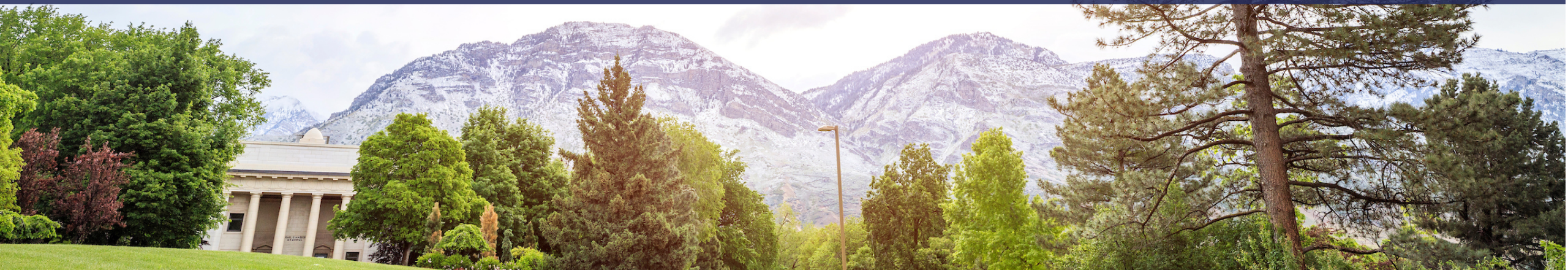
BYU–HAWAII TITLE IX GRIEVANCE PROCESS TRAINING



ADVISOR TRAINING

- This training is being provided in accordance with BYU-Hawaii's Sexual Harassment Policy and the 2020 amendments to the Code of Federal Regulations for Title IX
- This training is available to Title IX advisors who are appointed by the university, particularly to assist parties in the live hearing process
- If a party has an independent advisor (not appointed by the university), this training will be available online



BYU–HAWAII'S TITLE IX OFFICE

The Title IX Office is dedicated to promoting equitable treatment on the basis of sex by coordinating the university's efforts to prevent and respond to sex discrimination, including sexual harassment



THE ROLE OF A TITLE IX LIVE HEARING ADVISOR



THE ROLE OF A TITLE IX HEARING ADVISOR

Accompany your assigned party (Complainant or Respondent) to the live hearing (and to other meetings when requested)

Review evidence and the investigative file prior to the live hearing

Cross-examine the opposing party during the live hearing



EXPECTATIONS OF LIVE HEARING ADVISORS

- SUPPORT
- PREPARE
- BE PRESENT

Understand the policy and be willing to advise any party as assigned, whether Respondent or Complainant

Actively engage and be attentive during the live hearing

Conduct cross-examination with decorum and treat all involved parties with respect and dignity

Encourage truthful and candid responses to questions

Adhere to BYU–Hawaii's policies and procedures

As an advisor, you are not providing legal counsel to your assigned party (even if you are an attorney)

Advisors do not speak on behalf of their assigned party

Advisors are responsible for asking questions requested by your party and not solely responsible for coming up with the questions

