



ADVANCED TITLE IX COORDINATOR TRAINING

CUNY

March 31, 2025

AGENDA



Trauma Informed Practices



Investigation Hurdles



Access, culture, and community



Prevention



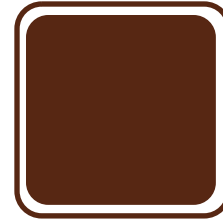
Navigating Sensitive Conversations



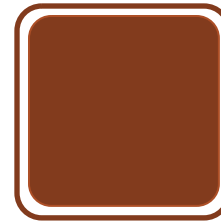
Report writing

Structure of file and report, developing content

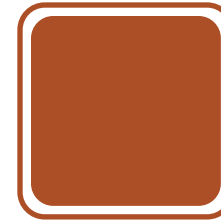
Framing Today's Conversation



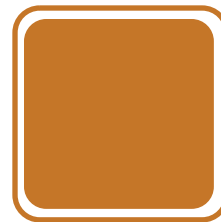
Be mindful



Honor privacy



Assume positive intent



Any suggestions?

GETTING TO KNOW YOU



1. Name
2. Institution
3. Role
4. Favorite CUNY spot to go?

Submit your responses in one message using the chat feature!

THE IMPORTANCE OF UNDERSTANDING THE POTENTIAL IMPACT OF TRAUMA



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

*WHAT FEELS BIG TO SOME MAY
FEEL OR BE SEEN AS SMALL TO
OTHERS.*

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

COMMON CHARACTERISTICS OF DISCLOSURES FROM A TRAUMA-IMPACTED BRAIN

Inconsistent

Non-linear

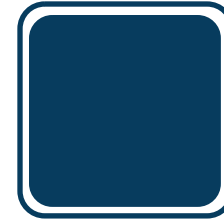
Fragmented

Lacking in detail

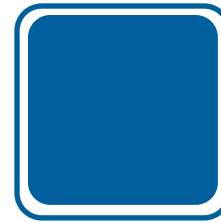
New information
added

Affect is
unexpected

**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

GUIDING PRINCIPLES OF TRAUMA-INFORMED SUPPORT

- Safety
- Choice
- Collaboration
- Trustworthiness
- Empowerment



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

ACCESS, CULTURE AND COMMUNITY



CONSEQUENCES OF BIAS



BIAS MITIGATION STRATEGIES



As Title IX Coordinators, we are responsible for considering the ways that bias might impact our campus processes, to ensure a fair, equitable outcome.

What bias mitigation strategies do you utilize on your campus in consideration of this requirement?

NAVIGATING SENSITIVE CONVERSATIONS



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.

- 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?

**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.



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?

REPORT WRITING



THE PRODUCTS OF EACH STEP OF THE INVESTIGATION

- **Notice of Allegations:** A document that frames the scope of the investigation
- **Initial Interviews:** Transcripts, summaries of interviews, interview notes
- **Evidence collection:** Text messages, social media posts, medical/police records
- **Evidence review:** Complainant's written response, Respondent's written response
- **Additional Evidence Collection/Follow-Up Interviews:** More documentary evidence, additional interview transcripts/summaries
- **The Investigative Report:** Preliminary and timeframe for response, then Final (sent to CUNY central after all timeframes have closed)
- **Final Investigative File**

