

Overview of Relevant Laws, Regulations, Guidance, and Case Law

Investigator Pathway

SMI | 2025



YOUR PRESENTER



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(she/her)

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LEGAL DISCLAIMER

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LEARNING OUTCOMES

Participants will

- Understand the foundations and principles of the current Title IX landscape.
- Understand the differences between Title IX and non-Title IX Sexual Misconduct cases.

KNOWLEDGE & SKILLS

1 - Administration

1.4: Advanced

1.8: Intermediate

8 - Law and Policy

8.1: Foundational/Intermediate

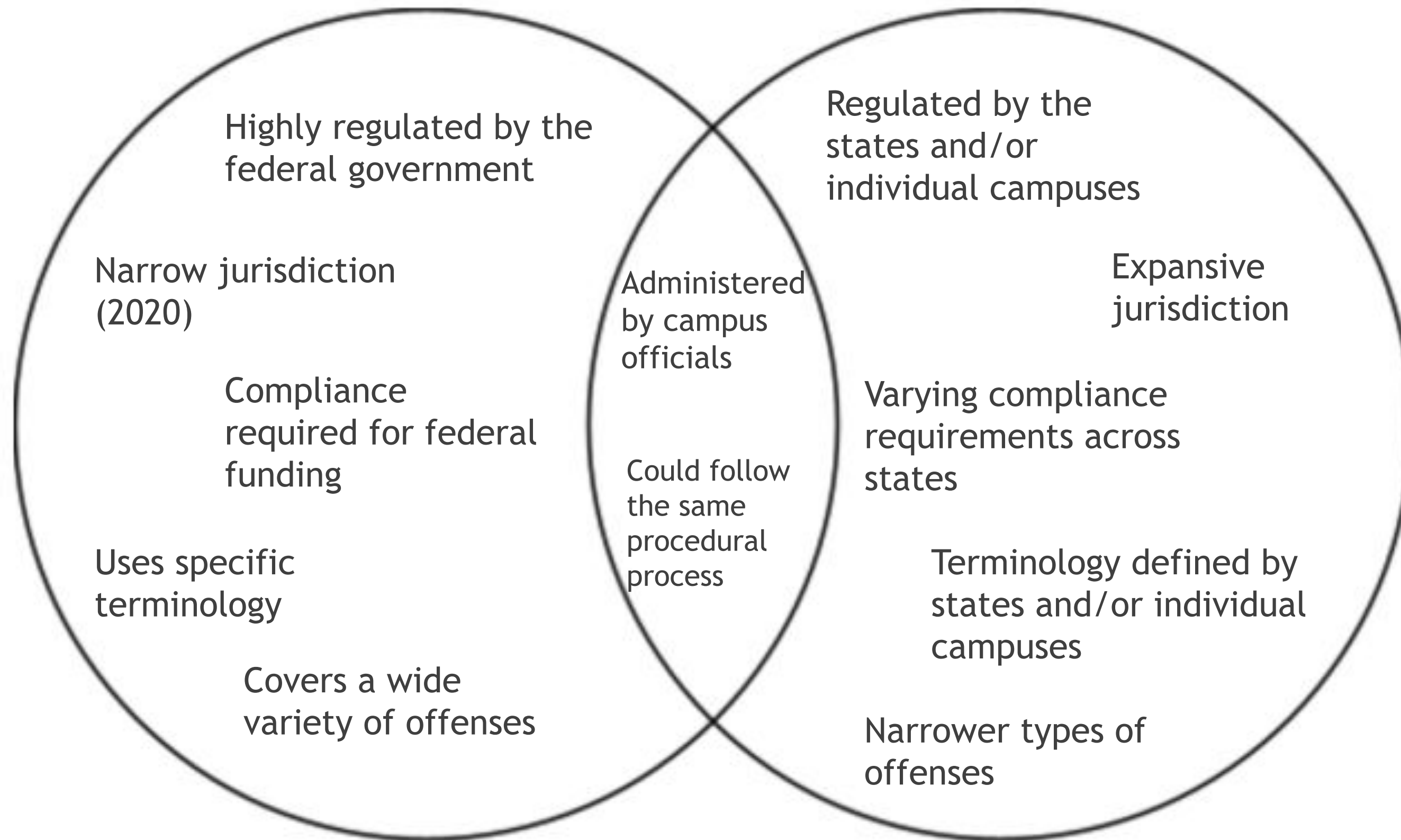
8.2: Advanced

3 - Case Resolution Management

3.2: Intermediate/Advanced

Title IX

Sexual Misconduct



2020 Title IX Prohibited Conduct

- Sexual Harassment on the basis of sex
 - Quid pro quo
 - Unwelcome conduct that is severe AND pervasive
 - Sexual assault
 - Dating violence (VAWA)
 - Domestic violence (VAWA)
 - Stalking (VAWA)

Non-Title IX Sexual Misconduct

- “Sexual misconduct” is not a phrase use in either the 2020 Title IX Regulations, but is a commonly used phrase outside of Title IX.
- How many of you have sexual misconduct defined in your student conduct code and/or non-Title IX policy? How do you define sexual misconduct?
- Sexual misconduct can be both a Title IX and non-Title IX offense.

Title IX vs non-Title IX Jurisdiction

- Conduct within the US
 - Conduct within the “education program or activity”
 - Substantial control over the Respondent and the context
 - Buildings owned or controlled by an officially recognized student organization
 - severe, pervasive, and objectively offensive
- Defined by university policy, likely includes off-campus behaviors.
 - Can expand beyond education program or activity, includes off-campus behaviors.
 - severe, pervasive, OR objectively offensive

Department of Education Press Releases

[January 2025 Press Release](#)

- Returning to 2020 Title IX Rule following a January 2025 court ruling in [State of Tennessee v. Cardona](#) issuing a nationwide injunction against enforcement of the 2024 Title IX Regulations.

[February 2025 Press Release](#)

- Announcing Dept. of Ed. enforcement of Title IX against schools who allow transgender women to compete in cisgender women's sports.

[April 2025 Press Release](#)

- Announcing Title IX Special Investigations Team between the Dept. of Ed. and Dept. of Justice.

2025 Cases to Review

- *John Doe 2 v. North Carolina State University*
- *Oldham v. Penn State University*
- *Hushen v. Gonzales*
- *Arana v. Board of Regents of the University of Wisconsin*
- *M.K. v. Pearl River County School District*

QUESTIONS?





ASCA Sexual Misconduct Institute

Title IX Process Before an Investigation

Investigator Pathway

SMI | 2025



Your Presenter



Darius Thomas

Associate Director

Office of Title IX Ethics & Compliance

Morehouse College

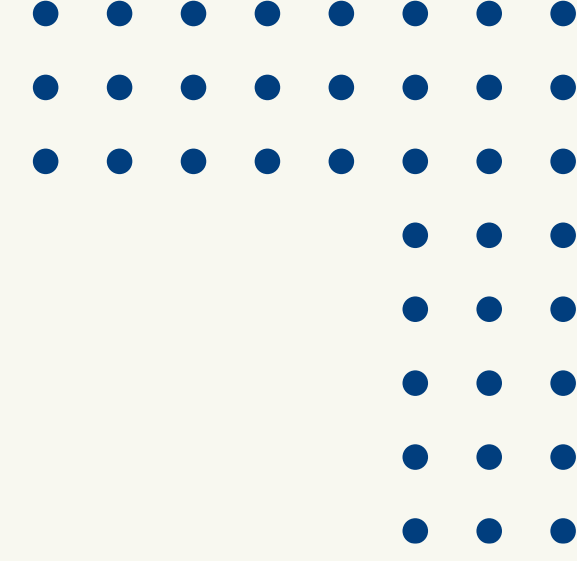
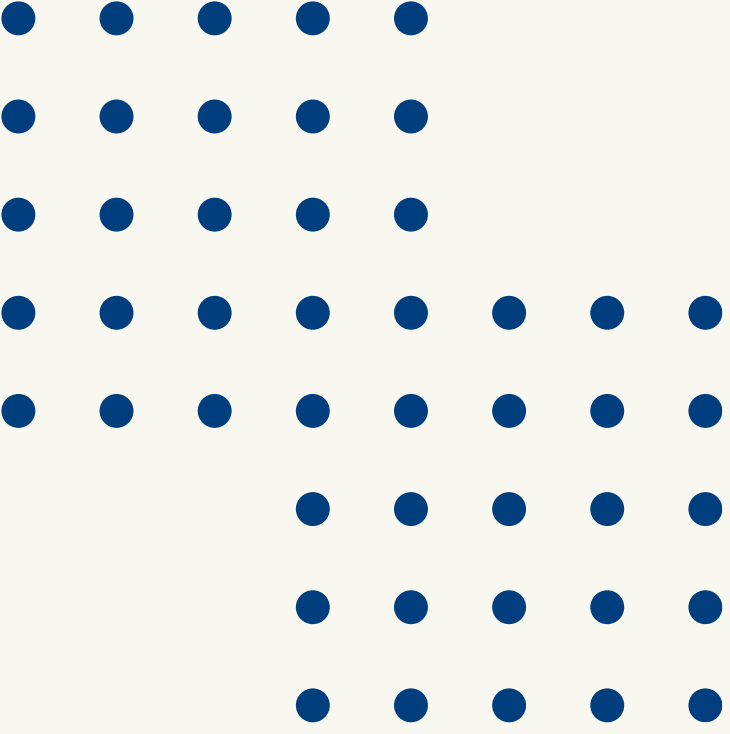
Darius.thomas1@morehouse.edu

LEARNING OUTCOMES

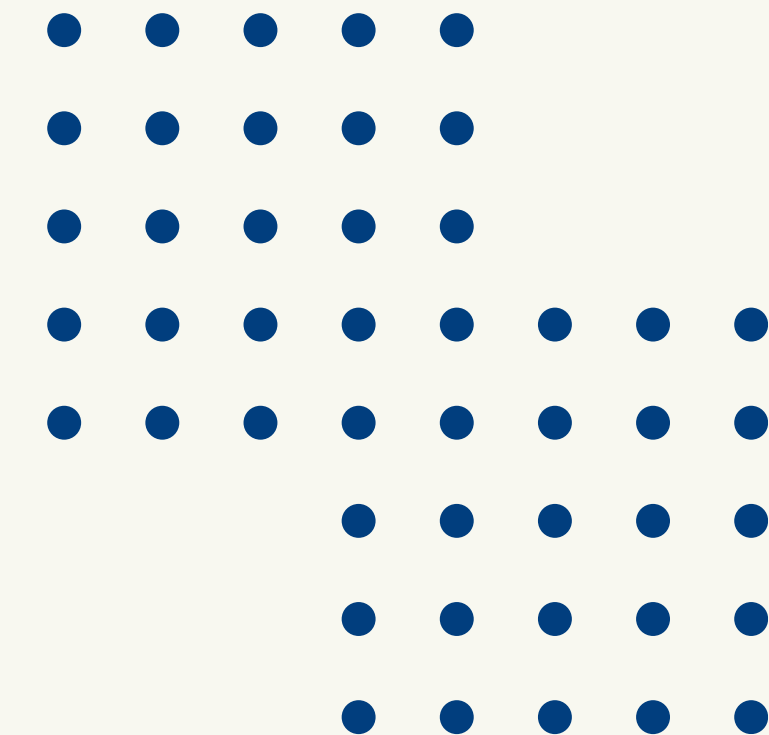
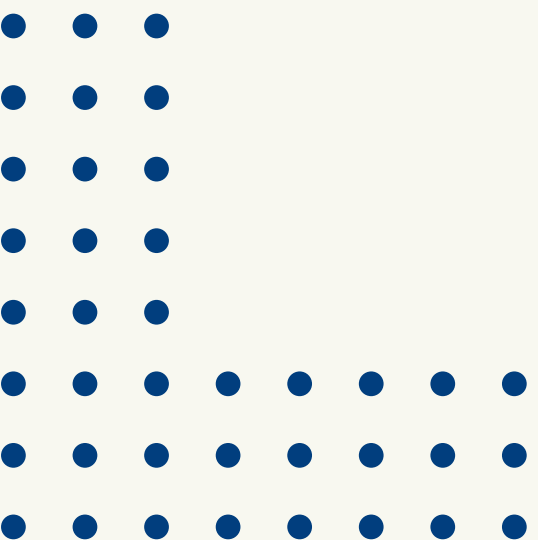
- Understand reporting requirements and regulatory requirements (ASCA K&S 1.1)
- Be able to describe the grievance process before an investigation begins, including Title IX Coordinator, investigator, and party roles (ASCA K&S 3.6)
- Understand the differences between the formal and informal processes
- Be able to outline the Title IX Coordinator assessment process (ASCA K&S 3.4)

SESSION OUTLINE

- Welcome & Framing
- Reporting Basics
- Intake & Informational Meetings
- Formal Complaint Process
- Informal Resolution
- Coordinator's Role & Assessment
- Wrap-Up & Knowledge Check

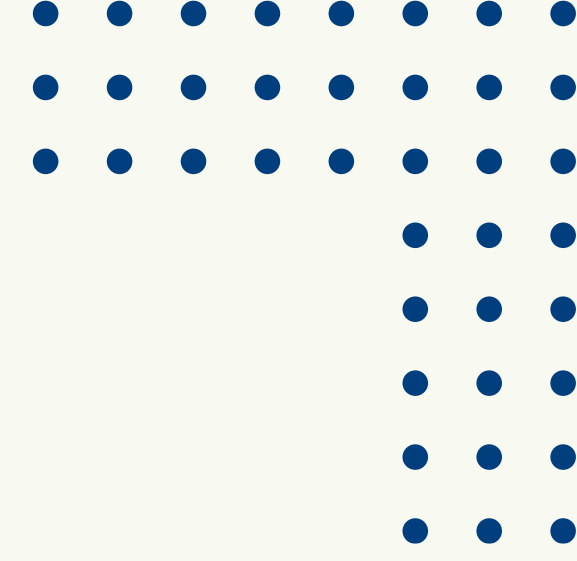
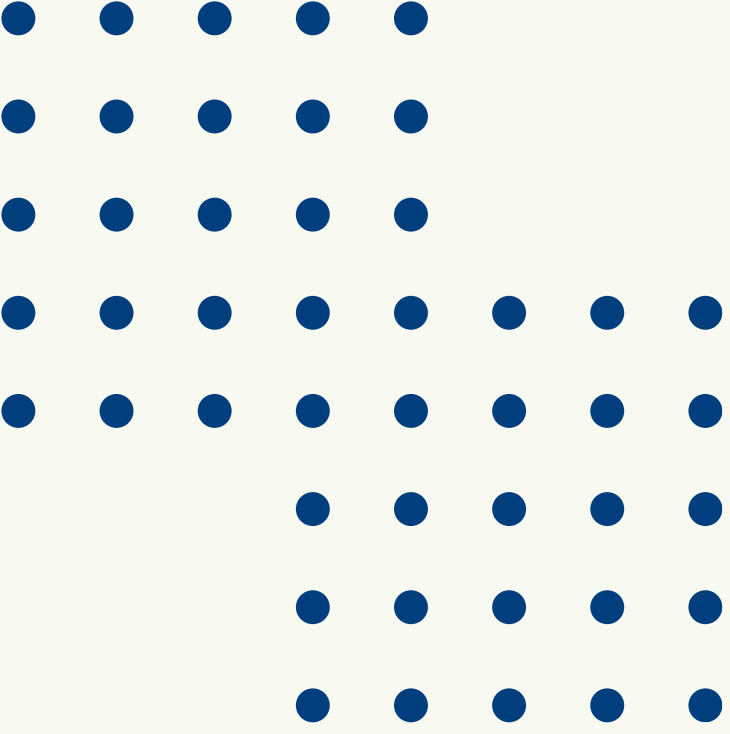


