



Association of
Title IX Administrators

Title IX Coordinator Foundations for K-12 Education

Training and Certification Course

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WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the training slides, supplemental materials, and to log your attendance.
- 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.
- If you have not registered for this training, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.





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.

Course Introduction



This course focuses on providing Title IX Coordinators with the foundational training to understand the scope of their role and its multi-faceted responsibilities under Title IX.



Title IX Coordinators will explore the essential components of the role including detailed responsibilities within the Title IX Grievance Process, structuring the Title IX team, and additional components of Title IX best practices.



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.

Content Advisory

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

Review: Title IX Statute and Regulations

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)

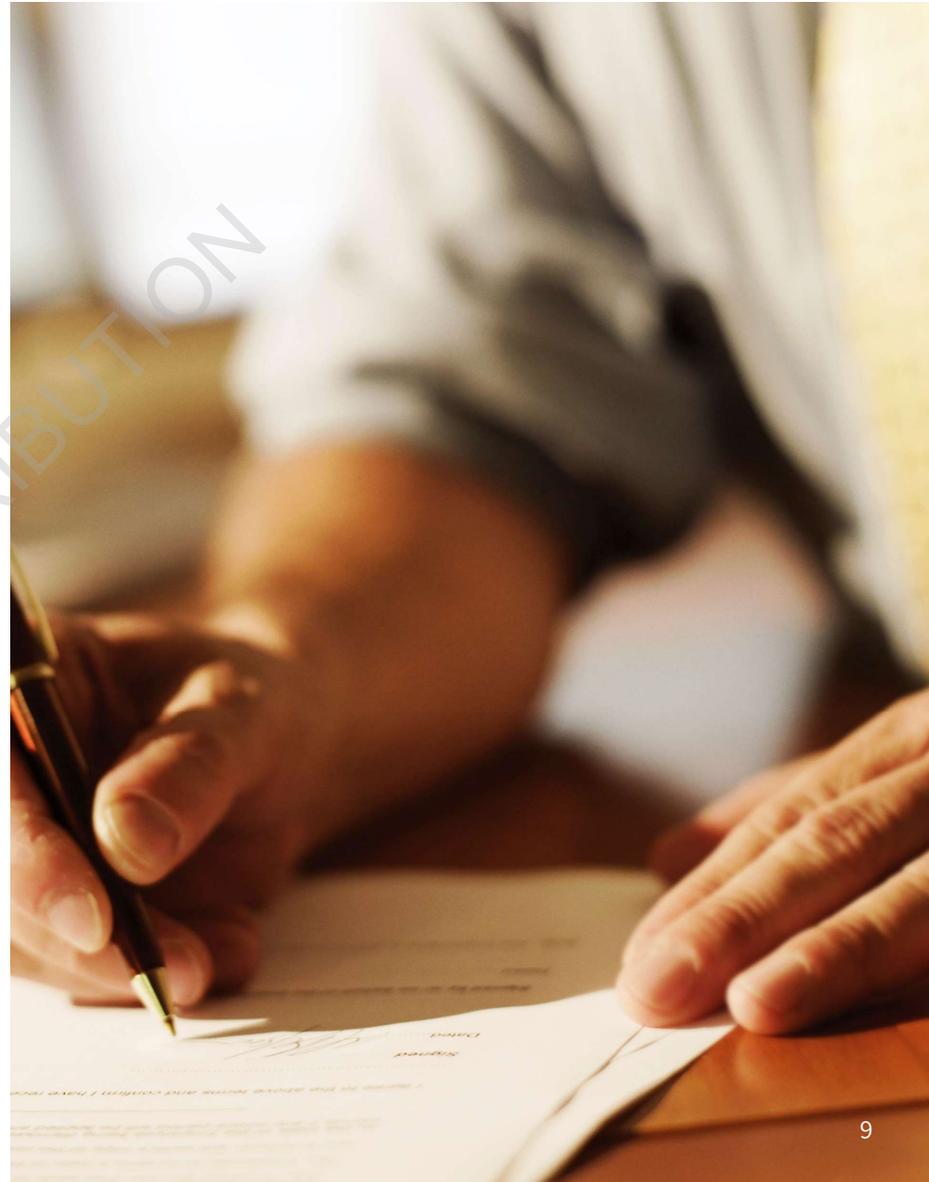


Title IX and Equity

- Title IX is a gender equity law
- Enacted as a follow-up to the passage of 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 sexual harassment and sex discrimination create

Title IX Regulations

- 2020 Title IX regulations focused on sexual harassment grievance process
- Proposed regulations (NPRM) afford significant flexibility for K-12 practitioners compared to the current process
- An expanded training requirement includes training all employees
- **ATIXA has developed a Regulations Implementation Checklist for K-12**
- Second proposed regulation regarding gender identity and athletics will likely be included in the 2024 release of new regulations



Review: Title IX Compliance Elements

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Title IX Compliance

- For K-12, once **any school/district employee** has actual notice of sexual harassment/sex discrimination, the school/district must:
 - Take immediate and appropriate steps to **investigate** what occurred, though the extent of the investigation may vary
 - The **obligation to investigate is absolute**, even if just an Initial Assessment is completed
 - This is regardless of whether the Complainant makes a formal complaint or asks the school/district to take action

Essential Compliance Elements

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

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

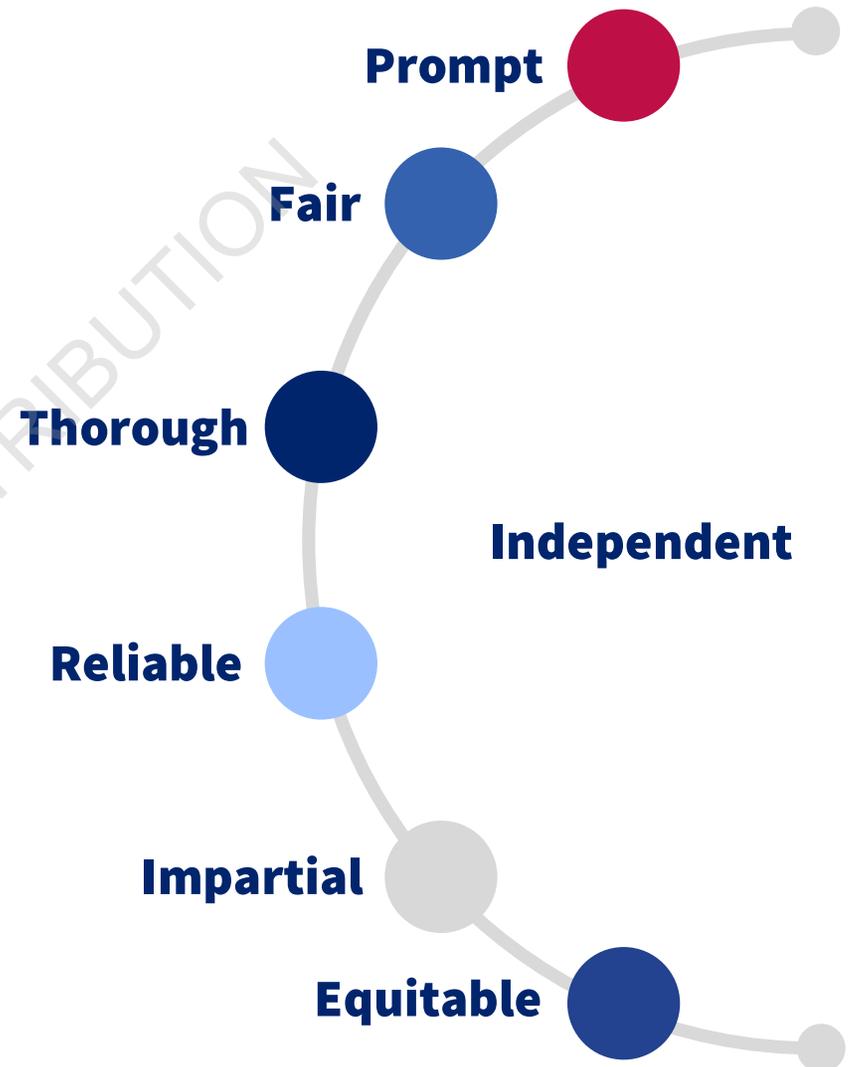
3

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

Principles for the Grievance Process

The Title IX Grievance Process requires that the school/district:

- Treat parties equitably
- Investigate reports/complaints in a prompt, thorough, and impartial manner
- Is effective in its mandate to stop, prevent, and remedy



Title IX Compliance

- School/District responses must not be **deliberately indifferent** to known sex discrimination or sexual harassment **AND**
- School/District must act **reasonably in light of known circumstances** to stop, prevent, and remedy
- A school/district is deliberately indifferent when:
 - The school/district has **actual notice** of harassment,
 - The harassment is **severe, pervasive, and objectively offensive**, and
 - The indifference is **systemic** in nature

Title IX Compliance Oversight

Title IX Coordinator (TIXC)

- Role mandated by Title IX regulations
- Oversees school/district Title IX compliance
- Responsibilities fall into two categories:
 - Respond to reports or complaints of sexual harassment and sex discrimination
 - Lead efforts to ensure gender equity across the entire school/district
- Must ensure the school/district response to reports of potential sex discrimination or sexual harassment is not deliberately indifferent



Title IX Compliance Oversight

Responsibilities:

- Recruit, supervise, and train TIX team
- Manage policy and procedures prohibiting sex discrimination and 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

Title IX Compliance Oversight

Responsibilities:

- Update school/district leadership on Title IX issues
- Maintain records
- Liaise with school/district legal counsel
- Develop and maintain accurate web and print-based Title IX publications
- Respond to government inquiries

Review: Title IX Scope, Definitions, and Jurisdiction

Scope and Jurisdiction

- 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
- Applies to both students and employees



Scope and Jurisdiction

Sexual Harassment

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



Scope and Jurisdiction

Sex Discrimination

- Sex/gender
- Sexual orientation
- Gender identity

Program Equity

- Example: athletics
- Retaliation

Retaliation



ATIXA

Model Definitions

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



Definitions: Consent

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

Title IX Team

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Title IX Core Team

- TIXC
- Deputy Title IX Coordinator(s)
- Investigator(s)
- Decision-Maker(s)
- Appeal Decision-Maker(s)
- Informal Resolution Facilitator(s)
- Advisor(s)



School/District Team

Schools/Districts have discretion in how to structure their Title IX Team, including:

