



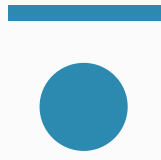
Title IX and Title VI Investigation Hearing Officer March

Pari Le Goff
Ada
Grand River Solutions

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DAY ONE: AGENDA



Regulatory Requirements
Title VI and Title XI



Interview Summaries
What should be included and



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



Evidence Assessments
How-to's



Investigation Initiation
Planning and managing



The Investigation Report
What to include and to structure



Investigation Interviews
Preparing and conducting

REGULATORY REQUIREMENTS

Title VI & Title IX: What we need to know

1

TITLE VI OVERVIEW

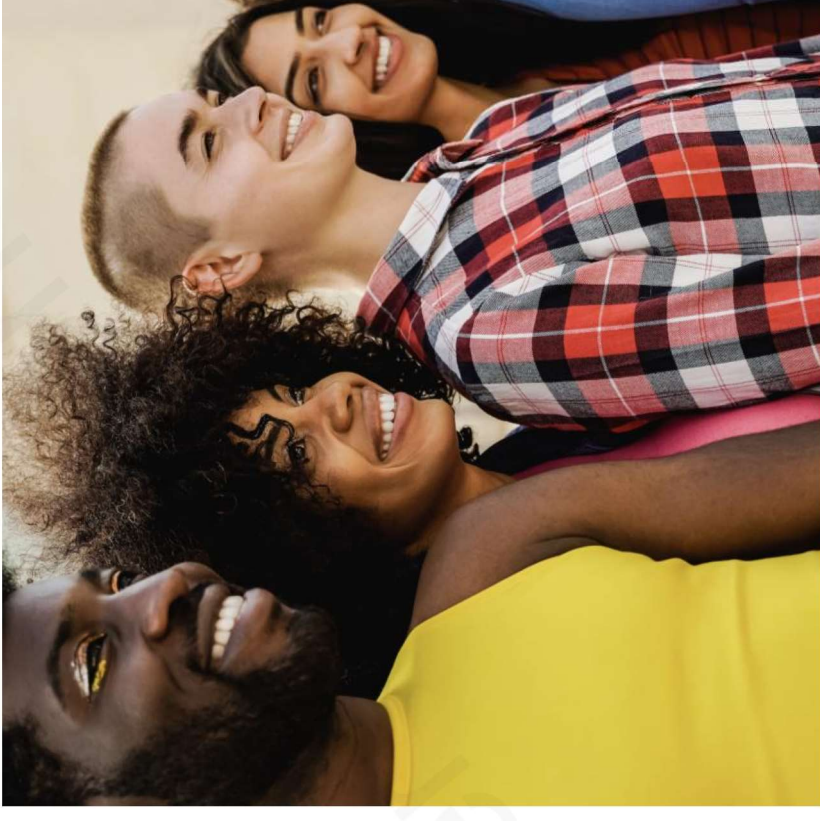


TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

[P]rovides that no person in the United States shall, on the basis 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
Title: Discrimination Based on Shared Ancestry or Ethnicity in Response to EO 13899 on Combating Anti-Semitism and EO 13985 on Advancing 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 Executive Orders (EO) 13899 on Combating Anti-Semitism and 13985 on Advancing Racial Equity and Support for Underserved Communities Government. The proposed regulations would implement the Executive Orders to address enforcement of Title VI by the Department's Office for involving harassment and other discrimination based on shared ancestry or ethnic characteristics. In this area, OCR has received complaints 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	
NPRM		12/00/2024	
		FR C	

TRUMP ADMINISTRATION ACTION

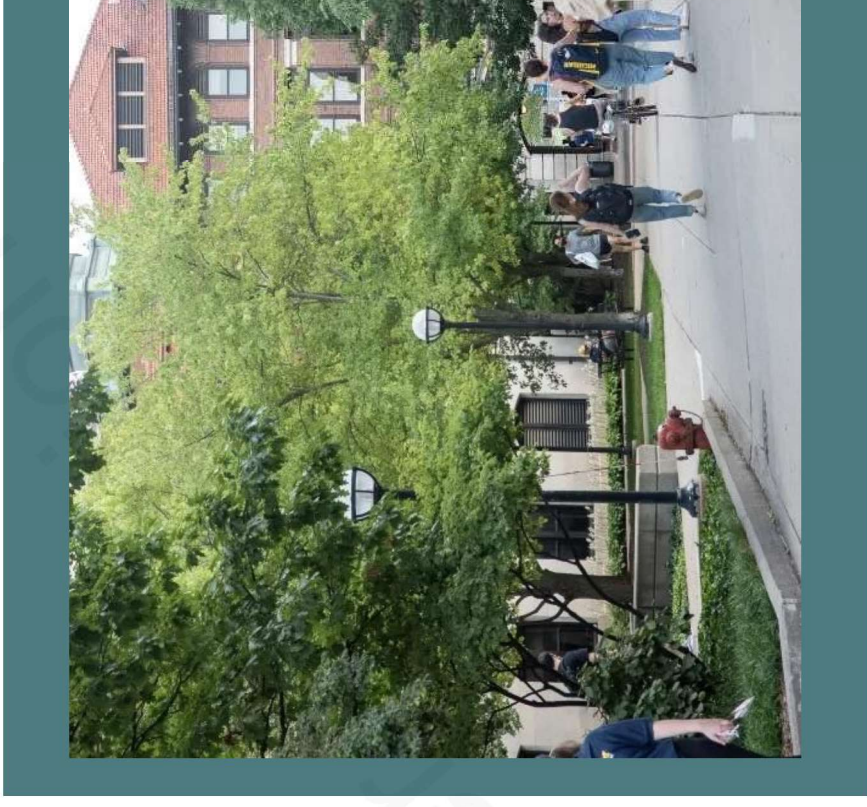
- 2019 EO 13899 — Combating Anti-Semitism
 - Calls for robust enforcement
- 2025 EO – Additional Measures to Combat Anti-Semitism
 - Agency heads to report their available actions to combat antisemitism
 - "immediate action by DOJ" including on "leftist, anti-A colleges and universities."
 - "Deport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

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 of the victim 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, relationship, 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, or national origin
- May occur in classrooms, dorms, hallways, facilities, social media
- Subjectively and objectively offensive harassment may occur when multiple incidents by one or more offenders, taken together, meet the definition
- Need to assess whether the collective incidents created a hostile environment (overall environmental impact)

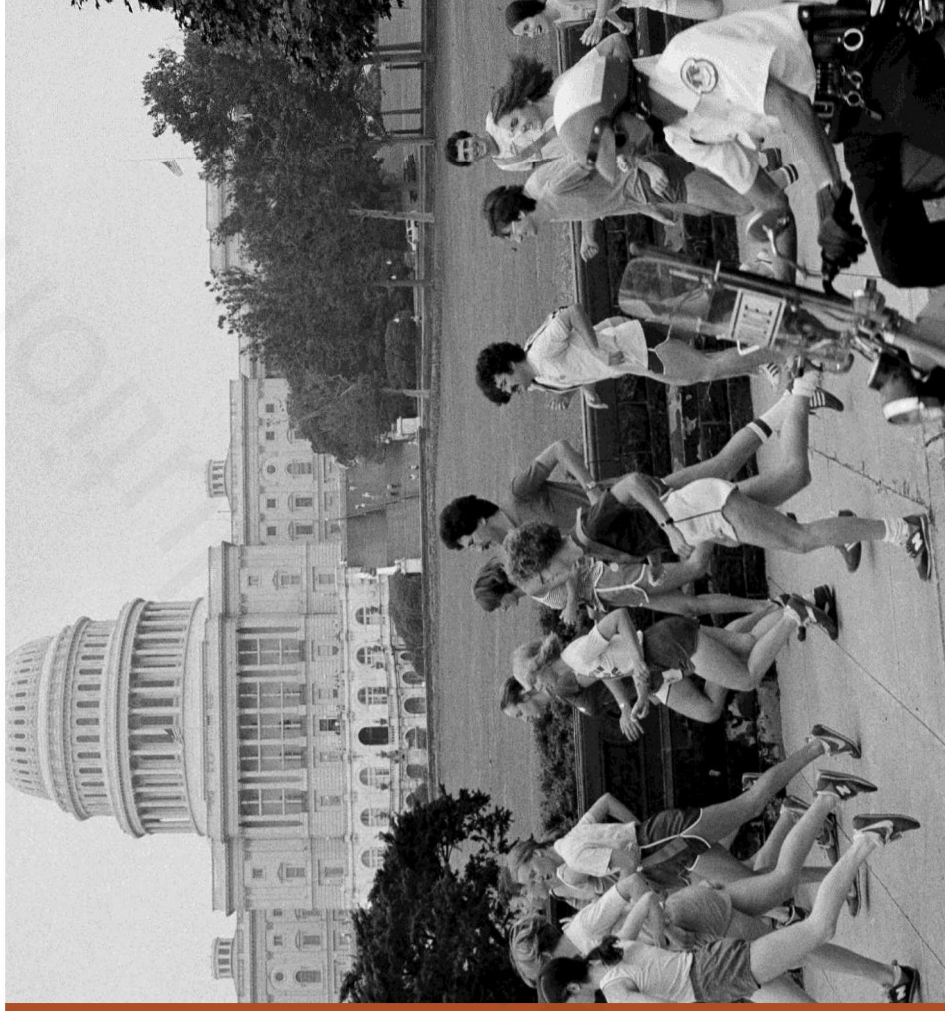
TITLE IX OVERVIEW



Title IX of the Education Amendments Act of 1972

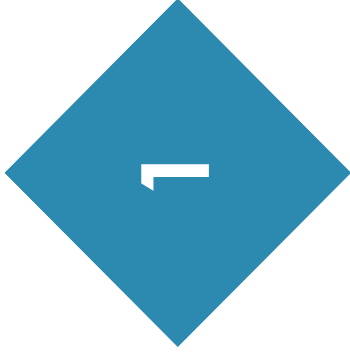
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).

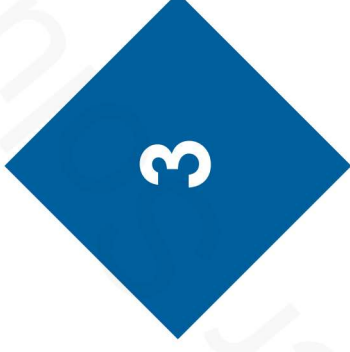


THE TITLE IX REGULATIONS

SEXUAL HARASSMENT ONLY



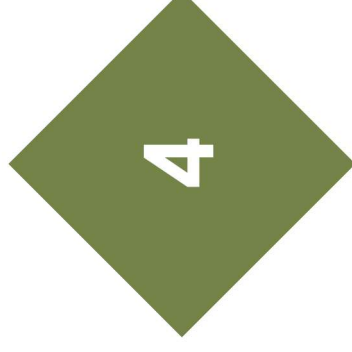
Narrows the definition of sexual harassment;



Narrows eligibility for a complaint;



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



Develops procedural requirements for investigation and adjudication of 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

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PROCEDURAL REQUIREMENTS FOR TITLE IX INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor o

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 of report prior to hearing

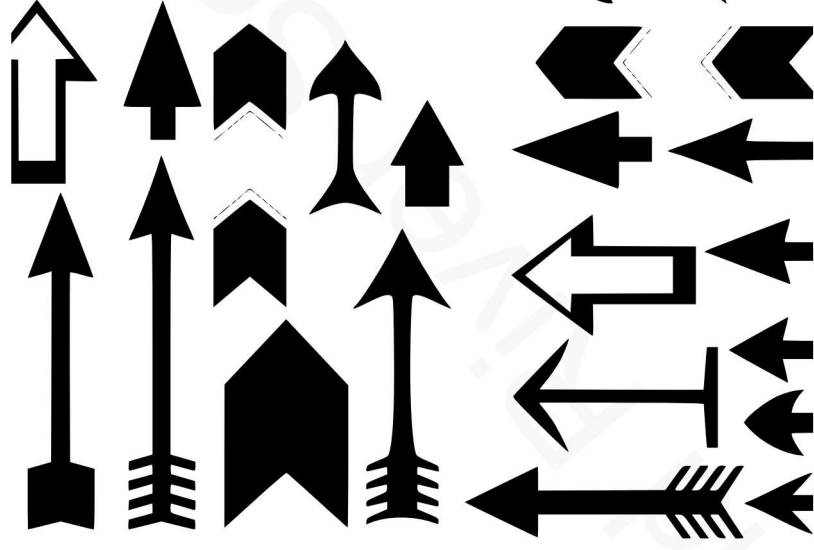
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INITIAL ASSESSMENTS

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

2

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 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

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

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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 organizations walking around tables, perusing options, a student passing out fliers, and his hand down and said, “Women special favors prospective members and then tried to hug 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

Discrimination Harassment

- Protected status
- Conduct or speech
- Context
- Academic Freedom
- Free Speech

Recall the scenario in previous slide:

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

HYPOTHETICAL 1:

What questions should you ask Robbie about her alcohol intake?

Recall the scenario in previous slide:

Jo was waiting in a conference room for his job interview with the hiring manager in the office. He overheard the interview panelists talking in the office hallway just outside the door. Jo reported someone said, “Well, women are more organized than men. We do we need to interview this person?”

HYPOTHETICAL 2:

What questions should you ask during the interview?

Recall the scenario in previous slide:

Ava was attending an open house at a local student organizations. While walking around the tables, perusing handouts, a student passing out fliers ran her hand down her arm and said, “We need your special favors for prospective students” and then tried to grab her wrist.

HYPOTHETICAL 3:

What questions should you ask to assess her 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,
FREEDOM
OF SPEECH
CAN MEAN
HATING
PEOPLE
WHOSE
OPINIONS
DIFFER
FROM
YOUR
OWN.



NOW, WHERE DO YOU
DRAW THE LINE?



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THE SCOPE OF INSTITUTIONAL DISCRETION

- Constituents may have difficulty understanding why institutions can and do limit speech activities (maybe 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
issue
arise
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ACADEMIC FREEDOM

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

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

ACADEMIC FREEDOM

What are the bases for Academic Freedom?

1

Teaching



2

Research



3

Intramural Speed

4

Extramural Speed

SHOULD I INVESTIGATE THIS?

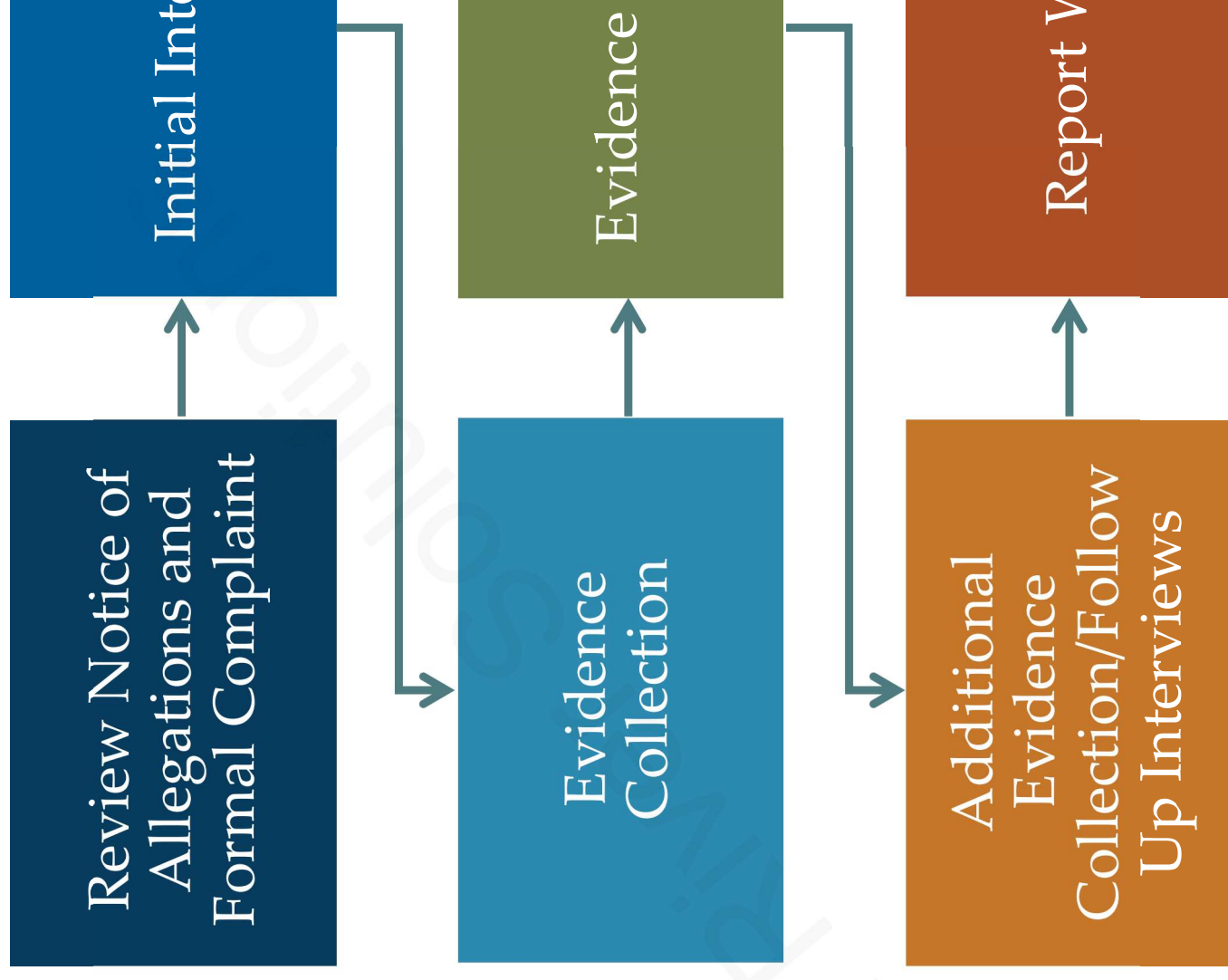
- A faculty member comments on a student's assignment that the work was "world." The student is from Egypt and was offended.
 - What else would you need to know in order to decide?
- A Black employee who works remotely came into the office one day, and a colleague referred to him as the "tall, dark, 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 exploiting 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

