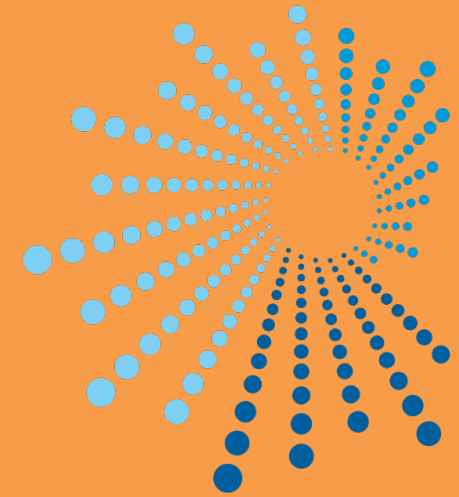


BRAVE Training: Creating a Trauma-Informed Conduct Process

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Senior Consultant



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Meet Your Facilitator



Chantelle Cleary, J.D.
Senior Consultant

Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 10 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.

About Us

Grand River Solutions provides Title IX, equity, and Clery Act consulting services. Together, our experts have more than 50 years 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.

Agenda

01

Regulatory Overview

Brief Overview of the New Regulatory Requirements

02

Trauma-Informed Practices

03

Conducting Trauma-Informed Investigations

Essential Elements of a Thorough Investigation

04

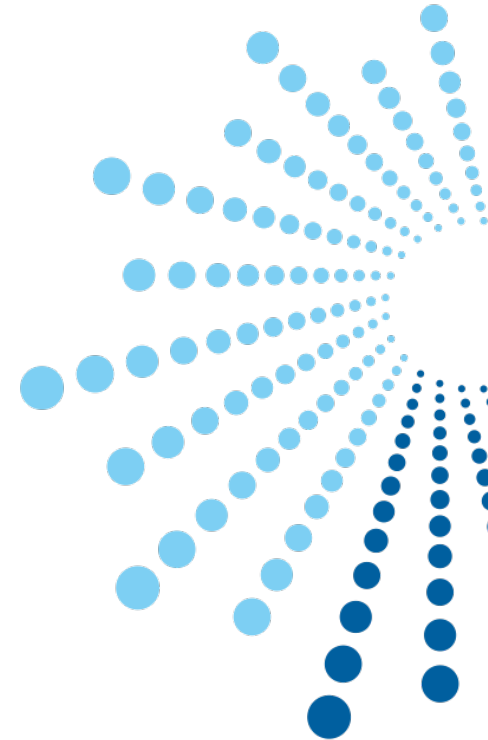
Trauma Informed Hearings in a Post-Regulation World

