



DECISION MAKER TRAINING: HEARINGS IN A POST REGULATORY WORLD

Bob Jones University

August 8, 2025

ABOUT US

Vision

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

Mission

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

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

AGENDA

● Title IX Requirements for Hearings

● Hearing Overview

● Pre-Hearing Tasks

● Developing Questions

● The Hearing

● Practical Application

TITLE IX REQUIREMENTS FOR HEARINGS

01

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Title IX of the Education Amendments Act of 1972

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

20 U.S.C. § 1681 (1972).



SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

AND... ONLY COVERED, IF:

Place of Conduct

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

Required Identity

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

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to BOTH parties

Equal Opportunity to Present Evidence

An advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

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

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

No Compelling participation

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

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

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

HEARING TECHNOLOGY: REQUIREMENTS AND CONSIDERATIONS



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

All hearings must be recorded.

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

THE REQUIREMENT OF IMPARTIALITY

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SECTION 106.45(b)(1)(iii)

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

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



ACTIVITY: IS THERE A CONFLICT OF INTEREST?

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

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

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

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

HEARING OVERVIEW

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WHAT IS THE PURPOSE OF A HEARING?



PURPOSE OF THE HEARING

1. Review and Assess Evidence

2. Make Findings of Fact

3. Determine Responsibility/ Findings of Responsibility

4. Determine Sanction and Remedy

PROCESS PARTICIPANTS

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



THE PARTICIPANTS

The Parties

Complainant

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

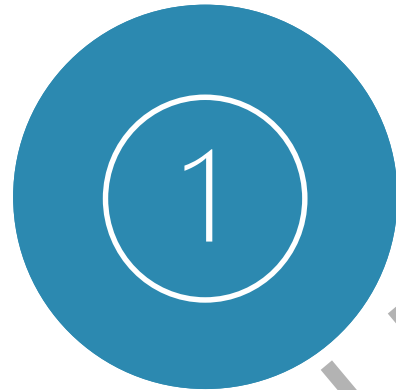
Respondent

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

THE PARTICIPANTS

Advisors

There are two types of Advisors



Advisor: throughout the whole process



Hearing Advisor: hearing, for purposes of asking questions

THE PARTICIPANTS

Advisors

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



THE PARTICIPANTS

Advisors: Prohibited Behavior

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



THE PARTICIPANTS

The Hearing Facilitator/Coordinator

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



THE PARTICIPANTS

Decision Maker or Makers

Decision Maker

One-person.

Decision Maker Panel

A panel.

Requires a hearing chair.

THE PARTICIPANTS

The Decision-Makers

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



THE PARTICIPANTS

The Hearing Chair

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



THE PARTICIPANTS

The Decision Maker

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



THE PARTICIPANTS

The Investigator

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



PRE-HEARING TASKS: HEARING PANEL & CHAIR

What should be done in advance of the hearing?

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THE INVESTIGATION IS COMPLETE!



Rapid Fire #1

It is time to schedule the hearing...

Using the chat box:
share your "To Do" List
for coordinating the
hearing.



RAPID FIRE RECAP

Arranging for space

Arranging technology

Scheduling pre-hearing meetings with parties & advisors

Scheduling prehearing meetings of the panel

Providing report and record to panel and parties

Scheduling the hearing

Conflict checks

Call for written submissions

Accommodations

Other considerations?

