

# WELCOME!

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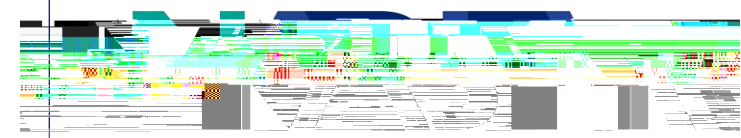
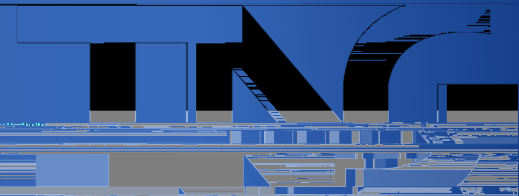
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# Title IX Hearing Officer and Decision-Maker

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# Strategic Dialogue



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# CONTENT ADVISORY

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# TITLE IX

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# X





# WHAT IS YOUR MISSION AS A DECISION-MAKER?

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# HEARING OFFICER/DECISION-MAKER RESPONSIBILITIES

## responsibilities

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Your Rank    Group Rank

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# WHAT DOES IT MEAN TO BE A " DECISION-MAKER?"



# WHEN AND HOW THE " DECISION-MAKER" WORKS

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# HEARING OFFICER/DECISION-MAKER COMPETENCIES

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# HEARING OFFICER/DECISION-MAKER COMPETENCIES (CONT.)

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# THE CHALLENGE FOR HEARING OFFICERS/DECISION-MAKERS







# WHAT IS DUE PROCESS?

- Substantive      Procedural

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# "PROCEDURAL DUE PROCESS" - ARE YOU FOLLOWING YOUR PROCESS?

Procedural Due Process:

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# " SUBSTANTIVE DUE PROCESS" - DUE PROCESS IN THE DECISION ITSELF

## Due Process in Decision

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# DUE PROCESS PROCEDURAL RIGHTS IN 2020 TITLE IX REGULATIONS

Right to:

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# DUE PROCESS PROCEDURAL RIGHTS IN 2020 TITLE IX REGULATIONS (CONT.)

Right to:



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# EVIDENTIARY STANDARDS











# 10 STEPS OF AN INVESTIGATION (CONT.)

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# EVIDENCE AND REPORT REVIEW BY PARTIES

## PART 1

Prior to the completion of the Investigation Report:

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# EVIDENCE & REPORT REVIEW BY PARTIES

## PART 2

At least 10 days prior to making a determination regarding responsibility (hearing):

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# ADVISORS (CONT.)

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- chosen by
- 
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- appointed for

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# ADVISORS (CONT.)



# PRESUMPTION OF NON-RESPONSIBILITY

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# TRAINING MANDATES

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# TRAINING MANDATES (CONT.)

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# LIVE HEARING

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# POLICY DEFINITIONS

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# SEXUAL HARASSMENT

harassment

- Quid Pro Quo
- Hostile Environment

sexual

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# HOSTILE ENVIRONMENT: "UNWELCOME"

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# HOSTILE ENVIRONMENT: "REASONABLE PERSON"

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# HOSTILE ENVIRONMENT: " PERVERSIVE "

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# HOSTILE ENVIRONMENT: " OBJECTIVELY OFFENSIVE "

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# HOSTILE ENVIRONMENT: TOTALITY OF THE CIRCUMSTANCES (CONT.)



# PUTTING IT ALL TOGETHER: HOSTILE ENVIRONMENT SEXUAL HARASSMENT

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# PUTTING IT ALL TOGETHER: HOSTILE ENVIRONMENT SEXUAL HARASSMENT (CONT.)

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# CONSENT

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# DATING VIOLENCE





# DOMESTIC VIOLENCE (CONT.)

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# STALKING

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- Course of conduct

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# STALKING (CONT.)

