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# Investigation Report and Determination Letter Writing

North Dakota State College of  
Science

August 2022

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**Darci Heroy**

*She/her*

Director of Strategic Partnerships  
and Client Relations

## Meet Your Facilitator

Darci is Grand River's Director of Client Relations for the Western and Mountain states region and the Pacific NW; she also serves Grand River as a hearing officer, consultant and coach to many of our client Coordinators. She joined Grand River after spending ten years in various roles in the public sector and higher education serving at an employment attorney, civil rights investigator, Title IX Coordinator and Chief Civil Rights Officer. She has gained increasing interest over the years in matters related to decision-making and bias through her work overseeing and performing hundreds of investigations and hearings, and from her life pre-law school where she studied the construction of race and racism, and lived and worked in Europe and West Africa studying global transitional justice mechanisms, international policy analysis and diplomacy.

# About Us

## Vision

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

## Mission

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

01

The Regulatory Requirements

02

Structure of the Investigative Report, Evidence File, and Final Written Determination

03

Writing a Report and Determination that STAND on their own

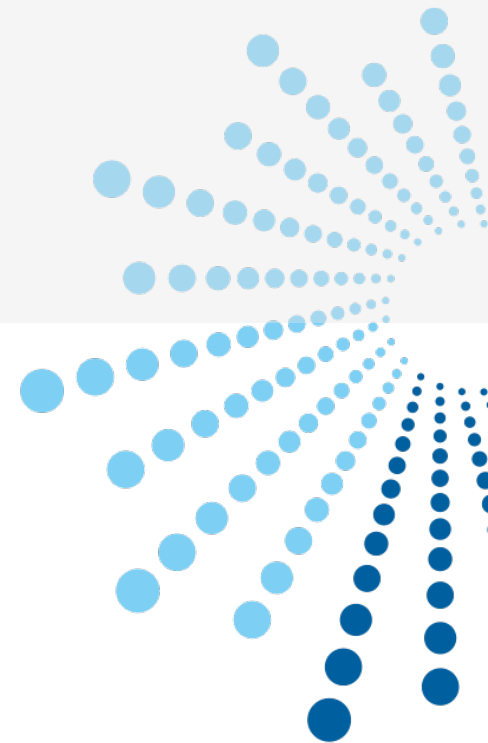
04

Writing the Investigative Report



# The Regulatory Requirements

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01

# Regulatory Requirements for the Investigation Report

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# Essential Steps of an Investigation



Formal Complaint and Notice of Allegations



Investigative Interviews



Evidence Collection



Evidence Review



Additional Evidence Collection/Follow-Up Interviews



The Investigative Report and Final Investigative Record

# The Products of Each Step of the Investigation



## Notice of Allegations

A document that frames the scope of the investigation



## Initial Interviews

Transcripts  
Summaries of Interviews  
Interview Notes



## Evidence Collection

Text messages  
Social media posts  
Medical/police records



## Evidence Review

Complainant's written response  
Respondent's written response



## Additional Evidence Collection/Follow-Up Interviews

More documentary evidence  
Additional interview transcripts/summaries



## The Investigative Report and Final Investigative File



# Report and Evidence File

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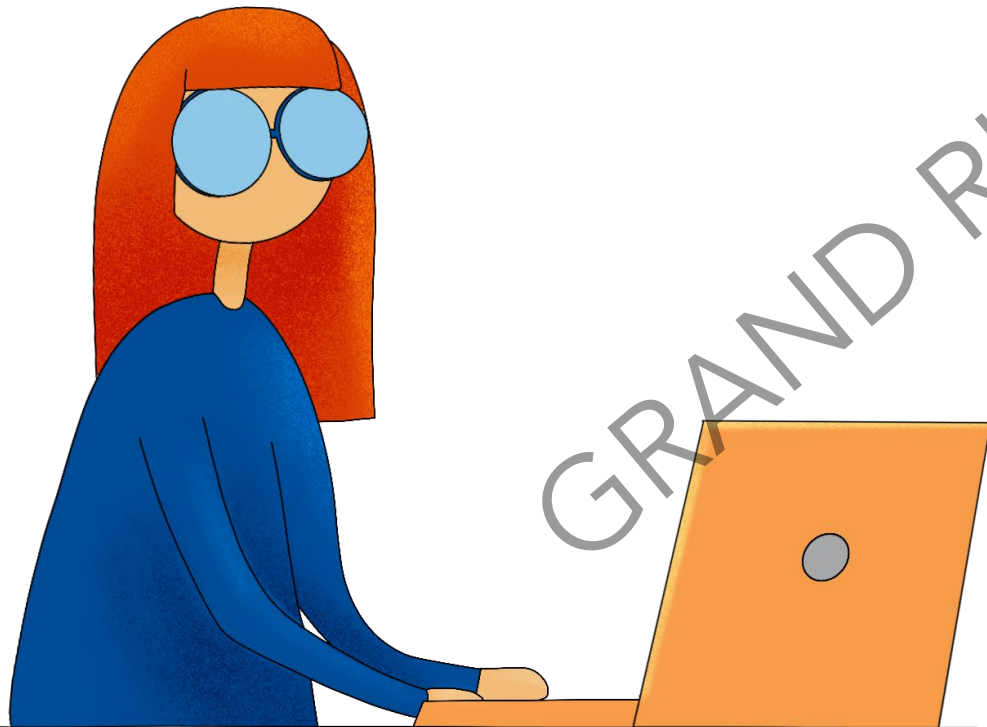


Summary of the Evidence



Compilation of the Evidence

The Investigator must create and provide to the Parties, their Advisors, and the Decision Maker(s) an investigative report that fairly summarizes relevant evidence.



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# The Investigative File

The Parties, their Advisors, and the Decision Maker(s) must be provided with a final compilation of all of the evidence gathered that is directly related to the allegations in the formal complaint. This includes evidence that Investigator deems relevant and evidence that the Investigator does not deem relevant.



# Directly Related Evidence

Regulations do not define “Directly Related” Evidence.

The Preamble states it should be interpreted using its plain and ordinary meaning.

Term is broader than:

- “All relevant evidence” as otherwise used in Title IX regulations, and
- “any information that will be used during informal and formal disciplinary meetings and hearings” as used in the Clery Act.

Includes evidence upon which the school does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source.

