



BEING AN EFFECTIVE TITLE IX ADVISOR: FROM INVESTIGATION TO HEARING

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MEET YOUR FACILITATORS



Tera Johnson

Tera has more than 15 years of experience in higher education and is a Senior Solutions Specialist with Grand River Solutions where she serves campuses nationwide as an investigator and hearing advisor. Prior to joining Grand River Solutions, Tera worked as a dean of students and Title IX Coordinator, and she has extensive experience in student conduct and residence life administration, behavioral intervention, training, and policy development. Tera holds a bachelor's degree in communication from John Carroll University and a master's degree in College Student Personnel from the University of Louisville.



Kevin Lineberger

Kevin is a Solutions Specialist at Grand River Solutions. Kevin has wide-ranging experience in law and policy research, social justice advocacy, and Title IX. Kevin also has considerable experience serving as an Advisor for both Complainants and Respondents.

ABOUT US

Vision

We exist to create safe and equitable work and educational environments.

Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

AGENDA

● Overview of Title IX and its Hearing Requirements

● Advisor Overview

● Hearing Advisor's Role

● At the Hearing

● Practical Application

OVERVIEW OF TITLE IX AND ITS HEARING REQUIREMENTS



01

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Title IX of the Education Amendments Act of 1972

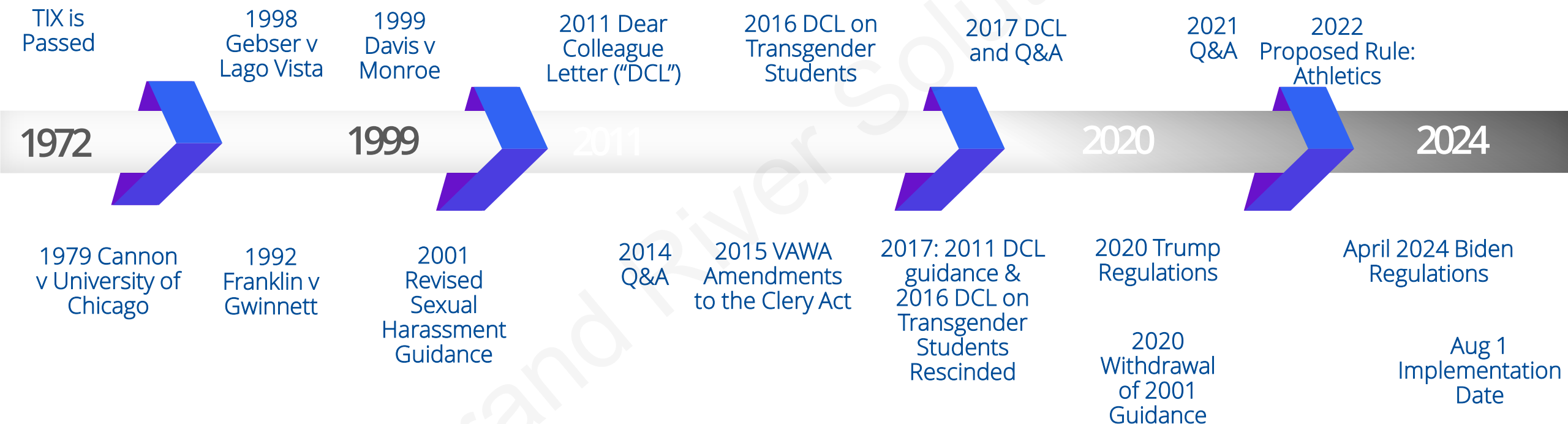
"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

