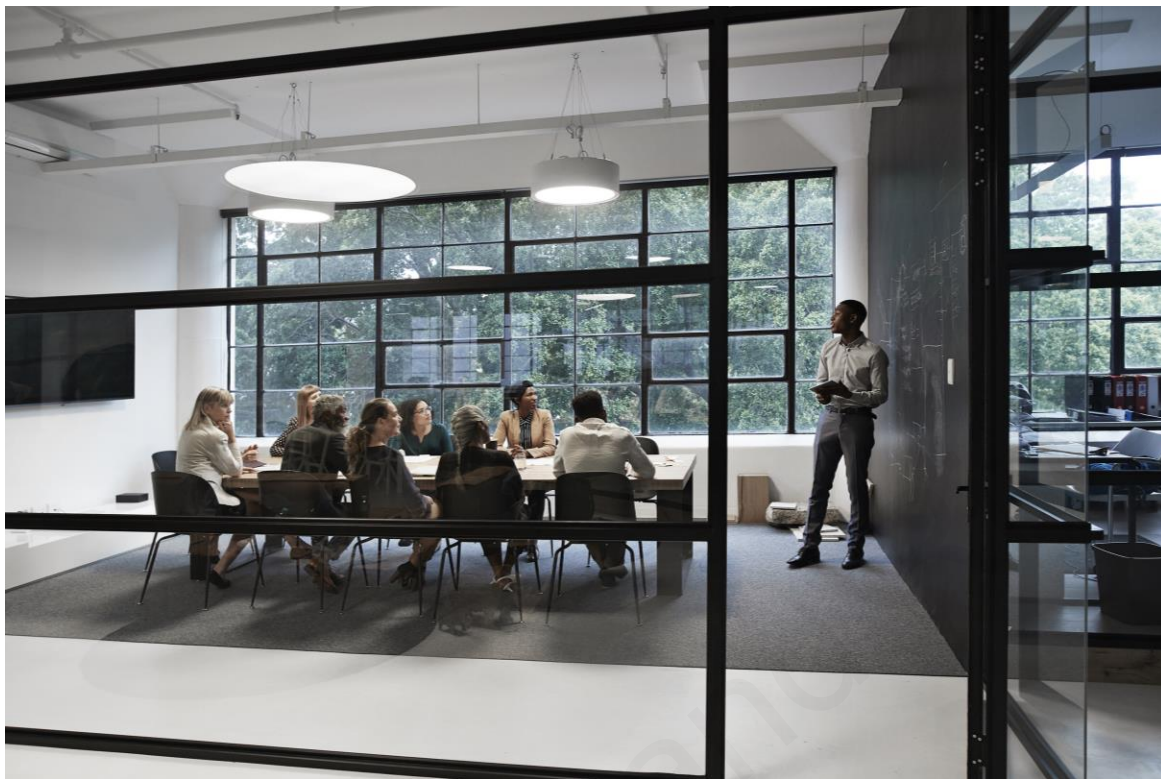




# DECISION MAKER TRAINING: HEARINGS IN A POST REGULATORY WORLD

Day One

Alan Canterbury & Davis Crow

May 28 & 29, 2025

# MEET YOUR FACILITATORS



**Alan Canterbury**  
**Senior Solutions Specialist**  
He/him/his



**Davis Crow**  
**Senior Solutions Specialist**  
He/him/his

# 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

● Title IX Requirements for Hearings

● Hearing Overview

● Pre-Hearing Tasks

● Developing Questions

● The Hearing

● Practical Application

# TITLE IX REQUIREMENTS FOR HEARINGS



01

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## Title IX of the Education Amendments Act of 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).



# 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).

# AND... ONLY COVERED, IF:

## Place of Conduct

- On campus **OR**
- Campus Program, Activity, Building, **AND**
- In the United States

## Required Identity

- Complainant participating/attempting to participate in Program or Activity, **AND**
- Control over Respondent

# 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

No Compelling participation

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

# HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS



If hearings cannot be in person, or if someone chooses to participate remotely, must have a remote participation platform available.

All hearings must be recorded.

Participants must be able to communicate with decision makers and advisors during the hearing

# THE REQUIREMENT OF IMPARTIALITY



# SECTION 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution not to have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent



# ACTIVITY: IS THERE A CONFLICT OF INTEREST?

**Complainant:** Alex, a senior student and President of the Student Government Association (SGA) at a small liberal arts college.

**Respondent:** Jack, a junior student, and member of the college's basketball team.

**Hearing Officer:** Dean Thompson, who is the Dean of Students but also Alex's direct supervisor as the SGA advisor.

**Additional Context:** Dean Thompson has a close professional and mentoring relationship with Alex, having worked with them extensively on SGA projects and initiatives. Additionally, Dean Thompson has a vested interest in maintaining a positive relationship with Alex, as the SGA President plays a crucial role in representing student interests and collaborating with college administrators.

# HEARING OVERVIEW

02

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# WHAT IS THE PURPOSE OF A HEARING?



# PURPOSE OF THE HEARING

1. Review and Assess Evidence

2. Make Findings of Fact

3. Determine Responsibility/ Findings of Responsibility

4. Determine Sanction and Remedy

# PROCESS PARTICIPANTS

- The Parties:
  - Complainant
  - Respondent
- Advisors
- Hearing Facilitator/Coordinator
- Decision Maker (s)
  - Hearing Chair
- Investigator



# THE PARTICIPANTS

## The Parties

### Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

### Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

# THE PARTICIPANTS

## Advisors

There are two types of Advisors



Advisor: throughout the whole process



Hearing Advisor: hearing, for purposes of asking questions

# THE PARTICIPANTS

## Advisors

- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institutionally appointed advisors should be trained)
- Can accompany their advisees at all meetings, interviews, and the hearing
- Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith
- May not speak on behalf of their advisee or otherwise participate, except that the advisor will conduct cross examination at the hearing.
- Advisors are expected to advise their advisees without disrupting proceedings



# THE PARTICIPANTS

## **Advisors:** Prohibited Behavior

An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor's non-compliance and future role.



# THE PARTICIPANTS

## The Hearing Facilitator/Coordinator

- Manages the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process
- Non-Voting
- Optional, not required



# THE PARTICIPANTS

## Decision Maker or Makers

### Decision Maker

One-person.

### Decision Maker Panel

A panel.

Requires a hearing chair.

# THE PARTICIPANTS

## The Decision-Makers

- **A panel**
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate



# THE PARTICIPANTS

## The Hearing Chair

- Is a decision-maker
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome



# THE PARTICIPANTS

## The Decision Maker

- One person
- Questions the parties and witnesses at the hearing
- Determines responsibility
- Determines sanction, where appropriate
- Answers all procedural questions
- Makes rulings regarding relevancy of evidence, questions posed during cross examination
- Maintains decorum
- Prepares the written deliberation statement
- Assists in preparing the Notice of Outcome



# THE PARTICIPANTS

## The Investigator

- Can present a summary of the final investigation report, including items that are contested and those that are not;
- Submits to questioning by the Decisionmaker(s) and the parties (through their Advisors).
- Can be present during the entire hearing process, but not during deliberations.
- Questions about their opinions on credibility, recommended findings, or determinations, are prohibited. If such information is introduced, the Chair will direct that it be disregarded.