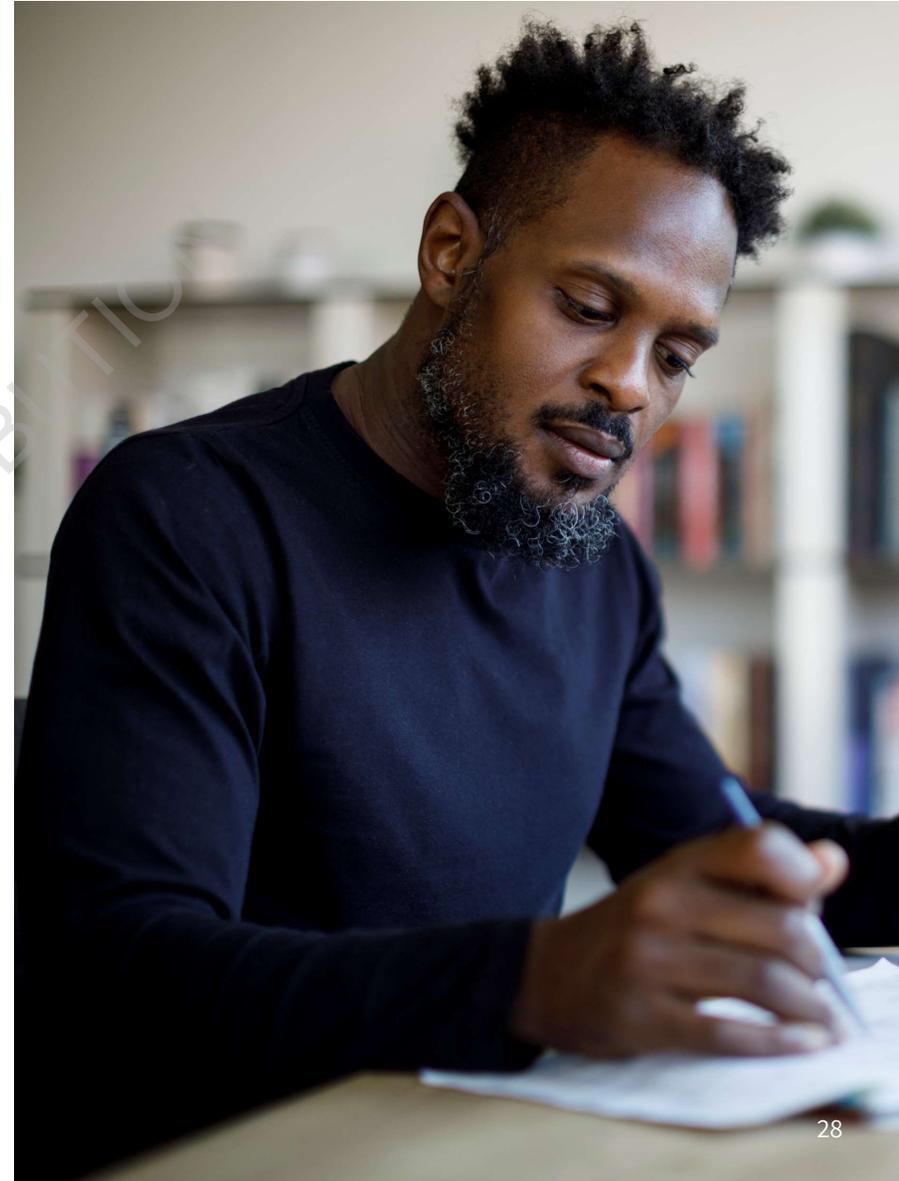
- Whether to have **Deputy Coordinators**
- **One-Investigator vs. Two-Investigator** model
- **Distinction and separation of roles** throughout Title IX process, and whether to appoint district-based administrators, school-based administrators, or contractors
- **Contract with a trained third party** to fulfill the roles of Investigator, Decision-Maker, Informal Resolution Facilitator, and Advisor

Designation Considerations

- Title IX team member designations do not have to follow “a chain of command”
- Evaluate individuals’ normal workload and availability
- Inherent conflict of interest or bias
- Other factors may include:
 - Multiple locations
 - Camps, before/after care programs
 - Evening/weekend learning programs
 - Dual-enrollment oversight
 - Athletics oversight

Title IX Coordinator

- Regulations require a single TIXC for each district (or school in the case of a single school like a public charter school)
- Must have autonomy and independence
- Schools/Districts will need to make policy determinations related to TIXC holding multiple roles (Example: Title IX Investigator and TIXC)
- Increasingly common to have TIXC as a dedicated position or a substantial part of a person's FTE
 - School/District must ensure proper staffing despite other roles/titles held by a TIXC



Title IX Extended Team

- Include key constituencies not represented on core team:
 - Legal Counsel
 - School Resource Officers
 - School Counselors
 - Student Health/School Nurses
 - Housing (if applicable)
- Regular meetings and coordination
- Training and programming
- Interaction with behavioral intervention or threat assessment team



Bias and Conflicts of Interest

- Title IX administrators have no “side” other than the **integrity of the process**
- Title IX regulations **prohibit conflicts of interest or bias** for Coordinators, Investigators, and Decision-makers against parties generally, an individual party, or related to the substance of the complaint
- **Training materials** cannot include sex stereotypes and should promote impartiality



Required Training

The Title IX Team (including TIXC, Deputy Coordinators, Investigators, Decision-makers, Appeal Decision-makers, and IR Facilitators) **must be trained on the following topics:**

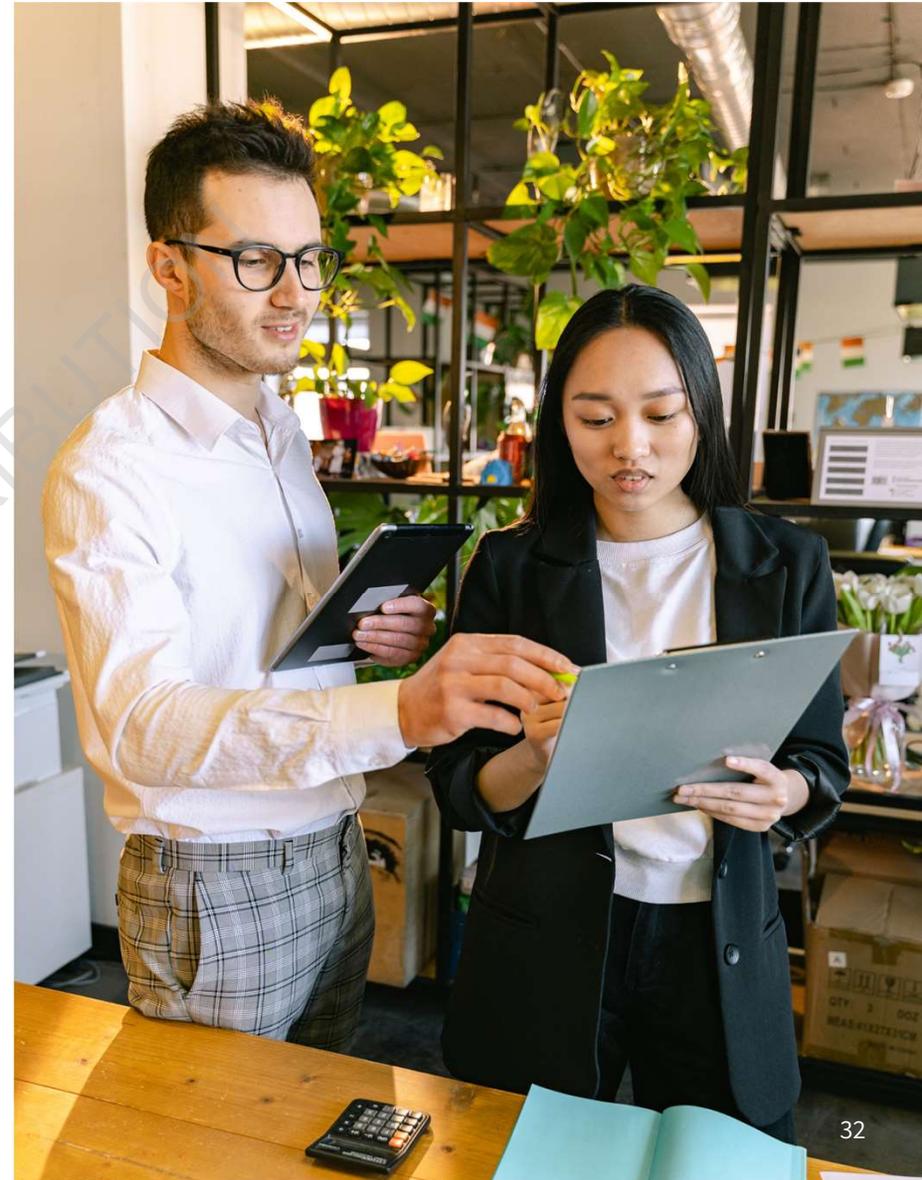
- Definition of **Sexual Harassment**
 - **Scope** of the school/district's education program or activity
 - **Title IX Grievance Process** including:
 - Conducting investigations
 - Decision-making
 - Conducting appeals
 - Facilitating Informal Resolution
 - **Serving impartially**; avoiding prejudice of facts; bias, and conflicts of interest
 - **Relevance of questions and evidence**; including restrictions of questions and evidence
 - **Creating an investigation report** that fairly summarizes relevant evidence
- Maintain training materials for seven years
 - Post most recent materials on the school/district's website

Assessing the Title IX Core Team

TIXCs must ensure team members are able to perform their roles

Consider:

- Impartiality/neutrality
- Confidentiality and privacy
- Training and competence
- Investigation report writing
- Decision rationales
- Cultural competence



Title IX Core Team

Strategies to support and develop the Title IX team include:

- Robust training options for new and experienced members
- Mentorship with other Title IX practitioners
- School/District resources for professional development
- Yearly team member evaluations with individualized feedback
- Regular mental wellbeing check-ins
- Opportunities for process/complaint debriefs
- Professional recognition

Leveraging TIXC Authority



VISIBILITY

- Location
- Involvement
- Presence in spaces and places



COLLABORATION

- Committees
- Programming
- Grants and Research



RELEVANCE

- Gender equity broadly
- Space planning
- Curriculum
- Services
- Policies



ACCESSIBILITY

- Email and phone responsiveness
- Language and tone
- Name and contact prominently displayed on website

Title IX Grievance Process

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Due Process for K-12



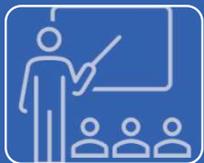
Title IX Regulatory Requirements

- Prescriptive procedures for formal and informal grievance process
- Applies to both students and employees



