



Association of
Title IX Administrators

Title IX Coordinator Foundations Level Two: Notice, Initial Assessment, and Resolution Process for K-12 Education

Training and Certification Course

NOT FOR DISTRIBUTION

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

Content Advisory

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

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

Introduction



This course focuses on providing Title IX Coordinators with the foundational training to understand their role in the Title IX Grievance Process.



Title IX Coordinators will explore the essential components of the Title IX Grievance Process, including policy determinations and considerations for best practice.



Our goal is to provide a comprehensive foundation that will allow practitioners to serve their school/district with the robust skills necessary to excel in their roles and lead Title IX compliance with confidence.

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

Title IX

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

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

Title IX has always mandated a response to sex discrimination; however, the 2020 Title IX Regulations **only** apply to sexual harassment complaints



Applicability

- Education program or activity in the United States
- School/District has control over the harasser
- School/District has control over the context of the harassment
- Applies to both students and employees
- Out-of-school jurisdiction is limited with regards to Title IX



Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access and Equity

Retaliation

Sexual Harassment

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

Sex Discrimination

- **Sex Discrimination** encompasses:
 - Unfair treatment based on sex*
 - Exclusion from participating on the basis of sex
- **Disparate Treatment:** occurs when a school/district policy, practice, or procedure (or an agent thereof) **intentionally** discriminates

*Defined as biological sex assigned at birth

Sexual Harassment Definitions

- **Hostile Environment**

- Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the school/district's education program or activity

- **Sexual Assault** includes:

- Rape
 - Fondling
 - Incest
 - Statutory Rape

ATIXA Model Policy Definitions

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



Title IX Compliance Elements

Essential Compliance Elements

The requirement to **Stop, Prevent, and Remedy** guides school/district response in their compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and school/district levels

3

REMEDY the effects of discrimination, on both individuals and the school/district

Title IX Compliance Oversight

- School/District responses must not be **deliberately indifferent** to known sex discrimination or sexual harassment **AND**
- School/District must act **reasonably in light of known circumstances** to stop, prevent, and remedy
- A school/district is deliberately indifferent when:
 - The school/district has **actual notice** of harassment,
 - The harassment is **severe, pervasive, and objectively offensive**, and
 - The indifference is **systemic** in nature

Title IX Coordinator (TIXC) Role

- Mandated by Title IX Regulations
- Oversees school/district Title IX compliance
- Responsibilities fall into two categories:
 - Responding to reports or complaints of sex discrimination, sexual harassment, and retaliation
 - Leading efforts to ensure Title IX compliance across the entire school/district
- Must ensure the school/district response to reports of potential Title IX violations is not deliberately indifferent



TIXC Oversight Responsibilities

- Assess compliance efforts and program effectiveness
 - Create and disseminate annual compliance report
- Develop and maintain accurate web and print-based Title IX publications
- Oversee complaint resolution process and program compliance
- Maintain Title IX records
- Manage policy and procedures prohibiting sex discrimination and harassment
- Recruit, supervise, and train Title IX team
- Track systemic issues or patterns
 - Take remedial action to prevent recurrence

Title IX Grievance Process

Due Process for K-12



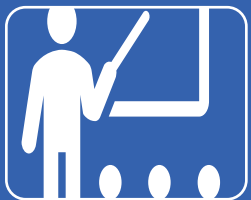
Regulatory requirements under Title IX

- Prescriptive procedures for formal and informal grievance process
- Applies to both students and employees



Fundamental fairness for students in disciplinary procedures

- Flows from Goss v. Lopez
- Specific requirements for students with disabilities



Procedural protections for employees

- State law requirements for some or all positions
- Procedural protections from collective bargaining agreements

Title IX Grievance Process Overview

INCIDENT

- Formal Complaint/ Notice to TIXC

INITIAL ASSESSMENT

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

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

DECISION-MAKING

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

APPEAL

- Appeal Grounds
- Determination and Rationale

Prompt and Fair Resolution

■ Prompt Resolution

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

■ Fair Resolution

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

Parties' Rights

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

Parent/Guardian Rights

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



Law Enforcement

- TIXC should assist Complainants who wish to report to law enforcement (LE)
- **Criminal investigations do not relieve a school/district of its duty to respond** promptly and effectively
 - Applies different laws/policies and a different standard of evidence
 - Criminal investigation process is separate from Title IX Grievance Process
 - FERPA protections limit sharing with LE
 - School/District can use information LE provides



Reports, Complaints, and School/District Notice

When is the School/District “On Notice”?

