



# 2020 TITLE IX REGULATIONS OVERVIEW

A Practical Approach to  
Navigating Beyond Compliance

Emma Hempel

June 2025

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# MEET YOUR FACILITATOR



Senior Solutions Specialist

*She/Her/Hers*

## Emma Hempel

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Emma Hempel is a Senior Solutions Specialist at Grand River Solutions. Emma serves as a Title IX Coordinator for campuses across the country. With over ten years of experience in the field of higher education, she previously served as the Title IX Coordinator at the State University of New York at New Paltz. In her previous role, she conducted all Title IX intakes for students and employees reporting sexual and interpersonal violence. She developed and implemented a variety of trainings and workshop on topics including sexual violence prevention, sexual harassment, bystander intervention, and diversity and inclusion.

# 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

# GETTING TO KNOW YOU



1. Name
2. Pronouns
3. Institution
4. Role
5. How long you have been doing Title IX work?
6. Favorite summer snack?

*Submit your responses in one message using the chat feature!*



# THE EVER-EVOLVING LANDSCAPE OF TITLE IX



01

# TITLE IX

## Title IX of the Education Amendments Act of 1972

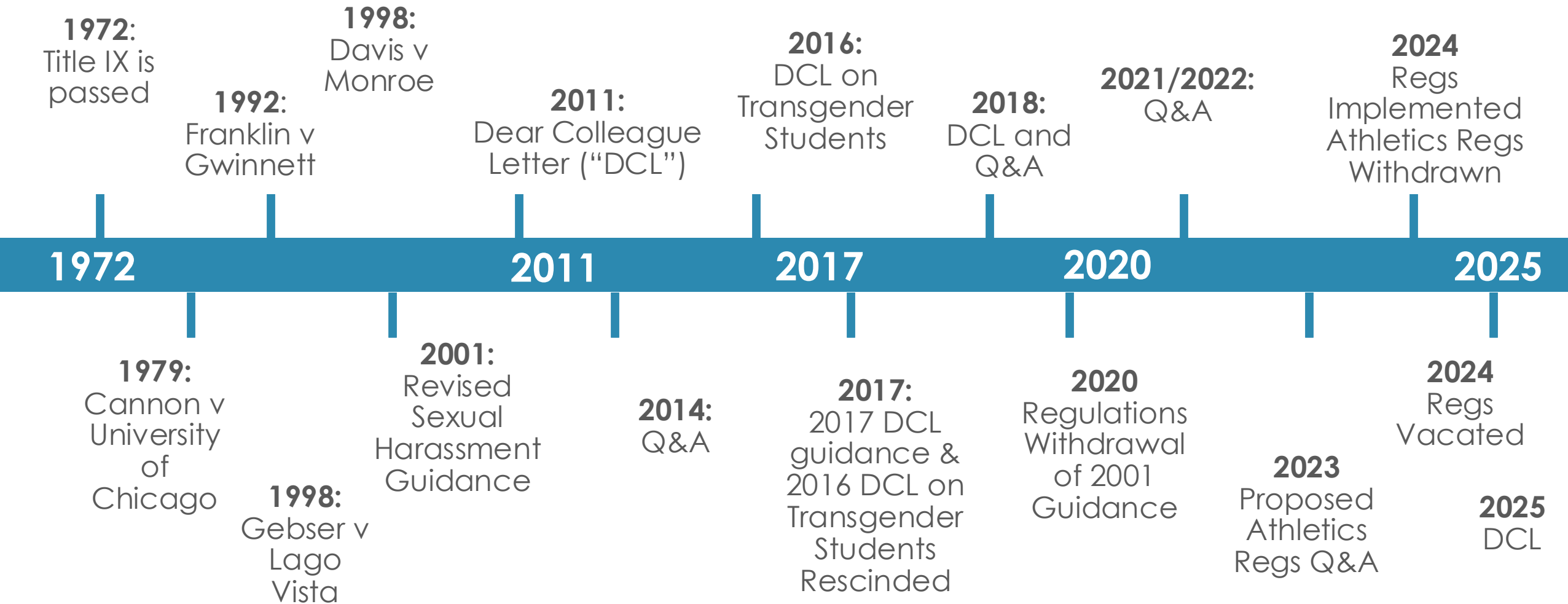
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).



# THE HISTORY OF TITLE IX

## A TIMELINE



# 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 TITLE IX REGULATIONS

## SEXUAL HARASSMENT ONLY

1

Narrows the definition of sexual harassment;

3

Narrows eligibility to file a complaint;

2

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

4

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



# TYPES OF CONDUCT



# 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. Fondling** — The touching of the private body parts of another person for the purpose of sexual gratification, 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 incapacity.

**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.

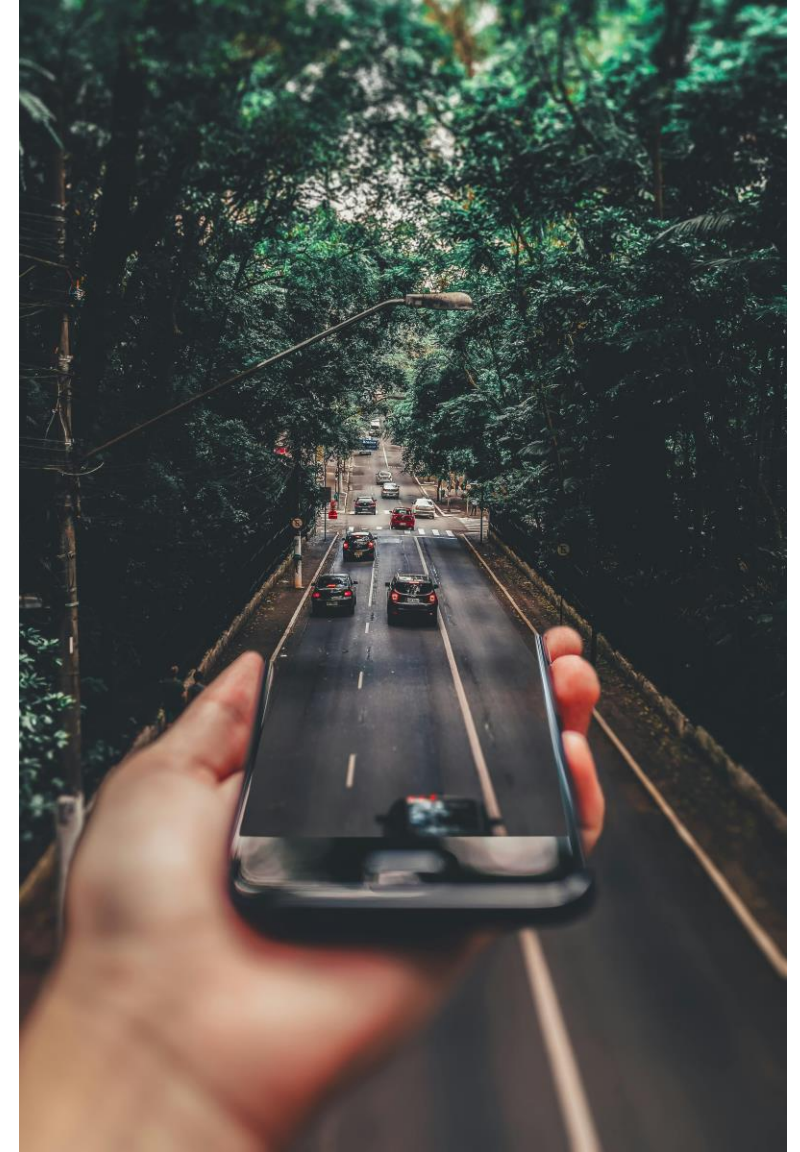
# STALKING

- 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 shares that another student 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.
- Will you address under Title IX? Why or why not? What other information do you need to know?





# LOCATION AND GEOGRAPHY





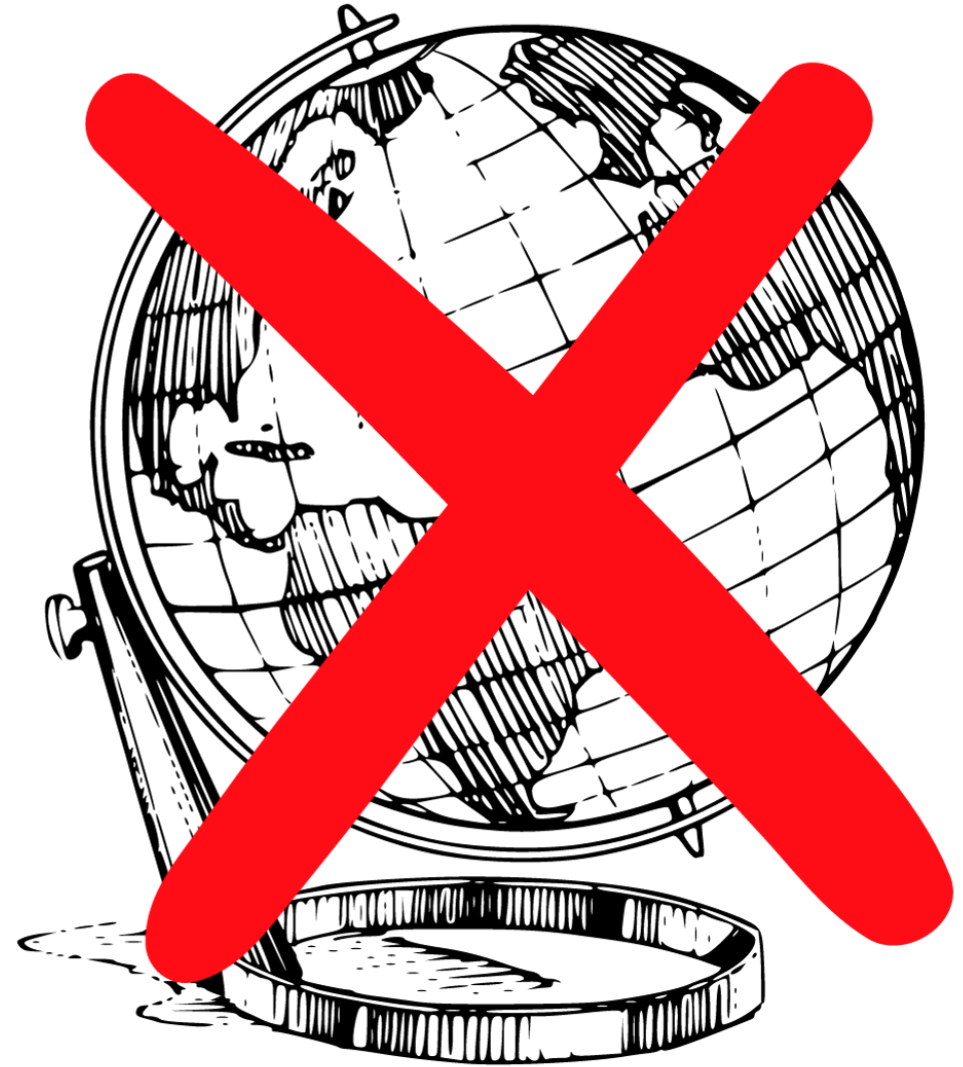
# COVERED GEOGRAPHY

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



GRAND RIVER | SOLUTIONS

# COVERED INDIVIDUALS

ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

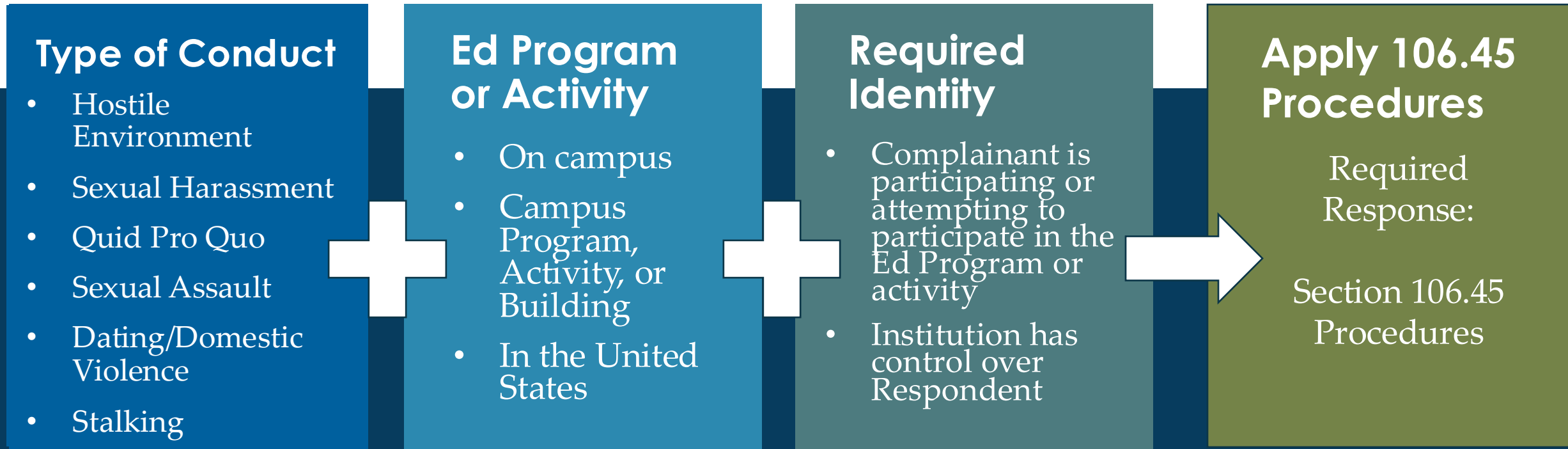
**“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30**