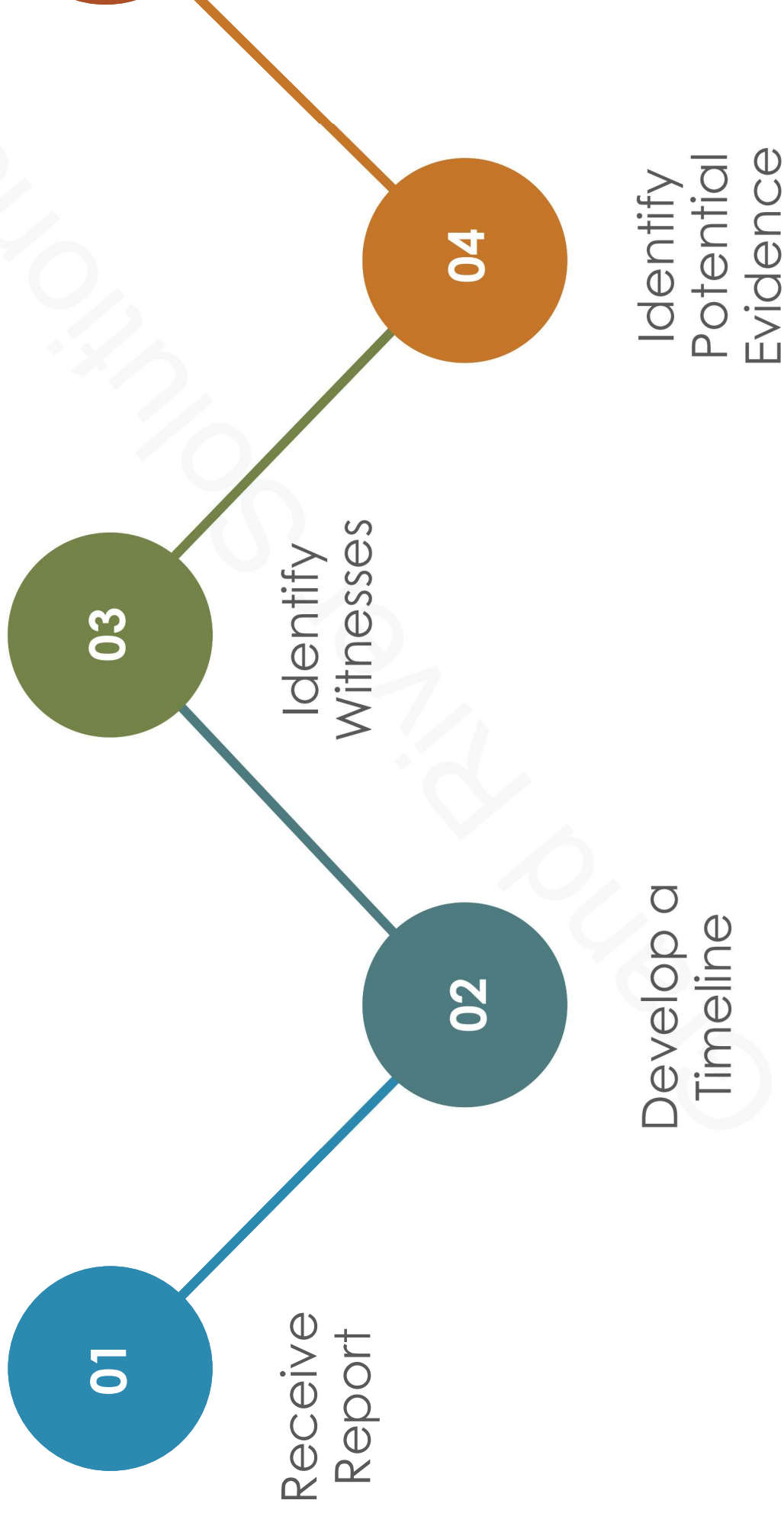
ESSENTIAL STEPS OF AN INVESTIGATION



PLANNING AND MANAGING



THE PROCESS: DEVELOPING AN INVESTIGATIVE STRATEGY



INVESTIGATION PLAN

By maintaining a running record of these things, you ensure you have your scope and can easily draft your report once you have specific materials once you have drafted your report.

Scope of the investigation

Policy definition of prohibited conduct

Witnesses

Ev



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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 conduct
2. Directed at a specific
3. No legitimate purpose
4. Cause Reasonable person fear:
 - a) *for their safety or other*
 - 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 or practice

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

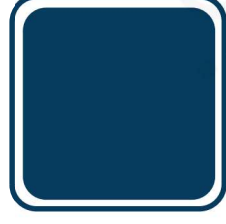
May not have a named respondent

INVESTIGATION INTERVIEWS

Preparing and conducting interviews

4

PREPARING FOR INTERVIEWS



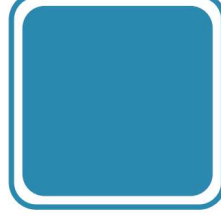
Logistics

Location, time



Process Discussion

What is expected of participants and of the interviewer?



Review Materials

Thoughtful review of evidence



Outline

Prepare interview questions and points for areas you need to explore

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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

How often (pervasiveness)

On the basis of . . . ?

Witnesses

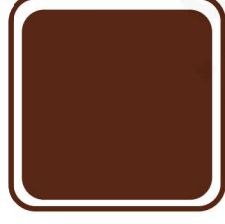
Location (jurisdiction)

Impact on complainant

Evidence

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CONDUCTING INTERVIEWS

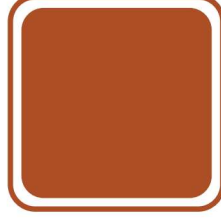


Elicit a narrative
Open with a broad question

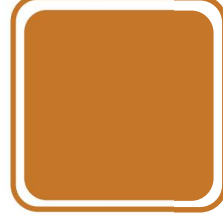


Listen

In more ways than one



Seek clarification
Intentionally and without
interrupting



Document

Questions, evidence, and
witnesses

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CONCLUDING INTERVIEWS

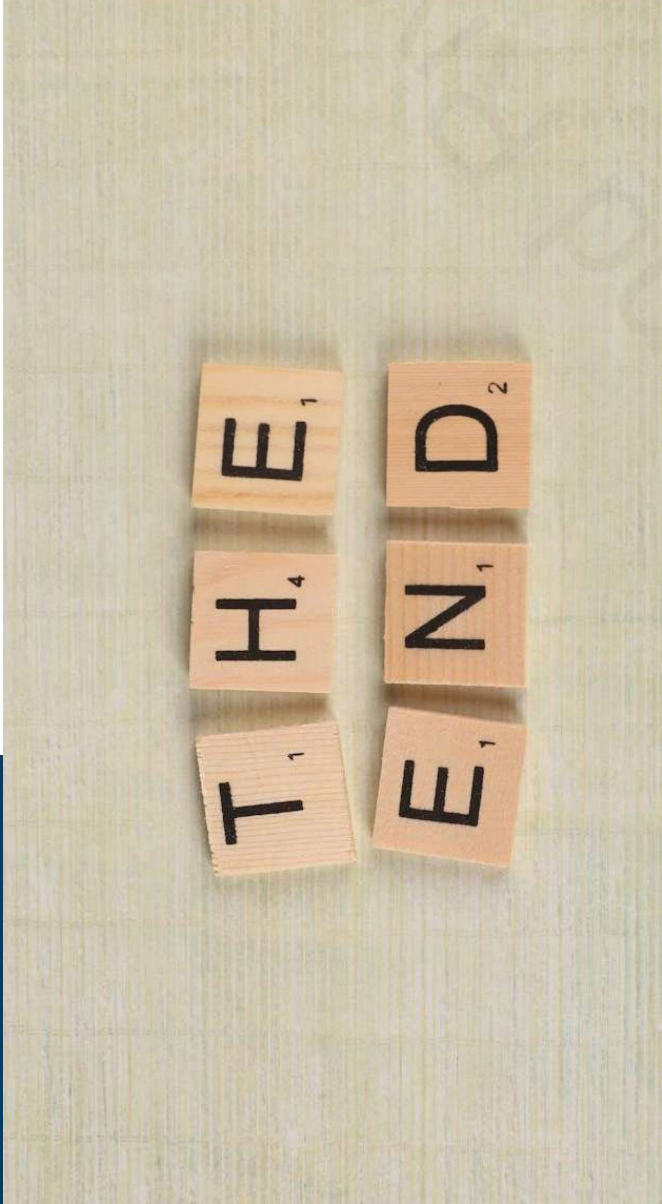
The end...or is it?

Debrief: Evidence to submit
witnesses discussed

Next steps: Review process
options, and expectations

Reflect: Was there anything
Anything they missed?

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DRAFTING SUMMARIES

5

What to include and how to do it

THE SUMMARY SHOULD STAND ON ITS OWN



S

Simple and Easy to
Comprehend

T

Transparent/Concise

A

Accurate

N

Neutral/Unbiased

D

Draws Attention to
Significant Evidence
and Issues

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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 substantial"

"Pursuant to the policy" -->

"Digital Penetration" -->

MAKE IT SIMPLE

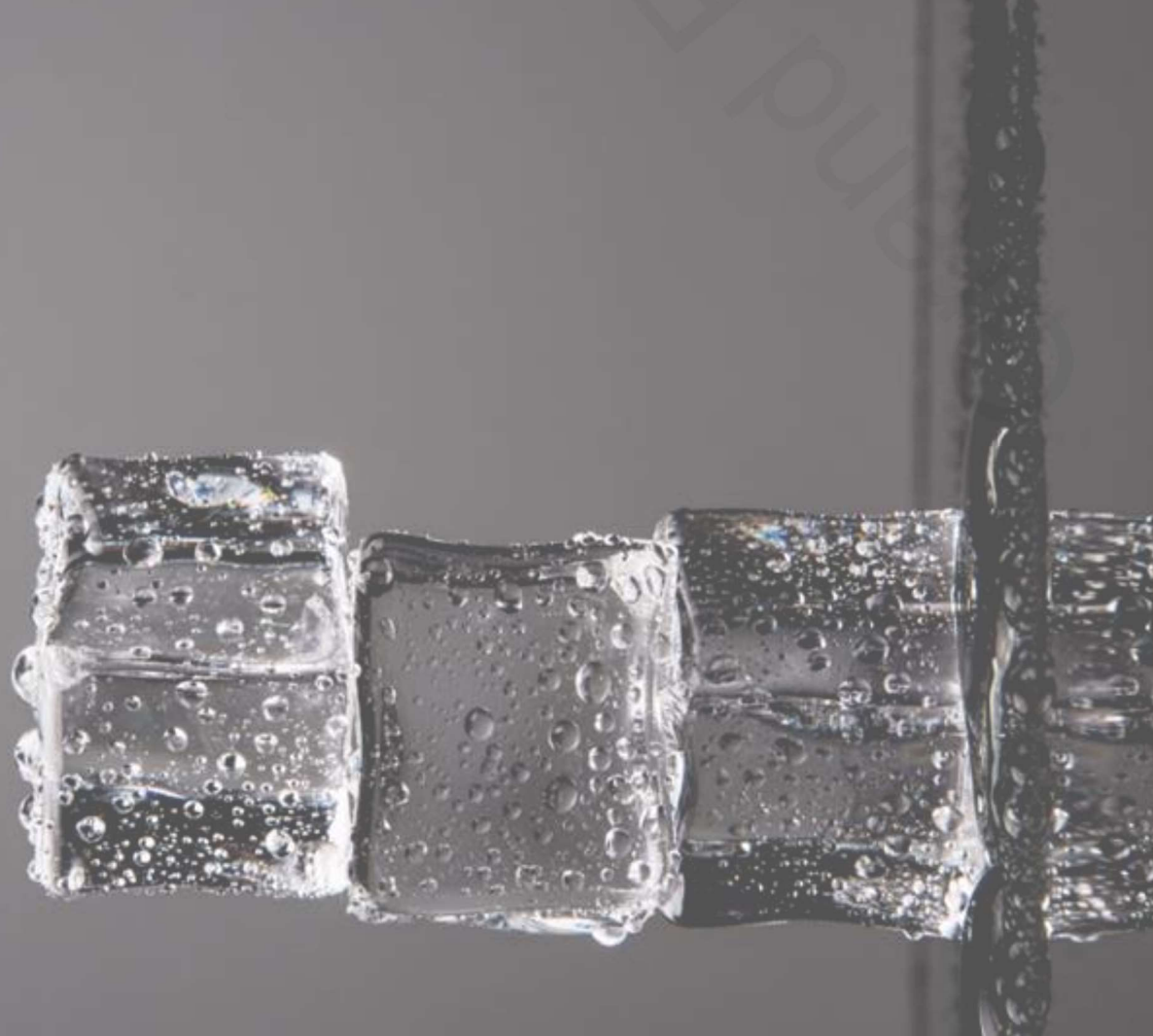
Commit to using plain language:

“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

- 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
- 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'

COMMIT TO USING NEUTRAL LANGUAGE

Non-Neutral/Biased

“Claimed/Alleged”

“According to X”

“Story/Version of Events”

“Had Sex with/Engaged in”

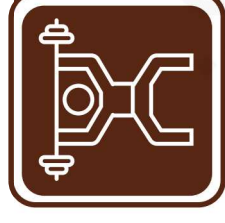
“Changed their Account/Story/Version of Events”

NEUTRALITY EXERCISE

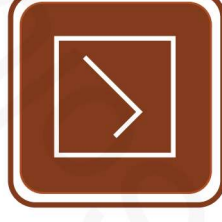
What's wrong with this?

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

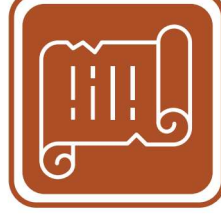
DRAW ATTENTION TO SPECIFIC EVIDENCE THROUGH INTENTIONAL PRESENTATION OF INFORMATION IN THE REPORT



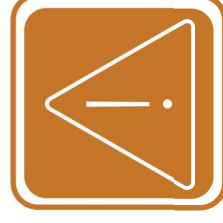
Evidence that is weighed or evaluated, or evidence that is believed to be significant.



Evidence related to credibility, reliability, or authenticity.



Explanations that provide 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 C depicted that at approximately a.m. Witness A entered the room which Complainant reported was assaulted. Witness A left the room ten minutes later. In interview with Complainant, they were asked why they did not see 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

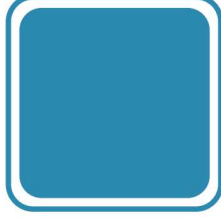
EVALUATING EVIDENCE



Is it relevant?



Is it authentic?



Is it credible
reliable?



How much weight
should it be given?

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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's sexual history or sexual predisposition (two exceptions)

(b) Un-waived privileged or recognized private

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 a fact more or less probable than it would be without the evidence.

AUTHENTICITY

NEVER
assume
evidence is
authentic



Ask questions
that lead
to proof of
authenticity



Investigate
authenticity
needs

- Obtain originals
- Multiple sources

- Timestamps
- Full screenshots
- Full chains of communications

- Look proper
- Metadata

CREDIBILITY AND RELIABILITY

There is no formula for assessing credibility and reliability.

