



Association of
Title IX Administrators

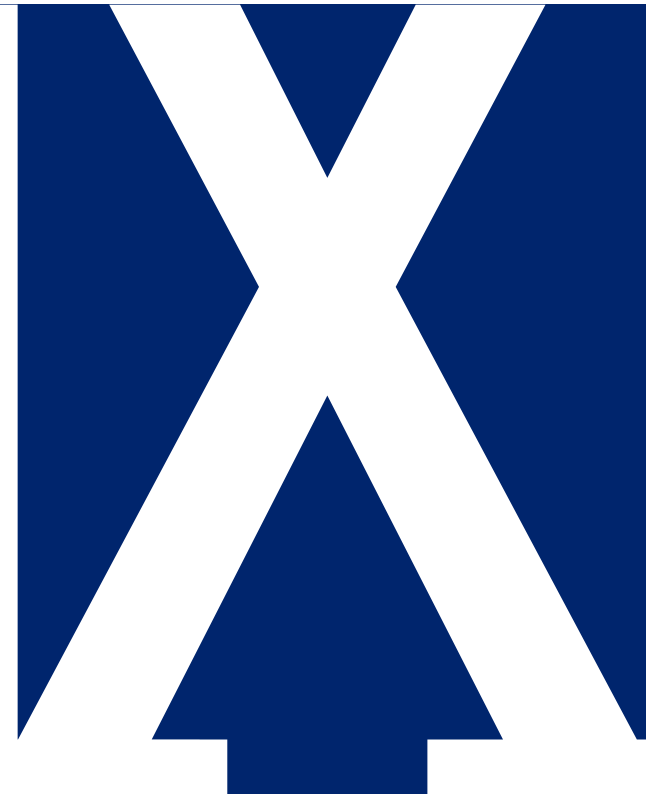
Title IX Annual Update Ohio State University December 12, 2024

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TITLE IX

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

“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.”



TITLE IX: SCOPE

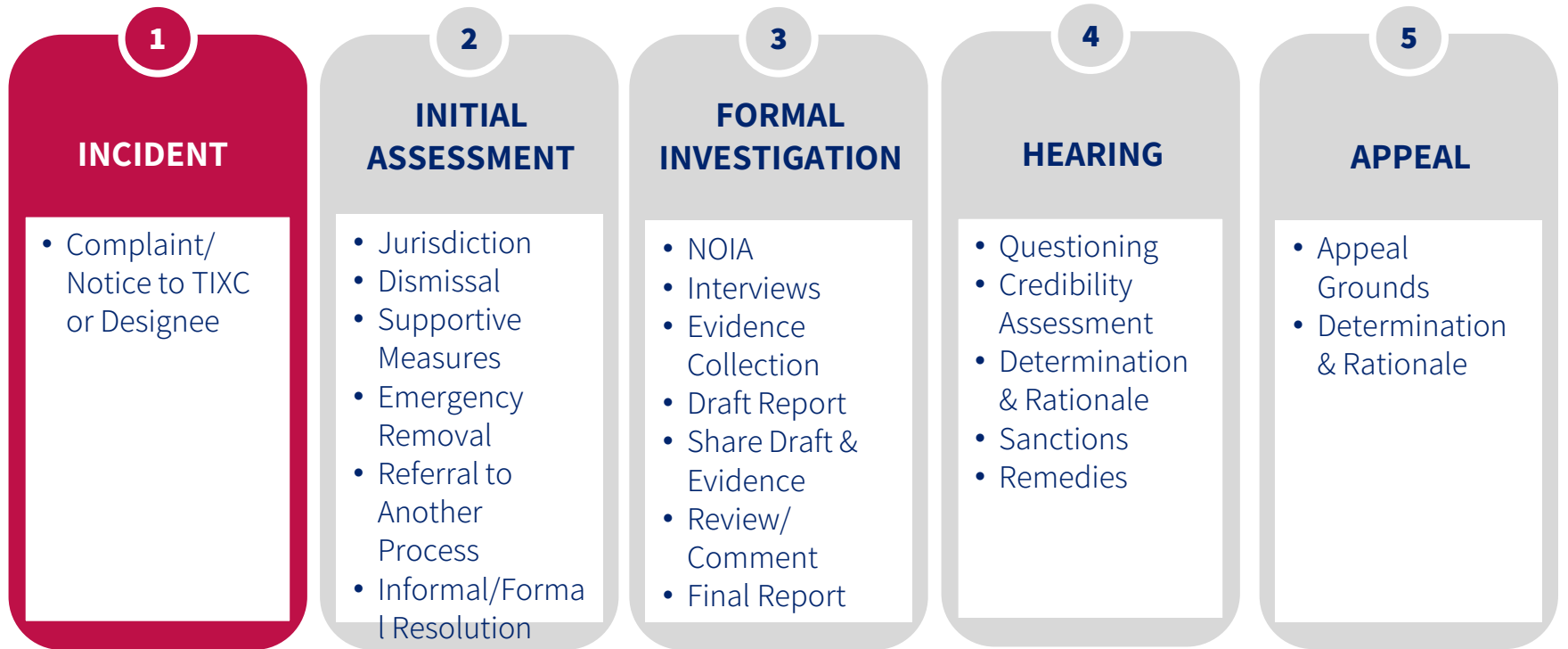
Sex Discrimination

- Inequitable Treatment
- Exclusion from participation

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

GRIEVANCE PROCESS OVERVIEW



TITLE IX GRIEVANCE PROCESS CONSIDERATIONS

Equitable Resolution

- Treat all parties equitably
 - 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



TITLE IX GRIEVANCE PROCESS OVERVIEW

Rights of the parties during the grievance process:

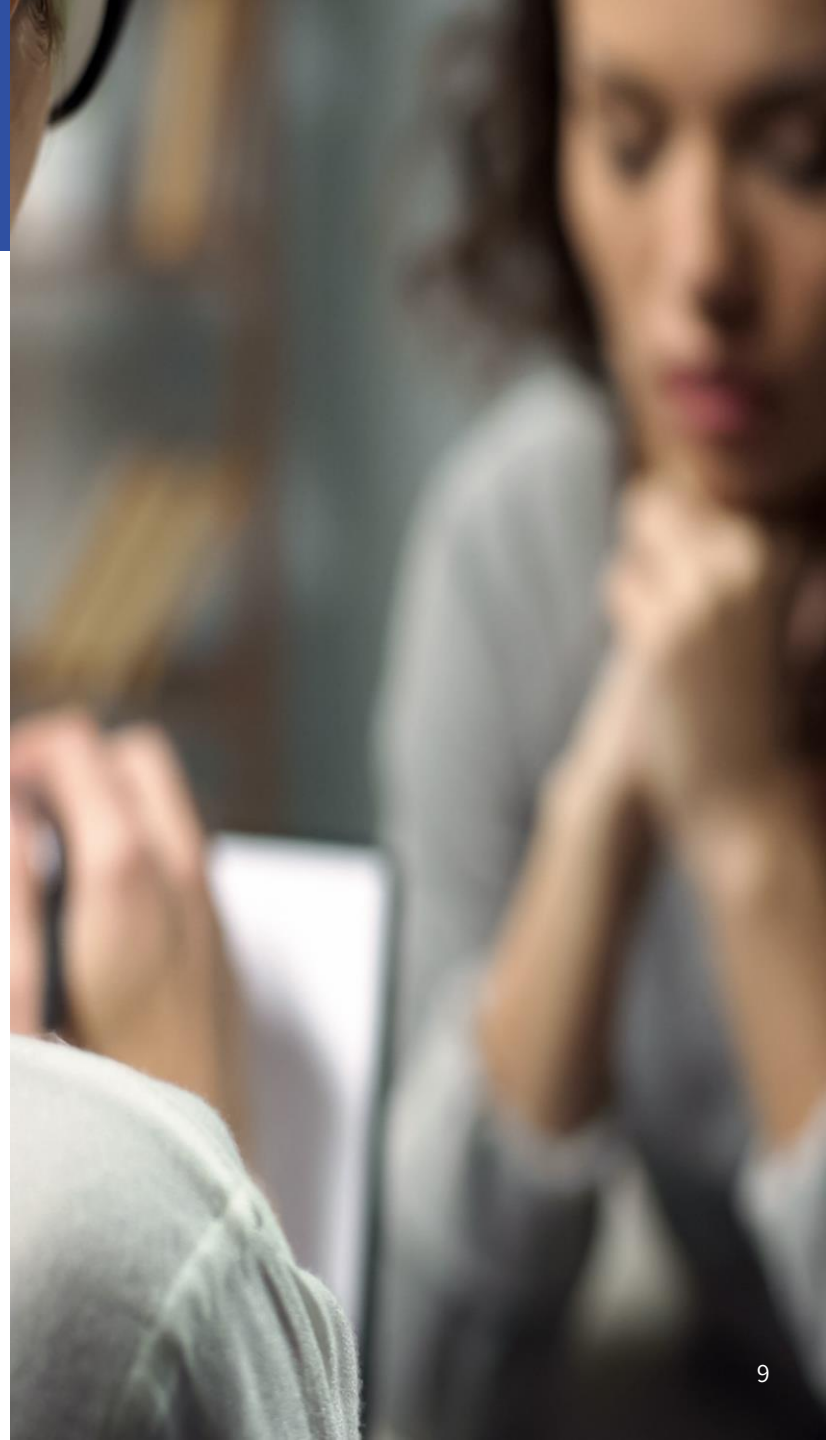
- Present witnesses
- Present inculpatory and exculpatory evidence
- Discuss the allegations under investigation without restriction
- Gather and present relevant evidence without restriction
- Be accompanied by Advisor of their choice
- Provided written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Inspect and review directly related evidence and investigation report

REPORTS, COMPLAINTS, AND NOTICE TO THE INSTITUTION

WHEN IS THE INSTITUTION “ON NOTICE?”

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

- **TIXC or Designee**, or
- An **Official with Authority (OWA)**: any official who has authority to institute corrective measures on behalf of the Recipient



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

OUTREACH AND INTAKE

- After receiving a report, TIXC or Designee (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?”

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 or Designee 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 or Designee of an incident and
- Obligates the TIXC or Designee 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 or Designee
- Alleging sexual harassment
- Complainant must be **participating or attempting to participate** (P/ATP)

DISCUSSION: REPORT vs. COMPLAINT

- Online reporting form
- Anonymous reporting opportunity
- 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 or Designee takes no formal action in response to a report, document rationale

SIGNING A FORMAL COMPLAINT: PPTVWM

In limited circumstances, a TIXC or Designee 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 or Designee Signing a Formal Complaint

- Employee Respondent
- Complainant who is not P/ATP

PPTVWM CONSIDERATIONS (SLIDE 1 OF 2)

Pattern, Predation, Threat, Violence, Weapon, or Minors

- Additional complaints of sexual violence involving the same Respondent
- Whether the sexual violence was committed by multiple individuals
- Whether the Respondent has a prior history of violence
- Whether the report reveals a pattern of behavior at a given location or by a particular group
- Whether the Respondent threatened further sexual violence or violence against the Complainant or others

PPTVWM (CONT.) SLIDE 2 OF 2

Pattern, Predation, Threat, Violence, Weapon, or Minors

- Whether a weapon facilitated the sexual violence
- Age of the Complainant
- Whether the school possesses other means to obtain relevant evidence (e.g., security cameras or personnel, or physical evidence)

If University proceeds, it should notify the Complainant and utilize appropriate supportive measures to protect them.

