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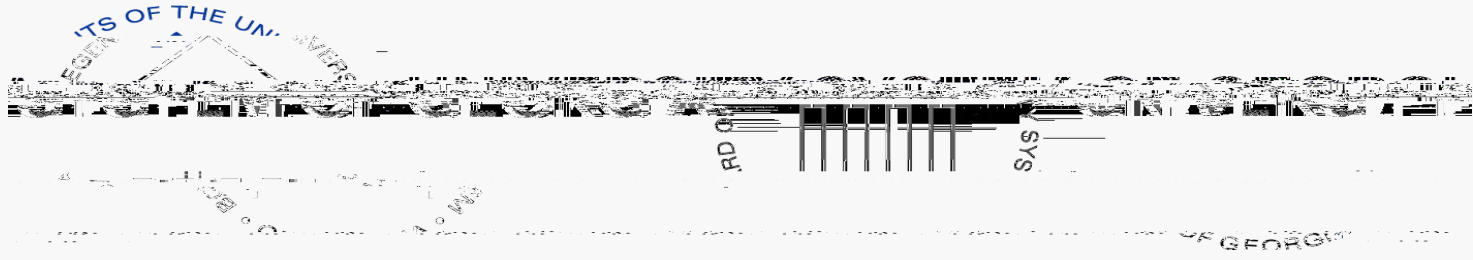
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Who's Here in the Room?

-

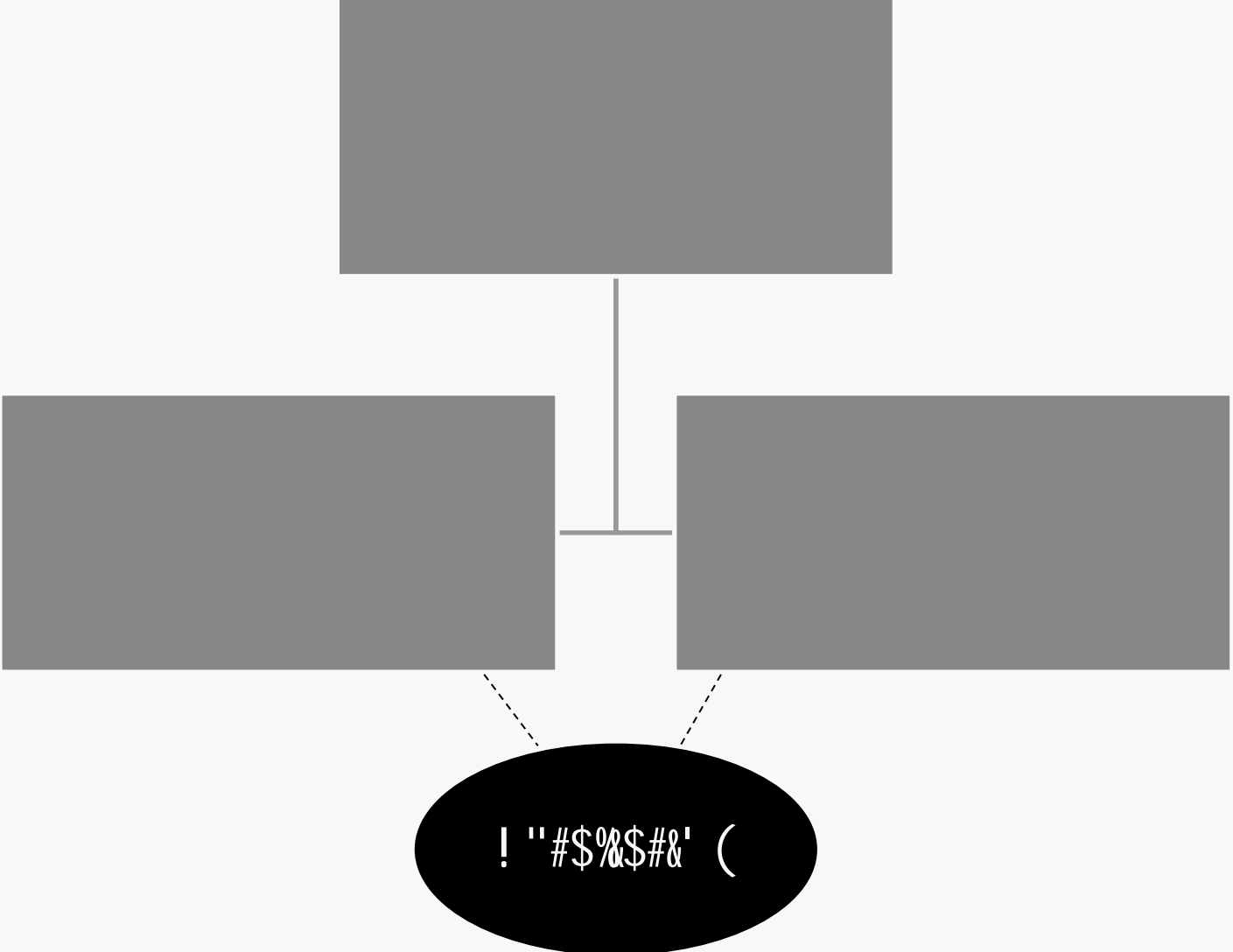
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What is Sex Discrimination?