20 U.S.C. § 1681 (1972).



The History of Title IX

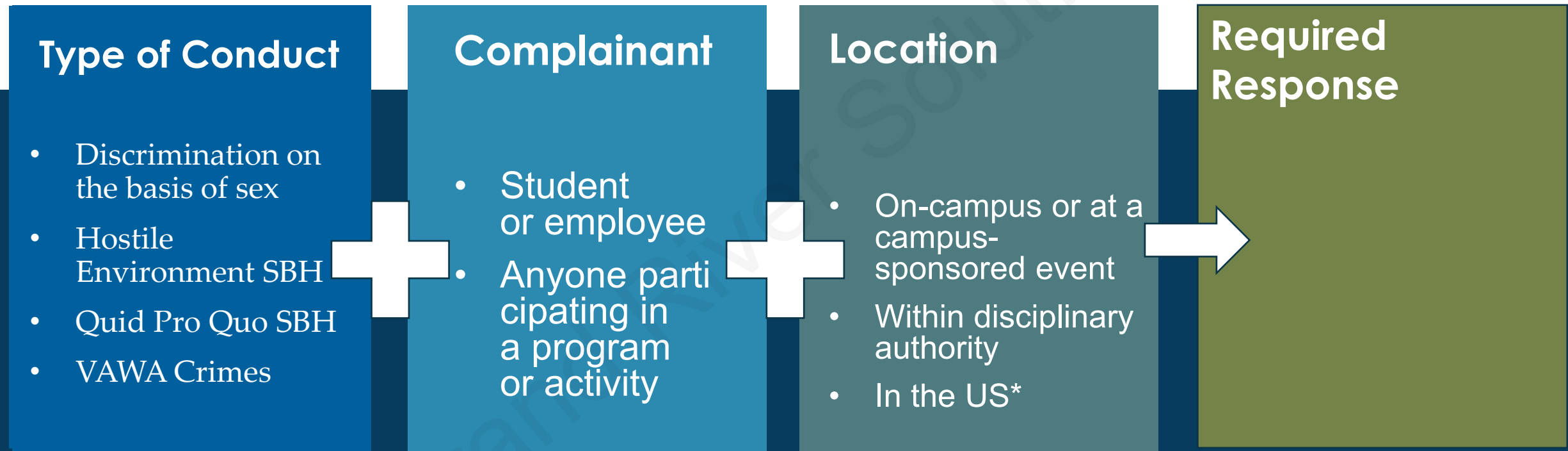
A Timeline



DEFINITIONS – WHAT IS SEX DISCRIMINATION UNDER 2024 TITLE IX

- **Discrimination on the basis of sex** includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- Sex-based harassment is a form of sex discrimination and means sexual harassment, and other harassment *on the basis of sex, that is:*
 - Hostile environment sexual harassment
 - Quid Pro Quo
 - Domestic violence, dating violence, sexual assault, and stalking

TITLE IX APPLICATION FOR PROCEDURES (POST-AUGUST 2024)



THERE ARE TWO TYPES OF ADVISORS



Advisor of Choice
(throughout whole process)



Hearing Advisor (hearing,
for purposes of asking
questions)

A QUICK NOTE: 4 POTENTIAL PROCESSES

1. Investigation with determination (106.45/Sex discrimination and sex-based harassment when a student is not a party)
2. Individual Meetings
3. Questions Through Decisionmaker
4. Advisor Conducted Cross (2020 style hearings)

ADVISOR OVERVIEW

02

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ADVISOR OF CHOICE

Parties are entitled to an advisor of choice.

The advisor of choice can be anyone.

This advisor may accompany the party to any interviews/meetings and the hearing.

The advisor will conduct cross examination of the other party and witnesses at the hearing (if applicable)

DURING THE INVESTIGATION: ADVISOR OF CHOICE

- Assist the advisee in understanding the Policy
- Assist in the identification of witnesses
- Assist in the identification of evidence
- Assist in providing the investigator with information
- Assist in preparation for investigative interviews
- Accompany advisee to investigative interviews
- Advise during the interview
- Assist with document/evidence review and response
- Assist with review of the report and development of the response