INTERACTING WITH LAW ENFORCEMENT

- TIXC or Designee 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



AFTER OUTREACH AND INTAKE

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

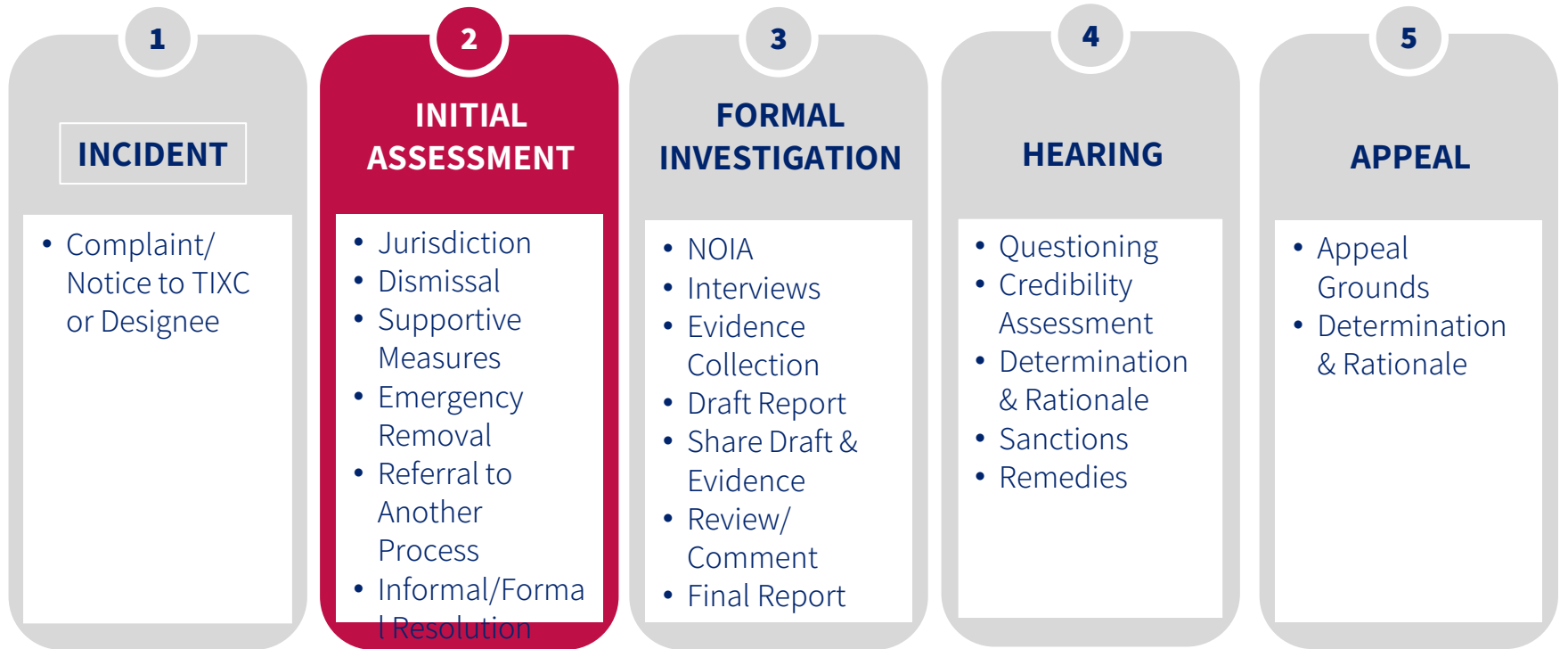
If formal complaint is filed:

- 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 or Designee needs to sign a formal complaint
- Consider whether **emergency removal** is warranted

INITIAL ASSESSMENT



JURISDICTION

TIXC or Designee 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?



DETAILS OF JURISDICTIONAL ASSESSMENT

- 1 Who is the complainant?
- 2 Who is the respondent?
- 3 Is it behavior that meets one or more of the definitions of sexual harassment under Section 106.30?
- 4 Is it within the program or activity?

Is the conduct outside of the United States?

1. WHO IS THE COMPLAINANT?

- At the time of filing a formal complaint, a Complainant must be **participating in or attempting to participate** in the education program or activity of the University with which the formal complaint is filed
 - OCR adopts a fairly broad definition of what could constitute “attempting to participate”

2. WHO IS THE RESPONDENT?

- If Respondent is **not** affiliated with the University in any way, the University **lacks authority** to take disciplinary action. Examples include:
 - Employee of an outside company (e.g., vendor, construction worker, etc.)
 - Guest or invitee
 - Prospective student
 - Former student
 - Former employee
 - Student from another institution
- May still remedy the harassment, but not provide a basis to run a formal grievance process as contemplated in the Title IX regulations.

3. DEFINITION OF SEXUAL HARASSMENT

Conduct on the basis of sex that satisfies one or more of the following:

- Hostile environment sexual harassment
 - Severe, **and** pervasive, **and** objectively offensive
- Quid pro quo harassment
- Sexual assault
- Domestic violence
- Dating violence
- Stalking

Retaliation is also prohibited.

