



Association of
Title IX Administrators

Title IX Coordinator Foundations Level One: Sexual Harassment Foundations for Higher Education

Training and Certification Course

WELCOME!

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Strategic Risk
Management Solutions



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

Content Advisory

The content and discussion in this 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



The primary focus of this course is responding to reports or complaints of sexual harassment, including reporting, the Formal Grievance Process, policy development, and other similar topics.



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



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

Title IX Compliance Oversight

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



Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide Title IX Coordinators (TIXCs) in their compliance work

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination for individuals, for the community, and on an institutional level

Title IX Compliance Oversight

Title IX Coordinator Role

- Mandated by Title IX regulations
- Oversees institutional Title IX compliance
- Responsibilities fall into two categories:
 - Responding to reports or complaints of sex discrimination and sexual harassment
 - Leading efforts to ensure sex equality across the entire institution



Title IX Compliance Oversight

Responsibilities:

- Manage policy and procedures prohibiting sex discrimination and sexual harassment
- Ensure institution acts reasonably to **stop, prevent, and remedy**
- Provide notification of nondiscrimination and Title IX information to current and prospective students and employees, including union/contract employees
- Develop and maintain accurate web and print-based Title IX publications
- Train institutional employees on Title IX compliance
- Recruit, supervise, and train Title IX Team
- Serve as point person for all reports and complaints

Title IX Compliance Oversight, Cont.

- Oversee Title IX Grievance Process and institution-wide programs
- Track systemic issues or patterns
 - Take remedial action to prevent recurrence
- Assess compliance efforts and program effectiveness
 - Create and disseminate annual compliance report (best practice)
- Update institutional leadership on Title IX issues
- Liaise with institutional legal counsel
- Create/maintain records
- Respond to government inquiries/investigations

Compliance Considerations

- State law
- Appetite for litigation
- Institutional and community values
- Physical layout of buildings and capacity for capital improvements
- Athletics conference rules

Review: Title IX Scope and Definitions

Review: Applicability

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



Scope

Title IX

Sex Discrimination

Disparate Treatment

Program Access and Equity

Retaliation

Sexual Harassment

Quid Pro Quo

Domestic Violence

Hostile Environment

Stalking

Sexual Assault

Dating Violence

Definitions

NOT FOR DISTRIBUTION

Quid Pro Quo

- An employee of the Recipient
- Conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the Recipient
- On an individual's participation in unwelcome sexual conduct



Hostile Environment Sexual Harassment

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



Sexual Assault: Rape

ATIXA Model Definition:

- Penetration, no matter how slight,
 - of the vagina or anus of a person,
 - with any body part or object, OR
- **oral penetration**
 - **Of a sex organ of the Complainant, or**
 - **by the Respondent's sex organ, or**
 - **by a sex-related object**
- without the consent of the Complainant,
- including instances where the Complainant is incapable of giving consent because of **their** age or because of a temporary or permanent mental or physical incapacity

Sexual Assault: Fondling

ATIXA Model Definition:

- The **intentional** touching of the **clothed or unclothed genitals, buttocks, groin, breasts, or other** body parts **of the Complainant by the Respondent**
 - without the consent **of the Complainant**
 - for the purpose of **sexual degradation**, sexual gratification, **or sexual humiliation**
- Or the Respondent caused or directed the Complainant's **intentional** touching **of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other** body parts
 - without consent of the Complainant
 - for the purpose of **sexual degradation**, sexual gratification, **or sexual humiliation**

Sexual Assault: Incest & Statutory Rape

- **Incest**

- Sexual intercourse between persons related to each other within the degrees wherein marriage is prohibited by state law

- **Statutory Rape**

- Sexual intercourse with a person who is under the statutory age of consent

Dating Violence

- Violence, on the basis of sex,
- Committed by a person
 - Who is in or has been in a social relationship of a romantic or intimate nature with the Complainant
 - The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interactions between the persons in the relationship
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
 - Does not include acts covered under the domestic violence definition

Domestic Violence

- Violence, on the basis of sex,
- Committed by a current or former spouse or intimate partner of the Complainant
 - By a person with whom the Complainant shares a child in common, or
 - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state, or
 - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of the state

Stalking

- Engaging in a course of conduct,
- On the basis of sex,
- Directed at the Complainant, that
 - would cause a reasonable person to fear for that person's safety, or
 - The safety of others, or
 - suffer substantial emotional distress

Retaliation: ATIXA Model Definition

- Recipient, or any member of Recipient's community,
 - Taking or attempting take materially adverse action,
 - By intimidating, threatening, coercing, harassing, or discriminating against any individual,
- For the purpose of interfering with any right or privilege secured by law or Policy, or
- Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure

Consent: ATIXA Model Definition

- **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

Additional Definitions

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



Activity: Does Title IX Apply?