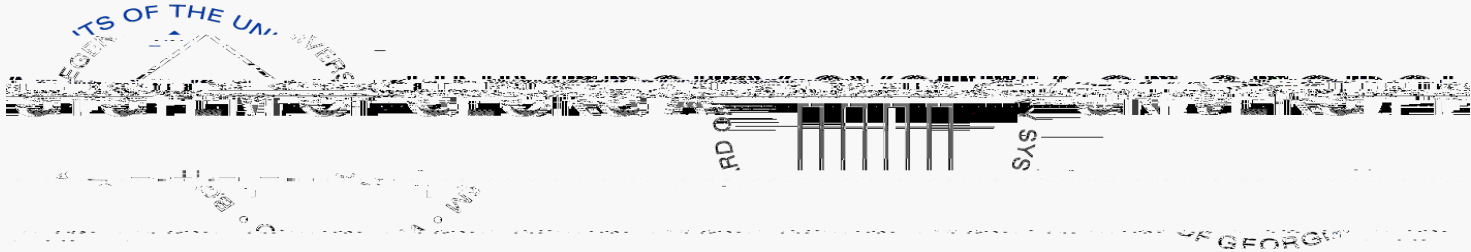


Title IX Sexual Harassment §106.30

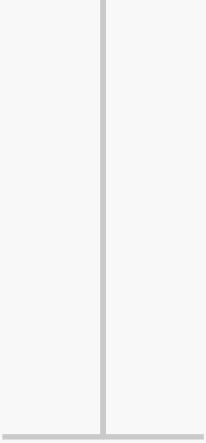
- - ! (i) An employee conditioning education benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
 - ! (ii) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, AND objectively offensive that it effectively denies a person equal access to the school's

Title IX Jurisdiction

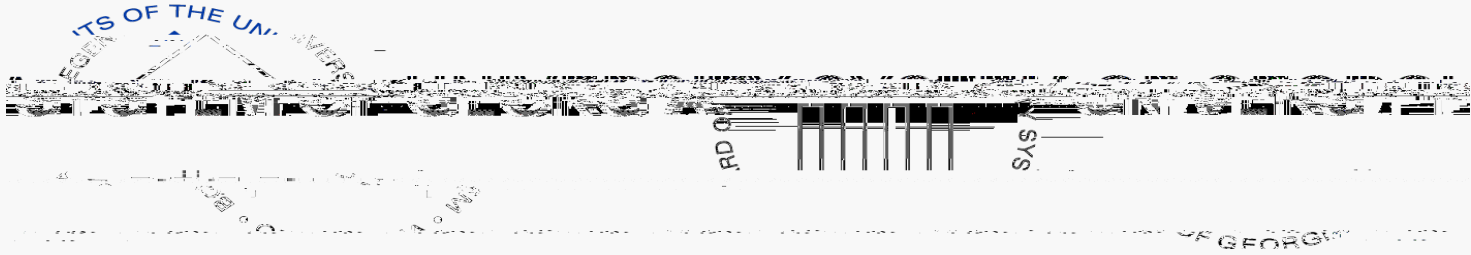
- Institution property
- Institution sponsored or affiliated events [**substantial control** is key]
- Buildings owned or controlled by officially recognized student organizations



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Stalking



Sexual Exploitation

of another for
, or for the benefit or advantage of anyone
other than the person so exploited.

Nonconsensual Sexual Contact

Any with another person of a

.

