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Crafting Clear and Compliant Reports

A Workshop for Education Investigators and Decision Makers

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Presenters



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Housekeeping

Our slides summarize key elements of relevant federal requirements and best practices necessary for a foundational training.

Practitioners should ensure they have an appropriate understanding of state and federal laws, regulations, agency guidance, and institutional policies specific to their matters.

This training is not legal advice—each institution and matter is unique, and laws are nuanced. Please consult institutional legal counsel on specific matters.

Hypotheticals are based on court cases or are fictitious; to ensure realism, some use fact patterns and language that are challenging and may not have clear resolution.

Questions/disagreement/discussion encouraged! Please do the breakout work (alone or with group).

Recording is not permitted.



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Share Out: Pre-Workshop Survey

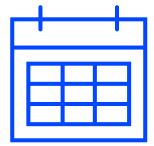
- What are you hoping to take away from this training today?
- What aspect of report writing do you find the most challenging?



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Agenda

- Foundations
- Structure
- Summarizing Facts/Evidence
- Creating Clarity: Grammar, Syntax, and Avoiding Bias
- Tricky Issues
- Findings/Analysis
- Additional Considerations



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Foundations

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Start at the Beginning



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Building a Framework: Structure



- *Report structure/components will vary:*
  - By institution
  - By type of alleged discrimination
  - By procedural posture/role
  - By policy, practice (e.g., templates)
  - By type/volume of allegations/evidence
  - By jurisdiction
  - By relevant laws/regulations
  - By regulators

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Roles

- Evidence Gatherer
- Factfinder
- Recommender
- *Decision Maker:*
  - Responsibility
  - Appeals



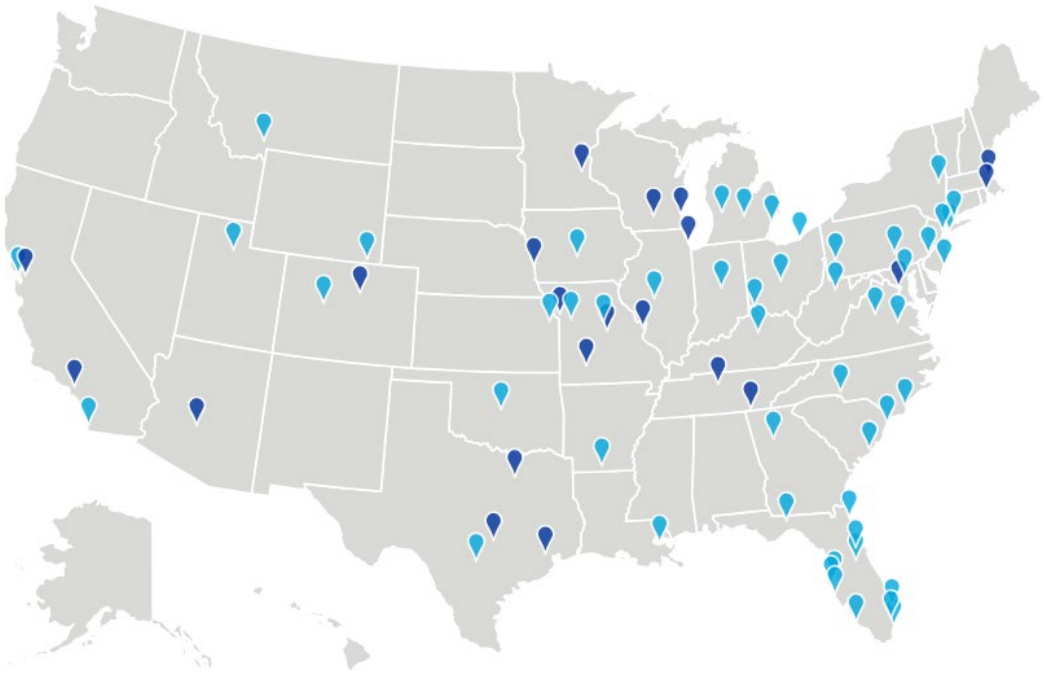
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Key Laws and Regulations

- Constitution of the United States (*e.g.*, First Amendment, Fourteenth Amendment)
- Americans with Disabilities Act (ADA)/Section 504 of the Rehabilitation Act
- Title VI of the Civil Rights Act
- Title IX of the Education Amendments
- Age Discrimination Act
- Federal Religious Liberty Rights/Laws
- Whistleblower-type Laws
- Employment-Specific Laws (Title VII, Age Discrimination in Employment Act)
- State constitutions, and state and local laws

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State Statutes, Local Laws



- Many states and localities have nondiscrimination rules that may apply
- May add nondiscrimination categories/definitions
- May be in tension with federal laws
- May have grievance procedure requirements
  - These requirements are **usually** much more flexible than Title IX's prescriptive procedures

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Example

- **Robust report/recordkeeping requirements**
  - **Title IX of the Education Amendments of 1972**
    - **Prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance**
    - **ED Title IX regulations are much more thorough than those for other prohibited forms of discrimination**

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What do ED regulations require of institutions under Title IX ("Sexual Harassment")?

- Compliance with nondiscrimination requirements (34 CFR § 106.44)
- Designation of a Title IX Coordinator (34 CFR § 106.8(a))
- Adoption, publication, implementation and notice of nondiscrimination policy and grievance procedures (34 CFR § 106.8(b)-(c))
- Preponderance of the evidence standard* (34 CFR § 106.45(b)(1)(vii))
- Investigative report (34 CFR § 106.45(b)(5)(vii))
- Written decision (34 CFR § 106.45(b)(7)(ii))
- Maintain records for 7 years for investigations, appeals, informal resolutions, training materials, supportive measures (34 CFR § 106.45(b)(10))
- Retaliation prohibited (34 CFR § 106.71)
- And more!

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Examples

- **Limited report/recordkeeping requirements**
  - **Title VI of the Civil Rights Act of 1964**
    - **Prohibits discrimination on the basis of race, color, and national origin**
  - **Section 504 of the Rehabilitation Act of 1973**
    - **Prohibits discrimination on the basis of disability**

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(Example) What do U.S. Department of Education (ED) Regulations require of institutions under Title VI?

