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Introduction to Fair, Thorough, and Trauma Informed Sexual Violence Investigations

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Meet Your Facilitator



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Chantelle Cleary is a nationally-recognized subject-matter expert in Title IX and related fields. She has more than 10 years of experience in the investigation and adjudication of sexual and interpersonal violence. She lectures extensively at universities and conferences throughout the U.S. on Title IX, VAWA, harassment, and implementation of best and emerging practices. Prior to joining Grand River Solutions, Chantelle served as the Director for Institutional Equity and Title IX at Cornell University, and before that as the Assistant Vice President for Equity and Compliance and Title IX Coordinator at the University at Albany. In these roles, she provided direct, hands-on experience in the fields of Title IX, civil rights, employment law, and workplace and academic investigations. Her responsibilities included focusing on diversity efforts, sexual assault prevention and training, affirmative action, and protecting minors on campus.



About Us

Grand River Solutions provides Title IX, equity, and Clery Act consulting services. Together, our experts have decades of direct, on-campus experience at both small and large, public and private institutions. This practical expertise derived from years of hands-on experience enables our team to offer customized solutions unique to your educational institution's needs. Grand River has a suite of creative, cost-effective and compliant solutions to help schools meet their needs in innovative ways.



Day One Agenda

01

Title IX's Requirements

02

The Proper Application of Trauma Informed Practices

03

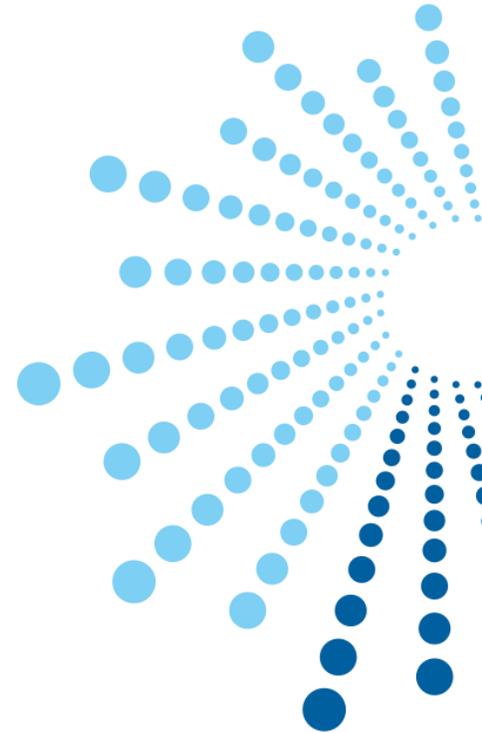
The Importance of Understanding the Potential Impact of Trauma

04

Developing an Investigative Strategy

05

Investigative Interview

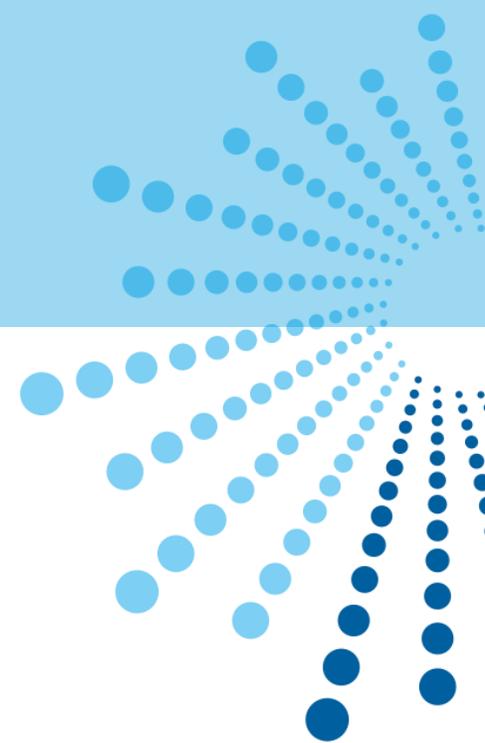




Title IX's Requirements

01

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Procedural Requirements for Investigations



Notice TO BOTH PARTIES



Equal opportunity to present evidence



An advisor of choice



Written notification of meetings, etc., and sufficient time to prepare



Opportunity to review ALL evidence, and 10 days to submit a written response to the evidence prior to completion of the report



Report summarizing relevant evidence and 10 day review of report prior to hearing

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Procedural Requirements for Hearings

Must be live, but can be conducted remotely

No Compelling participation

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Exclusion of Evidence if no cross examination

Written decision must be issued that includes finding and sanction

Notice Requirements

Notice of the allegations, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include:

the identities of the parties involved in the incident, if known,

the conduct allegedly constituting sexual harassment under § 106.30,

and the date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, under paragraph (b)(5)(iv) of this section, and may inspect and review evidence under paragraph (b)(5)(vi) of this section.

The written notice must inform the parties of any provision in the recipient's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process



Advisor of Choice

The advisor can be anyone, including an attorney.

Institutions cannot place restrictions on who can serve.

No training required.

Institution must provide advisor for the purposes of cross examination, only.



Written Notification of Meetings and Sufficient Time to Prepare

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Equal Opportunity to Present Evidence

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Evidence Review



Parties must have equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint

10 days to provide a written response

Investigative Report and Review

After reviewing and considering the comments on the evidence, the investigator will generate a report that summarizes the relevant evidence.

