

GRAND RIVER | SOLUTIONS

# Conducting Fair and Thorough Trauma-Informed Investigations

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June 2023

Grand River Solutions

# Meet Your Facilitators



**Collin Baer**

*He/Him/His*

Senior Solutions Specialist



**Emma Hempel**

*She/Her/Hers*

Senior Solutions Specialist

# About Us

## Vision

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

## Mission

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

# Day One Agenda

1

**Title IX's Requirements**

2

**The Proper Application of  
Trauma Informed Practices**

3

**The Importance of Understanding  
the Potential Impact of Trauma**

4

**Developing an Investigative  
Strategy**

5

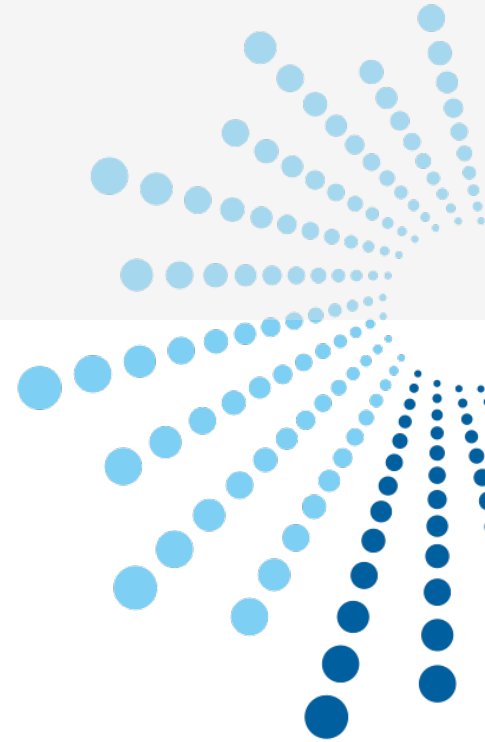
**Investigative Interviews: Part 1**



# Title IX's Requirements

01

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## Title IX of the Education Amendments Act of 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681 (1972).

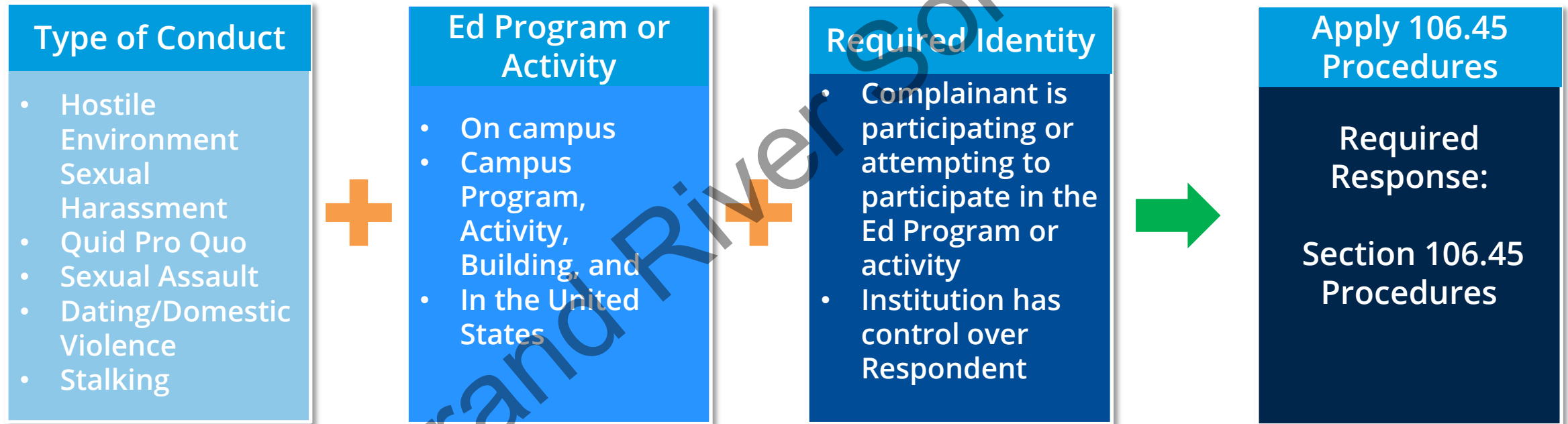


# The Title IX Regulations

Sexual Harassment Only

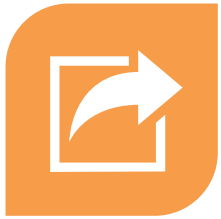
1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

# Title IX Application Post May 2020 Regulations





# 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



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# 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,

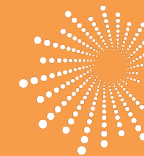
the conduct allegedly constituting sexual harassment under § 106.30,

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

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

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Institutions cannot place restrictions on who can serve.

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Institutions can create rules and guidelines for participation in the investigation

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No specific training required.



