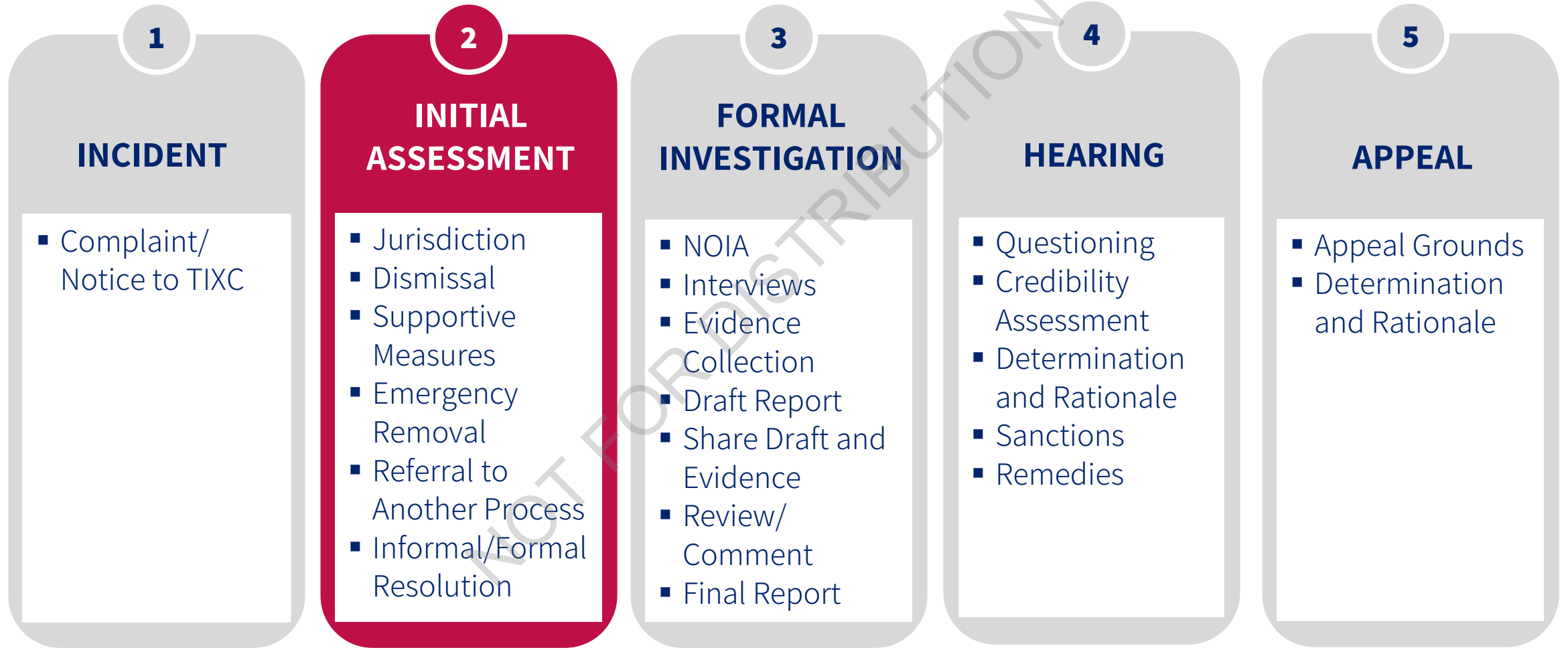


Initial Assessment

Initial Assessment



Jurisdiction

TIXC is responsible for conducting an initial assessment to determine Title IX jurisdiction:

- Does the alleged conduct, if proven, meet one of the definitions of Title IX sexual harassment?
- Who is the Complainant?
- Who is the Respondent?
- Does the institution have control over the context of the alleged harassment?



Jurisdiction

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



Outreach and Intake

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

Outreach and Intake

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

After Outreach and Intake

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

If formal complaint is filed:

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

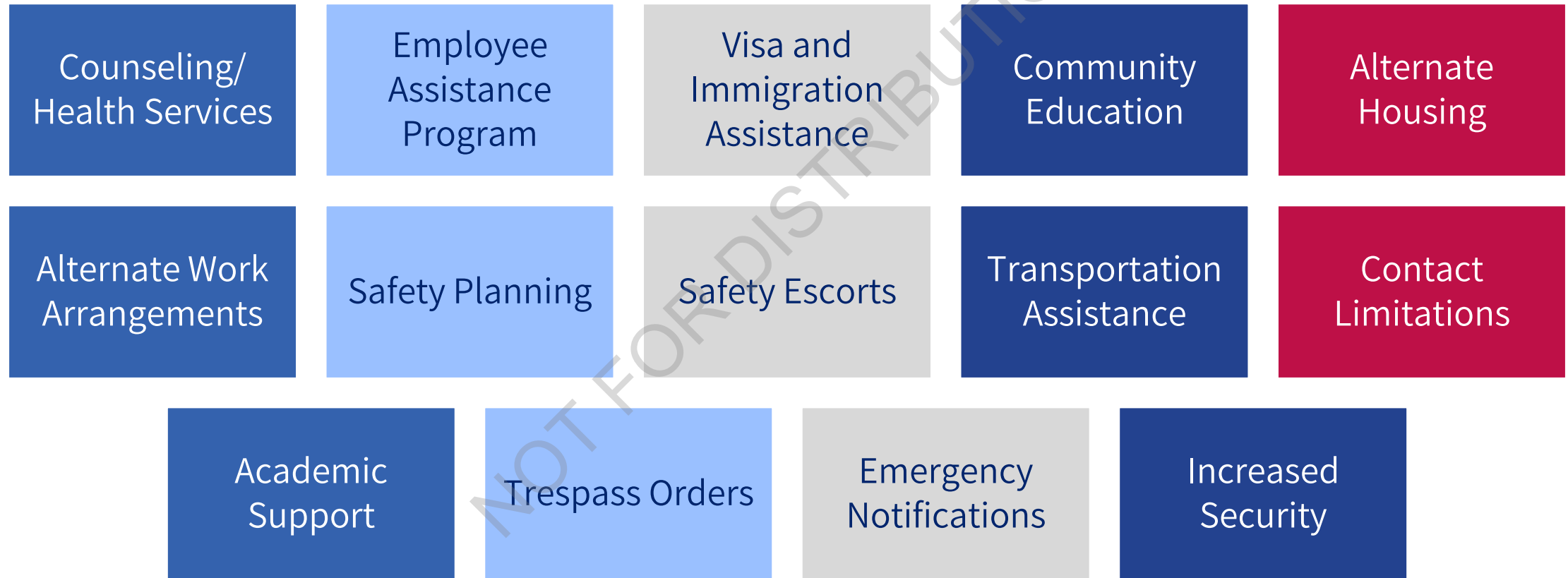
If no formal complaint is filed:

