



STETSON LAW



# INVESTIGATIVE REPORT WRITING POST-CONFERENCE WORKSHOP

Chantelle Cleary Botticelli & Blaze Bowers  
46<sup>th</sup> Annual National Conference on Law &  
Higher Education

March 2025

GRAND RIVER | SOLUTIONS

# MEET YOUR FACILITATORS



**Chantelle Cleary Botticelli**

## Senior Director of Business Development

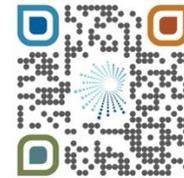
Chantelle is a nationally-recognized subject matter expert in TIX and related fields with over 15 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively throughout the country on Title IX, the Violence Against Women Act, harassment, and the implementation of best and emerging strategies in the industry.



**Blaze Bowers**

## Regional Director for Client Relations & Engagement

Blaze facilitates relationships with prospective and current clients in the Midwest & Southeast. He engages with Grand River Solutions leadership and team members in strategic planning and business development, while collaborating to identify emerging needs and future solutions in the various client sectors.



# 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

# WORKSHOP LEARNING OUTCOMES

## Relevant Information

Identify relevant information for inclusion in an investigative report.

## Irrelevant Information

Identify and exclude irrelevant information from your reports.

## Accessibility

Write a report is accessible to all, and that can stand on its own without access to other documents.

## Language

Use simple, neutral, unbiased, and accurate language in your reports.

## Compliance

Ensure that the report accurately states policy language and is compliant with institutional policy and procedures.

## Templatizing

Understand the importance of using a template that will contribute to the consistency of the reports generated.

# AGENDA

- 1 | Regulatory Requirements
- 2 | Structure of the Investigative Report and Record  
Writing the Report: Developing the Content
- 3 | Developing an Investigative File and Report
- 4 | Considerations for Non-Title IX Investigations

# THE LEGAL REQUIREMENTS

01

# LOTS OF LAWS FOR LOTS OF INVESTIGATIONS

- Best practice for investigations and reporting writing are consistent irrespective of controlling and regulation.



# BACK TO 2020 TITLE IX REGULATIONS: A FORMAL PROCESS OVERVIEW

- Title IX-covered Incident Reported
- Outreach to reporting individual
- Outreach to complainant, if different than reporting individual
- Initial Intake & Assessment
- Formal Complaint
- Notice of Allegations/Investigation
- Investigation
- Hearing
- Appeal



# NON-TITLE IX INVESTIGATIONS & REPORTS

Fewer Legal,  
Procedural  
Requirements...

More Flexibility in  
Your Approach

What does your  
policy say? When is  
the last time it was  
reviewed?

Consider promising  
& trauma-informed  
practices, always.

Is there a  
guide/"industry"  
standard in the  
applicable  
practice area?

- Consider the uniqueness of any type of Investigation?
- What are your goals?
- What laws apply (federal and state)?
- Take time to review your Title VI, EEO, ADA/504, Title VII, and other policies.
- The practices described today can be helpful, but be careful to differentiate as needed!

**Consider also unique practices for managing academic integrity, community standards, hazing, and other student-centric investigations!**

# INVESTIGATION REPORT FOUNDATIONS



02

# ESSENTIAL STEPS OF AN INVESTIGATION

Formal Complaint  
and Notice of  
Allegations\*

Investigative  
Interviews

Evidence  
Collection

Evidence  
Review\*

Additional Evidence  
Collection/Follow-Up  
Interviews\*

The Investigative  
Report and Final  
Investigative  
Record\*

\*Required for TIX matters, best practice for non-Title IX

# THE PRODUCTS OF EACH STEP OF THE INVESTIGATION

- **Notice of Allegations:** A document that frames the scope of the investigation
- **Initial Interviews:** Transcripts, summaries of interviews, interview notes
- **Evidence collection:** Text messages, social media posts, medical/police records
- **Evidence review:** Complainant's written response, Respondent's written response
- **Additional Evidence Collection/Follow-Up Interviews:** More documentary evidence, additional interview transcripts/summaries
- **The Investigative Report and Final Investigative File**

