



# Capture the Entire Experience

- If you have to, ask about the physical and emotional reactions to the incident.
- Conclude with very open-ended questions:
  - What was the most difficult part of this experience for you?
  - Is there something that stands out/that you just can't stop thinking about?
  - Is there anything more that you would like me to know?

# The Before

At some point during the interview, it is also important to explore the prior history, if any, between the reporting individual and the accused.

# And The After

It is also important to explore the events following the incident. Oftentimes, the best evidence is produced after the incident.

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction
  - "Has anyone expressed concern about you since the assault?"
- Communication/contact between the Complainant and Respondent

# Throughout the Interview



Explain your questions, especially the difficult ones.

How much did you drink? What they hear: this is your fault because you were drinking.



Do not ask leading questions.



Watch your tone.



Do not rush.



LISTEN!!!!!!!!!!



Pay attention to and document information that might lead to additional evidence.



Document questions asked. Especially when a response is not provided.

# After the Interview: Actions



Memorialize the Interview in writing

Notes  
Summary  
Transcript



Provide Opportunity for the party or witness to review it



Provide opportunity for party or witness to provide a response



Incorporate the response

GRAND RIVER SOLUTIONS

# After the Interview: Reflection



Reflect.



Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

# Follow-Up Interviews

Seek clarification

Explore inconsistencies

Explore contradictory evidence

Explore difficult issues

Provide opportunity to respond

# Follow-Up Interview Approach

Explain the purpose of the follow-up.

Set the stage for the topics you will be covering.

Do not avoid asking the hard questions.



# The “Hard” Questions

Details about the  
sexual contact

Seemingly  
inconsistent  
behaviors

Inconsistent  
evidence/information

What they were  
wearing

Alcohol or drug  
consumption

Probing into reports  
of lack of memory

# How to Ask the Hard Questions

Lay a foundation for the questions.

- Explain why you are asking it.
- Share the evidence that you are asking about, or that you are seeking a response to.

Be deliberate and mindful in your questions:

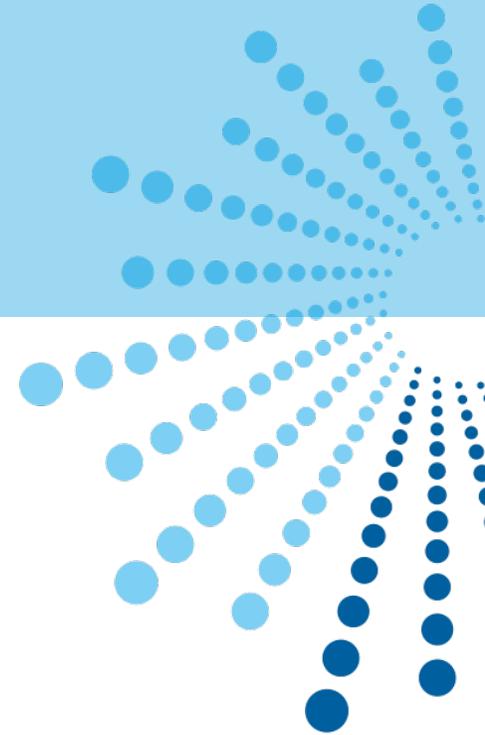
- Can you tell me what you were thinking when....
- Help me understand what you were feeling when...
- Are you able to tell me more about...



# Evidence Collection and Assessment

04

GRAND RIVER SOLUTIONS



# Evidence

“Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or non-existence of a fact.”

Black’s Law Dictionary

# Types of Evidence

## Direct Evidence

- Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

## Circumstantial Evidence

- Evidence based on inference and not on personal knowledge or observation.

## Corroborating Evidence

- Evidence that differs from but strengthens or confirms what other evidence shows

# Evidence

Testimony

Text Messages

Social Media  
Posts and  
messages

Emails

Surveillance

Videos

Photographs

Police Body  
Camera  
Footage

Swipe Records

Medical  
Records

Phone Records

Audio  
Recordings

# Evidence Collection



Identify the items of evidence that you would like to obtain



Develop an intentional strategy for obtaining that evidence



Overcome barriers to evidence collection



Considerations about collecting certain types of evidence

# 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/reliable?

Is the evidence worthy of belief?



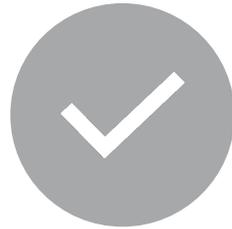
What weight, if any, should it be given?

Weight is determined by the finder of fact!

