



GRAND RIVER | SOLUTIONS

University of Tennessee System-Wide Training

Day One

Andrea Stagg and Kateeka Harris

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Meet Your Facilitators



Kateeka Harris

She/her/hers

Senior Solutions Specialist



Andrea Stagg

She/her/hers

Director of Consulting Services

Agenda

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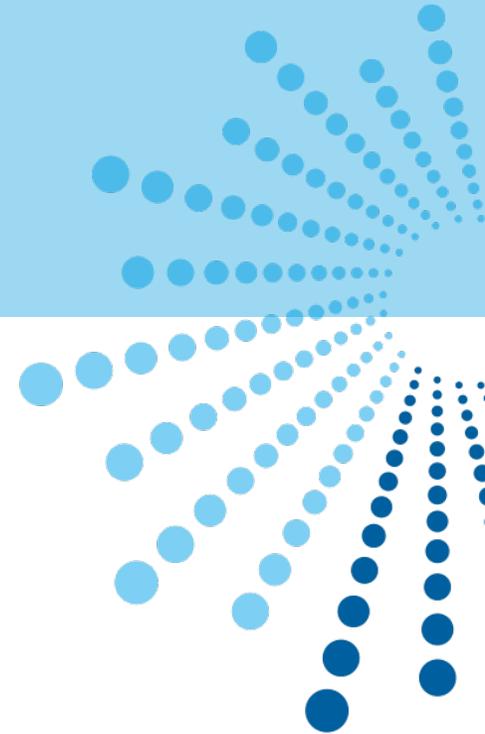
Evaluating Evidence



Regulatory Overview

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).

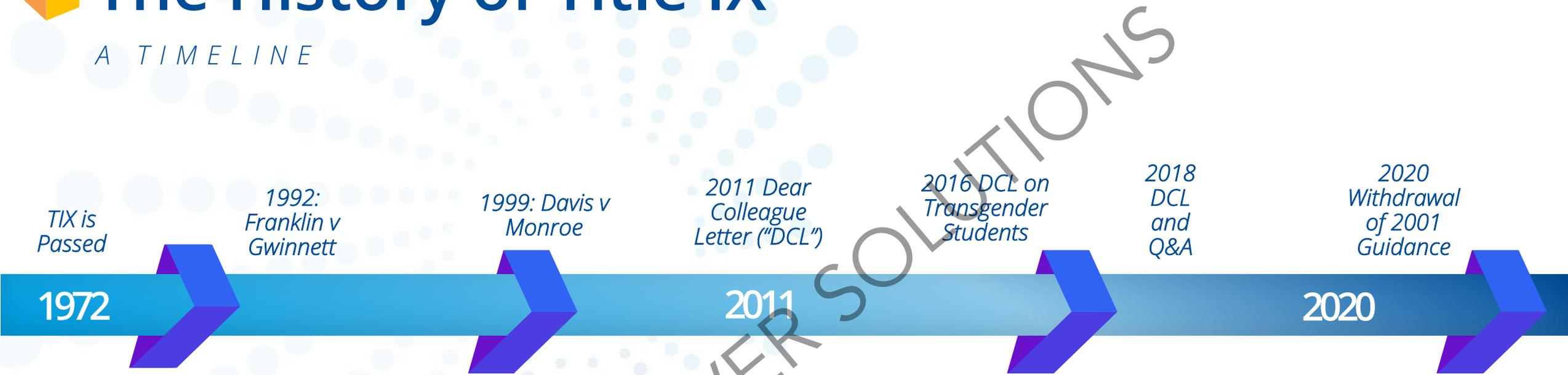
Title IX Applies to All Forms of Sex Discrimination

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities



The History of Title IX

A TIMELINE



TIX is Passed

1992: Franklin v Gwinnett

1999: Davis v Monroe

2011 Dear Colleague Letter ("DCL")

2016 DCL on Transgender Students

2018 DCL and Q&A

2020 Withdrawal of 2001 Guidance

1972

2011

2020

1979: Cannon v University of Chicago

1998: Gebser v Lago Vista

2001: Revised Sexual Harassment Guidance

2014 Q&A

2017: 2011 DCL guidance & 2016 DCL on Transgender Students Rescinded

2020 Regulations

2020 Q&A

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The Title IX Regulations

Sexual Harassment Only

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

Sexual Harassment: *Section 106.30*

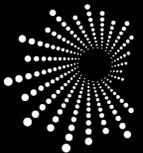
Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

Covered Geography

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

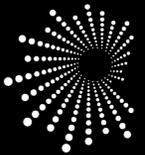
- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution





Not Covered

- Off campus conduct, even if it has an impact on the educational program or activity;
- Conduct that occurs outside of the United States.





Covered Individuals

Eligibility for Title IX's Protections

“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30

Applicant

Accepted/Hired

Enrolled/Employed

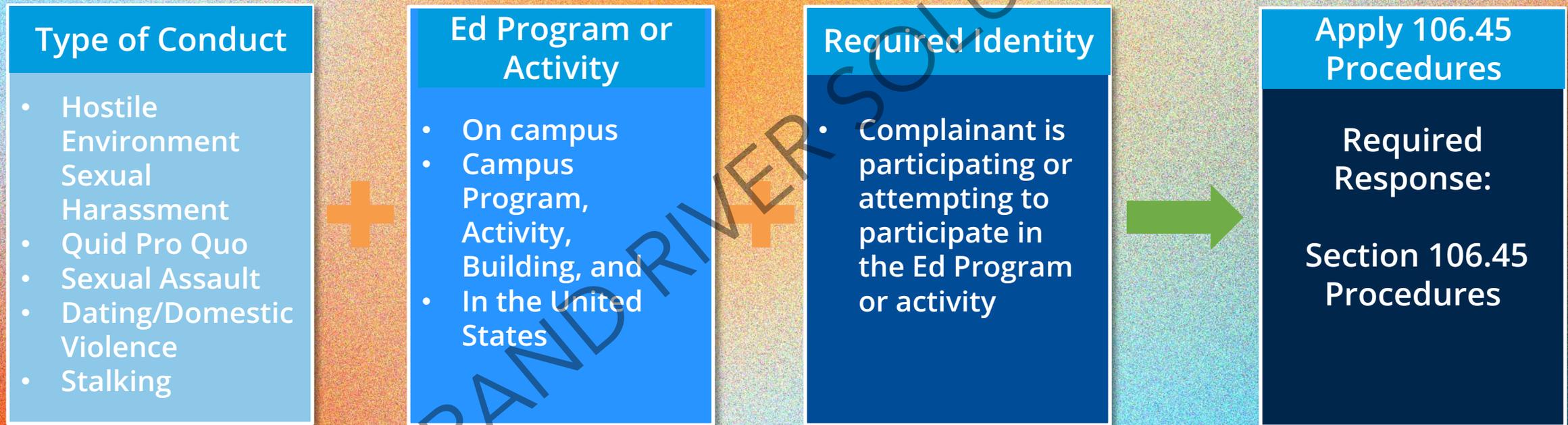
Programs or Activities

Field trip *in the United States*

Sports, theater, debate, academic competition

An away game for a sports team or the band

Title IX Application Post May 2020 Regulations



Conduct Falling Outside the Scope of Title IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures are compliant with VAWA/Clery, other intersecting federal and state laws



Actual Notice

A Narrowed Scope of Institutional Responsibility

Institution
must
respond
when it
has:

“Actual knowledge”

When “an official of the recipient who has authority to institute corrective measures” has notice, e.g., Title IX Coordinator

**of “sexual harassment”
(as newly defined)**

**that occurred within the
school’s “education
program or activity”**

“includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred

Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

**against a “person in the
United States” (so, not in
study abroad context)**

Other Requirements of the Regulations

Designation of
a Title IX
Coordinator

Dissemination
of policy

Separation of
Responsibilities

Training and
posting of
training

Impartiality

Record
Keeping

Impartiality

Avoiding Prejudgment and Bias

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

Impartiality

Avoiding Prejudgment and Bias

Do not rely on cultural "rape myths"

Do not rely on cultural stereotypes about how men or women purportedly behave

Do not rely on gender-specific research data or theories to decide or make inferences of relevance or credibility in particular cases

Recognize that anyone, regardless of sex, gender, gender identity or sexual orientation, can be a victim or perpetrator of sexual assault or other violence

Avoid any perception of bias in favor of or against complainants or respondents generally

Employ interview and investigation approaches that demonstrate a commitment to impartiality

Impartiality

Avoiding Bias

Department also rejected commenters' arguments that individuals should be disqualified from serving as investigators because of past personal or professional experience

"Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased" WHILE

"exercising caution not to apply generalizations that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents"

Impartiality

Avoiding Conflicts of Interest

Commenters argued that investigators and hearing officers employed by schools have an “inherent conflict of interest” because of their affiliation with the school, so Department should require investigations and hearings to be conducted by external contractors

Department noted that some of those commenters argued that this resulted in bias against complainants, and some argued that this resulted in bias against respondents

Department’s response: Department’s authority is over schools, not individual investigators and other personnel, so Department will focus on holding school’s responsible for impartial end result of process, without labeling certain administrative relationships as per se involving conflicts of interest

Impartiality

Avoiding Prejudgment, Bias, and Conflicts of Interest

Bottom line

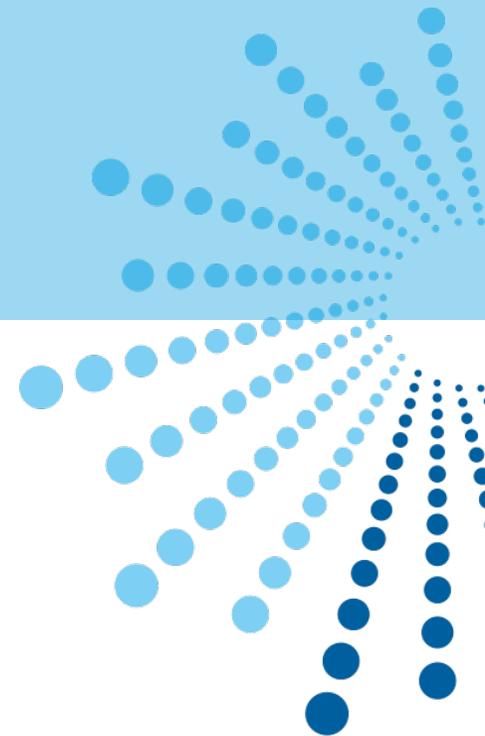
- Follow facts of every individual case
- Investigate in manner that will not allow even a perception of prejudice or bias for or against any party



Training, Education & Compliance Obligations

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Sources of Compliance Obligations