Includes:

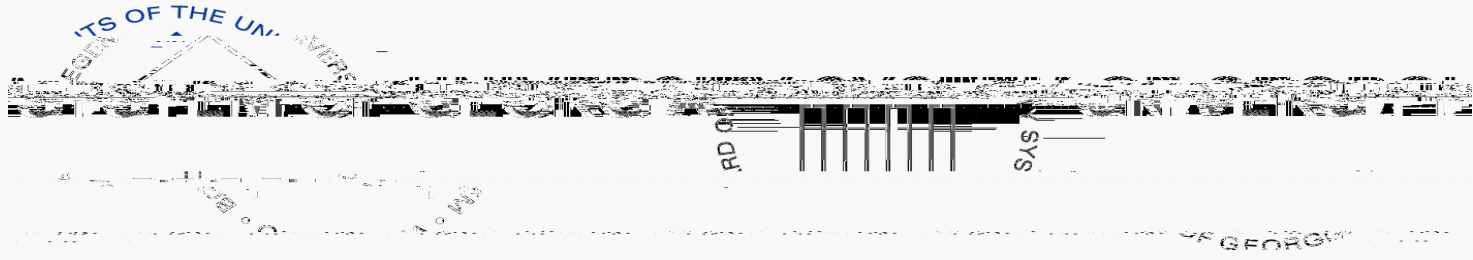
- " Touching of another's intimate parts (genitalia, groin, breasts, buttocks)
- " Touching a person with one's own intimate parts; or
- " Forcing a person to touch his or her own or another person's intimate parts

Sexual Harassment (Student on Student)

Unwelcome verbal, nonverbal, or physical conduct based on sex (including gender stereotypes), determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access

Sexual Harassment (Other)

- , based on sex
(including gender stereotypes) that may be any of the following:
- " Implicitly or explicitly a _____ employment status in a course program or activity
 - " _____ employment or education decisions; OR
 - " Sufficiently severe, persistent, or pervasive to interfere with one's work or educational performance creating an _____ work environment
 - " Note: Behavior may rise to the level of a Title IX violation



Overview of the Construct

1. Was force used by the Respondent to engage in the sexual activity?
2. Was the Complainant Incapacitated?
 - a) Did the Respondent know OR
 - b) Should the Respondent have known that the Complainant was incapacitated?
3. What clear words or actions by the Complainant gave the Respondent

Consent

Force

-

-

-

- Physical violence -- hitting, restraint, pushing, kicking, etc.
- Threats -- anything that gets the other person to do something they wouldn't ordinarily have done absent the threat

Force Continued

- Intimidation
- Coercion
 - " Consider:
 - ! Frequency
 - ! Intensity
 - ! Duration
 - ! Isolation

Force Analysis

- Did the Respondent utilize force or intimidation to engage in the sexual activity with the Complainant?
 -
 -

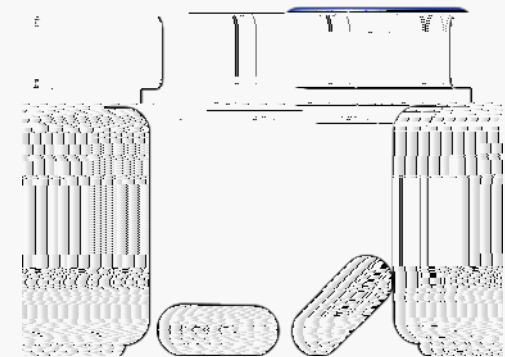
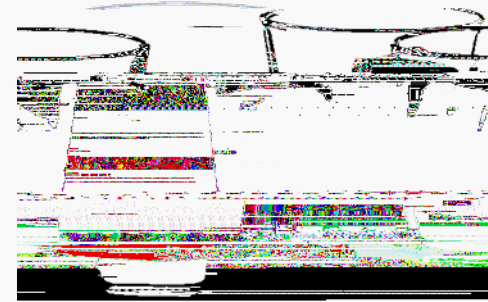


Incapacitation

-

- ! Could the Complainant make rational, reasonable decisions ?
- ! Could the Complainant appreciate the situation and address it consciously?

-



Determining Incapacitation

-
-
- - Alcohol or other drugs
 - Mental/cognitive impairment
 - Injury
 - Sleep



Common Factors that Impact the Effect of Alcohol

Rate of consumption

Strength of drink

Food in the stomach

Body Weight

Body Type – body fat percentage

Possible Signs of Incapacitation

- " Lack of control over physical movements
 -
- " Lack of awareness of circumstances or surroundings
- " Inability to communicate coherently
- " Vomiting
- " Total or intermittent unconsciousness



Respondent's Awareness

-

Incapacitation Analysis

"

Consent

C



Consent Is...

