



# TITLE VI, VII, AND IX INVESTIGATIONS

A practical approach to conducting investigations

*Spelman College*

June 30 & July 1, 2025

Facilitator: Pari Le Golchehreh

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# MEET YOUR FACILITATOR



## Pari Le Golchehreh

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Pari Le Golchehreh is a distinguished professional with a wealth of expertise in Title VI, VII, and IX investigations. She is a certified mediator and has skillfully facilitated alternative resolutions and mediated conversations. Pari has become a trusted authority in the field, renowned for her unwavering commitment to fairness and dedication to helping other practitioners navigate investigations efficiently and effectively.

As a seasoned Title IX and Title VII investigator, Pari has navigated complex cases with precision and integrity, ensuring that all parties involved are heard and respected throughout the investigative process. She possesses a deep understanding of the regulatory frameworks and nuances surrounding discrimination and harassment issues in educational and workplace settings.

In addition to her investigative prowess, Pari holds certification as a mediator, bringing a unique skill set to the table. She excels in facilitating constructive dialogues and finding amicable resolutions to disputes, earning her a reputation as a bridge-builder.

# ABOUT US

## Vision

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

## Mission

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

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

# AGENDA

● | Regulatory Requirements  
Title VI, VII, & IX

● | Investigative Strategies  
Planning, managing, & tracking investigation

● | Investigative Interviews  
Preparing for and conducting interviews

● | Drafting Summaries  
What to include and how

● | Evidence Collection  
How to gather and evaluate evidence

● | Investigation Report  
Structuring your report and reaching a determination

● | Q&A



# REGULATORY REQUIREMENTS

Title VI, VII & IX: What we need to know

1

# TITLE VI OVERVIEW



## **TITLE VI OF THE CIVIL RIGHTS ACT OF 1964**

[P]rovides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

# OVERVIEW

- History of Title VI
  - Race
  - Color
  - National Origin
- Is Religion covered?
  - National Origin Discrimination
    - Citizenship/Residency in a country with a dominant religion
  - Harassment Connected to Actual or Perceived Shared Ancestry (or ethnic characteristics)



# TRUMP ADMINISTRATION ACTION

- 2019 EO 13899 – Combating Anti-Semitism
  - Calls for robust enforcement
- 2025 EO – Additional Measures to Combat Anti-Semitism
  - Agency heads to report their available actions to combat antisemitism
  - "immediate action by DOJ" including on "leftist, anti-American colleges and universities."
  - "Deport Hamas Sympathizers and Revoke Student Visas"
- Winter-Spring 2025: Numerous opened investigations of antisemitism at universities



# GENERAL PRACTICAL TAKEAWAYS

- If a hostile environment exists
- And the recipient knew or should have known
- OCR will evaluate whether the recipient took immediate and effective steps to end the harassment, eliminate the hostile environment and its effects, and prevent them from recurring.

# HIGHER ED OCR RESOLUTION AGREEMENTS

- Emory University (January 2025)
- University of Washington (January 2025)
- Johns Hopkins University (January 2025)
- Lehigh University (January 2025)
- UCLA (January 2025)
- Rutgers University (January 2025)
- University of California (December 2024)
- University of Cincinnati (December 2024)
- Temple University (December 2024)
- Muhlenberg College (September 2024)
- University of Illinois (September 2024)
- Drexel University (August 2024)
- Brown (July 2024)
- Lafayette College (June 2024)
- City University of New York (CUNY) (June 2024)
- University of Michigan (June 2024)

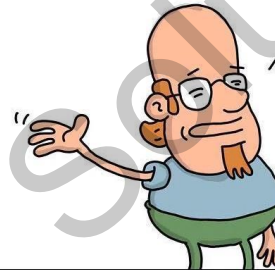


# HARASSMENT IN SUMMARY

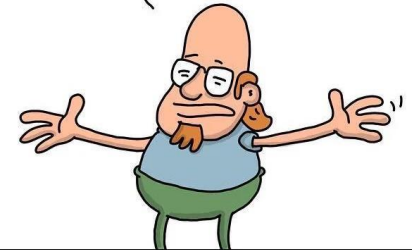
- Sufficiently severe, pervasive, or persistent so as to interfere or limit the ability to participate or benefit
- Need to assess the totality of the circumstances, including context, nature, frequency, duration, and location, as well as the number impacted, relationships, and power differential(s)
- Does not need to be directed at a particular individual
- May be based on an association with others of a different race, color, national origin
- May occur in classrooms, dorms, hallways, facilities, social media
- Subjectively and objectively offensive harassment may occur when multiple offenders, taken together, meet the definition
- Need to assess whether the collective incidents created a hostile environment (overall environmental impact)

# THE FIRST AMENDMENT AND ACADEMIC FREEDOM

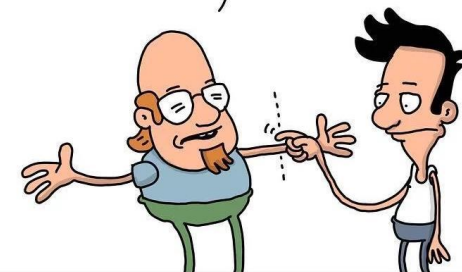
ON ONE HAND,  
FREEDOM OF SPEECH  
CAN MEAN STATING  
YOUR OPINION WITHOUT  
FEAR OF PERSECUTION.



ON THE OTHER HAND, IT  
CAN MEAN SPREADING  
HATE SPEECH, AND  
INCITING VIOLENCE.



NOW, WHERE DO YOU  
DRAW THE LINE?



DASKFJORD

# THE SCOPE OF INSTITUTIONAL DISCRETION

Often the exercise of discretion to limit speech turns on whether the speech activity at issue is in the context of a University-sponsored activity or event or occurs within a space over which the institution has greater control.



# HYPOTHETICAL

A student resident hung a Confederate flag from their dorm room window, visible from outside of the residence building.

## Response A:

The institution demanded immediate removal of the flag from public view and threatened disciplinary action if the Student did not comply.

## Response B:

The Institution put out a message explaining its commitment to free speech, while creating distance from the Student's expressed ideation.

