



Association of  
Title IX Administrators

# Sex-Based Harassment Foundations for Higher Education

Training and Certification Course

# WELCOME!

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- The ATIXA Event Lobby can be accessed by the QR code or visiting [www.atixa.org/atixa-event-lobby](http://www.atixa.org/atixa-event-lobby) in your internet browser.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
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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 primary focus of this course is responding to reports or complaints of sexual harassment, including reporting, the Formal Grievance Process, policy development, and other similar topics.



Title IX practitioners must ensure their institutional response to reports of sexual harassment is not deliberately indifferent.



Our goal is to provide a comprehensive framework to structure institutional response to sexual harassment reports and complaints.

# Title IX Compliance Oversight

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# 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 sexual harassment and sex discrimination 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





# Title IX Compliance Oversight

## Responsibilities:

- Recruit, supervise, and train TIX team
  - Must post training materials on website
- Manage policy and procedures prohibiting sex discrimination and harassment
- Oversee complaint resolution process and program equity
- Assure institution acts reasonably to stop, prevent, and remedy
- Track systemic issues or patterns
  - Take remedial action to prevent recurrence
- Assess compliance efforts and program effectiveness

# Title IX Compliance Oversight

## Responsibilities:

- Create and disseminate annual compliance report
- Update institutional leadership on Title IX issues
- Maintain records
- Liaise with institutional legal counsel
- Develop and maintain accurate web and print-based Title IX publications
- Respond to government inquiries

# Essential Compliance Elements

The requirement to **Stop, Prevent,** and **Remedy** guides Title IX Coordinators in their equity and compliance work

**1**

**STOP** discriminatory conduct

**2**

**PREVENT** recurrence, on both individual and institutional levels

**3**

**REMEDY** the effects of discrimination, on both individual and institutional levels

# Title IX Compliance Oversight

- Institution must act **reasonably in light of known circumstances** to stop, prevent, and remedy
- Institutional responses must not be **deliberately indifferent** to known sex discrimination or sexual harassment
- An institution is deliberately indifferent when:
  - The institution has **actual notice** of harassment,
  - The harassment is **severe, pervasive, and objectively offensive**, and
  - The indifference is **systemic** in nature

# Title IX Scope and Definitions

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# Review: Scope

- Education program or activity in the United States
- Control over the Respondent
- Control over the context of the harassment
- Applies to both student and employee complaints



# Title IX: Scope

## Sex Discrimination

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

## Sexual Harassment

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

## Retaliation

# 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

# Review: Definitions

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



# Activity: Does Title IX Apply?

# Blake & Tamika

- Tamika is a graduate student serving as a graduate teaching assistant for a first-year chemistry course
- Blake, a student in the course, has visited Tamika's office hours each week to ask questions and seek help with the course materials
- With the midterm coming up, Tamika offered Blake her phone number so he could message her with questions and allow her to respond more quickly than email
- After the midterm, Tamika continued texting Blake and they often talked about personal things
- Tamika started flirting with Blake and he flirted back

# Blake & Tamika

- After a few weeks, Tamika asked Blake to get a drink with her after class
- Blake declined
- Over the following few weeks, Tamika sent Blake several sexually explicit text messages, including a few partially nude pictures of herself
- Blake tried to tell Tamika he wasn't interested, but then gave up on responding
- Eventually, Blake blocked Tamika
- Tamika then resorted to winking at Blake during class and making thinly veiled sexual comments in front of Blake's classmates
- Tamika then used her school email account to ask Blake to come to her office hours for a surprise, implying his grade would suffer otherwise

# Sexual Harassment Definition

- Conduct on the basis of sex, or that is sexual in nature, including:
  - **Quid Pro Quo**
    - An employee, agent, or other person authorized by the recipient to provide an aid, benefit, or service
    - under the recipient’s education program or activity
    - explicitly or impliedly
    - conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

# Sexual Harassment Definition

- Conduct on the basis of sex, or that is sexual in nature, including:
  - **Hostile Environment**
    - Unwelcome conduct
    - determined by a reasonable person
    - to be so **severe, pervasive**, and **objectively offensive (SPOO)**
    - that it effectively denies a person equal access to the recipient's education program or activity.

# Amina & Darius

- Amina and Darius are two first-year students who met during their institution's Welcome Week festivities
- In October, Amina invited Darius to come with her to a play on campus
- During the show, Darius tried to grab Amina's hand, which was resting on her leg
- Amina pulled her hand away, but Darius left his hand on her thigh for awhile
- Amina froze and did not remove Darius's hand
- At one point during the play, Darius leaned over to try and kiss Amina, but Amina moved so Darius could not reach her mouth
- He kissed Amina on the cheek instead



# Amina & Darius

- Then Darius put his arm around Amina and squeezed her shoulder, pulling her into him
- After the play, Amina and Darius walked back to Amina's residence hall
- Darius put his arm around Amina's waist during their walk, again pulling her in closer to him
- When they reached Amina's residence hall, Darius pulled Amina closer to try and kiss her again
- Amina pulled him in for a quick hug, said goodbye, and bolted for the door

# Fondling Definition

- The touching of the private body parts of the Complainant (breasts, groin, buttocks),
  - 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 temporary or permanent mental impairment

# Daveed & Calvin

- Daveed reported an incident involving a former partner, Calvin, to his Resident Assistant
- Daveed reported that he and Calvin had been dating on-and-off for a few months but broke things off a few months ago
- Since then, Calvin has been spreading rumors that Daveed has an STI and is very promiscuous
- Daveed has been working with the Title IX office to try and resolve the situation since the RA followed their mandatory reporting obligations and submitted a report

# Daveed & Calvin

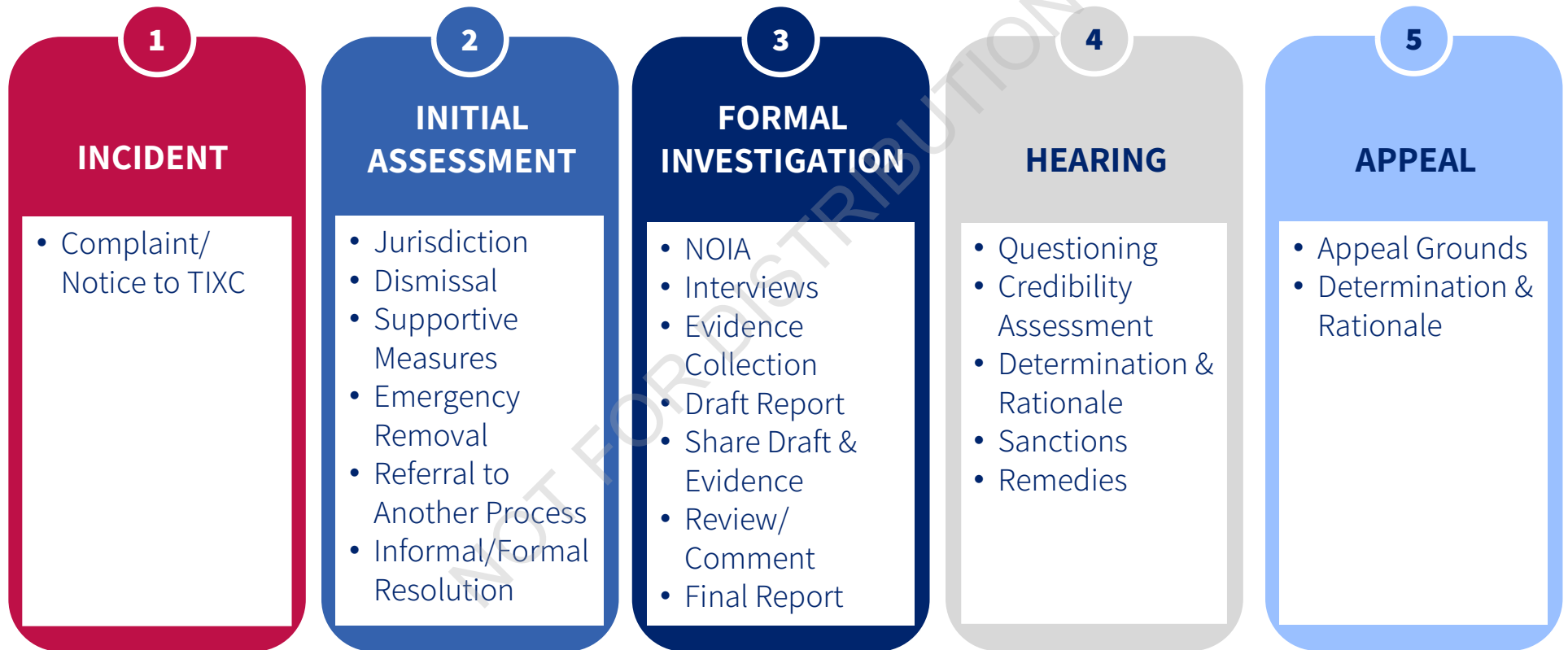
- Calvin's friend Kristina is on the student programming board's executive team and runs the club's elections
- Daveed is a club member and wants to be on the executive board next year
- Daveed is now reporting that Kristina has been talking to the executive board about his Title IX report and that Daveed is not trustworthy enough to be on the executive board
- Daveed feels like he can't file a formal complaint, or he won't get a fair shot at being elected

# Retaliation Definition

- Retaliation means intimidation, threats, coercion, or discrimination against any person by a(n):
  - Student, employee, institution, or person authorized by the institution to provide some sort of aid, benefit, or service, AND
  - For the purpose of interfering with any Title IX right or privilege OR
    - Because the person has:
      - Made a report or complaint,
      - Testified, assisted, or participated or refused to participate in any Title IX process.

