

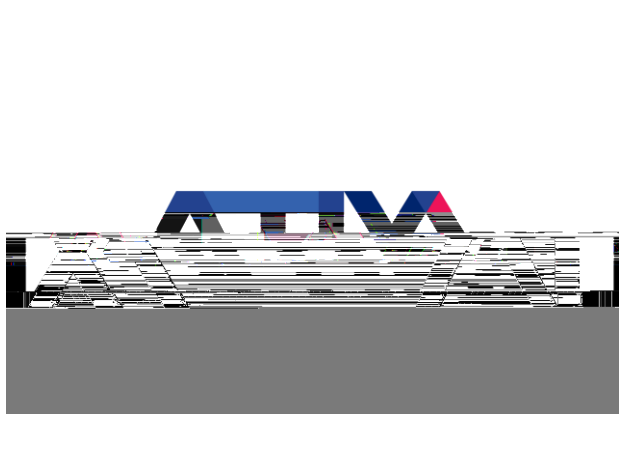
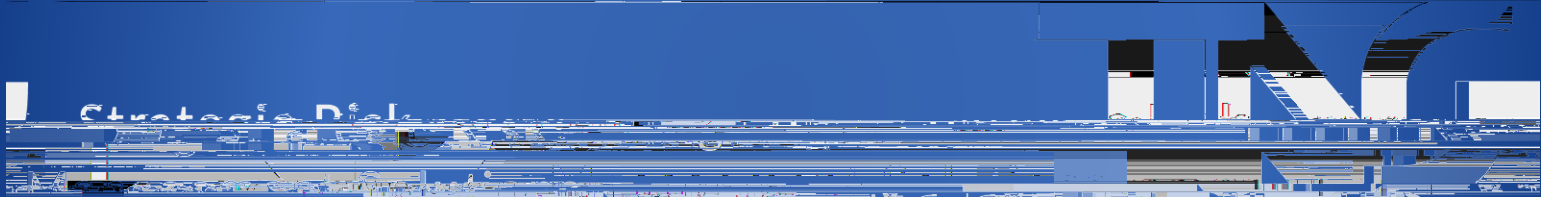


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Civil Rights Investigator Two

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TITLE IX NOTICES OF PROPOSED RULEMAKING 2022 & 2023



NPRM PROCESS TIMELINE

July 2022:

September 2022:

April 2023:

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Remember: As an Investigator, you are more responsible than the integrity of the process!

