



# Hearing Officer & Appellate Officer Title IX Training

DEPARTMENT OF TITLE IX

AY 2022-2023

# DTIX Training Goals

- ▶ Department of Title IX (DTIX) Introduction
- ▶ Brief Historical Legislative Review
  - ▶ Title IX Final Rule updates
  - ▶ Title IX Intersectional Legislation
- ▶ Emory University Sex and Gender-based Harassment & Discrimination, Policy 8.2
- ▶ DTIX Resolution Processes Overview
- ▶ Detailed Review of Hearing & Appeals: Processes and Officer Roles & Responsibilities
- ▶ Ask a Title IX Coordinator: Questions & Answers Portion



# Brief Historical Review of Title IX and Intersectional Legislation

# Title IX of the Higher Education Amendments (1972)

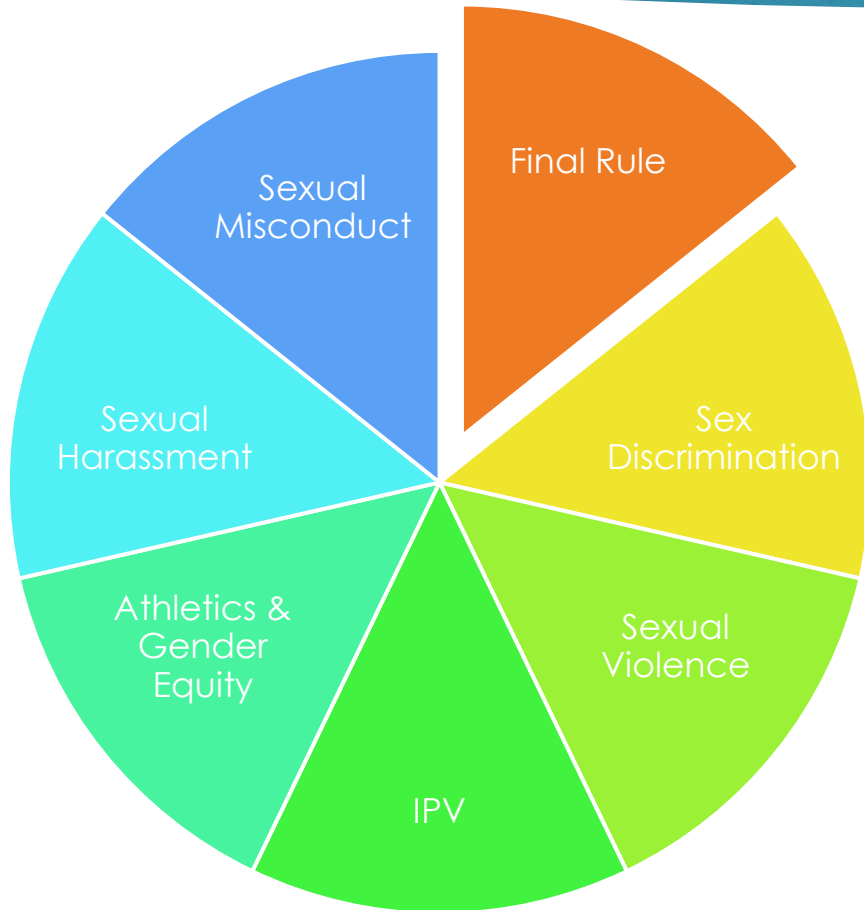
“NO PERSON IN THE UNITED STATES SHALL, **ON THE BASIS OF SEX**, BE EXCLUDED FROM PARTICIPATION IN, BE DENIED THE BENEFITS OF, OR BE SUBJECTED TO DISCRIMINATION UNDER ANY EDUCATION PROGRAM OR ACTIVITY RECEIVING FEDERAL FINANCIAL ASSISTANCE.”