Section I – Welcome & Framing

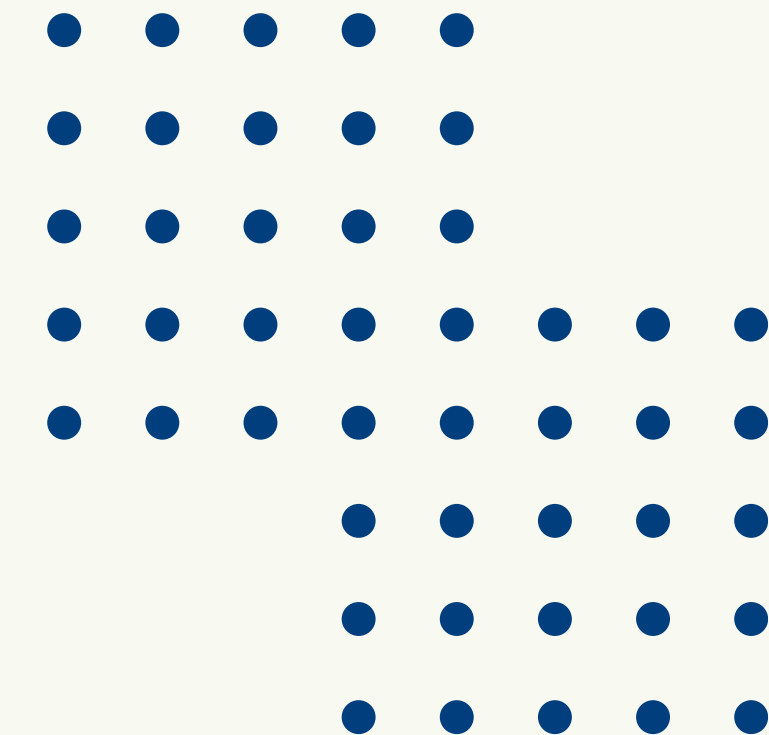
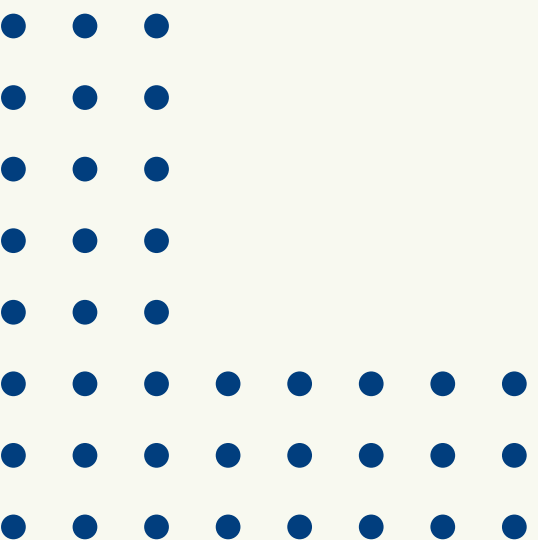


Warm-Up Poll

What comes to mind when you hear “Title IX process?”



Section II – Reporting Basics



Reporting Under Title IX

- Anyone may report to the Title IX Coordinator at any time.
- An incident report is not the same as a Formal Complaint.
- Institutions must clearly display how to report.

Scenario

- Faculty member overhears a sexual harassment disclosure while walking down a hallway to class.
- What should happen next?



Section III – Intake & Informational Meetings



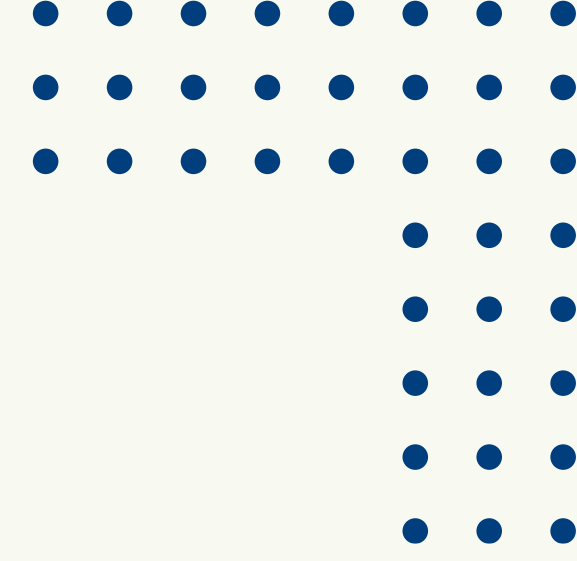
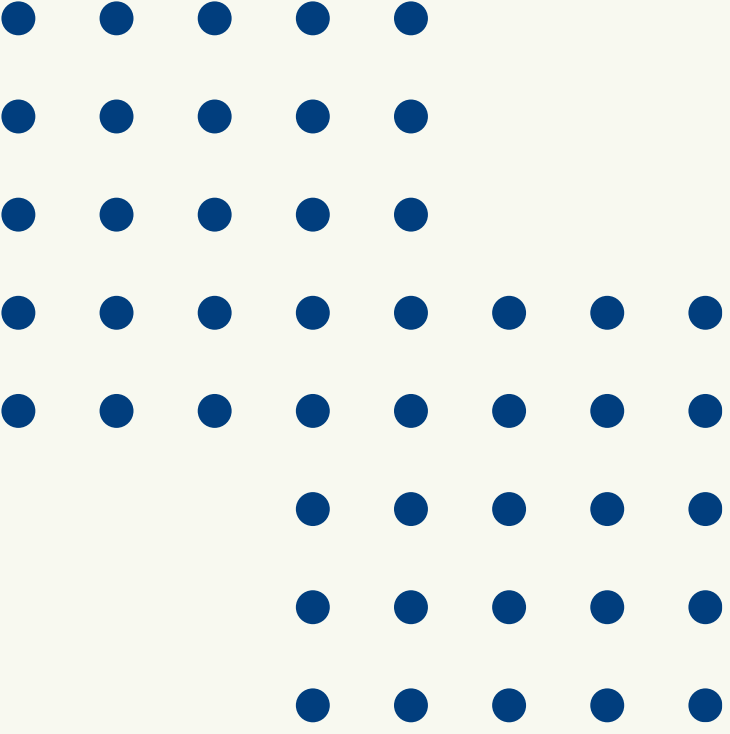
Purpose of Intake

- Should occur promptly after actual knowledge.
- Title IX Office provides information on rights, supportive measures, and options.
- Goal: ensure safety, support, and informed decision-making.

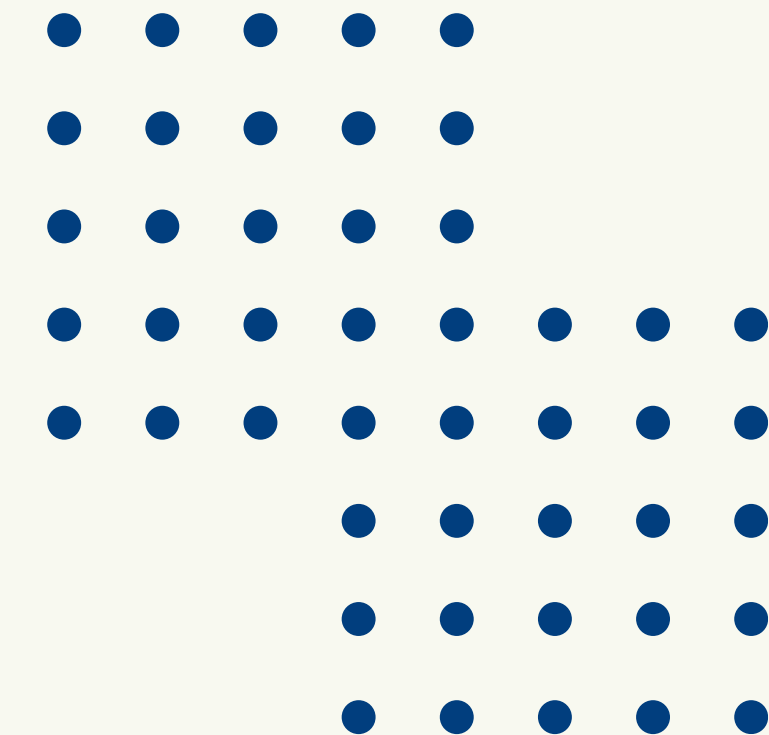
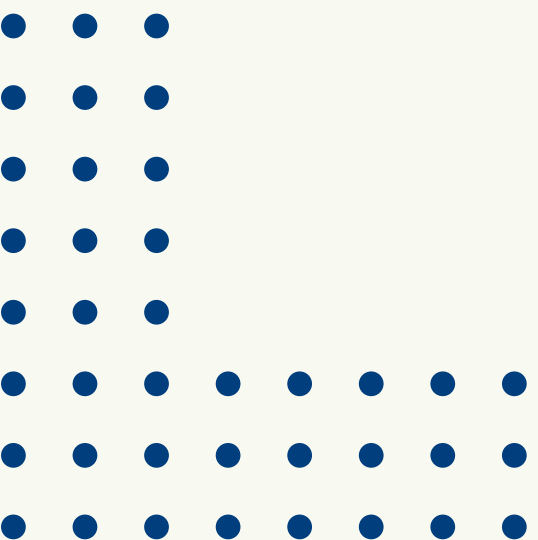
Defining a Formal Complaint

A document filed by a Complainant or signed by Title IX Coordinator alleging sexual harassment against a respondent and requesting that the institution investigate the allegation of sexual harassment

- signed by the Complainant or Title IX Coordinator
 - Title IX Coordinator is not the Complainant
 - Paper or electronic submission, or otherwise indicate their intent to file a Formal Complaint



Section IV – Formal Complaint Process



Initial Assessment

- Title IX Coordinator's responsibility.
- Determine if the alleged conduct falls under Title IX jurisdiction.
- If outside the scope of Title IX, consider what other policies may apply.

What is Title IX's Scope?

Definitional

- Conduct on the basis of sex that constitutes one of the forms of prohibited conduct in the regulations

Jurisdictional

- Occurs in the United States
- Relates to an “educational program or activity,” including:
 - Substantial control over Respondent and context
 - Building owned or controlled by a student organization

Supportive Measures

- Defined as non-disciplinary, non-punitive, individualized services.
- Examples: counseling referrals, academic adjustments, housing changes, and No Contact Directives.

Resolution Options

Formal

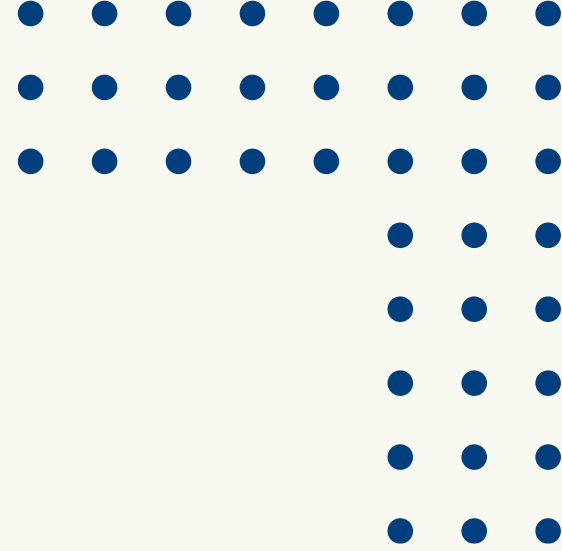
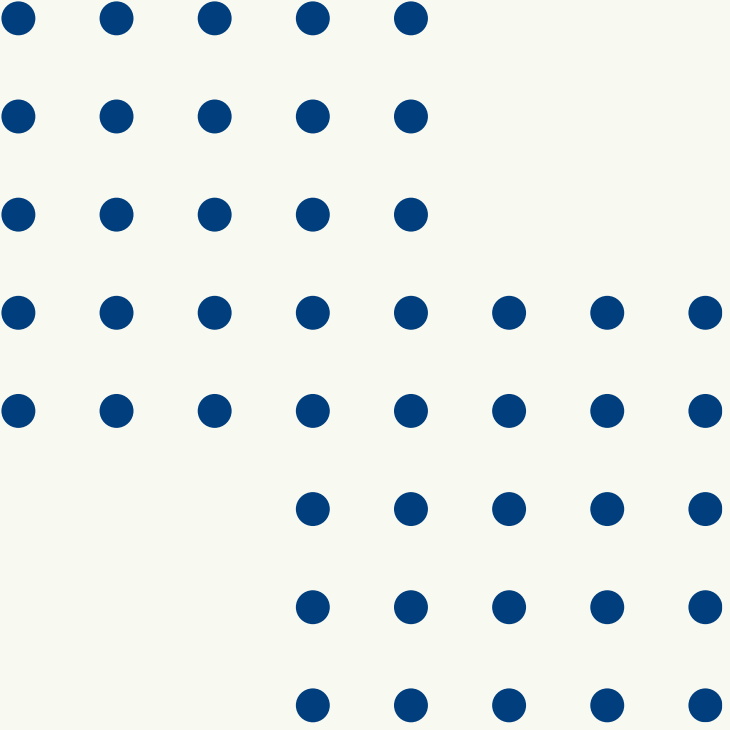
- Investigation
- Live hearing
- Written determination

Informal

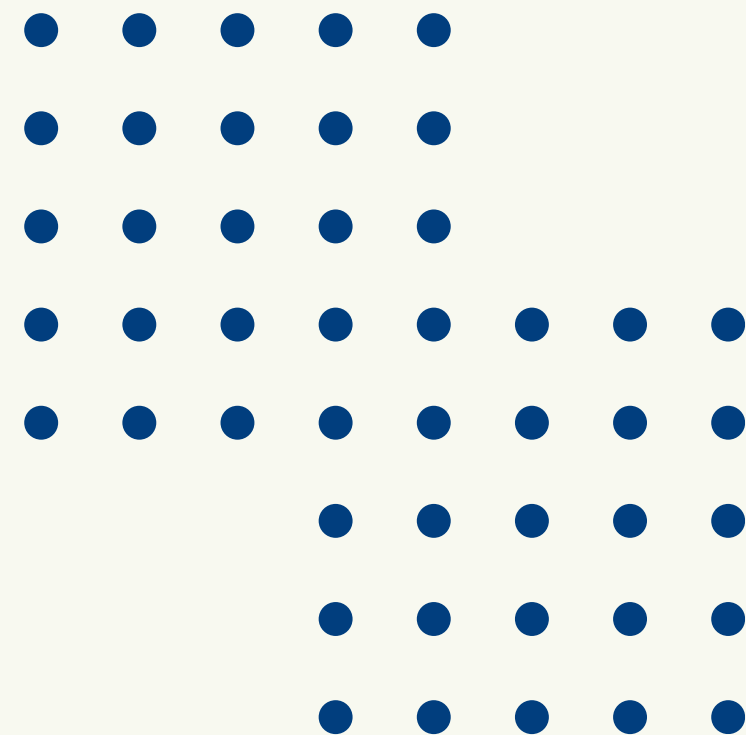
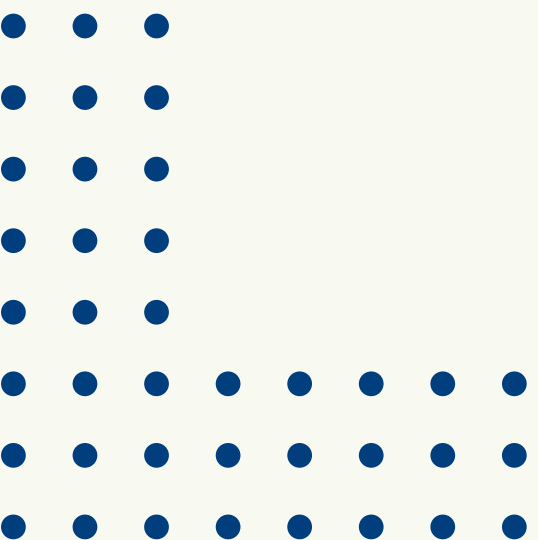
- Mutual consent required
- Flexible process options
- Not available if respondent is an employee

Formal or Informal?