Advisors do not make findings or determinations of responsibility

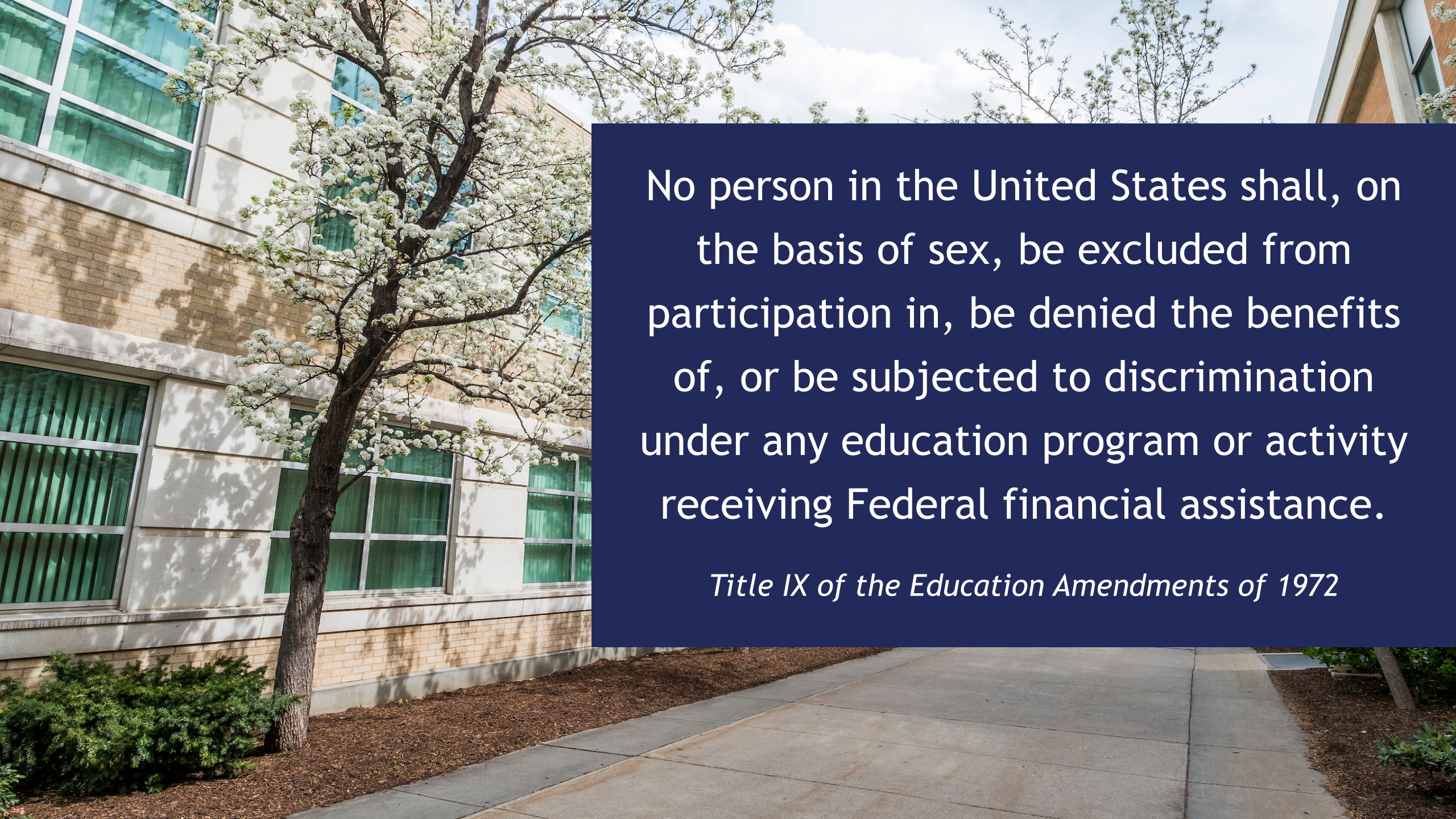
As an advisor, you should not develop the narrative for your assigned party

Advisors are not there to obtain a particular result in the process

As an advisor, you should not offer predictions on the outcome of the matter



THE DEFINITION OF SEXUAL HARASSMENT



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.

Title IX of the Education Amendments of 1972

Sex Discrimination
Title IX



Examples of Sex Discrimination:

- Unequal pay or benefits
- Disfavor in hiring or promotion
- Inequitable support of teams, programs, or facilities
- Consideration of sex in admissions & financial aid

Sexual Harassment

"Traditional" Sexual Harassment:

- Unwelcome conduct of a sexual nature
- Benefits conditioned on sexual conduct (quid pro quo)

Sexual Violence:

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



INVOLVED PARTIES

Complainant

An individual alleged to be the victim of sexual harassment

Respondent

An individual alleged to be responsible for sexual harassment

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

A BYU–Hawaii employee or faculty member conditions the provision of an aid, benefit, or service of BYU–Hawaii 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 BYU–Hawaii's Education Program or Activity

Sexual Assault, Dating Violence, Domestic Violence, or Stalking



Sexual Assault means any sexual act directed against a Complainant without the Complainant's Consent. Sexual Assault includes fondling, incest, rape, sexual assault with an object, sodomy, and statutory rape.

