



# INTERMEDIATE INVESTIGATOR TRAINING

Conducting Investigations with  
the Decision Maker in Mind

*Alison Nygard*

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# MEET YOUR FACILITATOR



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# ABOUT US

## Vision

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

## Mission

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

## Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

# AGENDA



Understanding What:  
Regulatory Requirements - What  
Investigators Should Know



Understanding Why:  
Purpose, objective, and goal for your  
investigation



Understanding Where:  
Preparing and planning your  
investigation



Understanding How:  
Executing a compliant, thorough, unbiased, and  
fair investigation



Understanding Who:  
Building your report with the  
Decision-Maker in mind

# UNDERSTANDING WHAT:

Regulatory Requirements -  
What Investigators  
Should Know

01



## THE REGULATIONS

- The 2020 Regulations are back in effect.
- Make sure that you have the correct policy version, which should be specified from the outset by the Coordinator in the investigation notices.
- When in doubt, check with your counsel about any legal updates in your state.

# PROCEDURAL REQUIREMENTS FOR TITLE IX SEXUAL HARASSMENT INVESTIGATIONS (WILL LIKELY APPLY FOR NON-TITLE IX AS WELL)

Notice of  
Investigation to  
BOTH parties

An Advisor of choice

Written  
notification of  
meetings  
and sufficient time  
to prepare

Equal opportunity to  
present evidence

Opportunity to  
review and respond  
to all relevant  
and directly related  
evidence

Report summarizing  
relevant evidence  
at least 10-days prior  
to hearing

# THE TITLE IX COORDINATOR (OR DESIGNEE) PREPARES THE NOTICE – CHECK THE POLICY

- Sufficiency of Detail – The Who, What, When, Where
- The Applicable Policy and Procedure
- Presumption that Respondent is Not Responsible
- Right to Advisor
- Right to Review Evidence
- Any Prohibition against Knowingly Making False Statements

TIPS: It's a good practice to include a section on the prohibition of retaliatory conduct against other participants in the process, in connection to the participation.

# REPORT AND EVIDENCE FILE

Summary of the Evidence



Compilation of all Evidence



**“RELEVANT  
EVIDENCE”  
AND  
“DIRECTLY  
RELATED”**



# RELEVANT EVIDENCE

The Department declines to define “relevant”, indicating that the 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.”

# DIRECTLY-RELATED EVIDENCE

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 Clery Act

Directly-related evidence includes:

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

# EVIDENCE THAT IS "NOT RELEVANT"

## Sexual History

Complainant's sexual predisposition or sexual history, with two exceptions:

- Offered to prove someone other than Respondent committed act, or
- Offered to prove consent

## Privileged

Legally recognized un-waived privilege

- \*\*Written release required for parties holding said privilege provides the privileged information

## Note

- Non-relevant information will not be relied upon in the analysis and should not be mentioned in the body of the report

Further, it is appropriate to redact Sexual History and Information covered by un-waived privilege

# OTHER REDACTION CONSIDERATIONS



Embarrassing or explicit information

Should not redact



Non-University contact information (addresses, phone, etc.)

Okay to redact for privacy



Anonymizing report

Consider if this is necessary.  
You must provide witness key.

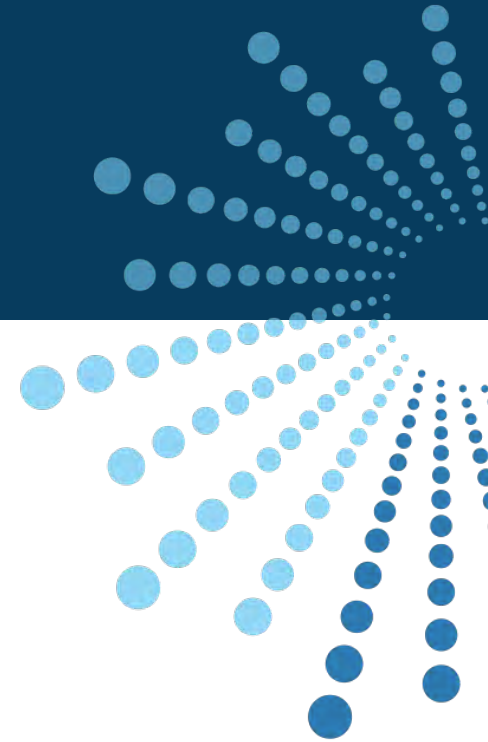


Other considerations

Medical documents,  
birthdates, ID numbers, etc.

# UNDERSTANDING WHY:

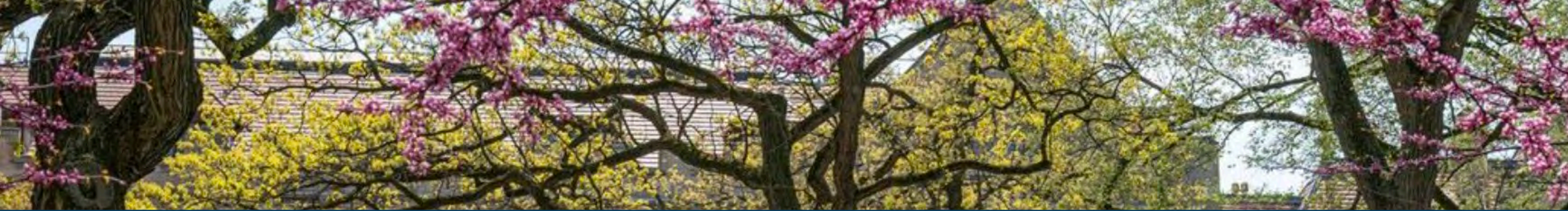
Purpose, Objective, and  
Goal



02



# CHECK THE POLICY



# THE REQUIREMENT OF IMPARTIALITY

Investigators are required to conduct their investigation in an impartial manner. This means that investigators must commit to the requirements of impartiality throughout the entire investigatory process, which includes the opportunity to make various decisions at multiple points.

The requirement of impartiality requires that investigators make those decisions without being influenced by impermissible bias, conflict of interest, and a pre-judgment of facts.

# AVOID PRE-JUDGEMENT OF THE FACTS

Investigators must be free of conflict and bias in order to proceed with an investigation assignment.

This can be accomplished by refraining from passing judgement on individual facts, the allegations, or whether the policy has been violated, until they have had the opportunity to consider ALL of the evidence.

## How do we protect the integrity of the investigation?

- Checking our biases
- Keeping an open mind
- Checking our egos
- Approach the allegations with neutrality
- Treat both parties equally and provide an equal opportunity to present evidence

**NOTE:** There must be an actual conflict. The burden of proof is always on the person arguing there is a conflict.

# GOAL: WHAT NEEDS TO BE PROVEN

What will the Decision-Maker be asked to decide?

What are the elements of each act of prohibited conduct alleged?

What does the formal complaint allege?

What material issues do you foresee?

Now prepare to develop an investigative strategy.

# STALKING ALLEGATION - QUESTIONS TO BE ADDRESSED:

Create a chart that you will use throughout your investigation to add information to as it comes in. This will function as a road map for your summary of the evidence and the analysis if applicable.



Directed at  
specific person  
Was the conduct  
directed at  
Complainant?



Substantial  
emotional distress  
Would conduct cause  
a reasonable person  
suffer substantial  
emotional distress?  
Did Complainant  
experience such?



Course of conduct  
Did Respondent  
engage in more than  
one action?



Fear for safety  
Would conduct cause  
a reasonable person  
fear for their safety or  
the safety of others?  
Did Complainant  
experience such?

