



Association of  
Title IX Administrators

# Investigation Skills and Report Writing for Higher Education

Training and Certification Course  
Sandhills Community College

# 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](http://www.atixa.org/atixa-event-lobby) in your internet browser.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
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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 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.

# Course Introduction



This course focuses on refining interviewing techniques and post-interview tasks, including writing clear, comprehensive investigation reports.



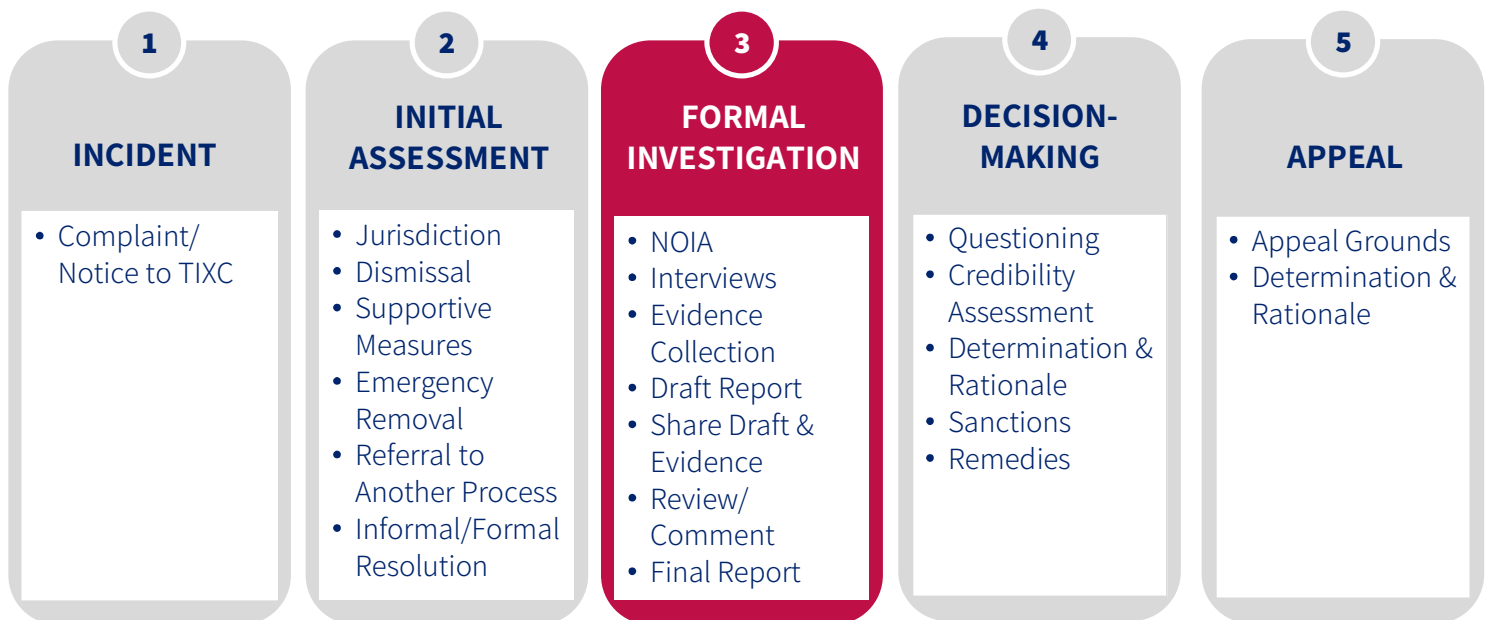
Practitioners will learn how to use policy language as a starting point for generating interview questions and synthesizing the information collected during an investigation.



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

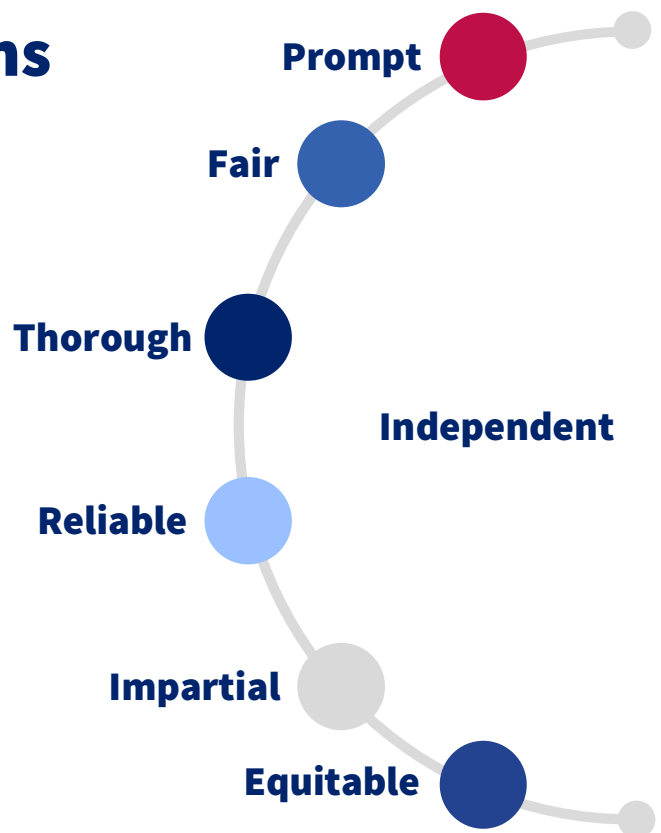
# Investigation Process Overview

# Investigation



# Civil Rights Investigations Overview

- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties





# Investigation Overview

## 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



# Investigation File

- Investigator is responsible for developing and maintaining an **investigation file** throughout 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
  - File for each party and witness
    - Verified interview transcripts
    - Associated evidence (e.g., screenshots, written statements)
    - Correspondence with the Investigator(s)
  - Collected evidence and evidence log

# Investigation File

- 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 years**

# Comprehensive Complaint File

## **Title IX Coordinator 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
- Advisor Non-Disclosure Agreements (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

# Investigation Strategy

# Investigation Strategy Review

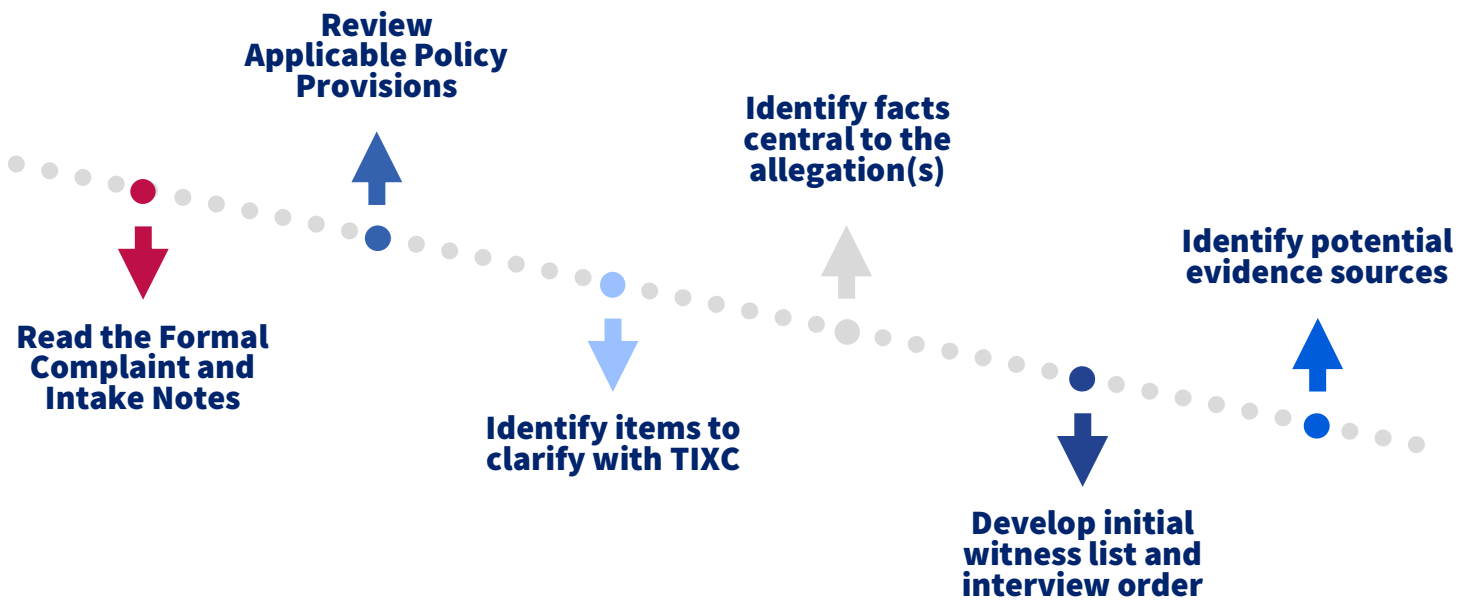
## **Investigator(s) consult with TIXC to strategize and plan the investigation:**

- Elements of the specific policy provision(s) alleged to have been violated
- Challenges with the type of complaint and the parties involved
- 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
- A working timeline for the investigation



# Activity: Investigation Strategy

# Activity: Investigation Strategy





# Activity: Investigation Strategy

**Read the Strategy Exercise document in the course lobby**

- Are there additional policies that may apply?
- Who are the initial witnesses?
- Who do you want to interview and in what order?
- What other sources of evidence may exist?

# Trauma-Informed Practices

# Trauma-Informed Practices

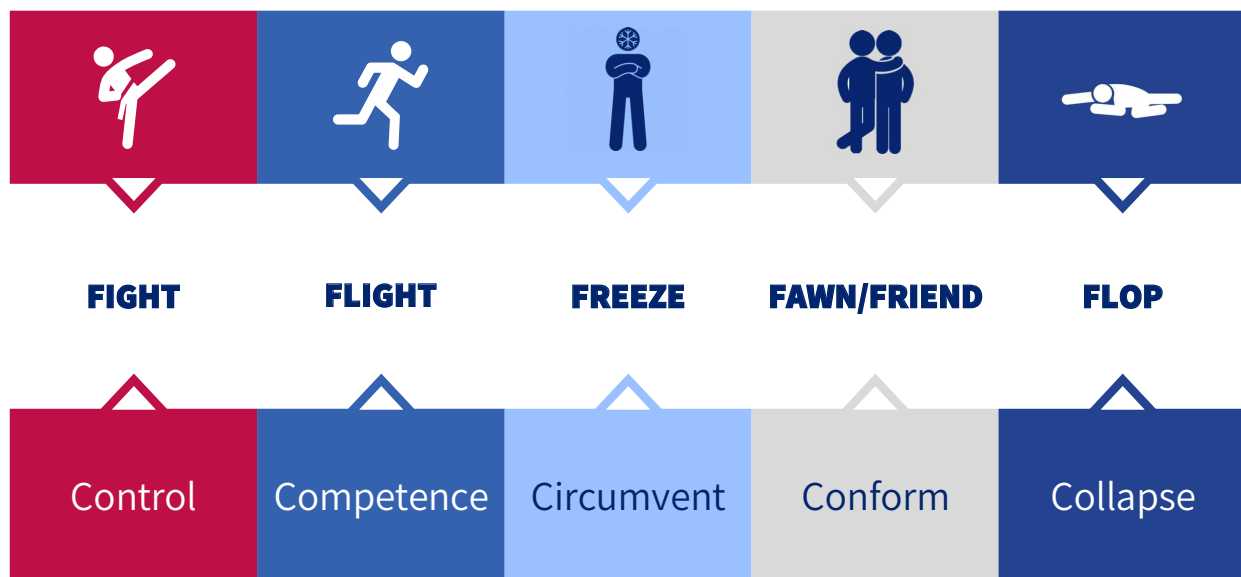
- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity, and can be:
  - Acute, chronic, or complex
  - Neurological, biological, psychological, social, and emotional impacts
  - Developmental, intergenerational, historical, secondary, vicarious, or collective
- Responses to trauma can vary, depending on a variety of factors
- Provide all people with support that makes TIX services and processes accessible, including those who may have experienced trauma

# Trauma-Informed Practices

- **ATIXA Position Statement:** Application of trauma-informed practices in our field has gotten ahead of the actual science
  - **ATIXA Recommendation:** Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
  - Trauma-informed practices should not significantly influence evidence evaluation



# Trauma Responses



# Fight Responses

## THREAT RESPONSES

- Attack
- Insult
- Exhibit anger



## STRESS RESPONSES

- Self-preservation at all costs
- Explosive temper and outbursts
- Aggressive, angry behavior
- Controlling behaviors
- Difficulty hearing other points of view
- Demanding of others
- Dictatorial tendencies
- Social media posts and rumors
- “Silent treatment”

# Flight Responses

## THREAT RESPONSES

- Attempt to flee or hide
- Pursue safety



## STRESS RESPONSES

- Obsessive and/or compulsive behavior
- Feelings of panic and anxiety
- Over-worrying
- Can't sit still; can't relax
- Tries to micromanage situations and other people
- Always “on the go”
- Creating escape plans

# Freeze Responses

## THREAT RESPONSES

- Can't move
- Shut down
- Feel numb



## STRESS RESPONSES

- Isolation
- Brain fog
- Disassociation
- Spacing out
- Difficulty making and acting on decisions
- Wants to hide from the world
- Achievement-phobic
- Inactive



# Fawn/Friend Responses

## THREAT RESPONSES

- Try to please others
- Neglect own boundaries and needs



## STRESS RESPONSES

- People-pleaser
- Poor boundaries
- Co-dependent
- Afraid to express true thoughts and feelings
- Lets other people make decisions
- Apologizes for everything
- Flatter others in an exaggerated fashion

# Flop Responses

## THREAT RESPONSES

- Physically or mentally unresponsive
- Fainting
- Loss of control over bodily functions

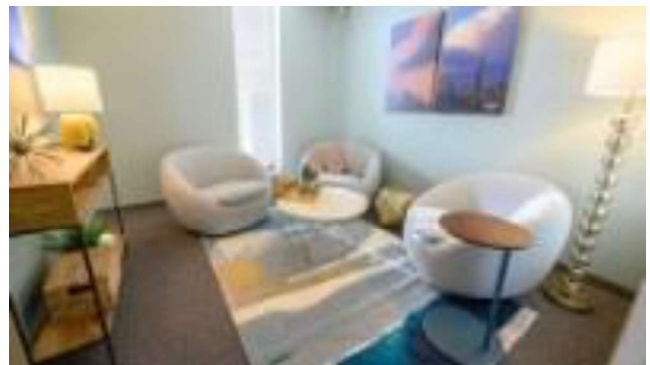


## STRESS RESPONSES

- Appearing disengaged
- Showing little or no emotion
- Missing classes, work, meetings, etc.
- Sleeping a lot
- Apathy
- Depression
- Disorientation

# Trauma-Informed Environments

- A soft interview room is considered an integral component of a trauma-informed interview environment
- Creating a space that is comfortable allows the interviewee to feel physically and emotionally safe and can have a significant impact on the interview process
- Soft interview rooms are useful when interviewing Complainants, Respondents, and witnesses



Source: <https://youtu.be/xGCMqxvvoCI?si=januovfATbx6U6dT>

# Trauma and Interviewing Complainants

- Interviewing Complainants about trauma they have reportedly experienced is different than interviewing other individuals
- Physiological changes occurring in the brain and body during trauma may affect memory, resulting in information that may be:
  - Disjointed
  - Incomplete
  - Inconsistent
- Acknowledge that individuals may not have a complete memory or answers to every question
  - Note gaps in the investigation report.
  - Lack of memory can't be excused by trauma but may be explained by it
- Ask questions carefully; memory can be impacted by suggestion

# Trauma and Interviewing Respondents

- Interview the Respondent in the same manner as you interview the Complainant
- Acknowledge that the Respondent may not recall details about the reported incident(s), especially if they indicate the NOIA was the first signal that the behavior was unwelcome and/or much time has passed
- Remember that some Respondents may be affected by trauma, too

# Suggested Questions

- Prior relationships with other party and witnesses
- Thought process
  - Can you share what was going through your mind when...?
- Sensory information
  - What do you remember seeing?
  - What do you remember hearing?
- Response (physical, emotional, verbal)
- Disclosures and/or documentation



# Additional Insights

- It may not be possible to confirm or challenge a party's statements during the first interview
  - Be planful and thoughtful in follow-up interviews
- Caution parties and witnesses that repeatedly providing detailed accounts of the incident(s) in other settings can potentially impact memory accuracy
- Memory limitations may result from a variety of circumstances
  - May pre-date or post-date the reported incident(s)
  - Often impossible to determine cause

# Trauma and Credibility

- Investigators and Decision-makers can only assess available relevant evidence
- Avoid substituting trauma indicators for evidence
- Trauma is neutral; it neither enhances or detracts from proof
- Lack of evidence from an individual often negatively impacts their credibility
- Biased thinking around what a person “should” or “would” have done
  - Timing of report



# Trauma and Credibility

- Differentiate between **more** versus **different** versus **contradictory** information if an individual's account changes
- Variations in testimony on minor or insignificant details should not significantly impact credibility
- One's affect ≠ evidence



# **Activity: Trauma-Informed Interviewing**

# Activity: Trauma-Informed Interviewing

**Read each of the following questions, identify why they are problematic, and suggest more trauma-informed phrasing**

- Have you had sex with this person before?
- Why does this keep happening to you?
- What were you wearing that night?
- Why would Complainant file a complaint if it wasn't true?
- Isn't it possible that you misunderstood Complainant's signals?
- Help me understand why you think what happened is a policy violation.
- Did anyone see this happen?

# Applying Policy in Investigations

# Applying Policy in Investigations

- Know what to look for
- **Models of Proof:** the specific elements of each violation
- Investigators collect information and evidence specific to the alleged policy violations
- Policy language informs appropriate questions
  - Policy provisions, definitions, jurisdiction
- Decision-makers use the information gathered in the investigation to determine whether all necessary elements are met for each alleged policy violation



# Activity: Applying Policy to Investigations

## **Definition: Fondling**

The touching of the private body parts of the Complainant (buttocks, groin, breasts), for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity.

# Activity:

## Applying Policy to Investigations

- Determine the policy elements for the **fondling** definition
- Use the elements to develop:
  - Initial questions for parties
  - Potential sources of evidence



# Model of Proof: Fondling

- The touching of the private body parts of the Complainant (buttocks, groin, breasts)
- For the purpose of sexual gratification
- Without the consent of the Complainant
  - Including instances where the Complainant is incapable of giving consent because of their age or
  - Because of a temporary or permanent mental incapacity

# Consent Construct

# ATIXA's Model Consent Policy Definition

## **Consent** is:

- knowing,
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity

# Overview of The Three Questions

1. **FORCE:** Was force used by the Respondent to obtain sexual or intimate access?
2. **INCAPACITY:** Was the Complainant incapacitated?
  - a. If so, did the Respondent know, or
  - b. Should the Respondent have known that the Complainant was incapacitated

**Note: The intoxication of the Respondent can not be used as a reason they did not know of the Complainant's incapacity.**

3. **CONSENT:** What clear Complainant words or actions gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

# Force

## Was force used by the Respondent to obtain sexual or intimate access?

### Physical Violence:

- Hitting, restraint, pushing, kicking, etc.

### Threats:

- Objective and subjective analysis of the viability of the threat (true threat if public)

### Intimidation:

- Implied threat that menaces and/or causes reasonable fear

### Coercion:

- Unreasonable amount of pressure for sexual access (isolation, frequency, intensity, and duration)

# Incapacity

## Was the Complainant incapacitated?

- **Incapacitation:** a state where an individual cannot make rational, reasonable decisions because they **lack the capacity** to give knowing consent
  - Unable to understand who, what, when, where, why, or how
  - Incapacity ≠ impaired, drunk, intoxicated, or under the influence
  - Situational awareness
  - Consequential awareness

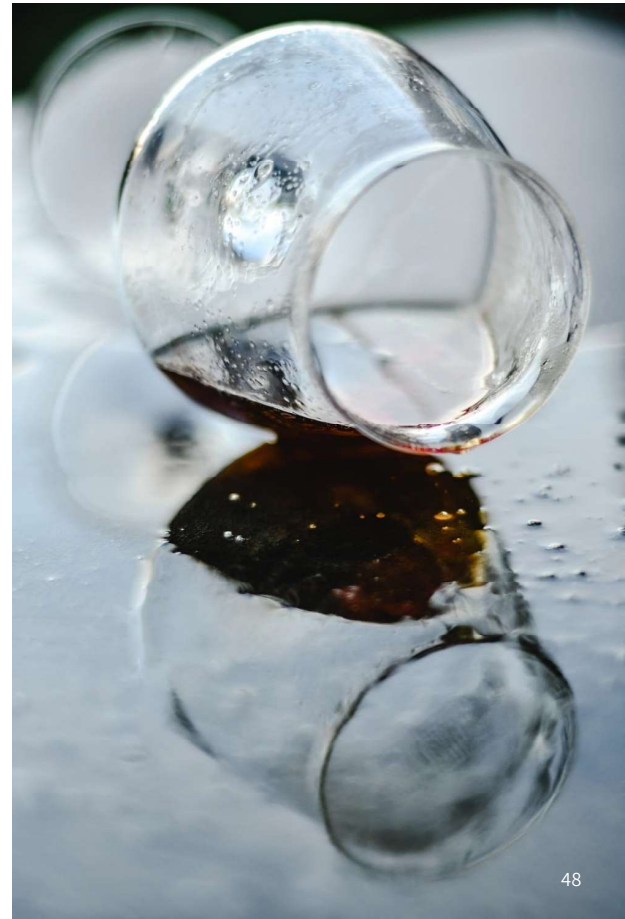
# Incapacity

- What was the reason for incapacity?
  - Alcohol or other drugs (prescription or non-prescription)
  - Mental/cognitive impairment
  - Injury
  - Asleep or unconscious
- Blackouts are frequent issues
  - Blackout ≠ incapacitation (automatically)
    - Blackout = working memory functional; short-term memory not retained
    - Partial blackout must be assessed as well
  - Although memory is absent in a blackout, verbal and motor skills may still function

## Evidence of Incapacity: Potential Context Clues

- Slurred speech
- Scent of alcohol on the breath
- Shaky equilibrium; disorientation
- Passing out/unconsciousness
- Throwing up
- Known blackout
- Outrageous or unusual behavior (requires prior knowledge)

Incapacitation determination is made contextually **in light of all the available relevant evidence.**





# Incapacity Analysis

- If the Complainant **was not** incapacitated, move to the Consent Analysis
- If the Complainant **was** incapacitated, but:
  - The Respondent did not know, **AND**
  - The Respondent would not have reasonably known of the Complainant's incapacity = no policy violation, move to Consent Analysis
- If the Complainant **was** incapacitated, and:
  - The Respondent **knew it or caused it** = policy violation
  - The Respondent **should have known it (reasonable person)** = policy violation
  - The Respondent's own intoxication cannot be used as a defense

# Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
  - If so, was the Complainant acting differently than previous similar situations?
- Evaluate what, if anything, the Respondent observed the Complainant consuming
  - Use a timeline analysis
- Determine if the Respondent provided any substances to the Complainant

# Consent Analysis

**What clear words or actions by Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?**

- Is there any relevant sexual or intimate pattern or history between the parties?
- What verbal and/or non-verbal cues were present during any acts or portion of the encounter that the parties agree were consensual? Non-consensual?
  - Contemporaneous communication
- Critical to gather evidence regarding detailed and specific intimate behaviors

# 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
  - Not inequitable

# Information Gathering and Recordkeeping

# Keeping Information

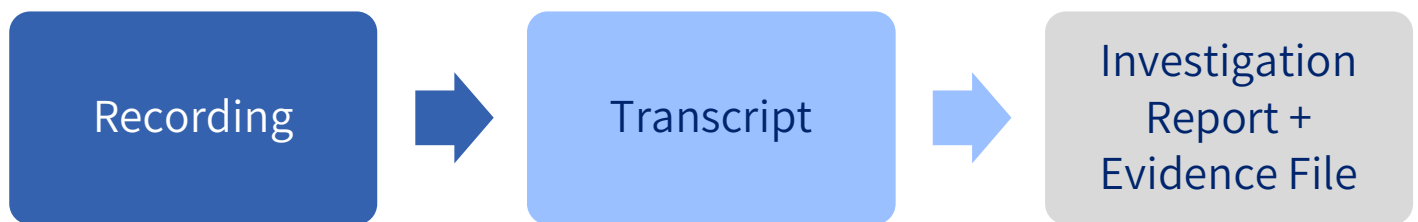
- Keep **investigation file** in a secure location
- Compile a timeline of the investigation steps, including dates of all meetings and interviews
- Records of all contacts, including emails and phone calls with all parties and witnesses
- Documenting interviews:
  - Take specific notes or record
  - Recording is becoming more common
  - Handwritten vs. typed notes
  - **Interviewee verification is industry standard practice**

# Information Flow

## Option 1: Notetaking



## Option 2: Recording



# Notetaking and Recording

## IF IT ISN'T WRITTEN DOWN, IT DIDN'T HAPPEN

- Date all records and identify who was present
- Number pages
- Keep notes describing any information shared with parties or witnesses
- Clarify anything that is unclear
- Document any refusal to answer, evasion, or refusal to participate
- Review and finalize notes immediately upon interview completion



# Notetaking

- Notetaking should occur throughout the entire interview
- Taking notes may slow down the interview
- Use pre-prepared numbered questions
  - Remain flexible for follow-ups
- Summarize perceptions of credibility

# Notetaking

- Don't want interviewees to feel **S.O.L.D.** out;  
Avoid:
  - **S**tereotypes
  - **O**pinions
  - **L**abels
  - **D**iagnoses
- Avoid conclusions or determinations
- Interview notes may be subject to “inspection” rights under FERPA
  - “Sole Possession notes” exception is very limited



# Recordkeeping

- Certain records must be maintained for at least **seven years**
  - Comprehensive complaint file
- Electronic database preferred over paper files
- TIXC is responsible for managing record retention
  - Follow applicable Title IX and/or institutional practice for record destruction

# Collecting and Managing Evidence

# Evidence Preservation

- Discuss with parties and witnesses as soon as feasible
  - Evidence provided by the institution
- Record names of witnesses and contact information
- Save relevant communications in a secure location, not just on the device
  - Screenshots
  - Date stamps
- Physical evidence
  - Clothing
  - Damaged property
  - Injuries

# Evidence Management

- Properly record and categorize evidence provided to Investigator or TIXC
  - Quick access (indexed, digitized)
  - Organized
  - Redacted versions and/or descriptions of explicit content
    - Unredacted version available for viewing
- Ensure the evidence is not compromised
  - Establishing chain of custody
  - Do not modify evidence in any way, unless you are clear about doing so

# Managing Sensitive Information

## **Store information in secure locations:**

- Electronic
  - Password protection or encryption; multi-factor authentication
  - Limited access, auditable storage
  - View or save information on appropriate devices
- Physical
  - Locked; limited access
- Remove personally identifiable information
- Communicate information storage practices to parties

# Law Enforcement Evidence

- Establishing an MOU is beneficial
  - Build relationships
  - Understand their process
  - Clarify level of access to law enforcement evidence
- Obtain documentation about chain of custody
  - Authentication efforts
  - Source of evidence
- Obtain officer statement or testimony about evidence
- Be aware of implications for sharing/releasing LE evidence



# Executing the Exchange of Information

- Use a secure file-sharing platform
  - Consider functional and time limit restrictions as appropriate for your community and process
    - Downloading
    - Saving
    - Printing
- Recommend using a descriptive watermark for each party/Advisor
- Ensure the parties have a user-friendly method for providing feedback
- Provide deadline, parameters, and directions for party feedback

# Investigation Reports

## Investigation Report Writing

“It’s a process of asking questions and then pruning and splicing and editing the transcribed answers, and it takes a tremendous amount of time and labor.”