That report will be shared with the parties and they will have 10 more days to comment



“Directly Related” and “Relevant Evidence”

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Directly Related Evidence

- Regulations do not define “Directly Related” Evidence
- 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 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

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

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



The Investigator



Can be the Title IX Coordinator, although that is disfavored



Must be trained in accordance with the requirements in the regulations



Must conduct the investigation in an impartial manner, avoiding bias/pre-judgment, and conflicts of interest

The Requirement of Impartiality

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Section 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, decision maker, or facilitator of informal resolution not to have a conflict of interest or bias

1. For or against complainants or respondents generally, or
2. An individual complainant or respondent

Section 106.45(b)(1)(iii)

Title IX Coordinator, investigator, decision maker, or facilitator of informal resolution must receive training on...how to serve impartially, including avoiding prejudgment of the facts at issue, conflict of interest, and bias. This training material may not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Impermissible Bias

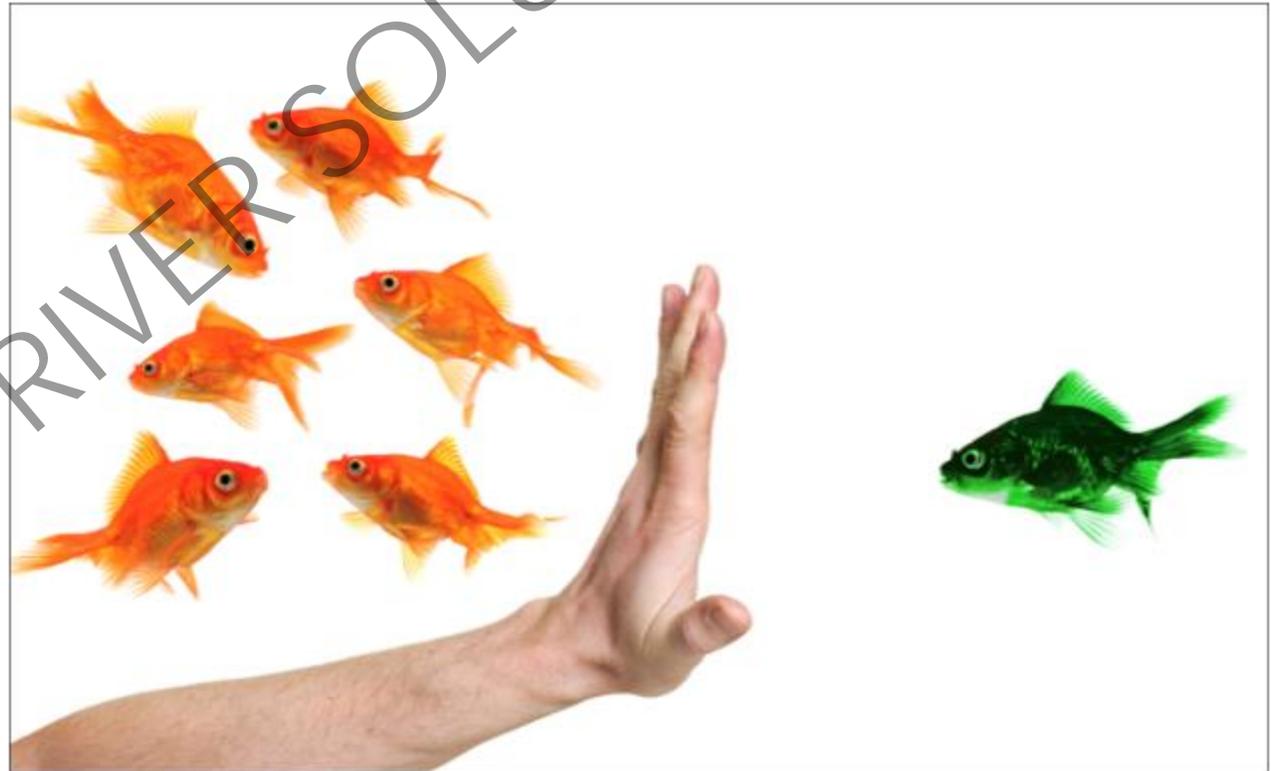
Making a decision, determination, or finding that is based on something other than the evidence and specific facts of the case.

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What Constitutes Bias?

- Fact specific, objective inquiry based in common sense
- Includes:
 - Decision-making that is grounded in stereotypes
 - Different treatment based on a person's sex or other protected characteristic



Conflict of Interest

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A black silhouette of a person's head and hand in profile, facing right. The person's hand is raised to their chin, with the index finger pointing upwards, suggesting a state of deep thought or listening.

Avoiding Prejudgment of the Facts

Requires that the Title IX professional refrain from making a judgement on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.

An Impartial Grievance Process Is...

- Not influenced by bias or conflict of interest
- Committed to decisions based on an objective view of all of the facts and evidence
- Reliable and accurate
- Legitimate
- Truth Seeking

Trauma Informed Practices

In the preamble, the Department permits the use of trauma informed practices and recognizes that trauma informed practices can be used in an impartial and non-biased manner.

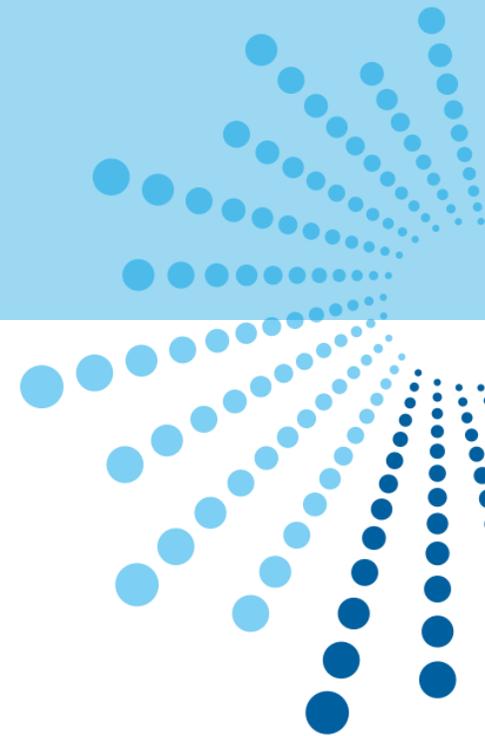
Trauma informed practices must be applied equally to all genders.



The Proper Application of Trauma Informed Practices

02

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Trauma Informed Practices provide tools/techniques for interviewing and engaging with the Complainant, Respondent, and Witnesses.



