



Association of
Title IX Administrators

Minnesota State Colleges and Universities

Investigator Training

June 4-5, 2025

WELCOME!

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Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



This training focuses on the best available research and field-tested practices for effective investigations.



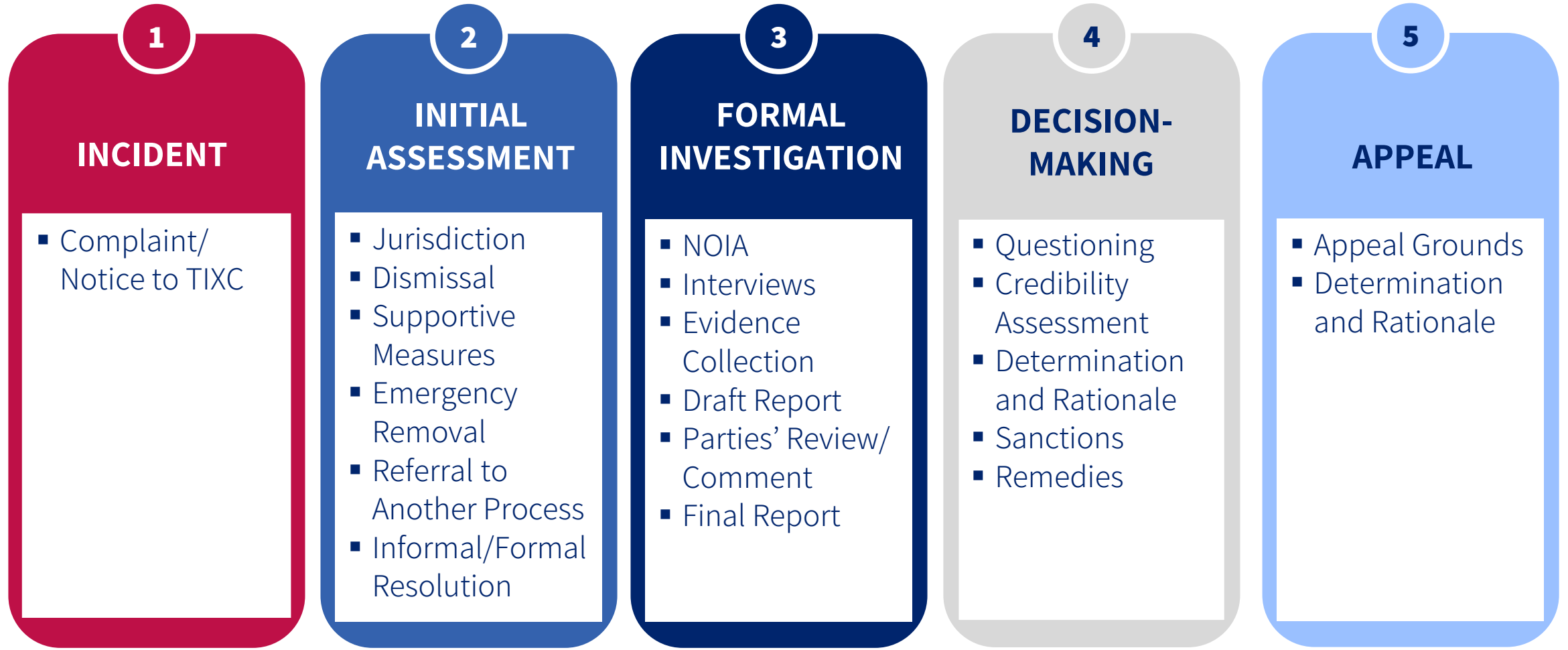
Practitioners will learn how to apply sophisticated investigation skills to an array of Title IX complaints.



Our goal is to provide you with an opportunity to refine your investigative skills to increase proficiency and confidence.

Title IX Resolution Process Refresher

Formal Grievance Process Overview



Investigation Overview

10 Steps of Investigations:

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Thorough, Reliable, Impartial Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

INCIDENT INVESTIGATION
SUMMARY

Incident Date:

Review Date:

by:

Summary:

Root Causes:

No Blue Shoes

Ronald McDonald Unified School District

- ↳ Student Conduct Manual

- ↳ Dress Code

- ↳ Special Circumstances

“No student shall be permitted to wear blue-colored shoes in the school cafeteria on Tuesdays during the school year when school is in session.”

No Blue Shoes

- On Friday, May 16, Frank S. reported that he saw Joe V. in the cafeteria last Tuesday, May 12 during his lunch period between 3rd and 4th hours.
- Frank S. said Joe V. was wearing blue shoes.
- Frank has finals next week but will participate in the investigation.



No Blue Shoes

- What questions do the allegations pose?
 - Was Joe in the cafeteria?
 - Was it on a Tuesday?
 - Was it during the school year and school hours?
 - Was Joe wearing blue shoes?



No Blue Shoes

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*How will you answer
these questions
with evidence?*



No Blue Shoes

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 - Was it during the school year and school hours?
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How will you answer these questions with evidence?

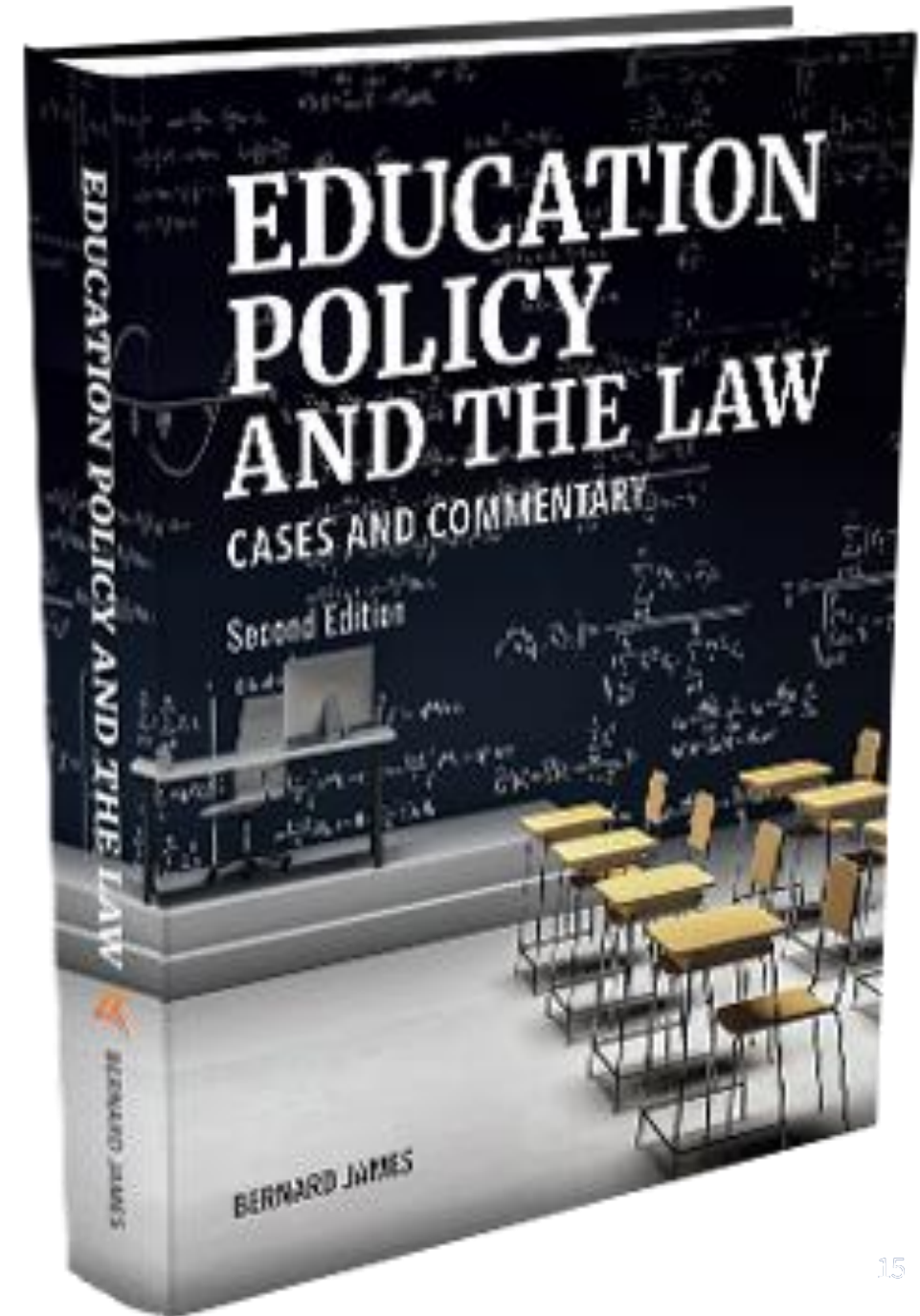
How will you structure your report to present the evidence?



Civil Rights Investigations

Policy vs. Law

- Education Civil Rights Law is for institutions
 - Institutions, not individuals, are subject to these laws
- The law dictates the policies
- Policy is for institutional community
 - Process and conduct expectations for the community and its members
- Civil Rights investigations are based on *policy*, not the *law*



Investigation Ingredients

- Investigations are simple, but not easy
- Once you've established jurisdiction* then the investigator needs to know:
 - The rule (policy)
 - The allegation

*programmatic, disciplinary, subject matter



Investigation Ingredients

■ The Allegation

- Complainant(s) and Respondent(s)
- Geography, setting, context, time and/or timing
- Conduct and/or circumstances at issue

■ The Rule

- Institutional policy
- Specific provisions
- Definitions or clarifications



Example

- Policy Provision
 - “Stalking – Engaging in a course of conduct, directed at the Complainant, that would cause a reasonable person to fear for their safety, fear for the safety of others, or suffer substantial emotional distress.”
- Definition
 - Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
 - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Model of Proof

- The policy provision (qualified by definitions, where applicable) is the roadmap
 - What am I investigating?
 - What questions do I need to answer with evidence?
 - What information would help me answer those questions?
 - When/how should I collect that information?
 - How should I structure my report to highlight that information?

Model of Proof

“Stalking – Engaging in a course of conduct / directed at the
Complainant / that would cause a reasonable person to fear for their
safety **OR** fear for the safety of others **OR** suffer substantial
emotional distress.”