- Informed (knowing)
- Voluntary (freely given)
- Active (not passive)
- Clear words or actions
- Indicates permission to engage in mutually agreed upon (sexual) activities



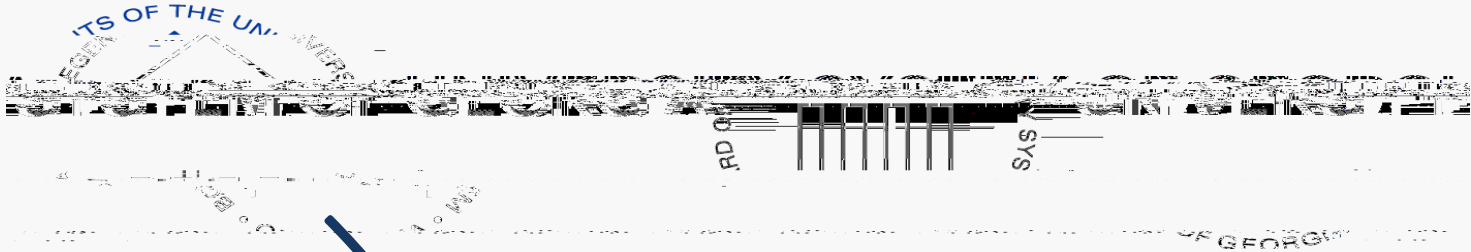
Withdrawal

Remember consent can be withdrawn at any time

The person withdrawing consent is expected to clearly communicate with words or actions they are withdrawing consent

Other person is required to cease sexual activity until consent is regained



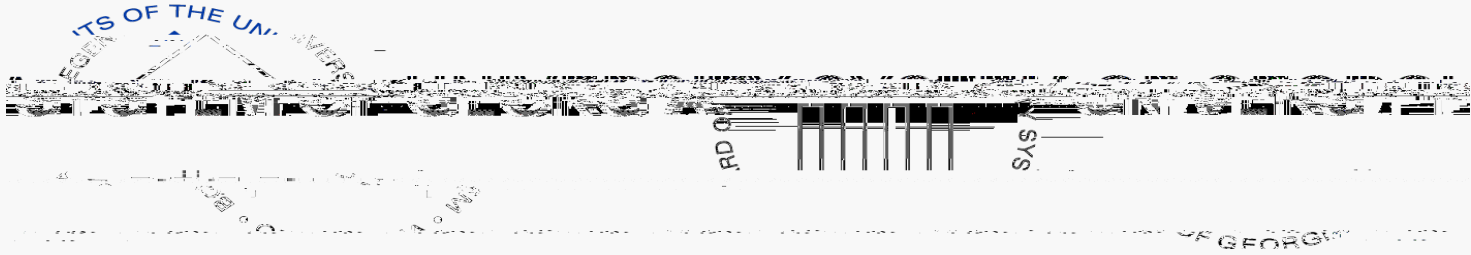


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Recognize and Avoid Your Own Bias

!



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Steps in the Investigation Process

- " Report is made
- " Intake by Title IX Coordinator
- " Filing of a Formal Complaint
- " Assignment to the Investigator
- "

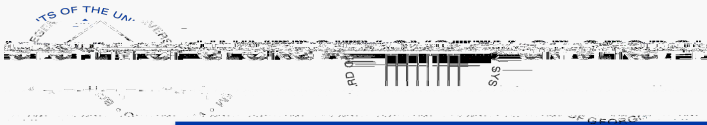


Interim Measures

- " May be implemented at any point by the Title IX Coordinator
- " Must be available to both parties
- " Must be implemented in an equitable manner designed to protect the parties and/or the campus community
- "

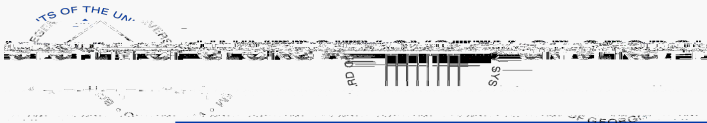
Examples

Housing changes
No Contact Directive
Class changes
Employment schedule or location changes
Administrative Leave
Interim Suspension*