Coordinating and Conducting Hearings

05

Evidence Review

Assessing Various Types of Evidence



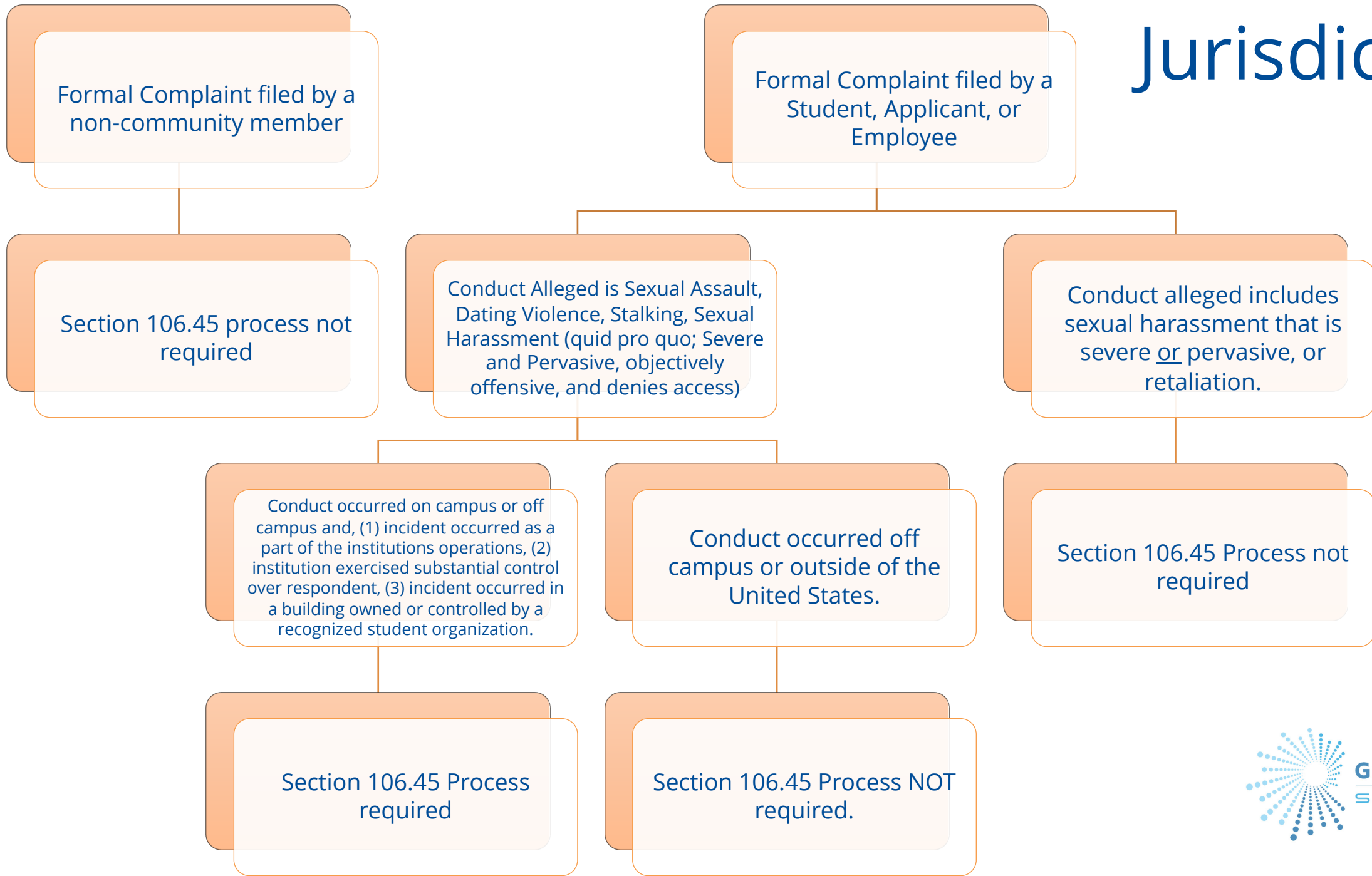


Regulatory Overview

Brief Overview of the New Regulatory Requirements

01

Jurisdiction



Investigations



NOTICE TO BOTH
PARTIES



EQUAL
OPPORTUNITY TO
PRESENT EVIDENCE



TO HAVE AN
ADVISOR OF
CHOICE.



WRITTEN
NOTIFICATION OF
MEETINGS, ETC.,
AND SUFFICIENT
TIME TO PREPARE.



OPPORTUNITY TO
REVIEW ALL
EVIDENCE, AND
TEN 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

Hearings

Must be live, but can be conducted remotely

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

Decision maker determines relevancy of questions and evidence offered

Cross examination must be permitted and must be conducted by advisor of choice

Written decision must be issued

Appeals

Appeals for all parties on the following basis:

- Procedural irregularity affected the outcome;
- Newly discovered evidence that could affect the outcome;
- Title IX personnel had a conflict of interest or bias that affected the outcome; or
- Others, as determined by the school.

Training Requirements

Title IX Coordinators, Decision Makers, and Facilitators of Informal Resolution

- Training on the definition of sexual harassment
- The scope of the institutions program or activity
