



INVESTIGATIONS AND HEARINGS

A Practical Approach to
Navigating Investigations and
Hearings

North Central College

Pari Le Golchehreh

May 13 & 14, 2025

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MEET YOUR FACILITATOR



Pari Le Golchehreh (she/her)

Pari Le Golchehreh is a distinguished professional with a wealth of expertise in Title VI, IX and Civil Rights 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 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

TRAINING AGENDA



Regulatory Requirements

Broad overview of the regulations



Investigation Planning

Mapping your path to a thorough, fair, and objective investigation



Interviewing Best Practices

Preparing and conducting effective interviews



Evidence Assessments

How to assess what is important



Structuring Your Report

Organizing the information in a comprehensive manner



Hearings and Advising

Roles and Responsibilities for Hearing Officers and Advisors



Determinations

Reaching a determination



Sanctions

Deciding on sanctions

ICE BREAKER – ROSE, BUD, AND THORN



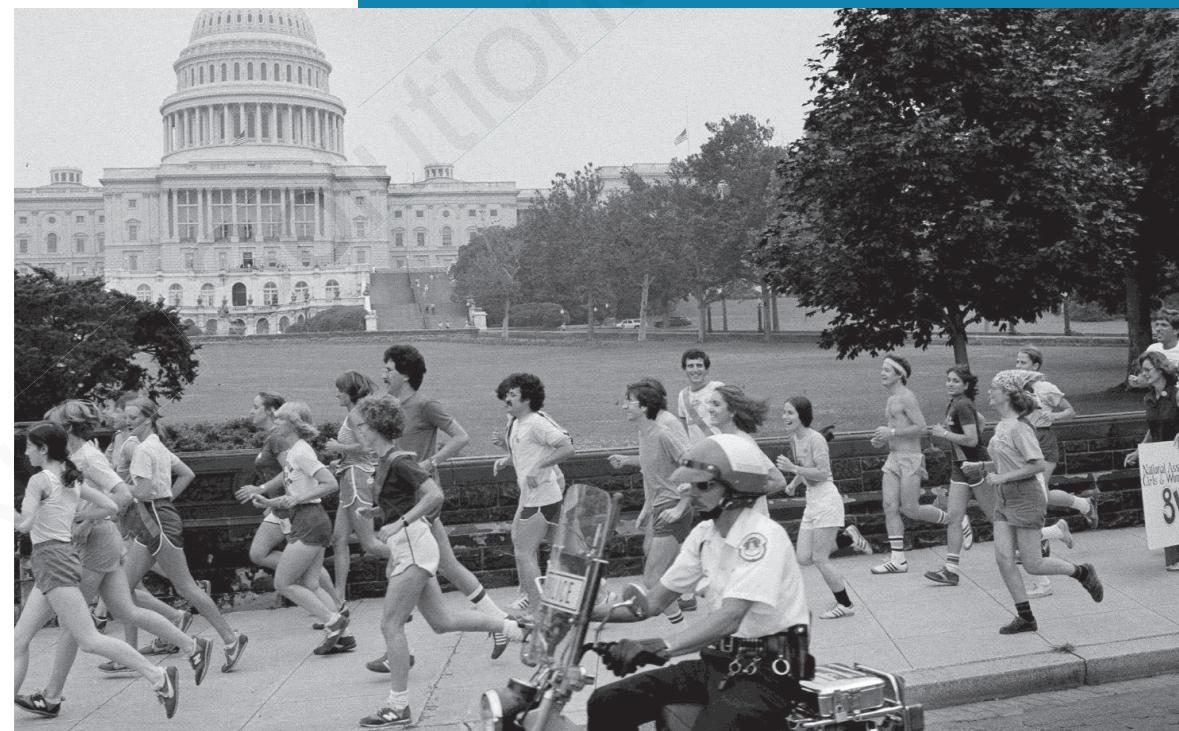
1. Name and Pronouns
2. Role at NCC
3. What you like most about this work
4. One thing you hope to learn today
5. One area you need support in

REGULATORY REQUIREMENTS

Title IX: Education Amendments Act, 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).



TITLE IX APPLICATION REGULATIONS

(2020/2025)

Type of Conduct

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

Ed Program or Activity

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

Required Identity

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

Apply 106.45 Procedures

Required Response:

Section 106.45 Procedures

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

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

Review of Directly Related and Relevant Evidence

Investigation Report

THE REQUIREMENT OF IMPARTIALITY



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WHAT CONSTITUTES BIAS?

Making a decision, determination, or finding that is based on something other than the evidence and specific facts of the case.



Stereotyping

Decision-making that is grounded in stereotypes



Differential treatment

On the basis of sex or other protected identity



Unsupported Decisions

A decision based on something other than the facts

CONFFLICT OF INTEREST



The burden is on the person arguing there is a conflict to present information of an actual conflict.

Is there a conflict or bias?

- An investigator who was a former sexual advocate
- The athletics director who has been assigned as the hearing officer for an incident involving a star athlete.
- An investigator who met with the Complainant for an intake meeting. Before a formal complaint was filed, the alleged Respondent, asked to meet with the investigator for guidance on initiating a mediated conversation.

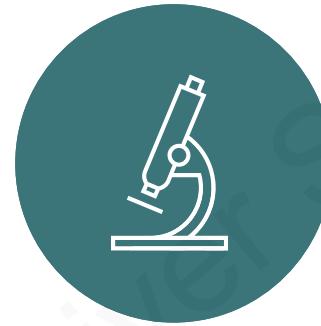
AVOIDING PREJUDGMENT OF THE FACTS

Requires that the Title IX professional refrain from making a judgement on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.

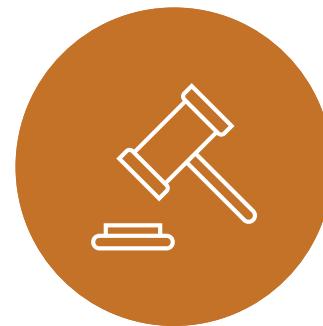
AN IMPARTIAL INVESTIGATION IS...



Not influenced by bias or conflict of interest.



Committed to decisions based on an objective view of the facts and evidence as you know them and as they evolve.



Truth seeking, not "your truth" confirming.

INVESTIGATION PLANNING

Mapping your path to a thorough,
fair, and objective investigation



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INVESTIGATION PLANNING

Scope

1

What do you
already know?

Timeline and Actions

2

What do you
need to track?

Investigation Components

3

What will you be
gathering?



STRUCTURING AN INVESTIGATION PLAN

Scope

- Identity and status of the parties
- Alleged incident(s)
- Prohibited conduct definition

Where do you look?

Timeline and Actions

- Investigation timeframe and incident timeline
- Evidence collection
- Communications

Why should we track this?

Investigation Components

- Witnesses
- Statements/ transcripts
- Documentary evidence

What is important to note?

SCOPE:

IDENTIFYING THE CLAIMS AND WHAT NEEDS TO BE PROVEN

- What will the decision maker be asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

STALKING

Engaging in a course of conduct on the basis of sex, directed at the Complainant that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Elements of the prohibited conduct:

- a. Engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
 1. *would cause a reasonable person to fear for the person's safety, or*
 2. *the safety of others; or*
 3. *Suffer substantial emotional distress.*

ACTIVITY ONE: CREATE A PLAN

STEP ONE:

1. Work with your group to create an investigation plan that will allow you to map and conduct your investigation.

Each group will present what they created and share their thought process.

STEP TWO:

1. Each group will be assigned a Notice.
2. Using the investigation plan you created, review the Notice and populate the plan with the following information:
 - a) Scope
 - b) Investigation timeframe and incident timeline
 - c) Potential evidence and/or witnesses you may want to gather or interview

SAMPLE PLAN

There are different ways you can organize the investigation plan.

- Cheat sheet
- Report outline
- Spreadsheets

Any other ways?

COMPLAINANT	
RESPONDENT	

INCIDENT NOTES (General information per the formal complaint)	

NOTICE LANGUAGE (Copy paste from notices)	

INVESTIGATOR'S CHECKLIST

REVIEW NOTICE AND FORMAL COMPLAINT	
REVIEW POLICY	
CREATE REPORT OUTLINE	
PREPARE FOR CP INTERVIEW/DEVELOP INTERVIEW OUTLINE	
INTERVIEW COMPLAINANT	
ORGANIZE EVIDENCE FROM COMPLAINANT	
PREPARE FOR RI INTERVIEW/DEVELOP INTERVIEW OUTLINE	
INTERVIEW RESPONDENT	
ORGANIZE EVIDENCE FROM RESPONDENT	
PREPARE FOR WITNESS INTERVIEW/DEVELOP INTERVIEW OUTLINE	
INTERVIEW WITNESSES	
ORGANIZE EVIDENCE FROM WITNESSES	
COMPILE ALL EVIDENCE FOR REVIEW	
CONDUCT EVIDENCE REVIEW	
INCORPORATE PARTY RESPONSES	
DRAFT PRELIMINARY INVESTIGATIVE REPORT	
SUBMIT DRAFT TO TIXC FOR REVIEW	
INCORPORATE REVISIONS/SUGGESTIONS	
SUBMIT FINAL DRAFT TO TIXC FOR REVIEW	
INCORPORATE COMMENTS/SUGGESTIONS	
FINALIZE REPORT – PROVIDE TO PARTIES AHEAD OF HEARING	

INVESTIGATION TIMELINE

INTAKE DATE	
FORMAL COMPLAINT DATE	
NOTICE DATE	
INVESTIGATION DEADLINE	

ELEMENTS OF PROHIBITED CONDUCT

Witnesses and/or evidence that speak to each element

ELEMENT 1	
ELEMENT 2	
ELEMENT 3	

INCIDENT TIMELINE

Who can speak to each time period, potential evidence, etc.

PRE-INCIDENT	
INCIDENT	
POST INCIDENT	

WITNESS LIST

Name & Contact	Provided by	Connected how / Relevant because?	Interviewed

EVIDENCE LISTS

Investigator's wish list:

Evidence name	Type	Relevant / connected because?	Provided by	Request dates

Evidence Gathered

Document name	Type	Relevant / connected because?	Provided by

CASE LOG

(Log all investigative communications and activity here)

DATE AND TIME	ACTIVITY

INTERVIEWING BEST PRACTICES

Preparing and conducting
effective interviews

WHAT DO YOU CALL AN
ALLIGATOR IN A VEST?