William Zinsser  
American writer, editor, literary critic, and teacher

# Title IX Regulatory Requirements

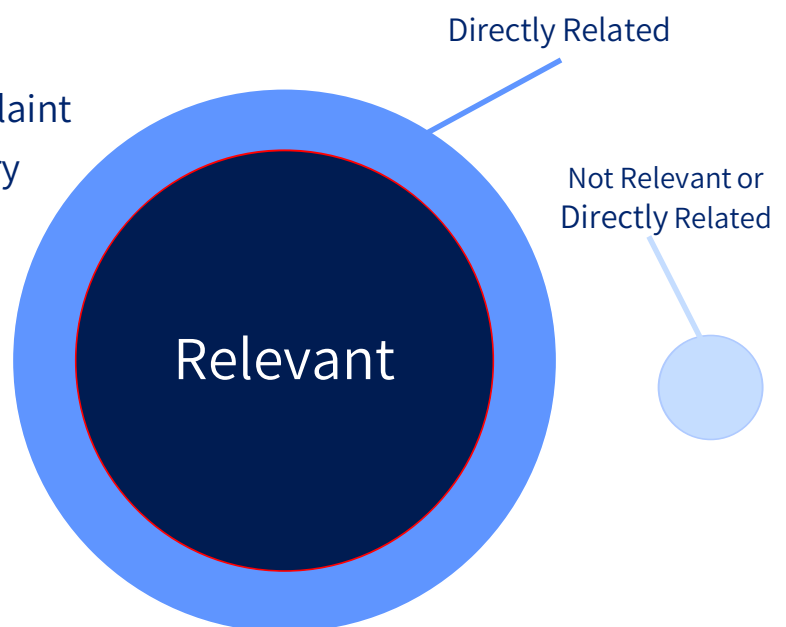
- Investigation report that fairly summarizes **all** relevant evidence
- Investigators must be trained on issues of relevance and writing investigation reports that fairly summarize relevant evidence
- Include relevant inculpatory and exculpatory evidence
- Leave considerable room for best practices

# Relevant Evidence

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

# Directly Related Evidence (DRE)

- Not defined by the regulations
- Evidence connected to the complaint
  - Not inculpatory or exculpatory



# Relevant vs. DRE: Example 1

Respondent: Yeah, yeah. I feel like my roommate was like, "We're out of bread." So, I figured I might as well get it while we're here.

Investigator: Okay. So, in terms of alcohol, what did you guys end up getting?

Respondent: Yes. She wanted some girly wine thing, and I don't really drink wine. I don't like it. I got a six pack of beer, I think.

Investigator: Okay. Do you remember what kind of beer?

Respondent: Gosh. I don't think the fall stuff was out yet. No, it's probably some kind of IPA. I don't know. That's what I usually drink.

Investigator: You get a bottle of wine; you get a six pack of some kind of IPA. You get a loaf of bread. Then what happens?

Respondent: Then we were walking back from Marty's to my apartment and just making small talk. And I was like, "Yeah, so you want to Netflix and chill?" She was like, "Yeah, that sounds good."

## Relevant vs. DRE: Example 2

- Witness 2 is the roommate of the Respondent. Witness 2 and the Respondent share membership in several student organizations. 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 in their shared apartment around 2:00 a.m. on the date of the reported incident. Witness 2 remembers the Respondent coming out of their room with just shorts on.
- Witness 2 recalls joking about Respondent's luck.
- Witness 2 recalls telling Respondent to try to "keep it down" as Witness 2 was going to sleep.
- 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 debriefed the night.



# 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?**

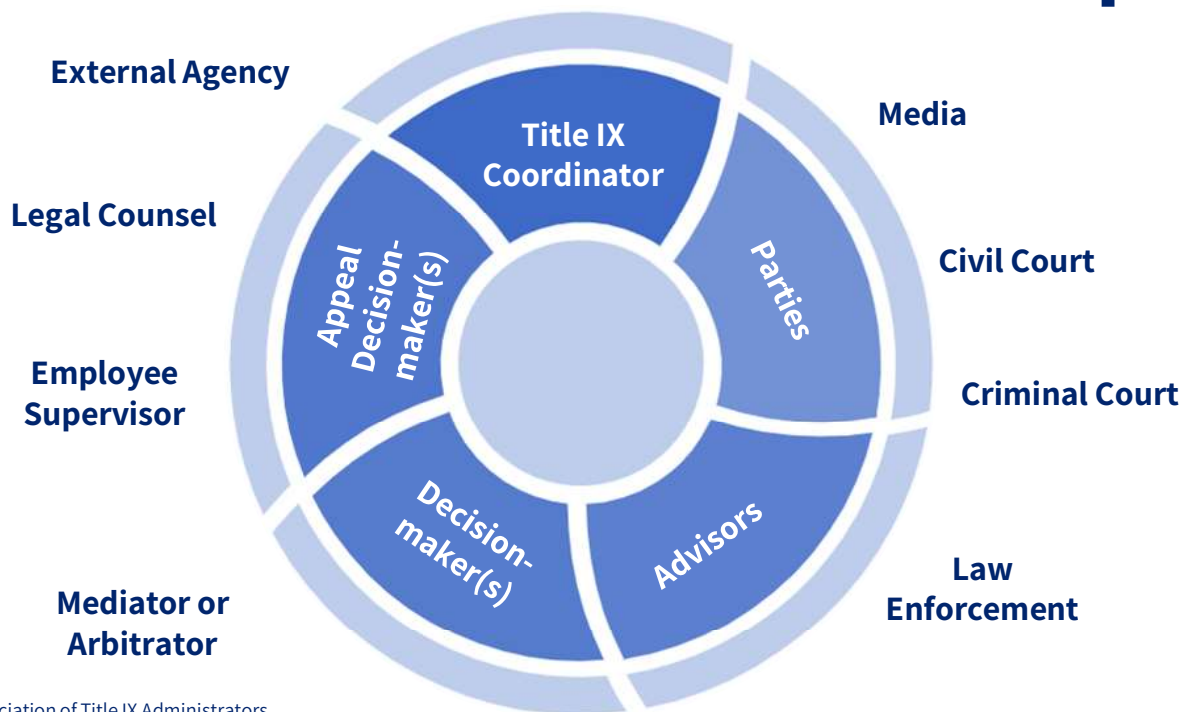
# Separating Evidence: Example

- 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**

# Consider Potential Audiences for Report



# Writing Mechanics

# Tone, Voice, Tense, and Point of View



## **TONE**

Writer's attitude toward the subject or audience



## **VOICE**

Form or format through which a narrator communicates a story



## **TENSE**

When events or actions occurred in time—in the past, present, or future



## **POINT OF VIEW**

The position from which the author "speaks" to the reader

# 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



# Active vs. Passive Voice

- **Active Voice:** used when the subject performs the action
  - Focuses on the doer of the action
  - Best practice
- **Passive Voice:** used when the action is performed upon the subject
  - Focuses on the action; doer is unknown, implied, or irrelevant

| <b>Examples of the<br/><u>Three Voices in Writing</u></b> |  |
|---|--|
| <b>1. Active Voice</b>                                    | "You ate six donuts."  |
| <b>2. Passive Voice</b>                                   | "Six donuts were eaten by you."  |
| <b>3. Passive-Aggressive Voice</b>                        | "You ate six donuts and I didn't get any. Don't worry, it's cool. I can see donuts are very important to you." |

# Tense

- **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
- Investigation reports are a narrative of events that have already occurred
  - Past tense is best practice
  - Avoid changing tenses
    - Exception: Investigator actions for the present or future

# Point of View

- **ATIXA recommends Investigators write from a neutral, detached observer point of view (third-person)**
  - This point of view creates distance between the reader and the parties
    - Example: Complainant was scared vs. Complainant reported they were scared
- What and how much the reader learns about the events, people, and locations in an investigation report depends on the Investigator's point of view
  - How much does the Investigator know and understand?
  - How much does the Investigator want the reader to know?
  - How would the report be different if someone else wrote it?
- Does the Investigator **describe** what parties and witnesses told them, or do they **repeat** what they were told by parties and witnesses?

# Writing and Structuring Investigation Reports

## Writing Process

“

The first draft is just you telling yourself the story.

”

Terry Pratchett  
English humorist, satirist, and author



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“Your ethical duty to the person being interviewed is to present [their] position accurately...but after that your duty is to the reader. [They] deserve[] the tightest package.”

William Zinsser

# Format and Structure

- Templates, templates, templates!
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
  - Headnotes
- Multi-party or multi-allegation investigations
- Report, Evidence File, or Appendix?
  - Transcribe texts/social media/audio recordings
  - Description of video content
  - Email or other writing description or transcript/excerpt
  - Expert statements

## Enhancing User-Friendliness

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

# Direct Quotations

**“[Their] own words will always be better than your words...this is a person talking to the reader directly, not through the filter of a writer.”  
William Zinsser**

- 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



# Incorporating Direct Quotations

**Introduce the quotation with a complete sentence**

Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.”

**Use an introductory or explanatory phrase**

When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.”

**Incorporate the quotation part of the sentence**

Cole described his relationship with Devyn as “friends with benefits.”

**Use a short phrase as part of the sentence**

Cole used the term “friends with benefits” to describe his relationship with Devyn.

# Punctuation for Quotations

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

- Three dots (...) indicate an omission of words in a sentence or sentences in a paragraph
- Four dots (....) indicate an omission 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

## **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
- No need to identify the error or include [sic] unless the meaning is unclear
- Helps proofreaders know what is/is not intentional

# Sensitive Information

- Offensive, triggering, or explicit language (i.e., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Sex assigned at birth vs. gender identity
- Chosen name vs. legal name



# 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 Advisors

# Redaction Practices

- Other options:
  - Include full name for first mention
  - Use initials
  - Use one- or two-letter identifiers (C, R, W1, W2, etc.)
- Create a fully unredacted copy?
  - Legal counsel
  - Decision-maker(s)

# Word Choice

- Investigation report writing is beige
- Unnecessary adverbs and adjectives
- Conclusory words
- Bias language



"What's wrong with adverbs in dialogue tags?" John asked inquisitively.

"They're unnecessary and irritating," Marsha said judgmentally.

"Says who?" John said defensively.

"The poor reader," Marsha said authoritatively.

## Common Pitfalls

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

# Word Choice Exercise Part 1

If you are comfortable doing so, please close your eyes and visualize what is happening during each of the following statements.



## Word Choice Exercise Part 2

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?



## 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 unwelcome sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016.

# Bias-Free Writing

- Words communicate ideas, but also reflect power, status, and privilege
- Language can reflect social capital
- Conscious and purposeful use of language can promote equity, justice, and inclusion
- Pay attention to communication with individuals in different roles
- Bias-free communication attempts to include all identities in a way that respects the subject and doesn't make assumptions about the recipient
- Bias-free writing does not discriminate

# Tips for Bias-Free Writing

- Know your own biases
- Focus on what's relevant
- Recognize and acknowledge differences
- Think small
- Avoid labels
- When in doubt, ask
- Use nouns, objectives, and adjectives properly

## Biased Language Example

“Allegations of sexual assault on college campuses are fraught with potential injustice for both female student victims of sexual violence and male students who may be falsely accused of improper conduct.”

*Doe v. Wake Forest University*, 1:23-cv-00114 (M.D.N.C., Sept. 6, 2023)

# Bias Example

## Email to Complainant

Thank you so much for sending your written statement. I would like to set up another meeting with you to ask some further questions and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other concerns you might have. If you could just let me know if there's a time that works well for you and if you have a preferred meeting location, I'll set an appointment for us.

I hope we can find a good time to meet next week. In the meantime, take good care and please don't hesitate to reach out if there's anything you need. Thanks!

# Bias Example

## Email to Respondent

Thank you for sending your written statement. We will need to meet again so that I can ask any follow-up questions I have and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other outstanding process pieces. Based on your class schedule, I set an appointment for us at 11 AM on Monday, February 7, 2022, in my office.

Refer to the list of resources at [website] if you need assistance before our meeting.

Sincerely,

Title IX Investigator



## Footnotes

- Provide a space for definitions, context, or source information that would disrupt the flow of the report
- Description of electronic devices or applications
- References to appendices or evidence file
- Background information
- Relevant evidence source(s)
- If the Investigator is offering context from their own knowledge, make sure it is clearly indicated as such
  - Example: The Investigator notes from personal familiarity with the building that Room 19 is approximately halfway down the hall from the elevator

# Footnotes

- Consider who will be reading the report now and potentially in the future
  - Technology evolves
  - Slang shifts
  - Pop culture references change
  - Businesses come and go
  - Generational differences
  - Cultural differences
- Do not assume common knowledge
- In text, the footnote follows punctuation except for the em dash (—)

## Footnote Example

Respondent described this interaction as follows. Relevant portions of the transcript are below.

*“At this point we were fully naked. And so we were grinding on each other. We were grinding on each other’s genitalia. And then she placed her hand over her vagina and said, ‘Wait, do you have a condom?’ Then we began to discuss the use of a condom. I did not have a condom. I had just ran out the week prior. And so she asked if I could grab one from one of my friends, to which I responded, ‘They’re not home. They’re still at the party. And I can’t exactly go searching through their things while they’re gone to try to find a condom.’”<sup>2</sup>*

The parties agreed they engaged in a conversation about Respondent’s lack of a condom and Complainant’s concerns regarding proceeding with sexual intercourse without a condom.

---

<sup>1</sup> See Complainant Interview 3.25.2022 Transcript.pdf, p.5

<sup>2</sup> See Respondent Interview 4.1.2022 Transcript.pdf, p.6

# Attachments, Appendices, and Exhibits

- Complete versions of relevant information incorporated 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
  - Others
- Description, date of receipt, source, method of receipt, and verification/authentication information

# Parties' Questions for Others

Document questions suggested or requested to be asked by the parties



## **Not Asked/Otherwise Answered**

Document: the question posed and the answer



## **Rephrased and Asked**

Document: the question, rephrased question, rationale for rephrasing, and the answer



## **Asked and Answered**

Document: the question, how it was asked, and the answer



## **Not Asked**

Document: rationale for not asking the question (e.g., irrelevant, not allowed)

# 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
- New evidence
- Clarification of earlier statements
- Requested shifts between relevant evidence and DRE

# Post-Review Investigator Response

- Follow-up on all areas identified by parties, as appropriate
  - Additional evidence
  - Additional witnesses
  - Questions
- Track changes
- Include each party's review and comment in appendix
  - Note if a party declined to comment
- Include Investigator response to review and comment in appendix
  - Rationales for responses

# Absent Information



# Information Not Obtained

## Document efforts to gather evidence or efforts to obtain unavailable evidence

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

# Unanswered Questions

## **Include 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 declined to provide additional information regarding their text conversation with Complainant on February 19, 2019. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

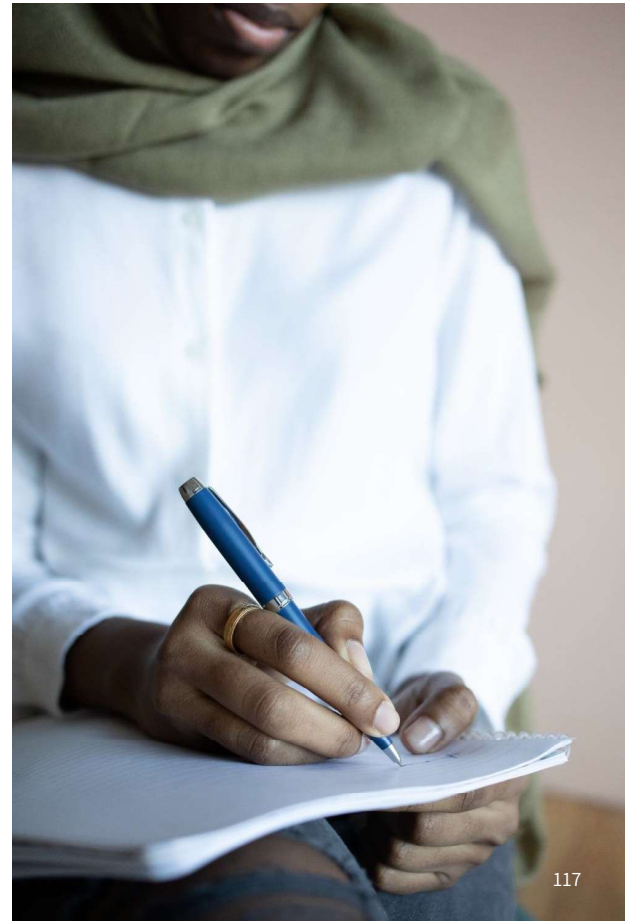
# Investigation Report Sections

# Investigation Report Sections

- Complaint Information
- Executive Summary
- Relevant Background
- Jurisdiction and Scope
- Applicable Policies and Relevant Definitions
- Investigation Timeline
- Incident Timeline(s)
- Summary of Relevant Statements and Evidence
- Credibility Analysis
- Discussion and Synthesis
- Recommended Findings
- Recommended Final Determination
- Conclusion
- Appendices
- Evidence File

# Complaint Information

- Complaint date
- Complainant's name and recipient ID#
- Initial notice date
- Initial notice received from
- Respondent name and recipient ID#
- Date assigned to Investigator(s)
- Assigned Investigator(s)
- NOIA date
- Final investigation report date



# Executive Summary

- Date, time, and manner of complaint
  - Complainant or TIXC
- Description of alleged misconduct
- Policies governing the investigation
- Summary of disputed and undisputed facts
- Status of the complaint (e.g., dismissal or referral to Decision-maker(s))

## Relevant Background

- Include additional background information as necessary to understand relationship history, context, etc.
  - Separate by topic



# Jurisdiction

## **Provide a jurisdiction statement including:**

- Date(s), time(s), and location(s) of reported conduct
- Individuals involved
- Relevant policies and procedures related to jurisdiction
  - Information and analysis for subject matter jurisdiction
  - Institutional control of the context of the alleged misconduct
  - Indicate whether Title IX requires the institution to investigate, or whether jurisdiction is discretionary, and Title IX does not apply
- Often prepared by TIXC



# Jurisdiction Statement Example

According to available information, the Respondent is currently a full-time administrative employee in the College of Human Performance, and the Complainant is currently a third-year doctoral student the physical therapy program. Both parties maintained the same institutional affiliations at the time of the reported incident.

The reported incident occurred in Parking Garage Six on the University of the Northwest campus in Seattle, Washington, United States. If proven, the allegations would constitute sexual assault under University policy and Title IX.

The University controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the institution's education program as a student; therefore, the University has jurisdiction over this complaint pursuant to Harassment Grievance Policy Section 2(b).

# Scope of the Investigation

- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
- TIXC determines the scope of the investigation
- Content of the complaint is not the sole determinant of investigation scope
- Parties and relevant witnesses
  - Provide basic context for a witness's connection to the institution and the parties
- Include when each individual was interviewed and by whom
  - Include nonresponsive individuals and anyone who declined to participate

## Scope Example

The Office of Institutional Equity, which oversees Title IX and VAWA compliance, commenced an investigation to determine:

1. Whether the Respondent engaged in behavior that constitutes sexual assault under University policy in an on-campus apartment on April 7, 2021
2. Whether the Respondent engaged in behavior that constitutes sexual exploitation under University policy in an on-campus apartment on April 7, 2021

Investigator(s) Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education's Office for Civil Rights for Title IX investigations, the Violence Against Women Act Section 304, and University policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students and non-students.

## Scope Example

This investigation was designed to collect all available information and to determine if the complaint should be dismissed or referred to a decision-maker for a formal hearing.