- Reasonable person



# OTHER ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION



# ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)

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# ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)



# ATIXA MODEL DEFINITIONS: SEXUAL EXPLOITATION (CONT.)

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# OTHER SEX-BASED MISCONDUCT OFFENSES THAT MAY BE ADDRESSED BY POLICY

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# RETALIATION

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# DETERMINING RETALIATION CLAIMS: KEYS TO UNDERSTANDING

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# BIAS, CONFLICTS OF INTEREST, & RECUSAL

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# BIAS

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# BIAS (CONT.)

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# BIAS AND CONFLICTS OF INTEREST

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# PREPARING FOR THE HEARING

# MUST DO: PREP FOR THE HEARING

All Decision-Makers Must Review:

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# MUST DO: PREP FOR THE HEARING (CONT.)

Decision-Makers Must Thoroughly Review All Materials :

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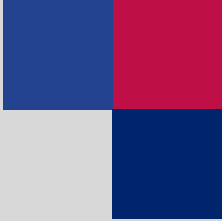
# DAY OF THE HEARING

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# QUICK TIPS ON HEARING LOGISTICS

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# THE HEARING: GENERAL LOGISTICS

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# HEARING DECORUM

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# THE HEARING

Tips for Hearing Officers/Decision-Makers:

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# THE HEARING

## Hearing Testimony: The Role of the Chair/Decision-Maker

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# DECISION-MAKING SKILLS, PART ONE

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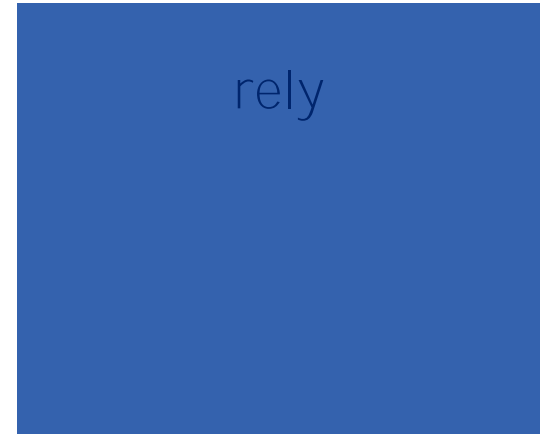
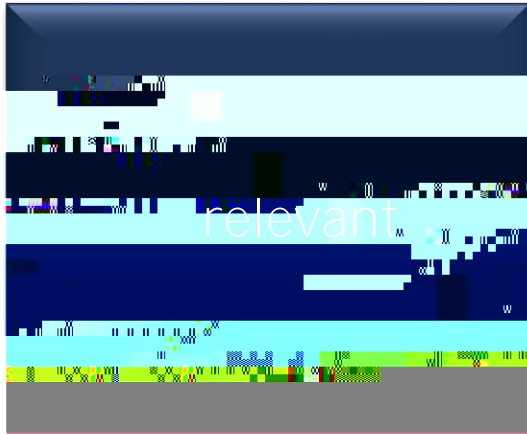
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# EVIDENCE

