



HEARINGS

Day One

Davis Crow

July 2024

MEET YOUR FACILITATOR

Davis Crow



Senior Solutions Specialist
He/Him/His

Davis Crow serves as a Senior Solutions Specialist with Grand River Solutions. In this role, he serves as a hearing officer, investigator, and trainer for institutions of higher education. Davis has extensive experience serving as a hearing officer and adjudicating cases involving discrimination and sexual misconduct. Davis also has conducted numerous investigations into complaints involving Title VI, Title VII, and Title IX.

ABOUT US

Vision

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

Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

AGENDA

● Title IX Requirements for Hearings

● Hearing Overview

● Pre-Hearing Tasks

● Developing Questions

● The Hearing

● Practical Application

TITLE IX REQUIREMENTS FOR HEARINGS



01

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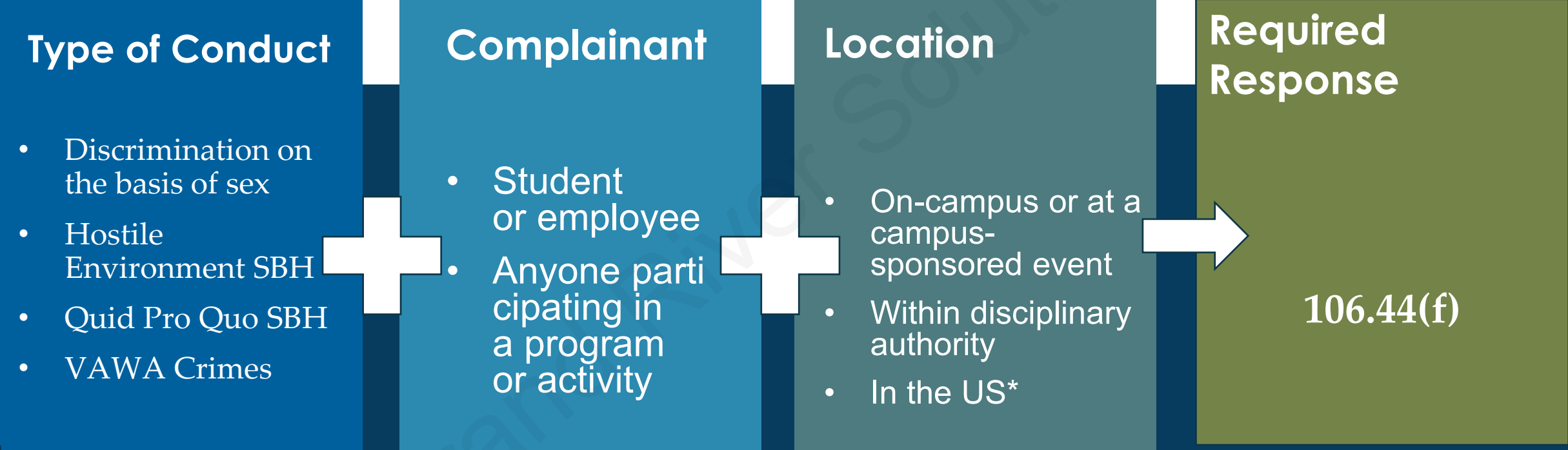
Title IX of the Education Amendments Act of 1972

"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).



TITLE IX APPLICATION FOR PROCEDURES (POST-AUGUST 2024)



DEFINITIONS – WHAT IS SEX DISCRIMINATION?

- **Discrimination on the basis of sex** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*
 - Hostile environment sexual harassment
 - Quid Pro Quo
 - Domestic violence, dating violence, sexual assault, and stalking

QUID PRO QUO HARASSMENT

Occurs when an employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient's education program or activity **explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;**

HOSTILE ENVIRONMENT SEX-BASED HARASSMENT HAS 5 COMPONENTS

- The conduct is
- (1) unwelcome,
- (2) sex-based,
- (3) subjectively and objectively offensive, and
- (4) so severe or pervasive
- (5) that it results in a limitation of or denial of a person's ability to participate in or benefit from the education program or activity.

Must have all 5 above!



HOSTILE ENVIRONMENT SEX-BASED HARASSMENT FACTORS TO CONSIDER IN DECISION-MAKING

- (1) the degree to which the conduct affected the complainant's ability to access the recipient's education program or activity;
- (2) the type, frequency and duration of the conduct;
- (3) the parties' ages, roles within the recipient's education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- (4) the location of the conduct and the context in which the conduct occurred; and
- (5) other sex-based harassment in the recipient's education program or activity.

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice (who may be an attorney) is allowed but not required during interviews

Written notification of meetings, etc., and sufficient time to prepare

Equal opportunity to access relevant evidence or an accurate description of this evidence, and a reasonable opportunity to respond to the evidence prior to completion of the report

Only relevant evidence that is not otherwise "impermissible" may be considered

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must give the decision-maker the opportunity to question parties and witnesses to assess credibility

Cannot compel participation

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

Either decision-maker will ask all questions or advisors may be allowed to ask questions

Decision-maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS



If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.

All hearings must be recorded.

Participants must be able to communicate with decision makers and advisors during the hearing

THE REQUIREMENT OF IMPARTIALITY



SECTION 106.45(b)(2)

Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent



ACTIVITY: IS THERE A CONFLICT OF INTEREST?

Complainant: Alex, a senior student and President of the Student Government Association (SGA) at a small liberal arts college.

Respondent: Jack, a junior student, and member of the college's basketball team.

Hearing Officer: Dean Thompson, who is the Dean of Students but also Alex's direct supervisor as the SGA advisor.

Additional Context: Dean Thompson has a close professional and mentoring relationship with Alex, having worked with them extensively on SGA projects and initiatives. Additionally, Dean Thompson has a vested interest in maintaining a positive relationship with Alex, as the SGA President plays a crucial role in representing student interests and collaborating with college administrators.

LIVE HEARING OVERVIEW



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WHAT IS THE PURPOSE OF A LIVE HEARING?



PURPOSE OF THE LIVE HEARING

1. Review and Assess Evidence

2. Make Findings of Fact

3. Determine Responsibility/ Findings of Responsibility

4. Determine Sanction and Remedy

SEX-BASED HARASSMENT: HEARINGS INVOLVING POSTSECONDARY STUDENTS

Option 1:

- Recorded live hearing, where Decision Maker, not the Advisor, can ask questions proposed by parties.