4. PROGRAM OR ACTIVITY?

- There is NO expectation that you exercise jurisdiction over off-site incidents UNLESS
 - The property is owned or controlled by the school **OR**
 - The property is being used for a program or event sponsored by the school or an organization recognized by the school **OR**
 - The property is owned or controlled by an organization recognized by the school
- All programs run by a federal funding University
- All programs using facilities of the funding University
 - e.g., Camps using fields/stadium

LIMITATIONS ON WHEN TITLE IX APPLIES

- Limitations:
 - Actions/conduct/speech protected by academic freedom
 - Pedagogically appropriate and germane to the subject matter of course that instructor hired to teach/research
 - Actions/conduct/speech protected by the First Amendment
 - Merely offensive conduct cannot be disciplined at a public institution
 - Must be severe, pervasive, and objectively offensive

IF TIX JURISDICTION IS NOT PRESENT

Behavior may still violate:

- College's Non-Discrimination, Harassment, Sexual Misconduct Policy
- Student Handbook/Conduct policies
- Technology/Acceptable Use policies
- Employee Handbook/Policies
- Professionalism Standards

MANDATORY DISMISSAL OF A FORMAL COMPLAINT

The TIX Coordinator or Designee MUST dismiss a formal complaint at any time if the alleged conduct:

- Would not constitute sexual harassment as defined (six offenses in § 106.30), even if proved
- Did not occur in the University's education program or activity
 - This includes having disciplinary control over the alleged Respondent
- Did not occur against a person in the United States
- The Complainant is not participating or attempting to participate in University's program at time of complaint

DISCRETIONARY OR PERMISSIVE DISMISSAL OF A FORMAL COMPLAINT

The TIX Coordinator or Designee MAY dismiss a formal complaint if at any time prior to a determination:

- Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations
- Respondent is no longer enrolled or employed by University
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations

MANDATORY OR PERMISSIVE DISMISSAL OF A FORMAL COMPLAINT

- Written notice of dismissal to parties required
 - Dismissal (or non-dismissal) of formal complaint may be appealed

Upon dismissal under the Title IX Regulatory framework (§106.45) the University may institute action under another policy but must provide appeal option

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



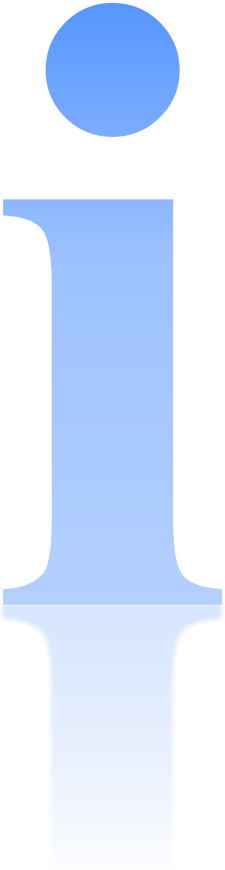
SUPPORTIVE MEASURES

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



ADDITIONAL CONSIDERATIONS

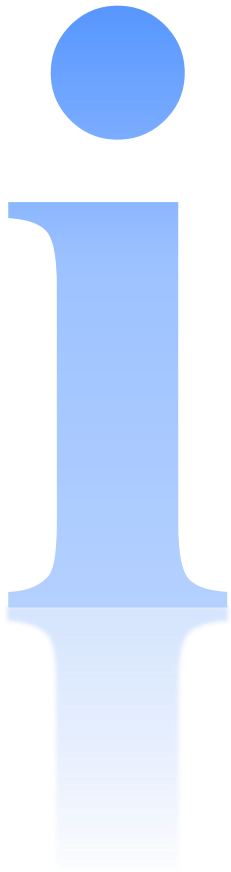
ADDITIONAL CONSIDERATIONS FOR INITIAL ASSESSMENT

- 
- The initial assessment is used to determine the following:
 - Does the allegation meet the Title IX regulatory standard for response?
 - Does jurisdiction exist?
 - Does the TIXC or Designee need to sign/initiate a formal complaint?
 - Mandatory/Discretionary dismissal considerations.
 - If dismissed, should an alternate policy/ process begin?
 - Should this move forward under a VII rubric or Student Conduct?

INITIAL ASSESSMENT

If proceeding under Title IX:

- Establish basis of investigation:
 - Incident or pattern, and/or climate/culture
- Establish a preliminary timeline for the investigation
- If no formal action, document how University's response was not deliberately indifferent
- Responding to anonymous reports:
 - Determine if a trend or pattern may be apparent
 - Can you identify parties?
 - Duty to attempt some form of remedial response, even to an anonymous report



NOTICE TO THE PARTIES: THE NOIA

- Upon receipt of a formal complaint, a college must provide **written notice** to the parties who are known that includes:
 - Notice of the grievance process, including any informal resolution process
 - Notice of the allegations with sufficient time to prepare a response before any initial interview and sufficient details known at the time, including:
 - Identities of the parties involved in the incident, if known
 - Description of conduct
 - Date and location, if known

EMERGENCY REMOVAL

The University may remove a student Respondent from the education program or activity on an emergency basis, only after:

1. Undertaking an individualized safety and risk analysis
2. Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal
3. Providing the Respondent with notice and an opportunity to challenge the decision immediately following the removal while respecting all rights under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act (1990), as applicable.

EMPLOYEE ADMINISTRATIVE LEAVE

- A University may place a non-student employee Respondent on administrative leave during the pendency of a grievance process under existing procedures, without modifying any rights provided under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act
- What is the appropriate action for student employees?

