

# Leadership Workshop: Supervising Investigations

Presented by:

**The Office of General Counsel**

and

**Systemwide Title IX and DHR Compliance**

Wednesday, August 18, 2021, 1:00 p.m. – 2:30 p.m.

# Welcome!

- Please keep yourself on mute and have videos off until the interactive portion of the presentation.
- Please use the chat to submit your questions.
- This workshop will not be recorded. The PPT presentation will be made available in PDF format after the presentation.



# Presenters

Alex Pursley, Assistant Director for Title IX Compliance

Laura Anson, Senior Systemwide Director for DHR Compliance

Ruth Jones, University Counsel, Civil Rights

Stephen Silver, Assistant Vice Chancellor & Chief Counsel-Civil Rights

Tina Leung, Manager, DHR Compliance

## **The Role of the Title IX Coordinator/DHR Administrator**

The DHR Administrator or Title IX Coordinator shall promptly investigate the Complaint or assign this task to another Investigator on a case-by-case basis. If assigned to another Investigator, the DHR Administrator or Title IX Coordinator shall monitor, supervise, and oversee all such delegated tasks, including reviewing all investigation draft reports before they are final to ensure that the investigation was sufficient, appropriate, impartial, and in compliance with this Executive Order.

*E.O. 1097, Article III, B. 7 and E.O. 1096, Article III, C. 7*

## Stages of an Investigation

-  **Intake & Complaint Assessment**
  - Define the scope of the investigation
  - Determine if a preliminary inquiry is necessary
-  **The Investigation**
  - Assign case to Investigator
  - Supervise evidence gathering
  - Address questions that arise during the investigation
-  **Evidence Review**
  - Assess investigation for completeness prior to the drafting of investigation report with findings
-  **Final Report**
  - Review to determine whether the report is understandable to third parties
  - Evaluate adequacy of analysis
  - Finalize and send to appropriate parties

# Intake & Complaint Assessment

# Assessment of the Complaint

- Does the complaint state sufficient information for an investigation?  
Assuming the allegations are true, would the complaint constitute a policy violation?
- Is a preliminary inquiry necessary?
  - Preliminary inquiry does not mean witness/respondent interviews
  - Preliminary inquiry should be used to ascertain certain facts not known or not available to the Complainant