Stalking Model of Proof

- Engaging in a course of conduct,
- On the basis of sex,
- Directed at the Complainant,
- That would cause a reasonable person to
 - fear for their safety, or
 - fear for the safety of others, or
 - suffer substantial emotional distress.

Consent Construct

ATIXA's Model Consent Policy Definition

Consent is:

- knowing,
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity



Overview of The Three Questions

1. **FORCE:** Was force used by the Respondent to obtain sexual or intimate access?
2. **INCAPACITY:** Was the Complainant incapacitated?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated

Note: The intoxication of the Respondent cannot be used as a reason they did not know of the Complainant's incapacity

3. **CONSENT:** What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

Force

Was force used by the Respondent to obtain sexual or intimate access?

Physical Violence

- Hitting, restraint, pushing, kicking, etc.

Threats

- Objective and subjective analysis of the viability of the threat (true threat if public)

Intimidation

- Implied threat that menaces and/or causes reasonable fear

Coercion

- Unreasonable amount of pressure for sexual access (e.g., isolation, frequency, intensity, duration)

Incapacity

Was the Complainant incapacitated?

- **Incapacitation:** a state where an individual cannot make rational, reasonable decisions because they **lack the capacity** to give knowing consent
 - Unable to understand who, what, when, where, why, or how
 - Incapacity ≠ impaired, drunk, intoxicated, or under the influence
 - Situational awareness
 - Consequential awareness

Incapacity, Cont.

- What was the reason for incapacity?
 - Alcohol or other drugs (prescription or non-prescription)
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious
- Blackouts are frequent issues
 - Blackout ≠ incapacitation (automatically)
 - Blackout = working memory is functional; short-term memory not retained
 - Partial blackout must be assessed as well
 - Although memory is absent in a blackout, verbal and motor skills may still function, as may decision-making capacity

Evidence of Incapacity: Potential Context Clues

- Slurred speech
- Odor of alcohol on the breath
- Shaky equilibrium; disorientation
- Passing out/unconsciousness
- Throwing up
- Known blackout
- Outrageous or unusual behavior (requires prior knowledge)

Incapacitation determination is made contextually
given all the available relevant evidence



Incapacity Analysis

- If the Complainant **was not** incapacitated, move to the Consent Analysis
- If the Complainant **was** incapacitated, but:
 - The Respondent did not know, **AND**
 - The Respondent would not have reasonably known of the Complainant's incapacity = no policy violation, move to Consent Analysis
- If the Complainant **was** incapacitated, and:
 - The Respondent **knew it or caused it** = policy violation
 - The Respondent **should have known it (reasonable person)** = policy violation
 - **Remember:** the Respondent's own intoxication cannot be used as a defense because of the reasonable person standard (though it could mitigate sanctions)

Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
 - If so, was the Complainant acting differently than previous similar situations, or out-of-character?
- Evaluate what, if anything, the Respondent observed the Complainant consuming
 - Use a timeline analysis
- Determine if the Respondent provided any substances to the Complainant

Consent Analysis

What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

- Is there any relevant sexual or intimate pattern or history between the parties?
- What verbal and/or non-verbal cues were present during any acts or portion of the encounter that the parties agree were consensual? Non-consensual?
 - Contemporaneous communication
- Critical to gather evidence regarding detailed and specific intimate behaviors
- Investigators sometimes think it isn't trauma informed to probe, but probing is part of the job – Investigators must probe gently and with tact

Civil Rights Investigators

What makes a good investigator?

- Intellectually curious
- Empathetic
- Highly analytical
- Excellent organization and writing skills
- Calculated and impartial
- “People skills”
- Active listening skills

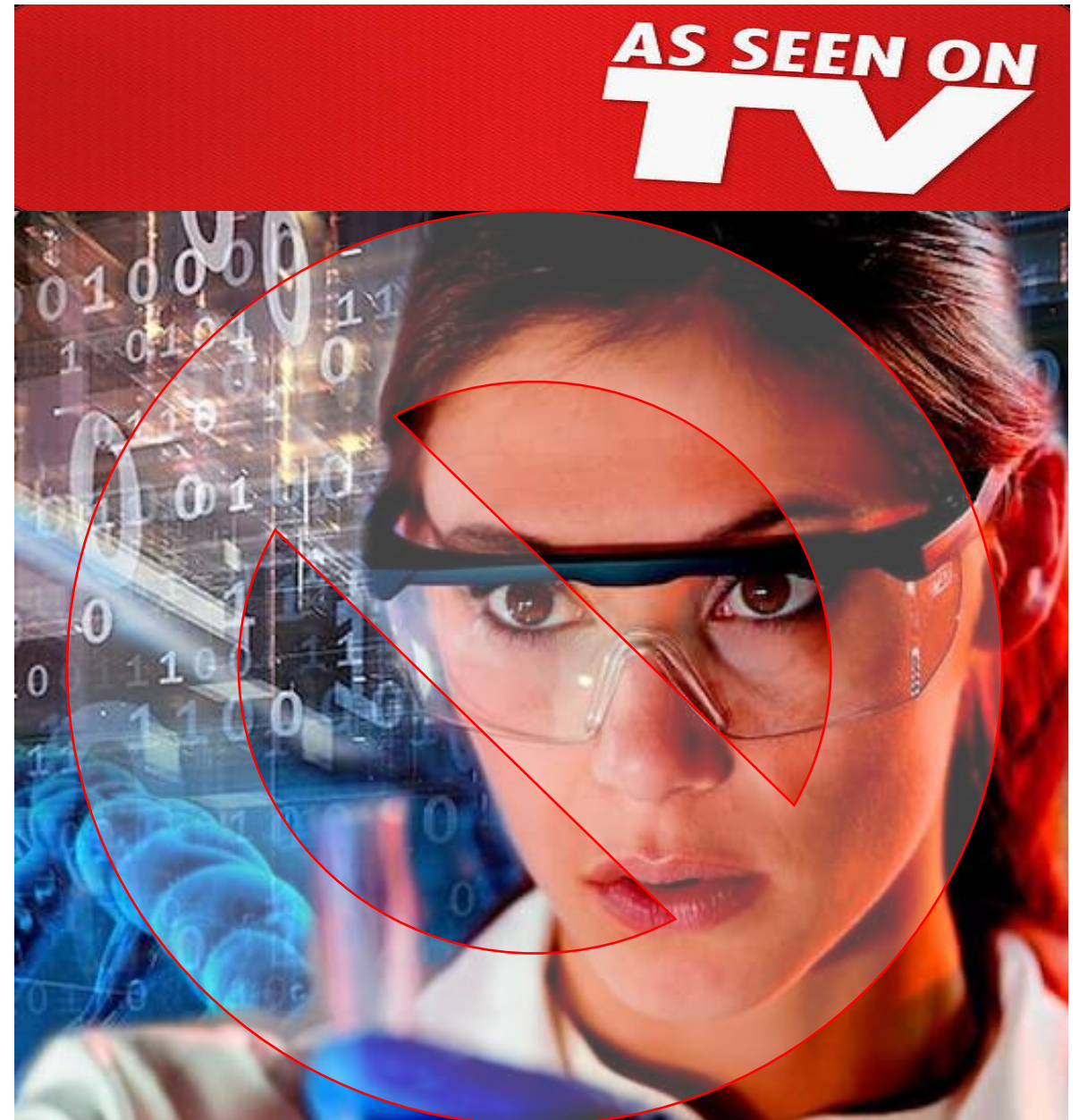


The primary type of evidence is testimonial.

- Intake statement from Complainant and witnesses.
- Interviews with the parties, involved administrators, witnesses, and others.

Other types of evidence may include:

- emails, text/social media conversations, images, video, card swipes, schedules, entry & exit logs, surveillance footage.



“Unbiased”

- free from favoritism or prejudice
- implies that a person or entity is not influenced by **their own beliefs or opinions** when making judgments or decisions
- does not mean you do not **have** biases
- “A conclusion without supporting evidence”

Affinity

Race

Hair

Stereotype

Beauty

Confirmation

Culture

Positional

Gender

Accent

Religion

Conformity

Self-awareness

- One of the most valuable investigator traits
- Pay attention to your presuppositions
- Control your nonverbals
 - You are an old stranger in a position of authority.
 - Not really, but this is how the majority of your interview subjects will see you.
 - Your subjects expect you to judge them and will be on guard.
 - You will hear expressions of preferences, decisions, behaviors that do not align with your own.
- Treat all parties the same.
- Control verbal interactions, nonverbal responses, suppositions, and conclusions.
- Second-guess your “gut instinct” or “intuition.”

Scenario

- Complainant and Respondent met at the library
- They started to date on and off
- One night, they had dinner and wine at Respondent's apartment
- They ended up drinking 3 bottles of wine between the two of them
- Respondent was very drunk, and engaged in sex with Complainant despite Complainant's protests
- Complainant was not as drunk as Respondent
- Respondent argues that even if they might have had non-consensual sex with Complainant, it's not their fault because of how drunk they were
- Respondent believes they were so drunk that they didn't even know they were having sex with Complainant, let alone that it was something Complainant didn't want

Interviewing Skills

Interviewing Skills

Investigators build and improve skills over time and with practice:

- Appropriate questioning
- Active listening
- Seeking clarification
- Identifying gaps
- Body language and non-verbal communication (use caution)



Interviewing Considerations

- Outline issues ahead of time
 - Open-ended questions designed to elicit narrative responses
 - Listen to answers before asking additional questions
 - Note discrepancies or areas for follow-up
- Use active listening skills
 - Eye contact
 - Head nodding
 - Summarization/restating
- Avoid tangents or distractions
- Insert logical additional questions flowing from interviewee's answers

Questioning Considerations

- An interview is a conversation designed to elicit information in a non-accusatory manner
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; answer all questions
- Ask purposeful questions:
 - What do I need to know?
 - Why do I need to know it?
- Use policy definitions to inform questions
- Avoid unnecessary repetition or traumatic re-triggering
- Choose or blend effective questioning strategies/methodologies

Questioning Tips

- Listen carefully
- Seek to clarify terms that have multiple meanings
 - “We hooked up” or “She was acting weird”
- Avoid:
 - Accusatory or argumentative questions/tone
 - Confusing questions
 - Blaming questions
 - “Double-barreled” questions
 - Evaluative responses
 - Sanitizing language (use the terms used by the interviewee)



Questioning Techniques



Following
vs.
Leading



Explaining
vs.
Defending



Clarifying
vs.
Challenging



Curiosity
vs.
Suspicion

Interview Challenges: Resistance, Reluctance, and Lying

- Offer a reminder of Investigator's role as a neutral fact-gatherer
- Maintain rapport and avoid accusation
 - “Help me understand...”
 - “I think I’m missing something...”
 - “Can you tell me more about that?”
- Use language mirroring
- Allow opportunity for interviewee to restate
- Review retaliation, amnesty policies, expectation of truthfulness
- Avoid statements reflecting moral judgment

Final Interview Questions

- “Is there anyone else that you think we should talk to?”
- “Are there any questions you expected, but that we didn’t ask?”
- “Is there anything else you think we need to know?”
- “What questions should I pose to other witnesses/parties?”
- **FOR THE PARTIES:** “Are there any questions that you would like us to ask any witness or other party?”

