



Association of
Title IX Administrators

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 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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Strategic Risk
Management Solutions



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

Content Advisory

The content and discussion in this 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

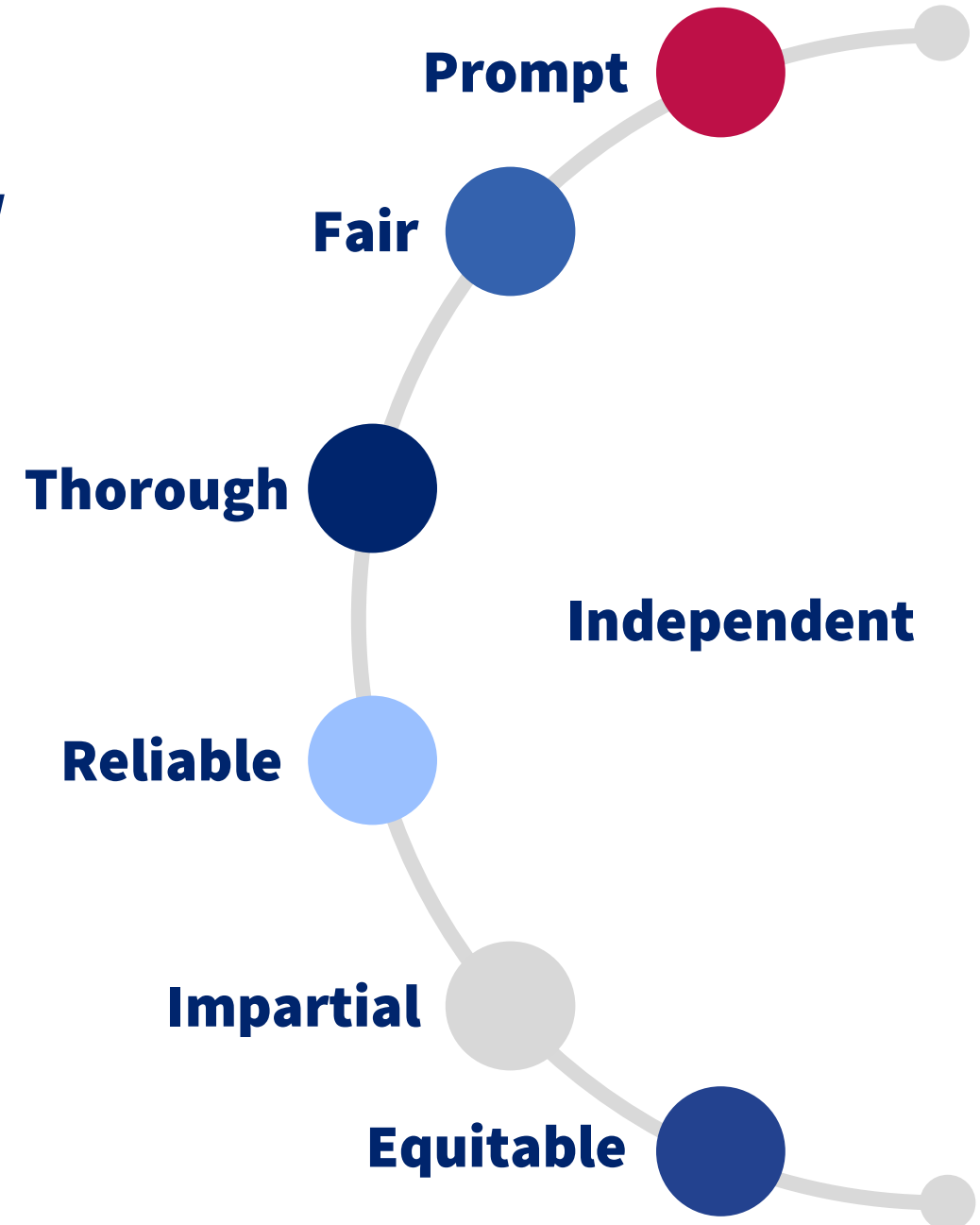
- Consent
- Retaliation
- Common additional offenses
 - Sexual Exploitation
 - Harm/Endangerment
 - Discrimination
 - Intimidation
 - Hazing
 - Bullying