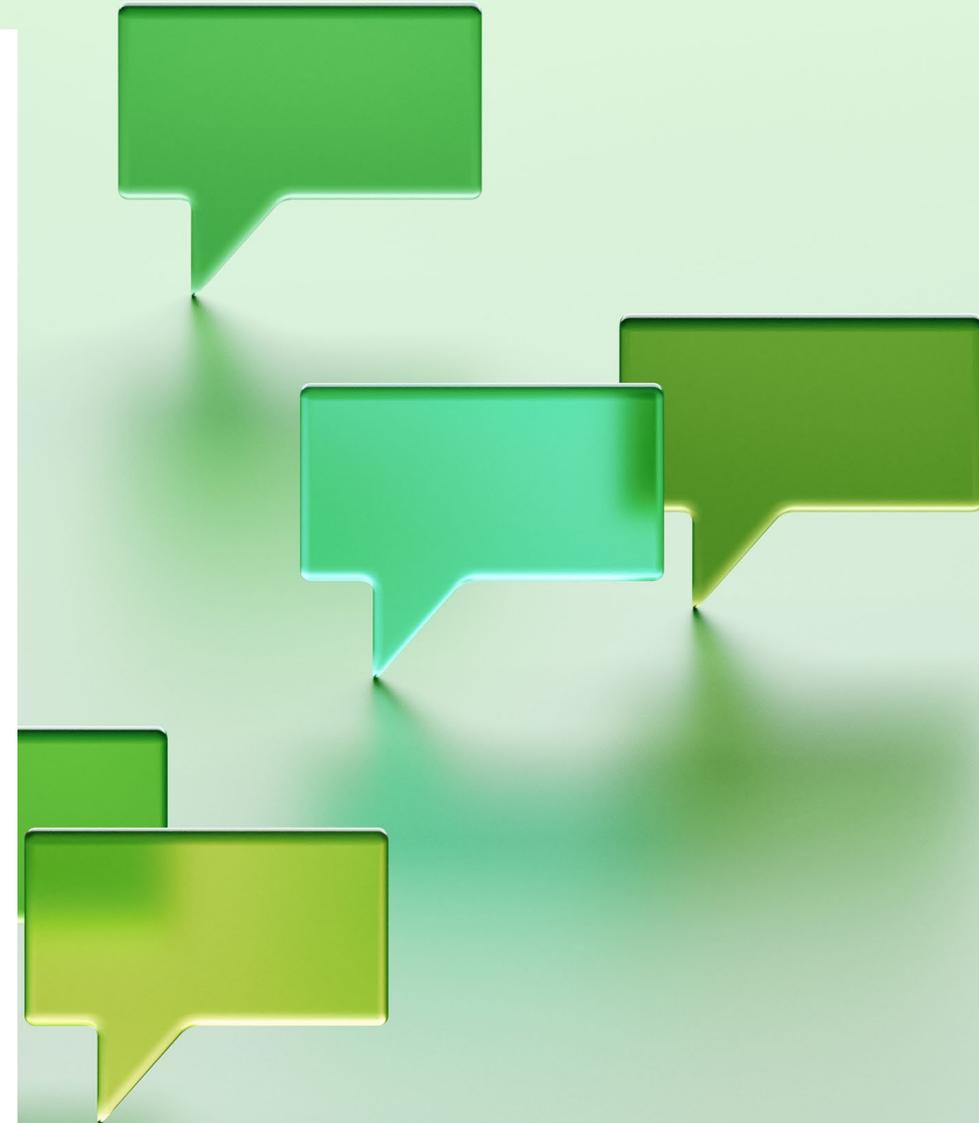
# Scope of the Investigation

- Does the complaint state the proper possible policy violations based on the factual allegations?
- Obtain information during intake to define the scope and select the appropriate policy
  - Get basic factual information that parties might not provide e.g., the who, what, where, when for the factual allegations
  - Clarify factual allegations relevant to determining policy violations

# The Investigation

# Supervising an Internal Investigator

- Discuss the scope of the investigation
- Review deadlines
- Discuss any unusual issues and address questions that may arise during the investigation
- Discuss when and how the Title IX Coordinator/DHR Administrator will be updated during the investigation
- Review evidence review materials & draft reports
  - More frequent check-ins may be advisable in some cases