INFORMAL RESOLUTION

- The Title IX regulations include a provision that encourages informal resolution
 - Following formal complaint
 - Allowed at any time prior to a final determination at discretion of TIXC or Designee
 - Voluntary, written consent of the parties
 - OCR regs preclude informal resolution of allegations that an employee harassed a student
 - Must still stop, prevent, remedy, and document response

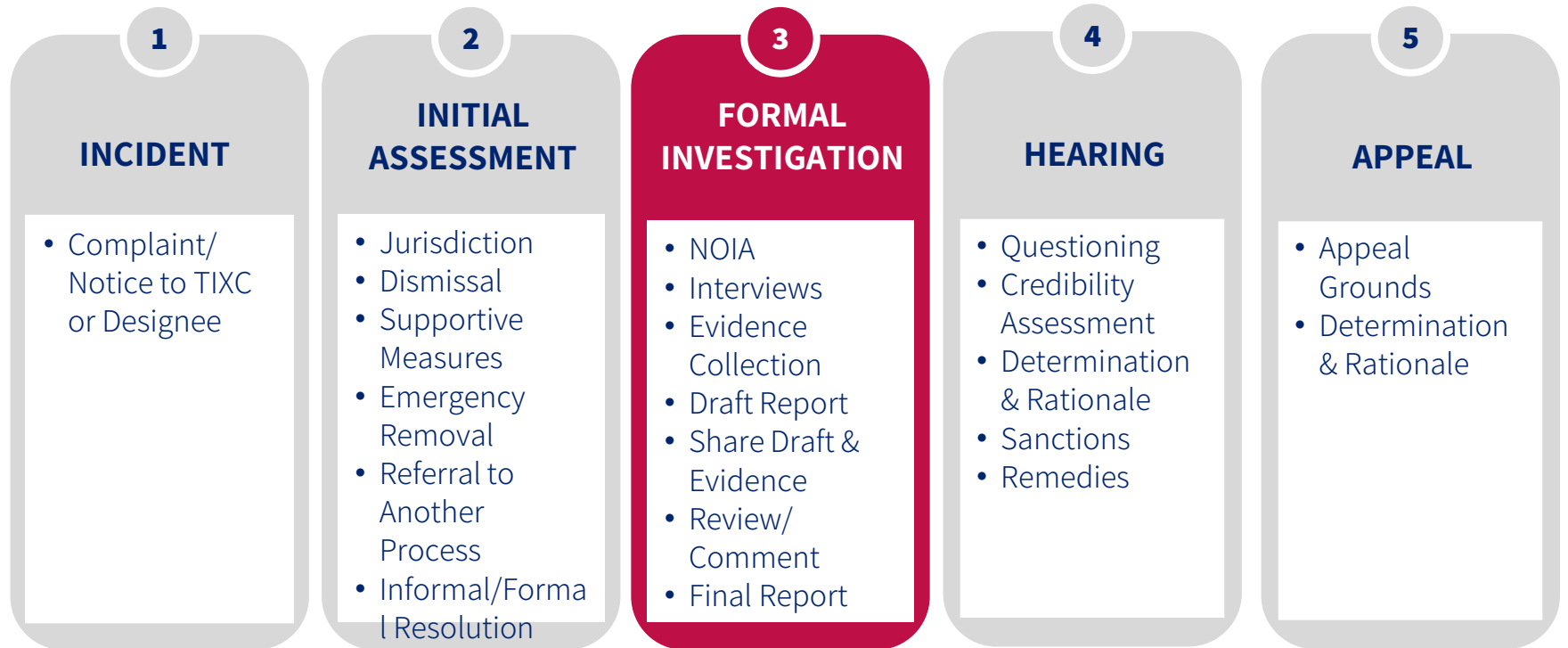
INFORMAL RESOLUTION ASSESSMENT

The Title IX Coordinator or designee may look to the following factors to assess whether Informal Resolution is appropriate, or which form of Informal Resolution may be most successful for the parties:

- Amenability of the parties to Informal Resolution
- Likelihood of potential resolution, taking into account any power dynamics between the parties
- Motivation of the parties to participate
- Civility of the parties
- Cleared violence risk assessment/ongoing risk analysis
- Whether an emergency removal is needed

INVESTIGATION

INVESTIGATION



INVESTIGATION OVERVIEW

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. Identify Issues; Establish Investigation Strategy
6. Conduct formal Comprehensive Investigation
7. Draft Investigation Report
8. Share draft with parties and advisors
9. Parties Review Draft Report & Evidence, submit response
10. Develop final Investigation Report



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

NOTICE OF INVESTIGATION AND ALLEGATIONS

- The next step is the Notice of Investigation and Allegations (NOIA) letter
 - Sent to all parties, simultaneously
 - Must be sent prior to interviewing any party
- The 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
 - The date and location of the alleged conduct
 - Information about grievance procedures
 - Any Informal Resolution options

NOTICE OF INVESTIGATION AND ALLEGATIONS

The NOIA must outline the parties' right to:

- Present witnesses, including expert witnesses
- Present inculpatory and exculpatory evidence
- Freely discuss the allegations
- Be accompanied by an Advisor of their choice
- 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
- Review all relevant and directly related evidence before the investigation report is finalized

