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- **Seriously – questions are encouraged!**
 - **‘For the sake of argument..’**
 - **Be aware of your own responses and experiences**
 - **Follow up with someone if you have questions and concerns**
 - **Take breaks as needed**

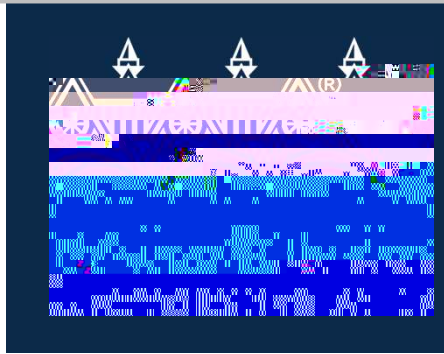
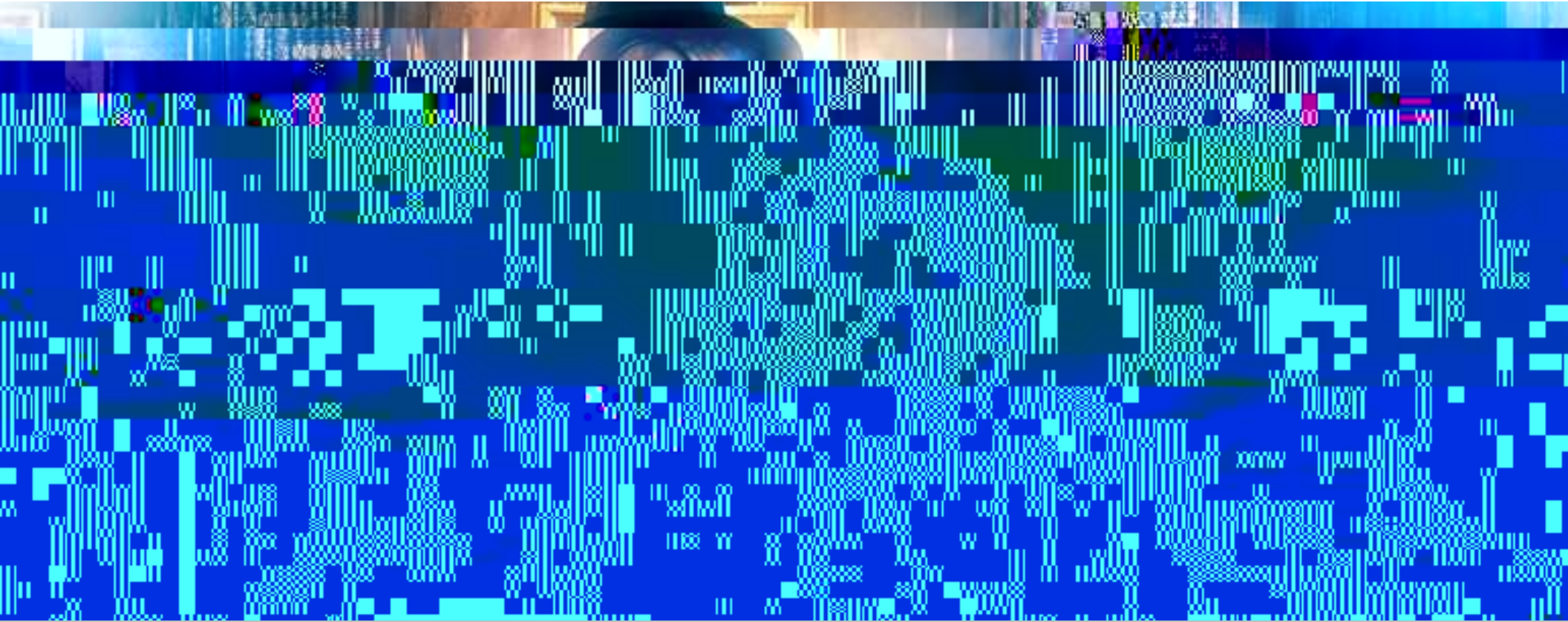
at www.brick.com/tileix

