Part 2

Title IX Training for

Coordinators & Investigators

ANY QUESTIONS FROM THE ASSIGNED VIDEO

Module 4 – Hearings

Emergency Removal

With respect for a process to remove a respondent from a recipient's education program or activity, these final regulations provide an emergency removal process in § 106.44(c) if there is an immediate threat to the physical health or safety of any students or other individuals arising from the allegations of sexual harassment. A recipient must provide a respondent with notice and an opportunity to challenge the emergency removal decision immediately following the removal. **(p. 574)**

Who does this? Emergency Removal Process

- The Emergency Removal Committee (hereafter ERC) has the authority to remove any University community member who poses an immediate threat to the physical health or physical safety of a complainant, respondent, or any other person participating in the investigation or adjudication of the Title IX process.

- The ERC will be composed of 3 members as follows:
  - Student is the alleged threat: Title IX Coordinator (or designee), a University professional who possess a background in counseling or social work appointed by the T9C (with designee back-up), Dean of Students (or designee).
  - Employee is the alleged threat: Title IX Coordinator (or designee), a University professional who possess a background in counseling or social work appointed by the T9C (with designee back-up), Human Resource Administrator appointed by the T9C (or designee).

The ERC Removal Process

- **In making the decision to remove a respondent on a temporary basis, the ERC will use the following criteria.**
  - **This meeting would include interviewing any individual who has relevant information regarding the immediate threat of the respondent.**
  - **Before making a decision, the ERC must meet with the respondent and allow the respondent to address the allegations of the immediate threat.**
  - **Consider only the physical safety of the potential victim(s).**
  - **Assess the available supportive and/or proscriptive measures that can remediate the immediate threat thus allowing the respondent to remain as a member of the University community.**

The ERC Removal Process

- Assess the credibility and relevance of the information received.
- Assess the nature and severity of the potential harm.
- Assess the duration of the risk.
- Assess how likely it is that the potential harm will occur.
- Assess the imminence of the potential harm.
- Determine that there is no other reasonable or restrictive remedies available other than emergency removal.

Admissibility of Evidence

"Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination question, the decision-maker [AHP Chair] must first determine whether the question is relevant and explain any decision to exclude a question as not relevant." **(p. 1115-16)**

There are two basic factors that should be considered when determining whether evidence is admissible or not. Is the evidence . . .

- **Relevant:** The evidence must prove or disprove an important fact in the case at hand. If the evidence doesn't relate to a particular fact, it is considered "irreelvant" and is therefore inadmissible.
- **Reliable:** Reliability refers to the credibility of a source that is being used as evidence. This usually applies to witness testimony.

✓ **Note:** The Title IX Coordinator, Complainant's Advisor or Respondent's Advisor may challenge any question posed to a witness asking the chair to rule on the relevance or reliability of the question.

Essentials in Determining If Evidence Is Inadmissible

- **Hearsay:** Testimony which is obtained from a third party source is not admissible.
- **Unfairly Prejudicial:** Evidence that arouses a panel member's outrage without adding any material information. For example, identifying the respondent as a member of the university Tiddlywinks team suggesting that Tiddlywinks players often violate university rules is inadmissible.
- **Wastes Time:** Several character witnesses who testify to the same character trait wastes time. Therefore, individuals wishing to speak to the character of either the complainant or respondent will not be allowed to testify.

- **Misleading:** Evidence that could draw the panel's attention away from the main issues of the case is misleading. For example, the respondent's homosexuality in a case of consensual sex with an underage person is misleading since the issue is whether the respondent had sex with a minor. The gender of the minor is irrelevant.

- **Privileges:** Evidence is often excluded if it came from a privileged source of information. The most important privileges are between attorneys and clients, licensed counselors and health care personnel, and clergy. The parties also have the right against self-incrimination.

