



Association of
Title IX Administrators

Title IX Coordinator Foundations: Gender Equity for Higher Education

Training and Certification Course

WELCOME!

- Please log in to your ATIXA Event Lobby to access the training slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by scanning the QR code or by visiting **www.atixa.org/atixa-event-lobby**.
- You will be asked to enter your registration email to access the Event Lobby.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby.
- If you have not registered for this training, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.





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 sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Introduction



This training focuses on Title IX compliance responsibilities for sex and gender equity including athletic equity, program equity, pregnancy and related conditions, and LGBTQIA+ protections.



Participants will explore the different types of sex discrimination complaints, as well as the unique challenges investigating or resolving sex discrimination complaints.



Our goal is to provide an in-depth understanding of institutional obligations to address sex discrimination and promote gender equity.

2024 Title IX Regulations Litigation

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

2024 Title IX Regulations Litigation

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

Introduction to Title IX Compliance

Title IX and Equity

- Title IX is a sex and gender equity law
- The principles of equity recognize that not all individuals have access to the same resources and opportunities
 - Equity focuses on increasing access by reducing disparities and barriers in order to increase access
 - Title IX imposes a duty on institutions to stop, prevent, and remedy the inequities created by sex and gender discrimination

Essential Compliance Elements

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

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, for both individuals and the community

Title IX Compliance Oversight

Who is the 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, sex-based harassment, and retaliation
 - Leading efforts to ensure sex and gender equity across the entire institution



Title IX Compliance Oversight

Responsibilities:

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

Title IX Compliance Oversight

- Oversee complaint Resolution Process and program equity
- Monitor for barriers to reporting and take steps to address them
 - 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, not a requirement)
- Update institutional leadership on Title IX issues
- Liaise with institutional legal counsel
- Create/maintain records
- Respond to government inquiries/investigations

Office for Civil Rights (OCR) Oversight

- OCR enforces Title IX compliance
- Conducts equity compliance reviews
 - Responds to complaints
- Reasons for OCR investigations
 - Athletic equity issues
 - Complaints regarding single-sex programming
 - Failure to accommodate pregnant individuals
 - Failure to stop, prevent, and remedy
 - Failure to investigate



Title IX Coordinator and OCR

- TIXC serves as the point person for OCR inquiries
 - If OCR makes contact, loop legal counsel and other stakeholders, such as public relations, President's office, etc.
- OCR investigations involve document collection and interviews
- Responding to OCR complaints is a resource-intensive process
 - Costs money, time, resources, and reputation
 - Also adds significant levels of stress
- May also contact OCR for technical assistance

Title IX Scope & Sex Discrimination

Retroactivity

- The 2024 Regulations apply **only** to sex discrimination or sex-based harassment alleged to have occurred **on or after** August 1, 2024
 - For conduct alleged to have occurred prior to August 1, 2024, the regulations in place at the time the alleged behavior occurred will apply
- Institutions will need to maintain/update policies, procedures, and training that are compliant with the **2020** Regulations and **2024** Regulations
 - If the institution is not fully compliant with 2020, now is the time



Title IX: Scope

Sex Discrimination

- Inequitable Treatment
 - Sex Characteristics
 - Sex Stereotypes
 - Pregnancy or Related Conditions
 - Sexual Orientation
 - Gender Identity
- Exclusion from Participation (*De Minimis* harm)

Sex-Based Harassment

- Quid Pro Quo
- Hostile Environment Harassment
- Dating Violence
- Domestic Violence
- Stalking
- Sexual Assault
 - Rape
 - Sodomy*
 - Sexual Assault with an Object*
 - Fondling
 - Incest
 - Statutory Rape

Retaliation

*ATIXA recommends removing these behaviors from policy, as they are covered by the Rape definition and are inconsistent with the Clery Act

Discrimination

The act of treating a person differently, or less favorably, based upon specific or perceived protected characteristics

- Discomfort vs. discrimination

1

**Can be connected
with prejudice**

2

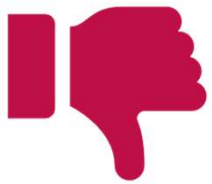
**Can be intentional
or unintentional**

3

**Always based on a
protected
characteristic**

Types of Discrimination Complaints

Common Types of Discrimination



Disparate Treatment

- Intentional
- Usually requires adverse action
- Affiliation or perception of affiliation with protected characteristic



Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups



Harassment

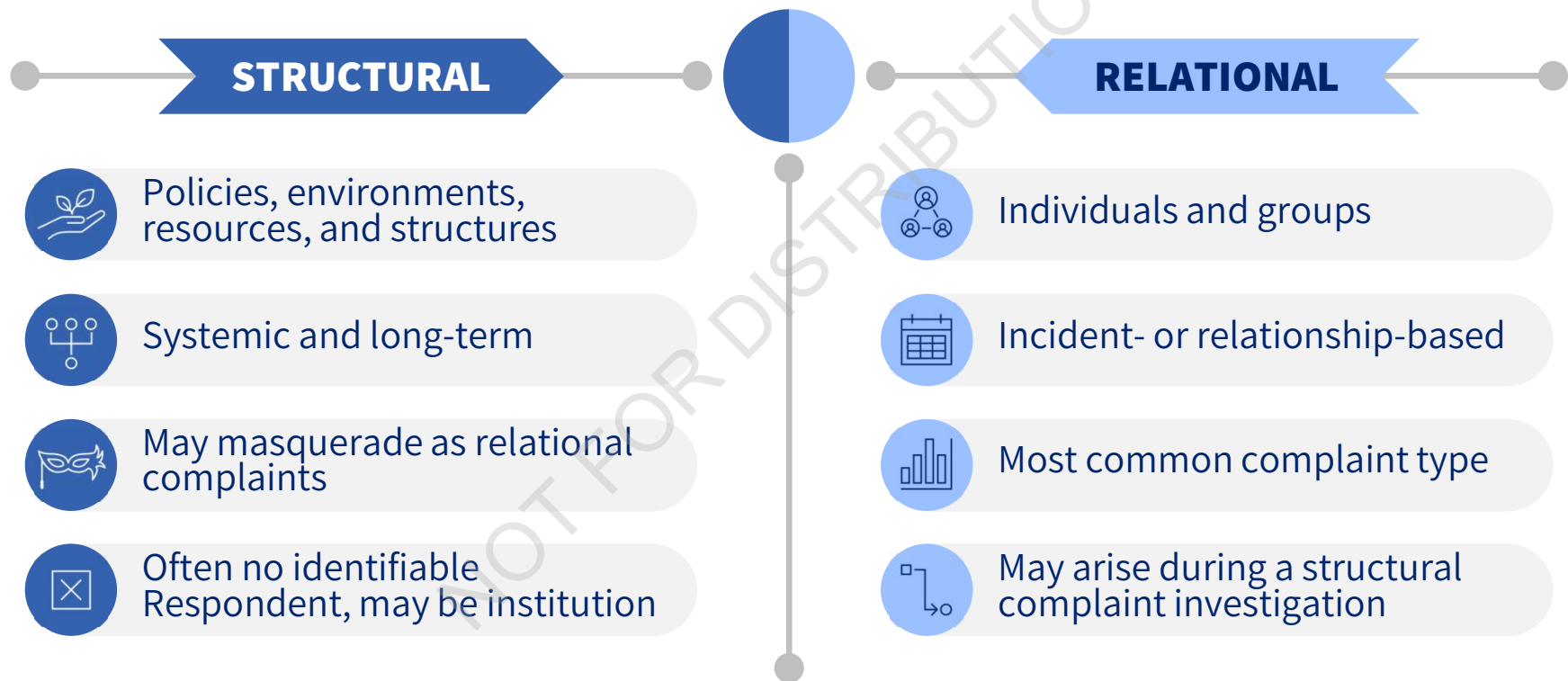
- Quid Pro Quo
- Hostile Environment



Retaliation

- Prohibited if engaged in protected activity
- Suffered adverse academic or employment action

Types of Complaints



Disparate Treatment

Disparate Treatment occurs when an individual treats another person **differently**, or takes an **adverse action**, because of that person's identity, such as sex or gender

Examples:

- Hiring
- Promotion/Performance reviews
- Pay
- Responsibilities/Job assignments
- Shifts
- Access to resources
- Athletics
- Grading
- Program access
- Student conduct outcomes
- Housing access
- Guest visitation policies

Adverse Action Examples

- Not hiring/demotion/termination
- Promotion/Tenure denial
- Poor performance reviews
- Less desirable work assignments
- Work-related threats
- Supervisory responsibility removal
- Abusive verbal or physical behavior
- Discipline
- Student leadership opportunity denial
- Unfair grading
- Pay and compensation disparity
- Resource inaccessibility
- Remedy inaccessibility
- Opportunity denial

Disparate Impact

- Disparate impact exists when “neutral” policies and practices have discriminatory impact
- Complex investigations
 - Often examines culture/climate
- High level statistical analysis
 - Validity studies
 - Programmatic necessity
- Examples: effect of hiring, admissions, or disciplinary processes, even when conducted in a facially neutral way
- Focuses on remedies, not sanctions



Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
 - By the Recipient, a student, or an employee, or other person...
 - “For the purpose of interfering with any right or privilege under Title IX,” **OR**
 - “Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in the Title IX grievance process”
- Institutions **may** require employees to support the Resolution Process as witnesses
 - Still cannot require students to participate
 - Retaliation allegations should be resolved under the § 106.45 Resolution Process

Activity: Is it Discrimination?