# Relevant Evidence

## Relevant Evidence

- “Evidence is relevant if:
- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

## Irrelevant Evidence

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

# Who Decides?

Department emphasizes repeatedly in Preamble that Investigators have discretion to determine relevance.

- Subject to Parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight.

Investigators will have to balance discretionary decisions not to summarize certain evidence in report against:

- Each Party's right to argue their case, and
- Fact that decisions regarding responsibility will be made at the hearing, not investigation stage.

# The Purpose of the Investigation Report

- To ensure that the recipient gives the parties meaningful opportunity to understand what evidence the investigator has collected and believes is relevant,
- To allow the parties opportunity to advance their own interests for consideration by the decision-maker.
- To give the parties (and advisors who are providing assistance and advice to the parties) adequate time to review, assess, and respond to the investigative report in order to fairly prepare for the live hearing or submit arguments to a decision-maker where a hearing is not required or otherwise provided.
- To allow the decision maker to adequately prepare for the live hearing, where one is conducted.
- To reduce the likelihood of bias in the final outcome by providing the parties and the decision maker(s) an opportunity to identify and explore potential bias by the investigator

*See 85 Fed. Reg. 30309 (May 19, 2020).*



# The Final Written Determination





# §106.45(b)(7): Determinations Regarding Responsibility

When a decision-maker (or group of decision-makers, depending on the institution's process) reaches its determination of responsibility or non-responsibility, the Final Rule requires that it issue a written determination. The Rule mandates a list of six items that must be included in any determination to ensure that it is "adequate for the purposes of an appeal or judicial proceeding reviewing the determination regarding responsibility."

*85 Fed. Reg. 30,389 (May 19, 2020)*

# The Final Written Determination Must Include the Following Information:

- A. Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;
- B. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the recipient's code of conduct to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- F. The recipient's procedures and permissible bases for the complainant and respondent to appeal.



# Information to Include in the Description of Procedural Steps Taken

- When the parties received the notice of allegations
- Who performed the investigation
- Which witnesses and parties were interviewed and when
- What locations, if any, were visited during the investigation
- What type of evidence was reviewed
- A description of the process undertaken to inspect and review the evidence and disseminate the investigative report, including the adherence to mandated procedural timelines
- Explanation of any delays in the process
- Explanation for why certain evidence was not sought or obtained

# Finding of Fact: Supporting the Determination

- The Final Rule requires that the written decision include an analysis and finding as to those facts that are relevant to the determination of responsibility or non-responsibility.
- The written decision does not need to include an analysis of all of evidence presented at the hearing or during the investigation.

# Conclusions Regarding the Code of Conduct

When the institution to applies principles or definitions not otherwise required under Title IX, those must be included in and addressed in the written determination.

# The Rationale

The decision-maker must make a finding of responsibility or non-responsibility for each allegation in the formal complaint.

The written determination must include the rationale for each finding based on an “objective” evaluation of the evidence presented at the hearing.

# Sanction and Remedies

The written determination must also indicate:

- The disciplinary sanctions, if any, that will be applied to the respondent when there is a finding of responsibility for the allegations.
- Whether remedies designed to restore or preserve equal access to the educational program or activity will be provided to complainant.

For Both The Report and  
The Final Written  
Determination

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# Intended Recipients

The Parties

The Advisors

The Decision Maker

The Appeal Panel

# Other Recipients?

Friends of  
the Parties

Parents

Law  
enforcement

Attorneys

Judges

Media

Social  
media

# Why is it Important to Write a Solid Report and Decision?

All of the reasons given by the DOE, and...

It allows you to recall the details of your investigation and the final determination long after the event—this is important if there are complaints by or against the parties involved or litigation in the future.

It signals to others that the complaint was taken seriously—that it is important to the institution to get it right.

A well written and comprehensive report/decision shows that the investigation and hearing was fair, impartial, and thorough.

A well written and comprehensive report/decision protects you and your institution in case of litigation and helps to limit your liability.



# Structure of the Investigative File, Investigative Report, and Final Written Determination

02

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# The Evidence File



Compilation of the evidence.



Organized intentionally and consistently.



Divided into Appendices.



Is attached to the

As one PDF?

As multiple PDFs?



Includes a procedural timeline.

# Essential Elements of

---

Intentionally organized to enhance comprehension

---

Factually accurate

---

Concise

---

Without editorial or opinion

---

Consistent format

---

# Examples of Appendices

## **Appendix A:**

Witness testimony only (e.g., transcripts, statements summaries, etc.)

## **Appendix B:**

Relevant documentary evidence (e.g., text messages, SANE reports, photographs, etc.)

## **Appendix C:**

The remaining evidence deemed irrelevant, but directly related to the allegations in the formal complaint.

## **Appendix D:**

The procedural timeline.



# Label the Appendices or Sections

---

- “Appendix A contains transcripts/summaries of party and witness interviews that the investigator deems relevant, in whole or in part.”
- “Appendix B contains documentary evidence that the investigator deems relevant, in whole or in part.”
- “Appendix C contains transcripts/summaries of party and witness interviews that the investigator does not deem relevant, but that are directly related to the allegations in the formal complaint.”
- “Appendix D contains documentary evidence that the investigator does not deem relevant, but that are directly related to the allegations in the formal complaint.”
- “Appendix E contains a timeline documenting all procedural steps taken from the filing of the formal complaint until the submission of the final investigative file and report.”

