



What We Learned: Lessons and Trends from Another Year of Investigating

D. STAFFORD & ASSOCIATES & NACCOP

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Today's webinar is being conducted by the National Association of Clergy Compliance Officers and Professionals (NACCOP).

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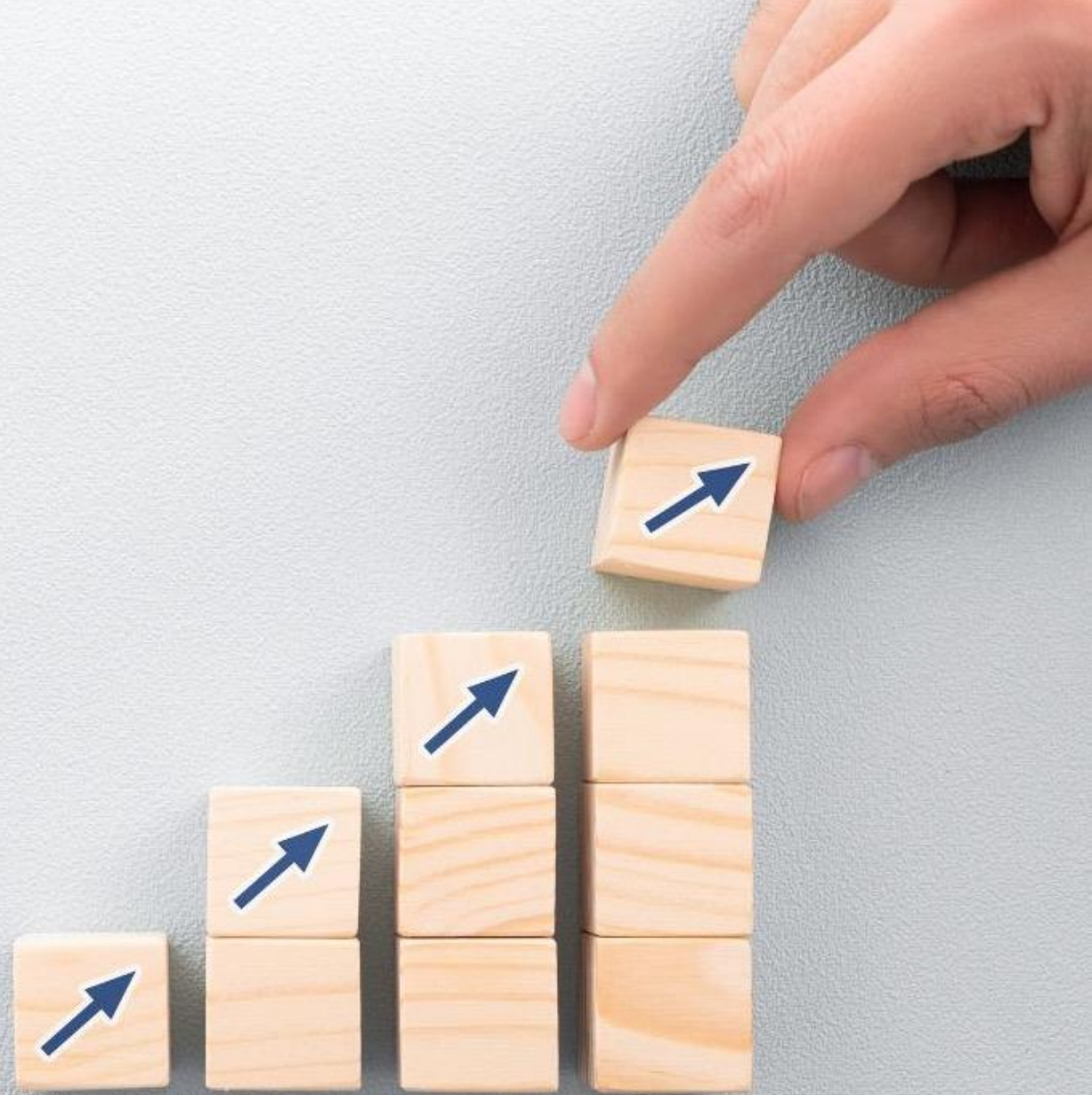
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Agenda

- Process Issues
 - The Narrative
 - Dismissals
 - The Notice Letter
 - Deadlines
 - Policy Definition Challenges
- Behavioral Trends

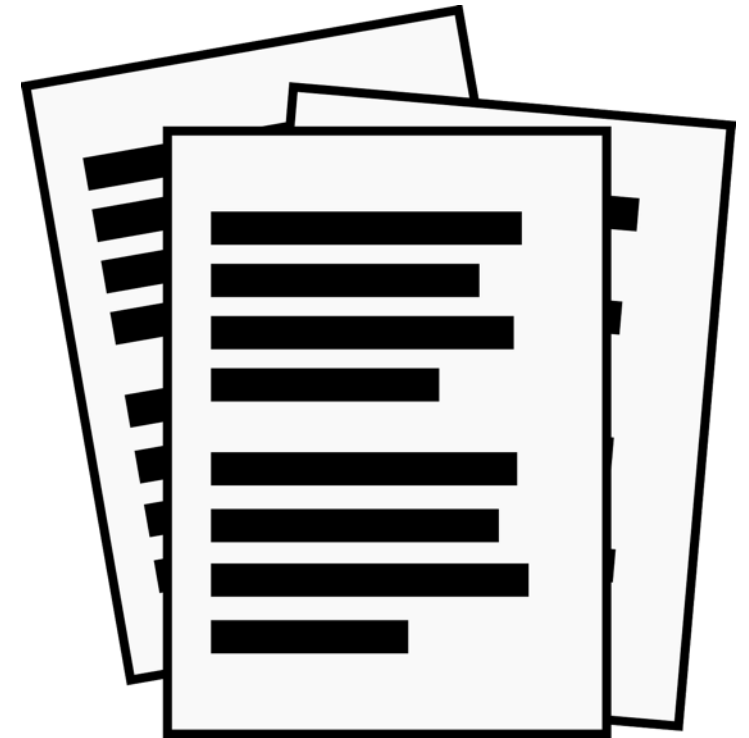
Process Issues



The Narrative



- This is not an investigation. It's part of intake.
- There should be a written narrative that informs your notice letter and the investigation.
- Could be:
 - Report/written account
 - Part of the written complaint
 - Intake notes

