



GRAND RIVER | SOLUTIONS

# Hearings in the New Era: *Are You Ready?*

## Day Two

Jody Shipper and Chantelle Cleary

## Meet Your Facilitator



**Jody Shipper, J.D.**

Co-Founder and Managing Director

Jody Shipper is a nationally-recognized subject-matter expert with more than 20 years of experience in Title IX and related fields. She is known for her insight into best-in-class programming, policies, and community outreach aimed at addressing sexual misconduct on campus. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Jody received her J.D. from the University of California, Hastings College of Law and her bachelor's degree from Georgetown University's School of Foreign Service.



# Overview of the Day

*Let's Practice!*

- Pre-Hearing Preparation
- Testimony and Cross Examination

# Pre-Hearing

GRAND RIVER SOLUTIONS



# Rapid Fire #1

The investigation is complete! It is time to schedule the hearing...

Using the chat box, share your "To Do" List for coordinating the hearing.

GRAND RIVER SOLUTIONS





# Rapid Fire Recap

- Arranging for space
- Arranging technology
- Scheduling pre-hearing meetings with parties and advisors
- Scheduling prehearing meetings of the panel
- Providing report and record to panel and parties
- Scheduling the hearing
- Call for written submissions
- Other considerations?

## ||| Rapid Fire #2

You and your team did a great job scheduling the hearing and arranging all the logistics.

It is now one week prior to the hearing. You have already received and reviewed the report and record and you will be meeting with the rest of the panel (or spending some quite time by yourself) to prepare for the hearing.

*Use the chat box to share what you plan to discuss/think about during the prehearing meeting.*



# Rapid Fire Recap

- Development of introductory comments
- Initial discussion of the evidence
- Areas for further exploration
- List of questions for the parties and the witnesses
- Anticipation of potential issues
- Logistics
- Review of any written submissions by the parties
- Other considerations?

# Break Out!

#1

Say hi!

Pick a scribe

Discuss

- All groups: Areas or topics that you would like to explore further in the hearing
- Groups 1 & 2: Complainant
- Groups 3 & 4: Respondent
- Groups 5 & 6: Witnesses

Email your responses to Jody

- [jody@grandriversolutions.com](mailto:jody@grandriversolutions.com)

# Report Out

Groups 1 & 2: Complainant  
Groups 3 & 4: Respondent  
Groups 5 & 6: Witnesses

# The Hearing

GRAND RIVER SOLUTIONS

# Break Out!

## #2



Say hi again



Select a member of your group to take notes and to report out to the whole group



Discuss the following...



# Report Out

GRAND RIVER SOLUTIONS



# Questions?



## Email Us

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

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

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

## Follow Us



[@GrandRiverSols](https://twitter.com/GrandRiverSols)



[Grand River Solutions](https://www.linkedin.com/company/GrandRiverSolutions)

©Grand River Solutions, Inc., 2020. 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.





GRAND RIVER | SOLUTIONS

# Hearings in the New Era: Are You Ready?

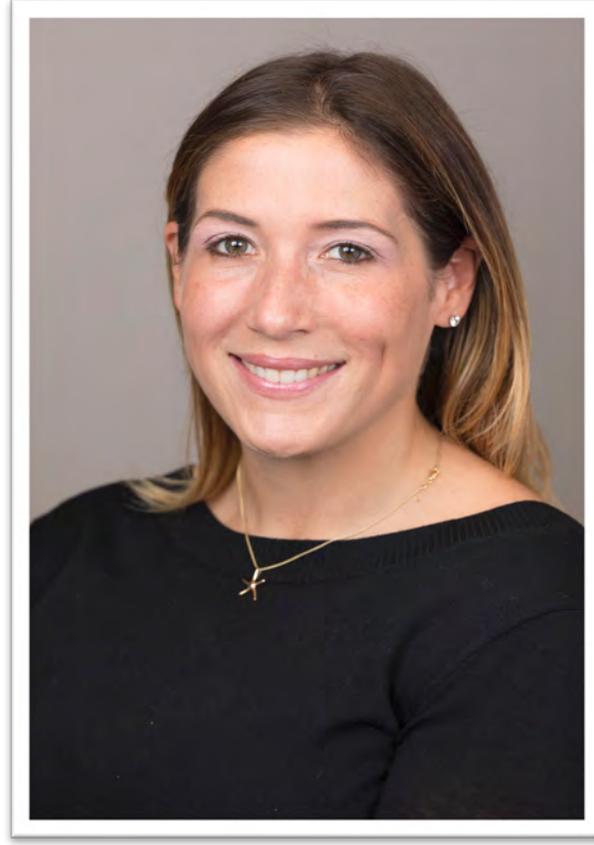
## Day One

Jody Shipper and Chantelle Cleary



**Jody Shipper, J.D.**

Co-founder and Managing Director  
Grand River Solutions



**Chantelle Cleary, J.D.**

Senior Consultant  
Grand River Solutions



# About Us

Grand River Solutions provides Title IX, equity, and Clery Act consulting services. Together, our experts have decades of direct, on-campus experience at both small and large, public and private institutions. This practical expertise derived from years of hands-on experience enables our team to offer customized solutions unique to your educational institution's needs. Grand River has a suite of creative, cost-effective and compliant solutions to help schools meet their needs in innovative ways.



# Today's Agenda

01

Regulatory Overview

05

Hearings Logistics

02

The Infrastructure for Compliance

06

Evidentiary Issues

03

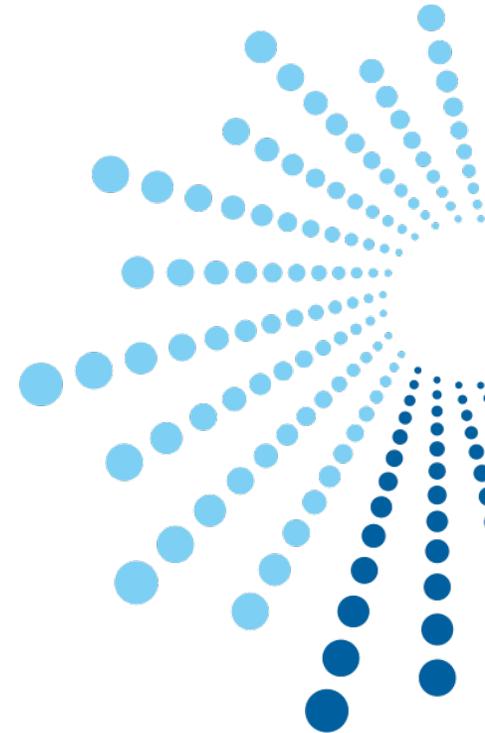
Roles and Responsibilities

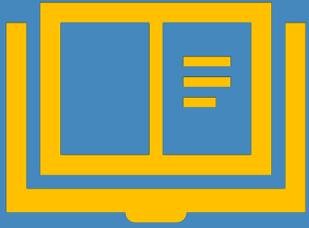
07

Post-Hearing

04

Pre-Hearing Tasks



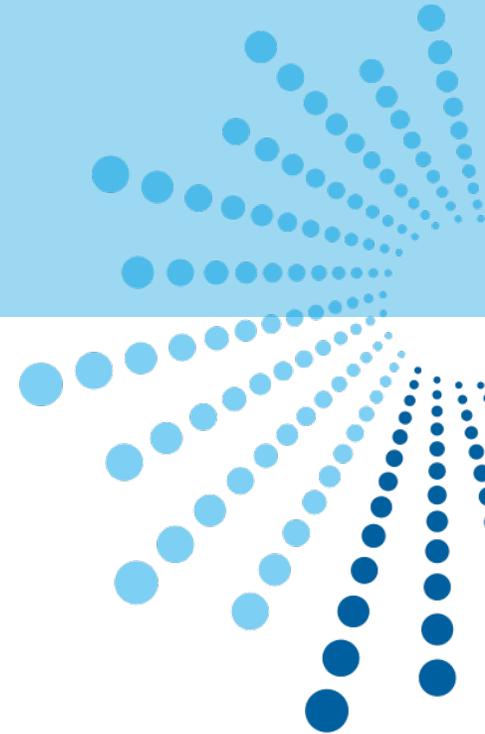


# Regulatory Overview

Narrowed jurisdiction and expansive procedural requirements

01

GRAND RIVER SOLUTIONS



# 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."

GRAND RIVER SOLUTIONS



# Title IX Applies to All Forms of Sex Discrimination

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

# The May 2020 Title IX Regulations Cover A Narrow Scope of Title IX

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment

Conduct Constituting  
Sexual Harassment as  
Defined in  
Section 106.30

# Section 106.30: Sexual Harassment

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies** a person equal access to the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).

# Title IX Application Post May 2020 Regulations

All Forms of Sex  
Discrimination,  
Retaliation

106.30 Sexual  
Harassment:

- Hostile Environment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking

# Title IX Application Post May 2020 Regulations

- Hostile Environment Sexual Harassment
- Quid Pro Quo
- Sexual Assault
- Dating/Domestic Violence
- Stalking



- Campus Program, Activity, Building, and
- In the United States, and
- Complainant is a member of the community, and
- Control over Respondent



Required Response:  
Section 106.45  
Procedures

# First Question

What Happened?

## Does the Complaint Allege:

1. sexual harassment in which the harassment was so severe and pervasive that it denied the complainant equal access to an educational program or activity, or denied the employee the equal ability to continue their work;
2. Dating Violence, Domestic Violence, Stalking, or Sexual Assault;
3. A complaint of quid pro quo sexual harassment by an employee respondent against a student.



## Second Question

Where Did the Conduct  
Occur?

Did the conduct occur:

1. The incident(s) occurred at school, within the United States;
2. The incident(s) occurred in any building owned or controlled by a student organization that is officially recognized by the institution, and within the United States;
3. The incident(s) was part of one of the school's programs or activities, such as part of a field trip or team athletic event, and within the United States.



## Third Question

Who Experienced the  
Conduct?

Is the Complainant:

1. a student (whether applicant, admitted, or currently enrolled); or
2. An employee (applicant, hired but not yet working, or employed),
3. Or someone who is otherwise still accessing or attempting to access a university program or activity, within the United States.



## Fourth Question

Who is the Accused?

