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Secrets to Writing an Air-tight Report

March 2022

43rd Annual National Conference on Law and Higher Education



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Good morning!

Please access materials here
and begin reading
Complainant's Statement:

[https://grandriversolutions.com/
national-conference-on-law-and-
higher-education-2022/](https://grandriversolutions.com/national-conference-on-law-and-higher-education-2022/)

Meet Your Facilitators



Jody Shipper, JD

She/Her

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Solutions Specialist

About Us

Vision

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

Mission

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

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity



The Importance of Writing a Solid Report

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A Well Constructed and Written Report

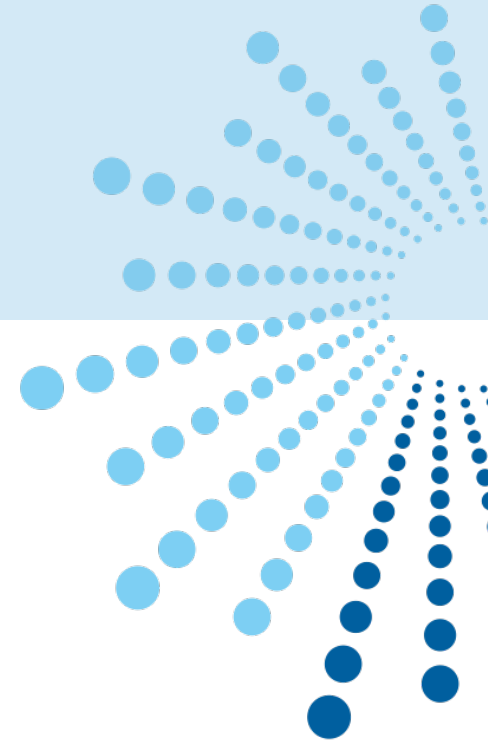
- Conveys the details of an investigation long after the event.
- Signals to others that the complaint was taken seriously—that it is important to the institution to get it right.
- Demonstrates that the investigation was fair, impartial, and thorough.
- Protects you and your institution in case of litigation and helps to limit your liability.