Title IX Final Regulations

Violence Against Women Act

Other, Intersecting Federal Laws

State Law

Legal Precedent

Institutional Policies

Resolution Agreements

Sources of Training Requirements



Title IX Final
Regulations

VAWA

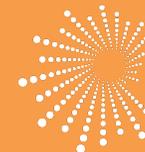
Violence
Against
Women Act



State Law



Resolution
Agreements



Training and Education

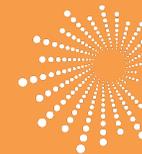
Two Areas of Focus

1

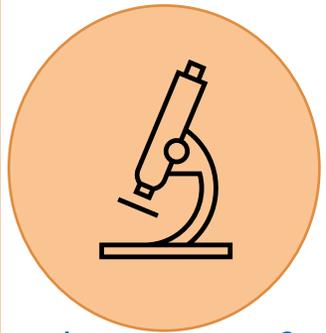
Institutional
Response to Sex
Discrimination

2

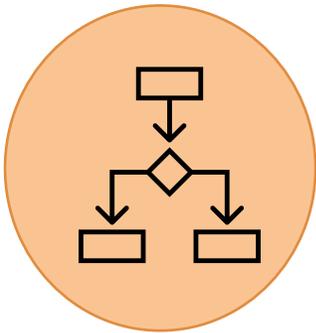
Prevention
Education



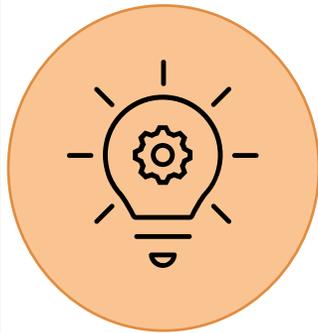
Training for Title IX Staff



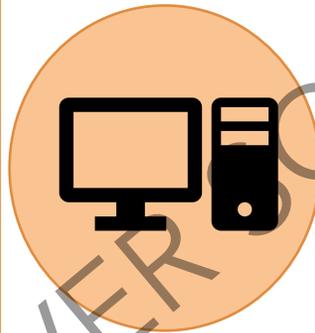
The scope of the institution's education program or activity (i.e., its Title IX "jurisdiction")



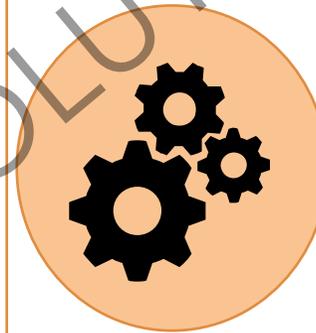
How to conduct the grievance process



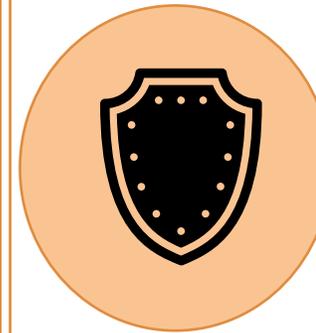
How to serve impartially



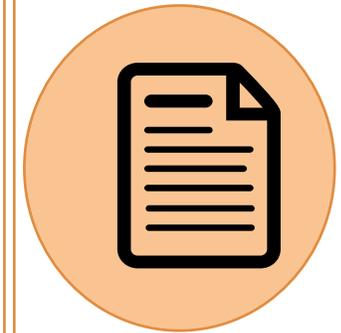
The technology to be used at a live hearing



Issues of relevance of questions and evidence



Rape shield protections; and,



Issues of relevance in creating an investigative report.





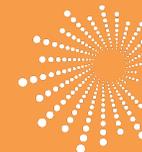
Responsible Employees



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“Responsibilities Required Under Title IX and the Regulations”

- Serve as the primary pathway for receipt of reports of sex discrimination and sexual harassment;
- Upon receipt of a report, promptly contact the complainant to discuss the availability of supportive measures and to explain the process of filing a formal complaint;
- Coordinate the effective implementation of supportive measures;
- Where a report is made, but a formal complaint is not filed by the complainant, determine whether a formal complaint should be filed and sign that formal complaint;
- Effective implementation of any remedies imposed by a decision maker at the conclusion of a grievance process.



Responsible Employee Training: Additional Areas of Focus

- Take time to explain the reason for and importance of Responsible Employee reporting
- Provide advice on how to receive a report
- Provide suggestions on how to share their obligation to report with the reporting individual
- Instruct on their options for reporting to the Title IX Coordinator
- Fully explain what happens after they report a disclosure

Special Considerations for Training & Education in the Post Regulatory Landscape



Explaining the narrowed scope of Title IX



Explaining the institutional decision for two processes/procedures



Responsible Employee challenges



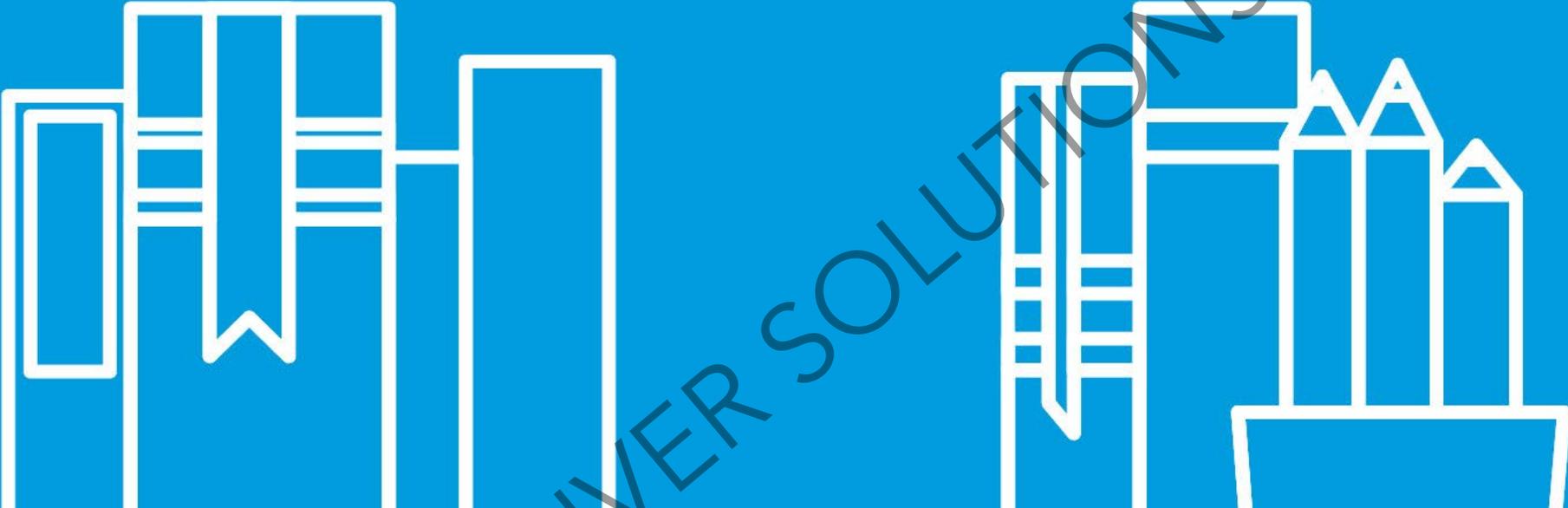
Burden of proof challenges



Length of Training



Time for questions/community processing



Prevention Education: Title IX Regulations

"The Department understands commenters' beliefs that the Department should create rules that monitor drinking, teach about interpersonal boundaries, sexuality, bystander intervention, and sexual consent communication, . . . [A]nd while the Department does not mandate educational curricula, nothing in the final regulations impedes recipients' discretion to provide students (or employees) with educational information." 85 Fed. Reg. 30063 (May 19, 2020).

Prevention Education: Violence Against Women Act (VAWA)



A primary prevention and awareness program [which includes bystander intervention] aims to prevent dating violence, domestic violence, sexual assault, and stalking.

Ongoing prevention and awareness campaigns.



Receipt of Reports

Actual Knowledge, Report Response,
Initial Assessments, and Supportive Measures

03

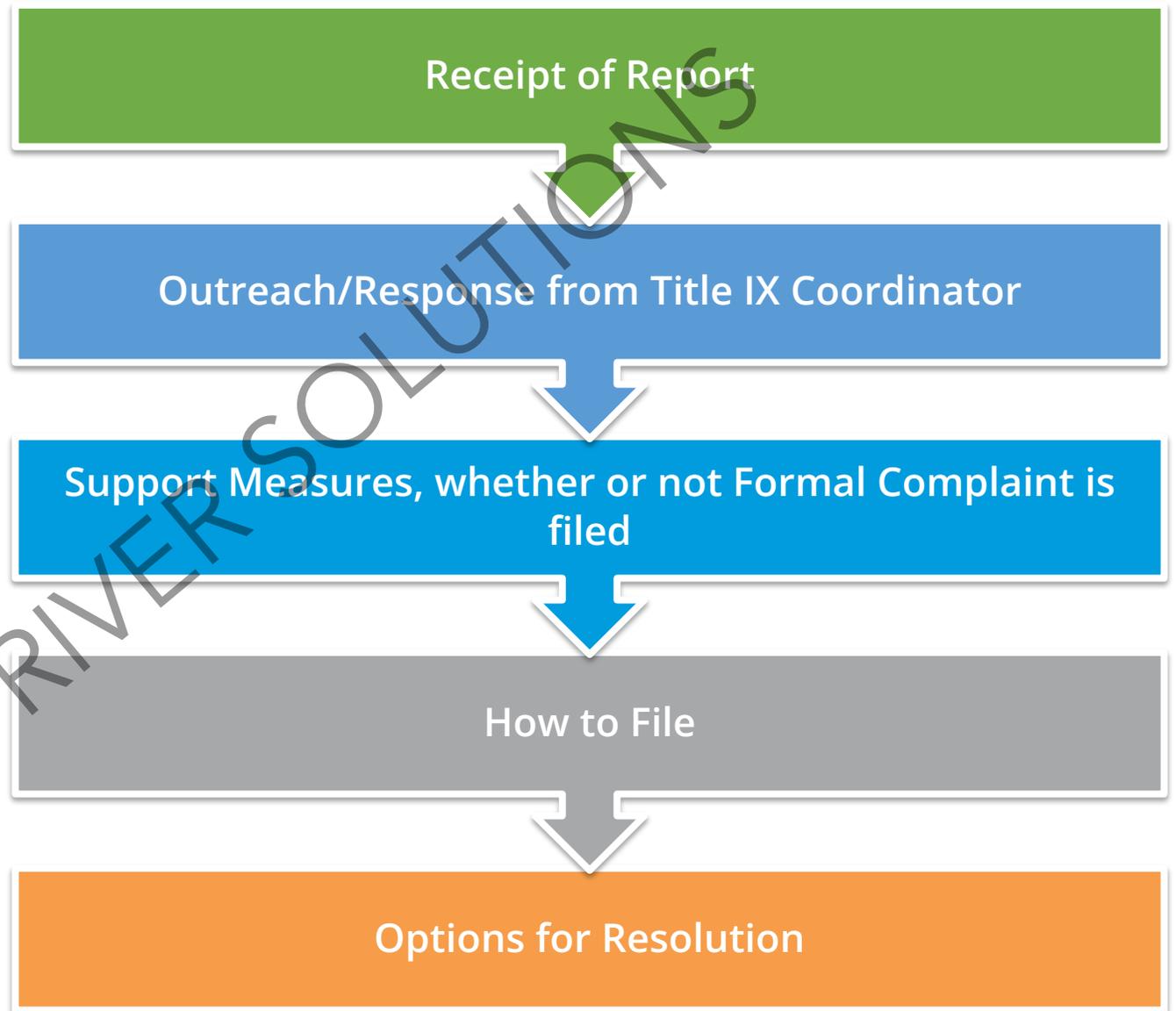
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Infrastructure for Reporting



