

Harassment and CSU Policy Webinar

**Presented by: DHR Compliance Unit & OGC
CSU Office of the Chancellor**

**September 30, 2020
10 A.M. – 11:30 A.M.**

Presenters



Laura Anson

Sr. Systemwide Director

Systemwide DHR/Whistleblower/Equal Opportunity Compliance Services

Ruth Jones

University Counsel – Civil Rights

Office of General Counsel

Tina Leung

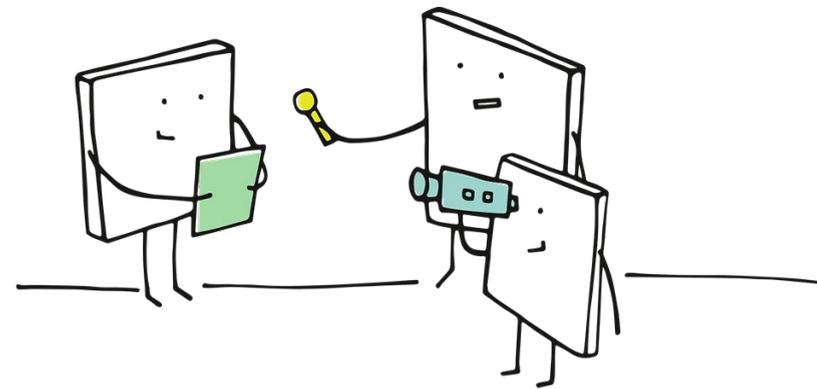
Manager, Chancellor's Office Investigations, Appeals & Compliance

Systemwide DHR/Whistleblower/Equal Opportunity Compliance Services

Poll Question

What is your title/job responsibility?

1. Title IX Coordinator
2. DHR Administrator
3. Conduct Administrator
4. Diversity Administrator
5. Title IX or DHR Investigator
6. Other (please specify)



Overview of CSU Harassment Policy

What is Harassment?



- Form of discrimination
- Analytical framework differs from that of discrimination
 - Harassment does not require proof of an adverse action
- A Complainant may be harassed by a peer or supervisor
- Anyone within a protected category, supervisor or subordinate can be the target of harassment
- Allegations of discrimination and harassment in the same complaint



Harassment, Discrimination or Both

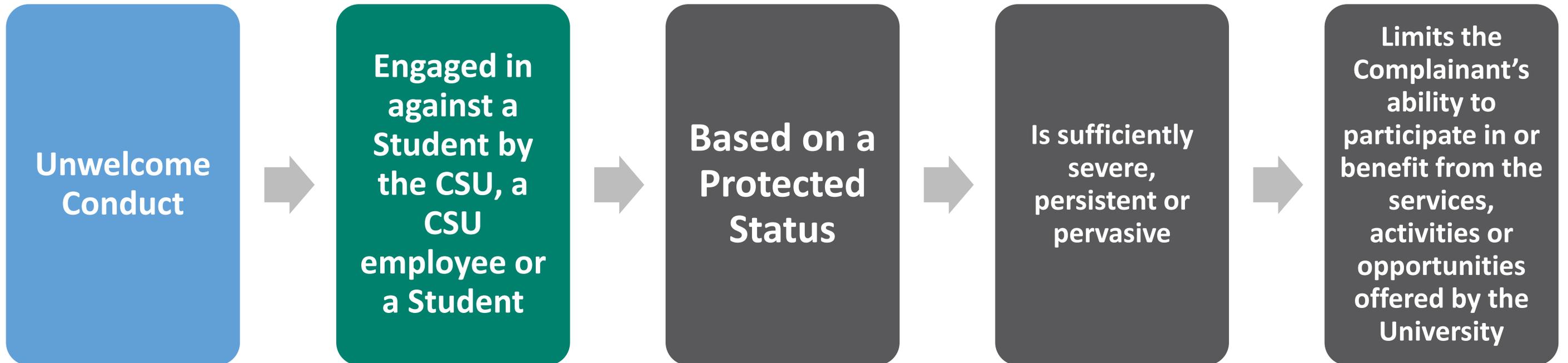
- Example of possible harassment:
 - Since Employee B joined the university six months ago, Employee A has used racial slurs and offensive comments when speaking to and about Employee B to other employees. Employee A and B are peers, but Employee B alleges that Employee A's conduct has made it almost impossible for her to work at the university.
- Example of possible discrimination:
 - Employee B alleges that she did not receive a promotion because of her race. In support of her allegation, she states that her supervisor uses racial slurs and other offensive comments about race.