Fundamental Fairness for Students in Disciplinary Procedures

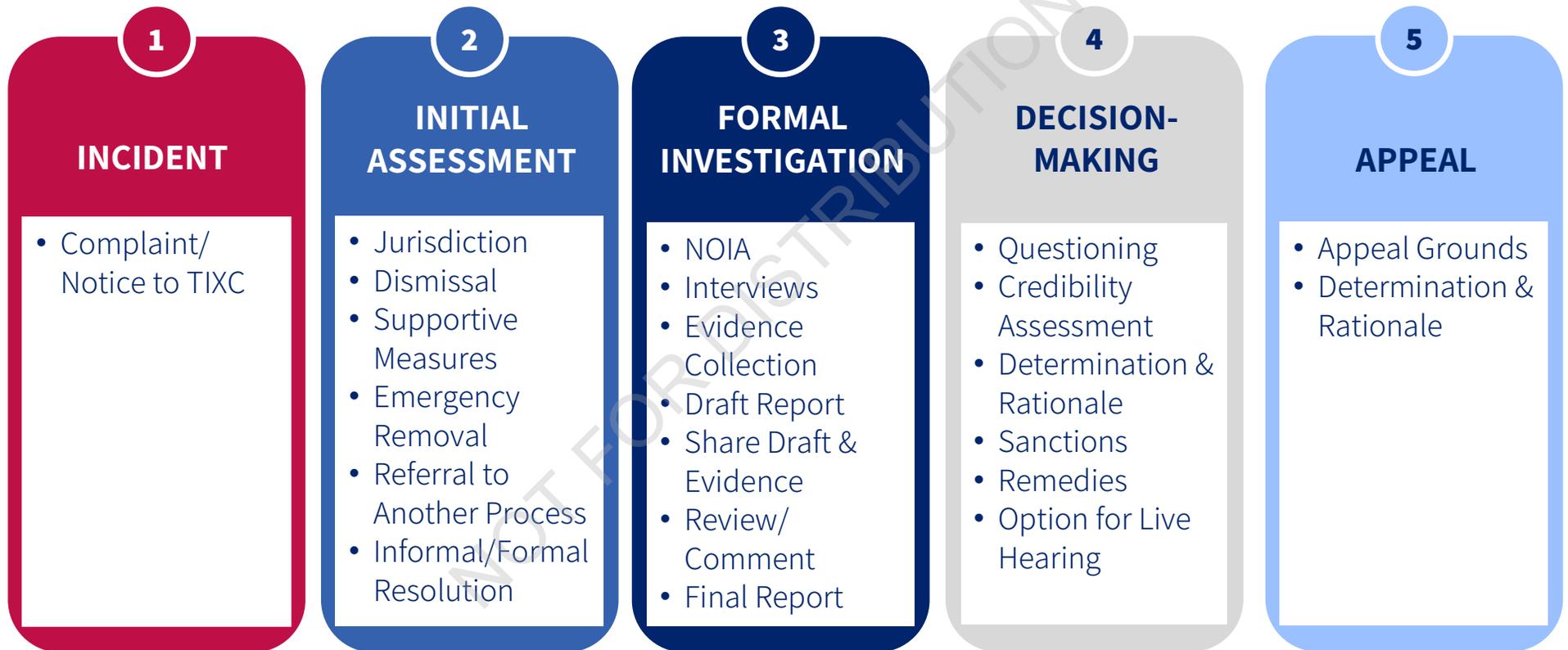
- Flows from *Goss v. Lopez*
- Specific requirements for students with disabilities



Procedural Protections for Employees

- State law requirements for some or all positions
- Procedural protections from collective bargaining agreements

Title IX Grievance Process Overview



Review:

Title IX Grievance Process Overview

Prompt Resolution

- Complete without undue delay
- Title IX regulations do not define “prompt”
 - Ideally 30 business days in K-12
 - 60 business days as an outer limit
- Grievance process may take longer than expected
 - Anticipate, mitigate, and document delays
 - Communicate with parties regarding delays

Review: Title IX Grievance Process Overview

Equitable Resolution

- Treat all parties equitably
- Ensure 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



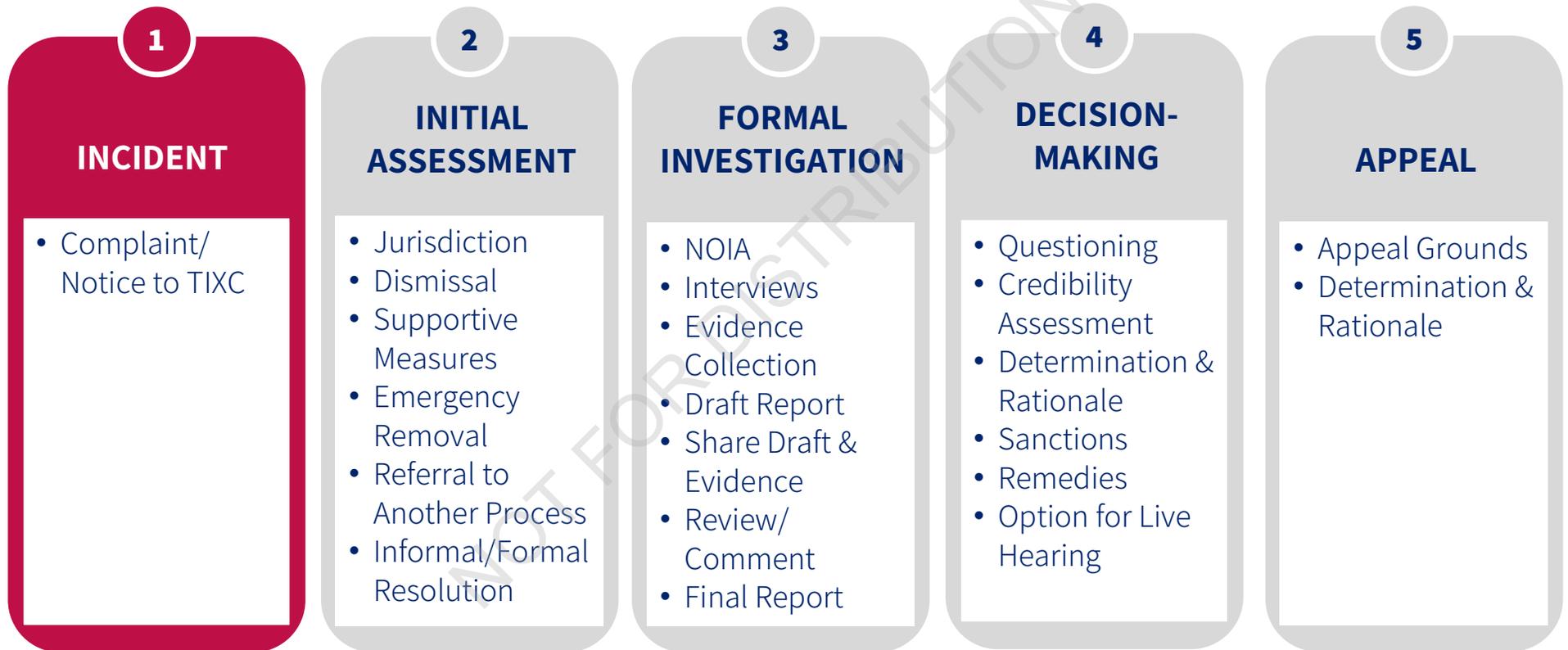
Title IX Grievance Process Overview

Rights of the parties during the grievance process:

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

Reports, Complaints, and Notice to the School/District

When is the School/District “On Notice?”



Point Person for Reports and Complaints

- **TIXC (or designee) receives all reports or complaints** regarding sex/gender-based harassment, misconduct, and discrimination
 - The TIXC oversees school/district TIX efforts
 - School/District may designate multiple entry points for receipt of information
 - Deputy Title IX Coordinator(s)
- **TIXC contact information** must be included within:
 - School/District's website
 - All handbooks or guides provided to applicants, students, employees, and unions

All K-12 Employees: Mandated Reporters

- School/District is “**on notice**” of sexual harassment or discrimination when a report is made to:
 - **TIXC**, or
 - **Any employee** of the school/district is made aware of the incident or concern
- Notice includes information K-12 employees witness, hear about, or receive a written or verbal complaint about, including from parents/guardians
- **In addition to other applicable mandated reporting:**
 - Abuse/child abuse of minors
 - Supervisors/managers under Title VII
 - Any other mandated reporting under state law or district policy

Report vs. Complaint

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

- **Report**

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

- **Formal Complaint**

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

Report vs. Complaint

- 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 or Complainant
- If TIXC takes no formal action in response to a report, document rationale

INCIDENT INVESTIGATION
SUMMARY

Incident Date:	
Review Date:	

by:

at Summary:

Root Causes:

Parent/Guardian Involvement

- Title IX regulations require (implicitly) that the school/district notify parents/guardians of a reported incident
 - Inform parent/guardian of grievance process and opportunity to file a formal complaint
- Parents/Guardians ultimately guide whether to file a formal complaint
 - TIXC may **facilitate dialogue** when a student and their parents/guardians differ
- Parents/Guardians are permitted to be, and often are, present with their student throughout the process, but some families do not, depending on the age of the party
- **ATIXA recommends** having open communication with parents/guardians and practicing good documentation
 - Provide written notices whenever possible

