

**GRAND RIVER** | SOLUTIONS

# Conducting Fair and Thorough Trauma-Informed Investigations

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# Meet Your Facilitators



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*She/Her/Hers*

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# 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

# Day One Agenda

1

**Title IX's Requirements**

2

**The Proper Application of  
Trauma Informed Practices**

3

**The Importance of Understanding  
the Potential Impact of Trauma**

4

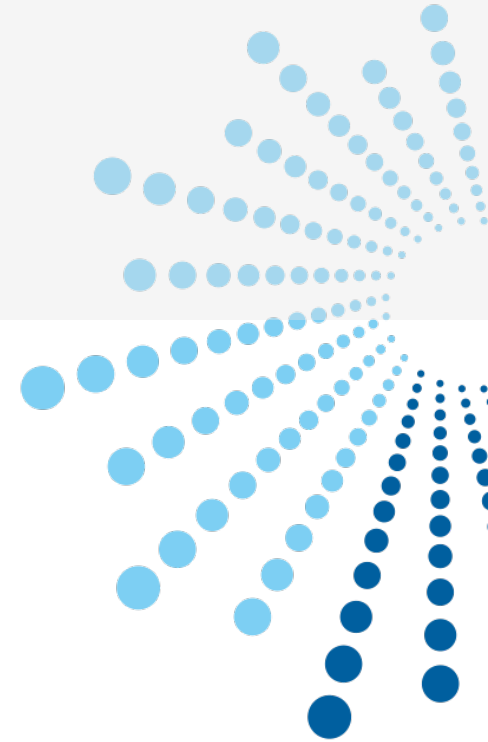
**Developing an Investigative  
Strategy**

5

**Investigative Interviews: Part 1**



# Title IX's Requirements



01

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# Title IX of the Education Amendments Act of 1972

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681 (1972).

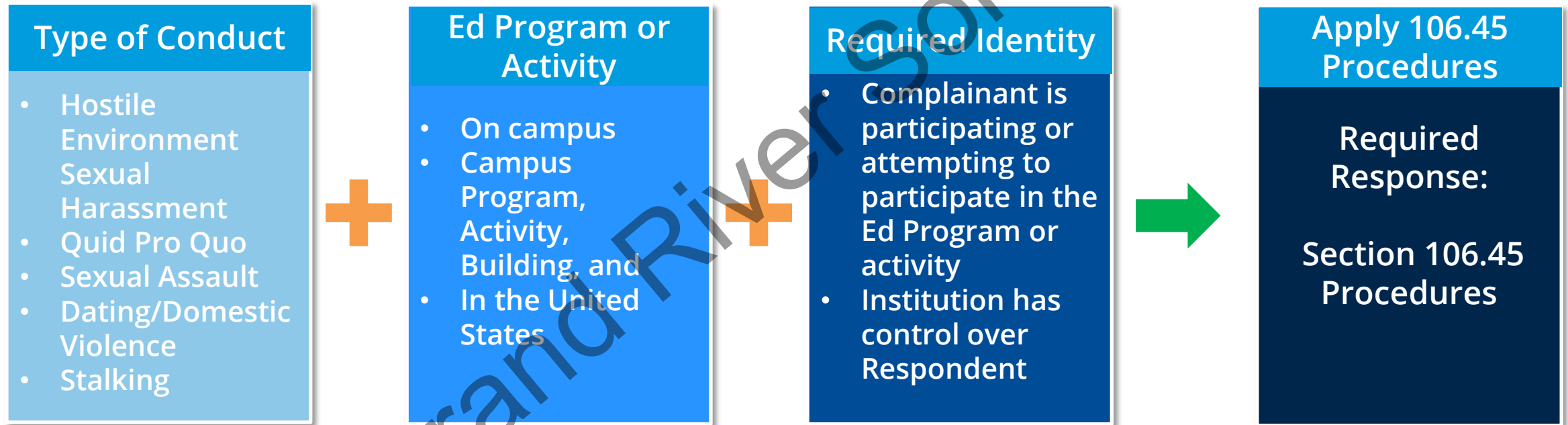
# The Title IX Regulations

Sexual Harassment Only

1. Narrows the definition of sexual harassment;
2. Narrows the scope of the institution's educational program or activity;
3. Narrows eligibility to file a complaint;
4. Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.