Interview Documentation and Review

- Maintain interview transcripts or written summaries
 - **Transcript:** word-for-word documentation of a recorded interview
 - **Summary:** Investigator's summation of all information gathered during entire interview (may be several paragraphs or pages, depending on interview length)
- Recording is an increasingly common practice
- Parties and witnesses should be invited to review their interview transcript/summary
 - Verify accuracy, clarify where needed, and provide additional information

Building Rapport

Building Rapport

- Rapport is meant to create a level of transparency and trust
 - Reinforce neutrality and impartiality with authenticity
 - Set the tone for the interview
 - Establish expectations
- Rapport building occurs throughout the interview, not just in the first five minutes
 - Ongoing effort to build and maintain rapport
- Do not sacrifice professionalism or neutrality to build rapport

Ethical Considerations



Professional
vs.
Buddy-Buddy



Understanding
vs.
Agreeing



Neutrality
vs.
Sympathy



Equity
vs.
Advocacy

Practical Considerations

Attire

Location

Notetaking

Recording

Response to
Emotions

Duration

Breaks

Entry/Exit

The Introductory Spiel

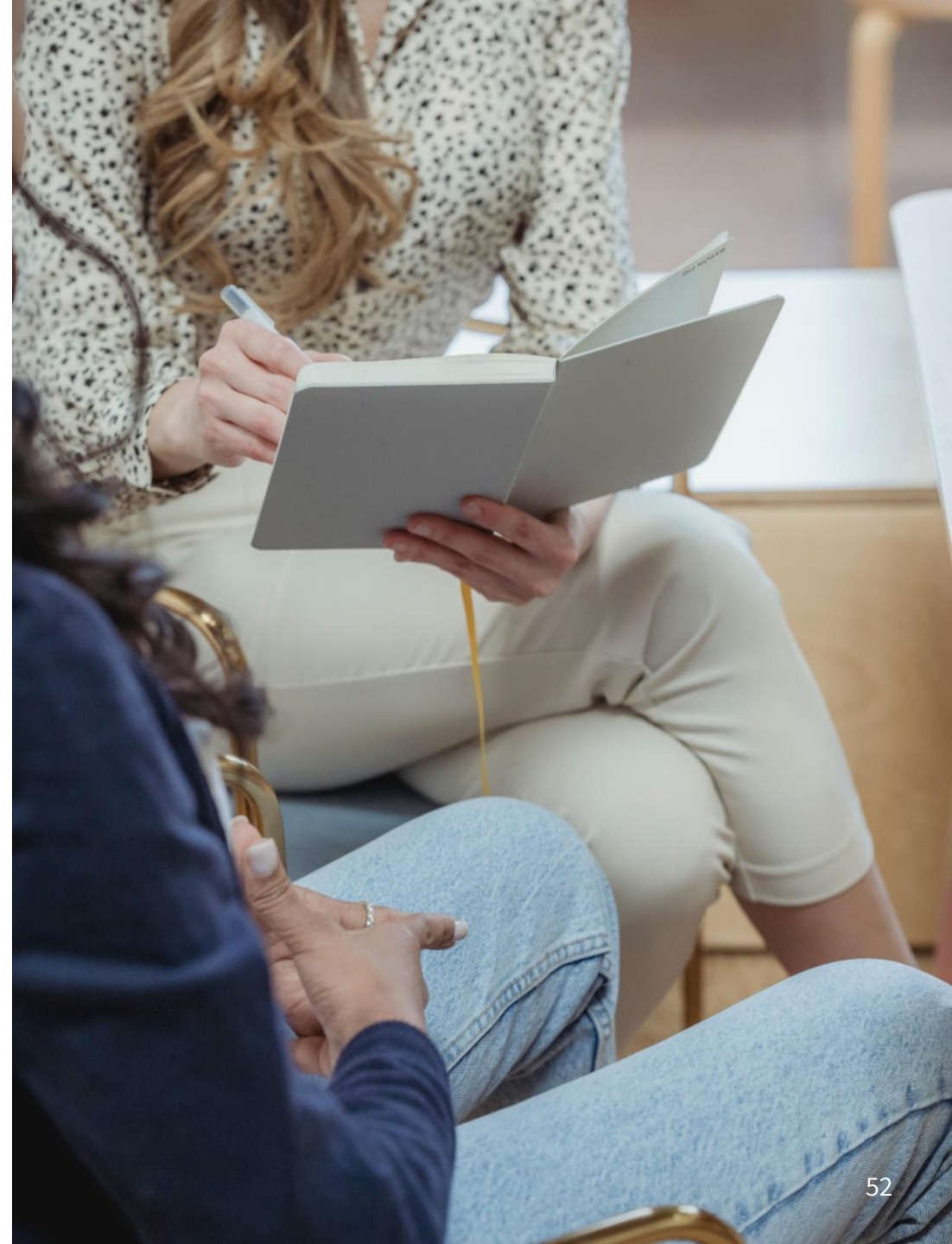
Explain:

- Process and interview flow
- Investigator role
- Expectations
- Retaliation and amnesty
- Interviewee rights
- Advisor role
- Privacy/confidentiality and their limits
- Need for truthfulness



The Introductory Spiel

- Answer questions
 - Anticipate reluctance or fear
- Provide option to take breaks
- Answer their questions about the interview or process
- Encourage interviewee to refrain from filtering language
- Avoid playing “cat and mouse” with the complaint contents or allegation details

