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Crafting Clear and Compliant Reports

A Workshop for Education Investigators
and Decision Makers

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Housekeeping

- Our slides summarize key elements of relevant federal laws and regulations necessary for a foundational training.
- Practitioners should ensure they have an appropriate understanding of state and federal laws, regulations, agency guidance, and institutional policies specific to their matters.
- This training is not legal advice—each institution and matter is unique, and laws are nuanced. Please consult institutional legal counsel on specific matters.
- Hypotheticals are based on court cases or are fictitious; to ensure realism, some use fact patterns and language that are challenging.
- Questions/disagreement/discussion encouraged! Please do the breakout work (alone or with group).
- Recording is not permitted.

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Share Out

Pre-Workshop Survey

- What are you hoping to take away from this training today?
- What aspect of report writing do you find the most challenging?

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Agenda

- Foundations
- Structure
- Summarizing Facts/Evidence
- Creating Clarity, Grammar, Syntax & Avoiding Bias
- Tricky Issues
- Findings/Analysis
- Additional Consideration

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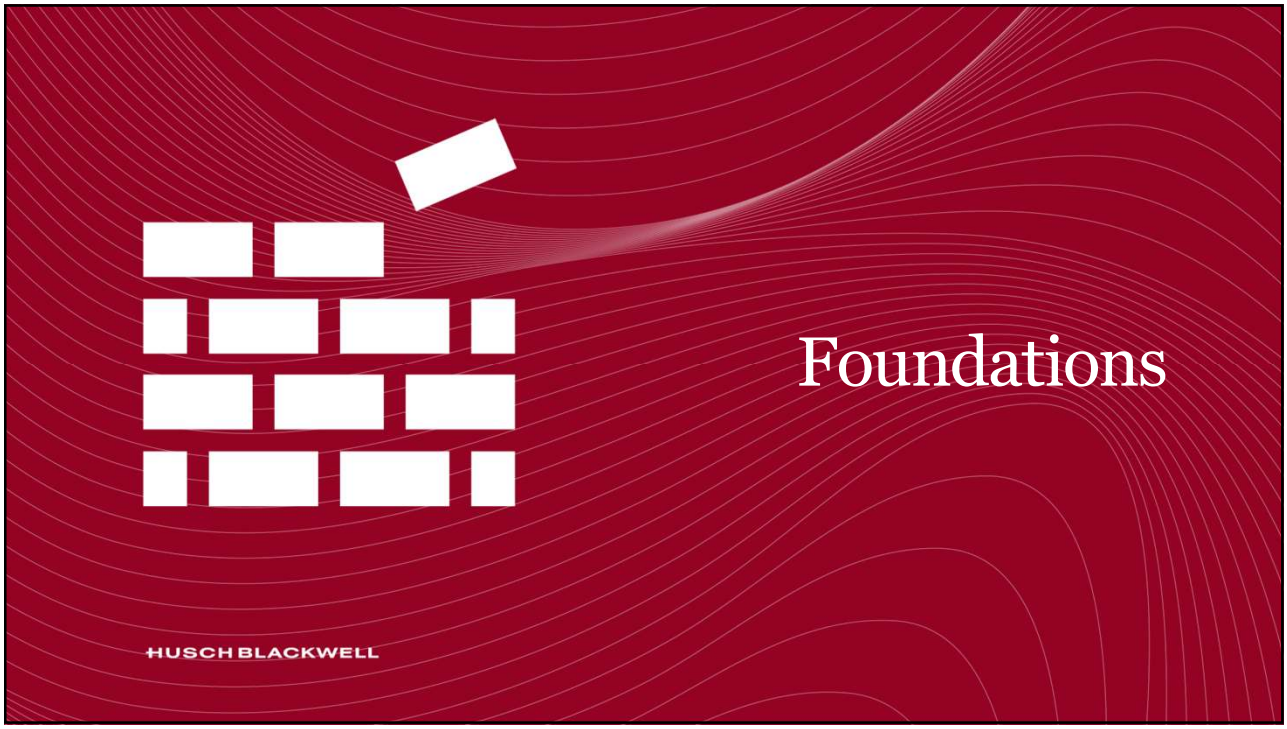

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Start at the Beginning

- What is the alleged conduct?
- What protected characteristic/ activity is the alleged conduct targeting?
- What do federal and/or state laws and regulations require of your institution regarding response and reporting?
- What do your institutional policies and procedures require regarding response and reporting?

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Building a Framework - Structure

- *Report structure/components will vary:*
  - By institution
  - By type of alleged discrimination
  - By procedural posture/role
  - By policy, practice (e.g., templates)
  - By type/volume of allegations/evidence
  - By jurisdiction
  - By relevant laws/regulations
  - By regulators

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Roles

- Evidence Gatherer
- Factfinder
- Recommender
- Decision Maker
  - Responsibility
  - Appeals

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Key Laws & Regulations

Constitution of the United States: e.g., First Amendment, Fourteenth Amendment	Americans with Disabilities Act (ADA)/Section 504 of the Rehabilitation Act	Title VI of the Civil Rights Act	Title IX of the Education Amendments
Age Discrimination Act	Federal Religious Liberty Rights/Laws	Whistleblower-type Laws	Employment-Specific Laws (Title VII, Age Discrimination in Employment Act)
	State constitutions, and state and local laws		

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State Statutes, Local Laws

- Many states and localities have nondiscrimination rules that may apply
- May add nondiscrimination categories/definitions
- May be in tension with federal laws
- May have grievance procedure requirements
  - These requirements are **usually** much more flexible than Title IX's prescriptive procedures

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Example

- Robust report/recordkeeping requirements
  - Title IX of the Education Amendments of 1972
    - Prohibits discrimination on the basis of sex in any education program or activity receiving Federal financial assistance
    - ED Title IX regulations are much more thorough than those for other prohibited forms of discrimination

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What do ED regulations require of institutions Under Title IX ("Sexual Harassment")?