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



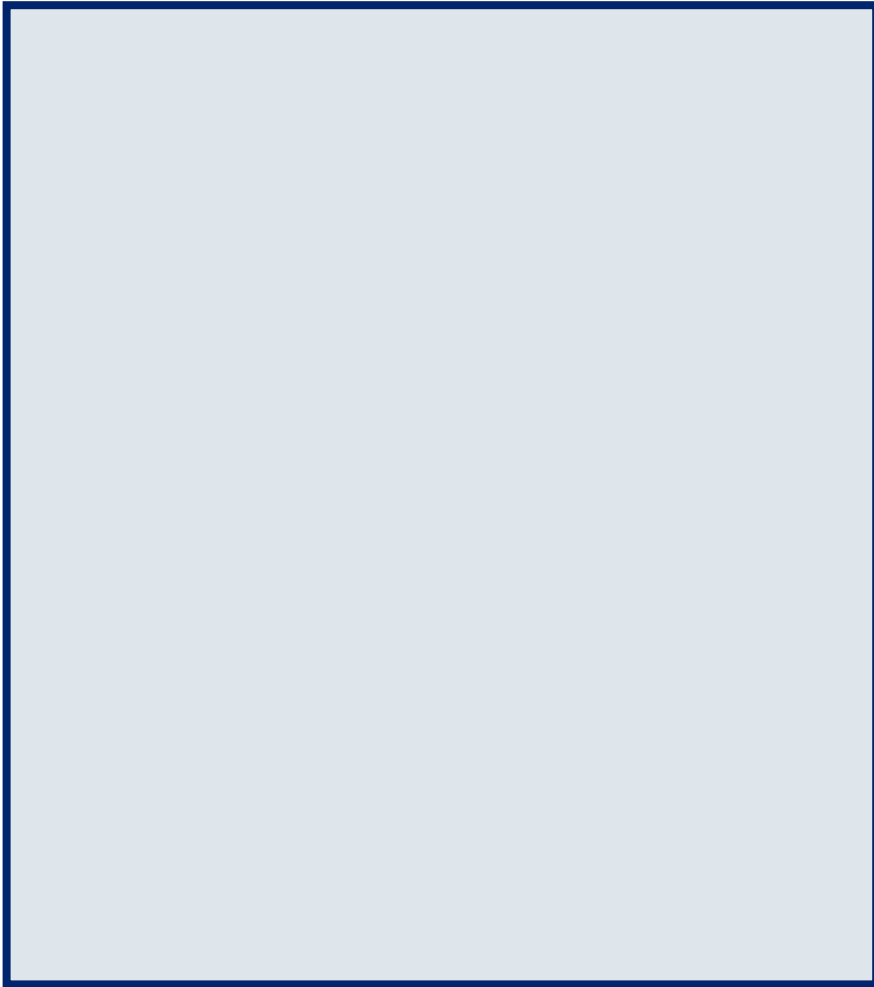
Bias and Conflicts of Interest

- 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



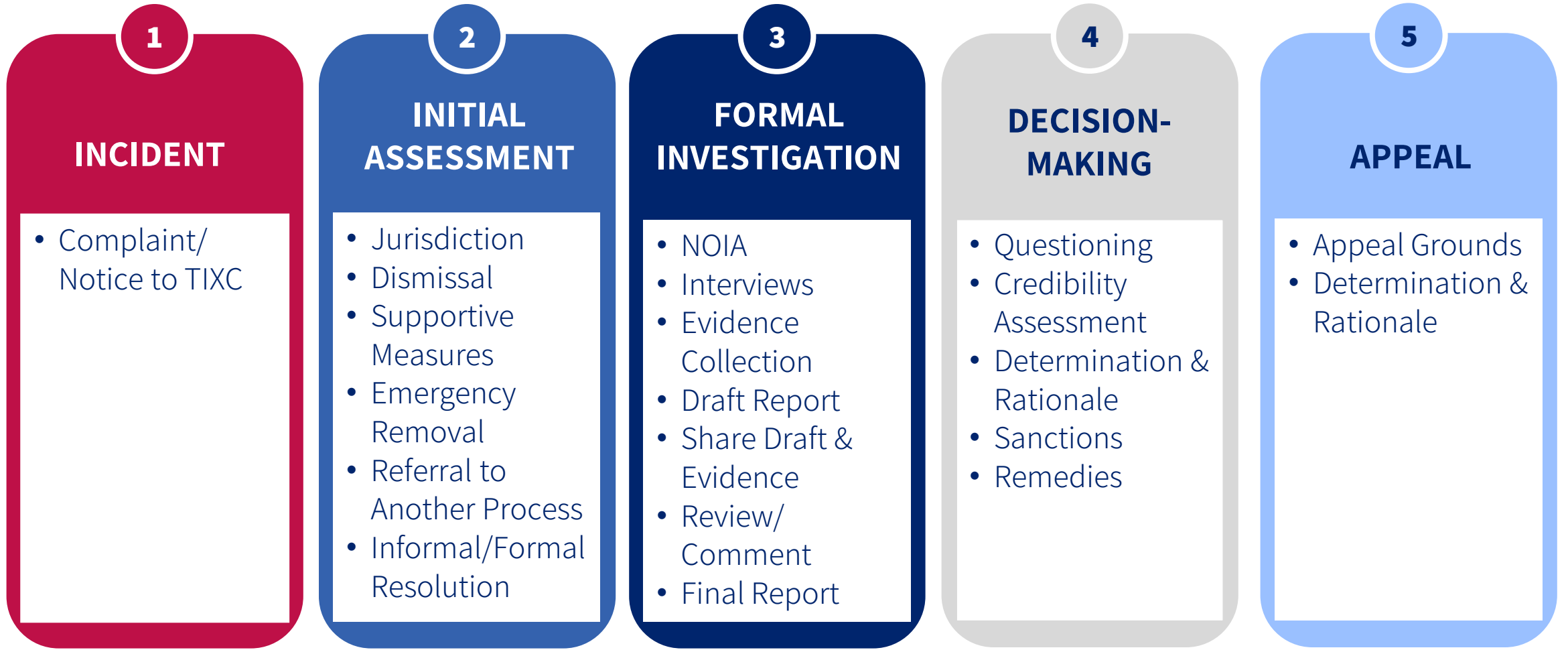
Activity: Recognizing Bias

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

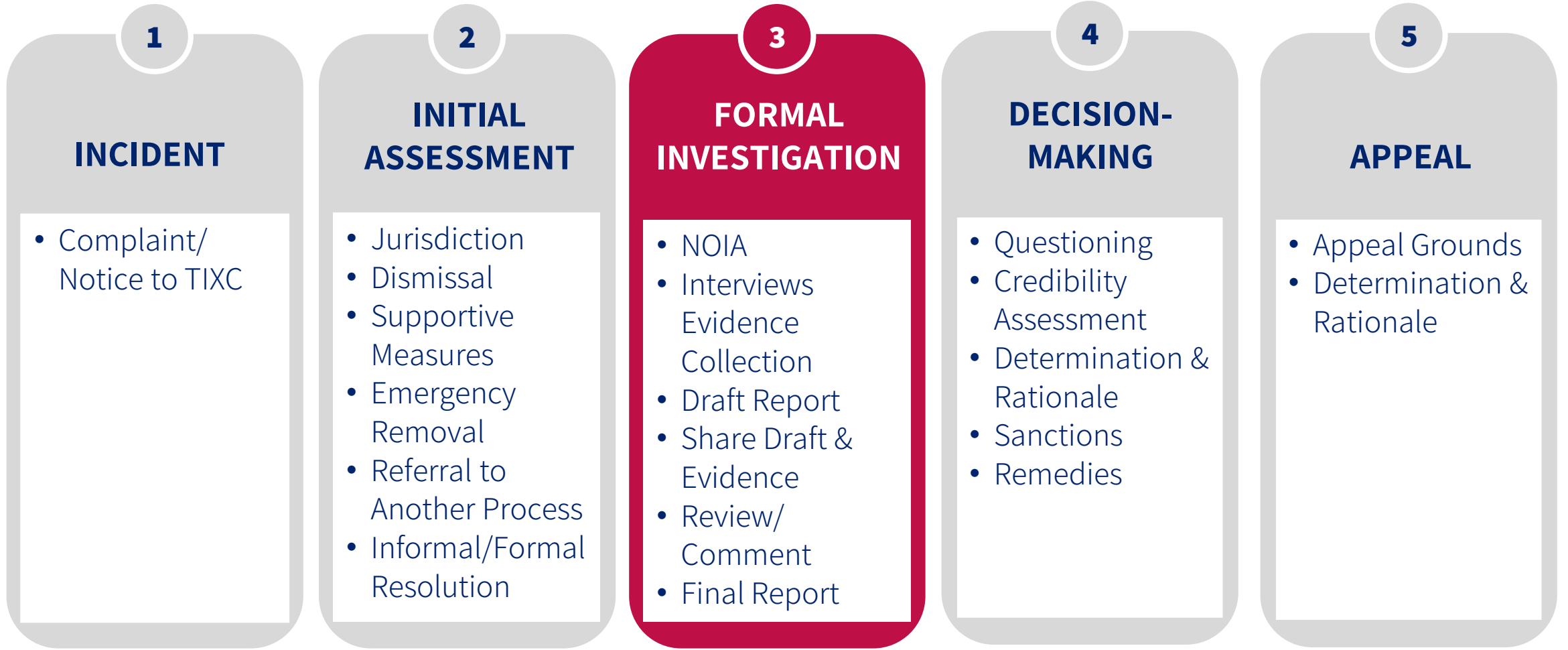
**Full-Time
Investigator(s)**

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/ 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

