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1873 - 2023

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# **Title IX Conduct Panel Supplemental Training**

**Last Updated: July 7, 2023**

# Supplemental Training Areas of Focus

- Supplemental Training Goals:
  - Understand changes in the legal landscape for Title IX
  - Appreciate the impact of those legal changes on this hearing process
  - Discuss what conflict of interest means
  - Highlight tips and key learning from the past 2 years with this hearing process
- Topics:
  - Contextual legal changes
  - Review of process changes and updates
  - Bias and conflicts of interest
  - Panelist tips



# Legal Context Updates

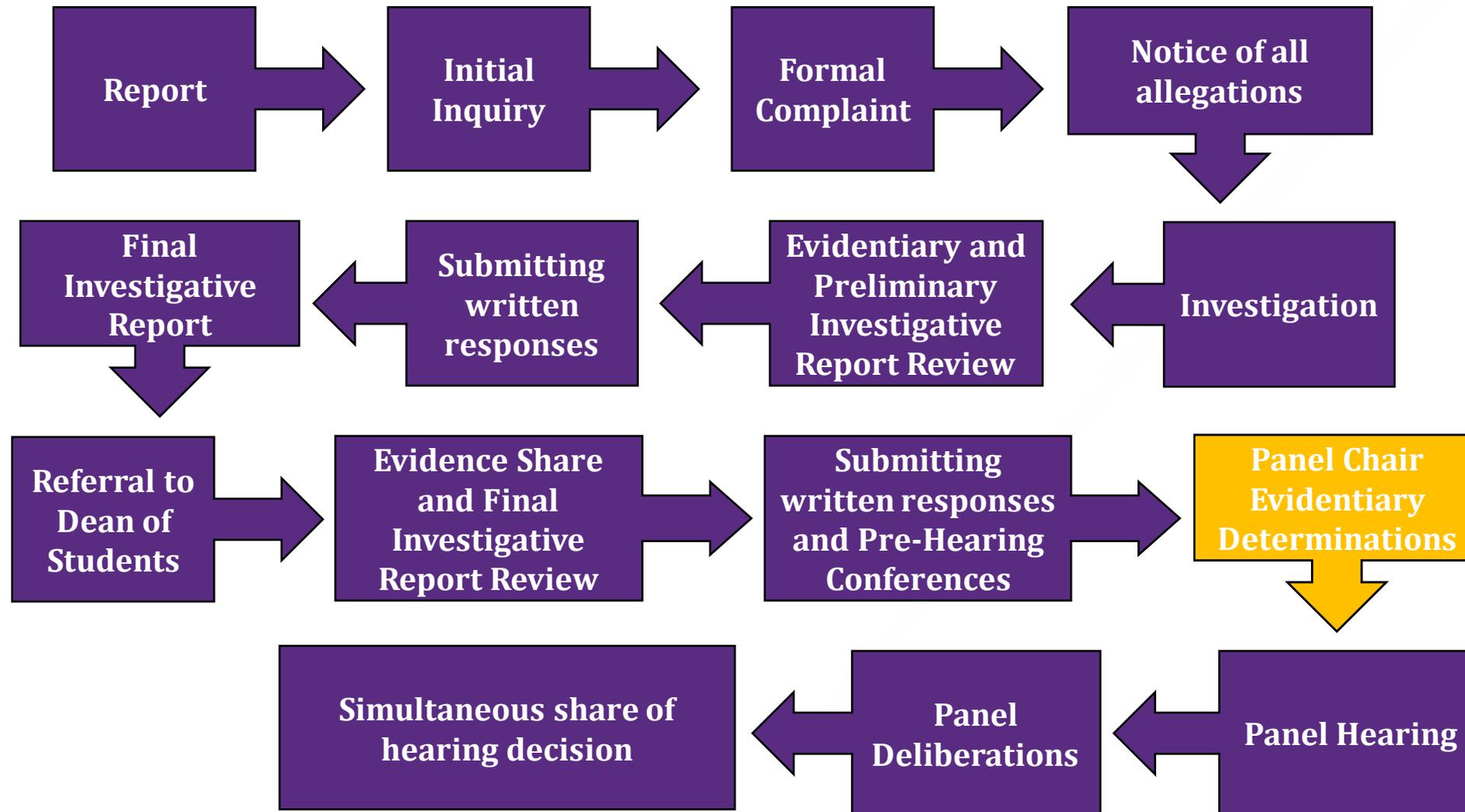
- Title IX (20 USC § 1681)
- Implemented through 2020 Title IX DOE Federal regulations (i.e., “regs”)
- Additional guidance documents provided by the DOE to help explain regs
  - 2021 Notice of Interpretation on Discrimination Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*
- Legal ruling:
  - *Victim Rights Law Center et al. v. Cardona*
- New Title IX DOE regulations