What are some examples of formal and informal processes under Title IX?

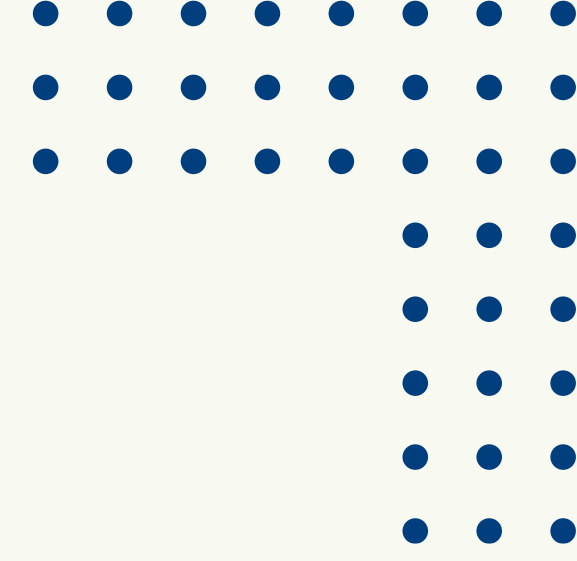
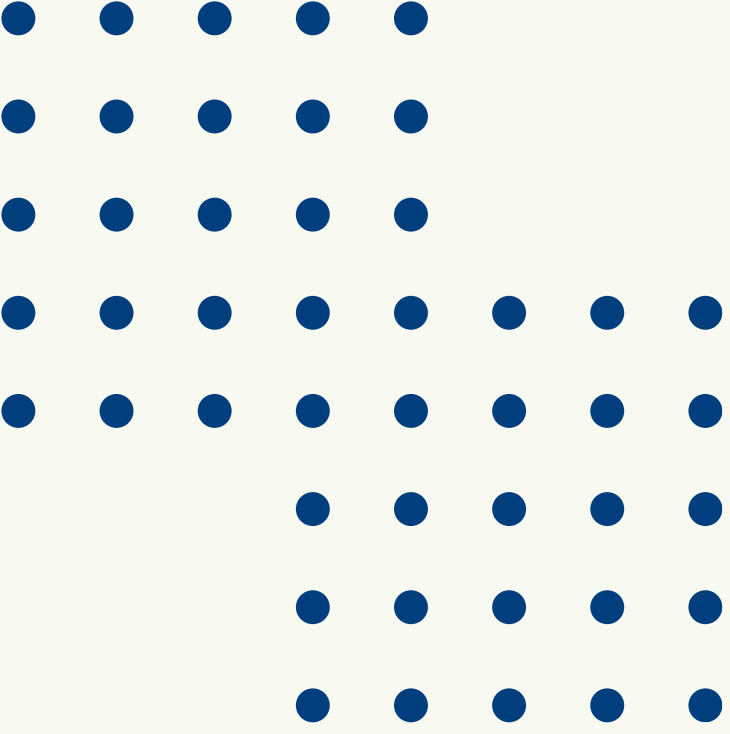


Section V – Informal Resolution

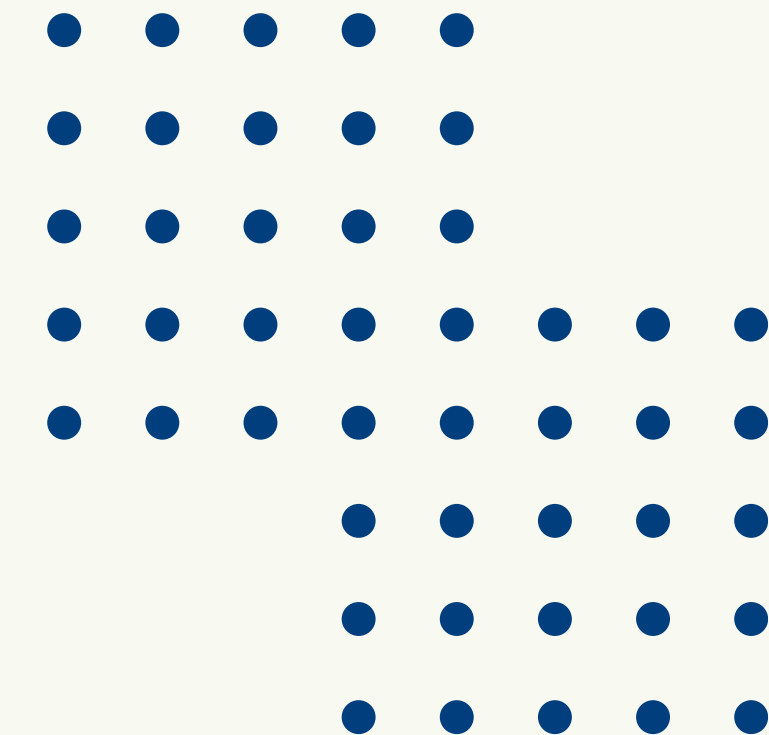
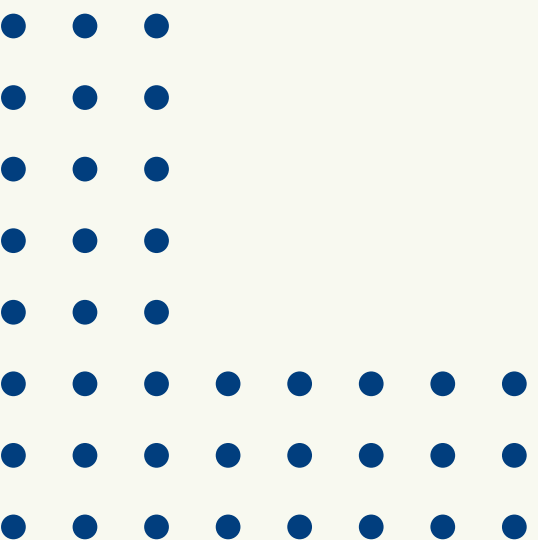


Informal Resolution Process

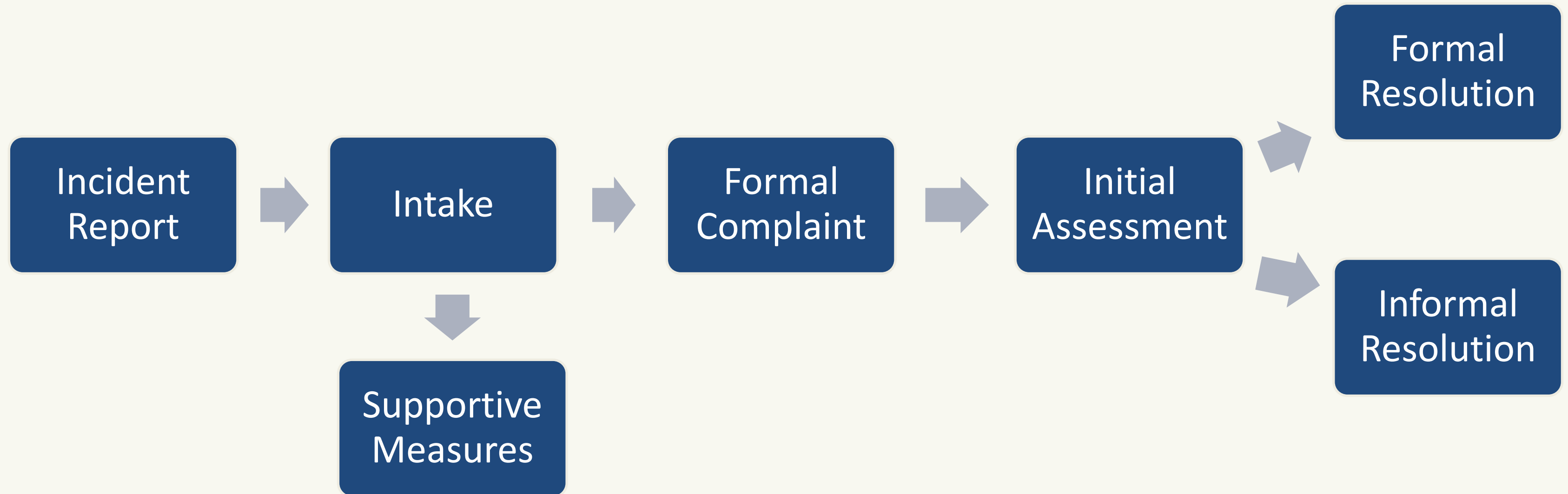
- Formal Complaint is required.
- Voluntary participation and written consent required.
- Facilitated by trained personnel.
- Either party may withdraw and resume formal process.



Section VI – Wrap Up



Recap



Key Takeaways

- Reporting lines must be clear and available to all community members.
- Appropriate Title IX Coordinator assessment is critical to deciding next available process steps.
- Title IX process must be fair, prompt, and equitable.
- Supportive measures can be offered regardless of Formal Complaint.

QUESTIONS?





ASCA Sexual Misconduct Institute

Case Study Introduction

Investigator Pathway

SMI | 2025



YOUR PRESENTERS



KATY LARKIN



KRISTI PATRICKUS

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LEARNING OUTCOMES

Participants will

- Understand the evolution of the case study and its application to the pathway content.
- Review the initial case study documents.

KNOWLEDGE & SKILLS

3 - Case Resolution Management

3.2: Intermediate/Advanced

3.6: Intermediate/Advanced

3.7: Intermediate/Advanced

7 - Investigations

7.1: Foundational/Intermediate/Advanced

7.2: Foundational/Intermediate/Advanced

7.3: Foundational/Intermediate/Advanced

4 - Education

4.3: Foundational/Intermediate/Advanced

4.4: Intermediate

8 - Law and Policy

8.2: Intermediate/Advanced

Evolving Case Study

- Throughout the pathway, you'll apply what you learn to an evolving case study.
- The case study is designed to practice the skills you learn during SMI, while also creating a consistent, controlled environment.
- Certain case study applications will occur as stand-alone sessions, others will be part of instructional sessions.

Case Study Part 1

- Incident Report
- Intake meeting notes with Title IX Coordinator
- Formal Complaint
- Notice of Allegations to both parties

QUESTIONS?





ASCA Sexual Misconduct Institute

The Role of an Investigator

Investigator Pathway

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YOUR PRESENTER



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(she/her)

- Director-at-Large, ASCA
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LEARNING OUTCOMES

Participants will

- Understand the roles and responsibilities of an investigator, including where the role begins and where it ends.

KNOWLEDGE & SKILLS

7 - Investigations

7.4: Foundational/Intermediate

8 - Law and Policy

8.1: Foundational/Intermediate

8.2: Foundational/Intermediate

8.3: Intermediate/Advanced

FORMAL COMPLAINT

NOTICE OF ALLEGATIONS TO ALL PARTIES

SANCTION DETERMINATION

NOTICE OF OUTCOME TO ALL PARTIES

INVESTIGATION PHASE

REVIEW FOR PERMISSIVE OR MANDATORY DISMISSAL

ADJUDICATION PHASE

NOTICE OF APPEAL OUTCOME TO ALL PARTIES

From the 2020 Regulations

- Serve in an unbiased capacity, free from conflicts of interest.
- Provide an equal opportunity for parties to present evidence, including proposing fact and expert witnesses.
- Allow the parties to discuss the allegations under investigation and gather/present relevant evidence.
- Allow for advisors in any meeting or interview.
- Provide a detailed, written notice of all interviews/other meetings in which a party is invited to attend and allow for sufficient time to prepare to participate.

From the 2020 Regulations

- Provide access to all evidence to parties for inspection and review, even irrelevant evidence, for meaningful review prior to the end of the investigation phase.
 - Must occur before the completion of the Final Investigative Report.
 - Allow parties at least 10-days to submit a written response for the investigator's consideration.
- Create an investigation report that fairly summarizes the relevant evidence and send to all parties and their advisors at least 10-days prior to the live hearing.

Investigator Responsibilities

- Gather relevant information related to the allegations
- Organize evidence into an Evidence File
- Synthesize information into an Investigation Report
- Remain unbiased
- Do everything in a succinct timeline
- Manage investigation deadlines

Boundaries of the Role

- Investigators ONLY collect and synthesize information, they do not make findings
 - No credibility findings, not responsible findings
- Setting up a case for a decision-maker's review

Cultural Implications and Barriers

- Investigators ONLY collect and synthesize information, they do not make findings
 - No credibility findings, not responsible findings
- Setting up a case for a decision-maker's review

Cultural Implications and Barriers

- Culture affects how we all view and take in the world. It governs what we value, how we see other people, which fuels our ideas of implicit bias.
- How might culture create a barrier to gathering information?
 - Might affect if someone speaks to you or what kind of evidence they can provide.
 - Might affect what kind of advisor they show up with (attorney or not)
 - Might affect how they're able to remember and recall information
 - Might affect how their culture views certain Title IX situations (definition of consent, "inability" for men to be victims, etc.)

Bias Introduction

- Point of most re-emphasis in 2020 Regulations is that every person involved in a Title IX case is free from bias and conflicts of interest.
- Ultimately, it's the role of the TIXC to screen out conflicts and bias, but...
- But how do you identify and screen out your own bias?
- Kimberly Papillon: https://www.youtube.com/watch?v=S3_TBfWTwuo
- “Implicit biases become destructive when they translate into microaggressions” - NIH

Implicit Bias

- Unconscious bias – automatic, unintentional assumptions, beliefs, attitudes, and stereotypes associated with a person or group of people
- Familiar biases: race, age, gender, sexual orientation, ability
- Less familiar:
 - Affinity: recognizing people similar to ourselves
 - Beauty: tendency to treat attractive people favorably
 - Name: just someone based on named
 - Weight: tendency to attribute weight to ability
 - Height: height with potential success
 - Authority: attribute greater accuracy to opinion of an authority figure

The most difficult people to teach fairness to are the people who value fairness the most. The fair people must take control of our brains. Insidious part of our brains that we can take control of.

– Kimberly Papillon

Explicit Bias

- “With explicit bias, individuals are aware of their negative attitudes or prejudices toward groups of people and may allow those attitudes to affect their behavior. The preference for a particular group is conscious.” NIH

How do you mitigate your own bias?

- Take time to identify biases that might come up with a particular case
 - Be honest with yourself about your own biases
 - Challenge those assumptions
 - Imagine the person as the opposite of the stereotype
 - Stay open-minded
- Avoid making connections that aren't justified by anything more than bias

How do you mitigate the potential apprehension of bias?

- Set the stage with participants early on, be clear in your neutrality
- Explain the investigative process
- Be transparent about challenges and delays
- Communicate impartially: consider the language you use, whether you're generalizing people or situations, don't immediately respond to angry emails.