- Compliance with nondiscrimination requirements (34 CFR § 106.44)
- Designation of a Title IX Coordinator (34 CFR § 106.8(a))
- Adoption, publication, implementation and notice of nondiscrimination policy and grievance procedures (34 CFR § 106.8(b)-(c))
- Preponderance of the evidence standard* (34 CFR § 106.45(b)(1)(vii))
- Investigative report (34 CFR § 106.45(b)(5)(vii))
- Written decision (34 CFR § 106.45(b)(7)(ii))
- Maintain records for 7 years for investigations, appeals, informal resolutions, training materials, supportive measures (34 CFR § 106.45(b)(10))
- Retaliation prohibited (34 CFR § 106.71)
- And more!

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Examples

- Limited report/recordkeeping requirements
  - Title VI of the Civil Rights Act of 1964
    - Prohibits discrimination on the basis of race, color, and national origin
  - Section 504 of the Rehabilitation Act of 1973
    - Prohibits discrimination on the basis of disability

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What do U.S. Department of Education (ED) Regulations require of institutions under Title VI?

- Compliance with nondiscrimination requirements (34 CFR § 100.3)
- Keep and permit ED access to books, records, accounts, and other information (34 CFR § 100.6)
- Cooperate with investigations and enforcement actions by ED (34 CFR § 100.7)
- Retaliation prohibited (34 CFR § 100.7)

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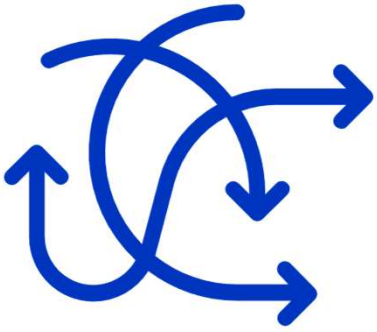
What don't Department of Education regulations require of institutions under Title VI?

- No explicit requirement that educational institutions adopt and publish grievance procedures for Title VI complaints
- Filling the gaps
  - Enforcement action
  - Case law
  - Institutional policies, procedures, and discretion



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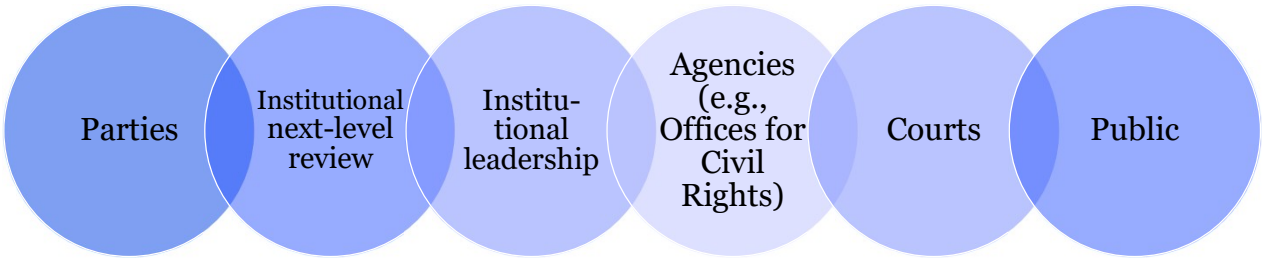
Who is our audience?



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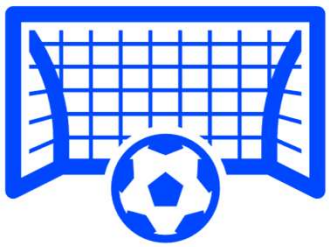
Goals

- Outline/summarize the allegations of potential misconduct
- Describe steps taken in investigation/decision-making
- Fairly summarize relevant evidence
- Potentially include analysis and determination



