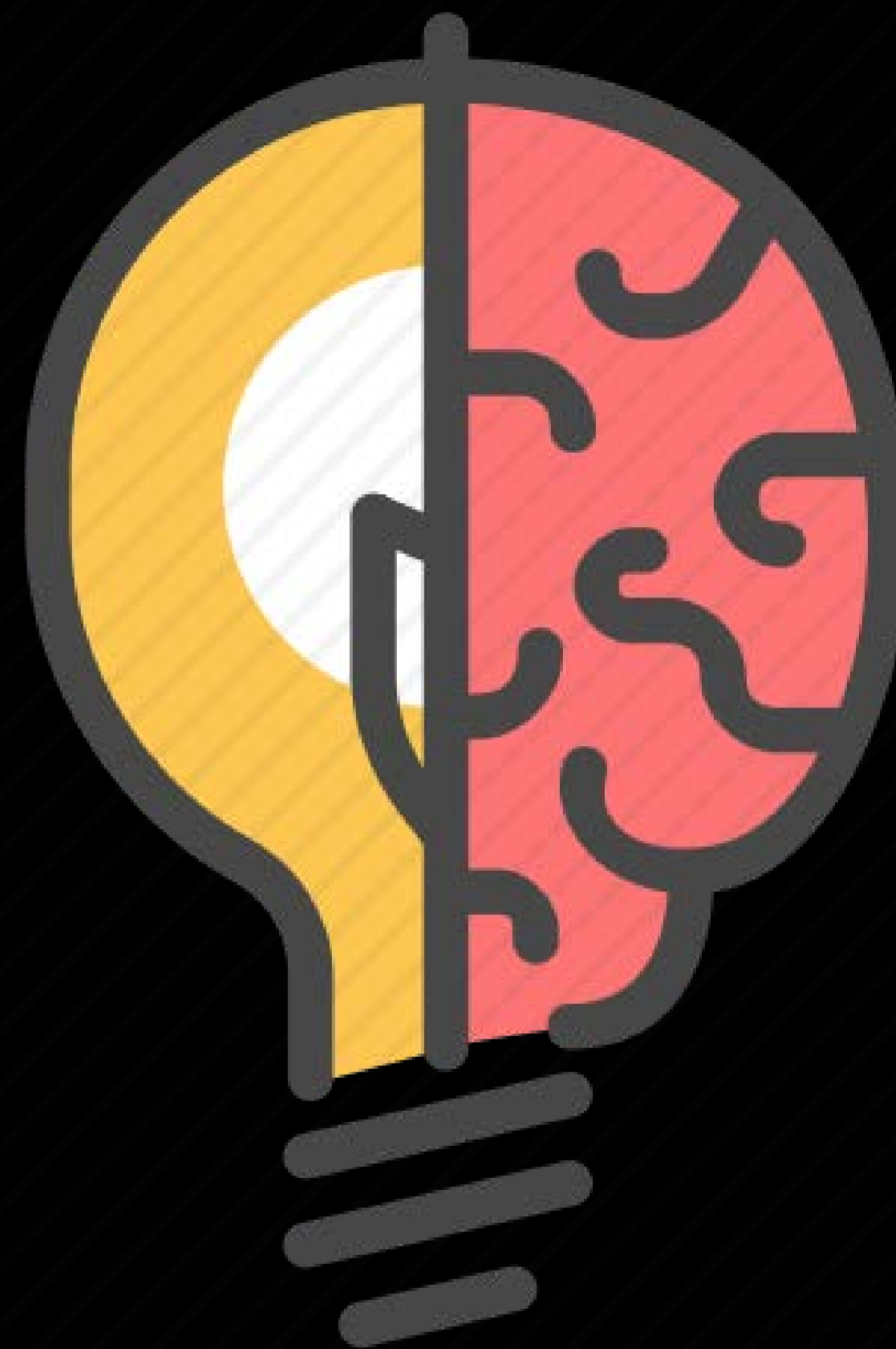
SUBJECT MATTER - LIMITATIONS

- Except for actions, conduct, or speech protected by:
 - Academic freedom
 - The First Amendment

IF THERE IS NO TIX JURISDICTION

- Behavior could still violate and be addressed under:
 - FSH 3200 – Non-discrimination
 - FSH 3220 – Sexual harassment
 - FSH 2300 – Student Code of Conduct
 - APM 30.12 – Technology/Acceptable Use policies
 - Other conduct policies or professionalism standards
- UI should still take steps to:
 - Provide support/resources to Complainant and UI community
 - Assess possible patterns or institutional variables that contributed to the alleged incident
 - Take what action it can (e.g., trespass, education, etc.)

THOUGHT EXERCISE





DEFINITIONS

DEFINITIONS

- **Complainant** - an individual who is alleged to be the victim of conduct that could constitute sexual harassment. If under 18 years of age, the complainant's parent or guardian may also be considered a complainant.
- **Respondent** - an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. If under 18 years of age, the respondent's parent or guardian may also act on behalf of the respondent.
- **Party** - either the complainant(s) or respondent(s). Parties includes the complainant(s) and respondent(s), collectively.
- **Advisor** - a person chosen by a party to accompany the party to meetings, hearings, or interviews related to the grievance process or appointed by the University solely to conduct cross-examination for the party at any hearing.

DEFINITIONS

- **Formal complaint** - a document filed with the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.
- **Supportive measures** - non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.
- **Remedies** - any measures implemented after a finding of responsibility that is designed to restore or preserve the complainant's equal access to the University's education program or activity. Such remedies may include the same measures implemented as supportive measures, but may be disciplinary or punitive in nature, and may burden the respondent.

DEFINITIONS

- **Sexual harassment** means conduct on the basis of sex that satisfies one or more of the following:
 - A University employee conditioning the provision of an aid, benefit, or service of the University 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 the University's education program or activity; or
 - Sexual assault, dating violence, domestic violence, or stalking.

DEFINITIONS

- **Sexual assault** as defined in 20 U.S.C. 1092(f)(6)(A)(v) - any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, including the following:
 - **Rape:** The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
 - **Sodomy:** Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.

DEFINITIONS

- **Sexual assault with an object:** To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his or her age or because of his or her temporary or permanent mental or physical incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory rape:** Sexual intercourse with a person who is under the statutory age of consent.

DEFINITIONS

- **Dating violence** as defined in 34 U.S.C. 12291(a)(10) is violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.
- **Domestic violence** as defined in 34 U.S.C. 12291(a)(8) is violence committed by a current or former spouse or intimate partner of the complainant; by a person with whom the complainant shares a child in common; by a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner; by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of Idaho; or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family laws of Idaho.

