

# MEET YOUR FACILITATORS



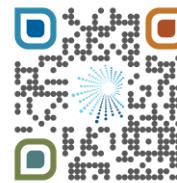
## Dr. Bill Boerner

Dr. Bill Boerner serves as a Senior Solutions Specialist for Grand River Solutions. He previously served as the Interim Vice President and Associate Vice President of Diversity, Equity, and Inclusion and Title IX Coordinator at Hobart and William Smith Colleges. In his previous role, Dr. Boerner oversaw the Diversity, Equity, and Inclusion division, leading inclusion goals and visioning for the Colleges. As the Title IX Coordinator, he led sexual violence prevention and response, and maintained compliance training for all students, faculty, and staff. Dr. Boerner has experience leading training and workshops related to identity, DEI, Title IX, bystander intervention, social justice, inclusion, LGBTQ+, understanding bias, and navigating transitions.



## Andrea Stagg

Andrea Stagg is the Director of Consulting Services at Grand River Solutions where she oversees Title IX and equity support, audits and compliance reviews, athletics consulting, accessibility and disability compliance, DEI initiatives, and Clery Act compliance solutions. Andrea has extensive experience in higher education in-house legal settings at public and private colleges and universities. She has published legal and compliance writing about sexual and interpersonal violence prevention and response, the Clery Act, NCAA compliance, and program integrity. She is a nationally sought after presenter and has advised federal and state legislators on best practices in campus safety and sexual harassment prevention.



# AGENDA – DAY ONE

- Housekeeping
- Check-in activity
- Background on Title IX and 129b
- Pratt Title IX and Sexual Misconduct Policy
- Hearings
  - Requirement for hearings
  - Process participants
  - Pre hearing tasks
- The Hearing

# WHAT DO YOU THINK?



# BACKGROUND ON TITLE IX AND 129-B

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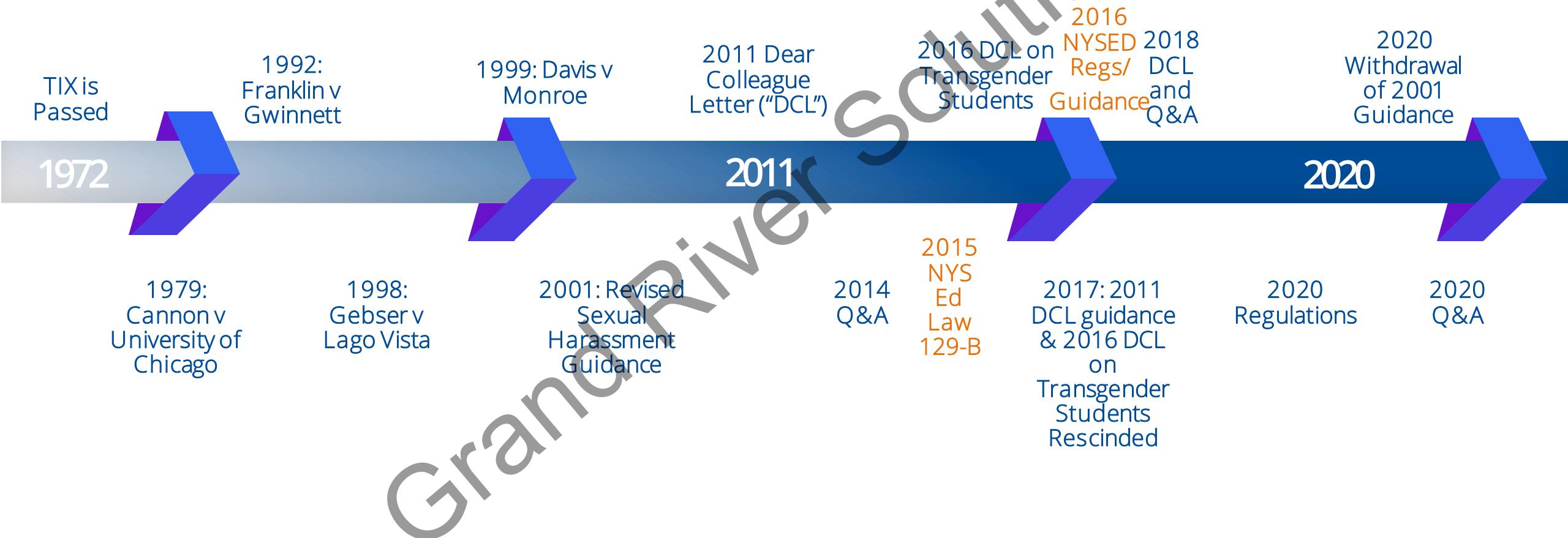
## Title IX of the Education Amendments Act of 1972

"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."



