



Association of
Title IX Administrators

Title IX Investigation Foundations Level Two: Report Writing for K-12 Education

Training and Certification Course

WELCOME!

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Strategic Risk
Management Solutions



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

Content Advisory

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

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

Introduction



This course focuses on the primary components of investigation report writing, including writing mechanics, report elements, structure, and best practices.



Practitioners will learn how to compose and structure an investigation report for Title IX complaints, including how to navigate and avoid common pitfalls.



Our goal is to provide an in-depth exploration of each section of an investigation report and the skills necessary to complete a robust and comprehensive report.

Title IX Overview

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Title IX

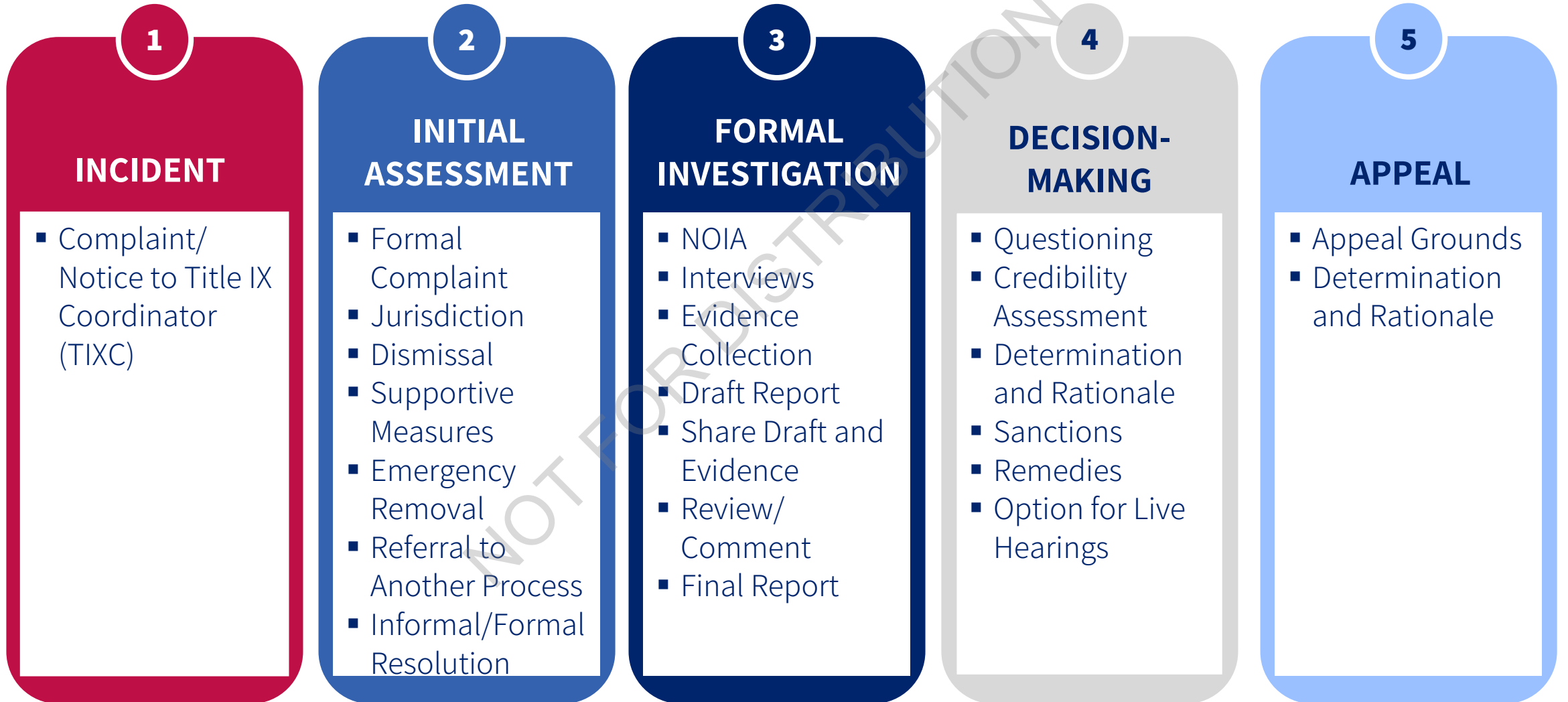
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance”

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



Title IX Grievance Process Overview

Formal Grievance Process Overview



Prompt and Fair Resolution

Prompt Resolution

- Complete without undue delay
- Title IX Regulations do not define “prompt”
 - Ideally 30 - 60 business days in K-12
 - Investigations vary widely in complexity and pacing
- Grievance process may take longer than expected
 - Anticipate, mitigate, and document delays
 - Communicate with parties regarding delays

