



Association of
Title IX Administrators

Title IX Compliance Essentials for K-12 Education

Training and Certification Course

WELCOME!

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- The ATIXA Event Lobby can be accessed by the QR code or visiting www.atixa.org/atixa-event-lobby in your internet browser.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
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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 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.

Introduction



The primary focus of this course is to introduce practitioners to Title IX's core tenets for addressing sex discrimination within a school or district's education program and activities.



Title IX practitioners will explore the essential training requirements under the 2020 and 2024 Title IX Regulations.



Our goal is to provide a comprehensive foundation that will allow practitioners to progress into role-specific in-depth training.

Title IX Statute and Regulatory History

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.”

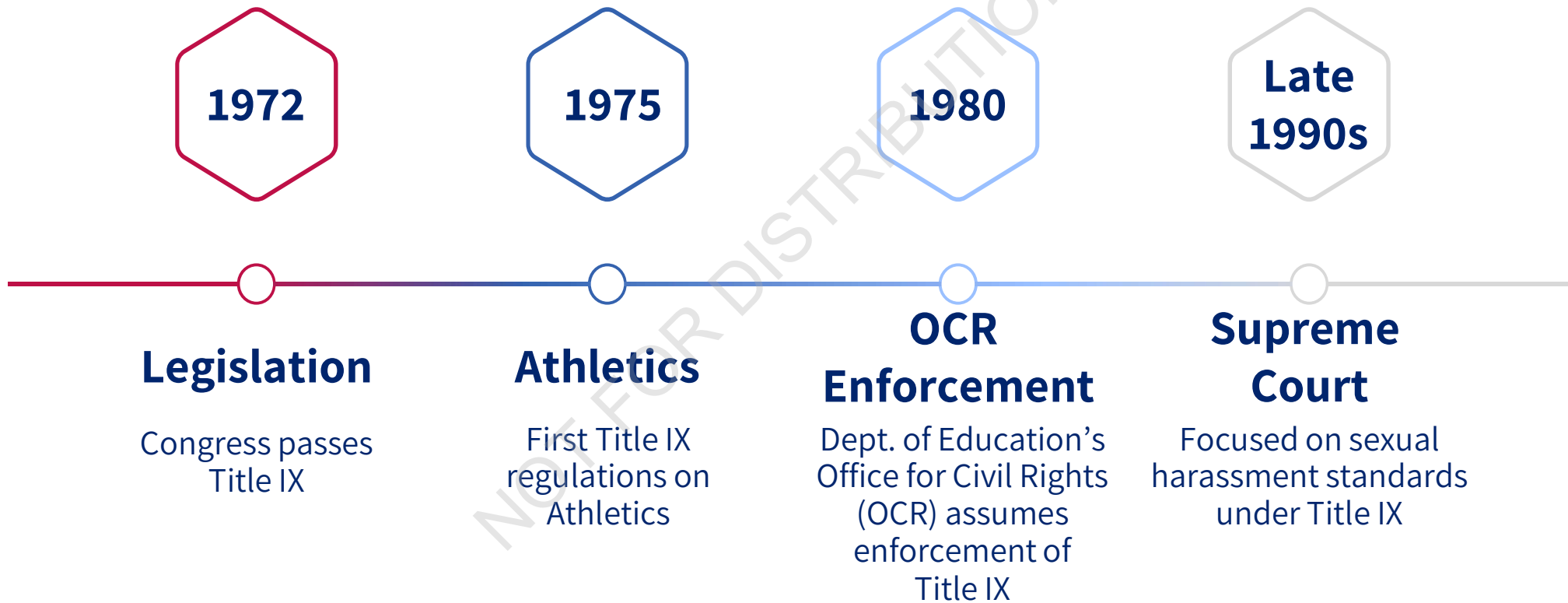
20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)



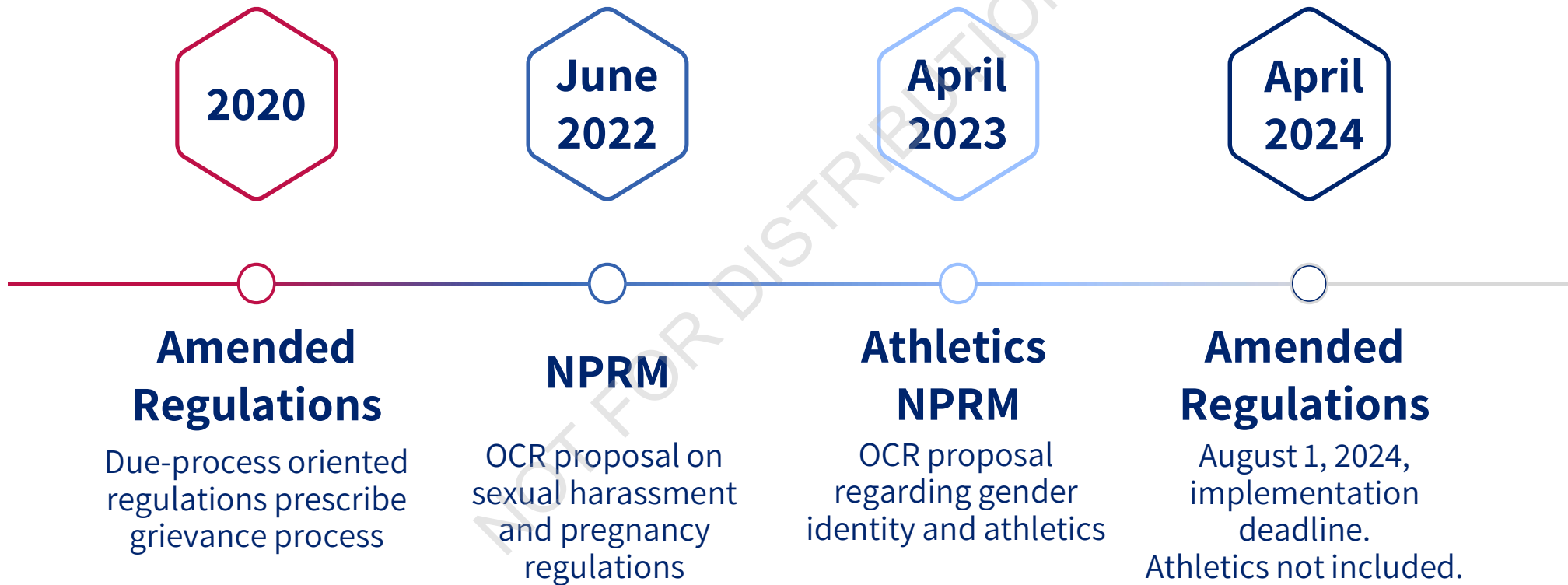
Title IX and Equity

- Title IX is a sex and gender equity law
- Enacted as a follow-up to the Civil Rights Act of 1964
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
 - Equity focuses on providing support and resources to reduce disparities in access to the education program
 - Title IX seeks to remedy the inequities created by sex discrimination and sex-based harassment

Title IX Evolution



Title IX Evolution



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

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 policies, procedures, and training for the **2020** regulations and **2024** regulations



Title IX Scope and Definitions

Applicability

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



Applicability

Recipient's education program or activity in the United States

- Conduct that is subject to the school/district's **disciplinary authority**
 - Almost all public K-12 schools/district's take some off-campus jurisdiction; be prepared to take very broad off-campus Title IX jurisdiction
- A sex-based hostile environment under the Recipient's education program or activity, even when some alleged conduct occurred outside the Recipient's education program or activity or outside the United States
 - **Downstream or in-program effects of out-of-school conduct**
 - Effects are subject to remedial (not disciplinary) obligations unless the in-program conduct resulting from out-of-school actions is itself enough to constitute sex-based harassment
 - This rule is irrelevant if the school/district takes broad off-campus jurisdiction

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



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



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



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** occupied 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

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 2020 Regulations, with First Amendment implications

