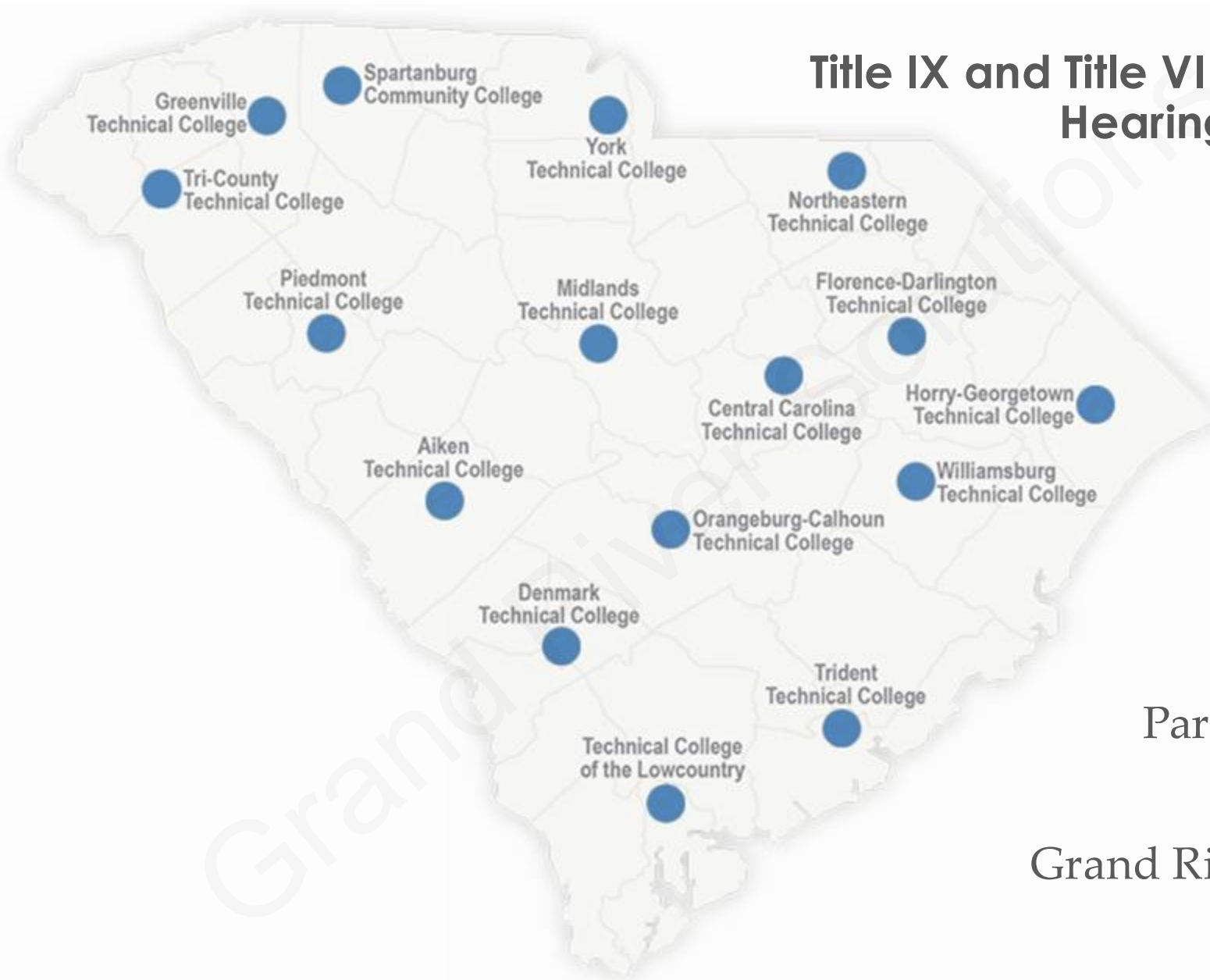




Title IX and Title VI Investigator and Hearing Officer Training

March 18 & 19, 2025

Pari Le Golchehreh &
Adam Wolkoff
Grand River Solutions, Inc.

DAY ONE: AGENDA

● Regulatory Requirements
Title VI and Title XI

● Initial Assessments
Intakes, jurisdiction, types of
conduct, and notice

● Investigation Initiation
Planning and managing

● Investigation Interviews
Preparing and conducting

● Interview Summaries
What should be included and how

● Evidence Assessment
How-to's

● The Investigation Report
What to include and to structure it

REGULATORY REQUIREMENTS

Title VI & Title IX: What we need to know

1

TITLE VI OVERVIEW



TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

[P]rovides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

OVERVIEW

- History of Title VI
 - Race
 - Color
 - National Origin
- Is Religion covered?
 - National Origin Discrimination
 - Citizenship/Residency in a country with a dominant religion
 - Harassment Connected to Actual or Perceived Shared Ancestry (or ethnic characteristics)



TITLE VI REGULATORY ACTION?

ED/OCR

RIN: 1870-AA15

Publication ID: Fall 2024

Title: Discrimination Based on Shared Ancestry or Ethnicity in Response to EO 13899 on Combating Anti-Semitism and EO 13985 on Advancing Racial Equity and Support for Underserved Communities

Abstract:

The Department plans to issue a proposed rule to amend its regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., in response to Executive Orders (EO) 13899 on Combating Anti-Semitism and 13985 on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. The proposed regulations would implement the Executive Orders to address enforcement of Title VI by the Department’s Office for Civil Rights (OCR) in cases involving harassment and other discrimination based on shared ancestry or ethnic characteristics. In this area, OCR has received complaints of harassment and assaults directed at Jewish, Muslim, Hindu, and other students based on their shared ancestry or ethnicity.

Agency: Department of Education(ED)

Priority: Other Significant

RIN Status: Previously published in the Unified Agenda

Agenda Stage of Rulemaking: Proposed Rule Stage

Major: No

Unfunded Mandates: No

CFR Citation: [34 CFR 100](#)

Legal Authority: [42 U.S.C. 2000d et seq.](#) [20 U.S.C. 1221e-3](#) [20 U.S.C. 3474](#) E.O. 13899 E.O. 13985

Legal Deadline: None

Timetable:

Action	Date	FR Cite
NPRM	12/00/2024	

TRUMP ADMINISTRATION ACTION

- 2019 EO 13899—Combating Anti-Semitism
 - Calls for robust enforcement
- 2025 EO – Additional Measures to Combat Anti-Semitism
 - Agency heads to report their available actions to combat antisemitism
 - "immediate action by DOJ" including on "leftist, anti-American colleges and universities."
 - "Deport Hamas Sympathizers and Revoke Student Visas"
- Feb. 3: Five opened investigations of antisemitism at universities

GENERAL PRACTICAL TAKEAWAYS

- If a hostile environment exists
- And the recipient knew or should have known
- OCR will evaluate whether the recipient took immediate and effective steps to end the harassment, eliminate the hostile environment and its effects, and prevent them from recurring.

RECENT HIGHER ED OCR RESOLUTION AGREEMENTS

- Emory University (January 2025)
- University of Washington (January 2025)
- Johns Hopkins University (January 2025)
- Lehigh University (January 2025)
- UCLA (January 2025)
- Rutgers University (January 2025)
- University of California (December 2024)
- University of Cincinnati (December 2024)
- Temple University (December 2024)
- Muhlenberg College (September 2024)
- University of Illinois (September 2024)
- Drexel University (August 2024)
- Brown (July 2024)
- Lafayette College (June 2024)
- City University of New York (CUNY) (June 2024)
- University of Michigan (June 2024)



HARASSMENT IN SUMMARY

- Sufficiently severe, pervasive, or persistent so as to interfere or limit the ability to participate or benefit
- Need to assess the totality of the circumstances, including context, nature, frequency, duration, and location, as well as the number impacted, relationships, and power differential(s)
- Does not need to be directed at a particular individual
- May be based on an association with others of a different race, color, national origin
- May occur in classrooms, dorms, hallways, facilities, social media
- Subjectively and objectively offensive harassment may occur when multiple offenders, taken together, meet the definition
- Need to assess whether the collective incidents created a hostile environment (overall environmental impact)

TITLE IX OVERVIEW



Title IX of the Education Amendments Act of 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. § 1681 (1972).



THE TITLE IX REGULATIONS

SEXUAL HARASSMENT ONLY

1

Narrows the definition of sexual harassment;

2

Narrows the scope of the institution's educational program or activity;

3

Narrows eligibility to file a complaint;

4

Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

TITLE IX APPLICATION REGULATIONS (2020)

Type of Conduct

- Hostile Environment
- Sexual Harassment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking

Ed Program or Activity

- On campus
- Campus Program, Activity, or Building
- In the United States

Required Identity

- Complainant is participating or attempting to participate in the Ed Program or activity
- Institution has control over Respondent

Apply 106.45 Procedures

Required Response:

Section 106.45 Procedures

PROCEDURAL REQUIREMENTS FOR TITLE IX INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

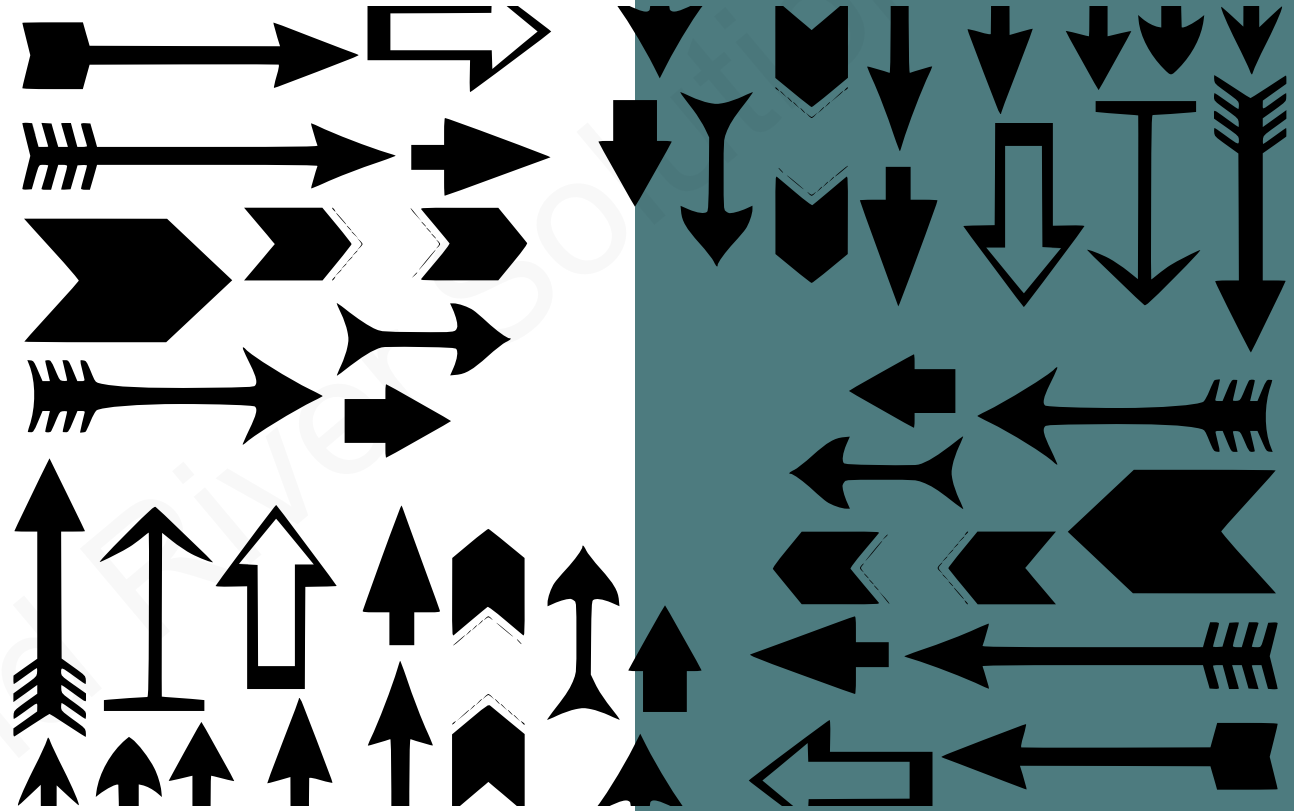
Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

INITIAL ASSESSMENTS

Jurisdiction, intake meetings, types of conduct, & notice requirements

JURISDICTION



STUDENT RELATED CONCERNS

There are three avenues:

TITLE IX SEXUAL HARASSMENT

- Alleged activity falls within the policy definition of sexual harassment (Section II(CC.))
- Alleged activity occurred within a college's education program or activity
- Alleged activity occurred against a person physically located in the US

NON-TITLE IX SEXUAL HARASSMENT

If the Title IX criteria are not met:

- The Student Code for Respondent students
- Non-Discrimination, Anti Harassment, and Sexual Misconduct Employee Respondent

DISCRIMINATION/HARASSMENT

Student Grievance Process if a student files a Discrimination or harassment complaint against a college employee.

What about Employee Complainants?

