

December 3, 2020



COLORADO
COMMUNITY COLLEGE SYSTEM

REPORT WRITING TRAINING

WRITING INVESTIGATION REPORTS PURSUANT TO SYSTEM PROCEDURE 19-60



Presented by: Tashana Taylor, CCCS Director of Civil Rights and Investigations

AGENDA:

- ❑ **Refresher: Civil Rights & Sexual Misconduct within CCCS**
 - ❑ **Applicable Laws, Key Definitions, and Policies & Procedures**
 - ❑ **Roles & Responsibilities**
 - ❑ **Options for Resolving Complaints: Informal Resolutions and Formal Investigations**
- ❑ **Refresher: Formal Investigations – Reports**
 - ❑ **Preliminary Investigation Report**
 - ❑ **Final Investigation Report**
 - ❑ **Determination Report**
- ❑ **Structure of Reports**
- ❑ **Review of Factual Findings, Analysis, and Conclusion**
- ❑ **Refresher: Final Steps**



REFRESHER

CIVIL RIGHTS & SEXUAL MISCONDUCT WITHIN CCCS



TITLE IX/EO COORDINATOR

Designated by each College and the System office to oversee all civil rights complaints, including sexual misconduct.

Applicable Laws:

Title IX, ADA, Title VI, and Title VII

TITLE IX & “EQUAL OPPORTUNITY”

- Title IX:
 - Prohibits discrimination based on sex.
 - Applies to students and employees.
- American with Disabilities Act (ADA):
 - Prohibits discrimination based on disability.

Title VI:

- Prohibits discrimination on the basis of race, color, and national origin.

Title VII:

- Prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion.
- Applies only to employees.

NOTE:

When the Complainant or Respondent is a student, Title IX applies. When both the Complainant and Respondent are employees, Title VII applies.

CCCS COMMITMENT TO CIVIL RIGHTS

Colorado Community College System is committed to creating an inclusive environment by prohibiting **all forms of discrimination and harassment, including sexual misconduct,** in its employment practices and educational programs and activities, specifically on the basis of:

1. Sex
2. Gender
3. Race
4. Color
5. Age
6. Creed
7. National or Ethnic Origin
8. Ancestry
9. Physical or Mental Disability
10. Familial Status
11. Veteran or Military Status
12. Pregnancy Status
13. Religion
14. Genetic Information
15. Gender Identity
16. Sexual Orientation

DISCRIMINATION

Any distinction, preference, advantage, or detriment given to a person based on one or more actual or perceived protected classes.

HARASSMENT

A form of Discrimination that includes Quid Pro Quo and Hostile Environment.

Sexual Misconduct

- Sexual Harassment
- Non-Consensual Sexual Contact
- Non-Consensual Sexual Intercourse
- Sexual Exploitation
- Dating/Domestic Violence
- Stalking

Retaliation

- Any adverse employment or educational action taken against a person because of the person's participation, or perceived participation, in a complaint or investigation of discrimination and/or harassment.

NEW: BOARD POLICY 19-60

PROHIBITION OF DISCRIMINATION, HARASSMENT OR RETALIATION

- BP 19-60 states:
 - Individuals affiliated with CCCS shall not discriminate or harass on the basis of sex, gender, race, color, age, creed, national or ethnic origin, ancestry, physical or mental disability, familial status, veteran or military status, pregnancy status, religion, genetic information, gender identity, sexual orientation, or any other protected class, in connection with employment practices or educational programs and activities (including in admissions).
 - Individuals shall not retaliate against any person who opposes discrimination, harassment or retaliation, or participates in any complaint or investigation process.

Applies to all conduct alleged to have occurred on or after August 12, 2020.

NEW: SYSTEM PROCEDURE 19-60

CIVIL RIGHTS AND SEXUAL MISCONDUCT RESOLUTION PROCESS

- Defines the process by which CCCS shall respond to allegations of discriminatory, harassing, and/or retaliatory behavior, including Sexual Misconduct.
- Appendix A: Provides definitions applicable to the procedure.
- Appendix B: Details Compliance Requirements, such as training requirements and notice/publication of policies and procedures.

Applies to all conduct alleged to have occurred on or after August 12, 2020.