DEFINITIONS

- **Stalking** as defined in 34 U.S.C. 12291(a)(30) means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.
- *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker 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.
- *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
- *Substantial emotional distress* means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.



EDUCATION PROGRAM

OR ACTIVITY

DEFINITIONS

- **Education program or activity** includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by the University

CONTEXT

- The “substantial control” test adopts the United States Supreme Court’s “program or activity” analysis in *Davis v. Monroe County Board of Education*, which addressed the conditions under which a federal funding recipient may be held liable for peer-on-peer sexual harassment in the recipient’s program or activity. The Department states, that while factors “such as whether the recipient funded, promoted, or sponsored the event or circumstance where the alleged harassment occurred . . . may be helpful or useful for recipients to consider . . . to determine the scope of a recipient’s program or activity, no single factor is determinative.”

CONTEXT

- Under TIX’s existing definition of “program or activity” and the language added under the new rules, UI’s TIX obligations apply to all incidents of “sexual harassment” of which UI has “actual knowledge” occurring on its campus. The Department confirmed that UI’s TIX obligations extend to off-campus incidents if any of three conditions are met:
 - the off-campus incident occurs as part of the UI’s “operations”;
 - the UI exercised substantial control over the respondent and the context of the alleged behavior that occurred off-campus; or
 - the incident occurred at an off-campus building owned or controlled by a student organization recognized by a postsecondary institution.

CONTEXT

- The Department indicates that “the statutory and regulatory definitions of ‘education program or activity’ encompass ‘all of the operations of’ such recipients, and such ‘operations’ may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by or used in the operations of the recipient.”
- The new rules address “electronic, digital, or online harassment by not making sexually harassing conduct contingent on the method by which the conduct is perpetrated.” TIX obligations apply to sexual harassment perpetrated through use of cell phones or the internet if the sexual harassment occurred in an education program or activity.

CONTEXT

- Furthermore, the rules specify that an education program or activity includes online conduct where the recipient exercised substantial control over both the respondent and the context in which harassment occurred.
- This fact-specific analysis will present challenging determinations, especially with students or employees predominantly studying, working, and interacting online for several months.
- On campus as well, questions will arise over control and context, as the Department provides as an example: a student using a personal device to perpetuate online sexual harassment during class time may constitute a circumstance over which a school exercises substantial control.

DEFINITIONS

- An education program or activity includes on-campus and off-campus buildings owned and controlled by a student organization officially recognized by a postsecondary institution, which includes fraternities, sororities, or sports team houses. Although postsecondary institutions may not always control what occurs in a building owned or controlled by a recognized student organization, such student organizations and events are an integral part of campus and student life and fall within TIX under a bright-line requirement imposed under new regs.

DEFINITIONS

- Consistent with the statutory language, the Title IX rules do not have extraterritorial application with respect to study abroad programs. Nothing in the Title IX rules prevents an institution from initiating student conduct proceedings or offering supportive measures to address sexual misconduct against a person outside of the United States.

DEFINITIONS

- Situations will arise presenting reported allegations about conduct that initiated outside of an education program or activity and continued with alleged subsequent and related conduct that occurred within a Title IX education program or activity. For example, if a student is sexually assaulted or harassed outside of an education program or activity, but subsequently suffers Title IX sexual harassment in an education program or activity, the Title IX rules (particularly its grievance process relating to a formal complaint) apply to the latter act of sexual harassment, but the school may choose to address the prior assault or harassment through its code of conduct.
- Reported allegations could increasingly present such scenarios, especially with students and employees having been away from campus due to the pandemic and returning.



THE CONDUCT PROCESS

DISCIPLINARY PHILOSOPHY

DISCIPLINARY PROCESS PHILOSOPHY

- The University of Idaho conduct process works to balance the safety and security of the members of our community with personal accountability, reflection and growth.
- Students will have an opportunity to reflect on their choices, understand how their actions have an impact on the UI community and an opportunity to grow from the experience.

LEARNING OUTCOMES

WE AIM TO

- Educate students to better understand how their decisions can affect themselves and the community in which they live which is often done through reflection, additional follow-up, and accountability.
- Provide a fair and consistent student conduct process based on university policy and best practices
- Regularly collaborate with the University and partners in the Moscow community, throughout the year, to provide equitable opportunities for students, faculty, and staff to learn, reflect, and grow.
- Provide a space for students, faculty, and staff to ask questions, address allegations of misconduct, and voice concerns.

BOARD OF REGENTS POLICY

- III.P. Subsection 12
 - Each institution [of higher education] will establish and publish a statement of student rights and a code of conduct. The code of conduct must include procedures by which a student charged with violating the code receives reasonable notice of the charge and is given an opportunity to be heard and present testimony in his or her defense.

BOARD OF REGENTS POLICY

- Title IX Policies I.T. (2)
 - Each institution shall publish its Title IX policies and procedures for students, staff and faculty. Such policies and procedures shall be updated as necessary and appropriate to comply with Title IX and guidance from OCR. Title IX coordinators shall be involved in the drafting and revision of such policies to ensure compliance with Title IX. If an institution is represented by legal counsel, its attorney also shall review the institution's policies for compliance with Title IX and OCR guidance. Policies shall clearly describe the process for resolving alleged violations of Title IX.

BOARD OF REGENTS & SBOE POLICY

- Title IX Policies I.T. (6)
- All employees shall receive training pertaining to Title IX and the institution's Title IX policy. Employees likely to witness or receive reports of sexual harassment and sexual violence shall receive enhanced training which, at a minimum, includes the requirements of Title IX, the proper method for reporting sexual harassment and sexual violence, and the institution's responsibilities for responding to reports of sexual harassment and sexual violence.

BOARD OF REGENTS & SBOE POLICY

- Institution employees who will likely require enhanced training include: Title IX coordinators, campus law enforcement personnel, student conduct board members, student affairs personnel, academic advisors, residential housing advisors, and coaches. All employees who learn of an allegation of sexual harassment, including sexual violence and gender-based harassment, (and are not required by law to maintain the confidentiality of the disclosure, such as licensed medical professionals or counselors) are required to report it to the Title IX coordinator within 24 hours. Fact finders and decision makers involving resolution of Title IX violations shall also have adequate training or knowledge regarding sexual assault, including the interpretation of relevant medical and forensic evidence.

