



Association of
Title IX Administrators

Title IX Coordinator Foundations Level One: Sexual Harassment Foundations for Higher Education

Training and Certification Course

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Strategic Risk
Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with sexual harassment, sex discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



The primary focus of this course is responding to reports or complaints of sexual harassment, including reporting, the Formal Grievance Process, policy development, and other similar topics.



Title IX practitioners must ensure their institutional response to reports of sexual harassment is not deliberately indifferent.



Our goal is to provide a comprehensive framework to structure institutional response to sexual harassment reports and complaints.

2024 Title IX Regulations Vacated

All federal funding recipients are now subject to the 2020 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety; other federal courts have followed suit
 - The 2024 Title IX Regulations are now vacated (null and void) and **not** in effect for **any** state, institution, or school
- Institutions must revert to **2020-compliant** policies and procedures for Title IX cases
- Ensure compliance with all 1975 and 2020 regulatory requirements

Department of Education (ED) Updates

- Department changes include:
 - Significant staffing reductions
 - Closure of 7 of 12 OCR regional offices
 - Federal funding and oversight shifts
- Executive Order (EO): *Improving Education Outcomes by Empowering Parents, States, and Communities* (3/20/25)
 - Directed the Secretary of Education to “facilitate closure of the Department” and “return authority to the States and local communities”
- Civil Rights enforcement remains in ED’s Office for Civil Rights (OCR), but other agencies (e.g., Health and Human Services (HHS) and Department of Justice (DOJ)) appear to be ramping up enforcement in certain areas
- Increased focus on Title VI

Dear Colleague Letter (02/04/25)

ED released a Title IX-focused Dear Colleague Letter (DCL) on 02/04/25

- OCR will enforce the 2020 Regulations, not 2024
- Institutions must immediately shift open investigations to use 2020 Regulations
- OCR will enforce *Defending Women from Gender Ideology* EO
 - Quoting the EO, OCR will:
 - “enforce all sex-protective laws to promote [the] reality’ that there are ‘two sexes, male and female,’ and that ‘[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.’”

Executive Order re: Sex and Gender

Defending Women from Gender Ideology Extremism and restoring Biological Truth to the Federal Government (01/20/25)

- Defines sex as a binary concept – man or woman
- All agencies must ensure that intimate spaces are designated by sex, not gender identity
- Limited *Bostock v. Clayton County*'s holding, says it only applies to Title VII
 - Dept of Justice issued guidance on 02/12/25 that *Bostock* does not apply to Title IX
- Prohibits federal funds and grants from promoting gender ideology
- Revokes all Biden administration EOs addressing gender identity
- Directs OCR to prioritize investigations/litigation to enforce rights and freedoms to binary nature of sex
- Does not address sexual orientation
- Courts initially paused enforcement, but the EO is now in full effect

Executive Order re: Gender and Athletics

Keeping Men Out of Women's Sports (02/05/25)

- Prohibits transgender women from playing women's sports
 - Cited as necessary for “safety, fairness, dignity, and truth”
- Applies definitions from *Defending Women from Gender Ideology* EO
- Threatens withdrawal of federal funds
- Will use Title IX to enforce on a prioritized basis
- Seeks to eliminate Olympic competition based on gender identity or testosterone reduction
- Does not prohibit transgender men from participation
- Subject of active and rapid enforcement by Federal government

Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQ Future Professionals
- Supporting Intersex Future Professionals
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQ Harassment in Schools
- Enforcement of Title IX - Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

Title IX Compliance Oversight

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Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

Title IX has always mandated a response to sex discrimination, however the 2020 Title IX Regulations **only** apply to sexual harassment complaints



Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide Title IX Coordinators (TIXCs) in their compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, on both individual and institutional levels

Title IX Compliance Oversight

Title IX Coordinator Role

- Mandated by Title IX regulations
- Oversees institutional Title IX compliance
- Responsibilities fall into two categories:
 - Responding to reports or complaints of sex discrimination and sexual harassment
 - Leading efforts to ensure sex equality across the entire institution



Title IX Compliance Oversight

Responsibilities:

- Manage policy and procedures prohibiting sex discrimination and sexual harassment
- Ensure institution acts reasonably to **stop, prevent, and remedy**
- Provide notification of nondiscrimination and Title IX information to current and prospective Future Professionals and employees, including union/contract employees
- Develop and maintain accurate web and print-based Title IX publications
- Train institutional employees on Title IX compliance
- Recruit, supervise, and train Title IX Team
- Serve as point person for all reports and complaints

Title IX Compliance Oversight, Cont.

- Oversee Title IX Grievance Process and institution-wide programs
- Track systemic issues or patterns
 - Take remedial action to prevent recurrence
- Assess compliance efforts and program effectiveness
 - Create and disseminate annual compliance report (best practice)
- Update institutional leadership on Title IX issues
- Liaise with institutional legal counsel
- Create/maintain records
- Respond to government inquiries/investigations

Compliance Considerations

- State law
- Appetite for litigation
- Institutional and community values
- Physical layout of buildings and capacity for capital improvements
- Athletics conference rules

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Review: Title IX Scope and Definitions

Review: Applicability

- Education program or activity in the United States
- Control over the Respondent
- Control over the context of the harassment
- Applies to both Future Professional and employee complaints



Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Equity

Retaliation

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Definitions

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Quid Pro Quo

- An employee of the Recipient
- Conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the Recipient
- On an individual's participation in unwelcome sexual conduct



Hostile Environment Sexual Harassment

- Unwelcome conduct
- determined by a reasonable person
- to be so **severe, pervasive, and objectively offensive (SPOO)**
- that it effectively denies a person equal access to the Recipient's education program or activity



Sexual Assault: Rape

ATIXA Model Definition*:

- Penetration, no matter how slight,
- of the vagina or anus of a person,
- with any body part or object, OR
- Oral penetration
 - of a sex organ of the Complainant, or
 - by the Respondent's sex organ...
- Without the consent of the Complainant,
- Including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental or physical incapacity

*Note: This definition differs slightly in wording and construction than the 2020 Regulations version, but not in substance

Sexual Assault: Fondling

ATIXA Model Definition*:

- The touching of the private body parts (breasts, groin, buttocks) of the Complainant by the Respondent, or
- The Respondent's private body parts touching the Complainant, or
- The Respondent causing the Complainant to touch the Respondent's or their own private body parts,
 - For the purpose of sexual gratification,
- Without the consent of the Complainant,
- Including instances where the Complainant is incapable of giving consent because of their age or because of temporary or permanent mental incapacity

*Note: This definition differs slightly in wording and construction than the 2020 Regulations version by providing additional clarification

Sexual Assault: Incest & Statutory Rape

- **Incest**

- Sexual intercourse between persons related to each other within the degrees wherein marriage is prohibited by state law

- **Statutory Rape**

- Sexual intercourse with a person who is under the statutory age of consent

Dating Violence

- Violence, on the basis of sex,
- Committed by a person
 - Who is in or has been in a social relationship of a romantic or intimate nature with the Complainant
 - The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interactions between the persons in the relationship
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
 - Does not include acts covered under the domestic violence definition

Domestic Violence

- Violence, on the basis of sex,
- Committed by a current or former spouse or intimate partner of the Complainant
 - By a person with whom the Complainant shares a child in common, or
 - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state, or
 - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state

Stalking

- Engaging in a course of conduct,
- On the basis of sex,
- Directed at the Complainant, that
 - would cause a reasonable person to fear for that person's safety, or
 - The safety of others, or
 - suffer substantial emotional distress

Retaliation: ATIXA Model Definition

- Recipient, or any member of Recipient's community,
 - Taking or attempting take materially adverse action,
 - By intimidating, threatening, coercing, harassing, or discriminating against any individual,
- For the purpose of interfering with any right or privilege secured by law or Policy, or
- Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure

Consent: ATIXA Model Definition

- **Consent** is not defined by the Title IX Regulations, but institutions are required by law to provide a definition (some states prescribe a definition applicable in that state)
- **ATIXA's Definition:**
 - Informed, knowing, and voluntary (freely given)
 - Active (not passive)
 - Creates mutually understandable permission regarding the conditions of sexual activity
 - No means no, but nothing also means no; Silence and passivity do not equal consent
 - To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
 - Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
 - Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity

Additional Definitions

- Common additional offenses
 - Sexual Exploitation
 - Harm/Endangerment
 - Discrimination
 - Intimidation
 - Hazing
 - Bullying



Activity: Does Title IX Apply?

Jordan & Casey

- Jordan is a Learning Leader (instructor) at a Paul Mitchell School, assigned to supervise a Future Professional, Casey, during classroom instruction and practical training on the clinic floor.
- Throughout the Core phase, Casey regularly stays after class to ask Jordan questions about haircutting techniques, client consultation strategies, and to get feedback on skills assessments.
- Jordan appreciates Casey's dedication and gives her personal cell number, saying it's quicker than going through email or the school's texting platform.
- After the mid-phase skills check, Jordan and Casey continue texting, initially about class-related questions, but their conversations begin to drift into personal territory.
- Jordan starts complimenting Casey's appearance, shares memes, and eventually begins flirting via text. Casey responds in kind, at first.
- A few weeks later, Jordan invites Casey to grab a drink after school. Casey declines, saying they should keep things professional.

Jordan & Casey

- Over the next several weeks, Jordan sends multiple sexually explicit text messages to Casey, including a few partially nude photos.
- Casey initially tries to express discomfort, then stops replying. Eventually, Casey blocks Jordan's number.
- In class, Jordan begins winking at Casey across the room and making suggestive remarks in front of other Future Professionals.
- Jordan also emails Casey through the school system, saying she should stop by Jordan's station for a "surprise," adding that "your Phase evaluation might depend on it."

What Title IX definitions does this case study implicate, if any?

Amina & Neveah

- Amina and Neveah are both new Future Professionals at a Paul Mitchell School, having met during their orientation week. They've been in the same phase of the program and often chat during breaks and school events.
- In October, Amina invited Neveah to attend a community beauty industry showcase event at a local venue, hosted in partnership with their school.
- During one of the workshops, while seated next to each other, Neveah reached over and tried to hold Amina's hand, which was resting on their leg. Amina pulled their hand away, but Neveah left their hand resting on Amina's thigh for several minutes.
- Amina froze and didn't move Neveah's hand.
- Later, Neveah leaned in and tried to kiss Amina. Amina turned their head, making it difficult for Neveah to reach their lips, so Neveah kissed Amina's cheek instead.

Amina & Neveah

- Shortly after, Neveah put their arm around Amina's shoulders and pulled them close, holding them tightly.
- After the showcase, they walked back toward their parked cars together. During the walk, Neveah wrapped their arm around Amina's waist, again pulling them close.
- When they arrived at Amina's vehicle, Neveah leaned in again to kiss Amina. Amina avoided the kiss, gave a quick hug, said goodbye, and got quickly inside their car.

