



GRAND RIVER | SOLUTIONS

Introduction to Fair, Thorough, and Trauma Informed Sexual Violence Investigations

St. Mary's University

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Meet Your Facilitator



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Chantelle Cleary Botticelli 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.



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

Day One Agenda

01

Title IX's Requirements

02

The Proper Application of Trauma Informed Practices

03

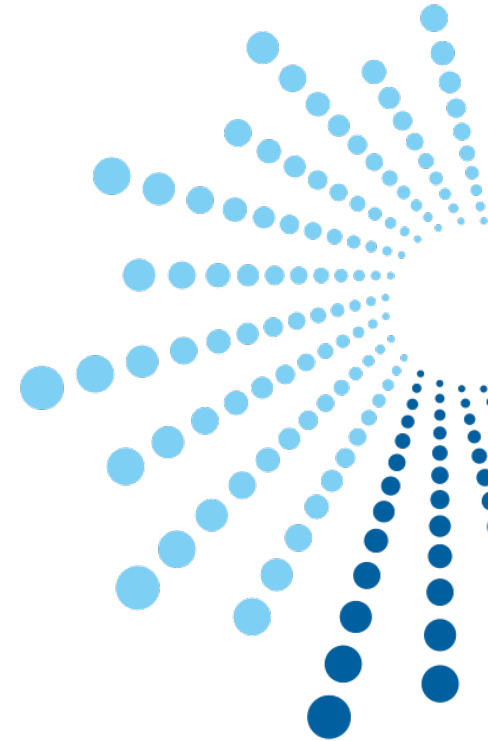
The Importance of Understanding the Potential Impact of Trauma

04

Developing an Investigative Strategy

05

Investigative Interviews





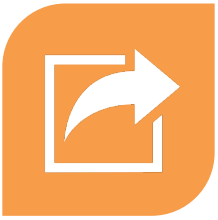
Title IX's Requirements

01

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Procedural Requirements for Investigations



Notice TO BOTH
PARTIES



Equal opportunity
to present evidence



An advisor of
choice



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



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



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



Notice Requirements

Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

the identities of the parties involved in the incident, if known,

the conduct allegedly constituting sexual harassment under § 106.30,

and the date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.

The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process



Advisor of Choice During the Investigation

The advisor can be anyone, including an attorney or a witness.

Institutions cannot place restrictions on who can serve.

Institutions can create rules and guidelines for participation in the investigation

No specific training required.



Written Notification of Meetings and Sufficient Time to Prepare





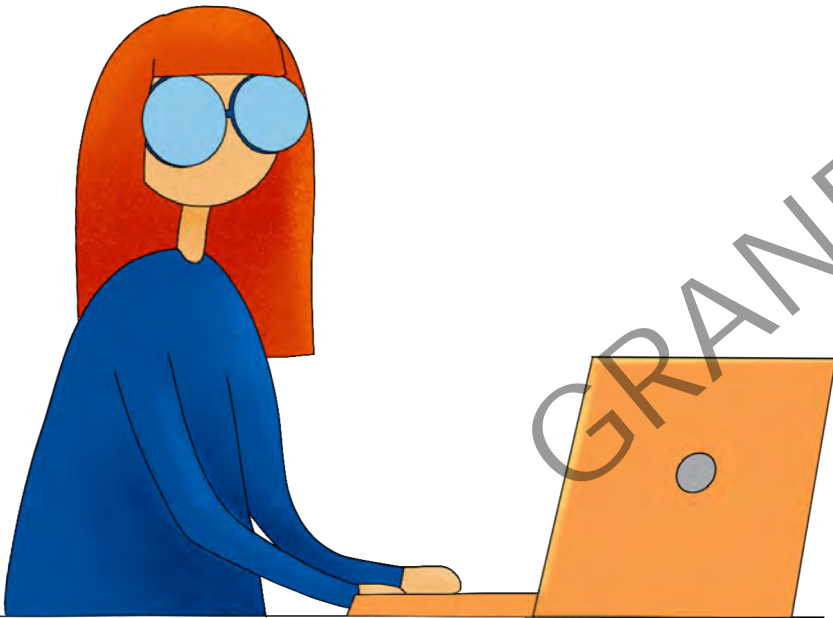
Equal Opportunity to Present Evidence

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Evidence Review

Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint.

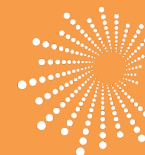
10 days to provide a written response.