## Response C:

The Institution had discussions with the Student about the theoretical harm the conduct could cause due to a lack of participant complainants.

What are some issues that could arise from these various response options?

# ACADEMIC FREEDOM

***Is Academic Freedom  
an Exception to  
Governmental  
Authority to Restrict  
Government  
Employees' Speech?***

The Supreme Court recognized that applying Government's discretion to restrict Government Employee Speech to public university professors would deny professors First Amendment protection for "expression related to scholarship or teaching." The court did not "decide whether the analysis . . . would apply in the same manner to a case involving speech related to scholarship or teaching."

# ACADEMIC FREEDOM

What are the bases for Academic Freedom?

1

Teaching



2

Research



3

Intramural Speech



4

Extramural Speech



# SHOULD I INVESTIGATE THIS?

- A faculty member comments on a student's assignment that the work was "third world." The student is from Egypt and was offended.
  - What else would you need to know in order to decide?
- A Black employee who works remotely came into the office one day, and a colleague referred to him as the "tall, dark, mysterious stranger."
  - Would the analysis change if the supervisor made the comment?
- A comment by a student in a history class stating that the professor is exaggerating the scope or impact of the Holocaust.
  - What else would you need to know in order to decide?

## TITLE VII OVERVIEW

stances. Achieving a balance  
the laws.

### **EQUAL OPPORTUNITY**

tion of employment practice  
of race, color, religion, sex  
was outlawed by Title VII

Title VII also created  
commission [EEOC] to  
working with local agencies



# TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII of the Civil Rights Act, as amended, protects employees and job applicants from employment discrimination based on race, color, religion, sex and national origin.



*MPI via Getty Images*

# TITLE VII KEY PROTECTIONS

Employees are  
protected from:

Discrimination

Harassment

Unmet religious  
accommodations\*

Retaliation

On the basis of a Protected Status

# SPECTRUM OF EMPLOYMENT DECISIONS

Recruitment, selection, termination

Employment terms, conditions, accommodations

Hostile work environment

Retaliation

# UNLAWFUL EMPLOYMENT PRACTICES

There is a wide range of possible unlawful practices which may trigger Title VII.

Terminating an employee because of their age.

Denying prayer time for a Muslim employee.

Sending emails with racist memes or jokes.

Prohibiting employees from speaking their native tongue during their lunch hour.

Assigning tasks to a female employee because "women have better handwriting."

Selecting a Caucasian candidate over an equally qualified African American.

Refusing reasonable accommodations without justification.

# TITLE IX OVERVIEW





## 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.

# TITLE IX APPLICATION REGULATIONS (2020)

## Type of Conduct

- Hostile Environment
- Sexual Harassment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking

## Ed Program or Activity

- On campus
- Campus Program, Activity, or Building
- In the United States

## Required Identity

- Complainant is participating or attempting to participate in the Ed Program or activity
- Institution has control over Respondent

## Apply 106.45 Procedures

Required Response:

Section 106.45 Procedures

# PROCEDURAL REQUIREMENTS FOR TITLE IX 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

# PROCESS COMPARISON

	VI	VII	IX
Notice	Recommended	Recommended	Yes
Evidence	Relevant only	Relevant only	Relevant & Directly related
Review of evidence	Not required	Not required	Yes
Hearing	Not required	Not required	Yes
Analysis by Investigator	Yes	Yes	No
Notice of Determination to Complainant	Recommended	Recommended	Yes

# INVESTIGATIVE STRATEGIES

Planning, Managing, & Tracking Investigations



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# INVESTIGATION PLANNING

## Scope

1

What do you already know?

## Timeline and Actions

2

What do you need to track?

## Investigation Components

3

What will you be gathering?





# STRUCTURING AN INVESTIGATION PLAN

## Scope

- Identity and status of the parties
- Alleged incident(s)
- Prohibited conduct definition

**Where do you look?**

## Timeline and Actions

- Investigation timeframe and incident timeline
- Evidence collection
- Communications

**Why should we track this?**

## Investigation Components

- Witnesses
- Statements/transcripts
- Documentary evidence

**What is important to note?**

# 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

# **MATERIAL ISSUES:**

## IDENTIFYING THE CLAIMS AND WHAT NEEDS TO BE PROVEN

- What does the complainant allege?
- What are the elements of each act of prohibited conduct alleged?
- What needs to be determined?

## **HYPOTHETICAL:** DETERMINE THE PROHIBITED CONDUCT

Kendall, an administrative assistant for Academic Affairs, recently announced to coworkers that she is pregnant. After Kendall's announcement, one of her supervisors, Veronica, begins berating Kendall's work as slow, shoddy, and scatter-brained, and accuses Kendall of focusing more on getting ready for her new baby than doing her job. Veronica also begins to scrutinize Kendall's bathroom usage and, on at least one occasion, yelled at Kendall for "always" being in the bathroom. As Kendall's pregnancy progresses, Veronica refers to Kendall as a "heifer," and makes the comment, "Are you sure you're not having twins?"



# UNLAWFUL DISCRIMINATION

## SEXUAL HARASSMENT

Unwelcome conduct

Based on sex or  
gender (expression  
and/or identity)

Submission to  
explicitly or implicitly  
term of condition

Submission to or  
rejection of used as  
basis for employment  
/academic decisions

Conduct so severe  
and/or pervasive,  
purpose or effect  
unreasonably  
interferes

Creates environment  
that a reasonable  
person would find  
intimidating, hostile or  
offensive



## ACTIVITY 1

### Investigation Planning Instructions



- Find a partner
- Review Activity 1
- Create an investigation plan

# INVESTIGATIVE INTERVIEWS

Preparing and conducting  
effective interviews

WHAT DO YOU CALL AN  
ALLIGATOR IN A VEST?



