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Report Writing Workshop

Columbia University

Chantelle Botticelli, J.D.

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Meet Your Facilitator

Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 15 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.

Chantelle Cleary Botticelli, J.D.
Director of Strategic Partnerships and Client Relations

Grand River Solutions

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

Learning Outcomes

- Identify relevant information for inclusion in an investigative report.
- Identify and exclude irrelevant information from your reports.
- Write a report that is understandable by someone without any experience in this space, and that can stand on its own without access to other documents.
- Use simple, neutral, unbiased, and accurate language in your reports.
- Ensure that the report accurately states policy language and is compliant with institutional policy and procedures.
- Understand the importance of using a template that will contribute to the consistency of the reports generated.

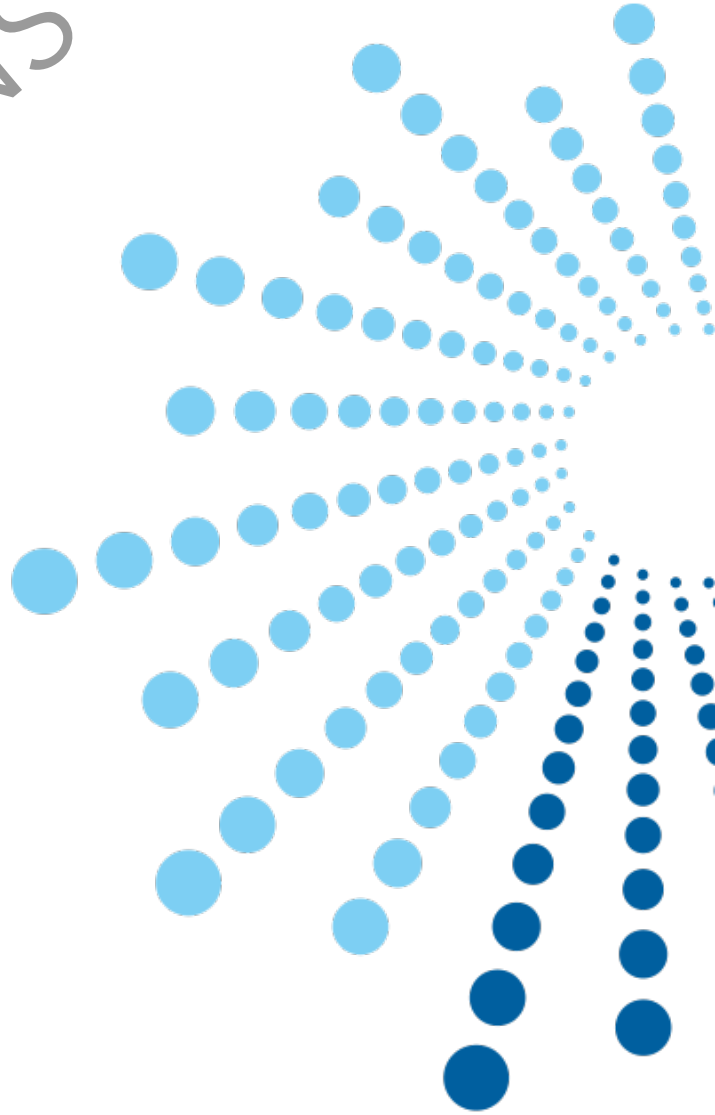
Agenda

01 The Regulatory Requirements

02 Structure of the Investigative Report and Record

03 Writing the Report: Developing the Content

04 Developing an Investigative File and Report for "The Formal" Hypothetical



The Regulatory Requirements

01

Essential Steps of an Investigation

- Notice of Allegations
- Initial Interviews
- Evidence Collection
- Evidence Review
- Additional Evidence Collection/Follow-Up Interviews
- The Investigative Report and Final Investigative Record

The Products of Each Step of the Investigation

Notice of Allegations	A document the frames the scope of the investigation
Initial Interviews	Transcripts Summaries of Interviews Interview Notes
Evidence Collection	Text messages Social media posts Medical/police records
Evidence Review	Complainant's written response Respondent's written response
Additional Evidence Collection/Follow-Up Interviews	More documentary evidence Additional interview transcripts/summaries
The Investigative Report and Final Investigative File	

Report and Evidence File

Summary of the Evidence

Compilation of the Evidence

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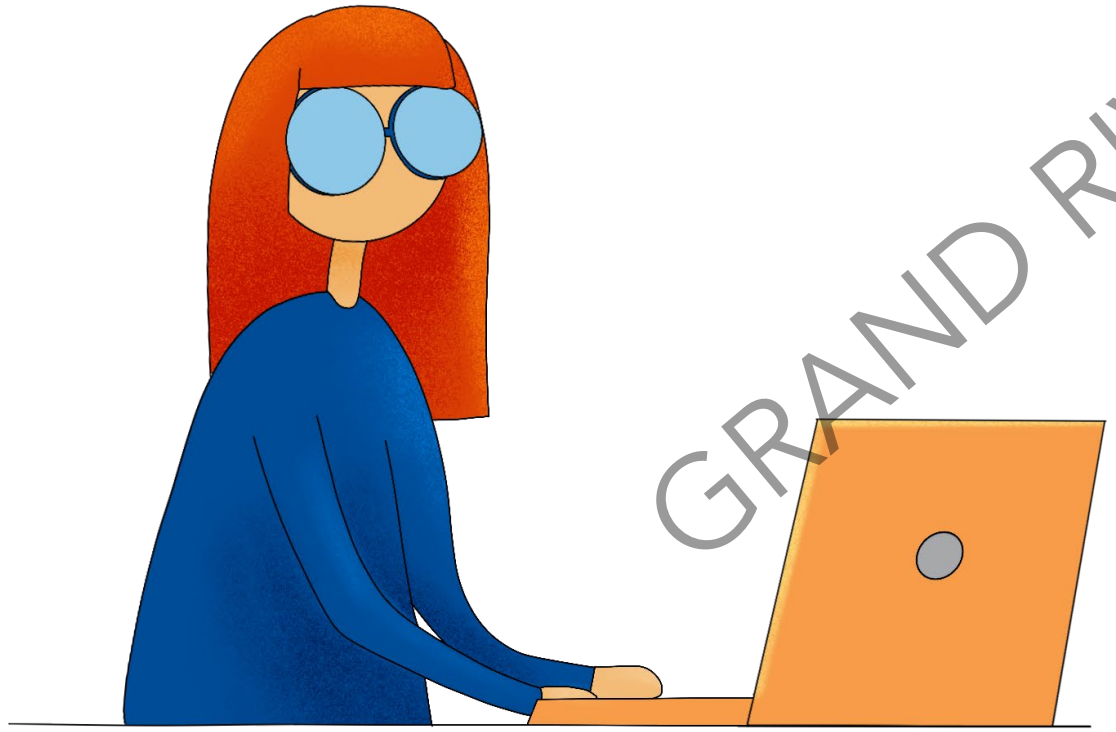
The Investigator must create and provide to the Parties, their Advisors, and the Decision Maker(s) an investigative report that fairly summarizes relevant evidence.



The Investigative File

The Parties, their Advisors, and the Decision Maker(s) must be provided with a final compilation of all of the evidence gathered that is directly related to the allegations in the formal complaint. This includes evidence that Investigator deems relevant and evidence that the Investigator does not deem relevant.

Directly Related Evidence

Regulations do not define "Directly Related" Evidence.

The Preamble states it should be interpreted using its plain and ordinary meaning.

Term is broader than:

- "All relevant evidence" as otherwise used in Title IX regulations, and
- "any information that will be used during informal and formal disciplinary meetings and hearings" as used in the Clery Act.

Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

Relevant of Evidence

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

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

Who Decides?

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 the hearing, not investigation stage.