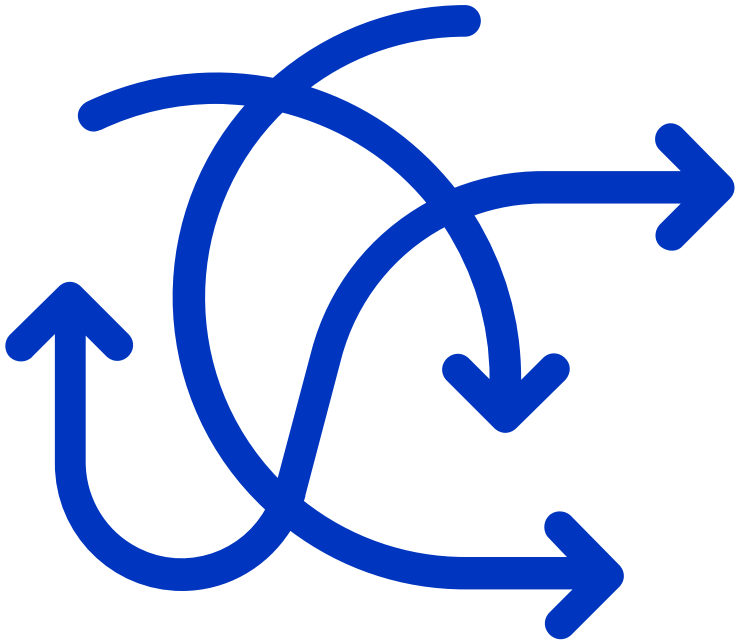
- Compliance with nondiscrimination requirements (34 CFR § 100.3)
- Keep and permit ED access to books, records, accounts, and other information (34 CFR § 100.6)
- Cooperate with investigations and enforcement actions by ED (34 CFR § 100.7)
- Retaliation prohibited (34 CFR § 100.7)

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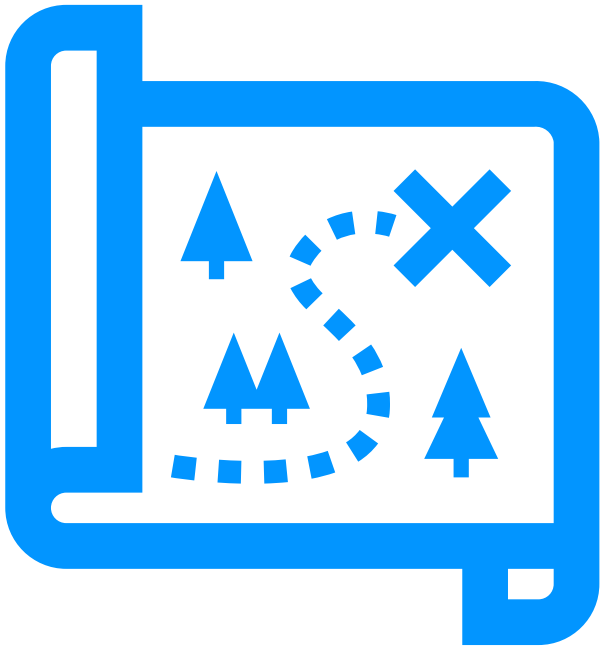
(Example) What don't Department of Education regulations require of institutions under Title VI?

- Requirement that educational institutions adopt and publish grievance procedures for Title VI complaints less proscriptive than Title IX



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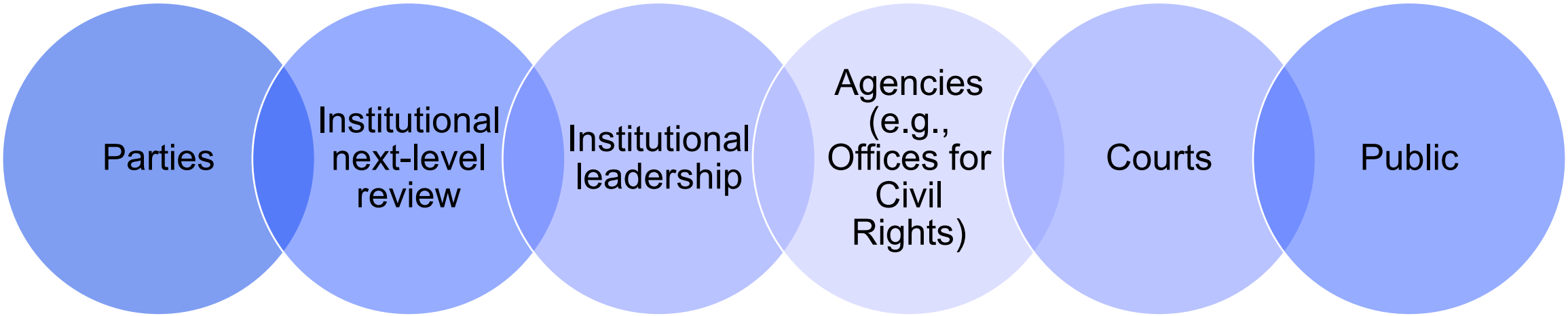
Filling the Gaps



- Enforcement action
- Case law, state law, miscellaneous laws on specific issues
- Institutional policies, procedures, and discretion

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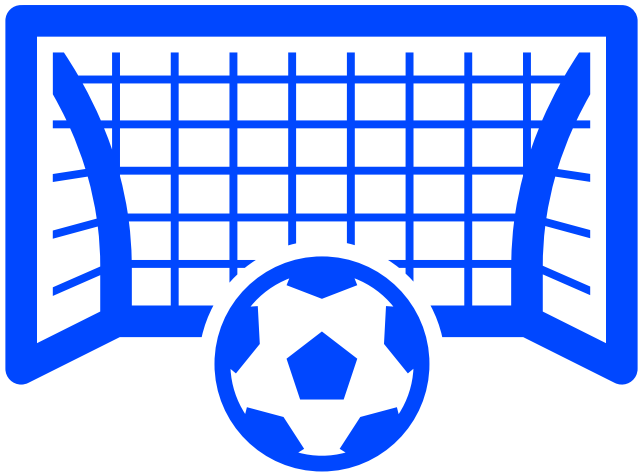
Who is our audience?



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Goals

- Outline/summarize the allegations of potential misconduct
- Describe steps taken in investigation/decision making
- Fairly summarize relevant evidence
- Potentially include analysis and determination



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Structure



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Questions to Consider: Format

- **Does your institution have a standard template for investigative reports?**
  - **If so,**
    - **Is the template effective?**
    - **Does your institution always use it?**



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Practical Points

- **Not all matters, or policies/procedures, require an exhaustive, detailed report.**
- **Consider institutional practice, policy/procedure, and resources. Consult other officials as needed to determine optimal approach.**

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Example – ED Title IX Regulations

- "Create an investigative report that fairly summarizes relevant evidence …" 34 CFR § 106.45(b)(5)
- "The written determination must include—
  - (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." (34 CFR § 106.45(b)(7))

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Typical Report Elements

- Information
- History of the case
- Allegations/potential violations
- Applicable policies/procedures
- Evidence gathered/considered
- Standard of evidence
- *(If applicable)* Evidence/Facts: Factual findings, credibility/weight assessments
- *(If applicable)* Decision maker:
  - Analysis and conclusion regarding responsibility on each allegation
  - Sanctions/remedies
- Next steps (*e.g.*, hearing, procedures/grounds for appeal)

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Information and History

- ***Complaint Information:***
  - Complaint date
  - Complainant's and Respondent's names and recipient IDs
  - Date assigned to Investigator(s) and Investigator(s) identity
  - Notice of Investigation and Allegations date

- ***Case History*** *(Relevant background necessary to understand the procedural posture of the matter)**:***
  - Brief description of parties (e.g., status as student, faculty, employee)
  - Brief description of relationship
  - Jurisdiction and scope of investigation
  - Purpose of report
  - Timelines (incident, investigation (notices, interviews, evidence collected, opportunities to review, etc.), hearing, appeal)

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Example: Procedural History Section

