



CONDUCTING FAIR AND THOROUGH TRAUMA-INFORMED INVESTIGATIONS

Pari Le Golchehreh
June 2024

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

DAY ONE AGENDA

● | TITLE IX'S REQUIREMENTS

● | THE PROPER APPLICATION OF TRAUMA INFORMED PRACTICES

● | THE IMPORTANCE OF UNDERSTANDING THE POTENTIAL IMPACT OF TRAUMA

● | DEVELOPING AN INVESTIGATIVE STRATEGY

● | INVESTIGATIVE INTERVIEWS:
Part 1

TITLE IX'S REQUIREMENTS



01

Grand River

Title IX of the Education Amendments Act of 1972

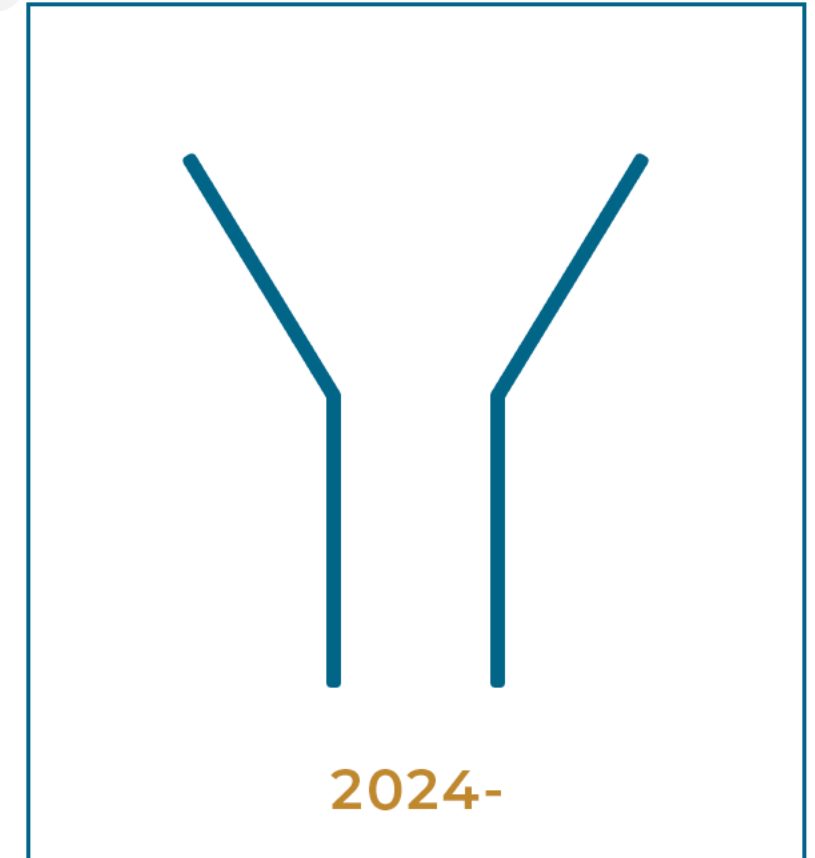
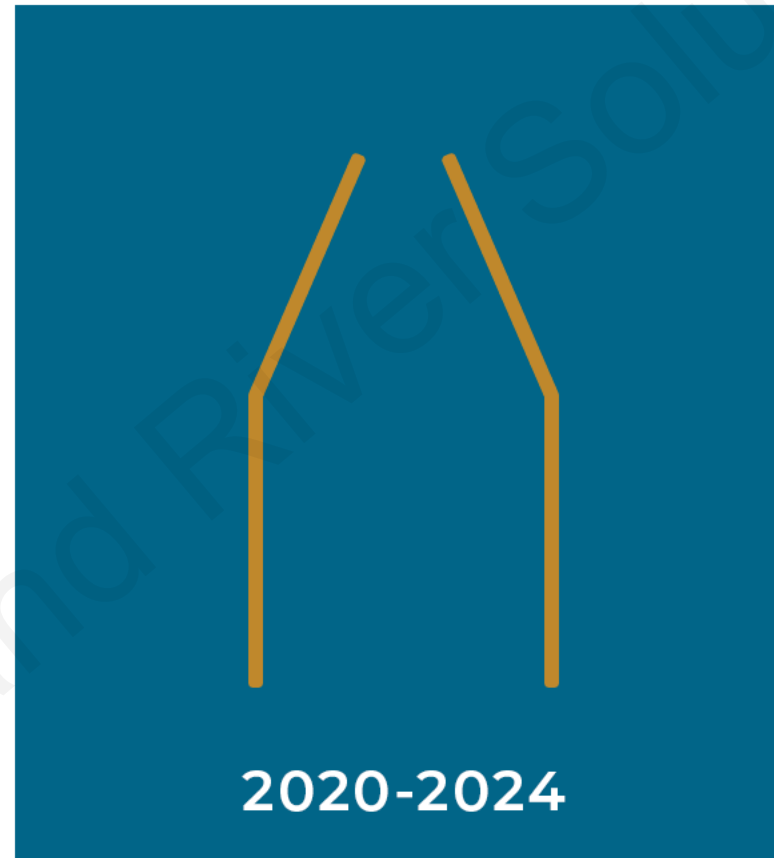
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).

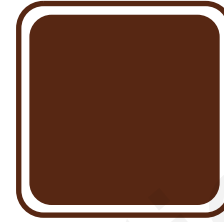


BIG PICTURE: SHIFTING THE TIX FUNNEL SHAPE

Top of Funnel: Access to TIX Policy
Bottom of Funnel: Process Due



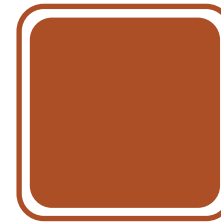
2024 Regs: Applicability Overview



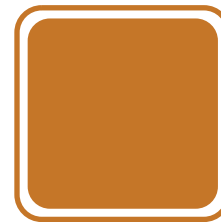
Type of Conduct



Scope

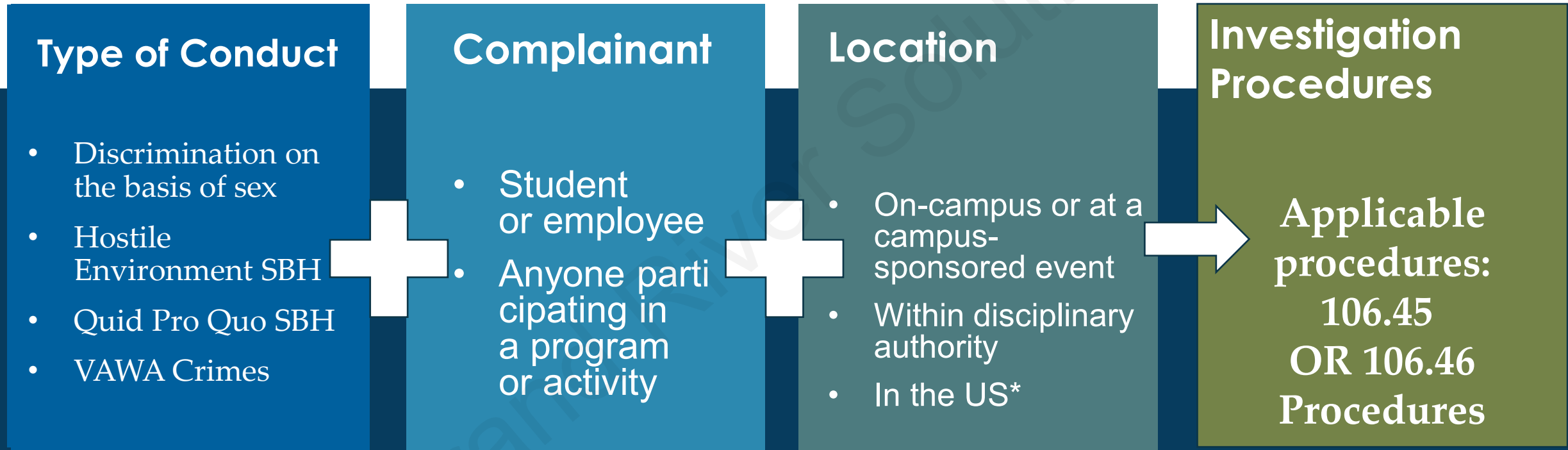


Geography



Complainant

FROM INTAKE TO INVESTIGATION (POST-AUGUST 2024)

