



# INVESTIGATIONS 101: FUNDAMENTALS AND BEST PRACTICES FOR EFFECTIVE INVESTIGATIONS

Collin Baer

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# 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

# MEET YOUR FACILITATOR

## Collin Baer

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Collin Baer is a member of the Investigation, Hearing, & Appeal Services Team at Grand River Solutions. Collin provides investigation, written determination, and hearing services. Collin also facilitates training on topics such as trauma-informed investigations and report writing. In addition to providing these services, Collin is a team manager and supervises an internal team.

Collin joined Grand River Solutions with over 20 years of experience conducting workplace investigations and providing professional services in higher education for state governments and private corporations. Prior to joining Grand River Solutions, Collin served as Associate Director for the Office of Equity and Equal Opportunity at Miami University, conducted investigations for the Nebraska Equal Opportunity Commission, and worked for private firm conducting workplace investigations across the country, including performing and supervising undercover assignments.

Collin received a bachelor's degree in criminal justice from the University of Nebraska and currently lives in Lincoln, NE with his spouse and two brilliant teenagers.

# AGENDA

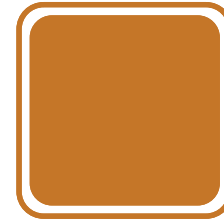
- Trauma Informed Practices
- Developing an investigative strategy
- Conducting an effective interview
- Collecting and Evaluating Evidence
- Writing an effective report

# THE PROPER APPLICATION OF TRAUMA INFORMED PRACTICES

01

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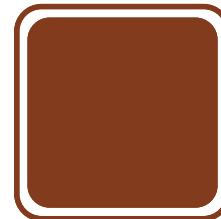
TRAUMA INFORMED  
PRACTICES  
PROVIDE TOOLS &  
TECHNIQUES FOR  
INTERVIEWING AND  
ENGAGING WITH  
THE COMPLAINANT,  
RESPONDENT, AND  
WITNESSES.



Format/Structure of the  
Interview



Format of Questions



Approach to  
Clarification

# TRAUMA INFORMED PRACTICES ARE DESIGNED TO:

Encourage thorough  
and complete  
investigations

Assist with  
recollection

Assist with  
recounting

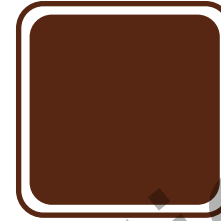
Reduce potential for  
false information

Minimize unnecessary  
re-traumatization

Reduce Bias

# MISAPPLICATION OF TRAUMA INFORMED PRACTICES

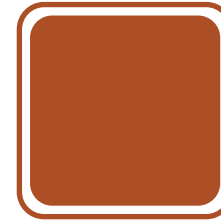
It is a misapplication of trauma informed principles to allow potential evidence of trauma to:



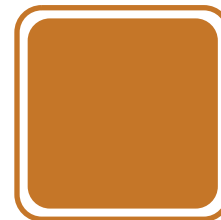
1. Influence the interpretation of a specific item of evidence;



2. Substitute for missing evidence;



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



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

# TRAUMA

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

# EXAMPLES OF EVENTS THAT MIGHT TRIGGER A TRAUMATIC RESPONSE

Sexual assault

Physical assault by a stranger

Physical assault by an intimate partner

A car accident

Accident that causes serious injury or death

Robbery

Significant medical event

# TRAUMA IMPACT

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

# COMMON CHARACTERISTICS OF DISCLOSURES BY A TRAUMA BRAIN

Inconsistent

Non-linear

Fragmented

Lacking in detail

New information  
added

Affect is  
unexpected

# HISTORICAL VIEW OF CREDIBILITY

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

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information



Viewed as  
Not Credible

# THE HISTORICAL CONCLUSION...

False Report  
Regretted Sex  
Not Provable



Investigation  
Closed

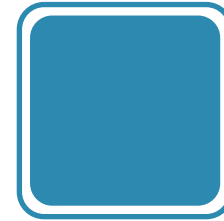
WHEN AN INVESTIGATOR USES “TRAUMA-INFORMED” TOOLS, THEY ARE LESS LIKELY TO:



Conclude, without a thorough investigation



Act on basis of bias



Retraumatize



Jeopardize future reporting

# THE FUTURE



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

This is essential to a fair and thorough investigation.

# WHEN PRESENTED WITH THE FOLLOWING CHARACTERISTICS IN A DISCLOSURE,

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information

**An investigator who understands trauma will....**



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CONTINUE THEIR  
INVESTIGATION.