Format/Structure of the Interview



Format of Questions



Approach to Clarification

Trauma Informed Practices are Designed to:

01

Encourage thorough and complete investigations

02

Assist with recollection

03

Assist with recounting

04

Reduce potential for false information

05

Minimize unnecessary re-traumatization

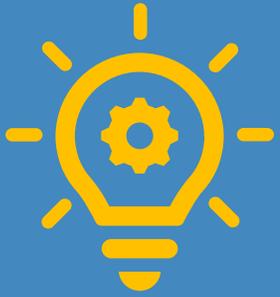
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Reduce Bias

Misapplication of Trauma Informed Practices

It is a misapplication of trauma informed principles to allow potential evidence of trauma to:

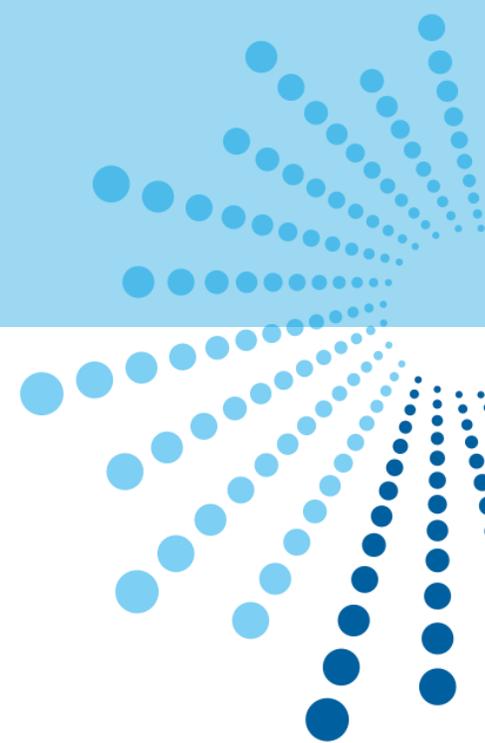
1. Influence the interpretation of a specific item of evidence;
2. Substitute for missing evidence;
3. To serve as a justification for not doing a full and thorough investigation;
4. Cause a biased belief in the veracity of one or more party



The Importance of Understanding the Potential Impact of Trauma

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Trauma

An event that is experienced as terrifying, horrifying, or threatening and that is coupled with an actual or perceived lack of control.

Examples of Events that Might Trigger a Traumatic Response

Sexual Assault

Physical Assault
by a Stranger

Physical Assault
by an Intimate
Partner

A Car Accident

Accident that
causes serious
injury or death

Robbery

Medical Event?



When trauma occurs, there are every real changes in brain function that may affect a person's ability to record or make memory and to recount their experience.