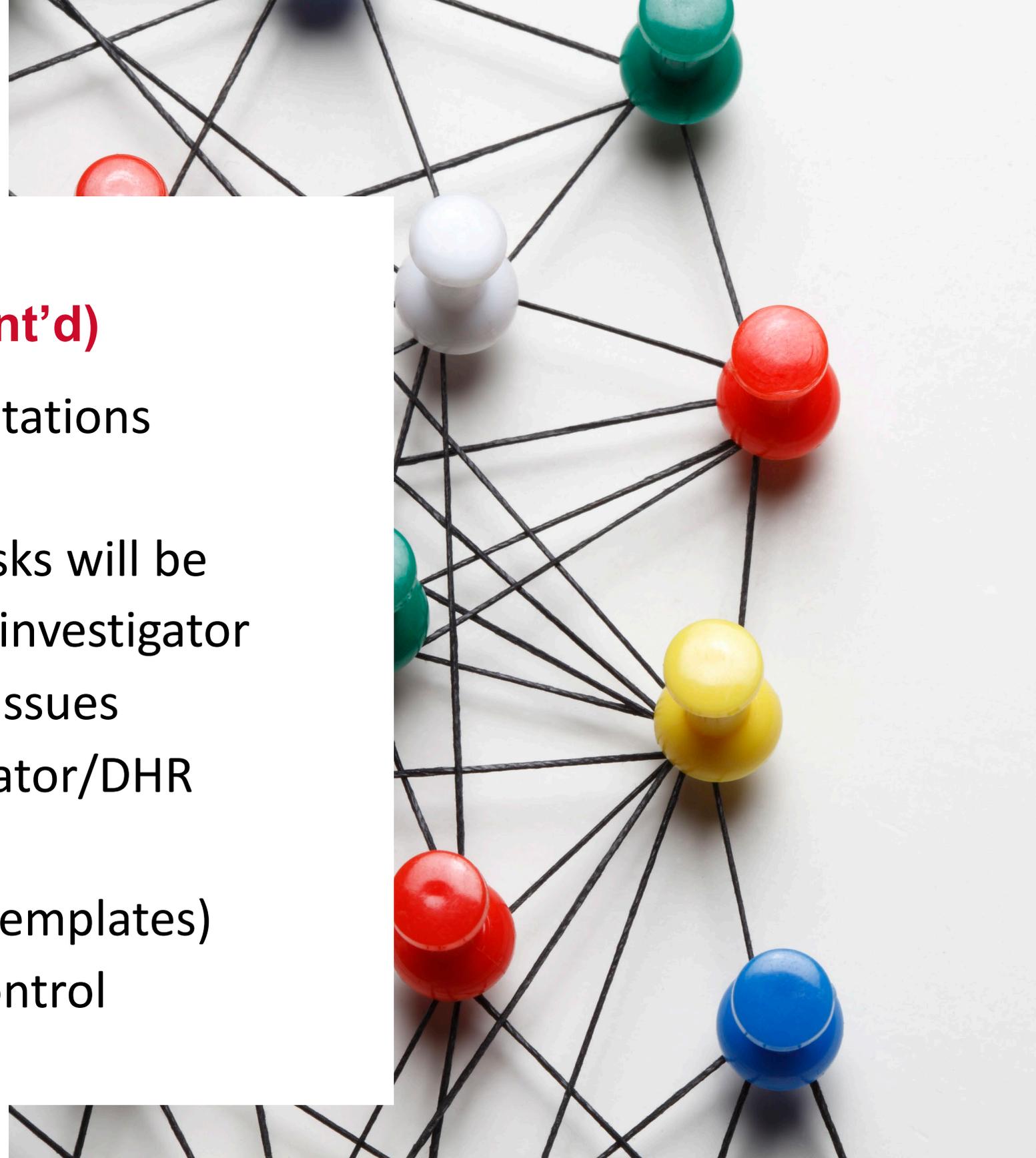
# Supervising an External Investigator

- Work with campus counsel to retain investigator and communicate scope of investigation
  - External investigator must be California lawyer or private investigator (or retired annuitant)
  - Attorney-investigators must be retained by campus counsel
- Review the CSU policy/procedures with the investigator, emphasize your availability to answer questions
- Identify person to assist with introducing investigator to the Parties and witnesses, and gathering documents
- Review deadlines and expectations with investigator



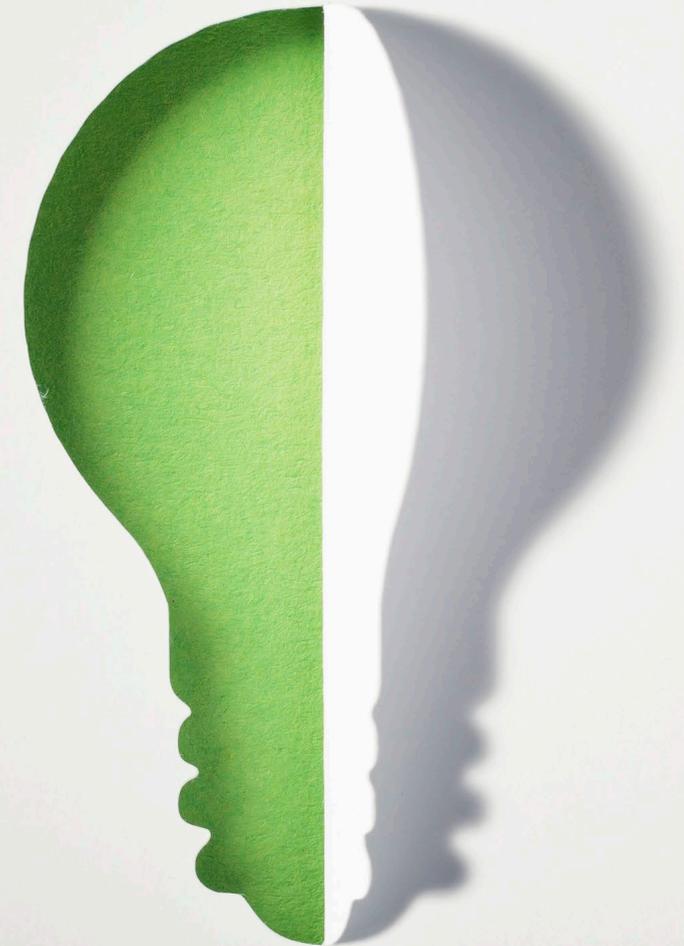
## Supervising an External Investigator (cont'd)

- Discuss with campus counsel expectations regarding roles and responsibilities
- Determine which administrative tasks will be handled by the campus and by the investigator
- Discuss any unusual/complex case issues
- Discuss when/how Title IX Coordinator/DHR Administrator will be updated
- Review draft reports (and provide templates)
- *Reminder:* Investigator does not control things. **YOU** do.



