



Ventura Community College: Decisionmaker Training

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Learning Outcomes

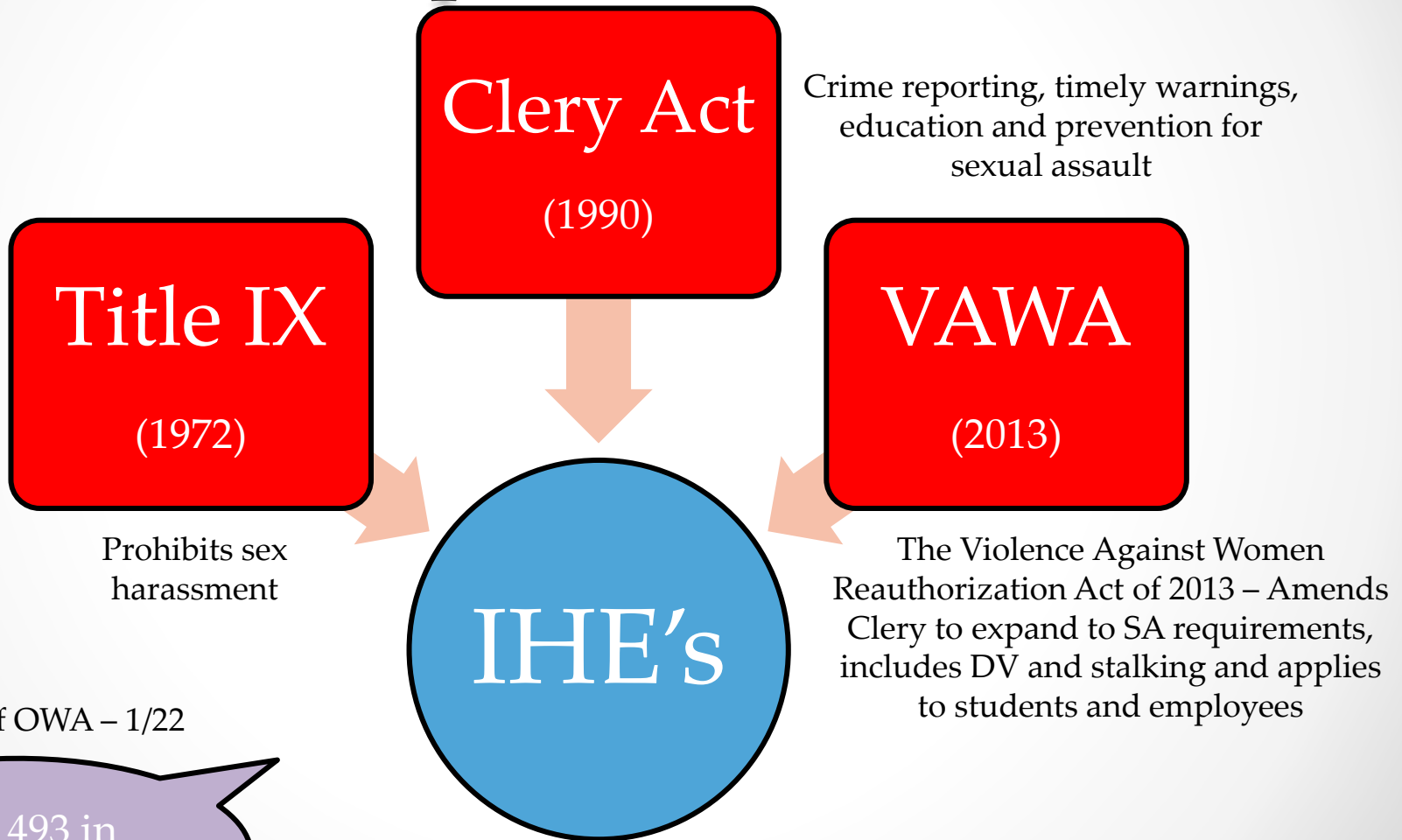
1. Ventura Community College Prohibited Conduct
 1. BP 3430 and BP 3434 and AP 3434
2. Live Hearing Overview
3. Decisionmaker Role and Responsibilities
4. Live Hearing Technology
5. Role of the Advisor



