



BEING AN EFFECTIVE TITLE IX ADVISOR: FROM INVESTIGATION TO HEARING

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Tera Johnson and Bobby
Whitehead

MEET YOUR FACILITATORS



Tera Johnson

Tera is a Senior Solutions Specialist with Grand River Solutions and has nearly 20 years of experience in higher education including roles in residence life, student conduct, Title IX, and the Dean of Students' office. In her Title IX and equity work, she has worked with parties in every step of the process from intake through appeal. Since joining GRS, she has served as an advisor in more than 100 cases. She received her Bachelor's degree from John Carroll University and her Master's degree from the University of Louisville.



Bobby Whitehead

Bobby is a Senior Solutions Specialist at Grand River Solutions. He brings over 10 years of experience in higher education, in roles including Lead Investigator in the Title IX Office and Assistant Director of Community Standards and Student Accountability. In his Title IX and equity work, he serves as an investigator and an advisor and also facilitates trainings. He received two Bachelor's degrees and a Master's degree from Auburn University.

ABOUT US

Vision

We exist to create safe and equitable work and educational environments.

Mission

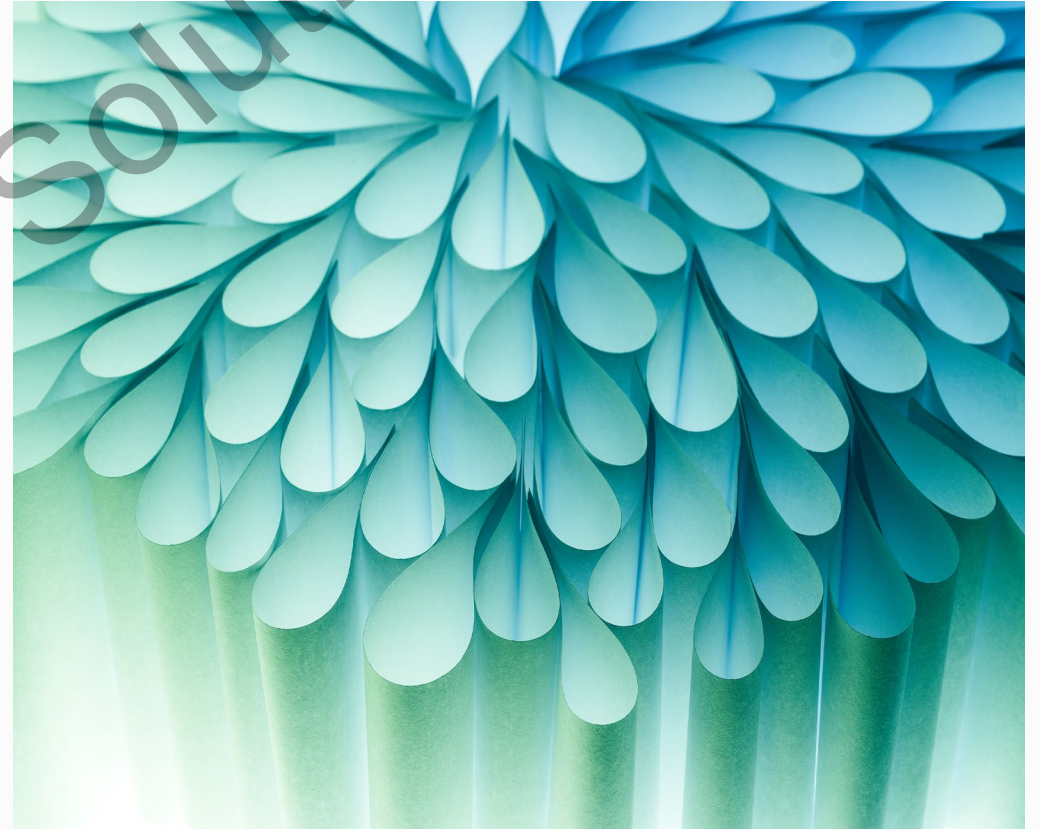
To bring systemic change to how school districts and institutions of higher education address their Clery Act & Title IX obligations.