FSH 2100 – **OUTLINE**

- A. Mutual Responsibility
- B. Statement of Student Values
- C. Jurisdiction
- D. UI Committees Dealing with Student Concerns

FSH 2100.A. – MUTUAL RESPONSIBILITY

- By enrolling, students voluntarily accept responsibility for compliance with all university policies, local ordinances, state laws, and federal laws
- Each student shall be responsible for his/her conduct at all times from admission through the actual awarding of a degree
 - This includes the period (i) before classes begin, (ii) after classes end, and (iii) between terms of actual enrollment
- The University reserves the right to take necessary and appropriate action to protect the safety and well-being of the campus community
- Students shall have the rights and responsibilities outlined in this policy and in FSH 2200, 2300, and 2400

FSH 2100.B. – STATEMENT OF STUDENT VALUES

- The Statement of Student Values is a step toward formally conveying our common University of Idaho educational and community goals. The Statement articulates the community we aspire to be, expresses our shared values, unites us as Vandals, and encourages collaboration with faculty, staff, and the administration
- “We come together as Vandals, a diverse community embracing individuality and striving for equity. We hold each other accountable to conduct ourselves with integrity and honesty, to foster excellence in education both in and outside the classroom, and to treat each other with respect”

FSH 2100.C. – JURISDICTION

- Disciplinary action may be taken for:
 - Any violation of local ordinances, state or federal law;
 - On campus conduct that violates the Student Code of Conduct; and
 - Off campus conduct that violates the Student Code of Conduct and that adversely affects the university community or the pursuit of the university's educational mission, process, or function, as determined by the Dean of Students
- Students may be subject to civil and criminal penalties in addition to any university sanctions for the same violation
- University proceedings may occur before, during, or after any civil or criminal actions are concluded and are not subject to challenge based on the action or inaction of any non-university authorities
 - They are completely separate processes with different burdens of proof

FSH 2200 – **OUTLINE**

- Section I. Freedom of Association
- Section II. Freedom of Inquiry and Expression
- Section III. Student Conduct

FSH 2200 SECTION III – STUDENT CONDUCT

- Violations of any rules imposed by University Housing are also violations of the Student Code of Conduct
- “Disciplinary action” is defined as any sanction imposed for misconduct pursuant to FSH 2400
- Except where new material information is discovered, no student shall be brought up on alleged violations of the Student Code of Conduct a second time for the same alleged incident where a previous review/hearing was fully exhausted for the same alleged incident
- Any party to a disciplinary action shall have the right to appeal the decision pursuant to FSH 2400
- Review/hearing bodies must include adequate notice to the parties and sufficient opportunity for the parties to prepare their arguments

FSH 2300

STUDENT CODE OF CONDUCT

- Academic Integrity (cheating and or plagiarism)
- Misuse of University Resources
- **Threat of Harm or Actual Harm to Person's Physical or Mental Health and Safety**
- Discrimination and Retaliation
- Disruption, Obstruction or Interference with Normal University Activities
- Housing Rules and Regulations
- Use and Misuse of Substances (Alcohol and Drugs)
- Violations of Laws or University Policies

UNIVERSITY OF IDAHO PROCESS

- Confidentiality
- All matters are confidential under both Federal Law and University Policies
 - Family Educational Rights and Privacy Act (“FERPA”)
 - [FSH 3170](#).B-4 (University ethics)
 - [FSH 2600](#) (Student Education Records)
- You must not disclose information you receive as part of any informal resolution process or proceeding to anyone other than those with a need to know (e.g., TIXC, OGC, etc.)



SERVING IMPARTIALLY

AVOIDING CONFLICTS OF INTEREST AND BIAS

WHY IMPARTIALITY?

- Impartiality is fundamental to the Title IX formal grievance process, which includes the informal resolution process
- When serving impartially, avoid:
 - Prejudgment of the facts at issue
 - Conflicts of interest
 - Bias

PREJUDGMENT **OF THE FACTS AT ISSUE**

PREJUDGMENT OF THE FACTS AT ISSUE

- Prejudgment – you’ll find a variety of definitions:
 - an attitude, belief, or impression formed in advance of actual experience of something
 - to pass judgment prematurely or without sufficient reflection or investigation
 - a judgment reached before the evidence is available
- Neither Complainants nor Respondents should be met with prejudice throughout the process.

PREJUDGMENT OF THE FACTS AT ISSUE

- When might prejudice occur?
 - When allegations involve
 - Sexual conduct
 - Sexual history
 - Drugs, and/or alcohol use
 - Sex stereotypes also often lead to prejudice

PREJUDGMENT OF THE FACTS AT ISSUE

- How do you avoid prejudging facts?
 - Keep an open mind by fighting the urge to react, closing yourself off, avoiding speculation, getting comfortable in uncomfortable situations
 - Wait to hear all facts
 - Seek additional facts, witnesses, evidence, etc.



CAUTION: Check your assumptions in situations involving:

- sexual assault
- drugs or alcohol use
- same sex or non-binary parties

PREJUDGMENT OF THE FACTS AT ISSUE

Scenario: Taylor serves on the SCB and comments to peers that women show too much skin, that they should leave a lot more to the imagination, and that of course they get whistles and hoots because they way their dressed is attention-seeking.

- Would you be concerned about Taylor's impartiality?
- Why or why not?



