



INVESTIGATIONS AND REACHING A DETERMINATION

A Practical Approach to
Navigating Investigations and
How to Reach a Determination

North Central College

Pari Le Golchehreh

May 14, 2024

MEET YOUR FACILITATOR



Pari Le Golchehreh (she/her)

Pari Le Golchehreh is a distinguished professional with a wealth of expertise in Title IX and Title VII investigations. She is a certified mediator and has skillfully facilitated alternative resolutions and mediated conversations. Pari has become a trusted authority in the field, renowned for her unwavering commitment to fairness and dedication to helping other practitioners navigate investigations efficiently and effectively.

As a seasoned Title IX and Title VII investigator, Pari has navigated complex cases with precision and integrity, ensuring that all parties involved are heard and respected throughout the investigative process. She possesses a deep understanding of the regulatory frameworks and nuances surrounding discrimination and harassment issues in educational and workplace settings.

ABOUT US

Vision

We exist to create safe and equitable work and educational environments.

Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

AGENDA



Investigation Strategizing

Identifying the scope of the investigation and mapping an investigation plan



Preparing for Interviews and Drafting Summaries

To do or not to do; summary writing



Report Structure

How to present the evidence in the most effective and efficient manner



Disputed/Undisputed Facts

How to prepare and piece together the important factors to be assessed.



Investigation Hurdles

Prior bad acts, and Intoxication v. Incapacitation



Credibility/Reliability

Making assessments on credibility/reliability



Analysis structure

Drafting a sound analysis for a fair determination.



Sanctioning

Contributing factors

ICE BREAKER – ROSE, BUD, AND THORN



1. Name and Pronouns
2. Role at NCC
3. What you like most about this work
4. One thing you hope to learn today
5. One area you need support in



BONUS SUMMARY – 2024 REGULATIONS

1. Timing!
2. Framework
3. Reporting responsibilities
4. Relevant Evidence
5. Dismissal and Consolidation
6. “Reasonable Opportunity”
7. Hearing or no Hearing?

01

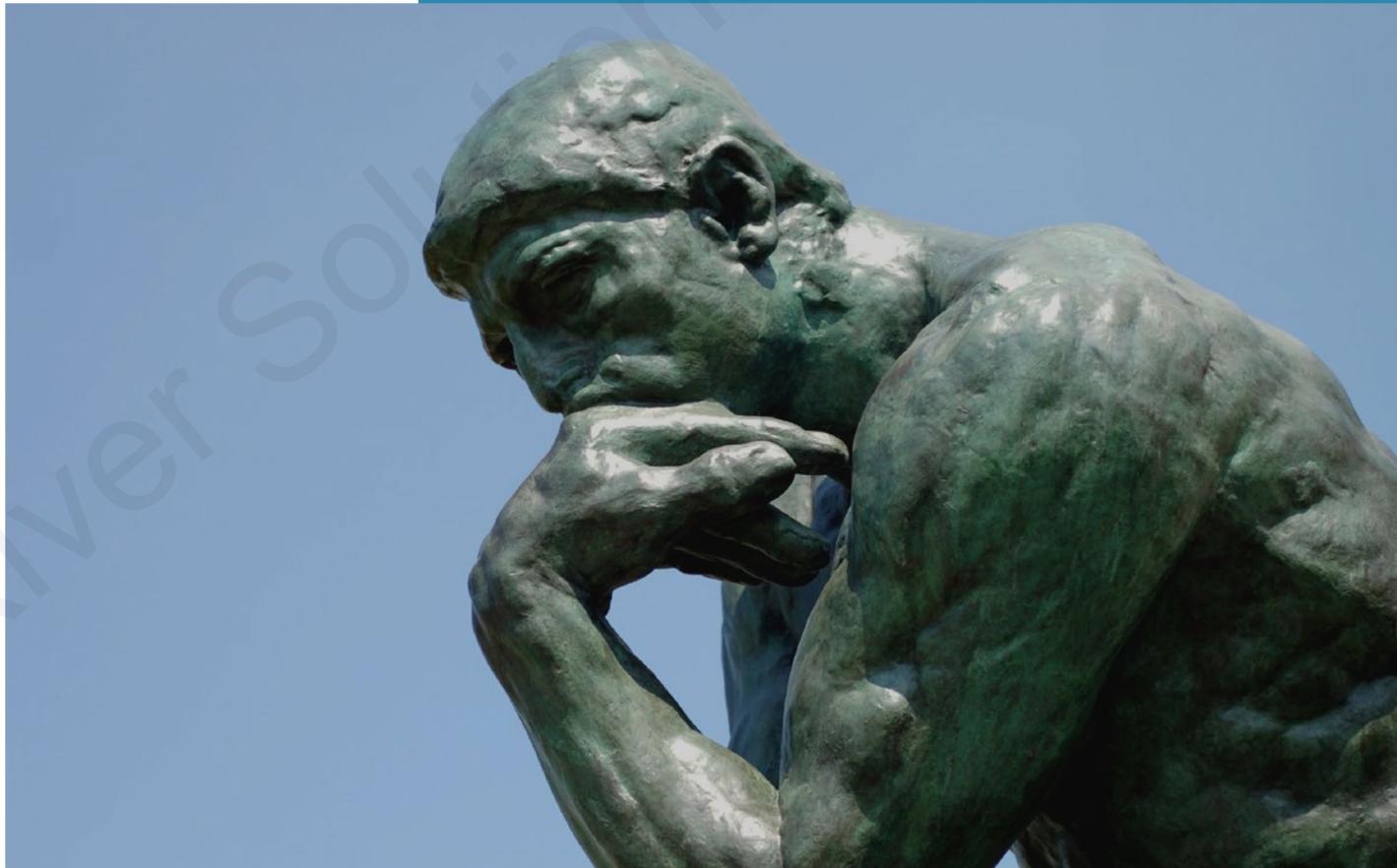
INVESTIGATION STRATEGIZING

Identifying the scope of the investigation and mapping an investigation plan



WHAT IS THE SCOPE OF THE INVESTIGATION?