Blake & Tamika

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

Blake & Tamika

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

What Title IX definitions does this case study implicate, if any?

Amina & Darius

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

Amina & Darius

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

What Title IX definitions does this case study implicate, if any?

Daveed & Calvin

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

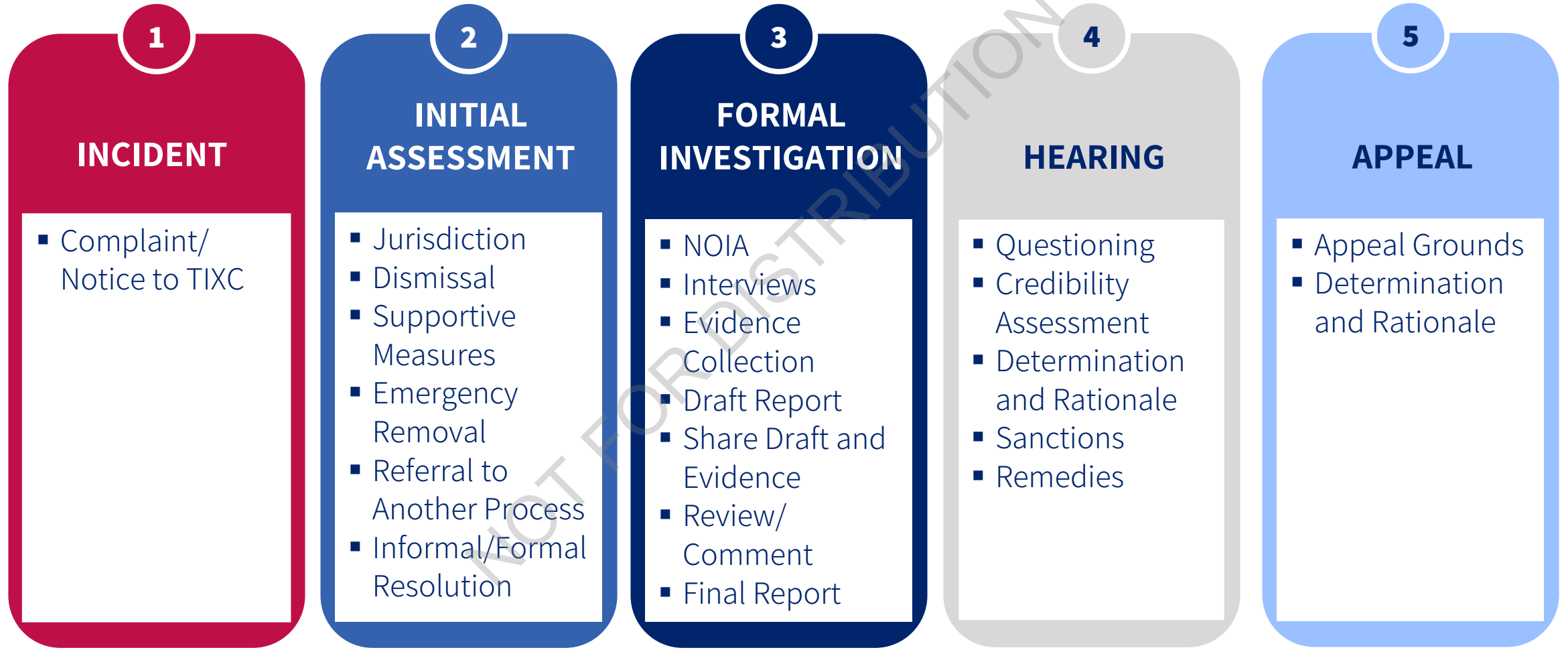
Daveed & Calvin

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

What Title IX definitions does this case study implicate, if any?