- **Testimony Concerning the Complainant, Respondent, or Witnesses**
  - **Prior Student/Employee Misconduct:** Prior misconduct by a student or employee will not be admissible during the hearing phase. However, if the respondent is found responsible, his/her previous documented misconduct may be taken into account by the AHP during the sanctioning phase.
  - **Previous Sexual Activity:** All questioning of those testifying must exclude evidence of the complainant's or respondent's previous sexual behavior or predisposition, unless such evidence is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's sexual behavior with respect to the respondent and is offered to prove consent.

- **Alcohol and Drugs:** The Title IX Office has a long standing tradition of applying the University's "Medical Amnesty Policy" to all parties, including witnesses, in a sexual misconduct case. However, the amount of alcohol and/or drugs consumed may be very relevant in determining if a given party was incapacitated.

- **Nonparticipation:** If a party or witness does not submit to questioning at the hearing, the Administrative Hearing Panel must not rely on any statements (written or verbal) of that party or witness in reaching a determination regarding responsibility and therefore these statements are inadmissible.

- **Treatment Records:** Only admissible with written consent of the party.

Source.htm: Legal Match, https://www.legalmatch.com/law-library/article/what-is-admissible-evidencel

Previous History: Previous misconduct may be taken into consideration when the panel sanctions a responsible party.

- Title IX Coordinator gives this envelope to Hearing Panel Chair before hearing begins. If the finding is . . .

NOT RESPONSIBLE

Chair returns the envelope to T9C unopened.

RESPONSIBLE: chair opens envelope

Mr./Ms.[Name] has no previous violations

Mr./Ms. [Name] has the following previous violations . . .

Assessing Credibility: Evaluating the Credibility of Sources

He Said/She Said Cases: Because the parties have provided two different accounts of what happened during their sexual encounter and they were the only two present during the alleged incident, this case presents a situation where one person's word must be evaluated against the other's.

Reminder: If a party or witness does not submit to questioning at the hearing, the Administrative Hearing Panel must not rely on any statements (written or verbal) of that party or witness in reaching a determination regarding responsibility and therefore these statements are inadmissible.

Credibility Analysis

- Weigh the evidence and credibility taking the following into account:
  - ✓ Detail and Consistency
  - ✓ Demeanor
  - ✓ Action Taken
  - ✓ Other Contemporaneous Evidence

- Credibility is the process of weighing the accuracy and the truthfulness of the evidence.

- **When assessing credibility, you must evaluate the . . .**
  - **source**
  - **plausibility of what is offered**
  - **corroborating evidence (supporting or refuting)**
  - **motive to lie (where appropriate)**