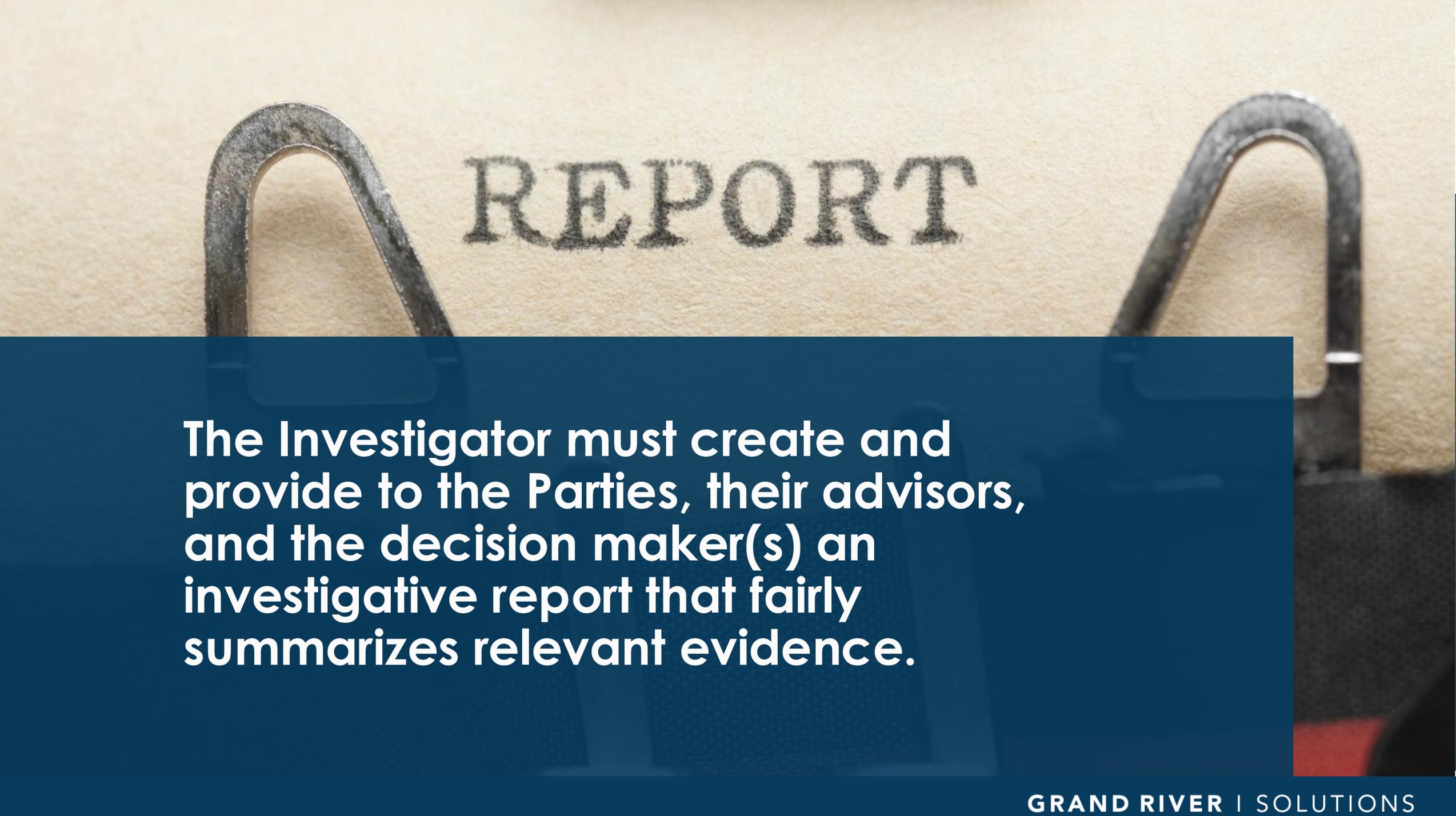
# REPORT AND EVIDENCE FILE

## Summary of the Evidence



## Compilation of the Evidence





# REPORT

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

# THE INVESTIGATIVE FILE

The Parties, their Advisors, and the Decision Maker(s) must be provided with a final compilation of all of the evidence gathered that is directly related to the allegations in the formal complaint.

This includes evidence that Investigator deems relevant and evidence that the Investigator does not deem relevant.



# TITLE IX ONLY: 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

## Relevant Evidence

### “Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

## Irrelevant Evidence

Prior sexual history of complainant, with **two exceptions**:

- Legally recognized and un-waived privilege.
- Including records related to medical, psychiatric, psychological treatment.

# 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 PURPOSE OF THE REPORT

To ensure that the recipient gives the parties meaningful opportunity to understand what evidence the investigator has collected and believes is relevant

To allow the parties opportunity to advance their own interests for consideration by the decision-maker.

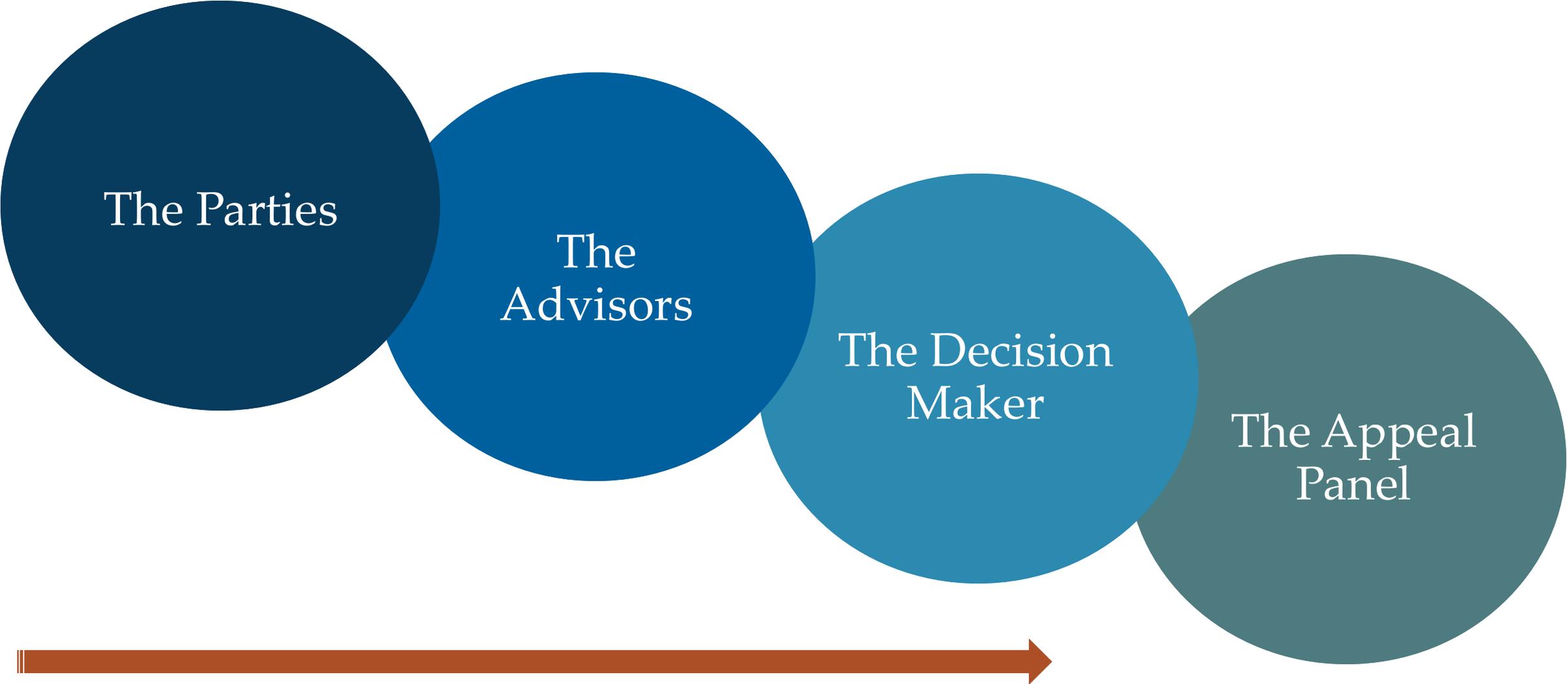
To give the parties (and advisors who are providing assistance and advice to the parties) adequate time to review, assess, and respond to the investigative report in order to fairly prepare for the live hearing or submit arguments to a decision-maker where a hearing is not required or otherwise provided.

To allow the decision maker to adequately prepare for the live hearing, where one is conducted.

To reduce the likelihood of bias in the final outcome by providing the parties and the decision maker(s) an opportunity to identify and explore potential bias by the investigator