What Title IX definitions does this case study implicate, if any?

Daveed & Calvin

- Daveed is a Future Professional at a Paul Mitchell School. Earlier this year, he was in an on-and-off relationship with another Future Professional, Calvin. They ended things a few months ago.
- Since the breakup, Calvin has been spreading rumors among other Future Professionals, claiming that Daveed has an STI and “sleeps around” with multiple classmates. These rumors have circulated in class group chats and around the clinic floor.
- Daveed reported the situation to a school team member who serves as a Phase 2 Learning Leader. Because that staff member is a mandatory reporter, the concern was elevated to the Title IX Coordinator, and Daveed has been working with the office to explore his options.

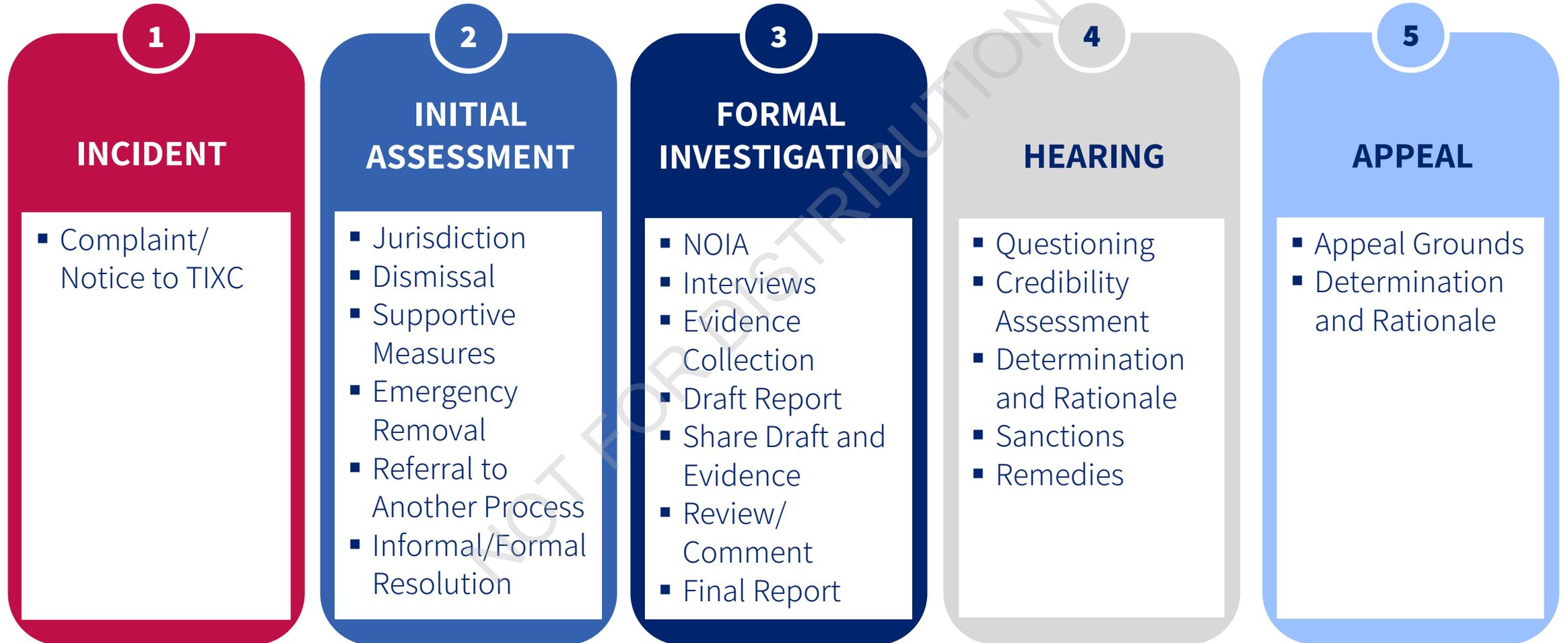
Daveed & Calvin

- Separately, Calvin's close friend Kristina is a club leader who helps lead school tours, assist with events, and mentors incoming Future Professionals. She's also involved in the selection process for new members of the club.
- Daveed recently shared that Kristina has been talking to other club members about his Title IX report, saying things like Daveed is "drama" and "can't be trusted."
- Daveed had been planning to apply to become a leader in the club the next cycle, but now he feels discouraged and fears he won't be given a fair chance.

What Title IX definitions does this case study implicate, if any?

Formal Grievance Process Overview

Title IX Grievance Process Overview



Prompt Resolution

- Complete without undue delay
- Title IX Regulations do not define “prompt”
 - 60 business days is a good guide, perhaps longer for moderately complex allegations
- Grievance process may take longer than expected
 - Anticipate, mitigate, and document delays
 - Communicate with parties regarding delays
- Must provide anticipated timelines for each proceeding

Fair Resolution

- Treat all parties fairly
 - If the institution affords a right, privilege, benefit, or opportunity to one party, consider whether it should be provided to other parties
- Ensures that all parties have opportunity to fully participate in the grievance process
- Make certain that all Title IX team members operate without bias and/or conflict of interest

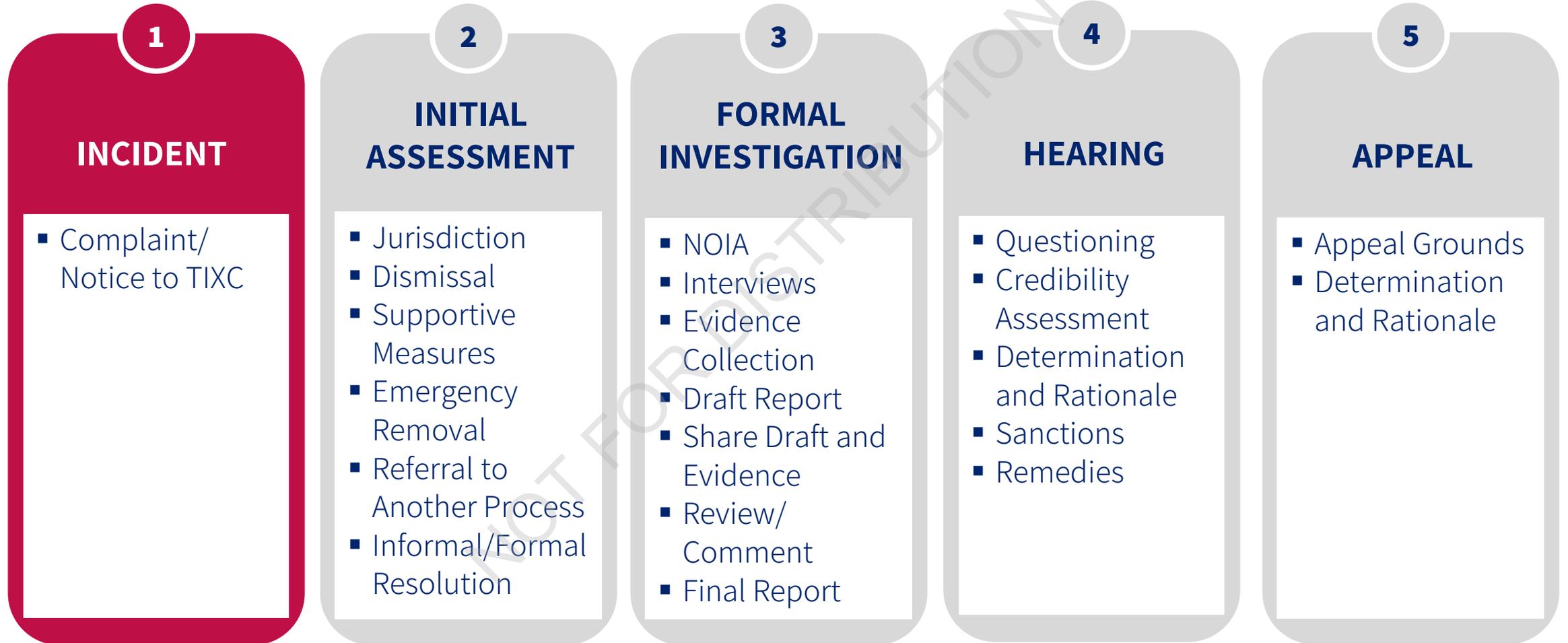


Parties' Rights During the Grievance Process

- Be accompanied by Advisor of their choice
- Discuss the allegations under investigation without restriction
- Gather and present relevant evidence without restriction
- Inspect and review directly related evidence and investigation report
- Present inculpatory and exculpatory evidence
- Present witnesses
- Written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Review all relevant and directly related evidence before the investigation report is finalized

Reports, Complaints, and Notice to the Institution

When is the Institution “On Notice?”



Point Person for Reports and Complaints

- TIXC (or designee) receives all reports or complaints regarding sexual harassment, misconduct, and sex discrimination
 - The TIXC oversees institutional Title IX efforts
 - Recipient may designate multiple entry points for information or reports
 - Deputy Title IX Coordinator(s)
- TIXC contact information must be included within:
 - The institution's website
 - All handbooks or catalogs provided to applicants, Future Professionals, employees, and unions

When is the Institution “On Notice?”

The institution is “**on notice**” of sexual harassment when a report is made to:

- **TIXC**, or
- An **Official with Authority (OWA)**: any official who has authority to institute corrective measures on behalf of the Recipient
 - ATIXA recommends including OWAs by role in policy

Mandatory Reporting

- ATIXA recommends that **all employees** are **mandated reporters** (except for **confidential resources**) under Title IX
 - Ensures information gets to those trained to respond
 - Enables institution to best support individuals
 - Supports tracking patterns
 - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy

Party and Witness Privacy Concerns

Privacy vs. Confidentiality vs. Privilege

1

PRIVACY

Statutory protection (FERPA) only allows disclosing records to those who need to know, but cannot guarantee confidentiality

2

CONFIDENTIALITY

Information protected by those who need not report to the TIXC because they are designated confidential or have ethical/statutory confidentiality duties (subject to exceptions)

3

PRIVILEGE

The highest legal protection (attorney giving advice to a client or clergy providing pastoral advice); client/patient/parishioner controls the privilege

Report vs. Complaint

A **report** is different than a **formal complaint**:

- **Report**

- Notifies the TIXC of an incident and
- Obligates the TIXC to offer supportive measures and explain the process

- **Formal Complaint**

- Written request to initiate an investigation
- Physical document or electronic submission from Complainant
 - OR signed by TIXC
- Alleging sexual harassment
- Complainant must be **participating or attempting to participate** (P/ATP)

Report vs. Complaint Considerations

- Online reporting form
- Anonymous reports
- Requests for confidentiality
- Take all reasonable steps to follow the Complainant's wishes
 - Institution must respond effectively and prevent harassment of other Future Professionals or Complainant
- If TIXC takes no formal action in response to a report, document rationale

