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# Conducting Fair and Thorough Trauma-Informed Investigations

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## The Before

At some point during the interview, it is also important to explore the prior history, if any, between the complainant and the respondent, and the history of the parties, individually.

# And The After

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It is also important to explore the events following the incident. Oftentimes, the best evidence is produced after the incident.

- The parties' psychological reactions
- Changes in behavior
- Witnesses to the psychological reaction
  - "Has anyone expressed concern about you since the assault?"
- Communication/contact between the complainant and respondent

# Day Two Agenda

1

**Investigative Interviews  
(continued)**

2

**Evidence Collection and  
Assessment**

3

**The Investigative Report and  
Record**



# Quick Review!

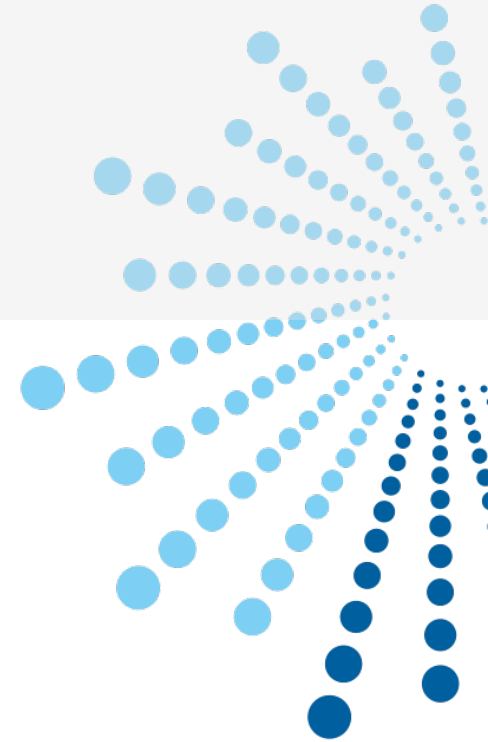
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# Investigative Interviews: Continued

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# Throughout the Interview



Explain your questions, especially the difficult ones.

How much did you drink? What they hear: this is your fault because you were drinking.



Do not ask leading questions.



Watch your tone.



Do not rush.



LISTEN!!!!!!!!!!



Pay attention to and document information that might lead to additional evidence.



Document questions asked. Especially when a response is not provided.

# At the Conclusion of the Interview



Discuss submission of evidence.



Explain statement review process.



Explain next steps in the process.



Keep the lines of communication open.



Review available support, privacy requirements,  
and prohibition against retaliation.



# After the Interview: Actions



Memorialize the Interview in writing.

Notes  
Summary  
Transcript



Provide opportunity for the party or witness to review it.



Provide opportunity for party or witness to provide a response.



Incorporate the response.

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# A Note About Witness Summaries



The reader of any report should not know of the investigator's presence in the report; for example, report should not say "I then asked ..."



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



Avoid conclusory words, or words that suggest that the investigator has an opinion about the information offered

# After the Interview: Reflection



Reflect.



Is there something you missed or forgot to ask?



Do you need clarity on any of the information shared?



Has this interview revealed additional evidence that you want to explore or collect?



Has evidence of additional policy violations been shared?

# Follow Up Interviews



Seek clarification

Explore inconsistencies

Explore contradictory evidence

Explore difficult issues

Opportunity to respond

# Follow Up Interview Approach

1

Explain the purpose of the follow up.

2

Set the stage for the topics you will be covering.

3

Prepare the interviewee for "the shift."

4

Do not avoid asking the hard questions.

# The “Hard” Questions

Details about the  
sexual contact

Seemingly  
inconsistent  
behaviors

Inconsistent  
evidence/information

What they were  
wearing

Alcohol or drug  
consumption

Probing into reports  
of lack of memory

# How to Ask the Hard Questions

Lay a foundation for the questions.

- Explain why you are asking it
- Share the evidence that you are asking about, or that you are seeking a response to

Be deliberate and mindful in your questions:

- Can you tell me what you were thinking when....
- Help me understand what you were feeling when...
- Are you able to tell me more about...

# What Questions Do You Have for Quinn?



Casey and I have been friends for a few weeks. On Friday night, we were hanging out alone in my room, watching a movie. We started to make out, and I was ok with that. After making out for a while, Casey started touching me down there. Then Casey tried to have sex with me. Casey knew that I didn't want to have sex but kept trying anyway. Casey was being really coercive, and so I just went along with it. Casey raped me and I want Casey to be held accountable.