“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”



Federal Regulatory Requirements



Expansion of OWA – 1/22

+ SB 493 in California

VCCCD AP 3434 – Responding to Harassment Based on Sex under Title IX

- Outlines Title IX proceedings and process
- Read and review it

Title IX Prohibited Conduct

Sexual
Harassment

Sexual Assault

Retaliation

Domestic and
Dating Violence

Stalking

Two Types of Sexual Harassment

Sexual Harassment

- Includes any sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature. Can be verbal, non-verbal, graphic, physical, electronic, etc. One or more of the following must be present:

Quid Pro Quo

- When an employee of the District conditions (implicitly or explicitly) the **provision of an aid, benefit, or service of the District on an individual's participation** in unwelcome sexual conduct
- **OR.....**

Hostile Environment

- Unwelcome conduct determined by a reasonable person standing in the shoes of the Complainant to be so **severe, pervasive, and objectively offensive** that it effectively **denies a person equal access** to the District's education program or activity

Hostile Environment

Unwelcome

- Subjective
- Determined by Reporting Party

Reasonable Person Standard

- How would a reasonable person respond in a similar situation?

Severe

- Were threats involved?
- Was there violence?
- Was the Complainant able to leave?

Pervasive

- Was it widespread?
- Was this “well-known?”
- In public?
- Frequency?
- Interference with job/school

Objectively Offensive

- Number involved
- Humiliating
- Intimidating
- Age differential

Hostile Environment = Totality of Circumstances

Questions to consider:

- How frequent is this occurrence?
- Who knows about it?
- Is it “common knowledge?”
- What is the relationship between the parties?
- Is there a power differential?
- Where did this occur?
- How big is the school? Department?
- What was the impact of this on the Reporting Party’s schooling/job?
- Reporting Party’s response (snowflake vs. boulder)
- Consider academic freedom and 1st Amendment rights

Incest – non-forcible sexual intercourse between persons who are related within the degrees wherein marriage is prohibited by law

Rape – penetration, no matter how slight, of the vagina or anus with any other body part or object, or oral penetration by a sex organ of another without consent

Statutory Rape – non-forcible sexual intercourse with a person who is under the statutory age of consent.

Sexual Assault - any sexual act (forcible or non-forcible) with another without consent or where the individual cannot consent because of age or **incapacitation**

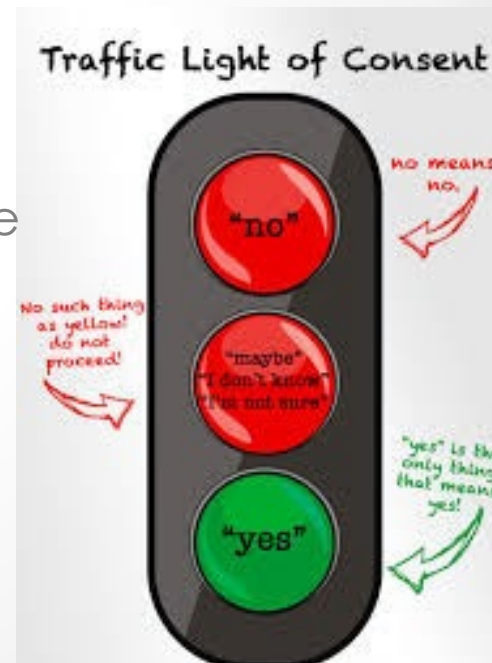
Sodomy – oral or anal sexual intercourse with another person without consent

Fondling – touching the genitals of another for one's own sexual gratification, without the consent of the victim

Sexual Assault with an Object – the use of an object to penetrate, however slightly, the genital or anal opening of another

Consent

1. Affirmative consent: Is positive cooperation in act and attitude made with knowledge and agreement to the nature of the act.
2. Consent cannot be the product of physical force, threats, or coercion.
3. Lack of protest/resistance or silence does NOT equal consent.
4. Affirmative consent is ongoing and can be revoked at any time.
5. Past sexual practice between individuals should not be assumed to be an indicator of consent.
6. Consent cannot be the product of incapacitation.
A person who is incapacitated is not capable of giving **valid**, affirmative consent.
7. Reasonable belief in affirmative consent is a defense to sexual assault and sexual contact.
8. Intoxication is not a defense.