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NOTICE OF ALLEGATIONS AND FORMAL INVESTIGATION

March 20, 2022

Riley Stave

SENT VIA EMAIL TO: Riley.stave@gru.edu

RE: Investigation into Violations of the University Sexual and Gender-Based Misconduct and Other Forms of Interpersonal Violence Policy (revised 2018) ("Sexual Misconduct Policy")

Dear Riley:

A student filed a written Formal Complaint in accordance with the University's Title IX office alleging that you engaged in conduct constituting a violation of the University's Sexual Misconduct Policy.

ALLEGATIONS

You are accused of committing violations of the Sexual Misconduct Policy, including engaging in stalking behavior and other prohibited acts.

An explanation of your rights and information relating to the University's policies and procedures can be found online at: www.GRU.edu/titleix

If you have any questions about this investigation, or University policies, or the content of this notice, please do not hesitate to contact me.

GROUP ACTIVITY: HYPOTHETICAL A

Is there anything
missing from the
notice?

WHAT TO DO WITH AN INSUFFICIENT NOTICE

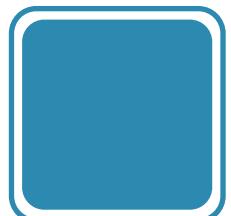
Consult the Title IX
Coordinator/designee
to clarify the following:



Who are the named parties?



What are each of the alleged
prohibited acts?



What policy provision and which
procedures are implicated?



What was alleged per the formal
complaint that justifies jurisdiction?

DEVELOPING AN INVESTIGATION PLAN

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STRUCTURING AN INVESTIGATION PLAN

Identify Parties

What is alleged to have happened?

What does the policy say?

Is there evidence to secure?

Who may be a witness?

How much time do I have?

BREAKOUT ROOM: HYPOTHETICAL B

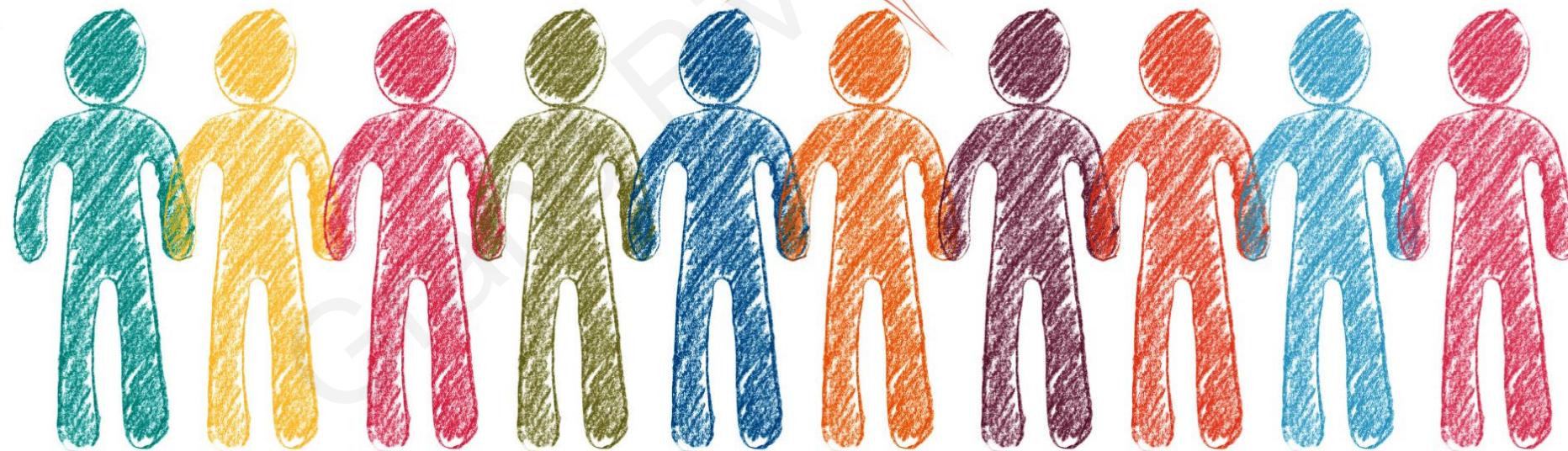
In your breakout rooms, review hypothetical B – Notice to Complainant.

