

# University of Missouri Equity Investigator Training

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July 2022

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# Agenda

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Scope of Discussion

Early Issues

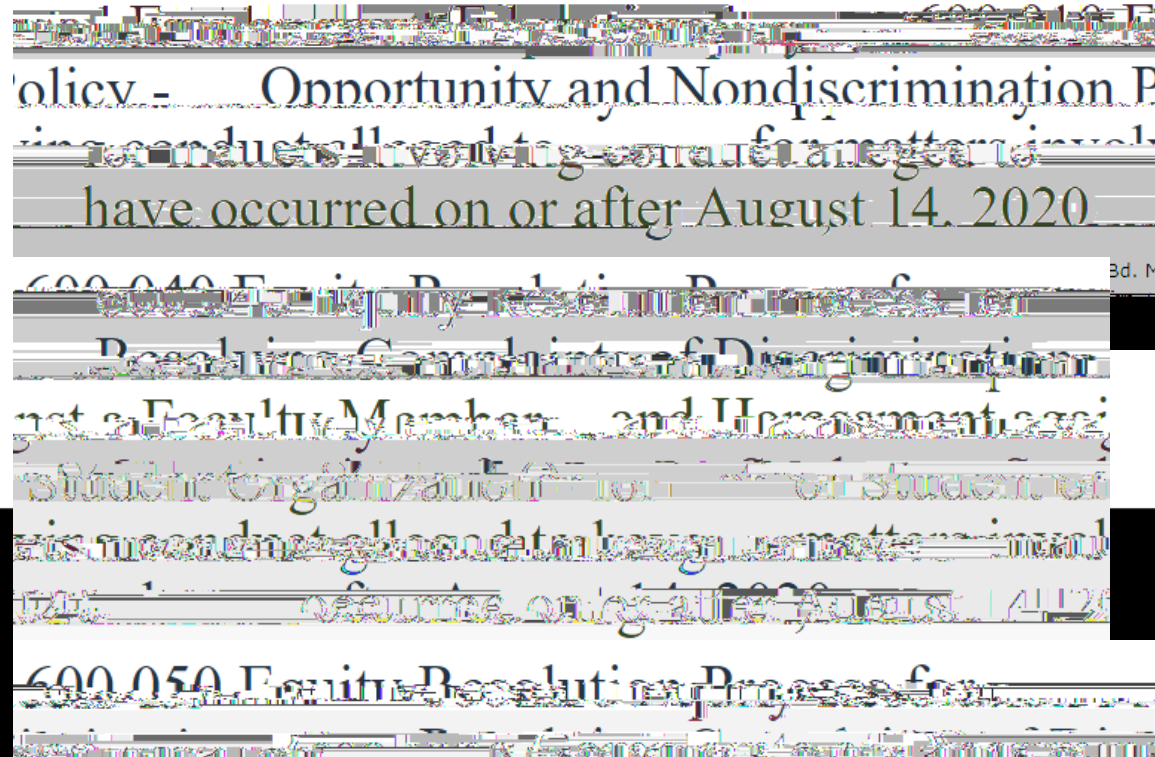
Gathering Information – Best Practices (and quick case study!)

Report Writing – Best Practices

Case Studies



# Nondiscrimination Policy (Equity Investigations)



# Broader Scope...

Further, if a Complainant simultaneously alleges or the investigation suggests that violations of the University's Anti-Discrimination Policies and disagreements arising from working relationships, working conditions, employment practices, or differences of interpretation of a policy, the University shall have the authority to investigate and take appropriate action regarding inappropriate Complainant allegations pursuant to the Equity Resolution Process. In conducting such an investigation, the Office of Equity Resolution may consult with and/or seek input from Human Resources and/or appropriate administrators and/or other employees.



**E. Preliminary Contact and Inquiry.** Upon receiving a report, the Equity Officer shall promptly contact the Complainant to discuss the availability of supportive measures as defined herein, consider the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]





What is a “limited investigation”?

What is a “preliminary inquiry”?

What if the complaint is anonymous? Or indirect?

