



Conducting the Investigation

05

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Essential steps of an investigation



Notice of formal investigation



Initial Interviews



Evidence Collection



Report writing

The Process: Developing an Investigative Strategy



Investigation Timeline

Prior History

- Between the Parties
- Of the Parties

Assault

- Consent
- Type of Contact

Pre-Assault

- Pre-Meditation
- Manipulation
- Attempt to Isolate

Post Assault

- Behaviors
- Communications

Identify and Interview Parties/Witnesses

Interview Objectives



Connect

- Build rapport
- Build trust
- Empower
- Listen



Safety Assessment

- Physical and Emotional Safety of the Victim
- Safety of the Community
- Safety of the Accused



Services

- Advocates
- Police/Campus
- Medical care
- Interim action



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



Prepare yourself for the meeting



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

Set Expectations

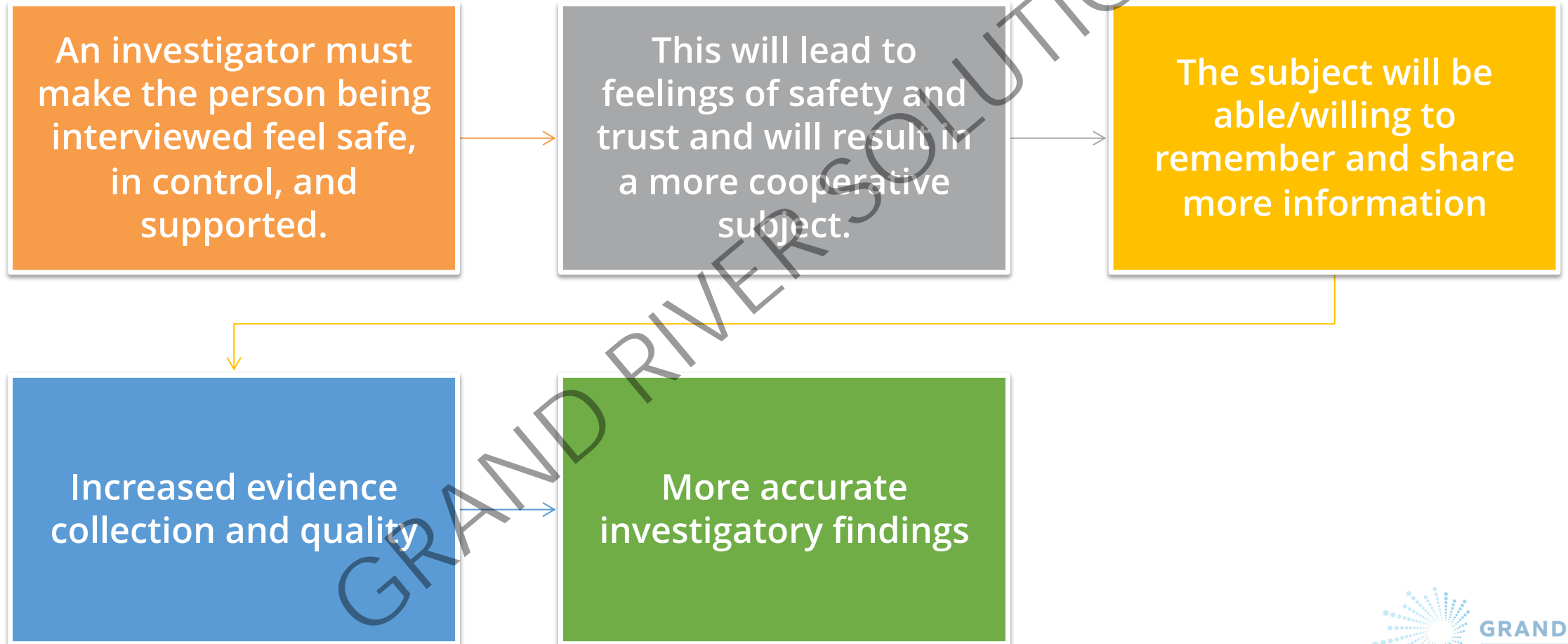
What they should expect of you

- 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

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

The importance of empowerment and the power of empathy



Investigative Interviews

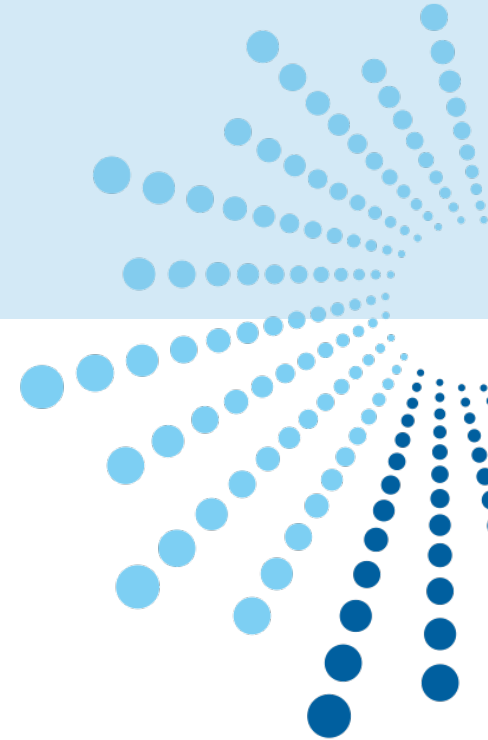




Evidence

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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.”