Student-Athlete Curfew 1

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want you girls to be safe”
- The men's volleyball coach does not make the same request

Is this discrimination?

Student-Athlete Curfew 2

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want you girls to be safe”
- The men's volleyball coach does not make the same request

What if the women's coach has never disciplined any curfew violations?

Student-Athlete Curfew 3

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want you girls to be safe”
- The men's volleyball coach does not make the same request

What if the women's coach disciplines or dismisses players that violate curfew?

Visitation Policy 1

- Institutional policy prohibits students of one gender from hosting an overnight guest of another gender in their residence hall room
- A male student complains to housing staff, saying it is not fair that they cannot have their girlfriend spend the night, but a gay student could have their partner spend the night

**Could this be a discriminatory policy?
Why or why not?**

Visitation Policy 2

- Institutional policy prohibits students of one gender from hosting an overnight guest of another gender in their residence hall room
- A male student complains to housing staff, saying it is not fair that they cannot have their girlfriend spend the night, but a gay student could have their partner spend the night

What changes could be made to this policy to avoid being discriminatory?

Visitation Policy 3

- Institutional policy prohibits students of one gender from hosting an overnight guest of another gender in their residence hall room
- A male student complains to housing, saying it is not fair that they cannot have their girlfriend spend the night, but a gay student could have their partner spend the night
- A few weeks after the student filed his complaint, his Resident Assistant documented him for underage alcohol consumption
- The student claims the documentation was in retaliation for his complaint about the visitation policy

What should the Title IX Coordinator do?

Sexual Orientation, Gender Identity, and Gender Expression

Key Terms

Sex Chromosomes, hormones, reproductive organs, and genitalia	Gender Attitudes, feelings, and behaviors that a given culture associates with biological sex	Gender Identity Internal sense of gender
Gender Expression Outward expression of gender, often through clothing, behavior, mannerisms, speech patterns, and activities	Sexual Orientation Sexual or romantic attraction, existing on a continuum (e.g., gay, lesbian, bisexual, heterosexual, asexual)	Transgender A person whose sense of identity and gender does not correspond with their sex assigned at birth

Key Terms

Cisgender

Gender identity consistent with the sex assigned at birth

Gender Fluid

One's sense of not having a fixed gender

Gender-Variant/Diverse

A person whose behavior or appearance varies from prevailing cultural/social expectations for their gender

Queer

Denoting or relating to a sexual or gender identity that does not correspond to cishet ideas of sexuality and gender

Religiously Affiliated Institutions

- Title IX allows exemption of activities of educational institutions **controlled by religious organizations** to the extent that the application of Title IX would be inconsistent with the religious tenets of the organization
 - Sexual orientation
 - Gender identity
 - Single-sex programming
 - Hiring practices



***De Minimis* Harm**

- In the limited circumstances where Title IX permits different treatment or separation based on sex, an institution **must not** implement differential treatment by means that subjects a person to **more than *de minimis* harm**
 - ***De minimis* harm:** harm determined to be too insignificant to cause a discriminatory effect
- Adopting a policy or practice preventing someone from participating in a program/activity **consistent with their gender identity** violates the *de minimis* harm provision
- Notable exceptions:
 - Religious exemptions
 - Fraternities and sororities
 - Housing (state law may impact)
 - Athletics

Restrooms and Locker Rooms

- All institutions may still maintain sex-separate facilities like bathrooms or locker rooms
 - Must permit transgender, transitioning, intersex, nonbinary, or gender-diverse individuals to participate in the education program and access facilities **consistent** with their gender identity/expression
 - Develop a protocol to respond to complaints about trans, transitioning, nonbinary, and genderqueer individuals using the bathroom according to their gender
- Become involved with capital improvement projects to build or renovate bathrooms, locker rooms, etc. to enhance privacy
- Collaborate directly with impacted individuals to design solutions
 - Document, document, document

Pronouns and Chosen Names

- General rule:
 - Permit students or employees to use chosen name and pronouns
 - Communication among offices and across technology is important
- Practical issues that may present:
 - Privacy concerns
 - Misgendering or dead naming issues
 - Conflict with religious freedom, academic freedom, or First Amendment
 - Technology/recordkeeping systems and pre-programmed gender fields
 - Email and identification number assignments that include initials or names
 - Conflict with state laws

Support Through Transitions

- Gender transitions
 - Social
 - Medical
 - Legal
- Common concerns and current challenges include
 - Discomfort vs. Discrimination
 - Educating communities and constituencies
 - Religious concerns and exemptions
 - Resources, services, and programs based on gender binary
 - State-based legislation

State Law Intersection

- The 2024 Regulations explicitly prohibit discrimination on the basis of sexual orientation (SO) and gender identity (GI)
- State laws vary significantly on this topic
 - Distinctions based on “biological sex”
 - Prohibitions against training on SO, GI, and related topics
- Even before the injunctions, some state governments directed their public schools and institutions to disregard this portion of the Title IX regulations
- This is an **evolving** situation with TIX administrators caught in the middle; consult with legal counsel

Activity: Case Study

Case Study: MC

- MC is a first-year transgender student
- MC is enrolled in the two-year fire academy at Capital City A&M (CCAM)
- The fire academy meets at a university complex outside city limits, as is required by city ordinance based on safety concerns for open flames and other applied learning opportunities in the fire program
- The complex only has one men's bathroom and one women's bathroom, with communal shower stalls in each

Case Study: MC

- MC notified the program coordinator of their gender identity at orientation
- During the first term of the program, MC was only at the extended campus once per week for a lecture class
- MC used the men's restroom while attending lectures at the extended campus
- Now, MC will be at the extended campus more often and will need to occasionally use the shower facilities, as other students do, after a live burn or other similar experience that requires exertion or exposure to heat
- MC has concerns that using the showers in the men's restroom will lead to problems, as MC's faculty and classmates do not know MC identifies as a transgender man

Case Study: MC

- There is no applicable state law in CCAM's state

What next steps would you take in this situation?

Who would you involve in addressing the situation?

Discrimination on the Basis of Pregnancy or Parental Status

Overview

- Pregnant students **and** employees are protected by Title IX, in addition to other federal/state laws
- Ensure that pregnant and newly parenting individuals are supported as needed to access their education and workplace
- Ensure individuals know and understand their rights under Title IX, including the TIXC role
- Pregnancy and related conditions are considered from two different lenses under Title IX:
 - Sex Discrimination
 - Temporary Disability

Title IX Regulations

A Recipient may not:

Discriminate in its education program or activity against any student or employee on the basis of such individual's current, potential, or past:

- Pregnancy
- Related condition

Adopt or implement any policy, practice, or procedure which treats a student or employee differently on the basis of current, potential, or past:

- Parental,
- Family, or
- Marital status

Pregnancy or Related Conditions

Includes the full spectrum of processes and events connected with pregnancy

- Pregnancy, childbirth, termination of pregnancy, or lactation
- Related medical conditions
- Recovery therefrom



Parental Status

The status of a person who, with respect to another person who is under the age of 18*, is:

- A biological parent
- An adoptive parent
- A foster parent
- A stepparent
- A legal custodian or guardian
- *In loco parentis* with respect to such a person
- Actively seeking legal custody, guardianship, visitation, or adoption of such a person

*Or who is 18 or older but is incapable of self-care because of a physical or mental disability