- How to conduct an investigation and grievance process
- How to serve impartially

Investigators

- Issues of relevance
- How to create an investigation report that fairly summarizes relevant evidence

Decision Makers

- Technology being used at a live hearing
- Issues of relevance of questions and evidence



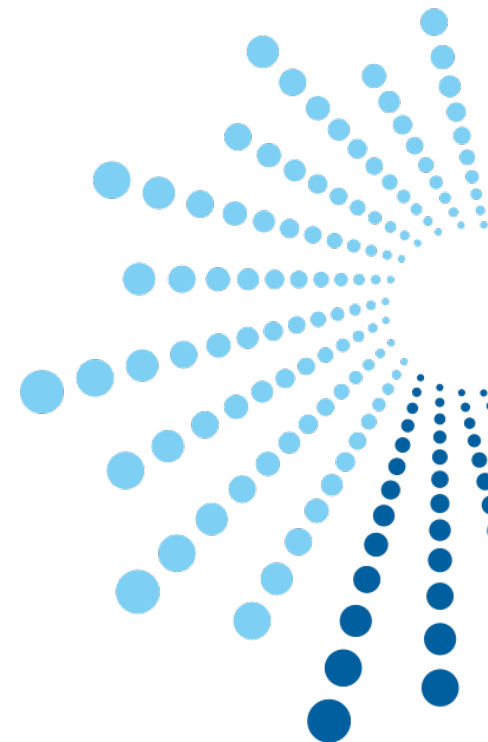
Trauma-Informed Practices

And their application to the investigation and adjudication of campus sexual misconduct reports.

02

What do we mean when we say “trauma-informed”?

An understanding of the impact that a traumatic event may have on brain function and a person’s ability to record and recall the event.



Why is it important to be “trauma-informed”?



Informs how we engaged with folks

Seek to minimize further harm



Informs how we conduct our investigations

The questions we ask

How we receive the information provided





But
seriously,
why is this
important?

Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence result in the belief that the reporting party is being dishonest.

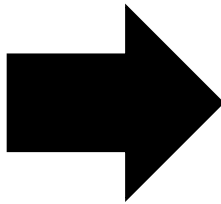
Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information



Deception



False Report
Regretted Sex
Not Prove-able



CASE CLOSED.

An understanding of trauma provides another explanation of these seemingly inconsistent behaviors.