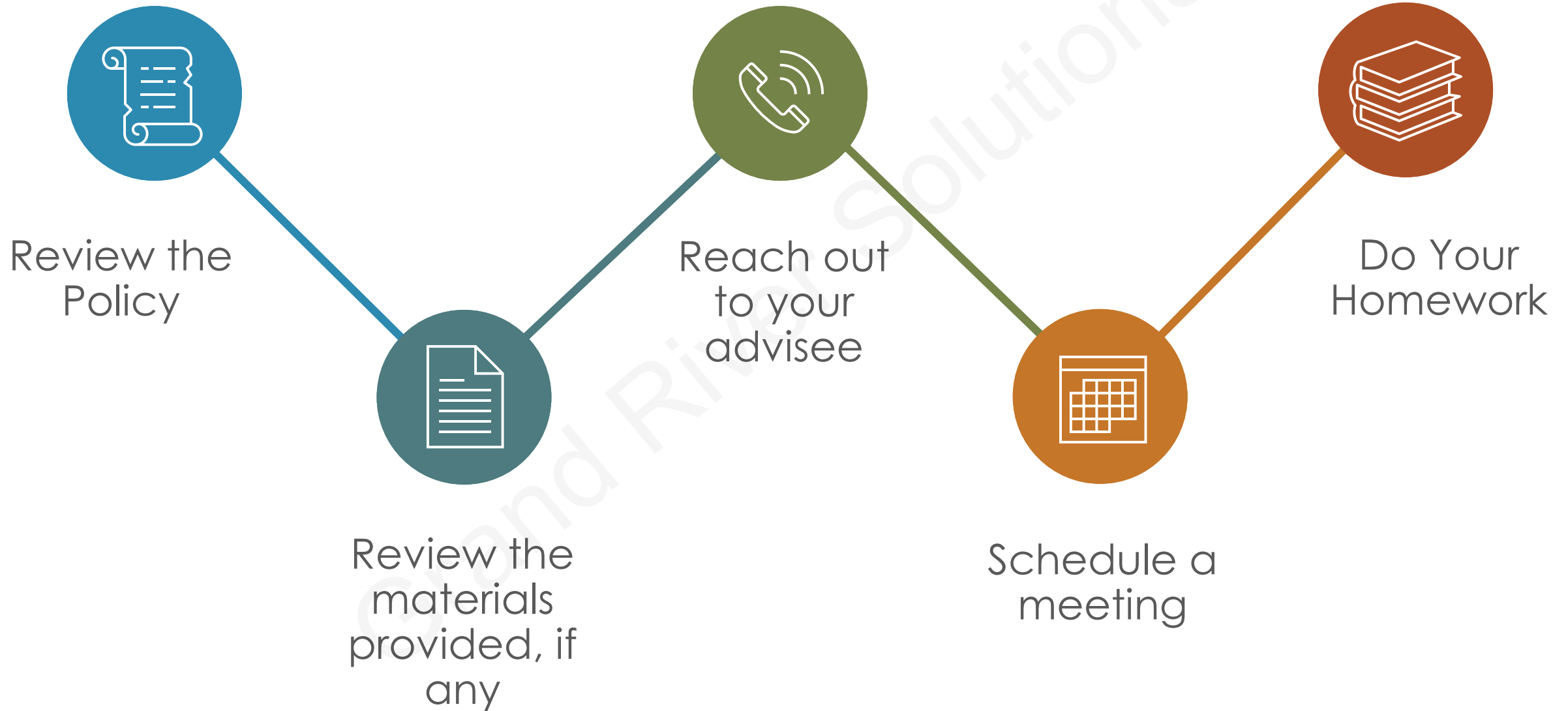
YOUR ROLE AS A HEARING ADVISOR

- The limited role of conducting cross examination on behalf of your party.
- Supporting your party.

03

HEARING ADVISOR'S ROLE

AFTER YOU ARE ASSIGNED A CASE AS A HEARING ADVISOR...