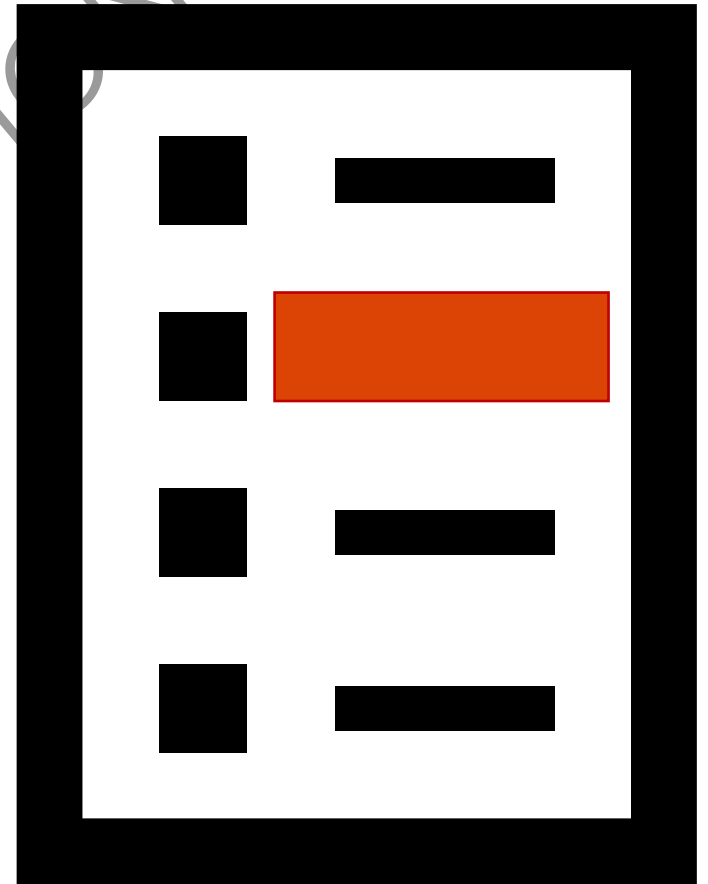


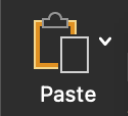
# Format and Structure of the Record

- Include page numbers
- Include a Table of Contents
  - For the entire record
  - For each appendix
- One document or PDF



# Redactions





# Structure of the Investigative Report

Overview of the Investigation

Statement of Jurisdiction

Identity of Investigators

Objective of the Investigation and the Investigation Report

Prohibited Conduct Alleged

Witnesses

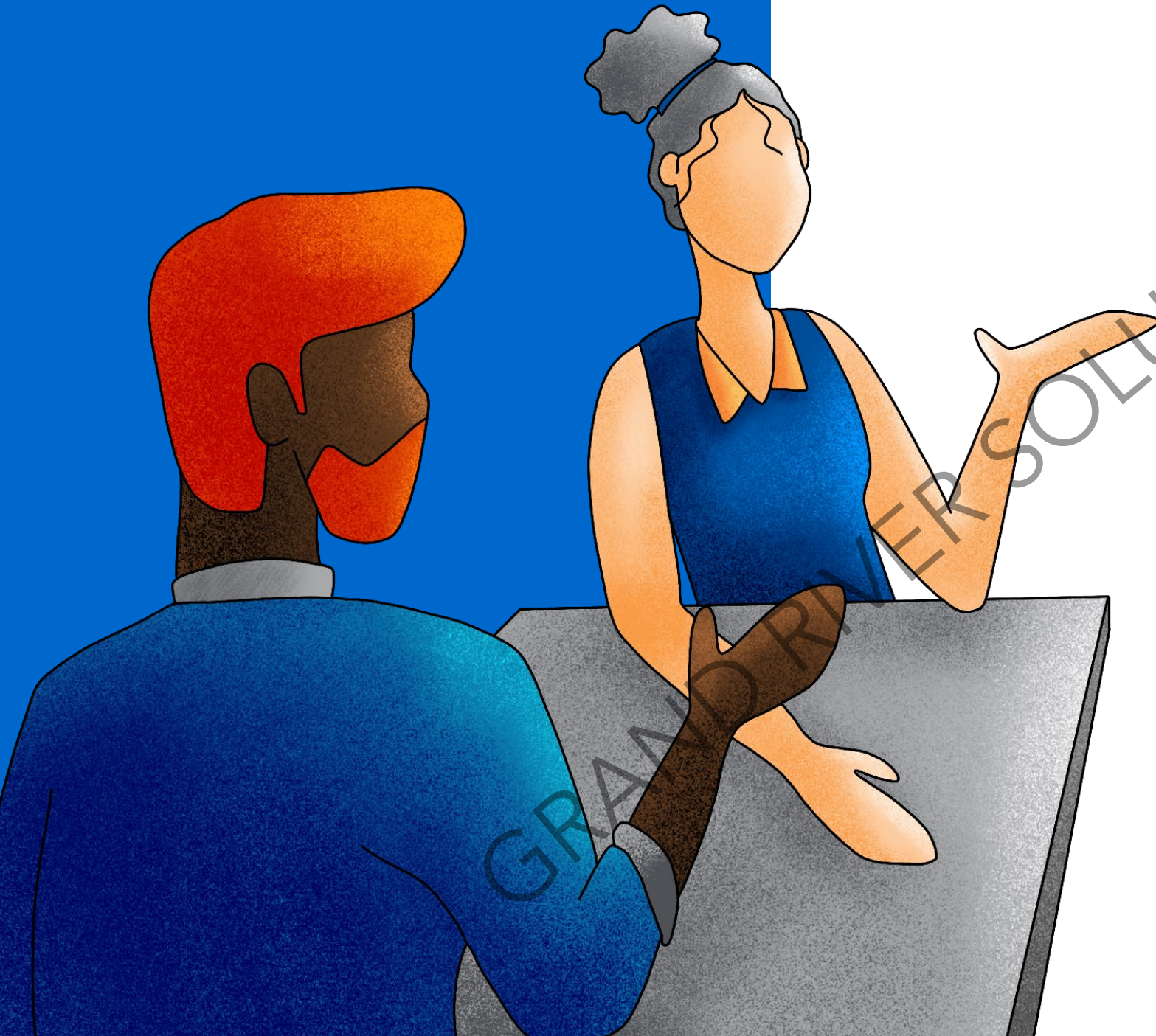
Evidence Collected

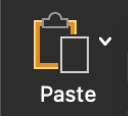
Summary of Evidence

Conclusion



# Questions about the Report Template?





# Structure of the Written Determination

Hearing Overview

Policy Statement

Procedural Timeline

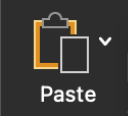
Findings of Fact Supporting the Final Determination