PRE-HEARING MEETINGS

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



DECISION MAKER OR HEARING PANEL AS A WHOLE



Review evidence and report

Review applicable policy and procedures

Preliminary analysis of the evidence

Determine areas for further exploration

Develop questions of your own

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

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

Rapid Fire #2

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



RAPID FIRE RECAP



Development
of
introductory
comments

Initial discussion of
the evidence

Areas for
further
exploration

List of
questions for
the parties
and the
witnesses

Anticipation
of potential
issues

Logistics

Review of
any written
submissions
by the
parties

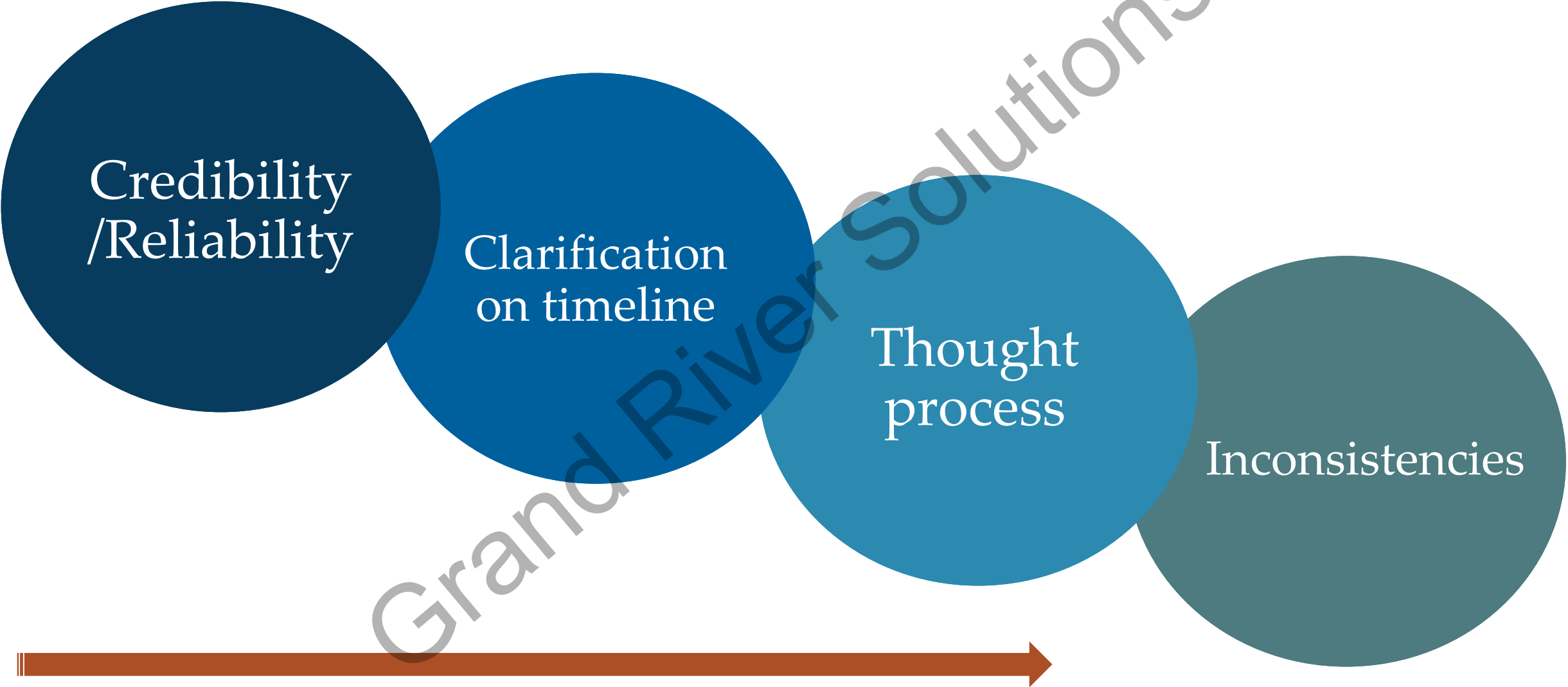
Other
considerations?

PRE-HEARING TASKS: DEVELOPING QUESTIONS

03(a)