Core Values

- Responsive Partnership
- Innovation
- Accountability
- Transformation
- Integrity

AGENDA

- | Types of Advisors
- | Hearing Advisors
- | Preparing for the Hearing
- | Practical Application

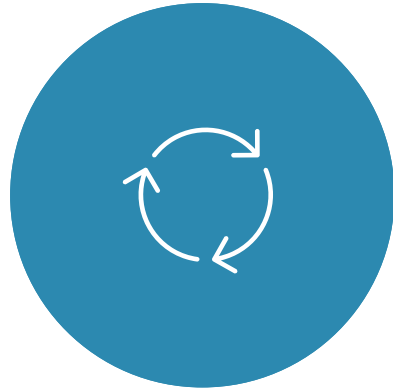


TYPES OF ADVISORS

01

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THERE ARE TWO TYPES OF ADVISORS



Advisor of Choice
(throughout whole process)



Hearing Advisor (hearing,
for purposes of asking
questions)

ADVISOR OF CHOICE

Parties are entitled to an advisor of choice.

The advisor of choice can be anyone.

This advisor may accompany the party to any interviews/meetings and the hearing.

The advisor can conduct cross examination of the other party and witnesses at the hearing.

WHAT DOES AN ADVISOR OF CHOICE DO?

- Assist advisee in understanding the policy
- Assist in the identification of witnesses and evidence
- Assist in providing the investigator with information
- Assist in preparation for investigative interviews
- Accompany advisee to investigative interviews and advise throughout as appropriate
- Assist with review of evidence and report and development of response



HEARING ADVISOR

An advisor of choice may serve as a hearing advisor.

If a party does not have their own advisor, the institution must provide one for the live hearing.

The hearing advisor's role is typically limited to asking questions for the purpose of cross examination.

Some institutions may permit the hearing advisor to have a role in helping the party to prepare for the hearing.

HEARING ADVISORS

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CONSIDERATIONS TO BE AWARE OF

- Confidentiality v. Privacy
- Perception of Conflicts of Interest
- Time Commitment
- Impact of Criminal Proceedings
- An Advisor Can be Anyone (Including an Attorney)
- Advising Complainants vs. Respondents

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EXPECTED DOCUMENTS

- Notice of Allegations/Investigation
- Investigation Report and Evidence
- Policy

