



Association of
Title IX Administrators

Providence College Title IX Refresher Training

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TNG Consulting, LLC.

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.

The instructor 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 to provide a refresher on responding to reports or complaints of sex discrimination and sexual harassment, including reporting and the Formal Grievance Process.



Providence College must ensure its institutional response to reports of sexual harassment is not deliberately indifferent.



Our goal is to provide a comprehensive refresher on the Formal Grievance Process and compliance requirements for those roles within the process.

Title IX Overview

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 Coordinator (TIXC) 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 Responsibilities, 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

Providence College's Title IX Coordinator

Simone Tubman

Assistant Vice President for Equity Compliance

Title VI and Title IX Coordinator

Harkins 312

401.865.2878

Stubman@providence.edu

Mandated Reporting

- **ALL College employees (with the exception of Confidential Resources) are mandated reporters of discrimination, harassment, and retaliation, including sexual misconduct**
- **MUST report to the College's Title IX Coordinator as soon as possible and within 24 hours of receiving the information**
- Helpful tips for mandated reporters:
 - Remind individual of your obligation to report and how to report confidentially
 - Thank the individual for sharing the information
 - Do not press for details

Review: Title IX Scope and Definitions

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
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Definitions

Quid Pro Quo

- An employee of Providence College
- Conditioning 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 (verbal, physical, written/electronic, and/or visual
- On the basis of sex
- determined by a reasonable person
- to be so **severe, pervasive, and objectively offensive (SPOO)**
- that it effectively denies a person equal access to the College's education program or activity



Sexual Assault: Rape

- The carnal knowledge of a person
- Without the consent of the victim
 - Including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault: Sodomy

- Oral or anal sexual intercourse with another person
- Without the consent of the victim,
 - Including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault: Sexual Assault with an Object

- To use an object or instrument to unlawfully penetrate, however slightly,
- The genital or anal opening of the body of another person,
- Without the consent of the victim
 - Including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity

Sexual Assault: Criminal Sexual Contact

Formerly known as "fondling"

- The intentional or forced touching of the clothed or unclothed body parts
- Without the consent of the individual,
 - including instances where the individual is incapable of giving consent because of his/her age, or because of his/her temporary or permanent mental or physical incapacity,
- For the purpose of sexual degradation, sexual gratification, or sexual humiliation

Sexual Assault: Incest & Statutory Rape

Incest

- Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

▪ Statutory Rape

- Non-forcible sexual intercourse with a person who is under the statutory age of consent (age of 16 in Rhode Island).

Dating Violence

- Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and
- Where the existence of such a relationship is determined based on considerations of the following factors:
 - Length, type, and frequency of interaction between the persons involved 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

- Includes felony or misdemeanor crimes of violence:
 - committed by a Respondent who is a current or former spouse or intimate partner of the Complainant, or
 - 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 Rhode Island, 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

Definition of Violence

ATIXA Model Definition:

- Violence includes situations where the Respondent **intentionally or recklessly** causes the Complainant serious physical, emotional, or psychological harm
 - Intent is evidenced when a reasonable person would be more likely to act with the purpose of causing serious harm rather than for any other reason
 - Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant
 - Violence in self-defense is not chargeable under the Policy if the purpose is **safety**, not harm
 - Consensual use of violence, such as in kink relationships, would not meet this definition
 - Threats to seriously harm the Complainant or people they care about may be chargeable under this definition if doing so causes serious emotional or psychological harm
 - Threats to harm oneself, even if made to cause emotional or psychological harm, are not considered violence under this definition (but may be addressable under a threat policy)
- **Note:** There is no definition of violence in the Title IX Regulations

Stalking

Engaging in a course of conduct,

- On the basis of sex,
- Directed at a specific person, that
 - would cause a reasonable person to fear for that person’s safety, or the safety of others, or
 - suffer substantial emotional distress
- For the purposes of this definition—from the 2014 VAWA Update:
 - Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property
 - Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