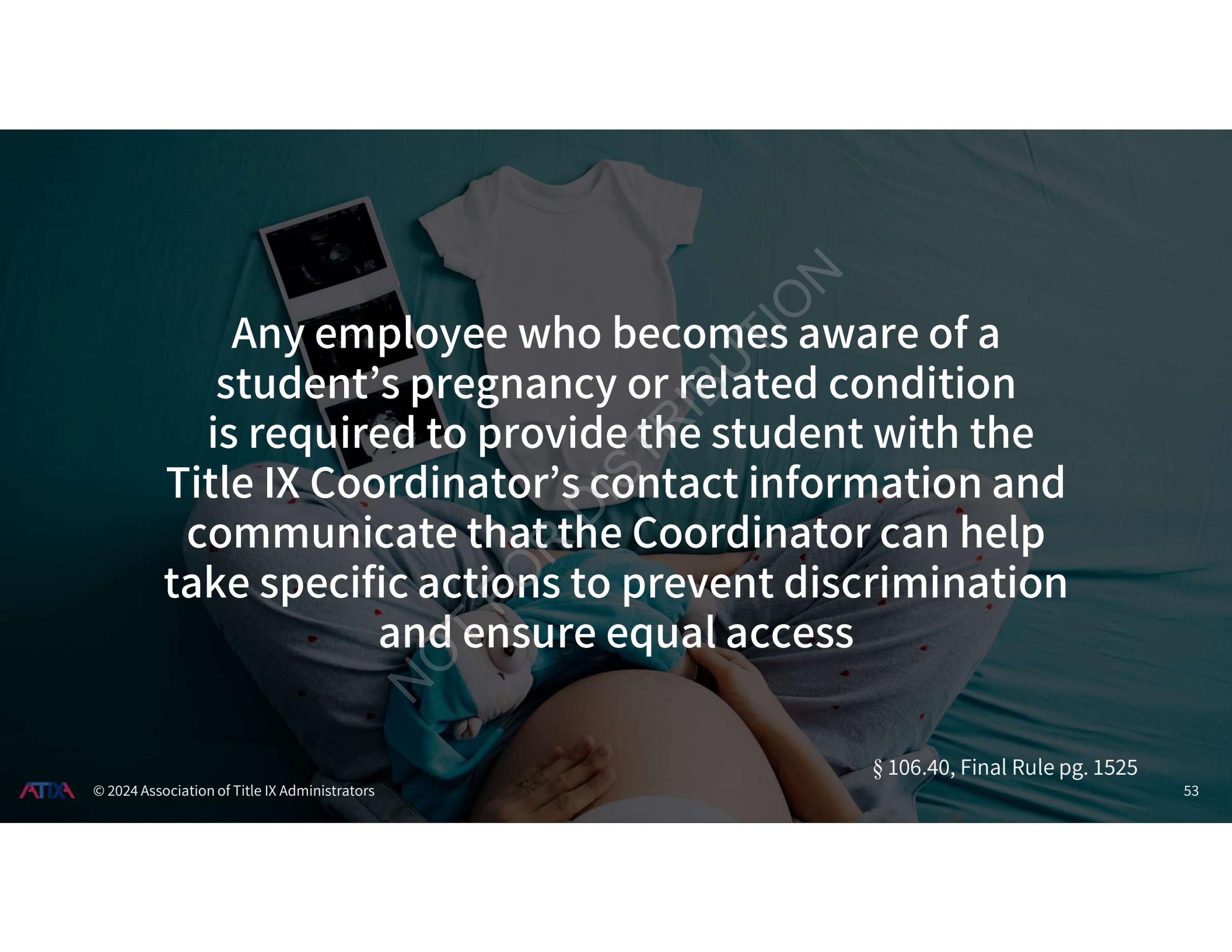
Pregnancy & Parenting: Scope

Individuals and Status:

- Students
- Employees
- Actual, potential, or past pregnancy and related conditions
- Family status
- Marital status
- Parenting status
- “Head of household”

Non-Discrimination Mandate:

- Academics and access to course offerings
- Admissions
- Athletics
- Employment, Recruitment, and Hiring
- Extra-curricular activities
- Facilities
- Financial Assistance
- Funding
- Lactation space and time
- Health Insurance
- Housing
- Leaves of Absence
- Salaries and Benefits

A pregnant woman is lying on a teal blanket. A white onesie is laid out on the blanket next to her. A smartphone is also visible on the blanket. The text is overlaid on the image.

Any employee who becomes aware of a student's pregnancy or related condition is required to provide the student with the Title IX Coordinator's contact information and communicate that the Coordinator can help take specific actions to prevent discrimination and ensure equal access

TIXC is Point Person for Support



Documentation



**Policies,
Practices, and
Procedures**



**Resolution
Process**



Reporting



**Outreach and
Support**



Training

Outreach and Intake

Upon knowledge of pregnancy or a related condition, TIXC should inform the individual of the institution's obligation to:

- Prohibit sex discrimination
- Provide reasonable modifications
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence
- Ensure lactation space access
- Maintain Resolution Process for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for employee medical benefit, service, plan, or policy purposes

Reasonable Modifications

- **Reasonable Modifications** to the policies, practices, or procedures to prevent discrimination:
 - Applies to students under Title IX
 - Other laws provide modification/accommodation requirements for employees
 - Essentially the same concept as **supportive measures**
 - **Individualized:** must consult with the student before offering
 - **Voluntary:** student may accept or decline each reasonable modification offered
- Consult with a student to meet their individualized needs in a prompt and effective manner
- Fundamental alteration of education program or activity is **NOT** reasonable
- Some pregnancy-related conditions could qualify as a temporary disability
 - May want to collaborate with disability services
 - Sometimes pregnant individuals may need to work with both Title IX and disability services

Reasonable Modifications

- Approach for pregnant students should be the same as non-pregnant students when considering exclusion from labs, athletics, clinical environments, etc.
 - Safety-related justifications (i.e., concern for the health of the fetus) are often discriminatory
- Maintain privacy of the student's pregnancy status to the extent possible
- Complaints alleging failure to provide reasonable modifications would be subject to resolution under the procedures outlined in § 106.45 (a form of disparate treatment)
 - Cannot use Informal Resolution for reasonable modification/pregnancy discrimination complaints against the institution

Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

Breaks During
Academic
Activities

Excusing
Intermittent
Absences

Online or
Homebound
Participation

Providing Course
Flexibility

Accessing
Alternate Parking

Counseling

Adjusting
Physical Space

Arranging
Elevator Access

Supporting Documentation

- Medical documentation is typically unnecessary to determine reasonable modifications
- Proceeding based on a student's self-attestation of their needs will be the least burdensome for the student and enable the institution to promptly meet the student's needs
- Can only be required in limited circumstances when:
 - **Necessary** and **reasonable** under the circumstances to determine:
 - Reasonable modifications to offer
 - Other specific actions to take

Supporting Documentation

Not necessary or reasonable when:

- Student's need is obvious, such as:
 - Expressing breast milk or breastfeeding
 - Carrying or keeping water nearby and drinking
 - Using a bigger desk
 - Sitting or standing
 - Taking breaks to eat, drink, use the restroom
 - Needing a larger uniform
- Not all students have access to healthcare providers or have seen one prior to needing reasonable modifications
- Similar supportive measures or modifications are available to non-pregnant students without documentation

Certification to Participate

- Must **not** require health care provider or other certification that the student is **physically able to participate** in the program or activity, unless:
 - The certified level of physical ability or health is necessary for participation;
 - The institution requires such certification of all students participating; **and**
 - The information obtained is not used as a basis for pregnancy-related discrimination

Privacy and Recordkeeping

- Consult with legal counsel about recordkeeping and sharing practices
 - State law may impact
- Consider whether to maintain records of (we recommend maintaining all):
 - Initial requests/contacts
 - Reasonable modification information
 - Consultation with disability/accessibility services (if applicable)
 - Notifications
 - Complaints, Investigations, and Resolutions
- Medical records receive at least the same privacy as other Title IX documents
 - Limit access accordingly
- Education and employment records are subject to subpoena

Lactation Space and Time

Ensure student and employee access to a lactation space that is **functional, appropriate, and safe:**

- A space other than a bathroom, that is:
 - Clean
 - Shielded from view
 - Free from intrusion from others
 - Available for expressing breast milk or breastfeeding as needed
- Fair Labor Standards Act has compatible requirements with Title IX
 - State laws may also add requirements



Activity: Sasha Case Study

Case Study: Sasha

- Sasha is a sophomore theatre major and just found out she is pregnant
- Sasha is having a very rough first trimester and is having to miss a lot of rehearsal time for a play in which she was recently cast as the lead role
- Professor Alexa, Sasha's Acting II instructor and the director of the production Sasha is in, has a very strict attendance policy when it comes to missing rehearsals
- Professor Alexa's policy prohibits a student from missing more than two rehearsals, otherwise they are removed from their role
- Sasha has now missed her third rehearsal and has been removed from the lead role and the play altogether

Case Study: Sasha

- Sasha is upset that she has been removed from the cast and reports to the TIXC that she is being discriminated against based upon her sex and pregnancy status
- Professor Alexa states that Sasha's removal has nothing to do with her sex or pregnancy status and has everything to do with the attendance policy which is applied equally to all students in productions
- Furthermore, according to the national theatre accrediting body, each production must include a minimum of twenty rehearsal hours for each actor prior to the first full dress rehearsal in order for the play to be considered of educational quality, and for it to count toward the student's degree requirements

Case Study Discussion: Sasha

- Rehearsals take place one day per week for six hours each session
- Missing one rehearsal is the equivalent of missing three weeks of course material
- Sasha's three absences have significantly impacted the others involved in the production, including other students not having the ability to rehearse scenes with her, which has in turn decreased their total number of rehearsal hours
- Sasha tells the TIXC that she has been rehearsing during the weekends with her scene partners and knows her lines despite missing the three class periods

What should the Title IX Coordinator do?