*See 85 Fed. Reg. 30309 (May 19, 2020).*

# INTENDED RECIPIENTS



# OTHER RECIPIENTS?

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



# WHY IS IT IMPORTANT TO WRITE A SOLID REPORT?

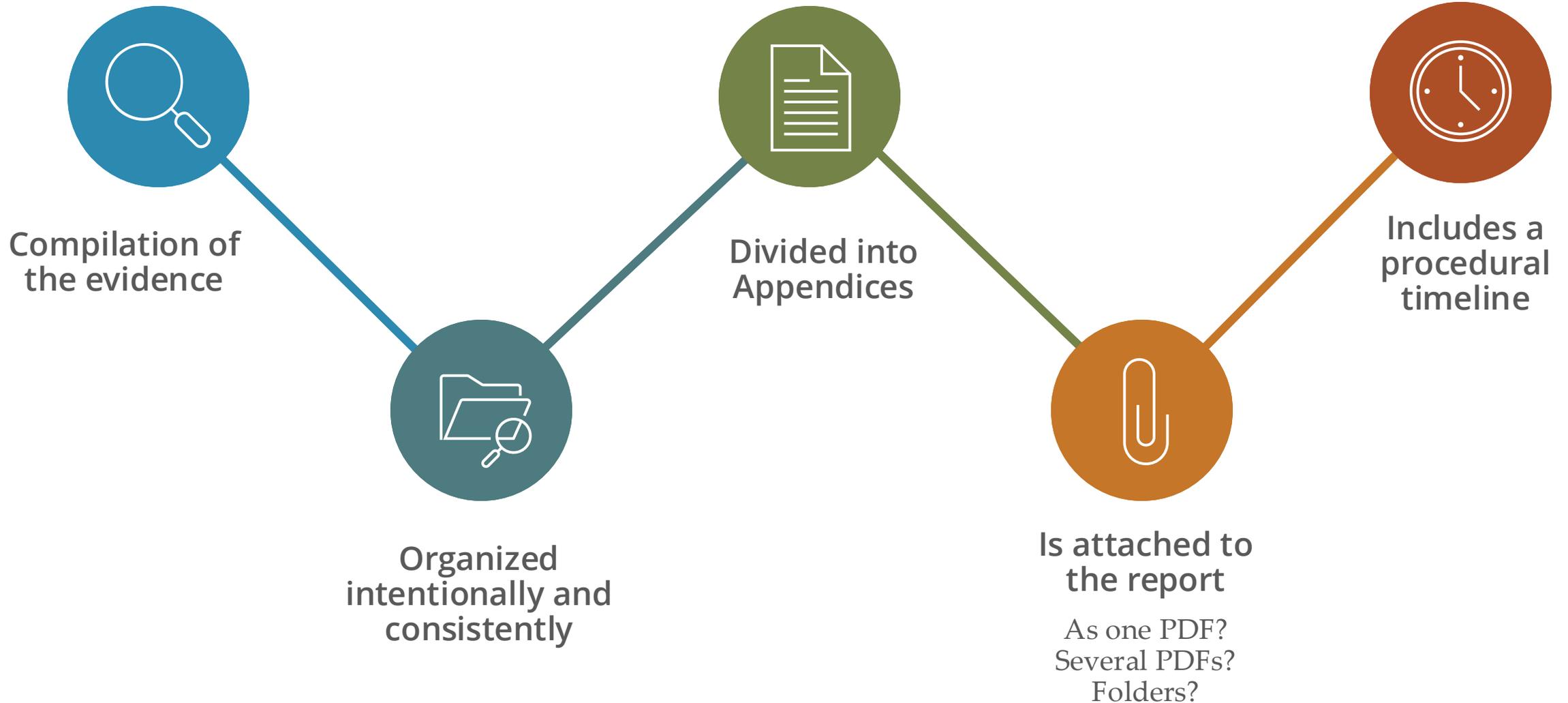
## All the reasons given by ED, and...

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

# STRUCTURE OF THE INVESTIGATIVE FILE AND REPORT

03

# THE EVIDENCE FILE



# EXAMPLE OF APPENDICES

## Appendix A

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

## Appendix B

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

## Appendix C

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

## Appendix D

The procedural timeline

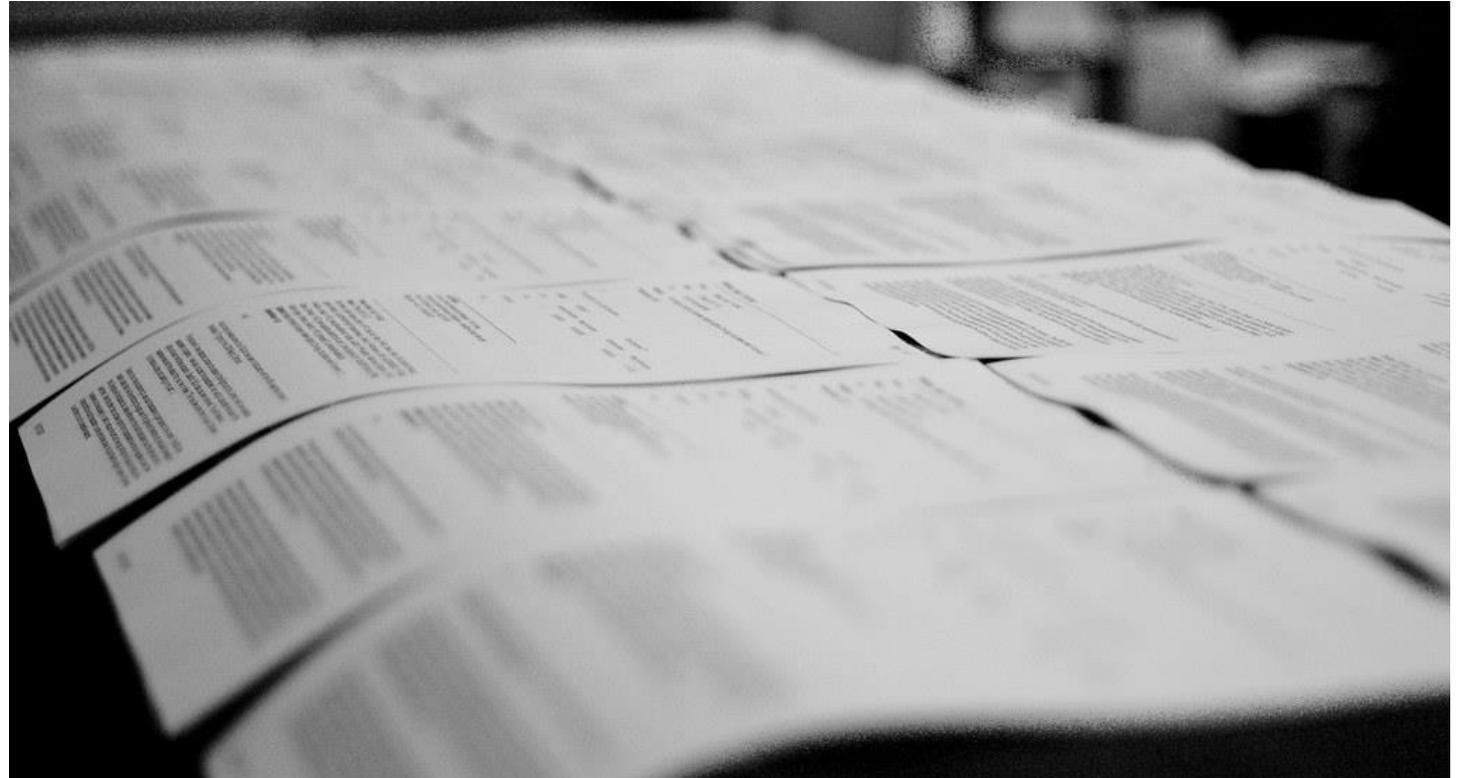


# LABEL THE APPENDICES OR SECTIONS

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

# FORMAT AND STRUCTURE OF THE RECORD

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





# REDACTIONS

# ESSENTIAL ELEMENTS OF THE REPORT

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

# STRUCTURE OF THE REPORT

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





# QUESTIONS ABOUT THE REPORT TEMPLATE?

# WRITING THE REPORT: DEVELOPING THE CONTENT



04

# GET THE EASY STUFF OUT OF THE WAY

Overview of the Investigation

Statement of Jurisdiction

Objective of the Investigation and the Investigation Report

Identity of Investigators

Prohibited Conduct Alleged

Witnesses

Evidence Collected

Summary of Evidence

Conclusion



# WRITING THE SUMMARY OF RELEVANT EVIDENCE

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

What are we being asked to decide?

What does the formal complaint allege?