Fair Resolution

- Treat all parties fairly
- Ensure that all parties have opportunity to fully participate

Parties' Rights

- Be accompanied by Advisor of their choice
- Discuss the allegations under investigation without restriction
- Gather and present relevant evidence without restriction
- Inspect and review directly related evidence and investigation report
- Present witnesses
- Present inculpatory and exculpatory evidence
- Receive written detailed Notice of Investigation and Allegations (NOIA)
 - Must include information about the school/district's Title IX Grievance Process
- Receive written notice of the date, time, location, participants, and purpose of interviews or meetings, with sufficient time to prepare

Parent/Guardian Rights

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



Investigation Process Overview

Investigation

1

INCIDENT

- Complaint/
Notice to TIXC

2

INITIAL ASSESSMENT

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

3

FORMAL INVESTIGATION

- NOIA
- Interviews
Evidence
Collection
- Draft Report
- Share Draft and
Evidence
- Review/
Comment
- Final Report

4

DECISION- MAKING

- Questioning
- Credibility
Assessment
- Determination
and Rationale
- Sanctions
- Remedies
- Option for Live
Hearings

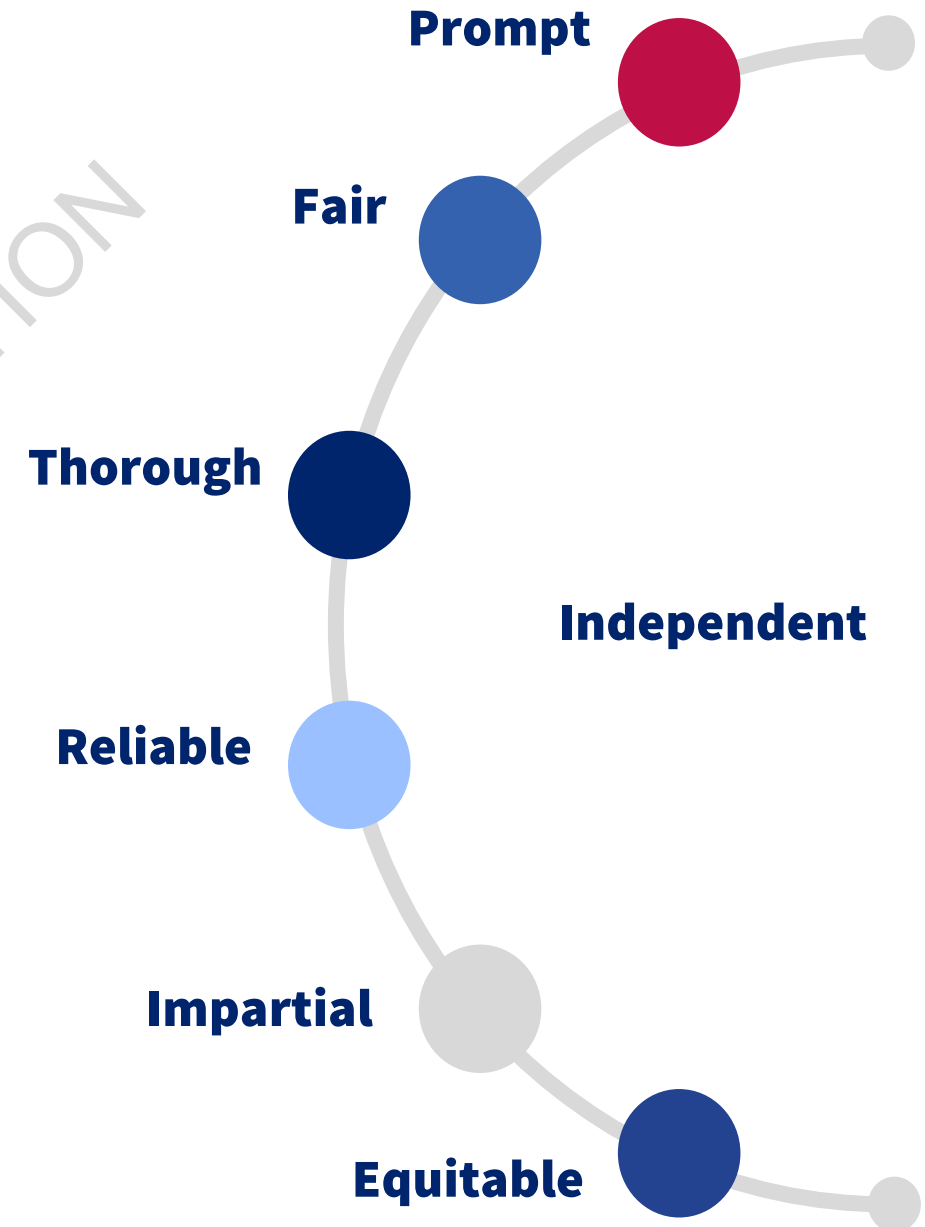
5

APPEAL

- Appeal Grounds
- Determination
and Rationale

Civil Rights Investigations Overview

- Title IX investigations differ significantly from other investigation practices commonly used in K-12 environments
- Investigations focus on gathering all available and **relevant** information
- The **school/district** is responsible for gathering evidence—not the parties
- Respondent is presumed “not responsible”