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

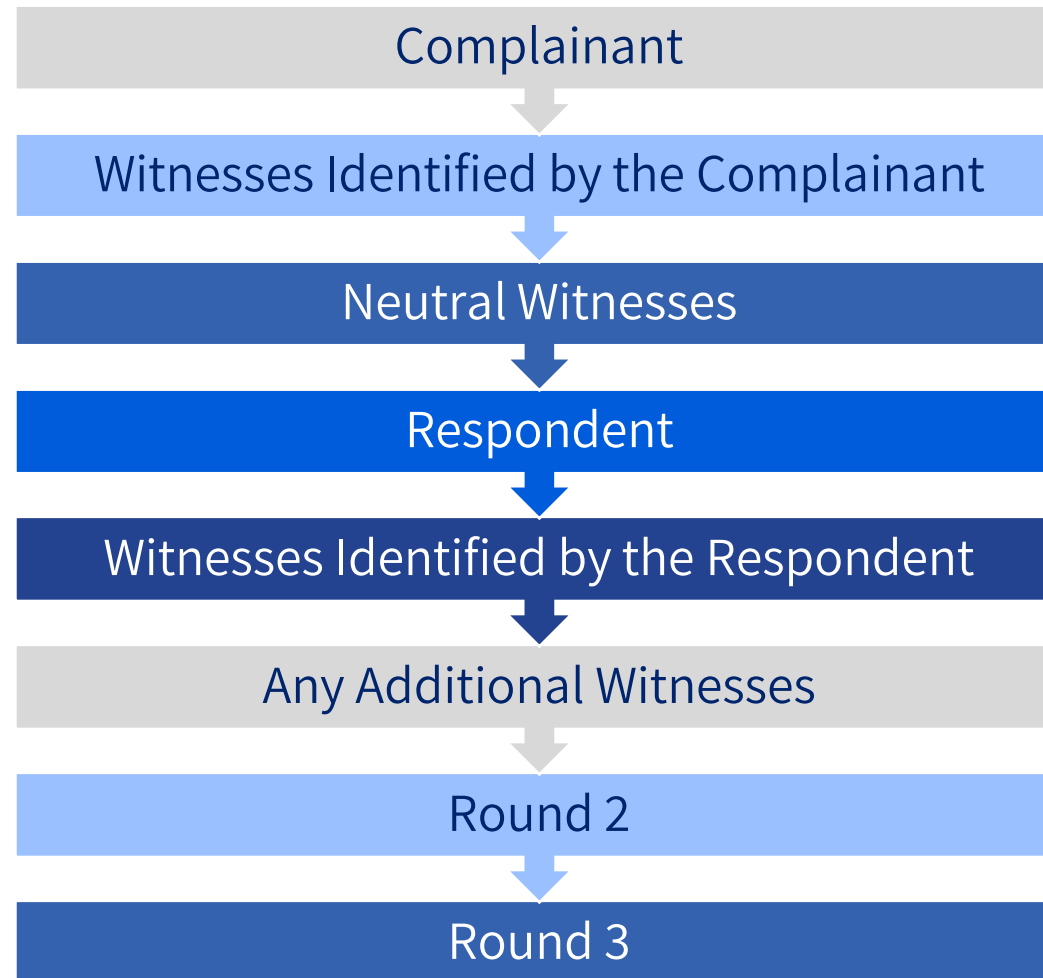
Sample Interview Sequences

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

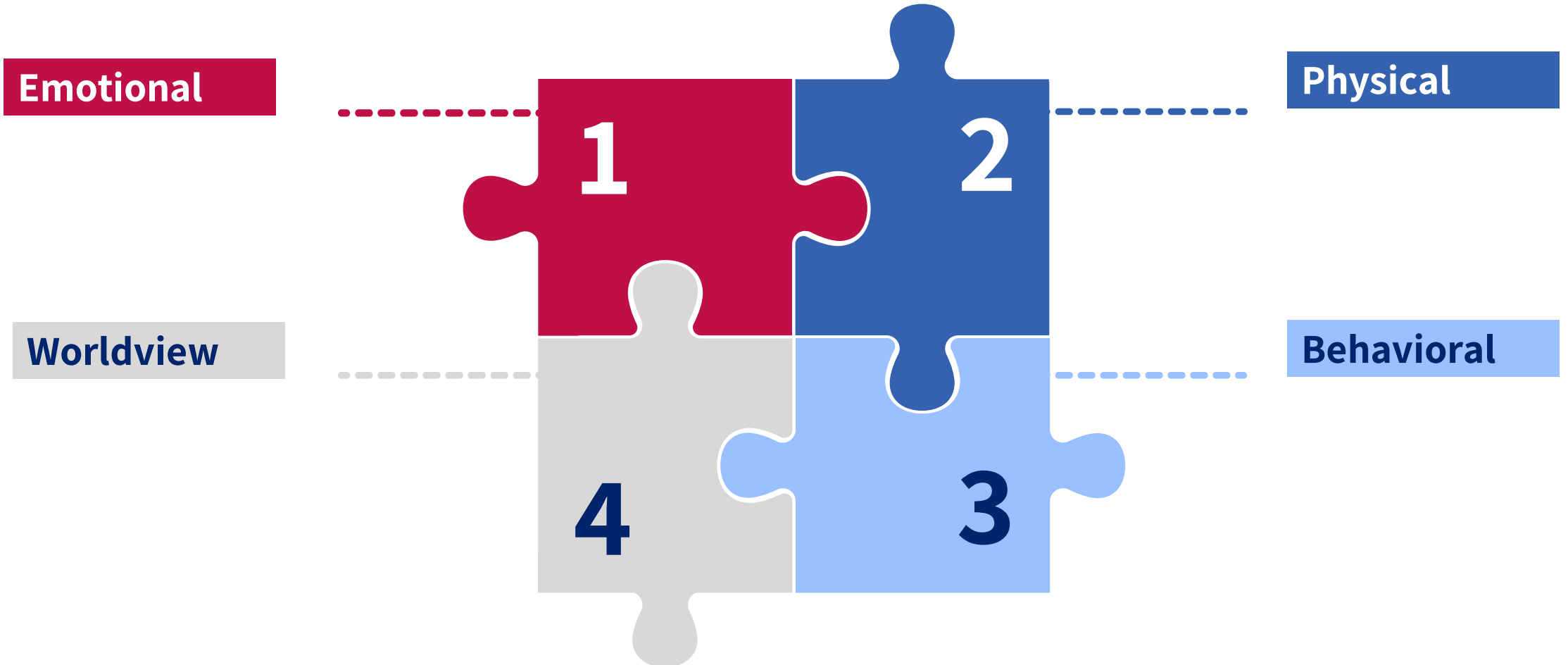
Building Rapport

- 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

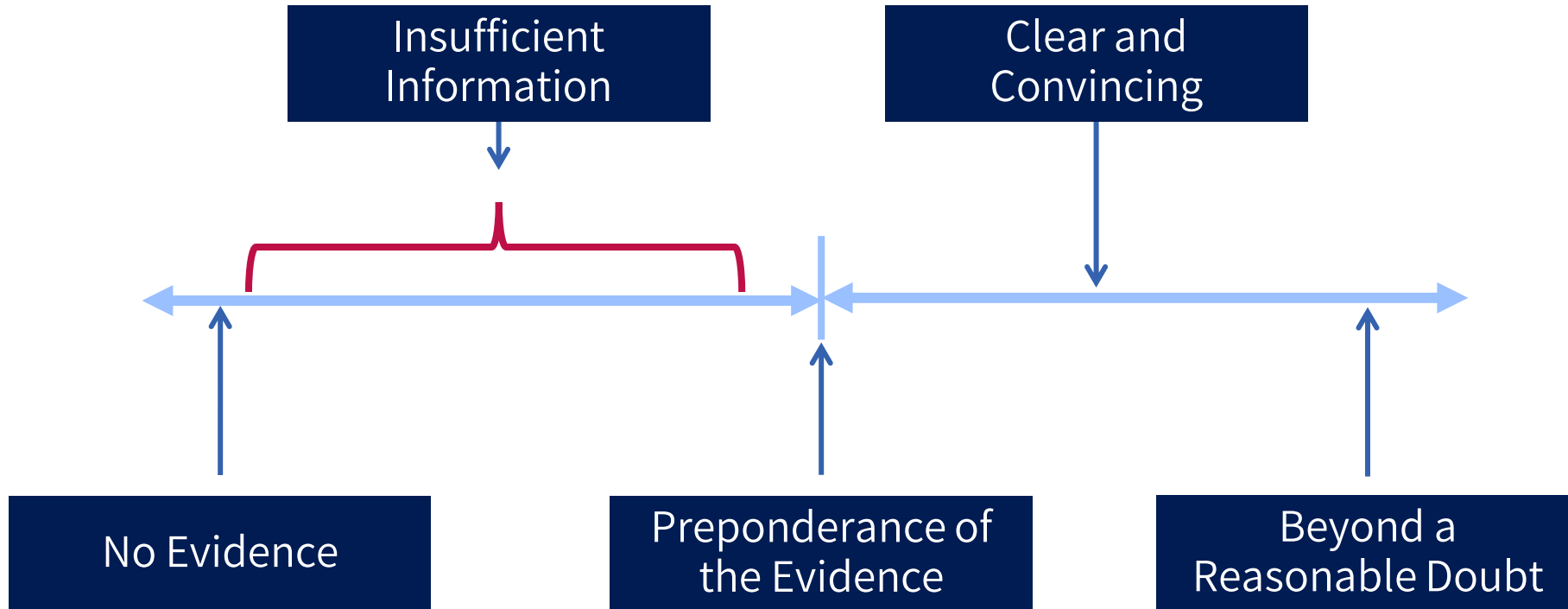
- Duty to collect and objectively evaluate all evidence that is relevant to the complaint