Initial Response Requirements



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Actual Knowledge

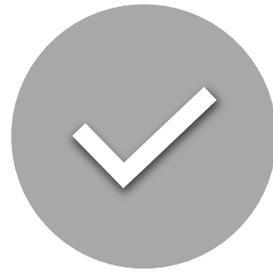
Notice of sexual harassment or allegations of sexual harassment to a recipient's:

- Title IX Coordinator; or
- Any official of the recipient who has authority to institute corrective measures on behalf of the recipient

Receiving Reports and Initiating the Response



1. REVIEW THE
REPORT



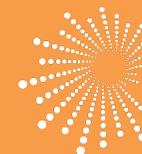
2. DETERMINE THE
APPROPRIATE INITIAL
RESPONSE



3. PROMPTLY
INITIATE THAT
RESPONSE



4. DOCUMENT/RECORD
THE RECEIPT OF THE
REPORT AND THE
RESPONSE THERETO



Initial Outreach

FIRST — SAFETY

Email

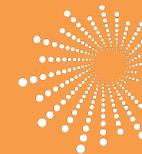
- Create forms

Phone

In person

- Use RA
- Campus safety

Follow up emails



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Emergency Removal of Student

- High threshold
- Not a determination of responsibility
- Whether or not grievance is underway
- Individualized
- Immediate threat (physical)
- Opportunity to challenge



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The Title IX Office receives the following anonymous report via your institution's online reporting form:

Riley Smith is in trouble. I live on their floor in River Hall and I constantly hear fighting and crying coming from their room at night. Every time I see Riley with their partner, they seem really submissive and nervous and I have noticed bruises on Riley the mornings after the biggest fights. The RA and Riley's partner are friend and so the RA doesn't do anything about it. It's getting so bad that some of the other people on the floor are talking about intervening, but we are afraid of Riley's partner too.

The Title IX Office is contacted by a professor who forwards the following email from a student to you:

I really don't want to bother you but I'm in a really hard situation.

I and my boyfriend had a row for these days. And he beated me yesterday and this morning that I attached some pictures before XXXX final starts this afternoon because I found out I couldn't hold pencil because of trembling and I couldn't even think in the first thirty minutes. These pictures shows my arms after he twisting them, which doesn't look violent but feel hurt. One hour before lab final started, I told him I'm going to call police after he beated me, then he dragged me from bed to the floor and threatened to kill me if I call police. It was horrible and hard to reminisce. I knew he tends to use violence before and I forgave him some times when he just pinched my chin and dragged my arm. But this time it is too bad. So he took my phone away and restrain me in my room, not letting me go because I told him I would tell my TA about this whole thing after the final. So he just let me go to final after I promised I won't tell school and police.

When I go to two finals today (XXXX and XXXX, especially the latter), I really couldn't think and even hold pen (and I grabbed my bag but almost nothing in it) for the first thirty minutes. Now everything is done, he promised not to show up in my life nor my room, which is good because I don't want to take penalty on anyone. But I couldn't predict what my final shows out. It won't match my work for the whole semester. I don't expect any makeup chance. I just want to let you know since I barely know any American women here, am I doing wrong? Is there anything I can do to fix anything from academics or life?

Sorry for bothering.

The Title IX Office receives the following email from a responsible employee:

My name is Professor Jones. One of my students shared that they were raped last weekend at a party by another student. They don't want the school starting an investigation, and so I am not going to share their name or the details with you. They are thinking about talking to the police but are not sure who to contact. Can you please provide me with information that I can share with the student?

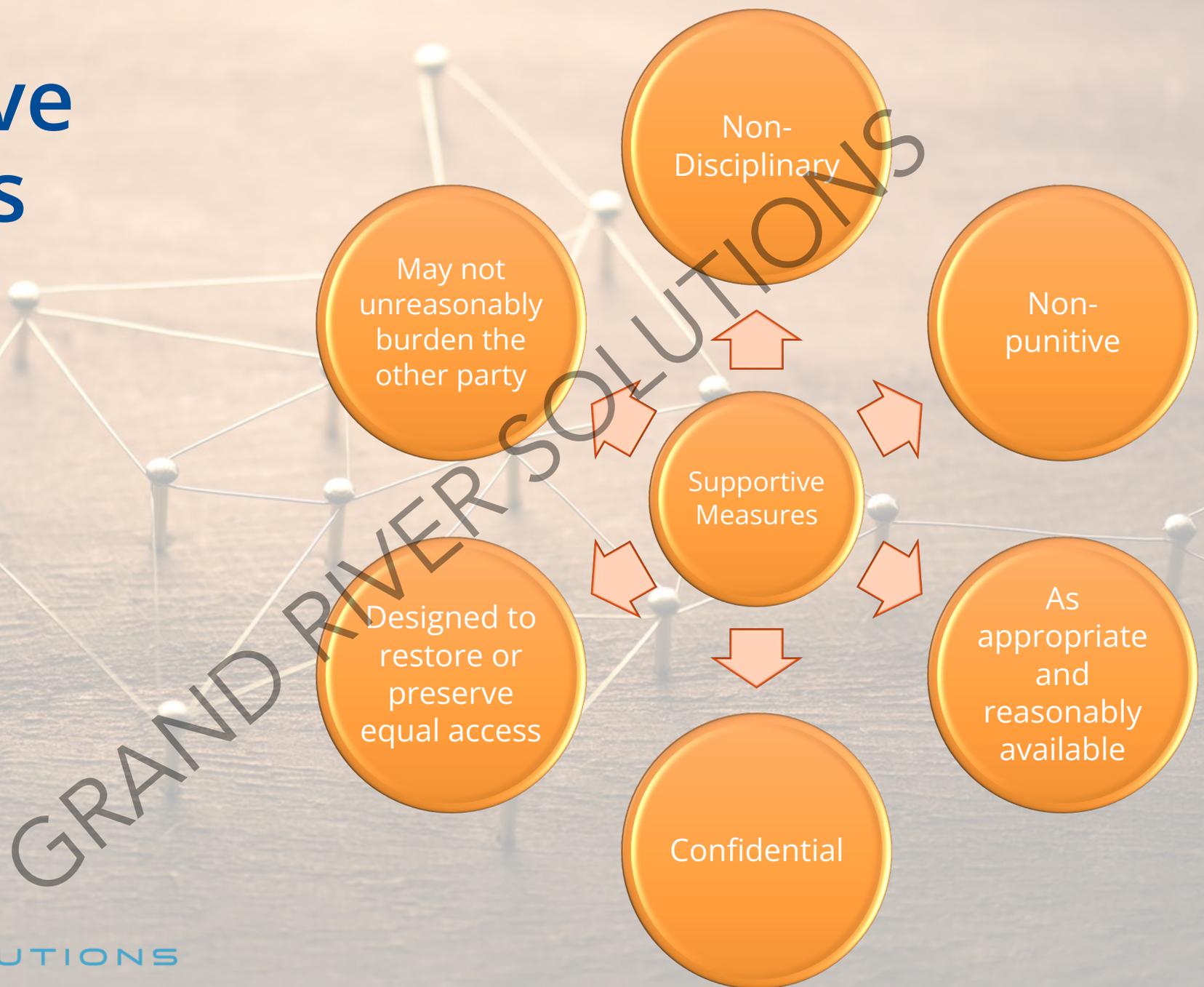
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Initial Meeting with the Complainant

- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available support
- Options for reporting
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps

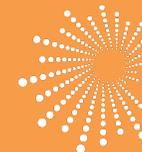


Supportive Measures

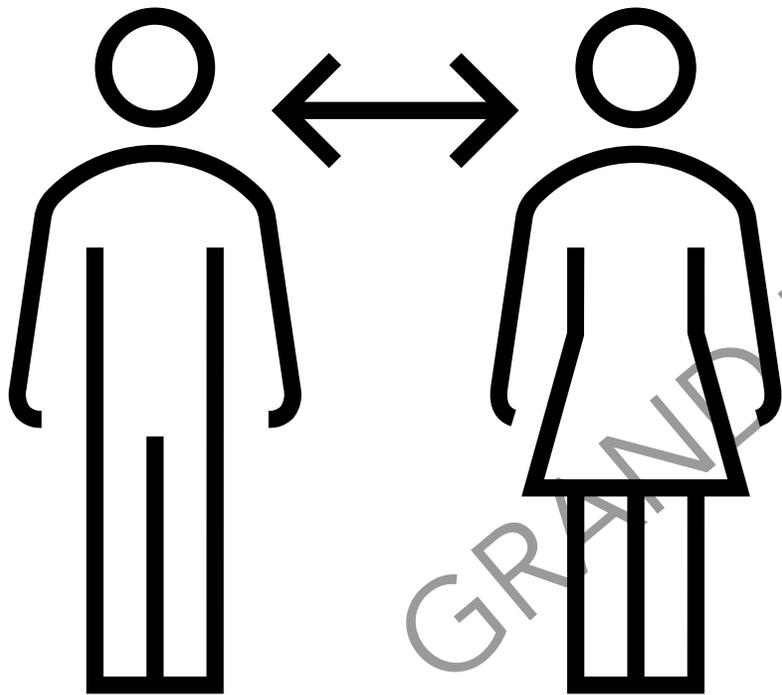


Examples of Supportive Measures

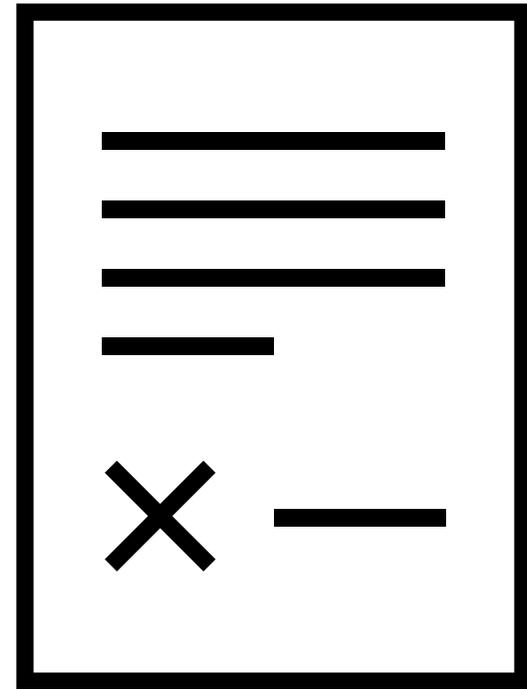
- Assistance obtaining access to counseling, advocacy, or medical services;
- Assistance obtaining access to academic support and requesting academic adjustments/accommodations;
- Changes in class schedules;
- Assistance requesting changes in work schedules, job assignments, or other work adjustments/accommodations;
- Changes in campus housing;
- Safety escorts;
- Leaves of absence;
- Mutual restrictions on contact between the Parties (“No-contact” orders).