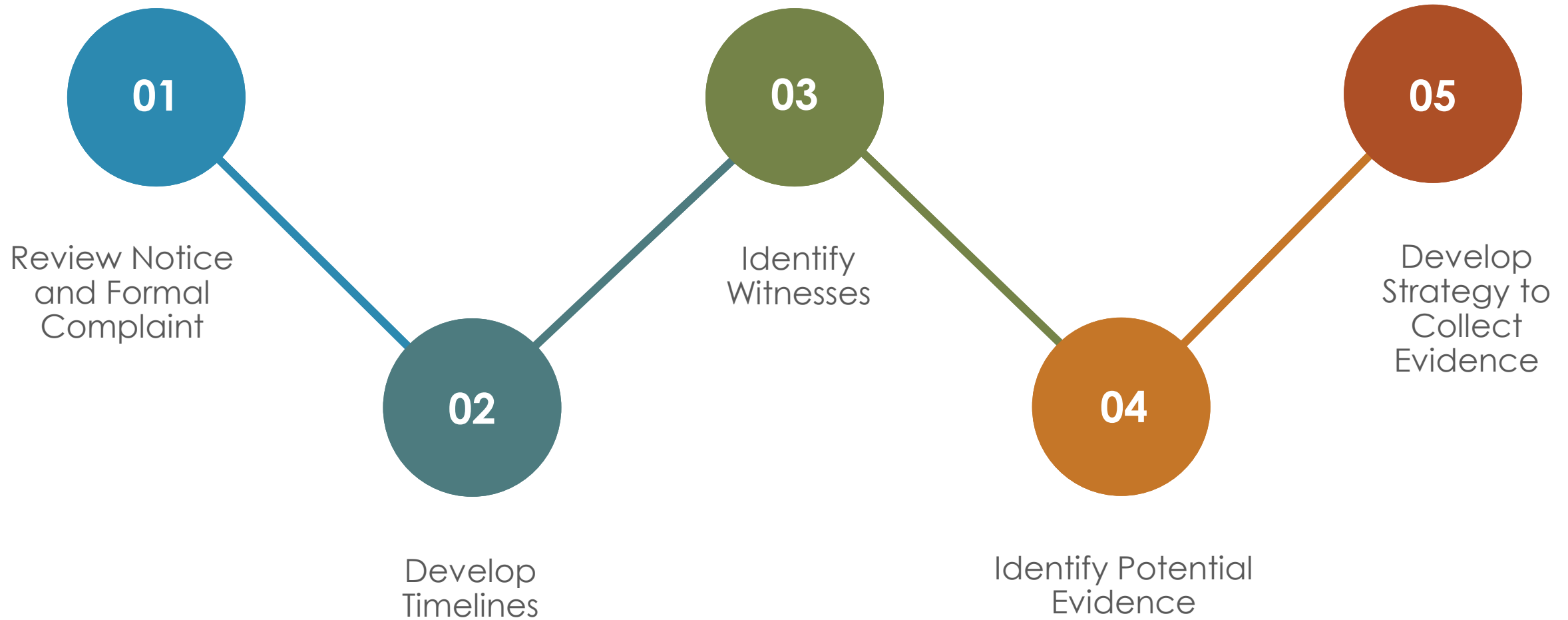


# UNDERSTANDING WHERE:

Preparing for the  
Investigation

03

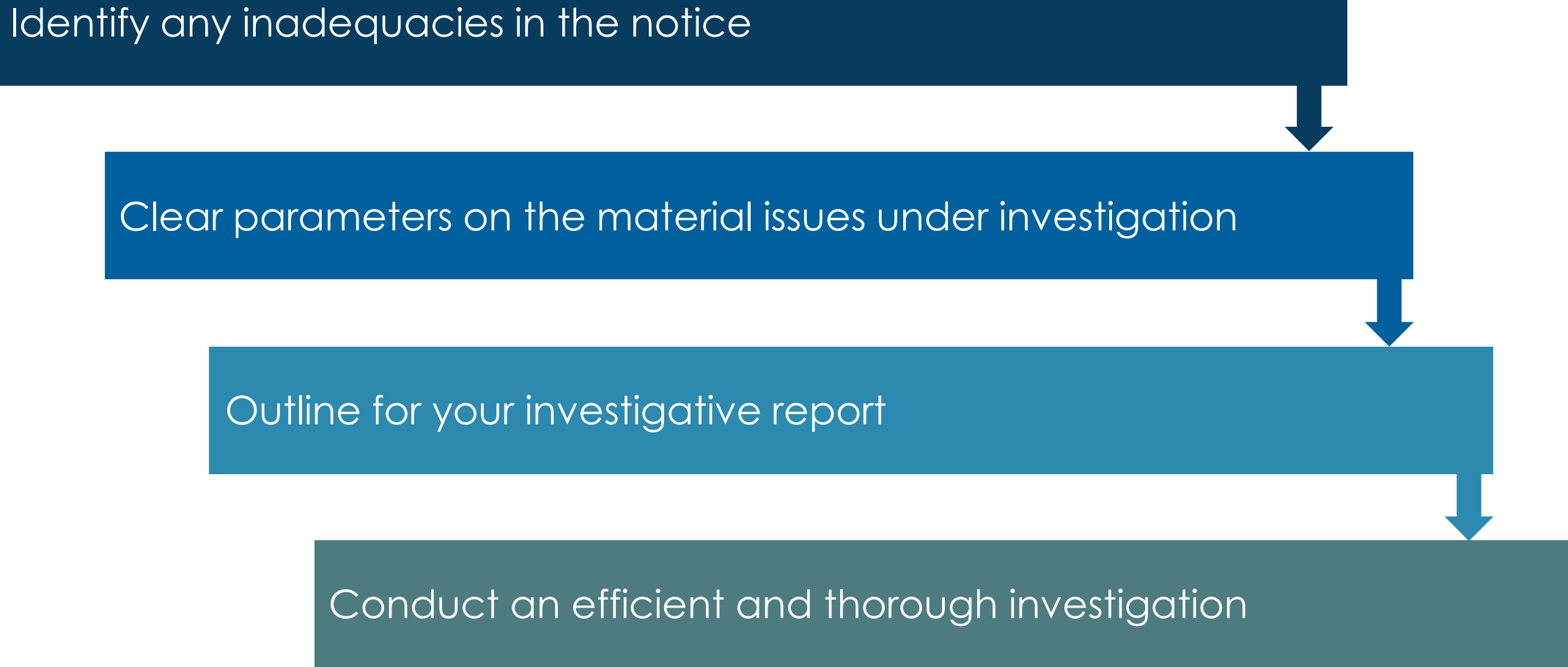
# THE PROCESS: DEVELOPING AN INVESTIGATIVE STRATEGY