EMPLOYEE RELATED CONCERNS

Consider the options

Title IX Sexual Harassment

- Alleged activity falls within the policy definition of sexual harassment (Section II(CC.))
- Alleged activity occurred within a college's education program or activity
- Alleged activity occurred against a person physically located in the US

Non-Title IX Sexual Harassment

- Allegations of discrimination, harassment, or sexual misconduct,
- That do not meet Title IX criteria

Now that we have the landscape, let's lay down the path.

HYPOTHETICALS: WHICH POLICY AND PROCEDURE APPLIES?

1 Robbie is a transfer student. While in her first class, the teaching assistant pointed in her direction and said, “When did we start accepting those types?”

2 Jo was waiting in a conference room for his job interview with the admissions office. He overheard the interview panelists talking in the office next door. Jo reported someone said, “Well, women are more organized, so do we need to interview this one?”

3 Ava was attending an open house for student organizations. While walking around the tables, perusing her options, a student passing out fliers ran his hand down her arm and said, “We accept special favors for prospective members,” and then tried to grab her waist.

CONDUCTING INTAKE



ASSESSING COMPLAINTS

Title IX

- Identities of the parties involved,
- Conduct of alleged sexual harassment,
- Date and location of alleged incident.

Title VI

Discrimination

- Protected status
- Conduct or speech
- Context
- Impact

Discriminatory Harassment

- Protected status
- Conduct/Speech
- Context
- Academic Freedom?
- Free Speech?

HYPOTHETICAL 1:

Recall the scenario in the previous slide:

Robbie is a transfer student. While in her first class, the teaching assistant pointed in her direction and said, "When did we start accepting those types?"

What questions should you ask during the intake?

HYPOTHETICAL 2:

Recall the scenario in the previous slide:

Jo was waiting in a conference room for his job interview with the admissions office. He overheard the interview panelists talking in the office next door. Jo reported someone said, “Well, women are more organized, so do we need to interview this one?”

What questions should you ask during the intake?

HYPOTHETICAL 3:

Recall the scenario in the previous slide:

Ava was attending an open house for student organizations. While walking around the tables, perusing her options, a student passing out fliers ran his hand down her arm and said, “We accept special favors for prospective members,” and then tried to grab her waist.

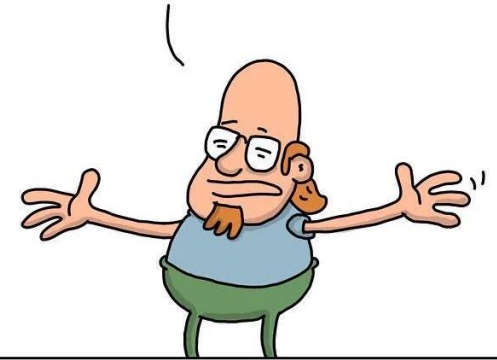
What questions should you ask during the intake?

THE FIRST AMENDMENT AND ACADEMIC FREEDOM

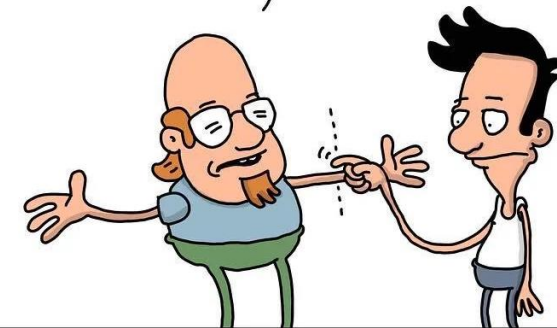
ON ONE HAND,
FREEDOM OF SPEECH
CAN MEAN STATING
YOUR OPINION WITHOUT
FEAR OF PERSECUTION.



ON THE OTHER HAND, IT
CAN MEAN SPREADING
HATE SPEECH, AND
INCITING VIOLENCE.



NOW, WHERE DO YOU
DRAW THE LINE?



DASKFJORD

THE SCOPE OF INSTITUTIONAL DISCRETION

- Constituents may have difficulty understanding why institutions can and do limit speech activities (maybe even less offensive ones) in some circumstances and not others.
- Often the exercise of discretion to limit speech turns on whether the speech activity at issue is in the context of a University-sponsored activity or event or occurs within a space over which the institution has greater control.

HYPOTHETICAL

A student resident hung a Confederate flag from their dorm room window, visible from outside of the residence building.

The institution demanded immediate removal of the flag from public view and threatened disciplinary action if the Student did not comply.

The Institution put out a message explaining its commitment to free speech, while creating distance from the Student's expressed ideation.

The Institution had discussions with the Student about the theoretical harm the conduct could cause due to a lack of participant complainants.

What are some issues that could arise from these various response options?

ACADEMIC FREEDOM

Is Academic Freedom an Exception to Governmental Authority to Restrict Government Employees' Speech?

The Supreme Court recognized that applying Government's discretion to restrict Government Employee Speech to public university professors would deny professors First Amendment protection for "expression related to scholarship or teaching." The court did not "decide whether the analysis . . . would apply in the same manner to a case involving speech related to scholarship or teaching."

ACADEMIC FREEDOM

What are the bases for Academic Freedom?

1

Teaching



2

Research



3

Intramural Speech



4

Extramural Speech



SHOULD I INVESTIGATE THIS?

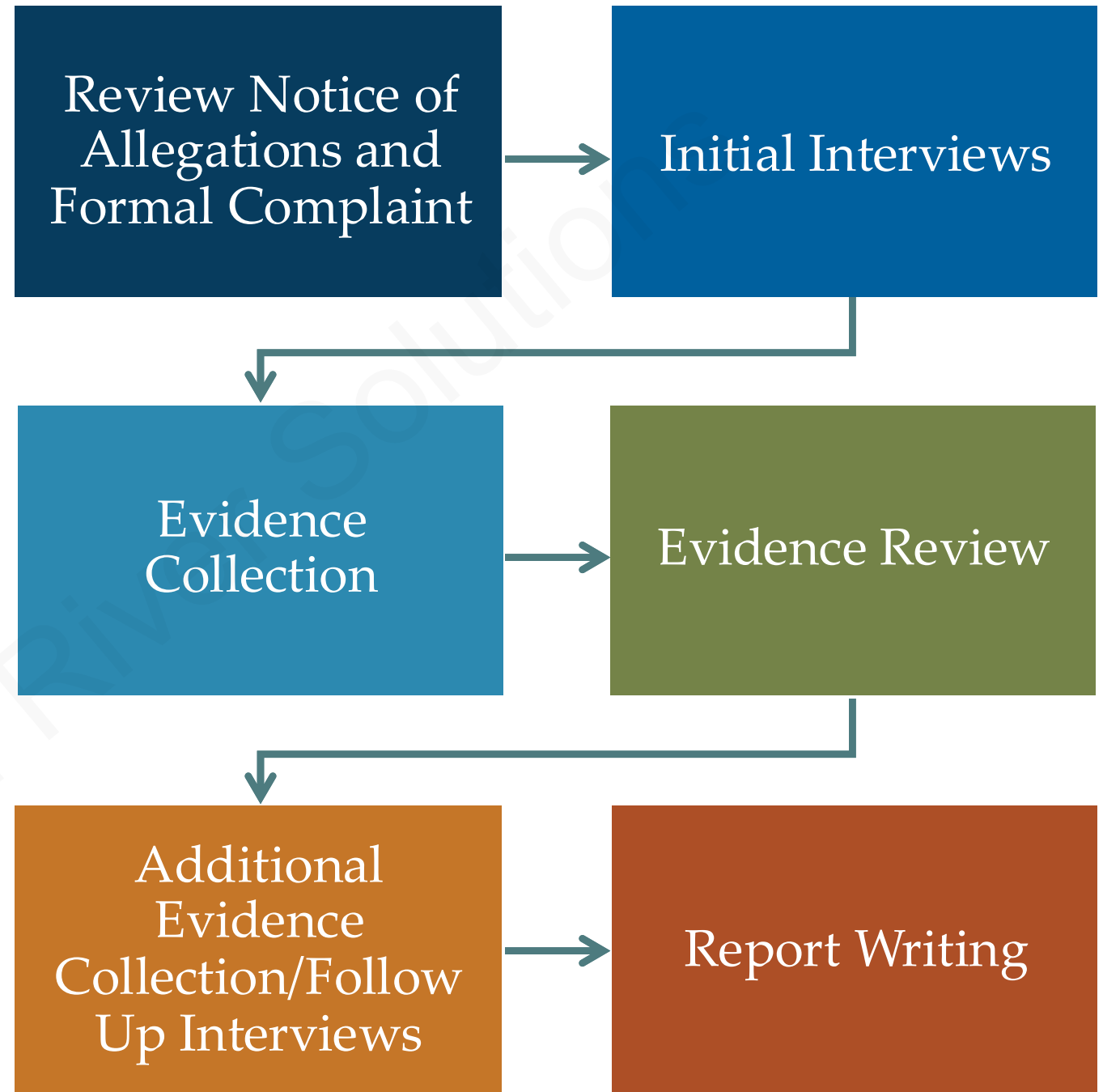
- A faculty member comments on a student's assignment that the work was "third world." The student is from Egypt and was offended.
 - What else would you need to know in order to decide?
- A Black employee who works remotely came into the office one day, and a colleague referred to him as the "tall, dark, mysterious stranger."
 - Would the analysis change if the supervisor made the comment?
- A comment by a student in a history class stating that the professor is exaggerating the scope or impact of the Holocaust.
 - What else would you need to know in order to decide?

INVESTIGATION INITIATION

Planning and managing your investigations

3

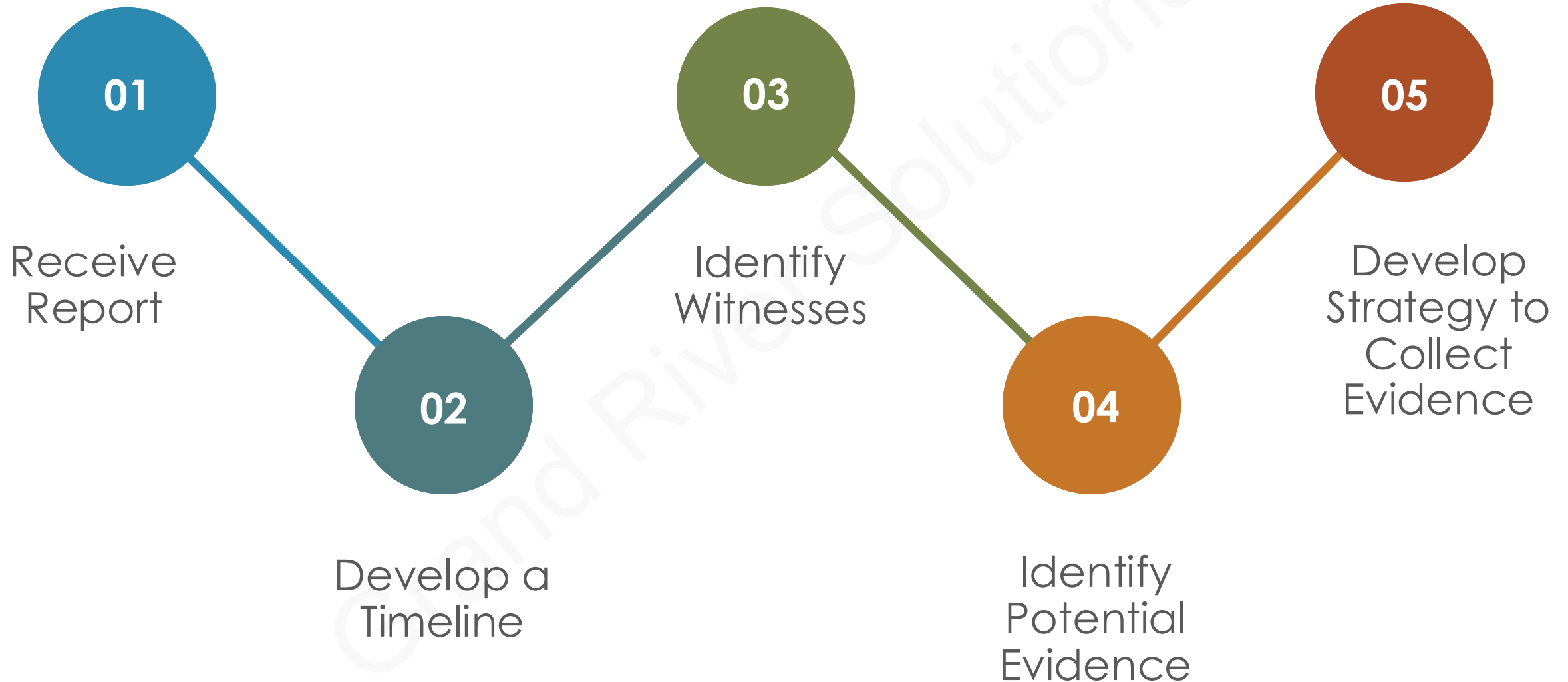
ESSENTIAL STEPS OF AN INVESTIGATION



PLANNING AND MANAGING



THE PROCESS: DEVELOPING AN INVESTIGATIVE STRATEGY



INVESTIGATION PLAN

By maintaining a running record of these things, you ensure you stay within your scope and can easily reference specific materials once you're ready to draft your report.