Based on the Notice, develop an investigation plan addressing the key areas we just discussed:

1. Parties
2. Alleged incidents
3. Policy provision
4. Potential evidence
5. Potential witnesses
6. Investigation timeframe

REPORT OUT

Hypothetical B
Discussion



REPORT STRUCTURE

How to present the evidence in the most effective and efficient manner

ORGANIZATIONAL APPROACHES

Person
centered
approach



Organized relative to the full statements of
parties and witnesses

Event
centered
approach



Organized relative to specific events as they
transpired

PERSON-CENTERED APPROACH

A. Complainant's Account

1. *Parties' prior relationship*
2. *Events immediately before the alleged prohibited conduct*
3. *Events immediately following the alleged prohibited conduct*
4. *Anything following the alleged prohibited conduct*

B. Respondent's Account

1. *Parties' prior relationship*
2. *Events immediately before the alleged prohibited conduct*
3. *Events immediately following the alleged prohibited conduct*
4. *Anything following the alleged prohibited conduct*

C. Witness Account

1. *Parties' prior relationship*
2. *Events immediately before the alleged prohibited conduct*
3. *Events immediately following the alleged prohibited conduct*
4. *Anything following the alleged prohibited conduct*

Pro-tip

It's all in the prep

Take your investigation plan (road map) to guide the outline of your investigative report.

Create consistent headers to stay focused on the material evidence/issues, as well as to orient the reader, ensuring comprehension.

Consistency
leads to clarity

EVENT-CENTERED APPROACH

I. History between the Parties

- a) Complainant's Account
- b) Respondent's Account
- c) Witness A's Account

II. The Hours Leading up to the Reported Incident

- a) Complainant's Account
- b) Respondent's Account
- c) Witness B's Account
- d) Witness C's Account

III. The Reported Incident

- a) Complainant's Account
- b) Respondent's Account

IV. After the Reported Incident

- a) Complainant's Account
- b) Respondent's Account
- c) Witness A's Account
- d) Witness D's Account

Pro-tip

Step back and consider the allegations holistically

Put yourself in the reader's position. Are there complicated allegations that may be easier to track if separated by the incident, accounting for each participant's perspective?

Be intentional!

HYPOTHETICAL C

WHICH ORGANIZATIONAL APPROACH WOULD YOU USE?

Office Issues

Complainant reports Respondent, their direct report, makes comments about Complainant's management practices. Specifically, Complainant reports that Respondent often tells other employees that Complainant is "confused about her responsibilities like she is confused about her gender," and that Complainant has "poor management skills because she clearly can't manage her personal life." Complainant states they heard this from witness A, Witness B, Witness C, and Witness D.

Respondent denies making such comments about Complainant, stating that all the Witnesses (A, B, C, and D) are "Close to" Complainant and have "the same political views." Respondent provides four additional witnesses to the conversations she had regarding Complainant – Witness 1, Witness 2, and Witness 3.

Is She Following Me?

Complainant reports Respondent is often "lingering" around corners near him and that she texts him "incessantly" from various numbers. Complainant said Respondent asks his friends about him when she cannot find him. Complainant said he is concerned about asking his friends to be witnesses because they are afraid of Respondent.

Respondent said she has classes near Complainant so has a good reason to be in the area. Respondent denies texting Complainant, stating she does not have his number. Further, Respondent said she does not have any mutual friends with Complainant.

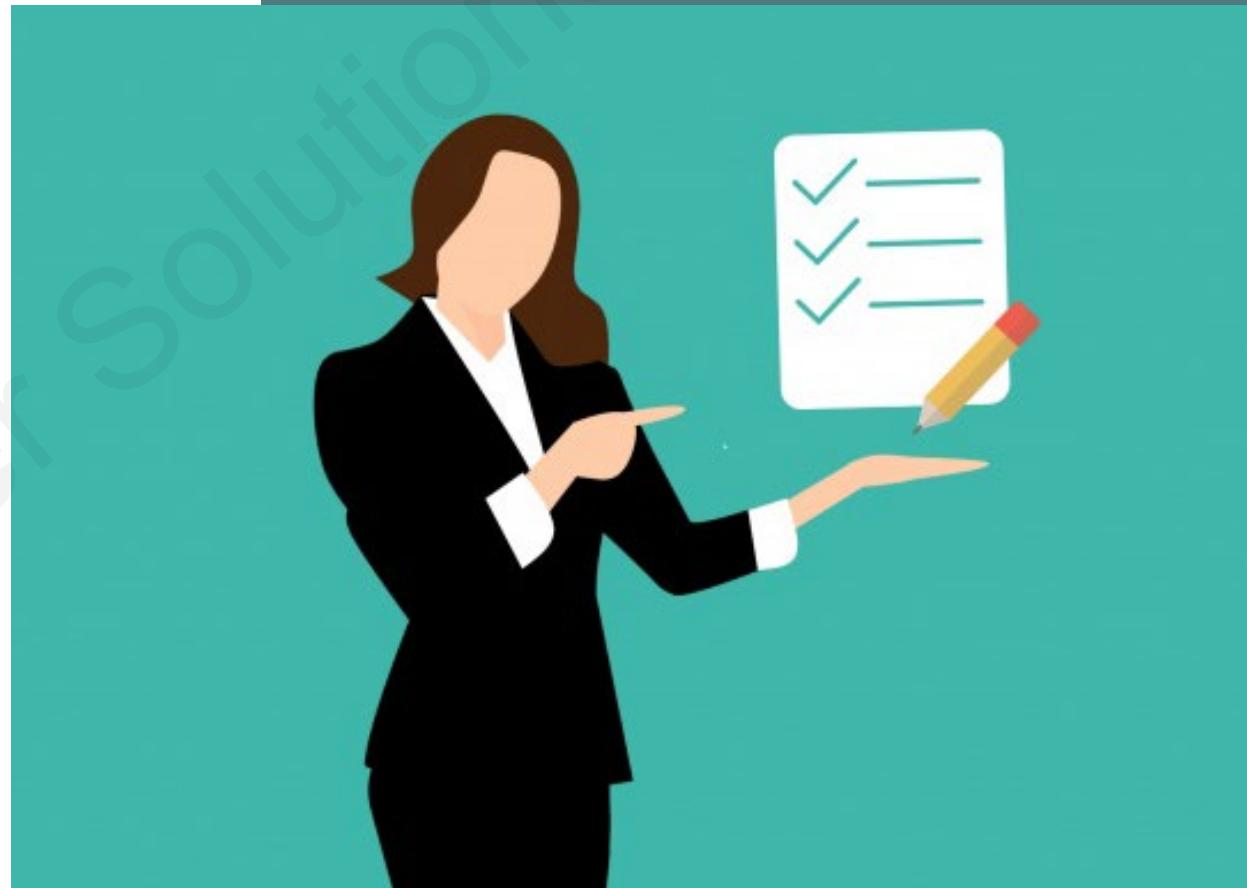
PREPARING FOR INTERVIEWS & DRAFTING SUMMARIES

