



FROM ONE TITLE IX COORDINATOR TO ANOTHER:

A Practical Approach to
Navigating Beyond Compliance

Jody Shipper
September 2025

MEET YOUR FACILITATOR



Co-Founder & Managing
Director

She/her/hers

Jody Shipper

Jody Shipper, J.D., is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody also co-founded Project IX in 2014, a nonprofit focused on Title IX-related services to schools with a mission to provide effective solutions for preventing and responding to sexual violence.

Jody was selected as the systemwide director for Title IX/VAWA/Clery and sexual assault/sexual violence compliance for the University of California in 2015. Prior to that, she served for 11 years as executive director of the Office of Equity and Diversity at a medium sized private research university where she also held the post of chief Title IX administrator. Previously, Jody served as outside counsel to businesses and nonprofits in California, litigating employment and education matters before state and federal courts as well as administrative agencies.

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

● 2020 Regulations

● Initial Outreach and Intake

● Resolution Options

● Investigation Basics

● Evidence and Credibility
Intoxication vs Incapacitation

● Hearings

● Appeals

● Conclusion

THE EVER-EVOLVING LANDSCAPE OF TITLE IX

01

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TITLE IX

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).

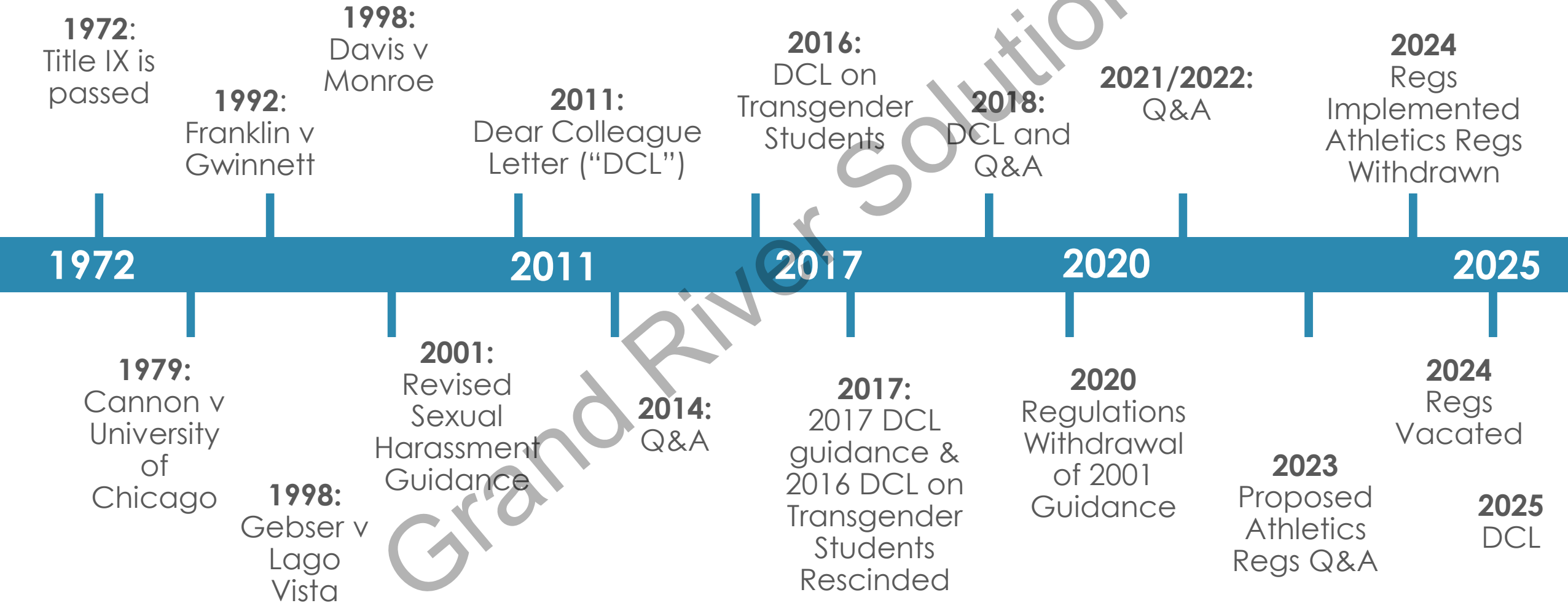


TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

THE HISTORY OF TITLE IX

A TIMELINE



THE TITLE IX REGULATIONS

SEXUAL HARASSMENT ONLY

1

Narrows the definition of sexual harassment;

2

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

3

Narrows eligibility to file a complaint;

4

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

TYPES OF CONDUCT



SEXUAL HARASSMENT: *DEFINED IN 1996, 2001, & 2011 GUIDANCE*

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) Conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, OR objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) Sexual assault is a form of sexual harassment

*Dating Violence, Domestic Violence, Stalking not included pre 2020 regulations.

SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

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

“SPECIFIC OFFENSES” (VAWA)

These are conformed to
VAWA Amendments to the Clery
Act



DATING VIOLENCE

Definition:

- “Violence committed by a person
- Who is or has been in a social relationship of a romantic or intimate nature with the victim;
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship”

DOMESTIC VIOLENCE

The term domestic violence is a “felony or misdemeanor crimes of violence” committed by:

- A. A current or former spouse of the victim
- B. A person with whom the victim shares a child in common
- C. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
- D. A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred
- E. Or any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

SEXUAL ASSAULT

Sexual Assault includes Rape, Sodomy, Sexual Assault With an Object, Fondling, Incest, and Statutory Rape.

These definitions come from the FBI.

SEX OFFENSES

A. Rape — The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

B. Sodomy — Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With an Object — The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

SEX OFFENSES PT 2

D. Sexual Contact — The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication.

E. Incest — Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

F. Statutory Rape — Nonforcible sexual intercourse with a person who is under the statutory age of consent.

NEW NIBRS DEFINITION

National Incident-Based Reporting System (FBI's national standard for collecting crime data)

The NIBRS new user manual from late June 2025 replaces “fondling” with “criminal sexual contact.”

We don't use the term "criminal" in our work, it creates confusion and risk that a court will apply criminal standards, such as "beyond a reasonable doubt."

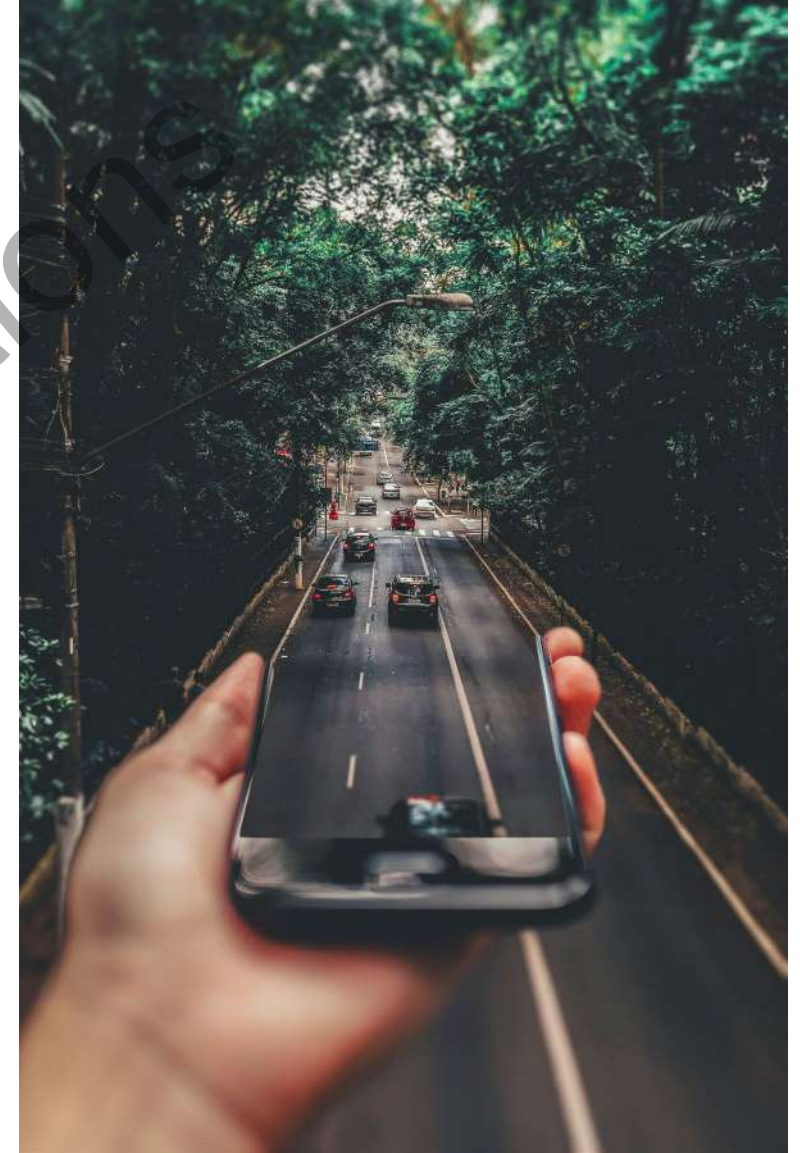
STALKING

- The term stalking means “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - A. fear for the person’s safety or the safety of others; or
 - B. suffer substantial emotional distress.



EXAMPLE: STALKING

- A student (A) shares that another student (B) is staring at them at the dining hall which is making them uncomfortable. Complainant says that they see the other student around campus a few times a week. There have been no communication attempts by Respondent.
- Student A also notes that they saw Student B drive past them on the road in front of campus the other day.
- Will you address under Title IX? Why or why not? What other information do you need to know?



LOCATION AND GEOGRAPHY





COVERED GEOGRAPHY

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ The incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

NOT COVERED GEOGRAPHY

- x Off campus conduct, even if it has an impact on the educational program or activity;
- x Conduct that occurs outside of the United States.



WOULD THIS FALL UNDER TITLE IX?

Taylor, a 2nd year student, comes into the Title IX Office on Monday morning requesting a meeting, sharing that "Alex raped me at a party on Saturday at the 'A Capella House'."

Some members of the A Capella club rent a house off-campus and they frequently throw parties.

Taylor is alleging "Alex raped me when I was drunk at the A Capella House."

- Would this fall under Title IX?
- Why or why not?
- What other information would you need to find out to make this determination?