Find us on at

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- **The role of investigators**
 - **Bias and conflicts of interest**
 - **Relevancy**

- **Investigative Techniques**
- **Mock Interview**
- **Writing a report**
- **Takeaways**

Day 1



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- **The role of investigator and decision maker MUST be separate.**
 - **The investigator does not make decisions. This helps to prevent bias of information the investigator may have ‘gleaned’ from the investigation process that is otherwise not relevant to the decision**

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- **The investigator has the burden of asking the parties for and collecting all relevant evidence.**
 - **Relevant may be institution determined, but we will discuss it further later today**
 - **Parties have the right to present fact and expert witnesses.**
 - **Issues of relevancy will often not be made until the decision maker is involved (after your involvement).**

1. The gatherer of all relevant evidence.

2. The organizer of all relevant evidence.



The new regulations don't really tell us directly

The preamble discussion indicates that it may include evidence that is “_____”

(30343)

The preamble also tells us:

**“evidence pertinent to proving whether
under investigation
are
(i.e., on what
is relevant)” (30294)**

**Does this question, topic, evidence help
under the standard of evidence?**

- **Preponderance of the evidence** a fact is more likely than not to be true (30373fn 1409)
- **Clear and convincing** a fact is highly probable to be true (30373fn 1409)

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- **The Rules of Evidence do apply and apply**
 - **“The Department appreciates the opportunity to clarify here that the final regulations**
; the decision maker must consider
relevant evidence and must not consider irrelevant
evidence.” (30336 37)

‘[A]

, or rape kits) (e.g.,

”

(as is, for instance, evidence concerning a complainant’s prior sexual history) or otherwise barred for use under 10645 (as is, for instance, information protected by a legally recognized privilege).”

investigating

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- **Preamble identifies medical and treatment records.**
 - **Jurisdiction dependent**
 - **Attorney-client communications**
 - **Implicating oneself in a crime**
 - **Confessions to a clergy member or other religious figures**
 - **Spousal testimony in criminal matters**
 - **Some confidentiality/trade secrets**

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- **Rape shield protections do not apply to Respondents**
 - **“The Department reiterates that the rape shield language . . . does not pertain to the sexual predisposition or sexual behavior of respondents, so _____ of inappropriate behavior by an alleged harasser _____.”**
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- There are d dh

When parties elect not to participate, a recipient cannot retaliate against them(30822)

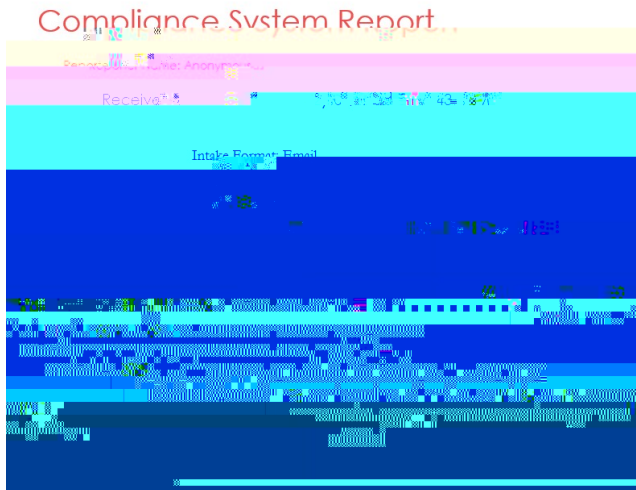
- **It is the right of any party or witness not to participate in the investigation**

1) The gatherer of gold ! nfg f ene

Dramatic



Disclaimer: The following hypotheticals are not based on any actual cases we have handled or of which we are aware. Any similarities to actual cases are coincidental.