More on Incapacitation

1. Incapacitation means a person cannot understand the fact, nature, or extent of the sexual activity.
2. Incapacitation is a state beyond intoxication or “drunkenness,” but not necessarily passed out.

In incapacitation cases, Title IX decision-makers consider:

1. Incapacitation of the Reporting Party; AND
2. Knowledge of the Respondent-knew or should have known



Dating Violence

Violence committed, on the basis of sex, by a person who is or has been in a social relationship of a romantic or intimate nature with a Complainant. The existence of the relationship is determined based on a consideration of the following factors: length of relationship, type of relationship, and frequency of interaction between persons involved. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.



Domestic Violence

Conduct, on the basis of sex, that includes the requisite components of felony or misdemeanor crimes of violence committed by:

- Current or former spouse or intimate partner;
- Person with whom child(ren) are shared;
- Person who is cohabitating with or has cohabitated with Reporting Party as a spouse or intimate partner;
- A person similarly situated to a spouse of the Reporting Party under California law; or
- Any other person, against an adult or youth, who is protected from that person's acts under California law.



Stalking

A course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress.

Course of Conduct

- Two or more acts, including but not limited to, acts in which the Respondent directly or indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property

Reasonable Person

- A reasonable person under similar circumstances and with similar identities to the Complainant

Substantial Emotional Distress

- Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

Retaliation

Intimidation, harassment, or reprisal against a person who has reported a problem, filed a complaint, participated (or chosen not to participate) in any manner in an investigation, hearing or other District resolution procedure.



Notice

- Officials with Authority (OWA)
- Responsible Employees
- Outreach and supportive measures

Initial Assessment

- Assess for jurisdiction and scope
- Formal Report (?)