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COMMON AREAS OF EXPLORATION



COMMON AREAS OF WHERE CLARITY OR ADDITIONAL INFORMATION IS NEEDED

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



THE HEARING

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ORDER OF PROCEEDINGS

1. Introductions and instructions by the Chair; Opening Statements

2. Presentation by Investigator

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

4. Closing Statements

5. Deliberation & Determination

OPENING INTRODUCTIONS AND INSTRUCTIONS BY THE CHAIR

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

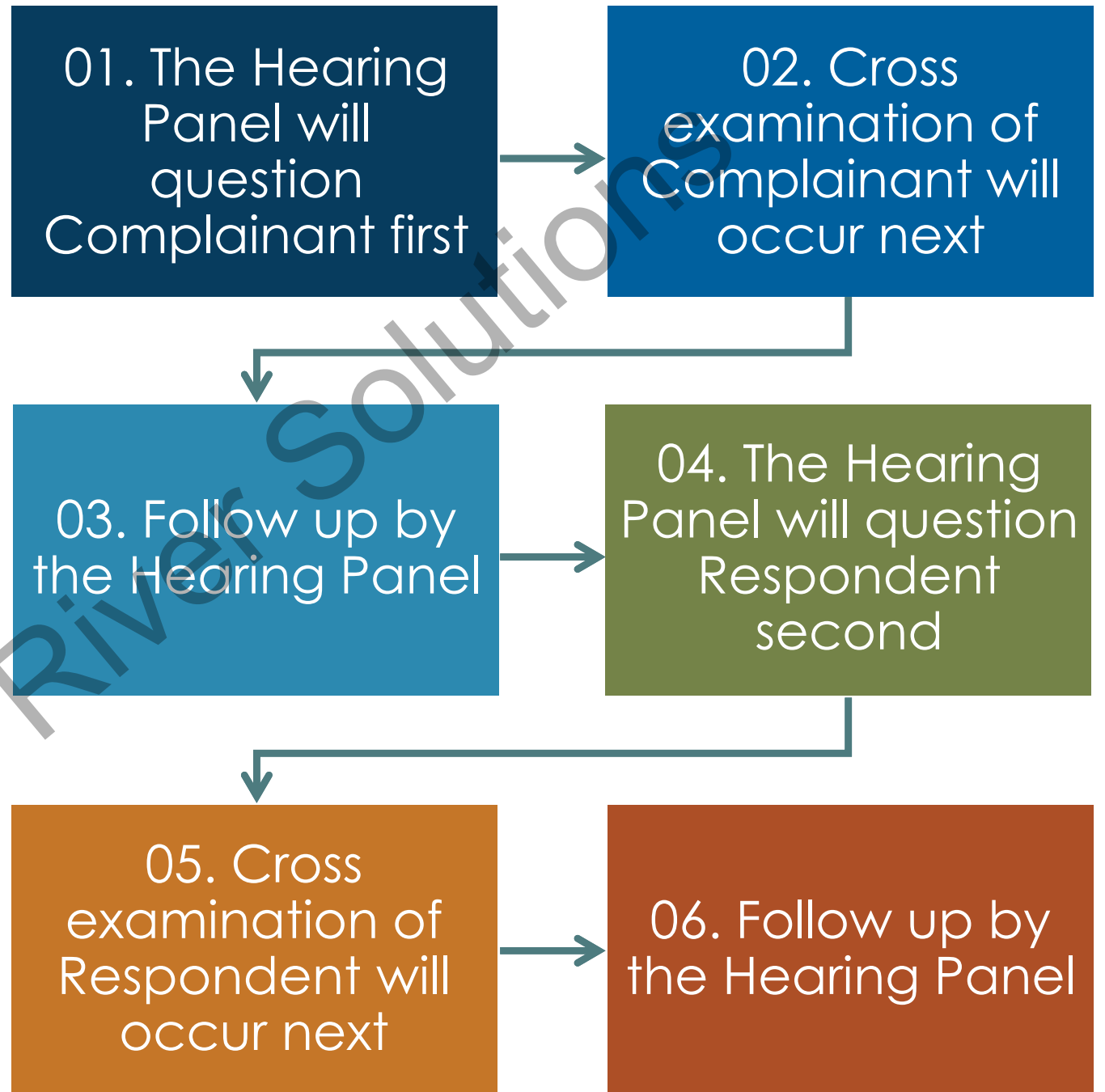


OPENING STATEMENTS

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

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

PRESENTATION OF INFORMATION & QUESTIONING OF THE PARTIES



QUESTIONING OF THE WITNESSES

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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)