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New
Information

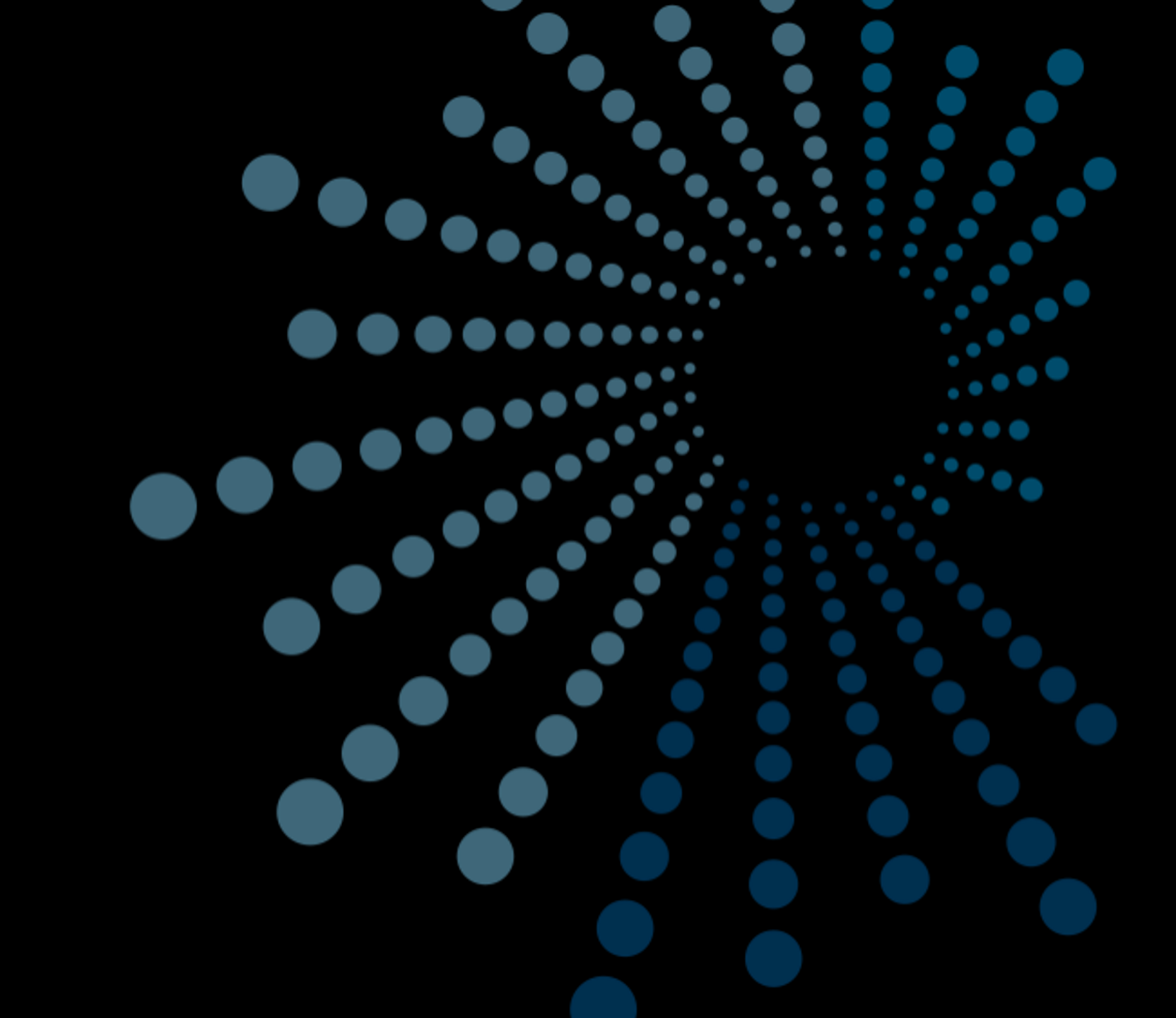


Deception?
Trauma?
Other
(alcohol)?



Investigation
Continues





**This is
essential to a
fair and
thorough
investigation.**

Trauma informed interview techniques may:

- Allow the interviewee to recount the experience in the manner in which the trauma was experienced;
- Enhance a reporting party's ability to recall;
- Result in more information about the experience;
- Reduce the potential for false information.

Without trauma informed training and knowledge, those conducting the process risk:

- Conducting the process with bias
- Prematurely concluding, without conducting a thorough investigation or inquiry, that the reporting individual is lying and that no investigation is needed;
- Causing further trauma;
- Jeopardizing future reporting.