# Formal Grievance Process Overview

# Title IX Grievance Process Overview



# 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
- Grievance process may take longer than expected
  - Anticipate, mitigate, and document delays
  - Communicate with parties regarding delays
- Must provide anticipated timelines for each proceeding



# Title IX Grievance Process Overview

## Equitable Resolution

- Treat all parties equitably
- Ensures that all parties have opportunity to fully participate in the grievance process
- Make certain that all Title IX team members operate without bias and/or conflict of interest



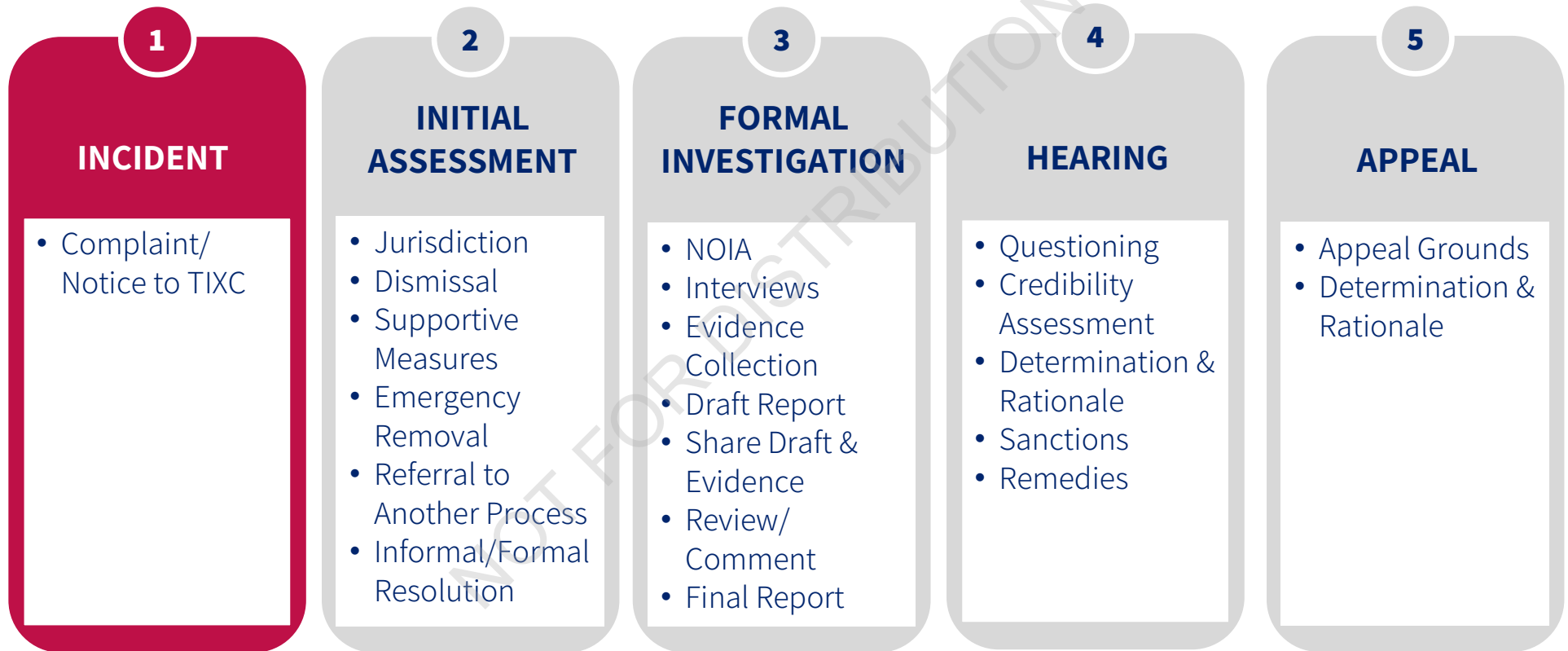
# Title IX Grievance Process Overview

## Rights of the parties during the grievance process:

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

# Reports, Complaints, and Notice to the Institution

# When is the Institution “On Notice?”



# Point Person for Reports and Complaints

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

# When is the Institution “On Notice?”

The institution is “**on notice**” of sexual harassment when a report is made to:

- **TIXC**, or
- An **Official with Authority (OWA)**: any official who has authority to institute corrective measures on behalf of the Recipient
  - ATIXA recommends including OWAs by role in policy

# Mandatory Reporting

- ATIXA recommends that **all employees** are **mandated reporters** (except for **confidential resources**) under Title IX
  - Ensures information gets to those trained to respond
  - Enables institution to best support individuals
  - Supports tracking patterns
  - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy

# Reporting

## 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



# Report vs. Complaint

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

- **Report**

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

- **Formal Complaint**

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

# Report vs. Complaint

- Online reporting form
- Anonymous reports
- Requests for confidentiality
- Take all reasonable steps to follow the Complainant's wishes
  - Institution must respond effectively and prevent harassment of other students or Complainant
- If TIXC takes no formal action in response to a report, document rationale

# Interacting with Law Enforcement

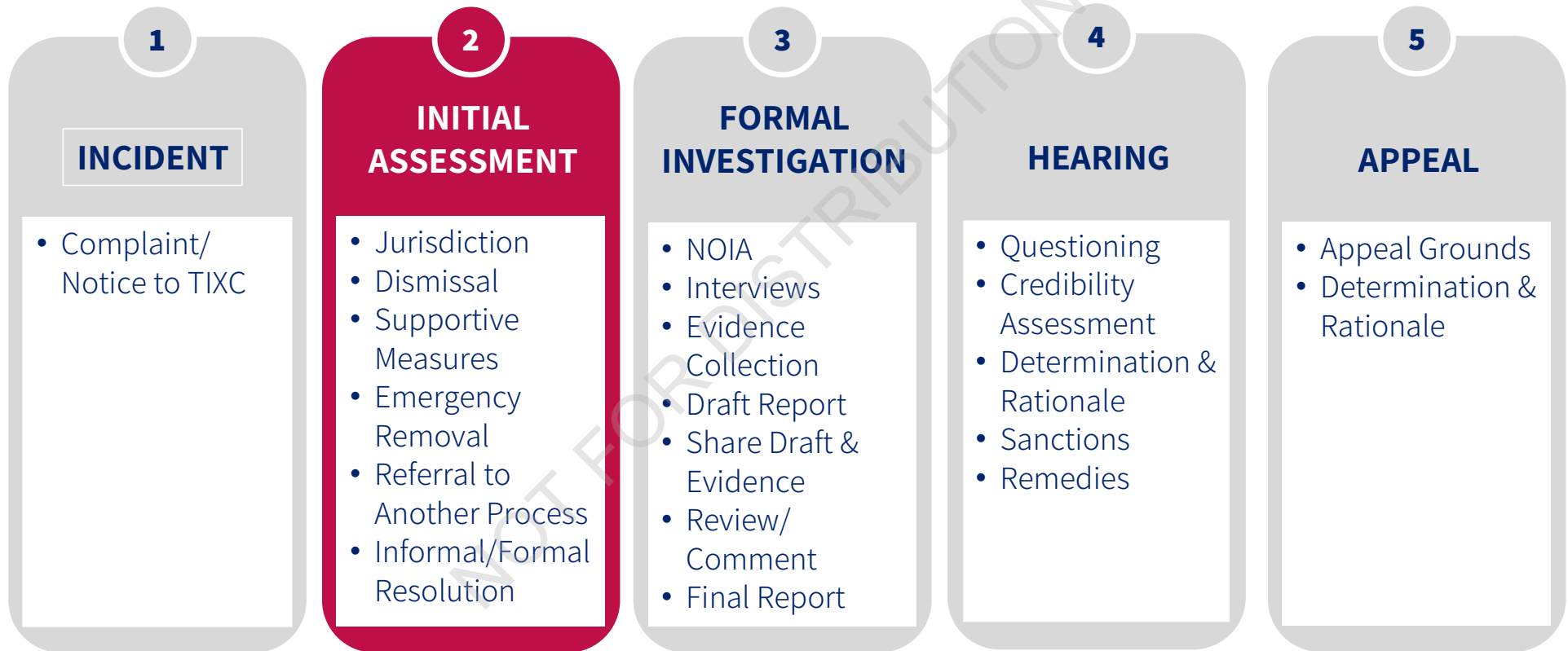
- TIXC must assist Complainants who wish to report to law enforcement
- State laws, local practices, and MOUs may facilitate information sharing with law enforcement
  - Law enforcement may not be aware of federal requirements under Title IX
  - Develop a reporting and information-sharing protocol



# Initial Assessment

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# Initial Assessment



# Initial 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?
  - Who is the Complainant?
  - Who is the Respondent?
  - Does the institution have control over the context of the alleged harassment?



# Initial Assessment

- **Yes, or Arguable:** move forward with Title IX grievance process
- **No:** determine whether an alternate policy or process applies
  - Dismiss the complaint under Title IX
  - Document the rationale
  - Refer to other process



# Outreach and Intake

- After receiving a report, TIXC (or designee), should always reach out to the Complainant
  - Best practice and regulatory requirement
- **Outreach** includes:
  - Introduction to Title IX and staff
  - Reason for the outreach
  - Offer to meet/speak over the phone; include right to Advisor
  - Available resources and resolution options, including how to file formal complaint
  - Discuss supportive measures and resources
  - Explain options to report to law enforcement
  - Follow up in writing with resources and information



# Outreach and Intake

- **Intake** includes:
  - Setting the table
  - Having written materials to reference and for parties to take with them
    - Follow up with an email containing these materials, too
    - Include access to medical care, including evidence preservation
  - Exploring facts, but not interviewing
    - Needed for initial assessment and Clery timely warning
  - Discussing Supportive Measures
  - Discussing Complainant's options
  - Answering questions
    - **DO NOT** answer the question “What should I do?”