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PRIOR TO THE INTERVIEW

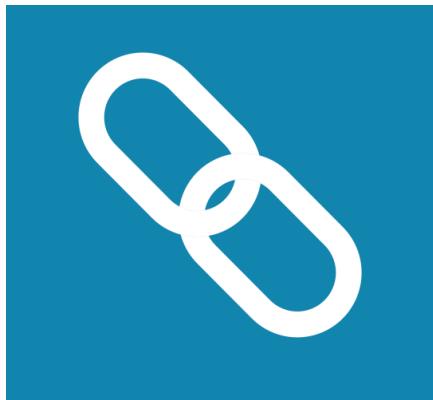
- | Secure an appropriate meeting location
- | Allow for enough time to conclude the meeting
- | If interviewing a party, inform them of their right to have an advisor present
- | Prepare for the meeting
- | Provide written notice of the meeting

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



INTERVIEW OBJECTIVES



Listen

Allow interviewee to share their experience



Evidence Preservation

Text messages
Photographs
Names and contact info for witnesses

Connect

Build rapport
Build trust
Empower



Clarify

Understand what you have heard
Seek additional information



INTERVIEW OBJECTIVE ONE: CONNECT

HOW TO BUILD

01 RAPPORT

- Empathy
- Fairness
- Objectivity
- Impartiality

02 TRUST

- Preparedness
- Clear introduction
- Transparency
- Expertise

03 EMPOWER

- Clear expectations
- Duration
- Patience
- Space
- Permission to seek clarification/ask questions

INTERVIEW OBJECTIVE ONE: CONNECT

Preparedness

Review materials

- Notice
- Complaint
- Available evidence
- Note evidence you may want

Outlining with intention

- Focused on scope
- Open-ended
- Absent blame, doubt, or leads

Going into interviews unprepared could result in extraneous information or missing key elements to the claims.

DISCUSSION: CONNECT

Building Rapport, Trust, and
Empowerment

Setting Clear Expectations

1. What they can expect of you as the investigator
2. What the investigative process entails, and
3. What do you expect of them?

What would you want to communicate to interviewees when the interview begins?

EXPECTATIONS

What you expect of them:

- Honesty
- Permission to ask questions or clarifications
- Authentic responses
- No retaliatory conduct

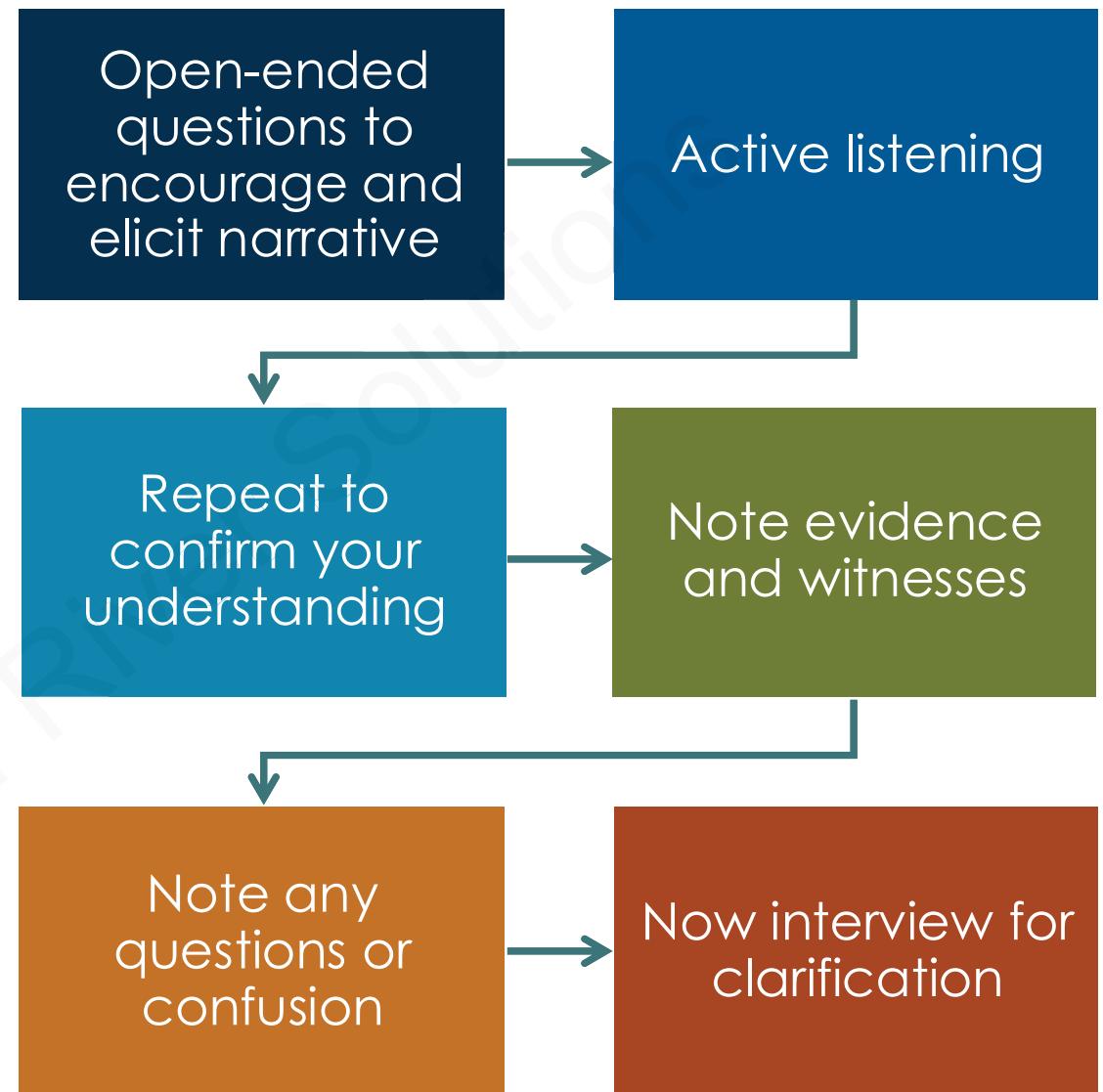
What they should expect of you:

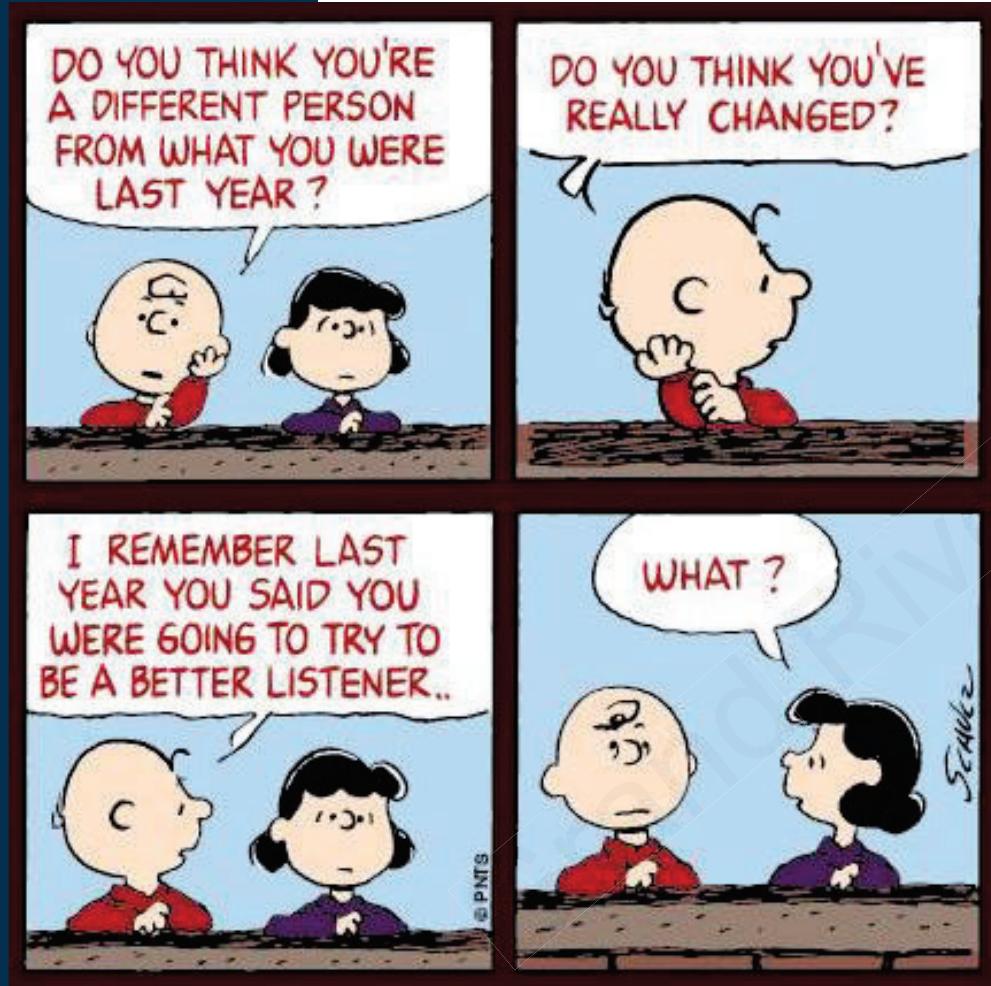
- Neutrality
- Active listening
- Privacy
- Interview memorialization method
- Sensitive nature of content
- Patience, respect, and appreciation
- Line of communication

Is there anything you would add?

INTERVIEW OBJECTIVE TWO: LISTEN

Interviews should elicit/encourage a narrative.





LISTEN

To listen is to...

Be impartial

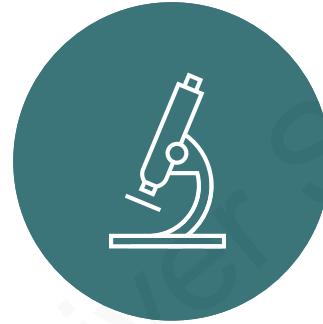
Not prejudge

Use trauma-informed practices

AN IMPARTIAL INVESTIGATION IS...



Not influenced by bias or conflict of interest



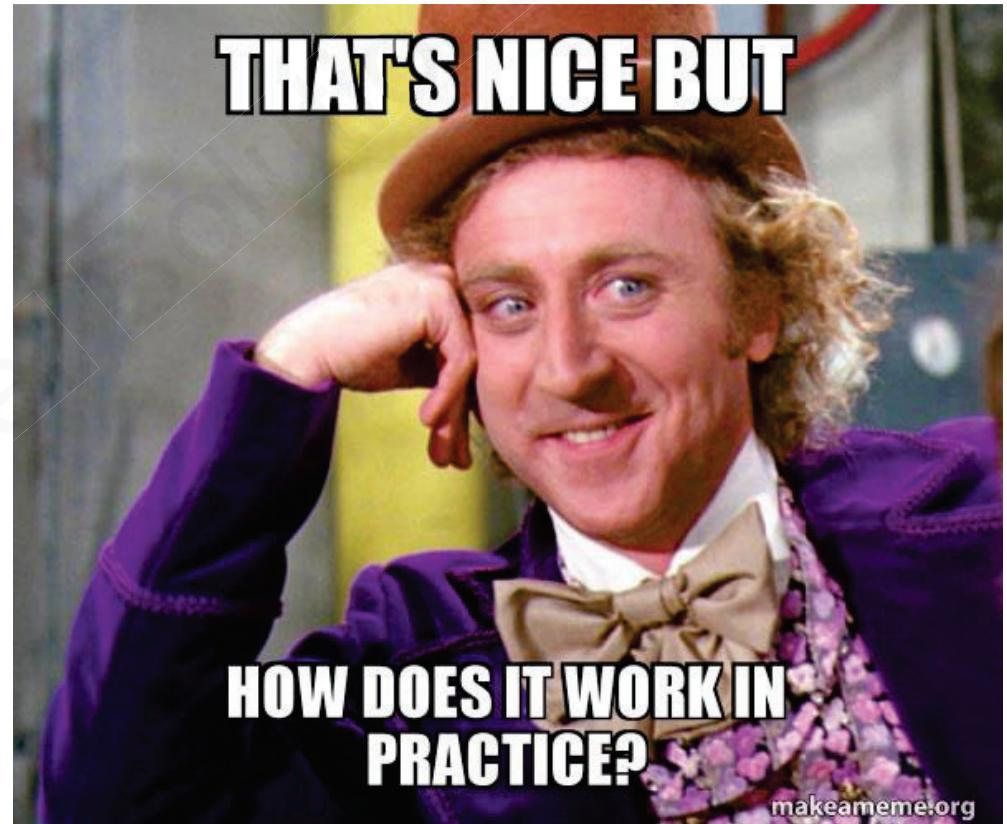
Committed to an objective view of the facts and evidence



Truth seeking

AVOIDING PREJUDGMENT OF THE FACTS

Requires that practitioners refrain from passing judgment on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.



