



Association of  
Title IX Administrators

# Investigation Foundations for Higher Education

Training and Certification Course

# WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting [www.atixa.org/atixa-event-lobby](http://www.atixa.org/atixa-event-lobby) in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
- If you have not registered for this course, an event will not show on your Lobby. Please email [events@atixa.org](mailto:events@atixa.org) or engage the ATIXA website chat app to inquire ASAP.





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 course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

# Course Introduction



The 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 today 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

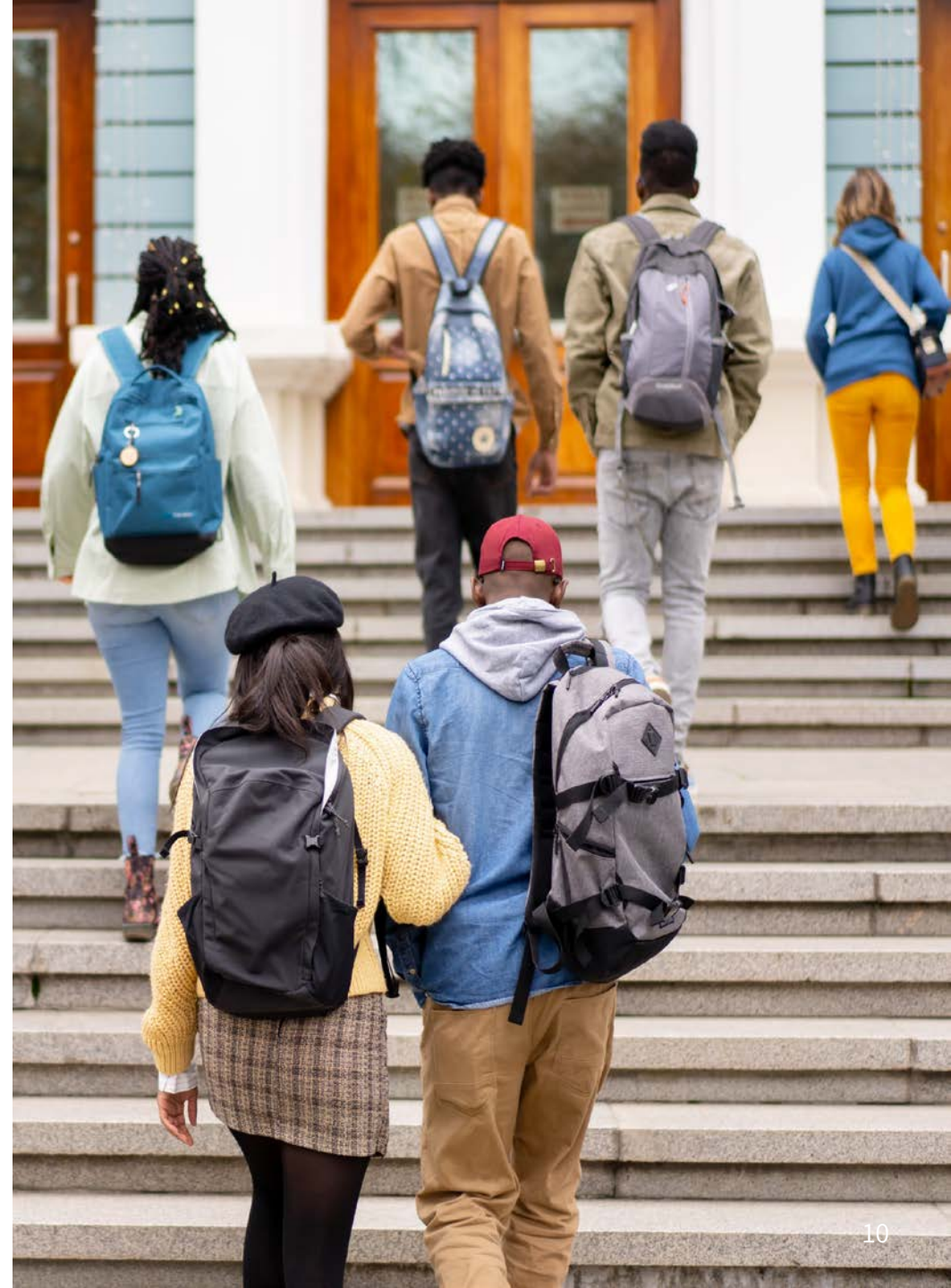
## Retaliation

## 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

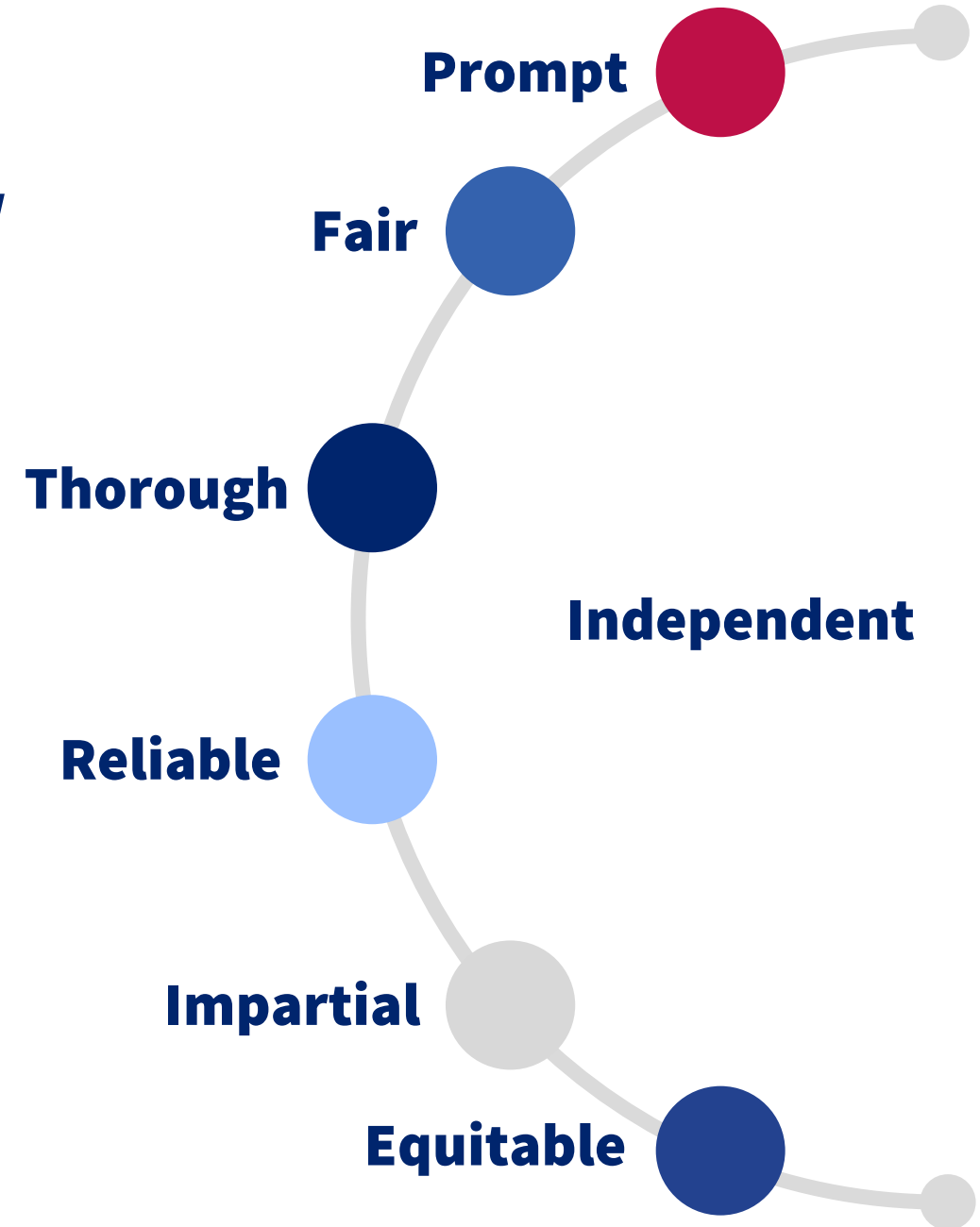
- Consent
- Retaliation
- Common additional offenses
  - Sexual Exploitation
  - Harm/Endangerment
  - Discrimination
  - Intimidation
  - Hazing
  - Bullying