How to plan for interviews &
To do or not to do: Summary writing



HOW TO PREPARE FOR INTERVIEWS

1. Understand the scope of the investigation
2. Have the policy definition of the prohibited conduct outlined
3. Review the evidence you have up to that point
4. Be intentional in drafting questions or areas for discussion, keeping in mind the limitations of an interviewee's actual knowledge



GROUP ACTIVITY: HYPOTHETICAL D

01

Prohibited
conduct

02

Policy
definition
and
elements

03

Alleged
incidents

GROUP ACTIVITY: HYPOTHETICAL D

02

(A) IPV

1. *Assault or battery*
2. *Social or intimate relationship*
3. *Determined by...*
 - i. Length,
 - ii. type,
 - iii. frequency

(B) Stalking

1. *Course of conduct*
2. *Directed at CP*
3. *Cause a reasonable person to:*
 1. Fear for safety, or
 2. Suffer substantial emotional distress

ORGANIZING THE INTERVIEW OUTLINE

IPV: (1) an assault or assault and battery, and (2) if there existed a social relationship of a romantic or intimate nature

Stalking: (1) course of conduct, (2) directed at specific person, (3) cause a reasonable person to:

(a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress.

03

Incident one: 2/15, blocked exit and pushed.

Incident two: 3/18, slapped mouth.

Incident three: 1/30 followed to residence.

Incident six: 2/15 followed to tracked location.

Incident four: 2/1 followed to residence.

Incident seven: 2/28 followed to tracked location.

Incident five: Tracking with Air Tag.

Incident eight: 3/2 followed to tracked location.