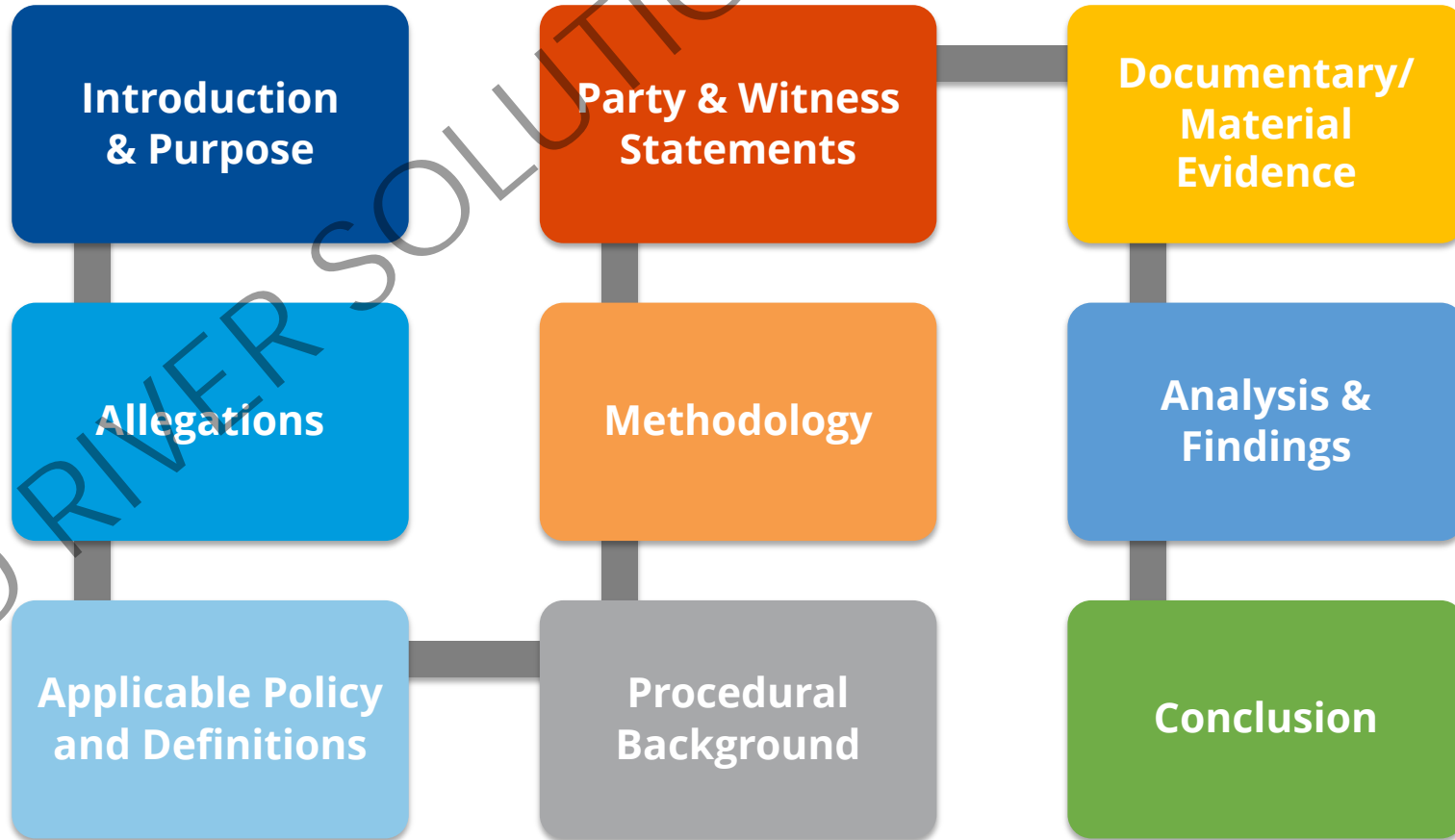


Structuring the Report

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Report Sections



Introduction and Purpose

- Date of Incident
- Complainant Name and Status (student, faculty, staff)
- Respondent Name (student, faculty, staff)
- Potential violation of what policy
- Investigation being conducted according to what policy/procedure
- What is the purpose?
- Gather evidence for someone else to make a determination
- Gather evidence, make findings of fact and/or policy

Allegations

- Brief description of the alleged conduct including date, time, location.
- Should be stated exactly as it appears in the notice of investigation.



Applicable Policy and Definitions

Include Directly from the Policy:

Formal name of the policy

Applicable section numbers

Applicable definitions (in relevant part)

Procedural Background

State and describe or explain the following:

- Date complaint was received.
- Date notices of investigation were sent.
- How the report came to you.
- What steps if any were taken in response to the report prior to and during the investigation process (e.g., interim/supportive or safety measures).
 - Only include they were put in place do not include any specifics about the measures, investigatory leave, no contact orders, etc.
- Date amended notices of investigation were sent.
- Any delays in the investigation process including the reasons for the delay and what was done during the delay.

Investigation Methodology

- Identify who was interviewed.
- Identify who was suggested to be interviewed but was not interviewed and why.
- State whether those interviewed were provided with an opportunity to review their statements and by what mechanism and how their comments were incorporated into the report (statement section or appendix).
- Identify the documents gathered, who provided them, and how they appear in the report (statement section, document section or appendix).

Party and Witness Statements

- Identify the status of the party or witness and their relationship to the investigation (e.g., Witness is the roommate of Complainant).
- Options for how to arrange statements:
 - By allegation
 - One complete version of events



Documents and Other Material Evidence

- Summarize relevant documents and identify the sections you will use in the analysis section if they are not also referenced in some detail in the party or witness statements.



Analysis, Findings, and Conclusion



Show your work.



Address each allegation.

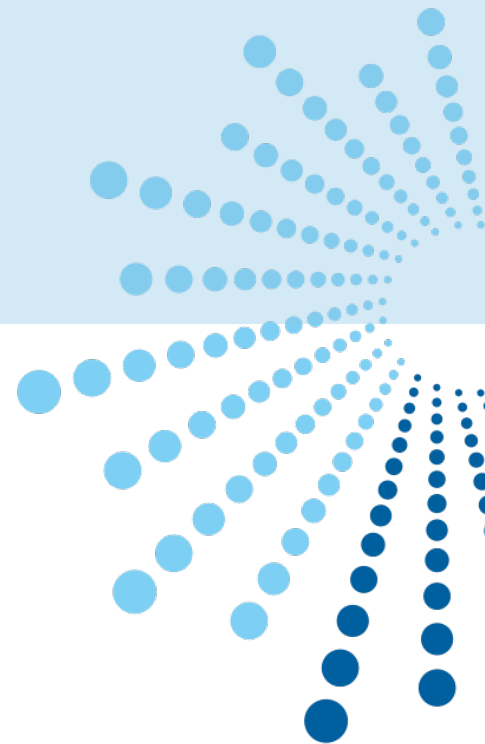


Address each element of the policy definition.