Option 2:

- Recorded live hearing, where Parties' Advisors can question any party or witness.
- Parties cannot do the questioning, and advisor of institution's choice must be provided if needed.

PROCESS PARTICIPANTS

- The Parties:
 - Complainant
 - Respondent
- Advisors
- Hearing Facilitator/Coordinator
- Decision Maker (s)
 - Hearing Chair
- Investigator



THE PARTICIPANTS

The Parties

Complainant

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

Respondent

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

THE PARTICIPANTS

Advisors

There are two types of Advisors



Advisor: throughout the whole process



Hearing Advisor: hearing, for purposes of asking questions

THE PARTICIPANTS

Advisors

- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institutionally appointed advisors should be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor may conduct cross examination at the hearing (depends on policy).*
- Advisors are expected to advise their advisees without disrupting proceedings



THE PARTICIPANTS

Advisors: Prohibited Behavior

An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor's non-compliance and future role.



THE PARTICIPANTS

The Hearing Facilitator/Coordinator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting
- Optional, not required



THE PARTICIPANTS

Decision Maker or Makers

Decision Maker

One-person.

Decision Maker Panel

A panel.

Requires a hearing chair.

THE PARTICIPANTS

The Decision-Makers

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



THE PARTICIPANTS

The Hearing Chair

- Is a decision-maker
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome



THE PARTICIPANTS

The Decision Maker

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



THE PARTICIPANTS

The Investigator

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



PRE-HEARING TASKS: HEARING PANEL & CHAIR

What should be done in advance of the hearing?

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THE INVESTIGATION IS COMPLETE!



Rapid Fire #1

It is time to schedule the hearing...

Using the chat box:
**share your "To Do" List
for coordinating the
hearing.**



RAPID FIRE RECAP

Arranging for space

Arranging technology

Scheduling pre-hearing meetings with parties & advisors

Scheduling prehearing meetings of the panel

Providing report and record to panel and parties

Scheduling the hearing

Conflict checks

Call for written submissions

Accommodations

Other considerations?

PRE-HEARING MEETINGS

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



DECISION MAKER OR HEARING PANEL AS A WHOLE



Review evidence and report

Review applicable policy and procedures

Preliminary analysis of the evidence

Determine areas for further exploration

Develop questions of your own

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

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

Rapid Fire #2

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



RAPID FIRE RECAP



Development
of
introductory
comments

Initial discussion of
the evidence

Areas for
further
exploration

List of
questions for
the parties
and the
witnesses

Anticipation
of potential
issues

Logistics

Review of
any written
submissions
by the
parties

Other
considerations?

PRE-HEARING TASKS: DEVELOPING QUESTIONS

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COMMON AREAS OF EXPLORATION

Credibility
/Reliability

Clarification
on timeline

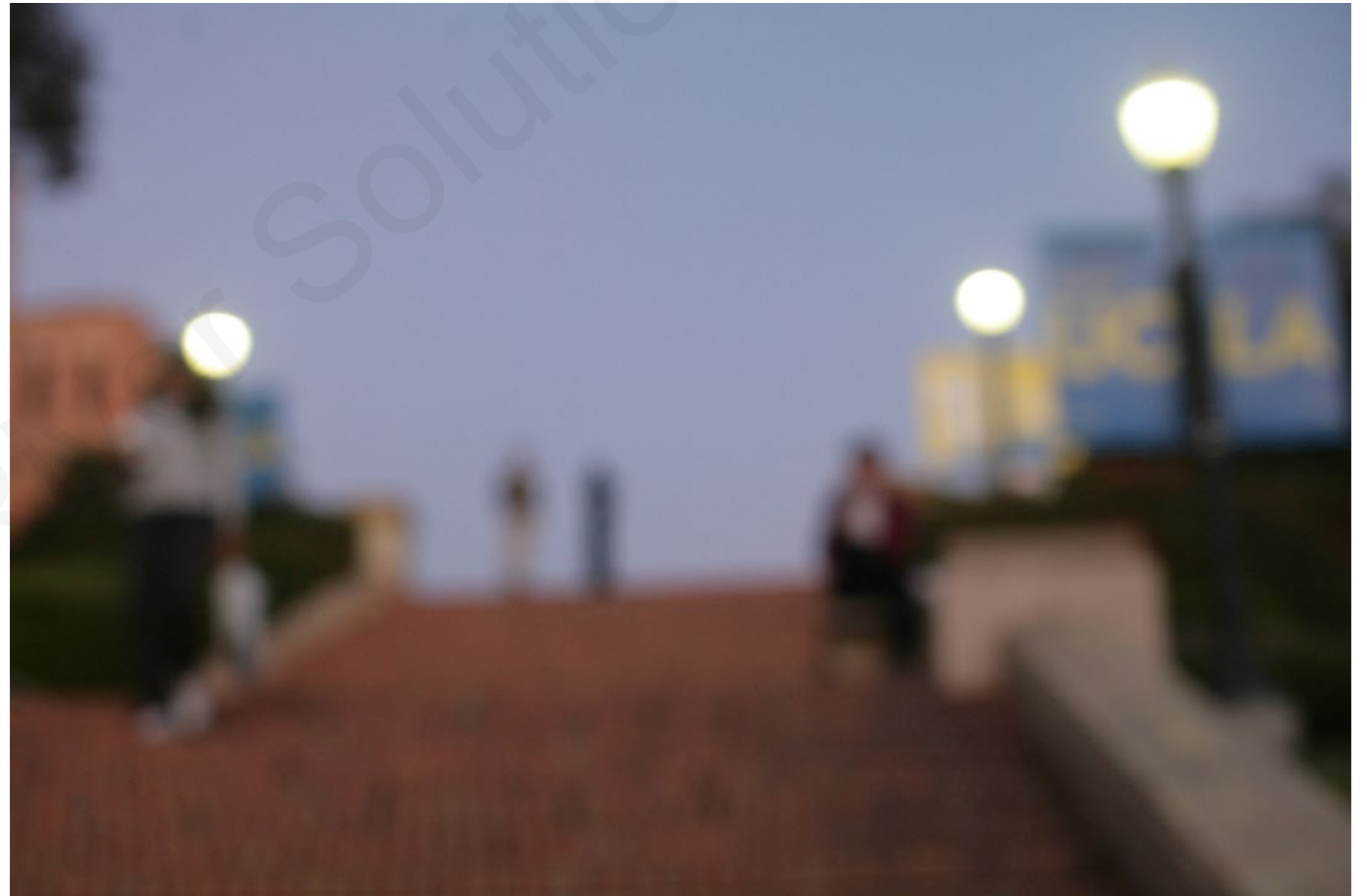
Thought
process

Inconsistencies



COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

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



CHARLIE AND RAMONA HYPOTHETICAL ACTIVITY

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

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



WHAT FACTS DO I KNOW?