Common Characteristics of Disclosures by a Trauma Brain

Inconsistent

Non-linear

Fragmented

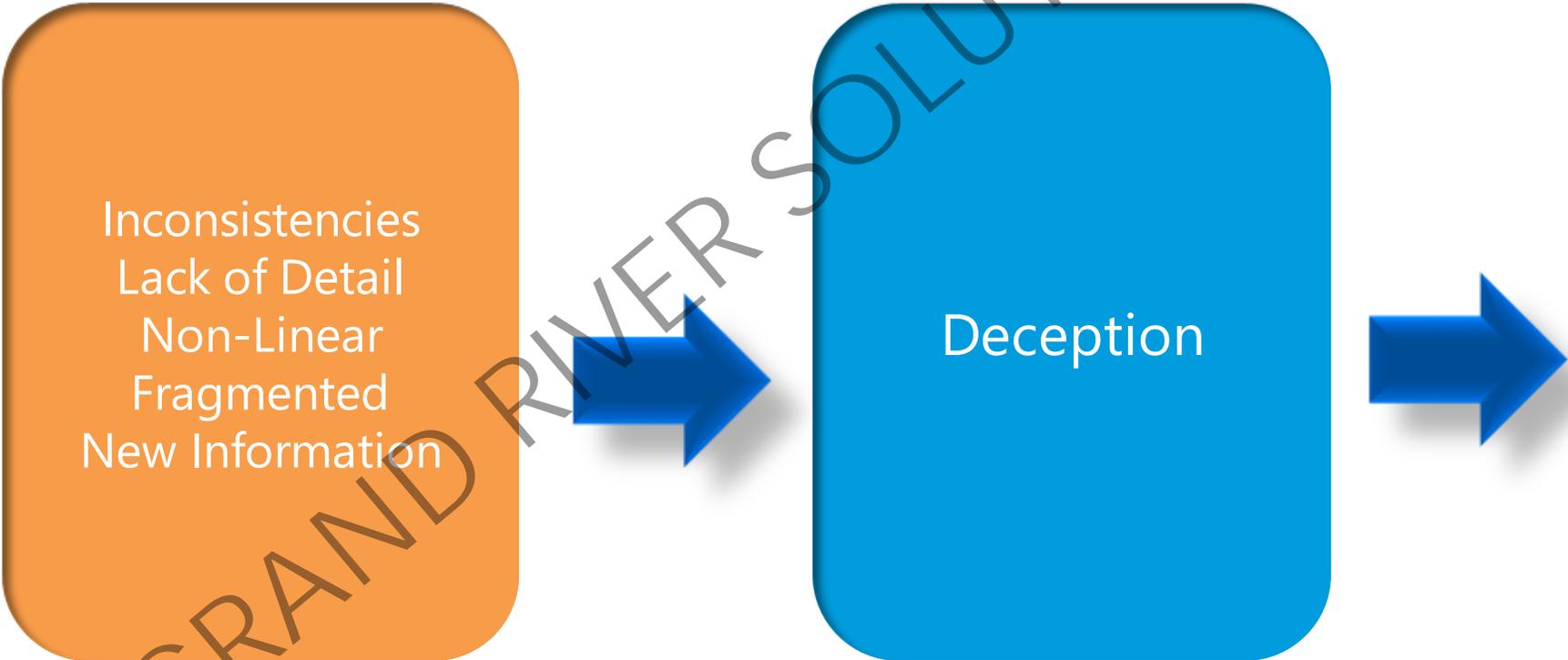
Lack of detail

New information

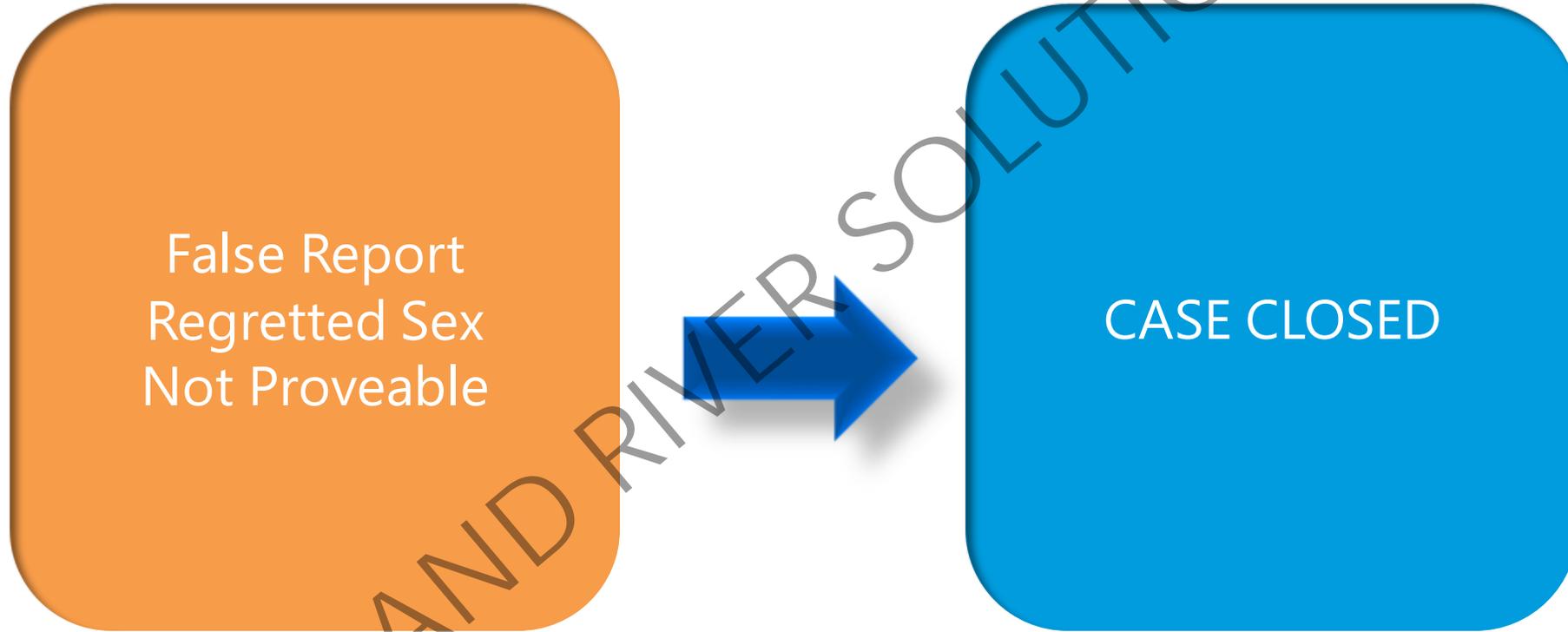
Affect is unexpected



Historically, the seemingly inconsistent behaviors that frequently accompany disclosures of sexual assault and interpersonal violence resulted in the belief that the victim was being dishonest.



The Historical Conclusion...



Without trauma informed training and knowledge, those conducting investigations and interviews risk:

Conducting their interview with bias

Wrongfully concluding, without conducting a thorough investigation that the reporting individual is lying

Causing further trauma

Jeopardizing future reporting

Prematurely Concluding the Investigation

The Future...

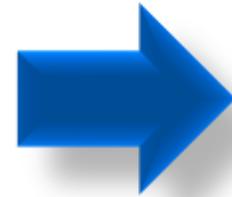
An understanding of trauma and its potential impact should encourage investigators to keep an open mind, and it should prevent investigators from immediately interpreting seemingly inconsistent behaviors with deception. An understanding of trauma provides another explanation for these seemingly inconsistent behaviors.

This is essential to a fair and thorough investigation.

Inconsistencies
Lack of Detail
Non-Linear
Fragmented
New Information



Deception?
Trauma?
Other (alcohol)?



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The Investigation Continues.....

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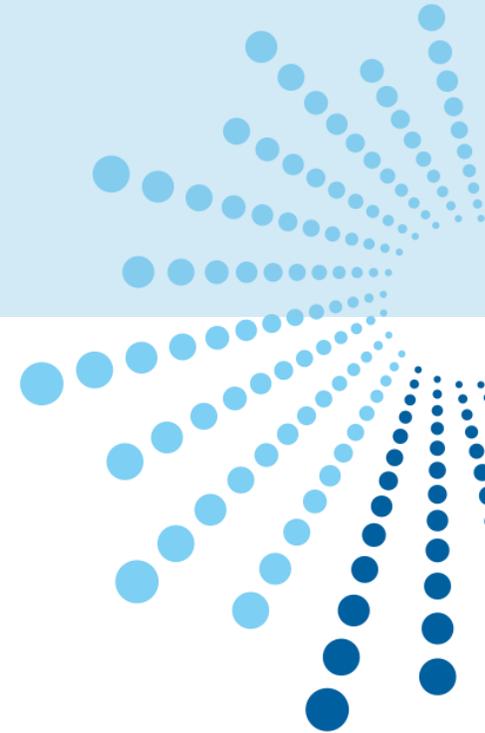




