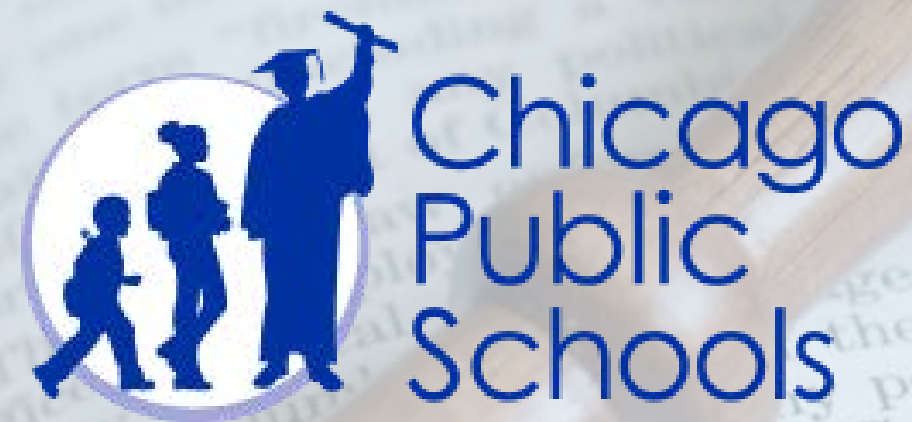


CIVIL RIGHTS INVESTIGATOR TRAINING



ICS TEAM



Betsy Smith
Director of Title IX Services



Courtney Bullard
CEO



Celeste Bradley
Director of DEI/EEO Services



Amy Buck
Attorney and Legal Analyst



Stephanie Ray
Legal Analyst



Brittany Gates
Legal Analyst

Housekeeping

- Level 2 Training
- Not Legal Advice
- Course Materials
- Breaks

Agenda

Session
1

Overview &
Relevant Laws

Session
2

Equal Opportunity Compliance
Office (EOCO) Process

Session
3

Interview Process

Session
4

Decision-making/
Report Writing



Session 1:

Overview and Relevant Laws

ADA

ADEA

Title IX

Title VI

Title VII





Understanding Title VI

Enforced by Office for Civil Rights

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Understanding Discrimination

Under Title VI

“ Title VI of the 1964 Civil Rights Act says,
" No person in the United States shall, on the
grounds of race, color or national origin, be
excluded from participation in, be denied the
benefit of, or be subjected to discrimination
under any program or activity receiving
federal financial assistance." ”

42 U.S.C. § 2000d

UNIVERSITY
APPLICATION

What Activities are Protected Under Title VI?

Programs and activities that receive education funds must operate in a non-discriminatory manner which include:

- admissions
- recruitment
- financial aid
- academic programs
- counseling and guidance
- vocational education
- student treatment and services

Protected Activities Continued...

- discipline
- classroom assignment
- grading
- recreation
- physical education
- athletics
- housing

EXAMPLES OF TITLE VI CASES



Students and families in Colorado School District filed a claim alleging discrimination due to National Origin for failing to provide adequate language services to all English Learner students.



T.B. et al. v. Independent School District 112 - six current and former African-American students of a suburban Minnesota school district and their parents alleged pervasive race discrimination.

EXAMPLES OF TITLE VI CASES



USC Investigation - A Jewish faculty member alleges the college failed to protect her from discrimination and harassment because of her support for Israel. The former employee filed a Title VI complaint and the Office for Civil Rights initiated an investigation.



Pfizer - "Pfizer is being sued for racial discrimination under Title VI for a federally funded fellowship program that "categorically excludes white and Asian-American applicants."



Students for Fair Admissions v. President and Fellows of Harvard College- The Supreme Court held that race-based admissions systems (affirmative action) violate the Equal Protection Clause of the 14th Amendment and Title VI.



Understanding Title VII

Enforced by EEOC

Title VII Prohibits Employment Discrimination based on:



GENDER
IDENTITY

AGE

COLOR

MENTAL OR
PHYSICAL
DISABILITY

SEXUAL
ORIENTATION

RELIGION

NATIONAL
ORIGIN

PREGNANCY

SEX

RACE

IMMIGRATION
STATUS

VETERAN
STATUS



Who is covered by Title VII of the Civil Rights Act?

Not Covered: Federal employees or independent contractors. However, federal employees are protected against discrimination by other federal anti-discrimination laws.

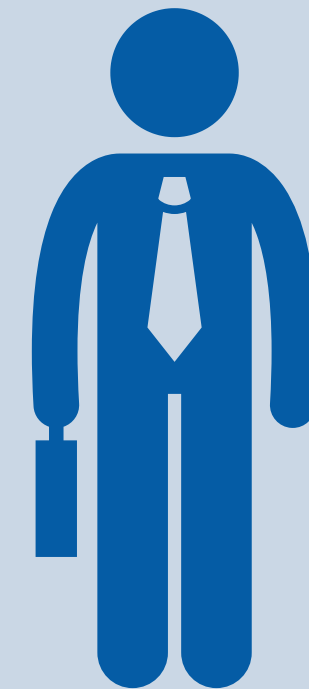
- Private & public sector employers w/15 or more workers
- State and local governmental agencies
- Employment agencies
- Apprenticeship programs



What Individuals are Protected from Discrimination Under Title VII?



Applicants



Former

Employees



Employees

Title VII Cases:

***Bostock v. Clayton County* - Supreme Ct case- Gender identity included under Title VII- Whether the policy was violated depended entirely on sex of the employee. It is this reliance on sex in the employer's decision-making that raises issues under Title VII.**

***State of Texas v. EEOC* (2022)- Federal court held that EEOC's guidance on "sex-based" bathroom policies was unlawful. The court held that *Bostock* does not address whether specific conduct relating to SOGI is protected under Title VII, rather the fact that SOGI are protected statuses under Title VII.**

HYPOTHESIS

Ralph is a white male and 4th grade teacher at ICS Elementary. Ralph's Principal is Ian, a black male. Ralph reports to HR that Ian is discriminating against him because he is white. Does this fall under Title VII?



What is the difference between Title VI & Title VII?



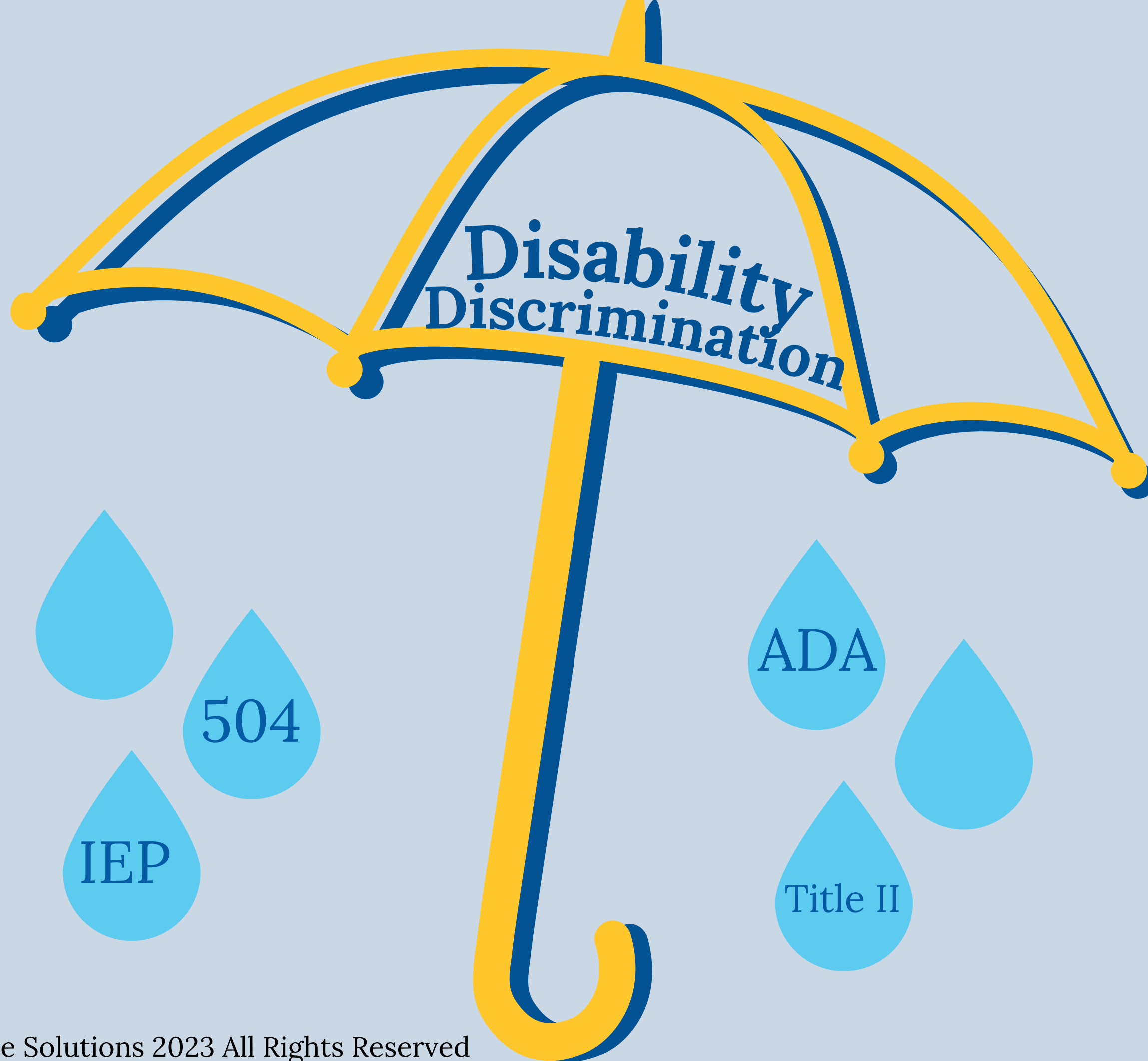
Discriminatory Conduct



ADA

AMERICANS WITH
DISABILITIES ACT





Disability
Discrimination



504



IEP



ADA



Title II



The Americans with Disabilities Act (ADA) of 1990 prohibits discrimination solely on the basis of disability in employment, public services, and accommodations. The person must otherwise be qualified for the program, service or job.

Discrimination Based on Disability



Section 504

Section 504 of the Rehabilitation Act of 1973 prohibits any school district receiving federal financial assistance from discriminating against disabled children.



Title II

Title II of the Americans with Disabilities Act of 1990 expands these protections and prohibits all school districts, whether they receive federal funding or not, from discriminating against disabled children.



ACCOMMODATIONS

The ADA requires the provision of reasonable effective accommodations for eligible faculty, staff, students, and visitors across an institution's programs, activities, and services.

The ADA defines a person with a disability as a person who has a physical or mental impairment that substantially limits one or more major life activity.