INCIDENT

- Complaint/
Notice to TIXC

INITIAL ASSESSMENT

- Jurisdiction
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- Informal/
Formal Resolution

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All K-12 Employees: Mandated Reporters

- The school/district is “**on notice**” of discrimination or sexual harassment when a report is made to:
 - **TIXC**, or
 - **Any employee** of the school/district is made aware of the incident or concern
- Notice includes information K-12 employees witness, hear about, or receive a written or verbal complaint about, including from parents/guardians
- **In addition to other applicable mandated reporting:**
 - Abuse/child abuse of minors
 - Supervisors/managers under Title VII
 - Any other mandated reporting under state law or district policy

Point Person for Reports and Complaints

- **TIXC (or designee) receives all reports or complaints** regarding sex discrimination, sexual harassment, and retaliation
 - The TIXC oversees school/district Title IX efforts
 - School/District may designate multiple entry points for receipt of information
 - Deputy Title IX Coordinator(s)
- **TIXC contact information** must be included within:
 - The school/district's website
 - All handbooks or guides provided to applicants, students, employees, and unions

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 sex discrimination or sexual harassment
 - Complainant must be **participating or attempting to participate** (P/ATP)

Parents/Guardians Involvement

- Title IX Regulations require (implicitly) that school/district notify parents/guardians of a reported incident
 - Inform parent/guardian of grievance process and opportunity to file Formal Complaint
- Parents/Guardians ultimately guide whether to file a Formal Complaint
 - TIXC may **facilitate dialogue** when a student and their parents/guardians differ
- Parents/Guardians are permitted to and often are present with their student throughout the process, but some families do not participate, depending on the age of the party

ATIXA recommends having open communication with parents/guardians and practicing good documentation

Reporting Considerations

- Online reporting form
- Allow anonymous reports
- Take all reasonable steps to follow the Complainant's wishes
 - School/District must respond effectively and prevent harassment of other students and/or Complainant
- If TIXC takes no formal action in response to a report, document rationale



Initial Assessment

Initial Assessment Overview

INCIDENT

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- Jurisdiction
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Measures
- Emergency
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Another
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- Informal/
Formal
Resolution

FORMAL INVESTIGATION

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Intake Following a Report/Complaint

- TIXC (or designee), should **always reach out to the Complainant** and parents/guardians (for student reports)
 - This is both best practice and a regulatory requirement
- **Outreach includes:**
 - Introduction to Title IX and staff
 - Reason for the outreach
 - Explore facts, but not interviewing
 - Offer to meet/speak over the phone; include right to an 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

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

PPTVWM

- Incident must fall within Title IX jurisdiction and allege sex discrimination or sexual harassment
- TIXC does not become a party to the complaint
- If the school/district proceeds, must notify the Complainant and offer appropriate supportive measures



Requests for Confidentiality

A Complainant may ask to remain anonymous and/or decline investigation

- TIXC must still conduct PPTVWM analysis
 - Employee reports may also require action despite Complainant's wishes
- Due process dictates that a Complainant's identity must be shared during a Formal Grievance Process
- Remind that the school/district maintains privacy and the prohibition on retaliation
- Provide supportive measures
- **Consider what steps school/district can take to stop, prevent, and remedy**
- The process will still be available to them, regardless of how long they wait
- School/District will take whatever action it can at that time

Title IX Jurisdiction Assessment

TIXC (or designee) conducts 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?
 - Participating or attempting to participate?
- Who is the Respondent?
 - Control over the Respondent?
- Does the school/district have control over the context of the alleged harassment?



Jurisdiction Evaluation

- **Yes, or arguable Title IX jurisdiction:** move forward with Title IX Grievance Process
- **No:** determine whether an alternate policy or process applies
 - Dismiss the complaint under Title IX
 - Provide support/resources to the Complainant and/or school community
 - Address “downstream” effects
 - Consider whether another policy applies and refer



Dismissal under Title IX

Dismissal Procedures Apply to Both



Mandatory Dismissal (required under Title IX)



Discretionary Dismissal (TIXC discretion)

Mandatory Dismissal

TIXC must dismiss the Formal Complaint at any time prior to a determination, if:

- The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Title IX Regulations even if proved, **and/or**
- The conduct did not occur in the school/district's education program or activity, **or**
- The conduct did not occur against a person in the United States, **or**
- 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

TIXC may dismiss the Formal 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
- School/District no longer employs or enrolls Respondent
- Specific circumstances prevent the school/district from gathering sufficient evidence for a determination
- **Parties can appeal**

Dismissal Procedures and Appeals

- **Promptly notify parties in writing**; include appeal information
- Continue to provide supportive measures
- **Refer the complaint** to another process if applicable
- **Appeal procedures**, generally:
 - Appeal Decision-maker(s) must be trained; must not have been involved in the complaint so far
 - Parties have an equal opportunity to respond to an appeal request, in writing
 - Written notification of appeal decision, including rationale, to parties

Downstream Effects

- Always consider what steps the school/district can take to address in-program effects of out-of-program conduct
- Provide support and resources to the Complainant
- Provide support and education to the school community (when appropriate)
- Determine if there are patterns or systemic variables that contributed to the alleged incident
- Take what action school/district can (e.g., trespass the person)



Students with Disabilities

- **TIXC should consult** with:
 - One or more members of the student's Individualized Education Program (IEP) team; **OR**
 - One or more members of the group of persons responsible for the student's placement decision
- Consult throughout the Title IX Grievance Process to determine how to comply with the requirements of:
 - Individuals with Disabilities Education Act (IDEA)
 - Section 504 of the Rehabilitation Act (Section 504)
- Includes decisions related to emergency removal

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 the determination



Emergency Removal Considerations

Consider:

- Existing culture of frequent interim suspensions for other student conduct issues must adapt to apply Title IX procedures
 - School-based administrators acting without consulting TIXC
 - Demands to remove Respondent when not indicated by safety and risk analysis
- Establishing procedures for conducting the safety and risk analysis
- Developing a process for Respondent to challenge the decision
- Applying manifestation determination when needed
- **Emergency removal should not create undue delay in the grievance process timeline**

Administrative Leave

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



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 IEP/504 administrators when appropriate
 - If not provided, document the rationale for refusal
 - Measures may be continued, modified, or ended at conclusion of the Title IX Grievance Process

Example Supportive Measures

School Counseling/ Health Services	Employee Assistance Program	Community Education	Alternate Work Arrangements
Safety Planning	Safety Escorts	Transportation Assistance	Contact Limitations
Academic Support	Trespass Orders	Emergency Notifications	Increased Security

Informal Resolution

- **Not available for employee-on-student harassment**
- TIXC must
 - Agree to the use of IR for each request
 - **Obtain written consent** of the parties and their parents/guardians
- Not defined by regulations, but **procedural requirements apply**
 - **Available** following a Formal Complaint, up to final determination
 - Conducted by trained IR Facilitator; should not be the same as the assigned DM
 - Parties may withdraw from IR at any time prior to agreement
- Must stop, prevent, and remedy with documented response

Informal Resolution Options

- Age-appropriate education, facilitated dialogue, and discussion
- Conflict coaching
- Mediation (including shuttle mediation)
- Negotiated resolution to make permanent supportive measures
- Restorative practice methods:
 - Circles
 - Conferences



ACTIVITY: Case Study

Case Study

- Three high school juniors entered a school stairwell during lunch period
- Steven and Anjali started to make out; Steven also put his hands up Anjali's shirt, unfastened her bra, and touched her breasts
- Although she consented to making out, Anjali did not expect Steven to go up her shirt
- Unbeknownst to Anjali, the third student, Leo, was filming Anjali and Steven making out
- Leo's video shows everything that happened, and Anjali's exposed breast was clearly visible for a few seconds on the video
- Leo Snapchatted the video to about 30 members of the junior class; several of whom circulated it to others in the school
- The next day, other students taunted Anjali and called her a "slut" in the hallway

Case Study Discussion

- How does Title IX apply to this situation?
- Who should be involved in a school/district response?
- What supportive measures should the school/district make upon receiving this report?

Investigation Oversight

Investigation Overview

INCIDENT

- Complaint/
Notice to TIXC

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Who Should Investigate?