Developing an Investigative Strategy

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Essential Steps of an Investigation



Notice of formal investigation



Initial Interviews



Evidence Collection



Report writing

The Process: Developing an Investigative Strategy



Investigation Timeline

Prior History

- Between the Parties
- Of the Parties

Incident

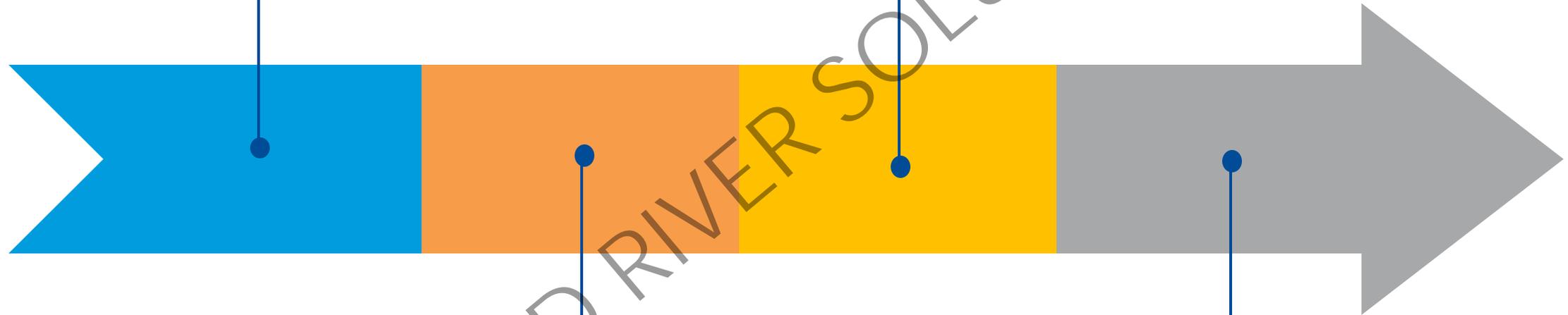
- Consent
- Type of Contact
- Injuries

Pre-Incident

- Communications
- Interactions
- Conduct

Post Incident

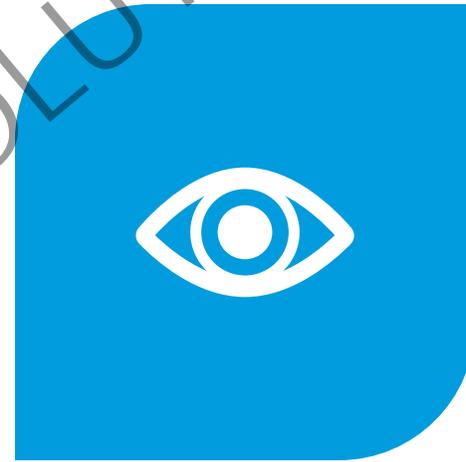
- Behaviors
- Communications



Title IX Hearing Requirements: The Impact on Investigations



EVIDENCE COLLECTION



INVESTIGATE THE
EVIDENCE

Strategies for Evidence Collection

Testimony

Text Messages

Social Media
Posts

Medical
Records

Public
Safety/Police
Records



The Importance of Organization

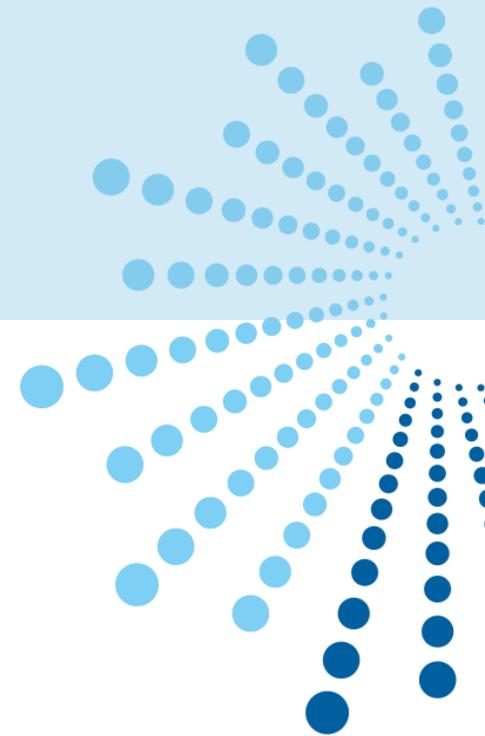
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Investigative Interviews

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Interview Objectives



Connect

- Build rapport
- Build trust
- Empower



Listen

Allow interviewee to share their experience



Clarify

- Understand what you have heard
- Seek additional information



Evidence Preservation

- Text Messages
- Photographs
- Names and contact info for witnesses



Prior to the Interview



Secure an appropriate meeting location



Allow for enough time to conclude the meeting



Prepare yourself for the meeting



If interviewing a party, inform them of their right to have an advisor present.