Is the Respondent:

1. A student (whether applicant, admitted, or currently enrolled), or
2. An employee (applicant, hired but not yet working, or employed).
3. Someone else that the institution may have control over (ie, a contractor, an alum, or a vendor)





# Apply the 106.45 Procedures

GRAND RIVER SOLUTIONS

**What do we do  
about misconduct  
that does not fall  
within this narrow  
scope?**

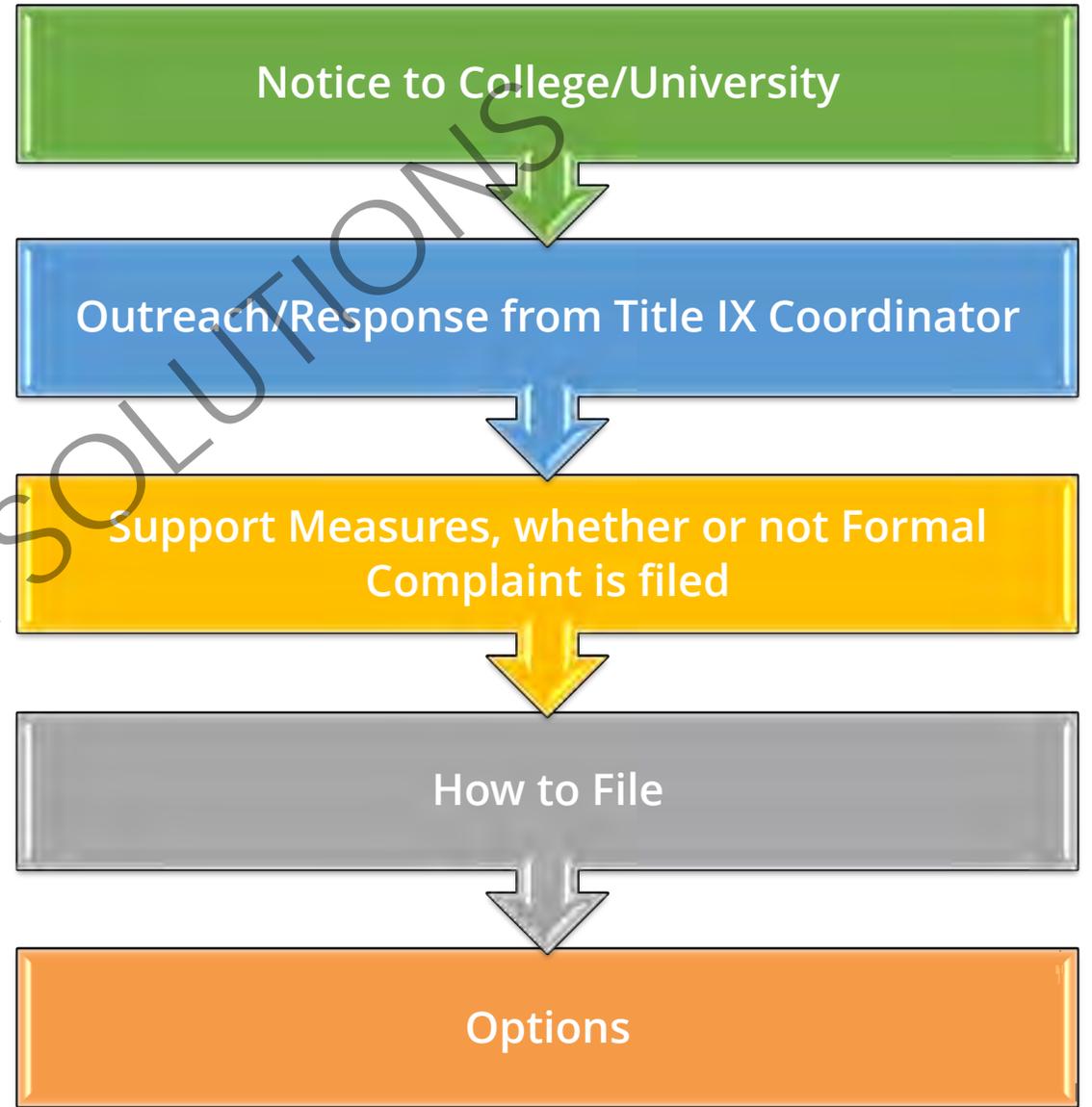


GRAND RIVER SOLUTIONS





# Before The Investigation



GRAND RIVER SOLUTIONS

# 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  
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

GRAND RIVER SOLUTIONS

# Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

Written decision must be issued that includes finding and sanction

What do we  
need to do  
all of this?



Space



Technology



Clear & Comprehensive Procedures



Staff



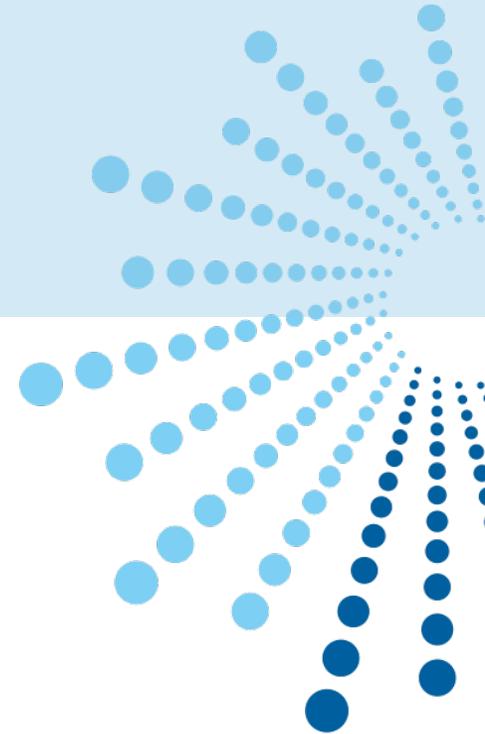
Expertise and Confidence



# The Infrastructure for Compliance

02

GRAND RIVER SOLUTIONS



# Purpose of the Hearing

Why does it matter?

Review and  
Assess  
Facts



Make  
Findings of  
Fact



Determine  
Responsibility  
/ Findings of  
Responsibility



Determine  
Sanction  
and  
Remedy

# The Essential Elements of All Hearings

---

Clear Procedures

---

Due/Fair Process

---

Fair, Equitable, and Neutral

---

Consistency

---

Trauma Informed

---

Well Trained Personnel

---



# Clear Procedures

## The Process

- Pre-hearing process, submission of evidence, opening statements, other statements, closing statements, findings, impact statements, etc.

## The Players

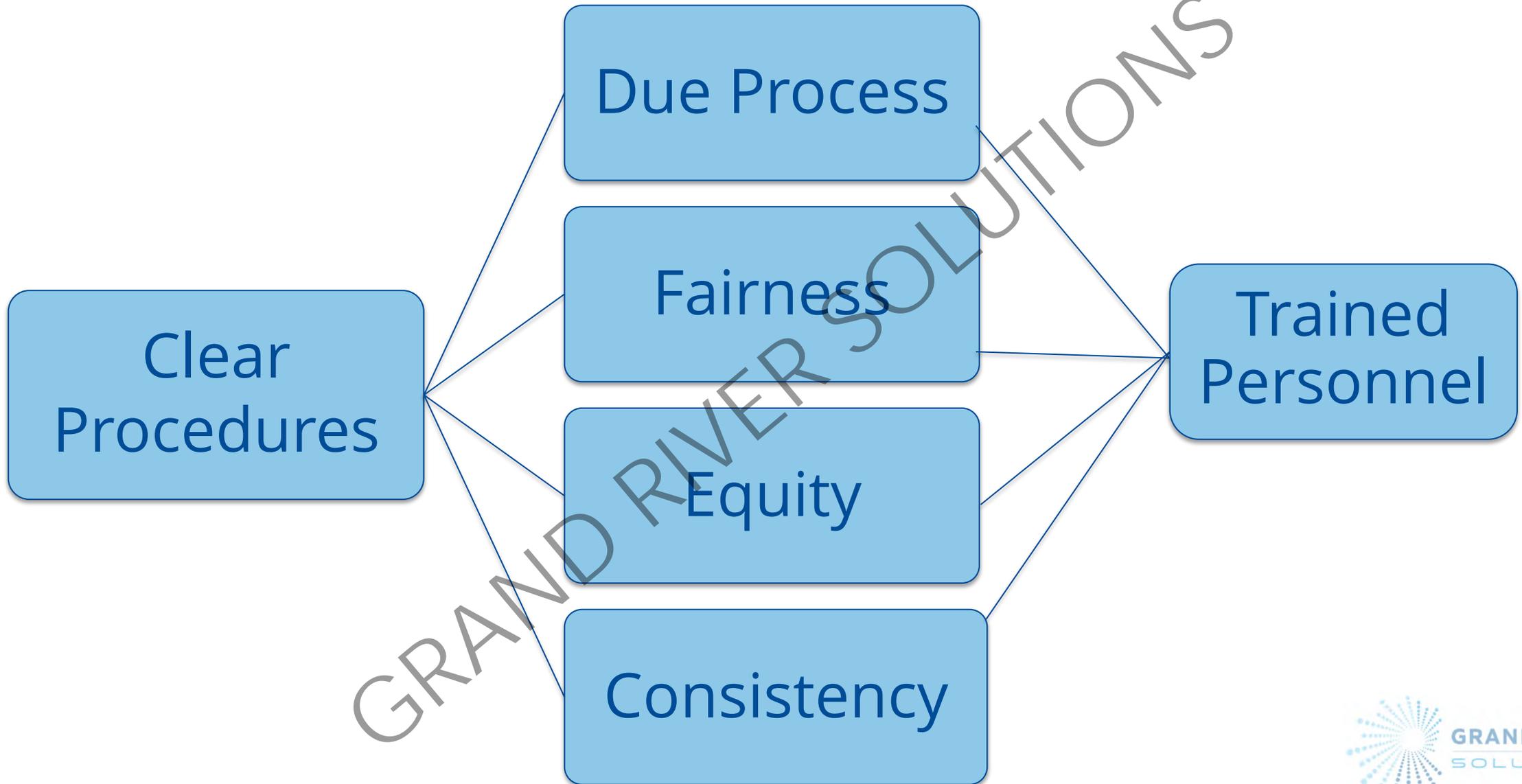
- The roles of all participants

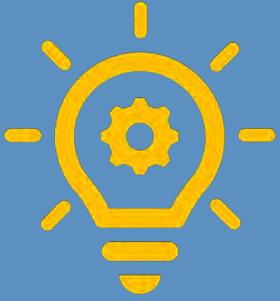
## The Evidence

- Relevancy, Exclusions, Timing of submission, how to submit, who decides, etc.