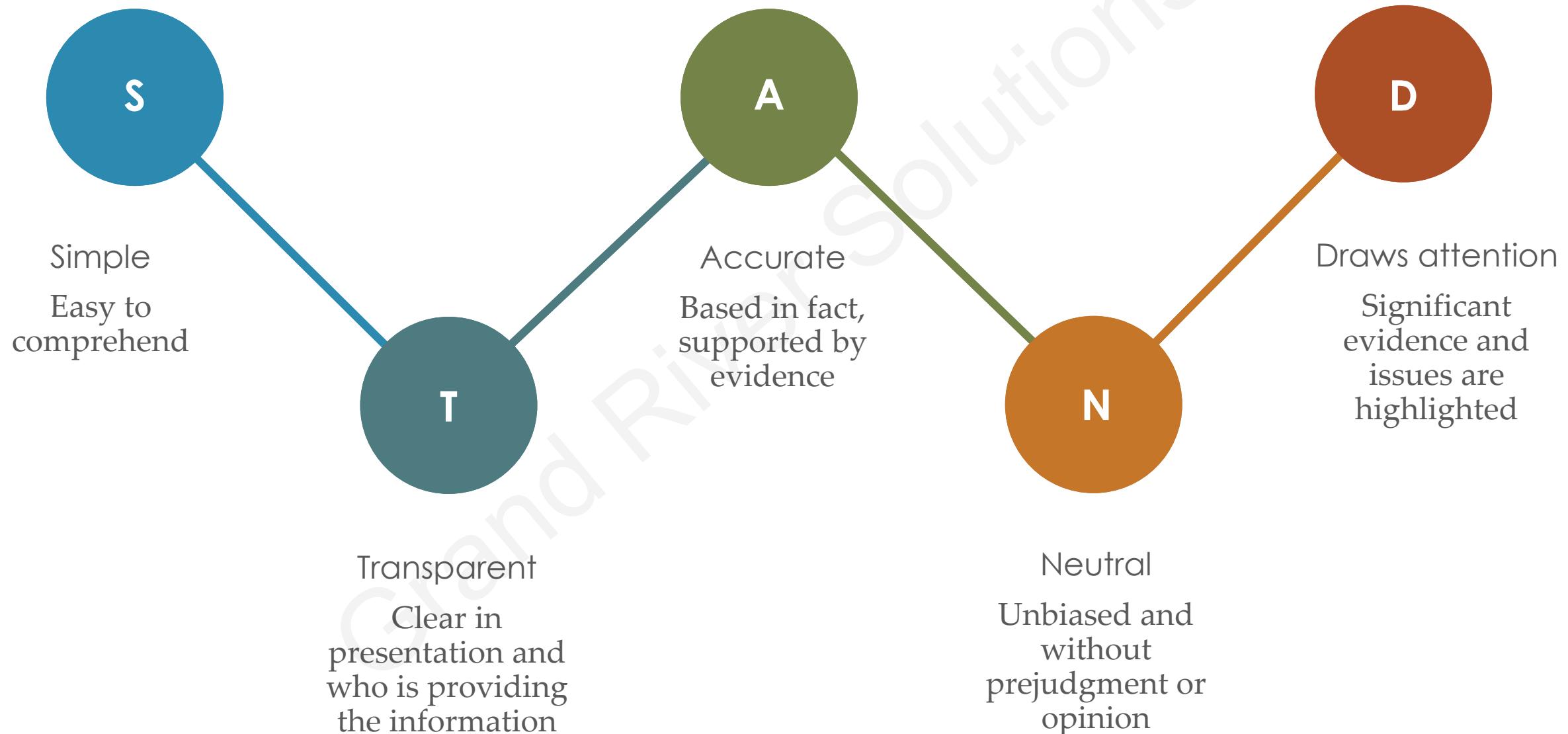
Casey's intake and interview audio



HYPOTHETICAL E

While listening to the audio, take notes of potential follow-up questions for Complainant and questions for Respondent using the outline we just developed.

DRAFTING INTERVIEW SUMMARIES



STAND - Simplicity

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

- Use plain language
- Be concise
- Avoid repetition
- Consider including a section on facts in dispute/not in dispute
- Avoid or define technical language/acronyms/slang

Complex Language

“Adjudicated”

“Preponderance of the Evidence”

“Respondent articulated”

“Prima Facie Assessment”

“The allegation was substantiated”

“Pursuant to the policy”

“Digital Penetration”

STAND - Transparent

- Chronological summary
- Define language
- Opinions
- Quantitative language
- Slang/acronyms
- Clear descriptions
- Consistent language

Question further when:

Testimony about contact with a person's vagina.

Testimony about penetration.

Testimony that clothing was removed.

Testimony that an event or an act had an impact on them

Opinions are offered.

STAND - Accurate

- Identity of participants (pronouns; title, etc.)
- Citing and referring to the policy language
- Allegations as set forth in the formal complaint
- Quotations and absent your editorials and opinions
- Citing to the investigation file

STAND – ACCURATE ACTIVITY

What is wrong with the following and how should you edit it?

Who's speaking?

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

Quotations:

Witness 3 was really out of it and drunk.

Conclusory words:

- The stalking started...
- The Respondent was angry.

STAND - Neutrality

Non-Neutral/Biased

“Claimed/Alleged”

“According to X”

“Story/Version of Events”

“Had Sex with/Engaged in”

“Changed their
Account/Story/Version of Events”

Non-Neutral/Biased

“Apparently/supposedly”

“Somehow”

“Witness A lied...”

“For some reason, Complainant can't
remember”

“Respondent refused to provide
[evidence]”

STAND - Draw attention

Reporting facts without interpretation does not mean only describing evidence in words. Draw attention to specific evidence through an intentional presentation of information in the report.