Investigation Process

Investigation Steps:

1. Receive Notice/Complaint
2. Initial Assessment and 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 and Evidence
9. Parties Review Draft Report and Evidence
10. Final Investigation Report



Investigation Documentation

Complaint File

TIXC should maintain:

- Supportive Measures and interim action correspondence and documents
- Emergency Removal documents (if applicable)
- Communication regarding Informal Resolution (if applicable)
- Signed releases of information for Advisors (if applicable)
- Advisor non-disclosure agreements (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and related responses/documentation

Investigation File

- Investigator is responsible for developing and maintaining an **investigation file** throughout the duration of the investigation
- **Investigation file includes:**
 - Copies of the policies and procedures in place at the time of the incident(s) and at the time of the investigation
 - Original NOIA and any subsequent NOIA updates
 - For each party and witness include:
 - Verified interview transcripts/summaries
 - Associated evidence (e.g., screenshots, written statements)
 - Correspondence with the Investigator(s)
 - Collected evidence and evidence log
 - Draft and final investigation report

Investigation File

- Investigator maintains:
 - Contact log
 - Investigator notes
 - Timelines for incident and investigation
 - Investigation report
- Investigation file becomes part of the **complaint file**
- Title IX-related records must be maintained for a minimum of **seven years**



Investigation Report, Evidence, and Sharing Documentation

Investigation Reports

- Federal regulations require an investigation report that fairly summarizes **all** relevant evidence
- Investigators must be **trained on issues of relevance and writing investigation reports** that fairly summarize **all** relevant evidence
 - Investigation report must include relevant inculpatory and exculpatory relevant evidence
- **Investigation reports serve several purposes:**
 - An opportunity for equitable access to evidence or accurate description of evidence
 - Shows Investigator's work
 - Provides Investigators with a standard and consistent format
 - Helps protect school/district on complaints that may be subject to scrutiny

Relevant and Directly Related Evidence

▪ Relevant Evidence

- Evidence is relevant if it has value in proving or disproving a fact at issue
 - Or assessing credibility
- It is the Investigator's responsibility to obtain all **relevant** evidence
- Investigators should include **relevant** evidence in their report

▪ Directly Related Evidence (DRE)

- Not defined by regulations
- DRE is evidence connected to the complaint, but is not inculpatory or exculpatory

Example: Relevant vs. Directly Related Evidence

Investigator: Walk me through how you met and then what happened with as much detail as you can share. I just want you to tell me a really detailed story that fills in the gaps for me.

Respondent: All right. You said you want to know how I met [Complainant].

Investigator: Yeah.

Respondent: It was sometime last summer. She was at a party that I went to that one of my teammates knew this guy, and I guess he is her brother and she was there and we just kind of talked while we were at the party.

She told me that she was going to be a freshman in the fall and so she was looking for friends and that kind of thing. So, I thought she was pretty cute, and we exchanged our Snapchat information and our cellphone numbers and kind of talked a little bit over the summer.

Then she hit me up when school started in the fall. So, that was kind of like how I know her.

Example: Relevant vs. Directly Related Evidence

- Witness 2 is the teammate of the Respondent. Witness 2 and the Respondent have played on both school and city league sports teams together for several years. Witness 2 is also a senior and knows the Complainant's older brother through social interactions. Witness 2 reports never meeting or communicating with the Complainant.
- Witness 2 remembers seeing the Respondent come out of a restroom stall in the boys' locker room with just shorts on and the zipper down.
- Witness 2 recalls joking about Respondent's luck.
- Witness 2 recalls telling Respondent to try to "keep it down" so coach didn't hear what was happening.
- Witness 2 e-mailed the Investigator screenshots of group text messages from September 5-6, 2020 in which the Respondent, Witness 2, and Witness 3 discussed what happened in the locker room.