- Investigator(s) may not be the 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

**Dedicated
Investigator(s)**
(including external)

Investigator Pool
(could include district-level,
school-level, or external)

**Coordinator as
Investigator**

Investigation Steps

1. Receive notice/Formal Complaint
2. Initial assessment and jurisdiction determination
3. Determine basis for investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish investigation strategy
6. Conduct comprehensive investigation
7. Draft investigation report
8. TIXC reviews draft report and evidence
9. Parties review draft report and evidence
10. Final investigation report

INCIDENT INVESTIGATION
SUMMARY

Incident Date:
Review Date:
by:
Summary:
Root Causes:

Establishing Investigation Foundation

- **Three bases for investigations:**
 - Incident
 - Pattern
 - Climate/Culture
- **TIXC determines the scope of the investigation**, which includes:
 - Allegations
 - Timeframes
 - Parties subject to the investigation
- **TIXC provides the Notice of Investigation and Allegations (NOIA)** letter
 - Sent to all parties, simultaneously

Notice of Investigation and Allegations

NOIA includes:

- Notice of the allegations and known details, such as identities or the parties
- A description of the alleged conduct and relevant policy provisions
- Information about grievance procedures
- Presumption that Respondent is not responsible
- Supportive measure available
- The rights of the parties
- Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
- Statement prohibiting retaliation

Investigation Strategy Considerations

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

- Establish investigation timeline
- **Party Interviews**
 - With Advisors, and/or parents/guardians present
- **Witness Interviews**
- **Evidence Collection**
 - Evidence available in school/district's possession
 - Evidence provided by parties or witnesses
 - Other relevant evidence gathered by the Investigator(s)
- **Credibility Assessment**

Understanding Evidence

- The burden to gather evidence is on the school/district, not the parties
- Duty to collect and objectively evaluate 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



Evidence Issues

- Connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon in the investigation report
- Decision-maker(s) ultimately determine what is relevant, directly related, or neither
- Heightened privacy and limitations on:
 - Evidence of a Complainant's sexual predisposition or prior sexual conduct
 - Medical records and information
 - Information subject to a privilege

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



Complainant's Sexual Predisposition and Sexual Behavior

- 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

Party and Witness 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



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?



Investigation Report Process



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 school/district does not intend to rely
 - Include exculpatory and inculpatory evidence
- **Investigator must:**
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
- Investigator (or TIXC) sends the final investigation report to the parties and Advisors for review 10 days prior to the decision-making phase

Process Delays

Investigations must be completed within a reasonably prompt timeframe; **avoiding undue delays**

- Investigations must proceed during school break
- 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



Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice
- “Of choice” truly means anyone
- Parents/Guardians may serve as Advisors or may accompany their student in addition to a separate Advisor
- Investigators may establish participation ground rules; must be applied equitably
- Parties may request an Advisor be provided by the school/district for the purposes of a live hearing
 - Schools/Districts may choose to appoint an Advisor earlier in process
- No obligation to provide or train Advisors, but school/district can choose to do so

Decision-making

Decision-Making Overview

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APPEAL

- Appeal Grounds
- Determination and Rationale

Roles and Responsibilities

- TIXC and Investigator(s) may not serve as a DM
- DM can be a single person or a panel

Title IX Coordinator

- Oversees process
- Facilitates scheduling and communication
- Ensures sanction compliance
- Implements remedies
- Provides school/district memory and precedent information
- Trains DM
- Maintains Title IX records

Decision-maker(s)

- Receives investigation report and evidence file from Investigator
- Facilitates exchange of relevant questions
- Determines relevance of evidence
- Assesses credibility
- Makes findings of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