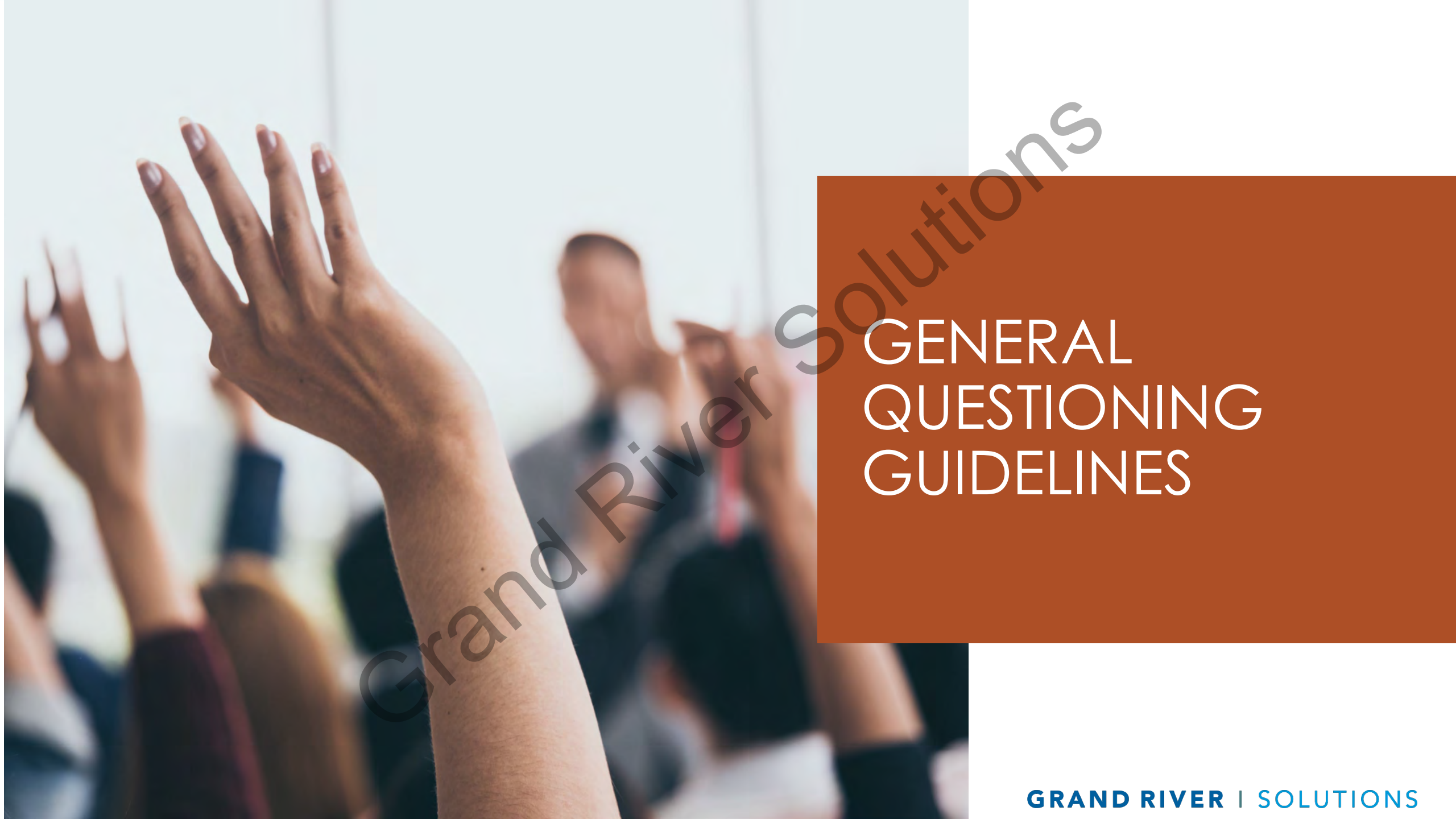
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Follow up by the Hearing Panel

CLOSING STATEMENTS

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

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



GENERAL
QUESTIONING
GUIDELINES

FORMAT OF QUESTIONING

The Hearing Panel or the advisor will remain seated during questioning

Questions will be posed orally

Questions must be relevant

WHEN QUESTIONING....

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



FOUNDATIONAL QUESTIONS TO ALWAYS CONSIDER ASKING

Were you interviewed?

Did you see the interview notes?