# 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



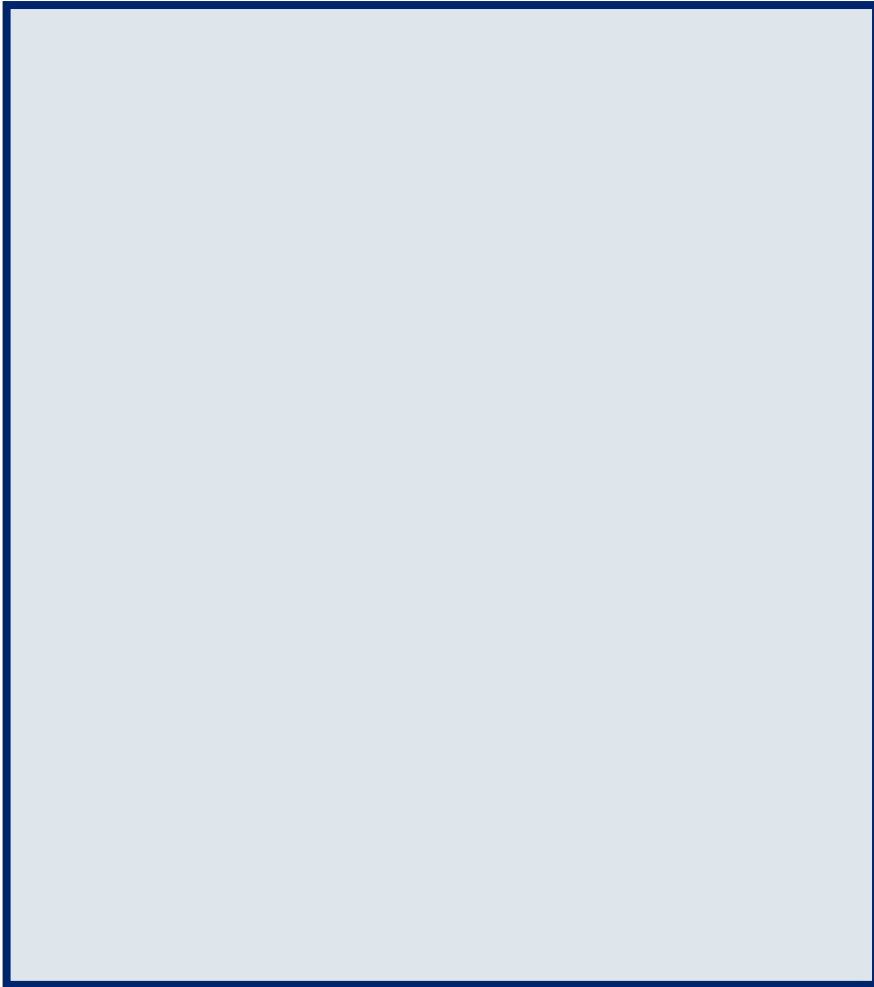


# Bias and Conflicts of Interest

- 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

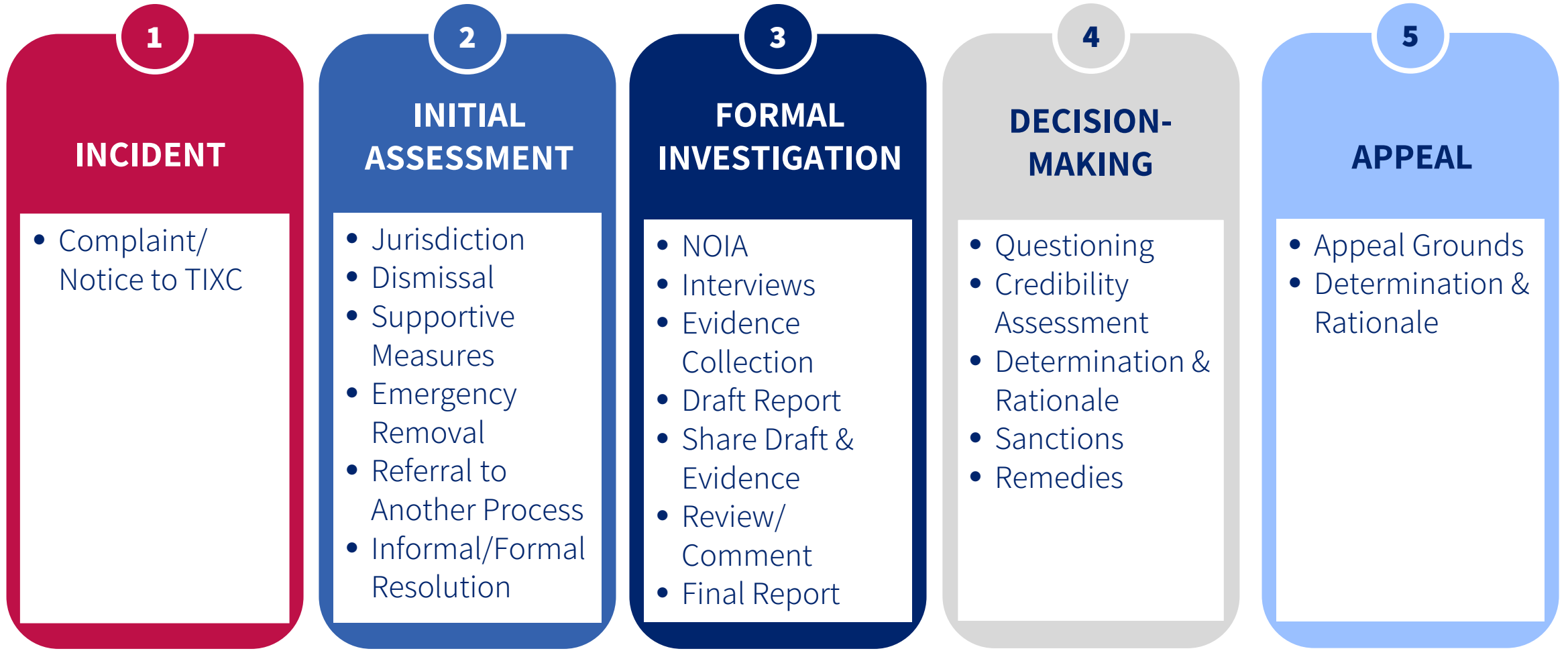
# Activity: Recognizing Bias

# 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
- 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



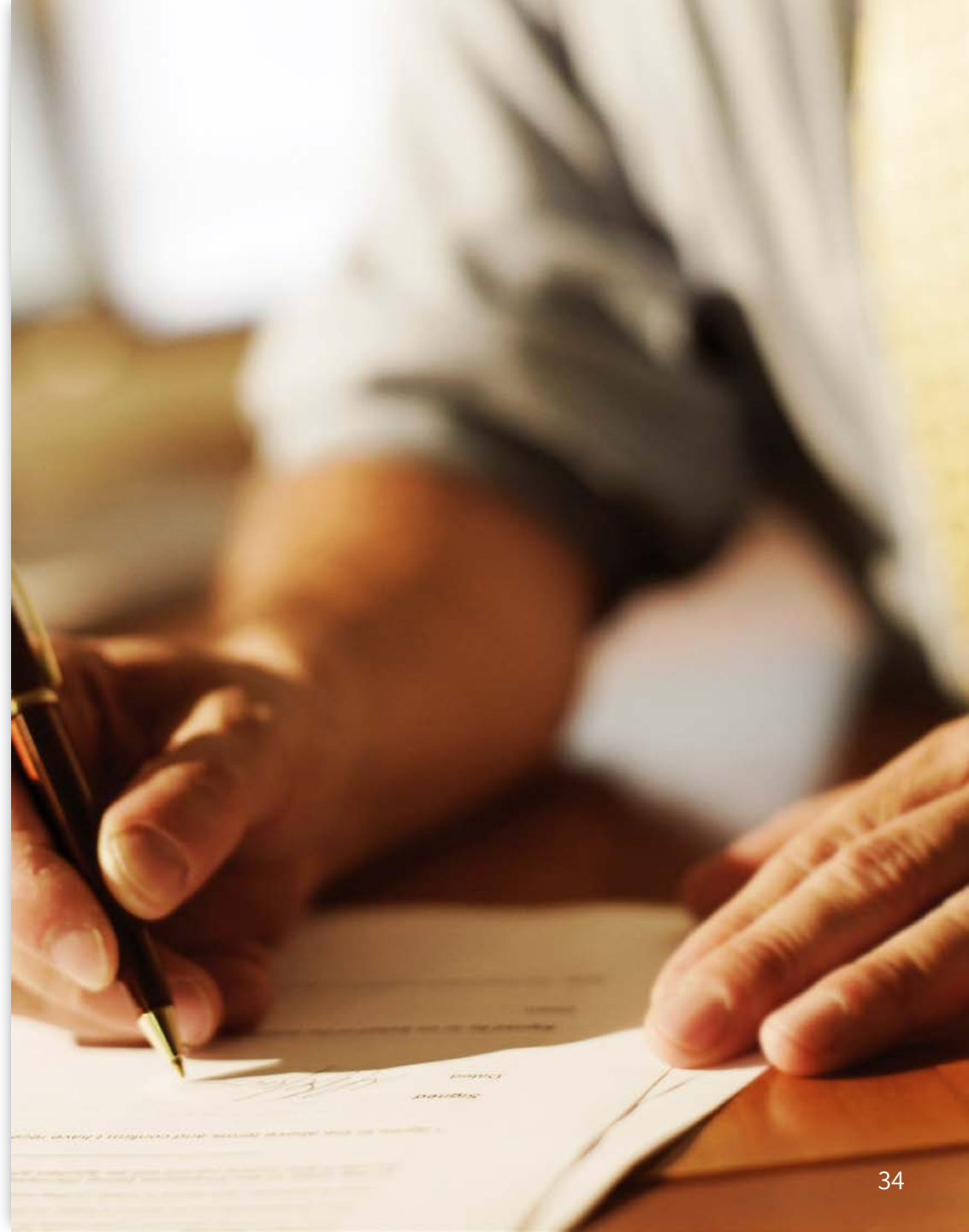
# Step 3: Determine a Basis for Investigation

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

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

# 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**

INCIDENT INVESTIGATION  
SUMMARY

Incident Date:

Review Date:

by:

t Summary:

Root Causes:

# Step 4: Notice of Investigation and Allegations

- The Notice of Investigation and Allegations (NOIA) letter is sent to all parties simultaneously
- 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
- 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 change during the investigation

# Recordkeeping

# Recordkeeping

- Investigator is responsible for developing and maintaining an **Investigation File** through the duration of the investigation
- Investigation File includes:
  - 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)

# Recordkeeping

- Investigation File includes:
  - Collected evidence and evidence log
  - 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