DO YOUR HOMEWORK

- Review applicable policy language/provisions
- Familiarize yourself with investigative report
- Understand the ins and outs of the report
- What is the timeline of events?
- Think about what areas you may want to highlight or expand upon
- What type of questions you will ask
- Who are the key witnesses?
- Consult with your advisee
- Anticipate questions of others
- Consider impact of your decisions and develop a strategy



MEETING WITH YOUR ADVISEE

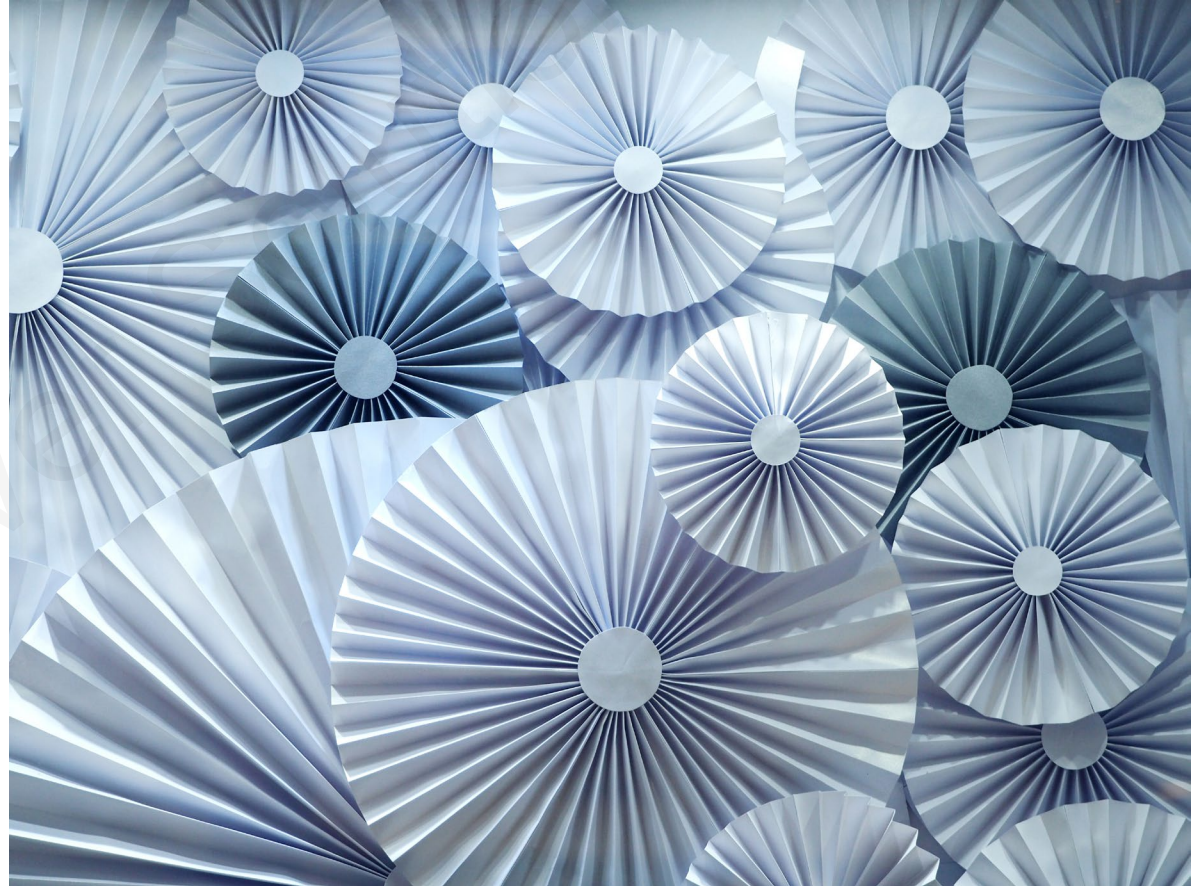
Build: Build Rapport

Explain: Explain your role

Advise: Advise them that their conversations with you are not privileged

Go Over: Go over the policy and process with them

Discuss: Discuss the evidence