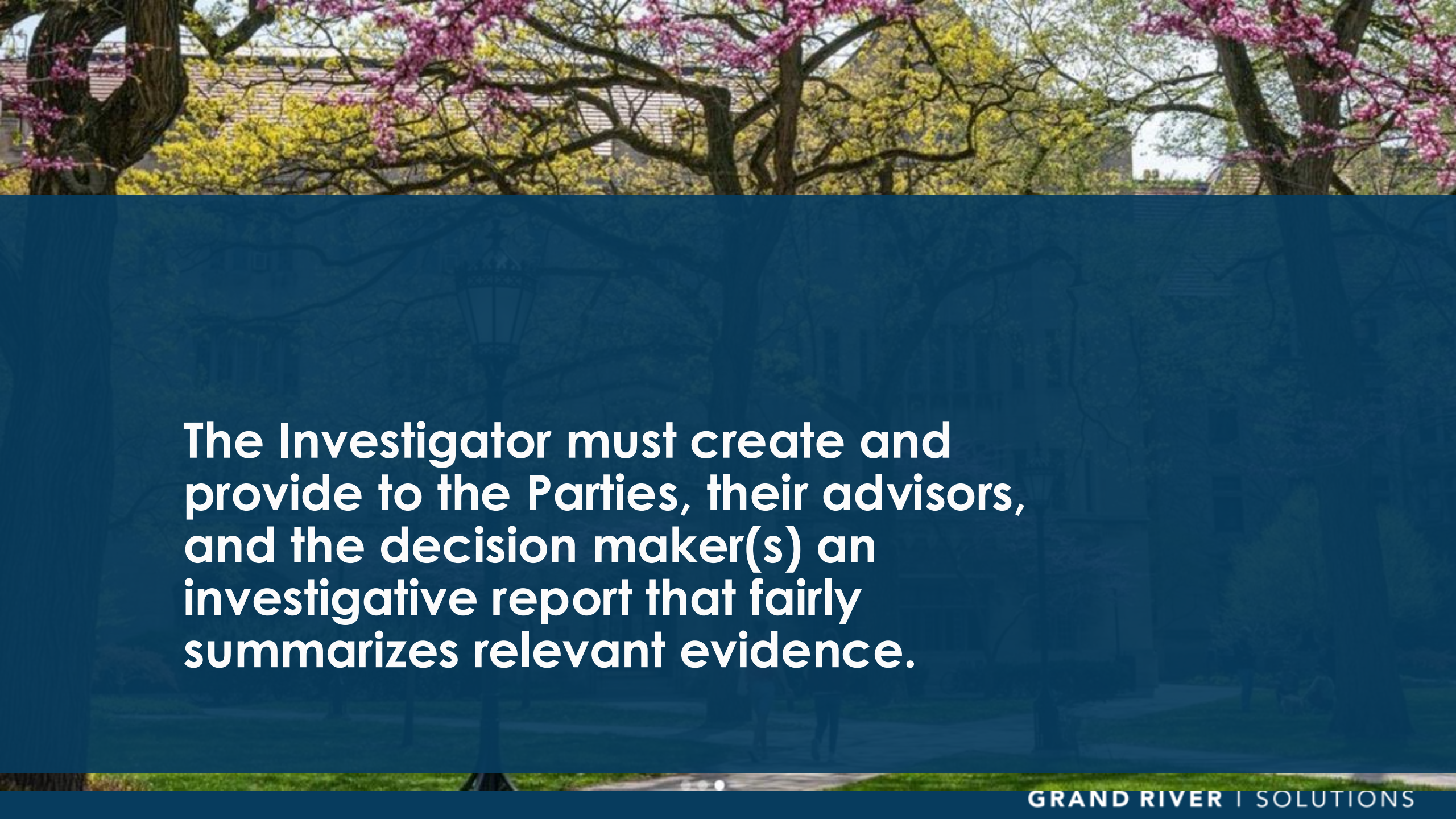
REPORT AND EVIDENCE FILE

Summary of the Evidence



Compilation of the Evidence





The Investigator must create and provide to the Parties, their advisors, and the decision maker(s) an investigative report that fairly summarizes relevant evidence.

DIRECTLY RELATED EVIDENCE

- Preamble states it should be interpreted using its plain and ordinary meaning.
- Term is broader than:
 - “all relevant evidence” as otherwise used in Title IX regulations, and
 - “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act
- Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

RELEVANT EVIDENCE

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.”