# PRE-HEARING TASKS: HEARING PANEL & CHAIR

What should be done in advance of the hearing?

03

# THE INVESTIGATION IS COMPLETE!



## Rapid Fire #1

It is time to schedule the hearing...

Using the chat box:  
**share your “To Do” List  
for coordinating the  
hearing.**



# RAPID FIRE RECAP

Arranging for space

Arranging  
technology

Scheduling pre-  
hearing meetings  
with parties &  
advisors

Scheduling  
prehearing  
meetings of  
the panel

Providing  
report and  
record to  
panel and  
parties

Scheduling  
the hearing

Conflict  
checks

Call for  
written  
submissions

Accommodations

Other considerations?

# PRE-HEARING MEETINGS

- Review the Logistics for the Hearing
- Set expectations
  - Format
  - Roles of the parties
  - Participation
- Decorum
- Impact of not following rules
- Cross Examination/Questioning Format & Expectations



# DECISION MAKER OR HEARING PANEL AS A WHOLE



Review  
evidence  
and report

Review applicable policy  
and procedures

Preliminary  
analysis of  
the  
evidence

Determine  
areas for  
further  
exploration

Develop  
questions  
of your  
own

# YOU AND YOUR TEAM DID A GREAT JOB SCHEDULING THE HEARING AND ARRANGING ALL THE LOGISTICS!

- It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

## Rapid Fire #2

Use the chat box to share what you plan to discuss/think about during the prehearing meeting.



# RAPID FIRE RECAP



Development  
of  
introductory  
comments

Initial discussion of  
the evidence

Areas for  
further  
exploration

List of  
questions for  
the parties  
and the  
witnesses

Anticipation  
of potential  
issues

Logistics

Review of  
any written  
submissions  
by the  
parties

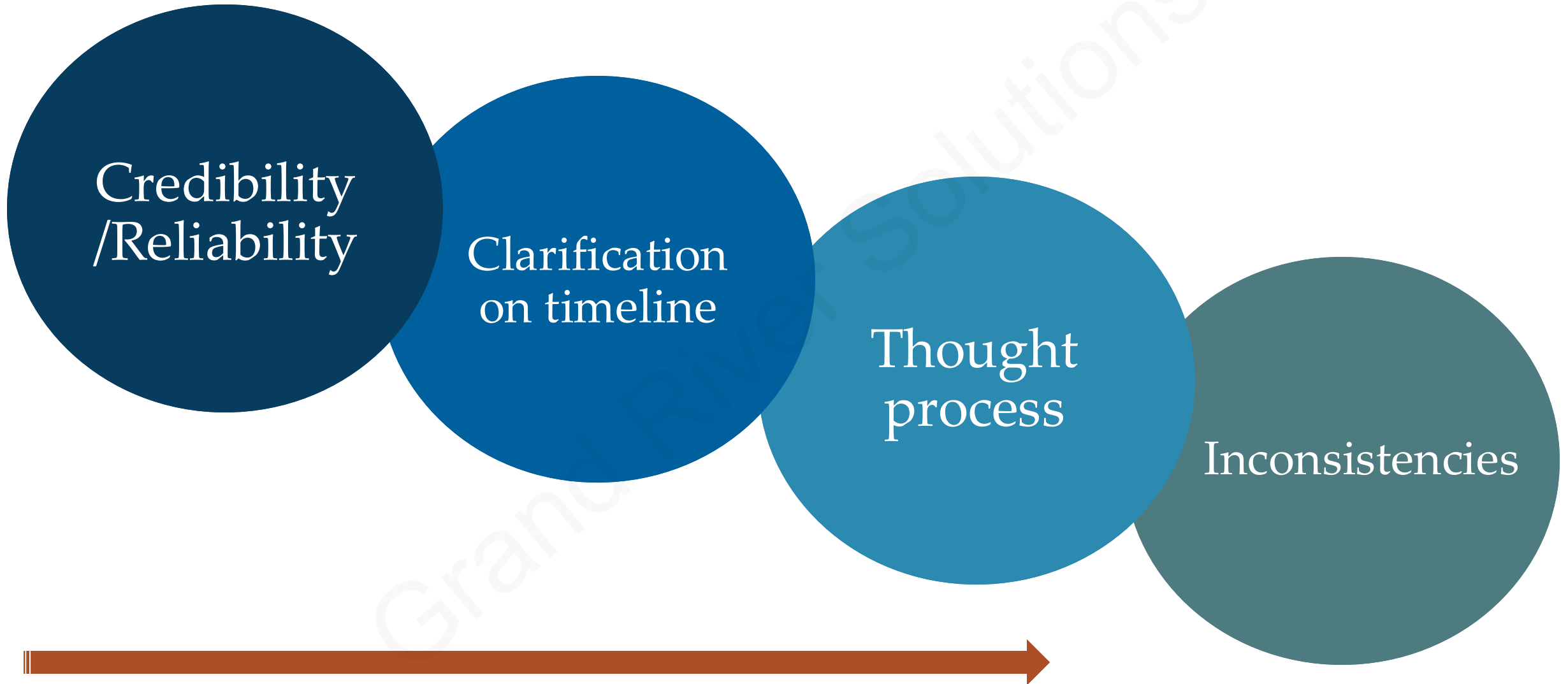
Other  
considerations?

