

Association of
Title IX Administrators

Title IX Hearing Advisors

Training and Certification Course

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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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Introduction



The primary focus of this training is to cultivate the skills needed to serve as an effective Advisor in the Title IX Grievance Process.



Participants will learn about the scope and function of Advisors within Title IX proceedings.



Our goal is to provide Title IX Coordinators and Advisors with a deep understanding of the Advisor's role, responsibilities, and expectations during a Title IX process.

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Title IX Overview

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Update on the 2024 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety
  - The 2024 Title IX Regulations are now "off the books" and **not** in effect for **any** state, institution, or school effective immediately
- Implications:
  - All federal funding recipients are now subject to the 2020 Title IX Regulations
    - Revert to **2020-compliant** policies for sexual harassment
    - Ensure sex discrimination is covered under policy
  - Consult with legal counsel on strategies for handling completed and ongoing complaints initiated under the 2024 Regulations
  - Ensure compliance with all 1975 and 2020 regulatory requirements

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Executive Order re: Sex & Gender

- The Executive Order (EO) defines sex as binary – male or female
  - Detaches the notion of gender or gender identity from the term "sex"
- Directs all federal agencies to enforce civil rights laws in alignment with the EO
  - The Dept of Education will **not** interpret Title IX to protect gender identity
  - The Dept of Justice will issue guidance that *Bostock* does **not** apply to Title IX
  - All agencies must ensure that intimate spaces are designated by sex, not identity
  - All Biden administration EOs addressing gender identity are revoked
- Prioritize investigations/litigation to enforce rights and freedoms to express binary nature of sex
- Prohibits grant funding from promoting gender ideology
- Foreshadows attempts to codify EO's definitions into law
- Notably, the EO does **not** address sexual orientation

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Rescinded Prior Guidance

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

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

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Title IX

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

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



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Title IX and Equity

- Title IX is a sex and gender equity law
- 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-based harassment and sex discrimination
- Ensuring that all parties have the same opportunity to have an Advisor in the Title IX Formal Grievance Process helps to ensure an equitable process

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Title IX: Scope

Sex Discrimination

- Disparate Treatment
- Disparate Impact
- Exclusion from Participation

Sexual Harassment

- Quid Pro Quo
- Hostile Environment Harassment
- Dating Violence
- Domestic Violence
- Stalking
- Sexual Assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape

Retaliation

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Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide institutions in their equity and compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, for both the Complainant and the community

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Roles in the Title IX Process

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Parties and Advisors

- **Complainant:** a person who is alleged to have been subjected to conduct that could constitute sex discrimination, sexual harassment, or retaliation
- **Respondent:** a person who is alleged to have engaged in conduct that could constitute sex discrimination, sexual harassment, or retaliation
- **Advisor:** Any person chosen by a party, or appointed by the school, who may accompany the party to all meetings related to the Grievance Process and advise the party on that process



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Title IX Team Members

- **Title IX Coordinator (TIXC):** responsible for overall institutional Title IX compliance
  - Typically manages the Grievance Process, supportive measures, Informal Resolution, emergency removals, and dismissals
  - May serve as an Investigator
- **Deputy Title IX Coordinator(s):** assist and support the TIXC or function as the TIXC if they are conflicted out or otherwise unavailable
- **Investigator(s):** gather evidence, interview parties and witnesses, organize evidence, and write an investigation report
- **Decision-maker(s) (DM):** individual or panel who renders a finding/determination, determines any sanctions, and recommends any remedies

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Title IX Team Members

- **Informal Resolution Facilitator:** individual who facilitates Informal Resolution (IR) process
  - ATIXA recommends that the Facilitator not be the Investigator or Decision-maker
- **Hearing Facilitator:** individual who manages hearing logistics
  - Often the TIXC
- **Appeal Decision-maker(s):** individual or panel who decides an appeal of a final determination or a dismissal



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Neutrality, Conflicts of Interest, and Bias

- Title IX regulations require that all individuals serve neutrally **without** any bias or conflicts of interest
  - Impartiality is critical to the integrity of the process
  - Title IX team members have no "side"
- Advisor must be prepared to help their advisee raise and navigate issues of bias or conflicts of interest



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What's the Difference?