TRAUMA INFORMED PRACTICES ARE DESIGNED TO:

Encourage thorough
and complete
investigations

Assist with
Recollection and
recounting

Reduce Bias

Reduce potential for
false information

Minimize unnecessary
re-traumatization

Anything else?

MISAPPLICATION OF TRAUMA INFORMED PRACTICES

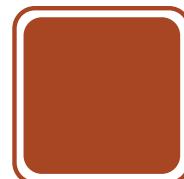
It is a misapplication of trauma informed principles to allow potential evidence of trauma to:



1. Influence the interpretation of a specific item of evidence;



2. Substitute for missing evidence;



3. To serve as a justification for not doing a full and thorough investigation;



4. Cause a biased belief in the veracity of one or more party.

INTERVIEW OBJECTIVE THREE: CLARIFICATION

Gathering information
that can support
credibility and
reliability assessments.

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency (internal and external)

Background, experience, and training

Coaching or bias

CLARIFICATION: QUESTIONS

Ask questions that:

- Come from a place of curiosity
- Seek understanding
- Elicit deeper details
- Address information not mentioned during the narrative

"Can you tell me more about..."

"Help me understand..."

"Is there anything else you are able to share about..."

"You mentioned you were at the office, then at the local bar. Can you share how you got to the bar?"

Avoid questions that:

- Interrogate
- Blame
- Imply doubt or disbelief
- Lead

"You knew the Respondent has an anger issue, didn't you?"

"Why did you wear such a revealing dress?"

"If you don't have any documentary evidence, how am I supposed to believe you?"

"You were yelling at them, right?"

CLARIFICATION: THE “HARD” QUESTIONS

Details about the sexual conduct/contact

Seemingly inconsistent behaviors

Inconsistent evidence

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

HOW TO ASK THE HARD QUESTIONS

- **Lay a foundation for the questions**
 - Explain why you are asking it
 - Share the evidence that you are asking about, or that you are seeking a response to
- **Be deliberate and mindful in your questions**
 - “Can you tell me what you were thinking when...”
 - “Help me understand what you were feeling when...”
 - “Are you able to tell me more about...”

WHICH QUESTION IS BETTER?

Sexual contact

In the formal complaint, CP describes having been inappropriately touched:

- Did RS touch your privates?
- Are you able to tell me where RS touched you?
- Can you demonstrate where you were touched?

Inconsistent behavior

RS has stated that CP and RS continued to text after the incident:

- Why did you remain friends with RS?
- Can you help me understand why you continued contact with RS?
- Were you comfortable staying in touch with the RS?

Inconsistent evidence

Parties provided copies of the same text exchange and RS alleged CP altered their version:

- Why does your version of the text message look fake?
- Did you alter the text messages?
- Can you review these text messages I obtained from RS?

Let's try more



WHICH QUESTION IS BETTER?

Attire

Complainant alleges that Respondent touched the skin of Complainant's inner thigh:

Consumption

Complainant described in the formal complaint having been highly intoxicated:

Lack of memory

Complainant describes in the formal complaint having "blacked out" for a large part of the relevant timeframe:

- Were you wearing business attire?
- To help me understand how RS touched your inner thigh, can you describe your clothing?
- What were you wearing the day of the incident?

- Are you able to recall how many drinks you had?
- How many shots did you drink in total?
- Can you help me understand why you drank so much?

- What was your last memory before blacking out?
- Why do you not remember parts of the night?
- Are you sure "blacked out" is the correct term?



INTERVIEW OBJECTIVE FOUR: EVIDENCE PRESERVATION

Identify the evidence that you would like to obtain or that was mentioned during the interview.

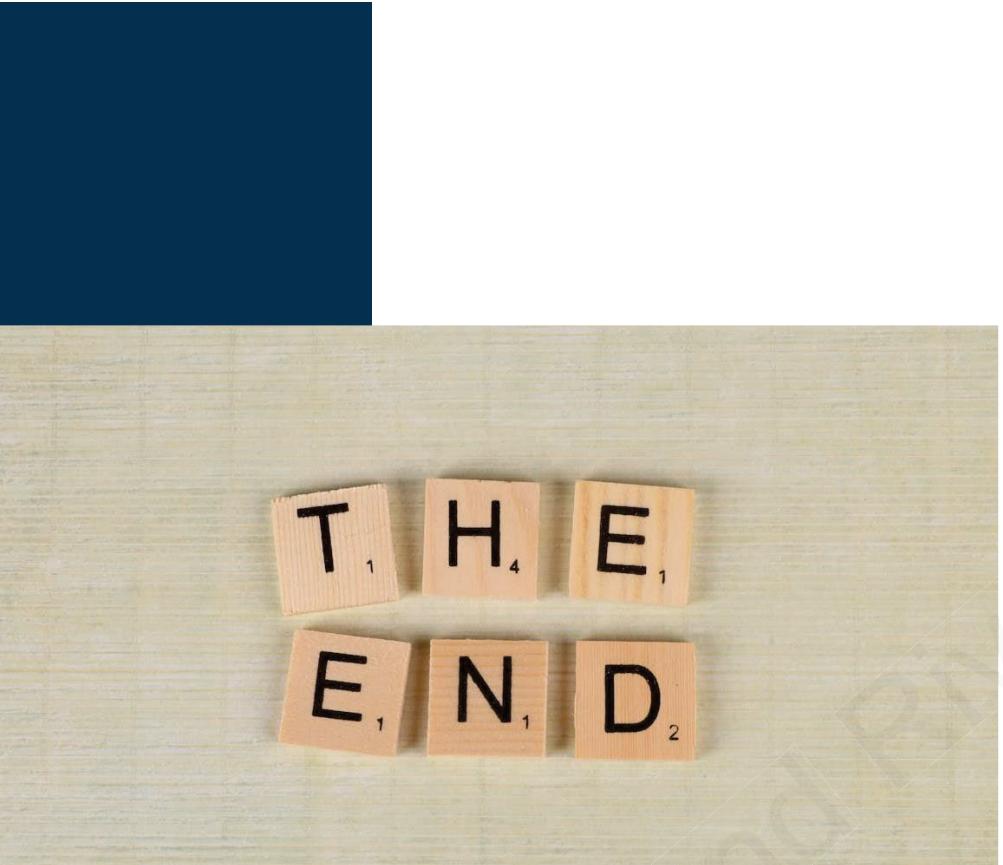
Develop an intentional strategy for obtaining the evidence.

Consider potential barriers to evidence collection and ways to overcome them.

Cognizant of limitations in collecting certain types of evidence.

When deciding what evidence to request of the interviewees, take these steps with intentionality:





CONCLUDING INTERVIEWS

The end...or is it?

Debrief: Evidence to submit and witnesses discussed

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

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

AFTER THE INTERVIEW: ACTIONS

Memorialize the interview in writing:

Interview Notes/
Summarize transcript

Provide opportunity for the party or witness to review it.

Provide opportunity for a response.

Incorporate the response.

ACTIVITY 2(A): NOTICE OF ALLEGATIONS

Dear Ethan:

The Title IX Office has received your formal complaint alleging that Sabrina Steven violated institutional policy by subjecting you to Online Harassment and Misconduct: Sexual Harassment, Stalking, and Sexual Exploitation.

According to the formal complaint, the Respondent is alleged to have engaged in the following conduct:

Between approximately June 10, 2024, and July 12, 2024, Respondent monitored Complainant's social media and took unauthorized photographs of Complainant and Complainant's apartment. On or about July 12, 2024, Respondent created a "nudified" image of Complainant (an image of Complainant's head upon a different person's nude body) without Complainant's consent. On or about July 12, 2024, Respondent shared the purported nude image of Complainant with other students without his permission.

This letter serves as formal notice that the College will be conducting a prompt, thorough, and impartial investigation of these allegations pursuant to the procedures detailed in the Title IX and Sexual Misconduct Policy ("Policy") found [here](#). A copy of this notice has also been provided to the Complainant. The College's grievance process is compliant with applicable federal and state law, including the 2020 Title IX implementing regulations.

Specifically, you are alleged to have violated the following provision of the Policy:

