



Association of  
Title IX Administrators

# Title IX Investigator Foundations for K-12 Education

Training and Certification Course

NOT FOR  
DISSEMINATION

# 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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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.

# Introduction



This training introduces the core tenets for investigating allegations of sex discrimination and sex-based harassment within a school or district's education program and activity.



Practitioners will learn the components of the investigation process, investigation skills, and best practices for conducting equitable investigations.



Our goal is to provide an in-depth exploration of investigations and how to practically apply the concepts to your role within the Title IX Resolution Process.

# Content Advisory

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

# **Review: Title IX Statute and Regulations**

# 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 educational program or activity receiving federal financial assistance.”

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



# 2024 Title IX Regulations Litigation

- Opponents of the 2024 Title IX Regulations sought, and were granted, **injunctions** to delay or halt implementation of the Regulations
  - **Injunction:** A court order requiring an individual or entity to either perform or stop performing a specific action
- Generally, courts granted injunctions based on questions around the validity of the gender identity provisions and the hostile environment definition
- If the 2024 Regulations are not enforceable as a result of an injunction, schools, districts, and institutions in those states should continue to follow the **2020 Regulations**
  - The 2024 Regulations also are not enforceable in some individual schools and institutions

# 2024 Title IX Regulations Litigation

- Implementation will be unsettled for the foreseeable future
  - Appeals will continue and, eventually, trials
  - Consult legal counsel to determine implementation plans and risk strategy
- **Note:** Some states also have “Do Not Implement” directives from state officials
  - Independent from any federal lawsuits or injunctions
- Track developments on ATIXA’s Regulations website, [www.atixa.org/regs](http://www.atixa.org/regs)
  - State-by-state information on injunctions and Do Not Implement directives
  - Lists of individual schools or institutions impacted by the Kansas injunction

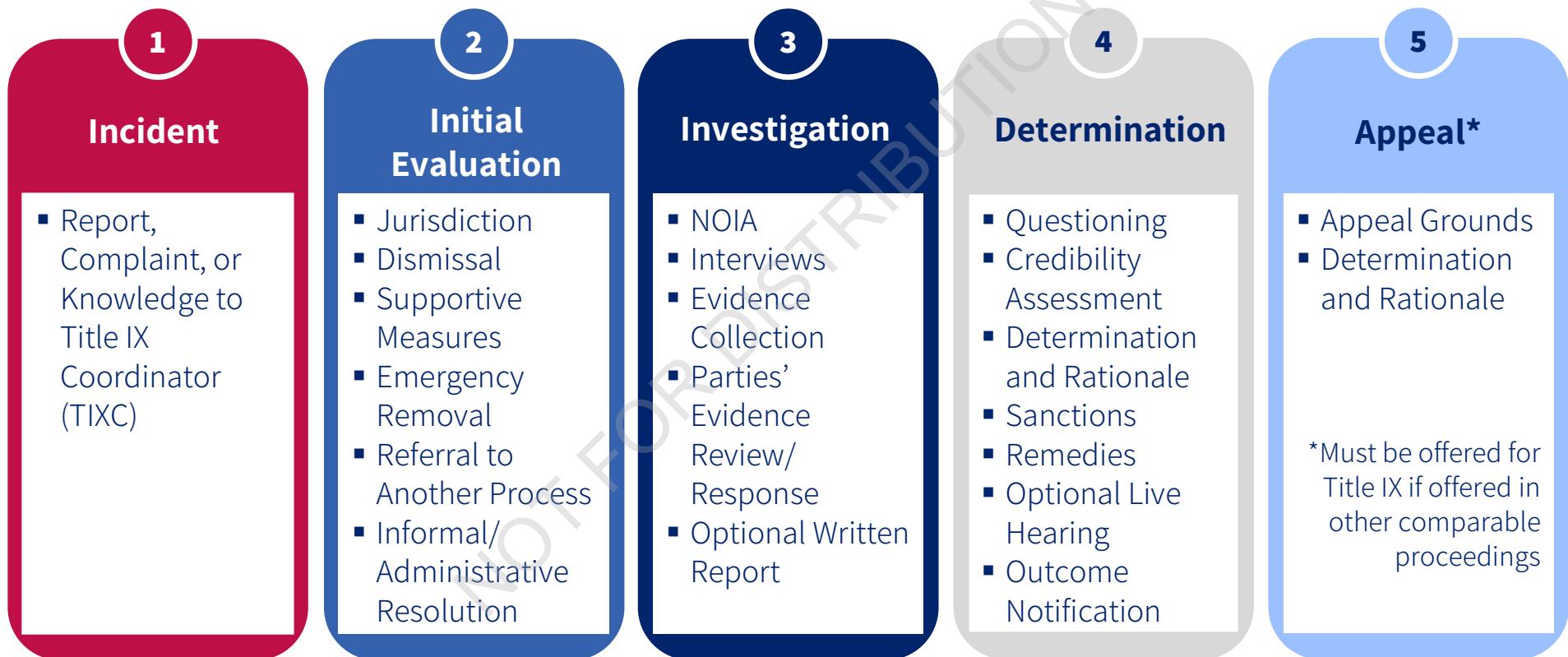
# Retroactivity

- The 2024 regulations apply **only** to sex discrimination alleged to have occurred **on or after** August 1, 2024
  - For conduct alleged to have occurred prior to August 1, 2024, the regulations in place at the time the alleged behavior occurred will apply
- Schools/Districts will need to maintain/update policies, procedures, and training that are compliant with the **2020** regulations and **2024** regulations