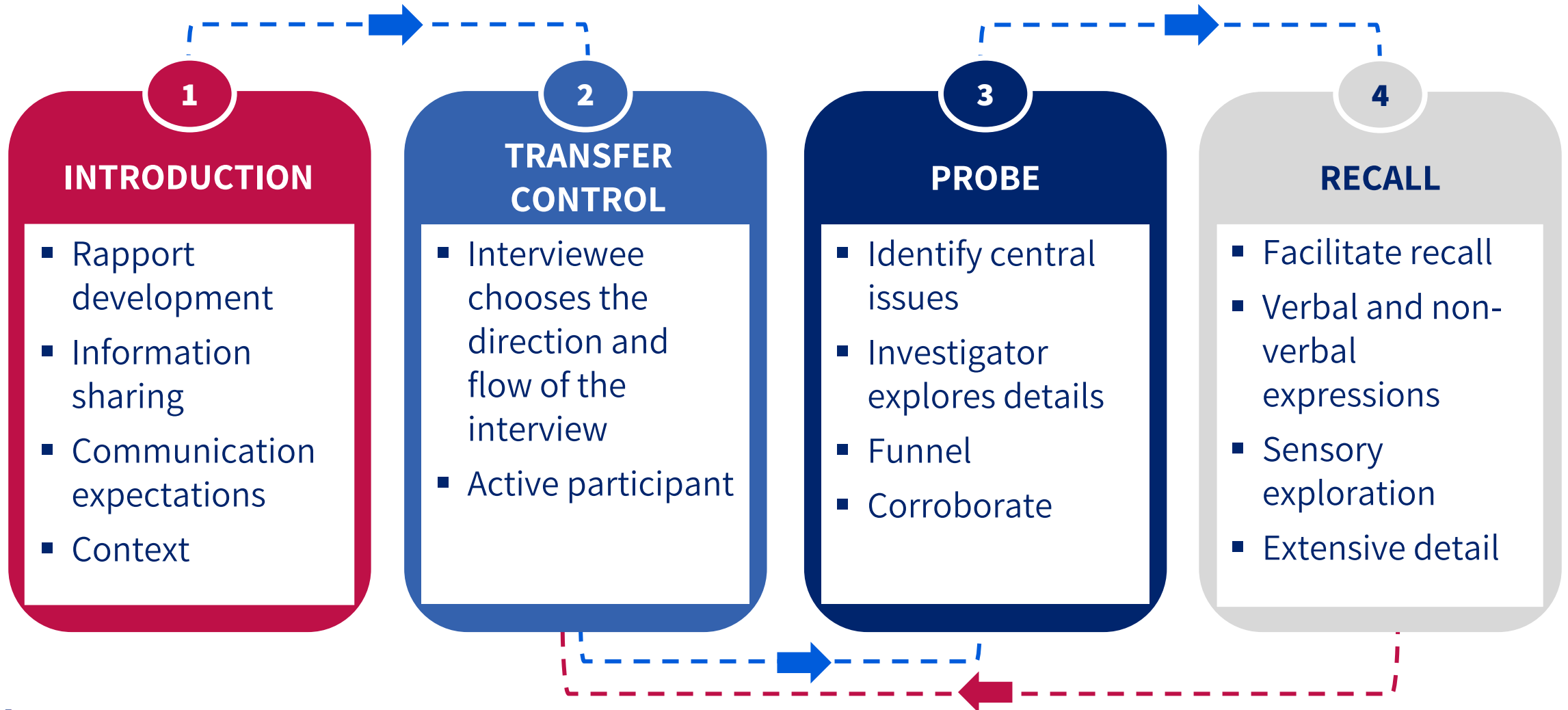


The Cognitive Interview

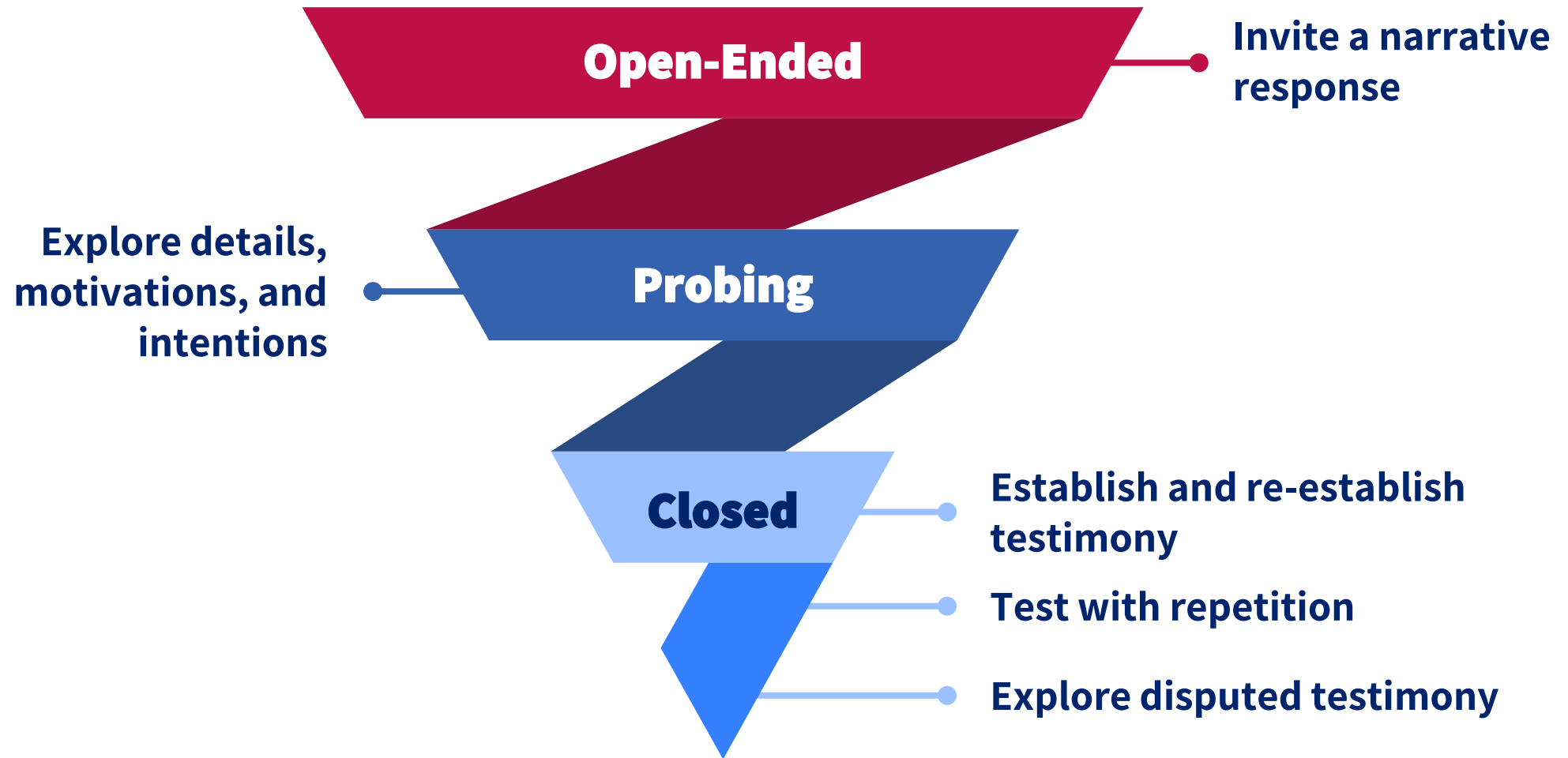
The Cognitive Interview

- Based on principles of memory and communication
 - Increases the quality and amount of relevant information an interviewer can gather
 - Decreases the likelihood of an interviewee recalling an event incorrectly
- Rapport is highly valued
 - Increases willingness of interviewee to share
 - Reduces:
 - Anxiety about discussing sensitive subjects
 - Sense of feeling judged
 - Defense mechanisms

Cognitive Interview Structure



Funnel Technique



Memory and Recall

- Repeated recollection attempts can strengthen recall and improve accuracy
 - Neural access pathways can literally thicken
 - Strategies encouraging holistic memory retrieval yield more accurate information
 - Questions focused on episodic memory or isolated critical moments are less reliable
- Focus on broader recall, even innocuous details
 - Repetition can help
- Use open-ended questions, delay funnel questioning if needed
- Tie critical details to nonessential details for continuity
- Provide adequate space and time for recall to occur
- Silence can be useful; don't rush to fill it

Cognitive Interview Considerations

- Cognitive interviewing requires the interviewer to bring the interviewee back to the scene
 - Raises concerns of re-traumatization
 - Interviewers should prepare the interviewee for the possibility of re-traumatization and outline options for breaks, managing trauma, etc.
- Interviews will likely take more time
- Investigators may want to explain the interview approach
 - Transparency is a rapport-building tactic
- If using co-Investigators, do not switch questioners during the recall process
 - Switching could break focus and disrupt recall

Cognitive Interviewing Strategies

Sensory Recall

Prompt recall through sensory experience, rather than event narrative

- “Are there specific scents or smells you remember?”
- “Are there specific sounds that you recall?”
- “How did the drink taste to you?”
- “How did it feel as you sat down on the couch?”
- “What else do you remember seeing from your spot on the couch?”



Memory Jogging Techniques

Prompt recall through accessing memories with divergent, rather than direct, retrieval methods

- Recount the events from the perspective of an imaginary third-party viewing the scene
- Take the witness to the scene to jog recall, but beware of trauma triggers
- Have the witness give a factual account without editorializing, then transcribe the account and ask the witness to go back and add their opinions and perceptions

Additional Tactics and Tools

Reverse Chronological
Order

Model Statements

Unexpected Questions

Written Narrative

Draw/Use a Picture

Focus on Specifics

Review details to:

- Spur additional recall
- Check for accuracy and consistency
- Correct errors or omissions
- Clarify contradictions or ambiguities
 - Terms
 - Phrases
- Rephrase confusing questions



Challenging Interviewees

- Interview in Investigator pairs
- Mirror responses
- Review facts
- Highlight conflicts
- Emphasize contradictory statements
- Accept any information they will share
- Ask logical follow-up questions
- Clarify vague, nonsensical, or non-responsive answers



Interview Closure

- Ask the interviewee to contact the investigator with any new information
 - Extends the interview
 - May result in more or better detail
- Ask interviewee to suggest other individuals for the Investigator to interview
 - Or suggest questions to ask others



Activity: Cognitive Interviewing

Cognitive Interviewing Activity

In groups of two, each person chooses a role: Interviewee or Interviewer

Step 1

- **Interviewee:** Review your prompt in the lobby
- **Interviewer:** Review your prompt in the lobby

Step 2

- **Both:** Do not share details from your respective prompts
- **Interviewer:** Conduct interview and take notes

Step 3:

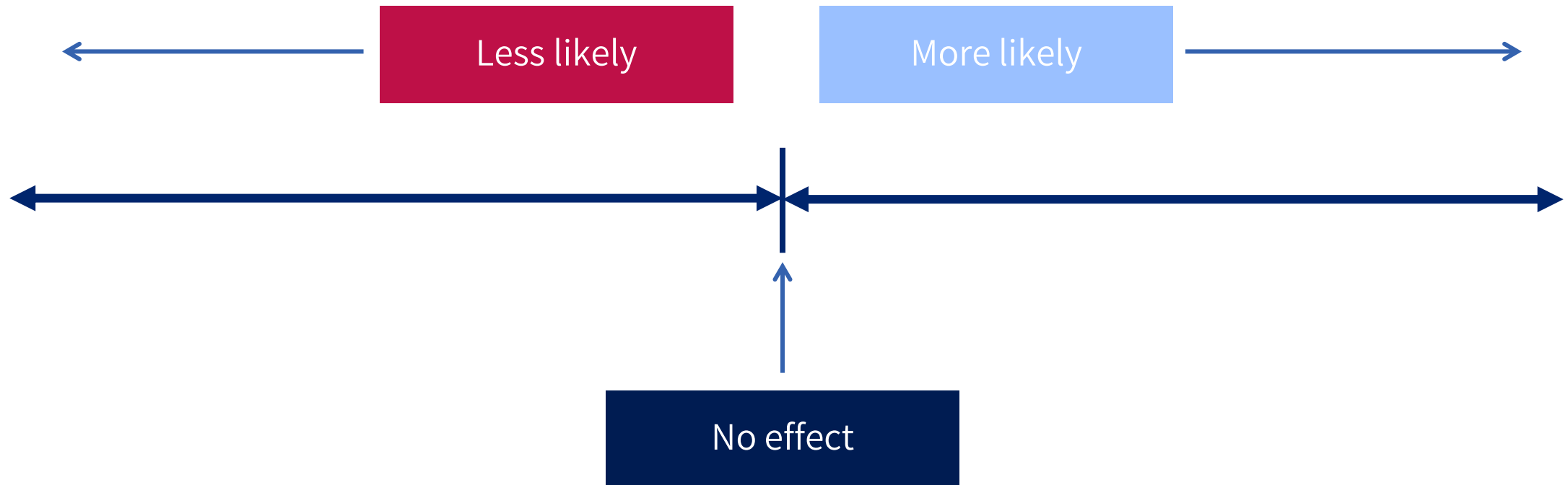
- **Interviewee:** What did the interviewer do that helped, hindered, or distracted you?
- **Interviewer:** What approaches did you use? Were they effective?