# Contact Log Example

## CONTACT LOG

Staff Member: Alicia Harrison

Date(s) for Communication Log: January 2023 to March 2023

### Communications Log

DATE	TIME	NAME OF CONTACT	TYPE OF COMMUNICATION (EMAIL, PHONE, IN PERSON)	COMMUNICATION NOTES	RESOLUTION PROVIDED AND FOLLOW-UP NEEDED
01/25/2023	1:00pm	Sam Smith	Phone	Discussed getting emails from IT	Received emails from IT on 01/26/2023
01/27/2023	2:00pm	Sally Harris	Email	Sent an email to Complainant to schedule <u>interview</u> .	Scheduled interview with Complainant for 01/29/2023.
01/29/2023	3:00pm	Sally Harris	In Person	Investigation Interview	Interviewed Complainant – send transcript to Complainant for verification.

# Evidence Log

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

# Evidence Log Example

## EVIDENCE LOG

Staff Member: Alicia Harrison

Date(s) for Communication Log: January 2023 to March 2023

DATE OF RECEIPT	SOURCE	METHOD OF RECEIPT	TYPE	DESCRIPTION	AUTHENTICATION
01/25/2023	Sam Smith	Email	Security video footage; Thumb drive	Elevator video footage from 12/10/22 9:10 pm to 10:10 pm	Closed circuit from Public Safety
01/27/2023	Sally Harris	Social Media Screenshot	Social media screenshot	Post made from 12/10/22 by Respondent at 9:22 pm	
01/29/2023	Sally Harris	In Person	Call record	Phone call log from Complainant's phone carrier	Copy of the phone record from the Complainant's record