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# PRIOR TO THE INTERVIEW

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

# HOW TO PREPARE FOR INTERVIEWS

1. Understand the scope of the investigation
2. Have the policy definition of the prohibited conduct outlined
3. Review the evidence you have up to that point
4. Be intentional in drafting questions or areas for discussion, keeping in mind the limitations of an interviewee's actual knowledge



# 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



# INTERVIEW 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

# INTERVIEW OBJECTIVE ONE: CONNECT

## Preparedness

### Review materials

- Notice
- Complaint
- Available evidence
- Note evidence you may want

### Outlining with intention

- Focused on scope
- Open-ended
- Absent blame, doubt, or leads

Going into interviews unprepared could result in extraneous information or missing key elements to the claims.

## DISCUSSION: CONNECT

Building Rapport, Trust, and  
Empowerment

### Setting Clear Expectations

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

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

# EXPECTATIONS

## What you expect of them:

- Honesty
- Permission to ask questions or clarifications
- Authentic responses
- No retaliatory conduct

## What they should expect of you:

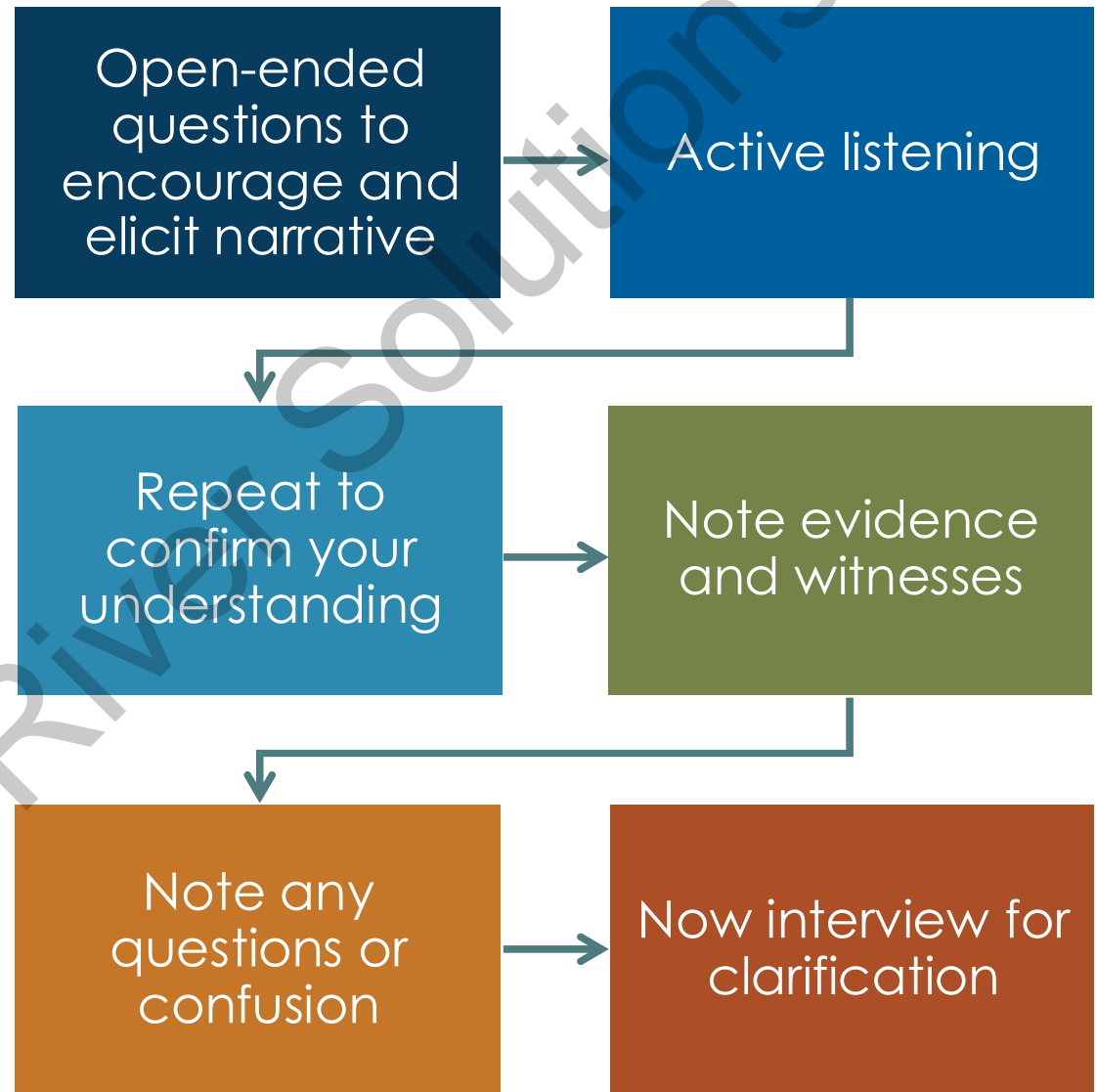
- Neutrality
- Active listening
- Privacy
- Interview memorialization method
- Sensitive nature of content
- Patience, respect, and appreciation
- Open line of communication