Hostile Environment Harassment

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

Specific Offenses

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Uniform Crime Reporting system of the Federal Bureau of Investigation
 - Must include the six sub-offenses of Rape, Sexual Assault with an Object, Sodomy, Fondling, Incest, and Statutory Rape
- **Dating Violence:** Violence committed by a person:
 - Who is or has been in a social relationship of a romantic or intimate nature with the victim; **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

Specific Offenses

Domestic Violence: Felony or misdemeanor crimes committed by a person 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 Recipient, 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

Specific Offenses

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
- **Course of conduct:** two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
- **Reasonable person:** a person under similar circumstances and with similar identities to the Complainant
- **Substantial emotional distress:** significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
 - By the school/district, a student, an employee, or other person...
 - “for the purpose of interfering with any right or privilege under Title IX,” **OR**
 - “Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in the Title IX grievance process”
- **Schools/Guardians may require** employees to participate in the Resolution Process as witnesses
 - Cannot require students to participate
 - Retaliation allegations should be resolved under the Title IX Resolution Process, §106.45

Model Policy Definitions

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



Definitions: Consent

- **Consent** not defined by the regulations; school/district policy should define

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

Selected Terminology

- Complainant
- Complaint
- Confidential Employee
- Evaluation
- Parental Status
- Peer Retaliation/Retaliation
- Pregnancy or Related Conditions
- Relevant Evidence
- Respondent
- Student



Title IX Compliance Elements

Legal Standards: *Gebser* (1998) and *Davis* (1999)

OCR Standards

Gebser v. Lago Vista Indep. School

524 U.S. 274 (1998)

The Supreme Court held that individuals may recover monetary damages from a school if:

- Three-part standard is met:
 1. An official of the educational institution must have had “**actual notice**” of harassment;
 2. The official must have authority to “**institute corrective measures**” to resolve the harassment problem; **AND**
 3. The official must have “**failed to adequately respond**” to the harassment and, in failing to respond, must have acted with “**deliberate indifference.**”

Davis v. Monroe County Bd. of Ed.

526 U.S. 629 (1999)

Finding in favor of Davis, the Supreme Court expanded on the *Gebser* case:

- School/District must have “**actual notice**”
- School/District must have responded with “**deliberate indifference**”
- “Deliberate indifference” constitutes a response that is “**clearly unreasonable in light of the known circumstances**”

Additionally, court held that, for a school/district to be liable in court:

- Harassment must be “**severe, pervasive, and objectively offensive,**” and the indifference “**systemic,**” to the extent that the victim is deprived of educational opportunities or services

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

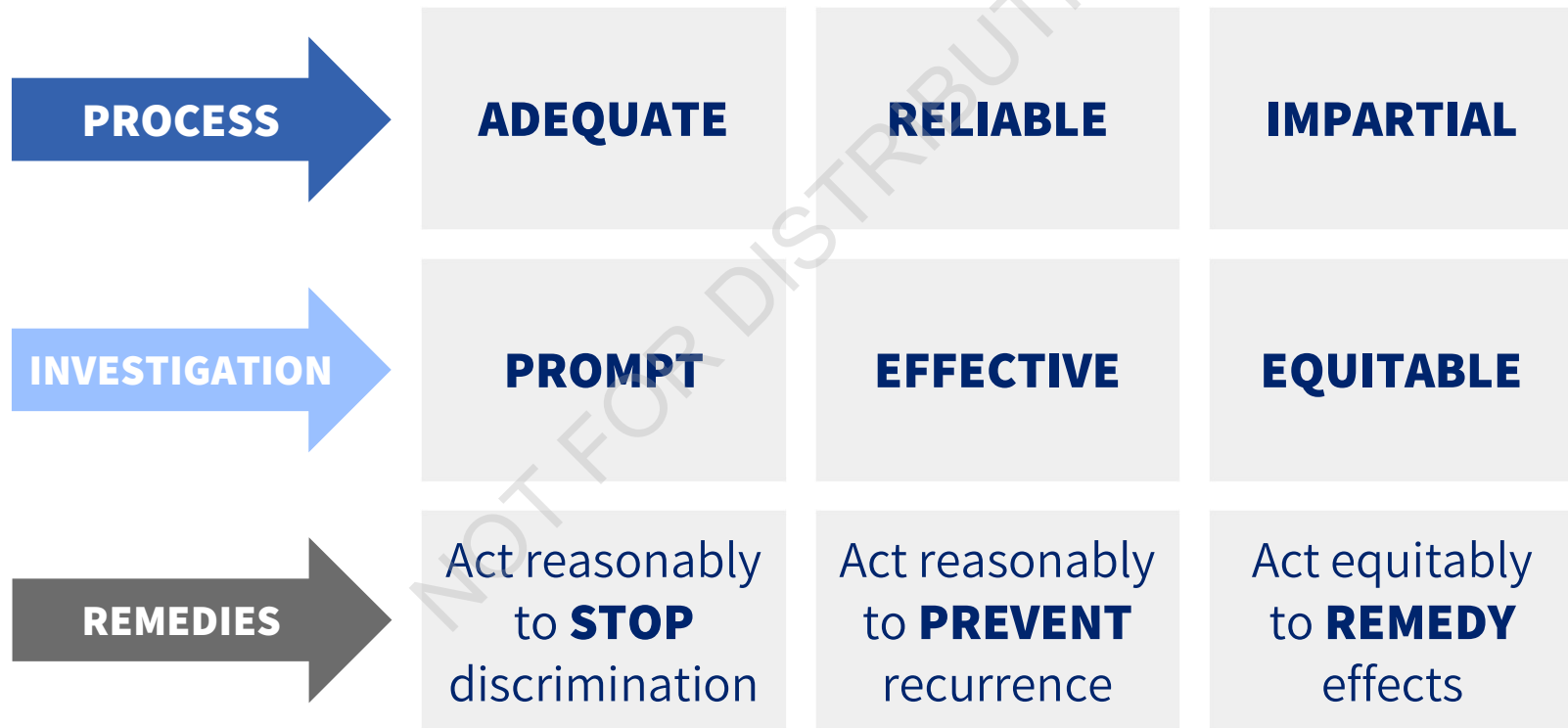
2

PREVENT recurrence, on both individual and institutional levels

3

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

The IX Commandments



Title IX Compliance: 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.



Training Requirements

- **All employees upon hiring, change in role, and annually on:**
 - School/District obligation to address sex discrimination
 - Scope of conduct that constitutes sex discrimination
 - Reporting and notification requirements
- **Training must be completed, not just made available**
- **Method:** May be in-person, online/virtual, synchronous or asynchronous, internal or external



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 Decision-Maker (DM)
- Responsibilities fall into two categories:
 - Responding to complaints of sex discrimination and sex-based harassment
 - Leading efforts to ensure sex and gender equity across the school/district



Title IX Compliance Oversight

Responsibilities (any of these roles can be shared/delegated):

- Recruit, supervise, and train Title IX team
- Point person for all reports and complaints
- Manage policy and procedures prohibiting sex discrimination and sex-based harassment
- Oversee complaint Resolution Process and program equity
- 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, not a requirement)

Title IX Compliance Oversight

- Update school/district leadership on Title IX issues
- Train school/district employees on Title IX compliance
- Maintain Title IX records
- Liaise with school/district legal counsel
- Develop and maintain accurate web and print-based Title IX publications
- Provide notification of nondiscrimination and Title IX information to school/district community, including students, parents/guardians, employees, and union/contract employees
- Respond to government inquiries
- Monitor for barriers to reporting and take steps to address them