# The History of Title IX and Education Law 129-B

## A TIMELINE



# THE TITLE IX 2020 REGULATIONS

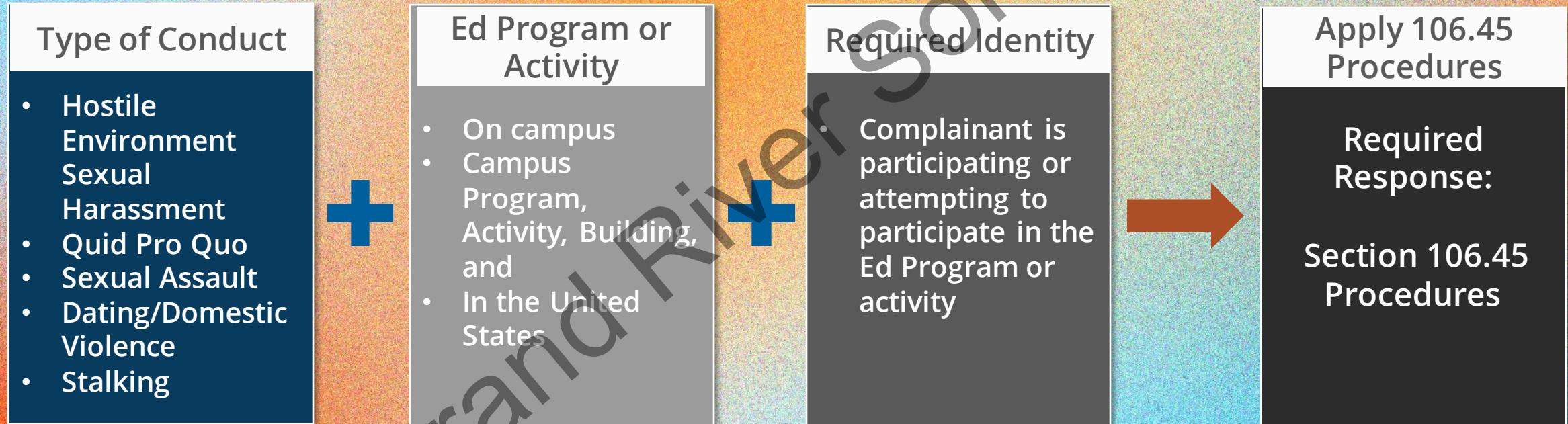
## SEXUAL HARASSMENT ONLY



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.

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# TITLE IX APPLICATION POST MAY 2020 REGULATIONS



# EDUCATION LAW ARTICLE 129-B

- July 2015 – Enough is Enough, NYS Education Law Article 129-B was signed by the governor
- General provisions
- Affirmative consent
- Alcohol/drug amnesty
- Student bill of rights
- Response to reports
- Climate surveys

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# NEW YORK SEXUAL HARASSMENT PREVENTION LAWS

- State law
- City law
- Focused on workplace sexual harassment prevention and response

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# PRATT'S TITLE IX AND SEXUAL MISCONDUCT POLICY: OVERVIEW

- Policy statement
- Reason for the policy
- Applicability
- Prohibited conduct under the policy
- Definitions
- Policy
- Procedures
- Internal & external inquiry resources
- Revision history & related policies

# PRATT'S TITLE IX AND SEXUAL MISCONDUCT POLICY: PROHIBITED CONDUCT

- Sexual Harassment (Title IX, Non-Title IX, & employment situations)
- Sexual Assault
- Domestic Violence
- Dating Violence
- Stalking
- Sexual Coercion
- Sexual Exploitation
- Retaliation

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# GENERAL DYNAMICS OF SEXUAL ASSAULT

- Many victims are reluctant to report
- Delays in reporting
- Wavering levels of participation
- Respondent known to victim.
- Little to no physical evidence.
- Emotionally charged situation.
- Adjudicator decisions often based on credibility.
- Demeanor - “perfect victim”
- Habits and Reflexes (Hopper)
- Victims questioning of events and actions.
- Effect of victim’s own misconceptions.

# PRATT'S TITLE IX AND SEXUAL MISCONDUCT POLICY: SCOPE

- Applies to everyone
- Applies to students and employees whether on or off campus
- Applies to everyone else (visitors, guests, contractors) when on campus or participating in Pratt sponsored activities
- Covers sexual harassment and sexual and interpersonal violence
- Other sex discrimination and discrimination and harassment based on protected categories is covered by the Nondiscrimination Policy

# PRATT'S TITLE IX AND SEXUAL MISCONDUCT POLICY: PROCEDURE

- Disclosure options
- Supportive and interim measures (including emergency removal/admin leave)
- Advisors
- Confidentiality

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# RESOLUTION PROCESSES – FORMAL COMPLAINT

- Written and signed description of the facts alleged
- Reviewed by the Coordinator
- Consolidation?
- Dismissal

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# RESOLUTION PROCESSES – OPTIONS

- Title IX Prohibited Conduct = Live hearing adjudication
- Prohibited Conduct of any type and student respondent = Live hearing adjudication
- Non-Title IX Prohibited Conduct involving employee respondents = No live hearing
- Informal Resolution

# RESOLUTION PROCESS – INFORMAL

- Formal complaint
- Notice of allegations
- Participant agreement
- Informal Agreement created
- Agreement enacted
- Claim closed

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# FORMAL PROCESS - OVERVIEW

- Formal complaint
- Timeframe
- Notice of allegations
- Notice of meetings and interviews
- Investigations
- Live hearing adjudication process
- Adjudication process for employees