TITLE IX







10 STEPS OF AN INVESTIGATION

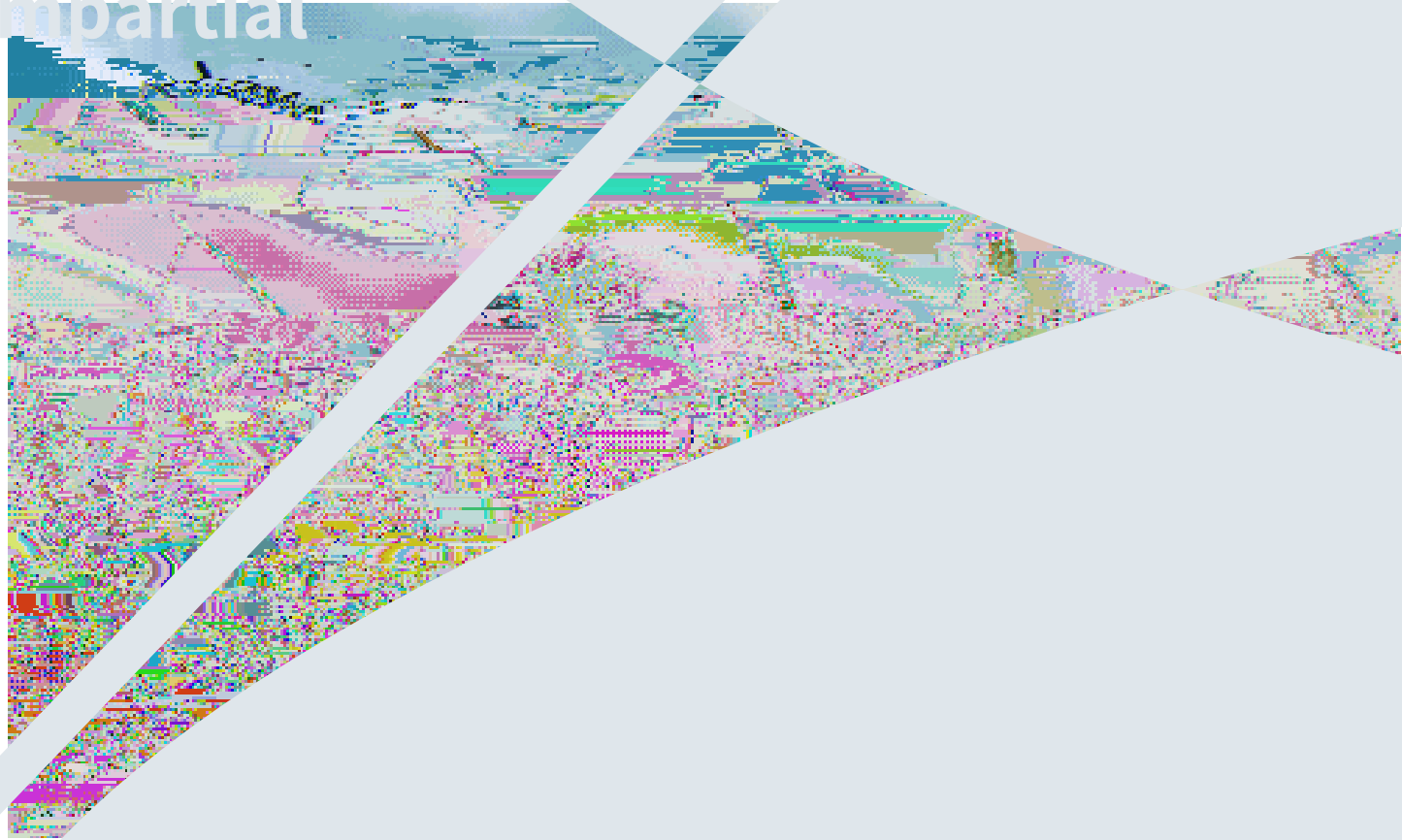


10 STEPS OF AN INVESTIGATION



THE GOAL OF THE

Impartial



WHAT IS DUE PROCESS?

EVOLUTION OF DUE PROCESS

Evolution of Due Process in education

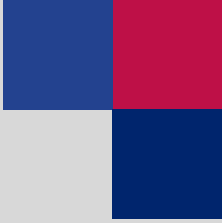
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DUE PROCESS IN PROCEDURE



DUE PROCESS IN DECISION

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EFFECTIVE INVESTIGATIONS

CIVIL RIGHTS INVESTIGATION MODEL HALLMARKS

Investigation is a critical part of the Title IX grievance process

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A NOTE ABOUT TERMINOLOGY

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A NOTE ABOUT TERMINOLOGY (CONT.)

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PROMPTNESS

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TITLE IX, CLERY ACT, VAWA SECTION 304

CLERY ACT AMENDMENT: VAWA SECTION 304

VAWA Section 304 created extensive new policy, procedure, training, education, and prevention requirements for:

[Y† 7¥—

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OCR GUIDANCE

Withdrawn:

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OCR GUIDANCE

Still in effect:

TITLE IX REGULATIONS

TITLE IX REGULATIONS (CONT.)

GRIEVANCE PROCEDURES

Must include:

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JURISDICTIONAL ISSUES

-
-

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JURISDICTIONAL ISSUES (CONT.)

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TITLE IX REGULATORY REQUIREMENTS

actual knowledge

not

deliberately indifferent

-
-

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TITLE IX REGULATORY REQUIREMENTS (CONT.)

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TITLE IX REGULATORY REQUIREMENTS (CONT.)