# PRE-HEARING TASKS: DEVELOPING QUESTIONS

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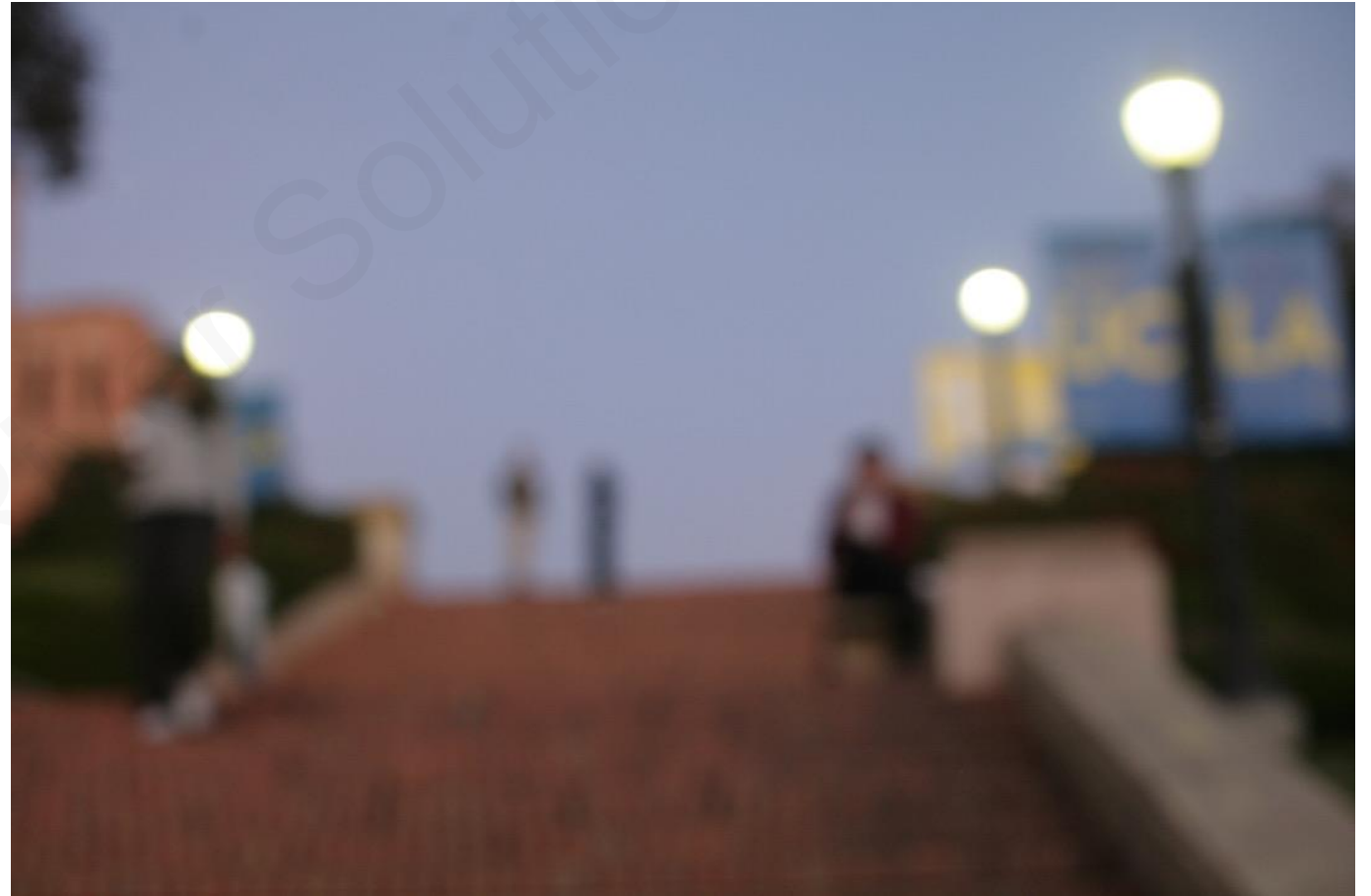
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# COMMON AREAS OF EXPLORATION



# COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

- Credibility
- Reliability
- Timeliness
- Inconsistencies
- Details about the alleged misconduct
- Facts related to the elements of the alleged policy violation
- Relevancy of certain items of evidence
- Factual basis for opinions



# CHARLIE AND RAMONA HYPOTHETICAL ACTIVITY

You will read a short hypothetical & policy definition and then answer:

- What are the elements of the policy?
- Develop questions addressing each of the policy elements based upon the facts you know and what you need to find out at the hearing.
- What areas of concern/exploration do you have? Why are you asking?



# WHAT FACTS DO I KNOW?

- The investigative report indicates:
  - *Student Jane was a TA for Prof. John Doe. Due to Jane's position, she and Prof. Doe spent a lot of time alone in Prof. Doe's office and lab.*
  - *Jane reported that "on more than one occasion" while alone with Prof. Doe in his office, Prof. Doe hugged her for "longer than [she] was comfortable with."*
  - *Prof. Doe told Investigator: "I'm a huggy guy." I treat my students like family, but there is never anything sexual implied when I hug a friend or student.*
  - *Jane said that in October and November Prof. Doe touched her knee and moved his hand up her leg touching her thigh while they were working alone in the lab. Jane said she "froze" in the moment, but after each instance she went home and cried.*
  - *Prof. Doe denied that this happened and said "at most" he may have accidentally grazed Jane's leg while they were working.*

# POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



# THE HEARING

04

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# ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator

3. Presentation of information and questioning of the parties and witnesses

4. Closing Statements

5. Deliberation & Determination

# OPENING INTRODUCTIONS AND INSTRUCTIONS BY THE CHAIR

- The University has a script for this portion of the proceedings, and it should be used.
- Introduction of the participants.
- Overview of the procedures.
- Overall goal: manage expectations.
- Be prepared to answer questions.

