Association of Title IX Administrators

Title IX Investigation Foundations Level One for K-12 Education

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Content Advisory

The content and discussion in this training 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.

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Course Introduction

This course introduces the core tenets for investigating allegations of sex discrimination and sexual harassment within a school or district's education program and activities.

Practitioners will learn the components of the investigation process, investigation skills, and best practices for conducting fair and impartial investigations.

Our goal is to provide an in-depth exploration of investigations and how to practically apply the concepts to your role within the Title IX Grievance Process.

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Review: Title IX Statute, Application, Scope, and Definitions

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Title IX

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

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

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Title IX Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Equity and Access

Retaliation

Sexual Harassment*

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

* 2020 Regs only apply to Sexual Harassment

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Sex Discrimination

- **Sex Discrimination** encompasses:
  - Unfair treatment based on sex
  - Exclusion from participating on the basis of sex
- **Disparate Treatment:** occurs when a school/district policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when a school/district policy, practice, or procedure (or an agent thereof) **unintentionally** discriminates
  - A policy may be intended to be neutral as written, but it may be applied in a discriminatory manner or in a way that has a discriminatory effect

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Sexual Harassment Definitions

- **Hostile Environment**
  - Unwelcome conduct determined by a reasonable person to be **so severe**, **pervasive, and objectively offensive** that it effectively denies a person equal access to the school/district's education program or activity
- **Sexual Assault** includes:
  - Rape
  - Fondling
  - Incest
  - Statutory Rape

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ATIXA Model Policy Definitions

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

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Title IX Grievance Process Overview

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Formal Grievance Process Overview

1 INCIDENT

- Complaint/ Notice to Title IX Coordinator (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 & Evidence
- Review/ Comment
- Final Report

4 DECISION-MAKING

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

5 APPEAL

- Appeal Grounds
- Determination & Rationale

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Prompt and Fair Resolution

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
  - 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

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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

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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

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Students with Disabilities

- If a party is a student with a disability, TIXC **should consult** with one or more members of the student's Individualized Education Program (IEP) team or Section 504 of the Rehabilitation Act (504) team
  - This consultation will determine how to comply with the IEP or 504 plan throughout the Title IX Grievance Process, including the investigation
- The TIXC should communicate with the Investigator to ensure that any coordination needed at the investigation stage is addressed
  - This may include:
    - Additional people present for meetings and interviews
    - Additional time to respond to any posed questions
    - Other appropriate steps to ensure compliance with Individuals with Disabilities Education Act (IDEA) and 504

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Investigation Process Overview

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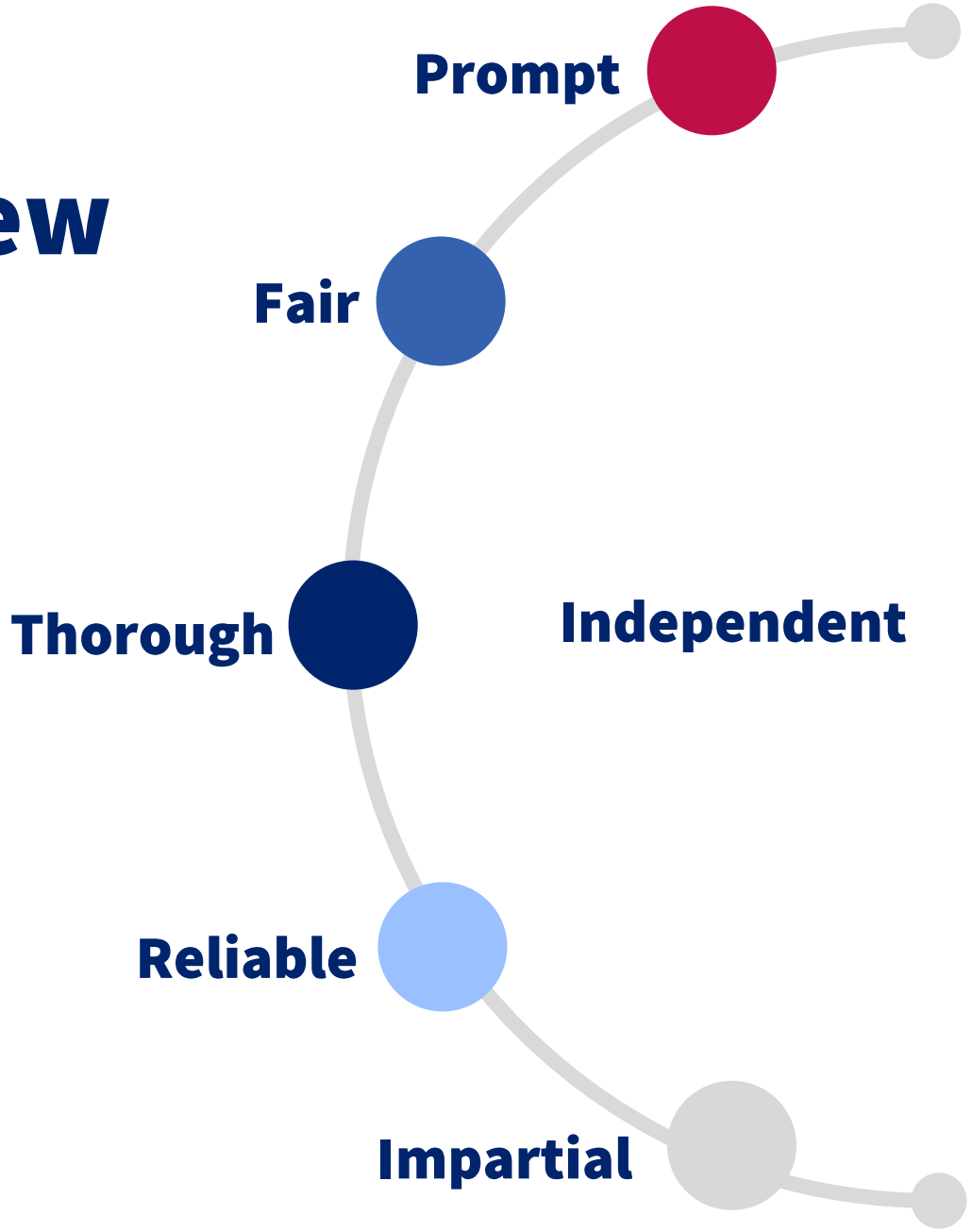
Civil Rights Investigations Overview