Relevant Evidence: Exceptions

- Never relevant
 - Evidence of Complainant's sexual predisposition
 - Evidence of Complainant's prior sexual behavior, unless:
 - Offered to prove someone other than Respondent committed the alleged conduct
 - Offered to prove consent, with respect to prior consent with the Respondent

Strategies for Separating Evidence

- Color-code the evidence
 - Highlight relevant evidence or use a different font color
- Add footnotes to the investigation report indicating where the evidence can be found in the DRE file
- Some Investigators prefer to include the DRE as an appendix
 - ATIXA generally prefers a separate file

Separating Evidence: Example

- Investigator obtained screen shots of 36 text messages
 - 20 are relevant
 - 16 are DRE
- **How could the Investigator separate the evidence into the report and evidence file?**



Separating Evidence: Example

- Investigator obtained screen shots of 36 text messages
 - 20 are relevant
 - 16 are DRE
- Investigator could:
 - Include the relevant texts in the report
 - Note that a section of the text messages are redacted
 - Create a footnote referencing the DRE file location of the complete text thread
 - Provide entirety of text conversation in the evidence file
 - Color-code the relevant sections and DRE sections

Activity: Relevant vs. Directly Related Evidence

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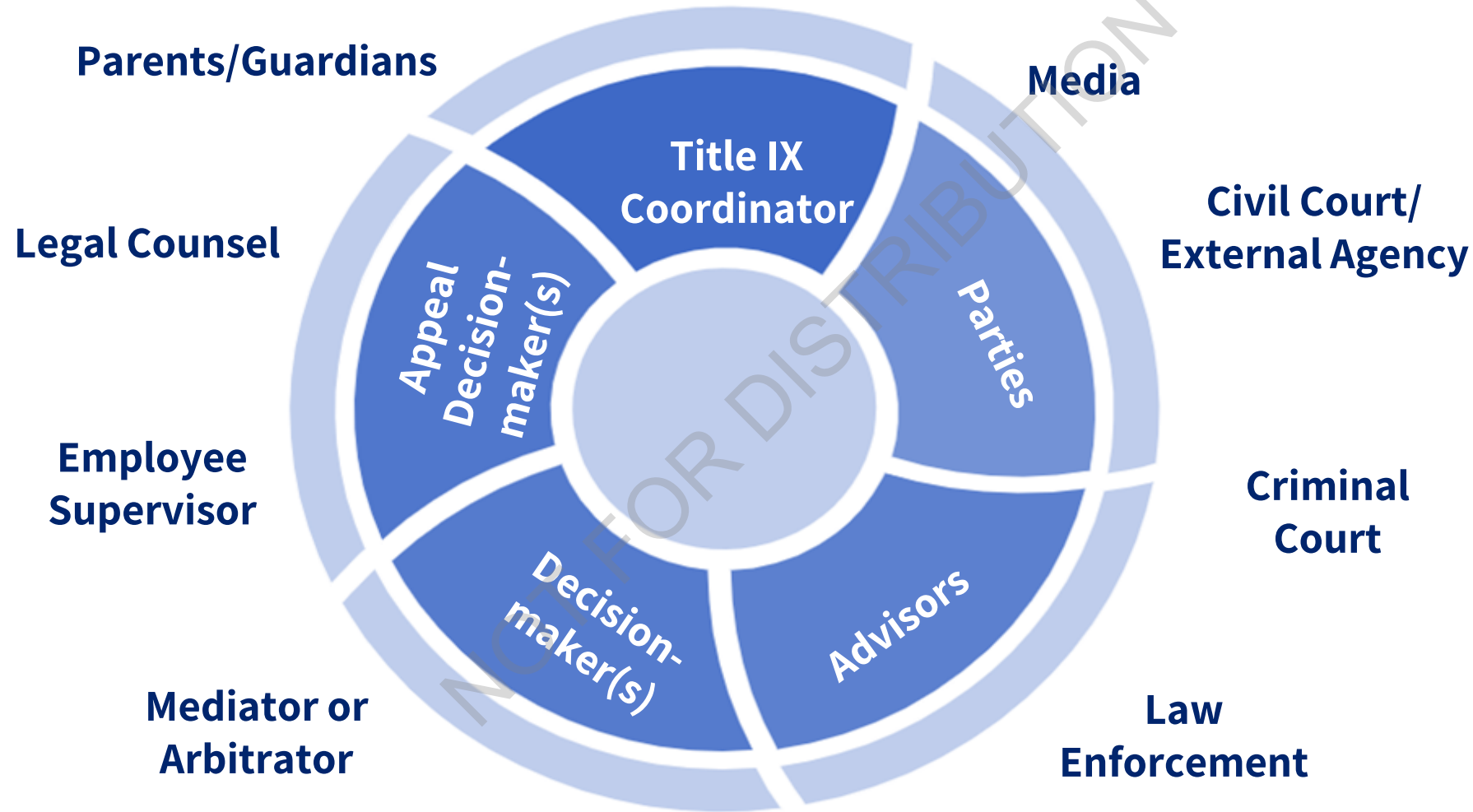
FERPA, Title IX, and Student Records