Title IX & Disability

Equity and Disability Laws

- Section 504 of the Federal Rehabilitation Act
 - Section 504 and Title IX share similar language
 - Section 504 protects individuals from discrimination on the basis of their disability
- Title IX Coordinators and Section 504/ADA Coordinators share similar responsibilities
 - Non-discrimination law compliance assurance
 - Non-discrimination notice publication
 - Grievance process oversight
 - Grievance investigation and resolution

Key Points

- TIXC and ADA/Section 504 Coordinator may be the same person
- ADA/Section 504 Coordinator should **not** be the same person as the accessibility/disability services coordinator
 - Their duties would create a conflict of interest
- TIXCs often navigate disability accommodations
 - Should have working knowledge of accommodation process
 - Communication and collaboration will smooth overlap between processes
- TIXCs should consider consulting with disability services professionals early in the Resolution Process, as needed
 - Supportive measures, Advisors, etc.

Title IX and Athletics

Overview

- Since the 1970s, Title IX has spotlighted athletic program equity
 - Accommodation of interests and abilities
 - Equitable distribution of resources
 - Equitable treatment
- TIXC provides oversight, may delegate
 - Often delegated to Senior Woman Administrator (NCAA)
- Compliance requirement applies to
 - Intercollegiate and interscholastic athletics
 - Intramurals
 - Club sports



Accommodating Interests and Abilities: Three-Part Test

Part 1: Opportunities for males and females are **substantially proportionate** to their respective enrollments

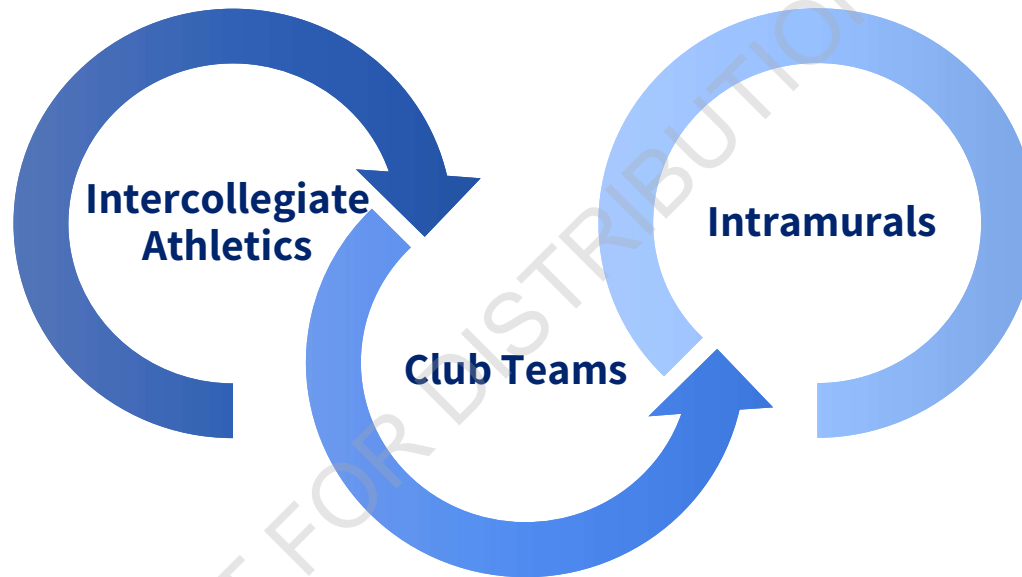
Part 2: Where one sex has been underrepresented, there is a **continuing practice of expansion** responsive to interests and abilities of underrepresented sex

Part 3: Where one sex is underrepresented and there is no continuing practice of expansion, demonstrate that interests and abilities of underrepresented sex have been **fully and effectively accommodated** by present program

Equitable Treatment: “The Laundry List”

Equipment & Supplies	Scheduling	Locker Rooms & Facilities	Housing & Dining
Coaching	Scholarships	Publicity	Travel & Per Diem
Medical and Training Services	Tutoring	Recruitment	Support Services

Title IX and Athletics



Three-Part Test and the 13 program components are typically **not** as problematic for intramurals and clubs because those programs tend to be self-initiated with fewer institutionally provided benefits

Common Areas of Concern

- Eliminating teams
- Inequitable facilities or equipment
- Scheduling of games or practice time
- Financing concerns
 - Scholarship funding
 - Name, Image, and Likeness
 - *House v. NCAA* settlement re: institutions paying players
 - Fundraising/Donations from booster clubs or donors
- Hostile environment sex-based harassment complaints
- Removal from team for Title IX reasons

Athletics NPRM

- The Department of Education did **not** include its rule on gender identity and athletic participation with its 2024 Final Rule
 - Athletics exempted from *de minimis* harm provision



Single-Sex Programs and Facilities

Single-Sex vs. Preferred Sex Programs

Single-Sex Program

- Activity or program designated men-only or women-only
 - “Women in STEM”
 - “Male Empowerment Network”
- Members of each sex are only permitted to participate in programs designed for their sex

Preferred Sex Program

- Open to all, but advertised or named to suggest participation by one sex is preferred
- **Best Practice** approach unless all programs are open to all

Exceptions to the Rule

- There are several **exceptions** that may apply to higher education institutions
- Exceptions may depend upon whether the institution:
 - Is public or private
 - Is religiously affiliated
 - Provides “substantial assistance” to a single-sex program
 - Provides separate but comparable facilities or programs for men and women

Notable Exceptions

- Social fraternities and sororities
- Institutions with a religious exemption
- Admissions at private institutions
- Athletic teams
 - Subject to broader equity analysis
- Housing
- Restrooms and locker rooms
 - May have sex-separate restrooms and locker rooms, but permit access based on gender identity



Single-Sex Scholarships

- OCR has recently resolved a few scholarship-based complaints
- Single-sex scholarships are **not** an exception to Title IX
- Institutions may **not**, on the basis of sex:
 - Provide different amounts or types of financial assistance
 - Assist any organization or person providing aid in a discriminatory manner
 - Apply any rule that treats people differently regarding marital or parental status
- Limited “safe harbor”
 - Wills, trusts, bequests, acts of foreign governments

Activity: Case Study

Case Study: Hank

- Hank is a student who frequently uses the institution's open gym hours to lift weights and use the cardio machines
- Recently, Hank was turned away from the gym because he arrived during Women Only Wednesdays— a time period on Wednesday evenings that the gym is reserved for women only
- Hank filed a complaint alleging that Women Only Wednesdays is a discriminatory practice

Case Study: Hank

- In his complaint, Hank suggested three resolution options:
 1. Maintain a women's only time but introduce a men's alternative for fairness
 2. Keep the women's only time but charge men less in student fees for the time they cannot access the facility
 3. Do away with single-sex gym times altogether

Case Study: Hank

- The female students who originally petitioned the gym staff to create Women's Only Wednesdays became aware of Hank's complaint
- They inform the TIXC that the women's only gym time is necessary because when men are in the gym with women, they create a hostile environment through the comments they make and by staring at women who are exercising

How should the TIXC address this complaint?

Which, if any, of Hank's suggested solutions would best resolve this situation?

Monitoring and Gender Equity Audits

Monitoring and Barrier Analysis

- TIXC has ongoing obligation to **monitor** the education program/activity for barriers to reporting
 - Take reasonably calculated steps to address such barriers
- Examples:
 - Availability and ability to access the reporting process
 - Confusing or delayed procedures
 - Difficulty finding information or contacting Title IX staff
 - Perceptions that TIX staff are biased

Barrier Analysis Tools

- Climate assessments and surveys
- Micro surveys and exit surveys
- Focus group data
- Training and education about reporting obligations, but especially for common sources of reporting
- Benchmark practices against peer institutions, leverage information and relationships from professional associations
- ATIXA's Barrier Analysis Tool