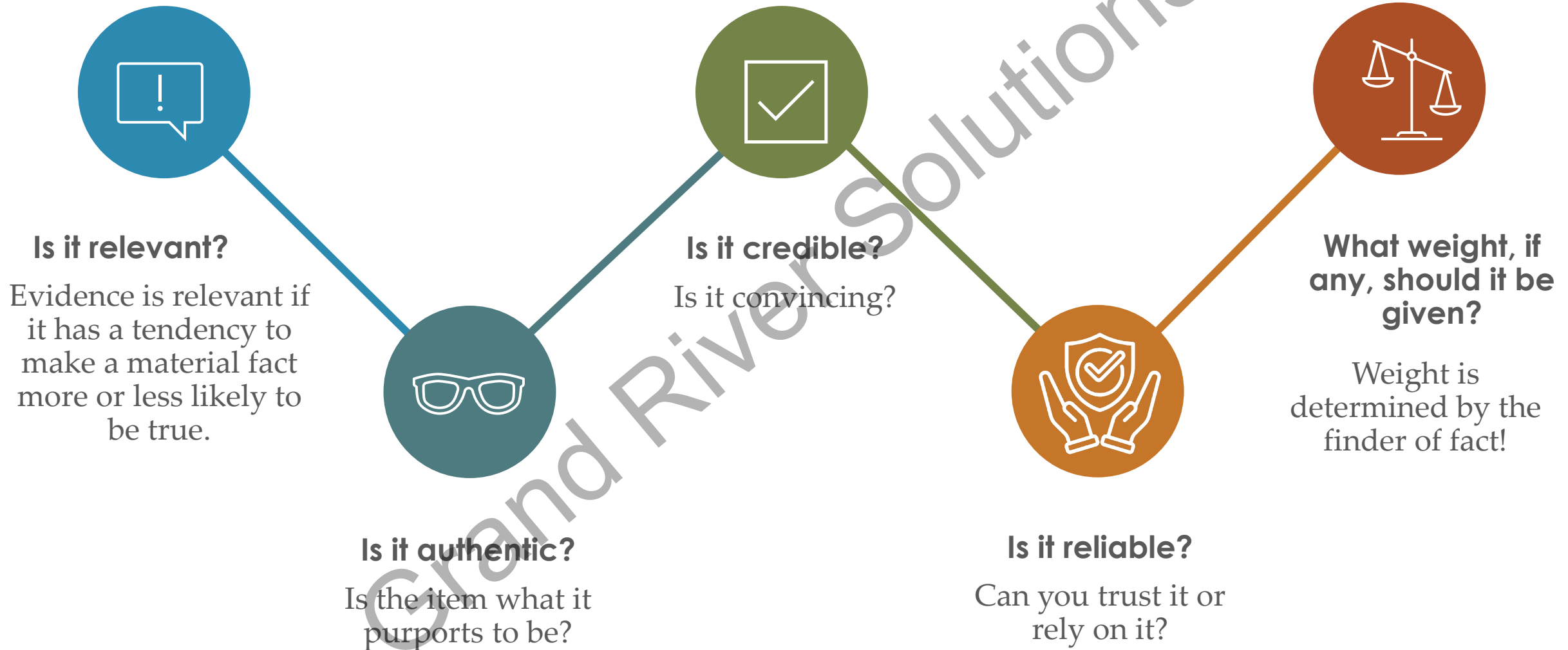
Did the notes reflect your recollection at the time?

As you sit here today, has anything changed?

Did you review your notes before coming to this hearing?

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

EVIDENTIARY CONSIDERATIONS DURING QUESTIONING



WHEN ARE QUESTIONS RELEVANT?

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



Credibility: The Person is convincing

RELIABILITY: THE PERSON'S STATEMENTS CAN BE TRUSTED



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Assessing Credibility and Reliability

NO FORMULA EXISTS, BUT CONSIDER THE FOLLOWING:

Sufficiency of detail and specificity

Internal consistency

Corroboration

Inherent plausibility

Material omission

Motive to falsify

Past record

Ability to recall events

CREDIBILITY/RELIABILITY ANALYSIS

STEP BY STEP

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

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

OPINION EVIDENCE

When might it be relevant?