## The Outcome

- Deliberations; Notice; manner and method communicated.



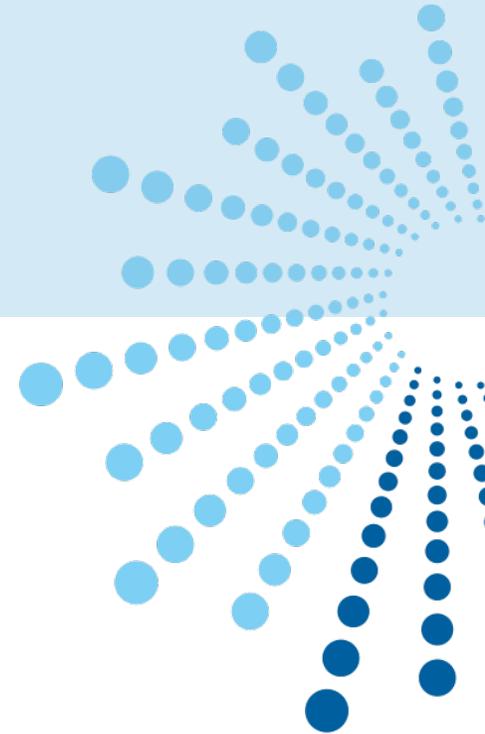


# Roles and Responsibilities

People, Functions, and Impartiality

03

GRAND RIVER SOLUTIONS

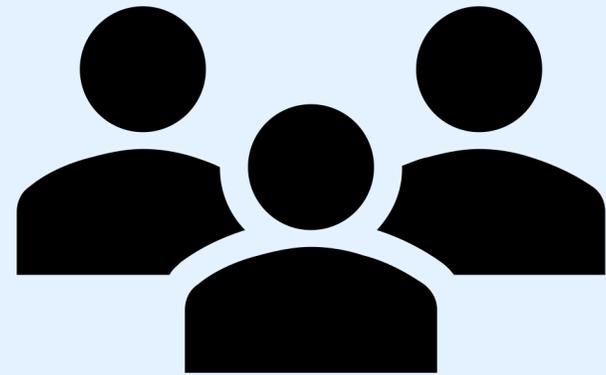


# Hearing Participants

Complainant	the person bringing the complaint
Respondent	the person against whom the complaint has been filed
Advisor	will conduct cross examination; role varies depending on school
Adjudicator(s) or Panelist(s)	role varies depending on when in the process the hearing occurs and responsibility of the officer
Investigator	summarizes the investigation, answers questions
Witnesses	present in the room only when answering questions
Hearing Coordinator/Officer	coordinates all aspects of the hearing, ensures a fair and equitable hearing process, acts as a resource for all participants
Decision-Maker	makes decision as to whether policy was violated
Administrative Staff	assists with the logistical coordination of the people, the space, technology, etc.

# Other Considerations Panel

- Number of panelists?
- Can you have a panel of one?
- Must finding be unanimous?
- Internal, external, or some combination?



Who is  
NOT  
in the  
Hearing?

---

General Counsel

---

Parents

---

Student newspaper

---

Interested faculty

---

Title IX Coordinator

# The Players

## Hearing Advisors

- Will conduct examination/cross
- Roles
- Training/Qualifications
- Communicating their role
- Enforcing their role



# The Players

## Support Person

- Optional
- Silent
- Roles
- Communicating their role
- Enforcing their role



# The Players

## The Coordinator/Chair

- Oversees the Process
- Maintains order/decorum
- Supports the panel
- Makes ruling
- Voting or non-voting
- Writes the decision
- Trained

GRAND RIVER SOLUTIONS



# The Players

## The Decision Maker

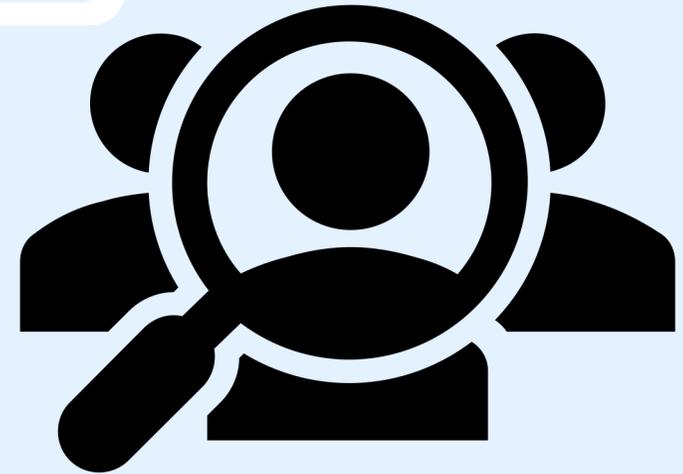
- May be Hearing Chair or on panel
- Determines whether policy was violated
- Cannot be investigator, Title IX Coordinator, or Appeals Officer



# The Players

## The Panel

- Fact finders
- Number of panelists?
- Composition?
- Makes the finding
- Unanimous?
- Pool?
- Recruitment and retention



# Impartiality

WHAT DOES THIS *REALLY* MEAN?

GRAND RIVER SOLUTIONS



# Prejudging

- “Believe all victims”?
- Is bringing forward a case a “judgment”?
- Avoiding any presumption of responsibility

GRAND RIVER SOLUTIONS



# Bias? Conflict of Interest

- Being anti-rape
- The investigator once took a women's studies course
- The appeals officer wrote on Facebook last week that if a boy is accused, he definitely did at least *something* wrong
  - The Title IX Coordinator went to the same college as the Complainant's mother
- The Title IX Coordinator's daughter works for the Complainant's mother



# Logistics of a Hearing

# Considerations for the Physical Space

- Room location and set-up
  - Entrances, exits, and proximity
- Privacy screens & partitions
- Technology
- Hallway control
- Space for extra visitors

# Hearing Room Configuration

Investigator & Hearing  
Coordinator

Hearing Officer

Witness

Respondent &  
Advisor

Complainant &  
Advisor

# Remote Participation

- **In whole or in part?**
- **Communication considerations**
  - Chat function or emails
- **Private consultation between parties and advisors**
  - Use of breakout rooms
  - Communication considerations
- **Practice runs**
- **Connectivity Considerations**

# Other Considerations

Time Limits

Breaks

Formality,  
Order and  
Gate-Keeping

Handling  
disruptions and  
interruptions

Poor behavior?

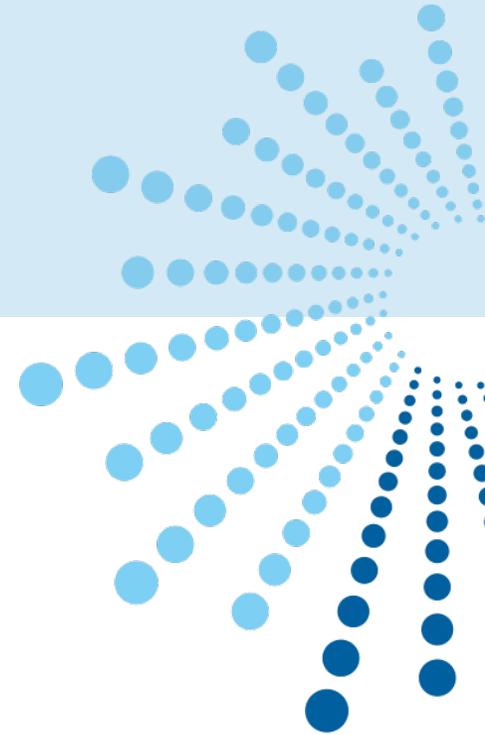
Recording



# The Hearing

GRAND RIVER SOLUTIONS

PART 2



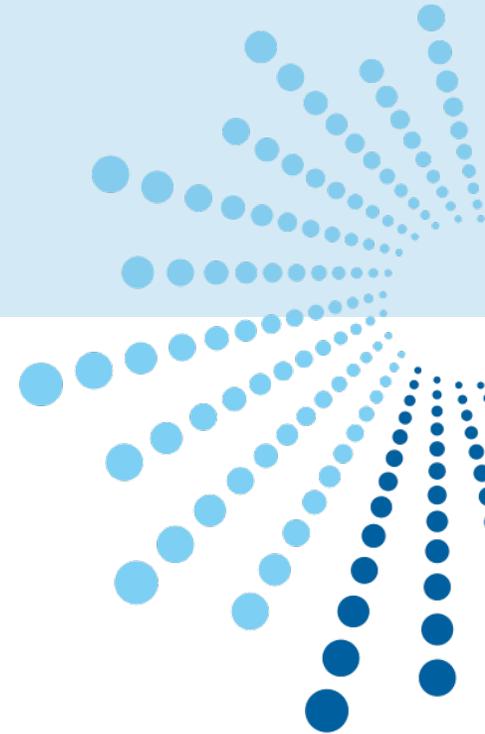


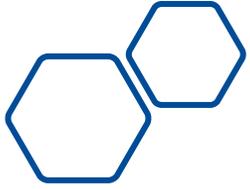
# Pre-Hearing Tasks

What should be done in advance of the hearing

04

GRAND RIVER SOLUTIONS





# Logistics

Scheduling participants

Reserving space

Provision of accommodations

Requests for delays; adjournments

# The Parties and their Advisors, and the Witnesses

## Pre-hearing instructions

- Via conference or meeting
- In writing

## Set expectations

- Format
- Roles of the parties
- Participation
- Evidence
- Decorum
- Impact of not following rules