- Applicant
- Enrolled or Employed
- Accepted or Hired



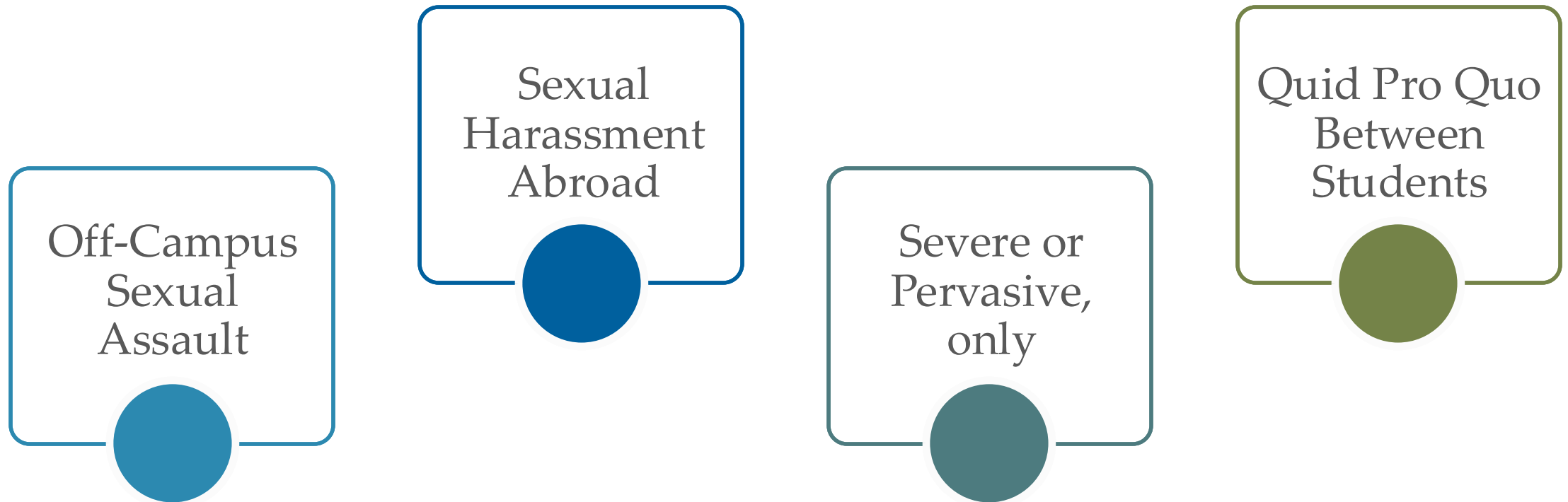


# TITLE IX APPLICATION (POST-MAY 2020)



# 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



# 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



# RECEIPT OF REPORTS

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



01

# 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

# 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.”

# COMPLAINANT INTAKE & SUPPORTIVE MEASURES

02

# 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

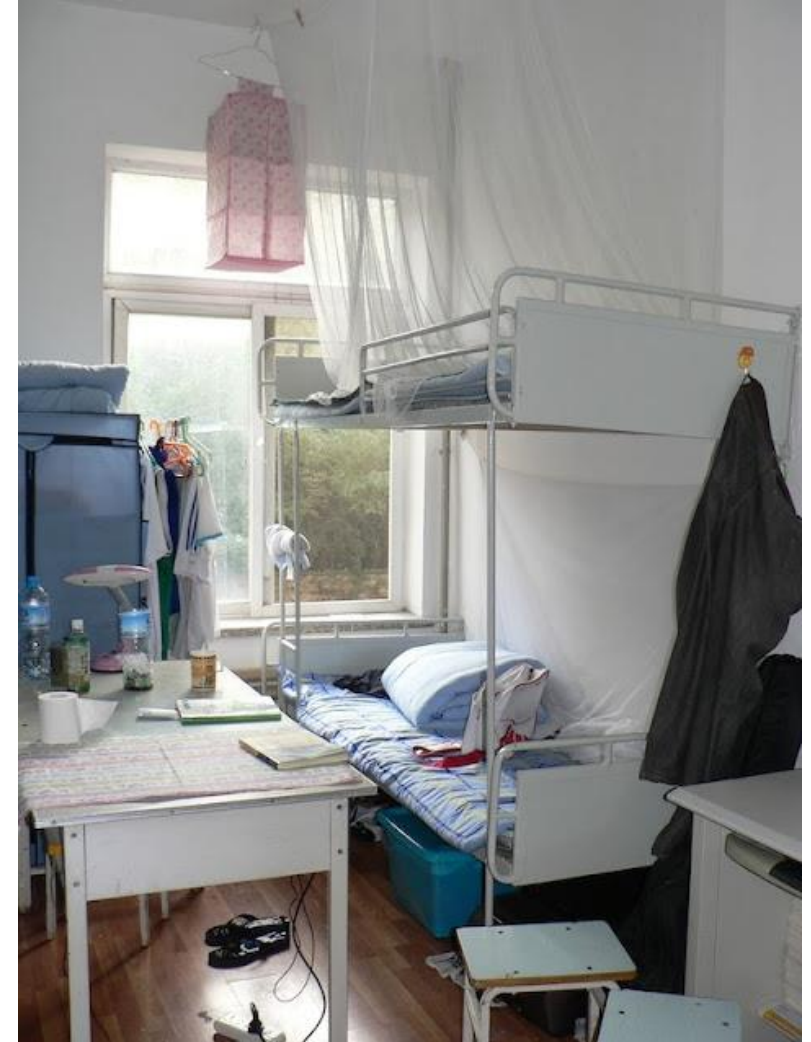
Non-punitive

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”**

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# 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.

# REPORT RESOLUTION

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 RESOLUTION

3(a)

# SUPPORT-BASED RESOLUTIONS

- Supportive Measures
- Targeted Education
- Educational Conversations



# FORMAL COMPLAINT & NOTICE REQUIREMENTS

03(b)



# 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;

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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;

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Identity of Respondent, if known;

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A request for a resolution or investigation.

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# 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

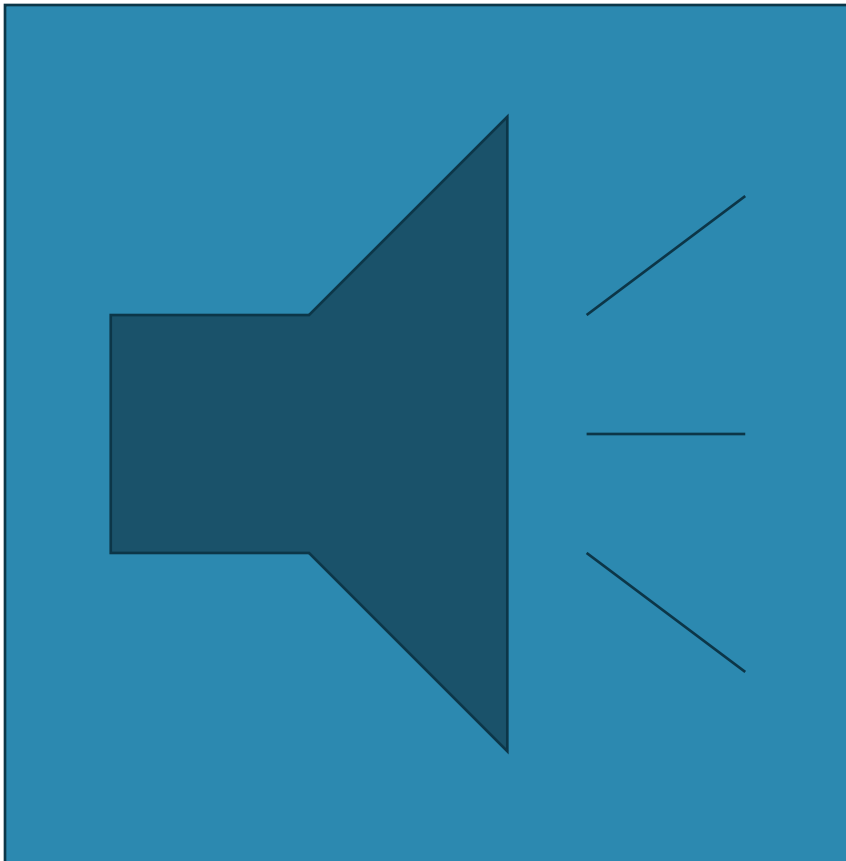
Written Notification Meetings and Sufficient Time to Prepare

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

03(c)

# 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

# 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

## **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.



Putting it all together



info@grandriversolutions.com



/Grand-River-Solutions



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/GrandRiverSolutions



/GrandRiverSolutions.com



@titleixandequity.bsky.social

## CONNECT WITH US







# DAY 2: TITLE IX COORDINATOR BOOTCAMP

A Practical Approach to  
Navigating Beyond Compliance

Blaze Bowers and Martha  
Compton

June 2025



# BUILDING A FOUNDATION FOR SUCCESS

01

# FINAL RULE, SECTION 106.8

Designation of Coordinator,  
Dissemination of Policy, and  
Adoption of Grievance Procedures

**“Each recipient must designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under this part, which employee must be referred to as the Title IX Coordinator.”**

## **Additionally:**

- The recipient must notify [everyone] of the name or title, office address, email address, and telephone number of the coordinator(s).
- Any person may report in person, by mail/email, telephone using the contact information.
- Reports can be made at anytime.

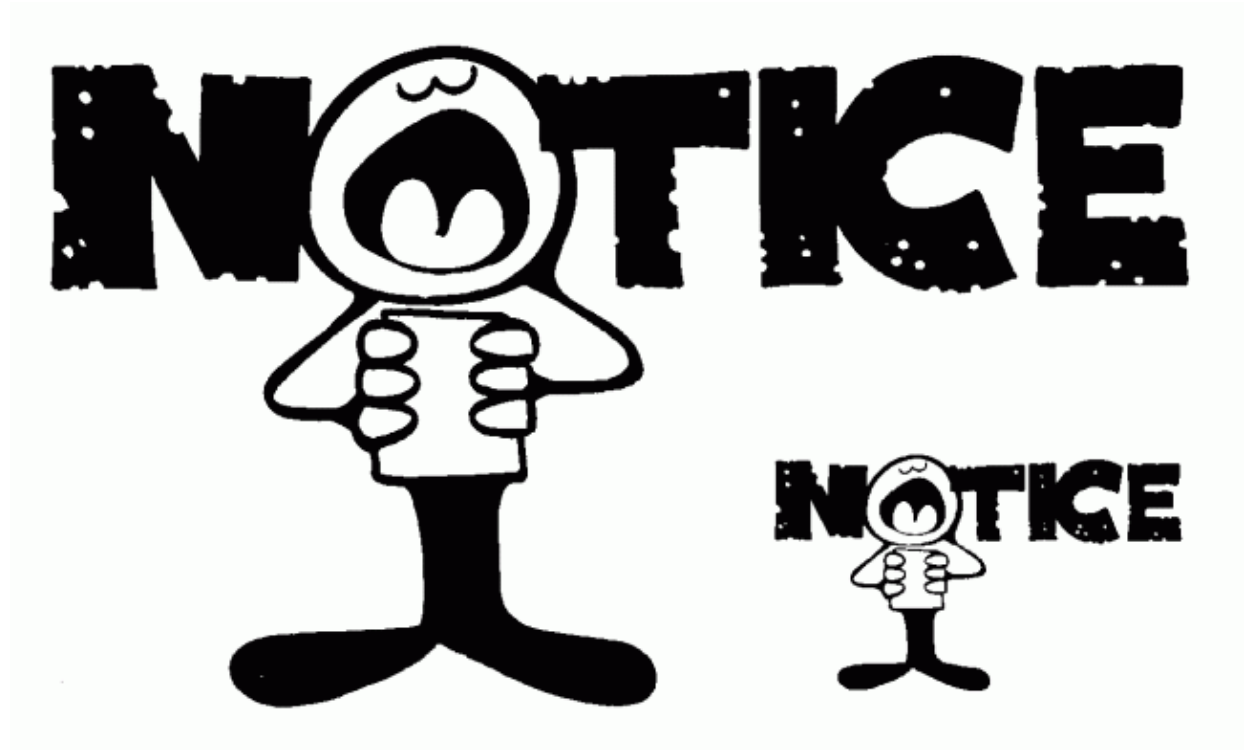


# FINAL RULE, SECTION 106.8 (a)

The institution must notify applicants and all members of the community of the Title IX Coordinator's:

1. **Name or Title**
2. **Office address**
3. **Email address**
4. **Phone number**

Any person may report , at any time, sex discrimination, including sexual harassment in person, by mail, by telephone, by email, or any other means using the contact information listed



# RESPONSIBILITIES REQUIRED UNDER TITLE IX AND THE REGULATIONS

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint
- Coordinate the effective implementation of supportive measures
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process