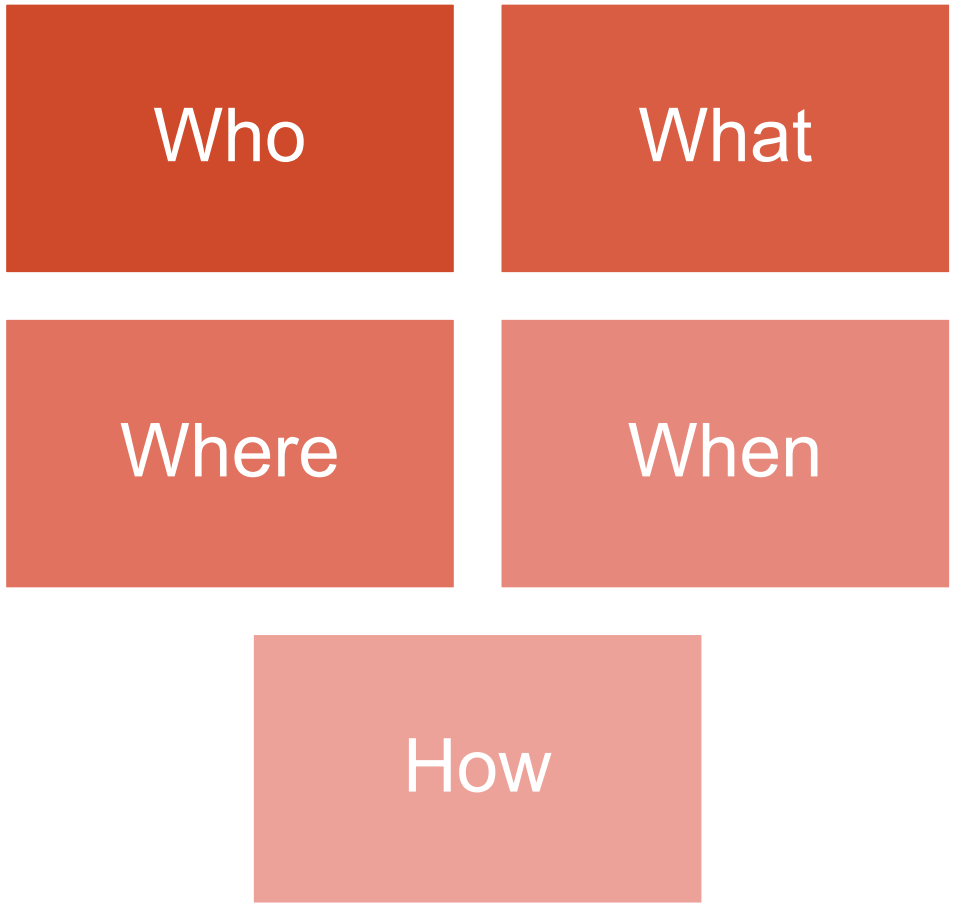
- ***Too sparse:*** **The investigation began in October and was completed in December. Several people were interviewed.**
- ***Alternative:*** **The University received Complainant Alice Wonderland's report on October 3, 2025, and issued a Notice of Investigation to both parties on October 8, 2025. The Investigator interviewed Complainant on October 15 and October 29, 2025; Respondent the Duchess on October 22, 2025; and four witnesses (Rabbit White, Cheshire Cat, Tweedle Dee, and Tweedle Dum) between November 3 and November 18, 2025.**

  Both parties were offered an opportunity to identify additional witnesses and evidence. The parties reviewed the evidence file from November 24 through December 1, 2025. Each was provided ten days to submit a written response; Alice requested an extension to fifteen days, which was granted, and the Duchess was also provided with a corresponding extension. This report was issued on December 19, 2025.



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Summarizing Allegations



- The alleged misconduct in the investigative report should align with that identified in the initial written notice (and any supplemental notices) provided to the parties

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Example: Summary of Allegations

- ***Too sparse:*** **Complainant alleges that Respondent harassed her based on disability. The conduct was unwelcome.**
- ***Alternative:*** **Complainant Peggy Ann McKay, a second-year medical resident, alleges that Respondent Dr. Sarah Cynthia Sylvia Stout, an Associate Professor of Surgery and Complainant's surgical rotation supervisor, subjected Complainant to unwelcome harassment based on disability at the Silverstein University Medical Center between January 12 and March 6, 2026.**

  Specifically, Complainant alleges that on January 21, 2026, Respondent said, "surgery is no place for a girl who gets sick so often"; that on February 4, 2026, Respondent said Complainant's evaluation "could go either way, depending whether you are in attendance in the coming weeks"; and that Respondent sent Complainant three messages reminding her that residents with the measles and the mumps, a gash, a rash and purple bumps should not attend clinicals in the hospital. Complainant alleges this conduct created a hostile, intimidating, and offensive environment that interfered with her clinical education, in violation of the Non-Discrimination Policy's prohibition on harassment based on disability.



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Policies & Procedures

- Cite all relevant policies/procedures
- *Typically:* Quote key provisions and provide enough information to document compliance with most relevant provisions
    - *Scope:* Provide facts demonstrating applicability to parties, location, alleged conduct
    - Definitions
    - Standard of review
    - Relevant (e.g., disputed) procedural requirements
- Attach copies of then-current versions

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Example: Policies and Procedures

- **The College considered Complainant's allegations under the Non-Discrimination Policy and Employee Non-Discrimination Procedures. The Non-Discrimination Policy provides:**
  - **Harassment based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or any other legally protected characteristic is strictly prohibited. Harassment includes unwelcome conduct—whether verbal, physical, or visual—that creates a hostile, intimidating, or offensive work environment or interferes with an employee's ability to perform their job.**
- **The Employee Non-Discrimination Procedures provide that all complaints alleging harassment by employees in violation of the Non-Discrimination Policy will be investigated and the evidence considered under a preponderance of evidence standard. (*See* Ex. 1, Non-Discrimination Policy; Ex. 2, Employee Non-Discrimination Procedures)**



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“Standard of Evidence”



Measure by which a policy violation is determined

(As to each element of a violation, what needs to be shown?)



Set by policy (sometimes law, regulation, guidance)



E.g., Preponderance of the evidence (more likely than not)

Clear and convincing evidence

Beyond a reasonable doubt



Preponderance of the evidence is most common

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Questions/ Discussion

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Summarizing Facts and Evidence



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Types of Evidence



Testimonial Evidence

Interviews with complainant, respondent, and witnesses

Written or recorded witness statements



Digital Evidence

E.g., emails, text messages, DMs, and social media posts

Metadata from electronic files

Logs from university platforms or systems



Documentary Evidence

Written statements or complaints

Other (*e.g.,* notes, receipts, handbooks, training materials, attendance records, diaries)



Physical Evidence

E.g., photographs, ID cards, clothing



Other Relevant Evidence

Medical or counseling records (with appropriate consent)

Prior complaints or disciplinary records (if relevant and allowed)

Expert opinions (*e.g.*, forensic analysis)

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Evidence Discussion Structure Options

- *By interview:*
  - Party accounts, then witness accounts
  - Chronological by interview
- *According to timeline:* Collect information for each fact/incident
- By element of alleged policy violation
  - *E.g.,* whether adverse action occurred, whether it was motivated by protected status or protected activity, whether it impacted ability to participate in programs/activities

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How do we summarize party and witness statements and evidence?