CONFLICTS OF INTEREST

ACTUAL | PERCEIVED | POTENTIAL

CONFLICTS OF INTEREST



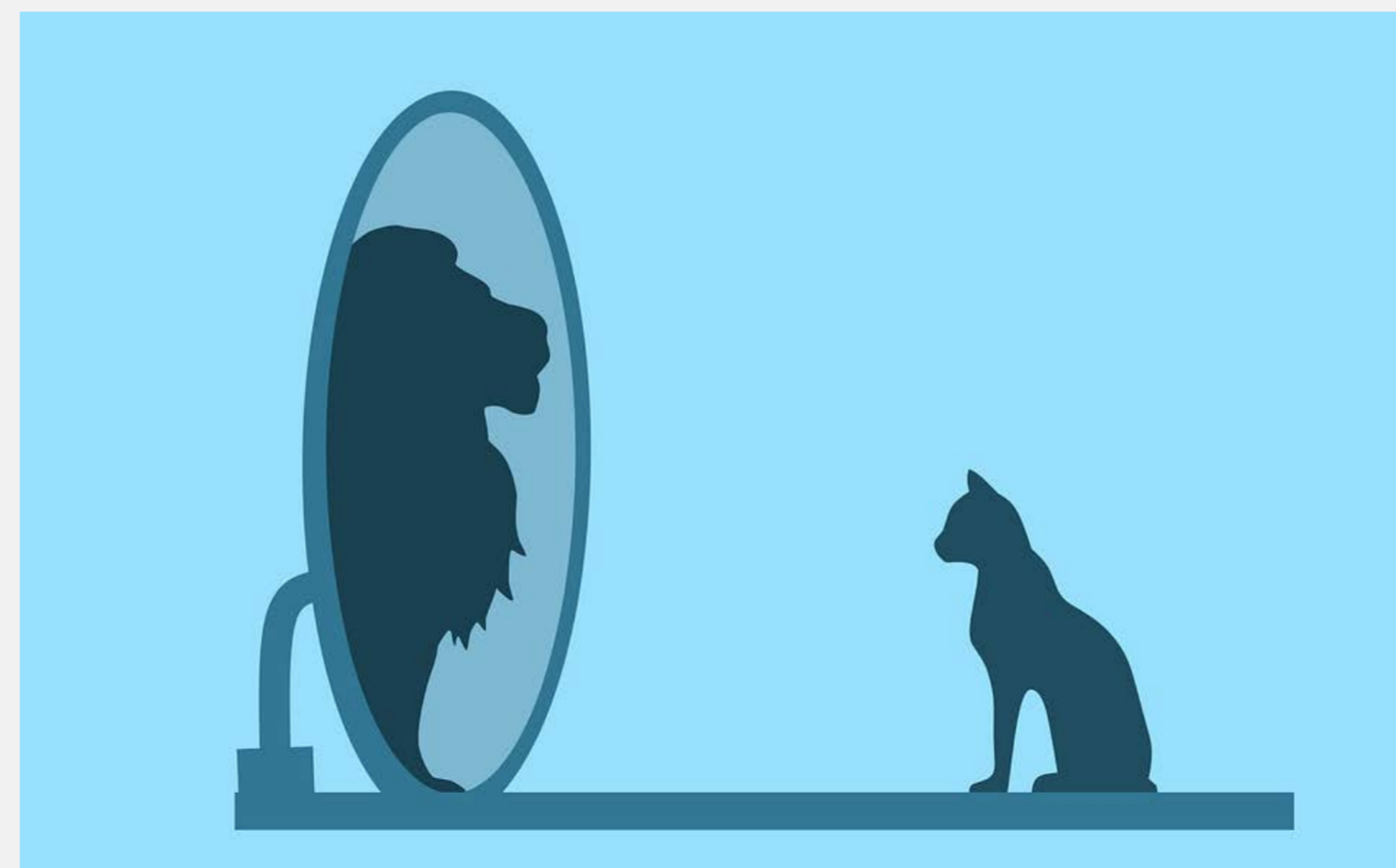
- The regs do not outline any COI's in and of themselves
- Affiliation with a survivors' rights organization does not create an actual/automatic COI
- But it may result in the appearance of a conflict or the appearance of bias
- When does a conflict prevent you from participating?

CONFLICTS OF INTEREST

- You must be conscientious of potential COIs
- If you are prevented from participating impartially, this is a COI that disqualifies you from serving in the Title IX process
- Determine what type of conflict is present as you consider your ability to impartially serve.

Types of COIs

- Actual
- Perceived/appearance
- Potential



ACTUAL & APPARENT CONFLICT OF INTEREST

Actual Conflict

- Circumstances exist which would reasonably prevent you from objectively and competently participating in the informal resolution process including imposing sanctions, remedies, or supportive measures for either party
- If you have an actual conflict, you should recuse yourself

Appearance of Conflict

- Circumstances exist that would cause a reasonable person with knowledge of those circumstances to believe that you have an actual conflict
- If you have the appearance of conflict, probably recuse yourself

[FSH 6240](#) – Conflicts of Interest or Commitment

CONFLICTS OF INTEREST

- When should (or does) a COI disqualify you from a role?
- Consider the following questions:
 - If my colleagues became aware of the conflict, how would I feel/react?
 - If the media became aware of the conflict, how would I (or they) feel/react?
 - If I saw someone else with the same potential conflict, how would I feel/react ? Would I think they should be barred from participating?
 - If the conflict was made known to the other party, how would I (or they) feel/react?

BIAS

EXPLICIT & IMPLICIT

BIAS

- A bias is:
 - A tendency, inclination, or prejudice toward/against someone or something;
 - Attitudes that affect our understanding, actions, and decisions
 - Mental shortcuts that may result in prejudgments, which could result in improper decisions or potentially discriminatory practices
- Biases may be based on:
 - Stereotypes
 - Gender
 - Race
 - Sexual orientation

BIAS

IMPLICIT

- You may or may not be aware
- Biases might be implicit, meaning actions, and decisions in an unconscious manner
- We use unconscious bias to filter and process information to the actions we take
- Differs from stereotype, which is a set of characteristics to all members of a group



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...others

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BIAS

IMPLICIT

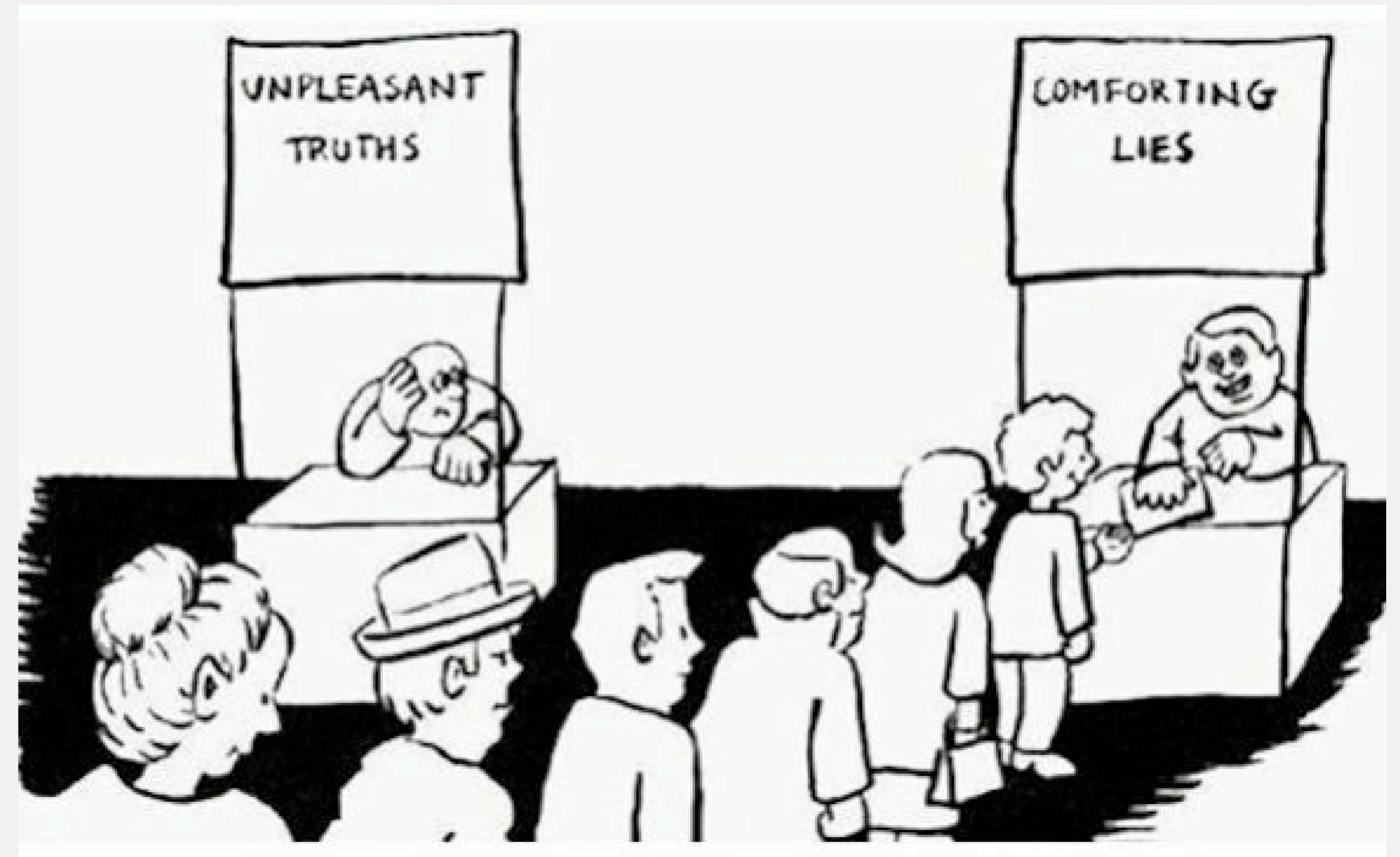
- Commonly associated implicit biases:
 - Skin color
 - Gender
 - Age
 - LGBTQA/Transgender