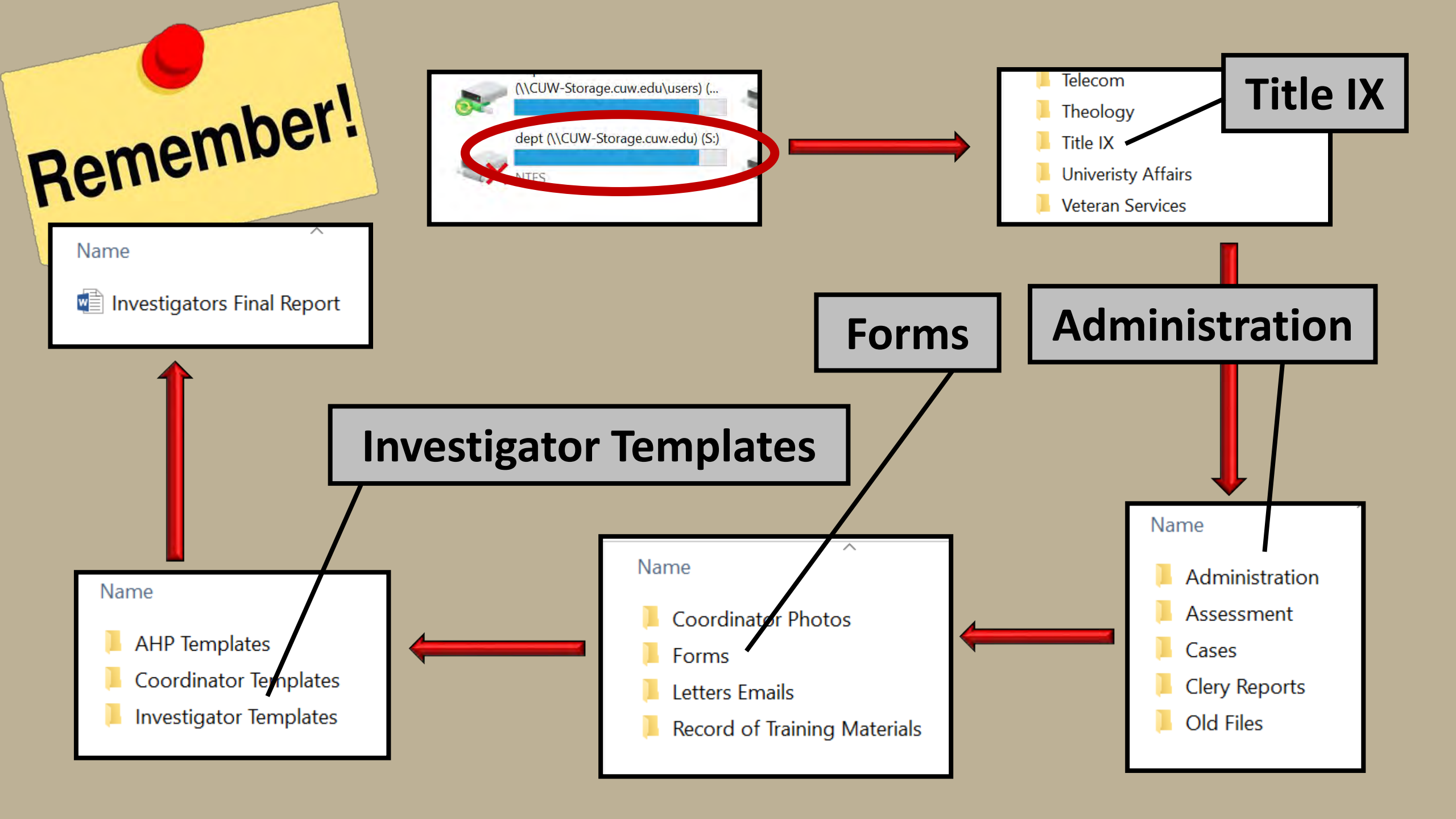
- **Coordinators and investigators need to rely on their own set of experiences when assessing credibility (avoid bias and stereotyping)**

- **Ask yourself this question:**
  - **Can I explain why I believe someone or something more than another someone or something?**

- **Detail and Consistency**
  - **The level of detail and consistency of each party's account should be compared in attempt to determine honesty and/or reliability.**
    - **Detail**
    - **Consistency**

Note: Intoxication and/or trauma can impact a person's recall.

Review of the Investigator Final Report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Forms
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Coordinator Photos
Forms
Letters Emails
Record of Training Materials
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AHP Templates
Coordinator Templates
Investigator Templates

CONCORDIA UNIVERSITY

WISCONSIN & ANN ARBOR

TITLE IX OFFICE

INVESTIGATOR'S FINAL REPORT

Case Information

Date Report Submitted: Click to enter a date.

Case Coordinator: Choose a Coordinator. Case Coordinator: Choose a Coordinator.

Case Investigators: CUW Female Investigators. CUW Male Investigators.

CUAA Female Investigators. CUAA Male Investigators.

Date of Incident: Click to enter a date. Date Reported: Click to enter a date.

Report made to: Click or tap here to enter text.

Date Assigned to Investigators: Click to enter a date. Date Completed: Click to enter a date.

Complainant's Advisor: List Advisor Respondent's Advisor: List Advisor

How some fields look

Date Report Submitted: Click to enter a date. ▼

9/30/2020

◀ September 2020 ▶

S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

Case Coordinator: Choose a Coordinator. ▼

- Choose an Item
- Jesus Hernadez
- Andrew Luptak
- Kim Masenthin
- Tori Negash
- Marie Terlinden

Report made to: Click or tap here to enter text.