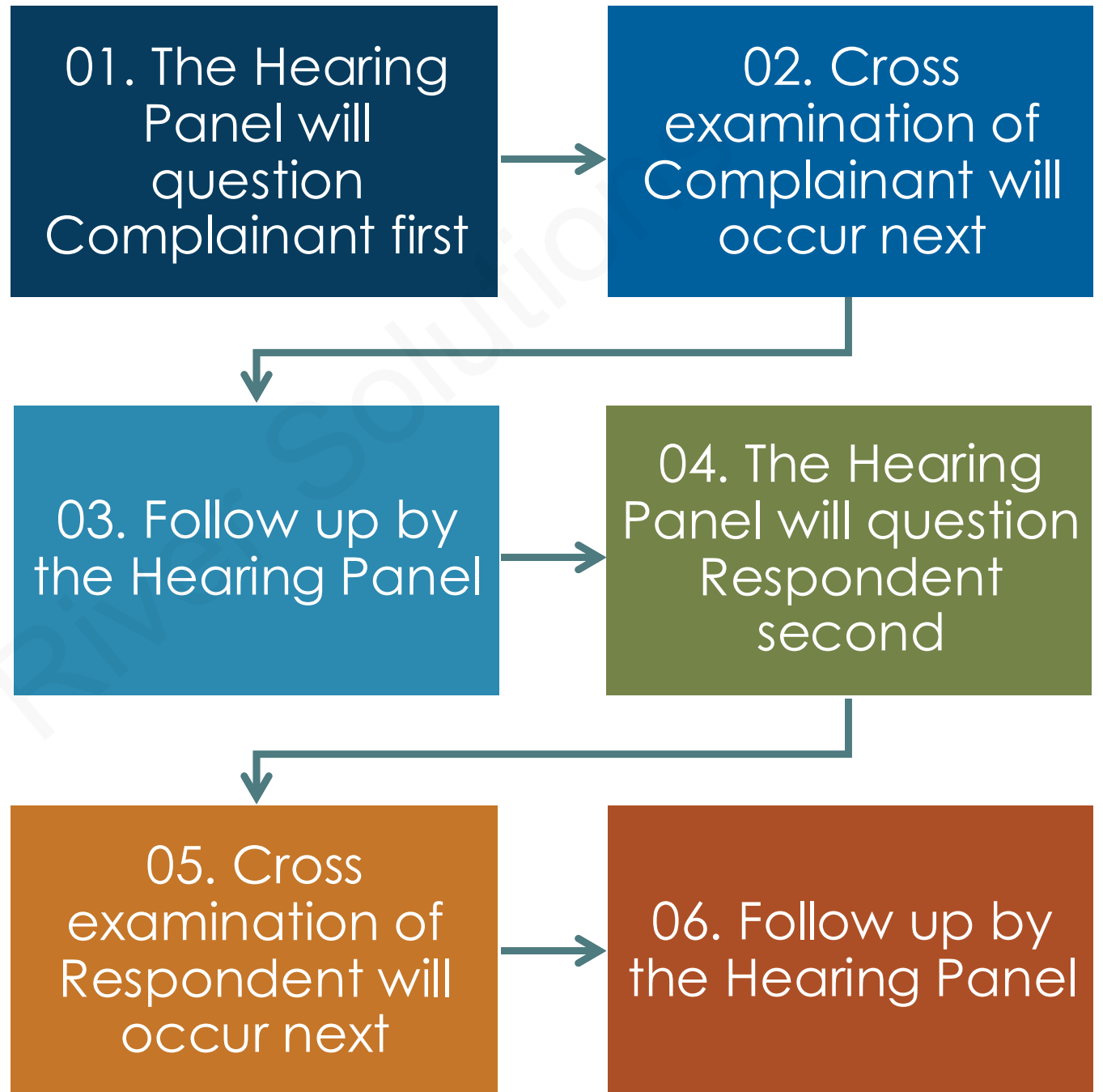


# OPENING STATEMENTS

*Optional: Not required by the regulations; institution may choose to allow.*

- Prior to questioning beginning during the hearing, each party may be given the opportunity to make an opening statement.
- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker.
- Both parties should give opening statement before either is questioned.
- Typically, the complainant goes first.

# PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



# QUESTIONING OF THE WITNESSES

01

The Chair will determine the order of questioning of witnesses

02

The Hearing Panel will question first

03

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

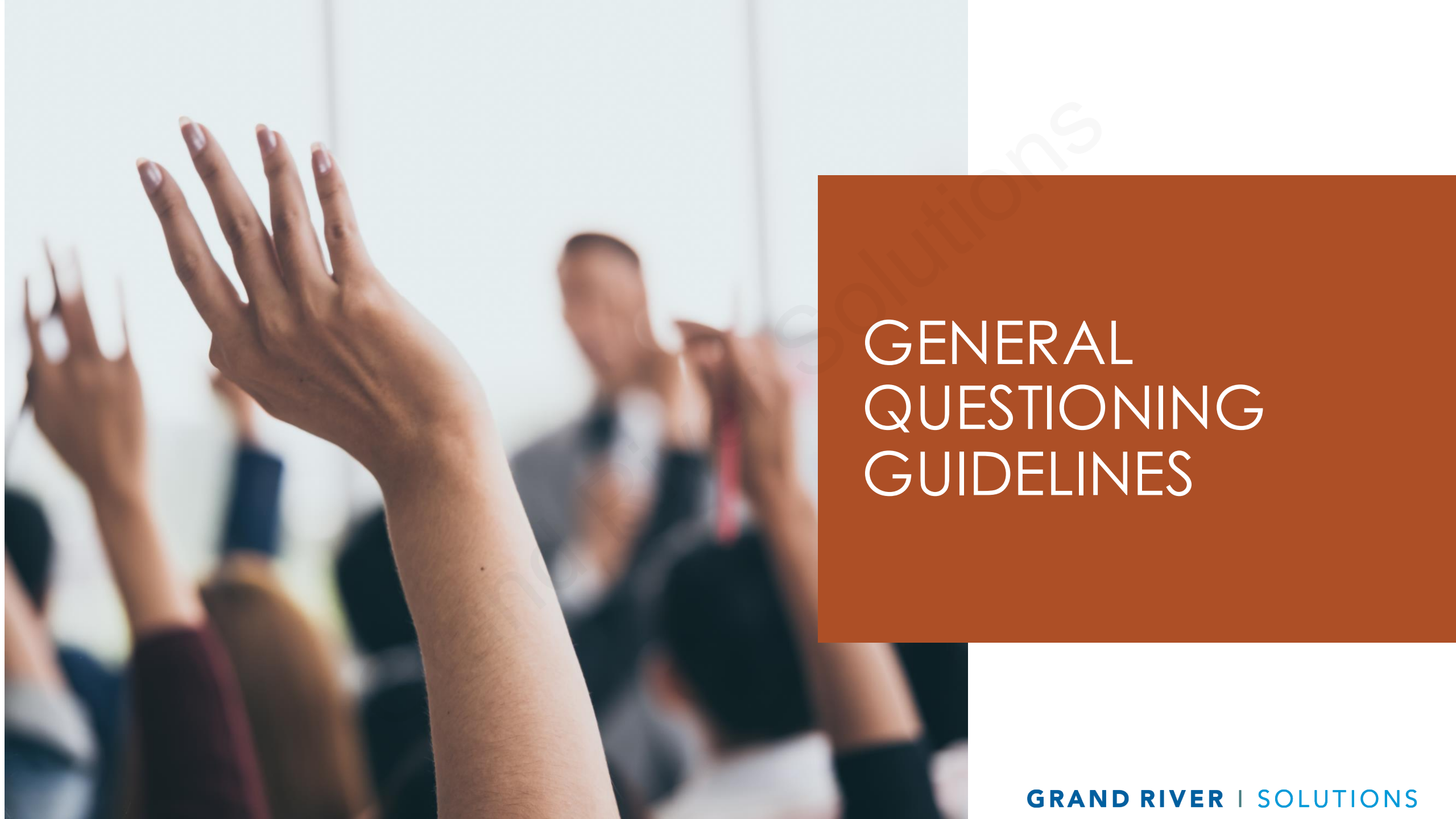
04

Follow up by the Hearing Panel

# CLOSING STATEMENTS

Prior to the conclusion of the hearing, each party will have the opportunity to make a closing statement.

- Intended to be a brief summary of the points the party would like to highlight.
- Directed to the Decision Maker and only the Decision Maker
- Not time to introduce new information or evidence.



# GENERAL QUESTIONING GUIDELINES

# FORMAT OF QUESTIONING

The Hearing Panel or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

# WHEN QUESTIONING....

- Be efficient
- Be prepared to go down a road that you hadn't considered or anticipated exploring.
- Explore areas where additional information or clarity is needed.
- Take your time. Be thoughtful. Take breaks if you need it.
- Listen to the answers.



# FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you  
interviewed?

Did you see the  
interview notes?