# The Decision Maker(s)



Review evidence and report



Review applicable policy and procedures



Preliminary analysis of the evidence



Determine areas for further exploration



Develop questions of your own

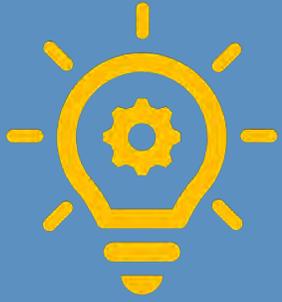


Anticipate the party's questions



Anticipate challenges or issues

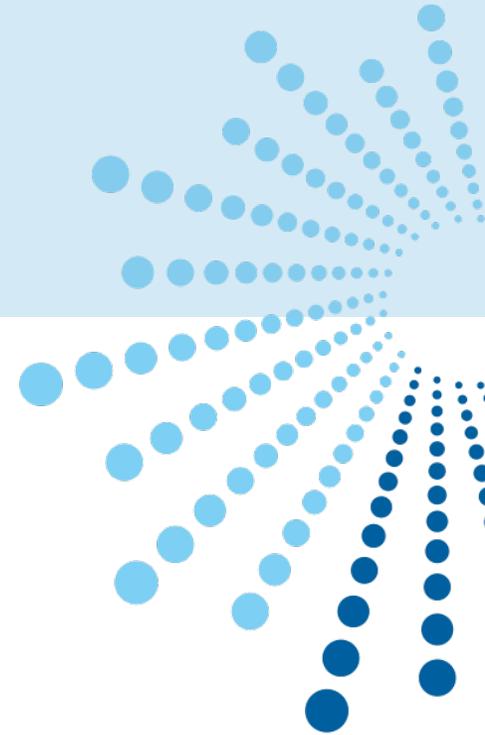




# Hearing Logistics

05

GRAND RIVER SOLUTIONS



# Opening Instructions by the Chair

- Set the stage
- Reiterate charges
- Reiterate rules and expectations
- Reiterate logistics for the day

*This should be scripted and used consistently.*



# Opening Statements

- Permitted, but not required
- Policy should include purpose and scope
- If permitted, consider
  - Requiring submission prior to hearing
  - Word limit
  - Time limit

GRAND RIVER SOLUTIONS

# Testimony

Procedures should be clear about:

- Order of/parties and witnesses
  - Could simply leave this up to the decision maker
- Order of examination
  - Questioning by the decision maker
  - Cross examination by the advisor
  - Will the advisor be permitted to question their own party?
  - Will there be a second round of questioning?
- Consistency is essential. Consider putting this all in your procedures.

# Cross Examination

Who does it?

- Must be conducted by the advisor
- If party does not appear or does not participate, advisor can appear and cross
- If party does not have an advisor, institution must provide one

# Cross Examination

## Permissible Questions

- Questions must be relevant
- Not relevant
  - Duplicative questions
  - Questions that attempt to elicit information about
    - Complainants prior sexual history
    - Privileged information
    - Mental health

# Cross Examination

## Role of the Decision Maker

- Rulings by Decision Maker required
  - Explanation only required where question not permitted

GRAND RIVER SOLUTIONS

# Cross Examination

## Impact of Not Appearing

- Exclusion of all statements of that party
- Exception- DOE Blog
- What if a party or witness appears, but does not answer all questions

# Closing Statements

---

- Permitted, but not required
- Policy should include purpose and scope
- If permitted, consider
  - Time limit
  - Submission in writing after the hearing

# Common Challenges

- Non-appearance by a party or witness
- Non-appearance by an advisor
- Party or witness appears but declines to answer some (or all) questions
- Disruptions
- Maintaining Decorum

# Tips for Increasing Efficiency

01

Be prepared

02

Have an  
experienced chair

03

Have back up plans  
for technology  
issues

04

Require pre-  
hearing written  
submissions

- of opening statements
- of questions in advance

# Being Trauma-Informed

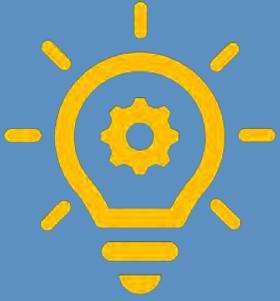
## Training your panel/adjudicators

- Asking questions
- Asking “why”
- Filtering questions of the parties

## Preparing parties

- Reviewing the investigation report
- Sharing their story again
- Answering questions again

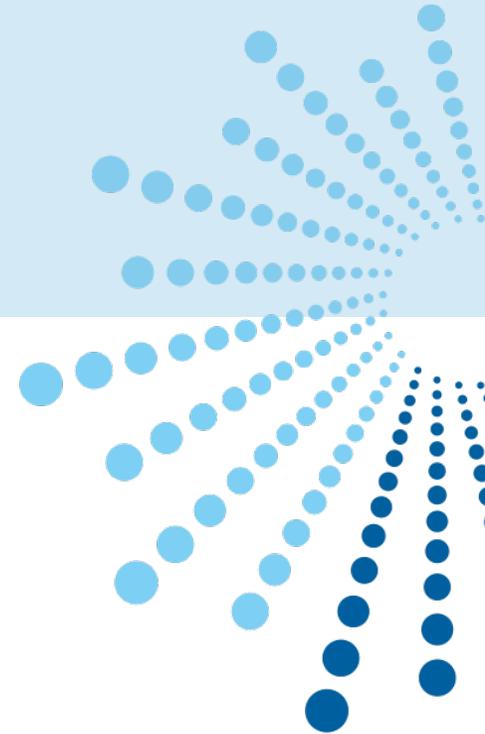
## The attraction of prurient interests



# Evidentiary Issues

06

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

# 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

# Some Other Evidentiary Issues

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

**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?

Is it convincing?



Is it reliable?

Can you trust it or really on it?



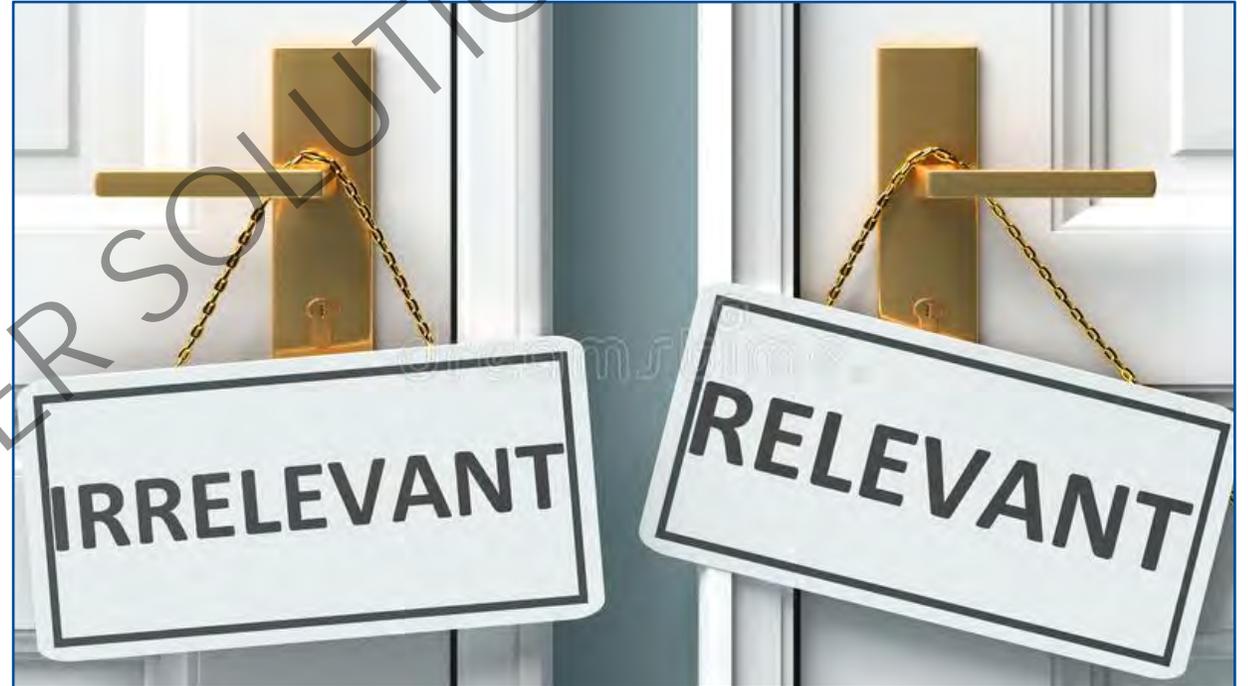
What weight, if any, should it be given?

Weight is determined by the finder of fact!

Logical connection between the evidence and facts at issue

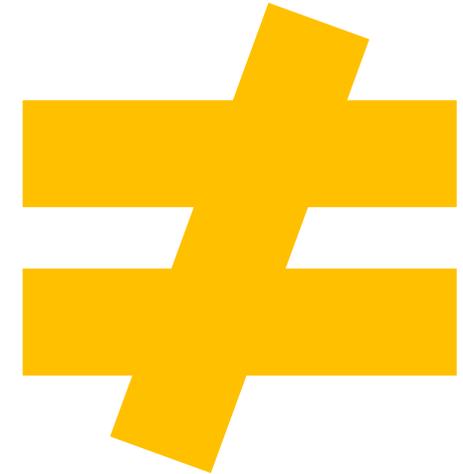
Assists in coming to the conclusion – it is “of consequence”

Tends to make a fact more or less probable than it would be without that evidence



# Relevance is Not...

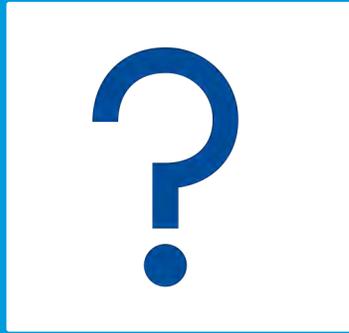
- Strength of the evidence
- Believability of the evidence
- Based on type of evidence: circumstantial, direct
- Based on complicated rules of court



GRAND RIVER SOLUTIONS

# 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

# Assessing Reliability

Inherent plausibility

Logic

Corroboration

Past record

Other indicia of reliability

# Credibility Versus Reliability

## Reliable Evidence

- I can trust the consistency of the person's account of their truth.
- It is probably true and I can rely on it.

## Credibility

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

# Being Convinced

It Is True, or Biased Conclusion?