Conflict of Interest

- Refers to situations in which:
  - An **actual** (or perceived) clash,
  - Between the DM's role and
    - A current or previous relationship/situation with one of the parties
  - Prevents neutrality or objectivity
  - Ex: A Residence Director deciding a complaint filed by a current Resident Assistant on their building staff

Bias

- Refers to prejudice for or against **a person or group,** or an unwillingness/inability to be influenced by factual evidence
- A preference or tendency to like or dislike
- Implicit or explicit
- Can be intentional, but generally unintentional or at least unconscious
- Ex: A DM who believes Respondents cannot be trusted to tell the truth

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Conflicts of Interest and Bias

- Title IX team members must **not have a conflict of interest or bias** for or against the following:
  - Complainants, generally
  - Respondents, generally
  - The individual Parties involved with a complaint
  - Subject matter or details of the complaint itself
- Advisors should report potential conflicts of interest or bias to the TIXC

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Role of the Advisor

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Advisors

- Advisors are not required for all Title IX Grievance Processes, though it is a best practice
  - When Advisors are permitted, the Title IX regulations contemplate two types of Advisors:

Party-Selected Advisor

- Title IX regulations (and VAWA) require that a party be allowed to select an "Advisor of choice" for **sexual harassment** allegations
- May be present for every meeting, interview, and hearing
- Institution may not limit choice

Institution-Appointed Advisor

- Only required for conducting Advisor-led questioning at the hearing when a party does not have an Advisor selected
- If appointed earlier than the hearing, may accompany the party throughout Grievance Process and be present for every meeting, interview, and hearing

Institution may regulate Advisor participation, if the restrictions apply equally to **all** parties

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Role of the Advisor

Advisor support may take various forms:

- Accompanying advisee throughout the Grievance Process, including all meetings
- Analyzing strategic issues, such as whether to:
  - Make a complaint
  - Participate in Informal Resolution (IR)
  - File an appeal
- Accessing supportive measures, community resources, and advocacy services
- Participating in the investigation, including review and comment on the report
- Preparing for the hearing, if applicable
  - Conducting any questioning/cross-examination at the hearing, if applicable

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Advisor Expectations

Advisors should:

- Understand their role in the context of their institution's policy and process
- Be reasonably available to their advisee
- Learn the applicable policies and procedures
- Advise with integrity and follow any applicable professional ethics
- Adhere to rules of confidentiality and privacy
- Meet the Title IX team and establish a good rapport
- Be timely, professional, and organized



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Advisor Expectations

Advisors should not:

- Make decisions for their advisee
- Act on behalf of their advisee without permission from the advisee
- Engage in disruptive or harassing behavior toward any party, witness, or Title IX team member
- Attempt to negotiate a resolution with the Decision-maker(s)



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Confidentiality and Privacy Concerns

- Although institutions must generally maintain privacy about the complaint and any individuals involved in Title IX processes, procedural requirements necessitate that each party know:
  - The identity of all other parties
  - The identity of all witnesses
- Information may be shared as permitted by FERPA, required by state law, or to execute the Title IX regulations, including investigations, hearings, or other proceedings
- Advisors may be asked to sign non-disclosure agreements regarding complaint information learned while serving as an Advisor
- Advisors should be familiar with mandated reporting policies and how to navigate reporting responsibilities when serving as an Advisor