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

POLICY ANALYSIS

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



THE HEARING

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ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator

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

4. Closing Statements

5. Deliberation & Determination

OPENING INTRODUCTIONS AND INSTRUCTIONS BY THE CHAIR

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

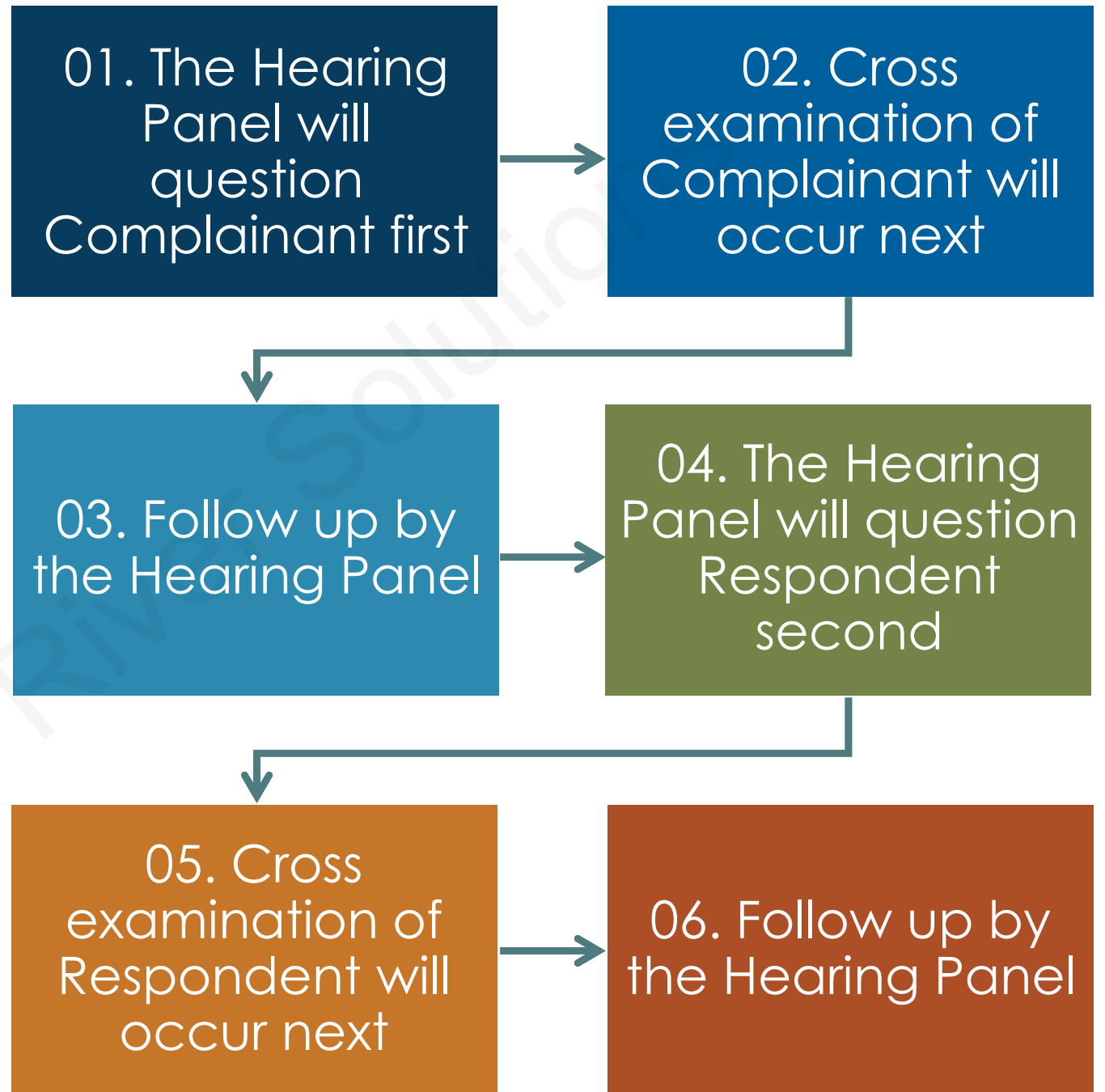


OPENING STATEMENTS

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

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

PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



QUESTIONING OF THE WITNESSES

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

Cross-examination will occur next (suggested: Complainant first followed by Respondent)