STALKING

Definition: Stalking means a pattern of words, whether verbal, written, or electronic, or a course of conduct consisting of two or more acts directed at a specific person that serves no legitimate purpose and would cause a reasonable person to fear for her, his, or other's safety, to fear damage to their property or property belonging to a member of their family, or to suffer substantial emotional distress.

Questions to Ask:

1. Pattern of words or course of conduct
2. Directed at a specific person
3. No legitimate purpose
4. Cause Reasonable person to fear:
 - a) *for their safety or others,*
 - b) *Damage to property*
 - c) *Suffer substantial emotional distress*

TYPES OF DISCRIMINATION

Individual

- Intentional adverse act(s)
- Limit or deny participation or cause exclusion
- Has an identified respondent

Adverse Impact/ Programmatic

A policy/procedure seems neutral, but has a discriminatory impact in practice

May be acceptable if there is a legitimate, non-discriminatory reason for the differential treatment

May not have a named respondent

INVESTIGATION INTERVIEWS

Preparing and conducting interviews

4

PREPARING FOR INTERVIEWS



Logistics

Location, time, and participants



Process Discussion

What is expected of the participants and of the facilitator



Review Materials

Thoughtful review of the evidence



Outline

Prepare interview questions or bullet points for areas you need to ask about

INITIAL INTERVIEW

“Harassment is conduct based upon an individual’s sex, race/color, religion, national origin, age, disability, service in the uniformed services (as defined in state and federal law), veteran status, political ideas, marital or family status, pregnancy, genetic information, genetic identity, gender expression, or sexual orientation that excludes an individual from participation in, denies the individual the benefits of, treats the individual differently, or otherwise adversely affects a term or condition of a person’s working or learning environment.”

What occurred, identities of other party(ies)

How often (pervasiveness)

On the basis of . . . ?

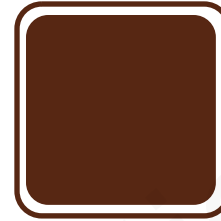
Witnesses

Location (jurisdiction)

Impact on complainant

Evidence

CONDUCTING INTERVIEWS



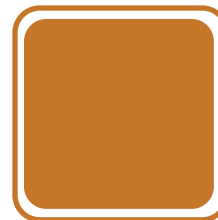
Elicit a narrative
Open with a big-picture question



Listen
In more ways than one



Seek clarification
Intentionally and without
interrupting



Document
Questions, evidence, and
witnesses

CONCLUDING INTERVIEWS

The end...or is it?



Debrief: Evidence to submit and witnesses discussed

Next steps: Review process, protections, options, and expectations

Reflect: Was there anything you missed?
Anything they missed?

DRAFTING SUMMARIES

What to include and how to do it

5

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THE SUMMARY SHOULD STAND ON ITS OWN



S Simple and Easy to Comprehend

T Transparent/Clear

A Accurate

N Neutral/Unbiased

D Draws Attention to Significant Evidence and Issues

CHOOSING SIMPLE LANGUAGE

Summaries should be written so that they are accessible to all readers, irrespective of their familiarity with the subject matter, or the institution's policies and the law.

Complex Language

"Adjudicated" -->

"Preponderance of the Evidence" -->

"Respondent articulated" -->

"Prima Facie Assessment" -->

"The allegation was substantiated" -->

"Pursuant to the policy" -->

"Digital Penetration" -->

MAKE IT SIMPLE

Commit to using plain language:

"The SANE's report indicated that Complainant presented to the ED with erythema around his left eye."

"Following this investigation, a hearing panel will convene to adjudicate this complaint using a preponderance of the evidence standard."

TRANSPARENT AND CLEAR

- Summarize information chronologically.
- Clearly define language used, such as:
 - **Opinions**
 - **Quantitative language**
 - **Slang/acronyms**
- Provide clear descriptions of acts.
- Use consistent language.



ACCURACY IS ESSENTIAL

- Be precise and accurate
- Use quotations often and
- No conclusory language

- Complainant first saw Respondent near the fountain in the middle of the quad.
- Witness 3 told Complainant that Respondent was creepy.

- Witness 3 was really out of it and drunk."

- The stalking started...

LET'S TRY IT

COMMIT TO USING NEUTRAL LANGUAGE

Non-Neutral/Biased

“Claimed/Alleged”

“According to X”

“Story/Version of Events”

“Had Sex with/Engaged in”

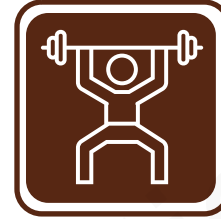
“Changed their Account/Story/Version of Events”

NEUTRALITY EXERCISE

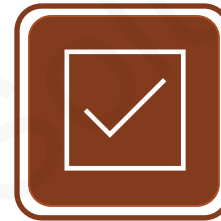
What's wrong with this?

“Complainant claimed that they were face down in the bed with their dress pushed up so that their face was actually laying on the bottom part of their dress. They alleged that someone was having sex with them from behind.”

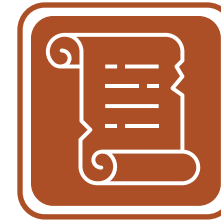
DRAW ATTENTION TO SPECIFIC EVIDENCE THROUGH INTENTIONAL PRESENTATION OF INFORMATION IN THE REPORT



Evidence that the Investigator believes should be afforded significant weight.



Evidence related to assessment of credibility, reliability, and authenticity.



Explanations that provide a better understanding of certain items of evidence or lack of evidence.



If it feels important, emphasize it.

POTENTIAL BAD FACTS

When your investigation reveals a fact that was not shared by a party or witness, the investigator should have explored the reason for the omission. The final report should document the exploration and accurately describe the explanation provided.

“Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left the room ten minutes later. In a follow up interview with Complainant, they were asked why they did not report Witness A’s presence in the room. Complainant responded by stating that they have no recollection of Witness A being in the room.”

EVIDENCE ASSESSMENT

How to assess and incorporate evidence

6

EVALUATING EVIDENCE



Is it relevant?



Is it authentic?



Is it credible and/or
reliable?



How much weight, if
any, should it be given?

TITLE IX RELEVANCY

Relevant

Evidence 401 Test for Relevant Evidence:

“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.”

Directly related

Evidence upon which the institution does not intend to rely on in reaching a determination regarding responsibility.

Not relevant (impermissible)

Evidence to be excluded from the investigation file as it relates to:

(a) Complainant sexual history or sexual predisposition (with two exceptions), or

(b) Un-waived legally recognized privilege.

TITLE VI RELEVANCY

RELEVANT

Does the evidence make a fact more or less probable than it would be without the evidence?

Can the Decision-Maker rely on the evidence in reaching a determination?

NOT RELEVANT

Does not contribute to making any fact more or less probable than it would be without the evidence.

AUTHENTICITY

NEVER
assume
evidence is
authentic

- Obtain originals
- Multiple sources

Ask questions
that lead
to proof of
authenticity

- Timestamps
- Full screenshots
- Full chains of communications

Investigate
authenticity if
necessary

- Look at properties
- Metadata

CREDIBILITY AND RELIABILITY

There is no formula for assessing credibility and reliability.

NOTE: Keep in mind evidence and witnesses can be credible, but not reliable.

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency (internal and external)

Background, experience, and training

Coaching or bias

WEIGHING THE EVIDENCE



Direct

Based on personal knowledge or observation and that, if true, proves a fact without inference or presumption



Circumstantial

Based on inference and not on personal knowledge



Corroborating

Differs from but strengthens or confirms what other evidence shows.

THE INVESTIGATION REPORT

What to include and how to structure it

7

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ESSENTIAL ELEMENTS OF THE REPORT

Intentionally organized to enhance comprehension

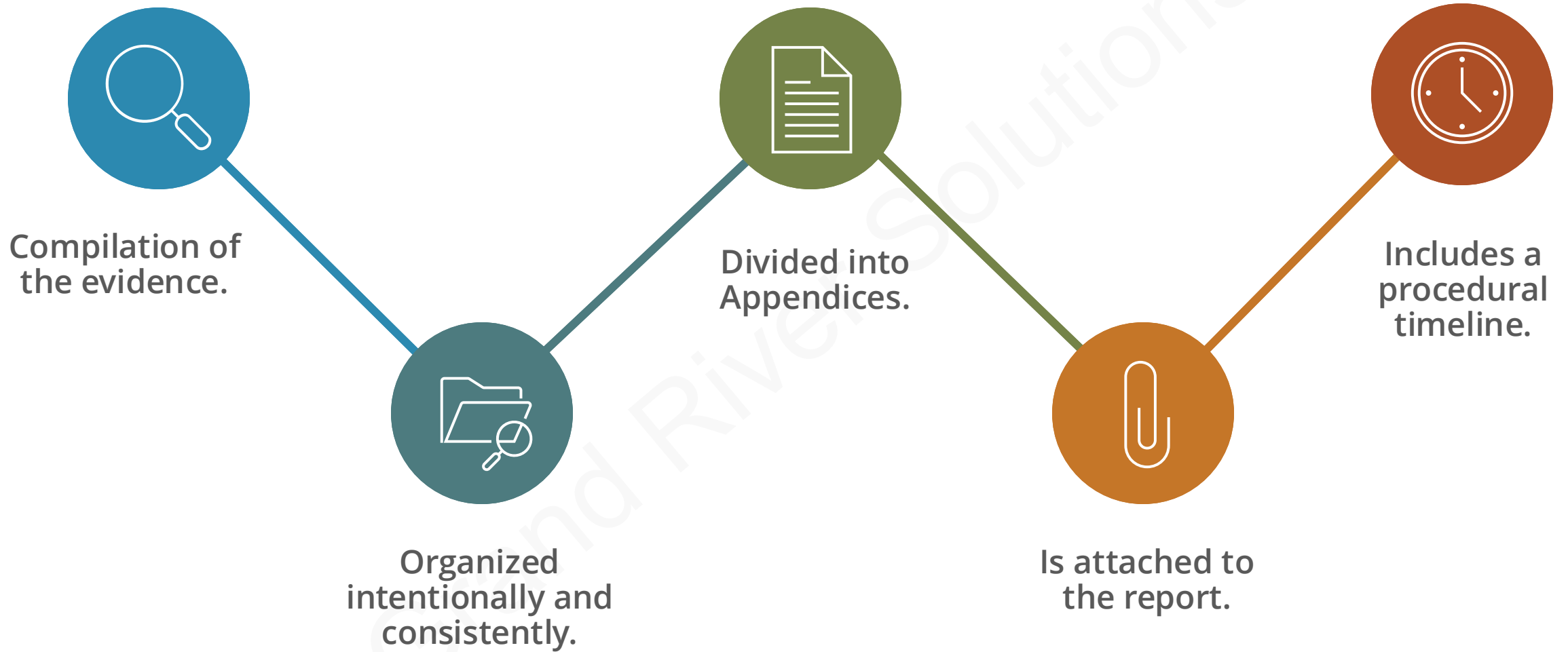
Factually accurate

Concise

Without editorial or opinion

Consistent format

THE EVIDENCE FILE



EXAMPLE OF APPENDICES

Appendix A: Party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant

Appendix B: Documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant

Appendix C: Remaining evidence deemed **directly related if TIX** by the investigator