Leveraging Institutional Presence



VISIBILITY

- Location
- Involvement
- Presence in spaces and places



COLLABORATION

- Committees
- Programming
- Grants and Research



RELEVANCE

- Gender equity broadly
- Space planning
- Curriculum
- Services
- Policies



ACCESSIBILITY

- Email and phone responsiveness
- Language and tone

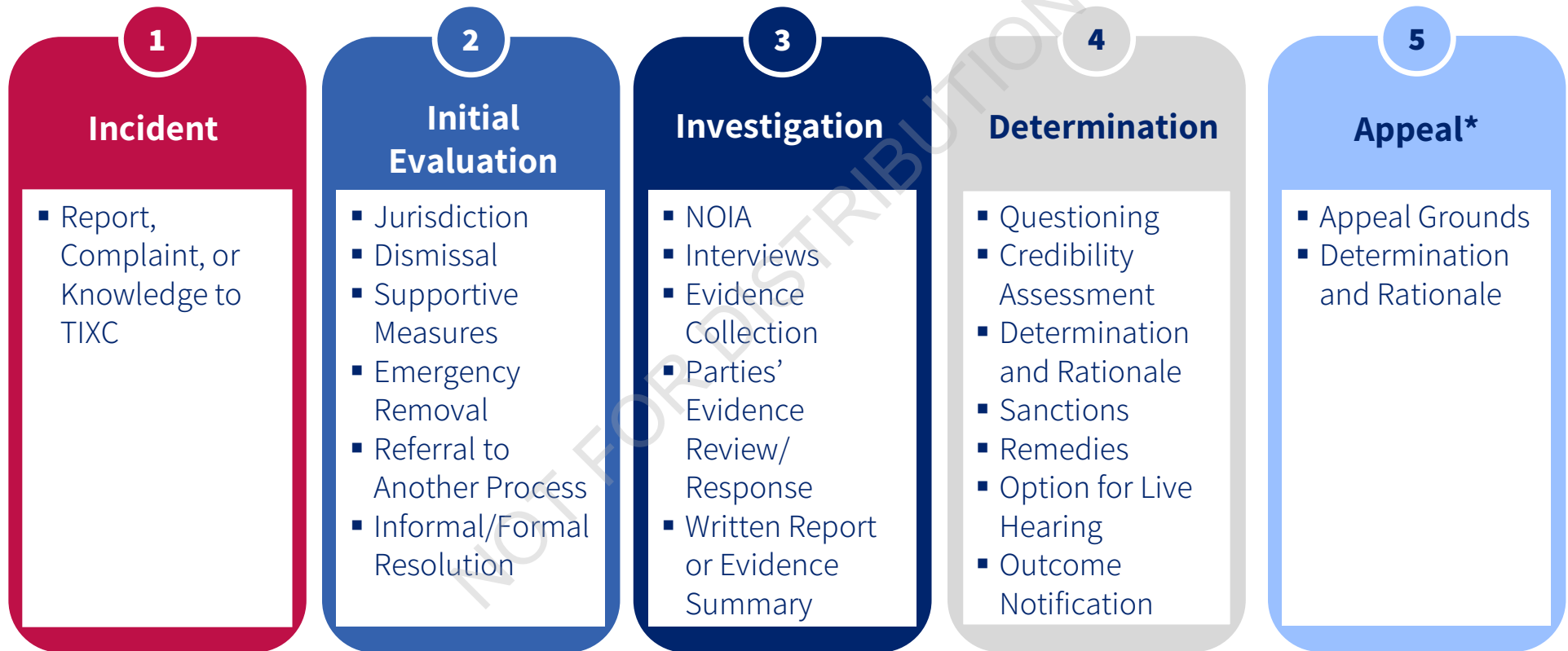
Gender Equity Audits

- Audits are intermittent assessments to measure compliance and to monitor barriers
- Factors such as cost and personnel capacity impact regularity



Title IX Resolution Process Overview

Title IX Resolution Process Overview



Two-Track Resolution Process

- Which Resolution Process applies depends on the identities of the parties
 - Sections 106.45 provides a civil rights Resolution Process for resolving complaints
 - Sections 106.46 incorporates § 106.45 and adds some due process protections
- Two separate processes are permitted but **not** required
 - If using only one, it must be § 106.46
- This course focuses on § 106.45

§ 106.45	§ 106.46
<ul style="list-style-type: none">▪ Sex discrimination complaints that are not sex-based harassment▪ Sex-based harassment complaints that do not involve a post-secondary student	<ul style="list-style-type: none">▪ Sex-based harassment complaints involving a post-secondary student Complainant and/or Respondent

Title IX Resolution Process Overview

Prompt Resolution

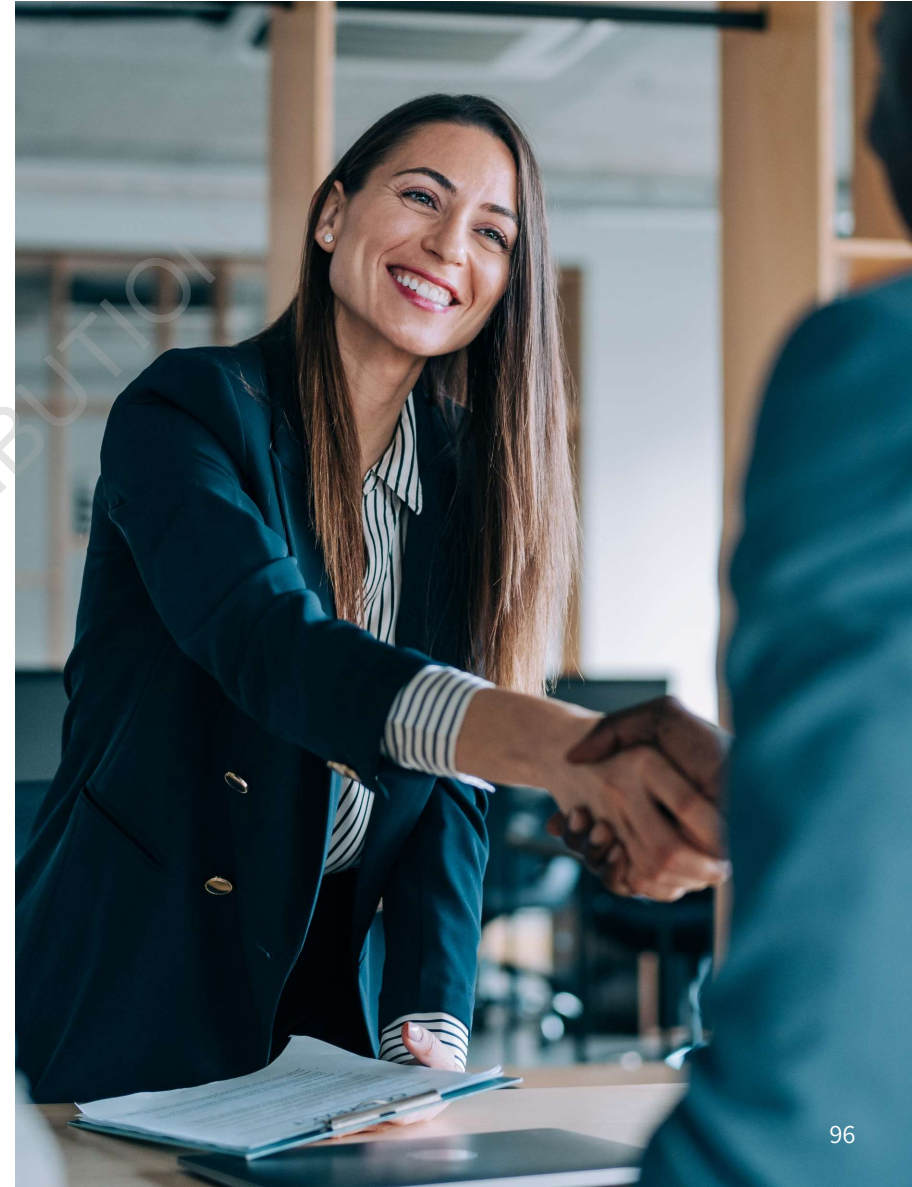
- Reasonably prompt timeframes for “major stages” of resolution process
 - Title IX regulations do not define “reasonably prompt”
 - 60 business days is a good guide for a moderately complex investigation
- Process may take longer than expected
 - Communicate with parties about delays
 - Reasonable extensions permitted
- Provide anticipated timelines for each proceeding