Analysis and Determination of Responsibility

Sanction and Remedies

Appellate Procedures



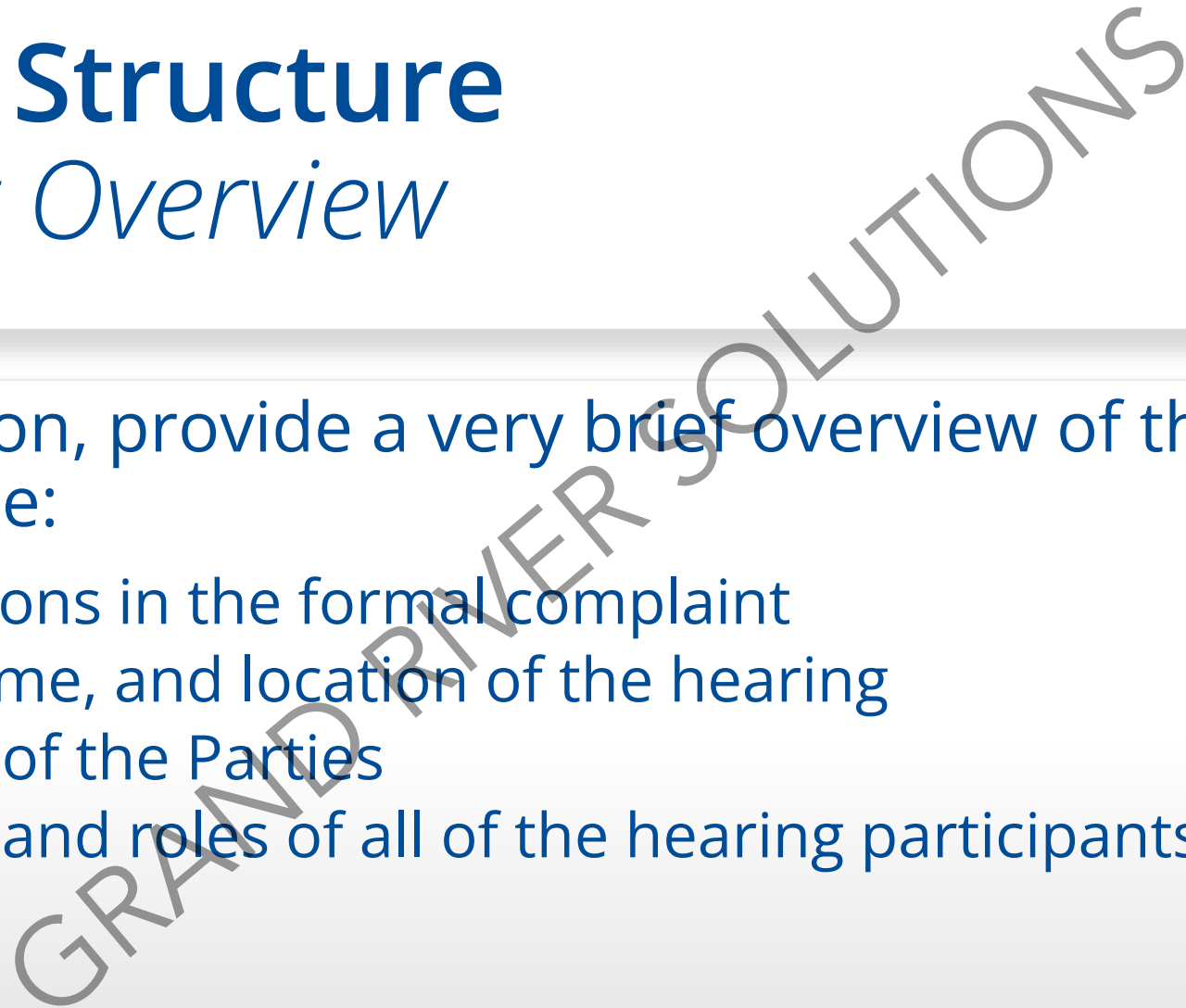


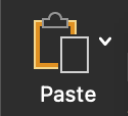
# Report Structure

## *Hearing Overview*

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

- The allegations in the formal complaint
- The date, time, and location of the hearing
- The names of the Parties
- The names and roles of all of the hearing participants