Appendix D: The procedural timeline

REDACTIONS

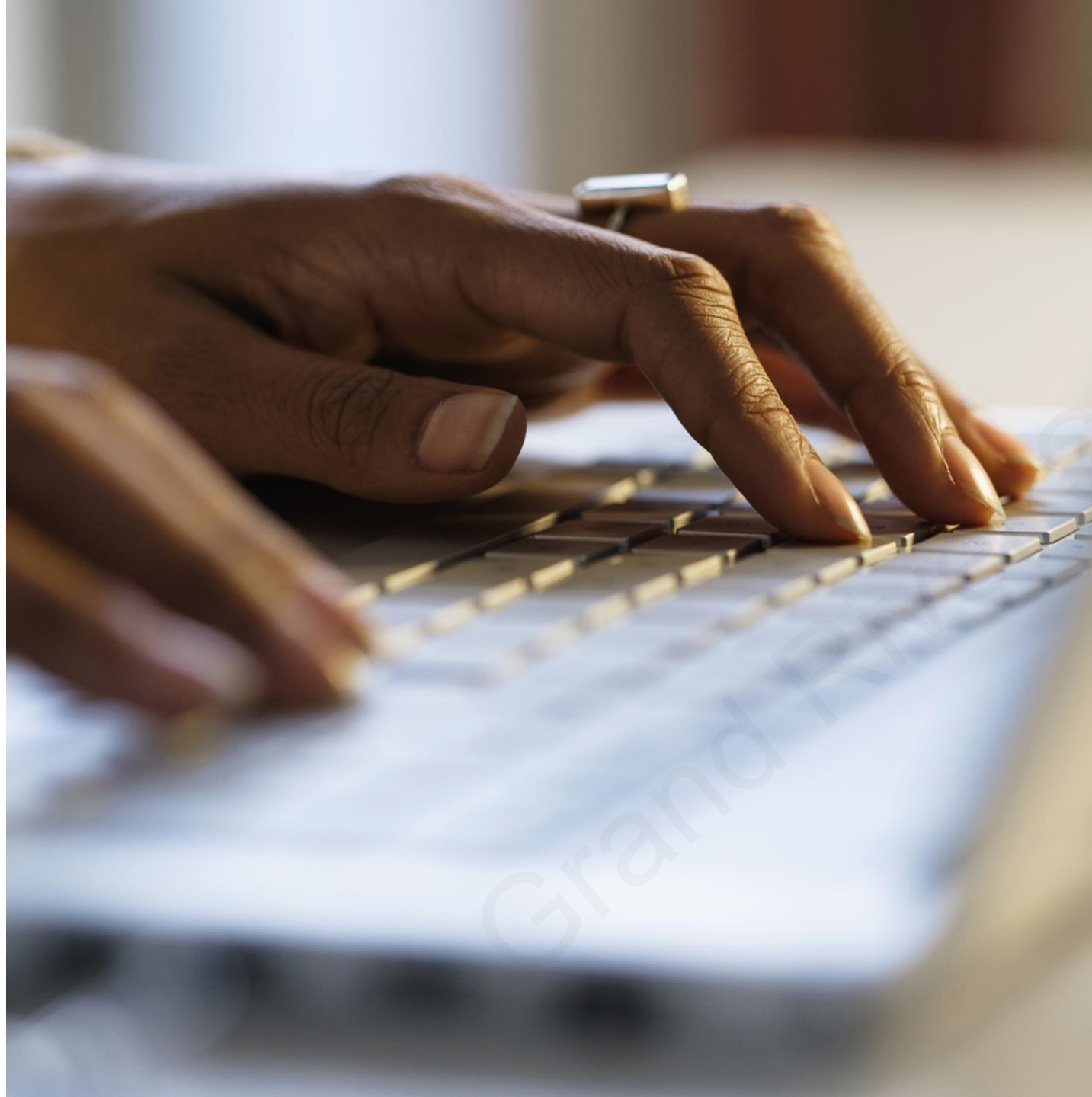
What do we redact and how should we do so?

- What we redact:
 - Information or evidence that is protected by a legally recognized privilege
 - FERPA
 - *What about embarrassing information?*
- How to redact: Monikers for identity or black-outs
 - Screenshot hurdles

STRUCTURE OF THE REPORT

- Overview of the Investigation
- Statement of Jurisdiction
- Objective of the Investigation and the Report
- Prohibited Conduct Alleged
- Witnesses
- Evidence Collected
- Summary of Evidence
- Non-TIX or TVI – Analysis and Findings
- Conclusion





WHAT TO INCLUDE IN YOUR REPORT

START BY IDENTIFYING THE QUESTIONS THAT YOU OR THE DECISION MAKER WILL BE CHARGED WITH ANSWERING:

What are we being asked to decide?

What does the formal complaint allege?

What are the elements of each act of prohibited conduct alleged?

NON-CONSENSUAL SEXUAL CONTACT:

Includes any intentional sexual touching, however slight, with any object, by one individual upon another individual that is without consent. Sexual contact includes: intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or any intentional bodily contact in a sexual manner, though not involving contact with breasts, buttocks, groin, genitals, mouth or other orifice.

1. Did Respondent intentionally touch the Complainant's body (private or otherwise)?
2. Did Respondent intentionally touch Complainant's body in a sexual manner?
3. Without Complainant's consent?

Analysis Grid: List the Elements

Did R touch C's body?	Was the touching sexual in manner?	Without C's consent (due to lack of capacity)?

IDENTIFY THE RELEVANT FACTS FOR INCLUSION IN THE REPORT.



Background



Key facts



Supporting facts



Assessment factors

Analysis Grid:

List where you will find the material facts to each of the questions.

Did R touch C's body?	Was the touching sexual in manner?	Without C's consent (due to lack of capacity)?
• Complainant's Account • Respondent's Account • Witness 1's Account • Text messages between Complainant and Respondent • SnapChat DM between Respondent and Witness 2	• Respondent's Account • SnapChat DM between Respondent and Witness 2	• Complainant's Account • Respondent's Account • Witness 1's Account • Witness 3's Account • Photograph of Complainant • Video of Complainant • Text messages between Complainant and Witness 4 • Witness 4's Account



HOW TO STRUCTURE THE REPORT

SINGLE INCIDENT ALLEGATIONS: PERSON CENTERED APPROACH



1. Complainant's Account

- a. The parties' prior relationship
- b. The events immediately prior to the alleged prohibited conduct
- c. The incident of alleged prohibited conduct
- d. The events following the alleged prohibited conduct

2. Respondent's Account

- a. The parties' prior relationship
- b. The events immediately prior to the alleged prohibited conduct
- c. The incident of alleged prohibited conduct
- d. The events following the alleged prohibited conduct

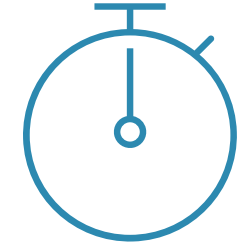
3. Witness 1's accounts

- a. Witness 1's observations of the parties' prior relationship
- b. The events immediately prior to the alleged prohibited conduct
- c. The incident of alleged prohibited conduct
- d. The events following the alleged prohibited conduct

4. Witness 2's account

- a. Repeat above format

SINGLE INCIDENT ALLEGATIONS: EVENT CENTERED APPROACH



1. History between the Parties

1. *The Reporting Party's Account*
2. *The Responding Party's Account*
3. *Witness A's Account*

2. The Hours Leading up to the Reported Incident

1. *The Reporting Party's Account*
2. *The Responding Party's Account*
3. *Witness B's Account*
4. *Witness C's Account*

3. The Reported Incident

1. *The Reporting Party's Account*
2. *The Responding Party's Account*

4. After the Reported Incident

1. *The Reporting Party's Account*
2. *The Responding Party's Account*
3. *Witness A's Account*
4. *Witness D's Account*

MULTIPLE INCIDENTS

Incident A (incident centered)

- Overview of the alleged incident
- Undisputed facts
- Reporting Parties Account
- Respondent Parties Account
- Witness Accounts

Incident B

- Overview of the alleged incident
- Undisputed Facts
- Reporting Parties Account
- Respondent Parties Account
- Witness Accounts

Incident C

- Overview of the alleged incident
- Undisputed Facts
- Reporting Parties Account
- Respondent Parties Account
- Witness Accounts

Complainants Account (person centered)

- Prior History between the parties
- Incident A
- Incident B
- Incident C
- Time between last incident and report

Respondent's Account

- Prior History between the parties
- Incident A
- Incident B
- Incident C
- Time between last incident and report

Witness Accounts

- Prior History between the parties
- Incident A
- Incident B
- Incident C
- Time between last incident and report

HOW MIGHT YOU INCLUDE THE FOLLOWING RELEVANT INFORMATION INTO THE SUMMARY?

1. Excerpt from the transcript of Complainant's initial interview located in Appendix A at page 34:
 - Complainant: "The next day he tried to talk to me. He sent me a bunch of text messages asking to see me. He said he was 'sorry' for hitting me and for raping me. I basically told him I didn't want to hear it and I called him an asshole. We've not communicated since."
2. Screenshot of the text message exchange, described above, submitted by Complainant and located in Appendix B, page 67.

OPTION A

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. Screenshots of this exchange were provided by Complainant and are included in Appendix B. See, Appendix A, p.34 and Appendix B, p. 67.

OPTION B

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. See Appendix A, p.34. Complainant provided screenshots of this exchange, which read as follows:

Complainant: I don't care what u say. U know I didn't want it and you did it anyway.

Respondent: I'm sorry I hurt u. You know I don't hit. I was so drunk. IDK what to say to make it better. Can I see u?

Complainant: What could you say? U raped me, asshole.

Respondent: I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did. *Appendix B, p. 67.*

OPTION C

Complainant reported that the next day, she engaged in a text message exchange with Respondent.

Complainant stated that in this exchange, Respondent told her that he was “sorry for hitting he and for raping her.” See Appendix A, p.34. Complainant provided the following screen shots of this exchange:

Appendix, p. 67.



ANALYSIS AND FINDINGS



FINDINGS OF FACT

- A "finding of fact"
 - The decision whether events, actions, or conduct occurred, *or* a piece of evidence is what it purports to be, is credible, and reliable.
 - Based on available evidence and information.
 - Determined by a preponderance of evidence standard.
 - Determined by the fact finder(s).



PREPONDERANCE OF THE EVIDENCE

- More likely than not.
- Does not mean 100% true or accurate.
- A finding of responsibility = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.
- A finding of not responsible = There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

EVALUATING THE EVIDENCE



Is it relevant?

Is the evidence important, or of consequence, to the fact-finding process?



Is it authentic?

Is the item what it purports to be?



Is it credible/reliable?

Is the evidence worthy of belief and can the decision maker rely on it?



What weight, if any, should it be given?

How important is the evidence to the fact-finding process?

DETERMINING CREDIBILITY AND RELIABILITY

Remember: There is No
Formula!



SUFFICIENCY OF DETAIL AND SPECIFICITY

Is the level of detail provided by the person reasonable and indicative of a genuine personal experience by the person?



INTERNAL CONSISTENCY/CONSISTENCY OVER TIME

- Did the person share the same version of events in all settings, including interviews, in written and/or verbal statements and between documentary evidence?
- Are there any discrepancies or contradictions?
- Is there a sufficient explanation for any discrepancies?



CONSISTENCY WITH OTHER EVIDENCE OR TESTIMONY



- Is the testimony or evidence consistent with the other evidence?
- Is the testimony or evidence inconsistent with the other evidence?
- Is there a sufficient explanation for any inconsistencies?

CORROBORATION

- Is there witness testimony (either by witnesses or people who saw the person soon after the alleged incident, or people who discussed the incidents with the person around the time they occurred) or documentary or physical evidence that corroborates the person's testimony?
- Is there witness testimony or documentary and/or physical evidence that are inconsistent with statements made during the interview or does not provide corroboration to the person's version of events?



INHERENT PLAUSIBILITY



- Is the testimony believable on its face?
- Does it make sense?
- Could it have occurred?
- Does it make sense that this person knows this information?
 - What was their opportunity to view?

MATERIAL OMISSION

- Did the person omit material information?
- If so, what?
 - e.g., submitted partial text messages, or omitted text messages that could be perceived as unfavorable
- Is there a reasonable reason for the material omission?



MOTIVE TO FALSIFY

- Did the person have a reason to be untruthful other than the general desire to be believed, or to prevail?
- Did the witness openly volunteer information that is prejudicial to their interests or the Party?
- If so, does the declaration against interest bolster their credibility?
- Does the person have an articulable bias, interest or other motive? [e.g. an employee received a poor performance review, so she falsified a claim of sexual harassment against her boss].
- Alternatively, does the person have little personal gain in the outcome?
- What are the relationships between the parties?

PAST RECORD

- Is there a history of similar behavior in the past?
 - e.g., a supervisor had previous complaints of sexual misconduct
- If so, this might impact whether a statement should be believed.
 - For example, a respondent who states they never knew that a certain behavior was wrong, yet was written up for that same behavior, the history of similar past behavior makes the respondent's statement less believable and less reliable.