Investigative Report and Review

After reviewing and considering the comments on the evidence, the investigator will generate a report that summarizes the relevant evidence.

That report will be shared with the parties and they will have 10 more days to comment.



Procedural Requirements for Hearings

Must be live, but can be conducted remotely.

You may not compel 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.



“Directly
Related” and
“Relevant
Evidence”

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Directly Related Evidence

Regulations do not define “Directly Related” Evidence.

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 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” Evidence

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

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

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

Evidence That is Not “Relevant”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition.

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 hearing, not investigation stage.



The Investigator



Can be the Title IX Coordinator, although that is disfavored.



Must be trained in accordance with the requirements in the regulations.



Must conduct the investigation in an impartial manner, avoiding bias/pre-judgment, and conflicts of interest.

The Requirement of Impartiality



Section 106.45(b)(1)(iii)

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

1. For or against complainants or respondents generally, or
2. An individual complainant or respondent

Impermissible Bias

Making a decision, determination, or finding that is based on something other than the evidence and specific facts of the case.

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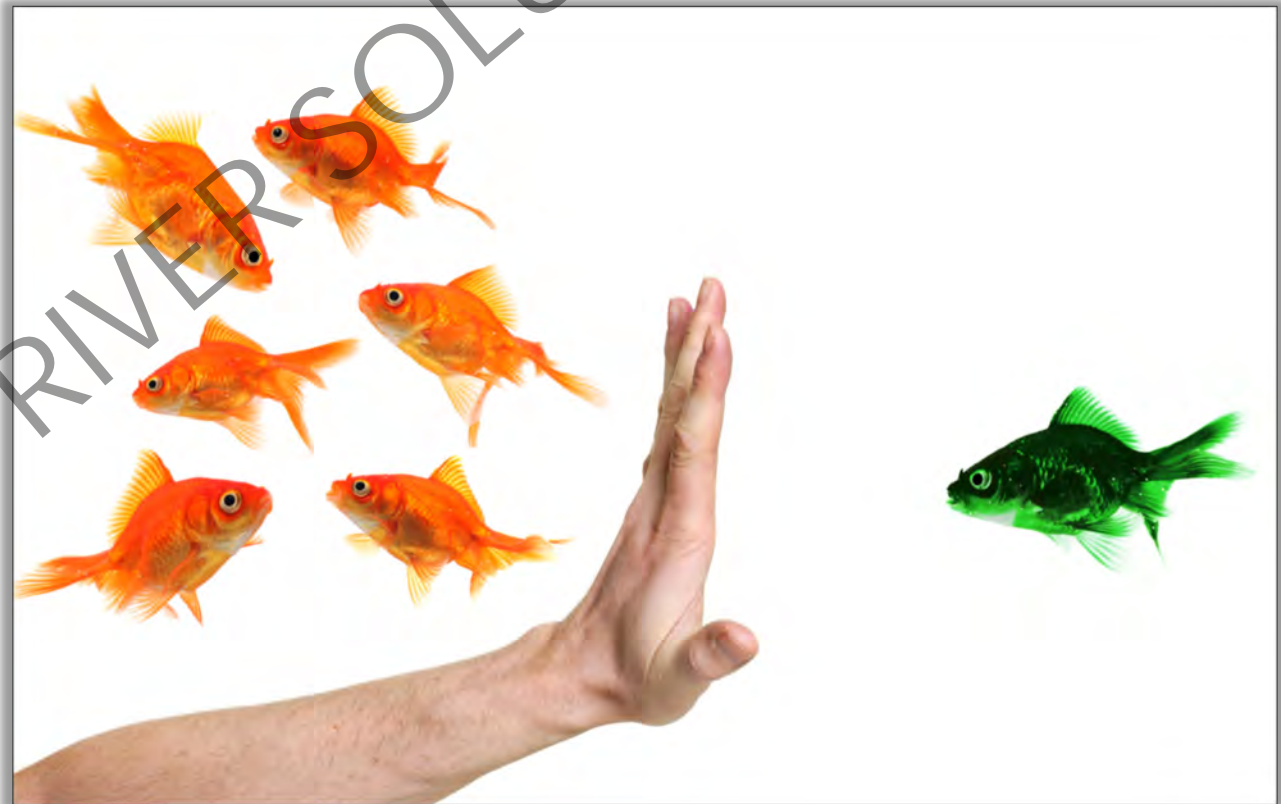
STOPS

What Constitutes Bias?