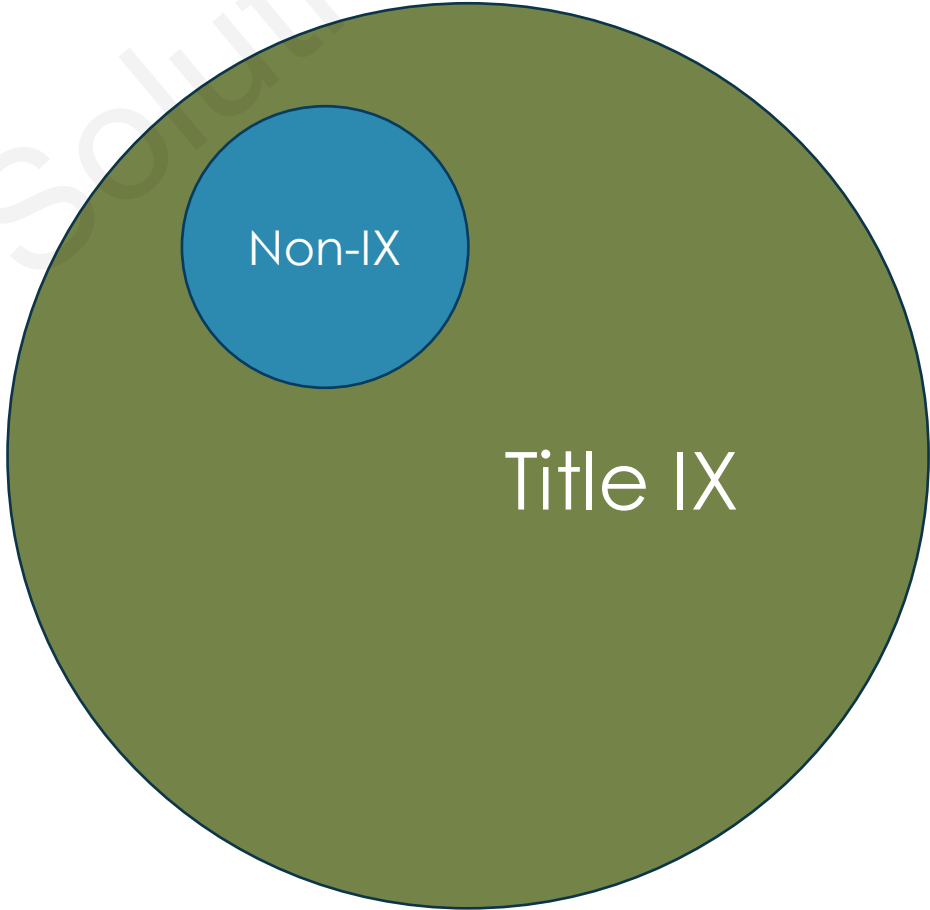


WHICH POLICY APPLIES?

2020



2024



TYPES OF CONDUCT

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WHAT IS COVERED BY 2024 TITLE IX?

- All sex discrimination – this is an umbrella term
- Not only sexual harassment (2020 amendments only addressed sexual harassment)



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.



DEFINITIONS: SEX DISCRIMINATION – "SEX STEREOTYPING"

Preamble: "fixed or generalized expectations regarding a person's aptitudes, behavior, self-presentation, or other attributes based on sex."



DEFINITIONS: SEX DISCRIMINATION – "SEX CHARACTERISTICS"?

The Preamble defines "sex characteristics" as "physiological sex-based characteristics."

Sex discrimination based on a person's physiological sex characteristics may include discrimination based on a person's anatomy, hormones, and chromosomes associated with male or female bodies.

ED states Title IX also covers discrimination based on (undefined) "intersex" traits [It adopts this term instead of "differences of sex development"].

ED identifies that "inappropriate disclosure of medical information about a student's intersex traits could constitute prohibited discrimination based on sex characteristics."



LGBTQIA+

Preamble:

Price Waterhouse/Oncale/Bostock and Title VII → Title IX Regulations

Sex stereotypes → to treat differently on basis of sexual orientation/gender identity is to discriminate on the basis of sex

“Indeed, Bostock’s reasoning dictates that, even assuming that ‘sex’ refers to ‘biological distinctions between male and female,’ discrimination against a person because they are gay or transgender is, in part, discrimination on the basis of sex.”

§106.10: “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.”

DE MINIMIS TEST



De Minimis test for sex-separated programs/activities:

- Otherwise permissible sex separation is consistent with Title IX as long as it is carried out in a manner that does not impose more than de minimis harm.
- Examples: locker and bathrooms; appearance codes
- Denying a transgender student "access to a sex-separate facility or activity consistent with that student's gender identity" would be more than a de minimis harm

DEFINITIONS – WHAT IS SEX-BASED HARASSMENT?

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

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.

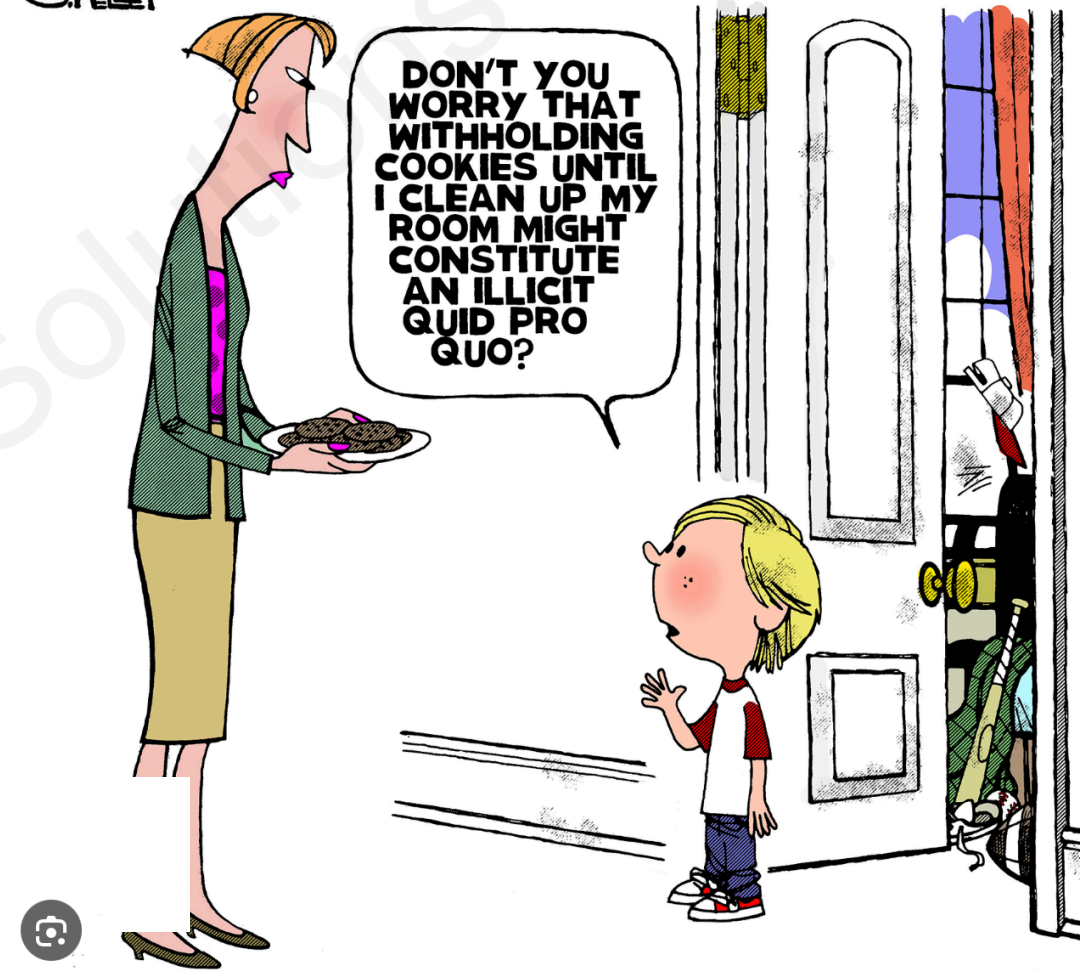
FIRST AMENDMENT BALANCING

- "One stray remark" is not "pervasive"
- A statement "of one's point of view on an issue of debate and with which another person disagrees, even strongly so, is not the kind or degree of conduct that implicates the regulations."
- But "sex-based conduct that occurs on multiple occasions and is so persistent that, for example, it limits another student's ability to complete assigned coursework at the student's typical level of performance" might meet the standard.
- ED encourages consultation with "settled components of Title VII sexual harassment law" for guidance on the meaning of "severe or pervasive"

QUID PRO QUO

Not just employees but also agents or other persons authorized by the recipient to provide an aid, benefit, or service under the program or activity.

SKILLY ©2019 PITTSBURGH POST-GAZETTE
CREATORS SYNDICATE



“SPECIFIC OFFENSES” (VAWA)

Now (actually) conformed to
VAWA Amendments to the Clery
Act...



DATING VIOLENCE

The term dating violence means “violence committed by a person—

- A. who is or has been in a social relationship of a romantic or intimate nature with the victim;
- B. the existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
 - I. The length of the relationship;
 - II. The type of relationship; and
 - III. The frequency of interaction between the persons involved in the relationship”

DOMESTIC VIOLENCE

The term domestic violence is a “felony or misdemeanor crimes of violence committed

- A. by a current or former spouse of the victim,
- B. by a person with whom the victim shares a child in common,
- C. by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner,
- D. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the violence occurred, or
- E. by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.”