Formal Complaint §106.30

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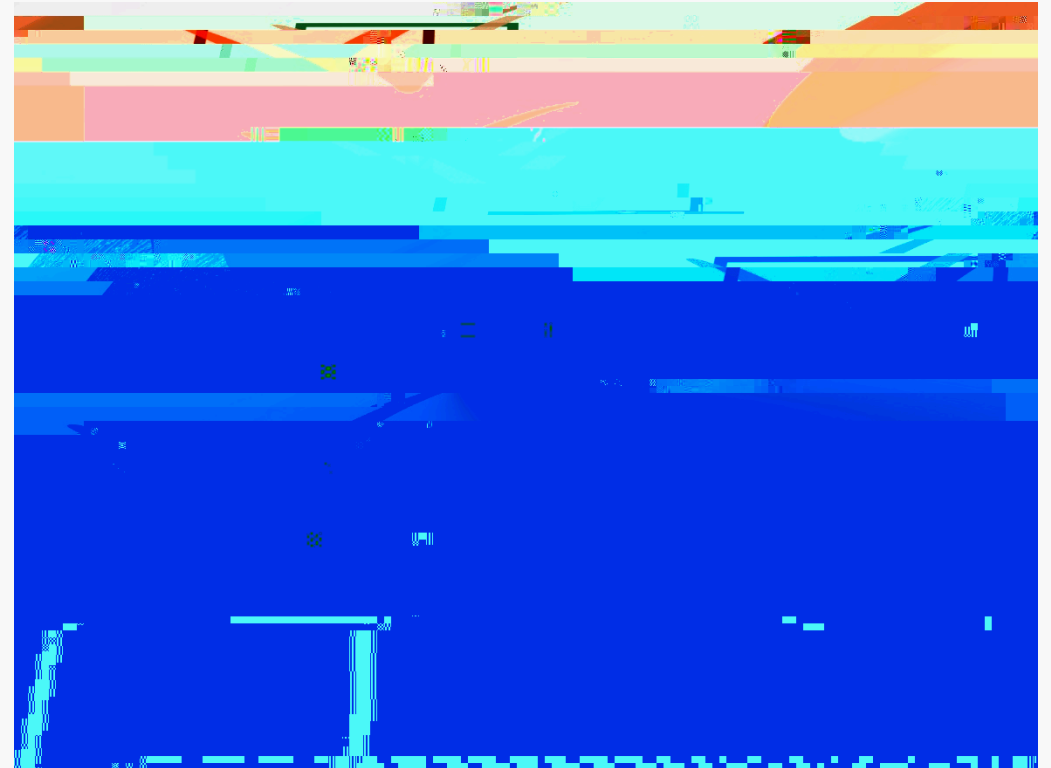


Developing an Investigation Plan

- Review the Complaint Intake and any available information
- Review the Sexual Misconduct Policy
- Review relevant investigation procedures
- Determine order of interviews
- Gather preliminary evidence
- Develop preliminary questions

Key Aspects in the Investigation Process

- Pending investigation
 - Possible charges
 - Possible sanctions
 - Available support resources
 - Identify the assigned investigator



Key Aspects in the Investigation Process

- Parties' right to an Advisor
 -
 -
- Parties' right to remain silent or otherwise not participate
 -
 -

Fact Gathering

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Interview Strategies

- Set a professional non-accusatory tone
- Introduce yourself and outline your role
- Acknowledge what emotions they may be experiencing
- Review the amnesty and retaliation policies
-



Effective Questioning

- Questions should be used to determine:

- " Who

- " What

- " When

- " Where

- " How

-

Effective Questioning

What are your goals?

-
-
-

What are NOT your goals?

-
-

How to Deal With...