REQUIRED IDENTITY



COVERED INDIVIDUALS

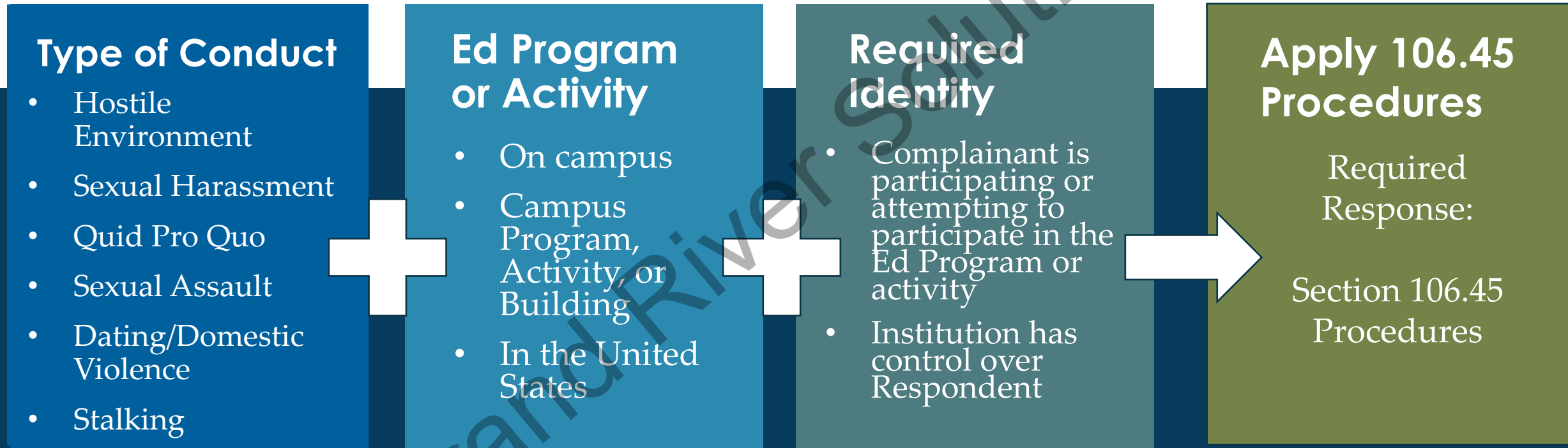
ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30

- Applicant
- Enrolled or Employed
- Accepted or Hired

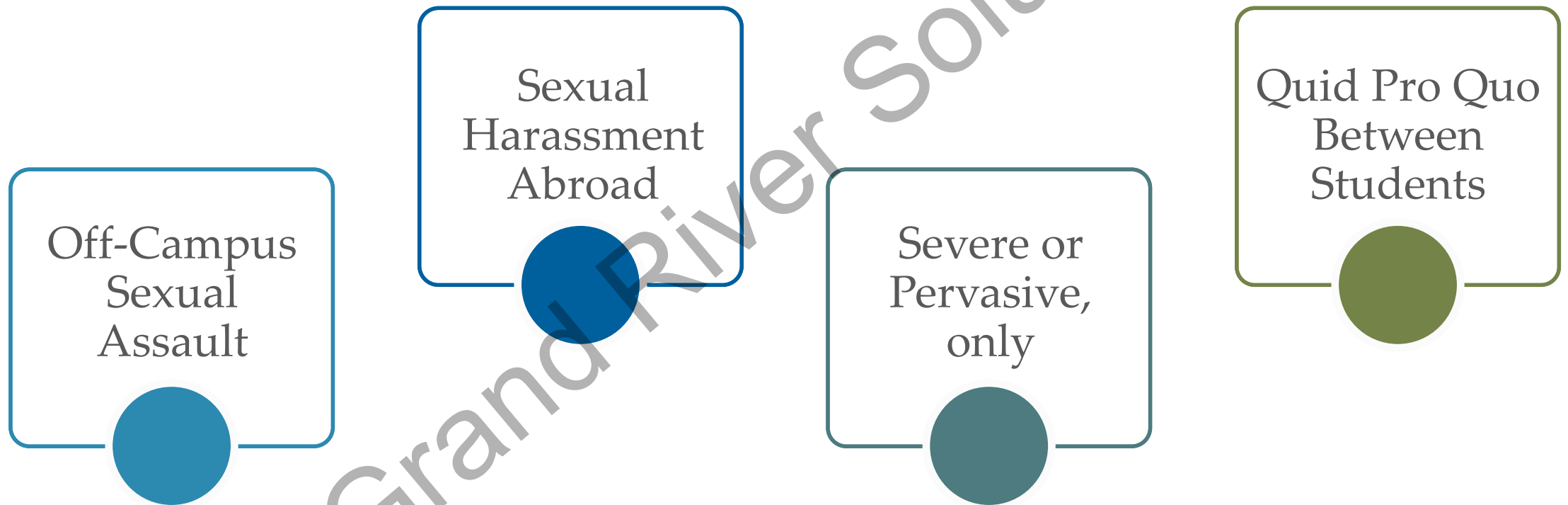


TITLE IX APPLICATION (POST-MAY 2020)



CONDUCT FALLING OUTSIDE THE SCOPE OF TITLE IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures comply with VAWA/Clery, other intersecting federal and state laws



IS THIS TITLE IX SEXUAL HARASSMENT?

You receive a 3rd party report from a Coach who heard some rumors about a student on their team, Dani.

Dani is constantly receiving sexually explicit photos via Snapchat from another teammate. Dani has asked them to stop numerous times. When they are at practice together, this individual often approaches Dani to make jokes of a sexual nature. This has happened about 3 times so far this week. Dani usually laughs it off. Dani emailed me saying they needed to miss practice today because they are "sick".

Why? Why not? What other information would you need to know?

ADDITIONAL REGULATORY REQUIREMENTS



ACTUAL NOTICE

Institution must respond when it has:

“Actual Knowledge...”

- When “an official of the recipient who has authority to institute corrective measures” has notice
- e.g., Title IX Coordinator

...of “sexual harassment that occurred within the school’s “education program or activity...”

- “Includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred
- Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

...against a “person in the United States”

- So, not in the study abroad context

A Narrowed Scope of Institutional Responsibility



INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report

2. Outreach/Response from Title IX Coordinator

3. Support Measures, whether or not Formal Complaint is filed

4. How to File

5. Options for Resolution

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

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

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

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

FINAL RULE § 106.45(B)(8)

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”



APPEALS: MANDATORY GROUNDS

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

OTHER REQUIREMENTS OF THE REGULATIONS

Designation of a Title IX Coordinator

Dissemination of policy

Separation of Responsibilities

Training and posting of training

Impartiality

Record Keeping

INITIAL ASSESSMENT: RECEIPT OF REPORTS

[CLICK TO EDIT TITLE STYLE](#)

02(a)

Actual Knowledge, Report Response,
Initial Assessments, and Supportive
Measures

REGULATORY REQUIREMENTS

Notice to College/University

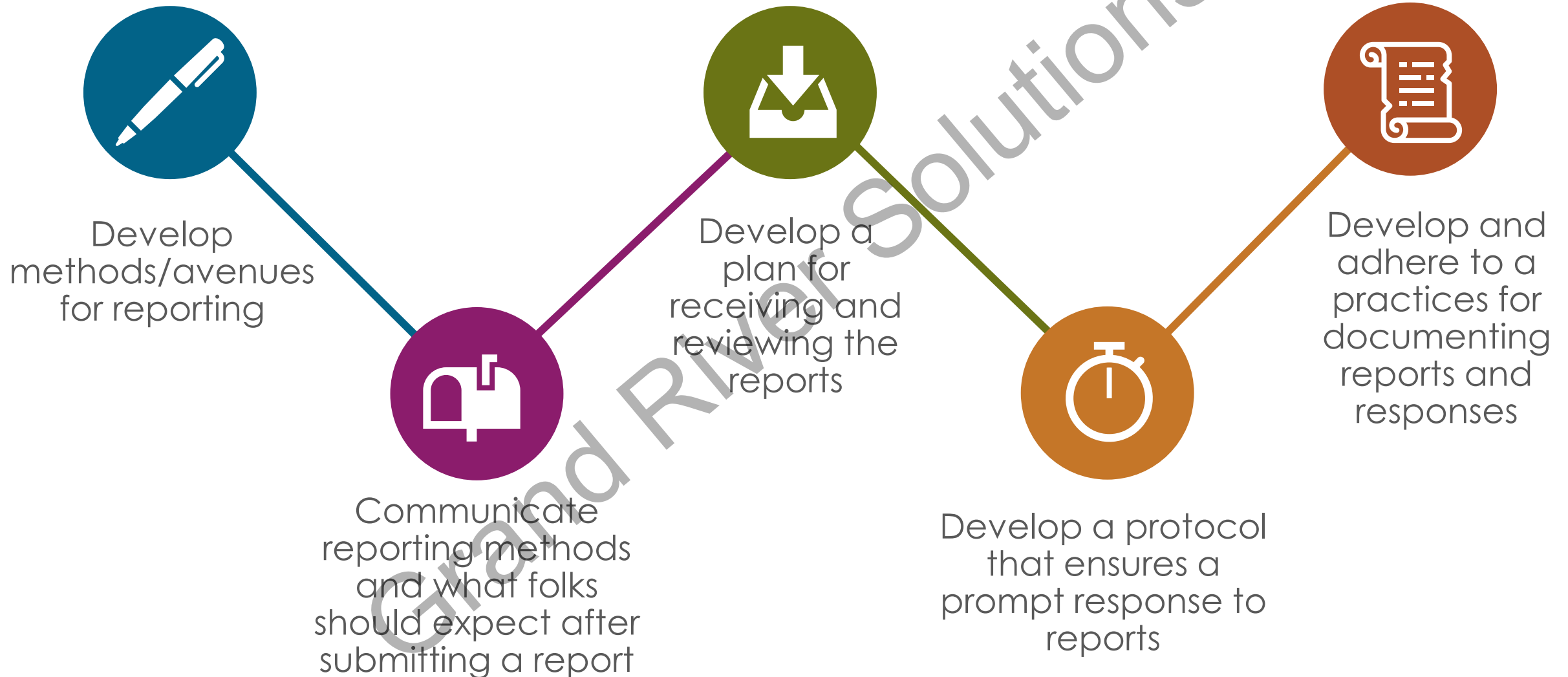
Outreach/Response from Title IX Coordinator

Support Measures, whether or not Formal
Complaint is filed

How to File

Options

INFRASTRUCTURE FOR REPORTING



RECEIVING REPORTS AND INITIATING THE RESPONSE



1. Review the report



2. Determine the appropriate initial response



3. Promptly initiate that response



4. Document/record the receipt of the report and the response thereto

INITIAL OUTREACH

- First: Safety
- Email: Create Forms
- Phone
- In person: Use RA, Campus Safety
- Follow Up Emails



SCENARIO: EMERGENCY REMOVAL OF STUDENT

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



THE TITLE IX OFFICE RECEIVES THE FOLLOWING ANONYMOUS REPORT VIA YOUR INSTITUTION'S ONLINE REPORTING FORM:

“Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley’s partner are friend and so the RA doesn’t do anything about it. It’s getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley’s partner too.”

INITIAL ASSESSMENT: COMPLAINANT INTAKE & SUPPORTIVE MEASURES

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GOALS OF THE INTAKE MEETING

- Review supportive measures and pathways for resolution
- Gather enough information to connect conduct to policy
- Ask about the impact on the Complainant to determine supportive measures
- Discuss the options for resolution or retention of the complaint
- Be forthcoming about responsibility to move complaint forward (if applicable)
- Safety? Threat assessment referrals? Clery?



HOW DOES AN INVESTIGATIVE INTERVIEW DIFFER FROM AN INITIAL INTAKE MEETING?



PREPARING FOR THE INTAKE MEETING

- Familiarize yourself with names/parties
- Identify areas where you need additional information or clarity
 - What else do you need to know to connect conduct to policy?
- Review relevant policies
 - Does it appear that the Title IX Coordinator may need to move forward regardless of the Complainant's wishes?
- Threat assessment(emergency removal, timely warning)
- Check your bias
- Prepare mentally/emotionally for the conversation

ACTIVITY 1: INCIDENT REPORT

What follow-up questions would you want to ask during your initial intake? What context would be important to know?

I, Brittany Christina, Resident Assistant for College Hall was approached by my resident, Sammy Ward, who stated that they were sexually assaulted by Dylan Cripe. Sammy was extremely upset, and it was very difficult to understand as they were talking through their sobs. They stated that they and Dylan were at a party when they began to have an argument and decided to go outside to figure it out. Sammy said that Dylan then sexually assaulted Sammy when they went outside and no one else was around to witness the event.