“Mutual Restrictions On Contact Between the Parties”



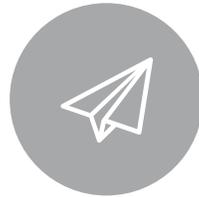
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Post Meeting Tasks



Document the meeting



Send a summary email with resources, options, next steps



Follow up



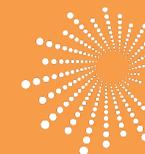
Make connections



Provide the supportive measures



Document supportive measures requested, provided, and not provided. Where not provided, indicate why.





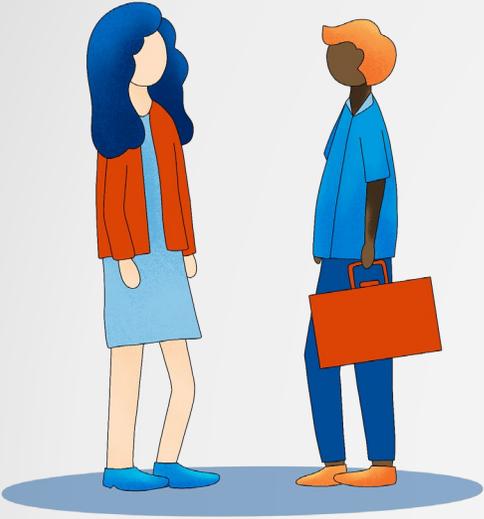
Report Resolution

Remedies Based, Informal, or Formal

04

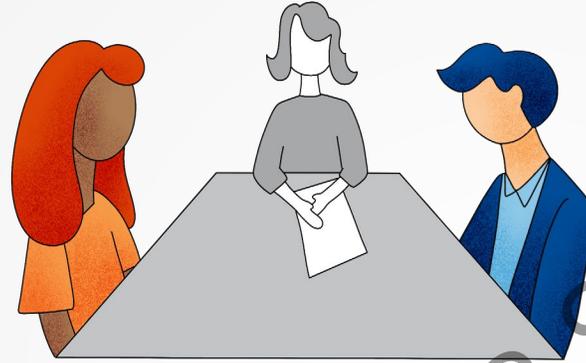
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How to Proceed?



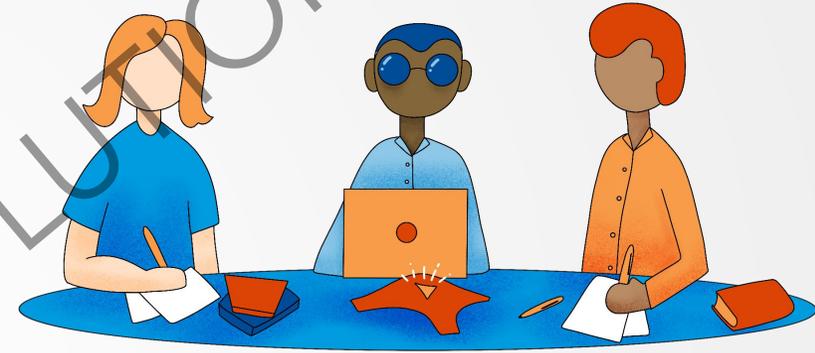
Remedies-based

No formal process



Alternative/Informal

Signed agreement;
Voluntary;
What records?



Formal/ Investigation/ Hearing

All requirements of 106.45

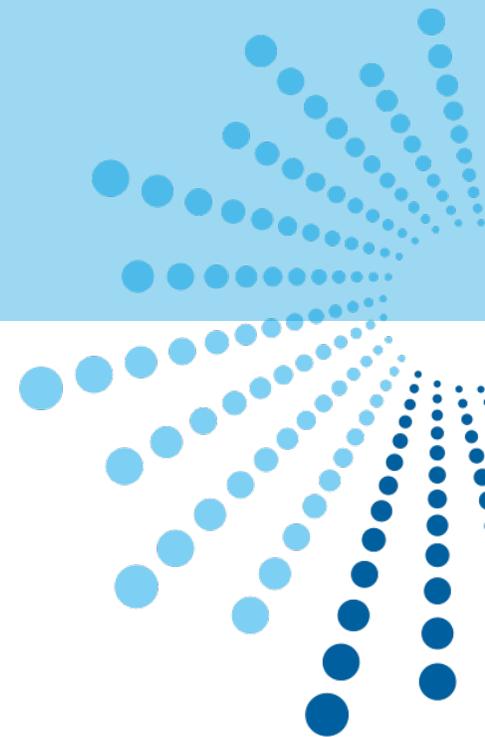




Remedies Based Resolution

04(a)

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Remedies Based Resolutions

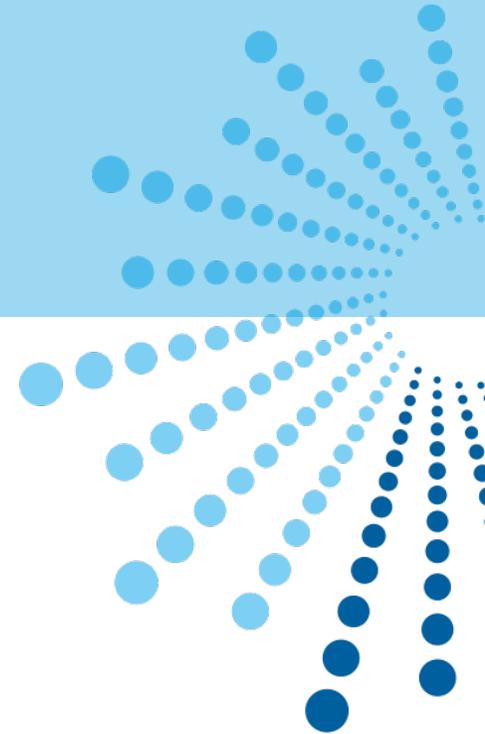
- Supportive Measures
- Educational Conversations
- Targeted Education



Formal Complaint & Notice Requirements

04(b)

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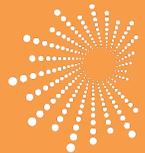


Formal Complaint Filed

By
Complainant

By the Title IX
Coordinator

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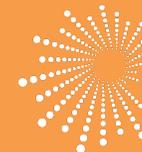
Factors to Consider When Determining Whether to File a Formal Complaint

Allegations
of Violence

Threats

Use of
weapons

Serial
predation



Formal Complaint

A Formal Complaint must include:

The Complainant's digital or physical signature, or an indication that the Complainant is the person filing the Formal Complaint;

An allegation of Prohibited Conduct as defined under this Policy. This may include:

- Where the incident(s) occurred; what incident(s) occurred; when the incident(s) occurred;

Identity of Respondent, if known;

A request for a resolution.

Formal Complaints may be made to the Title IX Coordinator by US Mail, email, or in person.

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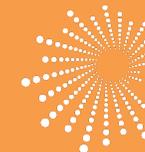
Dismissing Complaints

MANDATORY

- Not sexual harassment
- Did not occur in program or activity
- Not against person in the U.S.

DISCRETIONARY

- Complainant withdraws complaint
- Respondent no longer enrolled/employed
- School unable to collect sufficient info



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Can Proceed Under Other Policy



Notifying the Respondent



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FIRST—SAFETY

Written Notification Meetings and Sufficient Time to Prepare

Make sure support available

Don't send on a Friday

Don't send at 5pm

How will you notify

Consider impact of notification on Respondent

Notice of Allegation Requirements

- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment under § 106.30,
 - and the date and location of the alleged incident, if known.
- The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.
- The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process

Advisor of Choice

The advisor can be anyone, including an attorney;

Institutions cannot place restrictions on who can serve

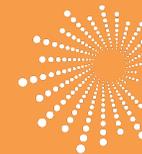
No training required

Institution must provide advisor for the purposes of cross examination

Initial Meeting with Respondent



- Prepare for the meeting
- Select appropriate space
- Build trust and rapport; empower
- Explain your role
- Discuss available supportive measures
- Supportive measures that provided to complainant that impact them
- Answer questions
- Evidence collection/preservation
- Conclude with a discussion of next steps



Post Meeting Tasks



Document the meeting



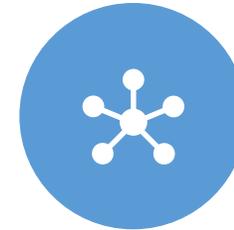
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Follow up

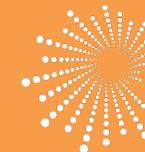


Provide the supportive measures



Make connections

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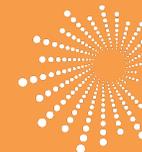
Formal Complaint Resolution

Informal Resolution

- Formal Complaint Required
- Parties must agree
- Can withdraw from process
- Alternate Resolution/Mediation
- No appeal