Respondent's Advisor: List Advisor

Respondent's Advisor: Robert Kardashian

Involved Parties		
Complainant's Name	**Status**	**University ID#**
Diane Chambers	**Student**	F0012345
		F00
		F00
		F00
Respondent's Name	**Status**	**University ID#**
Sam Malone	**Student**	F0067890
		F00
		F00
		F00
Witness' Name	**Status**	**University ID#**
Norm Peterson	**Student**	F0034567
Cliff Clavin	**Student**	F0033445
Carla Tortelli	**Student**	F0076543
Frasier Crane	**Student**	F0013579
		F00
		F00
		F00
		F00

Listed below are the specific alleged violation(s) of the University Sexual Misconduct Policy.

Alleged Violation of the Code of Student Conduct Article 2 § D Choose an item.

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Alleged Violation of the Employee Handbook § 4.3.7. Choose an item.

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1. Sexual Harassment
2. Sexual Assault (a)Forcible Rape
2. Sexual Assault (b)Forcible Sodomy
2. Sexual Assault (c) with an object
2. Sexual Assault (d) Forcible Fondling
2. Sexual Assault (e) Incest
2. Sexual Assault (f) Statutory Rape
3. Dating Violence
4. Domestic Violence
5. Stalking
6. Retaliation
7. Sexual Harassment
8. Non-Consensual Sexual Intercourse
9. Non-Consensual Sexual Contact
10. Sexual Exploitation
11. Stalking
12. Dating Violence
13. Domestic Violence
14. Retaliation
15. Improper Restraint or Detention
16. Fraud/Lying

Listed below are the specific alleged violation(s) of the University Sexual Misconduct Policy.

Alleged Violation of the Code of Student Conduct Article 2 § D 5 Stalking.

Alleged Violation of the Code of Student Conduct Article 2 § D Choose an item.

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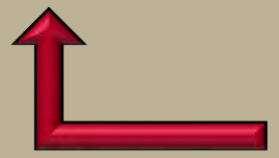


Delete the grey areas from the report

Coordinator & Investigator Meeting

TIME-LINE

Investigators complete investigation

Minimum time for parties to review evidence

Minimum time for parties to review investigative report

Investigation

10 Calendar Day Period

10 Calendar Day Period

- T9C gives access to parties

Investigators Prepare Final Report

Coordinator & Investigator Meet

Report Filed

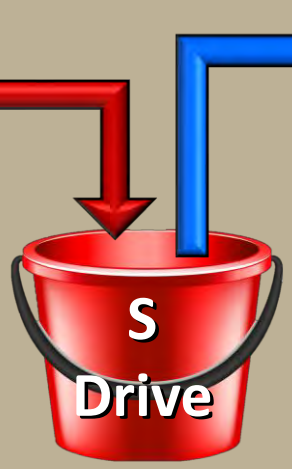
TIME-LINE

Investigators Prepare Final Report

- ✓ Summary of interview notes with complainant, respondent, & witnesses **(Done)**
- ✓ Facts of the case that both complainant(s) and respondent(s) agree (include any corroboration by witnesses)
- ✓ Facts of the case that both complainant(s) and respondent(s) disagree (include any corroboration by witnesses)
- ✓ Other Case Related Facts and Evidence (e.g. videos, emails between individuals, text messages)
- ✓ Credibility Assessment

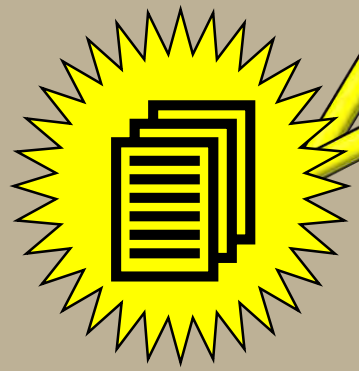
Purpose: Organize the facts and evidence to be reported in "Investigator's Report" and in the Hearing.