INITIAL MEETING WITH THE COMPLAINANT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



SUPPORTIVE MEASURES

Non-Disciplinary

May not
unreasonably
burden the other
party

Designed to restore
or preserve equal
access

Non-punitive

As appropriate and
reasonably
available

Confidential

EXAMPLES OF SUPPORTIVE MEASURES

- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic modifications and supportive measures;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



**“MUTUAL
RESTRICTIONS
ON CONTACT
BETWEEN THE
PARTIES”**



POST MEETING TASKS

Document the meeting

Send a summary email
with resources, options,
next steps

Follow up

Make connections

Provide the supportive
measures

Document supportive
measures requested,
provided, and not
provided. Where not
provided, indicate why.

IMPARTIALITY

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SUCCESSFUL COORDINATORS APPROACH ALL ASPECTS OF THE WORK...

Impartially



**Utilizing
Best
Practices**



**With
Empathy**



IMPARTIALITY

Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).



IMPARTIALITY: AVOIDING PREJUDGMENT AND BIAS

Do not rely on cultural
“rape myths”

Do not rely on cultural
stereotypes about how
men or women
purportedly behave

Do not rely on gender-
specific research data or
theories to decide or make
inferences of relevance or
credibility in particular
cases

Recognize that anyone,
regardless of sex, gender,
gender identity or sexual
orientation, can be a victim
or perpetrator of sexual
assault or other violence

Avoid any perception of
bias in favor of or against
complainants or
respondents generally

Employ interview and
intake approaches that
demonstrate a
commitment to
impartiality

IMPARTIALITY

Avoiding Bias

- “Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased” WHILE
- “exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents”

IMPARTIALITY

Avoiding Conflicts of Interest

- Simply having an affiliation with an institution in itself is NOT a conflict of interest:
 - "Department's authority is over schools, not individual investigators and other personnel, so Department will focus on holding school's responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest."

IMPARTIALITY

Avoiding Prejudgment, Bias, and Conflicts of Interest

Bottom Line

- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudgment or bias for or against any party



RESOLUTION OPTIONS

Support-Based Only,
Informal/Alternative, or Formal

03

HOW TO PROCEED?

Support- Based Only

No formal
process



Alternative/ Informal

Signed
agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All
requirements of
106.45



SUPPORT BASED-BASED RESOLUTION

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SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations



FORMAL COMPLAINT & NOTICE REQUIREMENTS

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FORMAL COMPLAINT FILED

By Complainant

**By the Title IX
Coordinator**

FACTORS TO CONSIDER WHEN DETERMINING WHETHER TO FILE A FORMAL COMPLAINT



Allegations of
Violence

Threats

Use of
Weapons

Serial
predation

A FORMAL COMPLAINT MUST INCLUDE

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include: Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution or investigation.

DISMISSING COMPLAINTS

Mandatory

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

Discretionary

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info

**CAN PROCEED
UNDER OTHER
POLICY**



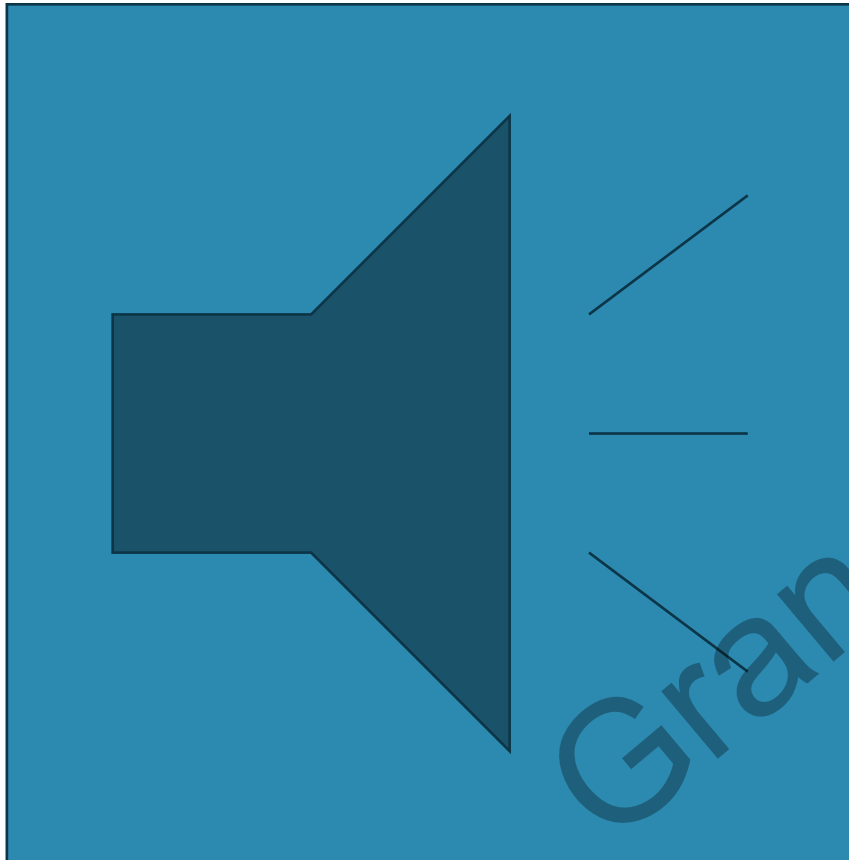
NOTICE OF ALLEGATION REQUIREMENTS (1)

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

NOTICE OF ALLEGATION REQUIREMENTS (2)

- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

NOTIFYING THE RESPONDENT



FIRST- SAFETY

Make sure Support Available

Written Notification Meetings and Sufficient Time to Prepare

Don't Send on a Friday

Don't send at 5pm

How will you notify?

Consider impact of notification on Respondent

ADVISOR OF CHOICE

The advisor
can be
anyone,
including an
attorney

Institutions
cannot place
restrictions on
who can
serve

No training
required

Institution must
provide advisor
for the purposes
of
questioning only.

INITIAL MEETING WITH RESPONDENT

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that were provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



POST MEETING TASKS

Document the meeting

Send a summary email with
resources, options, next
steps

Follow up

Make connections

Provide the supportive
measures

Document supportive
measures requested,
provided, and not provided.
Where not provided,
indicate why.

COMPLAINT RESOLUTION

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

ALTERNATIVE RESOLUTION

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ALTERNATIVE RESOLUTION REQUIREMENTS

- Formal Complaint must be filed
- Participation in an alternative resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the alternative resolution must be obtained
- Facilitators of alternative resolution must be trained



ALTERNATIVE RESOLUTION NOTICE REQUIREMENTS

- The allegations,
- The requirements of the alternative/informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the alternative resolution process
- And resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared;





FACILITATORS OF ALTERNATIVE RESOLUTION AS WITNESSES

**INFORMAL/ALTERNATIVE
RESOLUTION IS PROHIBITED TO
RESOLVE ALLEGATIONS THAT AN
EMPLOYEE SEXUALLY HARASSED
A STUDENT.**



FORMAL RESOLUTION

03(d)

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

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

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

TITLE IX COORDINATOR'S ROLE

In the Investigation

- Title IX Coordinator is permitted to conduct the investigation, though this is not favored
- If conducting the investigation, do so in accordance with the applicable institutional policy
- If not conducting the investigation, may serve as a support to the investigators
- May serve as a resource to the parties



PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

TITLE IX COORDINATOR'S ROLE

In the Adjudication

- Title IX Coordinator may not serve as the decision maker
- May serve to support the decision maker(s)
- May participate in the hearing to provide logistical support to decision makers
- Responsible for effective implementation of remedies imposed

FINAL RULE § 106.45(B)(8)

“Institutions must offer both parties an appeal from a determination regarding responsibility, and from a recipient’s dismissal of a formal complaint or any allegations therein.”

APPEALS: MANDATORY GROUNDS

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

TITLE IX COORDINATOR'S ROLE

In the Appeal



- Title IX Coordinator may not serve as an appellate reviewer
- May serve to support the appellate reviewer/panel
- May provide logistical support
- May coordinate implementation of appellate findings, where appropriate.
- Responsible for effective implementation of remedies imposed



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Putting it all together

INVESTIGATION BASICS

04

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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

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

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

NOTICE REQUIREMENTS

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

ADVISOR OF CHOICE DURING THE INVESTIGATION

The advisor can be anyone, including an attorney or a witness.

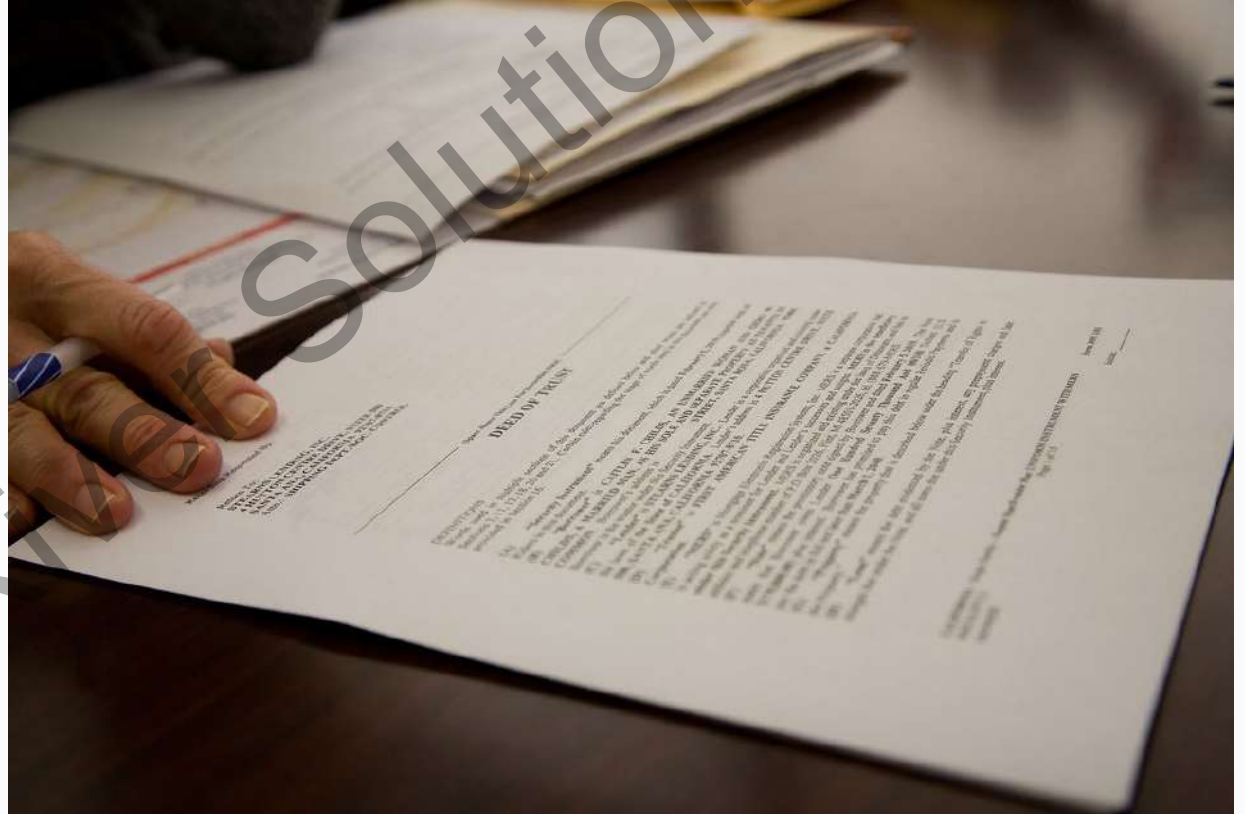
Institutions cannot place restrictions on who can serve.