Evidence

Understanding Evidence

- Duty to collect and objectively evaluate all relevant evidence
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant** means related to the allegations of sex discrimination under investigation:
 - Questions are relevant when they seek evidence that may aid in showing whether the alleged sexual harassment occurred
 - Evidence is relevant when it may aid a DM in determining whether the alleged sexual harassment occurred or in assessing credibility
- All relevant evidence must be objectively evaluated and considered, including both inculpatory and exculpatory
 - **Inculpatory:** supports a finding of responsible for a policy violation
 - **Exculpatory:** supports a finding of not responsible for a policy violation

Relevant Evidence



Privileged and Medical Information

The party must provide written permission to obtain and/or include:

- Evidence protected under a legally recognized privilege
- Records made or maintained by:
 - Physician
 - Psychiatrist
 - Psychologist



Relevant Evidence Exclusions

- Evidence of the **Complainant's sexual predisposition** is never relevant
- Evidence of the **Complainant's prior sexual behavior** is not relevant except:
 - If offered to prove that someone other than the Respondent committed the alleged conduct; or
 - If offered to prove consent with respect to prior consent with the Respondent
 - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Both exclusions apply even if admitted/introduced by the Complainant
- Exclusions do **not** apply to Respondent's prior sexual behavior or predisposition

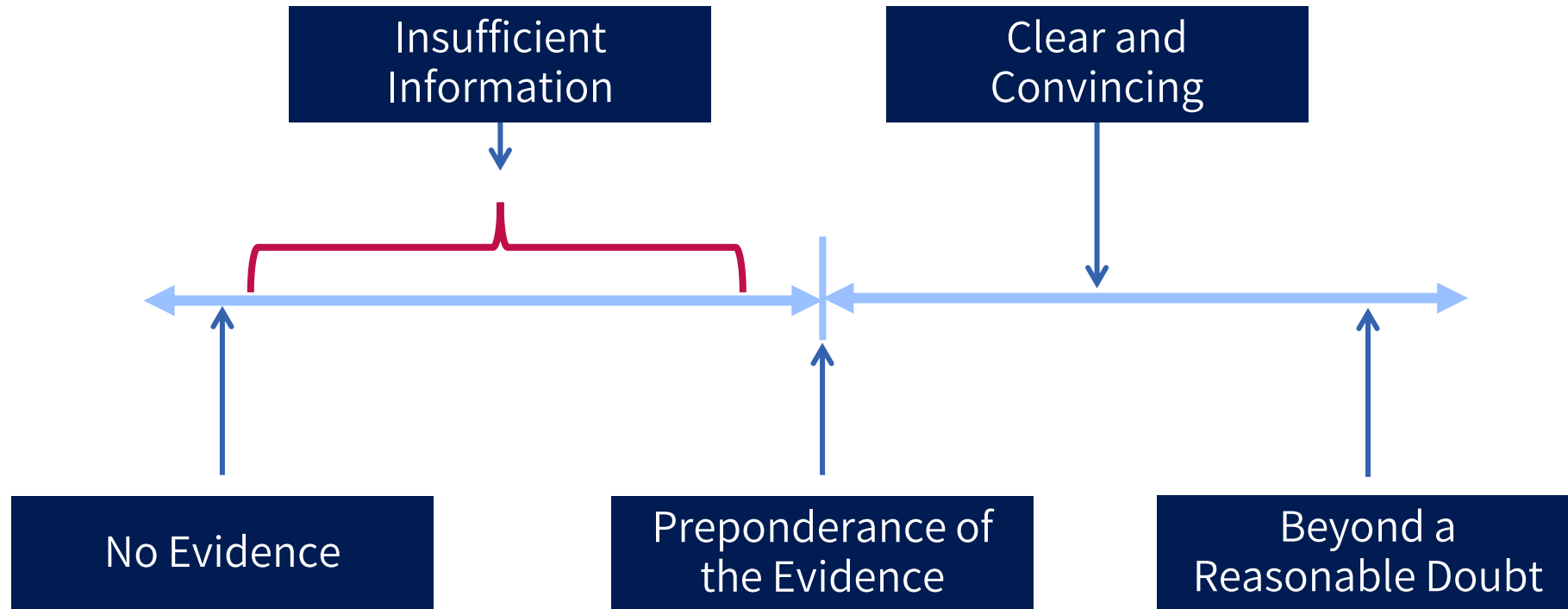
Evidence Authentication

- Not all evidence has the same degree of credibility
 - Less credible evidence may be less reliable evidence
- Investigator should seek the **highest quality evidence** available
- Investigator should try to **authenticate all evidence** provided
 - Check for possible evidence fabrication or alteration
 - Corroborate information between witnesses
 - Try to obtain complete, rather than partial, records when possible
 - Test assertions to verify accuracy when possible
 - Example: “I don’t remember if I wore a condom, but the condom in my wallet is no longer there”

Standard of Evidence

- **Two options:**
 - Preponderance of the evidence
 - Clear and convincing evidence
- Standard of evidence must be consistent for all formal complaints of sexual harassment in all policies
- Must apply the same standard for complaints against students and employees, including faculty
- Investigator must be familiar with the standard in institutional policy
- ATIXA recommends the preponderance of the evidence standard

Standard of Evidence



Preponderance of the Evidence is the current industry standard

Credibility Evidence & Assessment

Credibility

- **Credibility** is largely a function of corroboration and consistency
 - Credibility and honesty are not the same
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate reflection of what occurred)
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** Memory errors alone do not necessarily diminish witness credibility, nor does some evasion



Credibility Factors

Corroborating Evidence

- Evidence that can be verified by an independent and objective individual

Inherent Plausibility

- Information that is believable on its face/ by context

Consistency of Evidence/Testimony

Motive to Falsify

Past Record*

Demeanor*

* Less probative



Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
- Corroboration of central vs. environmental facts
- Not simply aligning with friendly witnesses
- Contemporaneous witness accounts
- Outcry witnesses
- Allegiances

Inherent Plausibility

- Does what the party described make sense?
 - Consider environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likeliness”
- Is the party’s statement consistent with the evidence?
- Is their physical location or proximity reasonable?
- How good is their memory?

Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
 - Academic or career implications
 - Personal or relationship consequences
- What if the allegations are false?
 - Other pressures on the Complainant
- Reliance on written document while answering questions



Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
 - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationships



Demeanor

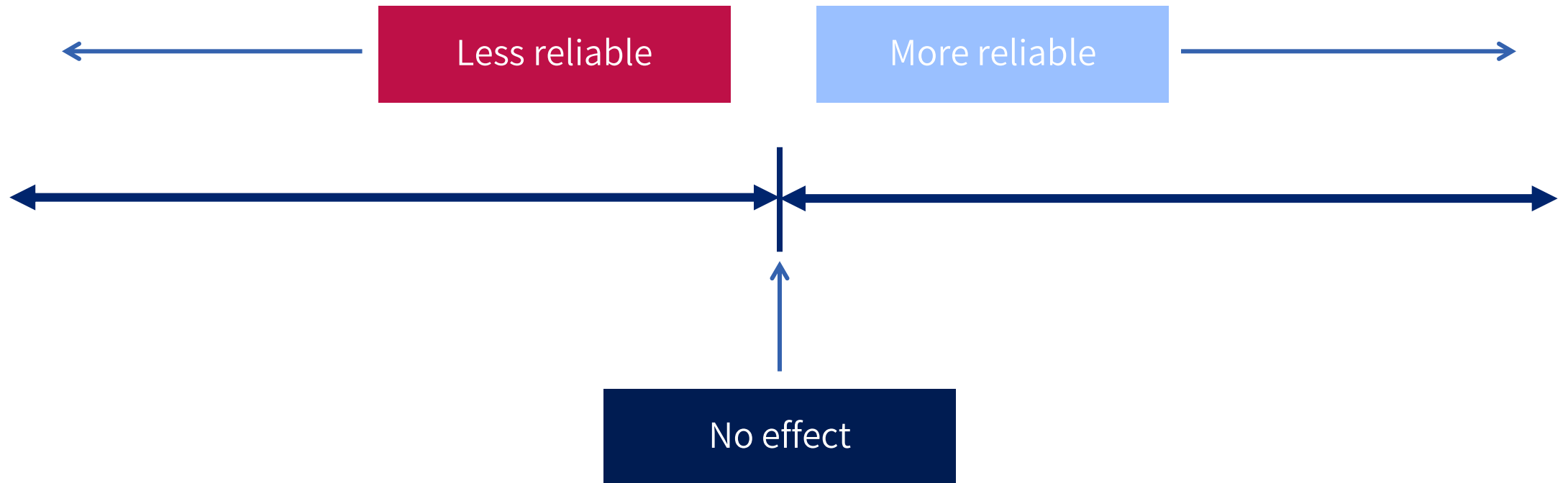
- Physical presentation and speech patterns are not determinative of credibility or truthfulness
 - Individuals are often good at picking up non-verbal cues
 - **However**, individuals are terrible at using demeanor to determine credibility
- Demeanor cues may indicate cause for additional questioning
 - “I noticed when I asked you about...you crossed your arms. Can you tell me why your posture changed?”
 - “I noticed when I started asking you questions about...your responses became much shorter. Can you explain that for me?”
 - “I noticed you rolled your eyes when I mentioned....Can you tell me about your reaction?”