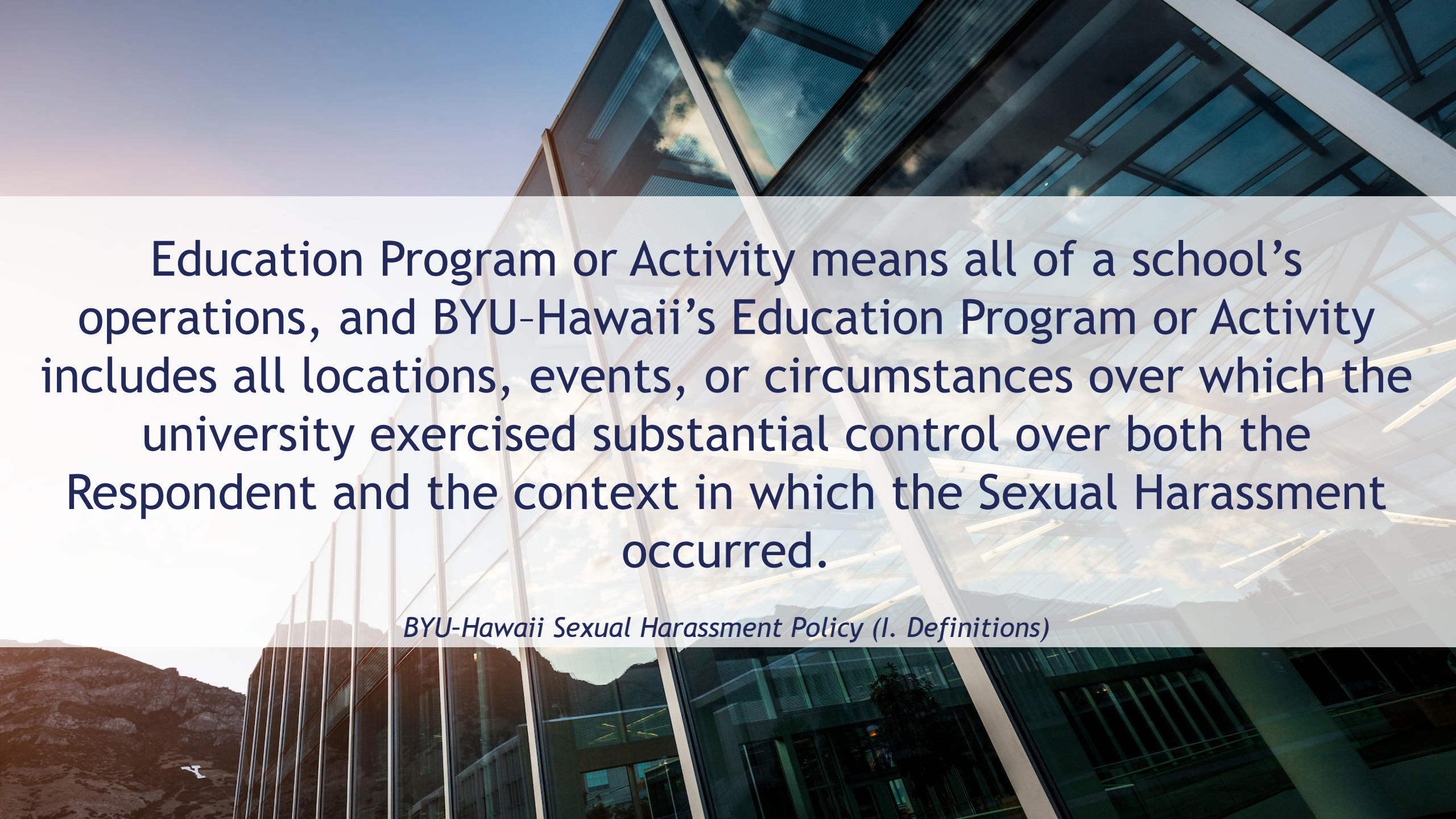
Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on a consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence means a violent act 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 similarly situated to a spouse of the Complainant, or by any other person against a victim who is protected from that person's acts under state domestic or family violence laws.