# DEVELOPING AN INVESTIGATIVE STRATEGY

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# ESSENTIAL STEPS OF AN INVESTIGATION



# UNDERSTAND THE SCOPE OF THE INVESTIGATION



Review the allegations



Ask questions if unsure

# IDENTIFY THE CLAIMS AND WHAT NEEDS TO BE PROVEN

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

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# DISCRIMINATION

Definition: an adverse action or actions that intentionally or unintentionally excludes one from full participation in, denies the benefits of, or affects the terms and conditions of employment or access to educational or institutional programs because of protected class status.

## Questions to ask:

1. Did Complainant experience an adverse action?
2. Was Complainant excluded from full participation in or denied the benefits of their employment or access to educational programs? OR were the terms and conditions of Complainant's employment or education impacted?
3. Did this occur *because of* Complainant's protected class status?

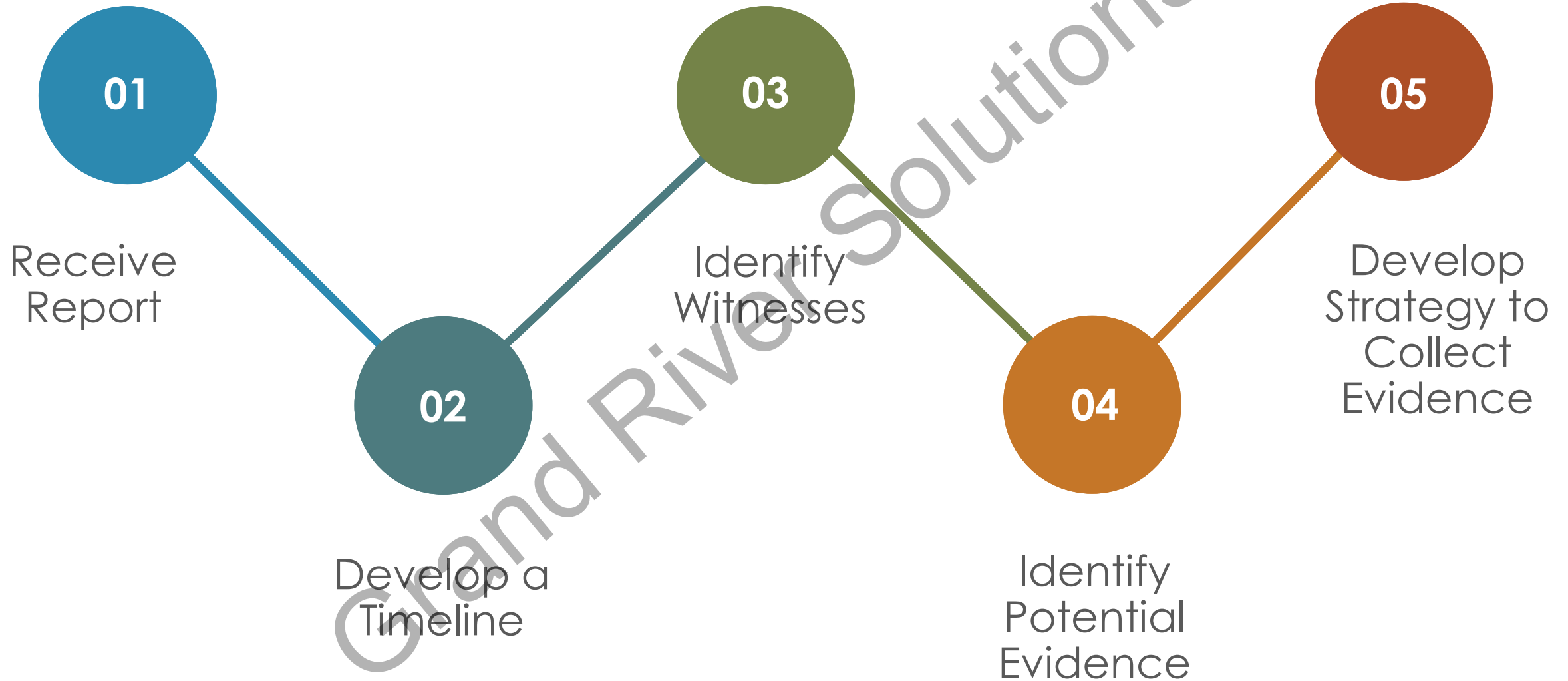
# STALKING

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

## Questions to Ask:

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

# THE PROCESS: DEVELOPING AN INVESTIGATIVE STRATEGY



# The Importance of Organization



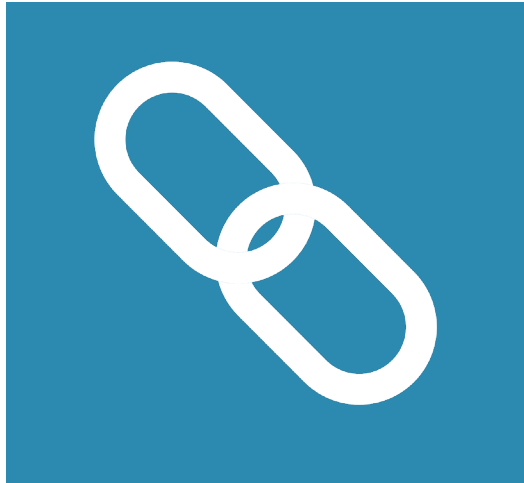
# CONDUCTING AN EFFECTIVE INTERVIEW

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# INTERVIEW OBJECTIVES



## Listen

Allow interviewee to share their experience

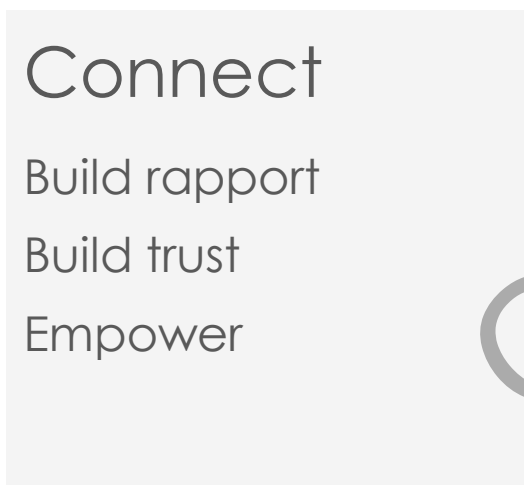


## Evidence Preservation

Text messages

Photographs

Names and contact info for witnesses



## Connect

Build rapport

Build trust

Empower



## Clarify

Understand what you have heard

Seek additional information



# PRIOR TO THE INTERVIEW

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

# EXPECTATIONS

What they should expect of you:

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

What you expect of them:

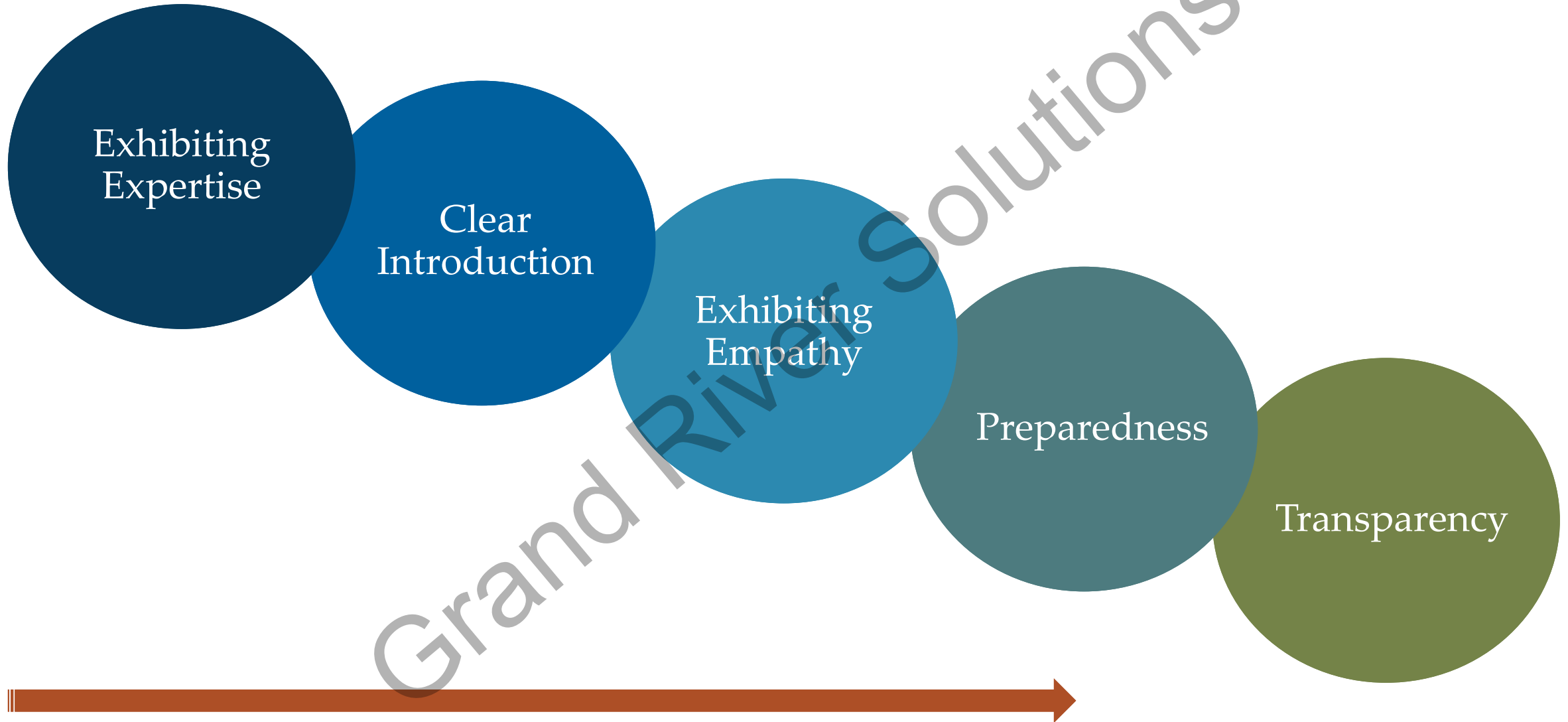
- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks



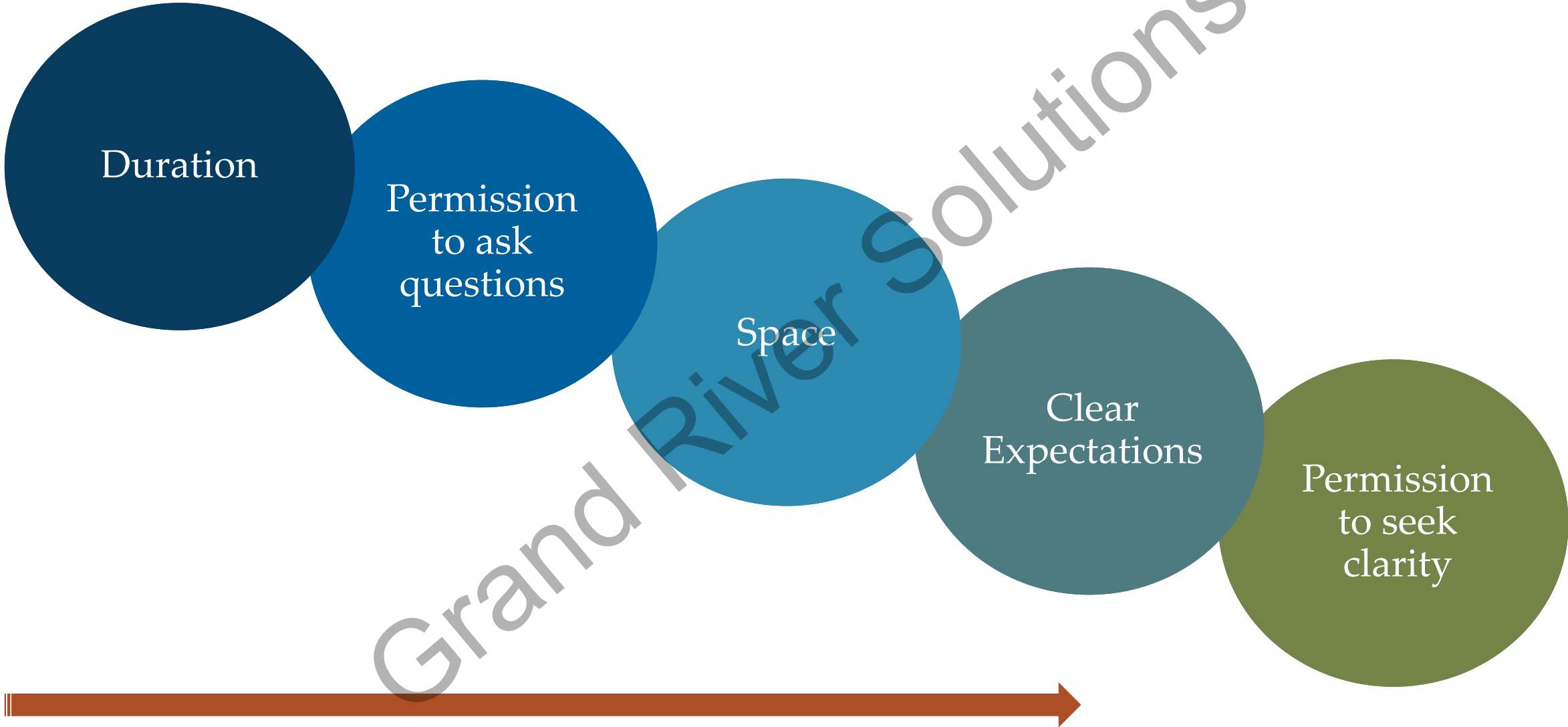
## HOW DO WE...

