

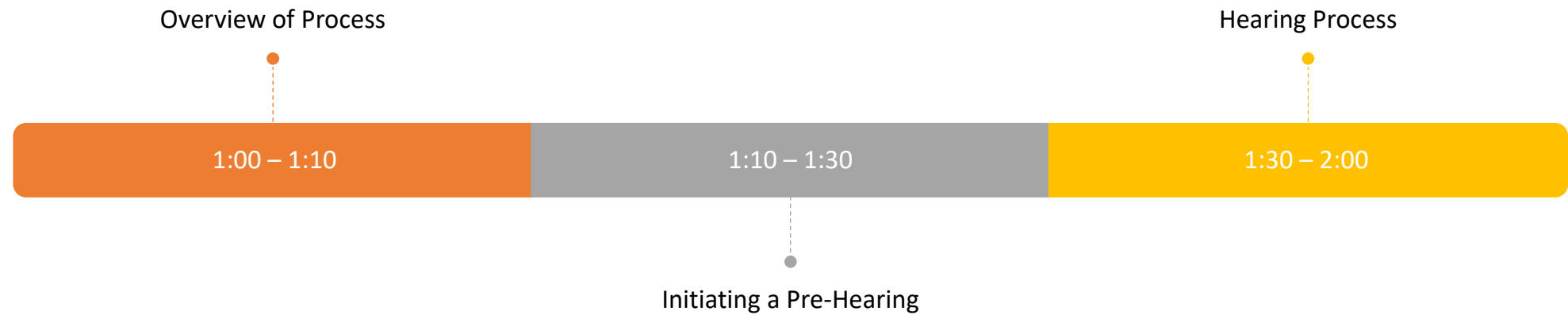
CONDUCTING AND ADJUDICATING
HEARINGS
TITLE IX



PURPOSE

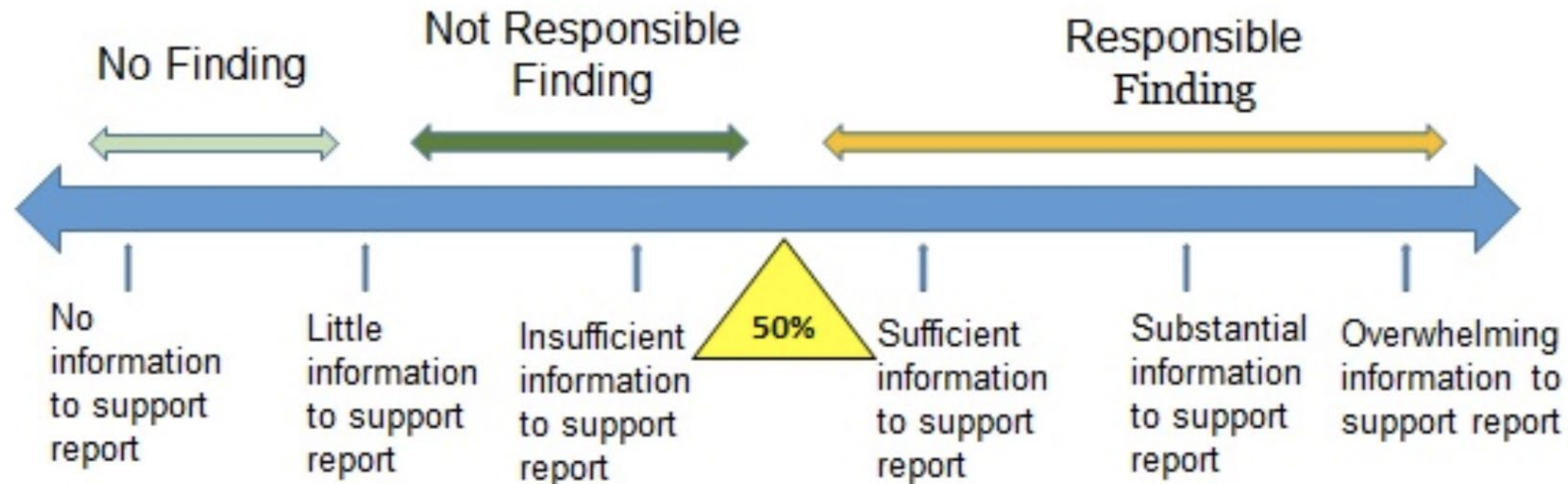
- Develop understanding of areas that impact hearing process
- Learn how to initiate the pre-hearing process
- Learn how to conduct a hearing
- Conclusionary outcomes

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 red arrow pointing to the right. On the right, a man in a dark blue suit is pushing a large green arrow pointing to the left. The two arrows are moving towards each other, meeting at a central point where several dark blue lines radiate outwards, resembling a starburst or an explosion, which visually represents the clash or conflict between the two interests.