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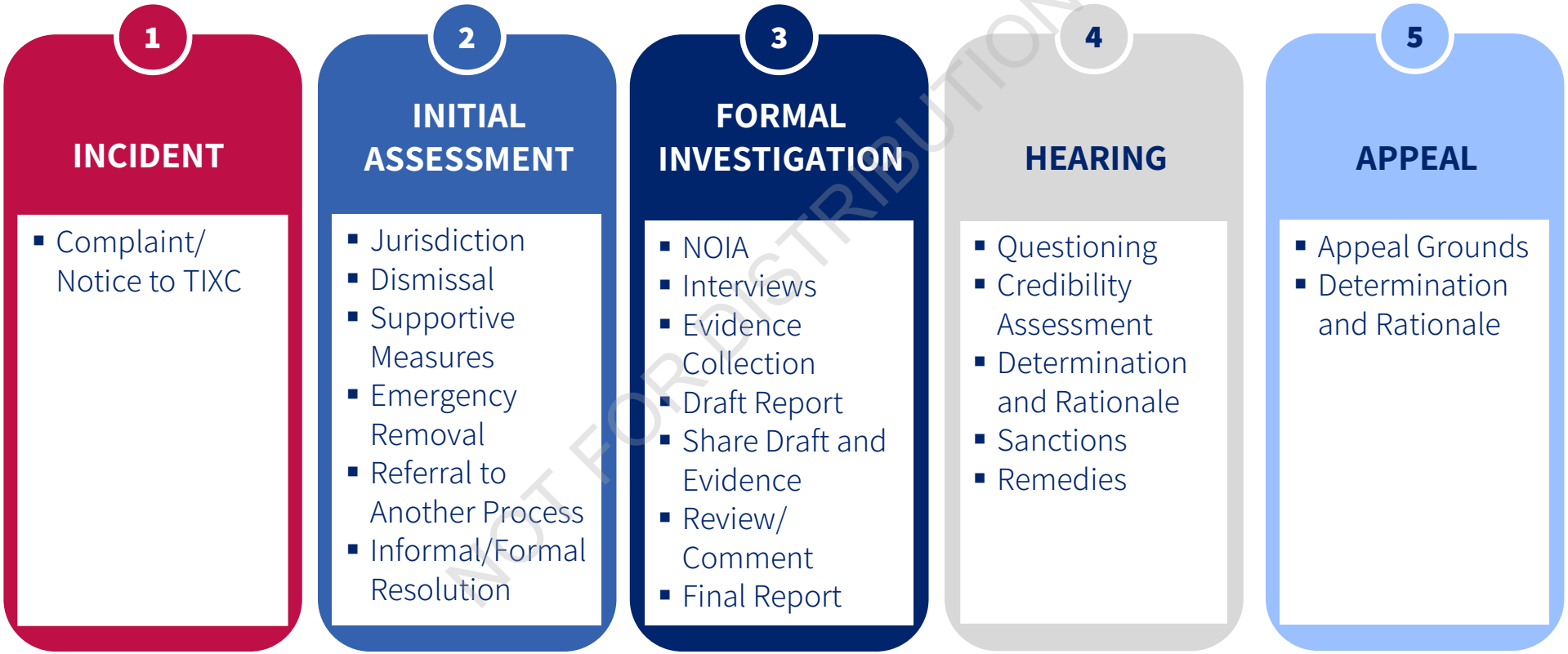
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Grievance Process: Overview and Pre-Investigation

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Title IX Grievance Process Overview



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Title IX Grievance Process Overview

Prompt Resolution

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



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Title IX Grievance Process Overview

Equitable Resolution

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



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Advisee Rights

- The Title IX regulations confer many substantive rights on parties
- Advisors need to be:
  - Familiar with these rights to help ensure that their advisee's rights are upheld
  - Prepared to advocate for their advisee to receive them



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Informational Meetings

- A party should be able to seek policy and process information without disclosing details of their own experience to a Title IX team member
- Advisors may accompany advisees to any informational meetings
- Confidential employees often recommend Complainants with whom they are working participate in an informational meeting



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When is the Institution "On Notice?"