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# Review of Process Changes and Updates: Resolution Process Overview



# Review of Process Changes and Updates: Title IX Hearing Panel Highlights

- Flow of the hearing
  - **Review** of party evidentiary responses/concerns **and panel instructions**
  - Opening statements
    - Complainant followed by Respondent
  - Direct and cross examination of parties
    - Complainant followed by Respondent
  - Direct and cross examination of witnesses
  - Closing statements
    - Respondent followed by Complainant
  - Parties and advisors excused
  - Panel deliberation

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# Review of Process Changes and Updates: Title IX Hearing Panel Topics

- Role of advisors
  - Conduct cross examination of opposing party and of witnesses
  - Parties can choose their own advisor
  - TCU required to provide an advisor at no cost to party
  - Can be an attorney
  - Advisor will be assigned to a party if they attend hearing alone
  - Can challenge relevancy determinations by Panel Chair
- Language added limiting the advisor role

# Review of Process Changes and Updates: Title IX Hearing Panel Topics

- Absent party
  - From pre-hearing evidentiary review process
  - From the hearing
  - Absent witness
  - No inference regarding responsibility permitted based solely on a party's absence (34 C.F.R. § 106.45(b)(6)(i))
  - Role of an advisor when their party is absent from the hearing
  - Neither the party nor their advisor appear at the hearing

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# Review of Process Changes and Updates: Title IX Hearing Panel Topics

- Written hearing decision
  - Clear and unambiguous
  - Tell the story of the case
  - Neutral tone
  - Clear party references
  - **Simultaneous sharing**

# Review of Process Changes and Updates: Title IX Hearing Panel Topics

- Written deliberation report must include (34 C.F.R. § 106.45(b)(7)(ii)) (cont.):
  - Factual findings that support responsibility determination and all panel conclusions
  - Panel excluded information with rationale
  - Appeal procedures and bases
- Deliberation report process and timeline

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# Review of Process Changes and Updates: Final Reminders

- Panel considerations
  - Hearing decorum
  - Professionalism
  - Objectivity & Neutrality
  - Evidentiary standard
  - Consider relevant evidence only
  - Carefully consider direct questions

# Review of Process Changes and Updates: Final Reminders

- What evidence can the panel consider?
  - All materials shared with the panel prior to the hearing...
    - **Minus** any evidence excluded by Panel Chair **prior to** or during the hearing
  - Party or witness statements given during the live hearing
  - Party or witness answers given to direct panel questions during the live hearing
  - Party or witness answers given to cross examination questions during the live hearing
  - Other evidence
- Remember: No inference regarding responsibility based solely on party's refusal to answer questions (34 C.F.R. § 106.45(b)(6)(i))

# Review of Process Changes and Updates

- Use of informal resolutions
- Consolidation of code allegations
- Consolidation of multiple respondents

# Bias and Conflicts of Interest

- Impartiality is a foundation of the hearing process
  - Conflicts of interest
  - Bias
  - Prejudgment of the case

# Panelist Tips

- Focus on crafting good questions
- Range of outcome options
- Destruction of notes
- Self care