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MEETING WITH YOUR ADVISEE

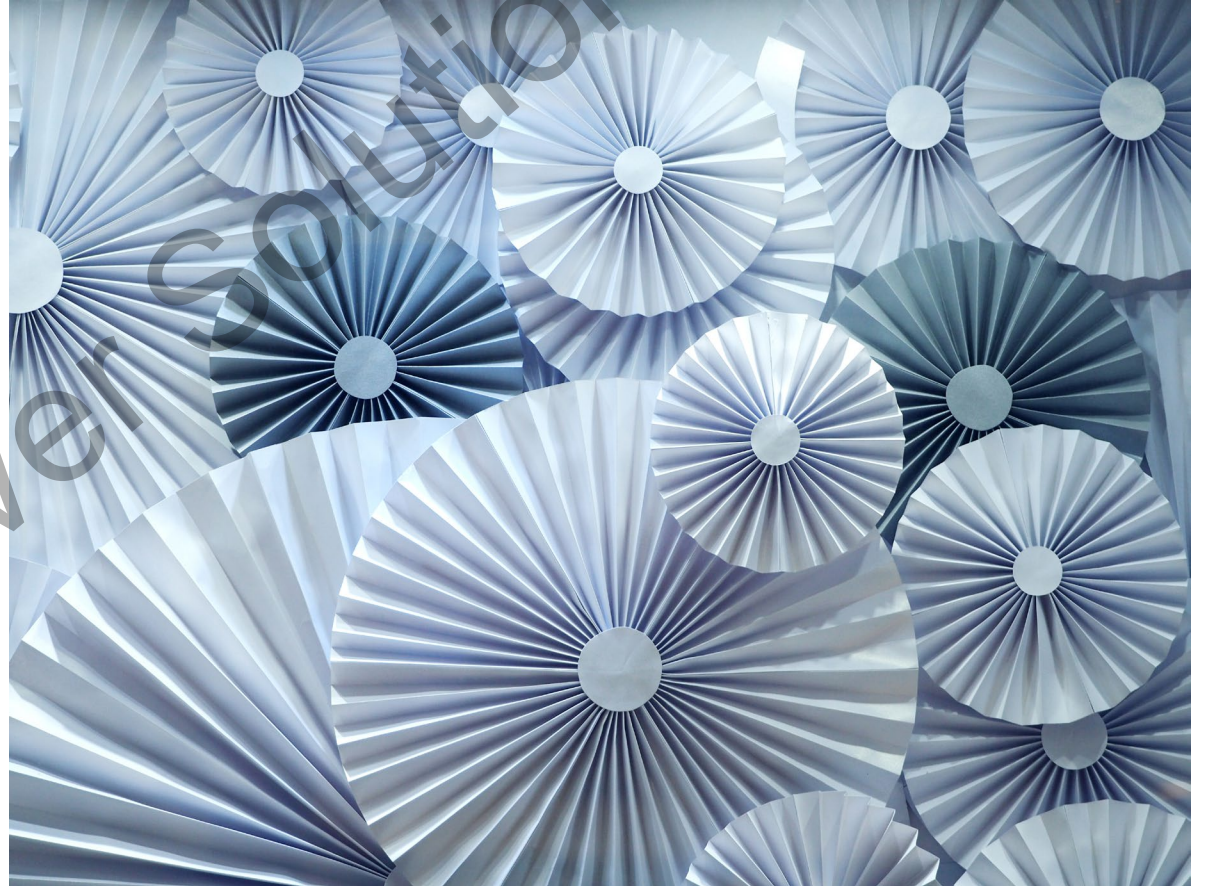
Build: Build Rapport

Explain: Explain your role

Advise: Advise them that their conversations with you are not privileged

Go Over: Go over the policy and process with them

Discuss: Discuss the evidence



CONSIDERATIONS WHEN MEETING WITH YOUR ADVISEE

- Non-Responsive Advisee
- Difficulties Coping
- Varying Levels of Support
- Advisee Shares New Information
- Advisee Participation

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PREPARING FOR THE HEARING

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PURPOSE OF A HEARING



To provide parties an opportunity to present relevant information to a decision maker as well as cross-examine the other party and/or witnesses.



To determine if a policy violation occurred based on the relevant information.

HEARING PARTICIPANTS

Complainant: the person bringing the complaint

Respondent: the person whom the complaint has been filed against

Advisor: one for each party; conducts cross examination

Investigator: may summarize the investigation and/or answer fact-based questions

Witnesses: may be called to answer questions; only present during their questioning

Decision Maker: facilitates the hearing, determines relevancy of questions in cross examination, determines if policy violations occurred, may determine sanctions

Hearing Coordinator/Administrator: coordinates all aspects of the hearing (people, space, technology, etc.), ensures a fair and equitable hearing process, acts as a resource for all participants