- Other characteristics less commonly associated implicit biases:
 - Height and weight
 - Introversion and extroversion
 - Marital and parental status
 - Disability status
 - Accents, or international cultural differences
 - College or hometown
 - Volunteer activities
 - Body modifications/manner of dress

BIAS

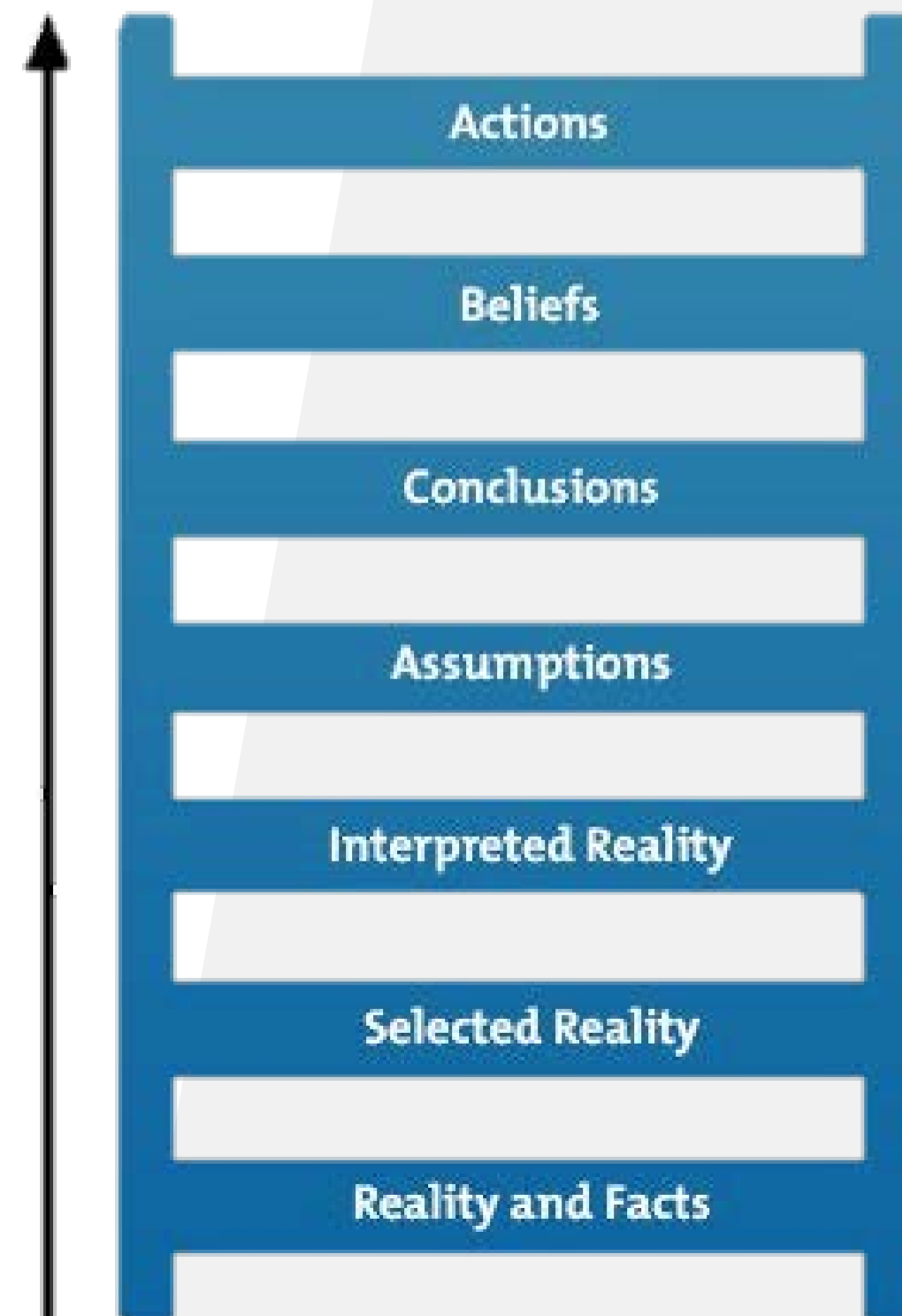
IMPLICIT

- We all have them.
- Bias does not automatically = Bad
- They may not align with our beliefs.
- Not intentional for the most part.
- Typically hold biases that favor our own in-group (but we can hold them against our in-group).
- They are malleable.