# RESPONSIBILITIES OFTEN DELEGATED TO THE TITLE IX COORDINATOR

- Ensuring that the institutional policies and procedures are compliant with Title IX
- Ensuring dissemination of the policy
- Overseeing the grievance process to ensure it is compliant
- Coordinating a compliant grievance process
- Staffing various roles
- Ensuring training requirements are met
- Record keeping
- Compliance with intersecting federal and state laws
- Education and prevention efforts

# 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





# 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

# 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

# THE THREE ESSENTIAL FUNCTIONS OF TITLE IX COMPLIANCE

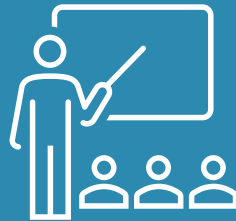
01

Response



02

Education &  
Prevention



03

Compliance



**ANOTHER  
MOMENT, PLEASE...**



# A SUCCESSFUL TITLE IX COORDINATOR...

C

Consistent

A

Adheres to policies and  
procedures

R

Records or documents  
everything

E

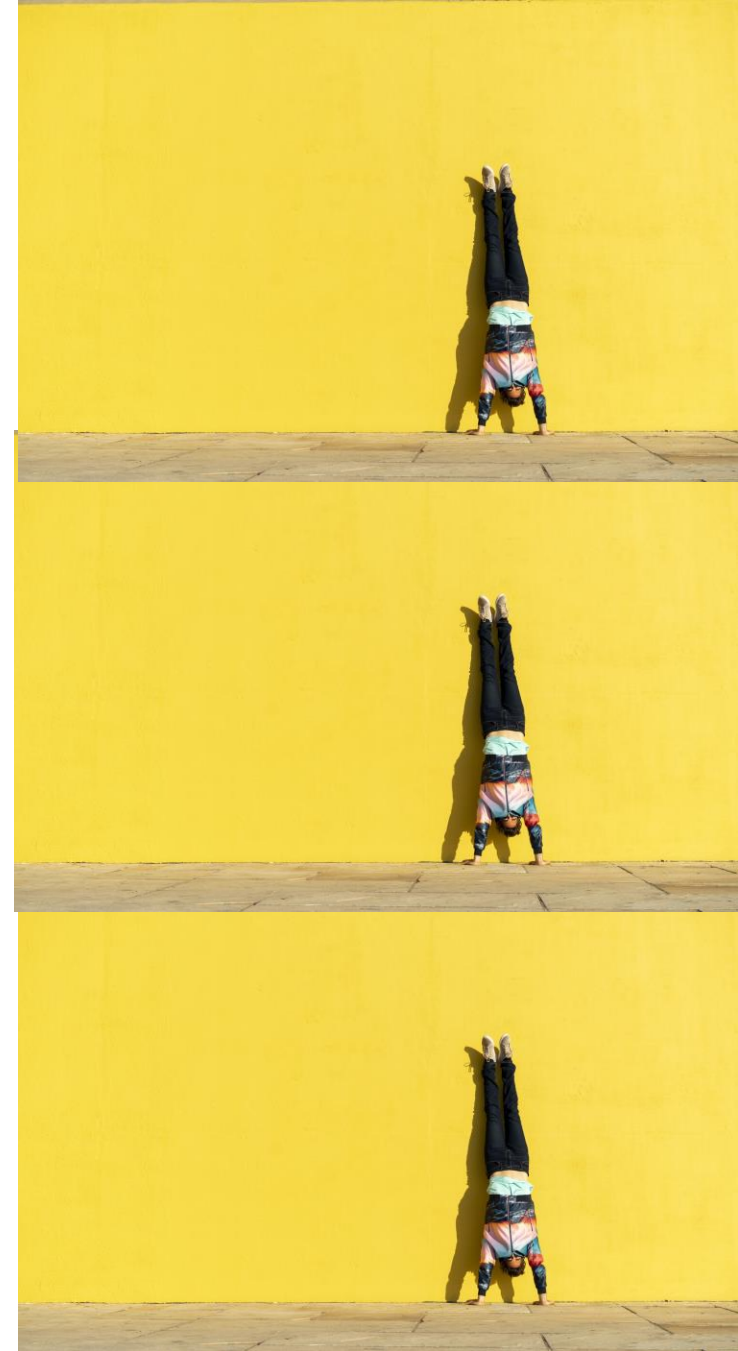
Engages meaningfully  
with the community

S

Strategizes for success

# CONSISTENCY

- Creation of Forms and Templates
- Development of Annual Plans for Training
- Development of Annual Plans for Compliance
- Comprehensive Policies & Procedures





# ADHERENCE

- Adhere to policies and procedures
- Implement training plans
- Stick to compliance plans
- Use the forms that are developed



# RECORD KEEPING

Document, Document, Document!

## 1. Compliance

1. Maintain old policies
2. Keep records of all responses to reporting requirement

## 2. Training

1. Dates, times, locations
2. Attendees
3. Training materials
4. Reason for the training

## 3. Response

1. EVERYTHING



# ENGAGEMENT

- Understand the needs of the community you serve
- Build awareness
- Build trust
- When you engage, others engage
- Can assist with workload





# STRATEGY

- Conduct your own review: Evaluate the institution's state of compliance, strengths, and opportunities in all areas
- Develop plans for success in every area
- Prioritize the implementation and execution of those plans



# 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



# COMPLIANCE

02

# SOURCES OF COMPLIANCE OBLIGATION

Title IX Final Regulations

Violence Against  
Women Act

Other, Intersecting  
Federal Laws

State Law

Institutional Policies

Resolution Agreements



# TITLE IX COMPLIANCE OBLIGATIONS

- Designate a Title IX Coordinator
- Disseminate Policy  
*Notification, Publication*
- Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;
- Provide supportive measures in accordance with the requirements of section 160.30
- For reports of sexual harassment utilize grievance procedures that comply with section 160.45
- Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).
- Maintain records response to sexual harassment in accordance with 160.45 (10)
- Comply with 160.71 prohibition against retaliation

# DEVELOPING A STRATEGY FOR COMPLIANCE

1

Identify Compliance Obligations

2

How you will prove that you are compliant

3

Record Keeping

# IMPLEMENTING THE STRATEGY FOR COMPLIANCE

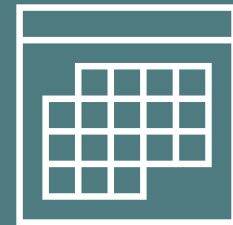
**Partnerships**



**Record  
Keeping  
Databases**



**Calendar**



# TRAINING & EDUCATION

Educating ourselves and our communities

03

# SOURCES OF TRAINING REQUIREMENTS



Title IX Final Regulations



Violence Against Women Act



State Law



Resolution Agreements

# TRAINING AND EDUCATION: TWO AREAS OF FOCUS

01



Institutional Response to Sex Discrimination

02



Prevention Education



# INSTITUTIONAL RESPONSE TRAINING

1. Institutional Policies and Procedures
2. Prohibited Conduct
3. Options for Confidential Support
4. The Identify, Role, and Requirements of the Responsible Employee
5. Options and methods for Reporting
6. The Grievance Process
7. The Role of the Title IX Coordinator



# A REALLY IMPORTANT MOMENT. LISTEN UP. IT'S OKAY...



To not know the answer to every question thrown your way



To say, "I don't know," "I'd like to think about that," "I'll get back to you," "Thank you for sharing your perspective."



To decline to answer a question



To recognize and assert your expertise

# WHO MUST RECEIVE TRAINING?

## Title IX Staff\*

- Coordinators
- Investigators
- Decision Makers (hearings and appeals)
- Facilitators of Informal Resolution

## Faculty

- New faculty
- Existing faculty
- Adjunct Faculty
- Supervising faculty

## Students

- New Students
- Existing Students
- Specialized populations
- Student staff

## Staff

- New/existing staff
- Senior leadership
- Public Safety/campus law enforcement
- Health care workers

\*“Those who are charged with ensuring a prompt, fair, and impartial investigation and result.” (VAWA)

# COMMUNITY PARTNERS?

Boards of Trustees

Law Enforcement

Advocacy Groups

Health Care Providers

Attorneys

Media

# TRAINING FOR TITLE IX STAFF



The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")

How to conduct the grievance process

How to serve impartially

The technology to be used at a live hearing \*

Issues of relevance of questions and evidence \*

Rape shield protections; and, \*

Issues of relevance in creating an investigation report. \*

# SPECIAL CONSIDERATIONS FOR TRAINING & EDUCATION

Explaining the  
narrowed scope of  
Title IX

Explaining the  
institutional decision  
for two  
processes/procedures

Responsible Employee  
challenges

Burden of proof  
challenges

Length of Training

Time for  
questions/community  
processing



# PREVENTION EDUCATION: TITLE IX REGULATIONS



"And while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information."

85 Fed. Reg. 30063 (May 19, 2020).

# PREVENTION EDUCATION: VIOLENCE AGAINST WOMEN ACT (VAWA)

A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.

Ongoing prevention and awareness campaigns.



# ELEMENTS OF ANNUAL TRAINING STRATEGY

- Identify population to be trained
- Determine topic
- Schedule the training
- How will you deliver the training
- Partnerships
- Communications
- Community input/feedback
- Engagement as passive education



A photograph of three women in an office environment. The woman in the foreground, with red hair and wearing a blue and white striped shirt, is smiling broadly at the camera while working on a laptop. Behind her, two other women are also smiling and looking towards the camera. The woman in the middle has dark hair and is wearing a green top, and the woman in the background has dark hair and is wearing a black top. They are all seated at a dark wooden table with laptops, papers, and a glass of water. A large blue rectangular overlay is positioned on the right side of the image, containing the title text.

# EMPLOYEE REPORTING OBLIGATIONS



## THE TITLE IX OFFICE RECEIVES THE FOLLOWING EMAIL FROM A RESPONSIBLE EMPLOYEE:

“My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don’t want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?”

# PREGNANCY OR RELATED CONDITIONS

04



# TITLE IX



Title IX prohibits discrimination on the basis of sex, which includes pregnancy and parental status – in educational programs and activities.

# TITLE IX & PREGNANCY



Cannot exclude or treat students (or employees or applicants) differently based on pregnancy or related conditions.

"Related conditions" include "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"

# TITLE IX OBLIGATIONS

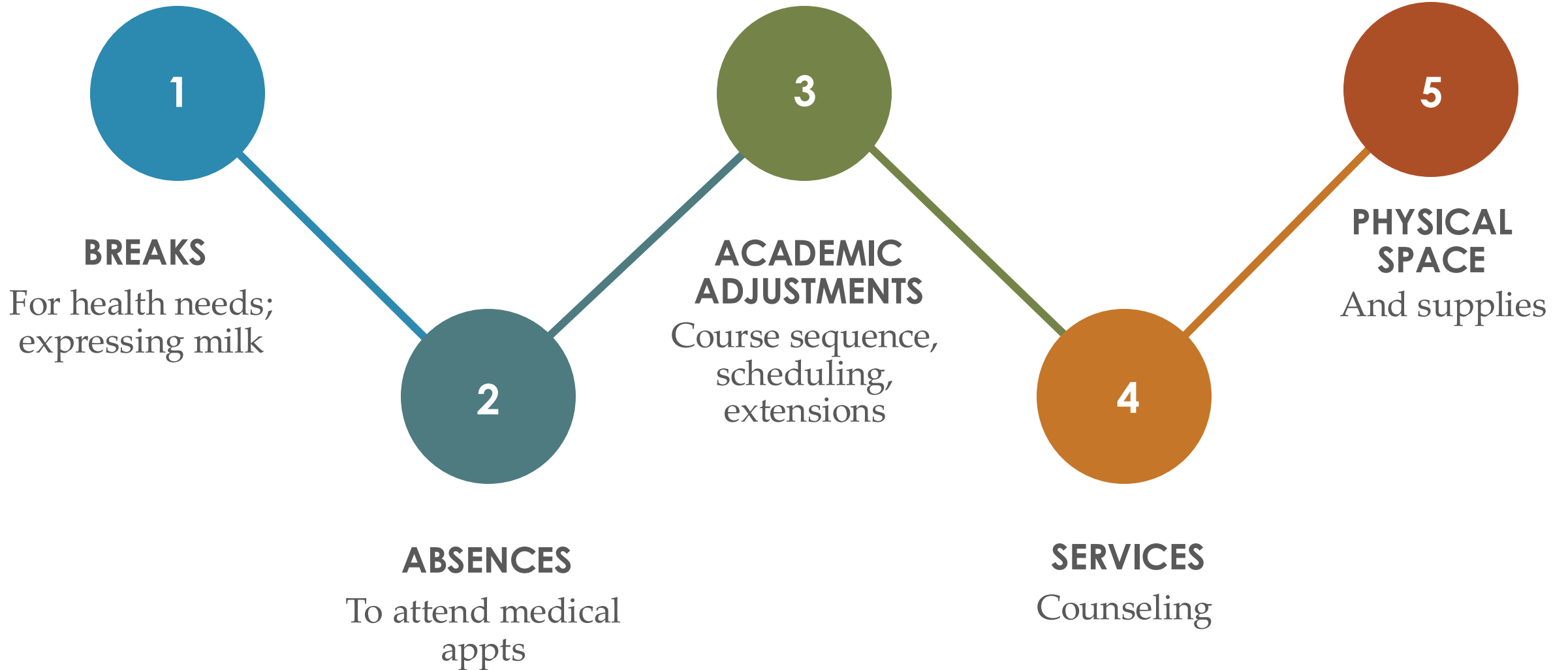
## Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability.
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began.
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



# ALLOW MODIFICATIONS

Non-Exhaustive



# NOW WHAT?

- A student in a science program asks a faculty member if they can be excluded from a series of lab sessions involving in chemicals that may be harmful for pregnant people. The instructor is insistent that they must complete these labs in order to not fail the class:
  - As Title IX Coordinator, what are your next steps?
  - Who else are you bringing into the conversation?
  - How can we be creative to ensure equal access for this student?