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

Supportive Measures

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

Supportive Measure Examples



Emergency Removal

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



Administrative Leave

- May remove an employee Respondent using existing administrative leave procedures
- A lower bar than emergency removal

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Mandatory Dismissal

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

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

Discretionary Dismissal

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

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

Dismissals

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



Informal Resolution

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

Informal Resolution, Cont.

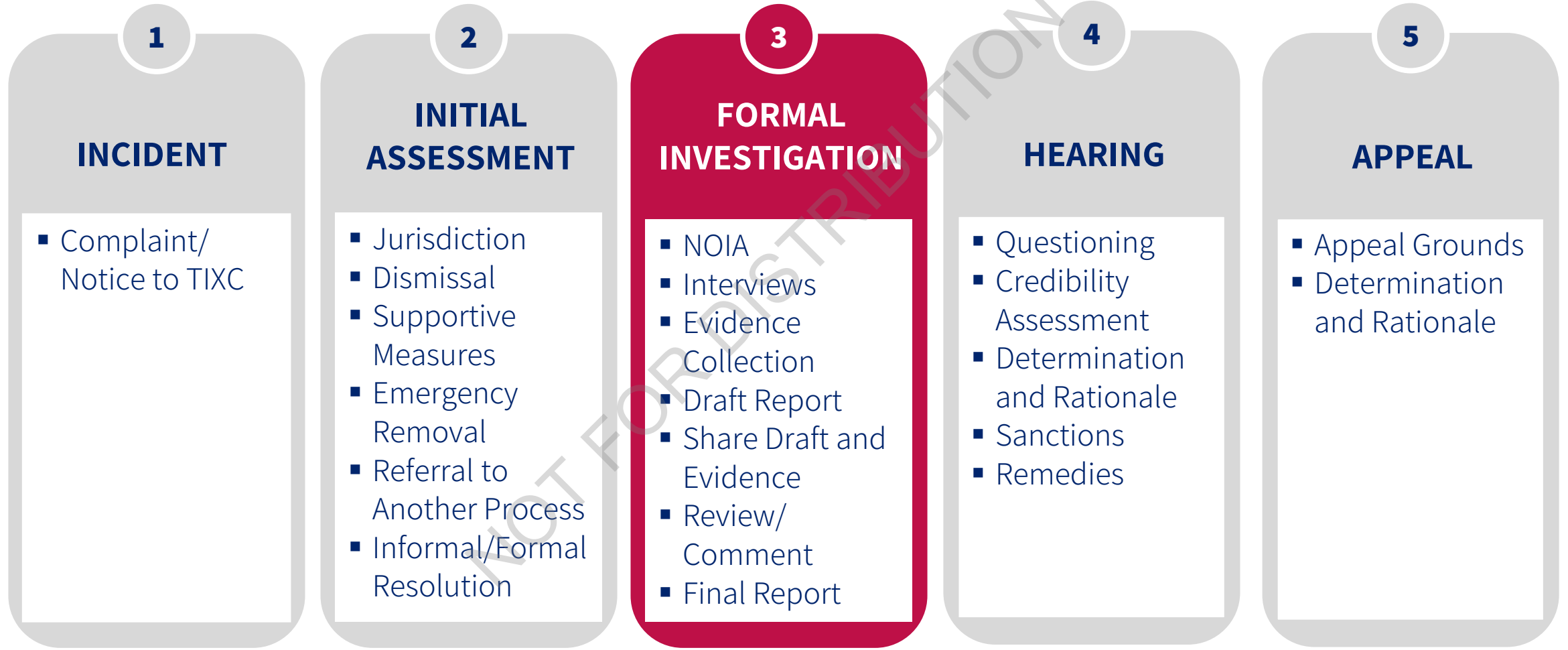
- Procedural requirements:
 - Formal complaint
 - Parties must receive written notice of the allegations, IR procedures, records created, and potential consequences
 - Parties' voluntary, written consent
 - Must still stop, prevent, remedy
- May withdraw from IR to start or resume Formal Grievance Process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



Investigation

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Investigation



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**

**External
Investigator**

**Coordinator as
Investigator**

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 Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

INCIDENT INVESTIGATION SUMMARY

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

Determining a Basis for Investigation

There are three bases for investigations:

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

Investigation Scope

Scope refers to the allegations, timeframes, and parties subject to the investigation

- TIXC determines the scope of the investigation
- Considerations:
 - Allegations outside of jurisdiction
 - Individual vs. group
 - Multiple complainants or Respondents
 - Counter-complaints
- May need to adjust scope during process



Notice of Investigation and Allegations

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

NOIA Inclusions

The NOIA must also include:

- Presumption that Respondent is not responsible
- A statement that retaliation is not permitted
- Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
- The NOIA must be updated if additional allegations arise during the course of the investigation
- Include or reference current policy and procedures