# Title IX Application Post May 2020 Regulations





# Procedural Requirements for Investigations



Notice TO BOTH  
PARTIES



Equal opportunity  
to present evidence



An advisor of  
choice



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



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



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



# Notice Requirements

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

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

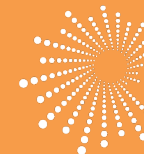
the conduct allegedly constituting sexual harassment under § 106.30,

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

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

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

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



# Advisor of Choice During the Investigation

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

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Institutions cannot place restrictions on who can serve.

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Institutions can create rules and guidelines for participation in the investigation.

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No specific training required.



# Written Notification of Meetings and Sufficient Time to Prepare

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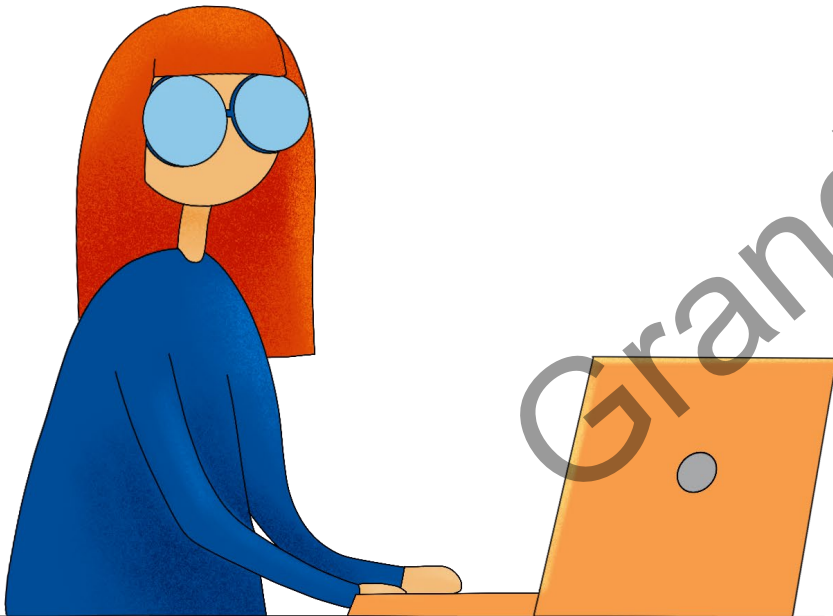
# Equal Opportunity to Present Evidence

# Evidence Review

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

10 days to provide a written response.



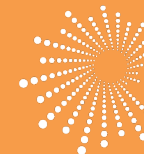
# Investigative Report and Review



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

That report will be shared with the parties and the parties will have another opportunity to respond in writing.

The hearing must occur at least 10 days after the release of the final report.





A 3D puzzle with blue and white pieces, featuring a prominent red piece. The puzzle is set against a blue background with a white puzzle piece pattern. The red piece is the central focus, standing out from the other pieces. The text "Grand River Solutions" is written diagonally across the puzzle pieces.

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“Directly  
Related” and  
“Relevant  
Evidence”

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# Directly Related Evidence

Regulations do not define “Directly Related” Evidence.

Preamble states it should be interpreted using its plain and ordinary meaning.

Term is broader than:

- “all relevant evidence” as otherwise used in Title IX regulations, and
- “any information that will be used during informal and formal disciplinary meetings and hearings” as used in Clery Act

Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

# “Relevant” Evidence

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

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

“Evidence is relevant if:

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

# Evidence That is Not “Relevant”

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

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

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

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

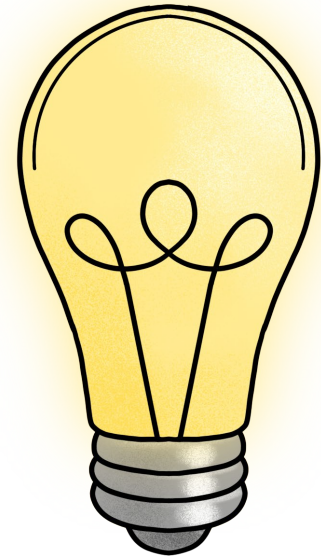
# Who Decides?

Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance at this stage of the process.

- Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight.

Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:

- Each party's right to argue their case, and
- Fact that decisions regarding responsibility will be made at hearing, not investigation stage.





# The Investigator

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



The Investigator may not be a decision maker.