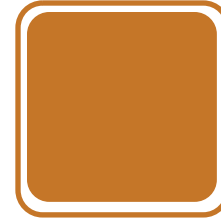


# THE IMPORTANCE OF UNDERSTANDING THE POTENTIAL IMPACT OF TRAUMA

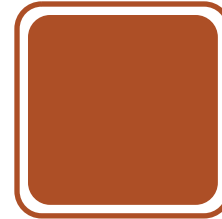
05



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



Format/Structure of the  
Interview



Format of Questions



Approach to Clarification

# TRAUMA-INFORMED PRACTICES ARE DESIGNED TO:

Encourage thorough  
and complete  
investigations

Assist with  
recollection

Assist with  
recounting

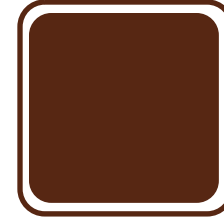
Reduce potential for  
false information

Minimize unnecessary  
re-traumatization

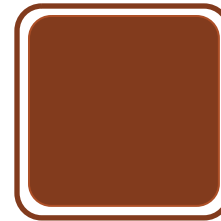
Reduce bias

# MISAPPLICATION OF TRAUMA-INFORMED PRACTICES

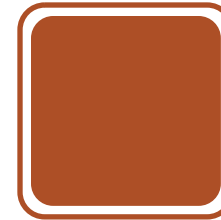
It is a misapplication of trauma-informed principles to allow potential evidence of trauma to:



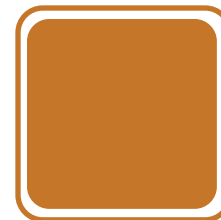
1. Influence the interpretation of a specific item of evidence



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

# What is trauma?



# TRAUMA

An event that is experienced as terrifying, horrifying, or life-threatening and that is coupled with an actual or perceived lack of control.

**What is an example of an event that might cause a traumatic response?**





# EXAMPLES OF EVENTS THAT MIGHT TRIGGER A TRAUMATIC RESPONSE

Sexual assault

Physical assault by a stranger

Physical assault by an intimate partner

A car accident

Accident that causes serious injury or death

Robbery

Significant medical event

# COGNITIVE IMPACT

When trauma occurs, there are very real changes in brain functioning that may impact a person's ability to form memories and to recount their experience.

# COMMON CHARACTERISTICS OF DISCLOSURES FROM A TRAUMA-IMPACTED BRAIN

Inconsistent

Non-linear

Fragmented

Lacking in detail


New information  
added

Affect is  
unexpected

# TRAUMA AFFECT=LACK OF CREDIBILITY?

Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the victim was being dishonest.

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information



Viewed as  
Not Credible;  
Case Closed

**WHEN  
PRACTITIONERS DEVELOP  
“TRAUMA-INFORMED”  
SYSTEMS, THEY ARE LESS  
LIKELY TO:**



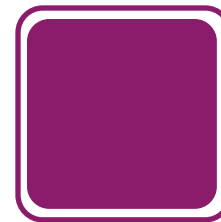
Make incorrect assumptions about credibility



Ask questions or make decisions founded in bias for either party or witnesses



Cause additional harm



Jeopardize future reporting

# ASKING THE RIGHT QUESTION

Trauma-informed systems ask the question  
*“What has happened to you?”* rather than  
*“What is wrong with you?”*

(ACHA, 2020)



# GUIDING PRINCIPLES OF TRAUMA-INFORMED SUPPORT

- Safety
- Choice
- Collaboration
- Trustworthiness
- Empowerment



*Adapted from The Institute on Trauma and Trauma-Informed Care (2015)*

# IMPACT OF TRAUMA EXPOSURE FOR TITLE IX COORDINATORS

- Trauma exposure also impacts each of us in our work as Title IX Coordinators
- Exposure to trauma may have both a negative and positive impact on each of us, including:
  - Negative - Secondary traumatic stress, burnout, and vicarious traumatization
  - Positive - Compassion satisfaction, resilience, and engagement
- Protective factors to prevent experiencing a negative impact may include:
  - Having a strong support system
  - Setting clear boundaries in your work
  - Developing a peer network to share about your experiences

# TRAUMA-INFORMED TAKEAWAYS

01

Trauma-informed systems are accessible for all parties

02

The impact of trauma exposure can negatively impact Title IX Coordinators

03

Burnout and trauma exposure can be related; it is important to develop protective factors

# NAVIGATING SENSITIVE CONVERSATIONS

6

You are meeting with a Complainant, Jessica, who is very quiet, reserved, and tearful. She is very reluctant to speak with you.

You discover later in the conversation that she has been sexually assaulted by another student. When she disclosed this to her family, they immediately told her she was at fault because, "premarital sex is against our religion." Jessica said this conversation happened over a year ago and she hasn't spoken about it since.

Jessica is requesting academic support because she has been struggling focusing and attending classes. She is adamant that she does not want counseling because she doesn't want her parents to find out she is receiving support.

## HOW DO YOU RESPOND?

- What are ways we can encourage conversation?
- What are some elements to be mindful of?
- How can we maintain a balance of wanting to shift the blame Jessica feels while not infringing on her religious beliefs?

# MANAGING EXPECTATIONS

Angry parties

7a

**YOU RECEIVE THE FOLLOWING MESSAGE FROM  
YOUR INSTITUTION'S ONLINE REPORTING FORM:**

- What are your next steps?
- What are some specific conversation points you will want to share with Complainant?
- Drawing from your own experiences, what are some concerns to be mindful of?

“Good morning. My name is Sammy. I was raped last night in Grand River Hall by Taylor who is on the basketball team here. Taylor gave me a bunch of white claws at a party and then attacked me in their residence hall room.

I want them expelled immediately. This is supposed to be a safe campus. Please text me once Taylor has been expelled so I know my friends and I can be safe again.”

*You conduct outreach to Complainant and they are Unresponsive, stating they won't meet with you until you've expelled Taylor.*



# PUSHBACK FROM FACULTY

Complainant and Respondent –  
Mutual Class

7b

# SCENARIO: PROFESSOR SMITH



Professor Smith has both Complainant Alex and Respondent Stevie in their Psychology class.

Professor Smith leaves a voicemail for the Title IX Coordinator wanting to know updates about a Title IX investigation. Professor Smith also mentions that they removed Stevie from their Psychology class.

# YOU RECEIVE THE FOLLOWING VOICEMAIL



Good morning. This is Doctor Smith from the Psychology department. I am calling because I have not yet received any updates on the investigation you are doing with students Alex and Stevie. I know it's been over a week since Alex met with your office. Since I have both of them in my class, I'm outraged that I have not received more updates about the progress of the investigation. I deserve to know because this impacts my ability to teach these students. Since I haven't heard back, I told Stevie they are not permitted to attend my class. I won't have dangerous students in my class endangering others. Please call me back immediately.

- What can you share/not share in your conversation with Professor Smith?
- What are you documenting?
- Who else are you working with to address these concerns?

# PUSHBACK FROM FACULTY- CONTINUED

Supportive Measures – Academics

4b



You receive the following email from a faculty member who does not want to offer academic support.

# SCENARIO: SUPPORTIVE MEASURES

Dear Title IX Coordinator,

Thank you for your email. My apologies for the delayed response, but as you know, faculty members are extremely busy and overburdened here on this campus.

I must say, the email you titled, "Academic Supportive Measures" was not only completely absurd, but borderline offensive. While I am sorry to hear that student Ash has been struggling to manage her emotions due to recent experiences, I'm not sure what can be done. Missed classes aren't really an option in the Chemistry department, as all labs and assignments must be completed in succession. Honestly, I think she is just looking for excuses.

My syllabus clearly states that students are permitted to miss no more than 3 classes, which is beyond generous. Missing 4 classes is absolutely unacceptable, even if there was a "hearing" organized by your office.

Furthermore, the only accommodations I permit are ones mandated to me by Disability Services, and it doesn't seem like Ash has a disability, she just has some emotional issues.

Lastly, in your email, you kept referring to Ash as they, which is grammatically incorrect. I only use proper grammar in my classroom and he or she pronouns, as God intended. Entertaining pronouns is a violation of my religious beliefs.

# EMPLOYEE CONCERNS

4C



# YOU RECEIVE THE FOLLOWING EMAIL FROM A UNION REPRESENTATIVE:

Good afternoon,

I am writing on behalf of Gerri Jones, who, as you already know, has been accused of sexual harassment by their coworker, Dylan. Gerri has never made any jokes of sexual nature, so these allegations are just ludicrous. As you know, Gerri is the only white person in their department and is often experiencing discrimination.

Due to the hostile environment you've created by conducting an unnecessary investigation, Gerri no longer feels safe working with their colleagues. Attending department meetings has become detrimental to their wellbeing.

Under Code 528.03 of the Collective Bargaining Agreement, which you are intentionally violating, employees have the right to safety in their work environment and the ability to request support as needed. **I am hereby requesting that Gerri be excused from all campus meetings.**



# TITLE IX INVESTIGATOR & DECISION MAKER TRAINING

A Practical Approach to  
Navigating Beyond Compliance

Martha Compton and Blaze  
Bowers

June 2025

**IMPARTIALITY**

**CLICK TO EDIT TITLE STYLE**

01

# THE REQUIREMENT OF IMPARTIALITY



# SECTION 106.45(B)(1)(III)

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

1. For or against complainants or respondents generally, or
2. An individual complainant or respondent

# WHAT CONSTITUTES BIAS?

Conduct a fact-specific, objective inquiry based in common sense to determine bias.

## **This Includes:**

- Decision-making that is grounded in stereotypes
- Different treatment based on a person's sex or other protected characteristic
- A decision based on something other than the facts

# **IMPERMISSIBLE BIAS**

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



# CONFLICT OF INTEREST



# 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.

# TRAUMA INFORMED PRACTICES

In the preamble, the Department permits the use of trauma informed practices and recognizes that trauma informed practices can be used in an impartial and non-biased manner.

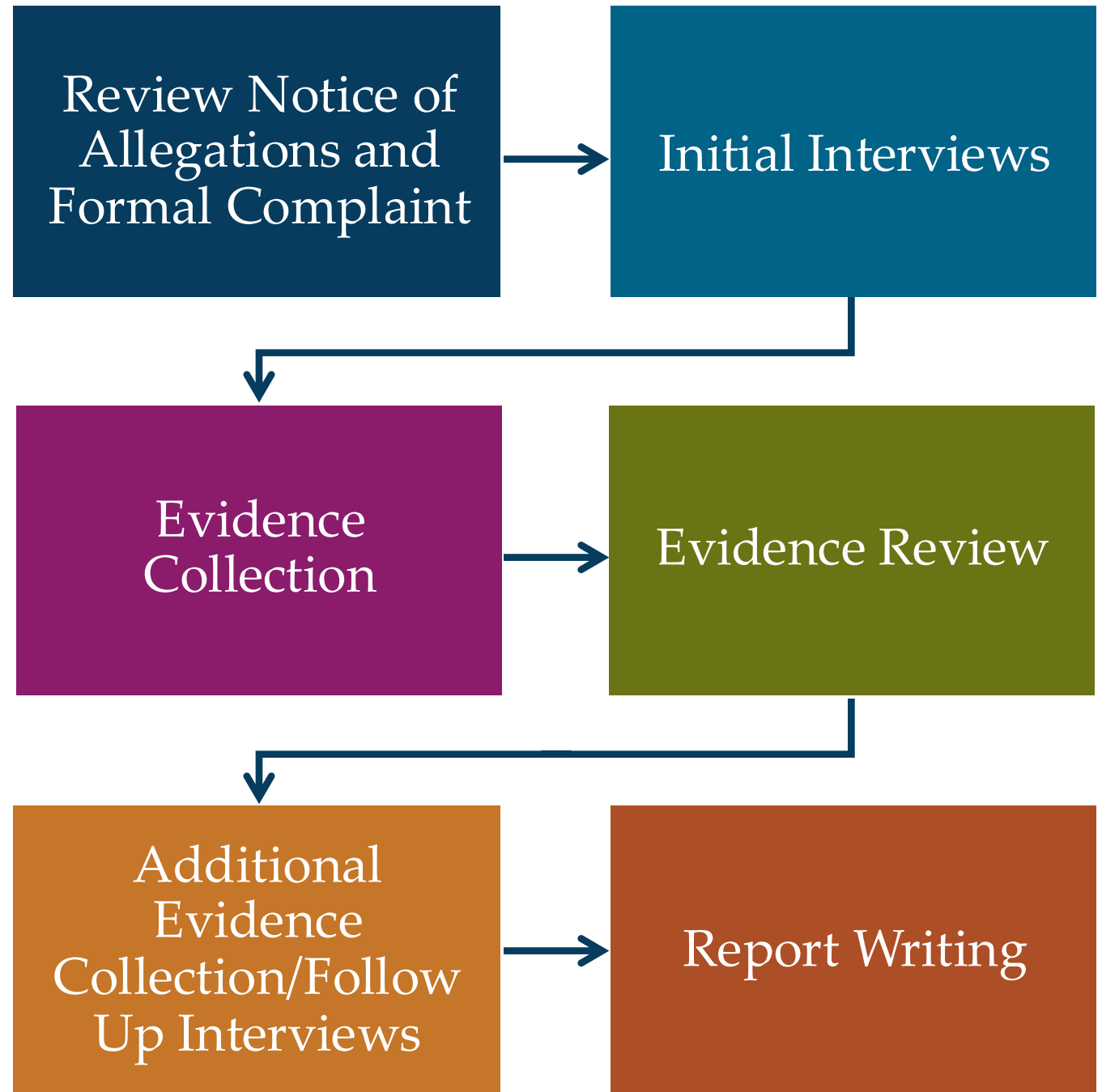
Trauma informed practices must be applied equally to all genders.