# Considerations

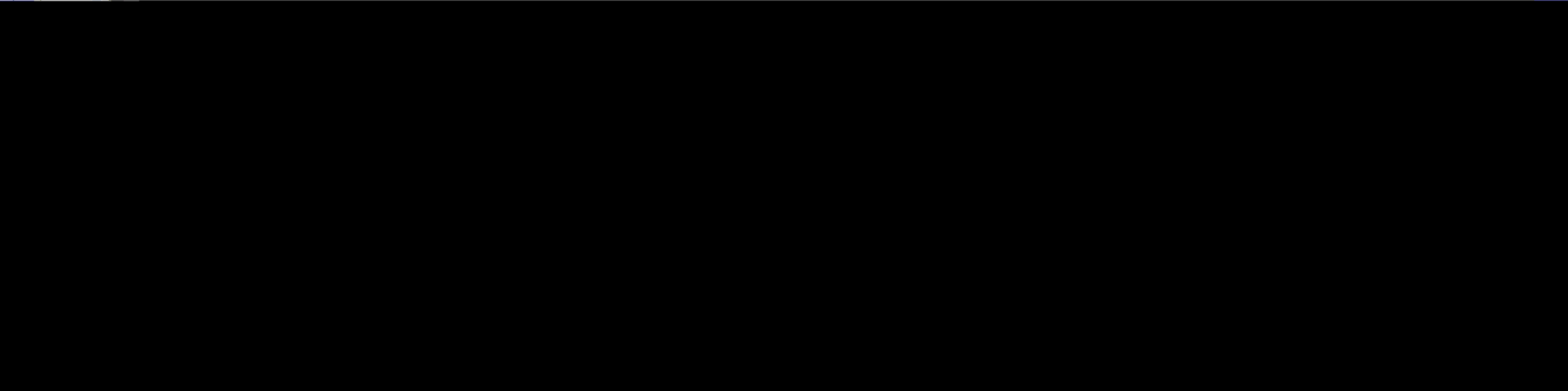
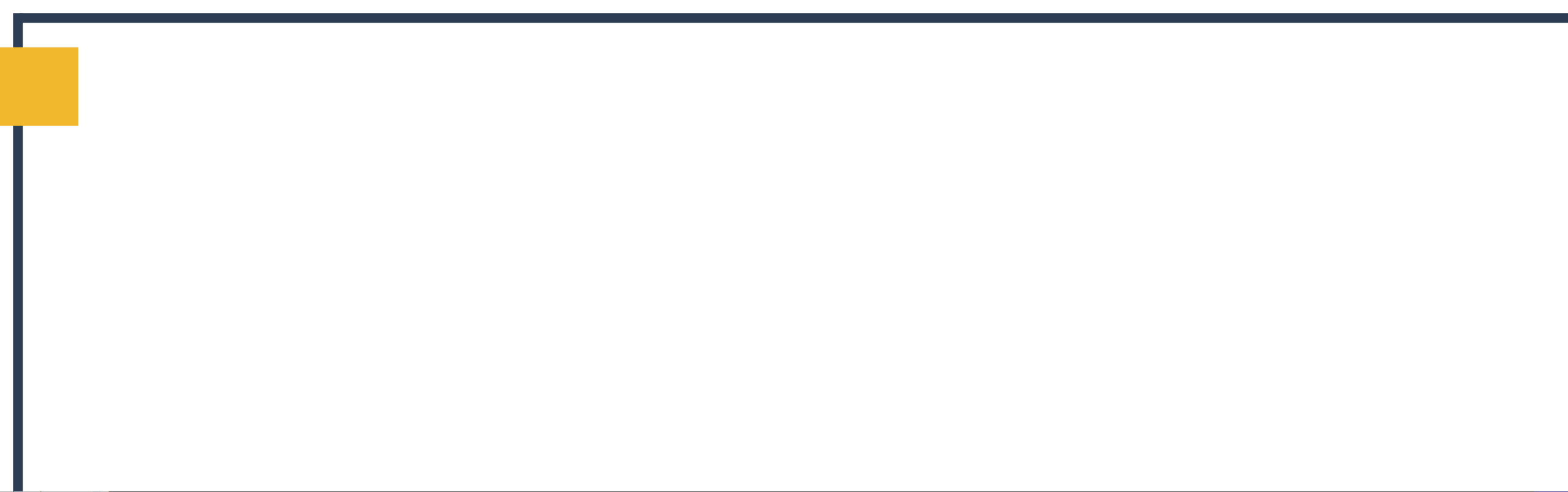
Once an allegation is reported, regardless of the source, the first task is to determine