Consider whether witness-by-witness, chronology, topic, or other format best aligns with policy, procedure, and clarity considerations



Summarize statements and evidence related to *material* facts



If a transcript of the interview or a full memorandum of the interview is included, summary can be relatively brief

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Scenario:
Breakout Session 1 - Summarizing Testimonial Evidence

- Discuss summary drafting from the homework assignment
- Report-out to share from discussion



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Share-Out

- In this scenario, how would you organize your fact summary (e.g., by claim, chronologically)?
- What facts did you include/not include?
  - How do you determine how much detail to include?
  - Were there any facts you decided to footnote instead of including in the body of the summary?
- If not including all facts provided in your summary, what can you do to ensure it is clear that you considered all relevant information?
- Did you use quotations? If so, for which portions?



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Creating Clarity: Grammar, Syntax, and Avoiding Bias

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Tone, Voice, and Point of View



Objective and neutral



Word choice is paramount

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Investigator/Decision Maker's POV

- Investigators/decision makers should write investigative reports as a "neutral, detached observer"
    - ***Describing*** what the parties and witnesses told them versus ***repeating*** what the parties and witnesses told them
- *Avoid:* first-person statements as the author of the report

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Examples: Tone, Voice and Point of View

- **The Whos down in Whoville made too much noise. The Whos made the noise because they were feasting on pudding. The Grinch got a wonderful, awful idea—to impersonate Santy Clause.**

  Vs. The Grinch reported that the Whos down in Whoville made too much noise. He said that he noticed that the noise increased on Feast days. He recalled that he first thought about impersonating Santy Clause …

- **I attempted to contact Max to schedule an interview.**

  Vs. The Investigator attempted to contact Max to schedule an interview.



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Word Choice and Language

- Formal language over informal language
  - Refer to things as their proper name and people by their titles
    - *E.g.,* “Marijuana” over “weed” / “Complainant Doe” over “Jack” / “genitals” over “junk”
  - Full words instead of shorthand or contractions
    - *E.g.,* “could not” over “couldn’t” / “percent” over “%”

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Example: Using Care in Sanitizing Evidence, Quotations

- **During his interview, Piglet reported that, on several occasions, Pooh expressed frustration with Eeyore for spilling the honey and commented on Eeyore's age.**

  Vs. During his interview, Piglet stated that, on several occasions, Pooh made comments about Eeyore spilling the honey including: "Eeyore is too old to be around ," "Eeyore is senile—no wonder he knocked over the honey," and "I'm going to kill fing Eeyore if his old a** ever spills my honey again."***



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Active vs. Passive Voice

- *Active voice:* the subject of the sentence performs the action
  - *E.g.,* “Mike called Fred a racially offensive slur.”

- *Passive voice:* the action of the sentence is performed upon the subject
  - *E.g.,* “Fred was called a racially offensive slur by Mike.”

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Example: Active vs. Passive Voice

- **Students were required to say the pledge of allegiance or leave the classroom each morning.**
- **The School's Morning Announcements Protocol required all students to say the pledge of allegiance or leave the classroom.**



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Questions to Consider: Verb Tense

- **How do you approach verb tense in reports?**
  - ***E.g.,* always past tense?**
  - **Are there times you would vary from your general practice?**



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Verb Tense

- Generally, use past tense consistently
- Use discretion when switching tenses
  - When indicating present or future actions
    - *E.g.,* of the investigators, parties/witnesses
  - When discussing correspondence
  - Quotations

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Example: Pronoun and Clause Placement

- ***Pronoun placement:***
  - **Eloise and her Nanny walked through the lobby of The Plaza. After that, she jumped on the bed.**

    Vs. Eloise and her Nanny walked through the lobby of The Plaza. After that, Eloise jumped on the bed.
- ***Clause placement:***
  - **During the football game, Frog said that Toad grabbed Frog's leg.**
  - ***Vs. Frog said that, during the football game, Toad grabbed Frog's leg.***

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Example: Defined Terms and Consistent Naming

- ***Inconsistent:*** **The student reported the incident to her RA. Charlotte later told the Dean that Cavatica had already spoken with residential staff. The complaining party then met with OIE.**
- ***Consistent:*** **Complainant Charlotte A. Cavatica reported the incident to Resident Assistant Wilbur. Complainant later told Dean of Students, Goose, that Complainant had already spoken with Pig. Complainant then met with the Office of Institutional Equity ("OIE").**
- **One person should not appear as "the student," "Charlotte," "Cavatica," and "the complaining party" in the same paragraph. Choose one designation, define it once, and use it everywhere.**



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Example: One Idea Per Sentence

- ***Overloaded:*** **Respondent, who had been employed in the department since 2019 and who supervised three of the four witnesses interviewed, stated that he did not recall the March 12 meeting, although he acknowledged that he may have been present, and Complainant, by contrast, described the meeting in detail and said Respondent raised his voice.**
- ***Revised:*** **Respondent has been employed in the department since 2019. He supervises three of the four witnesses interviewed. Respondent stated that he did not recall the March 12 meeting, but acknowledged that he may have been present. Complainant described the meeting in detail and stated that Respondent raised his voice during it.**

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Questions to Consider: Citations and Footnotes

- **Does adding footnotes help the organization of your report?**
- **Are you putting pertinent information into the footnotes instead of in the body of the report?**
- **How/where do you cite to evidentiary materials?**
- **Are your citations to the evidentiary materials better suited in footnotes or in text (including parentheticals)?**



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Bias and Report Writing

- Consider your institution’s approach to identities
- Avoid assumptions, generalizations, exaggerations, and labels
- Use nouns and adjectives appropriately
    - Consider objective adjectives vs. subjective adjectives
- Focus on relevance
- Review word choice for potential bias markers
- Be as specific as possible