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

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency (internal and external)

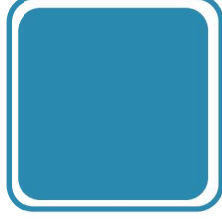
Background, experience, and training

Coaching or bias

WEIGHING THE EVIDENCE

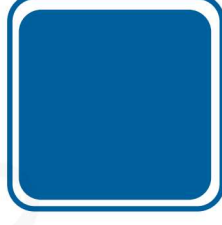
Direct

Based on personal knowledge, observation and that, fact without inference



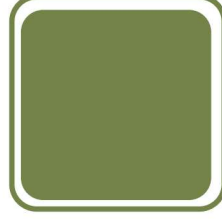
Circumstantial

Based on inference from personal knowledge



Corroborating

Differs from but strengthens what other evidence confirms



THE INVESTIGATION REPORT

What to include and how to structure it

7

ESSENTIAL ELEMENTS OF THE REPORT

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

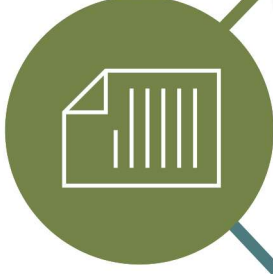
THE EVIDENCE FILE



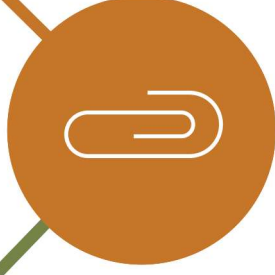
Compilation of
the evidence.



Organized
intentionally and
consistently.



Divided into
Appendices.



Is attached to
the report.

EXAMPLE OF APPENDICES

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

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

Appendix C: Remaining evidence deemed **directly related** to the investigation

Appendix D: The procedural timeline

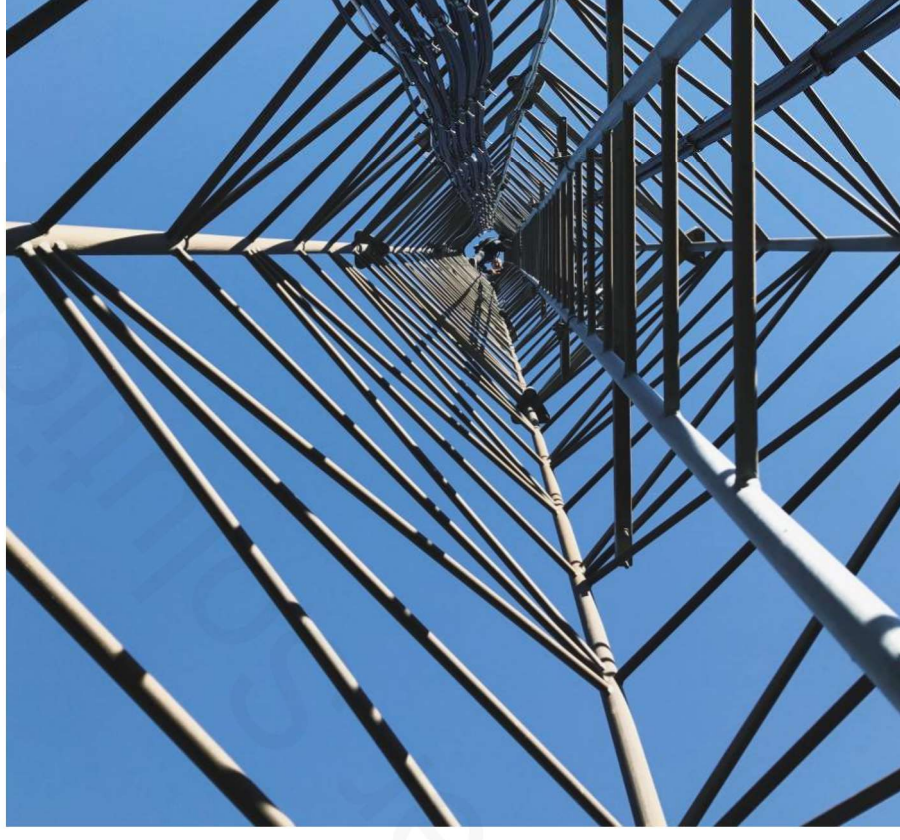
REDACTIONS

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 IN IN YOUR REF

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

What are we being asked to decide?

What does the formal complaint allege?

What are the elements of each prohibited conduct alleged?

NON-CONSENSUAL SEXUAL CONTACT:

Includes any intentional sexual touching, however slight, with any object, by one individual against another individual that is without consent. Sexual contact includes: intentional contact with breasts, buttock, groin, or genitals, or touching another with any of these body parts, or another touch you or themselves with or on any of these body parts; or any intentional contact in a sexual manner, though not involving contact with breasts, buttocks, groin, genital 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 or lack of capacity?

IDENTIFY THE RELEVANT FACTS FOR INCLUSION IN THE REPORT.



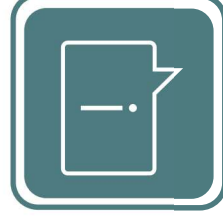
Background



Key facts



Supporting



Assessment for

GRAND RIVER

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 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 Respondent • Witness 4's Account



HOW TO STRUCTURE REPORT

GRAND RIVER

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 observation
- b. prior relationship
- c. The events immediately alleged prohibited conduct
- d. The incident of alleged conduct
- e. The events following the 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 current incident

Respondent's Account

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

Witness Accounts

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

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 a bunch of text messages asking to see me. He said he was for hitting me and for raping me. I basically told him I did not want to hear it and I called him an asshole. We've not communicated since."
2. Screenshot of the text message exchange, described and submitted by Complainant and located in Appendix B at 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 her. Screenshots of this exchange were provided to Complainant and are included in Appendix B. Screenshots of this exchange are included in Appendix B, 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 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 it anyway.

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

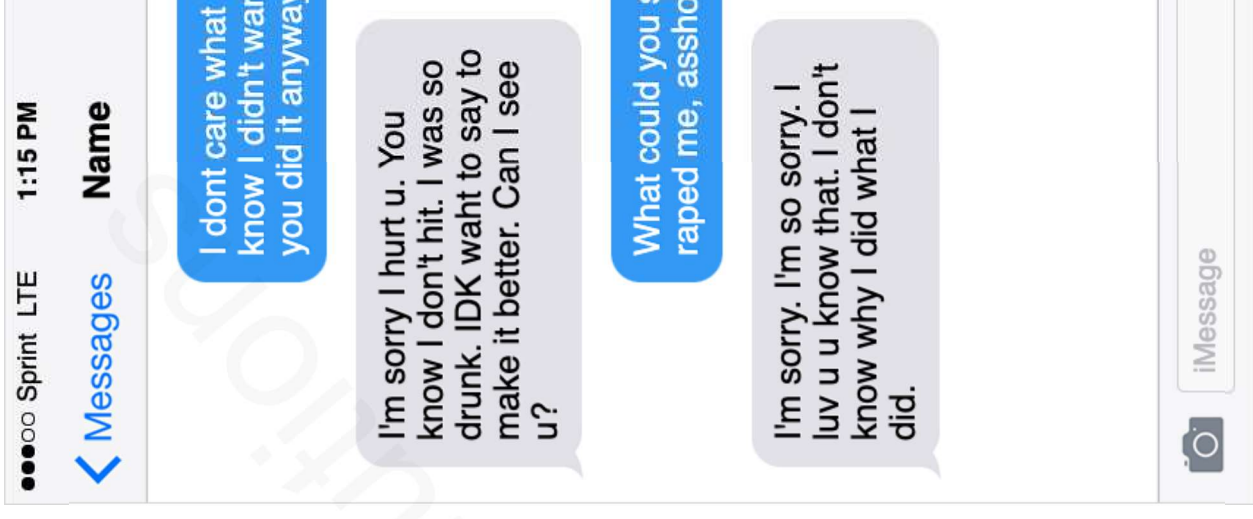
Complainant: What could you say? U raped me, asshole.

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

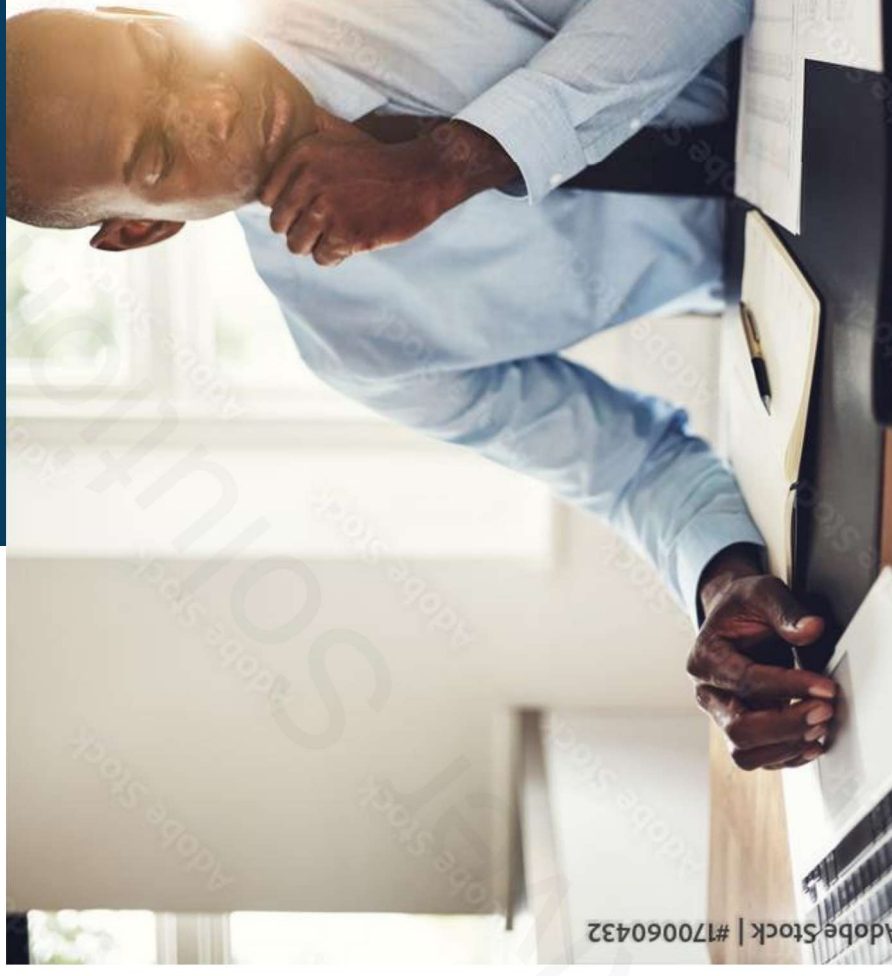
OPTION C

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.



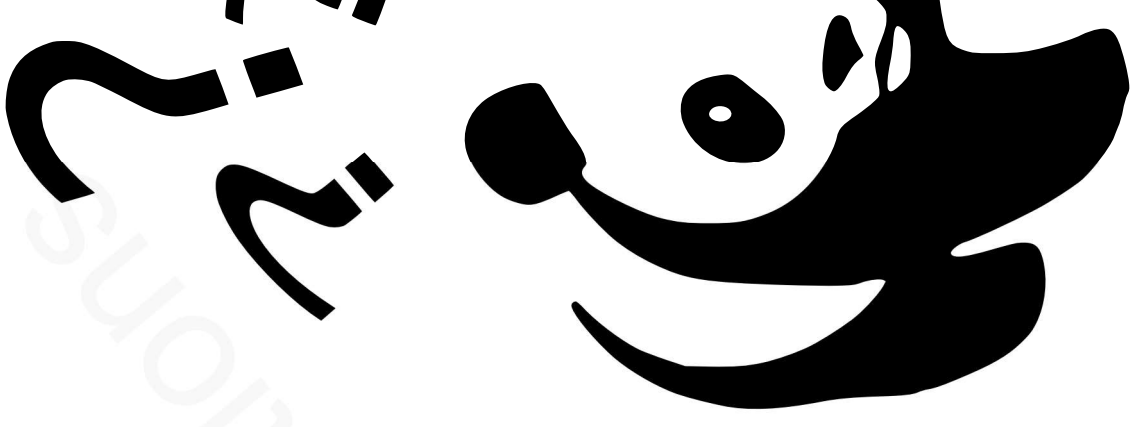
ANALYSIS AND FINDINGS



GRAND RIV

FINDINGS OF FACT

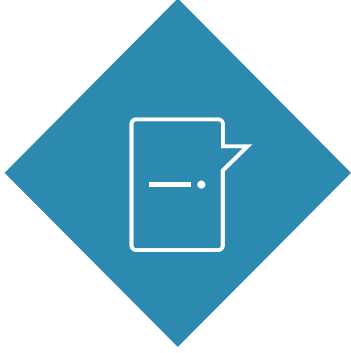
- A "finding of fact"
 - The decision whether events, actions, or conduct occurred, *or* a piece of evidence is what it purports to be, is credible, and reliable.
 - Based on available evidence and information.
 - Determined by a preponderance of evidence standard.
 - Determined by the fact finder(s).



PREPONDERANCE OF THE EVIDENCE

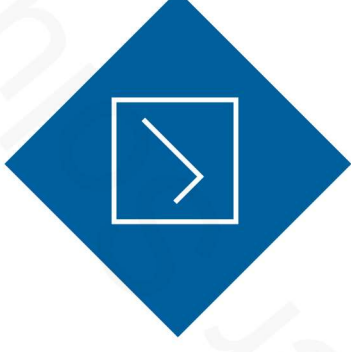
- More likely than not.
- Does not mean 100% true or accurate.
- A finding of responsibility = There was sufficient reliable evidence to support a finding, by a preponderance of the evidence, that the policy was violated.
- A finding of not responsible = There was not sufficient reliable, credible evidence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



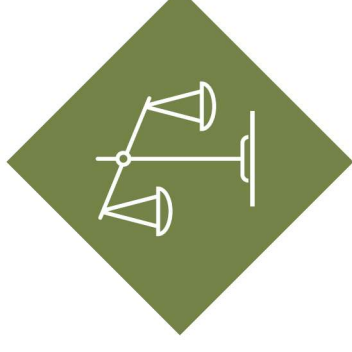
Is it authentic?

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 should it be given?

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

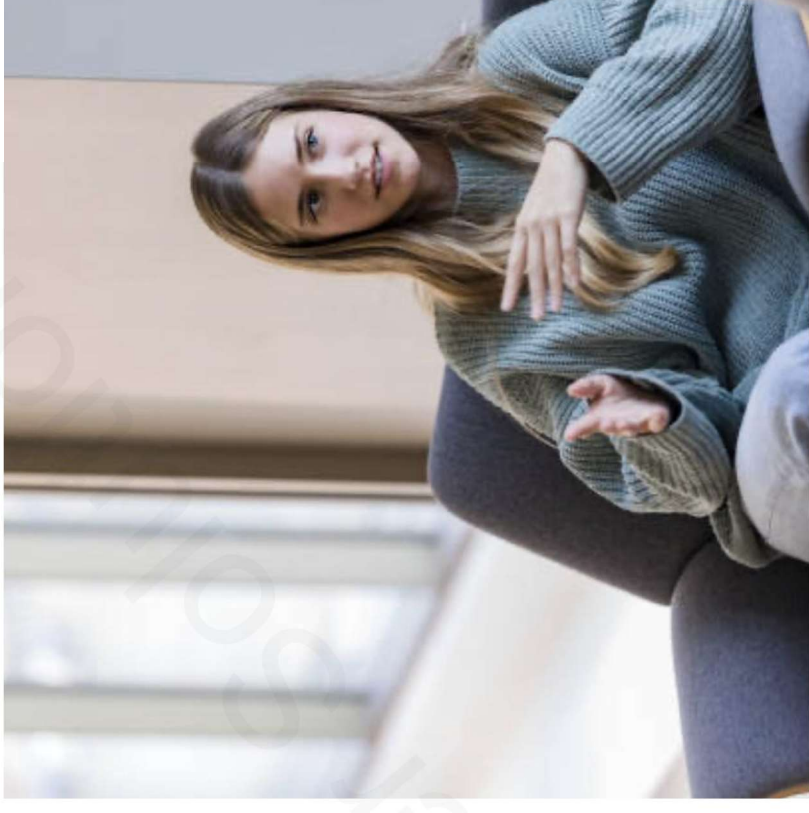
DETERMINING CREDIBILITY AND RELIABILITY

Remember: There is No
Formula!