Conducting Trauma-Informed Investigations

The Essentials of a Thorough Investigation

03

Essential steps of an investigation



Intake



Initial interview



Notice of formal investigation

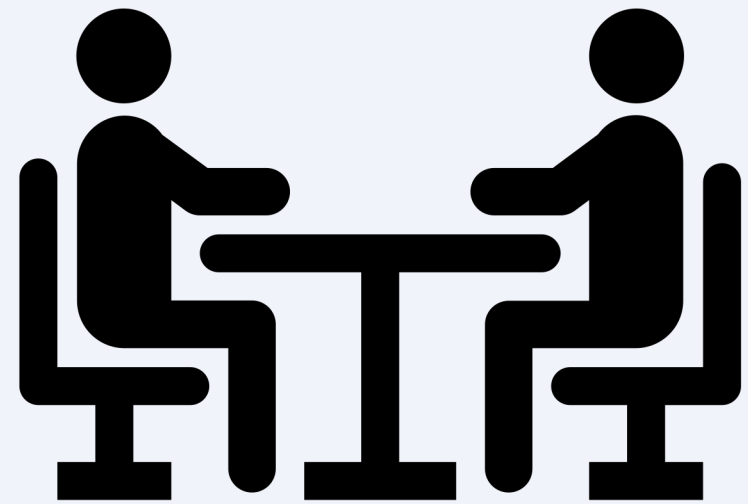


Evidence Collection



Report writing

Initial Intake, Notice, and Interviews





Prior to the Intake/Interview



Inform the person of their right to have an advisor present



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



Prepare yourself for the meeting

Intake and 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



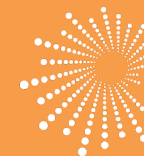
Services

Advocates
Police/Campus
Medical care
Interim action



Evidence Preservation

Text Messages
Photographs
Names and contact info
for witnesses



Set Expectations

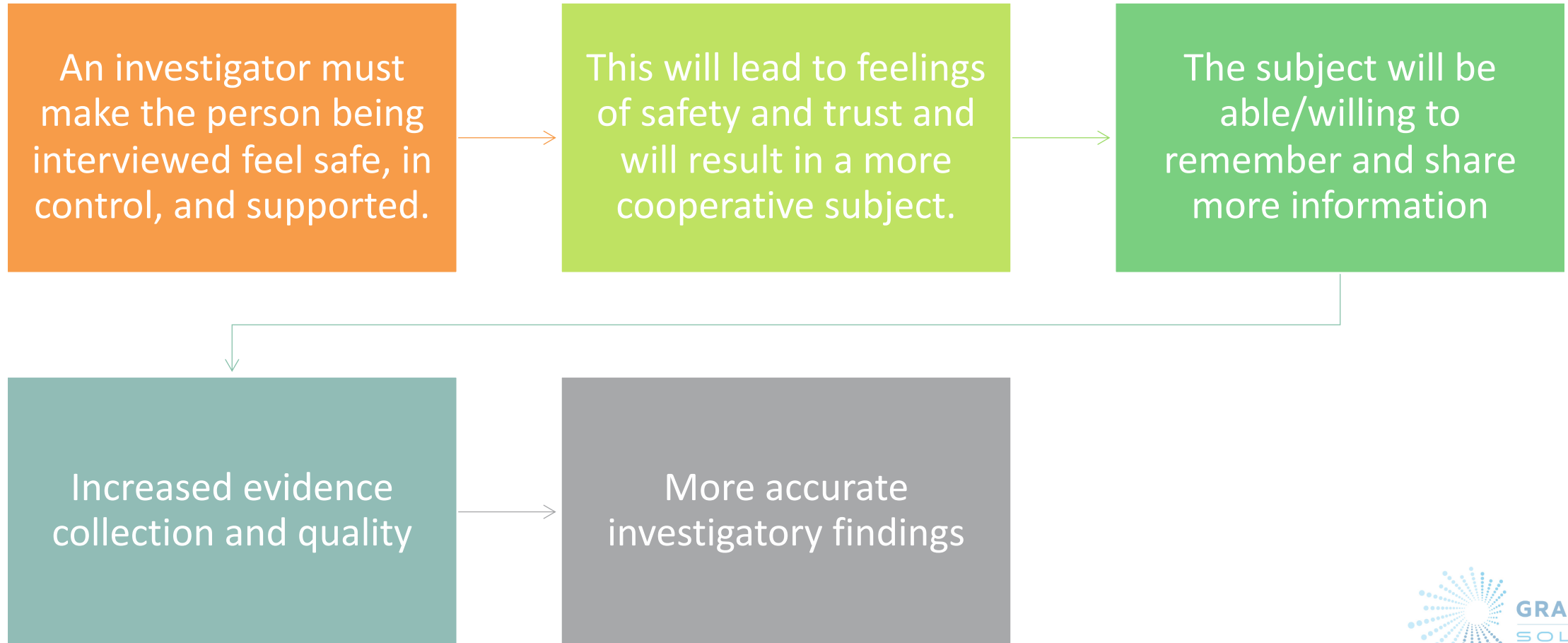
What they
should
expect of
you

- 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

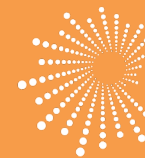


Start the interview by eliciting a narrative...

Where would you like to begin?

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

What are you able to tell me about your experience?