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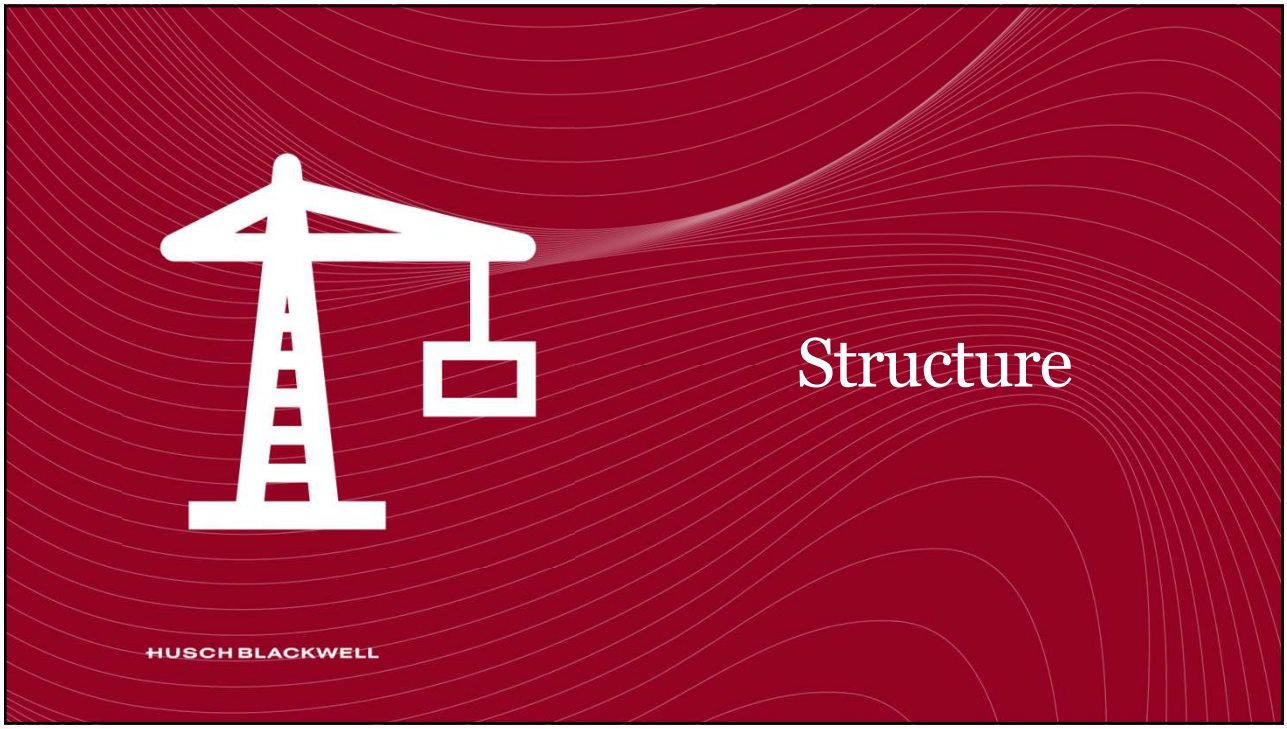

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Questions to Consider - Format

- Does your institution have a standard template for investigative reports?
  - If so, is the template effective?
- What factors into whether you utilize bullet points or numbered lists instead of long-form sentences?
- If you use headings, do they reflect the substantive information?

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Practical Point

- Not all matters, or policies/procedures, require an exhaustive, detailed report.
- Consider institutional practice, policy/procedure, and resources. Consult other officials as needed to determine optimal approach.

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Example – ED Title IX Regulations

- "Create an **investigative report that fairly summarizes relevant evidence** …" 34 CFR § 106.45(b)(5)
- "The written determination must include—
  (A) Identification of the **allegations** potentially constituting sexual harassment as defined in § 106.30;
  (B) A description of the **procedural steps** taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  (C) **Findings of fact** supporting the determination;
  (D) Conclusions regarding the **application of the recipient's code of conduct to the facts**;
  (E) A **statement of, and rationale for, the result as to each allegation**, including a determination regarding **responsibility**, any **disciplinary sanctions** the recipient imposes on the respondent, and whether **remedies** designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
  (F) The recipient's procedures and permissible bases for the complainant and respondent to **appeal**." (34 CFR § 106.45(b)(7))

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Typical Report Elements

- Information
- History of the case
- Allegations/potential violations
- Applicable policies/procedures
- Evidence gathered/considered
- Standard of evidence
- *(If applicable)* Evidence/Facts: Factual findings, credibility/weight assessments
- *(If applicable)* Decision maker:
  - Analysis and conclusion regarding responsibility on each allegation
  - Sanctions/remedies
- Next steps (*e.g.*, hearing, procedures/grounds for appeal)

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Information and History

Complaint Information

- Complaint date
- Complainant's and Respondent's names and recipient IDs
- Date assigned to Investigator(s) and Investigator(s) identity
- Notice of Investigation and Allegations date

Case History

- Relevant background necessary to understand the procedural posture of the matter
  - Brief description of parties (e.g., status as student, faculty, employee)
  - Brief description of relationship
  - Jurisdiction and scope of investigation
  - Purpose of report
  - Timelines (incident, investigation (notices, interviews, evidence collected, opportunities to review, etc.), hearing, appeal)

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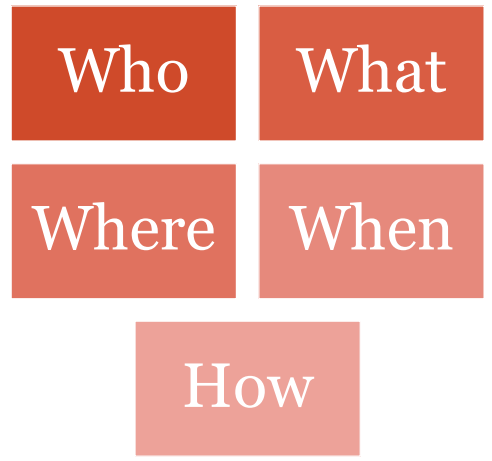
Summarizing Allegations



- The alleged misconduct in the investigative report should align with that identified in the initial written notice (and any supplemental notices) provided to the parties

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Policies & Procedures

- Cite all relevant policies/procedures
- Typically,
  - Quote key provisions and provide enough information to document compliance with most relevant provisions
    - Scope: Provide facts demonstrating applicability to parties, location, alleged conduct
    - Definitions
    - Standard of review
    - Relevant (e.g., disputed) procedural requirements
  - Attach copies of then-current versions

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Example – Policies and Procedures

The College considered Complainant's allegations under the Non-Discrimination Policy and Employee Non-Discrimination Procedures. The Non-Discrimination Policy provides:

> Harassment based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or any other legally protected characteristic is strictly prohibited. Harassment includes unwelcome conduct—whether verbal, physical, or visual—that creates a hostile, intimidating, or offensive work environment or interferes with an employee's ability to perform their job.