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant evidence** is evidence that tends to prove or disprove the underlying allegations
 - Inculpatory and exculpatory evidence
- **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**

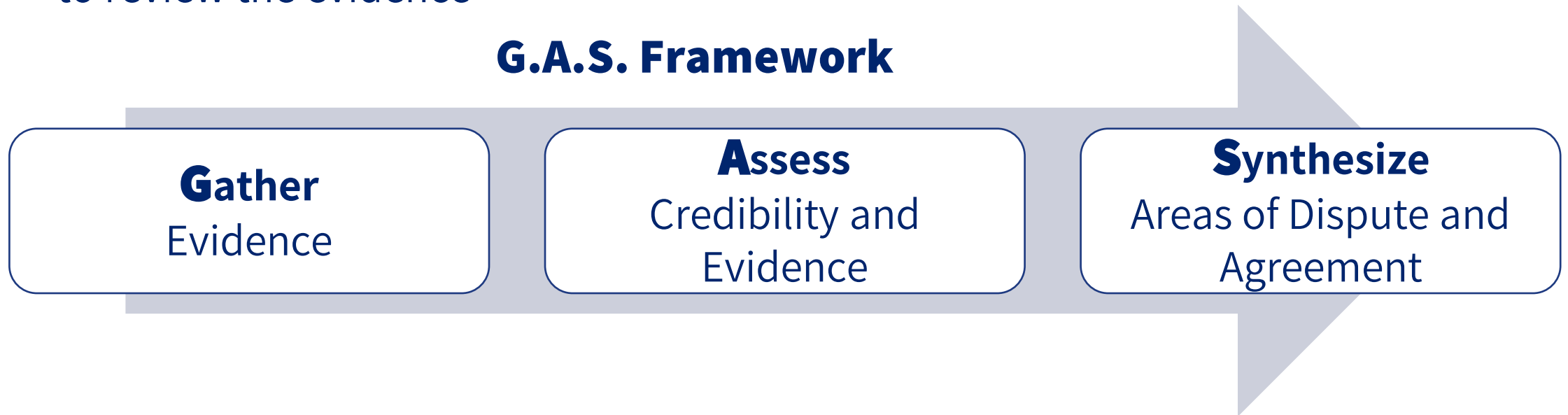
Evidence Authentication

- 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

Draft Investigation Report



TIXC/Legal Counsel Review Draft Investigation Report



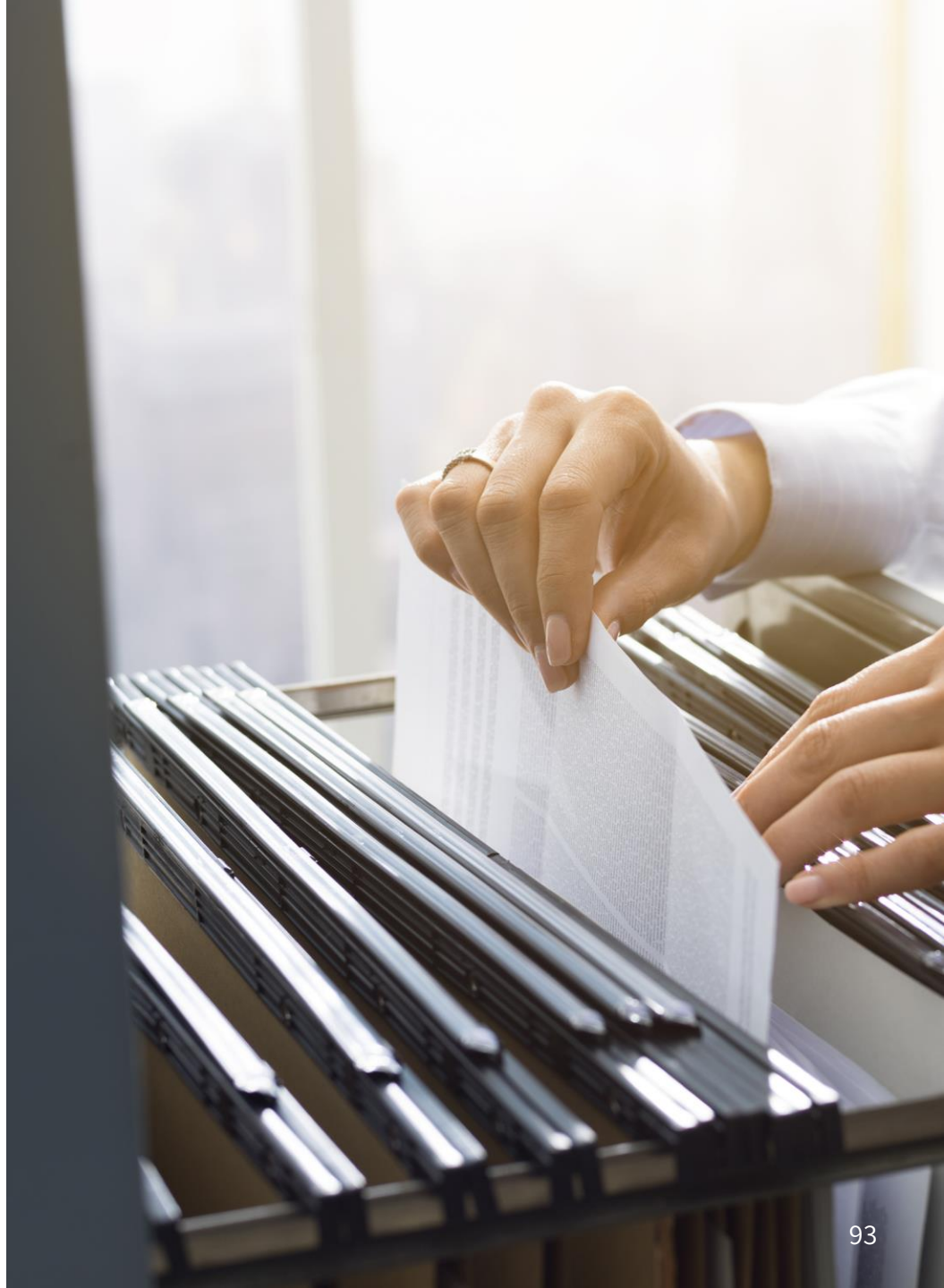
Parties and Advisors Review Draft Investigation Report