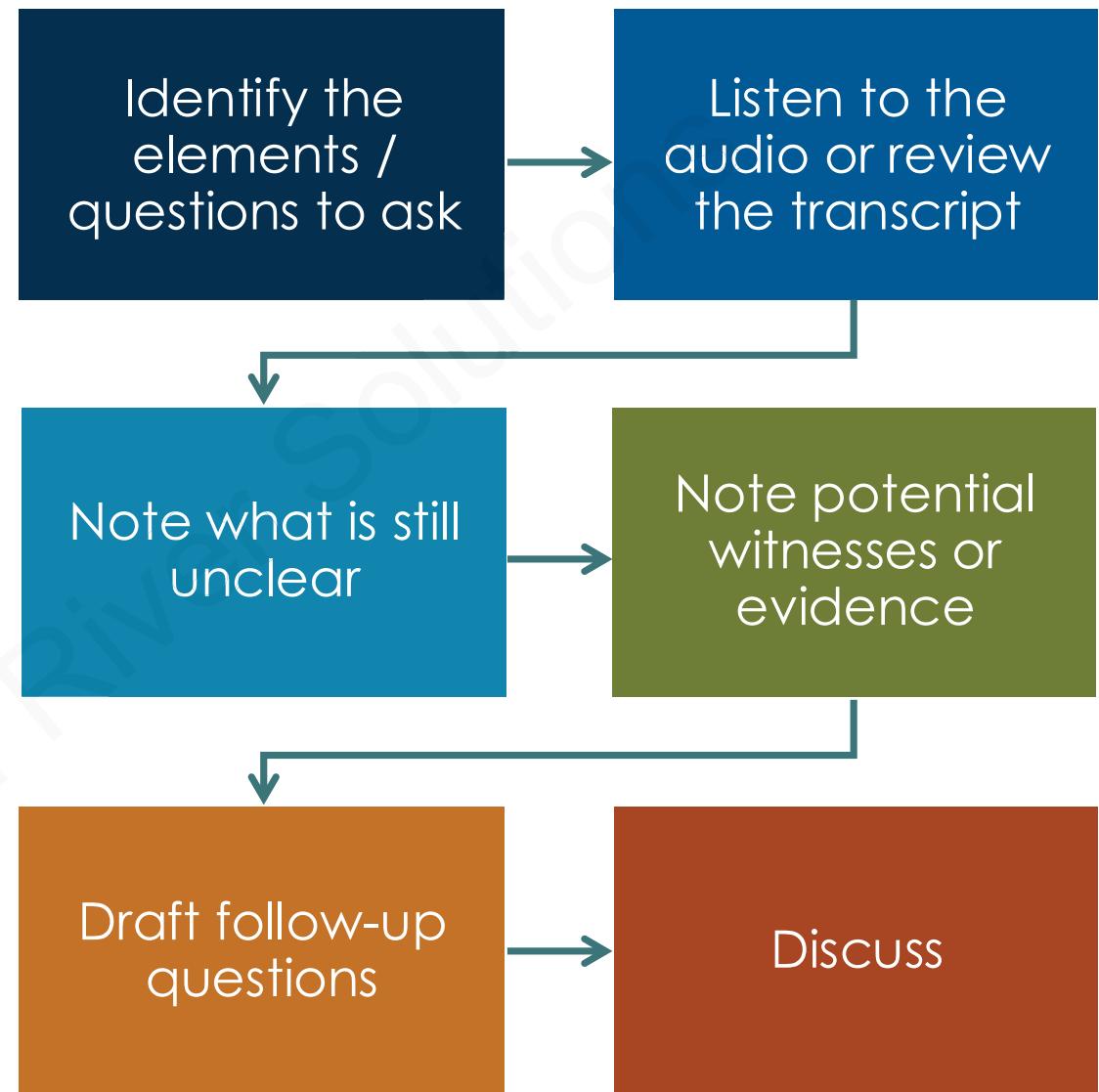
1. Title IX Sexual Harassment: Sexual Harassment
2. Title IX Sexual Harassment: Stalking
3. Title IX Sexual Harassment: Sexual Exploitation

ACTIVITY 2: FOLLOW UP QUESTIONS

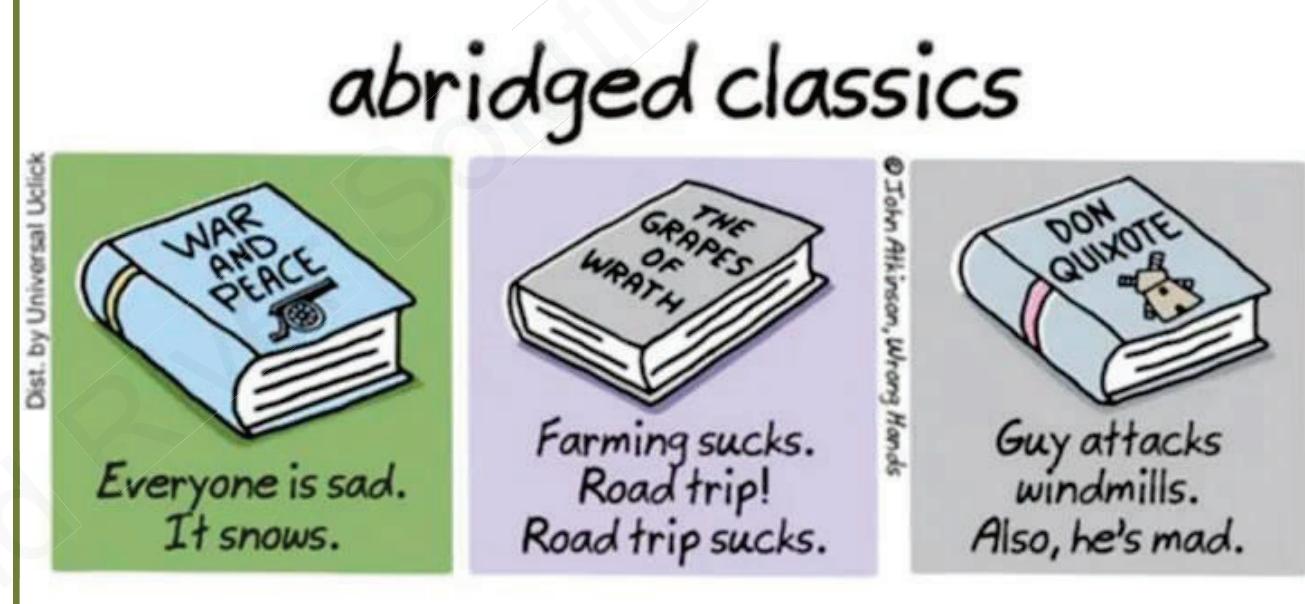
Review the assigned interview.

Draft follow-up questions.

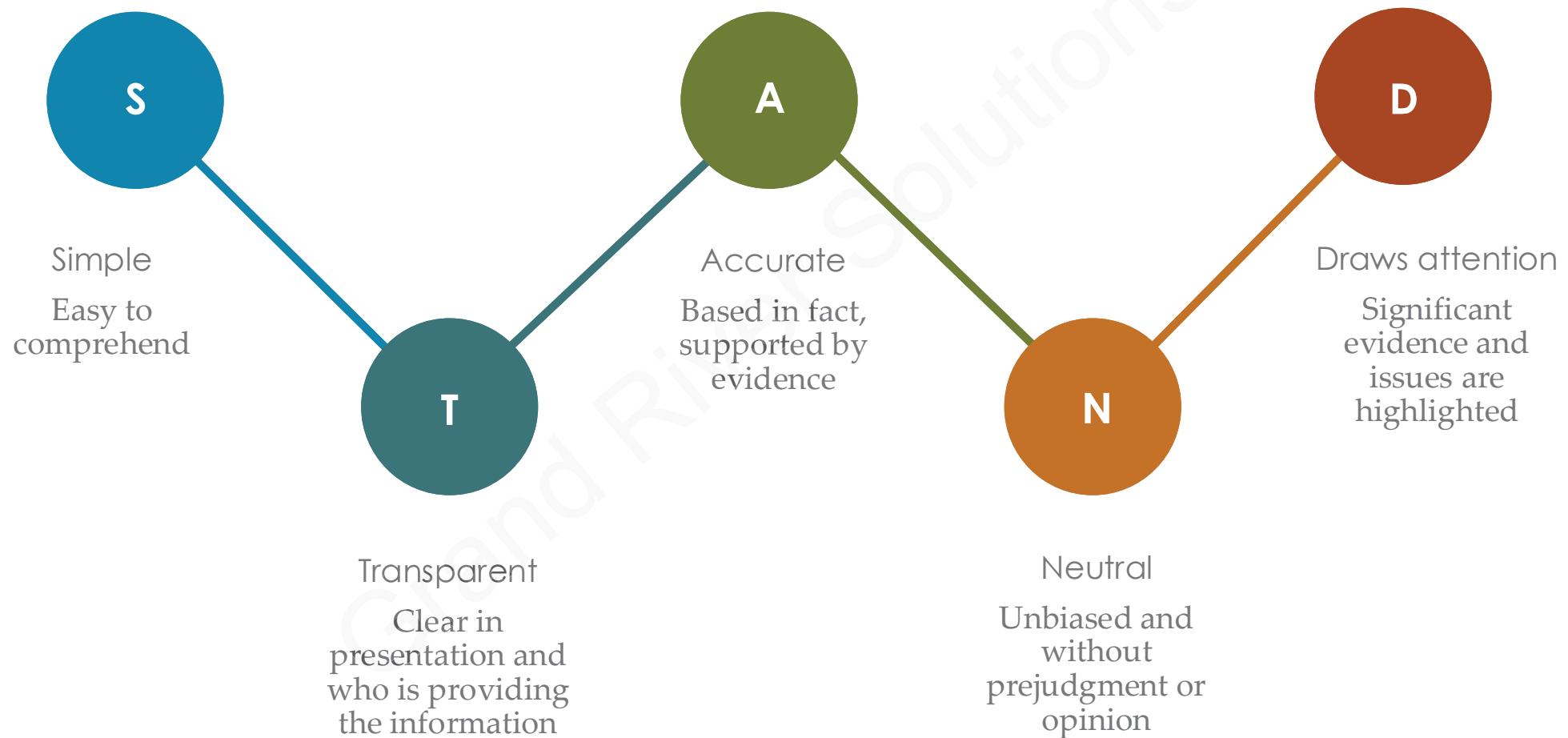
Remember to note witnesses, potential evidence, and the relevancy.



DRAFTING SUMMARIES



DRAFTING INTERVIEW SUMMARIES



CHOOSING SIMPLE LANGUAGE

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

Complex Language

“Adjudicated” -->
“Preponderance of the Evidence -->
“Respondent articulated” -->
“Prima Facie Assessment” -->
“The allegation was substantiated” -->
“Pursuant to the policy” -->
“Digital Penetration” -->

MAKE IT SIMPLE

Commit to using plain language:

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

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



TRANSPARENT AND CLEAR

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

ACCURACY IS ESSENTIAL

1

Respondent left the classroom, went to the public bathroom down the hall, and vandalized the stall.

2

Witness 3 told Complainant that Respondent was raging.

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

3

Complainant was so drunk because she was pre-gaming.

4

Respondent started harassing Complainant.

COMMIT TO USING NEUTRAL LANGUAGE

Non-Neutral/Biased

“Claimed/Alleged”

“According to X”

“Story/Version of Events”

“Had Sex with/Engaged in”

“Changed their Account/Story/Version of Events”

NEUTRALITY EXERCISE

What's wrong with this?

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

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.

- 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!

Excerpt from the transcript of Complainant's initial interview:

Complainant: "The next day he tried to talk to me. He sent me a bunch of text messages asking to see me. He said he was 'sorry' for hitting me and for raping me. I basically told him I didn't want to hear it and I called him an asshole. We've not communicated since.

Screenshot of text communication provided by Complainant:



HOW TO INCLUDE IMPORTANT DETAILS

OPTION A

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

Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. Screenshots of this exchange were provided by Complainant and are included in Appendix B. See, Appendix A, p.34 and Appendix B, p. 67.