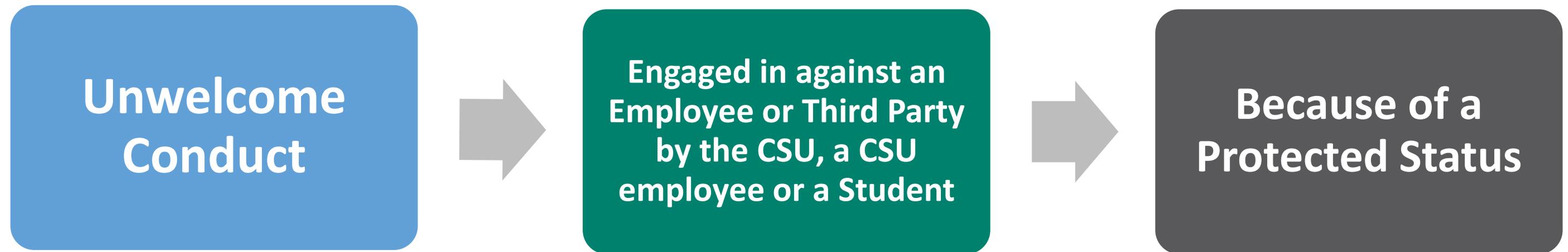
Harassment v. Bullying

- Bullying: deliberate, abusive or malicious mistreatment of an individual not based on a protected status
 - Repeated yelling, verbal humiliation, spreading damaging rumors, "mobbing" (ganging up on individuals)
 - Silent treatment, hostile glares
 - Deliberate professional exclusion
 - Imposing unreasonable demands designed to make the employee or student fail
- Harassment: severe or persistent, or pervasive treatment based on a protected status
 - The above bullying examples but when they are because of a protected status

Elements of Harassment (EO 1097) - All the Elements Must Be Present



Elements of Harassment (EO 1096)



Elements of Harassment (EO 1096) (cont'd)

Submission to, or rejection of, the conduct is made a term or condition of the Complainant's employment

OR

Submission to or rejection of such conduct by the Complainant is used as the basis or threatened to be used as the basis for employment actions or decision affecting the Complainant

OR

The conduct is sufficiently severe or pervasive that its effect, whether or not intended, could be considered by a reasonable person in the shoes of the Complainant, and is in fact considered by the Complainant, as intimidating, hostile or offensive

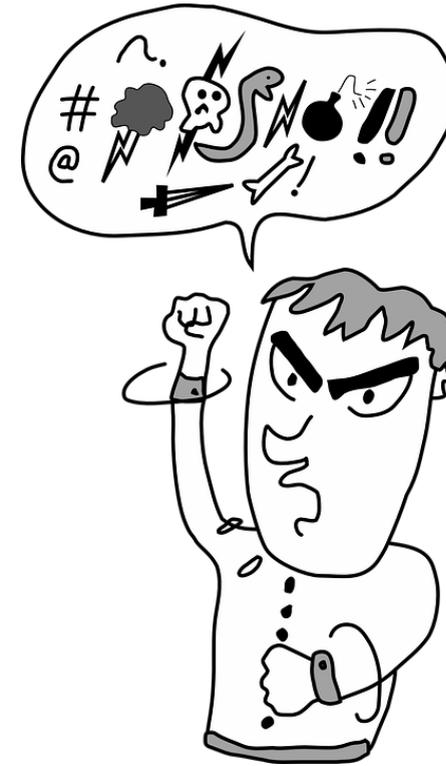
Poll: Case Scenario

- Thomas is in his late 60s and is a manager. Two of his staff are in their 70s. Thomas regularly treats them in dismissive, insulting ways and gives them less desirable work assignments than the younger employees. However, Thomas never specifically mentions their age.
- Do the older employees have enough for an investigation against Thomas for age-based harassment?