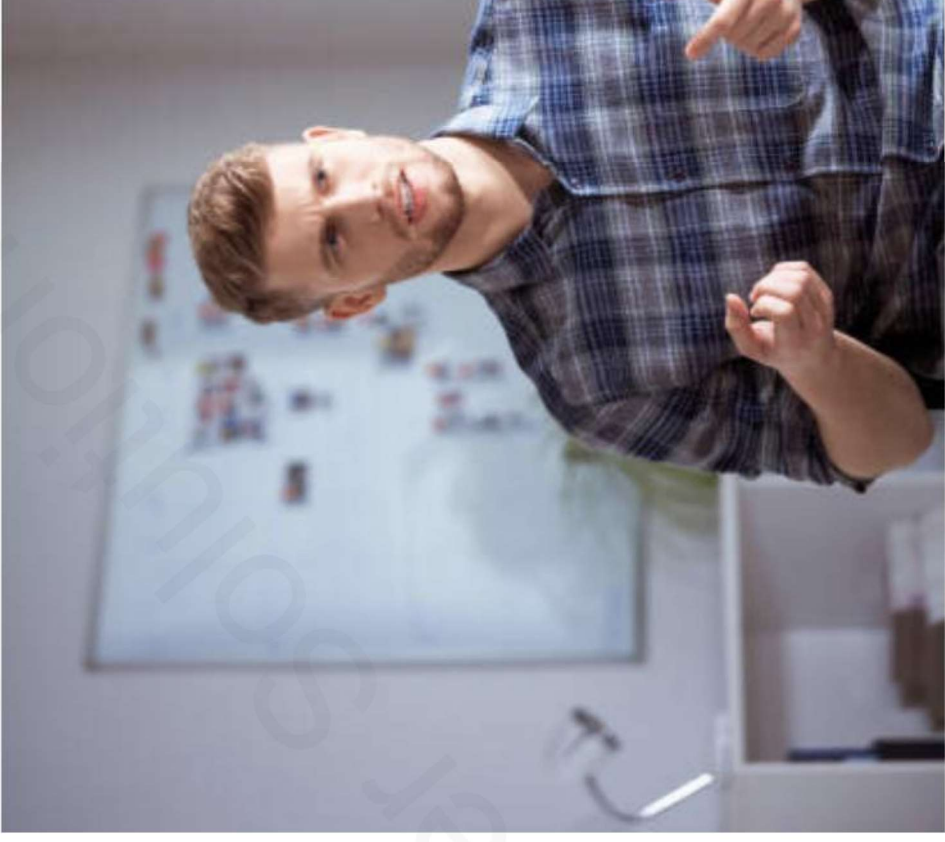
SUFFICIENCY OF DETAIL AND SPECIFICITY

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

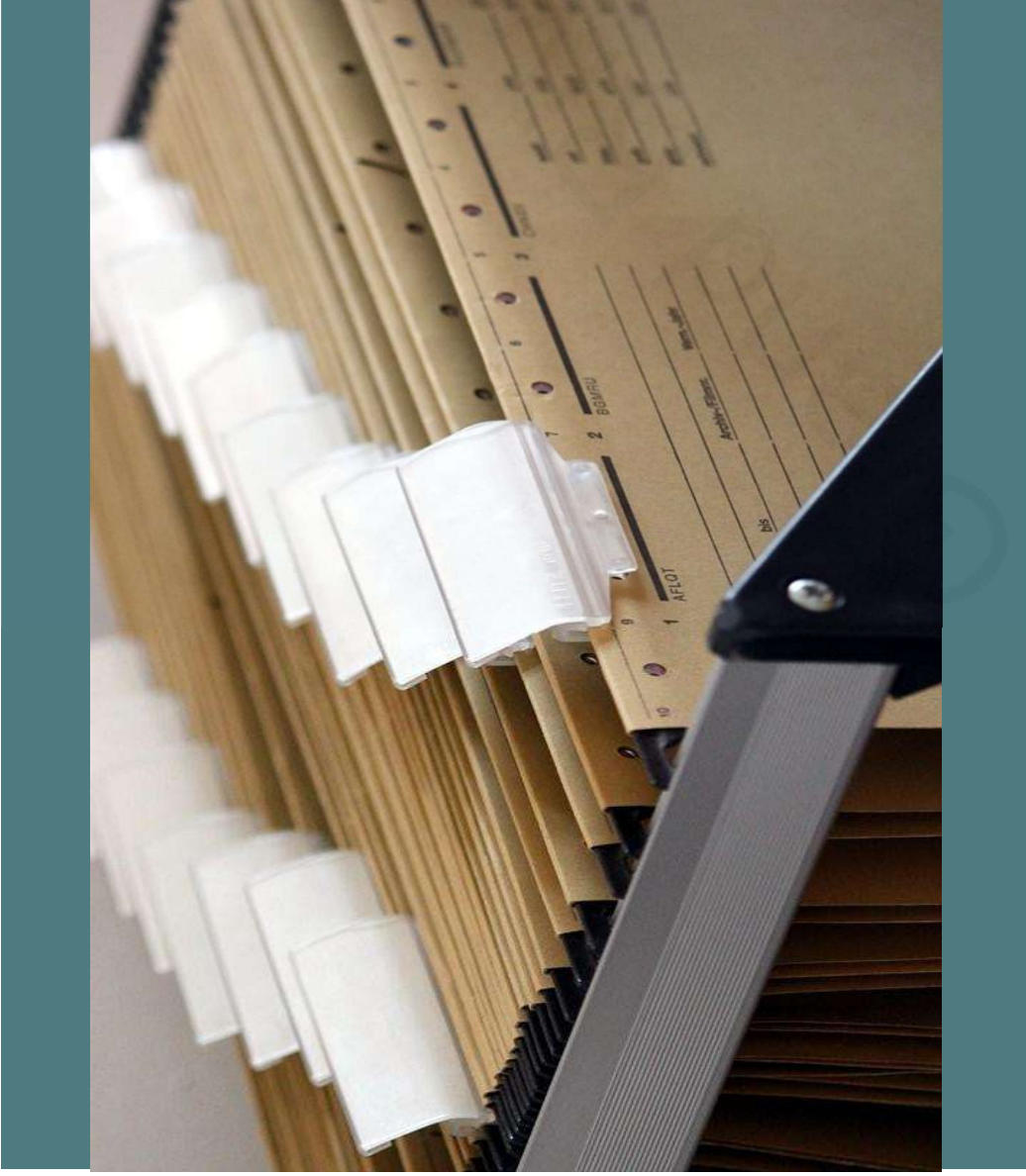


INTERNAL CONSISTENCY/CONSISTENCY OVER

- 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 TESTS



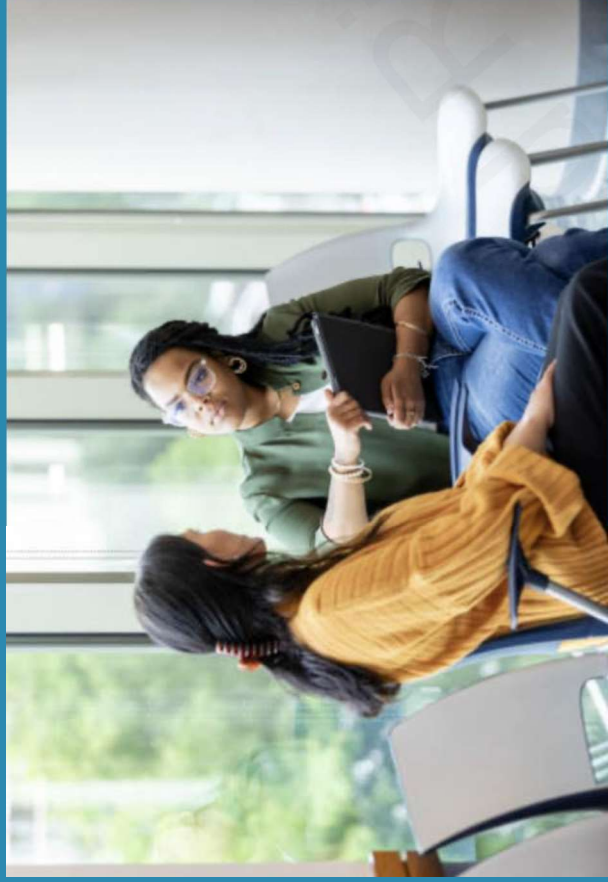
- Is the testimony or evidence consistent with the other evidence?
- Is the testimony or evidence inconsistent with the evidence?
- Is there a sufficient explanation for any inconsistencies?

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 the person knows this information?
- What was their opposing 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 and 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 certain behavior was wrong, yet was written up for that 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 all parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2006]
 - b) Disputed – unsupported by documentary or other evidence, or are factually inconsistent with other evidence 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 her; Marcy and Jack 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 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



GRAND RIV

MAKING A POLICY DETERMINATION

1. Take the facts that were found to be more likely than not to have occurred and apply them to the element of the alleged prohibited conduct.
2. Analyze, using the preponderance standard of proof, whether the element has or has not been proven.
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 or 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 Respondent • Witness 4's Account

Analysis Grid: Findings of fact

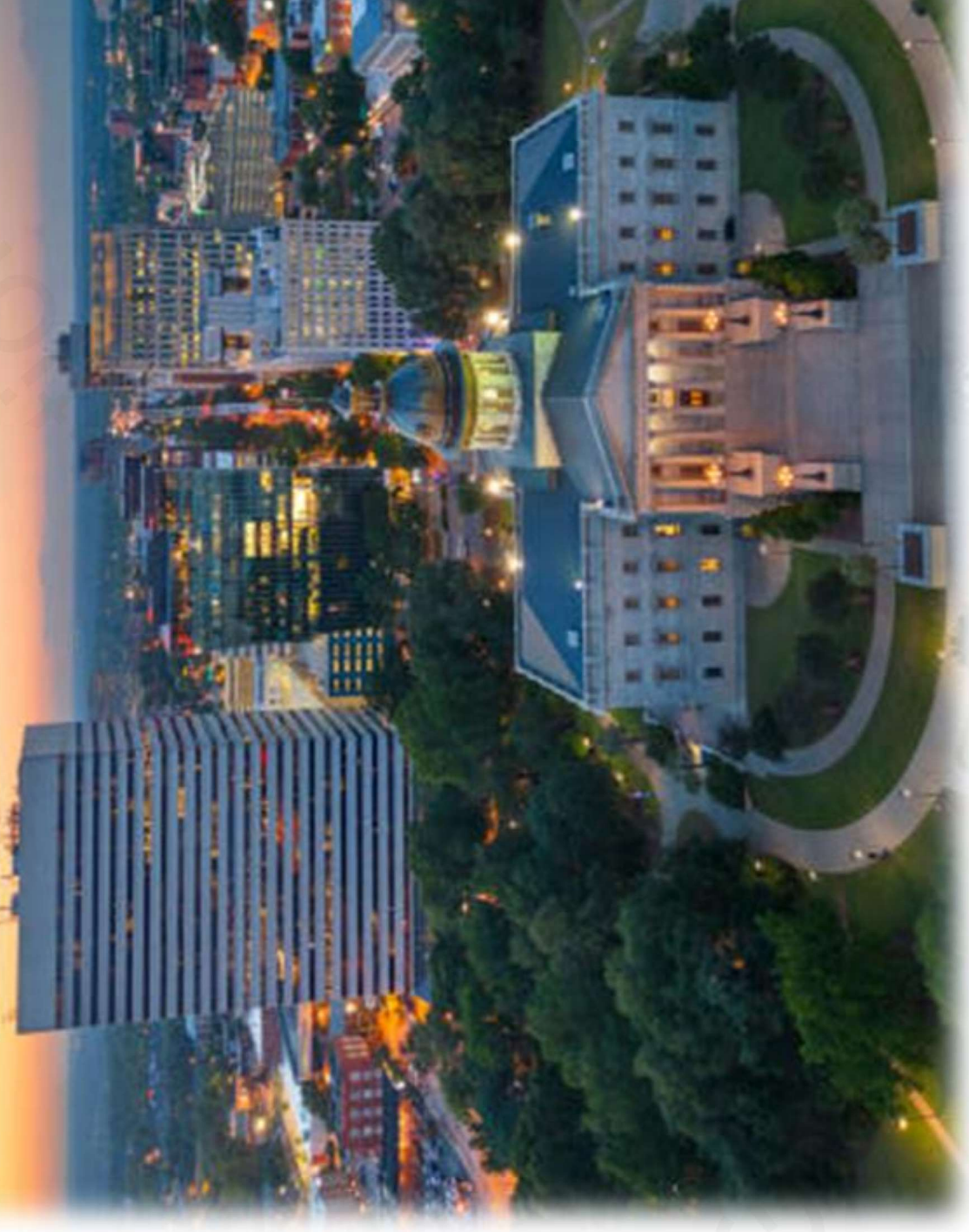
Did R touch C's body?	Was the touching sexual in manner?	Without C's consent or lack of capacity?
Parties do not contest that that Respondent touched Complainant's hips while they sat in Witness 2's back seat on their way to a party. This was corroborated in the text communications and witness statements.	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 consenting to Respondent touching due to being intoxicated, there was insufficient evidence that Complainant was in fact incapacitated because statements suggest that Complainant had been hold conversations and 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 evidence standard that Complainant was incapacitated therefore incapable of providing consent. Thus, the weight of the evidence is NOT RESPONSIBLE for the allegation of nonconsensual sexual contact, as set forth in the form complaint”

SC TECHNICAL COLLEGE

DAY TWO: HEARINGS



DAY TWO: AGENDA



Title IX Requirements for Hearings



The Hearing



Hearing Overview



Practical Application



Pre-Hearing Tasks



Developing Questions

TITLE IX REQUIREMENTS FOR HEARINGS

01

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof may be preponderance of the evidence or convincing; standard may be the same for the institution and employees

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 issued that includes finding and conclusions

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HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS



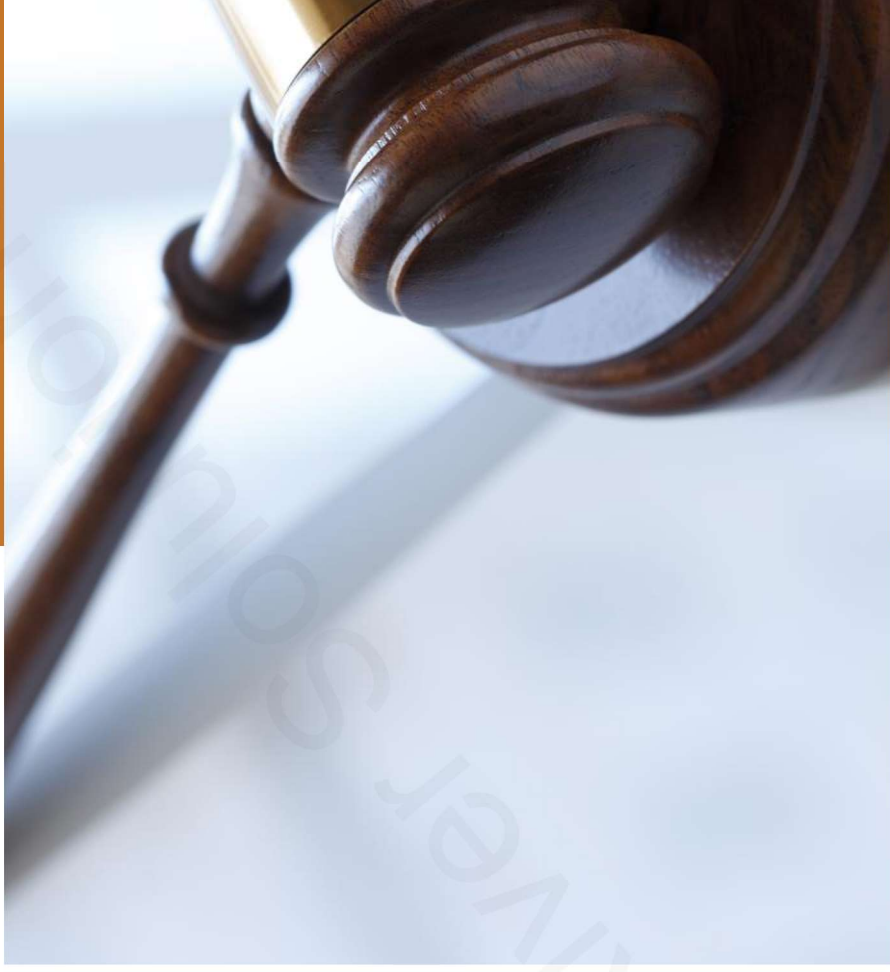
If hearings cannot be in person, or if someone chooses to participate remotely, must have participation platform available.

All hearings must be recorded.

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

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THE REQUIREMENT OF IMPARTIALITY

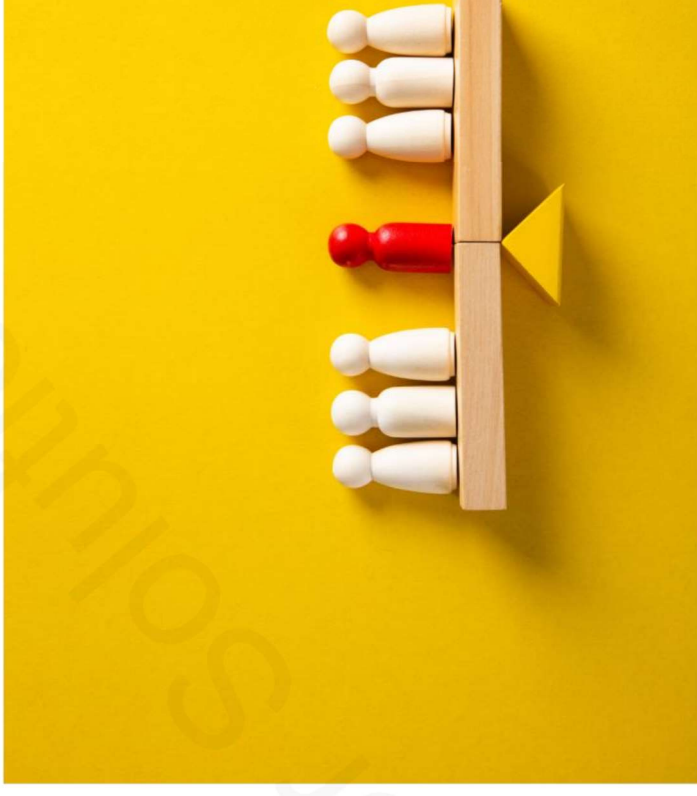


GRAND RIV

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 basketball team.