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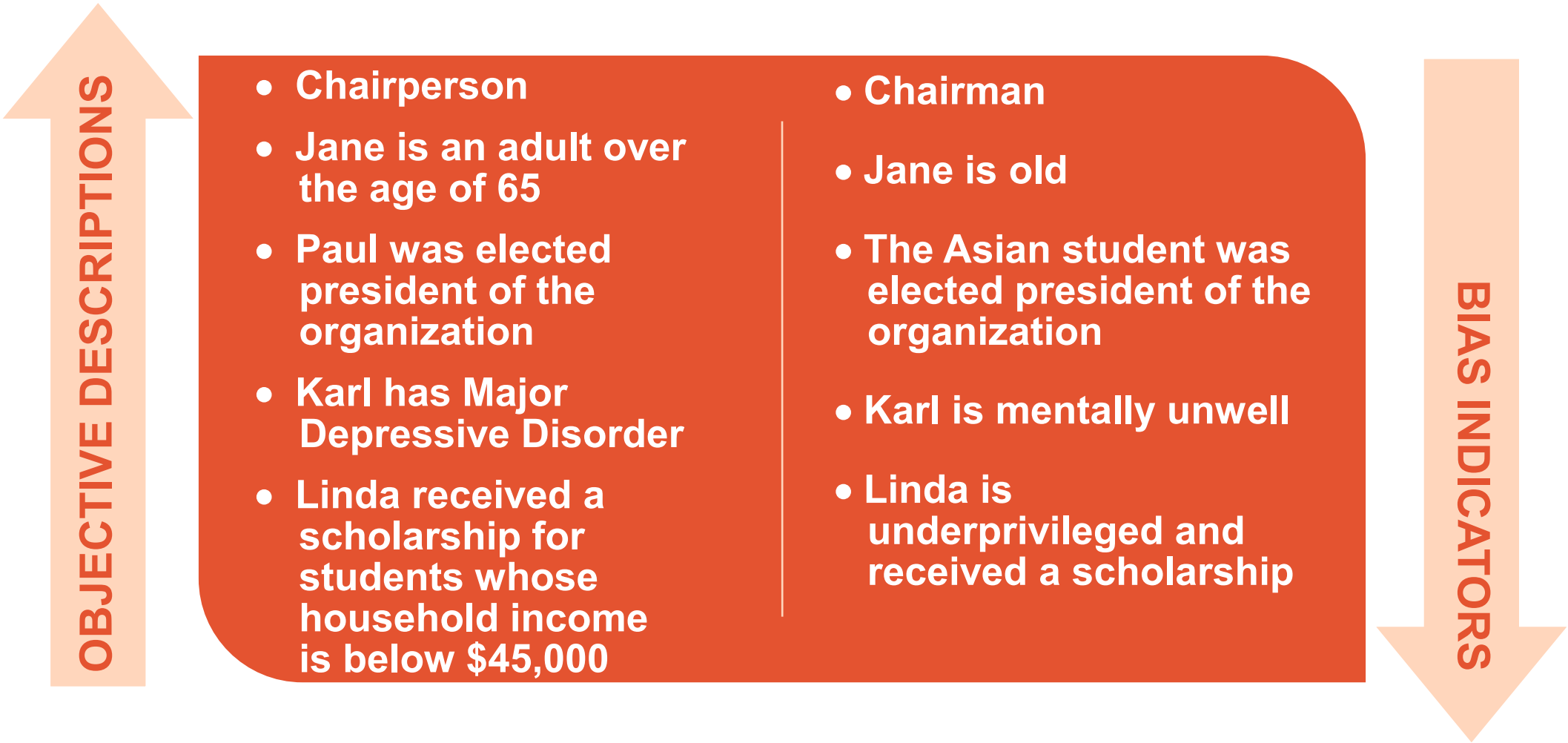
Practical Point

Have another person consider/proofread the investigation report before it is finalized. (In most cases/preferably, not someone who is otherwise involved.)

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Potential Bias Indicators vs. Objective Descriptions



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Example: Quotations and Characterization

- **Example: Complainant described her relationship with Respondent as "very close" and "platonic."**

  Vs. Example: Complainant described her relationship with Respondent: "We were always very close friends, but it was always strictly platonic."



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Identify the Issues in This Paragraph

“The incident at the bookstore was blown out of proportion. The manager, who has worked there for over 20 years without any complaints, simply asked the young man to leave because he was loitering. It had nothing to do with race. The store has a diverse staff, and the manager has even donated to minority charities in the past. The young man was wearing a hoodie and acting suspiciously, such that the manager was understandably concerned. The manager was doing his job, which includes ensuring individuals do not loiter in the store.”

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Identify the Issues in This Paragraph

"The incident at the bookstore store was ***blown out of proportion***. The manager, who has ***worked there for over 20 years without any complaints***, simply asked the ***young*** man to leave because he was ***loitering***. It had ***nothing to do with race***. The store has ***a diverse staff***, and the manager has even ***donated to minority charities*** in the past. The young man was wearing a ***hoodie*** and acting ***suspiciously***, such that the manager was ***understandably*** concerned. The manager was ***doing his job***, which includes ensuring individuals do not loiter in the store."

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Example: Revised Version

“An incident occurred at the bookstore involving a customer and the store manager. According to the manager, the customer was asked to leave due to concerns about loitering, in that he had been in the store for 30 minutes, picking up items from time to time, but not buying anything. The manager noted that recent training from the bookstore’s corporate office listed factors leading to shoplifting losses, and being in a store without purchasing or collecting items in a basket for 30 minutes was a risk factor. The customer, a young Black man, stated that he felt he was being treated unfairly and believed the action was racially motivated; he relayed that his white friend who came in with him had not been asked to leave.”

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Editing/Macro-Editing

- Does the overall structure and flow of the report make sense?
- Are there gaps in evidence, discussion of elements of the allegations, or other open questions that have not been explained?
- Is one side presented more or less favorably by the report itself?

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Editing/Macro-Editing *(cont.)*

- Can language be simplified?
- Can sentences written in passive voice be rewritten into active voice?
- Can language be formalized?
- Have terms been consistently designated?
- Is verb tense consistent and appropriate?
- Are grammar and punctuation marks consistent and appropriate?
- Are there any typos?
- Is formatting consistent/professional? (line-spacing, page numbers, headers/footers, justification, outline numbers/indents, font size, widows/orphans)?



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Discussion

- **What tips, tools, or devices do you have for shortening reports?**

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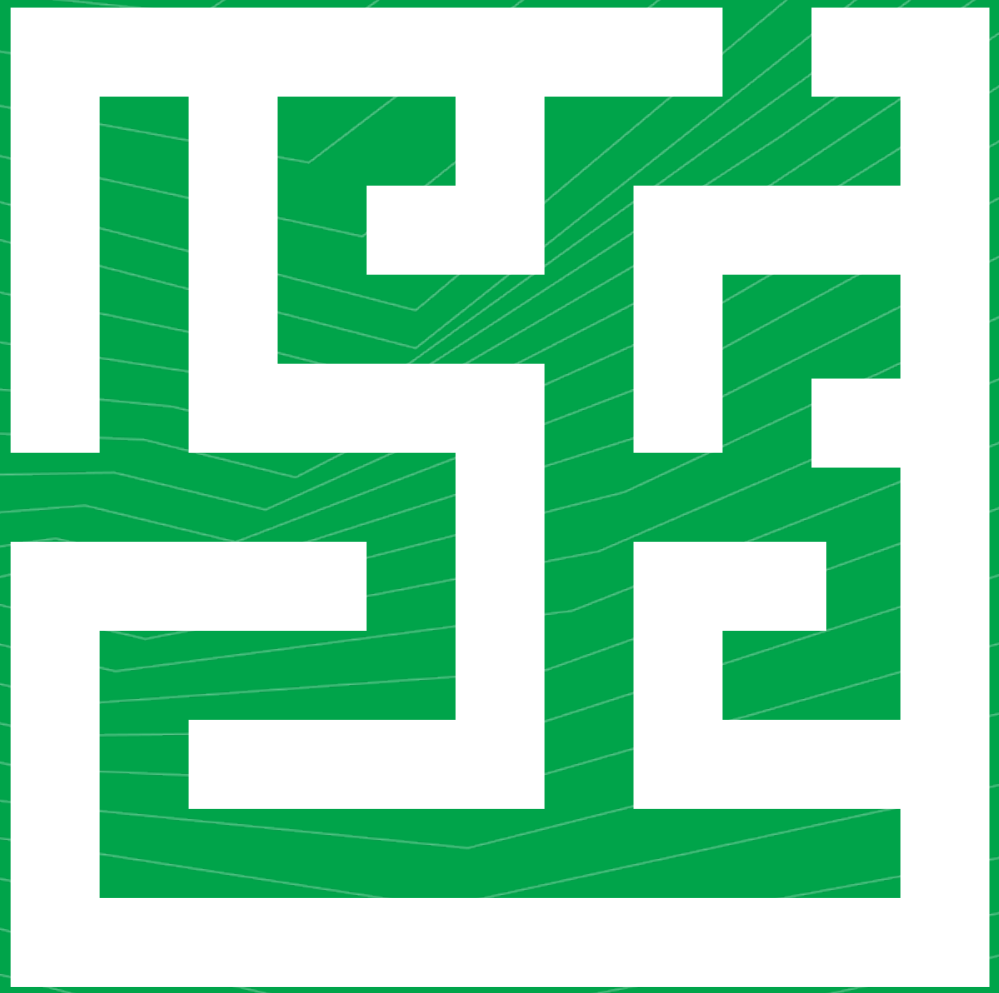
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Questions/ Discussion