Final Investigation Report

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

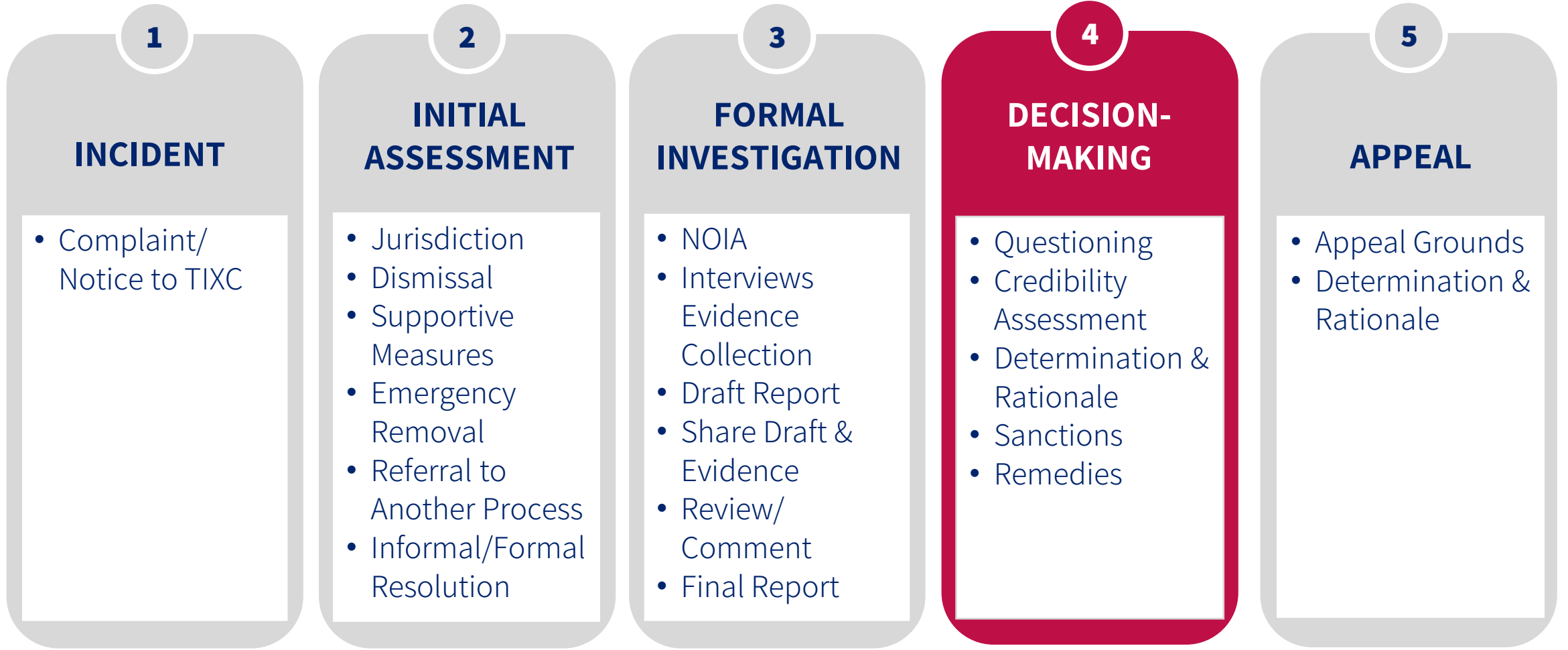
- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must:
 - Allow 10 days for written response
 - 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

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

1

INCIDENT

- Complaint/
Notice to TIXC

2

INITIAL ASSESSMENT

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

3

FORMAL INVESTIGATION

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

4

DECISION-MAKING

- Questioning
- Credibility Assessment
- Determination & Rationale
- Sanctions
- Remedies

5

APPEAL

- Appeal Grounds
- Determination & Rationale

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)
 - **Overturing** the determination (not recommended)
- Cannot be TIXC or serve in another role in the same complaint resolution



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Questions?



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Association of
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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 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

1

INCIDENT

- Complaint/
Notice to TIXC

2

INITIAL ASSESSMENT

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

3

FORMAL INVESTIGATION

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

4

DECISION- MAKING

- Questioning
- Credibility
Assessment
- Determination &
Rationale
- Sanctions
- Remedies