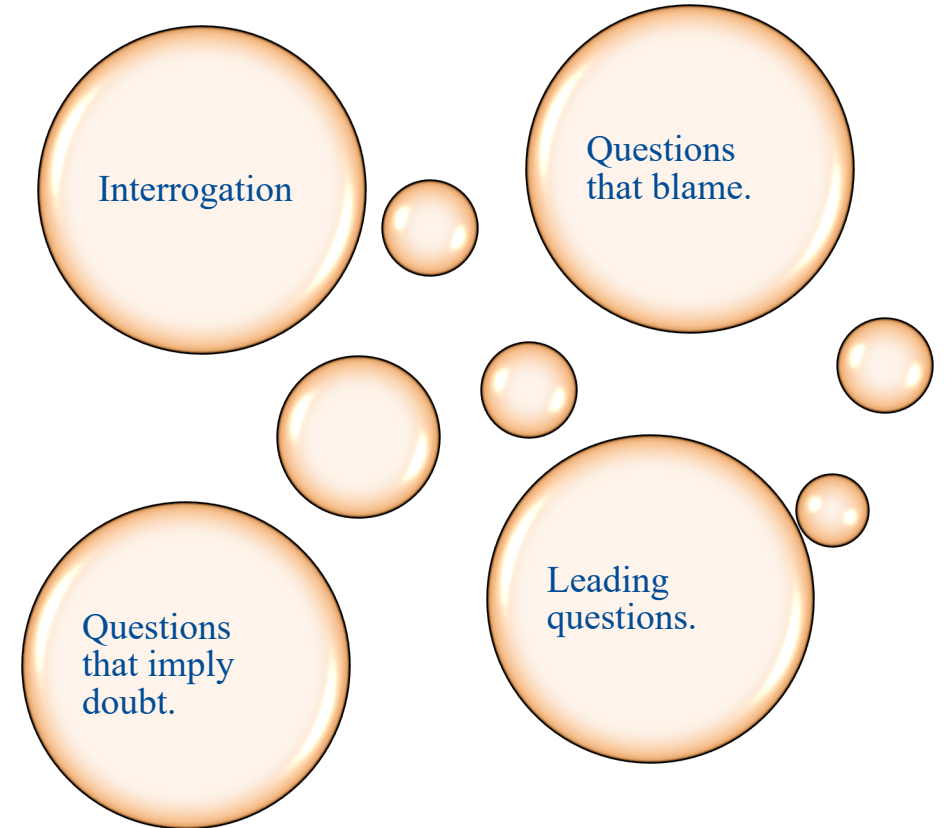
Next...

Ask questions that are intended to clarify and more deeply explore the information and details provided by the victim in their narrative.

Do Ask:



Avoid:



Capture the Entire Experience

Before

- How did they meet?
- Prior relationship?
- What they did in the hours prior?
- Pre-assault communications

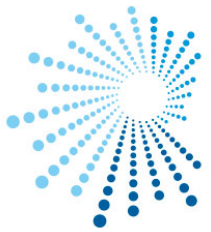
During

- Solicit details about the physical contact
- The interviewees physical and emotional reactions
- Their sensory experience

After

- Post assault communications
- Changes in behavior
- Changes in pre-assault relationship





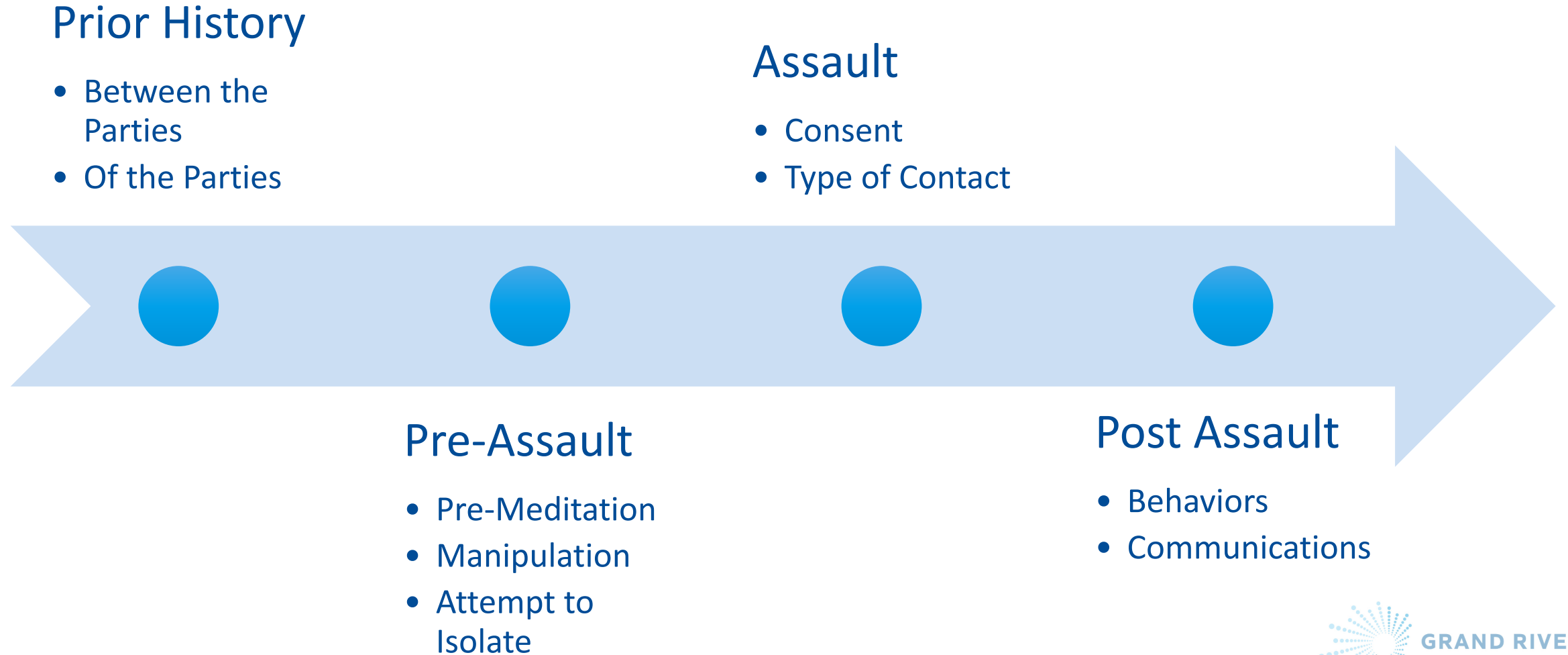
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Developing an Investigative Strategy