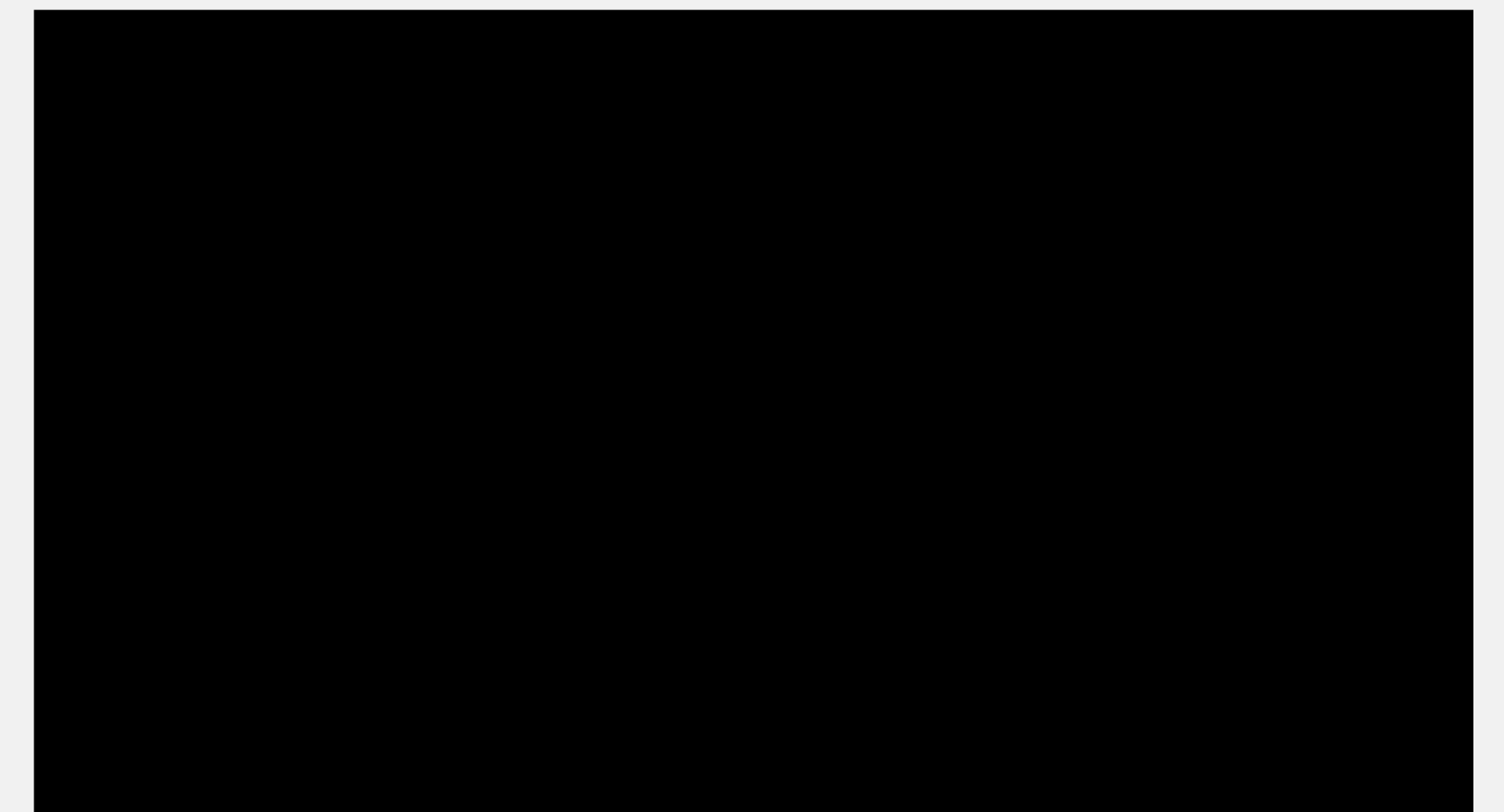


BIAS

LADDER OF INFERENCE



The ladder of inference describes the thinking process that we go through usually without realizing it, to get from a fact to a decision or action. The thinking stages can be seen as rungs on a ladder and are shown in this figure...



TRAUMA V. DECEPTION

Deception Cues	Trauma Cues
Speech (ahh, umm, pauses, fillers)	Speech (ahh, umm, pauses, fillers)
Lack of consistency in account of event	Lack of consistency in account of event
Inconsistent facial expression	Inconsistent facial expression
Lack of detail in account	Lack of detail in account
Saying “I don’t know/remember/recall”	Saying “I don’t know/remember/recall”

BARRIERS TO REPORTING

- Fear of retribution/retaliation
- Isolation
- Social stigma
- Victim blaming
- Systems work against victims/is worse than the assault
- Denial
- Lack of support
- Conflicting advice



CULTURAL AWARENESS

- Barriers to reporting/participating
 - Community values or honor that contribute to one's willingness or reluctance to seek or offer help
 - Assaults between persons of the same or different race/culture might impact willingness to report/participate
- Avoiding eye contact is not necessarily a sign of untruthfulness
- Rapport building may be more difficult – common topics may be “off-limits”

BARRIERS TO REPORTING

LGBTQ CONSIDERATIONS

- Some may be reluctant to disclose their sexual orientation or gender identity.
- Studies have found higher rates of sexual harassment in the LGBTQ community in academic settings.
- More likely to experience sexual assault, sexual harassment, physical assault and stalking compared to other groups typically targeted for hate crime victimization and are less likely to report due to perceived biases in the criminal justice system.
- High rates of verbal and physical abuse by current or former partners.
- Coercive or forced sex occurred 41% of the time in one study.

ASKING QUESTIONS

- Before you begin asking questions, consider these things:
 - Why am I asking the question? How will the response aid in my duties/role?
 - How will my tone, body language be perceived? Do I have my poker face on?
 - Is my question a leading question or open ended?
 - Is my question victim blaming or accusatory?
 - If it is an invasive question, acknowledge that fact.

BIAS DISCUSSION

- What are some examples of bias that you might observe in the TIX process?
- What are some examples of bias in yourself or others that you have noticed?



BIAS

HOW TO ADDRESS

1. Acknowledge that you have biases – we all do!
2. Understand the nature of unconscious bias and that it is a normal part of human cognition.
3. Work to identify those biases through facilitated discussion and self-awareness.
Engage in continuous self-reflection
4. Listen! Be open to feedback or constructive criticism
5. Pay attention to your language
6. Avoid generalizations
7. Question your thinking and challenge your assumptions

BIAS

- Understanding bias is particularly important in the Title IX context because:
 - Most evidence is circumstantial rather than direct
 - There are social stigmas associated with sex, alcohol, and drugs
 - Improper sex-based bias is prevalent and prevents reliable outcomes
 - There are also potential biases related to economic status, gender, race/ethnicity, and academic standing

TIPS & TRICKS TO SERVING IMPARTIALLY

THE GRIEVANCE PROCESS

- Treat all informal reports of sexual harassment equally, regardless of:
 - The form of the report
 - The demographics of the Complainant or Respondent
 - ... Others?
- Make no assumptions about the allegations based on:
 - The demographics of the Complainant or Respondent
 - The use of alcohol or drugs
 - ... Others?
- Offer supportive measures to Complainants and Respondents equally
- Keep an open mind and actively listen to all facts presented
- View all relevant evidence objectively
- Remember -- each case is unique

SCENARIO

- Blake, a Title IX Investigator, describes themselves as:
 - Feminist
 - Victim advocate
 - Social justice warrior from their days as a defense attorney
- In addition to their JD, they obtained a B.A. in Gender Studies and actively volunteers for the local sexual assault hotline.
- What, if any, concerns might one have about Blake's impartiality?