Unwelcome Conduct

- Subjective element
- Can be verbal, physical, and/or visual
 - Epithets, derogatory comments, slurs
 - Assault, impeding/blocking movement, physical interference with normal work or movement
 - Derogatory posters, cartoons, drawings, symbols, gestures

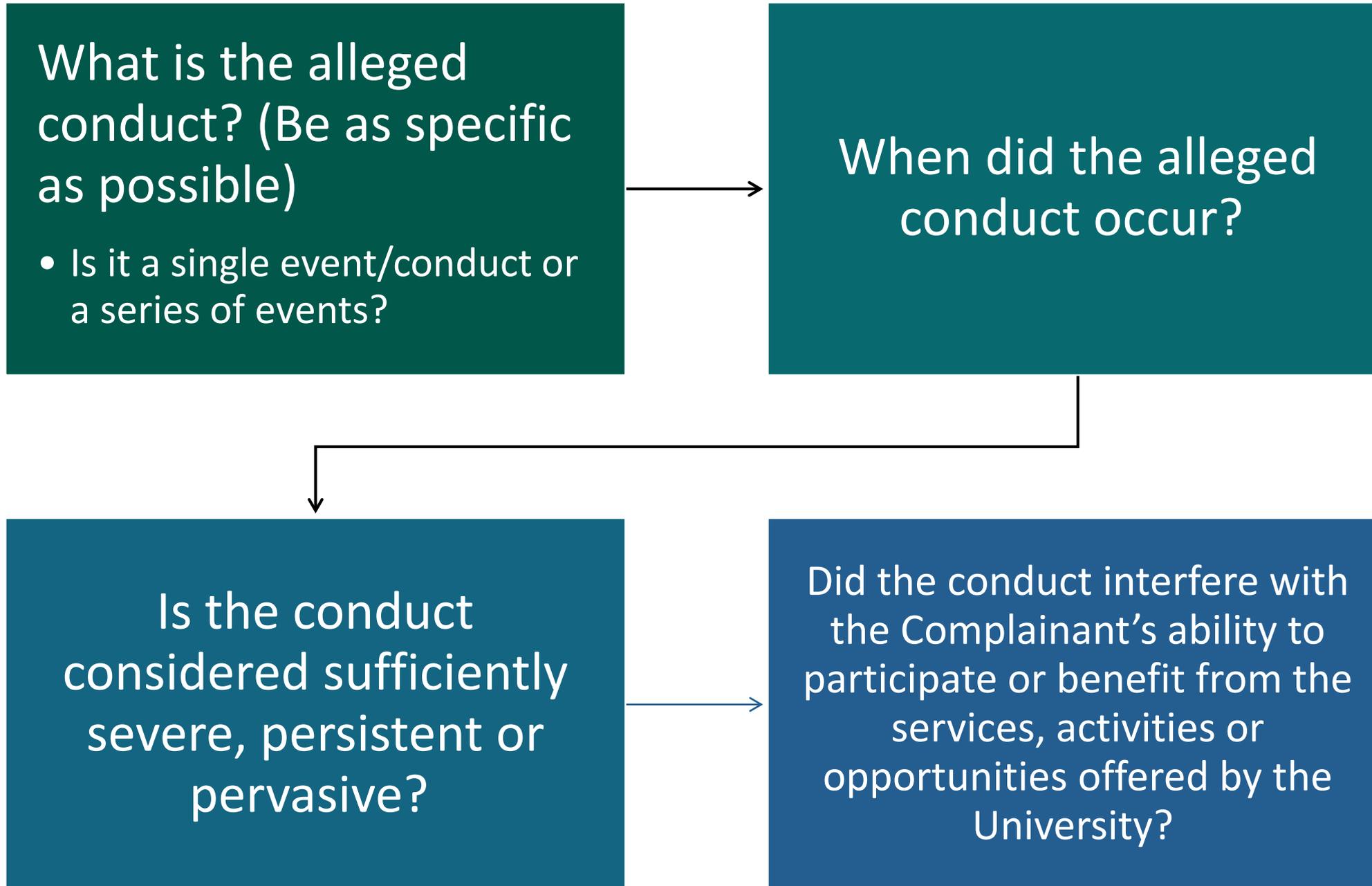


Because of the Protected Status

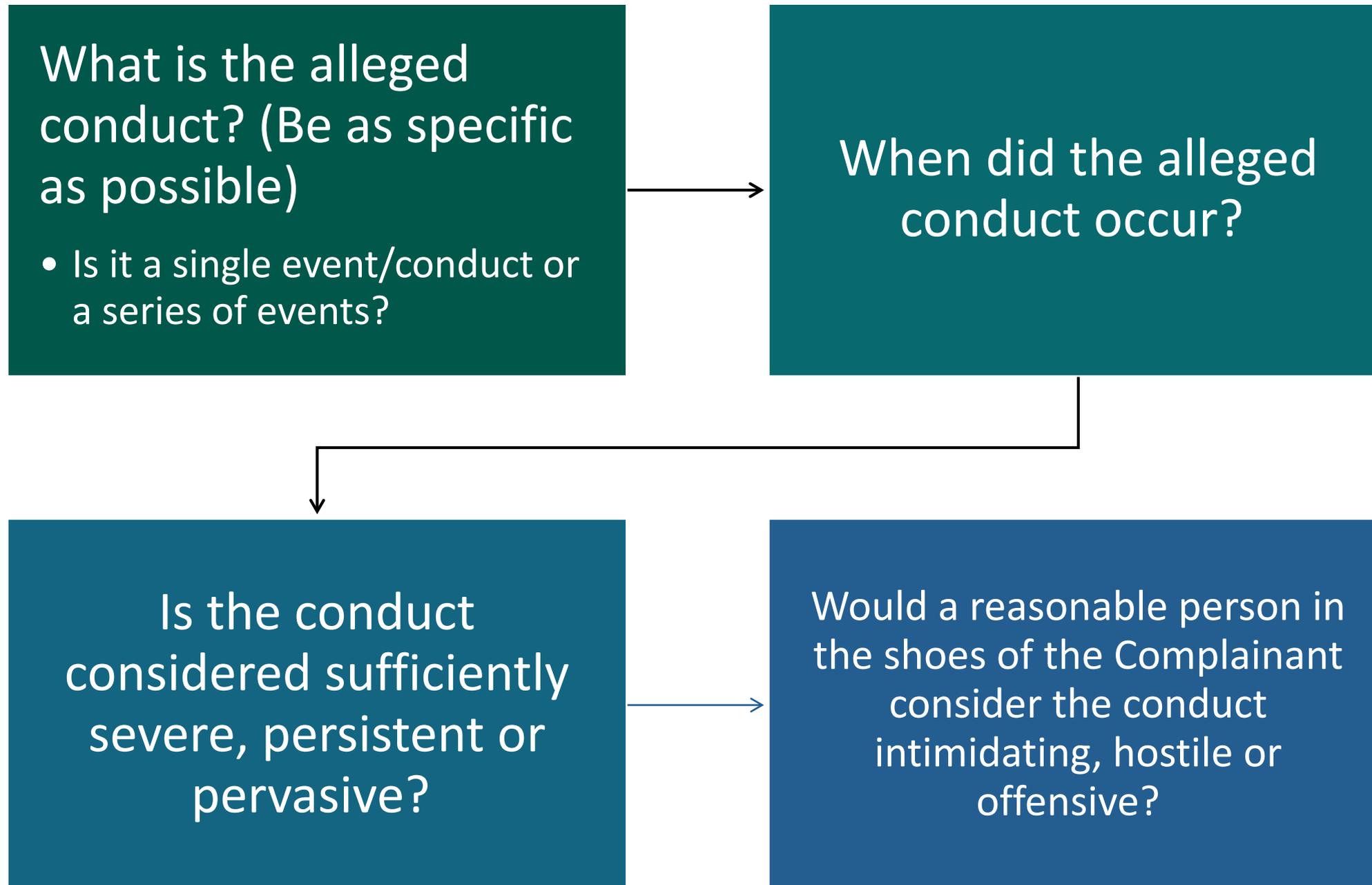
- Facts to show nexus between the conduct and the protected status of the complainant
- Examples of relevant evidence:
 - Use of slurs, language, comments
 - Differential treatment



Investigating and Analyzing Harassment (Student)



Investigating and Analyzing Harassment (Employees)



Severe, or Pervasive, or Persistent

- An objective standard to evaluate whether the alleged conduct interfered with the educational or employment environment
- No bright line, a fact-based totality of the circumstances analysis



"Reasonable Person in the Shoes of the Complainant"

- Objective standard
- Would a reasonable person with the same protected status(es) as the complainant find the conduct intimidating, hostile, or offensive?
- Ex: Complainant is an African American woman. Some Witnesses who are also African American have also found Respondent's comments and conduct regarding African Americans to be unwelcome, pervasive, and extremely offensive. (Harassment based on Race/Ethnicity)



Addressing Complaints About Inappropriate Conduct That is Not a Policy Violation

- For students: refer to student conduct office or Dean of Students
- For employees: refer to Human Resources/Faculty Affairs or other policy
- Examples: Calling an individual “moron,” “stupid” (things that are not based on a protected status but still considered unprofessional)



Discussion (Part I): Case Scenario

- Marie is an African-American employee. She has always had a great relationship with her White supervisor. One day her White supervisor tells her that her hair is too curly and that he thinks she would be a better employee if she would straighten her “nappy” hair. Marie is extremely offended by this comment, but her supervisor never raises the issue again.
- Do you think the conduct was sufficiently severe to constitute harassing conduct? State why or why not. **(Write your response in the chat)**