CCCS JURISDICTION

- BP 19-60 and SP 19-60 apply to behaviors that take place on a CCCS campus, at CCCS sponsored events, and may also apply to off-campus and online behavior when the Title IX/EO Coordinator determines that the off-campus or online behavior affects a substantial CCCS interest.
- For Title IX specific cases, the harassing behavior must have occurred in an education program or activity against a person within the United States.

REPEALED: BOARD POLICIES AND SYSTEM PROCEDURES (CONDUCT PRIOR TO AUGUST 12, 2020)

- **BP 3-120 and BP 4-120**
 - Provide that individuals affiliated with the System or Colleges shall not be subjected to unlawful discrimination and/or harassment on the basis of protected class or perceived protected class.
- **SP 3-50b and SP 4-31a**
 - Civil Rights Grievance and Investigation Process
 - Defines the process by which the System and Colleges shall respond to allegations of civil rights violations.
- **SP 3-120a and SP 4-120a**
 - Sexual Misconduct Procedure
 - Provides definitions and expands on the process by which the System and Colleges shall respond to allegations of sexual misconduct.

TITLE IX/EO COORDINATOR ROLE

- Point person for campus complaints.
- Provides oversight and coordination of prompt and equitable grievance procedures.
- Supervisor of investigations.
 - Investigations should be adequate, prompt, reliable, impartial, thorough, objective, and independent.
- Trainer and/or convener of training for students, employees, investigators, and appellate officers.
- Contact for government inquiries, including the Colorado Civil Rights Division (CCRD), Equal Employment Opportunity Commission (EEOC), and the U.S. Department of Education's Office for Civil Rights (OCR).
- Ensures College's website includes name and contact information for Title IX/EO Coordinator.

INVESTIGATOR ROLE

- Disclose all conflicts of interest to the Title IX/EO Coordinator.
- Remain neutral and impartial throughout the fact gathering stage.
- Treat all parties and witnesses with respect.
- Be aware of any bias or perceived bias.
- Do not make promises you can't keep (timelines, confidentiality, etc.).
- Complete the **fact gathering** stage.
- Write** applicable reports.

REMINDERS FOR INVESTIGATORS:

- Avoid Prejudgment of Facts:
 - There will be a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the resolution process.
- Credibility Determinations:
 - Any credibility determinations made by investigators will not be based upon a person's status as a Complainant, Respondent, or witness.

OPTIONS FOR RESOLVING COMPLAINTS

Informal Resolutions

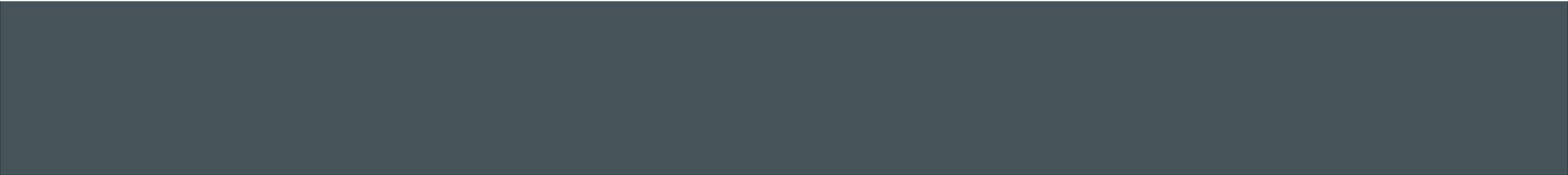
- Title IX/EO Coordinator may determine, in consultation with the parties, that an informal resolution is the appropriate way to resolve the reported concerns.
 - Parties are still provided notice of the allegations and specific informal resolution process, but no written investigation report or appeal rights.
- Examples of Informal Resolutions:
 - Interim or long-term remedial measures.
 - Training or other educational programming.
 - Referral to other resolution processes, for example facilitated discussions with the parties.
 - Referral to the Disciplinary Authority.

Formal Investigations

- Title IX/EO Coordinator will assign investigators.
- Title IX/EO Coordinator will provide the Notice of Investigation to the Complainant and Respondent.
- Investigators will conduct interviews of parties and witnesses, as deemed relevant by the Investigators, and collect evidence (aka “fact gathering stage”).
- Throughout the investigation, the Title IX/EO Coordinator will provide regular written updates on the status of the investigation to the parties.
- Investigators write Preliminary Investigation Report and Final Investigation Report.
- Investigators or Hearing Officers (for Title IX cases) write Determination Report.
- Parties provided with copies of applicable reports and Notice of Finding, which includes appeal rights.