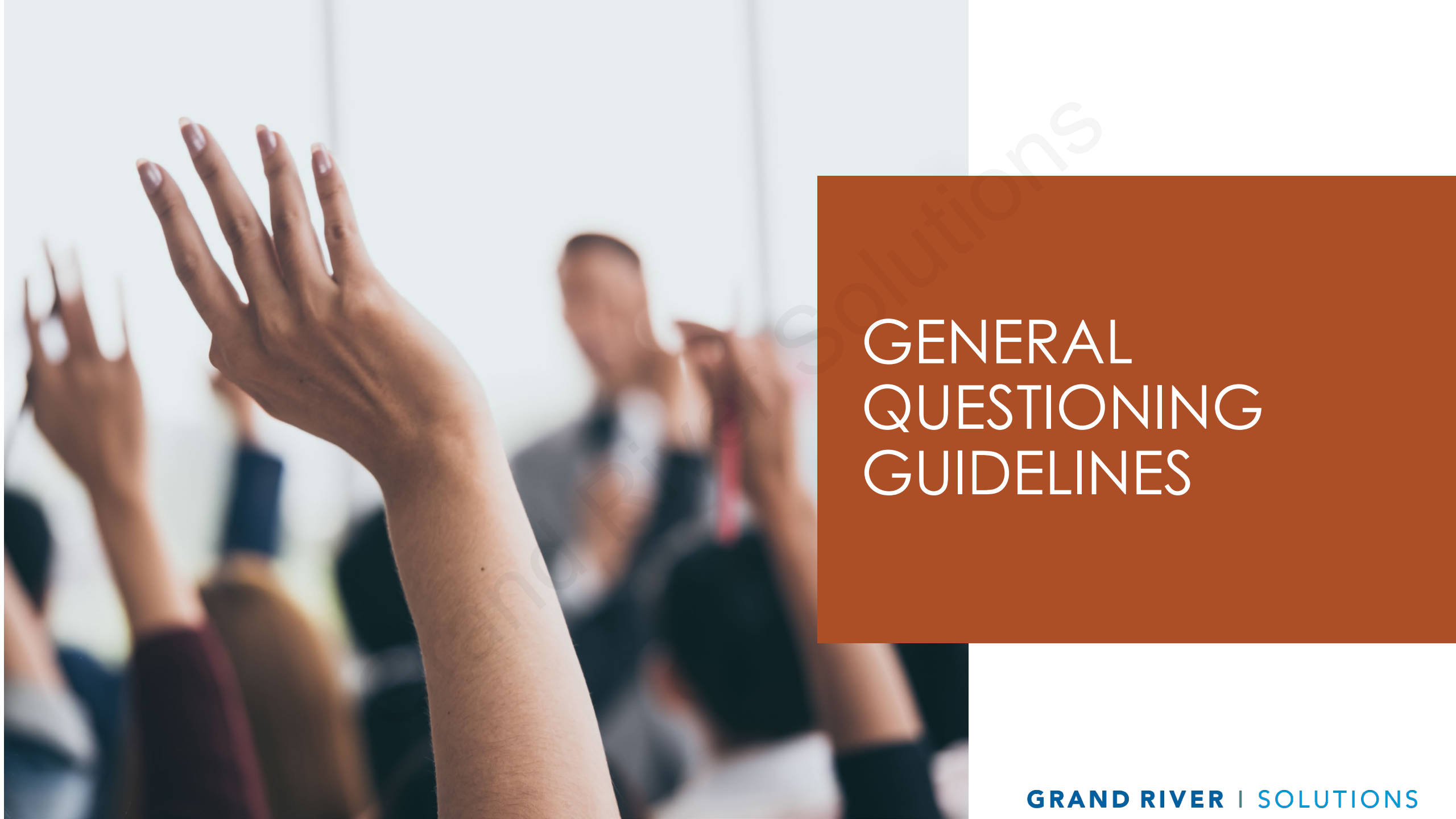
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Follow up by the Hearing Panel

CLOSING STATEMENTS

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

- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker
- Not time to introduce new information or evidence.



GENERAL QUESTIONING GUIDELINES

FORMAT OF QUESTIONING

The Hearing Panel or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

WHEN QUESTIONING....

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



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you interviewed?

Did you see the interview notes?

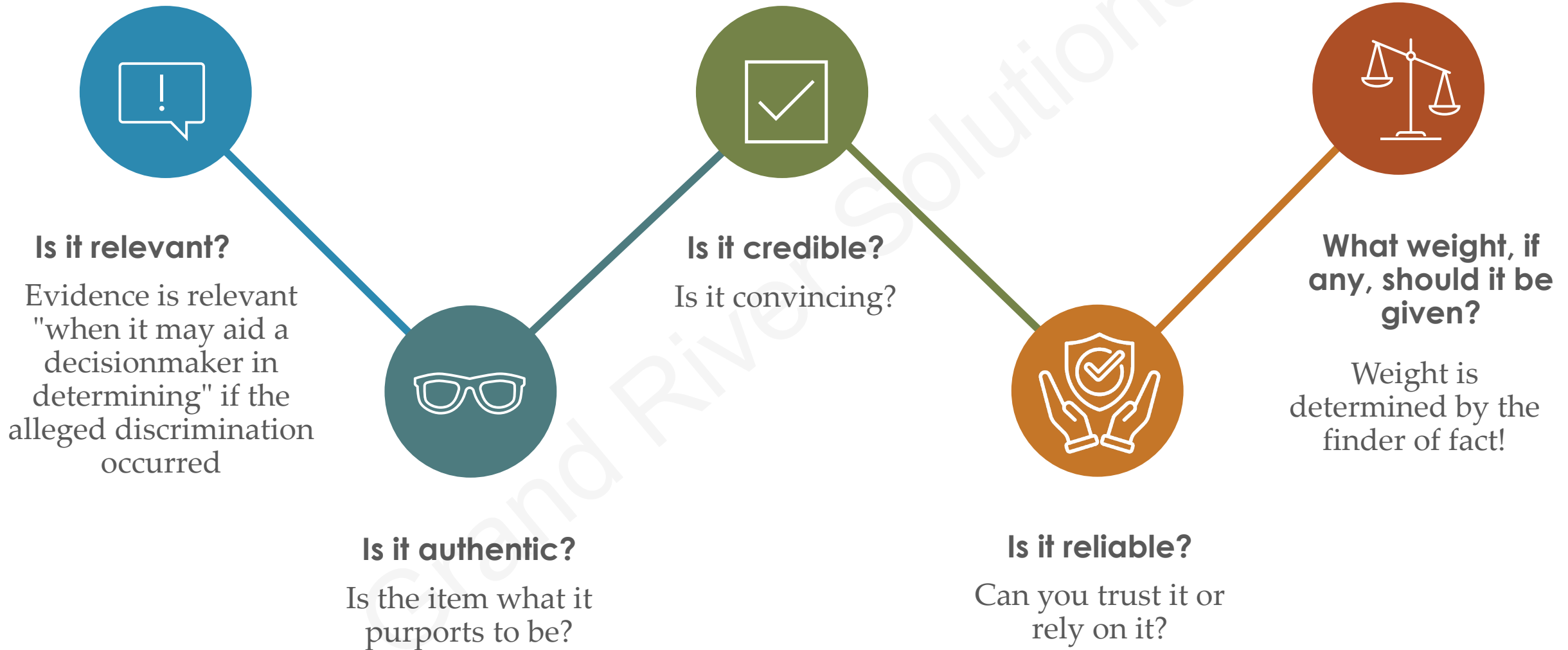
Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

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

EVIDENTIARY CONSIDERATIONS DURING QUESTIONING



RELEVANCE

- "Relevant" means "related to" the allegations of discrimination.
- **Questions** are relevant "when they seek evidence that may aid in showing" if the alleged discrimination occurred.
- **Evidence** is relevant "when it may aid a decisionmaker in determining" if the alleged discrimination occurred.
- "Not relevant" evidence from 2020 is now called "impermissible."
- "Sexual interests" of Complainant added to familiar 2020 exclusions.