Formal Resolution

- Investigation and Adjudication process in compliance with Section 106.45

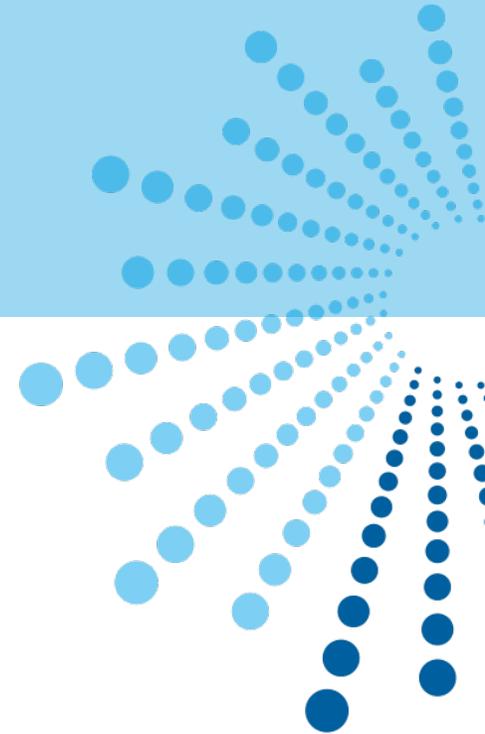




Informal Resolution

04(c)

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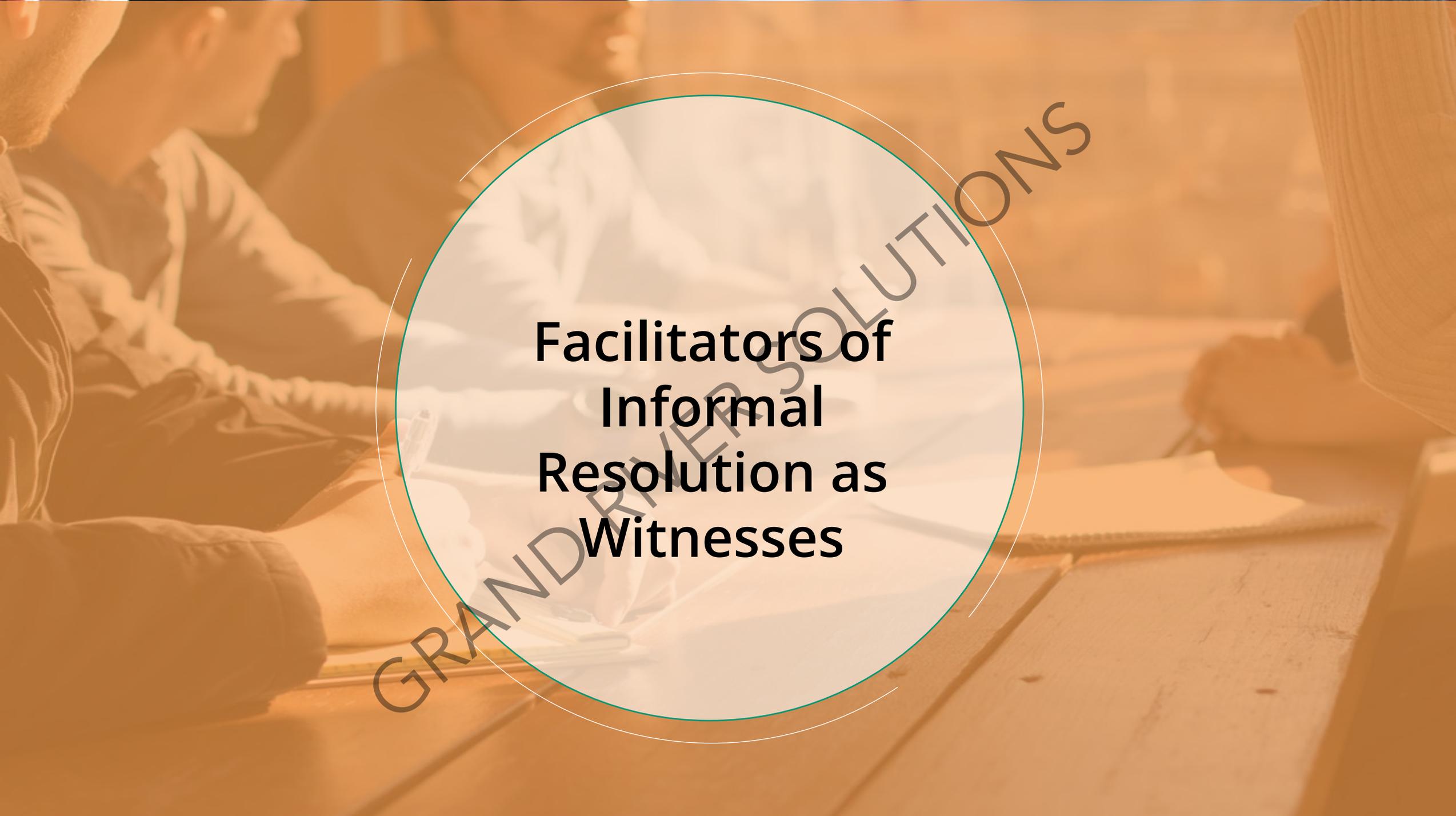


Informal Resolution Requirements

- Formal Complaint must be filed
- Participation in an informal resolution must be voluntary
- Must occur prior to resolution via a formal process
- Parties must be permitted to withdraw and seek formal resolution
- Voluntary, written consent to the informal resolution must be obtained
- Facilitators of informal resolution must be trained

Informal Resolution Notice Requirements

- the allegations,
- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process
- and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

The background of the slide shows a group of people in a meeting, with a large circular graphic overlay in the center. The text inside the circle is the main title of the slide. The overall color scheme is a warm, orange-brown hue.

Facilitators of Informal Resolution as Witnesses

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Informal Resolution is prohibited to resolve allegations that an employee sexually harassed a student.

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University of Tennessee System-Wide Training

Day Two

Andrea Stagg and Kateeka Harris

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Agenda

1

Regulatory Overview

2

Training, Education & Compliance Obligations

3

Receipt of Reports

4

Report Resolution

5

The Procedural Requirements of the Investigation

6

The Investigation Report

7

The Hearing

8

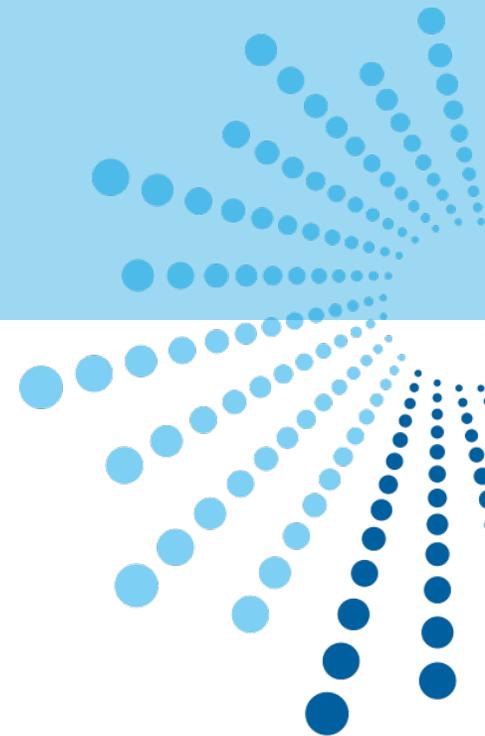
Evaluating Evidence



Formal Resolution

04(d)

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Procedural Requirements for Investigations

Notice to both parties

Equal opportunity to present evidence

An advisor of choice

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

Opportunity to review all evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing

Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling 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

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

When someone doesn't submit to cross

Written decision must be issued that includes finding and sanction



The Procedural Requirements of the Investigation

05

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Essential steps of an investigation



Notice of formal investigation



Initial Interviews



Evidence Collection



Report writing

The Process

Developing an Investigative Strategy



Investigation Timeline

Prior History

- Between the Parties?
- Of the Parties?

Incident

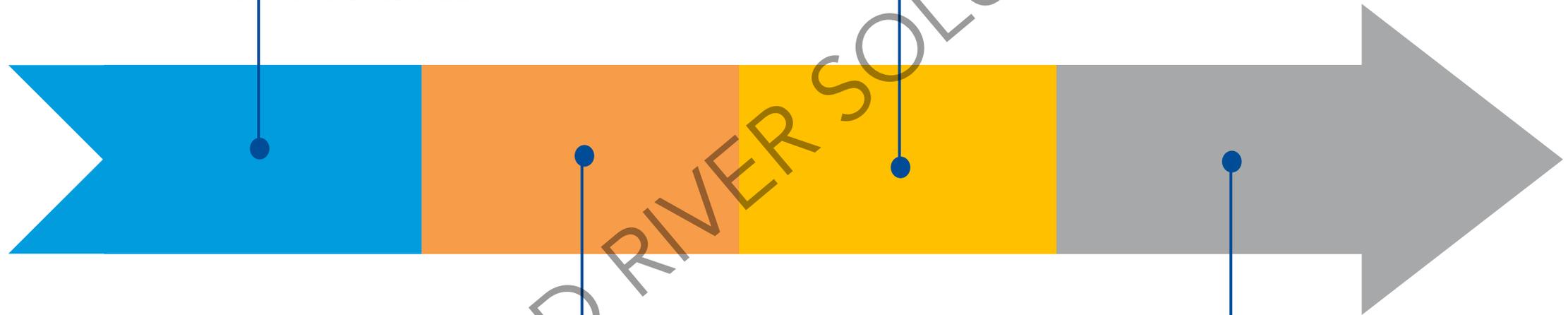
- Consent?
- Type of Contact?
- Injuries?

Pre-Incident

- Communications?
- Interactions?
- Conduct?

Post Incident

- Behaviors?
- Communications?



Interview Objectives



Connect

Build rapport
Build trust
Empower



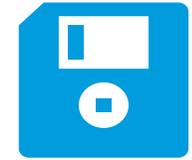
Listen

Allow interviewee to
share their experience



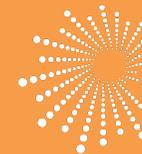
Clarify

Understand what you
have heard
Seek additional
information



Evidence Preservation

Text Messages
Photographs
Names and contact info
for witnesses



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

Areas of focus?

Other evidence?

Go back review what you have



Provide Written Notice of the Meeting

Advise the parties/witnesses that you will be collecting evidence

Set Expectations

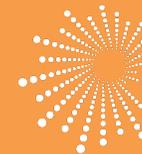
What they should expect of you

- 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

Investigative Interviews





—

“Directly
Related” and
“Relevant
Evidence”

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Directly Related Evidence

Regulations do not define “Directly Related” Evidence.

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

Term is broader than:

- “all relevant evidence” as otherwise used in Title IX regulations, and
- “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act

Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

“Relevant” Evidence

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.”

Logical connection between the evidence and facts at issue

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

Tends to make a fact more or less probable than it would be without that evidence



Evidence That is Not “Relevant”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior 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 behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use 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.”

Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition.

Who Decides?

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

- Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight.