Everything goes into the red bucket (S Drive)



Coordinator decides what goes into the blue bucket (evidence file)

Complainant Respondent



Investigator's Final Report

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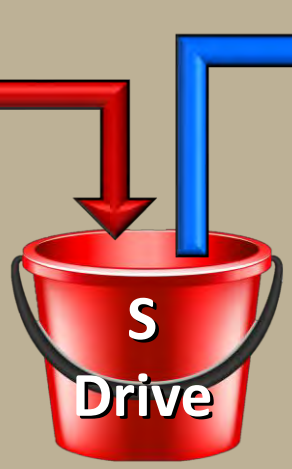
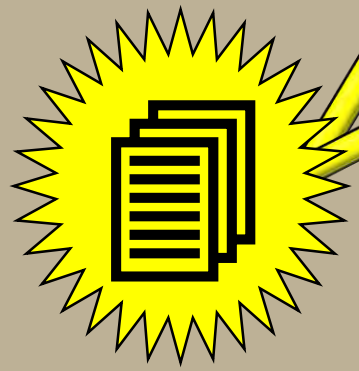


Coordinator decides what goes into the blue bucket (evidence file)

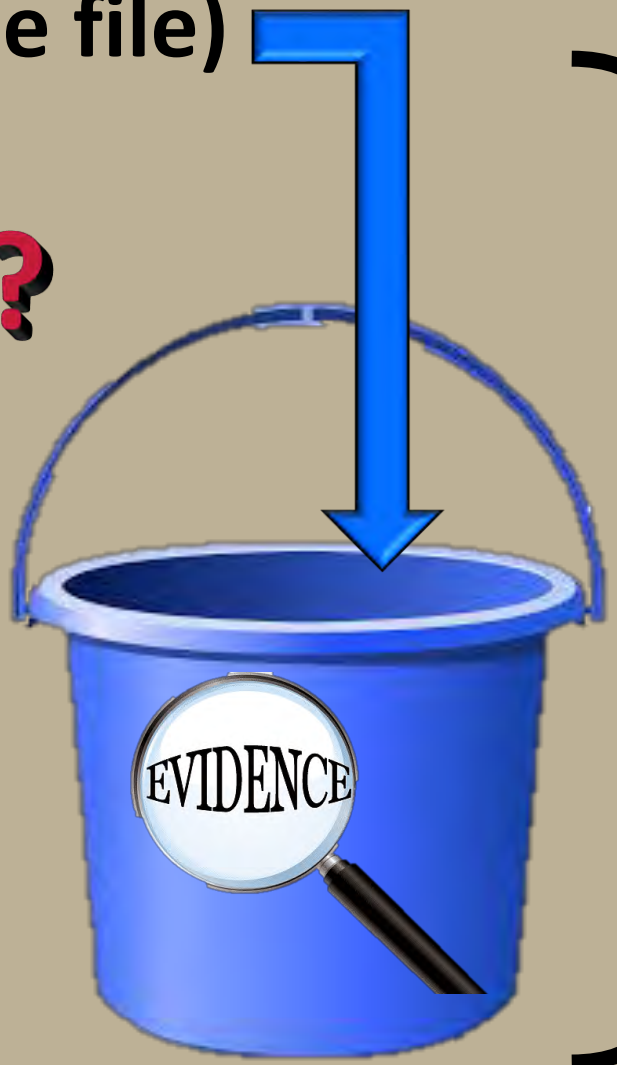
Complainant Respondent



Investigator's Final Report

Coordinator decides what goes into the blue bucket (evidence file)

How?



- **Relevant:** The evidence must prove or disprove an important fact in the case at hand. If the evidence doesn't relate to a particular fact, it is considered "irrelevant" and is therefore inadmissible.