# What Questions Do You Have for Barri?

“

When I got to the party, I was already lit. I kept letting Marc get me drinks anyway. At some point, I just kinda don't remember anything. And then I woke up in Marc's bed and it was morning. I had all my clothes on, but I know someone had sex with me. I could feel it. I just wanted to go, so I did. Before I left Marc woke up and tried to talk to me but I wasn't hearing it. He looked guilty and I could tell he felt bad

”

# What Questions Do You Have for Colin?

“

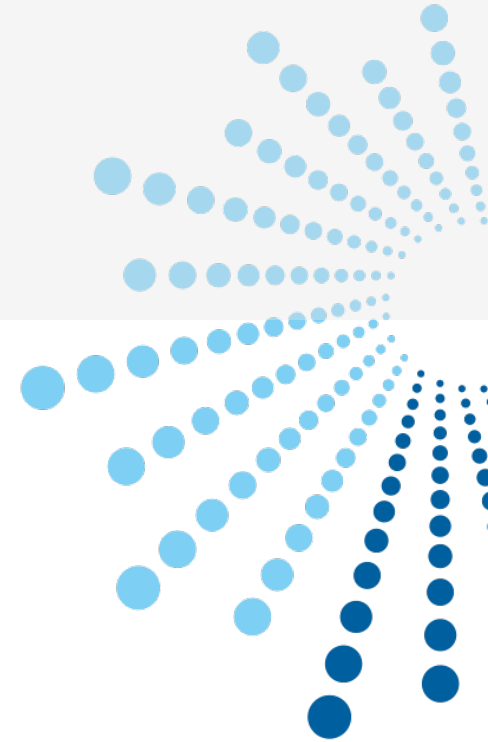
Pat and I have been together for about a month and have been intimate for the last two weeks. We went out with my friends on Friday night and Pat got really drunk. At some point we ran into my ex and Pat was really jealous, so we left. When we got back to my place, I thought things were fine. We started hooking up and all of a sudden Pat's mood changed. Pat got really aggressive and choked me. He was so angry and I was so scared.

”



# Evidence Collection and Assessment

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# Evidence

“Something (including testimony, documents, tangible objects) that tends to prove or disprove the existence of an alleged fact; anything presented to the senses and offered to prove the existence or non-existence of a fact.”

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

# Evidence

Testimony

Text Messages

Social Media  
Posts and  
messages

Emails

Surveillance

Videos

Photographs

Police Body  
Camera  
Footage

Swipe Records

Medical  
Records

Phone Records

Audio  
Recordings

# Evidence Collection



Identify the items of evidence that you would like to obtain.



Develop an intentional strategy for obtaining that evidence.



Overcome barriers to evidence collection.



Considerations about collecting certain types of evidence.

# A Thorough Investigation

is more than evidence collection



# Evaluating the Evidence

Is it relevant?

Is the evidence important, or of consequence, to the fact-finding process?



Is it authentic?

Is the item what it purports to be?



Is it credible/reliable?

Is the evidence worthy of belief and can the decision maker rely on it?



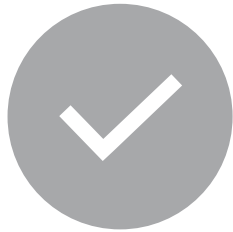
What weight, if any, should it be given?

How important is the evidence to the fact-finding process?

# A Thorough Investigation Permits the Decision Maker to Assess



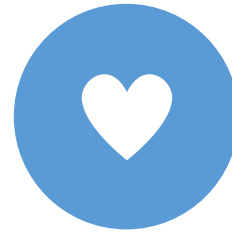
Relevance



Credibility



Reliability



Authenticity



Weight

# “Relevant” Evidence

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence  
401 Test for Relevant Evidence:

“Evidence is relevant if:

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

# Evidence That is Not “Relevant”

“Questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant,

- unless such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
- if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.”

“require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.”

Physical and mental health records and attorney-client privileged communications would fit within scope of this prohibition

# Assessing Relevance

Why Does it Matter?

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Unsure about the relevance about a particular item of evidence? Ask the person who has proffered it.

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Character Evidence

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Polygraph evidence

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Opinion Evidence



# Opinion Evidence

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When might it be relevant?

How do you establish a foundation for opinion evidence so that the reliability of the opinion can be assessed?

# Opinion Evidence: Try it!

You are investigating an allegation that Casey had sex with Taylor when Taylor was incapacitated. You interview several witnesses, one of whom made the following statement:

“I got to the party pretty late, and Taylor was already lit.”