- Title IX investigations differ greatly 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”



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Investigation Oversight

TIXC responsibilities:

- Appoint and train Investigators
- Conduct intake and initial assessment of report/complaint
- Ensure timeline compliance
- Maintain records
- Provide ongoing supportive measures for parties
- Review investigative reports
- Serve as primary point of contact for parties
- Strategize and consult with Investigators

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Who Should Investigate?

- Investigator(s) may not serve as the Decision-maker(s) for the same complaint
- School/District will determine the staffing model, including one Investigator or two

Full-Time Investigator(s)

Investigator Pool

Coordinator as Investigator

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Investigator Role

- Strategize with TIXC
- Remain impartial and free of bias
- Gather all available and relevant information
- Interview the parties and witnesses
- Create an investigation report that fairly summarizes all relevant details
- Share the evidence and investigation report with the parties
- Maintain accurate and thorough investigation records and notes

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Bias and Conflict of Interest

- Title IX Investigators have no “side” other than the **integrity of the process**
- Title IX regulations **prohibit conflict of interest or bias** against parties generally, an individual party, or the substance of the complaint
- Investigators identifying a potential conflict of interest or bias should **immediately notify** and disclose the information to the TIXC

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Required Training for Investigators

- Definition of **Sexual Harassment**
- **Scope** of the school/district's education program or activity
- Conducting a **fair and thorough investigation** and **Title IX Grievance Process**
- **Serving impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Relevance of questions and evidence**; including restrictions on questions and evidence about the Complainant's sexual predisposition or prior sexual behavior
- Creating an **investigation report** that fairly summarizes relevant evidence

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Investigation Phases

- Title IX investigations may examine allegations of sex discrimination, sexual harassment, or retaliation
- ATIXA's recommended investigation process is comprised of 10 steps over three phases:
  - Pre-investigation
  - Investigation
  - Post-investigation
- Not all phases involve the Investigator

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Pre-Investigation

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Investigation Steps

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

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Notice/Complaint

- School/District receives a report, knowledge, or Formal Complaint of alleged sex discrimination or sexual harassment
  - TIXC is point person to receive reports and Formal Complaints, including referrals from school/district employees
- **Report**: Any information that indicates a potential Title IX policy violation
- **Formal Complaint**: A written request for the school/district to initiate its Formal Title IX Grievance Process
  - Signed by the Complainant (or parents/guardians)
  - Could be signed by the TIXC

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Initial Assessment and Jurisdiction Determination

TIXC or designee will perform several steps, including:

- Outreach and Intake to potential Complainant (usually with parents/guardians)
- Complete jurisdictional assessment
- Sign a Formal Complaint (if applicable)
  - Pattern, Predation, Threat, Violence, Weapons, Minors, Employee Respondent, Complainant not P/ATP
- Offer and coordinate supportive measures
- Engage Emergency Removal or Administrative Leave (if applicable)
- Enact complaint Dismissal procedures (if applicable)
- If requested/appropriate, coordinate Informal Resolution process (if applicable)

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Investigation Bases and Scope

TIXC determines the investigation basis and scope

- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
  - If scope needs to be adjusted during the process, Investigator should consult with the TIXC
- **Three possible bases for civil rights investigation:**
  - **Incident:** a specific incident or period
    - May involve one or multiple alleged violations
  - **Pattern:** repetitive or similar behaviors or targets by the same Respondent over a period
    - Tend to involve multiple Complainants
  - **Climate/Culture:** discriminatory policies, processes, and environments
    - May have no identifiable Respondent

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Formal Investigation

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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 & Evidence
- Review/ Comment
- Final Report

4

DECISION-MAKING

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

5

APPEAL

- Appeal Grounds
- Determination & Rationale

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Investigation Steps

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 draft report & evidence review**
9. **Parties draft report & evidence review**
10. **Final investigation report**

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Notice of Investigation and Allegations

- The written NOIA is **sent to all parties simultaneously**
- **NOIA includes**:
  - Notice of the allegations and known details, such as identities or the parties
  - A description of the alleged conduct and relevant policy provisions
  - Information about grievance procedures
  - Presumption that Respondent is not responsible
  - Supportive measure available
  - 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

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Investigation Strategy

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Establish Investigation Strategy

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

- Elements of the specific policy provision(s) alleged to have been violated
  - Investigators are looking for evidence that speaks to each element
- Preliminary undisputed and disputed facts and their significance
- Initial witnesses and interview order
- Other types of possible evidence and the plan to acquire such evidence
- Anticipated obstacles and obstructions
- Working investigation timeline