- Title IX investigation reports involving students are subject to the **Family Educational Rights and Privacy Act (FERPA)**
- An investigation report is considered part of each party's education record
 - Not typically part of a student witness's education record
- FERPA permits the disclosure of information contained in education records, without the student's consent, to school officials and specific external stakeholders who have a **legitimate educational interest**
 - Includes other parties and their Advisors
 - Avoid including or redact personally identifying information before releasing the report

Employee Records

- Title IX investigation reports involving employees may be subject to state employment record laws
- School/district policy dictates whether a complaint, and subsequent Resolution Process, are part of a Complainant's employee records
- Title IX requires releasing the investigation report to parties (whether students or employees) and their Advisors

Report Audience Considerations



Writing Mechanics

Formal vs. Informal Language

Formal Language

- Medical/anatomical terms
- Accurate terms for alcohol or other drugs, their composition, and use
- Full words – we would, cannot, percent
- Last name, role, titles
- Third-person writing

Informal Language

- Colloquial or slang terms for anatomy (“junk”) or sexual acts (“smashing”)
- “Weed,” “hunch punch,” “hammered”
- Contractions – we’d, can’t
- First name or nickname
- Empathic writing/taking a position

Tense

- Investigation reports are a narrative of events that have already occurred
 - **Past tense is best practice**
 - Avoid changing tenses
- **Present Tense:** expresses anything that is happening now, or is ongoing, constant, or habitual
- **Past Tense:** indicates past events, prior conditions, or completed processes
- **Future Tense:** indicates actions or events that will happen in the future

Neutral Perspective

- **ATIXA recommends Investigators write in third person and from a neutral, detached observer point of view**
 - Creates distance between the reader and the parties
 - Example:
 - I watched Complainant sob and tremble at the pain they felt during the interview
vs.
 - Complainant stated that it was “very painful” to discuss the incident
- Focus on information and evidence, not opinions or suppositions
- Examine evidence in a neutral fashion, avoid emotional language, terms, moralization, etc.
- Write so that the report is consistent in tone/format/voice no matter who writes it
- Templates can help maintain a neutral perspective regardless of Investigator

Writing and Structuring Investigation Reports

Format and Structure

- Templates, templates, templates
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
 - Headnotes
- Multi-party or multi-allegation investigations
- Use attachments, appendices, and exhibits

Enhancing User-Friendliness

- Table of contents
- Page numbers
- Line numbers
- File naming conventions
- Internal document links

Attachments, Appendices, and Exhibits

- Incorporate versions of relevant information into the investigation report by reference or in excerpt form
 - Photographs
 - Video stills
 - Screenshots of text messages/social media
 - Access logs, card swipe logs, phone records
 - Academic course schedules
 - Floorplan diagrams
- Description, date of receipt, source, method of receipt, and verification/authentication information

Direct Quotations

- Direct quotations and commentary from parties and witnesses can help to accurately convey their experiences and perceptions
- Advisors' statements should not be attributed to a party
- Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness

Punctuation for Quotations

If words are omitted from a quotation, use an ellipsis (...)

- Three dots (...) indicate the quote omits words in a sentence(s)
- Four dots (....) indicate the quote omits words at the end of one sentence when the quote continues onto the next sentence
- Do not change the meaning of the sentence by omitting text without an ellipsis

If words are inserted or altered in a quotation to improve readability, use square brackets [] to indicate the change

- May include:
 - Letter case or verb tense
 - Replacing a word to clarify meaning

Punctuation for Quotations

Enclose “sic” in square brackets to indicate that the quote is verbatim, though there are spelling or other syntax errors

- Most needed for excerpts from documentary evidence or interview transcripts
- Use [sic] when the meaning of the quotation is unclear
 - Helps proofreaders know what is/is not intentional
- If there are numerous errors throughout, consider a blanket statement that quotes are verbatim and that grammatical, syntax, or other errors are a function thereof

Sensitive Information

- Offensive, triggering, or explicit language (e.g., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Chosen name vs. legal name

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Redaction Practices

Full redaction vs. role identifiers

- Example:
 - **Original:** Teagan stated that Jesse smacked her with an open hand
 - **Full:** ██████ stated that ██████ smacked her with an open hand
 - **Role Identifiers:** Complainant stated that Respondent smacked her with an open hand
- Full redaction is a common practice in law enforcement, but is not recommended for Title IX investigations
- Provide key with names for parties (and parents/guardians)

Redaction Practices

- Other options:
 - Include full name for first mention
 - Use initials
 - Use one- or two-letter identifiers (e.g., C, R, W1, W2)
- Determine whether to create a fully unredacted copy
 - Legal counsel
 - Decision-maker(s)



Word Choice

- Investigation report writing is **clear and factual**
- Avoid:
 - Unnecessary adverbs and adjectives
 - Conclusory words
 - Judgmental statements