ABILITY TO RECOLLECT EVENTS

- What is the extent the person was able to perceive, recollect or communicate the version of events?
 - e.g., the person reported they were intoxicated, or the person reported they were sleeping



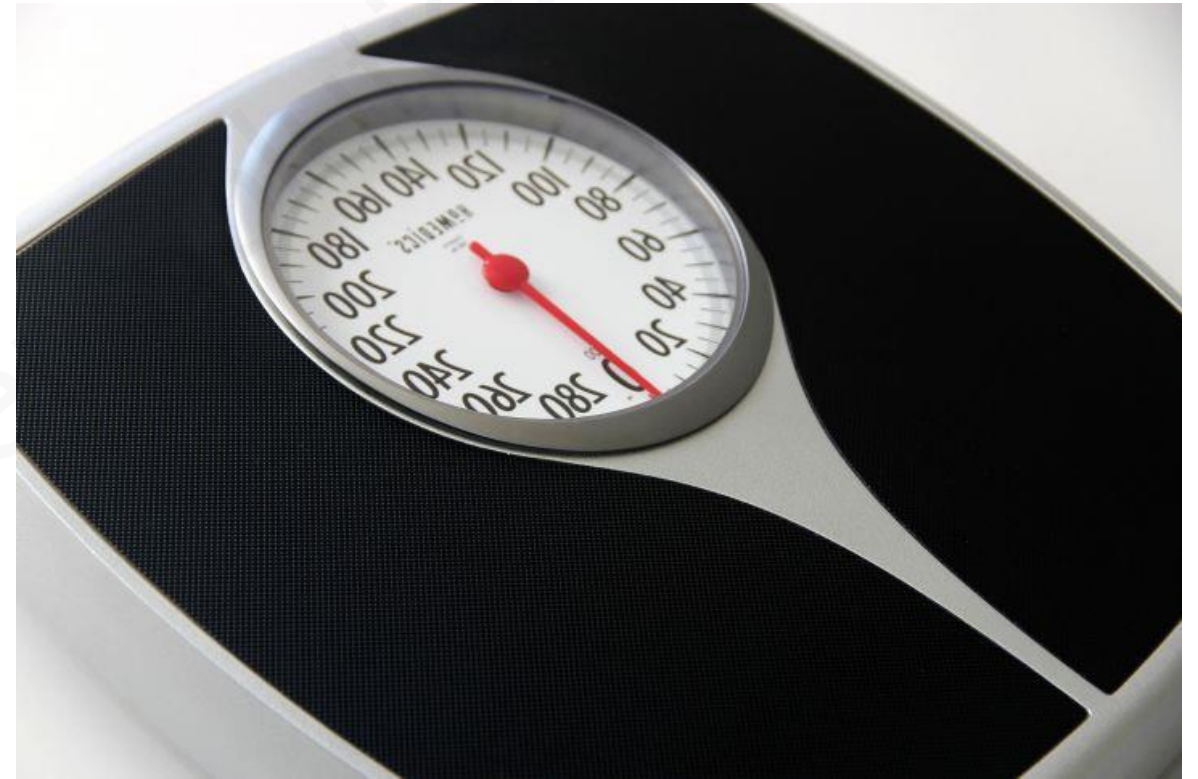
CREDIBILITY/RELIABILITY ANALYSIS: Step by Step

1. Determine the material facts – focus only on material facts.
2. Determine which material facts are:
 - a) Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
 - b) Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains [e.g., Marcy alleged that Jack kissed her without her consent around 1am at the party, and Jack asserted he never kissed Marcy and went home early]
 - c) State clearly which facts are accepted, and which are rejected, and state the reasons why.

“While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack’s version of events cannot be credited as being more likely than not to be true.”

WEIGHING THE EVIDENCE

Determine what weight, if any, you will afford to each item of evidence upon which you intend to rely, of evidence in your final determination.



POLICY DETERMINATIONS



MAKING A POLICY DETERMINATION

1. Take the facts that were found to be more likely than not to have occurred and apply them to each element of the alleged prohibited conduct.
2. Analyze, using the preponderance standard of proof, whether the element has or has not been met.
3. Finally, determine whether it is more likely than not that a policy violation has or has not occurred.

Analysis Grid:

What does the evidence suggest is more likely than not?

Did R touch C's body?	Was the touching sexual in manner?	Without C's consent (due to lack of capacity)?
• Complainant's Account • Respondent's Account • Witness 1's Account • Text messages between Complainant and Respondent • SnapChat DM between Respondent and Witness 2	• Respondent's Account • SnapChat DM between Respondent and Witness 2	• Complainant's Account • Respondent's Account • Witness 1's Account • Witness 3's Account • Photograph of Complainant • Video of Complainant • Text messages between Complainant and Witness 4 • Witness 4's Account

Analysis Grid: Findings of fact

Did R touch C's body?	Was the touching sexual in manner?	Without C's consent (due to lack of capacity)?
Parties do not contest that that Respondent touched Complainant's hips while they sat in Witness 2's back seat on their way to a party. This was corroborated in the text communications and witness statements.	Respondent denied that the touching of Complainant's hip was sexual in nature, however, SnapChat communications shared by Witness 2 reveal Respondent had mentioned touching Complainant intentionally because she wanted to see how far Complainant would allow it.	Although Complainant denied consenting to Respondent's touching due to being intoxicated, there was insufficient evidence that Complainant was in fact incapacitated because witness statements suggest that Complainant had been able to hold conversations and walk without assistance.

EXAMPLE OF A RECOMMENDED DETERMINATION:

“While the credible and reliable evidence supports a finding that it is more likely than not that Respondent touched Complainant’s hip in a sexual manner, the credible evidence does not support a finding, using the preponderance of the evidence standard that Complainant was incapacitated and therefore incapable of providing consent. Thus, the we find Respondent NOT RESPONSIBLE for the allegation of nonconsensual sexual contact, as set forth in the formal complaint”

SC TECHNICAL COLLEGE

DAY TWO: HEARINGS



DAY TWO: AGENDA

● Title IX Requirements for Hearings

● Hearing Overview

● Pre-Hearing Tasks

● Developing Questions

● The Hearing

● Practical Application

TITLE IX REQUIREMENTS FOR HEARINGS



01

Grand River

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS



If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.

All hearings must be recorded.

Participants must be able to communicate with decision makers and advisors during the hearing

THE REQUIREMENT OF IMPARTIALITY



SECTION 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution not to have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent



HYPOTHETICAL: IS THERE A CONFLICT OF INTEREST?

Complainant: Alex, a senior student and President of the Student Government Association (SGA) at a small liberal arts college.

Respondent: Jack, a junior student, and member of the college's basketball team.

Hearing Officer: Dean Thompson, who is the Dean of Students but also Alex's direct supervisor as the SGA advisor.

Additional Context: Dean Thompson has a close professional and mentoring relationship with Alex, having worked with them extensively on SGA projects and initiatives. Additionally, Dean Thompson has a vested interest in maintaining a positive relationship with Alex, as the SGA President plays a crucial role in representing student interests and collaborating with college administrators.

HEARING OVERVIEW



02

Grand River

PURPOSE OF THE HEARING

1. Review and Assess Evidence

```
graph TD; A[1. Review and Assess Evidence] --> B[2. Make Findings of Fact]; B --> C[3. Determine Responsibility/ Findings of Responsibility]; C --> D[4. Determine Sanction and Remedy];
```

2. Make Findings of Fact

3. Determine Responsibility/ Findings of Responsibility

4. Determine Sanction and Remedy

PROCESS PARTICIPANTS

- The Parties:
 - Complainant
 - Respondent
- Advisors
- Hearing Facilitator/
Coordinator
- Decision Maker(s)
 - Hearing Chair
- Investigator



THE PARTICIPANTS

The Parties

Complainant

means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment as defined herein.

THE PARTICIPANTS

Advisors

There are two types of Advisors



Advisor: throughout the
whole process
("may")



Hearing Advisor: hearing,
for purposes of asking
questions
"(must")

THE PARTICIPANTS

Advisors

- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institutionally appointed advisors should be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor will conduct cross examination at the hearing.
- Advisors are expected to advise their advisees without disrupting proceedings



THE PARTICIPANTS

Advisors: Prohibited Behavior

Suggestion: An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor's non-compliance and future role.



THE PARTICIPANTS

The Hearing Facilitator/Coordinator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting
- Optional, not required



THE PARTICIPANTS

Decision Maker or Makers

Decision Maker

One-person.

Decision Maker Panel

A panel.

Usually requires a hearing chair.

THE PARTICIPANTS

The Decision Maker

- One person
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome



THE PARTICIPANTS

The Investigator

- Can present a summary of the final investigation report, including items that are contested and those that are not;
- Submits to questioning by the Decisionmaker(s) and the parties (through their Advisors).
- Can be present during the entire hearing process, but not during deliberations.
- Questions about their opinions on credibility, recommended findings, or determinations, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.



PRE-HEARING TASKS: HEARING PANEL & CHAIR

What should be done in advance of the hearing?

03

THE INVESTIGATION IS COMPLETE!



Rapid Fire #1

It is time to schedule the hearing...

Call out your “To Do” List for coordinating the hearing.



RAPID FIRE RECAP

Arranging for space

Arranging
technology

Scheduling pre-
hearing meetings
with parties &
advisors

Scheduling
prehearing
meetings if
you have a
panel

Providing
report and
record to
decision-
maker and
parties

Scheduling
the hearing

Conflict
checks

Call for
written
submissions

Accommodations

Other considerations?

PRE-HEARING MEETINGS

- Review the Logistics for the Hearing
- Set expectations
 - Format
 - Roles of the parties
 - Participation
- Decorum
- Impact of not following rules
- Cross Examination/Questioning Format & Expectations



DECISION MAKER OR HEARING PANEL AS A WHOLE



Review
evidence
and report

Review applicable policy
and procedures

Preliminary
analysis of
the
evidence

Determine
areas for
further
exploration

Develop
questions
of your
own

HEARING PANEL CHAIR OR DECISION MAKER

Compile questions on behalf of the Panel

May convene a pre-hearing meeting

Review questions submitted by the parties

Anticipate challenges or issues

Become familiar with the script

YOU AND YOUR TEAM DID A GREAT JOB SCHEDULING THE HEARING AND ARRANGING ALL THE LOGISTICS!

- It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

Rapid Fire #2

Call out what you plan to discuss/think about during the prehearing meeting.



RAPID FIRE RECAP



Development
of
introductory
comments

Initial discussion of
the evidence

Areas for
further
exploration

List of
questions for
the parties
and the
witnesses

Anticipation
of potential
issues

Logistics

Review of
any written
submissions
by the
parties

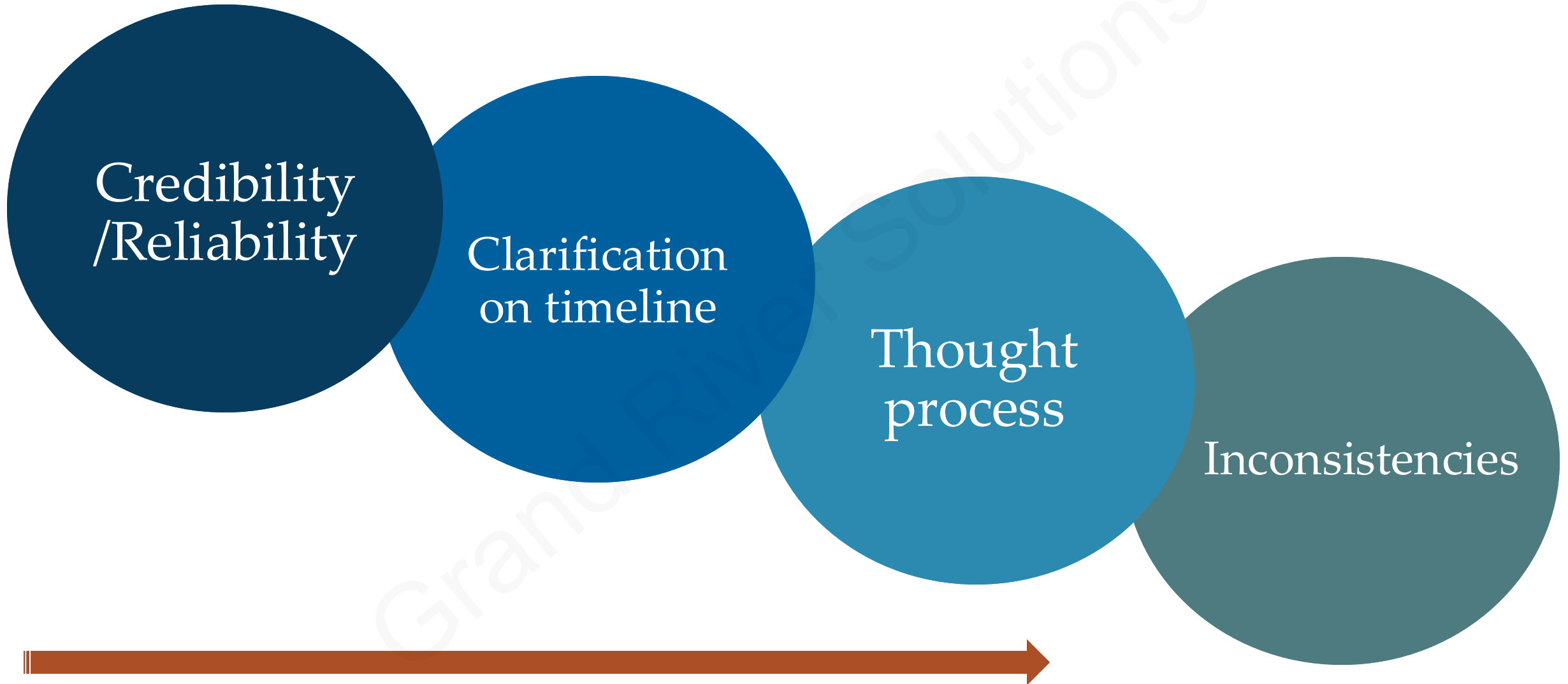
Other
considerations?