Reporter Name: Anonymous

Received January 23, 2020 at 11:43 PM

Intake Format: Email

Parties Identified: Riley Roberts and Cameron Clawson

Narrative: Riley Roberts RER Riley Roberts da 2020 at 11:43 PM

In your interview with Cameron, Cameron disclosed to you that they have proof that they have post traumatic stress disorder from Riley's actions. Cameron states that they have medical treatment records to prove this, but does not want to provide them to you

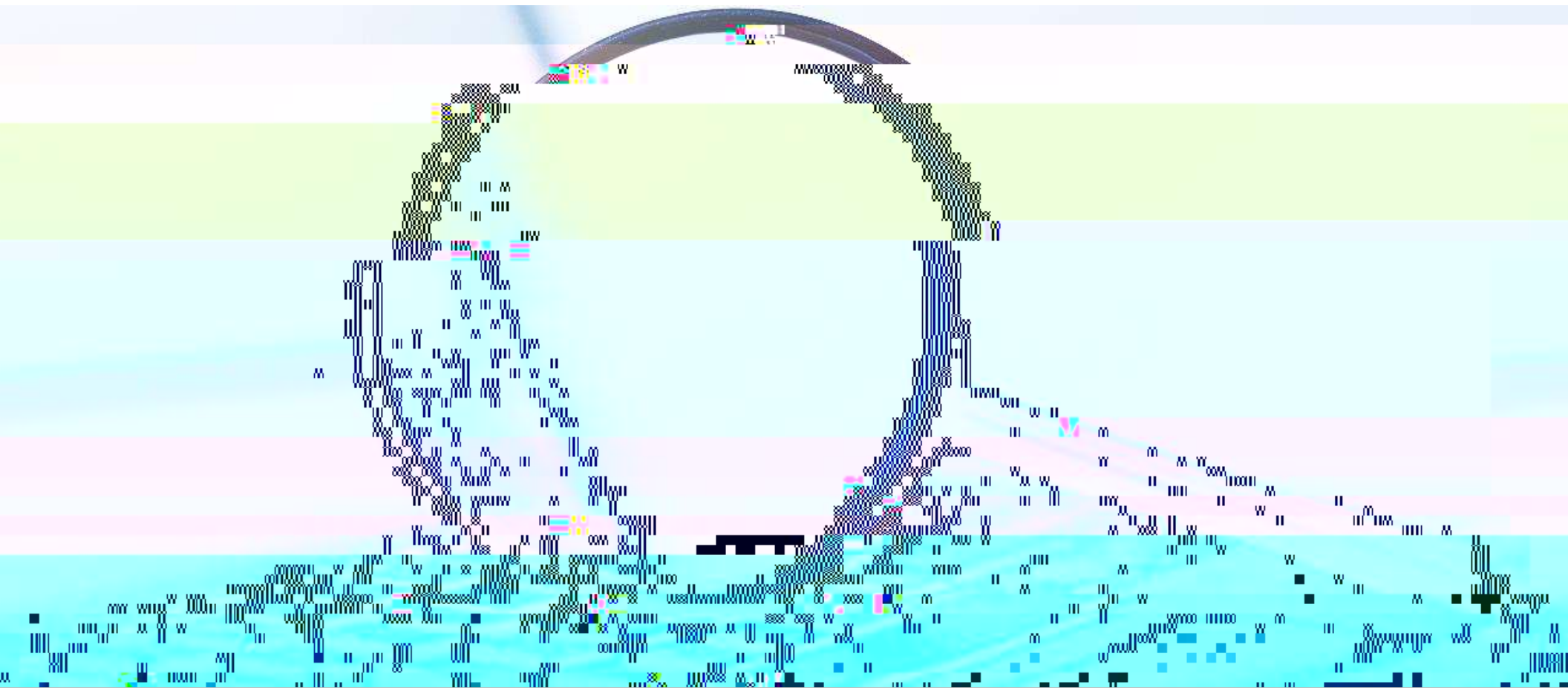
Is this relevant?

In your interview with Cameron, Cameron tells you that they have consulted with a psychic who is willing to state that Cameron was sexually assaulted by Riley.

Is this relevant?

In your interview with Riley, Riley tells you that they have been unable to sleep since Cameron filed the report and would like to provide treatment records to support the effects of Cameron's report on Riley. Riley is willing to sign a waiver.

