



USHE TITLE IX ANNUAL TRAINING Day One

August 4, 2026

Facilitators:

Emma Hempel & Pari Le Golchehreh

MEET YOUR FACILITATORS



Emma Hempel

Emma Hempel is the Regional Account Manager for the Northeast at Grand River Solutions. She comes to this role after being an essential part of the Director and Coordinator Services Team for nearly four years.

She is frequently sought after as a trainer and has trained thousands of individuals across the country on Title VI, Title IX, and other equity topics. Emma has served as Title IX and EEO Coordinator for both large and small public and private institutions across the country.



Pari Le Golchehreh

Pari Le Golchehreh is a distinguished Title VI, VII, and IX investigator and certified mediator known for her commitment to fairness and integrity. With deep expertise in discrimination and harassment law across educational and workplace settings, she navigates complex cases with precision while ensuring all parties are heard. Pari is equally skilled at facilitating constructive dialogue and alternative resolutions, earning her a reputation as a trusted authority and bridge-builder in the field.

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

GETTING TO KNOW YOU

- How long have you been doing Title IX work?
- Are you responsible for Title IX AND Title VI/VII?
- Summer or winter?
- Coffee or tea?
- Cookie or cupcake?
- Pepsi or coke?
- Dog or cats?
- Email or phone call?



DAY 1 AGENDA

● Overview of Title IX Compliance

● Creating a Culture of Reporting on Your Campus

● Intake Overview

● Emergency Removal

● Alternative (Informal) Resolution

● Pregnancy or Related Conditions

OVERVIEW OF TITLE IX COMPLIANCE

01

Grand River

THE THREE ESSENTIAL FUNCTIONS OF TITLE IX COMPLIANCE

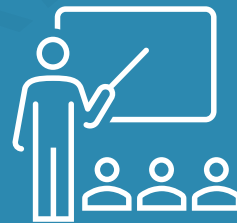
01

Response



02

Education &
Prevention



03

Compliance



TITLE IX

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).



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).

SEXUAL ASSAULT

Sexual Assault includes Rape, Sexual Contact, Incest, and Statutory Rape.

These definitions come from the FBI.

SEX OFFENSES

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

B. Sexual Contact (**Replaced Fondling**) — The intentional, nonconsensual touching of the clothed or unclothed body parts of another person for the purpose of sexual degradation, sexual gratification, or sexual humiliation. Sexual Contact also includes the forced, nonconsensual touching by the victim of the actor's clothed or unclothed body parts for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

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

D. Statutory Rape — Sexual intercourse with a person who is under the statutory age of consent.

DATING VIOLENCE

Definition:

- “Violence committed by a person
- Who is or has been in a social relationship of a romantic or intimate nature with the victim;
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship”

DOMESTIC VIOLENCE

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

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

STALKING

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



EXAMPLE: STALKING

- A student sends you the following email:
 - *Hi. This is Jordan Jones. Kris keeps staring at me in the library and I don't feel safe. Please tell Kris they can't be in the library while I'm studying with my friends. It's not fair that I pay money to go here and I am at risk.*
- Will you address under Title IX? Why or why not? What other information do you need to know?



LOCATION AND JURISDICTION





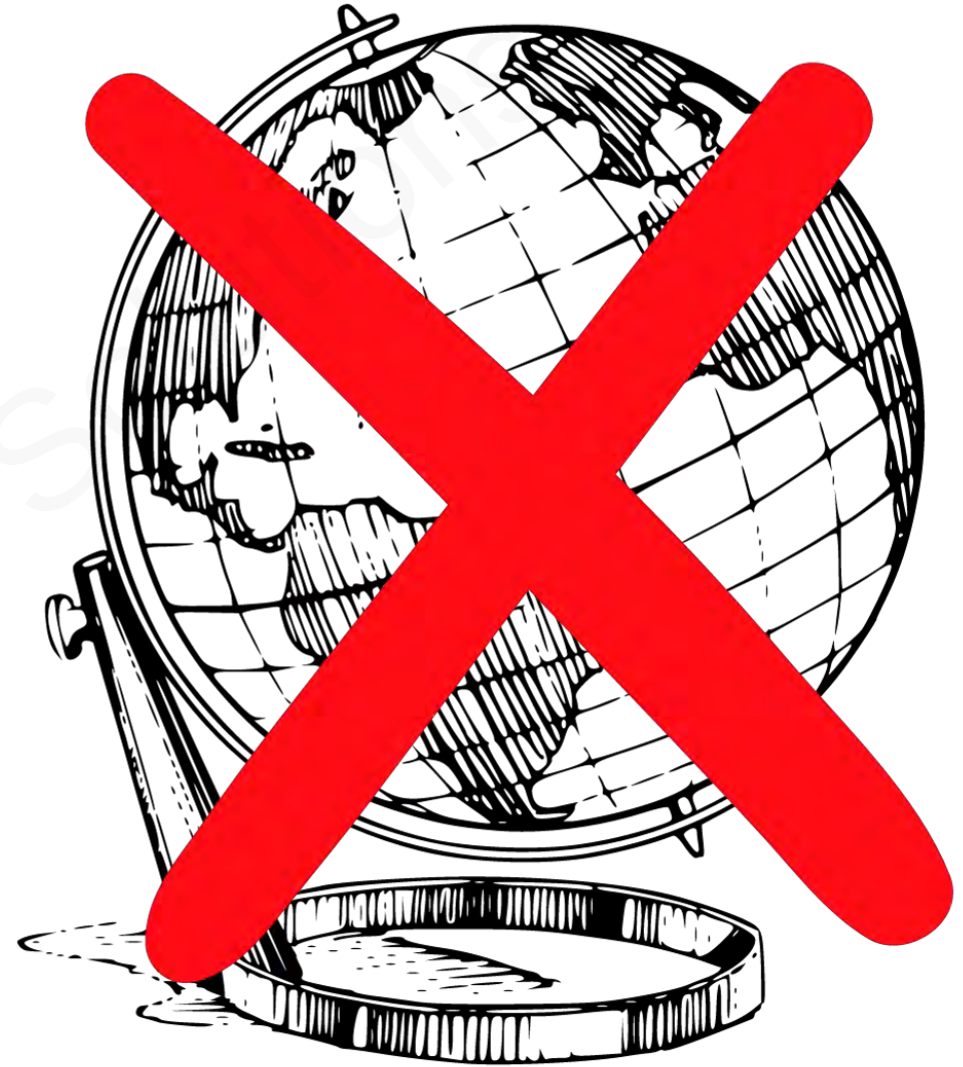
COVERED LOCATIONS

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 LOCATIONS

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



REQUIRED IDENTITY



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
- Enrolled or Employed
- Accepted or Hired



WOULD THIS FALL UNDER TITLE IX?

There are multiple summer camps held on Grand River University's campus starting in May and lasting through mid-August.

You receive a report that during a two-week, overnight, band camp for high school students an incident took place in Grand River Hall (an on-campus residence hall). The report came from one of the camp counselors and stated that Avery disclosed they were sexually assaulted by Cam in Grand River Hall on the night of June 1, 2026.

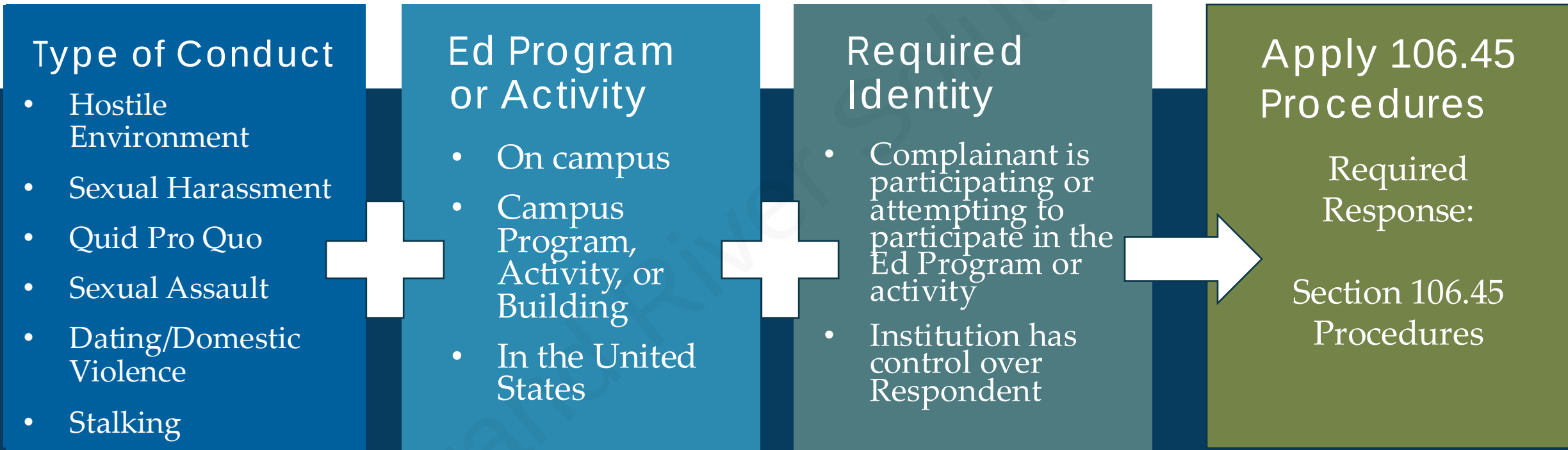
Consider:

1. Is this a Title IX matter?
2. What other information do you need to know?
3. Who else (if anyone) do you need to involve in these discussions?



TITLE IX APPLICATION

(POST-MAY 2020)



CONSIDER THE FOLLOWING SCENARIO:

Taylor is a 17-year-old student at a local high school who is dual enrolled at Grand River College (GRC) in a program that allows them to take courses at GRC.

Taylor has reported the following to the Title IX Office: There is a student, Max, in one of my GRC courses who is making me really uncomfortable. At first Max was just making inappropriate jokes, but then it escalated and he started showing me pornographic images on his phone. The last two times this happened, he also placed his hand on my back or thigh while leaning close to show me his phone. I feel like I need to drop this class if he doesn't stop.

- What red flags do you see?
- How would you assess this report?
- Who else (if anyone) do you need to involve?

ADDITIONAL REGULATORY REQUIREMENTS



TITLE IX COMPLIANCE OBLIGATIONS

- Designate a Title IX Coordinator
- Disseminate Policy
Notification, Publication
- Promptly respond to instances of sexual harassment occurring within the educational program or activity of which the institution has actual knowledge in a manner that is not deliberately indifferent;
- Provide supportive measures in accordance with the requirements of section 160.30
- For reports of sexual harassment utilize grievance procedures that comply with section 160.45
- Require that individuals participating in the grievance process do so impartially and that they are trained in accordance with the 160.45(b)(1)(iii).
- Maintain records response to sexual harassment in accordance with 160.45 (10)
- Comply with 160.71 prohibition against retaliation

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 directly related 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

Cannot compel participation of parties or witnesses

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

FINAL RULE § 106.45(B)(8)

“Institutions 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.”



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.

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

CREATING A CULTURE OF REPORTING ON YOUR CAMPUS

02

Grand River

START BY IDENTIFYING EMPLOYEES WITH REPORTING OBLIGATIONS

Who is required to report
on your campus?
(IE all non-confidential employees, etc)

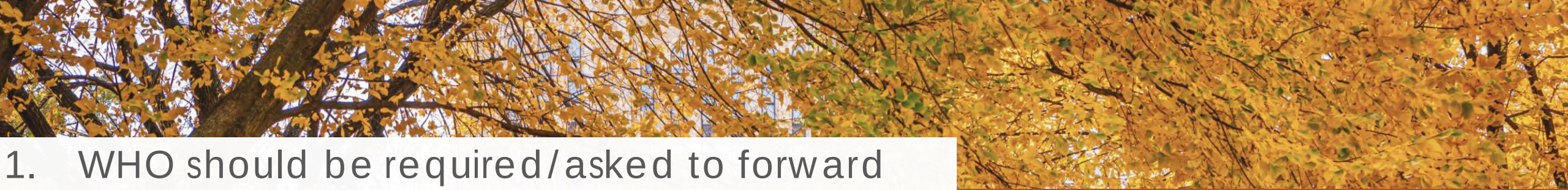


Title IX Regulatory Standard:

As of 2020 (and today), who must report sexual harassment they learn about or observe to the Title IX Coordinator, initiating the required response?

- Higher Education Institutions: employees with the authority to institute corrective measures on behalf of the recipient



- 
- 
1. WHO should be required/asked to forward what they know to the Title IX office?
 2. Why?
 3. How do you want employees to handle this responsibility?
 4. Does it matter if they are confidential employees? Let's discuss.

HOW TO DECIDE?
CONSIDERATIONS TO CONSIDER.

What About Student Employees?

May be an official with authority while they are fulfilling their employment responsibilities, but not when solely as a student



What about Confidential Employees?

Consider this for confidential employees:

For students who disclose sexual harassment, confidential employees *can* provide information on resources, including the Title IX Coordinator's contact information.

Practice tip: Confidential employees need to have privilege under state law allowing them to keep information confidential."



FOSTERING A POSITIVE REPORTING CLIMATE

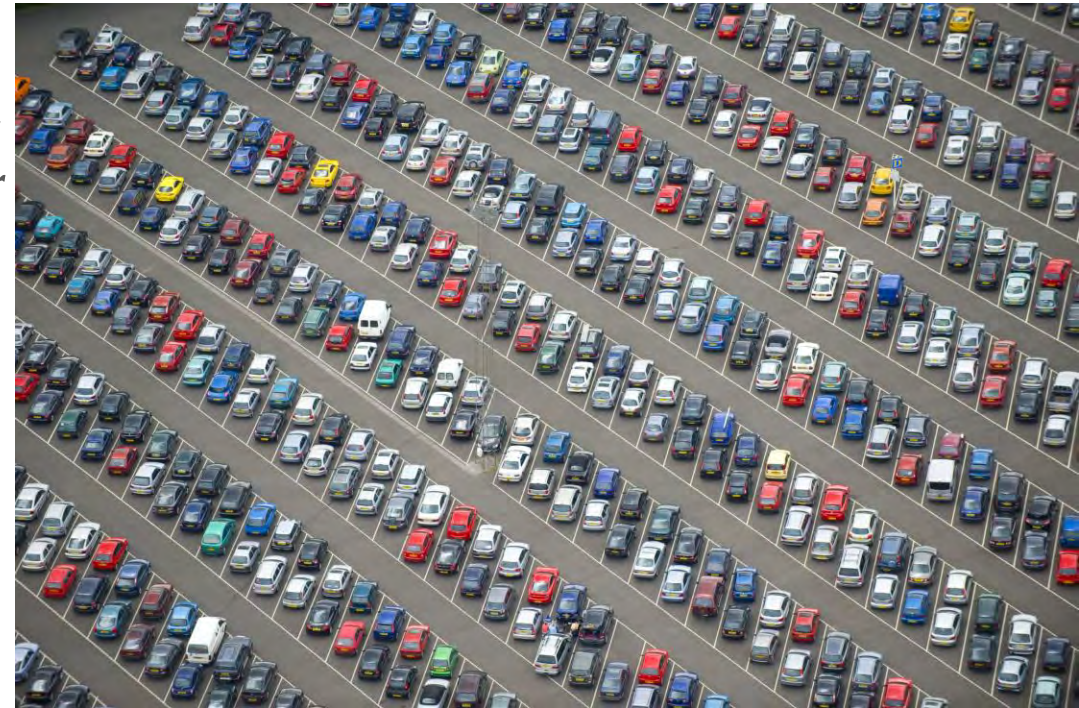
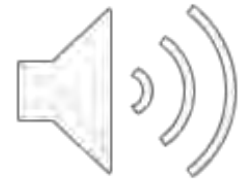


Now What?