Stalking means engaging in a course of conduct (two or more acts) directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or to suffer substantial emotional distress. Both in-person and electronic stalking are prohibited.

THE SCOPE OF BYU–HAWAII'S EDUCATION PROGRAMMING AND ACTIVITIES





Education Program or Activity means all of a school's operations, and BYU–Hawaii's Education Program or Activity includes all locations, events, or circumstances over which the university exercised substantial control over both the Respondent and the context in which the Sexual Harassment occurred.

BYU-Hawaii Sexual Harassment Policy (I. Definitions)

Behavior that occurred in the United States as part of a school's education program or activity

Typically, BYU–Hawaii campus or campus-owned property…

Where the respondent (alleged perpetrator) is affiliated with BYU–Hawaii…

And the incident happened in a situation where BYU–Hawaii had substantial control

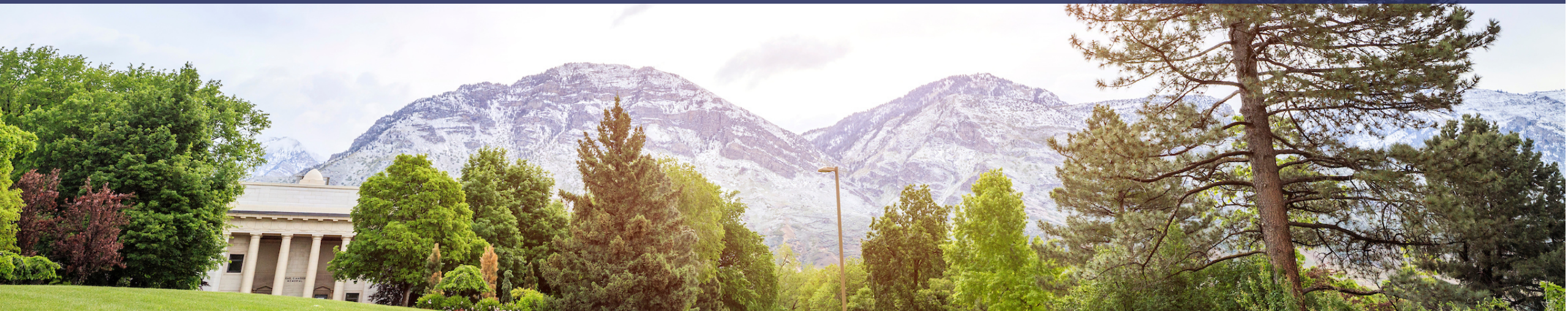


EXAMPLES OF BYU–HAWAII EDUCATION PROGRAM OR ACTIVITIES

- Admissions
- Academic instruction (classes)
- Workplace
- Hiring
- On-campus housing
- Sponsored club activities

The following are generally NOT considered part of BYU–Hawaii's education program or activities: Off-campus housing, social media, ward and church activities

INVESTIGATIONS AND THE GRIEVANCE PROCESS





INVESTIGATIONS

- Both the complainant and the respondent are treated equitably, and the respondent is presumed innocent until proven otherwise
- Statements and evidence may be submitted by both parties
- All can have a support person with them during interviews and other meetings during the investigation process
- The evidentiary standard used during investigations is a preponderance of the evidence (more likely than not)
- Determinations of responsibility are not made until the conclusion of the investigative process, which is typically 60 days

GRIEVANCE PROCEDURES

BYU-Hawaii utilizes two primary grievance procedures (Title IX and Non-Title IX) to respond to sexual harassment, depending on the circumstances of the allegations

If the alleged incident(s) of sexual harassment occurred 1) against a person in the United States who 2) is participating in or attempting to participate in a university program or activity, the Title IX grievance procedures will be followed

If a claim of sexual violence is alleged against a BYU-Hawaii employee or student, but the alleged incident(s) did not occur in the United States or did not occur in a university education program or activity, the Non-Title IX grievance procedures will be followed

Formal Complaints that do not fall in either of these categories will be evaluated to determine which university procedures to follow

TITLE IX

Initiated by a Formal Complaint

Option to resolve with an informal resolution (unless harassment is employee on student)

Investigations (information gathering) done by trained personnel

Parties may submit written response to Investigative Report

Decision makers review written record and conduct a live hearing with witnesses, questioning, and cross examination

Panel of Decision Makers provides written determination of responsibility.