Is this relevant?



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- **Review notes and information collected by the Title IX Coordinator**
 - **Review Notices to Complainant and Respondent**
 - **Review Policy/Code of Conduct**
 - **Define Scope of Investigation**

**What elements do you think will be disputed?
Agreed upon?**

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- **If there is a criminal investigation, work with law enforcement to collect and preserve evidence**
 - **Electronic communications**
 - **Security information**

- **Pictures, videos, audio**
- **Police reports**
- **Personnel files**
- **Prior complaints against respondent**

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- **Refer to the policy**
 - **Consider what information they are likely to have related to each element**
 - **Consider what information they are likely to have that may assist the decision maker in determining credibility**
 - **Be flexible**

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- **Use predictable symbols in the margin to easily skim during the interview**
 - **Followup questions**
 - **Potential evidence**
 - **Potential witness**
 - **Try to record exact quotes when possible**
 - **Interview notes are now required to be produced as part of the record**

You must now provide any party whose participation you seek, with

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- **Make introductions**
 - **Be hospitable**
 - **Give overview of why they are being interviewed**
 - **Explain retaliation policy**
 - **Invite questions**

-
- **Elicit a monologue about the incident**
 - **What happened earlier that day before the incident?**
 - **What happened with regard to the incident?**
 - **What happened next?**

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- **Re-review your notes**
 - **Re-review the elements of each charge**
 - **Have you elicited all of the information this witness might have about each element?**
 - **Do you have an understanding of how the witness obtained the information they shared?**

-
- **Gather facts to assist**
 - **Ask questions to test memory**
 - **Identify where the witness may corroborate or contradict their testimony, or other witnesses, and physical evidence**
 - **Be sensitive to potential trauma experienced by witnesses**

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- **Closing questions**
 - **Request copies of all evidence potentially available to the witness**

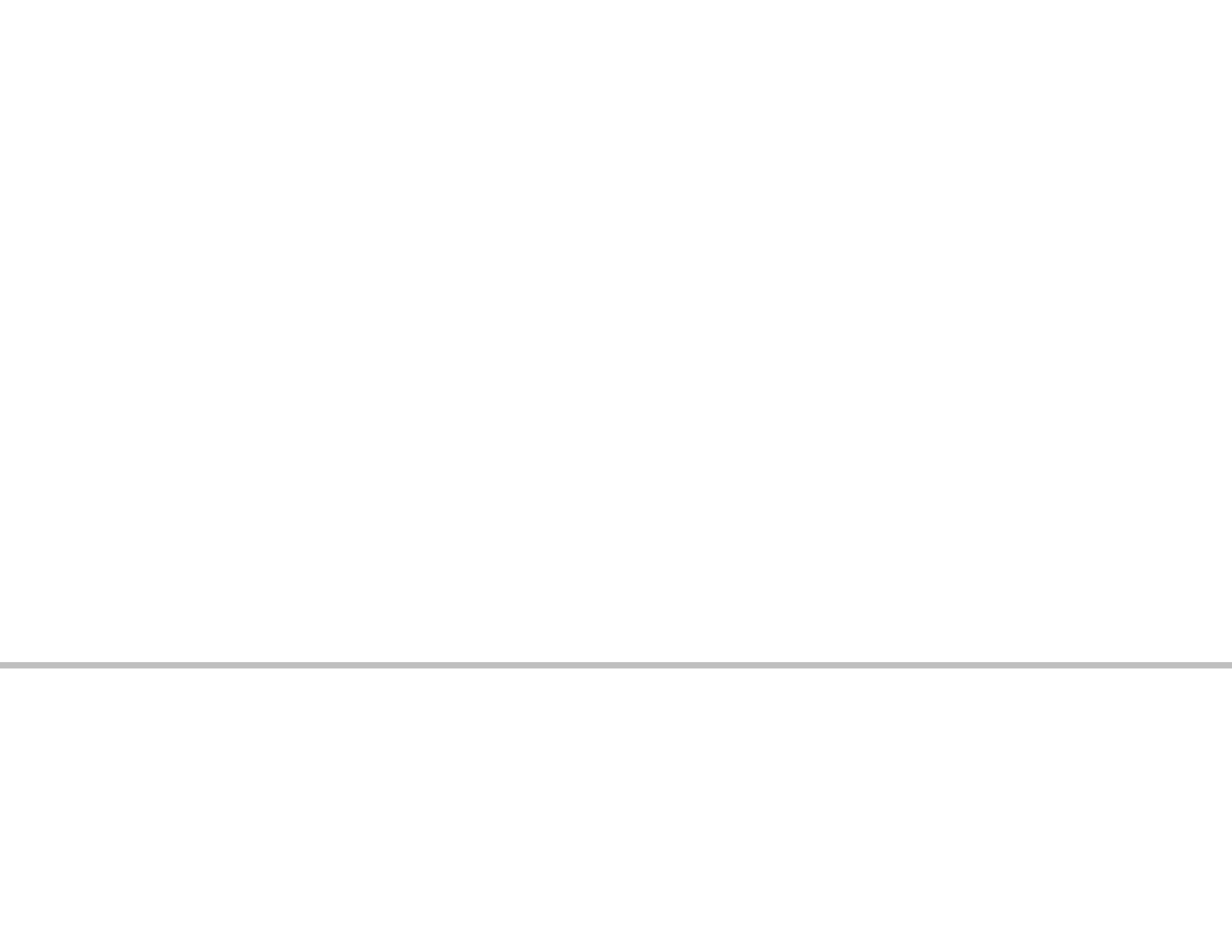
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- **Update investigation log**
 - **Review notes, make corrections/clarifications**
 - **Update witness list**
 - **Update list of evidence to be obtained**
 - **Write down questions to ask other witnesses**
 - **Consider whether appropriate to send email**