OPTION B

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

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

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

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

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

OPTION C

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

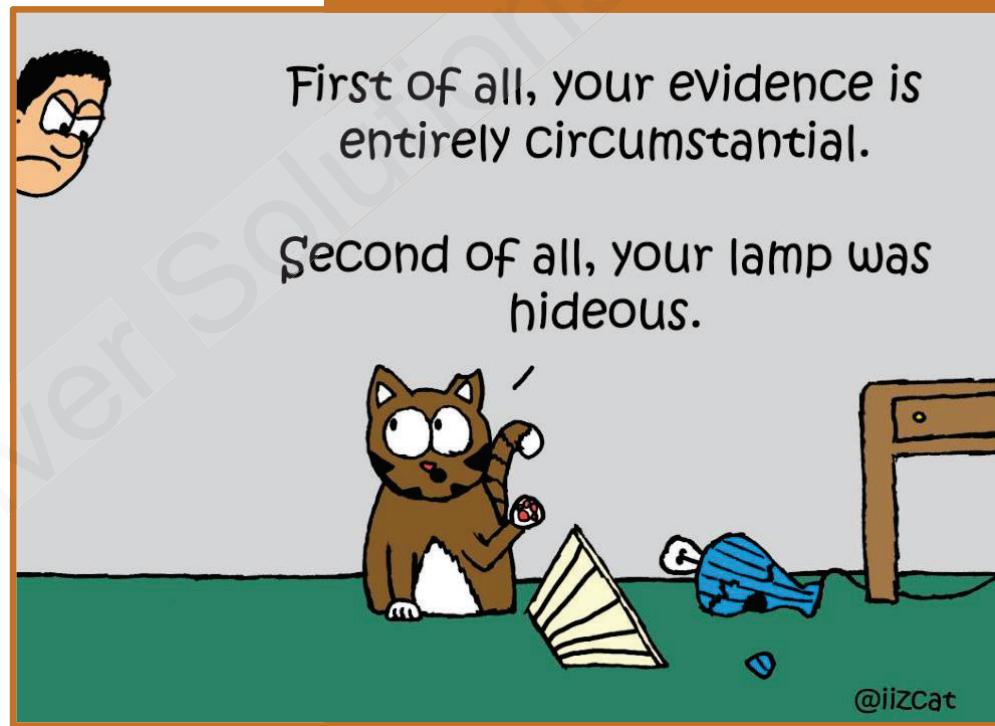
Complainant stated that in this exchange, Respondent told her that he was "sorry for hitting her and for raping her." See Appendix A, p.34. Complainant provided the following screen shots of this exchange:

Appendix, p. 67.



EVIDENCE ASSESSMENTS

How to assess what is important



First of all, your evidence is entirely circumstantial.

Second of all, your lamp was hideous.

@iizcat

EVALUATING THE EVIDENCE

A thorough investigation is more than evidence collection

01

Is it relevant?

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

03

Is it credible/reliable?

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

02

Is it authentic?

Is the item what it purports to be?

04

What weight, if any, should it be given?

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

RELEVANCY

Relevant

"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 school does not intend to rely on in reaching a determination regarding responsibility

Not Relevant

- Complainant sexual history
- Legally recognized unwaived privilege

POP QUIZ: IS IT RELEVANT OR DIRECTLY RELATED?



RELEVANT

- Polygraph regarding incident
- Statement from religious leader of party's good character
- Text communication between friends of party about what they heard
- Witness statement, "[Party] is a liar."



DIRECTLY RELATED

EVIDENCE THAT IS "NOT RELEVANT"

Sexual History

Complainant's sexual predisposition or sexual history, with two exceptions:

- Offered to prove someone other than Respondent committed act, or
- Offered to prove consent.

Privileged

Legally recognized un-waived privilege.

**Written release required for parties holding said privilege provides the privileged information.

Note

- Not included in the final compilation of evidence
- Not to be mentioned in the summary investigation report
- Not relied upon for the analysis
- Should be redacted

TEST YOUR KNOWLEDGE

Witness 1: "Complainant is VERY promiscuous."

- Relevant
- Directly related
- Not relevant

Complainant said that Respondent suffers from psychotic breaks and that mental health records can confirm this.

- Relevant
- Directly related
- Not relevant

Respondent: "Complainant and I had sex before and they did not cry rape then."

- Relevant
- Directly related
- Not relevant

Respondent offers medical records showing they were admitted to the hospital on the night of the alleged incident.

- Relevant
- Directly related
- Not relevant

WHEN ARE REDACTIONS APPROPRIATE?

Redact



Complainant's sexual predisposition, unless one of the two exceptions apply.

Redact



Legally recognized UNWAIVED privilege.

TO REDACT OR NOT REDACT?

Witness 1: "Complainant is VERY promiscuous."

- Redact
- Do not redact
- Partially redact

Complainant: Medical records from Nurse Examiner Sexual Assault Report

- Redact
- Do not redact
- Partially redact

Respondent: Screenshot of text messages of Complainant sending nude photos.

- Redact
- Do not redact
- Partially redact

Witness 2: "Respondent is a terrible person, but I know they couldn't assault the Complainant because they get whiskey dick."

- Redact
- Do not redact
- Partially redact

AUTHENTICITY



CONSIDERING CREDIBILITY AND RELIABILITY FACTORS

Is there corroborating evidence or has it been corroborated?

Is the evidence or statement plausible?

Does the evidence seem logical?

Is the evidence or statement consistent with other evidence or statements?

WEIGHING THE EVIDENCE



Direct

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



Circumstantial

Based on inference and not on personal knowledge

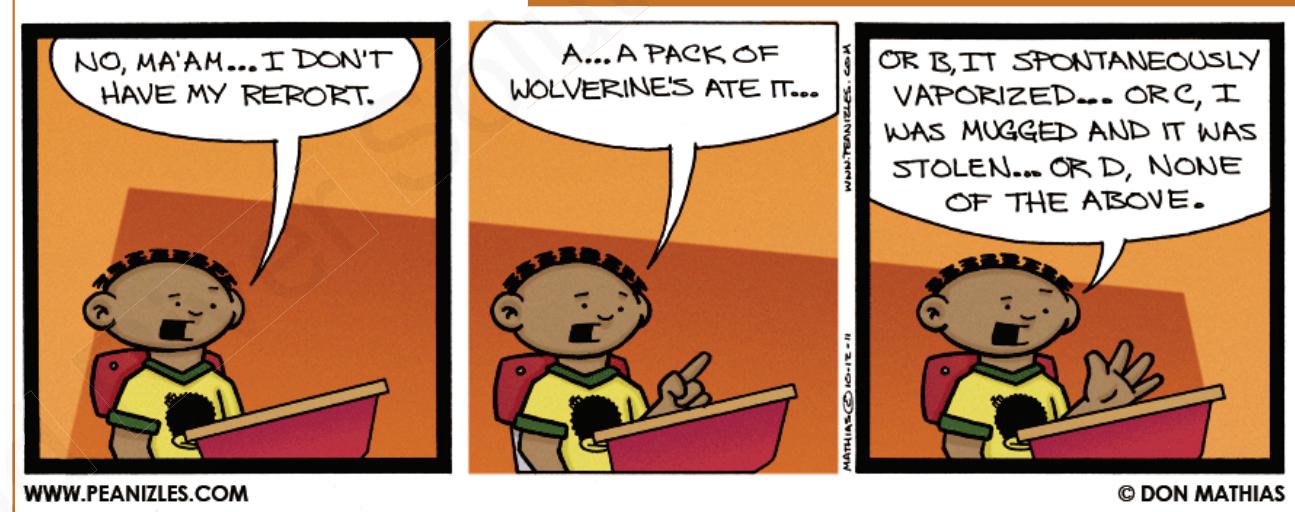


Corroborating

Differs from but strengthens or confirms what other evidence shows.

STRUCTURING YOUR REPORT

Organizing the information in a comprehensive manner

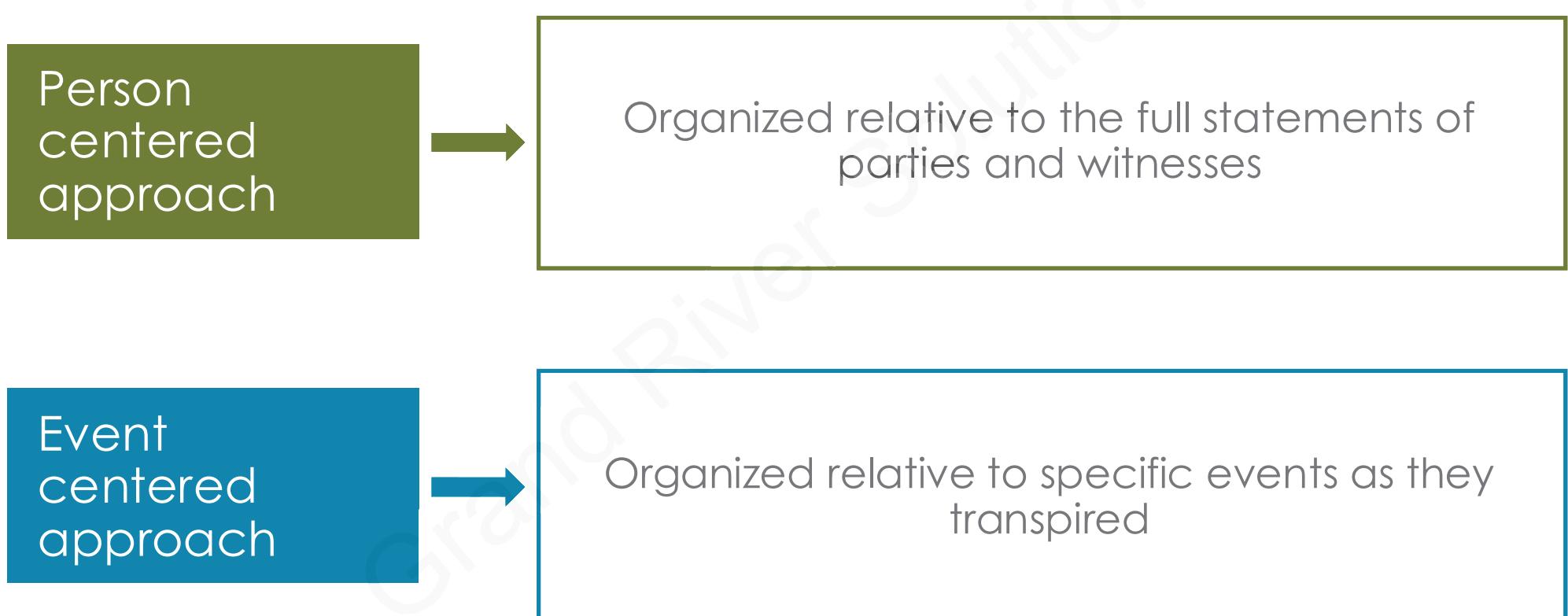


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STRUCTURING YOUR REPORT: REPORT ORGANIZATIONAL APPROACHES



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

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

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.