PRE-HEARING TASKS: DEVELOPING QUESTIONS

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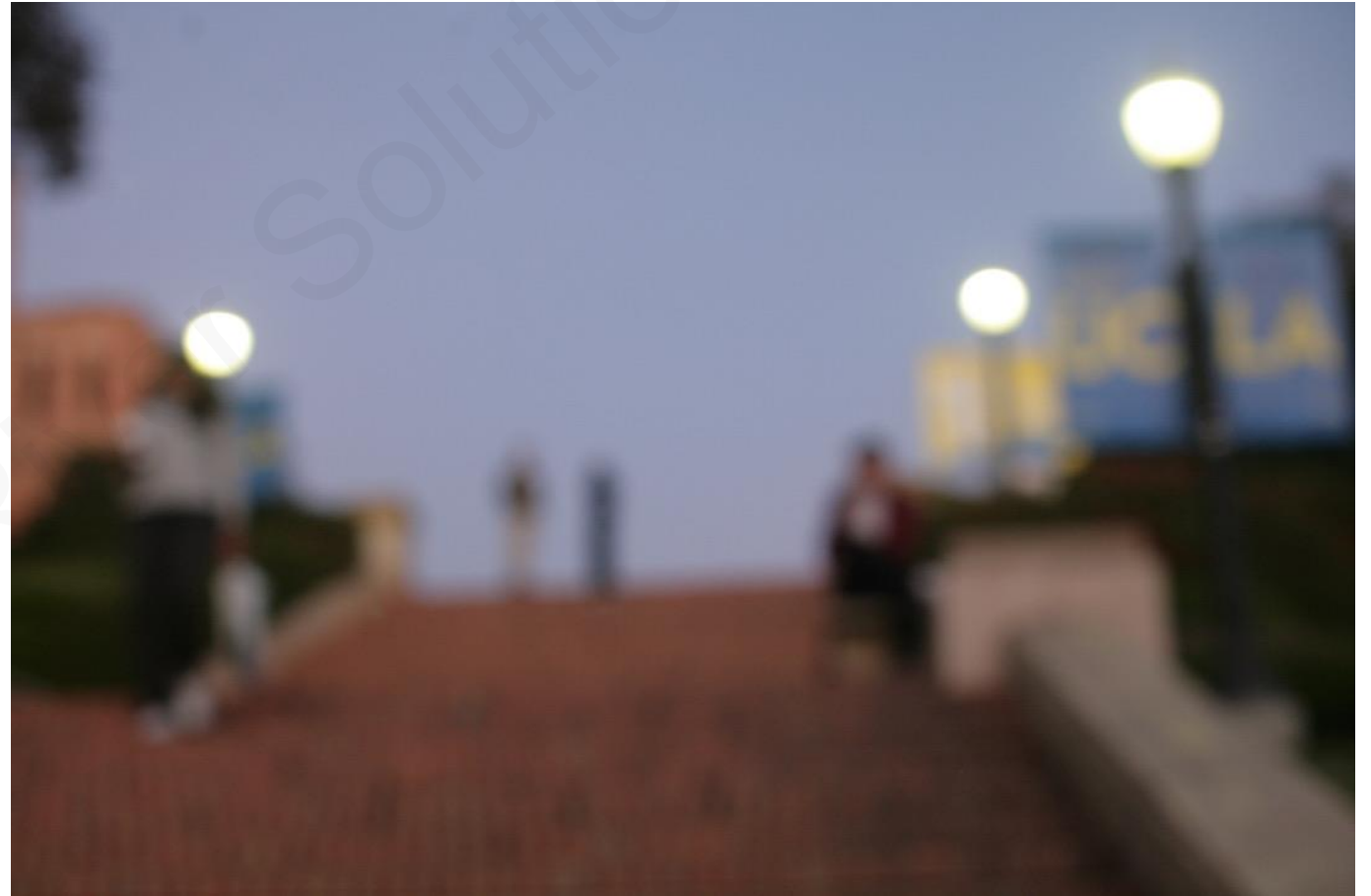
Grand River

COMMON AREAS OF EXPLORATION



COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

- Credibility
- Reliability
- Timeliness
- Inconsistencies
- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of certain items of evidence
- Factual basis for opinions



CHARLIE AND RAMONA HYPOTHETICAL ACTIVITY

You will read a short hypothetical & policy definition and then answer:

- What are the elements of the policy?
- Develop questions addressing each of the policy elements based upon the facts you know and what you need to find out at the hearing.
- What areas of concern/exploration do you have? Why are you asking?



CHARLIE AND RAMONA HYPOTHETICAL

Complainant Charlie and Respondent Ramona are involved in a Title IX complaint. Specifically, Charlie has alleged that Ramona sexually harassed her during their time in a mathematics course that they took together during the Fall 2023 semester, and that this harassment occurred both in and outside of class.

During the investigation, Investigator Ian interviewed both parties and two witnesses, one requested by each party. In Charlie's interview, she stated that Ramona sexually harassed her by frequently showing her pornographic images during class and while studying outside of class. Charlie said that Ramona began showing her the images in late September 2023. Charlie said that Ramona would show her sexually explicit images despite Charlie telling her to stop, and that Ramona would reference the explicit images to Charlie when she could not pull up the pictures. Charlie said that this continued for several weeks before she finally ended her friendship with Ramona.

When Ian interviewed Ramona, she stated

that while she had shown Charlie sexually explicit images, Charlie seemed to be interested in them and would ask to see more.

Ramona said that she would not have shown Charlie the images if Ramona did not think Charlie wanted to see them, and that Ramona only referenced the images to make jokes about them because Charlie seemed to find them to be funny. Ramona stated that Charlie ended their friendship after she received a particularly poor grade on an exam in the course that they were in, and that she told Ramona that she couldn't be friends with her because she needed to focus on her academics.

Witness #1, an acquaintance and classmate of both Charlie and Ramona in the mathematics course they were taking together, said that she noticed that Charlie seemed to be uncomfortable in her interactions with Ramona in October 2023. Witness #1 said that she noticed that Charlie would appear to avoid Ramona prior to class, and that she observed her tell Ramona

to stop talking to her during class. Witness #1 stated that Charlie later told her about the alleged sexual harassment after the complaint against Ramona was filed.

Witness #2 is a friend of Ramona's and would occasionally be present during Charlie and Ramona's study sessions that would take place outside of their mathematics class. Witness #2 stated that these sessions mostly occurred at Ramona's off-campus residence, and that most of Charlie and Ramona's time was spent studying. Witness #2 said that she was familiar with Ramona's alleged sharing of sexually explicit images, but that Charlie participated and shared explicit images as well. Witness #2 stated that Charlie seemed to enjoy herself whenever they would share these images and laugh about them with Ramona and Charlie.

POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



CHARLIE AND RAMONA HYPOTHETICAL

Sexual Harassment is defined by the applicable policy as,

Conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or (3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

POLICY DEFINITION: SEXUAL HARASSMENT

Conduct on the basis of sex that is so severe, pervasive, and objectively offensive that it effectively denies the Complainant equal access to the recipient's education program or activity.

- Was it on the basis of sex?
- Was it severe?
- Was it pervasive?
- Was it objectively offensive?
- Did it deny equal access to education program or activity?

THE HEARING

04

Grand River



ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator

3. Presentation of information and questioning of the parties and witnesses

4. Closing Statements

5. Deliberation & Determination

OPENING INTRODUCTIONS AND INSTRUCTIONS BY THE CHAIR

- It's advisable to always stick to a consistent script.
- Introduction of the participants.
- Overview of the procedures.
- Overall goal: manage expectations.
- Be prepared to answer questions.



OPENING STATEMENTS

Optional: Not required by the regulations; institution may choose to allow.

Prior to questioning portion of the hearing, each party may be given the opportunity to make an opening statement.

- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give opening statement before either is questioned.
- Typically, the Complainant goes first.

PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



01. The Hearing Panel will question Complainant first

02. Cross examination of Complainant will occur next

03. Follow up by the Hearing Panel

04. The Hearing Panel will question Respondent second

05. Cross examination of Respondent will occur next

06. Follow up by the Hearing Panel

QUESTIONING OF THE WITNESSES

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

Advisor cross-examination will occur next (suggested: Complainant's advisor followed by Respondent's advisor)

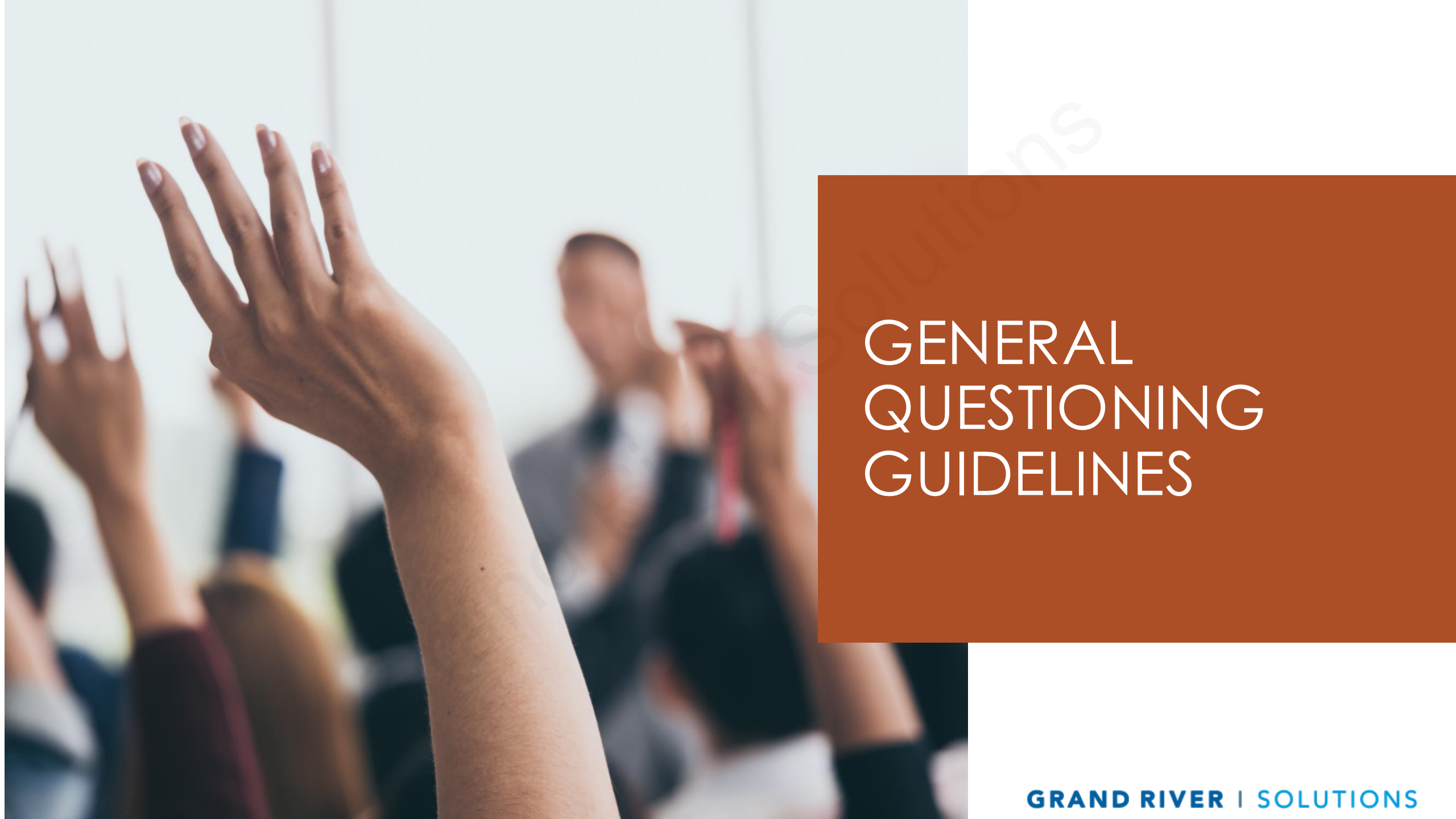
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Follow up by the Hearing Panel

CLOSING STATEMENTS

Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.

- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker
- Not the time to introduce new information or evidence.



GENERAL QUESTIONING GUIDELINES

PRE-SUBMITTED QUESTIONS UNDER 3-2-106.2

Questions for cross-examination may be presented in advance to the decision-maker so that relevancy may be determined prior to the hearing. However, providing cross-examination questions in advance does not preclude the advisor(s) from asking additional questions not provided in advance to the decision-maker



FORMAT OF QUESTIONING

The Hearing Panel or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

WHEN QUESTIONING....

- Be efficient
- Be prepared to go down a road that you hadn't considered or anticipated exploring.
- Explore areas where additional information or clarity is needed.
- Take your time. Be thoughtful. Take breaks if you need it.
- Listen to the answers.



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you
interviewed?

Did you see the
interview notes?

Did the notes reflect
your recollection at
the time?

As you sit here
today, has anything
changed?

Did you review your
notes before coming
to this hearing?

Did you speak with
any one about your
testimony today
prior to this hearing?

DEPT. OF ED ON RELEVANCY

- The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”
- *See, e.g.*, Federal Rule of Evidence 401 Test for Relevant Evidence:
- “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.”

WHEN ARE RELEVANT QUESTIONS?