NON-TITLE IX

Initiated by a Formal Complaint

Option to resolve with an informal resolution (unless harassment is employee on student)

Investigations (information gathering) done by trained personnel

Parties may submit written response to Preliminary Investigative Report

Decision makers review written record and may question investigator (no live hearing)

Panel of Decision Makers provides written determination of responsibility.

DETERMINATIONS REGARDING RESPONSIBILITY

- Decisions in all cases will be made by majority vote
- In Title IX cases, a Presiding Decision Maker will independently decide questions of relevance or other procedural questions during the live hearing
- In non-Title IX cases, the Title IX Coordinator will serve as a non-voting member to assist the decision-making panel
- Either party unsatisfied with the determination/decision may appeal as outlined in policy

TITLE IX LIVE HEARINGS



PREPARING FOR THE LIVE HEARING

- Review the Sexual Harassment Policy and corresponding Sexual Harassment Grievance Procedures (Title IX)
- Review the investigative file, final investigatory report, and any other provided investigation materials
- Communicate with your assigned party (primarily to draft questions that will be asked during the hearing)

PURPOSE OF THE LIVE HEARING

The purpose of the live hearing is to help the decision makers evaluate and consider evidence on the following questions:

- Does a preponderance of the evidence show (is it more likely than not) that the prohibited conduct occurred as alleged?
- If so, does that conduct constitute a violation of BYU-Hawaii's Sexual Harassment Policy?
- If the policy was violated, what is the appropriate remedy to restore or preserve equal access to BYU-Hawaii's Education Program or Activity?





ADDITIONAL POINTS

The decision-making panel will begin with the presumption that the respondent is not responsible for a violation of BYU-Hawaii's policy

Advisors will be permitted to ask questions, but will not be permitted to make statements or speeches

Advisors may confer quietly with their assigned party as needed, so long as they do not disrupt the process – for longer or more involved discussions, the parties and their advisors should ask for a break

If a party or witness is not willing to submit to cross-examination, their testimony and/or statements may not be considered in the final determination

STANDARD HEARING FORMAT

The Investigation Record will be available during the hearing and may be referred to during the hearing, including for purposes of cross-examination

- Opening by presiding decision maker
- Opening statement by both parties
- Questioning of the Complainant
- Questioning of the Respondent
- Questioning of any witnesses
- Closing statement by both parties
- Closing by presiding decision maker

Questioning of parties and witnesses will generally occur first by the hearing panel, then by the party's advisor, and then by the other party's advisor



CROSS-EXAMINATION

Questions raised to an opposing party or witness

Used to advance the claims or defense of a party

Used to assess the credibility of an individual

It is BYU-Hawaii's expectation that all advisors involved in live hearings conduct cross-examination with decorum and treat all involved parties with respect and dignity





TIPS FOR EFFECTIVE QUESTIONING

Keep questions clear and precise

Questions should relate directly to your assigned party's position on the alleged sexual harassment

Ask questions in a deliberate order

Do not use intimidating physical actions

Generally ask about only one fact per question

Intently listen to the answers given, instead of just focusing on what you're asking next

RELEVANCY DETERMINATIONS DURING THE LIVE HEARING

Only relevant questions may be asked of a Party or witness

Before a question is answered, the Presiding Decision Maker must first determine whether the question is relevant

If a question is deemed not relevant, the Presiding Decision Maker will explain the decision

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant and may not be asked, unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent

Legally privileged information is protected, regardless of relevancy

LIVE HEARING LOGISTICS

Live hearings will either be conducted with parties physically present in the same room OR via technology that allows all involved to simultaneously see and hear each other

