

Association of
Title IX Administrators

Title IX Coordinator Foundations for K-12 Education

Training and Certification Course

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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.

Course Introduction



This course focuses on providing Title IX Coordinators with the foundational training to understand their role in the Title IX Resolution Process.



Title IX Coordinators will explore the essential components of the Title IX Resolution Process, including policy determinations and considerations for best practice.



Our goal is to provide a comprehensive foundation that will allow practitioners to serve their school/district with the robust skills necessary to excel in their roles and lead Title IX compliance with confidence.

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Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, 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.

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Review:
Title IX Statute and Regulations

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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 educational program or activity receiving federal financial assistance."

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



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2024 Title IX Final Rule

- Issued **April 19, 2024**
- Effective and enforceable **August 1, 2024**
- Applies exclusively to incidents occurring **on or after August 1, 2024**
- 2024 is a blend of 2011 Dear Colleague Letter, 2020 Regulations, and new approaches
- 1561 pages total (1504 Preamble and 57 Regulations)
- More flexibility for Recipients in how to structure and staff resolution processes

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Retroactivity

- The 2024 regulations apply **only** to sex discrimination alleged to have occurred **on or after** August 1, 2024
  - For conduct alleged to have occurred prior to August 1, 2024, the regulations in place at the time the alleged behavior occurred will apply
- Schools/Districts will need to maintain/update policies, procedures, and training that are compliant with the **2020** regulations and **2024** regulations



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Review:
Title IX Compliance Elements

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Essential Compliance Elements

The requirement to **Stop, Prevent,** and **Remedy** guides school/district response in assuring equity and compliance with legal and OCR standards

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and school/district levels

3

REMEDY the effects of discrimination, on both individuals and the community

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School/District Title IX Obligations

- **Designate** at least one employee to serve as the Title IX Coordinator (TIXC)
- **Adopt, publish, and implement a policy statement** that the school/district does not discriminate on the basis of sex and prohibits sex discrimination
- **Adopt, publish, and implement grievance procedures** consistent with 34 C.F.R. Part 106.45
- **Provide notice** of nondiscrimination to current and prospective students, parents/guardians, employees, and any union or collective bargaining agencies
  - TIXC contact information
  - How to report conduct that may constitute sex discrimination or sex-based harassment

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School/District Title IX Obligations

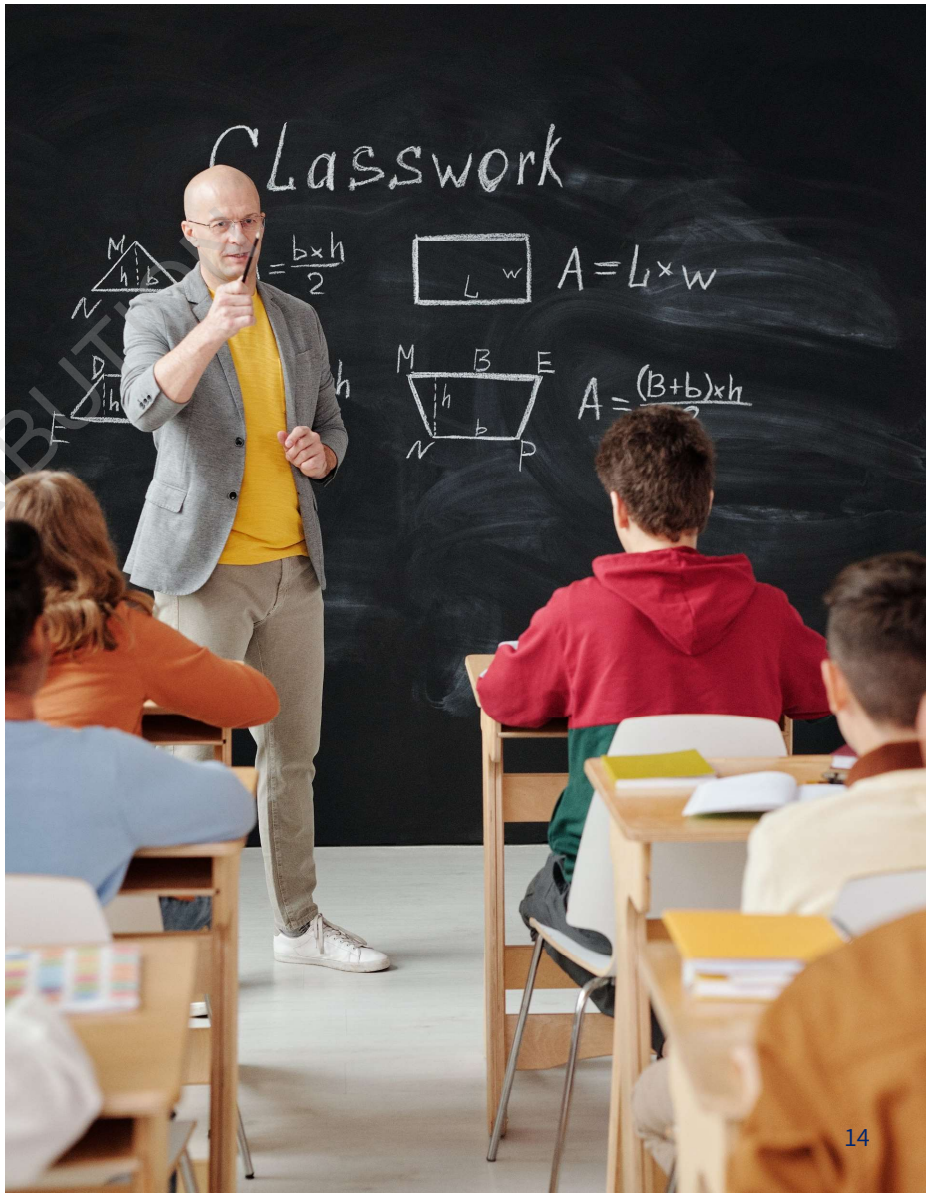
- **Train** all employees and the Title IX Team
- **Consult** with a member of the student's IEP/504 team during a Title IX Resolution Process (when applicable)
- **Maintain documentation** related to Title IX notification, training, and complaints

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Mandatory Reporting

- School/District must **require all non-confidential employees to notify the Title IX Coordinator (TIXC)** when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX
- Once notified, the TIXC must take actions to **promptly and effectively** end any sex discrimination, prevent its recurrence, and remedy its effects