# Report Structure

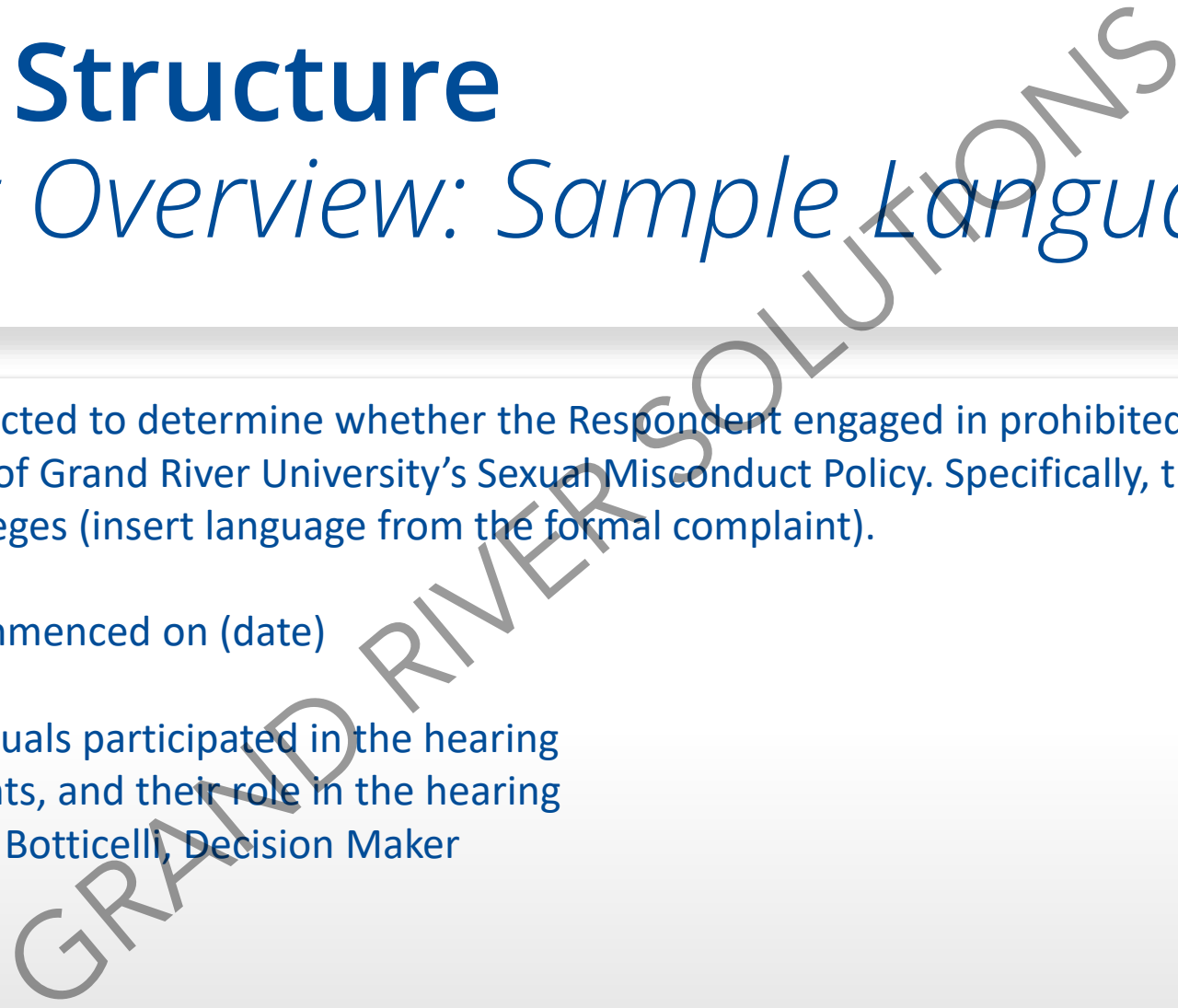
## *Hearing Overview: Sample Language*

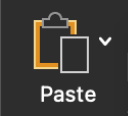
A hearing was conducted to determine whether the Respondent engaged in prohibited conduct in violation of Grand River University's Sexual Misconduct Policy. Specifically, the formal complaint alleges (insert language from the formal complaint).

The hearing was commenced on (date)

The following individuals participated in the hearing

- List the participants, and their role in the hearing
  - ie, Chantelle Botticelli, Decision Maker





# Report Structure

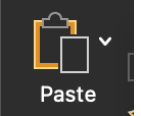
## *Policy Statement*

In this section, identify applicable policy definitions, including:

- Definitions of the prohibited conduct alleged;
- Definitions of terms relevant to a determination of responsibility
  - Consent
  - Coercion
  - Incapacitation
- Definition of the Standard of Proof to be applied





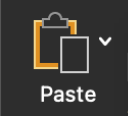


# Report Structure

## *Procedural Timeline*

In this section, you might choose to provide a procedural overview of the hearing and then refer the reader to an attachment that includes a procedural history of the matter from the filing of the formal complaint to final determination.

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# Report Structure

## *Procedural Timeline: Sample Language*

The hearing in this matter began on January 27, 2021 with introductions and an overview of the process. Thereafter, Complainant was questioned by the decision maker and then by Respondent's advisor. Following Complainant's testimony, Respondent was questioned by the decision maker. The hearing was then adjourned for the day. The hearing resumed on February 10, 2021. The proceedings began with questioning of Respondent by Complainant's advisor. Respondent's testimony was followed by the testimony of Witnesses 1 and 2. The parties' advisors were provided the opportunity to ask each witness relevant questions and follow up questions. Following testimony, the parties provided closing remarks. The decision maker then provided closing remarks and the hearing was concluded.

A full description of the procedural steps taken from the receipt of the formal complaint through this final determination of responsibility is appended hereto as **attachment A**.

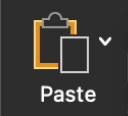


# Report Structure

## *Findings of Fact*

In this section, the decision maker(s) will summarize the facts upon which they relied in arriving at their final determination of responsibility.

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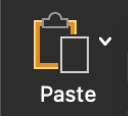


# Report Structure

*Rationale/Analysis and Determination of Responsibility*

In this section, the decision maker will state their findings regarding responsibility for each allegation in the formal complaint and will provide a rationale for each finding.

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# Report Structure

## *Sanction/Remedies*

In this section, the decision maker will include the sanctions and remedies imposed and a rationale for imposition of those sanctions and remedies.

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# Writing a Report or Determination that STAND on their own

03

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# The Report and Determination Should **STAND** On Their Own



- S** Simple and Easy to Comprehend
- T** Transparent/Clear
- A** Accurate
- N** Neutral/Unbiased
- D** Draw Attention to Significant Evidence and Issues

# Simplicity

Reports should be written so that they are accessible to all readers, irrespective of their familiarity with the subject matter, or the institutions policies and the law.

- Use plain language
- Be concise
- Avoid repetition
- Consider including a section on facts in dispute/not in dispute
- Avoid or define technical language/acronyms/slang





# Choosing Simple Language

## Complex Language

"Adjudicated"

"Preponderance of the Evidence"

"Respondent articulated"

"Prima Facie Assessment"

"The allegation was substantiated"

"Pursuant to the policy"

"Digital Penetration"

## Simple Language

"Decided/Determined"

"More likely than not"

"Respondent stated"

"Plain assessment/On its face assessment"

"The allegation was proven/supported by"

"As stated in the policy"

"Inserted their finger into (include body part penetrated)"

# Transparent and Clear

- Outline the report to enhance transparency and clarity.
- Summarize information chronologically.
- Clearly define language used in the report.
  - Opinions
  - Quantitative language
  - Slang/acronyms
- Provide clear descriptions of reported acts.
- Use consistent language.

# Clarifying Language

Unclear Language	Clear Language
"Complainant reported that Respondent forced her to perform oral sex"	"Complainant reported that Respondent forced her to put her mouth on his penis"
"SANE/RA/UPD"	"Sexual Assault Nurse Examiner/Resident Assistant/University Police"
"Witness 1 reported that Respondent was angry"	"Witness 1 reported that he believed that Respondent was angry because Witness 1 observed Respondent yelling, slamming his fists on the wall, and that the 'veins in his neck were popping out.'"
"Complainant stated that Respondent touched them down there"	"Complainant stated that Respondent touched them, "down there". When asked to define 'down there,' Complainant stated, 'my penis.'" OR "Complainant stated that Respondent touched their 'penis.'"

# Where Deeper Clarity is Often Needed, But Not Included

Dive Deeper when:	Include in the report clarity about the following:
Testimony about contact with a person's vagina.	Was the contact with the vagina or vulva?
Testimony about penetration.	What was penetrated? What was used to penetrate?
Testimony that clothing was removed.	What kind of clothing? How was it removed?
Testimony that an event or an act had an impact on them?	What was the specific impact?
Opinions are offered.	Include facts that form the basis for the opinion.