# After Outreach and Intake

- Consider if new information affects jurisdictional assessment
- Implement any requested supportive measures and/or remedies

## If formal complaint is filed:

- Determine whether to dismiss or proceed with formal investigation
- Consider whether **emergency removal** is warranted
- Evaluate whether complaint is appropriate for potential **Informal Resolution**

## If no formal complaint is filed:

- Determine whether TIXC needs to sign a formal complaint
- Consider whether **emergency removal** is warranted

# Signing a Formal Complaint: PPTVWM

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

**Factors that likely indicate an ongoing risk of harm include:**

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

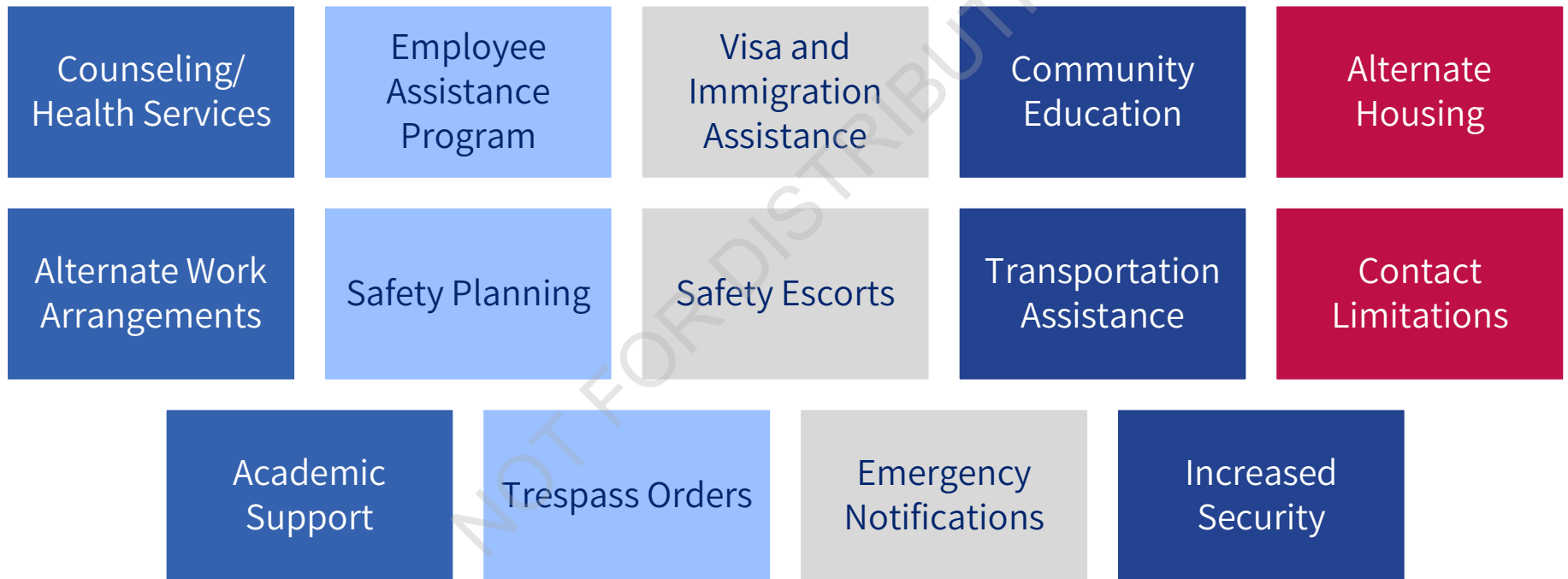
## Other Considerations for TIXC Signing a Formal Complaint

- Employee Respondent
- Complainant who is not P/ATP

# Supportive Measures

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

# Supportive Measures



# Activity: Outreach/Intake Conversation

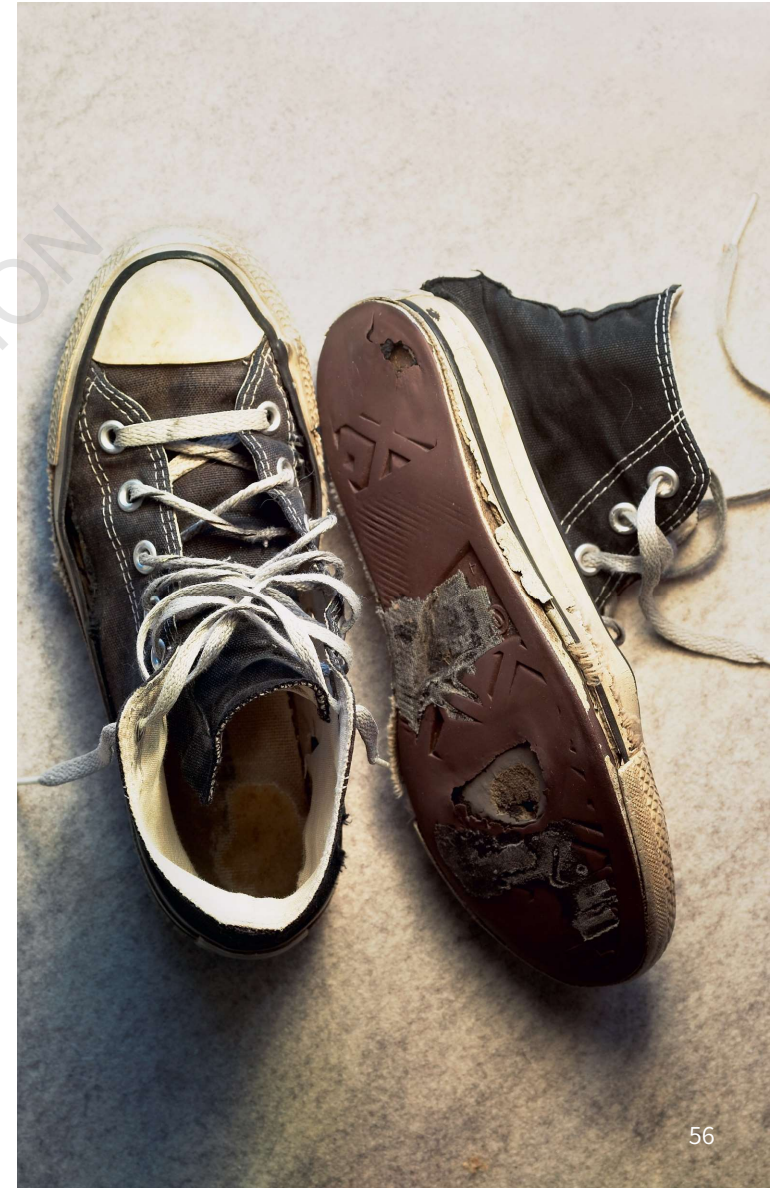
# Outreach and Intake Conversation

- Split into pairs
- Each partner will have 5 minutes to practice having an outreach/intake conversation with a Complainant after receiving a report from a mandated reporter
- Take notes to give your partner feedback following the conversation

# Emergency Removal

## Emergency Removal:

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





# Administrative Leave

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



# Mandatory Dismissal

**TIXC must dismiss the complaint at any time prior to a determination, if:**

1. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Title IX regulations even if proved, and/or
2. The conduct did not occur in the Recipient's education program or activity, or
  - No control over the context
3. The conduct did not occur against a person in the United States, or
4. At the time of filing a formal complaint, a Complainant is not P/ATP
  - AND the TIXC determines they do not need to sign a formal complaint

# Discretionary Dismissal

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

- Complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any portion thereof
- Recipient no longer employs or enrolls Respondent
- Specific circumstances prevent the Recipient from gathering sufficient evidence for a determination

# Dismissals

- Must promptly notify parties of the dismissal
- Notify parties that a dismissal may be appealed and include appeal information
  - Appeal Decision-maker(s) must be trained; must not have been involved in the complaint so far
- Institution may, and often will, address reported behavior under other applicable policy

# Informal Resolution

- Title IX permits **voluntary** Informal Resolution (IR)
- Not available for employee-on-student harassment
- IR is not defined by regulations
- At discretion of TIXC, at any time prior to a final determination
  - Likelihood of resolution
  - Power dynamics
  - Goals and motivation of the parties to participate
  - Complexity and timing of the complaint
- IR facilitators must receive training, be free of bias or conflicts
  - ATIXA recommends IR Facilitators not serve in any other roles

# Informal Resolution

- Procedural requirements:
  - Formal complaint
  - Parties must receive written notice of the allegations, IR procedures, records created, and potential consequences
  - Parties' voluntary, written consent
  - Must still stop, prevent, remedy
- May withdraw from IR to start or resume Formal Grievance Process at any time



# Investigation

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# Who Should Investigate?

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

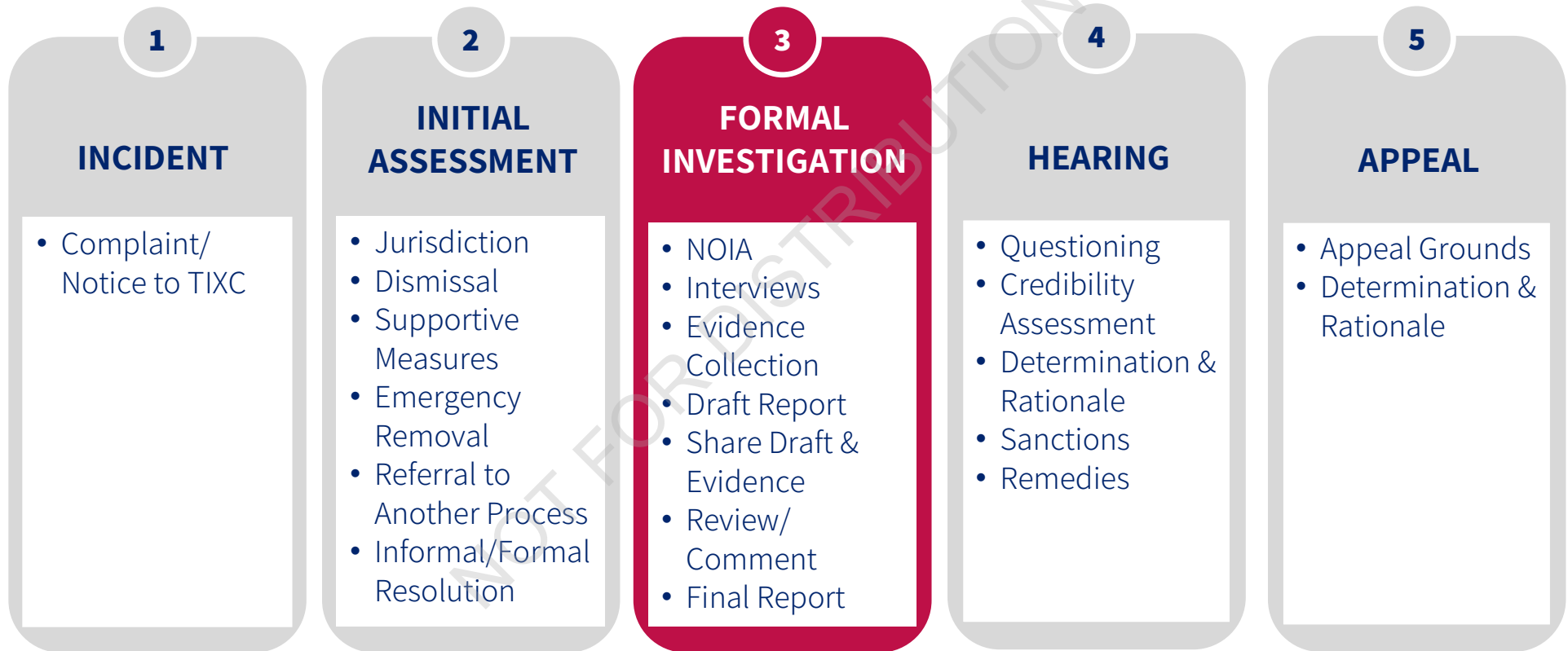
**Full-Time  
Investigator(s)**

**Investigator Pool**

**Coordinator as  
Investigator**



# Investigation



# Investigation Oversight

## 10 Steps of Investigations:

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

INCIDENT INVESTIGATION  
SUMMARY

Incident Date:

Review Date:

by:

t Summary:

Root Causes:

# Determining a Basis for Investigation

There are three bases for investigations:

- **Incident:** a specific incident or period
  - May involve one or multiple alleged violations
- **Pattern:** repetitive or similar behaviors or targets chosen by the same Respondent over a period
  - Tend to involve multiple Complainants
- **Climate/Culture:** discriminatory policies, processes, and environments
  - May have no identifiable Respondent
  - May cue up a subsequent incident or pattern investigation based on information gathered during climate/culture investigation

# 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

# Notice of Investigation and Allegations

- The next step is the Notice of Investigation and Allegations (NOIA) letter
  - Sent to all parties, simultaneously
  - Must be sent prior to interviewing any party
- The NOIA includes:
  - Notice of the allegations and known details, such as identities of the parties
  - A description of the alleged conduct and relevant policy provisions
  - The date and location of the alleged conduct
  - Information about grievance procedures
  - Any Informal Resolution options

# Notice of Investigation and Allegations

## The NOIA must outline the parties' right to:

- Present witnesses, including expert witnesses
- Present inculpatory and exculpatory evidence
- Freely discuss the allegations
- Be accompanied by an Advisor of their choice
- 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
- Review all relevant and directly related evidence before the investigation report is finalized

# Notice of Investigation and Allegations

## The NOIA must also include:

- Presumption that Respondent is not responsible
- 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 during the course of the investigation
- Include or reference current policy and procedures

# Investigation Strategy

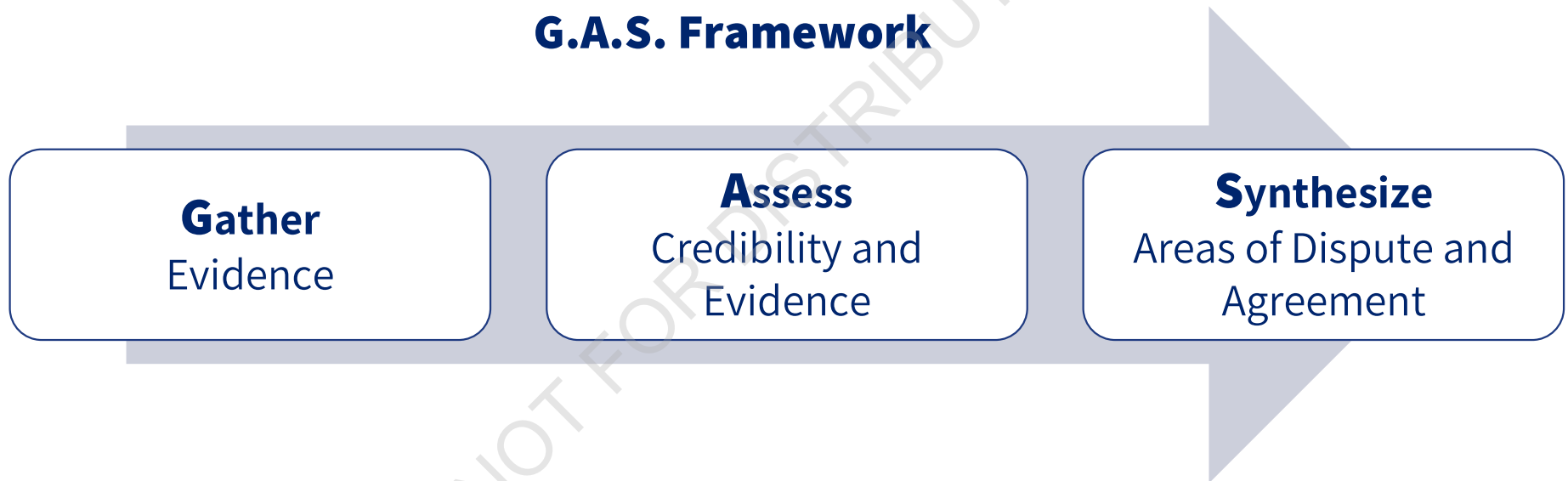
## **TIXC consults with Investigator(s) to strategize and plan the investigation:**

- 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 evidence and the plan to acquire such evidence
- Anticipated obstacles or obstructions
- A working timeline for the investigation



# Formal Investigation

## G.A.S. Framework



**The burden to gather evidence is on the institution, not the parties.**

# Understanding Evidence

- Duty to collect **relevant** evidence
  - Evidence is any kind of information presented to help determine what occurred
  - Relevant evidence is evidence that tends to prove or disprove the underlying allegations
    - Inculpatory and exculpatory evidence
  - Some evidence may only be relevant to assessing credibility
- Collect **all** relevant and reasonably available evidence except if **impermissible**
- Relevant evidence forms the basis of the investigation report



# Directly Related Evidence

- **Directly related evidence:** connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon in the investigation report
- Must be provided to the parties and their Advisors for review
  - ATIXA recommends providing an organized directly related evidence file
- Decision-maker(s) ultimately determine what is relevant, directly related, or neither

# 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

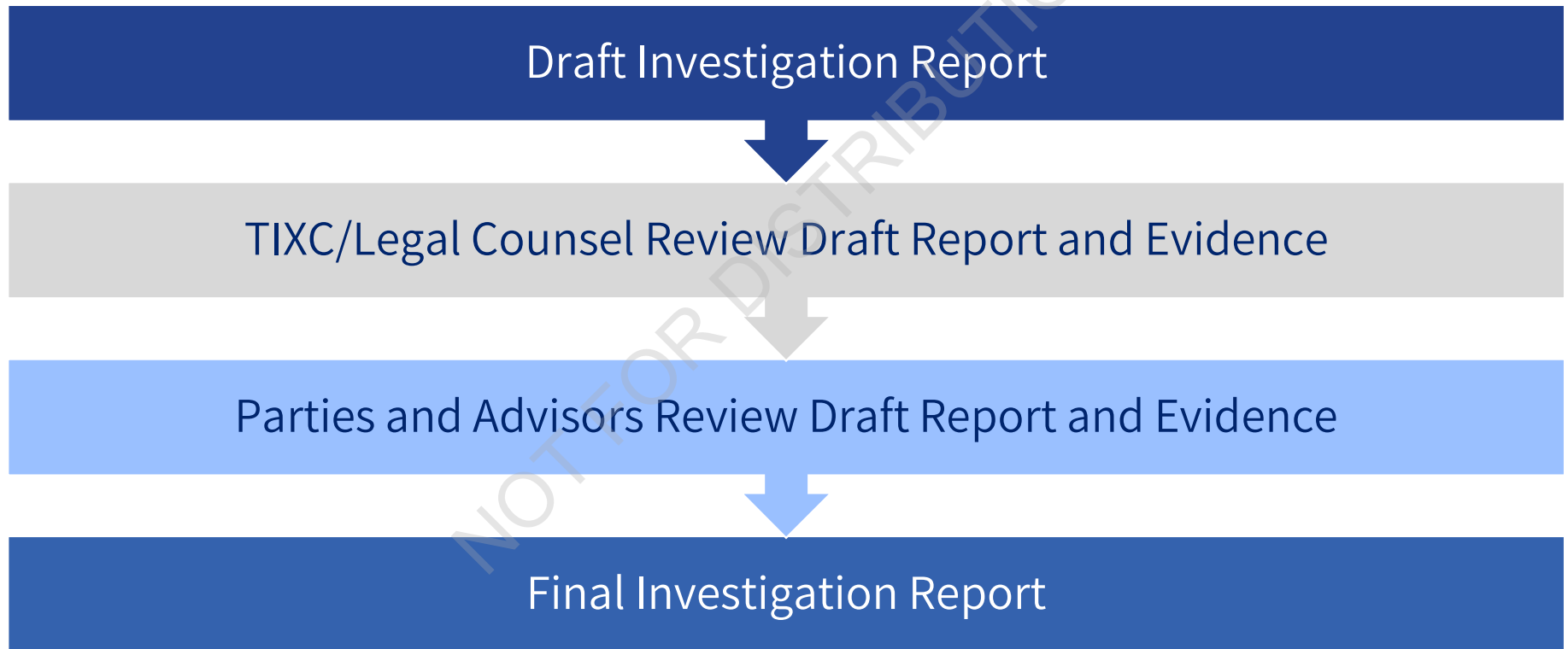
- **Credibility:** largely a function of corroboration and consistency
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate or truthful)
  - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** memory errors alone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