Title IX Team

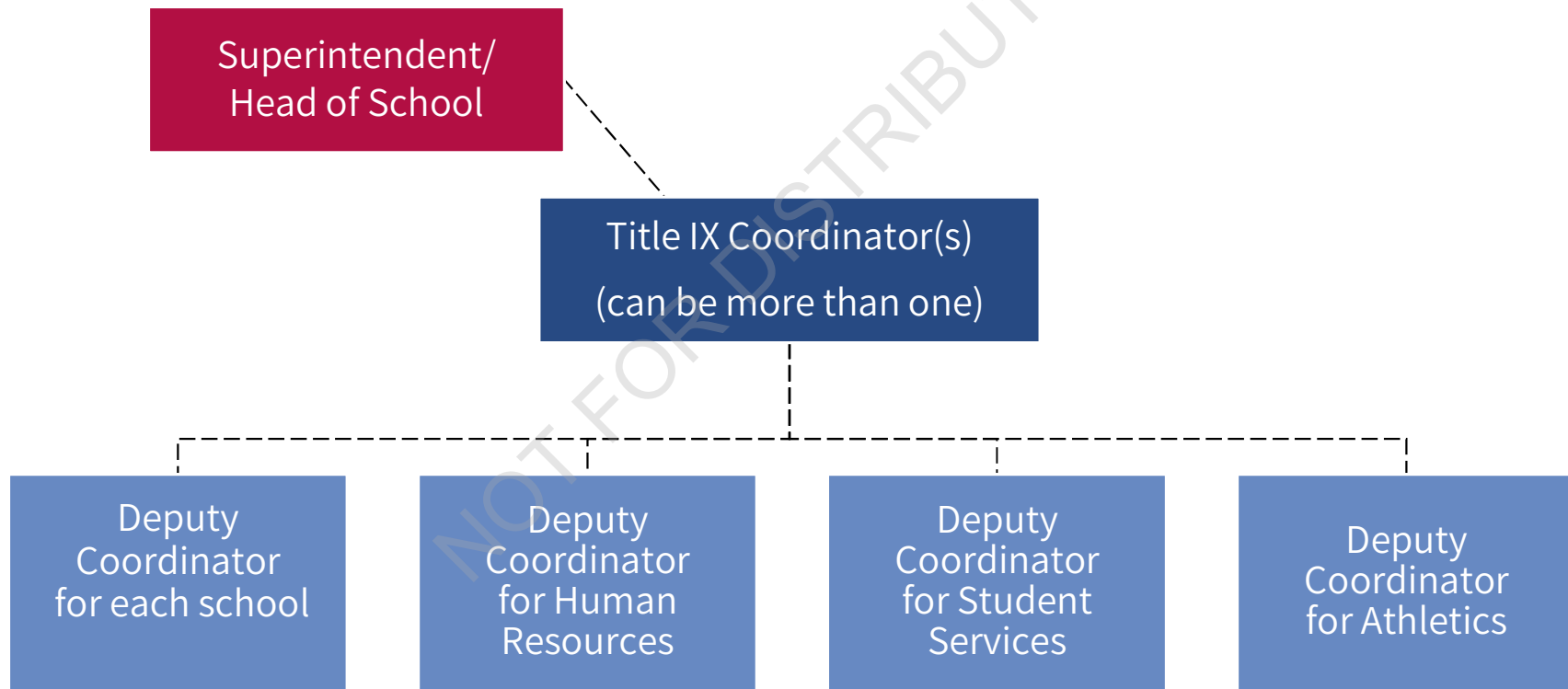
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School/District Team

- Schools/Districts **must designate a school- or district-based TIXC**
- Schools/Districts have discretion in structuring their Title IX Team, including:
 - Whether or not to have **Deputy Coordinators**
 - **Investigator-only vs. Investigator as Decision-maker**
 - **Distinction and separation of roles** throughout Title IX process, and whether to appoint district-based administrators, school-based administrators, or contractors
 - **Contract with a trained third-party** to fulfill the roles of Investigator, Decision-maker, Informal Resolution Facilitator, and Advisor

Sample Title IX Team Structure

Schools/Districts will determine a structure that works best for their unique needs



Deputy Title IX Coordinator(s)

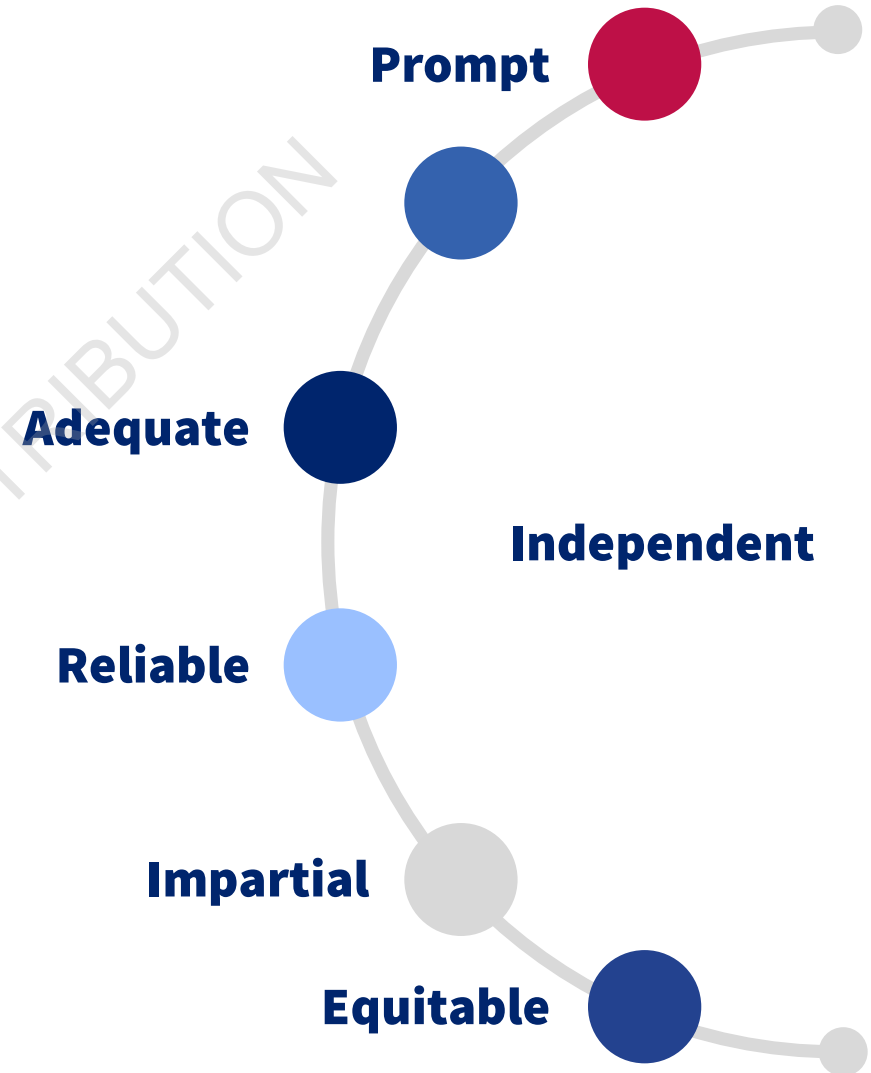
- Not required, **but may alleviate the burden** on one administrator
- Deputy TIXC responsibilities may vary based on need of the school/district
- **Responsibilities** may include:
 - Receive reports and complaints
 - Assist TIXC with trainings
 - Conduct initial evaluations
 - Coordinate Supportive Measures
 - Oversee investigations
 - Consult with TIXC on complaints



Investigator(s)

Responsibilities:

- Remain impartial and free of bias
- Gather all available and relevant information
- Interview the parties and witnesses
- Maintain accurate and thorough investigation records and notes
- Share the evidence with the parties



Decision-Maker(s)

Responsibilities:

- Remain impartial and free of bias
- Review evidence and facilitate questioning by parties (if needed)
- Conduct an independent assessment of the evidence gathered during the investigation, including assessment of credibility of the parties and witnesses
- Determine whether school/district policy was violated by the applicable standard of evidence
- Determine appropriate sanctions/discipline (if applicable)
- Draft a written determination outlining the rationale for all finding(s)

Appeal Decision-Maker(s)

Responsibilities:

- Remain impartial and free of bias
- Evaluate and deny or approve a party's request for an appeal
- Review written submissions from the parties, investigation report (if available), and evidence
- Speak with parties, Investigator(s), DM(s) as needed
- Determine whether an error was made during the resolution process
- Draft a written determination of the outcome and rationale (recommended)