“Taylor was wasted. Like totally messed up. There is no way they could have given permission for sex”



# Assessing Authenticity

Investigating the products of the Investigation



Never assume that an item of evidence is authentic.



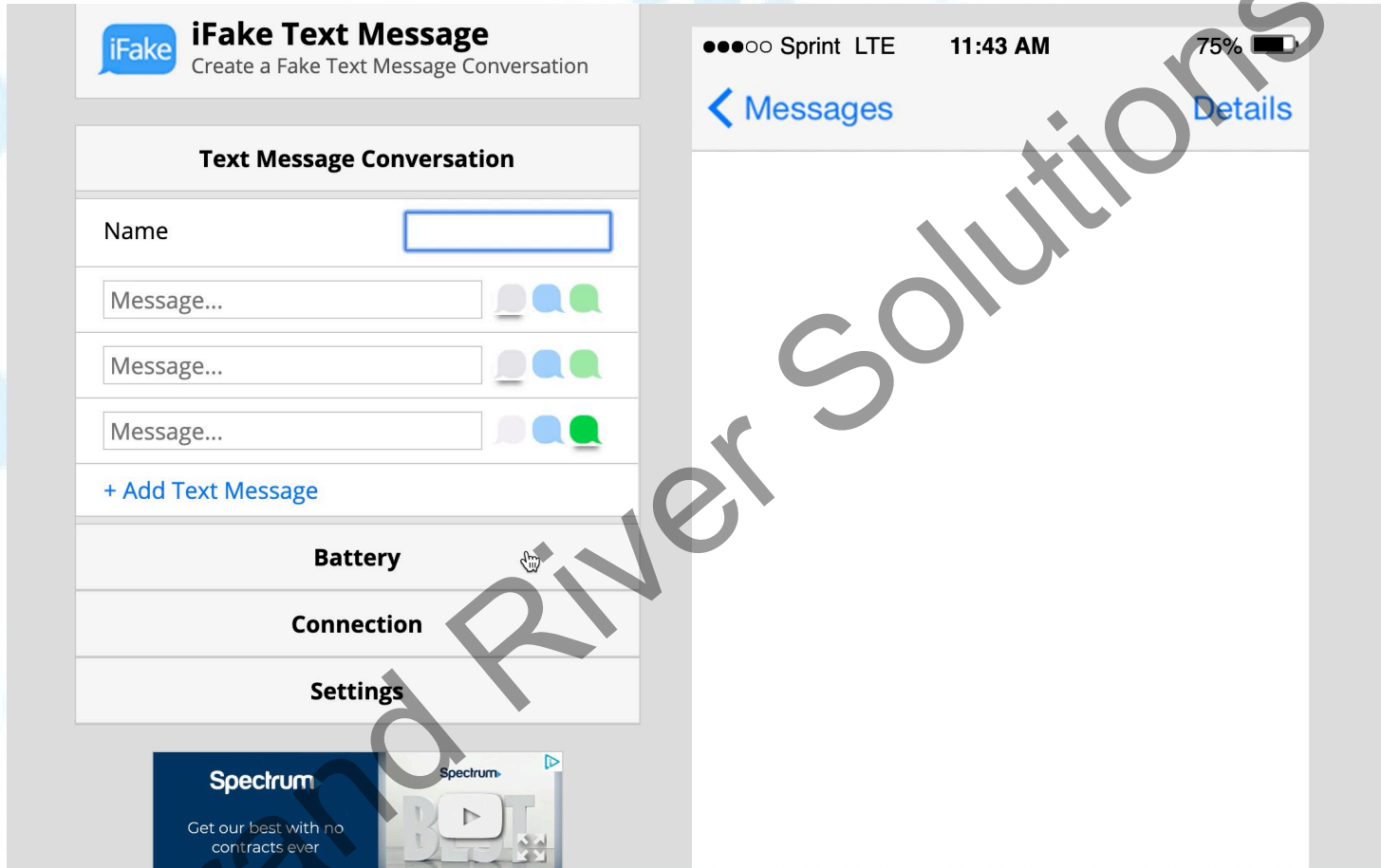
Ask questions, request proof.



Investigate the authenticity if necessary.

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# Is it authentic?

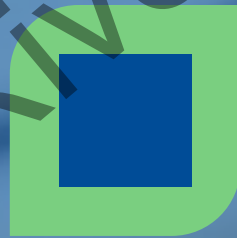
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QUESTION THE  
PERSON WHO  
OFFERED THE  
EVIDENCE



HAVE OTHERS  
REVIEW AND  
COMMENT ON  
AUTHENTICITY



REQUEST  
ORIGINALS



OBTAIN  
ORIGINALS FROM  
THE SOURCE



ARE THERE OTHER  
RECORDS THAT  
WOULD  
CORROBORATE?