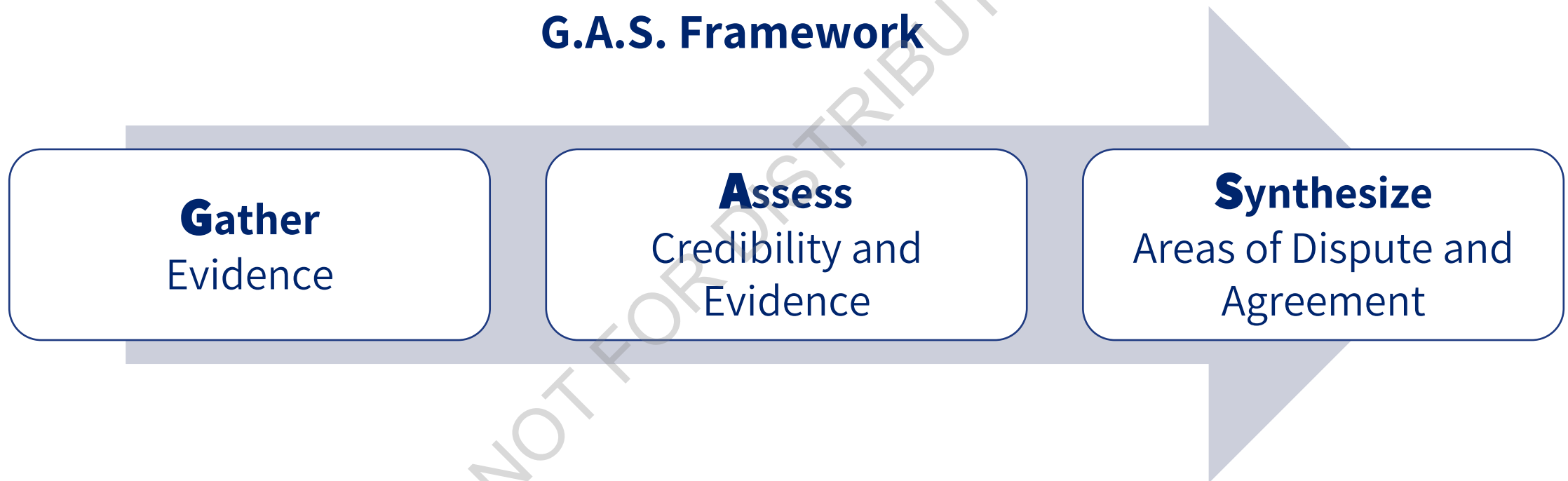
Investigation Strategy

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

- Review elements of the specific policy provision(s) alleged to have been violated
- Develop initial witnesses and tentative interview order
- Discuss challenges with the type of complaint and the parties involved
 - Anticipate allegiances
 - Disrupt possible collusion
 - Predict obstacles and obstructions
- Assess relevant pattern considerations
- Identify preliminary undisputed and disputed facts and their significance
- Consider types of possible evidence and the plan to acquire such evidence
- Establish preliminary investigation timeline

Formal Investigation

G.A.S. Framework



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

Understanding Evidence

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



Directly Related Evidence

- Connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon by the Decision-maker (DM)
- Must be provided to the parties and their Advisors for review
 - ATIXA recommends providing an organized directly related evidence file
- DMs ultimately determine what is relevant, directly related, or neither



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

- 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

Evidence and the Consent Construct

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?