The Purpose of the Report

- To ensure that the recipient gives the parties meaningful opportunity to understand what evidence the investigator has collected and believes is relevant,
- To allow the parties opportunity to advance their own interests for consideration by the decision-maker.
- To give the parties (and advisors who are providing assistance and advice to the parties) adequate time to review, assess, and respond to the investigative report in order to fairly prepare for the live hearing or submit arguments to a decision-maker where a hearing is not required or otherwise provided.
- To allow the decision maker to adequately prepare for the live hearing, where one is conducted.
- To reduce the likelihood of bias in the final outcome by providing the parties and the decision maker(s) an opportunity to identify and explore potential bias by the investigator

See 85 Fed. Reg. 30309 (May 19, 2020).

Intended Recipients

- The Parties
- The Advisors
- The Decision Maker
- The Appeal Panel

Other Recipients?

- Friends of the Parties
- Parents
- Law enforcement
- Attorneys
- Judges
- Media
- Social media

Why is it Important to Write a Solid Report?

All of the reasons given by the DOE, and…

- It allows you to recall the details of your investigation long after the event—this is important if there are complaints by or against the parties involved or litigation in the future.
- It signals to others that the complaint was taken seriously—that it is important to the institution to get it right.
- And a good report shows that the investigation was fair, impartial, and thorough.
- A report protects you and your institution in case of litigation and helps to limit your liability.

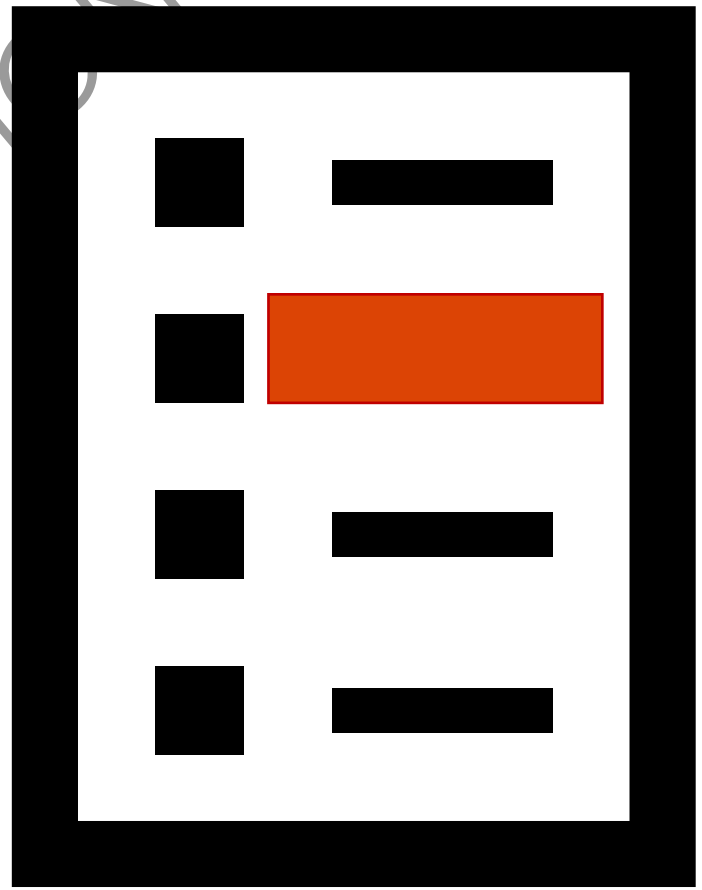
Structure of the Investigative Report and Record

02

Essential Elements

- Intentionally organized to enhance comprehension
- Factually accurate
- Concise
- Without editorial or opinion
- Consistent format

Redactions



The Evidence File

- Compilation of the evidence .
- Organized intentionally and consistently.
- Divided into Appendices.
- Is attached to the report.
  - As one PDF?
  - As several PDFs?
  - Folders?
- Includes a procedural timeline.

Examples of Appendices

Appendix A:

Witness testimony only (e.g., transcripts, statements summaries, etc.)

Appendix B:

Relevant documentary evidence (e.g., text messages, SANE reports, photographs, etc.)

Appendix C:

The remaining evidence deemed irrelevant, but directly related to the allegations in the formal complaint.

Appendix D:

The procedural timeline.

Format and Structure of the Record

- Include page numbers
- Include a Table of Contents
  - For the entire record
  - For each appendix
- One document or PDF

Structure of the Report

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

Questions about the Report Template?

Writing the Report: Developing the Content

03

Get the Easy Stuff Out of the Way

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

Writing the Summary of Relevant Evidence

Start by identifying the questions that you or the DM will be charged with answering

- What are we being asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

Fondling: is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.

1. Did Respondent touch the Complainant's private body parts?
2. For the purposes of sexual gratification?
3. Without Complainant's consent?

Analysis Grid: List the Elements

Did R touch the private body parts of C?	For the purpose of sexual gratification?	Without C's consent (due to lack of capacity)?

Identify the relevant facts for inclusion in the report.

Any information that is relevant to the elements of the prohibited conduct alleged.

Information that the Investigator believes the Decision Maker should consider or rely upon when making their final determination of responsibility. This includes:

- Information that is relevant to an assessment of the evidence.
  - Credibility
  - Reliability
  - Authenticity
- Helpful contextual information.
  - History between the parties
  - Post incident behavior

A well-organized evidence file will assist with this step.

Analysis Grid: List All the Material Facts Relevant to Each Question

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Text messages between Complainant and Respondent ➢ SnapChat DM between Respondent and Witness 2	➢ Respondent's Account ➢ SnapChat DM between Respondent and Witness 2	➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Witness 3's Account ➢ Photograph of Complainant ➢ Video of Complainant ➢ Text messages between Complainant and Witness 4 ➢ Witness 4's Account

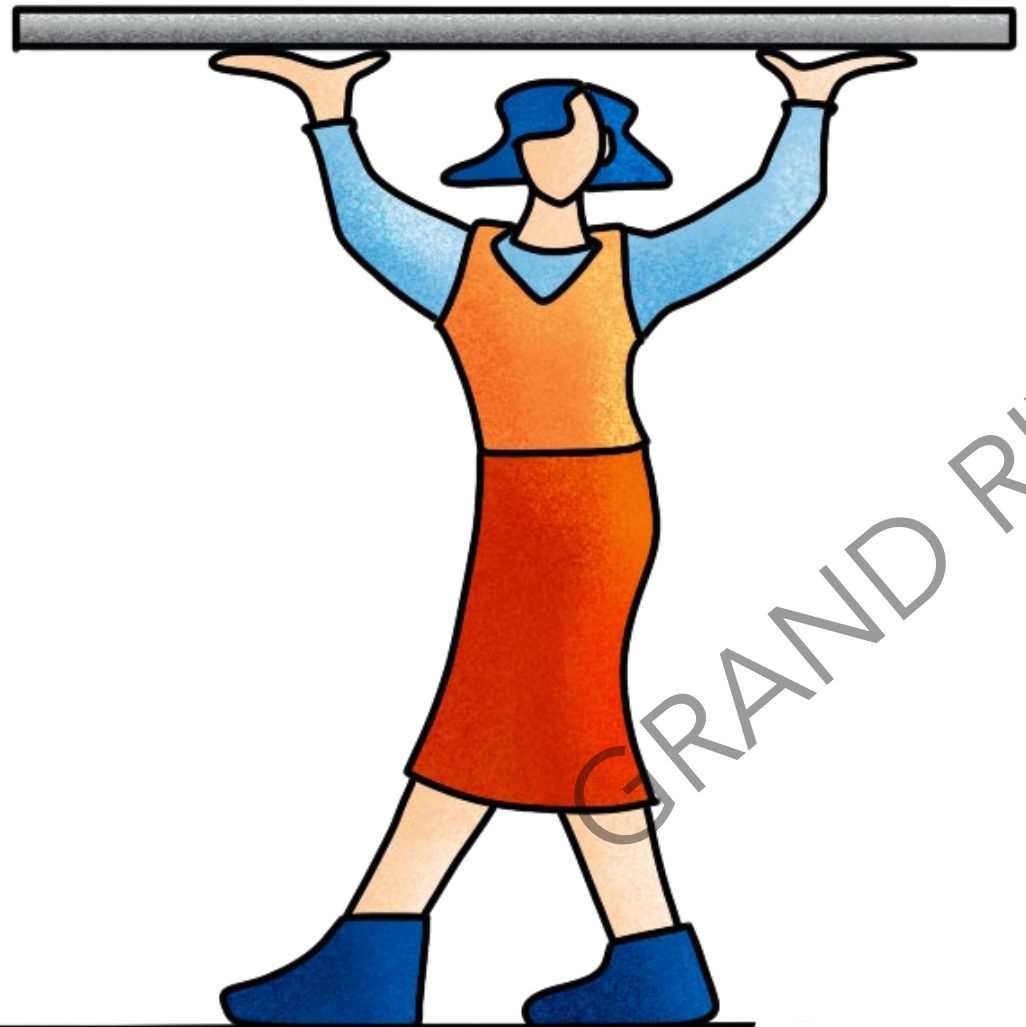
The following information is usually not relevant and should be omitted from reports:

- Irrelevant Information, including
  - Prior sexual history of Complainant
  - Information protected by a legally recognized and un-waived privilege
- The Investigator's Opinions
- Speculation and conjecture
- Character evidence
- Party and witness opinions that are unsupported by fact

Analysis Grid can serve as a guide as you start to write your summary of relevant evidence

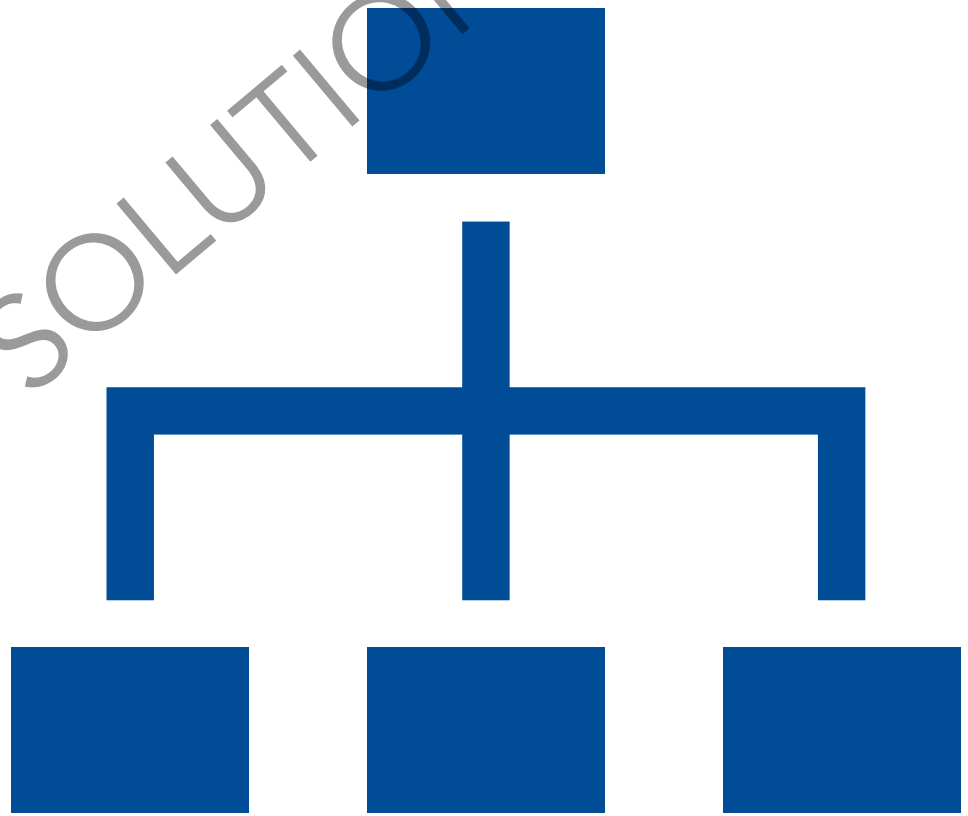
Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Text messages between Complainant and Respondent ➢ SnapChat DM between Respondent and Witness 2	➢ Respondent's Account ➢ SnapChat DM between Respondent and Witness 2	➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Witness 3's Account ➢ Photograph of Complainant ➢ Video of Complainant ➢ Text messages between Complainant and Witness 4 ➢ Witness 4's Account

The Report 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

Choose an organizational outline for the summary of facts.



Single Incident Allegations: *Person Centered Approach*

1. **Complainant's Account**
   a. The parties prior relationship
   b. The events immediately prior to the alleged prohibited conduct
   c. The incident of alleged prohibited conduct
   d. The events following the alleged prohibited conduct
2. **Respondent's Account**
   a. The parties prior relationship
   b. The events immediately prior to the alleged prohibited conduct
   c. The incident of alleged prohibited conduct
   d. The events following the alleged prohibited conduct
3. **Witness 1's accounts**
   a. Witness 1's observations of the parties prior relationship
   b. The events immediately prior to the alleged prohibited conduct
   c. The incident of alleged prohibited conduct
   d. The events following the alleged prohibited conduct
4. **Witness 2's account**
   a. Repeat above format

Single Incident Allegations:
Event Centered

1. **History between the Parties**
    1. The Reporting Party's Account
    2. The Responding Party's Account
    3. Witness A's Account
2. **The Hours Leading up to the Reported Incident**
    1. The Reporting Party's Account
    2. The Responding Party's Account
    3. Witness B's Account
    4. Witness C's Account
3. **The Reported Incident**
    1. The Reporting Party's Account
    2. The Responding Party's Account
4. **After the Reported Incident**
    1. The Reporting Party's Account
    2. The Responding Party's Account
    3. Witness A's Account
    4. Witness D's Account

Multiple Incidents

- **Incident A (incident centered)**
  - Overview of the alleged incident
  - Undisputed facts
  - Reporting Parties Account
  - Respondent Parties Account
  - Witness Accounts
- **Incident B**
  - Overview of the alleged incident
  - Undisputed Facts
  - Reporting Parties Account
  - Respondent Parties Account
  - Witness Accounts
- **Incident C**
  - Overview of the alleged incident
  - Undisputed Facts
  - Reporting Parties Account
  - Respondent Parties Account
  - Witness Accounts

- **Complainants Account (person centered)**
  - Prior History between the parties
  - Incident A
  - Incident B
  - Incident C
  - Time between last incident and report
- **Respondent's Account**
  - Prior History between the parties
  - Incident A
  - Incident B
  - Incident C
  - Time between last incident and report
- **Witness Accounts**
  - Prior History between the parties
  - Incident A
  - Incident B
  - Incident C
  - Time between last incident and report

Start Writing a Report That Will STAND on its Own

Simplicity

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

- Use plain language
- Be concise
- Avoid repetition
- Consider including a section on facts in dispute/not in dispute
- Avoid or define technical language/acronyms/slang

Choosing Simple Language

Complex Language	Simple Language
“Adjudicated”	“Decided/Determined”
“Preponderance of the Evidence”	“More likely than not”
“Respondent articulated”	”Respondent stated”
“Prima Facie Assessment”	“Plain assessment/On its face assessment”
“The allegation was substantiated”	“The allegation was proven/supported by”
“Pursuant to the policy”	“As stated in the policy”
“Digital Penetration”	“Inserted their finger into (include body part penetrated)”

Transparent and Clear

- Outline the report to enhance transparency and clarity.
- Summarize information chronologically.
- Clearly define language used in the report.
    - Opinions
    - Quantitative language
    - Slang/acronyms
- Provide clear descriptions of reported acts.
- Use consistent language.