# NOTICE OF ALLEGATIONS & FORMAL COMPLAINT

## BENEFITS OF PREP WORK

Identify any inadequacies in the notice



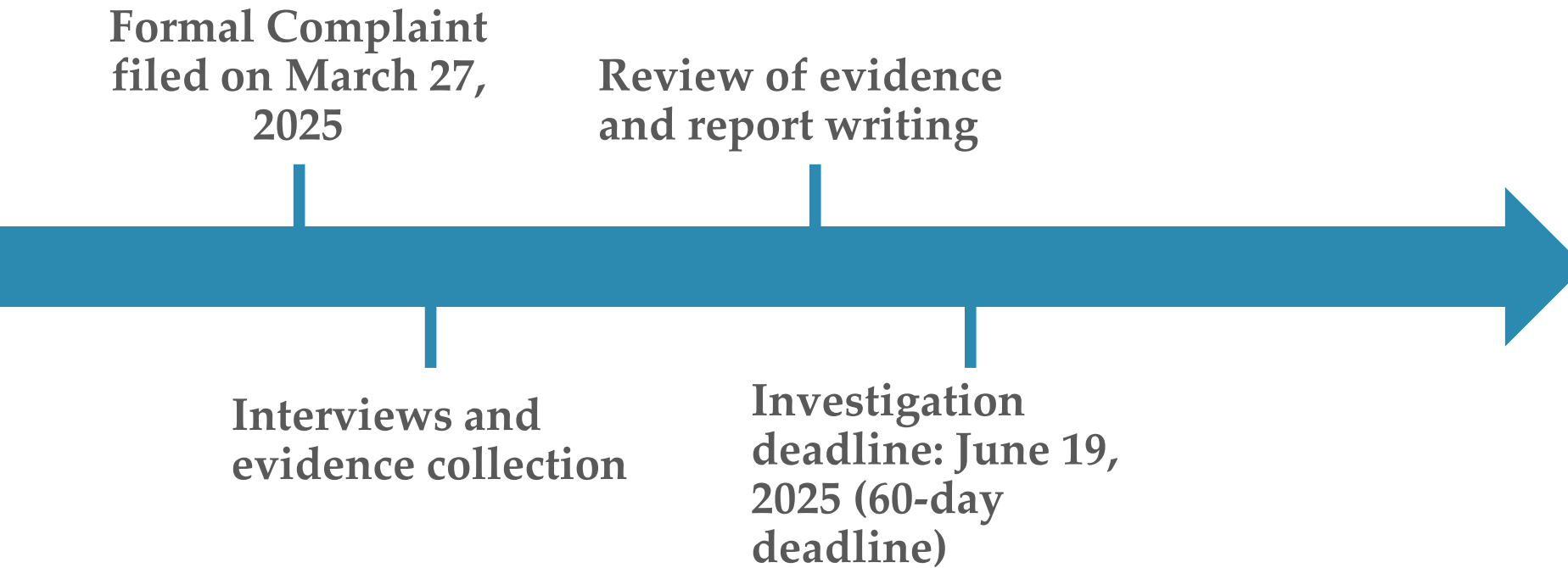
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graph TD; A[Identify any inadequacies in the notice] --> B[Clear parameters on the material issues under investigation]; B --> C[Outline for your investigative report]; C --> D[Conduct an efficient and thorough investigation];
```

Clear parameters on the material issues under investigation

Outline for your investigative report

Conduct an efficient and thorough investigation

# INVESTIGATION TIMELINE



# PRO TIP - CHECK YOUR CALENDAR, WORK BACK FROM FINAL DEADLINE

Does your institution have a built-in review process?



Does your institution have a built-in review process?  
What is the time for evidence review (often 10 days)



Request extension when you know you need it.



If one party gets an extension, they both get it.



Document delays and regularly check timeline.



# PRO-TIP: WITNESS AND EVIDENCE TABLE

| Witness / Evidence                                     | Offered by: | Relevancy                                                                                                                                      | Outreaches |
|--------------------------------------------------------|-------------|------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| John Doe                                               | Complainant | Complainant best friend. He was with the Complainant the night of the reported incident.                                                       | N/A        |
| Jane Doe                                               | Respondent  | Respondent roommate. It is believed that she saw the Complainant leave the Respondent's residence immediately following the reported incident. | N/A        |
| Text communication between parties on date of incident | Complainant | Text related to the incident immediately following the interaction.                                                                            | N/A        |

## PRO TIP: BUILD YOUR REPORT EARLY

Overview of the investigation



Statement of jurisdiction



Identity of investigators



Objective of the investigation and investigative  
report



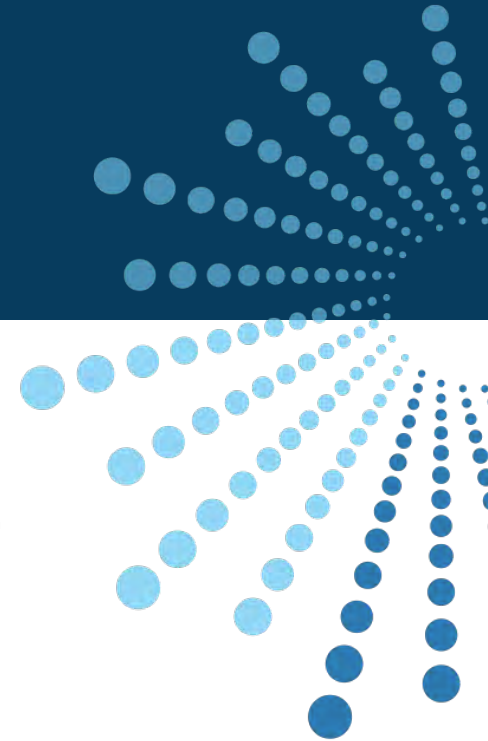
Prohibited conduct alleged



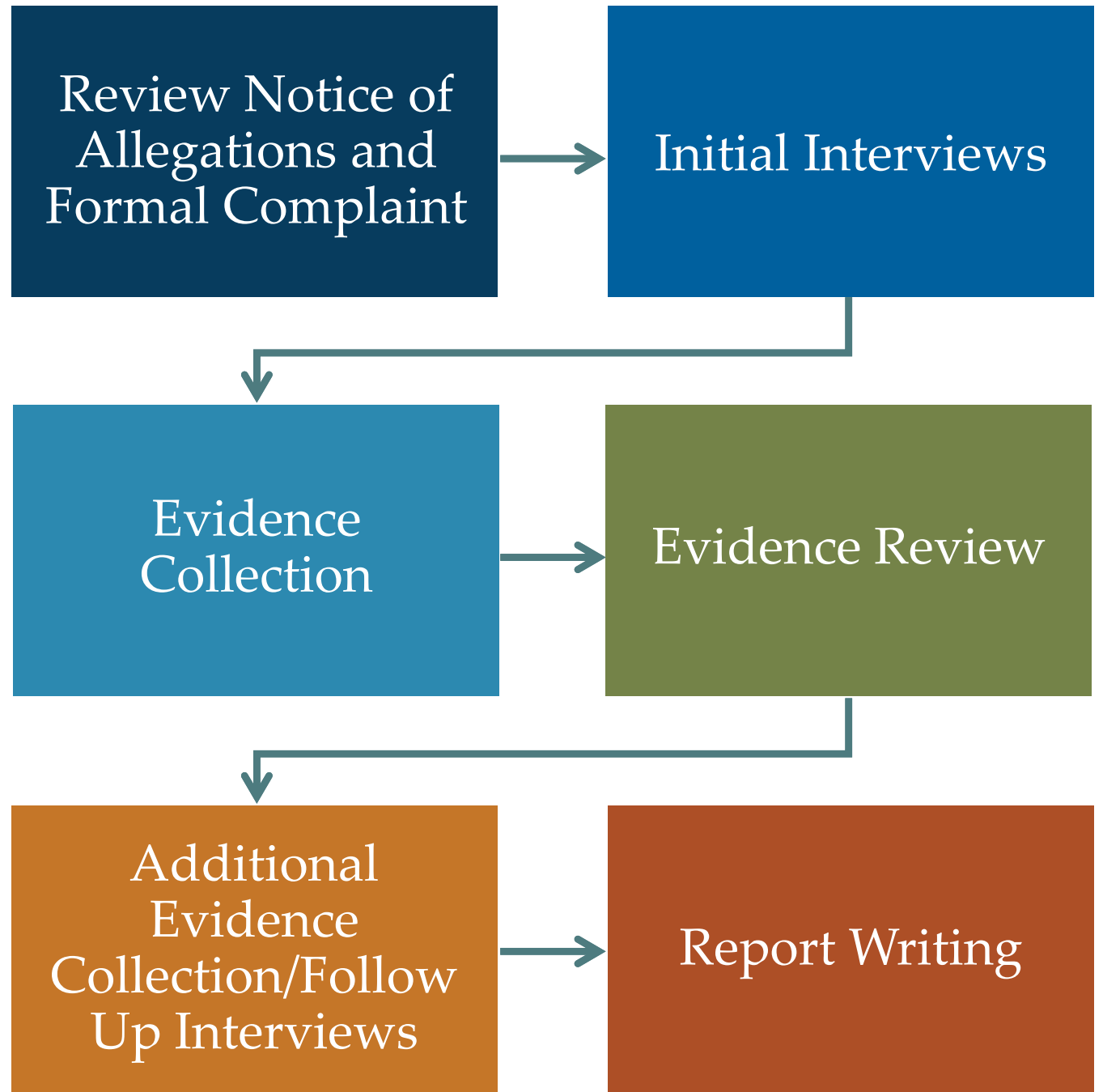
04

## UNDERSTANDING HOW:

Executing a Thorough,  
Unbiased, Fair, & Compliant  
Investigation

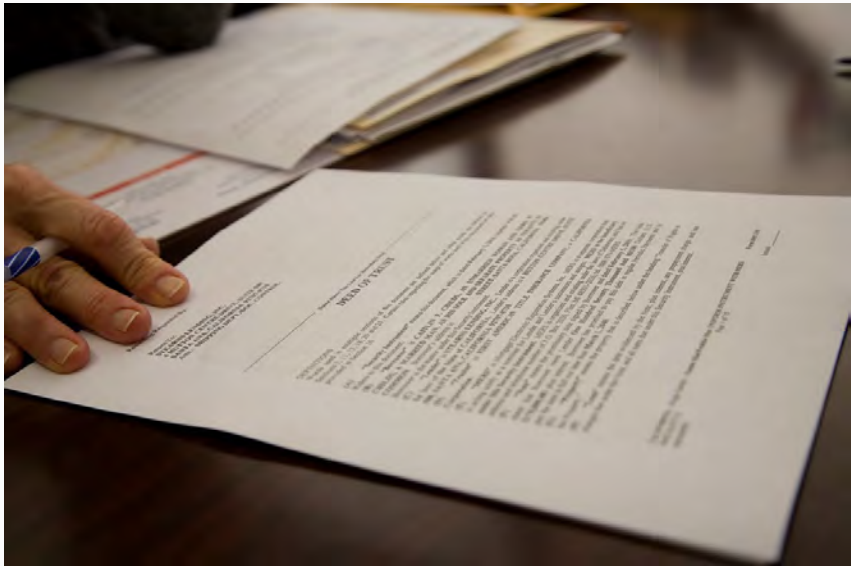


# ESSENTIAL STEPS OF AN INVESTIGATION



# INITIAL INTERVIEWS

## PARTY OUTREACH



The 2020 regulations require written notification of meetings and sufficient time to prepare.

- No specific definition of "sufficient time"

Best Practices:

- Use your best judgement on how much time you provide parties to prepare
- Document your attempts to reach parties
- Be consistent with your approach, irrespective of the party's role
- Include three available dates and times and request alternatives

# COMPONENTS TO PARTY OUTREACH



What should be included in your Investigator's outreach to parties?

## Key components

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- Investigator introduction
- Invitation to meet
- Information regarding the investigatory process
- Rights to an advisor of choice
- No-Retaliation Policy
- Institutions Policies and Procedures

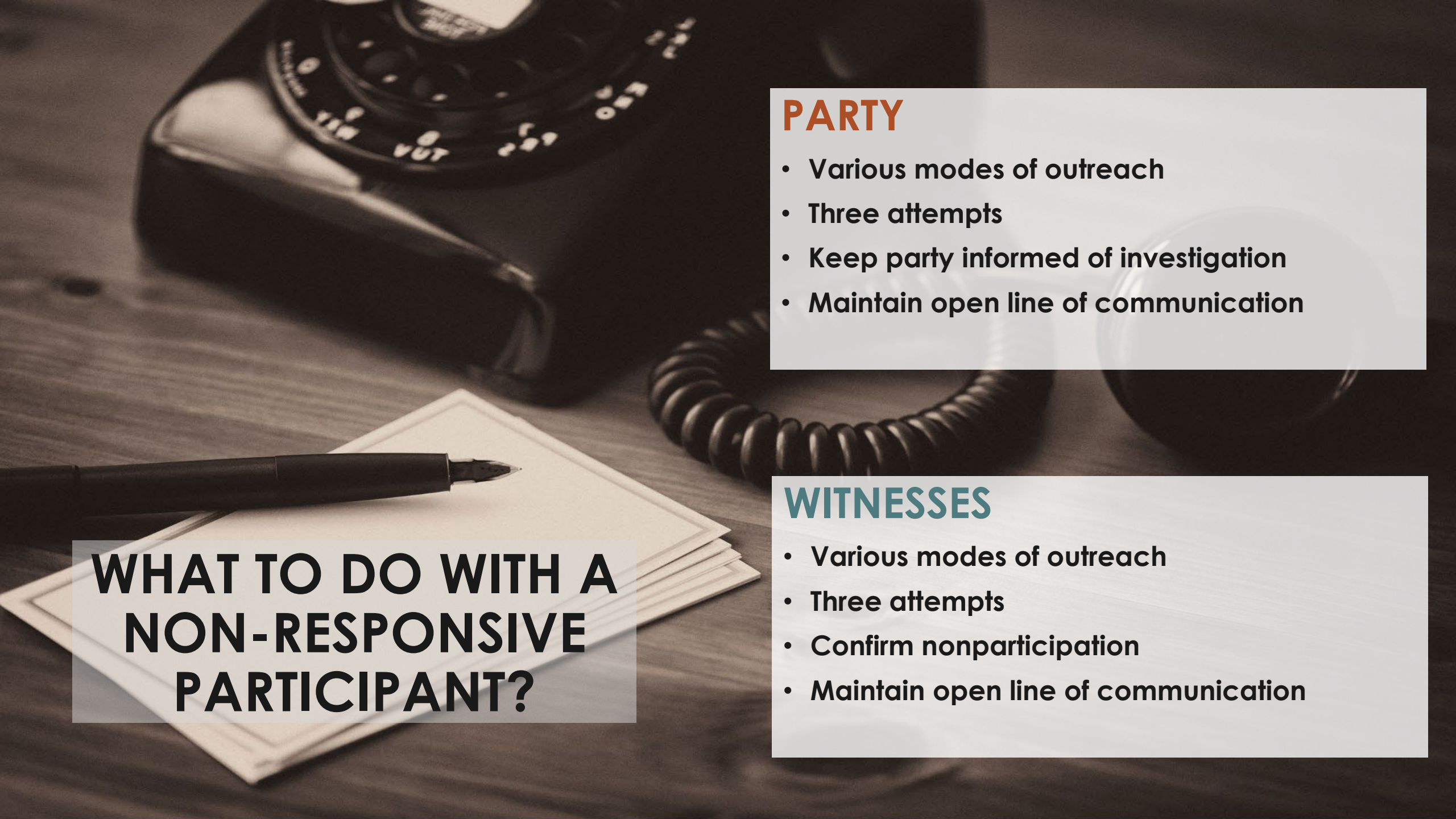
# COMPONENTS TO WITNESS OUTREACHES



What should be included in your Investigator's outreach to Witnesses?

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- Investigator introduction
- Invitation to meet
- Information regarding the investigatory process
- Their rights
- “Need to know”
- Institutions Policies and Procedures



## WHAT TO DO WITH A NON-RESPONSIVE PARTICIPANT?

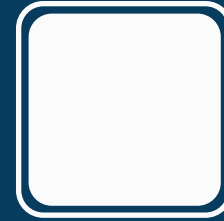
### PARTY

- Various modes of outreach
- Three attempts
- Keep party informed of investigation