20 U.S.C.A. § 1681

# Title IX- Other Relevant Title IX Guidance & Legislation

- ▶ Dear Colleague Letter (DCL) – U.S. Department of Education
  - ▶ DCL January 2001
    - ▶ Revised Sexual Harassment Guidance (1997)
  - ▶ DCL April 2004
  - ▶ Q&A on Campus Sexual Misconduct of September 2017
- ▶ Reauthorization of the Violence Against Women Act of 2013 (VAWA)
- ▶ Title IX Final Rule (published May 19, 2020)
- ▶ Proposed Title IX Regulations (published June 23, 2022, 50<sup>th</sup> anniversary of Title IX)

# Title IX Final Rule (released: May 2020, effective: August 14, 2020)



- Actual Notice
- Mandatory Response
- Procedural Processes- Live Hearings
- Evidentiary Rules
- Documentary guidelines
- Formal Complaint process
- Standard of Proof
- Advisor Role
- Supportive Measures

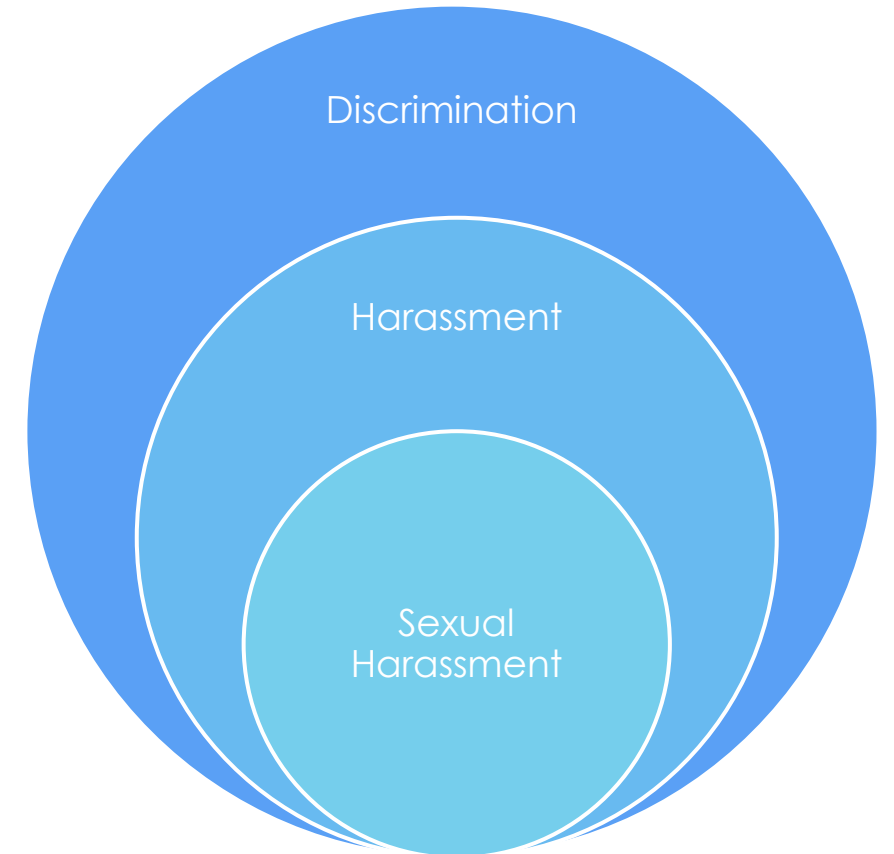


# Sex and Gender-based Harassment and Discrimination Policy

EMORY UNIVERSITY, POLICY 8.2

# Conduct Prohibited by Policy 8.2

- ▶ Sex/ Gender-based Discrimination
- ▶ Sex/ Gender-based Harassment
- ▶ Sexual Harassment
  - ▶ Hostile Environment
  - ▶ *Quid Pro Quo*
- ▶ Non-consensual sexual contact/ intercourse
- ▶ Sexual exploitation
- ▶ Dating/ Domestic Violence
- ▶ Stalking