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

# FONDLING DEFINITION

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.

1. Did Respondent touch the Complainant's private body parts?
2. For the purposes of sexual gratification?
3. Without Complainant's consent?

# Analysis Grid: List the Elements

Did R touch the private body parts of C?	For the purpose of sexual gratification?	Without C's consent (due to lack of capacity)?

# IDENTIFY THE RELEVANT FACTS FOR INCLUSION IN THE REPORT.



Information that is relevant to the elements of the prohibited conduct alleged.



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



Information that is relevant to an assessment of the evidence:

- Credibility
- Reliability
- Authenticity



Helpful contextual information

- History between the parties
- Post-incident behavior

A **well-organized** evidence file will assist with this step



# ANALYSIS GRID:

List All the Material Facts Relevant to Each Question

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• Witness 1's Account</li><li>• Text messages between Complainant and Respondent</li><li>• SnapChat DM between Respondent and Witness 2</li></ul>	<ul style="list-style-type: none"><li>• Respondent's Account</li><li>• SnapChat DM between Respondent and Witness 2</li></ul>	<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• Witness 1's Account</li><li>• Witness 3's Account</li><li>• Photograph of Complainant</li><li>• Video of Complainant</li><li>• Text messages between Complainant and Witness 4</li><li>• Witness 4's Account</li></ul>

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

- Irrelevant Information, including:
  - Prior sexual history of Complainant
  - Information protected by a legally recognized and un-waived privilege
- The Investigator's Opinions
- Speculation and conjecture
- Character evidence
- Party and witness opinions that are unsupported by fact



# THE REPORT SHOULD STAND ON ITS OWN



- S** Simple and Easy to Comprehend
- T** Transparent/Clear
- A** Accurate
- N** Neutral/Unbiased
- D** Draws Attention to Significant Evidence and Issues

Choose an  
organizational outline  
for the summary of facts



# SINGLE INCIDENT ALLEGATIONS: PERSON CENTERED APPROACH



## 1. Complainant's Account

- a. The parties' prior relationship
- b. The events immediately prior to the alleged prohibited conduct
- c. The incident of alleged prohibited conduct
- d. The events following the alleged prohibited conduct

## 2. Respondent's Account

- a. The parties' prior relationship
- b. The events immediately prior to the alleged prohibited conduct
- c. The incident of alleged prohibited conduct
- d. The events following the alleged prohibited conduct

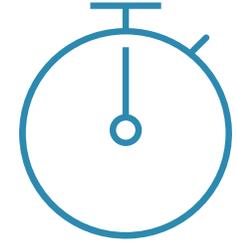
## 3. Witness 1's accounts

- a. Witness 1's observations of the parties' prior relationship
- b. The events immediately prior to the alleged prohibited conduct
- c. The incident of alleged prohibited conduct
- d. The events following the alleged prohibited conduct

## 4. Witness 2's account

- a. Repeat above format

# SINGLE INCIDENT ALLEGATIONS: EVENT CENTERED APPROACH



## 1. History between the Parties

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

## 2. The Hours Leading up to the Reported Incident

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

## 3. The Reported Incident

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

## 4. After the Reported Incident

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

# MULTIPLE INCIDENTS

## **Incident A (incident centered)**

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

## **Incident B**

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

## **Incident C**

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

## **Complainants Account (person centered)**

- Prior History between the parties
- Incident A
- Incident B
- Incident C
- Time between last incident and report

## **Respondent's Account**

- Prior History between the parties
- Incident A
- Incident B
- Incident C
- Time between last incident and report

## **Witness Accounts**

- Prior History between the parties
- Incident A
- Incident B
- Incident C
- Time between last incident and report



**Start Writing a Report That  
Will STAND on its Own**

# CHOOSING SIMPLE LANGUAGE

## Complex Language

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

## Simple Language

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

# TRANSPARENT AND CLEAR

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



# CLARIFYING LANGUAGE

## Unclear Language

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

“SANE/RA/UPD”

“Witness 1 reported that Respondent was angry”

“Complainant stated that Respondent touched them down there”

## Clear Language

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

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

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

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

OR

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

# WHERE DEEPER CLARITY IS OFTEN NEEDED, BUT NOT INCLUDED

## Dive Deeper When

Testimony about contact with a person's vagina.

Testimony about penetration.

Testimony that clothing was removed.

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

Opinions are offered

## Include clarity about the following:

Was the contact with the vagina or vulva?

What was penetrated?  
What was used to penetrate?

What kind of clothing?  
How was it removed?

What was the specific impact?

Include facts that form the basis for the opinion

# ACCURACY IS ESSENTIAL

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



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

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

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

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

**No conclusory words**

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

# COMMIT TO USING NEUTRAL LANGUAGE

## Non-Neutral/Biased

“Claimed/Alleged”

“According to X”

“Story/Version of Events”

“Had Sex with/Engaged in”

“Changed their Account/Story/  
Version of Events”

## Neutral Alternatives

“Reported/Stated”

“X reported/X stated”

“Account/Reported Recollection of Events”

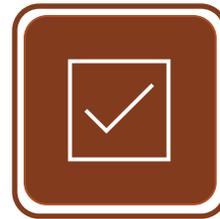
Simply describe what occurred

“When initially interviewed Respondent  
stated X. In a subsequent interview  
Respondent stated Y”

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



Evidence the Investigator believes should be afforded significant weight.



Evidence related to assessment of credibility, reliability, and authenticity.

- Consistencies
- Inconsistencies
- Corroborative evidence
- Omissions
- Statements that include or that are lacking in significant details



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



If it feels important, emphasize it in the report.

# OMITTED INFORMATION

When your investigation reveals a fact that was not shared by a party or witness, the investigator should have explored the reason for the omission.

The final report should document the exploration and accurately describe the explanation provided.

“Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left the room ten minutes later. In a follow up interview with Complainant, they were asked why they did not report Witness A’s presence in the room. Complainant responded by stating that they have no recollection of Witness A being in the room. ”