- Logical connection between the evidence and facts at issue
- Assists in reaching a conclusion – it is “of consequence”
- Tends to make a fact more or less probable than it would be without that evidence



Assessing Credibility and Reliability

NO FORMULA EXISTS, BUT CONSIDER THE FOLLOWING:

Sufficiency of detail and specificity

Internal consistency

Corroboration

Inherent plausibility

Material omission

Motive to falsify

Past record

Ability to recall events

CREDIBILITY/RELIABILITY ANALYSIS

STEP BY STEP

1. Determine the material facts based on the notice of allegations
2. Determine which material facts are undisputed and disputed
3. If any material facts are disputed, consider whether a credibility/reliability analysis will help reconcile the dispute

"Jack stated that he never kissed Marcy at the party and went home early, which Marcy denied. Meanwhile, several witnesses corroborated Marcy's statement that he was at the party until 3 a.m. In addition, a witness submitted a photograph showing Jack kissing Marcy at the party. Given that Marcy's statements were corroborated by witness statements and a photograph taken at the party, her statements were found more reliable regarding this material fact."

OPINION EVIDENCE

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?



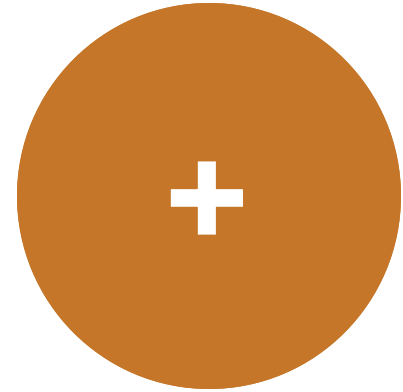
IS IT AUTHENTIC?



Question the person who offered the evidence.

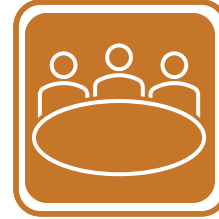


Have others review and comment on authenticity.



Are there other records that would corroborate?

TRAUMA-INFORMED
PRACTICES PROVIDE
TOOLS & TECHNIQUES
FOR ENGAGING WITH
THE COMPLAINANT,
RESPONDENT, AND
WITNESSES.



**Format/Structure of the
Hearing**

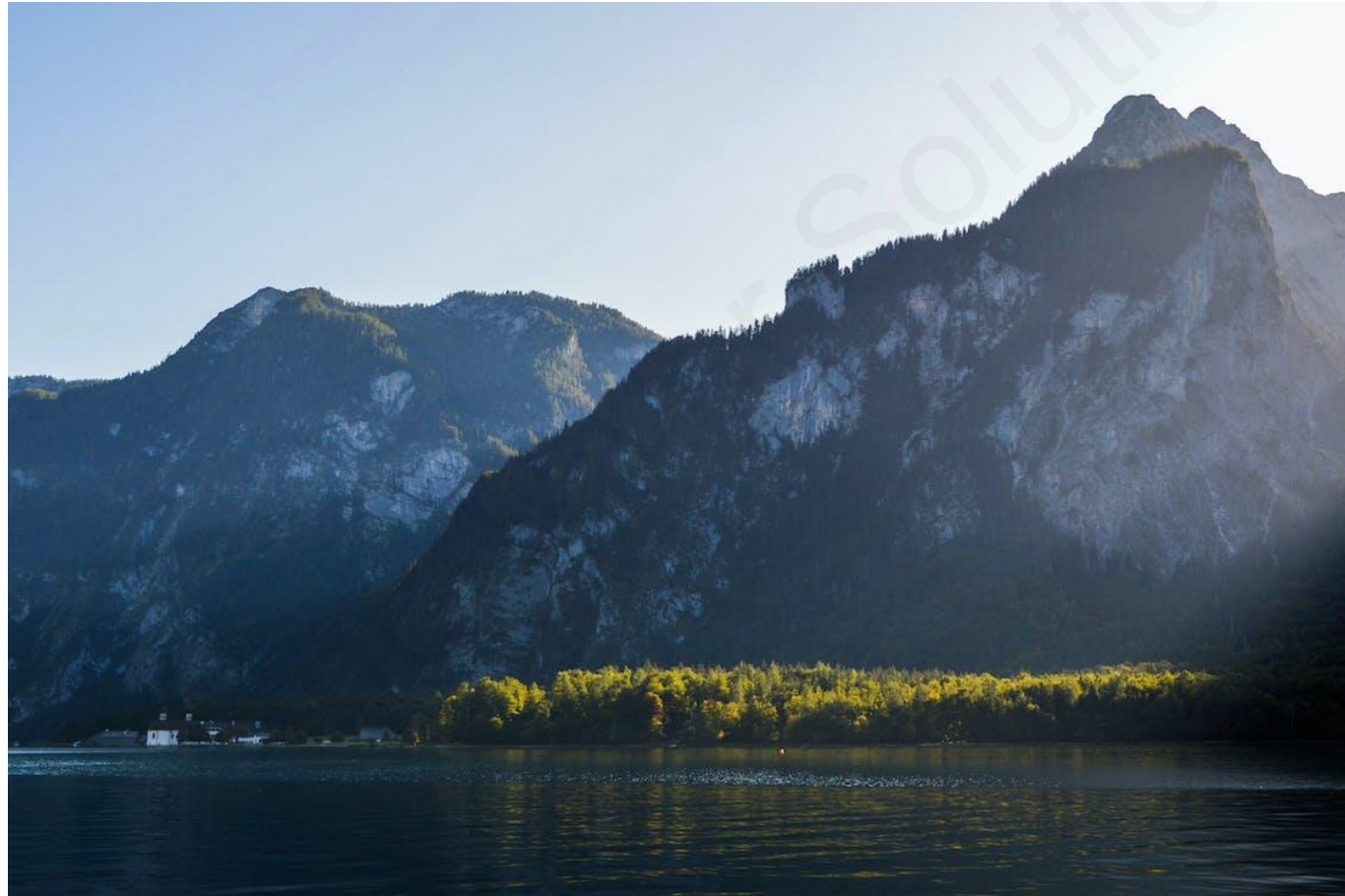


Format of Questions



Approach to Clarification

WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?



THE “HARD” QUESTIONS

Details about the sexual
conduct

Seemingly inconsistent
behaviors

Inconsistent
evidence/information

What they were wearing

Alcohol or drug
consumption

Probing into reports of
lack of memory

HOW TO ASK THE HARD QUESTIONS

Lay a foundation for the questions

- Explain why you are asking it
- Share the evidence that you are asking about, or that you are seeking a response to

Be deliberate and mindful in your questions

- “Can you tell me what you were thinking when...”
- “Help me understand what you were feeling when...”
- “Are you able to tell me more about...”



SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

- The Investigator's participation in the hearing is as a fact witness;
- Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
- Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
- The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

SPECIAL CONSIDERATIONS FOR PANELS

If a panel, decide in advance who will take the lead on questioning

Go topic by topic

Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel

BREAK OUT! #1

Areas or topics that you would like to explore further in the hearing



Say hi!



Pick a scribe



Discuss

Group 1: Questions for Complainant and Professor McPhee

Group 2: Questions for Respondent and Witness Taylor

Group 3: Questions for Witness Tom and Witness Charlie

REPORT OUT



Group 1: Questions for Complainant and Professor McPhee



Group 2: Questions for Respondent and Witness Taylor



Group 3: Questions for Witness Tom and Witness Charlie

THE DECISION MAKER'S ROLE DURING ADVISOR QUESTIONING



05

Grand River

CROSS EXAMINATION

WHO DOES IT?

1

Must be conducted by the advisor

2

If party does not appear or does not participate, advisor can appear and cross

3

If party does not have an advisor, institution must provide one

DECISION MAKER'S ROLE DURING ADVISOR QUESTIONING

- After the Advisor poses a question, the proceeding will pause to allow the Chair to consider it.
- Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may explore arguments regarding relevance with the Advisors.
- The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.
- The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
- The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.

WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

- Ask the person who posed the question why their question is relevant
- Take a break
- Ask their own questions of the party/witness



RELEVANT VS. NOT RELEVANT



Logical connection
between the
evidence and facts
at issue



Assists in coming to
the conclusion – it is
“of consequence”



Tends to make a fact
more or less probable
than it would be
without that evidence

BREAK OUT! #2

Review questions and determine whether they are relevant and allowed to be asked or irrelevant/impermissible



Say hi again!



Pick a scribe



Discuss

Group 1: Questions for Complainant and Professor McPhee

Group 2: Questions for Respondent and Witness Taylor

Group 3: Questions for Witness Tom and Witness Charlie

REPORT OUT



GROUP 1 QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Complainant

1. Isn't it true you found Alex attractive after you first met?
2. You wanted to hook up with Alex, didn't you?
3. You made this complaint only because you wanted your boyfriend's attention, isn't that true?
4. You kept calling Alex and asking him for help because you couldn't finish your part of the project without him, isn't that true?
5. You told the investigator you imagined seeing Alex everywhere. Where do you think you saw him?
6. Why were you always thinking of Alex?
7. And how often do you hallucinate?
8. How often has this happened in the past?
9. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet Alex there?
10. You said you were frightened by seeing Alex in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.

GROUP 1 QUESTIONS SUBMITTED BY **COMPLAINANT'S** **ADVISOR**

Questions for Witness Professor McPhee

1. Why didn't you tell Alex to stop stalking Stevie?
2. Weren't you supposed to forward Stevie's Title IX Complaint to the Coordinator, and don't you think that if you had done so, she would have been spared his stalking?

GROUP 1

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

Questions for Witness Professor McPhee

1. What grade did she have up to the project and what grade did she get on the project?
2. Isn't it true that Stevie was doing poorly in class?
3. After she made this complaint, did she get some special treatment or accommodation in your class?
4. Isn't it true that, once you told her she would have to do the work, she suddenly made up a story about Alex to paint him in a bad light?
5. Isn't it true that, before she told you this lie, you had no reason to think poorly of Alex?

GROUP 2

QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

Questions for Respondent

1. Do you keep stalking Stevie because you're OCD?
2. Have you ever been removed from another group project because you could not get along with others?
3. When you first talked to Stevie about your girlfriend breaking up with you, who was your girlfriend, or did you make that up just so you could talk to Stevie?
4. Why did you keep offering to work with Taylor in person instead of by Zoom?
5. Did you have a thing for Taylor?
6. Did you and Taylor ever end up hooking up?

GROUP 2 QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

Questions for Taylor

1. Did Alex seem fixated on Stevie when you were all part of the class project?
2. Did Alex insist that the two of you work together in person instead of online?
3. How often did he force you to work in person with him after classes?
4. Were you afraid of him?

GROUP 2

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

Questions for Taylor

1. Were you frustrated when working on the group project? Why?
2. Why did you think Alex was more frustrated than others?
3. Why did you think he was “taking it out” on Stevie if he was frustrated with the whole group?
4. Are you and Stevie friends?
5. Did Stevie tell you what to say in the investigation? If so, what?
6. Are you one of those “Believe all victims” people?

GROUP 3 QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

Questions for Tom

1. Can you think of any reason for Alex to be hanging out in the garage with flowers, other than to frighten Stevie?
2. Alex was pretty creepy, wasn't he?
3. Did you see him throw an object at Stevie?
4. Do you believe he was acting in self-defense when he threw the object?
5. You said Stevie is really pretty and guys hit on her a lot. Don't you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?

GROUP 3

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

Questions for Tom

1. When you saw Alex in the parking garage, were you frightened?
2. What, specifically, did Alex do that was frightening?
3. Does Stevie always overreact?
4. What, specifically, did Alex throw at her?

GROUP 3 QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

Questions for Witness Charlie

1. So are you the one who suggested Alex stalk Stevie's social media to find a food or drink she liked?
2. Why do you think Stevie and Alex had a plan to get together one night and talk? Do you know for sure that there were confirmed plans?
3. What proof did Alex give you to prove there was a real plan, and not an imaginary one?
4. You said Stevie was "rude" because you could not do a lot of work on the group project. What did you mean by that?
5. How long have you known Alex?
6. Isn't it true you just don't like Stevie?
7. Have you ever been accused of sexual harassment or stalking?
8. Isn't it true that you would say anything to support a guy who has been accused?

GROUP 3

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

Questions for Witness Charlie

- **No Questions**

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AFTER THE HEARING

05



Deliberations

PREPONDERANCE OF THE EVIDENCE

- Standard of proof by which determinations of responsibility are made
- "More likely than not"
- It does not mean that an allegation must be found to be 100% true or accurate
- **A finding of responsibility** = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
- **A finding of not responsible** = There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

WEIGHING THE EVIDENCE & MAKING A DETERMINATION

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.



FINDINGS OF FACT

A "finding of fact"

- The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be
- Based on available evidence and information
- Determined by a preponderance of evidence standard
- Determined by the fact finder(s)

Next steps?

POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



ALLEGATION: FONDLING

Fondling is the:

- ☐ touching of the private body parts of another person
- ☐ for the purpose of sexual gratification,
- ☐ Forcibly and/or without the consent of the Complainant,
 - ☐ including instances where the Complainant is incapable of giving consent because of their age or **because of their temporary or permanent mental or physical incapacity.**

ANALYSIS GRID

Touching of the private body parts of another person

Undisputed:
Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.

For the purpose of sexual gratification

Respondent acknowledges and admits this element in their statement with investigators.

"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."

Without consent due to lack of capacity

Complainant: drank more than 12 drinks, vomited, no recall
Respondent: C was aware and participating
Witness 1: observed C vomit
Witness 2: C was playing beer pong and could barely stand
Witness 3: C was drunk but seemed fine
Witness 4: carried C to the basement couch and left her there to sleep it off.