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

Additional Context: Dean Thompson has a close professional 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 administration.

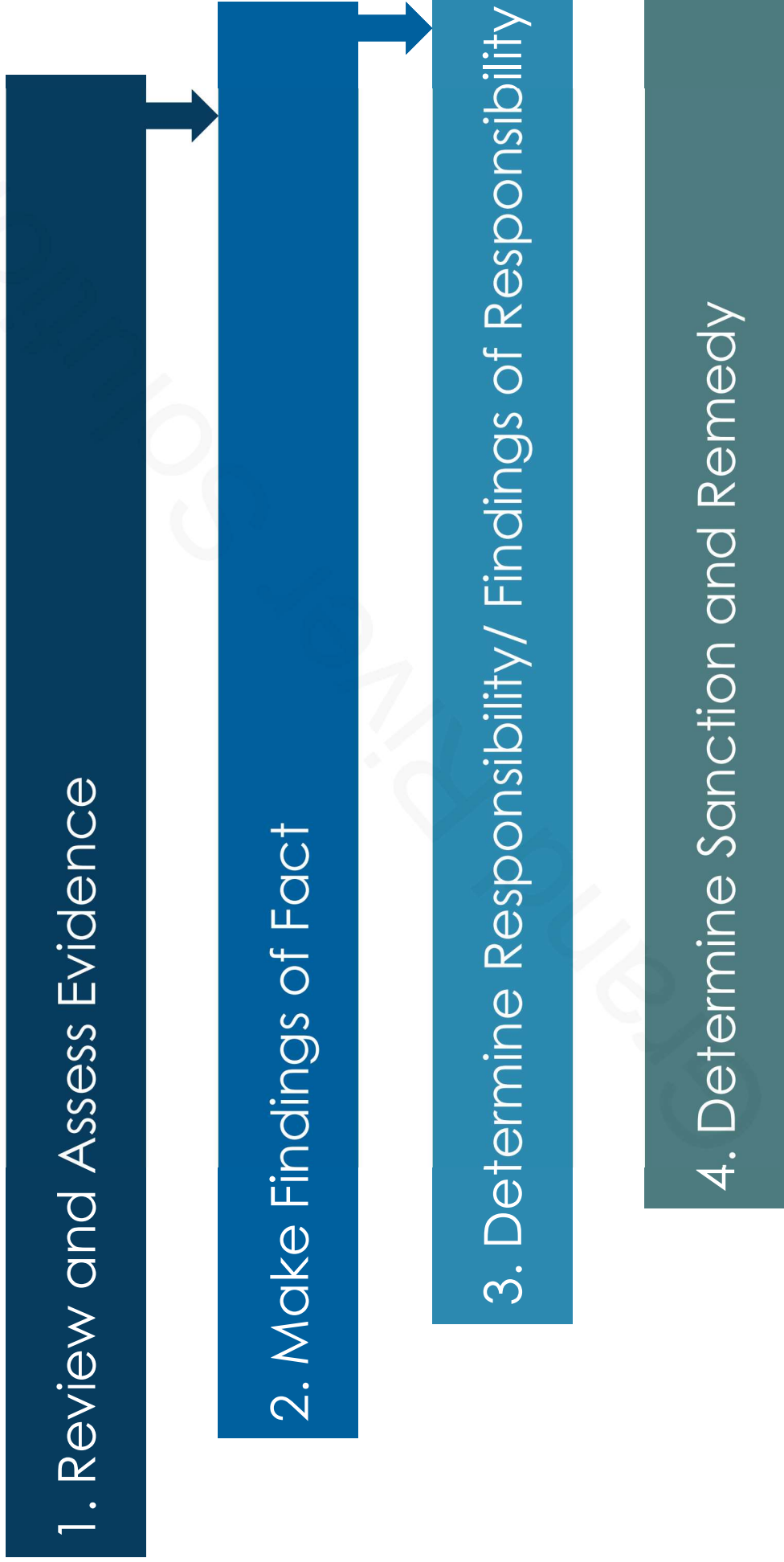
HEARING OVERVIEW

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.

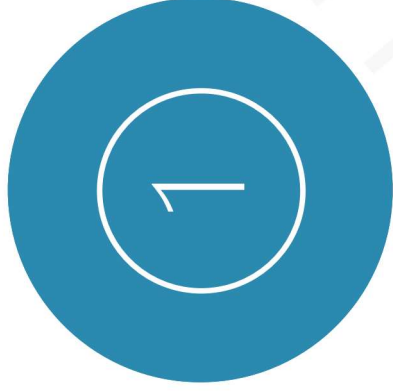
Respondent

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

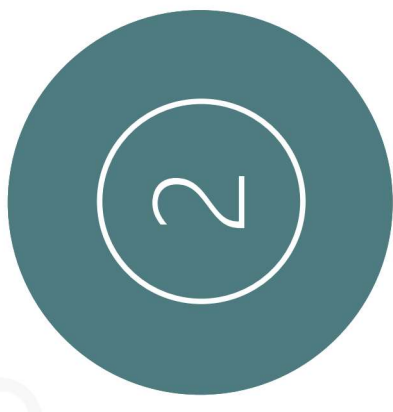
THE PARTICIPANTS

Advisors

There are two types of Advisors



Advisor: throughout the
whole process
("may")

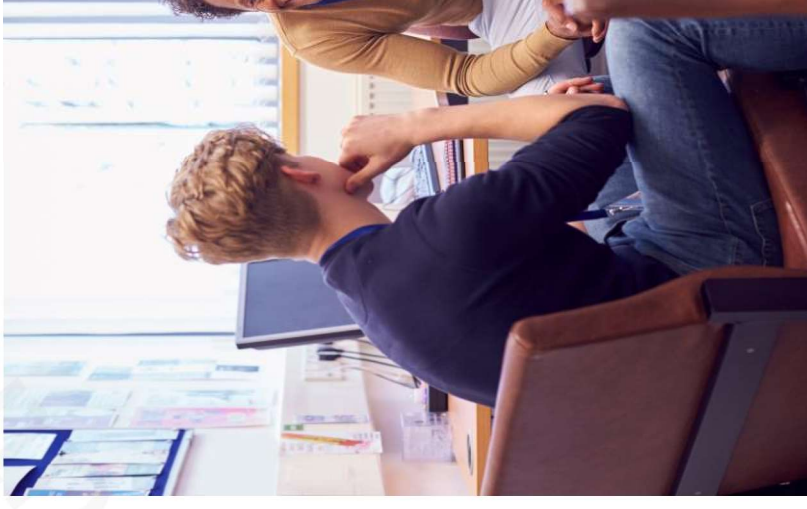


Hearing Advisor: hearing,
for purposes of asking
questions
"(must")

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

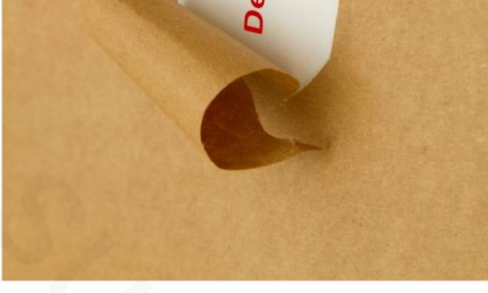
A panel.

Usually requires a hearing.

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 determination, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.



PRE-HEARING TASKS: HEARING PANEL & CHAIR

03

What should be done in advance of the hearing?

THE INVESTIGATION IS COMPLETE!



Rapid Fire #1

It is time to schedule
hearing...

Call out your
List for coordination
hearing.



RAPID FIRE RECAP

Arranging for space

Arranging
technology

Scheduling pre-
hearing meetings
with parties &
advisors

Providing
report and
record to
decision-
maker and
parties

Scheduling
the hearing

Conflict
checks

Call for
written
submissions

Acco

Other considerations?

GRAND RIVER

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
and procedures

Preliminary
analysis of
the
evidence

Determine
areas for
further
exploration

Dev
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own

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HEARING PANEL CHAIR OR DECISION MAKER

Compile questions on behalf of the Panel

May convene a pre-hearing meeting

Review questions submitted by the p

Anticipate challenges or issues

Become familiar with the script

GRAND RIVE

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 to discuss/think during the pre-meeting.



RAPID FIRE RECAP



Development
of
introductory
comments

Initial discussion of
the evidence

List of
questions for
the parties
and the
witnesses

Anticipation
of potential
issues

Logistics

Review of
any written
submissions
by the
parties

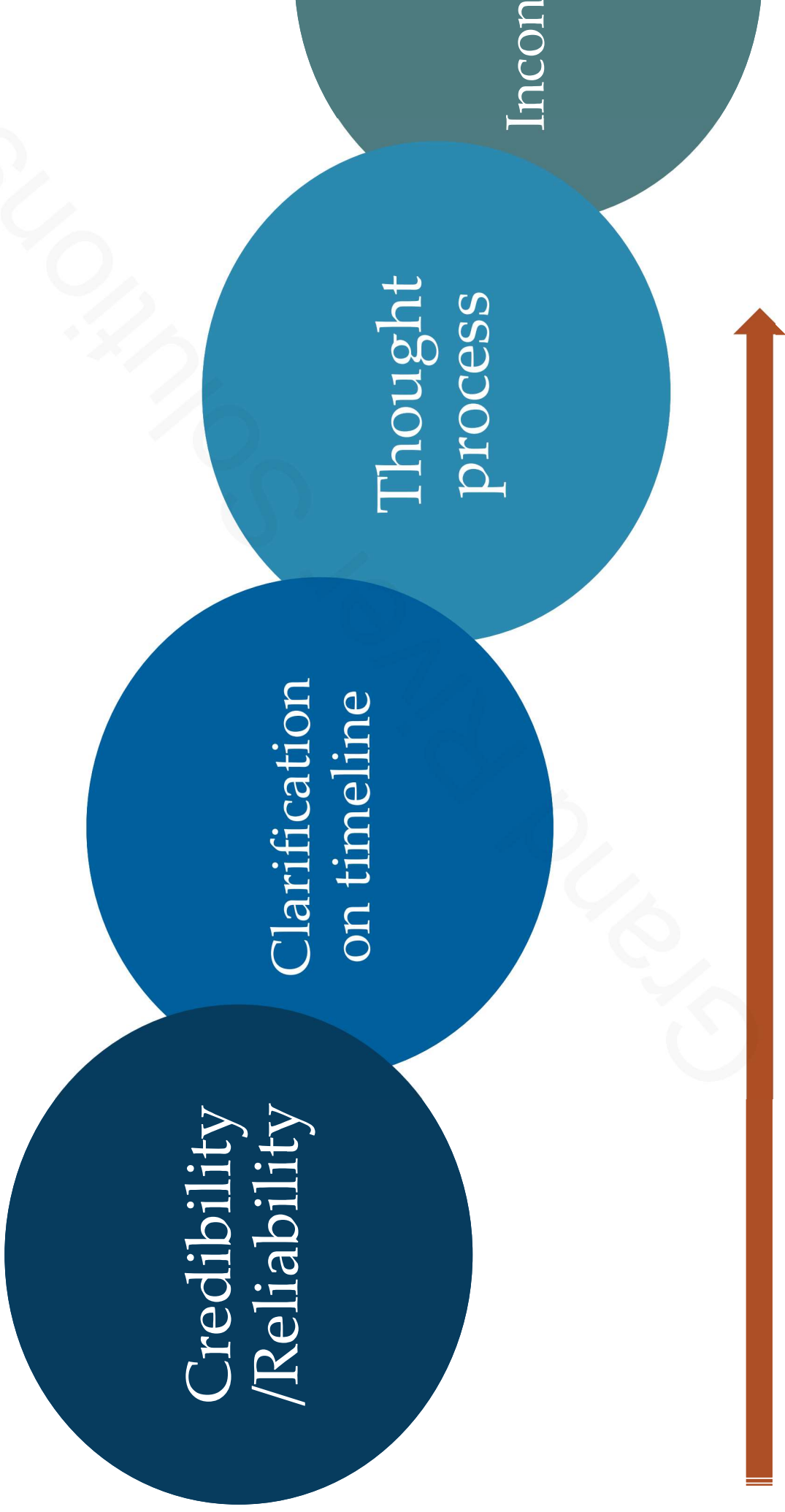
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GRAND RIVER

PRE-HEARING TASKS: DEVELOPING QUESTIONS

03(a)

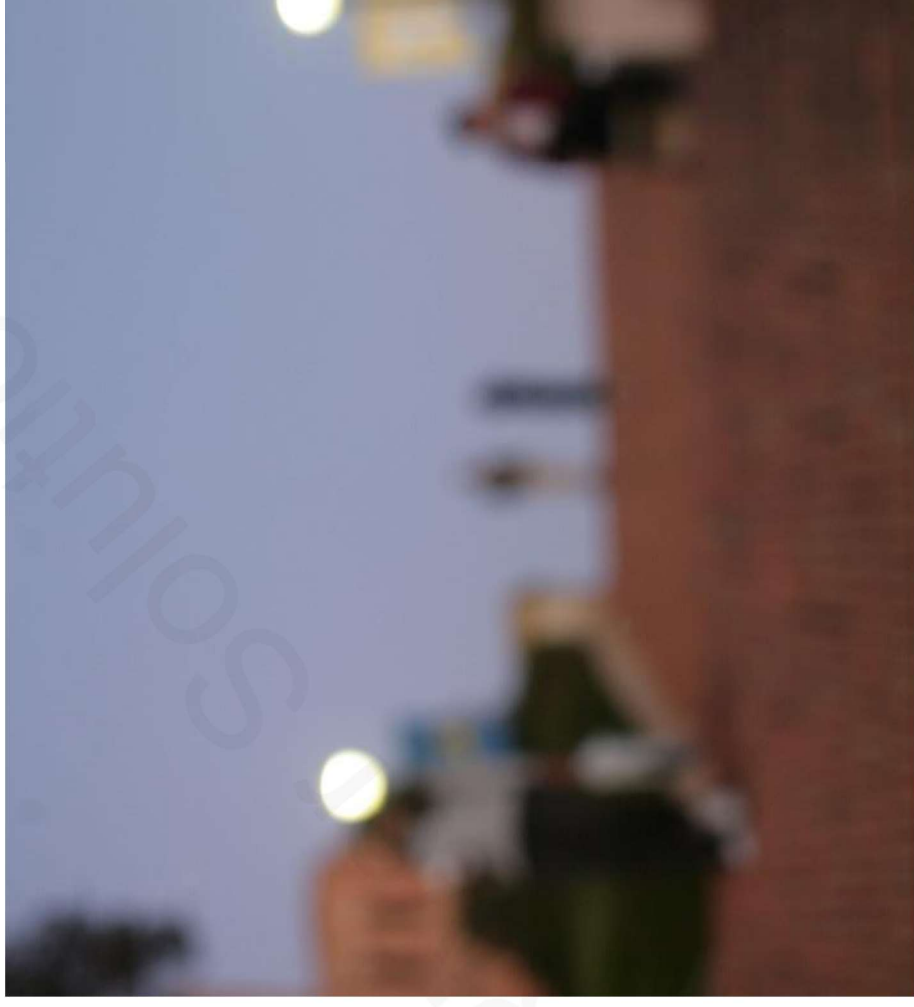
COMMON AREAS OF EXPLORATION



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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 on 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 concerned?



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. Charlie stated that Charlie later alleged sexual harassment complaint against

Witness #2 is a friend of Charlie's and occasionally be present at Ramona's study sessions. Ramona placed outside of the classroom. Witness #2 stated that the sexual harassment occurred at Ramona's residence, and that Ramona's time was spent there. Witness #2 said that she was not involved in the alleged sharing of sexually explicit images but that Charlie posted explicit images as well. Charlie seemed to be uncomfortable when they would share the images with Ramona about them with R

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) Unwelcome sexual harassment of 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 sexual 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; (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 the education program or activity?