SCENARIO

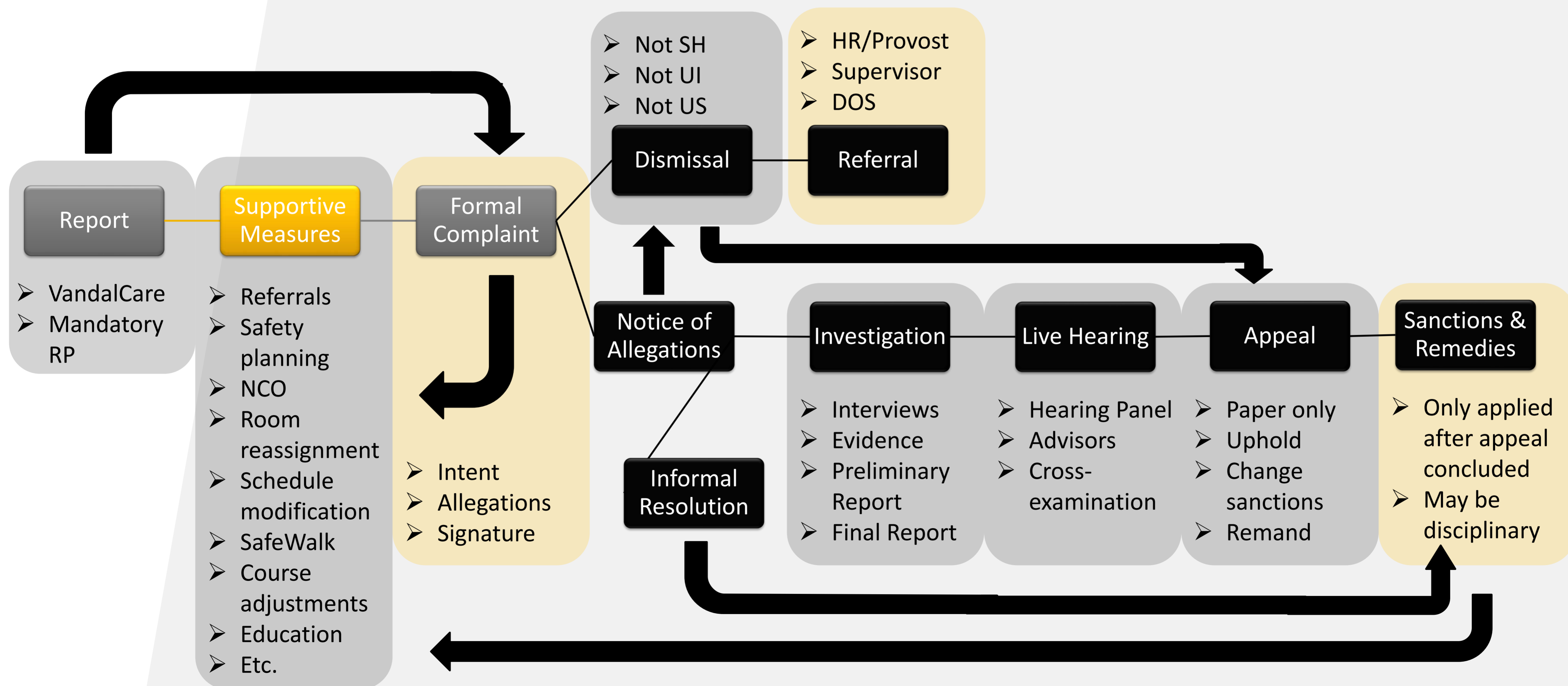
- Korey is a conduct officer who conducts informal resolutions under the formal grievance process for parties that voluntarily agree to participate.
- Korey is also the chair of a faculty senate committee responsible for ensuring academic excellence and reputation.
- Jordan has a 1.95 GPA and files a formal complaint against classmate Kennedy, who has a 3.85 GPA, alleging that Kennedy sexually harassed them in the Albertson's Lounge while working on a group assignment. They agree to engage in the informal resolution process, which Korey will coordinate.
- What, if any, concerns might one have about Korey's impartiality?



THE FORMAL GRIEVANCE PROCESS

INFORMAL RESOLUTION

THE REPORT & FORMAL GRIEVANCE PROCESS



MANAGING EXPECTATIONS

	Report	Formal Complaint
Actual knowledge of an alleged incident of SH	✓	✓
OCRI will contact Complainant	✓	✓
Offer Supportive Measures	✓	✓
Inform of right to file a Formal Complaint	✓	N/A
May only be filed by Complainant or TIXC	✗	✓
Complainant identity disclosed to Respondent	✗(ish)	✓
Notice of Allegations to all Parties	✗	✓
Investigation of allegations	✗	✓
Informal Resolution as an option	✗	✓
Live hearing with cross-examination	✗	✓
Appeal rights for both Parties	✗	✓

INFORMAL RESOLUTION PROCESS

- Optional, voluntary, both parties must provide informed, written consent
- Only available after a Formal Complaint has been filed
- Any party may withdraw at anytime and resume the formal grievance process
- Not an available option when the allegation involves an employee who sexually harassed a student
- Informal Resolution can include the full range of available supportive measures, disciplinary actions, and remedies
- Preamble contemplates mediation and restorative justice as informal resolution options, although not exhaustive

INFORMAL RESOLUTION PROCESS

Mediation or Facilitated Resolution

- Although not defined by the regs, it is a process by which a neutral third party facilitates the resolution of conflict between two or more parties.
- Facilitators must be qualified and impartial.
- Decision making authority rests at all times with the parties.
- The parties should have clear and sufficient information so that they can make informed decisions.
- A facilitator assists in the clarification of interests and exploration of alternatives.
- They do not make decisions for the parties.
- Their role is to raise questions for consideration by the parties including questions of fairness and feasibility of resolution options.