Clarifying Language

Unclear Language	Clear Language
“Complainant reported that Respondent forced her to perform oral sex”	“Complainant reported that Respondent forced her to put her mouth on his penis”
“SANE/RA/UPD”	“Sexual Assault Nurse Examiner/Resident Assistant/University Police”
“Witness 1 reported that Respondent was angry”	“Witness 1 reported that he believed that Respondent was angry because Witness 1 observed Respondent yelling, slamming his fists on the wall, and that the ‘veins in his neck were popping out.'"
“Complainant stated that Respondent touched them down there”	“Complainant stated that Respondent touched them, “down there”. When asked to define 'down there,' Complainant stated, 'my penis.'" OR "Complainant stated that Respondent touched their 'penis.'"

Where Deeper Clarity is Often Needed, But Not Included

Dive Deeper when:	Include in the report clarity about the following:
Testimony about contact with a person's vagina.	Was the contact with the vagina or vulva?
Testimony about penetration.	What was penetrated? What was used to penetrate?
Testimony that clothing was removed.	What kind of clothing? How was it removed?
Testimony that an event or an act had an impact on them?	What was the specific impact?
Opinions are offered.	Include facts that form the basis for the opinion.

Accuracy Is Essential

Be precise and accurate in how you identify folks.

- Use their preferred names and pronouns.

Be accurate and precise when citing or referring to policy language.

- Be sure to cite from the applicable policy/procedures.

Accurately state the allegations as set forth in formal complaint.

When summarizing the evidence, do so accurately without editorial or opinion.

- Use quotations often and appropriately.

Always cite to the investigation file.

Commit to Using Neutral Language

Non-Neutral/Biased	Neutral Alternatives
"Claimed/Alleged"	"Reported/Stated"
"According to X"	"X reported/X stated"
"Story/Version of Events"	"Account/Reported Recollection of Events"
"Had Sex with/Engaged in"	Simply describe what occurred
"Changed their Account/Story/Version of Events"	"When initially interviewed Respondent stated X. In a subsequent interview Respondent stated Y"

Draw Attention to Specific Evidence Through Intentional Presentation of Information in the Report

Evidence that the Investigator believes should be afforded significant weight.

Evidence related to assessment of credibility, reliability, and authenticity.

- Consistencies
- Inconsistencies
- Corroborative evidence
- Omissions
- Statements that include or that are lacking in significant details

Explanations that provide a better understanding of certain items of evidence or lack of evidence.

If it feels important, emphasize it in the report.

How might you include the following relevant information from the IF in the summary of relevant evidence section of the report?

1. Excerpt from the transcript of Complainant's initial interview located on Appendix A at page 34:
   - Complainant: "The next day he tried to talk to me. He sent me a bunch of text messages asking to see me. He said he was 'sorry' for hitting me and for raping me. I basically told him I didn't want to hear it and I called him an asshole. We've not communicated since.

2. Screenshot of the text message exchange, described above, submitted by Complainant and located in Appendix B, page 67.

Option A

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

Option B

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

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

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

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

Respondent: I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did.

Appendix B, p. 67.

Option C

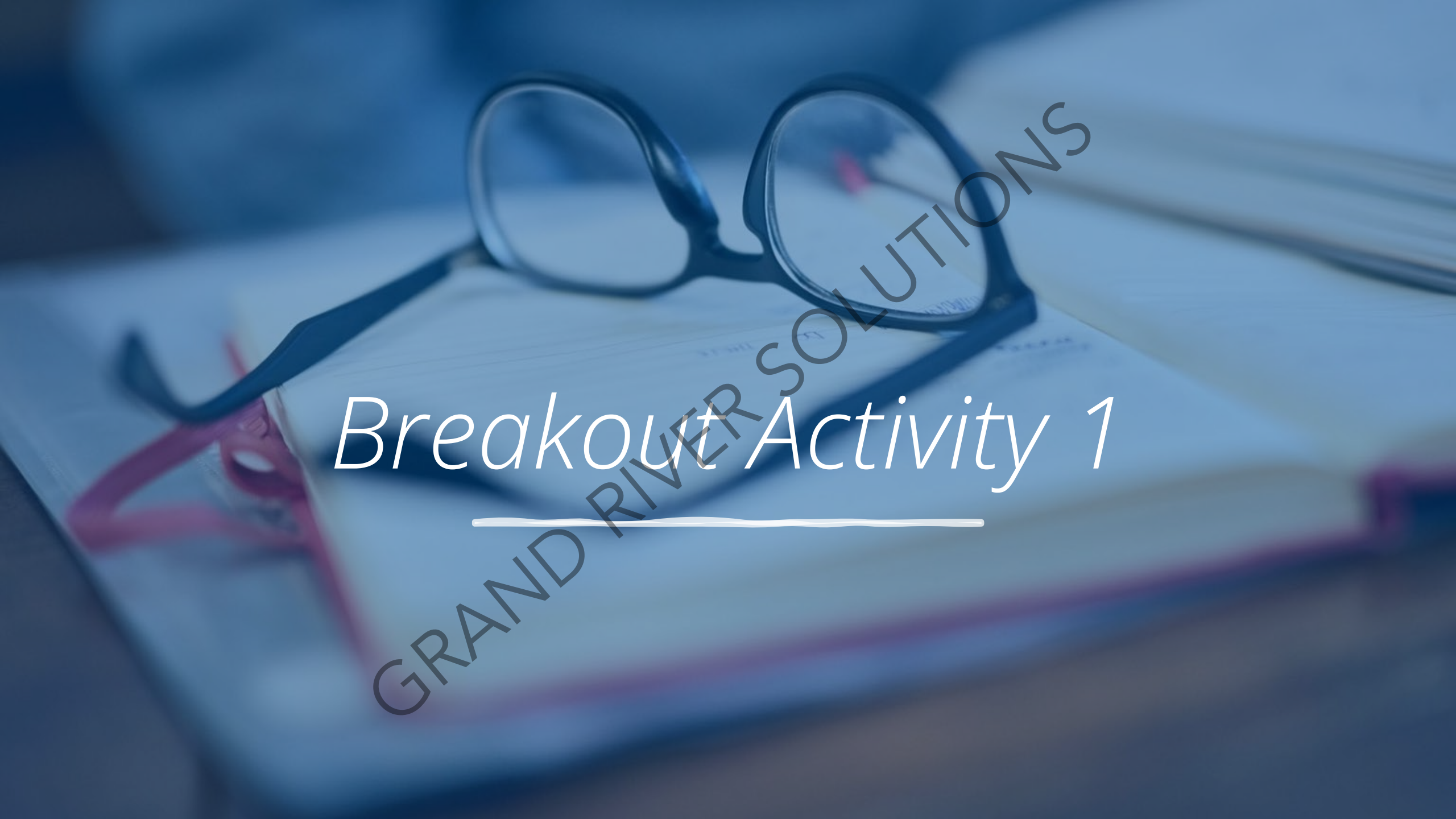
Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was "sorry for hitting he and for raping her." See Appendix A, p.34. Complainant provided the following screen shots of this exchange:

Appendix, p. 67.

When your investigation reveals that a fact that was not shared by a party or witness, the investigator should have explored the reason for the omission. The final report should document the exploration and accurately describe the explanation provided.

"Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left ten minutes later. Complainant failed to share this fact with the investigators."

"Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left the room ten minutes later. In a follow up interview with Complainant, they were asked why they did not report Witness A's presence in the room. Complainant responded by stating that they have no recollection of Witness A being in the room. "



Breakout Activity 1

Identify the irrelevant information…

He stated, “I asked her if she felt better and she told me yes. She apologized and I told her not to worry about it. At that point I was pretty drunk myself and I just wanted to go to sleep. At some point she put her arms around me and snuggled into me. I took that as a sign that she wanted to hook up. I had heard from a few other guys that had had sex with her before that she was a super sexual girl. One of my boys described her as a ‘sex freak.’ I didn’t want to disappoint her so I rolled onto my side and we were face to face; she didn’t back away so I kissed her. She kissed me back. I asked her again if she was ok and she moaned. We continued to undress each other. Before I knew it, we were having sex. She was totally awake and totally into it.”

He stated, “I asked her if she felt better and she told me yes. She apologized and I told her not to worry about it. At that point I was pretty drunk myself and I just wanted to go to sleep. At some point she put her arms around me and snuggled into me. I took that as a sign that she wanted to hook up. I had heard from a few other guys that had had sex with her before that she was a super sexual girl. One of my boys described her as a ‘sex freak.’ I didn’t want to disappoint her so I rolled onto my side and we were face to face; she didn’t back away so I kissed her. She kissed me back. I asked her again if she was ok and she moaned. We continued to undress each other. Before I knew it, we were having sex. She was totally awake and totally into it.”

Make it Simple

Commit to Using Plain Language

Instead of this:	Consider this:
“The SANE’s report indicated that Complainant presented to the ED with erythema around her left eye.”	“Complainant reported that he went to the hospital and was treated in the emergency department by a sexual assault nurse examiner. In her report, the sexual assault nurse examiner noted that Complainant had redness around his left eye.”
"Following this investigation, a hearing panel will convene to adjudicate this complaint using a preponderance of the evidence standard."	"When this investigation is complete, a hearing will be held. During that hearing three decision makers will consider testimony and other evidence. Following the hearing, the decision makers will decide whether the evidence supports a finding that it is more likely than not that Respondent engaged in the prohibited conduct alleged in the formal complaint."

Accurately Summarize the Following Statement

“I was standing outside of the library when I saw Amanda and Mike standing by the fountain arguing. Amanda started walking away and Mike grabbed her by the arm and yanked her back really hard. She kind of yelped, which was surprising cause it didn’t look like it hurt. Maybe she yelped because she was scared. I really don’t know. Anyway, Mike was really angry. His face was all red and he was yelling in her face, and like spitting all over it. Amanda turned her face away and Mike grabbed her by the chin and made her face him. She started flailing and trying to get away and that’s when he backhanded her across the face. I’ve known Mike for a long time and I’ve never seen him hurt a fly. Amanda must have really done something to make him mad. I actually heard she cheated on him with his best friend, Kyle, which is kinda fucked up.”

Witness A reported that he was standing outside of the library when he saw Complainant and Respondent standing “by the fountain arguing.” Witness A reported that Complainant began “walking away” and Respondent “grabbed” her by the arm and “yanked her back really hard.” Witness A stated that Complainant “kind of yelped.” Witness A stated that Respondent was “really angry.” Witness A described Respondent’s face as, “all red.” Witness A stated that Respondent was ”yelling in [Complainant’s] face” and “spitting all over it.” Witness A reported that Complainant “turned her face away” and Respondent “grabbed [Complainant] by the chin and made her face him.” Witness A stated that Complainant began “flailing and trying to get away.” Witness A stated that it was at this point that he observed Respondent “backhand” Complainant “across the face.”

Neutrality

“Complainant claimed that they were face down in the bed with their dress pushed up so that their face was actually laying on the bottom part of their dress. They alleged that someone was having sex with them from behind.”

"Complainant reported that they were face down in the bed with their dress pushed up so that their face was actually laying on the bottom part of their dress.
They stated that someone was penetrating their anus from behind.”

Analysis and Findings

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, is credible, and reliable.
  - 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 photo of Respondent eating ice cream.
- **Finding: It is more likely than not that Complainant and Respondent ate ice cream**

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.

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?

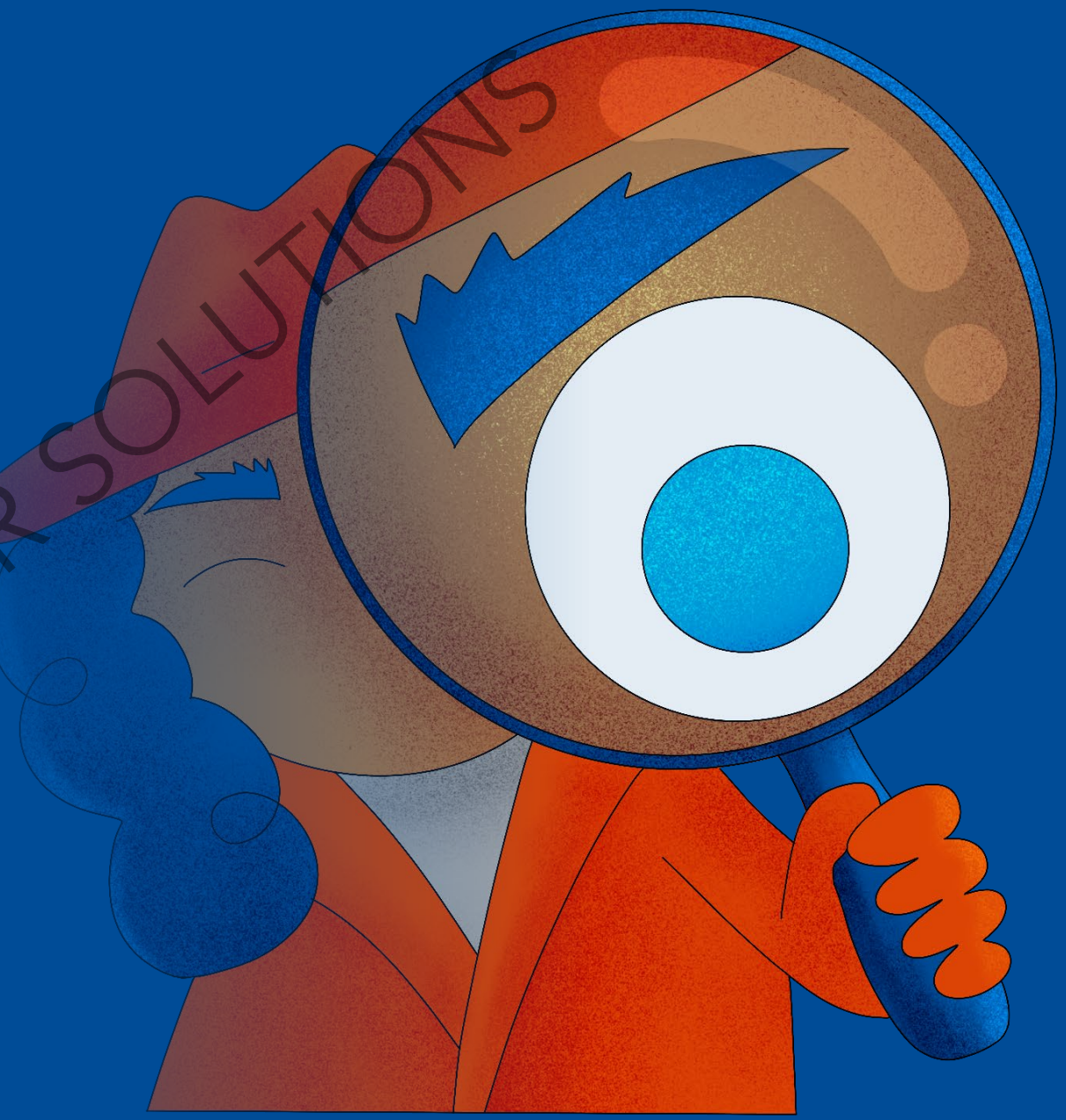
Is it reliable?