SEXUAL ASSAULT

“An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”

SEX OFFENSES

A. Rape — The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

B. Sodomy — Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

C. Sexual Assault With an Object — The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

SEX OFFENSES

D. Fondling — The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

E. Incest — Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

F. Statutory Rape — Nonforcible sexual intercourse with a person who is under the statutory age of consent.

STALKING

- The term stalking means “engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
 - A. fear for the person’s safety or the safety of others; or
 - B. suffer substantial emotional distress.”



"ADEQUATE, RELIABLE, AND IMPARTIAL" INVESTIGATIONS: NO SET FORMULA

- Sex discrimination (106.45)
 - Evidence option
 - Description of the evidence option
 - "Accurate" summary
 - Option to access evidence
- "Reasonable opportunity" to respond
 - Does not need to follow ED-prescribed timeframes (i.e. 10 days)
- Sex-based harassment w/student party (106.46)
 - Evidence option
 - Investigation report option
 - "Accurate" summary
 - Option to access evidence
- "Reasonable opportunity" to respond before hearing, if applicable

"equal opportunity" to "access" relevant and not impermissible evidence

NOTICE REQUIREMENTS

- The Coordinator will share with the parties the notice of allegations
- The notice contents may vary depending on which procedure applies
- Institutions may choose to use the 106.46 notice for all matters
- Notices must include the applicable policy and procedures, the identity of the parties (if known), conduct alleged, date(s), location(s)
- Notices should cite the prohibited conduct alleged, not just refer to the policy as a whole
- Notices will include additional rights of parties.

ADVISOR OF CHOICE DURING THE INVESTIGATION

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

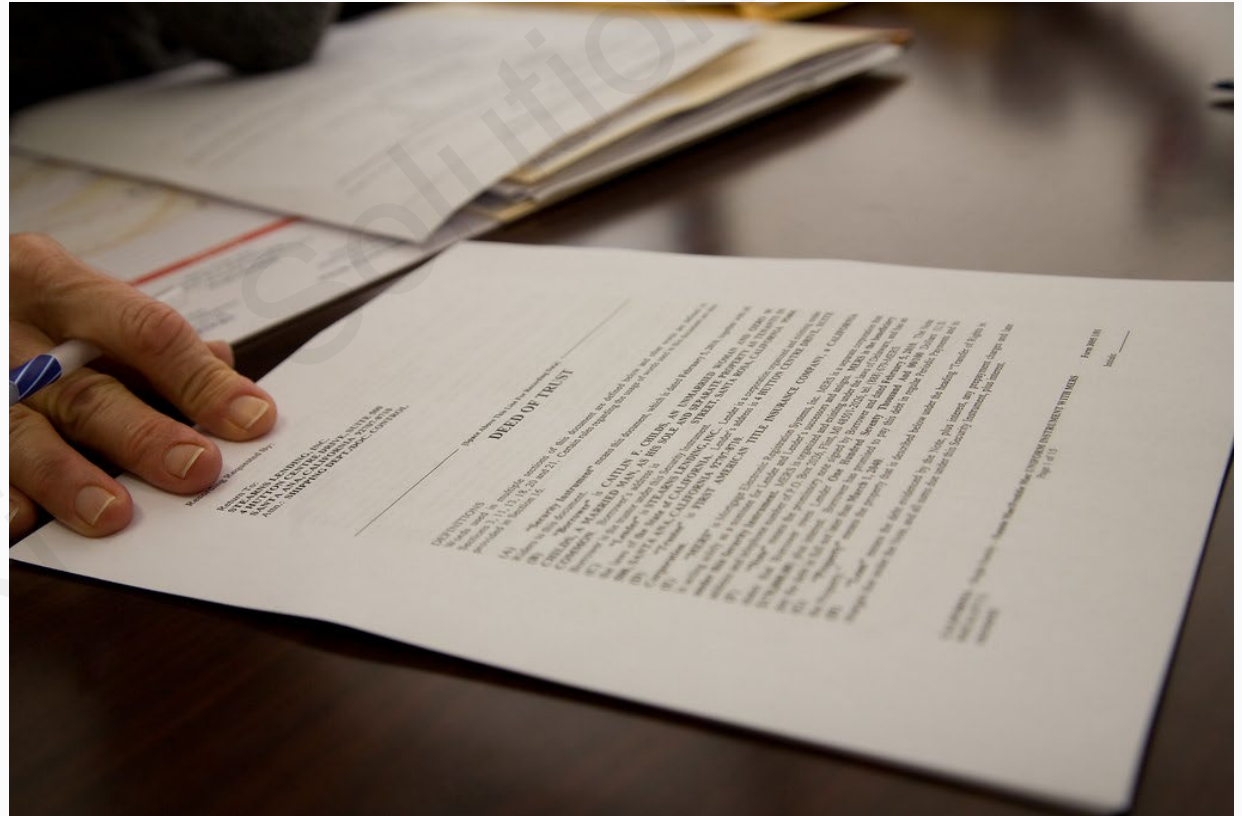
Institutions cannot place restrictions on who can serve.

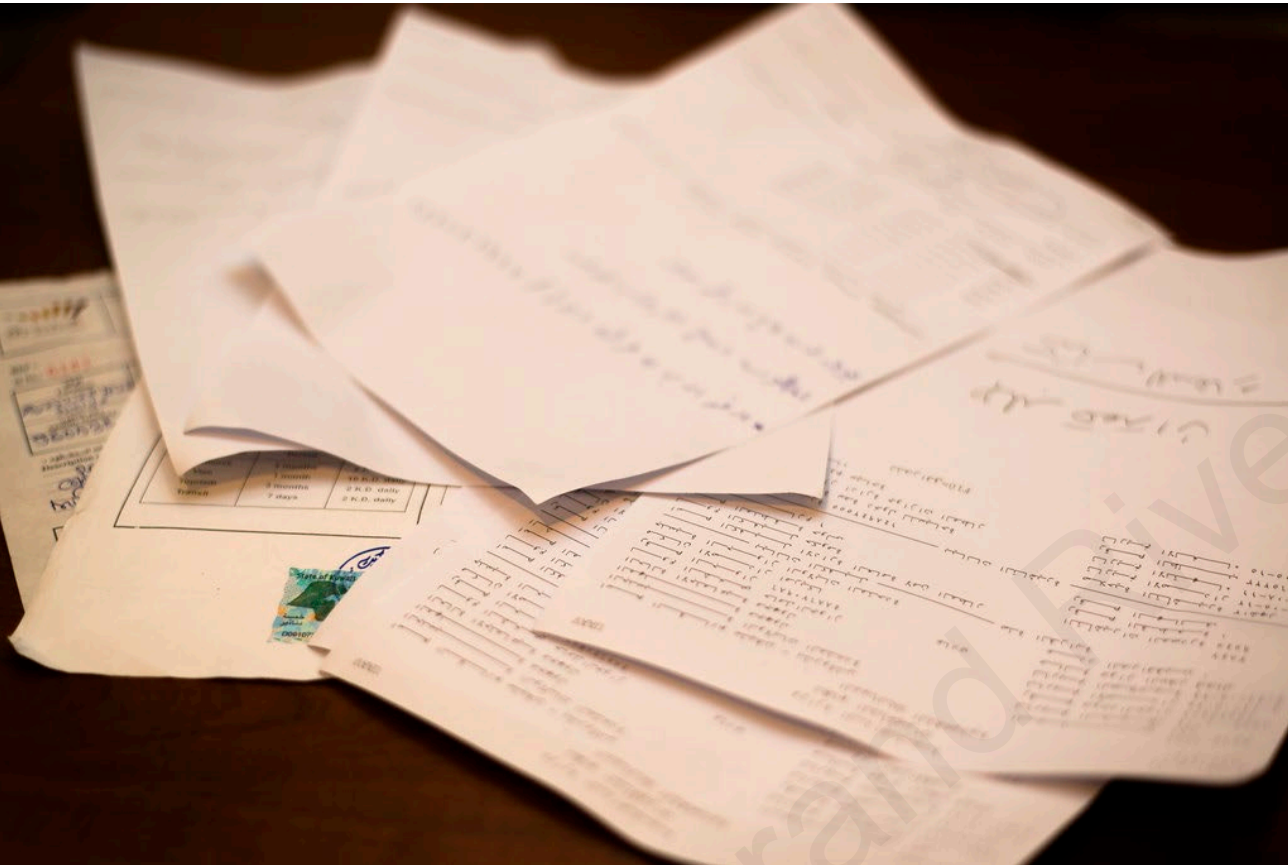
Institutions can create rules and guidelines for participation in the investigation.

No specific training is required.



WRITTEN NOTIFICATION OF MEETINGS AND SUFFICIENT TIME TO PREPARE





EQUAL OPPORTUNITY TO PRESENT EVIDENCE

EVIDENCE REVIEW

Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is relevant to the allegations raised in a formal complaint (and not otherwise impermissible).

Parties *can* provide a written response *within timeframe set by institution*.