# MAKE IT SIMPLE

## Commit to using plain language:

### Instead of this:

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

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

### Consider this:

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

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



**Neutrality**

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

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



**A FEW FINAL,  
BUT IMPORTANT,  
POINTS...**

# THE INVESTIGATOR SHOULD NOT BE PRESENT IN THE REPORT

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



# ANALYSIS AND FINDINGS



# FINDINGS OF FACT

## A "finding of fact"

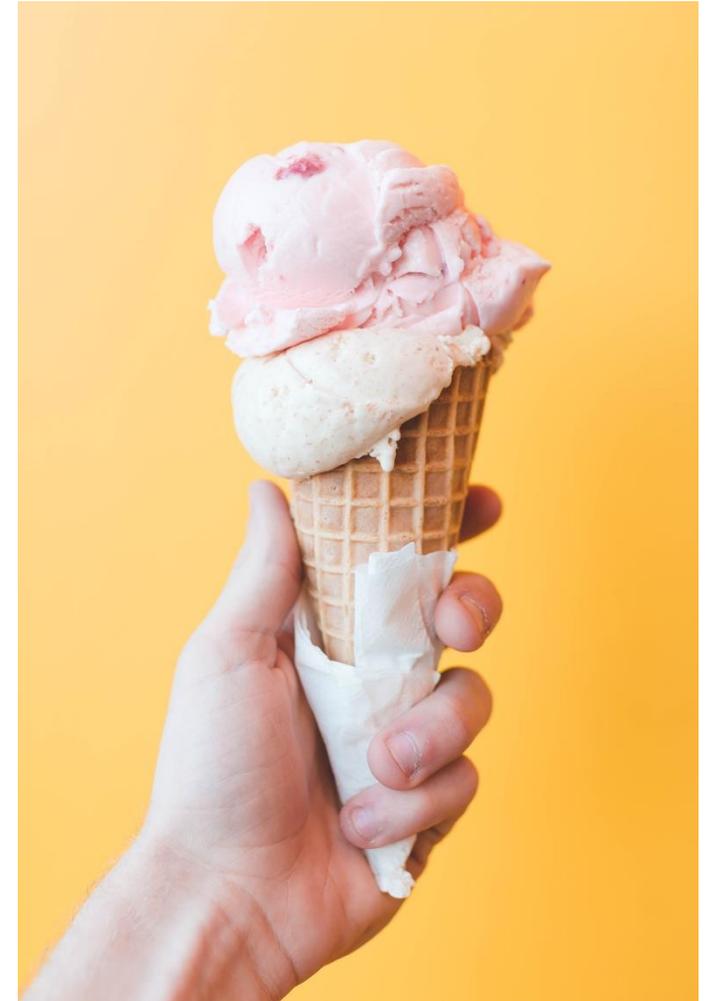
- The decision whether events, actions, or conduct occurred, **or** a piece of evidence is what it purports to be, is credible, and reliable.
- Based on available evidence and information.
- Determined by a preponderance of evidence standard.
- Determined by the fact finder(s).

## 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 photo of Respondent eating ice cream.

## Finding:

- It is more likely than not that Complainant and Respondent ate ice cream



# PREPONDERANCE OF THE EVIDENCE

- More likely than not.
- Does not mean 100% true or accurate.
- This standard is not required for non-Title IX investigations
- Consider also the "beyond a reasonable doubt" and other burdens/standards

## **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 =**

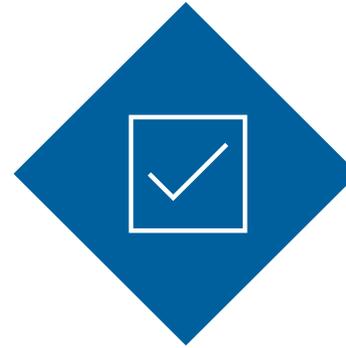
There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

# EVALUATING THE EVIDENCE



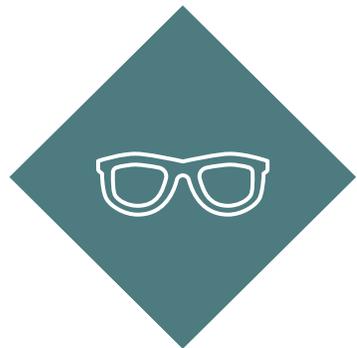
## Is it relevant?

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



## Is it authentic?

Is the item what it purports to be?



## Is it credible/reliable?

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



## What weight, if any, should it be given?

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

# IDENTIFY THE RELEVANT EVIDENCE

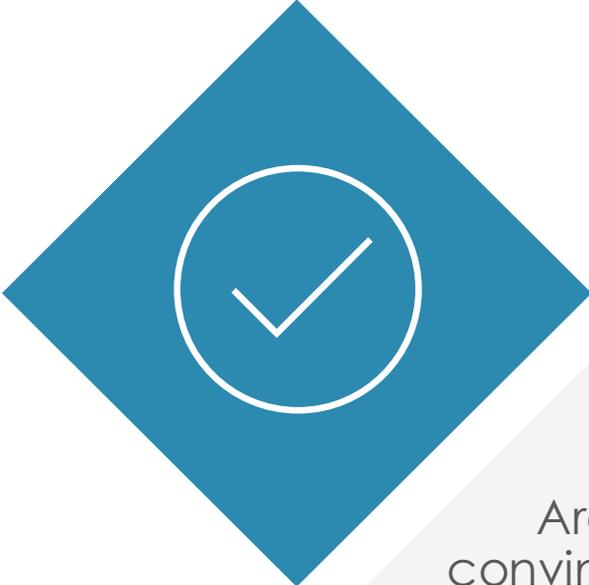


# ANALYSIS GRID

List All the Material Facts Relevant to Each Question

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• Witness 1's Account</li><li>• Text messages between Complainant and Respondent</li><li>• SnapChat DM between Respondent and Witness 2</li></ul>	<ul style="list-style-type: none"><li>• Respondent's Account</li><li>• SnapChat DM between Respondent and Witness 2</li></ul>	<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• Witness 1's Account</li><li>• Witness 3's Account</li><li>• Photograph of Complainant</li><li>• Video of Complainant</li><li>• Text messages between Complainant and Witness 4</li><li>• Witness 4's Account</li></ul>

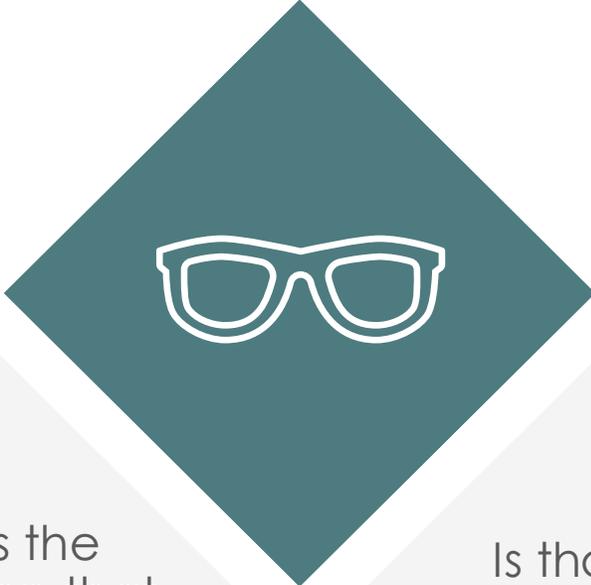
# ASSESSING AUTHENTICITY



Are you convinced that the item of evidence is authentic?



What is the information that convinces you of that?



Is that proof information credible and reliable?

# ANALYSIS GRID

## Make a Determination About the Authenticity of the Relevant Evidence

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• Witness 1's Account</li><li>• <b>Text messages between Complainant and Respondent</b></li><li>• <b>SnapChat DM between Respondent and Witness 2</b></li></ul>	<ul style="list-style-type: none"><li>• Respondent's Account</li><li>• <b>SnapChat DM between Respondent and Witness 2</b></li></ul>	<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• Witness 1's Account</li><li>• Witness 3's Account</li><li>• <b>Photograph of Complainant</b></li><li>• <b>Video of Complainant</b></li><li>• <del>Text messages between Complainant and Witness 4</del></li><li>• <b>Witness 4's Account</b></li></ul>

# DETERMINING CREDIBILITY AND RELIABILITY

Remember: There is  
No Formula!