- 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



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 room. The woman on the left is a Black woman with curly hair and glasses, wearing a white button-down shirt. The woman on the right is an Asian woman with long dark hair, wearing a black and white striped shirt. She is raising her right hand. In the background, there is a large window with a grid pattern and some colorful sticky notes (pink, red, yellow) on it. A water bottle and a blue folder are on the table in the foreground.

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



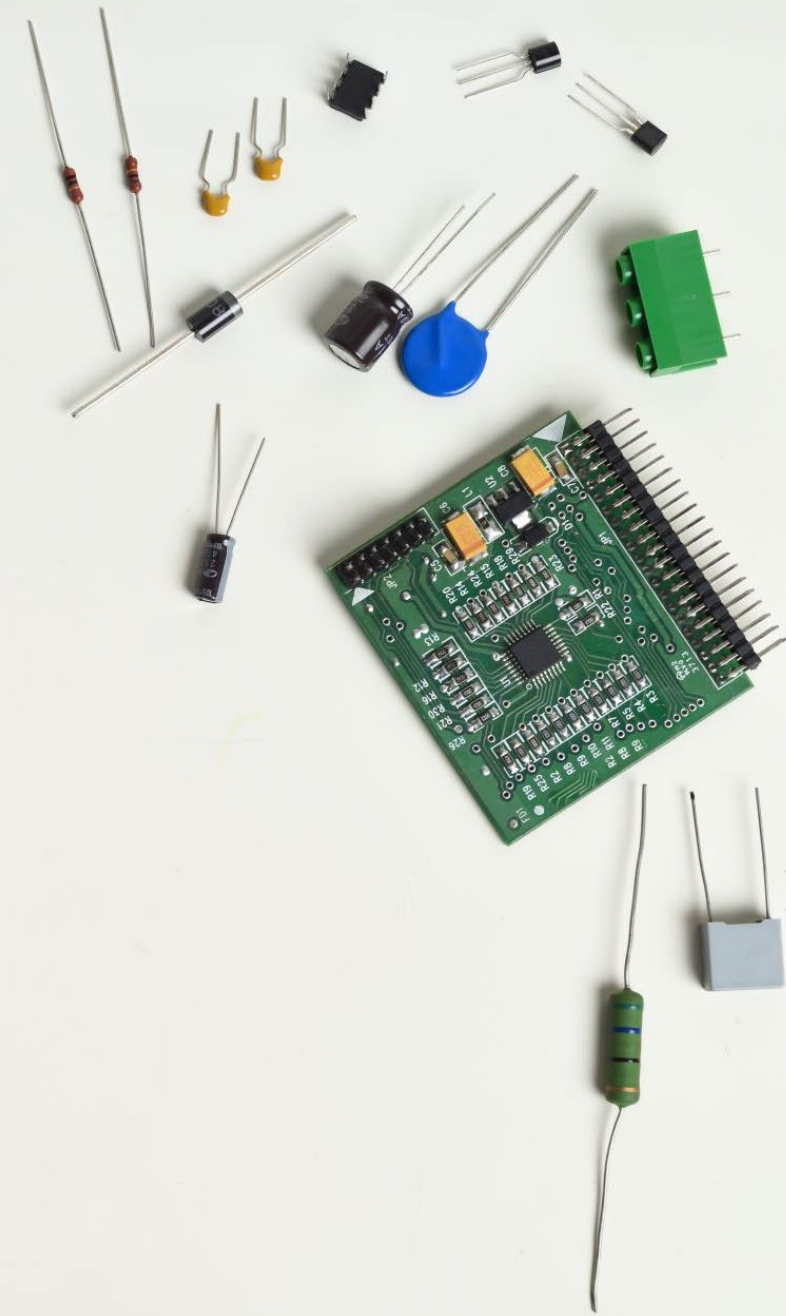


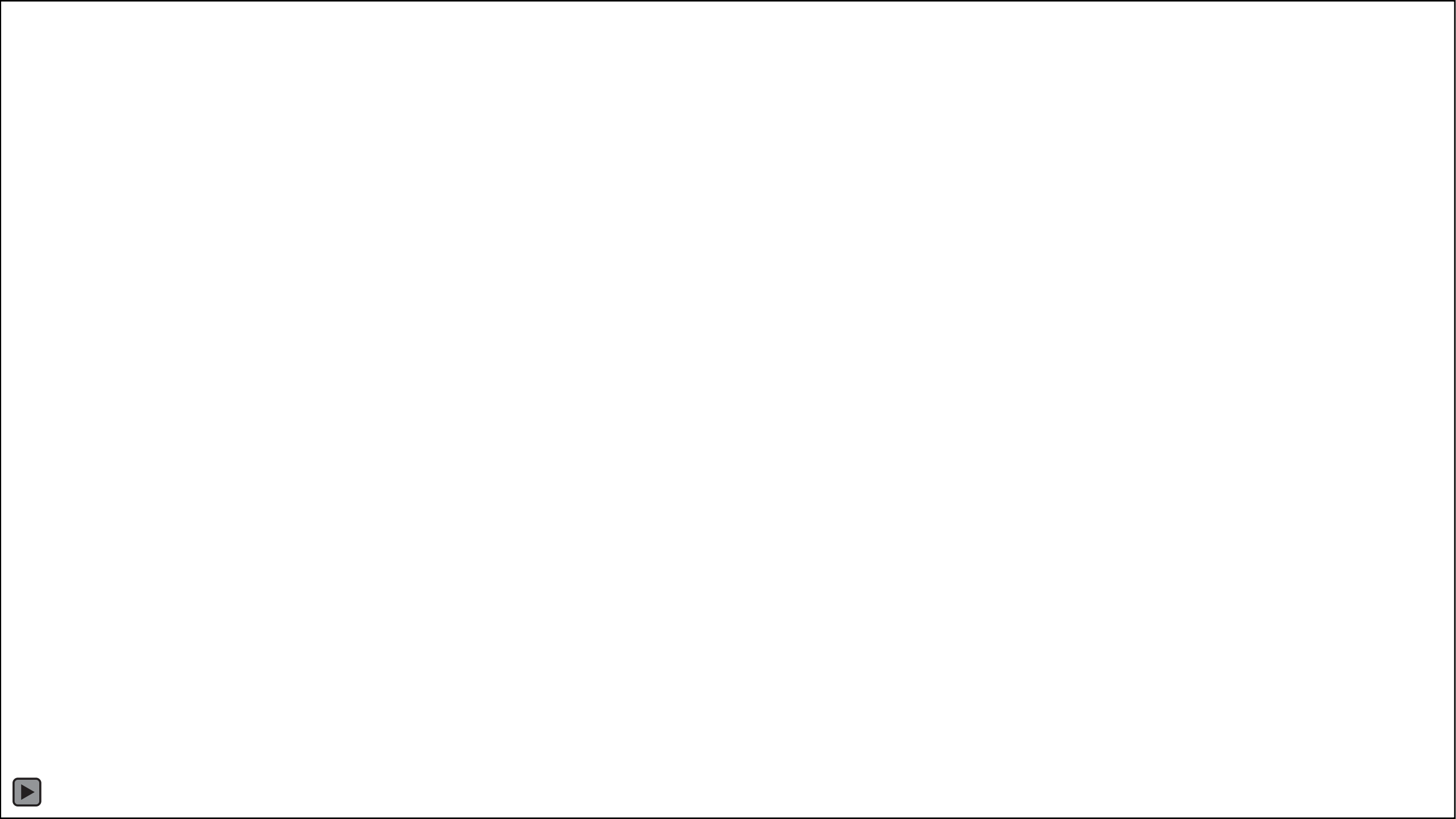
INITIAL ORDER CONT.

- 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 white, rectangular card with rounded corners is tilted at an angle, resting on a dark, textured surface. The card is the central focus, with its top-left corner pointing towards the upper left. The words "THANK YOU" are written in a bold, black, sans-serif font, with "THANK" on the top line and "YOU" on the bottom line. Below "YOU" are two exclamation marks, also in black. The background is dark and out of focus, with some light-colored, blurry shapes that suggest a natural setting like a forest floor. A diagonal, semi-transparent dark grey band runs from the top left towards the bottom right, partially obscuring the card and the background.

THANK YOU
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