PREPARE YOUR ADVISEE FOR THE HEARING



How to answer questions

Questions they can expect

How to prep for the hearing day itself and self-care

Communication during the hearing

Selective participation and potential impacts

04

AT THE HEARING

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

Investigator: may summarize the investigation, answer fact-based questions

Witnesses: present in the room only when answering questions

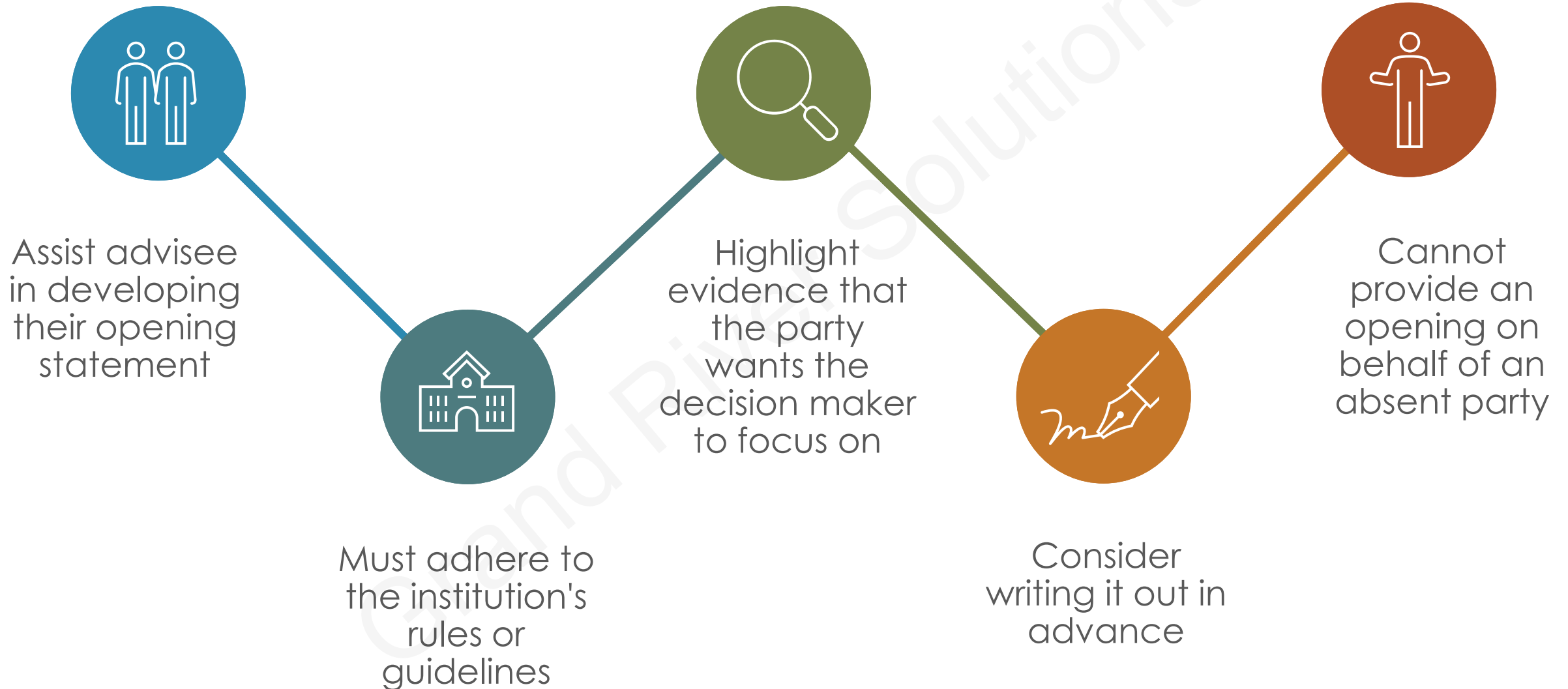
Hearing Coordinator: coordinates all aspects of the hearing, ensures a fair and equitable hearing process, acts as a resource for all participants

Hearing Administrator: assists with the logistical coordination of the people, the space, technology, etc.