# DEVELOPING AN INVESTIGATIVE STRATEGY



02

# 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?

# 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. Was it without Complainant's affirmative consent?
  - *If so, 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?

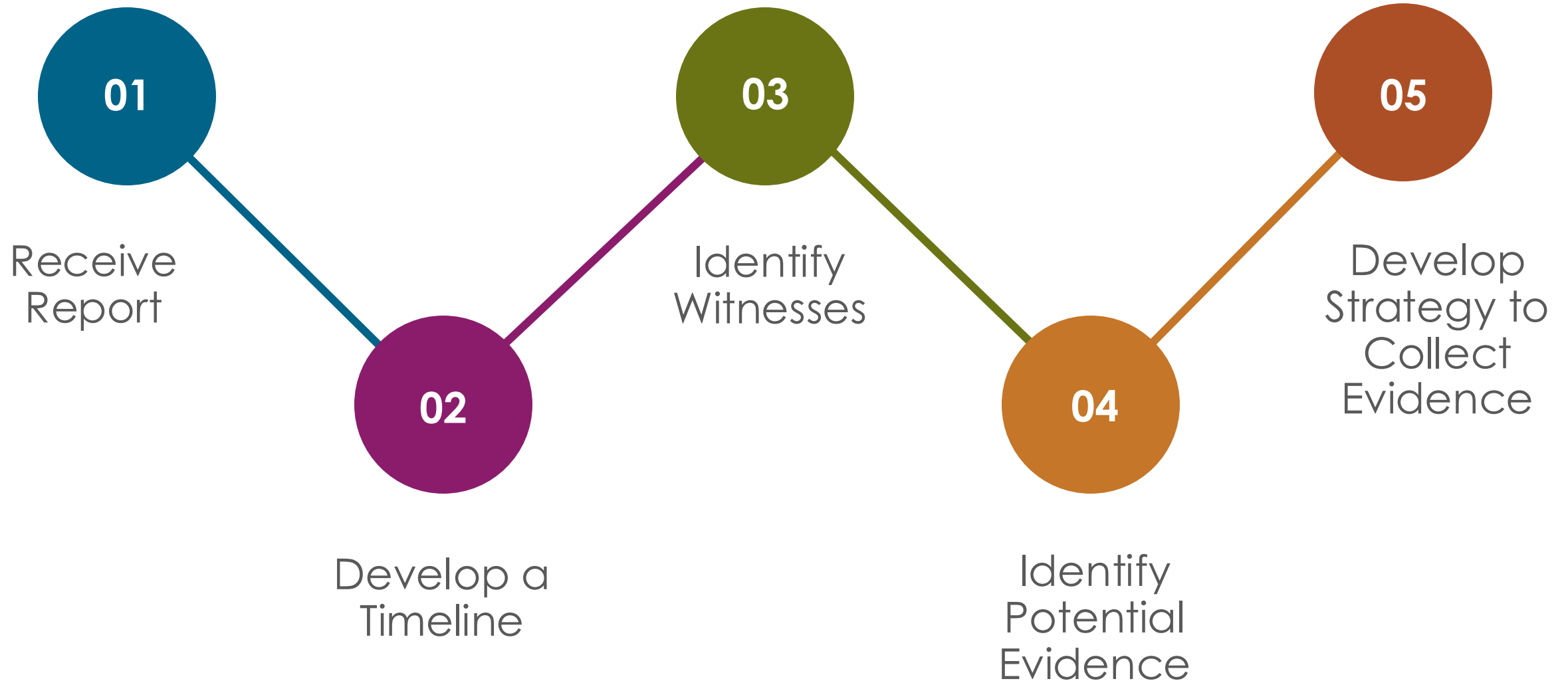
# STALKING

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

## CLICK TO EDIT TITLE STYLE

03



# 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:

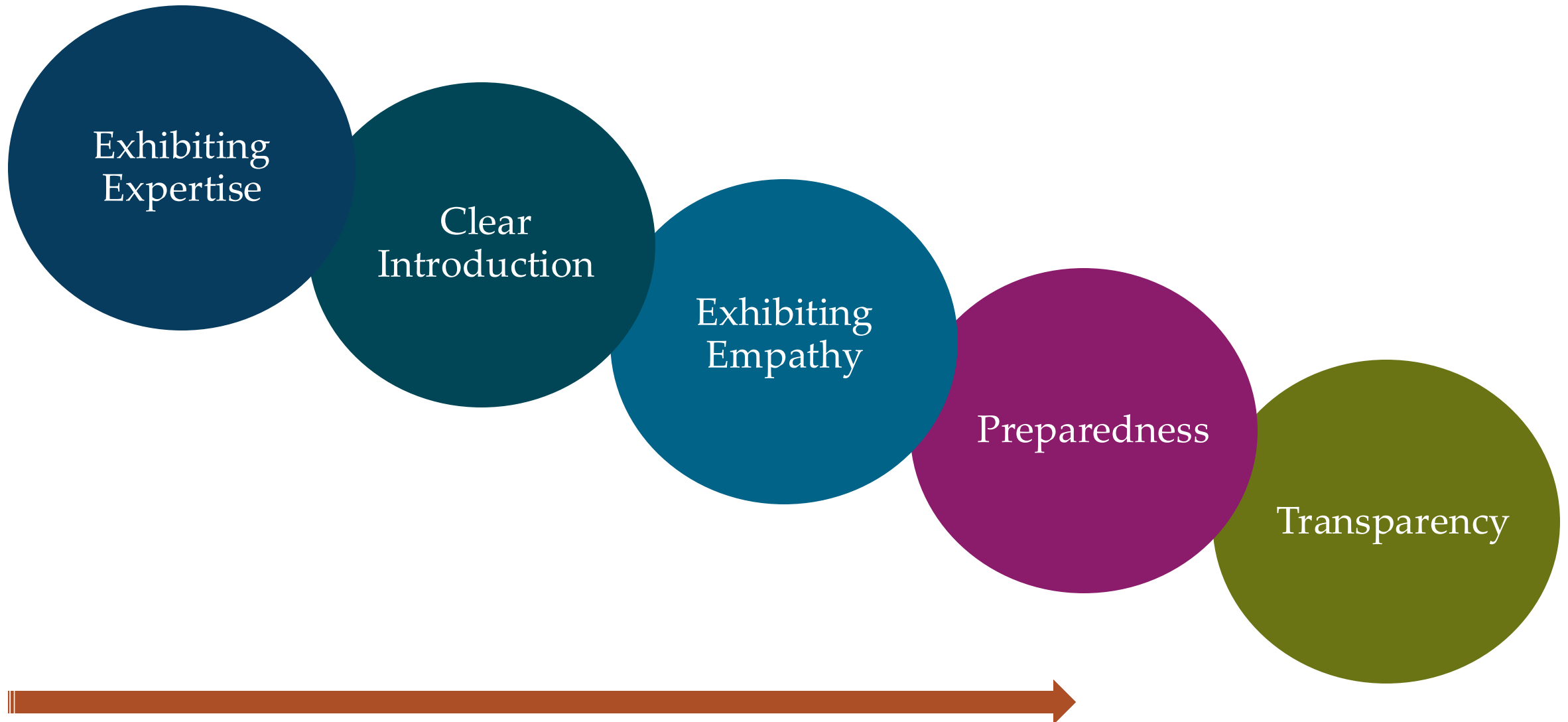
- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks



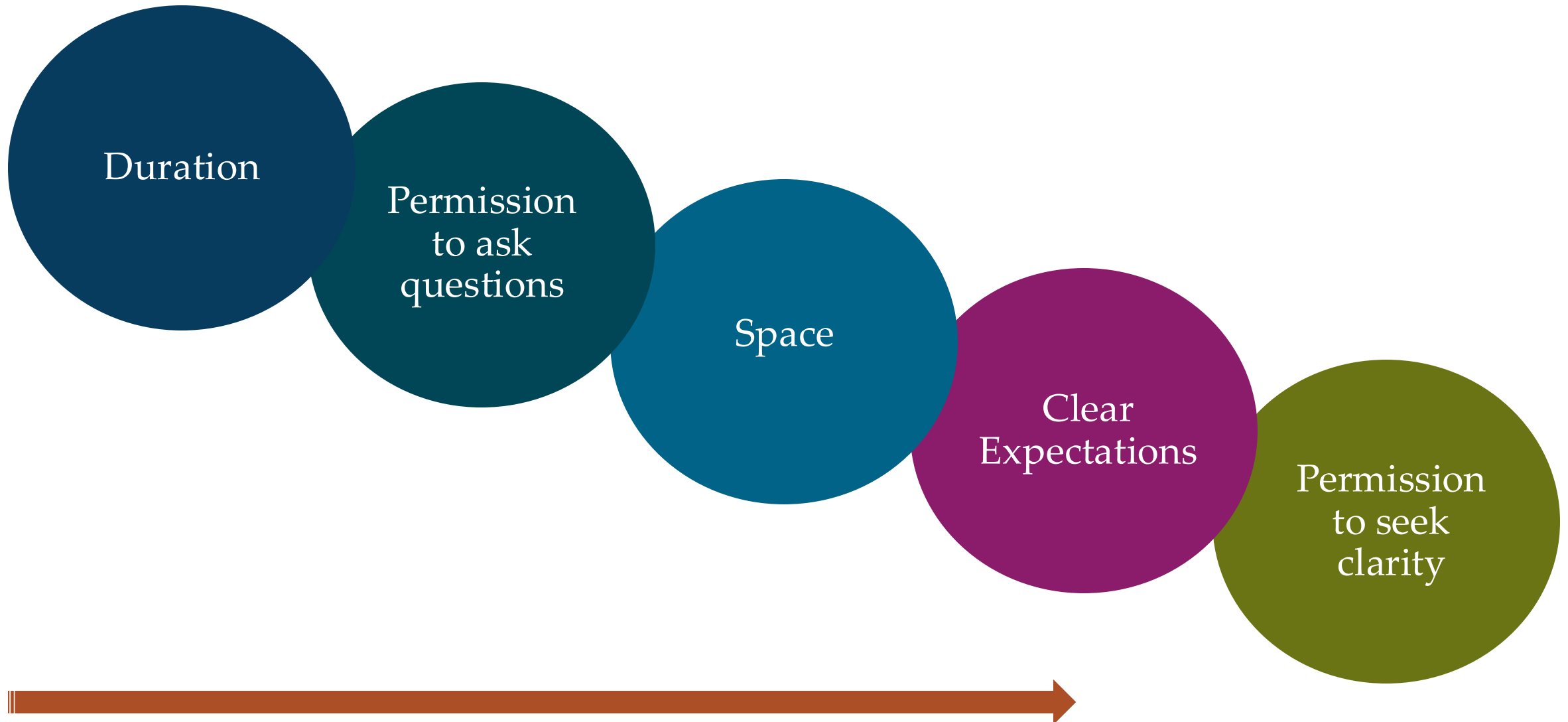
# HOW DO WE...

- Build Rapport and Trust?
- Empower?

# RAPPORT AND TRUST



# EMPOWERMENT



# 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.”

# EVIDENCE COLLECTION AND ASSESSMENT

05

# 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.

**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



# “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.”

# EVIDENCE THAT IS NOT “RELEVANT”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

- Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition

# 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?



# ASSESSING AUTHENTICITY

Investigating the products of the Investigation



Never  
assume that  
an item of  
evidence is  
authentic.