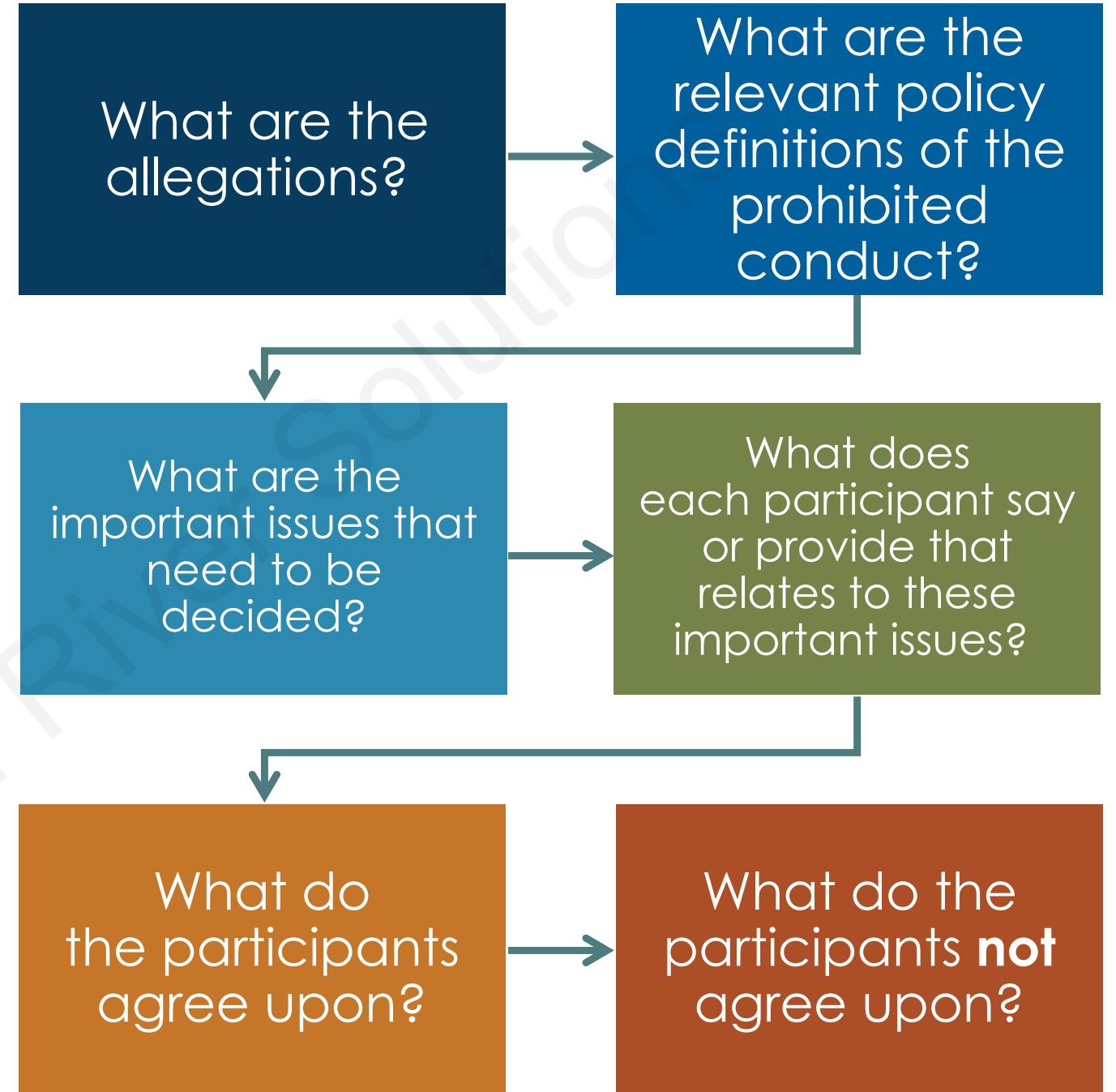
- Draw attention to Evidence that you believe should be afforded weight.
- Evidence related to assessments of credibility, reliability, and authenticity.
- Explanations that provide a clear understanding of certain items of evidence or the lack thereof.

If it feels important, emphasize it in your report!

DISPUTED/UNDISPUTED FACTS

How to prepare and piece together the important factors to be assessed

UNDISPUTED/ DISPUTED FACTS



HYPOTHETICAL F – UNDISPUTED/DISPUTED FACTS

INSTRUCTIONS: Review the statements in Hypothetical F. Determine the following:

- 1)What the allegations are per your policy,
- 2)What the policy definition is for the alleged prohibited conduct,
- 3)What the material/important issues are,
- 4)What does each participant say or provide that relates to the material/important issues,
- 5)What do the participants agree upon (undisputed),
- 6)What the participants do not agree upon (Disputed).

HYPOTHETICAL F - DISCUSSION

Allegations

1. Kissing (consensual?)
2. Digital penetration

Prohibited Conduct

- 3) Sexual Assault, defined as:
 - a. Any sexual act directed against a Complainant,
 - without their consent, or
 - instances in which the Complainant is incapable of giving consent.

What else is important to define?

MATERIAL ISSUES

Sexual activity

Was there sexual activity and what was it?

Absent consent

Did Complainant consent?

Incapacitation

Was Complainant able to give consent?

MATERIAL ISSUES: RELATED EVIDENCE

Sexual activity

- Complainant statement
- Respondent statement

Absent consent

- Complainant statement
- Respondent statement

Incapacitation

- Complainant statement
- Respondent statement
- Witness A statement

NCC - UNDISPUTED AND DISPUTED FACTS

BRAINSTORM ACTIVITY

HYPOTHETICAL F: Undisputed v. Disputed

INSTRUCTIONS: Review the statements below and determine the following:

- 1) What the allegations are per your policy,
- 2) What the policy definition is for the alleged prohibited conduct,
- 3) What the material/important issues are,
- 4) What does each participant say or provide that relates to the material/important issues,
- 5) What do the participants agree upon (undisputed),
- 6) What the participants do not agree upon (Disputed).

UNDISPUTED AND DISPUTED OVERVIEW

The key takeaway about the undisputed/disputed section of your report:

- Refer to the allegations and the relevant policy definition of the prohibited conduct.
- Focus on the relevant and material information as they relate to the allegations and prohibited conduct definition.
- Not every statement in the summary of evidence will be referred to in the undisputed/disputed section BUT every statement in the undisputed/disputed section, must have been referred to in the summary.

This is why it is important to stay organized throughout your investigation and actively work on the road map you created when you were initially assigned the case.

INVESTIGATION HURDLES

Bad actors/prior bad acts, and
intoxication v. incapacitation

PRIOR BAD ACTS/ BAD ACTORS

Regulations and the Preamble

- Regulatory language does not explicitly address the admissibility of prior bad acts
- Prior bad act evidence is mentioned in the preamble and is not prohibited.
- Institutions may adopt rules related to the weight or credibility of prior bad act evidence that must be applied equally to both parties.

IMPROPER V. PROPER



Prior bad acts are not relevant to prove a propensity.



Prior bad acts can be relevant to assessing credibility and reliability.

CONSIDERATIONS FOR INCLUSION



Do the prior bad acts demonstrate a pattern of behavior, causing a party to be more or less credible/reliable?