# Title IX Resolution Process Overview

# Title IX Resolution Process Overview



# Basic Requirements

**Section 106.45 provides a Civil Rights Resolution Process for resolving K-12 Title IX complaints**

- Must treat parties equitably
- Require TIXCs, Investigators, or DMs have **no conflicts of interest or bias**
  - DMs may be the same person as the TIXC or Investigator
- Presume that Respondent is not responsible
- Establish reasonably prompt timeframes for “major process stages”
  - I.e., Evaluation, Investigation, Determination, Appeal (if available)
- Must take reasonable steps to protect the parties’ and witnesses’ privacy
- Require an objective evaluation of relevant and not otherwise impermissible evidence
- Prohibit retaliation against parties, witness, and those involved in the Title IX Resolution Process

# Parties' Rights

- Receive detailed Notice of Investigation and Allegations (NOIA)
  - NOIA does not need to be in writing
  - Must include information about the school/district's Title IX Resolution Process
- Be informed of and receive appropriate and available supportive measures
- Gather and present evidence and witnesses
- Review all relevant evidence or an accurate description of the evidence
- If a student, be accompanied by parent/guardian to all meetings, interviews, and hearings (if applicable)
- To choose not to participate in the Title IX Resolution Process
- Receive a written outcome notification with rationale

# Parent/Guardian Rights

- **Pursue Title IX Resolution Process** on behalf of their student
- **Seek supportive measures** on behalf of their student
- **Make decisions** throughout the Title IX Resolution Process on behalf of their student, such as whether to pursue Informal Resolution
- **Attend** all interviews/meetings/hearings with their student, regardless of whether they are serving as the student's Advisor
- **Access** their student's education records, including Title IX complaint file
- **ATIXA recommends** having open communication with parents/guardians and practicing good documentation

# Investigation Process Overview

# Investigation Phases

- Title IX investigations may examine allegations of sex discrimination, sex-based harassment, program inequity, or retaliation
- ATIXA recommends a three-phase investigation process that involves a series of steps:
  - Pre-investigation
  - Investigation
  - Post-investigation
- Not all phases involve the Investigator



# TIXC Investigation Oversight

## TIXC Responsibilities:

- Appoint and train Investigators
- Conduct intake and initial evaluation of report/complaint
- Strategize and consult with Investigators
- Provide parties ongoing supportive measures
- Ensure timeframe compliance
- Review investigation documentation
- Maintain records
- Serve as parties' primary point of contact



# Investigator Role

- Remain impartial and free of bias
- Strategize with TIXC
- Gather all available and relevant information
- Interview the parties and witnesses
- Maintain accurate and thorough investigation records and notes
- Share the evidence or relevant evidence summary with the parties



# Bias and Conflicts of Interest

- Title IX Investigators have no “side” other than the **integrity of the process**
- Title IX regulations **prohibit conflicts of interest or bias** against parties generally, an individual party, or the substance of the complaint
- Investigators identifying a potential conflict of interest or bias should **immediately notify** and disclose the information to the TIXC



# Required Investigator Training

- Definition of **Sex-Based Harassment**
- **Scope** of the school/district's education program or activity
- Conducting a **fair and adequate investigation** and **Title IX Resolution Process**
- **Serving impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- The **meaning and application of the term “relevant”** in relation to questions and evidence
- The **types of evidence that are impermissible** regardless of relevance

# Pre-Investigation

# Investigation Process

## Investigation Steps:

- Receive Notice/Complaint
- Initial Evaluation and Jurisdiction Determination
- Determine Investigation Basis
- Notice of Investigation and Allegations (NOIA)
- Establish Investigation Strategy
- Adequate, Reliable, Impartial Investigation
- Relevant Evidence Summary (investigation report)
- TIXC Reviews Evidence
- Parties Review Evidence Summary or Relevant Evidence with Opportunity to Respond

INCIDENT INVESTIGATION

SUMMARY

Incident Date:

Review Date:

A by:

Incident Summary:

Root Causes:

# Report, Knowledge, or Complaint

- School/District receives a report, complaint, or has knowledge of alleged sex discrimination, sex-based harassment, or retaliation
- TIXC is point person to receive reports and complaints, including referrals from school/district employees
- **Report:** Any information that indicates a potential Title IX policy violation
- **Complaint:** An oral or written request to the school/district that objectively can be understood as a request for the school/district to investigate and make a determination about alleged discrimination under Title IX
  - Initiated by the Complainant (or parents/guardians, or other authorized legal representative)
  - Initiated by the TIXC

# Initial Evaluation and Jurisdiction Determination

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

- Outreach and intake to potential Complainant (usually with parents/guardians)
- Complete jurisdictional assessment
- Initiate complaint (if applicable)
  - Pattern, Predation, Threats, Violence, Weapons, Minors, Employee Respondent
- Offer and coordinate supportive measures
- Engage Emergency Removal or Administrative Leave procedures (if applicable)
- Enact complaint Dismissal procedures (if applicable)
- If requested/appropriate, coordinate Informal Resolution process (if applicable)

# Investigation Bases and Scope

## TIXC determines the investigation basis and scope

- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
  - If scope needs to be adjusted during the process, Investigator should consult with the TIXC
- Three possible bases for civil rights investigation:
  - **Incident:** a specific incident or period
    - May involve one or multiple alleged violations
  - **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
    - May have no identifiable Respondent