- Walking
- Talking
- Thinking
- Speaking
- Breathing
- Hearing

Accommodations

One aim of the ADA was to make educational institutions more accessible for the disabled. This aim covers “reasonable accommodations” such as the following:

- Modification of application and testing
- Allowing students to tape-record or videotape lectures and classes
- Modification of class schedules
- Extra time allotted between classes
- Notetakers
- Interpreters
- Readers
- Specialized computer equipment
- Special education

The accommodation also includes physical changes to an educational institution's buildings, including the following:

- Installing accessible doorknobs and hardware
- Installing grab bars in bathrooms
- Increasing maneuverability in bathrooms for wheelchairs
- Creating handicapped parking spaces
- Installing accessible water fountains
- Installing ramps

Undue Hardship?

INTERACTIVE PROCESS UNDER ADA

REPORT OF A DISABILITY THAT
IMPACTS ABILITY TO PERFORM JOB



MEETING WITH HR TO CONDUCT
INITIAL ASSESSMENT

IS REQUEST REASONABLE?



NEED FOR BRAINSTORMING
ALTERNATIVE ACCOMMODATIONS

IMPLEMENT ACCOMMODATION,
IF REASONABLE



CONTINUE INTERACTIVE PROCESS
UNTIL EXHAUSTED OPTIONS



DOCUMENT!! DOCUMENT!! DOCUMENT!!





Understanding Title IX

Enforced by Office for Civil Rights

Understanding Discrimination Under 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.

”



What Does Title IX Cover?

Enforced by Office for Civil Rights

SEXUAL HARASSMENT

EQUITY IN PROGRAMMING
(INCLUDING ATHLETICS)

PREGNANCY
DISCRIMINATION



TITLE IX SEXUAL HARASSMENT



EDUCATION PROGRAM/ACTIVITY



TITLE IX FORMAL GRIEVANCE PROCESS

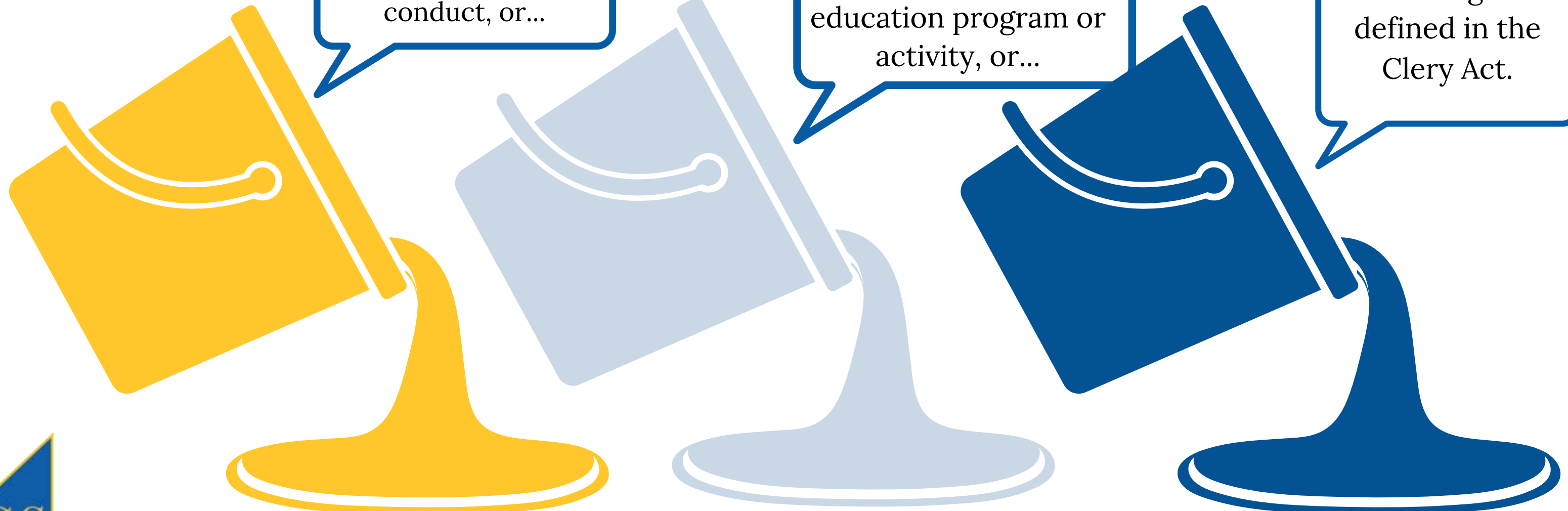


CONDUCT ON THE BASIS OF SEX THAT SATISFIES ONE OR MORE OF THE FOLLOWING:

An employee of the recipient conditioning the provision of aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct, or...

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 recipient's education program or activity, or...

"Sexual Assault," "Dating Violence," "Domestic Violence," or "Stalking" as defined in the Clery Act.



SEXUAL HARASSMENT

Other Conduct Covered Under Title IX

Sexual Assault

- Fondling
- Incest
- Rape
- Statutory Rape



Stalking

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 safety of others **OR**
- suffer substantial emotional distress



Other Conduct Covered Under Title IX

Dating Violence

Violence Committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Several factors used to determine such relationship including:

- length
- type
- frequency of interaction between the parties



Domestic Violence

A felony or misdemeanor crime of violence committed by a:

- current or former spouse or intimate partner of the victim
- person with whom the victim shares a child in common
- person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



Pregnancy Discrimination

Pregnancy + Related Conditions

Title IX Prohibits students and employees from discrimination based on:

- **Pregnancy**
- **False Pregnancy**
- **Childbirth**
- **Termination of Pregnancy**
- **OR recovery therefrom.**



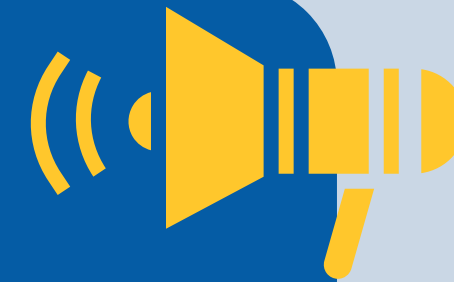
REMEMBER

- Must be treated the same as any other temporary disability
- Must be reinstated to the status held when individual began their leave



RECENT UPDATES

- New OCR Resource on Pregnancy Discrimination
- Proposed Rules on Pregnancy Discrimination
- Lingering Questions Post Bostock



Assistant Principal is denied promotion due to pregnancy leave. She files a claim for pregnancy and gender discrimination.

Title IX

Pregnancy discrimination in hiring.
Gender discrimination.

Evaluate individual claim.

Federal Funding is at risk.

Can file law suit immediately.

Title VII

Equal Pay.
Pregnancy discrimination.
Gender discrimination.

May want to investigate disparate impact/hiring practices.

Compensatory damages and pain and suffering.

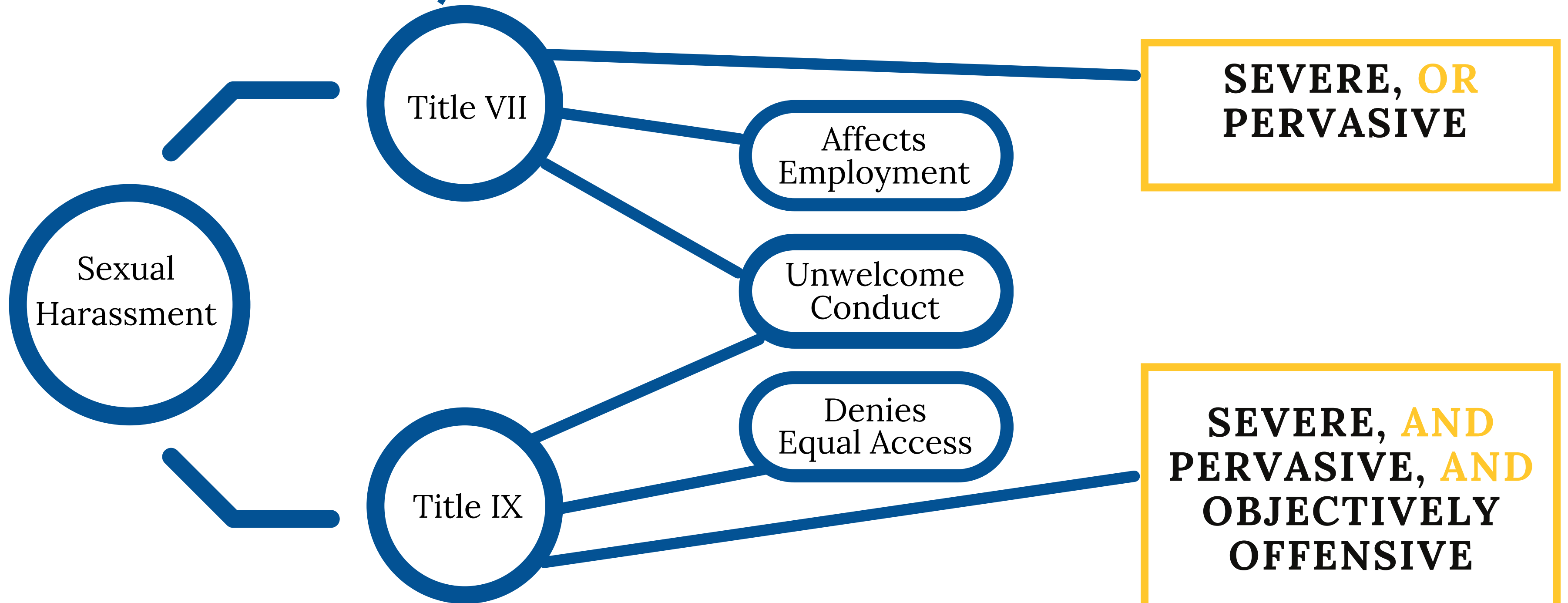
Must exhaust administrative remedies.



HYPOTHESIS

Mr. Jones is a high school band director. Jolie is a 9th grade clarinet player who started hanging out with her friends and Mr. Jones in the band room before and after school every day. One day, Mr. Jones asked Jolie for her number and started texting with her every day. He asked her to add him on SnapChat and when she didn't, he instructed her to stay after class one day and confronted her about it. When she told him she must not have seen it, he told her to add him right then and watched to be sure she did so. Soon, Mr. Jones started showing up in the cafeteria during Jolie's lunch period.

Title IX / Title VII Sexual Harassment



- Severe- can be non verbal through sexual assault (touching/fondling)
- Pervasive- how often and how widespread
- Objectively Offensive- behavior that would be offensive to a reasonable person under the circumstances



State Laws!

QUESTIONS?