Common Pitfalls

- Abbreviations, initialisms, and acronyms
- Absolutes
- Clichés
- Exaggerations
- Generalizations
- Idioms
- Inconsistency
- Jargon
- Repetition

Word Choice Exercise Part One

Consider the difference a single word makes:

- The Respondent **fondled** the Complainant's breasts while they were sitting next to each other on the bus
- The Respondent **felt** the Complainant's breasts while they were sitting next to each other on the bus
- The Respondent **caressed** the Complainant's breasts while they were sitting next to each other on the bus
- The Respondent **touched** the Complainant's breasts while they were sitting next to each other on the bus
- The Respondent **groped** the Complainants breasts while they were sitting next to each other on the bus

Word Choice Exercise Part Two

Now that you've heard each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?



The Respondent:

- Fondled
- Felt
- Caressed
- Touched
- Groped

Word Choice Examples

- The Respondent **refused** to answer the question
- The Respondent **declined** to answer the question
- The Respondent **chose not** to answer the question

- The Complainant **denied** offering to massage the Respondent
- The Complainant **vehemently denied** offering to massage the Respondent
- The Complainant **flatly denied** offering to massage the Respondent

Word Choice Examples

Poor Phrasing Example: “On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood.”

Doe v. Metropolitan Government of Nashville and Davidson County, No. 20-6225 (6th Cir. May 19, 2022)

Recommended Revision: Four male upperclassmen engaged in sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016. The girls allege the sexual activity was unwelcome.

Parties' Questions for Others

Document questions parties request be asked of other parties and witnesses

1

Otherwise Answered

The question and the answer

3

Rephrased and Asked

The question, rephrased question, rationale for rephrasing, and the answer

2

Asked and Answered

The question, how it was asked, and the answer

4

Not Asked

Rationale for not asking the question (e.g., irrelevant, impermissible)

Tips for Report and Evidence File Sharing

- Use a secure file-sharing platform
 - Consider functional and time limit restrictions as appropriate for the school/district community and process
- Include a separate watermark for each party (parent/guardian/Advisor)
- Ensure the parties have a user-friendly method for providing feedback



Incorporating Parties' First Ten-Day Review Feedback

- Include parties'/Advisors' entire feedback and any responses from the Investigator(s) as an appendix
 - Ask individuals to provide an itemized list of feedback rather than a long narrative
- Include appropriate discussion if feedback impacts credibility
- Strategies for handling:
 - New evidence
 - Clarification of earlier statements
 - Requested shifts between relevant evidence and DRE

Post-Review Investigator Response

- Follow-up on all areas, as needed
 - Additional evidence
 - Additional witnesses
 - Questions
- Track changes
- Note if any party declined to comment
- Include Investigator response to review and comment in appendix
 - Rationales for responses

Investigator Response to Review Example

Issue: Why Witness 4 was included as a witness?

Investigator's Response: Witness 4 was identified by the Investigator based on information provided by Witness 1 and Witness 2 indicating that Witness 4 assisted with interviewing Complainant 2 and taking his written statement after school administrators received the initial report. Additionally, Witness 1 and Witness 2 recommended Witness 4 as someone who likely had relevant information regarding the complaint. During Witness 4's investigation interview, the Investigator found the information provided to be relevant.

TIXC Review

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Internal Report Review and Feedback

- TIXC reviews draft investigation report prior to providing it to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report, but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions

Feedback Examples

- Respondent said, “You can touch me too if you want.” Complainant did not say if she touched Respondent.
 - **Comment:** Why is this unanswered? As a primary element of their defense, the Respondent is arguing Complainant reciprocated the sexual contact. This is important information.
- Witness 4 also said that Complainant did not explain what Complainant meant when she said she was considering getting Respondent in trouble.
 - **Comment:** Did the Complainant say what she meant by this comment?
- Complainant was told there was no appeal process.
 - **Comment:** By whom? Do you know?

Absent Information

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Information Not Obtained

Investigators should document all efforts to obtain evidence and an explanation for any information that could not be obtained

- Did/does not exist
- Cannot be located
- Party/witness not available or declines to respond to question(s)
- Party/witness declined to submit information
- Deleted, destroyed, damaged
- Unable to access without a court order
- Cannot be released based on an ongoing criminal and/or agency investigation

Unanswered Questions

- **ATIXA recommends including unanswered questions asked** during the investigation to:
 - Demonstrate a thorough investigation
 - Help guide the Decision-maker to topics that may need further exploration
- **If relevant, document in the interview summary**
 - Example: “Witness 2 did not provide additional information regarding their text conversation with Complainant on February 19, 2024. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