How do you mitigate the potential apprehension of bias?

- Focus on the facts and don't make presumptions
 - Making a presumption about a case before it starts is one of the worst things you can do.
 - Why? Because you're seeking out information to confirm your presumption instead of seeking out all the information.
- Follow your investigation plan (Jeff discusses later on)
- Document each step you take – why you asked for certain evidence, why you interviewed a particular person, etc.
- Practice professional skepticism

QUESTIONS?



Toolbox Items

- Kimberly Papillon TEDxNashvilleWomen: The Neuroscience of Decision-Making: Are We Foul or Fair? <https://www.youtube.com/watch?v=aCWYkZ5i-gE>
- Harvard Implicit Association Test (Project Implicit):
<https://implicit.harvard.edu/implicit/takeatest.html> ; <https://www.projectimplicit.net/>
- NIH website
<https://www.ncbi.nlm.nih.gov/books/NBK589697/#:~:text=Implicit%20bias%20includes%20the%20subconscious,%2C%20affect%20their%20decision%2Dmaking.>
- <https://yourvoiceprotected.ca/wp-content/uploads/2023/05/Mitigating-Bias-FINAL.pdf>



ASCA Sexual Misconduct Institute

INVESTIGATION PROCESS CONSIDERATIONS

Investigator Pathway

SMI | 2025



YOUR PRESENTER



Jeff Bates

Director of Student Conduct and
Deputy Title IX Coordinator
Oklahoma State University

LEARNING OUTCOMES

- Participants will recognize awareness of own biases and is open to cultural learning, critical self reflection, and self-critique (K&S 5.1).
- Participants will acknowledge the correlation between one's own lived experiences, biases, and privilege (K&S 5.1) and be aware of their own implicit bias (K&S 7.4).
- Participants will analyze aspects of trauma-informed practices within the content of investigations.
- Participants will consider best practices in communication with stakeholders (K&S 3.6).

POSITIONALITY STATEMENT

A positionality statement is a narrative or reflective account that explains how an author's identities or experiences relate to their research topic, the participants they engage with, and the overall research process, making implicit assumptions explicit to promote accountability and reduce bias.

Positionality statements help us to be aware of our perspectives, beliefs, and any underlying assumptions in our work.

SAMPLE POSITIONALITY QUESTIONS

- What experiences made me interested in this type of work and how do those experiences shape how I approach the work?
- What is my experience with victim advocacy work?
- What roles/positions have I had before my role and how do those roles inform my approach to this work?
- Do I have any personal experiences related to the content of investigative work?
- How did my experiences while in undergrad shape how I view what is normal?
- How do previous personal or societal experiences with law enforcement potentially result in biases?
- What did conversations around sexual content look like growing up and how does that influence what I view as expected for students to understand?

INSTITUTIONAL CONSIDERATIONS

- Institution Size
 - How does the size of your student body impact investigator objectivity?
- Office Structure
 - How large is your office and your investigative team?
 - How many different hats do you wear?
 - What types of allegations are you investigating? (Title IX, non-Title IX sexual misconduct, Title VI, Title VII, ADA, etc.)

BIAS

Bias is an inclination for or against an idea, object, group, or individual. It is often learned and is highly dependent on variables.

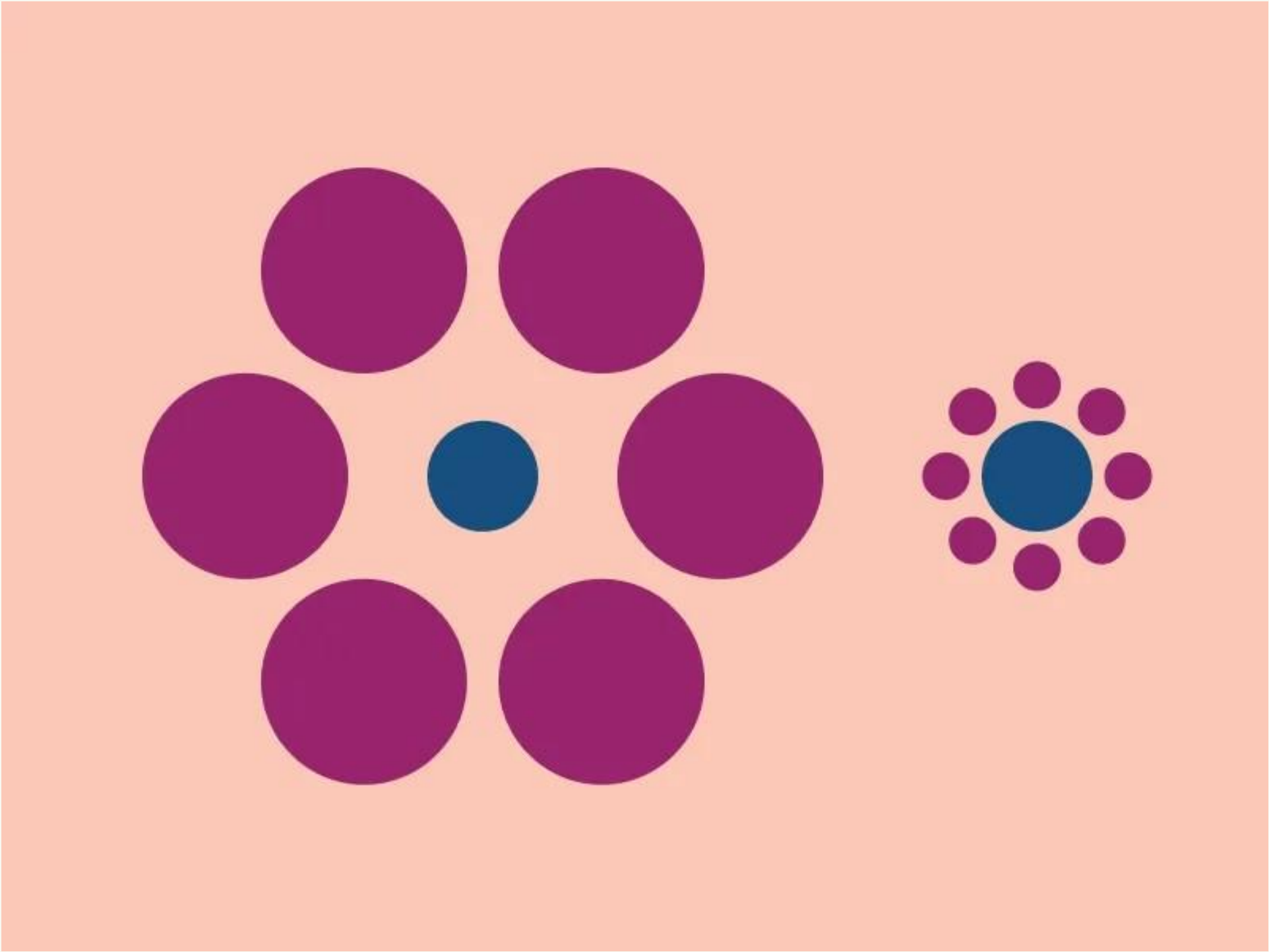
EXPLICIT VS. IMPLICIT BIAS

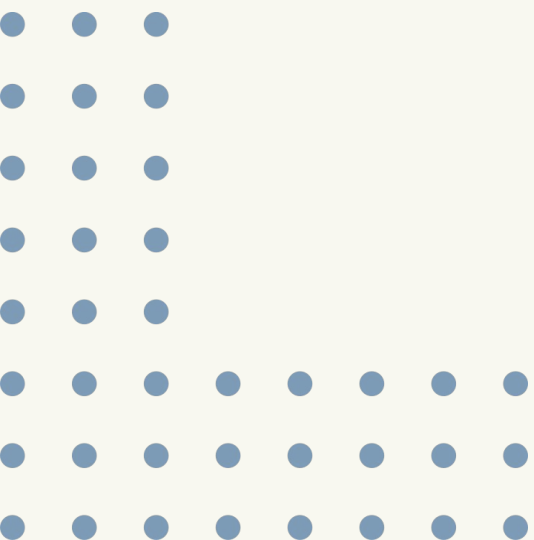
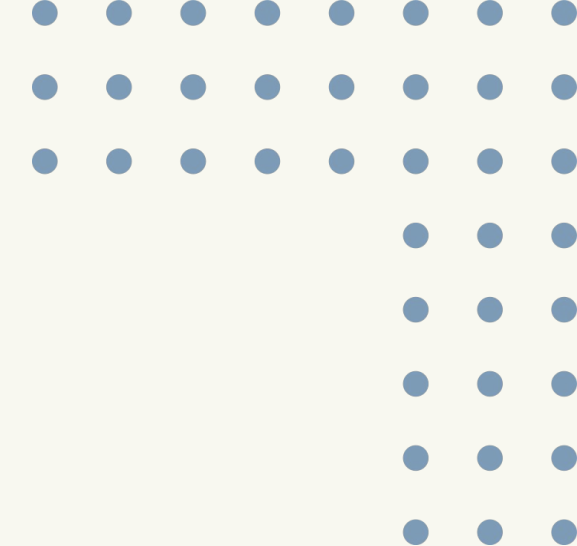
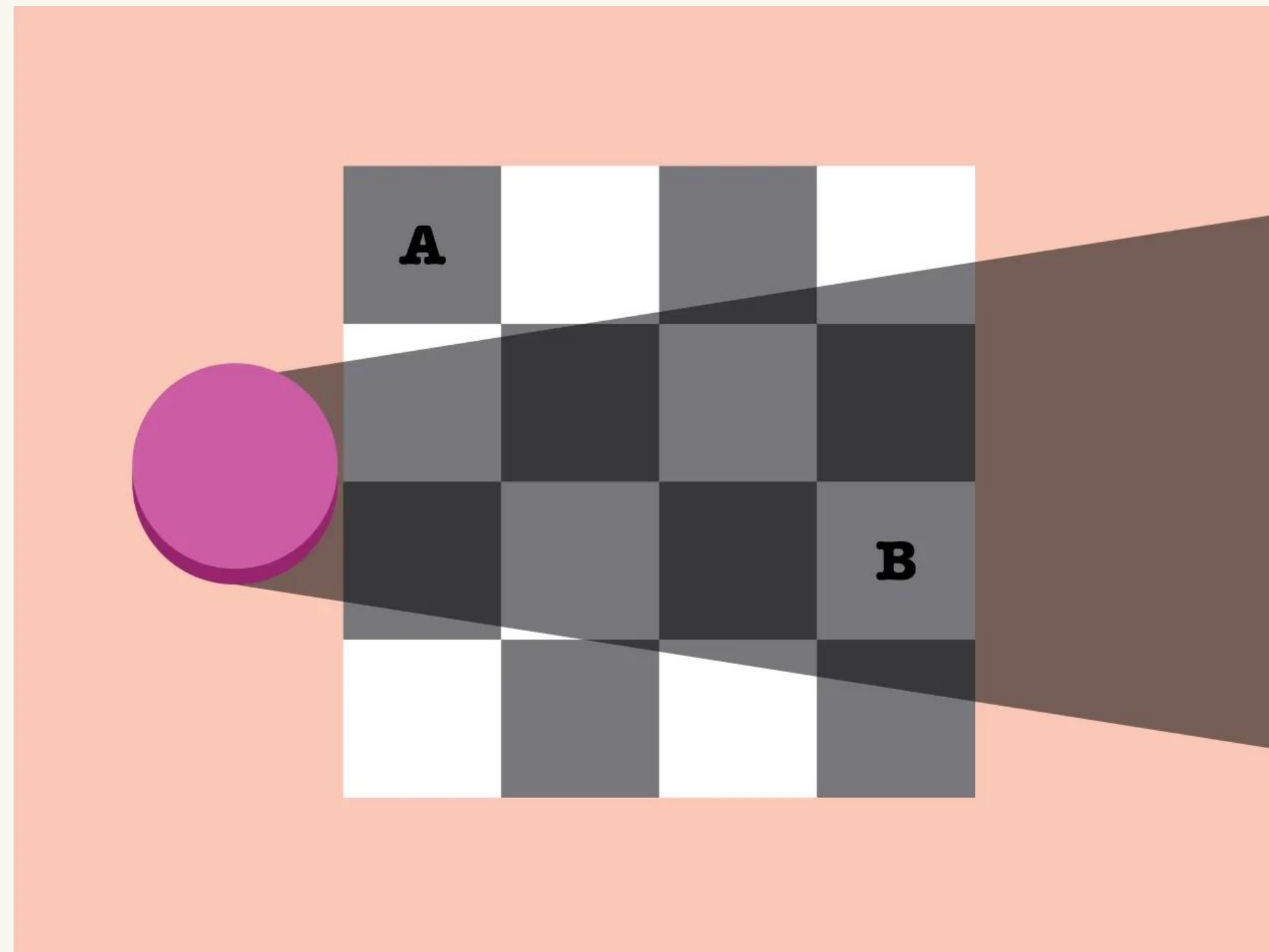
Explicit bias is a conscious, intentional preference or prejudice toward a person or group, whereas implicit bias is an unconscious, unintentional attitude or stereotype that can contradict a person's stated values and beliefs.

PROJECT IMPLICIT

Implicit Association Test (IAT)





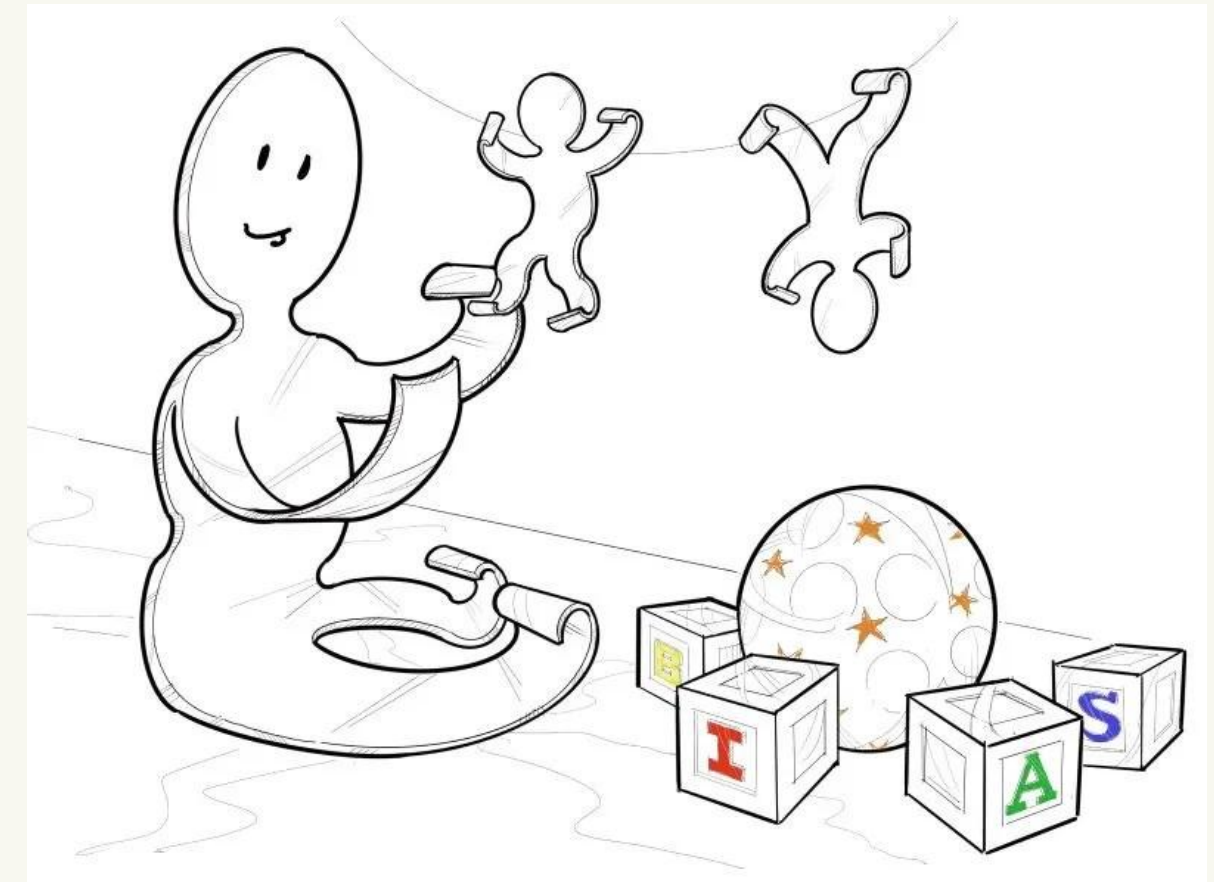


WHERE DOES BIAS COME FROM?