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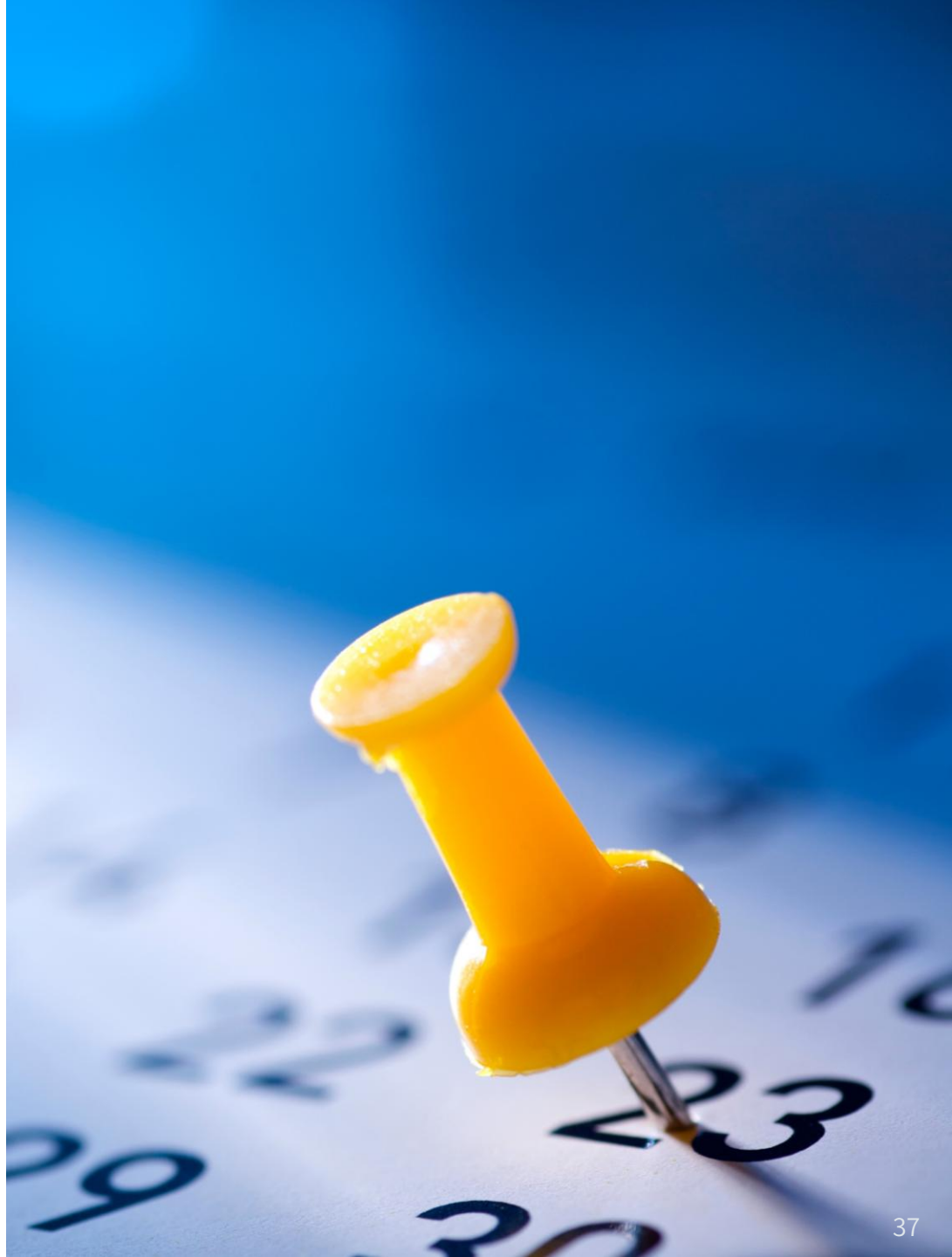
Establish an Investigation Strategy

Planning considerations:

- Process delays
- Working with parent/guardians and Advisors
- Coordination with law enforcement (if applicable)
- Interview sequencing
- Evidence collection
- Counter-complaints
- Sharing information with parties and witnesses during the investigation



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Process Delays

- Investigations must be completed within a reasonably prompt timeframe; avoiding undue delays
  - Expectation to proceed during school breaks, including summer
  - Consult with TIXC if circumstances cause more than a short process delay
- 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

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Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice as well as a parent/guardian
- “Of choice” truly means anyone
- 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 (if offered)
  - Schools/districts may choose to appoint an Advisor earlier in process
- Advisors may ask questions of the other party and any witnesses on behalf of the party they advise through the Investigator or Decision-maker

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Coordinating with Law Enforcement (LE)

- Sexual harassment incidents may also give rise to criminal law allegations under state laws
- LE may notify school/district of complaint, or school employee may report incident to LE
- Criminal investigations do not relieve school/district of its duty to respond promptly and effectively
- Criminal investigation cannot substitute for the Title IX investigation
  - Different laws/policies and a different standard of evidence
- TIXC communicates with LE in circumstances with concurrent responses, to the extent permitted by law

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Interview Sequencing

- Conduct interviews as promptly as possible to capture fresh recollections
  - Do not interview Respondent before providing the NOIA
- Identify an initial witness list and solicit additional witness suggestions from parties and other witnesses
- Investigator retains discretion to determine whether a suggested witness has relevant information
  - When unsure, err on the side of conducting the interview; it can always be excluded later if it proves to not be relevant
- When addressing student witnesses, consider getting parent/guardian permission (especially if required by state law or school/district policy), because the parties will have access to interview summary