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

Non-Testimonial Evidence

Text Messages

Social Media
posts

Social Media
Communications

Emails

Surveillance

Videos

Photographs

Police Body
Camera
Footage

Swipe Records

Medical
Records

Phone Records

Audio
Recordings

A Thorough Investigation

Is more than evidence collection

A Thorough Investigation Permits the Decision Maker to Assess



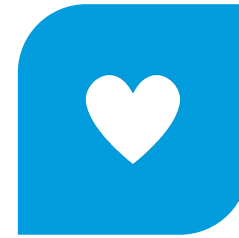
RELEVANCE



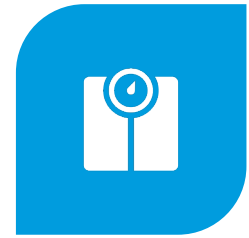
CREDIBILITY



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 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.

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
- Your own bias and limited experience

Some Other Evidentiary Issues

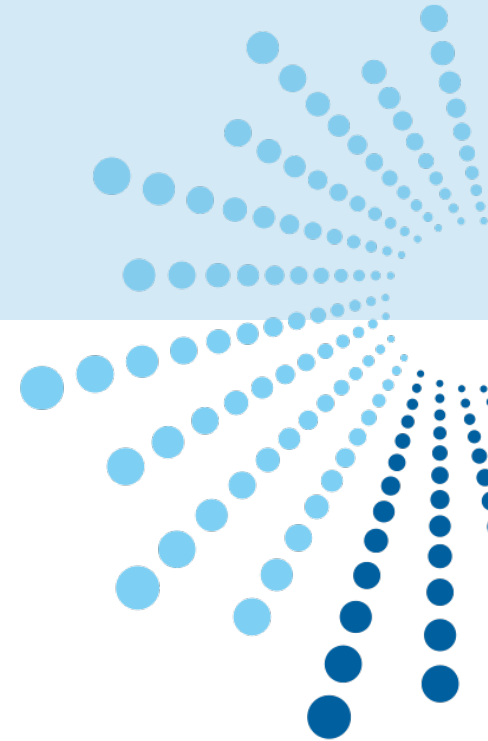
- Character evidence
- Polygraph examinations
- SANE reports
- Articles from journals
- Past conduct of complainant, respondent
- Unlawfully obtained evidence

EVIDENCE



The Investigation Report

Narrowed Jurisdiction and Expansive Procedural Requirements



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



Relevancy Standard

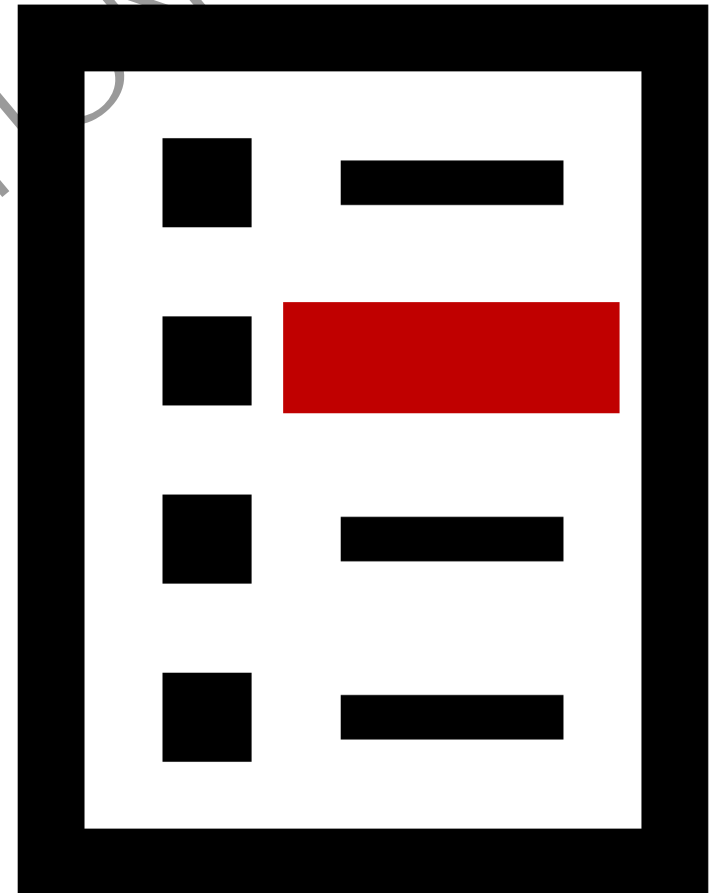
Relevant

- “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.”

Per se Irrelevant

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

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 Importance of a Quality Report

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The Purpose of the Report

- To allow for advance review
- To allow for advance preparation
 - By the decision maker
 - By the parties
- Reduce likelihood of bias in final outcome

Intended Recipients

The Parties

The Advisors

The Decision Maker

The Appeal Panel

Other Recipients?

Friends of
the parties

Parents

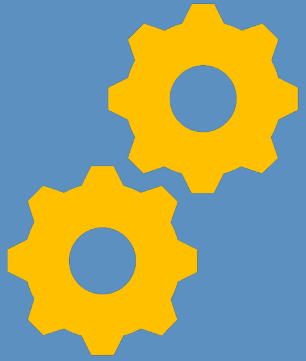
Law
enforcement

Attorneys

Judges

Media

Social Media



Essential Elements of a Quality Report

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Essential Elements

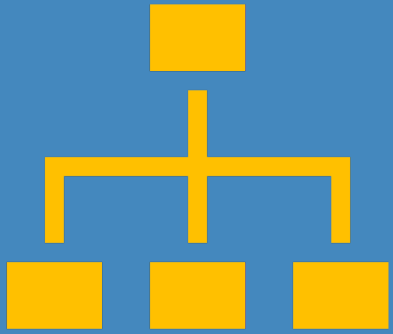
Intentionally organized to enhance comprehension

Factually accurate

Concise

Without editorial or opinion

Consistent format



Structure of the Report



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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

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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?

For More Information:

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