Formal Complaint

- Requires signature
- Can be accepted or dismissed

Investigation

- Or Informal/Alternative Resolution

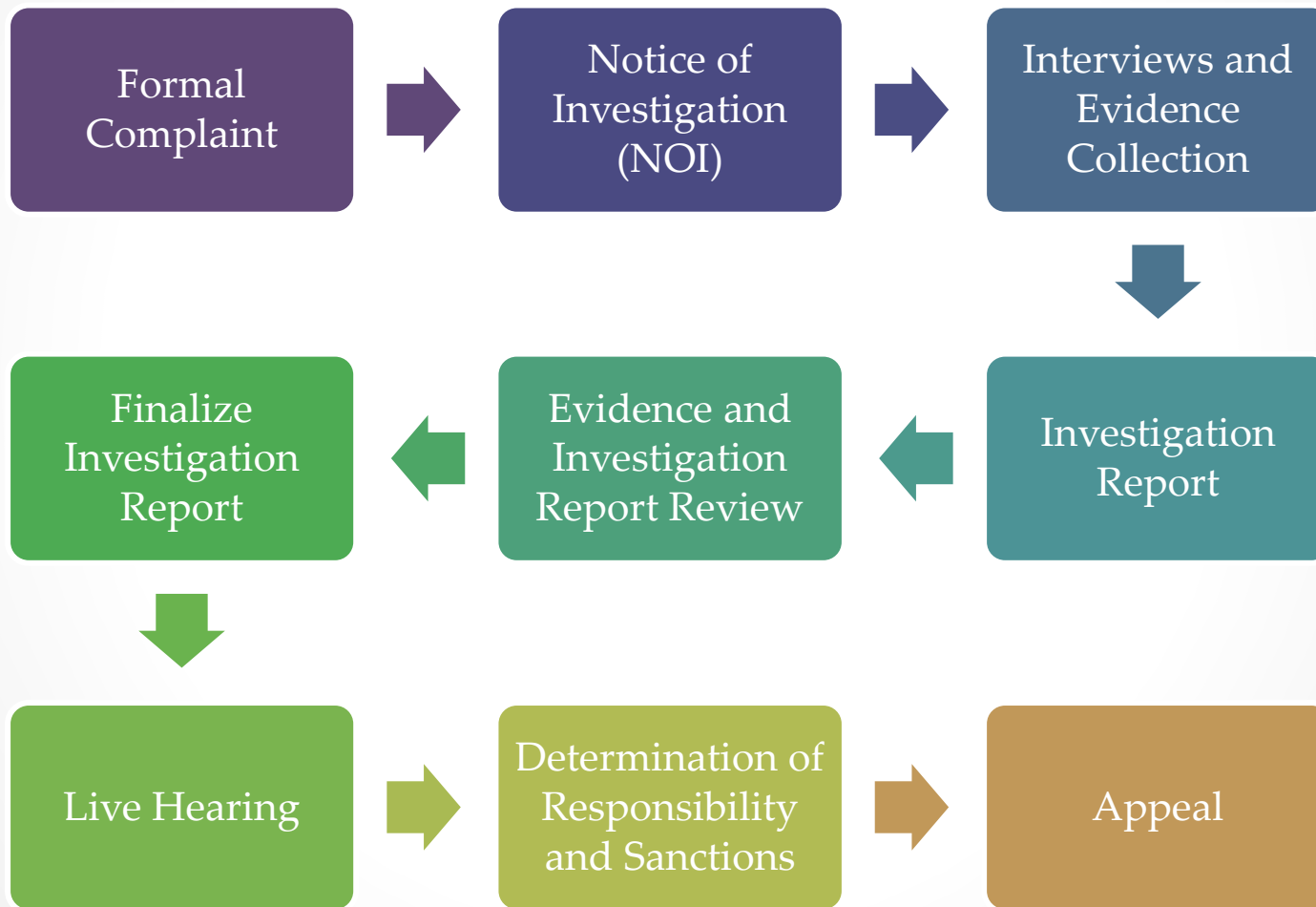
Live Hearing

- Decisionmaker
- Cross-examination by an advisor
- All evidence must be sponsored

Appeal

- Three (3) grounds for appeal

Investigation Steps



Decisionmaker Role and Responsibilities

- Familiarize yourself with District policy (AP 3434)
- Review all information provided by District (investigative report, evidence, etc.)
- Facilitate the Live Hearing in accordance with District policy and expectations
- Provide all parties an equitable opportunity to be heard and participate prior to reaching a determination
- Determine relevance of advisor questions and provide explanation
- Using the preponderance of the evidence standard, determine if there was a violation of District policy
- Assess credibility of parties and witnesses
- Draft a written report outlining findings



The Live Hearing



Live Hearing: Before

- Training on Policy and Process
- Technology Training
- Receive a copy of the Investigative Report
 - Will include procedural background, investigation overview, witness and party information, relevant evidence summary, party response to the evidence
- Access to Evidence
- ASAP provide a list of witnesses to Dr. Vega needed at the Live Hearing
 - Include approximations of time needed for each as well as order preference
- Review AP 3434

Live Hearing Basics

- Will be conducted via Zoom
 - District communicates with all parties ahead of time to ensure they are prepared to appear when called and have required technology
- District Title IX representative (Dr. Jesus Vega) will be in the “room” with camera off to monitor process, troubleshoot technology issues, and contact late/missing witnesses
 - Dr. Vega contact information: 805-289-6507 (W) and 805-701-9128 (C)
- Live Hearing will be recorded using the Zoom feature
- Decisionmaker is responsible for overseeing the flow of the proceedings

Live Hearing Flow

Introduction

- Decisionmaker opens on the record with date, time, parties present, allegations, and expectations on the record

Opening Statements

- Complainant provides an opening statement
- Respondent provides an opening statement

Complainant Testimony

- Decisionmaker will ask questions of the party
- Respondent's advisor will cross-examine Complainant

Respondent Testimony

- Decisionmaker will ask questions of the party
- Complainant's advisor will cross-examine Respondent

Live Hearing Decorum

- All parties are expected to conduct themselves professionally and act respectfully towards each others
- Parties should wait to be called on to speak; everyone will have a turn
- Parties are not permitted to record the proceedings; the District will record the proceedings
- During cross-examination, parties will wait for the decisionmaker to approve the question before answering
- Parties may ask for breaks and/or time to consult with their advisors; the Decisionmaker will grant as appropriate
- Advisors will be given one warning if they are not acting in accordance with expectations and then will be dismissed from the proceedings.