A Challenging/Reluctant Participant

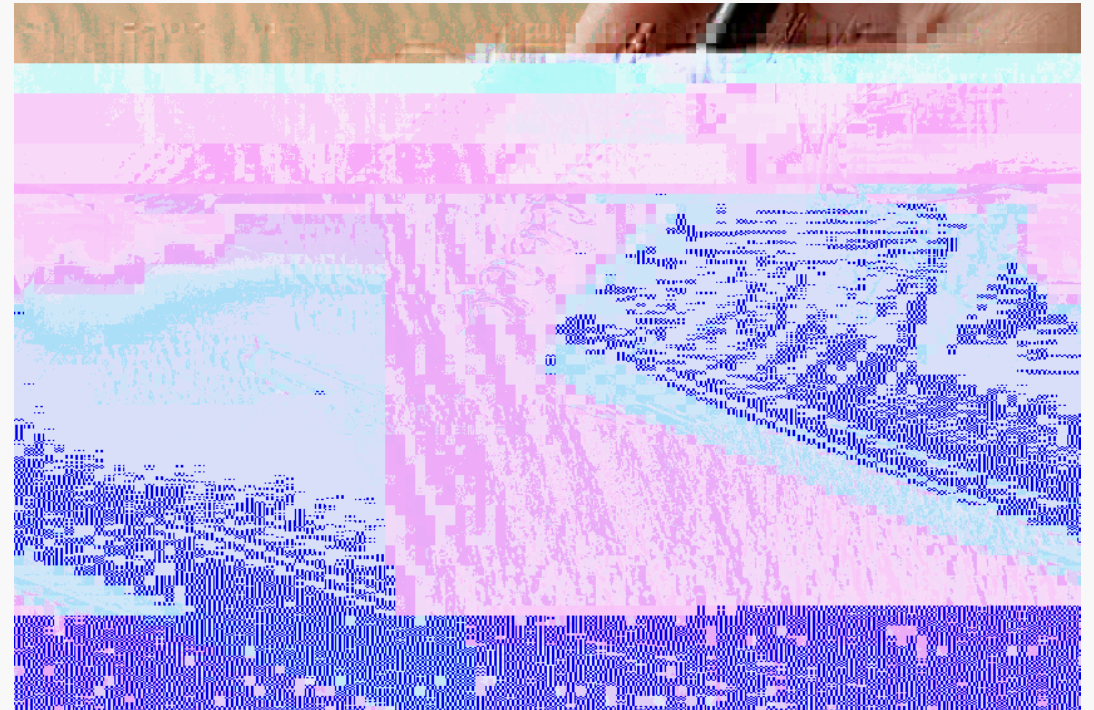
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Note-Taking

-
- ! Remember you are creating a publicly available record
- ! Try to include verbatim statements
-



Note-Taking Considerations

- Use of audio recordings
- Sending an interview summary for the participant to review and edit

Tip: Schedule time after an interview to review and type narrative summary





Understanding Evidence Thresholds



Weighing Evidence: Impact Factors

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Credibility

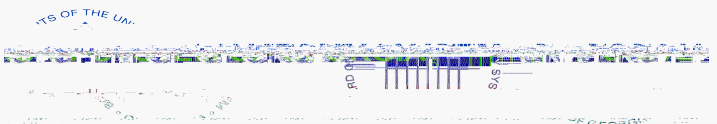
Other Evidentiary Exclusions

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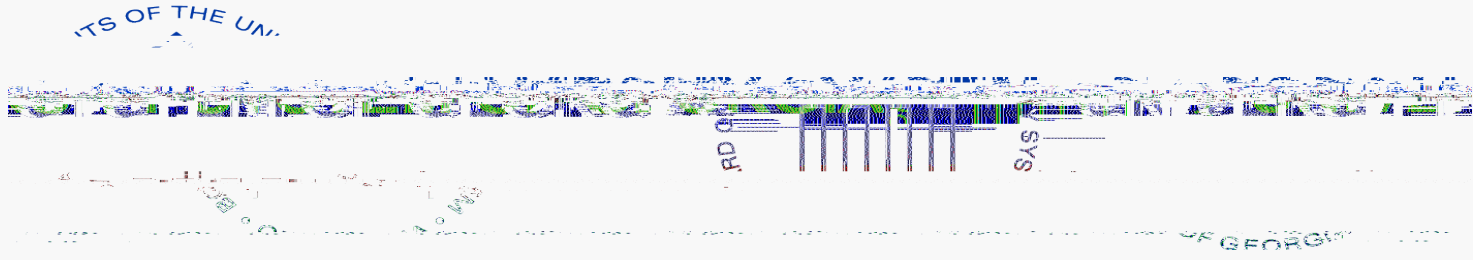
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The Investigation Report

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Basic Formatting

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Information Gathered During The Investigation