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Title IX Coordinator

- Role mandated by Title IX Regulations
- Oversees school/district Title IX compliance, including oversight of the Title IX Team
- May serve as Investigator and/or Decision-Maker (DM)
- Responsibilities fall into two categories:
  - Responding to complaints of sex discrimination, sex-based harassment, and retaliation
  - Leading efforts to ensure sex and gender equity across the school/district



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Monitoring & Barrier Analysis

- TIXC has ongoing obligation to **monitor** the program/activity for barriers to reporting
  - Take steps reasonably calculated to address such barriers
- Example Barriers:
  - Reporting process accessibility
  - Confusing or delayed procedures
  - Difficulty finding information or contacting Title IX staff
  - Perceptions of bias



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Review:
Scope and Definitions

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Applicability

- Education program or activity in the United States
- Downstream effects of external misconduct
- School/District has disciplinary authority over the context of the behavior
- Identity of the Complainant
- Applies to both students and employees
- Per the 2024 preamble, OCR will consider almost all off-campus sexual misconduct by school/district employees toward students to be within the school program/activity



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Sex Discrimination

- Discrimination on the basis of sex includes:
  - Sex Stereotypes
  - Sex Characteristics
  - Pregnancy or Related Conditions
  - Sexual Orientation
  - Gender Identity
- "More than *de minimis* harm"
- Sex-Based Harassment



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De Minimis Harm

- In limited circumstances where Title IX permits different treatment or separation based on sex, a school/district **must not** implement differential treatment by means that subjects a person to **more than *de minimis* harm**
- Adopting a policy or practice preventing someone from participating in a program/activity **consistent with their gender identity** violates the *de minimis* provision
- Notable exceptions:
  - Religious exemptions
  - Athletics



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Sex-Based Harassment

- Subset of sex discrimination
- Includes (the “Big Six” offenses):
  - Quid Pro Quo (QPQ)
  - Hostile Environment Harassment
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- No consent definition provided
  - Develop or adopt one for the school/district



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Quid Pro Quo

- "An employee, agent, or **other person authorized by the Recipient** to provide an aid, benefit, or service under the Recipient's education program or activity
  - Explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct"
- If a **student** occupies a position as some "other person authorized by the Recipient…" then QPQ **could** apply
- Definition encompasses:
  - Extracurriculars and academics
  - Detriment or threat thereof
  - If an individual purports to have authority to provide some aid, benefit, or service, even if they are unable to do so

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Hostile Environment Harassment

- Definition:
  - Unwelcome sex-based conduct that
  - Based on the totality of the circumstances
    - Is subjectively and objectively offensive **AND**
    - Is so severe **OR** pervasive
    - That it **limits or denies** a person's ability to participate in or benefit from the Recipient's education program or activity
- Regulations outline a series of additional considerations
- Lower/broader standard than the 2020 Regulations, with First Amendment implications

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Hostile Environment Harassment

- Definition provides factors for evaluating whether a hostile environment exists:
  - Complainant's ability to access the education program or activity
  - Conduct type, frequency, and duration
  - Parties' ages, roles, and previous interactions
  - Conduct location and context
  - School/District's control over the Respondent
- These are **factors**, not requirements
  - There could also be other factors to consider

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Sexual Assault

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting system
  - Must include the six sub-offenses:
    - **Rape**, involves a lack of consent
    - **Sexual Assault with an Object**, involves a lack of consent
    - **Sodomy**, involves a lack of consent
    - **Fondling**, involves a lack of consent
    - **Incest**, violation irrespective of consent
    - **Statutory Rape**, violation irrespective of consent

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Rape

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
  - **Rape:**
    - Penetration,
    - Without the consent of the Complainant,
    - Including instances where the Complainant is incapable of giving consent
      - Because of age **or**
      - Because of temporary or permanent mental or physical incapacity

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Sodomy

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
  - **Sodomy**
    - Oral or anal sexual penetration
    - Of the Complainant by the Respondent
    - Without the consent of the Complainant,
    - Including instances where the Complainant is incapable of giving consent
      - Because of age **or**
      - Because of temporary or permanent mental or physical incapacity

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Sexual Assault With An Object

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
  - **Sexual Assault With An Object**
    - Respondent's use of an object or instrument
    - To unlawfully penetrate, however slightly, the genital or anal opening
    - Of the body of the Complainant,
    - Without the consent of the Complainant,
    - Including instances where the Complainant is incapable of giving consent
      - Because of age **or**
      - Because of temporary or permanent mental or physical incapacity

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Fondling

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
  - **Fondling**
    - The touching of the private body parts (breast, buttocks, groin) of the Complainant by the Respondent
    - Or causing the Complainant to touch the Respondent's private body parts
    - Intentionally for a sexual purpose
    - Without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
      - Because of age **or**
      - Because of temporary or permanent mental or physical incapacity

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Incest and Statutory Rape

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
  - **Incest**
    - Nonforcible sexual intercourse between persons who are related to each other
    - Within the degrees wherein marriage is prohibited by law
  - **Statutory Rape**
    - Nonforcible sexual intercourse with a person
    - Who is under the statutory age of consent

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Dating Violence

- **Dating Violence:** Violence committed by a Respondent:
  - Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
  - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - Length of the relationship
    - Type of relationship
    - Frequency of interaction between the persons involved in the relationship

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Domestic Violence

- **Domestic Violence:** Felony or misdemeanor crimes committed by a Respondent who:
  - Is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of the jurisdiction of the school/district, or a person similarly situated to a spouse of the Complainant;
  - Is cohabitating, or has cohabitated, with the Complainant as a spouse or intimate partner;
  - Shares a child in common with the Complainant; **or**
  - Commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of the jurisdiction

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Stalking

Stalking: 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

- **"Reasonable person"** and **"Substantial Emotional Distress"** are not defined in the Title IX regulations
- **Course of conduct** requires that there be more than one incident and the conduct must be directed at a specific person
  - Can occur in person or using technology
- Should consider the duration, frequency, and intensity of the conduct

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ATIXA Model Policy Definitions

- Consent
- Common additional offenses with a potential Title IX intersection
  - Sexual Exploitation
  - Harm/Endangerment
  - Intimidation
  - Hazing
  - Bullying



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Definitions: Consent

- **Consent** is not defined by the regulations, so school/district policy should define (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 imply consent to other forms of sexual activity