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

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



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Report vs. Formal Complaint

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

- **Report**
  - Notifies the TIXC of an incident and
  - Obligates the TIXC to offer supportive measures and explain the process
- **Formal Complaint**
  - Written request to initiate an investigation
  - Physical document or electronic submission from Complainant
    - OR signed by TIXC
  - Alleging sexual harassment
  - Complainant must be **participating or attempting to participate** (P/ATP)

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TIXC Outreach

- After receiving a report, TIXC (or designee), must reach out to the Complainant
- **Outreach** includes:
  - Introduction to Title IX and staff
  - Reason for the outreach
  - Offer to meet/speak over the phone; include right to Advisor
  - Review of available resources and resolution options, including how to make a formal complaint
  - Discussion of supportive measures and resources
  - Explanation of law enforcement reporting options
  - Written follow up about resources and process information

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Introduction to Dax and Casey

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Casey Discussion

- You are a faculty member in the Entrepreneurship program and the faculty sponsor for a student organization in which Casey is a member
- Casey contacts you after receiving an outreach letter from the Title IX office and asks whether you think they should meet with the Title IX Coordinator, and if so, if you will accompany them to the meeting
- What should you consider before responding to Casey's questions?

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Advisors and Intake Meetings

- Advisors may accompany advisees to any intake meetings, interviews, or other meetings related to the Grievance Process
  - Institution can conduct intake without an Advisor present if the party agrees
- If Advisor is present:
  - Advisor may be asked to sign a non-disclosure agreement (NDA)
  - Party may be asked to sign a waiver to allow their Advisor access to the Title IX complaint records and to be able to communicate with the Title IX team (e.g., FERPA Release)

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Intake Meeting

- TIXC or designee explains the process and reviews the party's options for support and institutional response
  - Should provide written materials to reference and for parties to take with them
  - Parties should also receive a follow-up email containing these materials
    - Should include information on access to medical care and evidence preservation
- Title IX staff should explore facts, but not interview
  - Needed for initial assessment and Clery timely warning
- During the initial assessment, the parties may wish to advocate for or against supportive measures, dismissal, or emergency removal/administrative leave
  - Advisors can help parties articulate their needs for supports and frame their arguments

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Supportive Measures

- Individualized measures designed to:
  - Restore or preserve access
  - Protect safety of parties or educational environment
  - Provide support during Resolution Process
- May **not unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or charge
- Institution may deem which supportive measures are **reasonably available**



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Example Supportive Measures

- Counseling/ Health Services
- Employee Assistance Program
- Visa and Immigration Assistance
- Community Education
- Alternate Housing
- Alternate Work Arrangements
- Safety Planning
- Safety Escorts
- Transportation Assistance
- Contact Limitations
- Academic Support
- Trespass Orders
- Emergency Notifications
- Increased Security

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Casey Discussion

- Casey has decided to sign a formal complaint against Dax
- Based on what you know about Casey, what are some supportive measures that they may want to request?

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Emergency Removals

- A student Respondent may be removed from the education program or activity after an individualized safety and risk analysis
  - Student must comply with assessment or risk removal for failure to comply
  - An immediate threat exists to the physical health or safety of any student or other individual must exist
  - Threat must arise from sexual harassment allegations
- Provide the Respondent an opportunity to challenge the decision **immediately**



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Emergency Removal Challenge

Advising a Complainant

- Complainant **may** have an opportunity to provide a statement or attend the show cause meeting
  - May be in support of or against removal
    - Be cautious of potential Respondent influence on Complainant
      - Example: dating violence allegations where TIXC initiated the complaint
- Advisors should assist their party as needed
  - Submit a timely statement and/or attend the meeting
  - Effective statements are fact-based and speak to the "immediate threat exists to the physical health or safety" standard
    - May benefit from supporting documentation

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Emergency Removal Challenge

Advising a Respondent

- Respondent may submit a request to challenge the removal, meet with challenge decision-maker, or both
  - Ensure Respondent knows the deadline to challenge the removal
- Review the individualized risk and safety analysis documentation
- Determine whether institution offers partial removal vs. full removal and consider whether to advocate for partial removal rather than full removal or some other modification of removal terms
- Advisors should help their party understand the emergency removal standard and articulate either 1) why the standard has not been met, or 2) how the circumstances have changed
  - Effective statements are fact-based and speak to the "immediate threat exists to the physical health or safety" standard
    - Standard must be met and **arise from** the alleged sexual harassment

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Dax and Casey Discussion

- The institution completed a violence risk assessment and determined that Dax would be removed from the education program on an emergency basis because they posed an immediate threat to Casey
- Dax decides to challenge the emergency removal. As their Advisor, what would you recommend they include in their challenge documentation?
- Casey is in support of the emergency removal. If you were Casey's Advisor, what would you recommend Casey include in their statement if invited to provide one for consideration?