NOTICE OF INVESTIGATION AND ALLEGATIONS

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

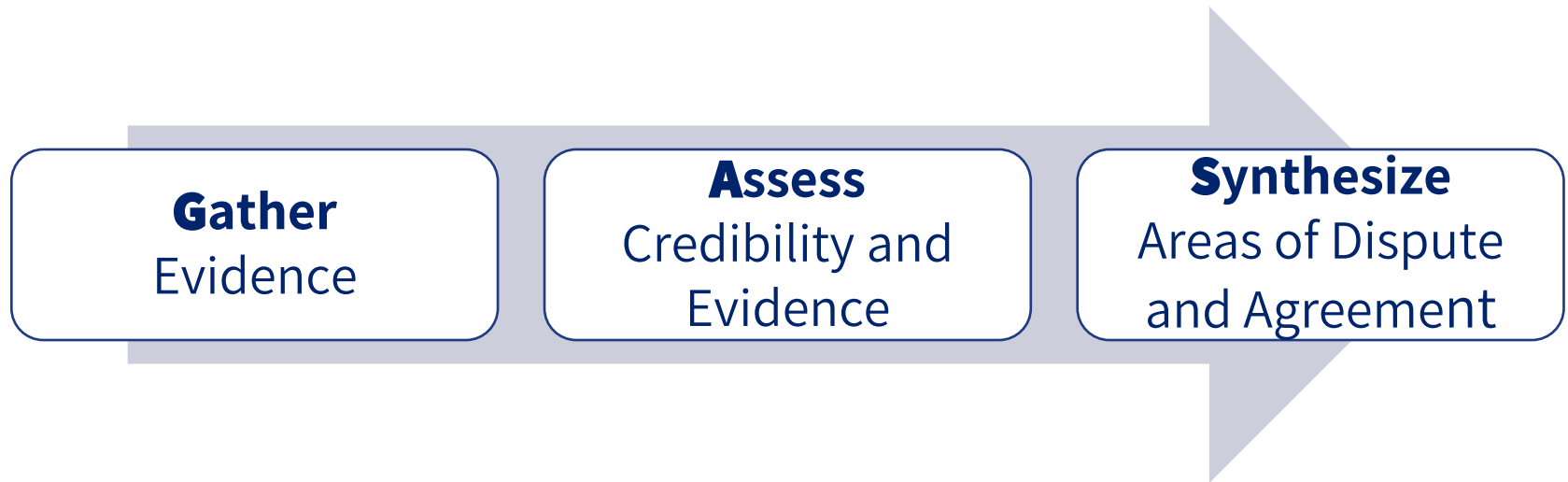
INVESTIGATION STRATEGY

Considerations for 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



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



OIE INVESTIGATION LOGISTICS

STEPS OF AN OIE INVESTIGATION

- Receive Notice/Complaint
 - Title IX allegations requires “actual notice” to trigger complaint before initiating investigation
 - Title VII allegations only require “knew or should have known” to trigger investigation
 - Both Title IX and Title VII allegations require remedial response (supportive measures)
- Conduct Initial Assessment and Jurisdiction Determination
- If alleged conduct does not meet Title IX standards but is based on a protected class, including sex/gender, and involves a student respondent, the process will generally follow the Title IX Investigation standard. If an employee respondent, the case will be addressed through the OIE process for employees

STEPS OF AN OIE INVESTIGATION

- Notice of Investigation to Parties/Notice of Formal Allegation(NOIA) (“Charge”).
- Establish investigation strategy
- Formal comprehensive investigation.
 - Witness interviews
 - Evidence gathering.
- Draft report
- Provide report including all evidence directly related to the allegations to parties and their advisors for inspection and review
- Complete final report.
 - Synthesize and analyze relevant evidence, provide a finding



OVERVIEW OF EVIDENCE

WEIGHTING EVIDENCE

- Investigator or Resolutions Officer may consider and assign weight to different types of evidence, when relevant and credible (see next slide)

Documentary Evidence

e.g., supportive writings or documents

Electronic Evidence

e.g., photos, text messages, and videos

Real Evidence

i.e., physical objects

Direct or Testimonial Evidence

e.g., personal observation or experience

Circumstantial Evidence

i.e., not eyewitness, but compelling

Hearsay Evidence

e.g., statement made outside the hearing but presented as important information

Character Evidence

subject to relevance determination; often not probative of the underlying allegation

DETAILS OF ANALYSIS OF EVIDENCE

1. Assess evidence carefully. For each piece of information you have as a result of your analysis and matching process you need to assess its evidentiary value:
 - What are the facts? They carry the most evidentiary weight.
 - What is the circumstantial evidence?
 - What are the opinions or hearsay information? They're less valuable than facts but are probably the bulk of what you're being told. Potentially are valuable when witnesses share similar opinions. Not worthless, but only suggestive rather than probative (proving).
2. How does the evidence add up?



CREDIBILITY

CREDIBILITY OVERVIEW

Corroboration

- Aligned testimony and/or physical evidence.

Inherent Plausibility

- “Does this make sense?”
- Be careful of bias influencing sense of “logical.”

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?

Demeanor

- Do they seem to be lying or telling the truth?

*Enforcement Guidance
on Vicarious Employer
Liability for Unlawful
Harassment by
Supervisors*

EEOC (1999)

CORROBORATING EVIDENCE (SLIDE 1 OF 2)

Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
 - Party says they were in class, teacher confirms
 - Party describes text conversation, provides screenshots
- Not simply alignment with friendly witnesses

CORROBORATING EVIDENCE (SLIDE 2 OF 2)

Corroborating Evidence (Cont.)

- Can include contemporaneous witness accounts
 - More “separate” the witness, greater the credibility boost
- Outcry witnesses
 - Does what party said then line up with what they say now?
- Pay attention to allegiances
 - Friends, teammates, group membership
 - This can work both directions (ex. honest teammate)

PLAUSIBILITY (SLIDE 1 OF 2)

Inherent Plausibility

- Does what the party described make sense?
 - Consideration of environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likelihood”
 - Would a reasonable person in the same scenario do the same things? Why or why not?
 - Are there more likely alternatives based on the evidence?

PLAUSIBILITY (SLIDE 2 OF 2)

Inherent Plausibility (Cont.)