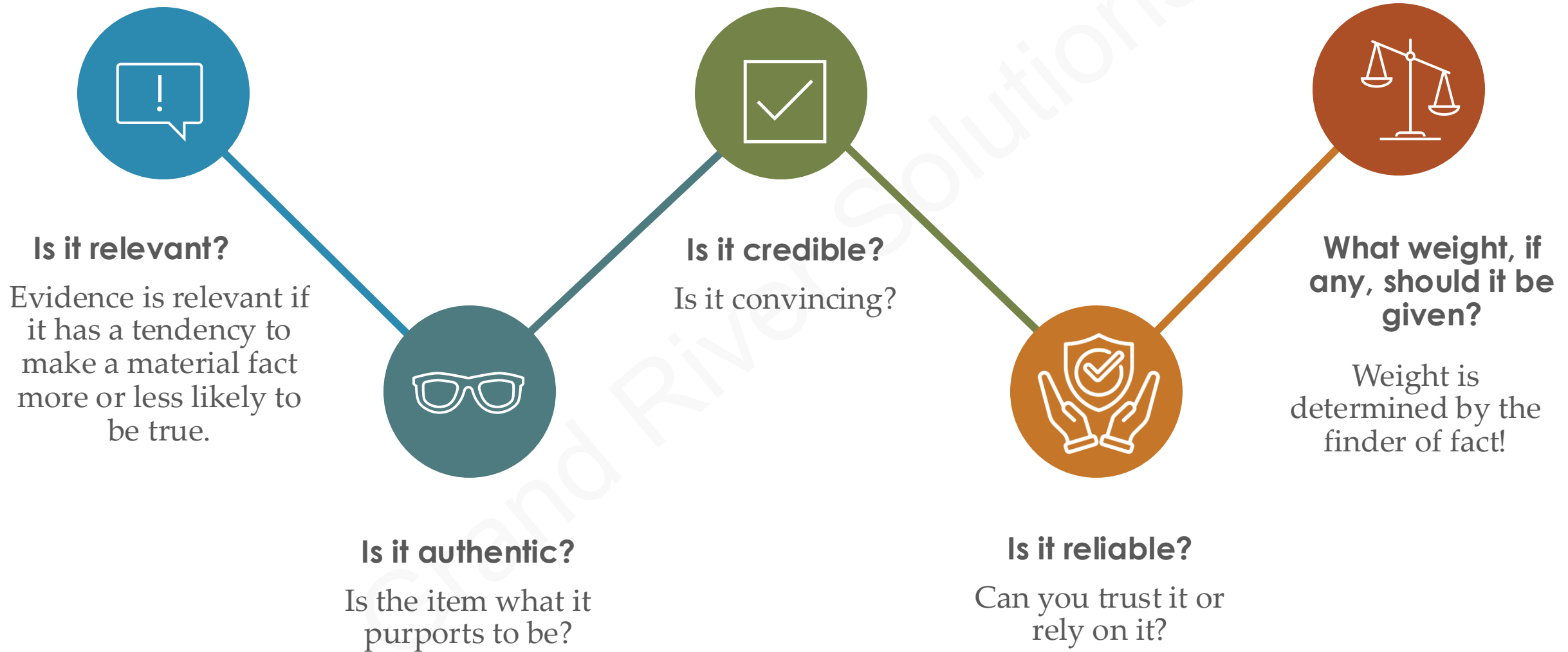
Did the notes reflect  
your recollection at  
the time?

As you sit here  
today, has anything  
changed?

Did you review your  
notes before coming  
to this hearing?

Did you speak with  
any one about your  
testimony today  
prior to this hearing?

# EVIDENTIARY CONSIDERATIONS DURING QUESTIONING



# WHEN ARE QUESTIONS RELEVANT?

- Logical connection between the evidence and facts at issue
- Assists in coming to the conclusion – it is “of consequence”
- Tends to make a fact more or less probable than it would be without that evidence



**Credibility:** The Person is convincing

**RELIABILITY:** THE PERSON'S STATEMENTS CAN BE TRUSTED



# Assessing Credibility and Reliability

NO FORMULA EXISTS, BUT CONSIDER THE FOLLOWING:

Sufficiency of detail and specificity

Internal consistency

Corroboration

Inherent plausibility

Material omission

Motive to falsify

Past record

Ability to recall events

# CREDIBILITY/RELIABILITY ANALYSIS

## STEP BY STEP

1. Determine the material facts based on the notice of allegations
2. Determine which material facts are undisputed and disputed
3. If any material facts are disputed, consider whether a credibility/reliability analysis will help reconcile the dispute

“Jack stated that he never kissed Marcy at the party and went home early, which Marcy denied. Meanwhile, several witnesses corroborated Marcy's statement that he was at the party until 3 a.m. In addition, a witness submitted a photograph showing Jack kissing Marcy at the party. Given that Marcy's statements were corroborated by witness statements and a photograph taken at the party, her statements were found more reliable regarding this material fact.”

# OPINION EVIDENCE

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?



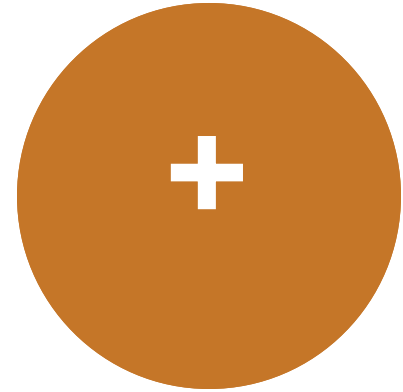
# IS IT AUTHENTIC?



Question the person who offered the evidence.

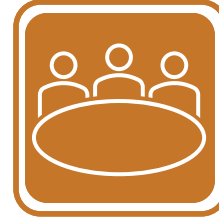


Have others review and comment on authenticity.



Are there other records that would corroborate?

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



Format/Structure of the  
Hearing



Format of Questions



Approach to  
Clarification

# WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?



# THE “HARD” QUESTIONS

Details about the sexual  
conduct

Seemingly inconsistent  
behaviors

Inconsistent  
evidence/information

What they were wearing

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...”



# SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

- The Investigator's participation in the hearing is as a fact witness;
- Questions directed towards the Investigator shall be limited to facts collected by the Investigator pertinent to the Investigation;
- Neither the Advisors nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations;
- The Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

# SPECIAL CONSIDERATIONS FOR PANELS

If a panel, decide in advance who will take the lead on questioning

Go topic by topic

Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

Ok to take breaks to consult with each other, to reflect, to consult with the TIXC or counsel



# TITLE IX HEARINGS IN A POST REGULATORY WORLD

Day Two

Alan Canterbury & Davis Crow  
May 28 & 29, 2025

# OUTSTANDING QUESTIONS FROM DAY ONE



# OVERVIEW OF DAY TWO

- | Advisor Questioning
- | Deliberations
- | Practical Application
- | Questions



# BREAK OUT! #1

All groups: Areas or topics that you would like to explore further in the hearing



Say hi!