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



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

# The Requirement of Impartiality

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# Section 106.45(b)(1)(iii)

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

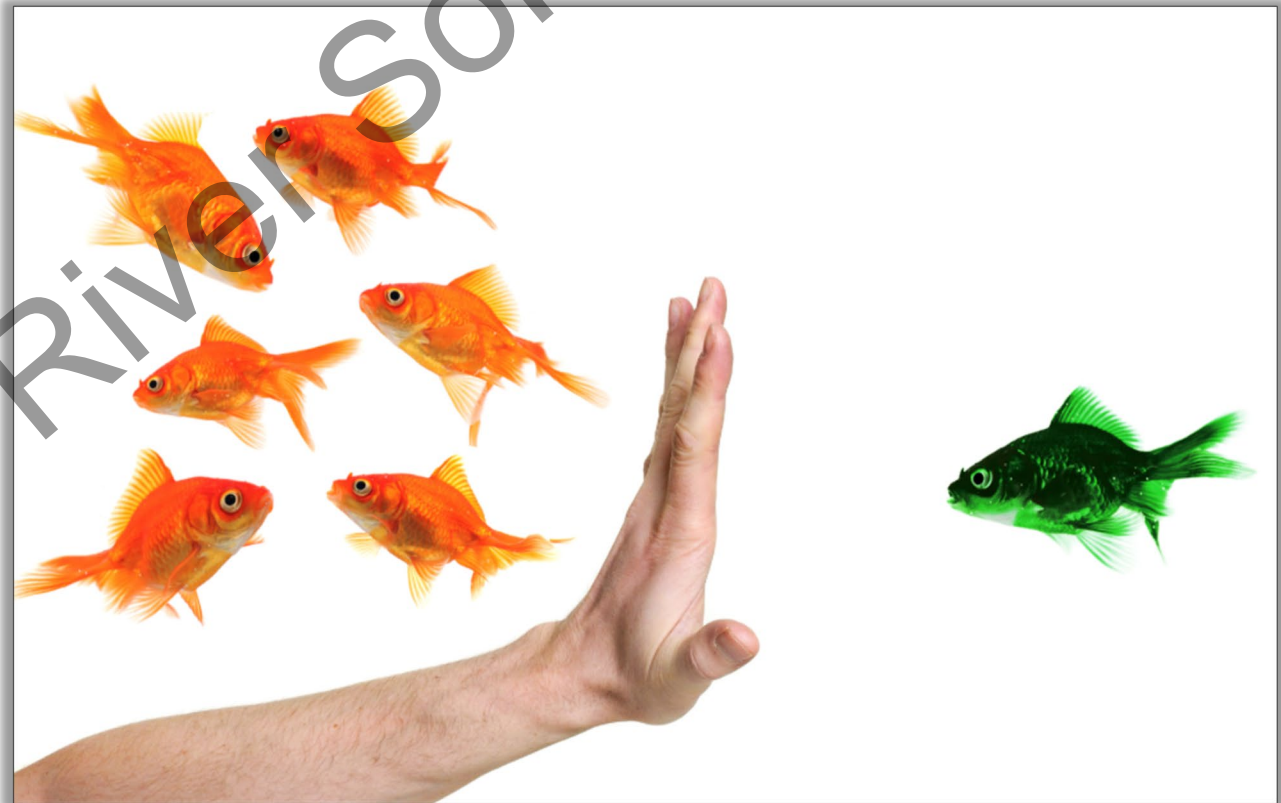
1. For or against complainants or respondents generally, or
2. An individual complainant or respondent

# What Constitutes Bias?

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

## Includes:

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



## Impermissible Bias

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

A close-up photograph of a wooden Scrabble board. A row of tiles spells out the word 'CONFLICT' diagonally from the bottom-left towards the top-right. The tiles are light-colored wood with dark blue letters and numbers indicating their point value. The 'C' tiles have a '3' in the bottom right corner, 'O' has a '1', 'N' has a '1', 'F' has a '4', 'L' has a '1', 'I' has a '1', 'C' has a '3', and 'T' has a '1'. Several other tiles are scattered on the board, including 'S', 'A', 'G', 'C', 'E', 'R', 'Z', and 'E'. A large, semi-transparent watermark reading 'Grand River Solutions' is overlaid diagonally across the center of the image. At the bottom, there is a solid orange horizontal bar.

# Conflict of Interest



# Avoiding Prejudgment of the Facts

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



# An Impartial Investigation is...

Not influenced by bias or conflict of interest.

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

Truth seeking, not "your truth" confirming.

# Trauma Informed Practices

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

Trauma informed practices must be applied equally to all genders.