A MANAGER IS RELUCTANT TO REPORT ON BEHALF OF AN EMPLOYEE THAT WORKS IN THEIR DEPARTMENT. THEY SENT YOU THE FOLLOWING EMAIL ABOUT AN HOUR AGO AND IS NOW OUTSIDE YOUR OFFICE REQUESTING TO SPEAK WITH YOU.

"My name is Alex Jones, and I am the team manager in the Marketing Department. One of my employees confided in me yesterday that they were stalked last week by another employee in the parking lot. They explicitly asked me not to report the incident or share their name, and I want to respect their privacy. Besides, I know the Title IX/EEO Office never does anything about concerns that are reported to them anyway."

I think I know who the other employee is and one of my buddies is the department chair in their department. Can you give me the name of our campus mediator so we can resolve this in a friendly way?"



HOW CAN WE
CREATE A
POSITIVE
REPORTING
CULTURE ON OUR
CAMPUSES?



How do you
create buy-in?

Consider Your
WHY



ASSESSING YOUR CURRENT CAMPUS CULTURE

- What are you doing well? Where are there opportunities for improvement?
- Ask for input from your key stakeholders.
- Assessment: Do most employees report? Is there consistent pushback to reporting? What else are you hearing?
- Acquiring that feedback:
 - o Listening sessions
 - o Surveys



ENGAGING LEADERSHIP

- How can you engage leadership? How can you get their buy-in?
 - Messaging from campus leadership
 - Reinforcement coming from "top down"
 - Identifying other partners who have buy-in in your community (high social capital)
 - Begin by identifying at least one campus leader
- Norming your campus
 - Sharing data
 - Doing "departmental road shows"
 - Ask me anything sessions

WHEN TRAINING EMPLOYEES, ADDRESS:

- **WHY** reporting matters
- **WHO** is required to report



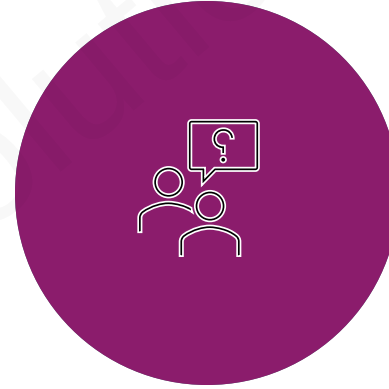
WHY IS REPORTING A GOOD THING?

- We cannot respond or protect our campus when we don't have the information.
- Ensuring the complainant is getting the support they need and understands their rights and options.
- The complainant won't need to share their story multiple times (trauma-informed)
- Allowing Title IX office to do the work instead of the reporter.
- Interrupting and preventing harm contributes to a safer campus community.
- What else?

ALSO DISCUSS:



- **HOW** employees should report

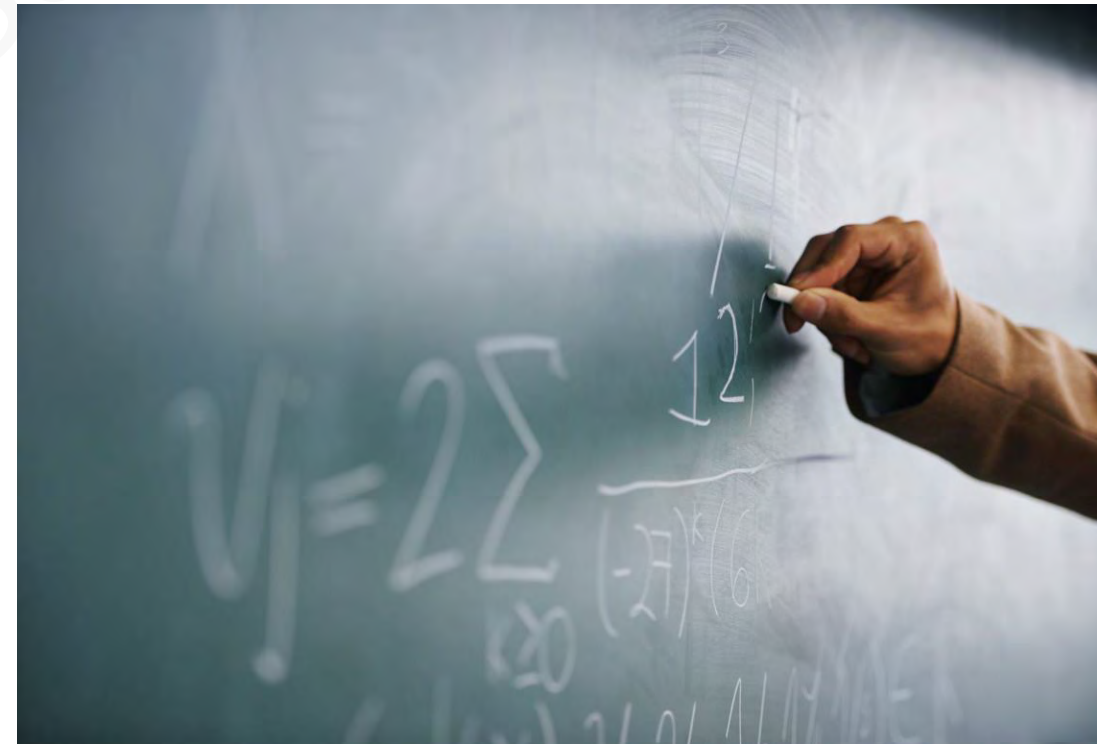


- **WHAT** they are expected to report

Now What?

You received a 3rd party report that a staff member learned of a sexual assault last week and did not report. After sending an email to them to check in, you receive the following response:

"Being forced to tell you this student's name is a violation of my rights and personal views. As an advocate for survivors, which is what you should be, I believe students should be able to choose whether or not they want to report to you. I will not strip survivors of their autonomy like you do. Furthermore, the student specifically asked me not to say anything, because she trusts me, not the administration. I will always protect survivors on our campus."



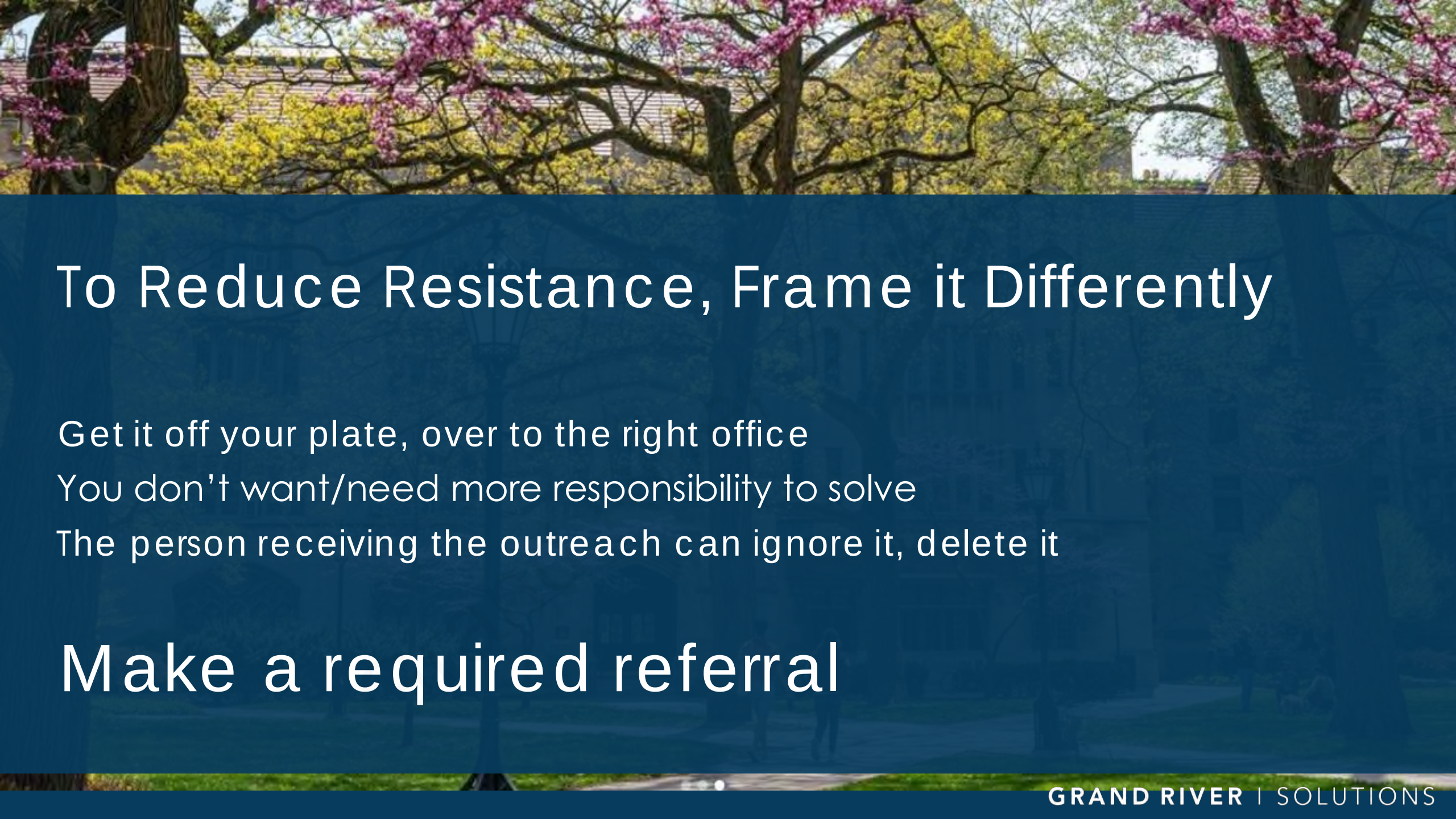
Resistance To Reporting: A Primer

Myth

- It feels like reporting the victim
- Perception it violates trust
- Employees who are misinformed about process
- A false understanding of “agency”

Response

- It's actually a referral to someone who can provide information and assistance
- Remembering boundaries
- Ensures outreach, resources, options, and rights are provided
- True agency requires an informed decision



To Reduce Resistance, Frame it Differently

Get it off your plate, over to the right office

You don't want/need more responsibility to solve

The person receiving the outreach can ignore it, delete it

Make a required referral

Summary

Define your goals

Define roles and expectations

Train

Communicate

Rinse and repeat. And then one more time for good measure.

INTAKE OVERVIEW

03

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CONDUCTING OUTREACH: BEST PRACTICES

- Identifying Complainant/Party
- Electronic/Email vs Phone Call
- Safety Concerns
- Utilize Case Management Systems (where possible)
- Communication Styles and Outreach Content



PREPARING FOR THE INTAKE MEETING

- Familiarize yourself with names/parties
- Identify areas where you need additional information or clarity
 - What else do you need to know to connect conduct to policy?
- Review relevant policies
 - Does it appear that the Title IX Coordinator may need to move forward regardless of the Complainant's wishes?
- Threat assessment(emergency removal, timely warning)
- Check your bias
- Prepare mentally/emotionally for the conversation

REPORT: You've received the following report. What follow-up questions would you want to ask during your initial intake? What context would be important to know?

Tabitha is a hair design student who filed the following report:

I'm not really sure if this is the right place for this, but I didn't know who to reach out to. I've been getting more and more uncomfortable with Jay Smith, my hairstyling instructor. It started out as small things, like he would touch me to demonstrate a technique, but his hand would linger longer than necessary. Then, I volunteered as a "model" in a class recently and he commented "that looks hot on you." He's said a few other things in class that made me uncomfortable, so I'm reaching out to see what can be done. Also, I need to finish this class because it's required for my program, but I would really appreciate if he acted more professionally.



INTAKE CHECKLIST

- Introductions and Establish Rapport
- Describe your role/office
- Outline the purpose of the intake and what to expect
- Explain Privacy vs. Confidentiality
- Invite parties to share their experience OR ask follow-up questions*
- Review policy and appropriate pathways for resolution (formal, informal, law enforcement, etc)
- Review supportive measures
- Review rights of party
- Answer any remaining questions
- Confirm next steps

SUPPORTIVE MEASURES

Non-Disciplinary

May not
unreasonably
burden the other
party

Designed to restore
or preserve equal
access

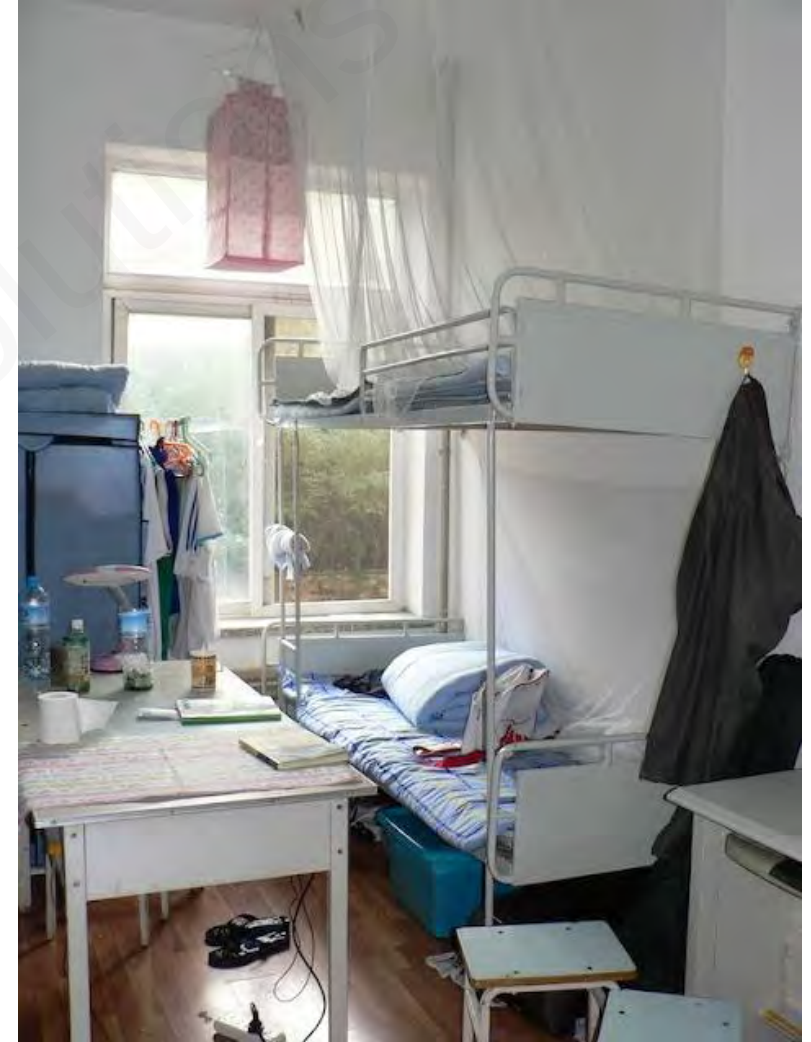
Non-punitive

As appropriate and
reasonably
available

Confidential

EXAMPLES OF SUPPORTIVE MEASURES

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



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.