The Process: Developing an Investigative Strategy



Investigation Timeline



Identify and Interview 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

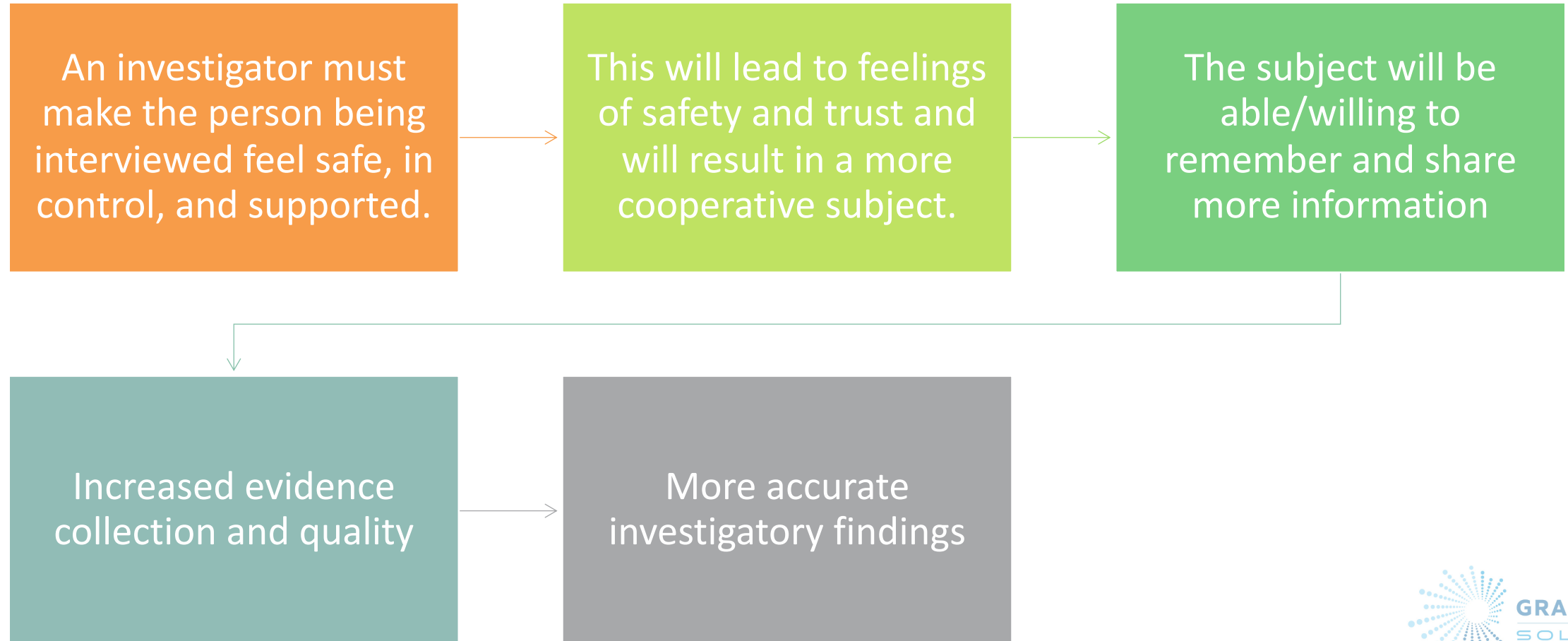


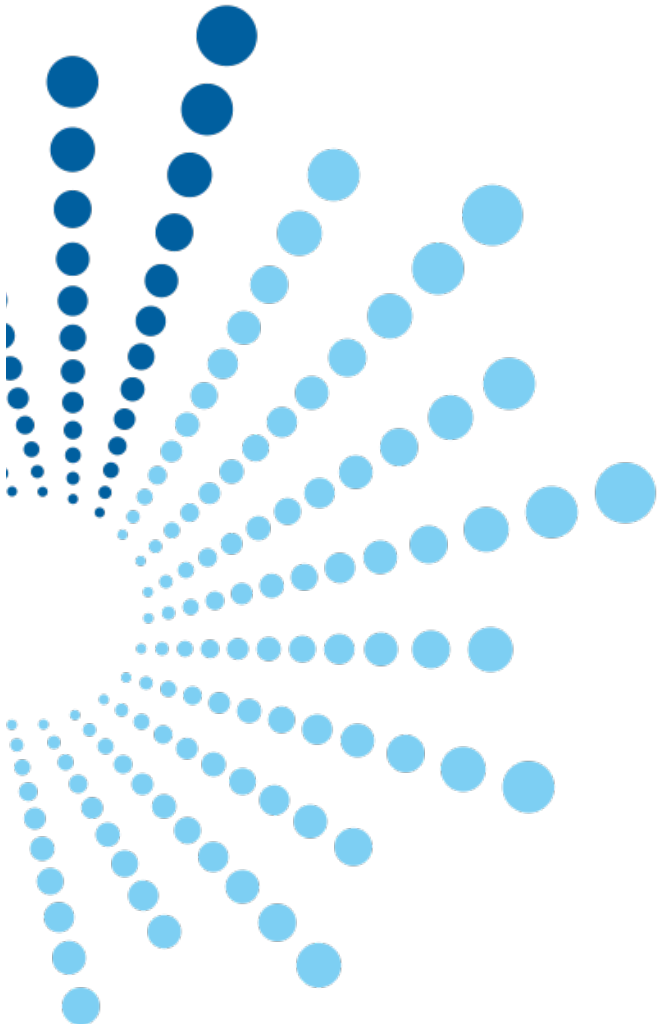
Evidence Preservation

- Text Messages
- Photographs
- Names and contact info for witnesses



The importance of empowerment and the power of empathy





Your approach to interviewing the Respondent and the witnesses should mirror your approach to interviewing the Reporting Individual.

Evidence
Collection and
Assessment



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

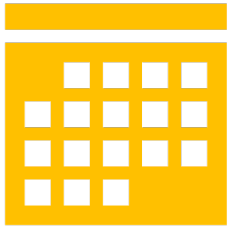
Swipe Records

Medical Records

Phone Records

Audio Recordings

Compilation of Evidence



10-day review of ALL evidence



Investigation Report
summarizing relevant evidence



10-day review of report





Trauma-Informed Hearings in a Post Regulation World

Coordinating and Conducting Hearings

04

The “Title IX” Hearing

A “Title IX” Hearing is a College Process

A “Title IX” hearing is an administrative process used to determine whether or not a College/University policy has been violated, and if so, what actions will be taken to address the violation.

A “Title IX” Hearing is Not a Criminal Proceeding

A “Title IX” hearing is not a criminal proceeding. Although there are elements and characteristics in these hearings that are similar to a criminal proceeding, these administrative hearings need not (and probably should not) follow the same processes or procedures as a criminal hearing. Moreover, these hearings do not establish whether a crime was committed.