Can you trust it or rely on it?

What weight, if any, should it be given?

Weight is determined by the finder of fact!

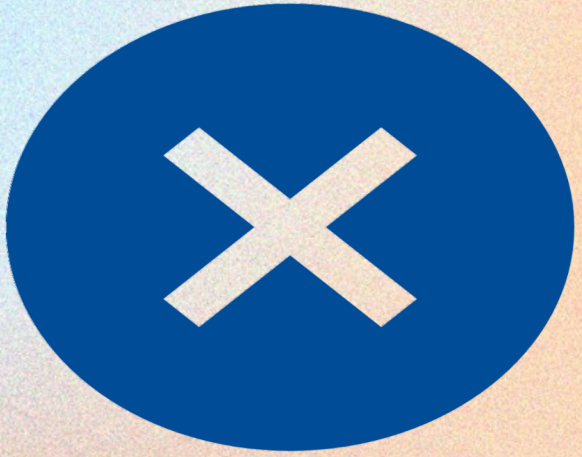
Identify the Relevant Evidence



Analysis Grid: List All the Material Facts Relevant to Each Question

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Text messages between Complainant and Respondent ➢ SnapChat DM between Respondent and Witness 2	➢ Respondent's Account ➢ SnapChat DM between Respondent and Witness 2	➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Witness 3's Account ➢ Photograph of Complainant ➢ Video of Complainant ➢ Text messages between Complainant and Witness 4 ➢ Witness 4's Account

Assessing Authenticity



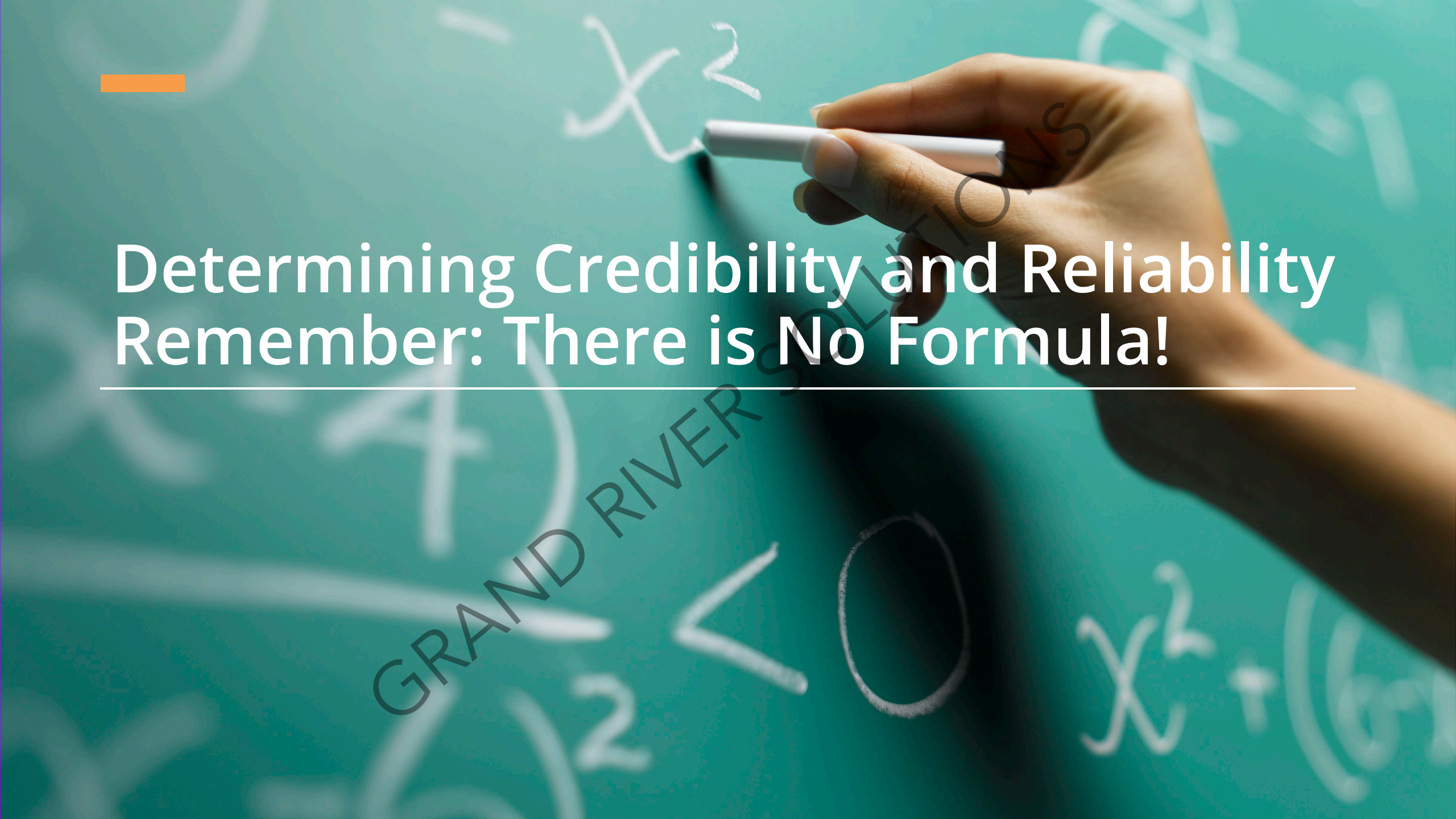
Are you convinced that the item of evidence is authentic.

What is the information that convinces you of that?

Is that proof information credible and reliable?

Make a Determination About the Authenticity of the Relevant Evidence

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ **Text messages between Complainant and Respondent** ➢ **SnapChat DM between Respondent and Witness 2**	➢ Respondent's Account ➢ **SnapChat DM between Respondent and Witness 2**	➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Witness 3's Account ➢ **Photograph of Complainant** ➢ **Video of Complainant** ➢ ~~**Text messages between Complainant and Witness 4**~~ ➢ Witness 4's Account



Determining Credibility and Reliability Remember: There is No Formula!

Sufficiency of Detail and Specificity

Is the level of detail provided by the person reasonable and indicative of a genuine personal experience by the person?

Internal Consistency/ Consistency Over Time

- Did the person share the same version of events in all settings, including interviews, in written and/or verbal statements and between documentary evidence?
- Are there any discrepancies or contradictions?
- Is there a sufficient explanation for any discrepancies?

Consistency with Other Evidence or Testimony

- Is the testimony or evidence consistent with the other evidence?
- Is the testimony or evidence inconsistent with the other evidence?
- Is there a sufficient explanation for any inconsistencies?

Corroboration

- Is there witness testimony (either by witnesses or people who saw the person soon after the alleged incident, or people who discussed the incidents with the person around the time they occurred) or documentary or physical evidence that corroborates the person's testimony?
- Is there witness testimony or documentary and/or physical evidence that are inconsistent with statements made during the interview or does not provide corroboration to the person's version of events?

Inherent Plausibility

- Is the testimony believable on its face?
- Does it make sense?
- Could it have occurred?
- Does it make sense that this person knows this information?
  - What was their opportunity to view?

Material Omission

- Did the person omit material information?
- If so, what?
  - e.g., submitted partial text messages, or omitted text messages that could be perceived as unfavorable
- Is there a reasonable reason for the material omission?

Motive to Falsify

- Did the person have a reason to be untruthful other than the general desire to be believed, or to prevail?
- Did the witness openly volunteer information that is prejudicial to their interests or the Party?
- If so, does the declaration against interest bolster their credibility?
- Does the person have an articulable bias, interest or other motive? [e.g. an employee received a poor performance review, so she falsified a claim of sexual harassment against her boss].
- Alternatively, does the person have little personal gain in the outcome?
- What are the relationships between the parties?