# Written Notification of Meetings and Sufficient Time to Prepare

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# Equal Opportunity to Present Evidence

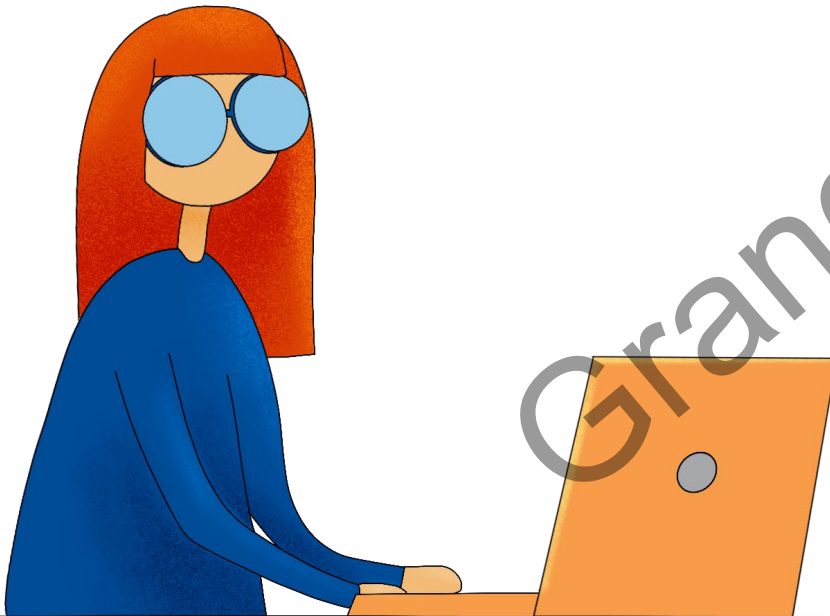
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# Evidence Review

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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.

10 days to provide a written response.



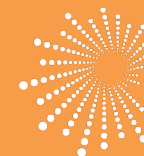
# Investigative Report and Review



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.





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“Directly  
Related” and  
“Relevant  
Evidence”

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# Directly Related Evidence

Regulations do not define "Directly Related" Evidence.

Preamble states it should be interpreted using its plain and ordinary meaning.

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# “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:

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# Evidence That is Not “Relevant”

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# Who Decides?

Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance at this stage of the process.

- 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:

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# 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.



# The Requirement of Impartiality

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# Section 106.45(b)(1)(iii)

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# What Constitutes Bias?

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

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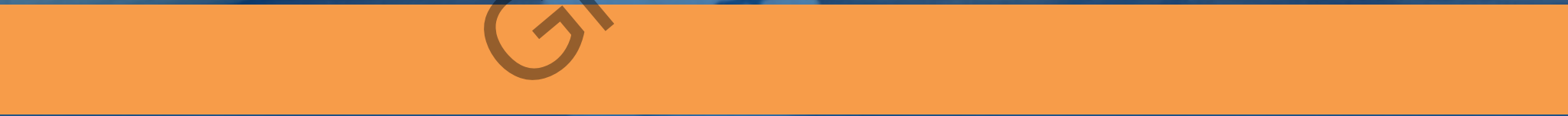
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## Impermissible Bias

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

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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.



# The Proper Application of Trauma Informed Practices

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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:

01

Encourage thorough and complete investigations

02

Assist with recollection

03

Assist with recounting

04

Reduce potential for false information

05

Minimize unnecessary re-traumatization

06

Reduce Bias



# Misapplication of Trauma Informed Practices

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# The Importance of Understanding the Potential Impact of Trauma

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# Trauma

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

# Examples of Events that Might Trigger a Traumatic Response

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Sexual Assault

Physical Assault  
by a Stranger

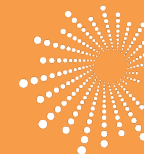
Physical Assault  
by an Intimate  
Partner

A Car Accident

Accident that  
causes serious  
injury or death

Robbery

Significant  
medical event



**When trauma occurs, there are very real changes in brain function that may affect a person's ability to make memory and to recount their experience.**

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## Common Characteristics of Disclosures by a Trauma Brain

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Inconsistent

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Non-linear

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Fragmented

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Lack of detail

---

New information

---

Affect is unexpected

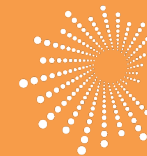
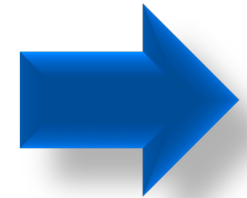


Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the victim was being dishonest.