CCCS shall make every effort to complete the resolution or investigation process within approximately 90 days from the date the complaint is filed.

QUESTIONS?





REFRESHER

FORMAL INVESTIGATIONS – REPORTS



PRELIMINARY INVESTIGATION REPORT

- Following the fact gathering stage, the investigator(s) shall issue a Preliminary Investigation Report to the parties for review.
 - Includes relevant evidence as gathered by the investigators, but does not include factual findings, analysis, or conclusion.
 - Parties have 10 calendar days to review and respond with any changes, clarifications, or questions.
 - Parties may review, upon request, all evidence collected as part of the investigation, whether or not it will be relied upon in reaching a determination.

FINAL INVESTIGATION REPORT

- At the conclusion of the fact gathering stage, the investigator(s) shall issue a Final Investigation Report to the Title IX/EO Coordinator.
 - Report should summarize the relevant evidence and detail the factual findings.
 - Report should include any relevant information submitted in response to the Preliminary Investigation Report.
 - Report **will not contain an analysis or a conclusion as to whether the conduct is in violation of applicable policies.**

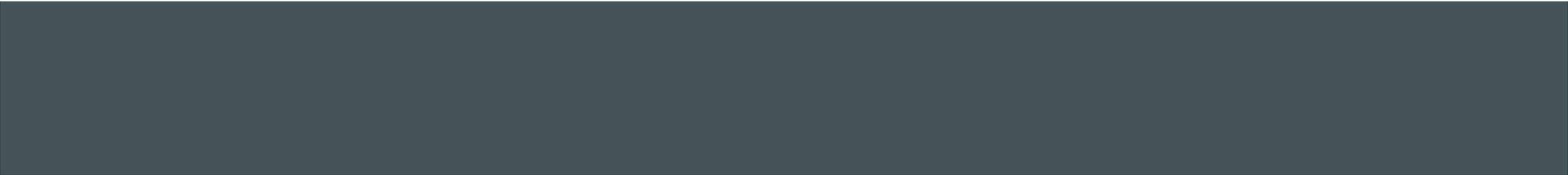
FINAL INVESTIGATION REPORT CONT.

- Upon receipt of the Final Investigation Report, the Title IX/EO Coordinator shall proceed as follows:
 - For cases involving Sexual Harassment within the United States, the Title IX/EO Coordinator shall initiate a live hearing. In cases involving a live hearing, the Hearing Officer, not the investigators, will make the final determination regarding the allegations and provide the Title IX/EO Coordinator with a written Determination Report.
 - **For other civil rights cases (non-Sexual Harassment or Sexual Harassment outside of the United States), the Title IX/EO Coordinator will obtain a written Determination Report from the investigators.**

DETERMINATION REPORT

- The Determination Report for other civil rights cases (non-Sexual Harassment or Sexual Harassment outside the United States) should include:
 - Whether or not, based on a preponderance of the evidence, the alleged behavior took place and whether that behavior constitutes a civil rights violation (**analysis and conclusion**). The determination shall include a summary of all evidence and information used to reach these conclusions.
 - **This is the only report that will include an analysis and conclusion.**

QUESTIONS?





STRUCTURE OF REPORTS

FORMAL INVESTIGATIONS



PRELIMINARY INVESTIGATION REPORT – STEP I

- I. Basic Information
 - I. Involved parties and witnesses (redact names, use “Complainant,” “Respondent,” “Witness 1,” “Witness 2,” etc.)
 - II. Date of alleged incident and brief description of allegations
 - III. Procedural History (background/history of the case)
 - IV. Jurisdictional Statement & Standard of Proof
- II. Summaries of Interviews & Relevant Evidence
 - I. Summary of information provided by Complainant during their interview.
 - II. Summary of information provided by Respondent during their interview.
 - III. Summary of information provided by Witnesses during their interviews.
 - IV. Relevant Evidence (for example: emails, text message correspondence, video surveillance, police reports, etc.)

Send the Preliminary Investigation Report to the Complainant and Respondent and give them 10 calendar days to respond with any changes, clarifications, or questions. Incorporate, as relevant, their responses into the Final Investigation Report.