Pick a scribe



Discuss

**Group 1:** Questions for Complainant and Witnesses Professor McPhee

**Group 2:** Questions for Respondent and Witness Taylor

**Group 3:** Questions for Witness Tom and Witness Charlie

# REPORT OUT



**Group 1:** Questions for Complainant and Witnesses Professor McPhee



**Group 2:** Questions for Respondent and Witness Taylor



**Group 3:** Questions for Witness Tom and Witness Charlie

# THE DECISION MAKER'S ROLE IN ADVISOR QUESTIONING



05

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# CROSS EXAMINATION

## WHO DOES IT?

1

Must be conducted by the advisor

2

If party does not appear or does not participate, advisor can appear and cross

3

If party does not have an advisor, institution must provide one

# THE ROLE OF THE DECISION MAKER DURING QUESTIONING BY THE ADVISORS

- After the Advisor poses a question, the proceeding will pause to allow the Chair to consider it.
- Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may explore arguments regarding relevance with the Advisors.
- The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive.
- The Chair will state their decision on the question for the record and advise the Party/Witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.
- The Chair has final say on all questions and determinations of relevance. The parties and their advisors are not permitted to make objections during the hearing. If they feel that ruling is incorrect, the proper forum to raise that objection is on appeal.

# THE PARTICIPANTS

## **Advisors:** Prohibited Behavior

An Advisor who oversteps their role as defined by the policy should be warned once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting may be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator has the ability determine how to address the Advisor's non-compliance and future role.



# WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

- Ask the person who posed the question why their question is relevant
- Take a break
- Ask their own questions of the party/witness



# RELEVANT VS. IRRELEVANT



Logical connection  
between the  
evidence and facts  
at issue



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



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

# BREAK OUT! #2

All groups: Review questions and determine whether they are relevant and allowed to be asked or irrelevant/impermissible



Say hi again!



Pick a scribe



Discuss

**Group 1:** Questions for Complainant and Witnesses Professor McPhee

**Group 2:** Questions for Respondent and Witness Taylor

**Group 3:** Questions for Witness Tom and Witness Charlie

# REPORT OUT



# **GROUP 1** QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

## Questions for Complainant

1. Isn't it true you found Alex attractive after you first met?
2. You wanted to hook up with Alex, didn't you?
3. You made this complaint only because you wanted your boyfriend's attention, isn't that true?
4. You kept calling Alex and asking him for help because you couldn't finish your part of the project without him, isn't that true?
5. You told the investigator you imagined seeing Alex everywhere. Where do you think you saw him?
6. Why were you always thinking of Alex?
7. And how often do you hallucinate?
8. How often has this happened in the past?
9. Why did you ask your boyfriend to walk you to your car when you knew you were supposed to meet Alex there?
10. You said you were frightened by seeing Alex in the parking garage. Did he have a weapon? Did he try to touch you? Did he try to hit you? Describe each and every way he tried to attack you that night.

# GROUP 2

## QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

### Questions for Respondent

1. Do you keep stalking Stevie because you're OCD?
2. Have you ever been removed from another group project because you could not get along with others?
3. When you first talked to Stevie about your girlfriend breaking up with you, who was your girlfriend, or did you make that up just so you could talk to Stevie?
4. Why did you keep offering to work with Taylor in person instead of by Zoom?
5. Did you have a thing for Taylor?
6. Did you and Taylor ever end up hooking up?

# GROUP 3

## QUESTIONS SUBMITTED BY COMPLAINANT'S ADVISOR

### Questions for Tom

1. Can you think of any reason for Alex to be hanging out in the garage with flowers, other than to frighten Stevie?
2. Alex was pretty creepy, wasn't he?
3. Did you see him throw an object at Stevie?
4. Do you believe he was acting in self-defense when he threw the object?
5. You said Stevie is really pretty and guys hit on her a lot. Don't you think someone who has had a lot of male attention would be in the best position to know which kind of male attention is acceptable, and when it is stalking?

# GROUP 1

QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

## Questions for Witness Professor McPhee

- 1. Why didn't you tell Alex to stop stalking Stevie?**
- 2. Weren't you supposed to forward Stevie's Title IX Complaint to the Coordinator, and don't you think that if you had done so, she would have been spared his stalking?**

# **GROUP 2** QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

## Questions for Taylor

1. Did Alex seem fixated on Stevie when you were all part of the class project?
2. Did Alex insist that the two of you work together in person instead of online?
3. How often did he force you to work in person with him after classes?
4. Were you afraid of him?

# GROUP 3

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

## Questions for Tom

1. When you saw Alex in the parking garage, were you frightened?
2. What, specifically, did Alex do that was frightening?
3. Does Stevie always overreact?
4. What, specifically, did Alex throw at her?

# GROUP 1

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

## Questions for Witness Professor McPhee

1. What grade did she have up to the project and what grade did she get on the project?
2. Isn't it true that Stevie was doing poorly in class?
3. After she made this complaint, did she get some special treatment or accommodation in your class?
4. Isn't it true that, once you told her she would have to do the work, she suddenly made up a story about Alex to paint him in a bad light?
5. Isn't it true that, before she told you this lie, you had no reason to think poorly of Alex?

# GROUP 2

## QUESTIONS SUBMITTED BY RESPONDENT'S ADVISOR

### Questions for Taylor

1. Were you frustrated when working on the group project? Why?
2. Why did you think Alex was more frustrated than others?
3. Why did you think he was “taking it out” on Stevie if he was frustrated with the whole group?
4. Are you and Stevie friends?
5. Did Stevie tell you what to say in the investigation? If so, what?
6. Are you one of those “Believe all victims” people?

# **GROUP 3** QUESTIONS SUBMITTED BY **COMPLAINANT'S** ADVISOR

## Questions for Witness Charlie

1. So are you the one who suggested Alex stalk Stevie's social media to find a food or drink she liked?
2. Why do you think Stevie and Alex had a plan to get together one night and talk? Do you know for sure that there were confirmed plans?
3. What proof did Alex give you to prove there was a real plan, and not an imaginary one?
4. You said Stevie was "rude" because you could not do a lot of work on the group project. What did you mean by that?
5. How long have you known Alex?
6. Isn't it true you just don't like Stevie?
7. Have you ever been accused of sexual harassment or stalking?
8. Isn't it true that you would say anything to support a guy who has been accused?

# GROUP 3

QUESTIONS SUBMITTED BY **RESPONDENT'S** ADVISOR

## Questions for Witness Charlie

- **No Questions**

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# AFTER THE HEARING

05



# Deliberations

# PREPONDERANCE OF THE EVIDENCE

- Standard of proof by which determinations of responsibility are made
- **"More likely than not"**
- It does not mean that an allegation must be found to be 100% true or accurate
- **A finding of responsibility =**
  - There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated
- **A finding of not responsible =**
  - There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated

# WEIGHING THE EVIDENCE & MAKING A DETERMINATION

1. Evaluate the relevant evidence collected to determine what weight, if any, you will afford that item of evidence in your final determination;
2. Apply the standard of proof and the evidence to each element of the alleged policy violation;
3. Make a determination as to whether or not there has been a policy violation.