The Employee Non-Discrimination Procedures provide that all complaints alleging harassment by employees in violation of the Non-Discrimination Policy will be investigated and the evidence considered under a preponderance of evidence standard. (*See* Ex. 1, Non-Discrimination Policy; Ex. 2, Employee Non-Discrimination Procedures)

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"Standard of Evidence"

Measure by which a policy violation is determined

(As to each element of a violation, what needs to be shown?)

Set by policy (sometimes law, regulation, guidance)

E.g., Preponderance of the evidence (more likely than not)

Clear and convincing evidence

Beyond a reasonable doubt

Preponderance of the evidence is most common

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Types of Evidence

Testimonial Evidence

Interviews with complainant, respondent, and witnesses

Written or recorded witness statements

Digital Evidence

E.g., emails, text messages, DMs, and social media posts

Metadata from electronic files

Logs from university platforms or systems

Documentary Evidence

Written statements or complaints

Other (e.g., notes, receipts, handbooks, training materials, attendance records, diaries)

Physical Evidence (e.g., photographs, ID cards, clothing)

Other Relevant Evidence

Medical or counseling records (with appropriate consent)

Prior complaints or disciplinary records (if relevant and allowed)

Expert opinions (e.g., forensic analysis)

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Evidence Discussion Structure Options

- By interview
  - Party accounts, then witness accounts
  - Chronological by interview
- According to timeline: Collect information for each fact/incident
- By element of alleged policy violation
  - E.g., whether adverse action occurred, whether it was motivated by protected status or protected activity, whether it impacted ability to participate in programs/activities

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How do we summarize party and witness statements and evidence?

Consider whether witness-by-witness, chronology, topic, or other format best aligns with policy, procedure, and clarity considerations

Summarize statements and evidence related to *material* facts

If a transcript of the interview or a full memorandum of the interview is included, summary can be relatively brief

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Scenario

Breakout Session 1:
Summarizing Testimonial Evidence

- Discuss summary drafting from the homework assignment
- Report-out to share from discussion

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Share-Out

- In this scenario, how would you organize your fact summary (e.g., by claim, chronologically)?
- What facts did you include/not include?
  - How do you determine how much detail to include?
  - Were there any facts you decided to footnote instead of including in the body of the summary?
- If not including all facts provided in your summary, what can you do to ensure it is clear that you considered all relevant information?
- Did you use quotations? If so, for which portions?

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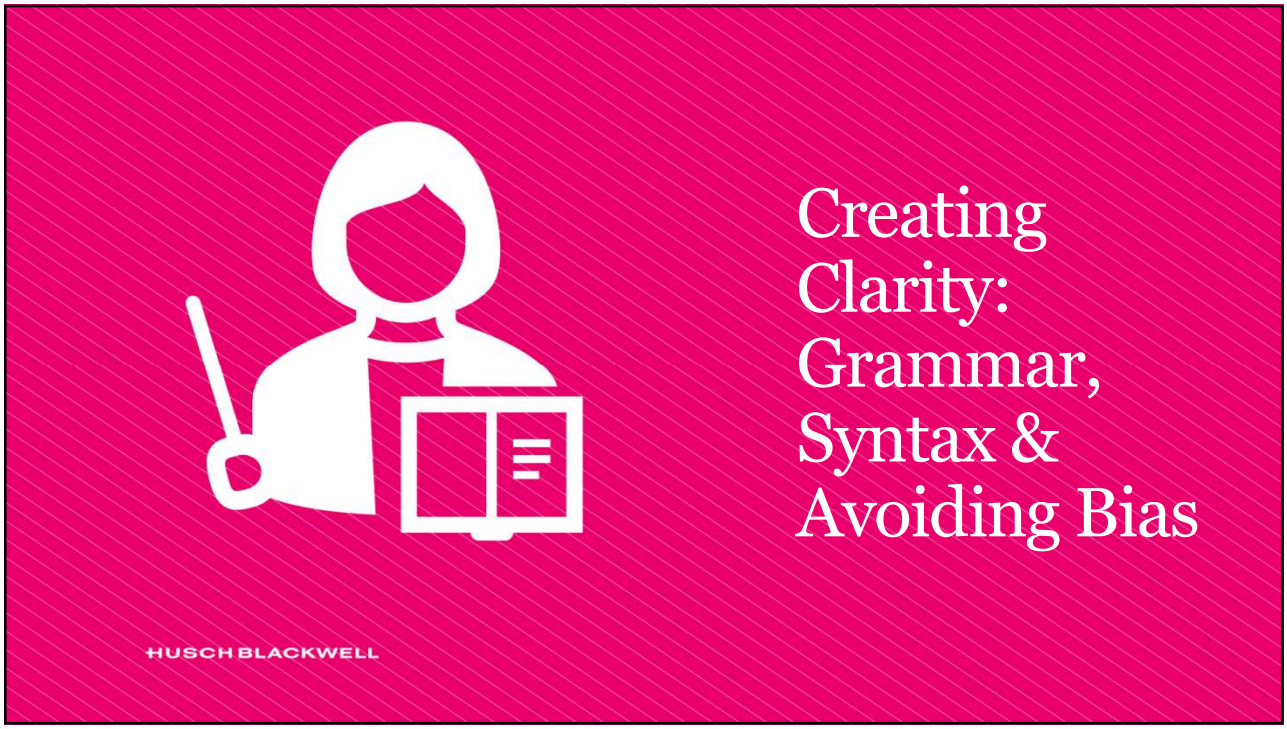