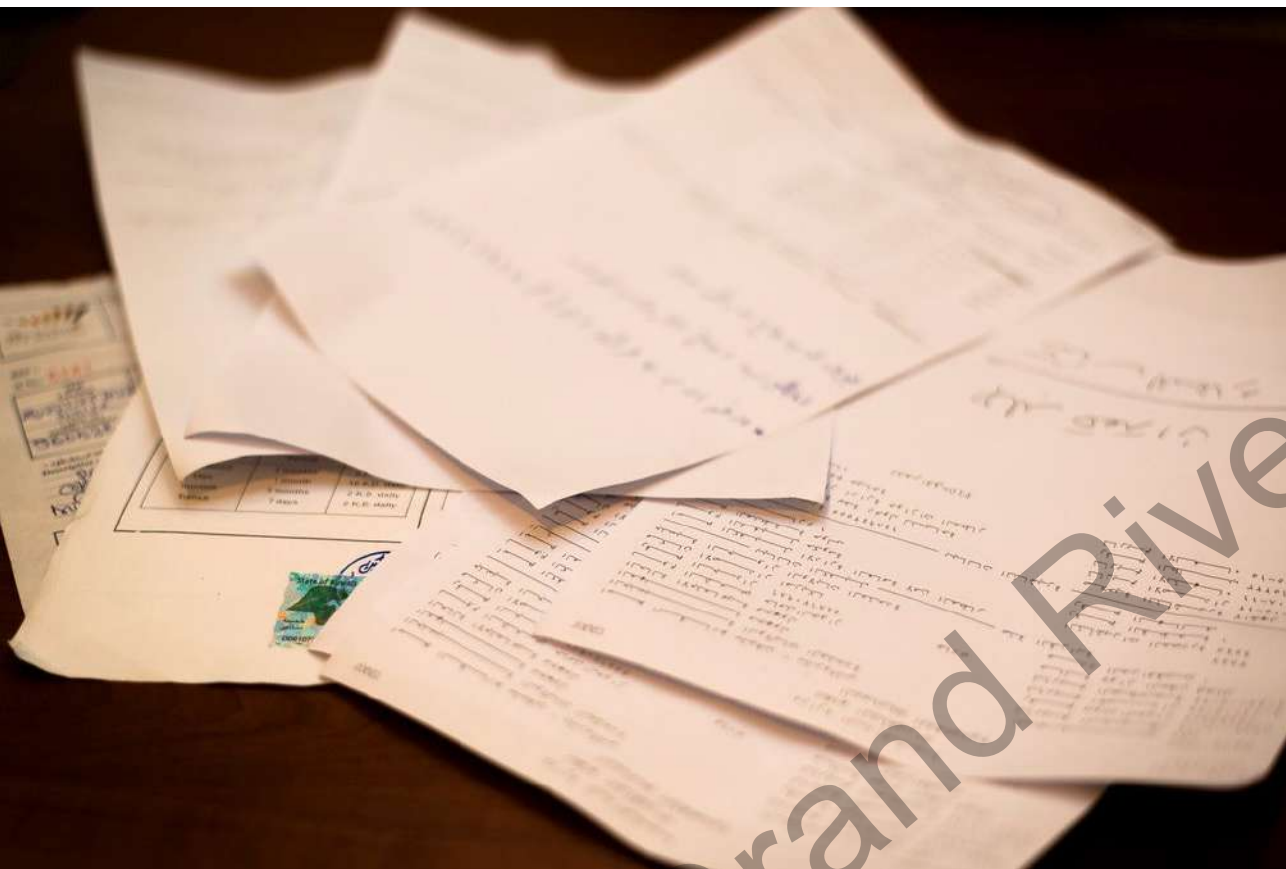
Institutions can create rules and guidelines for participation in the investigation.

No specific training is required.



WRITTEN NOTIFICATION OF MEETINGS AND SUFFICIENT TIME TO PREPARE





EQUAL OPPORTUNITY TO PRESENT EVIDENCE

EVIDENCE REVIEW

Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.

Parties have 10 days to provide a written response.

INVESTIGATIVE REPORT AND REVIEW



After reviewing and considering the comments on the evidence, the investigator will generate a report that summarizes the relevant evidence.



That report will be shared with the parties and the parties will have another opportunity to respond in writing.



The hearing must occur at least 10 days after the release of the final report.

THE INVESTIGATOR



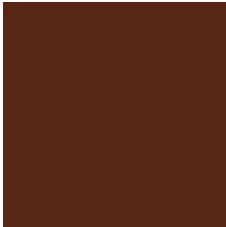
Can be the Title IX Coordinator, although that is disfavored.



The Investigator may not be a decision maker.



Must be trained in accordance with the requirements in the regulations.



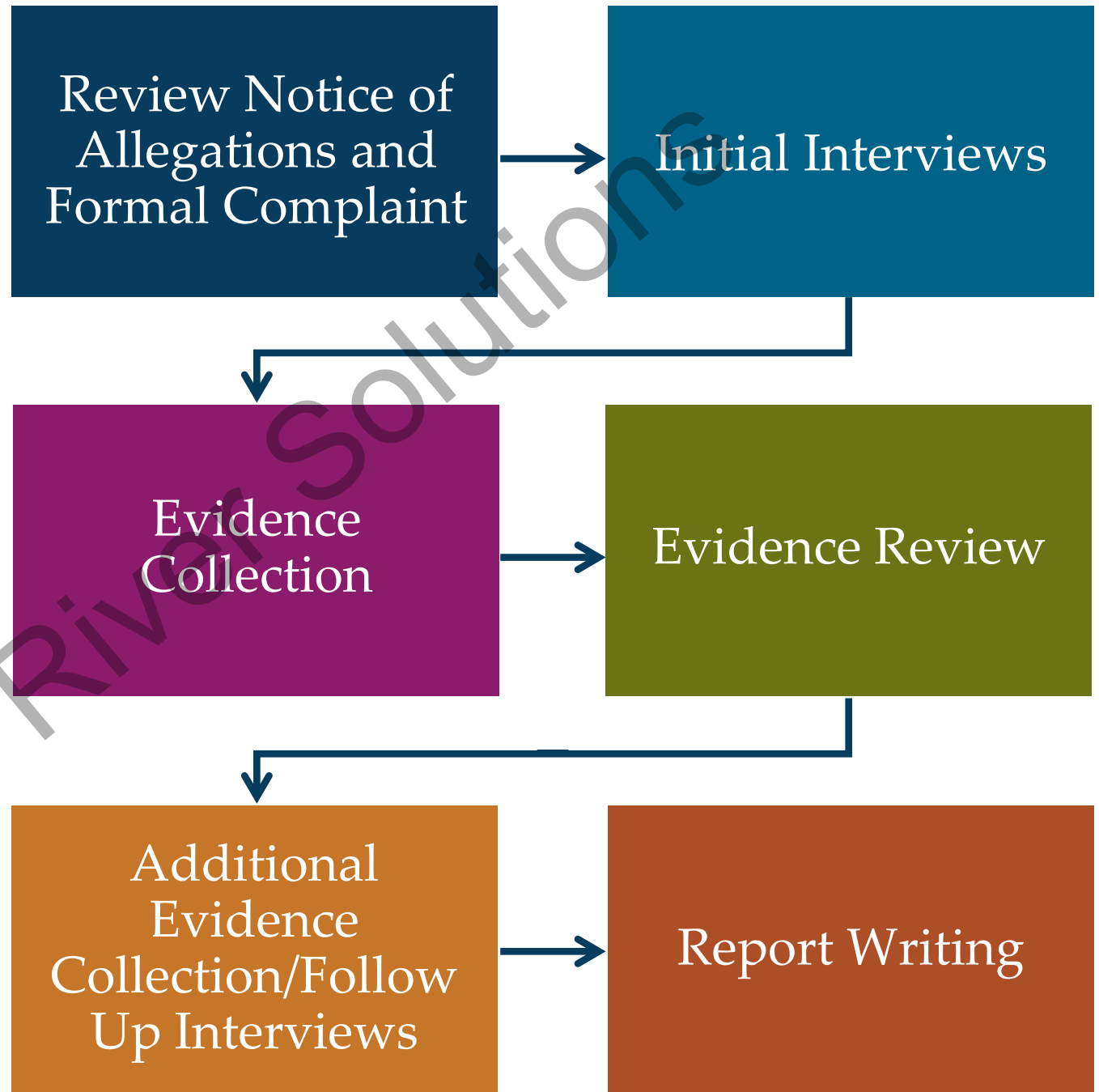
Must conduct the investigation in an impartial manner, avoiding bias/pre-judgment, and conflicts of interest.

DEVELOPING AN INVESTIGATIVE STRATEGY

05

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ESSENTIAL STEPS OF AN INVESTIGATION



UNDERSTAND THE SCOPE OF THE INVESTIGATION



Review the Notice of Allegations and the Formal Complaint



Ask questions if unsure

IDENTIFY 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?

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RAPE

Definition: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Questions to ask:

1. Did Respondent penetrate Complainant's vagina or anus?
2. Without Complainant's affirmative consent?
 - *What is the ground for lack of consent?*
 1. Did respondent fail to seek and obtain Complainant's affirmative consent?
 2. Did Respondent force Complainant?
 3. Did Respondent coerce Complainant?
 4. Was Complainant incapacitated and therefore incapable of consent?