# FINDINGS OF FACT

- **A "finding of fact"**

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

- **For example...**

- Complainant reports that they and Respondent ate ice cream prior to the incident
- Respondent says that they did not eat ice cream
- Witness 1 produces a timestamped photo of Respondent eating ice cream

- **Next steps?**

# POLICY ANALYSIS

- Break down the policy into elements
- Organize the facts by the element to which they relate



# ALLEGATION: FONDLING

**Fondling** is the:

- ☐ touching of the private body parts of another person
- ☐ for the purpose of sexual gratification,
- ☐ Forcibly and/or without the consent of the Complainant,
  - ☐ including instances where the Complainant is incapable of giving consent because of their age or **because of their temporary or permanent mental or physical incapacity.**

# ANALYSIS GRID

**Touching of the private body parts of another person**

**Undisputed:**  
Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.

**For the purpose of sexual gratification**

Respondent acknowledges and admits this element in their statement with investigators.

*"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."*

**Without consent due to lack of capacity**

**Complainant:** drank more than 12 drinks, vomited, no recall  
**Respondent:** C was aware and participating  
**Witness 1:** observed C vomit  
**Witness 2:** C was playing beer pong and could barely stand  
**Witness 3:** C was drunk but seemed fine  
**Witness 4:** carried C to the basement couch and left her there to sleep it off.

# ANALYSIS GRID

**Touching of the private body parts of another person**

**Undisputed:**

Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.



**For the purpose of sexual gratification**

Respondent acknowledges and admits this element in their statement with investigators.



*"We were looking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."*

**Without consent due to lack of capacity**

**Complainant:** drank more than 12 drinks, vomited, no recall

**Respondent:** C was aware and participating

**Witness 1:** observed C vomit

**Witness 2:** C was playing beer pong and could barely stand

**Witness 3:** C drank but seemed fine

**Witness 4:** carried C to the basement couch and left her there to sleep it off.



# DID YOU ALSO ANALYZE...?

On campus?

Program or Activity?

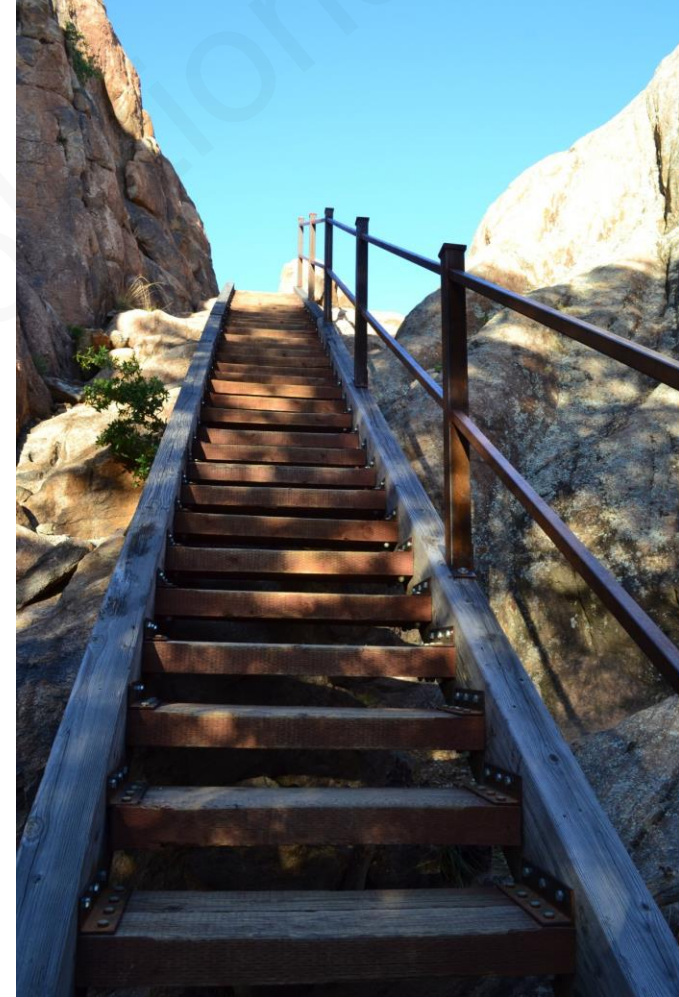
In a building owned/controlled by a recognized student organization?

Substantial control over respondent and context?

Complainant was attempting to access program/activity?

# GOALS OF SANCTIONS/DISCIPLINE

1. End the harassment
  2. Prevent its recurrence
  3. Remedy the harm
- What steps would be reasonably calculated to end harassment and prevent recurrence?



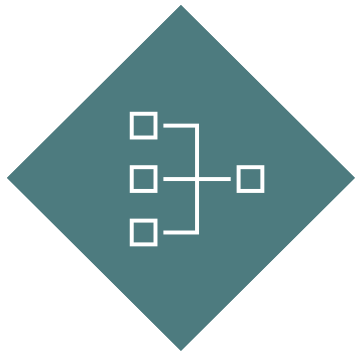
# SANCTIONING



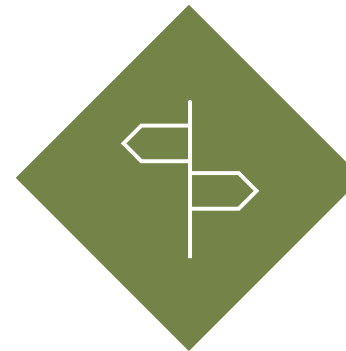
State Law



Learning Environment



System Policy



Measures Available

# THE SANCTION DOES NOT UNDO THE FINDING

- No lesser sanction if you disagree with findings
- Sanctioning officer must assume findings are correct

# DETERMINING THE PROPER SANCTION

- Consistency
- Foreseeability of repeated conduct
- Past conduct
- Does bias creep in?
- Remorse?
- Victim impact?



# AGGRAVATING CIRCUMSTANCES

- Premeditation
- Predation
- Physical violence
- Repeated violation
- Multiple policy violations in one incident
- Harm to others, impact on complainant and/or community
- Did the behavior continue after intervention?
- Effort to conceal or hide the incident?
- Refusal to attend past trainings
- Past failures to comply with directives



# FINAL REPORT

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



# THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



**S** Simple and Easy to Comprehend

**T** Transparent/Clear

**A** Accurate

**N** Neutral/Unbiased

**D** Draw Attention to Significant Evidence and Issues

# ADVISOR'S ROLE POST-HEARING

- May meet with their advisee to review decision and respond to procedural questions.
- Institutionally-appointed advisors typically do not advise nor assist the party in developing an appeal.
- Advisor of choice may assist in advising party whether or not to appeal and in the drafting of an appeal.