# Investigation

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# Investigation



# Investigation Process

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# Notice of Investigation and Allegations

- TIXC is responsible for ensuring the parties receive the NOIA prior to the investigation
- The 2024 Regulations require all parties receive a Notice of Allegation
  - Not required to be in writing
- ATIXA recommends providing both notice of the allegations and notice of the investigation in writing
  - Both are often sent in the same document, or provided verbally in the same conversation (NOIA)



# Notice of Investigation and Allegations

## A comprehensive 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
- Information about Resolution procedures
- Presumption that Respondent is not responsible
- Available supportive measures
- The parties' rights
- Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
- Statement prohibiting retaliation

# Additional Investigation Policy Items

School/District may retain some policy/procedure elements from the 2020 Title IX regulations

- **Advisors:** Whether to permit Advisors (separate from parent/guardian or legally authorized representative)
- **Expert Witnesses:** All parties may suggest fact witnesses; permitting expert witnesses is optional
- Always follow school/district policy, and if applicable, should be included in notice letters

# Policy Definitions

# Sex Discrimination

- Discrimination on the basis of sex includes:
  - Sex Stereotypes
  - Sex Characteristics
  - Pregnancy or Related Conditions
  - Sexual Orientation
  - Gender Identity
- “More than *de minimis* harm”
- Sex-Based Harassment



# Sex-Based Harassment

- Subset of sex discrimination
- Includes (the “Big Six” offenses):
  - Quid Pro Quo (QPQ)
  - Hostile Environment Harassment
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- No consent definition provided
  - Develop or adopt one for the school/district



# Hostile Environment Harassment

- Definition:
  - Unwelcome sex-based conduct that
  - Based on the totality of the circumstances
    - Is subjectively and objectively offensive **AND**
    - Is so severe **OR** pervasive
    - That it **limits or denies** a person's ability to participate in or benefit from the Recipient's education program or activity
- Regulations outline a series of additional considerations
- Lower/broader standard than the 2020 Regulations, with First Amendment implications

# Hostile Environment Harassment

- Definition provides factors for evaluating whether a hostile environment exists:
  - Complainant's ability to access the education program or activity
  - Conduct type, frequency, and duration
  - Parties' ages, roles, and previous interactions
  - Conduct location and context
  - School/District's control over the Respondent
- These are **factors**, not requirements
  - There could also be other factors to consider

# Sexual Assault

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting system
  - Must include the six sub-offenses:
    - **Rape**, involves a lack of consent
    - **Sexual Assault with an Object**, involves a lack of consent
    - **Sodomy**, involves a lack of consent
    - **Fondling**, involves a lack of consent
    - **Incest**, violation irrespective of consent
    - **Statutory Rape**, violation irrespective of consent

# Retaliation

## Defined as:

- Intimidation, threats, coercion, or discrimination against any person
- By the school/district, a student, an employee, or other person authorized by school/district to provide aid, benefit, or service under education program or activity:
  - For the purpose of interfering with any right or privilege under Title IX, **OR**
  - Because the person has reported information, made a complaint, assisted, or participated or refused to participate in any manner in any part of a Title IX Resolution Process
- **Schools/Districts may require** employees to participate as witnesses without it being considered retaliation
- Cannot require students to participate as parties or witnesses
- Retaliation allegations should be resolved under the Title IX Resolution Process

# ATIXA Model Policy Definitions

- Consent
- Common additional offenses with a potential Title IX intersection
  - Sexual Exploitation
  - Harm/Endangerment
  - Intimidation
  - Hazing
  - Bullying



# Investigation Strategy

# Establish Investigation Strategy

**Investigator consults with TIXC to strategize and plan the investigation:**

- Elements of the specific policy provision(s) alleged to have been violated
  - Investigators are looking for evidence that speaks to each element
- Initial witnesses and interview order
- Anticipated obstacles, challenges, and obstructions
- Relevant pattern considerations
- Preliminary undisputed and disputed facts and their significance
- Other types of possible evidence and the plan to acquire such evidence
- Working investigation timeline

# Establish Investigation Strategy

## Planning considerations:

- Process delays
- Working with parents/guardians and Advisors (if applicable)
- Coordination with law enforcement (if applicable)
- Interview sequencing
- Evidence collection
- Counter-complaints
- Sharing information with parties and witnesses during the investigation

# Process Delays

- Investigations must be completed within prompt timeframe, avoiding unreasonable delays:
  - Expectation to proceed during school breaks, including summer
  - 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
  - Always document extensions in recordkeeping

# Coordination with Law Enforcement (LE)

- Sex-based harassment incidents may also give rise to criminal investigations
- LE may notify school/district of complaint, or school employee may report incident to LE
- Criminal investigations do not relieve school/district of its duty to respond promptly and effectively
- Criminal investigation cannot substitute for the Title IX investigation
  - Different laws/policies and standards of proof
- ATIXC communicates with LE in circumstances with concurrent responses, to the extent permitted by law



# Interview Sequencing

- Conduct interviews as promptly as possible to capture fresh recollections
  - Do not interview Respondent before providing the 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; it can always be excluded later if it proves to not be relevant
- When addressing student witnesses, consider if there is a need to get parent/guardian permission (especially if required by state law or school/district policy), because the parties may request access to interview summary

# Evidence Collection

- Burden to gather evidence is the school/district's responsibility
- Active process to gather evidence
- Identify potential sources of information
- Document efforts to gather, even when not successful