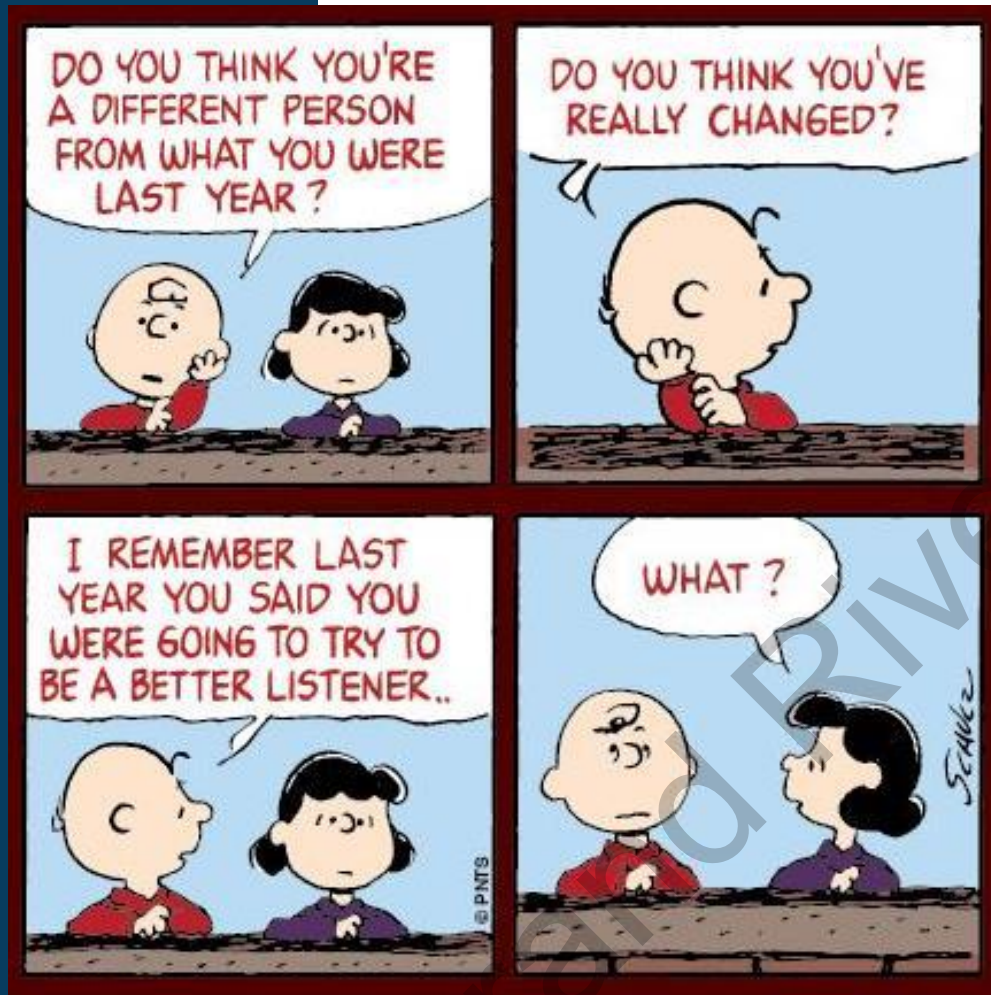
Is there anything you would add?



## INTERVIEW OBJECTIVE TWO: LISTEN

Interviews should elicit/encourage a narrative.





## LISTEN

To listen is to...

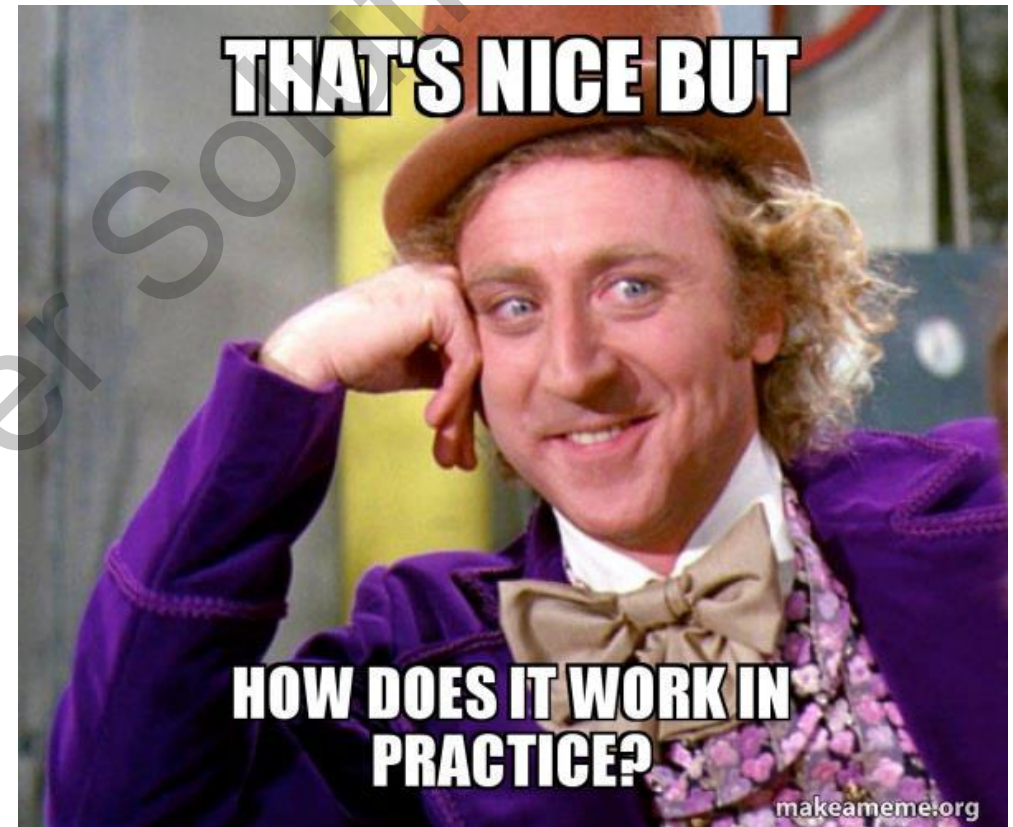
Be impartial

Not prejudice

Use trauma-informed practices

# AVOIDING PREJUDGMENT OF THE FACTS

Requires that practitioners refrain from passing judgment on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.



# TRAUMA INFORMED PRACTICES ARE DESIGNED TO:

Encourage thorough  
and complete  
investigations

Assist with recollection  
and recounting

Reduce Bias

Reduce potential for  
false information

Minimize unnecessary  
re-traumatization

Anything else?

# MISAPPLICATION OF TRAUMA INFORMED PRACTICES

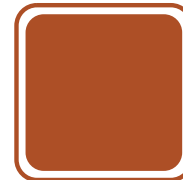
It is a misapplication of trauma informed principles to allow potential evidence of trauma to:



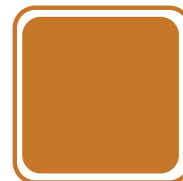
1. Influence the interpretation of a specific item of evidence;



2. Substitute for missing evidence;



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



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

# INTERVIEW OBJECTIVE THREE: CLARIFICATION

Gathering information that can support credibility and reliability assessments.