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Tricky Issues in Summarizing Facts and Evidence

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What is the relevance of evidence?

Evidence is relevant if:

- **It has a tendency to make a fact more or less probable than it would be without the evidence; and**
- **The fact is of consequence in determining the action**

Relevance must be determined considering the form of violation alleged

May be directly related but not relevant to deciding alleged policy violation

***Evidence may be relevant but not considered: E.g.,* privileged/protected information**

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Example: Relevance

- Complainant alleged that Recognized Student Organization denied Complainant's application to participate in RSO activities because of Complainant's religion
- Student Organization is not a designated religious organization nor is religion part of its stated purpose/mission
- Student Organization is on probation for hazing new participants with late-night calls
- Student Organization has a high number of participants who actively practice as members of the Church of the Flying Spaghetti Monster, which is different from Complainant's religion
  - Last year, 100% of Student Organization's new participants were CFSM members
  - Complainant was the only applicant who was not a CFSM member
- Student Organization leaders display some CFSM small banners and pins on their desks in the RSO office
- Student Organization President indicated in his interview that Complainant was not selected for participation because, before Complainant applied to participate, Complainant criticized CFSM, suggesting that students should not apply to the Student Organization because of the link to CFSM



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Impermissible Evidence

- *Generally:*
  - Evidence protected under a legally recognized privilege, unless the privilege has been voluntarily waived
  - Evidence provided to a confidential employee, unless the confidentiality has been voluntarily waived
  - A party's or witness's health treatment records without prior written consent
  - Character evidence (vs. evidence to pattern, practice, habit, etc.)
  - Other policy/legal protection

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Example: Impermissible Evidence

During a large-scale protest of Once-ler production, roughly 40 students entered and occupied an academic building. Thneedville University campus security later obtained a list of students identified through a sealed arrest record and charged each of them with a Code of Conduct violation.

The Investigator's report stated: "Because Student was present in the building at the time of the occupation, in violation of the Code's prohibition on unauthorized occupation, the Investigator finds a violation occurred." The report did not describe what the student did while inside, whether the student refused an order to leave, or whether the student participated in planning or barricading — only that the student's name appeared on the list.

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Example – ED Title IX Regulations and Relevance

- **Evidence about the complainant's sexual predisposition or prior sexual behavior is not relevant (34 CFR § 106.45(b)(1)(iii))**
  - ***EXCEPT:*** **if the evidence of the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct OR is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based conduct**
- **The grievance process may not "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" (34 CFR 106.45(1)(x))**

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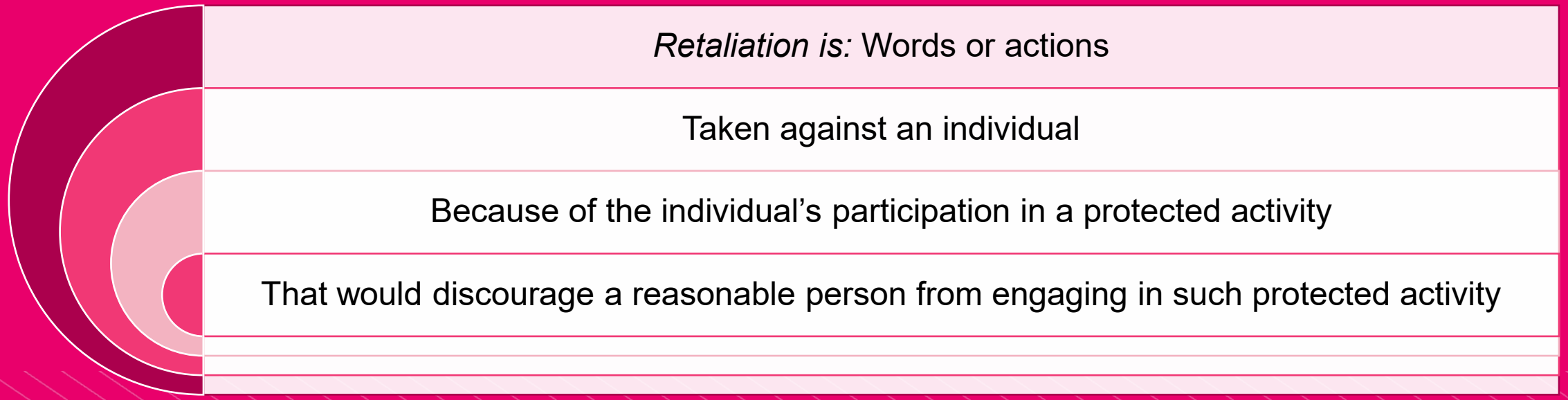
Evidence Gathered/Considered

Facts that matter	***Goals***	***How to do this?***
• Consider elements of alleged policy violation • Which facts are relevant to each element? • Which are disputed and undisputed?	• *Investigators:* identifying disputed/undisputed material facts • *Decision makers:* reaching resolution of disputed material facts (or, sometimes, on appeal, procedural issues)	• Show your work • Explain as needed (*e.g.*, if emphasized by a party) irrelevant information not considered • *Decision makers*: Explain your credibility assessments

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Practical Point: Analysis of Relevance

- **Break down elements of a policy violation to analyze relevance.**
- **E.g., policy definition: *Retaliation is defined as acts or words taken against an individual, because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in such protected activity.***



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Direct vs. Circumstantial

Direct — Actual evidence of a fact, circumstance, or occurrence proves a fact in question without presumption or inference

- *E.g.,* testimony of a witness who observed and perceived event in question (see, hear, touch)

Circumstantial (indirect) — Information which, based on logic or reason, is so closely associated with the fact to be provided that proof may be inferred

- *E.g.,* a receipt suggesting a party was not where they claimed to be at a material, particular time

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Circumstantial



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Direct



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Practical Points

- **Strict, court-like rules of evidence rarely apply in institutional investigation and hearing processes.**
- **If your role is only to report on facts gathered, consider erring on the side of inclusion. In most cases, if evidence gathered in an investigation is ultimately irrelevant, privileged, or otherwise inappropriate for consideration, it can generally be disregarded in decision making (and its treatment clarified in a file, report, or written decision).**

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Addressing Conflicting Evidence

- Conflicting evidence related to whether an element of the alleged violation occurred is relevant
- Include both sides
- Consider how/where to present information based on policy, practices, posture of matter (e.g., disputed and undisputed facts section, in analysis)

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What is credibility of evidence?