# A Thorough Investigation Permits the Decision Maker to Assess



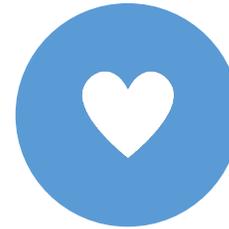
Relevance



Credibility



Reliability



Authenticity



Weight

# “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

# Assessing Relevance

Why Does it Matter?

---

Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.

---

Character Evidence

---

Polygraph evidence

---

Opinion Evidence

---



# Opinion Evidence

---

When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?

# Opinion Evidence: Try it!

---

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

“I got to the party pretty late, and Taylor was already lit.”

“Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex”



# Assessing Authenticity

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.



Ask questions, request proof.



Investigate the authenticity if necessary.

GRAND RIVER SOLUTIONS



# Is it authentic?

---



QUESTION THE  
PERSON WHO  
OFFERED THE  
EVIDENCE



REQUEST  
ORIGINALS



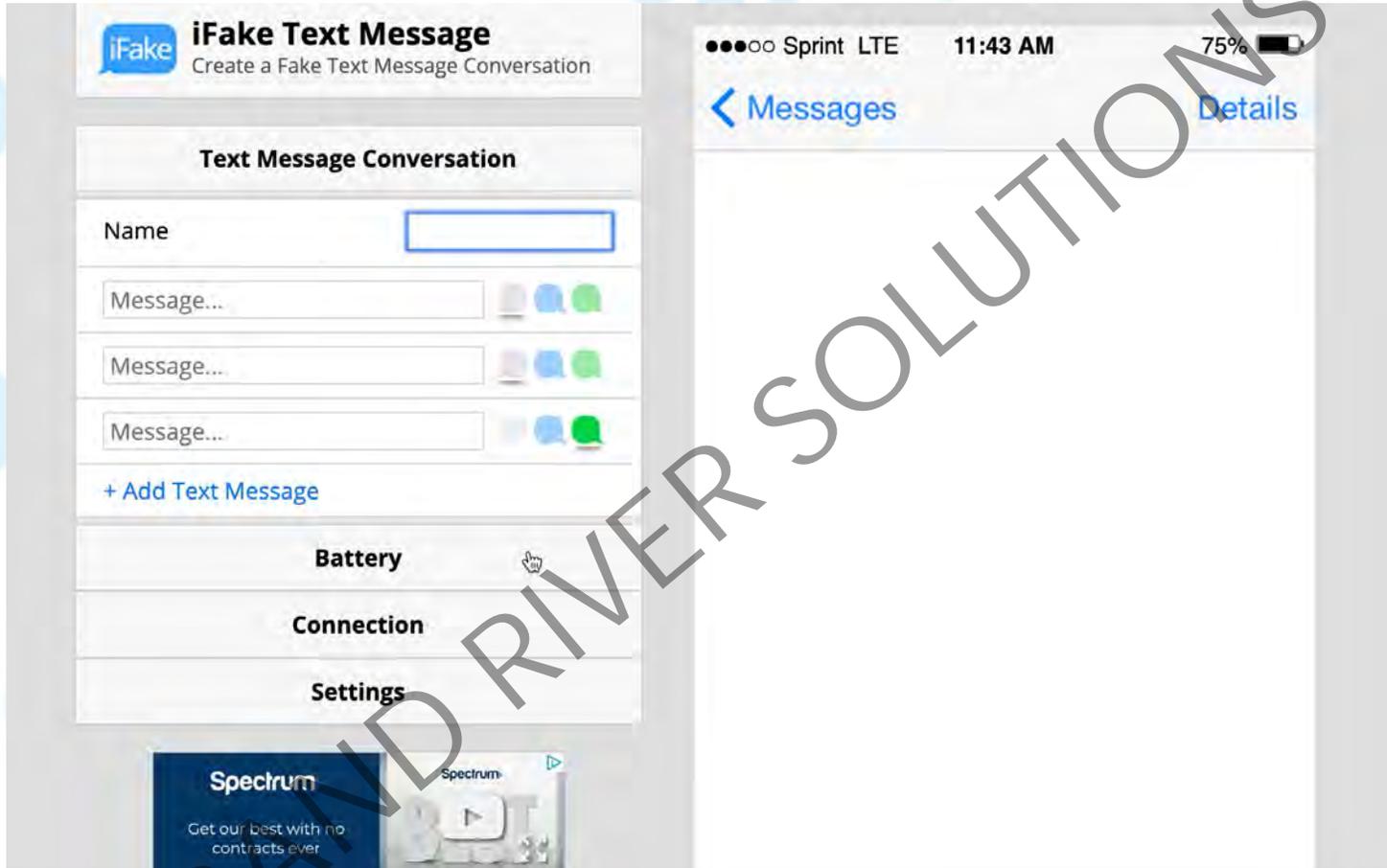
OBTAIN  
ORIGINALS FROM  
THE SOURCE



HAVE OTHERS  
REVIEW AND  
COMMENT ON  
AUTHENTICITY



ARE THERE OTHER  
RECORDS THAT  
WOULD  
CORROBORATE?