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information



Not Credible

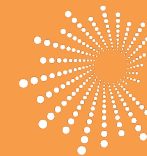


# The Historical Conclusion...

False Report  
Regretted Sex  
Not Provable



Investigation  
CLOSED





When an investigator uses “trauma informed” tools, they are less likely to:



CONCLUDE, WITHOUT A THOROUGH INVESTIGATION, THAT THE REPORTING INDIVIDUAL IS NOT CREDIBLE



ASK QUESTIONS OR MAKE DECISIONS FOUNDED IN BIAS



CAUSE ADDITIONAL HARM



JEOPARDIZE FUTURE REPORTING



# The Future

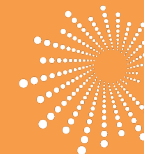
An understanding of trauma and its potential impact should encourage investigators to keep an open mind, and it should prevent investigators from immediately interpreting seemingly inconsistent behaviors with deception. An understanding of trauma provides another explanation for these seemingly inconsistent behaviors.

This is essential to a fair and thorough investigation.

When presented with the following characteristics in a disclosure,

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information

An investigator who understands trauma will....





**Continue their investigation.**



# Developing an Investigative Strategy

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04

# Essential Steps of an Investigation



Review Notice of Allegations and Formal Complaint



Initial Interviews



Evidence Collection



Evidence Review



Additional Evidence Collection/Follow Up Interviews



Report Writing

# 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.** 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.

1. Did Respondent penetrate Complainant's vagina or anus?
2. Without Complainant's affirmative consent?
  1. 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.** 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.

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
  1. Fear for their safety or the safety of others, or
  2. Suffer substantial emotional distress

# The Process

## Developing an Investigative Strategy



# Investigation Timeline

## Prior History

- Between the Parties?
- Of the Parties?

## Incident

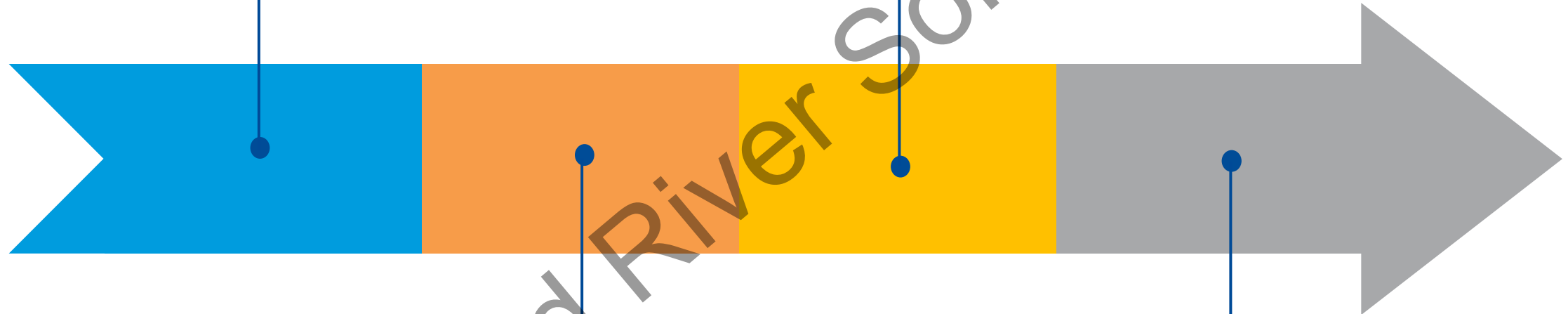
- Consent?
- Type of Contact?
- Injuries?

## Pre-Incident

- Communications?
- Interactions?
- Conduct?

## Post Incident

- Behaviors?
- Communications?





# The Importance of Organization

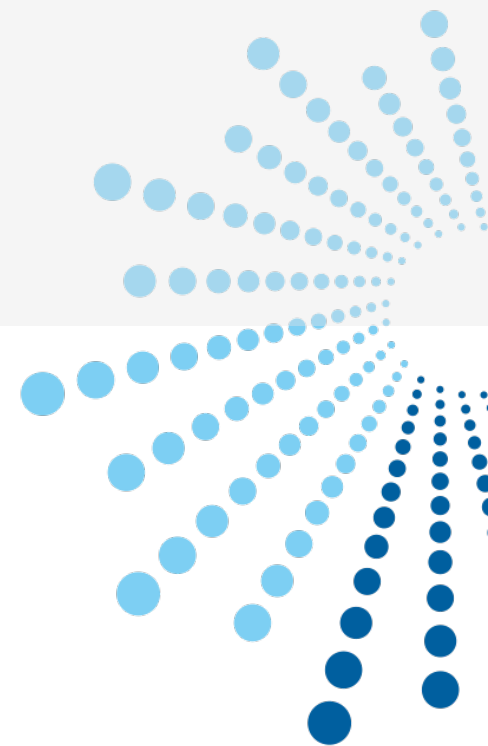
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# Investigative Interviews

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05



**Connect**

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# Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



If interviewing a party, inform them of their right to have an advisor present.



Prepare for the meeting

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Set  
Expectations

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# How do we...