# 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



## 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

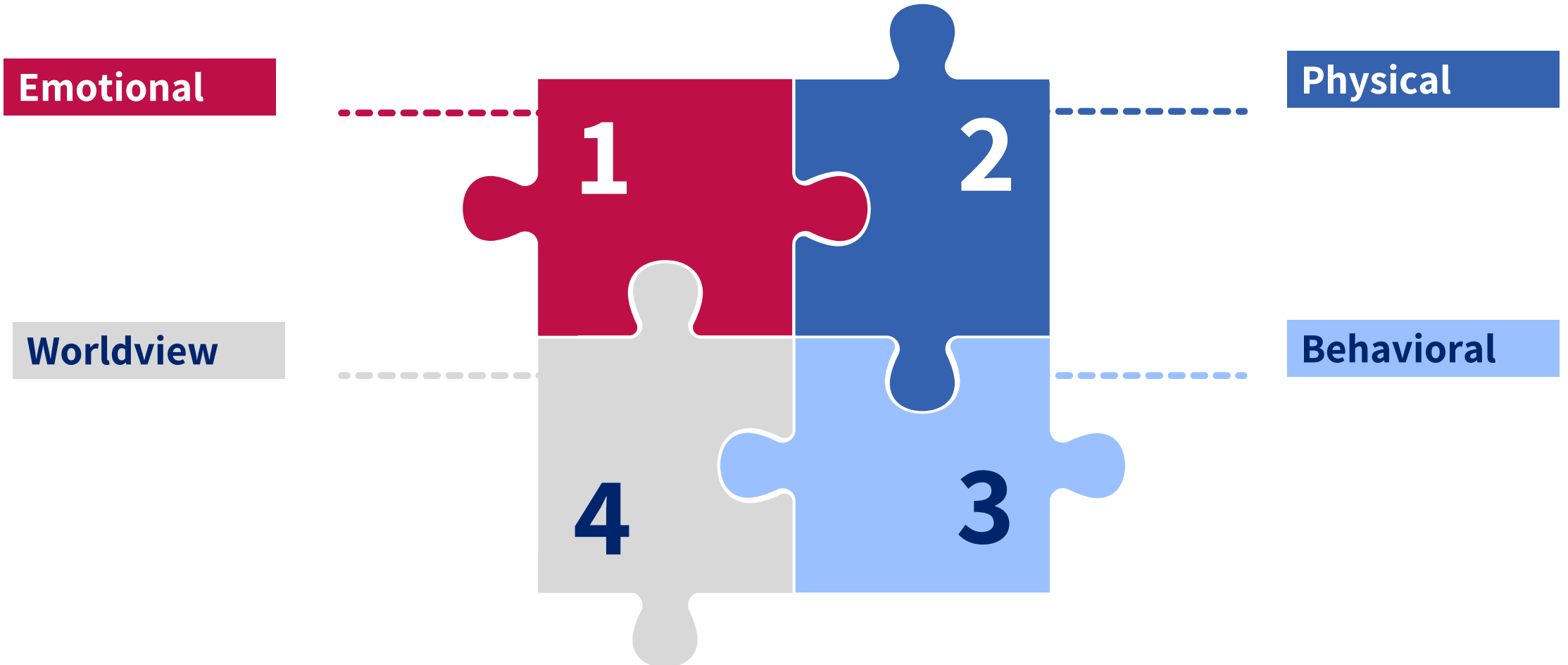
# Building Rapport

- 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



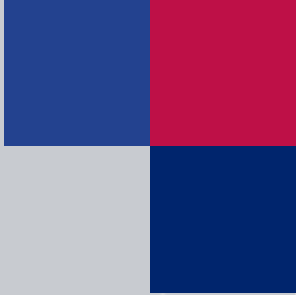
# Trauma-Informed Practices

- 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 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

# “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

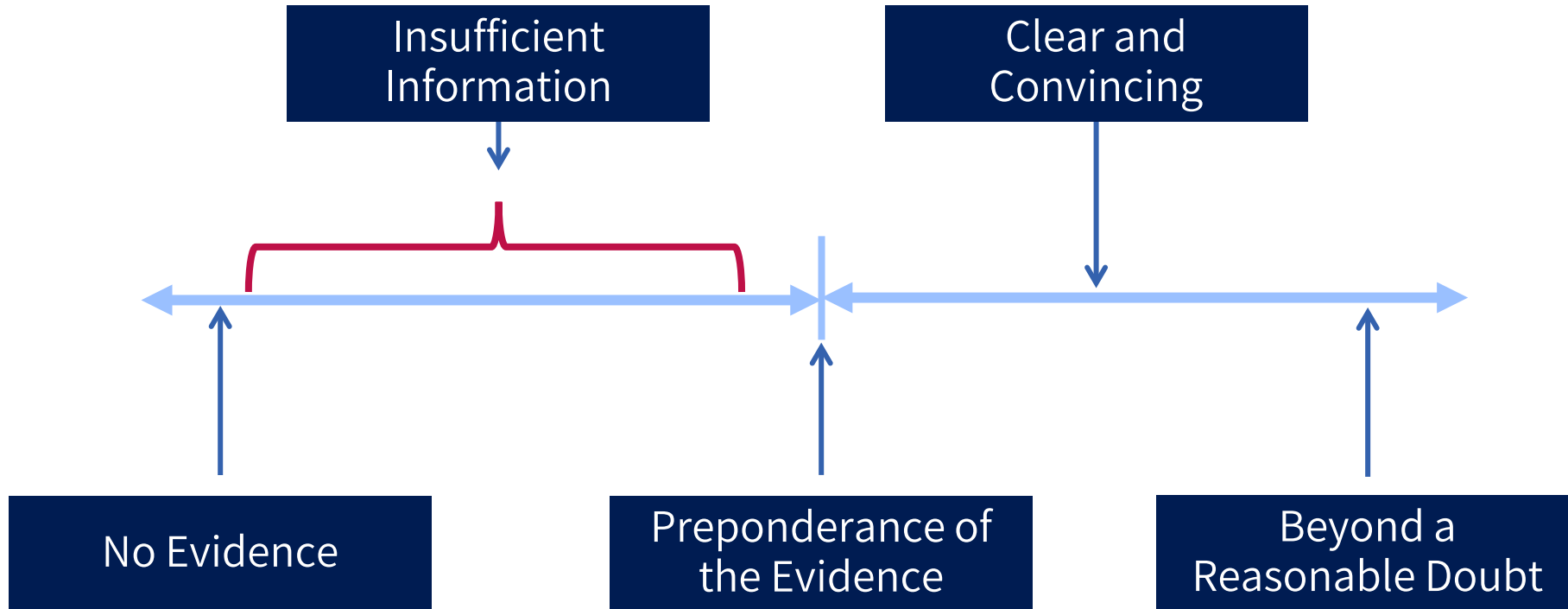
- Duty to collect and objectively evaluate all evidence that is relevant to the complaint
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant evidence** is evidence that tends to prove or disprove the underlying allegations
  - Inculpatory and exculpatory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