**A credible witness may give  
unreliable testimony**

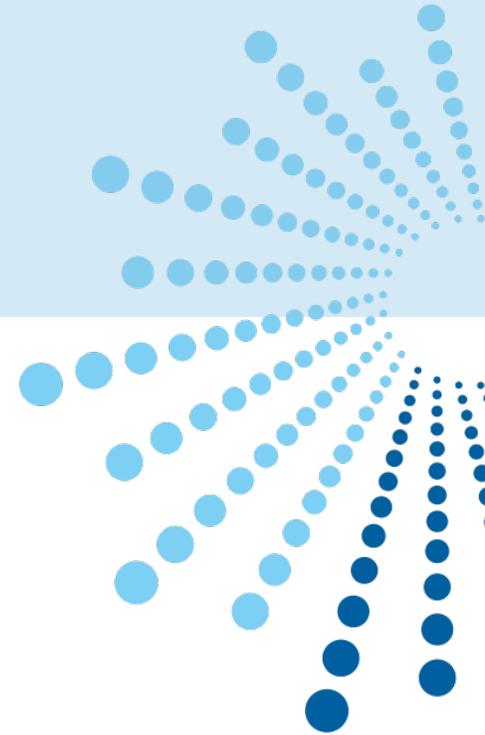
GRAND RIVER SOLUTIONS



# After the Hearing

06

GRAND RIVER SOLUTIONS



# Deliberations

GRAND RIVER SOLUTIONS

# Weighing the Evidence & Making A Determination

- 1) Evaluate the evidence collected to determine what factually is more likely to have occurred, and then
- 2) Analyze whether the conduct that happened constitutes a violation of the school's policies

# Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate



# Preponderance of the Evidence

- More likely than not
- Does not mean 100% true or accurate
- A finding = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated



# Final Report

- The allegations
- Description of all procedural steps
- Findings of fact
- Conclusion of application of facts to the policy
- Rationale for each allegation
- Sanctions and Remedies
- Procedure for appeal



# Questions?



## Email Us

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

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

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

## Follow Us



[@GrandRiverSols](https://twitter.com/GrandRiverSols)



[Grand River Solutions](https://www.linkedin.com/company/grand-river-solutions)



Jody Shipper

Jody@grandriversolutions.com



Chantelle Cleary

Chantelle@grandriversolutions.com



©Grand River Solutions, Inc., 2020. 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.





# *Hearings in the New Era: Are You Ready?*

## Training Packet\*

July 29 & 31, 2020

\*This training packet is intended for educational purposes only, and not as sample documents. The partial report and supporting statements included in this packet is designed solely to facilitate an understanding of the hearing process, and is not intended to reflect a completed investigation report.

©Grand River Solutions, Inc., 2020. 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.

Report

Date

Name of Investigator

Case Number

Background:

Complainant informed her RA that she had been sexually assaulted by Respondent, and the RA then forwarded that information to the Title IX Coordinator. Complainant filed a Formal Complaint on November 24, 2019. Specifically, as stated in the December 1, 2019 Notice of Investigation, Complainant alleged that Respondent sexually assaulted her on August 31, 2019, by engaging in sexual activity at a time when Complainant lacked the capacity to consent to sexual activity.

Relevant Policy:

The following are among the forms of sexual misconduct that violate Gotham College policy and their associated definitions:

SEXUAL ASSAULT:

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

This includes

(a) Sexual intercourse, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity, and

(b) Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity, and

(c) The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.

CONSENT: In order to understand this Policy, and the standards of behavior Gotham College expects, it is vital that students and other community members understand the concept of affirmative consent. This must be understood and accepted to be a member of the Gotham College community. Gotham College defines affirmative consent according to the following guidelines:

1. Consent IS:

An active, ongoing, and voluntary agreement by each participant to engage in sexual activity or sexual contact, communicated by clear actions or words.

2. Consent IS NOT present:

. . . when someone is incapacitated (including due to consumption of alcohol or drugs, lack of sleep or unconsciousness); an incapacitated person cannot consent.

. . . simply because the person has consented to sexual activity in the past; past consent to sexual activity does not imply present or future consent to sexual activity; current consent must be communicated by clear actions or words.

. . . because the other person is silent or does not resist sexual contact; again, consent must be communicated by clear actions or words.

. . . if the person has withdrawn their consent, which the person may withdraw at any time.

. . . if there is coercion, force, threats, or the absence of true choice, any of which invalidates consent.

Incapacitation due to alcohol or drugs. Gotham College will consider a variety of relevant factors when determining whether someone is incapacitated as result of alcohol or drugs. Those factors include, but are not limited to, ability to control one's physical movements such as stumbling or falling, the lack of awareness of the current circumstances or surroundings, slurred or incomprehensible speech, the ability to communicate, combativeness or other emotional volatility, vomiting or incontinence. The determination of incapacitation is based on objective and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

Complainant's Statement:

Complainant stated that she had been sexually assaulted by Respondent on August 31, 2019. She stated that she had known Respondent prior to the incident, but she did not consider that they were friends.

Complainant stated that she is in an all-female vocal group, Floral Choral, and that all of the vocal groups on campus had been invited to a party. She believes that the party had been intended as a celebration of someone's birthday, but she could not recall.

She stated that, before going to the party, she and Witness 1 (also a member of Floral Choral) got ready at Complainant's apartment. She explained that she and Witness 1 are "really into make-up," and so they spent time perfecting their make-up for the party. She stated that she helped Witness 1 with her make-up because Witness 1 has been talking to someone she liked, Student 1, whom she knew would be at the party, and so Witness 1 wanted to feel "extra special."

Complainant stated that Witness 1 had arrived at her apartment "at like 7 pm ish," and they then ordered some food. She stated that they ordered pizza because they wanted to make sure they had plenty of carbs to eat before starting to drink. She stated that they stayed at her apartment until approximately 10 pm, when they took an Uber to the party. Complainant recalled that Witness 1 called the Uber, because Witness 1 knew the address.

When asked if they had been drinking while getting ready, Complainant stated that Witness 1 had brought a bottle of pink champagne with her to Complainant's apartment, and they finished the bottle before going to the party. Complainant stated that she did not own glasses, so they each used a water bottle as a glass. Complainant did not know whether she or Witness 1 had consumed more of the champagne than the other, but she stated that she felt "like Witness 1 drank most of it, besides what I had poured in my water bottle."

Complainant thinks there were maybe 20 people at the party when she arrived, and then she got a beer. She stated that "once we got our beers, people started really showing up." She stated that she and Witness 1 found a place to sit by the kitchen area, and that they made a point to stay in the kitchen and away from the living room because it was really hot and muggy, and there was a huge window in the kitchen that was open and the breeze felt good. She stated that they "mostly just said hi to people as they came into to get drinks." She stated that she recalled speaking with Student 2, who is also in Floral Choral, but could not recall whether they were talking at the start of the party, or later. She said she remembered talking to Student 2 about Student 2's boyfriend, who was not at the party.

Complainant stated that Respondent was at the party, and she recalled speaking with him. She stated that his vocal group, the Cleftomaniacs, were the party's hosts, and she thought one or more of the Cleftomaniacs lived in the apartment where the party had been held. She stated

that she was with her friend Witness 1 the whole night. She believes that everyone from Floral Choral was at the party.

Complainant stated that she first met Respondent when they were both freshmen, as they were both involved in a cappella groups at school. She described their relationship as "like friends but not really. Like we didn't hang out together on purpose, but definitely saw each other around and at like competitions and stuff, we were cordial, and stuff."

Complainant recalled that she started speaking with Respondent at the party and that Witness 1 walked away from her while she was talking to Respondent. Complainant recalls that she was talking to Respondent about his job as the student assistant choral director for the Cleftomaniacs, a group she described as being "pretty big here." She stated that she was hoping to become the assistant choral director for her vocal group, and so she was "picking his brain about it." Complainant stated that she does not recall how long she spoke with Respondent, and does not recall how long Witness 1 was away from her side.

Complainant said that there was a keg of beer in the kitchen, and she poured herself a beer when she first got there. She said that, because she was near the keg the whole night, people were often topping up her cup. She said that Respondent had refilled her cup "at least once or twice."

Complainant stated that she started to feel drunk at some point, and did not have clear recollections of the party. She stated that she felt fine at the party, but then "suddenly I wasn't." She believed that Witness 1 left the party with Student 1, but was not certain. She stated that Respondent may have offered to walk her home, but she was not certain. She stated that she did not remember the end of the party, or leaving the party, but remembered walking up a hill, thinking that it was so rainy and wet, and thinking that she was heading back to her apartment, then "next thing I knew I was in Respondent's dorm room." When asked if she had ever been in his dorm room before, she said no. When asked to describe the room, she recalled that there was a chair and a "desk or table thing," a bed, and a window. She believed that he had a bathroom. She did not recall seeing anyone else at the dorm, and does not know if she saw his suite mate.

She stated that she recalled sitting on Respondent's lap on the chair, and had a distinct recollection of then being pushed by Respondent. She stated that she remembered being pushed down so that her knees slid off the chair and onto the floor. She recalled hearing him say something about his wanting to see her face, but she could not recall exactly what he said. She stated that "there was like a time where he said go down on me and I did." She does not recall if either or them were wearing clothes while she was sitting on his lap.

Complainant recalled feeling pain, and hearing Respondent's voice, but could not recall what he was saying. She stated that "at some point my skirt was off, and he was not wearing

anything from the waist down." She stated that her recollections were "so fuzzy and it is crazy I never get that drunk, I don't know if something else happened, I mean, I just don't know."

She stated that she had never before blacked out, but has no specific memories of what occurred when she was at his apartment. She stated that, at some point, she was lying on her back on his bed, and woke up to find that he was touching her genitals. She stated that she recalled trying to push his hand away, but believed she was not successful because he continued to forcefully rub the outside of her vagina.

When asked to describe the pain, she stated that she remembered feeling a sharp pain in her vagina, and that she continued to be sore for two or three days after the incident. She stated that Respondent was initially rubbing the outside of her genitals, and that it did not feel good, and that he got on top of her and tried to force his penis into her, and that it hurt and he was not able to penetrate her. She stated that she has a recollection that he grabbed something from a desk or table by the bed and she believes it was a tube of lubrication. She stated that she then felt him push his penis into her, and stated that she just remembers feeling that "this was something I had to get through." When asked if there was any conversation, Complainant stated that she recalls hearing Respondent make comments like "blow me," "turn around," and something about seeing her face, but she was unable to recall the order in which the comments were made, nor could she recall what was taking place when he made the comments. She did not recall having said anything to Respondent while this was taking place. Complainant also recalled the sensation of being turned or flipped over by Respondent, but then recalls nothing else until she woke up in the morning. She stated that she woke up on the couch in his room with a blanket over her, and initially she panicked because she did not know where she was. She stated that she then realized that she could smell vomit, and there was vomit in her hair and she was not wearing any underwear. She stated that she felt very "fuzzy" and had a terrible headache, but forced herself to get up to find her underwear so she could leave. She stated that it was too hard to get up at first, and she texted her friend Student 2 asking Ashely to come pick her up, but she did not know the name of his dorm building. She stated that Student 2 knew where Respondent lived and came to pick her up. Complainant stated that she felt really fuzzy and remembers walking out without her shoes, and then Student 2 went back in to get her shoes for her. Complainant stated that she never did find her underwear. Complainant stated that she fell back asleep in the car and did not really wake up until later in the day.