Consent

- Demonstrated through mutually understandable words and/or actions that indicate a willingness to engage in specific activity.
- Consent must be knowing and voluntary (freely given).
- To give consent, a person must be awake, of legal age (16 in RI), and have the capacity to reasonably understand the nature of her/his actions.
- A person who is physically or mentally incapacitated cannot give consent.
- A person may not use force, verbal threats, intimidation, or coercion as a method for obtaining consent.
- Prior consent does not imply current or future consent.
- Consent may be withdrawn at any time, and once withdrawn, the sexual activity must stop.
- Consent is automatically withdrawn if the person who had provided consent becomes incapacitated.

Retaliation

- Retaliatory acts, or attempts to retaliate, against anyone who has
 - reported in good faith sexual misconduct or discrimination, who has assisted, or testified, is expected to participate, refuses to participate, OR
 - has participated in any manner, in an investigation or grievance process or who otherwise support the report, are prohibited.
- Retaliation includes intimidation, verbal, or physical threats, coercion, or discrimination

Additional Definitions

- Common additional offenses
 - Sexual Exploitation
 - Discrimination
 - Complicity
 - Hazing
 - Bullying
 - Certain prohibited consensual sexual relationships



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: Title IX Implications

- 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: Title IX Implications

- 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: Title IX Implications

- 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

INCIDENT

- Formal Complaint/ Notice to Title IX Coordinator (TIXC)

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/ Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

HEARING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

APPEAL

- Appeal Grounds
- Determination and Rationale

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

- 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”?

INCIDENT

- Complaint/
Notice to TIXC

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive
Measures
- Emergency
Removal
- Referral to
Another
Process
- Informal/
Formal
Resolution

FORMAL INVESTIGATION

- Notice of
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- Appeal
Grounds
- Determination
and Rationale

Point Person for Reports and Complaints

- TIXC (or designee) receives all reports or complaints regarding sexual harassment, misconduct, and sex discrimination
 - The TIXC oversees College Title IX efforts
 - The College has designated multiple entry points for information or reports
- TIXC contact information must be included within:
 - The College's website
 - All handbooks or catalogs provided to applicants, students, employees, and unions (if applicable)

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)

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



Initial Assessment

Initial Assessment Overview

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Notice to TIXC

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Formal Resolution

FORMAL INVESTIGATION

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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?