# Assessing Credibility and Reliability

No formula exists, but consider the following:

Opportunity to view

Ability to recall

Motive to fabricate

Plausibility

Consistency

Character, background, experience, and training

Coaching

Bias

# Barriers to Evidence Collection

GRAND RIVER SOLUTIONS





# Barriers to Evidence Assessment

- Authenticity/Technology
- Colluding witnesses
- Colluding parties
- Totally different versions

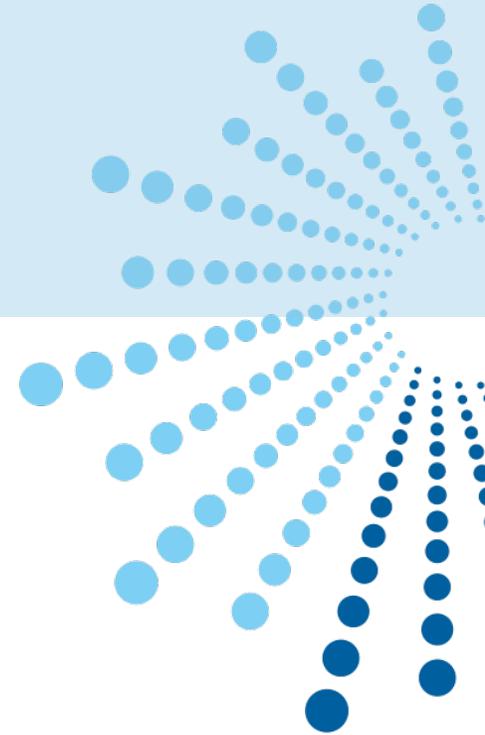
GRAND RIVER SOLUTIONS



# The Investigative Report and Record

05

GRAND RIVER SOLUTIONS



At the conclusion of the investigation, we must create an investigative report that fairly summarizes relevant evidence.



GRAND RIVER SOLUTIONS



# Relevancy Standard

## 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.”

## Irrelevant Evidence

- Prior sexual history of complainant, with two exceptions
- Legally recognized and un-waived privilege.
- Records related to medical, psychiatric, psychological treatment

# Who Decides?

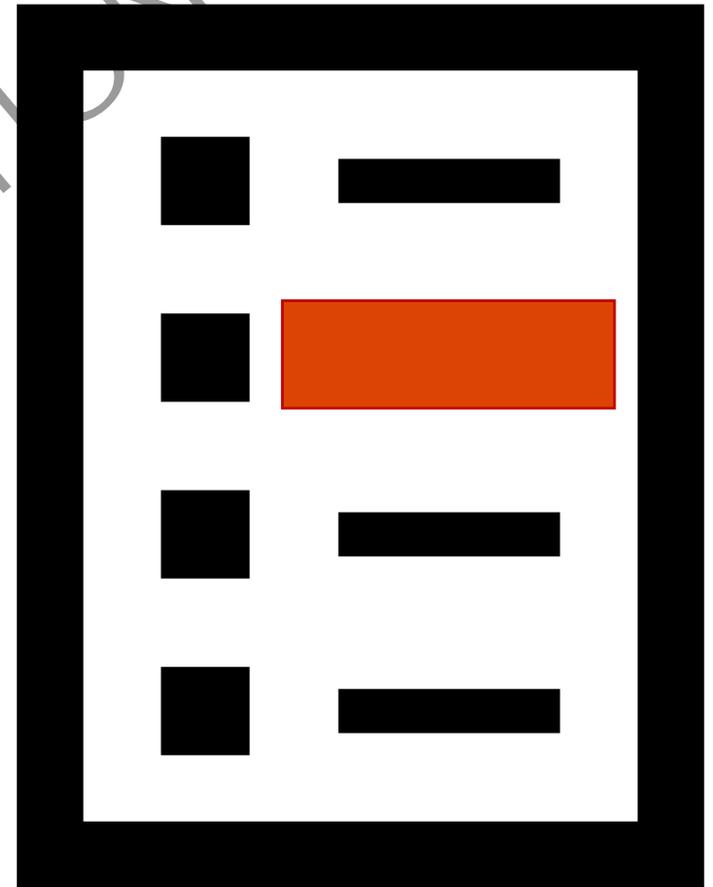
Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance

- 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

# Redactions



# Additional Requirements



Share the report with the parties and their advisors



In electronic format or hard copy



At least 10 days prior to the hearing

# The Purpose of the Report

- By the Decision Maker
- By the Parties

# Intended Recipients

The Parties

The Advisors

The Decision Maker

The Appeal Panel

# Other Recipients?

Friends of  
the parties

Parents

Law  
enforcement

Attorneys

Judges

Media

Social media

# Essential Elements

---

Intentionally organized to enhance comprehension

---

Factually accurate

---

Concise

---

Without editorial or opinion

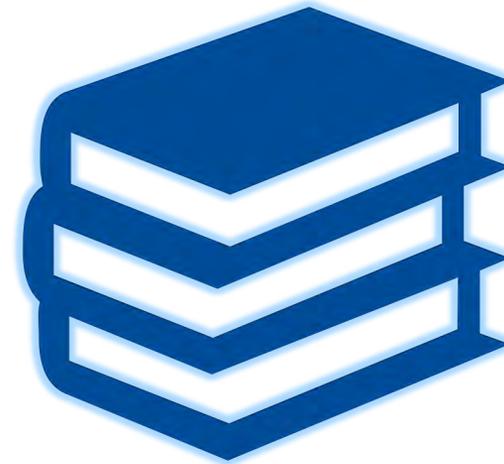
---

Consistent format

# Report and Record



Summary of the Evidence



Compilation of the Evidence

# The Record



Compilation of the evidence



organized intentionally and consistently



Divided into Appendices



Is attached to the report



Includes a procedural timeline

# Examples of Appendices

**Appendix A:**  
witness testimony  
only (e.g.,  
transcripts,  
statements  
summaries, etc.)

**Appendix B:**  
relevant  
documentary  
evidence (e.g., text  
messages, SANE  
reports,  
photographs, etc.)

**Appendix C:**  
the remaining  
evidence deemed  
irrelevant, but  
directly related to  
the allegations in the  
formal complaint

**Appendix D:**  
the procedural  
timeline



# Structure of the Report



- Overview of the Investigation
- Statement of Jurisdiction
- Identity of Investigators
- Objective of the Investigation and the Investigation Report
- Prohibited Conduct Alleged
- Witnesses
- Evidence Collected
- Summary of Evidence
- Conclusion



# Report Structure Overview

In this section, provide a very brief overview of the case. Include:

- the names of the parties,
- the applicable policy(ies)
- the prohibited conduct alleged,
- the date, time, and location of the conduct,
- a brief description of the alleged misconduct



# Report Structure

## Statement of Jurisdiction

---

1. Cite Jurisdictional Elements

---

2. State all grounds for Jurisdiction

GRAND RIVER SOLUTIONS



# Report Structure

## Identify Investigators

1. Identify the investigators by name

2. State that they have been properly trained

3. List trainings, or cite documents in the record that detail investigators prior training



# Report Structure

## Objective of the Investigation & Report

1. This language should mirror the language in your policy or procedures.
2. State the objective of the investigation
3. Briefly state that all procedural steps were followed
4. Describe the purpose of the report.



# Report Structure

## Prohibited Conduct Alleged

1. List the allegations of prohibited conduct in the formal complaint.

2. Include definitions of prohibited conduct from institution's policy/procedures.

# Report Structure

## List Witnesses

---

List those witnesses that were interviewed

---

List witnesses that were identified, but not interviewed

---

Simple List

---

Detailed List

# Example of a Detailed List

Witness Name	Witness identified by:	Information offered
John Doe	Reporting Party	Mr. Doe is the Reporting Party's best friend. He was with the Reporting Party the night of the reported incident.
Jane Doe	Investigators	Jane Doe is the Responding Party's roommate. It is believed that she saw the Reporting Party leave the Responding Party's residence immediately following the reported incident.



# Report Structure

## Evidence Collected

The final Title IX regulations require that all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint be shared with the parties and “made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.”

In this section, list the Evidence or Refer to Appendices



# Report Structure

## Summary of Evidence

In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.

# Report Structure

## Conclusion

In this section, summarize next steps in the process, including any procedural pre-requisites for moving the matter forward to a hearing.

# Questions?



Leave Us Feedback:



Email Us:

[Chantelle@grandriversolutions.com](mailto:Chantelle@grandriversolutions.com)

[info@grandriversolutions.com](mailto:info@grandriversolutions.com)



@GrandRiverSols



Grand River Solutions

---

©Grand River Solutions, Inc., 2021. Copyrighted material. Express permission to post training materials for those who attended a training provided by Grand River Solutions is granted to comply with 34 C.F.R. § 106.45(b)(10)(i)(D). These training materials are intended for use by licensees only. Use of this material for any other reason without permission is prohibited.