# FORMAL PROCESS – TIMEFRAME, NOA

- Timeframe for investigations, decisions, appeals
- Notice of Allegations, a road map for the investigation developed from the Formal Complaint
- NOA includes:
  - Details of the allegation
  - Applicable policies and procedures
  - Student Bill of Rights (if applicable)
  - How to make a bias/conflict challenge about the Coordinator or Investigator
  - Presumption of not responsible
  - Right to an advisor
  - Right to evidence review
  - Prohibition on knowingly making false statements
  - Retaliation is prohibited

# FORMAL PROCESS – NOTICE OF MEETINGS

- Date
- Time
- Location
- Participants
- Purpose

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# FORMAL PROCESS – INVESTIGATIONS

- Relevance
- Evidence review
- Final evidence report

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# FORMAL PROCESS – ADJUDICATIONS

- Live hearing adjudication
- Non-hearing adjudication
- Appeals process

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# **TITLE IX REQUIREMENTS FOR HEARINGS**

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# PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

# PROCESS PARTICIPANTS

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Complainant



Any individual who has reported being or is alleged to be the victim of Prohibited Conduct under this policy.

Respondent



Respondent, sometimes called the Accused, means any individual who has been reported to have engaged in Prohibited Conduct under this policy.

# 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.



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## THERE ARE TWO TYPES OF ADVISORS

**Advisor (throughout whole process)**

Throughout the whole process

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**Hearing Advisor**

Hearing, for purposes of asking questions

# 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

# ADVISORS

## Pratt Policy

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Parties in this process may be accompanied by an Advisor to any meeting or related hearing to which they are required or are eligible to attend. The Advisor is not an advocate. Except where explicitly stated by this Policy, Advisors shall not participate directly in the process, with exception that only an Advisor may conduct cross-examination during a live hearing.

# PARTICIPANTS: HEARING 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

Hearing Coordinator/Facilitator

# PARTICIPANTS: THE DECISION MAKER(S)

- One person or a 3-person panel
- 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



# PARTICIPANTS: APPEALS

- Three-person panel for appeals of live hearing adjudications
- President or designee for appeals of non-hearing adjudications



# OBLIGATIONS OF PROCESS PARTICIPANTS

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

- Title IX Coordinator, investigator, **decision maker**, or facilitator of informal resolution must receive training on...how to serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias. This training material may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

# IMPARTIAL INVESTIGATIONS AND HEARINGS ARE...

01

Not influenced by bias or conflict of interest.

02

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

03

Truth seeking, not "your truth" confirming.

# WHAT CONSTITUTES BIAS?

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



# CONFLICT OF INTEREST

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# 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.

# **TRAUMA INFORMED PRACTICES**

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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.

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# EXAMPLES OF EVENTS THAT MIGHT TRIGGER A TRAUMATIC RESPONSE

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**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.**

# COMMON CHARACTERISTICS OF DISCLOSURES BY A TRAUMA BRAIN

Inconsistent

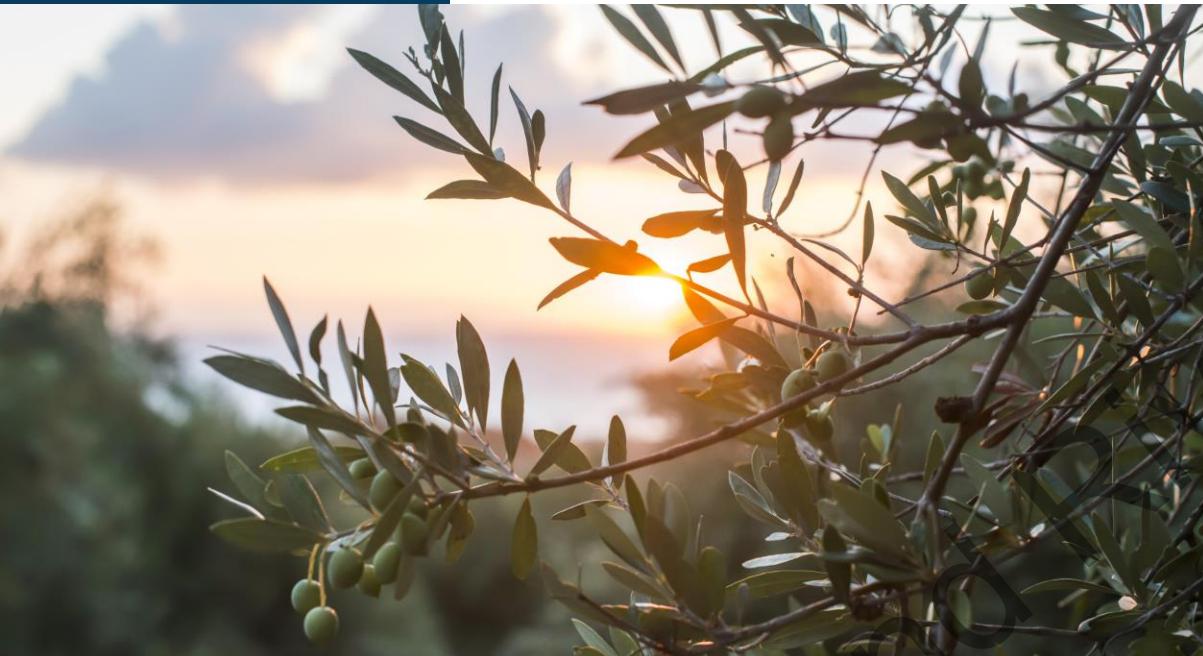
Non-Linear

Fragmented

Lack of Detail

New Information

Affect is unexpected



# 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

# PRE-HEARING TASKS

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# WHAT WILL HAVE HAPPENED ALREADY BY THE TITLE IX COORDINATOR



Pre-hearing mtgs with all parties.