Conduct a fact-specific, objective inquiry based in common sense to determine bias.

Includes:

- Decision-making that is grounded in stereotypes
- Different treatment based on a person's sex or other protected characteristic
- A decision based on something other than the facts





Conflict of Interest

A black silhouette of a person's head and hand in profile, facing right. The person's index finger is pressed against their lips in a 'shh' or 'thinking' gesture.

Avoiding Prejudgment of the Facts

Requires that the Title IX professional refrain from making a judgement on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.

An Impartial Investigation is...

Not influenced by bias or conflict of interest.

Committed to decisions based on an objective view of the facts and evidence as you know them and as they evolve.

Truth seeking, not "your truth" confirming.

Trauma Informed Practices

In the preamble, the Department permits the use of trauma informed practices and recognizes that trauma informed practices can be used in an impartial and non-biased manner.

Trauma informed practices must be applied equally to all genders.



The Proper Application of Trauma Informed Practices

02

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Trauma informed practices provide tools/techniques for interviewing and engaging with the Complainant, Respondent, and Witnesses.



Format/Structure of the Interview



Format of Questions



Approach to Clarification

Trauma Informed Practices are Designed to:

01

Encourage thorough and complete investigations

02

Assist with recollection

03

Assist with recounting

04

Reduce potential for false information

05

Minimize unnecessary re-traumatization

06

Reduce Bias

Misapplication of Trauma Informed Practices

It is a misapplication of trauma informed principles to allow potential evidence of trauma to:

1. Influence the interpretation of a specific item of evidence;
2. Substitute for missing evidence;
3. To serve as a justification for not doing a full and thorough investigation;
4. Cause a biased belief in the veracity of one or more party.



The Importance of Understanding the Potential Impact of Trauma

03

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Trauma

An event that is experienced as terrifying, horrifying, or threatening and that is coupled with an actual or perceived lack of control.

Examples of Events that Might Trigger a Traumatic Response

Sexual Assault

Physical Assault
by a Stranger

Physical Assault
by an Intimate
Partner

A Car Accident

Accident that
causes serious
injury or death

Robbery

Medical Event?



When trauma occurs, there are very real changes in brain function that may affect a person's ability to make memory and to recount their experience.

Common Characteristics of Disclosures by a Trauma Brain

Inconsistent

Non-linear

Fragmented

Lack of detail

New information

Affect is unexpected

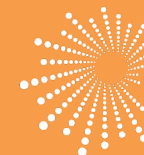
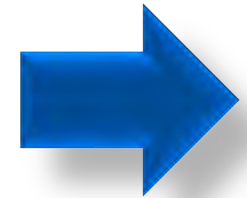


Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the victim was being dishonest.

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information

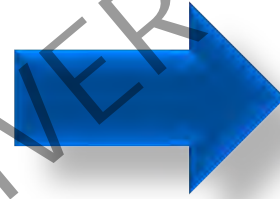


Not Credible



The Historical Conclusion...