106.30 DEFINITIONS SEXUAL HARASSMENT







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HOSTILE ENVIRONMENT:
GŁ >&Ž [&Bh G // &E V&d&

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HOSTILE ENVIRONMENT: TOTALITY OF THE CIRCUMSTANCES (CONT.)

SEXUAL ASSAULT* (CONT.)

Statutory Rape

Note:

DATING VIOLENCE



DOMESTIC VIOLENCE

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DOMESTIC VIOLENCE (CONT.)

STALKING

Course of conduct

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STALKING (CONT.)

Reasonable person

Substantial emotional distress

R°toÅt Á°toÅt Á°toÅt , μ³ Èÿ È†ÄÄ†ÈËÿ ÆÈμ Õμ°È†
o³ Ûμ³ † Å/ÆÄÈ ² †³, ² †³ ÈÄÿÿÈÄ



INVESTIGATING RETALIATION CLAIMS

RETALIATION: BASIC LEGAL PRINCIPLES



INVESTIGATING RETALIATION CLAIMS: KEYS TO UNDERSTANDING

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RETALIATION AND ADVERSE ACTION

Common definition of adverse action:

very broadly

INVESTIGATING RETALIATION CLAIMS: REBUTTING THE INFERENCE



INVESTIGATING RETALIATION CLAIMS: IS THE EXPLANATION LEGITIMATE?

Factors to consider:

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INVESTIGATING RETALIATION CLAIMS IS THERE EVIDENCE OF PRETEXT?

Factors to consider:

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OTHER CIVIL RIGHTS OFFENSES

OTHER ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION

Sexual Exploitation

ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)

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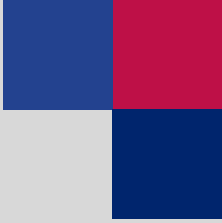
ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)

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OTHER CIVIL RIGHTS OFFENSES

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OTHER CIVIL RIGHTS OFFENSES (CONT.)



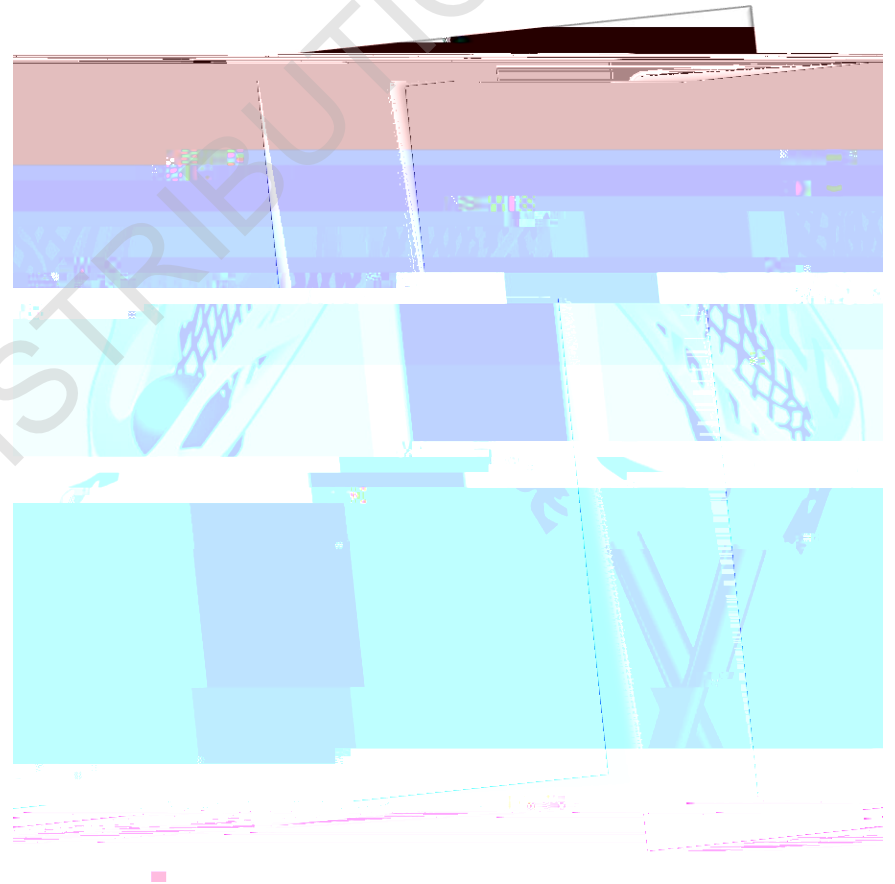
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ISSUE SPOTTING