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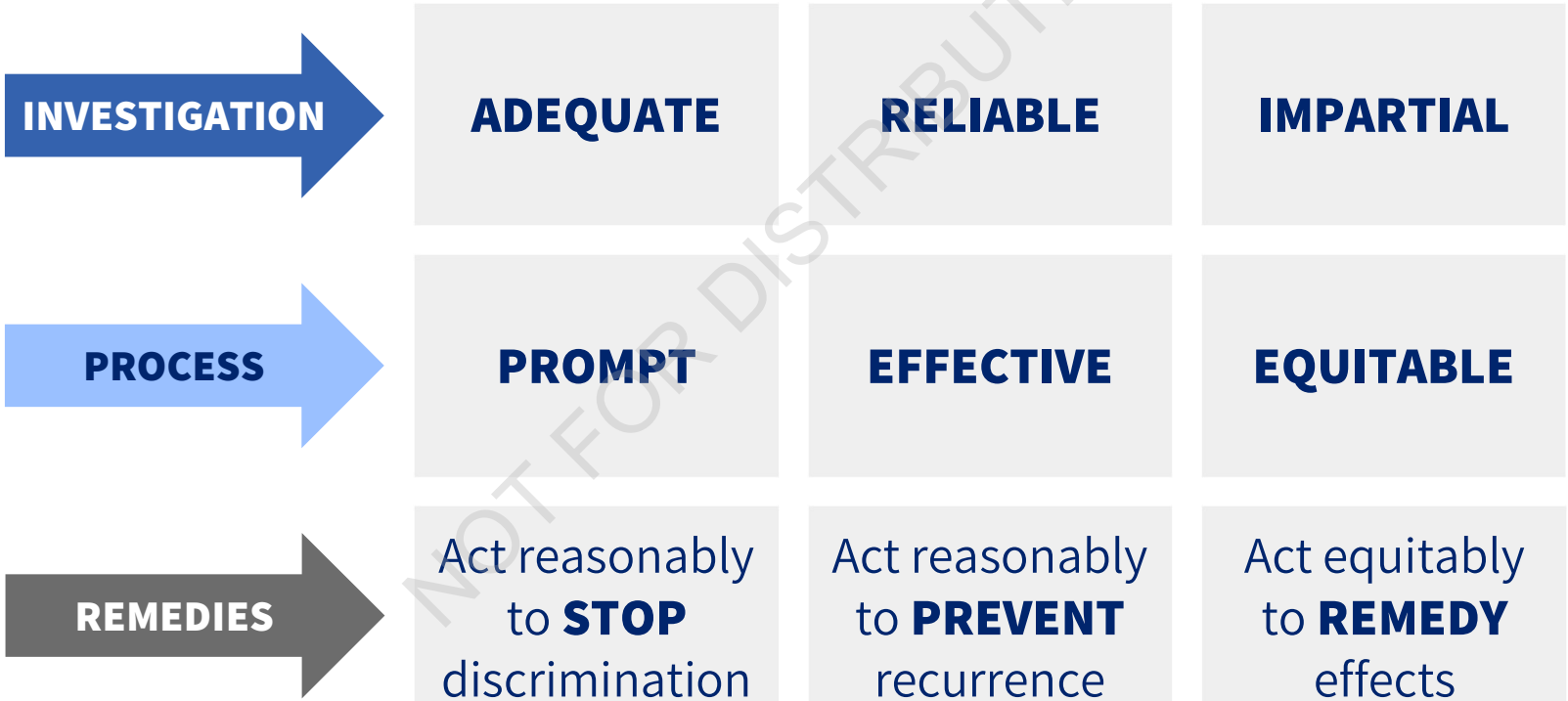
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Title IX Resolution Process

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The IX Commandments



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Title IX Resolution Process Overview

1 Incident

- Report, Complaint, or Knowledge to TIXC

2 Initial Evaluation

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/Formal Resolution

3 Investigation

- NOIA
- Interviews
- Evidence Collection
- Parties' Evidence Review/ Response
- Optional Written Report

4 Determination

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies
- Optional Live Hearing
- Outcome Notification

5 Appeal*

- Appeal Grounds
- Determination and Rationale

*Must be offered for Title IX if offered in other comparable proceedings

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Basic Requirements

Section 106.45 provides a civil rights Resolution Process for resolving K-12 Title IX complaints

- Must treat parties equitably
- Require TIXCs, Investigators, or DMs have **no conflicts of interest or bias**
  - DMs may be the same person as the TIXC or Investigator
- Presume that Respondent is not responsible
- Establish reasonably prompt timeframes for "major process stages"
  - I.e., Evaluation, Investigation, Determination, Appeal (if available)
- Must take reasonable steps to protect the parties' and witnesses' privacy
- Require an objective evaluation of relevant and not otherwise impermissible evidence
- Prohibit retaliation against parties, witness, and those involved in the Title IX Resolution Process

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Prompt Resolution

- Complete without unreasonable delay
- Title IX Regulations do not define “prompt”
  - Timeline often depends on the nature and severity of the allegation(s)
  - Section 106.45 should greatly reduce time to complete Resolution Process
- However, Title IX Resolution Process may take longer than expected
  - Anticipate, mitigate, and document delays
  - Communicate with parties regarding delays

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Parties' Rights

- Receive detailed Notice of Investigation and Allegations (NOIA)
  - NOIA does not need to be in writing
  - Must include information about the school/district's Title IX Resolution Process
- Be informed of and receive appropriate and available supportive measures
- Gather and present evidence and witnesses
- Review all relevant evidence or an accurate description of the evidence
- If a student, be accompanied by parent/guardian to all meetings, interviews, and hearings (if applicable)
- To choose not to participate in the Title IX Resolution Process
- Receive a written outcome notification with rationale

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Working with Parents/Guardians

Parents/Guardians are permitted to:

- **Pursue Title IX Resolution Process** on behalf of their student
- **Seek supportive measures** on behalf of their student
- **Make decisions** throughout the Title IX Resolution Process on behalf of their student, such as whether to pursue Informal Resolution
- **Attend** all interviews/meetings/hearings with their student, regardless of whether they are serving as the student's Advisor
- **Access** their student's education records, including Title IX complaint file

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Reports, Complaints, and School/District Knowledge

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Report, Complaint, or Knowledge

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When the School/District Has Knowledge

- School/District has **knowledge** of sex discrimination, sex-based harassment, or retaliation when information about conduct that reasonably may constitute sex discrimination, sex-based harassment, or retaliation is reported to:
  - **TIXC**, or
  - **Any non-confidential employee**
- Knowledge includes information that K-12 employees witness, hear about, or receive a written or verbal complaint about, including from parents/guardians
- **Complaint: Verbal** or **written** request to the school/district that **objectively** can be understood as a request for the school/district to investigate and make a determination about alleged discrimination
- School/District required to act when a complaint is made to the TIXC or any other non-confidential employee (almost everyone)