Title IX Resolution Process Overview

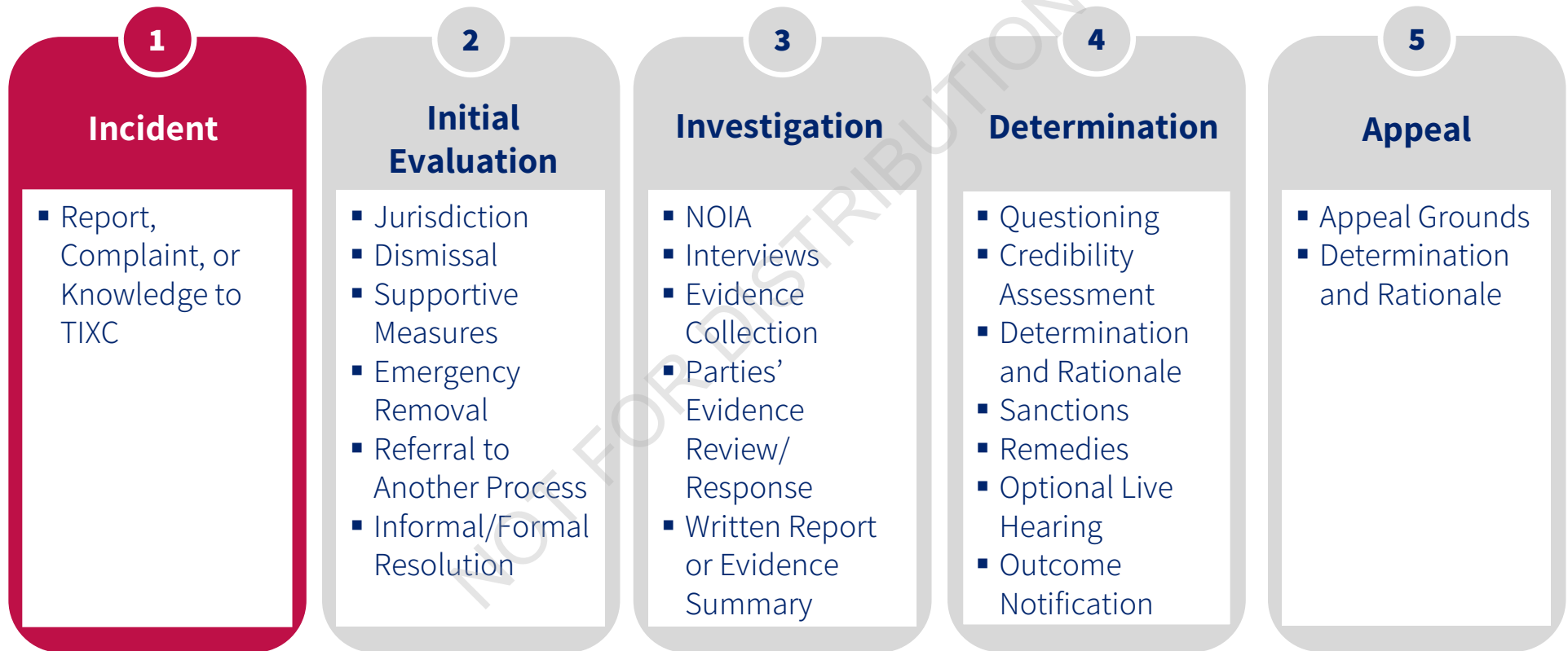
Equitable Resolution

- Treat all parties equitably
- Ensure that all parties have opportunity to fully participate in the grievance process
- Ensure that all Title IX team members operate without bias and/or conflict of interest



Complaints & Parties

Complaint Stage



Complaints

- **Complaint:** **verbal** or **written** request to the institution that **objectively** can be understood as a request for the institution to investigate and make a determination about alleged discrimination
- **Complainant:**
 - A student or employee alleged to have been subjected to conduct that could constitute sex discrimination, or
 - A person other than a student or employee alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

Complaints

- Individuals who may initiate a complaint depends on the **nature** of the complaint:
 - **Sex-Based Harassment:**
 - A Complainant, or parent/guardian
 - Title IX Coordinator
 - **Sex Discrimination:**
 - A Complainant, or parent/guardian
 - Title IX Coordinator
 - Any student or employee
 - Any other person participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

For purposes of having Complainant process rights, there is an important distinction between being a **Complainant** and being **able to initiate** a complaint

TIXC-Initiated Complaints

In rare instances, a TIXC may sign a complaint and/or initiate an investigation without the consent of the Complainant

- Only after determining the alleged conduct presents an imminent and serious threat to health or safety of the Complainant or other person; **OR**
- The conduct, as alleged, prevents the Recipient from ensuring **equal access** based on sex to its education programs or activities

Institution as a Respondent

- The 2024 Regulations do **not** consider the institution a Respondent for complaints of sex discrimination alleging a discriminatory policy or practice
 - Some provisions will not apply
 - Per the Preamble, “certain procedural rights and steps afforded to individual Respondents” do not apply
 - However, the Preamble does not indicate which provisions
- In some circumstances, upon notification of a potentially discriminatory policy or practice, the Title IX Coordinator may take **prompt** and **effective** steps to end the discrimination and prevent its recurrence
- TIXC will have to use their judgment to determine if an investigation is needed, if remedies can be directed by the TIXC, or if some fact-finding is necessary before action can be taken

Reporting

NOT FOR DISTRIBUTION

Reporting and Information-Sharing

The 2024 Regulations expanded reporting obligations to **include** sex discrimination:

EMPLOYEE ROLE	NOTIFY TIXC	PROVIDE TIXC CONTACT INFO
Confidential Employees	NO	YES
Employees with the authority to institute corrective measures	YES	YES
Employees with responsibility for administrative leadership, teaching, and advising	YES	YES
All other employees who are not confidential employees	CHOOSE ONE OR THE OTHER	

Confidential Employees

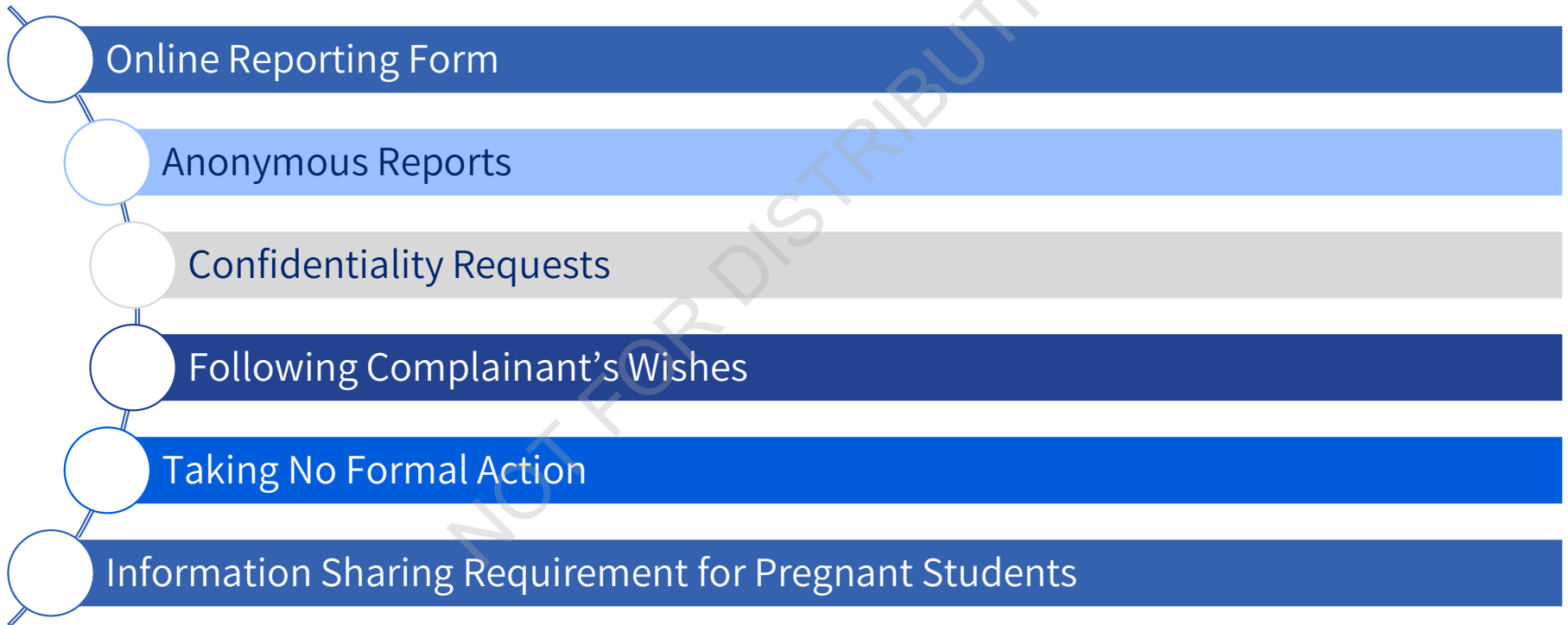
- Employee whose communications are privileged or confidential (at the time of disclosure) under federal or state law
- Employee whom the institution has designated as confidential for providing services related to sex discrimination
- Institutional Review Board-approved human-subjects research study, designed to gather information about sex discrimination



Mandatory Reporting

- ATIXA recommends that institutions designate **all employees** as **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
- Note any confidential employees within policy to ensure that reporters know about their options for confidential support