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# ASK YOURSELF

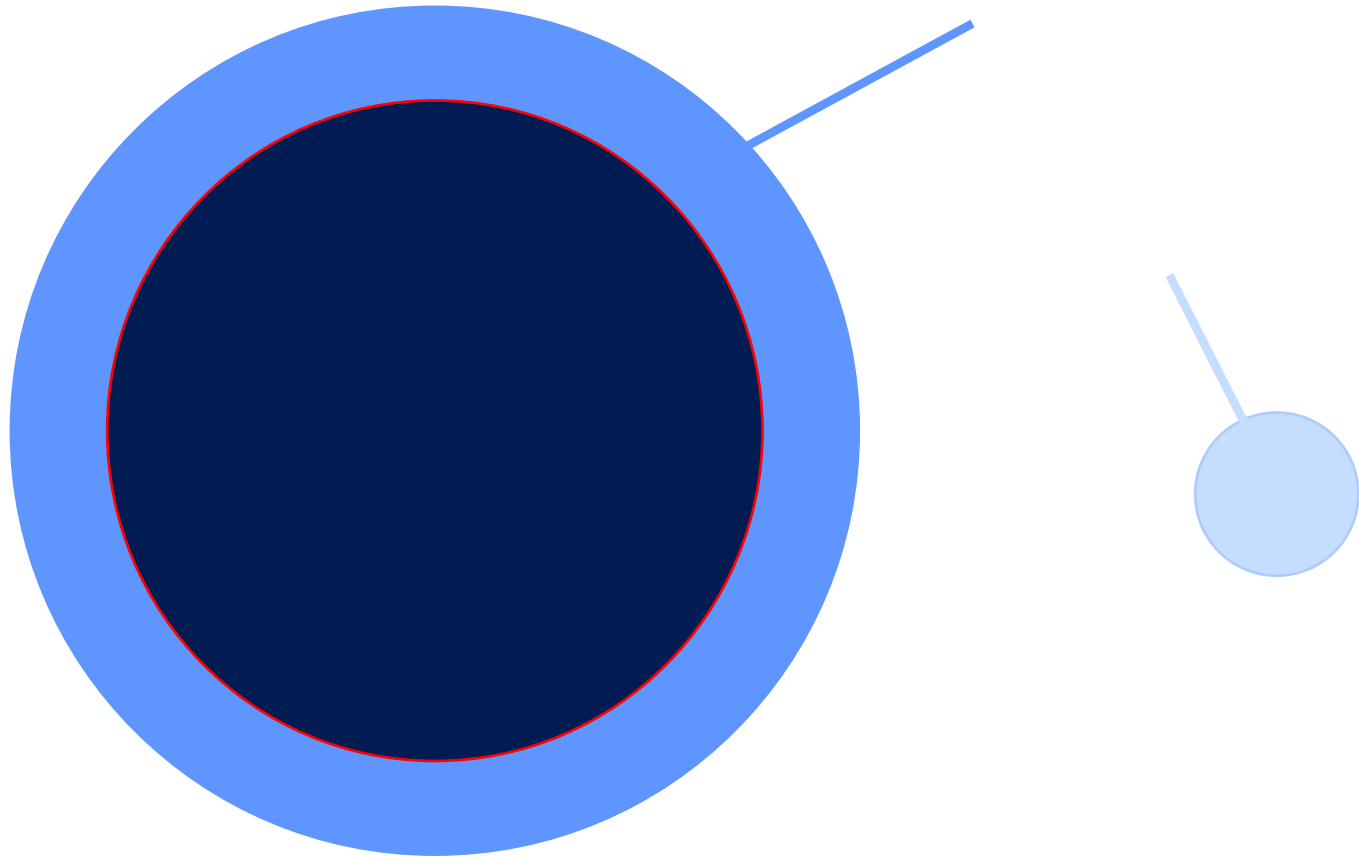


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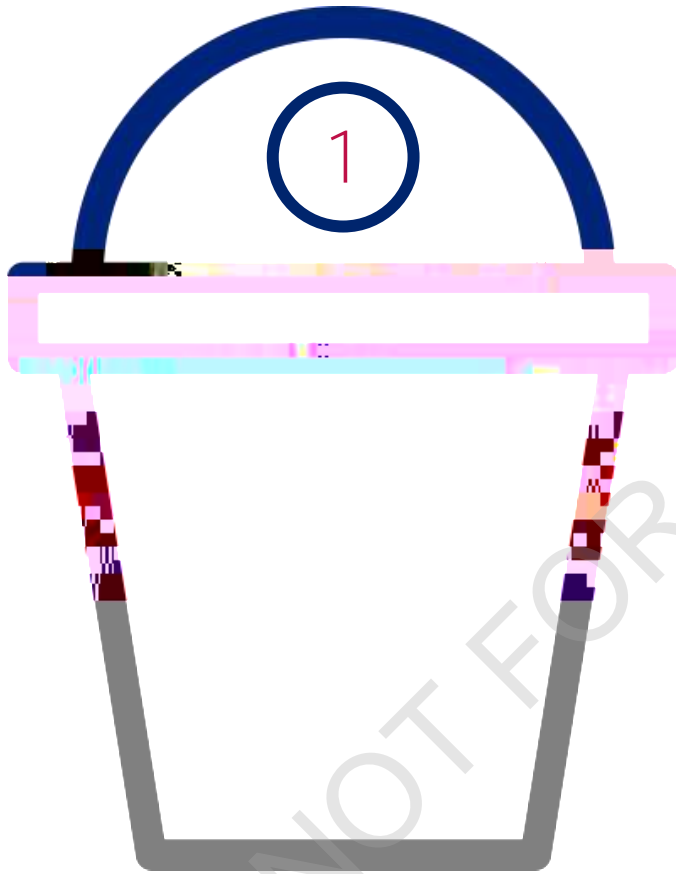
# UNDERSTANDING EVIDENCE