Inconsistencies, Affect, and Credibility

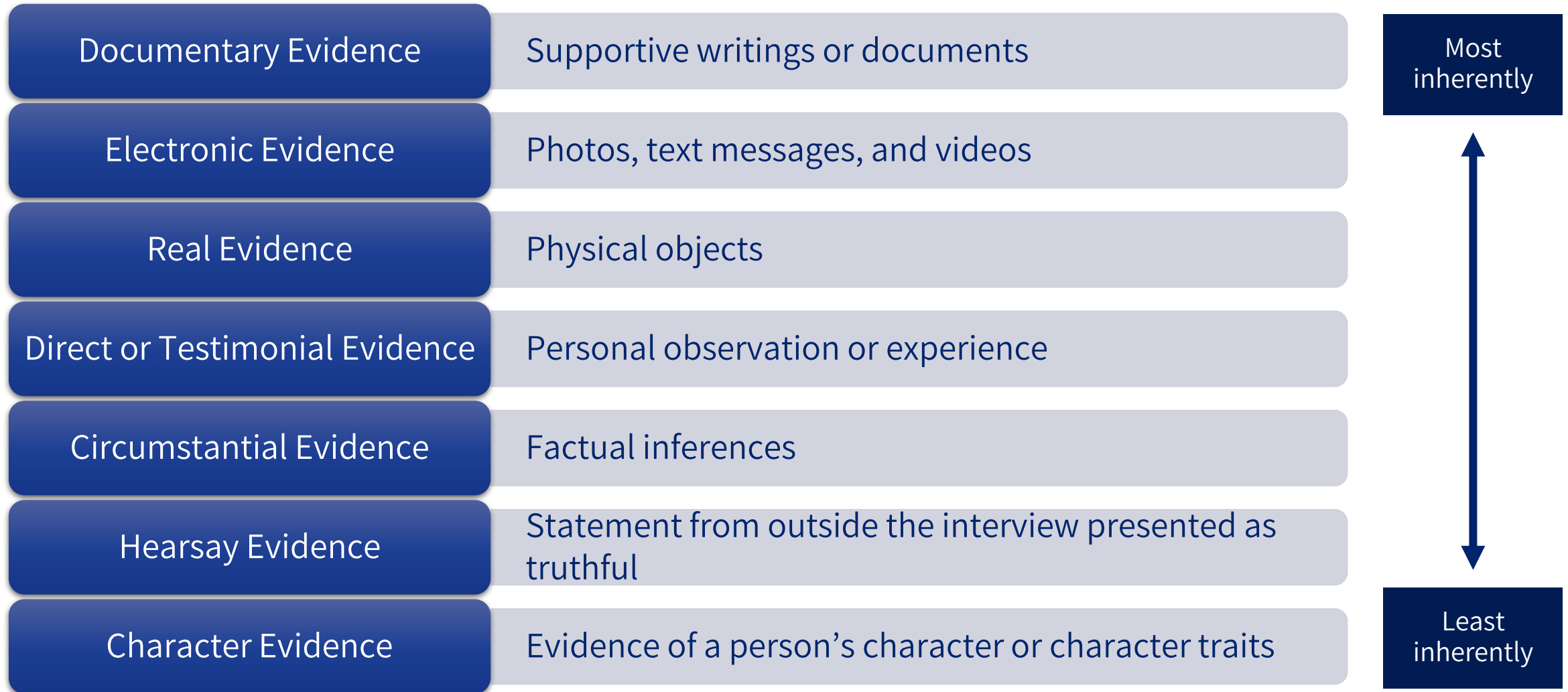
- Differentiate between **more** versus **inconsistent** versus **contradictory** information if an individual's account changes
- Variations in testimony on minor or insignificant details should not significantly impact credibility
- One's affect ≠ evidence



Credible (persuasive) Evidence



Reliability of Evidence



Trauma & Credibility

Trauma and Credibility

- Investigators can only collect available relevant evidence
- Trauma is neutral; it neither enhances nor detracts from proof
- Lack of evidence from an individual often negatively impacts their credibility
- Never substitute trauma indicators for evidence



Trauma and Credibility

- If an individual's account changes, differentiate between **more** information, **different** information, and/or **contradictory** information
 - Minor or insignificant variations should not significantly impact credibility
- One's affect is **not** evidence
 - A change in affect may signal a need to probe more deeply into a specific topic, though



Responses to Trauma

- Individuals may have different trauma manifestations, impacted by:
 - Personality
 - Availability or knowledge of coping strategies
 - Support systems or lack thereof
 - Capacity for resilience
 - Past history of trauma
 - Cultural differences
- Avoid biased thinking about what a person “should” or “would” have done, as this may invoke sexist tropes, rape myths, or other “victim-blaming” notions

Cognitive Interviewing, Trauma, and Credibility

- Deception requires greater cognitive load
- Deceptive individuals:
 - Prepare responses to anticipated questions
 - Develop a consistent, fixed narrative
- Honest individuals generally provide more detail or information
- Cognitive interviewing leverages differences in cognitive processing and strategy
 - Reveals inconsistencies in fixed narratives
 - Elicits verifiable details in credible accounts
- The motive for deception may also be of interest

Source: Vrij, A. (2019). Deception and Truth Detection When Analyzing Nonverbal and Verbal Cues. *Applied Cognitive Psychology*, 33, 160–167.

Credibility Assessments

Making Credibility Assessments

- Examine consistency of the story
 - Analyze statement substance and chronology
 - Inherent plausibility of all relevant evidence taken together
- Compare degrees of credibility within evidence
 - Is a piece of evidence consistent with other evidence known to be credible?
- Consider the amount of detail provided
- Non-verbal behaviors may be important to note
 - Do **not** let this drive the analysis

Credibility Assessments

- Investigator should use credibility assessments to direct the Decision-maker to areas needing closer examination
 - Focus the Decision-maker on alignment or discrepancies that may be significant for their analysis
 - Summarize the evidence to provide a snapshot
 - Use citations to help Decision-makers find the evidence within the report



Credibility Assessments in Investigation Reports

- Indicate where the Decision-maker should focus without rendering conclusions or making findings related to credibility

NOT GOOD

“The Decision-maker should find Mark to be unbelievable in his testimony about having received consent for the following reasons...”

BETTER

“Mark’s testimony about X conflicts with Mariana’s testimony about X. The accounts of Witness 1 and Witness 7 aligned with Mariana’s testimony, not Mark’s, during the investigation.”

Decision-Making and Credibility

- The live hearing is the last chance for the Decision-maker and parties to probe credibility
 - Live hearings are required for sexual harassment complaints in higher education
 - Cross-examination through Advisors
 - Institutions may permit direct examination by Advisors
- Some courts have endorsed a hearing for credibility assessment purposes

Common Credibility Errors

- Misplaced emphasis on:
 - Nonverbal indicators (nervousness, anxiety)
 - Inconsistent information
- Confusion about memory
 - Stress and emotion can complicate memory
- Parties' status
- Investigator bias

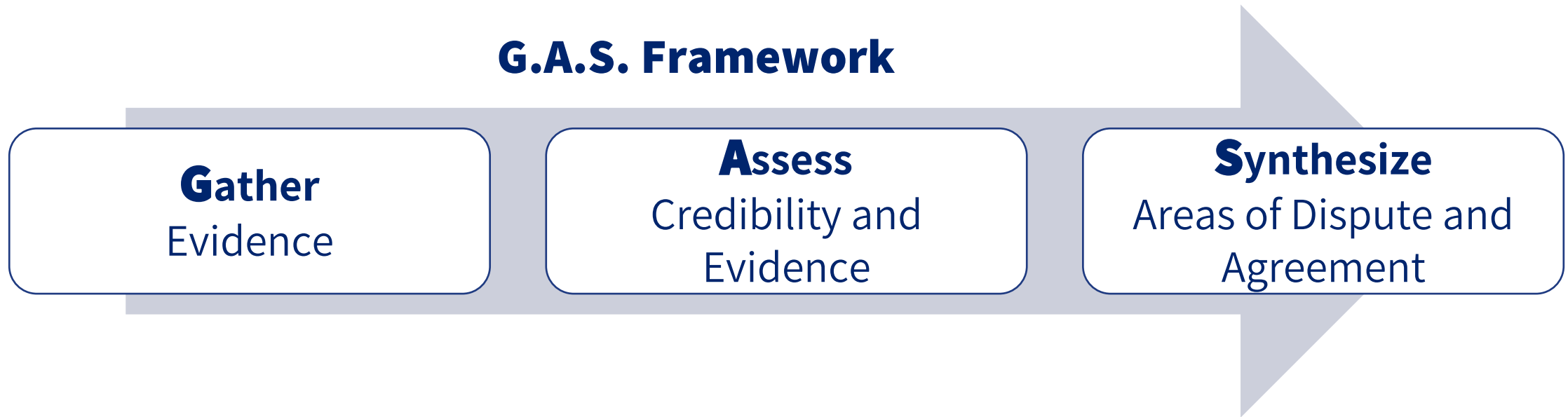


Investigation Report

Investigation Report

- Title IX requires a written investigation report that fairly summarizes all relevant evidence and the investigation

G.A.S. Framework

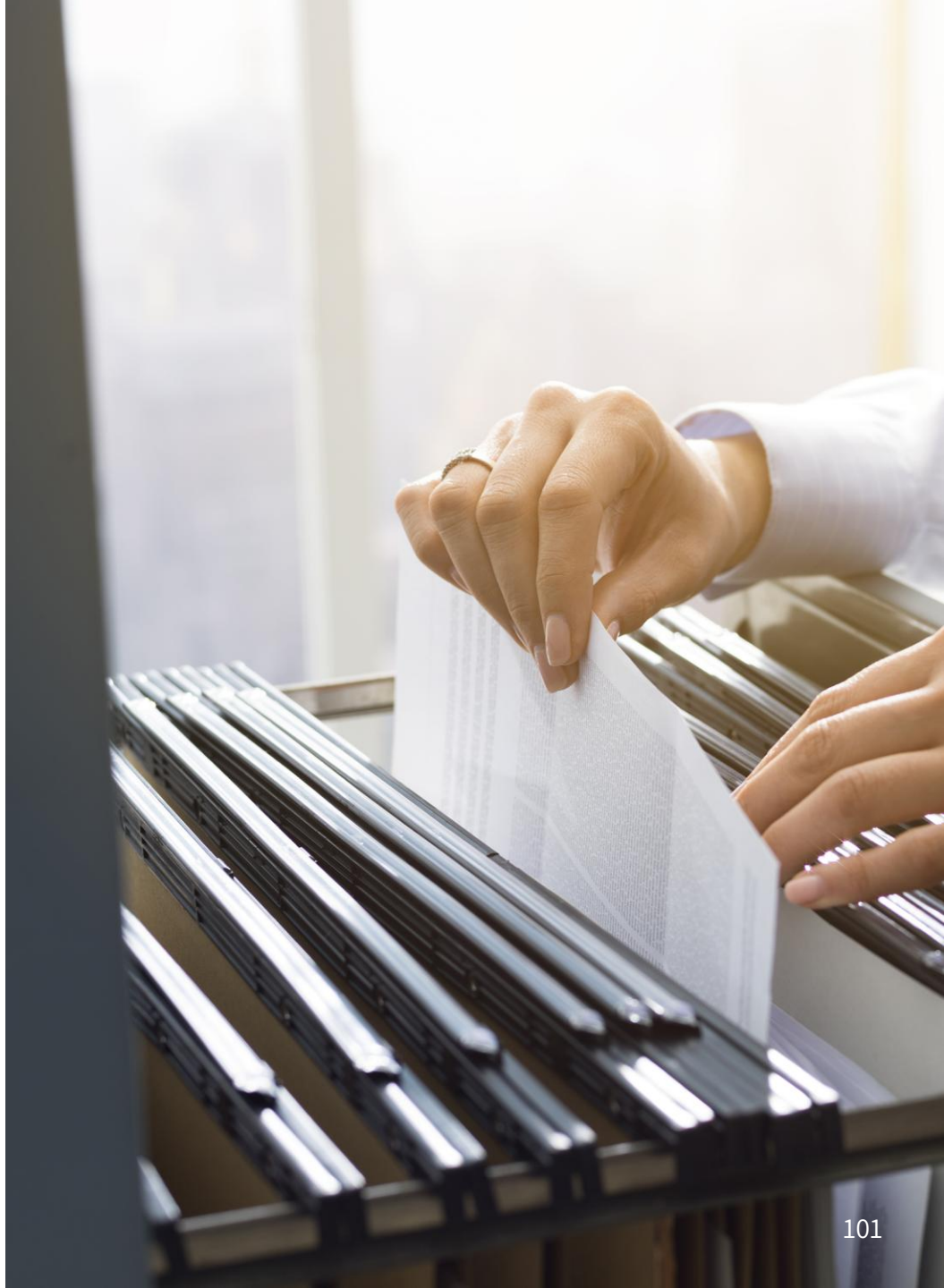


Example Investigation Report Sections

- Introduction/Complaint Information
- Allegations Overview
- Jurisdiction
- Investigation Scope
- Applicable Policies and Relevant Definitions
 - Standard of Evidence
- Evidence List
- Investigation Timeline
- Relevant Background
- Incident Timeline
- Relevant Evidence Summary
- Credibility Assessment
- Discussion and Synthesis
- Recommended Findings and Final Determination
- Conclusion
- Appendices
- Directly Related Evidence File

