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Hearings in a Post Regulatory World

Washington Community College Collective

Martha Compton | March 2022

Martha Compton

She/her

Director of Strategic Partnerships and Client Relations

Meet Your Facilitator

Martha consults and trains nationally on Title IX and student conduct and has previously served as a technical trainer for Department of Justice VAWA campus grantees. Martha is a former President of the Association for Student Conduct Administration, has been a faculty member for ASCA's Gehring Academy, and was part of the core team that developed ASCA's Sexual Misconduct Institute. A student conduct professional for over 20 years, Martha is also a former dean of students and has extensive experience in residence life, behavior intervention, emergency services, orientation, leadership, and working with student organizations.

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About Us

Vision

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

Mission

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

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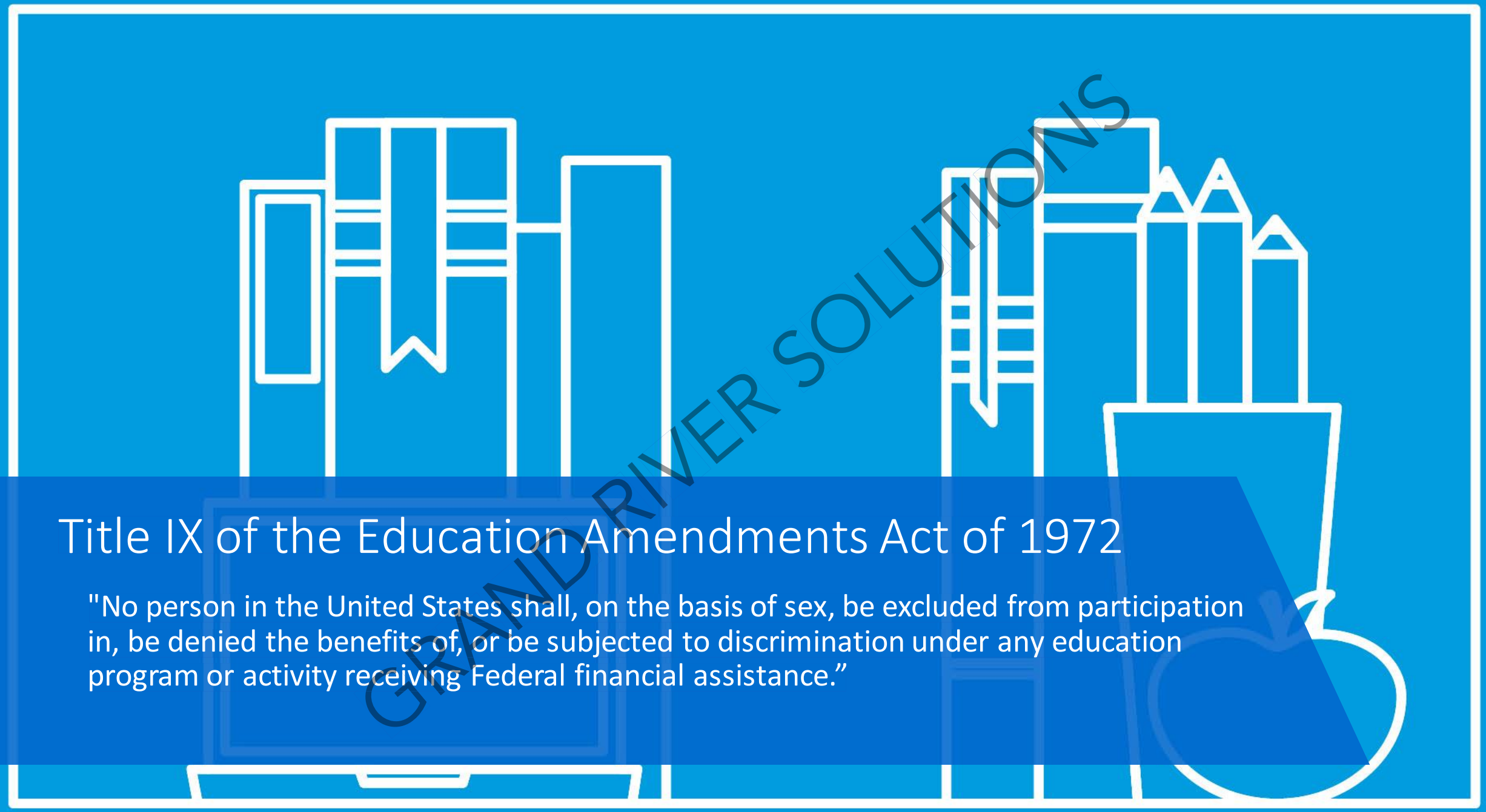
Agenda

1. Title IX Requirements for Hearings
2. Process Participants
3. Pre-Hearing Tasks
4. The Hearing
5. After The Hearing
6. Practical Application

Title IX Requirements For Hearings

01



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."

Section 106.30: Sexual Harassment

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
- 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 evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10 day review of report prior to hearing

Procedural Requirements for Hearings

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

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 complainants or respondents generally, or
- An individual complainant or respondent

Section 106.45(b)(1)(iii)

> Title IX Coordinator, investigator, **decision maker**, or facilitator of informal resolution must receive training on…how to serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias. This training material may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

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 during the hearing

- The parties with the decision maker(s)
- The parties with their advisors

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

Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?

Is the item what it purports to be?

Is it credible?

Is it convincing?

Is it reliable?

Can you trust it or rely on it?

What weight, if any, should it be given?

Weight is determined by the finder of fact!

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

Process Participants

02

The Participants

The Parties

Complainant	Respondent
The person who is alleged to be the victim of conduct prohibited under the policy.	The person who has been reported to be the perpetrator of conduct prohibited under the policy.