# *Supervisory Tips*

- Review of witness statements
  - Has the witness been asked all relevant questions?
  - Have all relevant witnesses been interviewed?
  - Is the focus on the material issues?
- Double-check to confirm all objective and relevant evidence has been obtained (available emails, text messages, policies and procedures, personnel file documents, etc.)
- Ensure that all policy deadlines are being met (and Parties notified of extensions)
- Your work now will pay off later!



# Evidence Review

# Evidence Review



Does the evidence review materials include all information required by the policy? For example, Addendum B – all evidence, including that upon which the University does not intend to rely



Ensure that each side has had an opportunity to review all relevant evidence obtained during the investigation.



Ensure that the investigation has gathered relevant, available information.

# Evidence Review (cont'd)



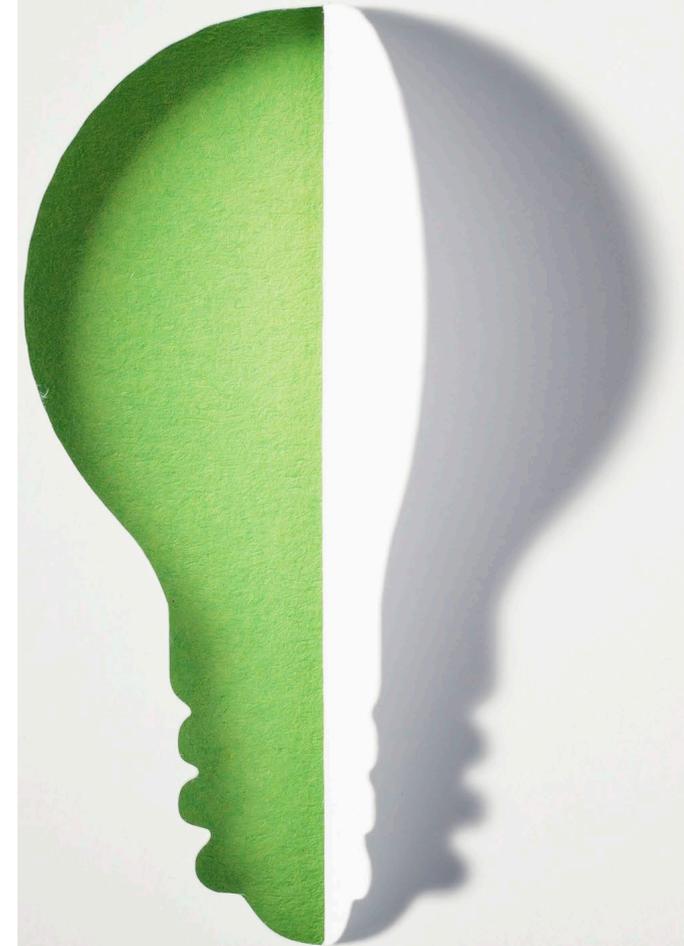
Determine at what point during the investigation the Title IX Coordinator/DHR Administrator should review the evidence gathered prior to finalizing the evidence review materials.



For remand investigations, Title IX Coordinators/DHR Administrators should ensure that remand instructions are followed

# *Supervisory Tips*

- If something is incomplete, now is the time to fix it!
- Discuss with investigator how many times evidence will be provided to the parties
- Subsequent rounds of evidence review should be limited to only the most recently provided evidence
- Timeframe for review during subsequent rounds of evidence may be adjusted according to volume
- Investigator still retains the discretion to stop the review of evidence when nothing new is added
- ***Don't let the evidence review take months!***



# Final Report

# Checklist for Reviewing a Final Report Draft

Does the report meet the policy requirements (EO 1096, III, C. 8 and EO 1097, III, B. 8\*):

\*Please see Addendum A, V. A and Addendum B, VIII. E for separate requirements.

## **Summary of the Allegations**

- Does the report include the factual allegations?
- Does the report include the policy provisions at issue?