EMERGENCY REMOVAL

04

Grand River

LET'S DISCUSS:

- What is emergency removal?
- How would you describe this to someone who is new to this field or to higher education?



LANGUAGE FROM REGS

The Title IX regulations provide process in § 106.44(c) to remove a respondent from a recipient's education program or activity on an emergency basis if there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment that justifies removal. A recipient must provide a respondent with notice and an opportunity to challenge the emergency removal decision immediately following the removal. Additionally, the grievance process in § 106.45 provides robust due process protections for both parties, and before imposition of any disciplinary sanctions or other actions against a respondent that are not supportive measures as defined in § 106.30 or an emergency removal under § 106.44(c), a recipient must follow a grievance process that complies with § 106.45.

LANGUAGE FROM REGS

§ 106.44(c) requires "...an individualized safety and risk analysis and provides the respondent notice and opportunity to challenge the removal decision. Note that § 106.44(c) does not restrict a recipient's emergency removal authority to removal decisions that are "narrowly tailored" to address the risk because § 106.44(c) adequately requires that the threat "justifies" the removal. If the high threshold for removal under § 106.44(c) exists (i.e., an individualized safety and risk analysis determines the respondent poses an immediate threat to any person's physical health or safety), then the recipient "should have discretion to determine the appropriate scope and conditions of removal of the respondent from the recipient's education program or activity. "

WHAT IS THE DIFFERENCE?

MAY BE POLICY SPECIFIC

- Emergency Removal – Typically students, but may apply to employees
 - o Based on Title IX Regulations and your school's policy
 - o Applies to students and may also apply to employees depending on your school's policy
- Interim Suspension—Typically students, sometimes used in the student conduct world.
 - o Based on your school's policies
 - o Emergency removal may include an interim suspension if justified based on an individualized safety and risk analysis
- Administrative leave—Employees
 - o Based in part on Title IX Regulations, but may also be allowed in your school's applicable employee and/or Title IX policy
 - o In the Title IX Regulations, administrative leave applies to a "non-student employee respondent"

LET'S DISCUSS:

- Should we consider emergency removal with all allegations of sexual misconduct? Why? Why not?



TIME LIMITS

- Emergency Removal is typically temporary:
 - o Pending conclusion of grievance process
 - o For a period of time determined after safety and risk analysis



INDIVIDUALIZED SAFETY OR RISK ANALYSIS

- Must have an immediate threat to the physical health or safety of an individual
- Must have more than generalized, hypothetical, or speculative information
- Cannot be based on general assumptions about sex or profile characteristics of sex offense perpetrators or frequency of false misconduct allegations
- Must be individualized to the respondent and examine the circumstances "arising from the allegations of sexual harassment"



INDIVIDUALIZED SAFETY OR RISK ANALYSIS

- Factors that *may* be included in the analysis:
 - Whether violence was allegedly involved in the conduct constituting sexual harassment
 - Circumstances that arise from the allegations (but are not the conduct itself) such as threat of self-harm by respondent
 - Any other factors that a recipient may consider in reaching a determination
- For a removal, must determine that (1) an immediate threat exists; and (2) that that threat justifies removal
- Schools have the flexibility and discretion to determine who conducts the safety or risk analysis and how to train them



CHALLENGES TO EMERGENCY REMOVAL

- We must offer the respondent the opportunity to challenge the removal decision.
- Title IX Coordinator will provide the respondent with notice and an opportunity to challenge the decision immediately following the removal. The University will designate an individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was justified.



LET'S TALK LOGISTICS: WHAT CAN EMERGENCY REMOVAL LOOK LIKE?

- What does it mean to emergency remove?
- Is not always an interim suspension. Can be emergency removed from a club, team, housing, physical presence on campus.
- Are they completing classes remotely?
- Fundamental right to education and keeping campus safe
- What happens when the semester ends?
- What else?



WHO SHOULD DECIDE?

- A group/team as opposed to only the Title IX Coordinator
- Committee? BIT Team? Care Team? Threat Assessment Team?
 - o Title IX Coordinator
 - o Student Conduct
 - o Campus Safety/Police
 - o University Counsel
 - o Counseling/Mental Health
 - o Who else?
- Don't forget challenges to removal!
 - o Usually not someone involved in the emergency removal decision



WHAT WOULD YOU DO?

Dear Title IX Coordinator,

This is Graham, the women's basketball coach. Listen, 3 of my girls came to talk to me today about another girl, Amanda, on the basketball team. Last night, some of the girls were drinking in Amanda's suite. Apparently, Amanda had too much to drink and she started grabbing some of the other girls underneath their shirts. The girls told her to stop. Amanda then trapped one of the girls down and said she would shoot them all tomorrow with her father's gun if they told anyone about it. I'm not sure if she has her gun in her residence hall? Amanda is our top defender and I'm happy to talk to her about this. We have a game tonight.

Would you emergency remove Amanda? If so, what removal actions would you recommend? What are your next steps? What additional information would you need to know?

TITLE IX POLICY VS PROCESS MANUAL

Process manual—Behind the scenes, internal guide to help you with building out a process.

Considerations for your process manual:

- Time frame?
- Who decides initially?
- Who are you notifying?
- Who hears challenges?
- How are students and employees treated differently?



SAMPLE POLICY LANGUAGE

For Title IX Prohibited Conduct, INSTITUTION retains the authority to remove a respondent from INSTITUTION's program or activity on an emergency basis, where:

- (1) INSTITUTION undertakes an individualized safety and risk analysis,
- (2) INSTITUTION determines that an immediate and serious threat to the health or safety of a complainant or any student, employee, or other individual arising from the allegations of sex discrimination justifies a removal, and
- (3) INSTITUTION provides the respondent with notice of and an opportunity to challenge the decision immediately following the removal.

The respondent may challenge the decision immediately following the removal, by notifying the Title IX Coordinator in writing. INSTITUTION will designate an impartial individual, not otherwise involved in the case, to consider the challenge to the removal and determine if the emergency removal was reasonable.

For all other Prohibited Conduct, INSTITUTION may defer to its interim suspension policies for students and administrative leave for employees.

ALTERNATIVE (INFORMAL) RESOLUTIONS

05

Grand River

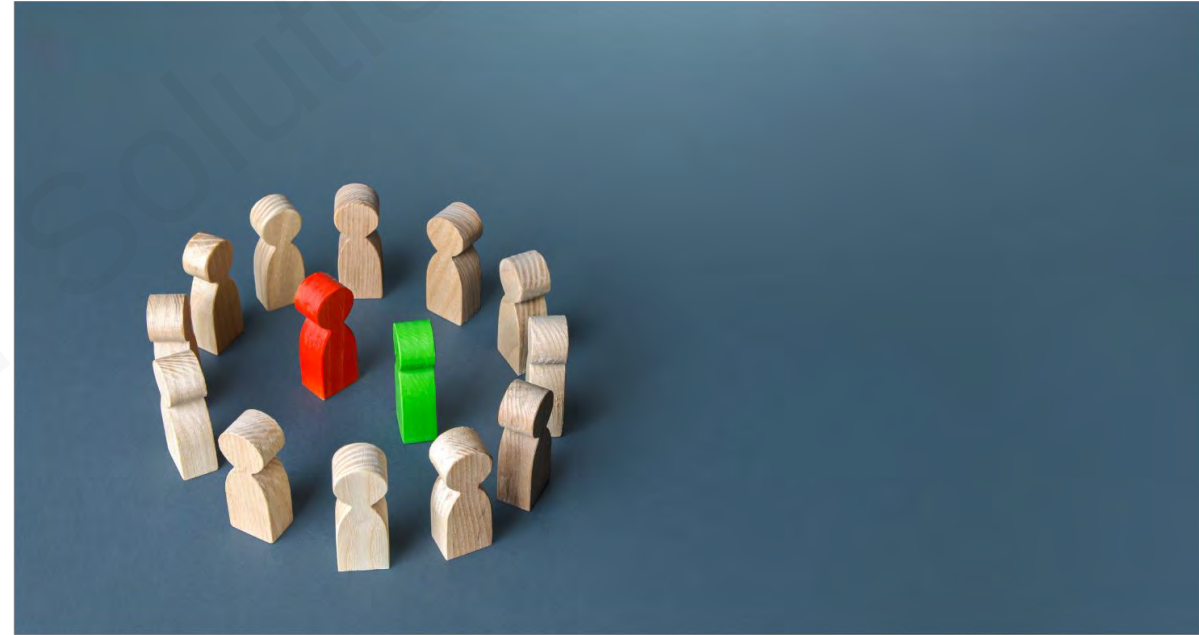
TRAINING REQUIREMENTS

Title IX coordinators, investigators, decision-makers, and “any person who facilitates an informal process” must receive training on:

- The definition of sexual harassment in the regulations
- The scope of the institution’s education program or activity
- How to conduct an investigation and grievance process
- How to serve impartially
- Any technology to be used at a live hearing
- Training materials must be made publicly available on website
- Training materials “must not rely on sex stereotypes” and must be maintained for seven years.

INFORMAL RESOLUTION

- Institutions have the option to offer an informal resolution; it is not required
- Institutions may decide on a case-by-case basis which matters are eligible for informal resolution; except
- Instances of alleged employee sexual harassment against a student are never eligible for informal resolution.



HIGHLIGHTS FROM THE 2020 FINAL RULE

- Must identify persons designated to facilitate informal resolution processes.
- Informal resolution processes must be reasonably prompt.
- Options for informal resolution processes should be included with notice of allegations.
- Informal resolution processes must be voluntary and can only be offered if a formal complaint is filed.
- Must keep records regarding the facilitation of an informal resolution process.
- Facilitators must be trained.



ALTERNATIVE RESOLUTION NOTICE REQUIREMENTS

- The allegations,
- The requirements of the alternative/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 alternative resolution process
- And resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the alternative resolution process, including the records that will be maintained or could be shared;





WHAT CAN INFORMAL RESOLUTION LOOK LIKE?

WHAT WORKS BEST?



Mediation



Shuttle Diplomacy



Restorative Practices



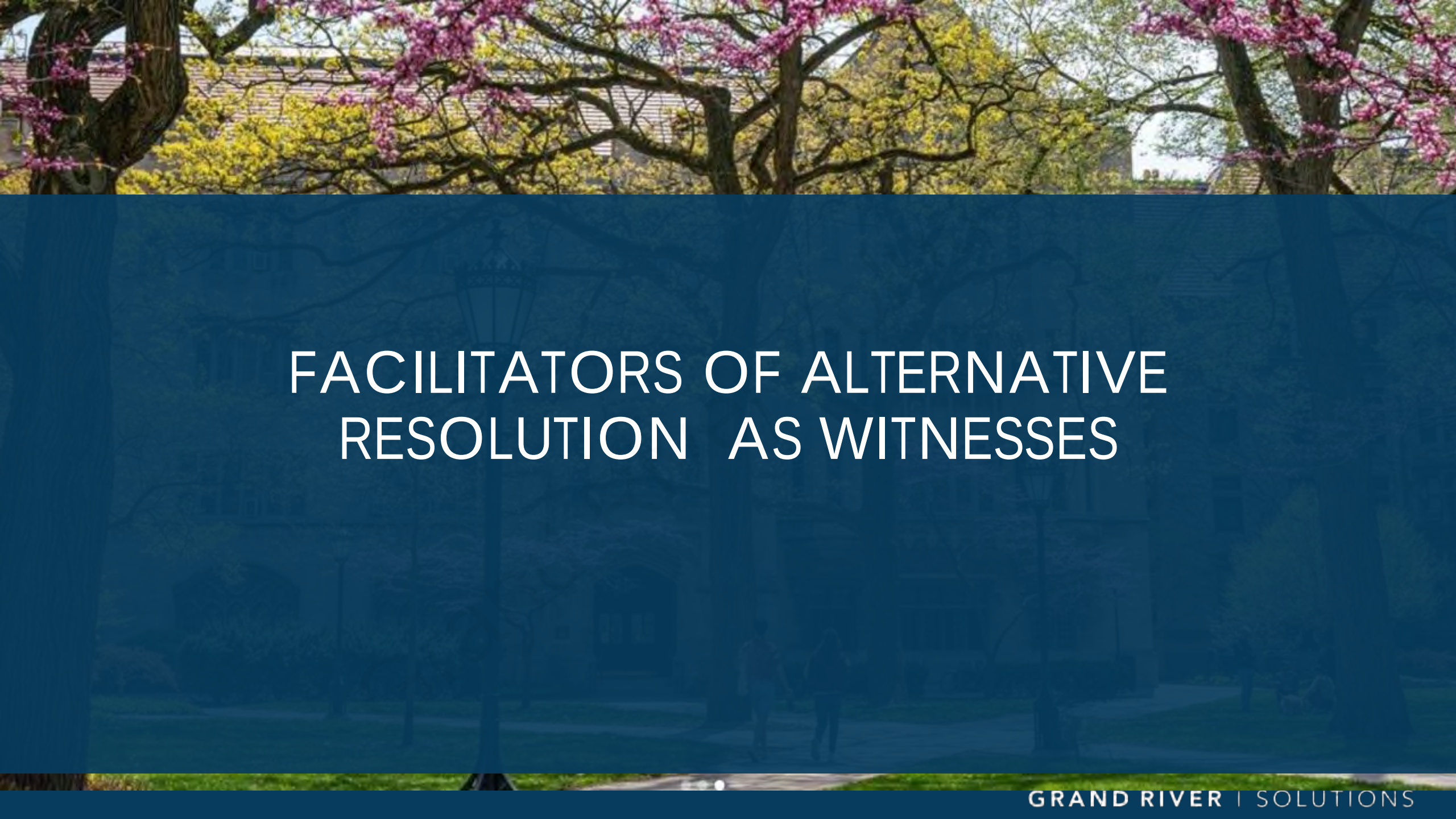
Informal Adjudication



GOALS FOR INFORMATION RESOLUTION PROCESSES



- ✓ Neutral/Impartial Process
- ✓ Trauma Informed
- ✓ Meets the Needs of the Parties
- ✓ Clear and Transparent
- ✓ Empowerment of Parties
- ✓ Resolution Focused



FACILITATORS OF ALTERNATIVE RESOLUTION AS WITNESSES

REMINDER:

Any information shared or gained during the informal resolution process typically may not be used against either party should the matter return to the formal process.