The Participants

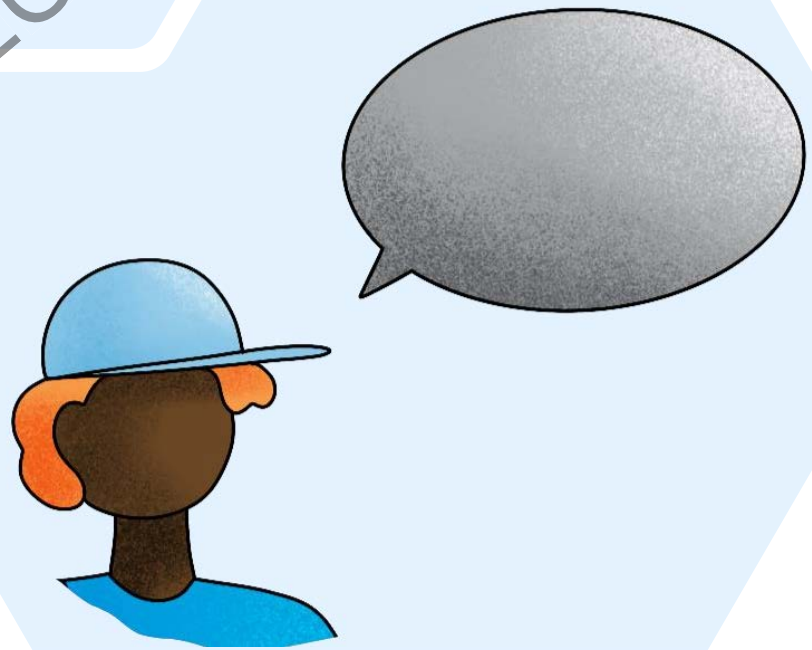
The Investigator

- 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.

The Participants

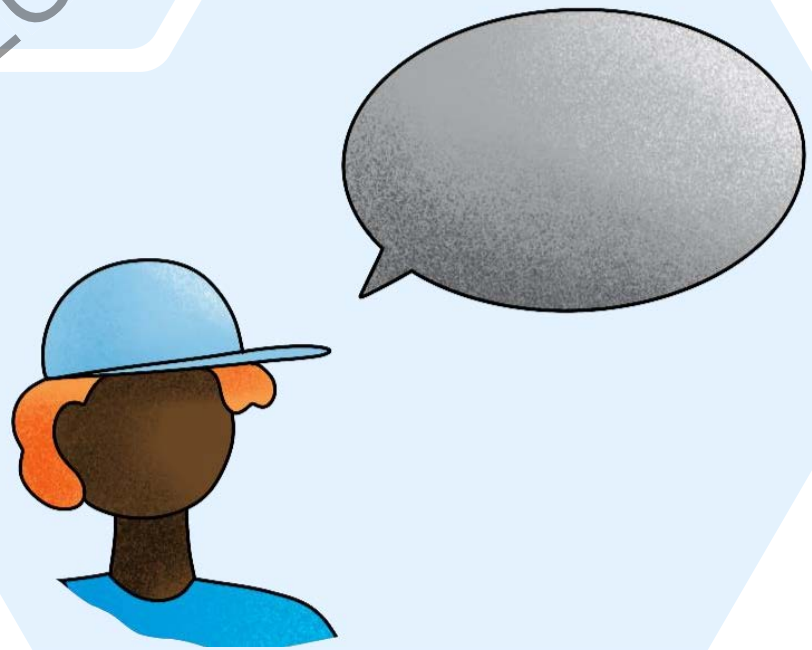
Advisors

- Can be anyone, including a lawyer, a parent, a friend, and a witness
- No particular training or experience required (institution 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

The Participants

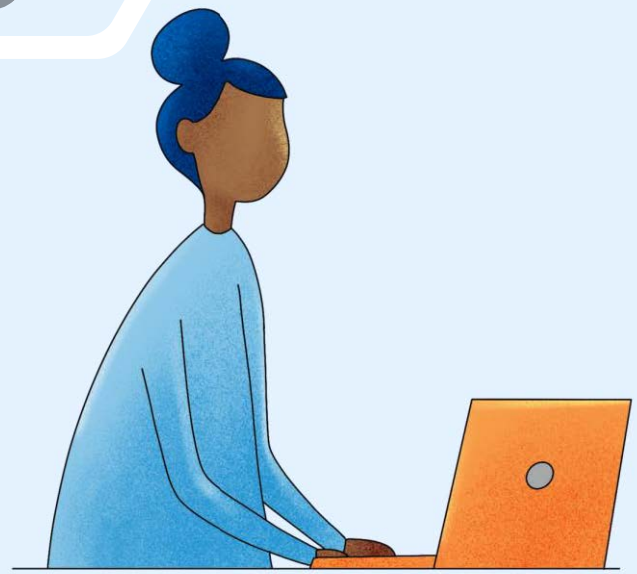
The Decision-Maker(s)