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"We were looking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."

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Complainant: drank more than 12 drinks, vomited, no recall
Respondent: C was aware and participating
Witness 1: observed C vomit
Witness 2: C was playing beer pong and could barely stand
Witness 3: C drank but seemed fine
Witness 4: carried C to the basement couch and left her there to sleep it off.



DID YOU ALSO ANALYZE...?

On campus?

Program or Activity?

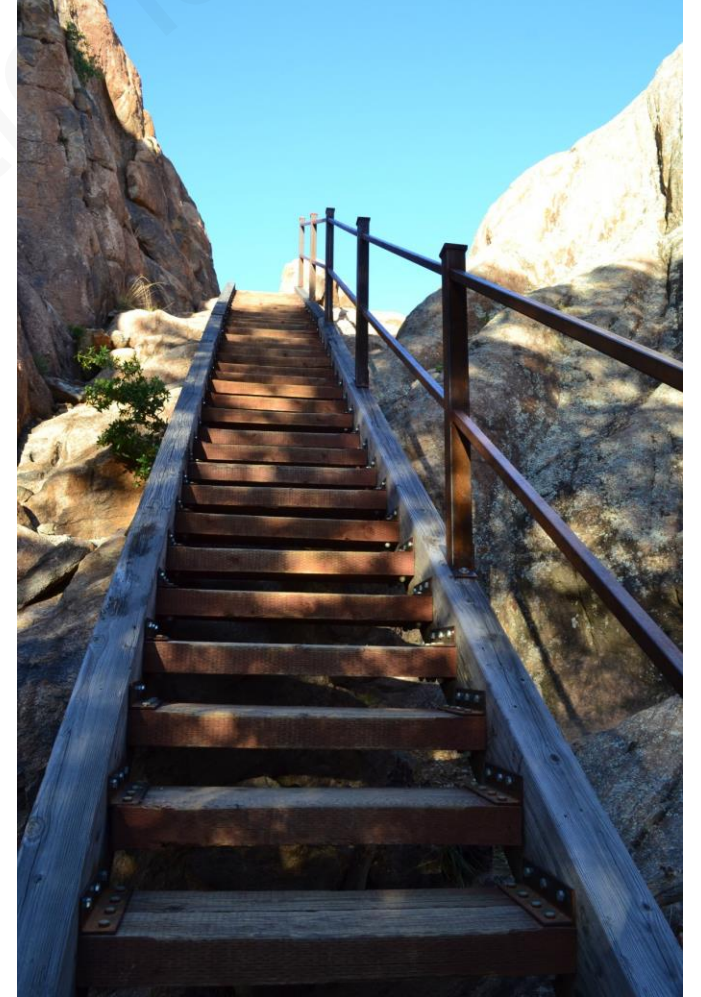
In a building owned/controlled by a recognized student organization?

Substantial control over respondent and context?

Complainant was attempting to access program/activity?

GOALS OF SANCTIONS/DISCIPLINE

1. End the harassment
 2. Prevent its recurrence
 3. Remedy the harm
- What steps would be reasonably calculated to end harassment and prevent recurrence?



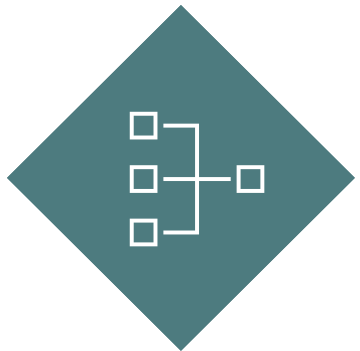
SANCTIONING



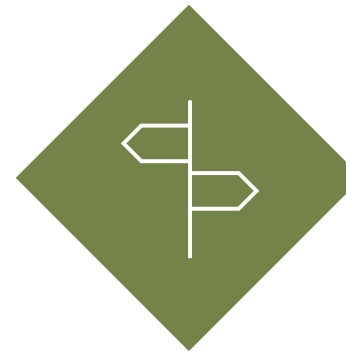
State Law



Learning
Environment



System Policy



Measures
Available

THE SANCTION DOES NOT UNDO THE FINDING

- No lesser sanction if you disagree with findings
- Sanctioning officer must assume findings are correct

DETERMINING THE PROPER SANCTION

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?



AGGRAVATING CIRCUMSTANCES

- Premeditation
- Predation
- Physical violence
- Repeated violation
- Multiple policy violations in one incident
- Harm to others, impact on Complainant / community
- Behavior after intervention
- Effort to conceal or hide the incident?
- Refusal to attend past trainings
- Past failures to comply with directives



FINAL REPORT

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and remedies
- Procedure for appeal



THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



S Simple and Easy to Comprehend

T Transparent/Clear

A Accurate

N Neutral/Unbiased

D Draw Attention to Significant Evidence and Issues

ADVISOR'S ROLE POST-HEARING

- May meet with their advisee to review decision and respond to procedural questions.
- Institutionally-appointed advisors typically do not advise nor assist the party in developing an appeal.
- Advisor of choice may assist in advising party whether or not to appeal and in the drafting of an appeal.



PRACTICAL APPLICATION



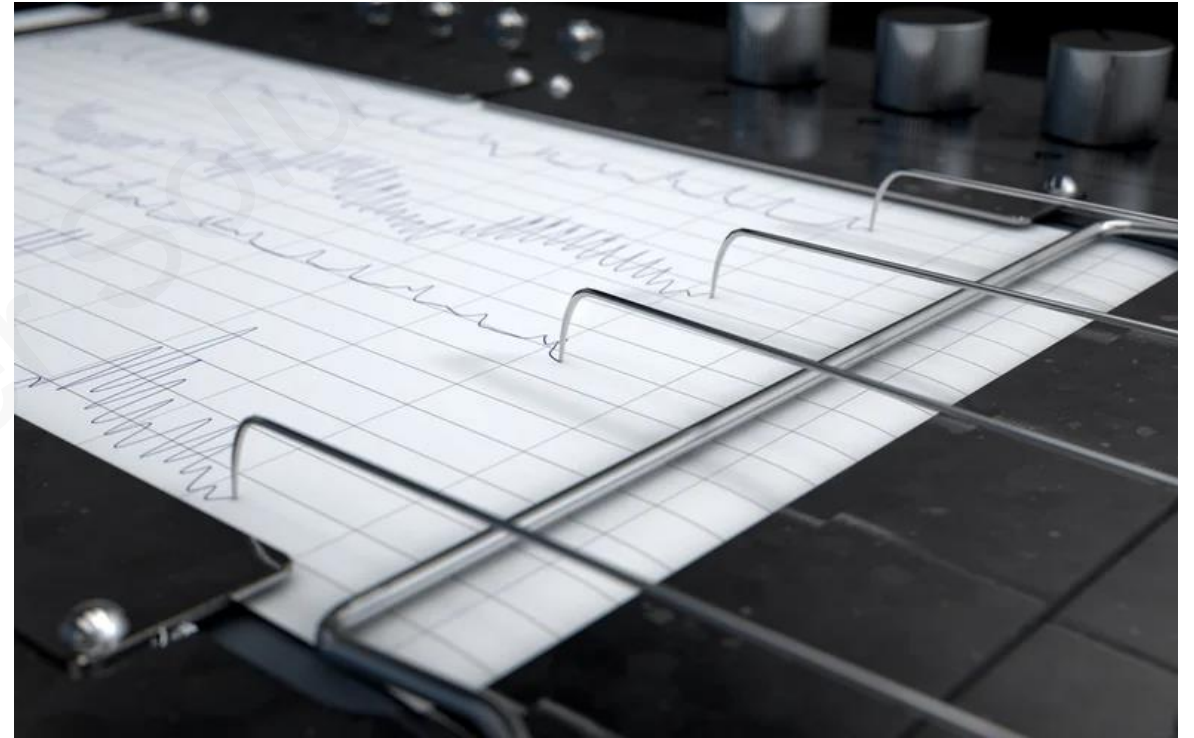
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SCENARIO 1

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

- **The Investigator determines the report is irrelevant. Must the Investigator share the report with the decision maker?**



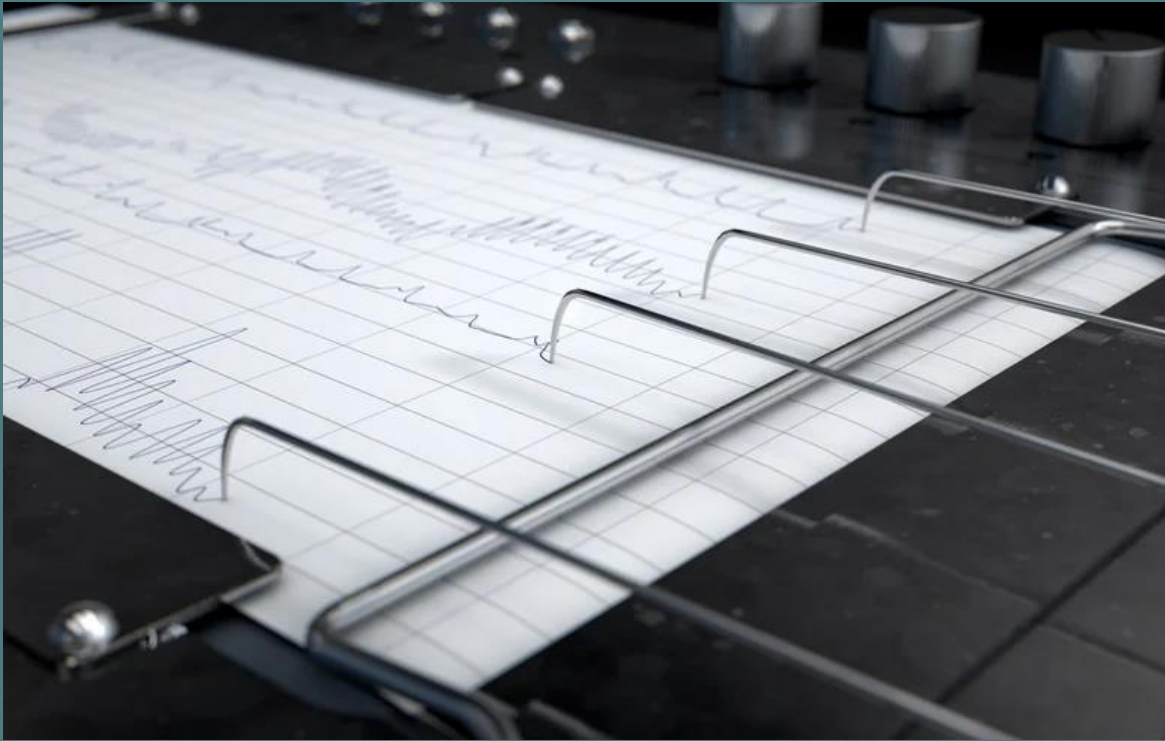
SCENARIO 2



Respondent appears at the hearing with Witness 7, who didn't participate in the investigation. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.

- Can the decision-maker hear from Witness 7 at the hearing?

SCENARIO 3



Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

Must the decision-maker find Respondent not responsible because of the findings in the report?

SCENARIO 4



During the hearing, the Complainant becomes upset, shuts down, and stops answering question.

If you are the Hearing Chair, how do you respond?

SCENARIO 5



During the hearing, the Complainant can be seen talking to someone off camera.

If you are the Hearing Chair, how do you respond?

SCENARIO 6



During the hearing, after being told a question is not relevant, the Respondent's advisor leans into the camera, throws his arms in the air, and rolls his eyes.

If you are the Hearing Chair, how do you respond?

SCENARIO 7

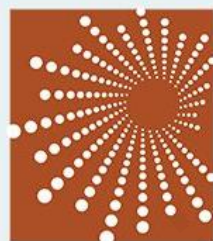


During the hearing, right before the Respondent is scheduled to give their statement, they drop off the zoom meeting and are not responsive to emails.

If you are the Hearing Chair, how do you respond?

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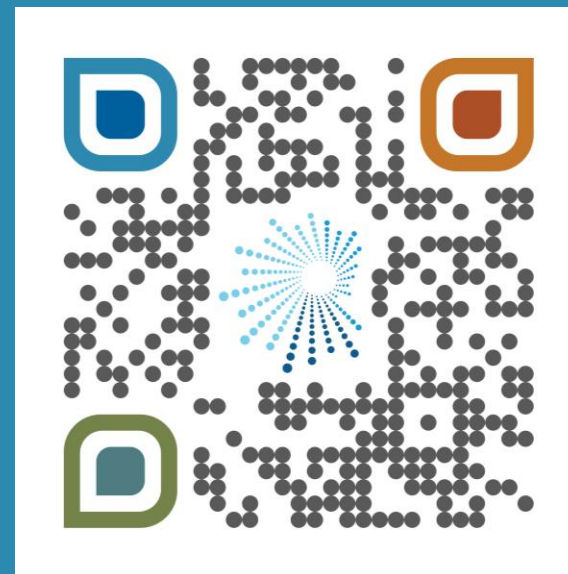


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