KEY INGREDIENTS TO A RESOLUTION

Written

Clear

Specific

Stated Deadlines

Enforceable

State any process for
foreseeable revisions

ELEMENTS OF A RESOLUTION AGREEMENT

- Identities of participants
- Procedural overview of matter
- Reference to appropriate policy
- Terms of the resolution
- Information on record retention
- Prohibition against retaliation
- Statement of agreement
- Signatures



CONSIDERATIONS

- What information is confidential?
- Recordkeeping
- What IR process(es) will you use?
- Who will conduct informal resolution?
- What are the possible outcomes?
- Compliance with outcomes



POSSIBLE OUTCOMES OF INFORMAL RESOLUTION

No-contact
directives

Apology/Reflective
Writing

Coaching or Training

Agreements to stay
away from certain
classes or activities

Facilitated dialogue

Agreement to
withdraw/transfer/re
sign.

PREGNANCY OR RELATED CONDITIONS

06

Grand River

TITLE IX



Title IX prohibits discrimination on the basis of sex, which includes pregnancy and related conditions—in educational programs and activities.

TITLE IX & PREGNANCY



Cannot exclude or treat students (or employees or applicants) differently based on pregnancy or related conditions.

"Related conditions" include "childbirth, false pregnancy, termination of pregnancy, or recovery therefrom"

TITLE IX OBLIGATIONS

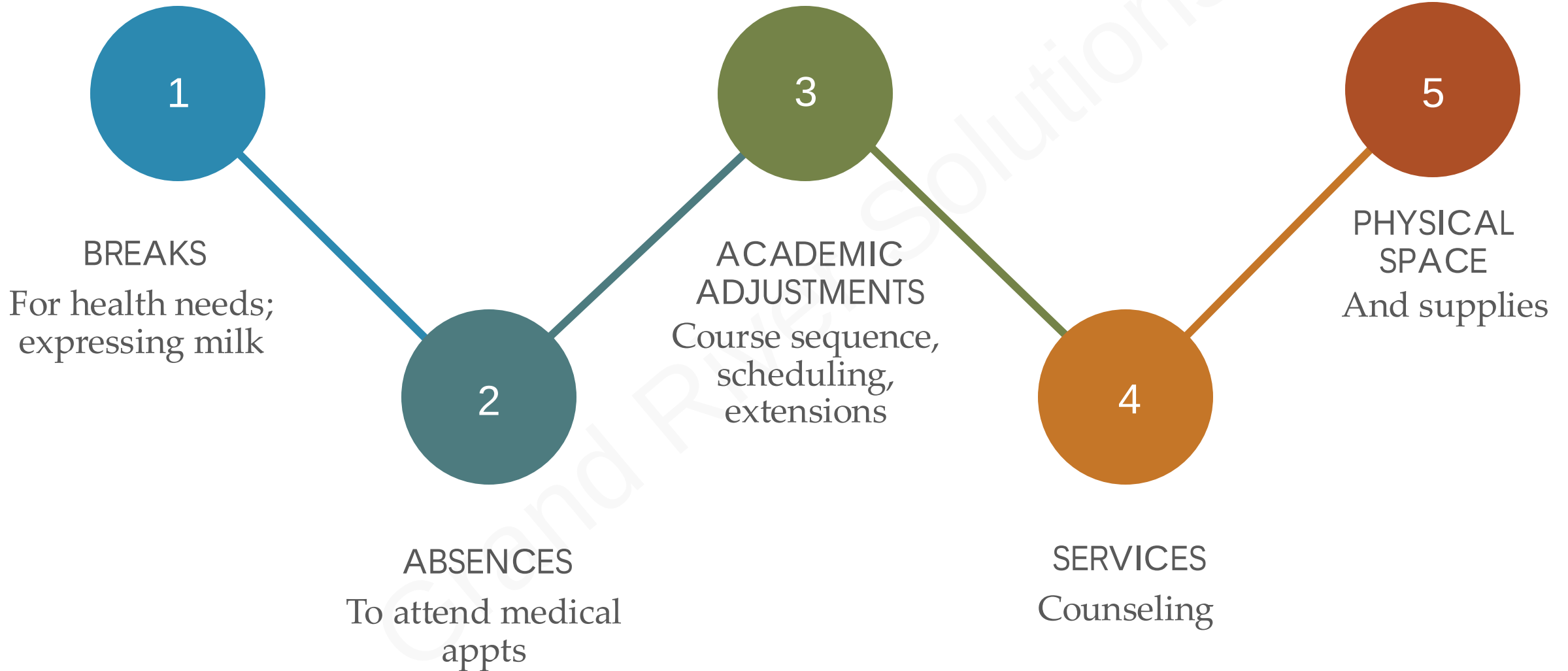
Summary of the obligations relating to pregnant students

- Allow them to make up any missed work without penalty
- Treat them similarly to students with a temporary disability
- They must be allowed to return to the same academic and extracurricular status as before their medical leave began
- Must provide reasonable adjustments, like a larger desk, elevator access, or allowing frequent trips to the restroom



ALLOW MODIFICATIONS

Non-Exhaustive



What About "Parents" and "Parenting?"

Cannot apply a rule about the actual or potential parental or marital status of a student, applicant, or employee that treats people differently based on sex.

Otherwise, rules are about those experiencing pregnancy or related conditions.

These are from 1975!



WHAT WOULD YOU DO IF...?

A student returns from recovery after delivering their baby and reports that the baby has had some health complications and is being cared for in the NICU. The student asks for more leave time due to the baby's health complications, under Title IX, and requests for an email to be sent to faculty letting them know they need to provide excused absences for the student and opportunity to make up missed work and/or exams.

Policy To Practice

Policies account not only for regulation but provide for a process that is understandable and—



Identify a single point of first entry (a proactive practice)



Provide consistent information using the correct terms and definitions

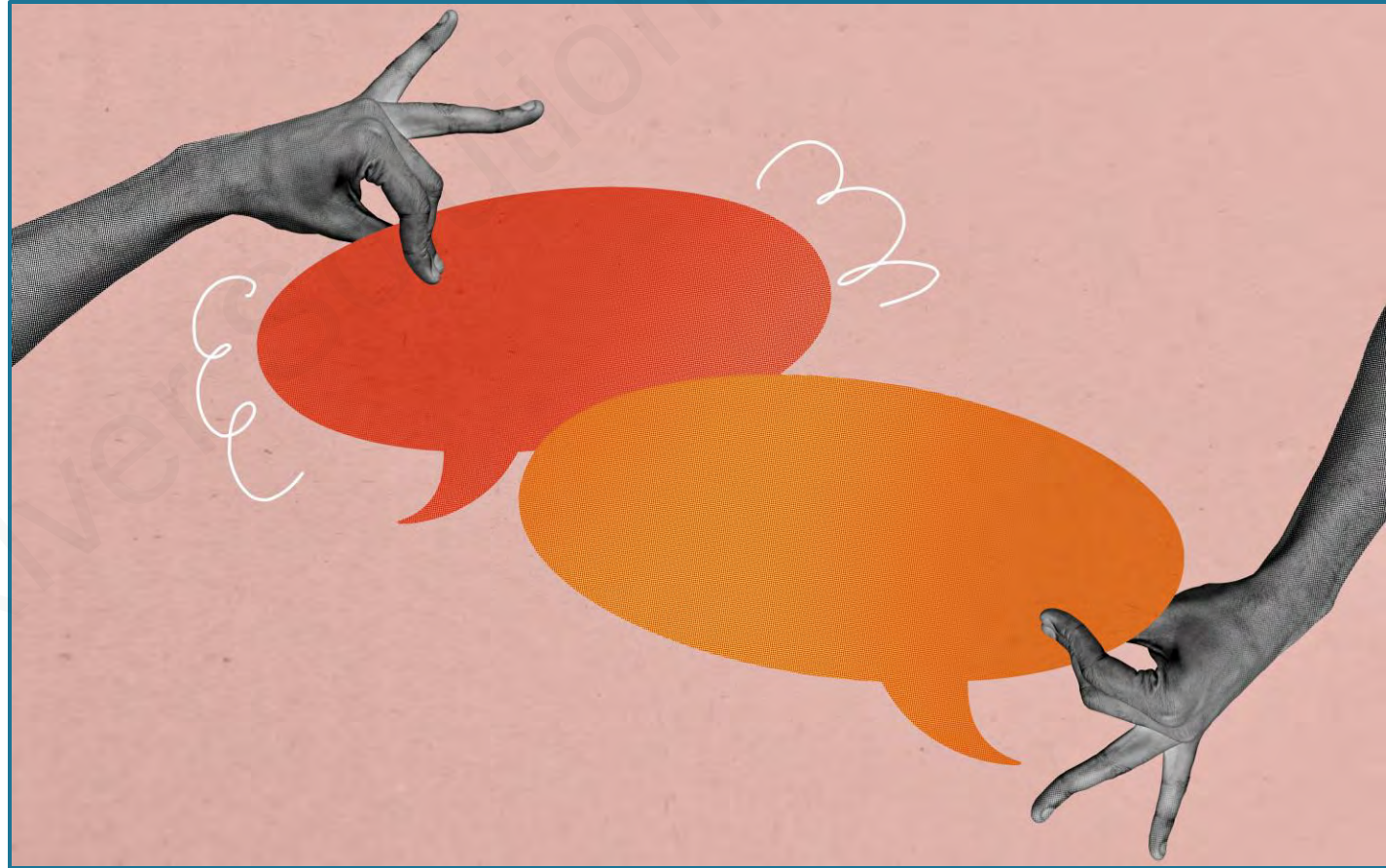


Support the student into the correct lane or lanes to begin



Identify appropriate services supports

CLOSING DAY ONE Q&A





USHE ANNUAL TITLE IX TRAINING

Day Two

August 5, 2026

Facilitators:

Emma Hempel & Pari Le Golchehreh

DAY TWO AGENDA



Assessing Jurisdiction



Title IX Investigations
An Overview



Issues of Relevance



Unpacking Severe, Pervasive, &
Objectively Offensive



Intoxication vs.
Incapacitation



Policy Analysis
For Investigators & Decision-makers

ASSESSING JURISDICTION

07

WHAT IS A NOTICE
OF ALLEGATION?

WHAT SHOULD BE
INCLUDED?



NOTICE OF ALLEGATION REQUIREMENTS (1)

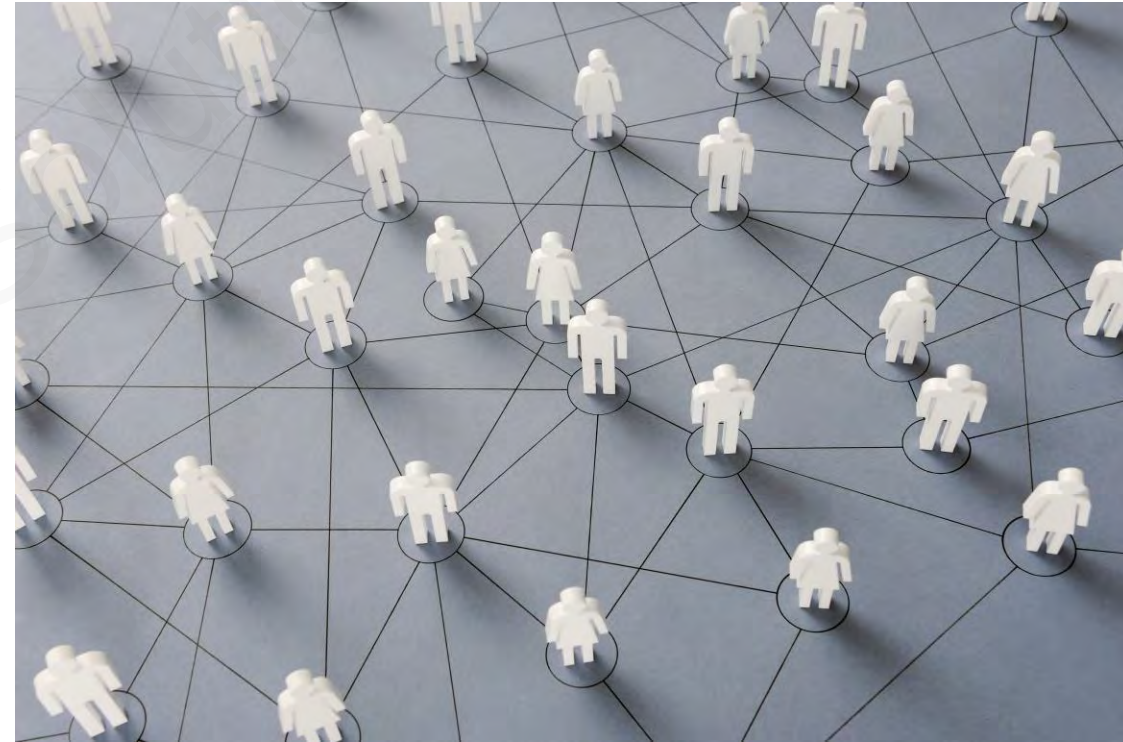
- Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:
 - the identities of the parties involved in the incident, if known,
 - the conduct allegedly constituting sexual harassment 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.

NOTICE OF ALLEGATION REQUIREMENTS (2)

- 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

CONNECTING CONDUCT TO POLICY

- The allegation is only as strong as your connection to the policy.
- Conduct/behavior needs to be correlated to the alleged policy violation.
 - If the behavior, as alleged is true, which policy would it fall under? Title IX? Other campus policy?