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

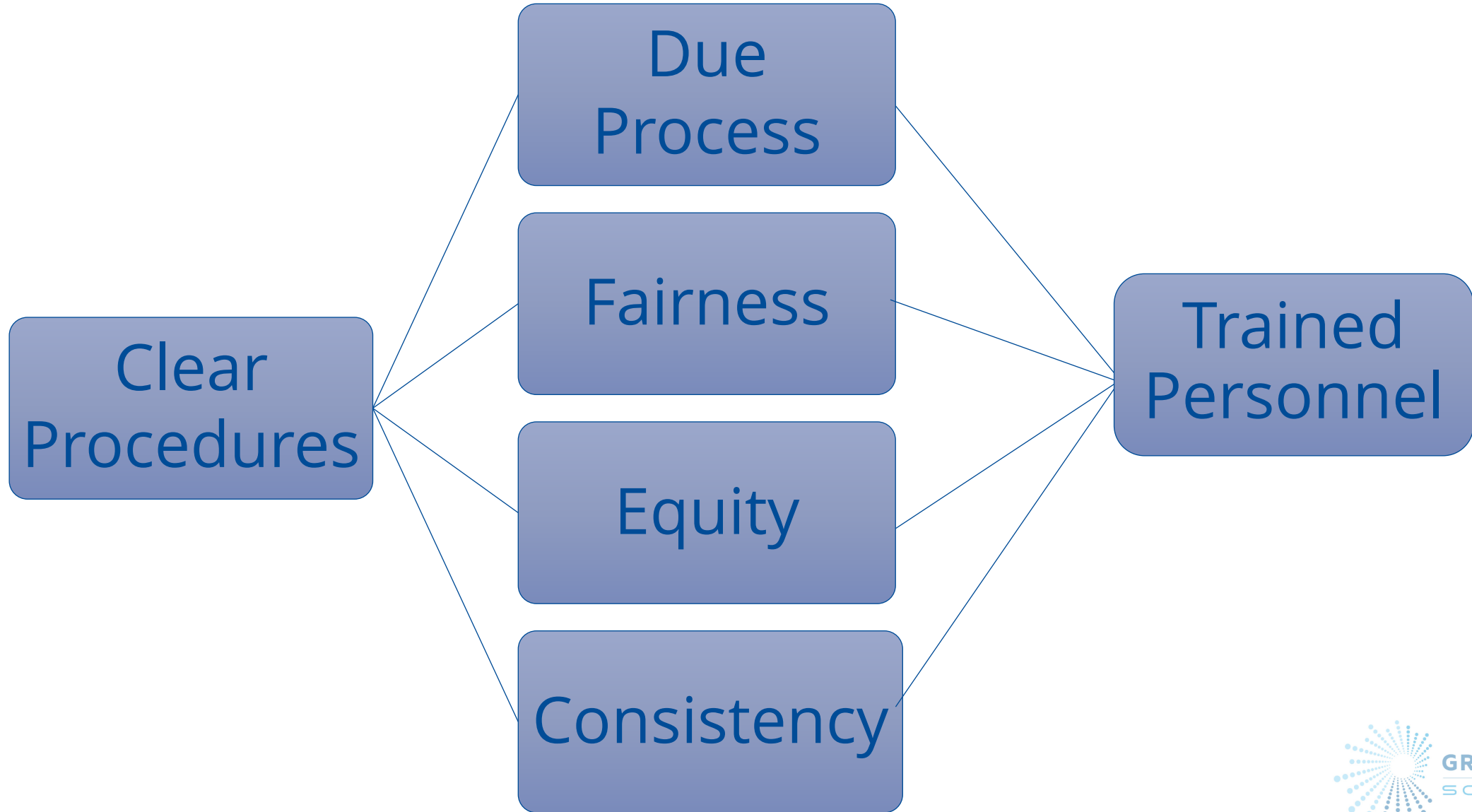
Fair, Equitable, and Neutral

Consistency

Trauma Informed

Well Trained Personnel





Clear Procedures

The Process

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

The Players

- The roles of all participants

The Evidence

- Relevancy, exclusions, timing of submission, etc.

The Outcome

- Deliberations; Notice; manner and method communicated.

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
Administrative Staff	assists with the logistical coordination of the people, the space, technology, etc.

The Players

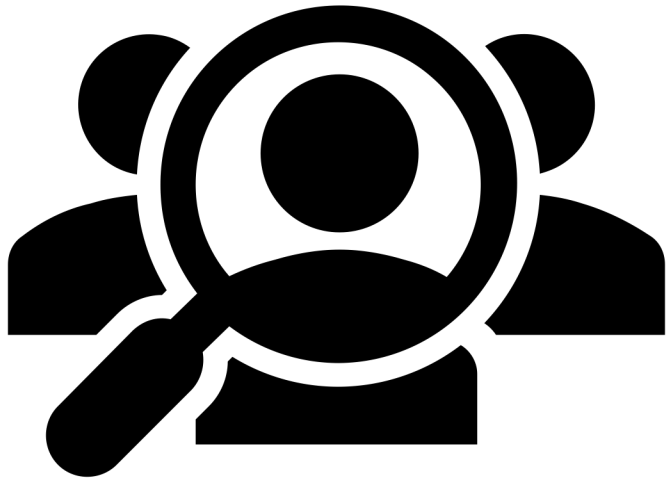
The Coordinator/ Chair



- Oversees the Process
- Maintains order/decorum
- Supports the panel
- Makes rulings
- Voting or non-voting
- Writes the decision
- Consistently serves in this role

The Players

The Panel



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

The Players

Advisors/Support Folks



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

The Process

Pre Hearing

Hearing Personnel

- Review of Investigation Report
- Evidentiary Decisions
- Preparation Meetings
 - Questions
 - Issues to explore
- Review of relevant training materials

The Parties

- Submission of Evidence
- Receipt and Review of Evidence
- Response Submissions
- Submission of Questions
- Preparation of Opening Statements

The Process

Opening, Closing, and Impact Statements

- Permissible content
- Pre-Submission
- Word or time limit
- Method of delivery
 - In writing?
 - Oral?
 - Both?

The Process

Testimony

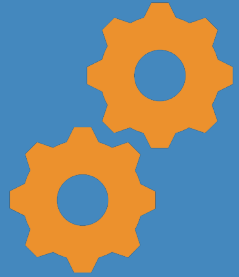
How the parties/witnesses will participate?

- Remotely
- Behind a screen

Questioning

- Order of Examination
- Rulings on question
- Documentation of rulings





Evidence Review

Assessing Various Types of Evidence

05



The Evidence

- Timing of Submission
 - Prior to the hearing?
 - At the hearing?
- Evidentiary Rules?
- Evidentiary Rulings
 - Who makes these?
- Exclusions
 - Character evidence
 - Prior bad acts
 - Mental health history
 - Prior sexual history

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 the evidence worthy of belief?

What weight, if any, should it be given?

Weight is determined by the finder of fact!

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

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

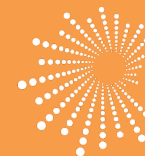
The Outcome

Deliberations

Written Findings/Notice of Outcome

Method of Delivery of Notice of Outcome

Timing of Notice of Outcome



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