# The Proper Application of Trauma Informed Practices



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



Format/Structure of the Interview



Format of Questions



Approach to Clarification

# Trauma Informed Practices are Designed to:

01

Encourage thorough and complete investigations

02

Assist with recollection

03

Assist with recounting

04

Reduce potential for false information

05

Minimize unnecessary re-traumatization

06

Reduce Bias

# Misapplication of Trauma Informed Practices

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

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



# The Importance of Understanding the Potential Impact of Trauma



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# Trauma

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

# Examples of Events that Might Trigger a Traumatic Response

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Sexual Assault

Physical Assault  
by a Stranger

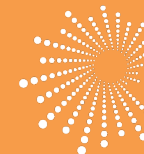
Physical Assault  
by an Intimate  
Partner

A Car Accident

Accident that  
causes serious  
injury or death

Robbery

Significant  
medical event





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

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## Common Characteristics of Disclosures by a Trauma Brain

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Inconsistent

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Non-linear

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Fragmented

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Lack of detail

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New information

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Affect is unexpected

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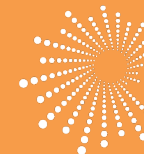
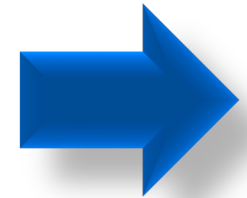


Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the victim was being dishonest.

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information



Not Credible

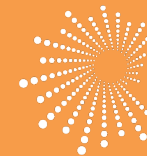


# The Historical Conclusion...

False Report  
Regretted Sex  
Not Provable



Investigation  
CLOSED



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



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



ASK QUESTIONS OR MAKE DECISIONS FOUNDED IN BIAS



CAUSE ADDITIONAL HARM



JEOPARDIZE FUTURE REPORTING



# The Future

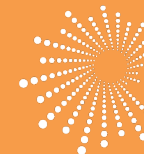
An understanding of trauma and its potential impact should encourage investigators to keep an open mind, and it should prevent investigators from immediately interpreting seemingly inconsistent behaviors with deception. An understanding of trauma provides another explanation for these seemingly inconsistent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

This is essential to a fair and thorough investigation.

When presented with the following characteristics in a disclosure,

Inconsistencies  
Lack of Detail  
Non-Linear  
Fragmented  
New Information

An investigator who understands trauma will....







**Continue their  
investigation.**



# Developing an Investigative Strategy

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# Essential Steps of an Investigation



Review Notice of Allegations and Formal Complaint



Initial Interviews



Evidence Collection



Evidence Review



Additional Evidence Collection/Follow Up Interviews



Report Writing

# Understand the Scope of the Investigation



Review the Notice of Allegations  
and the Formal Complaint



Ask questions if unsure

# Identify the Claims and What Needs to be Proven

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

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

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

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

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



# The Process

## Developing an Investigative Strategy



# Investigation Timeline

## Prior History

- Between the Parties?
- Of the Parties?

## Incident

- Consent?
- Type of Contact?
- Injuries?

## Pre-Incident

- Communications?
- Interactions?
- Conduct?

## Post Incident

- Behaviors?
- Communications?



# The Importance of Organization

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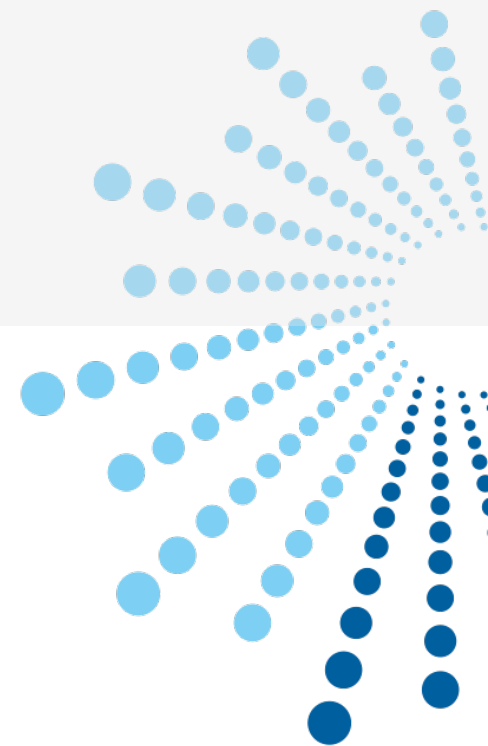
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# Investigative Interviews

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# Interview Objectives



## Connect

Build rapport  
Build trust  
Empower



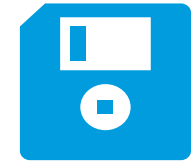
## Listen

Allow interviewee to  
share their experience



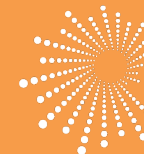
## Clarify

Understand what you  
have heard  
Seek additional  
information



## Evidence Preservation

Text Messages  
Photographs  
Names and contact info  
for witnesses



# Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



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



Prepare for the meeting

Areas of focus?