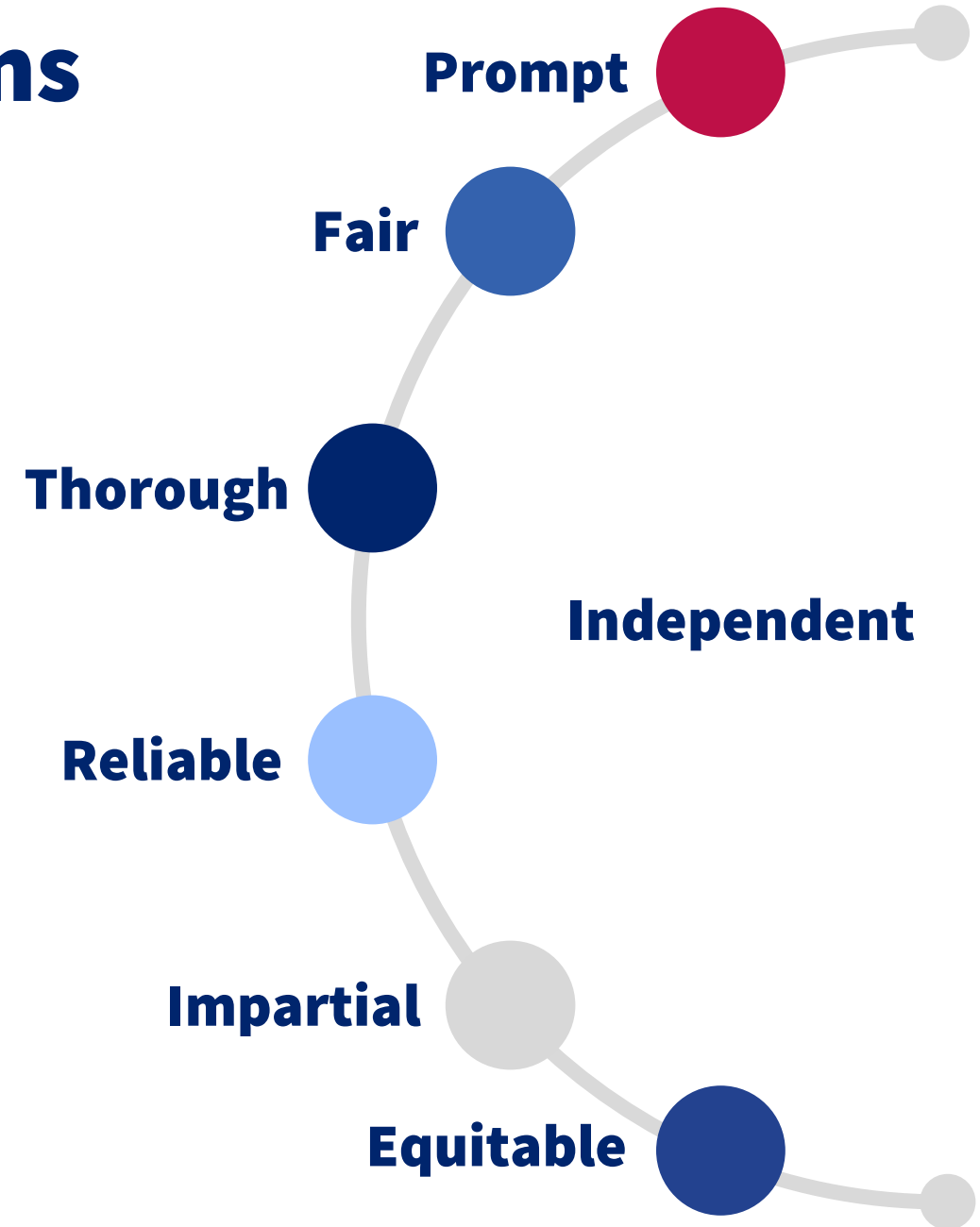
5

APPEAL

- Appeal Grounds
- Determination &
Rationale

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

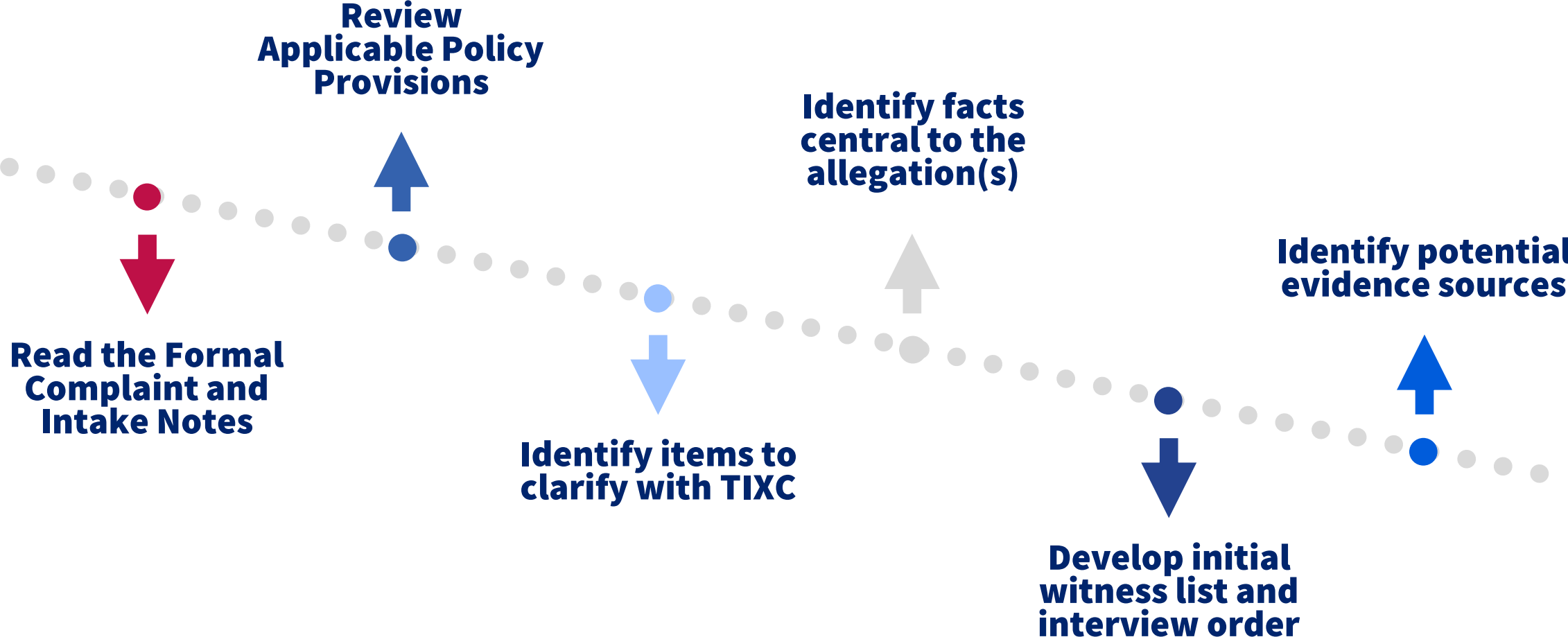
Investigation Strategy Review

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



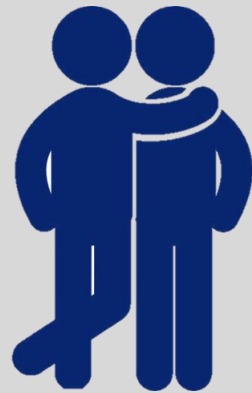
STRESS RESPONSES

- 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

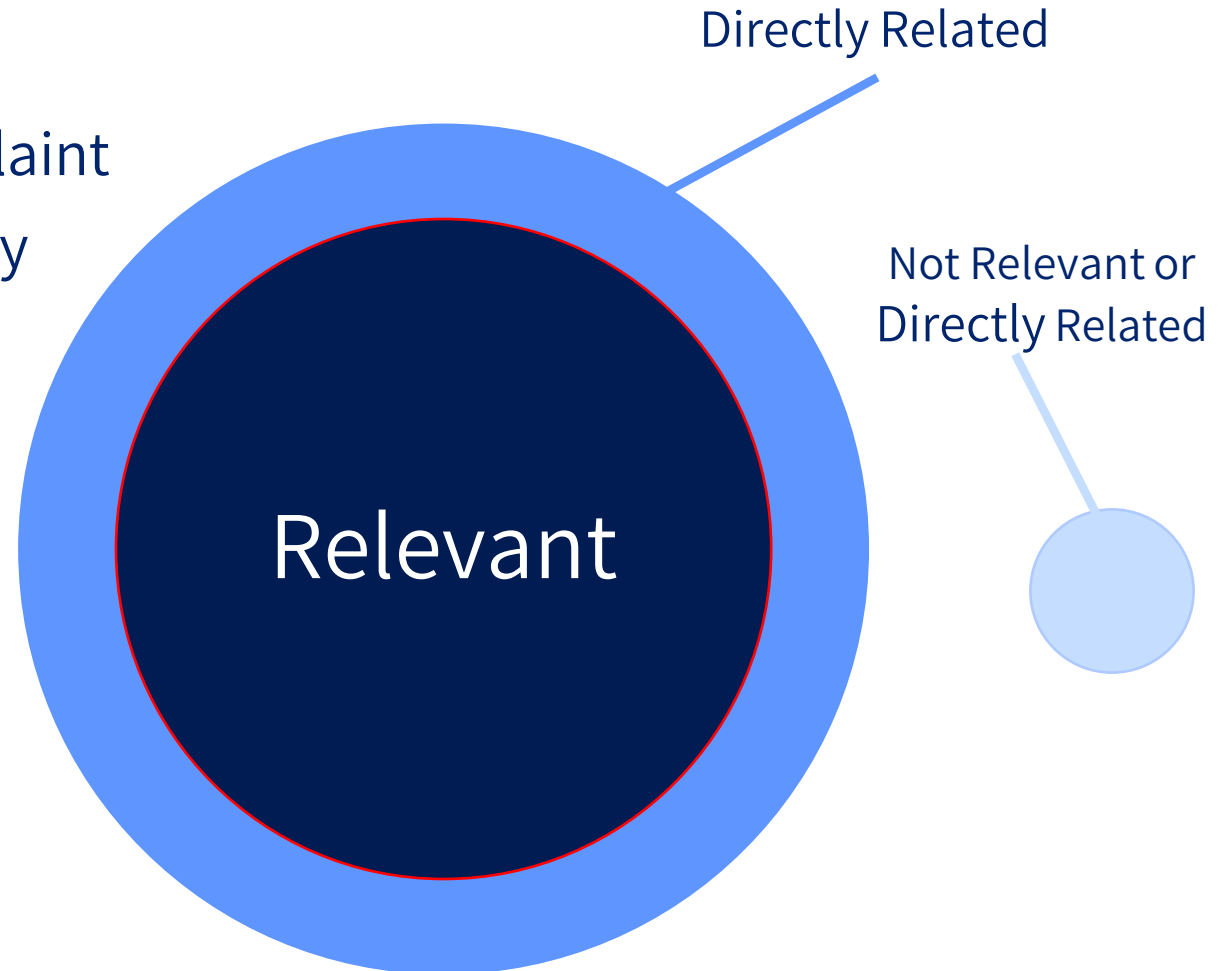
- Investigation report that fairly summarizes **all** relevant evidence
- Investigators must be trained on issues of relevance and writing investigation reports that fairly summarize relevant evidence
- Include relevant inculpatory and exculpatory evidence
- Leave considerable room for best practices