Set Expectations

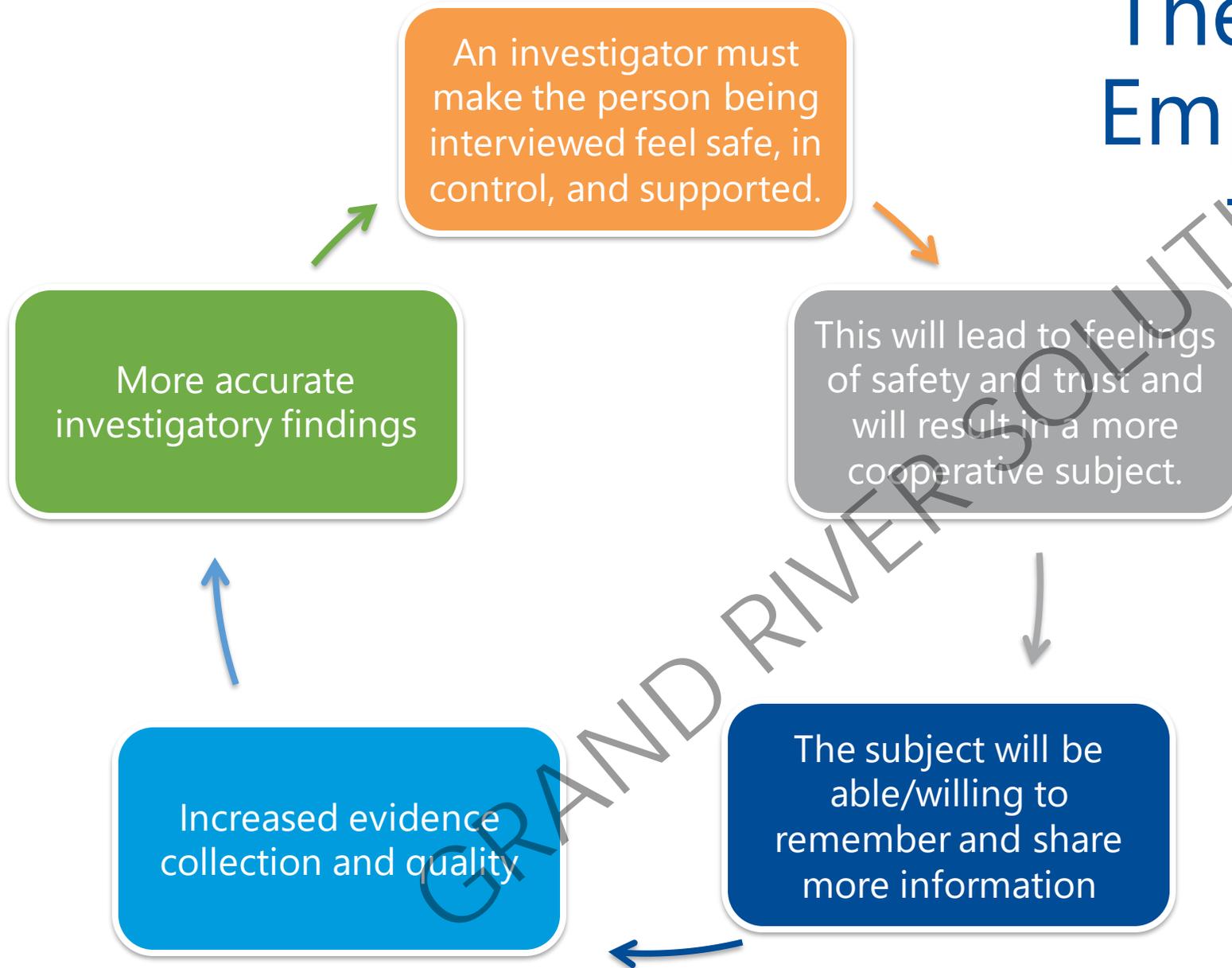
What they should expect of you

- That you are neutral
- That you will listen, what they are saying is important to you
- That you will keep the information they share private
- What you will do with recording/notes
- That you may have to ask difficult questions
- Patience, respect, and appreciation

What you expect of them

- Honesty
- That they will seek clarity if needed (give them permission to do so)
- That they won't guess or fill in blanks

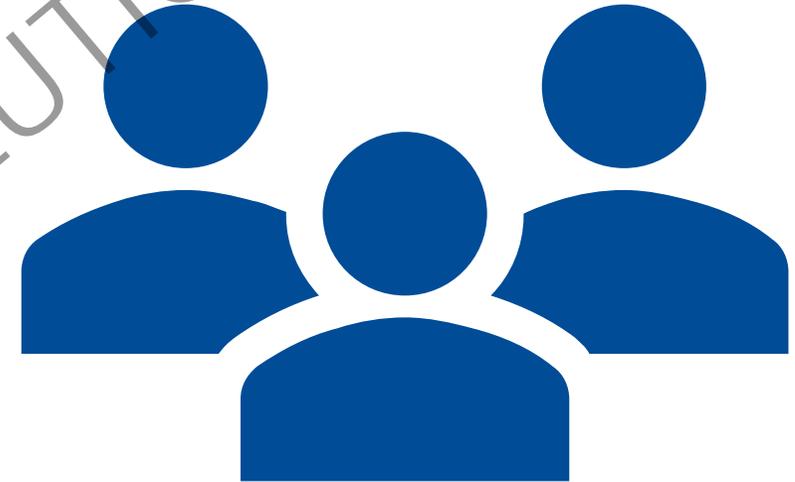
The Importance of Empowerment and the Power of Empathy



How do we...

Build Rapport and Trust?