False Report
Regretted Sex
Not Provable



CASE CLOSED



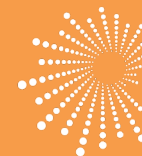
The Future

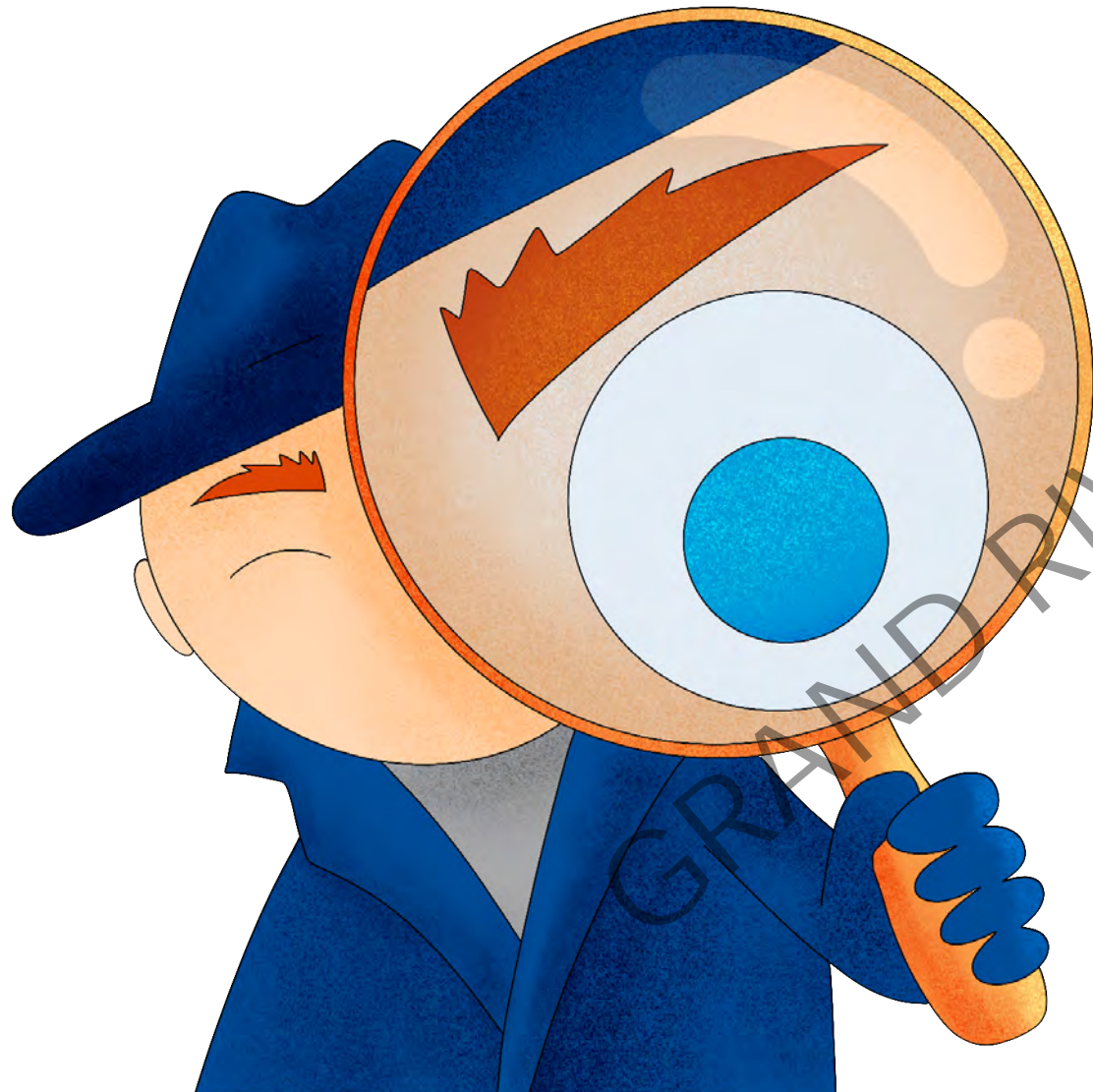
An understanding of trauma and its potential impact should encourage investigators to keep an open mind, and it should prevent investigators from immediately interpreting seemingly inconsistent behaviors with deception. An understanding of trauma provides another explanation for these seemingly inconsistent behaviors.

This is essential to a fair and thorough investigation.

When presented with the following characteristics in a disclosure,
an investigator who understands trauma will....

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information





**Continue their
investigation.**

When an investigator uses “trauma informed” tools, they are less likely to:



CONCLUDE, WITHOUT CONDUCTING A THOROUGH INVESTIGATION, THAT THE REPORTING INDIVIDUAL IS NOT CREDIBLE



PREMATURELY CONCLUDE THE INVESTIGATION



ASK QUESTIONS OR MAKE DECISIONS FOUNDED IN BIAS



CAUSE ADDITIONAL HARM



JEOPARDIZE FUTURE REPORTING





Developing an Investigative Strategy

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Essential Steps of an Investigation



Notice of Formal Investigation



Initial Interviews



Evidence Collection



Evidence Review

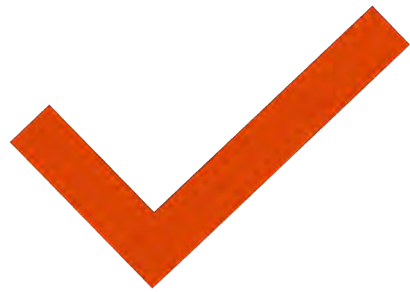


Additional Evidence Collection/Follow Up Interviews



Report Writing

Understand the Scope of the Investigation



Review the formal complaint



Ask questions if unsure

Identify the Claims and What Needs to be Proven

- What will the decision maker be asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

Rape. The penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

1. Did Respondent penetrate Complainant's vagina or anus?
2. Without Complainant's affirmative consent?
 1. What is the ground for lack of consent
 1. Did respondent fail to seek and obtain Complainant's affirmative consent?
 2. Did Respondent force Complainant?
 3. Did Respondent coerce Complainant?
 4. Was Complainant incapacitated and therefore incapable of consent?