Assignment of advisors



Sharing of FIR with parties

# 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

# PRE-HEARING TASKS: DECISIONMAKER(S)

- Review evidence and report
- Review applicable policy and procedures and the prohibited conduct at issue
- Preliminary analysis of the evidence
- Determine areas for further exploration
- Develop questions of your own
- Anticipate the party's questions
- May convene a pre-hearing meeting
- Anticipate challenges or issues
- Review the script

# PRE-HEARING TASKS: HEARING ADVISOR

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# AFTER YOU ARE ASSIGNED A CASE AS A HEARING ADVISOR...

Review the policy

Review the materials provided, if any

Reach out to your advisee

Schedule a meeting

Do Your Homework

# PREPARE YOUR ADVISEE FOR THE HEARING



How to answer questions



Questions they can expect



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



Communicating During the Hearing



Selective Participation and Potential Impacts

# THE HEARING

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# 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.

# Opening Introductions and Instructions by the Chair



The Institute 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.



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# Presentation of Information

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# Presentation of Information & Questioning of the Parties

01

The Hearing Panel will question Complainant first

02

Cross examination of Complainant will occur next

03

Follow up by the Hearing Panel

04

The Hearing Panel will question Respondent second

05

Cross examination of Respondent will occur next

06

Follow up by the Hearing Panel

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# Closing Statements

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

- 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.

# More On Questioning...

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# Format of Questioning

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-  The Hearing Panel or the advisor will remain seated during questioning
-  Questions will be posed orally
-  Questions must be relevant

# WHEN QUESTIONING....

Be efficient.

Explore areas where additional information or clarity is needed.

Listen to the answers.

Be prepared to go down a road that you hadn't considered or anticipated exploring.

Take your time. Be thoughtful. Take breaks if you need it.

# 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?

# COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

Credibility

Reliability

Timelines

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

# What constitutes a relevant question?

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.”

Information protected by an un-waived legal privilege

Medical treatment and care

Unduly repetitious or duplicative questions

Information that otherwise irrelevant

Complainant's prior sexual history, with limited exceptions.

## Irrelevant and Impermissible Questions

# Credibility Versus Reliability

## Reliability

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

## Credibility

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

# Questioning to Assess Reliability

Inherent plausibility

Logic

Corroboration

Other indicia of reliability

# Questioning to Assess Credibility

No formula exists, but consider asking questions about the following:

opportunity to view

ability to recall

motive to fabricate

plausibility

consistency

character, background, experience, and training

coaching



# Opinion Evidence

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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?



Never assume  
that an item of  
evidence is  
authentic.



**QUESTION THE  
PERSON WHO  
OFFERED THE  
EVIDENCE**



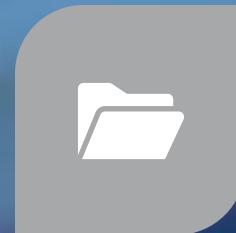
**REQUEST  
ORIGINALS**



**OBTAIN  
ORIGINALS FROM  
THE SOURCE**



**HAVE OTHERS  
REVIEW AND  
COMMENT ON  
AUTHENTICITY**



**ARE THERE  
OTHER RECORDS  
THAT WOULD  
CORROBORATE?**

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# What are the “Hard” Questions

Details about the  
sexual contact

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...

# Special Considerations for Panels

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

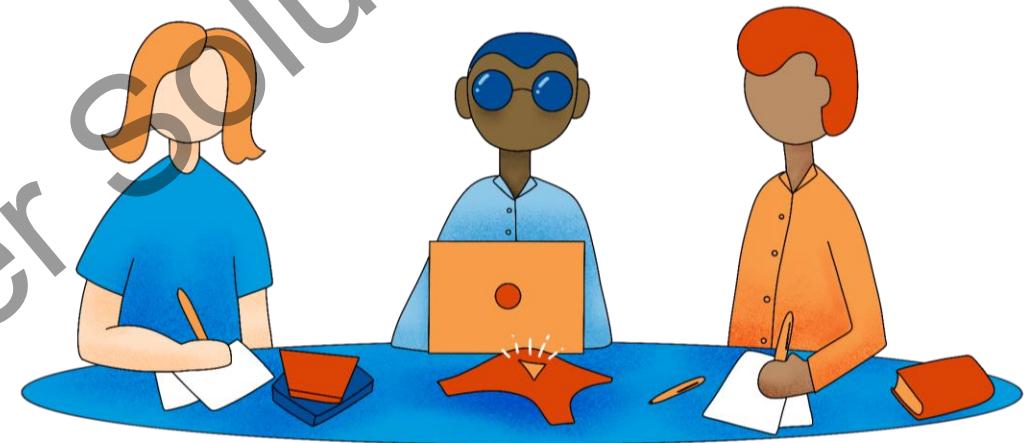
Go topic by topic

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





# How to Question the Investigator

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-  Ask questions about how they conducted their investigation (if not in the report)
-  Explore the investigator's decision making (if not in the report)
-  Seek clarity about evidence collected
  - Where it came from
  - Authenticity of the evidence
-  Ask factual questions that will assist in evaluation of the evidence
-  If bias is not in issue at the hearing, the Chair should not permit irrelevant questions of the investigator that probe for bias.