# SUFFICIENCY OF DETAIL AND SPECIFICITY

Is the level of detail provided by the person **reasonable** and indicative of a **genuine personal experience** by the person?



# INTERNAL CONSISTENCY/CONSISTENCY OVER TIME

- Did the person share the same version of events in all settings, including interviews, in written and/or verbal statements and between documentary evidence?
- Are there any discrepancies or contradictions?
- Is there a sufficient explanation for any discrepancies?



# CONSISTENCY WITH OTHER EVIDENCE OR TESTIMONY



- Is the testimony or evidence consistent with the other evidence?
- Is the testimony or evidence inconsistent with the other evidence?
- Is there a sufficient explanation for any inconsistencies?

# CORROBORATION

- Is there witness testimony (either by witnesses or people who saw the person soon after the alleged incident, or people who discussed the incidents with the person around the time they occurred) or documentary or physical evidence that corroborates the person's testimony?
- Is there witness testimony or documentary and/or physical evidence that are inconsistent with statements made during the interview or does not provide corroboration to the person's version of events?



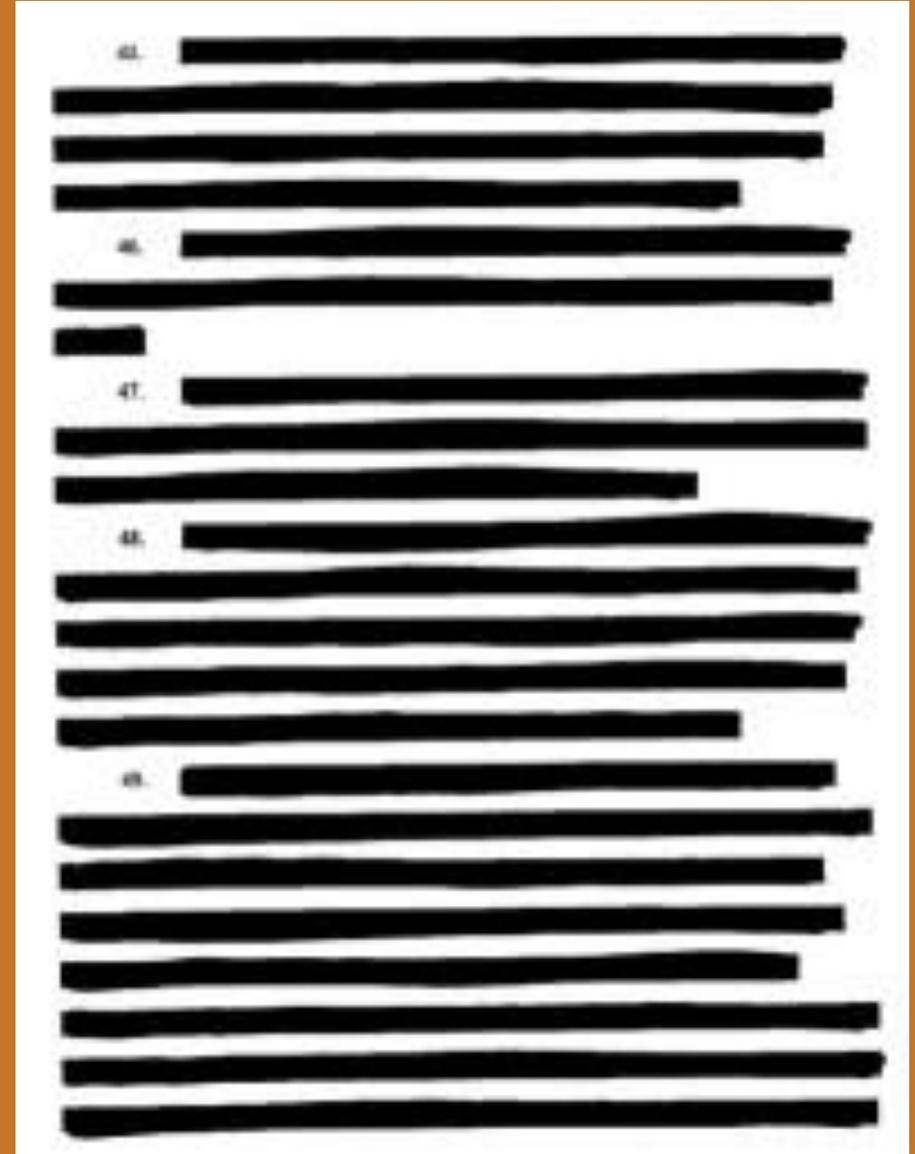
# INHERENT PLAUSIBILITY



- Is the testimony believable on its face?
- Does it make sense?
- Could it have occurred?
- Does it make sense that this person knows this information?
  - What was their opportunity to view?

# MATERIAL OMISSION

- Did the person omit material information?
  - If so, what?
- e.g., submitted partial text messages, or omitted text messages that could be perceived as unfavorable
- Is there a reasonable reason for the material omission?



# MOTIVE TO FALSIFY

- Did the person have a reason to be untruthful other than the general desire to be believed, or to prevail?
- Did the witness openly volunteer information that is prejudicial to their interests or the Party?
- If so, does the declaration against interest bolster their credibility?
- Does the person have an articulable bias, interest or other motive? [e.g. an employee received a poor performance review, so she falsified a claim of sexual harassment against her boss].
- Alternatively, does the person have little personal gain in the outcome?
- What are the relationships between the parties?



# PAST RECORD

- Is there a history of similar behavior in the past?
  - e.g., a supervisor had previous complaints of sexual misconduct
- If so, this might impact whether a statement should be believed.
  - For example, a respondent who states they never knew that a certain behavior was wrong, yet was written up for that same behavior, the history of similar past behavior makes the respondent's statement less believable and less reliable.



# ABILITY TO RECOLLECT EVENTS

- What is the extent the person was able to perceive, recollect or communicate the version of events?
  - e.g., the person reported they were intoxicated, or the person reported they were sleeping