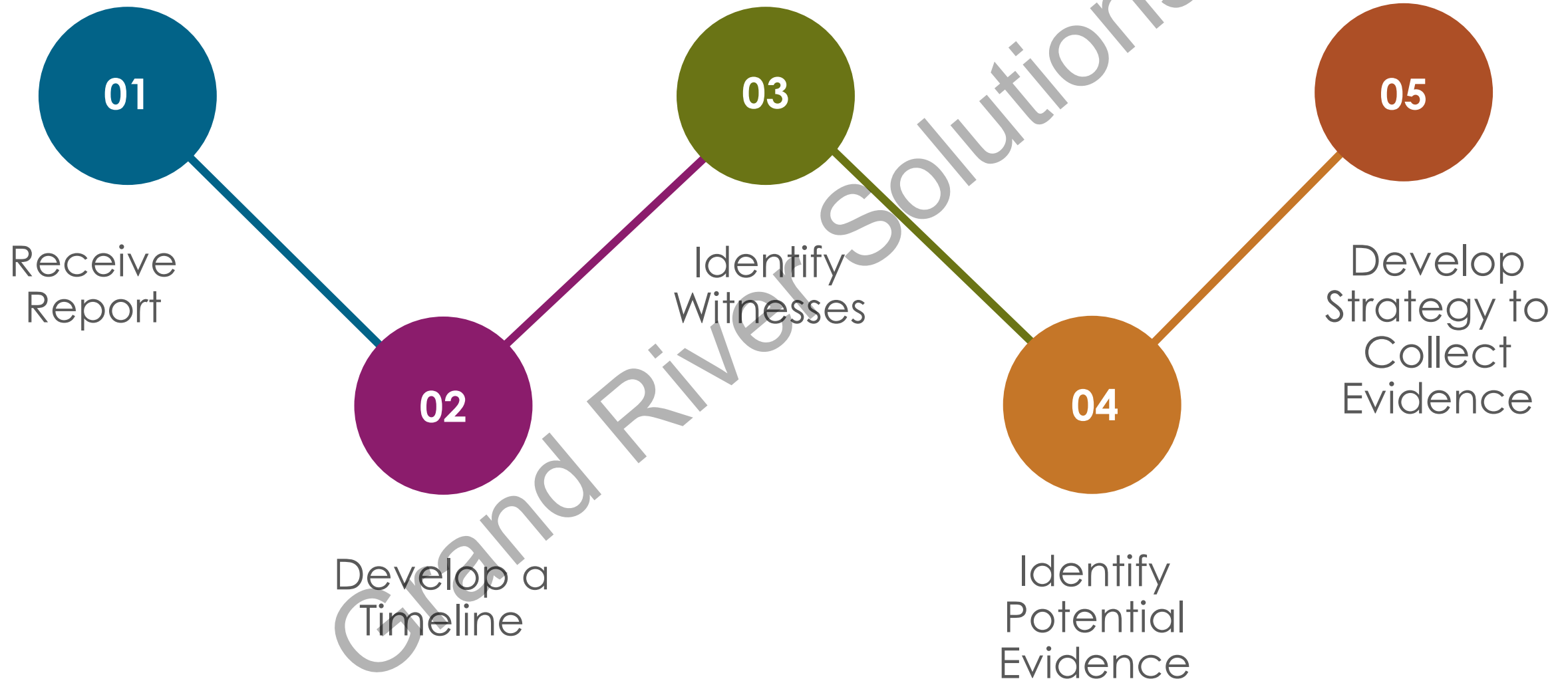
STALKING

Definition: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
Fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Questions to Ask:

1. Did Respondent engage in a course of conduct?
2. Was that course of conduct directed at Complainant?
3. Would Respondent's conduct cause a reasonable person to either
 - a. *Fear for their safety or the safety of others, or*
 - b. *Suffer substantial emotional distress?*

THE PROCESS: DEVELOPING AN INVESTIGATIVE STRATEGY



INVESTIGATION TIMELINE

Prior History

- Between the Parties?
- Of the Parties?

Incident

- Consent?
- Type of Contact?
- Injuries?

Pre-Incident

- Communications?
- Interactions?
- Conduct?

Post Incident

- Behaviors?
- Communications?

The Importance of Organization



INVESTIGATIVE INTERVIEWS

06

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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



AGENDA 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

EXPECTATIONS

What they should expect of you:

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you
- Prepare the parties for follow up interviews and the “shift”

What you expect of them:

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks

A photograph of three women sitting at a dark wooden table in a bright, modern office setting. The woman in the foreground, with vibrant red hair and wearing a blue and white striped long-sleeved shirt, is smiling broadly and looking towards the camera. She has her hands on a laptop. Behind her, two other women are also smiling and looking towards the camera. The woman in the middle has long dark hair and is wearing a mustard-colored top. The woman in the background has short dark hair and is wearing a dark top. On the table, there are several items: a laptop, a glass of water, a red mug, and some papers. A large, semi-transparent watermark reading "Grand River Solutions" is diagonally across the image. On the right side, there is a dark blue rectangular overlay containing white text.

HOW DO WE...

- Build Rapport and Trust?
- Empower?

RAPPORT AND TRUST

Exhibiting
Expertise

Clear
Introduction

Exhibiting
Empathy

Preparedness

Transparency



EMPOWERMENT

Duration

Permission
to ask
questions

Space

Clear
Expectations

Permission
to seek
clarity



CONDUCTING INVESTIGATIVE INTERVIEWS

1. Start by eliciting a narrative

2. Listen

3. Interview for clarification

4. Listen

5. Avoid leading or blaming questions, interrogation

START INTERVIEW BY ELICITING A NARRATIVE

- “Help me understand your experience?”
- “What are you able to tell me about your experience?”
- “Start where you are comfortable and share what you are able to remember.”

Allow the person to speak uninterrupted. This takes patience.

ASK QUESTIONS THAT ARE INTENDED TO CLARIFY AND MORE DEEPLY EXPLORE THE INFORMATION AND DETAILS PROVIDED BY THE PERSON IN THEIR NARRATIVE.

Do Ask:

Interview for clarification

Help me understand?

Can you tell me more about...?

Is there anything else you can share about...?

Avoid

Interrogation

Questions that blame

Questions that imply doubt

Leading questions

CAPTURE THE ENTIRE EXPERIENCE

- Ask about the physical and emotional reactions to the incident.
- Conclude with very open-ended questions:
 - What was the most difficult part of this experience for you?
 - Is there something that stands out/that you just can't stop thinking about?
 - Is there anything more that you would like me to know?

THE BEFORE

At some point during the interview, it is also important to explore the prior history, if any, between the complainant and the respondent, and the history of the parties, individually.



AND THE AFTER

It is also important to explore the events following the incident. Oftentimes, the best evidence is produced after the incident.

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction;
“Has anyone expressed concern about you since the assault?”
- Communication/contact between the complainant and respondent

THROUGHOUT THE INTERVIEW



Explain questions, especially the difficult ones.

How much did you drink?

What they hear: this is your fault because you were drinking.

Do not ask leading questions.

Watch your tone.

Do not rush.

Listen.

Pay attention to and document information.

Document questions asked.

AT THE CONCLUSION OF THE INTERVIEW

Discussion submission of evidence.

Explain statement review process.

Explain next steps in the process.

Keep the lines of communication open.

Review available support, privacy requirements, and prohibition against retaliation.

AFTER THE INTERVIEW: ACTIONS

Memorialize the interview in writing: notes, summary, transcript

Provide opportunity for the party or witness to review it.

Provide opportunity for party or witness to provide a response.

Incorporate the response.

A NOTE ABOUT WITNESS SUMMARIES

- The reader of any report should not know of the investigator's presence in the report; for example, report should not say "I then asked . . ."
- Use interviewee's words and put the words in quotes if it is their words
- Avoid conclusory words, or words that suggest that the investigator has an opinion about the information offered

AFTER THE INTERVIEW: REFLECTION



Reflect.

Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

FOLLOW UP INTERVIEWS

- Seek Clarification
- Explore Inconsistencies
- Explore contradictions
- Explore difficult issues
- Opportunity to respond

FOLLOW UP INTERVIEW APPROACH

01

Explain the purpose of the follow up

02

Set the stage for the topics you will be covering

03

Prepare the interviewee for “the shift”

04

Do not avoid asking the hard questions

THE “HARD” QUESTIONS

Details about the sexual conduct

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

HOW TO ASK THE HARD QUESTIONS

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

WHAT QUESTIONS DO YOU HAVE FOR QUINN?

“Casey and I have been friends for a few weeks. On Friday night, we were hanging out alone in my room, watching a movie. We started to make out, and I was ok with that. After making out for a while, Casey started touching me down there. Then Casey tried to have sex with me. Casey knew that I didn’t want to have sex but kept trying anyway. Casey was being really coercive, and so I just went along with it. Casey raped me and I want Casey to be held accountable.”

WHAT QUESTIONS DO YOU HAVE FOR BARRI?

“When I got to the party, I was already lit. I kept letting Marc get me drinks anyway. At some point, I just kinda don’t remember anything. And then I woke up in Marc’s bed and it was morning. I had all my clothes on, but I know someone had sex with me. I could feel it. I just wanted to go, so I did. Before I left Marc woke up and tried to talk to me but I wasn’t hearing it. He looked guilty and I could tell he felt bad.”

WHAT QUESTIONS DO YOU HAVE FOR COLIN?

“Pat and I have been together for about a month and have been intimate for the last two weeks. We went out with my friends on Friday night and Pat got really drunk. At some point we ran into my ex and Pat was really jealous, so we left. When we got back to my place, I thought things were fine. We started hooking up and all of a sudden Pat's mood changed. Pat got really aggressive and choked me. He was so angry and I was so scared.”

EVIDENCE COLLECTION AND ASSESSMENT

07

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EVIDENCE:

“Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or non-existence of a fact.”

-Black's Law Dictionary

TYPES OF EVIDENCE

Direct Evidence

Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

Circumstantial Evidence

Evidence based on inference and not on personal knowledge or observation.

Corroborating Evidence

Evidence that differs from but strengthens or confirms what other evidence shows

EVIDENCE

Testimony

Text
Messages

Social Media
Posts and
Messages

Emails

Surveillance

Videos

Photographs

Police Body
Camera
Footage

Swipe Records

Medical
Records

Phone Records

Audio Recordings

EVIDENCE COLLECTION

- Identify the items of evidence that you would like to obtain.
- Develop an intentional strategy for obtaining that evidence.
- Overcome barriers to evidence collection.
- Considerations about collecting certain types of evidence.

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A THOROUGH INVESTIGATION
is more than evidence collection

EVALUATING THE EVIDENCE

01

Is it relevant?

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

02

Is it authentic?

Is the item what it purports to be?

03

Is it credible/reliable?

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

04

What weight, if any, should it be given?

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

A THOROUGH INVESTIGATION PERMITS THE DECISION MAKER TO ASSESS

- Relevance
- Credibility
- Reliability
- Authenticity
- Weight



REMINDER-“RELEVANT” EVIDENCE

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

ASSESSING RELEVANCE

Why Does it Matter?

- Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.
- Character Evidence
- Polygraph Evidence
- Opinion Evidence

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?



OPINION EVIDENCE: TRY IT!

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

“I got to the party pretty late, and Taylor was already lit.”

“Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex”

ASSESSING AUTHENTICITY

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.