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- **Consider whether there are additional allegations that you need to bring to the Title IX Coordinator**
 - **Remember: notice of allegations must be sent out before you can ask questions of a respondent**
 - **Ensure you are not leaving the burden of proof on any party or witness alone (10645(b)(5)(i))**

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- **Follow up on anything identified during interviews**
 - **Is law enforcement involved? Could they be?**
 - **Ensure physical evidence is in a secure location and**

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- **Include everything related to allegations, even if you don't expect decision maker to rely on it**
 - **Allow 10 days to review**
 - **Allow written response**
 - **Follow up where necessary**
 - **Consider responses when preparing report**
- (10645(b)(5)(vi))**

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- **Summarize**
 - **No determination**
 - **Provide to parties and advisors**
 - **Allow 10 days to review prior to hearing**
 - **We will discuss report writing later today**



Compliance System Report



Reporter Name: Anonymous

Received January 23, 2020 at 11:43 P.M

Intake Format: Email

Parties Identified: Riley Roberts and Cameron Clawson

Narrative: Riley Roberts is a PREDATOR!!!! Riley posted a video having sex with their ex, Cameron Clawson, a revenge for their ex breaking up with them. It's all over their Snapchat story and even in an online forum for a class both Riley and Cameron have together. You must do something. .Cameron is distraught and talking about suicide!

-
- **Make sure you understand potential biases (actual or perceived)**
 - **Trauma may affect how someone responds to an incident**
 - **Prepare for your interview with questions and statements**
 - **Start with open ended questions**
 - **Obtain any documentary evidence that you can**



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- **Your second role, after gathering all relevant evidence, is to organize all relevant evidence for the parties and the decision maker**
 - **Here are some tools for how to best organize all the relevant evidence.**

The new Regulations provide that the investigator must create a report that:

- **Fairly summarizes relevant evidence**

(10645(b)(5)(vii))

What does this mean?

Identify with just factual information

- **Complainant**
- **Respondent**
- **Investigator**
- **Witnesses**
 - **Perhaps organize by fact v expert witnesses or by party whom requested the witness**

Explain your structure. Example:

“The information in this report is a summary of the facts as agreed upon by the parties and the witnesses. Where there is a difference in the accounts, it is noted in the report. For the sake of clarity, the report is organized chronologically and by subject matter when appropriate.”