Signing a Formal Complaint: PPTVWM

In limited circumstances, a TIXC should sign a formal complaint even if the Complainant declines to do so

Factors that likely indicate an ongoing risk of harm include:

- **P**attern
- **P**redation
- **T**hreat
- **V**iolence
- **W**eapons
- **M**inors

Other Considerations for TIXC Signing a Formal Complaint

- Employee Respondent
- Complainant who is not P/ATP

Interacting with Law Enforcement

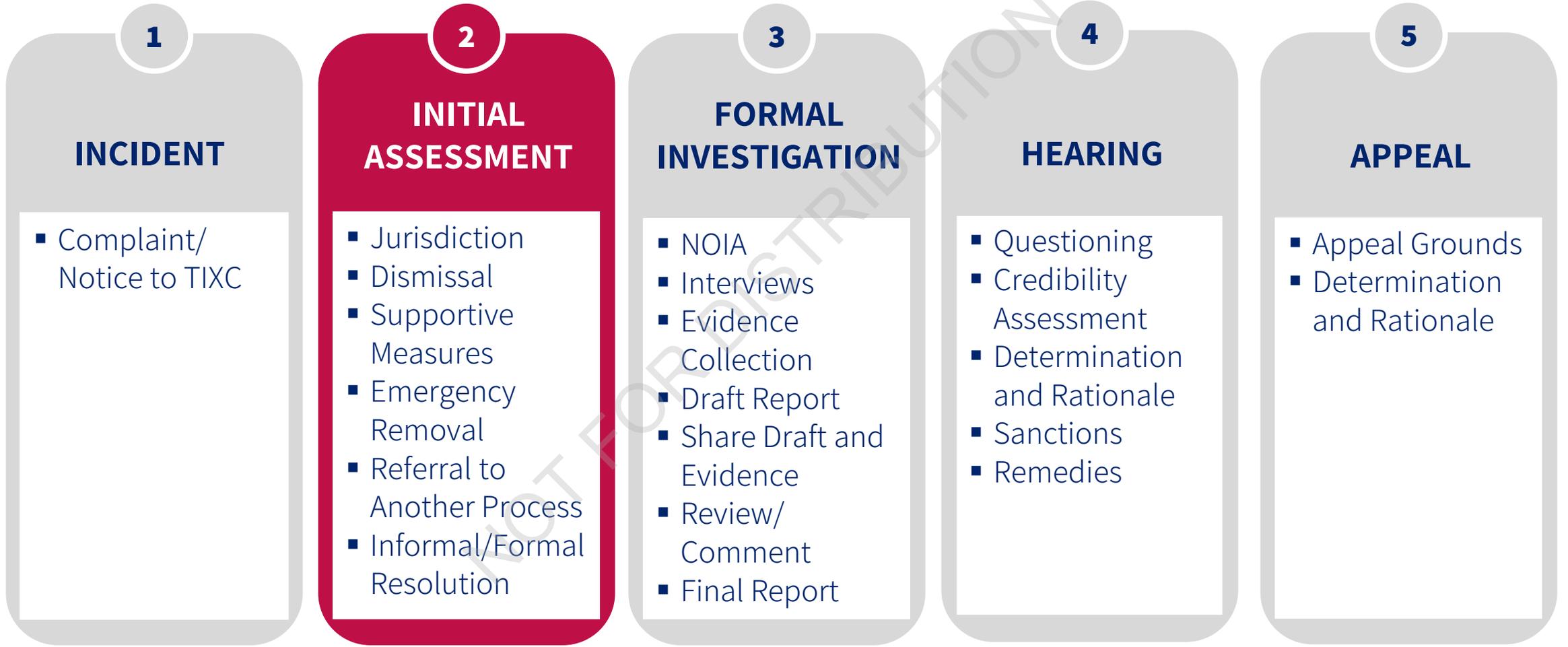
- TIXC must assist Complainants who wish to report to law enforcement
- State laws, local practices, and MOUs may facilitate information sharing with law enforcement
 - Law enforcement may not be aware of federal requirements under Title IX
 - Develop a reporting and information-sharing protocol
- VAWA requirements may also apply



Initial Assessment

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Initial Assessment



Jurisdiction

TIXC is responsible for conducting an initial assessment to determine Title IX jurisdiction:

- Does the alleged conduct, if proven, meet one of the definitions of Title IX sexual harassment?
- Who is the Complainant?
- Who is the Respondent?
- Does the institution have control over the context of the alleged harassment?



Jurisdiction

- **Yes, or Arguable:** move forward with Title IX Grievance Process
- **No:** determine whether an alternate policy or process applies
 - Dismiss the complaint under Title IX
 - Document the rationale
 - Refer to other process



Outreach and Intake

- After receiving a report, TIXC (or designee), should always reach out to the Complainant
 - Best practice and regulatory requirement
- **Outreach** includes:
 - Introduction to Title IX and staff
 - Reason for the outreach
 - Offer to meet/speak over the phone; include right to Advisor
 - Available resources and resolution options, including how to file formal complaint
 - Discuss supportive measures and resources
 - Explain options to report to law enforcement
 - Follow up in writing with resources and information

Outreach and Intake

- **Intake** includes:
 - Setting the table
 - Having written materials to reference and for parties to take with them
 - Follow up with an email containing these materials, too
 - Include access to medical care, including evidence preservation
 - Exploring facts, but not interviewing
 - Needed for initial assessment and Clery timely warning
 - Discussing Supportive Measures
 - Discussing Complainant's options
 - Answering questions
 - **DO NOT** answer the question “What should I do?”

After Outreach and Intake

- Consider if new information affects jurisdictional assessment
- Implement any requested supportive measures and/or remedies

If formal complaint is filed:

- Determine whether to dismiss or proceed with formal investigation
- Consider whether **emergency removal** is warranted
- Evaluate whether complaint is appropriate for potential **Informal Resolution**

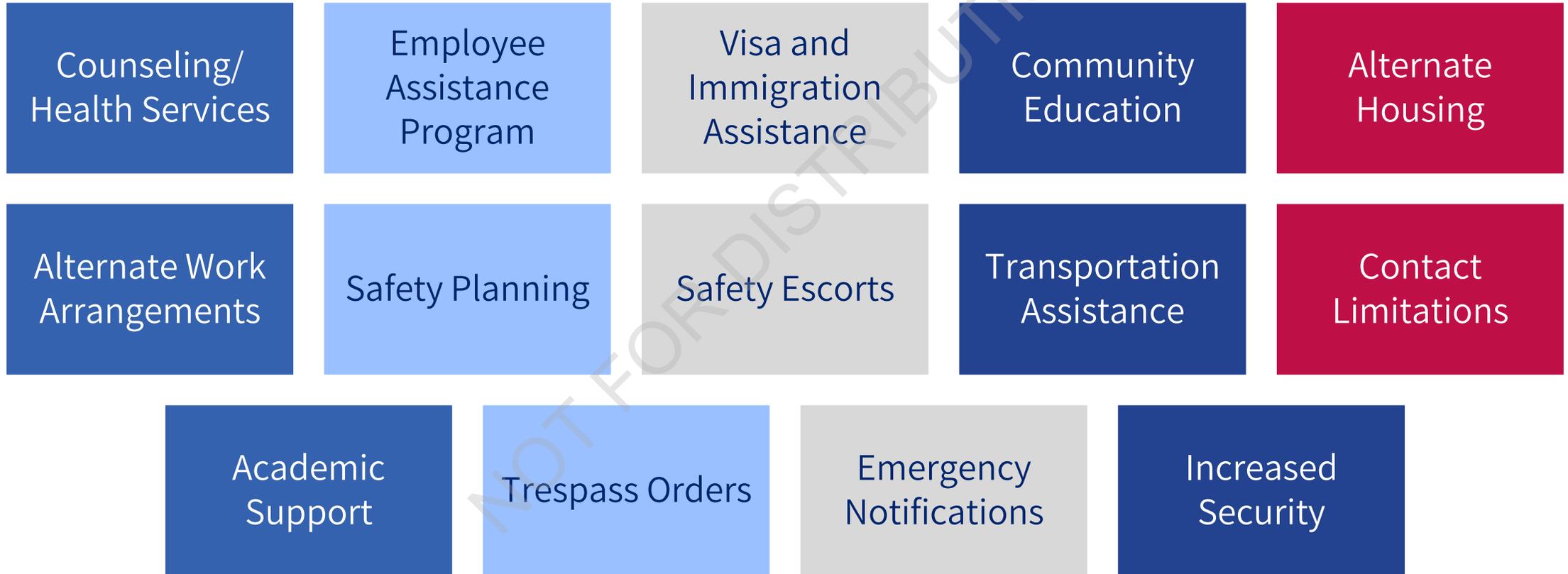
If no formal complaint is filed:

- Determine whether TIXC needs to sign a formal complaint
- Consider whether **emergency removal** is warranted

Supportive Measures

- Provided to parties throughout the process:
 - At no cost to the party
 - Individualized
 - Non-disciplinary, non-punitive
 - Protect safety of parties or environment, or deter sexual harassment
 - Restore or preserve equal access
 - Without unreasonably burdening other party
- Publish the range of supportive measures
- Avoid unnecessary disclosures about supportive measures
- Consult with accessibility/disability services when appropriate
- If not provided, document the rationale for refusal