CONSIDERATIONS IN ISSUE SPOTTING

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TRAVIS AND JUSTIN



TRAVIS AND JUSTIN

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DEB



DEB

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CONSENT CONSTRUCT



OVERVIEW OF THE THREE QUESTIONS

FORCE

1. Was force used by the Respondent to obtain sexual or intimate access?

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FORCE (CONT.)

Types of force to consider:

Physical violence:

Threats:

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FORCE (CONT.)

Types of force to consider:

Intimidation:

Coercion:

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INCAPACITY

2. Was the Complainant incapacitated?

INCAPACITY (CONT.)

lack the capacity

in light of all the facts available

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BEHAVIORAL CUES

Evidence of incapacity context clues:

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PRIOR KNOWLEDGE CONSTRUCT

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SOME FACTS ABOUT ALCOHOL



COMMON FACTORS



INCAPACITY ANALYSIS



CONSENT ANALYSIS

3. What clear words or actions by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

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CREATING TIMELINES

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TIMELINE CONSTRUCT



TIMELINE CONSTRUCT (CONT.)

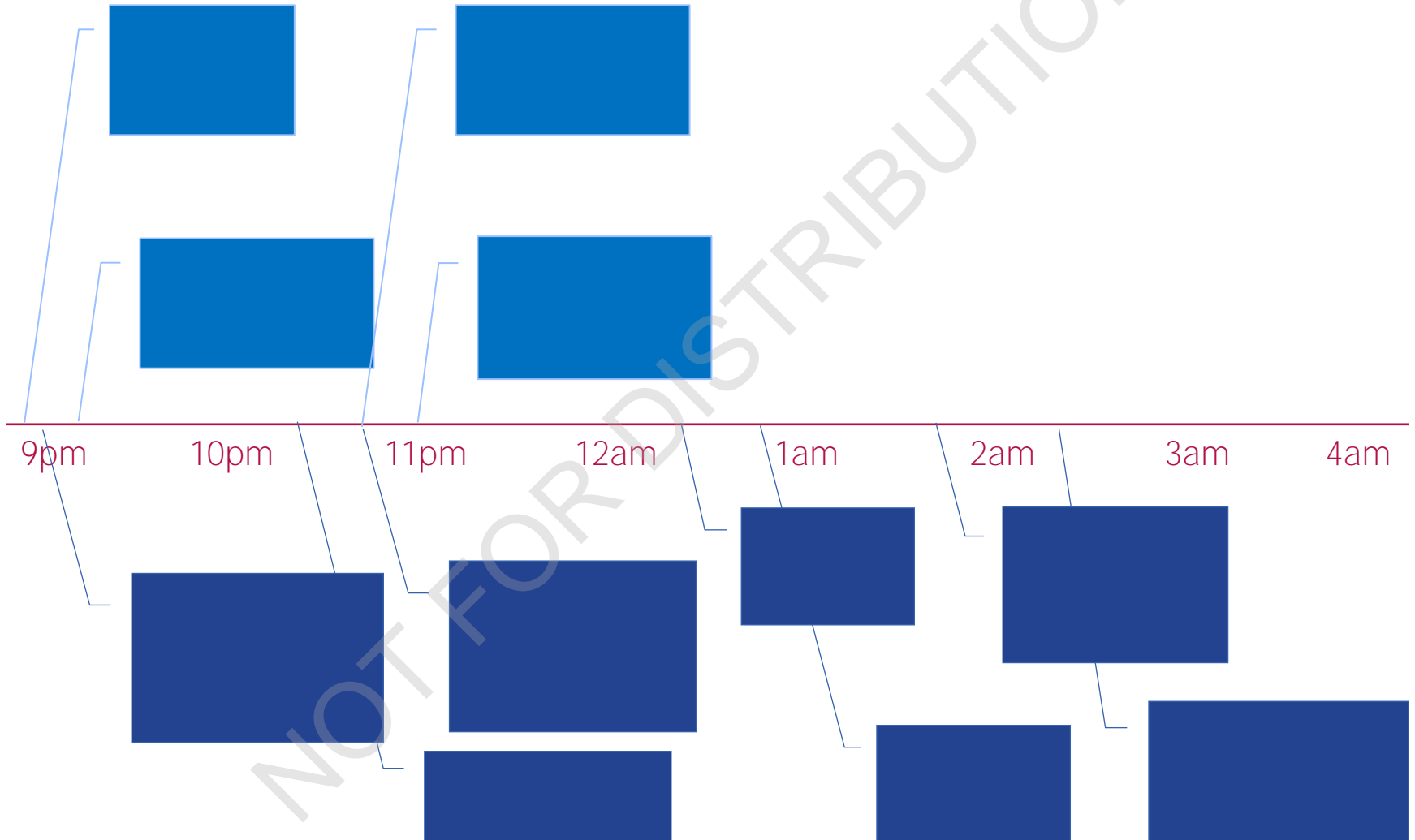
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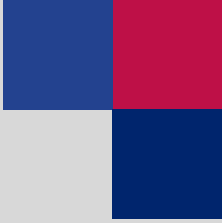