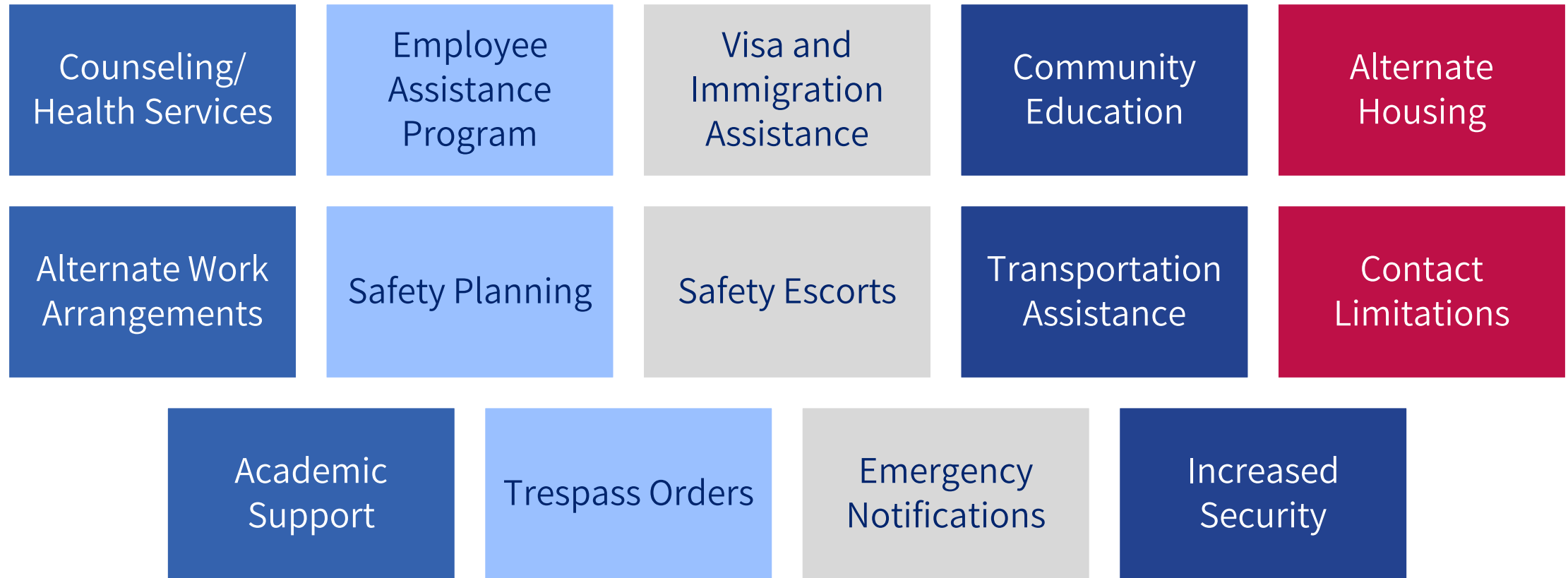


Supportive Measures

- 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

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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



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

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

Investigation Overview

INCIDENT

- Formal Complaint/
Notice to TIXC

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
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- Informal/
Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
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APPEAL

- Appeal Grounds
- Determination and Rationale

Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment & Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

INCIDENT INVESTIGATION
SUMMARY

Incident Date:	
Review Date:	
ed by:	
ent Summary:	
Root Causes:	

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

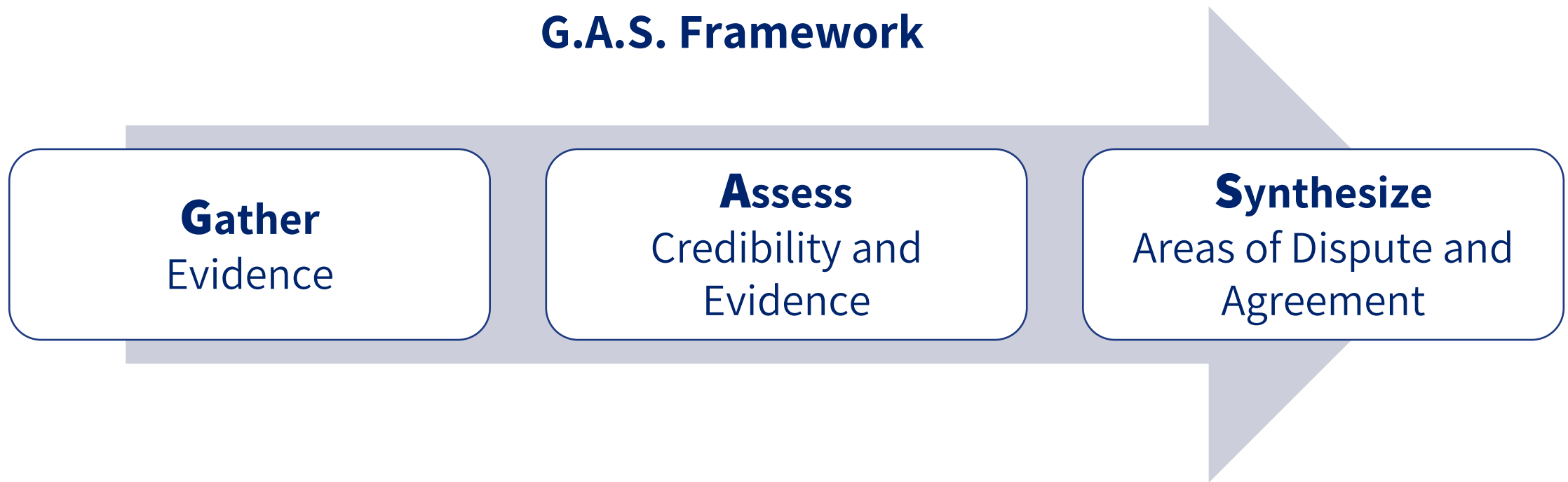
TIXC consults with Investigator(s) to strategize and plan the investigation:

- 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

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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
- 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 accurate and reliable
 - 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

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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 Overview

INCIDENT

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- Jurisdiction
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- Questioning
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- Sanctions
- Remedies

APPEAL

- Appeal Grounds
- Determination and Rationale

Decision-Making Phase

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

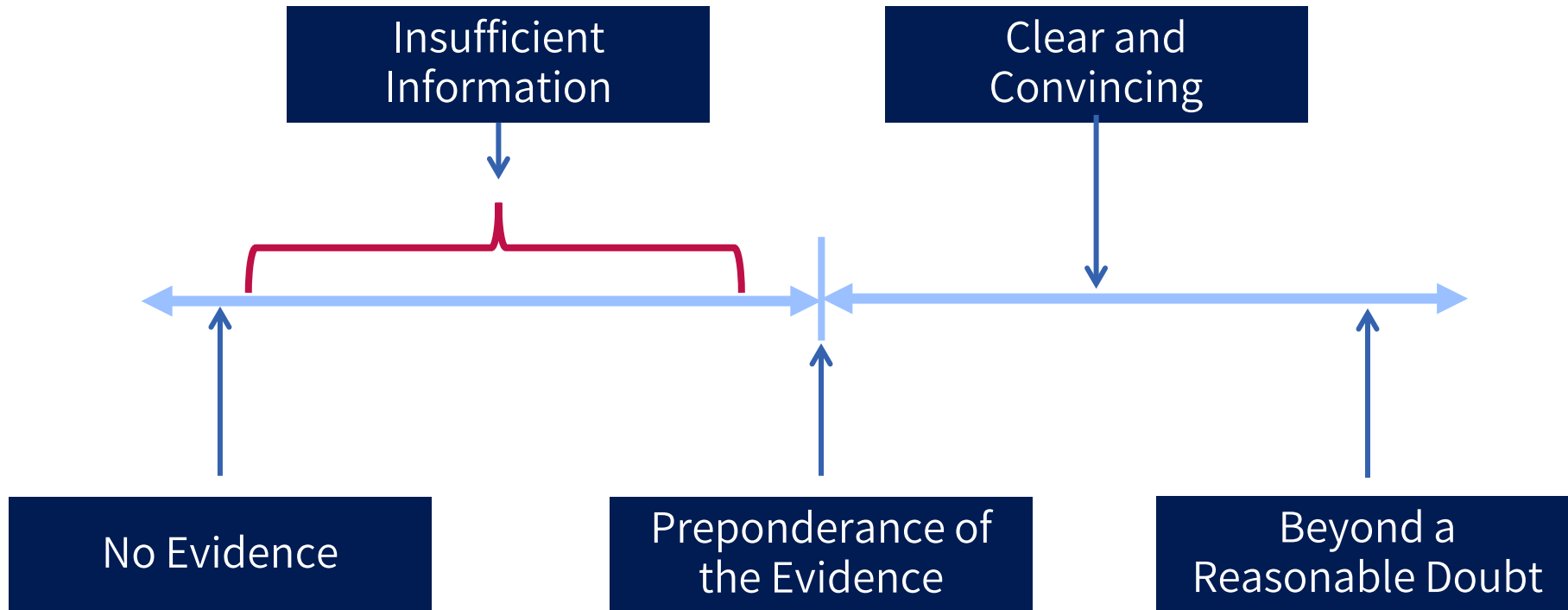
Live Hearings

- 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



- **Preponderance of the Evidence** is the most common industry standard
- Standard of Evidence must be consistent for **all** formal complaints of sexual harassment