Relevance

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Relevance

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

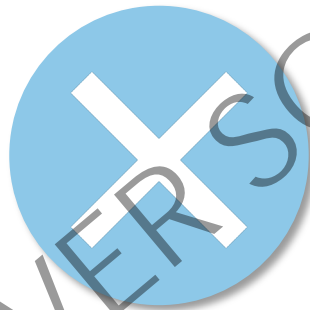
The following information is usually not relevant and should be omitted from reports:



Irrelevant information including:
prior sexual history of Complainant and information protected by a legally recognized and un-waived privilege



The Investigator's opinions



Speculation and conjecture



Character evidence



Party and witness opinions that are unsupported by fact

Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Is it authentic?

Is the item what it purports to be?



Is it credible?

Is it convincing?



Is it reliable?

Can you trust it or rely on it?



What weight, if any, should it be given?

Weight is determined by the finder of fact!

Is it relevant?

Hi. This is Lauren Hayes.
If got your number from
Drew. I hope that is ok.

I know you guys hooked
up last weekend, which
is fine. But i wanted to let
you know that cant
happen again because
we are back together.

Wow. Did Drew actually
give you my number or
did you narc it from his
phone?

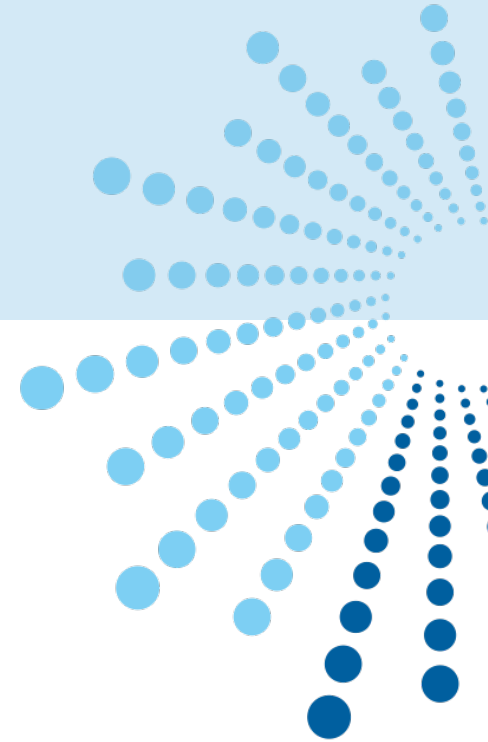
He doesn't know I am
texting you. Id
appreciated if you didn't
say anything. Like this is
girl code.

He's all yours, honey. Do
your best to enjoy that
tiny dick and dad bod.