# PRACTICAL APPLICATION



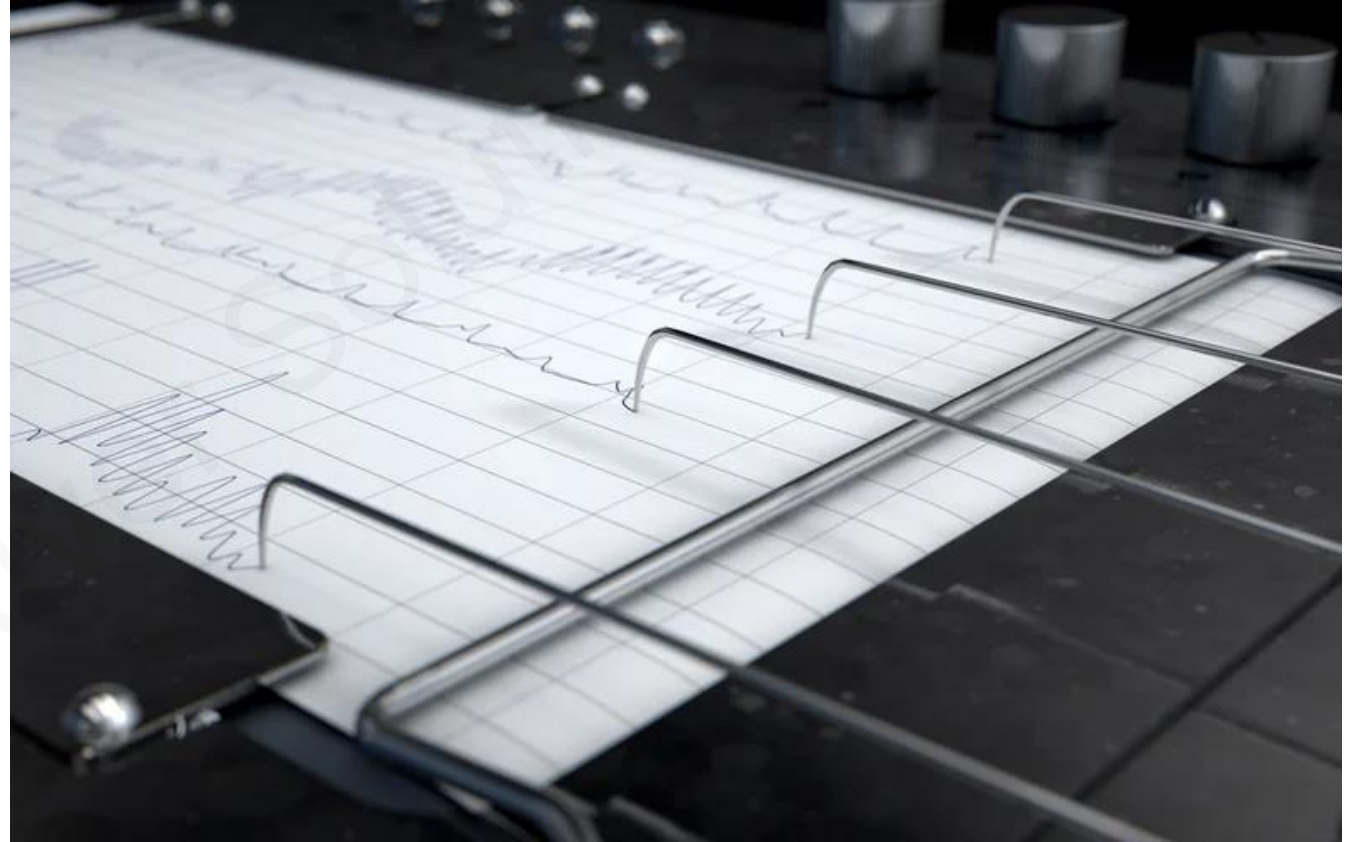
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Grand River

# SCENARIO 1

Respondent provides a polygraph report to investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations.

- **The Investigator determines the report is irrelevant. Must the Investigator share the report with the decision maker?**

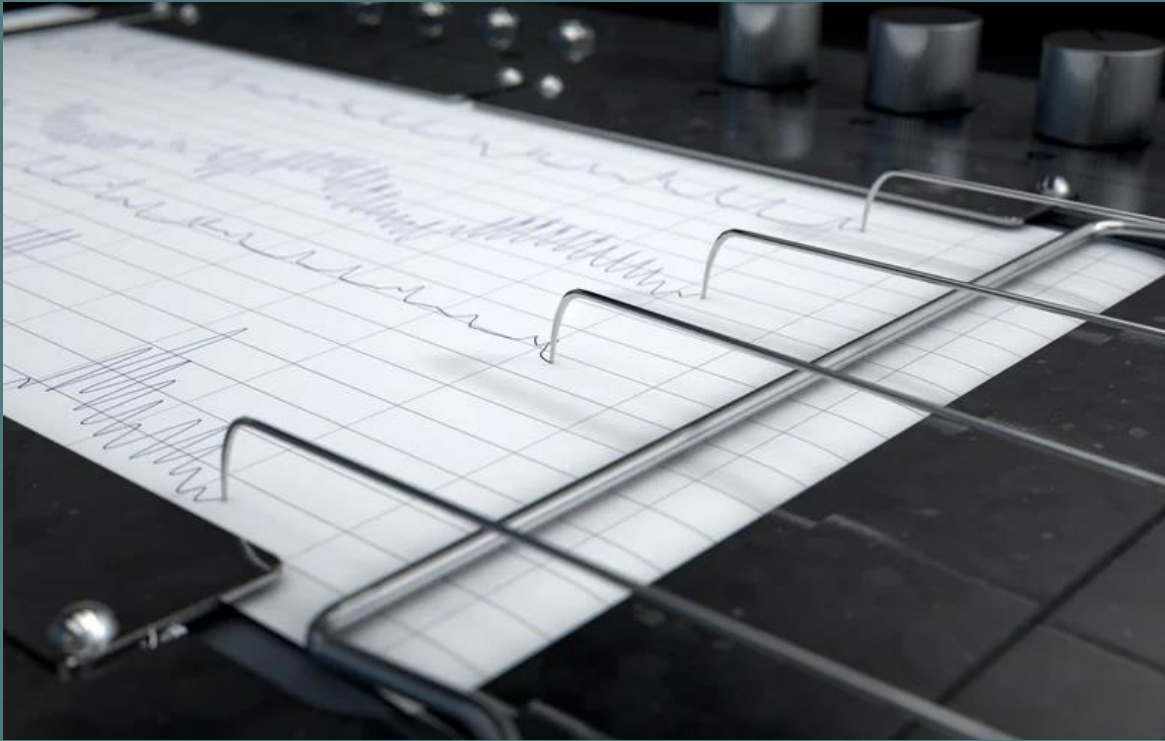


# SCENARIO 2



- Respondent appears at the hearing with Witness 7. Respondent would like Witness 7 to provide information testimony about text messages between them and Complainant that indicate that Complainant has made the allegations up.
- **Can the HP hear from Witness 7 at the hearing?**

# SCENARIO 3



Respondent provides a polygraph report to Investigators wherein it is concluded that Respondent is not being deceptive when denying the allegations. The polygrapher appears and answers all relevant questions on cross.

**Must the Hearing Panel find Respondent not responsible because of the findings in the report?**

# SCENARIO 4

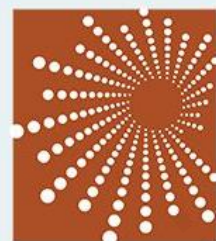


During the hearing, the Complainant becomes upset, shuts down, and stops answering question.

**If you are the Hearing Chair, how do you respond?**

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