Domestic Violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

1. Did Respondent engage in physical or sexual violence, or threats thereof against Complainant?

2. Are the parties in, or have they been in, a romantic or intimate relationship?

Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
Fear for the person's safety or the safety of others; or
Suffer substantial emotional distress.

1. Did Respondent engage in a course of conduct?
2. Was that course of conduct directed at Complainant?
3. Would Respondent's conduct cause a reasonable person to either
 1. Fear for their safety or the safety of others, or
 2. Suffer substantial emotional distress

The Process

Developing an Investigative Strategy



Investigation Timeline

Prior History

- Between the Parties
- Of the Parties

Incident

- Consent
- Type of Contact
- Injuries

Pre-Incident

- Communications
- Interactions
- Conduct

Post Incident

- Behaviors
- Communications

Title IX Hearing Requirements:

The Impact on Investigations



EVIDENCE COLLECTION



INVESTIGATE THE EVIDENCE



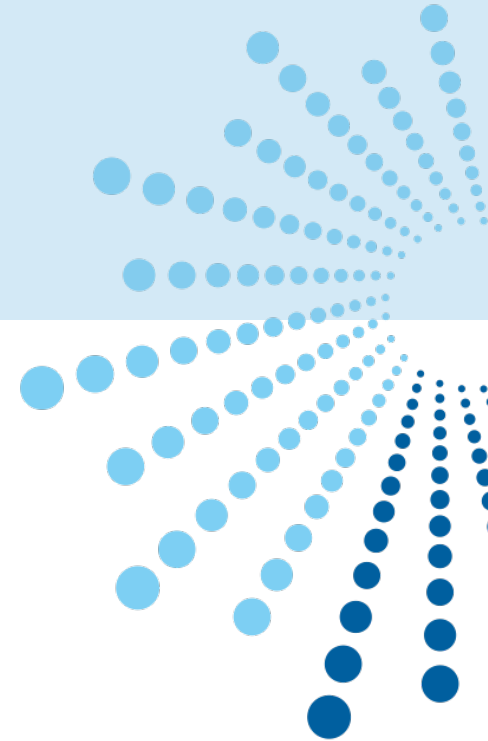
The Importance of Organization



05

Investigative Interviews

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Interview Objectives



Connect

Build rapport
Build trust
Empower



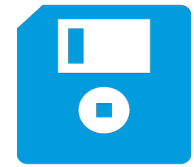
Listen

Allow interviewee to
share their experience



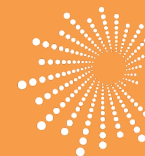
Clarify

Understand what you
have heard
Seek additional
information



Evidence Preservation

Text Messages
Photographs
Names and contact info
for witnesses



Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



If interviewing a party, inform them of their right to have an advisor present.



Prepare for the meeting

Areas of focus?

Other evidence?