THE HEARING

04

GRAND RIVER

ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair;
Statements

2. Presentation by Investigator

3. Presentation of information and questions
the parties and witnesses

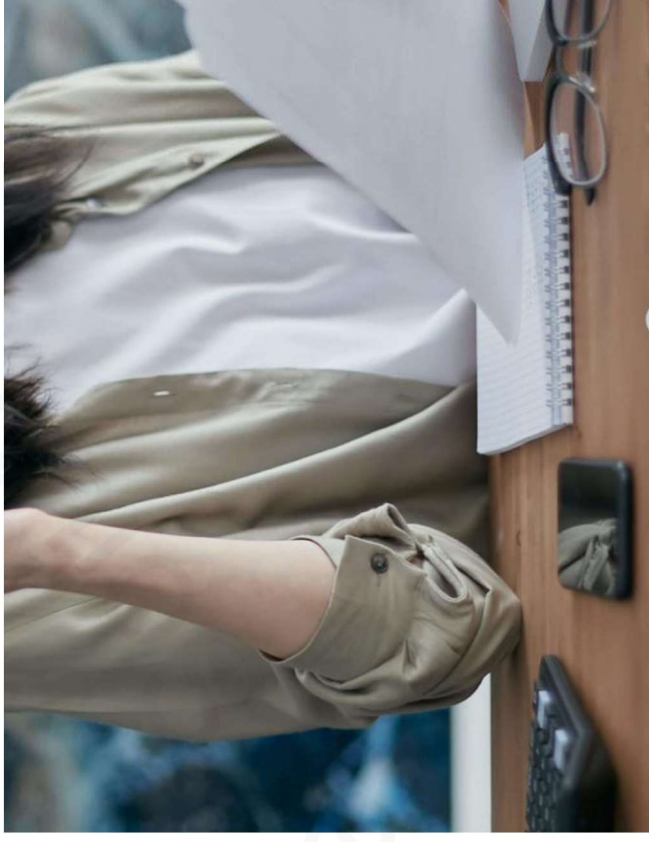
4. Closing Statements

5. Deliberation & Determination

GRAND JURY

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.



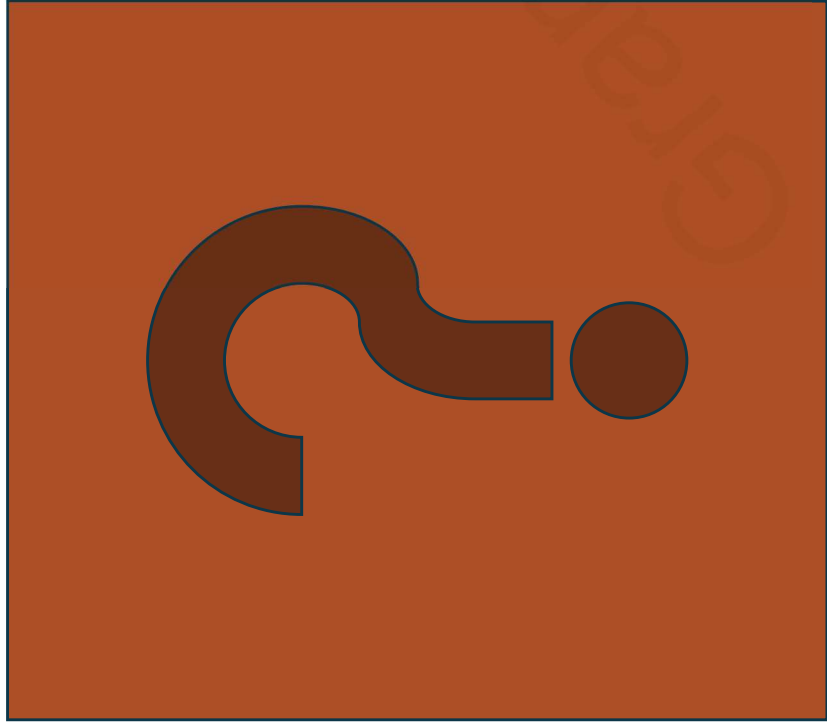
OPENING STATEMENTS

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

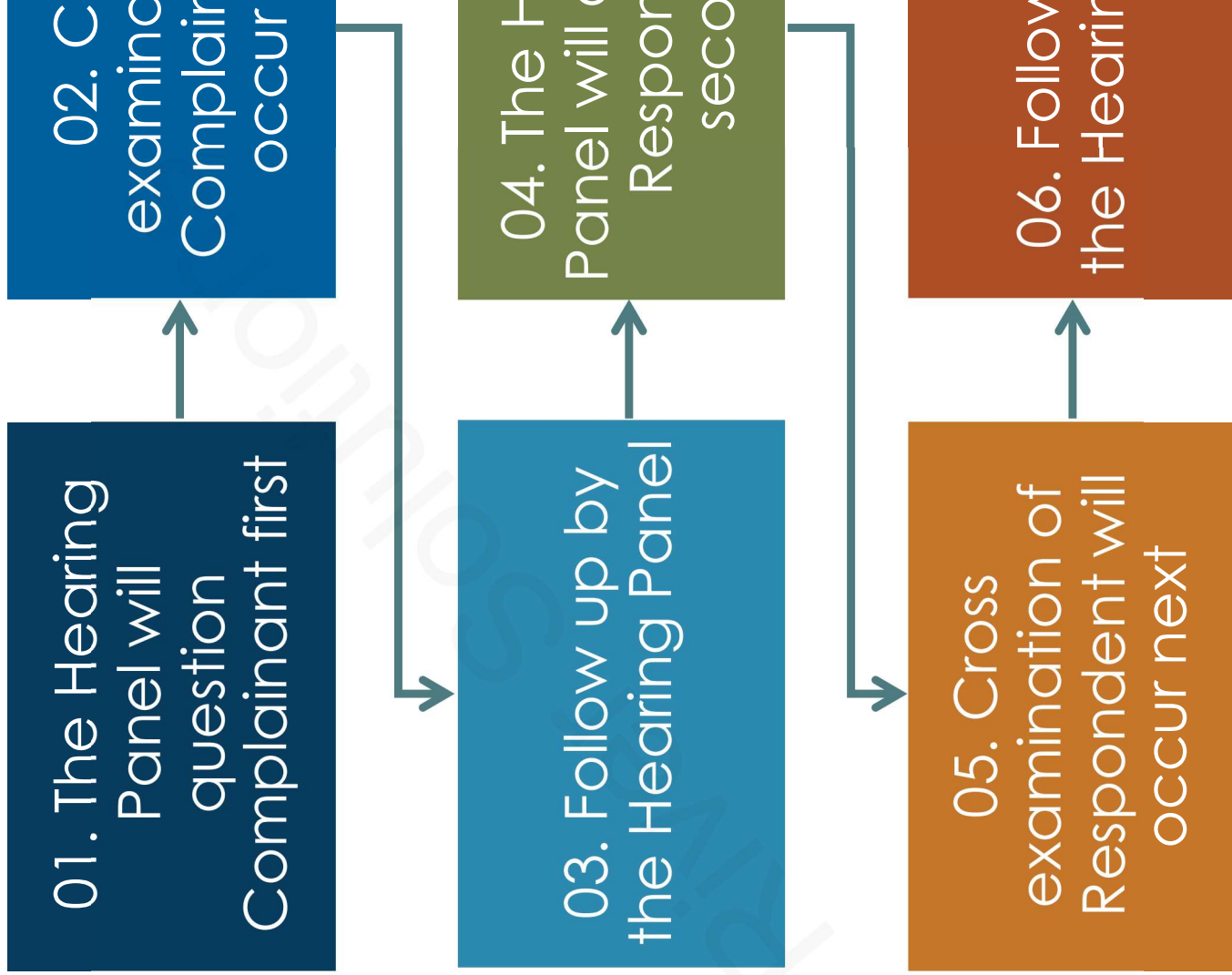
Prior to questioning portion of the hearing, each party may be given the opportunity to make an opening statement.

- Intended to be a brief summary of the points the party wants 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



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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)

04

Fol
the H

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

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PRE-SUBMITTED QUESTIONS UNDER 3-2-1

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 re

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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
your recollection
the time

As you sit here
today, has anything
changed?

Did you review your
notes before coming
to this hearing?

Did you speak
any one alone
testimony
prior to this

GRAND JURY

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; a
 - (b) the fact is of consequence in determining the a

WHEN ARE RELEVANT QUESTIONS?

- Logical connection between the evidence and issue
- Assists in reaching a conclusion – it is “of consequence”
- Tends to make a fact more or less probable that 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. Marcy denied. Meanwhile, several witnesses corroborated Marcy's statement that she was at the party until 3 a.m. In addition, a witness submitted a photograph of 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 are 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?



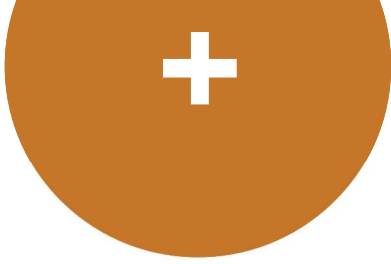
IS IT AUTHENTIC?



Question the person
who offered the
evidence.

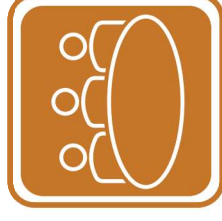


Have others review
and comment on
authenticity.



Are there
records that
corroborate

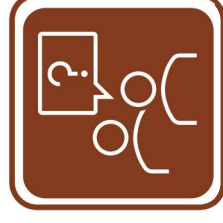
TRAUMA-INFORMED
PRACTICES PROVIDE
TOOLS & TECHNIQUES
FOR ENGAGING WITH
THE COMPLAINANT,
RESPONDENT, AND
WITNESSES.



**Format/Structure
Hearing**

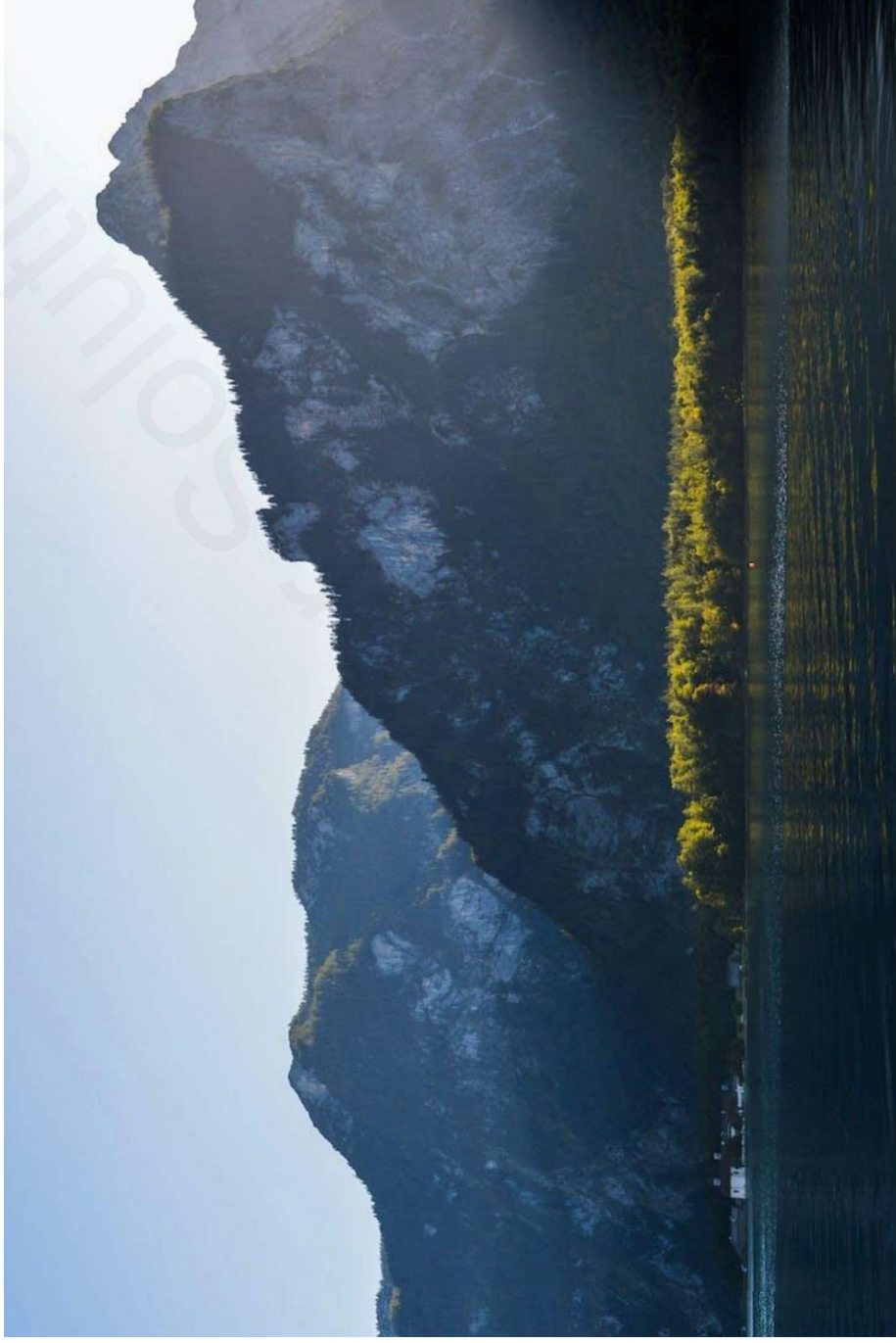


Format of Questions



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/

What they were wearing

Alcohol or drug
consumption

Probing into
lack of

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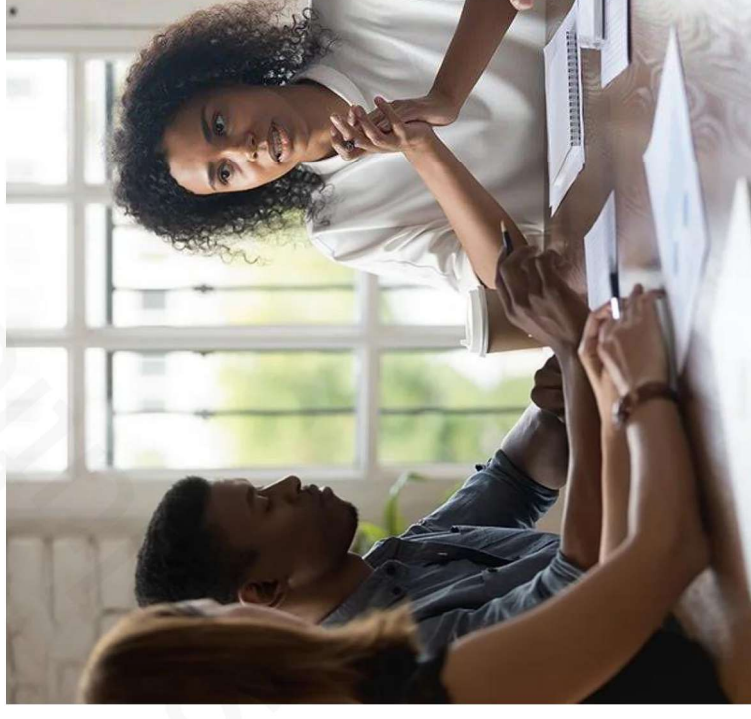
HOW TO ASK THE HARD QUESTIONS

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 comment on the Investigator(s) their opinions on credibility, recommendations, 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

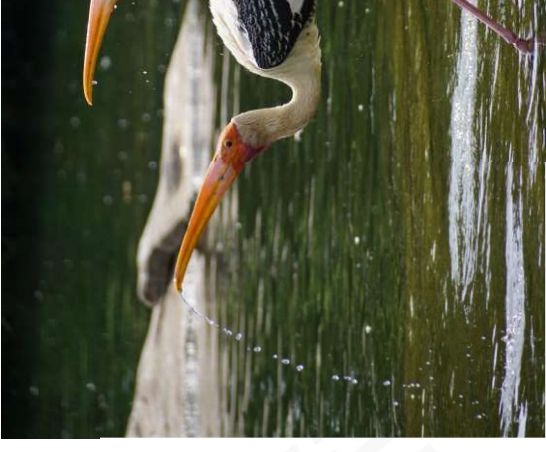
Pay attention to the questions of other panelists

Ok to take brief breaks to consult with other, to refer back to other, to consult with other or court

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BREAK OUT! #1

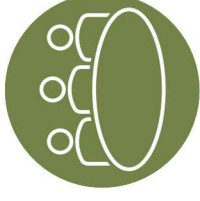
Areas or topics that you would like to explore further in the hearing



Say hi!



