



TITLE IX AND BIAS: IDENTIFYING AND REDUCING BIAS IN THE TITLE IX PROCESS

Idaho State University

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MEET YOUR FACILITATOR



Collin Baer

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ABOUT US

Vision

We exist to create safe and equitable work and educational environments.

Mission

To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

AGENDA

1

What is Bias?

2

Strategies for Mitigating Bias

3

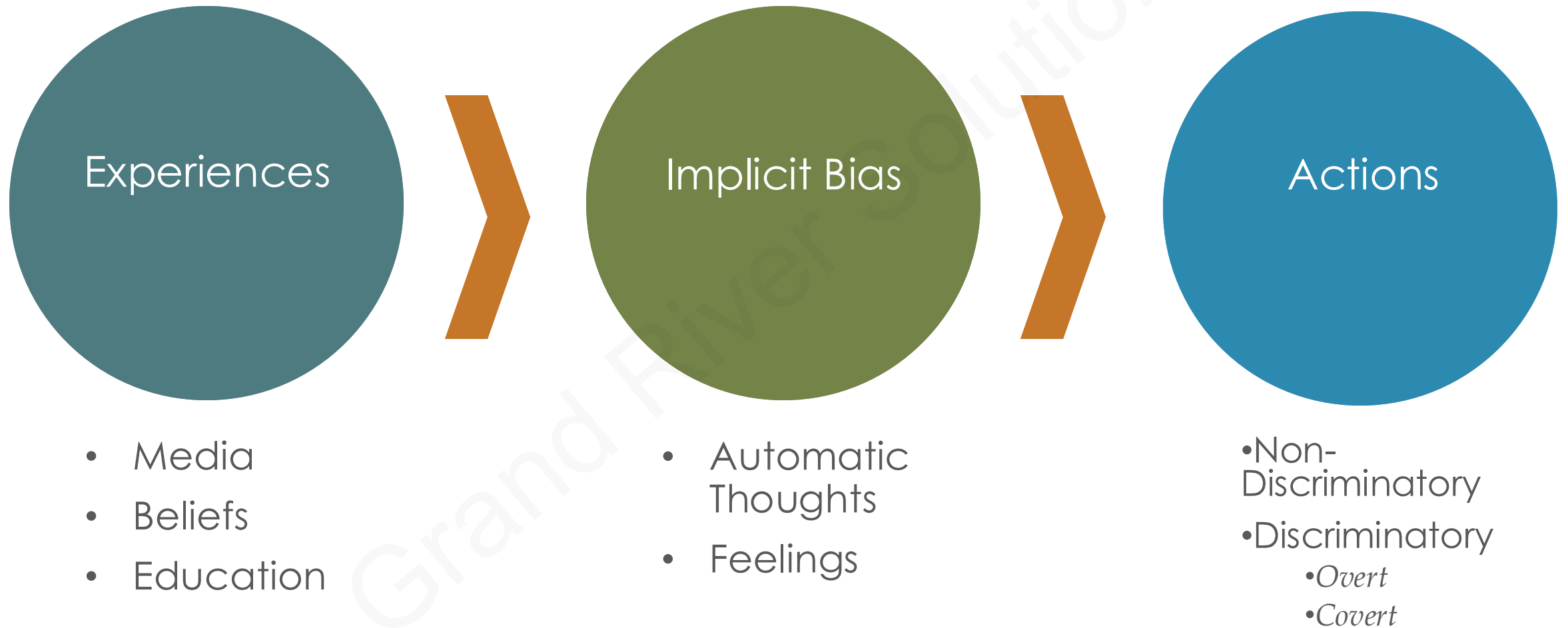
The Hearing

WHAT IS BIAS

The Neuroscience of Bias
Preparing for Bias Mitigation

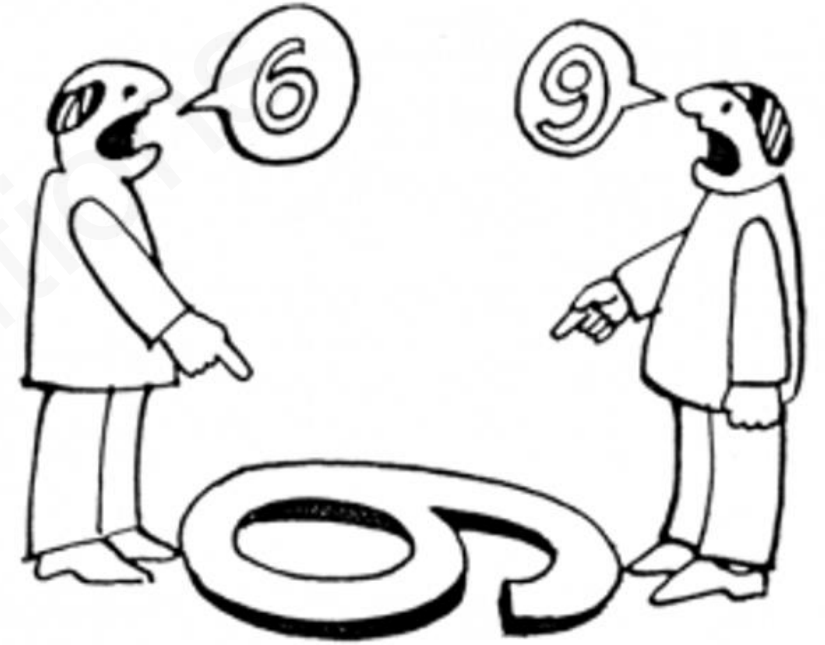
01

BIAS



PERCEPTIONS AND BIAS

- Your views are informed by your lived experiences.
 - Media
 - Family
 - Friends
 - Education
 - Societal Cues
 - Culture
- Your identity informs how you see the world and how the world sees you.



Multiple truths
exist!

WHY BIAS EXISTS

Minimal Group Effect

In-group favoritism occurs even when group membership is random. We are built to connect.

Bias and Self-Esteem

Bias can be self-affirming. If other groups are inferior, my group (“I”) must be superior.

Rationalization for Oppression Powerful group often retains power using stereotypes and prejudices.

Socialization/Exposure

We learn it. Influence of family, teachers, peers, media, and experience.

Lack of Exposure to the Diversity within Other Groups We tend to appreciate the diversity within our own groups, but not other groups.

Categorization Our mental tendency to group things, including people (e.g., race, gender, and age in the U.S.).

WE ALL HAVE BIAS!

The impact of our bias on others depends on the roles and the power we have in different situations.



4 PROBLEMS BIASES ADDRESS

Too Much
Information

Not Enough
Information

Must Act Quickly

What to Remember

Biases are methods our minds use to process information in an efficient matter.