Familiarity

Babies quickly learn to prefer people from familiar groups. A baby might prefer a face that matches the gender or race of their primary caregiver.

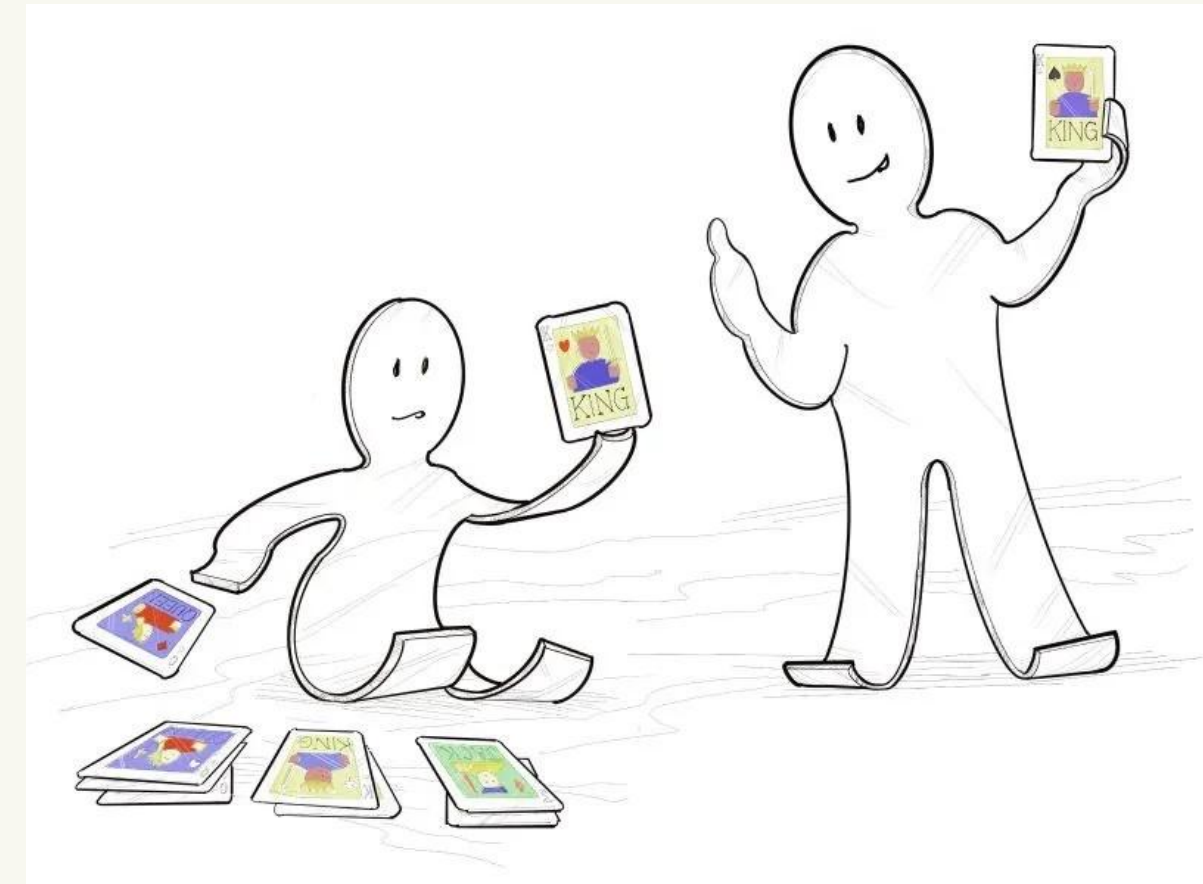
At just a few hours old, newborn infants already prefer listening to a language that they heard in the womb over an unfamiliar language.



Similarity

Toddlers notice similarities and differences across groups defined by language, gender, or race, and they start to more clearly separate people along these dimensions.

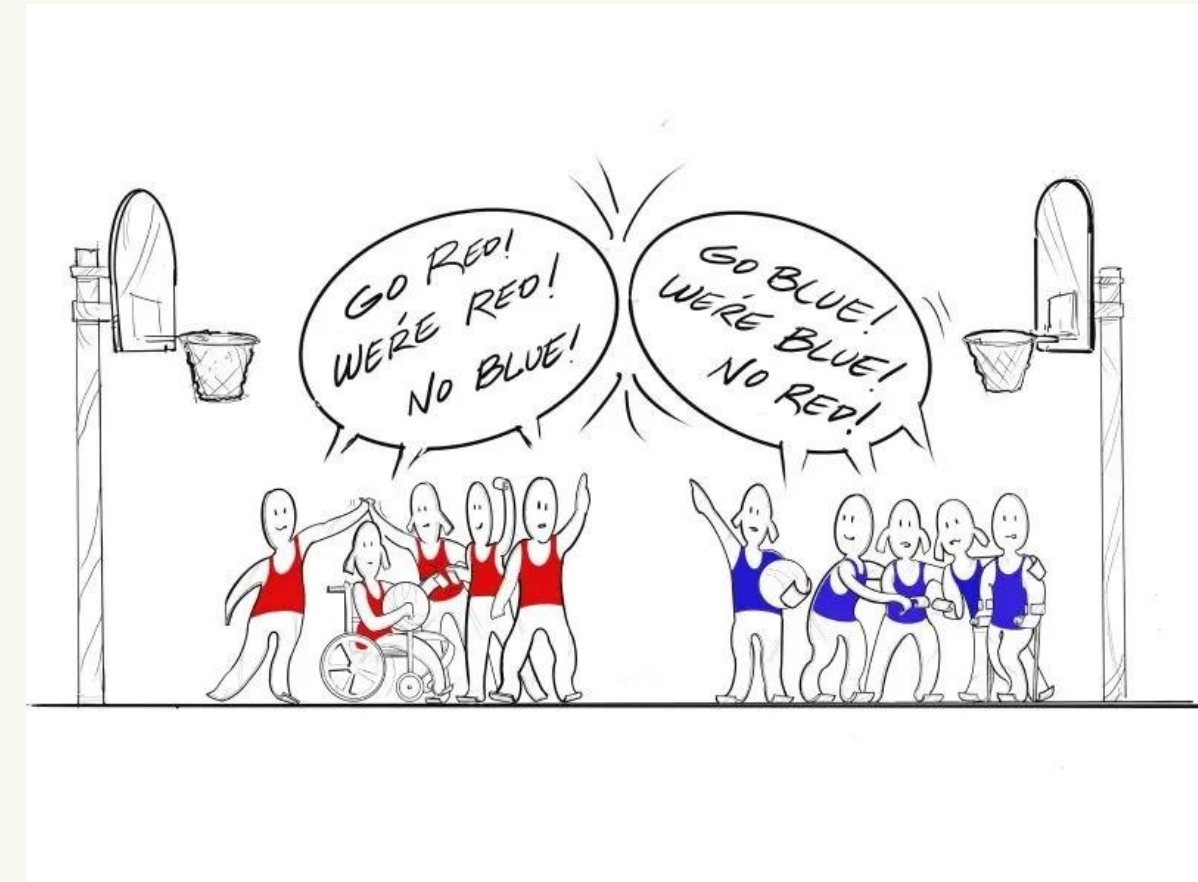
The adults around them fill in “value gaps” by subtly communicating about the kinds of people that are safe or smart. This teaches children whom they should approach and avoid.



Belonging

With further learning, children figure out who they are in the world. They learn the meaning of their own race, gender identity, sexual orientation, socioeconomic status, religion, and more.

As a result, they also come to feel belonging, preferring their in-groups (“us”), and perhaps expressing negative attitudes toward out-groups (“them”).



Confirming

The process of building and maintaining bias continues into adulthood. Throughout our lives, we use confirmation bias to see only what we expect to see in our environment.

We take in only the examples that align with our preexisting notions and stereotypes. We discard the counter-examples that would challenge these world views.



Confirmation Bias

The tendency to seek out information that reaffirms past choices or judgements.

Anchoring Bias

The tendency to fixate on initial information as a starting point while failing to adequately adjust for subsequent information.

Overconfidence Bias

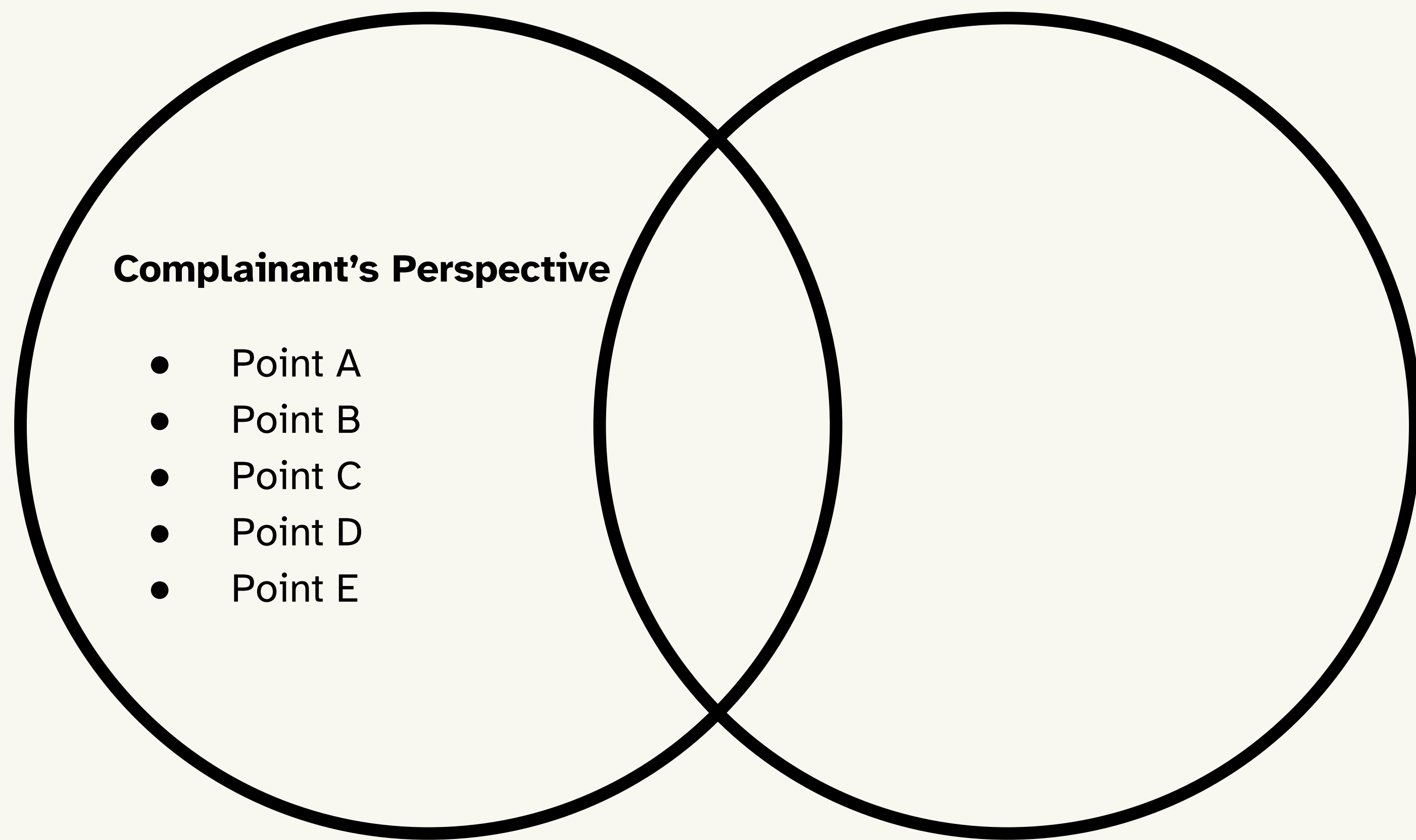
The tendency to be more confident in our own abilities than is objectively reasonable.

Authority Bias

The tendency to be more influenced by the opinion of an authority figure, unrelated to its actual content.

Escalation of Commitment Bias

The tendency to remain committed to our past behaviors, particularly those exhibited publicly, even if they do not have desirable outcomes.



Complainant's Perspective

- Point A
- Point B
- Point C
- Point D
- Point E

Respondent's Perspective

- Point A
- Point B
- Point C
- Point D
- Point E

Confirmation Bias

The tendency to seek out information that reaffirms past choices or judgements.

Anchoring Bias

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The tendency to remain committed to our past behaviors, particularly those exhibited publicly, even if they do not have desirable outcomes.

OVERCOMING BIAS

- Develop an intentional investigative plan and stick to it
 - What information do you need?
- Prepare questions ahead of time in consultation with others
 - What do I need to know?
 - Why do I need to know it?
- Conduct investigations in pairs
- Be aware of biases and their impact
 - Unique impact on those who are aware
- Put yourself in new spaces where gaps may exist
 - Make the unfamiliar, familiar through visualization and exposure

TRAUMA

Trauma is exposure to an incident or series of events that are emotionally disturbing or life-threatening with lasting adverse effects on the individual's functioning and mental, physical, social, emotional, and/or spiritual well-being.

Experiences that may be traumatic include:

- Physical, sexual, and emotional abuse
- Childhood neglect
- Living with a family member with mental health or substance use disorders
- Sudden separation from a loved one



TRAUMA INFORMED PRACTICE

- Enables an equitable and fair process while recognizing there may be trauma associated with the reported incident and/or response.
- Trauma-informed practice shifts the focus from “What’s wrong with you?” to “What happened to you?”
- Goals of Trauma-informed practices:
 - Realize the widespread impact of trauma & understand paths for recovery.
 - Recognize the signs & symptoms of trauma in complainants, respondents, & other involved parties.
 - Integrate knowledge about trauma into policies, procedures, & practices
 - Actively avoid re-traumatization

PRINCIPLES OF TRAUMA INFORMED PRACTICE

- Safety
- Trustworthiness & Transparency
- Peer Support
- Collaboration
- Empowerment
- Humility & Responsiveness

TRAUMA INFORMED QUESTIONS

- “When (specific event happened), what were your feelings and thoughts?”
- “Are you able to tell more about what happened when...?”
- “Where would you like to start?”
- “Would you tell me what you are able to remember about your experience?”
- “If anything, what do you remember hearing during the event?”
- “What were your thoughts and/or feelings while you were in... (the room, the car, the house, etc.)?”
- “Do you remember smelling/hearing/feeling/seeing anything when...? Tell me more about that.”