Supportive Measure Examples



Emergency Removal

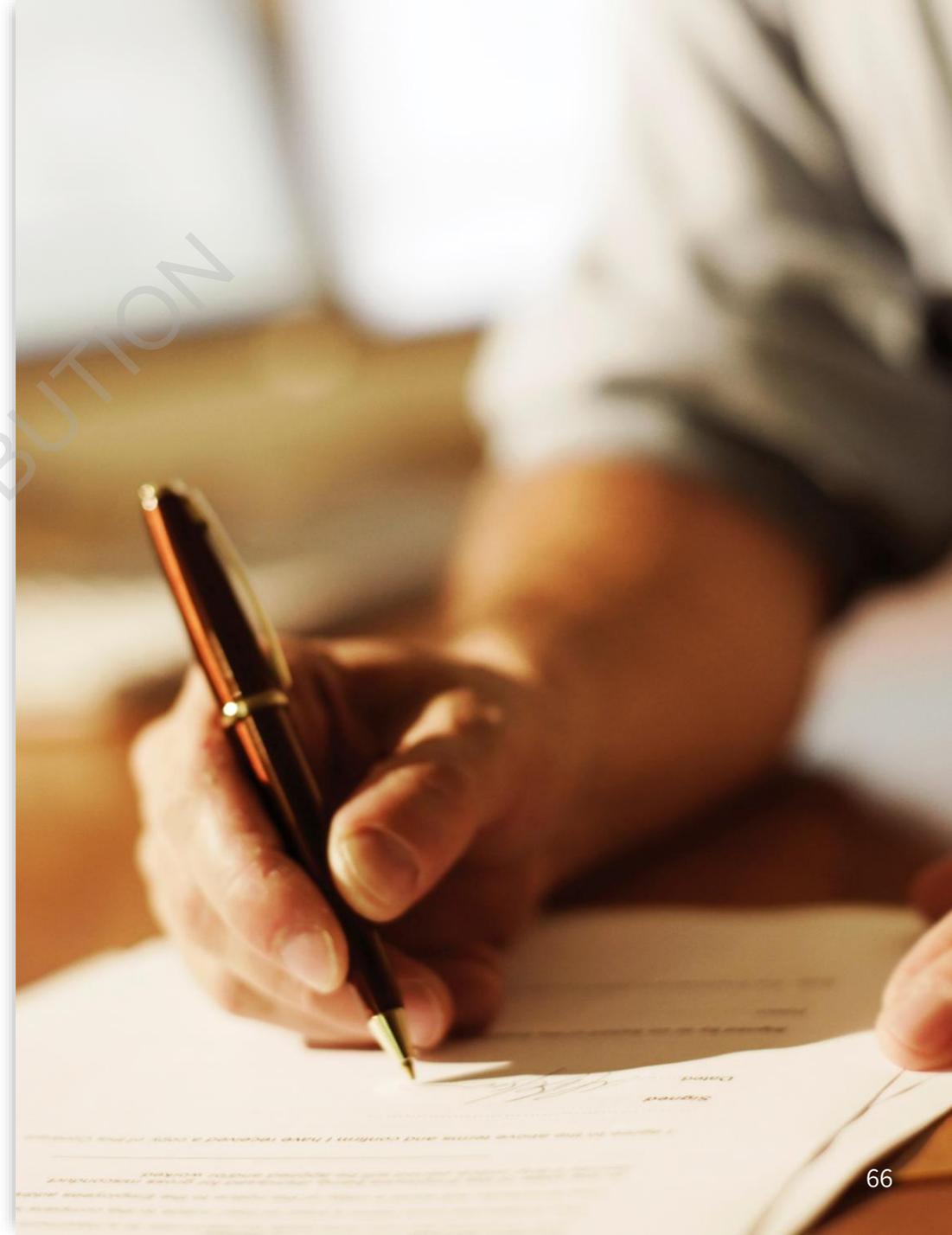
- Imposed upon Respondents on an emergency basis only
- Individualized safety and risk analysis
 - Immediate threat exists to the physical health or safety of any Future Professional or other individual
 - The threat arises from the allegations of sexual harassment
- Respondent entitled to immediate notice and opportunity to challenge



Administrative Leave

- May remove an employee Respondent using existing administrative leave procedures
- A lower bar than emergency removal

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Mandatory Dismissal

TIXC must dismiss the complaint at any time prior to a determination, if:

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Title IX Regulations even if proved, and/or
2. The conduct did not occur in the Recipient's education program or activity, or
 - No control over the context
3. The conduct did not occur against a person in the United States, or
4. At the time of filing a formal complaint, a Complainant is not P/ATP
 - **AND** the TIXC determines they do not need to sign a formal complaint

Discretionary Dismissal

The TIXC may dismiss the complaint (or a portion of it) at any time prior to a determination, if:

- Complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any portion thereof
- Recipient no longer employs or enrolls Respondent
- Specific circumstances prevent the Recipient from gathering sufficient evidence for a determination

Dismissals

- Must promptly notify parties of the dismissal
- Notify parties that a dismissal may be appealed and include appeal information
 - Appeal Decision-maker(s) must be trained; must not have been involved in the complaint so far
- Institution may, and often will, address reported behavior under some other applicable policy



Informal Resolution

- Title IX permits **voluntary** Informal Resolution (IR)
- Not available for employee-on-student (Future Professional) harassment
- IR is not defined by regulations
- At discretion of TIXC, at any time prior to a final determination
 - Likelihood of resolution
 - Power dynamics
 - Goals and motivation of the parties to participate
 - Complexity and timing of the complaint
- IR Facilitators must receive training, be free of bias or conflicts
 - ATIXA recommends IR Facilitators not serve in any other roles

Informal Resolution, Cont.

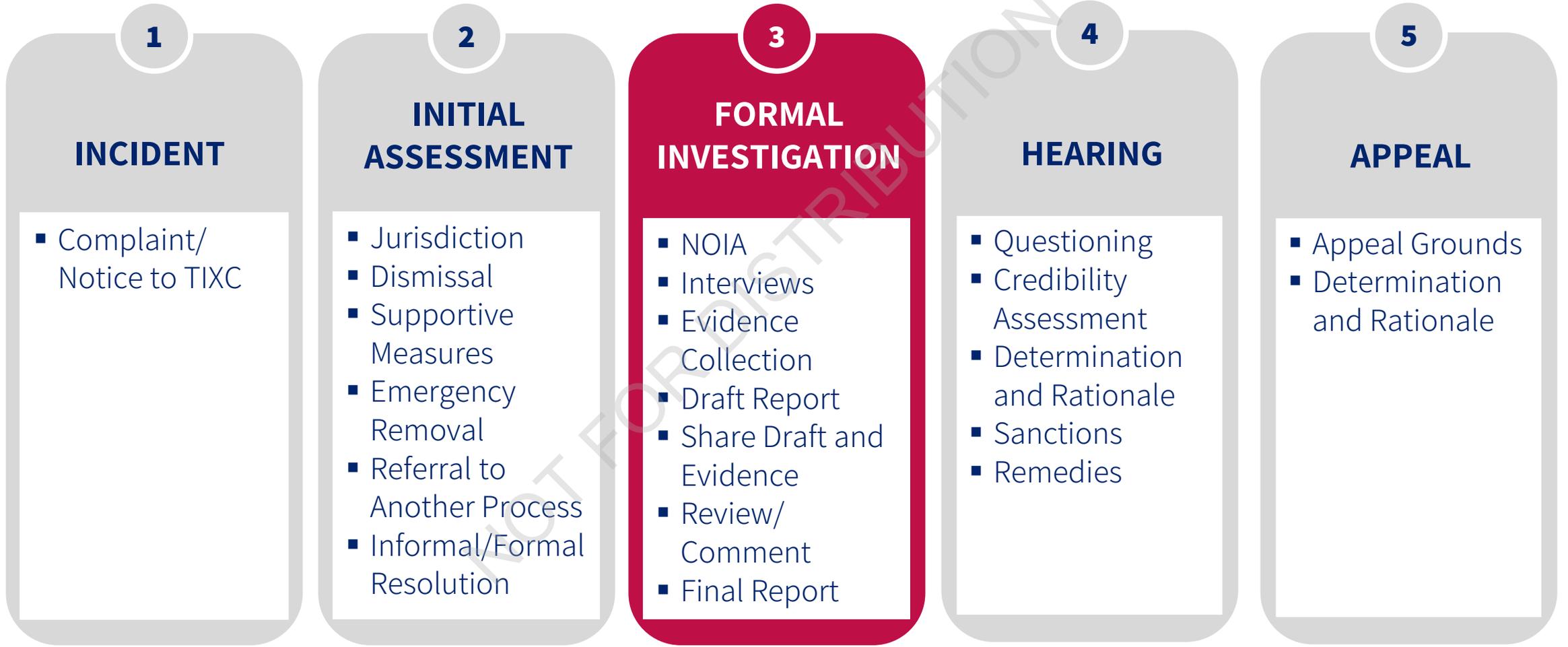
- Procedural requirements:
 - Formal complaint
 - Parties must receive written notice of the allegations, IR procedures, records created, and potential consequences
 - Parties' voluntary, written consent
 - Must still stop, prevent, remedy
- May withdraw from IR to start or resume Formal Grievance Process at any time



Investigation

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Investigation



Who Should Investigate?

- Investigator(s) may not be Decision-maker(s) for the same complaint
- Tasks:
 - Conduct prompt, thorough, and impartial investigations
 - Collect the maximum amount of relevant information available
 - Write comprehensive investigation report summarizing all relevant evidence

**Full-Time
Investigator(s)**

**Investigator
Pool**

**External
Investigator**

**Coordinator as
Investigator**

Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment & Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

INCIDENT INVESTIGATION SUMMARY

Incident Date:

Review Date:

ed by:

ent Summary:

Root Causes:

Determining a Basis for Investigation

There are three bases for investigations:

- **Incident:** a specific incident or period
 - May involve one or multiple alleged violations
- **Pattern:** repetitive or similar behaviors or targets chosen by the same Respondent over a period
 - Tend to involve multiple Complainants
- **Climate/Culture:** discriminatory policies, processes, and environments
 - May have no identifiable Respondent
 - May cue up a subsequent incident or pattern investigation based on information gathered during climate/culture investigation

Investigation Scope

Scope refers to the allegations, timeframes, and parties subject to the investigation

- TIXC determines the scope of the investigation
- Considerations:
 - Allegations outside of jurisdiction
 - Individual vs. group
 - Multiple complainants or Respondents
 - Counter-complaints
- May need to adjust scope during process



Notice of Investigation and Allegations

- Notice of Investigation and Allegations (NOIA) letter
 - Sent to all parties, simultaneously
 - Must be sent prior to interviewing any party
- **The NOIA includes:**
 - Parties' Rights
 - Notice of the allegations and known details, such as identities of the parties
 - A description of the alleged conduct and relevant policy provisions
 - The date and location of the alleged conduct
 - Information about grievance procedures
 - Any Informal Resolution options

NOIA Inclusions

The NOIA must also include:

- Presumption that Respondent is not responsible
- A statement that retaliation is not permitted
- Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
- The NOIA must be updated if additional allegations arise during the course of the investigation
- Include or reference current policy and procedures

