



# Relevancy, Credibility and Reliability

Michigan State University

April 21, 2023



# Agenda

01

Elements Analysis

02

Evidence authenticity, reliability, and credibility

03

Practice



# Decision-making Procedure

- **Collection of Relevant Evidence:** Collection of Relevant Evidence - OIE is responsible for collecting evidence and determining the relevancy of any evidence that is collected or provided by the parties, or witnesses. Evidence may include but is not limited to, party and witness statements, documents, electronic communications, personnel files, supervisor files, HR files, RCPD files, etc.
- **Final Investigation Report:** The parties receive copies of the Final Investigation Report (FIR) which includes a determination of whether OIE found a policy violation. The FIR is also sent to HR and the college, department or unit, or to the Dean of Students Office where applicable.

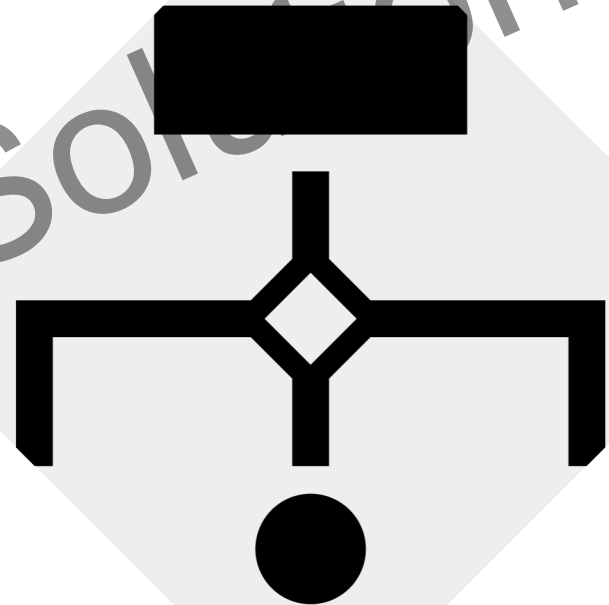
# Findings of Fact

- **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



## Policy Analysis

- Break down the policy into elements
- Organize the facts by the element to which they relate



# Allegation: Age-based Harassment

Harassment violates the ADP when a University community member:

- is subject to unwelcome conduct based on a protected category that,
- Is objectively and subjectively severe, persistent or pervasive; and
- Creates an unreasonable interference with the individual's work or educational experience.

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# Analysis Grid

<b>subject to unwelcome conduct based on a protected category</b>	<b>objectively and subjectively severe, persistent or pervasive</b>	<b>Creates an unreasonable interference with the individual's work or educational experience</b>
<p>Claimant: Respondent asked about and commented on her age.</p> <p>Respondent: Claimant shared her age. Respondent does not recall how she responded, but may have seemed surprised because Claimant seemed younger.</p>	<p>Claimant: Conversation occurred once, about a year ago.</p> <p>Respondent: Did not notice a change in Claimant's work.</p>	<p>Claimant: Felt uncomfortable ever since and avoided non-mandatory events.</p> <p>Respondent: Unaware Claimant was uncomfortable. Noticed Claimant did not attend recent weekend leadership conference.</p> <p>Witness: Claimant said she was avoiding Respondent.</p>

# Evaluating the Evidence

Is it relevant?

Evidence is relevant if it has a tendency to make a material fact more or less likely to be true.

Is it authentic?

Is the item what it purports to be?

Is it credible/reliable?

Is the evidence worthy of belief?

What weight, if any, should it be given?

Weight is determined by the finder of fact!