# 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
- Parties will have access to all relevant and otherwise not impermissible evidence at the conclusion of the investigation

# Counter-Complaints

- Respondents may make a **counter-complaint** of sex discrimination, sex-based harassment, or retaliation against the Complainant if there is Complainant misconduct that they wish to report
- Reporting other alleged misconduct (e.g., drug dealing, academic misconduct) is not considered a counter-complaint
- Counter-complaints may arise prior to, during, or after the investigation of the original complaint
- If a party mentions (even casually) discrimination or harassment that could serve as a basis for a counter-complaint, but it is unclear if they wish to make a complaint, clarify or have the TIXC contact them to clarify

# Activity: Parsing the Policy

# Ang and Becca

- Two sixth graders at Puckett Bay Middle School, Ang and Becca, are assigned tablemates for their Earth Science lab
- Ang requested to be reassigned to a new lab partner
- When the lab teacher asked the reason for the request, Ang shared the following:
  - For the past two weeks Becca has placed her hand on his thigh multiple times.
  - He has asked her to stop
  - She stops her attempts during that lab session but attempts to touch him again in subsequent labs
  - Additionally, Ang shared that yesterday when Ang was walking to pick up supplies at the front table, Becca reached over and grabbed his butt

# Fondling Definition

- **Sexual Assault:** An offense classified as a forcible or nonforcible sex offense under the Federal Bureau of Investigation's Uniform Crime Reporting System
  - **Fondling**
    - The touching of the private body parts (breast, buttocks, groin) of the Complainant by the Respondent
    - Or causing the Complainant to touch the Respondent's private body parts
    - Intentionally for a sexual purpose
    - Without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
      - Because of age **or**
      - Because of temporary or permanent mental or physical incapacity

# Investigation Skills and Questioning

# Pre-Interview Planning

- Do not conduct interviews prior to NOIA; avoid surprise interviews
  - Should have sufficient time to prepare
- Before scheduling interviews, consider
  - Location, scheduling constraints, participants, and preparation
- **Cannot mandate interview participation for students**
  - Schools/Districts have discretion to mandate employee participation as witnesses in Title IX Resolution Process
- It can be beneficial to conduct interviews in person, when possible, but videoconferences are common
- Always prepare initial questions in advance, but **remain flexible**

# Interviewing Skills

**Investigators build and improve skills over time and with practice:**

- Appropriate questioning
- Active listening
- Seeking clarification
- Identifying gaps
- Body language and non-verbal communication (use caution)



# Establishing Rapport

**GOAL:** interviewee trusts that Investigator is neutral and impartial

- Investigator helps set the tone for a productive interview
- Maintain professionalism
- Provide transparency about expectations and the process
- Balance neutrality with a human 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

## Key principles of trauma-informed practice:

- Safety
- Trustworthiness and transparency
- Collaboration and mutuality
- Empowerment, voice, and choice
- Cultural, historical, and gender issues

**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 (if applicable)
- Interview questions
- Recording/Notetaking practices
- Commitment to privacy
- Witness-specific information
- Post-interview steps
- Interview expectations
- Relevant policies
- Acknowledge difficulty
- Retaliation reminder

# Activity: Practicing Your Spiel

# Questioning Considerations

An interview is a conversation designed to elicit information in a non-accusatory manner

- Ask questions directly to the party; it is critical that they, not their parent/guardian or Advisor, answer
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; obtain answers to all questions
- Ask purposeful questions:
  - What do I need to know?
  - Why do I need to know it?
  - What is the best way to ask the question?

# Questioning Considerations

- Use policy definitions to inform questions (e.g., if fondling, which hand was used?)
- Avoid unnecessary repetition or traumatic re-triggering, but gently get the details you need
- Choose or blend effective questioning strategies/methodologies (cognitive interviews, etc.)



# Questioning Tips

- Listen carefully
- Seek to clarify terms that have multiple meanings
  - “We were hanging out” or “She was acting weird”
- Avoid:
  - Accusatory or argumentative questions or tone (often in the form of leading)
  - Confusing/compound questions
  - Blaming questions
  - “Double-barreled” questions
  - Evaluative responses
  - Sanitizing language (use the terms used by the interviewee)

# 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 (if applicable), and expectations of truthfulness
- Avoid statements reflecting moral judgment

# Final Interview Questions

- “Is there anyone else that you think I/we should talk to?”
- “Are there any questions you expected, but that I/we didn’t ask?”
- “Is there anything else you think I/we need to know?”
- What questions should I pose to other witnesses/parties?
- **FOR THE PARTIES:** “Are there any questions that you would like me/us to ask any other witness or party?”
- 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

# Interview Documentation and Review

- Maintain interview transcripts or written summaries
  - **Transcript:** word-for-word documentation of a recorded interview
  - **Summary:** Investigator's summation of 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

# Evidence and Credibility

# Understanding Evidence

- Duty to collect and objectively evaluate all relevant evidence
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant** means related to the allegations of sex discrimination under investigation:
  - Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred
  - Evidence is relevant when it may aid a Decision-maker in determining whether the alleged sex discrimination occurred or in assessing credibility
- All relevant evidence, unless otherwise impermissible, must be objectively evaluated and considered, including both inculpatory and exculpatory
  - **Inculpatory:** supports a finding of responsible for a policy violation
  - **Exculpatory:** supports a finding of not responsible for a policy violation

# 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	Factual inferences
Hearsay Evidence	Statement from outside the interview presented as truthful
Character Evidence	Evidence of a person's character or character traits