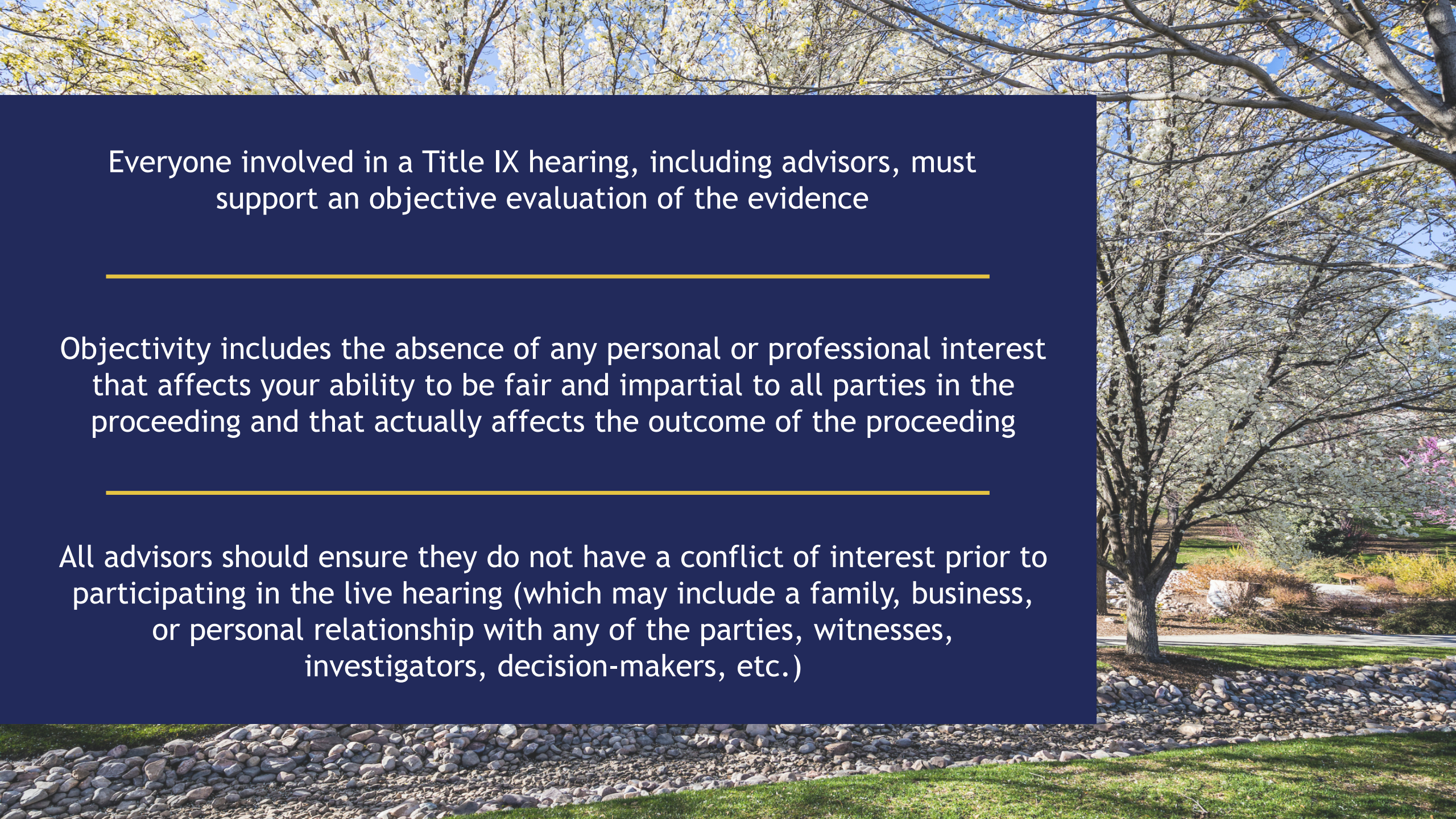
Any Party wishing to be physically separated from the other Party during the hearing, or any Party requesting that any witness be permitted to appear virtually at a live hearing, must submit a written request to the Title IX Coordinator at least 10 business days before the date of the hearing

All hearings will be recorded, and the recording will become part of the investigative record





SERVING IMPARTIALLY IN THE TITLE IX PROCESS



Everyone involved in a Title IX hearing, including advisors, must support an objective evaluation of the evidence

Objectivity includes the absence of any personal or professional interest that affects your ability to be fair and impartial to all parties in the proceeding and that actually affects the outcome of the proceeding

All advisors should ensure they do not have a conflict of interest prior to participating in the live hearing (which may include a family, business, or personal relationship with any of the parties, witnesses, investigators, decision-makers, etc.)