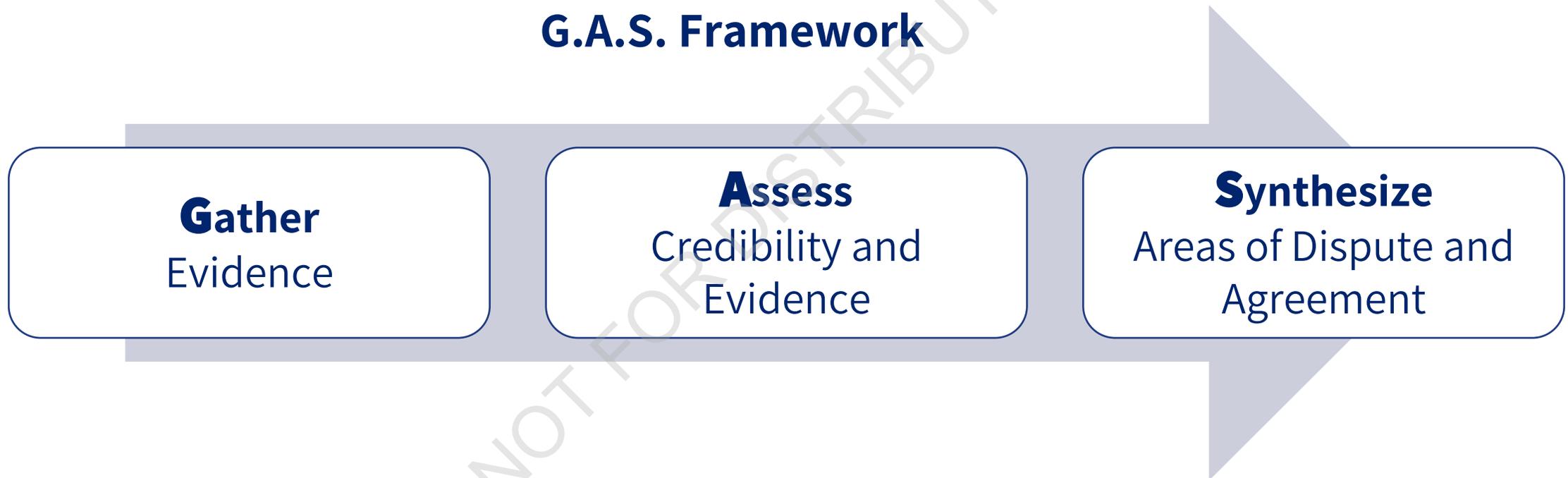
Investigation Strategy

TIXC consults with Investigator(s) to strategize and plan the investigation:

- Review elements of the specific policy provision(s) alleged to have been violated
- Develop initial witnesses and tentative interview order
- Discuss challenges with the type of complaint and the parties involved
 - Anticipate allegiances
 - Disrupt possible collusion
 - Predict obstacles and obstructions
- Assess relevant pattern considerations
- Identify preliminary undisputed and disputed facts and their significance
- Consider types of possible evidence and the plan to acquire such evidence
- Establish preliminary investigation timeline

Formal Investigation

G.A.S. Framework



The burden to gather evidence is on the **institution**, not the parties.

Understanding Evidence

- Duty to collect **relevant** evidence
 - Evidence is any kind of information presented to help determine what occurred
 - Relevant evidence is evidence that tends to prove or disprove the underlying allegations
 - Inculpatory and exculpatory evidence
 - Some evidence may only be relevant to assessing credibility
- Collect **all** relevant and reasonably available evidence except if **impermissible**
- Relevant evidence forms the basis of the investigation report



Directly Related Evidence

- Connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon by the Decision-maker (DM)
- Must be provided to the parties and their Advisors for review
 - ATIXA recommends providing an organized directly related evidence file
- DMs ultimately determine what is relevant, directly related, or neither



Privileged and Medical Information

The party must provide permission to obtain and/or include:

- Evidence protected under a legally recognized privilege
- Records made or maintained by:
 - Physician
 - Psychiatrist
 - Psychologist



Specific Evidence Issues

- Evidence of the **Complainant's sexual predisposition** is never relevant
- Evidence of the **Complainant's prior sexual behavior** is not relevant except:
 - If offered to prove that someone other than the Respondent committed the alleged conduct; or
 - If offered to prove consent with respect to prior consent with the Respondent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or predisposition

Evidence and the Consent Construct

1. Was **force** used by the Respondent to obtain sexual or intimate access?
2. Was the Complainant **incapacitated**?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated?
3. What **clear words or actions** by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

Credibility

- **Credibility** is largely a function of corroboration and consistency
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate or truthful)
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** Memory errors alone do not necessarily diminish witness credibility, nor does some evasion