- Maintain open line of communication

### WITNESSES

- Various modes of outreach
- Three attempts
- Confirm nonparticipation
- Maintain open line of communication

# ADVISOR OF CHOICE DURING THE INVESTIGATION



Can be anyone, including an attorney or witness.



Institutions cannot place restrictions on **WHO** can serve



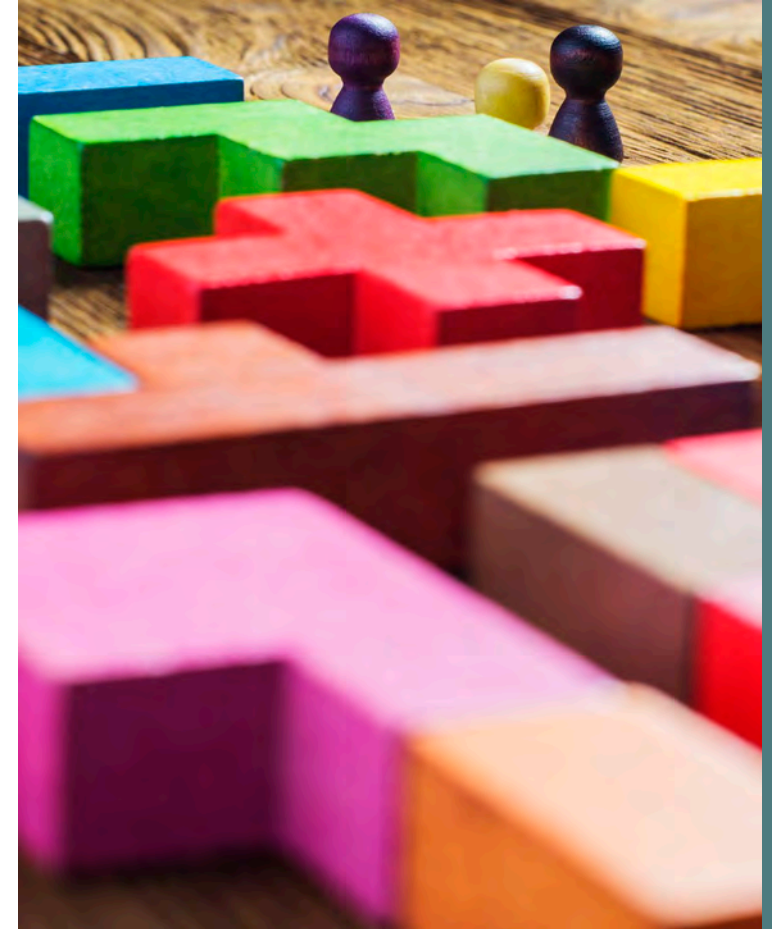
Institutions can create rules and guidelines for advisors



No specific training required

# CHALLENGING ADVISORS

- Remain professional and matter-of-fact
- Cite to the Policy and, if applicable, the written advisor agreement
- Set expectations early with Party and Advisor – For both Investigation and Hearing
- Avoid debates – Appeal is the proper avenue to object
- You can follow up after meeting if unsure about any questions





## COMMON ELEMENTS OF AN ADVISOR AGREEMENT

1. Explain their role
2. Provide rules/guidelines of engagement
3. Define confidentiality and the expectation of privacy
4. Warn about and potential consequences for unauthorized conduct

A blurred background image showing two people in an interview setting. One person is seated on the left, and another person is standing on the right, leaning forward. The scene is brightly lit, creating a high-contrast, almost ethereal effect. The overall color palette is light and airy, with a soft focus.

# INTERVIEWS

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# INTERVIEW OBJECTIVES

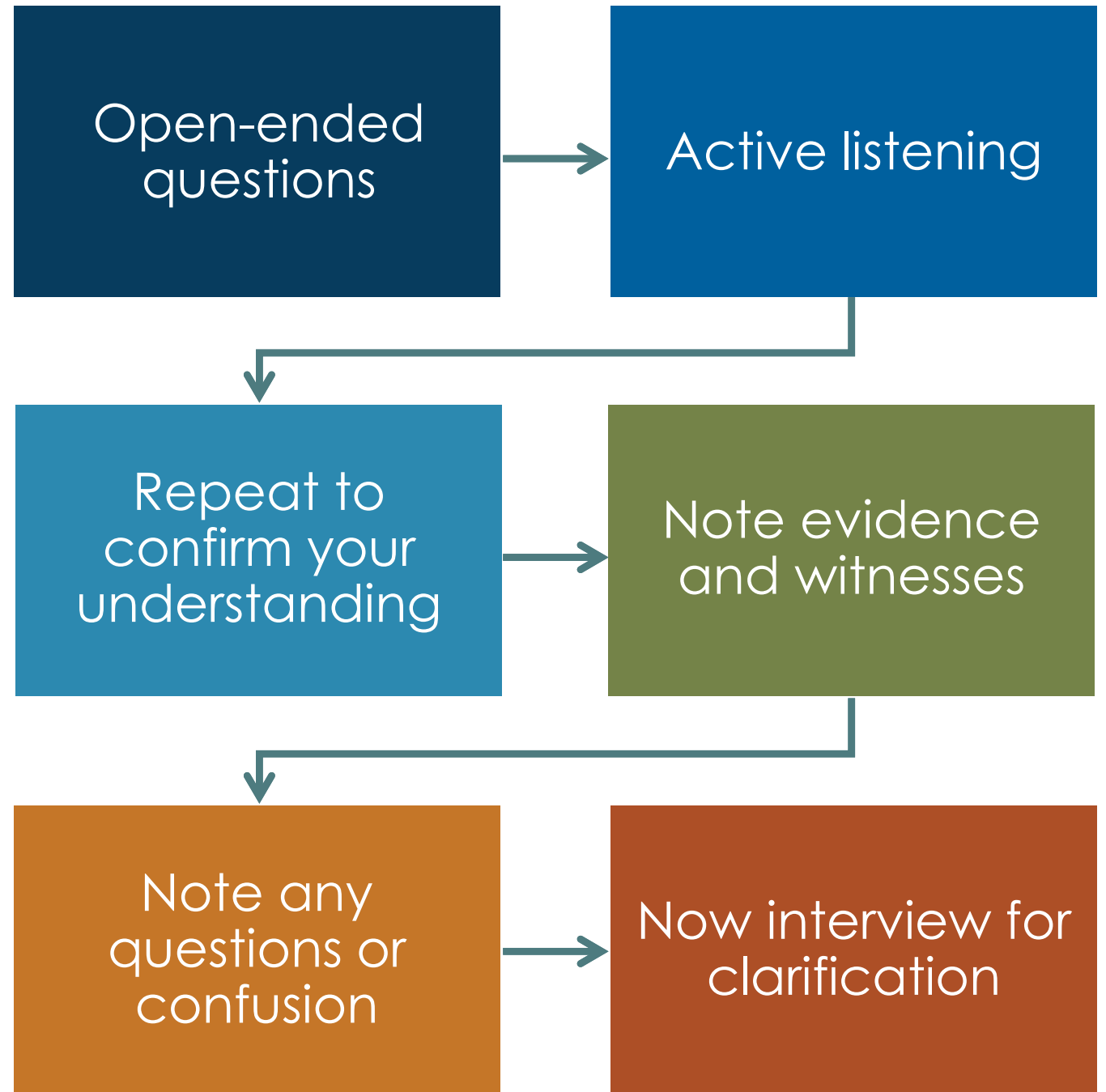


# PREPARE YOUR QUESTIONS

But be prepared for  
flexibility in the interview...

# LISTEN

Interviews should elicit/encourage a narrative



# CLARIFICATION

## Ask questions that:

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

## Avoid questions that:

- Interrogate
- Blame
- Imply doubt or disbelief
- Lead

# PRESERVE EVIDENCE

Identify the evidence that you would like to obtain or that was mentioned during the interview.

Develop an intentional strategy for obtaining the evidence.

Consider potential barriers to evidence collection and ways to overcome them.

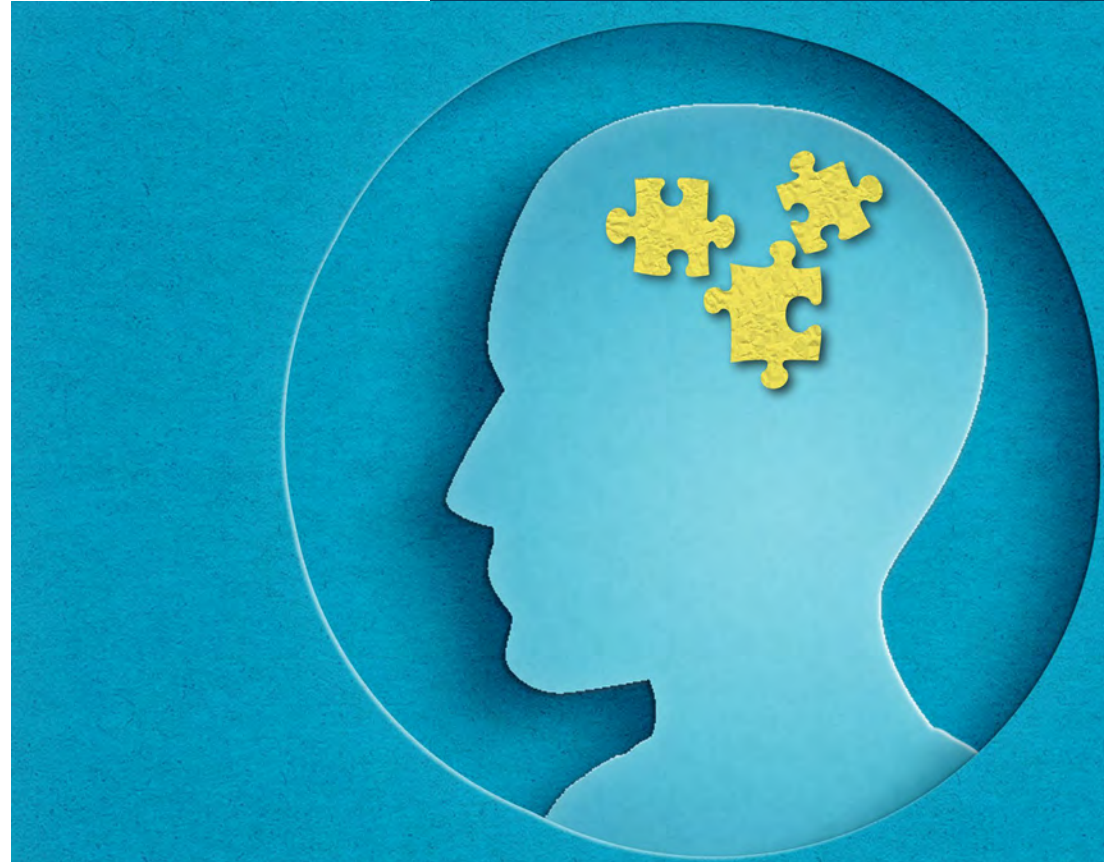
Be cognizant of limitations in collecting certain types of evidence.

When deciding what evidence to request of the interviewees, take these steps with intentionality:



# THINK AHEAD TO THE HEARING...

- If a party asks for a witness or evidence at the investigation, they will likely renew the request at the hearing if the information is not gathered.
- Hearing Officer's first question will be: "Why wasn't this gathered in the investigation?"
- Clearly document why the information could not be gathered or why you decided against gathering it.



# ACTIVITY: EVIDENCE COLLECTION

## WHAT TO DO IF...

No follow through on evidence:



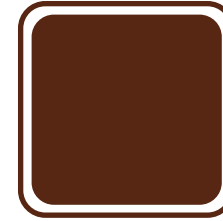
- Reminders
- Follow-ups (three attempts)
- Close the loop
- Track and document all attempts

Data dump:

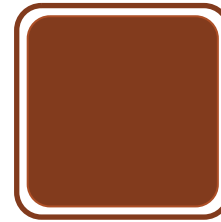


- Consider the source
- Gratitude
- Seek clarification on relevance
- Consider potential extension to review

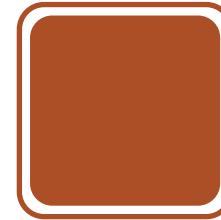
# AT THE CONCLUSION OF THE INTERVIEW



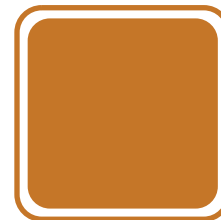
Explain the review process



Confirm next steps in the investigation process



Review support, privacy, and retaliation



Keep lines of communication open

# AFTER THE INTERVIEW: ACTIONS

Memorialize the interview in writing: Interview Notes/ Summary transcript



Provide opportunity for the party or witness to review, if permitted



Provide opportunity for a response



Incorporate the response



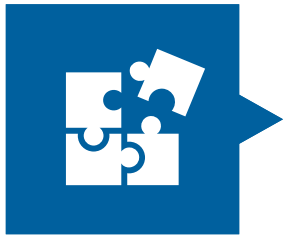
# ADDITIONAL TIPS FOR WITNESSES



Balancing party privacy with the need to ask specific questions



Balancing transparency about the how information will be shared with encouragement to participate



Gathering information to assist decision maker's need in evaluating reliability

# FOLLOW UP INTERVIEW APPROACH

01

Explain the purpose of the follow-up

02