- Is the party's statement consistent with the evidence?
- Is their physical location or proximity reasonable?
 - Could they have heard what they said they heard?
 - Were there other impediments? (darkness, obstructions)
- How good is their memory?
 - Temporal proximity based on age of allegations
 - “I think,” “I’m pretty sure,” “It would make sense”

MOTIVE TO FALISFY

Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
 - Think academic or career implications
 - Personal or relationship consequences
- What if the allegations are false?
 - Other pressures on the Complainant– failing grades, dramatic changes in social/personal life, other academic implications
- Reliance on written document during testimony

PAST RECORD

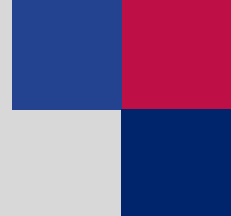
Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
 - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationship

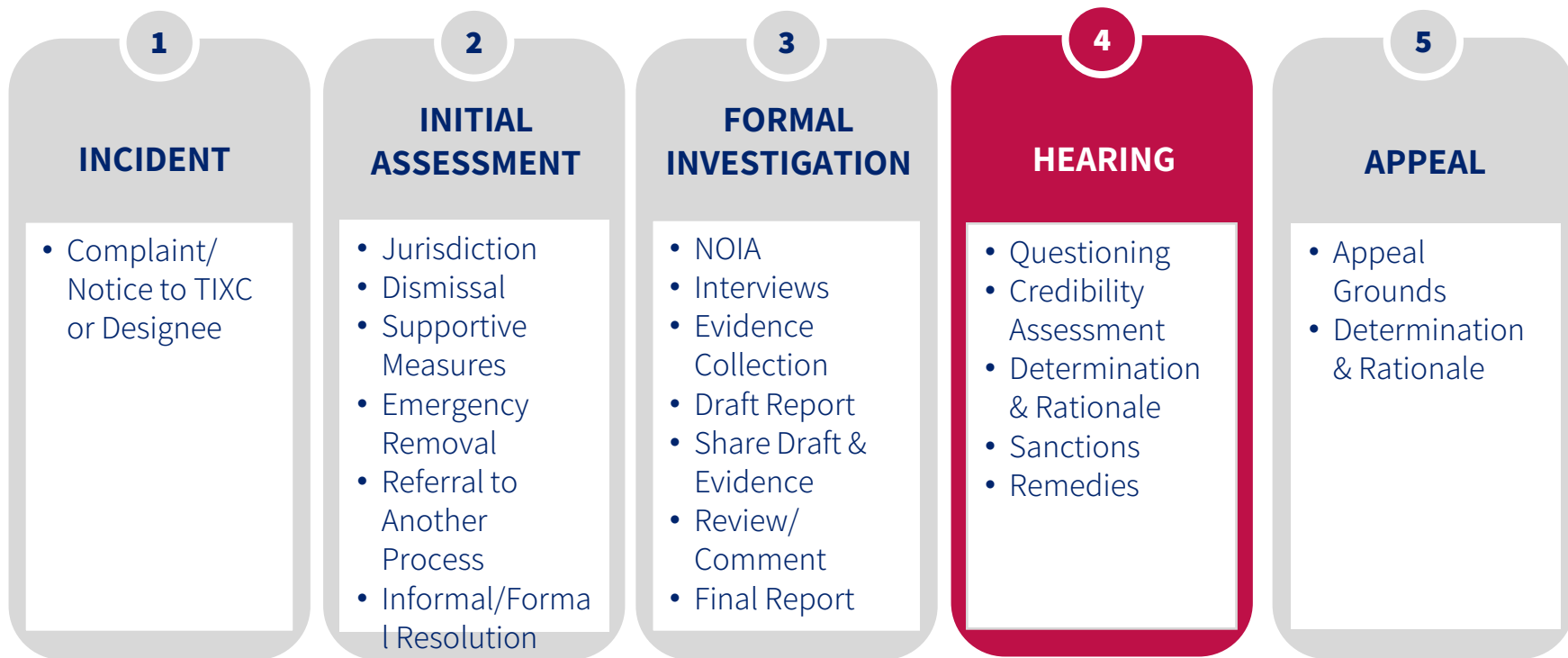
DEMEANOR

Demeanor

- Is the interviewee uncomfortable, uncooperative, resistant?
- Certain lines of questioning – agitated, argumentative
- BE VERY CAREFUL
 - Humans are excellent at picking up non-verbal cues
 - Human are terrible at spotting liars (roughly equivalent to polygraph)
- Look for indications of discomfort or resistance
- Make a note to dive deeper, discover source



DECISION-MAKING



LIVE HEARING

- Regulations mandate live hearing for all Title IX cases and student cases
- Virtual hearings are permitted
- Must create audio/audiovisual recording, or transcript of hearing and make it available to the parties for inspection and review.
- Must allow live cross-examination to be conducted exclusively by each party's Advisor in Title IX cases
- In Title IX cases, questions come from Advisors and Decision Maker
- In non-Title IX cases involving students, the parties may engage in directly questioning the other and the witnesses, typically through the Decision Maker.

DECISION-MAKING

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

Decision-maker(s)

- Is not TIXC or Designee 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 Decision-maker(s)
 - 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
 - Decision-maker must determine whether a proposed question is relevant and permissible
- Hearing can be in one location or virtually through technology
 - Decision-maker 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

DECISION-MAKING

- Making a Finding
 - Decision-makers determine what occurred based on the standard of evidence
- Making a Final Determination
 - Decision-makers 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

SANCTIONS AND REMEDIES

Sanctions

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

Remedies

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

WRITTEN DETERMINATIONS

- **Written Determination**
 - Authored by Decision-maker(s)
 - TIXC or Designee/Legal counsel reviews
 - TIXC or Designee 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

- 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

CLERY ACT/VAWA SECTION 304 INTERSECTIONS

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)