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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
- Opportunity to challenge a leave decision is determined by institutional policy



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Dismissal

Dismissal: an administrative decision to refer a complaint to another process or to determine that the complaint does not fall under any institutional policy and refer the Complainant to support resources

Upon dismissal of a complaint, institution must:

- Make appropriate notifications
- Offer supportive measures, if appropriate
- Permit an appeal of the dismissal decision, as outlined by policy

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Mandatory Dismissal

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

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

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Discretionary Dismissal

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

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

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Dismissal Appeals

- Ensure advisee knows appeal timeline and process
- Review dismissal rationale and dismissal grounds
- Organize facts and arguments around the identified dismissal grounds and available appeal grounds
  - Provide additional relevant information to counter or reinforce the grounds for dismissal
  - Anticipate the other party's arguments, if possible

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Informal Resolution

- At discretion of TIXC and only with Parties' voluntary consent
  - Formal complaint required
  - Available any time prior to determination
  - Institution determines available methods/structures
- Must provide Notice of Investigation and Allegations and IR Process
- Parties may withdraw from IR at any time prior to agreement
- Parties precluded from initiating or resuming investigation and Grievance Process if agreement is reached
- No appeal if agreement is reached

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Informal Resolution

Advising a Complainant

- Discuss Complainant's response to the following:
  - What is their goal in pursuing the Title IX process?
  - What are they hoping for as an outcome?
    - How important is it that there be a finding of responsibility on record?
    - Is reaching a written agreement with the Respondent(s) important?
  - Are they open to communicating directly with the Respondent(s)?
  - Are they willing to be in the same space with the Respondent(s) (virtually or in person)?
  - What concerns do they have about resolving informally?
- Review available IR options
- Weigh the benefits and drawbacks

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Informal Resolution

Advising a Respondent

- Discuss Respondent's response to the following:
  - Are they accepting responsibility for any or all of the alleged behavior?
  - What are they hoping for as an outcome of the Title IX process?
    - How important is it that there be a finding of non-responsibility on record?
  - Are they open to communicating directly with the Complainant(s)?
  - Are they willing to be in the same space with the Complainant(s) (virtually or in person)?
  - What concerns do they have about resolving informally?
  - Are there sanctions they would offer to agree to in order to resolve the complaint?
- Discuss use of information if future legal action is possible
- Review available IR options
- Weigh the benefits and drawbacks

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Dax Discussion

- Dax tells you that he knows this will all be fine if he can just talk to Casey in person
- Would you recommend that Dax request to pursue Informal Resolution? Why or why not?

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Grievance Process: Investigation

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Common Steps in TIX Investigations

- Institution receives notice/complaint
- TIXC conducts assessment and jurisdiction determination
- TIXC sends parties Notice of Investigation and Allegations (NOIA)
- Complaint assigned to Investigator(s)
- Thorough, reliable, impartial investigation
- Investigator(s) produce(s) Draft Investigation Report and Directly Related Evidence (DRE) File
- TIXC Reviews Draft Report
- Parties (and Advisors) review Draft Report and DRE File and have an opportunity to respond
- Final Investigation Report provided to Parties and DM(s)

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Notice of Investigation and Allegations

- Must be provided to the Parties simultaneously and in writing prior to interviewing any party
- **NOIA must include:**
  - Notice of the allegations and known details, such as identities of the Parties, date, and location of the alleged conduct
  - A description of the alleged conduct and relevant policy provisions
  - Information about grievance procedures
  - Any Informal Resolution options
  - Parties' rights, including right to an Advisor of their choice
  - Presumption that Respondent is not responsible