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



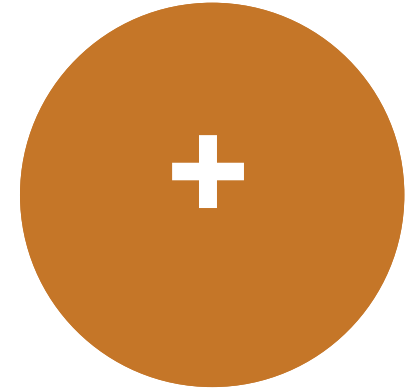
IS IT AUTHENTIC?



Question the person who offered the evidence.

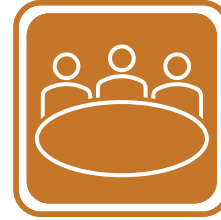


Have others review and comment on authenticity.



Are there other records that would corroborate?

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



Format/Structure of the Hearing



Format of Questions



Approach to Clarification

WHAT ARE SOME DIFFICULT QUESTIONS YOU STRUGGLE WITH ASKING?



THE “HARD” QUESTIONS

Details about the sexual
conduct

Seemingly inconsistent
behaviors

Inconsistent
evidence/information

What they were wearing

Alcohol or drug
consumption

Probing into reports of lack
of memory

HOW TO ASK THE HARD QUESTIONS

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



SPECIAL CONSIDERATIONS FOR QUESTIONING THE INVESTIGATOR

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

SPECIAL CONSIDERATIONS FOR PANELS

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

Go topic by topic

Ask other panelists if they have questions before moving on

Do not speak over each other

Pay attention to the questions of other panelists

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

THE DECISION MAKER'S ROLE IN ADVISOR QUESTIONING

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CROSS EXAMINATION

WHO DOES IT?

1

Must be conducted by the advisor

2

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

3

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

THE ROLE OF THE DECISION MAKER DURING QUESTIONING BY THE ADVISORS

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

THE PARTICIPANTS

Advisors: Prohibited Behavior

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



WHEN ASSESSING RELEVANCE, THE DECISION MAKER CAN:

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



RELEVANT VS. IRRELEVANT



Logical connection
between the
evidence and facts
at issue



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



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

AFTER THE HEARING

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Deliberations

PREPONDERANCE OF THE EVIDENCE

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

WEIGHING THE EVIDENCE & MAKING A DETERMINATION

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



FINDINGS OF FACT

- **A "finding of fact"**

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

- **For example...**

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

- **Next steps?**

POLICY ANALYSIS

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



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ALLEGATION: FONDLING

Fondling is the:

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

ANALYSIS GRID

Touching of the private body parts of another person

Undisputed:

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

For the purpose of sexual gratification

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

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

Without consent due to lack of capacity

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

Respondent: C was aware and participating

Witness 1: observed C vomit

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

Witness 3: C was drunk but seemed fine

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

ANALYSIS GRID

Touching of the private body parts of another person

Undisputed:

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



For the purpose of sexual gratification

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



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

Without consent due to lack of capacity

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

Respondent: C was aware and participating

Witness 1: observed C vomit

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

Witness 3: C took a drink but seemed fine

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



DID YOU ALSO ANALYZE...?

On campus?

Program or Activity?

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

Substantial control over respondent and context?

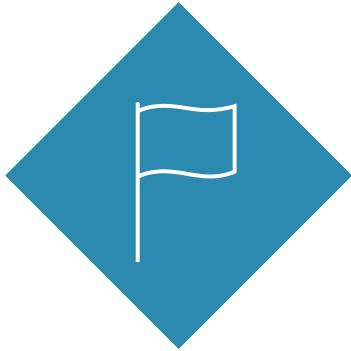
Complainant was attempting to access program/activity?

