

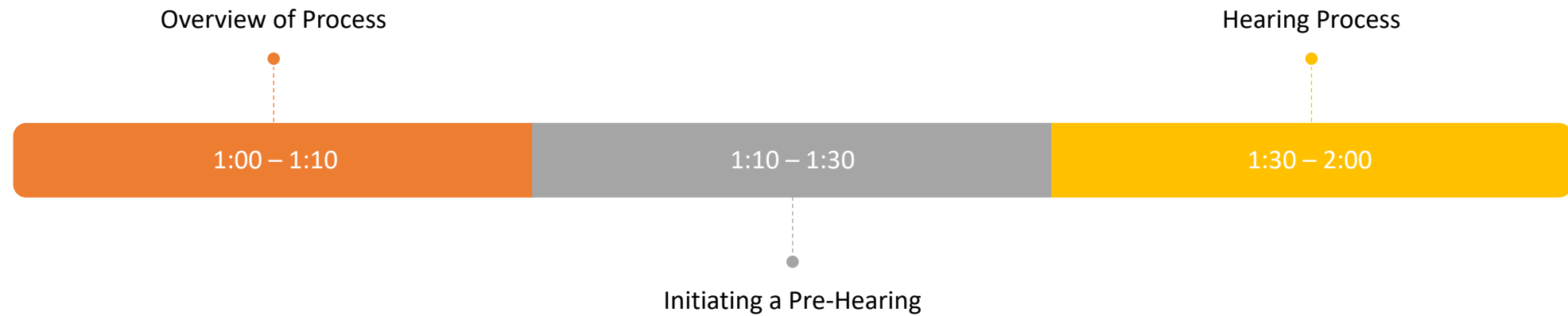
CONDUCTING AND ADJUDICATING
HEARINGS
TITLE IX



PURPOSE

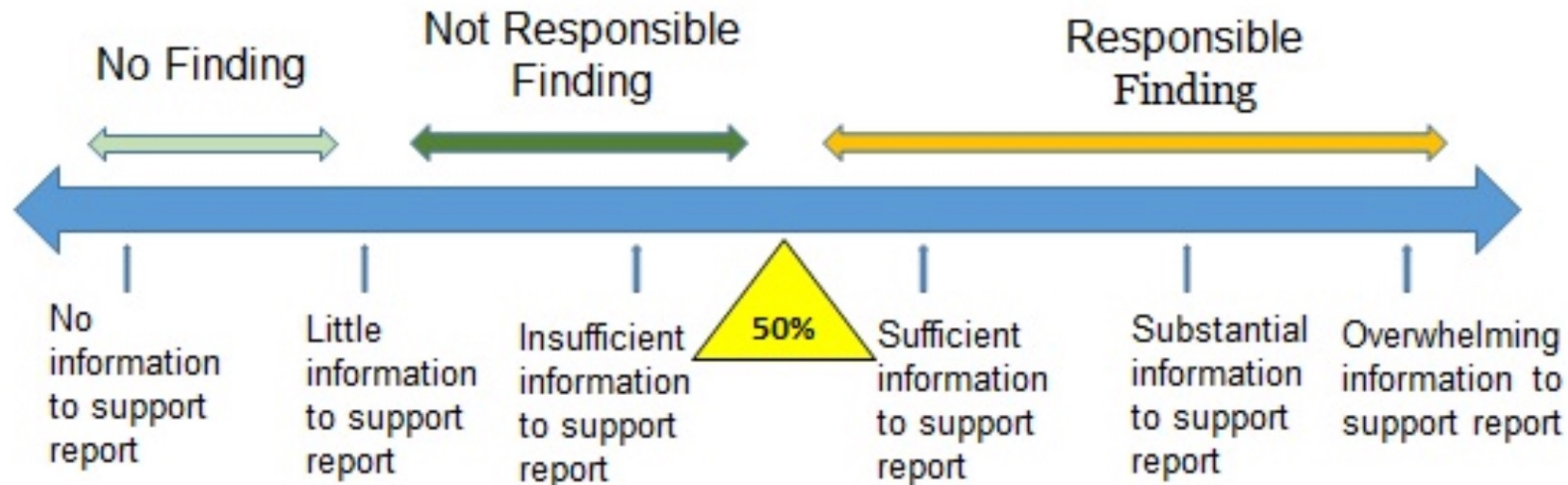
- Develop understanding of areas that impact hearing process
- Learn how to initiate the pre-hearing process
- Learn how to conduct a hearing
- Conclusionary outcomes

AGENDA



Preponderance of Evidence Standard

*A Requirement that **More than 50%** of the Evidence Points to Something*





ISSUES OF CREDIBILITY

- **Inherent Plausibility**

Is the testimony believable on its face? Does it make sense? Look for areas of consistency among the statements provided to you during each interview.

- **Demeanor**

Does the person appear to be telling the truth?