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- **Basic description of charges**
 - **How did the complaint make its way to an investigation?**
 - **Witnesses Interviewed**
 - **Witnesses Not Interviewed (and why)**
 - **The procedure followed, step by step**
 - **Any procedural anomalies that need explained?**

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- **Insert into the report screenshots of text messages and pictures where relevant**
 - **If information is attached but not referred to in a summary, may want to drop a footnote explaining why not**

If evidence is requested by a party and/or you determine it is not relevant, always explain that it was requested and why you determined it was not relevant

If you can, synthesize the information from multiple parties and witnesses

Where the stories diverge:

- **“Information from [Complainant]”**
- **“Information from [Respondent]”**

Undisputed Facts

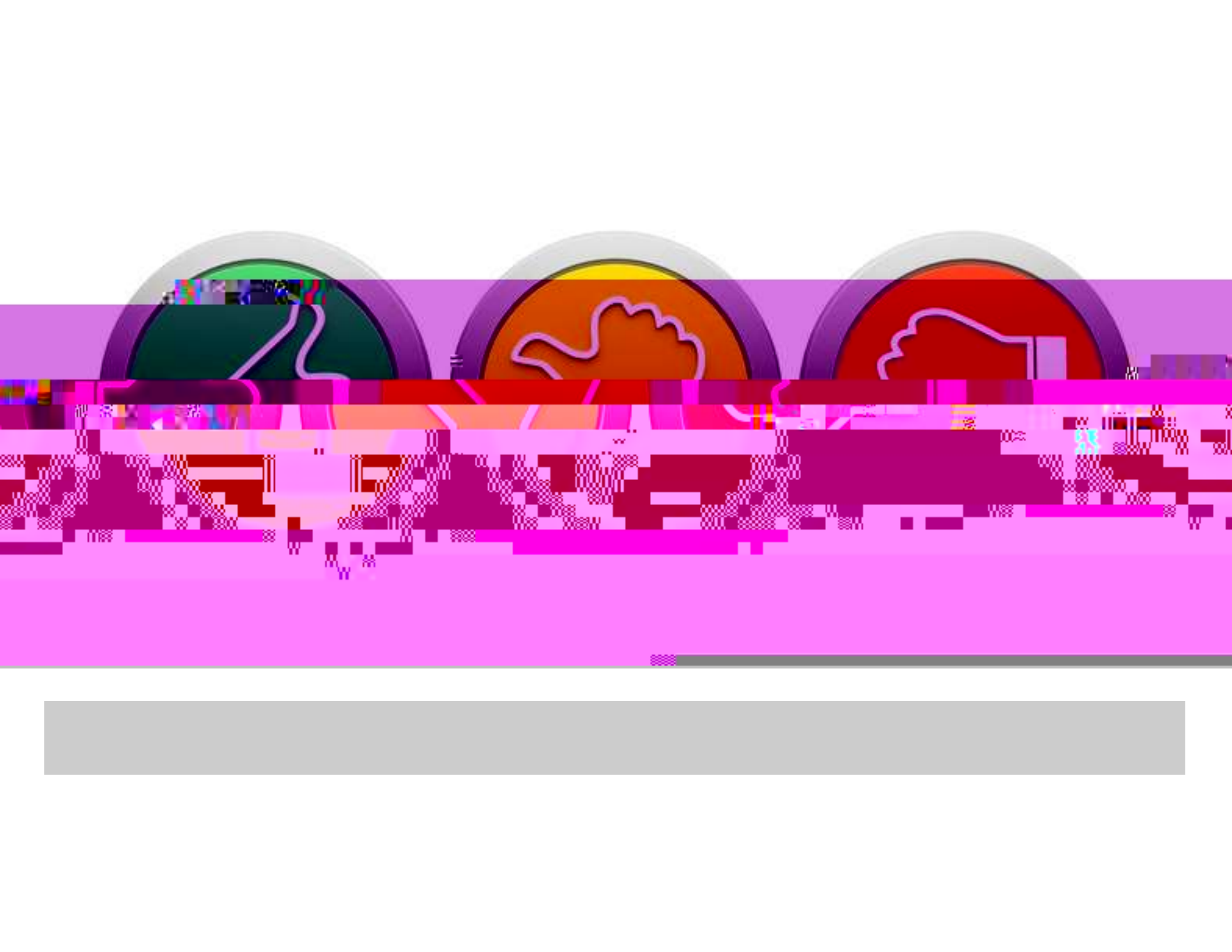
- **Series of numbered sentences**

Disputed Facts

- **Series of numbered sentences**

Make sure you have facts for each element of each charge.

Do not make credibility determinations.



Bad example: Complainant stated that she didn't think she had witnessed anything but that I should check with her

Neutral and clear correction Complainant stated that

Bad example: Respondent seemed nervous at the interview and wasn't consistent with the information

Neutral and clear correction Respondent provided the following information at the interview that Respondent was at the party from 7-8, that Respondent was not at the party at 7:30, and that Respondent may not have been at the party



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- **We will discuss each of these individually and provide examples, but some of the**

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- **Be neutral**
 - **Do not be partial to a complainant or a respondent, or complainants and respondents generally**
 - **Do not judge: memory is fallible [and it's contrary to your neutral role] (30323)**

-
- **Both can lead to the same perception (30252)**

No single investigator model (34 C.F.R. 106.45(b)(7)(i)):

- **Decision maker (or makers if a panel) must not have been the same person who served as the Title IX Coordinator or investigator (30367)**
- **Separating the roles protects both parties because the decision maker may not have improperly gleaned information from the investigation that isn't relevant that an investigator might (30370)**
- **The institution may consider external or internal investigator or decision maker (30370)**

‘[R]ecipients should have objective rules for determining when an adjudicator (or Title IX Coordinator, investigator, or person who facilitates an informal resolution) is biased, and the Department leaves recipients discretion to decide how best to implement the prohibition on conflicts of interest and bias...’ (30250)