Working with Parents/Guardians

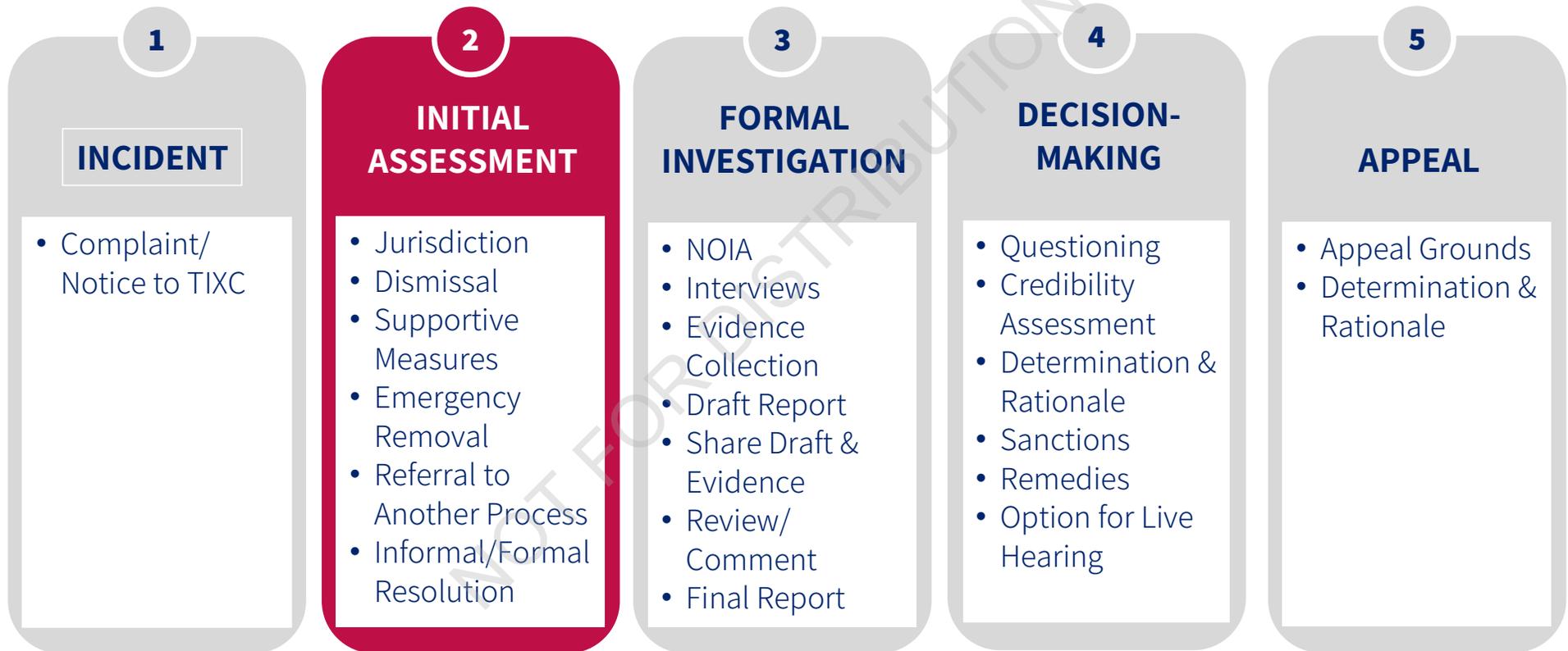
Parents/Guardians are permitted to:

- **File a formal complaint** on behalf of their student
- **Seek supportive measures** on behalf of their student
- **Make decisions** throughout the grievance 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

Initial Assessment

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Initial Assessment



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
 - Available resources and resolution options, including how to file formal complaint
 - Discuss supportive measures and resources
 - Explain options to report to law enforcement
 - Follow up in writing with resources and information

Signing a Formal Complaint: PPTVWM

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

Factors that likely indicate an ongoing risk of harm include:

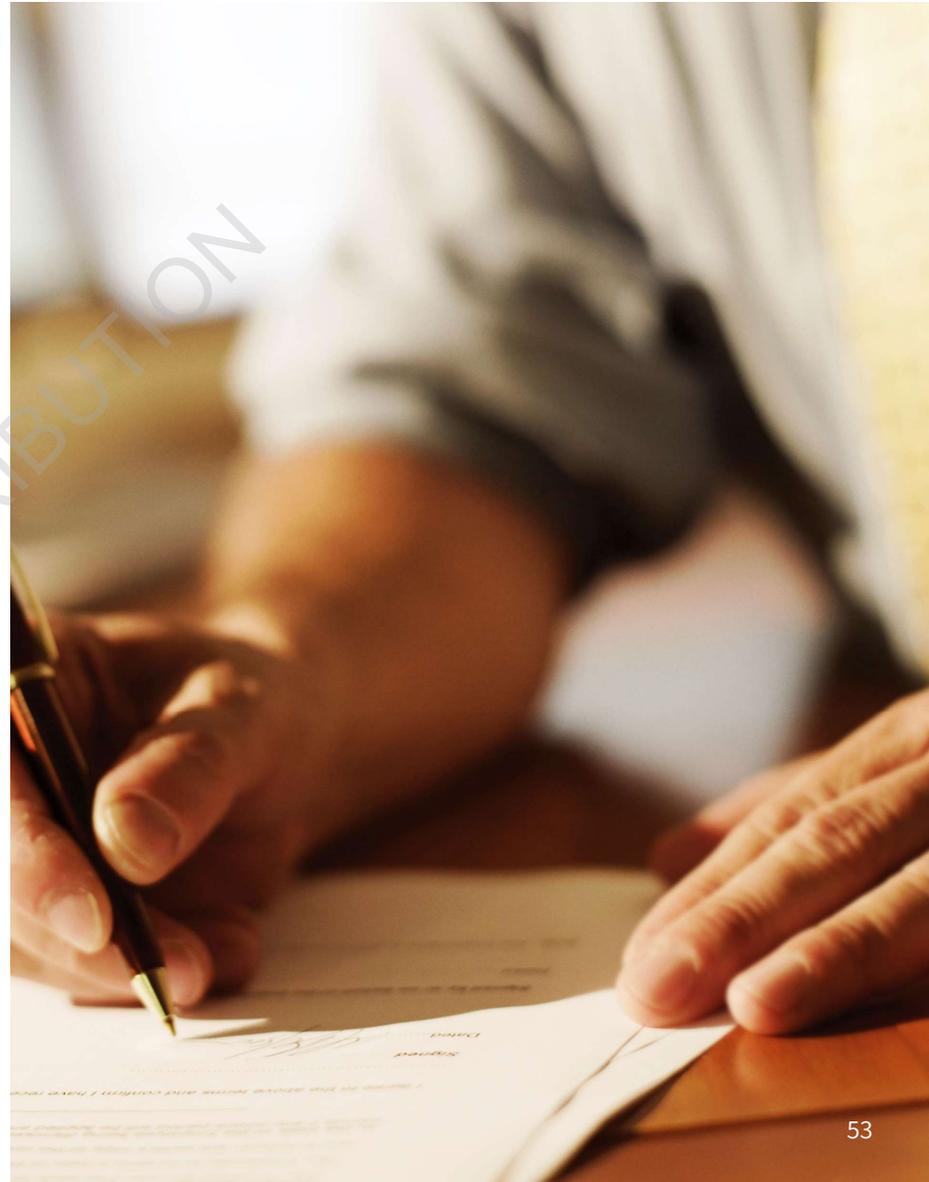
- **P**attern
- **P**redation
- **T**hreat
- **V**iolence
- **W**eapons
- **M**inors

Other Considerations for TIXC Signing a Formal Complaint

- Employee Respondent
- Complainant who is not P/ATP

Signing a Formal Complaint

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



Requests for Confidentiality

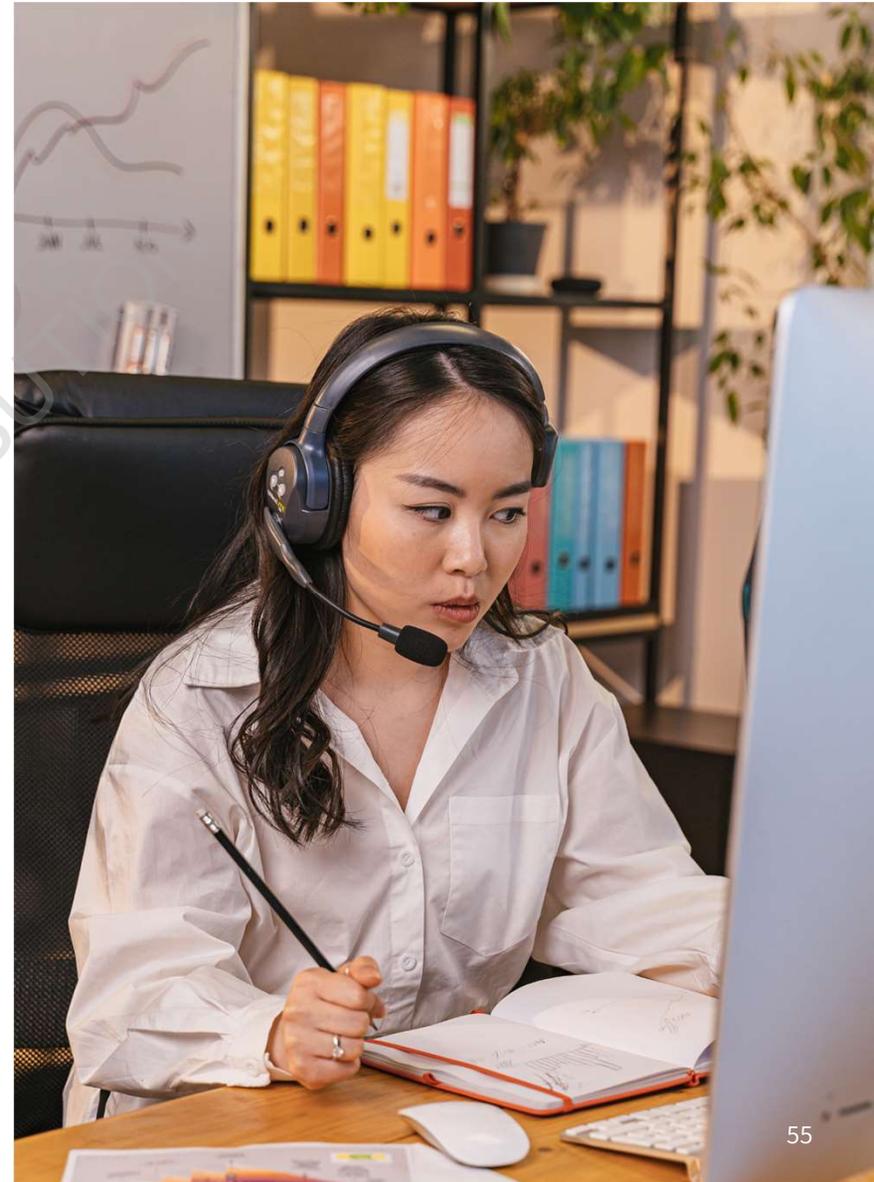
A Complainant may ask to remain anonymous and/or decline investigation

- TIXC must still conduct PPTVWM analysis
- Due process dictates that a Complainant's identity must be shared during a Formal Grievance Process
- Remind that the school/district maintains privacy and the prohibition on 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 whatever action it can at that time

Title IX Jurisdiction Assessment

TIXC conducts an initial assessment to determine Title IX jurisdiction:

- Does the alleged conduct, if proven, meet one of the definitions of Title IX sexual harassment?
- Who is the Complainant?
 - Participating or attempting to participate?
- Who is the Respondent?
 - Control over the Respondent?
- Does the school/district have control over the context of the alleged harassment?