GOALS OF SANCTIONS/DISCIPLINE

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



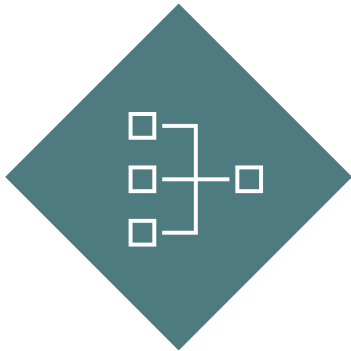
SANCTIONING



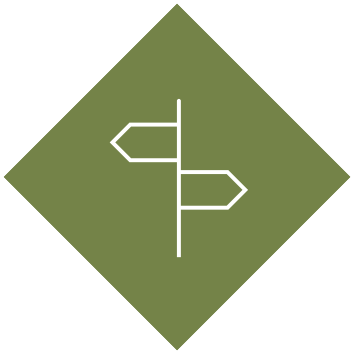
State Law



Learning Environment



System Policy



Measures Available

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THE SANCTION DOES NOT UNDO THE FINDING

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

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DETERMINING THE PROPER SANCTION

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



AGGRAVATING CIRCUMSTANCES

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



FINAL REPORT

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



THE FINAL DETERMINATION SHOULD STAND ON ITS OWN



S Simple and Easy to Comprehend

T Transparent/Clear

A Accurate

N Neutral/Unbiased

D Draw Attention to Significant Evidence and Issues

ADVISOR'S ROLE POST-HEARING

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



PRACTICAL APPLICATION

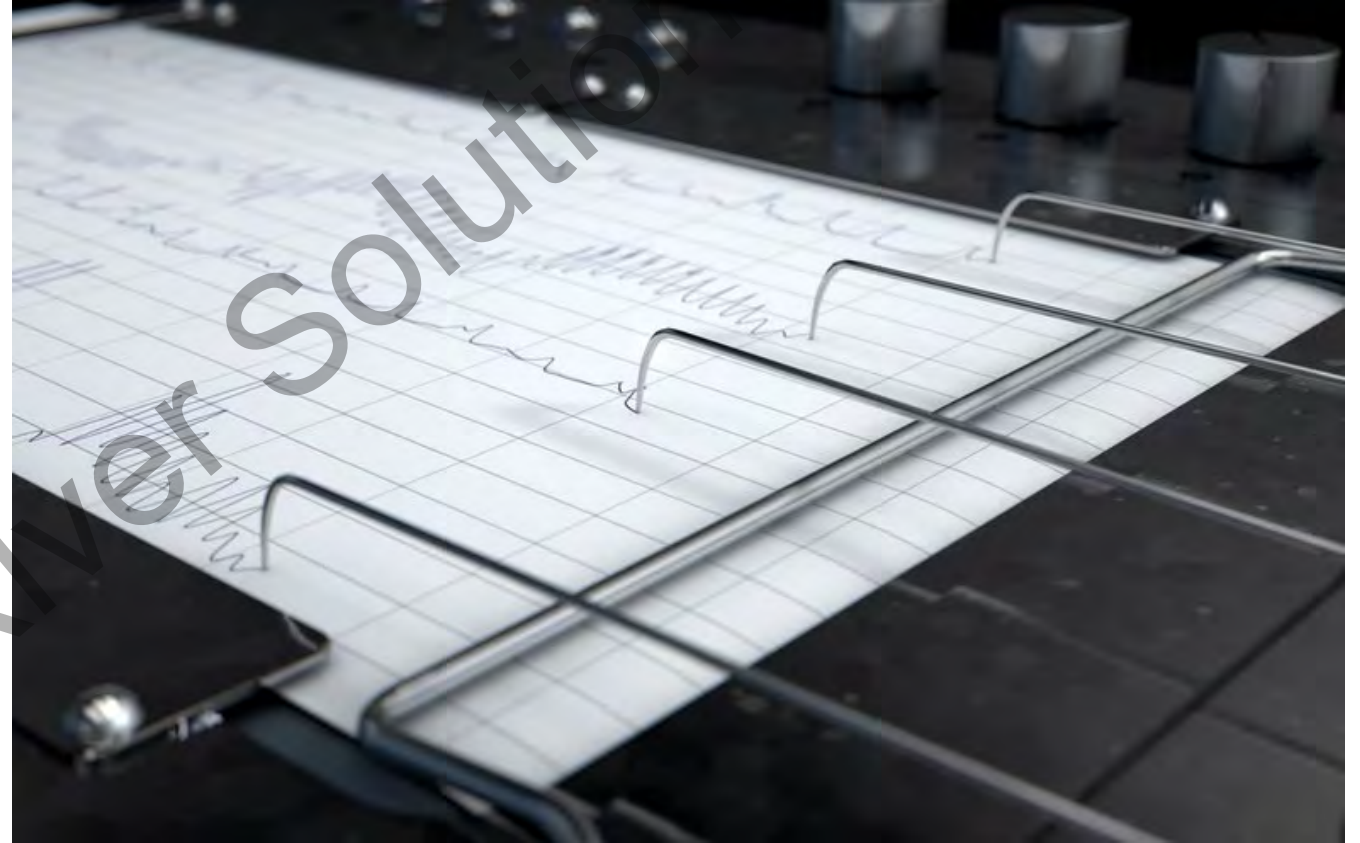
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SCENARIO 1