- Build Rapport and Trust?
- Empower?

# RAPPORT AND TRUST



# EMPOWERMENT



# CONDUCTING INVESTIGATIVE INTERVIEWS

1. Start by eliciting a narrative

2. Listen

3. Interview for clarification

4. Listen

5. Avoid leading or blaming questions, interrogation

# START INTERVIEW BY ELICITING A NARRATIVE

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

Allow the person to speak uninterrupted. This takes patience.

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

## Do Ask:

Interview for clarification

Help me understand?

Can you tell me more about...?

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

## Avoid

Interrogation

Questions that blame

Questions that imply doubt

Leading questions

# CAPTURE THE ENTIRE EXPERIENCE

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

# THE BEFORE

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



# AND THE AFTER

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

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

# THROUGHOUT THE INTERVIEW



Explain questions, especially the difficult ones.

How much did you drink?

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

Do not ask leading questions.

Watch your tone.

Do not rush.

Listen.

Pay attention to and document information.

Document questions asked.

# AT THE CONCLUSION OF THE INTERVIEW

Discussion submission of evidence.

Explain statement review process.

Explain next steps in the process.

Keep the lines of communication open.

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

# AFTER THE INTERVIEW: ACTIONS

Memorialize the interview in writing: notes, summary, transcript

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Provide opportunity for the party or witness to review it.

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Provide opportunity for party or witness to provide a response.

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Incorporate the response.

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# A NOTE ABOUT WITNESS SUMMARIES

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

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# AFTER THE INTERVIEW: REFLECTION



Reflect.

Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



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



Has evidence of additional policy violations been shared?

# FOLLOW UP INTERVIEWS

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

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# FOLLOW UP INTERVIEW APPROACH

01

Explain the purpose of the follow up

02

Set the stage for the topics you will be covering

03

Prepare the interviewee for “the shift”

04

Do not avoid asking the hard questions

# THE “HARD” QUESTIONS

Details about sexual conduct

Seemingly inconsistent behaviors

Inconsistent evidence/information

Details of work/academic performance

Alcohol or drug consumption

Probing into reports of lack of memory

# HOW TO ASK THE HARD QUESTIONS

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

# WHAT QUESTIONS DO YOU HAVE FOR QUINN?

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

## WHAT QUESTIONS DO YOU HAVE FOR BARRI?

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

# COLLECTING AND EVALUATING EVIDENCE

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## EVIDENCE:

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

-Black's Law Dictionary

# TYPES OF EVIDENCE

## Direct Evidence

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

## Circumstantial Evidence

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

## Corroborating Evidence

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

# EVIDENCE

Testimony

Text  
Messages

Social Media  
Posts and  
Messages

Emails

Surveillance

Videos

Photographs

Police Body  
Camera  
Footage

Swipe Records

Medical  
Records

Phone Records

Audio Recordings

# BARRIERS TO EVIDENCE COLLECTION



Non-participating parties

Uncooperative witnesses

Uncooperative advisors

Identity of party or witness unknown

Refusal to share materials

Materials lost or no longer accessible

Difficult topics

# EVIDENCE COLLECTION

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

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**A THOROUGH INVESTIGATION**  
is more than evidence collection

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# EVALUATING THE EVIDENCE

01

**Is it relevant?**

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

02

**Is it authentic?**

Is the item what it purports to be?

03

**Is it credible/reliable?**

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

04

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

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

# ASSESSING RELEVANCE

## Why Does it Matter?

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

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# OPINION EVIDENCE: TRY IT!

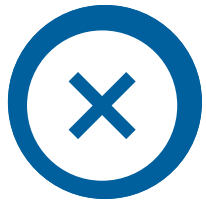
You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

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

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

# ASSESSING AUTHENTICITY

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.