# Questions from Advisors

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# What do I Want to Show?



Credibility?



Clarification on timeline?



The thought process?



Inconsistencies?



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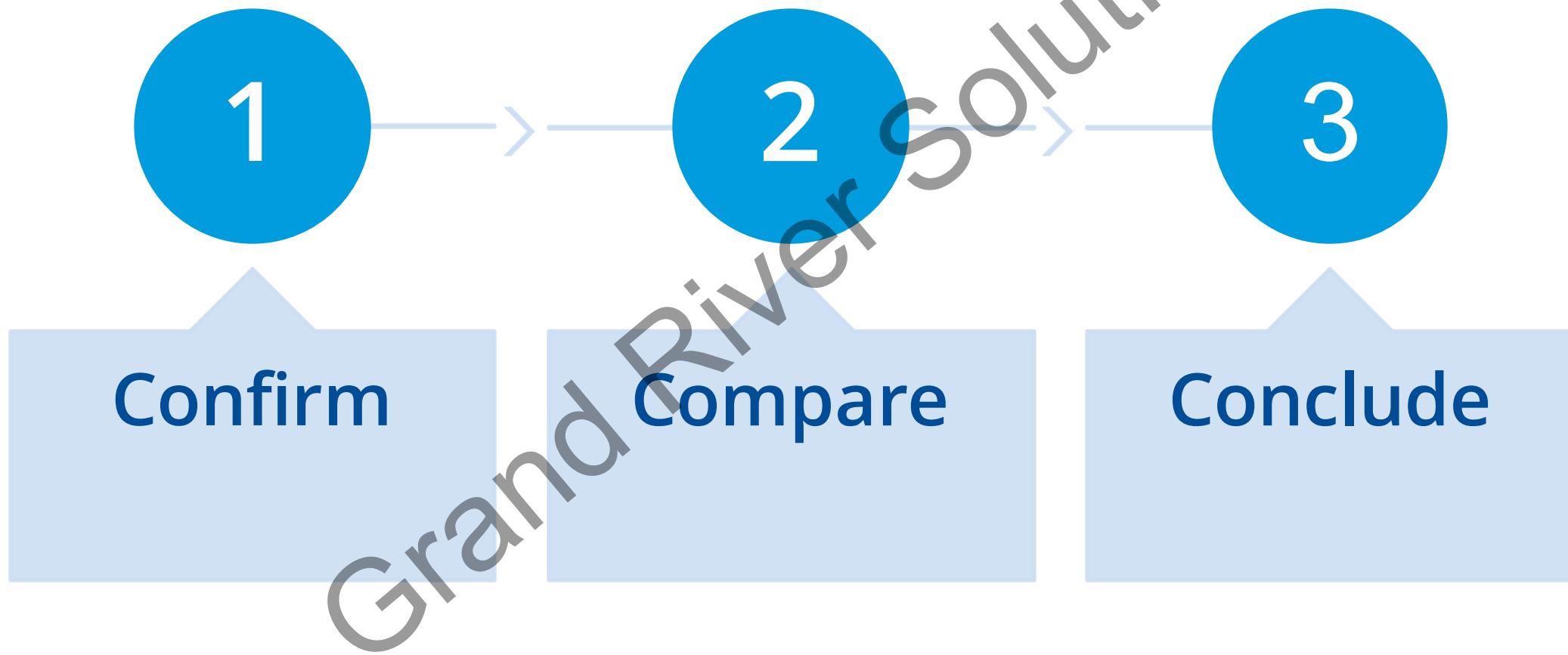
# Cross Examination

## Common Approaches

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1. Obtain/Highlight helpful information
2. If a witness does not have information that is helpful, ask questions that illustrate that they are unimportant.
3. Highlight bias/lack of bias
4. Highlight credibility and reliability/lack of credibility or reliability
5. Discounting