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Notice of Investigation and Allegations

- **NOIA must include:**
  - A statement that retaliation is not permitted
  - Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
  - The NOIA must be updated if additional allegations arise during the course of the investigation
  - Current policy and procedures (or link to them)
- Most institution-appointed Advisors are assigned following the NOIA

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Understanding Evidence

- The institution has the duty to collect **relevant** evidence
  - Relevant evidence is information **related to the allegations** of sexual harassment 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



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Privileged and Medical Information

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

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



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Privileged and Medical Information

Advising a Party

- Discuss the following before a party determines whether to provide written permission to include privileged and/or medical information in an investigation
  - All individuals who will have access to the information
  - Potential impacts of the information being shared more broadly
  - Intended purpose of including the information
    - Does it speak to whether the alleged conduct occurred?
    - Does it speak to credibility?
  - Whether a statement from the provider that summarizes the pertinent information would be sufficient

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Impermissible Evidence

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

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Advisors in Investigations

- Advisor may support advisee during interviews, but should avoid answering questions on advisee's behalf or coaching (unless permitted by law or policy)
  - Breaks for consultation or rest are permissible
- Working with Investigators
  - If there is a pre-interview opportunity, build a rapport with the Investigator(s) to support an advisee prior to the interview
  - Confirm whether institutional policy requires Advisors to take breaks or sidebars with an advisee to speak with them during an interview, or if Advisors may speak directly to them
  - Clarify under what circumstances an Advisor can address Investigator(s)
- Be aware of any decorum expectations

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Parties' Review and Response

Parties (and their Advisors) must be given:

- Ten days to respond to draft investigation report and DRE File
- Electronic or hardcopy access to materials

During the review and comment period, the advisee and Advisor may:

- Suggest new witnesses or additional questions to be asked of Parties or witnesses
- Comment on the evidence or offer new evidence
- Challenge Investigator's relevance determinations
- Ask to correct any mis-transcription or errors to ensure accuracy
- Address any bias concerns

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Grievance Process: Decision-Making

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Decision-Making

- Live hearing that enables DM(s) to question Parties and witnesses to assess credibility required
- **Finding:** DM(s)determine(s) what occurred based on the standard of evidence
- **Final Determination:** DM(s) determine(s) whether what occurred is a policy violation applying the standard of evidence
- DM authors a written determination letter for all Parties
  - Whether each policy provision was violated
  - Sanctions, if any
  - Appeal procedures