# Privileged and Medical Information

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

- Evidence protected under a legally recognized privilege, including evidence relevant to determining capacity to consent for students with disabilities
- Records made or maintained by:
  - Physician
  - Psychiatrist
  - Psychologist
  - Recognized professional or paraprofessional in reference to party or witness treatment



# Impermissible Evidence

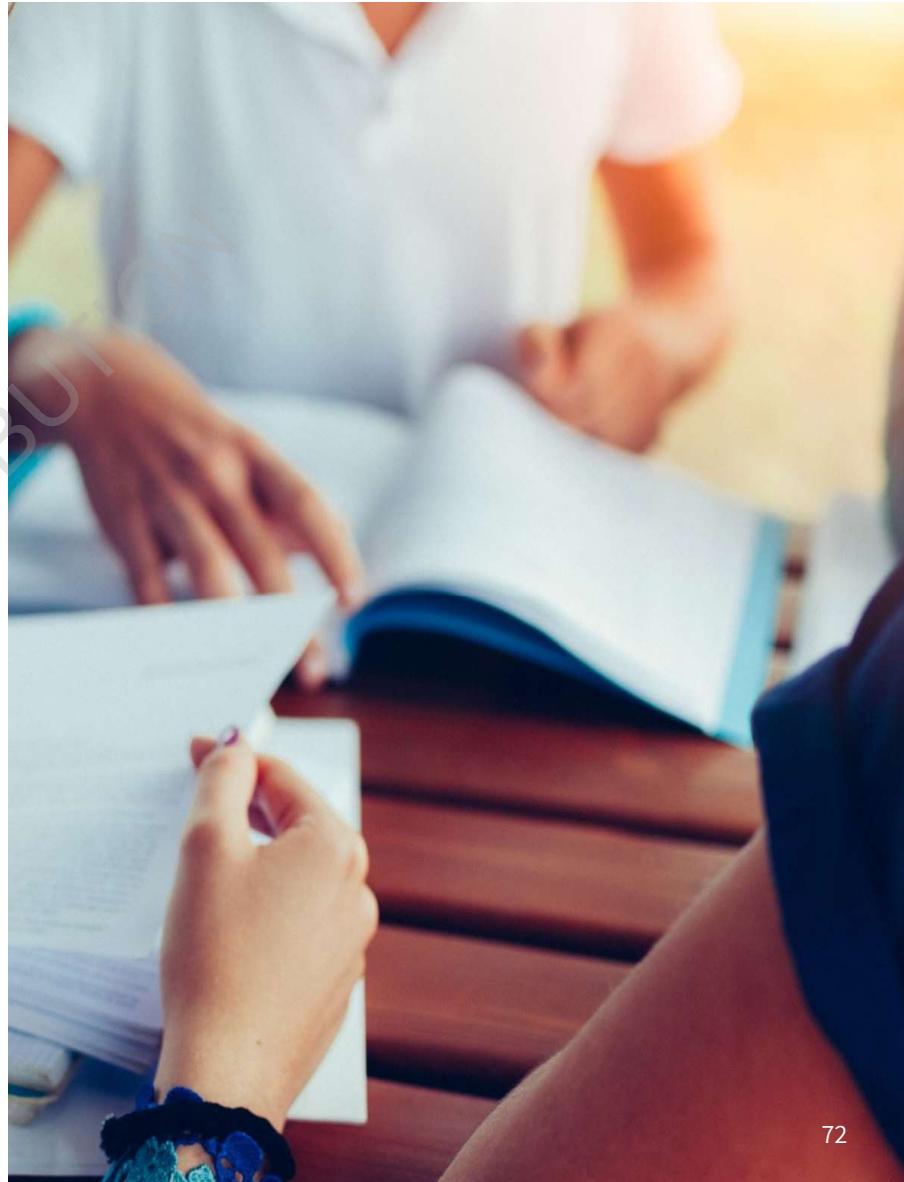
- Evidence of the **Complainant's sexual interests** is never relevant
- Evidence of the **Complainant's prior sexual conduct** is not relevant except:
  - If offered to prove that someone other than the Respondent committed the alleged conduct, or
  - Prior sexual conduct with Respondent, if offered to prove consent to the alleged sex-based harassment
  - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Even if admitted/introduced by the Complainant
- Does **not** apply to Respondent's prior sexual behavior or sexual interests

# Evidence Authentication

- Not all evidence has the same degree of credibility
  - Less credible evidence may be less reliable evidence
- Investigator(s) should seek the **highest quality evidence** available
- Investigator(s) 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
  - Test assertions to verify accuracy when possible
    - Example: “I don’t remember if I wore a condom, but the condom in my wallet is no longer there”

# Credibility

- **Credibility** is largely a function of corroboration and consistency
  - Credibility and honesty are not the same
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate reflection of what occurred)
  - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** Memory errors alone do not necessarily diminish witness credibility, nor does some minor 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/by context
- **Consistency of evidence/testimony**
- **Motive to Falsify**
- **Past Record\***
- **Demeanor\***

\*Less probative

# Evidence Review

- TIXC and/or legal counsel reviews draft investigation report (or evidence summary) 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
- Schools/Districts may elect to complete this review before the parties' review, after the parties' review, or have two separate TIXC/legal counsel reviews (track changes)