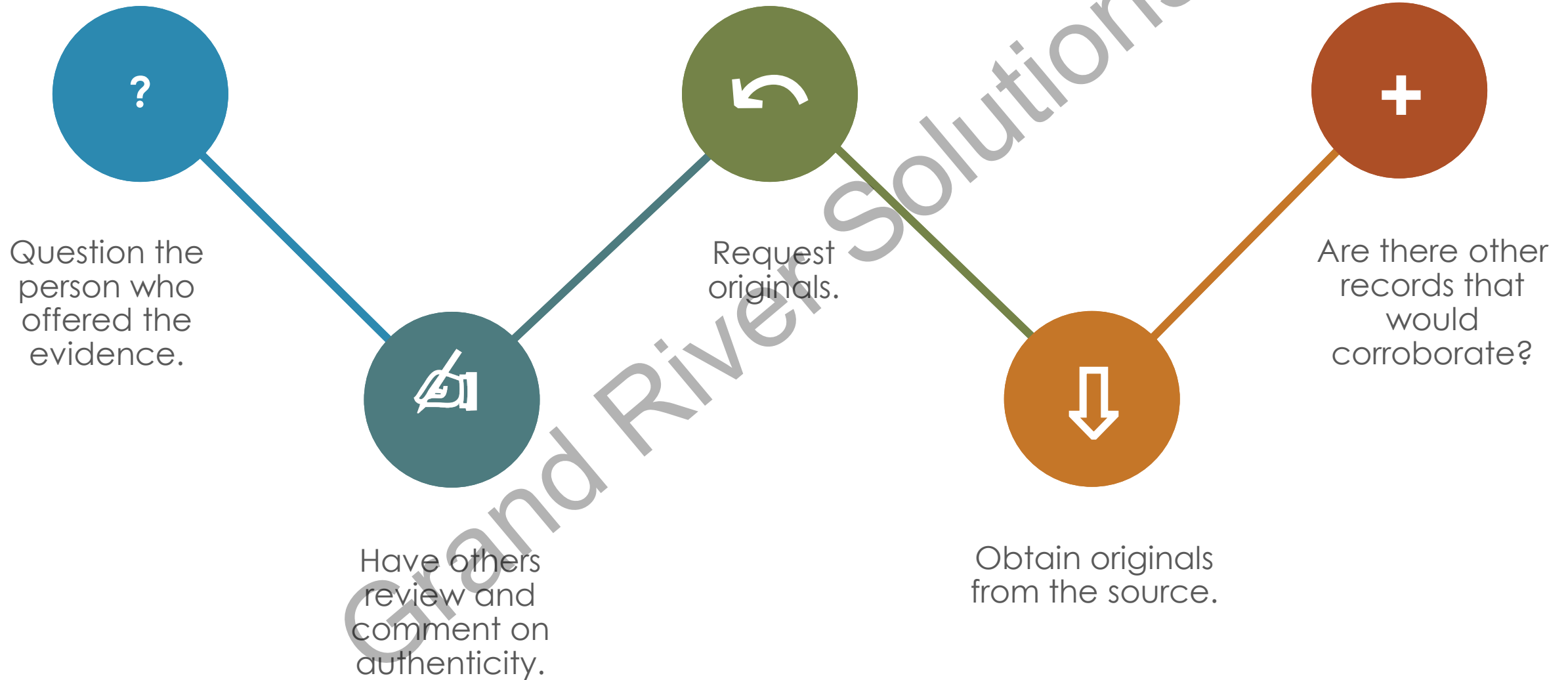
Ask questions, request proof.