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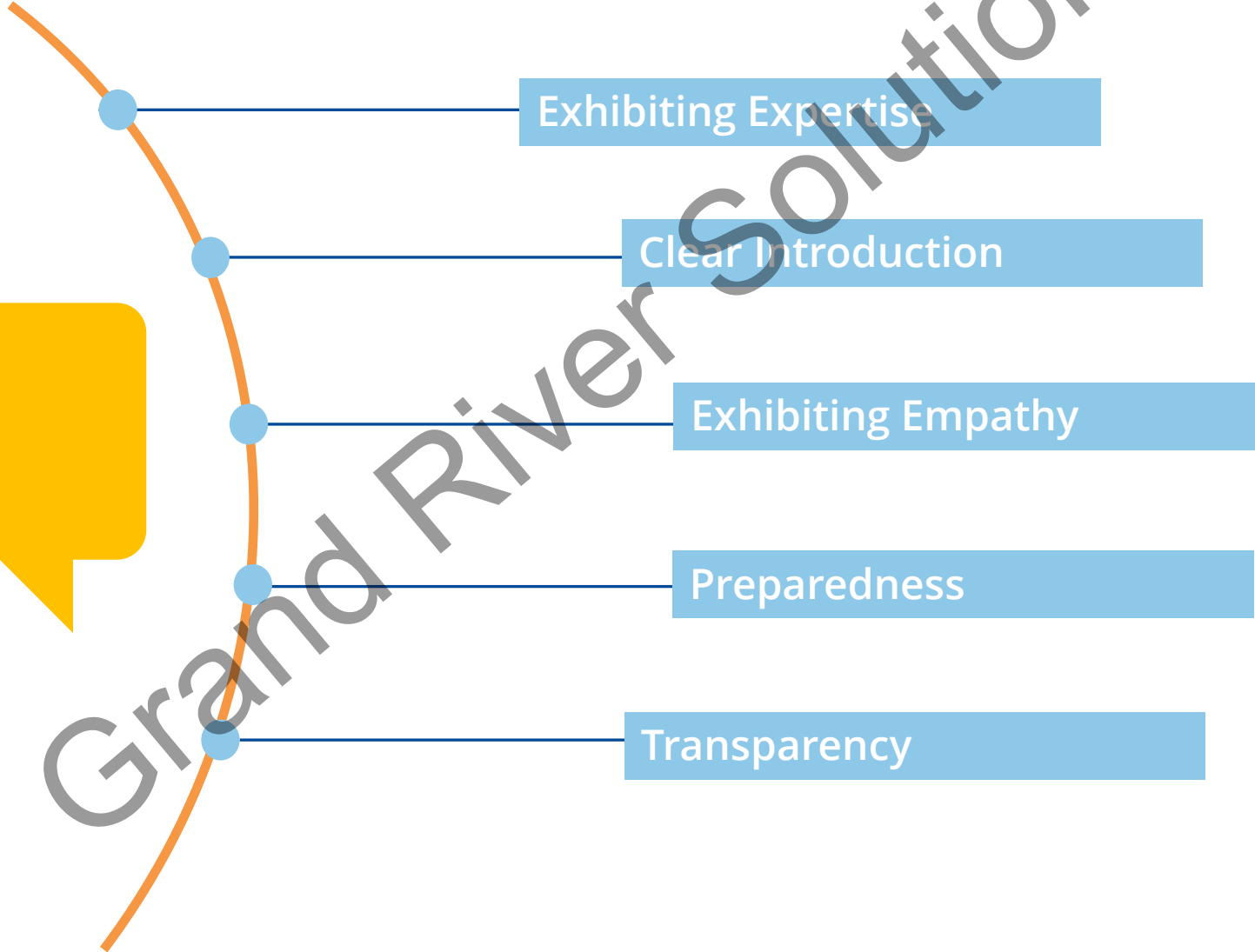
Build Rapport  
and Trust?



Empower?