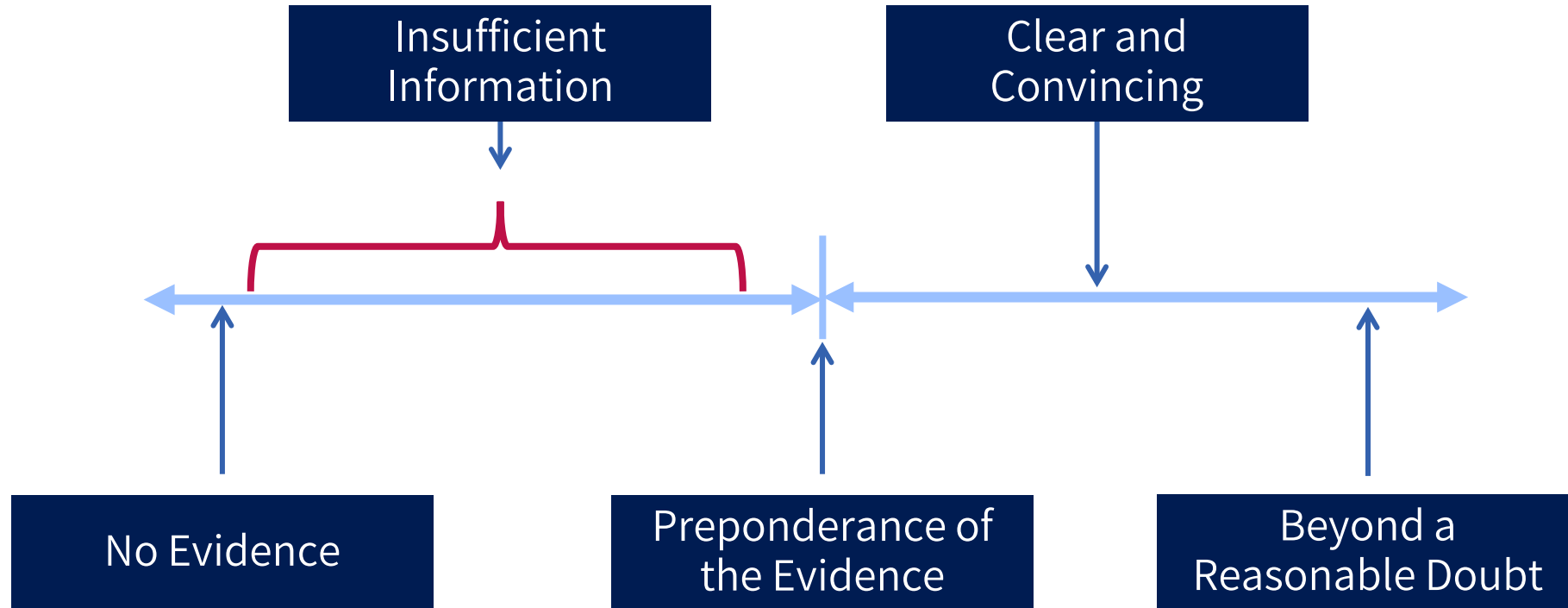
Process Steps

- Decision-maker (DM) reviews full investigative report and evidence
- Must wait 10 days from the time Investigator sends final report and evidence to parties to the DM making their determination
- Title IX Grievance Process requires the DM to facilitate either:
 - A live hearing
 - An opportunity for parties to submit written relevant questions to the other party and any witnesses, receive written answers, and ask limited follow-up questions
 - DM vets questions for relevance

Determinations

- DM **evaluates the relevant evidence** gathered by the Investigator and must consider both inculpatory and exculpatory evidence
 - Each allegation is considered individually for each Respondent
- DM **applies the standard of evidence** to make determination
 - Standard of evidence options include:
 - **Preponderance of the evidence**
 - Clear and convincing evidence
 - Standard of evidence must be consistent for all Formal Complaints of sexual harassment
- DM determines whether the Respondent violated school/district's policy
- Coordinate/integrate disciplinary procedures for students with disabilities (if applicable)

Standard of Evidence



Written Determinations

- **Written Determination**

- Authored by DM(s)
- TIXC/legal counsel reviews
- TIXC communicates to the parties and parent/guardian simultaneously in writing

- **Finality**

- On the date the school/district provides a written appeal determination **OR**
- The date when an appeal would no longer be timely

Written Determination Elements

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

Sanctioning Considerations

Sanctions must be reasonable and reflect the severity of the behavior:

- May consider:
 - Prior misconduct
 - Precedent
 - Attitude (exercise caution)
 - Collateral and/or multiple violations
- What best compensates for loss or injury to Complainant, school/district, or others?
- Should consider the educational impact on the Complainant and Respondent

Common Student Sanctions

- Alcohol/drug assessment and counseling
 - Alternative placement
 - Counseling
 - Detention
 - Discretionary sanctions
 - In-school-Suspension
 - Limited access to school activities
- Loss of privileges
 - Online education
 - Out-of-school Suspension
 - Expulsion
 - No contact orders
 - Warning (preferably written)
 - Volunteer/Service hours

Common Employee Sanctions

- Counseling
 - Discretionary sanctions
 - Loss of annual raise
 - Loss of privileges
 - Loss of supervisory or oversight responsibilities
 - Paid or unpaid leave
- Probation
 - Performance improvement/management process
 - Reduction in pay
 - Termination
 - Training
 - Warning (preferably written)