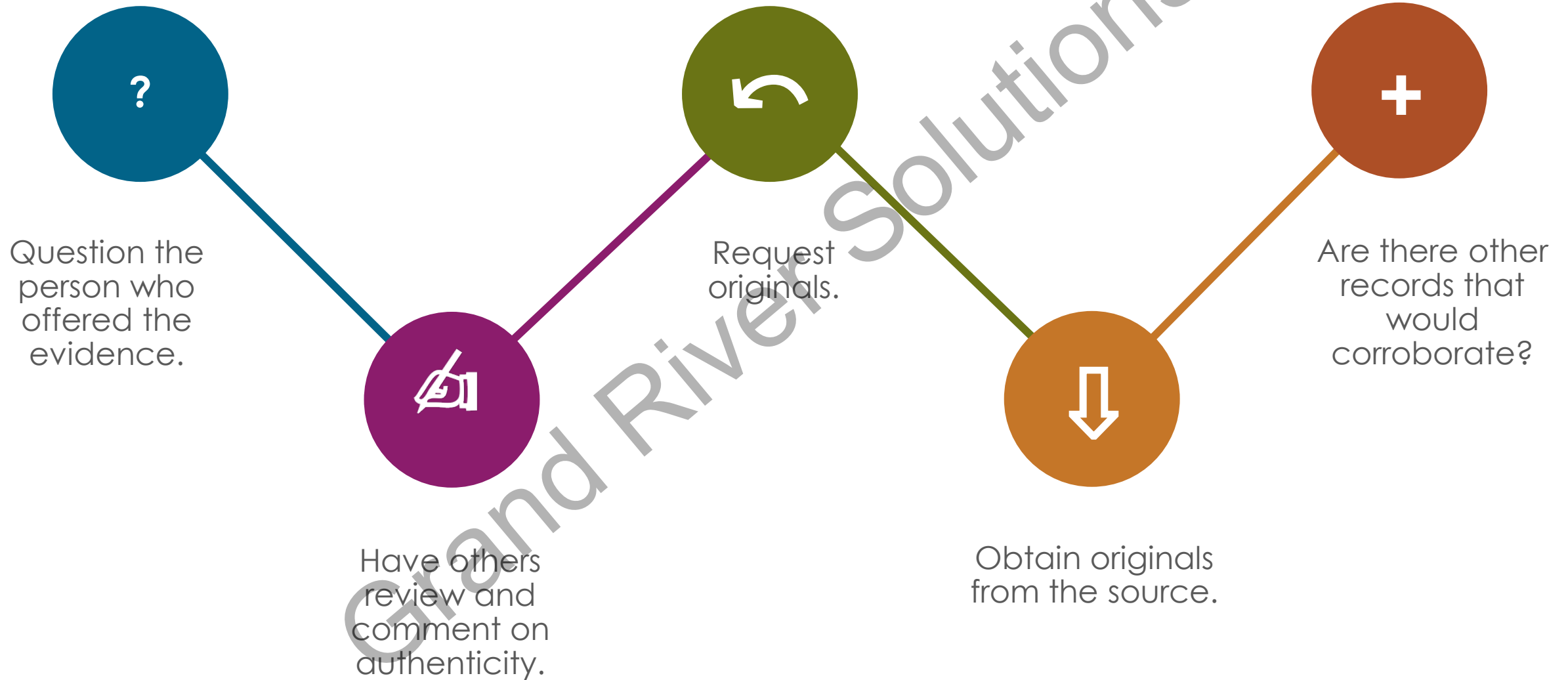


Ask questions, request proof.



Investigate the authenticity if necessary.

IS IT AUTHENTIC?



ASSESSING CREDIBILITY AND RELIABILITY

No formula exists, but
consider the following:

Sufficiency of
detail and
specificity

Ability to recollect
events

Material
Omission

Internal
Consistency

Inherent
Plausibility

Motive to
falsify

Corroboration

BARRIERS TO EVIDENCE COLLECTION



Non-participating parties

Uncooperative witnesses

Uncooperative advisors

Identity of party or witness unknown

Refusal to share materials

Materials lost or no longer accessible

Difficult topics

INTOXICATION VS INCAPACITATION



INCAPACITATION

- Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. Therefore, in situations when the Respondent knew or should have known that the Complainant is physically or mentally incapacitated, any “consent” obtained is invalid. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment. Incapacitation is based on the totality of the circumstances and all relevant indicators of an individual’s state of mind. Situations wherein an individual is deemed to have an inability to give consent in situations where the individual is include (continued on next slide):

INCAPACITATION

- Incapacitated due to alcohol, drugs, or other substances including, but not limited to, prescription medications; A. Determining consent when alcohol or other drugs are involved: In incidents involving alcohol, drugs, or other substances, the totality of the circumstances is analyzed to determine whether the use of alcohol, drugs, or other substances caused an inability make rational, reasonable decisions about sex activity. Whether a Respondent knew or reasonably should have known of the Complainant's inability to give knowing consent is an element of the policy violation. An individual's use of alcohol or drugs does not diminish that individual's responsibility to obtain consent if that individual is the one who initiates sexual activity. Incapacitation differs from drunkenness or intoxication. Incapacitation is a state where an individual cannot make a rational, reasonable decision because they lack the capacity to make informed judgments about the situation

INCAPACITATION

- Some factors considered to determine whether an individual is incapacitated due to alcohol, drugs, or other substances and therefore not able to give consent include, but are not limited to: ◦ whether the individual was conscious or unconscious, ◦ whether the individual became sick due to intoxication, ◦ the individual's ability to communicate and/or slurred speech, ◦ the individual's coordination (ex. ability to walk, dress/undress, perform simple tasks), ◦ and any other action that would be indicative of a level of cognitive functioning. ◦ The existence of any one of these factors may support a finding of incapacitation for purposes of this policy. The mere presence of alcohol, drugs, or other substances does not equate to an inability to give consent. Stated differently, it is possible for an individual to have alcohol, drugs, or other

SCENARIO 1

Complainant reported that they 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%.

SCENARIO 2

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.

HEARING OVERVIEW

08

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WHAT IS THE PURPOSE OF A HEARING?



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

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

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

THE PARTICIPANTS

Advisors

There are two types of Advisors



Advisor: throughout the whole process



Hearing Advisor: hearing, for purposes of asking questions

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

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 to 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.

Requires a hearing chair.

THE PARTICIPANTS

The Decision-Makers

- **A panel**
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate



THE PARTICIPANTS

The Hearing Chair

- Is a decision-maker
- 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 Decision Maker

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



THE PARTICIPANTS

The Investigator

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



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

PRE-HEARING TASKS: DEVELOPING QUESTIONS

09

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COMMON AREAS OF EXPLORATION

Credibility
/Reliability

Clarification
on timeline

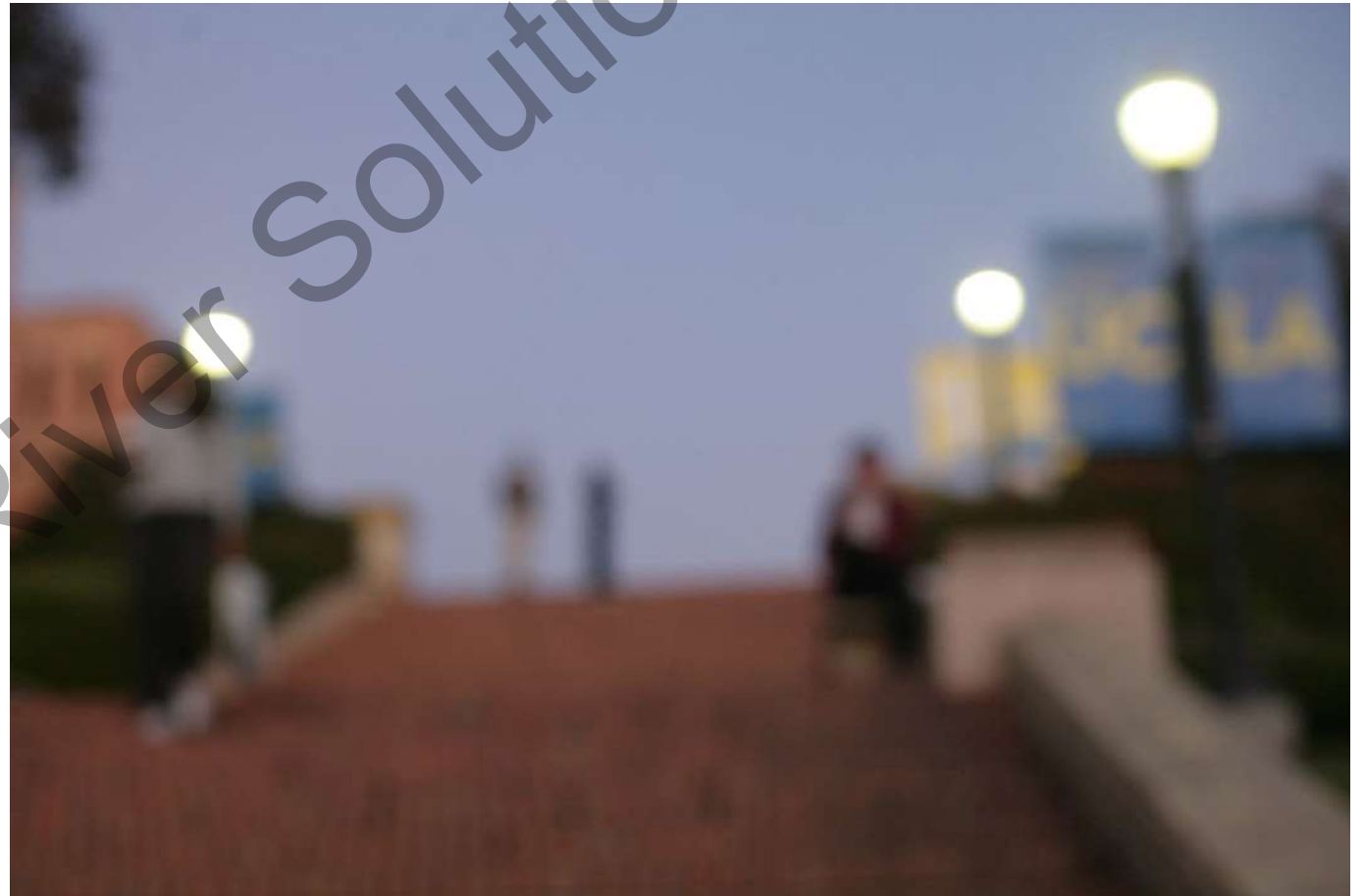
Thought
process

Inconsistencies



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



POLICY ANALYSIS

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



CHARLIE AND RAMONA HYPOTHETICAL ACTIVITY

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

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



THE HEARING

10

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FORMAT OF QUESTIONING

The Hearing Panel or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

WHEN QUESTIONING....

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



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you
interviewed?

Did you see the
interview notes?

Did the notes reflect
your recollection at
the time?

As you sit here
today, has anything
changed?

Did you review your
notes before coming
to this hearing?

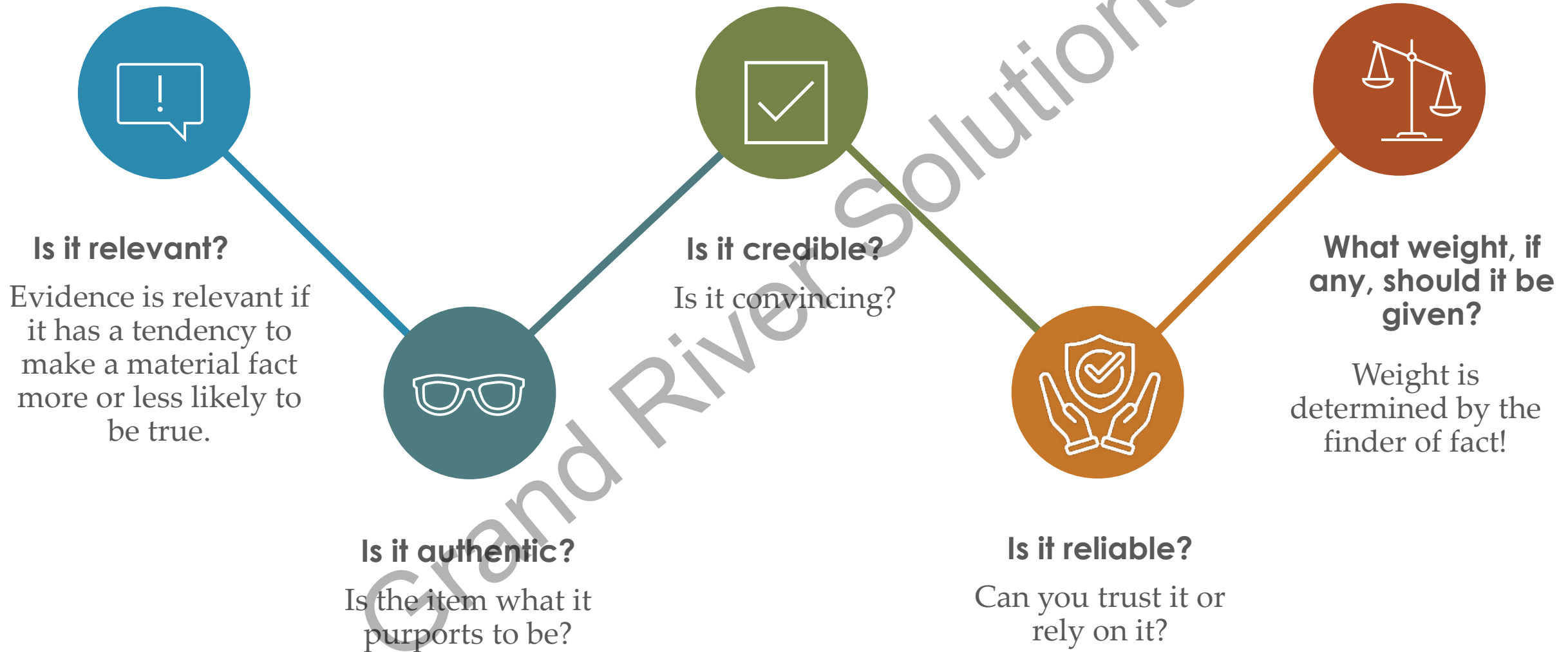
Did you speak with
any one about your
testimony today
prior to this hearing?