CONNECTING TO POLICY

If the conduct as alleged were substantiated, would this be violation of the following policy definition?

- Definition:

- o Stalking: Engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

- Intake Summary:

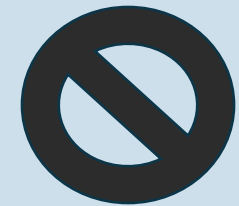
- o "They stared at me at the dining hall and are creepy." (Title IX Coordinator confirmed there were no additional instances of contact or attempted contact, threats, or physical contact.)

"They stared at me at the dining hall and are creepy."

Engaging in a course of conduct on the basis of sex

directed at a specific person

that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.



CONNECTING TO POLICY

If the conduct as alleged were substantiated, would this be violation of the following policy definition?

- Definition

- o 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

- Summary of Intake:

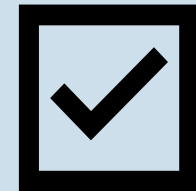
- o My vice-president made several comments to me that were sexual in nature. They frequently make sexual comments about my body during one-on-one meetings. When I walk into a meeting, they always make a comment about my appearance. Last week, they sent me a text message asking, "would I ever consider a threesome?" I no longer feel comfortable attending departmental meetings or meeting with them in general. Honestly, coming to work is a challenge.

My vice-president made several comments to me that were sexual in nature. They frequently make sexual comments about my body during one-on-one meetings. When I walk into a meeting, they always make a comment about my appearance. Last week, they sent me a text message asking, "would I ever consider a threesome?" I no longer feel comfortable attending departmental meetings or meeting with them in general. Honestly, coming to work is a challenge.

Unwelcome sex-based conduct

that is so severe, pervasive, and objectively offensive

effectively denies a person equal access to the recipient's education program or activity.



WRITING ALLEGATIONS



ELEMENTS OF AN ALLEGATION

- Time, date, location, parties, and specific alleged behavior as it relates to the policy.
- Language to consider:
 - On or about
 - Approximately
 - Including
- On or about DATE, in LOCATION, it is alleged that Respondent BEHAVIOR.
 - *(On or about October 1st, 2024, in Grand River Hall, it is alleged that Respondent inserted their penis into Complainant's vagina without consent.)*
- What to Avoid
 - Blaming Language

LET'S PRACTICE

Complainant shared, "We were making out, which was fine, but then Alex grabbed my boob without asking and I was super freaked out. I think this was last Friday [October 11th, 2024] in my residence hall [Grand River Hall]".

What is the alleged policy violation?

Sexual Contact (Replaced Fondling):

On or about October 11th, 2024, at approximately 11:00 pm in Grand River Hall, it is alleged that Respondent grabbed Complainant's breast for the purpose of sexual gratification and without consent.

You will review the summary of the intake meeting. Based on the information provided, write your allegations.



You are in conversation with one of your students, Quinn, about how the semester is going. Quinn casually mentions that another student, Emerson, has been sending them “weird” comments on a discussion post on Blackboard. Quinn now doesn't want to log onto Blackboard anymore. The comments started back in September.

- o "Guys, didn't Quinn look so cute today in class?"
- o "Omg this girl's boobs are almost as big as Quinn's lol."
- o "Hey Quinn, you're from another country, right?"
- o "Who's going to the bar after class tonight? Anyone think Quinn will get drunk and take their top off again?"

During class the other day, Emerson said to Quinn, “Your ass looked so good today. I hope I see you out tonight at the Art Club party.”

Quinn also mentioned that they frequently see Emerson at Art Club parties and that Emerson gets really “handsy” when they are drunk or high. Quinn said that many other Art Club students say Emerson is "creepy".

- o Back in October, at the Art Club party off-campus, Quinn shared that Emerson grabbed their breast while they were playing beer pong.
- o At that same party, Emerson made several comments of a sexual nature to Quinn, including, "I want to rip those jeans right off you."

WRITTEN ALLEGATIONS

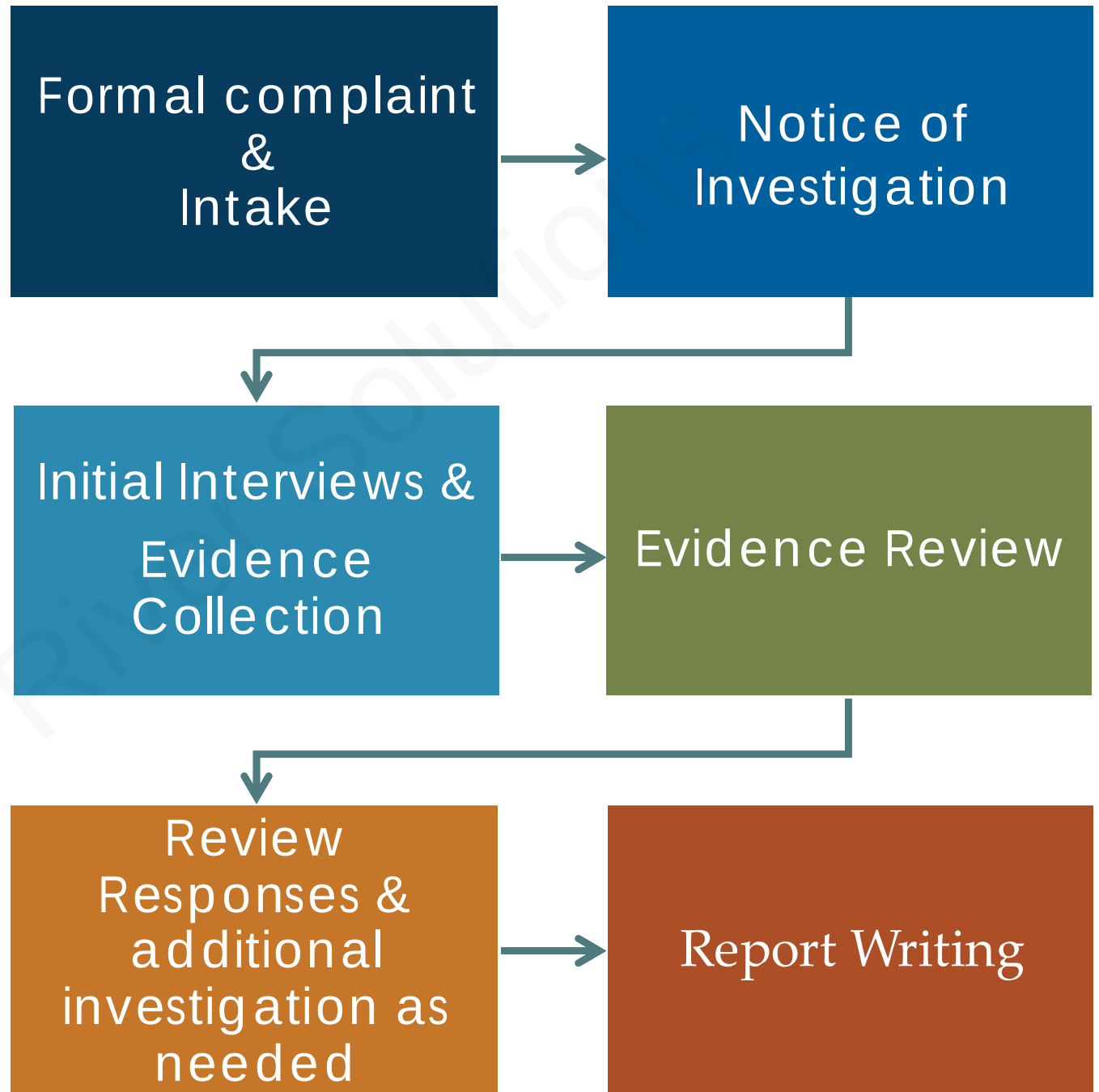
- Beginning on or about September 2025, it is alleged that the Respondent engaged in an unwelcome course of sexual conduct on-campus, off-campus, and electronically towards the Complainant that may be severe, pervasive, and objectively offensive and that denied their participation in their educational program. The alleged conduct included statements such as:
 - o "Guys, didn't Quinn look so cute today in class?"
 - o "Omg this girl's boobs are almost as big as Quinn's lol."
 - o "Who's going to the bar after class tonight? Anyone think Quinn will get drunk and take their top off again?"
 - o Additional verbal comments including a statement regarding removing clothing for the purpose of sexual gratification.
- On or about October 2025 off-campus, it is alleged that the Respondent grabbed Complainant's breast for the purpose of sexual gratification and without consent.

TITLE IX INVESTIGATIONS

An Overview



INVESTIGATION MILESTONES



SURVEY QUESTIONS

1

Raise your hand if you are a volunteer who supports the Title IX Office.

2

Raise your hand if you are typically handling more than two investigations at a time.

3

Raise your hand if you've written and feel comfortable with reaching determinations.



ELEMENTS OF A STRONG INVESTIGATION PLAN

SCOPE

**ASSIGNMENT
PROGRESSION**

**PRODUCTS OF THE
INVESTIGATION**



ELEMENTS OF A STRONG INVESTIGATION PLAN

SCOPE

Review formal complaint, Notice, Policy, and Procedures

ASSIGNMENT PROGRESSION

Timelines and tracking

PRODUCTS

Incident timeline, summaries/transcripts, documentary evidence

SAMPLE PLAN

There are different ways you can organize the investigation plan.

- Cheat sheet
- Report outline
- Spreadsheets

Any other ways?

COMPLAINANT	
RESPONDENT	

INCIDENT NOTES (General information per the formal complaint)

NOTICE LANGUAGE (Copy paste from notices)

INVESTIGATOR'S CHECKLIST

REVIEW NOTICE AND FORMAL COMPLAINT	
REVIEW POLICY	
CREATE REPORT OUTLINE	
PREPARE FOR CP INTERVIEW/DEVELOP INTERVIEW OUTLINE	
INTERVIEW COMPLAINANT	
ORGANIZE EVIDENCE FROM COMPLAINANT	
PREPARE FOR RS INTERVIEW/DEVELOP INTERVIEW OUTLINE	
INTERVIEW RESPONDENT	
ORGANIZE EVIDENCE FROM RESPONDENT	
PREPARE FOR WITNESS INTERVIEW/DEVELOP INTERVIEW OUTLINE	
INTERVIEW WITNESSES	
ORGANIZE EVIDENCE FROM WITNESSES	
COMPILE ALL EVIDENCE FOR REVIEW	
CONDUCT EVIDENCE REVIEW	
INCORPORATE PARTY RESPONSES	
DRAFT PRELIMINARY INVESTIGATIVE REPORT	
SUBMIT DRAFT TO TIXC FOR REVIEW	
INCORPORATE REVISIONS/SUGGESTIONS	
SUBMIT FINAL DRAFT TO TIXC FOR REVIEW	
INCORPORATE COMMENTS/SUGGESTIONS	
FINALIZE REPORT – PROVIDE TO PARTIES AHEAD OF HEARING	

INVESTIGATION TIMELINE

INTAKE DATE	
FORMAL COMPLAINT DATE	
NOTICE DATE	
INVESTIGATION DEADLINE	

ELEMENTS OF PROHIBITED CONDUCT

Witnesses and/or evidence that speak to each element

ELEMENT 1	
ELEMENT 2	
ELEMENT 3	

INCIDENT TIMELINE

Who can speak to each time period, potential evidence, etc.

PRE-INCIDENT	
INCIDENT	
POST INCIDENT	

WITNESS LIST

Name & Contact	Provided by	Connected how / Relevant because?	Interviewed

EVIDENCE LISTS

Investigator's wish list:

Evidence name	Type	Relevant / connected because?	Provided by	Request dates

Evidence Gathered

Document name	Type	Relevant / connected because?	Provided by

CASE LOG

(Log all investigative communications and activity here)

DATE AND TIME	ACTIVITY

Investigation Interviews

WHAT DO YOU CALL AN
ALLIGATOR IN A VEST?



Pre-Interview

Location, timing, written notice, and question preparations



During Interview

Connect, listen, and clarify

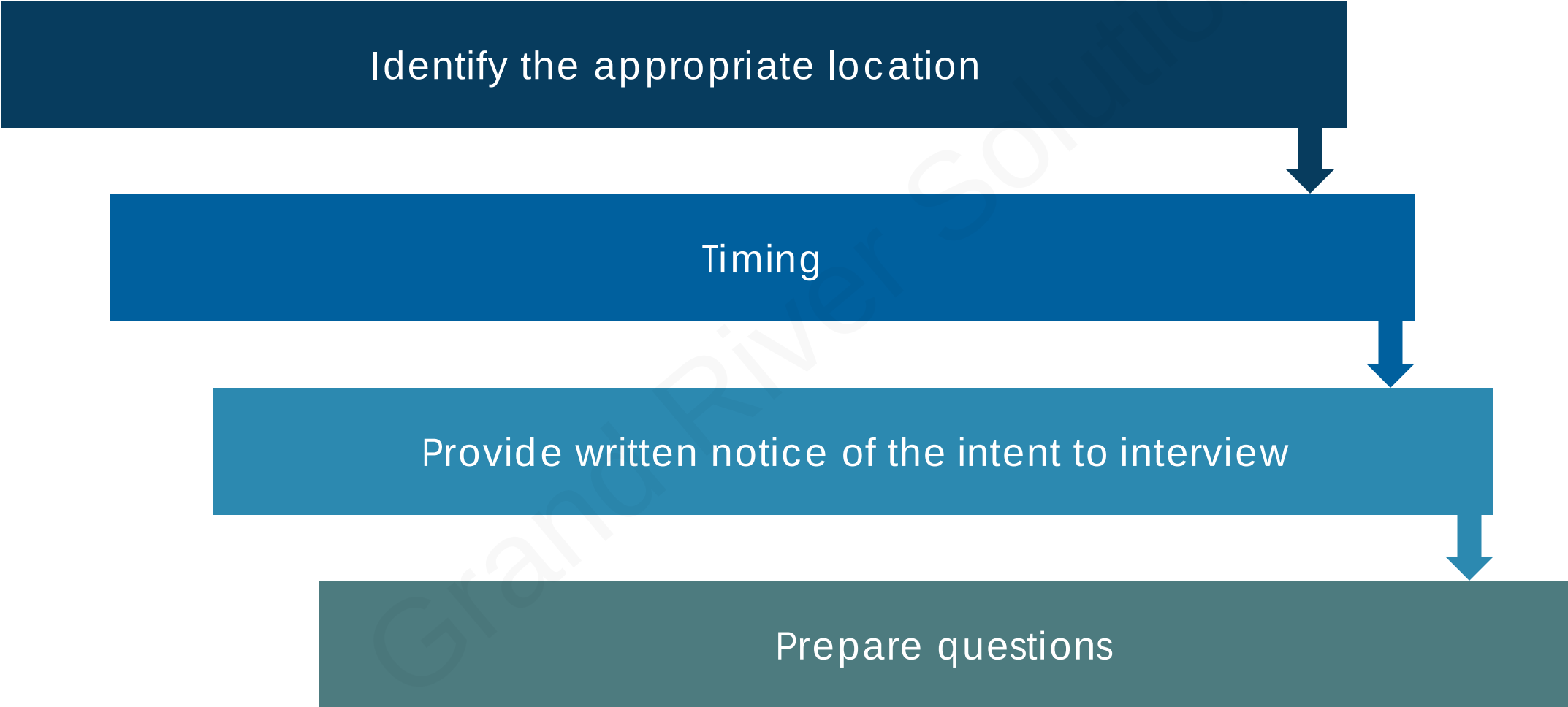


Post Interview

Reflect, memorialize, and provide opportunity to comment

PRE-INTERVIEW

Identify the appropriate location



```
graph TD; A[Identify the appropriate location] --> B[Timing]; B --> C[Provide written notice of the intent to interview]; C --> D[Prepare questions];
```

The diagram is a vertical flowchart with four rectangular boxes. The first box is dark blue, the second is medium blue, the third is light blue, and the fourth is dark teal. Each box is connected to the next by a downward-pointing arrow of the same color. The text inside each box is white.