Appeals

Appeal Overview

INCIDENT

- Complaint/
Notice to TIXC

INITIAL ASSESSMENT

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

FORMAL INVESTIGATION

- Notice of
Investigation
and
Allegations
- Interviews
- Evidence
Collection
- Draft Report
- Party Review/
Comment
- Follow Up
- Final Report

DECISION- MAKING

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

APPEAL

- Appeal
Grounds
- Determination
and Rationale

Appeals Considerations

Must offer a fair appeal process

- School/District's policy should include grounds and process for appeal
- School/District must provide information in writing to parties and Advisors about the appeal process
- One level of appeal is best practice
- Typically document-based review for error only (not a new consideration)
- Deference is given to the original DM

Grounds for Appeal

Must offer appeals on the following grounds:

- 1** Procedural irregularity that affected the outcome of the matter
- 2** New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter
- 3** Conflict of interest or bias by the TIXC, Investigator, DM that affected the outcome of the matter

Schools/Districts have the discretion to add additional appeal grounds

Appeals Determinations

Appellate 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 DM for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturning** the determination (not recommended)
- Cannot be TIXC or serve another role in the same complaint resolution

Employee Complaints

Employee Complaints: Overview

Title VII of the Civil Rights Act of 1964: prohibits discrimination on the basis of race, color, religion, **sex**, or national origin in employment

- Title IX intentionally mirrored Title VII
- Employees are protected under both Title VII and Title IX
- Title IX extends significant due process protections for at-will employees accused of misconduct than Title VII
- Potential disparities in employee processes for Title VII-based sexual harassment
- Potential conflicts with collective bargaining agreements

Employee Complaint Considerations

When an employee is a party in a Title IX complaint, the following should be considered:

- Role of school compliance/AA/EEO officer
- Role of Human Resources
- Oversight of Deputy Coordinators/Investigators
- Ability to merge/combine investigation and hearing processes
- Required disclosure of employee information (e.g., outcome and any discipline taken) that would typically remain confidential
- Additional rights afforded to employees under Title IX



Retaliation Prevention and Remediation

ATIXA Model Policy Definition: Retaliation

- Intimidation, threats, coercion, or discrimination against any person
 - By the school/district or another person:
 - For the purpose of interfering with any right or privilege under Title IX, **OR**
 - Because the person has made a report or complaint, **OR**
 - Because the person testified, assisted, participated or refused to participate in any manner in any part of a Title IX Grievance Process
-
- Cannot require students or employees to participate as parties or witnesses
 - Retaliation allegations should be resolved under the Title IX Grievance Process

Retaliation

Title IX prohibits retaliation against any person who has:

- Made a report or complaint, or
- Participated or refused to participate in any Title IX Grievance Process

Retaliation could include:

- Intimidation, threats, coercion
- Discrimination by a student, employee or person authorized to act for the school/district



School/District Obligations

TIXC must:

- Ensure retaliation is expressly prohibited under school/district's policy
- Inform parties and witnesses of protection from retaliation
- Monitor for any retaliation
- Provide a process to address retaliation complaints
- Ensure Investigators and other applicable Title IX Team members are trained on how to analyze retaliation claims

FERPA and Recordkeeping

Family Education Rights and Privacy Act (FERPA)

- Parents/Guardians have the right to “**inspect and review**” their students’ education records
- Title IX Grievance Process protects privacy, but avoid promising “confidentiality”
- Recommend obtaining consent of the parents/guardians of other student(s) whose information will be disclosed, especially student witnesses
- FERPA cannot be construed to conflict with or prevent compliance with Title IX, including requirement to notify all parties of the outcome



Recordkeeping

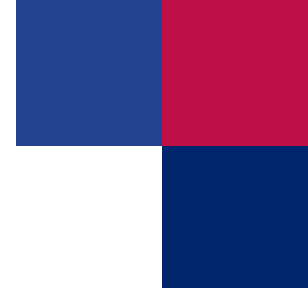
- **School/District must maintain records for a minimum of seven (7) years:**
 - Sex discrimination, sexual harassment, and retaliation complaints, including determination with rationale and discipline
 - Appeals and results
 - Informal Resolutions
 - Supportive measures and remedies
 - Training materials
- Document how the school/district response was **not deliberately indifferent**



Questions?

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