TRAUMA INFORMED CARE

REGIONAL RESEARCH INSTITUTE PSU
2013 – D. YATCHMENOFF

Trauma Informed Care (TIC) recognizes that traumatic experiences *terrify, overwhelm, and violate* the individual. TIC is a commitment not to repeat these experiences and, in whatever way possible, to **restore a sense of safety, power, and worth**.

THE FOUNDATIONS OF TRAUMA INFORMED CARE

Commitment to Trauma Awareness

Understanding the Impact of Historical Trauma
and Oppression

Agencies Demonstrate Trauma Informed Care with Policies, Procedures and Practices that:

Create Safe Context

through:

- Physical safety
- Trustworthiness
- Clear and consistent boundaries
- Transparency
- Predictability
- Choice

Restore Power

through:

- Choice
- Empowerment
- Strengths perspective
- Skill building

Build Self-Worth

through:

- Relationship
- Respect
- Compassion
- Acceptance and Non-judgment
- Mutuality
- Collaboration

**What are some ways your office infuses
Trauma-Informed Practice into your work?**

COMMUNICATION WITH INVOLVED PARTIES

EFFECTIVE COMMUNICATION

- Clear & concise
- Ethic of care
- Patience & Empathy
- Privacy vs. Confidentiality
- Written communication
 - Consider timing
- Providing space for response

NEUTRALITY

- A neutral investigator or decision maker is impartial and unbiased
 - Communicate your neutrality clearly with participants
 - Neutrality is not indifference or passiveness
 - Do not prejudge or take sides
 - Actively listen to all participants and thoughtfully assess their statements
 - Remain objective throughout
- How do you communicate with care and empathy, while maintaining neutrality?
- How do you manage your own beliefs, biases, opinions, and/or emotions while maintaining neutrality?
- How do you avoid influence when you receive external pressure to align with specific interests?

ADVISOR COMMUNICATION

- Early communication is key to avoiding issues with advisors
- How are they informed about their limited role and expectations for participation?
 - Outreach
 - Training opportunities
 - Advisor agreements
- How do you communicate violations of decorum or other expectations?
- If you have university volunteers, how do you recognize and support them?

RELUCTANT PARTICIPANTS

- Many participants are reluctant to be involved. They may:
 - distrust the process, or the university in general
 - fear retaliation
 - fear they won't be believed or that they will be re-traumatized
 - be uncomfortable with the subject matter
 - be simultaneously engaged with a criminal process
- What steps can you take to make them more comfortable in the process?
- What should you avoid doing?

QUESTIONS?





ASCA Sexual Misconduct Institute

INVESTIGATION PLANNING

Investigator Pathway

SMI | 2025



YOUR PRESENTER



Jeff Bates

Director of Student Conduct and
Deputy Title IX Coordinator
Oklahoma State University

LEARNING OUTCOMES

- Participants will explain aspects of successfully preparing for effective caseload management (K&S 3.5).
- Participants will be able to evaluate the charges and allegations in a Notice of Allegations letter to define the investigatory scope (K&S 7.2).
- Participants will prepare a policy segmentation sample.
- Participants will perform inquiry into reported behaviors by recalling potential evidence for collection.
- Participants will consider special populations in their investigative planning process (K&S 7.4).

PRE-INVESTIGATION STEPS

Items to consider and know about your process before you start an investigation:

- Do you have a conflict of interest in this case?
 - You should examine actual or perceived conflicts early on.
 - Do you have written policy on conflict of interest?
 - Refer to appeal language on bias
- How are your investigations staffed?
 - One investigator, dual investigator, partnered with another office

PRE-INVESTIGATION STEPS

Do you have any overlap with other campus policies like Student Conduct or non-Title IX and how do you handle these cases when you have multiple policies at play?

- Example: “the University has established these procedures to implement the student conduct process as it relates to allegations of Discriminatory Misconduct consistent with the Student Conduct Code. If there is a conflict between the Code and these procedures, the Code controls. In cases where allegations are related to both Discriminatory Misconduct and other forms of Prohibited Conduct under the Code, these procedures may be utilized to resolve all potential violations associated with the alleged misconduct.”

PRE-INVESTIGATION STEPS

- Will you audio and/or video record your interviews?
 - Important to know how you will be able to access information later on and how you'll share that information with the parties.
 - Transcripts or summary notes?
- Is there a concurrent criminal investigation? Are you working with university police on a concurrent investigation?
 - This is important to know, especially if you are asked to postpone your investigation pending the outcome of the criminal case or police investigation.
 - Also important to know to determine Complainant's and Respondent's participation interests.

PRE-INVESTIGATION STEPS

- How will you allow for deadline extensions?
 - Good-faith requests from the parties/advisors?
 - Does the other party get to respond to an extension request?
- How will you communicate with parties in the investigation phase?
 - Emails? Listserv? Case management software?

PRE-INVESTIGATION STEPS

- What are the participation expectations for your parties and witnesses?
 - Do you compel parties and witnesses to appear for interviews?
 - How many times will you reach out for an interview request?
- Are you assigning an advisor to each party? What are the advisor access options?
 - May require a conflict of interest screening for your advisors before you assign them to a party.

SPECIAL POPULATIONS

- Athletes
- Seniors
- Pregnant/parenting students
- Disability accommodations
- International students

SCOPE OF INVESTIGATION

- Scope refers to the investigation allegations, timeframes, and parties
- Reference the Notice of Investigation/Allegations sent to the parties.
 - The scope should be defined in this notice.
 - What policies has the Respondent allegedly violated?
- Double check the charges - is every behavior covered? Are the assigned charges accurate?

POLICY SEGMENTATION

- Outlined the elements of each charge
 - This is what you'll use to structure your investigation, so make sure you understand what you're looking for.
- Investigators should use policy segmentation to conduct interviews and collecting evidence.
- Decision-makers will subsequently use information gathered through policy segmentation to determine whether a policy violation has occurred.

POLICY SEGMENTATION EXAMPLE

Parties and Gatherings:

Participating in parties or gatherings that disturb the peace of campus residences or off-campus neighborhoods.

POLICY SEGMENTATION EXAMPLE

Parties and Gatherings:

Participating in parties or gatherings that disturb the peace of campus residences or off-campus neighborhoods.

POLICY SEGMENTATION EXAMPLE

Policy Segments	Questions/Notes
Participating in parties or gatherings	
that disturb the peace	
of campus residences or off-campus neighborhoods	

POLICY SEGMENTATION EXAMPLE

Fondling (“Criminal Sexual Contact”):

The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Or, the forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

POLICY SEGMENTATION EXAMPLE

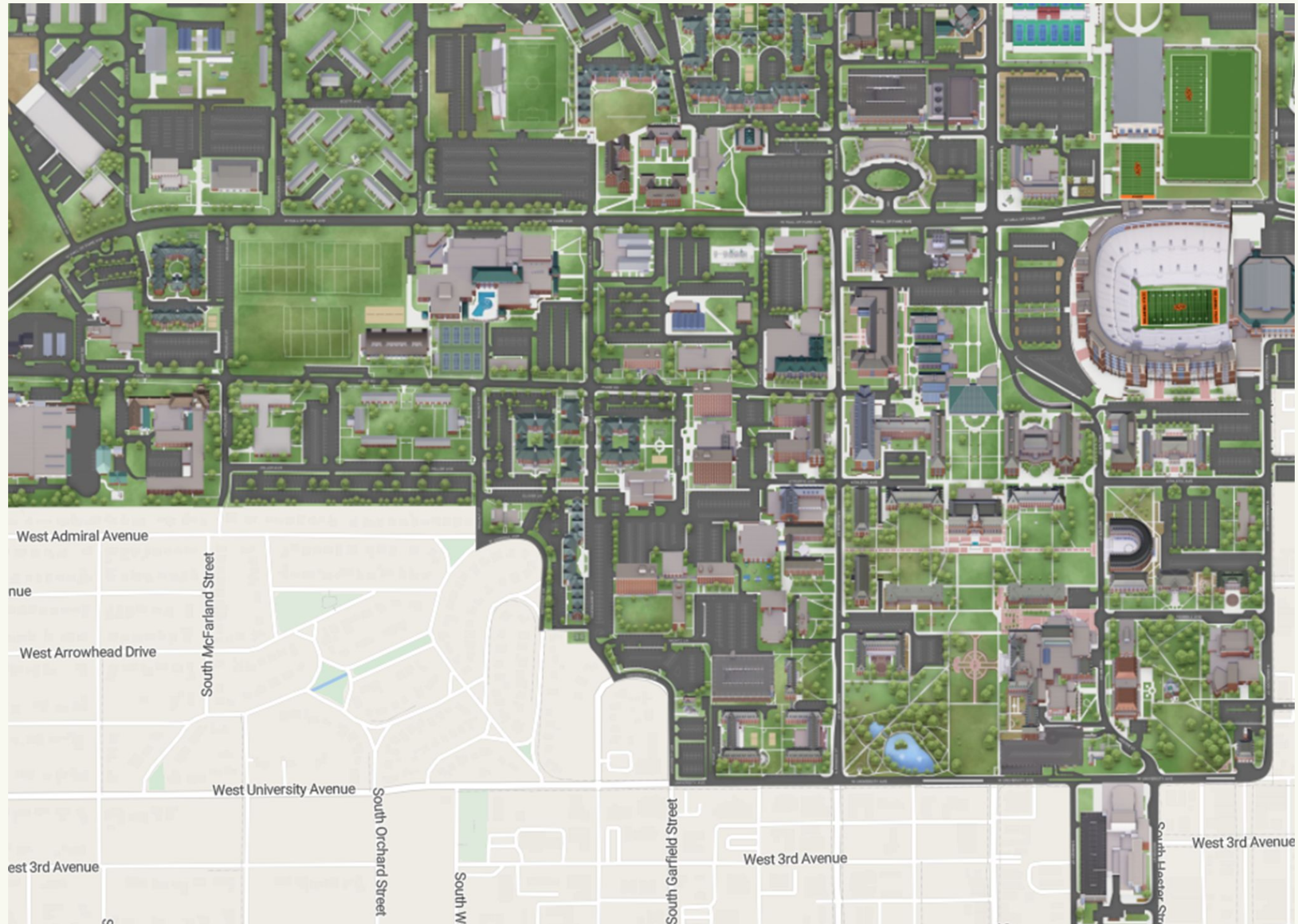
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EVIDENCE COLLECTION

- Start by listing out all potentially relevant evidence
 - Text messages
 - Snapchat/social media/dating app messages
 - Security footage
 - Keycard/swipe data
 - Pictures, videos
 - Police reports
 - Complainant's initial complaint
 - Space and Environment maps





INVESTIGATIVE TIMELINE

- Map out a tentative timeline using guidance in Title IX regulations as well as any available historical data from your institution.
 - 60 days

INVESTIGATIVE STRATEGY

- Create a list of known relevant witnesses
- What order should you interview the witnesses in?
- This is a great scheduling philosophy, but you'll need to remain flexible to your and your witness' schedules.

INVESTIGATIVE ENVIRONMENT

Draw a picture of the physical layout for a typical investigative interview in your process. Compare that picture with a partner.

INVESTIGATIVE ENVIRONMENT

- Privacy of the Interview Room
 - It is easier to tell the truth to one person than multiple people
 - Are there any windows or glass in the room that allows other to see in?
 - Size of room
 - How soundproof is the room?

INVESTIGATIVE ENVIRONMENT

- Location of the Interview Room
 - The location of the room should not be in close proximity to reminders of potential consequences
- Furniture of the Interview Room
 - Where do parties sit? Where does the investigator sit? Is there a table, desk, or physical barrier between parties?
- Additional Materials in the Interview Room
 - Tissues, artwork, degrees, etc.

PREPARE QUESTIONS

- Plan out your essential questions for your interviews.
 - Start with the charges - now that you have the elements, make sure you have questions tailored to those elements.
- What information would each witness provide related to each element?
 - If no other parties were present during an alleged incident, the Complainant and Respondent would be the best people to answer questions of consent.
- What questions might help with a credibility assessment later in the case?
 - Corroborating evidence from other witnesses? Prior conduct?



COMPREHENSIVE FILE

- Develop and maintain a comprehensive investigative file to include:
 - Timeline of Investigation steps
 - Formal Complaint
 - Notice of Allegations letter
 - Updated Allegations letters as needed
 - Interview notes/transcripts for each involved party
 - Submitted evidence for each involved party
 - Communication with the Investigator(s) or relevant office staff
 - Contact log

QUESTIONS?





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INTERVIEWING

Investigator Pathway

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YOUR PRESENTER



Jeff Bates

Director of Student Conduct and
Deputy Title IX Coordinator
Oklahoma State University

LEARNING OUTCOMES

- Participants will understand and employ various interviewing strategies and questioning frameworks (K&S 7.1).
- Participants will recall question types and understand the benefits of each type within the overall investigative structure (K&S 7.1).
- Participants will analyze information received over the course of an investigation through an understanding of credibility (K&S 7.2).
- Participants will distinguish the utility and fallibility of memories.

RAPPORT BUILDING

- Rapport creates trust between parties involved in the interview process by establishing norms and expectations.
- Building rapport is not worth losing your professional credibility.
- Ask some neutral questions not related to the incident which can be answered positively.
- Rapport building occurs at the outset of the investigation but does not end there.

CONGRUENT COMMUNICATION

Congruent communication is achieved when there is alignment in the following areas:

- 1. Non-vocal, non-verbal behavior** - dress and appearance, posture, eye-contact, facial expressions, body movements, gestures.
- 2. Vocal verbal and non-verbal behavior** - the way you express yourself and the way you speak and use your voice.
- 3. Listening behavior** - how you listen

It is important that all three of these areas 'say' the same thing

FORMS OF SELF-ADDRESS

- **Frozen** - “I’m Bieber”
- **Formal** - “I’m Mr. Bieber”
- **Consultative** - “I’m Eric Bieber”
- **Informal** - “I’m Eric”
- **Intimate** - “I’m Biebes”

FORMS OF SELF-ADDRESS

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INTRODUCTION

Before you begin asking questions as part of the investigation, consider providing helpful preliminary information including:

- Investigative process
- Expectations
- Role of the investigator
- Opportunity to take breaks
- Recognizing difficult questions and content
- Encourage openness
- Answer questions

INTERVIEWING COMPETENCIES

- Asking questions
- Active listening
- Gathering information
- Identifying inconsistency
- Clarifying gaps
- Synthesize information

QUESTIONING

Come with your list of questions, but be flexible.

- How many different ways can you ask the same question? Are you prepared to flex how you ask the question?
- Witness-Compatible Questioning

Other information you need during the interviews:

- Complainant's intake information/initial complaint
- Notice of Investigation/Allegations
- Evidence you wish to reference or share with witnesses
- Policy for reference

QUESTIONING

Categories of Questions

- Open-Ended
 - T.E.D.
- Specific
 - 5Ws
- Close-Ended

QUESTIONING

Types of Questions

- Timeline
- Parameter
- Sensory
- Reverse Recall
- Evidence
- Motivation Inquiry

QUESTIONING

Bad Types of Questions*

- Leading
- Option
- Marathon
- Hypothetical
- Closed Confirmatory

*with rare exceptions



QUESTIONING FRAMEWORKS

Funnel Approach

- Opened Ended
- Probing
- Close Ended



QUESTIONING FRAMEWORKS

G.A.S.