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency (internal and external)

Background, experience, and training

Coaching or bias

# CLARIFICATION: QUESTIONS

Ask questions that:

- Come from a place of curiosity
- Seek understanding
- Elicit deeper details
- Address information not mentioned during the narrative

Avoid questions that:

- Interrogate
- Blame
- Imply doubt or disbelief
- Lead



# CLARIFICATION: THE "HARD" QUESTIONS

## VI

- Details of conduct
- Inconsistent behavior/evidence
- Impact/Intention
- Targeted actions
- Identity
- Viewpoint
- Authority

## VII

- Details of conduct
- Inconsistent behavior/evidence
- Impact/Intention
- Targeted actions
- Identity
- Business related purpose

## IX

- Details of sexual contact
- Inconsistent behavior/evidence
- Specifics about garments
- Alcohol/drug consumption
- Lack of memory

# HOW TO ASK THE HARD QUESTIONS

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

# TVI & TVII: WHICH QUESTION IS BETTER?

## Identity

Complainant alleges that Respondent often questions whether she is Black because of her light skin color.

### Respondent Questions

- Why do you comment on Complainant's skin color?
- Can you tell me about the dynamics you and Complainant have?

## Viewpoint

Complainant alleges that Respondent's reference to the Negro National Anthem during class was harassing.

### Complainant Questions

- How was this harassing?
- What does "Negro" mean?
- Are you able to share the significance of the reference as it relates to you?

## Authority

Complainant alleges that they were not considered for a promotion because of their gender identity.

### Complainant Questions

- Why would you think that?
- Are you qualified for the position?
- Can you share what led you to believe this?



# TIX: 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?

Can you think of others?

## INTERVIEW 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, 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?

## AFTER THE INTERVIEW: ACTIONS

Memorialize the interview in writing



Provide opportunity for the party or witness to review it



Provide opportunity for a response



Incorporate the response





# QUICK REVIEW



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# DRAFTING SUMMARIES

## abridged classics

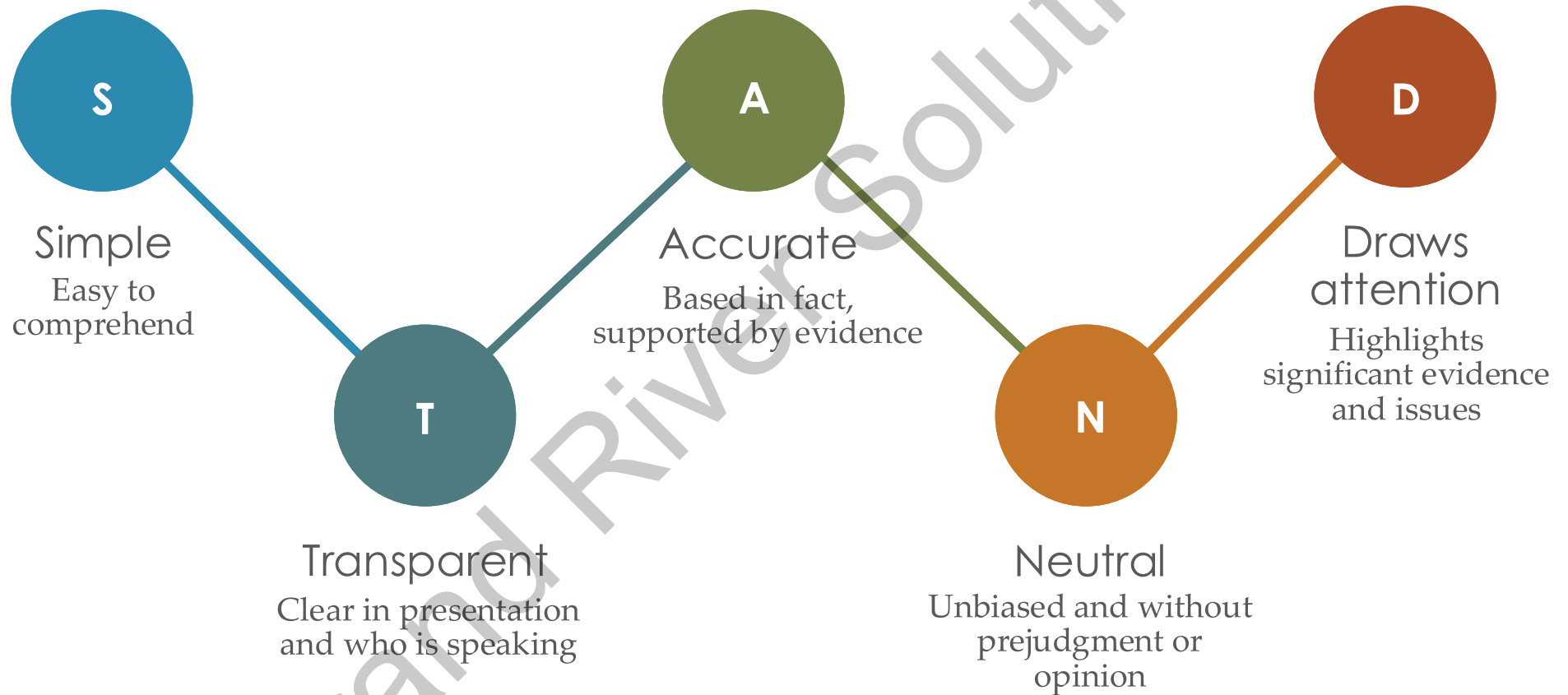
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# DRAFTING INTERVIEW SUMMARIES



# CHOOSING SIMPLE LANGUAGE

Summaries should be written so that they are accessible to all readers, irrespective of their familiarity with the subject matter, or the institution's policies and the law.

## Complex Language

"Adjudicated" -->

"Preponderance of the Evidence" -->

"Respondent articulated" -->

"Prima Facie Assessment" -->

"The allegation was substantiated" -->

"Pursuant to the policy" -->

"Digital Penetration" -->

## MAKE IT SIMPLE

Commit to using plain language:

"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."



## TRANSPARENT AND CLEAR

- Summarize information chronologically.
- Clearly define language used, such as:
  - **Opinions**
  - **Quantitative language**
  - **Slang/acronyms/code**
- Provide clear descriptions of acts.
- Use consistent language.