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- Relevance → admissibility of the evidence
- Credibility → how much weight admissible evidence is given

# UNDERSTANDING EVIDENCE



# BUCKET 1: RELEVANT EVIDENCE



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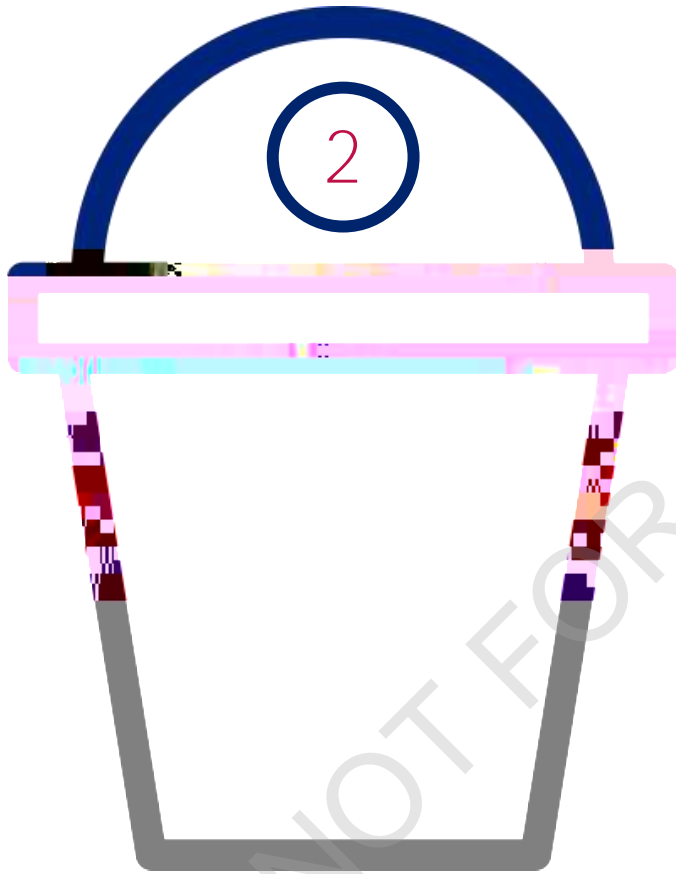
# RELEVANCE

- relevant
- 
- 
- 
- not bound by the Investigator's judgment
- All

who is



# BUCKET 2: DIRECTLY RELATED, BUT NOT RELEVANT EVIDENCE



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# OTHER EVIDENCE MAY BE DIRECTLY RELATED

Directly Related Evidence:

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# BUCKET 3: NEITHER RELEVANT NOR DIRECTLY RELATED EVIDENCE



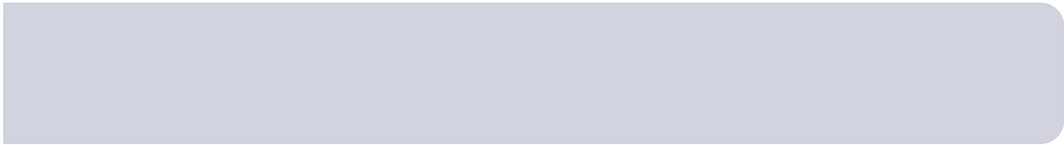
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# SPECIFIC EVIDENCE ISSUES UNDER THE TITLE IX REGULATIONS