- Narrative summaries of information NOT transcriptions
 -

Information Gathered During The Investigation

-

-

- TIP





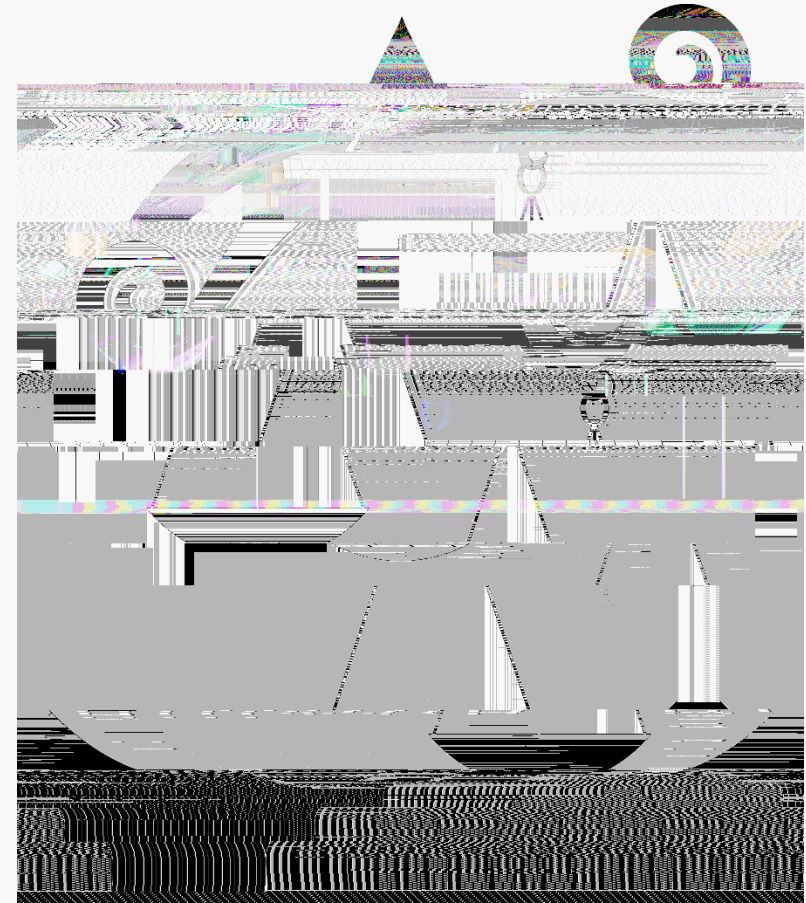






Understanding Substantial Evidence

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Necessary Attachments

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-
-

Optional Aspects of the Investigative Report

-

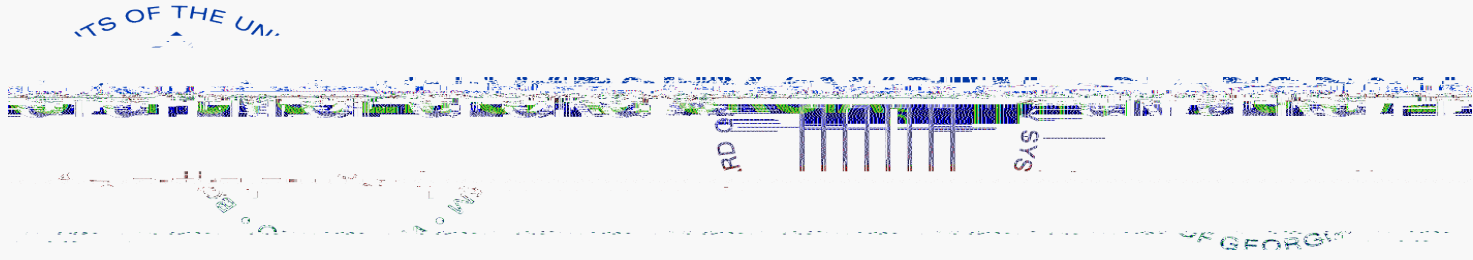
Key Aspects in the Investigation Process

- Parties right to review and respond to the investigation report
 -
- Sharing the final investigation report
 -
 -

Things to Avoid

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The USG Adjudication Processes