RELEVANT EVIDENCE

Relevant means **related to** the allegations of sex discrimination under investigation.

- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.
- Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

EVIDENCE THAT IS "IMPERMISSIBLE"

- Questions and evidence about the complainant's sexual interests or prior sexual conduct are not relevant,
 - unless such questions and evidence about the complainant's prior sexual conduct are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - if the questions and evidence concern specific incidents of the complainant's prior sexual conduct with respect to the respondent and are offered to prove consent.
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
 - Example: Physical and mental health records and attorney-client privileged communications

PRIOR SEXUAL CONDUCT AND INTERESTS

Not waivable

"Allowing complainants to broadly introduce the evidence prohibited by § 106.45(b)(7)(iii) threatens to deprive respondents of due process (e.g., allowing a complainant to introduce evidence of prior sexual conduct but not permitting the respondent to rebut) and might result in misuse by the parties.

Sexual "interests" ["predisposition" is out]

- Mode of dress
- Speech
- "Lifestyle"

Examples of potentially impermissible prior sexual history of complainant:

- Evidence of pregnancy
- Use of birth control
- Medical history of STI

EVIDENCE THAT IS "IMPERMISSIBLE"

- Waiver for privileged information need not be in writing
- Partial waiver can be factored into decision-making
- Redactions are mandatory
- "impermissible evidence (and questions seeking that evidence) must not be accessed or considered except by a recipient for the purpose of determining whether an exception applies that would permit the use of such evidence."

EVIDENCE THAT MAY BE RELEVANT

- Respondent's prior sex-based conduct used as "pattern evidence"
 - *Note: "pattern witness" is not protected by "rape shield" protections*
- Character evidence
- Expert witnesses
- **Key consideration?**

WHO DECIDES?

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

- Institution may need to "revisit" relevance decisions
- Consider a storage plan for evidence found not relevant

Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:

- Each party's right to argue their case, and
- Fact that decisions regarding responsibility may be made at hearing, not investigation stage.

THE INVESTIGATOR

Can be the Title IX Coordinator

The Investigator may also be a decision maker.

Must be trained in accordance with the requirements in the regulations.

Must conduct the investigation in an impartial manner, avoiding bias/pre-judgment, and conflicts of interest.

THE REQUIREMENT OF IMPARTIALITY



SECTION 106.45(b)(2)

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

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

SEX-BASED HARASSMENT: POSTSECONDARY STUDENTS

Option 1:

- Investigator or DM holds "individual meetings" with parties and witnesses, and must ask relevant questions posed by parties.
- Parties must be provided with recording or transcription of that meeting and given enough time to prepare questions for follow-up interviews, if needed.

Option 2:

- Recorded live hearing, where DM can ask questions proposed by parties.

Option 3:

- 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.

WHAT CONSTITUTES BIAS?

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

This Includes:

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

IMPERMISSIBLE BIAS

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

CONFLICT OF INTEREST



AVOIDING PREJUDGMENT OF THE FACTS

Requires that the Title IX professional refrain from making a judgement on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.

AN IMPARTIAL INVESTIGATION IS...



Not influenced by bias or conflict of interest.



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



Truth seeking, not "your truth" confirming.

TRAUMA-INFORMED PRACTICES

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

Per the Department, trauma-informed practices:

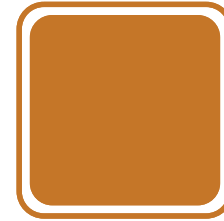
- consider the signs and symptoms of trauma;
- avoid re-traumatizing any participant in the process;
- must be applied equally to all parties in compliance with all grievance procedures.

THE PROPER APPLICATION OF TRAUMA-INFORMED PRACTICES

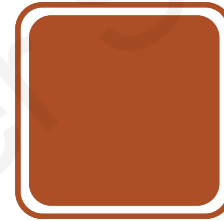
02

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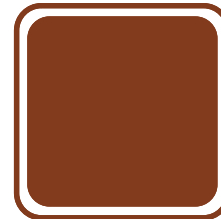
TRAUMA INFORMED
PRACTICES
PROVIDE TOOLS &
TECHNIQUES FOR
INTERVIEWING AND
ENGAGING WITH
THE COMPLAINANT,
RESPONDENT, AND
WITNESSES.



Format/Structure of the
Interview



Format of Questions



Approach to
Clarification

TRAUMA INFORMED PRACTICES ARE DESIGNED TO:

Encourage thorough
and complete
investigations

Assist with
recollection

Assist with
recounting

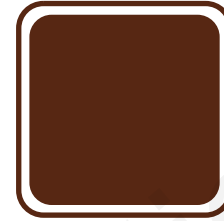
Reduce potential for
false information

Minimize unnecessary
re-traumatization

Reduce Bias

MISAPPLICATION OF TRAUMA INFORMED PRACTICES

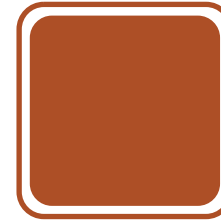
It is a misapplication of trauma informed principles to allow potential evidence of trauma to:



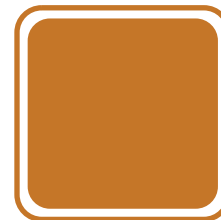
1. Influence the interpretation of a specific item of evidence;



2. Substitute for missing evidence;



3. To serve as a justification for not doing a full and thorough investigation;



4. Cause a biased belief in the veracity of one or more party.

THE IMPORTANCE OF UNDERSTANDING THE POTENTIAL IMPACT OF TRAUMA



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TRAUMA

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

EXAMPLES OF EVENTS THAT MIGHT TRIGGER A TRAUMATIC RESPONSE

Sexual Assault

Physical Assault by a Stranger

Physical Assault by an Intimate Partner

A Car Accident

Accident that causes serious injury or death

Robbery

Significant medical event

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

COMMON CHARACTERISTICS OF DISCLOSURES BY A TRAUMA BRAIN

Inconsistent

Non-linear

Fragmented

Lacking in detail

New information
added

Affect is
unexpected

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

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information



Viewed as
Not Credible

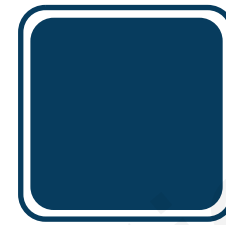
THE HISTORICAL CONCLUSION...

False Report
Regretted Sex
Not Provable



Investigation
Closed

WHEN AN INVESTIGATOR USES “TRAUMA-INFORMED” TOOLS, THEY ARE LESS LIKELY TO:



Conclude, without a thorough investigation



Act on basis of bias



Retraumatize



Jeopardize future reporting

THE FUTURE



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

This is essential to a fair and thorough investigation.

WHEN PRESENTED WITH THE FOLLOWING CHARACTERISTICS IN A DISCLOSURE,

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information

An investigator who understands trauma will....



CONTINUE THEIR
INVESTIGATION.