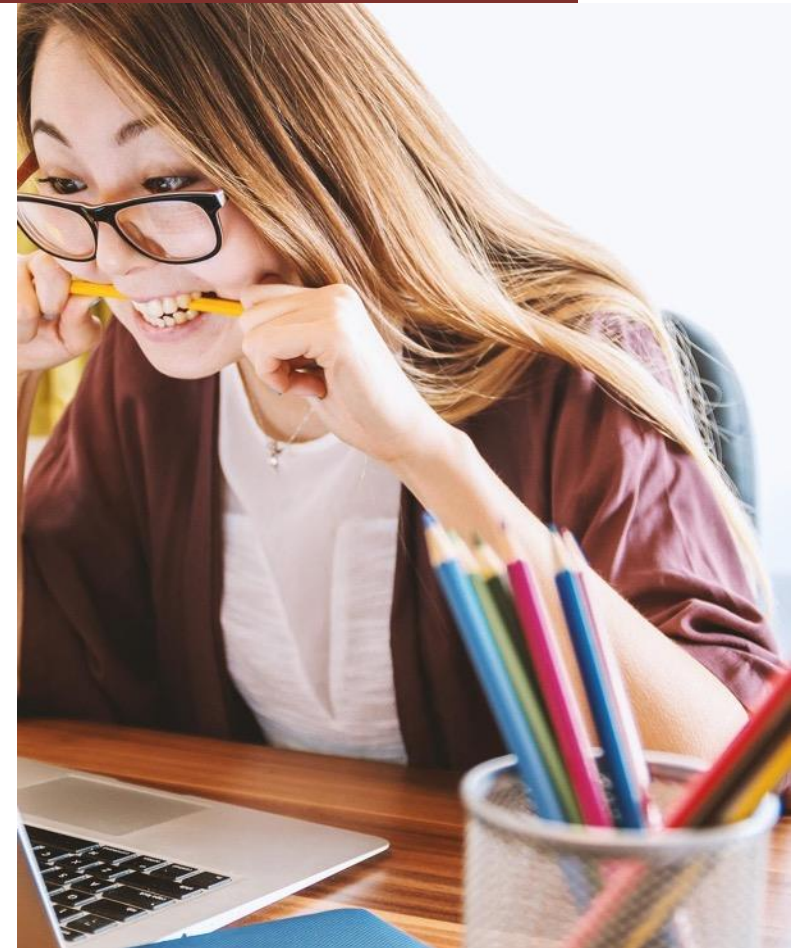


Why Am I Investigating This?



§106.45 (b)(3)(i) Dismissal of a formal complaint—(i) The recipient must investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the recipient’s education program or activity, or did not occur against a person in the United States, then the recipient must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the recipient’s code of conduct.

On the face of the complainant/narrative, would the behavior constitute sexual harassment? If not, why would you continue with initiating a full investigation?



From Narrative to Notice



Identifying the Alleged Violations



How

“It is alleged that after attending the sock hop, you and the Complainant returned to Murray Hall. The Complainant has alleged that you took off her clothes without consent and engaged in penetration of her vagina without her consent.”

What

“Therefore, the alleged violation of the Sexual Misconduct Policy is:

- a. Sexual assault...

Tips for Identifying Violations



- Have a corresponding violation for each instance of prohibited conduct.
 - Example: The Respondent and Complainant are in a dating relationship. The Complainant alleges that the Respondent engaged in sexual penetration without consent. This would be dating violence and sexual assault.
- If there are multiple incidents over a period of time, identify which violation goes with each incident.
 - Example: An incident of kissing without consent and a separate incident of unwelcome sexual comments in a classroom. Clearly identify that the kissing is sexual assault, and the unwelcome comments are sexual harassment.
 - Exception is stalking which is a collective course of conduct. In those cases, you should have timeframes and locations with the behaviors to the extent possible.



Grammatical Errors, Typos, and Wrong Information



Embrace the Deadline!

- “If you do not schedule your interview by such and such date, I am interpreting that as your decision to not participate in the investigation and the investigation will proceed without your involvement. Please note that the time for you to provide an account, evidence, and witnesses is during the investigation. Evidence known to you but not presented during the investigation is not considered new evidence and will not be allowed at the hearing.”
- “You did not attend your investigation interview; therefore, I am interpreting that as your decision to not participate in the investigation and the investigation will proceed without your involvement. Please note that the time for you to provide an account, evidence, and witnesses is during the investigation. Evidence known to you but not presented during the investigation is not considered new evidence and will not be allowed at the hearing.”
- “As a follow-up to our recent conversation, all evidence must be submitted by 5:00 p.m. on Friday, July 15, 2022.”



Consent
Definitions -
The New
Goldilocks And
The Three Bears

Informal Resolutions

Kidder's Ethical Dilemma Paradigms:

- Truth vs. Loyalty
- Individual vs. Community
- Short-term vs. Long-term
- Justice vs. Mercy



WHAT'S YOUR
STORY

Behavioral Trends



Questions?



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