Title IX Jurisdictional Assessment

- **Yes, or Arguable:** move forward with Title IX Formal Grievance Process
- **No:** Take following steps:
 - Dismiss the complaint under Title IX
 - Provide support/resources to the Complainant and/or school community
 - Address “downstream” effects
 - Consider whether another policy applies and refer:
 - Other Discrimination/Harassment policies
 - Student Handbook/Conduct policies
 - Technology/Acceptable Use policies
 - Employee Handbook/Policies
 - Professionalism standards

Dismissal Under Title IX

Dismissal Procedures Apply to Both



Mandatory Dismissal (Required under TIX)



Discretionary Dismissal (TIXC Discretion)

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 school/district's education program or activity, **or**
3. The conduct did not occur against a person in the United States, **or**
4. At the time of filing a formal complaint, a Complainant is not P/ATP
 - **AND** the TIXC determines they do not need to sign a formal complaint

Discretionary Dismissal

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

- Complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any portion thereof
- School/District no longer employs or enrolls Respondent
- Specific circumstances prevent the school/district from gathering sufficient evidence for a determination
- **Parties may appeal**

Dismissal Procedures and Appeals

- **Promptly notify the parties of the dismissal in writing;** include appeal information
- Continue to provide supportive measures
- School/District may, and often will, address reported behavior under another applicable policy
- **Appeal procedures**, generally:
 - Appeal Decision-maker(s) must be trained; must not have been involved in the complaint so far
 - Parties have an equal opportunity to respond to an appeal request, in writing
 - Written notification of appeal decision, including rationale, to parties

“Downstream Effects”

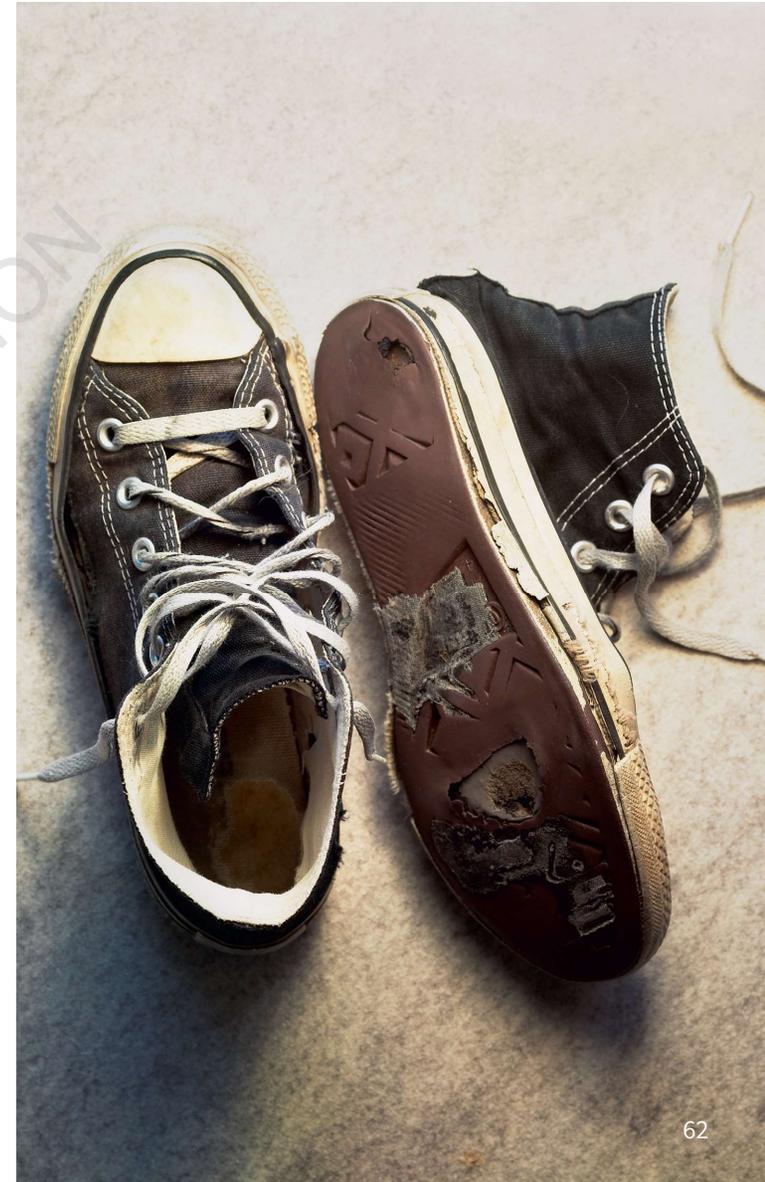
- Always consider what steps the school/district can take to address in-program effects of out-of-program conduct:
 - Provide Complainant support and resources
 - Provide school community support and education (where appropriate)
 - Determine if there are patterns or systemic variables that contributed to the alleged incident
 - Take available action(s) (e.g., trespass the person)



Emergency Removal

Emergency Removal:

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



Emergency Removal

Consider:

- Existing culture of frequent interim suspensions for other student conduct issues must adapt to apply Title IX procedures
 - 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
- Developing a process for Respondent to challenge the decision
- Applying manifestation determination when needed
- Emergency Removal should not create undue delay in the grievance process timeline

Administrative Leave

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



Supportive Measures

Provided to parties throughout the process:

- Non-disciplinary, non-punitive
 - Individualized
 - Restore or preserve equal access
 - Without unreasonably burdening other party
 - Protect safety of parties or environment, or deter sexual harassment
 - At no cost to the party
- Publish the range of supportive measures
 - Avoid unnecessary disclosures about supportive measures
 - Consult with IEP/504 administrators when appropriate
 - If not provided, document the rationale for refusal

Supportive Measures



Informal Resolution

- **Voluntary**, following a formal complaint
- Allowed at any time prior to the final determination at the discretion of the TIXC
- **Must obtain written consent** of the parties and their parents/guardians
- **Not available for employee-on-student harassment** under the regulations
- Not defined by regulations, but **procedural requirements apply**
- Conducted by trained Information Resolution (IR) Facilitator; must not be the same as the assigned Decision-Maker
 - ATIXA recommends it also not be the Investigator
- Must stop, prevent, and remedy with documented response

Informal Resolution

IR options include:

- Negotiated resolution to make permanent supportive measures
- Age-appropriate education, facilitated dialogue, and discussion
- Conflict Coaching
- Restorative practice methods:
 - Circles
 - Conferences
- Mediation (including Shuttle Mediation)



Informal Resolution Considerations

- Does school/district's 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
 - Wishes/influence of the parents/guardians
- 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?

Activity: Case Study

Case Study

- Three high school juniors went into 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, Cal, was filming Anjali and Steven making out
- Cal's video shows everything that happened, and Anjali's exposed breast was clearly visible for a few seconds on the video
- Cal 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

Case Study Discussion

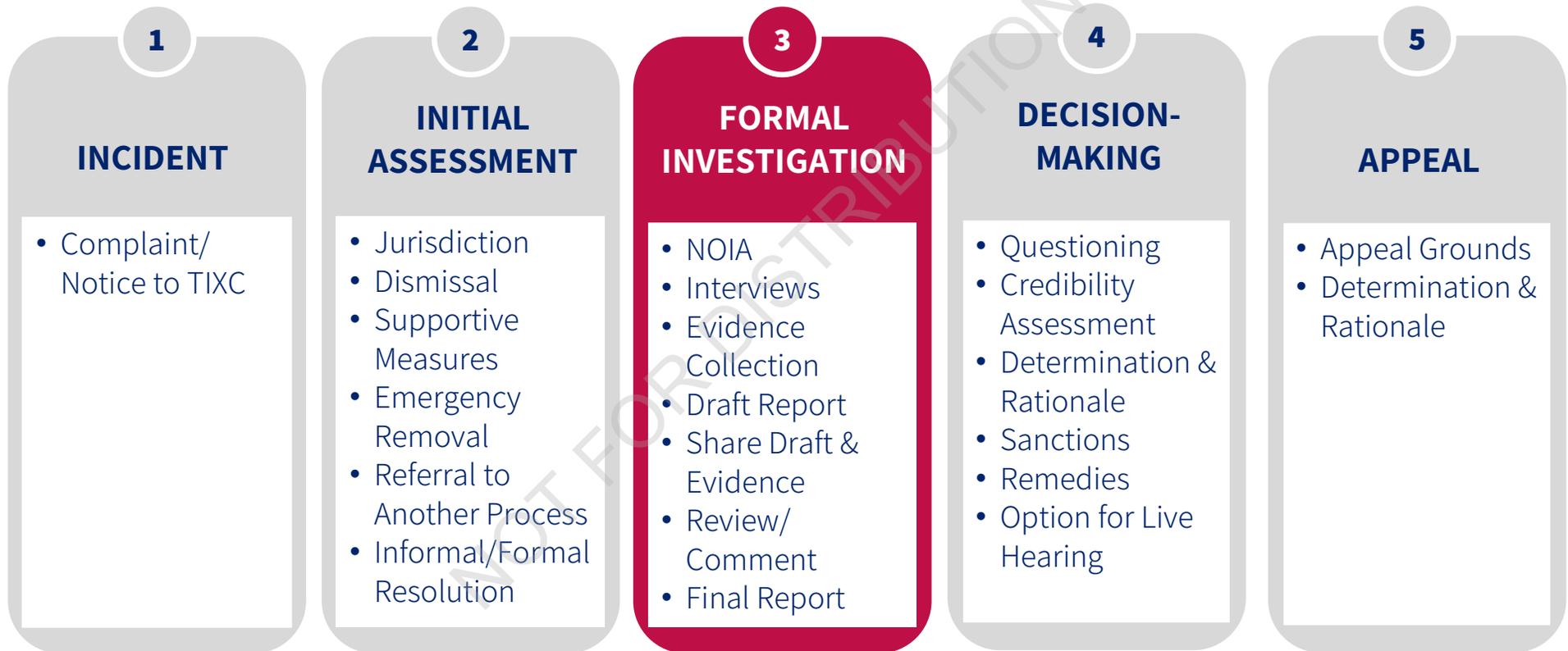
- Is this a Title IX issue the school/district needs to address?
- What might an appropriate response look like?

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Investigation Oversight

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Investigation



Who Should Investigate?