Informal Resolution Facilitator(s)

Responsibilities:

- Remain impartial and free of bias
- Review all relevant and permissible materials provided by the parties and/or the TIXC
- Meet individually with all parties to ascertain motivations, goals, and manage expectations
- Facilitate Informal Resolution (IR) process
- Draft IR agreement (or) refer to the TIXC to initiate/resume Administrative Resolution Process

Advisor(s)

Responsibilities:

- Schools/districts may allow all parties to have an Advisor of their choice, including an attorney to:
 - Assist the parties in navigating the Title IX Resolution Process
 - Liaise with the TIXC on behalf of the parties (as needed)
 - Accompany the parties to meetings and interviews
- Parents/Guardians and authorized legal representatives have the right to attend all meetings and receive all communication related to a Title IX complaint involving their student

Bias and Conflicts of Interest

- Title IX administrators have no “side” other than the **integrity of the process**
- Title IX Regulations **prohibit conflict of interest or bias** with Coordinators, Investigators, DMs, and IR Facilitators for or against Complainants or Respondents generally, an individual party, or related to the substance of the Complaint
- **Training materials** must not rely on sex stereotypes and should promote impartiality



Title IX Team Training Requirements

In addition to the training requirements for all employees, **those involved in the Title IX Resolution Process must receive additional training**, this includes:

- Investigators
- Decision-makers
- Informal Resolution Facilitators
- Appeals Decision-makers
- Those with the authority to modify or terminate supportive measures



Training Requirements

- **Title IX team training requirements:**
 - School/District's Title IX Resolution procedures
 - How to serve impartially; avoiding prejudice, conflicts of interest, and bias
 - The meaning and application of “relevant” and impermissible evidence
- IR Facilitators must be trained on school/district IR policy and procedures
- TIXCs must be trained on their specific responsibilities and recordkeeping systems

Title IX Resolution Process

Due Process in K-12

Goss v. Lopez, 419 U.S. 565 (1975)

- Supreme Court held that:
 - **K-12 education is a fundamental right;** therefore, students are **entitled to due process in disciplinary matters**
- **Due process minimally includes:**
 - Oral or written notice of charges
 - Explanation of the evidence
 - Opportunity to present their side of the story
 - Neutral Decision-maker

Due Process in K-12

- Standard of Evidence should be consistent across all grievance processes
- Detailed **Notice of Allegations** (NOA)
- Presumption that the **Respondent is not responsible**
- Limited ability to take any punitive or disciplinary actions prior to completion of Title IX Resolution Process
- **Prohibit bias:** TIXC, Investigators, Decision-makers, and Informal Resolution Facilitators
- Need to appropriately train individuals who have a role in Resolution Process

Title IX Resolution Process Overview



Basic Requirements

§ 106.45 provides a Civil Rights Resolution Process for resolving K-12 complaints

- Must treat parties equitably
- Require TIXCs, Investigators, or DMs have **no conflict of interest or bias**
 - DMs may be the same person as the TIXC or Investigator
- Presume that Respondent is not responsible for sex discrimination
- Establish reasonably prompt timeframes for “major stages” of the process
 - E.g., Evaluation, Investigation, Determination, Appeal (if available)
- Advisors not required, but parents/guardians have the right to participate

Basic Requirements

- Take reasonable steps to protect the privacy of the parties and witnesses
 - Cannot restrict ability of parties to:
 - Obtain and present evidence
 - Consult with family members, confidential resources, or advisors
 - Otherwise prepare for or participate in the Resolution Process
- Require an objective evaluation of relevant and not otherwise impermissible evidence
- Respondent requirements apply only to individuals
 - Schools/Districts are not considered Respondents in policy or practice complaints

Reports, Complaints, and Notice to the School/District

When is the School/District “On Notice?”

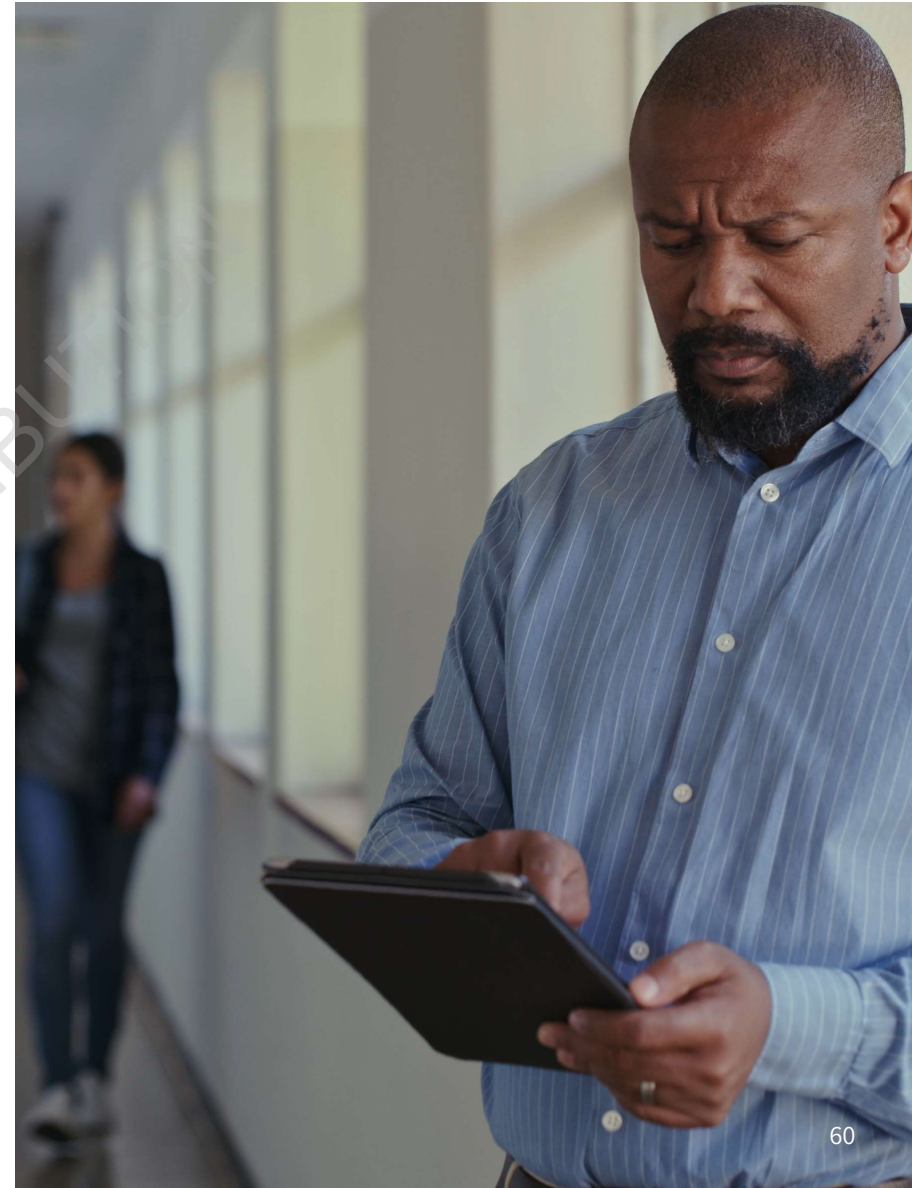


When is the School/District “On Notice?”