- One person or 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



Advisor's First Steps

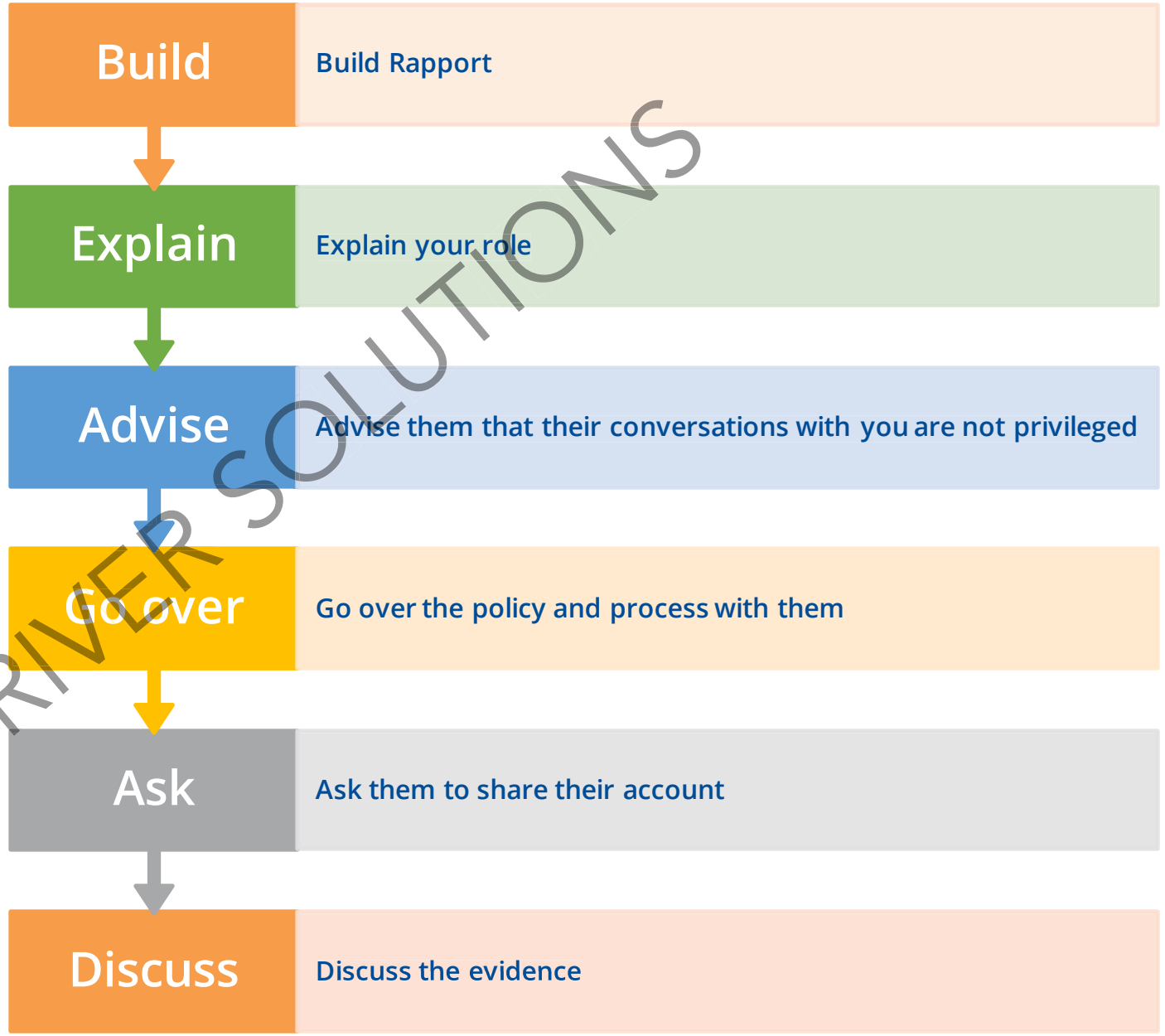
Establishing the Advisor/Advisee Relationship

03a

After you are assigned a case...

- Review the policy
- Review the materials provided, if any
- Reach out to your advisee
- Schedule a meeting

Meeting with your advisee



Setting Expectations

- At the outset, make sure the party is aware of the limitations of your role.
- Advisors are not a confidential resource.
  - You are not under an obligation to keep what a party tells you confidential and, in some instances, may be required to report it.
- Advisors must be truthful.
  - If the matter ends up in a court of law and the advisor is requested to testify, they must do so and do so truthfully.

Pre-Hearing Tasks: Hearing Panel & Chair

What should be done in advance of the hearing

03(b)

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 Expectations

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

Hearing Panel Chair

- Provide names of all individuals invited to participate in the hearing
- Provide parties with investigation report and all pertinent evidence
- Compile questions on behalf of the Panel
- May convene a pre-hearing meeting
- Review questions submitted by the parties
- Anticipate challenges or issues
- Become familiar with the script

Common Areas of Exploration

- Credibility?
- Clarification on timeline?
- The thought process?
- Inconsistencies?

Pre-Hearing Tasks: The Advisor

What should be done in advance of the hearing

03(c)

Pre-Hearing Preparation

Do Your Homework

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Exactly, What Type of Homework?

- Review applicable policy language/provisions
- Familiarize yourself with investigative report
- Understand the timeline of events
- Think about areas to highlight or expand upon
- What type of questions you will ask
- Who are the key witnesses
- Consult with your advisee
- Anticipate questions of others
- Develop a strategy

Identify the Claims, What Needs to be Proven

- Why are we here?
- What are the elements for the charge(s)?
- What are the definitions of those elements?
  - Consent?
  - Incapacitation?

Preparing for Cross

- Review and evaluate the evidence
- Identify the party's narrative, or the version of events that they want to illustrate
- Identify the facts at issue and the findings of fact that the party wants the decision maker to make
- Plan to highlight the evidence that support the narrative and the findings of fact that the party wants the decision maker to make
- Prepare an outline of topics to explore

The Hearing

04

Order of the Proceedings

01

Introductions and instructions by the Chair; Opening Statements

02

Presentation by Investigator

03

Presentation of information and questioning of the parties and witnesses

04

Closing Statements

05

Deliberation & Determination

Opening Introductions and Instructions by the Chair

- The institution should have a script for this portion of the proceedings, and it should be used.
- Introduction of the participants.
- Overview of the procedures.
- Be prepared to answer questions.