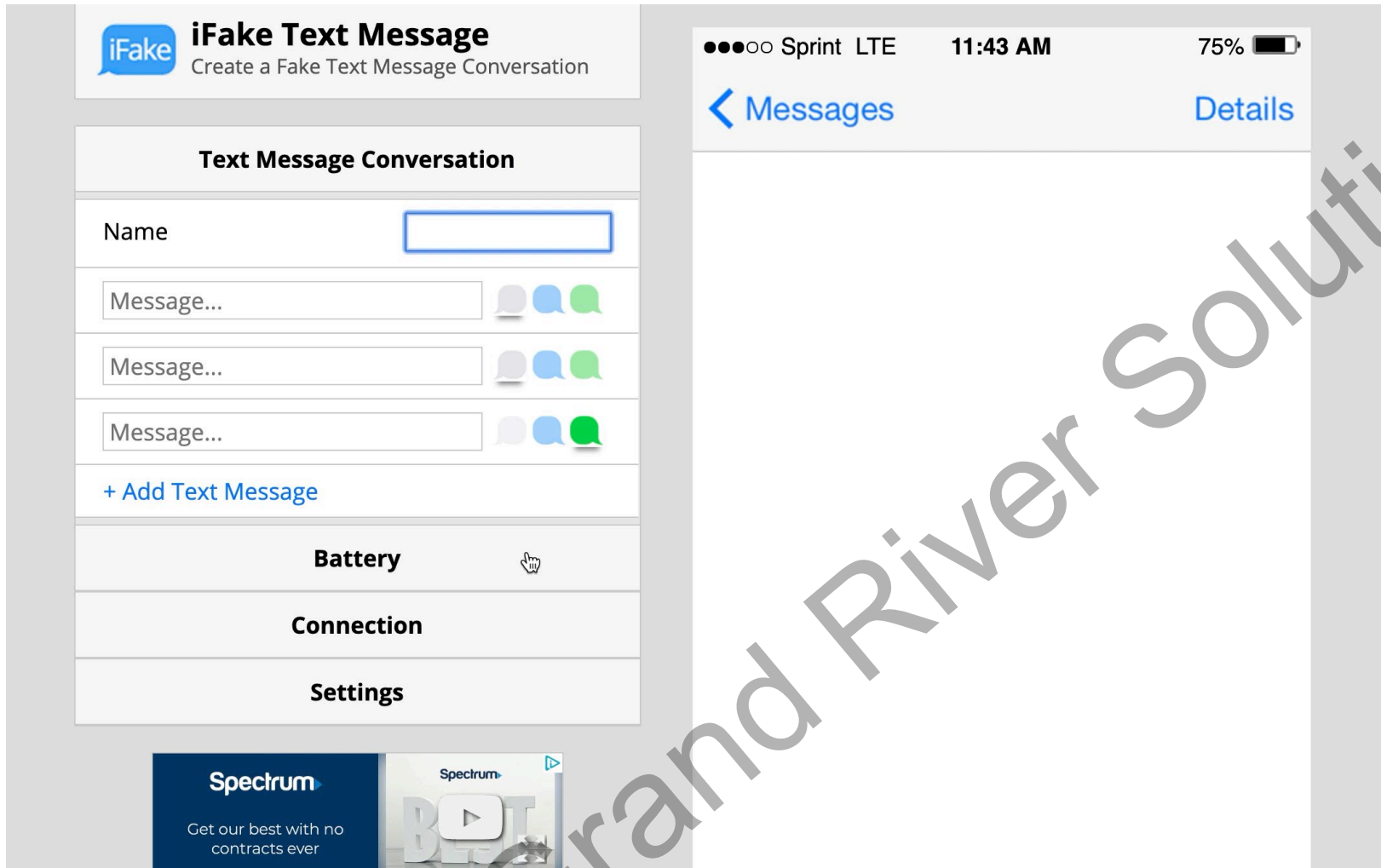
Investigate the authenticity if necessary.

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# IS IT AUTHENTIC?



# FAKE TEXT MESSAGES



It's easier than you think to create fake text messages that look convincing. This video shows how the website iFake lets a user customize names, text bubble colors, text, and even battery level.

# ASSESSING CREDIBILITY AND RELIABILITY

No formula exists, but consider the following:

Sufficiency of detail and specificity

Ability to recollect events

Material Omission

Internal Consistency

Inherent Plausibility

Motive to falsify

Corroboration

# WRITING AN EFFECTIVE REPORT

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



# RELEVANCY STANDARD

## Relevant Evidence

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

## Irrelevant Evidence (Title IX)

- Prior sexual history of complainant, with two exceptions:
- Legally recognized and un-waived privilege.
- Records related to medical, psychiatric, psychological treatment