- **The Regs:** *. . . requires the recipient to make all evidence directly related to the allegations available to the parties for their inspection and review . . .* (p. 814)

The Structure of the Administrative Panel Hearing

Rules for Questioning Complainant, Respondent, or a Witness

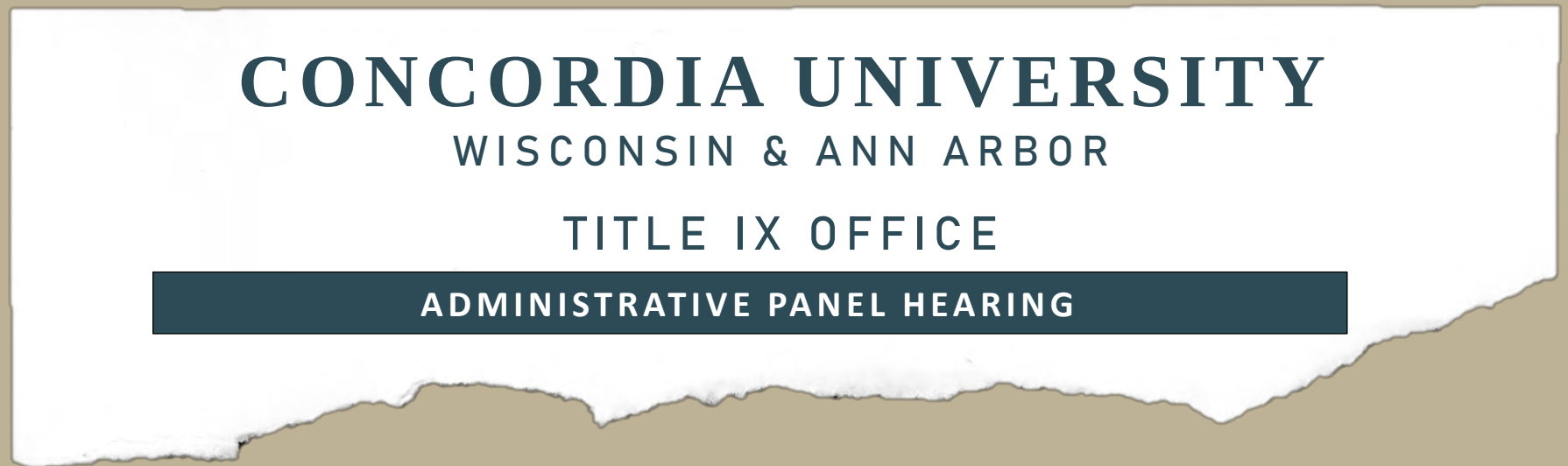
- At no time may a complainant or respondent (party) directly question the other party. All questioning of the parties will be through their advisor.

- Questions must be first directed to the AHP Chair so that the Chair may determine if the question is relevant to the issues at hand.

Outline of the Hearing

- **Pre-hearing (not required by OCR but recommended by ATIXA)**
  - **Conducted by AHP Chair with each party separately**
  - **Title IX Coordinator may be present**
  - **Purpose: educate both parties on the rules of the hearing and complete the witness list**

    - Parties are given the "Administrative Hearing Panel" handout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ADMINISTRATIVE PANEL HEARING

- Administrative Hearing Panel (AHP) Chair makes opening remarks, outlines hearing process, and addresses allegations to be considered
  - Note: Minor deviations from this outline and script may be made at the discretion of the AHP Chair.

- **Investigator Testifies**
  - Questions from panel
  - Questions from both parties advisors
  - Follow-Up Questions by any of the above