# Accuracy Is Essential

Be precise and accurate in how you identify folks.

- Use their preferred names and pronouns.

Be accurate and precise when citing or referring to policy language.

- Be sure to cite from the applicable policy/procedures.

Accurately state the allegations as set forth in formal complaint.

When summarizing the evidence, do so accurately without editorial or opinion.

- Use quotations often and appropriately.

Always cite to the investigation file.



Every statement in an interview summary should make clear that it was the interviewee who made that statement:

- Not: Complainant first saw Respondent near the fountain in the middle of the quad.
- Instead "Complainant stated that she first saw Respondent near the fountain in the middle of the quad."
- Not: Witness 3 told Complainant that Respondent was creepy.
- Instead: "Complainant stated that Witness 3 told him that Witness 3 believed Respondent was 'creepy.'"

Use interviewee's words and put in quotes if it is their word.

- Not "Witness 3 was really out of it and drunk."
- Instead; "Witness 4 stated that Witness 3 was 'really out of it' and 'drunk,' which she described as . . ."

No conclusory words

- Not "the stalking started"
- Instead; "Complainant stated that the conduct she identified as stalking started in January."
- In some states, particularly California, attorneys litigating these cases will argue that use of a conclusory term means the investigator is agreeing that the conduct did occur. It's a huge nuisance to be a deponent in those cases

# Commit to Using Neutral Language

Non-Neutral/Biased	Neutral Alternatives
"Claimed/Alleged"	"Reported/Stated"
"According to X"	"X reported/X stated"
"Story/Version of Events"	"Account/Reported Recollection of Events"
"Had Sex with/Engaged in"	Simply describe what occurred
"Changed their Account/Story/Version of Events"	"When initially interviewed Respondent stated X. In a subsequent interview Respondent stated Y"



Evidence that the Investigator believes should be afforded significant weight.



Evidence related to assessment of credibility, reliability, and authenticity.

Consistencies  
Inconsistencies  
Corroborative evidence  
Omissions  
Statements that include or that are lacking in significant details



Explanations that provide a better understanding of certain items of evidence or lack of evidence.



**If it feels important, emphasize it in the report.**

# Draw Attention to Specific Evidence Through Intentional Presentation of Information in the Report





Evidence that the decision maker has afforded significant weight.



Evidence related to assessment of credibility, reliability, and authenticity.

Consistencies  
Inconsistencies  
Corroborative evidence  
Omissions  
Statements that include or that are lacking in significant details



Explanations that provide a better understanding of certain items of evidence or lack of evidence.



**If it was important, emphasize it.**

# Draw Attention to Specific Evidence Through Intentional Presentation of Information in the Written Determination

How might you include the following relevant information from the IF in the summary of relevant evidence section of the report?

1. Excerpt from the transcript of Complainant's initial interview located in Appendix A at page 34:
  - Complainant: "The next day he tried to talk to me. He sent me a bunch of text messages asking to see me. He said he was 'sorry' for hitting me and for raping me. I basically told him I didn't want to hear it and I called him an asshole. We've not communicated since."
2. Screenshot of the text message exchange, described above, submitted by Complainant and located in Appendix B, page 67.

# Option A

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. Screenshots of this exchange were provided by Complainant and are included in Appendix B. See, Appendix A, p.34 and Appendix B, p. 67.

# Option B

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was sorry for hitting her and for raping her. See Appendix A, p.34. Complainant provided screenshots of this exchange, which read as follows:

**Complainant:** I don't care what u say. U know I didn't want it and you did it anyway.

**Respondent:** I'm sorry I hurt u. You know I don't hit. I was so drunk. IDK what to say to make it better. Can I see u?

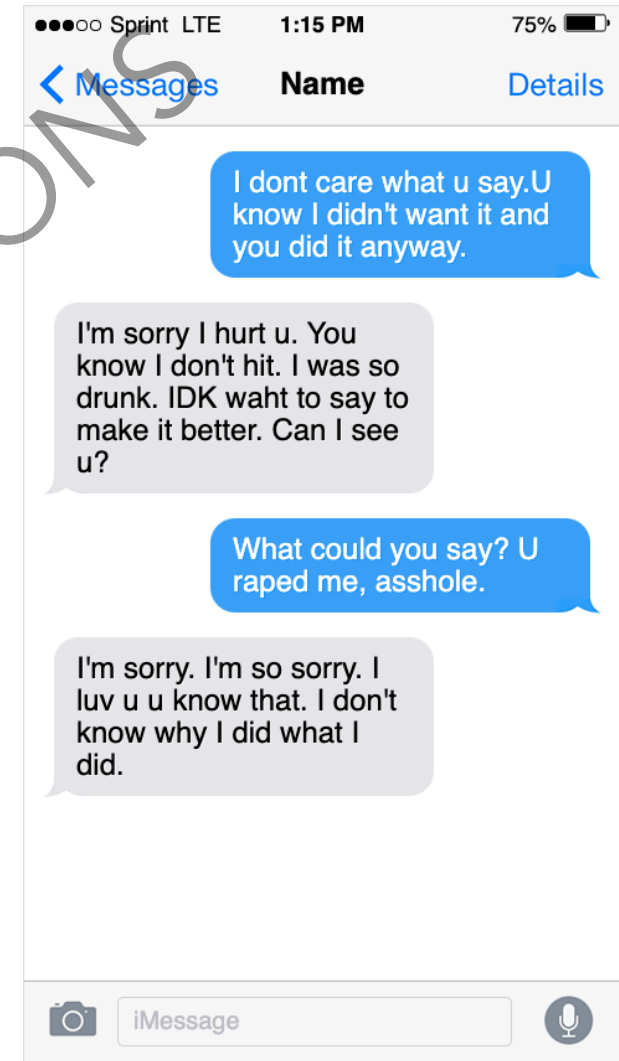
**Complainant:** What could you say? U raped me, asshole.

**Respondent:** I'm sorry. I'm so sorry. I luv u u know that. I don't know why I did what I did.

Appendix B, p. 67.

# Option C

Complainant reported that the next day, she engaged in a text message exchange with Respondent. Complainant stated that in this exchange, Respondent told her that he was “sorry for hitting he and for raping her.” See Appendix A, p.34. Complainant provided the following screen shots of this exchange:  
Appendix, p. 67.