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Initiating a Complaint

- TIXC retains ability to file a complaint when:
  - Imminent and serious threat exists; **OR**
  - The alleged conduct prevents the Recipient from ensuring equal access
- Parent, guardians, or authorized legal representative may file complaint on behalf of students
- For complaints of sex discrimination **only**, any student, employee, or any person participating or attempting to participate (P/ATP) may file a complaint
  - Not for sex-based harassment complaints, though school/district is not prohibited from acting on such knowledge by initiating a complaint

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Confidential Employees

- Schools/Districts may have confidential employees by law and may designate other employees as confidential
  - Notify all employees and students of confidential employees' identities
- Must explain their confidential status to parties
- Mandated to provide the following:
  - TIXC contact information
  - How to file a report
  - TIXC may be able to offer supportive measures
- **Confidential employees MUST still report suspected child abuse under state law**



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Reporting Considerations

- Online reporting form
- Anonymous reports
- Take all reasonable steps to follow the Complainant's wishes
  - School/District must respond effectively and prevent harassment of other students and/or Complainant
- If TIXC takes no formal action in response to a report, document rationale

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Initial Evaluation

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Intake Following a Report/Complaint

TIXC (or designee) should **always reach out to the Complainant** and parents/guardians (for student reports)

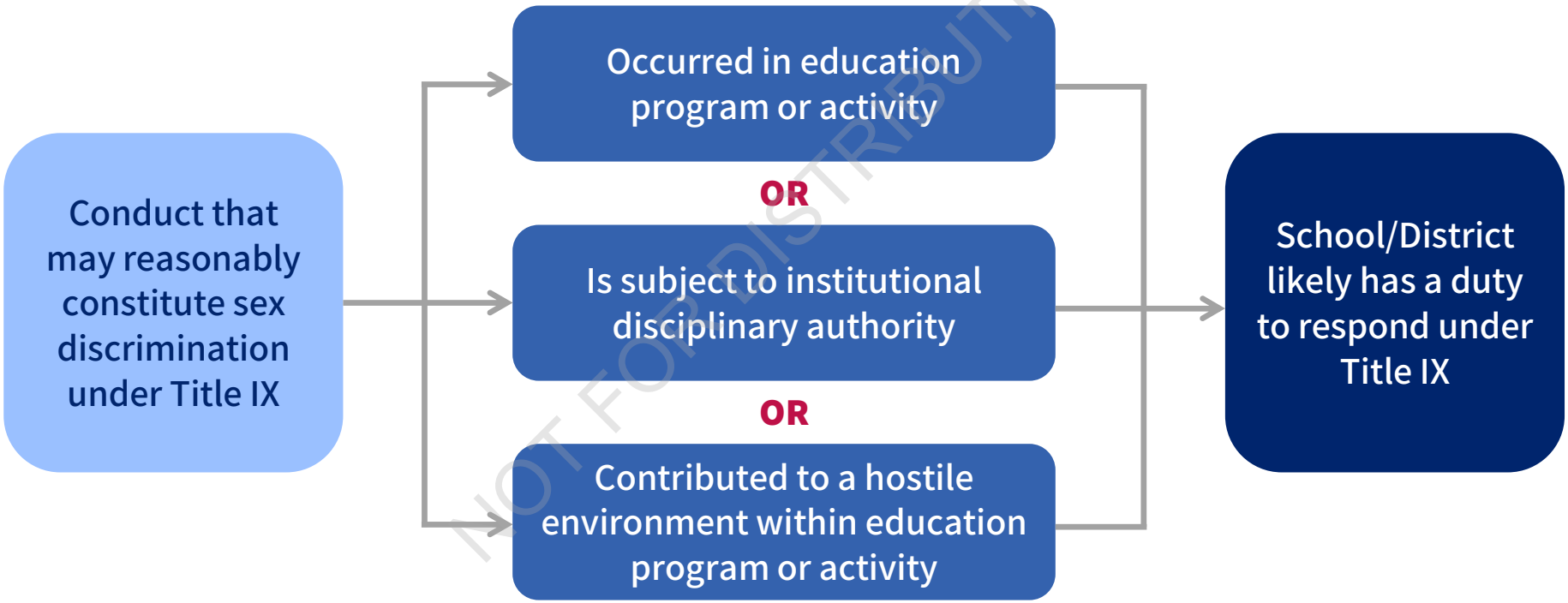
- This is both best practice and a regulatory requirement

- **Outreach includes:**
  - Introduction to Title IX and staff
  - Reason for the outreach
    - Explore facts, but not interviewing
  - Offer to meet/speak over the phone; include right to Advisor (if applicable)
  - Review available resolution options
  - Discuss supportive measures and resources
  - Explain law enforcement reporting options
  - Follow up in writing with resources and information (best practice, not required)

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Assessing Jurisdiction



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Initial Evaluation

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



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TIXC Initiating a Complaint: PPTVWM

In limited circumstances, a TIXC may initiate a complaint even if the Complainant declines to do so

Consider key safety, severity & scope factors, such as:

- **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

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Initiating a Complaint

- Incident must fall within Title IX jurisdiction and allege sex discrimination or sex-based harassment
- TIXC does not become a party to the complaint
- If the school/district proceeds, must notify the Complainant and offer appropriate supportive measures



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Requests for Confidentiality

A Complainant may ask to remain anonymous and/or decline investigation

- TIXC must still conduct PPTVWM analysis
- Due process dictates that a Complainant's identity must be shared during a Title IX Resolution Process
- Remind Complainant that the school/district maintains privacy and prohibits retaliation
- Provide supportive measures
- **Consider what steps can be taken to stop, prevent, and remedy**
- The process will still be available to them, regardless of how long they wait
- School/District will take reasonable non-disciplinary actions available to it

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Dismissal

All dismissals involving conduct occurring after August 1, 2024, are **discretionary**, under the following circumstances:

- Unable to identify Respondent after **reasonable** steps to do so
- Respondent no longer participating in education program/activity or employed by school/district
- Complainant withdraws all or a portion of complaint and any remaining alleged conduct would not be discrimination under Title IX
- Alleged conduct, if proven, would not be discrimination under Title IX
  - School/District must make reasonable efforts to clarify allegations before dismissal

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Dismissal

Upon dismissal of a complaint:

- Promptly notify Complainant
- Notify Respondent only if Respondent has already been notified of complaint
- Offer supportive measures as appropriate
- Inform Complainant of their right to appeal
  - Also inform Respondent if they have been notified of the complaint
- Take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur

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Dismissal Appeal

- **Summary of Appeal Grounds:**
  - Procedural irregularity that would change the outcome **OR**
  - The decision to investigate was biased **OR**
  - A conflict of interest impacted the school/district's efforts to clarify the initial allegations
- **School/District may want to add a ground that allows for the substantive appeal of the dismissal as wrongly decided**
- **Appeal procedures**, generally:
  - Appeal Decision-Maker(s) must be trained; must not have been involved in the complaint
  - Parties have an equal opportunity to respond to an appeal request
  - Parties receive written notification of appeal decision, including rationale

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Students with Disabilities

- **TIXC required to consult** with:
  - One or more members of the student's Individualized Education Program (IEP) team; **OR**
  - One or more members of the group of persons responsible for the student's placement decision
- To determine how to comply with the requirements of
  - Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act
  - Throughout the school/district's Title IX Resolution Process
- Includes decisions related to Emergency Removal

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Emergency Removals

- May remove a student Respondent after an individualized safety and risk analysis
  - An **imminent and serious threat** to the health or safety of the Complainant, any students, employees, or other persons must exist
  - Threat arises from sex discrimination allegations
- Provide the Respondent an opportunity to challenge the decision **immediately**



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Emergency Removal

Consider:

- Existing culture of frequent interim suspensions for other student conduct issues must adapt to apply Title IX procedures
  - Common concern with school-based administrators acting without consulting TIXC
  - Demands to remove Respondent when not indicated by safety and risk analysis
- Procedures for conducting the safety and risk analysis
- Process for Respondent to challenge the decision
- Manifestation Determination application when needed
- Emergency Removal should not create undue delay in the Title IX Resolution Process
- Removal can only continue for as long as an emergency continues to exist

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Administrative Leave

- May remove a non-student employee Respondent using existing administrative leave procedures
- A lower bar than Emergency Removal of a student Respondent



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Supportive Measures

- School/District may determine which supportive measures are **reasonably available**
  - Must provide a **timely opportunity** to seek modification, reversal, or denial
    - An impartial employee, uninvolved in initial decision, must have authority to modify or reverse
    - Review considers whether the original decision was **inconsistent** with the definition of supportive measures
  - Permit subsequent opportunity to challenge if circumstances materially change
  - Disclosure about supportive measures is need-to-know
- Measures may be continued, modified, or ended at conclusion of the Title IX Resolution Process

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Supportive Measures

Provided to parties following evaluation of a report/complaint:

- Non-disciplinary, non-punitive
- Individualized
- Restore or preserve equal access
- Without **unreasonably** burdening other party
- Protect safety of parties or environment, or deter sex-based harassment
- At no cost to the party

- Consult with IEP/504 administrators when appropriate
- If not provided, document the rationale for refusal

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Supportive Measures and Partial Removals

- In some circumstances, a partial removal from the education/program may be appropriate as a supportive measure
  - The partial removal must be consistent with the definition of supportive measures
    - May **not** be for disciplinary or punitive purposes
    - May be for preserving access, protecting safety, or providing support during a Title IX Resolution Process
- If a TIXC determines that a partial removal is disciplinary or punitive, the Emergency Removal provision applies

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Informal Resolution (IR)

- **Not available for employee-on-student sex-based harassment**
- TIXC must:
  - Agree to the use of IR for each request
  - Obtain the parties' voluntary consent
  - Provide the parties Notice of Allegations (NOA) and IR Process
- Parties may:
  - Request IR at any time prior to determination
  - Withdraw from IR at any time prior to agreement
- Parties are precluded from initiating or resuming investigation and Resolution Process if agreement is reached (as long as terms are adhered to)

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Informal Resolution

- **IR options include**:
  - Negotiated resolution to make supportive measures permanent
  - Age-appropriate education, facilitated dialogue, and discussion
  - Conflict Coaching
  - Restorative practice methods:
    - Circles, conferences
  - Mediation (including Shuttle Mediation)
- Must stop, prevent, and remedy with documented response



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Informal Resolution Considerations

- Does school/district policy allow for IR?
- Are the parties motivated to participate and amenable to an IR process?
- What is the likelihood of potential resolution, being mindful of:
  - Power dynamics between the parties
  - Parent/Guardian's wishes/influence
- Does the complaint present complexities?
- Is there adequate time/resources to complete the IR?
- Does the school/district have a method appropriate to the circumstances?

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Parent/Guardian Involvement

- Title IX Regulations do not require that the school/district notify parents/guardians or authorized legal representative of a reported incident
  - School/District should have clear rationale for not reaching out to the student's primary contact
  - In most instances, the TIXC should inform parent/guardian of Title IX Resolution Process and available supportive measures
- Parents/Guardians ultimately guide whether to pursue a Title IX Resolution Process
  - TIXC may **facilitate dialogue** when a student and their parents/guardians differ
- **ATIXA recommends** having open communication with parents/guardians and practicing good documentation
  - Provide written notices whenever possible

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Interacting with Law Enforcement

- TIXC should assist Complainants who wish to report to law enforcement (LE)
- Criminal investigations do not relieve a school/district of its duty to respond promptly and effectively
  - Criminal investigation process is separate from Title IX Resolution Process
  - Applies different laws/policies and a different standard of evidence
  - FERPA protections limit sharing with LE
  - School/District can use information LE provides



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Activity: Case Study

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Case Study

- Three high school juniors entered a school stairwell during lunch period
- Steven and Anjali started to make out; Steven also put his hands up Anjali's shirt, unfastened her bra, and touched her breasts
- Although she consented to making out, Anjali did not expect Steven to go up her shirt
- Unbeknownst to Anjali, the third student, Leo, was filming Anjali and Steven making out
- Leo's video shows everything that happened, and Anjali's exposed breast was clearly visible for a few seconds on the video
- Leo Snapchatted the video to about 30 members of the junior class; several of whom circulated it to others in the school
- The next day, other students taunted Anjali and called her a "slut" in the hallway

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Case Study Discussion

- How does Title IX apply to this situation?
- Who should be involved in a school/district response?
- What supportive measures should the school/district make upon receiving this report?