Go back review what you have



Provide Written Notice of the Meeting

Advise the parties/witnesses that you will be collecting evidence

Set Expectations

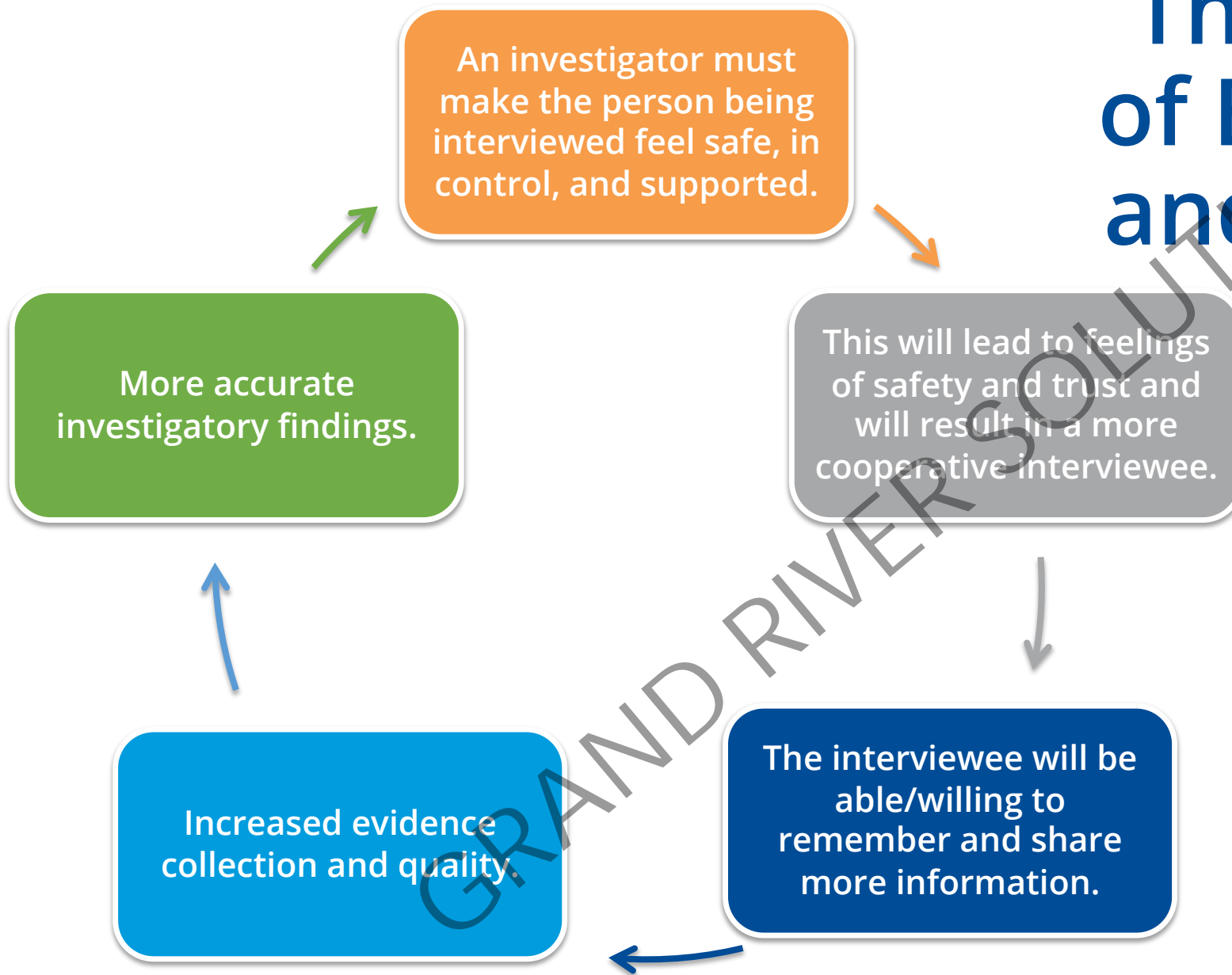
What they should expect of you

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation
- This will not be their only opportunity to speak with you

What you expect of them

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks

The Importance of Empowerment and the Power of Empathy



How do we...