Investigation Report Sections

Investigation Report Sections

- Allegations Overview
- Jurisdiction
- Applicable Policies and Relevant Definitions
- Investigation Timeline
- Incident Timeline
- Relevant Evidence Summary
- Discussion and Synthesis
- Recommended Findings and Determination
- Evidence File




Allegations Overview

Typically prepared by the TIXC

- Parties' names and school/district IDs
- Date, time, and manner of complaint
 - Complainant, third party, or TIXC
- Description of alleged misconduct
- Policies governing the investigation
- Scope of investigation

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Summary

Example: Summary of Allegation(s)

Introduction

On Tuesday, October 6, 2024, the Deputy Title IX Coordinator met with the Complainant and the Complainant's father. The Complainant reported that on Friday, October 2, 2024, the Respondent forced the Complainant to perform oral sex on him in the boys' locker room. The Complainant completed the complaint form during the meeting.

As a result of this allegation and additional evidence presented at the time of intake, the Deputy Title IX Coordinator asked the Title IX Investigator to conduct an adequate and impartial investigation using the provisions outlined in the district's Nondiscrimination and Sexual Misconduct Policy in accordance with Title IX, following guidelines from the U.S. Department of Education Office for Civil Rights.

Jurisdiction Statement

Provide a jurisdiction statement including:

- Date(s), time(s), and location(s) of reported conduct
- Individuals involved
- Relevant policies and procedures related to jurisdiction
 - Analysis of the school/district's jurisdiction over this type of complaint
 - School/district control and/or disciplinary authority for the context of the alleged misconduct
 - Indicate whether Title IX requires the school/district to investigate, or whether jurisdiction is discretionary

Example: Jurisdiction Statement

Jurisdiction Statement

According to available information, the Respondent is currently a full-time teacher at Brookside High School, and the Complainant is currently a sophomore student at the same school. Both parties maintained the same school affiliations at the time of the reported incident.

The reported incident occurred in the photography lab at Brookside High School in Seattle, Washington, United States. If true, the reported incident would constitute sexual assault under District policy and Title IX.

The District controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the District's education program as a student; therefore, the District has jurisdiction over this complaint pursuant to District Policy 2.2.

Applicable Policies and Relevant Definitions

- Include the full text of all applicable policy sections
- Alleged violation(s)
- Relevant definitions (e.g., consent)
- Standard of Evidence
- Consistent with the Notice of Investigation and Allegations (NOIA), including any amendments



Policy Handbook

Investigation Timeline

- Notifications to the parties
- Interviews with parties and witnesses
- Site visits
- Methods used to gather other evidence
- Meetings held
- Note any process delays, including reasons for the delay



Incident Timeline(s)

- Visual representation or list that shows events in chronological order
 - One timeline for the reported incident(s) based on all available information
 - Use separate timelines for multiple incidents if necessary
- Reference evidence connected to points on the timeline
 - E.g., timestamped text messages, receipts, call logs
- For stalking allegations, include a timeline to assess the “course of conduct” element of the offense

Relevant Evidence Summary

Content may dictate the most logical organization structure for this section

- By allegation
- By interviewee
- Chronological by interview
- Chronological by incident timeline

Discussion and Synthesis

- Discuss and synthesize the relevant information
 - Consider the elements of each policy at issue
 - Refer back to relevant evidence cited
 - Refer to the credibility assessment(s)
- Guide for the Decision-maker(s) determination
 - What remains unresolved?
 - What type of analysis is required based on the applicable policy provisions?

Discussion and Synthesis Example 1

Hostile Environment Harassment – Severity

Severity is a measure of the egregiousness of an incident, either in isolation or in aggregate. Typically, physical conduct is more likely to be severe without the need for repetition, but the Decision-maker should consider the totality of the circumstances in making an evaluation. In evaluating the severity of the conduct, the Decision-maker may consider whether the conduct was directed at a specific person or group of people, included violence or threats of violence, or whether there was a degree of abuse, embarrassment, or humiliation inherent to the conduct.

Discussion and Synthesis Example 1

Hostile Environment Harassment – Severity

Based on Complainant 1's allegation, Respondent's actions included physical conduct in the private space of Respondent's car. Complainant 1 was a seventeen-year-old student with an Individualized Education Plan (IEP) at the time of the alleged incidents and Respondent was Complainant 1's teacher, a relationship which may impact the Decision-maker's assessment of severity. Additionally, Complainant 1 described Respondent's touches as occurring while he was actively driving and that may also impact the Decision-maker's determination of the relative severity of the alleged conduct.

Discussion and Synthesis Example 2

Sexual Harassment – Objectively Offensive

Several factors weigh into an evaluation of the objective offense of misconduct. The relative ages and relationship of the parties can factor in, as well as the frequency and severity of the conduct. Conduct that is threatening, humiliating, intimidating, ridiculing, or abusive, may be determined to be objectively offensive.