Language of a Report

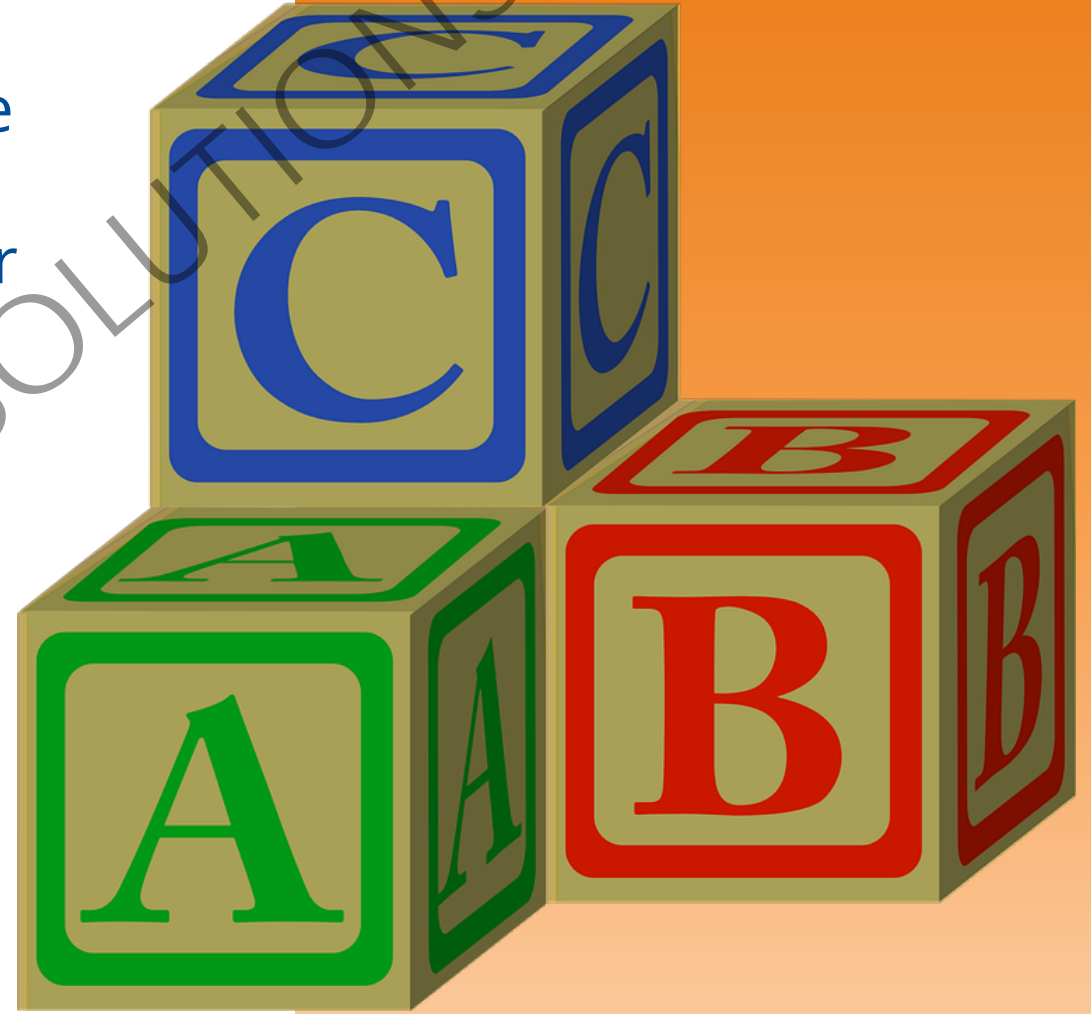
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Simplicity

Reports should be written so that they are accessible to all readers, irrespective of their familiarity with the subject matter, or the institutions policies and the law.

- Use plain language
- Be concise
- Avoid repetition
- Consider including a section on facts in dispute/not in dispute
- Avoid or define technical language/acronyms/slang



Choosing Simple Language

Complex Language	Simple Language
"Adjudicated"	"Decided/Determined"
"Preponderance of the Evidence"	"More likely than not"
"Respondent articulated"	"Respondent stated"
"Prima Facie Assessment"	"Plain assessment/On its face assessment"
"The allegation was substantiated"	"The allegation was proven/supported by"
"Pursuant to the policy"	"As stated in the policy"
"Digital Penetration"	"Inserted their finger into (include body part penetrated)"

Every statement in an interview summary should make clear that it was the interviewee who made that statement:

- Not: Complainant first saw Respondent near the fountain in the middle of the quad.
- Instead "Complainant stated that she first saw Respondent near the fountain in the middle of the quad."
- Not: Witness 3 told Complainant that Respondent was creepy.
- Instead: Complainant stated that Witness 3 told him that Witness 3 believed Respondent was "creepy."

Use interviewee's words and put in quotes if it is their word.

- Not "Witness 3 was really out of it and drunk."
- Instead; "Witness 4 stated that Witness 3 was 'really out of it' and 'drunk,' which she described as . . ."

No conclusory words

- Not "the stalking started"
- Instead; complainant stated that the conduct she identified as stalking started in January.
- In some states, particularly California, attorneys litigating these cases will argue that use of a conclusory term means the investigator is agreeing that the conduct did occur. It's a huge nuisance to be a deponent in those cases.