INSTITUTIONAL
COMPLIANCE SOLUTIONS





Session 2:

Equal Opportunity Compliance Office (EOCO) Process

COMPREHENSIVE NON-DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, SEXUAL MISCONDUCT AND RETALIATION POLICY

- **Adult-to-Adult or Student-to-Adult**
- **Complaints alleging:**
 - **They are the target of discrimination and/or harassment;**
 - **They have been retaliated against for making a good faith complaint of discrimination and/or harassment or for participating or aiding in an investigation of such complaints; or**
 - **They have knowledge of discrimination, harassment, or retaliation against another person.**
- **Based on membership, association, or perceived membership or association with a protected group (see next slide)**
- **In the educational programs or activities the Board operates**

PROTECTED CATEGORIES

National Origin

Sexual orientation

Religion

Gender or sex (includes gender identity, gender expression, pregnancy, childbirth, breastfeeding, and pregnancy related medical conditions)

Color

An individual's actual or perceived:

Age (40 or above)

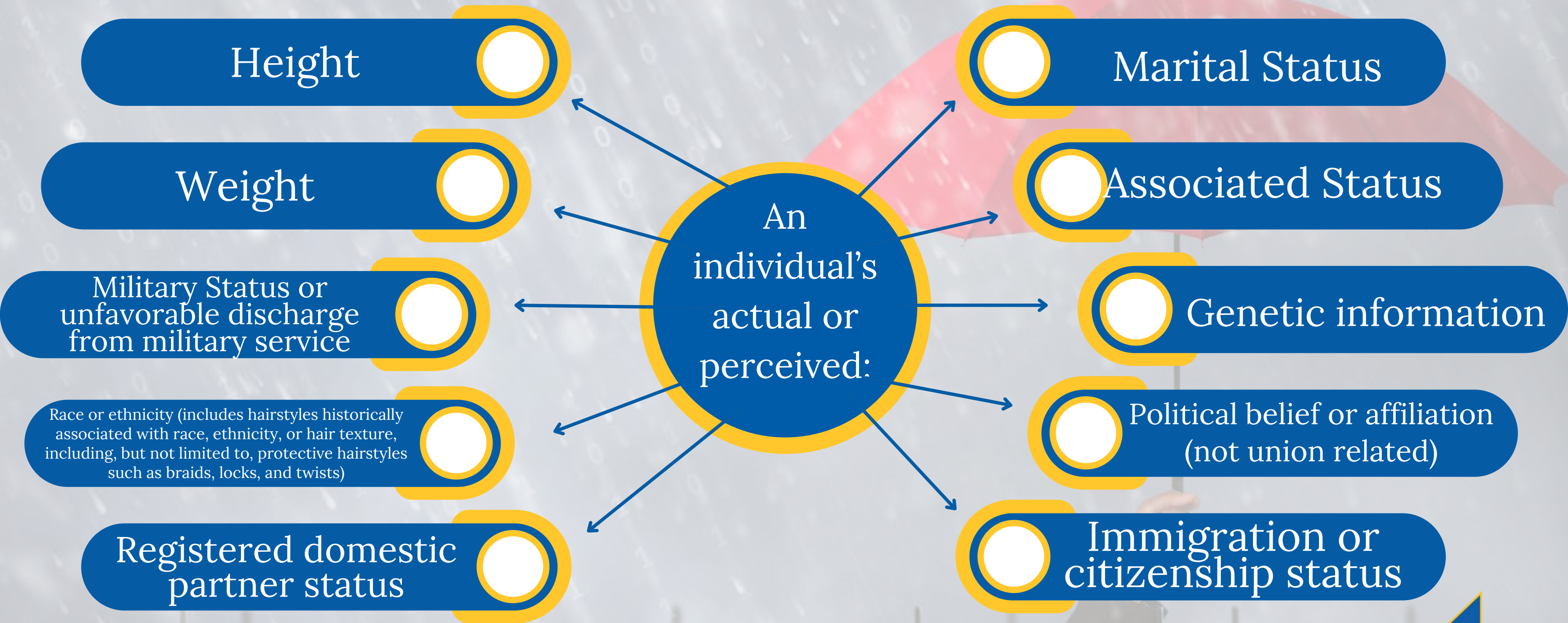
Mental or Physical Disability

Ancestry

Ethnic group identification

Nationality

PROTECTED CATEGORIES



TIMING

Complaints of discrimination, harassment or retaliation shall be made within 90 calendar days of the discrimination, harassment or retaliation, unless EOCO waives the 90 day requirement.

**Non-Title IX Complaints will be handled as promptly as possible.*

REPORT INTAKE

REPORT MAY BE RECEIVED BY:



Phone



Email



Mail



Online Form

Report



INSTITUTIONAL COMPLIANCE SOLUTIONS

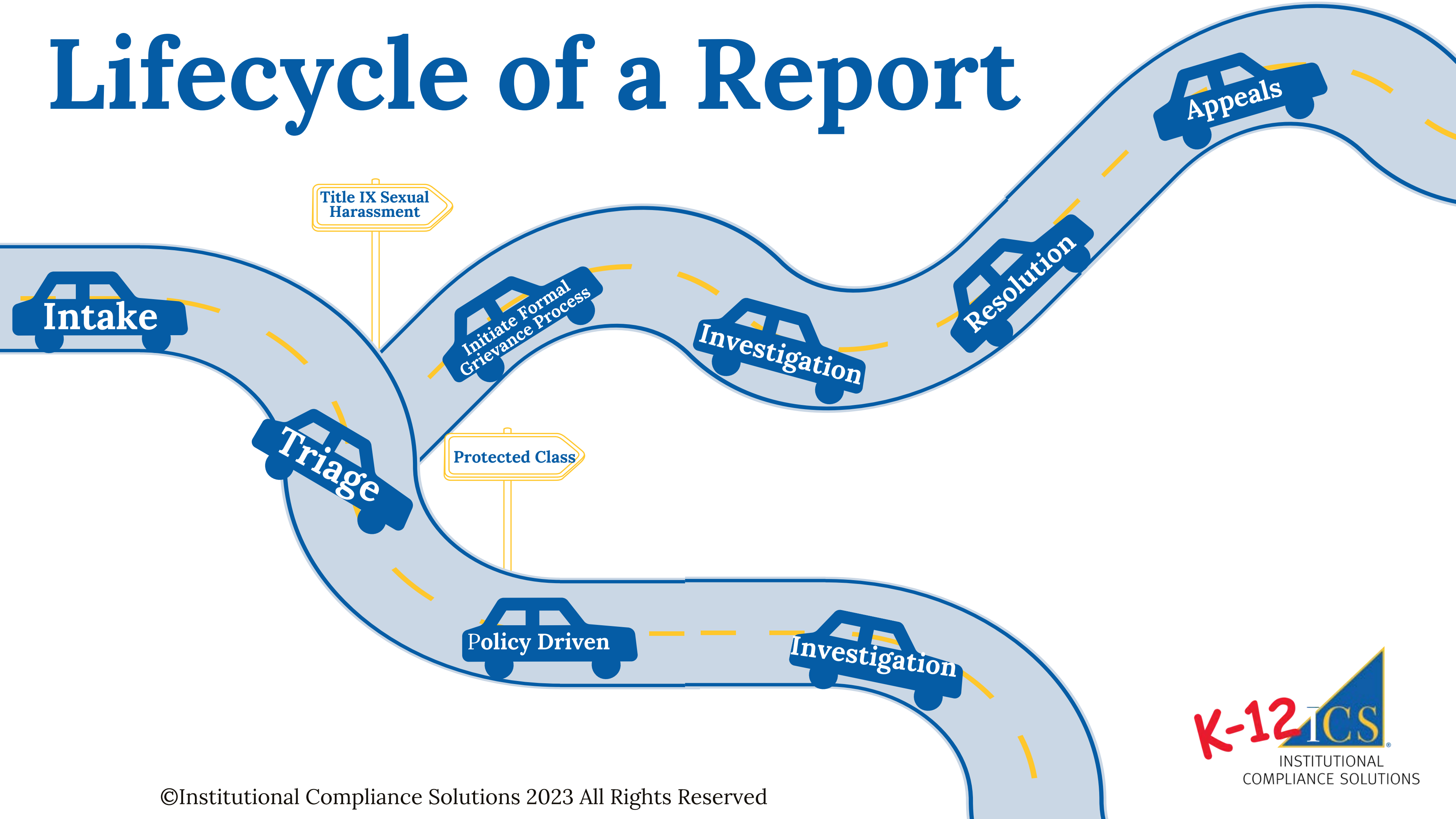
WHEN ROADS MEET.....



Ultimately
Pathway is
dictated by Policy,
and Policy is
impacted by Law



Lifecycle of a Report



Who's On First?



When a Report Is Made



Considerations



Does the complaint have to be written?



Does the complaint have to be signed?

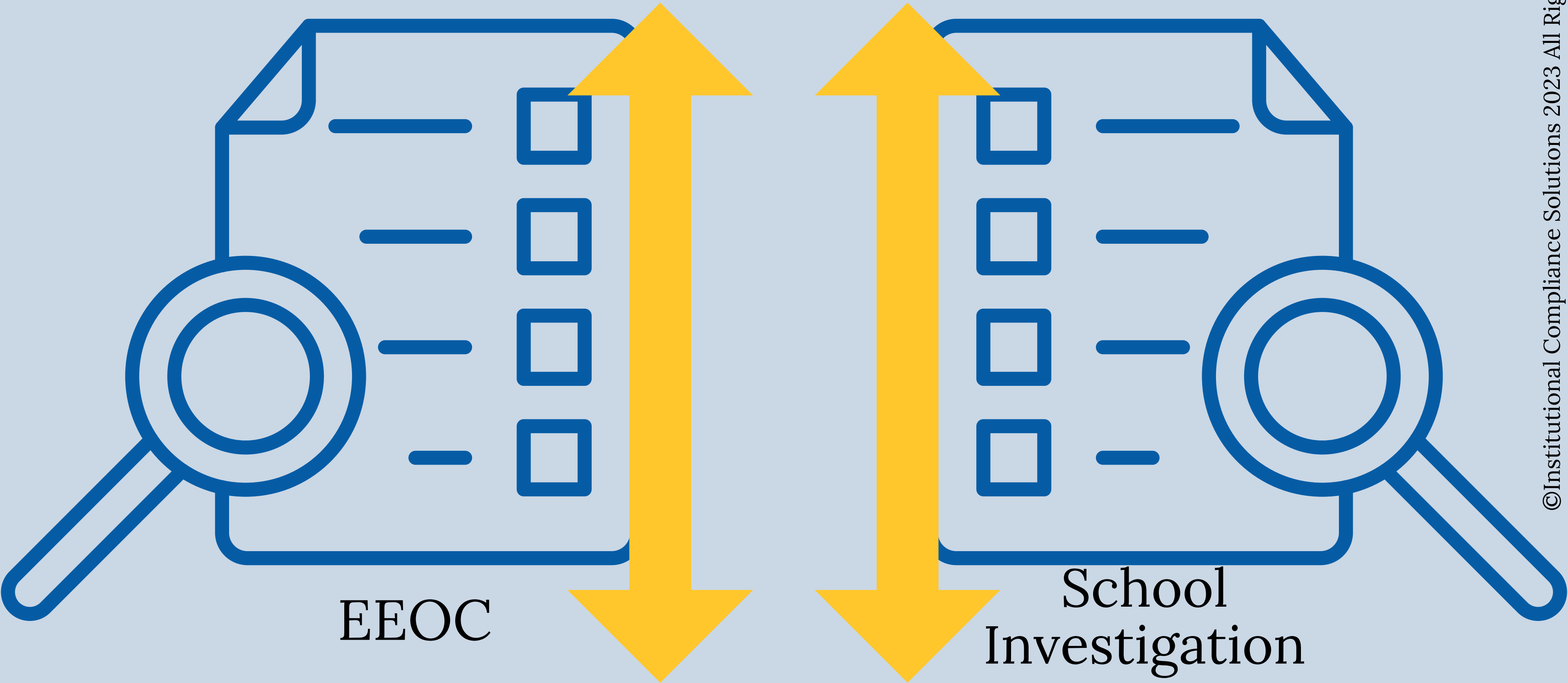


What does your policy dictate?