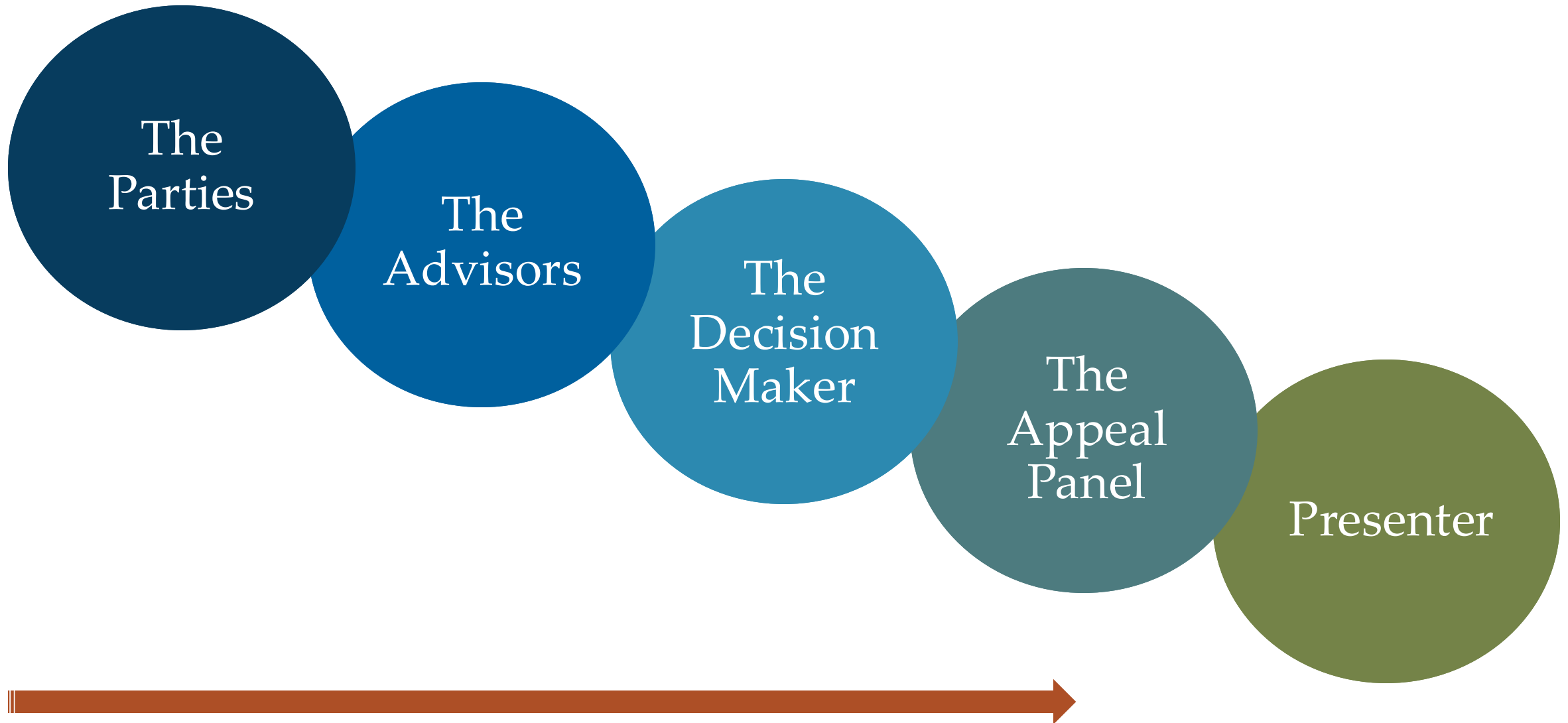
Irrelevant Evidence

- Prior sexual history of complainant, with two exceptions:
 - *(1) prove that someone other than the respondent committed the conduct alleged by the complainant, or (*
 - *2) 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.*
- Legally recognized and un-waived privilege.
- Including records related to medical, psychiatric, psychological treatment.

THE PURPOSE OF THE REPORT

- To ensure that the recipient gives the parties meaningful opportunity to understand what evidence the investigator has collected and believes is relevant,
- To allow the parties opportunity to advance their own interests for consideration by the decision-maker.
- To give the parties (and advisors who are providing assistance and advice to the parties) adequate time to review, assess, and respond to the investigative report in order to fairly prepare for the live hearing or submit arguments to a decision-maker where a hearing is not required or otherwise provided.
- To allow the decision maker to adequately prepare for the live hearing, where one is conducted.
- To reduce the likelihood of bias in the final outcome by providing the parties and the decision maker(s) an opportunity to identify and explore potential bias by the investigator
- See 85 Fed. Reg. 30309 (May 19, 2020).

INTENDED RECIPIENTS



OTHER RECIPIENTS?

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



WHY IS IT IMPORTANT TO WRITE A SOLID REPORT?

- It allows you to recall the details of your investigation long after the event—this is important if there are complaints by or against the parties involved or litigation in the future.
- It signals to others that the complaint was taken seriously—that it is important to the institution to get it right.
- A well written and comprehensive report shows that the investigation was fair, impartial, and thorough.
- A well written and comprehensive report protects you and your institution in case of litigation and helps to limit your liability.

A photograph of three women in a modern office setting. The woman in the foreground, with red hair and a striped shirt, is smiling broadly and looking towards the camera. She is sitting at a dark table with a laptop open in front of her. Two other women are seated behind her, also smiling and looking towards the camera. The woman on the left is pointing at the laptop screen. On the table, there are several red mugs and a glass of water. A large blue rectangular overlay is positioned on the right side of the image, containing the text 'LET'S HEAR IT!'.

**LET'S HEAR
IT!**

GRAND RIVER | SOLUTIONS

IDENTIFY THE IRRELEVANT INFORMATION...

He stated, “I asked her if she felt better and she told me yes. She apologized and I told her not to worry about it. At that point I was pretty drunk myself and I just wanted to go to sleep. At some point she put her arms around me and snuggled into me. I took that as a sign that she wanted to hook up. I had heard from a few other guys that had had sex with her before that she was a super sexual girl. One of my boys described her as a ‘sex freak.’ I didn’t want to disappoint her so I rolled onto my side and we were face to face; she didn’t back away so I kissed her. She kissed me back. I asked her again if she was ok and she moaned. We continued to undress each other. Before I knew it, we were having sex. She was totally awake and totally into it.”