- **Motive to Falsify**

Does the individual have any particular reason to lie? Does the person feel threatened for any reason?

- **Corroboration**

Is the party's testimony supported by physical evidence, written documentation or witness accounts?



BIASES

- We all have them
- Recognize and reflect on preferences, values and beliefs
- Avoid prejudgment of facts
- Confront biases by asking questions of yourself, such as:
 - Where is the assumption coming from?
 - Is the assumption impacting how I am thinking or make decisions?
 - What can I do to control for this bias(es)?
 - What do I do if I cannot control my bias(es)?



CONFLICTS OF INTEREST

An illustration depicting a conflict of interest. On the left, a man in a grey suit is pushing a large, light red arrow pointing to the right. On the right, a man in a dark blue suit with a red tie is pushing a large, teal arrow pointing to the left. The two arrows are moving towards each other and are about to collide in the center. At the point of collision, there is a bright white starburst with several dark blue and grey lines radiating outwards, suggesting a clash or impact. The background is plain white.

- Analyze positions within the organization
- Decision makers should not be in supervisory position
- Title IX Coordinators cannot oversee or participate in the adjudication process
- Always disclose conflicts of interest
- Recuse yourself if conflict presents

INITIATING THE PRE-HEARING



PRELIMINARY STEPS



All cases now include a hearing



If a party chooses not to participate, this will be excluded from the report, but it cannot factor into determination for responsibility



Investigator will provide results of investigation to Decision-Maker for consideration

DECISION-MAKERS

- Districts can determine size and parameters of Decision-Makers, which can include:
 - ✓ A single individual (internal or external)
 - ✓ A Panel (e.g., consortium)
 - ✓ Multiple individuals who each adjudicate specific portions of the grievance process
- Districts can use existing personnel or hire externally





CONCLUSION OF INVESTIGATION

- Decision-Maker is assigned
- Investigator provides record to Decision-Maker and the other parties
- Both parties can respond to report address any matters they want for consideration

PREHEARING PROCESS

- The Decision-Maker will provide forms to submit evidence
- Address and resolve issues concerning the hearing process, such as:
 - ✓ What evidence to include/exclude
 - ✓ Witnesses who will testify
 - ✓ Whether hearing will occur remotely or with parties participating in the same or different rooms
- Educate the parties on how it works
- Transparency in all decisions leading up to the hearing





SCHEDULING NOTICE

- Ten (10) days following final investigation report, hearing can be scheduled
- Date and location of pre-hearing is provided
- Date and location of pre-hearing is held.
- Any other pre-hearing deadlines are provided.

RECORD(S) FOR THE HEARING

- **Submission of Evidence Form**

- The parties can object to any part of the record and request it be removed from the record
- A request to add evidence can be requested by either party

- **Submission of Witness Form**

- Each party may identify witnesses they wish to have present
- Either party may object to any other witnesses

- **Other proposed evidence or witnesses**

- If any party offers new evidence or witnesses not identified during fact-finding process, the Decision-Maker will be asked to explain why it was not previously identified. This can be a factor to admit the evidence or witness





RECORD DISCLOSURE

- When submitting evidence and witness forms, each party will copy everyone participating in the hearing including:
 - Decision-Maker
 - Both parties
 - Other Party Advisors
- The Decision-Maker will consider these forms as part of the prehearing meeting and will ask questions of the parties to understand perspectives and forms.

A photograph of two women sitting at a table in a meeting. The woman on the left is a Black woman with curly hair and glasses, wearing a white button-down shirt, smiling. The woman on the right is an Asian woman with long dark hair, wearing a black and white striped shirt, also smiling and raising her right hand. In the background, there is a large window with a grid pattern and some colorful sticky notes (pink, red, yellow) attached to it. On the table in the foreground, there is a water bottle and a blue folder.

PREHEARING MEETING

- Answer questions about hearing process
- Allow the parties to talk about any concerns about the submissions and objections regarding evidence and witnesses
- Address any prehearing matters



PREHEARING ORDER

- Following the prehearing meeting the Decision-Maker sends a prehearing order to both parties that includes the decisions made by the officer to include the following:
 - Evidence allowed
 - Witnesses who will appear
 - Any other issues raised by the parties
- This order establishes the record for the hearing.
- Unanticipated issues can still be addressed prior or during hearing; weight is based on knowledge and relevant evidence.



THE HEARING



WHO IS INVOLVED?

- Both parties
- Party advisors
- Witnesses



ROLE OF THE DECISION-MAKER

- Ensure parties have opportunity to present evidence
- Determine admissibility
- Document reasons for decision



FLOW OF THE HEARING

- The Decision-Maker will initiate the hearing by providing information on what to expect at hearing and throughout the day
- Initial/Opening remarks from the parties within limited timeframe
- Testimony is presented with the Decision-Maker asking questions, as needed
- Testimonies are provided by:
 - Both parties
 - Witnesses
 - Investigator



FLOW OF HEARING CONT.