Other evidence?

Go back review what you have



Provide Written Notice of the Meeting

Advise the parties/witnesses that you will be collecting evidence

# Set Expectations

## What they should expect of you

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

## What you expect of them

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



# How do we...

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Build Rapport  
and Trust?

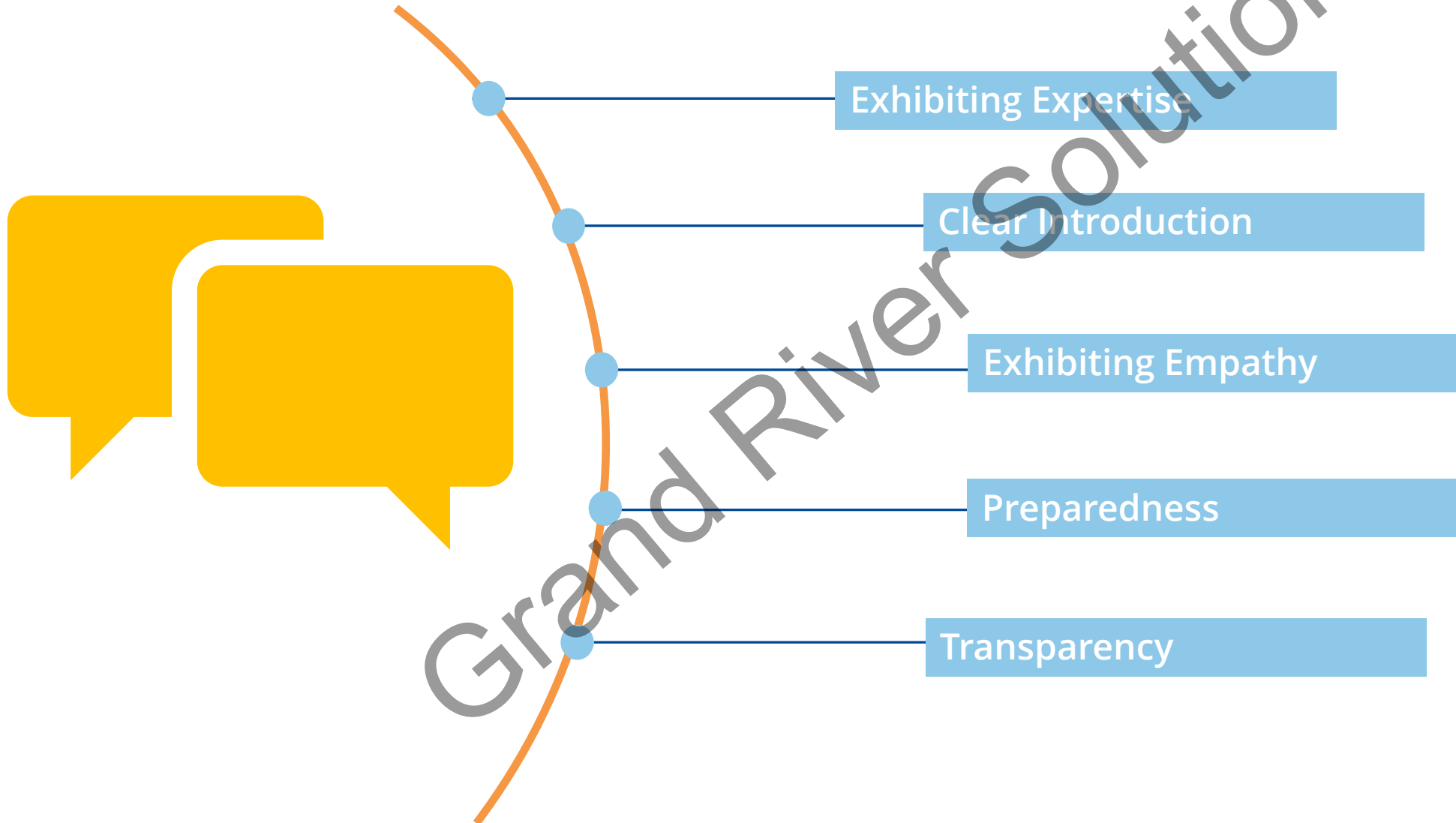


Empower?