IRRELEVANT AND IMPERMISSIBLE QUESTIONS



Information protected by an un-waived legal privilege

Medical treatment and care

Unduly repetitious or duplicative questions

Information that is otherwise irrelevant

Complainant's prior sexual history, with limited exceptions.

QUESTIONING TO ASSESS RELIABILITY

- Inherent plausibility
- Logic
- Corroboration
- Other indicators 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

Coaching

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.

OPINION EVIDENCE

When might it be relevant?

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



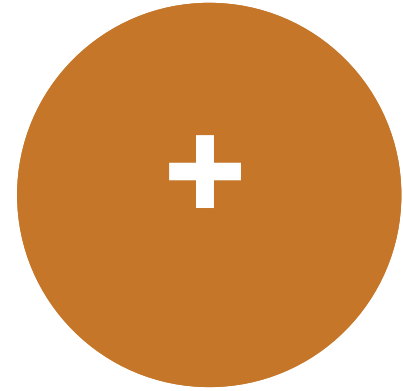
IS IT AUTHENTIC?



Question the person who offered the evidence.

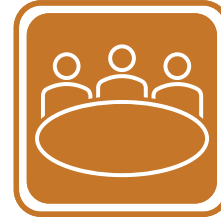


Have others review and comment on authenticity.



Are there other records that would corroborate?

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



Format/Structure of the
Hearing



Format of Questions



Approach to
Clarification

WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?



THE “HARD” QUESTIONS

Details about the sexual
conduct

Seemingly inconsistent
behaviors

Inconsistent
evidence/information

What they were wearing

Alcohol or drug
consumption

Probing into reports of lack
of memory

HOW TO ASK THE HARD QUESTIONS

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



SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

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

SPECIAL CONSIDERATIONS FOR PANELS

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

Go topic by topic

Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

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



HEARINGS

Day 2

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OUTSTANDING QUESTIONS FROM DAY ONE



OVERVIEW OF DAY TWO

- | Advisor Questioning
- | Deliberations
- | Practical Application
- | Questions



BREAK OUT! #1

All groups: Areas or topics that you would like to explore further in the hearing



Say hi!



Pick a scribe



Discuss

Group 1: Questions for Complainant and Witnesses Professor McPhee

Group 2: Questions for Respondent and Witness Taylor

Group 3: Questions for Witness Tom and Witness Charlie

REPORT OUT



Group 1: Questions for Complainant and Witnesses Professor McPhee



Group 2: Questions for Respondent and Witness Taylor



Group 3: Questions for Witness Tom and Witness Charlie

THE DECISION MAKER'S ROLE IN QUESTIONING



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CROSS EXAMINATION

WHO DOES IT?



May be conducted by the decision maker OR the advisor



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



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

THE ROLE OF THE DECISION MAKER WHEN NO LIVE HEARING IS HELD

- When a postsecondary institution **chooses not to conduct a live hearing**, the process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses including questions challenging credibility, must:
 - Allow the investigator or decisionmaker to ask such questions during individual meetings with a party or witness;
 - Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the investigator or decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness;
 - Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

THE ROLE OF THE DECISION MAKER DURING QUESTIONING BY THE ADVISORS

- When a postsecondary institution chooses to conduct a live hearing the process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses must allow the decisionmaker to ask such questions, and either:
 - Allow each party to propose such questions that the party wants asked of any party or witness and have those questions asked by the decisionmaker; or
 - Allow each party's advisor to ask any party or witness such questions
 - Such questioning must never be conducted by a party personally. If a postsecondary institution permits advisor-conducted questioning and a party does not have an advisor to ask questions on their behalf, the postsecondary institution must provide the party with an advisor of the postsecondary institution's choice, without charge

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:

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



RELEVANT VS. IRRELEVANT



Logical connection
between the
evidence and facts
at issue



Assists in coming to
the conclusion – it is
“of consequence”



Evidence is relevant when
it may aid a decisionmaker
in determining if the
alleged discrimination
occurred

BREAK OUT! #2

All groups: Review questions and determine whether they are relevant and allowed to be asked or irrelevant/impermissible



Say hi again!



Pick a scribe



Discuss

Group 1: Questions for Complainant and Witnesses Professor McPhee

Group 2: Questions for Respondent and Witness Taylor

Group 3: Questions for Witness Tom and Witness Charlie

REPORT OUT



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GROUP 1 QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

Questions for Complainant

- 1. Isn't it true you found Alex attractive after you first met?**
- 2. You wanted to hook up with Alex, didn't you?**
- 3. You made this complaint only because you wanted your boyfriend's attention, isn't that true?**
- 4. You kept calling Alex and asking him for help because you couldn't finish your part of the project without him, isn't that true?**
- 5. You told the investigator you imagined seeing Alex everywhere. Where do you think you saw him?**
- 6. Why were you always thinking of Alex?**
- 7. And how often do you hallucinate?**
- 8. How often has this happened in the past?**
- 9. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet Alex there?**
- 10. You said you were frightened by seeing Alex in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.**

GROUP 2 QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

Questions for Respondent

- 1. Do you keep stalking Stevie because you're OCD?**
- 2. Have you ever been removed from another group project because you could not get along with others?**
- 3. When you first talked to Stevie about your girlfriend breaking up with you, who was your girlfriend, or did you make that up just so you could talk to Stevie?**
- 4. Why did you keep offering to work with Taylor in person instead of by Zoom?**
- 5. Did you have a thing for Taylor?**
- 6. Did you and Taylor ever end up hooking up?**

GROUP 3 QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

Questions for Tom

1. Can you think of any reason for Alex to be hanging out in the garage with flowers, other than to frighten Stevie?
2. Alex was pretty creepy, wasn't he?
3. Did you see him throw an object at Stevie?
4. Do you believe he was acting in self-defense when he threw the object?
5. You said Stevie is really pretty and guys hit on her a lot. Don't you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?