# Considerations

Once you understand the allegations, then consider - ***is there information that might support the allegations beyond the complaint/report itself?***

If so, ***what type of information*** would be necessary to determine whether a potential policy violation has occurred –

- Is the information publicly available (e.g., available on the University's website, subject to a Sunshine Act request, etc.)?
- Would gathering information require interviews or other methods that would necessarily make more individuals aware of the allegations?





# Develop Plan of Investigation

**Who** will you interview?

**What** questions will you ask?

**What** documents do you need to review?

**Where** will you interview each person?

**When** will you interview each person?

**Why** will each person be important to your investigation?

**How** will you order your interviews?

# Always remember the “why”

There is an allegation.

A decision-maker will have to fairly and objectively review information to determine whether –

- Alleged behavior occur( oc)-ior occur( od Tc 0 Twh)7/0enor occurn2e(or)-32 T

# Items to consider early and often

Clarify allegations – they may change over time as more information is available

Understand the complexity – how many decisions, individuals, etc. are involved?

Identify and understand factual disputes – are those disputes material?

Ask yourself – what information would assist a decision-maker?  
– Consider if comparator data exists.



# If a discrete decision is at issue. . .

Gather information about how the decision was made –

- Who was/were the decision-maker(s)?
- What information was available to them?
- What is the stated reason for the decision?
- What information is available to document the response to each of these questions?

# Comparator Evidence

From the EEOC:

**Investigative Requirements** C. Ge  
circumstances under which the \_\_\_\_\_'s investigation can be used as the basis for knowledge of the  
\_\_\_\_\_ "\_\_\_\_\_ " \_\_\_\_\_  
other similarly situated employees, if any; \_\_\_\_\_ and any \_\_\_\_\_ compared with the treatment of o  
\_\_\_\_\_ "\_\_\_\_\_ " \_\_\_\_\_  
\_\_\_\_\_ though they have not been previously cited by the complainant.

# Comparator Evidence

Requires identifying whether there are others who are “similarly situated” (comparators).

- This is a very fact-intensive inquiry.
- Some courts have identified the following criteria to consider:
  - Engaging in the similar conduct (or misconduct);
  - Being subject to the same employment requirements, policies, procedures, or rule;
  - Same reporting structure;
  - Similar employment or disciplinary history.

# Other sources of information

As parties or witnesses identify potential information, consider how you might obtain it –

- Ask the person identifying the information if it is in their possession; if so, will they share it?
- Do they know who might have the information?

Don't forget about information the University makes publicly available.

Work to understand how the University (departments, units, etc.) maintain information. (Where does the information live?)

# Interviews – the parties

- Acknowledge the difficulty of the situation and explain that your goal is to understand what happened
- Let the party give a statement in his/her own words without interruption before asking follow-up questions
- Ask for clarification; don't interrogate
  - Stress that you want to get it right
  - Seek clarification for inconsistencies and explanations that don't make sense

# Interviews – the parties

- For complainants, ensure you have up to date understanding of allegations;
- For respondents, ensure the respondent has the most up to date notice and consider whether the notice needs to be updated –
  - Make sure to fully understand the complaint so that the individual has opportunity to address all allegations
- Give both parties opportunities to identify potentially relevant information – including other witnesses, documents, electronic data, etc.