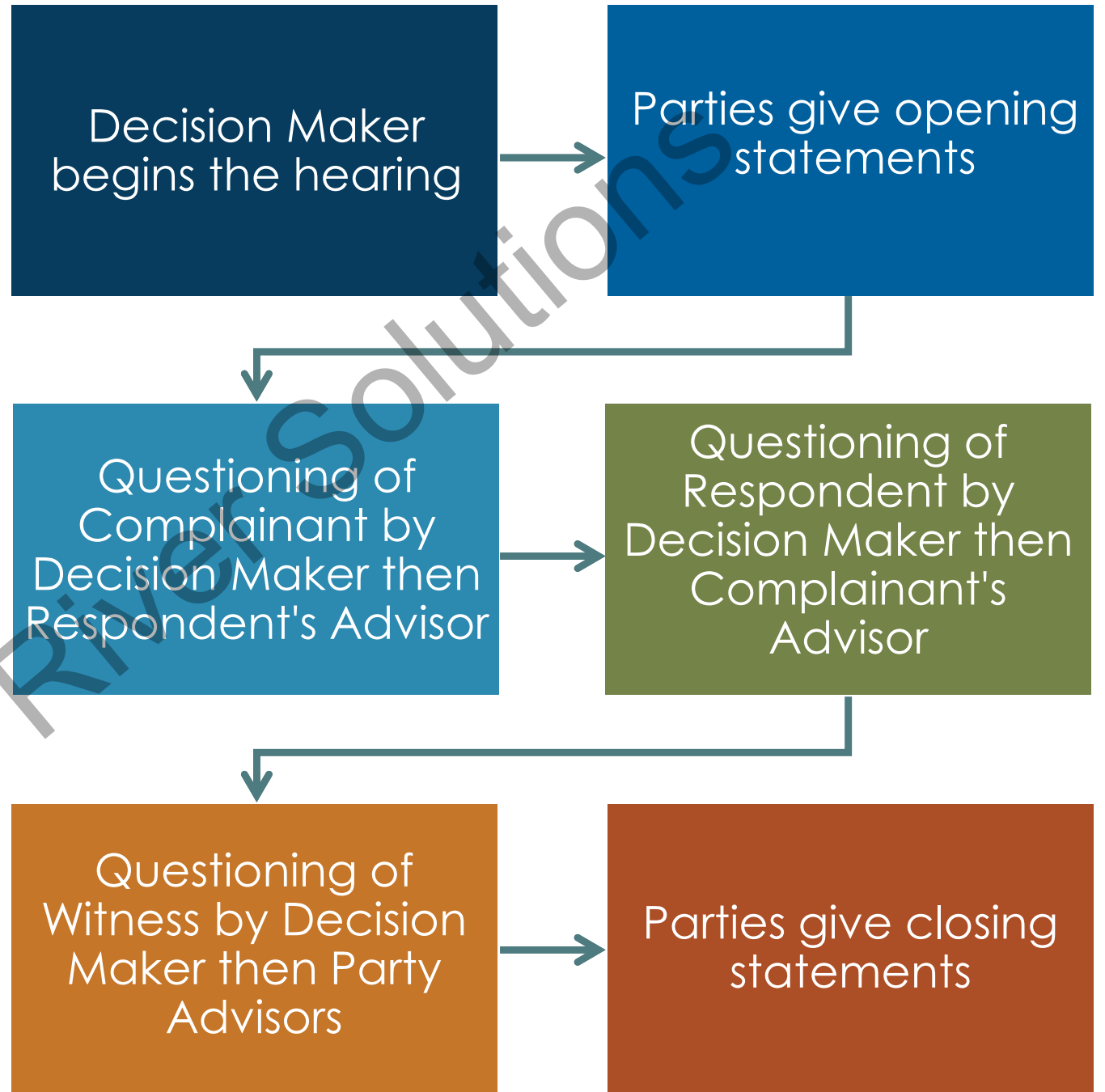


ADVISOR'S ROLE IN THE HEARING

- Conduct Cross Examination
- Support Your Party
- Follow Rules of Decorum

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HEARING ORDER



OPENING STATEMENTS

01

Must adhere to institutional guidelines

02

Thank everyone for being at the hearing and their attention to the matter

03

Highlight evidence the party wants the decision maker to focus on

04

Encourage your advisee to write out the opening statement prior to the hearing

PURPOSE OF CROSS EXAMINATION

To ask **relevant** questions to show that a policy violation did or did not occur.

- Identify the disputed facts
- Outline the version of events your party wants to show the Decision Maker
- Highlight the evidence that supports your party's version of events and/or opposes the other party's version of events

WHAT MAKES A QUESTION RELEVANT

The Department declines to define “relevant”, indicating that term “should be interpreted using [its] plain and ordinary meaning.”

See, e.g., Federal Rule of Evidence 401 Test for Relevant Evidence:

“Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.”

IRRELEVANT AND IMPERMISSIBLE QUESTIONS



- Information protected by an un-waived legal privilege
- Medical treatment and care
- Unduly repetitious or duplicative questions
- Information that is otherwise irrelevant
- Complainant's sexual history, with limited exceptions

RELEVANCY DETERMINATIONS

- The decision maker will determine whether a question posed during cross examination is relevant and permissible.
- When the decision maker determines that a question is relevant, the party/witness may answer it.
- When the decision maker determines that a question is irrelevant, they must state their reason for the record.



UNDERSTANDING HOW TO ASK QUESTIONS ABOUT POLICY

- What policies are alleged to have been violated?
- What are the elements of each policy?
- What are the definitions of those elements?
 - Consent
 - Incapacitation
 - Coercion
 - Force



STALKING

Definition: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
Fear for the person's safety or the safety of others; or suffer substantial emotional distress.

Questions to Ask:

1. Did Respondent engage in a course of conduct?
2. Was that course of conduct directed at Complainant?
3. Would Respondent's conduct cause a reasonable person to either
 - a. *Fear for their safety or the safety of others, or*
 - b. *Suffer substantial emotional distress?*

SEXUAL HARASSMENT (HOSTILE ENVIRONMENT)

Definition: Conduct on the basis of sex where unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's program or activity.

Questions to ask:

1. What is the conduct based on?
2. Was the conduct unwelcome?
3. Was the conduct severe, pervasive, AND objectively offensive?
4. Was there a denial of access to a program or activity?