CREATING A TIMELINE EXAMPLE

CREATING A TIMELINE EXAMPLE (CONT.)





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CASE STUDY

AMY

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AMY

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TODD

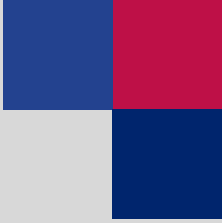
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TODD



TODD





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TRAUMA AND INVESTIGATIONS

WHAT IS TRAUMA?

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WHAT IS TRAUMA? (CONT.)

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MEMORY AND TRAUMA



TRAUMA & INTERVIEWING

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TRAUMA & INTERVIEWING (CONT.)

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TRAUMA & INTERVIEWING (CONT.)

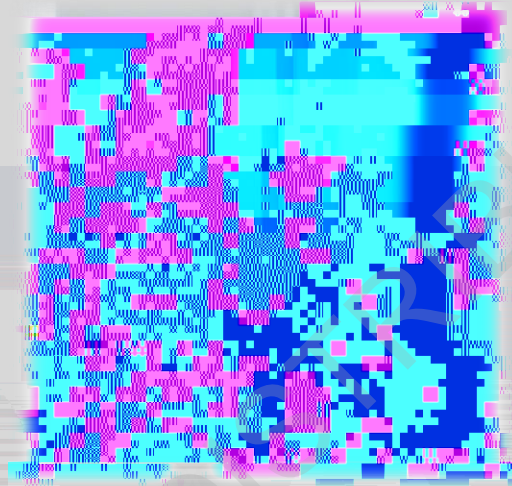
impartial

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TRAUMA & CREDIBILITY

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INVESTIGATION STRATEGY

STRATEGY IS KEY



OTHER ELEMENTS TO CONSIDER IN STRATEGY

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WHEN TO INTERVIEW PARTIES AND WITNESSES

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STRATEGY EXERCISE



NOTETAKING AND RECORDKEEPING

WHAT KINDS OF NOTES SHOULD BE KEPT?

NOTETAKING



NOTETAKING (CONT.)