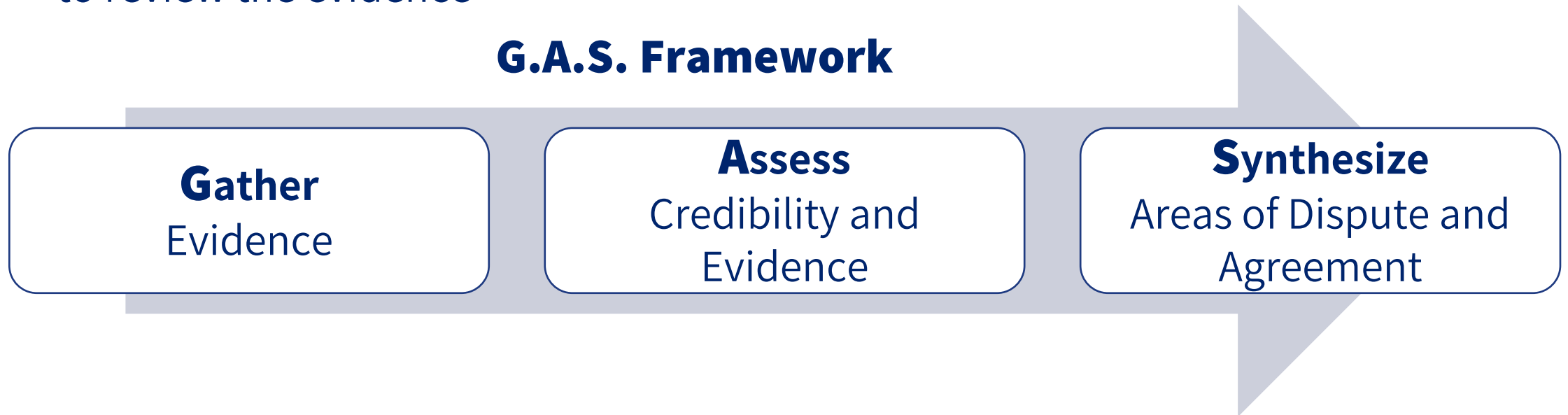
# Evidence Authentication

- 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

```
graph TD; A[Draft Investigation Report] --> B[TIXC/Legal Counsel Review Draft Investigation Report]; B --> C[Parties and Advisors Review Draft Investigation Report]; C --> D[Final Investigation Report];
```