Past Record

- Is there a history of similar behavior in the past?
  - e.g., a supervisor had previous complaints of sexual misconduct
- If so, this might impact whether a statement should be believed.
  - For example, a respondent who states they never knew that a certain behavior was wrong, yet was written up for that same behavior, the history of similar past behavior makes the respondent's statement less believable and less reliable.

Ability to Recollect Events

- What is the extent the person was able to perceive, recollect or communicate the version of events?
  - e.g., the person reported they were intoxicated, or the person reported they were sleeping

Credibility/Reliability Analysis

Step by Step

1. Determine the material facts – focus only on material facts.
2. Determine which material facts are:
    1. Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
    2. Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains [e.g., Marcy alleged that Jack kissed her without her consent around 1am at the party, and Jack asserted he never kissed Marcy and went home early]
    3. State clearly which facts are accepted, and which are rejected, and state the reasons why.

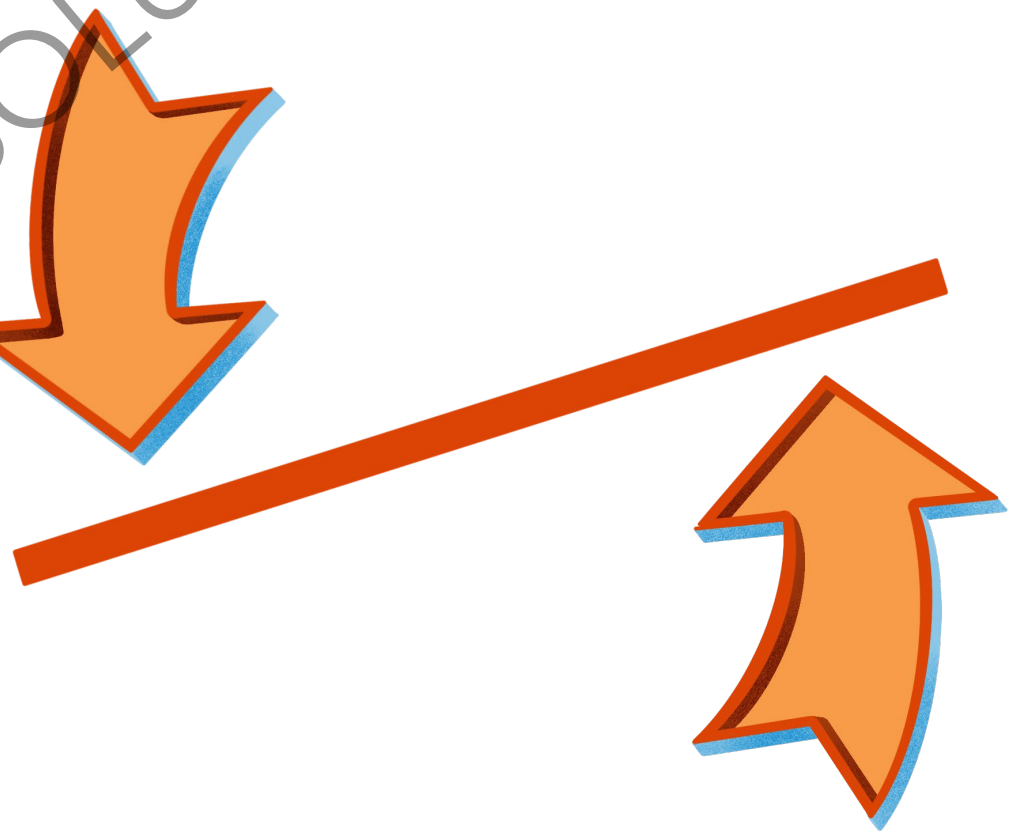
"While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack's version of events cannot be credited as being more likely than not to be true."

Make a Determination about the Credibility and Reliability of the Relevant Evidence

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ **Text messages between Complainant and Respondent** ➢ **SnapChat DM between Respondent and Witness 2**	➢ Respondent's Account ➢ **SnapChat DM between Respondent and Witness 2**	➢ Complainant's Account ➢ Respondent's Account ➢ Witness 1's Account ➢ Witness 3's Account ➢ **Photograph of Complainant** ➢ **Video of Complainant** ➢ ~~**Text messages between Complainant and Witness 4**~~ ➢ Witness 4's Account

Weighing the Evidence

Determine what weight, if any, you will afford to each item of evidence upon which you intend to rely, of evidence in your final determination.



Make a Determination about the Weight of the Evidence

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ **Complainant's Account** ➢ **Respondent's Account** ➢ Witness 1's Account ➢ Text messages between Complainant and Respondent ➢ SnapChat DM between Respondent and Witness 2	➢ Respondent's Account ➢ **SnapChat DM between Respondent and Witness 2**	➢ Complainant's Account ➢ Respondent's Account ➢ **Witness 1's Account** ➢ **Witness 3's Account** ➢ **Photograph of Complainant** ➢ **Video of Complainant** ➢ ~~Text messages between Complainant and Witness 4~~ ➢ Witness 4's Account

Make Findings

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, is credible, and reliable.
  - Based on available evidence and information.
  - Determined by a preponderance of evidence standard .
  - Determined by the fact finder(s).

Make a Findings of Fact

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
➢ **Complainant's Account** ➢ **Respondent's Account** ➢ Witness 1's Account ➢ Text messages between Complainant and Respondent ➢ SnapChat DM between Respondent and Witness 2	➢ Respondent's Account ➢ **SnapChat DM between Respondent and Witness 2**	➢ Complainant's Account ➢ Respondent's Account ➢ **Witness 1's Account** ➢ **Witness 3's Account** ➢ **Photograph of Complainant** ➢ **Video of Complainant** ➢ ~~Text messages between Complainant and Witness 4~~ ➢ Witness 4's Account

Making a Recommended Determination

1. Apply the standard of proof and the evidence to each element of the alleged policy violation.
2. Make a determination as to whether or not there has been a policy violation.

The Recommended Determination

"While the credible evidence supports a finding that it is more likely than not that Respondent touched Complainant's vagina with his hand for the purpose of sexual gratification, the credible evidence does not support a finding, using the preponderance of the evidence standard that Complainant was incapacitated and therefore incapable of providing consent. Thus, the we find Respondent NOT RESPONSIBLE for the allegation of fondling, as set forth in the formal complaint"

Developing an Evidence File and Report for "The Formal" Hypothetical

04

Breakout 2

What are the questions that you/the DM must answer?

In your small groups, create an analysis grid.

Report Out: Break Out 1

Analysis Grid: List the Elements

Did Drew Engage In Sexual Intercourse with Taylor?	Was Taylor incapacitated and therefore incapable of providing consent?	Did Drew know Taylor was Incapacitated?	Should Drew have known that Taylor was incapacitated?

Assembling an Investigative Record

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Break Out #3

In your small groups, assemble the investigative record.