Any Union considerations?

PARALLEL INVESTIGATIONS



NOTICE OF INVESTIGATION

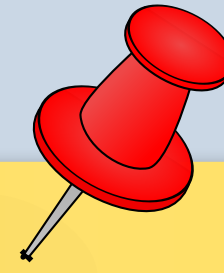
 Does your policy require a Notice of Investigation?

 Who drafts it and sends it out?

 Who receives it?



NOTE!



The EOCO may
initiate
investigations
even when there
is no
Complainant.

HYPO

Sonya works as a dishwasher in the kitchen at ICS Elementary School. When an opening for a cook position became available, Sonya applied. Sonya's first language is Creole, and she speaks some Spanish but very little English.

Prior to her interview, Jason, the cafeteria supervisor, requested a translator, but a Creole translator was not immediately available. So, he conducted the interview and pulled in one of his other cooks who speaks Spanish to translate during the interview process.

HYPO - CONT'D

Part of the interview process consisted of candidates cooking a meal according to a written recipe and instructions. Sonya was able to prepare the meal, but because she had to ask multiple clarifying questions, she did not complete the meal in the time allotted.

After Jason discussed the candidates with Dean, the district chef, they decided together not to hire Sonya.

HYPO - CONT'D

After the interview, Sonya asked Jason every day if they had made a decision. Jason kept stalling because he was waiting on the district to provide a Creole translator, per his request.

The district translation office did not respond to him for a week, and when he did not get a response, Jason decided to take matters into his own hands and pull another cafeteria employee into his office to translate during his meeting with Sonya. The cafeteria employee did not speak Creole, but rather, translated from English into Spanish. During the meeting, Jason stated that there were several reasons she did not get the job, but ultimately, it was her lack of English skills that disqualified her.

Sonya reported this to the Equal Opportunity Compliance Office as discrimination based on national origin.

WHAT ARE THE ALLEGATIONS?



Title VI
Title VII
ADA
ADEA



WHAT SHOULD BE INCLUDED IN NOTIFICATIONS?

Parties
Details

NEXT STEPS?

Interviews
Collection of
Evidence



Notice of Investigation



Dear Mr. Rogers,

The Equal Opportunity and Compliance Office has received a complaint alleging that you have engaged in behavior that violates the Comprehensive Non-Discrimination, Harassment, Sexual Harassment, Sexual Misconduct and Retaliation Policy. The allegation states that beginning July 17, 2023, you discriminated against Sonya Lucero based on her national origin. Ms. Lucero specifically claims that she has been treated differently due to her native language.

ICS takes reports of discrimination seriously as evidenced by our process for investigation and resolution of this alleged conduct. A copy of the entire policy and procedures can be found here at [https://www.addyour policy](https://www.addyourpolicy).

An investigator will be assigned to investigate this allegation and will be in contact with you soon to set up a time for an investigation meeting. As provided within the Policy, you are permitted to bring an advisor to all meetings during this process. Please be aware that CPS has a non-retaliation policy and any concerns of retaliation will be investigated and subject to appropriate disciplinary action. Additionally, any complainant or third party who knowingly makes materially false charges alleging a violation of CPS's Policy in bad faith may be subject to appropriate disciplinary action.



Session 3:

Interview Process

INVESTIGATOR IS RESPONSIBLE FOR:

- Conducting Investigation and gathering facts
- Preparing and issuing an Investigative Findings and Report containing:
 - Synopsis of evidence; and
 - whether the allegations are substantiated or unsubstantiated
- Rendering determination of responsibility based on Preponderance of Evidence



INTERVIEW SKILLS

- Professionalism
- Observation
- Rapport
- Outline
- Flexibility

INTRODUCTION DURING INTERVIEW WITH PARTIES



Confirm how they want to be referred to (Dr., pronouns, etc.)



If virtual, confirm attendees in the room



Explain the process - Use Flow Charts if possible!



Explain your role - will you be making the decision or are you simply a neutral fact-finder?



Recording or just taking notes?



Explain how any technology issues will be handled and address any possible distractions



Remind them that the Respondent is presumed not responsible



Warn against retaliation



Confidentiality vs. Privacy



Answer Questions



ADVISORS

- Of choice
- Can be an attorney, doesn't have to be
- Your policy defines how they can be involved in your process
- Challenges with advisors
- Benefits to advisors



**Don't forget your
soft skills
throughout**

SUPPORTIVE MEASURES

- Provide Check-In Supports
- Referral to the Employee Assistance Program
- Safety Plans and No Contact Orders
- Connection to external counseling, support, medical/health services and/or advocacy services (see resource guide)
- Modifications to course/work schedules and any other course/work-related adjustments
- Emergency removals/placements (in consultation with OSP/EOCO, Network Offices, the Office of Social Emotional Learning (OSEL), and Safety and Security)



ATMOSPHERE MATTERS

Before you even start interviewing...

- Consider the look and feel of the office/interview location
- Consider any privacy concerns

RECORDING:

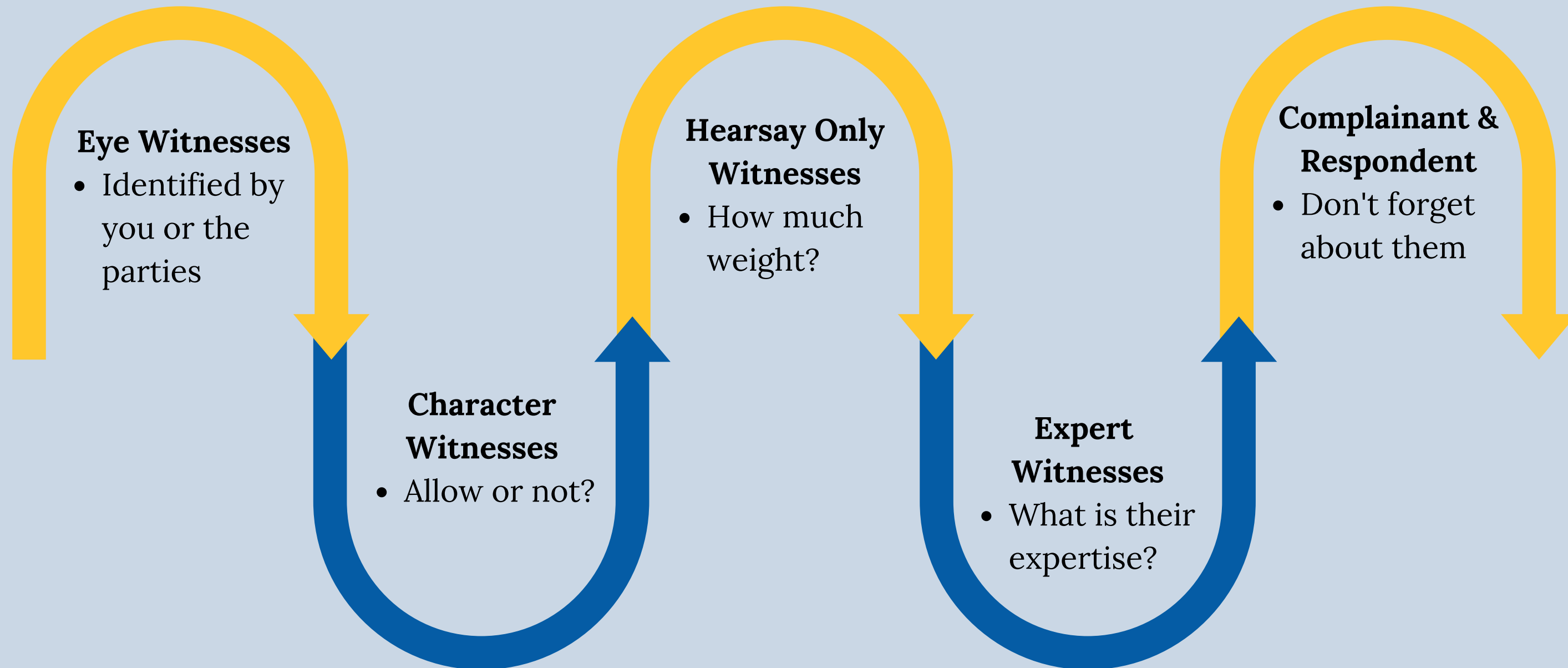
YES? OR NO?



NOTE-TAKING

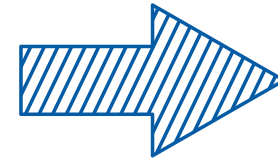
- Detailed, but not so much that it slows down the interview
- Decide what is most important
- Extra person in the room? Give notice and explain their role as note-taker
- Note taker vs. dual investigator
- Use quotations if possible
- Ask for a pause or clarification if necessary

TYPES OF WITNESSES



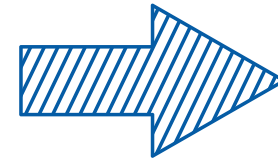
TYPES OF EVIDENCE

Direct Information/
Evidence



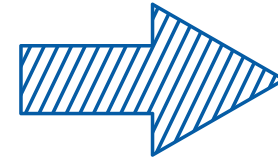
First person
observation of an
incident

Circumstantial
Information/Evidence



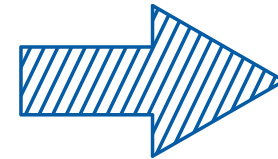
Reported observation of
information that offers
inferences about the facts
of the event

Documentary
Information/Evidence



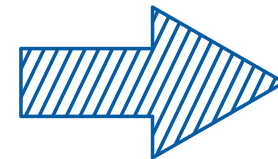
Written description of an
incident
*Police Report
*Write up from staff member