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

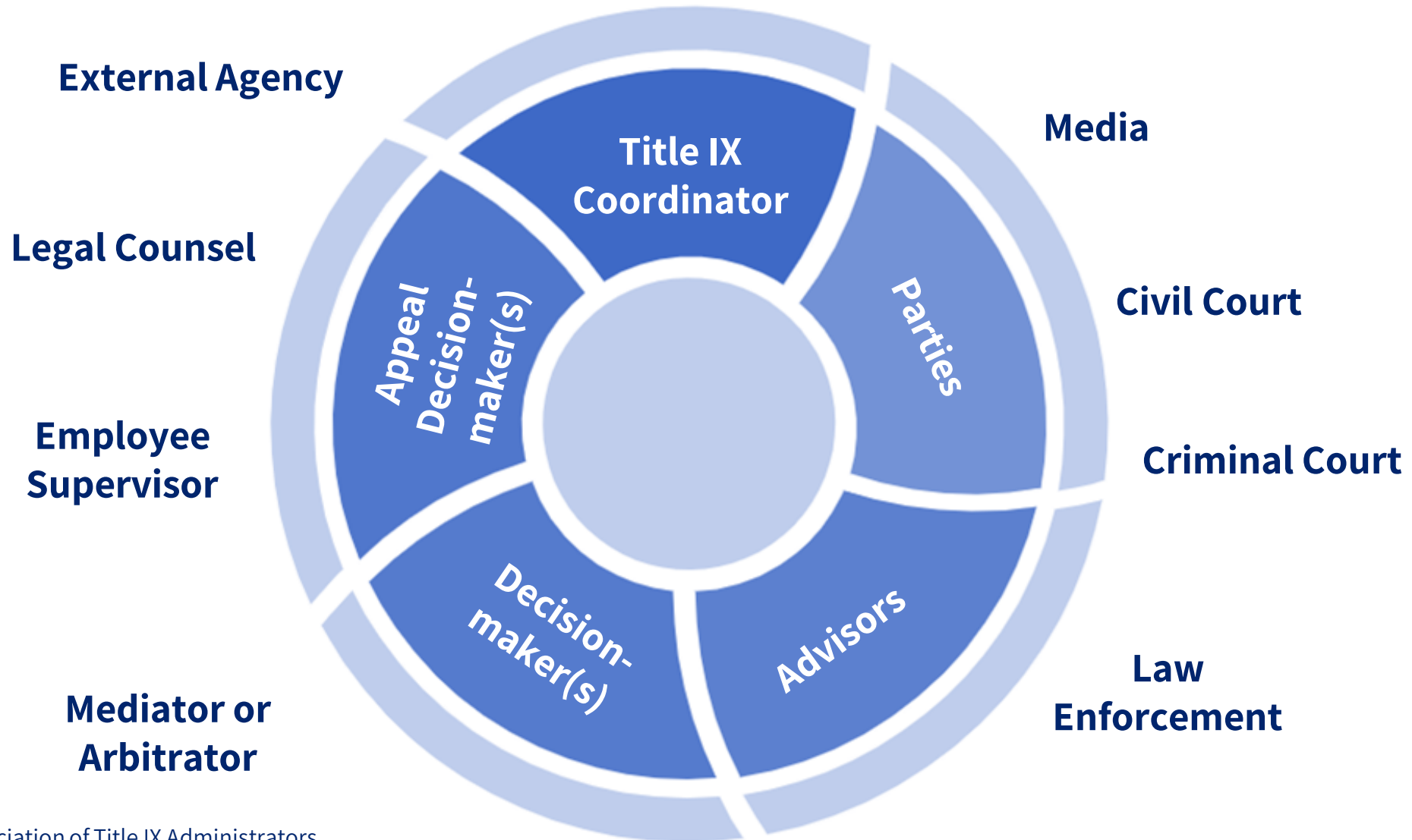
- Investigator obtained screen shots of 36 text messages
 - 20 are relevant
 - 16 are DRE
- **How could the Investigator separate the evidence into the report and evidence file?**

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

Examples of the Three Voices in Writing	
1. Active Voice	"You ate six donuts."
2. Passive Voice	"Six donuts were eaten by you."
3. Passive-Aggressive Voice	"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



“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.’”²

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.

¹ See Complainant Interview 3.25.2022 Transcript.pdf, p.5

² 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

1

Not Asked/Otherwise Answered

Document: the question posed and the answer

3

Rephrased and Asked

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

2

Asked and Answered

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

4

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.”