# Questioning How to Discount



# Discounting Example

## Statement A:

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

## Statement B:

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

# || Confirm

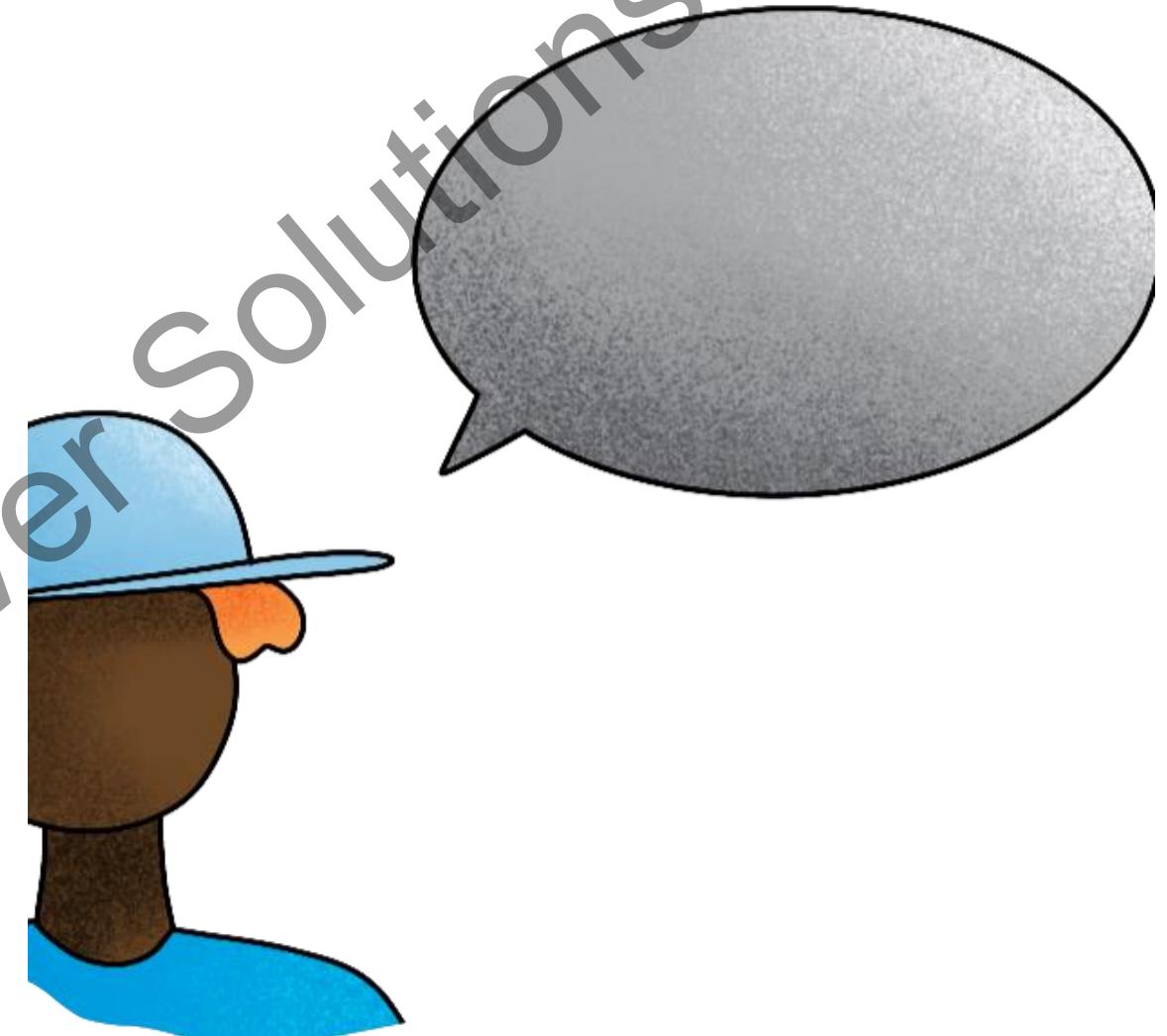
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- Witness Y, earlier today you were asked about what you heard and saw on the night in question...
- And you indicated that you heard loud voices, but that you are not sure if it was fighting, is that correct?
- You also said that the parties came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



# Compare

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



# Conclude

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

# Tips for Cross Examination:

Do be efficient in your questioning – go event by event

Don't rehash everything a witness has said

Do focus on the information that is helpful

Don't call folks liars or attack them

Do raise concerns about credibility and reliability

Don't rant, rave, loose your temper

Do make your points through pointed and calm questioning

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

# Observe and Listen

Be open to adjusting plans or strategy based on information presented at the hearing.

Make note of any issues that you think may be appropriate for appeal.

# THE DECISION MAKER'S ROLE IN ADVISOR QUESTIONING



# 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.

# When Assessing Relevance, the Decision Maker Can:

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Ask the person who posed the question why their question is relevant

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Take a break

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Ask their own questions of the party/witness