Commit to Using Neutral Language

Non-Neutral/Biased	Neutral Alternatives
"Claimed/Alleged"	"Reported/Stated"
"According to X"	"X reported/X stated"
"Story/Version of Events"	"Account/Reported Recollection of Events"
"Had Sex with/Engaged in"	Simply describe what occurred
"Changed their Account/Story/Version of Events"	"When initially interviewed Respondent stated X. In a subsequent interview Respondent stated Y"

"Complainant claimed that they were face down in the bed with their dress pushed up so that their face was actually laying on the bottom part of their dress. They alleged that someone was having sex with them from behind."

"Complainant **reported** that they were face down in the bed with their dress pushed up so that their face was actually laying on the bottom part of their dress. They **stated** that someone was **penetrating their vagina** from behind."

The Investigator should not be present in the report.

The report should never include reference to the investigator.

For example, it should never say. "I then asked why Respondent believed they had consent to kiss complainant"

Instead, "When asked why they believed they had consent to kiss complainant, respondent stated...."

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Option A

Witness 1, Kelly, recalled that she went to check on Complainant at 2:30 am and Complainant was not in bed. Kelly stated that she went looking for Complainant and also texted Complainant. Kelly stated that she then found Complainant stumbling down a random hallway, barefoot and tripping over her dress. Screenshots of these texts were provided by Witness 1 and are included in Appendix B. See, Appendix B, p. 6.

Option B

Witness 1, Kelly, recalled that she went to check on Complainant at 2:30 am and Complainant was not in bed. Kelly stated that she went looking for Complainant and also texted Complainant. Kelly stated that she then found Complainant stumbling down a random hallway, barefoot and tripping over her dress. See, Appendix B, p. 6. Witness 1 provided screenshots of this exchange, with date and time stamps showing the texts were sent November 1, 2020 at 2:46am and 2:59am. The texts read as follows, and there was no response:

Witness 1: Taylor where are you?

Witness 1: This isn't funny. Im bugging out. Where are you?

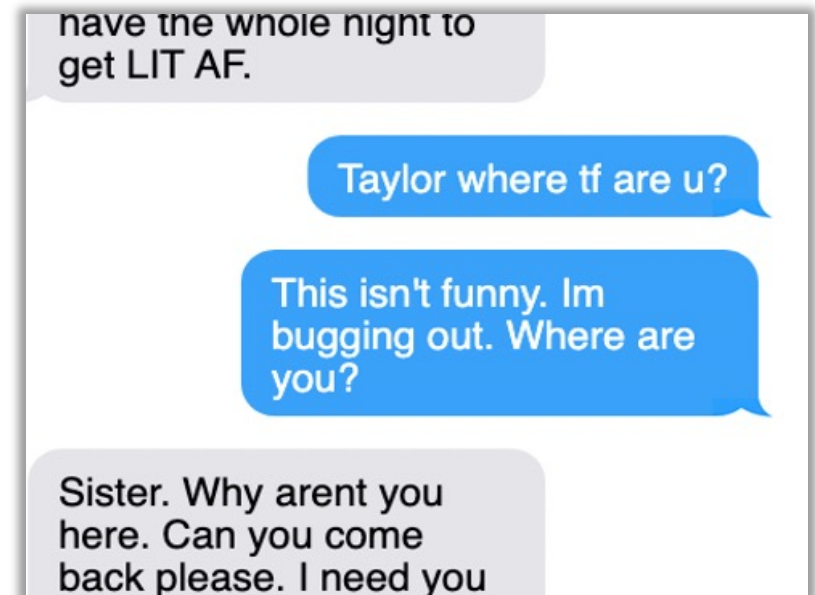
Appendix B, p. 6.



Option C

Witness 1, Kelly, recalled that she went to check on Complainant at 2:30 am and Complainant was not in bed. Kelly stated that she went looking for Complainant and also texted Complainant. Kelly stated that she then found Complainant stumbling down a random hallway, barefoot and tripping over her dress. Witness 1 provided screenshots of this exchange, with date and time stamps showing the texts were sent November 1, 2020 at 2:46am and 2:59am.

See also See, Appendix B, p. 6.



Draw Attention to Specific Evidence through Intentional Presentation of Information in the Report.



Evidence that the Investigator believes should be afforded significant weight.



Evidence related to assessment of credibility, reliability, and authenticity.