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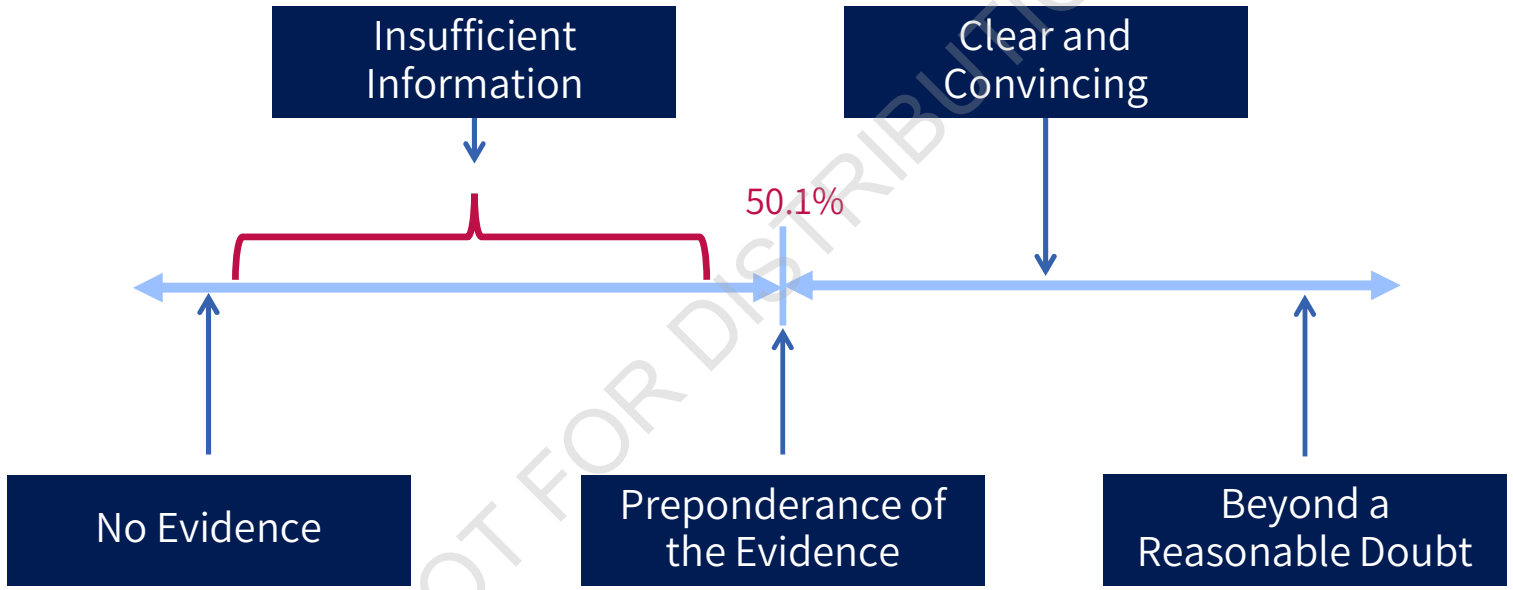
Live Hearings

- DM always has the option to ask questions directly of the Parties and witnesses
- Advisors ask questions directly of another party or witness on behalf of their advisee, subject to rulings by the DM on relevance and permissibility
- Hearings via technology (e.g., Zoom or Teams) are permitted
  - DM and parties **must** be able to simultaneously see and hear the party or witness while they are speaking
- Institution must create recording or transcript of hearing

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Standard of Evidence



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The Advisor's Role at the Live Hearing

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Pre-Hearing DM Interactions

- Chair or Decision-maker may have **pre-hearing communication** with each party and Advisor
  - In writing or in person

Pre-hearing communication can provide an opportunity to:

- Ask questions about the hearing and procedures
- Clarify expectations regarding logistics, decorum, Advisor role, and technology
- Discuss whether a party intends to ask questions of any or all witnesses
- Convey whether a party intends not to testify at the hearing
- Submit questions in advance, but this is **not** required
- Express any concerns about conflicts of interest or bias

Advisors should discuss these topics with their advisee prior to any pre-hearing meeting

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Opening and Closing Statements

- Some institutions will permit the parties to make opening and/or closing statements at a live hearing
  - **Opening Statements** introduce and summarize the party's version of events
  - **Closing Statements** summarize and reiterate the points a party wants to emphasize for DM consideration
- Such statements should be fact-based and avoid impact or mitigation information
- Advisors can assist their parties in preparing their statements and providing feedback



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Advisor-Led Questioning

- Advisors **must** ask any relevant questions their advisee wants asked
  - Institutional procedures may state whether Advisors may ask questions of their own advisee
- No obligation to conduct cross-examination if the advisee determines that it is not necessary or could be counter-productive
  - If an advisee does not direct their Advisor to conduct cross-examination, the Advisor is not to conduct it
    - An Advisor is there on the advisee's behalf and has no independent agency as an Advisor
- DM must:
  - Permit relevant questions and follow-up questions, including those challenging credibility
  - Determine whether questions are relevant and direct the party or witness to answer
  - Explain any decision to exclude a question as not relevant
- DM's relevance determination is final

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Questioning & Cross-Examination Tips

- Platinum Rule
- Ask direct questions, but don't intimidate
- Don't try to trick or confuse
- Remain seated while questioning
- Respect the process rules and boundaries
- Pause after asking each question to allow DM to determine its relevance
- Avoid multi-part or confusing questions