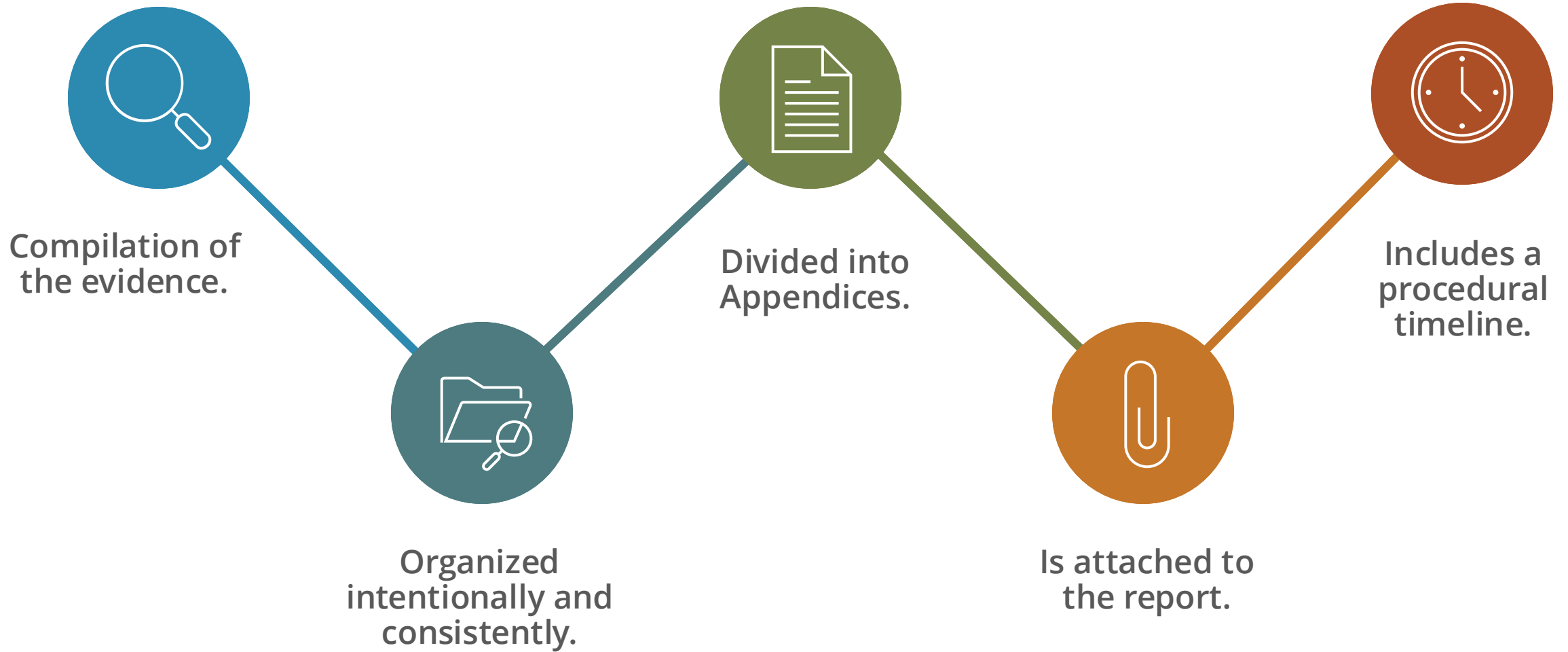
IDENTIFY THE IRRELEVANT INFORMATION...