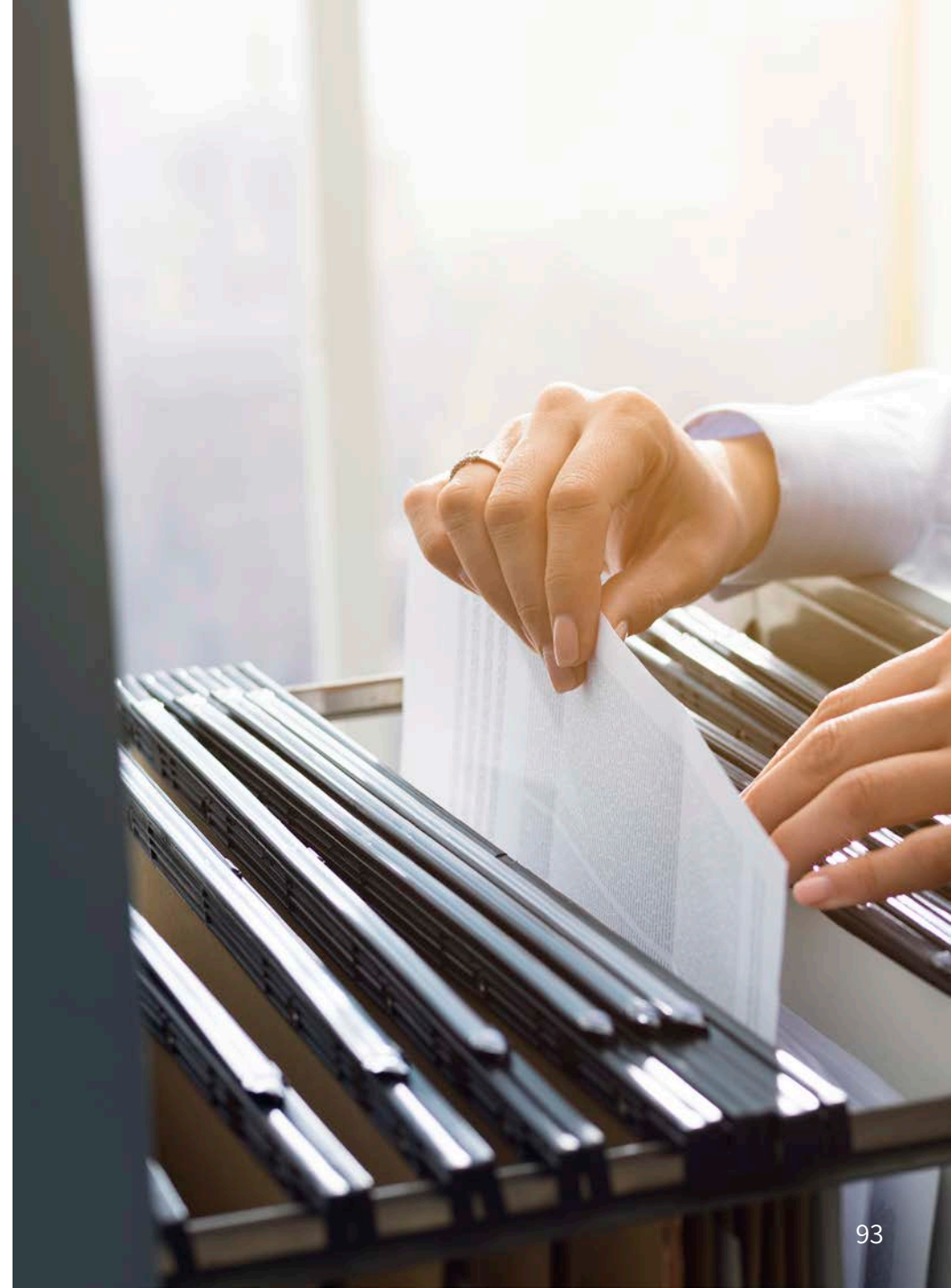
TIXC/Legal Counsel Review Draft Investigation Report