She stated that she was also spotting small amounts of blood and having "all that pain," and so she went to a rape treatment center. She stated that she worried that she might be bleeding internally, and stated that the SANE nurse told her she had both external and internal bruising and small tears where he had penetrated her, and that the bleeding was not connected to menstrual bleeding. She stated that she kept spotting and bleeding for 2 or 3 days. Complainant stated that, at first, she was having a hard time remembering what had happened, and so she texted a few friends to ask them if they knew when she had left the party. She stated that she bumped into Respondent a few times because of their mutual

involvement in the vocal groups, and he never apologized to her or said anything to her, so she decided to text him and ask him if he would get together with her. She stated that he agreed, and they met at the Campus Café for a coffee. She stated that their conversation was “really awkward and uncomfortable,” but she really wanted to know why he had sex with her despite knowing that she was so drunk. She stated that he kept stammering and saying “what are you talking about?” in a “really defensive way.” She stated that she finally just asked him “How did you not know I was passed out while we were having sex?” and, when he said nothing to her, she just stormed out. She stated that she then blocked Respondent on her phone and all social media. She stated that she had also deleted all texts and social media conversations she had with him, as she did not want to see his name on anything.

Complainant provided text messages she had exchanged with friends in the days after the party, in which she asked them what they remembered. In support of her contention that she had been incapacitated while at the party, she provided the screen shot of a text message she had sent to Witness 3 the day after the party, in which she asked Witness 3 details about the party, including when Witness 3 had left the party, and whether Witness 3 recalled when Complainant had left the party.

Complainant also provided a copy of the cover sheet from her visit to the Rape Treatment Center (RTC), showing that she had gone to the RTC on September 2, 2019, along with information regarding the clinical findings. She also provided the mostly-redacted police report, as the RTC staff had contacted the police on her behalf while she was awaiting the forensic exam.

Further, she provided screenshots of messages with Respondent, and also showed her phone to the investigator, who could see the same messages as those submitted in screen shots. In one, dated approximately three days after Witness 6’s party, she writes to Respondent “how did you not know I was passed out while you were having sex with me?” Respondent texts back “No, that’s not true, you passed out later.”

Complainant was also asked to submit relevant phone records. No records were provided.

#### Witness 2

Witness 2 stated that he had been at Witness 6’s party on August 31. He stated that the party had taken place at Witness 6’s apartment. He explained that it had been Witness 6’s birthday, and so several of the vocal groups decided to get together for a celebration. Witness 2 recalled that Witness 6’s roommates had purchased a keg for the party. Witness 2 stated that he did not have too much to drink, maybe “6-7 beers the whole night.”

Witness 2 stated that he arrived at the party around 11 pm with a friend, Student 3. He recalled seeing Respondent at the party, and says he spoke to Respondent about a girl, Student 4, who was at the party, and about being too nervous to approach her. Witness 2

stated that Respondent mentioned that Student 4 was just starting to learn to play guitar, and so he (Witness 2) went over and spoke with Student 4 about her guitar playing.

Witness 2 stated that he continued talking to Student 4 for the rest of the night, and did not recall seeing either Complainant or Respondent until he left the party with Student 3 around 1:30 am. Witness 2 stated that Respondent's ex-girlfriend had come to the party and Respondent seemed "really bothered," and so he and Student 3 invited Respondent to go out to get some food. He stated that Respondent declined the invitation and said he was going to walk Complainant back to her apartment. Witness 2 stated that Respondent rarely drinks, and so he often walks drunk girls home after parties "because he's cool and steady, and that kind of nice guy."

### Witness 3

Witness 3 stated that she was at Witness 6's birthday party on August 31. She explained that it was Witness 6's 21<sup>st</sup> birthday, and so she and some of Witness 6's other friends thought that Witness 6 should have a big party.

Witness 3 stated that she initially wasn't going to attend the party because she had too much school work, but ended up going out of loyalty to Witness 6, and also because she hadn't seen Respondent in a while and wanted to catch up with him. She stated that she arrived between 11:30 pm and midnight. She stated that she stayed for less than an hour before leaving. Witness 3 stated that she almost never drinks, and was glad that Respondent was also at the party so that she would have another non-drinker to talk to. When asked to confirm that she had not consumed any alcohol at the party, Witness 3 stated that she had "almost none, just like two beers."

When she arrived, she first found Witness 6 to wish him a happy birthday, then went over to talk to Respondent. Witness 3 said that Respondent was talking to Witness 1 and Complainant, and so he walked over to say hello. Witness 3 stated that she has known Respondent since they met in freshman year, and that they have a "brother/sister type of relationship." Witness 3 stated that she also knows Complainant from their interactions at different a capella group gatherings, and also because she sometimes watches Complainant's YouTube channel, "Styled by Soprano." Witness 3 explained that Complainant, who is a soprano, has a popular YouTube channel in which she offers make-up and fashion tips. Witness 3 stated that she was surprised to find out that Complainant was alleging that she had been really drunk at the party, as Witness 3 noted that Complainant had uploaded a YouTube video on mascara comparisons the morning of Saturday, September 1. Witness 3 stated that she remembered that Complainant was drinking a beer while they were chatting, and "smiling and batting her eyes at Respondent a lot, but she was just talking about you know life stuff, music stuff." Witness 3 stated that she was "a bit" annoyed with Complainant because she (Witness 3) had really wanted to hang out with Respondent. Witness 3 added that Respondent did "not seem very into" Complainant, and Complainant kept trying to get Respondent to

focus on her by having him refill her beer from the keg, although Witness 3 was not certain whether Respondent ever did refill Complainant's beer.

When asked if anyone at the party had seemed to be very drunk, or to have over-consumed alcohol, Witness 3 recalled that Witness 6 was "pretty wasted," but no one else appeared to be drunk. She stated, "It is not like we get super crazy at these parties, there is a keg, everyone has some beers and catches up."

When asked if she had received any text messages from Complainant after the party, Witness 3 stated that she had and provided screen shots. The day after the party, Complainant had Texted to ask Witness 3 details about the party, including when Witness 3 had left the party, and whether Witness 3 recalled when Complainant had left the party. In a reply text, Witness 3 wrote "I don't know when you left, but you seemed fine when I was talking to you. Pretty flirty."

#### Witness 4

Witness 4 stated that he had been at Witness 6's birthday party. He stated that he attended with other members of his vocal group. Witness 4 stated that he saw Respondent and two girls standing in the kitchen and laughing when he got there, and so he went over to talk to them. He stated that he was trying to be witty and say something funny, and "I remember totally getting blown off by some of the ladies in Floral Choral, that was pretty much it." Witness 4 said it seemed as if everyone was paying a lot of attention to Respondent, and so he asked "hey man are you almost done giving interviews?" He stated that Respondent laughed and put an arm over Witness 4's shoulder, but the two girls didn't laugh. Witness 4 stated that Respondent was trying to include him in the conversation, but the brunette was "really all about Respondent," and so Witness 4 just walked away.

#### Witness 5

Witness 5 stated that he is Respondent's suite mate. He described that their dorm room had a central area, and then each of their bedrooms connected to that central area. He stated that Respondent had invited him to Witness 6's 21<sup>st</sup> birthday party, but he had a huge class project due and so he did not attend the party.

Witness 5 stated that he was at home when Respondent returned home with a girl with dark hair. He stated that he did not know her at the time, but knew that she in the all-girl vocal group. Witness 5 stated that he now knows that the girl was Complainant. Witness 5 stated that he was walking back from the dorm kitchen down the hall to their suite with some cereal when Respondent got to the door. Witness 5 recalled that the girl came in first and seemed shy and said nothing, and then Respondent walked in. Witness 5 recalled that they seemed really wet, because there had been a sudden summer storm and a huge cloudburst. Witness 5 said they all talked for a moment about the party, most likely for less than a minute, and then Witness 5 went back to his room to continue working. Witness 5 stated that neither Respondent nor the girl seemed drunk. Witness 5 did not hear any noises or see anything else

until Respondent came in to get him around 1:30 am. Witness 5 stated that Respondent was "really freaked out" because Complainant had vomited in his bed and then fallen asleep. Witness 5 said that Respondent came in asking him to help, and so he went to Respondent's room and saw Complainant in the bed, lying face down in some vomit. Witness 5 stated that he and Respondent kept trying to get her to wake up, but she didn't, although she moaned a bit and was saying some "nonsense words." He stated that they picked her up and put her on the couch, and that Witness 5 tried to wipe the vomit off her. When asked, he recalled that she was dressed. Witness 5 said they covered her with a blanket, and made sure to turn her to her side in case she vomited again. Witness 5 said that Respondent then started to strip his bed in order to change the sheets, and he (Witness 5) then returned to his room to continue studying. He did not recall seeing her in the morning when he came out of his room to get some coffee around 10 a.m.

#### Witness Witness 6

Has no recollection of anything after 7 pm on the night of his party. He acknowledged that he was "way too far out of it." He stated that the next day he heard from some friends that Respondent had walked Complainant home and then had sex with her. Witness 6 provided screenshots of the text messages he exchanged with Respondent.

The following exchange was provided by Witness 6.