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Tone, Voice, and Point of View

Objective and neutral

Word choice is paramount

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Investigator/Decision-Maker's POV

- Investigators/decision-makers should write investigative reports as a "neutral, detached observer"
  - **Describing** what the parties and witnesses told them versus **repeating** what the parties and witnesses told them
- Avoid first-person statements as the author of the report

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Example – Tone , Voice and Point of View

- The Whos down in Whoville made too much noise. The Whos made the noise because they were feasting on pudding. The Grinch got a wonderful, awful idea—to impersonate Santy Clause.

  Vs. The Grinch reported that the Whos down in Whoville made too much noise. He said that he noticed that the noise increased on Feast days. He recalled that he first thought about impersonating Santy Clause …
- I attempted to contact Max to schedule an interview.

  vs. The Investigator attempted to contact Max to schedule an interview.

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Word Choice and Language

- Formal language over informal language
  - Refer to things as their proper name and people by their titles
    - Ex: “Marijuana” over “weed;” “Complainant Doe” over “Jack;” “genitals” over “junk”
  - Full words instead of shorthand or contractions
    - Ex: “could not” over “couldn’t;” “percent” over “%”

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Example – Using Care in Sanitizing Evidence, Quotations

- During his interview, Piglet reported that, on several occasions, Pooh expressed frustration with Eeyore for spilling the honey and commented on Eeyore’s age.
- *vs.* During his interview, Piglet stated that, on several occasions, Pooh made comments about Eeyore spilling the honey including: “Eeyore is too old to be around honey,” “Eeyore is senile—no wonder he knocked over the honey,” and “I’m going to kill f***ing Eeyore if his old a** ever spills my honey again.”

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Active Voice vs Passive Voice

- Active voice– the subject of the sentence performs the action
  - Ex: "Mike called Fred a racially offensive slur."
- Passive voice– the action of the sentence is performed upon the subject
  - Ex: "Fred was called a racially offensive slur by Mike."

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Example – Active vs. Passive Voice

- Students were required to say the pledge of allegiance or leave the classroom each morning.
- The School's Morning Announcements Protocol required all students to say the pledge of allegiance or leave the classroom.

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Questions to Consider – Verb Tense

- How do you approach verb tense in reports?
  - E.g., always past tense?
  - Are there times you would vary from your general practice?

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Verb Tense

- Generally, use past tense consistently
- Use discretion when switching tenses
  - When indicating present or future actions (e.g., of the investigators, parties/witnesses)
  - When discussing correspondence
  - Quotations

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Example – Pronoun and Clause Placement

- Pronoun placement
  - Eloise and her Nanny walked through the lobby of The Plaza. After that, she jumped on the bed.
  - *vs.* Eloise and her Nanny walked through the lobby of The Plaza. After that, Eloise jumped on the bed.
- Clause placement
  - During the football game, Frog said that Toad grabbed Frog's leg.
  - *vs.* Frog said that, during the football game, Toad grabbed Frog's leg.

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Questions to Consider – Citations and Footnotes

- Does adding footnotes help the organization of your report?
- Are you putting pertinent information into the footnotes instead of in the body of the report?
- How/where do you cite to evidentiary materials?
- Are your citations to the evidentiary materials better suited in footnotes or in text (including parentheticals)?

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Practical Point

Have another person consider/proofread the investigation report before it is finalized. (In most cases/preferably, not someone who is otherwise involved.)

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Bias and Report Writing

- Consider your institution's approach to identities
- Avoid assumptions, generalizations, exaggerations, and labels
- Use nouns and adjectives appropriately
  - Consider objective adjectives vs. subjective adjectives
- Focus on relevance
- Review word choice for potential bias markers
- Be as specific as possible

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Potential Bias Indicators vs. Objective Description

Chairman	Chairperson
Jane is old	Jane is an adult over the age of 65
The Asian student was elected president of the organization	Paul was elected president of the organization
Karl is mentally unwell	Karl has Major Depressive Disorder
Linda is underprivileged and received a scholarship	Linda received a scholarship for students whose household income is below $45,000

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Example – Quotations and Characterization

Example: Complainant described her relationship with Respondent as “very close” and “platonic.”

Example: Complainant described her relationship with Respondent: “We were always very close friends, but it was always strictly platonic.”