Individuals interviewed:

- Complainant – student
- Respondent – student
- Witness 1 – student and Complainant’s best friend
- Witness 2 – student and Respondent’s roommate
- Witness 3 – former student and Respondent’s former roommate

# Applicable Policies and Relevant Definitions

- Include the full text of **ALL** (correct versions) of 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 thereto

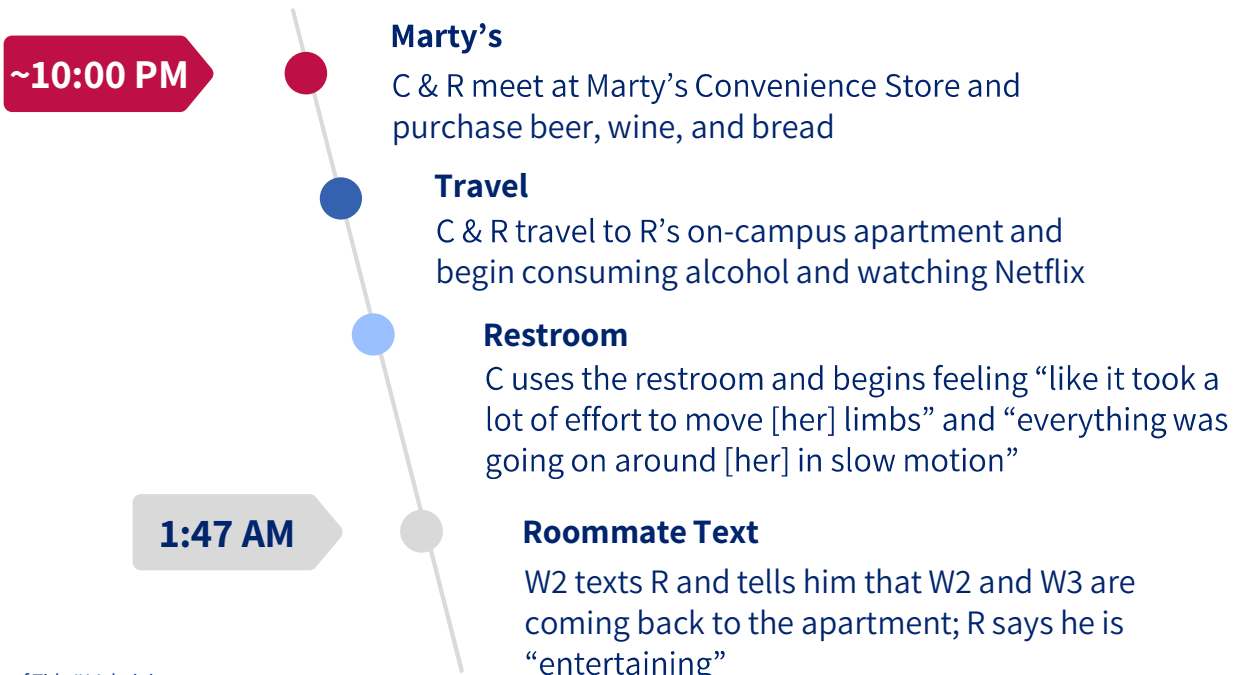
# Investigation Timeline

- Decision-maker or TIXC will need to include “a description of the procedural steps taken from the receipt of the formal complaint through the determination” in the outcome letter
  - Notifications to the parties
  - Interviews with parties and witnesses
  - Site visits
  - Methods used to gather other evidence
  - Hearings held
- Note any process delays, including rationale

# Incident Timeline(s)

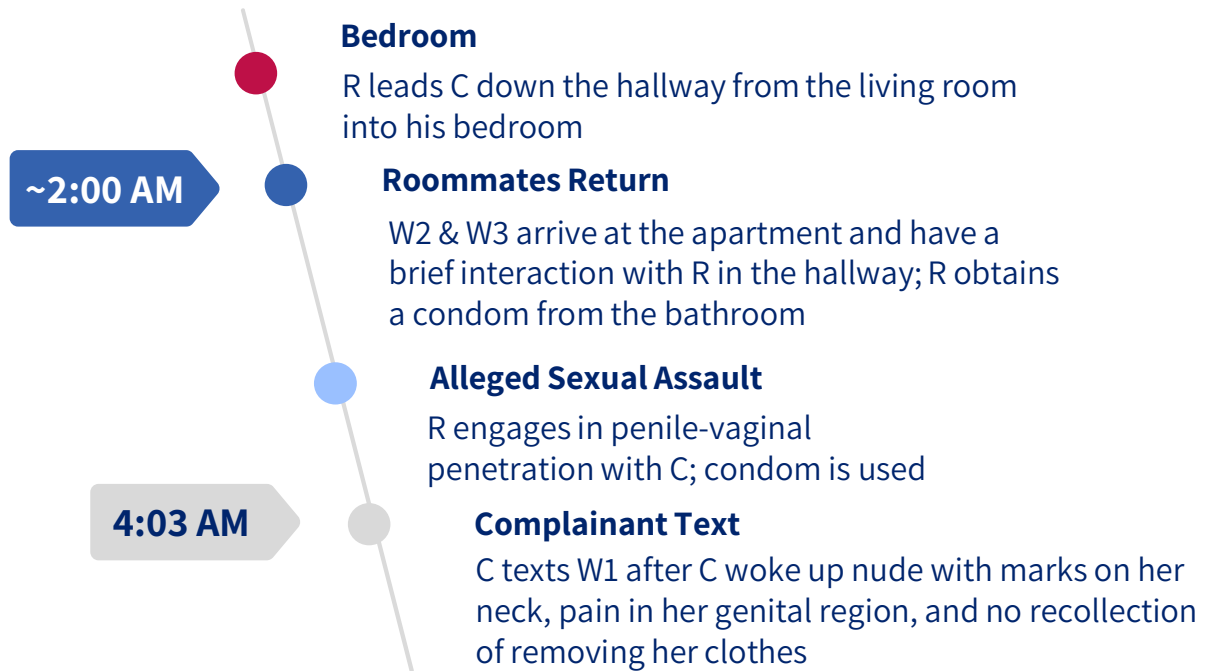
- **Timelines:** visual representation or list that shows events in chronological order
- One timeline for the reported incident(s) based on all available information
  - Use separate timelines for multiple incidents if necessary
- Reference evidence connected to points on the timeline (e.g., timestamped text messages, receipts, call logs)
- Especially helpful in evaluating incapacitation
- For stalking allegations, it is an industry standard to include a timeline to assess the “course of conduct” element of the offense

# Incident Timeline Example





# Incident Timeline Example



# Incident Timeline Example



~4:30 AM



## Pick-up

W1 picks up C outside of R's residence hall and transports C to the hospital for a sexual assault examination

- Timeline established by using all available information
  - Receipts
  - Text message time stamps
  - Witness statements
  - Party statements
  - Building access records
  - Other

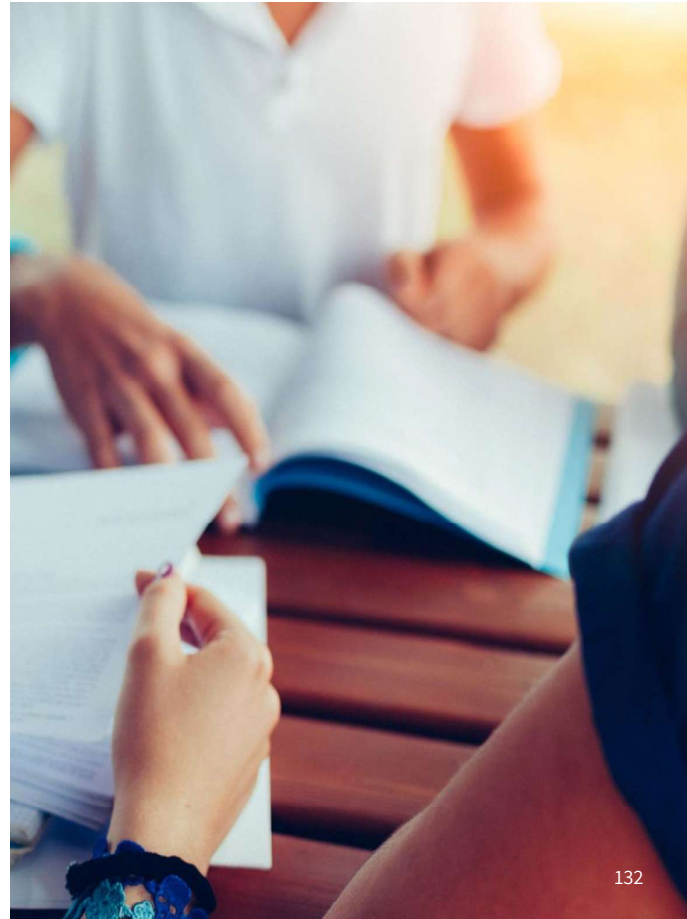
# Summary of Relevant Evidence

**Content may dictate the most logical organization structure for this section**

- Chronological by interview
- Chronological by incident timeline
- By allegation
- Parties first, then witnesses

# 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



# 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?

*Enforcement Guidance  
on Vicarious Employer  
Liability for Unlawful  
Harassment by  
Supervisors*

EEOC (1999)

# Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
- Corroboration of central vs. environmental facts
- Not simply aligning with friendly witnesses
- Contemporaneous witness accounts
- Outcry witnesses
- Allegiances

# Inherent Plausibility

- Does what the party described make sense?
  - Consider environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likeliness”
- Is the party’s statement consistent with the evidence?
- Is their physical location or proximity reasonable?
- How good is their memory?

# Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
  - Academic or career implications
  - Personal or relationship consequences
- What if the allegations are false?
  - Other pressures on the Complainant
- Reliance on written document while answering questions





# Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
  - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationships

# Demeanor

- Physical presentation and speech patterns are not determinative of truthfulness
  - Humans are excellent at picking up non-verbal cues
  - Humans are terrible at spotting liars
- Demeanor cues may indicate cause for additional questioning
  - “I noticed when I asked you about...you crossed your arms. Can you tell me why your posture changed?”
  - “I noticed when I started asking you questions about...your responses became much shorter. Can you explain that for me?”
  - “I noticed you rolled your eyes when I mentioned....Can you tell me about your reaction?”

# Credibility Assessments in Investigation Reports

- Indicate where to focus for the Decision-maker without rendering conclusions or making findings related to credibility

## NOT GOOD

“The Decision-maker should find Mark to be unbelievable in his testimony about having received consent for the following reasons...”

## BETTER

“Mark’s testimony about X conflicts with Mariana’s testimony about X. The accounts of Witness 1 and Witness 7 aligned with Mariana’s testimony, not Mark’s, during the investigation.”

# Credibility Analysis

- Specific and detailed credibility analysis of:
  - Each party
  - Each witness
  - Any other relevant evidence
- Point to specific details that were considered that have aided in the assessments
- May or may not include conclusions about credibility, depending on institutional policy
- ATIXA does not recommend making conclusions, but comparisons may be helpful

# Common Credibility Assessment Errors

- Misinterpretation of and misplaced emphasis on nonverbal deception indicators
- Misplaced emphasis on (often trivial) information inconsistencies
- Confusion about memory
- Bias in interviews
  - Presumptions of responsibility
  - Anchor bias
- Confirmation bias
- Accepting information at face value



# Activity: Credibility Analysis

# Activity: Credibility Analysis

**Read pages 1-21 of the Investigation Report for Activities document in the course lobby**

- What information speaks to the Complainant's credibility?
- What information speaks to the Respondent's credibility?
- Is there information that should be included about evidence credibility?

# 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)
- Summarize all areas of contested and uncontested facts/evidence
- Guide for the Decision-maker(s) determination
  - What remains unresolved?
  - What type of analysis is required based on the applicable policy provisions?



# Recommended Findings

- This section is only applicable if permitted by institutional policy
  - ATIXA does not recommend Investigators provide recommendations in processes involving hearings under the 2020 regulations
- Did the conduct occur as alleged?
  - List recommended findings for each alleged policy violation applying the standard of evidence
- Include a statement that the recommended findings are not binding on the Decision-maker(s)



# Activity: Recommended Findings

# Activity: Recommended Findings

**Using the Investigation Report for Activities document in the course lobby, write recommended findings for each allegation**

- Cite the specific evidence upon which the findings are based
- Include credibility assessment

# Recommended Final Determination

- This section is only applicable if permitted by institutional policy
  - ATIXA does not recommend Investigators provide recommendations in processes involving hearings under the 2020 regulations
- Did the conduct violate policy?
  - List recommended final determination for each alleged policy violation applying the standard of evidence
- Include a statement that the recommended determination is not binding on the Decision-maker(s)

# Conclusion

- Final summary statement regarding the status of the investigation
- Indicates whether the report will be forwarded to a Decision-maker, or the complaint will be dismissed

## Example

This report is intended to provide a comprehensive summary of the relevant evidence related to Complainant's allegations. It is not intended to draw any conclusions regarding the accuracy of the allegations or the credibility of the parties and witnesses. The Investigator submits this report for consideration by a Decision-maker appointed by Acme College and remains available to answer any questions regarding the investigation or information contained in this report.

# Appendices

- Relevant information that would not fit neatly in the investigation report
  - Policies
  - Complaint
  - Floorplans
  - Drawings
  - Lengthy documents
- Parties' feedback on the investigation report and Investigator responses
- Parties' questions for others and responses



# Evidence File

- All relevant and directly related information in complete form
- Redact information that is not relevant or directly related
- Logical organization to align with report
- May choose to color-code relevant vs. directly related evidence

## Enhancing User-Friendliness

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

# Report Review



# Report Review and Feedback

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

## Examples of Feedback

- 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 elements 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?



**Questions?**



Association of  
Title IX Administrators

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# Investigation Foundations for Higher Education

Training and Certification Course  
Sandhills Community College

# 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](http://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 [customevents@tngconsulting.com](mailto:customevents@tngconsulting.com) for help with registration.





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 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.



# Course Introduction



The course focuses on the fundamental skills necessary to conduct sex- and gender-based violence, harassment, and discrimination investigations.



Practitioners will learn how to adapt the investigation process to other civil rights grievance processes including Title VI, Title VII, the ADA, and Section 504 of the Rehabilitation Act.



Our goal is to provide you with an in-depth exploration of each phase of an investigation and how to practically apply the concepts to your role within the Title IX Formal Grievance Process.

# Title IX Overview

# Title IX and Equity

- Title IX is a gender equity law
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
  - Equity focuses on providing support and resources to reduce disparities in access to the education program
  - Title IX seeks to remedy the inequities sex- and gender-based harassment, discrimination, and violence create

# Title IX Compliance Oversight

## Who is the Title IX Coordinator (TIXC)?

- Role mandated by Title IX regulations
- Oversees institutional Title IX compliance
- Responsibilities fall into two categories:
  - Responding to reports or complaints of sexual harassment and sex discrimination
  - Leading efforts to ensure gender equity across the entire institution



# Review: Title IX Scope

## Sex Discrimination

- Sex/Gender Discrimination
- Program Inequity

## Retaliation

## Sexual Harassment

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

# Review: Title IX Scope

- Education program or activity
- Control over the Respondent
- Control over the context of the behavior
- Applies to both student and employee complaints



# Review: Sex Discrimination Definitions

- **Disparate Treatment:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when an institutional 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

# Review: Sexual Harassment Definitions

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





# Definitions: Consent

- **Consent** is not defined by the Title IX regulations, but institutions 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

# ATIXA Definitions

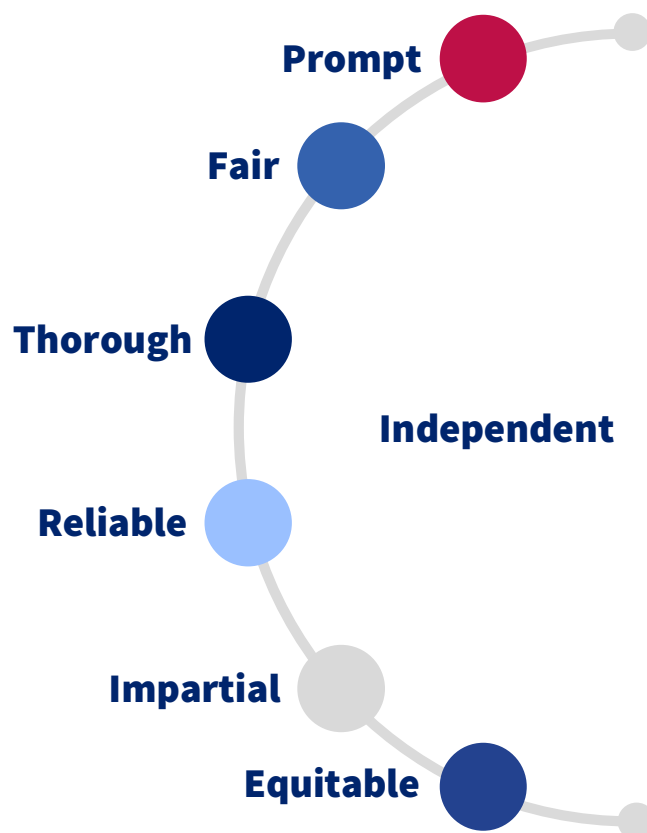
- Consent
- Retaliation
- Common additional offenses
  - Sexual Exploitation
  - Harm/Endangerment
  - Discrimination
  - Intimidation
  - Hazing
  - Bullying



# Civil Rights Investigations Overview

# Civil Rights Investigations Overview

- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties



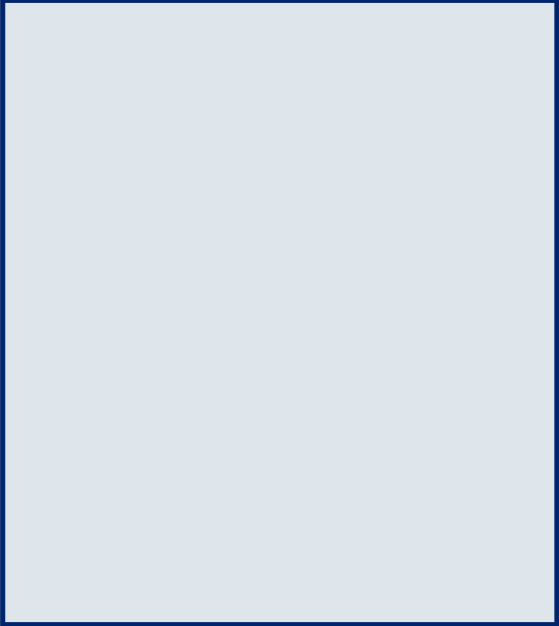
# Bias and Conflicts of Interest

- Investigators must not have a conflict of interest or bias for or against the following:
  - Complainants
  - Respondents
  - Specific individuals involved with a complaint
  - Subject matter or details of the complaint itself
- Remember, Investigators have no “side” — their investment is in the integrity of the process



# Activity: Recognizing Bias

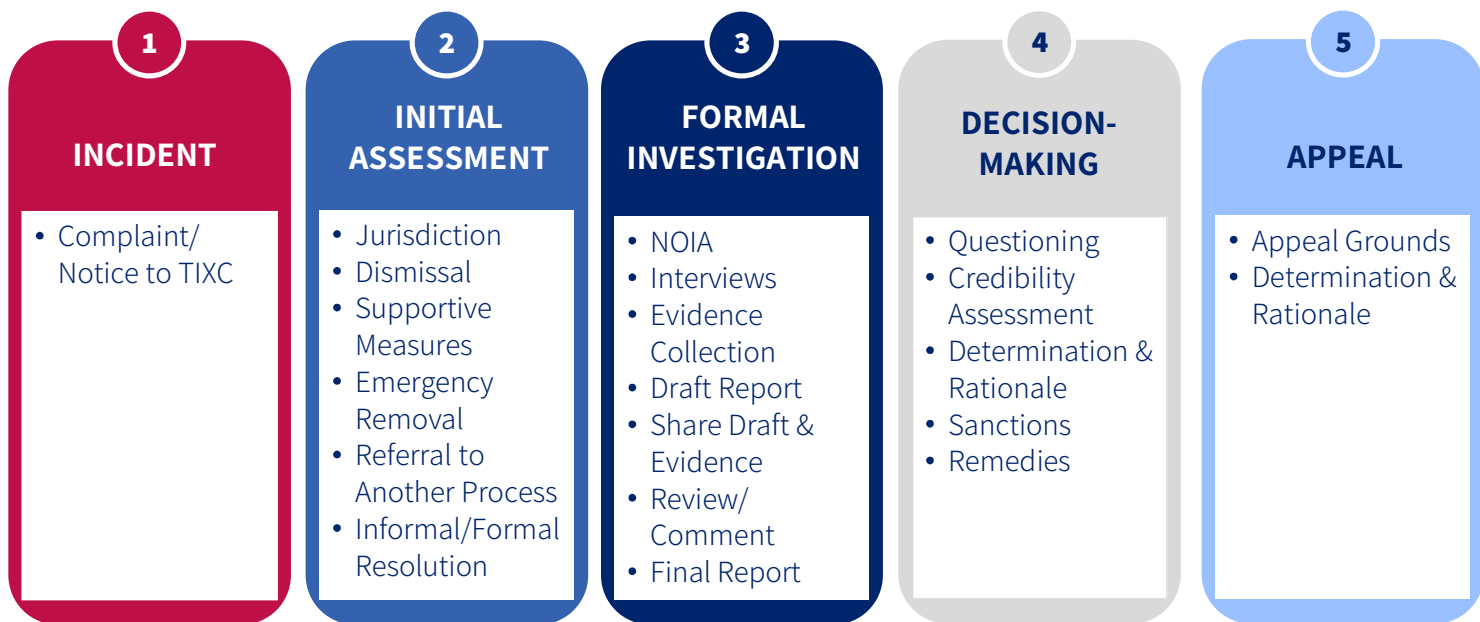
# Bias Boxes



# ATIXA'S Recommended Formal Grievance Process



# Formal Grievance Process Overview



# Title IX Grievance Process Overview

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



# Investigation Oversight and Supervision

## TIXC responsibilities include:

- Appointing Investigators and ensuring training
- Helping Investigators to strategize
- Ensuring timeline compliance
- Overseeing recordkeeping
- Serving as primary point of contact for parties



# Title IX Grievance Process Overview

## Prompt Resolution

- Complete without undue delay
- Title IX regulations do not define “prompt”
  - 60 business days is a good guide
  - Investigations vary widely in complexity and pacing
- Grievance process may take longer than expected
  - Anticipate, mitigate, and document delays
  - Communicate with parties regarding delays

## Equitable Resolution

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

# 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

# Investigation Overview

## 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



# Pre-Investigation

# Pre-Investigation Steps

**1**

**Notice/Complaint**

**2**

**Initial Assessment  
& Jurisdiction  
Determination**

**3**

**Determine Basis  
For Investigation**



# Step 1: Notice/Complaint

- Institution receives a report, knowledge, or complaint of alleged harassment or discrimination
- TIXC is point person to receive reports and complaints, including referrals from mandated reporters
- **Report:** Any information that indicates a potential policy violation
- **Formal Complaint:** A written request for the institution to initiate its Formal Grievance Process
  - Signed by the Complainant
  - Could be signed by the TIXC

## Step 2: Initial Assessment & Jurisdiction Determination

**TIXC or designee will perform several steps including:**

- Outreach and Intake to potential Complainant
- Jurisdictional Assessment
- Signing a Formal Complaint (if applicable)
  - Pattern, Predation, Threat, Violence, Weapons, Minors, Employee Respondent, Complainant not P/ATP
- Supportive Measures
- Emergency Removal or Administrative Leave (if applicable)
- Dismissal (if applicable)
- Pursuing Informal Resolution (if applicable)

# Title IX Jurisdictional Assessment

- TIXC is responsible for conducting an initial assessment to determine Title IX jurisdiction:
  - Does the alleged conduct, if proven, meet one of the definitions of Title IX sexual harassment or sex/gender discrimination?
  - Who is the Complainant?
  - Who is the Respondent?
  - Does the institution have control over the context of the alleged behavior?
- If an allegation falls outside Title IX jurisdiction, the institution may proceed under another policy (i.e., student conduct)



# Informal Resolution

- Title IX permits **voluntary** Informal Resolution (IR)
- Not available for employee-on-student sexual harassment
- IR is not defined by regulations
- Available at TIXC's discretion, at any time prior to a final determination
- Investigators should consult with TIXC to determine whether an investigation will proceed while IR is pursued
- IR facilitators must receive training, be free of bias or conflicts of interest
  - ATIXA recommends IR Facilitators not serve in any other roles for the same complaint

## Step 3: Determine a Basis for Investigation

There are three bases for civil rights investigations:

- **Incident:** a specific incident or period
  - May involve one or multiple alleged violations
    - Sexual Harassment or Retaliation
    - Disparate Treatment or Disparate Impact
- **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
  - 1975 regulatory framework
  - May have no identifiable Respondent

# Investigation Scope

- TIXC determines the scope of the investigation
- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
- Considerations:
  - Allegations outside of jurisdiction
  - Individual vs. Group
  - Multiple Complainants or Respondents
  - Counter-complaints
- May need to adjust scope during process



# Who Should Investigate?

- Investigator(s) may not be 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