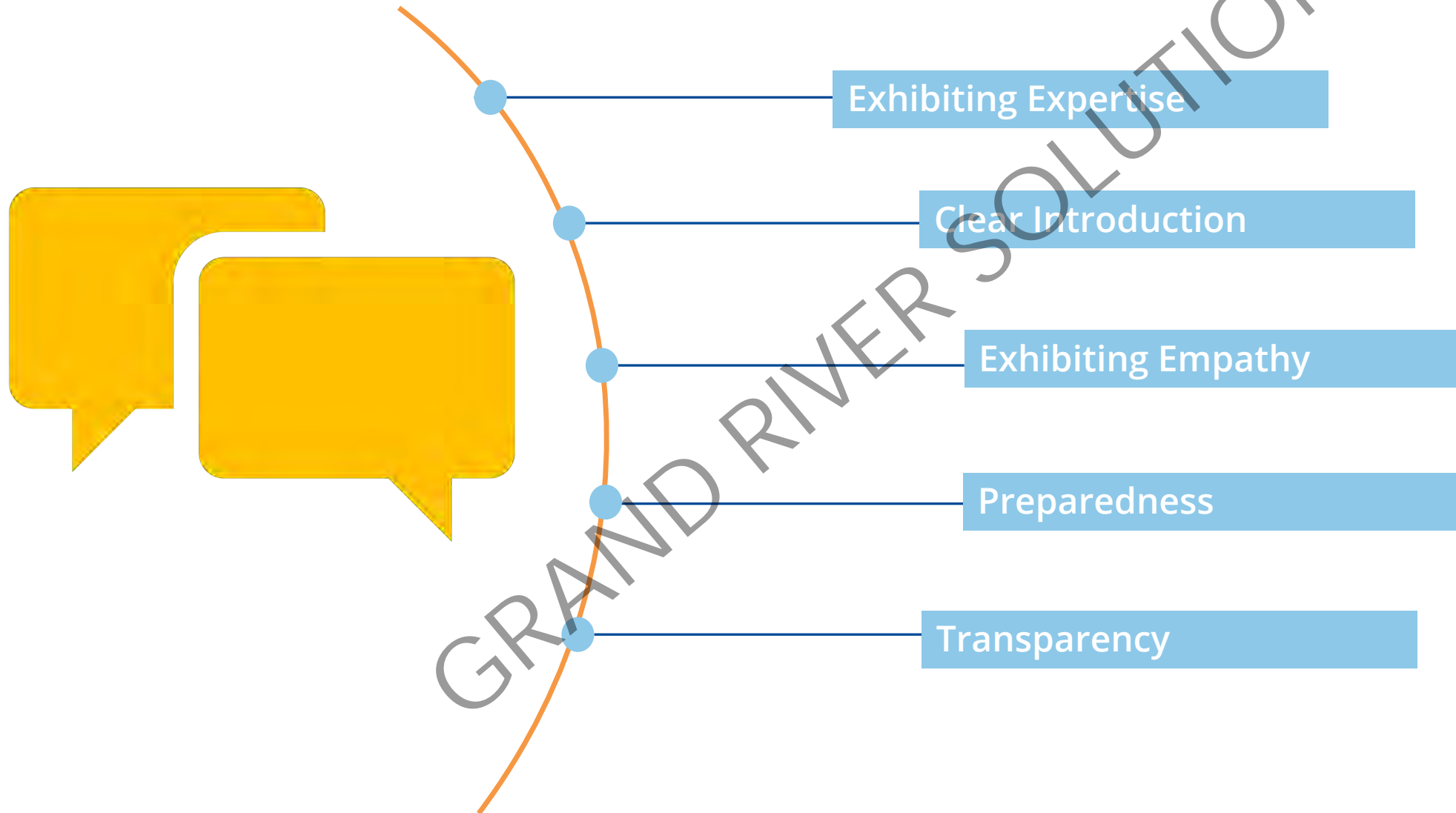
Build Rapport
and Trust?



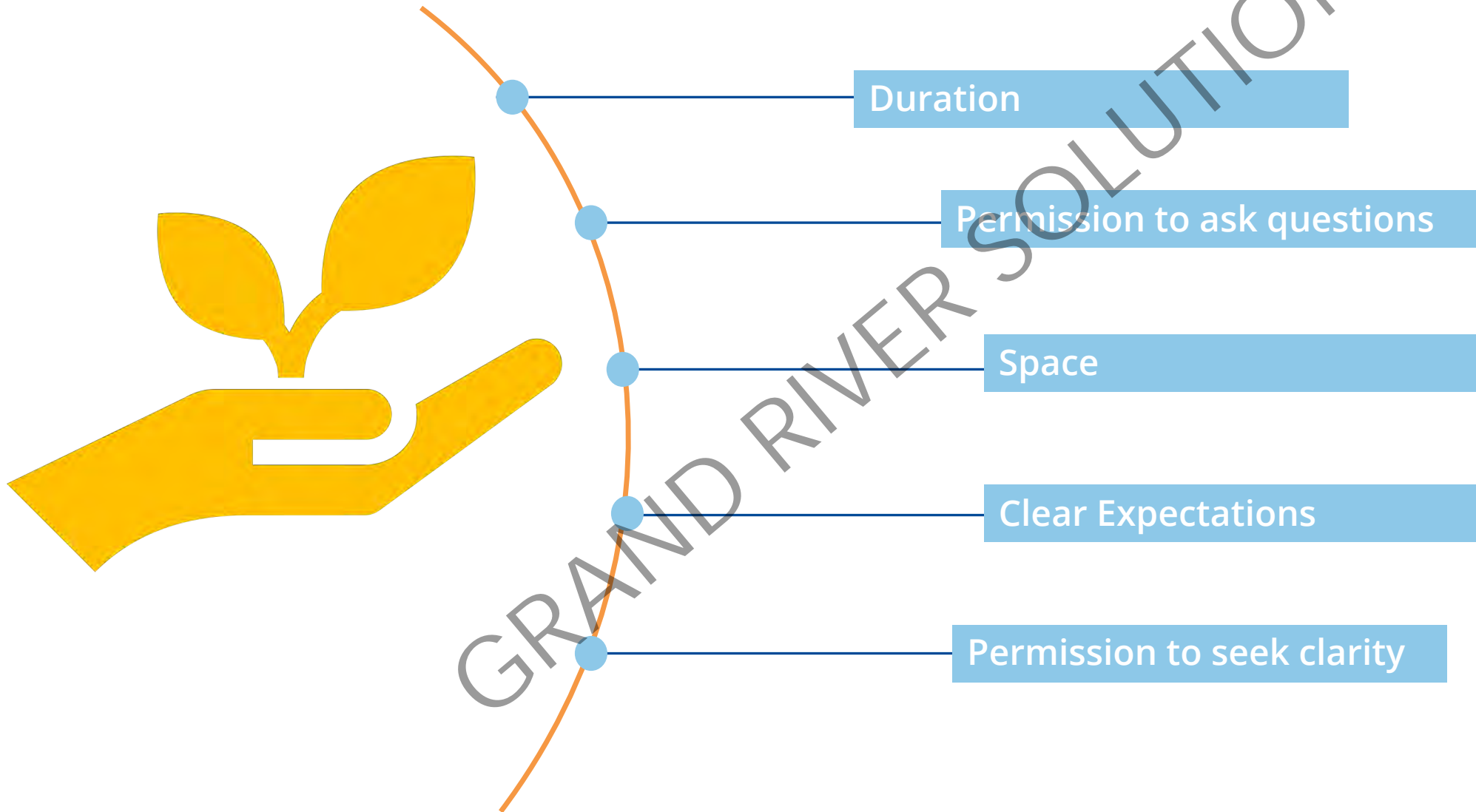
Empower?