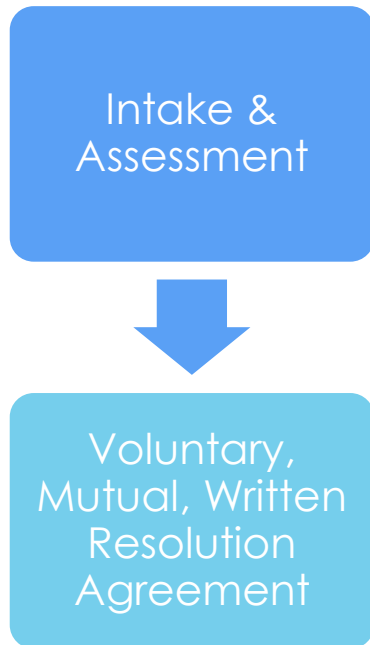




# DTIX Administrative Resolutions Processes

# DTIX Administrative Resolution Processes

## Informal



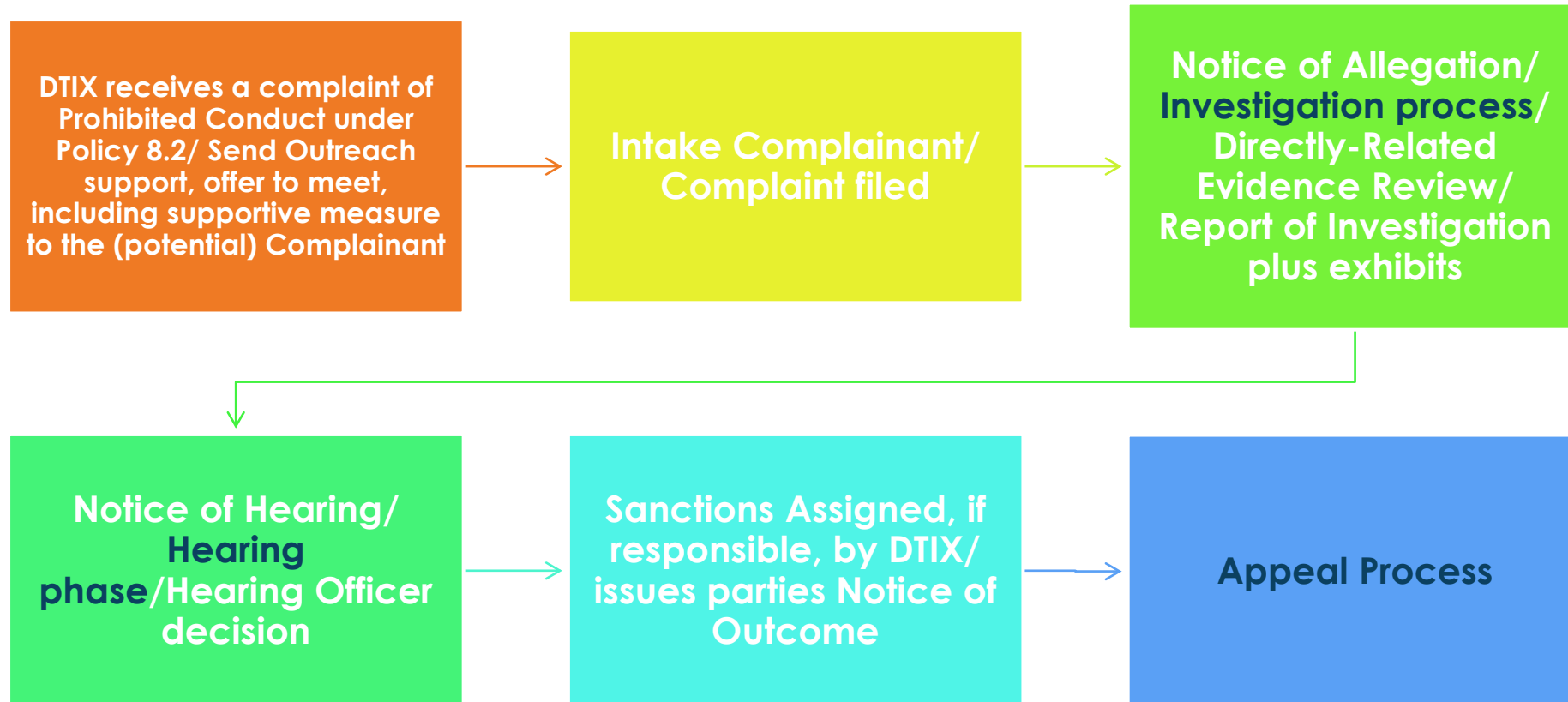
## Prohibited Conduct



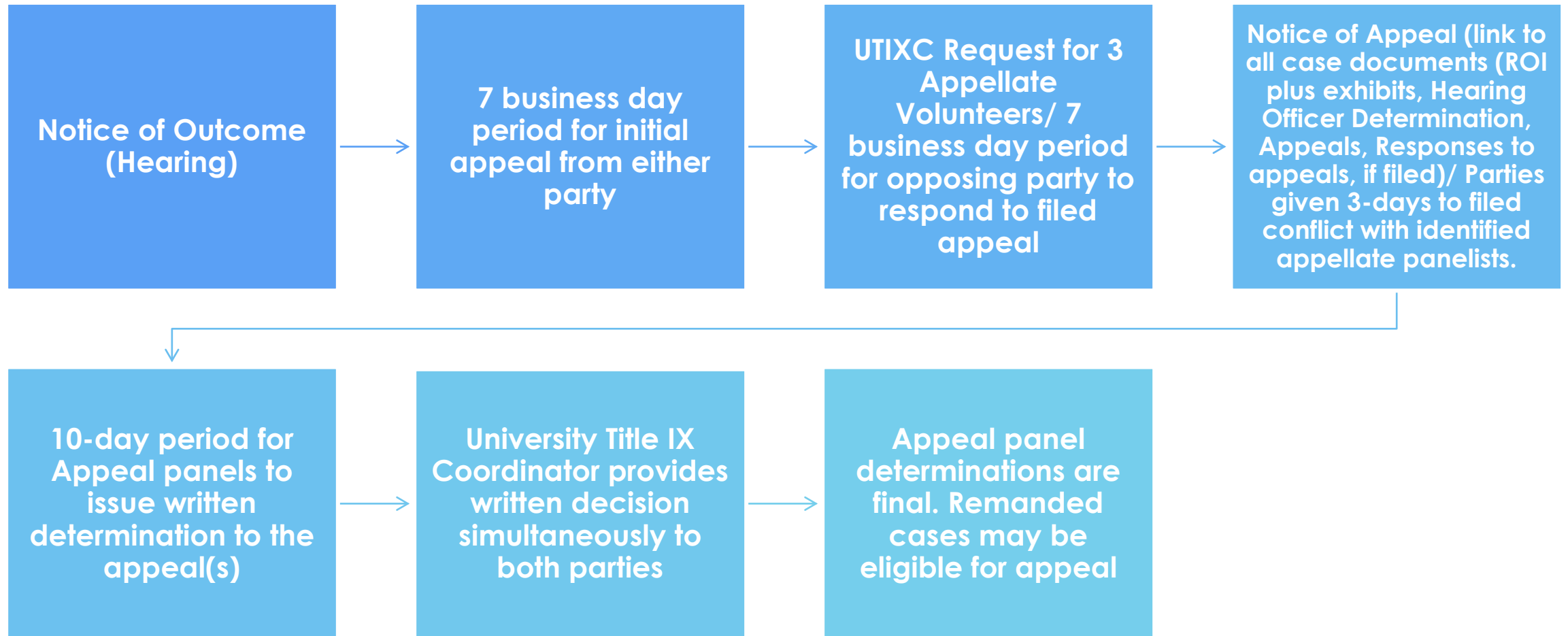
## Title IX



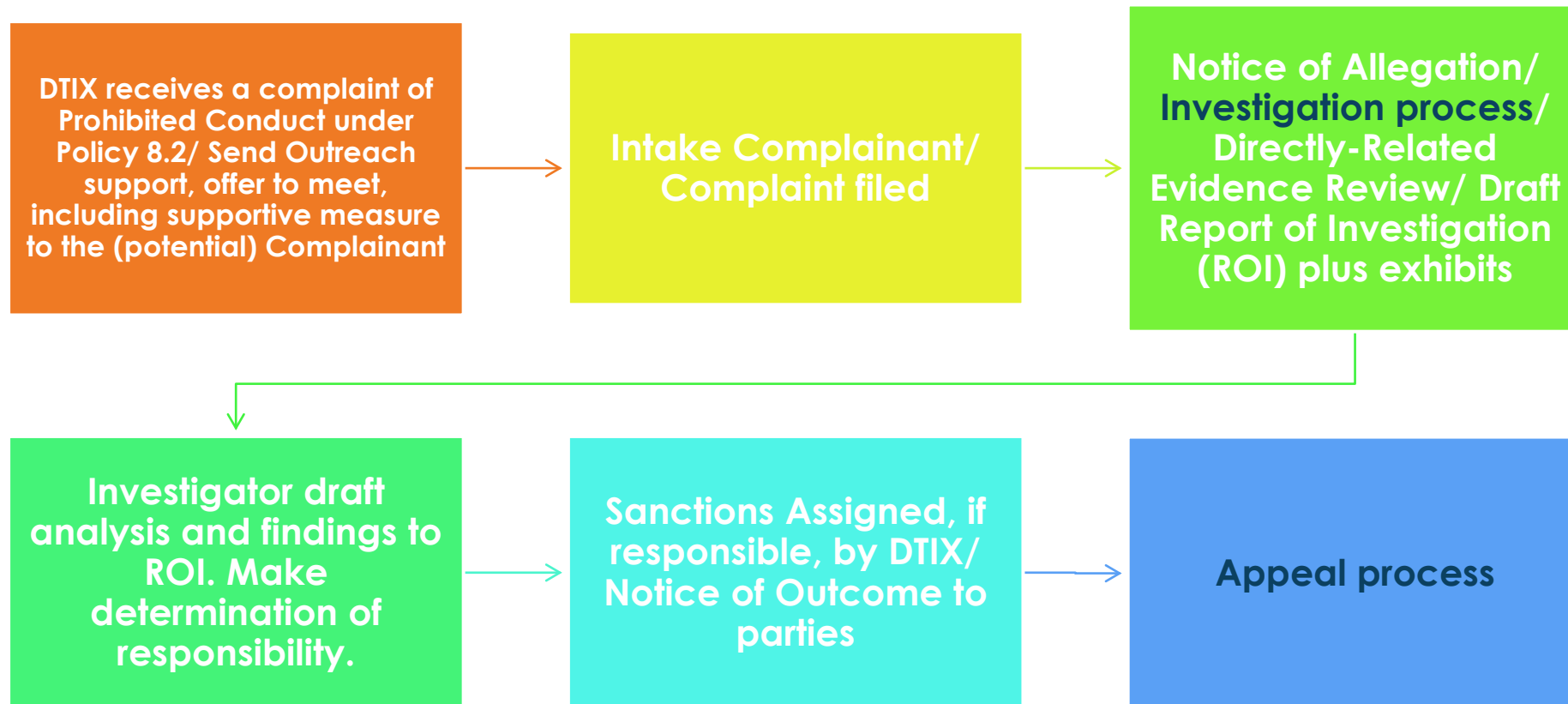
# Detailed Formal Administration Resolution Process (Appendix A)



# Hearing & Appellate Process Detailed



# Detailed Formal Administration Resolution Process (Appendix B)





# DTIX Hearing Process: Appendix A

# Pre-Hearing Expectations

- ❖ Hearing Officers are provided the full names of the parties and their respective advisors to conduct an internal **conflict check** and then are asked to verify there is no conflict.
- ❖ Parties are given 10-days prior to the hearing to prepare and given deadlines to participate (including deadline to submit witnesses and raise conflict concerns of the assigned and identified Hearing Officer).
- ❖ Parties and Hearing Officer receive the **Report of Investigation** (ROI) via secured link from DTIX
- ❖ Parties identify possible witnesses with supporting information regarding the witnesses' relevance. The witnesses must have participated in the interview process captured within the ROI to be identified for the hearing. **Hearing Officers will need to make determinations regarding which witnesses will be invited to participate in the hearing.**