Timing

Provide written notice of the intent to interview

Prepare questions

DURING INTERVIEW: OBJECTIVES



Listen

Allow interviewee to share their experience



Evidence Preservation

Text messages

Photographs

Names and contact info for witnesses

Connect

Build rapport

Build trust

Empower



Clarify

Understand what you have heard

Seek additional information



OBJECTIVE ONE: CONNECT

HOW TO BUILD

01 RAPPORT

Empathy
Fairness
Objectivity
Impartiality

02 TRUST

Preparedness
Clear introduction
Transparency
Expertise

03 EMPOWER

Clear expectations
Duration
Patience
Space
Permission to
seek
clarification/ask
questions

DISCUSSION: CONNECT

Building Rapport, Trust, and
Empowerment

Setting Clear Expectations

1. What they can expect of you as the investigator
2. What the investigation process entails, and
3. What do you expect of them?

What would you want to communicate to interviewees when the interview begins?

OBJECTIVE TWO: LISTEN



Open-ended questions



Trauma-informed



Objective



Active and patient

OBJECTIVE THREE: CLARIFICATION



Is curiosity and
desire to
understand

Supports sound assessments for
credibility & Reliability

Is **NOT**
interrogating,
blaming,
doubting, or
leading

Does **NOT** shy
away from
“hard” questions

Upholds
Trauma-
informed
practices

HOW TO ASK THE HARD QUESTIONS

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

WHICH QUESTION IS BETTER?

Sexual contact

In the formal complaint, CP describes having been inappropriately touched:

- Did RS touch your privates?
- Are you able to tell me where RS touched you?
- Can you demonstrate where you were touched?

Inconsistent behavior

RS has stated that CP and RS continued to text after the incident:

- Why did you remain friends with RS?
- Can you help me understand why you continued contact with RS?
- Were you comfortable staying in touch with the RS?

Inconsistent evidence

Parties provided copies of the same text exchange and RS alleged CP altered their version:

- Why does your version of the text message look fake?
- Did you alter the text messages?
- Can you review these text messages I obtained from RS?

Let's try more



WHICH QUESTION IS BETTER?

Attire

Complainant alleges that Respondent touched the skin of Complainant's inner thigh:

- Were you wearing business attire?
- To help me understand how RS touched your inner thigh, can you describe your clothing?
- What were you wearing the day of the incident?

Consumption

Complainant described in the formal complaint having been highly intoxicated:

- Are you able to recall how many drinks you had?
- How many shots did you drink in total?
- Can you help me understand why you drank so much?

Lack of memory

Complainant describes in the formal complaint having "blacked out" for a large part of the relevant timeframe:

- What was your last memory before blacking out?
- Why do you not remember parts of the night?
- Are you sure "blacked out" is the correct term?



OBJECTIVE FOUR: EVIDENCE PRESERVATION

Identify the evidence that you would like to obtain or that was mentioned during the interview.

Develop an intentional strategy for obtaining the evidence.

Consider potential barriers to evidence collection and ways to overcome them.

Cognizant of limitations in collecting certain types of evidence.

When deciding what evidence to request of the interviewees, take these steps with intentionality:



CONCLUDING INTERVIEWS

The end...or is it?



Debrief: Evidence to submit and witnesses discussed

Next steps: Review process, protections, options, and expectations

Reflect: Was there anything you missed?
Anything they missed?

POST-INTERVIEW: ACTIONS

Memorialize the interview in writing



Provide opportunity for the party or witness to review and respond to it.



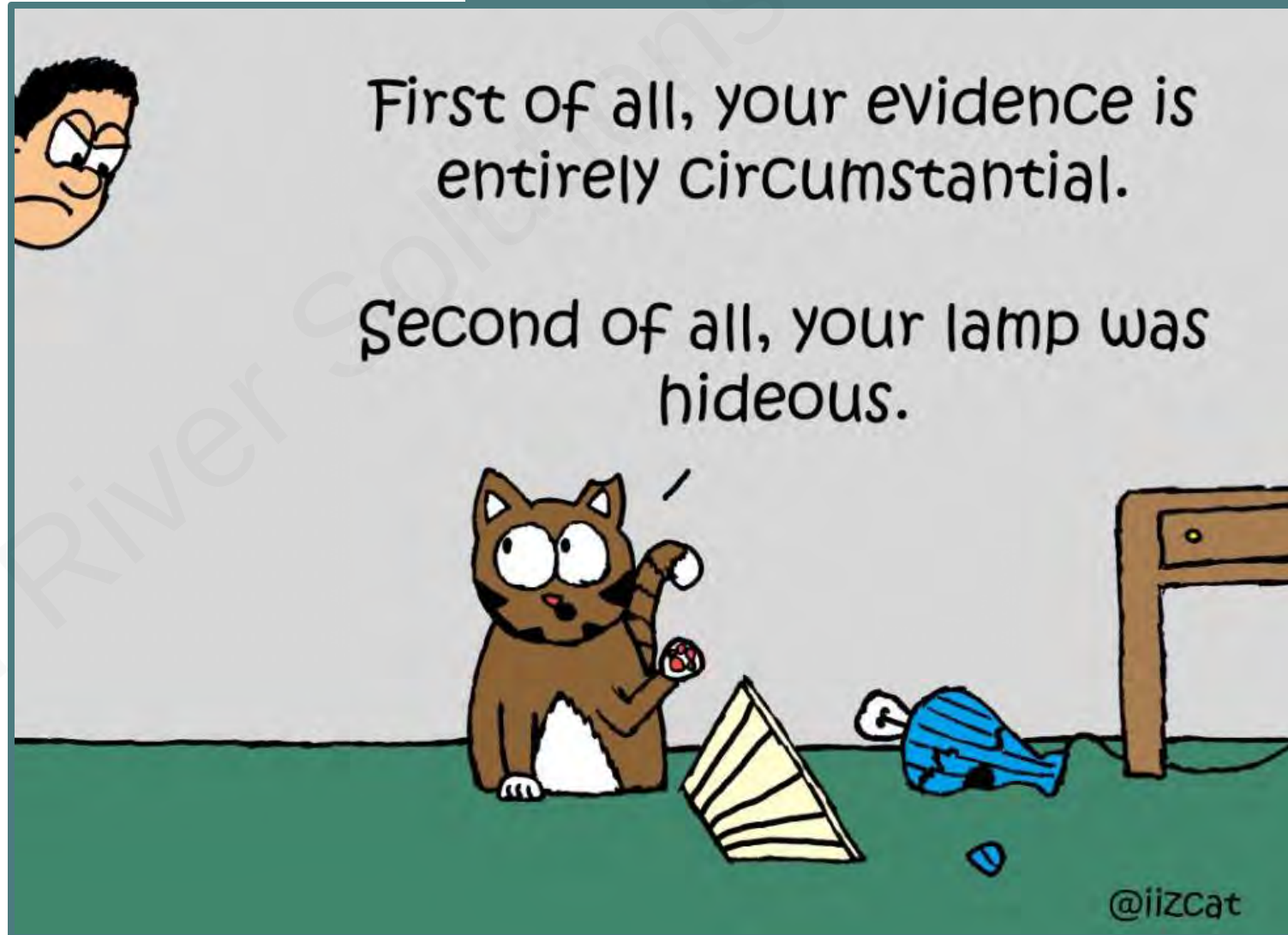
Incorporate the response.



Reflect on the relevancy of the information shared.



ISSUES OF RELEVANCE



EVALUATING THE EVIDENCE

A thorough investigation is more than evidence collection

01

Is it relevant?

02

Is it authentic?

03

Is it credible/reliable?

04

What weight, if any,
should it be given?

RELEVANCY

Relevant

(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."

Directly
Related

Evidence upon which the school does not intend to rely on in reaching a determination regarding responsibility

Not Relevant

- Complainant sexual history
- Legally recognized un-waived privilege

POP QUIZ: IS IT RELEVANT OR DIRECTLY RELATED?



RELEVANT

Polygraph regarding
incident

Statement from religious
leader of party's good
character

Text communication
between friends of party
about what they heard
about the incident

Witness statement,
"[Party] is a liar."



**DIRECTLY
RELATED**

EVIDENCE THAT IS "NOT RELEVANT"

Sexual History

Complainant's sexual predisposition or sexual history, with two exceptions:

- Offered to prove someone other than Respondent committed act, or
- Offered to prove consent.

Privileged

Legally recognized un-waived privilege.

**Written release required for parties holding said privilege provides the privileged information.

Note

- Not included in the final compilation of evidence
- Not to be mentioned in the summary investigation report
- Not relied upon for the analysis
- Should be redacted

TEST YOUR KNOWLEDGE

Witness 1: "Complainant is VERY promiscuous."

- Relevant
- Directly related
- Not relevant

Complainant said that Respondent suffers from psychotic breaks and that mental health records can confirm this.

- Relevant
- Directly related
- Not relevant

Respondent: "Complainant and I had sex before and they did not cry rape then."

- Relevant
- Directly related
- Not relevant

Respondent offers medical records showing they were admitted to the hospital on the night of the alleged incident.

- Relevant
- Directly related
- Not relevant

WHEN ARE REDACTIONS APPROPRIATE?

Redact



Complainant's sexual predisposition, unless one of the two exceptions apply.

Redact



Legally recognized UNWAIVED privilege.

TO REDACT OR NOT REDACT?

Complainant: Medical records from Nurse Examiner Sexual Assault Report

- Redact
- Do not redact
- Partially redact

Respondent: Screenshot of text messages of Complainant sending nude photos.

- Redact
- Do not redact
- Partially redact

Respondent alleged that he contracted an STI from Complainant and that was why they filed the complaint.

- Redact
- Do not redact
- Partially redact

Witness 2: "Respondent is a terrible person, but I know they couldn't assault the Complainant because they can't get it up when they drink."

- Redact
- Do not redact
- Partially redact

AUTHENTICITY

NEVER
assume
evidence is
authentic

- Obtain originals
- Multiple sources

Ask questions
that lead
to proof of
authenticity

- Timestamps
- Full screenshots
- Full chains of communications

Investigate
authenticity if
necessary

- Look at properties
- Metadata

CONSIDERING CREDIBILITY AND RELIABILITY FACTORS

Is there corroborating evidence or has it been corroborated?

Is the evidence or statement plausible?

Does the evidence seem logical?

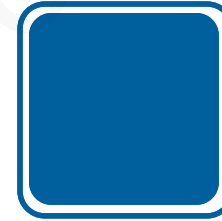
Is the evidence or statement consistent with other evidence or statements?

WEIGHING THE EVIDENCE



Direct

Based on personal knowledge or observation and that, if true, proves a fact without inference or presumption



Circumstantial

Based on inference and not on personal knowledge



Corroborating

Differs from but strengthens or confirms what other evidence shows.

SEVERE, PERVASIVE,
& OBJECTIVELY
OFFENSIVE





HOSTILE ENVIRONMENT

(1) Unwelcome conduct

(2) determined by a reasonable person to be

a) so severe,

b) pervasive, and

c) objectively offensive

(3) that it effectively denies a person equal access to a school's education program or activity.

ABSOLUTES



Avoid “gut” decisions



Avoid bias



Document the factors
considered

IS IT SEVERE?

Intensity over frequency

Key question to ask:

Was the incident so serious that one instance had a significant effect on the Complainant?

Likely severe:

- Sexual Assault
- Unwanted groping
- Exposing genitalia
- Threats of sexual violence
- Frequent use of slurs or homophobic comments
- Visual exposure to sexual materials

Less likely to be severe:

- Stray remarks or a few profanities,
- Awkward compliment,
- Single unwanted request for a date,
- Minor teasing or name calling

FACTORS FOR SEVERITY



Is there a notable age difference between the parties?



Is there a power imbalance?



Where and what was the context of the conduct?

IS IT PERVASIVE?

Frequency and Pattern

Key question to ask:

*Did the behavior occur
multiple times/across multiple
avenues?*

Likely pervasive:

- Multiple occurrences over a short period of time
- Variety of behaviors, given totality of the circumstances

One comment is unlikely to meet the threshold

FACTORS FOR PERVASIVENESS



How frequently did the conduct occur?



Number of incidents in correlation with the time period



Minor and varying behaviors taken in totality

OBJECTIVELY OFFENSIVE

Subjective & Objective

Key question to ask:

*Would a reasonable person
consider it a hostile
environment?*

Subjective:

If there is a complaint, you likely met this requirement.

Objective:

A reasonable person, one who is similarly situated with Complainant, would consider the behavior as contributing to a hostile environment.

FACTORS FOR OBJECTIVELY OFFENSIVE



What is the context/setting?



Is there a power dynamic or relationship between the parties?



Is there cultural significance?

TEST YOUR KNOWLEDGE

1

During a class discussion, a student makes a sexually suggestive joke.

3

A student sexually assaulted another student.

2

A teacher's aid repeatedly sends one of the student text messages asking to meet off-campus.

4

A faculty member wrote in the feedback to a student, "I really liked your outfit last night."