- G = Gather information
- A = Assess credibility and relevance
- S = Synthetize areas of agreement/dispute



QUESTIONING FRAMEWORKS

P.E.A.C.E

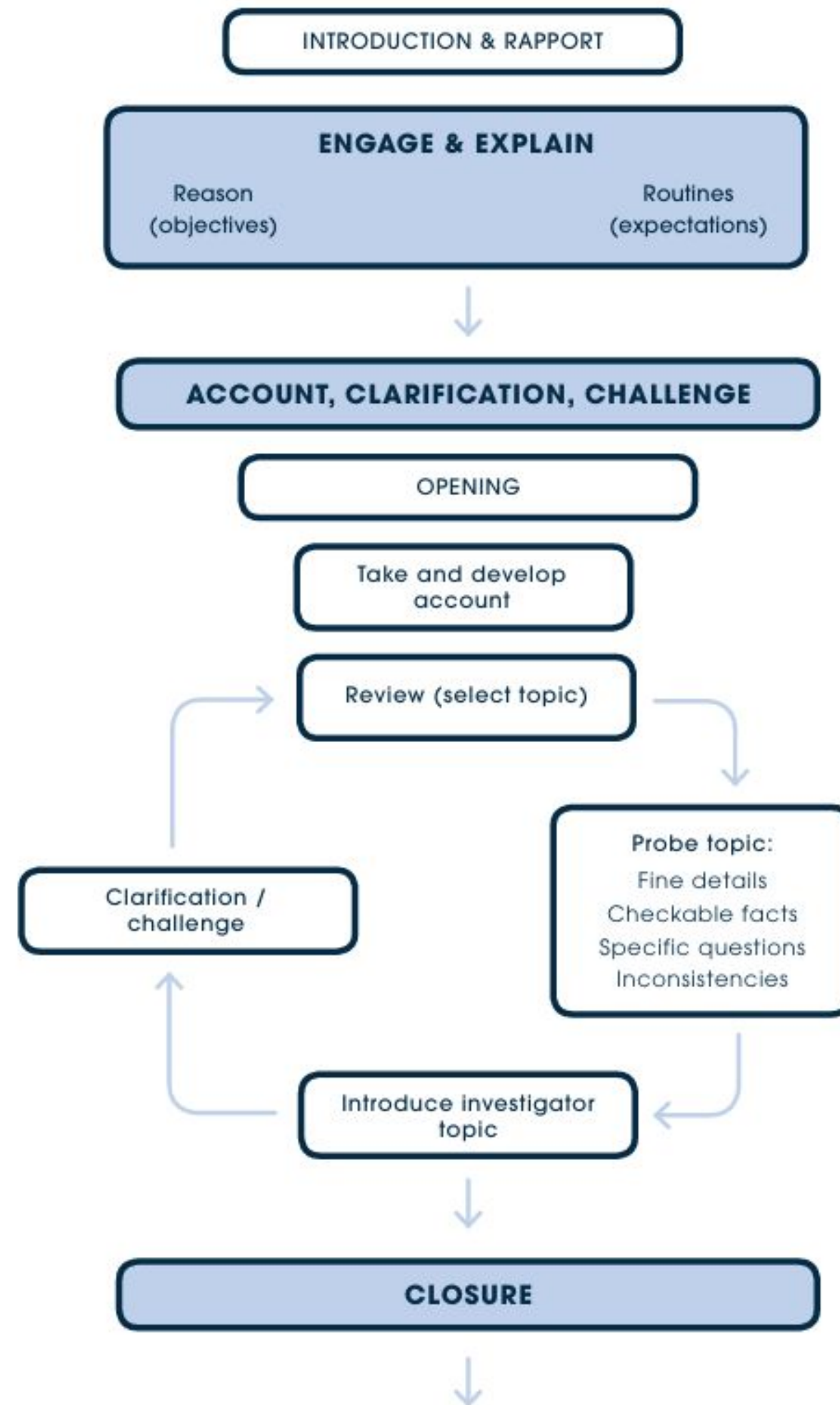
- P = Plan & Prepare
- E = Engage & Explain
- A = Account
- C = Closure
- E = Evaluation

E
Engage & Explain

A
Account

REPEAT

C
Closure



QUESTIONING

When you sense reluctance:

- remind the party of the investigator role from your introduction
- “I know this content can be difficult and so I appreciate your willingness to discuss this with me.”

When you sense deception:

- “Can you help me understand...?”
- “I think I am missing something...”
- Identify the barrier to truthfulness and remove it

VOICE INFLECTION

- I didn't say you were stupid.
- I didn't say you were stupid.
- I didn't say you were stupid.
- I didn't say you were stupid.

SILENCE

“The effective use of pauses and silence are some of the most valuable tools in an investigator’s toolbox.”

SILENCE

“The effective use of pauses and silence are some of the most valuable tools in an investigator’s toolbox.”

-Jeff Bates

SILENCE

Investigator: [Asks a question]

Interviewee: [Silence]

Investigator: *I understand it can be difficult to remember detail*

Interviewee: [Silence]

Investigator: *Take your time*

Interviewee: [Silence]

Investigator: *There's no rush*

Interviewee: [Silence]



CASE STUDY

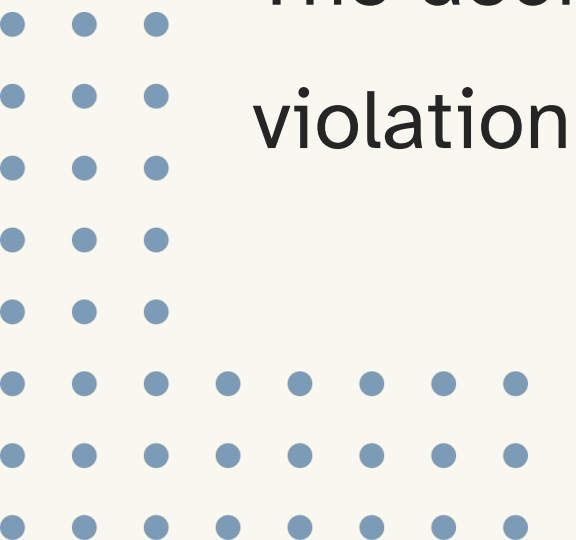


CREDIBILITY

“Credibility is the capacity for being believed; the quality that renders something (testimony, evidence, a witness, etc.) worthy of belief; believability.” Cornell Law.

In the Title IX process, credibility means the weight assigned to the evidence after considering the source, content, and plausibility.

The investigator assesses the credibility of evidence throughout the investigation.



The decision-maker makes a *final* assessment of credibility when determining whether the violation occurred.

CREDIBILITY INVOLVES RELIABILITY AND VALIDITY

Target A
Poor Validity,
Good Reliability



Target B
Poor Validity
Poor Reliability



Target C
Good Validity,
Good Reliability



CREDIBILITY ≠ HONESTY

- Memories may be altered by time by unconscious bias, stress, anxiety, substance use, and other external or internal influences.
- Fallibility of memory includes natural deviation from the original experience, creation of “memory illusions,” and variable retrieval of details each time the memory is shared.

FAKE MEMORIES



ASSESSING CREDIBILITY

- Inherent Plausibility
- Motive to Falsify
- Corroboration
- Past Behavior
- Demeanor

Factors, not elements: you don't need them all and not one weighs heavier than the others. You can also evaluate other factors, such as sobriety.

INHERENT PLAUSIBILITY

- Is the evidence believable on its face and does it make sense?
- Is it consistent with other gathered evidence?
- Is the described physical location reasonable?
- Listen for “I’m pretty sure,” “It would make sense” and “I think” in interviews and testimony.

REASONABLENESS

- What is the reasonableness of the evidence?
 - Was a party close enough to hear a conversation? Was the room dark?
 - Is something else more likely to have occurred?
- When you are faced with two plausible explanations, you have to decide what is more plausible based on the other information that you know.

MOTIVE TO FALSIFY

- Does the person have a reason to lie?
- Everyone risks something by participating in the process (personal or relationship consequences, academic impacts, career implications, etc.)
- What do parties risk if the allegations are true vs. false?
 - From both the Complainant and Respondent perspective
- Lying doesn't mean the party or witness loses all credibility

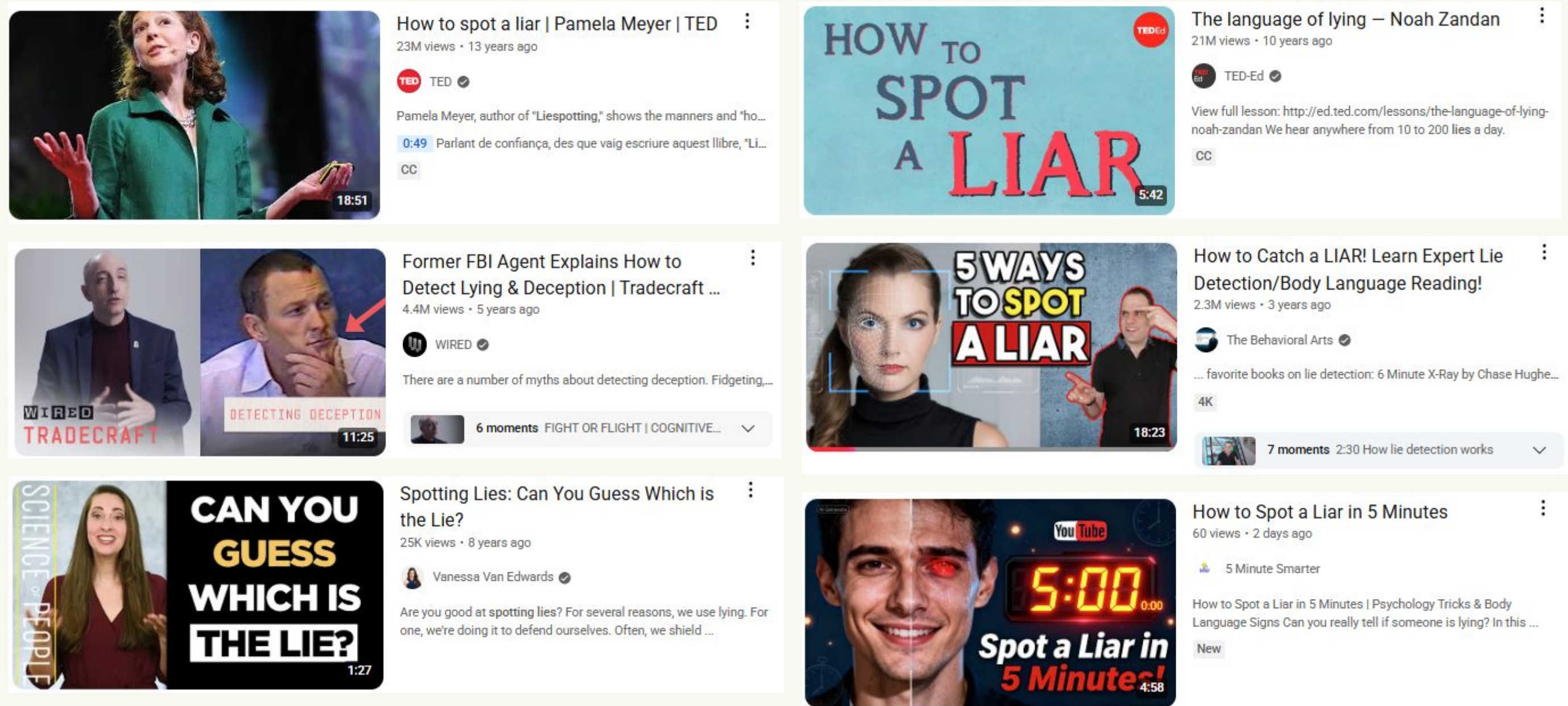
CORROBORATION

- Does the evidence strengthen the party's statement or testimony?
- Independent, direct evidence provides objective authentication
 - Example: Party reports receiving threatening messages and provides screenshots.
 - Example: Party reports they were out of town during the incident and provides travel confirmation.
- Contemporaneous evidence, such as an outcry witness, reporting to police, and emergency medical records, may strengthen the veracity of a party's testimony.
- Be wary of relying on friendly witnesses... Generally, the more unattached a witness is, the more credibility they have.

PAST BEHAVIOR

- Does the Respondent have a history of substantially similar allegations?
- Has the Respondent been found responsible previously for similar violations?
- Did the Complainant and Respondent know one another previously?
 - Was either party acting inconsistently than in previous situations?
- Past violations do not indicate current responsibility but may establish a pattern.

DEMEANOR



DEMEANOR

It's not easy to spot a liar



Associated with lying



No significant relationship



Associated with truth-telling

CUES	ASSUMED RELATIONSHIP	ACTUAL RELATIONSHIP
VOCAL		
Hesitations (use of speech fillers, e.g., “ah,” “um,” “er,” “uh,” and “hmmm”)	✓	X
Speech errors (grammatical errors, word or sentence repetition, false starts, sentence change, sentence incompletions, slips of the tongue, etc.)	✓	X
High-pitched voice	✓	✓
Speech rate (number of spoken words in a certain period of time)	X	X
Latency period (period of silence between question and answer)	X	X
Pauses (silent, filled, or mixed)	✓	X

CUES	ASSUMED RELATIONSHIP	ACTUAL RELATIONSHIP
VISUAL		
Gaze aversion (looking away from the conversation partner)	✓	X
Smiles (smiling and laughing)	X	X
Facial fidgeting (face touching or rubbing hair)	✓	X
Self-fidgeting (touching, rubbing, or scratching body or face)	✓	X
Fidgeting (undifferentiated)	✓	✓
Illustrators (hand and arm movements designed to modify or supplement what is being said verbally)	X	✓
Leg and foot movements	✓	X
Posture shifts (movements made to change seating position)	✓	X
Head movements (head nods and head shakes)	✓	X
Eye blinks (blinking of the eyes)	✓	X