Students

Employees

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Title IX Hearings

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Sexual Misconduct Hearings

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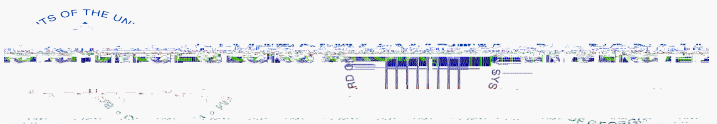
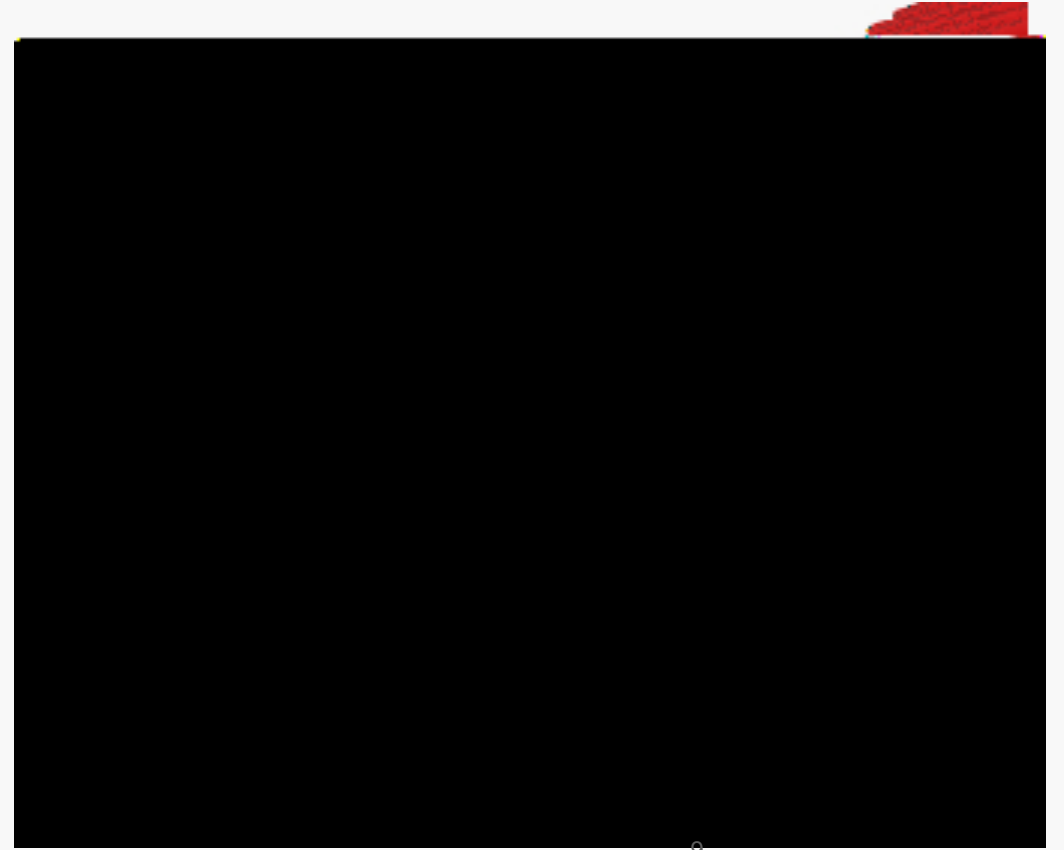
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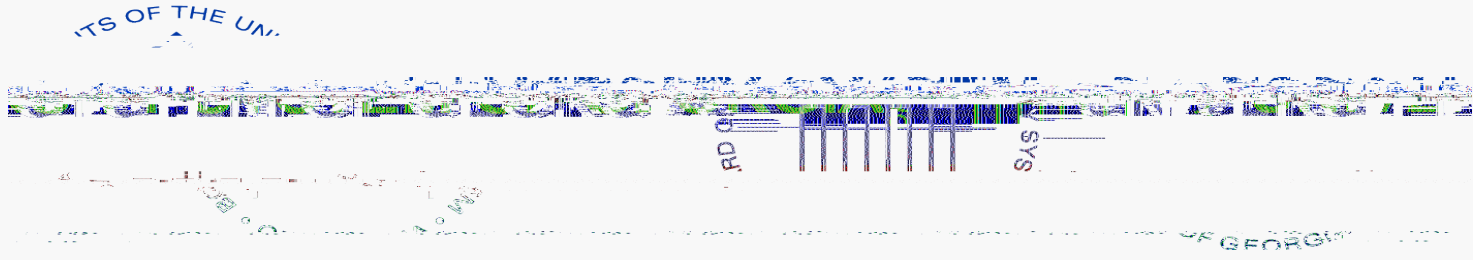
Typical Order of a Hearing

- " Opening by Decision Maker
- " Opening statements by both parties

Appeals

- -
- New information
Procedural Error
!
- Finding inconsistent with the weight
of the information





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Retaliation §106.71

- Who is protected: Reporters, Complainants, Witnesses, Respondents, even those who choose to not participate
- What is protected: Intimidation, threats, coercion, discrimination

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Record Keeping §106.45(b)(10)

-

! Reports [supportive measures, why not deliberately indifferent and what measures taken to restore or preserve equal access]

! Investigations