FINAL INVESTIGATION REPORT – STEP 2

I. Basic Information

- I. Involved parties and witnesses (redact names, use “Complainant,” “Respondent,” “Witness 1,” “Witness 2,” etc.)
- II. Date of alleged incident and brief description of allegations
- III. Procedural History (background/history of the case)
- IV. Jurisdictional Statement & Standard of Proof

II. Summaries of Interviews & Relevant Evidence

- I. Summary of information provided by Complainant during their interview (+ feedback from Preliminary Investigation Report).
- II. Summary of information provided by Respondent during their interview (+ feedback from Preliminary Investigation Report).
- III. Summary of information provided by Witnesses during their interviews.
- IV. Relevant Evidence (for example: emails, text message correspondence, video surveillance, police reports, etc.)

III. Factual Findings

DETERMINATION REPORT – STEP 3 (FOR NON-TITLE IX CASES ONLY)

I. Basic Information

- I. Involved parties and witnesses (redact names, use “Complainant,” “Respondent,” “Witness 1,” “Witness 2,” etc.)
- II. Date of alleged incident and brief description of allegations
- III. Procedural History (background/history of the case)
- IV. Jurisdictional Statement & Standard of Proof

II. Summaries of Interviews & Relevant Evidence

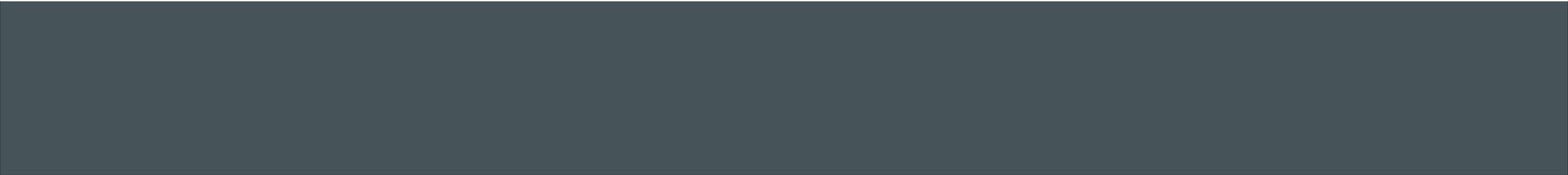
- I. Summary of information provided by Complainant during their interview (+ feedback from Preliminary Investigation Report).
- II. Summary of information provided by Respondent during their interview (+ feedback from Preliminary Investigation Report).
- III. Summary of information provided by Witnesses during their interviews.
- IV. Relevant Evidence (for example: emails, text message correspondence, video surveillance, etc.)

III. Factual Findings

IV. Analysis (including referencing relevant policies/procedures)

V. Conclusion

QUESTIONS?





UNDERSTANDING FACTUAL FINDINGS, ANALYSIS, AND CONCLUSION

FORMAL INVESTIGATIONS





FACTUAL FINDINGS

TO BE INCLUDED IN BOTH THE FINAL INVESTIGATION REPORT AND DETERMINATION REPORT



FACTUAL FINDINGS

The facts as you, the Investigator, find them based on the evidence.

- Did parties say that certain information was undisputed?
- What information is disputed?
 - Do witness statements support one version of the story over the other?
 - Does the evidence support one party over the other?
 - Did one party provide inconsistent information?
 - Were both parties credible? One party? Neither party?
 - Credibility analysis should be done only as needed, not routinely
- Don't use evidence to match your preferred finding. Factual findings should always be based on the evidence.

EXAMPLE

It is undisputed that Complainant was enrolled in Spanish 101 during the Fall 2020 semester and that Respondent was the assigned Instructor for the course. It is further undisputed that Complainant received an accommodation from Disability Services because of a mental disability and that the Respondent was provided a valid copy of Complainant's accommodation letter.

The investigators find, based on consistent statements from Complainant, Witness 1, and Witness 2, that following Respondent's receipt of the accommodation letter, Respondent required Complainant to disclose her disability to the entire class and publicly berated and laughed at Complainant for needing an accommodation during several class periods. The investigators further find, more likely than not, that Respondent's behavior caused Complainant to leave the classroom crying on numerous occasions. This finding is based on Complainant's statement to the investigators, in addition to witness statements from several students who were also in the classroom during the incidents.