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STRUCTURE OF THE INVESTIGATIVE FILE AND REPORT



THE EVIDENCE FILE



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



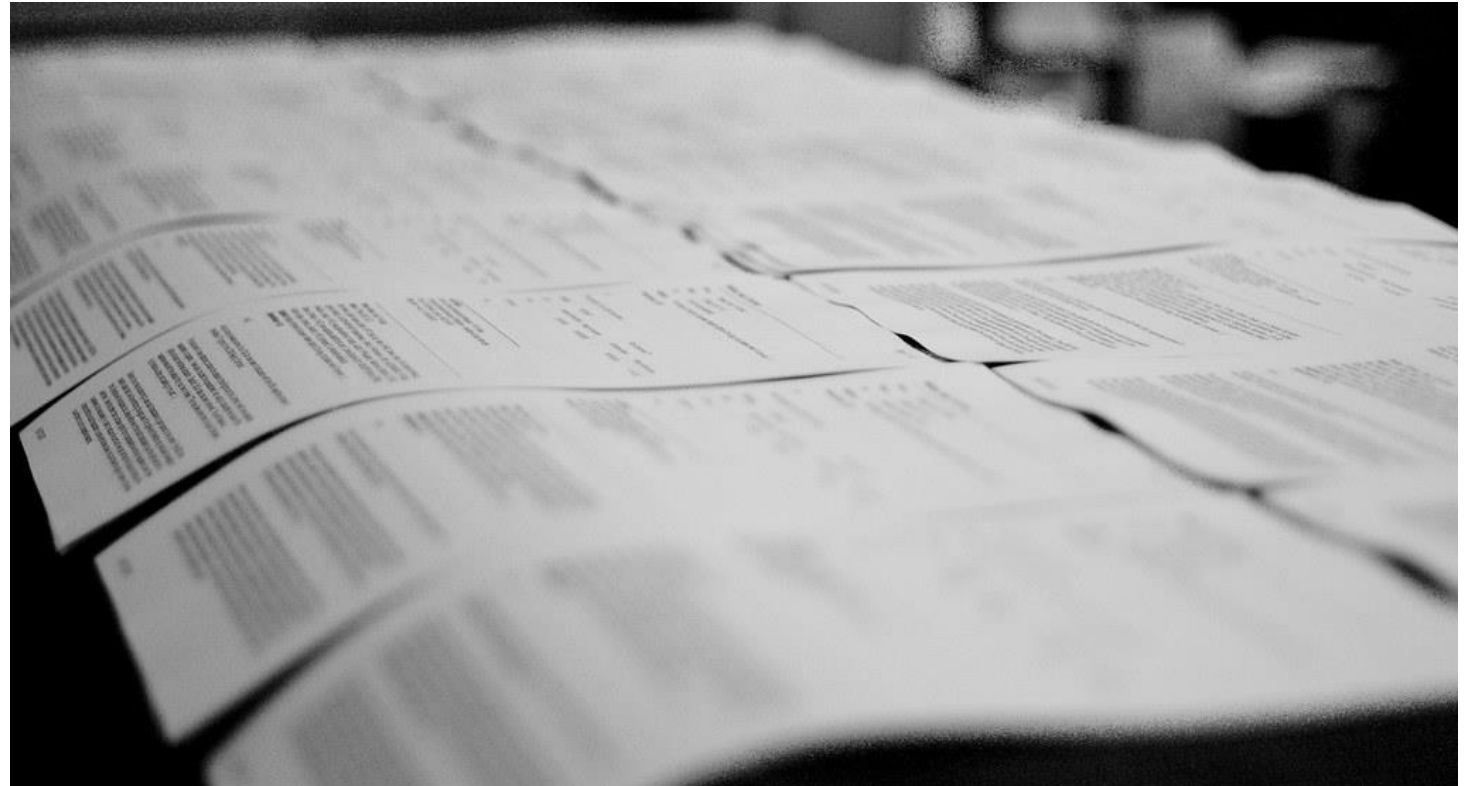
LABEL THE APPENDICES OR SECTIONS

- “Appendix A contains transcripts/summaries of party and witness interviews that the investigator deems relevant, in whole or in part.”
- “Appendix B contains documentary evidence that the investigator deems relevant, in whole or in part.”
- “Appendix C contains transcripts/summaries of party and witness interviews that the investigator does not deem relevant, but that are directly related to the allegations in the formal complaint.”
- “Appendix D contains documentary evidence that the investigator does not deem relevant, but that are directly related to the allegations in the formal complaint.”
- “Appendix E contains a timeline documenting all procedural steps taken from the filing of the formal complaint until the submission of the final investigative file and report.”

FORMAT AND STRUCTURE OF THE RECORD

- Include page numbers
- Include a Table of Contents
 - **For the entire record**
 - **For each appendix**
- One document or PDF

***Making them
accessible along the
way!***





REDACTIONS

ESSENTIAL ELEMENTS OF THE REPORT

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

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



WRITING THE REPORT: DEVELOPING THE CONTENT



GET THE EASY STUFF OUT OF THE WAY

Overview of the
Investigation

Statement of
Jurisdiction

Objective of the
Investigation and
the Investigation
Report

Identity of
Investigators


Prohibited
Conduct
Alleged

Witnesses

Evidence
Collected

Summary of
Evidence

Conclusion



WRITING THE SUMMARY OF RELEVANT EVIDENCE

START BY IDENTIFYING THE QUESTIONS THAT YOU OR THE DECISION MAKER WILL BE CHARGED WITH ANSWERING:

What are we being asked to decide?

What does the formal complaint allege?

What are the elements of each act of prohibited conduct alleged?

STALKING MEANS ENGAGING IN A COURSE OF CONDUCT DIRECTED AT A SPECIFIC PERSON THAT WOULD CAUSE A REASONABLE PERSON TO: (1) FEAR FOR THEIR SAFETY OR THE SAFETY OF OTHERS OR (2) SUFFER SUBSTANTIAL EMOTIONAL DISTRESS.