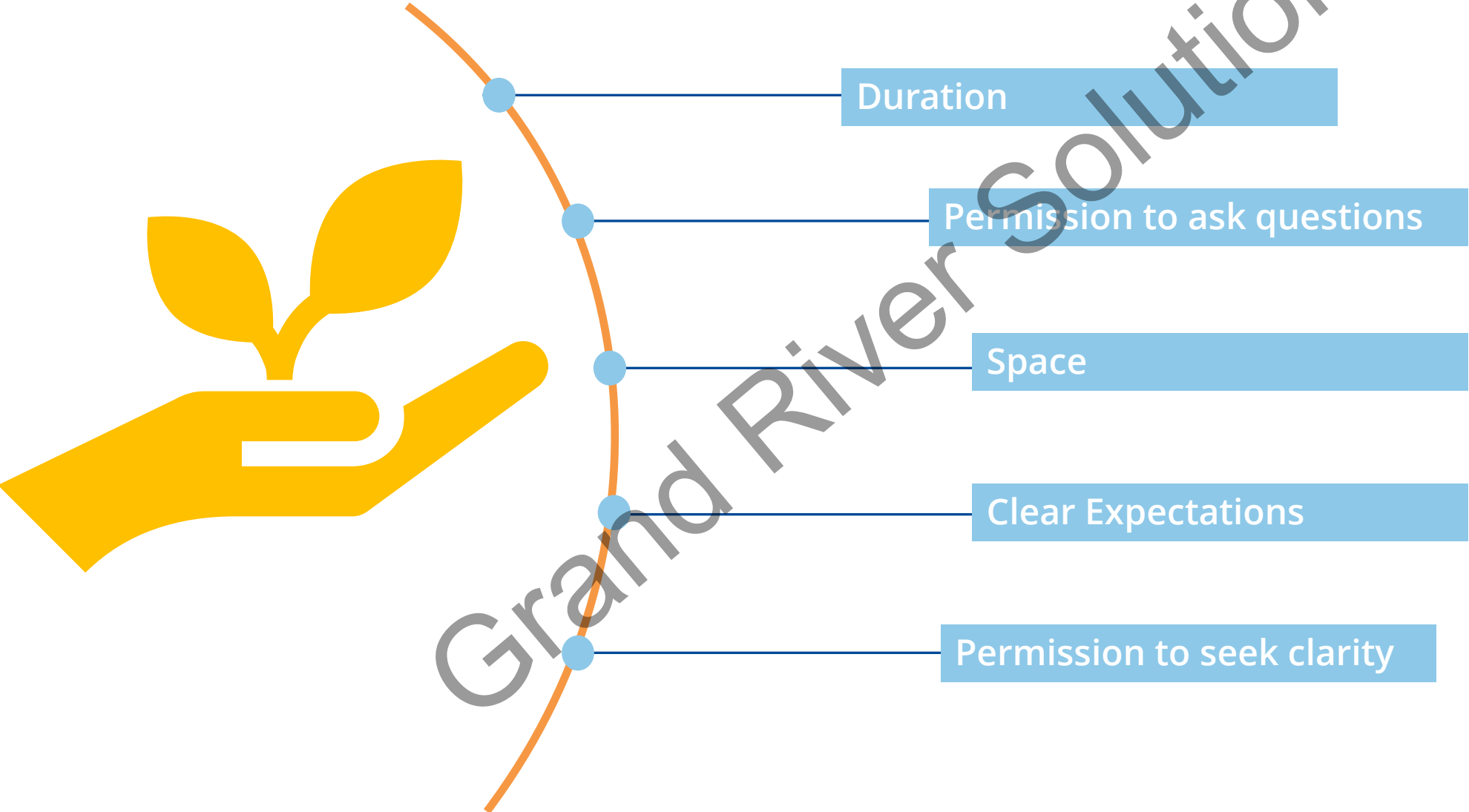


# Rapport and Trust

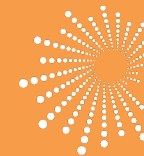


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# Empowerment



# Investigative Interviews



# Start the interview by eliciting a narrative...

Help me understand your experience?

Start where you are comfortable and share what you are able to remember.

Allow the person to speak uninterrupted. This takes patience.

What are you able to tell me about your experience?



Next, 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

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

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# Day Two Agenda

1

**Investigative Interviews  
(continued)**

2

**Evidence Collection and  
Assessment**

3

**The Investigative Report and  
Record**



# Quick Review!

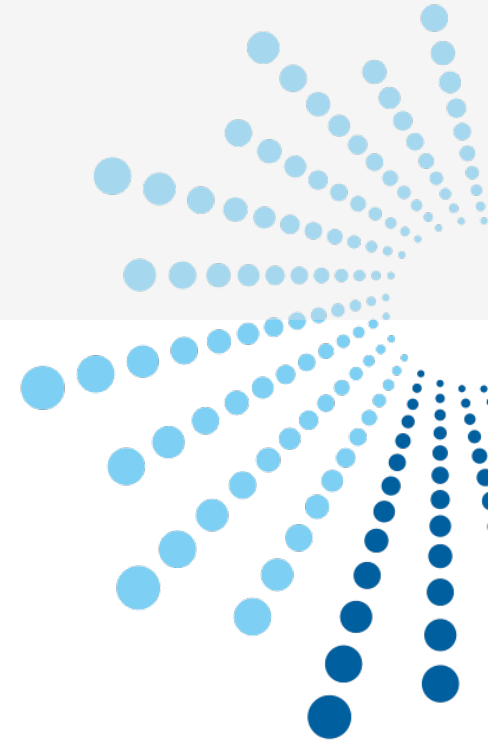
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# Investigative Interviews: Continued

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01

# Throughout the Interview



Explain your 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 that might lead to additional evidence.



Document questions asked. Especially when a response is not provided.

# At the Conclusion of the Interview



Discuss 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.



Memorialize the  
Interview in  
writing.

## After the Interview: Actions

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# 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 contradictory evidence

Explore difficult issues

Opportunity to respond

# Follow Up Interview Approach

1

Explain the purpose of the follow up.

2

Set the stage for the topics you will be covering.

3

Prepare the interviewee for "the shift."

4

Do not avoid asking the hard questions.