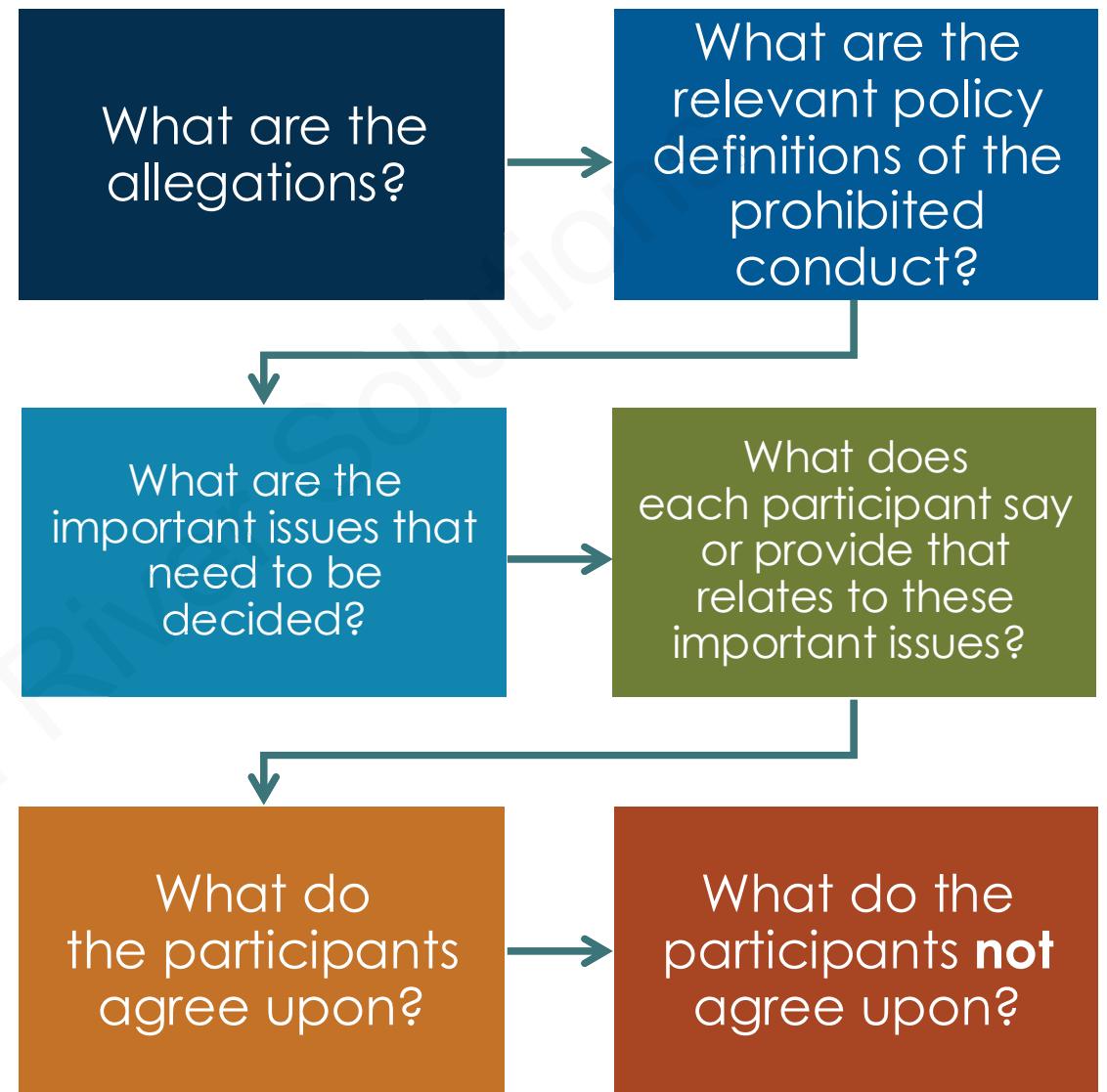
Respondent denies making such comments about Complainant, stating that all the Witnesses (A, B, C, and D) are "Close to" Complainant and have "the same political views." Respondent provides four additional witnesses to the conversations she had regarding Complainant – Witness 1, Witness 2, and Witness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

UNDISPUTED/ DISPUTED FACTS



DRAFTING THE UNDISPUTED/DISPUTED FACTS

These are the key considerations:

- 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.
- Remember that you are not making a determination, you are simply presenting the important information that a decision maker needs to evaluate to reach a finding.

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.

HEARINGS AND ADVISING

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HEARING: ORDER OF PROCEEDINGS

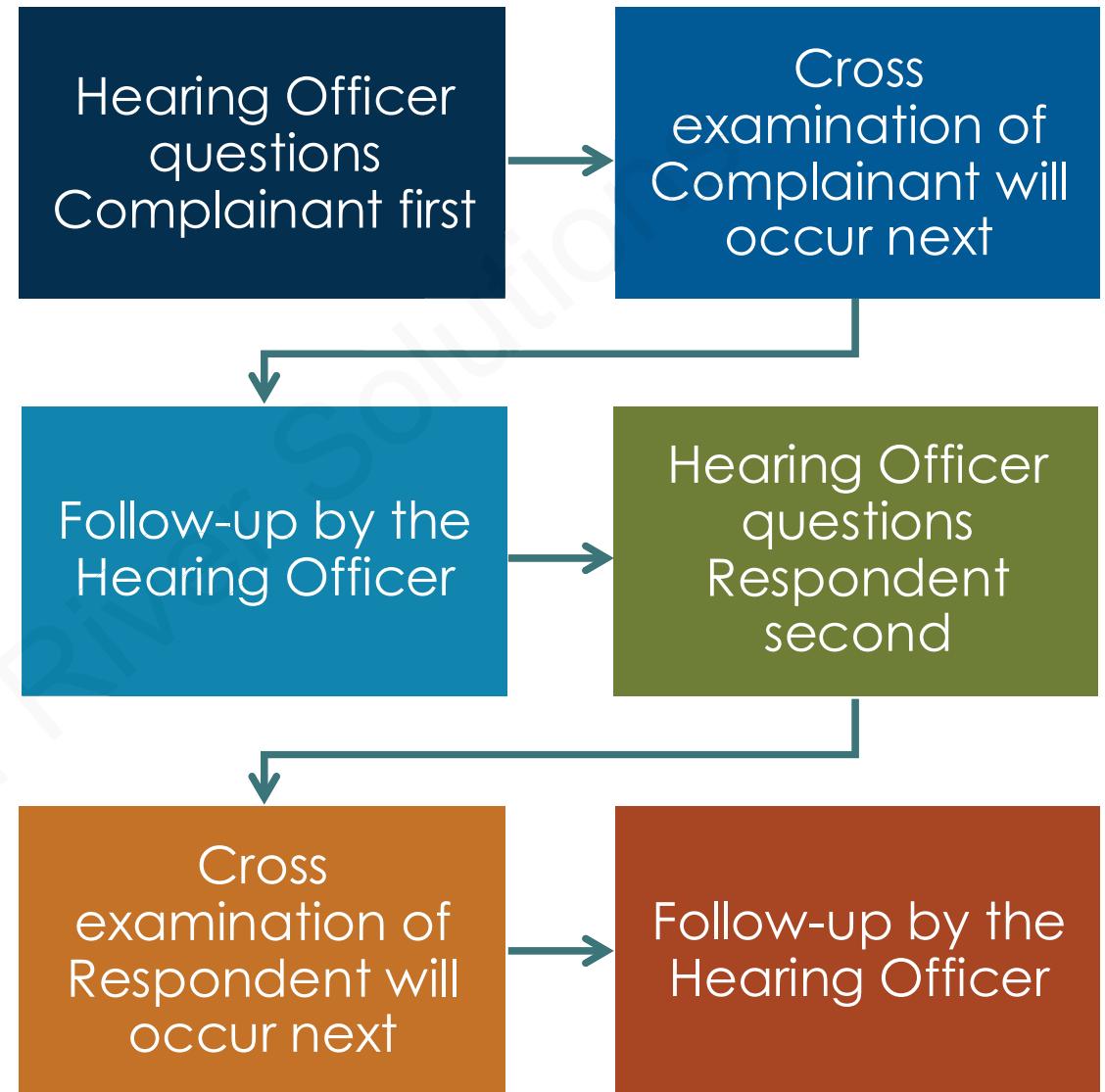
1. Introductions and instructions by the Chair; Opening Statements
2. Presentation by Investigator
3. Presentation of information and questioning of the parties and witnesses
4. Closing Statements
5. Deliberation & Determination

OPENING STATEMENTS

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

- After the introductions and process explanation, each party may be given the opportunity to make an opening statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give an opening statement before either is questioned.
- Typically, the complainant goes first.

PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



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.



WHEN ARE QUESTIONS RELEVANT?

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



IRRELEVANT AND IMPERMISSIBLE QUESTIONS



Information protected by an un-waived legal privilege

Medical treatment and care

Unduly repetitious or duplicative questions

Information that otherwise irrelevant

Complainant's prior sexual history, with limited exceptions.

CLOSING STATEMENTS

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

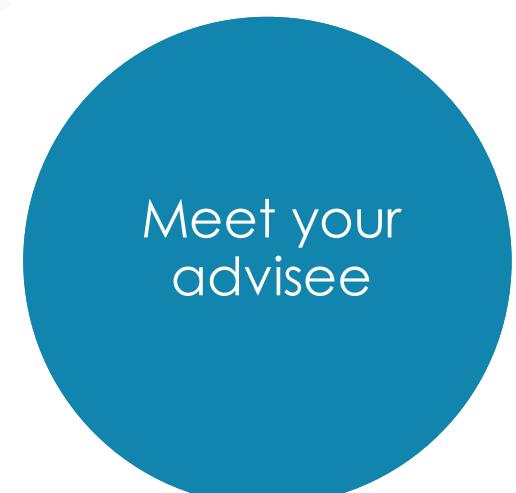
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker
- Not time to introduce new information or evidence.



YOUR ROLE AS A HEARING ADVISOR

- The limited role of conducting cross examination on behalf of your party
- Supporting your party

AFTER YOU ARE ASSIGNED AS A HEARING ADVISOR



Review applicable policy language/ provisions

Familiarize yourself with the investigation report

Consult with your advisee

MEETING WITH YOUR ADVISEE

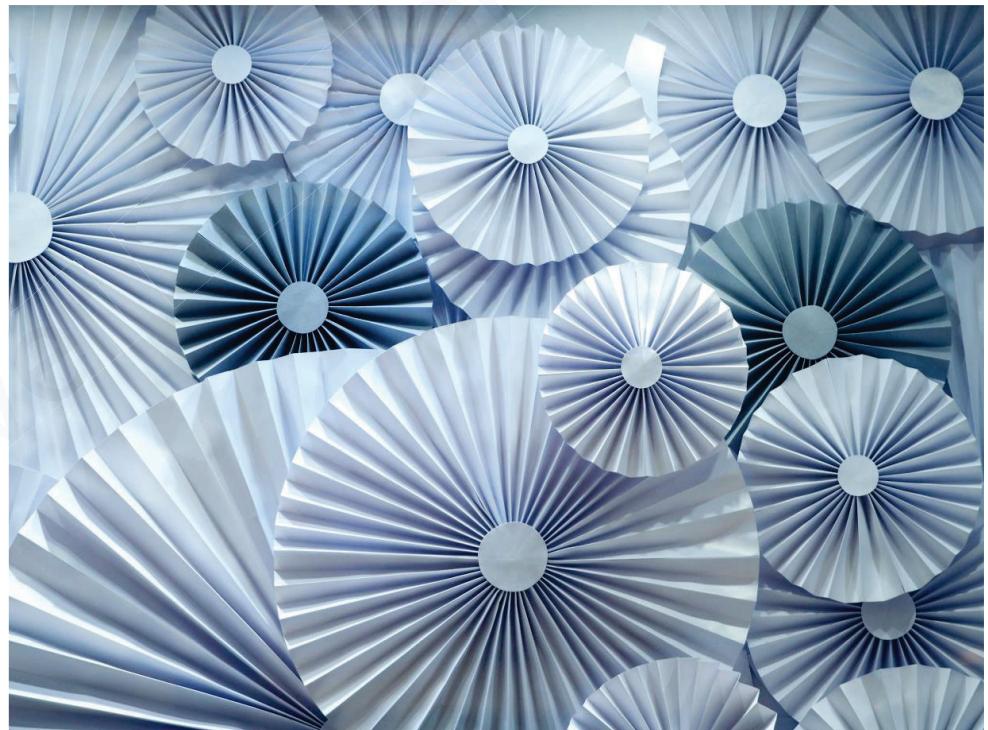
Build: Build Rapport

Explain: Explain your role

Advise: Advise them that their conversations with you are not privileged

Go Over: Go over the policy and process with them

Discuss: Discuss the evidence



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

When were you interviewed?