Live Hearing Process via Zoom

- District will create the Zoom account and will start the meeting at an agreed upon time with Decisionmaker
- Decisionmaker will be granted host privileges on Zoom
- Decisionmaker must press the record button
- Decisionmaker is responsible to admitting people in from the waiting room at the appropriate times
- District will contact witnesses who are late
- Only the party speaking will be visible on screen with the Decisionmaker. The other parties will be muted and off-camera

Live Hearing: After

Witness Testimony

- Decisionmaker will ask questions of each witness
- Each party (and advisor) can ask questions of witness

Closing Statements

- Each party will provide a closing statement
- Order: Respondent, Complainant, Respondent

Wrap-Up

- Decisionmaker will close the Hearing and dismiss parties

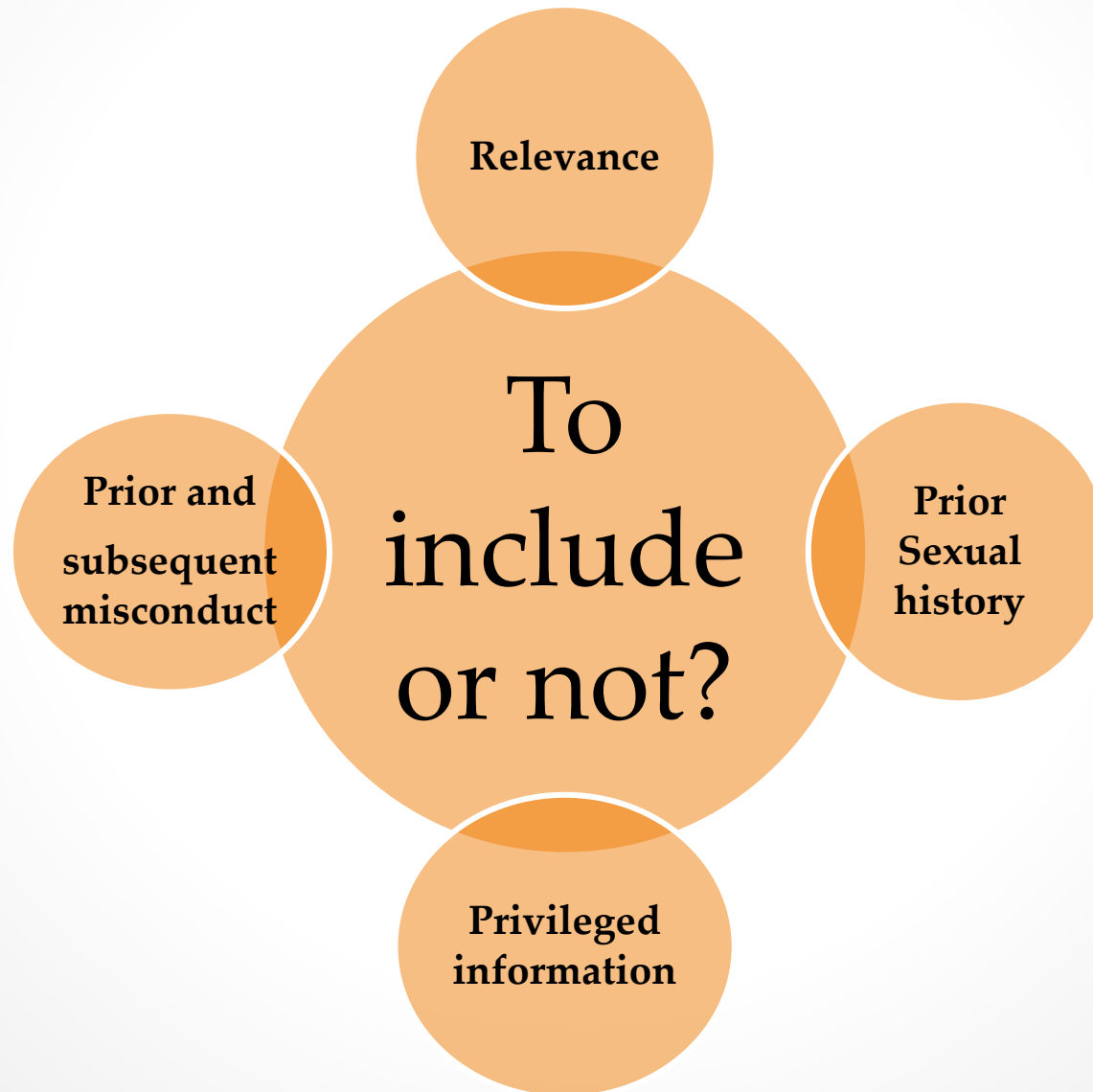
Findings

- Decisionmaker will draft report (access to evidence and Live Hearing recording will be provided by District) and provide it to District ASAP

Determinations of Responsibility (AP 3434)

- Written outcome (determination of responsibility or non-responsibility) is due to District no LATER than 30 business days after hearing.
- The written report must include:
 - Identification of the allegations
 - Description of procedural steps throughout the process (investigator, evidence collected, evidence review, etc.)
 - Findings of fact that support the determination of responsibility or not
 - Conclusions based on application of the District's code
 - A statement of, and rationale for, the result as to each allegation, including a determination of responsibility,
 - A statement of, and rationale for, any disciplinary sanctions the District imposes
 - A statement of whether the District will provide the Complainant with remedies designed to restore or preserve equal access to the District's education program or activity
 - District appeal procedures