Decision Maker: facilitates the hearing, determines if policy violations occurred, may determine sanction



OPENING STATEMENTS



TESTIMONY OF THE PARTIES & WITNESSES

POSSIBLE ORDER

01

The Decision Maker will determine the order of testimony

02

The Decision Maker will question first


03

Cross examination may occur next

04

Follow up by the Decision Maker

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

QUESTIONING

ROLE OF THE DECISION MAKER

- The decision maker will determine whether a question posed during cross examination is relevant and permissible.
- When the decision maker determines that a question is relevant, the party/witness may answer it.
- When the decision maker determines that a question is irrelevant, they must state their reason and offer a chance to rephrase/clarify.

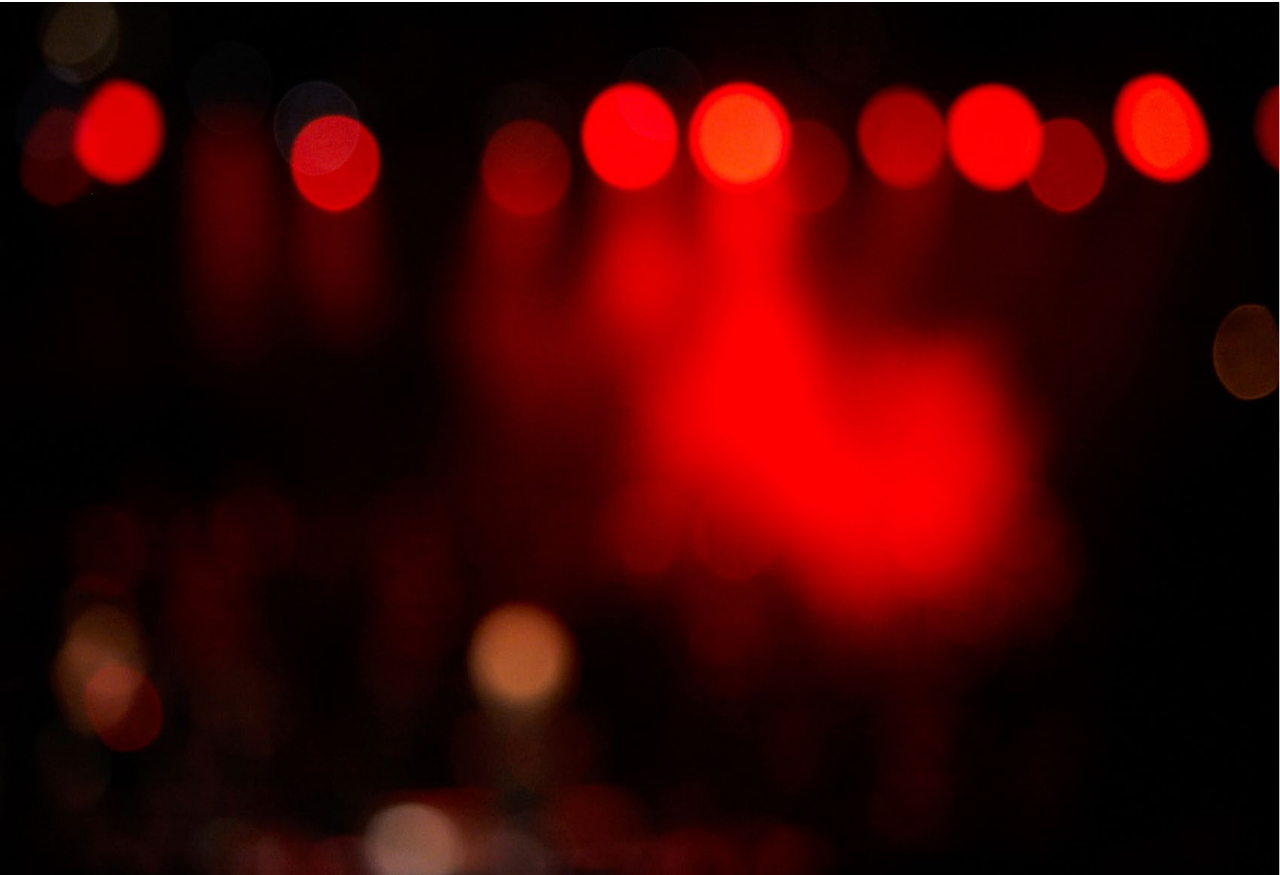


PREPARING FOR ASKING QUESTIONS

- Review and evaluate the evidence
- Identify your narrative, or the version of events that you want to illustrate
- Identify the facts at issue and the findings of fact that you want the decision maker to make
- Plan to highlight the evidence that support the narrative and the findings of fact that you want the decision maker to make
- Prepare an outline of topics to explore