# 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

Bias

# Barriers to Evidence Collection

Non-Participating Parties

Uncooperative Witnesses

Uncooperative Advisors

Identity of party or witness unknown

Refusal to share materials

Materials lost or no longer accessible

Difficult topics

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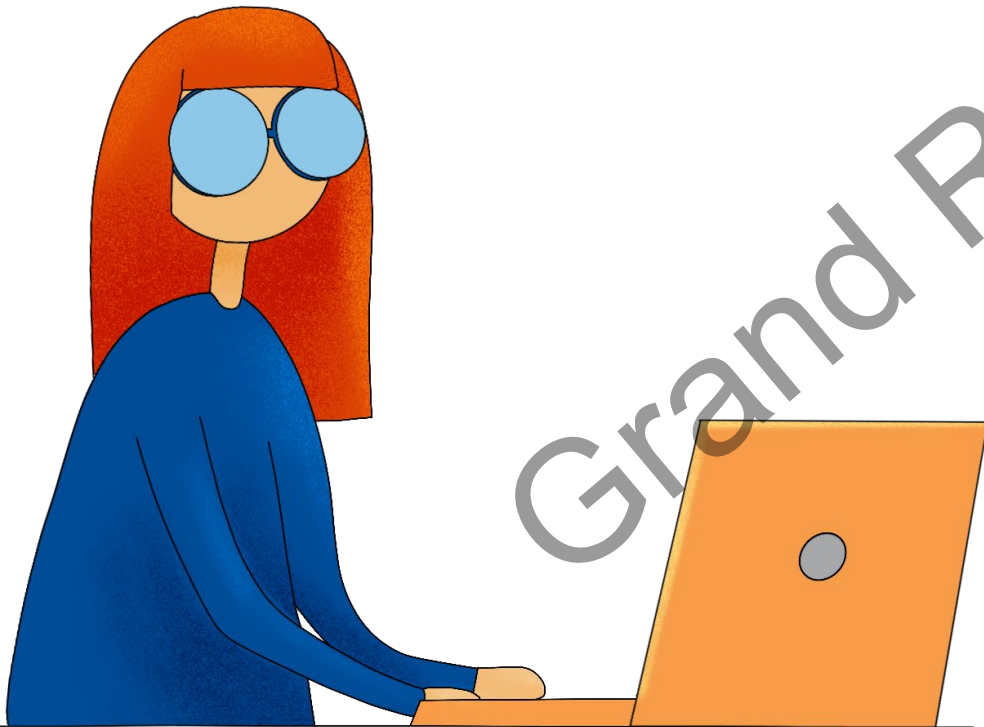
# The Investigative Report and Record

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



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# Relevancy Standard

## 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 unwaived privilege.
- Records related to medical, psychiatric, psychological treatment

# Who Decides?

Department emphasizes repeatedly in Preamble that investigators have discretion to determine relevance

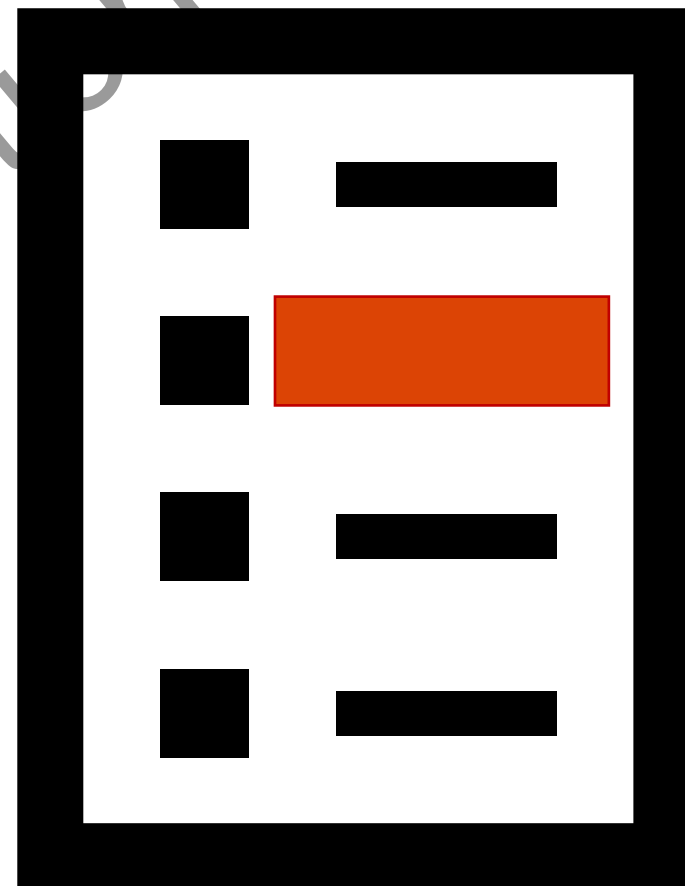
- Subject to parties' right to argue upon review of "directly related" evidence that certain information not included in investigative report is relevant and should be given more weight