Internal Report Review

- Investigation supervisor and/or legal counsel reviews draft investigation report prior to providing it to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions
- Institutions may elect to complete this review after the parties' review



Writing Mechanics

Formal vs. Informal Language

Formal Language

- Medical/anatomical terms
- Accurate terms for alcohol or other drugs, their composition, and use
- Full words--we would, cannot, percent
- Last name, role, titles
- Third-person writing

Informal Language

- Colloquial or slang terms for anatomy (“junk”) or sexual acts (“smashing”)
- “Weed,” “hunch punch,” “hammered”
- Contractions--we’d, can’t
- First name or nickname
- Empathic writing/taking a position

Tense

- Investigation reports are a narrative of events that have already occurred
 - **Past tense is best practice**
 - Avoid changing tenses
- **Present Tense:** expresses anything that is happening now, or is ongoing, constant, or habitual
- **Past Tense:** indicates past events, prior conditions, or completed processes
- **Future Tense:** indicates actions or events that will happen in the future

Neutral Perspective

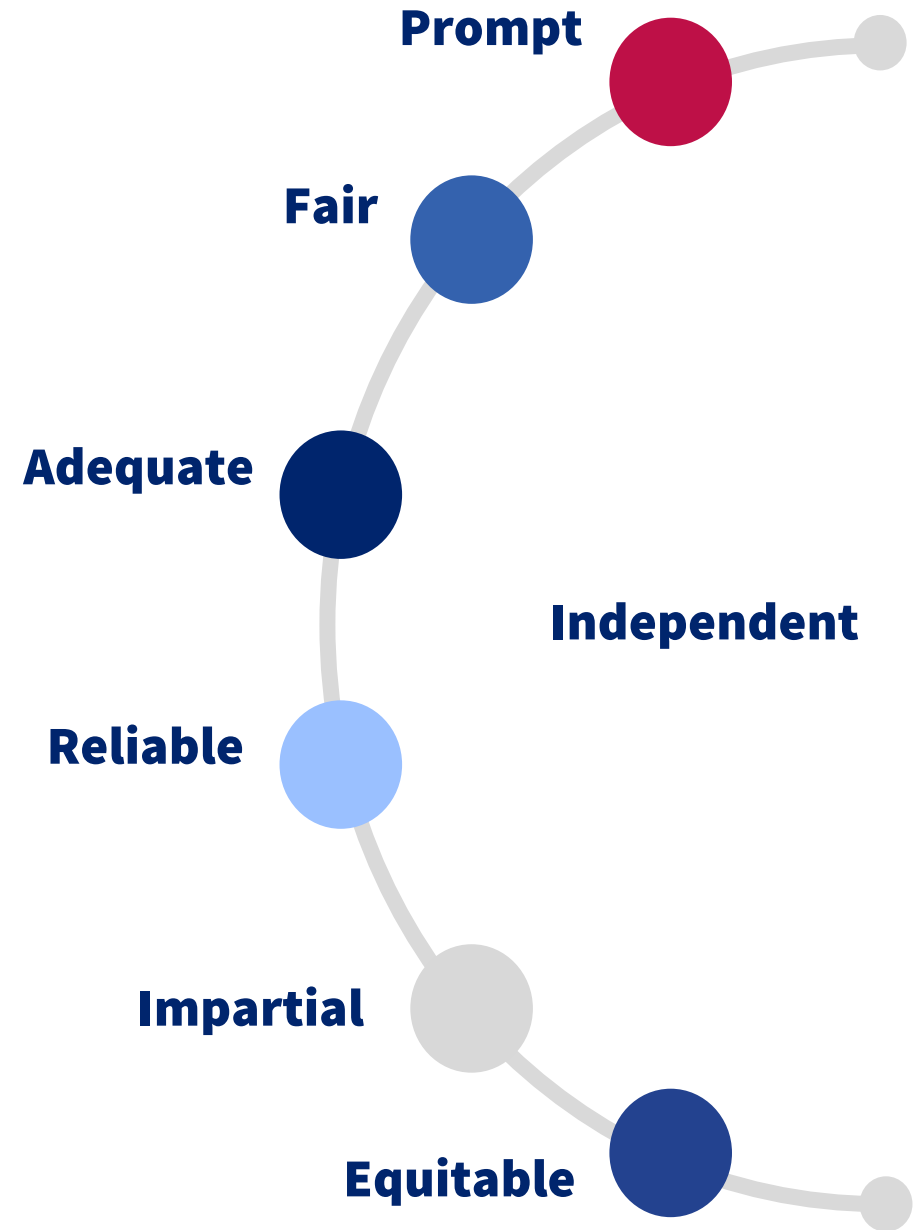
- **ATIXA recommends Investigators write in third person and from a neutral, detached observer point of view**
 - Creates distance between the reader and the parties
 - Example:
 - I watched Complainant sob and tremble at the pain they felt during the interview
vs.
 - Complainant stated that it was “very painful” to discuss the incident
- Investigator’s writing can unintentionally reflect their own biases
 - Focus on information and evidence, not opinions or suppositions
 - Examine evidence in a neutral fashion, avoid emotional language, terms, moralization, etc.
 - Write so that the report is consistent in tone/format/voice no matter who writes it
- Templates can help maintain a neutral perspective regardless of Investigator



Writing and Structuring Investigation Reports

Fair and Impartial

It is incumbent on fair and impartial Investigators to provide a report that accurately and succinctly summarizes the evidence provided by the parties and witnesses



Format and Structure

- Templates, templates, templates
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
 - Headnotes
- Multi-party or multi-allegation investigations
- Use attachments, appendices, and exhibits

Enhancing User-Friendliness

- Table of contents
- Page numbers
- Line numbers
- File naming conventions
- Internal document links

Attachments, Appendices, and Exhibits

- Incorporate versions of relevant information into the investigation report by reference or in excerpt form
 - Photographs
 - Video stills
 - Screenshots of text messages/social media
 - Access logs, card swipe logs, phone records
 - Academic course schedules
 - Floorplan diagrams
- Description, date of receipt, source, method of receipt, and verification/authentication information

Direct Quotations

- Direct quotations and commentary from parties and witnesses can help to accurately convey their experiences and perceptions
- Advisors' statements should not be attributed to a party
- Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness



Incorporating Direct Quotations

Introduce the quotation with a complete sentence

Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.”

Use an introductory or explanatory phrase

When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.”

Incorporate the quotation part of the sentence

Cole described his relationship with Devyn as “friends with benefits.”

Use a short phrase as part of the sentence

Cole used the term “friends with benefits” to describe his relationship with Devyn.

Punctuation for Quotations

If words are omitted from a quotation, use an ellipsis (...)

- Three dots (...) indicate the quote omits words in a sentence(s)
- Four dots (....) indicate the quote omits words at the end of one sentence when the quote continues onto the next sentence
- Do not change the meaning of the sentence by omitting text without an ellipsis

If words are inserted or altered in a quotation to improve readability, use square brackets [] to indicate the change

- May include:
 - Letter case or verb tense
 - Replacing a word to clarify meaning

Sensitive Information

- Offensive, triggering, or explicit language (e.g., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Sex assigned at birth vs. gender identity
- Chosen name vs. legal name



Redaction Practices

Full redaction vs. role identifiers

- Example:
 - **Original:** Teagan stated that Jesse smacked her with an open hand
 - **Full:** [REDACTED] stated that [REDACTED] smacked her with an open hand
 - **Role Identifiers:** Complainant stated that Respondent smacked her with an open hand
- Full redaction is a common practice in law enforcement, but is not recommended for civil rights investigations
- Provide key with names for parties

Redaction Practices

- Other options:
 - Include full name for first mention
 - Use initials
 - Use one- or two-letter identifiers (C, R, W1, W2, etc.)
- Determine whether to create a fully unredacted copy
 - Legal counsel
 - Decision-maker(s)



Word Choice

- Investigation report writing is **clear and factual**
- Avoid:
 - Unnecessary adverbs and adjectives
 - Conclusory words
 - Bias language
 - Judgmental statements

Common Pitfalls

- Abbreviations, initialisms, and acronyms
- Absolutes
- Clichés
- Exaggerations
- Generalizations
- Idioms
- Inconsistency
- Jargon
- Repetition

Word Choice Exercise Part One

Consider the difference a single word makes:

- The Complainant said that the Respondent **fondled** the Complainant's breasts while they were sitting next to each other on the bus
- The Complainant said that the Respondent **felt** the Complainant's breasts while they were sitting next to each other on the bus
- The Complainant said that the Respondent **caressed** the Complainant's breasts while they were sitting next to each other on the bus
- The Complainant said that the Respondent **touched** the Complainant's breasts while they were sitting next to each other on the bus
- The Complainant said that the Respondent **groped** the Complainants breasts while they were sitting next to each other on the bus

Word Choice Exercise Part Two

Now that you've heard each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?