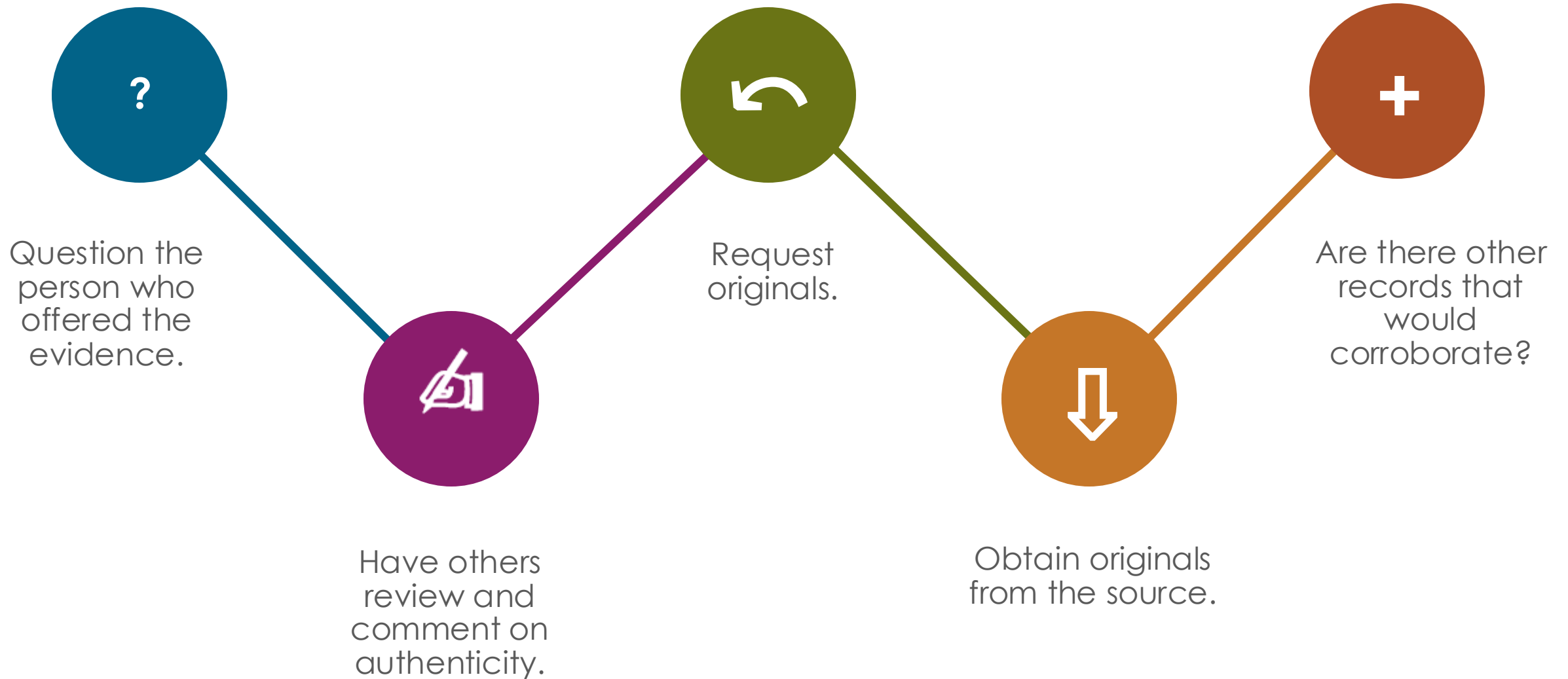
Ask  
questions,  
request  
proof.



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

# THE INVESTIGATIVE REPORT AND RECORD TO EDIT TITLE STYLE

06

At the conclusion of the investigation, we must create an investigative report that fairly summarizes relevant evidence.



# RELEVANCY STANDARD

## 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.”

## Irrelevant Evidence

- Prior sexual history of complainant, with two exceptions:
  - Legally recognized and un-waived privilege.
  - Records related to medical, psychiatric, psychological treatment

# WHO DECIDES?

- Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance
  - Subject to parties' right to argue upon review of “directly related” evidence that certain information not included in investigative report is relevant and should be given more weight
- Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:
  - Each party's right to argue their case, and
  - Fact that decisions regarding responsibility will be made at hearing, not investigation stage





# REDACTIONS

# ADDITIONAL REQUIREMENTS

Share the  
report with the  
parties and  
their advisors

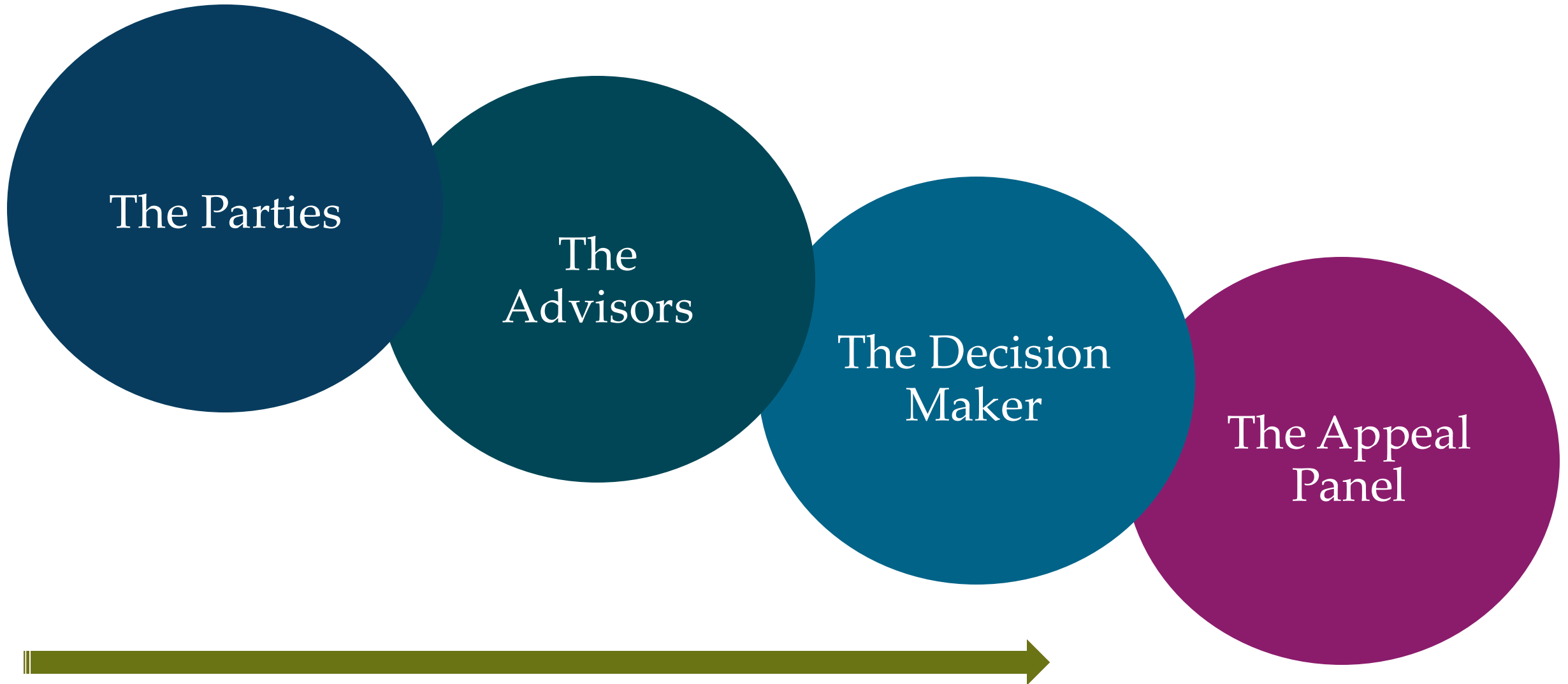
In electronic  
format or hard  
copy\*

At least 10  
days prior to  
the hearing

# THE PURPOSE OF THE REPORT

- To allow for advance review
- To allow for advance preparation
  - By the Decision Maker
  - By the Parties
- Reduce likelihood of bias in the final outcome

# INTENDED RECIPIENTS



# OTHER RECIPIENTS?

- Friends of the parties
- Parents
- Law enforcement
- Attorneys
- Judges
- Media
- Social Media



# ESSENTIAL ELEMENTS

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

# REPORT AND EVIDENCE FILE

## Summary of the Evidence



## Compilation of the Evidence





# THE EVIDENCE FILE

Compiles the  
evidence

Organized intentionally and  
consistently

Divided into  
Appendices

Attached to  
the report

Includes a  
procedural  
timeline

# EXAMPLE OF APPENDICES

- Appendix A
  - Contains all of the party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant
- Appendix B
  - Contains all of the documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant
- Appendix C
  - Contains the remaining evidence deemed irrelevant by the investigator, but that is directly related to the allegations in the formal complaint
- Appendix D
  - The procedural timeline

# STRUCTURE OF THE REPORT

- Overview of the Investigation
- Statement of Jurisdiction
- Identity of Investigators
- Objective of the Investigation and the Investigation Report
- Prohibited Conduct Alleged
- Witnesses
- Evidence Collected
- Summary of Evidence
- Conclusion

In this section, provide a very brief overview of the case. Include:

- the names of the parties,
- the applicable policy(ies)
- the prohibited conduct alleged,
- the date, time, and location of the conduct,
- a brief description of the alleged misconduct

# REPORT STRUCTURE

## Statement of Jurisdiction

1. Cite Jurisdictional Elements
2. State all grounds for Jurisdiction

# REPORT STRUCTURE

## Identify Investigators

1. Identify the investigators by name
2. Investigator's training belongs in file, not in report

# REPORT STRUCTURE

## Objective of the Investigation & Report

1. This language should mirror the language in your policy or procedures.
2. State the objective of the investigation
3. Briefly state that all procedural steps were followed
4. Describe the purpose of the report.



# REPORT STRUCTURE

## Prohibited Conduct Alleged

1. List the allegations of prohibited conduct in the formal complaint
2. Include definitions of prohibited conduct from the institution's policy/procedures

# REPORT STRUCTURE

## List Witnesses

- List those witnesses that were interviewed
- List witnesses that were identified, but not interviewed
- Simple List
- Detailed List

# EXAMPLE OF A DETAILED LIST

Witness Name	Witness identified by:	Information offered
John Doe	Reporting Party	Mr. Doe is the Reporting Party's best friend. He was with the Reporting Party the night of the reported incident.
Jane Doe	Investigators	Jane Doe is the Responding Party's roommate. It is believed that she saw the Reporting Party leave the Responding Party's residence immediately following the reported incident.

# REPORT STRUCTURE

## Evidence Collected

- The final Title IX regulations require that all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint be shared with the parties and “made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.”
- In this section, list the Evidence or Refer to Appendices

# REPORT STRUCTURE

## Summary of Evidence

- In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.

# REPORT STRUCTURE

## Conclusion

- In this section, summarize next steps in the process, including any procedural pre-requisites for moving the matter forward to a hearing.

# HEARING OVERVIEW

01

# 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 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.



# PRE-HEARING TASKS: HEARING PANEL & CHAIR

What should be done in advance of the hearing?

02

# THE INVESTIGATION IS COMPLETE!



## Rapid Fire #1

It is time to schedule the hearing...

Using the chat box:  
share your “To Do” List  
for coordinating the  
hearing.





# RAPID FIRE RECAP

Arranging for space

Arranging  
technology

Scheduling pre-  
hearing meetings  
with parties &  
advisors

Scheduling  
prehearing  
meetings of  
the panel

Providing  
report and  
record to  
panel and  
parties

Scheduling  
the hearing

Conflict  
checks

Call for  
written  
submissions

Accommodations

Other considerations?

# PRE-HEARING MEETINGS

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





# DECISION MAKER OR HEARING PANEL AS A WHOLE



Review  
evidence  
and report

Review applicable policy  
and procedures

Preliminary  
analysis of  
the  
evidence

Determine  
areas for  
further  
exploration

Develop  
questions  
of your  
own

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

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

## Rapid Fire #2

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.



# RAPID FIRE RECAP



Development  
of  
introductory  
comments

Initial discussion of  
the evidence

Areas for  
further  
exploration

List of  
questions for  
the parties  
and the  
witnesses

Anticipation  
of potential  
issues

Logistics

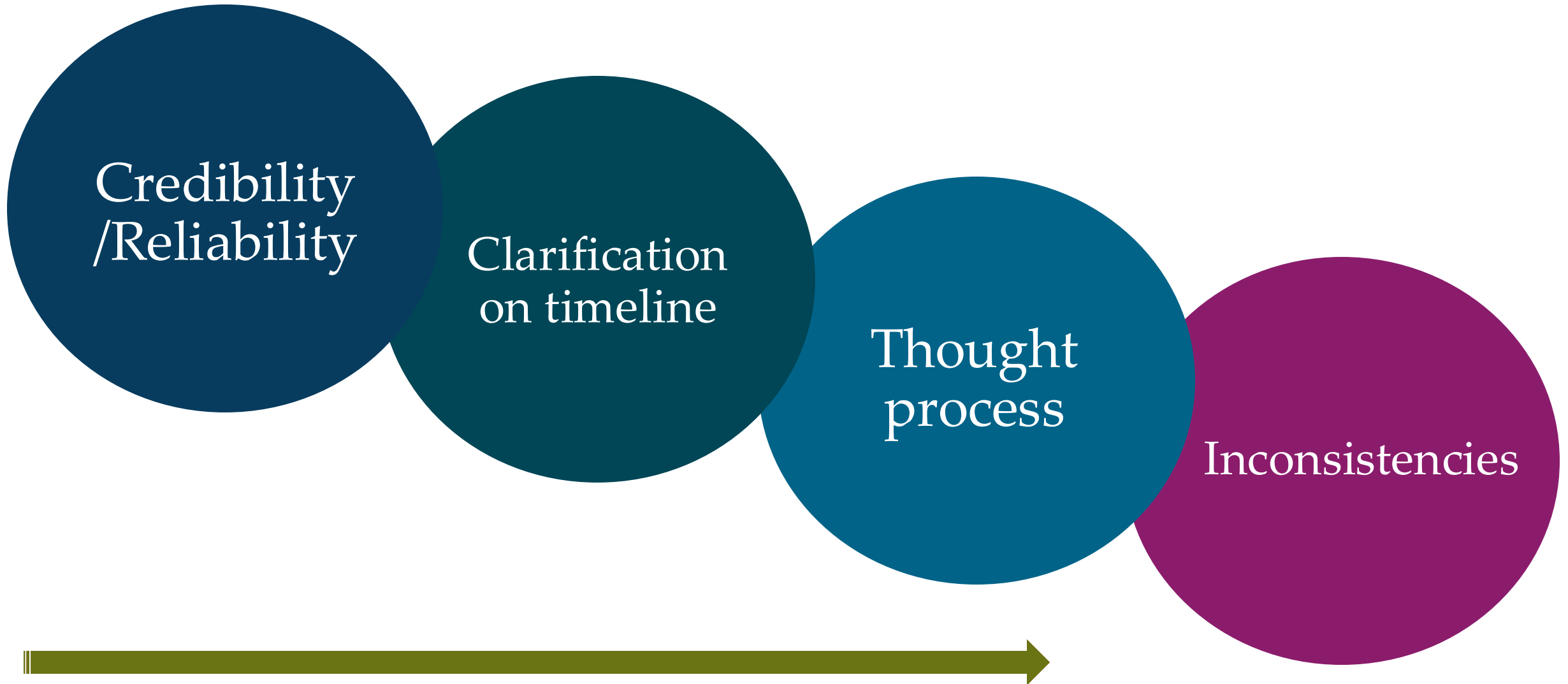
Review of  
any written  
submissions  
by the  
parties

Other  
considerations?