Drafting, Reviewing, and Finalizing the Investigation Report

Draft Investigation Report

```
graph TD; A[Draft Investigation Report] --> B[TIXC/Legal Counsel Review Draft Report and Evidence]; B --> C[Parties and Advisors Review Draft Report and Evidence]; C --> D[Final Investigation Report];
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TIXC/Legal Counsel Review Draft Report and Evidence

Parties and Advisors Review Draft Report and Evidence

Final Investigation Report

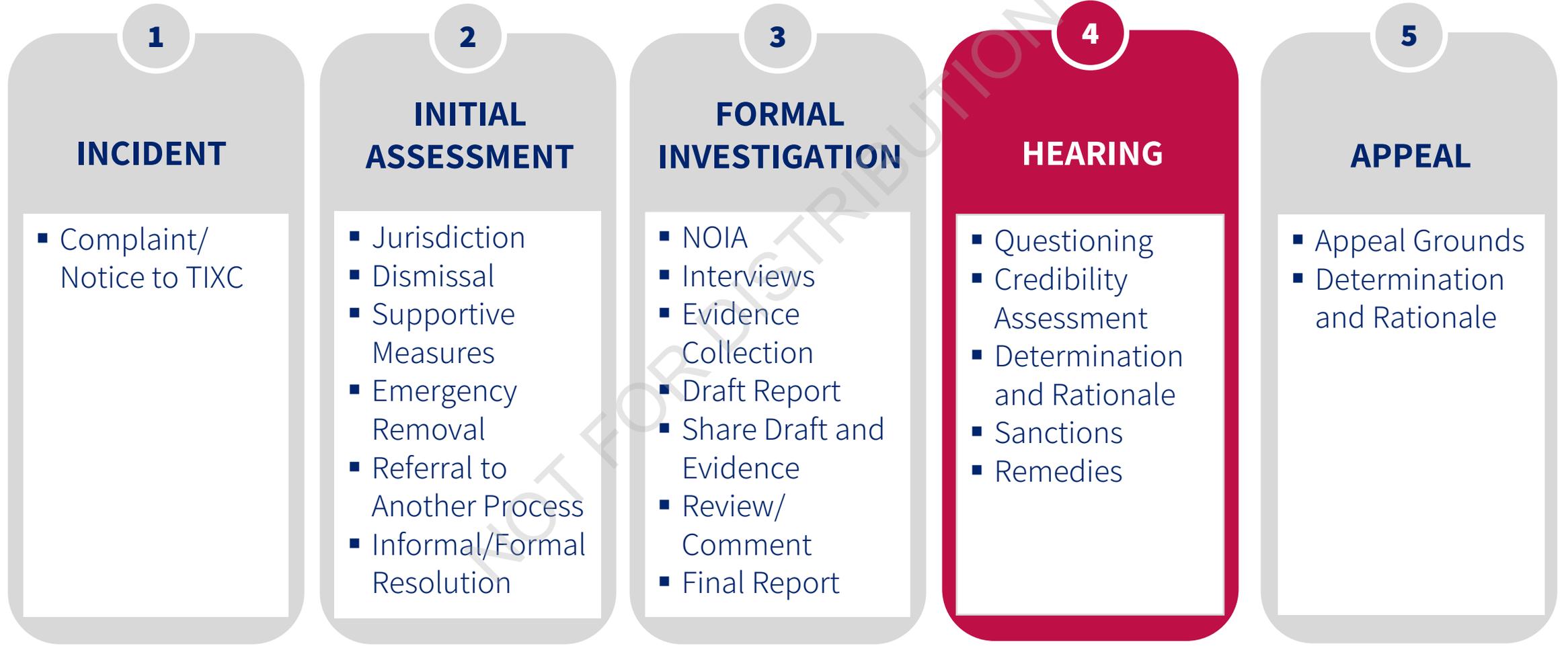
Parties' and Advisors' Review of Report and Evidence File

- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must:
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
- Investigator sends the final investigation report to the parties and Advisors for review 10 days prior to the hearing

Decision-Making

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Decision-Making



Decision-Making

All complaints **must** be resolved through a decision-making phase unless an Informal Resolution is reached, or the complaint is dismissed

Title IX Coordinator

- Oversees process
- Facilitates scheduling and communication
- Ensures sanction compliance
- Implements remedies
- Provides institutional memory and precedent information
- Trains DMs
- Maintains institutional records

Decision-maker(s)

- Is not TIXC or Investigator
- Facilitates Decision-making process, including questioning
- Determines relevance
- Assesses credibility
- Makes a finding of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

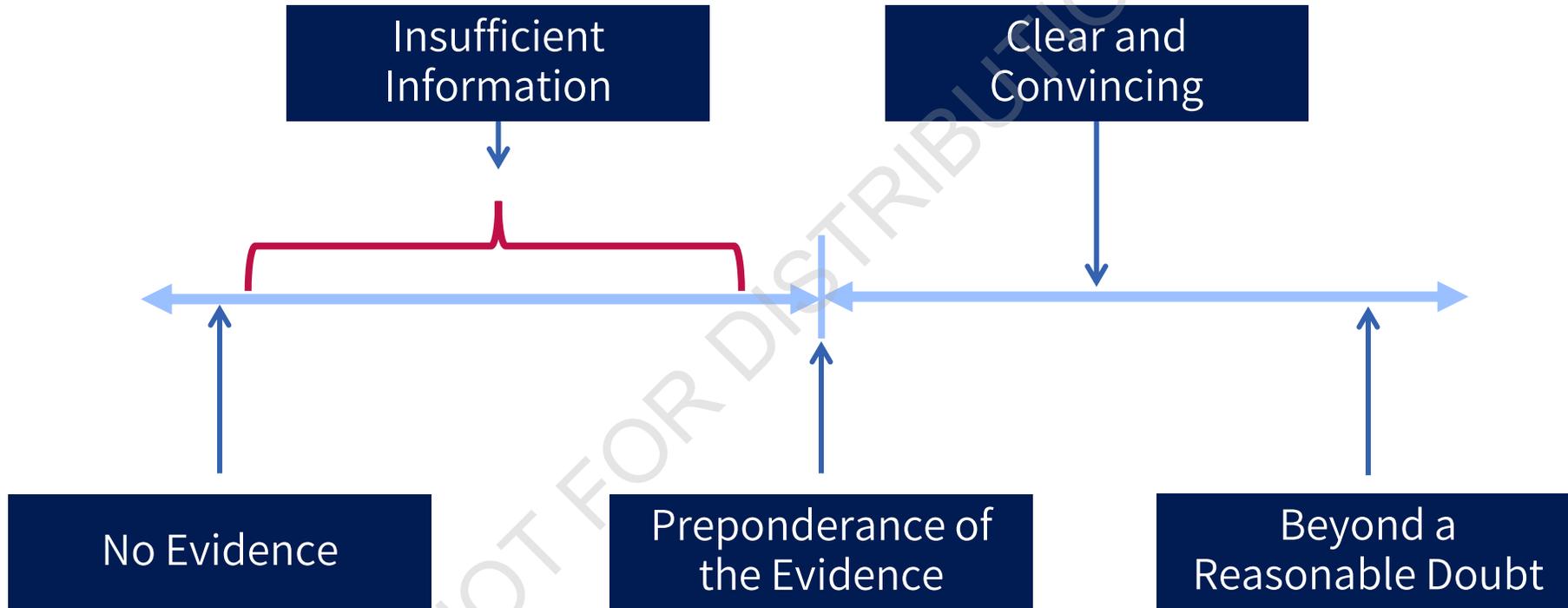
Live Hearings

- May impose reasonable decorum rules
- Questions must be asked by the parties' Advisors and/or DMs
 - If the party does not have an Advisor, the institution must provide an Advisor for the purpose of asking questions during the hearing, if the party wishes to ask questions
 - DM must determine whether a proposed question is relevant and permissible
- Hearing can be in one location or virtually through technology
 - DM and parties must be able to simultaneously see a party or witness when they are speaking/communicating
- Must create an audio or video recording or transcript and make it available to parties to inspect and review

Finding and Final Determination

- Making a Finding
 - DMs determine what occurred based on the standard of evidence
- Making a Final Determination
 - DMs determine whether what occurred is a policy violation applying the standard of evidence
 - Consider each allegation individually for each Respondent
- **Standard of Evidence**
 - Apply either the **preponderance of the evidence** standard or the **clear and convincing evidence standard**
 - Standard of evidence must be consistent for all formal complaints of sexual harassment

Standard of Evidence



Sanctions and Remedies

Sanctions

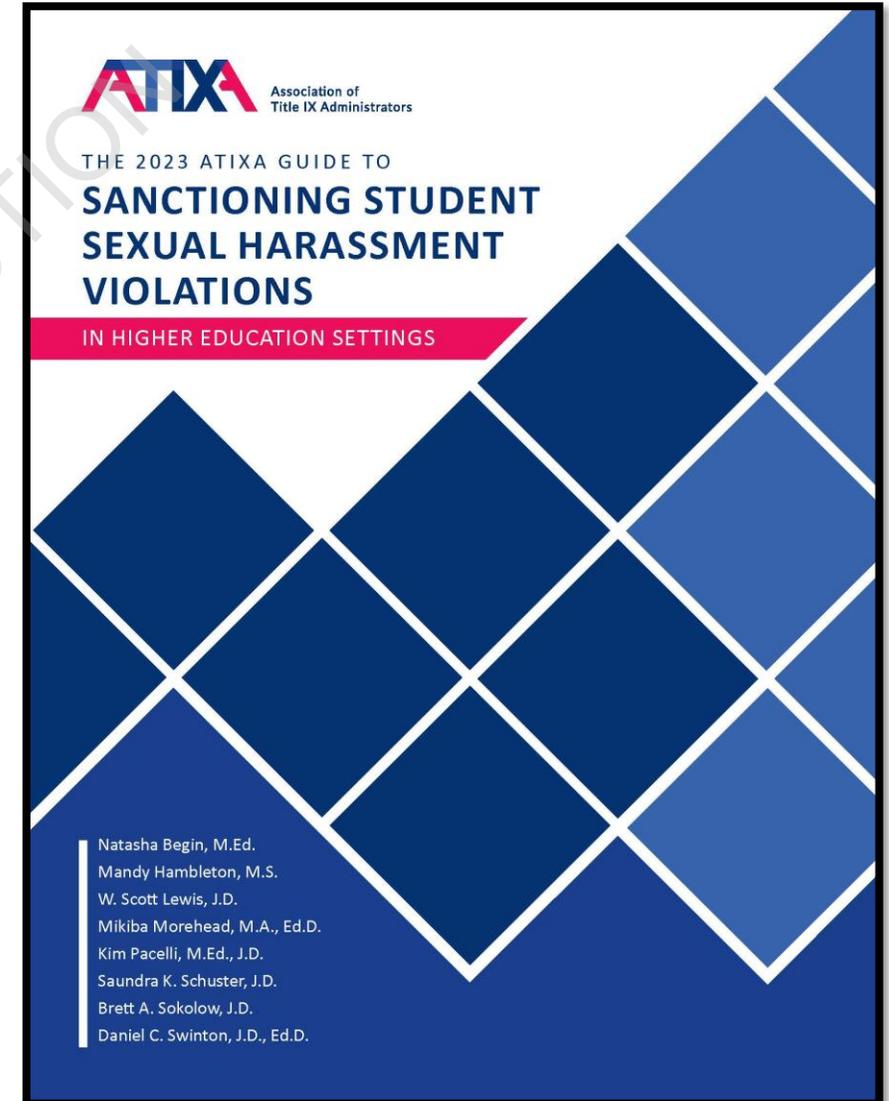
- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC does not issue sanctions but oversees the process
- TIXC assures sanction compliance
 - Failure to comply could lead to discipline

Remedies

- May be implemented before or after a determination
- TIXC determines remedies that are fair and not clearly unreasonable given the circumstances
- Goal: preserve or restore access to education program and activity
- TIXC ensures remedies are implemented

Sanctions

- Nature of Title IX sanctions
- May consider prior misconduct, precedent, acceptance of responsibility, and collateral or multiple violations
- Sanctioning Pitfalls
 - Conflating the finding, determination, and sanctioning
 - Failure to stop, prevent, and remedy
 - Unwillingness to expel, suspend, or terminate
 - Prescribed sanctioning
 - Inconsistent or disparate sanctions
 - Impact or mitigation statements influencing findings
 - Failure to consider aggravating or mitigating circumstances



Written Determinations

- **Written Determination**
 - Authored by DMs
 - TIXC/Legal counsel reviews
 - TIXC communicates to the parties simultaneously in writing
- **Finality**
 - On the date the institution provides a written appeal determination
 - OR the date when an appeal would no longer be timely

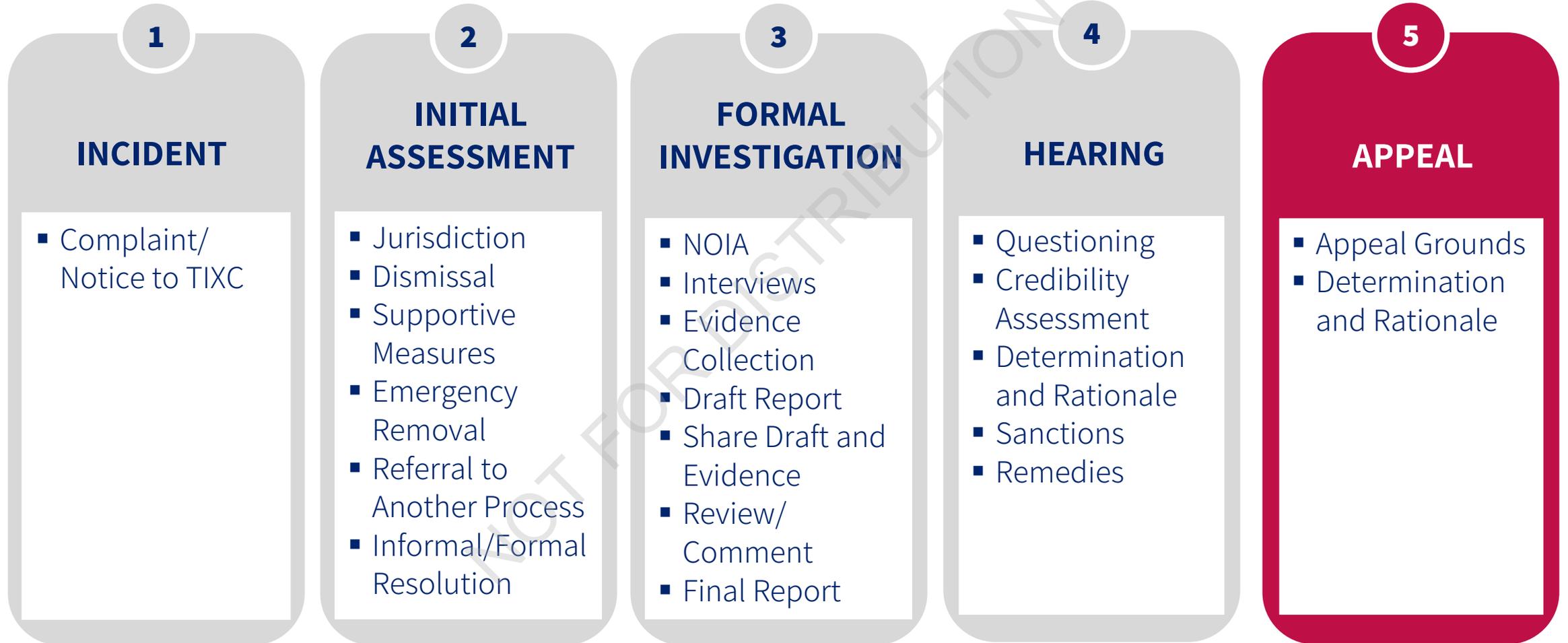
Written Determination Elements

- Applicable policy
- Procedural steps from complaint through determination
- Statement of and rationale for the result of each specific allegation
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Whether remedies will be provided to Complainant
- Procedures and bases for appeal

Appeals

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Appeals



Appeal Process

Institution must offer a fair appeal process

- Institutional policy must include grounds and process for appeal
- Institutions must provide information about the appeal process in writing to parties and Advisors
- One level of appeal is best practice
- Typically, document-based review for error only; not a new consideration
- Discretion of panel vs. single Appeal DM
- Deference is given to the original DM

Appeal Decision-Maker

- Cannot be TIXC or serve another role in the same complaint resolution
- Makes determination on a party's request for an appeal
- Reviews written submissions from parties
- May review investigation report or evidence gathered during investigation/decision-making phase
- May speak with Investigator, DM, parties, and/or witnesses
- **Review of complaint should be limited to the grounds noted in the appeal request**
- Draft a written determination that outlines the rationale for the outcome

Appeal Grounds

Must offer appeals on the following grounds:

1

Procedural irregularity that affected the outcome of the matter

2

New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter

3

Conflict of interest or bias by the TIXC, Investigator, DM that affected the outcome of the matter

Institutions have the discretion to add additional appeal grounds

Appeal Outcomes

Appeal Decision-maker

- Must complete a written determination with rationale
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the DM for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturing** the determination (not recommended)
- Cannot be TIXC or serve another role in the same complaint resolution

Recordkeeping

- Recipient must maintain records for a minimum of **seven** years:
 - Sexual Harassment formal complaints, including determination and discipline/remedies
 - Appeals and results
 - Rationales for all determinations
 - Informal Resolution
 - Supportive measures
 - Measures taken to preserve/restore access
 - All training materials
- Document how response was **not** deliberately indifferent



Clery Act/VAWA Section 304

Clery/VAWA Section 304 Intersections

Clery Act

- Designed to improve reporting and transparency of campus crime statistics