What do I want to show?



- Credibility?
- Clarification on timeline?
- The thought process?
- Inconsistencies?

IDENTIFY THE CLAIMS, WHAT NEEDS TO BE PROVEN

- Why are we here?
- What are the elements for the charge?
- What are the definitions of those elements?
 - **Consent?**
 - **Incapacitation?**
 - **Coercion?**
 - **Force?**



STALKING

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

Questions to Ask:

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

RAPE

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

Questions to ask:

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

RELEVANT EVIDENCE

Relevant means **related to** the allegations of sex discrimination.

- Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred.
- Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

EVIDENCE THAT IS "IMPERMISSIBLE"

- Questions and evidence about the complainant's sexual interests or prior sexual conduct are not relevant,
 - unless such questions and evidence about the complainant's prior sexual conduct are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - if the questions and evidence concern specific incidents of the complainant's prior sexual conduct with respect to the respondent and are offered to prove consent.
- Questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
 - Example: Physical and mental health records and attorney-client privileged communications

PRIOR SEXUAL CONDUCT AND INTERESTS

- Not waivable
 - "Allowing complainants to broadly introduce the evidence prohibited by § 106.45(b)(7)(iii) threatens to deprive respondents of due process (e.g., allowing a complainant to introduce evidence of prior sexual conduct but not permitting the respondent to rebut) and might result in misuse by the parties."
- Sexual "interests"
 - Mode of dress
 - Speech
 - "Lifestyle"
- Examples of potentially impermissible prior sexual history of complainant:
 - Evidence of pregnancy
 - Use of birth control
 - Medical history of STI

ASKING QUESTIONS

Common Approaches

1. Obtain/Highlight helpful information
2. If a witness does not have information that is helpful, ask questions that illustrate that they are unimportant.
3. Highlight bias/lack of bias
4. Highlight credibility and reliability/lack of credibility or reliability
5. Discounting



QUESTIONING

How to Discount



Confirm



Compare



Conclude

DISCOUNTING EXAMPLE

Statement A:

During her interview with the investigator, Witness Y stated that she overheard Respondent and Complainant fighting inside of Complainant's bedroom. She stated that Complainant came out of the room crying and that their face was red and swollen. She stated that Respondent followed Complainant out of the room "looking angry" and grabbed Complainant by the arm "aggressively" and pulled them back into the room. The fighting then continued.

DISCOUNTING EXAMPLE



Statement B:

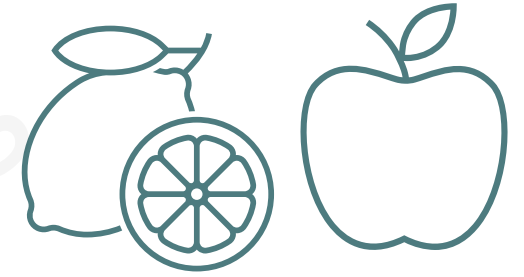
At the hearing, Witness Y tells the decision maker that while she heard loud voices, it might not have been fighting. She also stated that the parties came out of the room together, that Complainant looked upset, that Respondent looked concerned, and that they “calmly” went back in the room together.

CONFIRM



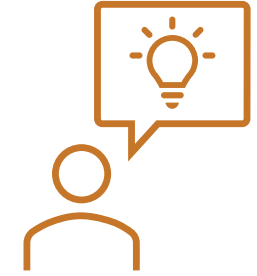
- Witness Y, earlier today you were asked about what you heard and saw on the night in question...
- And you indicated that you heard loud voices, but that you are not sure if it was fighting, is that correct?
- You also said that the parties came out together and then went back into the room, is that what you saw?
- And you are sure of this?