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



Drafting, Reviewing, and Finalizing the Investigation Report

Draft Investigation Report

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

Parties and Advisors Review Draft Report and Evidence

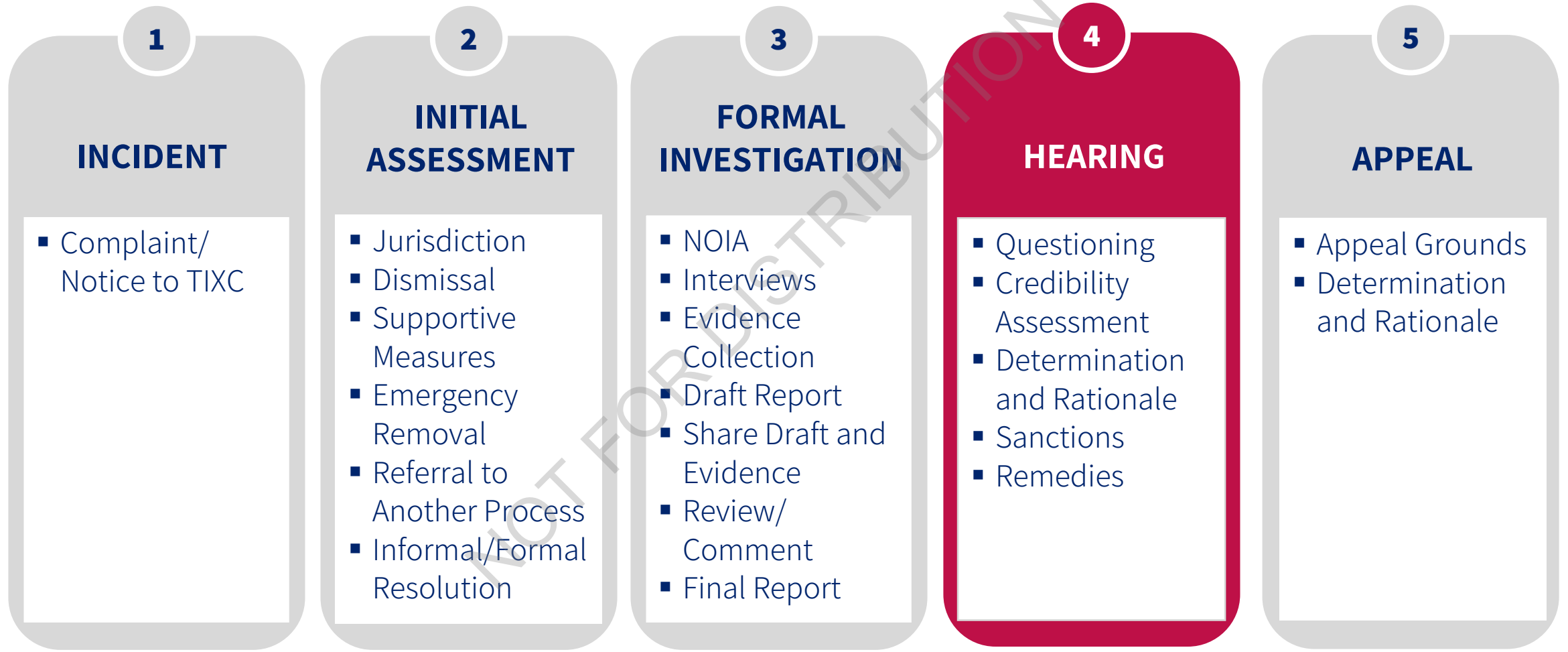
Final Investigation Report

Parties' and Advisors' Review of Report and Evidence File

- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must:
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
- Investigator sends the final investigation report to the parties and Advisors for review 10 days prior to the hearing

Decision-Making

Decision-Making



Decision-Making

All complaints **must** be resolved through a decision-making phase unless an Informal Resolution is reached, or the complaint is dismissed

Title IX Coordinator

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

Decision-maker(s)

- Is not TIXC or Investigator
- Facilitates Decision-making process, including questioning
- Determines relevance
- Assesses credibility
- Makes a finding of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