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Additional Tips

- DM will likely ask questions of Parties and witnesses before Advisors ask questions
  - Advisor's question may be disallowed if already asked or if abusive/uncivil
  - DM may permit Advisors to reword questions
- Keep track of what has been asked
  - Be prepared to explain why a question is relevant, but engage in discussion **only** if invited to do so by the DM or Chair
  - Explain why the question may produce a different answer than was already provided
- Note relevant page and line numbers when drafting questions to aid in quickly accessing the information during the hearing

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Dax and Casey Discussion

- If you were Dax's Advisor, what are some of the questions you would want to ask Casey?
- If you were Casey's Advisor, what are some of the questions you would want to ask Dax?
- Be prepared to explain why your questions are relevant

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Answering Questions During the Hearing

- Advisee may pause to discuss a question or answer with their Advisor
  - Advisor can also request to pause or confer before the advisee answers
- Advisee can choose to not respond to one or more questions



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Supporting an Advisee During Questioning

An Advisor can support their advisee in the following ways:

- Be attentive during questioning of other Parties and witnesses
- Ask for a break if an advisee is uncomfortable or emotional
- Ask the DM to rule on questions from the other Advisor if they seem to be asked in an abusive way
- Ask for questions to be repeated or clarified for an advisee
- Repeat questions for the advisee if necessary
- Allow space for advisees to pause, frame their response, and compose themselves before answering questions

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Impact and Mitigation Statements

- Institutional policy may permit parties to submit impact and/or mitigation statements
  - Opportunity to present information not be included in an investigation report or relevant to the alleged policy violation(s)
  - Only considered by the DM during the sanctioning phase if a policy violation is determined
- Advisors can help their advisee draft an effective impact or mitigation statement
  - Impact of the behavior, allegations, or Grievance Process
  - Mitigation information offered by the Respondent
  - Potential unintended or unknown impact a particular sanction may have (e.g., loss of an internship or job offer if suspended)
  - Complainant requests for sanctioning leniency or severity, including identification of aggravating factors

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Decision-Making Reminders

Recipients must:

- Notify all parties of the outcome of the complaint
  - Overrides FERPA protections
  - Not a violation of employment record privacy
- Refrain from disciplining parties for false statements based solely on the determination
- Provide and implement remedies to restore access and prevent recurrence
  - Not just sanctions

- DM may consider prior misconduct, precedent, acceptance of responsibility, and collateral or multiple violations when determining sanctions

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Appeals

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Appeals

- Opportunity to appeal must be offered equitably to all Parties
- Burden is in the appealing party to demonstrate that an error occurred
  - Appeal is not a re-hearing
- 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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Appeal Grounds

Must offer appeals on the following grounds:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter
3. Conflict of interest or bias by the TIXC, Investigator, Decision-Maker that affected the outcome of the matter

Institutions have the discretion to add additional appeal grounds

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Advising for Appeals

- Ensure advisee knows the appeal timeline and process
- If making the appeal request, help advisee understand the available appeal grounds
  - Frame arguments according to the applicable appeal grounds
  - Provide facts and evidence to support arguments
  - Even if the advisee has valid reasons for appeal, if they cannot properly frame their arguments, their appeal may not be considered
- If responding to an appeal:
  - Determine if response is warranted
  - Help advisee respond directly to the arguments raised in the appeal
  - Consider whether a separate appeal should be submitted
- Accompany advisee to any appeal meetings, if applicable

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Dax and Casey Discussion

- Dax is found responsible for stalking Casey and suspended for one calendar year
- As a result, Dax will lose their student visa and must return to their country of origin
- Dax wants to submit an appeal on the basis of new evidence that would change the outcome and submit records from their psychiatrist and psychologist for consideration
- What would you want to discuss with Dax related to the appeal process?

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Recordkeeping

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Recordkeeping

- Institution-appointed Advisors should confer with the TIXC regarding creating, sharing, and maintaining records
- Follow institutional policies for:
  - Storage
  - Access
  - Privacy
  - Destruction

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Questions?

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