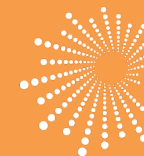
Rapport and Trust



Empowerment



Investigative Interviews



Start the interview by eliciting a narrative...

Where would you like to begin?

Start where you are comfortable and share what you are able to remember.

What are you able to tell me about your experience?

Allow the person to speak uninterrupted. This takes patience.



Next, ask questions that are intended to clarify and more deeply explore the information and details provided by the person in their narrative.

Do Ask:

- Interview for clarification
- Help me understand
- Can you tell me more about...?
- Is there anything else you can share about...?

Avoid:

- Interrogation
- Questions that blame
- Questions that imply doubt
- Leading questions

Explore implicit memories by asking questions about the sensory experience.

- What are you able to tell me about:
 - What you saw?
 - What you heard?
 - What you smelled?
 - What you felt?
 - What you tasted?
- What are you able to tell me about any images, smells, or sounds that keep coming back to you?



"I felt an animal. I think it was dead. I was terrified that he hurt it. I thought he would do the same to me."



"Help me understand why you keep rubbing your wrists like that?"

A close-up photograph of a camera lens, likely a macro lens, resting on a dark, textured wooden surface. The lens is positioned on the left side of the frame, with its glass element and internal elements visible. The background is dark and out of focus, emphasizing the lens and the text.

Capture the Entire Experience

- Ask about the physical and emotional reactions to the incident.
- Conclude with very open-ended questions:
 - What was the most difficult part of this experience for you?
 - Is there something that stands out/that you just can't stop thinking about?
 - Is there anything more that you would like me to know?

The Before

At some point during the interview, it is also important to explore the prior history, if any, between the reporting individual and the accused.

And The After

It is also important to explore the events following the incident. Oftentimes, the best evidence is produced after the incident.

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction
 - "Has anyone expressed concern about you since the assault?"
- Communication/contact between the complainant and respondent

Throughout the Interview



Explain your questions, especially the difficult ones.

How much did you drink? What they hear: this is your fault because you were drinking.



Do not ask leading questions.



Watch your tone.



Do not rush.



LISTEN!!!!!!!!!!



Pay attention to and document information that might lead to additional evidence.



Document questions asked. Especially when a response is not provided.

At the Conclusion of the Interview



Discuss submission of evidence.



Explain statement review process.



Explain next steps in the process.



Keep the lines of communication open.



Review available support and prohibition against retaliation.

After the Interview: Actions



Memorialize the Interview in writing.

Notes
Summary
Transcript



Provide opportunity for the party or witness to review it.



Provide opportunity for party or witness to provide a response.



Incorporate the response.

After the Interview: Reflection



Reflect.



Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

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