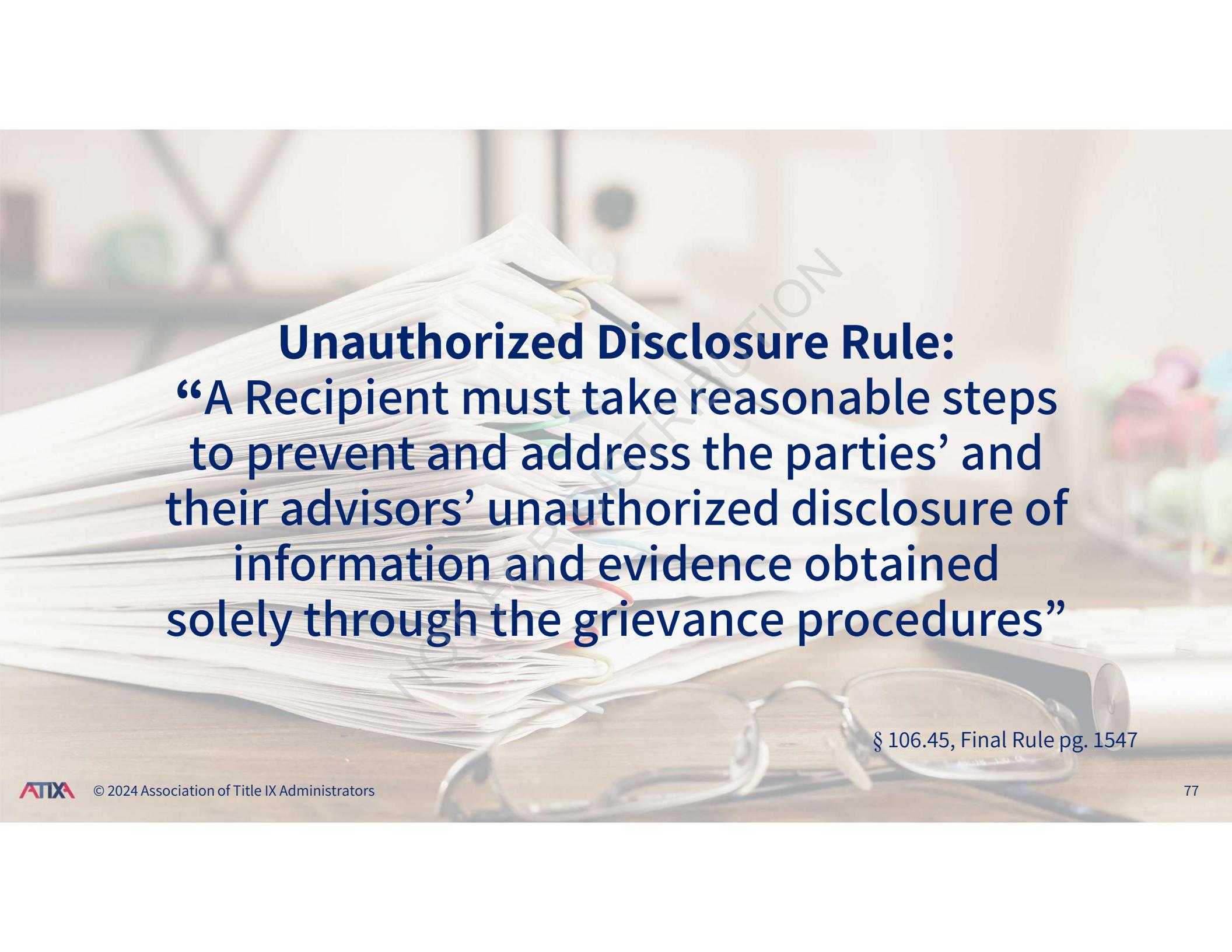
# Parties' Evidence Review

- **Must provide an equal opportunity to access:**
  - The relevant and not otherwise impermissible evidence, **or**
  - An accurate description of this evidence
    - If providing a description of the evidence, must provide the actual evidence upon request of any party
  - A reasonable opportunity to respond to the evidence or accurate description of the evidence
- No written investigation report required
  - ATIXA **strongly** recommends writing an investigation report

# Tips for Evidence File Sharing

- Use a secure file-sharing platform
  - Consider functional and time limit restrictions as appropriate for the school community and process
- Include a separate watermark for each party (parent/guardian/Advisor)
- Ensure the parties have a user-friendly method for providing feedback
- Reminder of Unauthorized Disclosure Rule





**Unauthorized Disclosure Rule:**  
**“A Recipient must take reasonable steps**  
**to prevent and address the parties’ and**  
**their advisors’ unauthorized disclosure of**  
**information and evidence obtained**  
**solely through the grievance procedures”**

§ 106.45, Final Rule pg. 1547

# Unauthorized Disclosure Exceptions

## ▪ Unauthorized Disclosures

- **Exception:** Evidence gathered and presented by a Complainant or Respondent may be shared by them (their parent/guardian)
- The parties may not share other information disclosed in the Title IX Resolution Process that is the school's/district's work product
- Note: This is not a FERPA requirement, rather a general privacy requirement
- Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized

# Investigation Report

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# Investigation Report

- A comprehensive investigation report is not required per the 2024 Regulations; however, ATIXA **strongly** recommends compiling one
- **Investigation reports typically include:**
  - Summary of Allegation(s)
  - Jurisdiction Statement
  - Applicable Policies and Relevant Definitions
  - Investigation Timeline
  - Incident Timeline
  - Summary of Relevant Evidence
  - Credibility Assessment and Analysis
  - Recommended Findings and Determination
  - Evidence File