Set the stage for the topics

03

Prepare them for “the shift”

04

Ask the hard questions

# 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...”

## ACTIVITY: POLL TIME

### Which question is better?

When prompted, select which question is better of the options

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

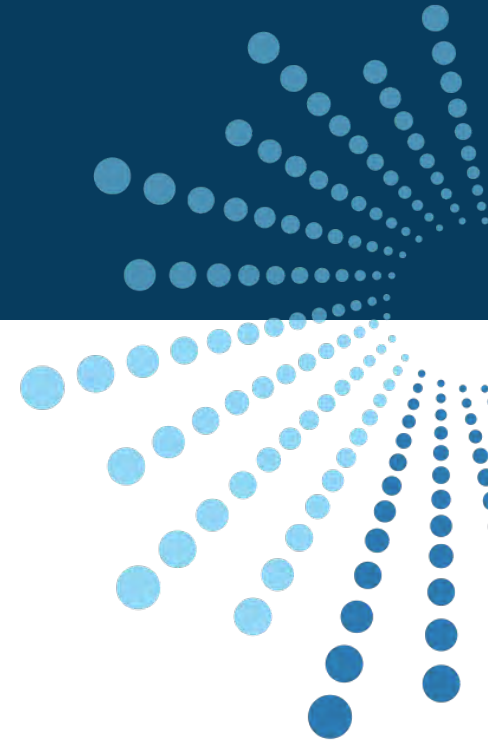
#### HINT:

There won't always be a "wrong" answer...

05

## UNDERSTANDING WHO:

Review of Evidence and  
Report Writing with the  
Decision-Maker in Mind



# REVIEW OF EVIDENCE BROAD STROKES

Parties must be given an opportunity to present evidence in support of their position.

Share all relevant (and directly related) evidence

Ten days for parties to respond to the evidence

Clear categorization of evidence assessment

Organized

Secure and private

Expectations for the review process and care of the evidence

Incorporation of responses/additional evidence and finalization of investigative file

A person wearing a plaid shirt is sitting at a wooden desk, working on a laptop. The laptop screen shows a blurred image of a person. The person's hands are on the keyboard. The background is dark and out of focus.

# EVIDENCE ASSESSMENT

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# AUTHENTICITY



NEVER  
assume  
evidence is  
authentic

- Obtain originals
- Multiple sources

Ask questions  
that lead  
to proof  
of authenticity

- Timestamps
- Full screenshots
- Full chains of communications

Investigate  
authenticity if  
necessary

- Look at properties
- Metadata

# WEIGHING THE EVIDENCE



## Direct

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



## Corroborating

Differs from but strengthens or confirms what other evidence shows.



## Circumstantial

Based on inference and not on personal knowledge.

# **CREDIBILITY AND RELIABILITY ASSESSMENTS OF THE PARTIES AND WITNESSES**



# CONSIDERATIONS ABOUT CREDIBILITY AND RELIABILITY

- Sufficiency of details and specificity
- Internal consistencies
- Consistency with evidence or testimony
- Corroboration

- Inherent plausibility
- Material omission
- Motive to falsify
- Past record
- Ability to recollect events

# CREDIBILITY/RELIABILITY ANALYSIS

1. Determine the material facts – focus only on material facts.
2. Determine which material facts are:
  - a. Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties
  - b. Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains
3. State clearly whether the evidence is sufficient or insufficient to establish each disputed fact.

## Example:

“The parties disputed whether Respondent kissed Complainant at the party. Witness 1 provided a timestamped photo showing Respondent and Complainant kissing and stated that this photo was taken at the party. Respondent said “no comment” when asked about the photo. This corroborative evidence from the witness tends to strengthen the reliability of Complainant’s account and weaken the reliability of Respondent’s account.”

# ADDITIONAL CONSIDERATIONS

Incapacitation

Explanation of  
thought  
process and  
reactions –  
DON'T ASSUME

Weight of  
Specific Facts

# REPORT WRITING

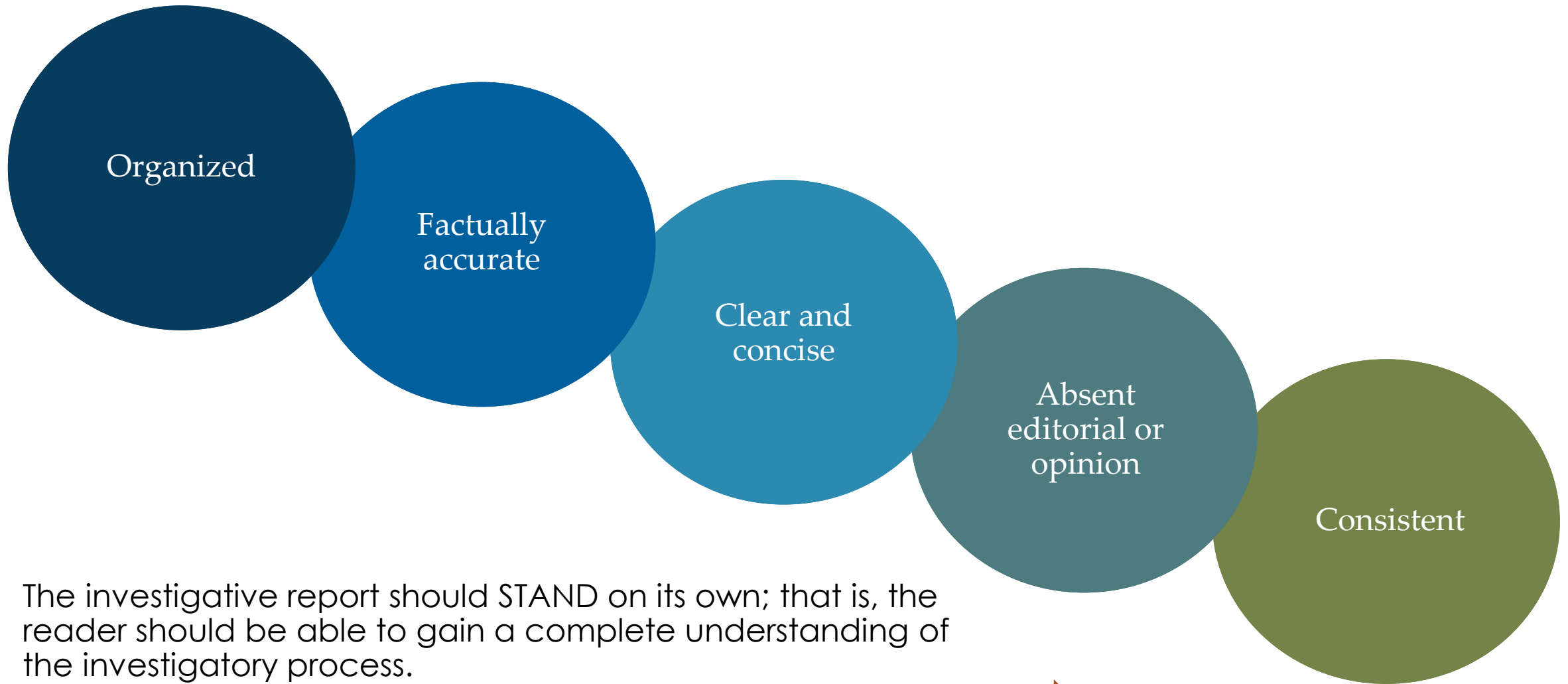


# IMPORTANCE OF WRITING A SOLID REPORT

Beyond ensuring the investigative report is compliant with policy (and regulations), a solid report also:

- Allows for future recollection if needed
- Signals complaint was taken seriously
- Ensures the investigation was fair, impartial, and thorough
- Protects you and your institution in case of litigation and limits liability

# ESSENTIAL ELEMENTS OF A REPORT



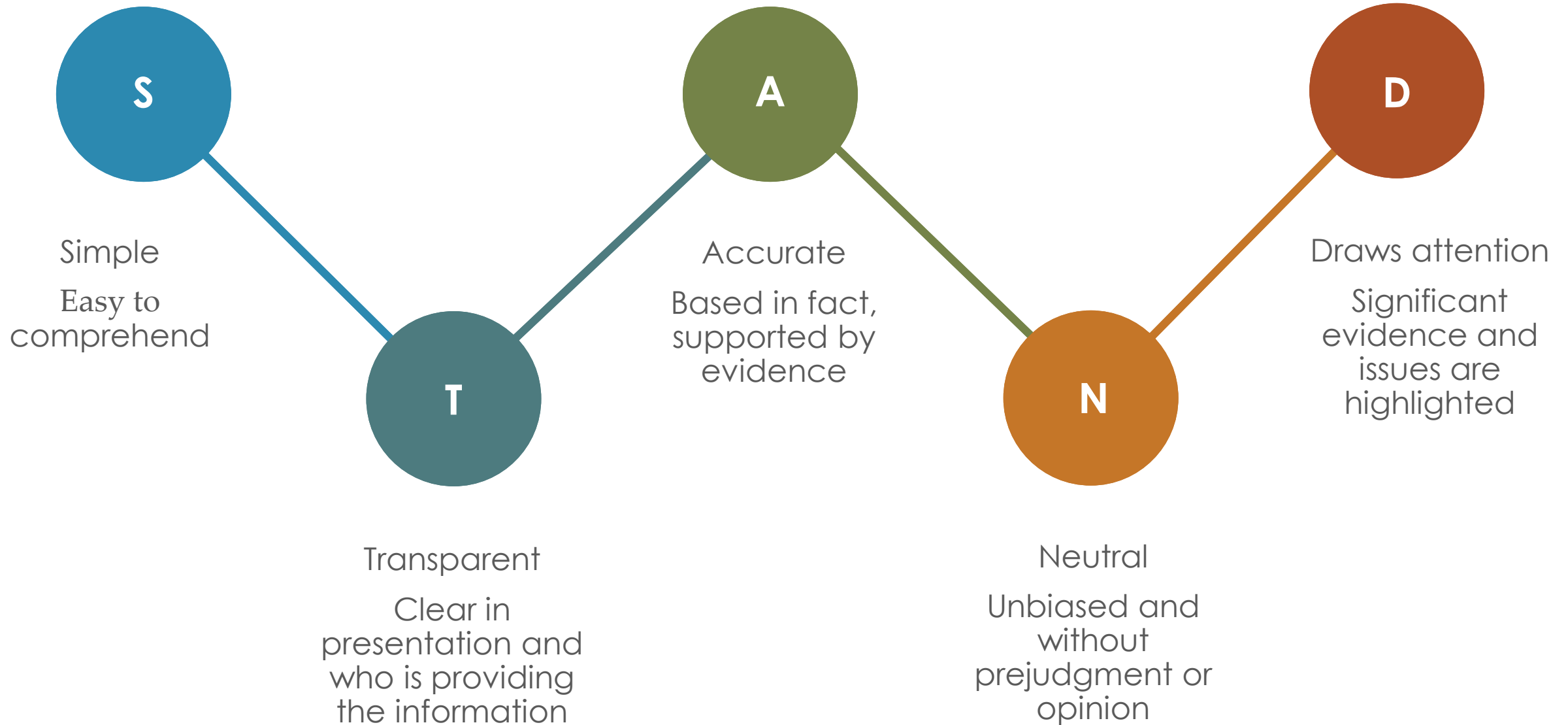
The investigative report should STAND on its own; that is, the reader should be able to gain a complete understanding of the investigatory process.



# CONTENT CREATION FOR SUMMARY OF EVIDENCE



# THE REPORT SHOULD STAND ON ITS OWN



# STAND - S

## Simple

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