Reporting Considerations

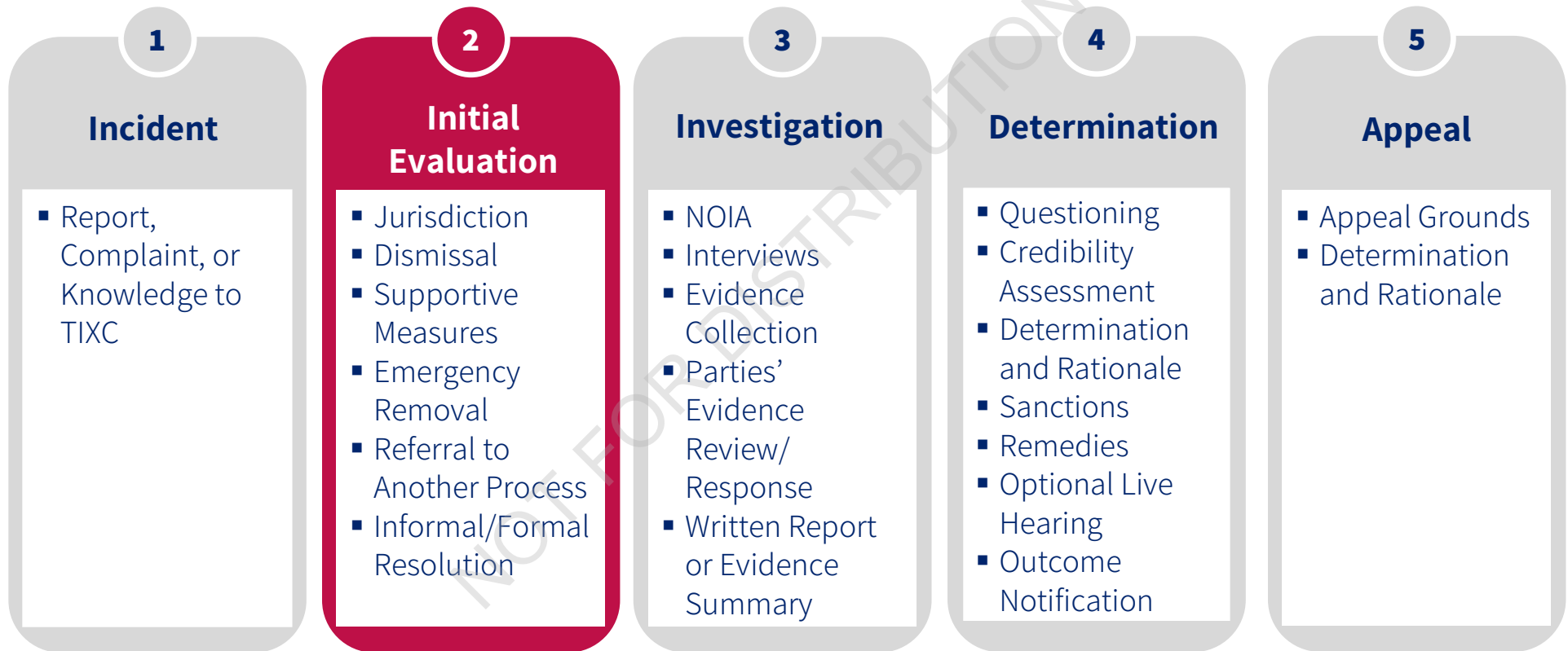


Reporting Exceptions

- Disclosures at post-secondary public awareness events require reporting but they are **not** disclosures obligating an institutional response
 - **Unless** there is an immediate and serious threat
 - Unlikely for sex discrimination complaints
 - Employees attending event must report any disclosures to TIXC for safety analysis
 - TIXC must incorporate information or trends into prevention and remedial efforts
- Exception **does not** extend to classroom assignments or discussions
 - Such disclosures constitute reportable knowledge and require follow up
- No self-reporting requirements for **Complainants**

Initial Evaluation

Initial Evaluation



Jurisdiction & Dismissal

Review: Jurisdiction

- May reasonably constitute sex discrimination
- Complainant identity and status
- Education program or activity in the United States
 - Subject to disciplinary authority
 - Downstream effects of external misconduct



Education Program or Activity

- Within education program or activity
 - Conduct subject to Recipient's **disciplinary authority**
 - Conduct in a building **owned or controlled by a student organization** officially recognized by a postsecondary institution
- Downstream effects
 - Including off-campus and outside the United States



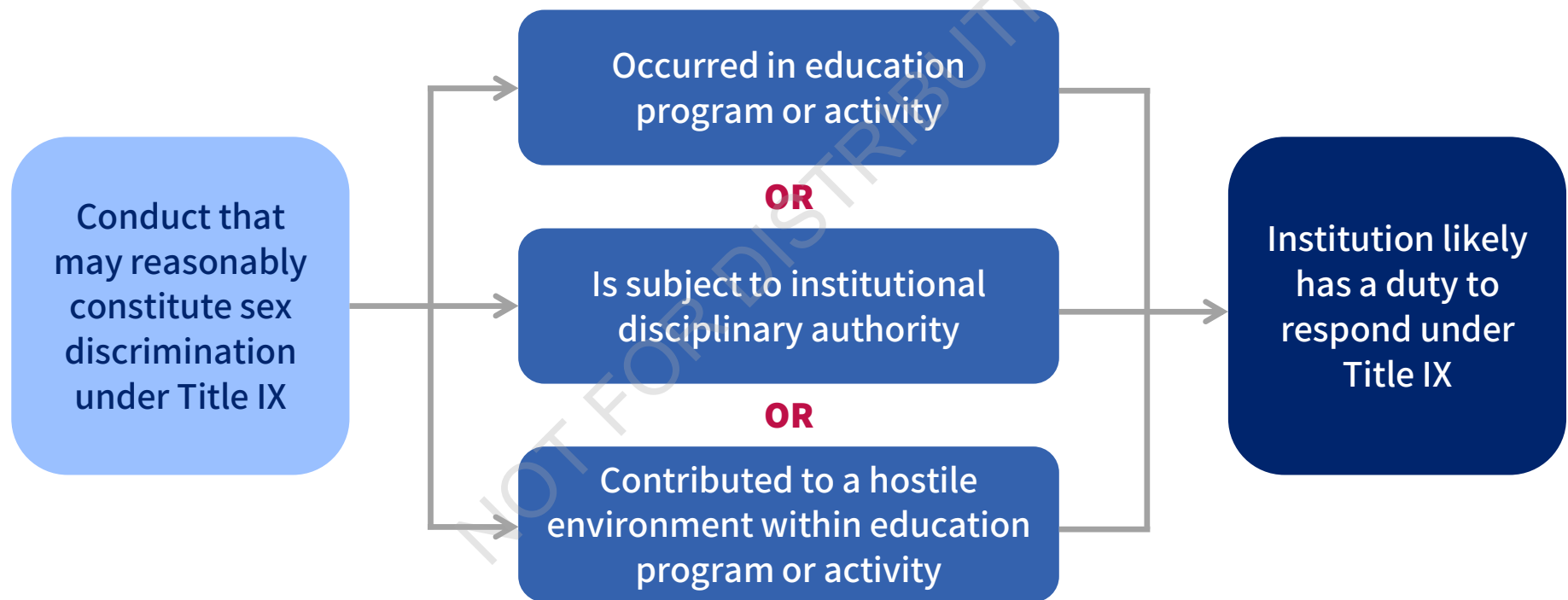
Disciplinary Authority

- “Conduct that is subject to Recipient’s disciplinary authority”
 - Fact-specific analysis
 - “To the extent a Recipient addresses other student misconduct...a Recipient may not disclaim responsibility for addressing sex discrimination that occurs in a **similar context**”
- Similar context
 - Ex: Other forms of discrimination
- Obligation to **investigate** conduct occurring under institution’s disciplinary authority is only ever as broad as Recipient’s **reasonable ability** to do so

Downstream Effects

- “Obligation to address sex-based hostile environment under its education program or activity...
 - Even when **some conduct** alleged to be contributing to the hostile environment occurred **outside** the Recipient’s education program or activity”
- Do **not** need to determine whether the conduct occurring outside the program/activity is itself a policy violation
 - Alleged conduct outside the education program/activity may be relevant to investigation or Recipient response
 - No need to independently respond to alleged underlying conduct, unless institution takes broad off-campus jurisdiction by policy

Visualizing Jurisdiction



Dismissals

All dismissals involving conduct occurring on or after August 1, 2024, are **discretionary**, and may be implemented under the following circumstances:

- Unable to identify Respondent after **reasonable** steps to do so
- Respondent no longer participating in education program or employed by Recipient
- Complainant withdraws all or a portion of complaint and any remaining conduct would not be sex discrimination under Title IX
- Alleged conduct, if proven, would not be sex discrimination under Title IX
 - Recipient must take reasonable efforts to clarify allegations before dismissal

Dismissals

Upon dismissal of a complaint, institution must:

- Notify Complainant
 - Notify Respondent only if Respondent has already been notified of the complaint
 - Offer supportive measures, as appropriate
- Inform Complainant of their right to appeal
 - Also inform Respondent if they have been notified of the complaint
- Take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur

Dismissal Appeals

- Implement appeal procedures equally
- Only Complainant has right to appeal dismissal if Respondent is not notified of the complaint
- If Respondent knows of complaint, both have equal right to appeal
- Appeal Decision-maker must be trained and **not** have taken part in investigation of allegations or dismissal of complaint
- Provide parties a reasonable and equal opportunity to make a statement
- Notify parties of the appeal result and rationale
 - No requirement of a **written** notification

Outreach and Intake

Outreach and Intake

- After receiving a report/knowledge, TIXC (or designee), should always reach out to the Complainant
- **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 make a complaint
 - Discuss supportive measures and resources
 - Follow up in writing with resources and information

Outreach and Intake

Intake includes:

- Providing an overview of the process
- Having written materials to reference and for parties to take with them
 - Follow up with an email containing these materials, too
- Exploring facts, but not interviewing
 - Needed for initial evaluation
- Discussing Supportive Measures
- Discussing Complainant's options
- Answering questions
 - **DO NOT** answer the question “What should I do?”