SCENARIO: GROUP DISCUSSION

Complainant is Respondent's administrative assistant and has been working with Respondent for the last 6 months. Shortly after Complainant was hired, Respondent began making comments about Complainant's appearance. In the first few months, Complainant estimated that Respondent made approximately 5 comments. Complainant did not remember them specifically, but recalled Respondent saying things like, "You look nice today" or "Is that a new hairstyle? It looks great."

Complainant reported that in the last month, Respondent's comments became increasingly frequent—about once per week-- and made Complainant more-and-more uncomfortable. Complainant reported that one day she came to work in heeled boots and Respondent stated, "I've always preferred tall women." The last comment Respondent made prior to Complainant's report to the Title IX Office was, "You should wear more outfits like that. It hugs you in all the right places."

BREAKOUT GROUPS: SCENARIO

Taylor is a sophomore student and employee in the campus recreation center. During the semester, a supervisor repeatedly comments on Taylor's appearance, asks intrusive questions about Taylor's sex life, and frequently says things such as, "You'd get better shifts if you were nicer to me." Taylor laughs nervously at first but later tells the supervisor the comments are uncomfortable and asks for them to stop.

Despite this, the behavior continues for several months. The supervisor begins sending late-night messages containing sexual jokes and comments about Taylor's body. During work shifts, the supervisor stands unnecessarily close to Taylor, touches Taylor's lower back, and makes comments in front of coworkers such as, "Taylor knows how to keep me entertained."

Taylor starts requesting fewer work hours to avoid interactions with the supervisor and eventually stops attending optional staff trainings and social events connected to the job. Taylor reports difficulty concentrating in classes because of anxiety about seeing the supervisor on campus and begins considering resigning from the position entirely.

INTOXICATION V. INCAPACITATION



CONSENT THROUGH THE TITLE IX LENS

The statute does not define incapacitation, BUT Federal law and OCR guidance REQUIRE institutions to utilize a standard for assessing consent when capacity is at issue.



CLERY ACT & FBI UCR

Sexual Assault & Consent defined

Sexual Assault is:

Sexual acts committed against a person without their consent.

Consent is possible if:

A person had the “capacity” to understand, decide, or control their sexual conduct.

A person lacks capacity when they are unable to understand the nature of the sexual conduct or to make a voluntary, informed decision about it.

OCR GUIDELINES

OCR requires a functional **analysis of an individual's** condition at the time of the sexual acts.

We cannot:

- Treat all intoxication as incapacitation
- Skip a capacity analysis
- Presume incapacity because of vulnerability

KEY ASPECTS OF INCAPACITATION

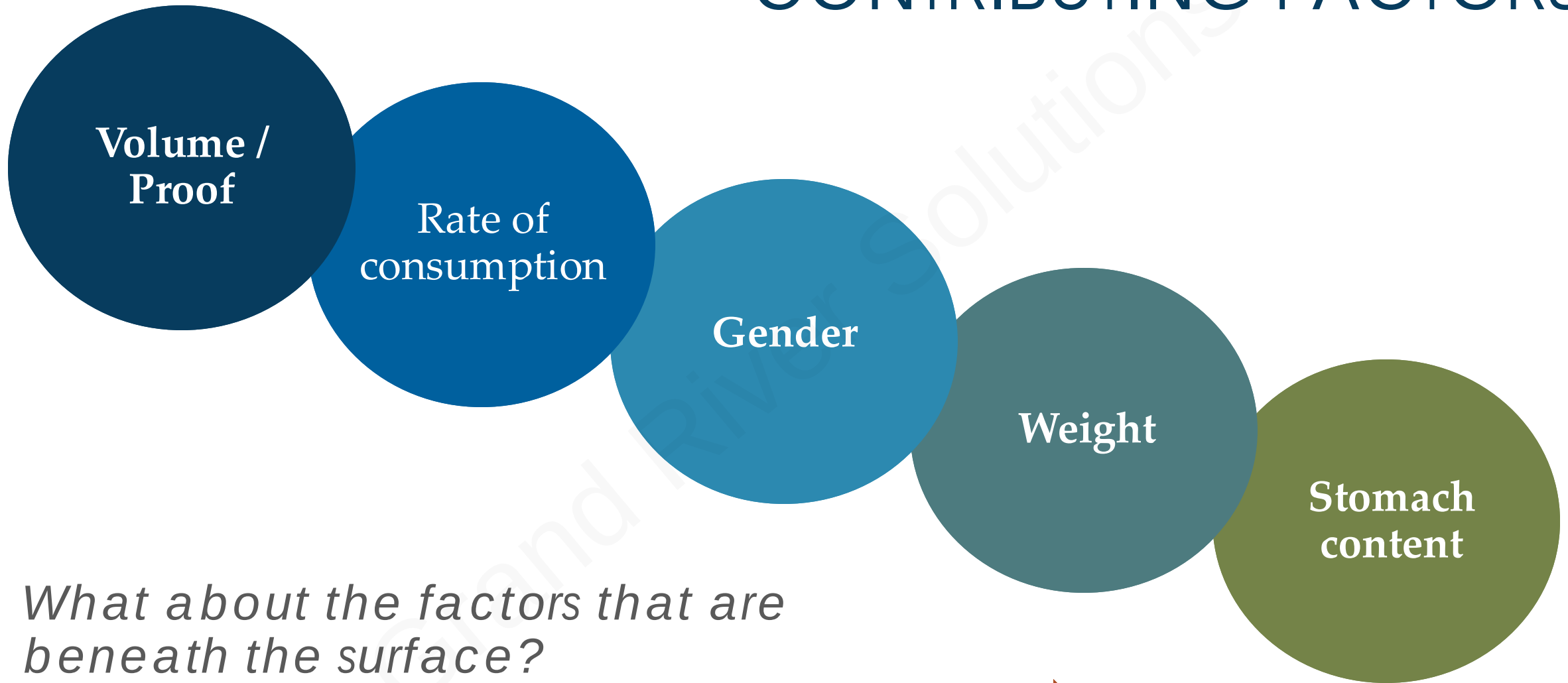
Beyond drunkenness

Impaired judgment

Observable signs

Physical resistance is NOT a requirement

CONTRIBUTING FACTORS



*What about the factors that are
beneath the surface?*



OTHER FACTORS TO CONSIDER



Prior history / habits



Pre-existing conditions /
prescription medication



Compounding substances



Environmental

HYPOTHETICAL A: Given what we know about contributing factors and the stages of intoxication, what issues do you see in this fact pattern?

Complainant reported that they blacked out. He said his roommate had filled a gallon jug with "jungle juice" and gave it to him to drink throughout the day. He said he thinks his roommate mixed Gatorade, Hard Mountain Dew, tequila, Twisted Tea, and margarita mix in the juice. Complainant said they started drinking from the gallon around noon, and does not remember if he finished the jug by the time he arrived at Respondent's residence at 6 p.m. Complainant said when they arrived at Respondent's residence, Respondent gave him a beer can to "shotgun," which he did. He said this is when his memory is "fuzzy."

EVIDENCE: KEY SOURCES



AVOIDING PITFALLS

Security footage:

Plan to assess availability and secure the evidence immediately

Witness accounts:

Be prepared and open-minded. Avoid prejudgment, bias, and presumption

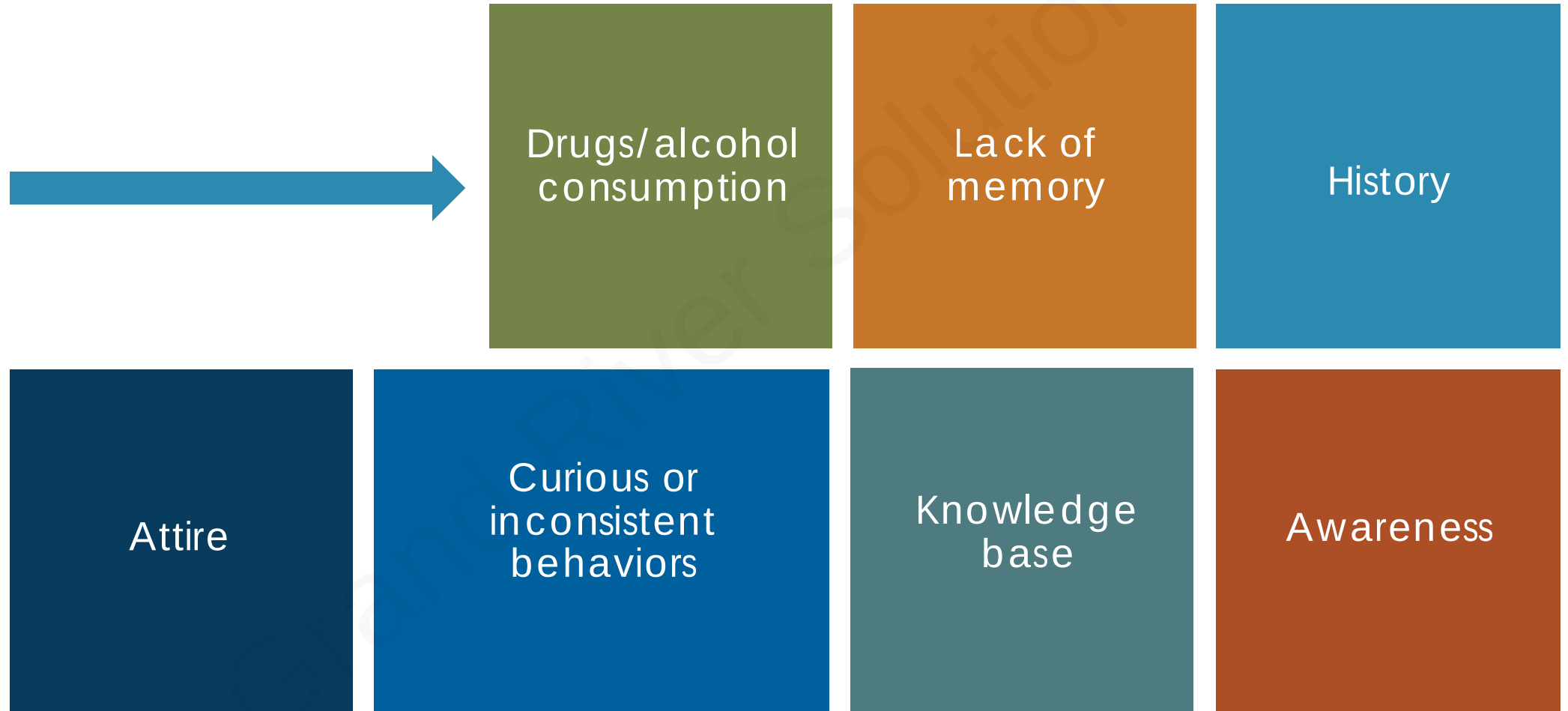
Medical reports:

Remain compliant, be transparent, and review content closely

Text and social media:

Retrieve evidence from multiple sources, authenticate, and think outside of the box

SENSITIVE QUESTIONS



FRAMING THE SENSITIVE QUESTION

1 Identify the sensitive questions before the interview

2 Prepare the questions ahead of time, avoiding prejudgment, bias, and doubt

3 Lay the foundation for the importance of the information you are seeking

WHICH QUESTION IS BETTER: COMPLAINANT EDITION

Sexual contact

CP said although they were "blacked out, "they knew they were touched inappropriately:

- How do you know this to be true?
- Why do you think that?
- Are you able to describe what led you to know this?

Inconsistent behavior

RS has stated that CP and RS continued to text after the incident:

- Why did you remain friends with RS?
- Help me understand why you continued to contact RS?
- Were you comfortable staying in touch with the RS?

Lack of Memory

CP stated they "blacked out" for a large part of the relevant timeframe.

- What was your last memory before blacking out?
- Why do you not remember parts of the night?
- Are you sure "blacked out" is the correct term?

Let's try more



WHICH QUESTION IS BETTER: RESPONDENT EDITION

Attire

CP stated RS pulled off her jean shorts while she was struggling to stay awake. RS stated CP took off her romper on her own.

- How do you know what a romper is?
- Can you prove that CP did this on her own?
- Is there anything you can provide to support your story?

Consumption

CP described being highly intoxicated. RS stated CP was “perfectly fine.”

- Are you able to recall how many drinks CP had?
- How would you know CP was “perfectly fine”?
- Are you able to recall how CP was behaving?

Inconsistent evidence

RS stated that CP walked them upstairs. Photo evidence shows RS carrying CP upstairs.

- This photo contradicts your description.
- Look at this photo from the night of the incident.
- Can you review this photo and tell me if this is an accurate depiction of the evening?

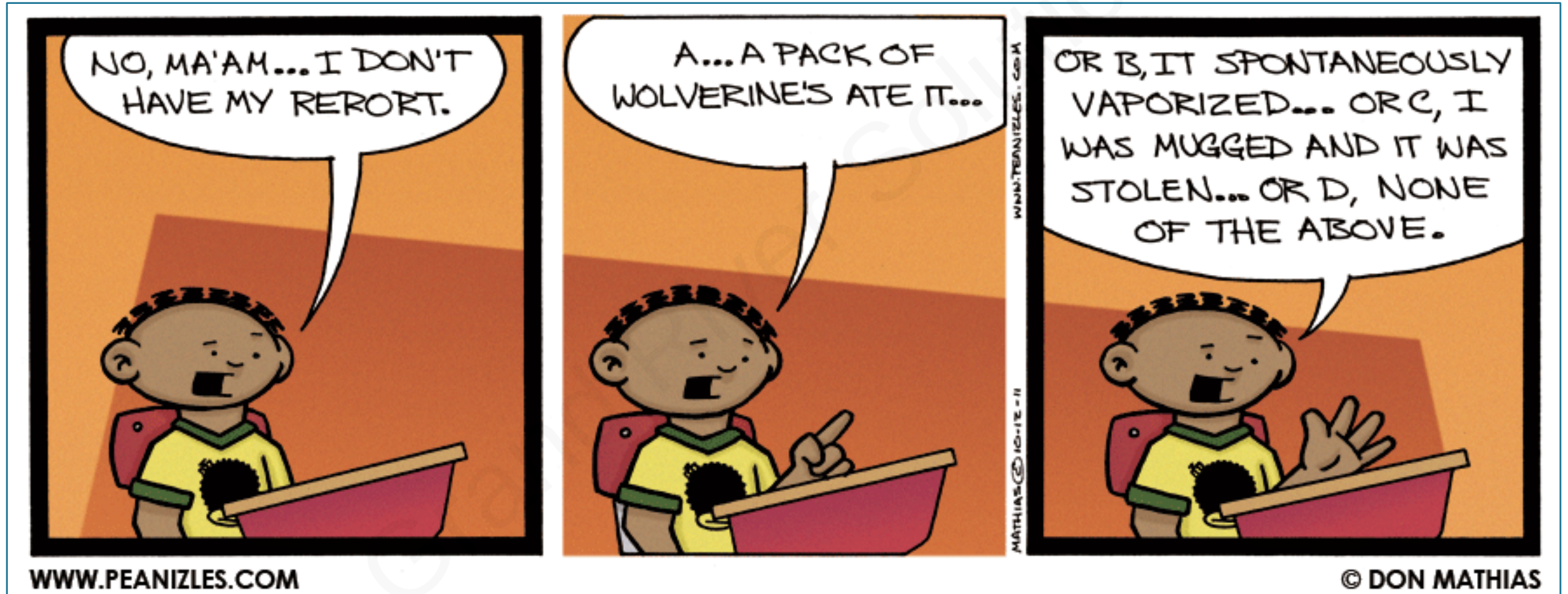


POLICY ANALYSIS INVESTIGATORS & DECISION-MAKERS



INVESTIGATOR'S REPORT

Organizing the information in a comprehensive manner



STRUCTURING YOUR REPORT:

REPORT ORGANIZATIONAL APPROACHES

Person
centered
approach

```
graph LR; A[Person centered approach] --> B[Organized relative to the full statements of parties and witnesses]; C[Event centered approach] --> D[Organized relative to specific events as they transpired]
```

Organized relative to the full statements of parties and witnesses

Event
centered
approach

Organized relative to specific events as they transpired

PERSON-CENTERED APPROACH

A. Complainant's Account

1. *Parties' prior relationship*
2. *Events immediately before the alleged prohibited conduct*
3. *Events immediately following the alleged prohibited conduct*
4. *Anything following the alleged prohibited conduct*

B. Respondent's Account

1. *Parties' prior relationship*
2. *Events immediately before the alleged prohibited conduct*
3. *Events immediately following the alleged prohibited conduct*
4. *Anything following the alleged prohibited conduct*

C. Witness Account

1. *Parties' prior relationship*
2. *Events immediately before the alleged prohibited conduct*
3. *Events immediately following the alleged prohibited conduct*
4. *Anything following the alleged prohibited conduct*

Pro-tip

It's all in the prep

Create consistent headers to stay focused on the material evidence/issues, as well as to orient the reader, ensuring comprehension.