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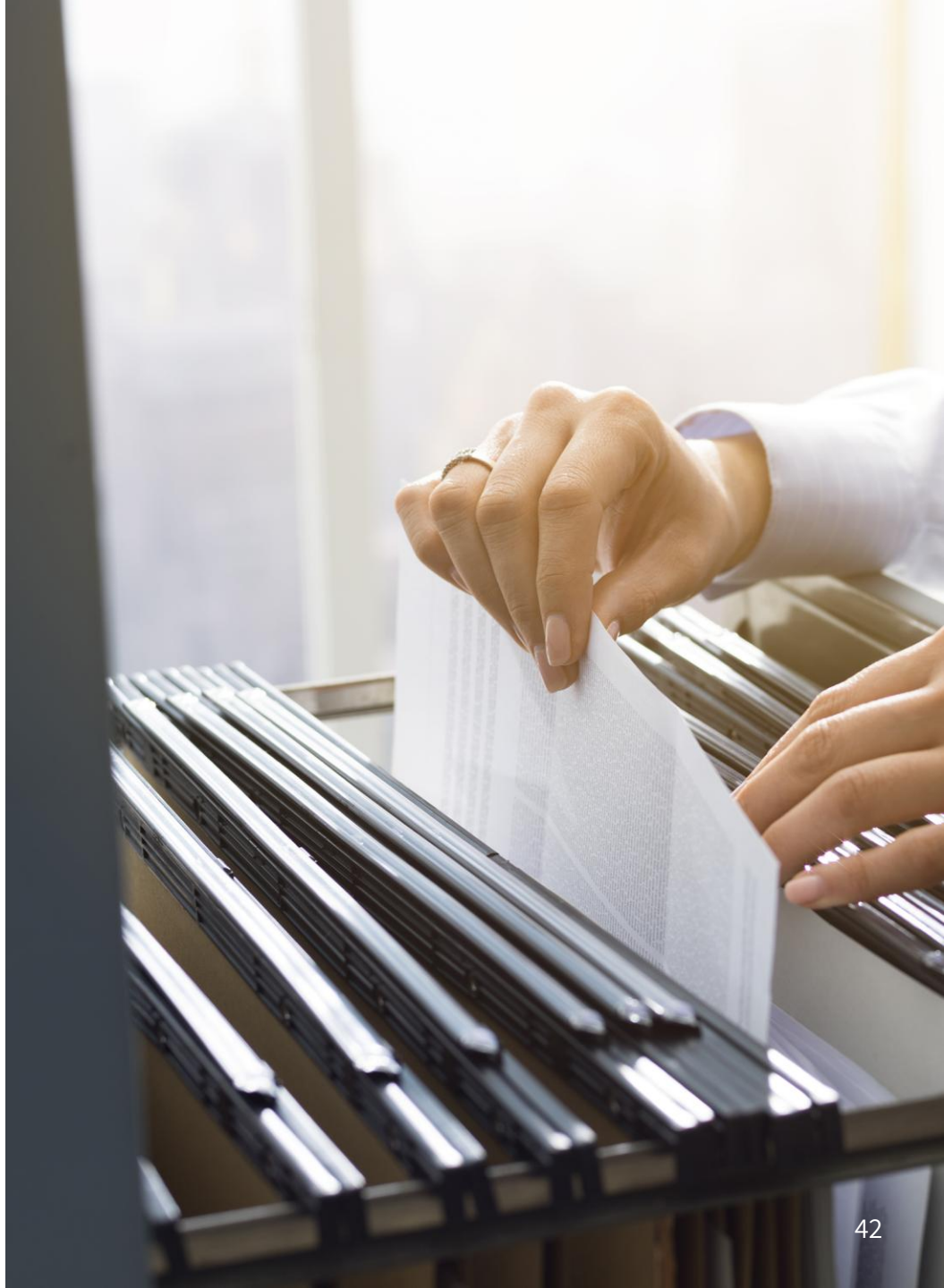
Evidence Collection

- Burden to gather evidence is the school/district's responsibility
- Active process to gather evidence
- Identify potential sources of information
- Document efforts to gather, even when not successful



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Information Sharing

- Information sharing practices must **balance transparency, privacy, and strategy**, as well as the parties' rights
- Witnesses may have limited or no knowledge about the complaint itself
- Witnesses may or may not know the parties or other witnesses
- Some information sharing will be necessary
- Parties will have access to all relevant and directly related information at the conclusion of the investigation

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Counter-Complaints

- Respondents may file a **counter-complaint** of sex discrimination or sexual harassment against the Complainant if there is Complainant conduct that they wish to report
- Reporting other alleged misconduct (e.g., drug dealing, academic misconduct) is not considered a counter-complaint
- May occur prior to, during, or after the investigation of the original complaint
- If a party mentions (even casually) discrimination or harassment that could serve as a basis for a counter-complaint, but it is unclear if they wish to make a complaint, clarify or have the TIXC contact them to clarify

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Activity: Parsing the Policy

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Ang and Becca

- Two sixth graders at Puckett Bay Middle School, Ang and Becca, are assigned tablemates for their Earth Science lab
- Ang requested to be reassigned to a new lab partner
- When the lab teacher asked the reason for the request, Ang shared the following:
  - For the past two weeks Becca has placed her hand on his thigh multiple times.
  - He has asked her to stop
  - She stops her attempts during that lab session but attempts to touch him again in subsequent labs
  - Additionally, Ang shared that yesterday when Ang was walking to pick up supplies at the front table, Becca reached over and grabbed his butt