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Identify the Issues in This Paragraph

"The incident at the bookstore store was blown out of proportion. The manager, who has worked there for over 20 years without any complaints, simply asked the young man to leave because he was loitering. It had nothing to do with race. The store has a diverse staff, and the manager has even donated to minority charities in the past. The young man was wearing a hoodie and acting suspiciously, such that the manager was understandably concerned. The manager was doing his job, which includes ensuring individuals do not loiter in the store."

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Identify the Issues in This Paragraph

"The incident at the bookstore store was **blown out of proportion**. The manager, who has **worked there for over 20 years without any complaints**, simply asked the **young** man to leave because he was **loitering**. It had **nothing to do with race**. The store has **a diverse staff**, and the manager has even **donated to minority charities** in the past. The young man was wearing a **hoodie** and acting **suspiciously**, such that the manager was **understandably** concerned. The manager was **doing his job**, which includes ensuring individuals do not loiter in the store."

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Revised Example

"An incident occurred at the bookstore involving a customer and the store manager. According to the manager, the customer was asked to leave due to concerns about loitering, in that he had been in the store for 30 minutes, picking up items from time to time, but not buying anything. The manager noted that recent training from the bookstore's corporate office listed factors leading to shoplifting losses, and being in a store without purchasing or collecting items in a basket for 30 minutes was a risk factor. The customer, a young Black man, stated that he felt he was being treated unfairly and believed the action was racially motivated; he relayed that his white friend who came in with him had not been asked to leave."

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Editing – Macro-Editing

- Does the overall structure and flow of the report make sense?
- Are there gaps in evidence, discussion of elements of the allegations, or other open questions that have not been explained?
- Is one side presented more or less favorably by the report itself?

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Editing – Micro-editing

- Can language be simplified?
- Can sentences written in passive voice be rewritten into active voice?
- Can language be formalized?
- Have terms been consistently designated?
- Is verb tense consistent and appropriate?
- Are grammar and punctuation marks consistent and appropriate?
- Are there any typos?
- Is formatting consistent/professional? (line-spacing, page numbers, headers/footers, justification, outline numbers/indents, font size, widows/orphans)?

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Discussion

- What tips, tools, or devices do you have for shortening reports?

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What is relevance of evidence?

Evidence is relevant if:

- It has a tendency to make **a fact** more or less probable than it would be without the evidence; and
- The fact is of consequence in determining the action

Relevance must be determined considering the form of violation alleged

May be directly related but not relevant to deciding alleged policy violation

Evidence may be relevant but not considered: E.g., privileged/protected information

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Example – Relevance

- Complainant alleged that Recognized Student Organization denied Complainant's application to participate in RSO activities because of Complainant's religion
- Student Organization is not a designated religious organization nor is religion part of its stated purpose/mission
- Student Organization is on probation for hazing new participants with late-night calls
- Student Organization has a high number of participants who actively practice as members of the Church of the Flying Spaghetti Monster, which is different from Complainant's religion
  - Last year, 100% of Student Organization's new participants were CFSM members
  - Complainant was the only applicant who was not a CFSM member
- Student Organization leaders display some CFSM small banners and pins on their desks in the RSO office
- Student Organization President indicated in his interview that Complainant was not selected for participation because, before Complainant applied to participate, Complainant criticized CFSM, suggesting that students should not apply to the Student Organization because of the link to CFSM

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Impermissible Evidence

- Generally
  - Evidence protected under a legally recognized privilege, unless the privilege has been voluntarily waived
  - Evidence provided to a confidential employee, unless the confidentiality has been voluntarily waived
  - A party's or witness's health treatment records without prior written consent
  - Character evidence (vs. evidence to pattern, practice, habit, etc.)
  - Other policy/legal protection

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Example – ED Title IX Regulations and Relevance

- Evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant (34 CFR § 106.45(b)(1)(iii))
  - EXCEPT if the evidence of the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct OR is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based conduct
- The grievance process may not "require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege" (34 CFR 106.45(1)(x))

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Evidence Gathered/Considered

Facts that matter	*Goals*	*How to do this?*
• Consider elements of alleged policy violation • Which facts are relevant to each element? • Which are disputed and undisputed?	• *Investigators:* identifying disputed /undisputed material facts • *Decision makers:* reaching resolution of disputed material facts (or, sometimes, on appeal, procedural issues)	• Show your work • Explain as needed (*e.g.*, if emphasized by a party) irrelevant information not considered • *Decision makers*: Explain your credibility assessments

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Practical Point – Analysis of Relevance

- Break down elements of a policy violation to analyze relevance.
- E.g., policy definition: *Retaliation is defined as acts or words taken against an individual, because of the individual's participation in a protected activity that would discourage a reasonable person from engaging in such protected activity.*

Words or actions	Taken against an individual	Because of the individual's participation in a protected activity	That would discourage a reasonable person from engaging in such protected activity

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Direct vs. Circumstantial

Direct — Actual evidence of a fact, circumstance, or occurrence proves a fact in question without presumption or inference	• E.g., testimony of a witness who observed and perceived event in question (see, hear, touch)
Circumstantial (indirect) — Information which, based on logic or reason, is so closely associated with the fact to be provided that proof may be inferred	• E.g., a receipt suggesting a party was not where they claimed to be at a material, particular time

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Circumstantial

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Practical Point

- Strict, court-like rules of evidence rarely apply in institutional investigation and hearing processes.
- If your role is only to report on facts gathered, consider erring on the side of inclusion. In most cases, if evidence gathered in an investigation is ultimately irrelevant, privileged, or otherwise inappropriate for consideration, it can generally be disregarded in decision-making (and its treatment clarified in a file, report, or written decision).

