

TITLE IX SOLUTIONS, LLC

# ADVANCED DECISION-MAKER TRAINING

STANDARD OF PROOF, RELEVANT EVIDENCE,  
& CREDIBILITY ASSESSMENTS

HOPE COLLEGE  
MARCH 12, 2026





**SPEAKER**

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INVESTIGATOR & DECISION-MAKER



# ATTENDEE INTRODUCTIONS

1. Name
2. Role at Hope College
3. What you are most looking forward to today?



What is said here stays  
here. What is learned  
here leaves here.

# PREPONDERANCE OF THE EVIDENCE STANDARD



# STANDARD OF PROOF

**STANDARD USED TO DETERMINE WHETHER OR NOT A SEXUAL HARASSMENT POLICY VIOLATION OCCURRED.**

## Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

## Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

# STANDARD OF PROOF

## Preponderance of the Evidence

Anything that tips the scale to more than 50/50

## Clear and Convincing

More likely to be true than untrue, substantial evidence to support

## Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

# RELEVANT EVIDENCE



# DEFINITION

## HOW DO WE DEFINE RELEVANT EVIDENCE?

- Decision maker must ensure that “all relevant questions and evidence are admitted and considered (though varying weight or credibility may of course be given to particular evidence by the decision-maker).”
- Decision maker may not adopt rules excluding certain types of relevant evidence

# DEFINITION

## HOW DO WE DEFINE RELEVANT EVIDENCE?

- Relevant questions must not be abusive and enforcement of decorum must be applied evenhandedly.
- Where the substance of a question is relevant, but the manner of the question is “harassing, intimidating, or abusive
  - For example, the advisor yells, screams, or physically ‘leans in’ to the witness’s personal space.”



# DEFINITION

## HOW DO WE DEFINE RELEVANT EVIDENCE?

- “To the extent that a party wants the other party questioned in an adversarial manner in order to further the asking party’s views and interests, that questioning is conducted by the party’s own advisor, and not by the recipient .
  - Thus, no complainant (or respondent) need feel as though the recipient is ‘taking sides’ or otherwise engaging in cross-examination to make a complainant feel as though the recipient is blaming or disbelieving the complainant.”

# DEFINITION

## HOW DO WE DEFINE RELEVANT EVIDENCE?

- A school may not adopt rules excluding certain types of relevant evidence (e.g., lie detector or rape kits) where that type of evidence is not labeled irrelevant in the regulations (e.g., sexual history) or otherwise barred for use under 34 CFR 106.56 (privilege) and must allow fact and expert witnesses.



# DEFINITION

## HOW DO WE DEFINE RELEVANT EVIDENCE?

- “[W]here a cross-examination question or piece of evidence is relevant, but concerns a party’s character or prior bad acts, under the final regulations the decision-maker cannot exclude or refuse to consider the relevant evidence, but may proceed to objectively evaluate that relevant evidence by analyzing whether that evidence warrants a high or low level weight or credibility , so long as the decision-maker’s evaluation treats both parties equally by not, for instance, automatically assigning higher weight to exculpatory character evidence than to inculpatory character evidence.”

# DEFINITION

## HOW DO WE DEFINE RELEVANT EVIDENCE?

- No adverse inference from a party or witness electing not to participate in cross-examination.
  - 34 C.F.R. 106.45(b)(6)(i)

## HOPE'S POLICY

“If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, the Decision-maker(s) may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.”

*Appendix B, 30*



## QUESTIONS TO ASK YOURSELF:

- Does this help me in deciding if there was more likely than not a policy violation?
- Does it make it more or less likely that a policy violation occurred?
- Why or why not?