Did you see the interview notes?

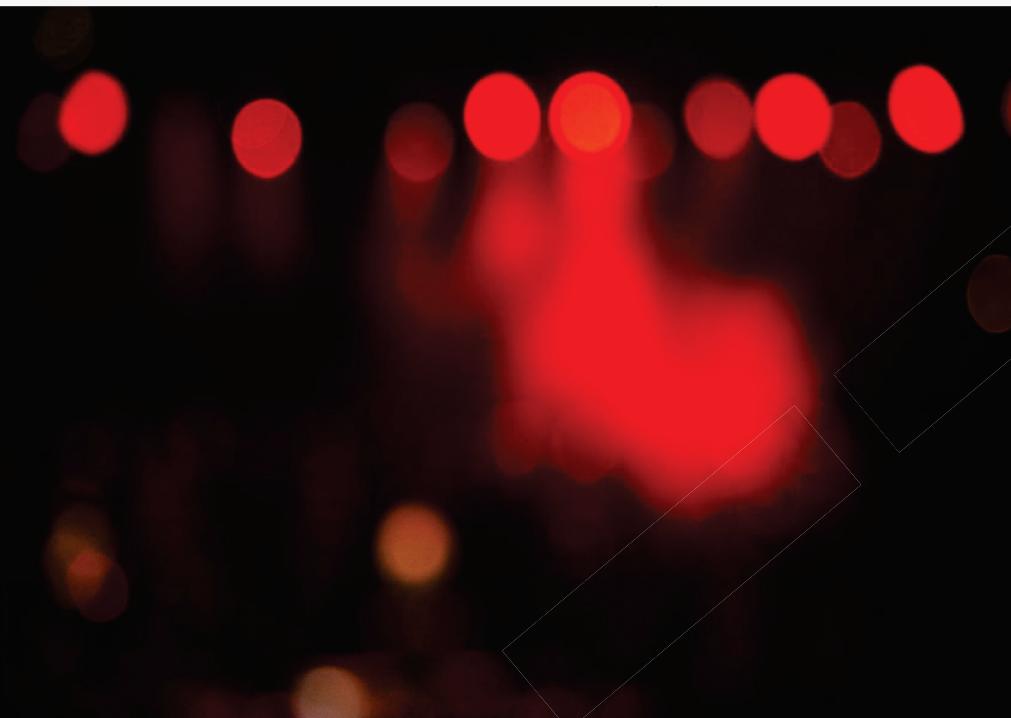
Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

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

DEVELOPING QUESTIONS



What does the advisee want to show?

- Credibility issues?
- Confusing timeline?
- Lacking thought process?
- Inconsistencies in evidence or statements?

PREPARE YOUR ADVISEE FOR THE HEARING



How to answer questions

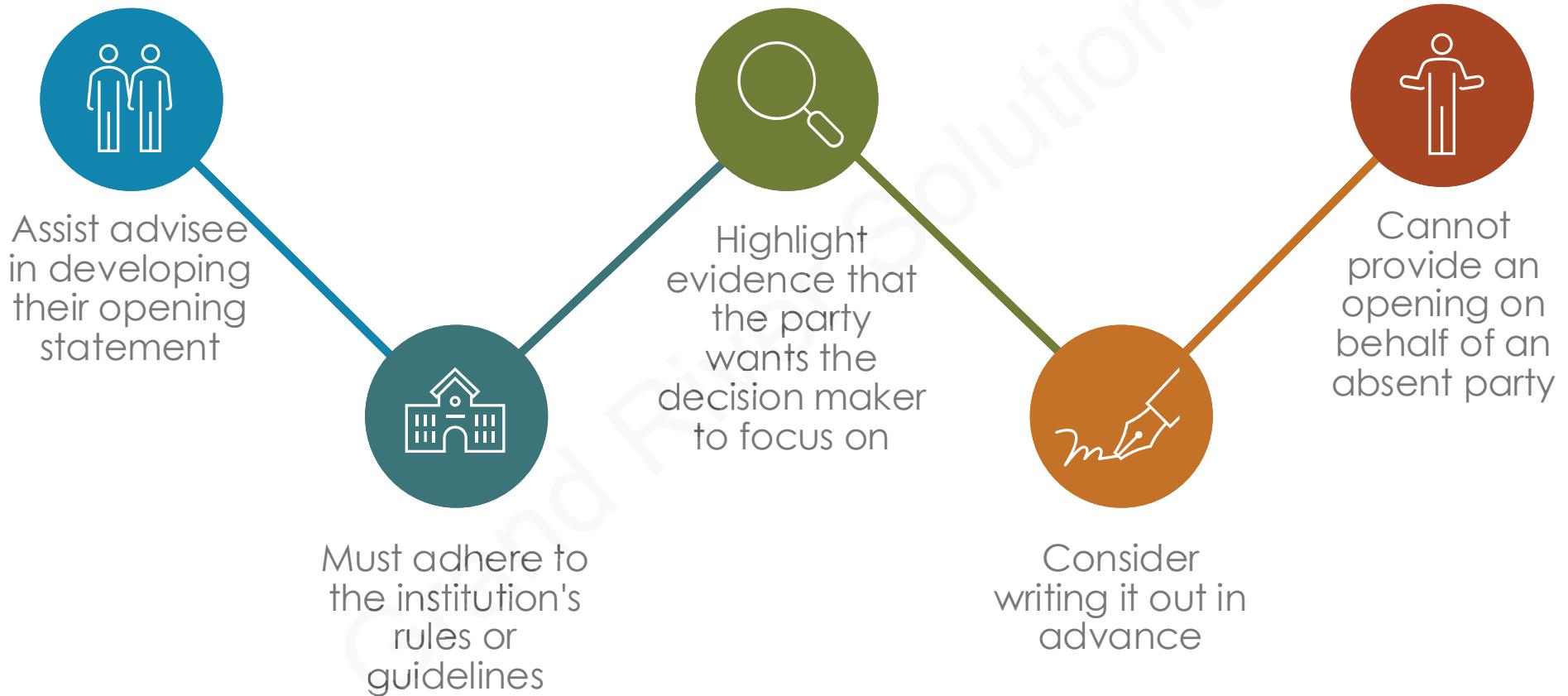
Questions they can expect

How to prep for the hearing day itself and self-care

Communication during the hearing

Selective participation and potential impacts

OPENING STATEMENTS



CROSS EXAMINATION: WHO AND WHAT

- Must be conducted by the advisor
- Advisor may appear and cross even if party does not participate
- If party does not have an advisor, the institution must provide one.

“The Rule requires that schools provide the opportunity for cross-examination, and that party advisors must be permitted to ask all relevant questions (including follow-up questions), and only relevant questions.”*

*September 4, 2020 Questions and Answers Regarding the Department’s Final Title IX Rule

CROSS-EXAMINATION: HOW

Pre-Hearing

- Review and evaluate
- Identify advisee's narrative
- Know the issues
- Highlight what is supportive
- Prepare an outline

This is vital. If you do not determine the above, you cannot properly advise.

Common Approaches

- Highlight helpful information
- Question for importance
- Highlight bias/lack of bias
- Highlight credibility and reliability/lack of credibility or reliability
- Discounting

Always keep the end in mind. What is the advisee's goal?

DISCOUNTING EXAMPLE

Statement A:

During her interview with the investigator, Witness Y stated that she overheard Respondent and Complainant fighting inside of Complainant's bedroom. She stated that Complainant came out of the room crying and that their face was red and swollen. She stated that Respondent followed Complainant out of the room "looking angry" and grabbed Complainant by the arm "aggressively" and pulled them back into the room. The fighting then continued.

DISCOUNTING EXAMPLE



Statement B:

At the hearing, Witness Y tells the decision maker that while she heard loud voices, it might not have been fighting. She also stated that the parties came out of the room together, that Complainant looked upset, that Respondent looked concerned, and that they “calmly” went back in the room together.

CONFIRM



- Witness Y, earlier today you were asked about what you heard and saw on the night in question...
- And you indicated that you heard loud voices, but that you are not sure if it was fighting, is that correct?
- You also said that the parties came out together and then went back into the room, is that what you saw?
- And you are sure of this?

COMPARE



- Witness Y, this isn't the first time you shared your observations of Complainant and Respondent that night, is it?
- Did you talk to the investigator about this?
- And that statement was provided just two days after the incident, correct?
- Do you recall what you said to the investigator?
- Did you tell the investigator the truth when you were interviewed?

CONCLUDE



- Witness Y, when you spoke to the investigator, you indicated that you heard fighting, correct?
- And that Complainant came out of the room crying, isn't that right?
- And that Respondent came out looking angry, correct?
- You also stated that you saw Respondent grab Complainant and drag them back into the room, isn't that true?
- Since speaking with the investigator, you and Complainant have had a falling out, haven't you?

CROSS EXAMINATION:

Don't call folks liars or attack them

Do raise concerns about credibility and reliability

Don't rant, rave, lose your temper

Do make your points through pointed and calm questioning

Don't forget to be prepared to pivot as testimony is given

Do be efficient in your questioning – go event by event

Don't rehash everything a witness has said

Do focus on the information that is helpful

BREAK OUT! #1

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



Say hi!