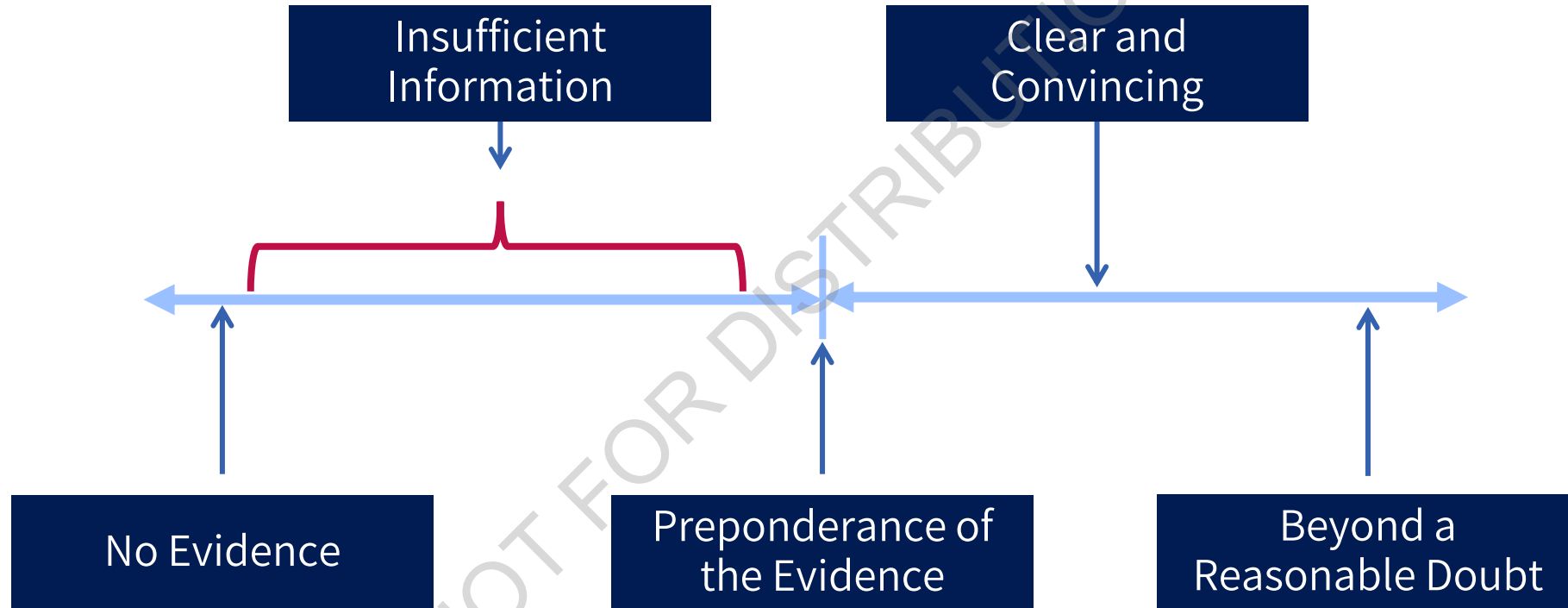
Live Hearings

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

Finding and Final Determination

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

Standard of Evidence



Sanctions and Remedies

Sanctions

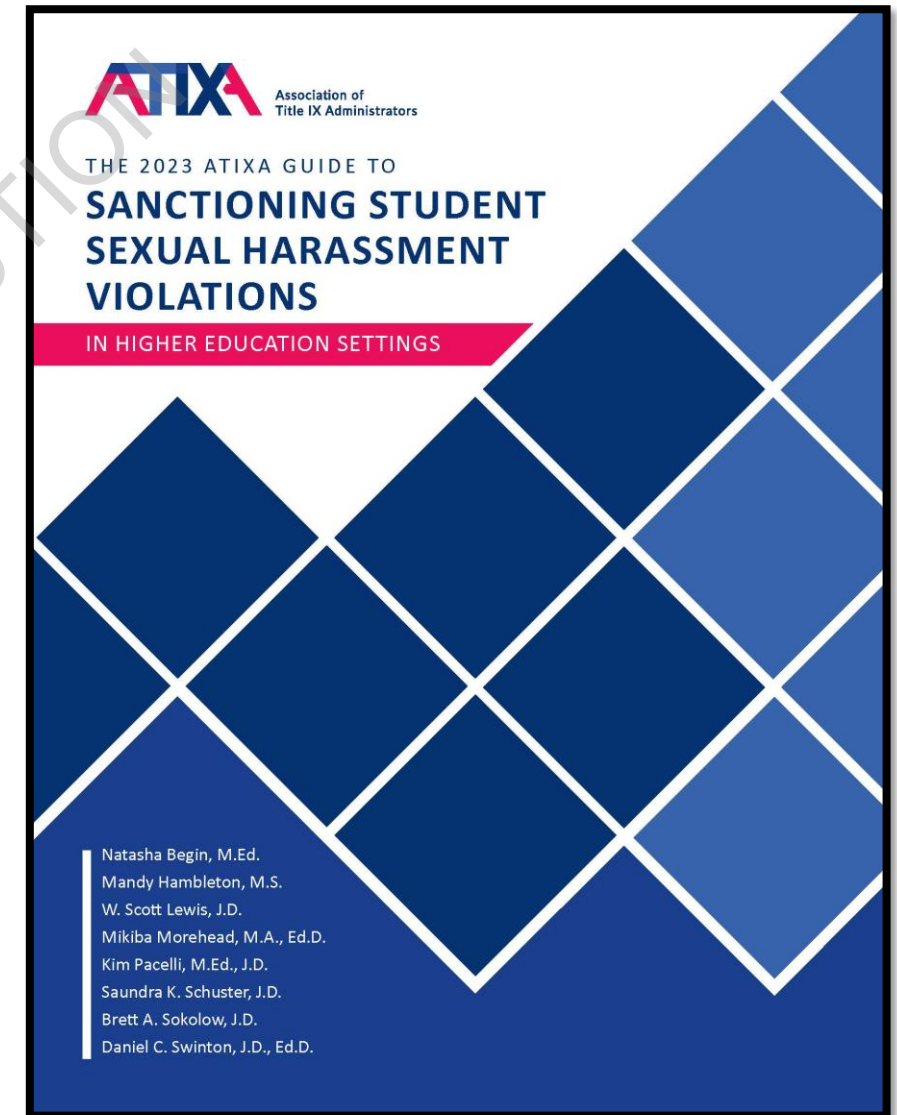
- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC does not issue sanctions but oversees the process
- TIXC assures sanction compliance
 - Failure to comply could lead to discipline

Remedies

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

Sanctions

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



Written Determinations

- **Written Determination**

- Authored by DMs
- TIXC/Legal counsel reviews
- TIXC communicates to the parties simultaneously in writing

- **Finality**

- On the date the institution provides a written appeal determination
 - OR the date when an appeal would no longer be timely

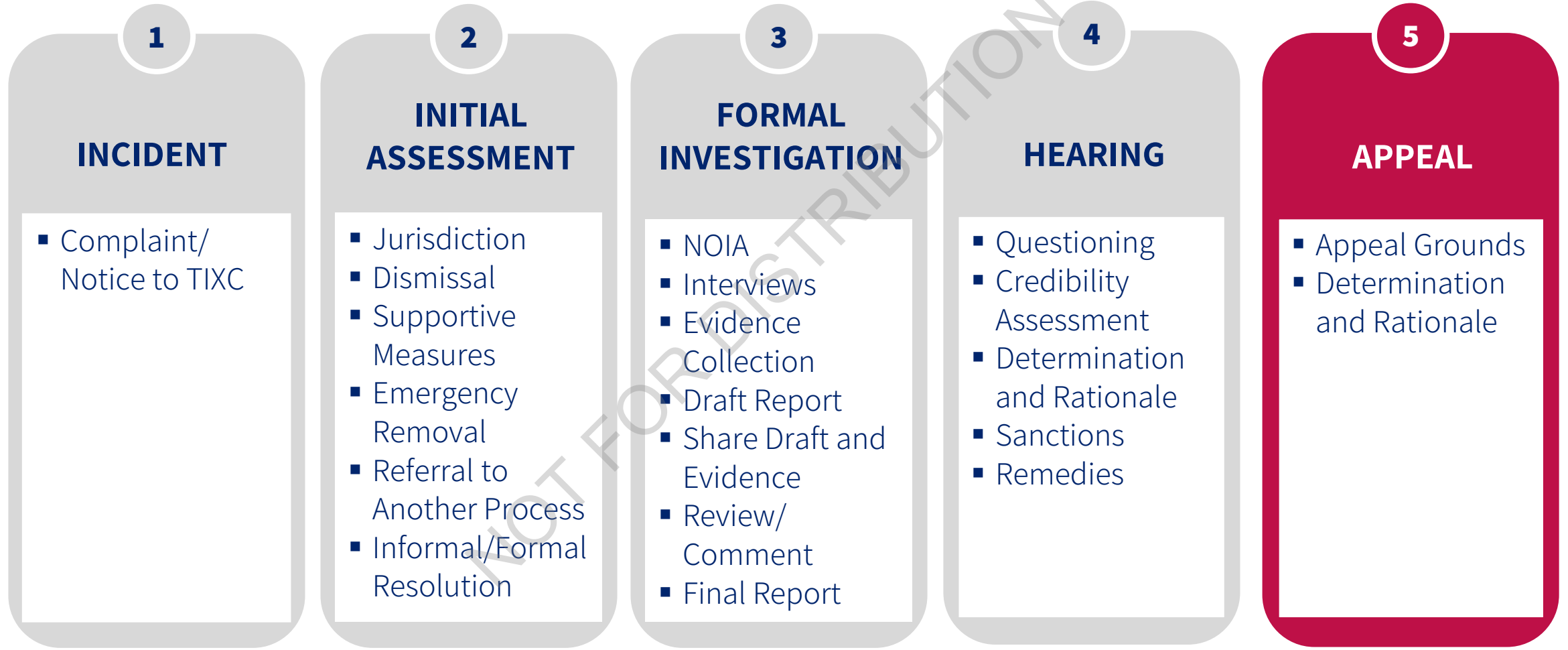
Written Determination Elements

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

Appeals

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Appeals



Appeal Process

Institution must offer a fair appeal process

- Institutional policy must include grounds and process for appeal
- Institutions must provide information about the appeal process in writing to parties and Advisors
- One level of appeal is best practice
- Typically, document-based review for error only; not a new consideration
- Discretion of panel vs. single Appeal DM
- Deference is given to the original DM