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

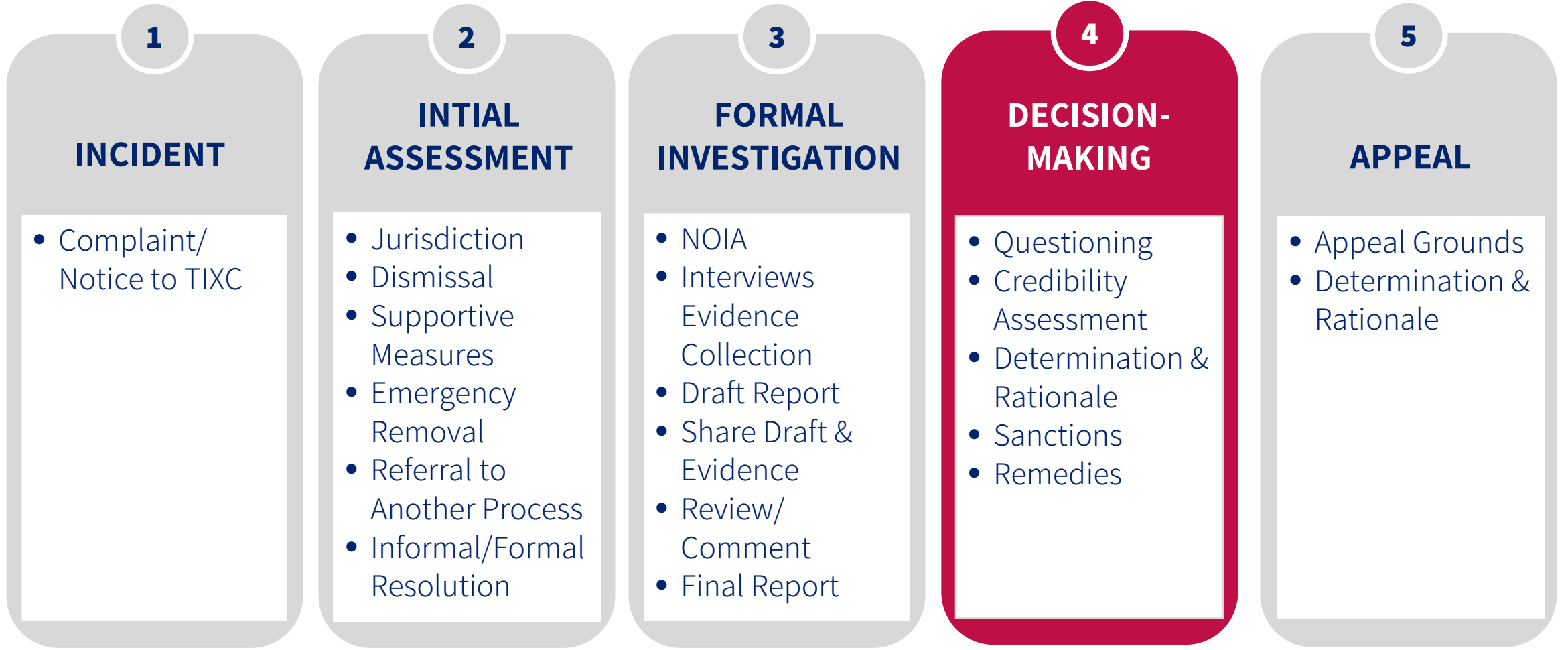
# Step 10: Final Investigation Report

- 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

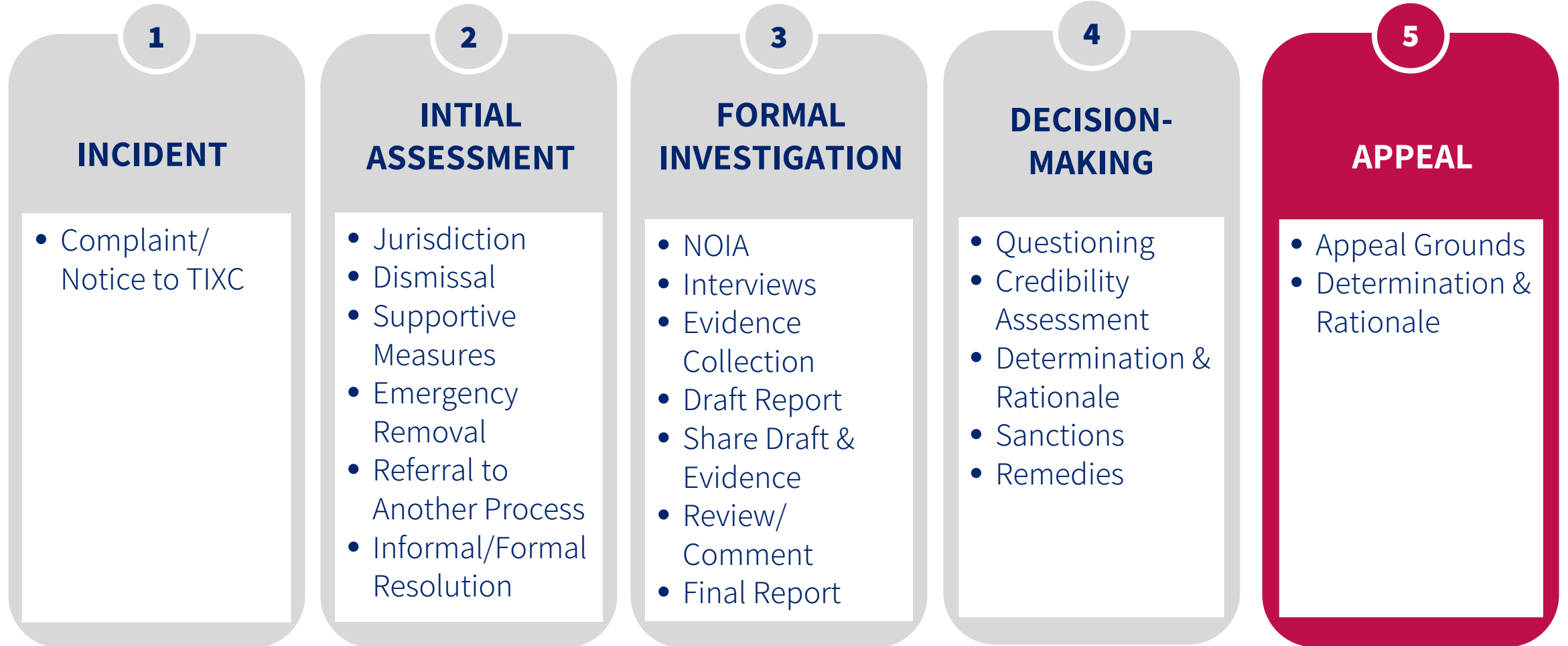
- Written Determination
  - Authored by Decision-maker(s)
  - TIXC/Legal counsel reviews
  - TIXC communicates to the parties simultaneously in writing
- Finality
  - On the date the Recipient provides a written appeal determination
    - OR the date when an appeal would no longer be timely

## 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



# 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**

Procedural irregularity 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





**Questions?**



Association of  
Title IX Administrators

LIMITED LICENSE AND COPYRIGHT. By purchasing, and/or receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for its use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes, only. These materials may be used to train Title IX personnel, and thus are subject to 34 CFR Part 106.45(b)(10), requiring all training materials to be posted publicly on a website. No public display, sharing, or publication of these materials by a licensee/purchaser is permitted by ATIXA. You are not authorized to copy or adapt these materials without explicit written permission from ATIXA. No one may remove this license language from any version of ATIXA materials. Licensees will receive a link to their materials from ATIXA. That link, and that link only, may be posted to the licensee's website for purposes of permitting public access of the materials for review/inspection, only. Should any licensee post or permit someone to post these materials to a public website outside of the authorized materials link, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.