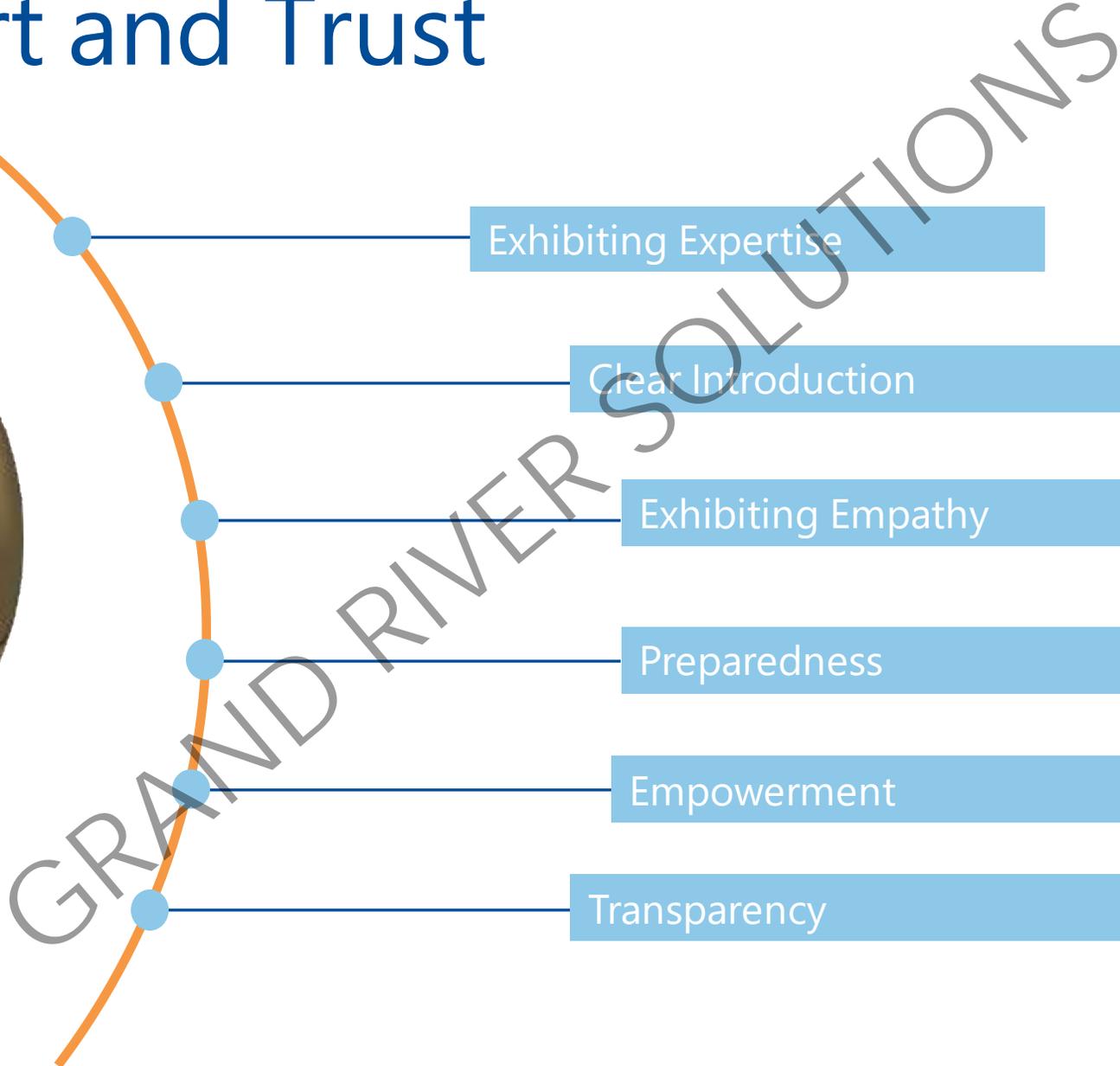
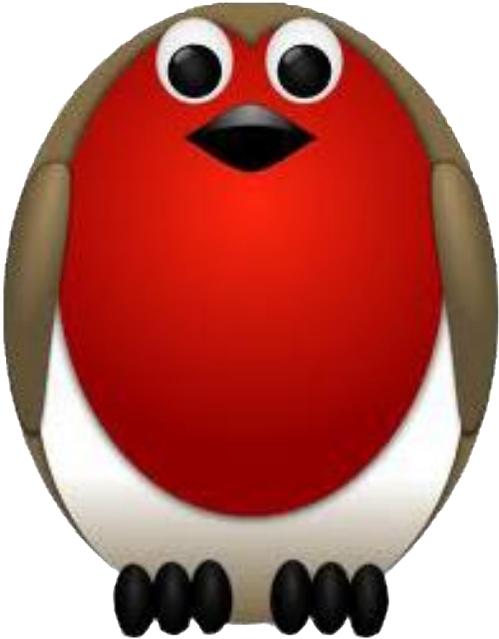
Empower?