Witness 6: Hey, u get lucky with her? I hear you're the only guy who hasn't been with her yet

Respondent: Yeah, but she's not great in bed, she started strong but then just lay there made me to all the work She def boring in bed And then got sick in my bed, what a joke she is

Witness 6: I hear she was plenty drunk U sure she was with it thru whole thing

Respondent: Not sure, maybe that why she so pissed

#### Witness Student 2

Student 2 stated that she had gone to Witness 6's party, but only stayed for "maybe half an hour or an hour," and left because she had promised to go catch up with her boyfriend. She believes she arrived around 10:30 pm "more or less." She is certain she was Student 2 recalled that a "bunch of the Cleftomaniacs were there, obviously it was their party, my girls from Floral Choral, Pitch Slapped, maybe Treble Threat too." She does not remember speaking with anyone in particular.

She stated that she received a text from Complainant around 8 am the next day, and Complainant texted "I don't know what happened and feel really sick, can you get me?" Student 2 stated that as she was about to text back, Complainant sent another text saying "At Respondent's." Student 2 said that she really had no idea what could be going on, but agreed to go over to Respondent's dorm to get Complainant. She stated that she had previously been to Respondent's dorm several times to either hang out, or because she once had a big school project with Witness 5. Student 2 said she knocked on the door and no one answered,

so she texted Complainant "I'm here," and Complainant replied with "k" but then she waited a few minutes and didn't see Complainant, so Student 2 decided to try the door, which was unlocked. She stated she then walked and, as she walked in, Complainant was walking from a bedroom, wrapped in a blanket and not wearing any shoes. Student 2 said Complainant looked "awful," and "smelled, there was vomit on her." Student 2 said she helped Complainant into her car, then went back in to see if she could find Complainant's shoes, which she found in the living room area, not far from the front door. Student 2 said she brought Complainant back to Complainant's dorm room and put Complainant to bed. Ashely stated that Complainant did not talk to her, other than mumbling that she felt ill.

Student 2 stated that she texted Complainant around 4 pm the next day to check on Complainant, who texted back that she was "really hung over," and "not sure what happened." Complainant texted Student 2 to ask "Do you know how I got to Respondent's?" and then later texted "I think he had sex with me, after I passed out." Student 2 stated that she tried to reach Complainant a few more times that night and the next day, but got no responses. Student 2 stated that she then texted Complainant's roommate, who texted that she was "taking care of Complainant." The roommate also texted "I don't know what happened to her, but wow, that was one bad hangover. It's been 3 days, and she still seems completely out of it."

#### Witness 1

Witness 1 stated that she had been invited to Witness 6's birthday party on August 31. She stated that Witness 6 lived with two other guys from Cleftomaniacs, and so most of the Cleftomaniacs were at the party.

Witness 1 stated that she went to Complainant's apartment before the party to get ready, and that Complainant did her make-up. Witness 1 explained that Complainant has a popular YouTube channel about makeup and is "really talented." Witness 1 stated that they "carbo loaded" before going to the party, and also consumed a bottle of pink champagne she had brought to Complainant's apartment. Witness 1 stated that she "chugged" her champagne because she was trying to work up the courage to talk to Student 1 at the party. Witness 1 could not recall how much champagne she consumed, nor could she recall how much Complainant might have consumed.

Witness 1 stated that she called an Uber and they went to the party. She stated that there were not many people when they arrived. She stated that she could not recall when they arrived. She stated that more people started to arrive soon after she and Complainant had gotten there, and that Student 1 arrived after midnight.

Witness 1 stated that she stayed with Complainant most of the night while Complainant was talking with the assistant director for the Cleftomaniacs, Respondent. Witness 1 stated that Complainant really wanted to have the same position in Floral Choral, and so Complainant was asking Respondent about his role. Witness 1 said that, as the evening went on, Complainant

was drinking more and more beer, possibly because it was so warm and humid that night. She remembered seeing Respondent refill Complainant's beer "at least two times, maybe more." She recalled that Complainant started to laugh really hard at everyone's jokes, and was "wobbly". When asked what she meant by "wobbly," Witness 1 explained "she looked like she might just fall over at any moment, and was just sort of swaying back and forth." When asked if Complainant ever fell down, Witness 1 said "no, but she was standing close to the counter most of the night, and seemed to move closer to the counter as the night went on and the kitchen got more crowded, and the counter sort of propped her up." Witness 1 also remembered that Complainant had spilled her beer on herself a few times, but it had not been particularly noticeable.

Witness 1 stated that she left with Student 1 around 1 am. She stated that, before leaving, she told Respondent that she was leaving and asked him if he would walk Complainant back to her dorm, which was about 4 blocks away.

Witness 1 stated that, other than Witness 6, no one at the party was "super fall-down drunk."

Respondent:

Respondent stated that he attended Witness 6's party, but did not drink any alcohol that night or take any drugs. He said that he saw Complainant nursing one beer the whole night. He said that Complainant was both flirting with him and pestering him with questions about his role with the Cleftomaniacs, but then she then started talking to other people. She came with her friend Witness 1, but Witness 1 left with Student 1. He stated that, when he saw Witness 1 was leaving, he had told Witness 1 that he would walk complainant back to her dorm.

Respondent stated that they passed his place along the way and they ducked into his apartment because of a sudden summer rain storm. He said they took off their soaked shoes (and his soaked socks) and had a quick chat with his roommate, who was walking through the living room when they came in. He stated that other than being soaked by the rain, she seemed "fine." He stated that he walked to his room to get her a pair of dry socks and she followed him and started kissing him, which surprised him, although he could not explain why it surprised him. He stated that she sat down on his bed to change her socks and then she unbuttoned and unzipped his jeans as he stood next to the bed. He said that she commented, wow, your jeans are soaked. He said he believed she was encouraging him to take them off so they could have sex, so he did so, and then pushed her down on the bed. He stated that they kissed for a few minutes and that she started giving him oral sex. He said that he then pulled off her underwear and started fingering her. He said she "seemed into it" but that she was very passive and made him do all the work, which annoyed him because "she was the one who started it." He stated that he turned her over so she was on her stomach and he started to have sex with her from behind, but that she did not seem to be participating at all and seemed bored. He recalled thinking to himself "Like maybe she's done this so many times, it's not a big deal to her." He said they stopped having sex and that he just laid down and fell asleep. He stated that he woke up thirsty a little while later, so he got up to get water and when he

came back to bed, he smelled vomit and realized she had thrown up in his bed. He stated that he tried to wake her up, but that she was passed out. He stated that he got his roommate to help him lift her out of his bed and put her on the couch.

He stated that, when he woke up, Complainant was gone.

He stated that he did not reach out to Complainant, because he really did not want to have a relationship with her. He stated that he then received a text from Complainant "at some point," asking him to meet her. He said he went because he assumed she wanted to apologize for throwing up in his bed, but instead she "started saying all these crazy things" and blaming him for "how everything happened." He said he did not know how to respond because she was "so completely off."

Respondent submitted screen shots of texts, and also showed his phone to the investigator, who could see the same messages as those submitted in screen shots. Respondent was also asked to provide telephone records, which he provided.

#### Follow-Up Interview with Complainant

After having spoken with Complainant, Respondent's comments were shared with her. She acknowledged having contacted Respondent approximately two weeks after Witness 6's party, and asking him to have coffee. When asked to share her thinking as to why she had contacted Respondent, she stated that she had been really confused about what had happened, and could not understand how someone she had always perceived as "so nice," could have engaged in such a violent act. She stated that she was surprised that he had not known that she was likely completely passed out while they were still having sex, and she wanted to give him a chance to explain his behavior, so that she could better process what had happened.

In response to having read some of the comments by Respondent and witnesses in which they suggested that she has had a lot of sex with different men, Complainant noted that, while it was true that she had engaged in a lot of sex, she was also really clear about the difference between drunk sex and being passed out. She also noted that she would never have had sex with Respondent because there was no condom, and "I would never have sex with anyone without a condom." She also commented on having had oral sex with Respondent, stating, "I sort of have a vague recollection, it's jumbled, but I sort of remember, and I do remember pulling at his wet pants because I remember the feel of the wet denim in my hand. I'm not saying the oral sex was not consensual, or that I was passed out at that point. It's what happened later, when he penetrated me."

Gotham College Witness List

Complaint Cecily Soprano

Respondent Caleb Case

Witness 1 Christine

Witness 2 Alec West

Witness 3 Kelsea Pratt

Witness 4 Jin-Hoo Kim

Witness 5 Maxwell

Witness 6 Mateo

Witness 7 Ashley

Student 1 Carlos

Student 2 Ashley

Student 3 Jay

Student 4 Heather

December 1, 2019

Caleb Case  
123 Main Street  
Sent via email

RE: Notice of Formal Complaint

Dear Mr. Case,

This letter is to notify you that a formal investigation of a violation of Gotham College's Sexual Misconduct policy has been initiated. This is based on a report made by Cecily Soprano, in which she alleged that you sexually assaulted her on or around August 31, 2019 by engaging in sexual activity without her consent, which she was unable to give because she lacked the capacity to consent to sexual activity. Such conduct, if true, would be a violation of Gotham College policies. Please know that the decision to move forward with an investigation does not carry with it any determination that you are assumed to have violated the policy; any such determination would be made only after a full review of the evidence, the conclusion of the Gotham College adjudication process.

The Gotham College Sexual Misconduct Policy is found in College Policy 05-001 at <http://gothamcollege.edu/sexual-misconduct>.

The specific policy alleged to have been violated is:

Sexual Assault: Having or attempting to have sexual contact with another individual:

1. By force or threat of force;
2. Without affirmative consent; or
3. Where the individual is incapacitated.

CONSENT: In order to understand this Policy, and the standards of behavior Gotham College expects, it is vital that students and other community members understand the concept of affirmative consent. This must be understood and accepted to be a member of the Gotham College community. Gotham College defines affirmative consent according to the following guidelines:

1. Consent IS:

An active, ongoing, and voluntary agreement by each participant to engage in sexual activity or sexual contact, communicated by clear actions or words.

2. Consent IS NOT present:

... when someone is incapacitated (including due to consumption of alcohol or drugs, lack of sleep or unconsciousness); an incapacitated person cannot consent.

... simply because the person has consented to sexual activity in the past; past consent to sexual activity does not imply present or future consent to sexual activity; current consent must be communicated by clear actions or words.

... because the other person is silent or does not resist sexual contact; again, consent must be communicated by clear actions or words.

... if the person has withdrawn their consent, which the person may withdraw at any time.

... if there is coercion, force, threats, or the absence of true choice, any of which invalidates consent.