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Presentation of Information

Presentation of Information & Questioning of the Parties

01

The Hearing Panel will question Complainant first

02

Cross examination of Complainant will occur next

03

Follow up by the Hearing Panel

04

The Hearing Panel will question Respondent second

05

Cross examination of Respondent will occur next

06

Follow up by the Hearing Panel

Questioning of the Witnesses

01

The Chair will determine the order of questioning of witnesses

02

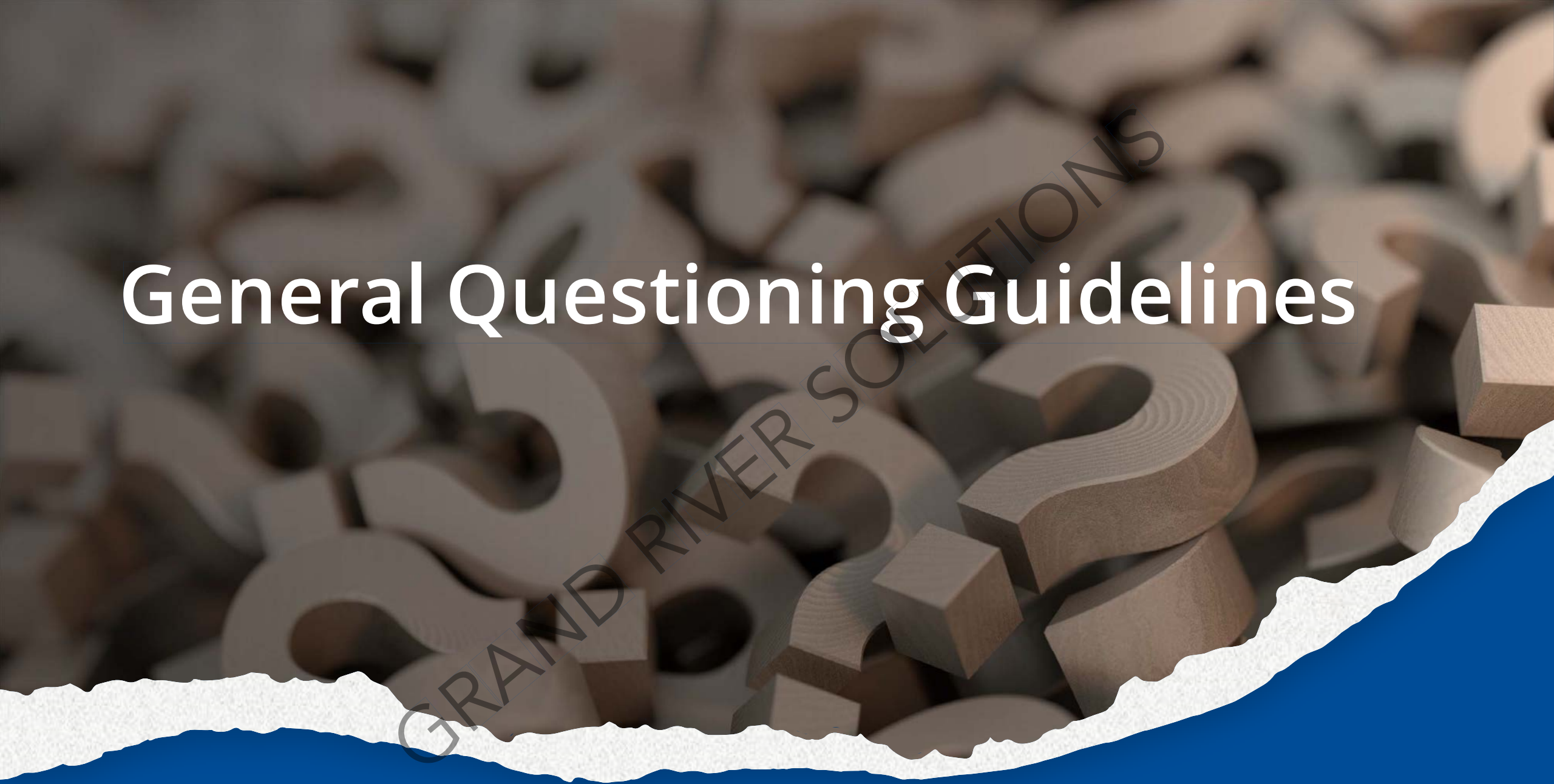
The Hearing Panel will question first

03

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

04

Follow up by the Hearing Panel



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

What constitutes a relevant question?

The Department declines to define "relevant", indicating that term "should be interpreted using [its] plain and ordinary meaning."

See, e.g., Federal Rule of Evidence 401 Test for 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."

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When is evidence 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

Irrelevant and Impermissible Questions

Questions that seek to illicit irrelevant information

- Complainant's prior sexual history
- Information protected by an un-waived legal privilege
- Medical treatment and care

Duplicative questions

Information that otherwise irrelevant

When Questioning....

Be efficient.

Explore areas where additional information or clarity is needed.

Listen to the answers.

Be prepared to go down a road that you hadn't considered or anticipated exploring.

Take your time. Be thoughtful. Take breaks if you need it.

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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?

Common Areas of Where Clarity or Additional Information is Needed

- 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
- Credibility
- Reliability
- Timelines
- Inconsistencies

Questioning to Assess Reliability

Inherent plausibility

Logic

Corroboration

Other indicia of reliability

Questioning to Assess Credibility

No formula exists, but consider asking questions about the following:

- opportunity to view
- ability to recall
- motive to fabricate
- plausibility
- consistency
- character, background, experience, and training
- coaching

Credibility Versus Reliability

Reliable Evidence

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

Credibility

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

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?