# The “Hard” Questions

Details about the  
sexual contact

Seemingly  
inconsistent  
behaviors

Inconsistent  
evidence/informatio  
n

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.

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# 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 Cameron?

“

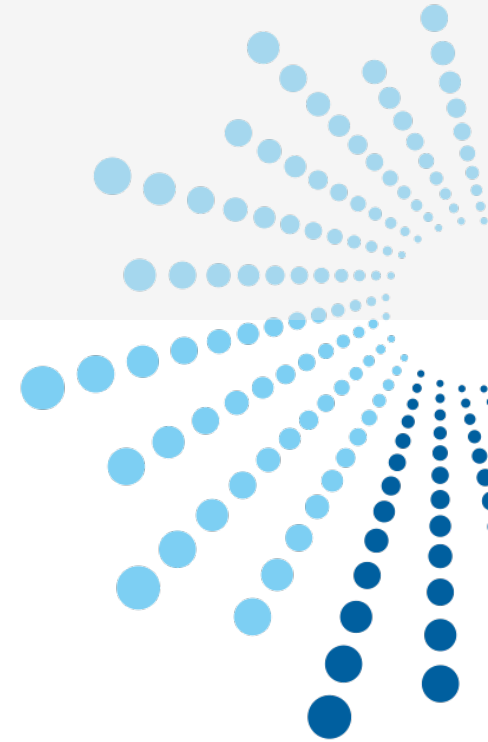
Pat and I have been together for about a month and have been intimate for the last two weeks. We went out with my friends on Friday night and Pat got really drunk. At some point we ran into my ex and Pat was really jealous, so we left. When we got back to my place, I thought things were fine. We started 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

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02

# 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

Is it relevant?

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



Is it authentic?

Is the item what it purports to be?



Is it credible/reliable?

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



What weight, if any, should it be given?

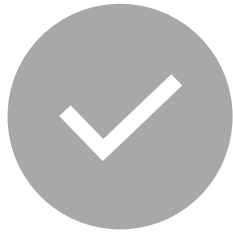
How important is the evidence to the fact-finding process?



# A Thorough Investigation Permits the Decision Maker to Assess



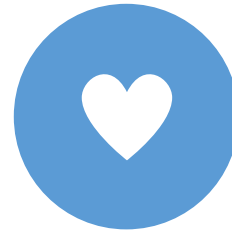
Relevance



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:

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# Evidence That is Not “Relevant”

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# Assessing Relevance

Why Does it Matter?

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Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.

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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.