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Review the hearing record

# AFTER THE HEARING

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# Deliberations

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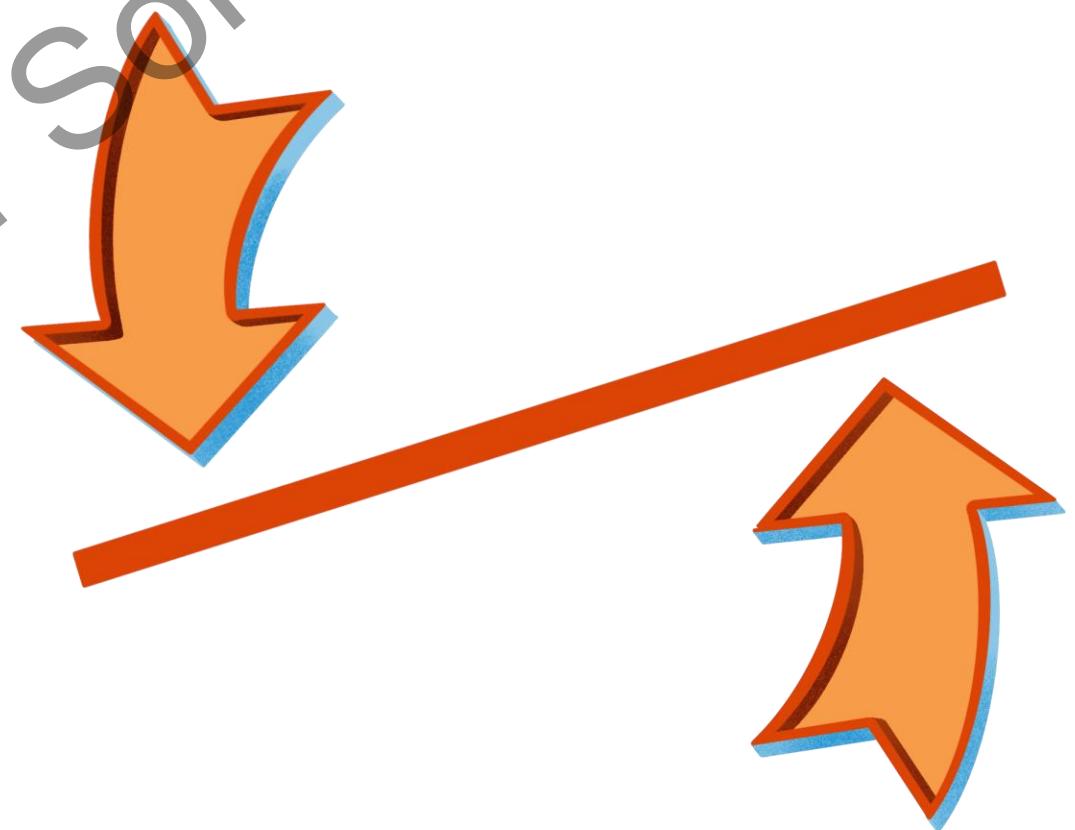


# Preponderance of the Evidence

- 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?**

# PRACTICAL APPLICATION

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# Scenario

Jess and Cam were in a dating relationship. Cam disclosed to the Title IX coordinator that they had an argument and then went to sleep. During the night Jess initiated sexual activity by touching Cam's genitals. Cam said no and pushed Jess away. Jess ignored this and continued to touch Cam's genitals roughly for a few minutes before stopping. In the morning when Cam confronted Jess about it, Jess screamed and yelled, threw objects around the room, and punched Cam in the arm. Cam broke up with Jess that night.

After the breakup, Jess called and texted Cam repeatedly. Cam ignored the calls and didn't respond. Jess also showed up outside Cam's residence hall room and banged on the door. This happened 3 times. Campus safety responded at Cam's request. Jess also knew Cam's academic schedule and showed up outside a building where Jess knew Cam would be exiting. Cam was upset about all of this and went to student counseling for support.

# Allegation: Sexual Assault

Sexual Assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of consent and incapacitation). Sexual contact includes:

- sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight;
- sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.

Sexual touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant's own body.

# Allegation: Dating Violence

includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; (iii) the frequency of interaction between the persons involved in the relationship.

# Allegation: Stalking

is engaging in a course of conduct on the basis of sex 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.

Course of conduct means two or more instances including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

# Analysis Grid

Element 1	Element 2	Element 3

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# Apply Preponderance Standard to Each Element

Element 1

Element 2

Element 3

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# Goals of Sanctions/Discipline

End the harassment, prevent its recurrence, remedy the harm

What steps would be reasonably calculated to end harassment and prevent recurrence?



# 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

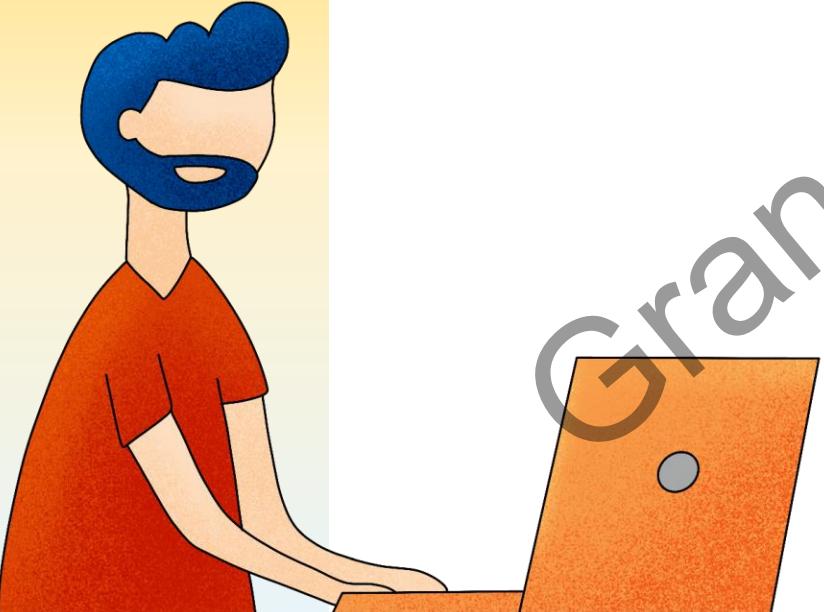
# The Sanction Does Not Undo the Finding