**Full-Time  
Investigator(s)**

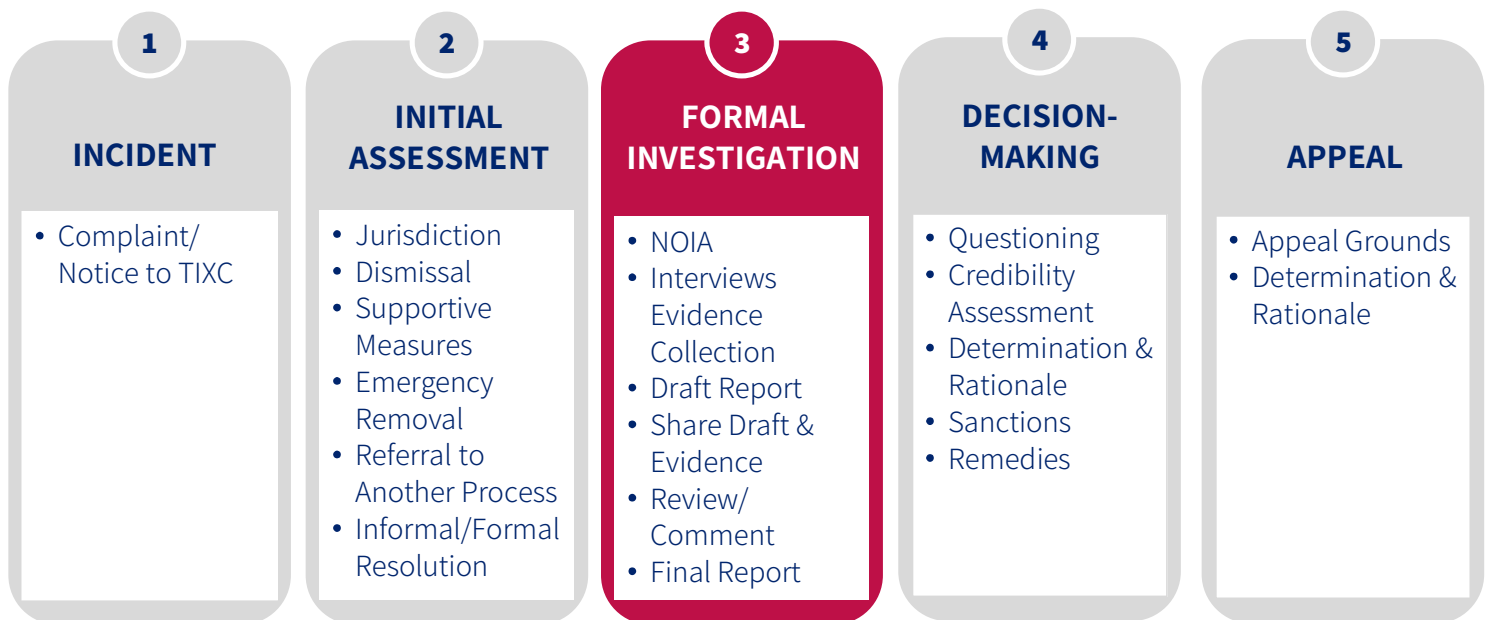
**Investigator Pool**

**Coordinator as  
Investigator**

# Investigation



# Investigation



# 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**



## Step 4: Notice of Investigation and Allegations

- The Notice of Investigation and Allegations (NOIA) letter is sent to all parties simultaneously in writing
- The 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
  - The date and location of the alleged conduct
  - Information about grievance procedures
  - Any Informal Resolution options

# 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: Notice of Investigation and Allegations

## The NOIA must also include:

- Presumption that Respondent is not responsible
- Include or reference current policy and procedures
- A statement that retaliation is not permitted
- Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
- The NOIA must be updated if additional allegations arise or allegations change during the investigation

# Recordkeeping

# Recordkeeping

- Investigator is responsible for developing and maintaining an **investigation file** through 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
  - File for each party and witness
    - Approved interview transcripts
    - Associated evidence (e.g., screenshots, written statements)
    - Correspondence with the Investigator(s)
  - Collected evidence and evidence log

# Recordkeeping

- 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 years**



# Contact Log

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

| Date    | Time    | Contact      | Type      | Notes                            | Follow-up/<br>Resolution           |
|---------|---------|--------------|-----------|----------------------------------|------------------------------------|
| 1/25/23 | 1:00 PM | Sam Smith    | Phone     | Discussed getting emails from IT | Received emails from IT on 1/26/23 |
| 1/27/23 | 2:00 PM | Sally Harris | Email     | Interview Scheduling Request     | Interview scheduled for 1/29/23    |
| 1/29/23 | 3:00 PM | Sally Harris | In Person | Investigation Interview          | Send transcript for verification   |

# Evidence Log

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



# Evidence Log Example

| Date    | Source       | Method of Receipt       | Type                              | Description   | Authentication                                    |
|---------|--------------|-------------------------|-----------------------------------|---|---|
| 1/25/23 | Sam Smith    | Email                   | Security video footage; USB drive | Elevator video footage from 9:10 – 10:10 PM on 12/10/22 | Closed circuit from Public Safety                 |
| 1/27/23 | Sally Harris | Social Media Screenshot | Social Media Screenshot           | Post made by Respondent at 9:22 PM on 12/10/22          |   |
| 1/29/23 | Sally Harris | In Person               | Call Record                       | Phone call log from Complainant’s cell phone carrier    | Email with attachment from carrier to Complainant |

# Investigation Timeline

- Investigators begin documenting an investigation timeline upon assignment of the formal complaint
- The 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

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# Investigation Strategy and Interviews

## **Step 5: 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
- Challenges with the type of complaint and the parties involved
- 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
- A working timeline for the investigation

## Step 5: Establish Investigation Strategy

- Planning considerations:
  - Process delays
  - Coordination with law enforcement
  - Interview sequencing
  - Evidence collection
  - Anticipate obstacles/obstructions
  - Counter-complaints
  - Sharing information with parties and witnesses during the investigation

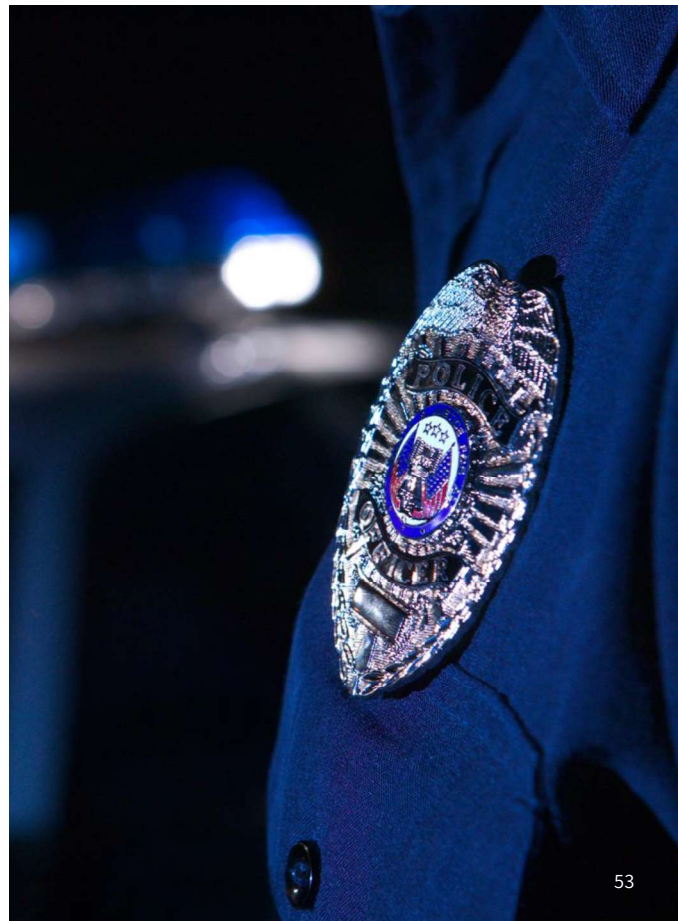
# Process Delays

- Investigations must be completed within a reasonably prompt timeframe; avoiding undue delays
  - Investigations must proceed during academic breaks
  - Investigators should 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



# Coordinating with Law Enforcement

- Law enforcement may also be investigating one or more of the allegations in the Title IX investigation
- Law enforcement may request that the institution pause or stop its investigation; however, the Title IX investigation cannot be unreasonably delayed
- Pausing for a reasonable time to permit law enforcement to gather evidence is permissible
- Criminal investigation cannot substitute for the Title IX investigation



# Interview Sequencing

- Conduct interviews as promptly as possible to capture fresh recollections (but not before 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

# Sample Interview Sequences

## Sequence A



# Sample Interview Sequences

## Sequence B



# Sample Interview Sequences

## Sequence C



# Evidence Collection

- Active process to gather evidence
- Identify potential sources of information
- Document efforts to gather, even when not successful



# Counter-Complaints

- Respondents may file a **counter-complaint** of sexual harassment or sex discrimination 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

# 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
- The parties will have access to all relevant and directly related information at the conclusion of the investigation



# Formal Investigation

# Step 6: Formal Comprehensive Investigation



**THOROUGH**



**RELIABLE**



**IMPARTIAL**



**PROMPT**



**FAIR**



**EQUITABLE**

# Party and Witness Investigation Concerns

## Confidentiality vs. Privilege vs. Privacy

**1**

### **CONFIDENTIALITY**

Those who receive reports from students (and sometimes employees) and need not report to the TIXC

**2**

### **PRIVILEGE**

A legal obligation, such as an attorney giving advice in an attorney/client relationship or clergy providing pastoral advice

**3**

### **PRIVACY**

Only disclosing the allegations to those who need to know, but cannot guarantee confidentiality

# Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice
- “Of choice” truly means anyone
- Investigators may establish participation ground rules, if applied equitably
- Parties may request that the institution provide an Advisor for hearing
  - Institutions may choose to appoint earlier in process
- Advisors may ask questions of the other party and any witnesses on behalf of the party they advise during live hearings



# Pre-Interview Planning

- Before scheduling interviews, consider:
  - Interview location
  - Interview scheduling constraints
  - Interview participants
  - Interview preparation
- Must provide written notification to parties with sufficient time to prepare
  - Date, time, location, participants, and purpose
- Cannot mandate participation in interviews
- It can be beneficial to conduct interviews in person, when possible, but videoconferences are common
- Investigator should always prepare initial questions in advance, but remain flexible

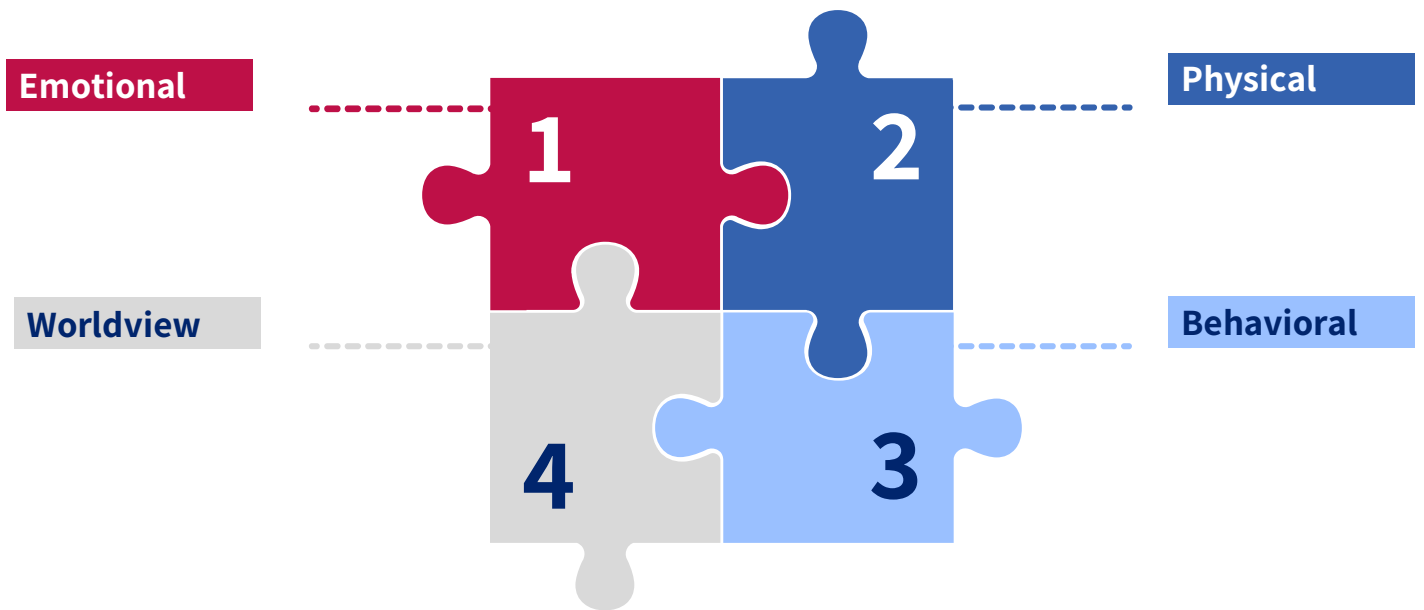
# Building Rapport

- GOAL: Interviewee trusts that you are neutral and impartial
- Investigators can 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

# Trauma-Informed Practices

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity
  - Acute, chronic, or complex
  - Neurological, biological, psychological, social, and emotional impacts
  - Developmental, intergenerational, historical, secondary, vicarious, or collective
  - Responses to trauma can vary, depending on a variety of factors
- Provide all persons with support that makes TIX services and processes accessible, including those who may have experienced trauma

# Impacts of Trauma





# Trauma-Informed Practices

- Key principles of trauma-informed practice:
  - Safety
  - Trustworthiness and transparency
  - Collaboration and mutuality
  - Empowerment, voice, and choice
  - Cultural, historical, and gender issues
- **ATIXA Position Statement:** Application of trauma-informed practices in our field has gotten ahead of the actual science
  - **ATIXA Recommendation:** Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
  - Trauma-informed practices should not significantly influence evidence evaluation

## “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



# Activity: Practicing Your Spiel

# Interviewing Skills

- Investigators build and improve skills over time and with practice:
  - Appropriate questioning
  - Body language and non-verbal communication
  - Active listening
  - Seeking clarification
  - Identifying gaps



# Questioning Considerations

- An interview is a conversation designed to elicit information in a non-accusatory manner
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; answer all questions
- Ask purposeful questions:
  - What do I need to know?
  - Why do I need to know it?
- Use policy definitions to inform questions
- Avoid unnecessary repetition or traumatic re-triggering
- Choose or blend effective questioning strategies/methodologies

# Questioning Tips

- Listen carefully
- Seek to clarify terms that have multiple meanings
  - “We hooked up” or “She was acting weird”
- Avoid:
  - Accusatory or argumentative questions or tone
  - Confusing questions
  - Blaming questions
  - “Double-barreled” questions
  - Evaluative responses
  - Sanitizing language (use the terms used by the interviewee)



# 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?

# 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, expectation of truthfulness



# Final Questions for Interviews

- “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?”
- 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



# Activity: Developing Questions

## Activity: Developing Questions

- Refer to the Sample Notice of Investigation and Allegations (NOIA) in the course lobby
- Read the NOIA and begin developing interview questions based on the allegations and policy language provided

# 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

# Understanding Evidence

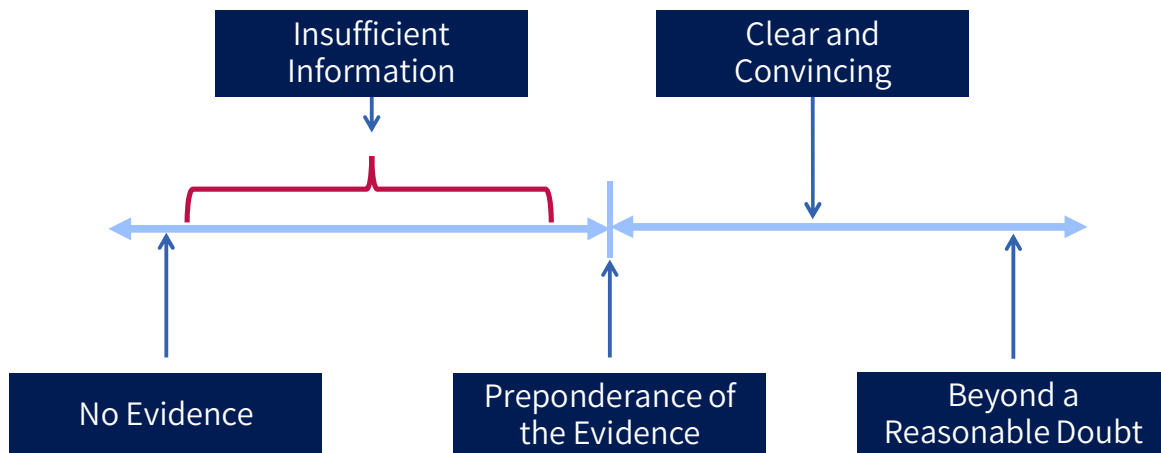
- Duty to collect and objectively evaluate all evidence that is relevant to the complaint
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant evidence** is evidence that tends to prove or disprove the underlying allegations
  - Inculpatory and exculpatory evidence
- **Directly related evidence** is connected to the complaint, but is neither inculpatory nor exculpatory



# Standard of Evidence

- Two options:
  - Preponderance of the evidence
  - Clear and convincing evidence
- Standard of evidence must be consistent for all formal complaints of sexual harassment in all policies
- Must apply the same standard for complaints against students and employees, including faculty
- Investigator must be familiar with the standard in institutional policy
- ATIXA recommends the preponderance of the evidence standard

# Standard of Evidence



**Preponderance of the Evidence** is the current industry standard.

# 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       |



# Specific Evidence Issues: Privileged and Medical Information

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

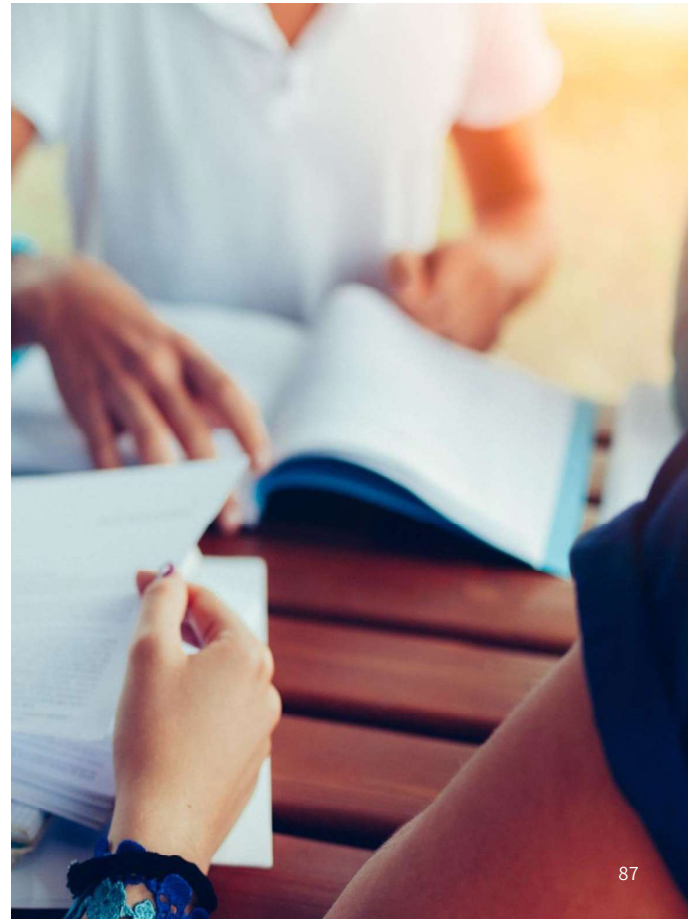
- Evidence protected under a legally recognized privilege
- Records made or maintained by:
  - Physician
  - Psychiatrist
  - Psychologist

## 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

- **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



# Credibility Assessment

Consider the following elements to establish credibility:

- **Corroborating Evidence:** evidence that can be verified by an independent and objective individual
- **Inherent Plausibility:** information that is believable on its face
- **Motive to Falsify**
- Additional elements that investigators should consider, but are commonly less probative are:
  - **Past Record**
  - **Demeanor**

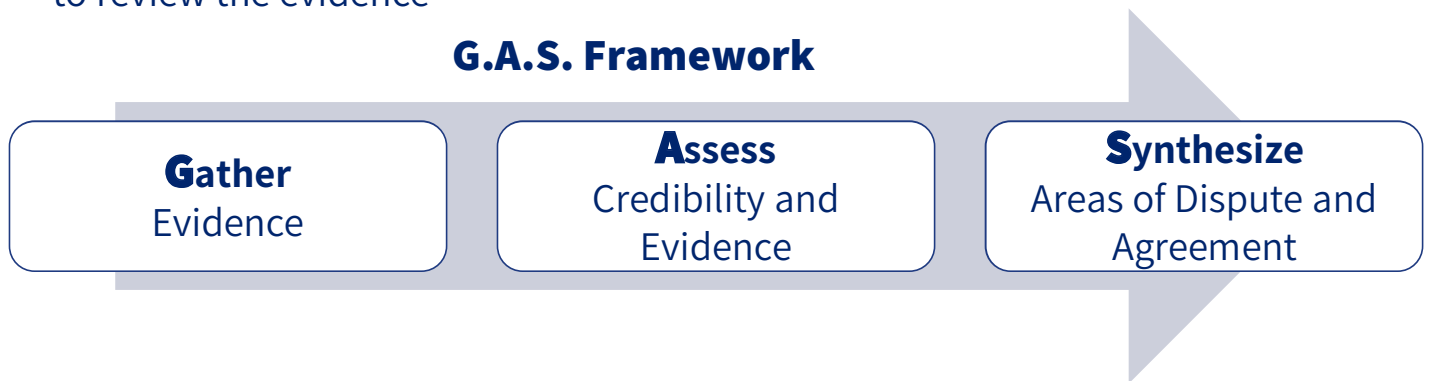
# Evidence Authentication

- Not all evidence has the same degree of credibility
  - Less credible evidence may be less reliable evidence
- Investigator should seek the highest quality evidence available
- Investigators 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

## Step 7: Draft Investigation Report

- Title IX requires a written investigation report that fairly summarizes all relevant evidence and the investigation
- ATIXA recommends sharing draft report in Step 8 when the parties are entitled to review the evidence

### G.A.S. Framework



# Investigation Report Elements

## Comprehensive investigation report typically includes:

- Complaint and party information
- Jurisdiction
- Scope
- Applicable policies
- Investigation timeline
- Summary of evidence
- Analysis
  - Credibility Assessment
  - Disputed and non-disputed facts
- Conclusion
- Appendices

# Investigation Report Steps





## Step 8: 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
- Institutions may elect to complete this review after the parties' review or have two separate TIXC/legal counsel reviews



## **Step 9: 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 Recipient 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

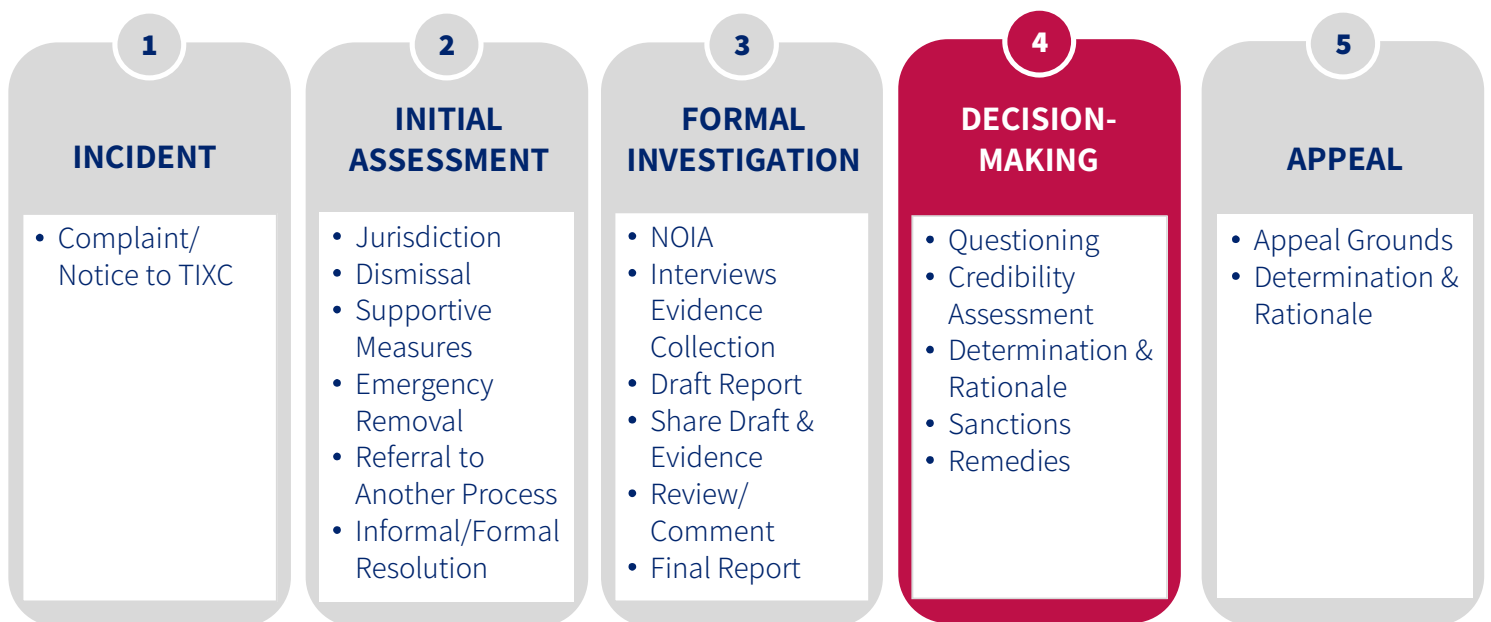
## Step 10: Final Investigation Report

- Institutions determine the final investigation report review process
  - Once finalized, the investigation report is distributed simultaneously to the parties and their Advisors
  - The Title IX office provides the report to the Decision-maker(s)
- Parties and Advisors will be sent the final investigation report for review at least 10 days prior to the hearing