# ADDITIONAL EVIDENCE RESTRICTIONS IN TITLE IX REGULATIONS

Additional permissions (from the party) required for:

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# ADDITIONAL EVIDENCE CONSIDERATIONS IN HEARINGS

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## RELEVANCE EXERCISES

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# CASE STUDY: IVAN & JUANITA

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# CASE STUDY: IVAN & JUANITA

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# CASE STUDY: IVAN & JUANITA



# CASE STUDY: IVAN & JUANITA



# CASE STUDY: IVAN & JUANITA

You are the Chair of the Hearing Panel. You must determine whether each specific piece of evidence is relevant.



# CASE STUDY: IVAN & JUANITA

Consider whether the following pieces of evidence, if part of the fact pattern originally provided from the investigation report, would be relevant:

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# CASE STUDY: IVAN & JUANITA

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# RELEVANT OR DIRECTLY RELATED?

RELEVANT? DIRECTLY RELATED? NEITHER?  
WHICH AND WHY?



# QUESTIONING & DECISION-MAKING SKILLS, PART TWO

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# QUESTIONING

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# IF YOU STILL HAVE TO ASK A QUESTION, ASK YOURSELF

- Is the answer already in the report or documentation I have been provided?
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  -
- What do I need to know?
  - - 
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# ASKING GOOD QUESTIONS

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# QUESTIONING SKILLS

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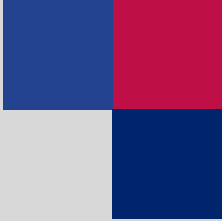
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# QUESTIONING TIPS

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# QUESTIONING ACTIVITY

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# QUESTIONING & CROSS-EXAMINATION

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# QUESTIONING & CROSS-EXAMINATION (CONT.)

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# QUESTIONING & CROSS-EXAMINATION (CONT.)

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# UNDERSTANDING CREDIBILITY IN THE DECISION PROCESS

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# WHAT IS CREDIBILITY?

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# CREDIBILITY

## Inherent Plausibility



# FACTORS TO CONSIDER FOR CREDIBILITY

## Inherent Plausibility

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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



# FACTORS TO CONSIDER FOR CREDIBILITY

## Past Record

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# CREDIBILITY ASSESSMENTS IN INVESTIGATION REPORTS

Regulations permit Investigators to make credibility recommendations

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# CREDIBILITY IN THE HEARING

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# CONSENT



# OVERVIEW OF THE THREE QUESTIONS





# FORCE

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



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# INCAPACITY

2. Was the Complainant incapacitated?

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# INCAPACITY (CONT.)

- capacity lack the
- 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







# 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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## MAKING A DECISION

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# OVERVIEW OF THE DELIBERATION PROCESS

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# DELIBERATIONS

## General Information

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Withhold judgment until all the evidence has been considered.





# SANCTIONING IN SEXUAL MISCONDUCT CASES

Title IX and case law require:

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- (Stop)
- (Prevent)
- (Remedy)
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# WRITTEN DETERMINATIONS

Decision-maker/Chair issues a detailed, written determination regarding responsibility that includes the following:

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# WRITTEN DETERMINATIONS (CONT.)