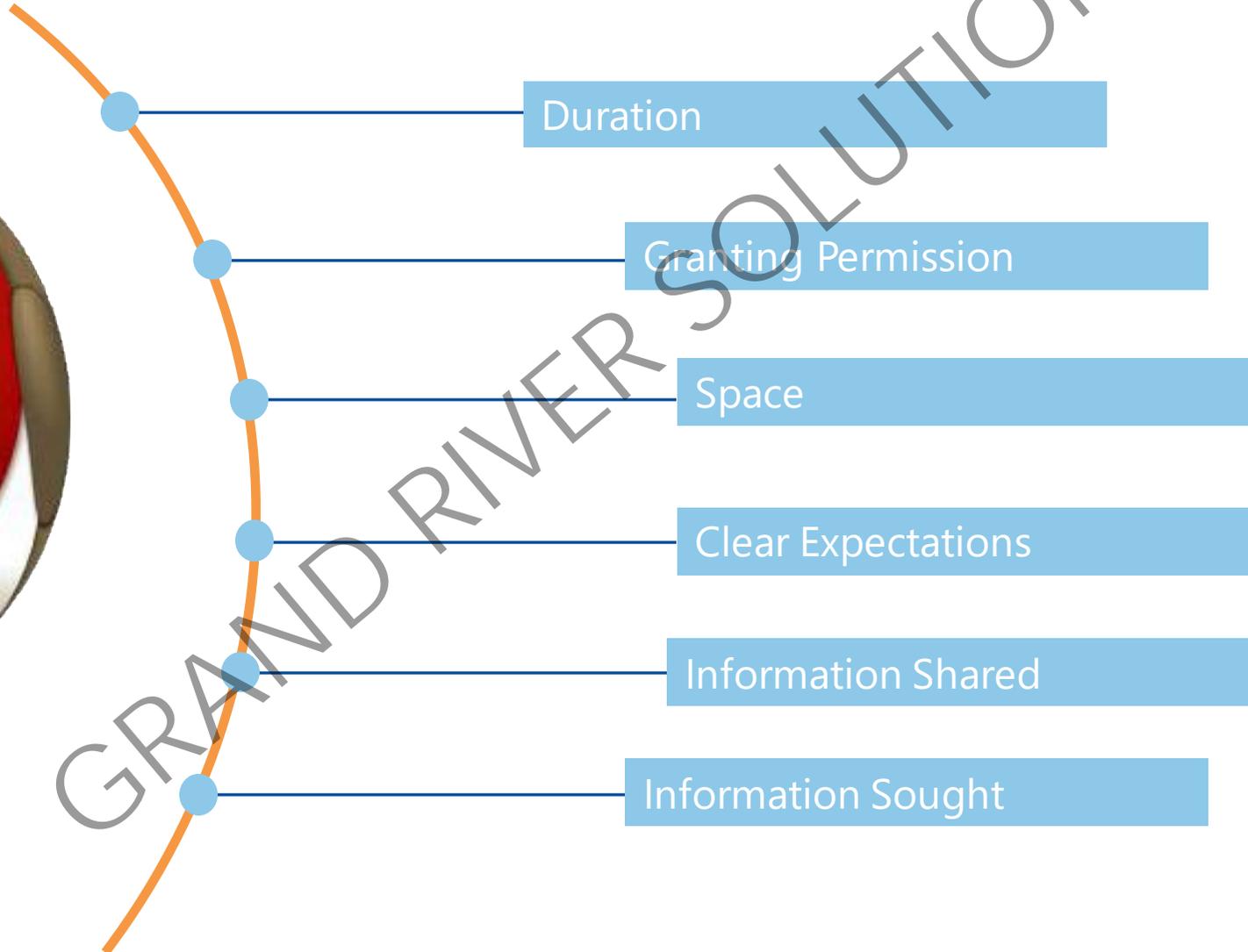
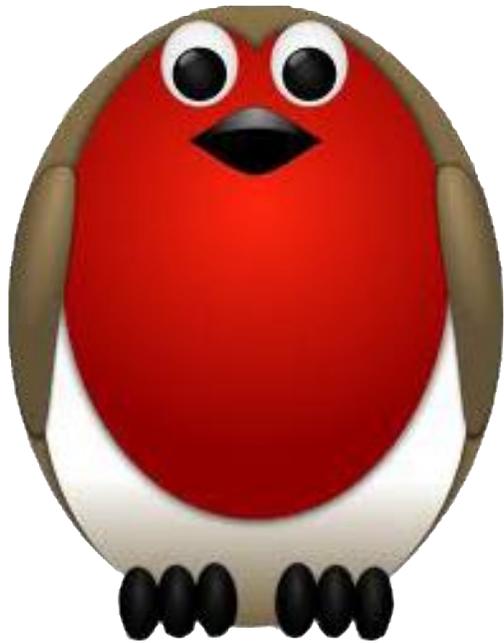
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Rapport and Trust



Empowerment



Investigative Interviews

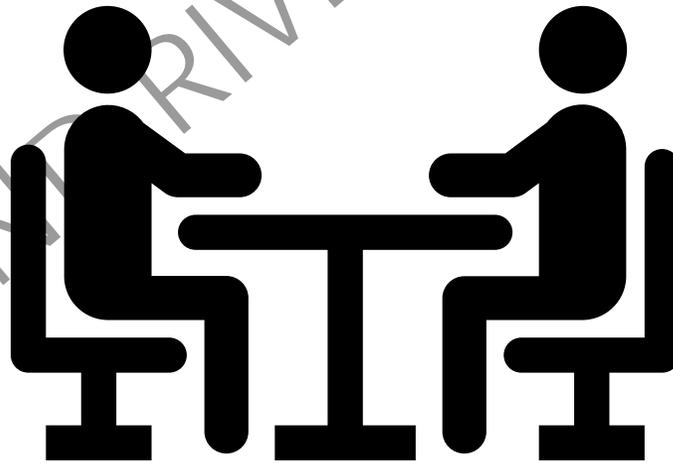


Start the interview by eliciting a narrative.

Where would you like to begin?

Start where you are comfortable and share what you are able to remember.

What are you **able** to tell me about your experience?



Allow the person to speak uninterrupted.
This takes patience.

Next, ask questions that are intended to clarify and more deeply explore the information and details provided by the person in their narrative.

Do Ask:

- Interview for clarification
- Help me understand
- Can you tell me more about...?
- Is there anything else you can share about...?

Avoid:

- Interrogation
- Questions that blame
- Questions that imply doubt
- Leading questions

Explore implicit memories by asking questions about the sensory experience and peripheral details.

- What are you able to tell me about:
 - What you saw?
 - What you heard?
 - What you smelled?
 - What you felt?
 - What you tasted?
- What are you able to tell me about any images, smells, or sounds that keep coming back to you?



Explore implicit memories by asking questions about the sensory experience and peripheral details.

- *What are you able to tell me about:*
 - *What you saw?*
 - *What you heard?*
 - *What you smelled?*
 - *What you felt?*
 - *What you tasted?*
- *What are you able to tell me about any images, smells, or sounds that keep coming back to you?*



"I felt an animal. I think it was dead. I was terrified that he hurt it. I thought he would do the same to me."



"Help me understand why you keep rubbing your wrists like that?"



Capture the Entire Experience

- If you have to, ask about the physical and emotional reactions to the incident.
- Conclude with a very open-ended questions:
 - What was the most difficult part of this experience for you?
 - Is there something that stands out/that you just can't stop thinking about?
 - Is there anything more that you would like me to know?

The Before

At some point during the interview, it is also important to explore the prior history, if any, between the reporting individual and the accused.

... and The After

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 victim and perpetrator

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

Follow Up Interviews

Seek clarification

Explore inconsistencies

Explore contradictory evidence

Explore difficult issues

Opportunity to respond



Follow Up Interview Approach

Explain the purpose of the follow up

Set the stage for the topics you will be covering

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...

Questions?

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