- Avoid inserting yourself (the investigator) into the report

Avoid or Define Complex Language Like:

- Adjudicated
- Preponderance of the Evidence
- Respondent articulated
- Prima Facie Assessment
- Substantiated
- Pursuant to the policy
- Digital penetration

# STAND - T

## Transparent

- Summarize information chronologically
- Clearly define language used in the report
- Note what is opinion
- Use quantitative language
- Avoid or define slang/acronyms
- Provide clear descriptions of reported acts
- Use consistent language

## Question Further:

- Testimony about contact with a person's vagina
- Testimony about penetration
- Testimony that clothing was removed
- Testimony about event or act impact
- Testimony includes opinions

# STAND - A

## Accurate

- Identity of participants (pronouns; title, etc.)
- Citing and referring to the policy language
- Allegations as set forth in the formal complaint
- Quotations and absent your editorials and opinions
- Citing to the investigation file

# STAND – ACCURATE ACTIVITY

What is wrong with the following and how should you edit it?

## Who's speaking?

- Complainant first saw Respondent near the fountain in the middle of the quad
- Witness 3 told Complainant that Respondent was creepy

## Quotations:

- Witness 3 was really out of it and drunk

## No conclusory words:

- The stalking started...
- The Respondent was angry

# STAND - N

## Neutral

### Not Neutral/ Biased Statements:

- "Claimed/Alleged"
- "According to X"
- "Story/Version of Events"
- "Had Sex with/Engaged in"
- "Changed their Account/Story/Version of Events"
- "Apparently/supposedly"
- "Somehow"
- "Witness A lied..."
- "For some reason, Complainant can't remember"
- "Respondent refused to provide [evidence]"

# STAND - D

## Draw attention

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

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

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

# ORGANIZATION OF THE SUMMARY OF EVIDENCE



# ORGANIZATIONAL APPROACHES

Person-  
centered  
approach



Organized relative to the full statements of  
parties and witnesses

Event-  
centered  
approach



Organized relative to specific events as they  
transpired

# ORGANIZATIONAL APPROACHES – SINGLE INCIDENT

## Person - Centered

### **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

### **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

### **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

## *Event - Centered*

### **History between the Parties**

- a) Complainant's Account
- b) Respondent's Account
- c) Witness A's Account

### **The Hours Leading up to the Reported Incident**

- a) Complainant's Account
- b) Respondent's Account
- c) Witness B's Account
- d) Witness C's Account

### **The Reported Incident**

- a) Complainant's Account
- b) Respondent's Account

### **After the Reported Incident**

- a) Complainant's Account
- b) Respondent's Account
- c) Witness A's Account
- d) Witness D's Account

# ORGANIZATIONAL APPROACHES – MULTIPLE INCIDENTS

## Person - Centered

### **Complainant's Account**

- a) Prior History of the parties
- b) Incident A
- c) Incident B
- d) Incident C

### **Respondent's Account**

- a) Prior History of the parties
- b) Incident A
- c) Incident B
- d) Incident C

### **Witness 1's accounts**

- a) Prior History of the parties
- b) Incident A
- c) Incident B
- d) Incident C

## *Event - Centered*

### **Incident A**

- a) Overview of the alleged incident
- b) Undisputed facts
- c) Complainant Account
- d) Respondent Account
- e) Witness Accounts

### **Incident B**

- a) Overview of the alleged incident
- b) Undisputed facts
- c) Complainant Account
- d) Respondent Account
- e) Witness Accounts

### **Incident C**

- a) [Same as above]