Hearsay
Information/Evidence



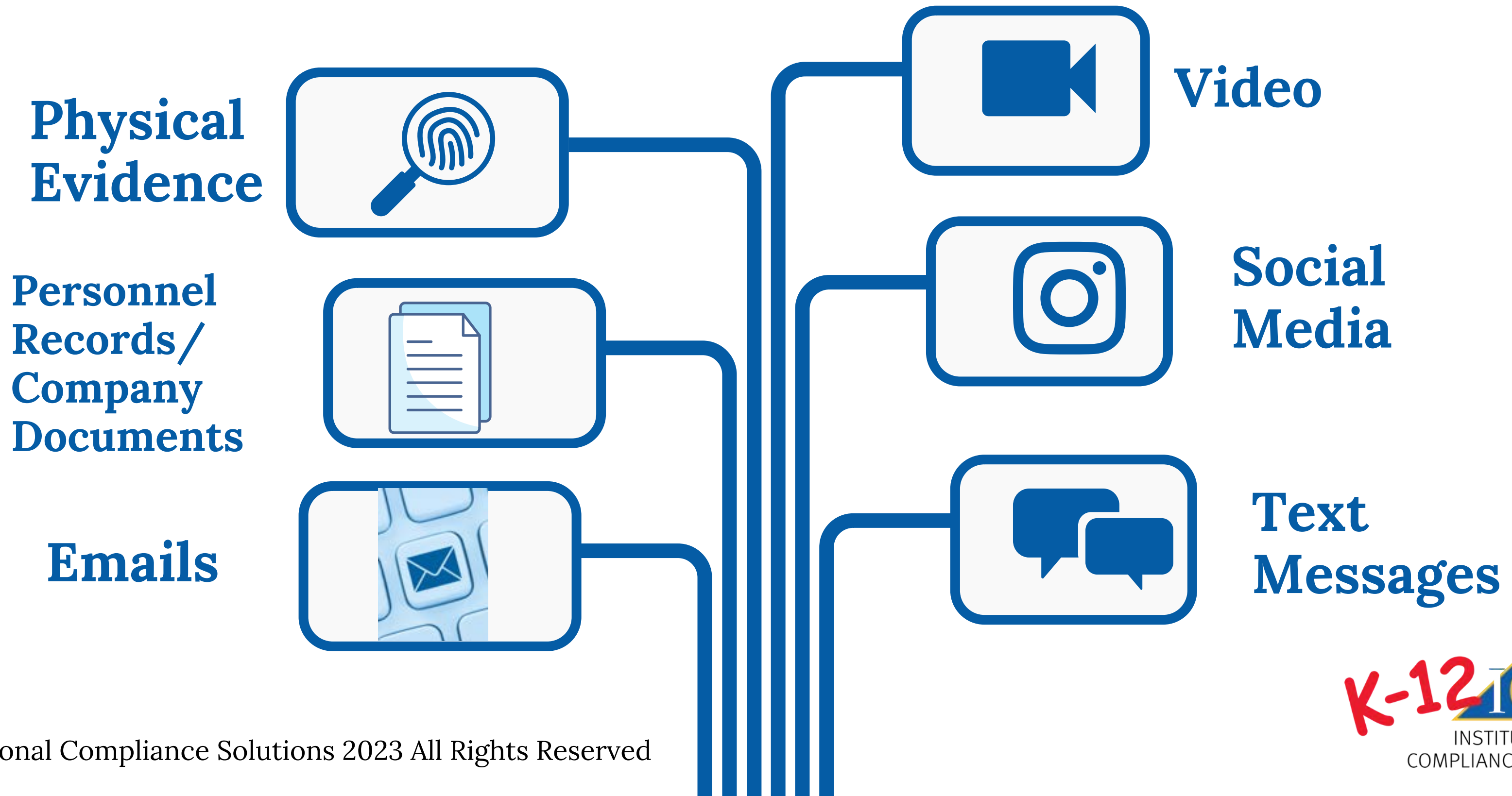
Information that is
reported through
another party

Expert
Information/Evidence



Information that is shared
from a person who has an
acknowledged expertise in
related subject matter

IDENTIFYING TYPES OF EVIDENCE



POTENTIAL WITNESSES & EVIDENCE



Coworker who translated for Sonya



Emails between Sonya and Jason after her interview



Written part of interview



Job Application



Cooking test notes



Performance Reviews



Personnel records



TYPES OF QUESTIONS

Broad, Open-Ended Questions

**Who? What? When?
Where? How? Why?**

Circling Technique

**Opportunity to
Clarify**

**Direct
Questions**

Yes/No

POTENTIAL QUESTIONS



Can you describe why you feel like you were treated differently because of your language?

Did you receive any documentation specifying why you were not hired?

When you were waiting for a decision, how did you contact Jason?

Can you tell me about the cooking assessment? What were you instructed to make?

You said that there were other reasons you did not get the job, can you tell me what those were?

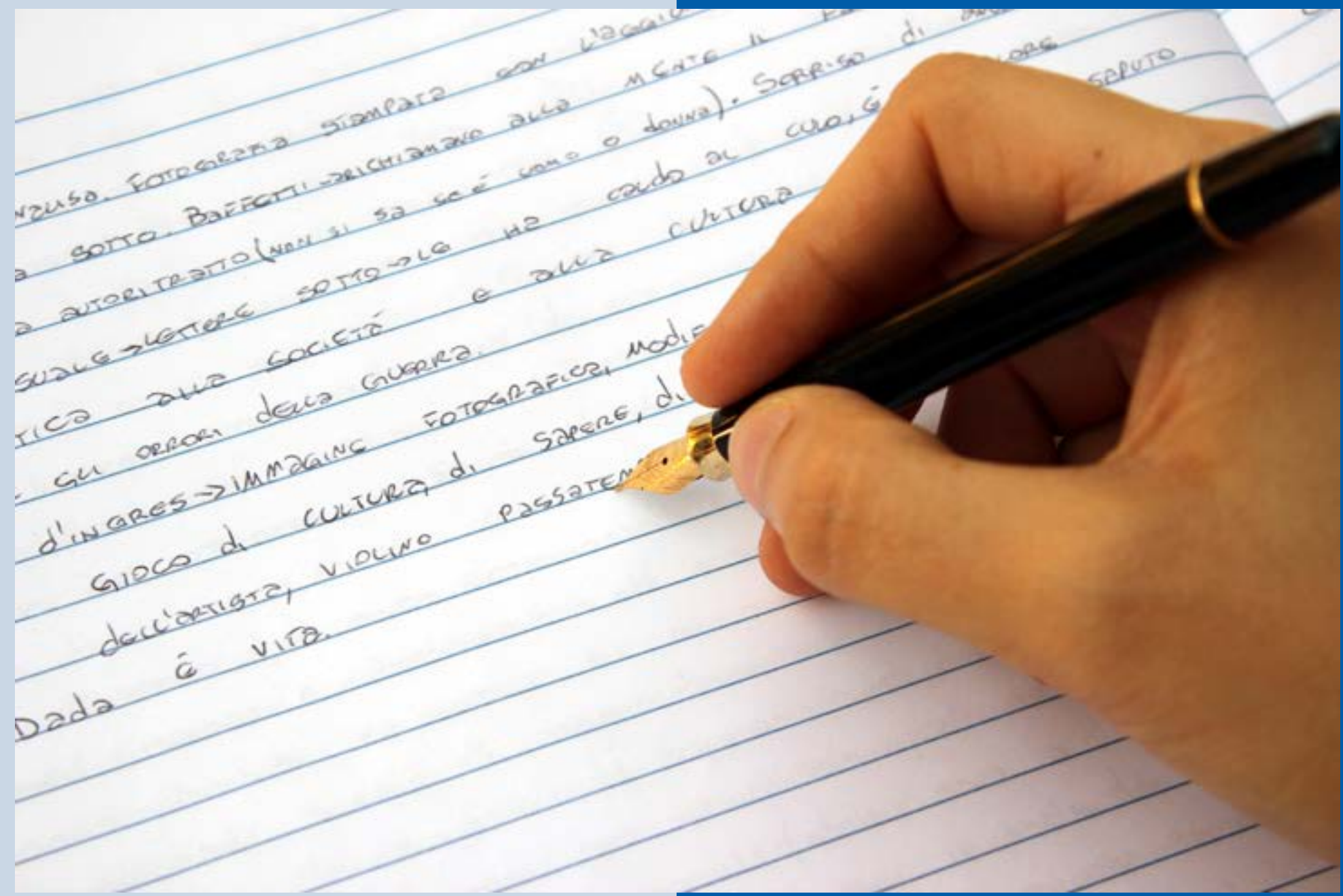
How would you describe your proficiency in Spanish?

Did you tell anyone about the alleged conduct? If so, who?

What happened after you were told you did not get the cook position?

Session 4:

Report Writing- Decision Making





INTRODUCTION TO REPORT WRITING

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AUDIENCE

- What is the intent of the report?
- Who needs to understand/use it?
- Where/how will it be used?

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ORGANIZATION

Easy to Follow, Clear, Concise

Can the reader follow the report and understand who reported/said what?



Includes the Basics

Assume the reader knows NOTHING



Consistent but Not Identical

There is room for a little flexibility



Roadmap for the Decision-Maker

This report will guide the decision maker, help them ask questions, and provide a roadmap for their process



Reviewed by Colleague

Trusted, Title IX counterpart

LANGUAGE MATTERS!

- Allegations / Policy Violations
- Complainant / Respondent
- Quotes v. Paraphrase
- Pronouns
- Consistent / Inconsistent

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SAMPLE INVESTIGATIVE REPORT OUTLINE

I. Introduction and Allegations



II. Parties and Witnesses



III. Investigative Timeline



IV. Definitions of Conduct at Issue/Policy



V. Summary of Relevant Evidence and Information



VI. Analysis and Conclusion



VII. Recommendations



VIII. Appendix



NOTE: Attachments can be included at the end of the report or in a different document, but there should be a list of the Attachments at the end of the report.

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INTRODUCTION & ALLEGATIONS

- Look to Notice of Investigation, if there is one.

- When was the report received?

- Who reported?

- How was the report received?

- What is alleged?

- Use language from the report form/complaint.



PARTIES AND WITNESSES

CALL FOR WITNESS

List of each party and witness that serves as a "key" for the reader.

Include titles/
relationship to parties.

INVESTIGATIVE TIMELINE

**Procedural History
of the Matter**

Notice of Investigation

**When was the
report received?**

Dates of Meetings

**Did you receive a formal
complaint/written report?**

**Dates of Collection of Evidence (If
different than dates of meetings)**

**Include info
about any delays**

DEFINITIONS



Define the conduct/allegations at issue.

Review anti-discrimination policy or employee handbook.

Include burden of proof (Preponderance of the Evidence) here.

Look to your notice of investigation or policy for language/guidance.

STANDARD OF PROOF

- **Preponderance of the Evidence** - 50% plus a feather - more likely than not












SUMMARY OF RELEVANT EVIDENCE AND INFORMATION



- All of the relevant info received in investigation
- May include Timeline of Events
- Can be broken down by:
 - *Party/witness (w/subsections for each person & the info provided)
 - *Allegations
 - *Chronological Order of Events
- Include when interviews took place, if in-person or by video conference, and who was present.
- If something is not included, note reasons (footnotes are your friend!)

APPENDICES / ATTACHMENTS

-  **Complaint / Report and Notices to each Party**
-  **Anti-Discrimination Policy or Relevant sections of Employee / Faculty**
-  **Handbook excerpt**
-  **Code of Conduct excerpt**
-  **Emails**
-  **Text Messages / Snapchats / etc.**
-  **Photos or Screenshots**
-  **Written responses from parties**
-  **Map of school**

Things

To

Consider



- Policies may include opportunity for parties or witnesses to review evidence
- Notes may have to be redacted
- Confidential Documents (mental health records with consent)

Be Prepared...

To be investigated!