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

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

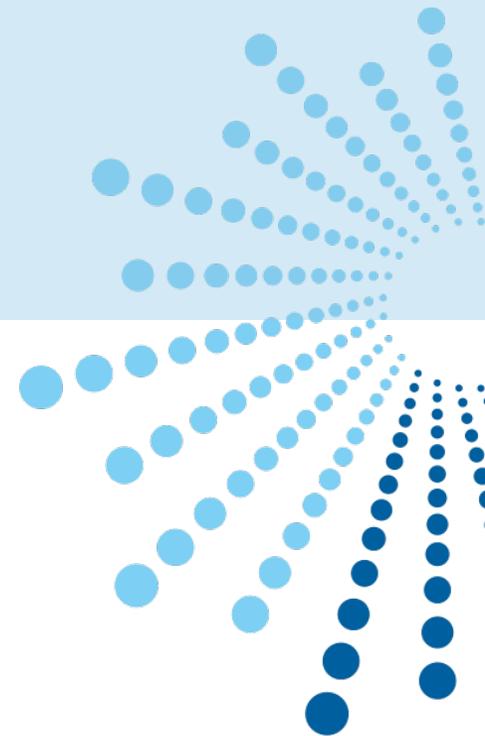




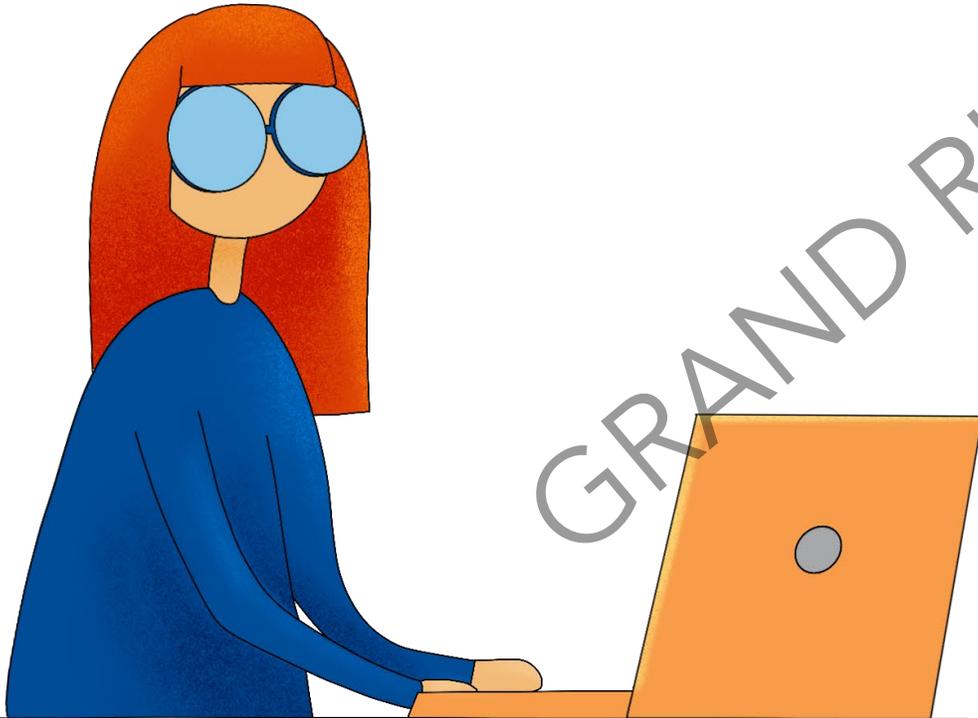
The Investigation Report

06

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



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Investigative Report: Form

- Develop or adopt a template and use it consistently
- Written Summary
- Appendices

Investigative Report Content: 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

Investigative Report Content: Jurisdiction

In this section state the institutions jurisdictional grounds:

- Cite the jurisdictional elements in the policy
- If there are several grounds for jurisdiction, state them.

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Investigative Report Content: Identification of the Investigators

Identify the
investigator(s)

Include a statement
that indicates that
they have been
properly trained.

Include information
about the training
the investigator
received.

Investigative Report Content: Objective of the Investigation and the Report

- This is a statement that sets forth the objective of the investigation, and
- The objective of the report



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Investigative Report Content: List the Witnesses

- List those who were interviewed
- List those who were not interviewed
- Simple list
- Detailed list



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Example of a Detailed List:

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

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Investigative Report Content: Evidence Collected

The final Title IX regulations require that all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint be shared with the parties and “made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.”

In this section, list the Evidence or Refer to Appendices.



Appendices



Compilation of the evidence.



organized intentionally and consistently



are attached to the report.



Includes the procedural timeline.

Examples of Appendices



Appendix A

Contains all of the party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant



Appendix B

Contains all of the documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant



Appendix C

Contains the remaining evidence deemed irrelevant by the investigator, but that is directly related to the allegations in the formal complaint



Appendix D

The procedural timeline

Investigative Report Content: Summary of the Evidence

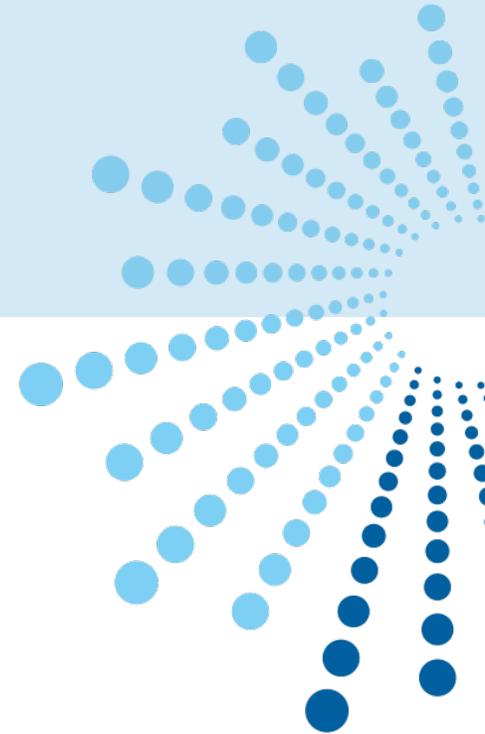
In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in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



Pre-Hearing Tasks

07(a)

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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



Review evidence and report



Review applicable policy and procedures



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



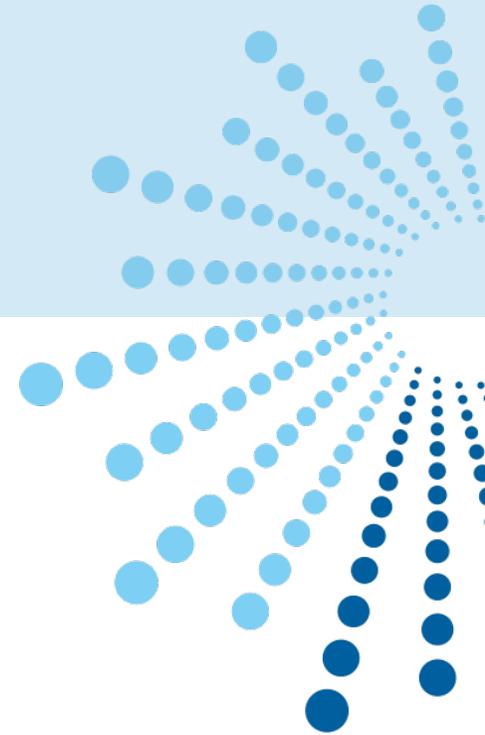
Prepare the script



The Hearing

07(b)

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Purpose of the Hearing

1

Review and
Assess
Evidence

2

Make Findings
of Fact

3

Determine
Responsibility/
Findings of
Responsibility

4

Determine
Sanction and
Remedy

The Essential Elements of All Hearings

Clear Procedures

Due/Fair Process

Fair, Equitable, and Neutral

Consistency

Trauma Informed

Well Trained Personnel

Logistics of the Hearing

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What do we
need to do
with all of
this?



Space



Technology



Clear & Comprehensive Procedures



Staff



Expertise and Confidence

Considerations for the Physical Space

- Room location and set-up
 - Entrances, exits, and proximity
- Privacy screens & partitions
- Technology
- Hallway control
- Space for extra visitors

Hearing Room Configuration

Investigator & Hearing
Coordinator

Hearing Officer

Witness

Respondent &
Advisor

Complainant &
Advisor

Remote Participation

- **In whole or in part?**
- **Communication considerations**
 - Chat function or emails
- **Private consultation between parties and advisors**
 - Use of breakout rooms
 - Communication considerations
- **Practice runs**
- **Connectivity Considerations**

Cross Examination Questions

How will this work?

- Submitted in advance?
- Submit one by one?
- Each one is vocalized, approved/denied, then asked?
- Submit cross-exam questions by email or chat during hearing?

Roles and Responsibilities

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Hearing Participants

Complainant	the person bringing the complaint
Respondent	the person against whom the complaint has been filed
Advisor	will conduct cross examination; role varies depending on school
Adjudicator(s) or Panelist(s)	role varies depending on when in the process the hearing occurs and responsibility of the officer
Investigator	summarizes the investigation, answers questions
Witnesses	present in the room only when answering questions
Hearing Coordinator/Officer	coordinates all aspects of the hearing, ensures a fair and equitable hearing process, acts as a resource for all participants
Decision-Maker	makes decision as to whether policy was violated
Administrative Staff	assists with the logistical coordination of the people, the space, technology, etc.

Order of the Proceedings

01

Introductions
and instructions
by the Chair;
Opening
Statements

02

Presentation by
Investigator

03

Presentation of
information and
questioning of
the parties and
witnesses

04

Closing
Statements

05

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.



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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.

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

Questioning of the Witnesses

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

Advisor cross-examination will occur next (suggested: Complainant's advisor followed by Respondent's advisor)

04

Follow up by the Hearing Panel

Cross Examination

Who does it?

- Must be conducted by the advisor
- If party does not appear or does not participate, advisor can appear and cross
- If party does not have an advisor, institution must provide one

Cross Examination

Permissible Questions

- Questions must be relevant
- Not relevant
 - Duplicative questions
 - Questions that attempt to elicit information about
 - Complainants prior sexual history
 - Privileged information
 - Mental health

Cross Examination

Role of the Decision Maker

- Rulings by Decision Maker required
 - Explanation only required where question not permitted

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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.

Common Challenges

- Non-appearance by a party or witness
- Non-appearance by an advisor
- Party or witness appears but declines to answer some (or all) questions
- Disruptions
- Maintaining Decorum

Tips for Increasing Efficiency

01

Be prepared

02

Have an
experienced chair

03

Have back up plans
for technology
issues

04

Require pre-
hearing written
submissions

- of opening statements
- of questions in advance

Other Decisions

- Will you include Opening, Closing, or Impact Statements?
NOT required, but you need to decide.
- How will questioning take place? Direct cross examination, indirect?
- How will questions be submitted?
- Will there be any restrictions on questions that can be asked, such as due to relevancy, already asked and answered, unduly harassing?
- If done remotely, how will the technology be set up?
- If in person, room set-up and who is in the room?