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# Post-Investigation: Decision-Making and Hearings

# Decision-Making



# Decision-Making

- Separate Decision-maker(s) who is not the TIXC or Investigator for allegations of sexual harassment; may use a different structure for other types of complaints
- Decision-making models situate the Investigator role in three ways:
  - Investigator as gatherer
  - Investigator as synthesizer
  - Investigator as recommender
- Decision-maker relies heavily on the work of the Investigator to determine:
  - Relevance of all evidence
  - Credibility of all evidence
- Decision-maker determines if the Respondent violated policy, and if so, what sanctions or remedies are appropriate and necessary

# Live Hearings

- All sexual harassment complaints must be resolved through a live hearing unless an Informal Resolution is reached
- Investigator may be asked to participate as a witness in the live hearing and be questioned by the Decision-maker(s) and/or parties through their Advisors
  - Example: Why did you decide some evidence relevant; other evidence was not?
- Decision-maker manages the hearing and questioning to limit to relevant evidence
- Hearing can be held in a physical location or virtually
- Must record hearing or create transcript

# Written Determinations

## ▪ **Written Determination**

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

## ▪ **Finality**

- On the date the Recipient provides a written appeal determination
  - OR the date when an appeal would no longer be timely

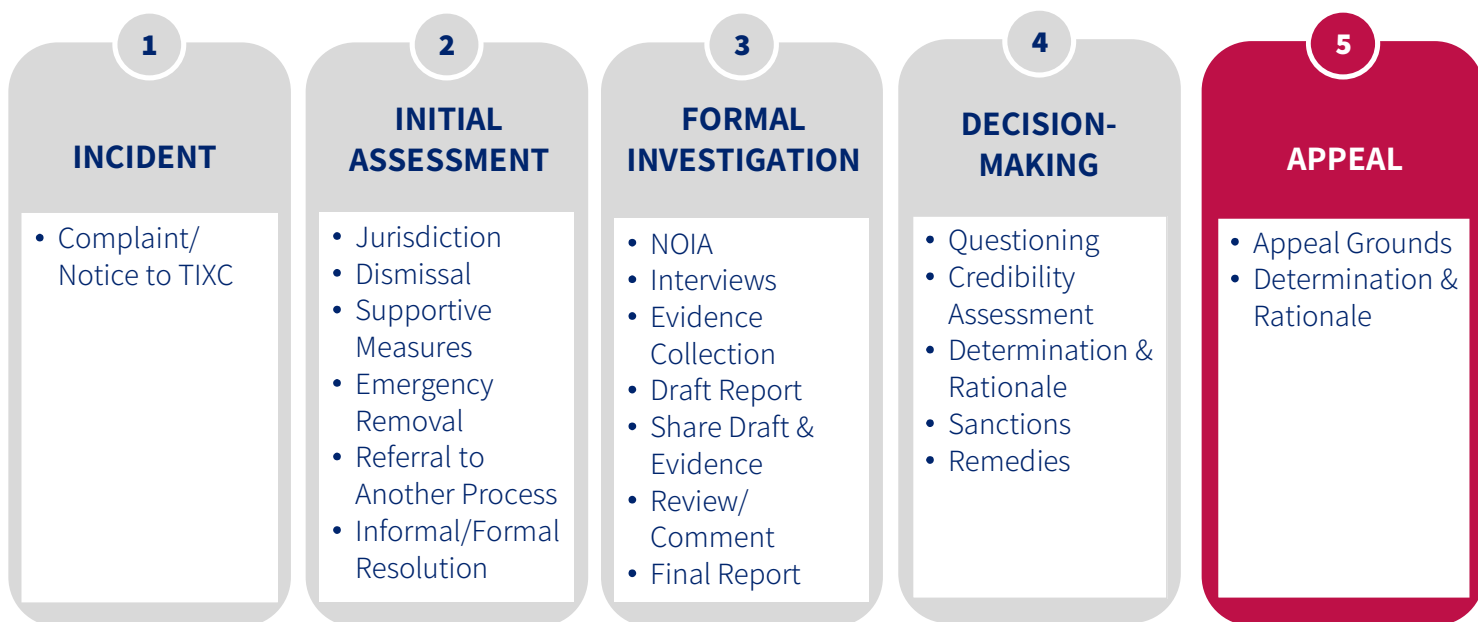
## **Written Determination Elements**

- Applicable policy
- Procedural steps from complaint through determination
- Statement of and rationale for the result of each specific allegation
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Whether remedies will be provided to Complainant
- Procedures and bases for appeal



# Appeals

# Appeals



# Appeals

**Must offer appeals on one or more of the following grounds:**

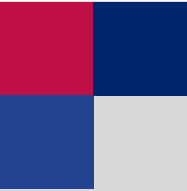
- 1** Procedural irregularity that affected the outcome of the matter
- 2** New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter
- 3** Conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter

**Institutions have the discretion to add additional appeal grounds.**

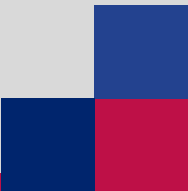
# Appeals

## Appeal Decision-maker:

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



**Questions?**





Association of  
Title IX Administrators

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Association of  
Title IX Administrators

# Title IX Compliance & Athletics in Higher Education

Training and Certification Course

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

# Content Advisory

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

# Course Introduction



The primary focus of this course is preparing Title IX and Athletics practitioners with relevant information to build stronger Athletic programs regarding compliance, culture, and equity.



Title IX and Athletics practitioners will be able to identify compliance requirements and best practices as well as address red flags related to athletics compliance.



Our goal is to provide a deeper understanding of issues relating to sexual harassment, sexual misconduct, culture in Athletics, and program equity compliance.

# Agenda

- 1 Overview and History of Title IX and Athletics
- 2 Accommodation of Interests and Abilities
- 3 Athletic Financial Assistance
- 4 Other Athletic Benefits and Opportunities
- 5 Red Flags
- 6 eSports
- 7 Sex Discrimination and Sexual Harassment in Sport

# **Title IX Notices of Proposed Rulemaking 2022 & 2023**

# Title IX Regulations

- **1972:** Congress passed Title IX of the Education Amendments
- **1980:** the Department of Education's Office for Civil Rights (OCR) given primary responsibility for enforcing Title IX
- **November 2018:** OCR proposed the most detailed and comprehensive Title IX regulations to date, which focused on sexual harassment response
- **August 2020:** Significantly amended, due-process oriented Regulations took effect (proposed in Nov. 2018)
- **June 2022:** OCR published a Notice of Proposed Rule Making (NPRM) outlining proposed changes to the Title IX regulations focused on sexual harassment response and pregnancy and related conditions

# NPRM Process Timeline

- **July 2022:** NPRM published in the Federal Register and the 60-day public comment period began
- **September 2022:** Review and comment period ended
  - Received 240,000+ comments
- **April 2023:** OCR published a separate NPRM outlining proposed changes to the Title IX regulations focused on gender identity and athletic participation; 30-day public comment period
  - Received 150,000+ comments
- ED has indicated a March 2024 deadline for releasing the Final Rule
- ATIXA's experts believe an April – June 2024 publication date is more realistic and anticipate an August 2024 implementation deadline

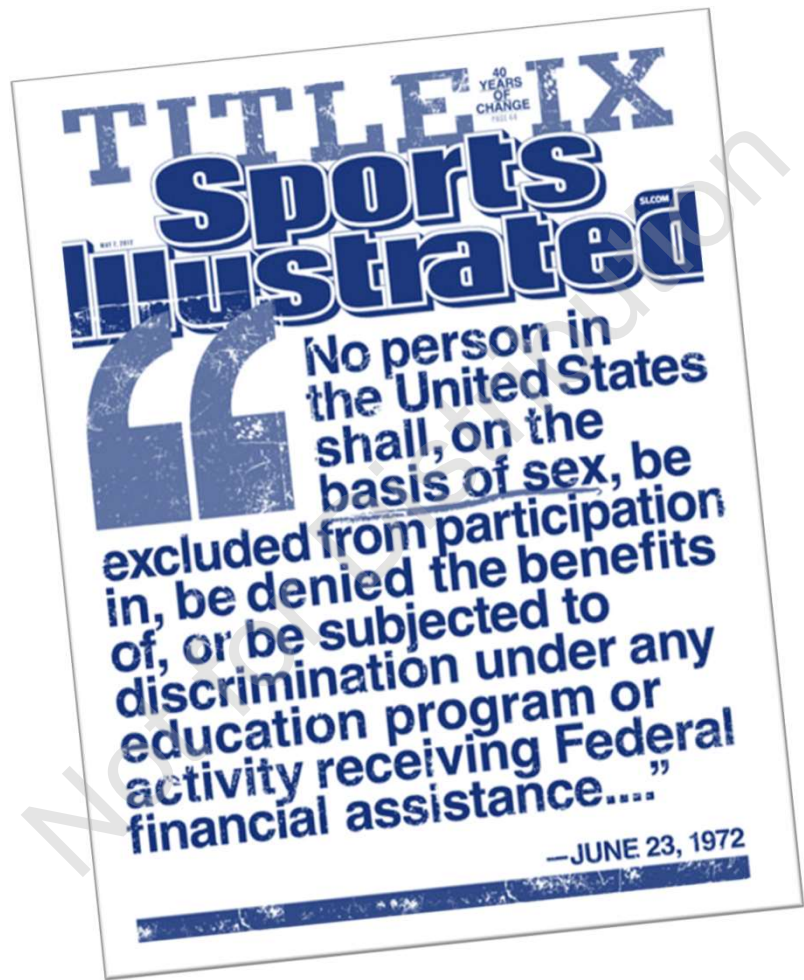
# Preparing for Implementation

- Continue to fulfill obligations under the current regulations for 2023-2024 academic year

## Steps to Take Now:

- Educate yourself on the proposed regulations
- Prepare to educate your community on the changes
- Identify stakeholders that will need to be involved in making policy decisions  
Determine how you will manage policy changes
- Plan for the training needs for your community
- Consider state laws, court decisions, and other regulations that may affect your institutional approach





# Title IX: Scope

## Sex Discrimination

- Inequitable Treatment
  - Sex characteristics
  - Sex stereotypes
  - Pregnancy or related conditions
  - Sexual orientation
  - Gender identity
- Exclusion from participation

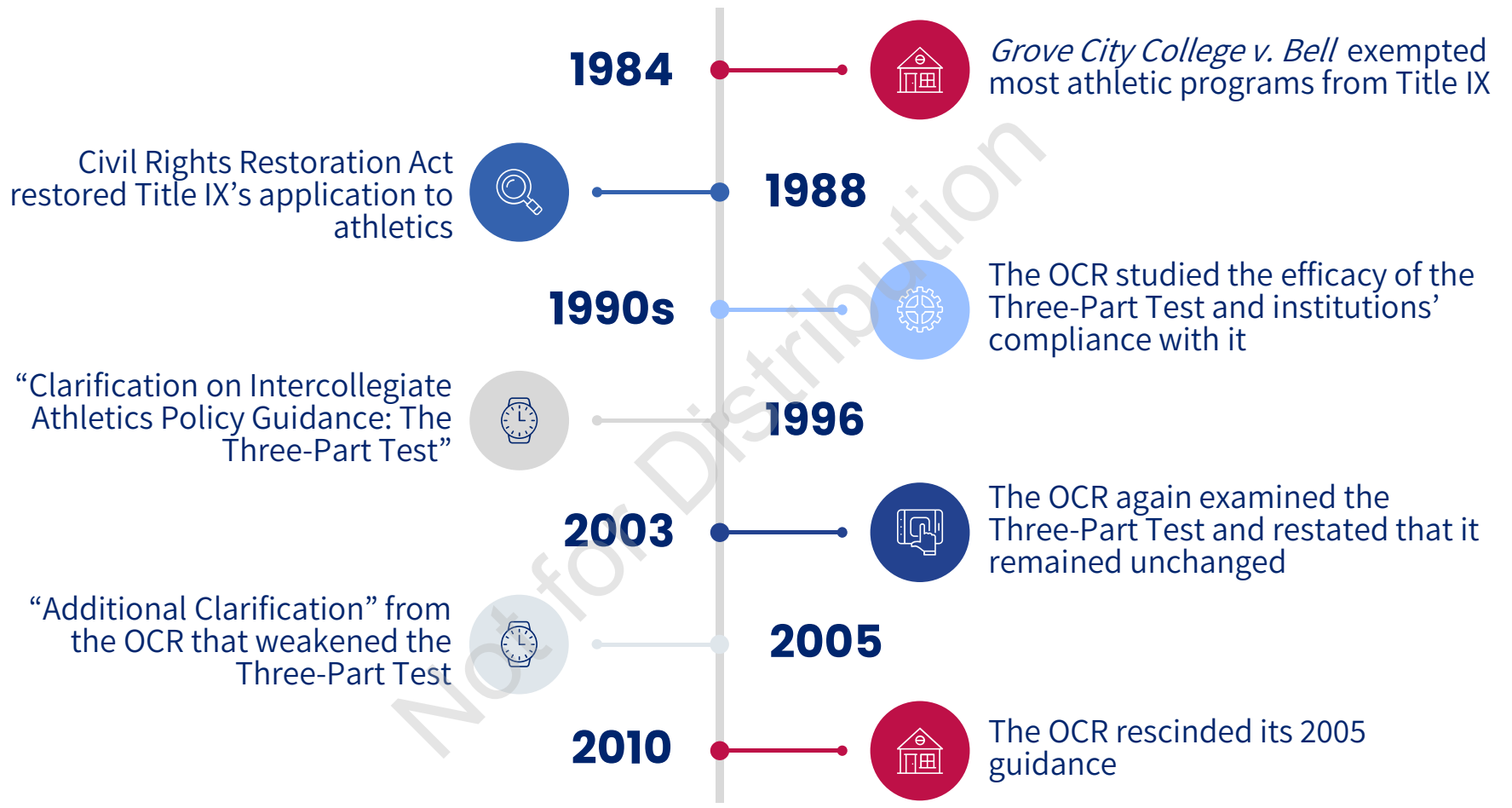
## Sexual Harassment

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

## Retaliation

# History of Title IX and Athletics

- Athletics is not mentioned in the 1972 Title IX statute
- Proposed regulations (1974) did and created a fire-storm
- Regulations passed in 1975 and athletics was given three years to comply
- Dec. 11, 1979, HEW issued the “Intercollegiate Athletics Policy Interpretation”
  - Contained the “Three-Part Test” to determine Title IX compliance with student interests and abilities



# Recent Regulations & Requirements

## 2020 Title IX Regulations

- VRA – The effect on athletics interim actions
- Effect on investigations and jurisdiction



## NCAA Campus Sexual Violence Policy – Annual Attestation

- Policy training and compliance
- Dissemination of information
- Annual education for **all** student-athletes, coaches, and staff
- Prior conduct disclosure form for all prospective, continuing, and transfer student-athletes
- Prior conduct check
- Policy regarding gathering information from previous institution(s)

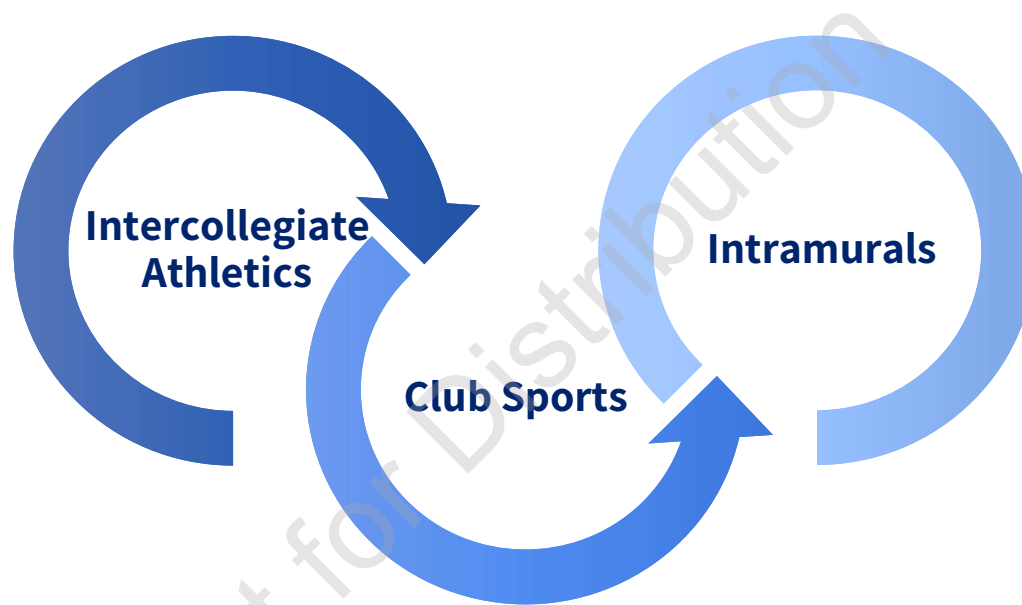
# NCAA Attestation: Why it Matters to CC/JC

- Community colleges are NOT members of the NCAA, so the attestation requirements do NOT apply to them
- That said, NOT attesting to the issues requested may result in the student-athlete not being permitted to participate
- Some institutions are moving toward “serious misconduct” policies and may ask broader questions – these can be referred to the dean of students or student conduct office as well

# Name, Image, and Likeness

- Individuals can engage in name, image, and likeness (NIL) activities that are consistent with the law of the state where the school is located
  - Colleges and universities may be a resource for state law questions
- College athletes who attend a school in a state without an NIL law can engage in this type of activity without violating NCAA rules related to name, image, and likeness
- Individuals can use a professional services provider for NIL activities
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school

# Title IX and Athletics



Three-Part Test and the 13 program components are typically not as problematic for Intramurals and Club Sports because those programs are typically self-initiated and fewer benefits are provided by the institution





**EQUALITY**  
*requires a level playing field  
that doesn't yet exist*



**JUSTICE**  
*eliminates systemic barriers*

**The journey  
starts by  
asking  
those  
affected  
how they  
see and are  
impacted  
by the  
conditions,  
rules, and  
resources.**



**EQUITY**  
*acknowledges systemic  
impediments with targeted fixes*



**AGENCY**  
*individuals know that access  
is their right*

Adapted from Pittman, Karen (2018). *Changing the Odds Together*.

# Title IX and Athletics

## Title IX requires an institution to:

- Provide equal **opportunities** for female and male students to become intercollegiate athletes
  - Analyzed by means of a three-part test (“prongs”)
- Provide equitable treatment of **participants** in the overall women’s program as compared to the overall men’s program
  - Analyzed according to thirteen (13) different program components (The “Laundry List”)

# Title IX and Athletics

## Title IX does not require an institution to:

- Provide the same funding to the overall women's and men's programs
- Provide the same funding to men's and women's teams for the same sport
- Provide specific benefits to teams
- Offer the same number of teams for men and women
- Offer the same sports for men and women
- Provide the same benefits to men's and women's teams in the same sport
- Compete at a specific level

# Athletic Oversight – Gender Equity

- The oversight of compliance remains the responsibility of the *Institution's* Title IX Coordinator (TIXC)
- **Compliance in athletics** may be delegated to the Senior Woman Administrator (SWA = NCAA distinction) or compliance officer in athletics
  - Need for outside education on the various areas of TIX
- Institutions should have a Deputy TIXC in athletics
  - Athletics Deputy TIXC should **not** be the Recipient's TIXC

# The Three-Part Test: Accommodation of Interests and Abilities

- Proportionality
- Program Expansion
- Full Accommodation

# Three-Part Test (1979)

## Effective accommodation of interests and abilities

1

Opportunities for males and females substantially proportionate to their respective enrollments; **OR**

2

Where one sex has been underrepresented, a history and continuing practice of program expansion responsive to the developing interests and abilities of that sex; **OR**

3

Where one sex is underrepresented and cannot show a continuing practice of program expansion, whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program

# Counting Participants

For purposes of Title IX compliance, a **participant** is defined as those athletes who:

- Regularly receive institutionally sponsored support normally provided to athletes
- Regularly participate in organized practices or team meetings and activities during the season
- Are listed on the eligibility or squad list
- Are injured, but continue to receive financial aid on the basis of athletic ability

# Counting Participants

- **Participants** also include those who:
  - Are listed on a team's squad or eligibility list AND are on the team as of the team's first competitive event
  - Join the team during the season\*
  - Are a walk-on
  - Are a member of the JV, freshman, "B" team, etc.
  - Quit or were cut after the first competitive event
  - Are a Redshirt athlete
  - Are a mid-year transfer eligible to participate in the spring

\*Season begins on the date of a team's first intercollegiate competitive event and concludes on the date of the final intercollegiate competitive event.

Sources: HEW (1979). Intercollegiate Athletics Policy Interpretation;  
OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 91-92.



# Counting Participants

- The following are **not** participants:
  - Unfilled team slots or positions
  - Club, intramural and recreation program participants
  - Cheerleaders\*
  - Athletes who quit or are cut BEFORE first competitive event of the season
  - Sport participants out of season (e.g., spring football)
  - Scrimmage or practice squads
  - Student managers,\* student coaches,\* student trainers\*
  - Students who are academically ineligible
  - Mid-year transfers if no spring season

\*Even if they receive scholarships

Sources: HEW (1979). Intercollegiate Athletics Policy Interpretation;  
OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 91-92.

# Part 1: Proportionality

## Opportunities for males and females substantially proportionate to their respective enrollments

- **Substantially proportionate** accounts for natural fluctuations in enrollment and participation rates, but institutions must adjust if shifted enrollment or participation shifts persist
- OCR uses a case-by-case analysis, rather than a rigid statistical requirement (e.g., within 1% of student body)
- OCR would also consider opportunities to be substantially proportionate when the number of opportunities that would be required to achieve proportionality would not be sufficient to sustain a viable team

# Part 2: Program Expansion

**History and continuing practice of program expansion responsive to the developing interests and abilities of the underrepresented sex**

**In analyzing a history of program expansion, OCR considers:**

- An institution's record of adding intercollegiate teams, or upgrading teams to intercollegiate status, for the underrepresented sex
- An institution's record of increasing the numbers of participants in intercollegiate athletics who are members of the underrepresented sex
- An institution's affirmative responses to requests by students or others for addition or elevation of sports

## Part 2: Program Expansion

- An institution's current implementation of a nondiscriminatory policy or procedure for requesting the addition of sports (including the elevation of club or intramural teams) and the effective communication of the policy or procedure to students
- An institution's current implementation of a plan of program expansion that is responsive to developing interests and abilities

# Part 3: Full Accommodation

**Whether it can be demonstrated that the interests and abilities of that sex have been fully and effectively accommodated by that present program**

**OCR will consider whether there is:**

- Sufficient unmet interest to support an intercollegiate team
- Sufficient ability to sustain an intercollegiate team
- A reasonable expectation of competition for the team

# Levels of Competition

- Financial Assistance
- Counting Participants for Financial Assistance

# Levels of Competition

## OCR assesses compliance by examining:

- Whether the competitive schedules for men's and women's teams, on a program-wide basis, afford proportionally similar numbers of male and female athletes equivalently advanced competitive opportunities

**OR**

- Whether the institution can demonstrate a history and continuing practice of upgrading the competitive opportunities available to the historically disadvantaged sex as warranted by developing abilities among the athletes of that sex

# Other Athletic Benefits and Opportunities

- Equipment and Supplies
- Scheduling
- Travel and Per Diem Allowance
- Coaches
- Tutors
- Locker Rooms and Other Facilities
- Medical and Training Services
- Housing and Dining Services
- Publicity
- Recruitment of Student Athletes
- Provision of Support Services



# Financial Assistance

- Must provide **reasonable opportunities** for financial assistance to members of each sex in proportion to the participation rate of each sex in intercollegiate athletics
  - Does **NOT** require same number of scholarships for men and women or scholarship of equal value
- Total amount awarded must be “substantially proportionate to the participation rates” of men and women in the institution’s athletic programs
- Disparities could be non-discriminatory in origin
  - E.g., in-state vs. out-of-state recruits; reasonable professional decisions
- Also applies to work-related aid programs or loans

# Multi-Sport Athletes and Financial Assistance

- There is a different standard for counting multi-sport athletes for scholarship participants than for all other forms of Title IX analyses
- Scholarship counting:
  - An athlete who participates in multiple sports is counted as only **ONE** scholarship
  - Based on total program participation, not individual team analysis
  - Typically, does not matter for which team the student is counted
  - All other forms of Title IX analysis
  - An athlete who participates in multiple sports is counted as a participant for each sport

Source: OCR (1996). Clarification of Intercollegiate Athletics Policy Guidance: The Three-Part Test; Bonnette, pp. 92-93.