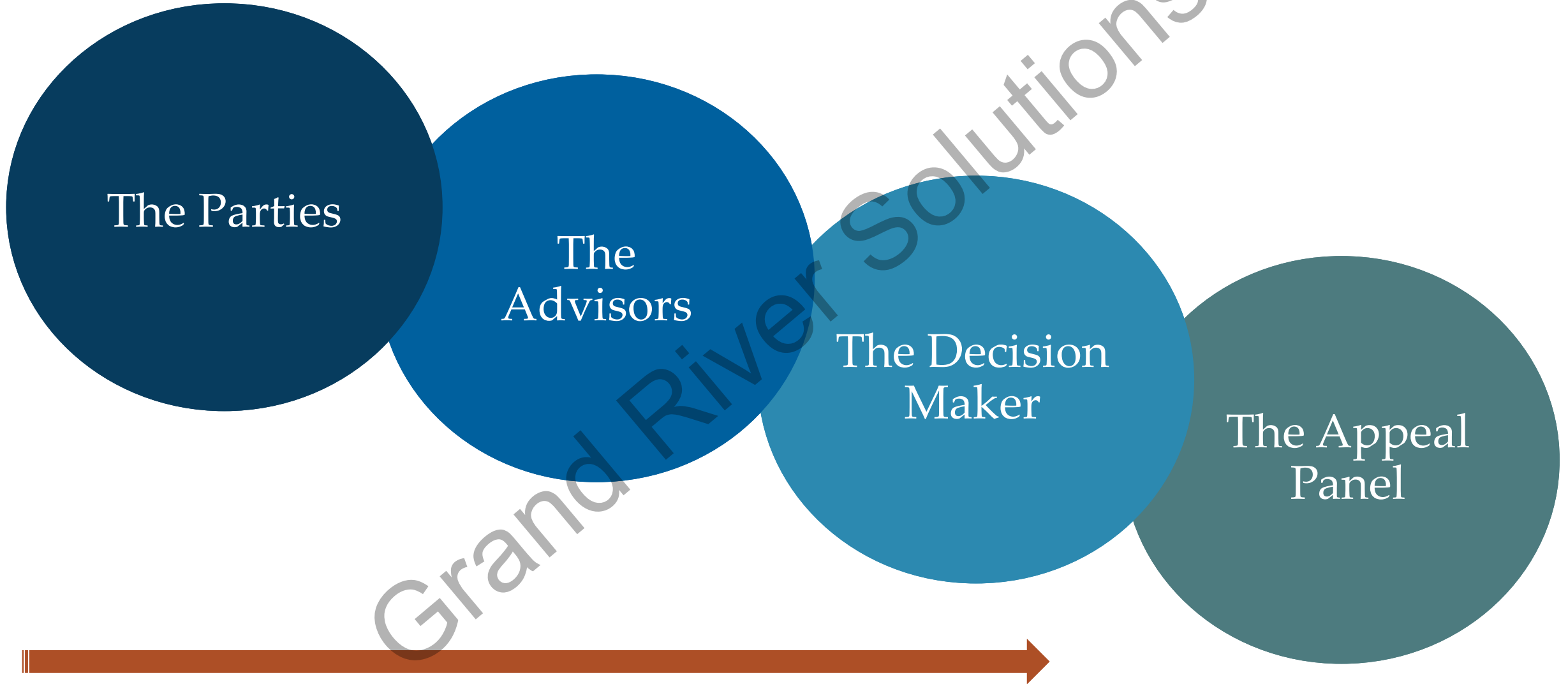
# WHO DECIDES RELEVANCE?

- Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance
  - Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight
- Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:
  - Each party's right to argue their case, and
  - Fact that decisions regarding responsibility will be made at hearing, not investigation stage (in Title IX cases)

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# REDACTIONS

# INTENDED RECIPIENTS



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# OTHER RECIPIENTS?

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



# ESSENTIAL ELEMENTS

Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format

# THE EVIDENCE FILE

Compiles the  
evidence

Organized intentionally and  
consistently

Divided into  
Appendices

Attached to  
the report

Includes a  
procedural  
timeline

# EXAMPLE OF APPENDICES

- Appendix A
  - Contains all of the party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant
- Appendix B
  - Contains all of the documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant
- Appendix C
  - Contains the remaining evidence deemed irrelevant by the investigator, but that is directly related to the allegations in the formal complaint
- Appendix D
  - The procedural timeline

# STRUCTURE OF THE REPORT

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

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# REPORT STRUCTURE

## Overview

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

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

# REPORT STRUCTURE

## Objective of the Investigation & Report

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

# REPORT STRUCTURE

## Prohibited Conduct Alleged

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

# REPORT STRUCTURE

## List Witnesses

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

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# REPORT STRUCTURE

## Evidence Collected

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

# REPORT STRUCTURE

## Summary of Evidence

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

# REPORT STRUCTURE

## Conclusion

- Title IX: summarize next steps in the process, including any procedural pre-requisites for moving the matter forward to a hearing.
- If no hearing: state the finding/conclusion, then summarize next steps, including sanctioning, referrals, and/or appeal procedures.

# FINDINGS OF FACT

What is your finding?

## A finding of fact is:

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

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# STRUCTURING THE ANALYSIS

- Break down the policy into elements
- Organize the facts that you've determined to be more likely than not true, by the element to which they relate



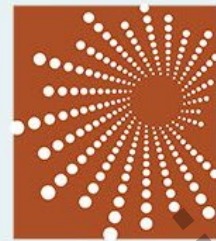
# KEY ELEMENTS

- Summarize the undisputed material issues.
- Summarize the findings of fact for the disputed issues.
- 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.

## DETERMINATION

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**CONNECT**  
IS MOVING TO



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**Equity  
Titles VI, VII, IX**

**Clery  
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Hazing Act**

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## CONNECT WITH US



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