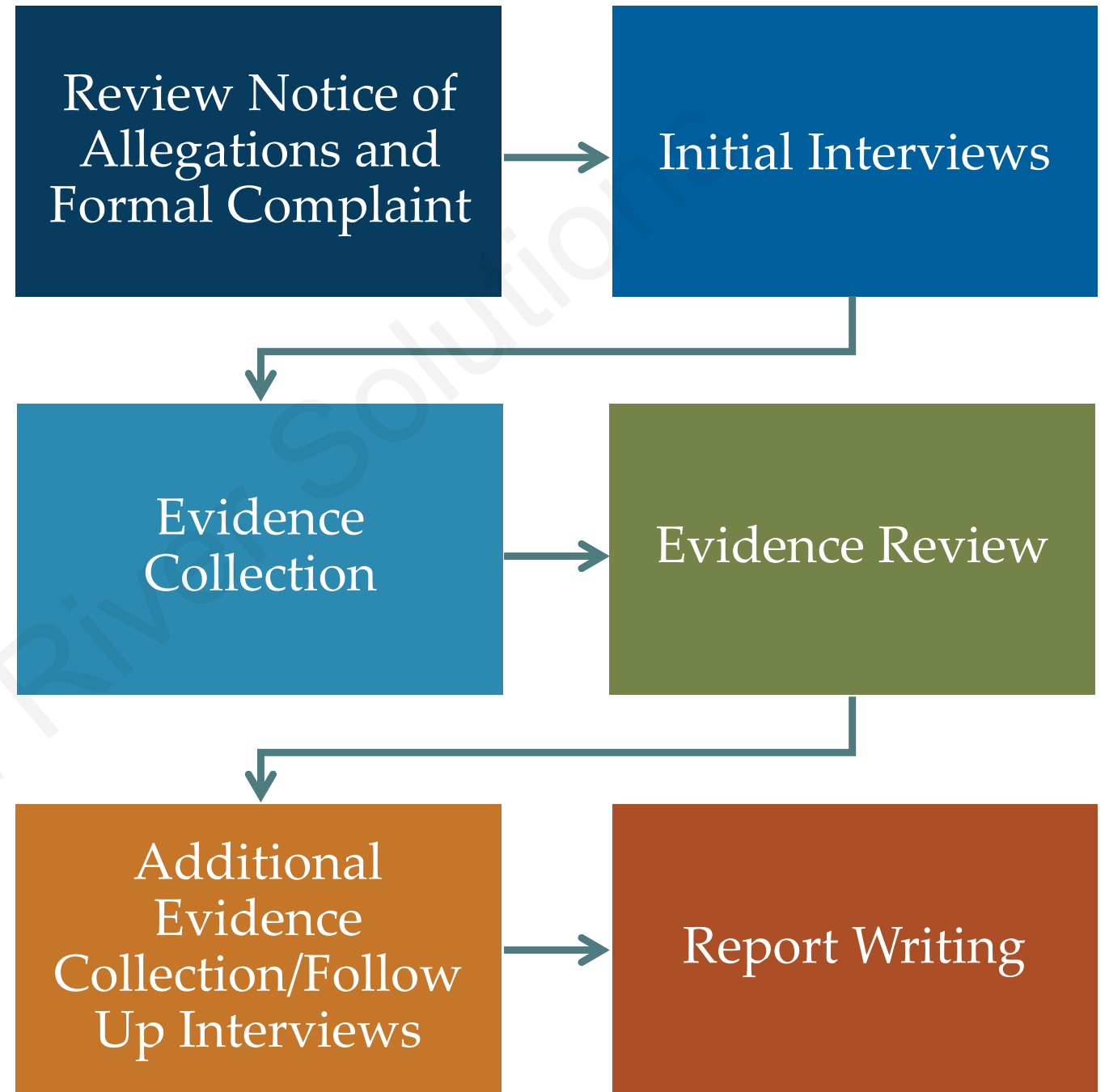
DEVELOPING AN INVESTIGATION STRATEGY



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ESSENTIAL STEPS OF AN INVESTIGATION



UNDERSTAND THE SCOPE OF THE INVESTIGATION



Review the Notice of Allegations and the Formal Complaint



Ask questions if unsure

IDENTIFY THE CLAIMS AND WHAT NEEDS TO BE PROVEN

- What will the decision maker be asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

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RAPE

Definition: The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Questions to ask:

1. Did Respondent penetrate Complainant's vagina or anus? •
2. Without Complainant's affirmative consent?
 - *What is the ground for lack of consent?*
 1. Did respondent fail to seek and obtain Complainant's affirmative consent?
 2. Did Respondent force Complainant?
 3. Did Respondent coerce Complainant?
 4. Was Complainant incapacitated and therefore incapable of consent?

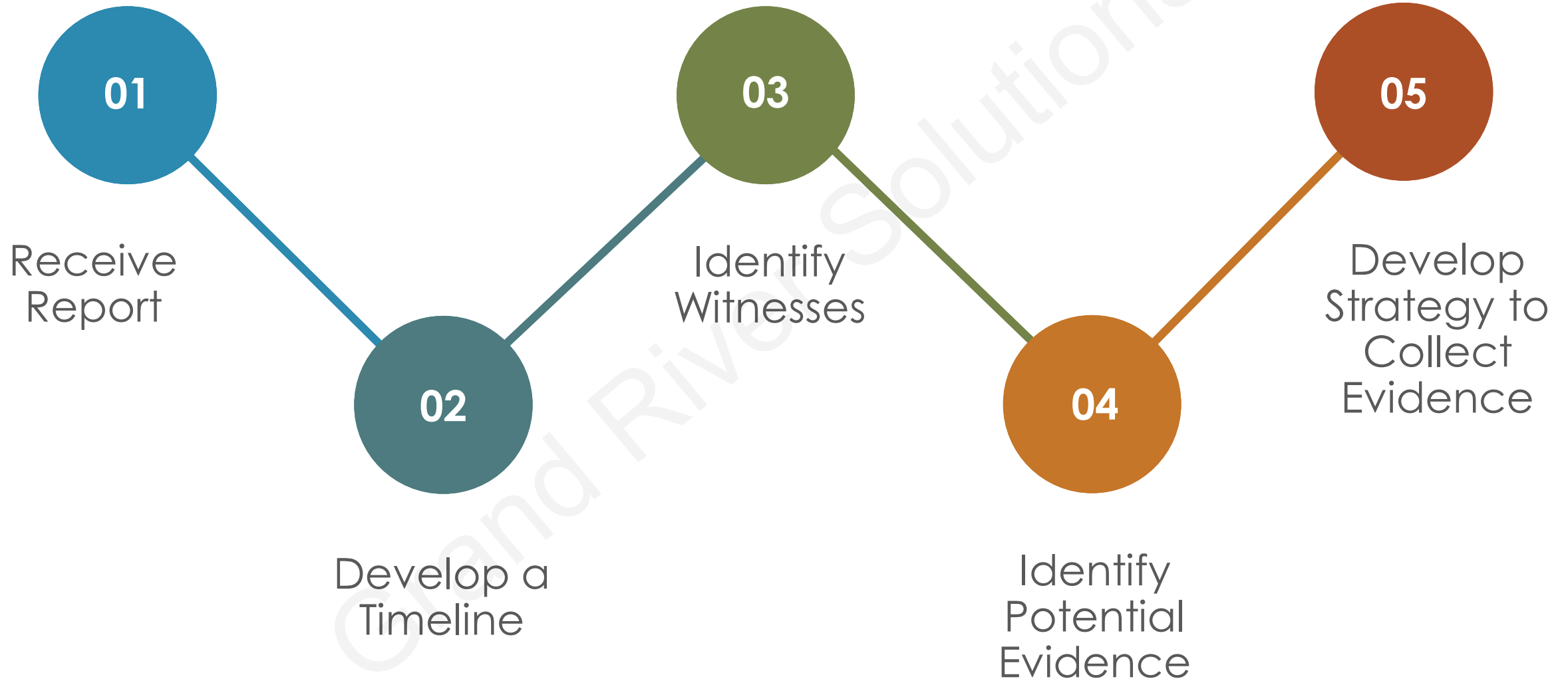
STALKING

Definition: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
Fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Questions to Ask:

1. Did Respondent engage in a course of conduct?
2. Was that course of conduct directed at Complainant?
3. Would Respondent's conduct cause a reasonable person to either
 - a. *Fear for their safety or the safety of others, or*
 - b. *Suffer substantial emotional distress?*

THE PROCESS: DEVELOPING AN INVESTIGATIVE STRATEGY



INVESTIGATION TIMELINE

Prior History

- Between the Parties?
- Of the Parties?

Incident

- Consent?
- Type of Contact?
- Injuries?

Pre-Incident

- Communications?
- Interactions?
- Conduct?

Post Incident

- Behaviors?
- Communications?

The Importance of Organization



INVESTIGATION INTERVIEWS

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INTERVIEW OBJECTIVES



Listen

Allow interviewee to share their experience



Evidence Preservation

Text messages

Photographs

Names and contact info for witnesses

Connect

Build rapport

Build trust

Empower



Clarify

Understand what you have heard

Seek additional information



PRIOR TO THE INTERVIEW

- Secure an appropriate meeting location
- Allow for enough time to conclude the meeting
- If interviewing a party, inform them of their right to have an advisor present
- Prepare for the meeting

- Provide written notice of the meeting

EXPECTATIONS

What they should expect of you:

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you
- Prepare the parties for follow up interviews and the “shift”

What you expect of them:

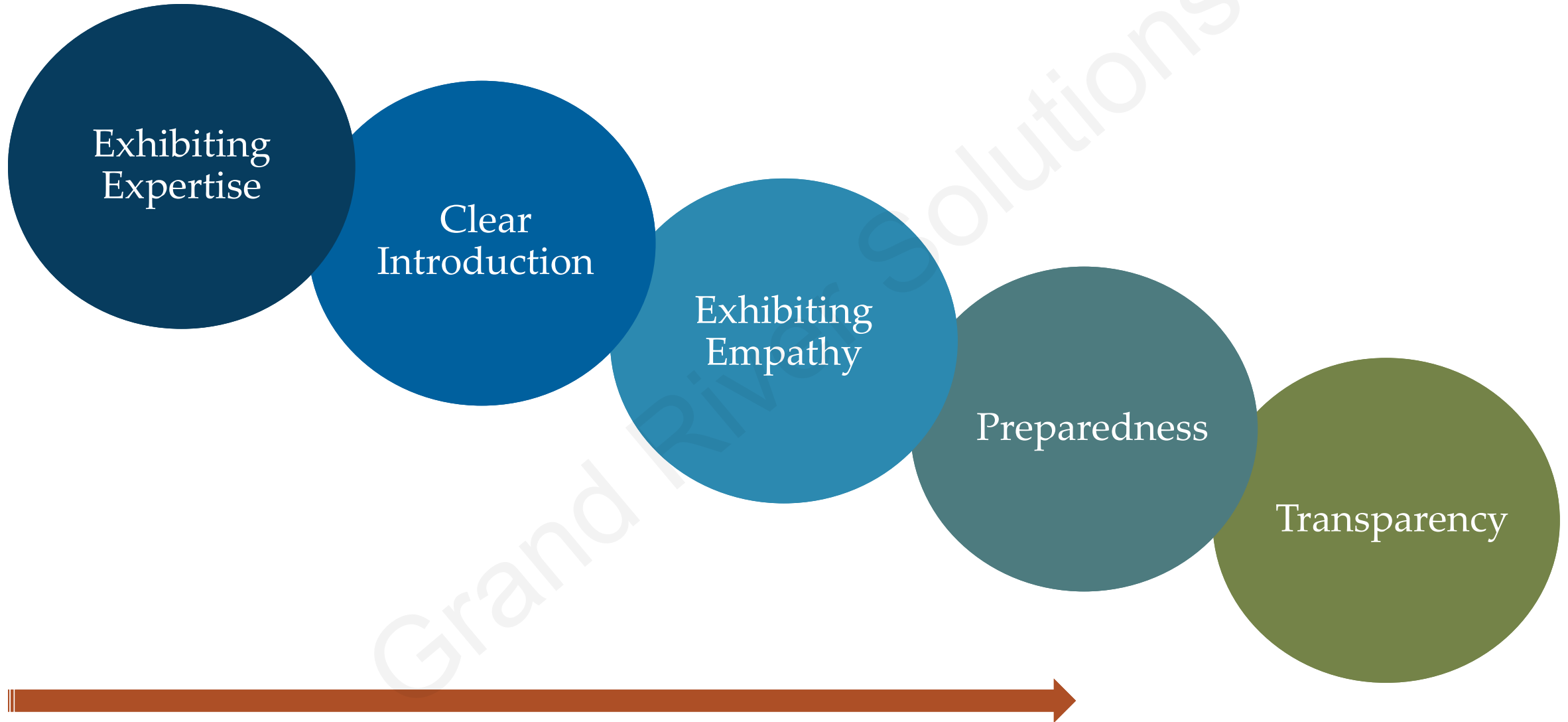
- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks



HOW DO WE...

- Build Rapport and Trust?
- Empower?

RAPPORT AND TRUST





CONDUCTING FAIR AND THOROUGH TRAUMA-INFORMED INVESTIGATIONS

Kelly Whitney & Adam Wolkoff
Day 2
June 2024

MEET YOUR FACILITATORS

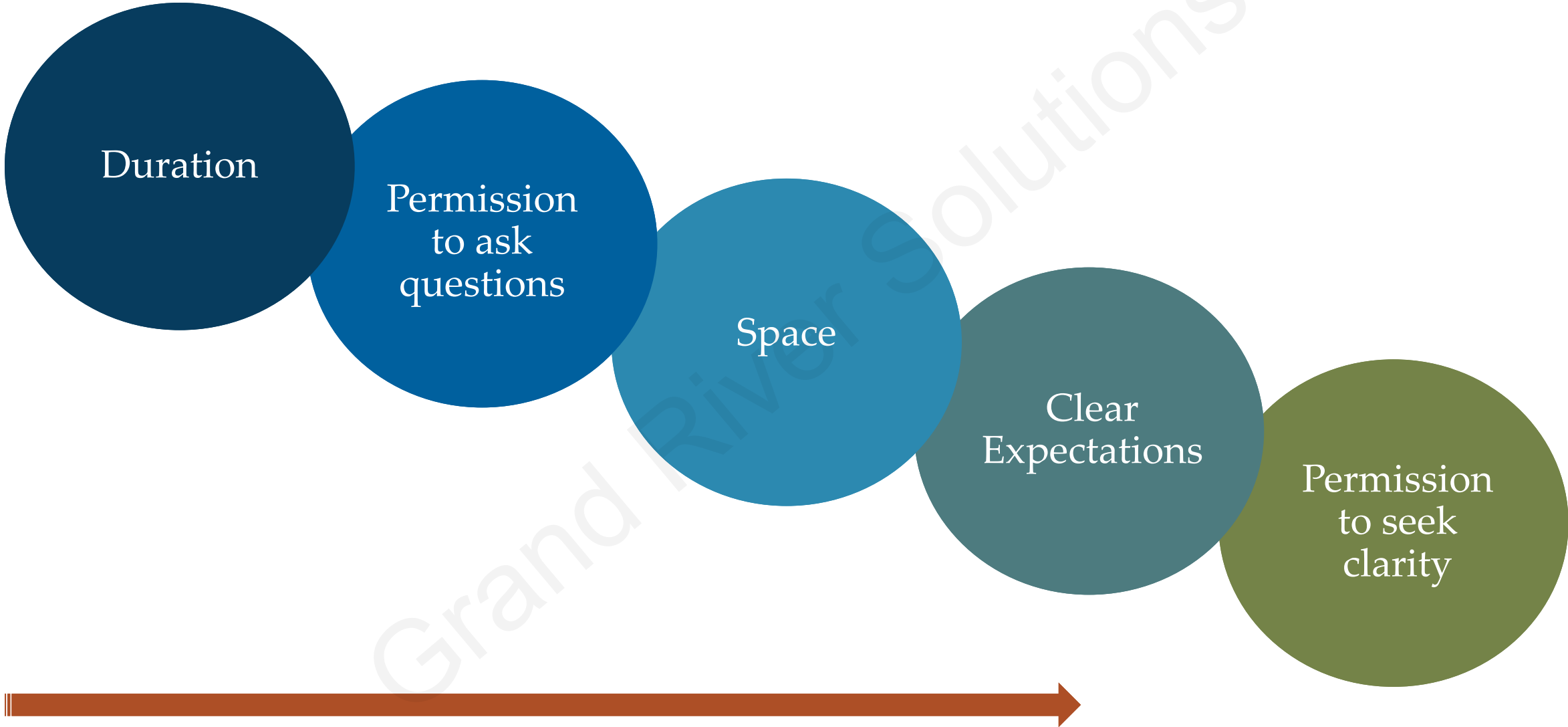


Kelly Whitney
Senior Solutions Specialist
She/her/hers



Adam Wolkoff
Assistant Director of Resolution Services
He/him/his

EMPOWERMENT



INVESTIGATIVE INTERVIEWS

1. Start by eliciting a narrative

2. Listen

3. Interview for Clarification

4. Listen

5. Avoid leading or blaming questions, interrogation

START INTERVIEW BY ELICITING A NARRATIVE

- “Help me understand your experience?”
- “What are you able to tell me about your experience?”
- “Start where you are comfortable and share what you are able to remember.”

Allow the person to speak uninterrupted. This takes patience.

ASK QUESTIONS THAT ARE INTENDED TO CLARIFY AND MORE DEEPLY EXPLORE THE INFORMATION AND DETAILS PROVIDED BY THE PERSON IN THEIR NARRATIVE.

Do Ask:

Interview for clarification

Help me understand?

Can you tell me more about...?

Is there anything else you can share about...?

Avoid

Interrogation

Questions that blame

Questions that imply doubt

Leading questions

CAPTURE THE ENTIRE EXPERIENCE

- Ask about the physical and emotional reactions to the incident.
- Conclude with very open-ended questions:
 - What was the most difficult part of this experience for you?
 - Is there something that stands out/that you just can't stop thinking about?
 - Is there anything more that you would like me to know?

THE BEFORE

At some point during the interview, it is also important to explore the prior history, if any, between the complainant and the respondent, and the history of the parties, individually.



AND THE AFTER

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

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction;
“Has anyone expressed concern about you since the assault?”
- Communication/contact between the complainant and respondent

DAY TWO AGENDA

- Investigative Interviews
Continued
- Evidence Collection and
Assessment
- The Investigative Report
and Record



QUICK REVIEW



INVESTIGATIVE INTERVIEWS: CONTINUED



01

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THROUGHOUT THE INTERVIEW



Explain questions, especially the difficult ones.

How much did you drink?

What they hear: this is your fault because you were drinking.

Do not ask leading questions.

Watch your tone.

Do not rush.

Listen.

Pay attention to and document information.

Document questions asked.

AT THE CONCLUSION OF THE INTERVIEW

Discussion submission of evidence.

Explain statement review process.

Explain next steps in the process.

Keep the lines of communication open.

Review available support, privacy requirements, and prohibition against retaliation.

AFTER THE INTERVIEW: ACTIONS

Memorialize the interview in writing: notes, summary transcript.

Provide opportunity for the party or witness to review it.

Provide opportunity for party or witness to provide a response.

Incorporate the response.

A NOTE ABOUT WITNESS SUMMARIES

- The reader of any report should not know of the investigator's presence in the report; for example, report should not say "I then asked . . ."
- Use interviewee's words and put the words in quotes if it is their words
- Avoid conclusory words, or words that suggest that the investigator has an opinion about the information offered

AFTER THE INTERVIEW: REFLECTION

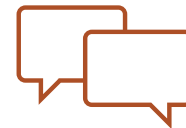


Reflect.

Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

FOLLOW UP INTERVIEWS

- Seek Clarification
- Explore Inconsistencies
- Explore contradictions
- Explore difficult issues
- Opportunity to respond

FOLLOW UP INTERVIEW APPROACH

01

Explain the purpose of the follow up

02

Set the stage for the topics you will be covering

03

Prepare the interviewee for “the shift”

04

Do not avoid asking the hard questions

THE “HARD” QUESTIONS

Details about the sexual conduct

Seemingly inconsistent behaviors

Inconsistent evidence/information

What they were wearing

Alcohol or drug consumption

Probing into reports of lack of memory

HOW TO ASK THE HARD QUESTIONS

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

WHAT QUESTIONS DO YOU HAVE FOR QUINN?

“Casey and I have been friends for a few weeks. On Friday night, we were hanging out alone in my room, watching a movie. We started to make out, and I was ok with that. After making out for a while, Casey started touching me down there. Then Casey tried to have sex with me. Casey knew that I didn’t want to have sex but kept trying anyway. Casey was being really coercive, and so I just went along with it. Casey raped me and I want Casey to be held accountable.”

WHAT QUESTIONS DO YOU HAVE FOR BARRI?

“When I got to the party, I was already lit. I kept letting Marc get me drinks anyway. At some point, I just kinda don’t remember anything. And then I woke up in Marc’s bed and it was morning. I had all my clothes on, but I know someone had sex with me. I could feel it. I just wanted to go, so I did. Before I left Marc woke up and tried to talk to me but I wasn’t hearing it. He looked guilty and I could tell he felt bad.”

WHAT QUESTIONS DO YOU HAVE FOR COLIN?

“Pat and I have been together for about a month and have been intimate for the last two weeks. We went out with my friends on Friday night and Pat got really drunk. At some point we ran into my ex and Pat was really jealous, so we left. When we got back to my place, I thought things were fine. We started hooking up and all of a sudden Pat's mood changed. Pat got really aggressive and choked me. He was so angry and I was so scared.”

EVIDENCE COLLECTION AND ASSESSMENT



02

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EVIDENCE:

“Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or non-existence of a fact.”

-Black's Law Dictionary

TYPES OF EVIDENCE

Direct Evidence

Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

Circumstantial Evidence

Evidence based on inference and not on personal knowledge or observation.

Corroborating Evidence

Evidence that differs from but strengthens or confirms what other evidence shows

EVIDENCE

Testimony

Text
Messages

Social Media
Posts and
Messages

Emails

Surveillance

Videos

Photographs

Police Body
Camera
Footage

Swipe Records

Medical
Records

Phone Records

Audio Recordings

EVIDENCE COLLECTION

- Identify the items of evidence that you would like to obtain.
- Develop an intentional strategy for obtaining that evidence.
- Overcome barriers to evidence collection.
- Considerations about collecting certain types of evidence.

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A THOROUGH INVESTIGATION
is more than evidence collection

EVALUATING THE EVIDENCE

01

Is it relevant?

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

02

Is it authentic?

Is the item what it purports to be?

03

Is it credible/reliable?

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

04

What weight, if any, should it be given?

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

A THOROUGH INVESTIGATION PERMITS THE DECISION MAKER TO ASSESS

- Relevance
- Credibility
- Reliability
- Authenticity
- Weight



ASSESSING RELEVANCE

Why Does it Matter?

- Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.
- Character Evidence
- Polygraph Evidence
- Opinion Evidence

OPINION EVIDENCE

When might it be relevant?

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



OPINION EVIDENCE: TRY IT!

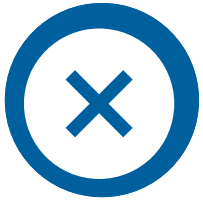
You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

“I got to the party pretty late, and Taylor was already lit.”

“Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex”

ASSESSING AUTHENTICITY

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.

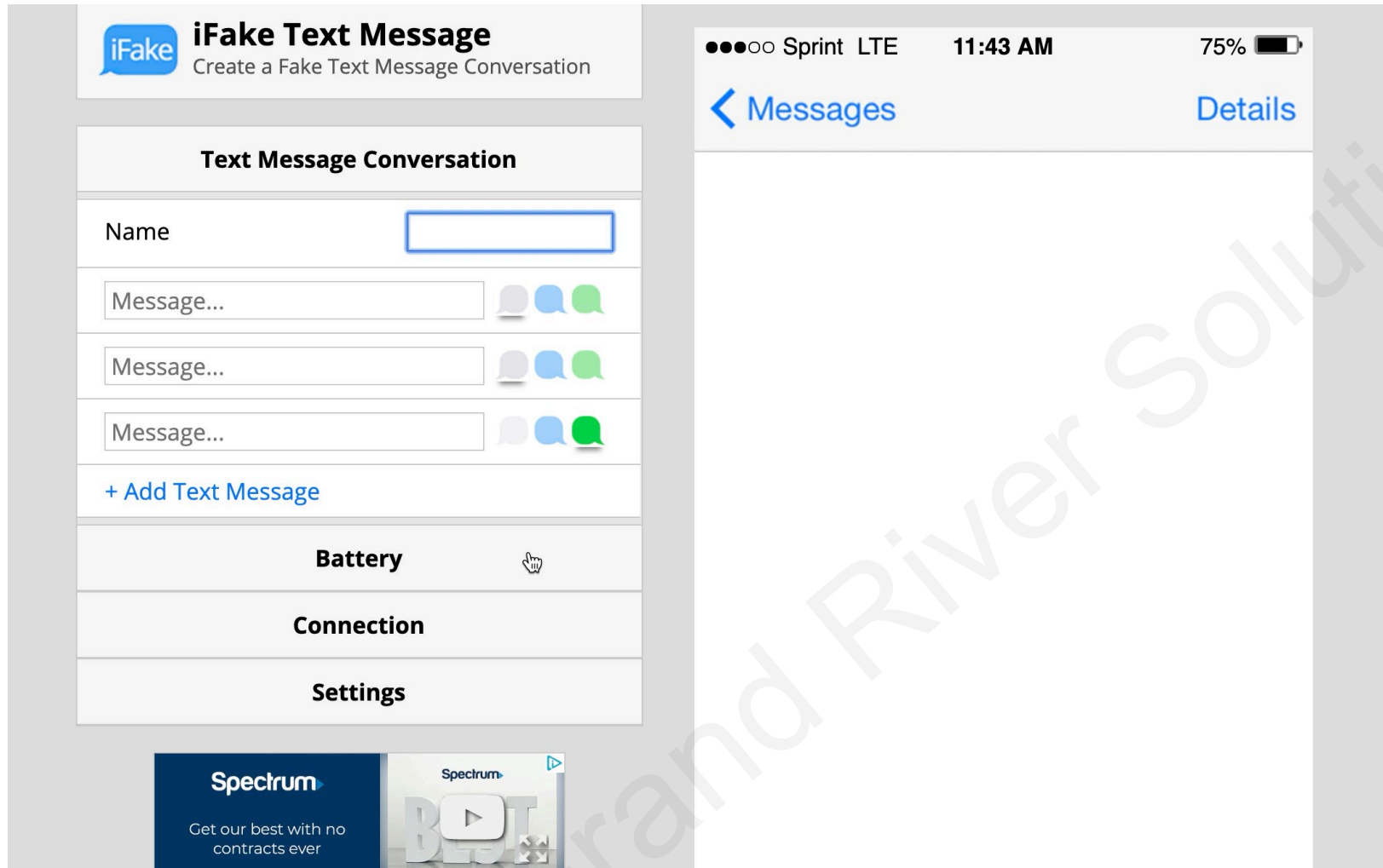


Ask questions, request proof.