- Clery Geography and Title IX jurisdiction are separate and overlapping
 - Timely Warning requirement
 - Clery Annual Security Report (ASR)

Violence Against Women Act (VAWA)

- Intended to improve community-based responses to domestic violence, dating violence, sexual assault, and stalking
- VAWA § 304 Amended the Clery Act
 - Added new awareness, training, and procedural requirements
 - Officials conducting disciplinary proceedings must be trained annually

Clery/VAWA Section 304 Intersections, Cont.

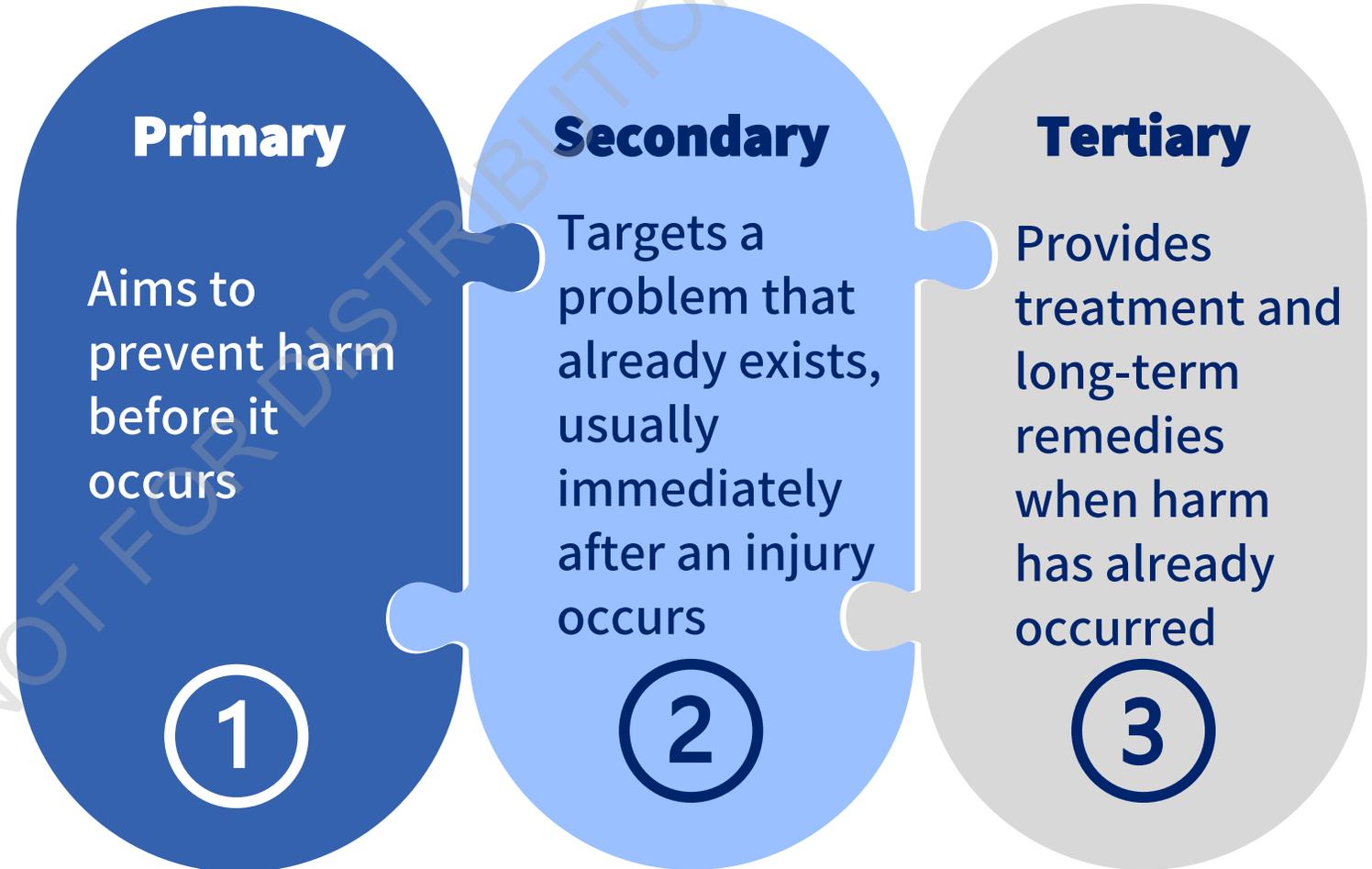
- Inform Complainants about:
 - Importance of preserving evidence
 - Institutional reporting
 - Law enforcement reporting
- Complainants should receive written information regarding:
 - Common action items or resources victims should consider
 - Supportive Measures
 - Services available on- and off-campus
 - Reporting options
 - Protection options

Prevention and VAWA

What is Prevention?

An integrated and collaborative approach to addressing multiple areas of wellness that is:

- Evidence-based
- Multi-layered
- Directed at individual, community, and environmental levels



VAWA Prevention Programming

- Programs tailored to each institution and its populations
- Ongoing prevention and awareness campaigns
 - Responsive to community needs
 - Tailored to be culturally relevant and inclusive
- Direct programming to **all** incoming Future Professionals and new employees
 - Make a **good faith effort** to reach all incoming Future Professionals and new employees
 - Include a statement that the institution prohibits sexual assault, dating and domestic violence, and stalking
 - Consent definition
 - Provide risk reduction information
 - Increase bystander action
 - Increase empowerment for victims

VAWA Training

- Annual training for officials involved in investigating and/or resolving complaints:
 - Sexual assault, dating and domestic violence, and stalking
 - Conducting an investigation
 - Conducting a hearing
- Ensure training materials are neutral, follow Title IX regulations in effect

Policy Management

Title IX Policy and Procedures

- Title IX requires policies and procedures that facilitate resolution of sexual harassment complaints
- **Policy**
 - Clearly define expectations and prohibited conduct
- **Procedures**
 - Govern how to resolve alleged policy violations fairly
- TIXC should have decision-making authority in policy and procedure revision process



Policy and Procedures Development

Inventory Existing Policies & Procedures (P&P)

- Harassment and discrimination P&P
- Future Professional Conduct
- Human Resources
- State and federal laws
- System-based policies

Create and Implement Policies & Procedures

- TIXC-led effort
- Values and mission alignment
- Reporting mechanisms
- Compliant
- Comprehensive
- Comprehensible
- Accessible
- Coordinate overlap and align with other policies

Avoid Discriminatory Policies & Procedures

- Consistency across all related policies and procedures
- No variations based on parties' identities
- No differential treatment

Sources of Requirements and Guidance

Federal Law and
Regulations

State/Local Law and
Regulations

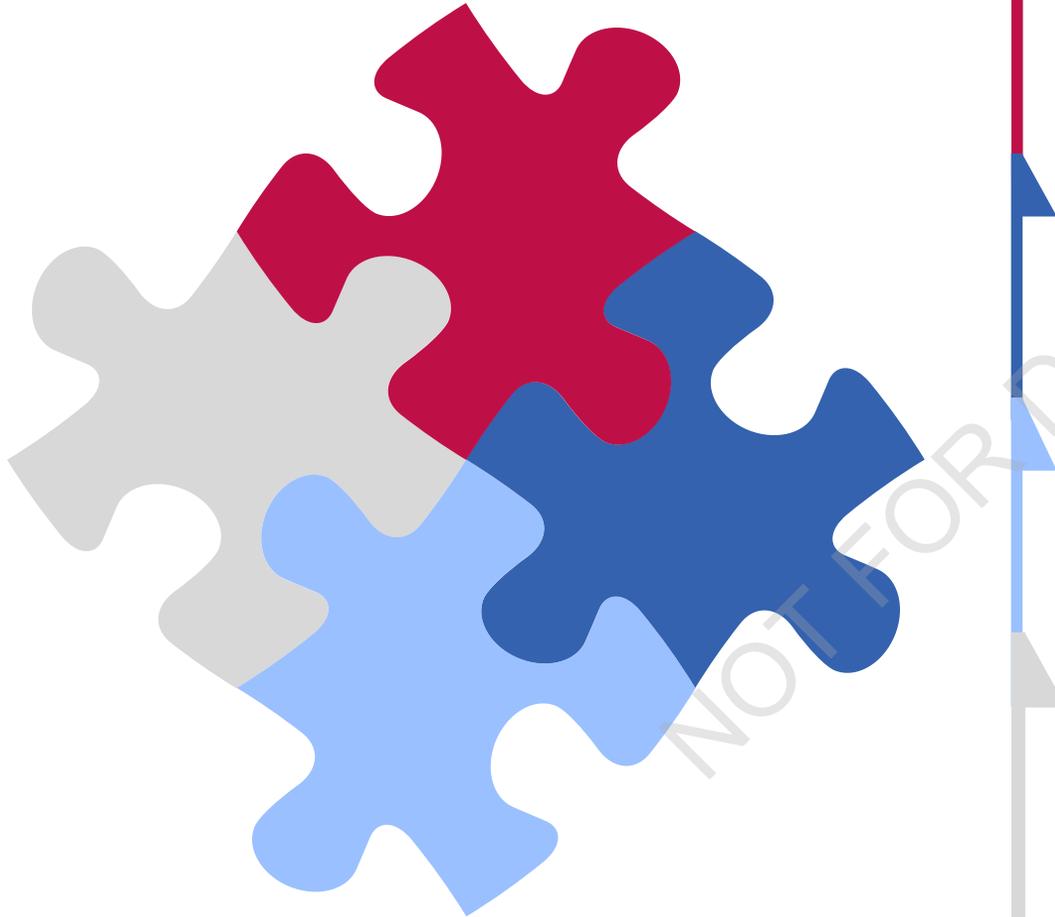
Relevant Court
Decisions

OCR Resolution
Agreements

Insurance Provider
Requirements

Governing Body
Policies

Overlapping Policies



Governing Body

- Board Policy
- Board Administrative Procedures

Employee-Facing Publications and Websites

- Human Resources Policies & Procedures
- Employee Handbooks

Future Professional-Facing Publications and Websites

- Future Professional Conduct Code and/or Handbooks
- Future Professional Club Policies & Procedures

Future Professional and Employee-Facing

- Civil Rights & First Amendment Policies & Procedures
- Acceptable Use Policies

Publication Requirements

- **Title IX regulations require Recipients to publish policies, procedures, and non-discrimination notices to:**
 - Future Professionals and applicants
 - Employees and employment applicants
 - All unions or professional organizations holding collective bargaining or professional agreements with the Recipient



Mandatory Notice of Non-Discrimination

- Provide to Future Professionals, employees, applicants, and all unions or professional organizations with collective bargaining agreements
- Publish **prominently** on institutional website and in handbooks or catalogs
- Required elements:
 - A statement that the institution does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity
 - TIXC contact information
 - Location of policy and grievance procedures
 - Instructions on how to make a report
 - Information about filing a complaint with Title IX and OCR

Bias and Conflict of Interest

Bias

- Bias can represent any variable that improperly influences an investigation or decision
- There are many forms of bias that can impact investigations:
 - Pre-determined outcome
 - Partisan approach by investigators in questioning, findings, or reports
 - Intervention by senior-level administrators
 - Not staying in your lane
 - Improper application of policies/procedures
 - Confirmation bias
 - Implicit bias
 - Animus of any kind
 - Biased training materials; reliance on sex stereotypes

Conflict of Interest

Title IX Regulations require that any individual designated by a School as a Title IX Coordinator... not have a conflict of interest or bias for or against Complainant or Respondents generally or any individual Complainant or Respondent

- Can be the investigator
- Cannot be a Decision-maker
- Cannot be an Appeal Decision-maker
- Trained in an unbiased fashion
- Neutrality in title, office location/department, supervisory responsibilities, supervisor
- Non-partisan (in terms of the grievance process)

Conflict of Interest

- Types of conflicts:
 - Wearing too many hats in the process
 - Legal counsel as Investigator
 - Investigators who are not impartial
- Simply knowing a future professional or an employee is typically not sufficient to create a conflict of interest if objectively not compromised
- Previously disciplining a future professional or employee is often not enough to create a conflict of interest

Trauma-Informed Practices

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Understanding Trauma

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity
 - Acute, chronic, or complex
 - Neurological, biological, psychological, social, and emotional impacts
 - Developmental, intergenerational, historical, secondary, vicarious, or collective
 - Responses to trauma can vary, depending on a variety of factors
- Provide all persons with support that makes Title IX services and processes accessible, including those who may have experienced trauma

Trauma-Informed Practices