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Definitions: Sexual Harassment

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- **Sexual Assault, Fondling**:
  - 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**

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Sexual Degradation

ATIXA Model Definition:

- Refers to conduct that reduces a person to a sexual object, demeans them on the basis of sex, or portrays them as inferior, subservient, or lacking dignity because of a person's sex or sexual characteristics
- Key aspects include the reduction or objectification of a person's sense of value, not just making the person feel embarrassed
- May manifest as:
  - Verbal
  - Physical/Positional
  - Behavioral/Role-Based
  - Body-Based

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Sexual Gratification

- ATIXA suggests the following decisional rubric for assessing when it is reasonable to find that the contact in question is **NOT** for purposes of sexual gratification:
  - The contact can be proven inadvertent
  - The contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider
  - The contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual)
  - The contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual
  - The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s)

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Sexual Humiliation

ATIXA Model Definition:

- Refers to conduct that causes embarrassment, shame, or loss of dignity through sexualized means
- Sexual humiliation typically involves verbal, physical, or psychological acts that target a person's sense of dignity, self-worth, or bodily autonomy, while being tied to sexual activity, sexuality, or sexual identity
- May manifest as:
  - Verbal
  - Exposure-Based
  - Situational
  - Social

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Investigation Skills and Questioning

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Pre-Interview Planning

- Do not conduct interviews prior to NOIA; avoid surprise interviews
  - Should have sufficient time to prepare
- Before scheduling interviews, consider
  - Location, scheduling constraints, participants, and preparation
- **Cannot mandate interview participation**
- It can be beneficial to conduct interviews in person, when possible, but videoconferences are common
- Always prepare initial questions in advance, but **remain flexible**

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Interviewing Skills

Investigators build and improve skills over time and with practice:

- Appropriate questioning
- Active listening
- Body language and non-verbal communication (use caution)
- Identifying gaps
- Seeking clarification

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Establish Rapport

GOAL: Interviewee trusts that Investigator is neutral and impartial

- Investigator(s) help set the tone for a productive interview
- Maintain professionalism
- Provide transparency about expectations and the process
- Balance neutrality with compassionate approach
- Ask questions in a straightforward, non-judgmental manner
- Follow up in a timely manner, if necessary
- Use a trauma-informed approach to working with all parties and witnesses

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Trauma-Informed Practices

Key principles of trauma-informed practice:

- Safety
- Trustworthiness and transparency
- Collaboration and mutuality
- Empowerment, voice, and choice
- Cultural, historical, and identity considerations

ATIXA Recommendation: Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence

- Trauma-informed practices should not significantly influence evidence evaluation

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“The Spiel”

- Establishing rapport creates a conducive interview environment
- “The Spiel” helps an interviewee to understand the Investigator’s role and the process

- Investigator introduction and role
- Purpose of investigation
- Role of the Advisor
- Interview questions
- Notetaking practices
- Commitment to privacy
- Witness-specific information
- Post-interview steps
- Interview expectations
- Relevant policies
- Acknowledge difficulty
- Retaliation reminder

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Activity: Practicing Your Spiel

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Questioning Considerations

An interview is a conversation designed to elicit information in a non-accusatory manner

- Ask questions directly to the party; it is critical that they, not their parent/guardian or Advisor, answer
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; obtain answers to all questions
- Ask purposeful questions:
  - What do I need to know?
  - Why do I need to know it?
  - What is the best way to ask the question?

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Questioning Considerations, Cont.

- Use policy definitions to inform questions (e.g., if fondling, which hand was used?)
- Avoid unnecessary repetition or traumatic re-triggering, but gently get the details you need
- Choose or blend effective questioning strategies/methodologies (e.g., cognitive interviews)
- Be mindful age and use developmentally appropriate questioning techniques

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Questioning Tips

- Listen carefully
- Seek to clarify terms that have multiple meanings
  - “We were hanging out” or “She was acting weird”
- Avoid:
  - Accusatory or argumentative questions or tone (often in the form of leading)
  - Blaming questions
  - Confusing/compound questions
  - “Double-barreled” questions
  - Evaluative responses
  - Sanitizing language (use the terms used by the interviewee)

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Interview Challenges: Resistance, Reluctance, and Lying

- Offer a reminder of Investigator's role as a neutral fact-gatherer
- Maintain rapport and avoid accusation
  - "Help me understand…"
  - "I think I'm missing something…"
  - "Can you tell me more about that?"
- Use language mirroring
- Allow opportunity for interviewee to restate
- Review retaliation, amnesty policies (if applicable), expectation of truthfulness
- Avoid statements reflecting moral judgment

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Final Interview Questions

- “Is there anyone else that you think we should talk to?”
- “Are there any questions you expected that we didn’t ask?”
- “Is there anything else you think we need to know?”
- What questions should I pose to other witnesses/parties?
- **FOR THE PARTIES**: “Are there any questions that you would like us to ask any other witness or the other party(ies)?”
- Document questions and answers provided
- Keep a running list of the questions suggested/requested by each party
  - Whether and when the question was asked
  - Rationale for not asking any question(s) based on irrelevance or impermissible evidence

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Interview Documentation and Review