1. Did the complainant have reasonable fear for safety or safety of others?
2. Did the complainant suffer substantial emotional distress?

IDENTIFY THE RELEVANT FACTS FOR INCLUSION IN THE REPORT.



Any information that is relevant to the elements of the prohibited conduct alleged.



Information that the Investigator believes the Decision Maker should consider or rely upon when making their final determination of responsibility.



Information that is relevant to an assessment of the evidence:



Helpful
contextual
information

THE FOLLOWING INFORMATION IS USUALLY NOT RELEVANT AND SHOULD BE OMITTED FROM REPORTS:

- Irrelevant Information
- The Investigator's Opinions
- Speculation and conjecture
- Character evidence
- Party and witness opinions that are unsupported by fact



ANALYSIS GRID: SAMPLE

The analysis grid can serve as a guide as you start to write your summary of relevant evidence.

Did the complainant have reasonable fear for safety or safety of others?

Did the complainant suffer substantial emotional distress?

THE REPORT SHOULD STAND ON ITS OWN



S Simple and Easy to Comprehend

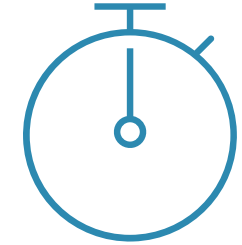
T Transparent/Clear

A Accurate

N Neutral/Unbiased

D Draws Attention to Significant Evidence and Issues

SINGLE INCIDENT ALLEGATIONS: EVENT CENTERED APPROACH



1. History between the Parties

1. *The Reporting Party's Account*
2. *The Responding Party's Account*
3. *Witness A's Account*

2. The Hours Leading up to the Reported Incident

1. *The Reporting Party's Account*
2. *The Responding Party's Account*
3. *Witness B's Account*
4. *Witness C's Account*

3. The Reported Incident

1. *The Reporting Party's Account*
2. *The Responding Party's Account*

4. After the Reported Incident

1. *The Reporting Party's Account*
2. *The Responding Party's Account*
3. *Witness A's Account*
4. *Witness D's Account*

MULTIPLE INCIDENTS

Incident A (incident centered)

- Overview of the alleged incident
- Undisputed facts
- Reporting Parties Account
- Respondent Parties Account
- Witness Accounts

Incident B

- Overview of the alleged incident
- Undisputed Facts
- Reporting Parties Account
- Respondent Parties Account
- Witness Accounts

Incident C

- Overview of the alleged incident
- Undisputed Facts
- Reporting Parties Account
- Respondent Parties Account
- Witness Accounts

Complainants Account (person centered)

- Prior History between the parties

- Incident A

- Incident B

- Incident C

- Time between last incident and report

Respondent's Account

- Prior History between the parties

- Incident A

- Incident B

- Incident C

- Time between last incident and report

Witness Accounts

- Prior History between the parties

- Incident A

- Incident B

- Incident C

- Time between last incident and report

SIMPLICITY

- Reports should be written so that they are accessible to all readers, irrespective of their familiarity with the subject matter, or the institutions policies and the law.
 - Use plain language
 - Be concise
 - Avoid repetition
 - Consider including a section on facts in dispute/not in dispute
 - Avoid or define technical language/acronyms/slang



CHOOSING SIMPLE LANGUAGE

Complex Language

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

Simple Language

“Decided/Determined”
“More likely than not”
“Respondent stated”
“Plain assessment/on its face assessment”
“The allegation was proven/supported by”
“As stated in the policy”
“Inserted their finger into...”

TRANSPARENT AND CLEAR

- Outline the report to enhance transparency and clarity.
- Summarize information chronologically.
- Clearly define language used in the report, such as:
 - **Opinions**
 - **Quantitative language**
 - **Slang/acronyms**
- Provide clear descriptions of reported acts.
- Use consistent language.



CLARIFYING LANGUAGE

Unclear Language

“Complainant reported that Respondent forced her to perform oral sex”

“SANE/RA/UPD”

“Witness 1 reported that Respondent was angry”

“Complainant stated that Respondent touched them down there”

Clear Language

“Complainant reported that Respondent forced her to put her mouth on his penis”

“Sexual Assault Nurse Examiner/Resident Assistant/University Police”

“Witness 1 reported that he believed that Respondent was angry because Witness 1 observed Respondent yelling, slamming his fists on the wall, and that the ‘veins in his neck were popping out.’”

“Complainant stated that Respondent touched them, “down there”. When asked to define 'down there,' Complainant stated, 'my penis.'”

OR

“Complainant stated that Respondent touched their 'penis.’”

WHERE DEEPER CLARITY IS OFTEN NEEDED, BUT NOT INCLUDED

Dive Deeper When

Testimony about contact with a person's vagina.