ANALYSIS

ONLY TO BE INCLUDED IN THE DETERMINATION REPORT (FOR NON-TITLE IX CASES **ONLY**)



ANALYSIS

Apply the Policy to the Factual Findings.

- **Include the policy/definition word for word.**
 - For example: Harassment, Hostile Environment, “occurs when a person is subjected to verbal or physical conduct based on a protected class that is sufficiently severe, persistent or pervasive, and objectively offensive to... unreasonably interfere with a person’s ability to participate in or benefit from CCCS educational programs or activities, from both a subjective and objective viewpoint.”
- **Reiterate the factual findings and apply the policy/definition.**
 - As discussed in the factual findings section, the investigators found that the Respondent berated and laughed at Complainant based on Complainant’s disability and need for an accommodation on several occasions. The investigators found that several witnesses observed this behavior and that Respondent’s behavior caused Complainant to leave the classroom crying on numerous occasions. The investigators find that Complainant was subjected to Respondent’s verbal conduct, which was sufficiently severe and persistent, and objectively offensive. Respondent’s conduct unreasonably interfered with Complainant’s ability to participate in class, which is an educational program, both from a subjective and objective viewpoint.



CONCLUSION

ONLY TO BE INCLUDED IN THE DETERMINATION REPORT (FOR NON-TITLE IX CASES ONLY)



CONCLUSION

Based on a preponderance of the evidence standard, and the information obtained pursuant to this investigation, the investigators conclude that it is more likely than not that Respondent engaged in harassment as defined in SP 19-60. Respondent is therefore found responsible in violation of BP and SP 19-60.