Deliberations

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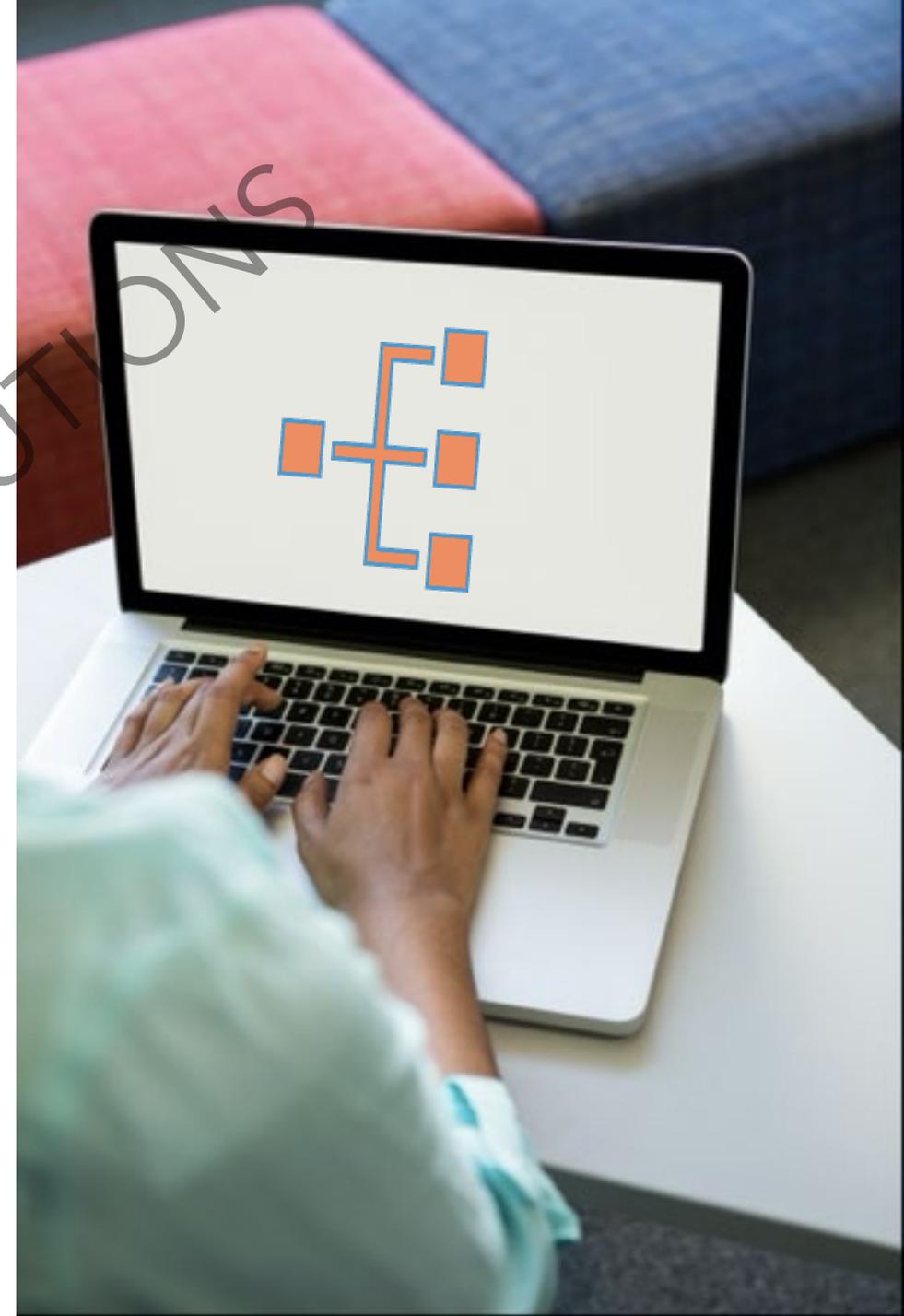
Findings of Fact

- **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

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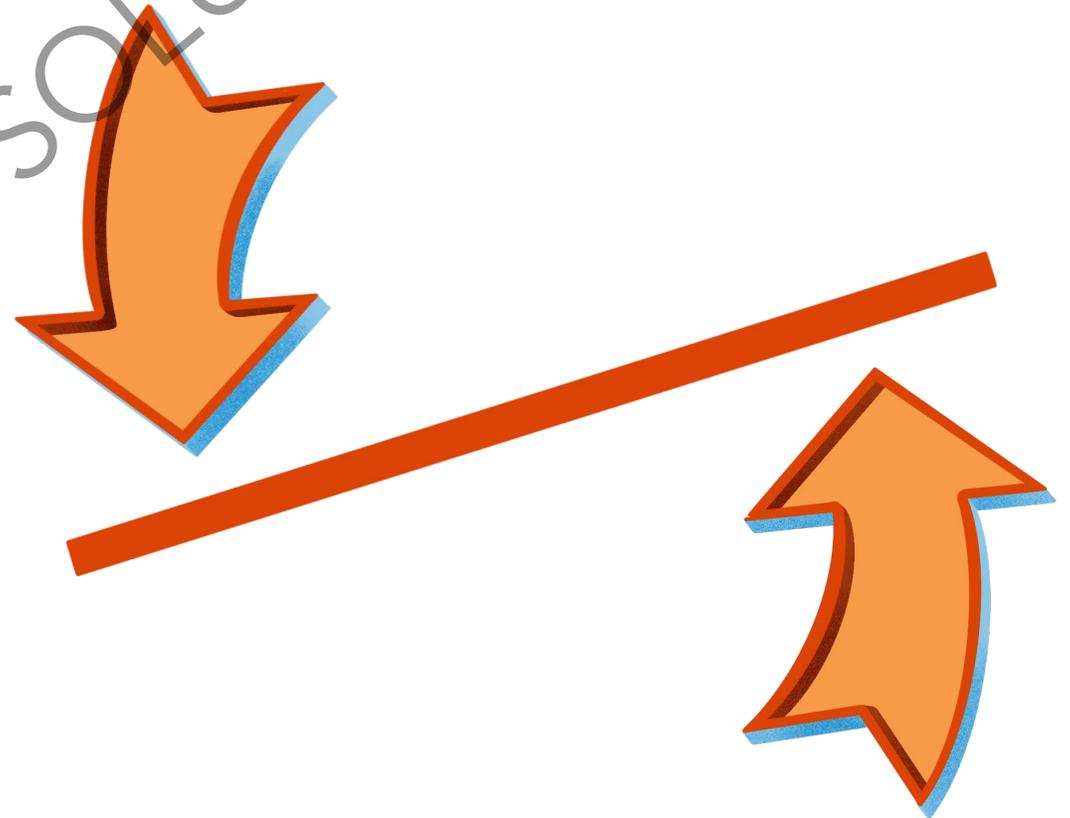
Did You Also Analyze...?

(if required by policy)

- On campus?
- Program or Activity?
- In a building owned/controlled by a recognized student organization?
- Substantial control over respondent and context?
- Complainant was attempting to access program/activity?

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.



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

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.”

”

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

Non-Testimonial Evidence

Text Messages

Social Media posts

Social Media Communications

Emails

Surveillance

Videos

Photographs

Police Body Camera Footage

Swipe Records

Medical Records

Phone Records

Audio Recordings

Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?

Is the item what it purports to be?

Is it credible/reliable?

Is the evidence worthy of belief?

What weight, if any, should it be given?

Weight is determined by the finder of fact!

Credibility Versus Reliability

Reliable evidence:

- 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.

Being Convinced

It Is True, or Biased Conclusion?

A credible witness may give unreliable testimony.

I Just KNOW They Are Not Telling the Truth

- Bias
- Can you really spot a liar?
- Understanding clues that are cultural different from your own

HOW TO
SPOT A
LIAR

Preponderance of the Evidence

- More likely than not
- Does not mean 100% true or accurate
- A finding = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

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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



Appeals: Mandatory Grounds

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- (C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals: Mandatory Grounds

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

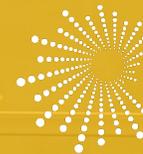
(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

“

Final Rule § 106.45(b)(8)

[I]nstitutions 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.

”





Appealing
sanctions?

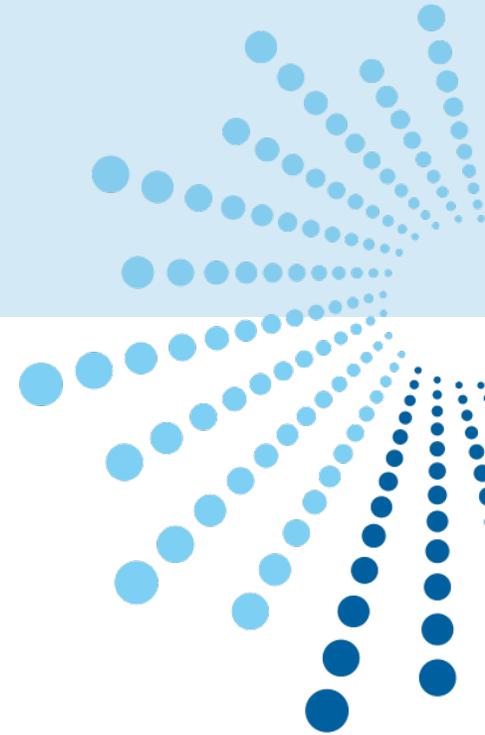
Other grounds for
appeal? Your
discretion

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Practice Time

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Pre-Hearing

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Rapid Fire #1

The investigation is complete:

- 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

Accommodations

Call for written submissions

Conflict checks

Other considerations?

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You and your team did a great job scheduling the hearing and arranging all the logistics!

||| Rapid Fire #2

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.

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?

Break Out!

#1

Say hi!

Pick a scribe

Discuss

- All groups: Areas or topics that you would like to explore further in the hearing
- Group 1: Questions for Complainant
- Group 2: Questions for Respondent
- Group 3: Questions for Witnesses Bob, Stevie, and Dylan
- Group 4: Questions for Witnesses Nick, Kayla and Caitlyn

Report Out

Group 1: Questions for Complainant
Group 2: Questions for Respondent
Group 3: Questions for Witnesses Bob, Stevie,
and Dylan
Group 4: Questions for Witnesses Nick, Kayla and
Caitlyn

Logical connection between the evidence and facts at issue

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

Tends to make a fact more or less probable than it would be without that evidence



The Hearing

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Break Out!