- The school/district is “**on notice**” of sex discrimination and sex-based harassment when a report is made to:
 - **TIXC**, or
 - **Any non-confidential employee** of the school/district is made aware of the incident or concern
- Notice includes information that K-12 employees witness, hear about, or receive a written or verbal complaint about, including from parents/guardians

Confidential Employees

- Schools/Districts may have confidential employees 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 allegations of child abuse**



Title IX Complaints

- No “Formal Complaint” is required to trigger Title IX obligations
- Complaint defined:
 - “**Oral** or **written** request to the Recipient that **objectively** can be understood as a request for the Recipient to investigate and make a determination about alleged discrimination”
- Complaints require action by the school when they are made to the TIXC, or any other non-confidential employee (almost everyone)

Title IX Complaints

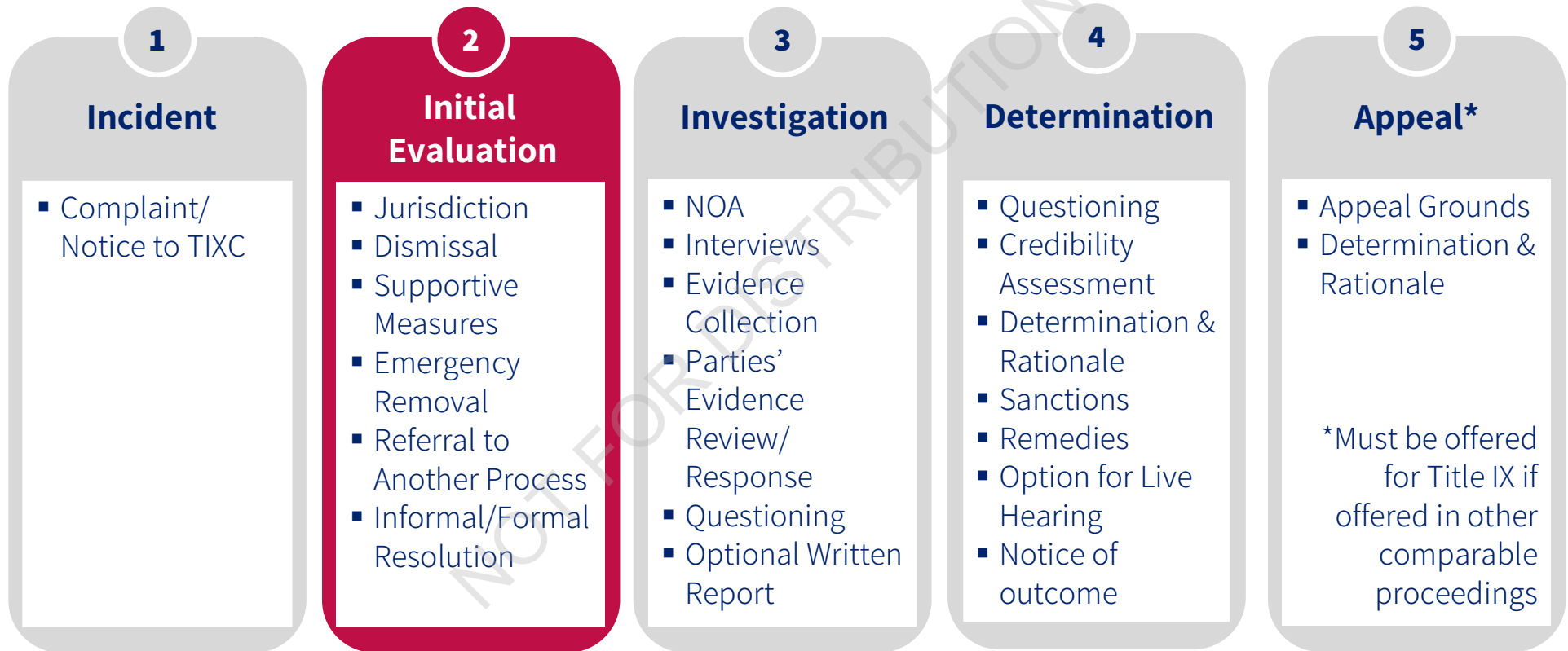
- TIXC retains ability to file a complaint when:
 - Imminent and serious threat exists; **OR**
 - The alleged conduct prevents the Recipient from ensuring equal access
- Parent, guardians, or authorized legal representative may file complaint on behalf of students
- For complaints of sex discrimination **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 TIXC is not prohibited from acting on such knowledge if they wish by signing a complaint

Additional Reporting Requirements

- **Supervisors and Managers** (per Title VII)
 - Mandated to report harassment or other misconduct of which they are aware
- **Abuse or Suspected Abuse of Minors**
 - All employees are required to report abuse or suspected abuse of minors consistent with state law
 - This generally includes immediately reporting to law enforcement and to the state's child welfare agency
- Additional **state reporting requirements** (e.g., elder abuse and felony reporting)
- Complainant employees are not required to report their own harassment