RECAP

PRELIMINARY INVESTIGATION REPORT, FINAL INVESTIGATION REPORT, DETERMINATION REPORT

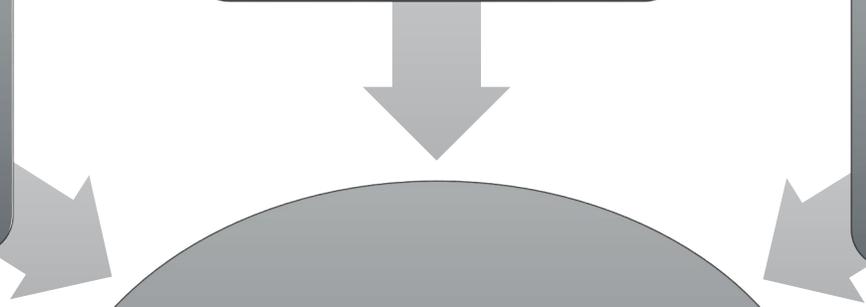


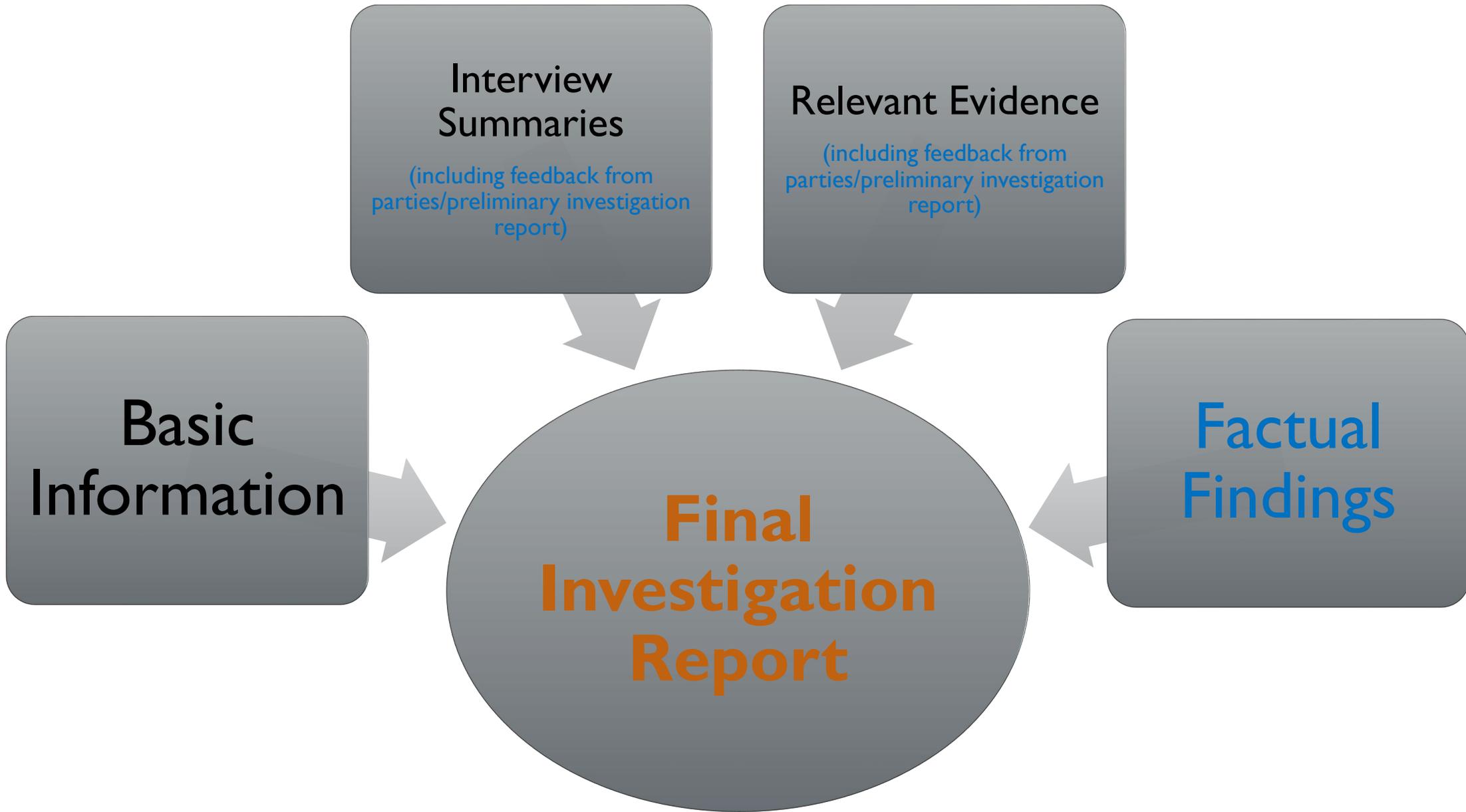
Basic
Information

Interview
Summaries

Relevant
Evidence

**Preliminary
Investigation
Report**





Interview Summaries

(including feedback from parties/preliminary investigation report)