GROUP 1

QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

Questions for Witness Professor McPhee

- 1. Why didn't you tell Alex to stop stalking Stevie?**
- 2. Weren't you supposed to forward Stevie's Title IX Complaint to the Coordinator, and don't you think that if you had done so, she would have been spared his stalking?**

GROUP 2 QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

Questions for Taylor

- 1. Did Alex seem fixated on Stevie when you were all part of the class project?**
- 2. Did Alex insist that the two of you work together in person instead of online?**
- 3. How often did he force you to work in person with him after classes?**
- 4. Were you afraid of him?**

GROUP 3

QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Tom

1. When you saw Alex in the parking garage, were you frightened?
2. What, specifically, did Alex do that was frightening?
3. Does Stevie always overreact?
4. What, specifically, did Alex throw at her?

GROUP 1

QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Witness Professor McPhee

- 1. What grade did she have up to the project and what grade did she get on the project?**
- 2. Isn't it true that Stevie was doing poorly in class?**
- 3. After she made this complaint, did she get some special treatment or accommodation in your class?**
- 4. Isn't it true that, once you told her she would have to do the work, she suddenly made up a story about Alex to paint him in a bad light?**
- 5. Isn't it true that, before she told you this lie, you had no reason to think poorly of Alex?**

GROUP 2

QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Taylor

1. **Were you frustrated when working on the group project? Why?**
2. **Why did you think Alex was more frustrated than others?**
3. **Why did you think he was “taking it out” on Stevie if he was frustrated with the whole group?**
4. **Are you and Stevie friends?**
5. **Did Stevie tell you what to say in the investigation? If so, what?**
6. **Are you one of those “Believe all victims” people?**

GROUP 3 QUESTIONS SUBMITTED BY **COMPLAINANT'S ADVISOR**

Questions for Witness Charlie

- 1. So are you the one who suggested Alex stalk Stevie's social media to find a food or drink she liked?**
- 2. Why do you think Stevie and Alex had a plan to get together one night and talk? Do you know for sure that there were confirmed plans?**
- 3. What proof did Alex give you to prove there was a real plan, and not an imaginary one?**
- 4. You said Stevie was "rude" because you could not do a lot of work on the group project. What did you mean by that?**
- 5. How long have you known Alex?**
- 6. Isn't it true you just don't like Stevie?**
- 7. Have you ever been accused of sexual harassment or stalking?**
- 8. Isn't it true that you would say anything to support a guy who has been accused?**

GROUP 3

QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

Questions for Witness Charlie

- No Questions

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AFTER THE HEARING

05

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Deliberations

PREPONDERANCE OF THE EVIDENCE

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

WEIGHING THE EVIDENCE & MAKING A DETERMINATION

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



FINDINGS OF FACT

- **A "finding of fact"**

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

- **For example...**

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

- **Next steps?**

POLICY ANALYSIS

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



ALLEGATION: FONDLING

Fondling is the:

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

ANALYSIS GRID

Touching of the private body parts of another person

Undisputed:

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

For the purpose of sexual gratification

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

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

Without consent due to lack of capacity

Complainant: drank more than 12 drinks, vomited, no recall

Respondent: C was aware and participating

Witness 1: observed C vomit

Witness 2: C was playing beer pong and could barely stand

Witness 3: C was drunk but seemed fine

Witness 4: carried C to the basement couch and left her there to sleep it off.

ANALYSIS GRID

Touching of the private body parts of another person

Undisputed:

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



For the purpose of sexual gratification

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



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

Without consent due to lack of capacity

Complainant: drank more than 12 drinks, vomited, no recall

Respondent: C was aware and participating

Witness 1: observed C vomit

Witness 2: C was playing beer pong and could barely stand

Witness 3: C drank but seemed fine

Witness 4: carried C to the basement couch and left her there to sleep it off.



DID YOU ALSO ANALYZE...?

What is the status of the complainant?

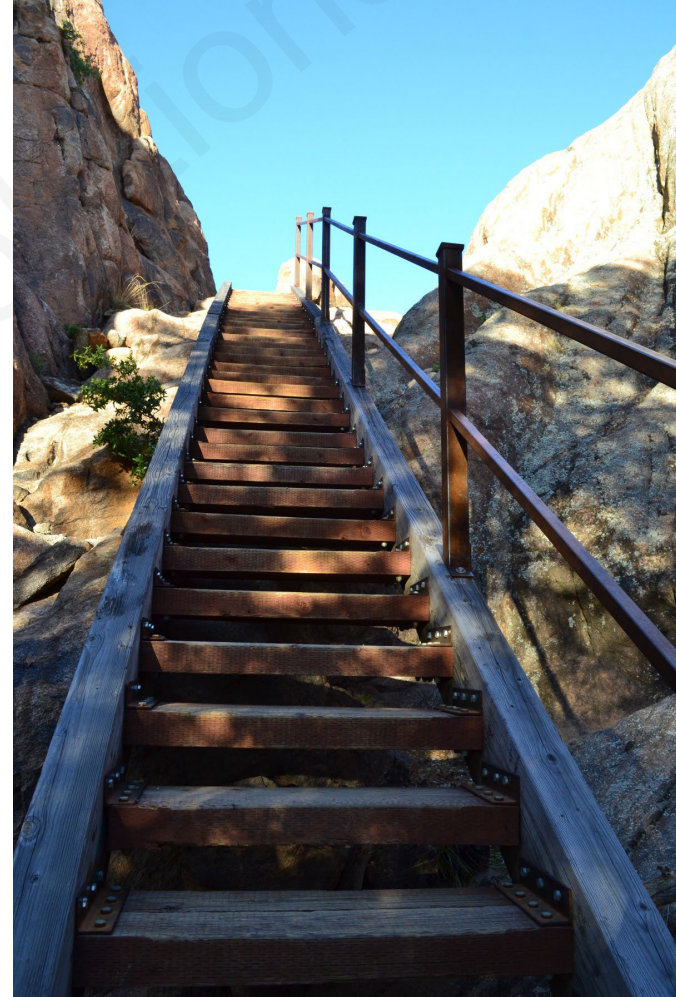
Have an impact on a program or activity?

Substantial control over respondent?

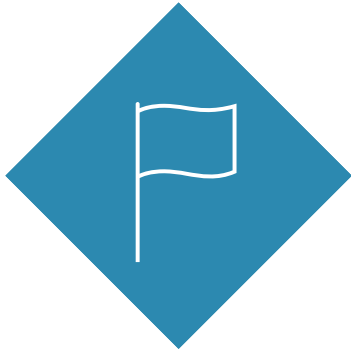
Complainant was attempting to access program/activity?