# Report Writing Considerations

- **ATIXA recommends Investigators write in third person and from a neutral, detached observer point of view**
  - Creates distance between the reader and the parties
    - Example:
      - I watched Complainant sob and tremble at the pain they felt during the interview **vs.**
      - Complainant stated that it was “very painful” to discuss the incident
- Investigator’s writing can unintentionally reflect their own biases
  - Focus on information and evidence, not opinions or suppositions
  - Examine evidence in a neutral fashion, avoid emotional language, terms, moralization, etc.
  - Write so that the report is consistent in tone/format/voice no matter who writes it
- Templates can help maintain a neutral perspective regardless of Investigator

# Sensitive Information

- Offensive, triggering, or explicit language (e.g., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Sex assigned at birth vs. gender identity
  - Avoid the singular “they” in report writing; use roles instead (e.g., C, R, W1, W2)
- Chosen name vs. legal name



# Investigation Recordkeeping

# Investigation File

- Investigator is responsible for developing and maintaining an **investigation file** throughout the duration of the investigation
  - Copies of the policies and procedures in place at the time of the incident(s) and at the time of the investigation
  - Original NOIA and any subsequent NOIA updates
  - For each party and witness include:
    - Verified interview transcripts
    - Associated evidence (e.g., screenshots, written statements)
    - Correspondence with the Investigator(s)
  - Collected evidence and evidence log

# Investigation File

- Investigation file should also contain:
  - 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 (7) years**

# Contact Log

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

Date	Time	Contact	Type	Notes	Follow-up/ Resolution
1/25/24	1:00 PM	Sam Smith	Phone	Discussed getting emails from IT	Received emails from IT on 1/26/24
1/27/24	2:00 PM	Sally Harris	Email	Interview Scheduling Request	Interview scheduled for 1/29/24
1/29/24	3:00 PM	Sally Harris	In Person	Investigation Interview	Send transcript for verification

# Evidence Log

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



# Evidence Log Example

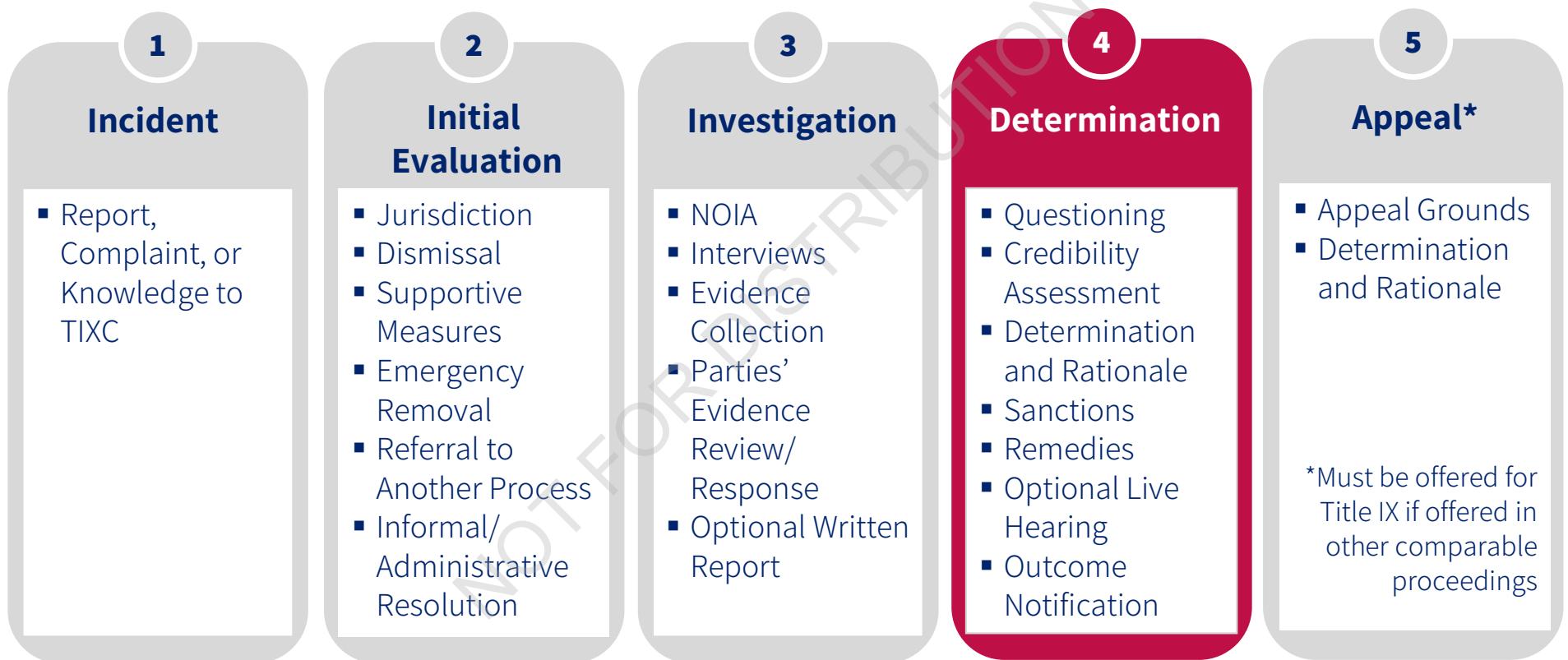
Date	Source	Method of Receipt	Type	Description	Authentication
1/25/24	Sam Smith	Email	Security video footage; USB drive	Elevator video footage from 9:10 – 10:10 PM on 12/10/23	Closed circuit from IT
1/27/24	Sally Harris	Social Media Screenshot	Social Media Screenshot	Post made by Respondent at 9:22 PM on 12/10/23	
1/29/24	Sally Harris	In Person	Call Record	Phone call log from Complainant's cell phone carrier	Email with attachment from carrier to Complainant