NOTE TAKING

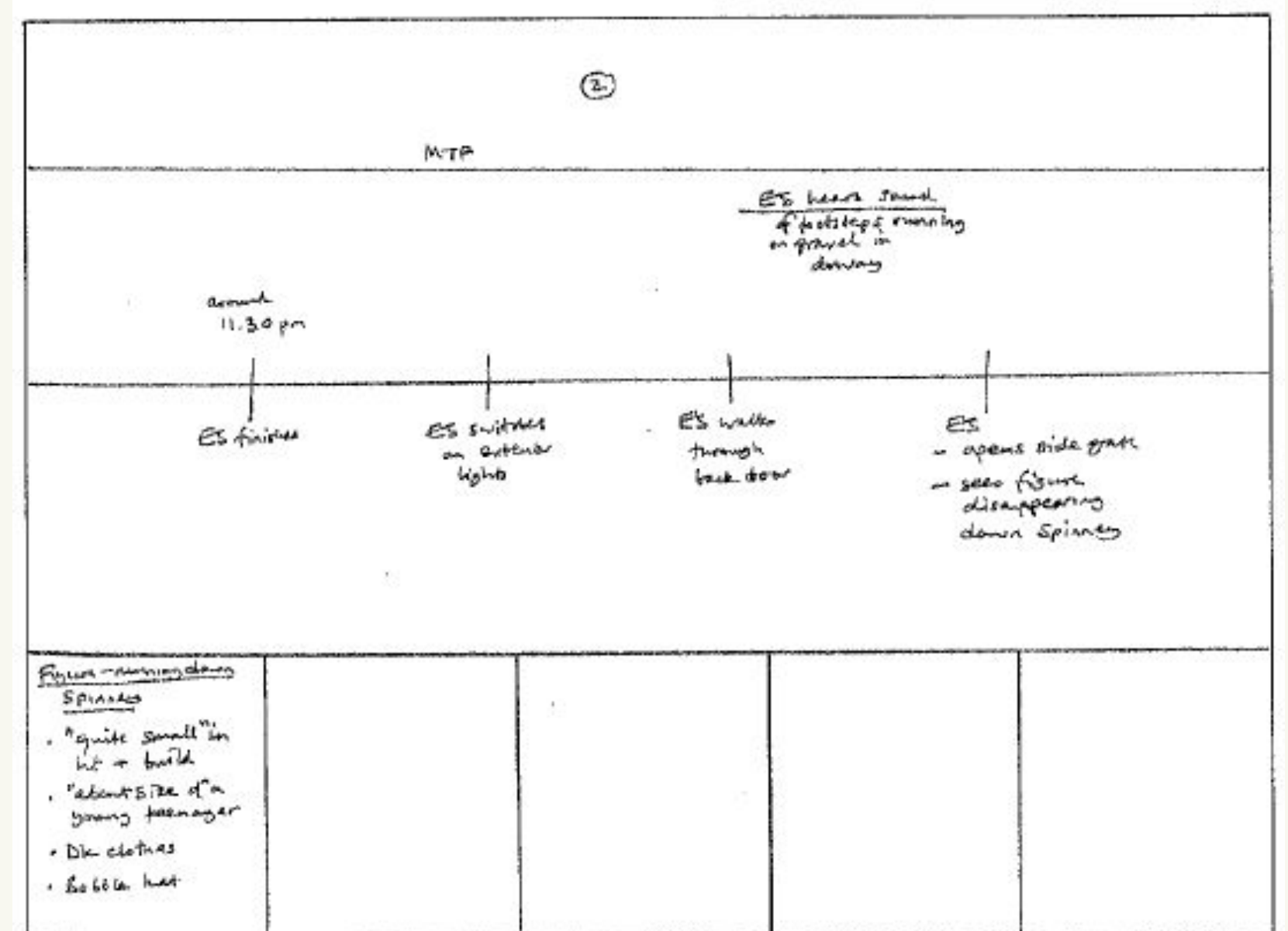
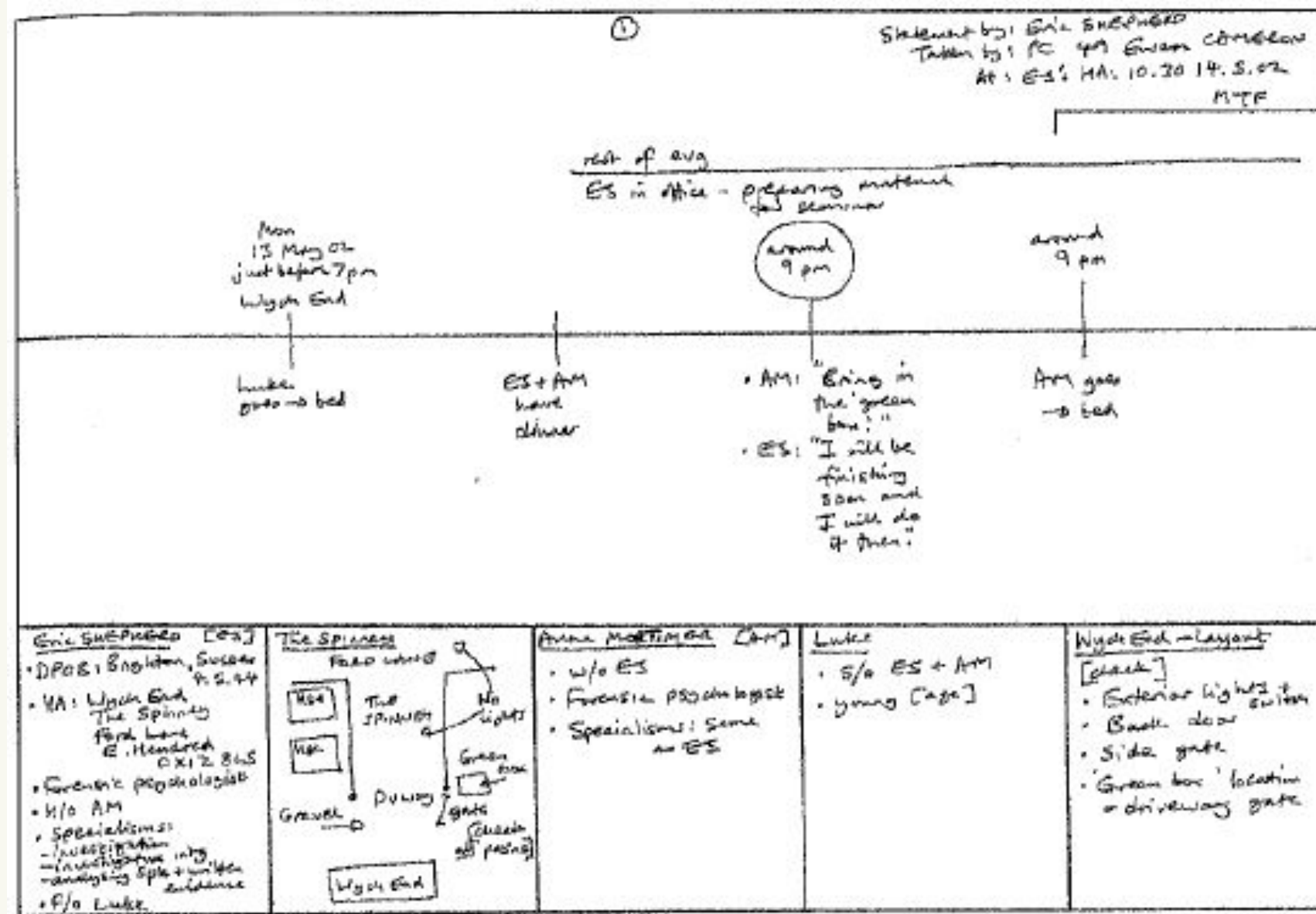
“You will never know the value of good notes until you don’t have them.”

- Cst. (ret.) Wyatt, New Westminster Police

NOTE TAKING

- If it isn't written down, it didn't happen
- Physical notes v. computer notes
- Notes are not a transcript
 - note key pieces of information received from involved parties
 - note key pieces of information given to involved parties
 - note involved parties refusal to answer questions
- Be mindful that taking notes slows the process down

NOTE TAKING



QUESTIONS?





ASCA Sexual Misconduct Institute

THE EFFECTIVE USE OF EVIDENCE

Investigator Pathway

SMI | 2025



YOUR PRESENTER



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LEGAL DISCLAIMER

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LEARNING OUTCOMES

- Participants will understand key terms and how to distinguish between different kinds of evidence.
- Participants will learn how to evaluate pieces of evidence and how they apply to the investigation process.
- Participants will father methods to corroborate evidence and how that affects a witness's credibility.

SESSION OUTLINE

- ☐ Definitions and Types of Evidence
- ☐ Evaluating Relevance, Credibility, and Reliability
- ☐ Importance of weight
- ☐ Corroboration – How do you know it is good evidence?

Key Terms

- **Inculpatory vs. Exculpatory Evidence**
- **Testimonial Evidence**
- **Documentary & Digital Evidence**
- **Physical Evidence**

- **What about circumstantial evidence?**

Collecting Evidence

- **Asking the right questions**
- **Documentation – how, when, and from whom?**
- **Timing of collection**
- **Get “both copies”**

Relevance

- **Is it directly related?**
- **Does it make a fact more or less probable?**
- **What to do with non-relevant evidence.**

Credibility

- Does this make sense?
- The devil in the details
- Is it consistent?
- Motive for bias
- Support or contradiction
- **CAUTION** – Demeanor & Delivery

Reliability

- **Who do I trust?**
- **The role of alcohol & other substances**

Weighing the Evidence

Relevance + Credibility + Reliability = Weight/Probative Value

“Tricky Evidence”

- **Medical Records**
- **Polygraph Results**
- **Expert Witness Reports**
- **Refusal to Answer**
- **AI Generated**
- **New Evidence**

Corroboration

- **Support vs. Contradiction – How much?**
- **Sources of Evidence**
- **Level of Detail**
- **Document the Documents!**

QUESTIONS?





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Drafting an Investigation Report

Investigator Pathway

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YOUR PRESENTER



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LEARNING OUTCOMES

Participants will

- Review an investigation report template and discuss writing mechanics used to draft high-quality reports.
- Draft an outline of an investigation report that aligns with the case study materials.

KNOWLEDGE & SKILLS

Case Resolution Management

3.1 - Foundational and Intermediate

3.2 - Foundational and Intermediate

3.6 - Foundational and Intermediate

Investigations

7.1 - Foundational and Intermediate

7.2 - Foundational and Intermediate

7.3 - Foundational and Intermediate

Internal & External Partnerships

6.2 - Foundational and Intermediate

Evidence File and Investigation Report

- The ultimate documentation produced at the end of your investigation.
 - Evidence File = all relevant and irrelevant evidence in its raw format.
 - Investigation Report = an unbiased, impartial summary of all the relevant evidence and how it relates to the allegations and assigned charges.
- You prepare these documents as you proceed through the investigation.
- The parties are entitled to two opportunities to read and respond to evidence prior to the end of the investigation phase and issuance of the Final Investigation Report.
- The Evidence File and Investigation Report become part of the record and are transferred to the decision-maker in preparation for the live hearing.

Evidence File and Investigation Report

- Fill in these documents as you proceed through a case, don't wait until the end of an investigation.
 - Your notes should remain separate, but you can draft your Evidence File and Investigation Report as you go.
- The more experience you have in these documents, the easier they become to input information and craft into the versions that the parties and advisors receive.

Setting up Credibility Assessments

- Though Investigators do not conduct credibility assessments, it's important to set the stage for the Decision-Makers.
- Use Credibility Determination Factors ([EEOC Guidance](#)):
 - Inherent Plausibility
 - Demeanor
 - Motify to Falsify
 - Corroboration through witness testimony or physical evidence
 - Past Record
- Focus on explaining the factors and how they relate to what you've learned.

Evidence File and Investigation Report

- Review Evidence File Template
- Review Investigation Report Template

Legal Writing Primer

IRAC

- **I:** Issue
- **R:** Rule
- **A:** Application
- **C:** Conclusion

In your role as an Investigator, you'll mostly use IRA structure, without drawing a conclusion.

This writing structure can adapt as needed, but it's a great baseline to keep you organized when you start writing.

Investigation Report Writing Practices

- Write short, clear sentences. It's better to have more sentences than lengthy ones that are hard to read.
- Consider using identifiers like Complainant, Respondent, Witness 1, etc. This helps anonymize your reports should they be leaked.
 - It's also easier to follow the report without needing to know everyone's names.
- Avoid extensive pronoun usage.
 - When you're talking about a lot of different people, using pronouns can make your sentences hard to follow and make your writing unclear.
 - You can avoid using pronouns entirely for ease of reading, but this takes practice and may sound awkward at first.

Case Study Application

- Create your Initial Evidence File
- Create your Draft Investigation Report

QUESTIONS?





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TITLE IX PROCESS AFTER AN INVESTIGATIVE REPORT

Investigator Pathway

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YOUR PRESENTER



Jeff Bates

Director of Student Conduct and
Deputy Title IX Coordinator
Oklahoma State University

LEARNING OUTCOMES

- Participants will identify and describe their role as an investigator in the hearing process and appeal process at their respective institutions.
- Participants will understand case resolution pathways for Title IX cases (K&S 3.4)

HEARING PHASE

- Formal complainants are resolved through a hearing phase unless they have otherwise been resolved through an Informal Resolution process.
- The role of the hearing body is to:
 - Elicit information and ask questions of involved parties
 - Determine relevance and credibility
 - Make a decision about responsibility
 - Assign outcomes
 - Draft a rationale
- An effective and thorough investigation and report allows a hearing body to do each of these tasks well.

INVESTIGATOR ROLE

- Your role as an investigator will vary based on your institutional process and standard procedure
 - Investigator may be available upon request to be present at the hearing
 - Investigator may always be at the hearing to answer questions
 - Investigator may be present to answer investigative process related questions
 - Investigator may provide a summary of the report and key decisions to the hearing body

INVESTIGATOR ROLE

Regardless of the Investigator role in a hearing, the two most important considerations are to:

1. Not make any statements that could be construed as making a determination of whether a policy was violated
2. Not make any statements or observations that are not already included in your investigative report

WHAT DOES THE ROLE OF AN INVESTIGATOR AT YOUR INSTITUTION LOOK LIKE?

ADVISOR ROLE

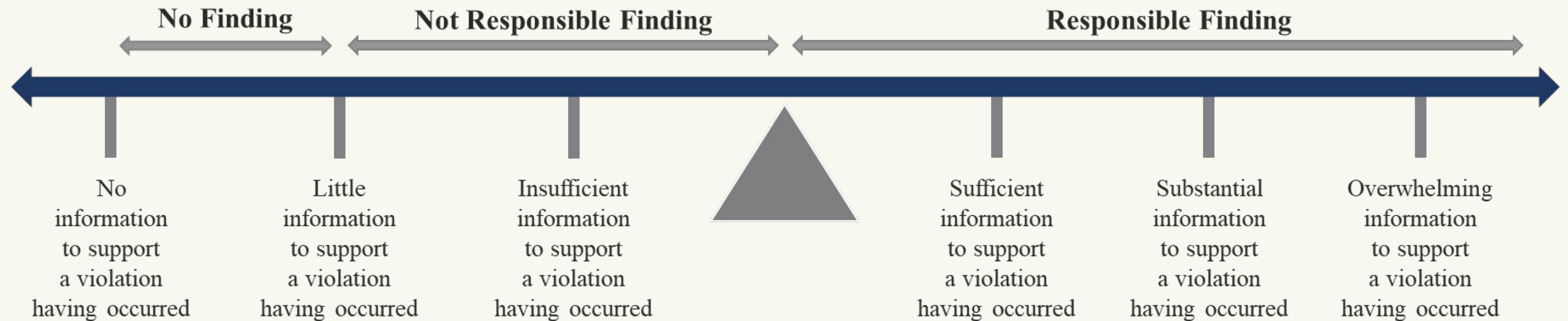
- Advisor's ability to participate may differ based on institutional policy
- Questions for any involved parties must be asked by either the Advisor or the Hearing Body
- A Respondent or Complainant who does not have an advisor will be provided one by the institution for the questioning phase of the hearing

HEARING FINDING & RATIONALE

- The hearing body will make a decision about 1) what happened and 2) whether a policy has been violated based on the standard of evidence set forth in policy.
- This is most often the preponderance of the evidence standard.
- The Hearing Body will draft a rationale using all information available to them and utilizing a policy segmentation approach.

HEARING FINDING & RATIONALE

- The hearing body will make a decision about 1) what happened and 2) whether a policy has been violated based on the standard of evidence set forth in policy.
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- The Hearing Body will draft a rationale using all information available to them and utilizing a policy segmentation approach.

APPEAL PROCESS

- Your role as an investigator will vary based on your institutional process and standard procedure
- Regardless of the Investigator role in an appeal, the two most important considerations are to:
 - Not make any statements that could be construed as making a determination of whether a policy was violated
 - Not make any statements or observations that are not already included in your investigative report

QUESTIONS?





ASCA Sexual Misconduct Institute