CROSS EXAMINATION TIPS

Keep moving-don't rehash everything a party or witness has said

Stay professional-don't call folks liars or attack them

Be prepared to pivot as testimony is given

Keep composure-don't rant or lose your temper

Be efficient in your questioning – go event by event

Raise concerns about credibility and reliability

Focus on relevant information

Make your points through pointed and calm questioning

Observe and listen during the hearing

CLOSING STATEMENTS

- Assist advisee in developing their closing statement
- Summarize evidence that the party wants the decision maker to focus on
- Bullet points
- May not provide a closing on behalf of an absent party



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AFTER THE HEARING

DEBRIEF

THE APPEAL

Lessons Learned

- Advisors arguing relevancy?
- Asking an ill-advised question?
- Case by case

PRACTICAL APPLICATION

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WHAT QUESTIONS WOULD YOU ASK?

The following slides include information reported by a Complainant as well as statements from two witnesses.

- If you were Complainant's advisor...
 - Who would you want to cross examine at the hearing?
 - What questions would you ask if you were Complainant's advisor?
- What questions would you ask if you were Respondent's advisor?
 - Who would you want to cross examine at the hearing?
 - What questions would you ask if you were Complainant's advisor?

FORMAL COMPLAINT

Complainant alleged that Respondent violated the provision against stalking by engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress.

Specifically, Complainant alleged that after she told Respondent to stop talking to her, Respondent: followed her to and from her dorm; repeatedly asked her friends of her location; and approached her while she was with a group of friends. Complainant reported that after she ended her romantic relationship with Respondent, she would see Respondent every day on her way to class. Complainant also reported that on more than one occasion Respondent asked Witness A where she was. Lastly, Complainant reported that Respondent approached her while she was with Witness A and others and began yelling at her about why she was no longer talking to him. Complainant reported these interactions made her uncomfortable and fearful for what Respondent would do next.

WITNESS A

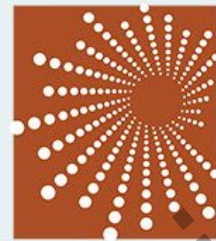
Witness A was interviewed by the investigator and reported that she and Complainant have been best friends since they were younger. Witness A stated she was happy to hear when Complainant and Respondent broke up because she did not like Respondent. Witness A stated Complainant had called her a couple of times after she broke up with Respondent as Complainant believed Respondent was following her to class. Witness A recalled Complainant's voice was "shaking" and she was not able to "keep a consistent train of thought" during these conversations. Witness A stated Respondent asked her once where Complainant was. Witness A also recalled seeing Respondent approach Complainant with a "raised" voice but the two seemed to be smiling when they were talking to one another. Witness A was not sure what the two were talking about as they walked away from where she was standing.

WITNESS B

Witness B was interviewed by the investigator and reported she has known Respondent for about a year. Witness B stated she has never met Complainant nor seen Complainant and Respondent interact. Witness B stated Respondent told her when Respondent and Complainant broke up. Witness B stated Respondent seemed sad but said he was mostly confused and “wanted answers.” Witness B recalled Respondent asking her a few times if she had seen Complainant. She told Respondent she had not, despite seeing Complainant in the dining hall. Witness B stated that the last time Respondent talked to her about Complainant was when he called her and said he approached Complainant for “closure.” Witness B stated Respondent approached Complainant “in a loud, joking manner” and asked Complainant to come talk to him. Witness B stated Respondent said that the conversation was “productive,” “good natured,” and “civil.” Witness B recalled that Respondent’s mood was very high after this conversation and they have not spoken about Complainant since.

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Team Are Doing.

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- Investigations
- Hearings & Appeals
- Alternative Resolutions
- Program Review
- Policy & Procedures
- Consulting & Coaching



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Resolution Services

We work to resolve employee, faculty, and student cases at companies and educational institutions.

Our experienced practitioners are available to serve as facilitators of alternative resolutions, investigators, decision-makers, hearing officers, chairs, panel members, or appellate officers for all equity and discrimination cases.



DELEGATED ROLES

Gap in staffing? We can help.
Interim or Long-Term Needs

- Title IX Coordinators and Staff
- Title VI Coordinators and Staff
- EO Director
- Equity Director
- ADA/504 Coordinators and Staff



Delegated Roles



ADA/504

ADA/504 Coordinator
Policy Development & Review
Training
Accessibility & Compliance Assessment
Investigations

Digital Accessibility

Policy Development & Review
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