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

**Dedicated
Investigator(s)**
(including external)

Investigator Pool
(could include district-level,
school-level, or external)

**Coordinator as
Investigator**

Investigation Oversight

10 Steps of Investigations:

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



Step 3: Formal Investigation Footing

- 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 Investigation and Allegations (NOIA)** letter
 - Sent to all parties, simultaneously

Step 4: Notice of Investigation and Allegations

The Notice of Investigation and Allegations (NOIA) letter is **sent to all parties simultaneously**

- The **NOIA includes:**
 - Notice of the allegations and known details, such as identities of the parties
 - A description of the alleged conduct and relevant policy provisions
 - Information about grievance procedures
 - Presumption that Respondent is not responsible
 - Available supportive measures
 - The rights of the parties
 - Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
 - Statement prohibiting retaliation

Step 4: Notice of Investigation and Allegations

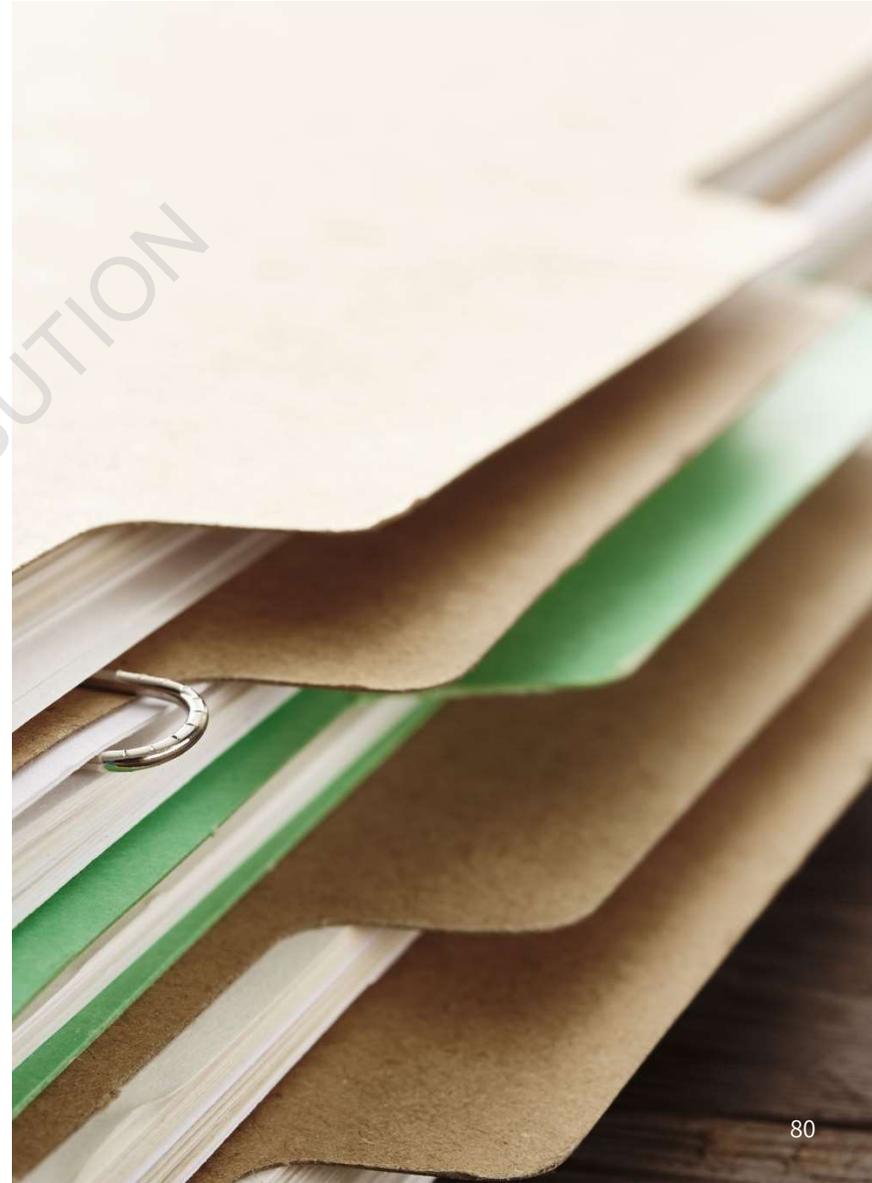
The NOIA must outline the parties' rights in the Formal Grievance Process:

- To present witnesses, including expert witnesses
- To present inculpatory and exculpatory evidence
- To freely discuss the allegations
- To be accompanied by an Advisor of their choice
- To receive written notice of all details and purpose, with sufficient time to prepare, of any investigation interview or other meeting they are requested to attend
- To review all relevant and directly related evidence before the investigation report is finalized

Step 4: NOIA

- Always update the NOIA if additional allegations arise during the course of the investigation
- Include or reference current policy and procedures

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Steps 5 and 6: Formal Investigation



THOROUGH



RELIABLE



IMPARTIAL



PROMPT



FAIR



EQUITABLE

Steps 5 and 6: Formal Investigation

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

- Establish investigation timeline
- **Party Interviews**
 - With Advisors, and/or parents/guardians present
- **Witness Interviews**
- **Evidence Collection**
 - Evidence available in school/district's possession
 - Evidence provided by parties or witnesses
 - Other relevant evidence gathered by the Investigator(s)
- **Credibility Assessment**

Process Delays

Investigations must be completed within a reasonably prompt timeframe; **avoiding undue delays**

- Investigations must proceed during school breaks
- Provide parties with **written notice and rationale** for any delays
- Parties may request reasonable extensions on a case-by-case basis
 - Grant or deny extensions equitably
 - Extensions must be documented



Coordinating with Law Enforcement

- Incidents of Title IX sexual harassment may also give rise to criminal allegations under state law
- Law Enforcement (LE) may notify the school/district of a complaint, or a school/district employee may report an incident to LE
- Criminal investigations do not relieve a school/district of its duty to respond promptly and effectively
 - Criminal investigation is distinct from the Title IX Formal Grievance Process
 - Each applies different laws/policies and a different standard of evidence
- TIXC and Investigator communicate with LE in complaints with concurrent responses

Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice
- “Of choice” truly means anyone
- Parents/guardians may serve as Advisors or may accompany their student in addition to a separate Advisor
- Investigators may establish participation ground rules; must be applied equitably
- Parties may request an Advisor be provided by the school/district for the purposes of a live hearing
 - Schools/districts may choose to appoint an Advisor earlier in process
- No obligation to provide or train Advisors (unless there is a live hearing), but school/district can choose to do so

Understanding Evidence

Duty to collect relevant evidence

- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant evidence** is evidence that tends to prove or disprove the underlying allegations
 - Inculpatory and exculpatory evidence
- Some evidence may only be relevant to assessing credibility



Understanding Evidence

Directly related evidence: connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon in the investigation report

- Decision-maker(s) ultimately determine what is relevant, directly related, or neither
- Heightened privacy and limitations on:
 - Evidence of a Complainant's sexual predisposition or prior sexual conduct
 - Medical records and information
 - Information subject to a privilege