Discussion (Part II): Case Scenario

- Marie gets a promotion that many of her colleagues have been competing to get. Not long after she gets a promotion, she finds an envelope left on her desk. It contains a graphic photo of an African-American being lynched and an unsigned note telling her to “watch your step.” Marie is certain that the note was left by two White colleagues who were also considered for the role. Marie is extremely offended and fears for her safety.
- Do you think the conduct was sufficiently severe to constitute harassing conduct? State why or why not. **(Write your response in the chat)**



Poll: Do You Take This Complaint?

- Jenny is a Muslim student. She recently reached out to her professor and requested a review of her thesis. The professor agrees to review, but responds with negative feedback. The comments contained in the professor's review include, "you're a sh!tty writer," "I don't know where you learned to write so atrociously," and "you're never going to get your degree if you keep writing like this." Jenny files a complaint alleging harassment based on her religion. When asked how the professor's comments constitute harassment based on her religion, Jenny says that it's because he's seen her with her hijab and knows that she's Muslim.

Questions

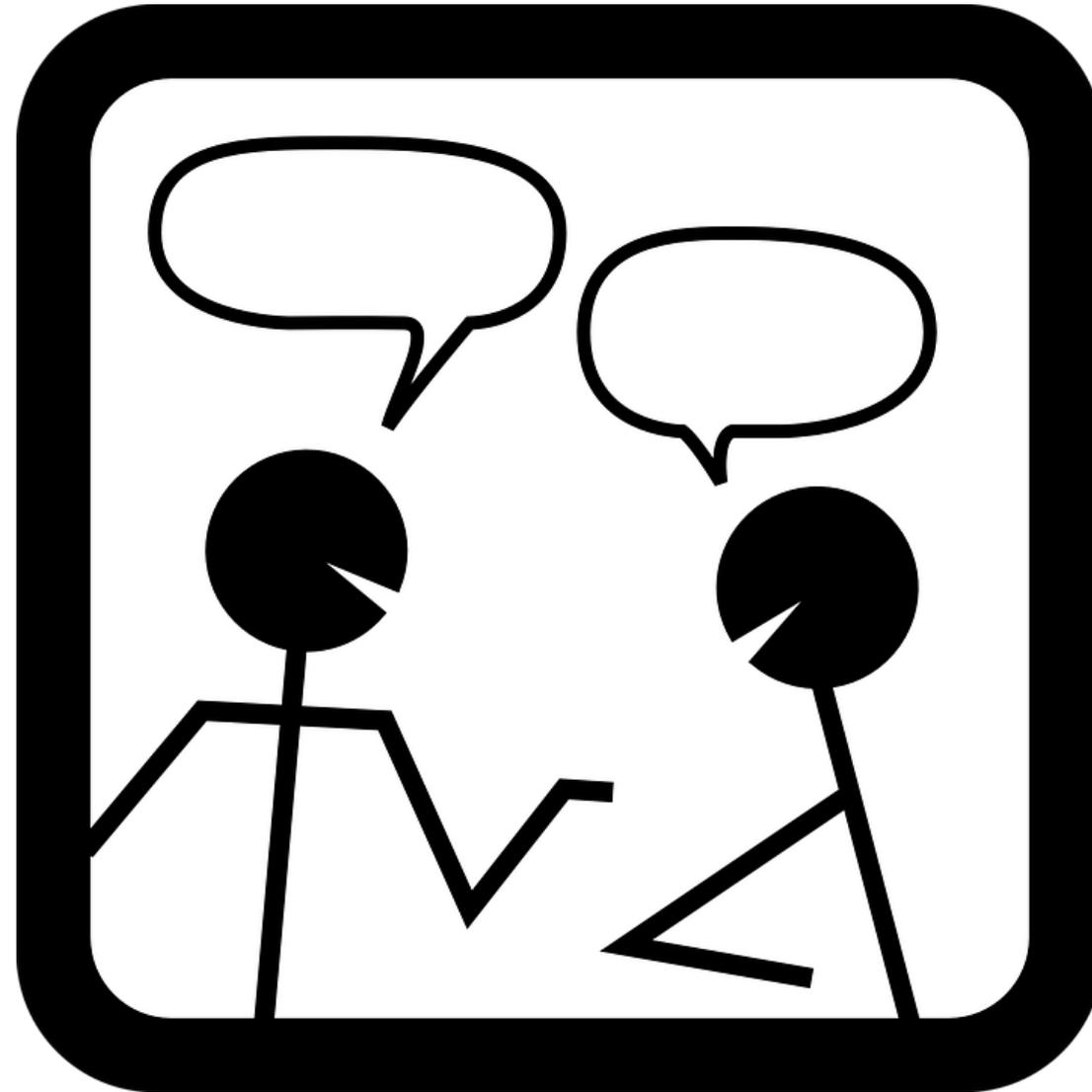
Interactive Role Play Exercise

Interview & Instructions

- Overview of case scenario