WHAT ARE CONSEQUENCES OF BIAS?



CONSEQUENCES OF BIAS



We don't see everything.



We see what we believe.



Quick decisions can be flawed.



Our memory reinforces error.

STRATEGIES FOR MITIGATING PERSONAL BIAS



02

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BIAS MITIGATION STRATEGIES



As Title IX Practitioners, we are responsible for considering the ways that bias might impact our campus processes, to ensure a fair, equitable outcome.

What bias mitigation strategies do you utilize on your campus in consideration of this requirement?

MITIGATION STRATEGIES FOR YOUR PROCESS

Stay curious to maintain maximum information

Preemptively commit to formal protocol to help decision makers

Create bias checkpoints in your process

Institute feedback mechanisms

Consult with subject-matter experts

THE REQUIREMENT OF IMPARTIALITY



THE HEARING

03

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SECTION 106.45(b)(2)

Require that any person designated as a Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias:

- For or against complaints or respondents generally, or
- An individual complainant or respondent



PURPOSE OF THE LIVE HEARING

1. Review and Assess Evidence

2. Make Findings of Fact

3. Determine Responsibility/ Findings of Responsibility

4. Determine Sanction and Remedy



ANALYSIS AND RELEVANCY

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AGENDA

1

Elements of Analysis

2

Evidence, Authenticity, Reliability, and Credibility

3

Relevancy Determinations



FINDINGS OF FACT

A "finding of fact"

- The decision whether events, actions, or conduct occurred, or a piece of evidence is what it purports to be
- Based on available evidence and information
- Determined by a preponderance of evidence standard
- Determined by the fact finder(s)

For example...