- Cross examination is allowed by the advisors only and not the parties involved
- Closing remarks from both parties

INITIAL ORDER

- Following the hearing, the Decision-Maker will issue an initial order that includes:
 - Allegations and procedural history
 - Findings of Fact
 - Conclusion based on substantiation or not of prohibited conduct by the respondent along with rationale for conclusion
 - If responsible, the remedies or sanctions



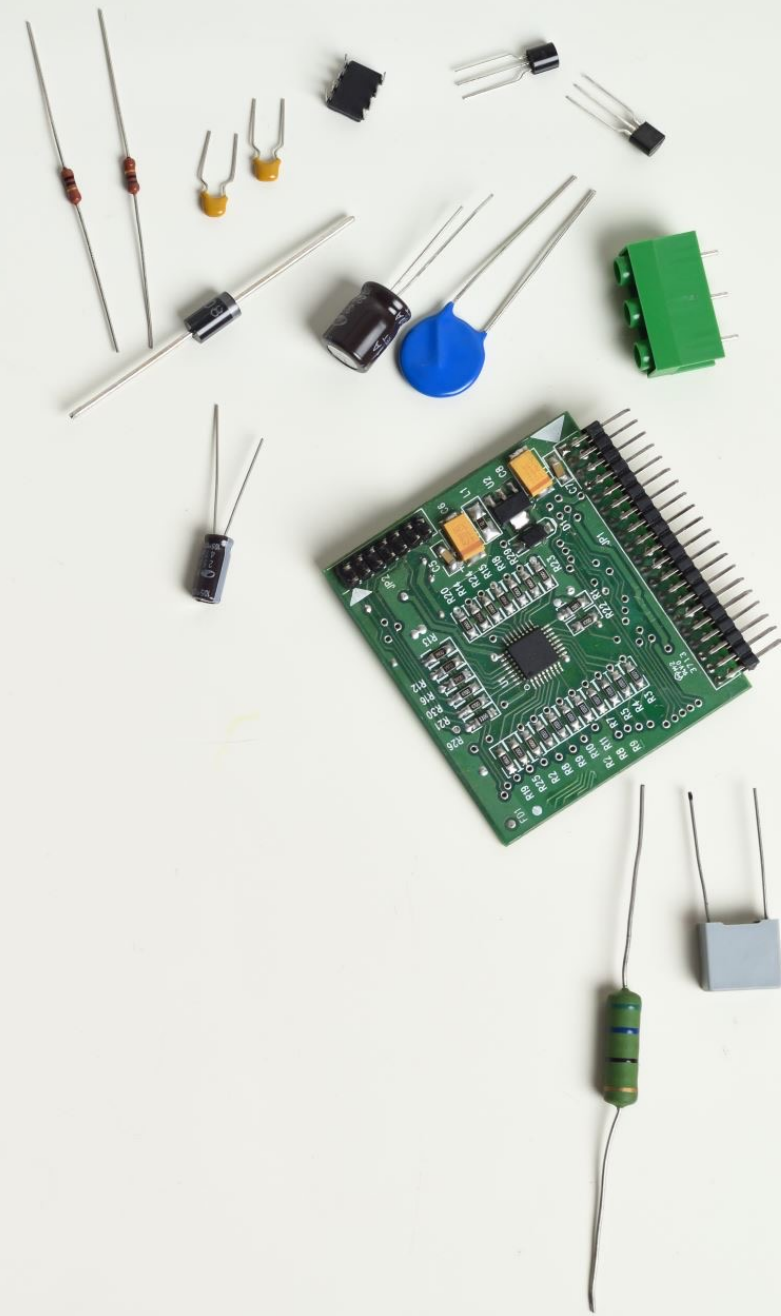


INITIAL ORDER CONT.

- The parties may request an administrative review of the initial order within 21 days of the initial order
- If administrative review is requested, it will move forward to the review process
- If no request is made, the order becomes final

ESSENTIAL TECHNOLOGY

- Zoom teleconferencing (preferably with breakout rooms)
- Email
- Share Drive
- Training must be provided on all technology used during hearing
- Live hearings must be recorded
- ADA requirements must be followed



A photograph of a business meeting. In the foreground, a person's hands are visible, one pointing at a document on a laptop screen. Another person's hand is also visible, pointing at the same document. A third person, wearing a dark suit, is in the background, looking at the laptop. The scene is dimly lit, with the laptop screen providing the main source of light. The text "QUESTIONS & ANSWERS" is overlaid in the center of the image.

QUESTIONS & ANSWERS

A white rectangular card with rounded corners is positioned diagonally on a dark, textured surface. The card features the text 'THANK YOU' in a bold, black, sans-serif font, with '!!' below it. A dark, semi-transparent diagonal band runs from the top-left towards the bottom-right, partially obscuring the card and the background. The background is dark and out of focus, showing some texture.

THANK YOU
!!