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
- Rape shield protections



EVIDENTIARY CONSIDERATIONS DURING QUESTIONING



Credibility: The Person is convincing

RELIABILITY: THE PERSON'S STATEMENTS CAN BE TRUSTED



Assessing Credibility and Reliability

NO FORMULA EXISTS, BUT CONSIDER THE FOLLOWING:

Sufficiency of detail and specificity

Internal consistency

Corroboration

Inherent plausibility

Material omission

Motive to falsify

Past record

Ability to recall events

CREDIBILITY/RELIABILITY ANALYSIS

STEP BY STEP

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

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

WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

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



RELEVANT VS. IRRELEVANT



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

EVIDENCE: GATHERING, WEIGHING, ANALYZING

Avoiding Common Errors

11

ALL APPEALS

Trauma-Informed

Everyone in Their Lane

Fundamental Fairness

Due Process

Consistent Process

THE RIGHT TO APPEAL?

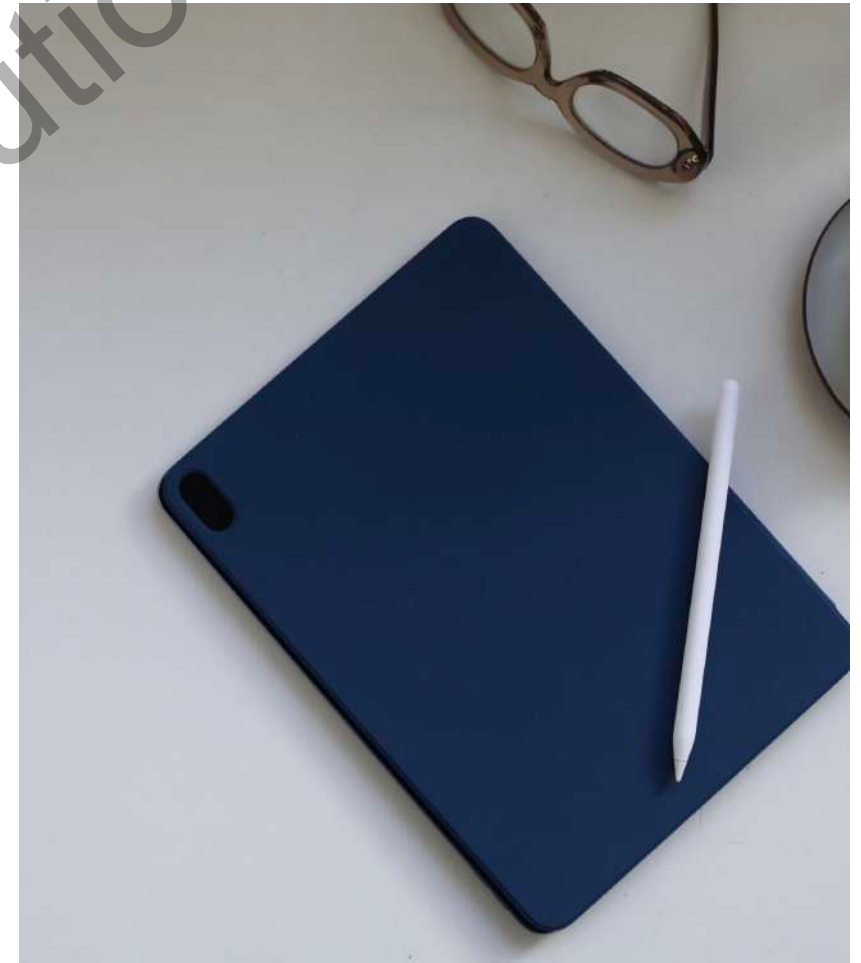
Both the complainant and respondent have the right to:



- Appeal the same things in the same way to the same person(s);
- Receive information about the appeal process;
- Appeal a sanction;
- Have all aspects of the process be the same for each party;
- Have their appeal reviewed and decided upon;
- Receive notice of the outcome of the appeal.

SANCTIONS AND INTERIM MEASURES DURING APPEAL PROCESS

- Maintaining or changing interim measures during the process
- Communicating and documenting sanctions and interim measures
- Deciding whether to impose sanctions during the process
 - Pros and Cons



DUE PROCESS DURING THE APPEAL PROCESS

- Regular, published procedures
- Standard grounds for appeal
- Who is reviewing or hearing the appeal



Equal Rights and
Fair Process for
Each Party

BEFORE THE APPEAL

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NOTIFICATION OF THE APPEALS PROCESS

Who Gets Notified	What They are Notified Of
• Complainant • Respondent • Student Conduct? • Human Resources? • Academic • Personnel?	• Allegations • Investigation Outcome • Applicable Policy • Appeals Process • Timeline • Links • Dates • How to submit

WHOSE JOB IS IT TO...



Receive the
appeals

Determine whether
the grounds for
appeal have been
met

Notify the
person(s)
responsible
for reviewing
the appeal

Arrange the
logistics for
the appeal

Communicate
the decision

Retain
Documents

Determine
Remedies

Communicate with
complainant and
respondent and
advisors and
witnesses as
appropriate



DE NOVO APPEALS?

We are NEVER, EVER
going back to this...

DIFFERENCES IN RESPONSIBILITY

Resolutions

- Investigation
- Hearing
- Determine What Happened
- Findings of Fact
- Findings of Policy

SANCTION

Appeal

- Review the Appeal
- Determine Whether Grounds for Appeal Have Been Met
- Make Decision Regarding Merits of Appeal