- Claimant reports that they and Respondent ate ice cream prior to the incident
- Respondent says that they did not eat ice cream
- Witness 1 produces a timestamped photo of Respondent eating ice cream



Allegation: Forcible Fondling

Fondling is the:

- touching of the private body parts of another person (buttocks, groin, breasts)
- for the purpose of sexual gratification,
- forcibly, and/or against that person's will (nonconsensually),
OR
- not forcibly or against the person's will in instances which the Complainant is incapable of giving consent because of age or because of temporary or permanent or physical incapacity

ANALYSIS GRID

Touching of the private body parts of another person (buttocks, groin, breasts)

Undisputed:

Complainant and Respondent agree that there was contact between Respondent's hand and Complainant's vagina.

For the purpose of sexual gratification

Respondent acknowledges and admits this element in their statement with investigators.

"We were hooking up. Complainant started kissing me and was really into it. It went from there. Complainant guided my hand down her pants..."

Complainant is incapable of giving consent because of temporary incapacity

Complainant: drank more than 12 drinks, vomited, no recall

Respondent: C was aware and participating

Witness 1: observed C vomit

Witness 2: C was playing beer pong and could barely stand

Witness 3: C was drunk but seemed fine

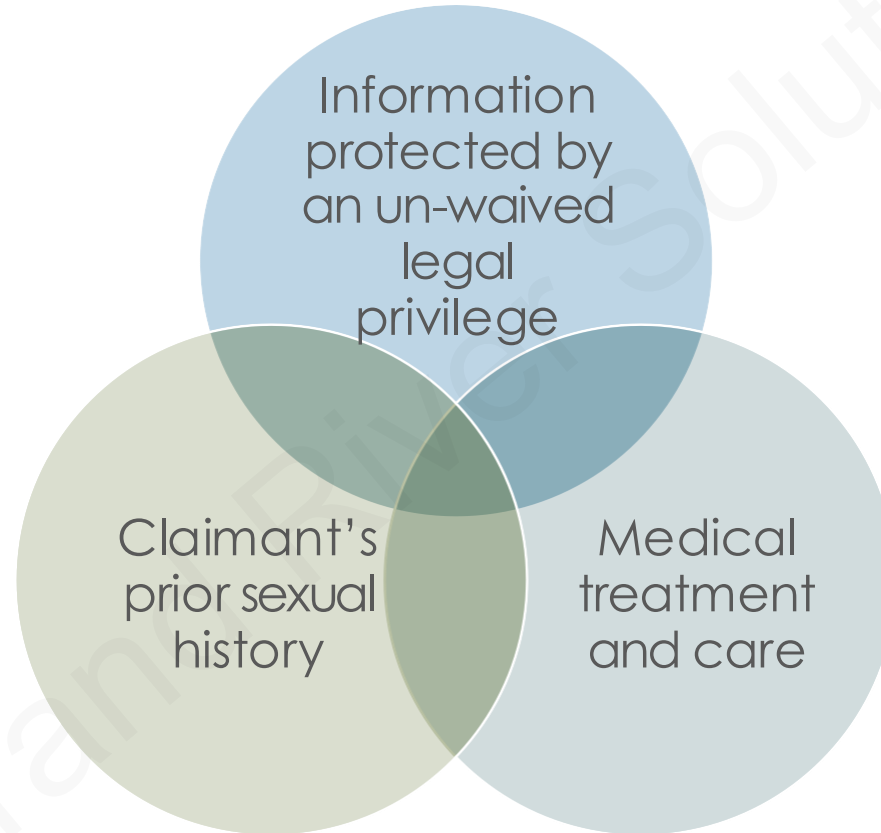
Witness 4: carried C to the basement couch and left her there to sleep it off.

RELEVANCY DEFINITION

Relevant means related to the allegations of sex discrimination under investigation as part of the grievance procedures under § 106.45, and if applicable § 106.46.

Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

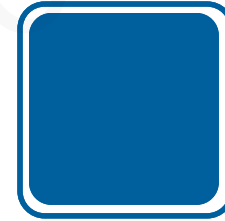
IRRELEVANT OR IMPERMISSIBLE



WHEN IS EVIDENCE RELEVANT?