No lesser sanction if  
you disagree with  
findings



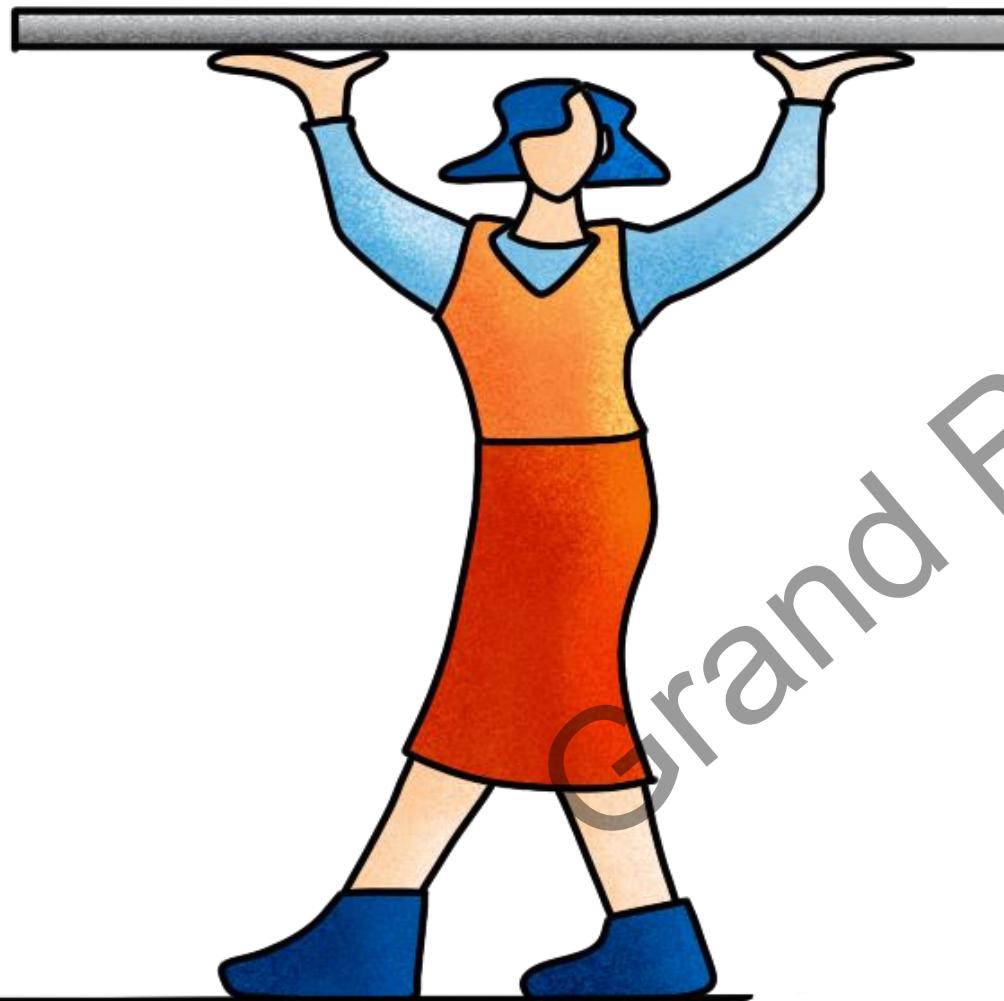
Sanctioning officer  
must assume findings  
are correct



# Notice of Written Determinations

- 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.



## FINAL RULE § 106.45(B)(8)

[I]stitutions 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.

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# APPEALS AT PRATT

- Live hearing adjudication
- Non-hearing adjudication
- Appeals process

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# THANKS FOR JOINING US!

## CONNECT WITH US

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[info@grandriversolutions.com](mailto:info@grandriversolutions.com)



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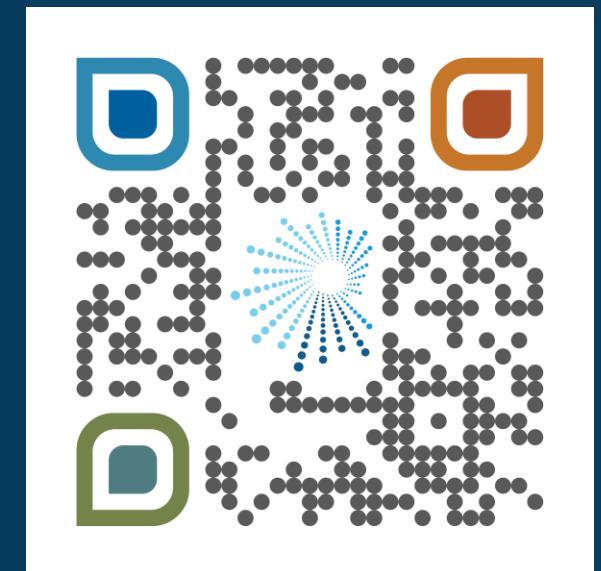
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