Appeal Decision-Maker

- Cannot be TIXC or serve another role in the same complaint resolution
- Makes determination on a party's request for an appeal
- Reviews written submissions from parties
- May review investigation report or evidence gathered during investigation/decision-making phase
- May speak with Investigator, DM, parties, and/or witnesses
- **Review of complaint should be limited to the grounds noted in the appeal request**
- Draft a written determination that outlines the rationale for the outcome

Appeal Grounds

Must offer appeals on the following grounds:

1

Procedural irregularity that affected the outcome of the matter

2

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

3

Conflict of interest or bias by the TIXC, Investigator, DM that affected the outcome of the matter

Institutions have the discretion to add additional appeal grounds

Appeal Outcomes

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

Recordkeeping

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



Clery Act/VAWA Section 304

Clery/VAWA Section 304 Intersections

Clery Act

- Designed to improve reporting and transparency of campus crime statistics
- Clery Geography and Title IX jurisdiction are separate and overlapping
 - Timely Warning requirement
 - Clery Annual Security Report (ASR)

Violence Against Women Act (VAWA)

- Intended to improve community-based responses to domestic violence, dating violence, sexual assault, and stalking
- VAWA § 304 Amended the Clery Act
 - Added new awareness, training, and procedural requirements
 - Officials conducting disciplinary proceedings must be trained annually

Clery/VAWA Section 304 Intersections, Cont.

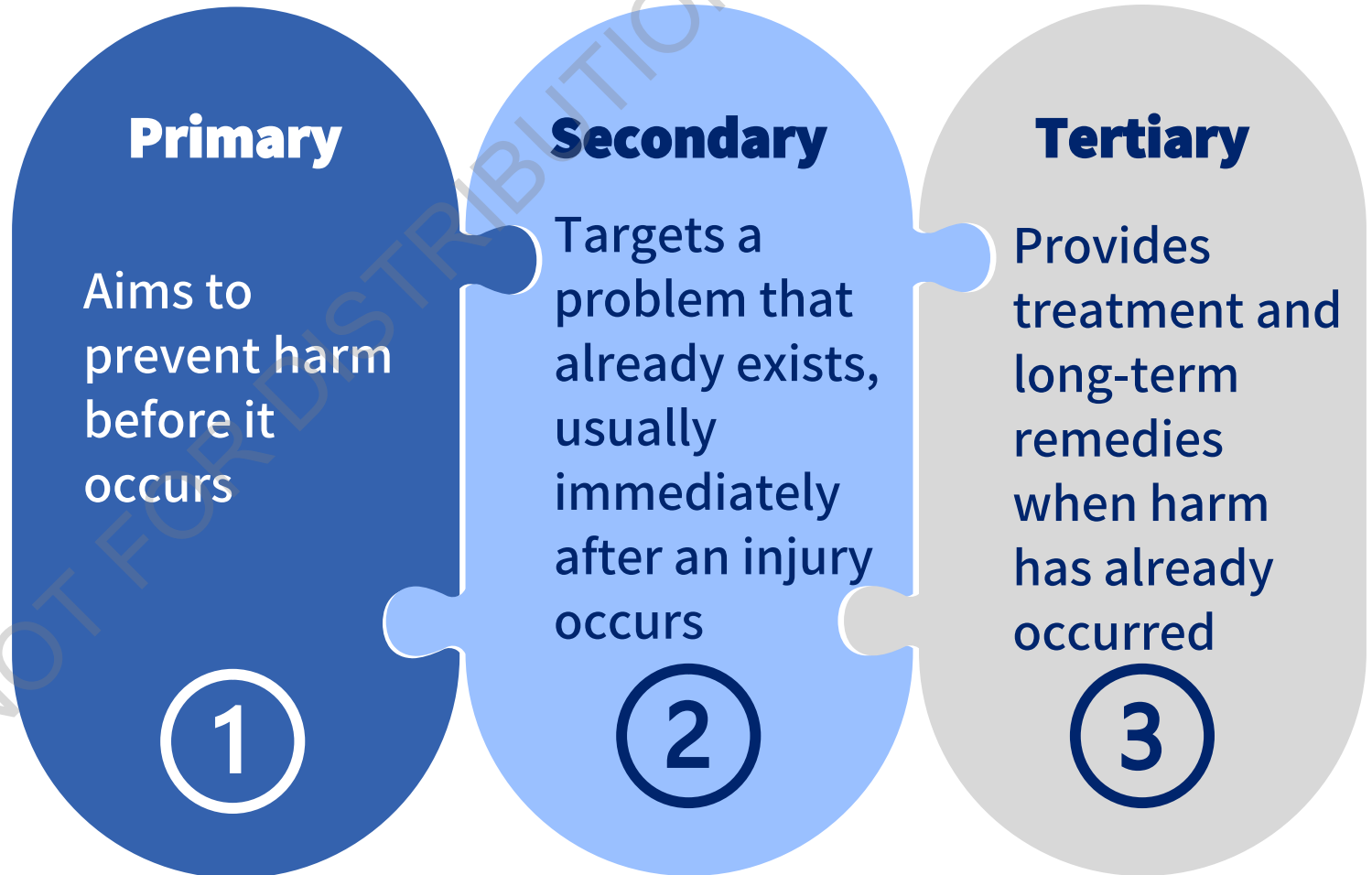
- Inform Complainants about:
 - Importance of preserving evidence
 - Institutional reporting
 - Law enforcement reporting
- Complainants should receive written information regarding:
 - Common action items or resources victims should consider
 - Supportive Measures
 - Services available on- and off-campus
 - Reporting options
 - Protection options

Prevention and VAWA

What is Prevention?