COMPARE



- Witness Y, this isn't the first time you shared your observations of Complainant and Respondent that night, is it?
- Did you talk to the investigator about this?
- And that statement was provided just two days after the incident, correct?
- Do you recall what you said to the investigator?
- Did you tell the investigator the truth when you were interviewed?

CONCLUDE



- Witness Y, when you spoke to the investigator, you indicated that you heard fighting, correct?
- And that Complainant came out of the room crying, isn't that right?
- And that Respondent came out looking angry, correct?
- You also stated that you saw Respondent grab Complainant and drag them back into the room, isn't that true?
- Since speaking with the investigator, you and Complainant have had a falling out, haven't you?

CROSS EXAMINATION TIPS

Do be efficient in your questioning – go event by event

Don't rehash everything someone said

Do focus on the information that is helpful

Don't call folks liars or attack them

Do make your points through pointed and calm questioning

Don't rant, rave, lose your temper

Do raise concerns about credibility and reliability

Don't forget to be prepared to pivot as testimony is given

Do observe, listen, and take notes during the hearing

CLOSING STATEMENTS: ADVISOR'S ROLE

- Assist advisee in developing their closing statement
- Summarize evidence that the party wants the decision maker to focus on
- Bullet points
- May not provide a closing on behalf of an absent party



AFTER THE HEARING

DEBRIEF?

THE APPEAL

Lessons Learned

- Advisors arguing relevancy?
- Asking an ill-advised question?
- Case by case
- Observe and Listen
- Questioning through the Decisionmaker

PRACTICAL APPLICATION

05

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Complainant alleges that Respondent violated the provision against stalking by engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Specifically, Complainant alleges that after she told Respondent to stop talking to her, Respondent: followed her to and from her dorm; repeatedly asked her friends of her location; and approached her while she was with a group of friends. Complainant reported that after she ended her romantic relationship with Respondent, she would see Respondent every day on her way to class. Complainant also reported that Respondent on more than one occasion asked Witness A where she was. Lastly, Complainant reported that Respondent approached her while she was with Witness A and others and began yelling at her regarding why she was no longer talking to him. Complainant reported that these interactions together made her uncomfortable and fearful for what Respondent would do next.

WITNESS A

Witness A was interviewed by the investigator and reported that she and Complainant have been best friends since they were younger. Witness A stated she was happy to hear when Complainant and Respondent broke up because she did not like Respondent. Witness A stated that Complainant had called her a couple of times after she broke up with Respondent as Complainant believed Respondent was following her to class. Witness A recalled Complainant's voice "shaking" and she was not able to "keep a consistent train of thought" during these conversations. Witness A stated Respondent asked her once where Complainant was. Witness A also recalled seeing Respondent approached Complainant with a "raised" voice but the two seemed to be smiling when they were talking to one another. Witness A was not sure what the two were talking about as they walked away from where she was standing.

WITNESS B

Witness B was interviewed by the investigator and reported she has known Respondent for about a year. Witness B stated she has never met Complainant nor seen Complainant and Respondent interact. Witness B stated that Respondent told her when Respondent and Complainant broke up. Witness B stated Respondent seemed sad but said he was mostly confused and “wanted answers.” Witness B recalled Respondent asking her a few times if she had seen Complainant. She told Respondent she had not, despite seeing Complainant in the dining hall. Witness B stated that the last time Respondent talked to her about Complainant was when he called her and said he approached Complainant for “closure.” Witness B stated Respondent approached Complainant “in a loud, joking manner” and asked Complainant to come talk to him. Witness B stated Respondent said that the conversation was “productive,” “good natured,” and “civil.” Witness B recalled that Respondent’s mood was very high after this conversation and they have not spoken about Complainant since.

THANK YOU!

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