- Maintain interview transcripts or written summaries
  - **Transcript**: word-for-word documentation of a recorded interview
  - **Summary**: Investigator's summation all information gathered during entire interview
    - May be several paragraphs or pages, depending on interview length
- Recording is an increasingly common practice
- Parties and witnesses should be invited to review their interview transcript/summary
  - Verify accuracy, clarify where needed, and provide additional information

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Specific Issue: Non-Consensual Intimate Imagery

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Image-Based Sexual Abuse

- Sharing/threatening to share sexually explicit or intimate images of individuals without their consent
  - Images originally obtained without consent
    - Using hidden cameras
    - Hacking phones
    - Recording sexual assaults
  - Images consensually obtained within the context of a private intimate relationship that are later shared without consent beyond the relationship
    - “Non-consensual pornography”
    - “Revenge porn”

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Non-consensual Intimate Imagery (NCII)

- **Authentic NCII:**
  - Authentic (i.e., real) sexually explicit, nude, or intimate videos, photos, or audio recordings of an individual,
  - distributed without the consent of the individual depicted
- **Synthetic NCII:**
  - Videos, photos, or audio representations of an individual that have been digitally manipulated (i.e., faked)
  - to depict an individual in a sexually explicit, nude, or intimate manner or saying sexual or explicit words/statements,
  - distributed without the consent of the individual depicted

Synthetic NCII depicts sexually related actions or behaviors that never happened, or places identifiable individuals in pornographic, nude, or sexual situations without their consent

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Considerations for Investigators

- Perpetrator anonymity/impersonation
- Accessing evidence stored on personal devices, accounts, or platforms
- NCII of individuals under the age of 18 qualifies as Child Sexual Abuse Material (CSAM)
  - A detailed description of the imagery should be included as evidence instead of the imagery itself
- Become skilled at parsing out the policy
  - Sexual harassment (non-Title IX), sexual exploitation
  - Disruptive behavior
  - Other school/district policies

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Evidence and Credibility

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Understanding Evidence

- Duty to collect and objectively evaluate all evidence that is relevant to the complaint
- **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
- **Directly related evidence** is connected to the complaint, but is neither inculpatory nor exculpatory

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Relevance

- Evidence is generally considered **relevant** when it helps determine:
  - Whether the Respondent violated policy, and/or
  - The credibility of any evidence, including a party or witness statement
- The Investigator initially evaluates relevance, but the DM ultimately decides
- All relevant evidence must be objectively evaluated and considered
  - **Inculpatory:** supports a finding of responsible
  - **Exculpatory:** supports a finding of not responsible
- In the decision-making phase, parties may dispute the Investigator's initial relevance determinations

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Types of Evidence

Documentary Evidence	Supportive writings or documents
Electronic Evidence	Photos, text messages, and videos
Real Evidence	Physical objects
Direct or Testimonial Evidence	Personal observation or experience
Circumstantial Evidence	Not eyewitness, but compelling
Hearsay Evidence	Statement from outside the interview presented as truthful
Character Evidence	Evidence of a person's character or character traits

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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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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 predisposition or behavior

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Evidence Authentication

- Not all evidence has the same degree of credibility
  - Less credible evidence may be less reliable evidence
- Investigator(s) should seek the **highest quality evidence** available
- Investigator(s) should try to **authenticate all evidence** provided
  - Check for possible fabrication of evidence
  - Corroborate information between witnesses
  - Try to obtain complete, rather than partial, records when possible
  - Test assertions to verify accuracy when possible
    - Example: “I don’t remember if I wore a condom, but the condom in my wallet is no longer there”

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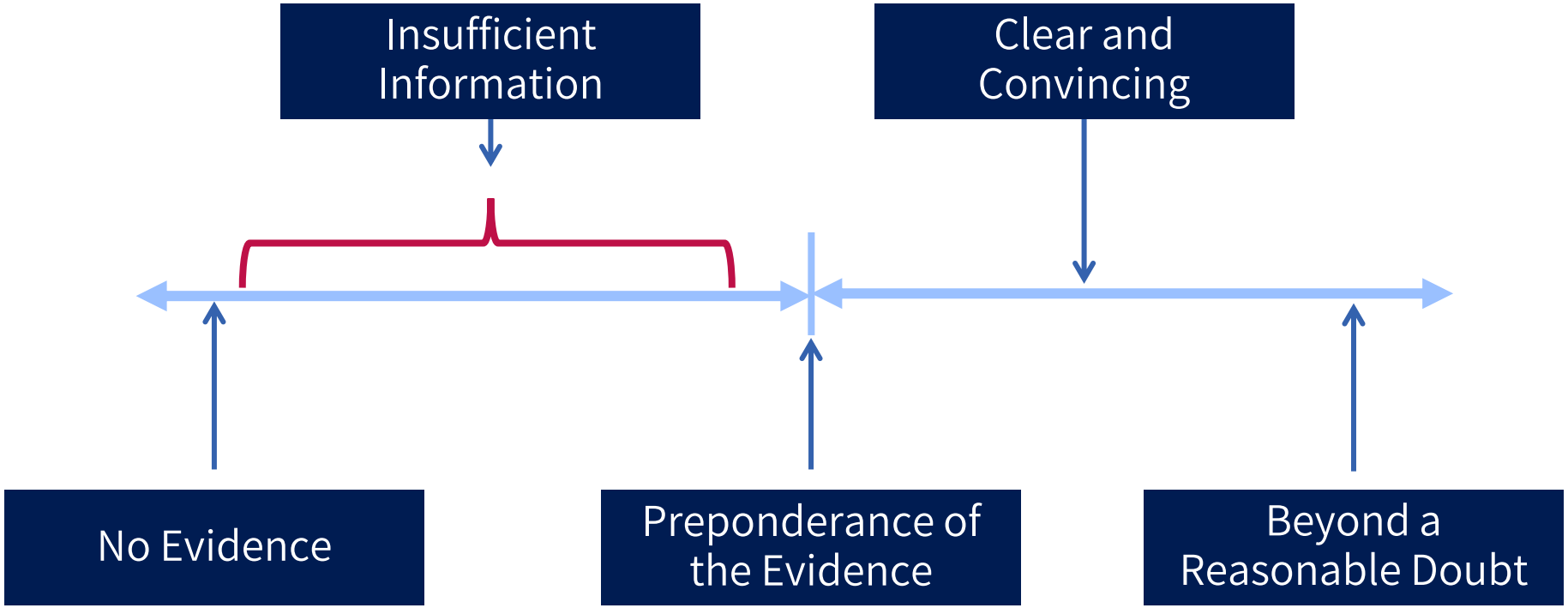
Standard of Evidence