- Complaint Form from Complainant Wang Li (provided in advance)
- Intake interview with Complainant (Laura)
- Breakout sessions
 - Organized based on protected status
 - Prepare 2 additional questions to ask Complainant
 - Select someone in your team to ask these questions
 - Consider: whether to investigate, Respondent(s), allegations

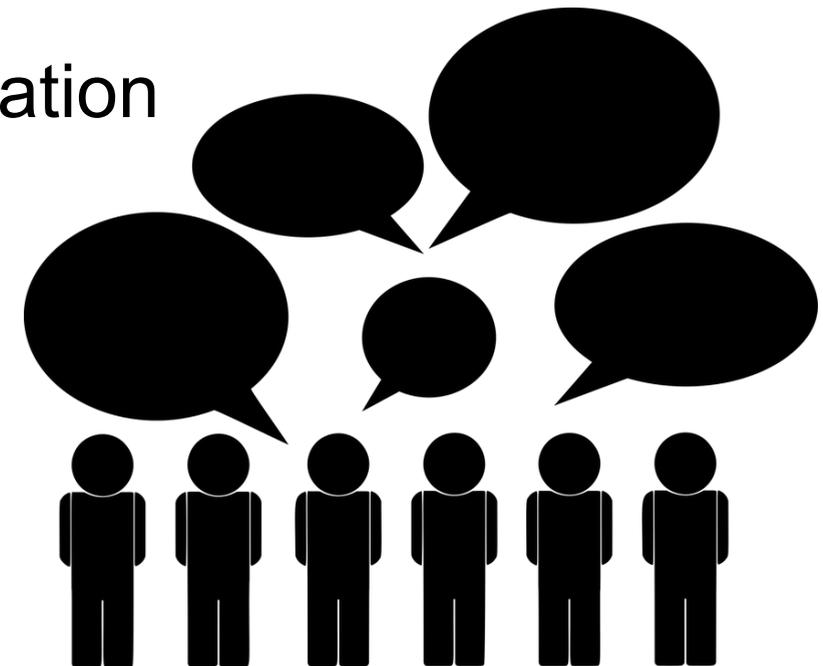


Intake Interview – Laura & Wang Li



Breakout Sessions (10 Minutes)

- Categories: Race/Color, Disability, Military/Veteran Status, Age
- Instructions:
 - Prepare 2 additional questions to ask Complainant
 - Select someone in your team to ask these questions
 - Also, consider if the complaint will be taken for investigation
 - And if so, who the Respondent(s) are, and
 - What allegations will be investigated



Opportunity for Audience Questioning of Complainant





Summary

- EO 1097 Investigation
- Respondents: Professor Smith, Sara Lobato, John Jones, Tom Anderson
- Allegations:
 - Professor Smith – harassment (age, disability, military/veteran) for his comments about Wang's age, his service, and requesting extra time for class assignments due to his disability
 - Sara Lobato, John Jones, Tom Anderson – harassment (race/color, age) for their comments about the coronavirus and about Wang's age

Additional Questions

Contact Information

- **Laura Anson**

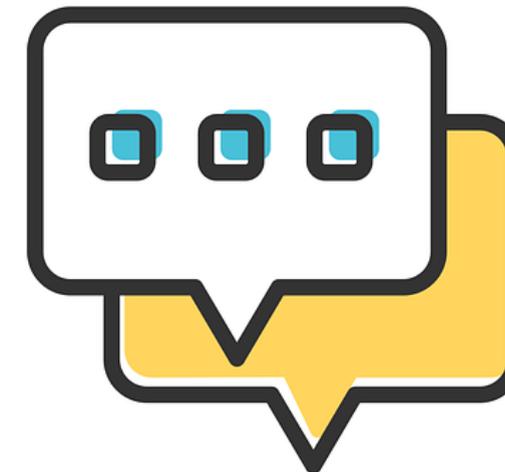
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Thank you for attending!