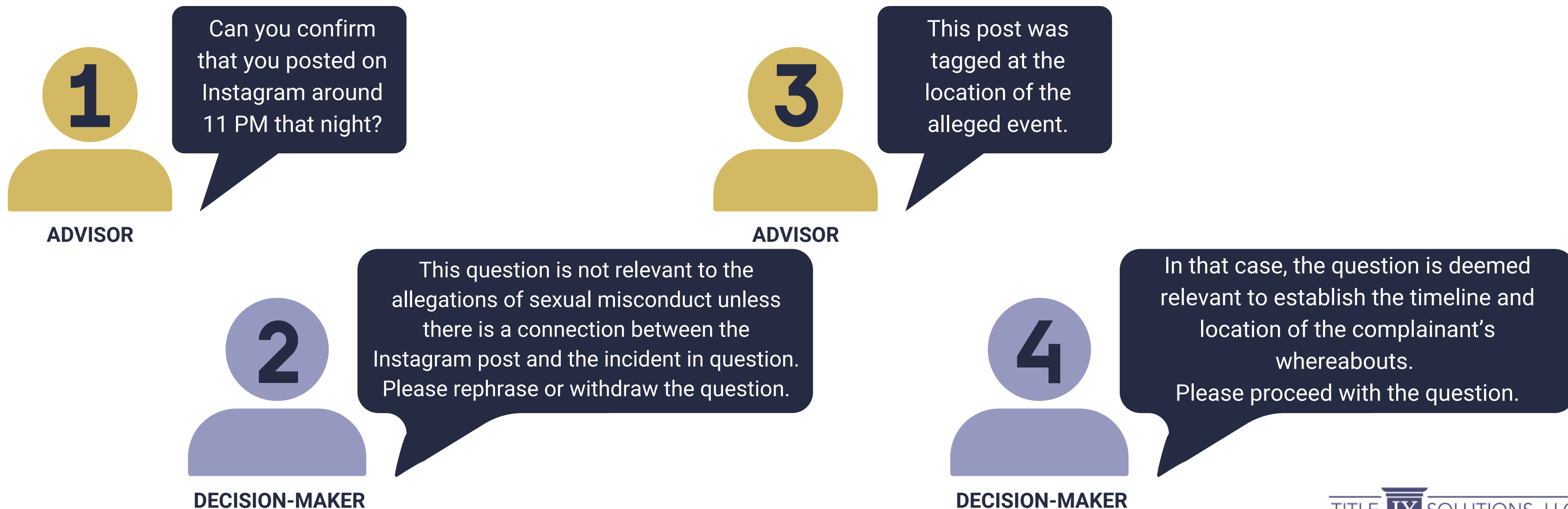
# THE HEARING PANEL'S ROLE AT THE HEARING

**THE DECISION-MAKER WILL BE RESPONSIBLE FOR RULING ON THE RELEVANCY OF EVERY QUESTION ASKED DURING THE HEARING. THEY MUST ALSO EXPLAIN ANY DECISION TO EXCLUDE A QUESTION AS IRRELEVANT.**

- Determining which questions should be permitted:
  - 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 or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

# QUESTIONING CADENCE

- Following the Advisor's question, the Decision-Maker will rule on the relevance of the question
- Can be awkward at first, but becomes smoother as the hearing progresses



# RESOLVING FACTUAL DISPUTES

## UNDISPUTED VS. DISPUTED FACTS

### UNDISPUTED

- What the parties agree on
- Example: *The parties agree that they spent the night together on November 18, 2025.*

### DISPUTED

- What the parties disagree on
- Example: *The parties disagree on how much alcohol was consumed on the night of November 18, 2025.*

# FACT ANALYSIS

## HOW DO THE FACTS FIT THE ELEMENTS OF EACH ALLEGED POLICY VIOLATION?

**What undisputed  
facts address each  
element?**



No need to  
analyze further

**What disputed facts  
must be resolved for  
each element?**



These must be  
resolved by the  
decision-maker

# WEIGHING THE EVIDENCE

## OCR 2001 GUIDANCE\* RECOMMENDS CONSIDERING THE FOLLOWING WHEN RESOLVING THE CONFLICT

- Statements by any witnesses to the alleged incident
- Evidence about the relative credibility of the complainant/respondent
  - The level of detail and consistency of each person's account should be compared to assess who is telling the truth
  - Is corroborative evidence lacking where it should logically exist?