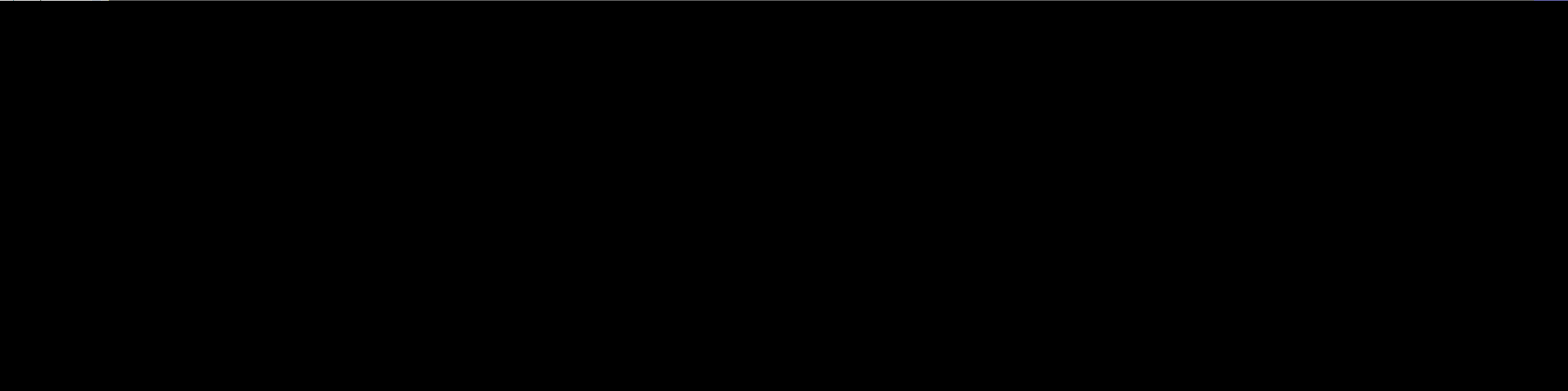
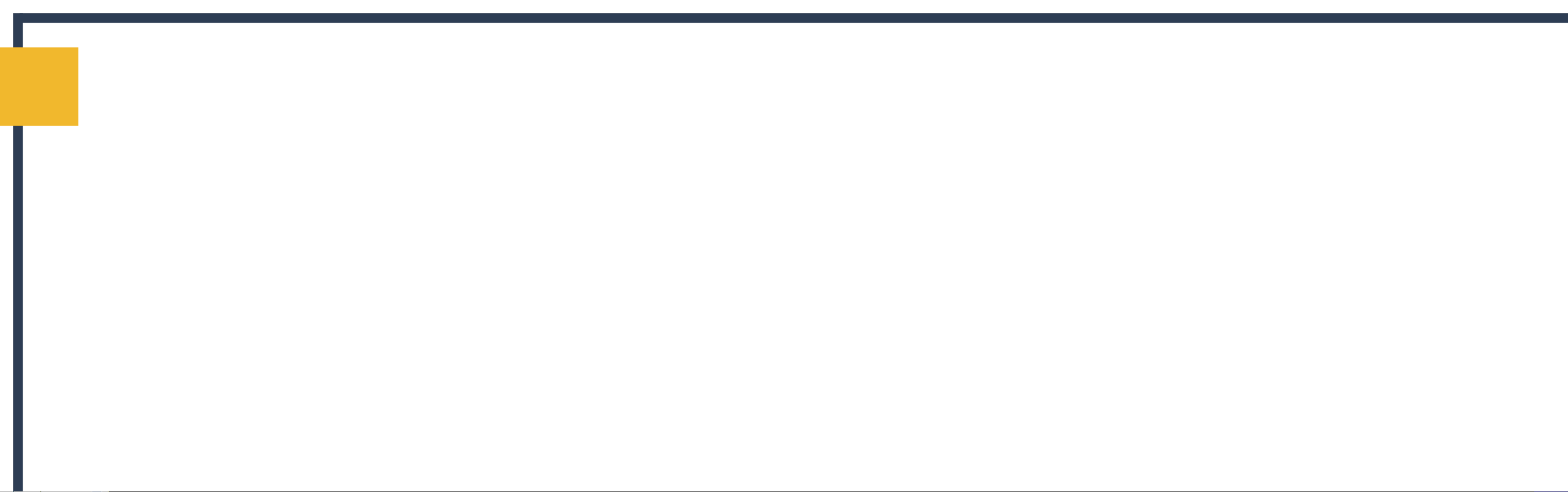
# Reminders for conducting interviews

Be objective and do not prejudge

Make those being interviewed as comfortable as possible

- Consider appropriate location, time, etc.
- Avoid group interviews
- Provide adequate notice of interviews

Be respectful –







# Reminders for conducting interviews

# Reminders for conducting interviews – Garrity Warnings

Most relevant in situations where the University is investigating conduct that may also be criminal.