Evidentiary Considerations



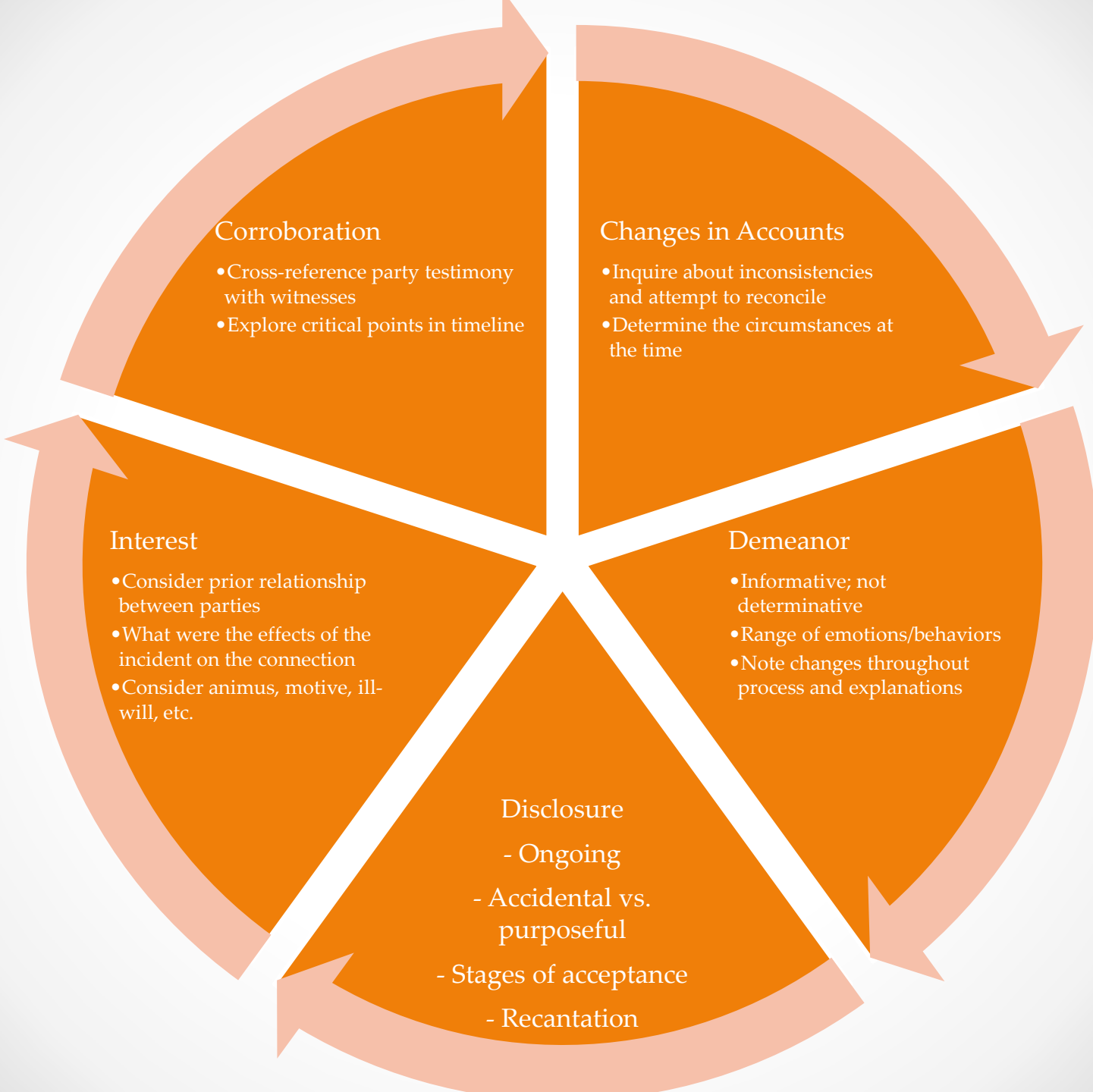
Evidentiary Rules Must Consider

- All relevant evidence from all parties and witnesses
 - Regulations do not define relevance
- Inculpatory and exculpatory evidence
- Applied equally and impartially to all parties without bias
- Past sexual practice of Respondent

- But **NOT**:
 - Questions and evidence about reporting parties prior sexual history is irrelevant unless:
 - Used to prove someone other than the Respondent committed the alleged conduct; OR
 - To prove consent regarding past sexual practice with the respondent
 - Privileged information (A/C, HIPPA, clergy, etc.)

Potential Importance of Past/Subsequent Misconduct

- Intent/knowledge/state of mind
- Motive
- Opportunity
- Pattern
- Identity
- Others?



Corroboration

- Cross-reference party testimony with witnesses
- Explore critical points in timeline

Changes in Accounts

- Inquire about inconsistencies and attempt to reconcile
- Determine the circumstances at the time

Demeanor

- Informative; not determinative
- Range of emotions/behaviors
- Note changes throughout process and explanations


Disclosure

- Ongoing
- Accidental vs. purposeful
- Stages of acceptance
- Recantation

Interest

- Consider prior relationship between parties
- What were the effects of the incident on the connection
- Consider animus, motive, ill-will, etc.

Credibility Assessments: Synthesis

A large orange pentagon with a thin dark orange border, centered on the slide. Inside the pentagon, the text "Is what being said plausible?" is written in white serif font.

Is what
being said
plausible?

Finding and Sanctioning

- Decisionmaker determines if policy was violated. Must make a finding on each allegation