#2

Say hi!

Pick a scribe

Discuss the list of proposed questions for:

- Group 1: Questions for Complainant
- Group 2: Questions for Respondent
- Group 3: Questions for Witnesses Bob, Stevie, and Dylan
- Group 4: Questions for Witnesses Nick, Kayla and Caitlyn



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Report Out



These questions are submitted by Complainant for Respondent

1. How many drinks did you have at Kayla's before going to TKE?
2. How big were those drinks?
3. Who mixed those drinks?
4. Were you drunk when you got to TKE?
5. How often do you go to parties?
6. How often do you get drunk at parties?
7. Why didn't you stay with your friends when you got to TKE?
8. When you got to TKE, did you intend to have sex with Angel that night?
9. What else do you remember from that night?
10. Did you play darts?
11. Isn't it true that you were easily able to throw darts and hit the bullseye that night?
12. When Angel was "hugging" you, as you called it, he was actually just holding on to you for support because he could not stand up, isn't that right?
13. How many times did he fall on to you when the two of you were on the couch?
14. Who got up first from the couch?
15. Isn't it true that you got up first and pulled Angel to his feet?
16. You told the investigator the two of you were drunk sloppy kissing? It seems you are admitting that Angel was drunk, isn't that correct?
17. Given all that you recall, it seems that you have a really good recollection of that night, no impaired memory, were easily able to play darts, and never fell down, so for you to act as if you were too drunk to give him a blow job and that you're the real victim here is nothing less than highly offensive, isn't that right?
18. If someone were sexually assaulted and the other person said it was the victim's fault, that is victim blaming, isn't it?
19. Are you alleging you were sexually assaulted?
20. Why would you make that up?
21. If you are saying that you were sexually assaulted, why didn't you file a complaint? Is that because you know you'll lose and be expelled for a false complaint and retaliation if you do that?
22. Are you making an allegation in order to retaliate against complainant?
23. Did you ever drink from Angel's water bottle?
24. Did you ever smell alcohol on Angel's breath while at the TKE party?
25. Have you seen the video of you giving Angel a blow job?
26. Did you initiate sex with Angel in order to get back at your boyfriend?
27. He wasn't restraining you, why didn't you just pull away?
28. Do you often give blowjobs to boys at parties?

Questions submitted by Respondent for Complainant

1. You said you do not remember anyone drinking from your water bottle. How can you remember that?
 2. Did you file a report with the police?
 3. Why not?
 4. Did you get a medical exam?
 5. Why not?
 6. Is it true that you are hoping to go to medical school?
 7. Isn't it true that you are really worried about your grades this semester?
 8. Isn't it true you were struggling with inorganic chemistry class?
 9. And isn't it true that you wanted to drop the class, but you would have had a "W" on your transcript?
 10. Did you end up withdrawing from that class?
 11. And isn't it true that there is no notation on the transcript because you were given the gift of being pulled from the class without any transcript notation?
 12. And is that why you filed this claim, so you could get out of taking the class without anything showing up on your transcript?
 13. You said to the investigator that you "could not believe anyone would film" the sex act that occurred at the TKE party, isn't that correct?
 14. Have you ever watched any porn videos?
 15. Didn't you take a video last year of some of your friends, including Bob and Dylan, playing a game that involved simulating sex acts?
 16. During your interview with the investigator, isn't it true that you had to be reminded by your own advisor that your "story" is that you were too drunk to remember anything, right?
 17. How many times did you and your advisor rehearse your interview?
 18. You said you had no information or memories about what happened at the party, but also claim to remember how her hands were moving, when the two of you were sitting on the couch in the basement. Which one of those statements is the lie?
-

Questions for Bob

By Complainant

1. When you were describing the vodka you poured into your water bottle, what exactly do you consider to be 2 or 3 shots?
2. Did you use shot glasses, red solo cups, or did you eyeball it?
3. What do you remember about Barb's Tinder profile?
4. Did it suggest what type of relationship she was looking for?
5. Did you match?
6. Why were you looking at Tinder?
7. How often do you troll on Tinder?
8. You said Barb took a huge gulp out of your water bottle toward the end of the evening. What did you mean by "huge gulp?"
9. How much of the vodka/orange juice in your bottle did you drink that night?
10. How much was left in the morning?

By Respondent

1. Doesn't your frat have a reputation on campus of getting girls drunk at parties?
 2. Isn't true when you say you take care of people at parties, that you actually just get them more drunk so they will have sex with one of your friends or brothers? That is what you were doing to the respondent, correct?
 3. Didn't you have to retake Measuring Science 101 where they teach you how to measure liquids?
 4. How many times did you watch that video before deleting it?
 5. Do you still have the video?
 6. Will you get in trouble with your fraternity for bringing in illicit alcohol to the party?
 7. Isn't it a violation of fraternity rules for you to drink, particularly when you were supposed to stay sober and prevent people from getting too drunk or harming themselves or others?
 8. Do you feel bad that, by drinking so much, you were unable to do your job well that night?
 9. Do you feel bad that, by drinking so much, you basically allowed the sex assault in the basement to occur, because you weren't keeping a watchful eye?
-

Questions for Dylan

By Complainant

1. You told the investigator you saw Angel spill beer on Barb, isn't that correct?
2. And didn't you tell the investigator that you also saw Angel stumbling and falling?
3. So basically, he was acting like he was so drunk that he could barely function, right?

By Respondent

1. You made a water bottle of vodka and orange juice correct?
 2. How much did you drink?
 3. Do you remember how much of it you had left at the end of the night?
 4. How strong was your orange juice and vodka?
 5. You bought beer. How old are you?
 6. Why do you have a fake ID?
 7. You said you saw Angel at the party, and that he was so drunk he could barely stand up; did you take any action to protect your drunk friend from drinking more?
 8. Is that because your friend was not really that drunk, or because you don't really care about someone being so drunk they can barely stand?
 9. Your friend passed out at the end of the night; which emergency number did you call for help?
 10. You said you put a trash can by him when you saw him passed out, but you didn't roll him on to his side? Is that because he was sleeping, and not really because he was drunk?
 11. Have you ever tried to hit on Barb?
 12. Didn't she reject your advances?
 13. Is that why you're exaggerating your supposed observations that Angel was so drunk?
 14. Respondent does better than you in all your classes, correct?
 15. And you said you once caught her cheating off of you, but isn't it actually true that you were the one referred to student conduct for a plagiarism charge?
 16. If you have a fake ID, what else is fake? Your testimony, for example?
-

Questions for Stevie

By Complainant

1. How much did you have to drink?
2. How drunk did you feel that night?
3. Do you think you were close to blacking out?
4. Given how drunk you were, isn't it likely that you don't really have a good memory of that night?
5. You said Angel stumbles even when he is not drinking, yet you know he is an athlete, so how is it that an athlete stumbles and is as uncoordinated even when sober, as you described to the investigator?
6. Do you have a crush on Barb?
7. How long have you wanted to have sex with her?
8. Are you minimizing how very drunk Angel was in order for her to like you more?

By Respondent

1. Did you see Barb and Angel playing darts?
 2. Was Angel able to play darts?
 3. Was he hanging on to Barb for dear life or standing up and throwing darts?
-

Questions for Nick

By Complainant

1. Isn't true you have no real friends?
2. You don't get good grades, correct?
3. That is because you are always smoking weed, correct?
4. How much weed did you smoke that night?
5. Does smoking weed impact your ability to remember things?
6. Isn't it true that the reason you started smoking weed was because you got a card for medical marijuana, for your anxiety and ADHD?
7. Did you imagine the conversation about Angel wanting to hook up with a girl?
8. Does your anxiety or ADHD make you imagine things that did not happen?
9. Why did you presume Angel was "cheating" when he was actually the victim of a sexual assault?
10. Did you watch the video?
11. Isn't it obvious to you that Angel is swaying and can barely stand up while she gives him a blow job?
12. Do you still have the video of that night on your phone?
13. If I were to call the police on you and tell them that that you have evidence of a crime on your phone, aren't you scared they will find it?

By Respondent

1. So, the complainant seemed desperate to hook-up with a girl that night?
 2. Are you certain you remember that conversation?
 3. What else do you recall from that night?
 4. Can you remember what you ate for breakfast that day?
 5. And isn't it true that you are a really honest person who would never lie?
-

Questions for Kayla

By Complainant

1. Did you notice the complainant stumbling or falling over, once he was in the basement?
2. Did you feel drunk that night?
3. Was the amount you had to drink that night a lot for you?
4. Given how much you had to drink, do you think you can even trust your memories from that night?
5. Barb is a good friend of yours, isn't she?
6. You would say anything to support her, wouldn't you?
7. Did you tell the investigator that Barb was mad at herself?
8. Is it possible she was mad at herself for violating Angel?
9. You said Barb and Angel were "drunk sloppy kissing." Did you get that phrase from Barb, or did she get it from you?
10. Did she tell you what to say here today?
11. Do you know that, if you are caught lying for her, you will be disciplined and might be suspended or expelled?

By Respondent

1. Would you categorize Angel as the initiator of all the contact between him and Barb?
 2. So you would call him the aggressor, is that right?
 3. How many times did you see Angel fill Barb's beer that night?
 4. And you saw him keep topping it off, is that right?
 5. Did that feel predatory to you?
 6. Have you seen Angel or any of his friends like Bob, Dylan, Stevie, or Nick try to get a girl really drunk at a party, on any other occasion?
-

Questions for Caitlyn

By Complainant

1. You would consider complainant a good guy, right?
2. Barb wanted to "have a good time" right?
3. Did she tell you she planned to have sex with Angel that night?
4. You saw her intentionally move down to give a blow job?
5. How often has she done this at other parties? Is giving blow jobs something she casually does at parties?
6. And she is a good friend, right?
7. So this is particularly painful for you, your telling the truth about her sexually assaulting him, right?
8. And would you agree that it does not matter if the victim is a man or a woman, but rape is rape, right?
9. You said Barb had her arm around Angel's waist when people were in the basement that night. Is that so that she could control him?

By Respondent

1. You told the investigator you had 4-5 beers and 2-3 swigs of from Bob's vodka, correct?
 2. Is that a lot for you?
 3. Were you feeling drunk that night?
 4. How drunk?
 5. Was the drink in Bob's water bottle strong?
 6. Given how drunk you were, why should we trust your recollections of that night?
 7. You said you were cheering on the sex act in the video; were you surprised to see yourself doing that?
 8. Do you remember cheering?
-

Questions?

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info@grandriversolutions.com

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