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Addressing Conflicting Evidence

- Conflicting evidence related to whether an element of the alleged violation occurred is relevant
- Include both sides
- Consider how/where to present information based on policy, practices, posture of matter (e.g., disputed and undisputed facts section, in analysis)

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What is credibility of evidence?

The extent to which something is believable, trustworthy, or convincing

Critical where:

Material facts are disputed

Witnesses/evidence inconsistent on **material** facts

Not necessarily binary/absolute

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How do we assess credibility?

- Plausibility—Believable?
- Corroboration—Other evidence?
- Consistency
- Demeanor
- Motive to falsify
- Material omission
- Contemporaneous
- First-hand knowledge
- Influence of others
- Bias (overt/unconscious)
- Behavior after the alleged misconduct is reported
- History of similar behavior, pattern, practice, habit

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Example – Writing to Credibility

Peter alleged that Wendy assaulted Peter at a campus protest because of Peter's protected status. Peter provided a video of the protest, time-stamped 11:30 a.m., showing the back of an individual with long, green hair holding a sign, and the sign hitting Peter in the face. Peter said the individual was Wendy, whom he recognized from having met her socially on several occasions.

Wendy denied being at the protest. Wendy acknowledged being acquainted with Peter and that she had long, green hair at the time of the protest. Wendy reported that, at 11:30 a.m., she was at the hair stylist, which took over an hour because she had to wait for her friend, Tinkerbell, to get her hair done first at the salon. Wendy reported leaving the salon at 12:30 p.m. The Investigator asked Wendy to provide contact information for Tinkerbell, stylist, and/or salon; the Investigator asked Wendy to obtain confirmation of her appointment, such as an email/text confirmation, or receipt or credit card statement showing the time of the payment. Though Wendy responded that she would provide this information, and the Investigator made a second request, Wendy did not do so. Following the second request, Wendy stopped responding to the Investigator's attempts at communication.

Peter identified Wendy as being present at the protest. It is undisputed the two are acquainted. The video does not show the face of the individual holding the sign, though it does show hair similar to Wendy's. Though Wendy said that she was at the stylist with others at the time of the assault, she did not identify evidence of her appointment or the time it ended despite agreeing to do so. Therefore, the Investigator finds that Peter's account should be credited, such that it is more likely than not that Wendy was present at the protest holding the sign that hit Peter in the face.

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More Tricky Evidence

Refusal to answer/testify/provide information	"New" evidence
• Generally, not in and of itself evidence • Negative inference may/may not be permissible • Consider other available evidence • Note refusal in the report	• May impact weight/credibility • May require additional investigation • Consider reason it is "new" • Where timing is unusual, note in the report

- Consult policies, procedures, and appropriate officials as needed

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How do we assess "I don't remember?"

True loss of memory may occur due to, e.g.:

- Trauma
- Passage of time
- Lack of attention

Balance

- Memory loss alone does not equate to a lack of credibility
  - Recollection/testimony need not be linear
- Possible to remember some information and not other information
- Inexplicable memory loss as to adverse details, while memory of helpful details, may indicate a lack of credibility
- May go to weight

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Also Tricky – AI-Generated or Potentially Altered Evidence

- Consider
  - Unnatural lighting or shadows, blurry areas, inconsistent skin tone/texture/movement
  - Credibility: E.g., context, contrary evidence or inconsistency with other evidence, motive, pattern
  - Detection technology?
  - Any relevant procedures (e.g., for AI-detection, separate disciplinary procedures)

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Practical Point

- Avoid speculation
- If evidence is not available but may have been significant, address its absence
- If something is unknown/undeterminable, state as much (if material, consider further investigation)

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How should you address the parties' criticisms of the investigation?

- Incorporate new or salient points as necessary
- If a party demanded more interviews or collection of other evidence, and you elected not to pursue, explain why

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Discussion

- When do you start writing the report?

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Analysis and Determination

IRAC

- **I**ssue– restating the question that needs to be answered (i.e., whether a policy violation occurred)
- **R**ule– outlining the relevant elements of the policy/procedure that is at issue
- **A**nalysis– resolving factual disputes under the evidentiary standard outlined in institutional policy/procedures and applying the facts to that rule
- **C**onclusion– simple and definitive response to the issue statement

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Example – Outcome

Thus, the Decision Maker finds that a preponderance of the evidence indicates that:

- After Administrator filed a complaint against Faculty Member, Faculty Member's criticism of Administrator became more frequent and was perceived by witnesses as more severe.
- Faculty Member is in a position of influence over Administrator's performance evaluations and salary, and gave Administrator a negative performance review following the complaint, though others provided positive reviews.
- Administrator ceased attending Department meetings at which Faculty Member would be present after Faculty Member questioned Administrator's report in a sarcastic manner at a meeting following the complaint.
- As such, the Decision Maker finds it is more likely than not that Faculty Member took adverse action against Administrator in response to Administrator's complaint, which impacted Administrator's participation in Institution programs or activities. Therefore, the Decision Maker finds that Faculty Member violated [*policy(ies)*] by engaging in retaliation against Complainant.