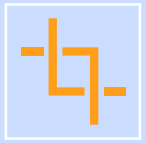


The extent to which something is believable, trustworthy, or convincing



Critical where:

- **Material facts are disputed**
- **Witnesses/evidence inconsistent on material facts**



Not necessarily binary/absolute

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How do we assess credibility?

- Plausibility—Believable?
- Corroboration—Other evidence?
- Consistency
- Demeanor
- Motive to falsify
- Material omission
- Contemporaneous
- First-hand knowledge
- Influence of others
- Bias (overt/unconscious)
- Behavior after the alleged misconduct is reported
- History of similar behavior, pattern, practice, habit

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Example: Writing to Credibility

Peter alleged that Wendy assaulted Peter at a campus protest because of Peter's protected status. Peter provided a video of the protest, time-stamped 11:30 a.m., showing the back of an individual with long, green hair holding a sign, and the sign hitting Peter in the face. Peter said the individual was Wendy, whom he recognized from having met her socially on several occasions.

Wendy denied being at the protest. Wendy acknowledged being acquainted with Peter and that she had long, green hair at the time of the protest. Wendy reported that, at 11:30 a.m., she was at the hair stylist, which took over an hour because she had to wait for her friend, Tinkerbell, to get her hair done first at the salon. Wendy reported leaving the salon at 12:30 p.m. The Investigator asked Wendy to provide contact information for Tinkerbell, stylist, and/or salon; the Investigator asked Wendy to obtain confirmation of her appointment, such as an email/text confirmation, or receipt or credit card statement showing the time of the payment. Though Wendy responded that she would provide this information, and the Investigator made a second request, Wendy did not do so. Following the second request, Wendy stopped responding to the Investigator's attempts at communication.

Peter identified Wendy as being present at the protest. It is undisputed the two are acquainted. The video does not show the face of the individual holding the sign, though it does show hair similar to Wendy's. Though Wendy said that she was at the stylist with others at the time of the assault, she did not identify evidence of her appointment or the time it ended despite agreeing to do so. Therefore, the Investigator finds that Peter's account should be credited, such that it is more likely than not that Wendy was present at the protest holding the sign that hit Peter in the face.

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More Tricky Evidence

Refusal to answer/testify/ provide information	***"New" evidence***
• Generally, not in and of itself evidence • Negative inference may/may not be permissible • Consider other available evidence • Note refusal in the report	• May impact weight/credibility • May require additional investigation • Consider reason it is "new" • Where timing is unusual, note in the report

- *Consult policies, procedures, and appropriate officials as needed*

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How do we assess "I don't remember"?

True loss of memory may occur due to, e.g.:

- Trauma
- Passage of time
- Lack of attention

Balance:

- Memory loss alone does not equate to a lack of credibility
  - Recollection/testimony need not be linear
- Possible to remember some information and not other information
- Inexplicable memory loss as to adverse details, while memory of helpful details, may indicate a lack of credibility
- May go to weight

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Also Tricky: AI-Generated or Potentially Altered Evidence

- *Consider:*
  - Unnatural lighting or shadows, blurry areas, inconsistent skin tone/texture/movement
  - Credibility (*E.g.,* context, contrary evidence or inconsistency with other evidence, motive, pattern)
  - Detection technology?
  - Any relevant procedures (*E.g.*, for AI-detection, separate disciplinary procedures)

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Practical Points

- **Avoid speculation**
- **If evidence is not available but may have been significant, address its absence**
- **If something is unknown/undeterminable, state as much (if material, consider further investigation)**
- ***Remember:*** **Report documents the investigation, which, depending on policy, makes a recommendation/determination based on the evidence available at the conclusion of investigation.**

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Example: Investigator Neutrality and Documenting Process

An employee was accused of inappropriate conduct toward students. The Investigator drafted a report recommending termination, but internal notes and testimony from those involved in the process later suggested that several people reviewing the file were not convinced the allegations were substantiated. The employee was never told what the specific allegations were and was not interviewed or given a chance to respond before the decision was made.

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How should you address the parties' criticisms of the investigation?



Incorporate new or salient points as necessary



If a party demanded more interviews or collection of other evidence, and you elected not to pursue, explain why



Know the rights of the parties to review report

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Questions/ Discussion



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Bringing it all Together: Findings and Analysis

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Discussion

- **When do you start writing the report?**

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Analysis and Determination

IRAC:

- ***I****ssue*– restating the question that needs to be answered (*i.e.*, whether a policy violation occurred)
- ***R****ule*– outlining the relevant elements of the policy/procedure that is at issue
- ***A****nalysis*– resolving factual disputes under the evidentiary standard outlined in institutional policy/procedures and applying the facts to that rule
- ***C****onclusion*– simple and definitive response to the issue statement

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Example: Outcome

Thus, the Decision Maker finds that a preponderance of the evidence indicates *that:*

- **After Administrator filed a complaint against Faculty Member, Faculty Member's criticism of Administrator became more frequent and was perceived by witnesses as more severe.**
- **Faculty Member is in a position of influence over Administrator's performance evaluations and salary, and gave Administrator a negative performance review following the complaint, though others provided positive reviews.**
- **Administrator ceased attending Department meetings at which Faculty Member would be present after Faculty Member questioned Administrator's report in a sarcastic manner at a meeting following the complaint.**
- **As such, the Decision Maker finds it is more likely than not that Faculty Member took adverse action against Administrator in response to Administrator's complaint, which impacted Administrator's participation in Institution programs or activities. Therefore, the Decision Maker finds that Faculty Member violated [*policy(ies)*] by engaging in retaliation against Complainant.**



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Example: Departing from Recommendations

Miss , a former lecturer, alleged the university violated her due process rights. An internal Academic Freedom Council determined she "was fired for the content of her class." A separate faculty appeals hearing body reached the same conclusion. Dr. Trunchbull, the final decision maker, proceeded with termination without addressing either body's findings in the decision letter.