- Include evidence reviewed and credibility of witnesses/parties
- Drafts a findings report clearly articulating the finding and why based on the standard of proof
- If it is a finding, must issue sanction in report as well.

Sanctions

- Must be appropriate for the conduct
- OCR considers the impact of the sanction on the Respondents education
- Past misconduct may be considered
- Consider past precedent and practice for similar sanctions
- Educational sanctions can be utilized
- Ensure that sanctions are followed through on (completed hours, notation on transcript, etc.)



Appeal

- Available to both parties
- Appeals can be based on outcome of investigation or dismissal of formal complaint
- Appeal decisionmaker CANNOT have had any other role in the process. Must be a NEW person
- Three grounds for appeal:
 - Procedural irregularity that affected outcome
 - New evidence that was not reasonably available at the time a decision or dismissal was made that could affect outcome
 - TIXC, Investigator, or decision-maker had a conflict of interest that affected the outcome
 - Can add another if District chooses

Appeal Outcomes

Appeal Accepted

Appeal Denied

Decision
Stands

Remand

Modified
Sanction

- New Investigation
- New Hearing
- New Sanction Hearing

Decision
Stands

Advisors

- Parties are entitled to an advisor of their choice to provide them with support and assistance throughout the process.
- Advisors cannot be denied but can be discouraged (ex. witness)
- Parties must be provided an advisor free of charge by the District to do the cross examination of the other party at the Live Hearing
- You control the process and flow; decorum is expected!
- One warning ONLY!