Not necessary for most investigations, unless the investigator is aware of a concurrent criminal investigation.

In situations where the University intends to compel a response and the employee being questioned indicates they are not comfortable answering, the investigator should provide a Garrity Warning.

# Quick Case Study

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# **Report Writing – Best Practices**

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# Preparing the report

Plan as you investigate

- Compile information as you go – don't be left to draft everything at the end of your interviews

Drafting as you go helps to identify gaps in information

As you consider the report, decide –

- How will you organize the information?
  - Follow the report template
- Will you include an overall chronology or summary at the end?
- What are some key sections that you should include?

# Preparing the report

The report should include a detailed summary of the investigation, including:

- Summary of the procedural steps in the investigation;

- Summary of all interviews; and

- Summary of any physical or documentary evidence.

  - Photographs, logs, emails, text messages, police reports, forensic evidence, etc.

- Attach copies of statements and documents to the report.

# Summaries of Witness Interviews

When summarizing witness interviews –

- Explain who the witness is and how he/she is connected to the University and the investigation

- State when and where you interviewed the witness

- Identify any other individuals present during the interview (e.g., an advocate)

- Describe in detail each event or topic discussed during the interview

# Summaries of Witness Interviews

- Identify what information you provided to the witness (if any) about the complaint or your investigation
- Note any discussions about confidentiality, retaliation, next steps, etc.
- Describe in detail how the witness responded to the information provided

What did the witness say?

Did they have a physical or emotional response?

Did they deny having any relevant information?



# Summaries of Witness Interviews

- With respect to each event or topic discussed –
  - Note the date, time, and location
  - Provide a chronology of the event as reported by the witness (who said what and in what order)
  - For any key statements, document verbatim what the witness reported was said
  - Describe in detail any alleged gestures or physical contact
  - Note the name of any other witnesses identified by the witness
  - Describe any documents or other evidence provided by the witness

# Remember tone and voice

When recounting information from the parties or witnesses, identify the source of the information and avoid conclusory statements

- Good

  - “Maria reported that Dave called her fifteen times on Tuesday evening after class.”

  - “The following is a summary of the information provided by Maria: . . .”

- Not so good

# Summaries of Witness Interviews

- Note your observations about the witness's behavior, demeanor, and attitude during the interview
- BUT only report factual observations, no conclusions

## Good

- Maria cried when talking about X.
- Dave looked at the floor when talking about Y.

## Not So Good

- Maria cried when talking about X, so I believe she was telling the truth.
- Dave looked at the floor when talking about Y, so I believe he was lying.

# Summaries of Witness Interviews

Note inconsistencies in the witness's account or discrepancies between what the witness says during the interview and any subsequent communications

BUT again, avoid conclusions

- Good

During my initial interview with Maria, she said Dave did X. After informing her that Dave denied doing X, she explained that Dave had actually done Y.

- Not So Good



# Follow-Up Interviews

Same rules above apply





# Other Information

If a witness was not contacted, explain why

# What else should you consider?

A Good Investigative Report is ... **as specific as possible**

- Avoid vague terms like “some,” “many,” “a lot”
- Provide dates, times, locations, when available
- The more details, the better



# What else should you consider?

A Good Investigative Report is ... **clear**

- Err on the side of over-explaining
- Assume the reader knows nothing about the individuals involved
- Introduce each individual the first time they are mentioned in the report and provide their title and/or explain their involvement in the complaint and investigation
- Use consistent terminology throughout



**What else should you consider?**

# What else should you consider?

A Good Investigative Report is ... **helpful to the decision-maker.**

- What is helpful?
- What is not helpful?



# Concluding thoughts

Treat all individuals involved in this process with respect and courtesy

Be even handed and impartial – this process is meant to be fair to all involved

Remember the impact of the process on those involved and be sensitive to those difficulties

# Case Studies

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QUESTIONS?