Asking Questions to Assess Authenticity
Investigating the Products of the Investigation

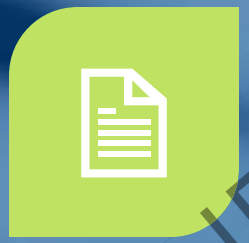
Never assume that an item of evidence is authentic.

Ask questions, request proof.

Request further investigation of the authenticity if necessary.

Is it authentic?

QUESTION THE PERSON WHO OFFERED THE EVIDENCE



REQUEST ORIGINALS

OBTAIN ORIGINALS FROM THE SOURCE

HAVE OTHERS REVIEW AND COMMENT ON AUTHENTICITY

ARE THERE OTHER RECORDS THAT WOULD CORROBORATE?

What are the "Hard" Questions

- Details about the sexual contact
- 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 Questioning the Investigator

- Ask questions about how they conducted their investigation
- Explore the investigators decision making
- Seek clarity about evidence collected
  - Where it came from
  - Authenticity of the evidence
- Ask factual questions that will assist in evaluation of the evidence
- If bias is not in issue at the hearing, the Chair should not permit irrelevant questions of the investigator that probe for bias.

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

The Advisor's Role in Questioning

04(a)

First Decide: To Cross or Not to Cross

Special Considerations

WILL SUBMITTING TO CROSS EXAMINATION SERVE THE PARTY'S INTERESTS?

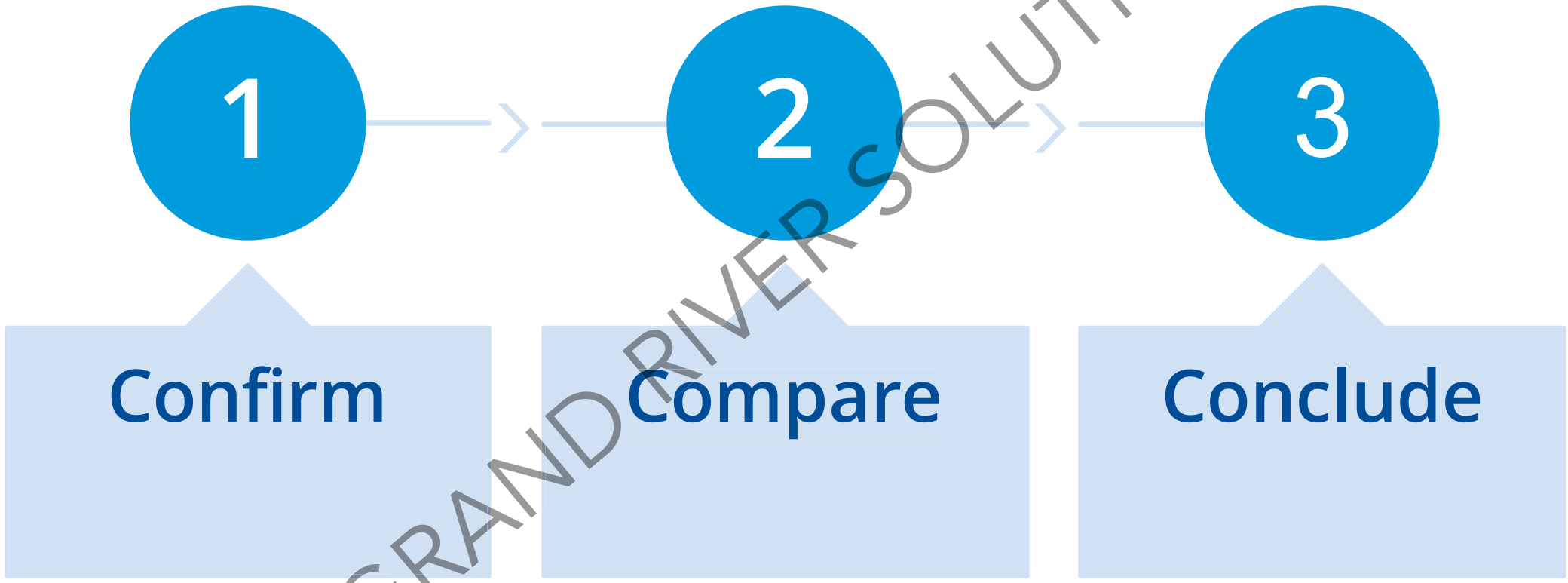
WILL CONDUCTING CROSS EXAMINATION SERVE THE PARTY'S INTERESTS?

Cross Examination
Common Approaches

1. Highlight the evidence that supports your advisee's narrative/version of events and the findings of fact that you want the decision maker to make.
2. Obtain/Highlight helpful information.
3. If a witness does not have information that is helpful, ask questions that illustrate that the witness's testimony is unimportant.
4. Highlight bias/lack of bias.
5. Highlight credibility and reliability/lack of credibility or reliability.
6. Address any inconsistencies of the party or witness.

Questioning

Addressing Inconsistent Statements



Example

Statement A:

During her interview with the investigator, Witness Y stated that she overheard Respondent and Complainant fighting inside of Complainant's bedroom. She stated that Complainant came out of the room crying and that their face was red and swollen. She stated that Respondent followed Complainant out of the room "looking angry" and grabbed Complainant by the arm "aggressively" and pulled them back into the room. The fighting then continued.