# Red Flags to Look for and Ask About

- Proportionality
- Program Expansion
- No Unmet Interest
- Retaliation
- Equal Pay
- Hostile Environment
- Donations
- Fundraising

# Athletic Oversight – Gender Equity



# Equipment & Supplies

## Key factors in examining the equivalence for men and women:

- Quality of equipment and suppliers
- Amount of equipment and supplies
- Suitability of equipment and supplies
- Maintenance and replacement of the equipment and supplies
- Availability of equipment and supplies

# Scheduling of Games and Practice Times

## Key factors in examining the equivalence for men and women:

- Number of competitive events per sport
- Number and length of practice opportunities
- Time of day competitive events are scheduled
- Time of day practice opportunities are scheduled
- Opportunities to engage in available pre-season and post-season competition

# Travel and Per Diem Allowances

## Key factors in examining the equivalence for men and women:

- Modes of transportation
- Housing furnished during travel
- Length of stay before and after competitive events
- Per diem allowances
- Dining arrangements

# Coaching

## Key factors in examining coaching:

- Opportunity to receive coaching
  - Relative availability of full-time coaches
  - Relative availability of part-time and assistant coaches
  - Relative availability of graduate assistants
- Assignment of coaches
  - Training, experience, and other professional qualifications
  - Professional standing



# Coaching

## Key factors in examining coaching:

- Compensation of coaches
  - Rate of compensation (per sport, per season)
  - Duration of contracts
  - Conditions relating to contract renewal
  - Experience
  - Nature of coaching duties performed
  - Working conditions
  - Other terms and conditions of employment

# Academic Tutoring

## Key factors in examining the equivalence for men and women:

- Academic Tutoring
  - Availability of tutoring
  - Procedures and criteria for obtaining tutorial assistance
- Assignment of Tutors
  - Tutor qualifications
  - Training, experience, and other qualifications

# Academic Tutoring

- Compensation of Tutors
  - Hourly rate of payment by nature subjects tutored
  - Pupil loads per tutoring season
  - Tutor qualifications
  - Experience
  - Other terms and conditions of employment

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# Locker Rooms, Practice and Competitive Facilities

## Key factors in examining the equivalence for men and women:

- Quality and availability of the facilities provided for practice and competitive events
- Exclusivity of use of facilities provided for practice and competitive events
- Availability of locker rooms
- Quality of locker rooms
- Maintenance of practice and competitive facilities
- Preparation of facilities for practice and competitive events

# Medical and Training Facilities and Services

## Key factors in examining the equivalence for men and women:

- Availability of medical personnel and assistance
- Health, accident, and injury insurance coverage
- Availability and quality of weight and training facilities
- Availability and quality of conditioning facilities
- Availability and qualifications of athletic trainers

# Housing and Dining Facilities and Services

## Key factors in examining the equivalence for men and women:

- Housing provided
- Special services as part of housing arrangements (e.g., laundry facilities, parking space, cleaning service)

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# Publicity

## Key factors in examining the equivalence for men and women:

- Availability and quality of sports information personnel
- Access to other publicity resources for men's and women's programs
- Quantity and quality of publications and other promotional devices featuring men's and women's programs

# Student Athlete Recruitment

## Key factors in examining the equivalence for men and women:

- Whether coaches or other professional athletic personnel in the programs serving male and female athletes are provided with substantially equal opportunities to recruit
- Whether the financial and other resources made available for recruitment in male and female athletic programs are equivalently adequate to meet the needs of each program
- Whether the differences in benefits, opportunities, and treatment afforded prospective student athletes of each sex have a disproportionately limiting effect upon the recruitment of students of either sex



# Support Services

The administrative and clerical support provided to an athletic program can affect the overall provision of opportunity to male and female athletes, particularly to the extent that the provided services enable coaches to perform better their coaching functions.

## Key factors:

- Amount of administrative assistance provided to men's and women's programs
- Amount of secretarial and clerical assistance provided to men's and women's programs

“Our proportionality is within five percentage points - close enough!”

“We will reach proportionality through roster management!”

“We just added a women’s team, so we definitely comply with prong two!”

“It’s OK, we are cutting a men’s and a women’s team!”

“But no one has complained about our lack of women’s sports!”

“We absolutely have enough money to add a new men’s team!”

Gender imbalances on coaching staff

Closed hiring practices

Salaries not benchmarked  
(conference, geographic)

Roster Management vs.  
Roster Manipulation

Complaints about hostile environment  
How managed?  
By whom?

Complaints about gender equity from **anywhere**

# Donations

- **Booster clubs:** Groups of fans or donors who want to support a team or program
- **Donors:** Individuals who want to give to a team or program
- Booster club and donor contributions to schools can affect a school's Title IX compliance
- Can provide assistance to a school's athletic programs
- Often, they only want to support a specific team or program or provide a specific service
- Oversight and guidance from the Title IX Office are necessary to ensure compliance
- Often involves educating the donor/club
- Ideally, they support **ATHLETICS**

# Fundraising

- Fundraising = Teams raising money on their own
  - For a specific opportunity
  - For equipment, uniforms, etc.
  - For special equipment, uniforms, etc.
- Private fundraising is permissible
- Title IX requires that male and female teams must have equal access and equal opportunities to comparable benefits and services no matter the source of money

# The Law

- Booster/Donor money can be looked at as clandestine financing for major school sports programs – most of which are overwhelmingly male
  - Impact of NIL at the college level
- While funding may be unequal, the benefits and services for programs must be equal/equitable
  - If not, the Recipient has to make up the difference to equalize opportunities
- Nothing in the language of Title IX dictates that funding must be the same for the female and male overall programs or the female and male teams in the same sports
  - Lack of funds, however, cannot justify sex discrimination
- These contributions should be a big concern for schools

# eSports

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## ESPORTS

- Proportionality issues
- Harassment concerns
- Competitions in/out of school
- The future



# Sex Discrimination, Sexual Harassment, Sexual Violence, and Intimate Partner Violence and Sport

- Recent Examples
- Instructive Cases
- Prevalence
- Definitions
- Obligations

# NCAA & Sexual Violence

The Executive Committee expects NCAA members to... **operate fairly and ethically**, and further to assure that student-athletes are neither advantaged nor disadvantaged by special treatment and that institutions' athletics departments must:

- Comply with campus authorities and ensure that all athletics staff, coaches, administrators and student-athletes maintain a hostile-free environment for **all student-athletes** regardless of gender or sexual orientation
- **Know and follow campus protocol** for reporting incidents of sexual violence
- **Report immediately any suspected sexual violence to appropriate campus offices for investigation and adjudication**

# NCAA & Sexual Violence

- **Educate all** student-athletes, coaches, and staff about sexual violence prevention, intervention and response
- Assure compliance with all federal and applicable state regulations related to **sexual violence prevention and response**
- **Cooperate with but not manage, direct, control, or interfere with** college or university investigations into allegations of sexual violence ensuring that investigations involving student-athletes and athletics department staff are managed in the same manner as all other students and staff on campus
- **Sexual Violence Policy FAQ:** <https://www.ncaa.org/sports/2021/7/21/ncaa-board-of-governors-policy-on-campus-sexual-violence-administrator-faq.aspx>

# NCAA Policy on Campus Sexual Violence

1. The athletics department is informed on, integrated in, and compliant with institutional policies and processes regarding sexual violence prevention and proper adjudication and resolution of acts of sexual and interpersonal violence
2. The institutional policies and processes regarding sexual violence prevention and adjudication, and the name and contact information for the campus Title IX Coordinator\*, are readily available within the department of athletics, and are provided to student-athletes

\*For international members and schools that do not receive federal funding, or are otherwise exempt from Title IX, the signature should be from the Title IX Coordinator or institutional staff member with comparable responsibilities

# NCAA Policy on Campus Sexual Violence

3. All student-athletes, coaches and staff have been educated each year on sexual violence prevention, intervention and response, to the extent allowable by state law and collective bargaining agreements.
4. All incoming, continuing and transfer student-athletes have completed an annual disclosure related to their conduct that resulted in discipline through a Title IX proceeding or in a criminal conviction for sexual, interpersonal or other acts of violence.\*\* Transfer student-athletes also must disclose whether a Title IX proceeding was incomplete at the time of transfer. Failure to make a full and accurate disclosure could result in penalties, including loss of eligibility to participate in athletics as determined by the member institution.

# NCAA Policy on Campus Sexual Violence

\*\*A person who has been disciplined through a Title IX proceeding or criminally convicted, regardless of the degree, and whether the result of a plea or court determination, of either of the following:

**Interpersonal Violence:** Violence that is predominantly caused due to the relationship between the victim and the perpetrator, including dating and domestic violence

**Sexual Violence:** A term used to include both forcible and nonforcible sex offenses, ranging from sexual battery to rape

**Other Acts of Violence:** Crimes including murder, manslaughter, aggravated assault or any assault that employs the use of a deadly weapon or causes serious bodily injury

# NCAA Policy on Campus Sexual Violence

5. Institutions have taken reasonable steps to confirm whether incoming, continuing and transfer student-athletes have been disciplined through a Title IX proceeding or criminally convicted of sexual, interpersonal or other acts of violence.\*\* In a manner consistent with federal and state law, all NCAA member institutions must share relevant discipline information and incomplete Title IX proceedings as a result of transfer with other member institutions when a student-athlete attempts to enroll in a new college or university.

# NCAA Policy on Campus Sexual Violence

6. An institution choosing to recruit an incoming student-athlete or accept a transfer student- athlete must have a written procedure that directs its staff to gather information that reasonably yields information from the former institution(s) to put the recruiting institutional leadership on notice that the student left the institution with an incomplete Title IX proceeding, was disciplined through a Title IX proceeding or has a criminal conviction for sexual, interpersonal or other acts of violence.\*\* Failure to have it written and to gather information consistent with that procedure could result in penalties.



# NCAA Policy Implementation Timeline

- NCAA member institutions have access to policy examples (log-in required) and additional resources through the NCAA website: <https://ncaa.org/csvpolicy>
- **2020**
  - Policy updated to include items 4-6
- **2021-22 Academic Year**
  - President/chancellor, director of athletics, and campus Title IX coordinator attest their compliance with items **1 -3** of the policy for the 2021-22 academic year
- **2022-23 Academic Year**
  - President/chancellor, director of athletics, and campus Title IX coordinator attest their compliance with items **1-6** of the policy for the 2022-23 academic year by **November 3, 2023**

# Three Forms of Sexual Harassment

Sexual Harassment is

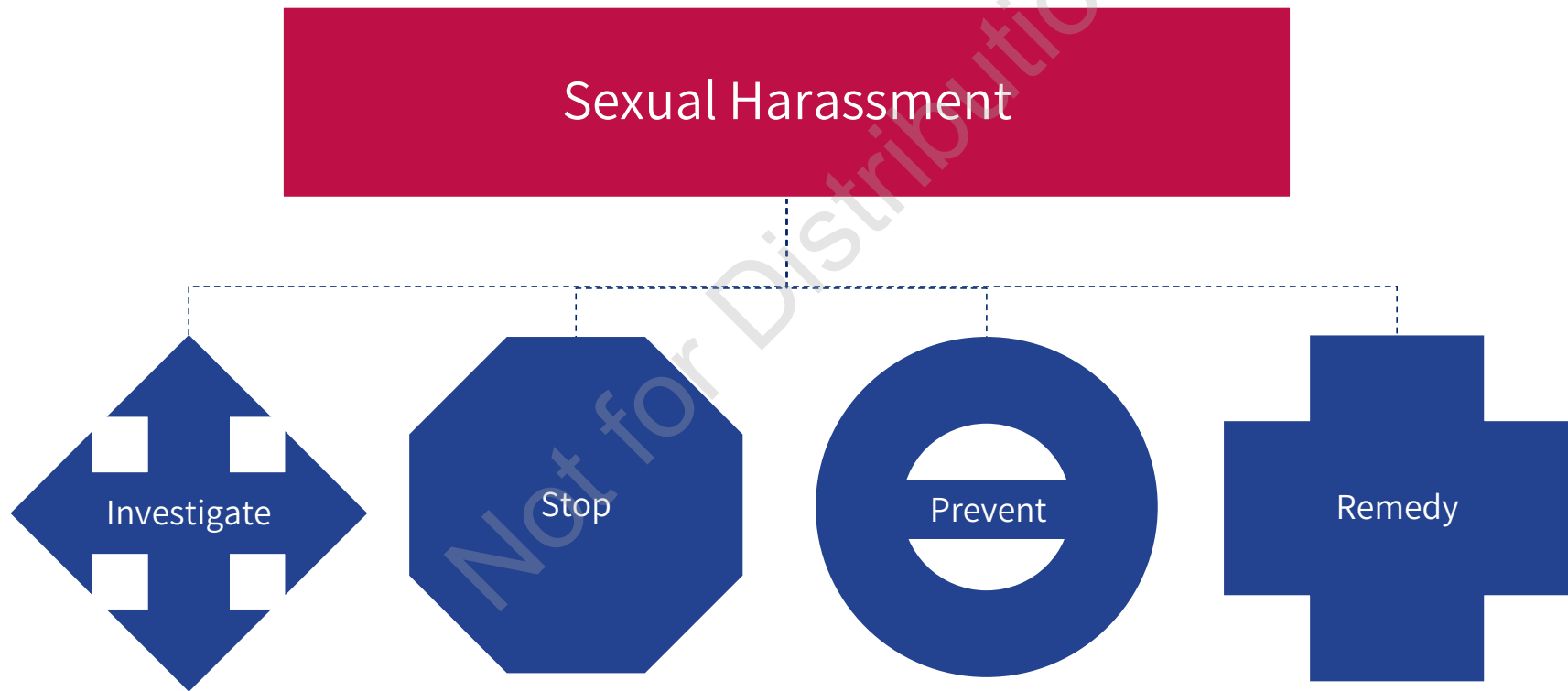
Unwelcome conduct of a sexual nature or that is sex or gender-based

Based on power differentials  
(**quid pro quo**)

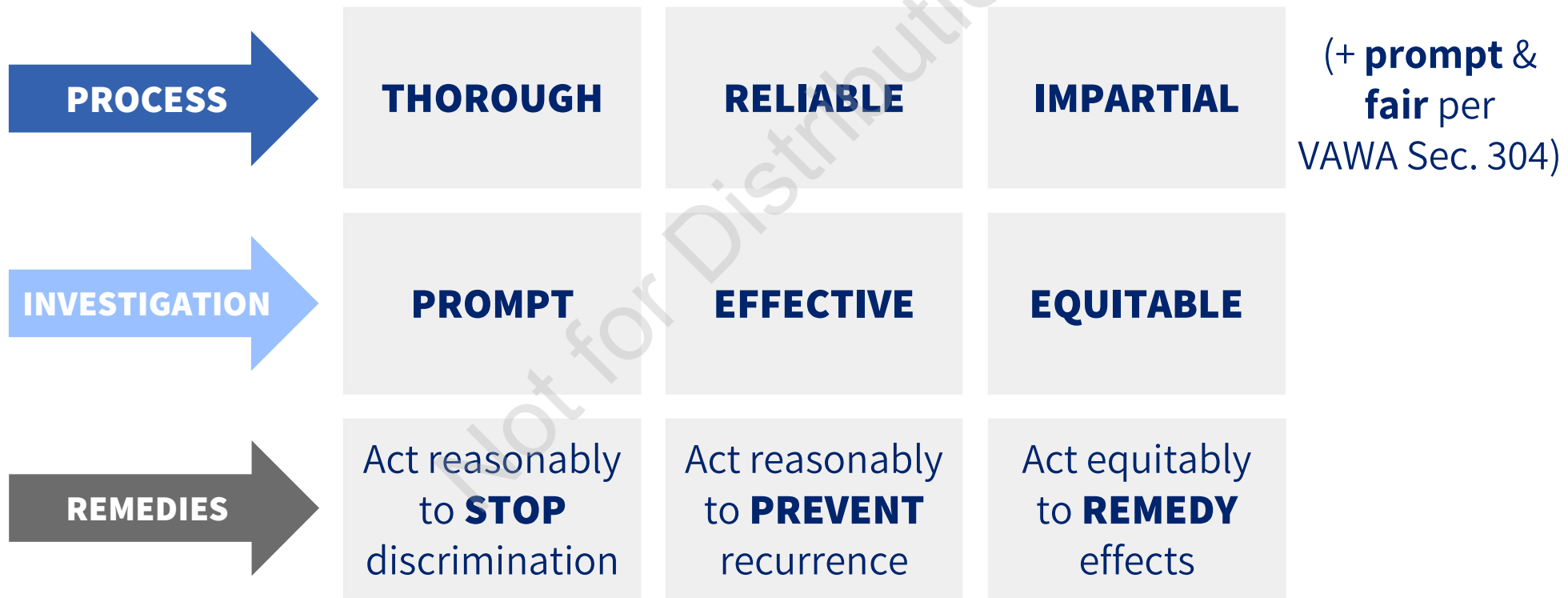
The creation of a  
**hostile environment**

**Retaliation**

# Institutional Obligations Under Title IX



# The IX Commandments



# Instructive Cases

*Simpson v. Univ. of Colorado Boulder*, 500 F.3d 1170 (10th Cir. 2007).

- Recruiting visits
- Off-campus parties
- Climate

*Jennings v. UNC Chapel Hill*, 482 F.3d 686 (4th Cir. 2007).

- Climate in locker room
- Player evaluation meetings
- Power of a coach

*Williams v. Bd of Regents of Univ. of Georgia*, 477 F.3d 1282 (11th Cir. 2007).

- Recruit histories

*Jackson v. Birmingham*, 544 U.S. 167 (2005).

- Retaliation

# Unique Issues in Sport

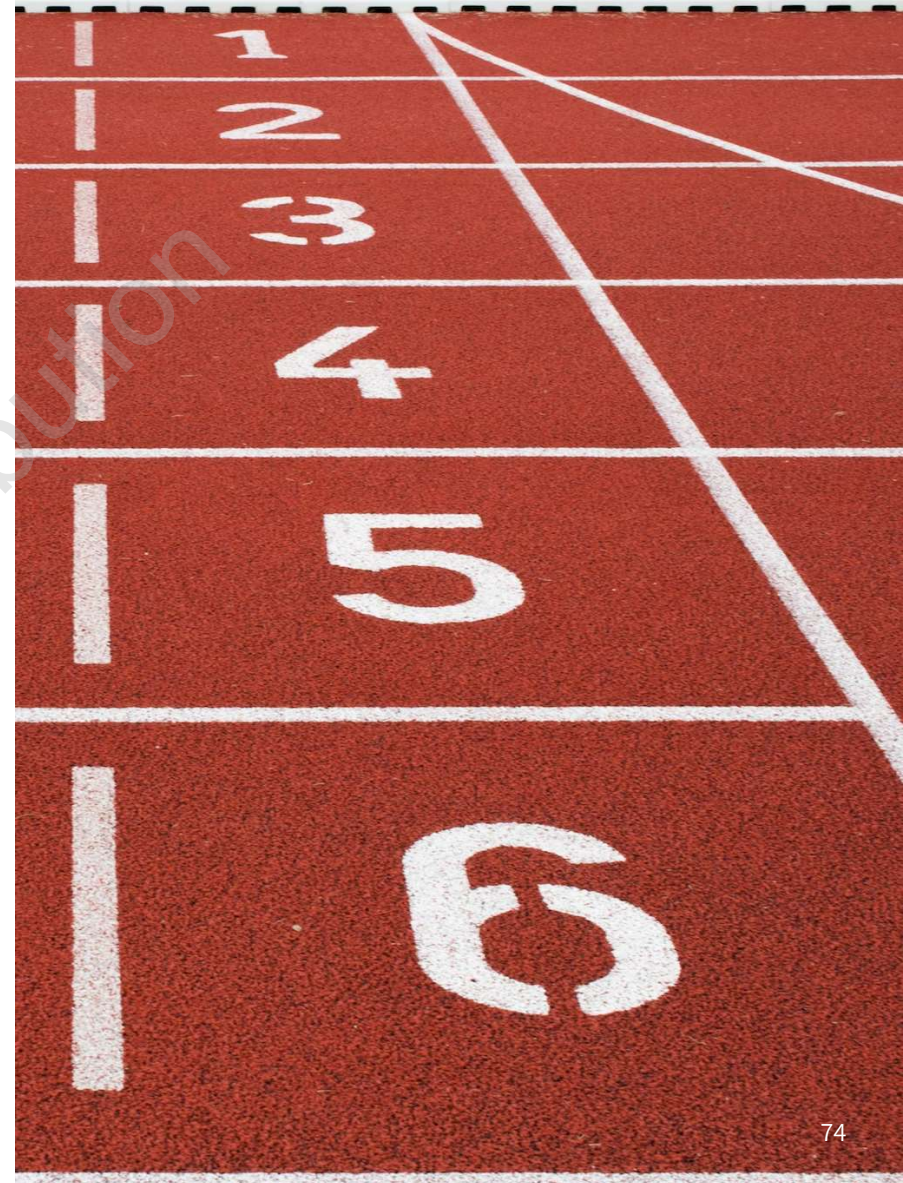
# Unique Challenges: Title IX and Student Athletics

- Insularity of teams and the athletic department
  - Loyalty to Coach/Team/Dept.
- Protectionism of teams and the athletic department by other groups
- Coach-Athlete dynamics
  - Recruitment
  - Trust-based
  - Power-based
- Revenue vs. non-revenue sports
  - vs. Premier Sports



# Unique Challenges: Title IX and Student

- Male sport privilege
- Body image and focus on the body (especially women)
  - Track and Field Comments
  - Gym wear issues
- Student-athlete on student-athlete violence
- Must-win mentality





# Unique Challenges: Title IX and Student Athletics

- Culture of violence and aggressive behavior in sports
- Approval of sexist/homophobic language and attitudes
- Groupie culture
- Celebrity sense/Entitlement

# Pregnancy and Athletics

# Pregnancy and Athletics

- The law recognizes pregnancy as affecting only one gender
- The [NCAA guidelines](#) on management of pregnant athletes is a good document to review and follow
- OCR speaks to pregnancy and parenting on the whole
  - A Recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or **extracurricular activity**, on the basis of such student's **pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom**, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient (34 C.F.R. § 106.40(b)(l))

# Pregnancy and Athletics

- [2007 Dear Colleague Letter](#) on Nondiscriminatory Treatment of Pregnant Students in Athletic Scholarships
- [2013 Guidance](#) on Supporting the Academic Success of Pregnant and Parenting Students

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# LGBTQIA+ Issues

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# Current LGBTQIA+ Issues in Competition

- International Olympic Committee (IOC)/United States Olympic and Paralympic Committee (USPOC) guidelines are the current standards adopted by the NCAA
- OCR has stated they recognize sexual orientation, gender identity, and gender expression as protected characteristics (Title VII already does)
- State laws and rules regarding competition are being challenged in federal courts
  - Idaho, Arizona, Kentucky, Florida, West Virginia, Utah, Georgia, Iowa, Louisiana, South Carolina, Tennessee
  - At least 14 other states have proposed bills
- ATIXA will continue to update members on these issues

# Dating and Other Relationships

# Managing Dating Relationships Among Teammates

**Frame intra-team dating as part of broader relationship management issues that can distract a team from their competitive goals, such as:**

- Best friends on a team being cliquey or having a big falling out
- Two teammates dating the same person on another team
- One teammate getting dumped by their partner and then another teammate starts dating the ex-partner
- Dating on a mixed-sex team



# Managing Dating Relationships Among Teammates

- Heterosexual dating on men's and women's teams that practice together and travel to competitions together
- Same-sex teammates dating on a men's or on a women's team
- Conflicts between teammates based on race
- Conflicts between teammates based on sexual orientation
- Conflicts between teammates based on religion

# Managing Dating Relationships Among Teammates

- Develop policy that applies to all relationship management issues rather than focusing on same-sex teammates dating
- Make policies about dating apply to all dating relationships not just same-sex dating
- Range of possible policies on intra-team dating:
  - Prohibit intra-team dating (Not recommended)
  - Ignore intra-team dating (Not recommended)
  - Proactively set expectations for intra-team dating and other dating relationships and interpersonal conflict on the team (Recommended)



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**Questions?**

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& ASSOCIATES

# 2024 Title IX Regulations

Presented by:

**Cathy Cocks, Adrienne Murray and Ann Todd**  
**Associates**

**Dolores A. Stafford**

**President and CEO**

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**[www.dstaffordandassociates.com](http://www.dstaffordandassociates.com)**

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## **TITLE IX**

### **Copyright**

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## ISSUANCE OF CERTIFICATES FOR COMPLETION

To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.