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Investigation Oversight

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Investigation

1 Incident

- Report, Complaint, or Knowledge to TIXC

2 Initial Evaluation

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/Formal Resolution

3 Investigation

- NOIA
- Interviews
- Evidence Collection
- Parties' Evidence Review/ Response
- Optional Written Report

4 Determination

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies
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- Outcome Notification

5 Appeal*

- Appeal Grounds
- Determination and Rationale

*Must be offered for Title IX if offered in other comparable proceedings

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Who Should Investigate?

- Investigator(s) may also be the Decision-Maker(s) for the same complaint
  - Conflicts of interest and bias prohibited
- Tasks:
  - Conduct prompt, adequate, and impartial investigations
  - Collect the maximum amount of relevant information available
  - Summarize and share all relevant evidence

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Dedicated Investigator(s) (including external)	Investigator Pool (could include district-level, school-level, or external)	Investigator as DM	TIXC as Investigator and/or DM

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Investigation Oversight

Investigation Steps:

- Receive Notice/Complaint
- Initial Evaluation and Jurisdiction Determination
- Determine Investigation Basis
- Notice of Investigation and Allegations (NOIA)
- Establish Investigation Strategy
- Adequate, Reliable, Impartial Investigation
- Relevant Evidence Summary (investigation report)
- TIXC Reviews Evidence
- Parties Review Evidence Summary or Relevant Evidence with Opportunity to Respond



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Establishing Investigation Foundation

- There are **three bases for investigations**:
  - Incident
  - Pattern
  - Climate/Culture
- TIXC determines the **scope of the investigation**, which includes:
  - Allegations
  - Timeframes
  - Parties subject to the investigation
- ATIXA recommends TIXC provide a combined **Notice of Investigation and Allegations (NOIA**)
  - Send to all parties, simultaneously

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Notice of Investigation and Allegations

- Notice is not required to be in writing
  - ATIXA recommends providing both notice of the allegations and notice of the investigation in writing
- **Must include:**
  - Resolution procedures, including IR (if available)
  - Sufficient available information to permit parties to respond to the allegations
    - Identities (who), allegations (what), date (when), location (where)
  - Statement that retaliation is prohibited
  - Statement that parties can view relevant evidence or description of the evidence
  - Reference current policy and procedures – include copy or link
- Always update the notice if additional allegations arise during the course of the investigation

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Investigation Components

- **TIXC consults with Investigator(s) to strategize and plan the investigation**
  - Establish investigation timeline
- **Party Interviews**
  - Parents/Guardians (students) and/or Advisors (students and employees, if permitted) present
- **Witness Interviews**
- **Evidence Collection**
  - Evidence in school/district's possession
  - Evidence provided by parties or witnesses
  - Other relevant evidence gathered by the Investigator(s)
- **Evidence Sharing**

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Understanding Evidence

- The burden to gather evidence is on the School/District, not the parties
- Duty to collect and objectively evaluate all relevant evidence
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant** means related to the allegations of sex discrimination under investigation
  - Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred
  - Evidence is relevant when it may aid a DM in determining whether the alleged sex discrimination occurred
- All relevant evidence, unless otherwise impermissible, must be objectively evaluated and considered, including both inculpatory and exculpatory
  - **Inculpatory:** supports a finding of responsible for a policy violation
  - **Exculpatory:** supports a finding of not responsible for a policy violation

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Privileged and Medical Information

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

- Evidence protected under a legally recognized privilege, including evidence relevant to determining capacity to consent for students with disabilities
- Records made or maintained by:
  - Physician
  - Psychiatrist
  - Psychologist
  - Recognized professional or paraprofessional in reference to party or witness treatment



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Impermissible Evidence

- Evidence of the **Complainant's sexual interests** is never admissible
- Evidence of the **Complainant's prior sexual conduct** is not relevant except:
  - If offered to prove that someone other than the Respondent committed the alleged conduct, or
  - Prior sexual conduct with Respondent, if offered to prove consent to the alleged sex-based harassment
  - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Even if admitted/introduced by the Complainant
- Does **not** apply to Respondent's prior sexual behavior or sexual interests

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Parties' Evidence Review

- **Must provide an equal opportunity to access:**
  - The relevant and not otherwise impermissible evidence, **or**
  - An accurate description of this evidence
    - If providing a description of the evidence, must provide the actual evidence upon request of any party
  - A reasonable opportunity to respond to the evidence or accurate description of the evidence
- No written investigation report required
  - ATIXA **strongly** recommends an investigation report

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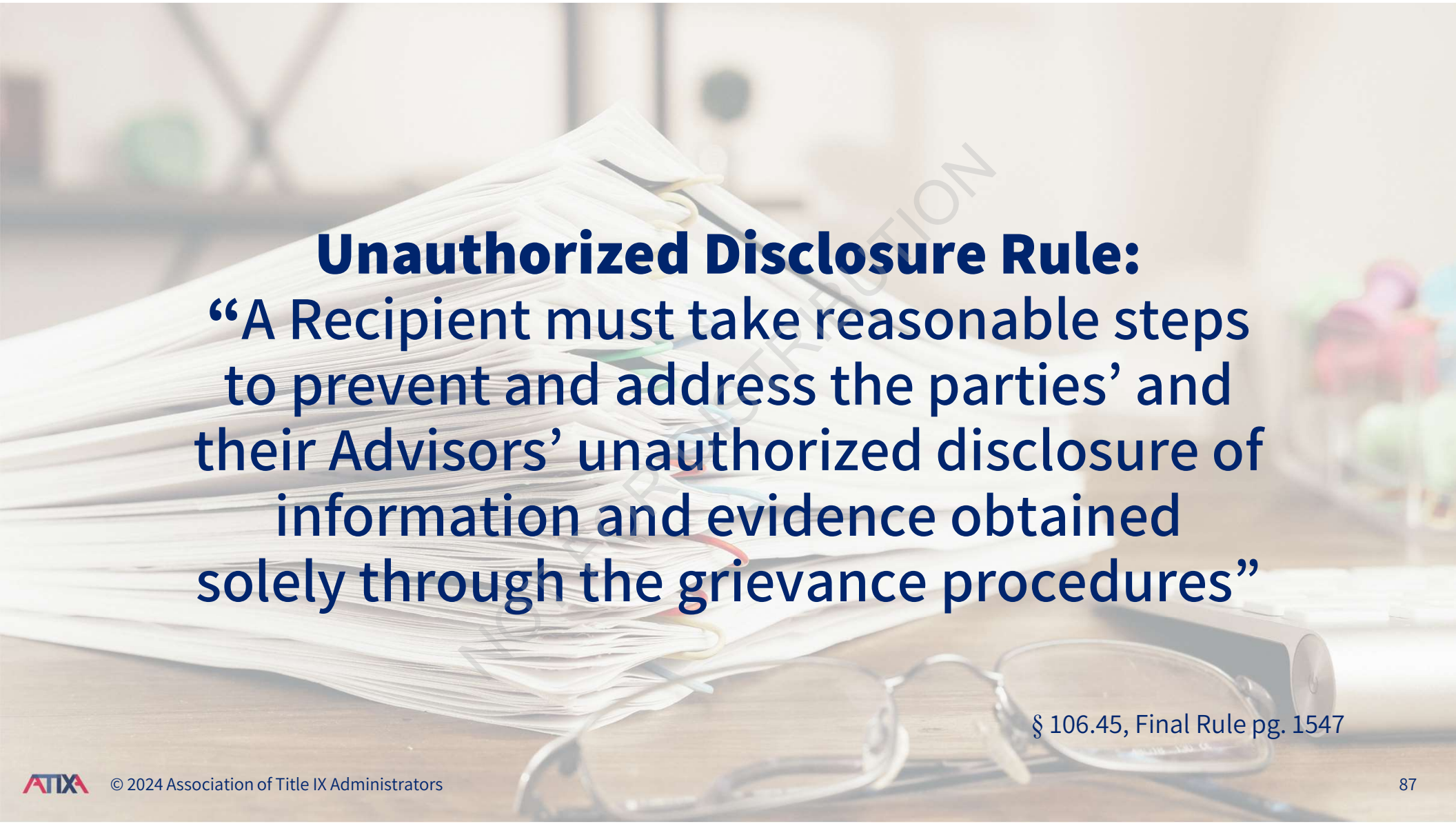
Advisors