Logical connection
between the evidence
and the facts at issue



Tends to make a fact
more or less
probable than it
would be without
that evidence

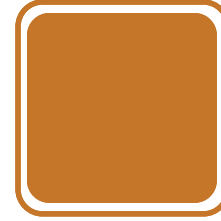


Assists in coming to the
conclusion – it is “of
consequence”

HOW CAN WE ASSESS EVIDENCE AUTHENTICITY?



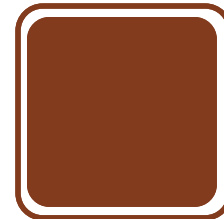
QUESTIONS TO ASSESS EVIDENCE AUTHENTICITY



Never assume that an item of evidence is authentic.

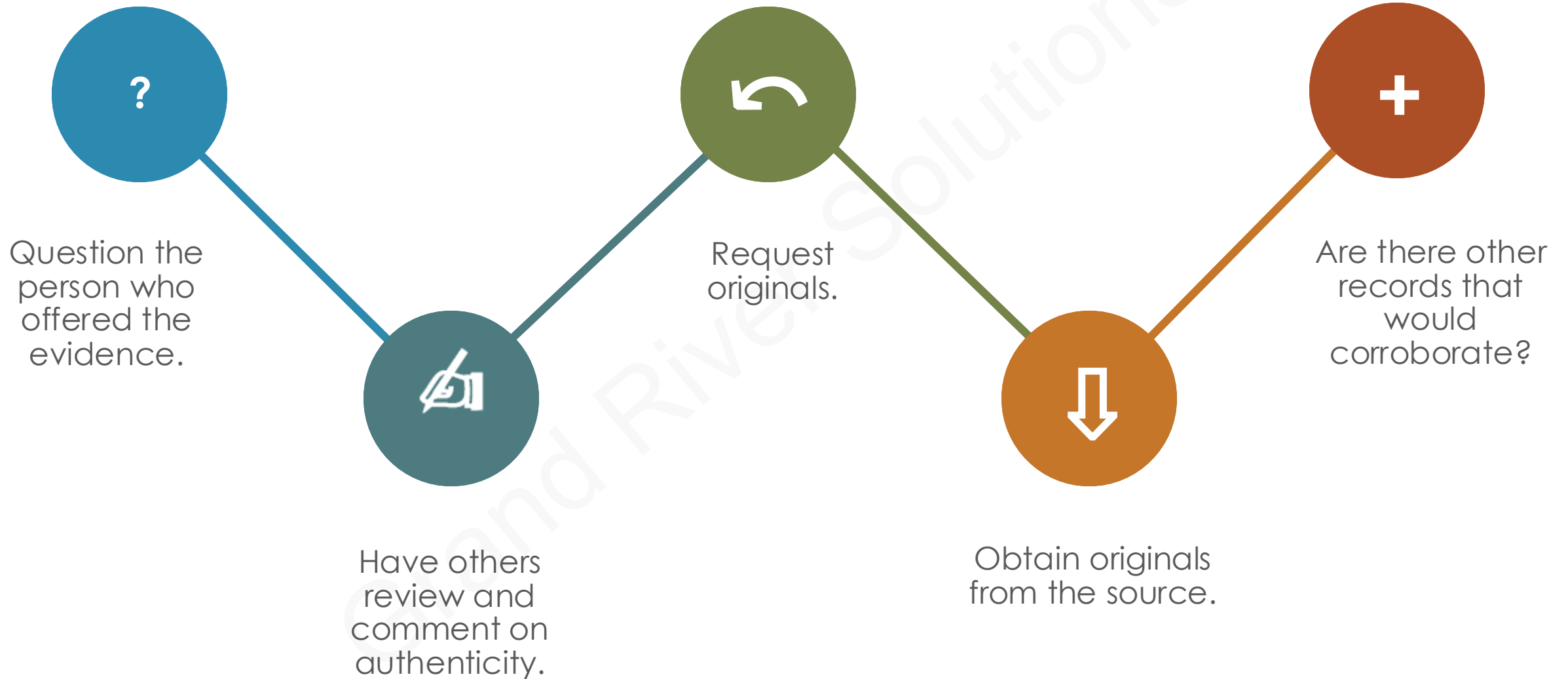


Ask questions, request proof.