GOALS OF SANCTIONS/DISCIPLINE

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



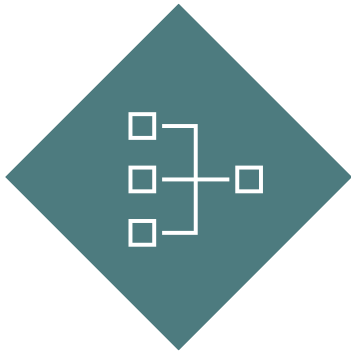
SANCTIONING



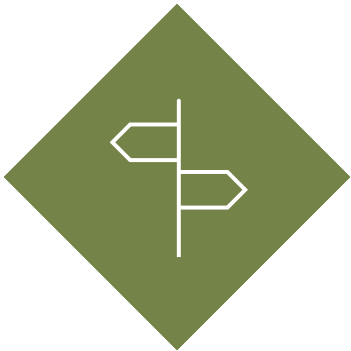
State Law



Learning Environment



System Policy



Measures Available

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THE SANCTION DOES NOT UNDO THE FINDING

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

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DETERMINING THE PROPER SANCTION

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



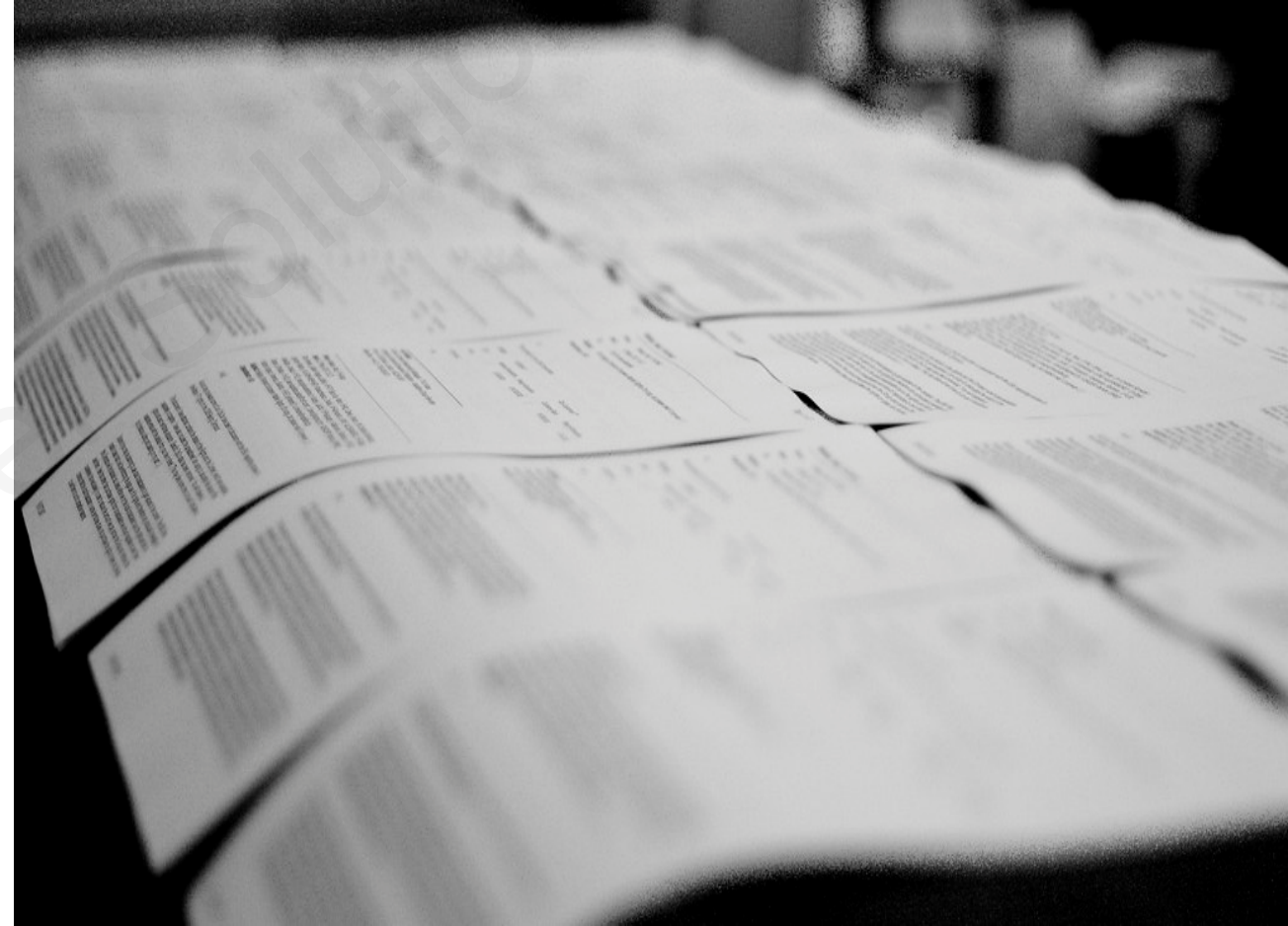
AGGRAVATING CIRCUMSTANCES

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



FINAL REPORT

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



THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



S Simple and Easy to Comprehend

T Transparent/Clear

A Accurate

N Neutral/Unbiased

D Draw Attention to Significant Evidence and Issues