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- The Decision-maker should author the written determination
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# WRITTEN DETERMINATIONS: LOGISTICS

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# APPEALS

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# APPEALS

The Appeal Decision-maker may be an individual or a panel

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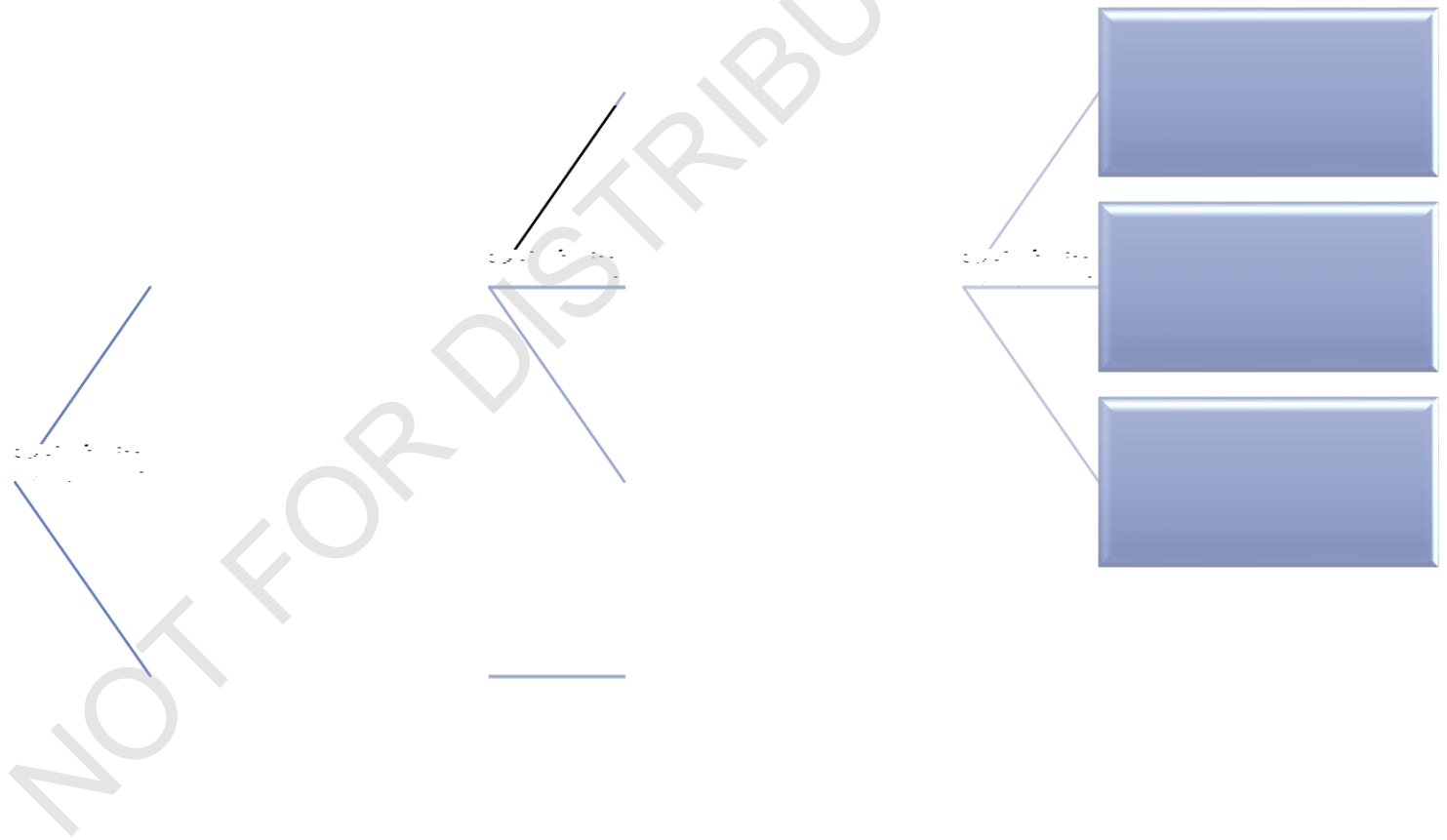


# BASES FOR APPEAL

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# APPEALS: THE PROCESS





# APPEALS: OTHER ATIXA RECOMMENDATIONS

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# RECORDKEEPING AND DOCUMENTATION

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# RECORDKEEPING & DOCUMENTATION



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