When your investigation reveals a fact that was not shared by a party or witness, the investigator should have explored the reason for the omission. The final report should document the exploration and accurately describe the explanation provided.

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“Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left ten minutes later. Complainant failed to share this fact with the investigators.”

“Surveillance video from Clinton Hall depicted that at approximately two a.m. Witness A entered the room in which Complainant reports that she was assaulted. Witness A left the room ten minutes later. In a follow up interview with Complainant, they were asked why they did not report Witness A’s presence in the room. Complainant responded by stating that they have no recollection of Witness A being in the room.”

A few final, but important,  
points....

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**The writer should not be present in the report.**

**The report/determination should never include reference to the investigator or decision maker.**

**For example, it should never say. "I then asked why Respondent believed they had consent to kiss complainant"**

**Instead, "When asked why they believed they had consent to kiss complainant, respondent stated...."**

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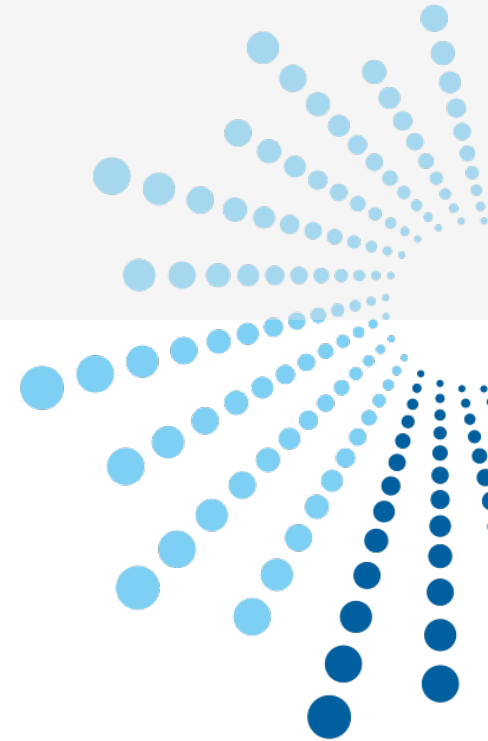




# Writing the Report: Developing the Content

04

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# Get the Easy Stuff Out of the Way

Overview of the Investigation

Statement of Jurisdiction

Identity of Investigators

Objective of the Investigation and the Investigation Report

Prohibited Conduct Alleged

Witnesses

Evidence Collected

Summary of Evidence

Conclusion

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# Writing the Summary of Relevant Evidence

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Start by identifying the questions that you or the decision maker will be charged with answering:



What are we being asked to decide?



What does the formal complaint allege?



What are the elements of each act of prohibited conduct alleged?

Fondling: is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.

1. Did Respondent touch the Complainant's private body parts?
2. For the purposes of sexual gratification?
3. Without Complainant's consent?

# Analysis Grid: List the Elements

Did R touch the private body parts of C?	For the purpose of sexual gratification?	Without C's consent (due to lack of capacity)?

# Analysis Grid: List All the Material Facts Relevant to Each Question

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ Witness 1's Account</li> <li>➤ Text messages between Complainant and Respondent</li> <li>➤ SnapChat DM between Respondent and Witness 2</li> </ul>	<ul style="list-style-type: none"> <li>➤ Respondent's Account</li> <li>➤ SnapChat DM between Respondent and Witness 2</li> </ul>	<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ Witness 1's Account</li> <li>➤ Witness 3's Account</li> <li>➤ Photograph of Complainant</li> <li>➤ Video of Complainant</li> <li>➤ Text messages between Complainant and Witness 4</li> <li>➤ Witness 4's Account</li> </ul>

# The analysis grid can serve as a guide as you start to write your summary of relevant evidence.

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ Witness 1's Account</li> <li>➤ Text messages between Complainant and Respondent</li> <li>➤ SnapChat DM between Respondent and Witness 2</li> </ul>	<ul style="list-style-type: none"> <li>➤ Respondent's Account</li> <li>➤ SnapChat DM between Respondent and Witness 2</li> </ul>	<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ Witness 1's Account</li> <li>➤ Witness 3's Account</li> <li>➤ Photograph of Complainant</li> <li>➤ Video of Complainant</li> <li>➤ Text messages between Complainant and Witness 4</li> <li>➤ Witness 4's Account</li> </ul>



# Make a Determination About the Authenticity of the Relevant Evidence

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ Witness 1's Account</li> <li>➤ <b>Text messages between Complainant and Respondent</b></li> <li>➤ <b>SnapChat DM between Respondent and Witness 2</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Respondent's Account</li> <li>➤ <b>SnapChat DM between Respondent and Witness 2</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ Witness 1's Account</li> <li>➤ Witness 3's Account</li> <li>➤ <b>Photograph of Complainant</b></li> <li>➤ <b>Video of Complainant</b></li> <li>➤ <del>Text messages between Complainant and Witness 4</del></li> <li>➤ Witness 4's Account</li> </ul>

# Identify the relevant facts for inclusion in the report.



Any information that is relevant to the elements of the prohibited conduct alleged.

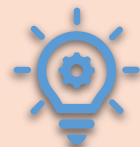


Information that the Investigator believes the Decision Maker should consider or rely upon when making their final determination of responsibility. This includes:




Information that is relevant to an assessment of the evidence.

Credibility  
Reliability  
Authenticity



Helpful contextual information.

History between the parties  
Post incident behavior



A well-organized evidence file will assist with this step.

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# The following information is usually not relevant and should be omitted from reports:

- Irrelevant Information, including
  - Prior sexual history of Complainant
  - Information protected by a legally recognized and un-waived privilege
- The Investigator's Opinions
- Speculation and conjecture
- Character evidence
- Party and witness opinions that are unsupported by fact





# Writing the Final Determination

05

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# Deliberations are complete

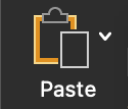
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**Show your work: Writing  
the Final Determination**



# Get the Easy Stuff Out of the Way

Hearing Overview

Policy Statement

Procedural Timeline

Findings of Fact Supporting the Final Determination

Analysis and Determination of Responsibility

Sanction and Remedies

Appellate Procedures





# Identify the Questions that You are Charged with Answering

- What are we being asked to decide?
- What does the formal complaint allege?
- What are the elements of each act of prohibited conduct alleged?

# Findings of Fact

List relevant evidence

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.