- Schools/Districts are not required to permit Advisors
- Advisors may otherwise be required
  - School/District policy
  - Union/Collective Bargaining Agreements (CBAs)
- Schools/Districts must allow parents/ guardians to participate throughout the Title IX Resolution Process
- ATIXA considers permitting Advisors to be a best practice



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Unauthorized Disclosure Rule:
"A Recipient must take reasonable steps to prevent and address the parties' and their Advisors' unauthorized disclosure of information and evidence obtained solely through the grievance procedures"

§ 106.45, Final Rule pg. 1547

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Determination

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Determination

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Roles and Responsibilities

- TIXC and/or Investigator(s) may serve as a DM
- DM can be a single person or a panel

Title IX Coordinator

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

Decision-Maker(s)

- Facilitates exchange of questions (if needed)
- Determines relevance of evidence
- Assesses credibility
- Makes findings of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes outcome and determination rationale

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Decision-Making Process

Process Steps

- DM evaluates the relevant and not otherwise impermissible evidence and all complaint documentation
  - Must consider both inculpatory and exculpatory evidence
  - Each allegation is considered individually for each Respondent
- Schools/Districts must provide a process enabling DM to question parties and witnesses to assess credibility

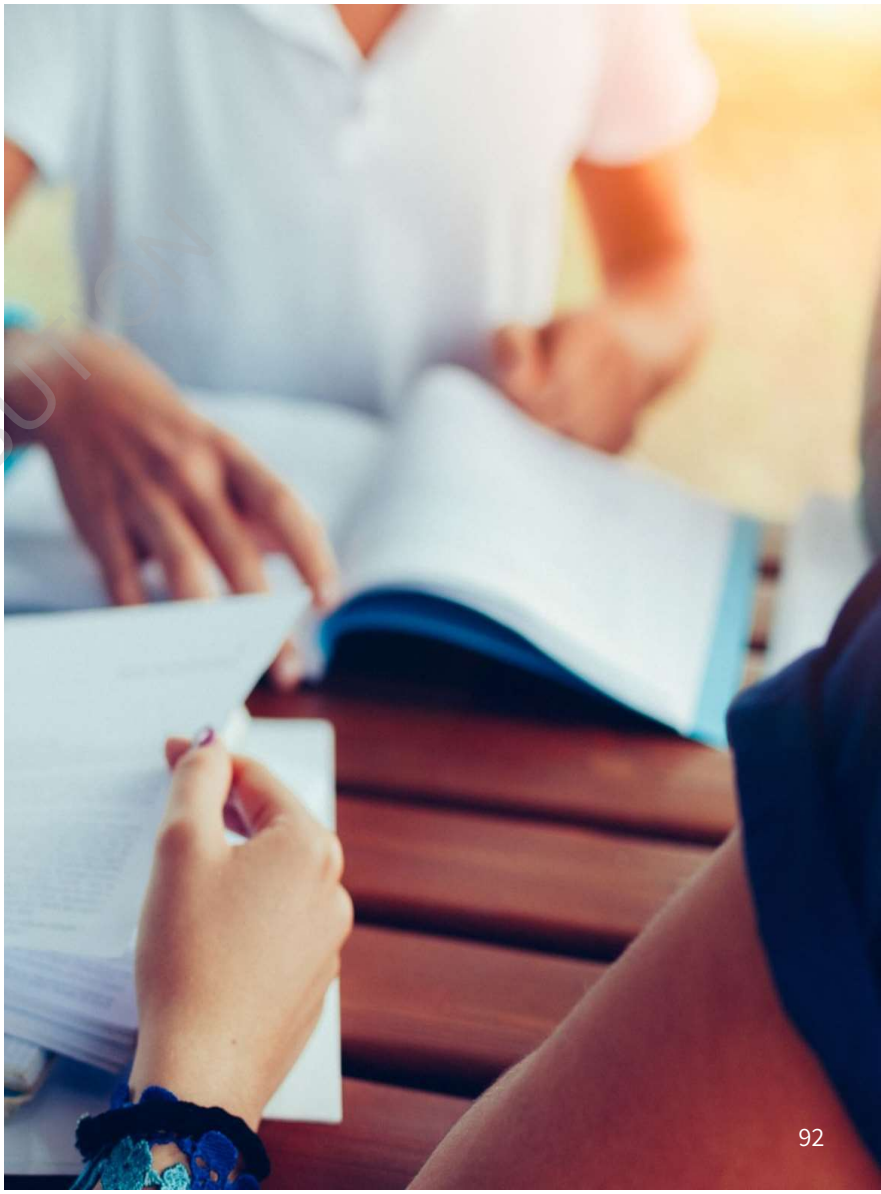


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Credibility

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



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Credibility Assessment

Consider the following elements to establish credibility:

- **Corroborating Evidence:** evidence that can be verified by an independent and objective individual
- **Inherent Plausibility:** information that is believable on its face/by context
- **Consistency of evidence/testimony**
- **Motive to Falsify**
- **Past Record***
- **Demeanor***

*Less probative

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Determinations

- Decision-Maker **applies the standard of proof** to make determination
  - Standard of proof options include:
    - **Preponderance of the evidence** (ATXA recommended)
    - **Clear and convincing evidence**
  - Standard of proof must be consistent for all sex-based harassment complaints
- DM determines whether the Respondent violated school/district policy
- Parties **must receive written notice** of the determination, rationale, and appeal procedures (if applicable)
- TIXC coordinates remedies and disciplinary sanctions as appropriate
  - Required to consult with IEP/504 administrator (if applicable)

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Written Determinations

Written Determination

- Authored by DM(s)
- TIXC/legal counsel reviews
- TIXC communicates to the parties and parent/guardian simultaneously in writing

When is Determination Final?