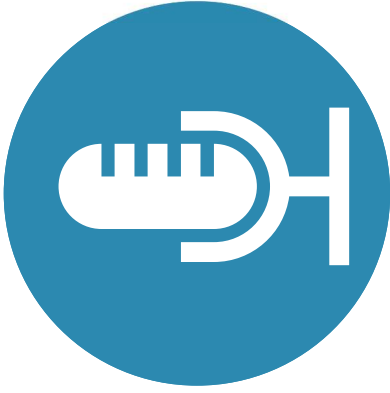
Pick a scribe



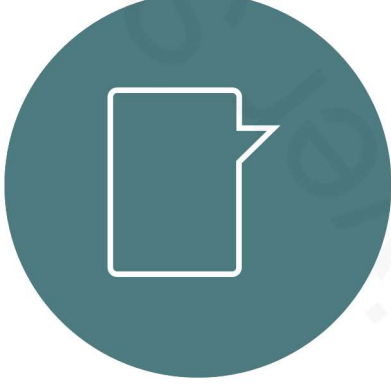
Discuss

- 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 Chair

THE DECISION MAKER'S ROLE DURING ADVISOR QUESTIONING

05

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

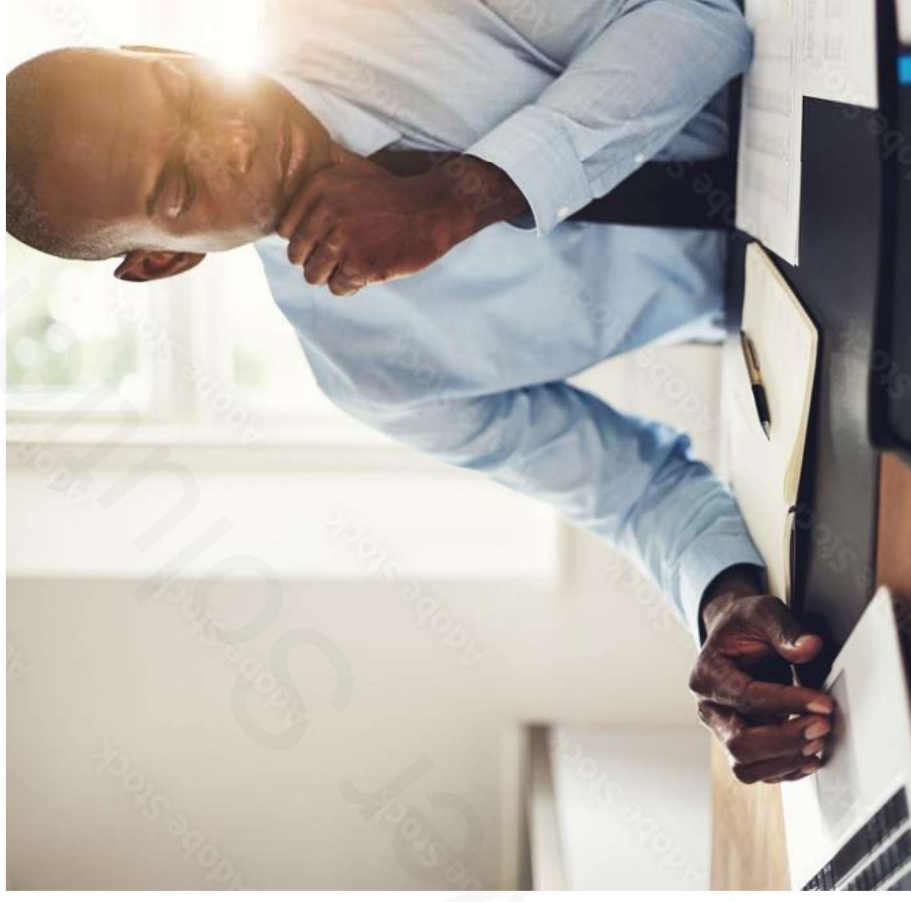
If party does not have an advisor, institution must provide one

DECISION MAKER'S ROLE DURING QUESTIONING

- After the Advisor poses a question, the proceeding will pause to allow consider it.
- Chair will determine whether the question will be permitted, disallowed or rephrased. The Chair may explore arguments regarding relevance with 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 may explain any decision to exclude a question as not relevant, or to reframe a question to be relevant.
- The Chair has final say on all questions and determinations of relevance. The Chair and their advisors are not permitted to make objections during the hearing. If a party feels that a ruling is incorrect, the proper forum to raise that objection is on appeal.

WHEN ASSESSING RELEVANCE, THE DECISION CAN:

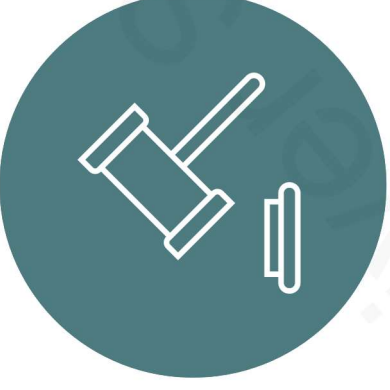
- Ask the person who posed the question why their question is relevant
- Take a break
- Ask their own questions of the party/witness



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 more or less
than it would
without that

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BREAK OUT! #2

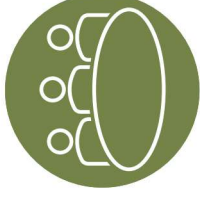
Review questions and determine whether they are relevant and allowed to be asked or irrelevant/impermissible



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



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GROUP 1 QUESTIONS SUBMITTED BY RESPONDENT'S A

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 promise, 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 be there?
10. You said you were frightened by seeing Alex in the parking garage. Did he have a weapon? Did he 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 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 spared him stalking?

GROUP 1

QUESTIONS SUBMITTED BY RESPONDENT'S ADV

Questions for Witness Professor McPhee

1. What grade did she have up to the project and what grade did she have 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, you 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 believe that Alex was doing poorly of Alex?

GROUP 2

QUESTIONS SUBMITTED BY COMPLAINANT

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 not get along with others?
3. When you first talked to Stevie about your girlfriend breaking up with who was your girlfriend, or did you make that up just so you could Stevie?
4. Why did you keep offering to work with Taylor in person instead of
5. Did you have a thing for Taylor?
6. Did you and Taylor ever end up hooking up?

GROUP 2

QUESTIONS SUBMITTED BY **COMPLAINAN**

Questions for Taylor

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

GROUP 2

QUESTIONS SUBMITTED BY **RESPONDENT**

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

Questions for Tom

1. Can you think of any reason for Alex to be hanging out in the garage 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 stalk-

GROUP 3

QUESTIONS SUBMITTED BY RESPONDENT

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

Questions for Witness Charlie

1. So are you the one who suggested Alex stalk Stevie's social media to see if she likes to go out and drink she liked?
2. Why do you think Stevie and Alex had a plan to get together one night? 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 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 of sexual harassment or stalking?

GROUP 3

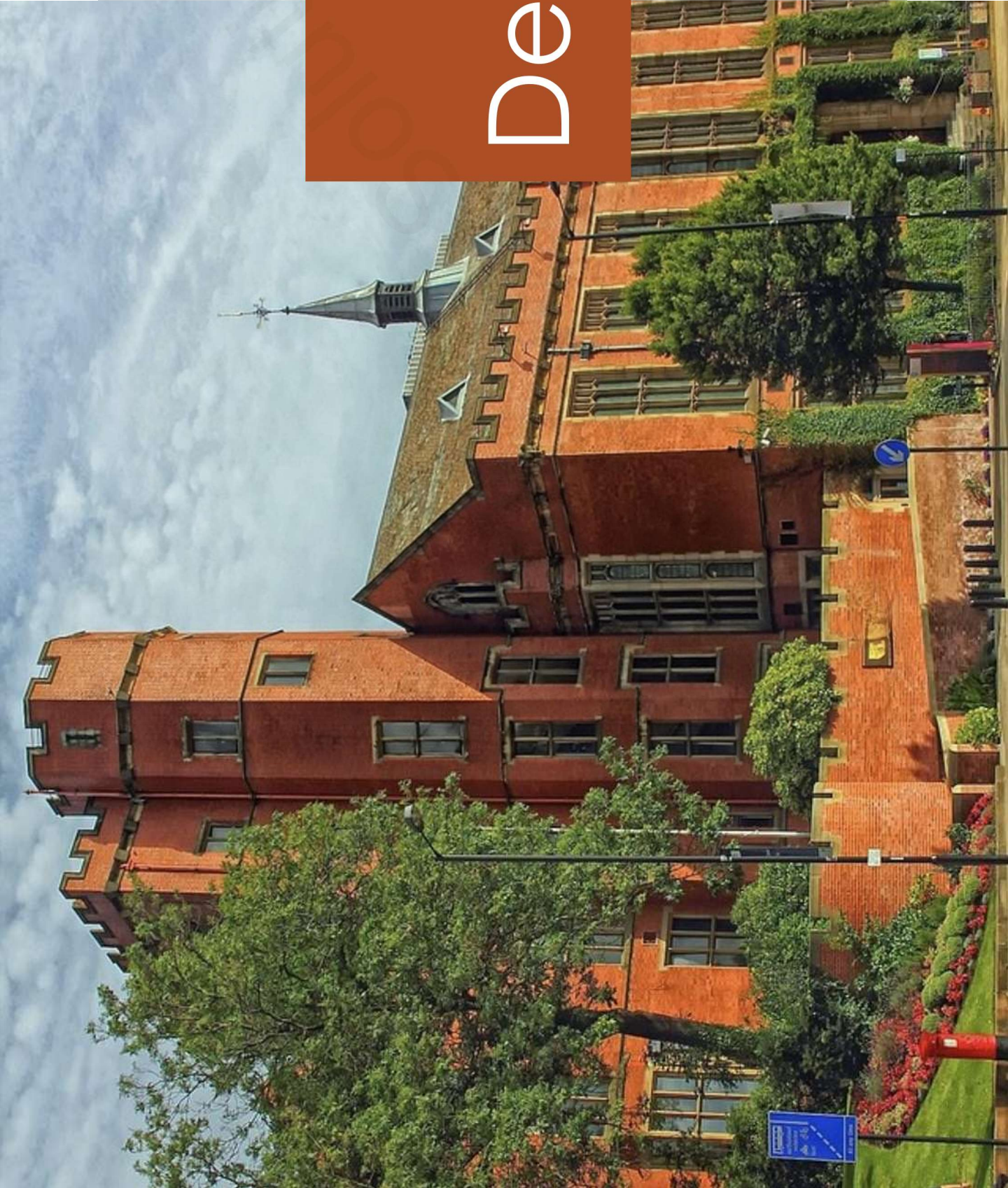
QUESTIONS SUBMITTED BY RESPONDENT

Questions for Witness Charlie

- No Questions

AFTER THE HEARING

05



Delibero

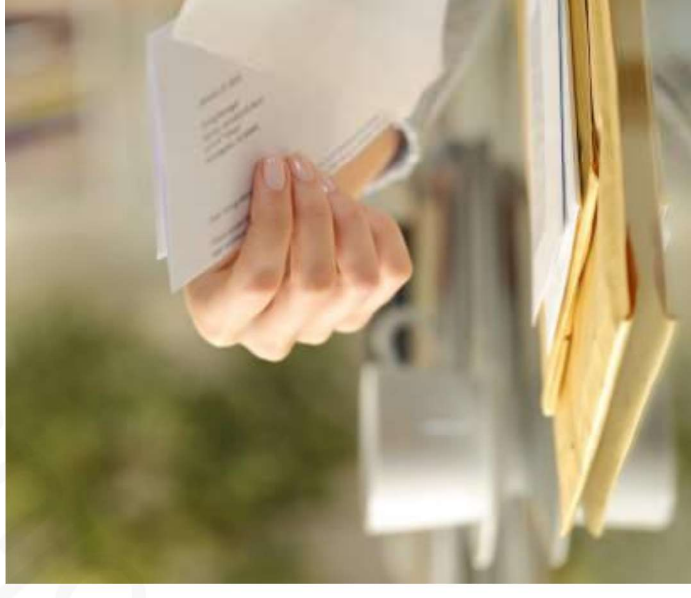
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PREPONDERANCE OF THE EVIDENCE

- 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 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 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 consequences 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 to lack of consent

Complainant: drank more than 12 drinks, vomited, and has no recall
Respondent: C was not sober and was participating in sexual activity
Witness 1: observed C and R in the basement
Witness 2: C was playing beer pong and R was barely standing
Witness 3: C was seemed fine
Witness 4: carried C to her room and laid her in the basement couch
her there to sleep

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.	Respondent acknowledges and admits this element in their statement with investigation. <i>"We were looking it up. Complainant stated kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."</i>	Without consent to lack of consent Complainant: drank more than 12 drinks, vomited, and can't recall Respondent: Cw and participating in sexual activity Witness 1: observed Cw for 20 minutes Witness 2: playing pool and could be easily startled Witness 3: seemed fine Witness 4: carried Complainant to basement couch and laid her there to sleep
--	---	---	---

DID YOU ALSO ANALYZE...?

On campus?

Program or Activity?

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

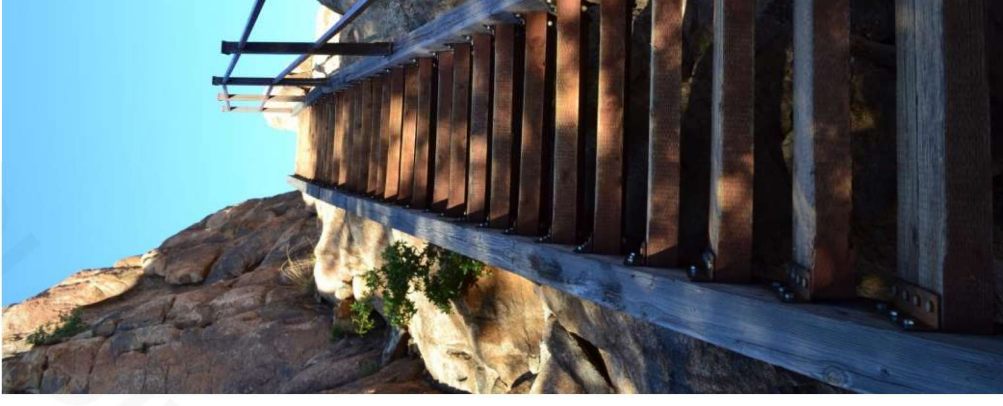
Substantial control over respondent and c

Complainant was attempting to access program/activity?

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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?



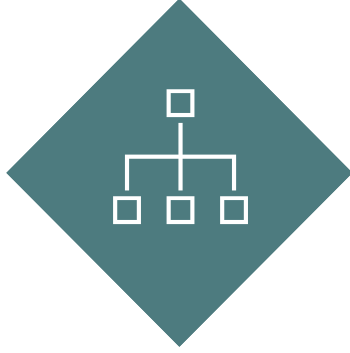
SANCTIONING



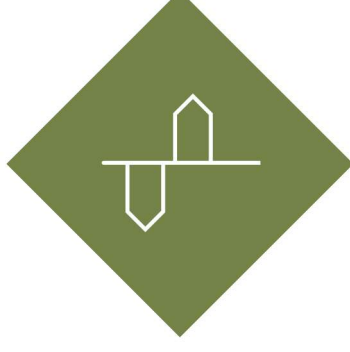
State Law



Learning
Environm



System Policy



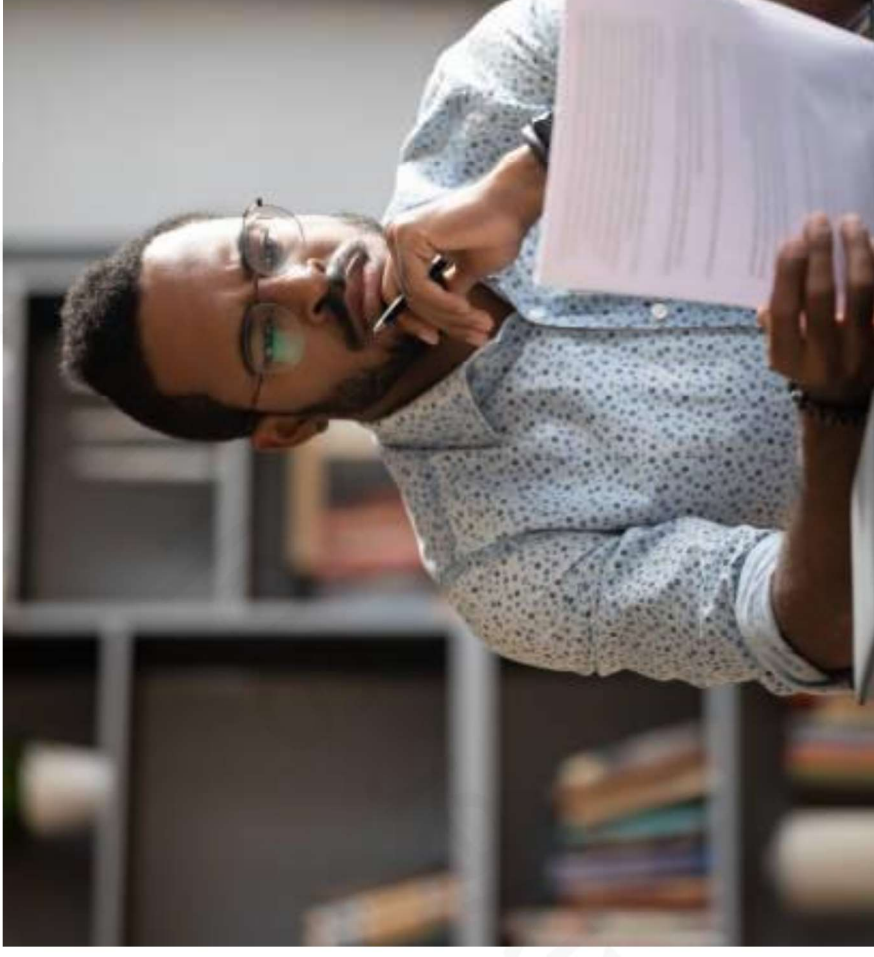
Measure
Availabl

THE SANCTION DOES NOT UNDO THE FINDING

- No lesser sanction if you disagree with finding
- 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/Concise