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 hearing, not investigation stage



# Redactions



# Additional Requirements



Share the report with the parties and their advisors



In electronic format or hard copy



At least 10 days prior to the hearing

# The Purpose of the Report

**To allow for advance Review**

**To allow for advance Preparation**

- By the Decision Maker
- By the Parties

**Reduce likelihood of bias in final outcome**

# Intended Recipients

The Parties

The Advisors

The Decision Maker

The Appeal Panel

# Other Recipients?

Friends of  
the parties

Parents

Law  
enforcement

Attorneys

Judges

Media

Social media

# Essential Elements

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Intentionally organized to enhance comprehension

---

Factually accurate

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Concise

---

Without editorial or opinion

---

Consistent format

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# Report and Evidence File



Summary of the Evidence



Compilation of the Evidence

# The Evidence File



Compilation of the evidence



organized intentionally and consistently



Divided into Appendices



Is attached to the report



Includes a procedural timeline



# Examples of Appendices



## Appendix A

Contains all of the party/witness testimony (e.g., transcripts, statements summaries, etc.) that the investigator deems relevant



## Appendix B

Contains all of the documentary evidence (e.g., text messages, SANE reports, photographs, etc.) that the investigator deems relevant



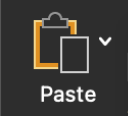
## Appendix C

Contains the remaining evidence deemed irrelevant by the investigator, but that is directly related to the allegations in the formal complaint



## Appendix D

The procedural timeline



# Structure of the Report



Overview of the Investigation

Statement of Jurisdiction

Identity of Investigators

Objective of the Investigation and the Investigation Report

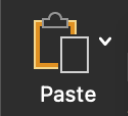
Prohibited Conduct Alleged

Witnesses

Evidence Collected

Summary of Evidence

Conclusion



# Report Structure Overview

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

- the names of the parties,
- the applicable policy(ies)
- the prohibited conduct alleged,
- the date, time, and location of the conduct,
- a brief description of the alleged misconduct



# Report Structure

## Statement of Jurisdiction

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1. Cite Jurisdictional Elements

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2. State all grounds for Jurisdiction

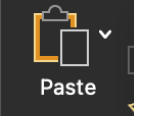


# Report Structure

## Identify Investigators

1. Identify the investigators by name

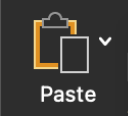
2. Investigator's training belongs in file, not in report



# Report Structure

## Objective of the Investigation & Report

1. This language should mirror the language in your policy or procedures.
2. State the objective of the investigation
3. Briefly state that all procedural steps were followed
4. Describe the purpose of the report.



# Report Structure

## Prohibited Conduct Alleged

1. List the allegations of prohibited conduct in the formal complaint.

2. Include definitions of prohibited conduct from institution's policy/procedures.

# Report Structure

## List Witnesses

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List those witnesses that were interviewed

---

List witnesses that were identified, but not interviewed

---

Simple List

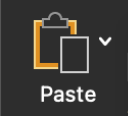
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Detailed List



# Example of a Detailed List

Witness Name	Witness identified by:	Information offered
John Doe	Reporting Party	Mr. Doe is the Reporting Party's best friend. He was with the Reporting Party the night of the reported incident.
Jane Doe	Investigators	Jane Doe is the Responding Party's roommate. It is believed that she saw the Reporting Party leave the Responding Party's residence immediately following the reported incident.

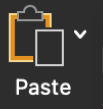


# Report Structure

## Evidence Collected

The final Title IX regulations require that all evidence obtained as part of the investigation that is directly related to the allegations in the formal complaint be shared with the parties and “made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing including for the purposes of cross-examination.”

In this section, list the Evidence or Refer to Appendices



# Report Structure

## Summary of Evidence

In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.

# Report Structure

## Conclusion

In this section, summarize next steps in the process, including any procedural pre-requisites for moving the matter forward to a hearing.

# Thank you!

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