Testimony about penetration.

Testimony that clothing was removed.

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

Opinions are offered

Include clarity about the following:

Was the contact with the vagina or vulva?

What was penetrated?

What was used to penetrate?

What kind of clothing?

How was it removed?

What was the specific impact?

Include facts that form the basis for the opinion



ACCURACY IS ESSENTIAL

- Be precise and accurate in how you identify folks.
 - Use their preferred names and pronouns.
- Be accurate and precise when citing or referring to policy language.
 - Be sure to cite from the applicable policy/procedures.
- Accurately state the allegations as set forth in formal complaint.
- When summarizing the evidence, do so accurately without editorial or opinion.
 - Use quotations often and appropriately.
- Always cite to the investigation file.

Every statement in an interview summary should make clear that it was the interviewee who made that statement:

- Not: Complainant first saw Respondent near the fountain in the middle of the quad.
- Instead "Complainant stated that she first saw Respondent near the fountain in the middle of the quad."
- Not: Witness 3 told Complainant that Respondent was creepy.
- Instead: "Complainant stated that Witness 3 told him that Witness 3 believed Respondent was 'creepy.'"

Use interviewee's words and put in quotes if it is their word.

- Not "Witness 3 was really out of it and drunk."
- Instead; "Witness 4 stated that Witness 3 was 'really out of it' and 'drunk,' which she described as . . ."

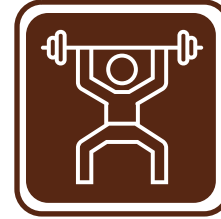
No conclusory words

- Not "the stalking started"
- Instead; "Complainant stated that the conduct she identified as stalking started in January."
- In some states, particularly California, attorneys litigating these cases will argue that use of a conclusory term means the investigator is agreeing that the conduct did occur. It's a huge nuisance to be a deponent in those cases

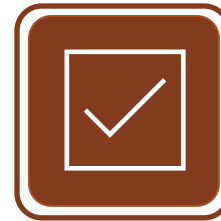
COMMIT TO USING NEUTRAL LANGUAGE

Non-Neutral/Biased	Neutral Alternatives
"Claimed/Alleged"	"Reported/Stated"
"According to X"	"X reported/X stated"
"Story/Version of Events"	"Account/Reported Recollection of Events"
"Had Sex with/Engaged in"	Simply describe what occurred
"Changed their Account/Story/Version of Events"	"When initially interviewed Respondent stated X. In a subsequent interview Respondent stated Y"

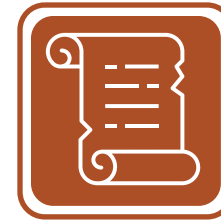
DRAW ATTENTION TO SPECIFIC EVIDENCE THROUGH INTENTIONAL PRESENTATION OF INFORMATION IN THE REPORT



Evidence that the Investigator believes should be afforded significant weight.



Evidence related to assessment of credibility, reliability, and authenticity.
Consistencies
Inconsistencies
Corroborative evidence
Omissions
Statements that include or that are lacking in significant details



Explanations that provide a better understanding of certain items of evidence or lack of evidence.



If it feels important, emphasize it in the report.

HOW MIGHT YOU INCLUDE THE FOLLOWING RELEVANT INFORMATION FROM THE IF IN THE SUMMARY OF RELEVANT EVIDENCE SECTION OF THE REPORT?

1. Excerpt from the transcript of Complainant's initial interview located in Appendix A at page 34:
 - Complainant: "The next day he tried to talk to me. He sent me a bunch of text messages asking to see me. He said he was 'sorry' for hitting me and for raping me. I basically told him I didn't want to hear it and I called him an asshole. We've not communicated since."
2. Screenshot of the text message exchange, described above, submitted by Complainant and located in Appendix B, page 67.

OPTION A IN PRACTICE

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. Screenshots of this exchange were provided by Complainant and are included in Appendix B. See, Appendix A, p.34 and Appendix B, p. 67.

OPTION B IN PRACTICE

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

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

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

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

Respondent: I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did.

Appendix B, p. 67.

OPTION C IN PRACTICE

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was “sorry for hitting he and for raping her.” See Appendix A, p.34. Complainant provided the following screen shots of this exchange:

Appendix, p. 67.



MAKE IT SIMPLE

Commit to using plain language:

Instead of this:

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

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

Consider this:

"Complainant reported that he went to the hospital and was treated in the emergency department by a sexual assault nurse examiner. In her report, the sexual assault nurse examiner noted that Complainant had redness around his left eye."