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**Adrienne Meador Murray, Vice President,**  
**Equity Compliance and Civil Rights Services**



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



**Catherine Cocks, M.A.**  
**Consultant, Student Affairs, Title IX, and**  
**Equity Compliance Services**



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.





## Ann Todd

### Consultant, Equity Compliance and Civil Rights Investigations



**Ann Todd, Esq** is a seasoned civil rights investigator in higher education for D. Stafford & Associates (DSA). Ms. Todd is a graduate of Davidson College with a degree in psychology and holds a JD from the University of Nebraska. Prior to joining DSA, she practiced law in Charlotte, NC, specializing in employment and civil rights and worked for a number of non-profit organizations. She returned to her alma mater (Davidson College) in 2008 and worked there through March of 2016 serving as the Assistant Director of Human Resources with the responsibility of managing employee relations and the learning and development function while also serving as the deputy Title IX Coordinator.

Ms. Todd joined the DSA in 2015 and currently serves as the Consultant, Equity Compliance and Civil Rights Investigations. She is the Senior Investigator for the DSA Title IX Investigation Team. She conducts external investigations on behalf of colleges and universities, specializing in investigating student allegations of sex discrimination, sexual assault, intimate partner violence, and stalking. Additionally, she brings a strong Human Resources background to investigating a range of employee misconduct—from performance issues to discrimination.

In addition to conducting investigations, Ms. Todd is a frequent speaker and consultant on Title IX investigations, conducting 20-30 courses every year on best practices for investigating sex discrimination and sex crimes on campus. She works with schools to draft policies and processes that provide equity and fairness to



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all parties involved and is adept at facilitating discussions with institutions to ensure the end product represents the values of the campus community.

Ms. Todd is licensed private investigator and a member of the NC Bar. She is a Certified Clery Compliance Officer through the National Association of Clery Compliance Officers and Professionals (NACCOP) and she is also a certified 360 facilitator through the Center for Creative Leadership. Ms. Todd lives in Davidson, NC where she volunteers on a number of local and town boards.





2024 TITLE IX REGULATIONS



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A NOTE ON TRAINING



**This is not legal advice,  
consult your lawyer!**

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TITLE IX, EDUCATION AMENDMENTS OF 1972,  
20 U.S.C. § 1681

*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.*

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## OVERVIEW OF THE 2024 TITLE IX REGULATIONS



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### Sex Discrimination

**Sex-Based Harassment**

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

**Sex Discrimination**

- Sex stereotypes
- Sex characteristics
- Pregnancy or related conditions
- Sexual orientation
- Gender identity

**Applies in . . .**  
Admission, Employment, Educational Programs, and Activities

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### MISCONCEPTIONS



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**IMPLEMENTATION DATE: AUGUST 1, 2024**



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**TECHNICAL ASSISTANCE FROM THE DEPARTMENT**

Office for Civil Rights (To assist with compliance)  
<https://ocrcas.ed.gov/contact-ocr>

Student Privacy Policy Office (FEPPRA Questions)  
<https://studentprivacy.ed.gov/?src=fpco>

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**FIRST AMENDMENT**

*§ 106.6(d) Constitutional protections.  
Nothing in this part requires a recipient to:  
(1) Restrict any rights that would otherwise  
be protected from government action by the  
First Amendment of the U.S. Constitution*

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### 34 C.F.R. § 106 – SUBPARTS

- Subpart A: Introduction (106.1 – 106.9)
- Subpart B: Coverage (106.11 – 106.18)
- Subpart C: Admission and Recruitment (106.21 – 106.24)
- Subpart D: Education Programs/Activities (106.31 – 106.46)
- Subpart E: Employment (106.51 – 106.62)
- Subpart F: Retaliation (106.71 – 106.72)
- Subpart G: Procedures (106.81 – 106.82)

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### DEFINITIONS



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### § 106.2 - DEFINITIONS

|                           |                                 |                           |
|---------------------------|---------------------------------|---------------------------|
| Admission                 | Applicant                       | Party                     |
| Postsecondary institution | Pregnancy or related conditions | Program or activity       |
| Recipient                 | Student                         | Student with a disability |

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## § 106.2 - DEFINITIONS

|                  |                      |                       |                        |
|------------------|----------------------|-----------------------|------------------------|
| Complaint        | Complainant          | Confidential employee | Disciplinary sanctions |
| Peer retaliation | Sex-based Harassment | Relevant              | Remedies               |
| Respondent       | Retaliation          | Supportive measures   |                        |

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## NOT DEFINED

|                    |                           |          |
|--------------------|---------------------------|----------|
| Credibility        | Consent                   | Employee |
| Sex Discrimination | Sexual assault (but link) |          |

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## § 106.2 – DEFINITIONS: PARTIES

| Complainant   | Respondent   | Party   |
|---|--|---|
| <ul style="list-style-type: none"> <li>A student or employee, or</li> <li>Non-student/employee who was participating/attempting to participate at the time of the alleged sex discrimination</li> </ul> | <ul style="list-style-type: none"> <li>A person who is alleged to have violated the recipient's prohibition on sex discrimination</li> </ul> | <ul style="list-style-type: none"> <li>A complainant or respondent</li> </ul> |

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## SEX-BASED HARASSMENT DEFINITIONS



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### § 106.2 – SEX-BASED HARASSMENT

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*Sex-based harassment prohibited by this part is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including on the bases described in § 106.10, that is:*

1. *Quid pro quo*
2. *Hostile Environment*
3. *Specific offenses*

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### QUID PRO QUO HARASSMENT

*“An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service under the recipient’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.”*

§ 106.2

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## QUID PRO QUO NOTES




Unwelcome



Explicit and implicit



Aid, benefit, or service



Employee, agent, or other person

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## HOSTILE ENVIRONMENT HARASSMENT

*“Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:...”*

§ 106.2

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## UNPACKING HOSTILE ENVIRONMENT



Unwelcome

Sex-based

Totality of Circumstances

Subjective and Objective

Severe or Pervasive

Limits or Denies

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## HOSTILE ENVIRONMENT "FACT-SPECIFIC INQUIRY"




Degree affected educational access




Type, frequency, duration



Parties' ages, roles, previous interactions, other factors



Location and context in which occurred



Other sex-based harassment in educational setting

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## HOSTILE ENVIRONMENT NOTES



Jurisdiction



Beyond Sexual Harassment

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## SPECIFIC OFFENSES

Sexual assault

Dating violence

Domestic violence

Stalking

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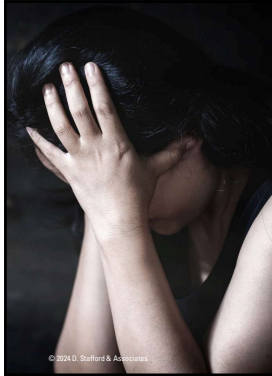
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## SEXUAL ASSAULT

*“Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation”*

§ 106.2

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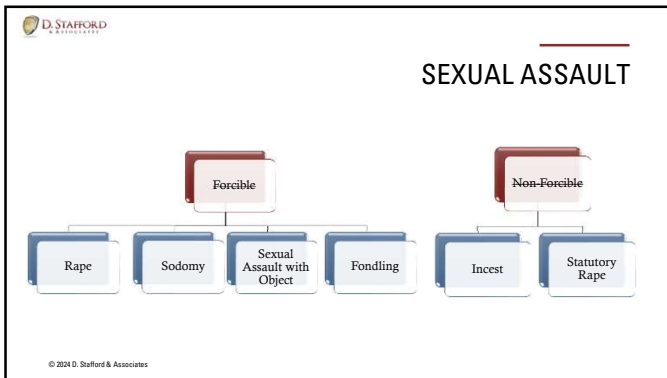
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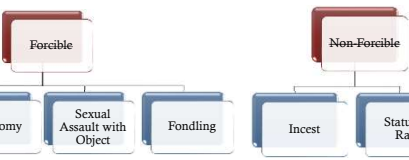
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## SEXUAL ASSAULT



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### NON-CONSENSUAL SEXUAL PENETRATION

**Rape** - (Except Statutory Rape) The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

**Sodomy** - Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

**Sexual Assault With An Object** - To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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## NON-CONSENSUAL SEXUAL TOUCHING

**Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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## INCEST AND STATUTORY RAPE

**Incest** - Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

**Statutory Rape** - Nonforcible sexual intercourse with a person who is under the statutory age of consent

FBI, Uniform Crime Reporting Program: National Incident-Based Reporting System (2018)

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## DATING VIOLENCE

**Dating violence** means violence committed by a person:

- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (1) The length of the relationship;
  - (2) The type of relationship; and
  - (3) The frequency of interaction between the persons involved in the relationship

§ 106.2

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## DOMESTIC VIOLENCE

**Domestic violence** meaning felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shares a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction

§ 106.2

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## STALKING

**Stalking** meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) Fear for the person's safety or the safety of others; or
- (B) Suffer substantial emotional distress.

§ 106.2

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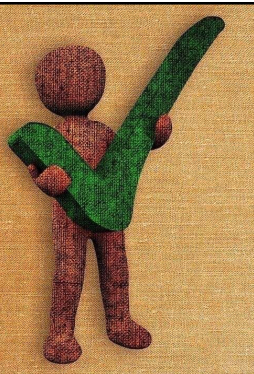
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## NOTE ON CONSENT

*The Assistant Secretary will not require a recipient to adopt a particular definition of consent, where that term is applicable with respect to sex-based harassment.*

§ 106.2

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## TITLE IX COORDINATOR AND NOTICE OF POLICIES



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### § 106.8(a)(1)-(a)(2) – DESIGNATION OF COORDINATOR

|           |   |
|-----------|---|
| Designate | “Designate and authorize” at least one employee |
| Delegate  | May delegate “specific duties”                  |
| But...    | One person must retain “ultimate oversight”     |

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### § 106.8(b)(1) – NONDISCRIMINATION POLICY

Adopt

↓

Publish

↓

Implement



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## § 106.8(b)(2) – GRIEVANCE PROCEDURES



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graph TD
    A[Adopt] --> B[Publish]
    B --> C[Implement]
        
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## § 106.8(c) – NOTIFICATION OF NONDISCRIMINATION

|  |  |
|--|--|
| <p><b>Who [§ 106.8(c)]</b></p> <ul style="list-style-type: none"> <li>• Students</li> <li>• Parents, guardians, legal reps (K-12)</li> <li>• Employees</li> <li>• Applicants for admission or employment</li> <li>• Unions and professional organizations</li> </ul> | <p><b>What [§ 106.8(c)(1)(i)]</b></p> <ul style="list-style-type: none"> <li>• Does not discriminate</li> <li>• Inquiries to Title IX or OCR</li> <li>• Name or title, office, email, telephone</li> <li>• How to locate policy and procedures</li> <li>• How to report or make a complaint</li> </ul> |
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## § 106.8(c)(2) – PUBLICATIONS

- Website
- Each handbook, catalog, announcement, bulletin and application form for recruitment
- One sentence option
- Cannot say people are treated differently on the basis of sex

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§ 106.8(d)(1)  
**ALL EMPLOYEE TRAINING REQUIREMENTS**

*“promptly upon hiring or change of position that alters duties under Title IX and annually thereafter”*



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**ALL EMPLOYEE TRAINING**





Prohibit Sex Discrimination



Prohibited Conduct



Duty to provide contact info to pregnant students



Duty to report or provide contact info

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**§106.8(d)(2)-(4) – TRAINING PERSONS WHO ARE RESPONSIBLE FOR IMPLEMENTING PROCEDURES**

- Title IX Coordinator and Designees
- Investigators
- Decisionmakers (including appeals of determination and dismissal)
- Informal Resolution Facilitator
- Person with authority to modify/terminate Supportive Measures
- Others?

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**§106.8(e) – STUDENTS WITH DISABILITIES**

- An individual with a disability, as defined in the Rehabilitation Act of 1973 or a child with a disability, as defined in the Individuals with Disabilities Education Act
- The Title IX Coordinator may consult, as appropriate, with the individual or office designated to support students with disabilities to determine compliance with disability law.

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**TITLE IX'S COVERAGE OF SEX DISCRIMINATION**

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**§ 106.10 – SCOPE**

*“Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.”*

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 **§ 106.11 – APPLICATION**



- Sex discrimination in education program or activity
- Sex-based hostile environment even when some contributing conduct occurred off campus
- Could be broadened by “disciplinary authority”

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 **§ 106.12 – EDUCATIONAL INSTITUTIONS CONTROLLED BY RELIGIOUS ORGANIZATIONS**

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May submit in writing seeking assurance of the exemption

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Must identify the provision and explain how it conflicts with a specific tenet

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Not required to seek assurance

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May raise its exemption at any time

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 **§ 106.31(a)(2) – EDUCATION PROGRAMS OR ACTIVITIES**

*(1) Except as provided elsewhere...no person, on the basis of sex...*

*(2) in the limited circumstances...this part permits different treatment ...on the basis of sex, ...must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted .... Adopting a policy or engaging in a practice that prevents a person from participating...consistent with the person's gender identity subjects a person to more than de minimis harm on the basis of sex.*

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**"EXCEPT AS PERMITTED BY..."**



- Religious exemption
- Military and merchant marine educational institutions
- Fraternalities and sororities
- YMCA/YWCA/Girl Scouts/Boy Scouts/Camp Fire Girls
- Voluntary youth service organization
- Undergraduate private admissions
- Sex-separate housing
- Sex-separate athletic teams

§ 106.31(a)(2) & § 106.31(a)(3)

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**PERMISSIBLE DIFFERENT TREATMENT CAN'T CAUSE MORE THAN "DE MINIMIS HARM"**

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**§ 106.40 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (STUDENTS)**

No policies, practices, or procedures treating a student's current, potential, or past parental, family, or marital status differently  
§ 106.40(a)

No discrimination against students on the basis of pregnancy or related conditions  
§ 106.40(b)(1)

Responsibility to provide Title IX Coordinator's contact and other information  
§ 106.40(b)(2)

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**§ 106.40(b)(3) – SPECIFIC ACTIONS**

|   |                          |  |
|---|--------------------------|--|
| Information about the institution's obligations | Reasonable modifications | Provide voluntary access to separate and comparable portion of program or activity |
| Voluntary leaves of absence                     | Lactation space          | Limitation on supporting documentation   |

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**§ 106.40(b)(4-5) – COMPARABLE TREATMENT AND CERTIFICATIONS**

|   |  |
|---|--|
| Must treat in the same manner and under the same policies as any other temporary medical conditions | Must not require a certification from a healthcare provider or any other person that the student is physically able to participate |
|---|--|

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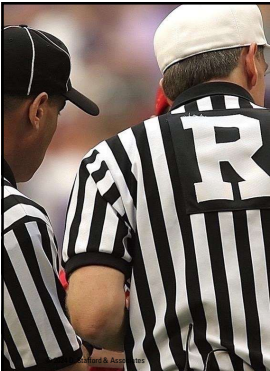
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**§ 106.41(a) – ATHLETICS**

*No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person or otherwise be discriminated against in any interscholastic, intercollegiate, club or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.*

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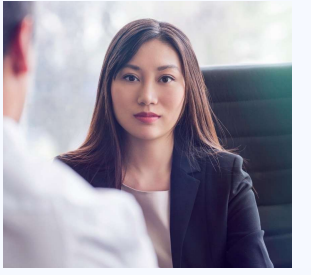
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## § 106.44 RESPONSE TO SEX DISCRIMINATION



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## § 106.44 – RESPONSE

- § 106.44(a) General
- § 106.44(b) Barriers to reporting
- § 106.44(c) Notification requirements
- § 106.44(d) Confidential employee requirements
- § 106.44(e) Public awareness events
- § 106.44(f) Title IX Coordinator requirements
- § 106.44(g) Supportive measures
- § 106.44(h) Emergency removal
- § 106.44(i) Administrative leave
- § 106.44(j) Prohibited disclosures of PII
- § 106.44(k) Discretion to offer informal resolution

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## § 106.44(a) – GENERAL (RESPONSE)


If knowledge of conduct that reasonably may constitute sex discrimination



Promptly



Effectively



Compliantly

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**§ 106.44(c)(2)(ii) – NOTIFICATION REQUIREMENT**

*(A) Notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination under Title IX...*

**OR**

*(A) Provide the contact information of the Title IX Coordinator and information about how to make a complaint of sex discrimination...*

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**REPORTING REQUIREMENTS**

2001 Guidance

**Responsible Employees:** Employee with authority to take action; given the duty of reporting misconduct; or student would reasonably believe has this authority

↓

2020 Regulations

**Officials with Authority** to institute corrective measures

↓

2024 Regulations

**Employees with authority to take corrective action or responsibility for administrative leadership, teaching, or advising. (BUT ALL NON-CONFIDENTIAL MUST DO SOMETHING!)**

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**§ 106.44(c)(2) – NOTIFICATION REQUIREMENTS**

| Type of Employee  | Notify Title IX                   | Provide Title IX contact and how make complaint |
|---|-----------------------------------|---|
| <b>Confidential Employee</b>  | No                                | Yes<br>(and more!)                              |
| <b>Category 1:</b> Employee with ability to institute corrective measures OR responsible for administrative leadership, teaching, or advising | Yes                               |   |
| <b>Category 2:</b> All other employees  | <b>Either or (SCHOOL DECIDES)</b> |   |

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## STUDENT EMPLOYEE REPORTING REQUIREMENTS

*“A postsecondary institution must reasonably determine and specify whether and under what circumstances a person who is both a student and an employee is subject to [the reporting requirements]...”*

§ 106.44(c)(3)

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## § 106.2 – CONFIDENTIAL EMPLOYEES DEFINED



Privileged  
(in role)



Designated  
(when providing services)



Human-subjects research  
on sex discrimination

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## § 106.44(d) – CONFIDENTIAL EMPLOYEE REQUIREMENTS

Recipient must notify all participants of contact information for confidential employees

106.44(d)(1)

When confidential employee receives a report must explain...

106.44(d)(2)

Status as confidential

106.44(d)(2)(i)

How to contact Title IX and make complaint

106.44(d)(2)(ii)

Title IX Coordinator has responsibilities

106.44(d)(2)(iii)

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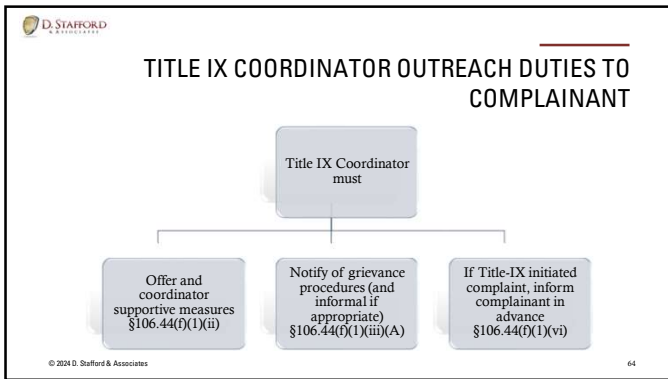
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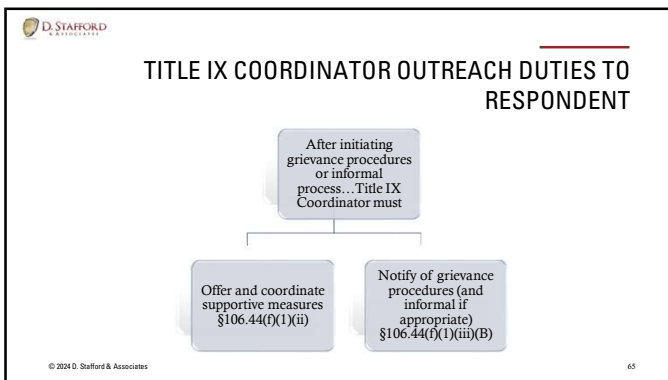
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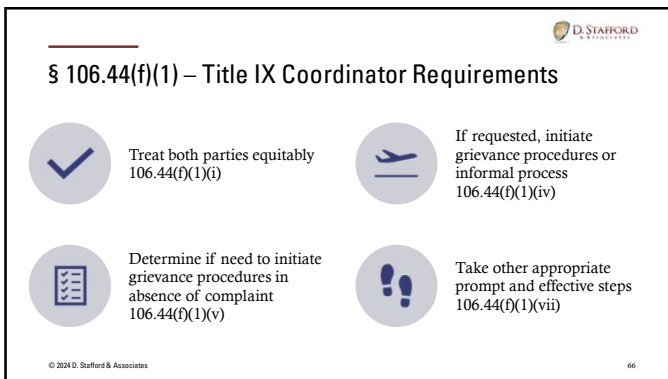
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## § 106.44(f)(1)(v) – TITLE IX-INITIATED COMPLAINTS

*In the absence of a complaint or the withdrawal of any or all of the allegations in a complaint, and in the absence or termination of an informal resolution process, determine whether to initiate a complaint of sex discrimination ....*

*(A) To make this fact-specific determination, the Title IX Coordinator must consider, at a minimum, the following factors:*

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## EIGHT FACTORS TO CONSIDER

|                       |                   |                         |                         |
|-----------------------|-------------------|-------------------------|-------------------------|
| Complainant's request | Safety concerns   | Risk of additional acts | Severity of allegation  |
| Age and relationship  | Scope and pattern | Evidence                | Alternatives to resolve |

§ 106.44(f)(1)(v)(A)

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## THRESHOLD DETERMINATION

If, after considering these and other relevant factors, the Title IX Coordinator determines the conduct as alleged...

presents an imminent and serious threat to the health or safety of the complainant or other person, OR

prevents the recipient from ensuring equal access...to its education program or activity

➔

the Title IX Coordinator may initiate a complaint

§ 106.44(f)(1)(B)

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## § 106.2 – SUPPORTIVE MEASURES DEFINITION

Individualized

Offered as appropriate

Reasonably available

Without unreasonably burdening

Not for punitive or disciplinary reasons

Without fee or charge

Complainant or respondent

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## SUPPORTIVE MEASURE GOALS

Restore or preserve party access to program or activity

Provide support during process

§ 106.2

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## § 106.44(g)(1) – SUPPORTIVE MEASURE EXAMPLES

- \_\_\_\_\_ Counseling
- \_\_\_\_\_ Extensions of deadlines and other course-related adjustments
- \_\_\_\_\_ Campus escort services
- \_\_\_\_\_ Increased security and monitoring of certain areas of the campus
- \_\_\_\_\_ Restrictions on contact applied to one or more parties
- \_\_\_\_\_ Leaves of absence
- \_\_\_\_\_ Changes in class, work, housing, extracurricular or other
- \_\_\_\_\_ Training and education

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### 106.44(g)(2) – SUPPORTIVE MEASURES EXPLAINED

- Must not unreasonably burden either party
- Must be designed to
  - protect safety of parties or
  - safety of educational environment or
- Provide support during grievance procedures or informal process
- Must not be imposed for punitive or disciplinary reasons

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### OTHER CONSIDERATIONS FOR SUPPORTIVE MEASURES

§106.44(g)(3) May modify, terminate, or continue at conclusion of grievance procedures or informal process.