- **Key principles of trauma-informed practice:**
 - Safety
 - Trustworthiness and transparency
 - Collaboration and mutuality
 - Empowerment, voice, and choice
 - Cultural and historical context
- **ATIXA Position Statement:** Application of trauma-informed practices in our field has gotten way ahead of the actual science
 - **ATIXA Recommendation:** Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
 - Trauma-informed practices should not significantly influence evidence evaluation

Title IX Team

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Meeting Community Needs

- Institutions must stop, prevent, and remedy sex discrimination and sexual harassment and ensure equitable access to programs
- TIXC cannot accomplish this alone
- Institutions must adequately staff their Title IX teams to ensure compliance and could consider:
 - Adding permanent position(s)
 - Creating new role(s)
 - Identifying paid employees to fulfill roles
 - Reassigning tasks
 - Regional consortia or sharing arrangements
 - Third-party outsourcing



Title IX Team Roles

Deputy TIXCs

- Designation by location, population, or responsibilities
- Consider broad Title IX compliance needs
- Can step in for TIXC when there is a conflict or the TIXC is otherwise unavailable
- Not required, but a best practice

Title IX Team Members

- Deputy Title IX Coordinators
- Investigators
- DMs
- Informal Resolution Facilitators
- Appeal DMs
- DM for emergency removal challenges
- Dismissal Appeal DMs
- Advisors

Structuring the Title IX Team

- The Title IX team must be large enough to fulfill required separation of roles, though the below numbers recognize that some individuals fill more than one role
- To reduce conflicts of interest and bias, and manage attrition/turnover/burnout, TIXCs should overrecruit and train all possible backups

ATIXA Recommends (Moderate Staffing Size):

1	Title IX Coordinator
3-5	Deputy Coordinators
2-4	Investigators
5-10	DMs
1-3	Informal Resolution Facilitators
4-6	Advisors

Building the Title IX Team

Title IX Coordinator

- Trained and agile
- Consider title, office location or department, supervisory responsibilities, and supervisor
- ATIXA recommends reporting to President/Cabinet-level
- Must have autonomy and independence

Considerations for Building the Team

- Potential for conflict of interest or bias
- Educational credentials or professional experience
- Individual's workload and availability
- Role at institution
- Social group memberships
- Social media activity
- Volunteer affiliations

Title IX Team Training

- TIXC (or designee) has responsibility to ensure the **Title IX Team** also receives **annual training** on the topics on the preceding slide, and:
 - Institutional response obligations to reports of sex discrimination and sexual harassment, including reporting requirements
 - Definition of sexual harassment
 - Title IX Grievance Procedures
 - Serving impartially and without conflicts of interest or bias
 - Meaning and application of relevant questions and evidence
- IR Facilitators must receive training on rules and practices associated with the institution's Informal Resolution process

Assessing the Title IX Team

TIXC must ensure team members are able to perform their roles

Consider:

- Confidentiality and privacy practices
- Cultural competence
- Decision rationales
- Impartiality/neutrality
- Writing skills
- Training and competence



Title IX Team Supervision/Oversight

- Requires ongoing leadership, support, and oversight to ensure compliance obligations and institutional needs are met
- Often not their supervisor of record, but TIXC will oversee part of their work
- **Key strategies, include:**
 - Clear expectations for roles, responsibilities, and performance metrics
 - Ongoing training and individualized professional development opportunities
 - Professional ethics modeling
 - Prompt and honest work product feedback
 - Resource allocation
 - Regular meetings or check-ins
 - Supervisory availability and support

Managing Team Member Complaints

TIXC must manage complaints about a Title IX team member with a sensitive and comprehensive approach, including:

- Prompt response
 - May need to investigate and gather information
- Consultation with legal counsel, human resources, or other supervisory staff (if applicable)
- Supportive Measures (if appropriate)
- Take appropriate action with rationale
 - Determine if there is mishandling, bias, or a conflict of interest
 - Remove the Title IX team member from the current complaint
 - Provide remedial training and education
 - Remove the individual from the Title IX team

Assessing the Title IX Program

Assessing the Title IX Program

Assessment should be multifaceted:

- Benchmarking
- Climate assessments
- Compliance reporting
- Complaint, investigation, and resolution process debriefing
- Internal reviews/audits/assessments
 - Address areas for improvement
 - Assess Title IX team
 - Conduct barrier analysis
 - Identify strengths, program gaps



Climate Surveys

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Title IX-Based Climate Survey Objectives

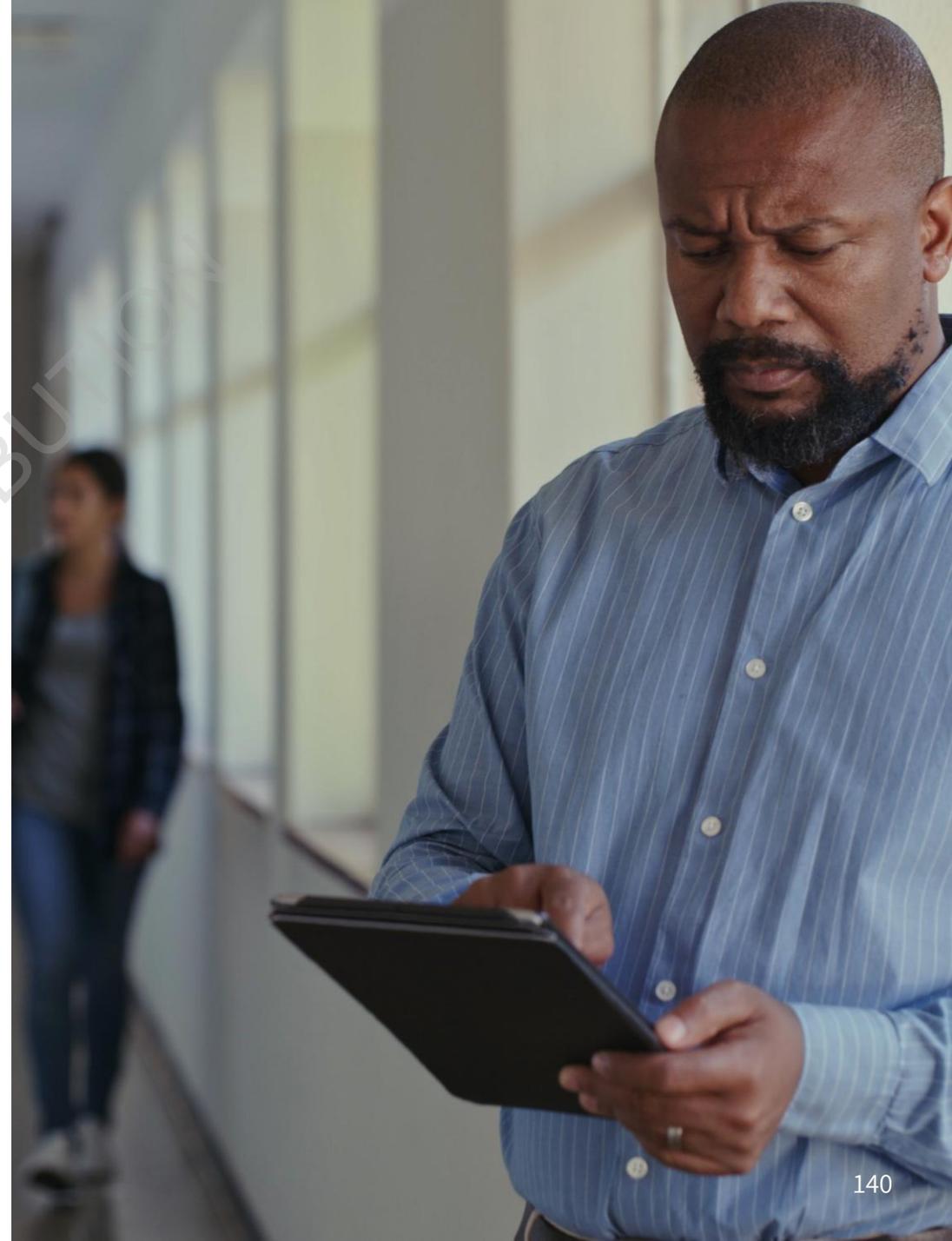
- Focused on sex discrimination and sexual harassment, including sexual assault, dating and domestic violence, and stalking
 - Assess **prevalence** of sex discrimination and sexual harassment
 - Evaluate awareness of Title IX **policies, resources**, and reporting **procedures**
 - Gauge the **perception of** school/campus safety and the effectiveness of district/institutional responses
 - Identify **gaps** in services, support, and education related to Title IX
 - Could lay a foundation/justification for **affirmative action** (though courts hostile)
- Assists TIXC with **monitoring** the education program for barriers to reporting

Climate Survey Stages



Climate Survey Structure

- Demographic questions
 - Narrow results
 - Basis for comparison
- Experience and perception questions
 - Bulk of the survey
 - Gain a better understanding of the participants' experience
- ATIXA recommends targeted questions to evaluate how well individuals understand existing policy and procedures



Climate Survey Report

- Draft a comprehensive overview of the Climate Survey responses
- Compiling a report can feel onerous, some tips to help:
 - Create or follow a template
 - Assign sections to committee members to draft
 - Allocate sufficient time for writing and review
- Consider:
 - Accessible platform for sharing the climate survey results
 - Showcasing both qualitative and quantitative data
 - Sharing a “next steps” plan to address areas needing improvement

Assessment Outcome Sharing





Association of
Title IX Administrators

Questions?

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