# DTIX Pre- and Post- Hearing Assistance

- ❖ Once assigned, DTIX will share the link to the matter-specific Hearing Officer Folder
- ❖ DTIX will meet with you prior to the hearing to answer any of your questions
- ❖ This folder contains:
  - ❖ Notices sent to the parties;
  - ❖ Emory University Policy 8.2
  - ❖ Report of Investigation with all appendices;
  - ❖ Hearing script (Updated by DTIX prior to hearing);
  - ❖ Previous Hearing Decisions;
  - ❖ Hearing Officer Determination template (DTIX will continue to update this template after the hearing with the hearing transcript, parties' questions, etc.)



# During the Hearing Expectations

- ❖ Recorded on Zoom (all parties, required to be on camera and muted)
- ❖ Transcribed by Rev.Com (Emory handles this and provides the transcript within 2-4 days post-hearing)
- ❖ Hearing Officer is given “wide discretion over matters of decorum at the hearing.” (DTIX provides Rules for Decorum to all parties, including the Hearing Officer)
- ❖ Engage in the examination through questioning of the parties and witnesses.
- ❖ Permit for cross-examination. All parties will have an advisor present who is permitted to ask the opposing party and/or witnesses questions determined relevant by the Hearing Officer.
- ❖ DTIX will communicate the parties’ questions to the Hearing Officer for review, via email. Time will be allotted during the break period for the Hearing Officer to make determinations of relevance of the questions.

# Relevance Determinations

- ▶ **Relevance.** Although the determination of relevance of testimony and information is in the discretion of the Hearing Officer, certain categories of evidence will rarely, if ever, be relevant. These include character evidence, polygraph and other generally unreliable or unproven scientific evidence, speculation, and the like. The Hearing Officer has broad discretion to determine the relevance of evidence.
- ▶ If questions are relevant, they will be asked as explained on the previous slide, on the record.
- ▶ If a question is not relevant, the Hearing Officer may state the reason it is not relevant (i.e. repetitive/ ask and answered OR not relevant to the matter under consideration) and instruct the party or witness to not answer.
  - ▶ In the case of an excessive number of questions DTIX asks the Hearing Officer to make relevance determinations to each question in Appendix B of the Hearing Officer Determination Report. The Hearing Officer may state why questions are not relevant in batches (ex: odd numbered questions are repetitive, etc.)

# Relevance Determinations (continued)

“The final regulations do not define relevance, and the **ordinary meaning** of the word should be understood and applied.”

## **Federal Rules- 401**

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

# Hearing Officer Written Determination: Standard of Review

**Hearing Officer's will determine if the Respondent violated Policy 8.2, as alleged, by a preponderance of the evidence.**

**Standard of Evidence.** The level of proof required to determine whether or not a Respondent is responsible for the allegations shall be preponderance of the evidence, i.e., it is more likely than not that alleged conduct occurred.

# Hearing Officer Determination (continued)

- ▶ Within 15 business days of the conclusion of the hearing, the Hearing Officer will draft the Hearing Officer Written Determination which will include:
  - ▶ Allegations of Title IX misconduct/ Formal Complaint (DTIX will add);
  - ▶ Standard of Review;
  - ▶ Relevant policy provisions (DTIX will add);
  - ▶ Evidence not considered;
  - ▶ Summary of the hearing proceedings;
    - ▶ Hearing of Overview
    - ▶ Summary of Complainant Testimony (if participating in hearing)
    - ▶ Summary of Respondent Testimony (if participating in hearing)
    - ▶ Summary of Witnesses (if participating in hearing)
  - ▶ Reliability Assessment
  - ▶ Analysis
  - ▶ Findings
  - ▶ Recommended Sanctions/ Remedies

# Hearing Officer Recommended Sanctions For Students

- ▶ The broad range of sanctions for students includes, but is not limited to, the following:
  - Revocation of Degree
  - Revocation of Alumni Privileges
  - Expulsion
  - Suspension
  - Disciplinary Probation
  - Removal from Student Housing and/ or University premises
  - Dismissal from University Employment
  - Successful completion of educational training programs
  - Loss of University privileges
  - Community Service
  - Counseling or Mentoring