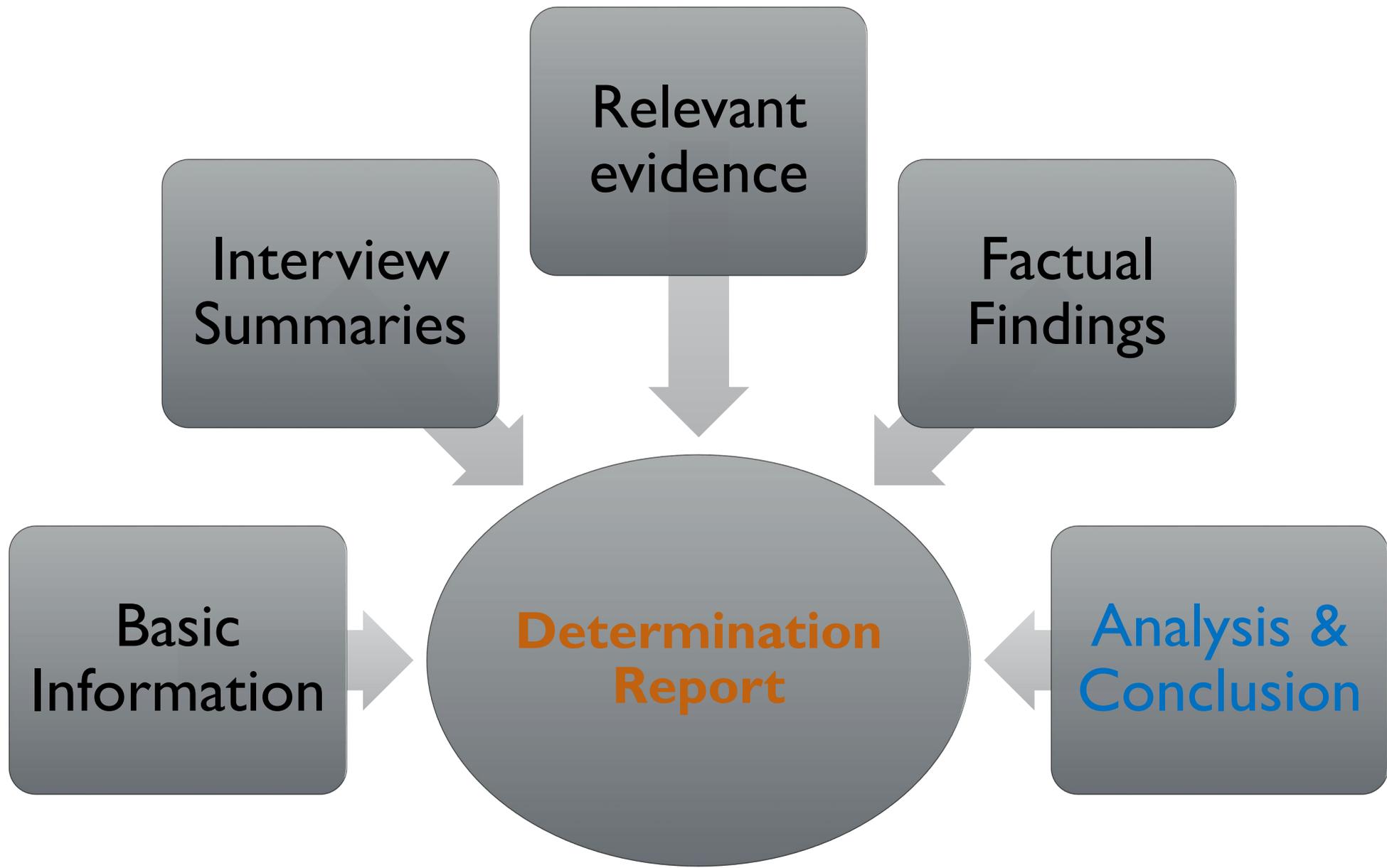
Relevant Evidence

(including feedback from parties/preliminary investigation report)

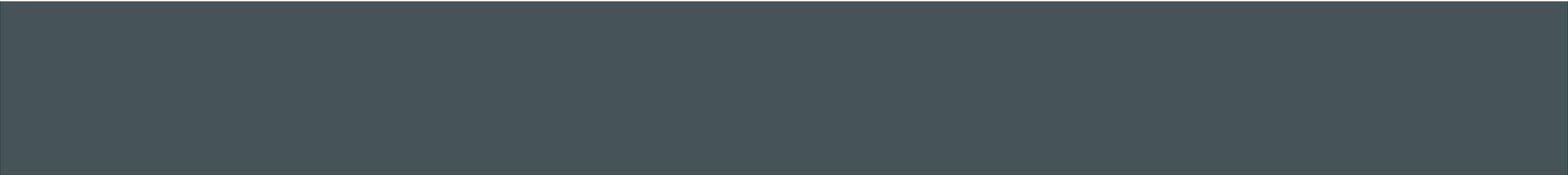
Basic Information

Factual Findings

Final Investigation Report



QUESTIONS?





REFRESHER

FINAL STEPS: NOTICE OF FINDINGS AND APPEALS



ONCE A DETERMINATION REPORT IS RECEIVED (EITHER FROM THE INVESTIGATORS OR HEARING OFFICER)...

- The Title IX/EO Coordinator will provide a Notice of Finding to the Complainant and Respondent notifying them of the findings. The parties will also receive a copy of the Final Investigation Report and Determination Report.
- Upon receiving the Notice of Findings, the parties will be advised of their right to appeal within 10 calendar days of service of the decision.
 - If the appeal is timely and meets the limited grounds for appeal, an Appellate Officer will be assigned.
 - Written notice of the outcome of the appeal will be provided simultaneously to the parties.
- Once the appeal process has been exhausted:
 - If the Respondent is found not in violation, the complaint shall be closed with no further disciplinary action.
 - If the Respondent is found in violation, the findings will be provided to the Disciplinary Authority to proceed in accordance with applicable policies.

FINAL QUESTIONS/THOUGHTS/CONCERNS?



THANK YOU FOR ATTENDING!

Feel free to contact me with any questions.

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