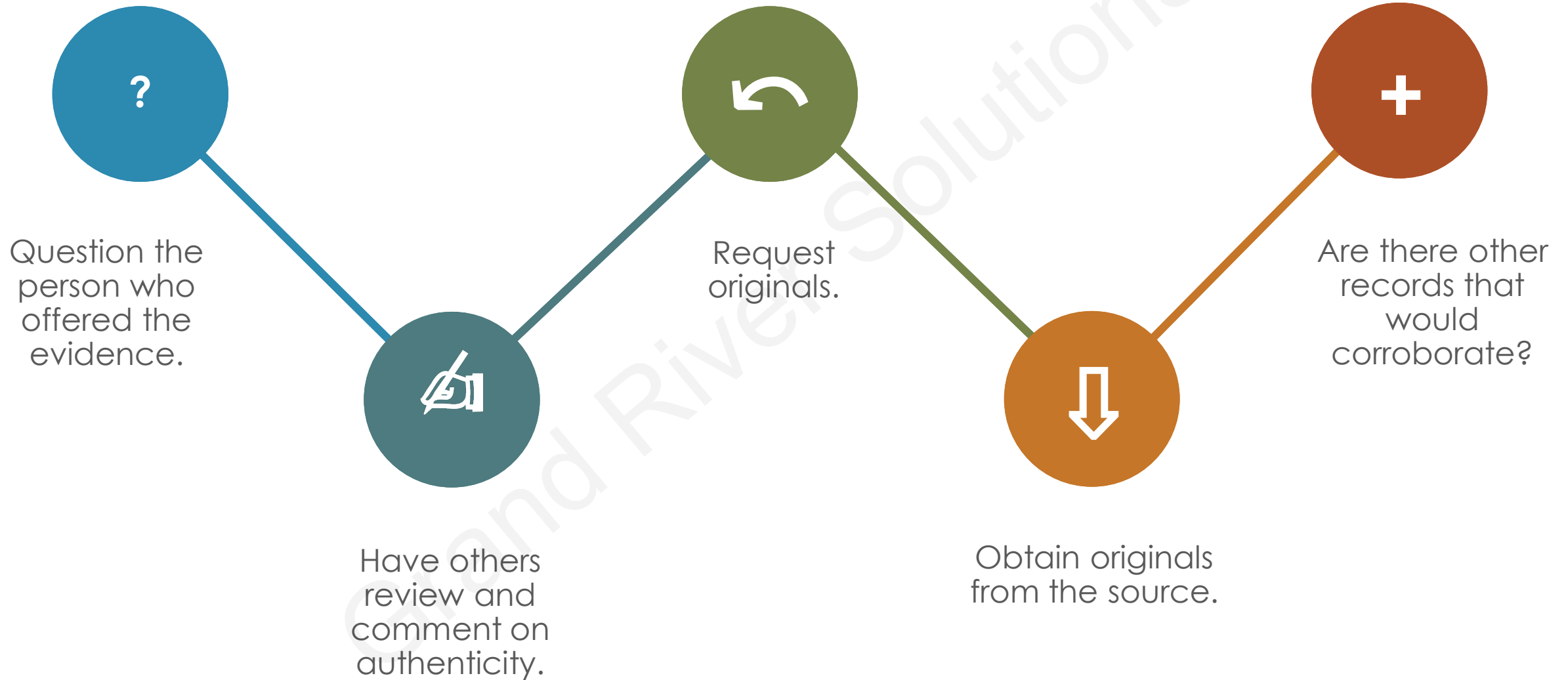


Investigate the authenticity if necessary.

FAKE TEXT MESSAGES



IS IT AUTHENTIC?



ASSESSING CREDIBILITY AND RELIABILITY

No formula exists, but consider the following:

Sufficiency of detail and specificity

Ability to recollect events

Material Omission

Internal Consistency

Inherent Plausibility

Motive to falsify

Corroboration

BARRIERS TO EVIDENCE COLLECTION



Non-participating parties

Uncooperative witnesses

Uncooperative advisors

Identity of party or witness unknown

Refusal to share materials

Materials lost or no longer accessible

Difficult topics

THE INVESTIGATION REPORT AND RECORD

03

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An investigation report must fairly summarize relevant evidence.



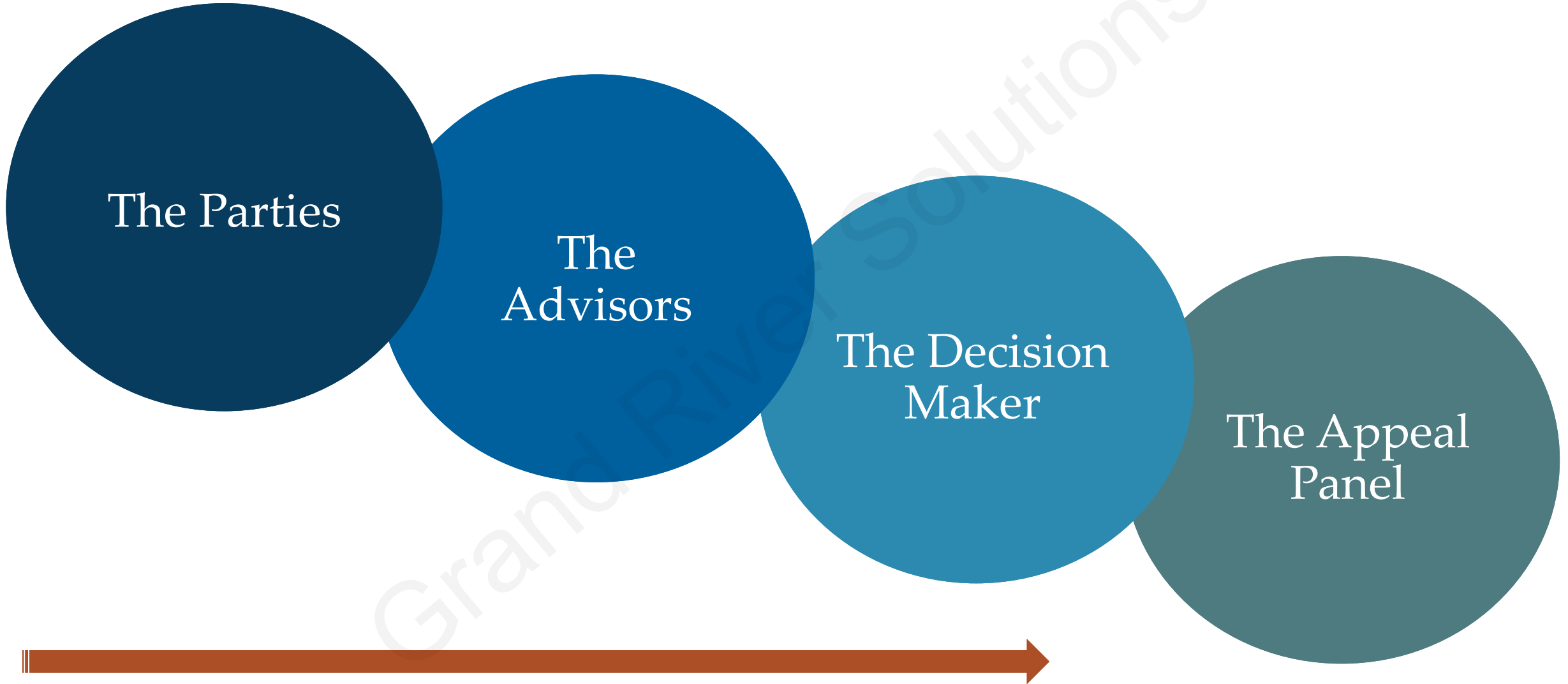


REDACTIONS

THE PURPOSE OF THE REPORT

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

INTENDED RECIPIENTS



OTHER RECIPIENTS?

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



ESSENTIAL ELEMENTS

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

THE EVIDENCE FILE

Compiles the
evidence

Organized intentionally and
consistently

Divided into
Appendices

Attached to
the report

Includes a
procedural
timeline

EXAMPLE OF APPENDICES

- Appendix A
 - Contains all of the party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant
- Appendix B
 - Contains all of the documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant
- Appendix C
 - The procedural timeline

STRUCTURE OF THE REPORT

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

REPORT STRUCTURE

Overview

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

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

REPORT STRUCTURE

Statement of Jurisdiction

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

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REPORT STRUCTURE

Identify Investigators

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

REPORT STRUCTURE

Objective of the Investigation & Report

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

REPORT STRUCTURE

Prohibited Conduct Alleged

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

REPORT STRUCTURE

List Witnesses

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

EXAMPLE OF A DETAILED LIST

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

REPORT STRUCTURE

Evidence Collected

- The Title IX regulations require that all evidence obtained as part of the investigation that is relevant to the allegations in the formal complaint and not otherwise impermissible be shared with the parties and made available at any hearing.
- In this section, list the Evidence or Refer to Appendices

REPORT STRUCTURE

Summary of Evidence

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

REPORT STRUCTURE

Conclusion

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

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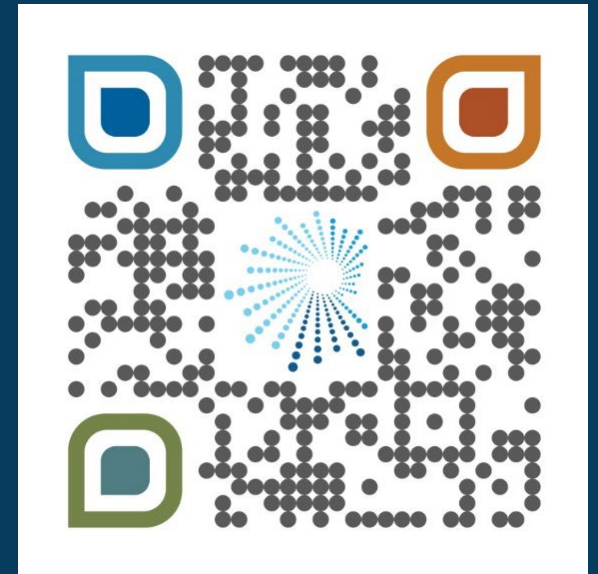


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