Request further investigation of the authenticity if necessary.

IS IT AUTHENTIC?



CREDIBILITY VERSUS RELIABILITY

Reliability

- I can trust the person's account of their truth because it is consistent with other evidence.
- It is probably true and I can rely on it.

Credibility

- I trust their account based on their tone and reliability.
- They are honest and believable.
- It might not be true, but it is worthy of belief.
- It is convincingly true.
- The witness is sincere and speaking their real truth.

ASSESSING CREDIBILITY AND RELIABILITY

No formula exists, but
consider the following:

Sufficiency of
detail and
specificity

Ability to recollect
events

Material
Omission

Internal
Consistency

Inherent
Plausibility

Motive to
falsify

Corroboration

CREDIBILITY ASSESSMENT

- DM must be able to question parties and witnesses to assess their credibility "to the extent" credibility is disputed and relevant to an allegation of sex discrimination.
- No definition, but example from ED: Credibility cases are those when the determination relies on testimonial evidence, and must choose to between competing narratives to resolve a case.
- DM may place less or no weight on statements based on refusal to answer relevant question.*

INHERENT PLAUSIBILITY



- Is the testimony believable on its face?
- Does it make sense?
- Could it have occurred?
- Does it make sense that this person knows this information?
 - What was their opportunity to view?

CORROBORATION

- Is there witness testimony (either by witnesses or people who saw the person soon after the alleged incident, or people who discussed the incidents with the person around the time they occurred) or documentary or physical evidence that corroborates the person's testimony?
- Is there witness testimony or documentary and/or physical evidence that are inconsistent with statements made during the interview or does not provide corroboration to the person's version of events?



SUFFICIENCY OF DETAIL AND SPECIFICITY

Is the level of detail provided by the person reasonable and indicative of a genuine personal experience by the person?



ABILITY TO RECOLLECT EVENTS

- What is the extent the person was able to perceive, recollect or communicate the version of events?
 - e.g., the person reported they were intoxicated, or the person reported they were sleeping



MOTIVE TO FALSIFY

- Did the person have a reason to be untruthful other than the general desire to be believed, or to prevail?
- Did the witness openly volunteer information that is prejudicial to their interests or the Party?
- If so, does the declaration against interest bolster their credibility?
- Does the person have an articulable bias, interest or other motive? [e.g. an employee received a poor performance review, so she falsified a claim of sexual harassment against her boss].
- Alternatively, does the person have little personal gain in the outcome?
- What are the relationships between the parties?

INTERNAL CONSISTENCY/CONSISTENCY OVER TIME

- Did the person share the same version of events in all settings, including interviews, in written and/or verbal statements and between documentary evidence?
- Are there any discrepancies or contradictions?
- Is there a sufficient explanation for any discrepancies?



CONSISTENCY WITH OTHER EVIDENCE OR TESTIMONY



- Is the testimony or evidence consistent with the other evidence?
- Is the testimony or evidence inconsistent with the other evidence?
- Is there a sufficient explanation for any inconsistencies?

THANK YOU!

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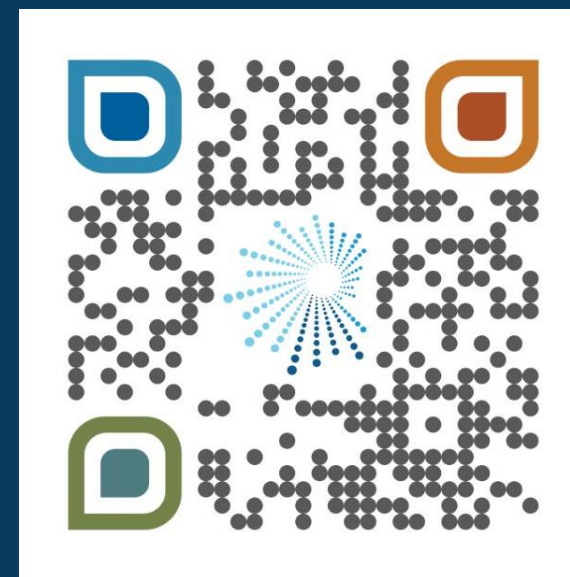


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