Initial Evaluation

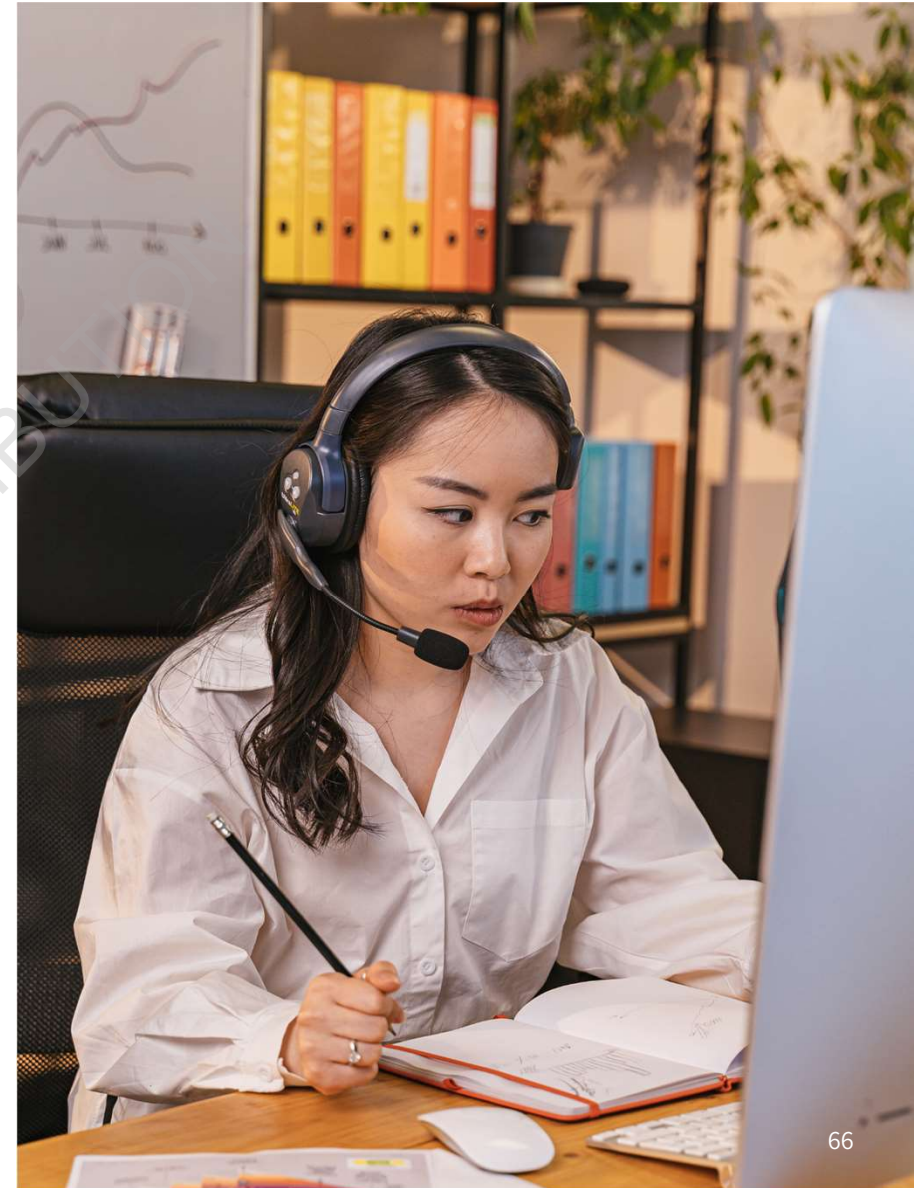
Initial Evaluation



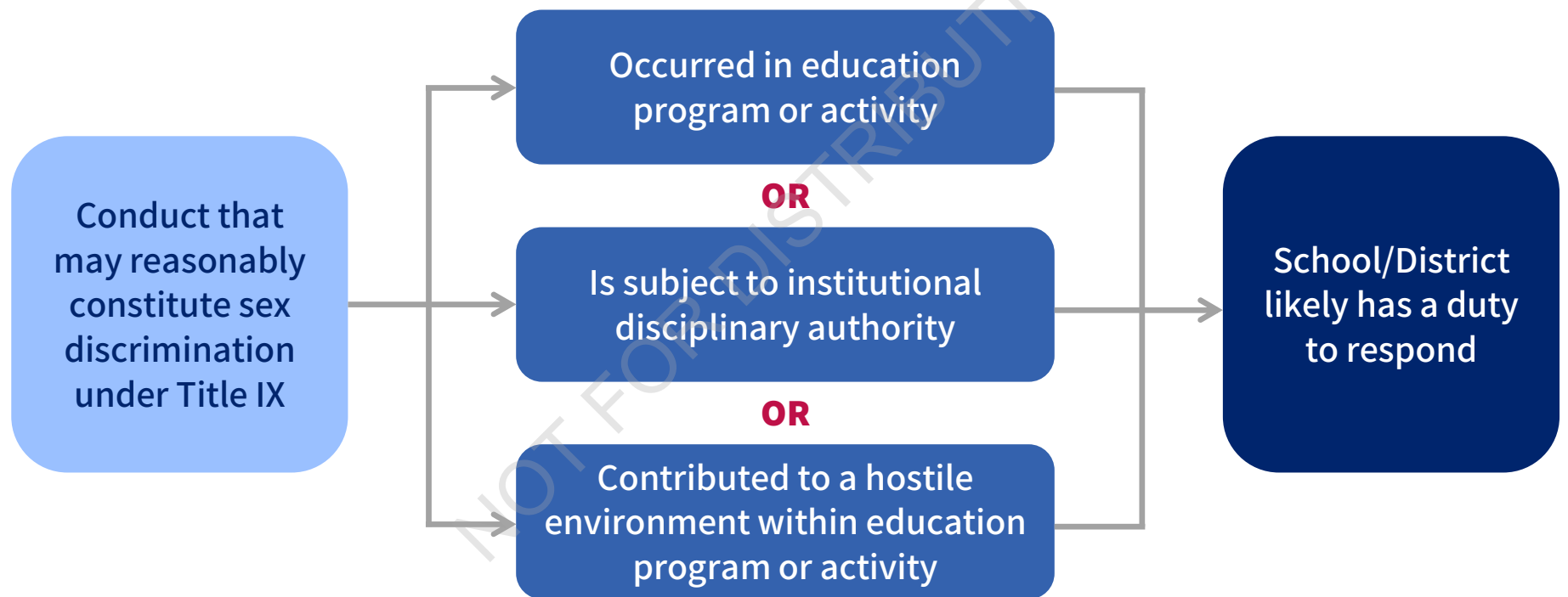
Jurisdiction

Title IX Coordinator (TIXC) is responsible for evaluating Title IX jurisdiction:

- Is the conduct of a nature that it “may reasonably constitute sex discrimination?”
- Who is the Complainant?
- Who is the Respondent?
- Is it part of a school/district education program or activity?
 - Which may be reduced to the question of whether the school takes blanket off-campus jurisdiction or not



Visualizing Jurisdiction



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



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 or employed by school/district
- Complainant withdraws all or a portion of complaint and any remaining 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

Dismissal Appeals

- 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
- Appeal DM must **not** have taken part in investigation of allegations or dismissal of complaint
- Ensure the Appeal DM has been trained
- Provide parties a reasonable and equal opportunity to make a statement
- Implement appeal procedures equally for the parties
- Notify parties of the appeal result and rationale
- ATIXA recommends adding a ground that allows appeal that dismissal was simply wrongly decided, substantively

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 (IDEA) and Section 504 of the Rehabilitation Act
 - Throughout the school/district's Title IX Resolution Process
- Includes decisions related to Emergency Removal

Supportive Measures

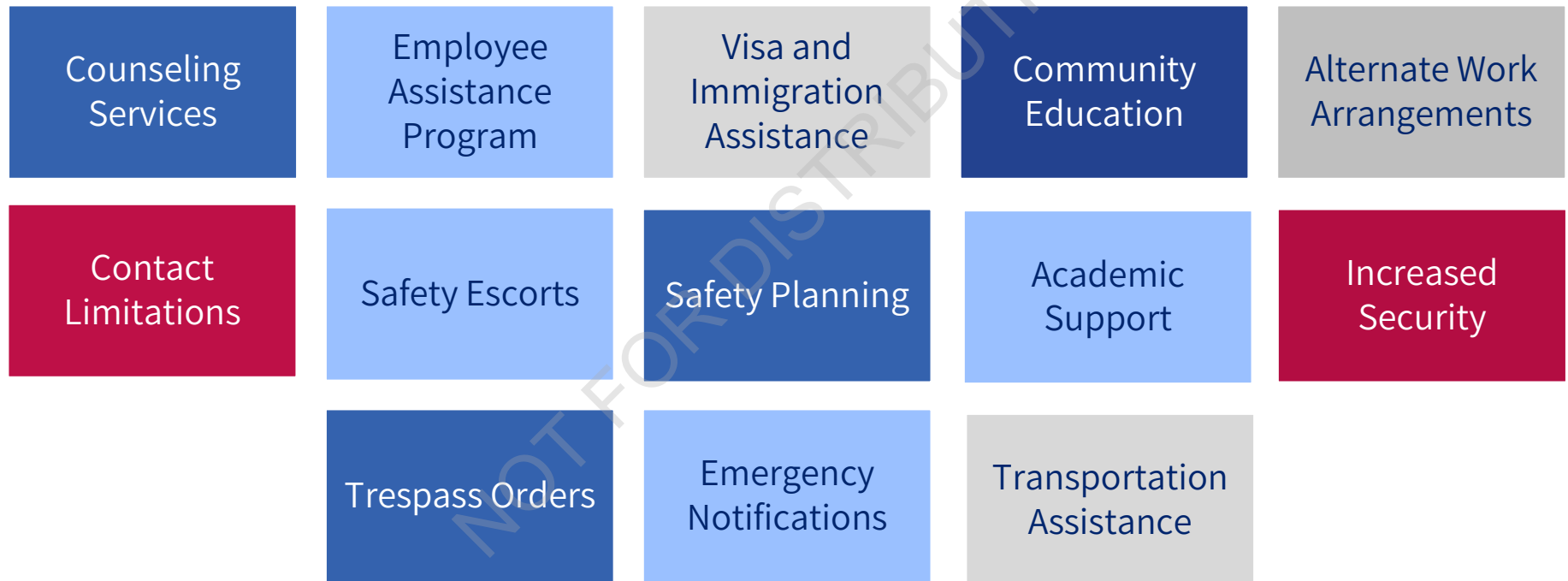
- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during the Title IX Resolution Process
- May not **unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or charge



Supportive Measures

- School/District may deem 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 change materially
 - Disclosure about Supportive Measures is need-to-know
- Measures may be continued, modified, or ended at conclusion of the Title IX Resolution Process

Supportive Measures



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, and 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 Participating/Attempting to Participate (P/ATP)

Removals

- May remove a 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**



Emergency Removal

- Emergency Removal process must maintain the rights granted by:
 - IDEA
 - Section 504
 - Americans with Disabilities Act
- Schools cannot interim suspend students if Title IX applies
- Employees can be suspended without meeting this standard



Informal Resolution (IR)

- Available without a complaint
- **TIXC must:**
 - Agree to the use of IR for each request
 - Obtain the parties' voluntary consent
 - Provide the parties Notice of Allegations and Investigation 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/resuming Resolution Process if agreement is reached (as long as terms are adhered to)