A Accurate

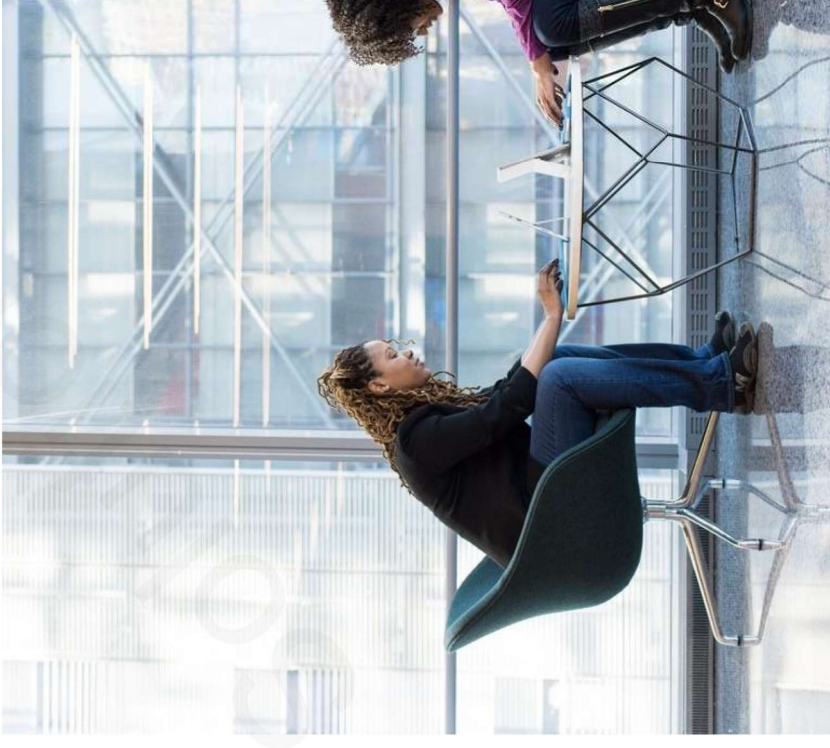
N Neutral/Unbiased

D Draw Attention to
Significant Evidence
and Issues

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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

06

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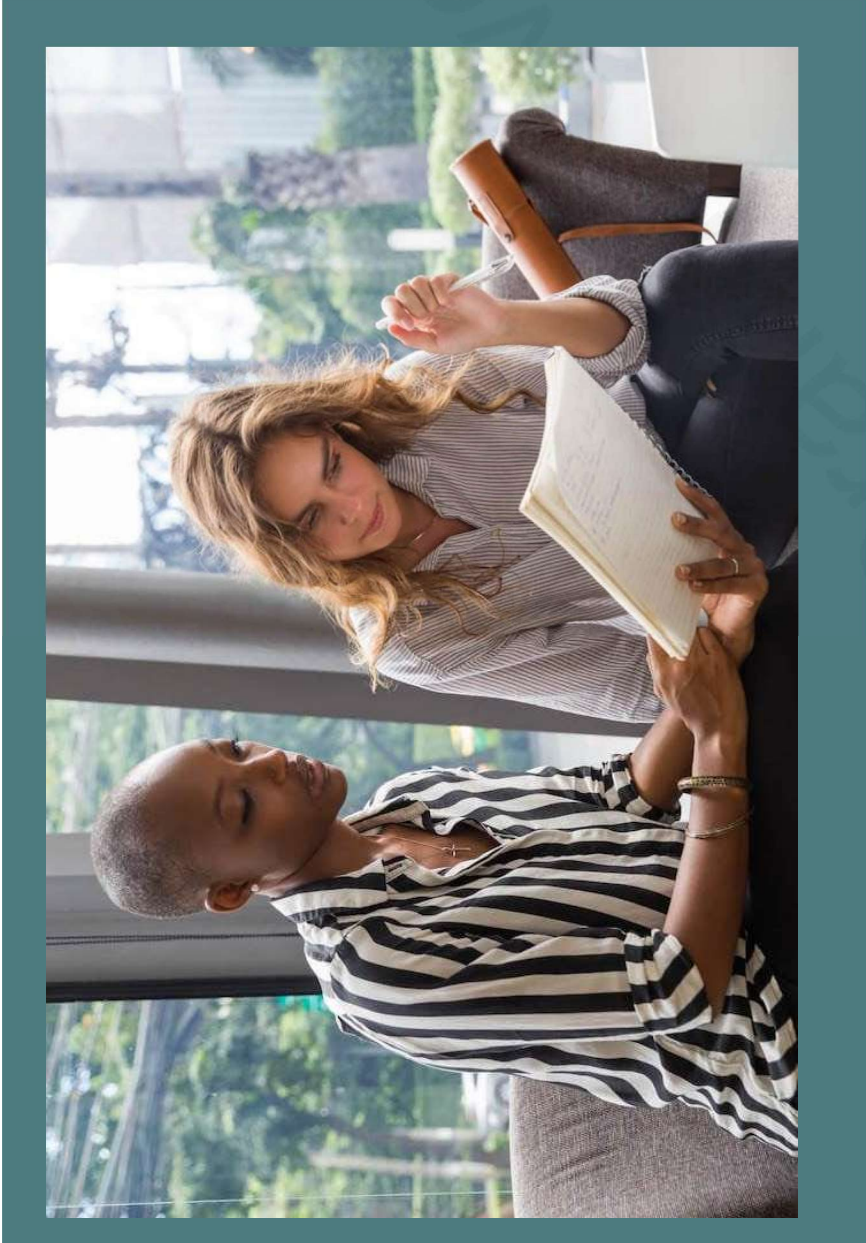
SCENARIO 1

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
with Witness 7, who did
participate in the invest
Respondent would like
provide information tes
about text messages bet
and Complainant that i
Complainant has made
allegations up.

- Can the decision-maker
from Witness 7 at the

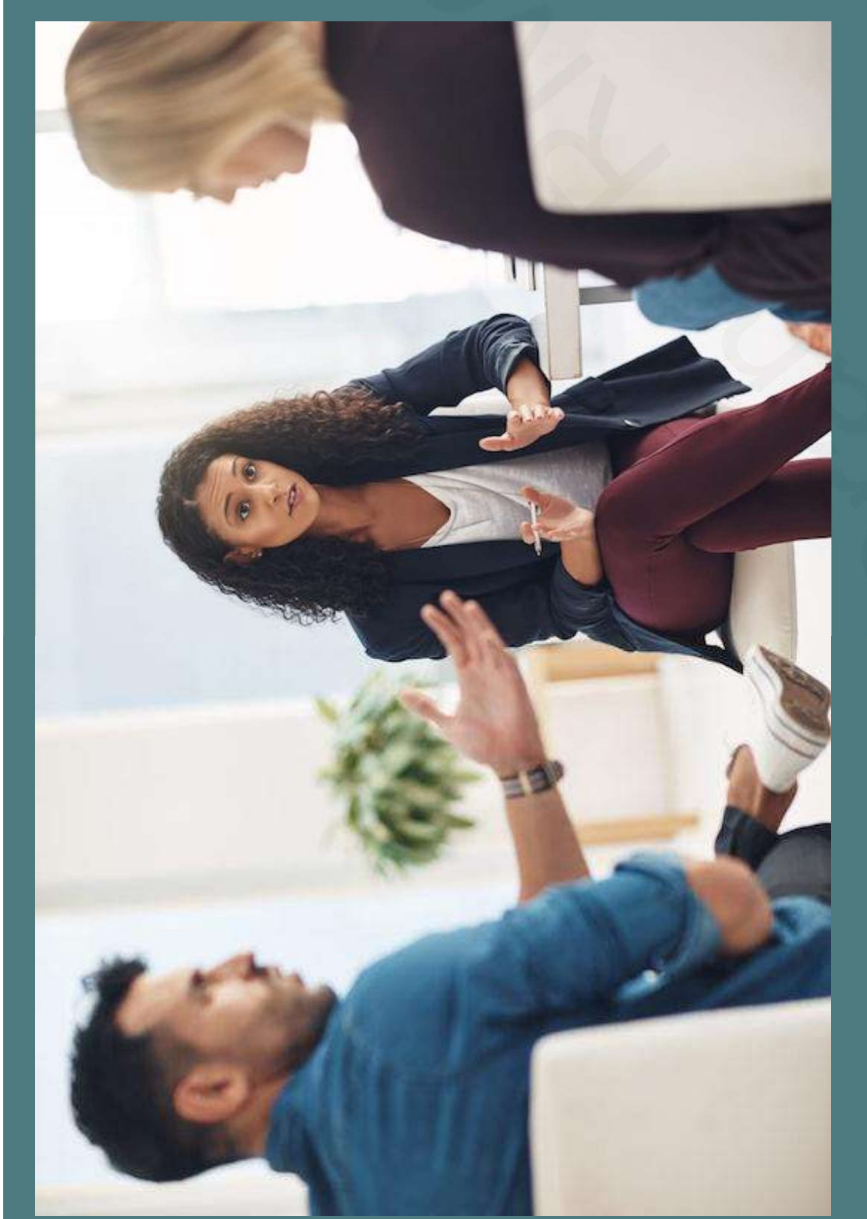
SCENARIO 3



Respondent provides a polygraph to Investigators wherein it is determined that Respondent is not being truthful when denying the allegation. A polygrapher appears and asks relevant questions on cross.

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

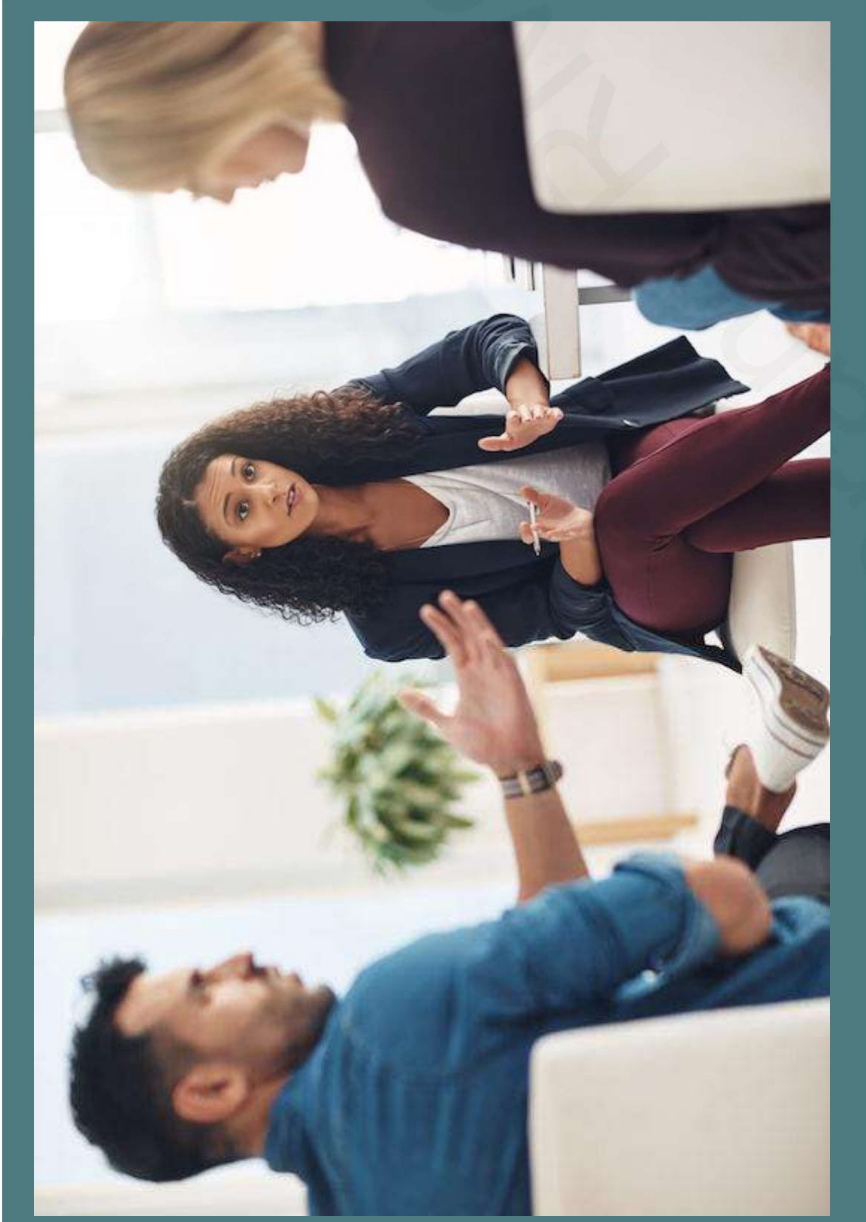
SCENARIO 4



During the hearing, the Com becomes upset, shuts down answering question.

If you are the Hearing Chair respond?

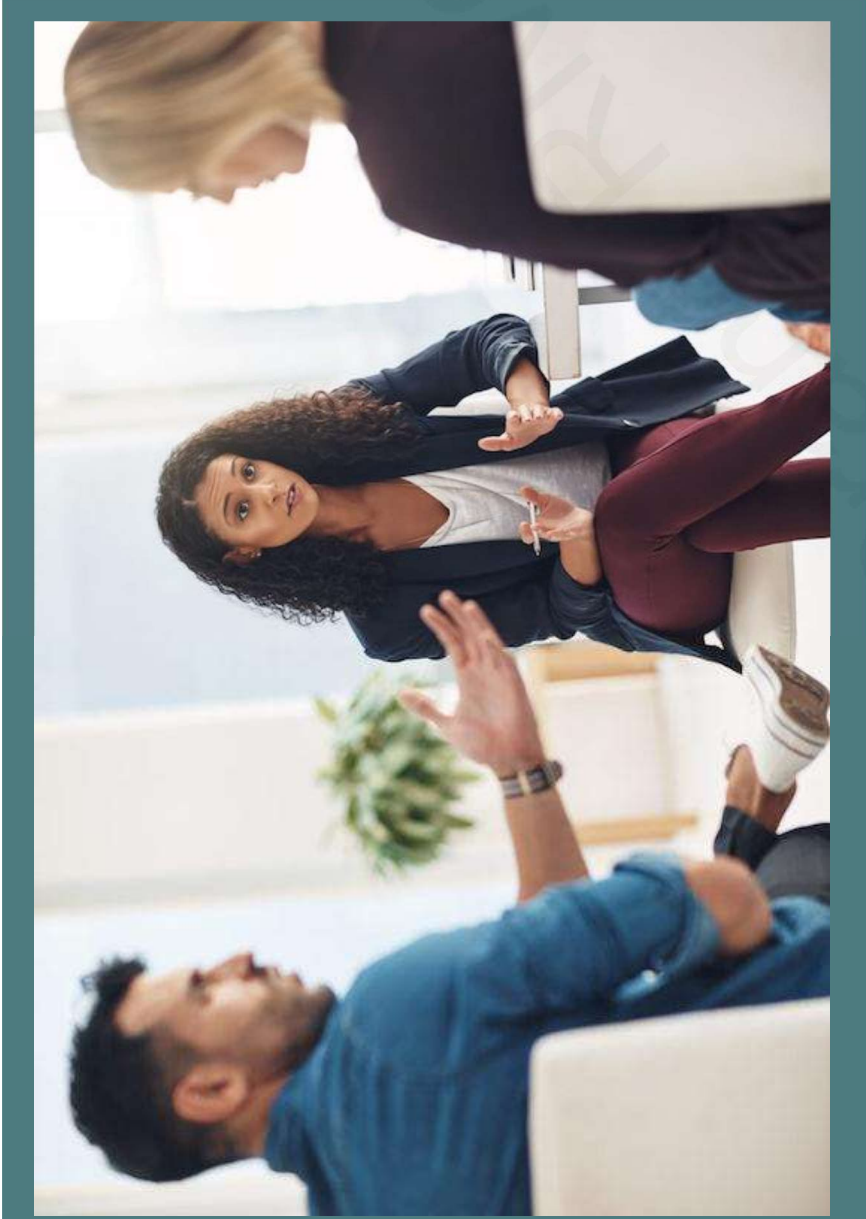
SCENARIO 5



During the hearing, the Com can be seen talking to som camera.

If you are the Hearing Chair respond?

SCENARIO 6



During the hearing, after being asked a question that was 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 would you respond?

SCENARIO 7

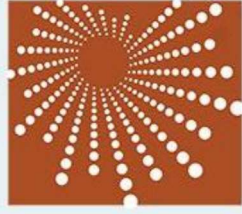


During the hearing, right before the hearing, Respondent is scheduled to give a statement, they drop off the statement at the meeting and are not responding to emails.

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

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