- On the date the school/district provides a written appeal determination; **OR**
- The date when an appeal would no longer be timely

Written Determination Elements

- Applicable policy
- Procedural steps taken
- Statement of and rationale for the result of each specific allegation
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Any Supportive Measures and/or remedies provided
- Procedures and bases for appeal, if available

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Sanctioning Considerations

Sanctions must be reasonable and reflect the severity of the behavior:

- May consider:
  - Mitigating, aggravating, and compounding factors
  - Severity and egregiousness
  - Prior misconduct history
  - Acceptance of responsibility
  - Complainant's request for enhanced/lesser sanctions
  - Pattern behavior
  - Precedent
- What best compensates for loss or injury to Complainant, school/district, or others?
- Should consider the educational impact on the Complainant and Respondent

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Common Student Sanctions

- Warning (preferably written)
- Detention
- Loss of privileges
- Counseling
- Contact restriction
- Limited access to school activities
- Service hours
- Online education
- Alcohol and drug assessment and counseling
- Discretionary sanctions
- Alternative placement
- In-School Suspension
- Out-of-School Suspension
- Expulsion

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Common Employee Sanctions

- Warning (preferably written)
- Probation
- Performance improvement/ management process
- Training
- Counseling
- Loss of privileges
- Reduction in pay
- Loss of annual raise
- Discretionary sanctions
- Loss of supervisory or oversight responsibilities
- Paid or unpaid leave
- Suspension
- Termination

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Appeals

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Appeals

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Appeals

- Schools/Districts can only decline to offer an appeal process if it does so in all comparable proceedings
- If offered, an appeal process should mirror those in **comparable proceedings**
  - This is the floor, not the ceiling
  - Comparable proceedings may include those used to resolve other discrimination complaints
- Policy should include grounds and process for appeal
- One level of appeal is best practice
- Typically document-based review for error only
- Deference is given to the original DM

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Appeal Grounds

If appeal is offered, must offer appeals on each of the following grounds:

1. Procedural irregularity that would **change the outcome**
2. New evidence that would **change the outcome** and that was not reasonably available when the determination of whether sex-based harassment occurred
3. TIXC, Investigator, or DM had a conflict of interest or bias for or against Complainant(s) or Respondent(s) generally or the individual Complainant or Respondent that would **change the outcome**

Schools/Districts have the discretion to add additional appeal bases, as long as the procedures and additional bases for appeal are equally available to all parties

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Appeal Determinations

- Appeal DM should complete a written determination with rationale
- Determinations may include:
  - **Upholding** the original determination and sanctions (if any)
  - **Remanding** the complaint back to the Decision-Maker for reconsideration or to the Investigator for further investigation
  - **Modifying** the original determination and/or sanctions (if any)
  - **Overturning** the determination (not recommended)

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Employee Complaints

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Employee Complaints

Title VII of the Civil Rights Act of 1964: Prohibits discrimination on the basis of race, color, religion, **sex**, or national origin in employment

- Title IX intentionally mirrored Title VII
- Employees are protected under both Title VII and Title IX
- Title IX extends significant due process protections for at-will employees accused of misconduct compared to Title VII
- Potential inequity in employee processes for Title VII-based sex-based harassment
- Potential conflicts with collective bargaining agreements

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Employee Complaints

When an employee is a party in a Title IX complaint, the following should be considered:

- Role of school/district equity/AA/EEO officer
- Role of Human Resources
- Oversight of Deputy Coordinators/Investigators
- Ability to merge/combine investigation and hearing processes
- Required disclosure of employee information (e.g., outcome and any discipline taken) that would typically remain confidential
- Additional rights afforded to employees under Title IX



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Retaliation Prevention and Remediation

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Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
- By the school/district, a student, an employee, or other person authorized by school/district to provide aid, benefit, or service under education program or activity:
  - For the purpose of interfering with any right or privilege under Title IX, **OR**
  - Because the person has reported information, made a complaint, assisted, or participated or refused to participate in any manner in any part of a Title IX Resolution Process

- **Schools/Districts may require** employees to participate as witnesses without it being considered retaliation
- Cannot require students to participate as parties or witnesses
- Retaliation allegations should be resolved under the Title IX Resolution Process

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Retaliation

Title IX prohibits retaliation against any person who has:

- Made a report or complaint, or
- Participated or refused to participate in any Title IX process

Retaliation could include:

- Intimidation, threats, coercion
- Discrimination by a student, employee, or person authorized to act for the school/district



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Retaliation

TIXC must:

- Ensure retaliation is expressly prohibited under school/district's policy
- Inform parties and witnesses of protection from retaliation
- Monitor for any retaliation
- Provide a process to address retaliation complaints
- Ensure Investigators and other applicable Title IX team members are trained on how to analyze retaliation complaints

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FERPA and Recordkeeping

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Family Educational Rights & Privacy Act

- Parents/Guardians have the right to "**inspect and review**" their students' education records
- Title IX Resolution Process protects privacy, but avoid promising "confidentiality"
- Recommend obtaining consent of the parents/guardians of other student(s) whose information will be disclosed, especially student witnesses
- Title IX requirements override any conflicting FERPA provisions



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Recordkeeping

School/District must maintain records for a minimum of seven (7) years:

- Sex discrimination and sex-based harassment complaints, including determination and discipline and/or remedies
  - Appeals and results
  - Rationales for all determinations
  - Informal Resolutions
  - Supportive Measures
  - Measures taken to preserve/restore access
- All training materials
- All materials used to provide training post August 1, 2024
  - Make available for review upon request (no requirement to post publicly)

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Questions?

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