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Scenario: Breakout Session 2 - Findings of Fact

- **Consider the summaries of evidence collected.**
- **Generate chart together.**
- **Make necessary findings of fact.**
- **Provide an explanation to support how you reached particular findings of fact.**



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Share-Out

- **What sources of evidence did you put in each column?**
- **What were the most relevant facts as to each element? (Which did you discuss the most?)**
- **What findings of fact did you make and what was your support (including facts you might have assumed)?**
- **How would you structure this report?**
- **What can you share about your credibility determination/paragraph assessing credibility?**



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Next Steps



- *Outline what will occur next in the matter:*
  - What procedurally can the parties expect?
  - If a determination has been made, what are the grounds for a party to appeal?
  - If the report is the last step and the matter concluded, consider saying so

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Questions/ Discussion



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Additional Considerations

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Appendices/Exhibits

- Policies and procedures
- Interview transcripts
- Written submissions
- Documentary evidence
- Printout/screenshot or reference to location of digital evidence

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Questions to Consider: Confidentiality

- **What information in your report is protected by FERPA, HIPAA, state privacy law, employment law, collective bargaining agreements, Title IX or your own policy?**
- **Is information otherwise sensitive/personal? (e.g., witness identity?)**
- **Does protected information go to elements of alleged misconduct, credibility, consistency, important context?**
- **Is privacy-protective language obscuring evidence the parties need in order to respond meaningfully?**
- **Who will receive the report — the parties, advisors, a decision maker, an appeal officer, counsel, or a public records requester — and does each need the same version?**



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Example: Writing to Protect Confidentiality

- ***As written:*** **Witness 3, Yosemite, said he learned about the incident from his roommate, Bugs, who is on academic probation and is also a complainant in a separate Title IX matter involving Respondent Elmer alleging conduct that occurred after that at issue here. Yosemite said Bugs has been in counseling at the Student Health Center since that separate incident. Yosemite said he had no firsthand knowledge of the events described in the allegations**
- ***Written to protect confidentiality:*** **Witness 3 stated that he learned about the incident from another student, who is not a party to this matter but who is a complainant in another matter involving Respondent Elmer alleging conduct that occurred after that at issue here. Witness 3 stated that the other student described the incident to Witness 3 on the evening of March 12. Witness 3 had no firsthand knowledge of the events described in the allegations.**



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Redaction?

- *Consider:*
  - Confidentiality requirements
    - Multiple parties, witnesses, Title IX vs. other
  - Personal/sensitive nature of information being considered
  - Whether information being considered for redaction is relevant to a determination
    - Does it go to elements of alleged misconduct, credibility, consistency, important context?
  - Impact on clarity
  - Who will have access
    - Does each need the same version?
  - How to document redactions
    - Consistency between report and exhibits

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Example: Redaction

- ***Witness statement:*** **"I think [Respondent] Taz has bipolar disorder. Taz lies a lot when he's manic. When he's manic, he starts talking really fast and loudly, and he stays up all night like he's on cocaine. He once told me that his mother won a game show, but, when I checked the website for the show, I didn't see her name as a winner. My sister, who is also a student here, has bipolar disorder, and I've read a lot about it, so I recognize the symptoms. I also saw Taz's medicine cabinet and saw he had antipsychotics in there."**



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Example: Consistency Between Report and its Exhibits

- ***The problem:*** **The body of the report refers to "another student" and "a staff member in the department," but Exhibit 7 attaches the unredacted email thread in which both individuals are named, and Exhibit 9 includes a screenshot showing a third student's phone number.**
- ***The fix:*** **Redact identifying information in the exhibits to match the level of protection used in the body of the report. Note each redaction and the reason for it — for example, "Name of non-party student redacted; not relevant to the allegations." Keep an unredacted master file in the investigative record so the institution can reconstruct what was withheld.**
- **Confidentiality is only as strong as the least protected document in the packet.**



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Questions/ Discussion



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Takeaways

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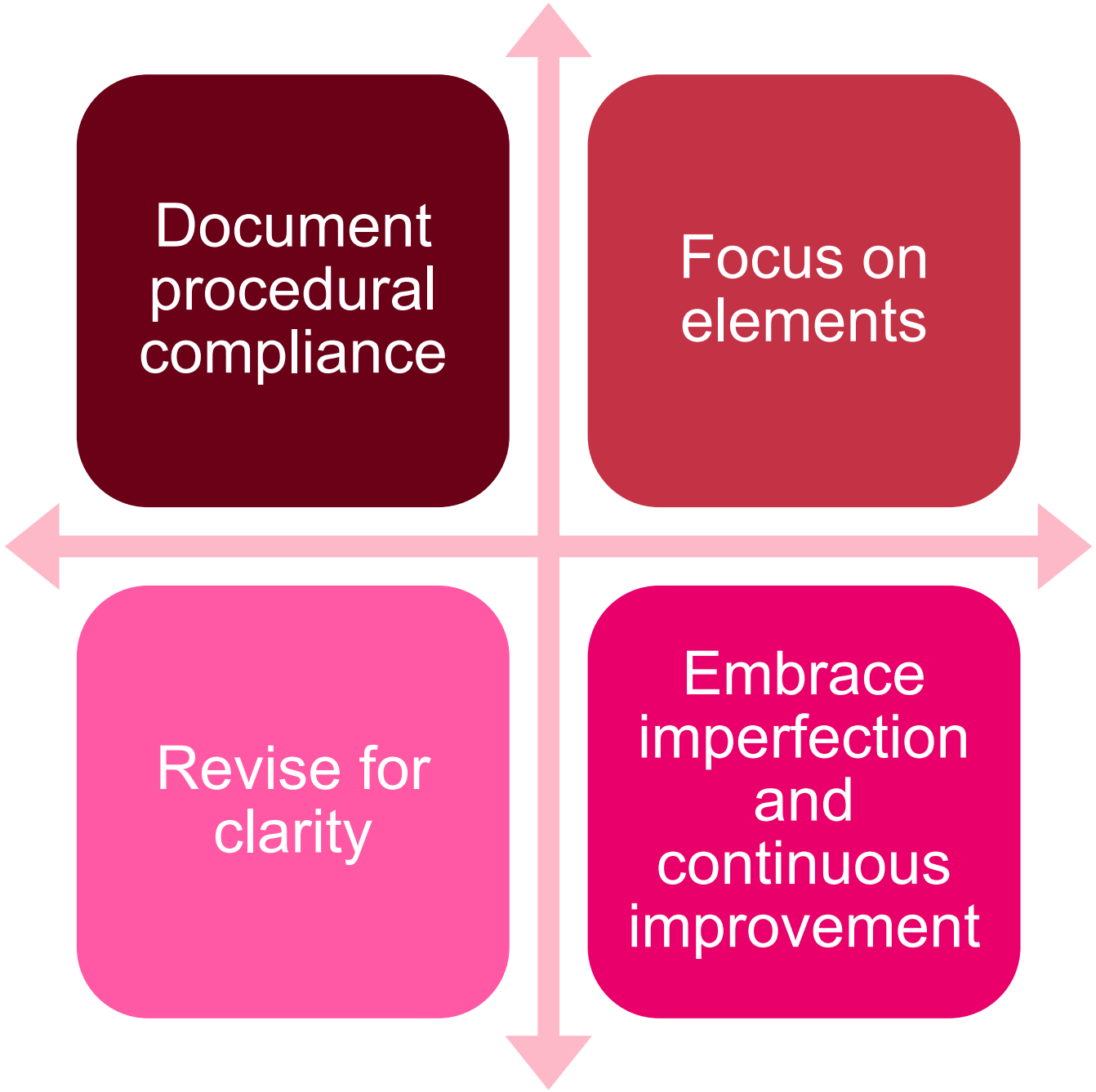
Closing Discussion

- **What are some of your takeaways from this training?**
- **What outstanding questions do you have?**



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Wrap-Up



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AMA (within reason) OPTIONAL



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