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

- Evidence-based
- Multi-layered
- Directed at individual, community, and environmental levels



VAWA Prevention Programming

- Programs tailored to each institution and its populations
- Ongoing prevention and awareness campaigns
 - Responsive to community needs
 - Tailored to be culturally relevant and inclusive
- Direct programming to **all** incoming students and new employees
 - Make a **good faith effort** to reach all incoming students and new employees
 - Include a statement that the institution prohibits sexual assault, dating and domestic violence, and stalking
 - Consent definition
 - Provide risk reduction information
 - Increase bystander action
 - Increase empowerment for victims

VAWA Training

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

Policy Management

Title IX Policy and Procedures

- Title IX requires policies and procedures that facilitate resolution of sexual harassment complaints
- **Policy**
 - Clearly define expectations and prohibited conduct
- **Procedures**
 - Govern how to resolve alleged policy violations fairly
- TIXC should have decision-making authority in policy and procedure revision process



Policy and Procedures Development

Inventory Existing Policies & Procedures (P&P)

- Harassment and discrimination P&P
- Student Conduct
- Human Resources
- Collective Bargaining Agreements
- Athletic policies
- State and federal laws
- System-based policies

Create and Implement Policies & Procedures

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

Avoid Discriminatory Policies & Procedures

- Consistency across all related policies and procedures
- No variations based on parties' identities
- No differential treatment

Sources of Requirements and Guidance

Federal Law and
Regulations

State/Local Law and
Regulations

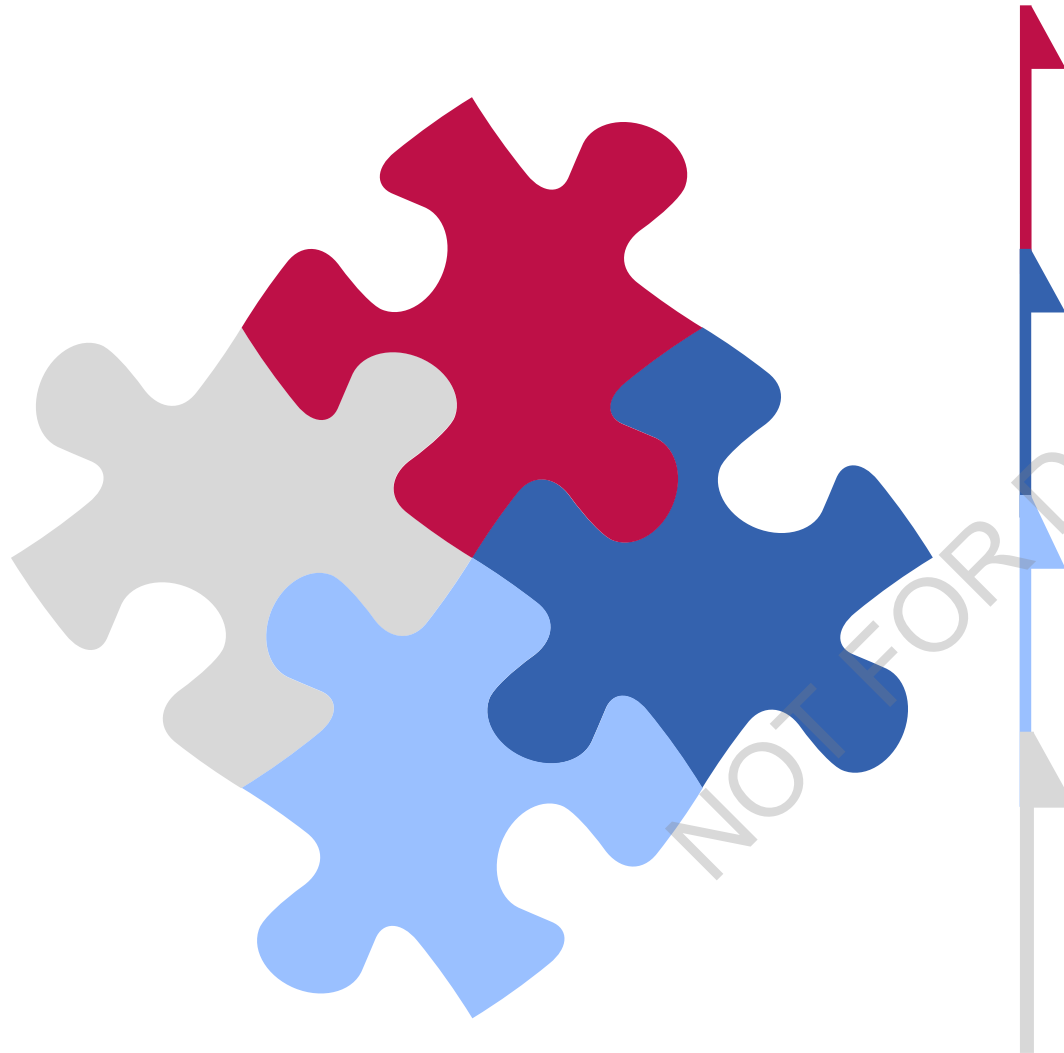
Relevant Court
Decisions

OCR Resolution
Agreements

Insurance Provider
Requirements

Governing Body
Policies

Overlapping Policies



Governing Body

- Board Policy
- Board Administrative Procedures

Employee-Facing Publications and Websites

- Human Resources Policies & Procedures
- Faculty/Staff Handbooks

Student-Facing Publications and Websites

- Student Conduct Code and/or Handbooks
- Student Org. Policies & Procedures

Student and Employee-Facing

- Civil Rights & First Amendment Policies & Procedures
- Acceptable Use Policies
- Athletic Policies