Specific Evidence Issues: Privileged and Medical Information

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

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

Specific Evidence Issues: Rape Shield Provision

- 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

Credibility Assessment

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

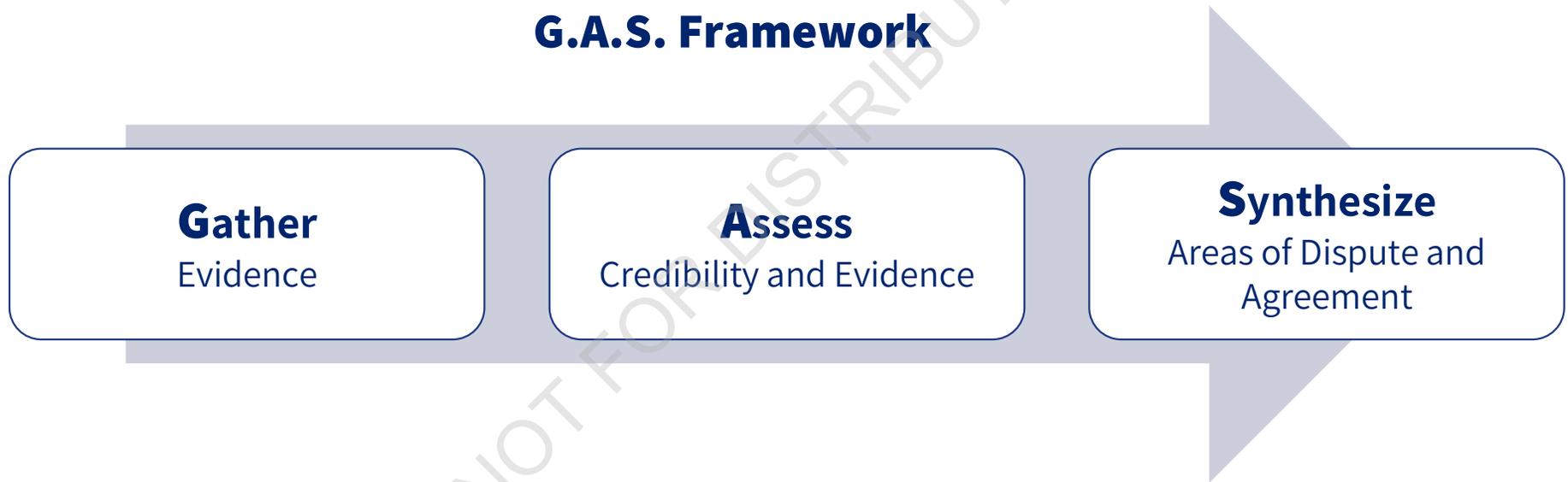


Consent Construct: Three Questions

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

Step 7: Drafting Investigation Report

G.A.S. Framework



The burden to gather evidence is on the school/district, not the parties

Steps 8-10: Drafting, Reviewing, and Finalizing the Investigation Report



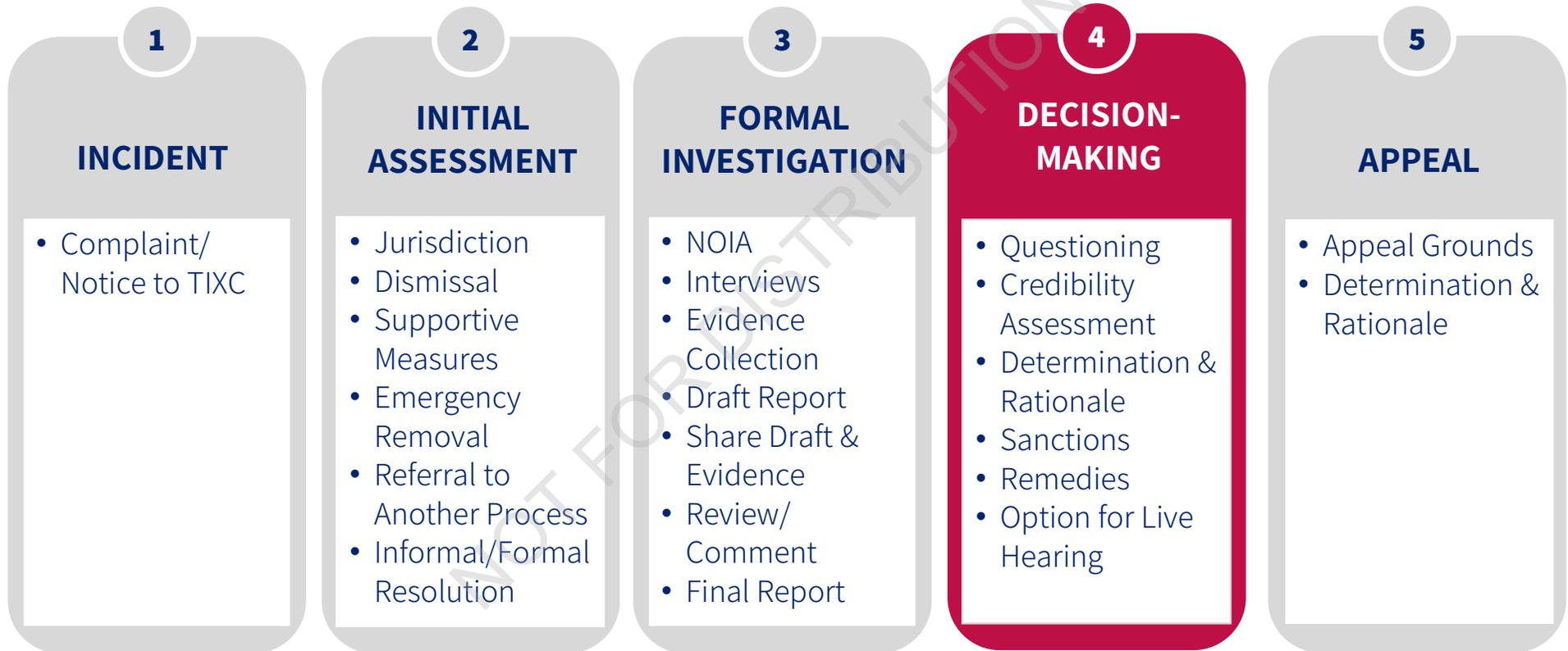
Steps 9 and 10: Parties' and Advisors' Report and Evidence File Review

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

Decision-Making

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Decision-Making



Decision-Making Process

Process Steps

- Decision-maker reviews full investigative report and evidence
- Must wait 10 days from the time Investigator sends final report and evidence to parties to the Decision-maker making their determination
- K-12 grievance process requires the Decision-maker to facilitate either:
 - A live hearing
 - An opportunity for parties to submit written relevant questions to the other party and any witnesses, receive written answers, and ask limited follow-up questions
 - Decision-maker vets questions for relevance

Roles and Responsibilities

- TIXC and Investigator(s) may not serve as a Decision-maker
- Decision-maker can be a single person or a panel

Title IX Coordinator

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

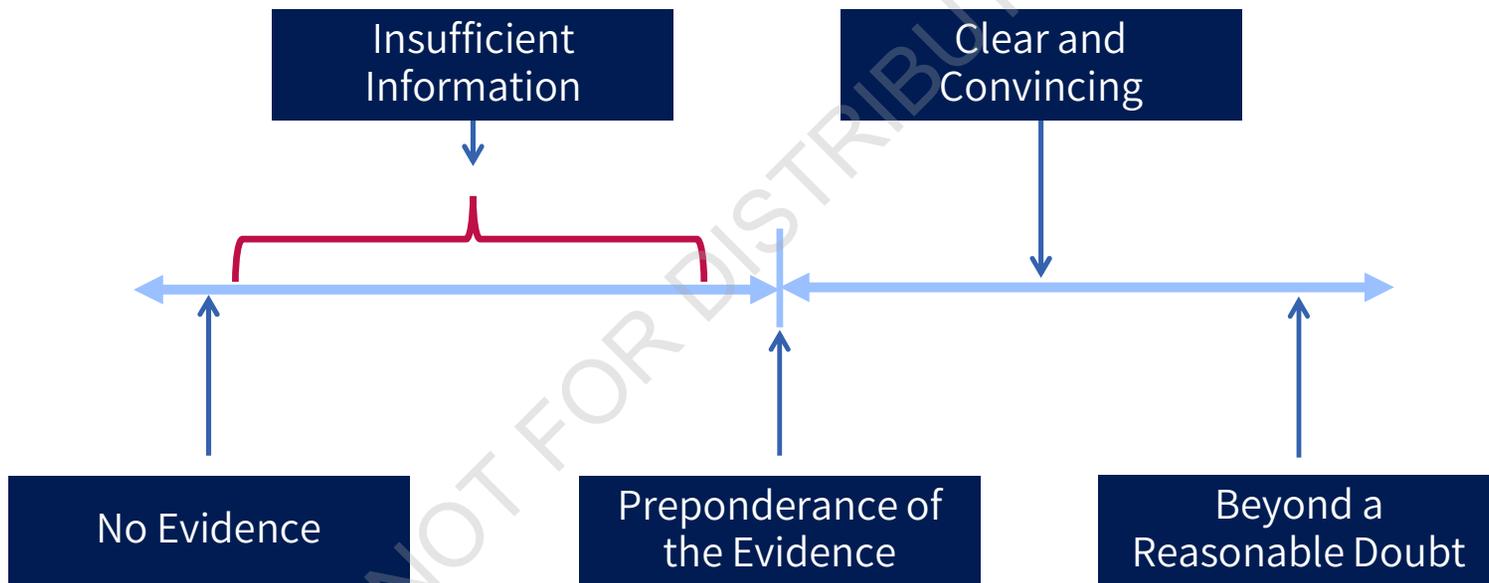
Decision-maker(s)

- Receives investigation report and evidence file from Investigator
- Facilitates exchange of relevant questions
- Determines relevance of evidence
- Assesses credibility
- Makes findings of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

Determinations

- Decision-maker **evaluates the relevant evidence** gathered by the Investigator; must consider both inculpatory and exculpatory evidence
 - Each allegation is considered individually for each Respondent
- Decision-maker **applies the standard of evidence** to make determination
 - Standard of evidence options include:
 - **Preponderance of the evidence**
 - **Clear and convincing evidence**
 - Standard of evidence must be consistent for all formal sexual harassment complaints
- Decision-maker determines whether the Respondent violated school/district policy
- Coordinate/integrate disciplinary procedures for students with disabilities (if applicable)

Standard of Evidence



Written Determinations

Written Determination

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

Finality

- 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 remedies provided to Complainant
- Procedures and bases for appeal

Sanctioning Considerations

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

- May consider:
 - Prior misconduct
 - Precedent
 - Attitude (exercise caution)
 - Collateral and/or multiple violations
- What best compensates for loss or injury to Complainant, school/district, or others?
- Should consider the educational impact on the Complainant and Respondent

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

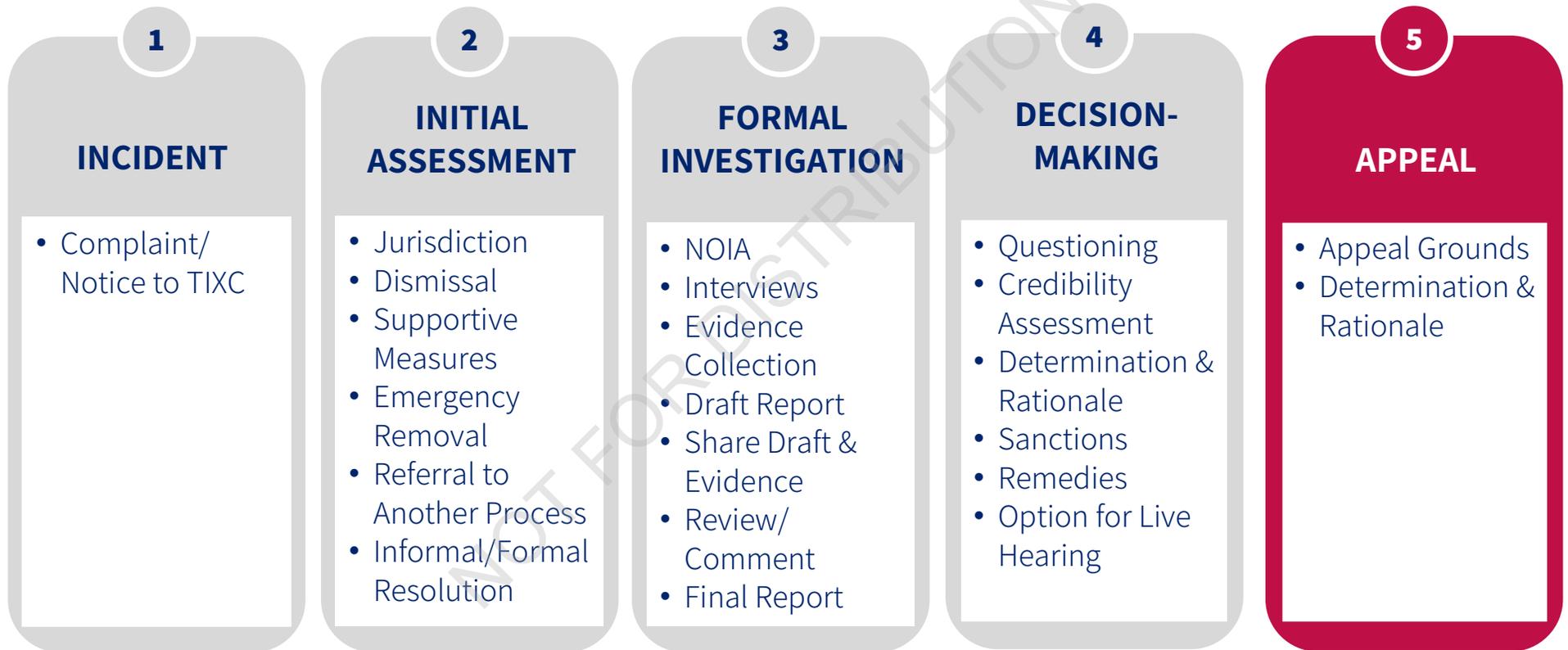
Common Employee Sanctions

- 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

Appeals

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Appeals



Appeals

Must offer equitable appeal process

- Policy should include grounds and process for appeal
- School/District must provide information about the appeal process to parties and Advisors in writing
- One level of appeal is best practice
- Typically document-based review for error only (not a new consideration)
- Deference is given to the original Decision-maker

Appeals

Must offer appeals on one or more of 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

Bias or conflict of interest issues

Schools/Districts have the discretion to add additional appeal grounds

Appeals Determinations

Appeal Decision-maker issues 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)
 - **Overturing** the determination (not recommended)
- Appeal Decision-maker cannot be TIXC or serve another role in the same complaint resolution

Family Education Rights & Privacy Act

- Parents/Guardians have the right to “**inspect and review**” their students’ education records
- Title IX Formal Grievance 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
- FERPA cannot be construed to conflict with or prevent compliance with Title IX, including requirement to notify all parties of the outcome



Recordkeeping

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

- Sexual Harassment and discrimination 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
- Document how school/district response was **not deliberately indifferent**