Document, Document, Document
(delays, objections EVERYTHING)

- Duplication of documentation
- To record or not to record?
- Inclusivity vs. Exclusivity



HYP0

Sonya reported that another cafeteria worker, Fiona, was present during her interview. You made repeated attempts to speak with Fiona, but she never replied to your emails or calls, and when you finally got her to come in for a meeting, she said she did not want to participate in the investigation, but she would not tell you why.

Drew was the employee who served as the interpreter for both the interview and the follow up meeting when Sonya was told that she was not chosen for the position. When you spoke with Drew, he told you that he did not remember Jason ever saying anything about Sonya not speaking English. When you circled back, he said he wasn't really sure if he heard Jason say anything about her not speaking English, but then followed up by asking if Jason would see his responses to the answers. When you questioned Drew about any concerns he may have, he said he just wanted to know. You then explained that the school has a zero tolerance policy against retaliation, and you asked Drew if he believed he would be retaliated against. He said "maybe" but would not elaborate further. Jason is Drew's direct supervisor.

What do you do with this information in the analysis portion of your report?

Analysis

DOES YOUR POLICY
REQUIRE THE
INVESTIGATOR TO
INCLUDE ANY OF
THE FOLLOWING IN
THE REPORT?

Conclusion/Findings
(Ex: "A preponderance
of the evidence
does/does not support
a violation of Policy
4.02)

Recommendations



Decisions . . .



THOUGHTS FOR DECISION-MAKERS

WHAT IS THE STANDARD
OF EVIDENCE ?

CREDIBILITY
DETERMINATIONS

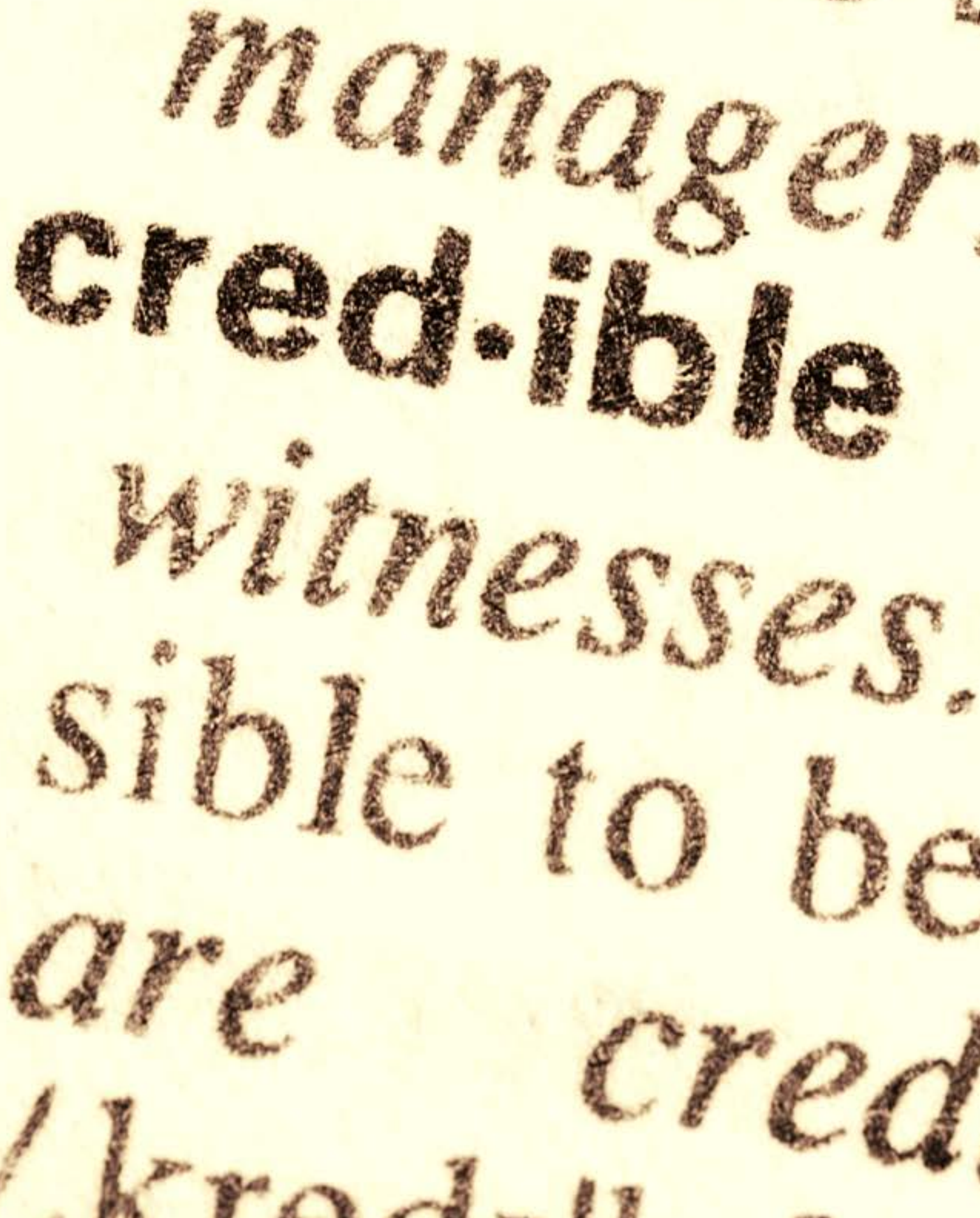
MAKING A
DETERMINATION

RELY ON EVIDENCE NOT
FEELINGS....



CREDIBILITY DETERMINATIONS

- Required
- Consistency vs. Inconsistency
- Reputation vs. Credibility



ANALYSIS AND CONCLUSION:

- Go back to your policy.
- Break down the parts of the definitions to match the facts.
- Think of the scale! How will you weigh each piece of evidence?
- Connect the evidence to the definitions.
- Add witness statements that support the evidence.
- Address credibility/consistency.



Responsible for
Policy Violations?

Address any concerns or
perceptions that you have
identified as potential or
contributing issues?

CONCLUSIONS
/
FINDINGS

Responsible for any
other policy or
handbook violations?

Identify next steps
or appeal rights





Corrective Actions

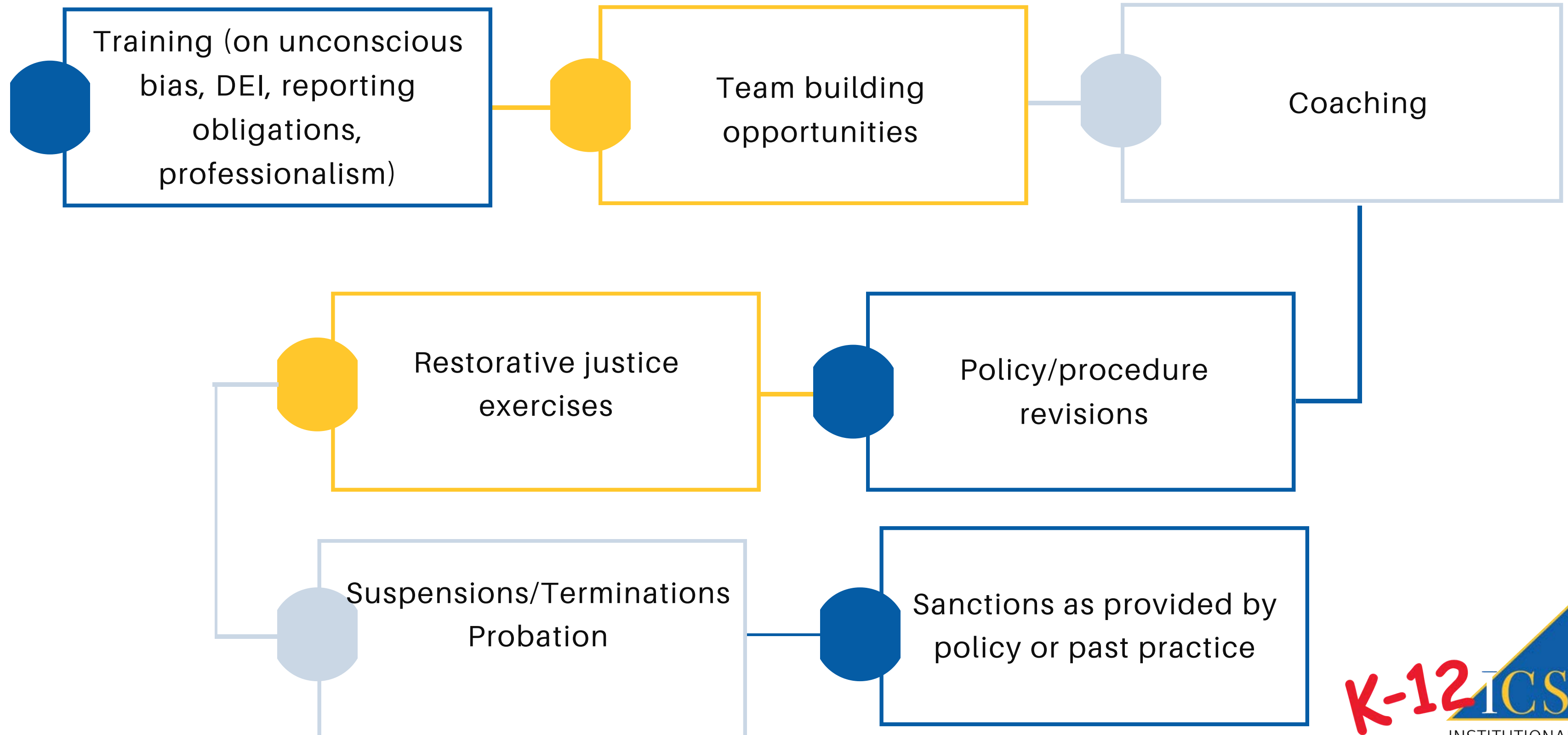
CORRECTIVE ACTION

- Non-disciplinary training provided to parties and/or witnesses when it is deemed beneficial to review policies, procedures, or other rules that govern the conduct of Covered Individuals.
- EOCO may recommend corrective action, even if the reported conduct is unsubstantiated

BOTH COMPLAINANT AND RESPONDENT RECEIVE NOTIFICATION OF THE INVESTIGATION OUTCOME



Sample Recommendations:





APPEALS ?

EOCO FINDINGS ARE FINAL UNLESS....

- EOCO determines that a procedural error occurred; or
- New information exists that would substantially change the outcome





ALTERNATIVE RESOLUTION

- After complaint has been filed and any time prior to a determination.
- Complainant and Respondent must agree or the Respondent is willing to accept responsibility.
- Parties receive a written notice prior to entering process.
- Can be stopped at any time and parties may request a complete investigation.
- District may be unable to honor a request for confidentiality and/or alternative resolution when allegations involve serious misconduct.