Sanctions and Remedies

Sanctions

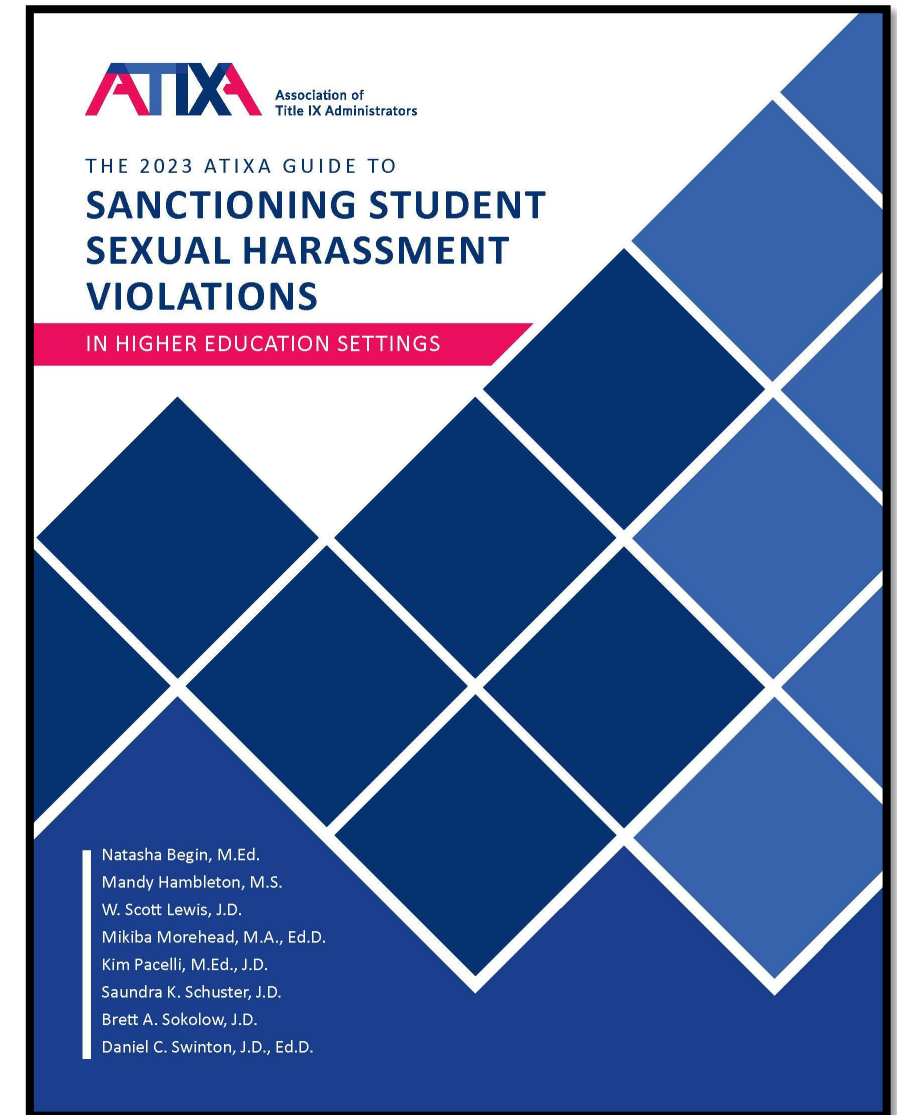
- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC does not issue sanctions but oversees the process
- TIXC assures sanction compliance
 - Failure to comply could lead to discipline

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

Appeal Overview

INCIDENT

- Formal Complaint/ Notice to TIXC

INITIAL ASSESSMENT

- Jurisdiction
- Dismissal
- Supportive Measures
- Emergency Removal
- Referral to Another Process
- Informal/ Formal Resolution

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/ Comment
- Follow Up
- Final Report

HEARING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

APPEAL

- Appeal Grounds
- Determination and Rationale

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)
 - **Overturing** 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





Association of
Title IX Administrators

Questions?

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