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- Final regulations “leave recipients **flexibility to use their own employees, or to outsource** Title IX investigation and adjudication functions, and the Department encourages recipients to pursue alternatives to the inherent difficulties that arise when a recipient’s own employees are expected to perform functions free from conflicts of interest and bias.” (30251)

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- **Example: it is ___ a **per se bias** or **conflict of interest** to hire professionals with **histories of working in the field of sexual violence** (30252)**
 - **Cautions against using generalizations to identify bias and conflict of interest and instead **recommends** using a **reasonable person test** to determine whether bias exists.**

-
- **An investigator used to supervise one of the parties;**
 - **Information “gleaned” by the investigator is shared with the decision maker outside the investigation report (in meetings to discuss pending cases, in passing while at work, etc.)**

A good way to ensure impartiality and avoid bias:

- **Keep an open mind and actively listen**
- **Each case is unique and different**

**Thinking about how to move forward with some
issues of impartiality, conflict of interest and bias**

Scenario for the next several hypotheticals:

You are an investigator for your Title IX Office. You have just been handed a formal complaint to investigate. An initial review did not identify you as having any conflict of interest or bias. But you will need to assess the following situations based on additional information you have.

You review the report and realize that the name of one of the parties seems familiar to you from a past and unrelated investigation. You don't have any real memory of the case or any thoughts you have of that party, but you realize that

Your institution's student conduct office, Title IX office, and Greek Life office meet weekly to discuss student issues and potential issues. In these meetings, you discuss specific students by name for continuity of care for students and to ensure everyone is on the same page. As a result, you have heard other employees discuss the parties in the case handed to you and some of it seemed to indicate that the Complainant may be dramatic.

What should you do?

During your investigation, the Respondent's attorney accuses you of bias because of your former work as a victim advocate.

What should you do?

Be Human & Be a Blank Slate



Remember– additional information available at

at www.bicker.com/ileix

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