DIFFERENCES IN BURDEN

College/
University

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graph LR; A[College/University] --> B[Error correction]; C[Complainant Respondent] --> D[Persuade and point out error with supporting evidence or facts]
```

Error correction

Complainant
Respondent

Persuade and point out error with supporting
evidence or facts

HAS THE BURDEN BEEN MET?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds

This step is **not** to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

WAS AN APPEAL FILED?

Review the information provided by Complainant and/or Respondent and determine whether it contains sufficient information concerning the grounds for appeal and the reasons related to those grounds.

This step is not to decide the merits of the appeal, but to identify the nature and scope of the issues to be addressed.

IN THEIR APPEAL, RESPONDENT WRITES:

- I have new evidence not previously available to me. Having read the hearing officer's report, I now know the hearing officer was biased (new evidence) because the hearing officer found against me, and there is no way that any unbiased hearing officer would have properly weighed the evidence and come to any conclusion other than the fact that complainant was lying.
- The hearing officer failed to call 1 key witness. The Title IX coordinator should have been questioned, and she could have explained that Complainant was given a free pass and allowed to drop out of organic chem after it was obvious Complainant was going to fail. This would have proven that Complainant made up the complaint and filed only to avoid failing a difficult class.

WHAT DOES THIS MEAN?

- You are reviewing the appeal for what it says, not how it is said.
- You are identifying what the party says went wrong in the process or whether the party has identified new information and IF the party has articulated that what went wrong or what is new, if true, would have led to a different outcome.



COMMON CHALLENGES

Non-Participating Parties

- Bias/conflict of interest
- Error

Uncooperative Witnesses

Uncooperative Advisors

DEAR APPEALS OFFICER...

- I am the victim of a false accusation...
- The police were not contacted and I was not charged by law enforcement with a crime
- After the supposed sexual assault, she sent me a friend request on Instagram and asked me to dance at a party
- No one listened to my explanation or reviewed the evidence so they could see that I was falsely accused.

DOES THIS MEET ANY GROUNDS FOR APPEAL?

- Procedural error?
- Bias/conflict of interest?
- New evidence?



NEW EVIDENCE: WHAT WOULD YOU DO?

Appeal states there is
new evidence...

Evidence not provided with the appeal

How do you know it is new?

It is new but is it relevant and reliable?

DEAR APPEALS OFFICER...

I am the victim of a false accusation. Something went terribly wrong.....



PROCEDURAL ERROR: THE DECISION WAS UNREASONABLE

The decision was unreasonable based on the evidence.

- “I am the victim of a false accusation”
- “There was no crime”
- “She initiated it, not me”
- “We were both drunk”

PROCEDURAL ERROR

There was a procedural error in the process that materially affected the outcome.

- Someone was not interviewed
- I was not allowed to cross-examine the complainant
- Burden was put onto me to prove consent

DENIAL OF A PROCESS YOU DON'T OFFER

Cross examination

Representation

Discovery

Subpoena / compel witnesses

WHEN A RESPONDENT REFUSES TO PARTICIPATE IN THE PROCESS BUT CLAIMS DUE PROCESS IS VIOLATED

“The Plaintiff waived his right to challenge the process resulting in his expulsion by failing to participate in the process afforded him.”

- Herrell v. Benson



WHEN EXCEPTIONS TO PROCESS OCCURS

Examples:

- University brings the case against one of its own
- Recusal of a member of a panel
- Changing composition of a panel

BIAS

- What constitutes bias?
- The investigator was biased against me because...
- The investigator was biased against (complainants/respondents generally) because ...



ALLEGATIONS FOR BIAS

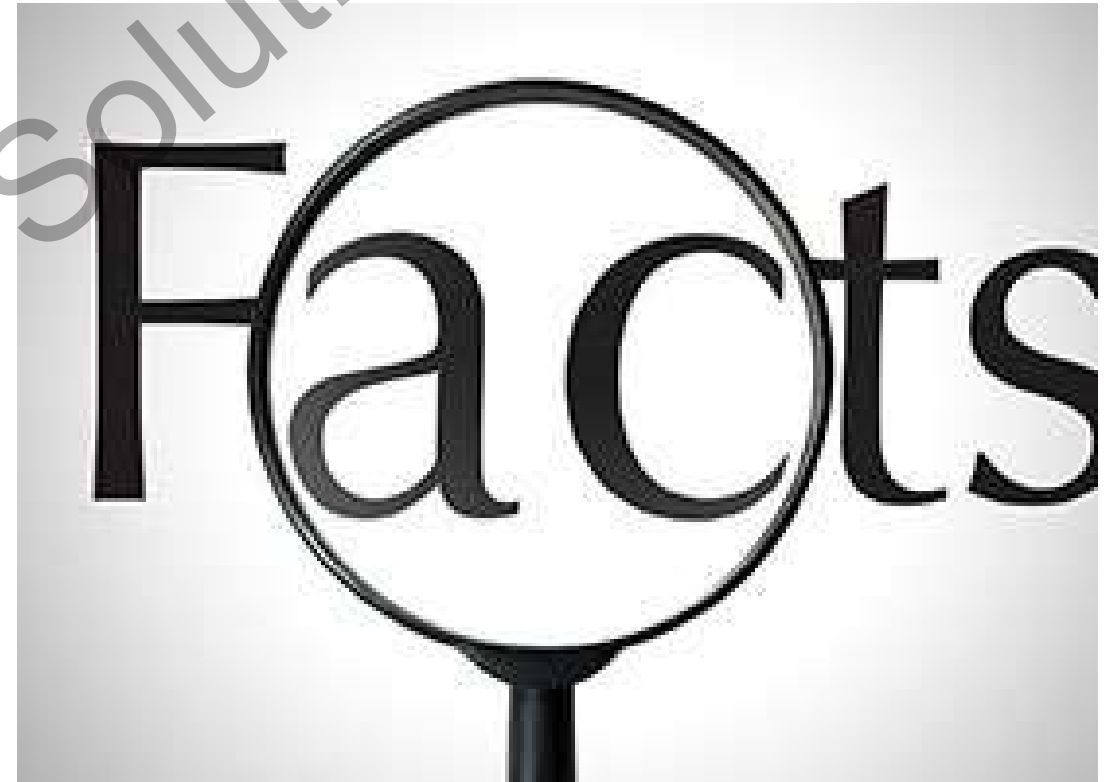
“Pro-victim bias does not
equate to anti-male bias.”
-Doe v. University of Colorado

Anti-violence bias does not
equate to anti-male bias.

ALLEGATIONS OF BIAS AS THE BASIS FOR APPEAL

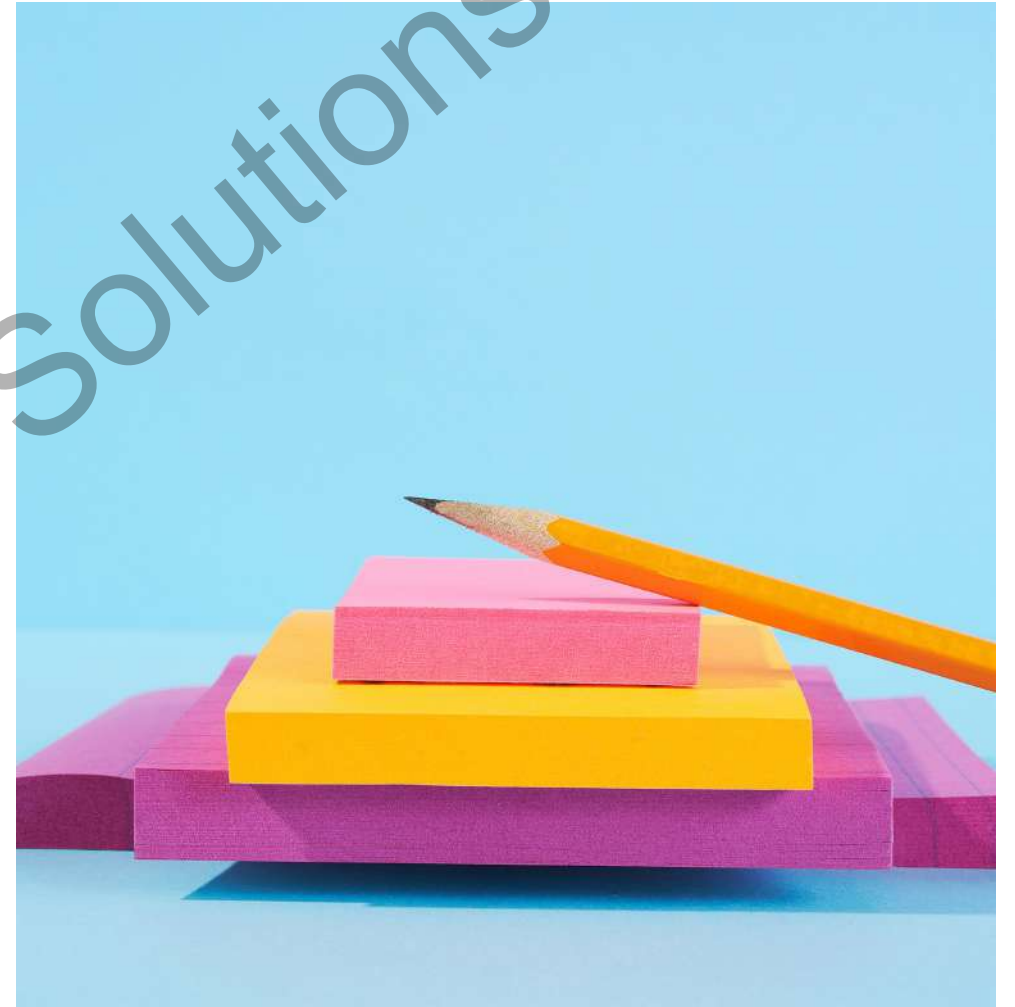
An allegation of bias without factual support “no longer passes muster”.

-Doe v. University of Colorado



NEW INFORMATION

- Is it really new?
- If it is new, would it change the findings/outcome
- Who investigates new information?



COMMON ERRORS

Grand River Solutions

SOMETIMES INSTITUTIONS DO THE WRONG THING



- Missing deadlines for providing materials
- Misunderstanding of consent or incapacitation
- Errors at a hearing

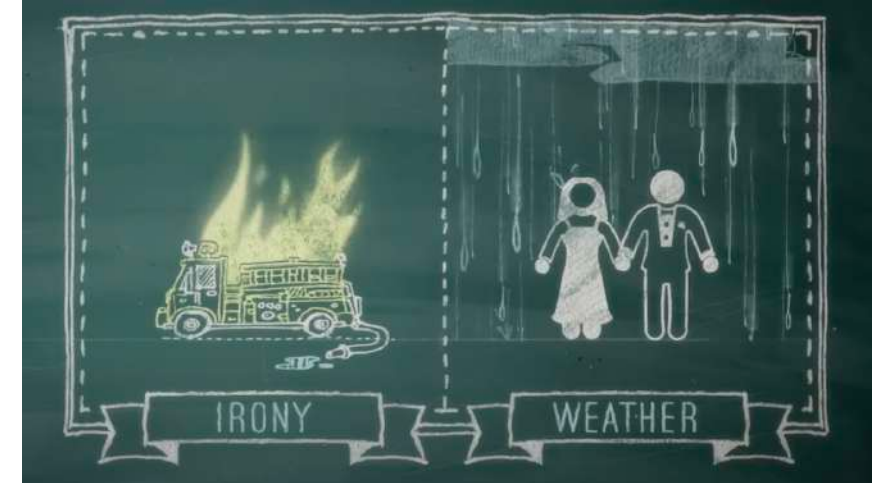
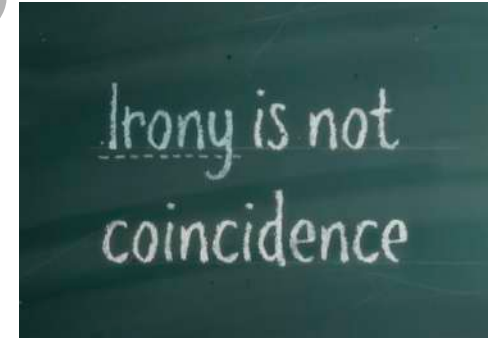
DETERMINING CREDIBILITY ON APPEAL

If Complainant does not participate, can you judge credibility?

Do you need to see demeanor to note credibility?

EVIDENCE – KNOWING WHAT TO CONSIDER

- Drunk vs. Intoxicated vs. Incapacitated
 - Language matters
 - Clarity and consistency of application
- Who has to prove consent?
- Know the language of your policy



Courtesy Weird AI's Word Crimes

CROSS COMPLAINTS



- Was it handled?
- How was it handled?
- When raised for first time in the appeal, what is your process?
- Who handles?

APPEALS PANELS THAT EXCEED THEIR AUTHORITY



- Stay In Your Lane
- How Do You Know
- How To Correct

TREATING THE PARTIES DIFFERENTLY

1. He filed an appeal, argued there was a procedural error because he did not agree with the panel's interpretation of a text message. Appeal granted, determination overturned. She then filed an appeal on basis that appeal panel exceeded their authority, her request to file an appeal was denied. **What did the court say?**
2. Hearing chair did not inform parties that a key witness was her student, nor that he had discussed the case (in brief) with the witness prior to her first interview. **What did the court say?**

WHY SHOW YOUR WORK: WHEN A JUDGE HAS A DIFFERENT DEFINITION OF CONSENT

“Because she removed her own shirt when Respondent suggested having sex, there was insufficient proof of a lack of affirmative consent.” Haug v. SUNY Potsdam, 2018

As the Complainant did not report the rape, and did not initially think she had been raped . . . more likely there was an erroneous outcome due to gender. Doe v. Dordt University, 2022

LESSER-INCLUDED CHARGES ON APPEAL



There are no lesser-included charges

Reflects lack of notice and opportunity to respond.

- Powell v. St. Joseph's University
- Doe v. U.S.C.

SANCTIONS ARE NOW WRONG BECAUSE FINDING WAS WRONG

Does appeals officer determine new sanction, or send case back for appropriate determinations?



CAN A SANCTION INCREASE ON APPEAL?

- A. In response to Complainant's appeal?
- B. Sua sponte (meaning, just on their own determining it was not sufficient) ?

LANGUAGE MATTERS WHEN WRITING APPEAL RESPONSE

You need clear and
consistent application

Drunk vs. Intoxicated vs.
Incapacitated

Who has to prove
consent?

Know the language of
your policy

HOW MUCH INFORMATION TO PROVIDE ON APPEAL?

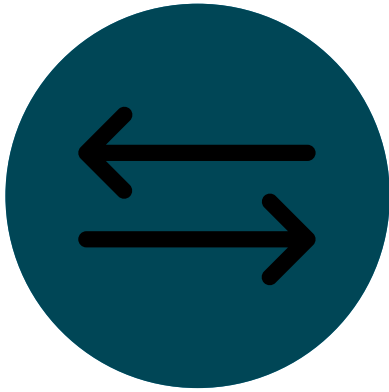
The appellate officer's failure to plainly articulate why he granted the appeal, which resulted in a new hearing that found the respondent in violation, was "perplexing" to the reviewing court, along with the appellate officer's ad hoc decision to request an independent Title IX opinion prepared in the course of determining the appeal.

COMMUNICATIONS ERRORS

- Communicate the decision
 - Complainant and Respondent
 - Title IX
- Interim measures
- No contact directives
- Remedial measures
- Sanctions



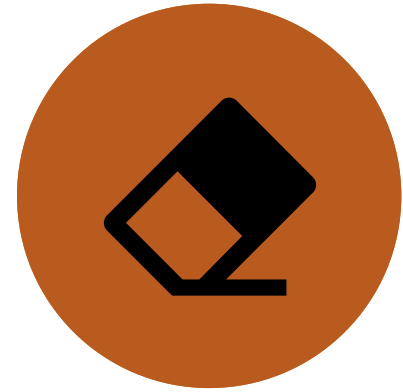
APPELLATE OFFICER/PANEL MAY NOT...



Substitute their own findings for the findings of the decision maker



Engage in fact-finding/weigh new evidence



Correct procedural errors on their own



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