Publication Requirements

- **Title IX regulations require Recipients to publish policies, procedures, and non-discrimination notices to:**
 - Students and applicants
 - Employees and employment applicants
 - All unions or professional organizations holding collective bargaining or professional agreements with the Recipient

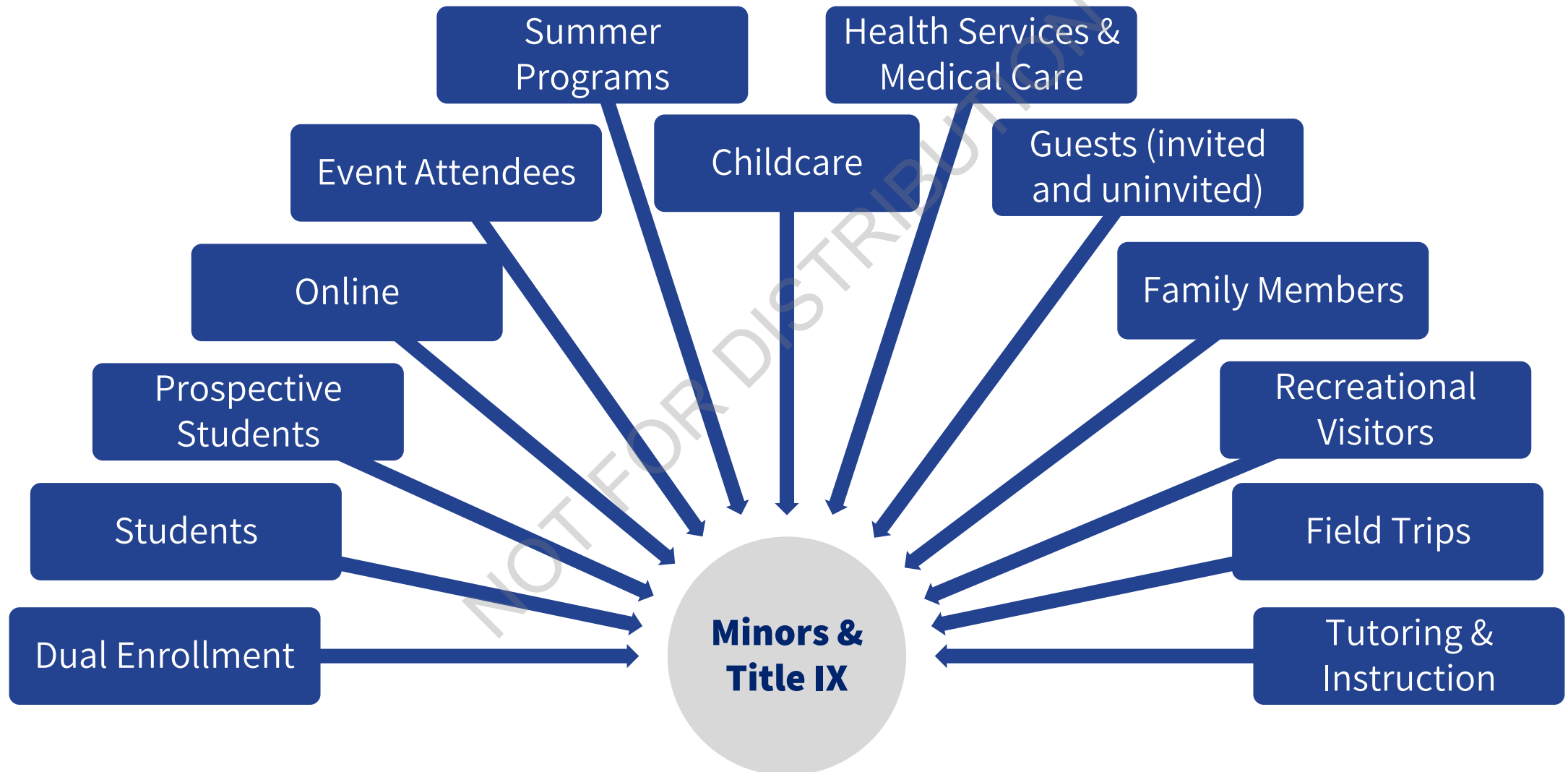


Mandatory Notice of Non-Discrimination

- Provide to students, employees, applicants, and all unions or professional organizations with collective bargaining agreements
- Publish **prominently** on institutional website and in handbooks or catalogs
- Required elements:
 - A statement that the institution does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity
 - TIXC contact information
 - Location of policy and grievance procedures
 - Instructions on how to make a report
 - Information about filing a complaint with Title IX and OCR

Minors and Title IX

Minors on Campus



Common Challenges

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



Dual Enrollment & Title IX Compliance

Dual enrollment programs present a variety of compliance challenges:

- Training
- Reporting, including child abuse reporting
- Jurisdiction and downstream effects
- Supportive Measures
- Age of Consent
- Remedies
- FERPA and parents' rights
- Collaborative investigations



Camps and Programs: Significant Assistance



Not Ours

- Run by a different entity
- Other entity hires the staff
- Institution only rents out space at fair market value



Kind of Ours

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



Completely Ours

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

Sample Policy

Abuse of Minors

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

Trauma-Informed Practices

Understanding Trauma

- **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 Title IX services and processes accessible, including those who may have experienced trauma

Trauma-Informed Practices

- **Key principles of trauma-informed practice:**
 - Safety
 - Trustworthiness and transparency
 - Collaboration and mutuality
 - Empowerment, voice, and choice
 - Cultural and historical context
- **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