- Consistencies
- Inconsistencies
- Corroborative evidence
- Omissions
- Statements that include or that are lacking in significant details



Explanations that provide a better understanding of certain items of evidence or lack of evidence.



If it feels important, emphasize it in the report.



Practice Activity: Summary of Complainant's Interview

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What Concerns or Corrections Did You Identify?

Neutrality
Thoroughness
Accuracy

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Where to Begin: Identifying and Organizing

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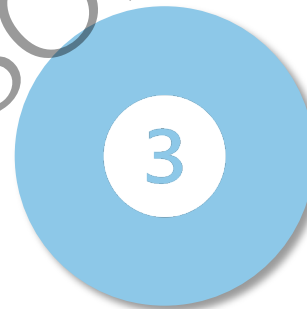
Breaking Down the Elements



A sexual act



Incapacitation



Respondent's
knowledge of
incapacitation



Consent

Analysis Grid: List the Elements

Sex Act	Incapacitation	Knew or Should Have Known	Consent

Analysis Grid: List the Elements

Sex Act	Incapacitation	Knew or Should Have Known	Consent
	<ul style="list-style-type: none">➤ threw up while we were having sex➤ She was fine while having sex➤ Cristina saw her in bar at 2:30, she took a shot➤ Kelly found her wandering and stumbling at 2:30		

Analysis Grid: List the Elements

Sex Act	Incapacitation	Knew or Should Have Known	Consent
undisputed	<ul style="list-style-type: none"> ➤ I threw up while we were having sex ➤ She was fine while having sex ➤ Cristina saw her in bar at 2:30, she took a shot ➤ Kelly found her wandering and stumbling at 2:30 	<ul style="list-style-type: none"> ➤ C's statement: He brought her 2 drinks ➤ Kelly left ➤ Complainant "passed out" ➤ CP: She was not moving during sex, and vomited. ➤ RP: She was fine during sex, we were kissing, she answered questions about consent 	<ul style="list-style-type: none"> ➤ RP: Verbal consent, twice ➤ CP: No capacity to consent

Determining Credibility and Reliability

Remember: There is
No Formula!

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A hand holding a white marker pointing at a chalkboard. The chalkboard is covered with various mathematical symbols and equations, including x^2 , $\frac{1}{x}$, $6x^2$, < 0 , and x^2 . The background is a warm orange color.

Sufficiency of Detail and Specificity

Is the level of detail provided by the person reasonable and indicative of a genuine personal experience by the person?

When your investigation reveals that a fact was not shared by a party or witness, the investigator should have explored the reason for the omission. The final report should document the exploration and accurately describe the explanation provided.

“Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left ten minutes later. Complainant failed to share this fact with the investigators.”

“Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left the room ten minutes later. In a follow up interview with Complainant, they were asked why they did not report Witness A’s presence in the room. Complainant responded by stating that they have no recollection of Witness A being in the room.”

Internal Consistency

Consistency Over Time

- Did the person share the same version of events in all settings, including interviews, in written and/or verbal statements and between documentary evidence?
- Are there any discrepancies or contradictions?
- Is there a sufficient explanation for any discrepancies?

Consistency with Other Evidence or Testimony

- Is the testimony or evidence consistent with the other evidence?
- Is the testimony or evidence inconsistent with the other evidence?
- Is there a sufficient explanation for any inconsistencies?

Corroboration

- Is there witness testimony (either by witnesses or people who saw the person soon after the alleged incident, or people who discussed the incidents with the person around the time they occurred) or documentary or physical evidence that corroborates the person's testimony?
- Is there witness testimony or documentary and/or physical evidence that are inconsistent with statements made during the interview or does not provide corroboration to the person's version of events?

Inherent Plausibility

- Is the testimony believable on its face?
- Does it make sense?
- Could it have occurred?
- Does it make sense that this person knows this information?
- What was their opportunity to view?

Material Omission

- Did the person omit material information?
- If so, what?
 - e.g., submitted partial text messages, or omitted text messages that could be perceived as unfavorable
- Is there a reasonable reason for the material omission?

Past Record

- Is there a history of similar behavior in the past?
 - e.g., a supervisor had previous complaints of sexual misconduct
- If so, this might impact whether a statement should be believed.
 - For example, a respondent who states they never knew that a certain behavior was wrong, yet was written up for that same behavior, the history of similar past behavior makes the respondent's statement less believable and less reliable.