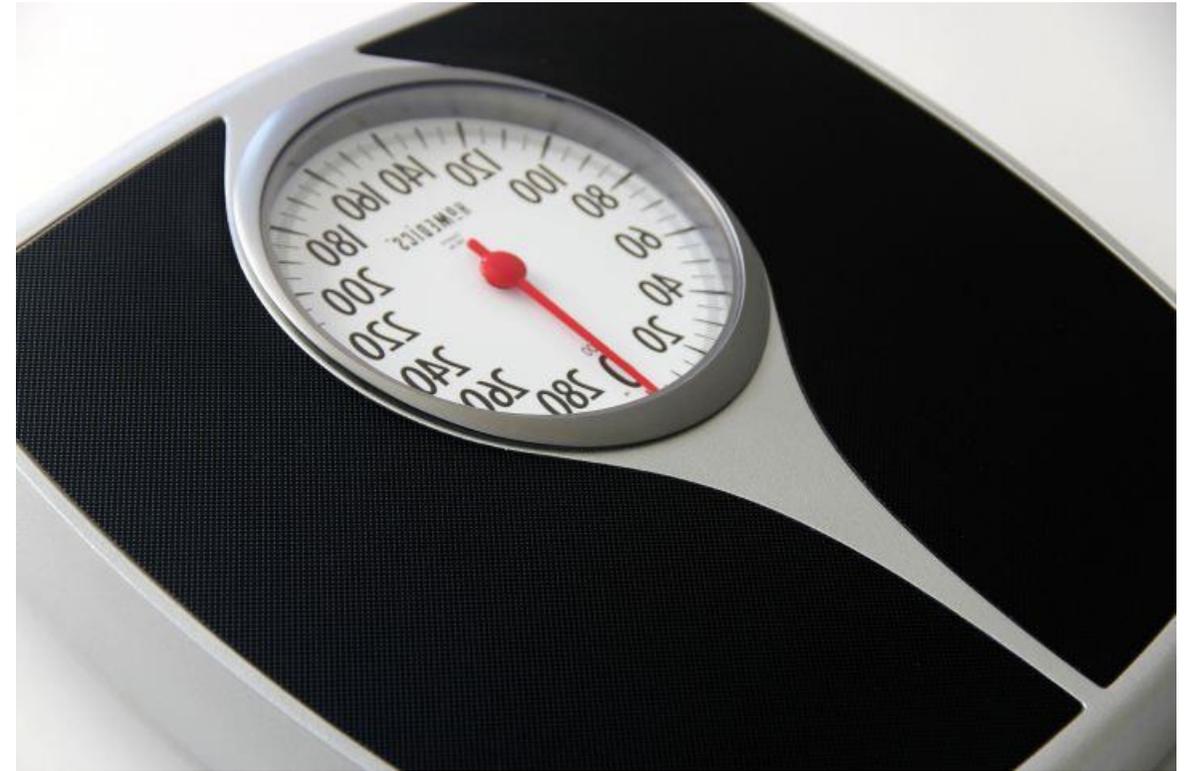
# CREDIBILITY/RELIABILITY ANALYSIS: Step by Step

1. **Determine the material facts** – focus only on material facts.
2. **Determine which material facts are:**
  - a) **Undisputed** – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
  - b) **Disputed** – unsupported by documentary or other evidence, or are facts about which an element of doubt remains [e.g., Marcy alleged that Jack kissed her without her consent around 1am at the party, and Jack asserted he never kissed Marcy and went home early]
  - c) State clearly which facts are **accepted**, and which are **rejected**, and state the **reasons why**.

“While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack’s version of events cannot be credited as being more likely than not to be true.”

# WEIGHING THE EVIDENCE

Determine what weight, if any, you will afford to each item of evidence upon which you intend to rely, of evidence in your final determination.



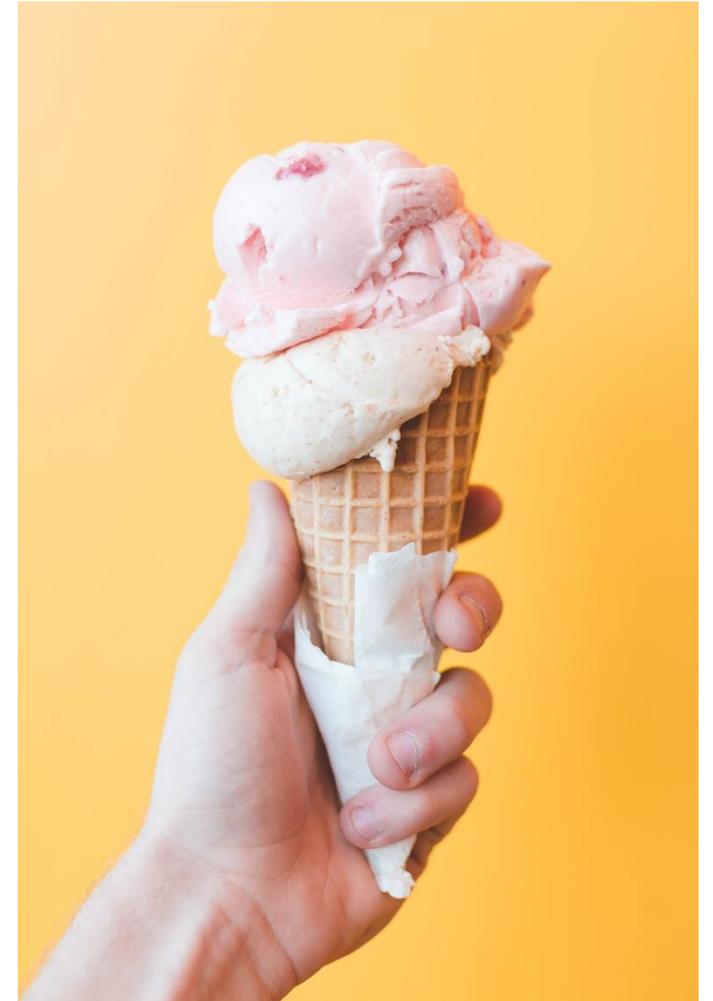
**MAKE FINDINGS**



# 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, is credible, and reliable.
- Based on available evidence and information.
- Determined by a preponderance of evidence standard .
- Determined by the fact finder(s).