Session 5:

Conflict & Bias





- Suspend your mind...
- No pre-judgment
- Check for conflicts
- Check your biases





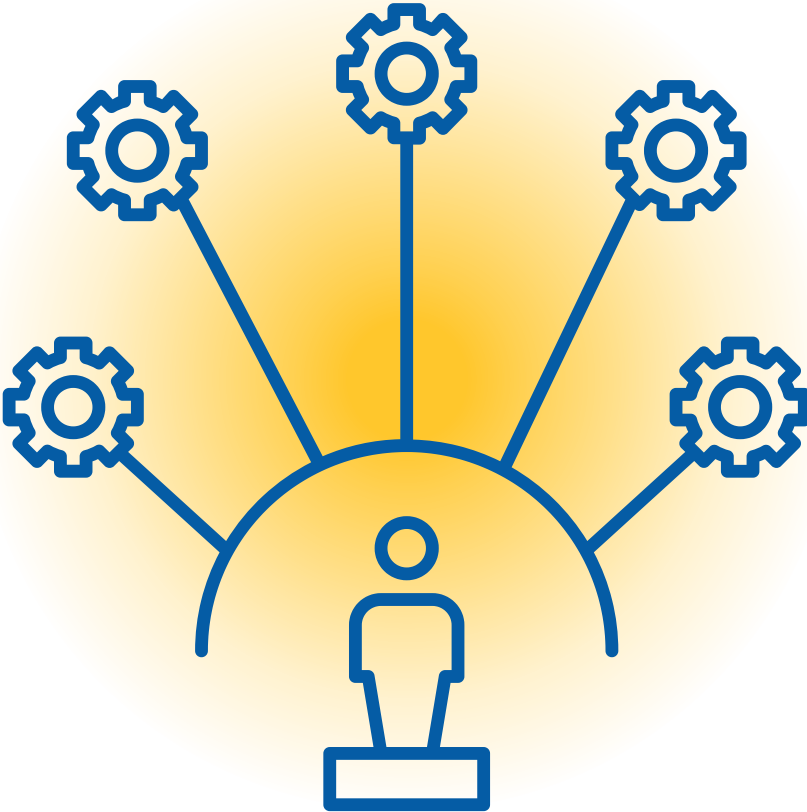
IDENTIFY AND MANAGE CONFLICTS OF INTEREST AND BIAS / IMPORTANT THROUGHOUT THE ENTIRE PROCESS

Actual v. Perceived

conflict
of

I N T E R E S T S

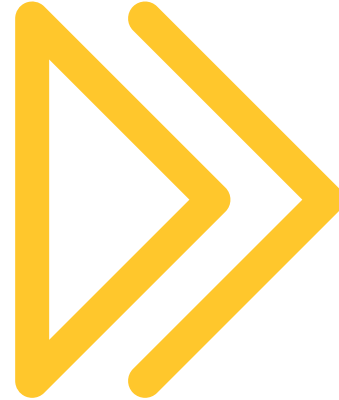
Experiences



Media

Beliefs

Education



Biases



Automatic Thoughts

Feelings



Actions



Discriminatory

Non-Discriminatory

Overt

Covert



Bias – Cause to feel or show inclination or judgement for or against someone or something



Subjective/Objective/Perception of Bias or Conflict

Examples:



Frequent flyers



Student Counsel President



Basketball Star

Unconscious bias that causes people to gravitate towards others who appear to be like them

Affinity Bias

Confirmation Bias

Listening to or respect data information that aligns with our viewpoints

Cognitive bias that claims that positive impressions of people, brands, and products in one area positively influence our feelings in another area

Halo Bias

Biases

Horn Bias

Cognitive bias that causes our negative impression of someone or something in one area to change our impression of them in other areas

Anchoring Bias

Overconfidence Bias

Overly confident in own intelligence, experience or opinions

Being overly influenced by the first piece of information we receive



IKEA effect - Placing value on things we have done ourselves



Defaulting to Bias in Decision Making is Enhanced When:



The basis for judgment is ambiguous.



Rushed decisions b/c of time constraints.



We are in a heightened emotional state.



There is no accountability for our decision making.

Bias Impacts Investigations



In types of questions



In granting extensions or setting deadlines



In drafting a report



Bias Impacts Decision Making

- Your views are informed by your lived experiences.
- Your identity informs how you see the world and how the world sees you.
- We are also shaped by our environments.

All humans have bias.



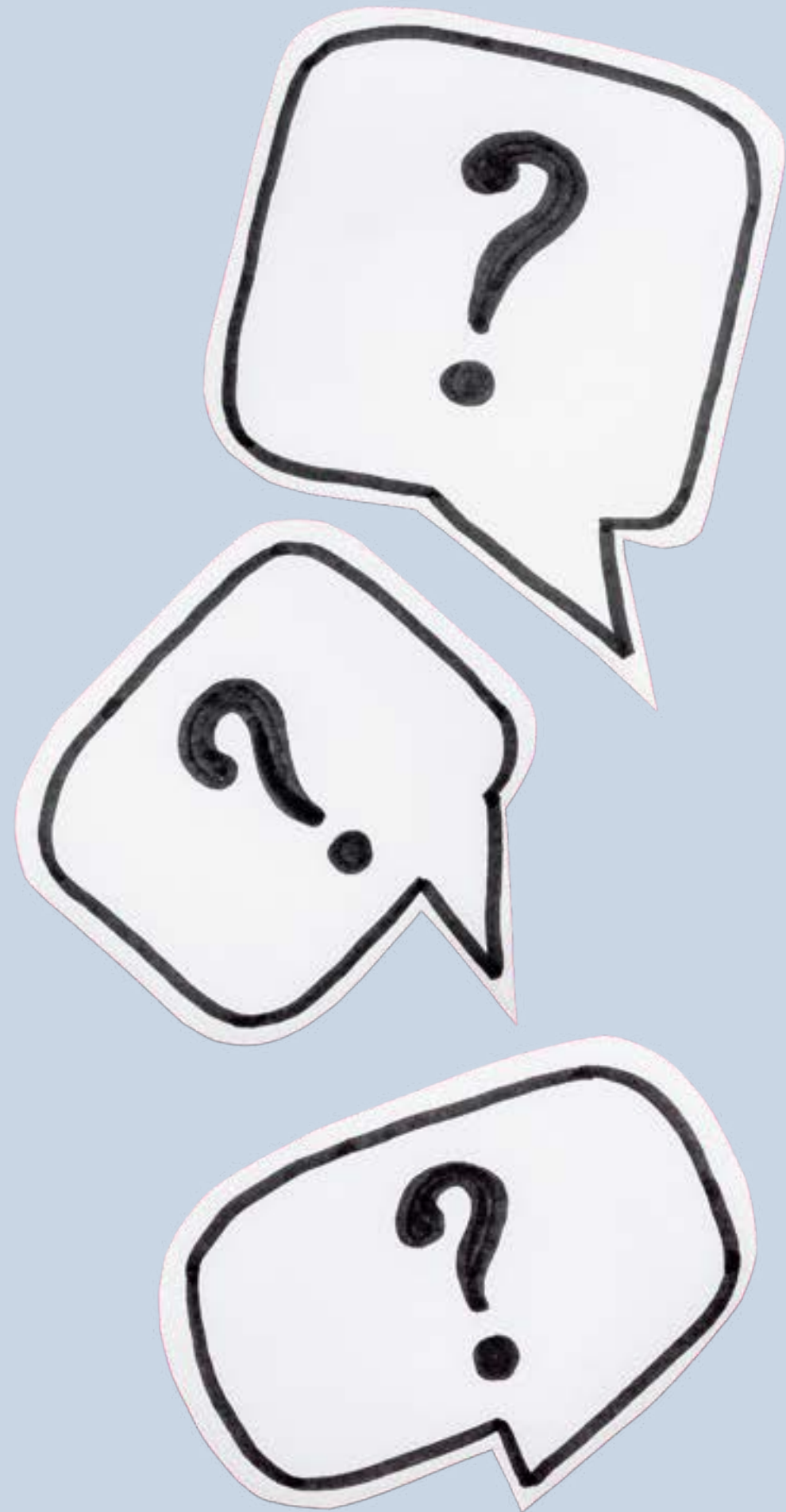
How Do We Mitigate Conflict of Interest and Bias?

Reducing Bias in Investigations and Decision Making



- 1 Was there equity during process?
- 2 Were questions fair to all parties?
- 3 Was information written in an unbiased manner?
- 4 Did you weigh information objectively?

Reducing Bias in Sanctioning



One size fits all approach to sanctioning?



Can you articulate how the action taken is reasonably calculated to end the harassment?



Can you articulate how the action taken is reasonably calculated to prevent the recurrence?



Remedies: Intended to restore or preserve equal access

WHAT HAPPENS WHEN SOMEONE ACCUSES YOU OF BIAS?

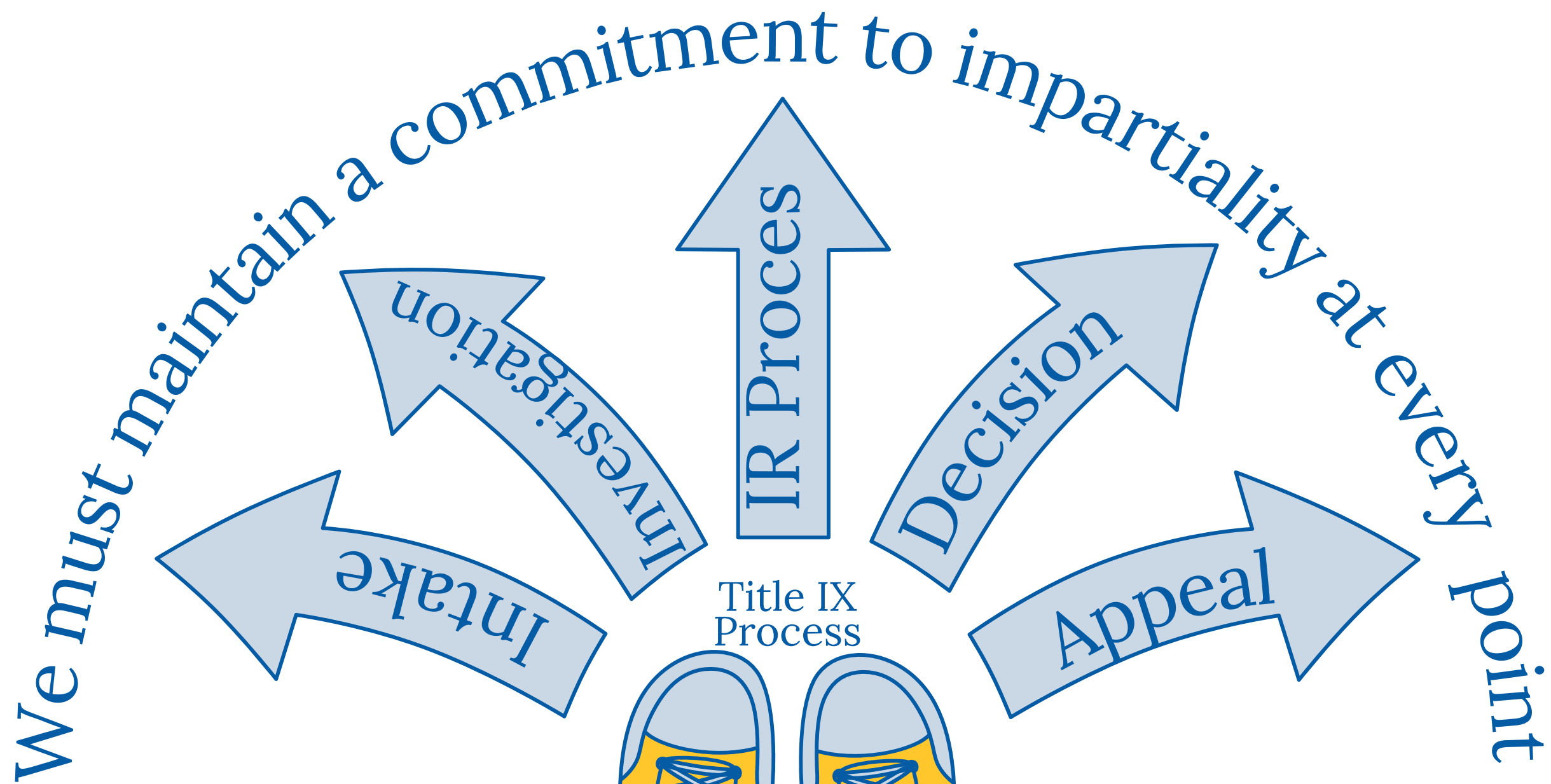


Acknowledge their concerns (we all have bias)