# ACCURACY IS ESSENTIAL

- Be precise and accurate
- Use quotations often and
- No conclusory language

1

Respondent left the classroom, went to the public bathroom down the hall, and vandalized the stall.

2

Witness 3 told Complainant that Respondent was raging and spitting racial slurs.

3

Complainant was so drunk because she was pre-gaming.

4

Respondent started harassing Complainant.

# COMMIT TO USING NEUTRAL LANGUAGE

## Non-Neutral/Biased

“Claimed/Alleged”

“According to X”

“Story/Version of Events”

“They had sex”

“Changed their Account/Story/Version of Events”

# NEUTRALITY EXERCISE

1

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.

2

Respondent's version of events was that she was walking to class when she walked by the Muslim Student Group's midday prayer event in the quad. She supposedly did not know this was a daily event.

3

Witness 1 claimed he heard Respondent ask the Athletics Director if she was "recruiting straight from Africa," even though office door was closed.



## **STAND****D** - Draw attention

Reporting facts without interpretation does not mean only describing evidence in words. Draw attention to specific evidence through an intentional presentation of information.

- Draw attention to Evidence that you believe should be afforded weight.
- Evidence related to assessments of credibility, reliability, and authenticity.
- Explanations that provide a clear understanding of certain items of evidence or the lack thereof.

**If it feels important, emphasize it in your report!**

## HOW TO INCLUDE IMPORTANT DETAILS

*Complainant: "The next day he tried to talk to me. He sent me a bunch of text messages asking to see me. He said he was 'sorry' for hitting me and for raping me. I basically told him I didn't want to hear it and I called him an asshole. We've not communicated since."*

Excerpt from Complainant's interview summary:

Screenshot of communication provided by Complainant:



## OPTION A

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. Screenshots of this exchange were provided by Complainant and are included in Appendix B. See, Appendix A, p.34 and Appendix B, p. 67.

## OPTION B

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. See Appendix A, p.34. Complainant provided screenshots of this exchange, which read as follows:

**Complainant:** I don't care what u say. U know I didn't want it and you did it anyway.

**Respondent:** I'm sorry I hurt u. You know I don't hit. I was so drunk. IDK what to say to make it better. Can I see u?

**Complainant:** What could you say? U raped me, asshole.

**Respondent:** I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did. *Appendix B, p. 67.*

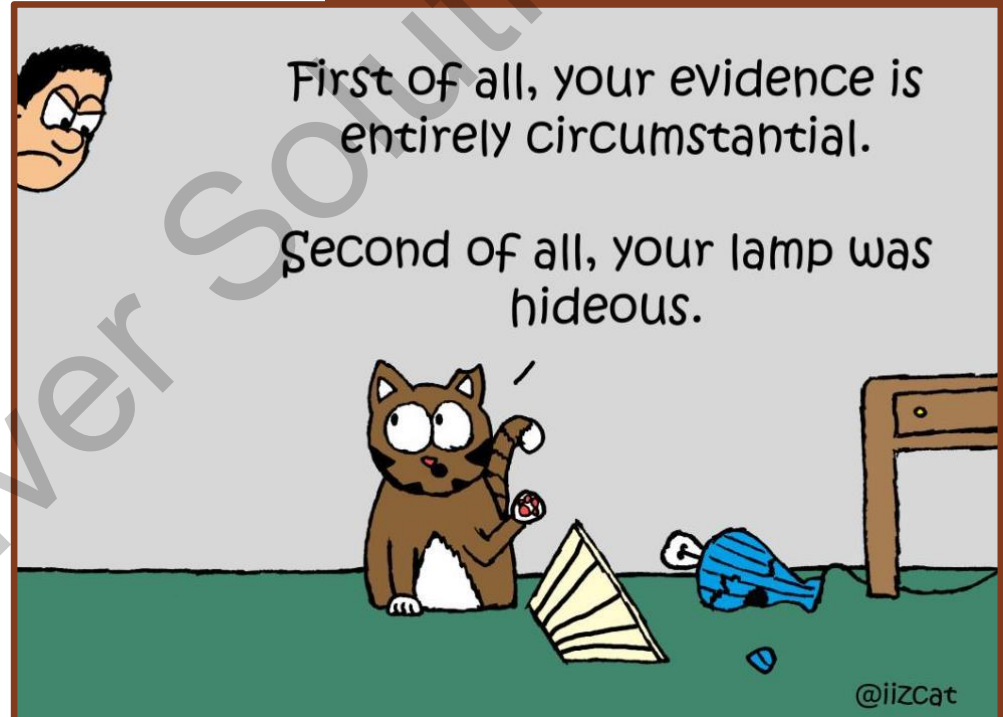
## OPTION C

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was “sorry for hitting he and for raping her.” See Appendix A, p.34. Complainant provided the following screen shots of this exchange: Appendix, p. 67.



# EVIDENCE COLLECTION

How to gather and  
evaluate evidence



# EVALUATING THE EVIDENCE

A thorough investigation is more than evidence collection

01

**Is it relevant?**

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

02

**Is it authentic?**

Is the item what it purports to be?

03

**Is it credible/reliable?**

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

04

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

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

# RELEVANCY

## Federal Rule of Evidence 401 Test

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.



# TIX EVIDENCE CONSIDERATIONS

## Directly Related

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



**Included** in  
evidence file

## Not Relevant

- Complainant sexual history or predisposition unless,
  - Offered to prove consent
  - Offered to prove someone other than Respondent engaged in the prohibited act
- Unwaived legally recognized privilege



**Excluded** from  
evidence file

# TEST YOUR KNOWLEDGE

Witness 1: "Complainant is VERY promiscuous."

- Relevant
- Directly related
- Not relevant

Complainant said that Respondent's pastor can corroborate that Respondent is sexist and that's why Complainant was not promoted.

- Relevant
- Not relevant

Complainant reported Harassment on the basis of her sexuality. Respondent: "Complainant isn't even gay because she dated my male cousin."

- Relevant
- 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 or confidential information.

# TO REDACT OR NOT REDACT?

Witness 1: "Complainant is VERY promiscuous."