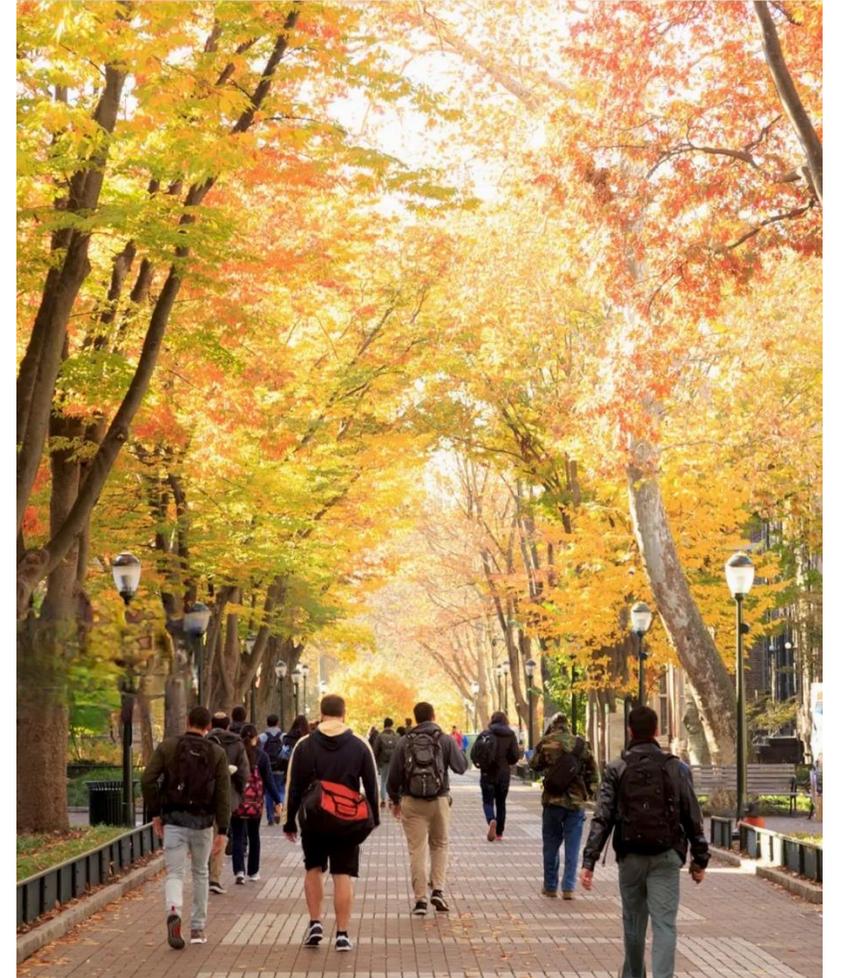
# ANALYSIS GRID

## Make a Findings of Fact

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"><li>• <b>Complainant's Account</b></li><li>• <b>Respondent's Account</b></li><li>• Witness 1's Account</li><li>• Text messages between Complainant and Respondent</li><li>• SnapChat DM between Respondent and Witness 2</li></ul> 	<ul style="list-style-type: none"><li>• Respondent's Account</li><li>• <b>SnapChat DM between Respondent and Witness 2</b></li></ul> 	<ul style="list-style-type: none"><li>• Complainant's Account</li><li>• Respondent's Account</li><li>• <b>Witness 1's Account</b></li><li>• <b>Witness 3's Account</b></li><li>• <b>Photograph of Complainant</b></li><li>• <b>Video of Complainant</b></li><li>• <del>Text messages between Complainant and Witness 4</del></li><li>• Witness 4's Account</li></ul> 

# MAKING A RECOMMENDED DETERMINATION

1. Apply the standard of proof and the evidence to each element of the alleged policy violation.
2. Make a determination as to whether there has been a policy violation.





REPORT

## THE RECOMMENDED DETERMINATION:

“While the credible evidence supports a finding that it is more likely than not that Respondent touched Complainant’s vagina with his hand for the purpose of sexual gratification, the credible evidence does not support a finding, using the preponderance of the evidence standard that Complainant was incapacitated and therefore incapable of providing consent. Thus, we find Respondent **NOT RESPONSIBLE** for the allegation of fondling, as set forth in the formal complaint”

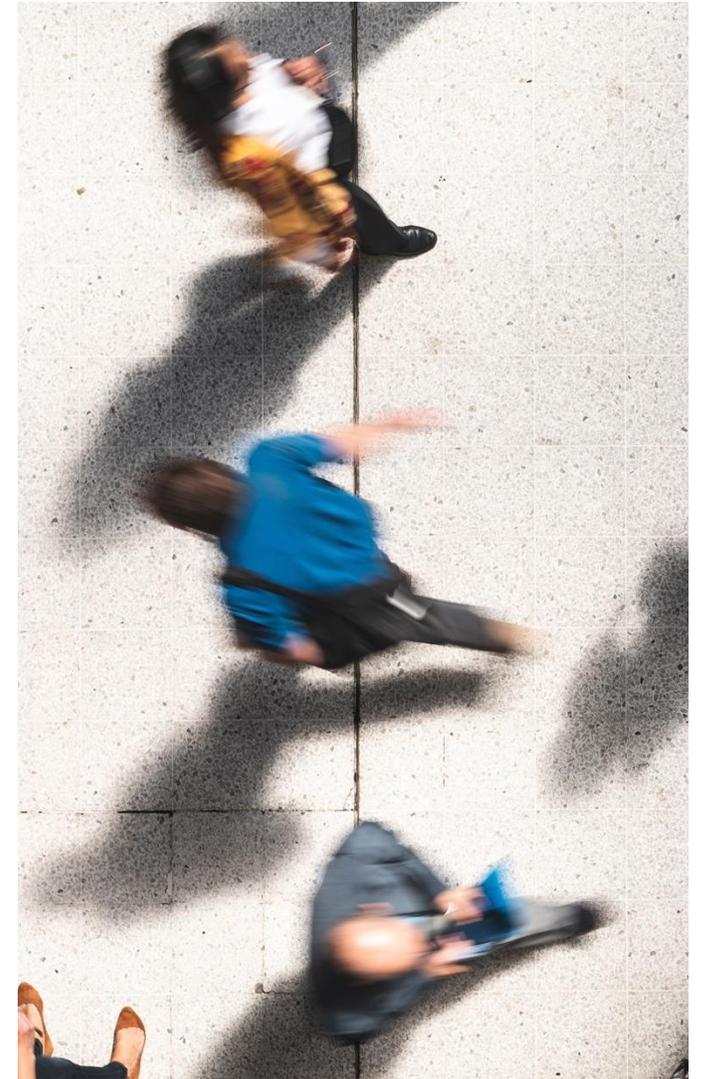
# REDACTION

To Redact or  
Not to Redact?



# CONSIDER

- Is there information that must be redacted from this record?
- What is your reasoning for any redactions made?
- Is there information that should be redacted from this record?
- How will you document the redactions?

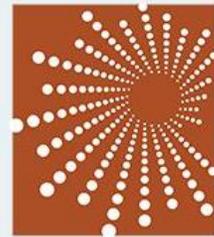


- Be kind to yourself for the work you've done already in good faith.
- Compare yourself to yourself yesterday instead of comparing yourself to others.
- Writing good reports is a constantly evolving process. Don't expect perfection.
- Don't worry about where your skills are today, just keep getting better.
- You have the tools. You can do it!



# THE RIVER CONNECT IS MOVING TO LINKEDIN.

At the same place you do your business social media networking, you can now find The River Connect and all the great events, resources, and real-time discussions on the topics important to higher ed equity professionals.



**THE RIVER**  
**CONNECT**  
IS MOVING TO





info@grandriversolutions.com



/Grand-River-Solutions



/GrandRiverSolutions



/GrandRiverSolutions

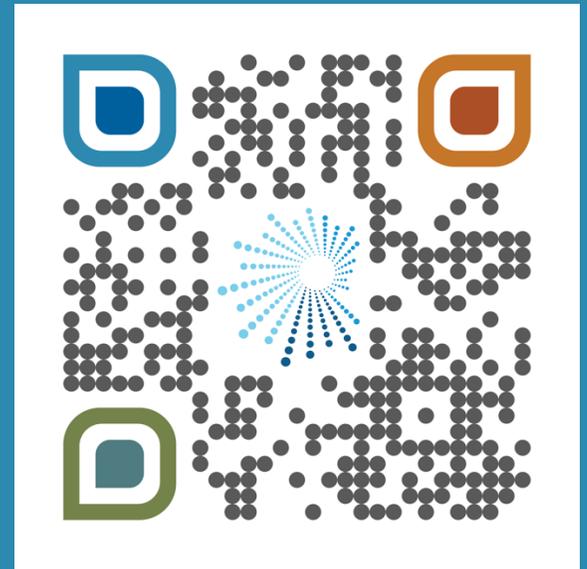


/GrandRiverSolutions.com



@titlexandequity.bsky.social

## CONNECT WITH US



©Grand River Solutions, Inc., 2025. Copyrighted material. Express permission to post training materials for those who attended a training provided by Grand River Solutions is granted to comply with 34 C.F.R. § 106.45(b)(10)(i)(D). These training materials are intended for use by licensees only. Use of this material for any other reason without permission is prohibited.