# WEIGHING THE EVIDENCE

## OCR 2001 GUIDANCE\* RECOMMENDS CONSIDERING THE FOLLOWING WHEN RESOLVING THE CONFLICT

- Evidence of the complainant's reaction or behavior after the alleged harassment
  - Were there witnesses who saw that the complainant was upset?
  - Changes in behaviors? Work-related? School?
  - Concerns from friends and family?
  - Avoiding certain places?
- May not manifest until later

# WEIGHING THE EVIDENCE

## OCR 2001 GUIDANCE\* RECOMMENDS CONSIDERING THE FOLLOWING WHEN RESOLVING THE CONFLICT

- Evidence about whether the complainant filed the complaint or took other action to protest the conduct soon after the alleged incident occurred
  - But failure to immediately file may merely reflect a fear of retaliation, a fear that the complainant may not be believed, etc. rather than that the alleged harassment did not occur

# WEIGHING THE EVIDENCE

## OCR 2001 GUIDANCE\* RECOMMENDS CONSIDERING THE FOLLOWING WHEN RESOLVING THE CONFLICT

- Other contemporaneous evidence:
  - Did the complainant write about the conduct and reaction to it soon after it occurred?
    - e.g. in a diary, email, blog, social media post
  - Did the student tell others (friends, parents) about the conduct and their reaction soon after it occurred?

# QUANTITY VS. QUALITY

## THE WEIGHT OF THE EVIDENCE OR ITS STRENGTH INTENDING TO PROVE THE ISSUE AT STAKE THAT IS IMPORTANT

- The quality of the evidence is not determined by its quantity
  - Don't compare 1 witness to 3 witnesses
  - Don't compare many documents to few documents
- Quantity can be a factor, but it should not be automatic

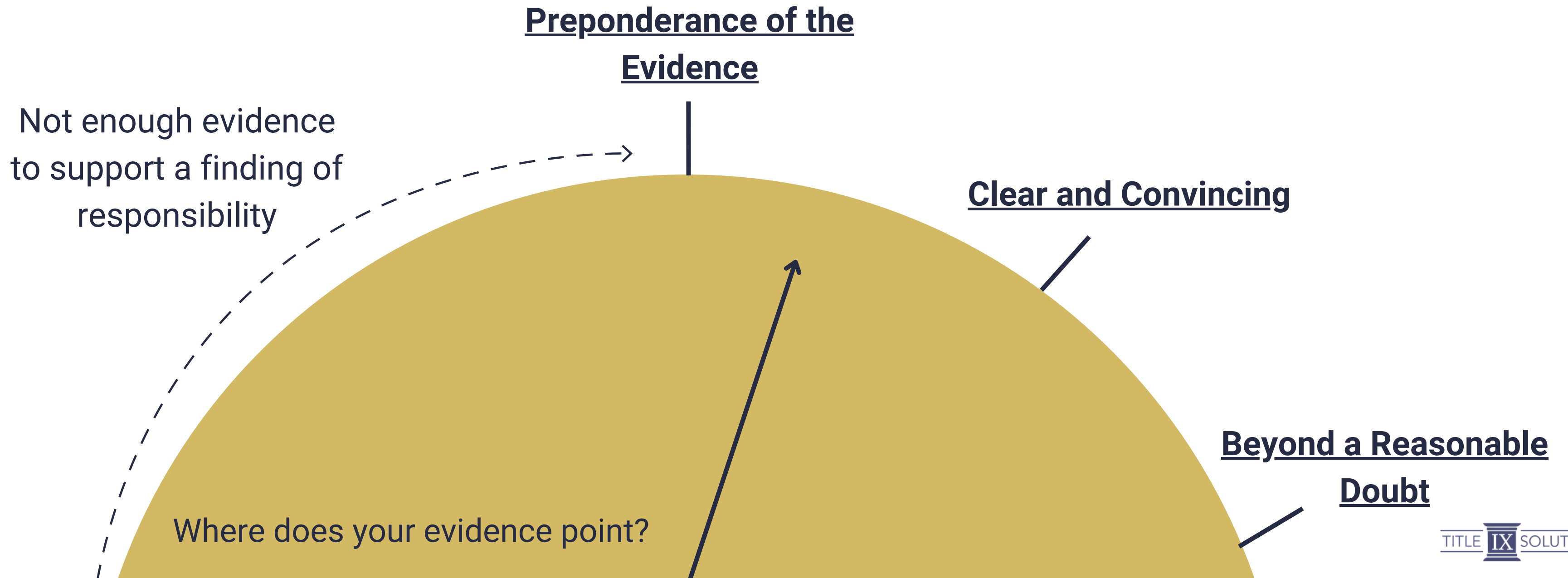
# IMPACT

## DO NOT CONSIDER IMPACT

- Don't consider the potential impact of your decision on either party when determining if the charges have been proven.
- Focus only on the charge or charges brought in the case and whether the evidence presented to you is sufficient to persuade you that the respondent is responsible for the alleged policy violation(s).