"When this investigation is complete, a hearing will be held. During that hearing three decision makers will consider testimony and other evidence. Following the hearing, the decision makers will decide whether the evidence supports a finding that it is more likely than not that Respondent engaged in the prohibited conduct alleged in the formal complaint."



Neutrality

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

"Complainant **reported** that they were face down in the bed with their dress pushed up so that their face was actually laying on the bottom part of their dress. They **stated** that someone was **penetrating their anus** from behind."

THE INVESTIGATOR SHOULD NOT BE PRESENT IN THE REPORT.

- The Investigator should not be present in the report.
- For example, it should never say. “I then asked why Respondent believed they had consent to kiss complainant”
- Instead, “When asked why they believed they had consent to kiss complainant, respondent stated....”



**ACCURATELY SUMMARIZE THE
FOLLOWING STATEMENT:**

“I was standing outside of the library when I saw Amanda and Mike standing by the fountain arguing. Amanda started walking away and Mike grabbed her by the arm and yanked her back really hard. She kind of yelped, which was surprising cause it didn’t look like it hurt. Maybe she yelped because she was scared. I really don’t know. Anyway, Mike was really angry. His face was all red and he was yelling in her face, and like spitting all over it. Amanda turned her face away and Mike grabbed her by the chin and made her face him. She started flailing and trying to get away and that’s when he backhanded her across the face. I’ve known Mike for a long time and I’ve never seen him hurt a fly. Amanda must have really done something to make him mad. I actually heard she cheated on him with his best friend, Kyle, which is kinda fucked up.”



“I was standing outside of the library when I saw Amanda and Mike standing by the fountain arguing. Amanda started walking away and Mike grabbed her by the arm and yanked her back really hard. She kind of yelped, which was surprising cause it didn’t look like it hurt. Maybe she yelped because she was scared. I really don’t know. Anyway, Mike was really angry. His face was all red and he was yelling in her face, and like spitting all over it. Amanda turned her face away and Mike grabbed her by the chin and made her face him. She started flailing and trying to get away and that’s when he backhanded her across the face. I’ve known Mike for a long time and I’ve never seen him hurt a fly. Amanda must have really done something to make him mad. I actually heard she cheated on him with his best friend, Kyle, which is kinda fucked up.”

SUMMARY:

Witness A reported that he was standing outside of the library when he saw Complainant and Respondent standing “by the fountain arguing.” Witness A reported that Complainant began “walking away” and Respondent “grabbed” her by the arm and “yanked her back really hard.” Witness A stated that Complainant “kind of yelped.” Witness A stated that Respondent was “really angry.” Witness A described Respondent’s face as, “all red.” Witness A stated that Respondent was “yelling in [Complainant’s] face” and “spitting all over it.” Witness A reported that Complainant “turned her face away” and Respondent “grabbed [Complainant] by the chin and made her face him.” Witness A stated that Complainant began “flailing and trying to get away.” Witness A stated that it was at this point that he observed Respondent “backhand” Complainant “across the face.”

INVESTIGATION HURDLES

Prior bad acts, and
intoxication v. incapacitation

IMPROPER V. PROPER



Prior bad acts are not relevant to prove a propensity.



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

INTOXICATION V. INCAPACITATION



ASSESSING INCAPACITATION

Did Complainant consume alcohol/drugs?



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graph TD; A[Did Complainant consume alcohol/drugs?] --> B[Did Complainant exhibit signs of incapacity?]; B --> C[Did Respondent know of Complainant's incapacity?]; C --> D[Should Respondent have known of Complainant's incapacity?];
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Did Complainant exhibit signs of incapacity?

Did Respondent know of Complainant's incapacity?

Should Respondent have known of Complainant's incapacity?

SCENARIOS: INTOXICATION V. INCAPACITATION

Fact Pattern A: “But they seemed fine”

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

SCENARIOS: INTOXICATION V. INCAPACITATION

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

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

PREVENTION



PREVENTION EDUCATION: TITLE IX REGULATIONS

"The Department understands commenters' beliefs that the Department should create rules that monitor drinking, teach about interpersonal boundaries, sexuality, bystander intervention, and sexual consent communication,. . . . 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.



PREVENTION AND EDUCATION



- Who facilitates your training and prevention programming?
- What are examples of prevention programs, activities, or trainings that have worked well?
- How do you ensure campus compliance and prevention best practices?

A photograph of three women sitting at a dark wooden table in a bright, modern office. The woman in the foreground has vibrant red hair and is wearing a blue and white striped long-sleeved shirt. She is smiling broadly and looking towards the camera. Behind her, two other women are also smiling. One woman has dark hair and is wearing a green top, and the other has dark hair and is wearing a black top. They are all looking at a laptop screen. On the table, there are several red mugs and a glass of water. The background is a bright, white wall with a large window and a blackboard.

QUESTIONS?

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