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

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

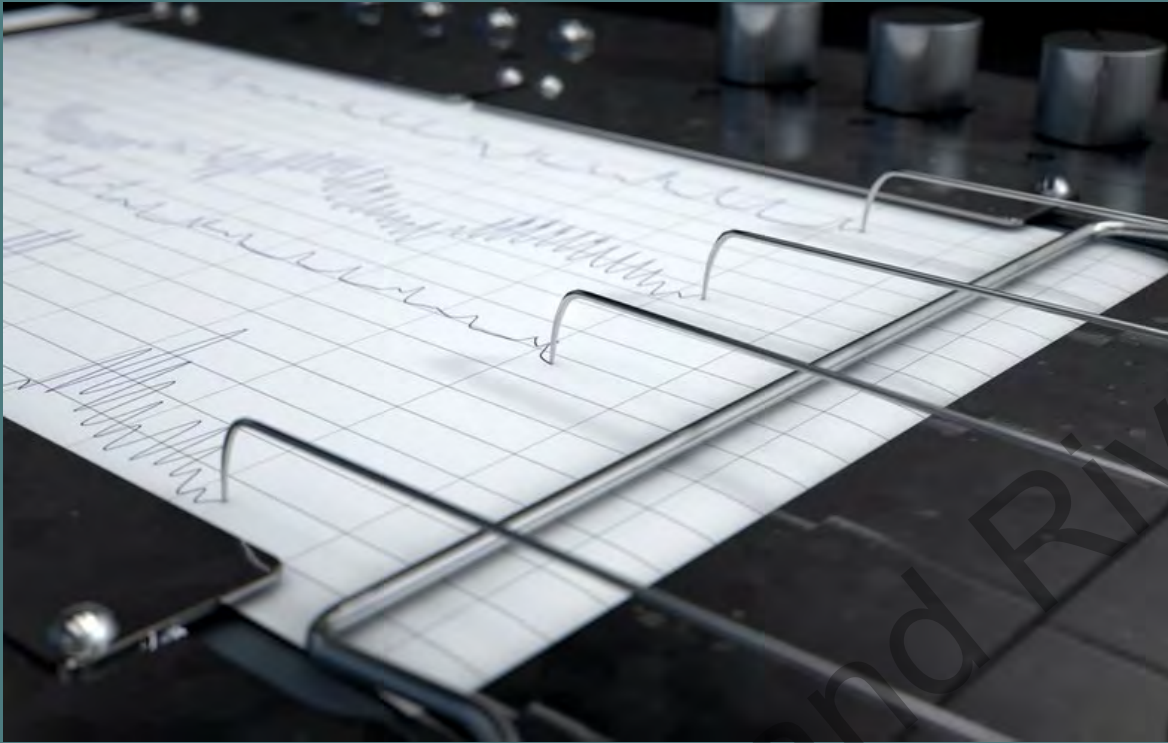


SCENARIO 2



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

SCENARIO 3



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

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

SCENARIO 4

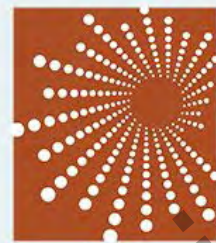


During the hearing, the Complainant becomes upset, shuts down, and stops answering question.

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

THE RIVER CONNECT IS MOVING TO LINKEDIN.

At the same place you do your business social media networking, you can now find The River Connect and all the great events, resources, and real-time discussions on the topics important to higher ed equity professionals.



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