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Scenario

Breakout Session 2: Findings of Fact

- Consider the summaries of evidence collected.
- Generate chart together.
- Make necessary findings of fact.
- Provide an explanation to support how you reached particular findings of fact.

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Share-Out

- What sources of evidence did you put in each column?
- What were the most relevant facts as to each element? (Which did you discuss the most?)
- What findings of fact did you make and what was your support (including facts you might have assumed)?
- How would you structure this report?

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Next Steps

Outline what will occur next in the matter:

- What procedurally can the parties expect?
- If a determination has been made, what are the grounds for a party to appeal?
- If the report is the last step and the matter concluded, consider saying so

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Questions/ Discussion

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Appendices/Exhibits

- Policies and procedures
- Interview transcripts
- Written submissions
- Documentary evidence
- Printout/screenshot or reference to location of digital evidence

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Confidentiality

- Consider
  - Confidentiality requirements
    - E.g., (FERPA, employment laws, HIPAA, other)
    - Particularly where multiple parties, witnesses
    - Title IX vs. other
  - Whether information being considered for redaction is relevant to a determination
    - Does it go to elements of alleged misconduct, credibility, consistency, important context?
  - Impact on clarity
  - Personal/sensitive nature of information being considered
  - How to document redactions
  - Who will have access

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INSERT EXAMPE

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Redaction?

- Consider
  - Confidentiality requirements
    - Multiple parties, witnesses, Title IX vs. other
  - Whether information being considered for redaction is relevant to a determination
    - Does it go to elements of alleged misconduct, credibility, consistency, important context?
  - Impact on clarity
  - Personal/sensitive nature of information being considered
  - How to document redactions
  - Who will have access

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Example - Redaction

- Witness statement: "I think [Respondent] Taz has bipolar disorder. Taz lies a lot when he's manic. When he's manic, he starts talking really fast and loudly, and he stays up all night like he's on cocaine. He once told me that his mother won a game show, but, when I checked the website for the show, I didn't see her name as a winner. My sister, who is also a student here, has bipolar disorder, and I've read a lot about it, so I recognize the symptoms. I also saw Taz's medicine cabinet and saw he had antipsychotics in there."

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Closing Discussion

- What are some of your takeaways from this training?
- What outstanding questions do you have?

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Wrap-Up

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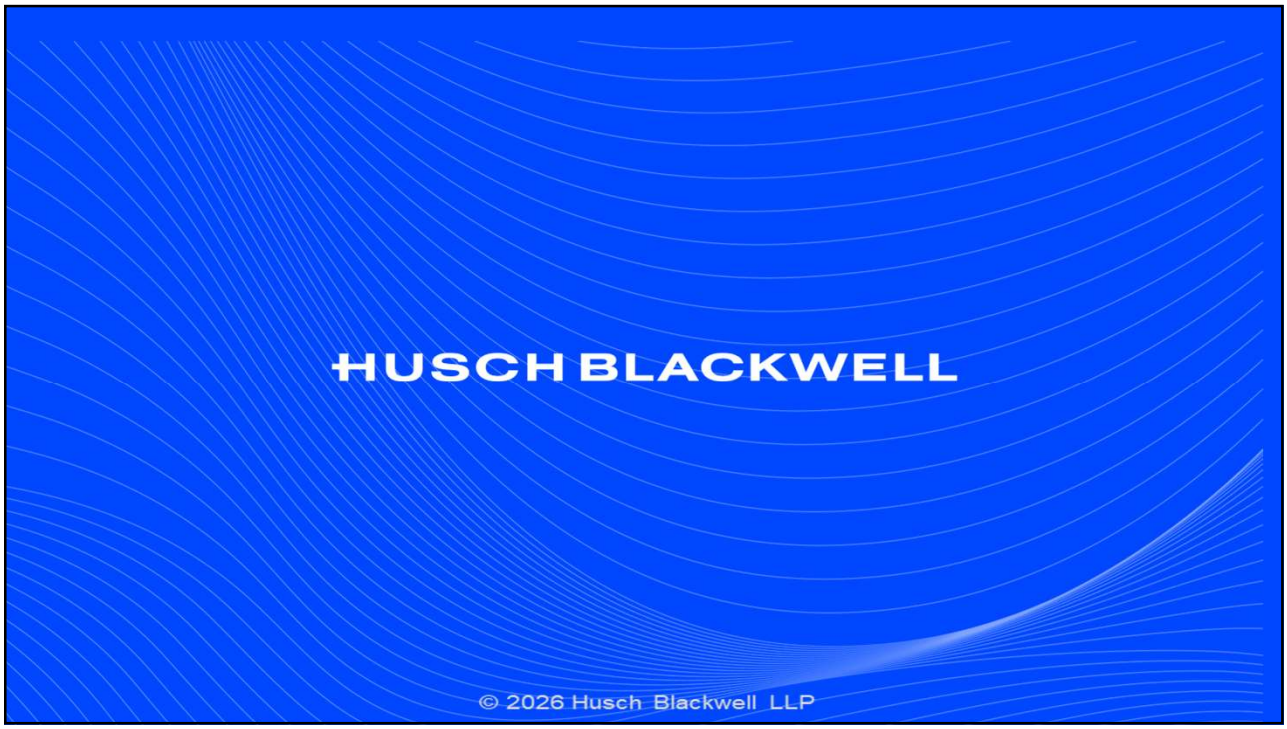

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