Note that you found the evidence to be authentic

Is the item what it purports to be?



Explain why you determined the evidence to be credible.

Why it was convincing?



Explain why you found the evidence reliable

Why did you trust it?



Articulate the weight provided?

Explain how important the particular item of evidence was to you.

# Credibility/Reliability Analysis

## *Step by Step*

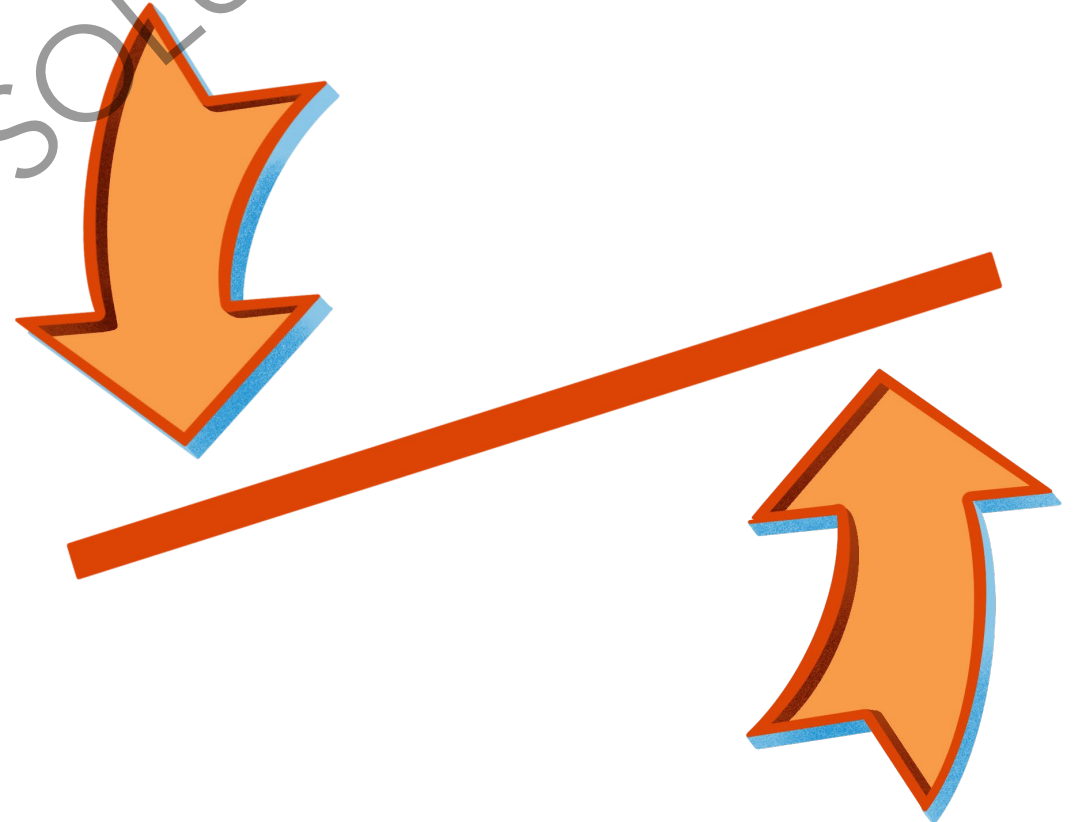
1. Determine the material facts – focus only on material facts.
2. Determine which material facts are:
  1. Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
  2. Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains [e.g., Marcy alleged that Jack kissed her without her consent around 1am at the party, and Jack asserted he never kissed Marcy and went home early]
  3. State clearly which facts are accepted, and which are rejected, and state the reasons why.

“While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack’s version of events cannot be credited as being more likely than not to be true.”

# Weighing the Evidence

Determine what weight, if any, you will afford to each item of evidence upon which you intend to rely, of evidence in your final determination.

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# Make a Determination about the Weight of the Evidence

Touching of the private body parts of another person	For the purpose of sexual gratification	Without consent due to lack of capacity
<ul style="list-style-type: none"> <li>➤ <b>Complainant's Account</b></li> <li>➤ <b>Respondent's Account</b></li> <li>➤ Witness 1's Account</li> <li>➤ Text messages between Complainant and Respondent</li> <li>➤ SnapChat DM between Respondent and Witness 2</li> </ul>	<ul style="list-style-type: none"> <li>➤ Respondent's Account</li> <li>➤ <b>SnapChat DM between Respondent and Witness 2</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Complainant's Account</li> <li>➤ Respondent's Account</li> <li>➤ <b>Witness 1's Account</b></li> <li>➤ <b>Witness 3's Account</b></li> <li>➤ <b>Photograph of Complainant</b></li> <li>➤ <b>Video of Complainant</b></li> <li>➤ <del>Text messages between Complainant and Witness 4</del></li> <li>➤ Witness 4's Account</li> </ul>

# Explain Your Findings

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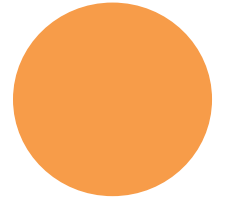
# Apply the Preponderance of the Evidence

More likely than not.

Does not mean 100% true or accurate.

A finding of responsibility = There was sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.

A finding of not responsible = There was not sufficient reliable, credible evidence to support a finding, by a preponderance of the evidence, that the policy was violated.



# Making a Determination

1. Apply the standard of proof and the evidence to each element of the alleged policy violation.
2. Make a determination as to whether or not there has been a policy violation.



## The Final Determination

“While the credible evidence supports a finding that it is more likely than not that Respondent touched Complainant’s vagina with his hand for the purpose of sexual gratification, the credible evidence does not support a finding, using the preponderance of the evidence standard that Complainant was incapacitated and therefore incapable of providing consent. Thus, the we find Respondent **NOT RESPONSIBLE** for the allegation of fondling, as set forth in the formal complaint”

# Including Sanction

Often times, sanctions will be policy driven

Include appropriate policy language, such as:

- Factors that can be considered when determining sanction
- Factors that were considered
- How those factors impacted imposition of sanction
- State the sanction
- What the institution hopes to achieve by imposing the sanctions
- Include other remedies?

# Writing the Finding of Facts and Final Determination



Use the analysis grid to guide this section of the final determination



Adhere to the guidelines set forth above



Always cite to the investigative report, record, and hearing

# Thank you!

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