# Consent Construct: Three Questions

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

# Drafting, Reviewing, and Finalizing the Investigation Report





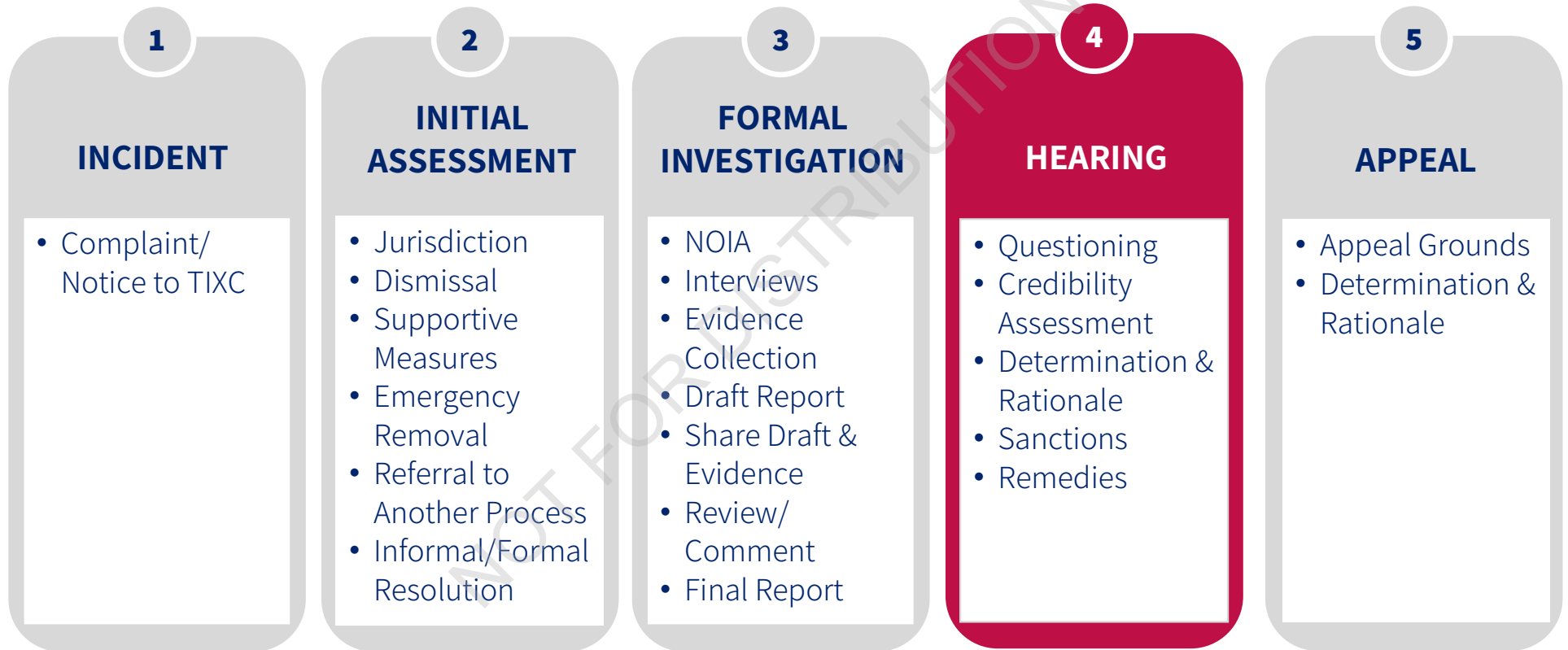
# Parties' and Advisors' Review of Report and Evidence File

- 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
- Investigator sends the final investigation report to the parties and Advisors for review 10 days prior to the hearing

# Decision-Making

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# Decision-Making



# Decision-Making

- TIXC may not serve as a Decision-maker
- All formal complaints must be resolved through a live hearing unless an Informal Resolution is reached, or the complaint is dismissed

## **Title IX Coordinator**

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

## **Decision-maker(s)**

- Conducts Pre-Hearing Meetings (if any)
- Facilitates hearing process, including questioning
- Determines relevance
- Assesses credibility
- Makes a finding of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

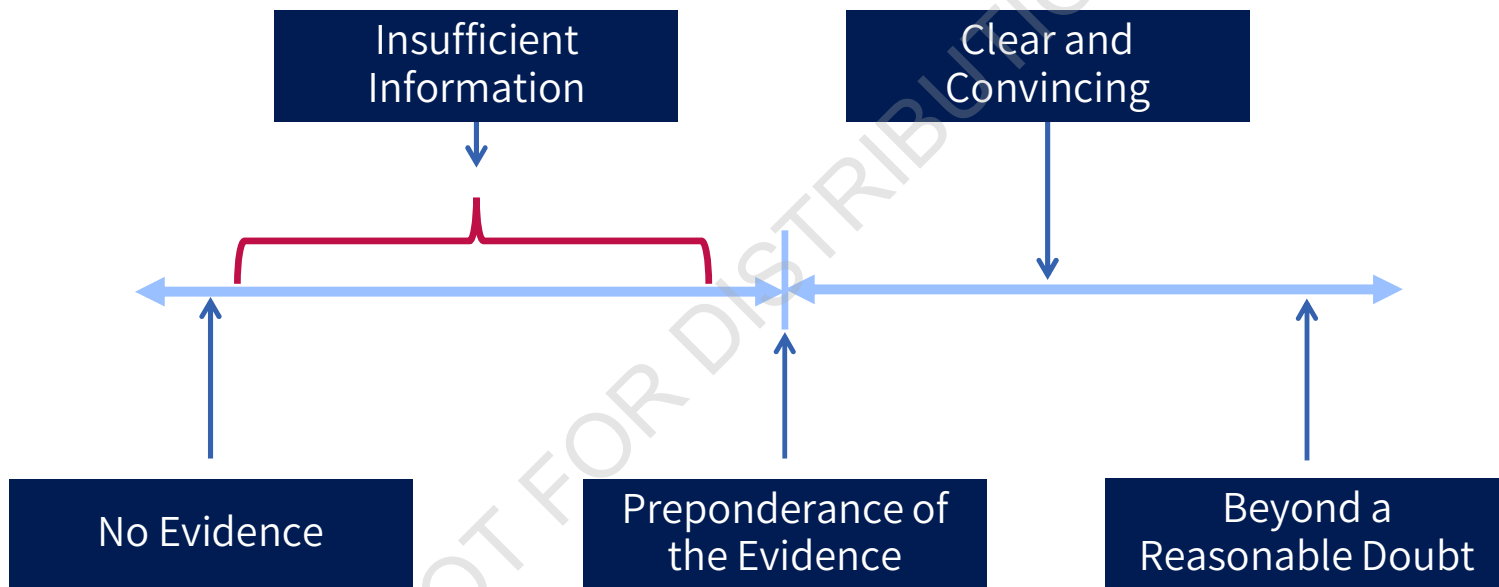
# Live Hearings

- May impose reasonable decorum rules
- Questions must be asked by the parties' Advisors and/or Decision-maker(s)
  - If the party does not have an Advisor, the institution must provide an Advisor for the purpose of asking questions during the hearing, if the party wishes to ask questions
  - Decision-maker must determine whether a proposed question is relevant and permissible
- Hearing can be in one location or virtually through technology
  - Decision-maker and parties must be able to simultaneously see a party or witness when they are speaking/communicating
- Must create an audio or video recording or transcript and make it available to parties to inspect and review

# Decision-Making

- Making a Finding
  - Decision-makers determine what occurred based on the standard of evidence
- Making a Final Determination
  - Decision-makers determine whether what occurred is a policy violation applying the standard of evidence
  - Consider each allegation individually for each Respondent
- Standard of Evidence
  - Apply either the preponderance of the evidence standard or the clear and convincing evidence standard
  - Standard of evidence must be consistent for all formal complaints of sexual harassment

# Standard of Evidence



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

# Sanctions and Remedies

## Sanctions

- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC does not issue sanctions but oversees the process
- TIXC assures sanction compliance
  - Failure to comply could lead to discipline

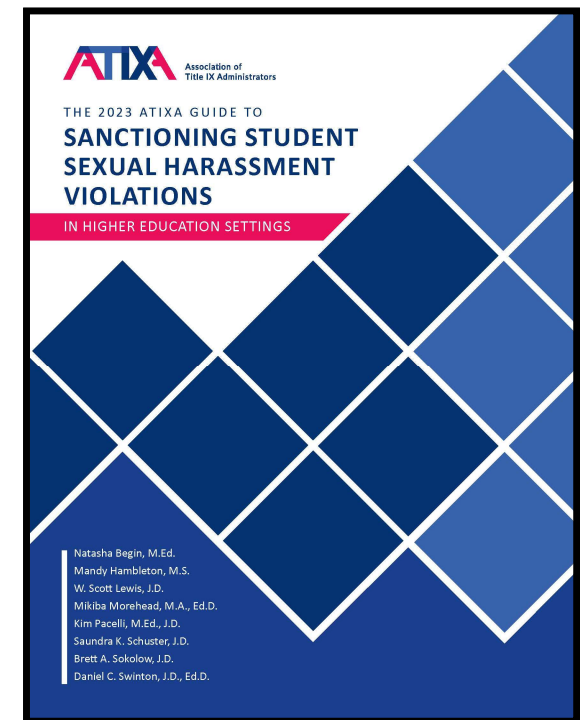
## Remedies

- May be implemented before or after a determination
- TIXC determines remedies that are equitable and not clearly unreasonable given the circumstances
- Goal: preserve or restore access to education program and activity
- TIXC ensures remedies are implemented



# Sanctions

- Nature of Title IX sanctions
- May consider: prior misconduct, precedent, acceptance of responsibility, and collateral or multiple violations
- Sanctioning Pitfalls
  - Conflating the finding, determination, and sanctioning
  - Failure to stop, prevent, and remedy
    - Unwillingness to expel, suspend, or terminate
    - Prescribed sanctioning
    - Inconsistent or disparate sanctions
  - Impact or mitigation statements influencing findings
  - Failure to consider aggravating or mitigating circumstances