# PRE-HEARING TASKS: DEVELOPING QUESTIONS

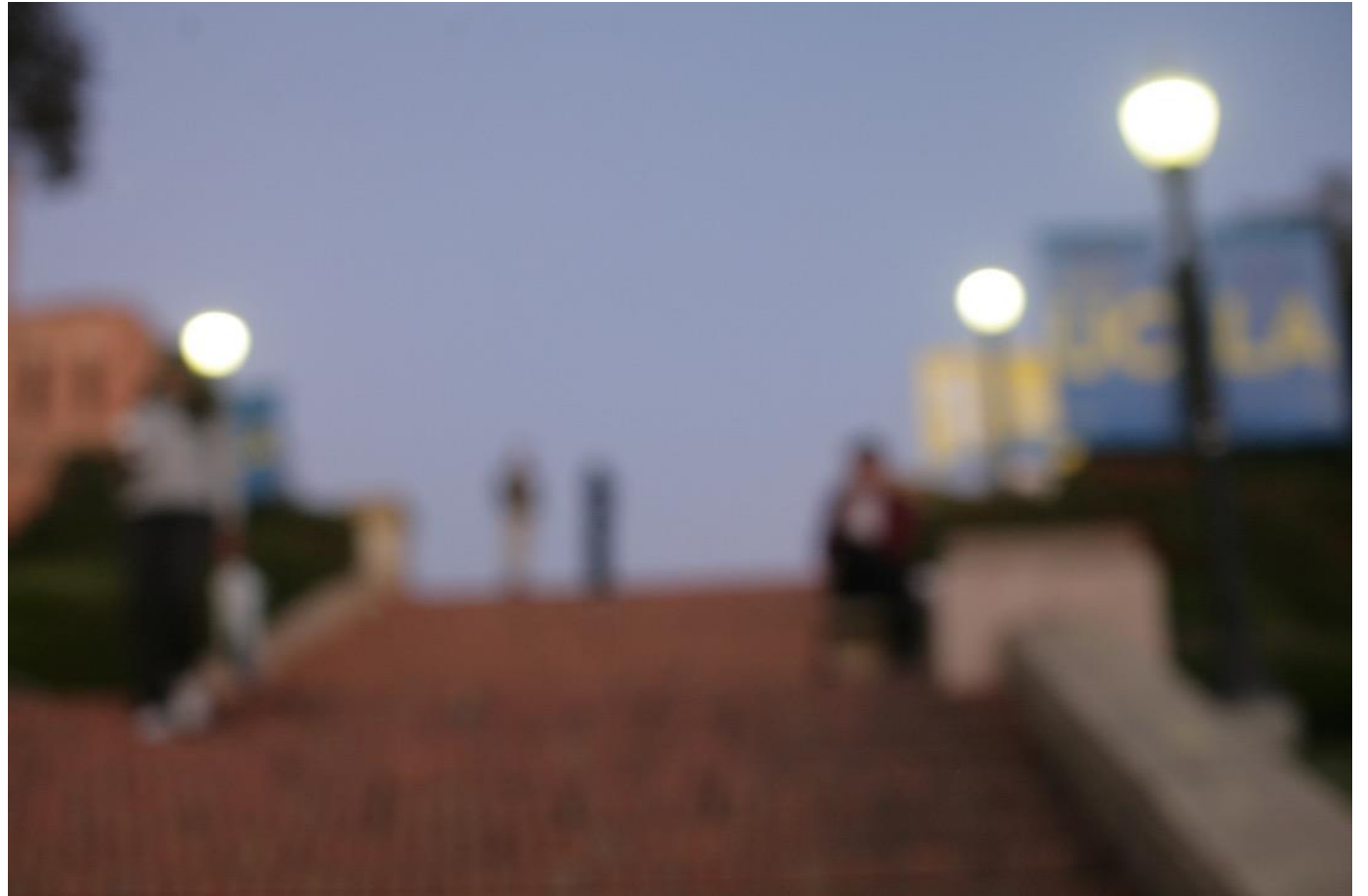
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# COMMON AREAS OF EXPLORATION



# COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

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



# CHARLIE AND RAMONA HYPOTHETICAL ACTIVITY

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

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



# WHAT FACTS DO I KNOW?

- The investigative report indicates:
  - *Student Jane was a TA for Prof. John Doe. Due to Jane's position, she and Prof. Doe spent a lot of time alone in Prof. Doe's office and lab.*
  - *Jane reported that "on more than one occasion" while alone with Prof. Doe in his office, Prof. Doe hugged her for "longer than [she] was comfortable with."*
  - *Prof. Doe told Investigator: "I'm a huggy guy." I treat my students like family, but there is never anything sexual implied when I hug a friend or student.*
  - *Jane said that in October and November Prof. Doe touched her knee and moved his hand up her leg touching her thigh while they were working alone in the lab. Jane said she "froze" in the moment, but after each instance she went home and cried.*
  - *Prof. Doe denied that this happened and said "at most" he may have accidentally grazed Jane's leg while they were working.*



# POLICY ANALYSIS

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



# THE HEARING

04

# ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator

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

4. Closing Statements

5. Deliberation & Determination

# OPENING INTRODUCTIONS AND INSTRUCTIONS BY THE CHAIR

- The University has a script for this portion of the proceedings, and it should be used.
- Introduction of the participants.
- Overview of the procedures.
- Overall goal: manage expectations.
- Be prepared to answer questions.

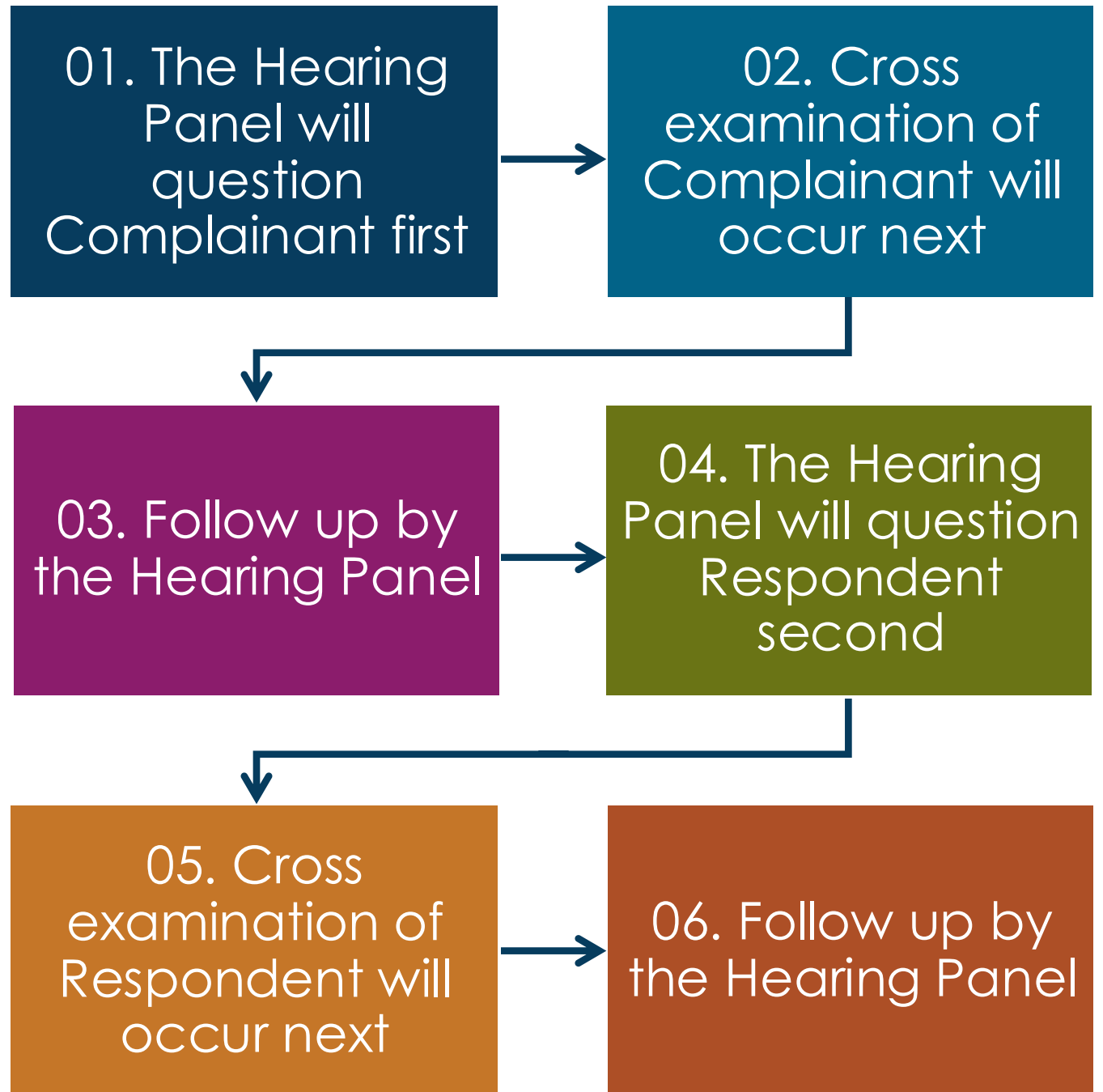


# OPENING STATEMENTS

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

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

# PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



# QUESTIONING OF THE WITNESSES

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

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

04

Follow up by the Hearing Panel


# CLOSING STATEMENTS

*OPTIONAL: NOT REQUIRED BY THE REGULATIONS; INSTITUTION MAY CHOOSE TO ALLOW.*

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.





# GENERAL QUESTIONING GUIDELINES

# 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?

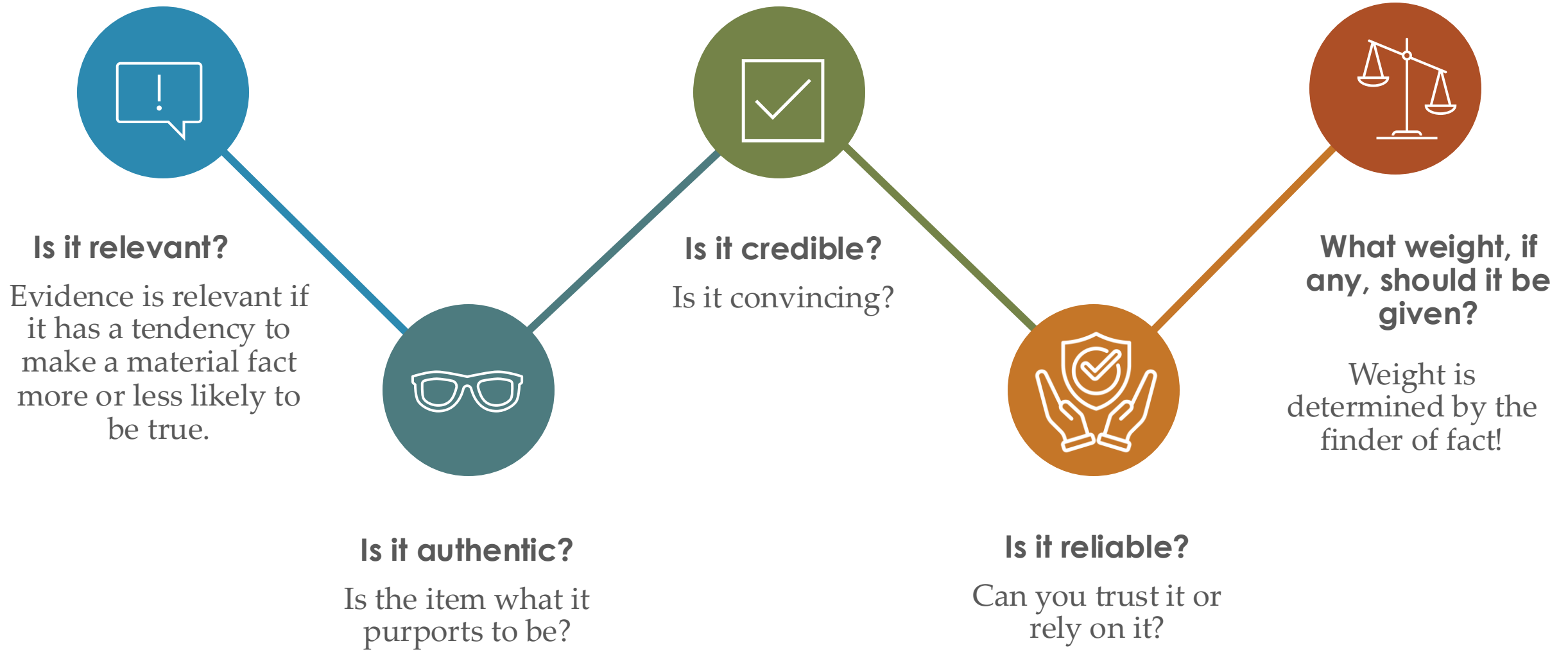
Did the notes reflect  
your recollection at  
the time?