Could the evidence affect the decision maker's assessment of the reliability or credibility of a person?



Does the prior bad act refute a party's assertion that they lacked relevant knowledge?

INTOXICATION V. INCAPACITATION



ASSESSING INCAPACITATION

Did Complainant consume alcohol/drugs?

Did Complainant exhibit signs of incapacitation?

Did Respondent know of Complainant's incapacity?

Should Respondent have known of Complainant's incapacity?

SCENARIOS: INTOXICATION V. INCAPACITATION

Fact Pattern A: “But they seemed fine”

Complainant reported that they were blacked out on the night of the incident. Complainant estimated that they had approximately five “shots” of tequila before they “blacked out.” Several witnesses attested that Complainant did ingest an unknown amount of hard liquor but was able to hold conversations throughout the entire evening and was not slurring or stumbling. According to an online BAC Calculator, Complainant likely had a BAC of .21%.

SCENARIOS: INTOXICATION V. INCAPACITATION

Fact Pattern B: “How was I supposed to know?”

Respondent stated Complainant was already at the party when they arrived. Respondent said they do not know how much Complainant had to drink but did see Complainant holding a red solo cup, drinking an unknown liquid. Complainant stated they remembered Respondent trying to dance with them, but that Complainant tried to push Respondent away and stumbled to the ground, unable to stand up again. Complainant said Respondent assisted Complainant upstairs to a room. Complainant stated they tried to speak but were unable to put words together without feeling the need to vomit. Eyewitnesses recalled seeing Respondent carry Complainant upstairs.

CREDIBILITY AND RELIABILITY

What is it and how to make an assessment



CONSIDERATIONS ABOUT CREDIBILITY AND RELIABILITY

- Sufficiency of details and specificity
- Internal consistencies / consistency over time
- Consistency with evidence or testimony
- Corroboration
- Inherent plausibility
- Material omission
- Motive to falsify
- Past record
- Ability to recollect events

HYPOTHETICAL G: MATCHING GAME

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MATCHING GAME: SCENARIOS

ONE

Respondent provided screenshots of text communications exchanged with Complainant's roommate, Dale. Dale said they no longer have the text communications.

TWO

Witness Robbie said they were at the event hosted by their sorority. Witness Robbie said, "I saw [Complainant] at the beginning of the party when we were doing keg stands. [Complainant] was shit-faced."

MATCHING GAME: SCENARIOS CONTINUED

THREE

Witness Jay was offered by Complainant as an eyewitness to the events leading up to the reported incident. While interviewing the Respondent, you learn that Witness Jay and Respondent have been secretly dating.

FOUR

During Complainant's interview, they state that they have no recollection of how they got to their campus residence after the bar. Respondent and other witnesses submitted screenshots of communications with Complainant wherein Complainant said their Uber ride was successful and they are home safe.

ANALYSIS STRUCTURE

Drafting a sound analysis for a fair determination





ANALYSIS AND FINDING

EVIDENTIARY STANDARD

PREPONDERANCE OF THE EVIDENCE

Responsible -
"More likely than
not..."



There was sufficient, reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

Not responsible -
"Insufficient
evidence.."



There was insufficient reliable and credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

FINDINGS OF FACT

What is your finding?

A finding of fact is:

- 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)

Let's try it:

- Complainant reports that they and Respondent simultaneously ingested two shots of liquor just before the incident.
- Respondent denies ingesting any liquor on the night of the incident.
- Witness 1 produces a video from that night of the incident showing both Complainant and Respondent ingesting two shots of liquor at the same time together.

POLICY ANALYSIS

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



QUID PRO QUO:

- 1 An employee of the College,
- 2 Conditions the provision of an aid, benefit, or service of the College,
- 3 On an individual's participation in unwelcomed sexual conduct.

ANALYSIS GRID

ASSUME THESE ARE THE MATERIAL FACTS THAT ARE EITHER UNDISPUTED OR THAT YOU HAVE DETERMINED TO BE MORE LIKELY THAN NOT TRUE.

1 - Employee

Complainant (CP) is a current student.

Respondent (RS) is Complainant's faculty advisor for their senior thesis.

2 – Aid, Benefit, service

RS agreed to advise CP if they agreed to go to dinner and CP agreed.

Email evidence produced by both parties reveal that CP attempted to schedule meetings during RS's office hours, but RS would only agree to meet with CP in the evenings and off campus.

3 – For sexual conduct

CP provided text screenshots from RS asking inappropriate personal questions about CP and sharing personal info about themselves.

CP said one evening while reading a section of their thesis, RS stood closely behind CP and whispered in their ear, "God, you smell divine," and brushed their nose across CP's neck.

RS denied texting CP and whispering in CP's ear.

CP provided text screenshots from RS with a non-specific apology.

KEY ELEMENTS:

- Summarize the undisputed material issues.
- Summarize the findings of fact for the disputed issues.
- Analyze whether each of the elements of the prohibited conduct have or have not been established.
- Conclude with whether Respondent, by the preponderance of the evidence, violated the prohibited conduct policy.