## **Executive Summary and Background Section**

- Does the report have sufficient background information to understand the allegations and the analysis of possible policy violations?
- Would a background section or an executive summary be useful because of the complexity or length of the report?

## **Summary of the Investigation Process**

- Does the report include a timeline containing dates of important events (i.e., dates of notice of investigations, intakes/interviews, review of the evidence, extensions)?
- Does the report include an explanation if the investigation applied a previous policy and the current procedure?
- Does the report state that the parties had an opportunity to review the evidence?

# Checklist (cont'd)

## Preponderance of the Evidence Standard

- Does the report state that this is the standard utilized and was it applied properly?

## Detailed Description of the Evidence

- Does the report contain a discussion of which witnesses were interviewed and what evidence was examined?
- Does the report have a detailed description of the witness statements?
- Does the report have a detailed description of any objective evidence reviewed?
- Is any of the relevant evidence attached as an exhibit?

## Findings

- Does the report analyze all charges included in the Notice of Investigation and any Amended Notices of Investigation?
- Does the report make the factual determinations that are relevant to the policy violation determinations?
- Does the report make relevant credibility determinations?
- Does the report analyze all disputed elements of the alleged prohibited conduct?
- Are the conclusions sufficiently analyzed?

# Discussing the Draft

- Discuss any response or questions about written comments on the draft
- The format of the report and inclusion of required elements
- Make sure the investigator uses and adapts the template as necessary
- **Background and Context**
  - To help a reader unfamiliar with the Parties understand the statements by the Parties and witnesses
  - To assist with credibility determinations
  - To provide context to help a reader understand the evidence considered
- **What additional investigation is necessary?**
  - Interview additional witnesses or consider other evidence

# Tips for Final Draft Review

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*How does it read to an outsider?*

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*Are the facts and conclusions sufficiently explained?*

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*Can giving feedback to the internal investigator also serve as a professional development opportunity for the investigator?*

# Professional Development

- Each case might have opportunity for professional development for the team on:
  - Interviewing techniques
  - Information/evidence gathering
  - Policy definition analysis
  - Report writing
- External resources may be available
  - Trainings by Association of Workplace Investigators (AWI) [www.awi.org](http://www.awi.org)
  - Society for Human Resources (SHRM) [www.shrm.org](http://www.shrm.org)
  - Association of Title IX Administrators (ATIXA)
  - T9 Mastered



**Questions?**

# Interactive Session

# Scenario: Reviewing the Complaint

- Brooklyn is an Analyst who works in the Finance Department on campus. Brooklyn's complaint is against Emerson, who is also an Analyst in the same department.
- Brooklyn says Emerson has sexually harassed them by hitting on them and repeatedly asking Brooklyn, "So when am I taking you out?" One time, Emerson text Brooklyn a nude picture (of Emerson) and then quickly followed the message with a text that read "Oops, accident 😊," but Brooklyn thinks it was intentional.

# Scenario: Reviewing the Complaint (cont'd)

- Brooklyn also alleges that Emerson has discriminated against them based on age by making comments such as, “I always mistake you for a student when I see you in the hall” and “people your age are so sensitive,” the latter comment being in response to Brooklyn saying “Emerson, seriously, stop” when Emerson asks to take Brooklyn out. Brooklyn feels very uncomfortable, has been taking sick days to avoid Emerson and wants Emerson to be removed from the Department.
- Brooklyn says they told their immediate supervisor, Carey about the nude picture, and other employees have heard the comments Emerson has made.

# Breakout Sessions: Discussing the Final Report Draft

- Refer to Final Report Draft that was sent to you via email
- *15 minutes*
- Instructions:
  - Discuss the draft investigation report with your team, focusing on the report's defects.
  - Come up with three (3) suggestions for improvement
  - **Select one person to report on one (1) of the defects.**

# Breakout Sessions

# Discussion of Report Defects

- Did not include specific allegations
- Did not interview all witness and did not review objective evidence (e.g., consider text message evidence)
- No proper analysis (did not analyze using EO definitions of sexual harassment, age, discrimination)
- Improper use of preponderance of the evidence standard. (e.g., not based on which Party has more corroborating witnesses)
- Poor credibility assessment
- No discussion of investigation process (e.g., dates of review of the evidence, etc.)

# Presenters' Contact Information

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**Thank you for attending!**