# 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

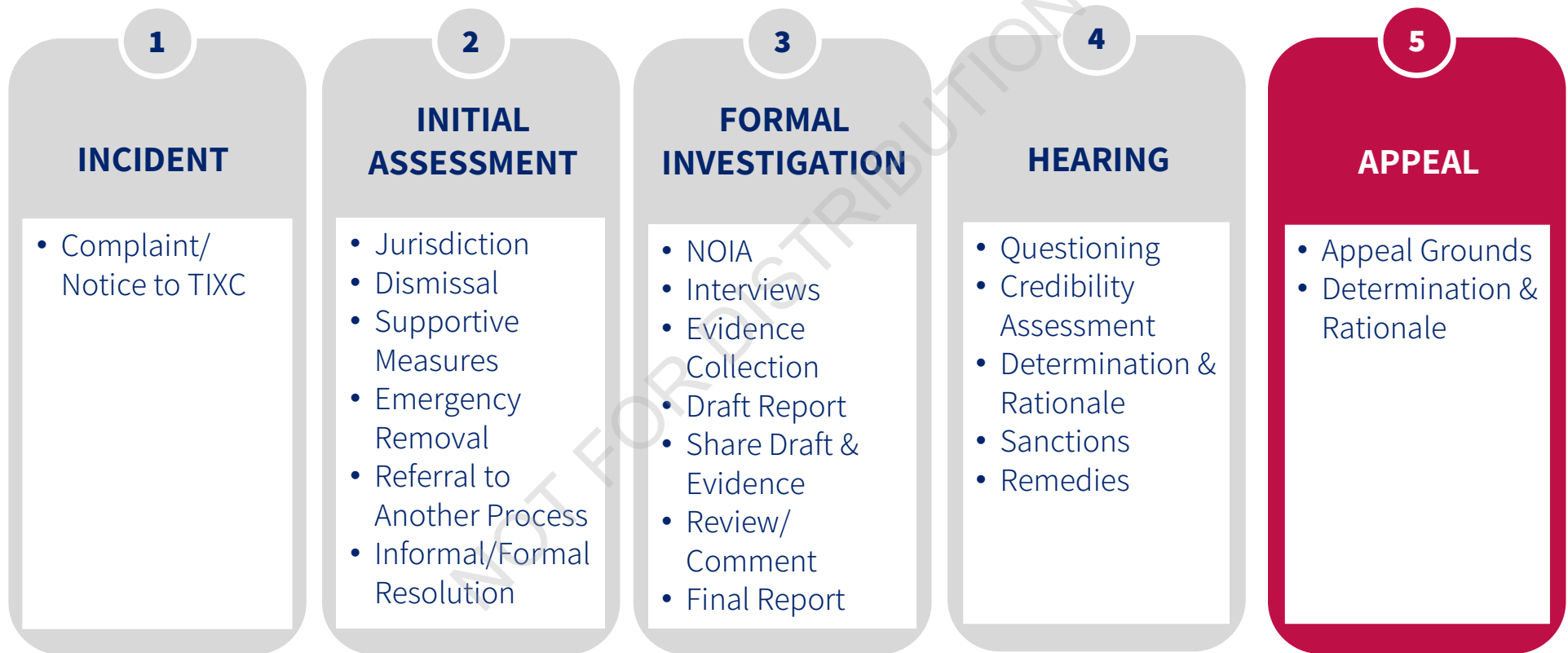
## Written Determination Elements

- 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

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# Appeals



# Appeals

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

1

Procedural irregularity that affected the outcome of the matter

2

New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter

3

Conflict of interest or bias by the TIXC, Investigator, Decision-Maker that affected the outcome of the matter

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

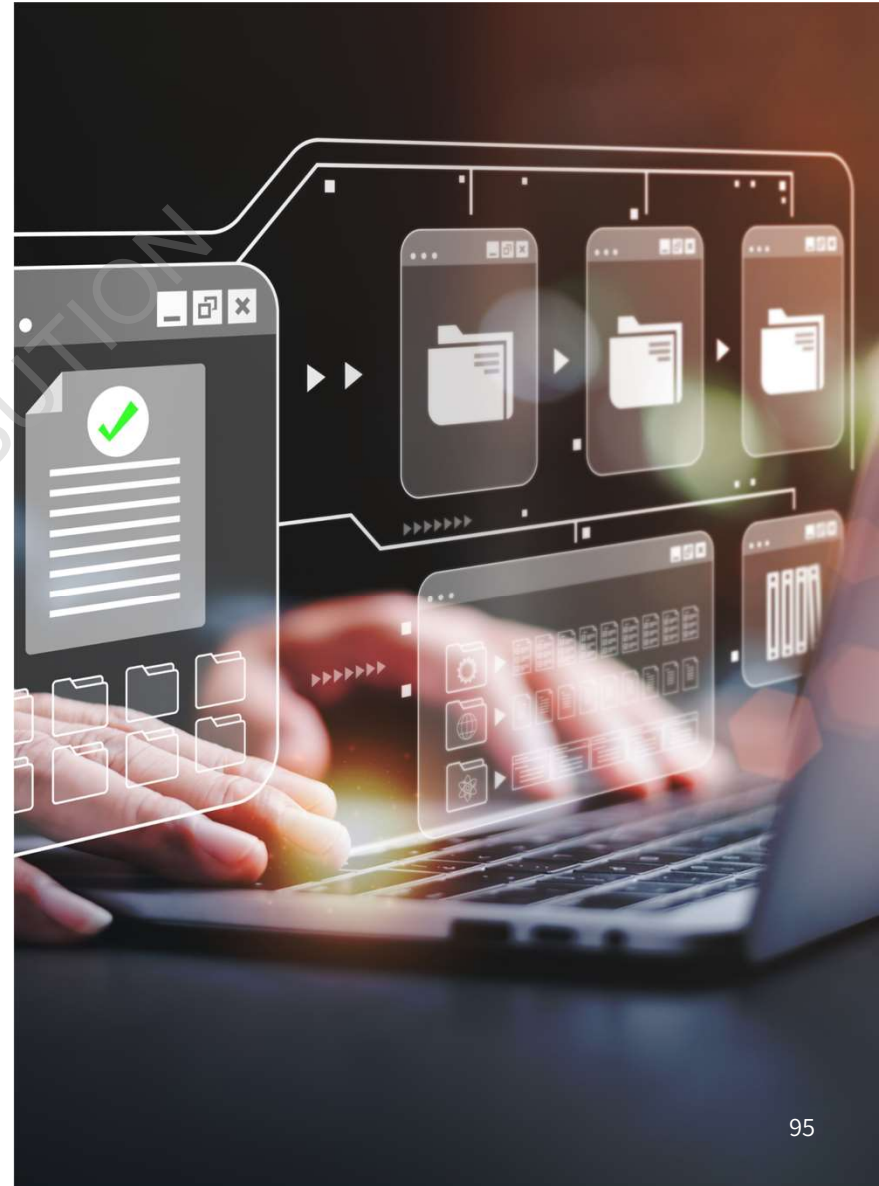
# Appeals

## 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 another role in the same complaint resolution

# Recordkeeping

- Recipient must maintain records for a minimum of **seven** years:
  - Sexual Harassment complaints, including determination and discipline and/or remedies
  - Appeals and results
  - Rationales for all determinations
  - Informal Resolution
  - Supportive measures
  - Measures taken to preserve/restore access
  - All training materials
- Document how response was **not** deliberately indifferent



# Clery Act/VAWA Section 304 Intersections

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# Clery/VAWA Section 304 Intersections

## Clery Act

- Designed to improve reporting statistics on campus sexual violence
  - Added new awareness, training, and procedural requirements related to sexual assault, dating and domestic violence, and stalking
- Disciplinary proceedings must be conducted by officials trained annually
- Clery Geography and Title IX jurisdiction are separate and overlapping
  - Timely Warning requirement
  - Clery Annual Security Report (ASR)

## Violence Against Women Act

- Improving community-based responses to domestic violence, dating violence, sexual assault, and stalking

# Clery/VAWA Section 304 Intersections

- Inform Complainants about
  - Importance of preserving evidence
  - Institutional reporting and making a report to police
- Complainants should receive written information regarding:
  - Common action items or resources victims should consider
  - Supportive measures
  - Services available on- and off-site
  - Reporting options
  - Protection options

# Policy Management

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# Notice of Non-Discrimination

- Notice of Non-Discrimination
  - Provide to students, employees, applicants, and all unions or professional organizations with collective bargaining agreements
  - Publish **prominently** on institutional website and in handbooks or catalogs
  - Required elements:
    - TIXC contact information
    - Location of policy and grievance procedures
    - Instructions on how to make a report
    - Information about filing a complaint with OCR and other agencies with jurisdiction

# Title IX Policy and Procedures

- Title IX requires policies and procedures that facilitate resolution of sexual harassment and sex discrimination complaints
- **Policy**
  - Clearly define expectations and prohibited conduct
- **Procedures**
  - Govern how to resolve alleged policy violations in an equitable way



# Policy and Procedure Development

## Take Inventory of Existing Policies

- Harassment and discrimination P&P
- Student Conduct and Athletics policies
- Human Resources or Collective Bargaining Agreement policies
- State and federal laws

## Create and Implement Policy

- TIXC-led effort
- Values and mission alignment
- Reporting mechanisms
- Compliant
- Comprehensive
- Comprehensible
- Coordinate overlap and align with other policies

## Avoid Discriminatory Policies

- Cultural competency
- Bias-free language
- Training for professionals implementing procedures
- Ensure consistency of approach to discrimination complaints among policies
- Reduce inequities

# Activity: Policy Inventory

# Policy Inventory

- Time to make a list of all policies on which your TIX Office currently consults
- What is missing?
- What is the biggest risk and priority as of today?
- Where are all versions of your policies published?
  - Do they all consistently conform to each other?
  - Have previous policies or versions been clearly rescinded or archived?