DETERMINATION

GROUP ACTIVITY DRAFT THE DETERMINATION

1 - Employee



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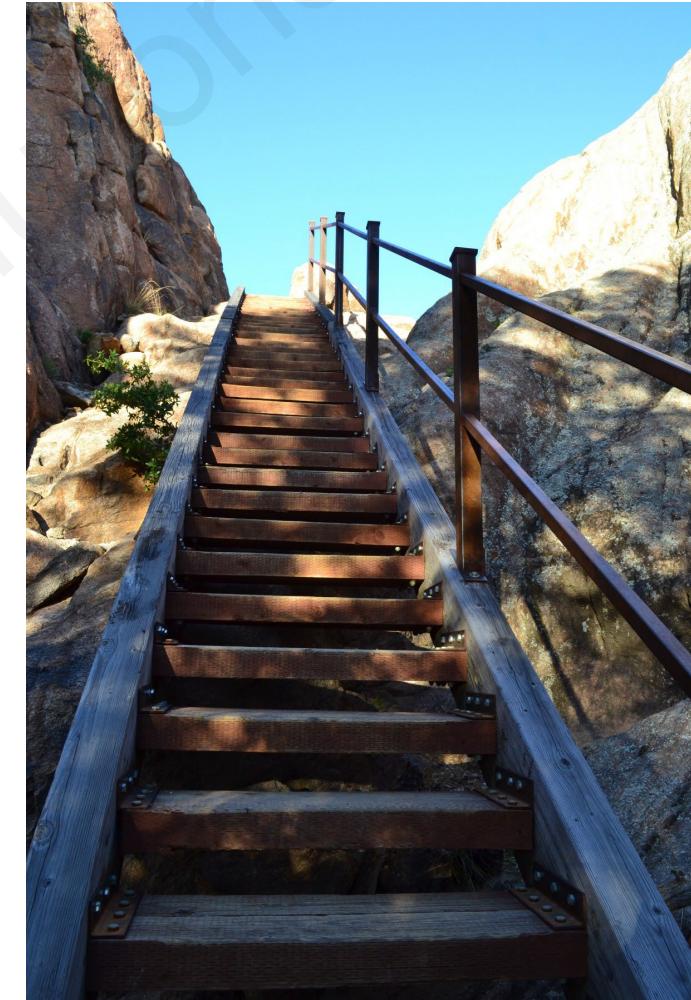
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SANCTIONING

Contributing factors

GOALS OF SANCTIONS/DISCIPLINE

1. End the harassment
2. Prevent its recurrence
3. Remedy the harm



DETERMINING THE PROPER SANCTION

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



AGGRAVATING CIRCUMSTANCES

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



PROCEDURAL REQUIREMENTS FOR THE FINAL REPORT

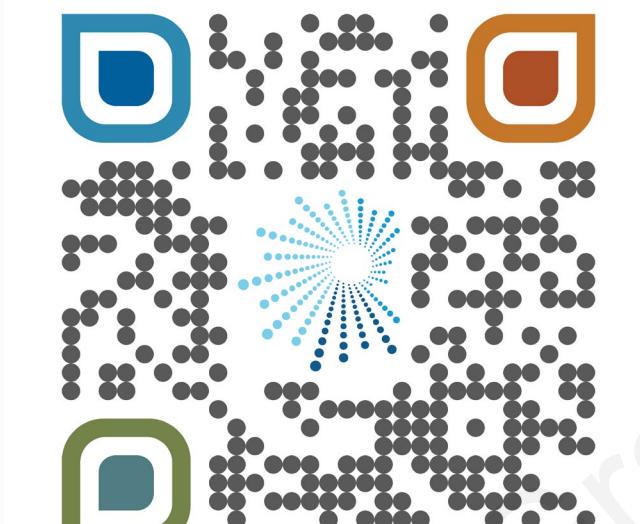
- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each policy determination
- Sanctions and remedies (with rationale)
- Procedure for appeal





QUESTIONS?

COMPLIMENTARY SUBSCRIPTION



**THE RIVER
CONNECT**

A place to
*communicate
share
educate
learn*

for HIGHER EDUCATION
PROFESSIONALS working in
Title IX, Equity & Clery

A photograph of a dark blue tablet lying flat on a light-colored surface. A white stylus pen is resting on the tablet. To the right of the tablet is a pair of brown-rimmed glasses. Further to the right is a clear glass of water next to a white cup with a brown saucer.

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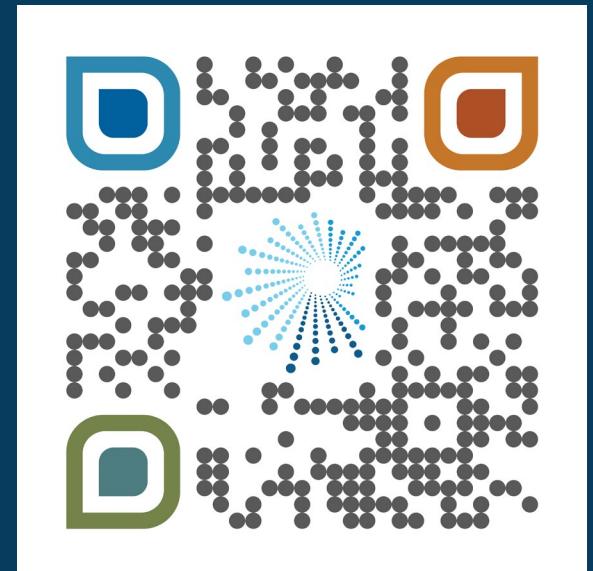
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