Statement B:

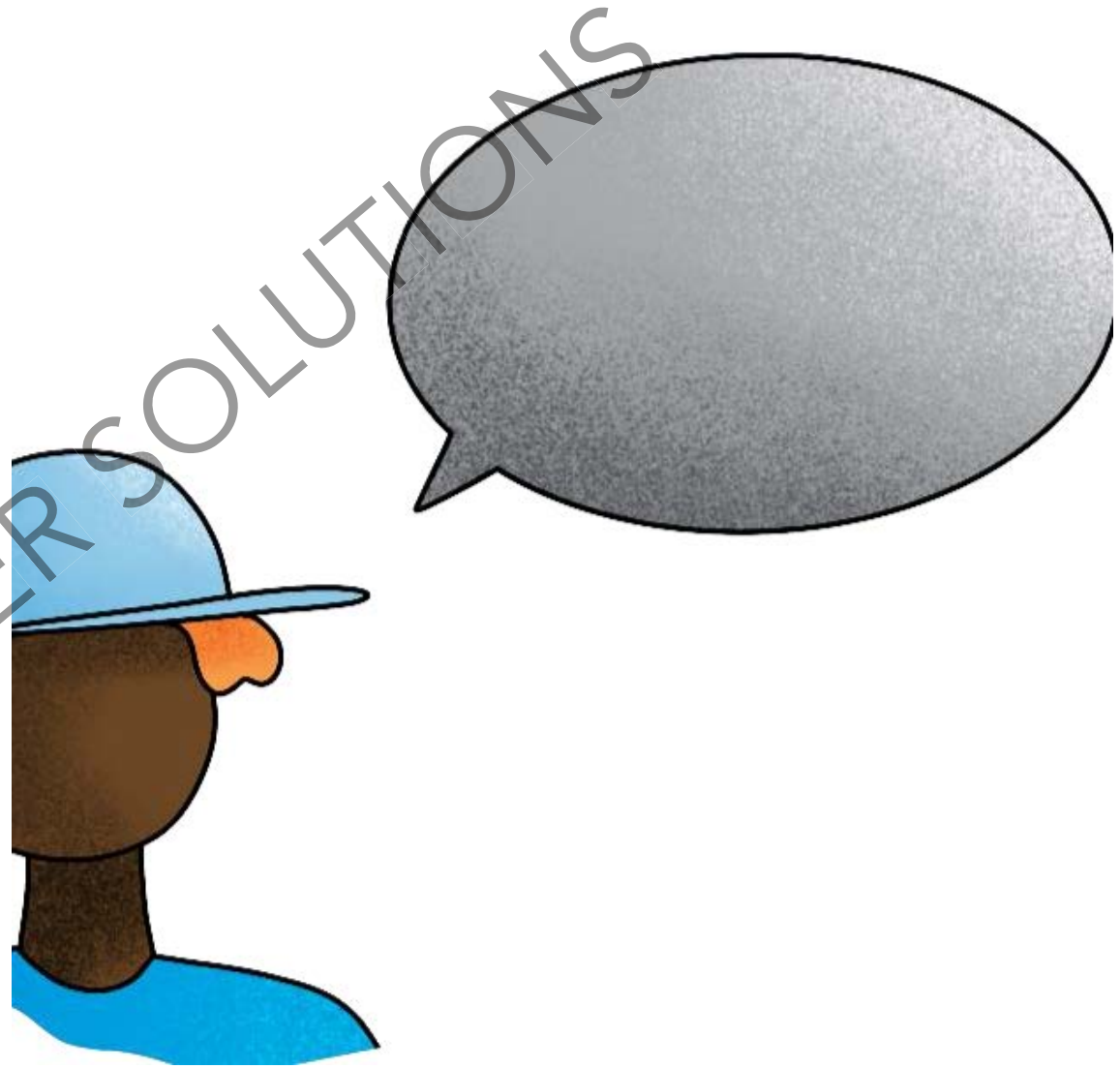
At the hearing, Witness Y tells the decision maker that while she heard loud voices, it might not have been fighting. She also stated that the parties came out of the room together, that Complainant looked upset, that Respondent looked concerned, and that they "calmly" went back in the room together.

Confirm

- Witness Y, earlier today you were asked about what you heard and saw on the night in question…
- And you indicated that you heard loud voices, but that you are not sure if it was fighting, is that correct?
- You also said that the parties came out together and then went back into the room, is that what you saw?
- And you are sure of this?

Compare

- Witness Y, this isn't the first time you shared your observations of Complainant and Respondent that night, is it?
- Did you talk to the investigator about this?
- And that statement was provided just two days after the incident, correct?
- Do you recall what you said to the the investigator?
- Did you tell the investigator the truth when you were interviewed?



Conclude

- Witness Y, when you spoke to the investigator, you indicated that you heard fighting, correct?
- And that Complainant came out of the room crying, isn't that right?
- And that Respondent came out looking angry, correct?
- You also stated that you saw Respondent grab Complainant and drag them back into the room, isn't that true?
- Since speaking with the investigator, you and Complainant have had a falling out, haven't you?

The Do's of Conducting Cross

Be efficient

Highlight the portions of their testimony that support your advisee's narrative.

Listen.

Do make your points through pointed and calm questioning

Be prepared to go down a road that you hadn't considered or anticipated exploring.

Do raise concerns about credibility and reliability

Take your time. Be thoughtful. Ask for breaks if you need it.

The Do Nots of Cross Examination:

Don't rehash everything a witness has said.

Don't call folks liars or attack them.

Don't rant, rave, lose your temper.

Observe and Listen

Be open to adjusting plans or strategy based on information presented at the hearing.

Make note of any issues that you think may be appropriate for appeal.