# WHICH ORGANIZATIONAL APPROACH WOULD YOU USE?

## Office Issues

Complainant alleged that Respondent, Complainant's direct report, makes comments about Complainant's management practices. Specifically, Complainant stated that Respondent often tells other employees that Complainant is "not qualified and was only hired because of Complainant's 'so called disability'." Complainant said Respondent told witnesses that Complainant, "doesn't even need accommodations." Complainant describes hearing this from Witness A, Witness B, Witness C, and Witness D.

Respondent denies making such comments about Complainant, stating that all the Witnesses (A, B, C, and D) are "close to" Complainant and have "the same political views." Respondent provides four additional witnesses to the conversations Respondent had regarding Complainant – Witness 1, Witness 2, and Witness 3.

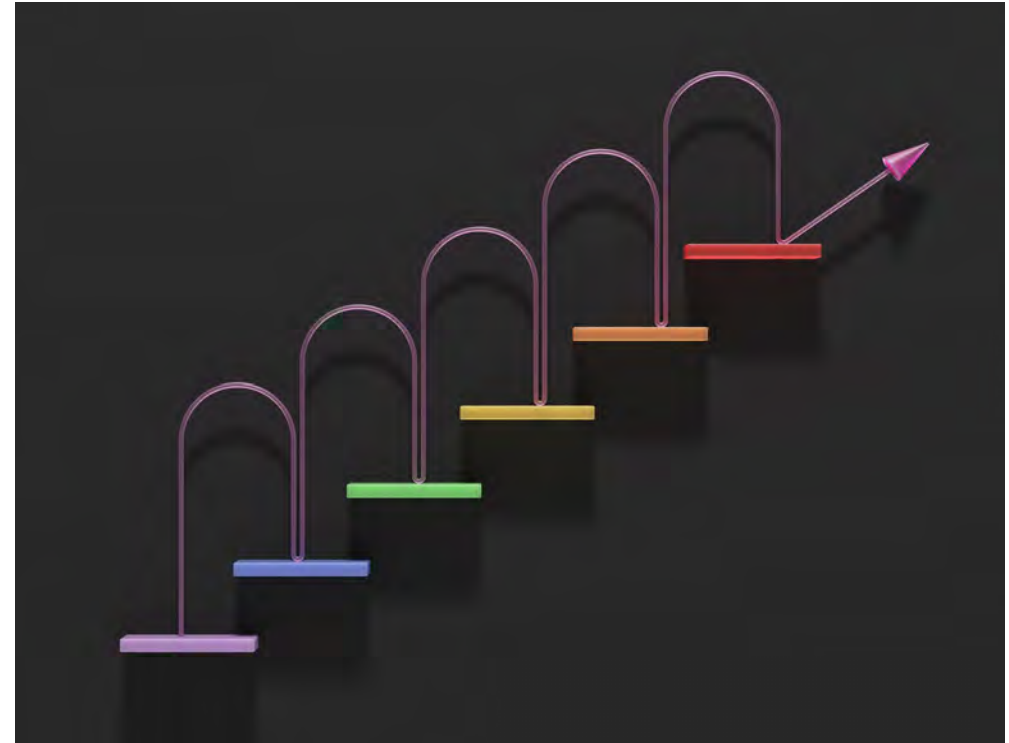
# KEY ELEMENTS FOR HEARING OFFICER INITIAL REVIEW

- Jurisdiction
- Procedural Steps
- Policy Name/Correct Version
- Standard of Proof
- Material Disputed/Undisputed Facts
- Specific Charges
  - Summary of Factual Allegation(s)
  - Policy Section Charged with Definition(s)



# PROCEDURAL STEPS

- What does the policy require?
- Examples:
  - Initial Disclosure
  - Formal Complaint
  - Investigation Notices (and any amended)
  - Interview Dates
  - Preliminary Report/Review of Evidence
  - Final Report
  - Any Responses/New Evidence



# UNDISPUTED AND DISPUTED FACTS



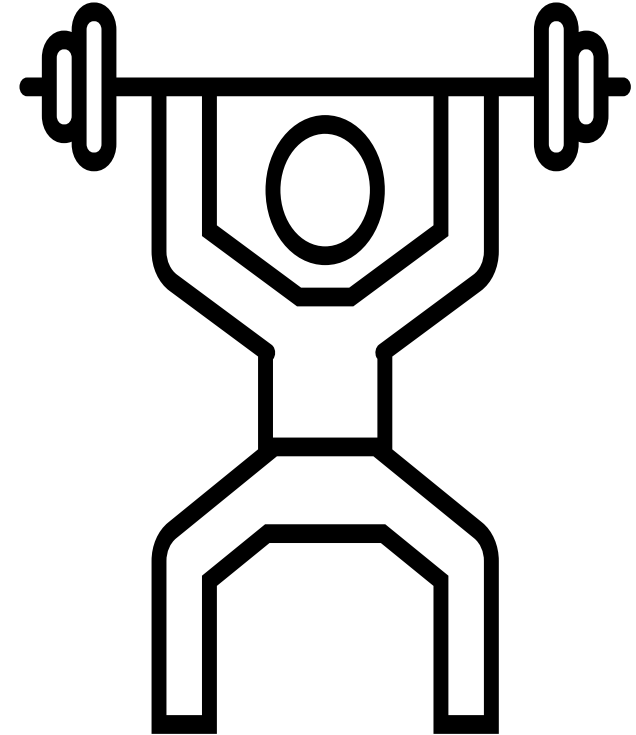
# UNDISPUTED/ DISPUTED FACTS

When developing this section, ask yourself these questions:



# AVOID HEAVY LIFTING FOR THE HEARING OFFICER

- For hearing cases, the Officer or Panel should ideally only need to clarify.
- As you prepare report, consider what a decision-maker would need to reach a conclusion.
- Are there any gaps? Unresolved questions?
- Have the parties been asked about significant differences between their accounts and other evidence?



# **MOCK INVESTIGATION ACTIVITY**



# THE ALLEGATIONS

The Notice of Allegations:

Complainant has alleged that Respondent engaged in conduct that, if true, violates Grand River University's Sexual Misconduct Policy for stalking. Specifically, it has been alleged that, after Complainant told Respondent to stop contacting her, Respondent:

1. Approached Complainant on campus on [date]
2. Sent Complainant at least twenty unwelcome Snap Chat messages on [date], including a threatening statement; and
3. Entered Complainant's dormitory room without permission on [date] and took personal items.

# PROHIBITED CONDUCT DEFINED

Per Grand River University's Sexual Misconduct Policy, Stalking is defined as:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- a. Fear for their safety or the safety of others, or
- b. Suffer substantial emotional distress.

Course of conduct is defined as: Two or more acts, including in person, by or through others regarding a specific person, or by electronic means.

# MATERIAL ISSUES TO BE DETERMINED

RECALL THE POLICY DEFINITION OF THE PROHIBITED CONDUCT

Did  
Respondent  
engage in a  
course of  
conduct?



Fear of Safety?



Was the  
conduct  
directed at  
Complainant?

Substantial  
Emotional  
Distress?

# MERGING THE POLICY DEFINITION WITH THE MATERIAL ISSUES

## Course of conduct



Was the conduct directed at Complainant?

## Fear of safety



- Would the conduct cause a reasonable person to suffer substantial emotional distress?
- Did Complainant suffer substantial emotional distress?

- Approaching on campus?
- Snap Chat messages?
- Entering dormitory and taking items?

## Directed at specific person



- Would the conduct cause a reasonable person to fear for their or others safety?
- Did Complainant experience that fear?

## Substantial emotional distress



# **BREAKOUT ACTIVITY:**

## DISCUSSION: UNDISPUTED

- Parties were in a dating relationship
- Relationship recently ended, albeit exact date is in dispute
- Respondent was outside Complainant's classroom
- Respondent sent Complainant some Snap Chat messages
- Respondent called Complainant after Snap Chat messages
- Complainant blocked Respondent