Inform them of your bias training

Report their concerns to supervisor

Document, Document, Document





Session 6:

Trauma Informed Practices





GENERAL PRINCIPLES

- Not adversarial
- Not a court proceeding
- Remove your advocacy hat
- Trauma informed principles transcend working with victims

PURPOSE

- Tool for your toolbox
- Highlight Role
- Create Consistency
- Create Comfort

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Utilizing Trauma Informed Practices

WHAT DOES IT MEAN?

- Realizing the prevalence of trauma
- Understanding the impacts of trauma
- Avoiding the creation of additional trauma





Using Non-Trauma Informed Practices:

- JEOPARDIZES FUTURE REPORTING
- RESULTS IN PREMATURE JUDGMENT AND ACCUSATIONS OF FALSE REPORTING
- CAN CAUSE ADDITIONAL TRAUMA



Using Non-Trauma Informed Practices:

- JEOPARDIZES FUTURE REPORTING
- RESULTS IN PREMATURE JUDGMENT AND ACCUSATIONS OF FALSE REPORTING
- CAN CAUSE ADDITIONAL TRAUMA

Neurobiological Impact of Trauma

HOW DOES TRAUMA IMPACT
THE BRAIN?

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TRAUMA & AMYGDALA, HIPPOCAMPUS, PREFRONTAL CORTEX



- **Brain detects threat- Trauma Triggers Chemical Reaction**
- **Impacts:**
 - **Decision-making;**
 - **Rational thinking;**
 - **Perception;**
 - **Planning effective responses;**
 - **Memory**
- **During trauma- may function less effectively**
- **"Survival Mode"- may not be able to think through the situation clearly**



Fight, Flight, or Freeze

OR ALL THREE...

Or Something Completely Different...

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Response to Trauma

THE POSSIBLE IMPACT

SHOCK

DENIAL

SELF-BLAME

EMBARRASMENT

FEAR

ANGER

CONFUSION

DISRESPECT

HUMILIATION

LIMITED EMOTION

AVOIDING ADDITIONAL TRAUMA





Investigative Trauma May Trigger Same Reactions

FIGHT

- Hostile; Angry; Explosive; Annoyed

FLIGHT

- Stop participating; Run Away

FREEZE

- No Response; Radio Silence



#1 SKILL= ADAPTABILITY

- **Take the lead from the person you are meeting with**
- **Use empathy**
- **Listen actively**
- **Develop rapport**
- **Withhold judgment**

Trauma Informed Necessities

THE 4- C'S



Comfortable



Clear



Consistent



Convenient

PRE INTERVIEW:

- **NOTIFY THE PARTY/WITNESS**
 - **WHAT IS THIS ABOUT**
 - **WHO WILL BE THERE**
 - **HOW DO THE PARTICIPANTS GET THERE?
(VIRTUALLY AND/OR IN PERSON)**
 - **TIME ZONES**
- **SURPRISES UNDERMINE YOUR CREDIBILITY**





PRIVACY IS IMPERATIVE

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TRUST BEGINS WHEN THE PARTICIPANT "ENTERS" THE ROOM

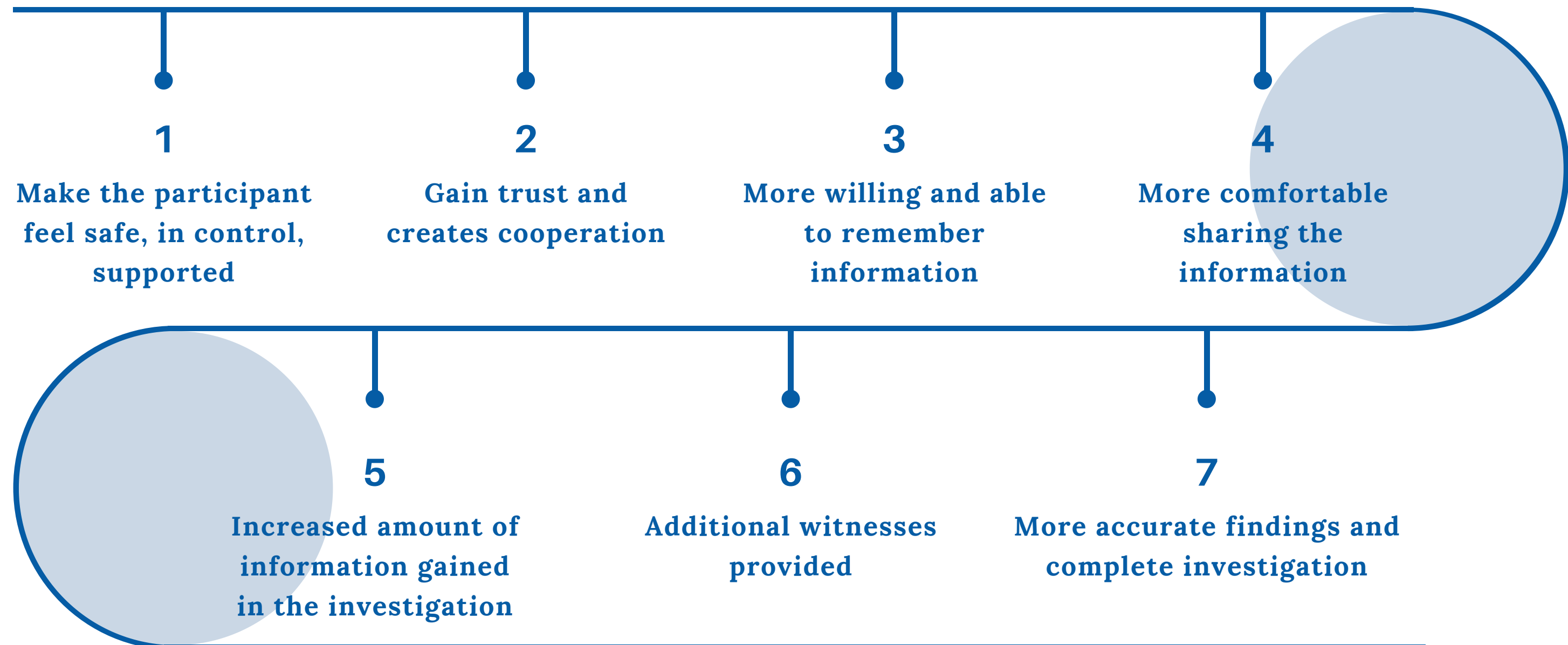
- What does the room look and/or feel like?
- How do you appear when the participant enters?
- How do you introduce yourself/describe yourself?
- How do you explain the interview/process?
- How do you address housekeeping items?



ACCESS TO SUPPORTIVE SERVICES?

- COUNSELING, FINANCIAL, ETC.?
- ADVISOR IN THE MEETING?
- DURING INVESTIGATION?
- POST INVESTIGATION?
- WHAT IF THEY DON'T PARTICIPATE?
- LET THEM KNOW EARLY

Leading with Empathy



Hello,
My name is

REGARDLESS OF WHO YOU ARE INTERVIEWING, THE INTRODUCTION MATTERS

- Who are you?
- Why are you interviewing
- What are your qualifications?
- Why now?
- Who is the participant?
- What do they prefer to be called?
- What do they do for a living?
- Where are they from?
- Do they have questions, concerns, etc.?
- How should they let you know if they need a break?
- Do they have a hard stop time?

Explain the Process

INVESTIGATION

Flow chart is best

What are the standards/violations being investigated? (Definitions)

Timeline?

POSSIBLE OUTCOMES

What happens at the end?

Burden/Standard of Proof?

Who makes the decisions?

WILL THERE BE A REPORT?

Public/Private/Will they see it?

PRIVACY VS. CONFIDENTIALITY

What can they expect?

What if police involved?



Initial Questions:
What are you able to tell me?
Where would you like to begin?

Use these types of questions:

Help me understand

Do you have any additional information to share?

Can you tell me a little more?

Questions for clarity

NOT these types of questions:

The "Why" Questions
Why didn't you?

Leading Questions

Blaming questions

Interrogating questions

FRAMING THE QUESTION EXAMPLES

- Why didn't you ask for help?
- Why did you drink if you didn't want to?
- Why didn't you report right away?



- Was there anyone around or available?
- What happened after you had the drink?
- Was there anything in particular that helped you decide to report?





TREAT THE PARTIES EQUITABLY, INTERVIEW THEM UNIQUELY

- **Ensure that the complaint and response are being taken seriously**
- **No prejudgments**
- **Prohibitions against retaliation**
- **Ask hard questions, but acknowledge that they are hard**



**REMINDER: BODY
LANGUAGE & FACIAL
EXPRESSIONS**

- Virtually and in person

Don't go Overboard

IT CAN GO TOO FAR...

You cannot lead investigations with your emotions

ACKNOWLEDGE CONFLICTS OF INTEREST AND/OR BIASES

Truly reflect on how they are impacting your ability to investigate

IF YOU FIND YOURSELF HERE, TAKE A BREAK

From the interview, the witness/party, the project

Scenarios Complainant

**COMPLAINANT CRIES
HYSTERICALLY**

Unable to get composure

**COMPLAINANT
REFUSES TO SPEAK**

Absolutely NOTHING

**COMPLAINANT
REFUSES TO GIVE
ANY DETAILS**

Won't talk about what occurred,
but will talk around it

**COMPLAINANT
DEMANDS
IMMEDIATE ACTION**

Expects that the process should
be concluded immediately after
their interview

Scenarios Respondent

**RESPONDENT
SCREAMS AND
SLAMS FIST**

Will not calm down

**RESPONDENT
REPORTS ABUSE OF
THEIR OWN**

Sexual or physical abuse

**RESPONDENT
REFUSES TO TALK**

Lawyers up and attorney wants
to speak for Respondent

**RESPONDENT CRIES
HYSTERICALLY**

Unable to finish interview

QUESTIONS?

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Session 7:

Hypos