Consistency
leads to clarity

EVENT-CENTERED APPROACH

I. History between the Parties

- a) Complainant's Account
- b) Respondent's Account
- c) Witness A's Account

II. The Hours Leading up to the Reported Incident

- a) Complainant's Account
- b) Respondent's Account
- c) Witness B's Account
- d) Witness C's Account

III. The Reported Incident

- a) Complainant's Account
- b) Respondent's Account

IV. After the Reported Incident

- a) Complainant's Account
- b) Respondent's Account
- c) Witness A's Account
- d) Witness D's Account

Pro-tip

Step back and consider the allegations holistically

Put yourself in the reader's position. Are there complicated allegations that may be easier to track if separated by the incident, accounting for each participant's perspective?

Be intentional!

HYPOTHETICAL

WHICH ORGANIZATIONAL APPROACH WOULD YOU USE?

Office Issues

Complainant reports Respondent, their direct report, makes comments about Complainant's management practices. Specifically, Complainant reports that Respondent often tells other employees that Complainant is "confused about her responsibilities like she is confused about her gender," and that Complainant has "poor management skills because she clearly can't manage her personal life." Complainant states they heard this from witness A, Witness B, Witness C, and Witness D.

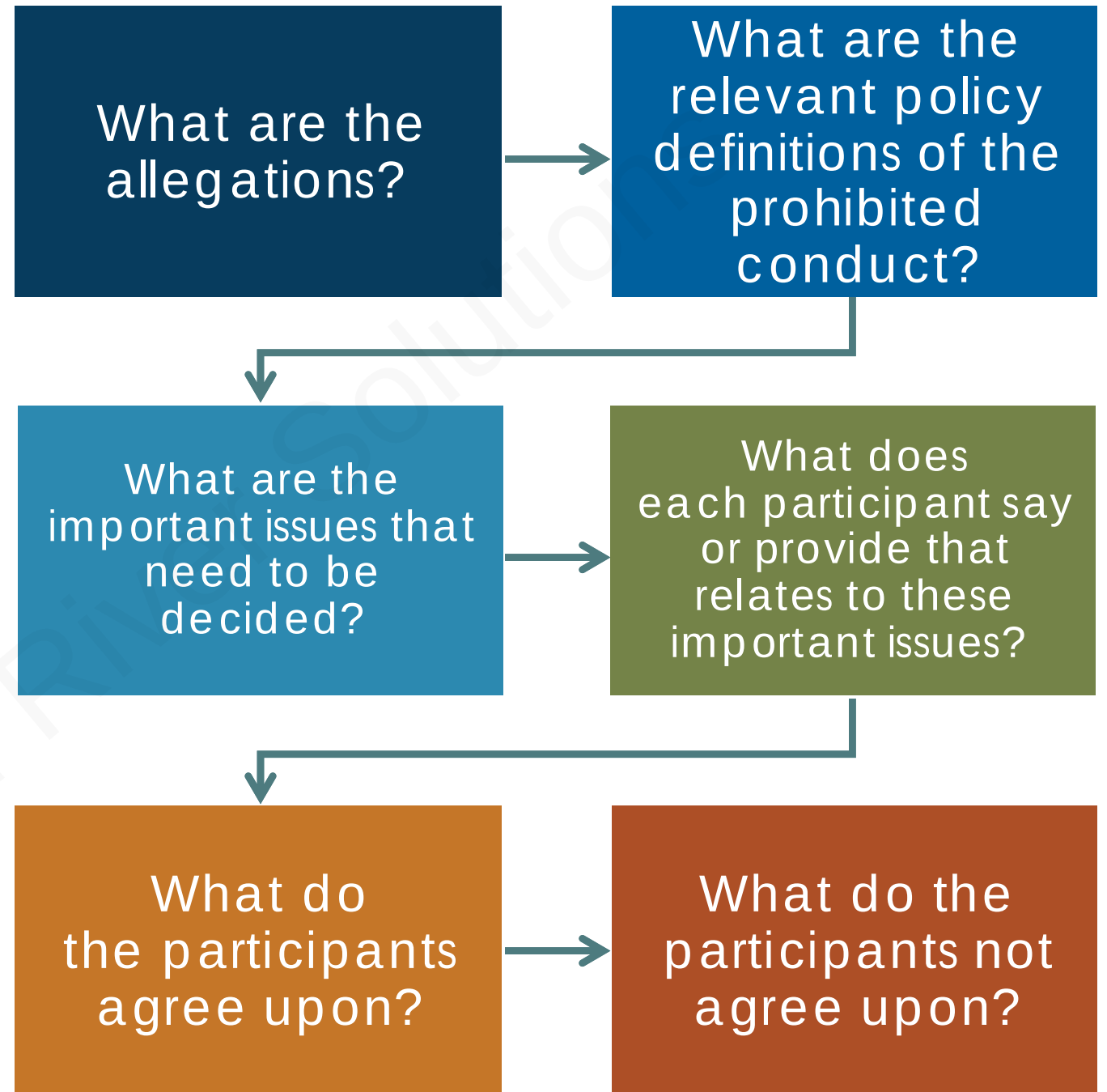
Respondent denies making such comments about Complainant, stating that all the Witnesses (A, B, C, and D) are "Close to" Complainant and have "the same political views." Respondent provides four additional witnesses to the conversations she had regarding Complainant – Witness 1, Witness 2, and Witness 3.

Is She Following Me?

Complainant reports Respondent is often "lingering" around corners near him and that she texts him "incessantly" from various numbers. Complainant said Respondent asks his friends about him when she cannot find him. Complainant said he is concerned about asking his friends to be witnesses because they are afraid of Respondent.

Respondent said she has classes near Complainant so has a good reason to be in the area. Respondent denies texting Complainant, stating she does not have his number. Further, Respondent said she does not have any mutual friends with Complainant.

UNDISPUTED/ DISPUTED FACTS



DRAFTING THE UNDISPUTED/DISPUTED FACTS

These are the key considerations:

- Refer to the allegations and the relevant policy definition of the prohibited conduct.
- Focus on the relevant and material information as they relate to the allegations and prohibited conduct definition.
- Not every statement in the summary of evidence will be referred to in the undisputed/disputed section BUT every statement in the undisputed/disputed section, must have been referred to in the summary.
- Remember that you are not making a determination, you are simply presenting the important information that a decision maker needs to evaluate to reach a finding.

This is why it is important to stay organized throughout your investigation and actively work on the road map you created when you were initially assigned the case.

UNDISPUTED / DISPUTED FACTS

PRESENTATION OF MATERIAL ISSUES FOR A STALKING ALLEGATION

01

Course of
Conduct

02

Sex-Based

03

Directed at
Complainant

04

Subjective &
Objective fear of
safety or
substantial
emotional distress

Definition: Engaging in a course of conduct on the basis of sex, directed at the Complainant that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

HYPOTHETICAL: “HE’S STALKING ME.”

Complainant and Respondent were in a dating relationship that ended in March 2025. Complainant alleged that in April 2025, Respondent called her 20 times day. Complainant also reported that Respondent had gone into her campus housing suite during spring break and stole several gifts he had given her during their dating relationship. Complainant further stated that Respondent had shown up in front of the building where her Monday morning class is.

Respondent stated that Complainant ended their dating relationship in May 2025 via text message. He said that his calls in April 2025 were out of concern because he had not seen her around campus and she was not answering his calls. Respondent stated he was out of state for the entirety of spring break. Respondent further stated that on **Monday mornings, he has a class at the same time as Complainant’s in the adjacent building.**

DISPUTED FACTS

What does each party say regarding these material issues?

Course of Conduct

- Parties ended their relationship when?
- What items were stolen?
- What was the purpose for being outside the building?

Directed at Complainant

To be
continued...

- Calls 20x a day?
- Items taken from suite?
- Outside the building on Monday morning?

Sex-Based

- Did RS enter CP's suite during spring break?
- Did RS have a class near CP on Mondays?

Fear of safety
or substantial
emotional
distress



Decision-Maker's Report

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PROCEDURAL REQUIREMENTS FOR THE HEARING REPORT

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



EVIDENTIARY STANDARD

PREPONDERANCE OF THE EVIDENCE

Responsible -
"More likely than
not..."



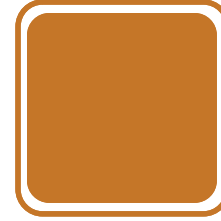
There was sufficient, reliable, and credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

Not responsible -
"Insufficient
evidence.."



There was insufficient reliable and credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

STEP ONE: FINDINGS OF FACT



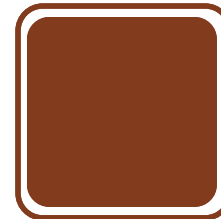
Structured

Clear presentation of material questions to be answered.



Summary of undisputed facts

Address the material issues that the participants agree on.



Credibility and Reliability

Analysis of evidence that speaks to each disputed material fact.

FINDINGS OF FACT GRID

COURSE OF CONDUCT ELEMENT

Question 1

In April 2025, did Respondent call Complainant 20 times a day?

Question 2

During spring break, 2025, did Respondent enter Complainant's campus suite?

Question 3

Did Respondent have a Monday morning class in a building adjacent to Complainant's class?

ASSESSING AND PRESENTING CREDIBILITY AND RELIABILITY

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency (internal and external)

Background, experience, and training

Coaching or bias



Be intentional



Use reasonable deduction



Be clear/Transparent



Do not presume/assume

HYPOTHETICAL: WHAT'S YOUR FINDING?

- Complainant reports ingesting two shots of liquor with Respondent just before the reported incident.
- Respondent denies ingesting any liquor on the night of the incident.
- Witness 1 produces a video from the night of the incident showing both Complainant and Respondent ingesting two shots of liquor at the same time together.



Answer:

Although Respondent denied ingesting any alcohol on the night of the incident, Complainant reported that they and Respondent ingested two shots of liquor just before the reported incident, and Witness 1 provided a video recording, confirmed to be taken on the night of the incident, showing both Complainant and Respondent ingesting two shots of liquor together. Therefore, the evidence suggests that it is more likely than not that Complainant and Respondent ingested two shots of alcohol at the same time, together, just before the incident.

STRUCTURE FOR THE POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts that you've determined to be true by the element to which they relate



QUID PRO QUO EXAMPLE:

1

An employee of the College,

2

Conditions the provision of an aid, benefit, or service of the College,

3

On an individual's participation in unwelcomed sexual conduct.

HYPOTHETICAL

- Complainant (CP) is a current student.
- Respondent (RS) is CP's faculty advisor for their senior thesis.
- RS agreed to advise CP if they agreed to go to dinner and CP agreed.
- Email evidence produced by both parties reveal that CP attempted to schedule meetings during RS's office hours, but RS would only agree to meet with CP in the evenings and off campus.
- CP provided text screenshots from RS asking inappropriate personal questions about CP and sharing personal info about themselves.
- CP said one evening while reading a section of their thesis, RS stood closely behind CP and whispered in their ear, "God, you smell divine," and brushed their nose across CP's neck.
- RS denied texting CP and whispering in CP's ear.
- CP provided text screenshots from RS with a non-specific apology.

GROUP DISCUSSION DRAFT THE DETERMINATION

1 - Employee



Respondent is an employee.

2 – Aid, Benefit, service

Is advising an aid, benefit or service?

3 – For sexual conduct

Asking personal questions?

Dinner?

Brushing against back of neck and whispering?

POTENTIAL DETERMINATION Finish the analysis

Here, it is undisputed that Respondent agreed to be Complainant's Faculty Advisor for their senior thesis. The credible and reliable evidence supports a finding that it is more likely than not that Respondent conditioned their advisement on Complainant meeting only in the evenings off campus.

As to the inappropriate text messages, although CP was unable to produce evidence to corroborate the nature of the text messages, they were able to produce evidence of a text within which RS wrote a non-specific apology. **This evidence contradicts RS's statement that he did not text CP. Thus, CP is** deemed more reliable. Therefore, it is more likely than not that RS sent CP inappropriate text messages.

However, neither party provided any supporting evidence of their assertions **regarding the alleged comment, "God, you smell divine," and the whispering in CP's ear. Thus, there is insufficient evidence to determine that** it is more likely than not that RS whispered in CP's ear and said, "God, you smell divine..."



DAY TWO CLOSING

Q & A
and
closing thoughts



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investigations

hearings

appeals

Title VI

Clery/SCHA

Coordinators

Title IX

equity directors

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The Good Work You And
Your Team Are Doing.



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&
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