Pick a scribe



Discuss

Group 1 – Complainant Advisors: Questions for Respondent (Sabrina)

Group 2 – Respondent Advisors: Questions for Complainant (Ethan)

Group 3 – Complainant Advisors: Questions for witness Sara

Group 4 – Respondent Advisors: Questions for witness Jeremiah

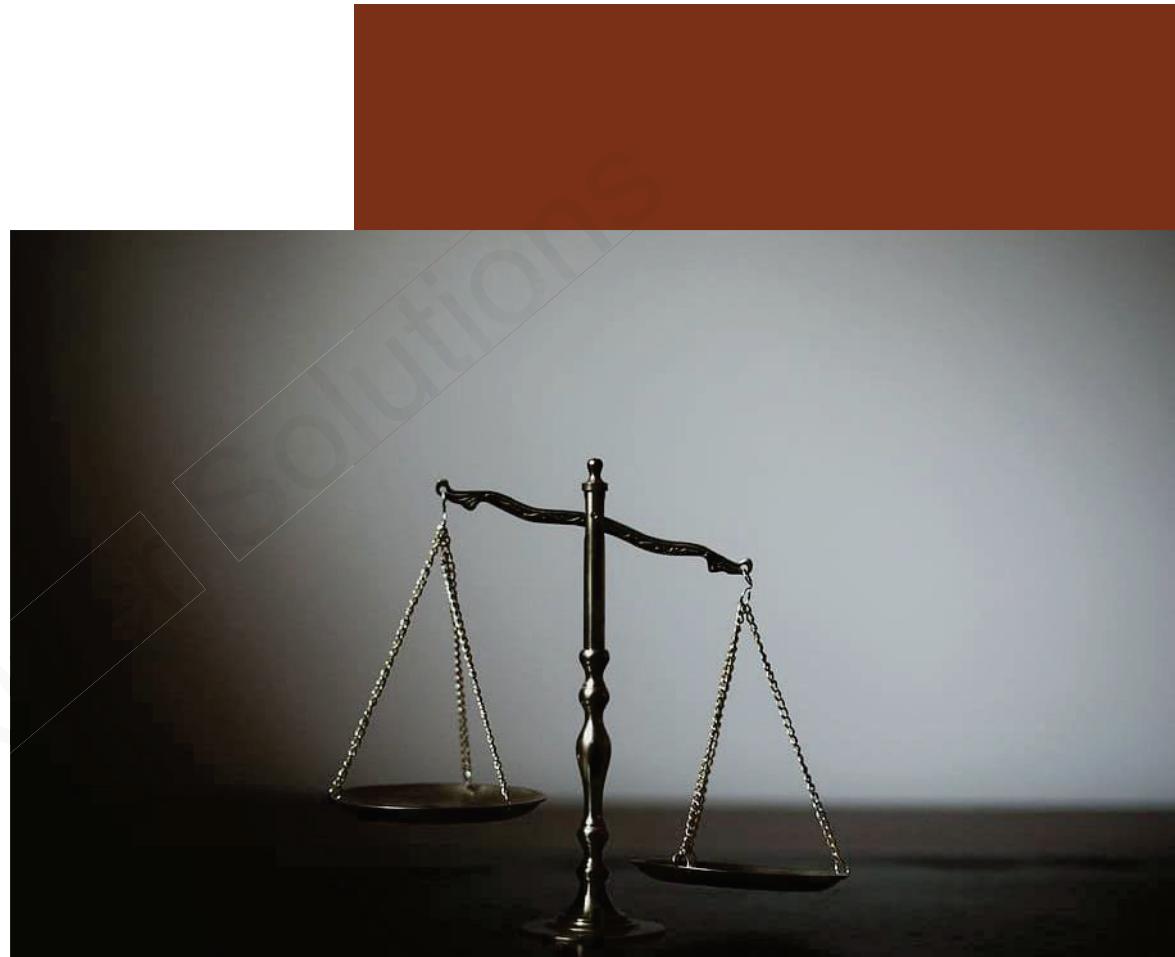
CLOSING STATEMENTS: ADVISOR'S ROLE

- Take notes during questioning
- Assist advisee in developing their closing statement
- Summarize important evidence or information
- Bullet points
- Party closes, not the advisor



DETERMINATIONS

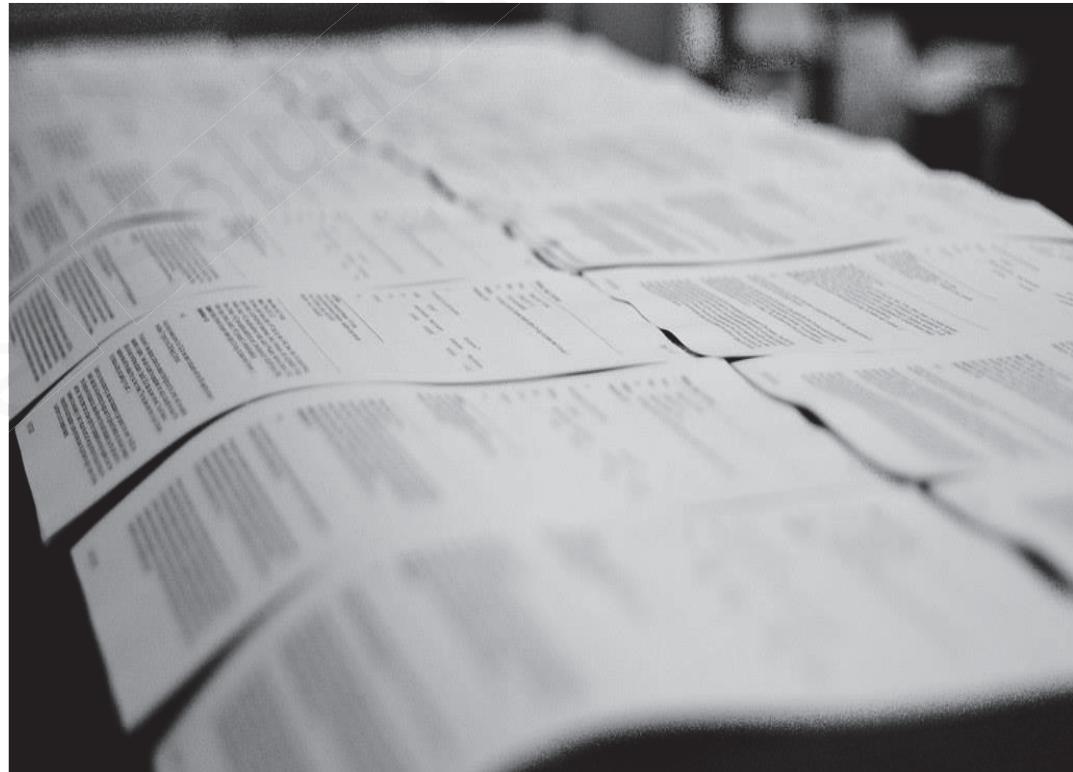
Findings of Fact and
Policy Analysis



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PROCEDURAL REQUIREMENTS FOR THE HEARING 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



EVIDENTIARY STANDARD

PREPONDERANCE OF THE EVIDENCE

Responsible -
"More likely than
not..."



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

Not responsible -
"Insufficient
evidence..."

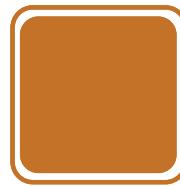


There was insufficient reliable and credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

DETERMINATION: STEP ONE

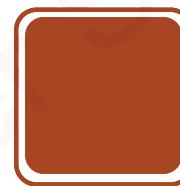
A finding of fact is a Hearing Officer's decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be:

- On the basis of available evidence and information
- Determined by a preponderance of evidence standard



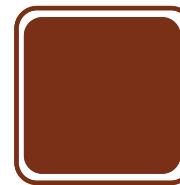
Structured

Clear presentation of material questions to be answered.



Summary of undisputed facts

Address the material issues that the participants agree on.



Credibility and Reliability

Analysis of evidence that speaks to each disputed material fact.

ACTIVITY THREE, PART 1: ANALYSIS GRID

LIST OUT THE RELEVANT DISPUTED FACTS

Question 1

Question 2

Question 3

ASSESSING AND PRESENTING CREDIBILITY AND RELIABILITY

Opportunity to view



Be intentional

Ability to recall



Use reasonable deduction

Motive to fabricate

Plausibility



Be clear/Transparent

Consistency (internal and external)



Background, experience, and training

Coaching or bias

Do not presume/assume

HYPOTHETICAL: WHAT'S YOUR FINDING?

- 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 the night of the incident showing both Complainant and Respondent ingesting two shots of liquor at the same time together.



Answer:

Although Respondent denied ingesting any alcohol on the night of the incident, Complainant reported that they and Respondent ingested two shots of liquor just before the reported incident, and Witness 1 provided a video recording, confirmed to be taken on the night of the incident, showing both Complainant and Respondent ingesting two shots of liquor together. Therefore, the evidence suggests that it is more likely than not that Complainant and Respondent ingested two shots of alcohol at the same time, together, just before the incident.

ACTIVITY THREE, PART 2: FINDINGS OF FACT

INSTRUCTIONS:

Take one of the material questions, using the credibility and reliability factors, and reach a finding of fact.

- Be intentional,
- Use reasonable deductions,
- Be clear, and
- DO NOT PRESUME!

Remember!

A finding of fact is:

A Hearing Officer's decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be:

- On the basis of available evidence and information
- Determined by a preponderance of evidence standard

Bonus points:

Each member of the team can select a material question and draft a finding.

STRUCTURE FOR THE POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts that you've determined to be true 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.

GROUP DISCUSSION DRAFT THE DETERMINATION

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.

POTENTIAL DETERMINATION

Finish the analysis:

Here, as it is undisputed that Respondent agreed to be Complainant's Faculty Advisor for their senior thesis. The credible and reliable evidence supports a finding that it is more likely than not that Respondent conditioned their advisement on Complainant meeting only in the evenings off campus.

As to the inappropriate text messages, although CP was unable to produce evidence to corroborate the nature of the text messages, they were able to produce evidence of a text within which RS wrote a non-specific apology. This evidence contradicts RS's denial. Thus, CP is deemed more reliable. Therefore, it is more likely than not that RS sent CP inappropriate text messages.

However, neither party provided any supporting evidence of their assertions regarding the alleged comment, "God, you smell divine," and the whispering in CP's ear. Thus, there is insufficient evidence to determine that it is more likely than not that RS whispered in CP's ear and said, "God, you smell divine..."

SANCTIONS

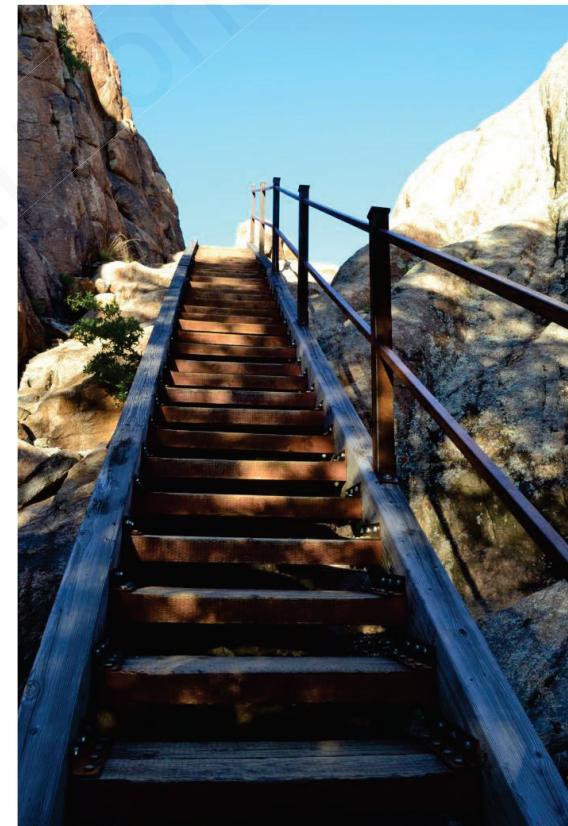
Assigning appropriate
sanctions



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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





QUESTIONS?

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