# MAKING A DETERMINATION

LOOK TO ALL THE EVIDENCE IN TOTAL, AND MAKE JUDGMENTS ABOUT THE WEIGHT AND CREDIBILITY, AND THEN DETERMINE WHETHER OR NOT THE BURDEN HAS BEEN MET



# CREDIBILITY ASSESSMENTS



# CREDIBILITY IN TITLE IX

## ROLE OF CREDIBILITY IN TITLE IX

- Credibility helps the decision-maker assess the weight of evidence presented by both parties.
- Evaluating credibility includes assessing:



**STRENGTH**



**SOURCE**



**PLAUSIBILITY**

# BARRIERS TO ASSESSING CREDIBILITY

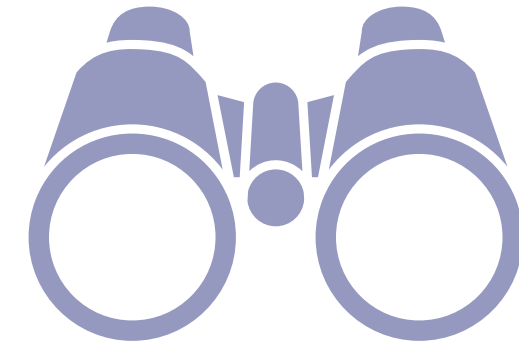
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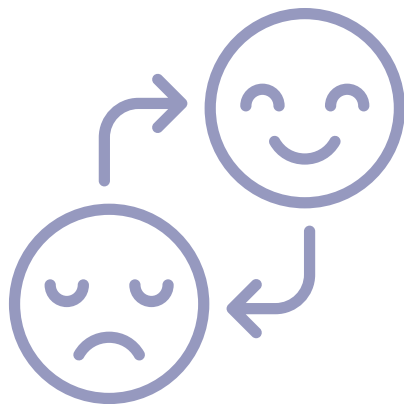
Biases (positive and negative)



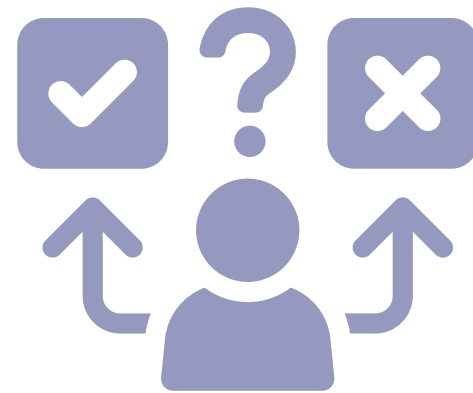
Prior experiences with individuals



Misconceptions about corroboration



Misunderstanding trauma-based responses



Personal morals/beliefs influencing assessment



Limited information and fears of interviewees

# ASPECTS OF CREDIBILITY

POSITIONAL/LOCATIONAL



The ability to see or hear claimed events

KNOWLEDGE/EXPERTISE



Proper qualification of expert evidence

CORROBORATION/NEUTRALITY



Weight of camera recordings vs. witness testimony

# GETTING PAST “HE SAID/SHE SAID”

- ✓ Summarize information from investigation report for each party
- ✓ Note discrepancies between party accounts
- ✓ Note discrepancies between witness and parties
- ✓ Note discrepancies within different accounts from the same party
- ✓ Note discrepancies between investigation and hearing
- ✓ Assess whether any party or witness has a motive to be less than truthful
- ✓ Assess whether any party or witness has any bias
- ✓ Assess the reasonableness or unreasonableness, or probability or improbability, of the party or witness’s account



## FINDINGS OF FACT

- At the hearing or in the investigative report?
- What are the pros and cons of each?



# QUESTIONS?

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