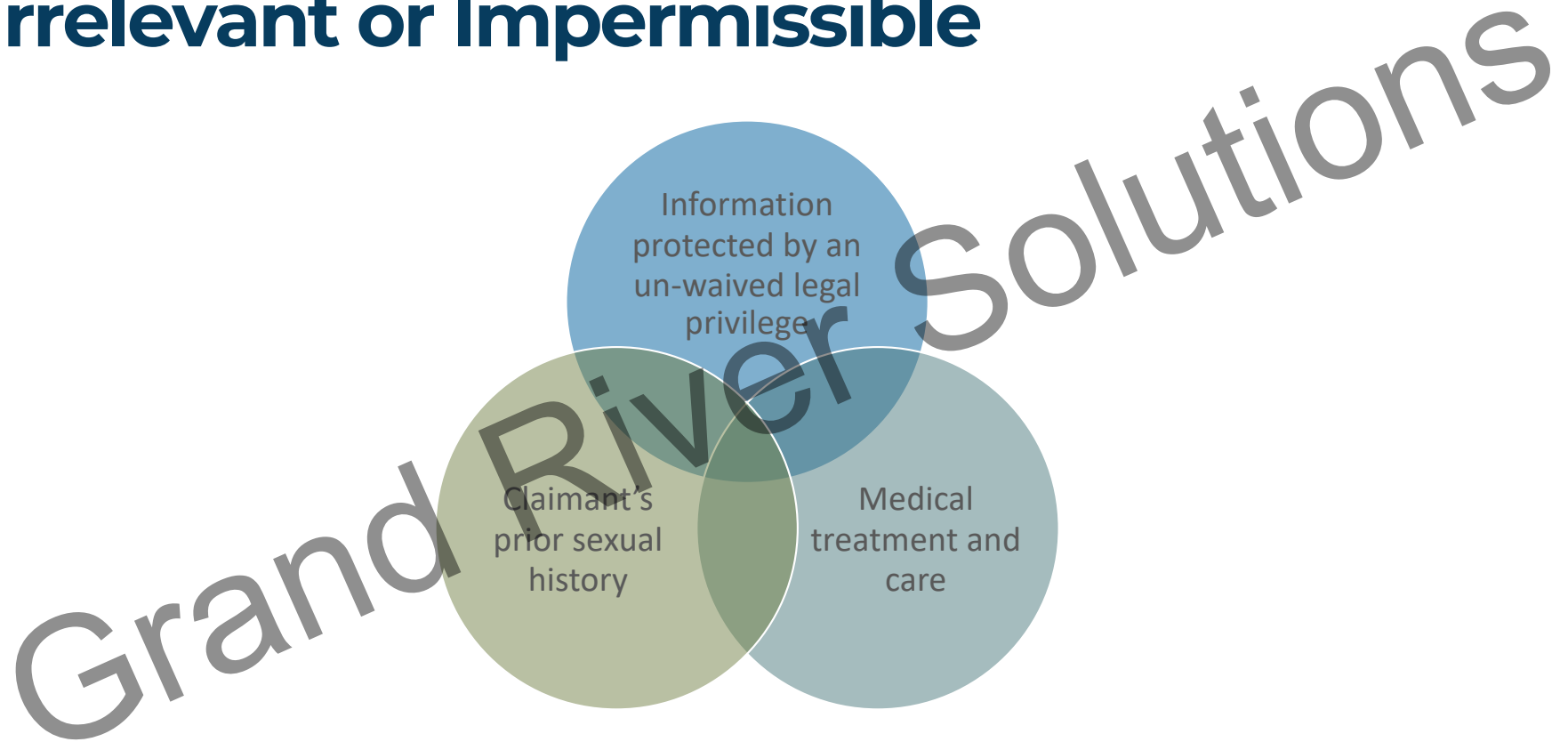
## When is evidence relevant?

Logical connection between the evidence and 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”

# Irrelevant or Impermissible



## Is it authentic?

Question The Person Who Offered The Evidence

Request Originals

Obtain Originals From The Source

Have Others Review And Comment On Authenticity

Are There Other Records That Would Corroborate?

# CREDIBILITY AND RELIABILITY

- Why they are different
- How to write about it
- When a party attacks credibility of the other, but on a non-issue (delay in reporting, did not go to law enforcement, minimized the report in comments to a friend or family,)
- How to ask questions to get to the bottom of it without being offensive

# 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.

## Reliability

Inherent plausibility

Logic

Corroboration

Other indicia of reliability

## Credibility

**No  
formula  
exists, but  
consider  
the  
following:**

motive to fabricate

plausibility

consistency

background, experience, and training

coaching

# CREDIBILITY/RELIABILITY ANALYSIS

## STEP BY STEP

1. Determine the material facts – focus only on material facts.
  2. Determine which material facts are:
    - Undisputed – consistent, detailed and plausible, and/or agreed upon by the parties [e.g., Marcy and Jack attended a fraternity party on April 5, 2019]
    - Disputed – unsupported by documentary or other evidence, or are facts about which an element of doubt remains
    - State clearly which facts are accepted, and which are rejected, and state the reasons why.
- “While Jack maintained that he never kissed Marcy and went home early, several witnesses corroborated that he was at the party until 3 a.m. In addition, a photo was submitted by a witness showing Jack kissing Marcy. Therefore, I find that Jack’s version of events cannot be credited as being more likely than not to be true.”



# 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?

# 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?

# INHERENT PLAUSIBILITY / LOGIC

- 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/hear/know?

# MATERIAL OMISSION

- Did the person omit material information?
- If so, what?
  - e.g., submitted partial text messages, or omitted text messages that could be perceived as unfavorable
- Is there a reasonable reason for the material omission?

## PAST RECORD

- Is there a history of similar behavior in the past?
  - e.g., a supervisor had previous complaints of sexual misconduct
- If so, this might impact whether a statement should be believed.
  - For example, a respondent who states they never knew that a certain behavior was wrong, yet was written up for that same behavior, the history of similar past behavior makes the respondent's statement less believable and less reliable.

# ABILITY TO RECOLLECT EVENTS

- What is the extent the person was able to perceive, recollect or communicate the version of events?

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## Weighing Evidence



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# Types of Evidence

## Direct Evidence

- Evidence that is based on personal knowledge or observation and that, if true, proves a fact without inference or presumption.

## Circumstantial Evidence

- Evidence based on inference and not on personal knowledge or observation.

## Corroborating Evidence

- Evidence that differs from but strengthens or confirms what other evidence shows