- **Preponderance of the Evidence** is the most common industry standard
- Standard of Evidence must be consistent for all Formal Complaints of sexual harassment

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Credibility

- **Credibility** is 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

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Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Inherent Plausibility

- “Does this make sense?”
- Be careful of bias influencing sense of “logical”

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?

Demeanor

- Do they seem to be lying or telling the truth?

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Investigation Report

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Investigation Report Elements

- Title IX **requires a written investigation report** that fairly summarizes all relevant evidence and the investigation process
- **Comprehensive investigation report typically includes:**
  - Complaint and party information
  - Jurisdiction and scope
  - Applicable policies
  - Investigation timeline
  - Summary of evidence
  - Analysis: credibility assessment, disputed and non-disputed facts
  - Conclusion
  - Appendices
- Investigative report is typically between 5-25 pages

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Report Writing Considerations

- **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
- Investigator’s writing can unintentionally reflect their own biases
  - 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

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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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Investigation Report Process

Draft Investigation Report

TIXC/Legal Counsel Review Draft Investigation Report

Parties and Advisors Review Draft Investigation Report

Final Investigation Report

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Report Review

- TIXC and/or legal counsel 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
- Schools/districts may elect to complete this review after the parties' review or have two separate TIXC/legal counsel reviews

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Parties' and Advisors' Review Draft Investigation Report

- 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 parties' feedback and incorporate where appropriate
    - Document rationale for not making recommended changes as appropriate

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Tips for Evidence File Sharing

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

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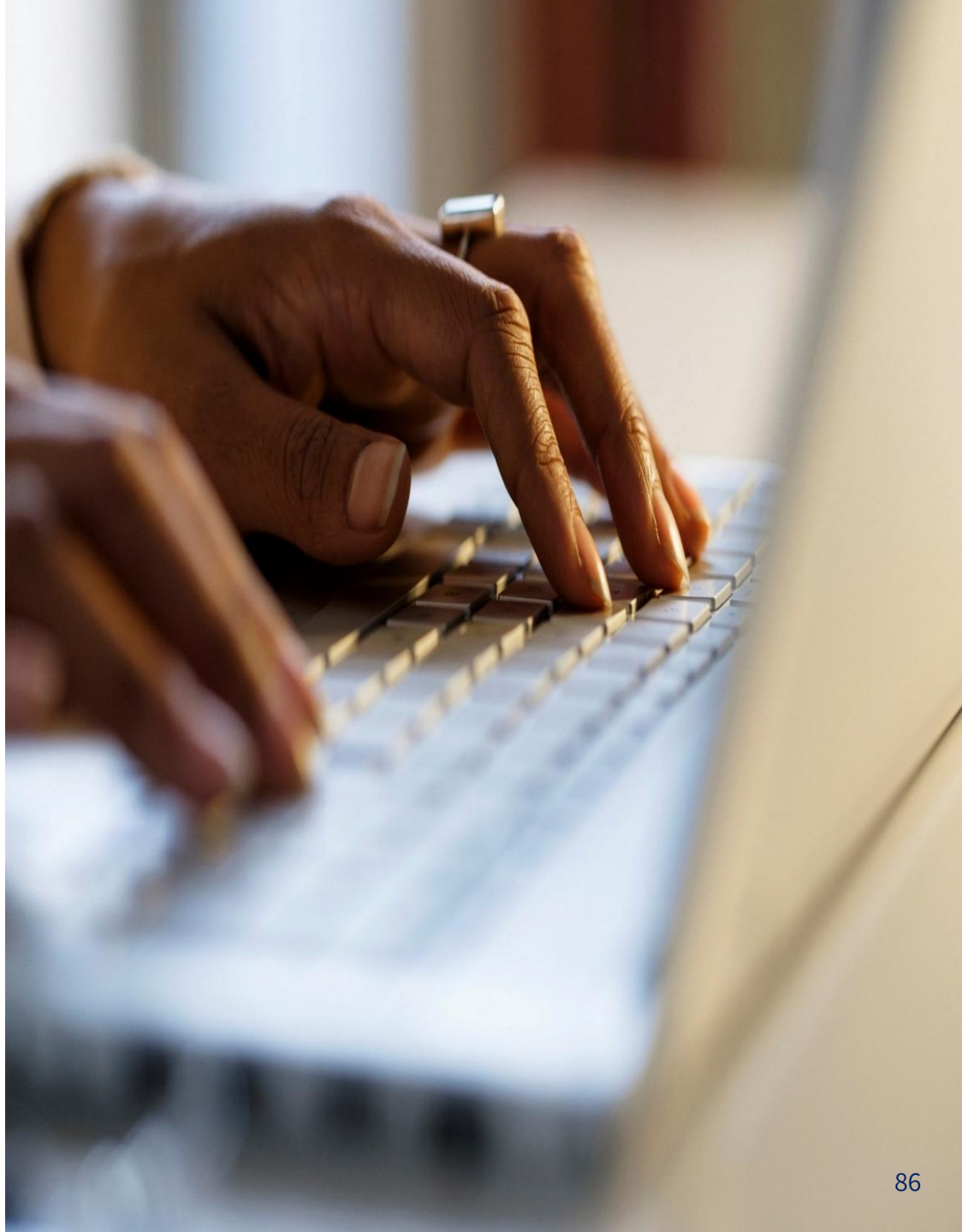
Final Investigation Report