Incapacitation due to alcohol or drugs. Gotham College will consider a variety of relevant factors when determining whether someone is incapacitated as result of alcohol or drugs. Those factors include, but are not limited to, ability to control one's physical movements such as stumbling or falling, the lack of awareness of the current circumstances or surroundings, slurred or incomprehensible speech, the ability to communicate, combativeness or other emotional volatility, vomiting or incontinence. The determination of incapacitation is based on objective and reasonably apparent indications of incapacitation when viewed from the perspective of a sober, reasonable person.

You will be provided a full opportunity to respond to the allegations and may also provide any relevant documentary evidence and the identity of potential witnesses.

The Student **Ombuds office** is available for support and information at [GothamOmbuds@GothamCollege.edu](mailto:GothamOmbuds@GothamCollege.edu). Any information shared with the student Ombuds is confidential, and will not be shared with the Title IX office. Additional resources available to you are included with the attached resource sheet.

Please contact me with times you are available, so we can schedule an initial meeting to discuss the process, any questions you might have, and provide an opportunity for you to share information from your perspective on alleged concerns. At that time I can also discuss with you any potential interim measures that might be appropriate during the resolution process.

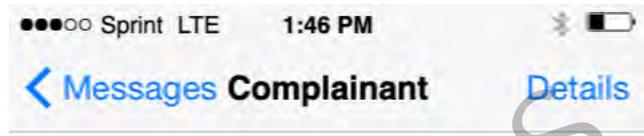
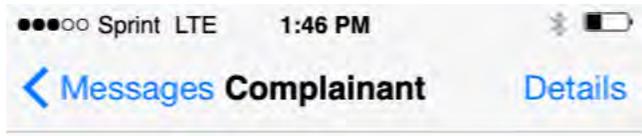
If you have any questions or concerns, please do not hesitate to contact me or the Office of Equal Opportunity and Access at 123-456-7890.

Sincerely,

Jody Shipper  
Not Your Title IX Coordinator

# Attachments

GRAND RIVER SOLUTIONS



Sweater's not mine. The other, yeah

I couldn't find them this morning lol

Things got pretty crazy last night

In a good way

I had fun

me too

We should do it again

I got your number from Matteo, hope that's ok

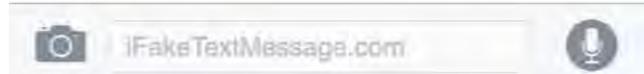
I think you might have left something here last night

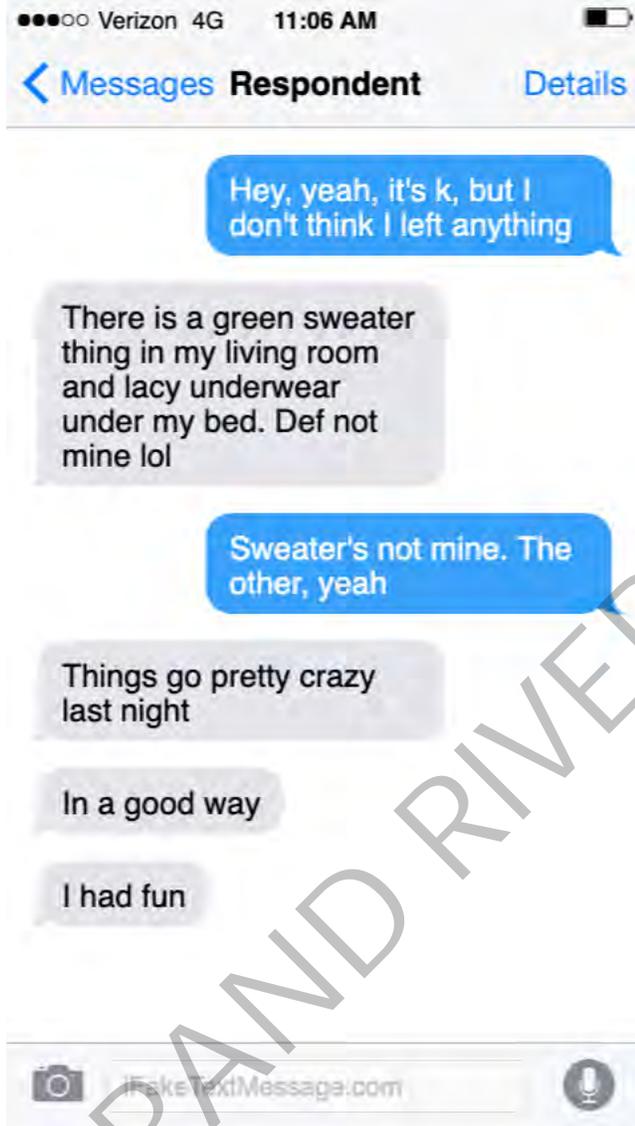
Hey, yeah, it's k, but I don't think I left anything

There is a green sweater thing in my living room and lacy underwear under my bed. Def not mine lol

Sweater's not mine. The other, yeah

I couldn't find them this morning lol





# College News

Monday, November 11, 2019

## Sober or Nah? The Truth Be

The "science" behind blood alcohol content is wrong. Students who consume twenty shots in three minutes can not be drunk, a new report shows. For years, those who study alcohol intoxication have been wrong. The new study highlights the quantity of alcohol necessary to actually make a college student drunk is far more than once believed.

Re  
foll  
imp  
The  
that  
rela  
the

# The Daily M

Monday, January 6, 2020

## Colleges are Anti-Male

Title IX, a gender equity law, only hurts men! First the sports and now the lies. What will they come for next? The Title IX pendulum has swung too

far. The Department of Education is investigating Title IX complaints from men who say colleges discriminate against them.

Re  
fol  
imp  
The  
that



# *Hearings in the New Era: Are You Ready?*

## Training Packet\*

July 29 & 31, 2020

\*This training packet is intended for educational purposes only, and not as sample documents. The partial report and supporting statements included in this packet is designed solely to facilitate an understanding of the hearing process, and is not intended to reflect a completed investigation report.

©Grand River Solutions, Inc., 2020. 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.

## CHECKLIST FOR A HEARING

First determine who will perform each of these tasks. Consider not just the identity of the individual, but their campus role, and whether or not it would be appropriate for that role to handle the identified task.

### Tasks to assign:

<input type="checkbox"/>	Share the final investigation report with the parties and accept/incorporate response
<input type="checkbox"/>	Coordinate date for hearing
<input type="checkbox"/>	Identify the hearing officer
<input type="checkbox"/>	Review hearing process with each party (and advisor) to answer their questions
<input type="checkbox"/>	Assign cross-examination facilitator as needed and notify advisors of their role
<input type="checkbox"/>	Invite witnesses
<input type="checkbox"/>	Invite investigator
<input type="checkbox"/>	Coordinate hearing day participation
<input type="checkbox"/>	Staff the hearing room and any other rooms (witness waiting area, for example)
<input type="checkbox"/>	Reserve rooms for hearing
<input type="checkbox"/>	Prepare room for hearing (cover windows, set up screen if one is to be used, set up computers)
<input type="checkbox"/>	Assign individual who will be responsible for keeping order in hearing room
<input type="checkbox"/>	Determine and communicate method by which questions will be forwarded to hearing chair for advance review for relevancy
<input type="checkbox"/>	Assign individual responsible for ensuring necessary technology is working
<input type="checkbox"/>	Draft hearing script
<input type="checkbox"/>	Read hearing script
<input type="checkbox"/>	Storing of hearing transcript or audio
<input type="checkbox"/>	Identify person with authority to make the following decisions: <ul style="list-style-type: none"> <li>○ Whether or not to delay if a party is not available?</li> <li>○ Accept/deny parties' requests for witnesses (including, potentially, new witnesses)</li> <li>○ Accept/deny parties' requests for documents (including, potentially, new evidence)</li> <li>○ Determine whether or not a conflict of interest exists (if raised by a party)</li> <li>○ Approve or deny requests for accommodation</li> <li>○ Approve or deny questions submitted in advance</li> <li>○ Approve or deny questions asked/submitted at hearing</li> <li>○ When breaks will be taken, when hearing will start and end</li> <li>○ Handle procedural questions raised both before hearing and during</li> </ul>
<input type="checkbox"/>	Identify person who will communicate with the parties all decisions regarding hearing date, evidence, witnesses, hearing process, approval or denial of requests for accommodations



## To Do:

<input type="checkbox"/>	Share final investigation report with parties (give 10 days minimum for parties to respond, incorporate response)
<input type="checkbox"/>	Assign and communicate hearing date
<input type="checkbox"/>	Assign hearing officer
<input type="checkbox"/>	Reserve rooms (hearing, complainant, respondent, witnesses)
<input type="checkbox"/>	Coordinate communications regarding evidence and witnesses
<input type="checkbox"/>	Communicate evidence list and witness list to parties
<input type="checkbox"/>	Assign staff to proctor each room
<input type="checkbox"/>	Coordinate with IT for hearing needs (video conference, recording of hearing)
<input type="checkbox"/>	Explain hearing process to each party
<input type="checkbox"/>	Inform advisor of their role (train cross-examination advisor)
<input type="checkbox"/>	Invite witnesses
<input type="checkbox"/>	Invite investigator
<input type="checkbox"/>	Coordinate all arrangements (set-up, IT, screen)
<input type="checkbox"/>	Email hearing reminders/confirmation <ul style="list-style-type: none"> <li>• Adjudicator or hearing panel members</li> <li>• Investigator</li> <li>• Complainant</li> <li>• Respondent</li> <li>• Witnesses</li> <li>• Advisors/cross examination facilitators</li> </ul>
<input type="checkbox"/>	Print documents for Complainant and Respondent use at hearing <ul style="list-style-type: none"> <li>• Policy</li> <li>• Investigation report</li> <li>• Exhibits</li> </ul>
<input type="checkbox"/>	Print documents for Adjudicator/Hearing Panel <ul style="list-style-type: none"> <li>• Policy</li> <li>• Investigation report</li> <li>• Hearing script</li> <li>• Exhibits</li> </ul>

## Bring to Hearing Room:



Printed documents (see above)



"Meeting in Progress" signs



Water Bottles



Phone or online capability if needed (for panel and coordinator, not for advisors or parties)



Recording device and batteries



Pens/Paper



Screen if requested/needed



Paper to cover any windows



Index cards



Tape



Tissues