Informal Resolution

- Forms of IR not defined (e.g., facilitated dialogue, shuttle negotiation, restorative practices, etc.)
- Regs do not specify “Informal Resolution” procedures
- Resolution may include restrictions the school/district could have imposed as disciplinary sanctions or remedies
- IR Facilitator:
 - May **not** serve as Investigator or Decision-Maker
 - Must be trained in both Title IX and IR
- Expanding IR options may help decrease barriers to reporting

Investigation

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Investigation



Investigation

- 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
- TIXC provides the **Notice of Allegations** letter
 - Sent to all parties, simultaneously

Notice of 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

Investigator as Decision-Maker

- **Options:**
 - Single investigator – investigator as DM (not recommended, especially if no appeal)
 - Investigator and separate DM (handoff)
 - Collaborative between Investigator and DM
- Permissible for TIXC to serve as the Investigator and/or DM
- Conflicts of interest and bias still prohibited



§ 106.45: Investigations

§ 106.45

- Adequate, reliable, and impartial
- Gather evidence
- Permit parties to present fact witnesses, inculpatory, and exculpatory evidence
- Recipient must review all evidence gathered through the investigation and determine relevance
- Provide parties opportunity to access relevant evidence or accurate description of such evidence
- Provide parties reasonable opportunity to respond to evidence
- Investigation report not required
- Take reasonable steps to prevent and address parties' unauthorized disclosure of information and evidence obtained through process

Adequate, Reliable, and Impartial

- **Adequate**

- Has the investigation been taken to a logical, reasonable extent?
- Have key witnesses been interviewed?
- Has all available relevant evidence been obtained?
- Has the Investigator explored all reasonable theories of offense and defense?

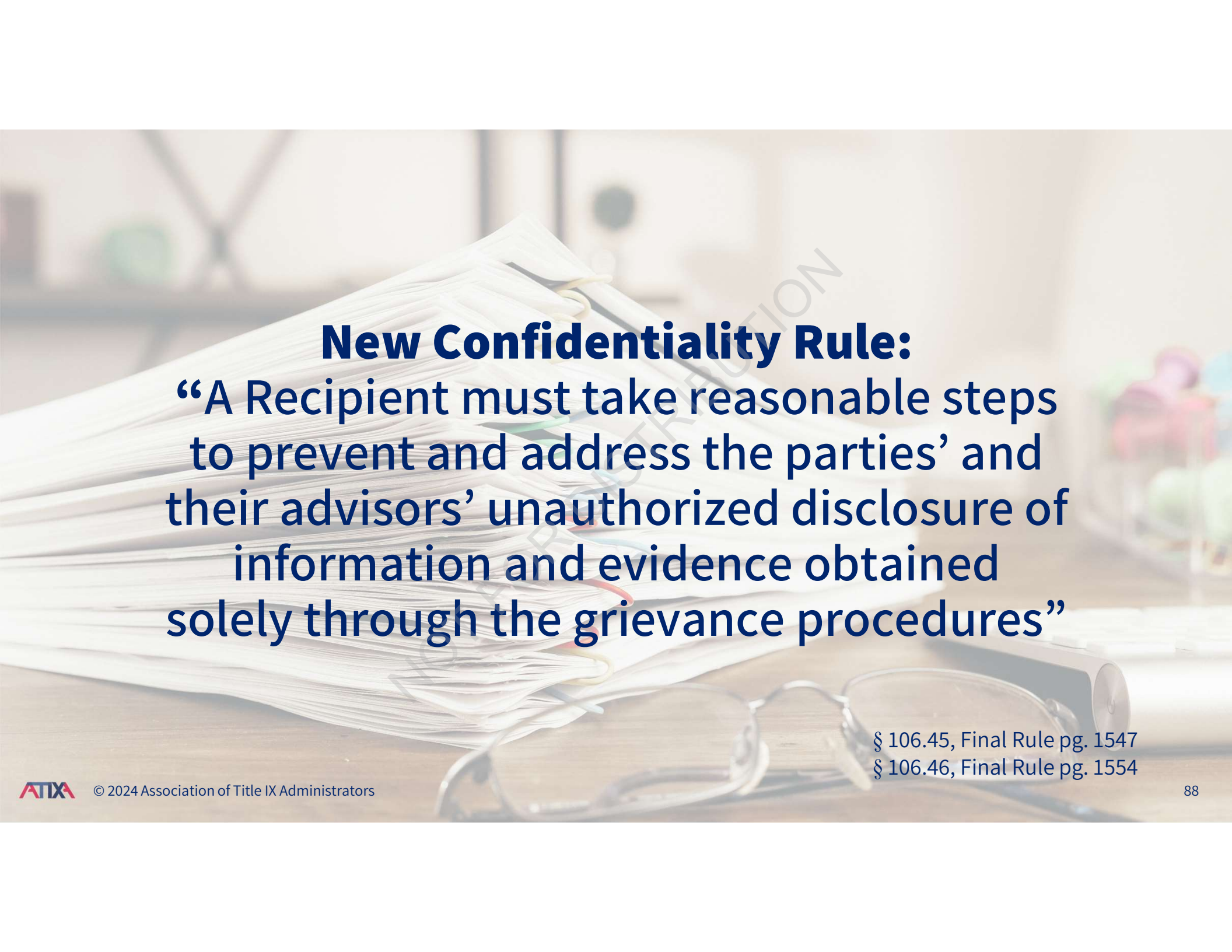
- **Reliable**

- Can the Investigator point to valid, verified, credible evidence as the basis for the determination?
- Has the Investigator explored the foundation for the evidence, brought a healthy skepticism, and not taken testimony at face value?

Adequate, Reliable, and Impartial

- **Impartial**

- Is the Investigator able to show that only relevant evidence has influenced the determination, and that biased or non-objective considerations have been excluded from their consideration?



New Confidentiality 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
§ 106.46, Final Rule pg. 1554

Types of Evidence

Relevant

Impermissible
(regardless of relevance)

Not Relevant

Understanding Evidence

- Duty to collect **relevant** and permissible evidence
 - Relevant evidence is information **related to the allegations** of sex discrimination under investigation that may aid in determining whether the alleged misconduct occurred
 - Inculpatory and exculpatory evidence
 - Some evidence may only be relevant to assessing credibility
- Relevant evidence forms the basis of the investigation report