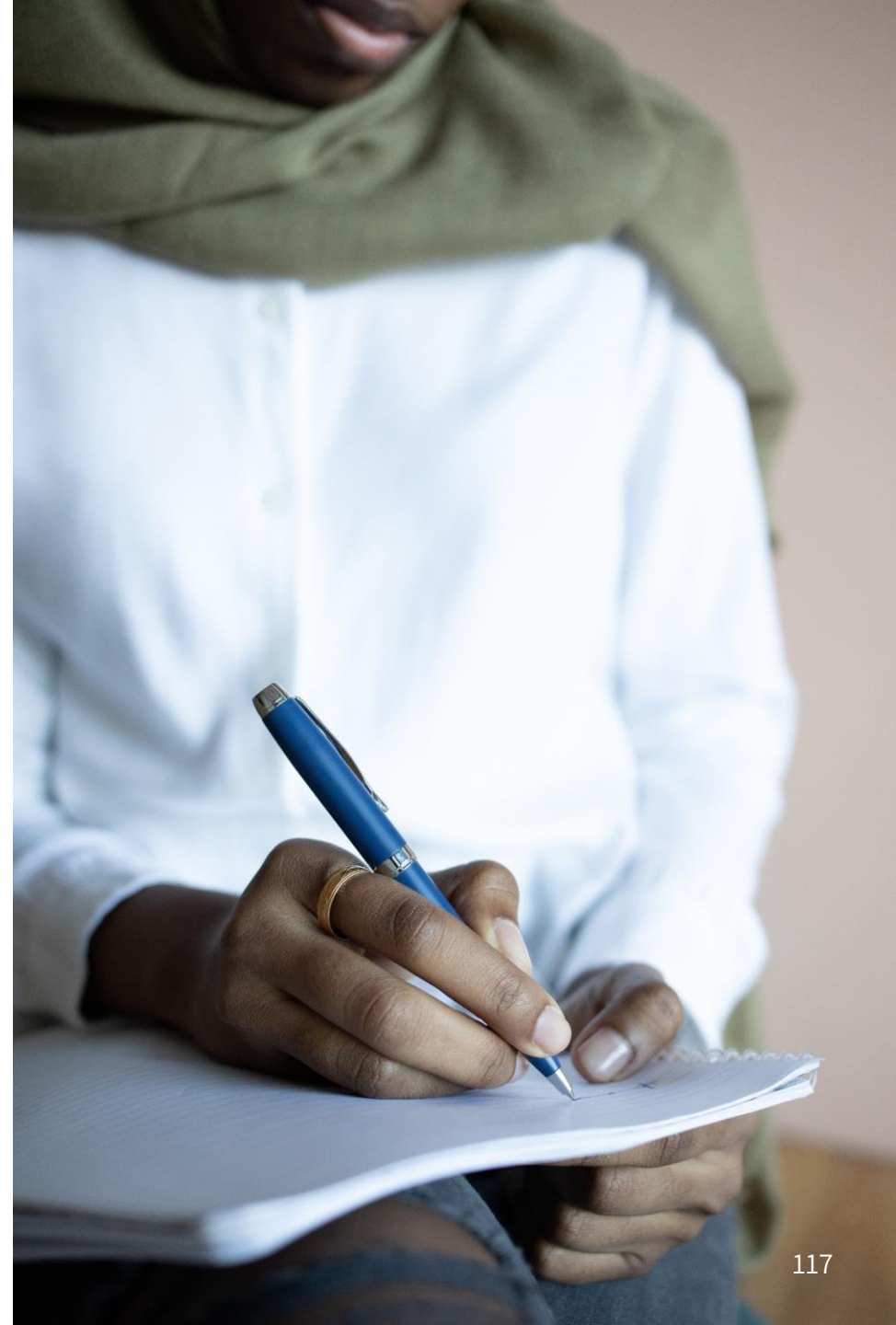
Investigation Report Sections

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

~10:00 PM

Marty's

C & R meet at Marty's Convenience Store and purchase beer, wine, and bread

Travel

C & R travel to R's on-campus apartment and begin consuming alcohol and watching Netflix

Restroom

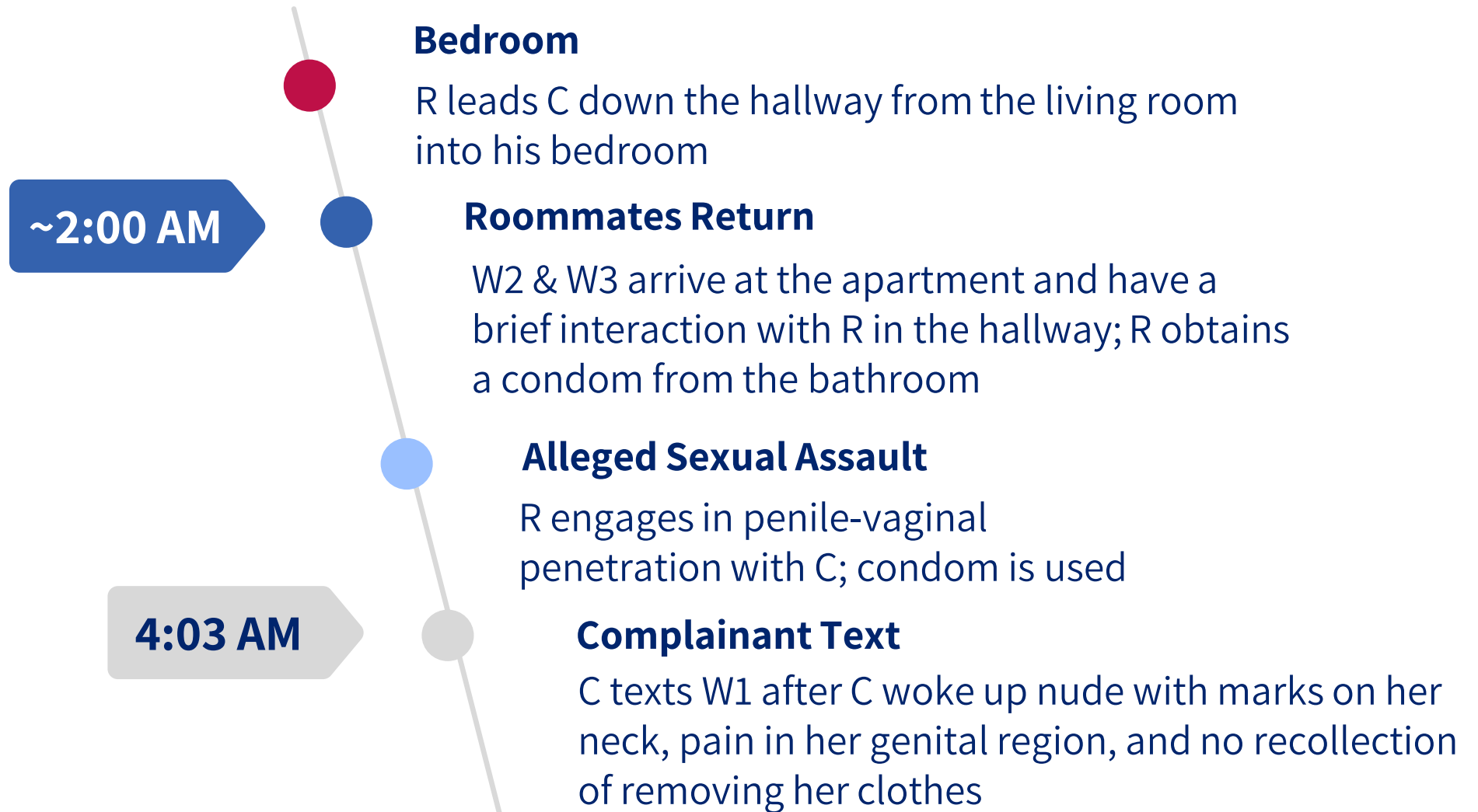
C uses the restroom and begins feeling "like it took a lot of effort to move [her] limbs" and "everything was going on around [her] in slow motion"

1:47 AM

Roommate Text

W2 texts R and tells him that W2 and W3 are coming back to the apartment; R says he is "entertaining"

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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