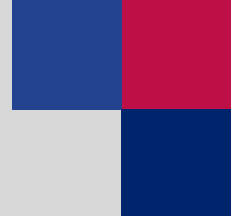
Violence Against Women Act (VAWA)

- 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

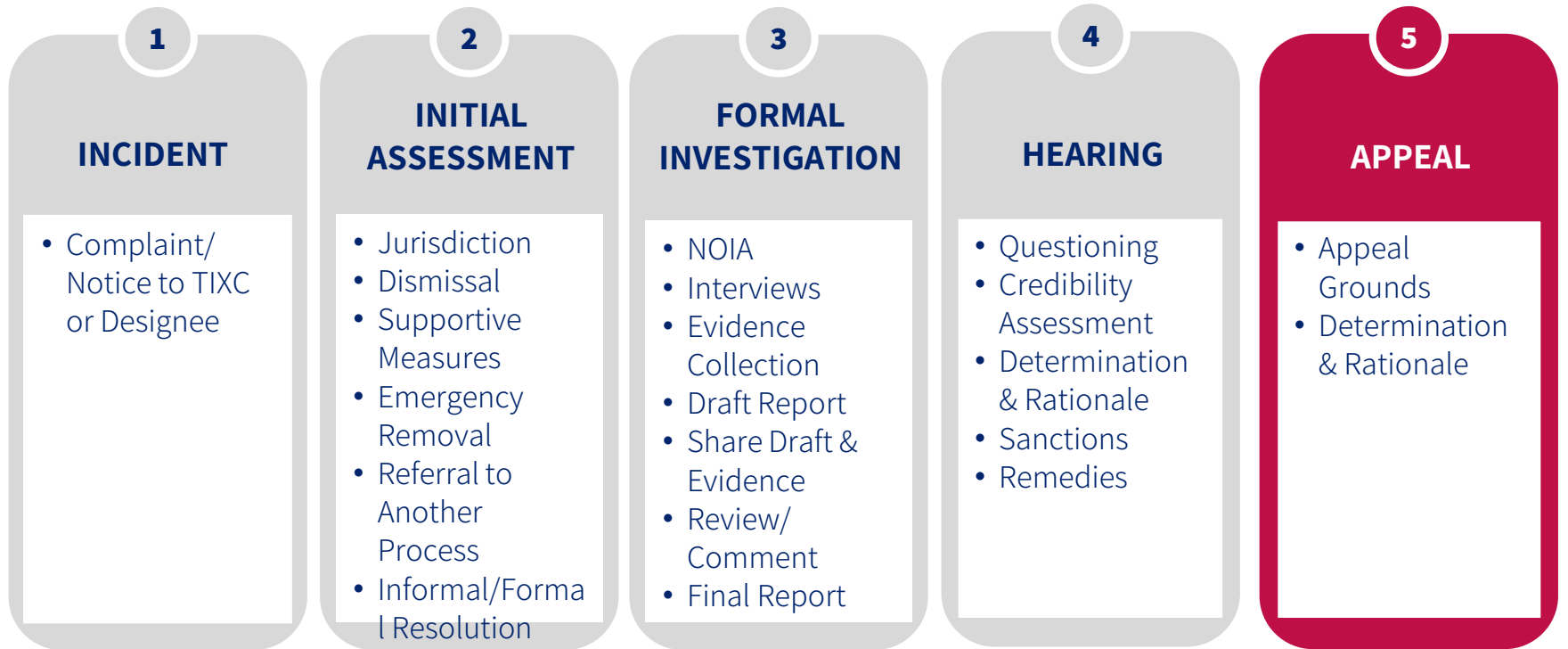
CLERY/VAWA SECTION 304 INTERSECTIONS

VAWA REQUIRES

- 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



APPEALS



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 or Designee, Investigator, Decision-Maker that affected the outcome of the matter

Institutions have the discretion to add additional appeal grounds

APPEAL OUTCOMES

Appeal Decision-maker

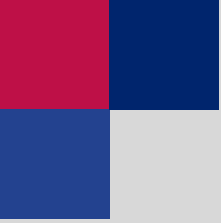
- Must complete a written determination with rationale
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the Decision-maker for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturing** the determination (not recommended)
- Cannot be TIXC or Designee or serve another role in the same complaint resolution

APPEAL DISPOSITIONS

- Possible dispositions by the appeal officer. The appeal officer may, after a review of the record:
 - Uphold the original decision and/or sanction(s) or corrective action;
 - Dismiss the case or individual finding against the respondent and vacate any portion or all of the sanction(s)/corrective action;
 - Remand the case for investigation;
 - Remand the case to the original hearing body or refer the case to a new resolutions officer to be reheard. Cases may be remanded for the purpose of considering a specific issue(s) or for a new hearing.

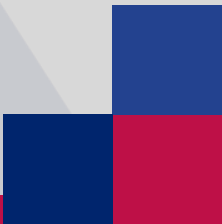
ADDITIONAL APPEAL INFORMATION

- If a case is remanded for rehearing and the respondent is found in violation, the sanction/corrective action imposed can be greater or lesser than that imposed at the original hearing.
- The appeal procedures also apply to the outcome of a remanded investigation and/or hearing.
- Each party shall be limited to one appeal of a decision and/or a dismissal of a complaint.
- Neither party is required to respond to an appeal. Not responding to an appeal does not imply agreement with the appeal.
- A complaint that is resolved by informal resolution is not subject to appeal unless the right of appeal is included as a specific part of the informal resolution.
- A respondent who has accepted responsibility for violating the Non-Discrimination, Harassment, and Sexual Misconduct Policy waives the right to appeal
- The decision of the appeal officer is final, additional procedures may apply for matters involving a faculty member.



Association of
Title IX Administrators

Questions?





CONTACT INFORMATION

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