# Hearing Officer Recommended Sanctions For Employee

- ▶ The broad range of sanctions for employees includes, but is not limited to, the following:
  - Apology or Reprimand
  - Remedial Training
  - Workplace Restriction
  - Denial of Promotion, Merit Pay Increase, or Other Benefit
  - Reassignment
  - Suspension
  - Separation



# DTIX Appellate Processes- Appendices A & B



# Grounds for Appeals – Appendix A

Both parties have the right to appeal on the following bases:

- ▶ **Procedural irregularity** that affected the outcome of the matter, which may include, but is not limited to, failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence;
- ▶ **New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
- ▶ The Title IX Coordinator, investigator(s) or decision-maker(s) had a **conflict of interest or bias** for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

# Grounds for Appeals – Appendix B

Both parties have the right to appeal on the following bases:

- ▶ To consider **new information**, sufficient to alter the decision, or other relevant facts not brought out in the investigation because such information was not known or knowable to the appealing party during the investigation.
- ▶ To allege a significant **procedural error** within the investigative process that may have substantially impacted the fairness of the investigation, the decision, and/or the sanction.
- ▶ To allege that the **sanction imposed is overly excessive or insufficient** based upon the weight of the information considered by the Title IX Coordinator.

# Appeal Process Overview

- ▶ Appeal Officer will review the ROI, the Hearing Officer Determination, the filed appeal, and any submitted response to the appeal in order to determine whether there is a reasonable basis for changing the outcome based on the cited ground of appeal.
- ▶ Appeal Officer will issue a written determination with rationale within 10 business days of receipt of the appellate documents. DTIX will provide a link to all appellate documents.
- ▶ The Appeal Officer's determination is final.

# Appellate Officer Actions

The Appellate Officer may request that DTIX takes the following steps:

- ▶ Affirm the original finding and sanction;
- ▶ Affirm the original finding but issue a new sanction, which may be of greater or lesser severity;
- ▶ Remand the case back to (Appendix A) Hearing OR (Appendix B) the Department of Title IX to correct a procedural or factual defect; or,
- ▶ Dismiss the case if there was a procedural or factual defect that cannot be remedied by remand.



# DTIX Legacy Cases

# Differences in Hearing Process for Legacy Cases

Hearings that are conducted in accordance with Emory Policy 8.2 (effective Prior to August 14, 2020)

- ▶ Advisor's do not engage in the cross-examination process. All questions directed to parties or witnesses are asked by Hearing Officer.
- ▶ *Rules of Hearing Decorum*, issued post August 2020 do not apply.
- ▶ The time to issue the Hearing Officer Determination and Rationale is 10 business days

# Differences in Hearing Process for Legacy Cases

- ▶ The grounds from Emory Policy 8.2, effective March 28, 2019 (are slightly different):
  1. To consider new information, sufficient to alter the decision, or other relevant facts not brought out in the original hearing, because such information was not known or knowable to the person appealing during the time of the hearing.
  2. To allege a procedural error within the hearing process that may have substantially impacted the fairness of the hearing.
  3. To allege that finding was inconsistent with the weight of the information.

# Ask Title IX Coordinators

Questions & Answers





# Department of Title IX Contacts

Office: Administration Building, 201 Dowman Drive, Suite 305; [titleix@emory.edu](mailto:titleix@emory.edu)

▶ Nicole Babcock, University Title IX Coordinator

[nicole.babcock@emory.edu](mailto:nicole.babcock@emory.edu)

▶ Danica Myers, Interim, Title IX Coordinator Faculty, Staff, & Students

[dmyers5@emory.edu](mailto:dmyers5@emory.edu)

▶ Crystal Joy Anderson, Title IX Case Manager

[crystal.joy.anderson@emory.edu](mailto:crystal.joy.anderson@emory.edu)

▶ Antonese Wilson, DTIX Administrative Assistant

[antonese.wilson@emory.edu](mailto:antonese.wilson@emory.edu)