- Respondent was in Complainant's dormitory building the day of the final alleged incident

# BREAKOUT ACTIVITY:

## DISCUSSION: DISPUTED

- Who ended the relationship
- Whether Complainant told Respondent to cease contact
- Whether Respondent walked toward Complainant and called her name at classroom
- How many Snap Chat messages Parties exchanged
- The language of one specific message
- Whether Complainant responded
- Whether Complainant asked Respondent to call her after Snap Chat messages
- Whether Respondent entered Complainant's room and took items

# UNDISPUTED AND DISPUTED OVERVIEW

The key takeaway about the undisputed/disputed section of your report:

- Refer to the allegations and the relevant policy definition of the prohibited conduct.
- Focus on the relevant and material information as they relate to the allegations and prohibited conduct definition.
- Not every statement in the summary of evidence will be referred to in the undisputed/disputed section BUT every statement in the undisputed/disputed section, must have been referred to in the summary.

This is why it is important to stay organized throughout your investigation and actively work on the road map you created when you were initially assigned the case.



# ANALYSIS AND FINDING (WHEN APPLICABLE)

# FINDINGS OF FACT

What is your finding?

## A finding of fact is:

- The decision whether events or conduct occurred as alleged.
- Based on available evidence and information.
- Determined by a preponderance of evidence standard.
- Determined by the fact finder(s).

## Let's try it:

- Complainant reports that both parties simultaneously ingested two shots of liquor just before the incident.
- Respondent denies ingesting any liquor on the night of the incident.
- Witness 1 produces a video from that night of the incident showing both Complainant and Respondent ingesting two shots of liquor at the same time together.

# EVIDENTIARY STANDARD

## *PREPONDERANCE OF THE EVIDENCE*

Responsible -  
"More likely than  
not..."



There was sufficient evidence to support a finding, by a preponderance of the evidence, that the policy was violated after applying the factual findings to the policy elements.

Not responsible -  
"Insufficient  
evidence.."



There was insufficient evidence to support a finding, by a preponderance of the evidence, that the policy was violated after applying the factual findings to the policy elements.

# THE RECOMMENDED DETERMINATION

---

## Key elements:

- Summarize the undisputed material facts.
- Summarize the findings on disputed material facts
- THEN, as a separate step:
- Address whether the elements of the prohibited conduct policy have or have not been established based on the factual findings.
- Conclude with whether the Respondent, by the preponderance of the evidence, violated the prohibited conduct policy.

“While the evidence was sufficient to establish that Respondent more likely than not touched Complainant’s breast with his hand for the purpose of sexual gratification, there was insufficient evidence to find that Complainant was incapacitated at the time. The evidence was also sufficient to establish that Complainant more likely than not gave verbal consent for this touching. Thus, Respondent is deemed NOT RESPONSIBLE for the allegation of sexual contact, as set forth in the formal complaint.”

## **Sample Recommended Determination**

# THINKING AHEAD TO THE APPEAL

- Don't Take it Personally:
  - Allegations of bias may still be listed in the appeal even when you have applied neutral principles
- What you Can Control:
  - *Make every effort to remain neutral and be aware of perception of bias:*
    - e.g., Necessary but neutrally-worded questions



# Recommended Findings: Pros and Cons

# QUESTIONS?





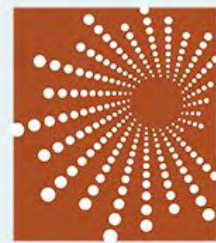
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- ADA/504 Coordinators and Staff



Delegated Roles



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