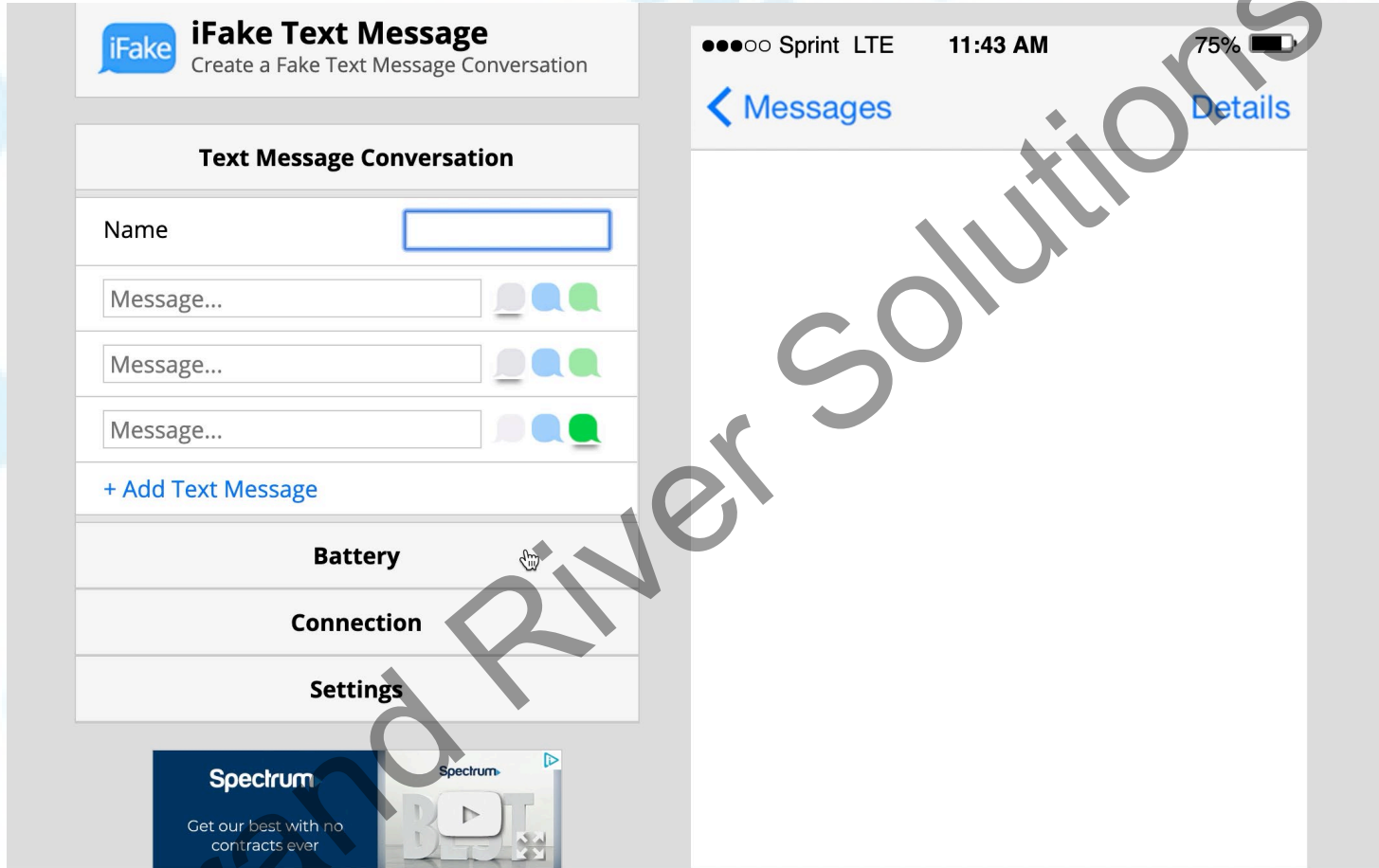


Ask questions, request proof.



Investigate the authenticity if necessary.

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# Is it authentic?

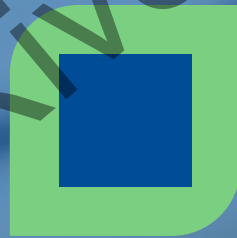
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QUESTION THE  
PERSON WHO  
OFFERED THE  
EVIDENCE



HAVE OTHERS  
REVIEW AND  
COMMENT ON  
AUTHENTICITY



REQUEST  
ORIGINALS



OBTAIN  
ORIGINALS FROM  
THE SOURCE



ARE THERE OTHER  
RECORDS THAT  
WOULD  
CORROBORATE?

# Assessing Credibility and Reliability

No formula exists, but consider the following:

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency

Character, background, experience, and training

Coaching

Bias

# 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

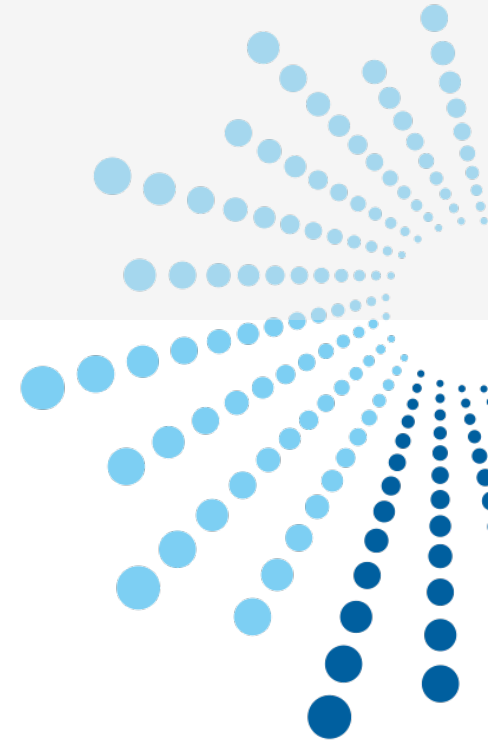
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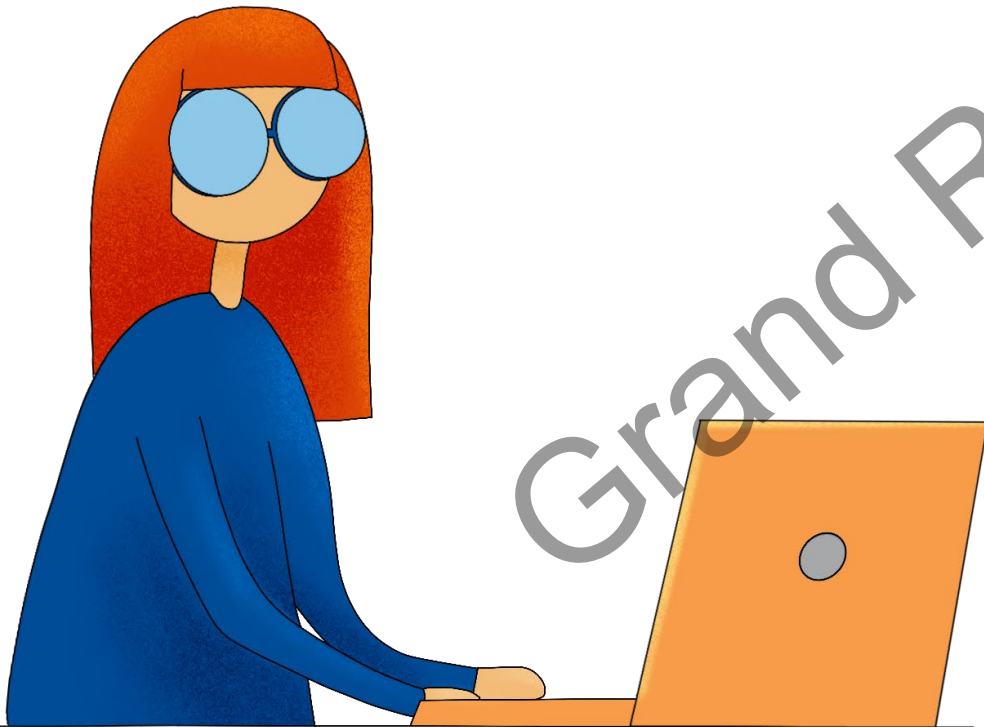
# The Investigative Report and Record