The Decision Maker's Role in Advisor Questioning

04(b)

Cross Examination
Who does it?

Must be conducted by the advisor

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

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.

When Assessing Relevance, the Decision Maker Can:

Ask the Advisor why their question is relevant

Take a break

Ask their own questions of the party/witness

Review the hearing record

After the Hearing

05

Deliberations

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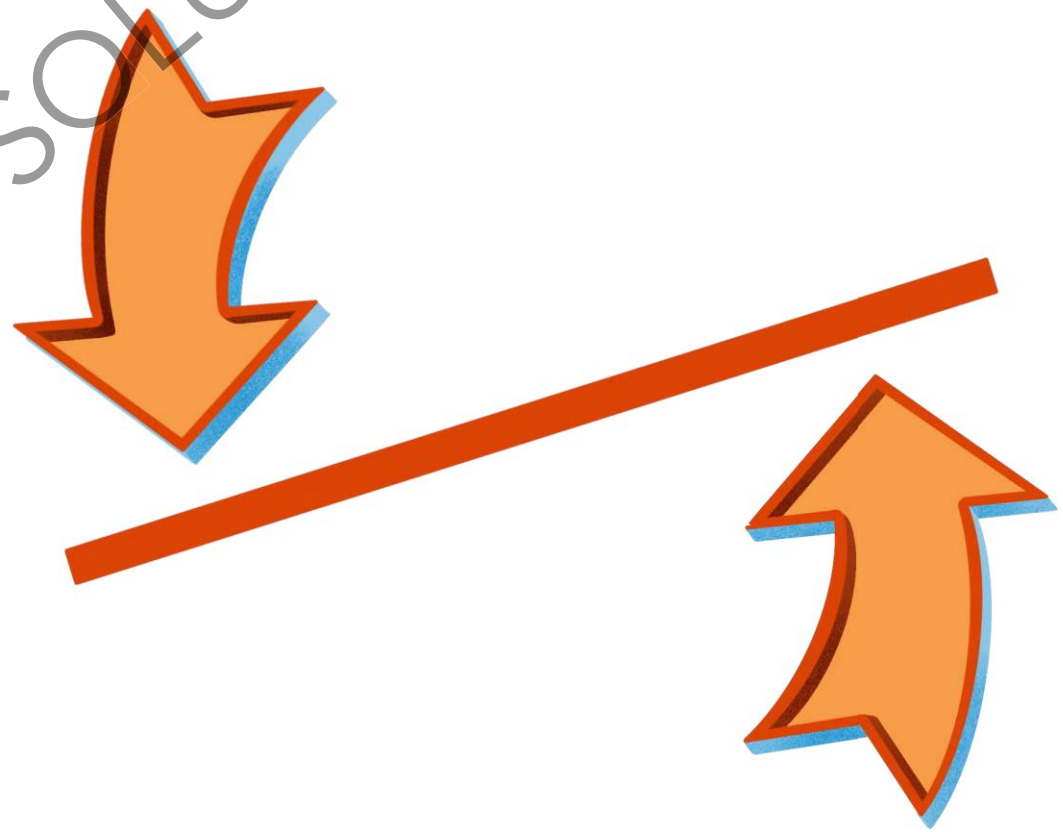
Weighing the Evidence & Making a Determination

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.



Preponderance of the Evidence

More likely than not

Does not mean 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

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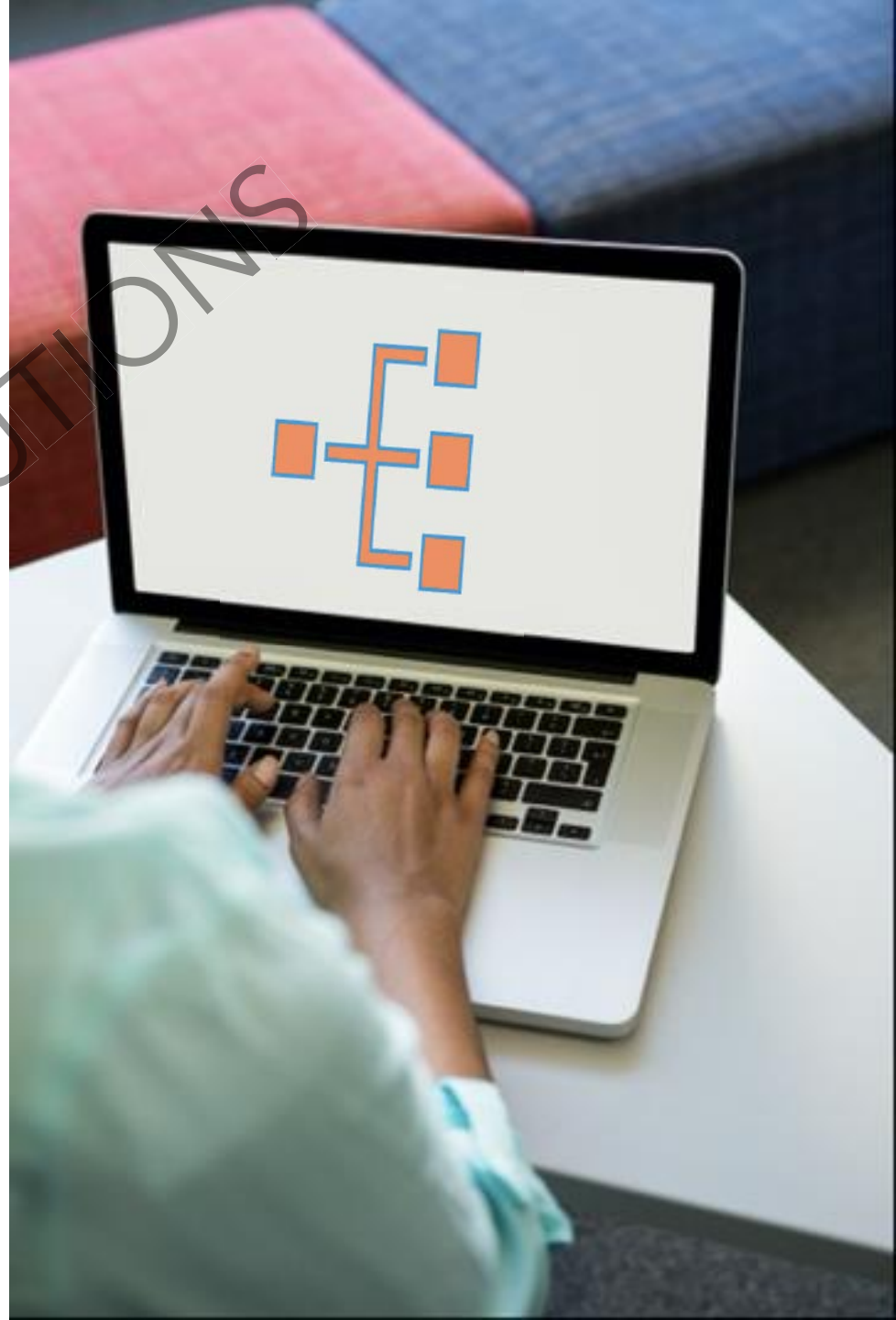
Findings of Fact