Be sure to do the following:

1. Create sections or appendices
2. Include an explanation of each section/appendix
3. Create one or more table of contents
4. Include every item of evidence

Report Out

Report Out

Appendix A: *Relevant Transcripts*

1. Transcript of Complainant's Initial Interview
2. Transcript of Complainant's Follow Up Interview
3. Complainant's Written Response to the Draft Investigative Record
4. Transcript of Respondent's Initial Interview
5. Transcript of Respondent's Follow Up Interview
6. Transcript of Witness 1's Interview
7. Transcript of Witness 1's Follow Up Interview
8. Transcript of Witness 3's Interview
9. Transcript of Witness 3's Follow Up Interview
10. Transcript of Witness 5's Interview

Appendix B

1. Screen Shots of Text Messages Between Complainant and Respondent
2. Screen Shots of Text Messages Between Complainant and Witness 1
3. Screen Shots of Text Messages Between Respondent and Witness 5
4. Screen Shots of Text Messages Between Complainant and Witness 7

Appendix C

1. Transcript of Witness 6’s Interview
2. Letter Submitted by Eric Church
3. Transcript of Witness 7's Interview

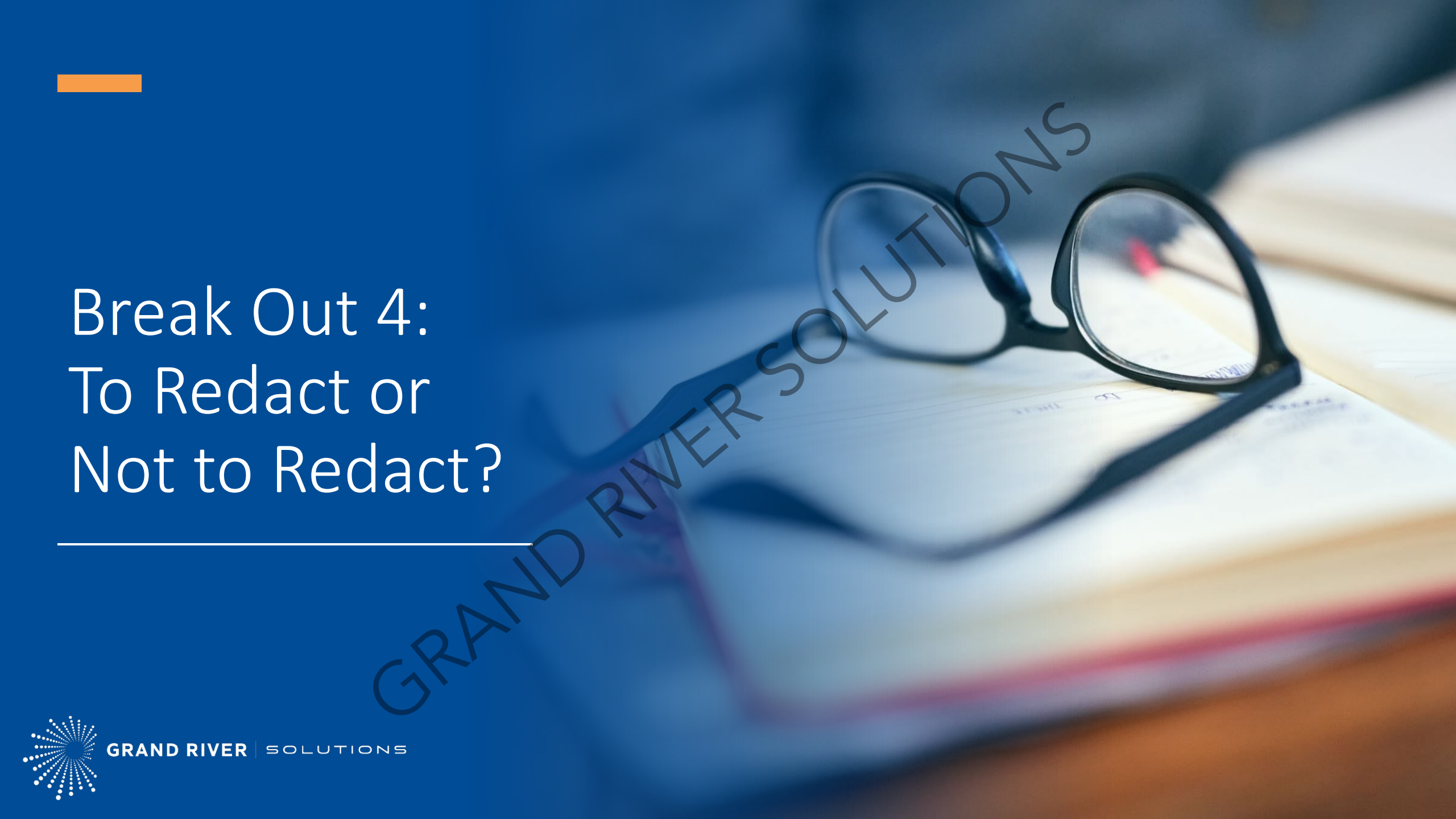
Appendix D

1. Procedural Timeline

Appendix E

1. Investigator Abby Plates: Training Materials
2. Investigator Kevin F. Ware: Training Materials

Break Out 4: To Redact or Not to Redact?



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Consider

- Is there information that must be redacted from this record?
- Is there information that should be redacted from this record?
- What is your reasoning for any redactions made?
- How will you document the redactions?

Do we redact?

Any reference to Complainant's relationship with Witness 3?

Respondent's description of Complainant hooking up with Witness 3 at the fraternity party during the fall of 2020?

Witness 3's statements about Respondent's prior behaviors?

Break Out #5

In your small groups, do some editing!

As a team, review small portions of a summary and edit it using the track feature in word. Edit the summary:

1. To simplify it
2. For transparency/clarity
3. Accuracy
4. Neutrality
5. Draw attention to important facts

Group 1

Group 2

Break Out # 6

In your small groups, fill the analysis grid and make a finding!

- First, list the relevant evidence related to each question.
- Second, assess the authenticity, credibility, and reliability of each item of evidence to determine what items of evidence you will rely upon when making and explaining your finding/recommended finding.
- Third, determine the weight you will give to each item of evidence upon which you intend to rely.
- Next, apply the standard of proof and make a finding as to each element of the formal complaint.
- Finally, make a finding of responsibility

Did Drew Engage in a Sexual Act with Taylor?	Was Taylor incapacitated and therefore incapable of providing consent?	Did Drew know Taylor was Incapacitated?	Should Drew have known that Taylor was incapacitated?
➢ **Undisputed** ➢ Complainant's testimony ➢ Respondent's testimony			
➢ It is more likely than not that Drew engaged in sexual intercourse with Taylor			

Group 1

Group 2

Be kind to yourself for the work you've done already in good faith.

Compare yourself to yourself yesterday instead of comparing yourself to others.

Writing good reports is a constantly evolving process. Don't expect perfection.

Don't worry about where your skills are today, just keep getting better.

You have the tools. You can do it!

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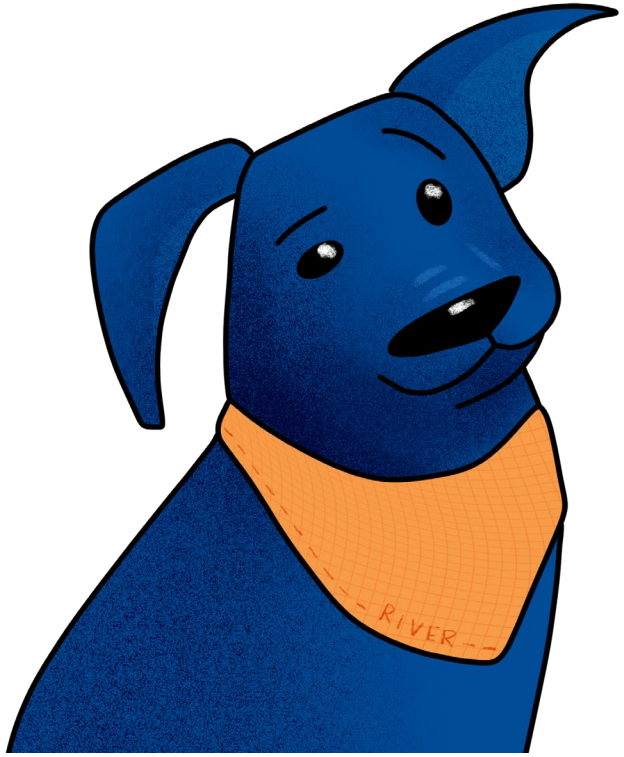
Questions?



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