- Redact
- Do not redact
- Partially redact

Complainant: Medical records from Nurse Examiner Sexual Assault Report

- Redact
- Do not redact
- Partially redact

Complainant reported Harassment on the basis of her sexuality. Respondent: "Complainant isn't even gay because she dated my male cousin."

- Redact
- Do not redact
- Partially redact

Witness 2: "Respondent is a terrible person, but I know they couldn't assault the Complainant because they get sloppy with whiskey."

- 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

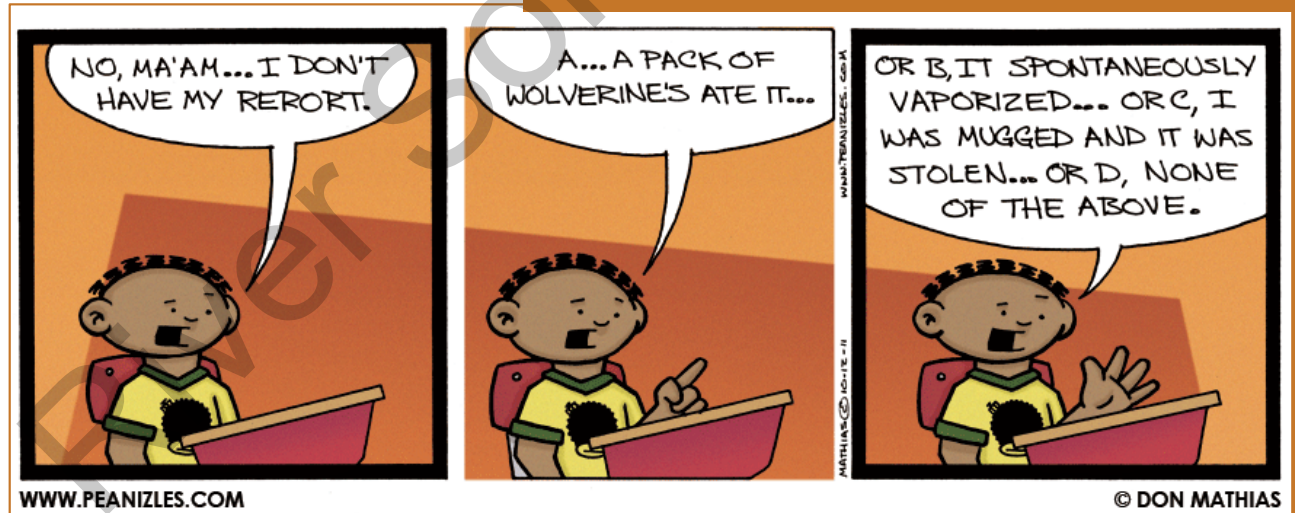


## Corroborating

Differs from but strengthens or confirms what other evidence shows.

# INVESTIGATION REPORT

Structuring your report  
and reaching a  
determination





# 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.

# 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.

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# HYPOTHETICAL

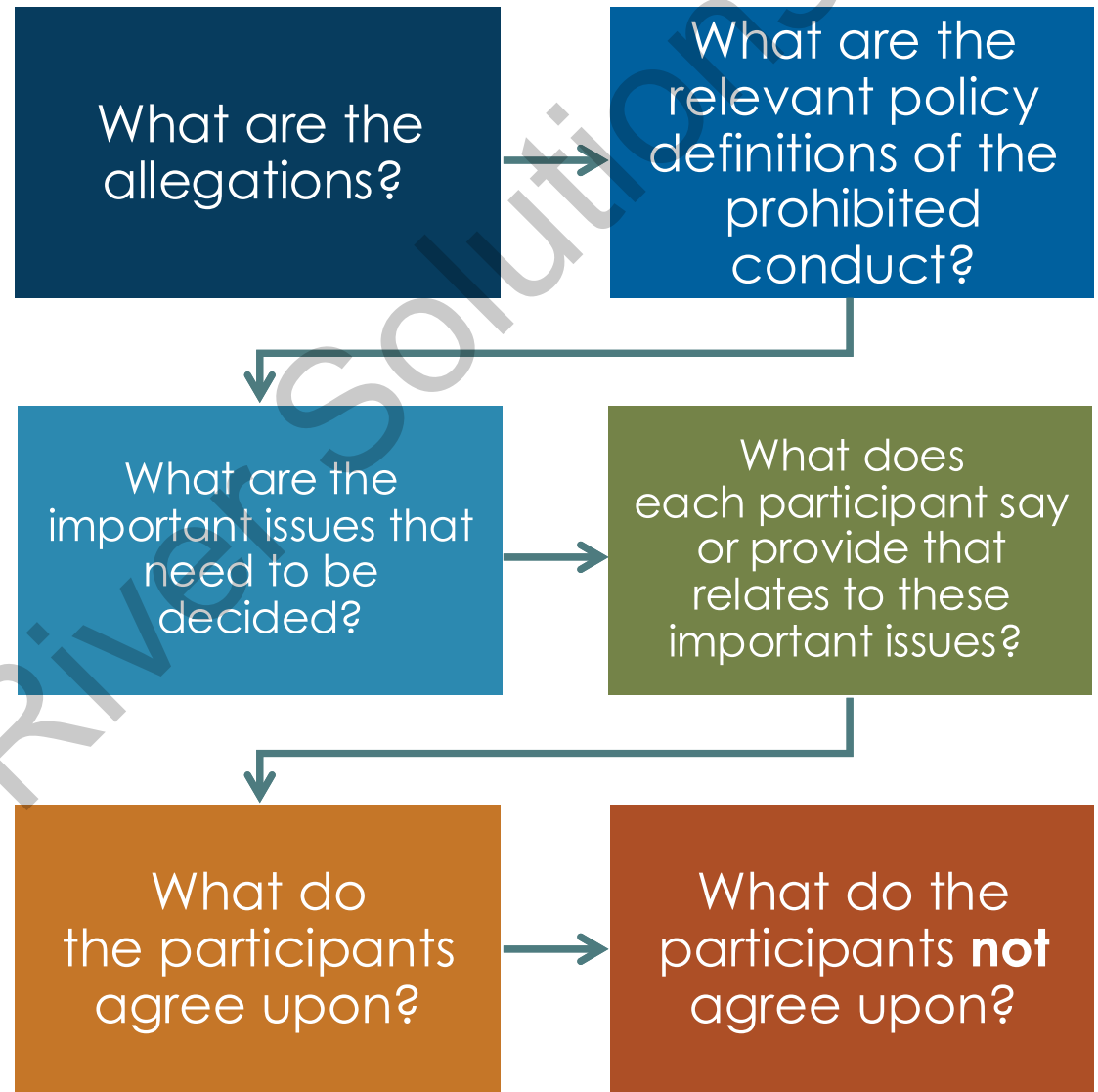
## WHICH ORGANIZATIONAL APPROACH WOULD YOU USE?