# Assessing the Title IX Program

# Structuring the Title IX Team

- TIXC must ensure TIX Team is large enough to fulfill required separation of roles
  - To reduce conflicts of interest and bias, and manage attrition/turnover/burnout, TIXCs should overrecruit
- ATIXA Recommends:

<b>1</b>	<b>Title IX Coordinator</b>
<b>3-5</b>	<b>Deputy Coordinators</b>
<b>2-4</b>	<b>Investigators</b>
<b>5-8</b>	<b>Decision-makers</b>
<b>1-3</b>	<b>Informal Resolution Facilitators</b>
<b>4-6</b>	<b>Advisors (if they are appointed)</b>

# Structuring the Title IX Team

## Title IX Coordinator

- Unbiased and neutral
- Consider title, office location or department, supervisory responsibilities, and supervisor
- ATIXA recommends reporting to President/Cabinet-level

## Considerations for Building a Team

- Individual's workload and availability
- Conflict of interest or bias
- Role at institution
- Previous education, professional experience, or research
- Social media activity
- Social group memberships
- Volunteer affiliations

# Structuring the Title IX Team

## Deputy TIXCs

- Not required, but an effective practice
  - Designation by location
  - Designation by population
  - Designation by responsibilities
- Consider broad Title IX compliance needs
- Ensure Title IX responsibilities are included in employee job descriptions
- Can step in for TIXC when there is a conflict or the TIXC is otherwise unavailable

## Extended Title IX Team

- Legal Counsel
- Public Safety/Campus Police
- Mental Health Counselors
- Residence Life
- Fraternity and Sorority Life
- Prevention Services
- Student Health

# Assessing the Title IX Team

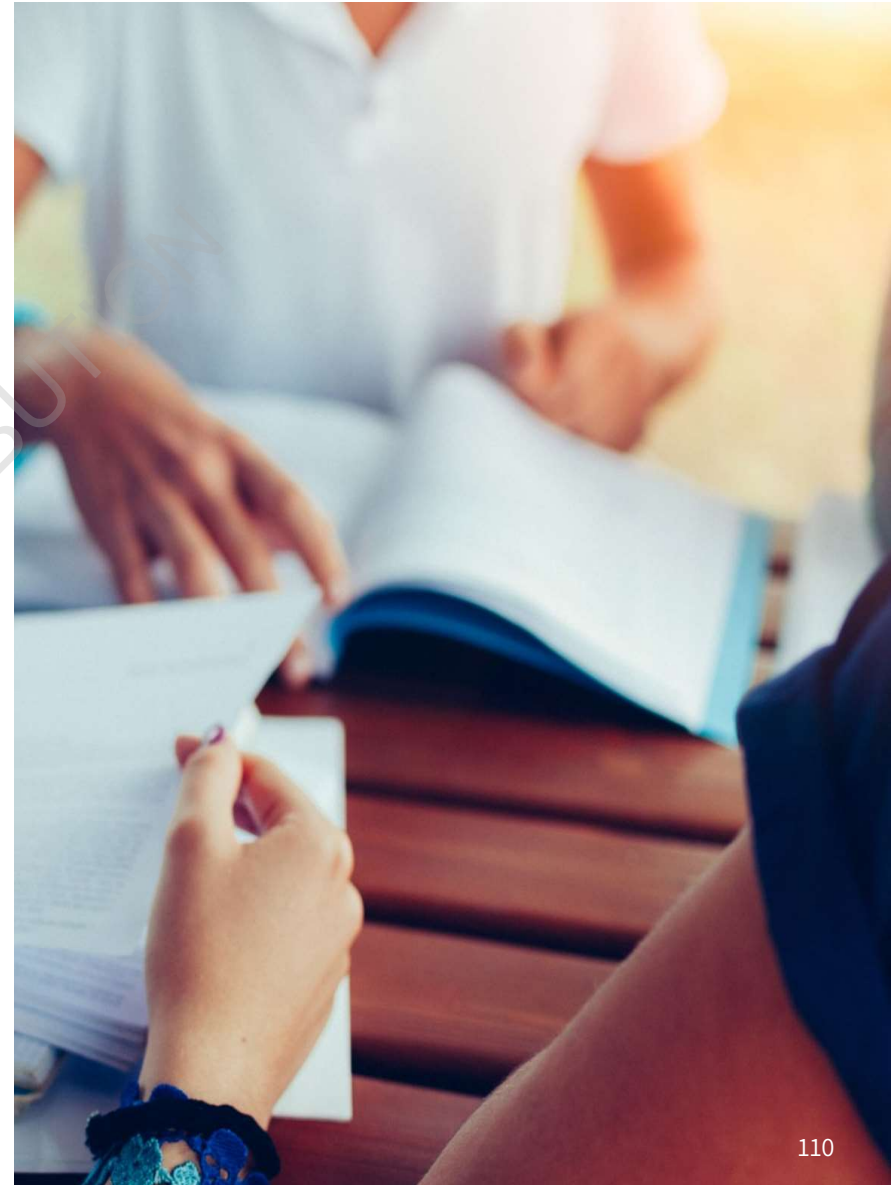
## Assess the Title IX team's:

- Mental and emotional health
- Reliability and resilience
- Impartiality/neutrality
- Confidentiality and privacy
- Trustworthiness
- Training and competence
- Investigation report writing
- Decision rationales (complete, appropriate, and well-reasoned)
- Cultural competence



# Assessing the Title IX Program

- Needs Assessment
  - Identify strengths
  - Identify program gaps
  - Barrier Analysis
  - Address areas of improvement
  - Assess resources
- Internal reviews/audits/assessments
- Complaint/investigation debriefing
- Benchmarking
- Climate Assessment



# Leveraging Title IX Coordinator Authority



## VISIBILITY

- Location
- Involvement
- Presence in spaces and places



## COLLABORATION

- Committees
- Programming
- Grants and Research



## RELEVANCE

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



## ACCESSIBILITY

- Email and phone responsiveness
- Language and tone

# Prevention

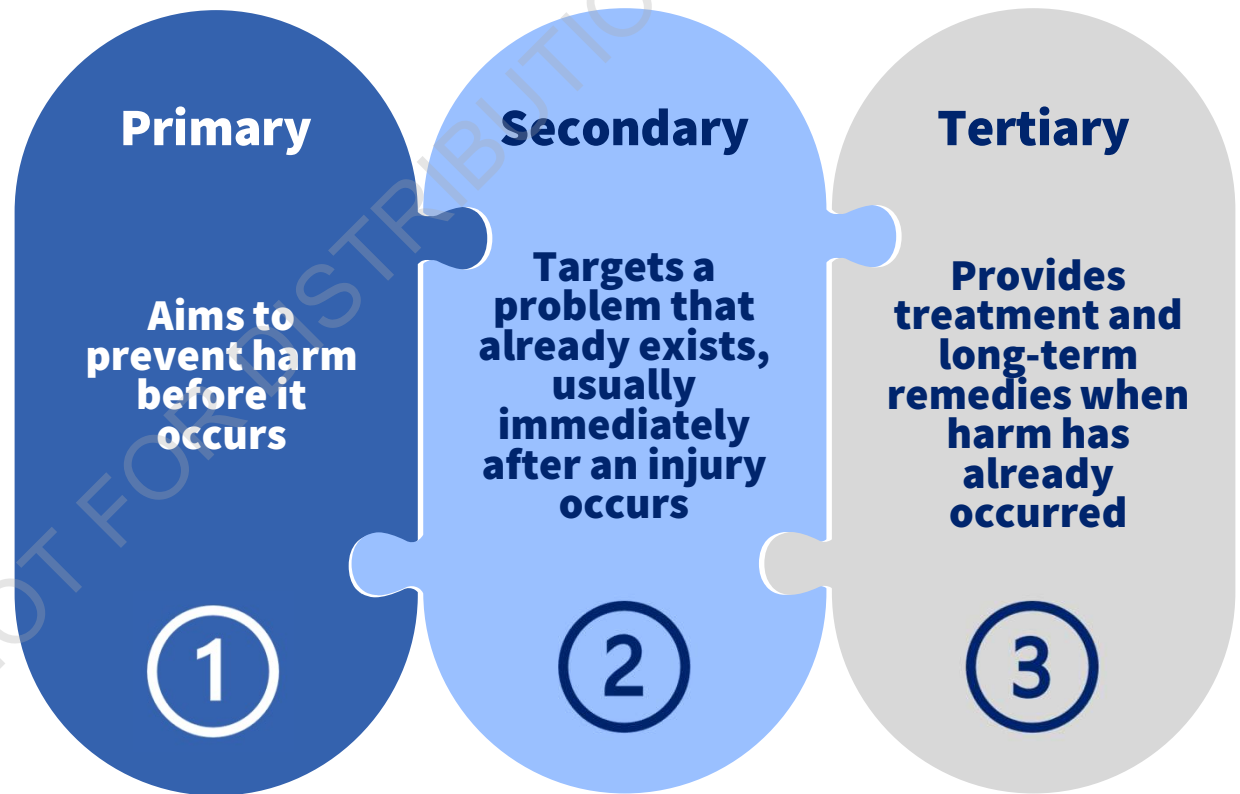
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# What is Prevention?