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



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# Relevancy Standard

Relevant Evidence

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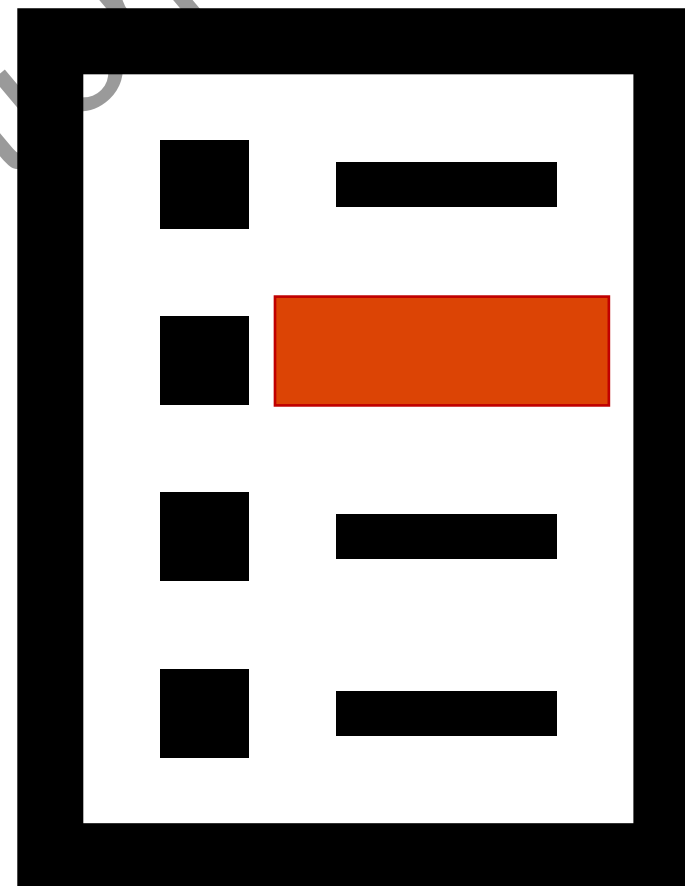
# Who Decides?

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:

# 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**

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# Intended Recipients

The Parties

The Advisors

The Decision Maker

The Appeal Panel

# 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

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# Report and Evidence File



Summary of the Evidence



Compilation of the Evidence

# The Evidence File



Compilation of the evidence



organized intentionally and consistently



Divided into Appendices



Is attached to the report



Includes a procedural timeline

# Examples 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

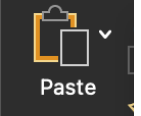
Prohibited Conduct Alleged

Witnesses

Evidence Collected

Summary of Evidence

Conclusion



# Report Structure Overview

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

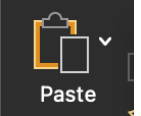


# Report Structure

## Identify Investigators

1. Identify the investigators by name

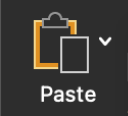
2. Investigator's training belongs in file, not in report



# 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 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

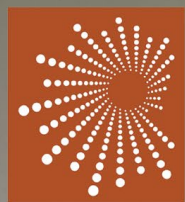
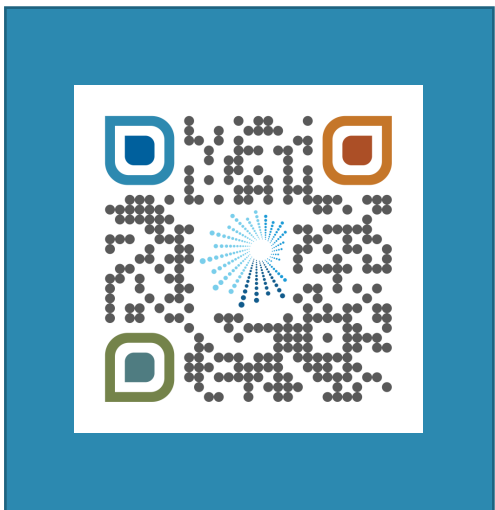
In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in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

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# Thank you!

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