- **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	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.	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..."	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.

Apply Preponderance Standard to Each Element

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
Undisputed: Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.	Respondent acknowledges and admits this element in their statement with investigators "We were kissing [illegible] Complainant started kissing me [illegible] really into it. It went from there. Complainant guided my hand down her pants…"	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: [illegible] but seemed fine Witness 4: carried C to the basement couch and left her there to sleep it off.

Did You Also Analyze…?

(if required by policy)

- 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?

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

Practical Application

06

Scenario 1

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 2A

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 2B

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?**

Case Study

> The Formal Complaint charges Respondent with sexual assault for engaging in sexual contact with Complainant when she was incapacitated by alcohol. Specifically, Complainant alleges that she was at a party with friends when they met Respondent. Complainant reported that prior to the party she pre-gamed with Witness 1 and they split a bottle of prosecco. Complainant stated that while at the party, Respondent and Witness 2 approached her and her friend, Witness 3, and asked if they would be their partners in a round of beer pong. Complainant reported that she paired up with Respondent and they played several rounds. She further alleged that that Respondent was the one who filled their cups. Complainant stated that she "got drunk fast" and her last memory was of Respondent handing her a celebratory shot because they had won the tournament. Her next memory was waking up on a couch in a bedroom that was unfamiliar to her, naked from the waist down. Respondent was on the floor next to her, asleep. He was under a blanket but was also naked.

Witness 1

Witness 1 was interviewed by the investigator and reported that she and Complainant are roommates, but they are not close. Witness 1 is an athlete and tends to hang out with her teammates. She stated that for this reason, they rarely hang-out, but that the night of the alleged incident they did because they were planning on going to the same party. Witness 1 stated that they split a bottle of prosecco, but that Complainant drank most of it because Witness 1 had an early practice the next morning and didn't want to get "too messed up." Witness 1 said that they went to the party together, but then went their separate ways. Witness 1 stated that towards the end of the night, she saw Complainant and described her as "a disaster." She also reported that Respondent was "practically carrying her" and she approached them and offered to take Complainant home. According to Witness 1, Complainant said she was fine, but her words were slurred, and she could barely stand. Witness 1 told Respondent to take care of her and he said, "I'm just going to put her to bed." She didn't see either party again that night.

At the hearing, Witness 1 gave testimony that was substantially the same as what she told the investigator.

Witness 2

Witness 2 told the investigators that he is Respondent's best friend and teammate. Witness 2 stated that when looking for partners for the beer pong tournament, Respondent saw Complainant and Witness 3 and suggested that they approach them because Complainant "was hot" and Witness 3 "looked drunk enough to be a good time." Witness 2 said that Complainant was fine and didn't appear to be that drunk. He also stated that she made most of the winning shots after several rounds of the game so she couldn't have been too messed up. When asked who was filling the cups, he said that he wasn't sure who did it each round, but he definitely saw Complainant fill them on two occasions. After the tournament was over, he helped Witness 3 get home and so didn't see Complainant and Respondent again that night. He also mentioned that he and Witness 3 are now dating.

At the hearing, Witness 2 testified that Complainant was fine. He also stated that Respondent never filled Complainant's cup and that Complainant was all over Respondent the entire night.

Witness 3

Witness 3 was Complainant's best friend at the time of the incident. They are no longer close and Witness 3 is now dating Witness 2.

Immediately following the alleged incident, Witness 3 told the investigators that Complainant was already drunk when she got to the party. She stated that Respondent and Witness 2 asked them to play beer pong and they agreed. She stated that the parties seemed to hit it off immediately. She stated that they won the tournament and so played at least five rounds and that by the end of the game Complainant was the "drunkest she had ever seen her." Witness 3 stated that Complainant was slurring her words, couldn't stand on her own, and was really loud, which is not like her. Witness 3 stated that that she was pretty drunk too, but not as bad as Complainant. Witness 3 stated that she left the party with Witness 2.

At the hearing, Witness 3 stated that she may have exaggerated her description of Complainant when she spoke to the investigators. She told the decision makers that although Complainant drank a lot, she wasn't that out of it, because she had a high tolerance and drank a lot all the time.

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