### IS SHE FOLLOWING ME?

Complainant reports Respondent is often "lingering" around corners near her and texts her "incessantly" from various numbers. Complainant said Respondent asks her friends about Complainant when she cannot find her. Complainant said she is concerned about asking her 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 her number. Further, Respondent said she does not have any mutual friends with Complainant.

# UNDISPUTED/ DISPUTED FACTS





# FINDINGS OF FACT AND POLICY ANALYSIS

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# EVIDENTIARY STANDARD

## *PREPONDERANCE OF THE EVIDENCE*

Responsible -  
"More likely than  
not..."



There was sufficient, reliable, 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.

# FINDINGS OF FACT

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

Is it relevant?



Is it authentic?



Is it credible/reliable?



How much weight?



# GROUP ACTIVITY: PART I

## Allegations

Complainant, who identifies as Black American, alleged that Respondent, a student leader, posted on her Instagram account the following statement:

*"Tell me why these people keep lumping me in the 'Black American' group? I am African! I am not, nor would I want to identify with those people!"*

Complainant reported that the post has created a hostile environment for her because she can no longer participate in the student group that Respondent is a leader of.

# GROUP ACTIVITY: PART II

## DISCRIMINATORY HARASSMENT

Verbal, physical, or graphic conduct that denigrates or shows hostility or aversion toward an individual or group on the basis of race, color, religion, ethnic or national origin, genetic information, age, disability, veteran's status, or any factor that is a prohibited consideration under applicable law, and that is so severe and/or pervasive it:

- Has the purpose or effect of creating an intimidating, hostile, or offensive employment, educational, or living environment; or
- Has the purpose or effect of unreasonably interfering with an individual's work or a student's academic performance.

### Element 1

Verbal, physical, or graphic conduct

### Element 2

Denigration, hostility, or aversion towards a protected status

### Element 3

So severe and/or pervasive that its purpose or effect:

- Created an intimidating, hostile or offensive environment, or
- Unreasonably interfered w/ individual's work or student's academic performance

# GROUP ACTIVITY: PART III

## MATERIAL ISSUES

### Allegations

Complainant, who identifies as Black American, alleged that Respondent, a student leader, posted on her Instagram account the following statement:

"Tell me why these people keep lumping me in the 'Black American' group? I am African! I am not, nor would I want to identify with those people!"

Complainant reported that the post has created a hostile environment for her because she can no longer participate in the student group that Respondent is a leader of.

### Material Issues

- Did Respondent post the statement?
- Did Complainant experience an interference?
- Was the interference connected to Respondent's conduct?

*Anything else?*

## GROUP ACTIVITY: PART IV

### EVIDENCE GATHERED

- Complainant identifies as a Black American
- Complainant provided screenshots of Respondent's Instagram post
- Complainant stated she was a member of Respondent's student group, but left shortly after the Instagram post
- Several witnesses attested to seeing Respondent's post but noted the post had been removed
- Respondent initially denied that she had posted the comment but when shown the screenshot stated she forgot about the post
- Respondent further noted that Complainant left the student group because she found out Respondent was dating her ex
- Witness 1, Complainant's suitemate, stated Complainant told her she left the student group because Respondent brought her ex to the meetings

# GROUP ACTIVITY: PART V

## WHAT EVIDENCE DO WE HAVE?

### Conduct

- Complainant statement
- Statements from witnesses
- Respondent statement

### Interference

- Complainant statement
- Respondent statement
- Witness 1 statement

### Connection

- Complainant statement
- Respondent statement
- Witness 1 statement

## GROUP ACTIVITY: PART VI

### WHAT IS YOUR FINDING OF FACTS?

#### CONDUCT:

Given that Respondent initially did not recall posting the statement, and remembered only after seeing the screenshots from Complainant, Investigator found Complainant's evidence and statement more reliable. Further, Witnesses corroborated Complainant's account, noting that the post was later removed. Therefore, Investigator found that it is more likely than not that the screenshot provided by Complainant was authentic and Respondent posted the content.

#### A Finding of Fact is:

- The decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be
- Based on available evidence
- Determined by the preponderance



**Remember!!!**

*What about the next two material issues?*



## KEY ELEMENTS:

---

- Summarize the undisputed material issues.
- Summarize the findings of fact.
- Analyze whether each of the elements of the prohibited conduct have or have not been established.
- Conclude with whether Respondent, by the preponderance of the evidence, violated the prohibited conduct policy.

## POLICY ANALYSIS

# ANALYSIS GRID

## 1 - Conduct

- Screenshot
- Complainant statement
- Witness statements
- Respondent statement

## 2 – Directed at protected status

- Complainant identity
- Screenshot
- Complainant statement

## 3 – Severe and/or pervasive

- Complainant statement
- Respondent statement
- Witness 1 statement

# ANALYSIS GRID DRAFT THE DETERMINATION



**Unwelcome  
Conduct**

- Screenshots
- Complainant statement



**Directed at  
protected status**

- Complainant identity
- Post used language "Black American"
- Respondent differentiated herself from "Black Americans"
- Respondent referred to Black Americans as "those people"



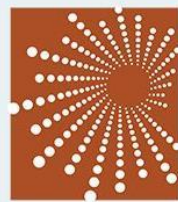
**Severe and/or  
pervasive**

- Complainant left student group
- Respondent statement regarding the reason Complainant left
- Witness 1 statement

# Q&A

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