Touching an individual's penis and buttocks may constitute objectively offensive conduct, depending on the context, particularly when considering factors like the relationship between the parties and the status of those individuals. Complainant 2 was a nineteen-year-old student with an IEP at the time of the alleged incidents.

Discussion and Synthesis Example 2

Hostile Environment Harassment– Objectively Offensive

Respondent was Complainant 2's teacher at ATIXA High School as well as Complainant 2's connection to the NABITA High School marching band program, and that may also impact the Decision-maker's ultimate determination as to whether the behavior was objectively offensive. This question should be evaluated from the perspective of a reasonable person similarly situated (in the shoes of) to the Complainant.

Recommended Findings*

- **Did the conduct occur as alleged?**
 - What is more likely than not to have occurred?
 - Who was involved in what occurred?
 - When and where did it happen?
- **Apply the credibility analysis**
 - Evidence is less credible if it is inconsistent or not corroborated
 - Passage of time, coupled with memory errors can adversely impact evidence credibility
- Allow the evidence alone to guide recommended findings
- List the recommended finding of fact for each alleged violation, applying the standard of evidence

* This section is only applicable if permitted by school/district policy

Recommended Final Determination*

For complaints where Investigator(s) found that the alleged conduct occurred, apply the standard of evidence and use the relevant, credible evidence to answer the following

Did the conduct alleged violate policy?

- Parse the policy into its individual elements (model of proof)
 - A final determination of a violation can only occur when every element of a policy is met
 - Which facts provide information that either supports or detracts from meeting each element?
- List the recommended final determination for each alleged policy violation applying the standard of evidence
- If using an Investigator only investigates model, include a statement that the recommended findings and determination are not binding on the Decision-Maker(s)

*This section is only applicable if permitted by school/district policy

Recommended Findings and Determination Example

Sexual Assault – Fondling is a violation of District policy. For Complainant’s allegation to be sustained, the preponderance of the evidence must show that the alleged incident (1) occurred and (2) contained each of the following elements:

Fondling, defined as the intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of the Complainant by the Respondent, without the consent of the Complainant, for the purpose of sexual degradation, sexual gratification, or sexual humiliation

Recommended Findings and Determination Example

Because Respondent did not provide a statement and the parties were alone without the presence of others, the analysis of this allegation is limited to Complainant's perspective of what occurred between the parties. Complainant alleged that on more than one occasion, Respondent touched Complainant's vaginal area both over and under her clothing, without Complainant's consent. Complainant alleged that she did not want Respondent to touch her vaginal area but was scared to tell him no because Respondent was mean to Complainant. Complainant reported this information to Witnesses 1, 2, 3, 6, 7, and 8 all of whom testified that Complainant told them that Respondent touched Complainant's vaginal area without Complainant's consent.

Recommended Findings and Determination Example

Witnesses 6 and 8 testified that Complainant told them that Respondent touched Complainant inappropriately and without Complainant's consent on September 19 and an undisclosed date prior to September 19. The Investigator noted that there were no material differences in the statements that Complainant provided to any of the aforementioned witnesses. Although, per Witness 3, Respondent denied Complainant's allegations, the preponderance or greater weight of the evidence collected supports Complainant's description of the alleged conduct, that Respondent touched Complainant's vaginal area without Complainant's consent, which satisfies the first and third elements of the fondling definition.

Recommended Findings and Determination Example

Additional analysis is required to determine the second element of the policy prohibition – was the conduct done with sexual intent or for the purpose of sexual gratification. This analysis increases in difficulty when the Respondent is an elementary student; children that young have not yet reached sexual maturity, and the behavior may simply be mimicry or curiosity or actual sexual interest or intent. When reviewing whether Respondent’s behavior was for the purpose of sexual gratification, the Investigator looked to the overall context of the behavior and relationship of the parties and primarily focused on whether the contact was made intentionally.

Recommended Findings and Determination Example

This behavior was intentional, per Complainant, as Respondent made contact with Complainant's vaginal area both over and under her clothing, and it is nearly impossible to make contact with someone's bare skin under their clothing in the absence of intent. Additionally, based on the statements of Witnesses 2, 3, and 4, the parties had a "dating" relationship and were seen kissing on school grounds. The parties' dating relationship coupled with the intent of Respondent touching Complainant on her bare vaginal area, supports that the conduct was done for the purpose of Respondent's sexual gratification. Because the alleged conduct satisfies all policy elements, the preponderance of the evidence supports a finding that Respondent violated the District Policy for Sexual Assault (Fondling).

Evidence File

- All relevant information in complete form
- Redact information that is impermissible
- Logical organization to align with report
- Maintain electronically
- TIXC must be able to access

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Questions?

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