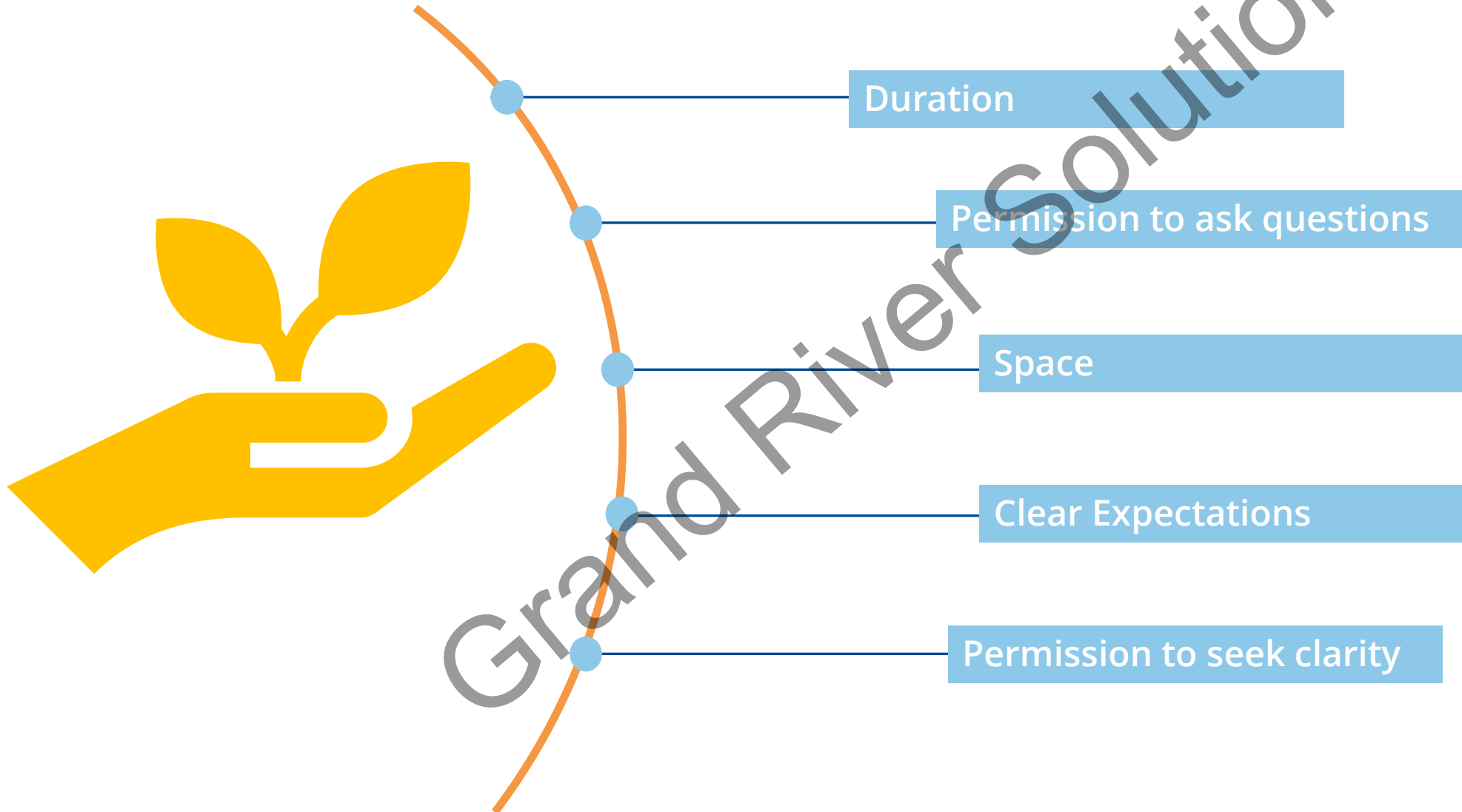


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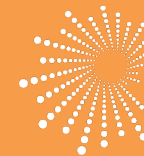
# Rapport and Trust



# Empowerment



# Investigative Interviews



# Start the interview by eliciting a narrative...

Help me understand your experience?

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

What are you able to tell me about your experience?

Allow the person to speak uninterrupted. This takes patience.