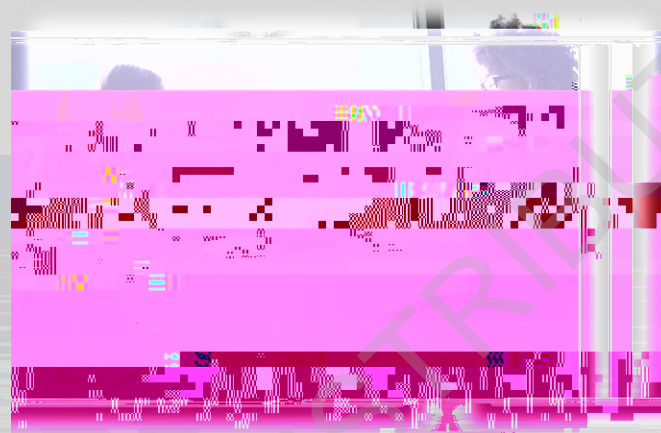


NOTETAKING (CONT.)

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RECORDKEEPING (CONT.)

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MEETING CONSIDERATIONS

THE ENVIRONMENT



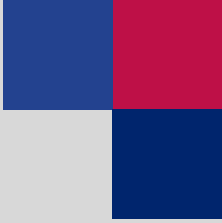
THE INVESTIGATORS

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MANAGING EXPECTATIONS

Be sure the parties understand parameters of the policy, what it does and does not cover, how the process plays out, and what process can and cannot accomplish



QUESTIONING SKILLS & GUIDELINES

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QUESTIONING GUIDELINES

Take the complaint from start to finish through a process of broad to narrow questions and issues that need to be addressed.

CONDUCTING INTERVIEWS

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INTERVIEW GUIDELINES

CONDUCTING INTERVIEWS (CONT.)

CONDUCTING INTERVIEWS (CONT.)

CONDUCTING INTERVIEWS (CONT.)

At the end:

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IMPACT OF NON-PARTICIPATION (CONT.)

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HIT THE G.A.S.

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GATHER THE EVIDENCE

ASSESS CREDIBILITY

COMMON ERRORS IN ASSESSING CREDIBILITY

COMMON ERRORS IN ASSESSING CREDIBILITY (CONT.)

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CREDIBILITY OVERVIEW

Corroboration

Inherent Plausibility

Motive to Falsify

FACTORS TO CONSIDER FOR CREDIBILITY

Corroborating Evidence

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FACTORS TO CONSIDER FOR CREDIBILITY

Inherent Plausibility (Cont.)

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FACTORS TO CONSIDER FOR CREDIBILITY

Motive to Falsify

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FACTORS TO CONSIDER FOR CREDIBILITY

Past Record

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FACTORS TO CONSIDER FOR CREDIBILITY

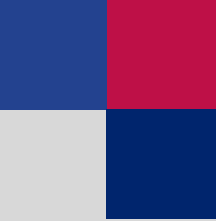
Demeanor

CREDIBILITY ASSESSMENTS IN INVESTIGATION REPORTS

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SYNTHESIZE AREAS OF DISPUTE

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ELEMENTS OF THE INVESTIGATION REPORT

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ALSO INCLUDE IN THE INVESTIGATION REPORT

FOCUS ON WHAT IS NOT KNOWN,
RATHER THAN IS KNOWN





BIAS, PREJUDICE, AND CONFLICT OF INTEREST

WHAT ARE BIAS AND PREJUDICE?

Bias

Prejudice

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COMMON FORMS OF BIAS WITHIN INVESTIGATIONS

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IMPACTS OF BIAS WITHIN INVESTIGATIONS

COMMON FORMS OF PREJUDICE WITHIN INVESTIGATIONS



IMPACTS OF PREJUDICES WITHIN INVESTIGATIONS

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BIAS AND PREJUDICE COMMON IDENTITIES IMPACTED

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CONFLICTS OF INTEREST

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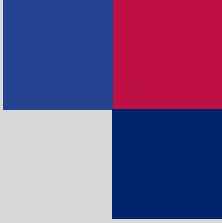
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MITIGATING BIAS, PREJUDICE & CONFLICTS OF INTEREST IN INVESTIGATIONS

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MITIGATING BIAS, PREJUDICE & CONFLICTS OF INTEREST IN INVESTIGATIONS (CONT.)

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INCLUSIVE INVESTIGATIONS

BIAS-FREE WRITING

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TIPS FOR INCLUSIVE INVESTIGATIONS

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IMPORTANCE OF VISIBILITY

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