# Investigation Timeline

- Begin documenting an investigation timeline as soon as the investigation is assigned
- 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 (if applicable)
- Often included in investigation report

# Post-Investigation: Decision-Making and Appeals

# Determination



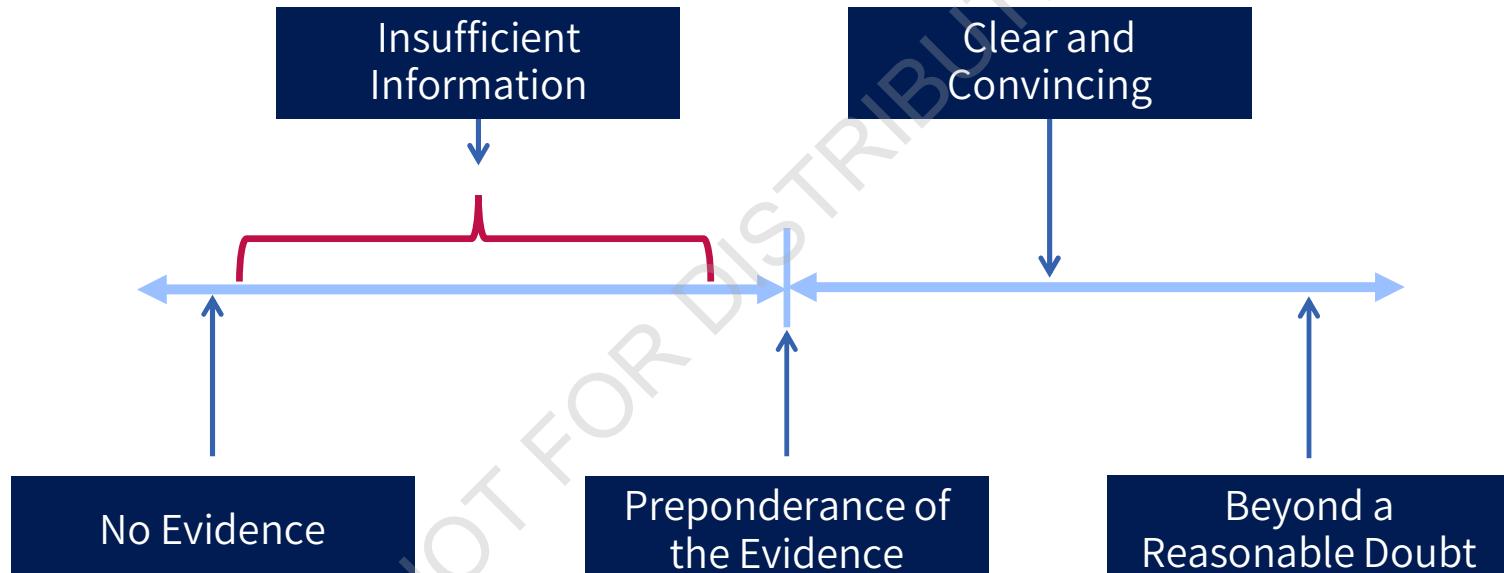
# Decision-Making Process

- TIXC and Investigator(s) may serve as a DM
- DM can be a single person or a panel
- DM **evaluates the relevant and not otherwise impermissible evidence** the Investigator(s) gathered
  - Must consider both inculpatory and exculpatory evidence
  - Each allegation is considered individually for each Respondent
- Schools/Districts must provide a process enabling DM to question parties and witnesses to assess credibility

# Determinations

- Decision-maker **applies the standard of proof** to make determination
- Schools/Districts must use **preponderance of the evidence** standard
  - Unless clear and convincing is used for all “comparable proceedings”
  - “Comparable proceedings”
    - Proceedings for other discrimination complaints involving the same **category of Respondents** (students vs. employees)
    - Similar types of “person-to-person offenses” that are physical in nature but do not pertain to sex
- Investigator must be familiar with the standard of proof in school/district policy
- DM determines whether the Respondent violated school/district policy and drafts **written determination with rationale**

# Standard of Proof



# Appeals



# Appeal Grounds

If appeal is offered, must offer appeals on each of the following grounds:

- 1 Procedural irregularity that would **change the outcome**
- 2 New evidence that would **change the outcome** and that was not reasonably available when the determination of whether sex-based harassment occurred
- 3 TIXC, Investigator, or DM had a conflict of interest or bias for or against Complainant(s) or Respondent(s) generally or the individual Complainant or Respondent that would **change the outcome**

**Schools/Districts have the discretion to add additional appeal bases, as long as the procedures and additional bases for appeal are equally available to all parties**

# Appeal Decision-Maker and Outcomes

- Must not have been previously involved in the complaint or Resolution Process
- Must complete a written determination with rationale
- Determinations may include:
  - **Upholding** the original determination and sanctions (if any)
  - **Remanding** the complaint back to the Decision-maker for reconsideration or to the Investigator for further investigation
  - **Modifying** the original determination and/or sanctions (if any)
  - **Overturning** the determination (not recommended)



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# Questions?

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