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?

# EVIDENTIARY CONSIDERATIONS DURING QUESTIONING





# 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





**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.”

# OPINION EVIDENCE

When might it be relevant?

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



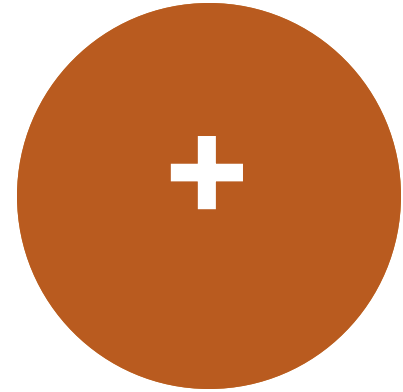
# IS IT AUTHENTIC?



Question the person who offered the evidence.

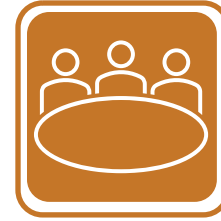


Have others review and comment on authenticity.



Are there other records that would corroborate?

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



Format/Structure of the  
Hearing

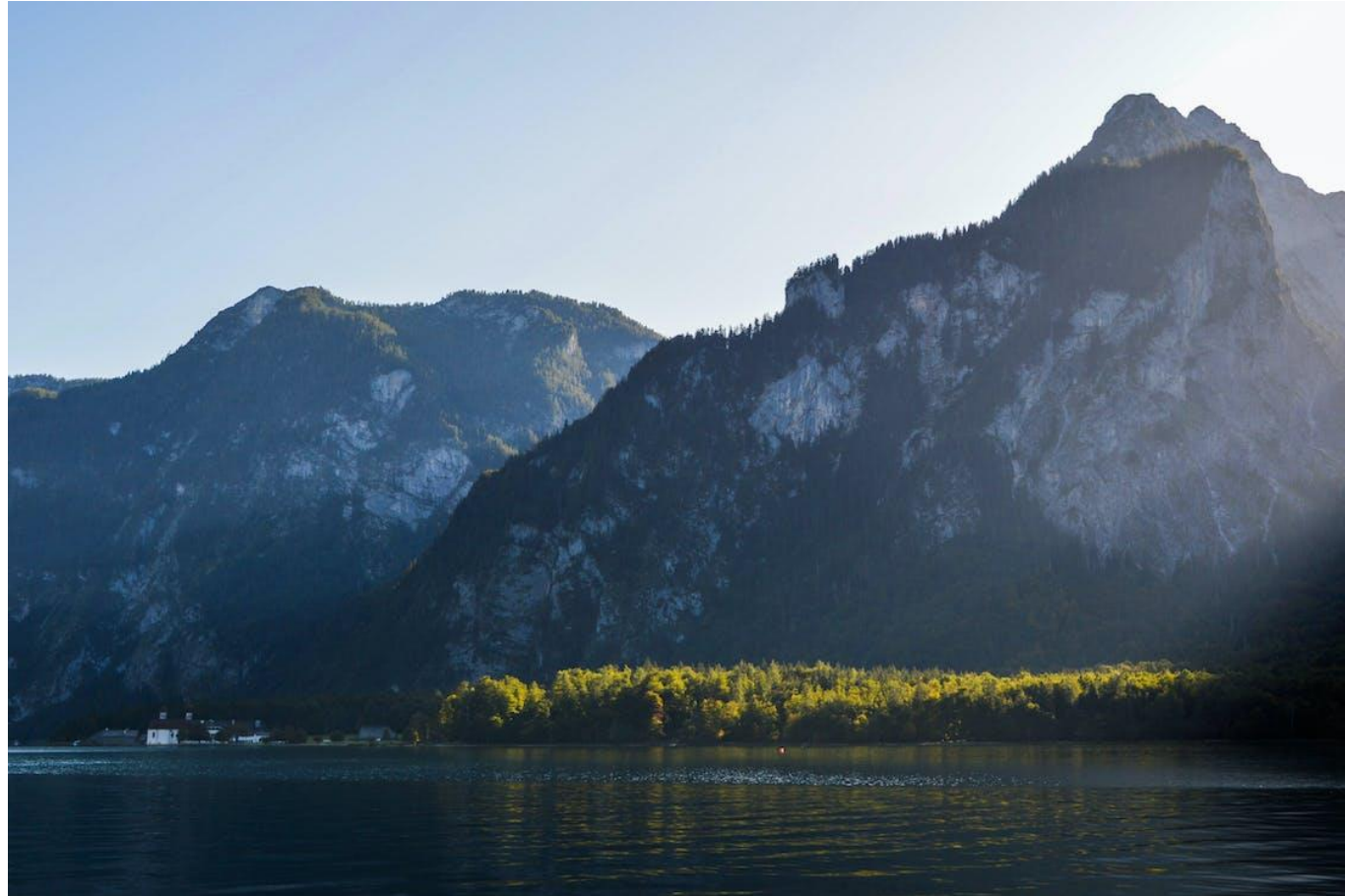


Format of Questions



Approach to  
Clarification

# WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?





# SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

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

# SPECIAL CONSIDERATIONS FOR PANELS

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

Go topic by topic

Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

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



# THE DECISION MAKER'S ROLE IN ADVISOR QUESTIONING

05

# CROSS EXAMINATION

## WHO DOES IT?



Must be conducted by the advisor



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



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

# THE ROLE OF THE DECISION MAKER DURING QUESTIONING BY THE ADVISORS

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

# 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 determine how to address the Advisor's non-compliance and future role.



# 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

# AFTER THE HEARING

## CLICK TO EDIT TITLE STYLE

05





# Deliberations

# PREPONDERANCE OF THE EVIDENCE

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



# WEIGHING THE EVIDENCE & MAKING A DETERMINATION

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



# FINDINGS OF FACT

- **A "finding of fact"**

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

- **For example...**

- Complainant reports that they and Respondent ate ice cream prior to the incident
- Respondent says that they did not eat ice cream
- Witness 1 produces a timestamped photo of Respondent eating ice cream

- **Next steps?**

# POLICY ANALYSIS

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



# ALLEGATION: FONDLING

**Fondling** is the:

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

# ANALYSIS GRID

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<p><b>Undisputed:</b> Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.</p>	<p>Respondent acknowledges and admits this element in their statement with investigators.</p> <p><i>"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."</i></p>	<p><b>Complainant:</b> drank more than 12 drinks, vomited, no recall <b>Respondent:</b> C was aware and participating <b>Witness 1:</b> observed C vomit <b>Witness 2:</b> C was playing beer pong and could barely stand <b>Witness 3:</b> C was drunk but seemed fine <b>Witness 4:</b> carried C to the basement couch and left her there to sleep it off.</p>



# ANALYSIS GRID

**Touching of the private body parts of another person**

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



**For the purpose of sexual gratification**

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



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

**Without consent due to lack of capacity**

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



# DID YOU ALSO ANALYZE...?

On campus?

Program or Activity?

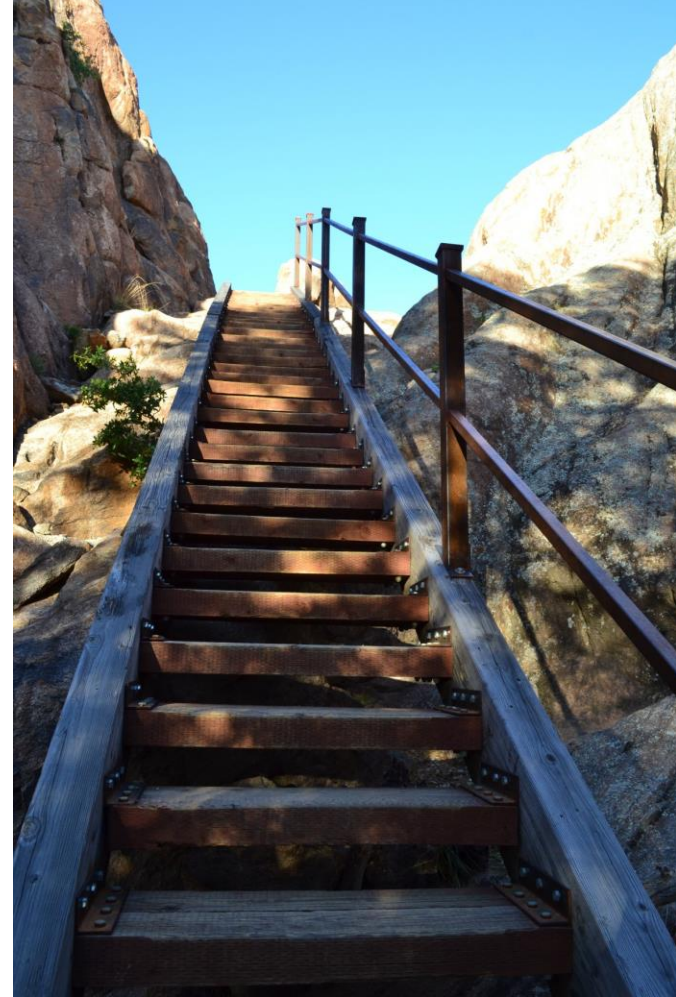
In a building owned/controlled by a recognized student organization?

Substantial control over respondent and context?

Complainant was attempting to access program/activity?

# GOALS OF SANCTIONS/DISCIPLINE

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



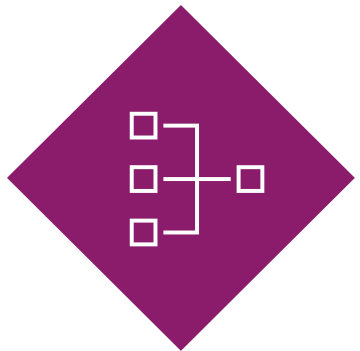
# SANCTIONING



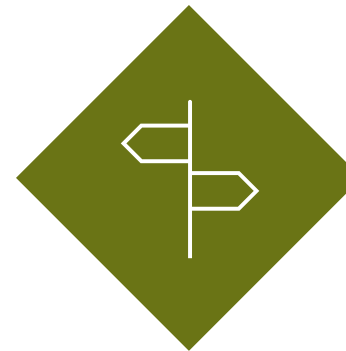
State Law



Learning Environment



System Policy



Measures Available

# THE SANCTION DOES NOT UNDO THE FINDING

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

# DETERMINING THE PROPER SANCTION

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



# AGGRAVATING CIRCUMSTANCES

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





# FINAL HEARING REPORT

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



# THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



- S** Simple and Easy to Comprehend
- T** Transparent/Clear
- A** Accurate
- N** Neutral/Unbiased
- D** Draw Attention to Significant Evidence and Issues

# ADVISOR'S ROLE POST-HEARING

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







info@grandriversolutions.com



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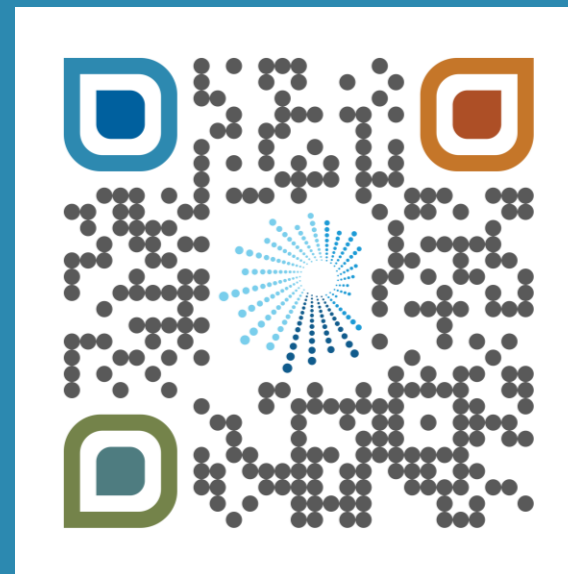


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@titleixandequity.bsky.social

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