- School/District determines the final investigation report review process
  - Once finalized, the investigation report is distributed simultaneously to the parties (parents/guardians) and their Advisor(s)
  - TIXC provides the report to the DM(s)
- Parties and Advisors will be provided with the final investigation report for review at least 10 days prior to the DM making a final determination



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Investigation Recordkeeping

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Investigation File

- Investigator is responsible for developing and maintaining an **investigation file** throughout the duration of the investigation
  - 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
    - Associated evidence (e.g., screenshots, written statements)
    - Correspondence with the Investigator(s)
  - Collected evidence and evidence log

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Investigation File

- Investigation file should also contain:
  - Background information (education, employment, etc.)
  - Witness flowcharts
  - Contact Log
  - Investigator notes
  - Timelines for incident and investigation
  - Investigation Report
- Investigation file becomes part of the **comprehensive complaint file**
- Title IX-related records must be maintained for a minimum of **seven (7) years**

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Contact Log

- All forms of contact with any party, witness, or third party regarding the complaint or related to it
- Date, time, method of contact, topics discussed, any decisions, and any agreed upon action steps for each interaction related to the Complaint

Date	Time	Contact	Type	Notes	Follow-up/ Resolution
1/12/25	1:00 PM	Sam Smith	Phone	Discussed getting emails from IT	Received emails from IT on 1/16/25
1/12/25	2:00 PM	Sally Harris	Email	Interview Scheduling Request	Interview scheduled for 1/15/25
1/15/25	3:00 PM	Sally Harris	In Person	Investigation Interview	Send transcript for verification

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Evidence Log

- All evidence gathered with:
  - Description
  - Date of receipt
  - Source
  - Method of receipt
- Any evidence verification/authentication information

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Evidence Log Example

Date	Source	Method of Receipt	Type	Description	Authentication
1/10/25	Sam Smith	Email	Security video footage; USB drive	Elevator video footage from 9:10 – 10:10 PM on 12/10/24	Closed circuit from IT
1/11/25	Sally Harris	Social Media Screenshot	Social Media Screenshot	Post made by Respondent at 9:22 PM on 12/10/24	
1/15/25	Sally Harris	In Person	Call Record	Phone call log from Complainant's cell phone carrier	Email with attachment from carrier to Complainant

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Investigation Timeline

- Begin documenting an investigation timeline as soon as the investigation is assigned
- Comprehensive timeline should include:
  - Dates of all significant investigation steps
  - Dates of all meetings and interviews
  - Evidence collection and review periods
  - Report writing and review periods (if applicable)
- Often included in investigation report

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Post-Investigation: Decision-Making and Appeals

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Decision-making Overview

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 & Evidence
- Review/ Comment
- Final Report

4

DECISION-MAKING

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

5

APPEAL

- Appeal Grounds
- Determination & Rationale

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Decision-making Process

- Separate DM(s) who is not the TIXC or Investigator for allegations of sexual harassment complaints; may use a different structure for sex discrimination complaints
- DM reviews full investigative report and evaluates all relevant evidence
  - Must consider both inculpatory and exculpatory evidence
  - Each allegation is considered individually for each Respondent
- K-12 Grievance Process requires the DM to facilitate either:
  - A live hearing (may depend on state law, legal precedent, school/district policy)
  - An opportunity for parties to submit written questions to the other party and any witnesses, receive written answers, and ask limited follow-up questions

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Determinations

- DM **applies the standard of evidence** to make determination
  - Standard of evidence options include:
    - **Preponderance of the evidence**
    - **Clear and convincing**
  - Standard of evidence must be consistent for all Formal Complaints of sexual harassment
- Investigator must be familiar with the standard of proof in school/district policy
- DM determines whether the Respondent violated school/district policy and drafts **written determination with rationale**
  - Reviewed by TIXC and/or legal counsel
  - Communicated to the Parties and Advisors simultaneously

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Appeals

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 & Evidence
- Review/ Comment
- Final Report

4

DECISION-MAKING

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

5

APPEAL

- Appeal Grounds
- Determination & Rationale

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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, DM that affected the outcome of the matter

Schools/Districts have the discretion to add additional appeal grounds

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Appeal Decision-Maker

- Completes a written determination with rationale
- Determinations may include:
  - **Upholding** the original determination and sanctions (if any)
  - **Remanding** the complaint back to the DM for reconsideration or to the Investigator for further investigation
  - **Modifying** the original determination and/or sanctions (if any)
  - **Overturning** the determination (not recommended)
- Cannot be TIXC or serve in another role in the same complaint resolution

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Questions?

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