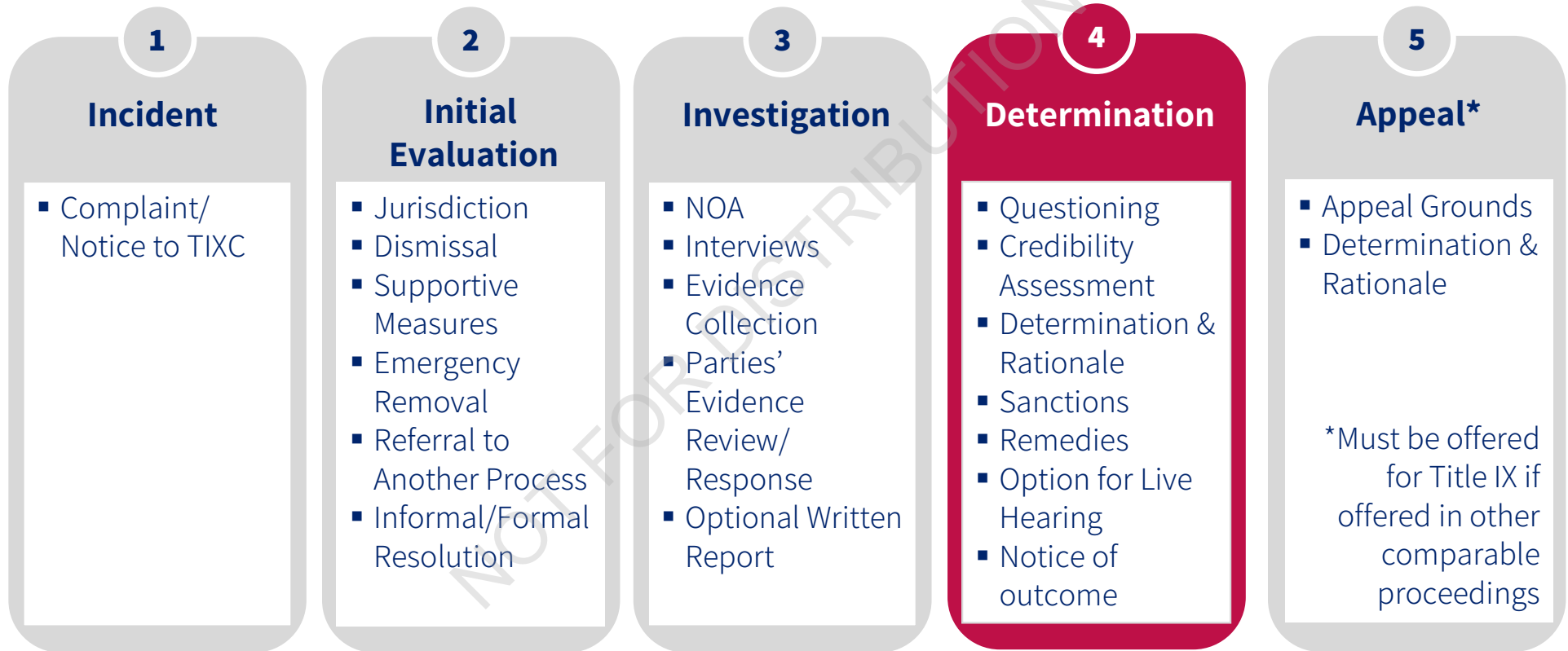
Parties' Evidence Review

- **Must provide the parties with:**
 - “An equal opportunity to access either the relevant or not otherwise impermissible evidence, **or** an accurate description of this evidence...”
 - If providing a description of the evidence, must also provide the actual evidence upon request of any party
 - “A reasonable opportunity to respond to the evidence or accurate description of the evidence...”
 - Schools/Districts should consider defining and devising a process for this
- No written investigation report required
 - ATIXA recommends maintaining this practice

Determination

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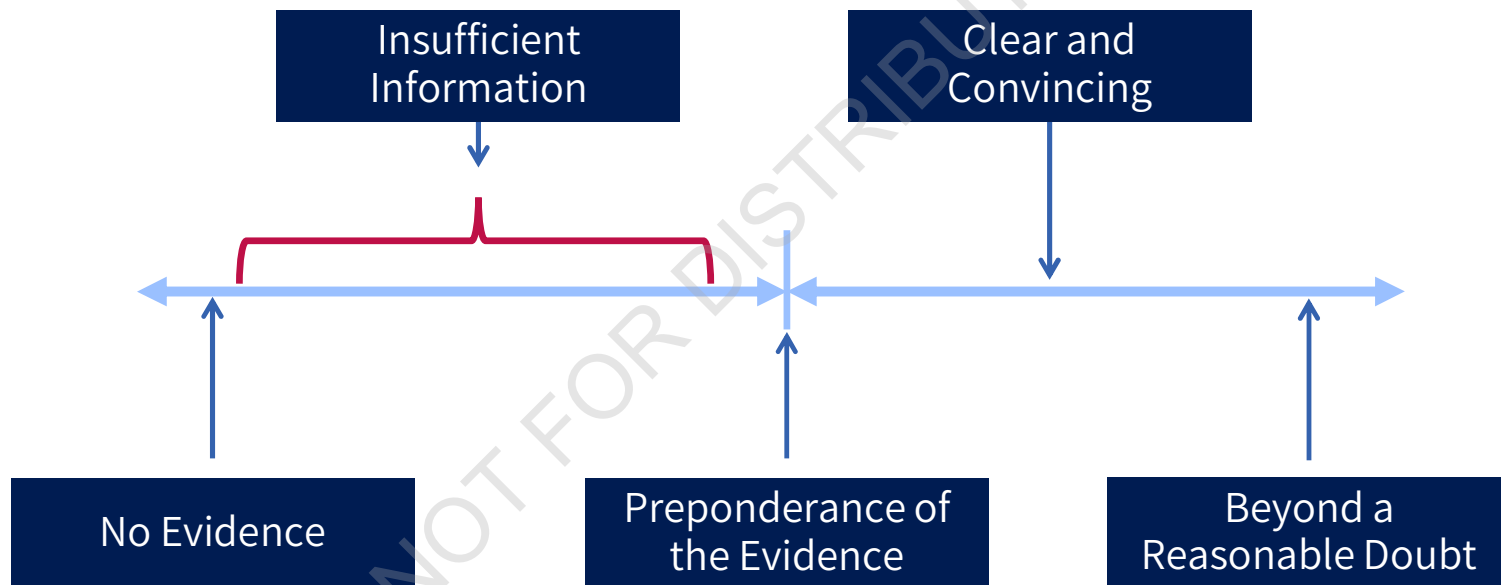
Determination



Decision-Making

- Schools/Districts must provide a process enabling DM to question parties and witnesses to assess credibility
 - DM may be the same person as the TIXC or Investigator
- Must use **preponderance of the evidence** standard
 - Unless clear and convincing is used in all “comparable proceedings”
 - “Comparable proceedings”
 - Proceedings for other discrimination complaints involving the same **category of Respondents** (students vs. employees)
 - Similar types of “person-to-person offenses” that are physical in nature but do not pertain to sex
- DM determines whether the Respondent violated school/district policy

Standard of Evidence



Decision-Making

- **Permitted but not required by Title IX:**
 - Live hearing
 - Determination Appeal
- Schools/districts must notify the parties in writing of:
 - Determination
 - Rationale
 - Appeal procedures (if applicable)
- TIXC coordinates remedies and disciplinary sanctions as appropriate



Written Determinations

- Written Determination
 - Authored by Decision-maker(s)
 - TIXC/Legal counsel reviews
 - TIXC communicates to the parties and parent/guardian simultaneously in writing

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
- Any remedies provided to Complainant
- Procedures and grounds for appeal, if available

Appeals

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Appeals



Appeals

- School/District 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 a floor, not a ceiling
 - Comparable proceedings may include those used to resolve other discrimination complaints



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 at the time of the determination
- 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

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)

Pregnancy and Related Conditions

Pregnancy and Related Conditions

- TIXC is responsible for coordinating and overseeing necessary reasonable modifications for those experiencing pregnancy and related conditions
- Schools/Districts should **publicize supports available** for pregnancy and pregnancy-related conditions, including **how to request support**
- **Includes the full spectrum of processes and events connected with pregnancy:**
 - Pregnancy, childbirth, termination of pregnancy, or lactation
 - Related medical conditions
 - Recovery therefrom

School/District Obligations

- School/District may not discriminate in its program/activity against any **student or employee** based on current, potential, or past pregnancy or related conditions
- When a pregnant student informs any employee of their pregnancy or related condition, the employee must inform the student of:
 - The TIXC's contact information
 - Information about support available through the TIXC

School/District Obligations

Schools/Districts are required to:

- Prohibit sex discrimination
- Provide, coordinate, and document **reasonable modifications**
- Allow access to separate and comparable program (but not require)
- Allow for **voluntary leaves of absence**
- Provide lactation time and space
- **Provide resolution procedures** for sex discrimination complaints
- Provide comparable treatment to temporary medical conditions

Other Considerations for K-12

Working with Parents/Guardians

Parents/Guardians and authorized legal representatives permitted to:

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



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
 - You can use information LE provides



FERPA*

- **For practitioners:**
 - Title IX requirements override any conflicting FERPA provisions
- **For legal counsel:**
 - OCR asserts that the due process protections in Title IX are **constitutional requirements**
 - Not only does Title IX override FERPA where this is a conflict, constitutionally guaranteed due process rights in the Title IX Resolution Process add an additional layer of override

*Family Educational Rights and Privacy Act



Recordkeeping and Posting

Must maintain records for seven (7) years

- For each complaint of sex discrimination, any IR or Title IX Resolution Process documentation and the outcome
- For each notification of sex discrimination, any documentation re: response
- All materials used to provide training post August 1, 2024
 - Make available upon request (no requirement to post publicly)





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Questions?

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