§106.44(g)(4) Must provide timely opportunity to challenge supportive measure decision

§106.44(g)(5) Must not disclose unless need to provide measure, restore/preserve access or exception applies

§106.44(g)(6)(ii) Title IX may consult with disability office when implementing

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### LEAVE OPTIONS



Emergency removal



Administrative leave

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**§ 106.44(h) – EMERGENCY REMOVAL**

- Imminent and serious threat to the health or safety of any persons
- Arises from the allegations
- Provide notice and opportunity to challenge immediately following the removal
- Cannot modify any rights under IDEA, Section 504, or the ADA

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**§ 106.44(k) – INFORMAL RESOLUTION**

- Allowed for employee/student in postsecondary
- Discretion to offer or decline
- Voluntary for parties
- Provide notice
- Facilitator must not be investigator or decisionmaker
- Can include restrictions

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**§ 106.44(k)(3) – INFORMAL NOTICE**

|   |                 |                                     |
|---|-----------------|-------------------------------------|
| Allegations   | Requirements    | Right to withdraw                   |
| Cannot initiate or resume grievance procedures once final | Potential terms | Information that will be maintained |

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## ADDITIONAL RESPONSE REQUIREMENTS









Monitor for Barriers  
to reporting  
§ 106.44(b)(1)

Take steps to Remove  
Barriers  
§ 106.44(b)(1)

Response to  
disclosures at Public  
Awareness Events  
§ 106.44(e)

Prohibited  
Disclosures of PII  
§ 106.44(j)

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## § 106.45 GRIEVANCE PROCEDURES FOR SEX DISCRIMINATION



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## § 106.45 – GRIEVANCE PROCEDURES

- § 106.45(a)(1) General
- § 106.45(a)(2) Complaint
- § 106.45(b) Basic requirements for grievance procedures
- § 106.45(c) Notice of allegations
- § 106.45(d) Dismissal of a complaint
- § 106.45(e) Consolidation of complaints
- § 106.45(f) Complaint investigation
- § 106.45(g) Questioning parties and witnesses
- § 106.45(h) Determination whether sex discrimination occurred
- § 106.45(i) Appeals
- § 106.45(j) Additional provisions
- § 106.45(k) Informal resolution
- § 106.45(l) Provisions limited to sex-based harassment complaints

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## § 106.45(a)(2) – COMPLAINT

|  |  |
|--|--|
| <p style="text-align: center; background-color: #4a7ebb; color: white; padding: 5px;">Sex discrimination other than sex-based harassment</p> <ul style="list-style-type: none"> <li>Complainant</li> <li>Parent or other</li> <li>Title IX Coordinator</li> <li>Any student or employee</li> <li>Other person participating</li> </ul> | <p style="text-align: center; background-color: #4a7ebb; color: white; padding: 5px;">Sex-based harassment</p> <ul style="list-style-type: none"> <li>Complainant</li> <li>Parent or other legal representative</li> <li>Title IX Coordinator</li> </ul> |
|--|--|

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## § 106.45(b) – BASIC REQUIREMENTS FOR GRIEVANCE PROCEDURES

- \_\_\_\_\_ Treat complainants and respondents equitably
- \_\_\_\_\_ Free of bias and conflict of interest
- \_\_\_\_\_ Presumption of not responsible
- \_\_\_\_\_ Reasonably prompt timeframes with extensions for good cause
- \_\_\_\_\_ Reasonable steps to protect privacy
- \_\_\_\_\_ Objective evaluation of all evidence that is relevant
- \_\_\_\_\_ Exclude certain evidence as impermissible
- \_\_\_\_\_ Articulate consistent principles for applying grievance procedures

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## TITLE IX PERSONNEL

The decisionmaker may be the same person as the Title IX Coordinator or investigator.

§ 106.459b)(2)

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§ 106.45(c)(2) – Additional Allegations

If decided to investigate additional allegations, must provide notice of to parties whose identities are known.

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§ 106.45(d)(1)(i-iv) – DISMISSAL OF A COMPLAINT

Unable to identify respondent

Respondent is not participating or employed

May dismiss if..

Complainant voluntarily withdraws complaint

Conduct, if proven, would not constitute sex discrimination

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DUTIES BEFORE DISMISSAL

Unable to identify the respondent

- Reasonable steps to identify respondent

Complainant withdraws allegation(s)

- Must consider initiating the complaint

Allegation if proven not discrimination?

- Prior to dismissing, must clarify with the complainant

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## ADDITIONAL DISMISSAL NOTES




Notice



Appeal



Support



Stop

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## § 106.45(e) – CONSOLIDATION OF COMPLAINTS

Multiple respondents

More than one complainant against one or more respondent

One party against another party

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## § 106.45(b)(7) – RELEVANT AND NOT OTHERWISE IMPERMISSIBLE EVIDENCE



Privileged information



Physician/psychologist records



Complainant's sexual interest or prior sexual conduct

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## PROTECTING THE PRIVACY OF PERSONS

**§ 106.44(j)**

- Must not disclose personally identifiable information obtained except...
  - With prior written consent
  - To carry out the purposes of this part

**§ 106.45(b)(5)**

- Take reasonable steps to protect the privacy of the parties and witnesses
- Steps cannot restrict the ability of the parties to:
  - Obtain and present evidence, including by speaking to witnesses
  - Consult with their family members, confidential resources, or advisors
  - Otherwise prepare for or participate in the grievance procedures

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## PROTECTING THE PRIVACY OF INFORMATION

**§ 106.44(k)(3)**

- Before the initiation of an informal process, provide notice that explains...
  - What information will maintain
  - How the institution could disclose for use in grievance procedures

**§ 106.45(f)(4)(iii)**

- Take reasonable steps to prevent and address the parties' unauthorized disclosure of information and evidence solely through the grievance procedures

**§ 106.46(e)(6)(iii)**

- Parties' and their advisors' unauthorized disclosure

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### MINIMUM REQUIREMENTS UNDER § 106.45

Complaint

↓

Notice

↓

Investigate

↓

Written Determination

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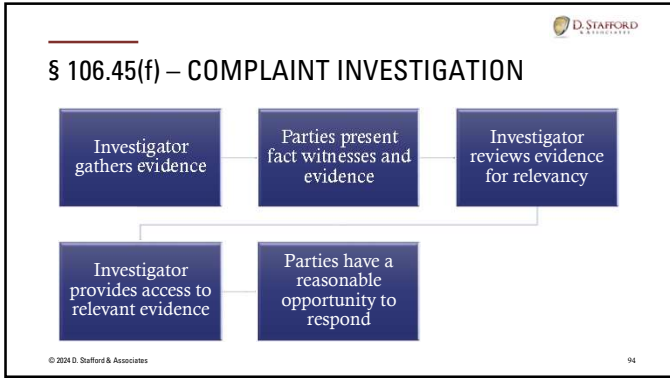
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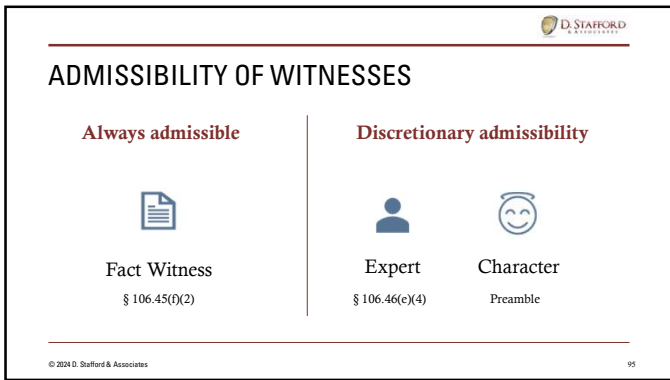
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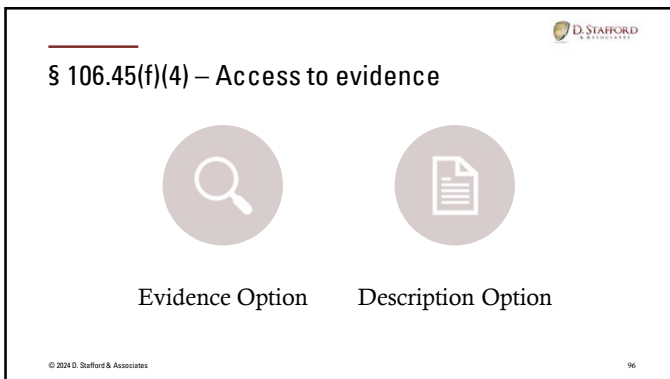
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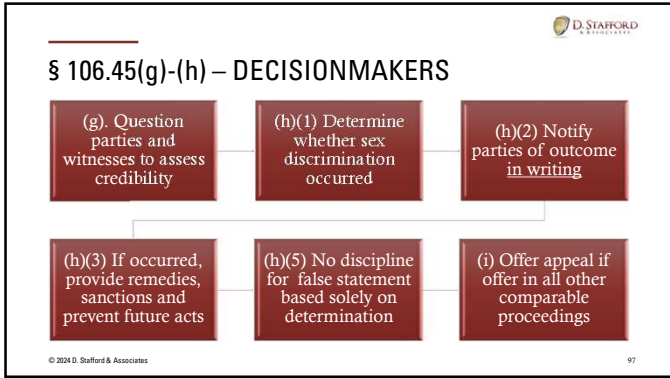
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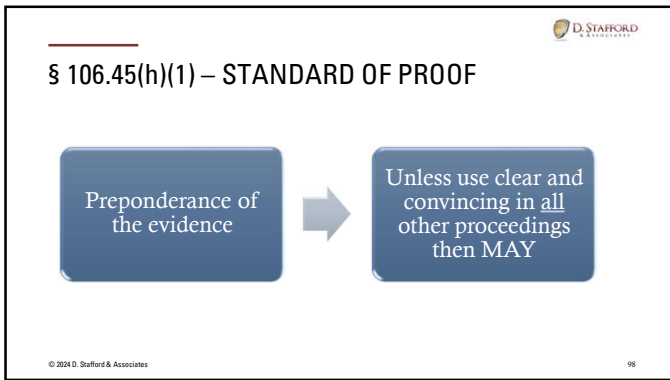
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**WRITTEN DETERMINATION**

*Notify the parties in writing of the determination whether sex discrimination occurred under Title IX or this part including the rationale for such determination, and the procedures and permissible bases for the complainant and respondent to appeal, if applicable*

§ 106.45(h)(2)

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## FINAL POLICY NOTES ON § 106.45

- Written Policy/Procedures
- Single-investigator model is an option
- Informal resolution option before or after complaint
- If harassment - range of supportive measures
- If harassment - list of sanctions

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**D. STAFFORD & ASSOCIATES**

## § 106.46 GRIEVANCE PROCEDURES SEX-BASED HARASSMENT INVOLVING STUDENTS



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## § 106.46 – SEX-BASED HARASSMENT INVOLVING STUDENTS

|   |                                     |
|---|-------------------------------------|
| § 106.46(a) General                           | § 106.46(g) Live hearing procedures |
| § 106.46(b) Student employees                 | § 106.46(h) Written determination   |
| § 106.46(c) Written notice of allegations     | § 106.46(i) Appeals                 |
| § 106.46(d) Dismissal of a complaint          | § 106.46(j) Informal resolution     |
| § 106.46(e) Complaint investigation           |                                     |
| § 106.46(f) Questioning parties and witnesses |                                     |

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**§ 106.46(b) – STUDENT EMPLOYEES**

*“When a complainant or a respondent is both a student and an employee... must make a fact-specific inquiry to determine whether the requirements of this section apply.”*

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**TWO GRIEVANCE PROCEDURES**

**Procedure A (106.45)**

- Sex discrimination
- Employee on employee sex-based harassment
- K-12 complaints
- Retaliation

**Procedure B (106.46)**

- Sex-based harassment involving student complainants or student respondents at postsecondary institutions

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**COMPARING NOTICE**

|   | §106.45(c)<br>not required to be in writing | §106.46(c)<br>required to be in writing |
|---|---|---|
| Grievance Procedures  | YES   | YES                                     |
| “Sufficient information” (parties, conduct, date, location) | YES   | YES                                     |
| Statement that retaliation prohibited                       | YES   | YES                                     |
| Access to relevant evidence                                 | YES   | YES                                     |
| Respondent is presumed not responsible                      |   | YES                                     |
| Right to advisor of choice                                  |   | YES                                     |
| Prohibition on false statements                             |   | YES                                     |

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## § 106.46 TWEAKS

|   |  |
|---|--|
| <b>AMENDED NOTICE:</b><br>Must be in writing<br>§106.46(c)(2)                                 | <b>NOTICE:</b><br>May reasonably delay providing notice if safety concern<br>§106.46(c)(3) |
| <b>DISMISSAL:</b><br>Written simultaneous notice of dismissal of a complaint<br>§106.46(d)(1) | <b>DISMISSAL:</b><br>Obtain complainant's voluntary withdrawal in writing<br>§106.46(d)(2) |

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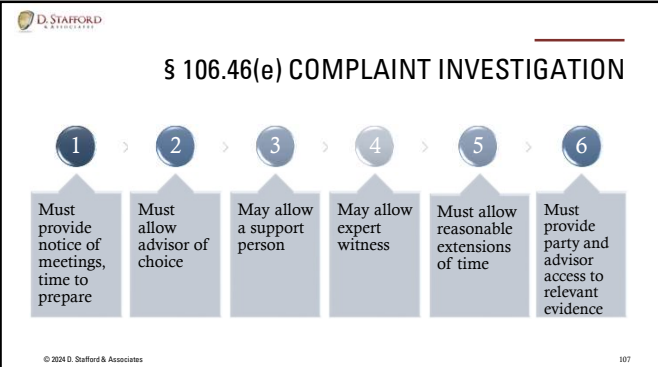
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## § 106.46(e) COMPLAINT INVESTIGATION

- 1 >
- 2 >
- 3 >
- 4 >
- 5 >
- 6

|  |                              |                            |                          |  |  |
|--|------------------------------|----------------------------|--------------------------|--|--|
| Must provide notice of meetings, time to prepare | Must allow advisor of choice | May allow a support person | May allow expert witness | Must allow reasonable extensions of time | Must provide party and advisor access to relevant evidence |
|--|------------------------------|----------------------------|--------------------------|--|--|

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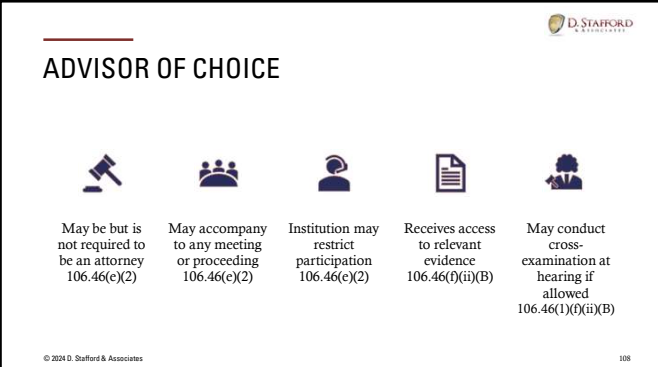
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## ADVISOR OF CHOICE

|   |   |   |   |   |
|---|---|---|---|---|
| <br>May be but is not required to be an attorney<br>106.46(e)(2) | <br>May accompany to any meeting or proceeding<br>106.46(e)(2) | <br>Institution may restrict participation<br>106.46(e)(2) | <br>Receives access to relevant evidence<br>106.46(f)(ii)(B) | <br>May conduct cross-examination at hearing if allowed<br>106.46(1)(f)(ii)(B) |
|---|---|---|---|---|

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§ 106.46(e)(6)(i) – Access to evidence



Evidence Option



Investigative Report Option

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REVIEW AND RESPOND TO EVIDENCE

*A postsecondary institution must provide the parties with a reasonable opportunity to review and respond to the evidence or the investigative report...*

§ 106.46(e)(6)(ii)

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ASSESSING CREDIBILITY



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**§ 106.46(f)(1) – PROCESS FOR QUESTIONING PARTIES AND WITNESSES**

Decisionmaker Questions

Party-proposed Questions

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**FORMATS FOR CREDIBILITY ASSESSMENT**

Individual meetings §106.46(f)(1)(i)

Hearing with decisionmaker asking proposed questions §106.46(f)(1)(ii)(A)

Hearing with cross-examination by advisors §106.46(f)(1)(ii)(B)

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**§ 106.46(f)(1)(i) – INDIVIDUAL MEETINGS**

- Must hold individual meetings with the complainant, respondent, and any witnesses
- The investigator or decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the investigator or decisionmaker
- Provide each party with the recording or transcript with an opportunity to propose follow-up questions
- There could be several rounds of meetings

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### § 106.46(f)(1)(ii) – HEARING OPTION

- The decisionmaker may ask relevant and permissible questions
- Each party may propose relevant and permissible questions to be asked by the decisionmaker
- No questions may be asked directly by a party
- If the institution uses advisor-conducted questioning and a party does not have an advisor, the institution must provide one without charge (cannot be a confidential employee)

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### LIVE HEARING

*The decisionmaker must determine whether a proposed question is relevant ... prior to the question being posed and must explain any decision to exclude a question as not relevant or otherwise impermissible.*

*... must not permit questions that are unclear or harassing*

*... must give a party an opportunity to clarify or revise a question that ... is unclear or harassing*

*... may also adopt and apply other reasonable rules regarding decorum, provided they apply equally to the parties.*      § 106.46(f)(3)

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### § 106.46(g) – LIVE HEARING PROCEDURES

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## REFUSAL TO RESPOND TO QUESTIONS

*A decisionmaker may choose to place less or no weight upon statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible. The decisionmaker must not draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to such questions.*

§ 106.46(f)(4)

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## § 106.46(g) – LIVE HEARING PROCEDURES



Audio



Video



Transcript

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## SANCTIONS AND REMEDIES



**Disciplinary Sanctions**  
*"consequences ... following a determination"*



**Remedies**  
*"Restore or preserve access"*

§ 106.2

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## § 106.46(h) – DETERMINATION REGARDING RESPONSIBILITY

- Description of alleged sex-based harassment
- Policies and procedures used to evaluate allegations
- Evaluation of evidence and determination
- Disciplinary sanctions or remedies if sex-based harassment occurred
- Appeal procedures

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## § 106.46(i) – APPEALS

*Must offer the parties an appeal from a determination whether sex-based harassment occurred and from a ... dismissal of a complaint or any allegation therein, on the following bases:*

- Procedural irregularity that would change the determination of whether sex-based harassment occurred
- New evidence that would change the outcome of the matter and that was not reasonably available at the time the determination of whether sex-based harassment occurred or dismissal was made
- Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that would change the outcome

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## § 106.47 – ASSISTANT SECRETARY REVIEW OF SEX-BASED HARASSMENT COMPLAINTS

*The Assistant Secretary will not deem a recipient to have violated this part solely because the Assistant Secretary would have reached a different determination in a particular complaint alleging sex-based harassment than a recipient reached under § 106.45, and if applicable § 106.46, based on the Assistant Secretary's independent weighing of the evidence.*

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# SUBPART E: EMPLOYMENT



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## § 106.51-61 – EMPLOYMENT

|  |                                   |  |                               |                       |
|--|-----------------------------------|--|-------------------------------|-----------------------|
| § 106.7 Effect of employment opportunities | § 106.51 Employment               | § 106.52 Employment criteria                           | § 106.53 Recruitment          | § 106.54 Compensation |
| § 106.55 Job classification and structure  | § 106.56 Fringe benefits          | § 106.57 Marital or parental status                    | § 106.58 Effect of other laws | § 106.59 Advertising  |
|  | § 106.60 Pre-employment inquiries | § 106.61 Sex as a bona-fide occupational qualification |                               |                       |

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## § 106.57 – PARENTAL, FAMILY, OR MARITAL STATUS; PREGNANCY OR RELATED CONDITIONS (EMPLOYMENT)

|   |   |   |
|---|---|---|
| No policies, practices, procedures, or take any employment action concerning parental, family or marital status | No policies, practices, procedures, or take any employment action based on head of household or principal wage earner | Must not discriminate on the basis of current, potential, or past pregnancy or related conditions |
| Comparable treatment to other temporary medical conditions  | Voluntary leaves of absence   | Lactation time and space  |

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**§ 106.60 – PRE-EMPLOYMENT INQUIRIES**

- Must not make a pre-employment inquiry as to marital status, including whether an applicant is “Miss or Mrs.”
- May ask an applicant to self-identify their sex, but only if this is asked of all applicants and if the response is not used as a basis for discrimination

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**SUBPART F: RETALIATION**



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**§ 106.2 – RETALIATION DEFINITION**

*Retaliation means intimidation, threats, coercion, or discrimination against any person for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this part...*

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## WHO CAN RETALIATE?




Recipient



Student



Employee



Other

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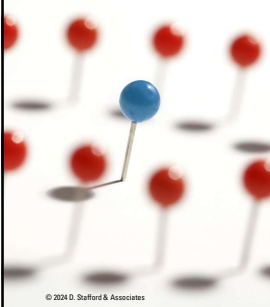
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## § 106.2 – PEER RETALIATION



*Peer retaliation means retaliation by a student against another student.*

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## § 106.71 – RETALIATION

*A recipient must prohibit retaliation, including peer retaliation, in its education program or activity. When a recipient has information about conduct that reasonably may constitute retaliation . . . the recipient is obligated to comply with § 106.44. Upon receiving a complaint alleging retaliation, a recipient must initiate its grievance procedures under § 106.45, or, . . . an informal resolution*

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## RETALIATION NOTES

|                         |                                  |                        |
|-------------------------|----------------------------------|------------------------|
| Interference clause     | Participation clause             | Employee participation |
| Consolidated complaints | False statements and retaliation | Adverse Action         |

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## §106.8(f) – RECORDKEEPING (7 YEARS)

|   |   |   |
|---|---|---|
|  |  |  |
| Process and Outcome for Complaints  | Actions taken for Reports   | Materials upon request for training   |

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## POLICY CONSIDERATIONS

- Student conduct codes
- Employee handbooks
- Non-discrimination policies and procedures
- Incidents occurring before August 1, 2024

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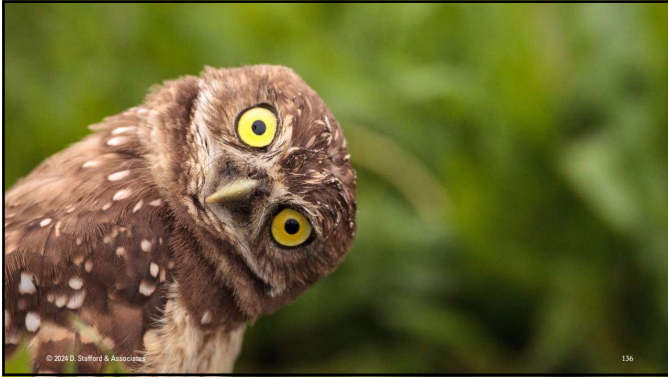
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### OTHER D. STAFFORD TRAINING OPPORTUNITIES

|  |  |  |
|--|--|--|
| <p><b>Title IX Coordinator Track</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Tier 0: Introduction for NEW Title IX Coordinators</li> <li><input type="checkbox"/> Tier 1: Law and Policy</li> <li><input type="checkbox"/> Tier 2: Sex Discrimination Response</li> <li><input type="checkbox"/> Tier 3: Safety &amp; Risk Analyses for Sex-Based Harassment Emergency Removals</li> <li><input type="checkbox"/> Tier 4: Title IX for Human Resources Professional</li> <li><input type="checkbox"/> Tier 5: Pregnancy or Related Conditions</li> </ul> | <p><b>Investigator Track</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Tier 1: Sex-Based Harassment Investigations</li> <li><input type="checkbox"/> Tier 2: Dating/Domestic Violence and Stalking (DVDVS) Investigations</li> <li><input type="checkbox"/> Tier 3: Case Study and Simulation (Interviewing)</li> <li><input type="checkbox"/> Tier 4: Statement Analysis</li> <li><input type="checkbox"/> Tier 5: Report Writing</li> <li><input type="checkbox"/> Tier 6: Technology &amp; Investigations</li> <li><input type="checkbox"/> Tier 7: Violence Against Men</li> </ul> | <p><b>Related Offerings</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Institutional trainings</li> <li><input type="checkbox"/> Threat Assessment Teams</li> <li><input type="checkbox"/> Clergy Compliance</li> <li><input type="checkbox"/> Procedural Justice</li> <li><input type="checkbox"/> Decisionmakers (<a href="http://www.naccop.org">www.naccop.org</a>)</li> <li><input type="checkbox"/> Appellate Officer (<a href="http://www.naccop.org">www.naccop.org</a>)</li> <li><input type="checkbox"/> Constructing Resolution Processes (<a href="http://www.naccop.org">www.naccop.org</a>)</li> <li><input type="checkbox"/> Title IX Webinars (<a href="http://www.naccop.org">www.naccop.org</a>)</li> </ul> |
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