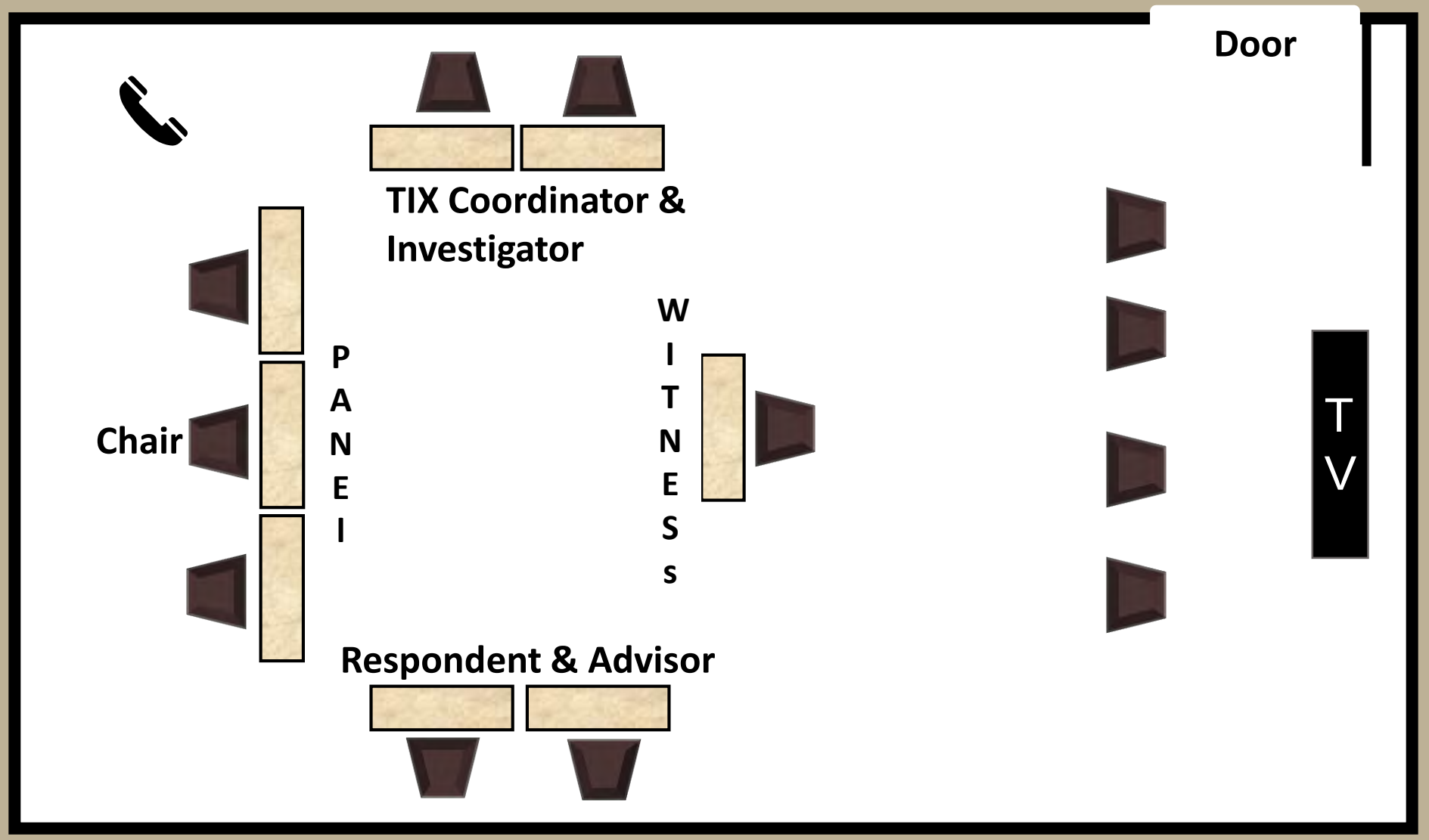
- **Complainant testifies (opening statement)**
  - **Questions from panel**
  - **Questions from Investigator**
  - **Questions from both parties advisors**
  - **Follow-Up Questions by any of the above**
- **Respondent testifies (opening statement)**
  - **Questions from panel**
  - **Questions from Investigator**
  - **Questions from both parties advisors**
  - **Follow-Up Questions by any of the above**

- **Witness #1, 2, etc.**
  - **Questions from panel**
  - **Questions from Investigator**
  - **Questions from both parties advisors**
  - **Follow-Up Questions by any of the above**

- **Closing Statements from both parties (up to 5 minutes)**

- **Deliberations**
  - **Delivery of outcome/rationale**

Would you like to do a mock hearing?



QUESTIONS
ANSWERS