ADVISOR'S ROLE POST-HEARING

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



PRACTICAL APPLICATION

06

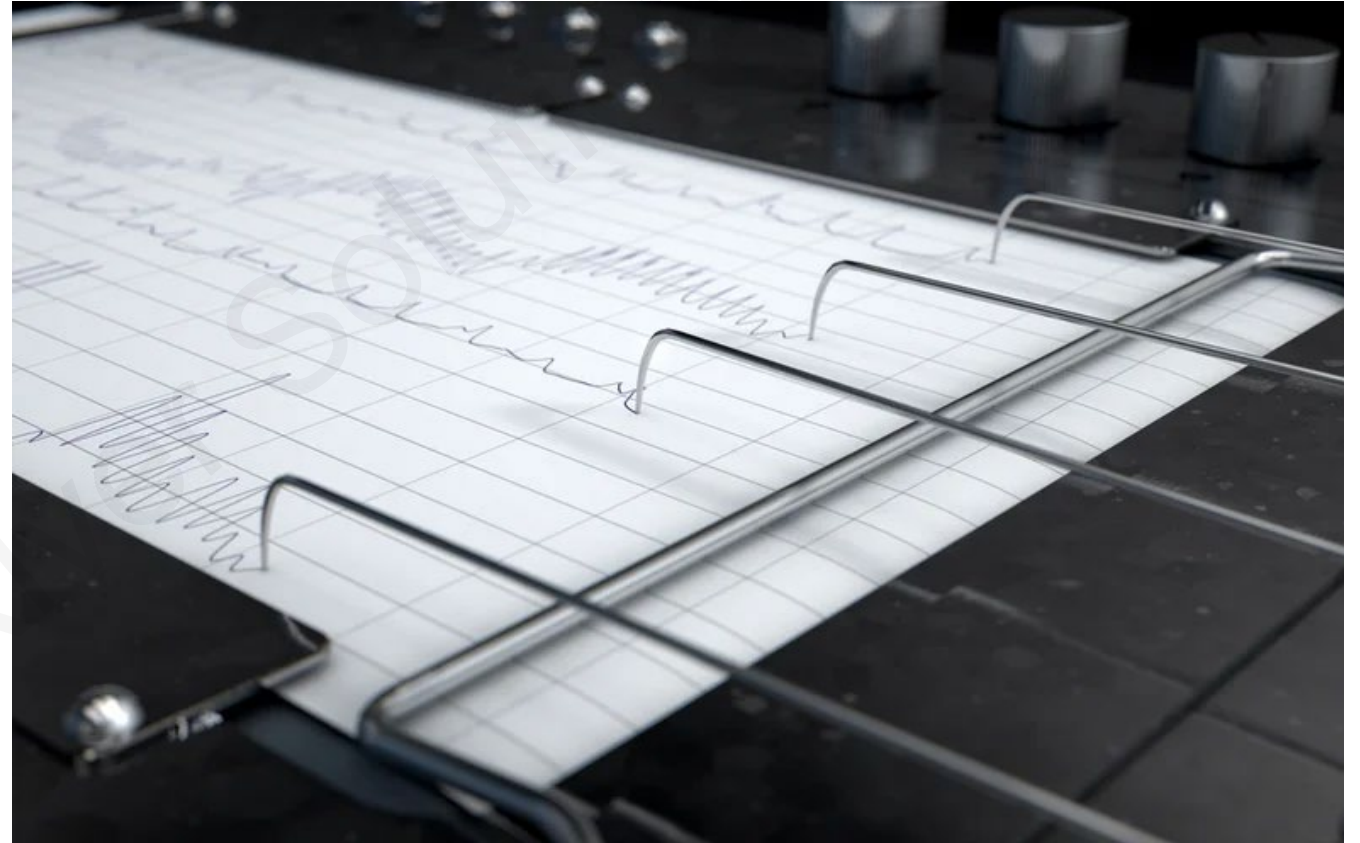
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SCENARIO 1

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

- **The Investigator determines the report is irrelevant. Must the Investigator share the report with the decision maker?**

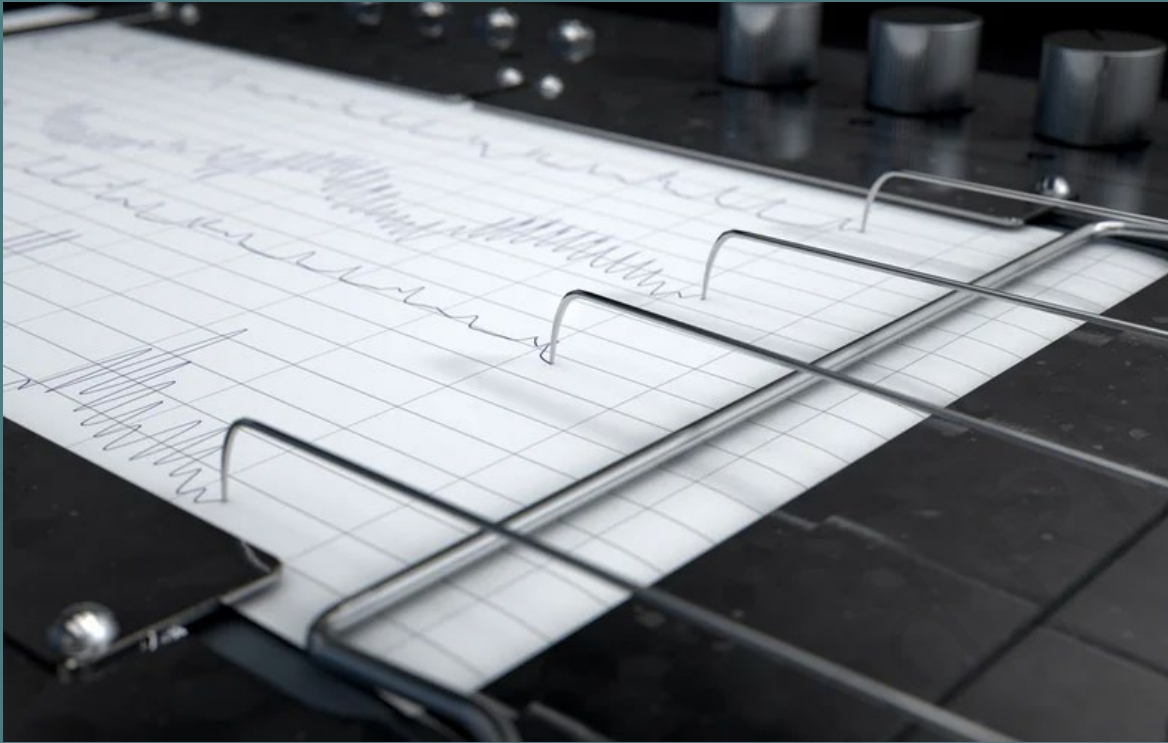


SCENARIO 2



- Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.
- **Can the HP hear from Witness 7 at the hearing?**

SCENARIO 3



Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

Must the Hearing Panel find Respondent not responsible because of the findings in the report?

SCENARIO 4



During the hearing, the Complainant becomes upset, shuts down, and stops answering question.

If you are the Hearing Chair, how do you respond?

THANK YOU!

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