Ability to Recollect Events

- What is the extent the person was able to perceive, recollect or communicate the version of events?
 - e.g., the person reported they were intoxicated, or the person reported they were sleeping

Credibility/Reliability Analysis

Step by Step

1. Determine the material facts – focus only on material facts.
2. Determine which material facts are:
 - Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
 - Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains [e.g., Marcy alleged that Jack kissed her without her consent around 1am at the party, and Jack asserted he never kissed Marcy and went home early]
 - State clearly which facts are accepted, and which are rejected, and state the reasons why.

“While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack’s version of events cannot be credited as being more likely than not to be true.”

Credibility and Reliability

- Did Complainant make up the allegation due to jealousy (Matt, Lauren). Lauren received angry messages in response from Complainant
- Cristina saw Complainant in bar at 2:30, she had a shot / Kelly found Complainant wandering, did not know where she was
- He was pushing drinks on her/She had texted "You can buy me drinks at the Formal"
- Letter from Pastor: He is a good person, he only tells the truth
- Lauren: He always asks for consent
- Cristina: Respondent is a good person
- Social media: Lauren found Complainant on social media / Kelly, Joe, Taylor: Taylor never uses social media

Make a Determination about the Credibility and Reliability of the Relevant Evidence

Sex Act	Incapacitation	Knew or Should Have Known	Consent
undisputed	<ul style="list-style-type: none"> ➤ Cristina saw her in bar at 2:30, she took a shot. Texts? ➤ Kelly found her wandering and stumbling at 2:30. Texts? 	<ul style="list-style-type: none"> ➤ C's statement: He brought her 2 drinks ➤ Kelly left Complainant "passed out" ➤ CP: She was not moving during sex, and vomited. ➤ RP: She was fine during sex, we were kissing, she answered questions about consent 	<ul style="list-style-type: none"> ➤ RP: Verbal consent, twice ➤ CP: No capacity to consent ➤ Pastor Eric's letter ➤ Lauren's statement re: consent ➤ Texts about hotel arrangements ➤ Text to Kelly in morning (I'm fine, mortified)

Weighing the Evidence

- Determine what weight, if any, you will afford to each item of evidence upon which you intend to rely on in your final determination.

Weigh the Evidence

Sex Act	Incapacitation	Knew or Should Have Known	Consent
undisputed	<ul style="list-style-type: none"> ➤ Cristina saw her in bar at 2:30, she took a shot. Texts? ➤ Kelly found her wandering and stumbling at 2:30. Texts? 	<ul style="list-style-type: none"> ➤ C's statement: He brought her 2 drinks ➤ Kelly left Complainant "passed out" ➤ CP: She was not moving during sex, and vomited. ➤ RP: She was fine during sex, we were kissing, she answered questions about consent 	<ul style="list-style-type: none"> ➤ RP: Verbal consent, twice ➤ CP: No capacity to consent ➤ Pastor Eric's letter ➤ Lauren's statement re: consent ➤ Texts about hotel arrangements ➤ Text to Kelly in morning (I'm fine, mortified)

Did Drew Engage in a Sexual Act with Taylor?	Was Taylor incapacitated and therefore incapable of providing consent?	Did Drew know Taylor was Incapacitated?	Should Drew have known that Taylor was incapacitated?
<ul style="list-style-type: none">➤ Undisputed➤ Complainant's testimony➤ Respondent's testimony			
<ul style="list-style-type: none">➤ It is more likely than not that Drew engaged in sexual intercourse with Taylor			

Making Finding

1. Apply the standard of proof and the evidence to each element of the alleged policy violation.
2. Make a determination as to whether or not there has been a policy violation.

The background is a dark blue, textured surface. It features several light blue, hand-painted style arrows pointing in various directions. A diagonal watermark in a lighter blue-grey color reads "GRAND RIVER SOLUTIONS".

Your Turn

Thank you #StetsonCon 2022!

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info@grandriversolutions.com

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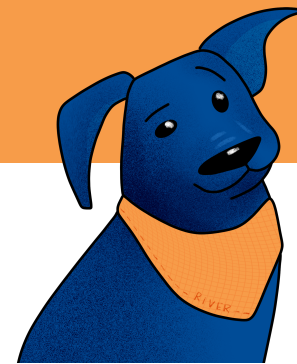


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