Formal Grievance Process Overview

Title IX Grievance Process Overview



Prompt Resolution

- Complete without undue delay
- Title IX Regulations do not define “prompt”
 - 60 business days is a good guide, perhaps longer for moderately complex allegations
- Grievance process may take longer than expected
 - Anticipate, mitigate, and document delays
 - Communicate with parties regarding delays
- Must provide anticipated timelines for each proceeding

Fair Resolution

- Treat all parties fairly
 - If the institution affords a right, privilege, benefit, or opportunity to one party, consider whether it should be provided to other parties
- Ensures that all parties have opportunity to fully participate in the grievance process
- Make certain that all Title IX team members operate without bias and/or conflict of interest

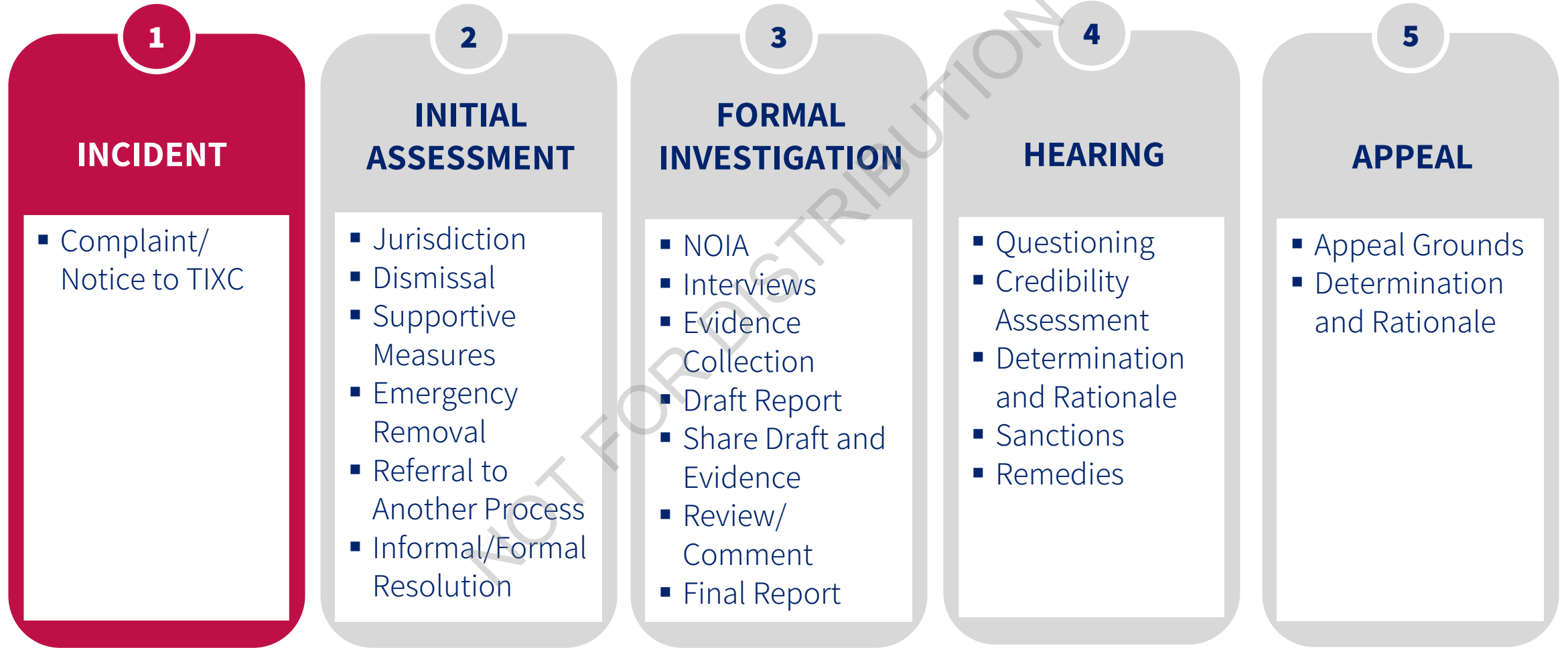


Parties' Rights During the Grievance Process

- Be accompanied by Advisor of their choice
- 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
- Written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Review all relevant and directly related evidence before the investigation report is finalized

Reports, Complaints, and Notice to the Institution

When is the Institution “On Notice?”



Point Person for Reports and Complaints

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

When is the Institution “On Notice?”

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

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

Mandatory Reporting

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

Party and Witness Privacy Concerns

Privacy vs. Confidentiality vs. Privilege

1

PRIVACY

Statutory protection (FERPA) only allows disclosing records to those who need to know, but cannot guarantee confidentiality

2

CONFIDENTIALITY

Information protected by those who need not report to the TIXC because they are designated confidential or have ethical/statutory confidentiality duties (subject to exceptions)

3

PRIVILEGE

The highest legal protection (attorney giving advice to a client or clergy providing pastoral advice); client/patient/parishioner controls the privilege

Report vs. Complaint

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

- **Report**

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

- **Formal Complaint**

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

Report vs. Complaint Considerations

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

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

Interacting with Law Enforcement

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