Beyond conflicts of interest, a Title IX Advisor must approach the role impartially and without any prejudgment

Advisors must set aside impressions or biases they may have from the media, other cases in which they may have been involved, and personal opinions

Title IX advisors should act in the best interest of their assigned party and at their party's request, not in pursuit of their own agenda



ADVISORS DO NOT…

Rely on sex stereotypes

Make credibility determinations based on the sex or gender of a party or witness

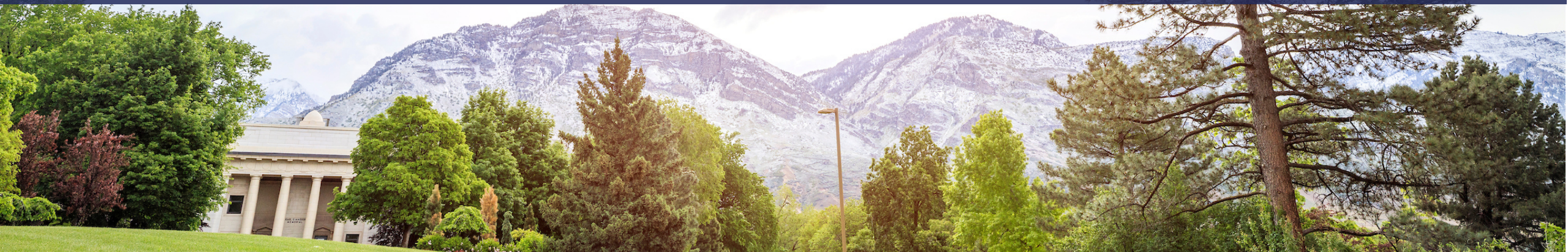
Make credibility determinations based on a person's role as Complainant or Respondent

ADVISORS DO…

Approach the investigation and live hearing with an open mind and without any preconceived notions

Consider participation in the process as an objective review of the facts and circumstances