The Respondent:

- Fondled
- Felt
- Caressed
- Touched
- Groped

Word Choice Examples

- The Respondent **refused** to answer the question
- The Respondent **declined** to answer the question
- The Respondent **chose not** to answer the question

- The Complainant **denied** offering to massage the Respondent
- The Complainant **vehemently denied** offering to massage the Respondent
- The Complainant **flatly denied** offering to massage the Respondent

Word Choice Examples

Poor Phrasing Example: “On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood.”

Doe v. Metropolitan Government of Nashville and Davidson County, No. 20-6225 (6th Cir. May 19, 2022)

Recommended Revision: Four male upperclassmen engaged in sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016. The girls allege the sexual activity was unwelcome.

Investigation Report

Investigation Report Steps

Draft Investigation Report (recommended)



TIXC/Legal Counsel Reviews Draft Investigation Report



Parties and Advisors Review Draft Investigation Report



Final Investigation Report

Internal Report Review

- TIXC and/or legal counsel reviews draft investigation report prior to providing it to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions
- Institutions may elect to complete this review after the parties' review or have two separate TIXC/legal counsel reviews



Parties and Advisors Review Draft Investigation Report

- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must:
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
 - Document rationale for not making recommended changes as appropriate

Review and Response

Review and response may include:

- Suggested additional witnesses
- Suggested additional questions for parties or witnesses
- Additional evidence for review
- Clarification of earlier statements
- Correction of misinformation
- Argument that evidence is relevant or not

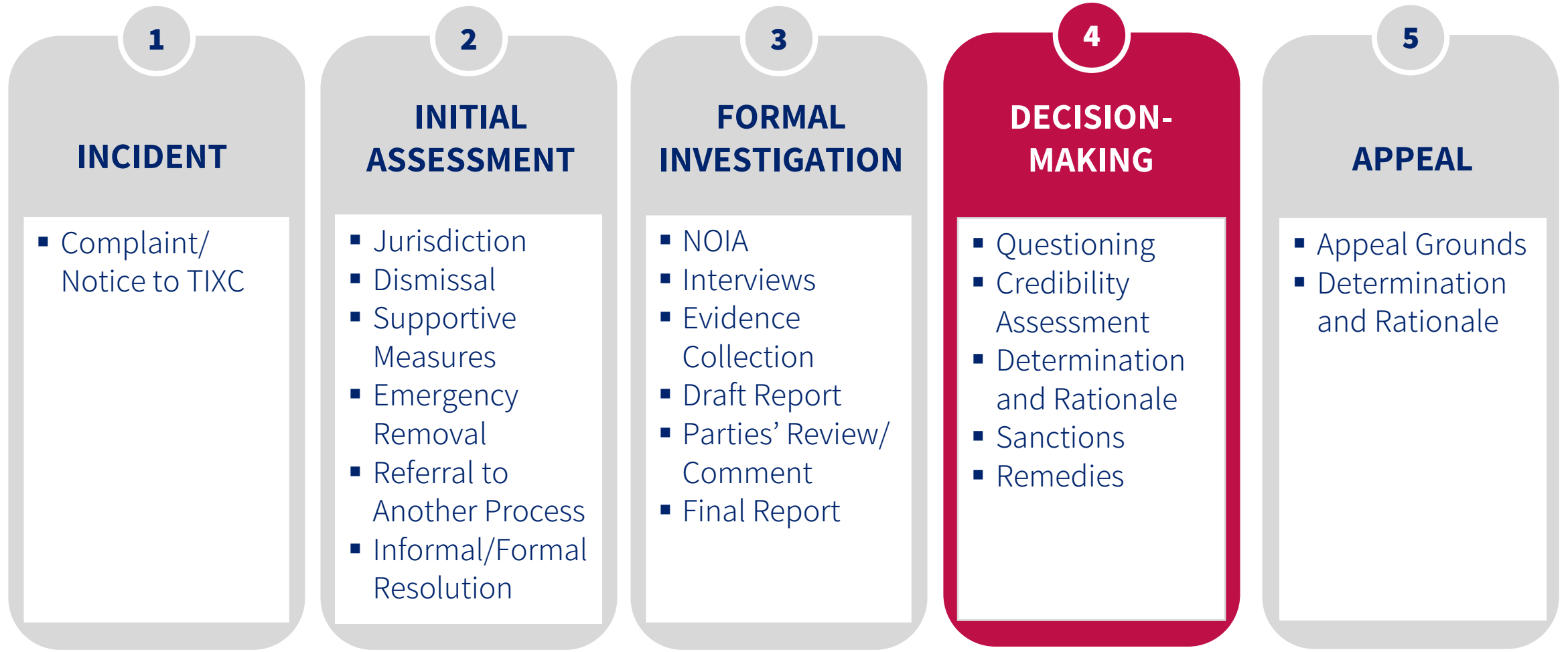


Final Investigation Report

- Institutions determine the final investigation report review process
 - Once finalized, the investigation report is distributed simultaneously to the parties and their Advisors
 - The Title IX office provides the report and directly related evidence file to the DM(s)
- Parties and Advisors will be sent the final investigation report for review at least 10 days prior to the hearing

Post-Investigation: Decision-Making and Hearings

Decision-Making



Decision-Making

- Separate Decision-maker(s) who is not the TIXC or Investigator for sexual harassment allegations; may use a different structure for other types of complaints
- **Decision-making models situate the Investigator role in three ways:**
 - Investigator as evidence gatherer
 - Investigator as evidence synthesizer
 - Investigator as determination recommender
- **DM relies heavily on the work of the Investigator to determine:**
 - Relevance of all evidence
 - Credibility of all evidence
- DM determines whether the Respondent violated policy, and if so, what sanctions or remedies are appropriate and necessary

Live Hearings

- All sexual harassment complaints must be resolved through a live hearing unless an Informal Resolution is reached
- Investigator may be asked to participate as a witness in the live hearing and be questioned by the DM(s) and/or parties through their Advisors
 - Example: Why did you decide some evidence relevant; other evidence was not?
- DM manages the hearing and questioning to limit to relevant evidence
- Hearing can be held in a physical location or virtually
- Must record hearing or create transcript

Written Determinations

- **Written Determination**

- Authored by DM(s)
- TIXC/Legal counsel reviews
- TIXC communicates to the parties simultaneously in writing

- **Finality**

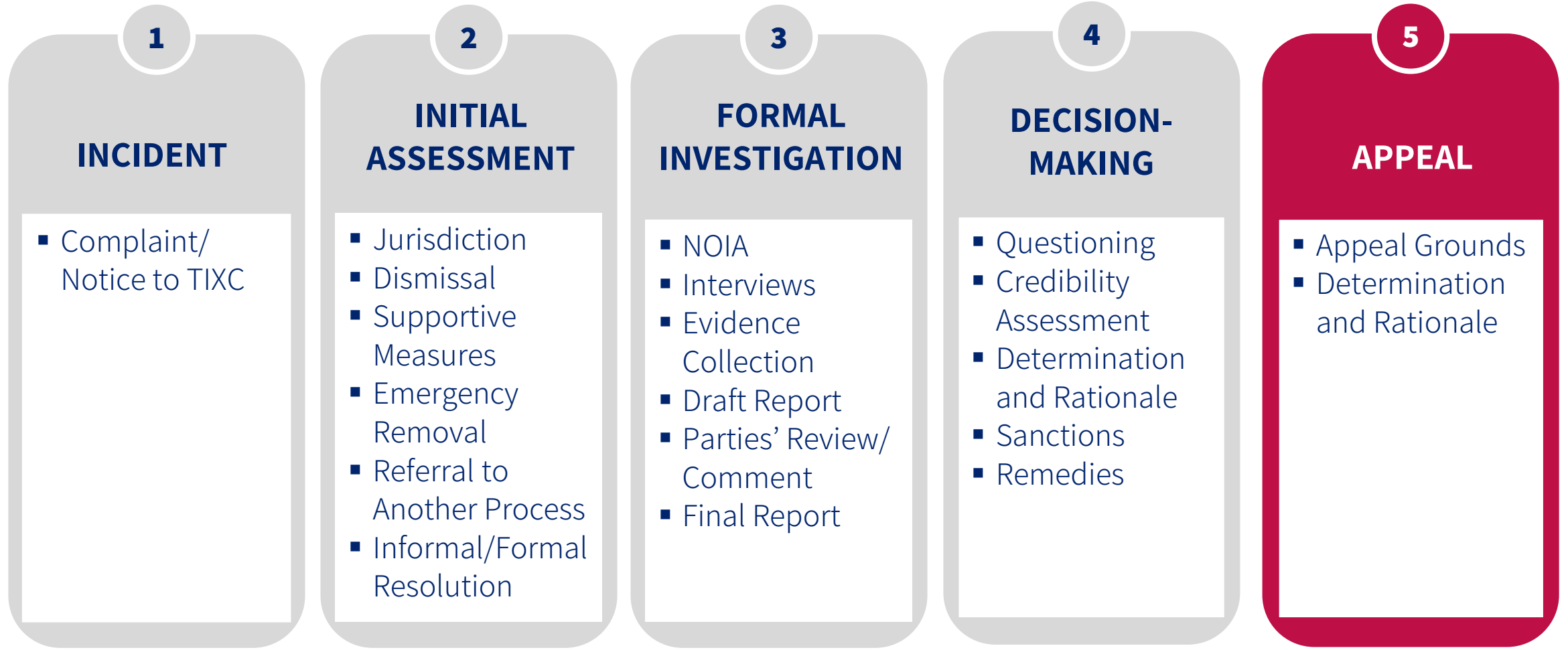
- On the date the Recipient provides a written appeal determination
 - OR the date when an appeal would no longer be timely

Written Determination Elements

- Applicable policy
- Procedural steps from complaint through determination
- Statement of and rationale for the result of each specific allegation
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Whether remedies will be provided to Complainant
- Procedures and bases for appeal

Appeals

Appeals



Appeal Grounds

Must offer appeals on one or more of the following grounds:

1

Procedural irregularity that affected the outcome of the matter

2

New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter

3

Conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter

Institutions have the discretion to add additional appeal grounds

Appeal Decision-Maker and Outcomes

- Must not have been previously involved in the complaint or Formal Grievance Process
- Must complete a written determination with rationale
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the DM for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturing** the determination (not recommended)



Association of
Title IX Administrators

Questions?

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