First Amendment Protections

First Amendment

- Schools/districts must implement their grievance processes consistent with the First Amendment
- Natural tensions arise between:
 - Free speech and expression
 - Harassment and/or hostile environment claims
- Types of unprotected speech
 - Incitement of disruption and breach of peace
 - Defamation
 - True threat
 - Obscenity
- Hate speech



Student Discipline

- Best practices in navigating tensions regarding student speech require school/district administrators to determine whether the speech:
 - **“Materially and substantially interferes” with the requirements of appropriate discipline in the operation of the school**
 - Reasonable anticipation of substantial disruption; mere speculation is not enough
 - “More than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint”
 - **Or intrudes upon the rights of other students**
- In addressing speech that occurs in out-of-school settings, schools/districts must evaluate how the speech impacts and disrupts the educational program or mission

Pregnancy and Related Conditions

Pregnancy and Related Conditions

TIXC is responsible for coordinating and overseeing necessary supportive measures and modifications for those experiencing pregnancy and related conditions

- **Pregnancy includes:**

- Pregnancy, childbirth, termination of pregnancy, or lactation
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions

Title IX Compliance

Schools/Districts are required to:

- Publicize supports available for pregnancy and pregnancy-related conditions, including how to request support
- Provide, coordinate, and document reasonable modifications and supportive measures
- Allow access to separate and comparable programs
- Allow for a voluntary leave of absence
- Provide lactation time and space
- Provide grievance procedures for sex discrimination complaints
- Provide comparable treatment to temporary disabilities or conditions

Supporting Pregnancy and Related Conditions

- Supportive Measures
 - Provided on an individualized and voluntary basis
 - May not require healthcare provider certification
 - Subject to fundamental alteration analysis
- Allow individuals to choose the best (available) options for their circumstances
- Some pregnancy-related conditions could qualify as a temporary disability



Employee Complaints

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Employee Complaints

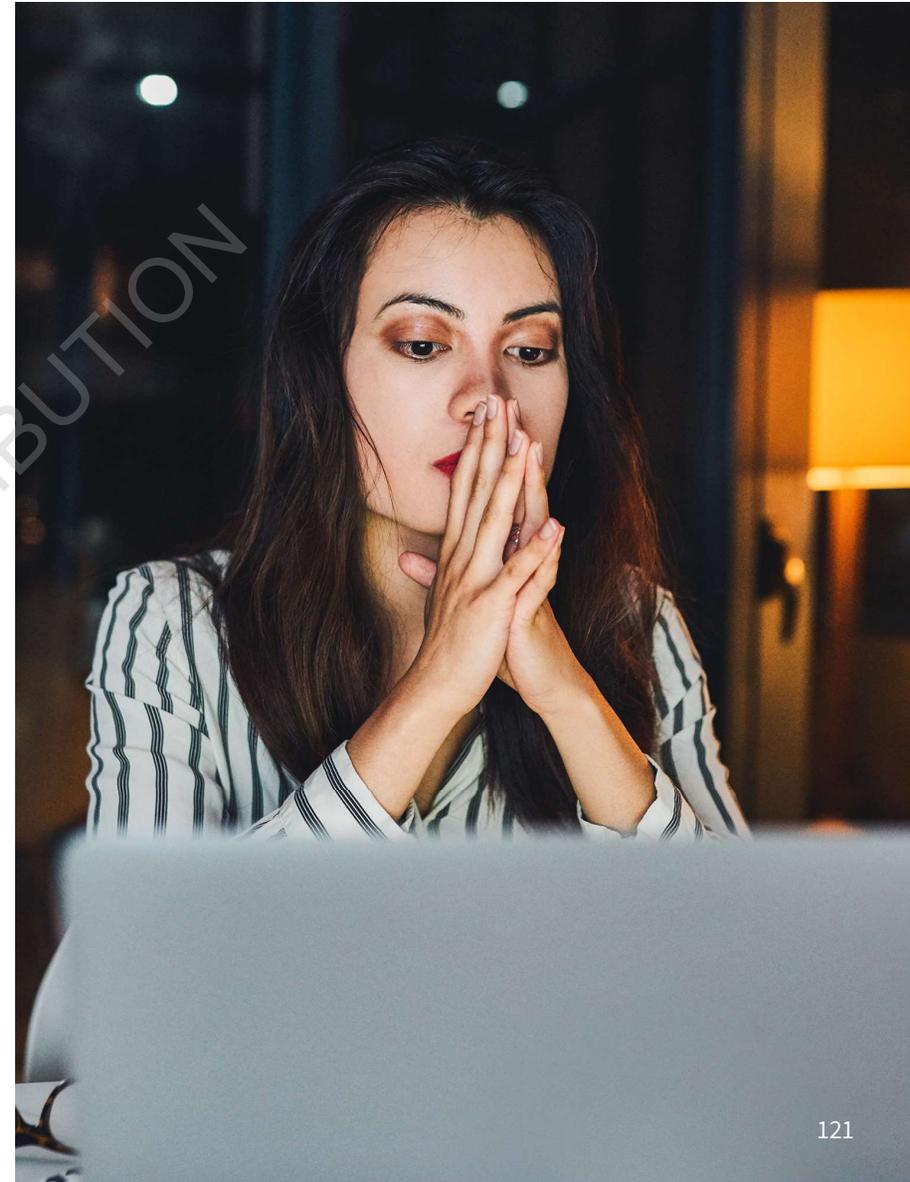
Title VII of the Civil Rights Act of 1964: prohibits discrimination on the basis of race, color, religion, **sex**, or national origin in employment

- 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 sexual harassment
- Potential conflicts with collective bargaining agreements

Employee Complaints

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

- Role of school 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



Retaliation Prevention and Remediation

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Retaliation Defined

- Title IX has always prohibited retaliation broadly
- NPRM proposes a specific definition:
 - Intimidation, threats, coercion, or discrimination by a(n):
 - Student, employee, institution, or person authorized by the institution to provide some sort of aid, benefit, or service, AND
 - Interferes with any Title IX right or privilege OR
 - Occurs because the person has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX process

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



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

Title IX Compliance Oversight and Assessment

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Complaint Closure Assessment

TIXCs should routinely continue to assess complaints after the grievance process has concluded

This regular assessment should document how the school/district was not deliberately indifferent:

- Confirm that the appropriate supportive measures were implemented
- Regularly re-evaluate the need for any continuing supportive measures
- Confirm that appropriate remedies were implemented
- Ensure sanctions were enforced and address (if needed)
- Monitor for retaliation and subsequent harassment

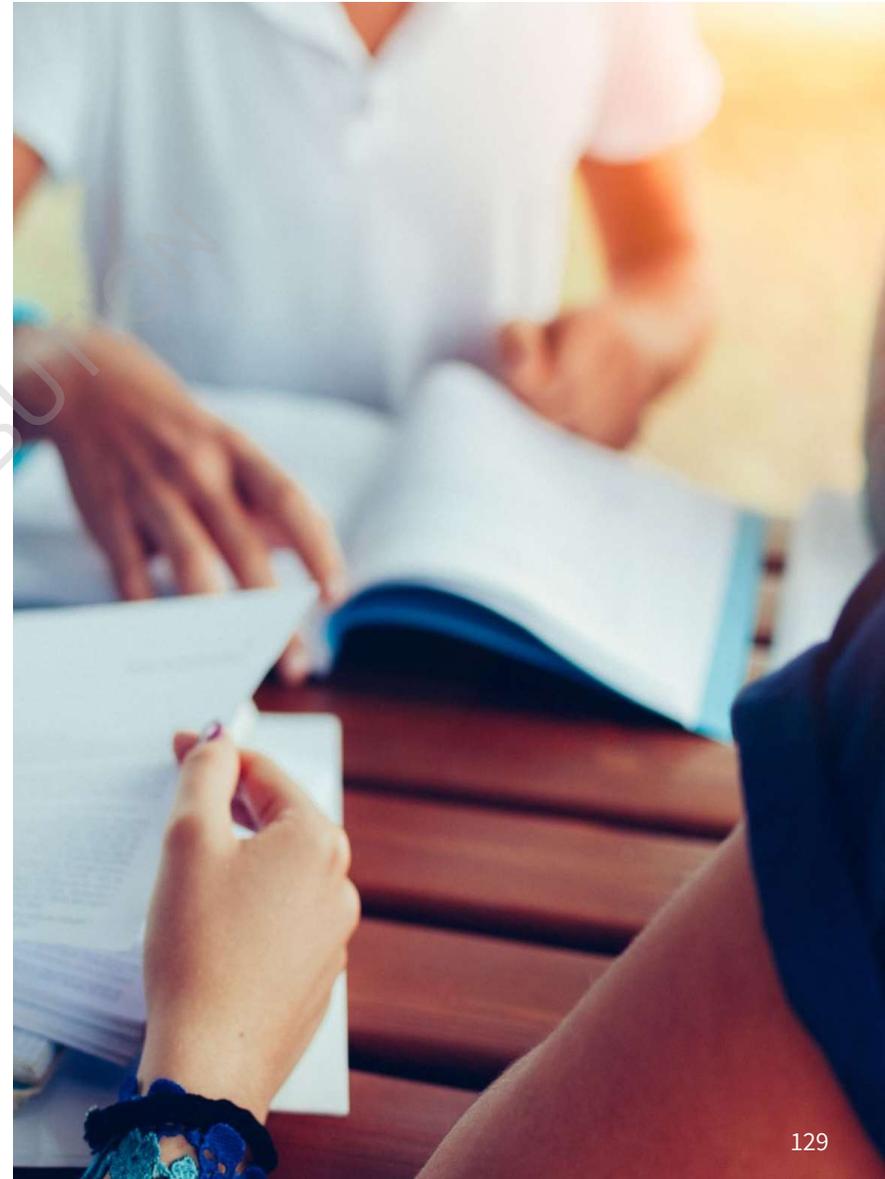
Pattern and Climate Issue Assessment

Complaint closure assessment can also assist TIXCs in identifying pattern and climate issues:

- Identify patterns and systemic problems
- Issue school/district-wide policy statements, informational campaigns
- Provide regular training for school/district students, employees, parents/guardians
- Conduct periodic surveys of school/district climate
- Establish a system for monitoring future incidents and patterns

Compliance Assessment

- **Conduct regular needs assessment**
 - Identify strengths
 - Identify program gaps
 - Barrier Analysis
 - Address areas of improvement
 - Assess resources
- **Identify patterns and systemic problems**
 - Internal reviews/audits/assessments
 - Climate Assessments
- Complaint/investigation debriefing
- Benchmarking





Association of
Title IX Administrators

Questions?

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