INFORMAL RESOLUTION PROCESS

Restorative Justice

- Although not defined by the regs, it usually aims to repair harm done to victims or relationships through facilitation but will vary from program to program.
- Could include a system of institution-based, non-punitive interventions, in which students are brought together with trained staff to discuss differences and conflicts, often in a group setting.
- Goal is to ensure that the process preserves equal access for both parties to educational opportunities

INFORMAL RESOLUTION PROCESS

Pros

Simplified Process/less adversarial

Finality for the parties

Control of outcome/tailored

Potentially restorative/satisfactory

- Counseling
- Academic adjustments
- Schedule modifications
- Safe Walk
- Mutual NCO

Cons

Delays process if unsuccessful

Less process/safeguards

Potential avoidance of consequences

- Housing modifications
- Leaves of absence
- Increased security/monitoring
- Disciplinary measures

INFORMAL RESOLUTION FACILITATOR

- Your goal is to assist parties to reach an agreement on their terms, help the parties find a way to move forward with equal access to educational opportunities
- You should remain compassionate and neutral, do not take sides or make assumptions
- You should help the parties discuss potential resolution terms
- Consider utilizing an opening script to ensure:
 - Approach is consistent
 - Overview of the process is provided
 - All necessary points are covered
- Empower the parties to engage and trust in the process by feeling heard

INFORMAL RESOLUTION STEPS

- Contact the parties separately at the outset to initiate the process. They must be informed in writing of:
 - The allegations
 - The informal resolution process requirements
 - Any consequences
- Consider the needs/wishes of the parties.
 - Will this occur in person?
 - Via zoom?
 - In the same room?
 - In separate/breakout rooms?
 - Do they wish to communicate directly to one another?
 - Do they have an advisor/parent/witness/attorney/etc. present?

INFORMAL RESOLUTION STEPS

- Shuttle diplomacy could be considered at the beginning
- Begin by providing an overview of the expectations of the parties and process for resolution
- Allow each party (whether together or separate) to provide their narrative and perspective of the underlying issues
- Separation of parties

SEPARATION OF PARTIES

Learn from each party:

- What do they want out of the process?
- What do they want from the other party?
- What would make you feel safe?
- What do you want your days at UI to look like after this resolution?
- What could the school do to make you feel safer?
- What could the other party do to make you feel safer?
- What do you need versus what do you want? Are they different?
- What could you live with? What are you unwilling to accept?

SEPARATION OF PARTIES

Learn from each party:

- Confirm primary (or top three) for each party
- Clarify with each party what you will share with the other party or what they are willing to share with the other party. *It may not be everything they've discussed with you!*
- Go through the lists to attempt to identify any areas of overlap, if any
- This may require multiple trips between parties until a resolution can be reached
- Once reached, ensure both parties understand the terms and have agreed to the same terms

WHEN AN AGREEMENT IS REACHED

- Document the terms of the agreement using the templated form while you are still with the parties – it's important to be quick and efficient once the agreement is made
- Ensure the parties review the document and specific terms, make changes as necessary
- The parties must sign the document to confirm that it accurately reflects their understanding of the agreement
- Consider including:
 - Confidentiality provisions* (and related consequences for violation)
 - Consequences for failure to adhere to the agreement
- Provide a copy for approval to the appropriate university official.
- Once approved, ensure each party and the Title IX Coordinator receive a copy

*CONFIDENTIALITY PROVISIONS

- Terms of the resolution should only be on a need-to-know basis
- Can include penalties for either party sharing or publishing the agreement
- Reminder that student records are subject to FERPA
- Gag orders are best to avoid (first amendment, academic freedom, PRR considerations)
- How will violations be enforced?
- What if the violation occurs years after they've left the institution?
- Is there a distinction between a family member, partner therapist and a blog, journalist, or other media?
- Will it appear as though the institution is attempting to conceal information?

WHAT IF NO AGREEMENT IS REACHED?

- Consider giving the parties time to consider the proposed resolution(s)
- Helpful to set a deadline for this consideration period
- Reverting to the formal process can be the default outcome if a resolution is not reached by the deadline set
- Can continue to facilitate discussion if parties believe a resolution can be reached
- Maintain any records of the process and its results
- Neutrally remind parties:
 - The limitations of the informal resolution process (requires both parties to agree in order to complete)
 - They can revert to the formal grievance process at any time/if unsuccessful
 - They have more control over the informal resolution process

DOCUMENTATION FOR AN AGREEMENT

- Required, especially for ED
- Should include:
 - Names of parties, representatives (if any), and facilitator
 - Specific terms of agreement with specificity
 - Signature of all parties
 - What the agreement means (i.e., no appeal, final institutional agreement, etc.)
 - How to resolve any future disputes (i.e., underlying facts, the resolution itself, etc.)
 - Contact information if there are questions or concerns about the terms
- Determine if parties would like the facilitator or TIXC to follow-up



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INFORMAL RESOLUTION – FINAL AGREEMENT

This form is used to document the terms of an informal resolution regarding alleged misconduct under the University of Idaho’s Title IX Sexual Harassment Policy, FSH 6100. All parties, the informal resolution facilitator, and the University (as defined in FSH 6100 N-5) must accept the terms outlined for the informal resolution to be implemented.

Respondent: [Redacted] VNumber: [Redacted]

Advisor (if any): [Redacted] Email: [Redacted]

Complainant: [Redacted] VNumber: [Redacted]

Advisor (if any): [Redacted] Email: [Redacted]

Incident Date(s): [Redacted] Resolution Date: [Redacted]

Allegation(s): [Redacted]

Informal Resolution Type: [Redacted]

Facilitator(s): [Redacted]

The parties have agreed to the following specific actions to resolve the allegations:
[Redacted]

If for any reason any of the terms are not adhered to, the parties agree that the following consequences may apply:
[Redacted]

For the purpose of consideration in the event of any further allegations of misconduct, and/or a background check, the Respondent’s institutional record will indicate:
[Redacted]

The outcome of this informal resolution agreement will be shared with:
[Redacted]

The outcome of this informal resolution agreement includes the following additional understandings:
[Redacted]

- By signing this agreement, the parties affirm the following:
- I voluntarily agree to the terms of this informal resolution as outlined above and understand by doing so that I am relinquishing my right to have this matter resolved through the applicable formal grievance process.
 - I can choose to not sign this document and instead have this matter resolved through the applicable formal grievance process.
 - I understand that the outcome of an informal resolution agreement is not appealable.
 - I am aware that the University of Idaho will maintain a record of this informal resolution agreement and all associated information in accordance with institutional policy and applicable laws.

[Redacted Signature] [Redacted Date]
Complainant’s Signature Date

[Redacted Signature] [Redacted Date]
Respondent’s Signature Date

[Redacted Signature] [Redacted Date]
Facilitator’s Signature Date

FOR INTERNAL USE ONLY

As the representative for the University of Idaho, I have reviewed|approved this informal resolution agreement, thus resolving this matter.

[Redacted Signature] [Redacted Date]
University Representative’s Signature Date

[Redacted Name] [Redacted Title]
University Representative’s Name Title

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University
of Idaho

QUESTIONS?