Treat all parties, witnesses, and other involved administrators with respect



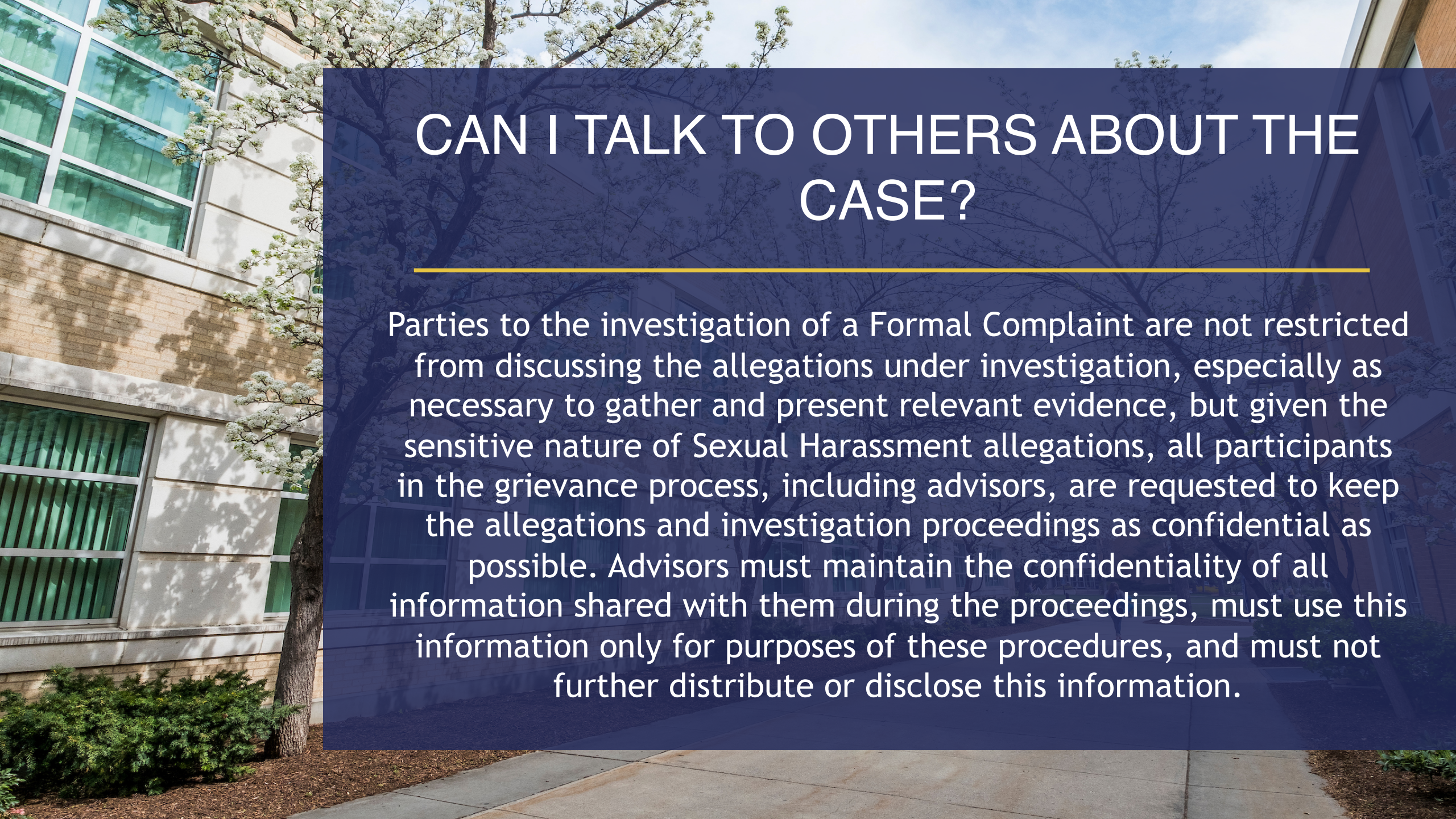
ADDITIONAL QUESTIONS AND ANSWERS



AS AN ADVISOR, AM I RESPONSIBLE FOR ANY OF THE INVESTIGATION?

No. Investigative duties are performed by qualified investigators from the university's Title IX Office. The results of the investigation will be provided to you and the party you advise for review prior to the live hearing.





CAN I TALK TO OTHERS ABOUT THE CASE?

Parties to the investigation of a Formal Complaint are not restricted from discussing the allegations under investigation, especially as necessary to gather and present relevant evidence, but given the sensitive nature of Sexual Harassment allegations, all participants in the grievance process, including advisors, are requested to keep the allegations and investigation proceedings as confidential as possible. Advisors must maintain the confidentiality of all information shared with them during the proceedings, must use this information only for purposes of these procedures, and must not further distribute or disclose this information.

IS THIS A LEGAL PROCEEDING?

No. Title IX investigations and hearings as discussed in this training are NOT civil or criminal legal proceedings. They are internal investigative processes and have only internal administrative repercussions. You will be advising parties only on matters related to a BYU-Hawaii policy violation, not external laws.





WHAT HELP AND RESOURCES WILL I HAVE?

In addition to this training, you will have access to BYU-Hawaii policies, procedures, and materials relevant to the case in which you are involved. Should you need clarification or have process questions, you can consult with BYU-Hawaii's Title IX Coordinator.



CONCLUSION

THINGS TO REMEMBER

- BYU–Hawaii is committed to promoting a safe and respectful campus environment
- BYU–Hawaii prohibits sexual harassment, which includes quid pro quo, hostile environment, and sexual violence (sexual assault, dating violence, domestic violence, and stalking)
- The Title IX grievance procedures apply only to behavior that allegedly occurred as part of BYU–Hawaii's education programming and activities
- The purpose of the live hearing is to determine if there was a policy violation, and if so, what the appropriate remedy is
- The role of hearing advisors is to prepare for, be present at, and conduct questioning at the live hearing
- Advisors must participate impartially and not have any conflicts of interest




QUESTIONS?
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