An integrated and collaborative approach to addressing multiple areas of wellness that is:

- evidence-based
- multi-layered
- directed at individual, community, and environmental levels



# Prevention vs. Training

## Prevention

Focuses on building awareness and teaching skills to stop potentially harmful behavior from occurring

## Training

Focuses on policies, procedures, and tasks that an individual needs to know how to follow or complete

- **Regulations require that Title IX Team be trained on:**
  - Definition of sexual harassment
  - Scope of the Recipient's education program or activity
  - How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
  - How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
  - Use of any technology to be used at a live hearing
  - Issues of relevance for investigations and hearings

# VAWA Prevention and Training

## VAWA Prevention Programming

- Programs tailored to each institution and its populations
- Directed to **all incoming students** and **new employees**
  - Institutional statement prohibiting sexual assault, dating and domestic violence, and stalking
  - Consent definition
  - Risk reduction
    - Example: bystander intervention programs

## VAWA Training

- Annual training for officials involved in investigating and/or resolving complaints:
  - Sexual assault, dating and domestic violence, and stalking
  - Conducting an investigation
  - Conducting a hearing
- Ensure training materials are neutral

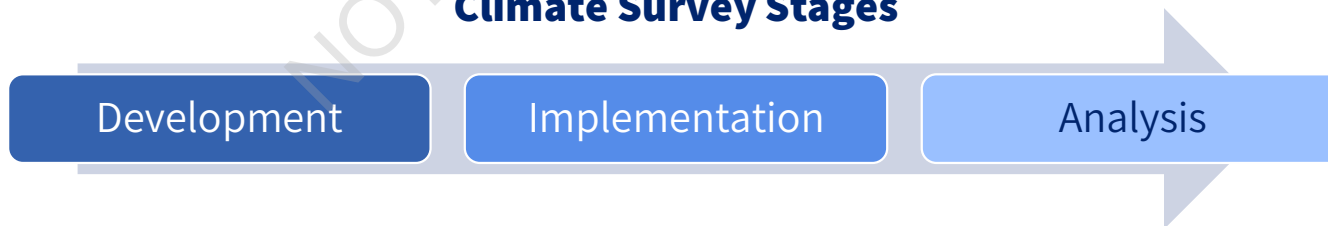
# Climate Surveys

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# Climate Surveys

- Learning about experiences with sexual harassment, sexual assault, dating and domestic violence, and stalking
  - Measure policy, procedure, and resource awareness levels
- Assist TIXC with monitoring the education program for barriers to reporting
- Move away from the frame that climate surveys are unpleasant or source of liability

## Climate Survey Stages



# Climate Survey Structure

- Demographic Questions
  - Provide the ability to narrow results
  - Create ability for comparison
- Experience and Perception Questions
  - Should be the bulk of the survey
  - Designed to gain a better understanding of the participants' experience
- ATIXA recommends targeted questions to evaluate how well individuals understand the existing policy and grievance procedures

# VAWA Climate Survey

## Still waiting...

- Included in 2022 VAWA Reauthorization
- Required every two years
- Publish campus-level results on website
- Questions will include:
  - Demographics
  - Incidence and prevalence of sexual harassment, sexual assault, dating and domestic violence, and stalking
  - Students' awareness of policies
- Institutions can add additional questions



# Trauma-Informed Practices

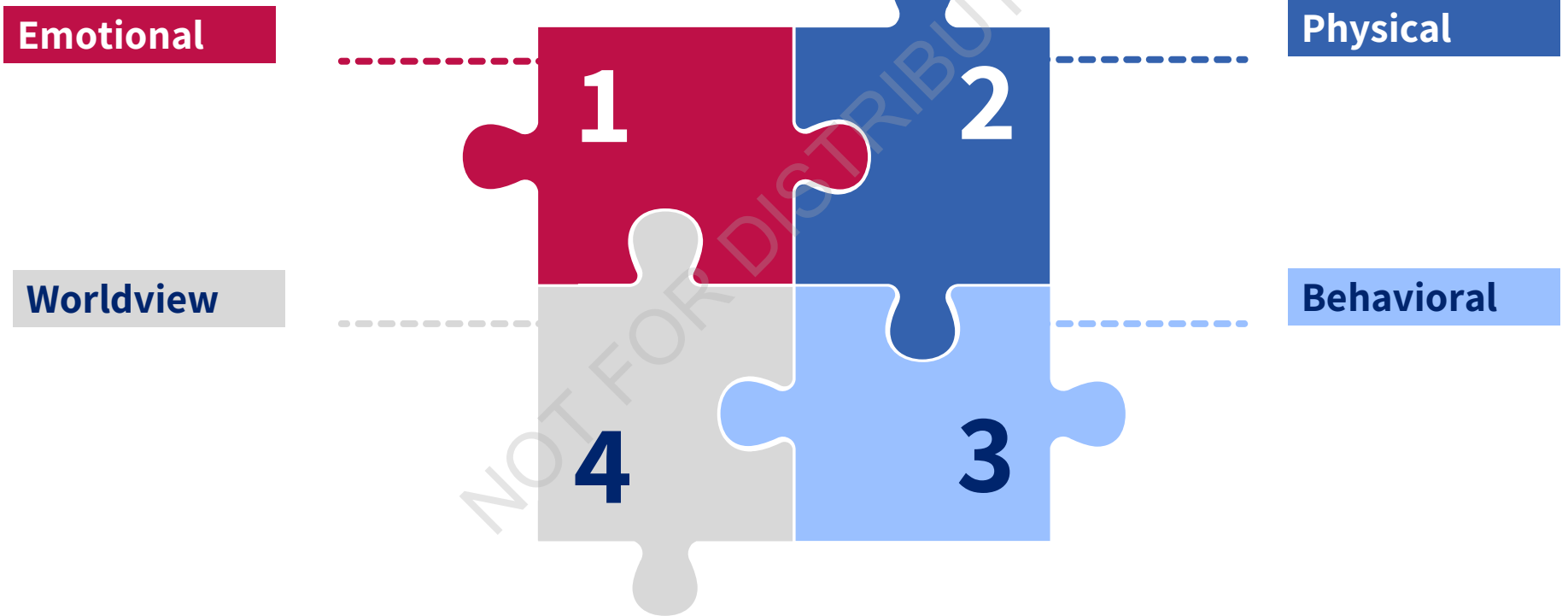
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# Trauma-Informed Practices

- **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



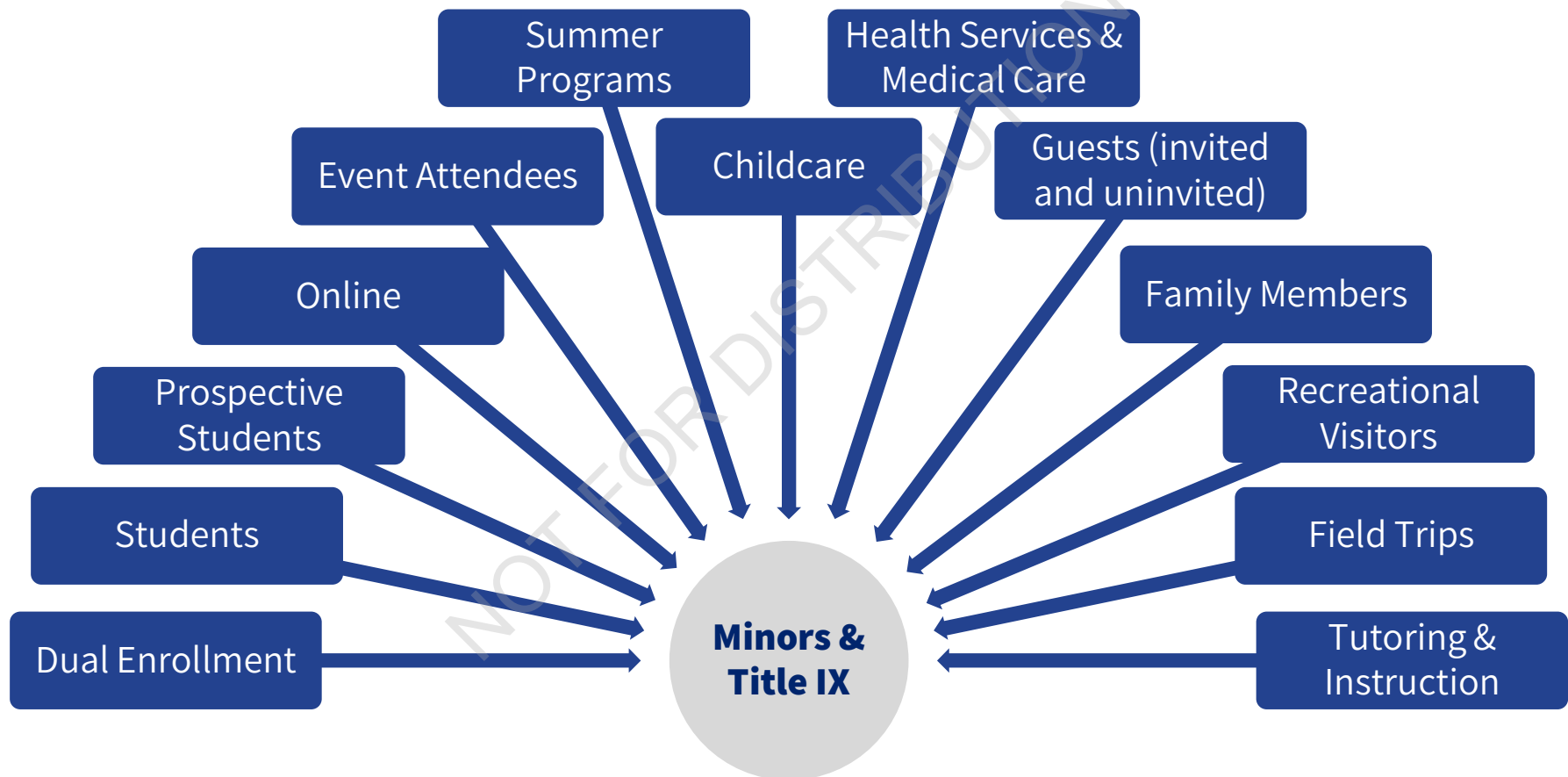
# Trauma-Informed Practices

- 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 way 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

# Minors and Title IX

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# Minors on Campus



# Common Challenges

- Policy provisions for minors on campus
  - Number of minors, location, responsibility, access
  - Training for those with access to minors or supervision of minors
  - Restrooms, locker rooms, residential facilities
  - Mandatory reporting for child abuse
- Children in classrooms
- Dual Enrollment

# Camps and Programs: Significant Assistance



## Not Ours

- Run by a different entity
- Other entity hires the staff
- Institution only rents out space



## Kind of Ours

- The money comes through a shell or through the institution
- Employees are students or temporary hires
- May use institution's name



## Completely Ours

- The money comes into the institution
- Staff are institutional employees
- Uses institution's name



# Sample Policy

## Abuse of Minors

In addition to having students who are minors enrolled, College/University hosts minors as guests and as participants in youth activities. State law narrowly imposes duties to report certain crimes involving minors and abuse to appropriate officials including mental health professionals, medical providers, school counselors, clergy, and law enforcement officers. Institution's protocol is that in addition to fulfilling the requirements of state law [insert here] **all employees will also promptly report all suspected child abuse, sexual abuse of minors, and criminal acts by minors** to the campus police/security office without delay. Clery Act reporting of offenses for statistical purposes occurs whether victims are minors or adults.





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**Questions?**

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