Supportive Measures

Supportive Measures

- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during grievance procedures
- May **not unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or charge



Supportive Measures

Counseling/ Health Services	Employee Assistance Program	Visa and Immigration Assistance	Community Education or Programs	Alternate Housing
Alternate Work Arrangements	Safety Planning/Escorts	Mediate with Faculty or Supervisor	Transportation Assistance	Contact Limitations
Academic Support	Policy Revision	Training	Climate/Culture Assessment	Alternate Course Completion Options

Assessing Unreasonableness Example

- Complainant has requested that Respondent be moved to another residence hall as a supportive measure
- Potential Considerations:
 - Whether Respondent will be separated from a living learning community, student-athlete housing, scholarship housing, or other similar type of grouped housing
 - Whether a comparable facility has space
 - Whether Respondent will have an increased distance to travel to their classes, campus employment, or other services that may have impacted their housing selection
 - Whether Respondent will lose access to any other facilities (e.g., study space, dining options) by moving
 - Whether the institution can provide any resources or supports to offset anything that might make the move unreasonable (e.g., assistance packing/moving, shuttle service)

Supportive Measures

- Institution may deem which supportive measures are **reasonably available**
 - Must provide a **timely opportunity** to seek modification, reversal, or denial
 - An impartial employee, uninvolved in initial decision, must have authority to modify or reverse
 - Review considers whether the original decision was **inconsistent** with the definition of supportive measures
 - Permit additional opportunity to contest if circumstances change materially
 - Disclosure about supportive measures is need-to-know
- Measures may be continued, modified, or ended at conclusion of the Title IX Resolution Process

Activity: Supportive Measures

Activity: Supportive Measures

- A graduate student is employed in a research lab on campus
- The research necessitates having a researcher in the lab around the clock
- The professor responsible for managing the lab only assigns male students to monitor the lab after 9:00 p.m.
- When a male student asked the professor about the scheduling practice, the professor said, “I have daughters and would not want them walking through a parking lot by themselves late at night”
- The male student reported the professor for sex discrimination and now receives half as many shifts

What supportive measures should be considered?

Activity: Supportive Measures

- A pregnant student alleges that her chemistry professor will not discuss any accommodations or modifications to her chemistry lab course, insisting she complete the course as designed
- The student is concerned about exposure to chemicals in the lab and the date of the final exam, which is right around her due date

What supportive measures should be considered?

Activity: Supportive Measures

- A transgender student is repeatedly misgendered by their major's sole academic advisor
- The academic advisor insists they do not mean to offend their student, but their religious beliefs prevent them from using the student's pronouns

What supportive measures should be considered?

Informal Resolution

Informal Resolution

- Requires TIXC approval and the parties' voluntary consent
- Available without a complaint
- Must provide Notice of Allegations and Informal Resolution (IR) information
- Available any time prior to determination
- Parties may withdraw from IR at any time prior to agreement
- May offer IR for complaints between an employee and student
- Parties precluded from initiating or resuming investigation and Resolution Process if agreement is reached
 - Unless the conduct continues after the agreement is reached

Informal Resolution

- Form of IR not defined (e.g., facilitated dialogue, shuttle negotiation, restorative practices)
- Resolution may include restrictions the institution could have imposed as disciplinary sanctions or remedies
 - Binding only on the parties
- IR Facilitator:
 - May **not** serve as Investigator or Decision-Maker (DM)
 - Must be trained
- Expanding IR options may help with increase in reporting

Informal Resolution

Parties must receive notice of:

- Allegations
- IR procedures
- Right to withdraw from IR and initiate/resume Resolution Process
- IR agreement would preclude initiating/resuming formal process arising from the same allegations
- Potential terms in an agreement
- Records creation and sharing practices

Investigation Phase

Investigation



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 or the “Respondent” may be the institution
 - May be useful tool for DT/DI complaints
 - May lead to named respondents or individual/pattern investigations

Investigation Scope

- **Scope** refers to the investigation allegations, timeframes, and parties
- TIXC determines the scope of the investigation
- Considerations:
 - Allegations outside of jurisdiction
 - Individual vs. Group
 - Multiple Complainants or Respondents
 - Counter-complaints
 - Complaint consolidation
 - Retaliation
- May need to adjust scope during process

Investigation Oversight

Common Investigation Steps:

1. Receive Notice/Complaint
2. Initial Evaluation
3. Establish 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:

Basic Requirements

All sex discrimination complaints may be addressed using § 106.45, if desired

- Treat parties equitably
- Require TIXC, Investigators, or DMs have **no** conflict of interest or bias
 - DMs may be the same person as the TIXC or Investigator
- Presume that Respondent is not responsible for sex discrimination
- Establish reasonably prompt timeframes for “major stages” of the process
 - E.g., Evaluation, Investigation, Determination, Appeal
- Advisors not required

Basic Requirements

- Take reasonable steps to protect the privacy of the parties and witnesses
 - Cannot restrict ability of parties to:
 - Obtain and present evidence
 - Consult with family members, confidential resources, or Advisors
 - Otherwise prepare for or participate in the Resolution Process
- Objective evaluation of relevant (and not otherwise inadmissible) evidence
- Respondent requirements apply **only** to individuals
 - Recipients are **not** Respondents in policy or practice complaints

Notice of Investigation and Allegations

- Does **not** need to be in writing
 - ATIXA recommends writing it
- **Must include:**
 - Recipient's resolution procedures, including Informal Resolution
 - Sufficient available information to permit parties to respond to the allegations, such as identities (who), allegations (what), date (when), and location (where)
 - Statement that retaliation is prohibited
 - Statement that parties have opportunity to access relevant evidence or description of the evidence

Investigations

Section 106.45

- Adequate, reliable, and impartial
- Gather evidence
- Permit parties to present fact witnesses and both inculpatory and exculpatory evidence
- Recipient reviews all evidence gathered through the investigation and determines relevance
- Provide parties opportunity to access relevant evidence or accurate description of such evidence
- Provide parties reasonable opportunity to respond to evidence
- Investigation report not required
- Take reasonable steps to prevent and address parties' unauthorized disclosure of information and evidence obtained through process

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 allegations
- In sex discrimination complaints, Investigators look for **different** types of evidence:
 - Similarly situated individuals
 - Statistical evidence
 - Non-discriminatory-rationales
 - Following established policy, the other applicant was more qualified, etc.
 - Pretext
 - Whether the offered rationale for the adverse action is true/legitimate
- Circumstantial evidence may play a larger role in sex discrimination complaints

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
- Assessing **non-discriminatory reasons** and **pretext** evidence may involve substantial emphasis on credibility assessments



Parties' Review and Response

- ATIXA recommends Investigators compile relevant evidence into an investigation report rather than providing an evidence summary
 - Send to each party and Advisor in an electronic format or hard copy
 - Include relevant evidence
- Investigator must:
 - Provide parties a reasonable opportunity to respond to Investigation Report/summary
 - Provide all relevant evidence upon request by a party, if Investigator only provided an evidence summary
 - Consider parties' feedback and incorporate where appropriate

Evidence Activity

Deidre

- Deidre, a queer student, alleged that a faculty member has exhibited discriminatory and queerphobic conduct against her
- According to Deidre, the faculty member frequently cuts off Deidre during class but does not do so to other students in the seminar, all of whom Deidre knows, and none of whom identify as queer
- The faculty member also delays responding to Deidre's emails, although other students report prompt responses
- Deidre approached the faculty member during office hours to express her concerns about the faculty member's behavior
- Later, despite strong peer reviews, Deidre received a poor grade on her capstone project
- Deidre believes the grade is retaliation for speaking up

What kinds of evidence may be available in this situation?

What are possible next steps?

Dr. Munroe

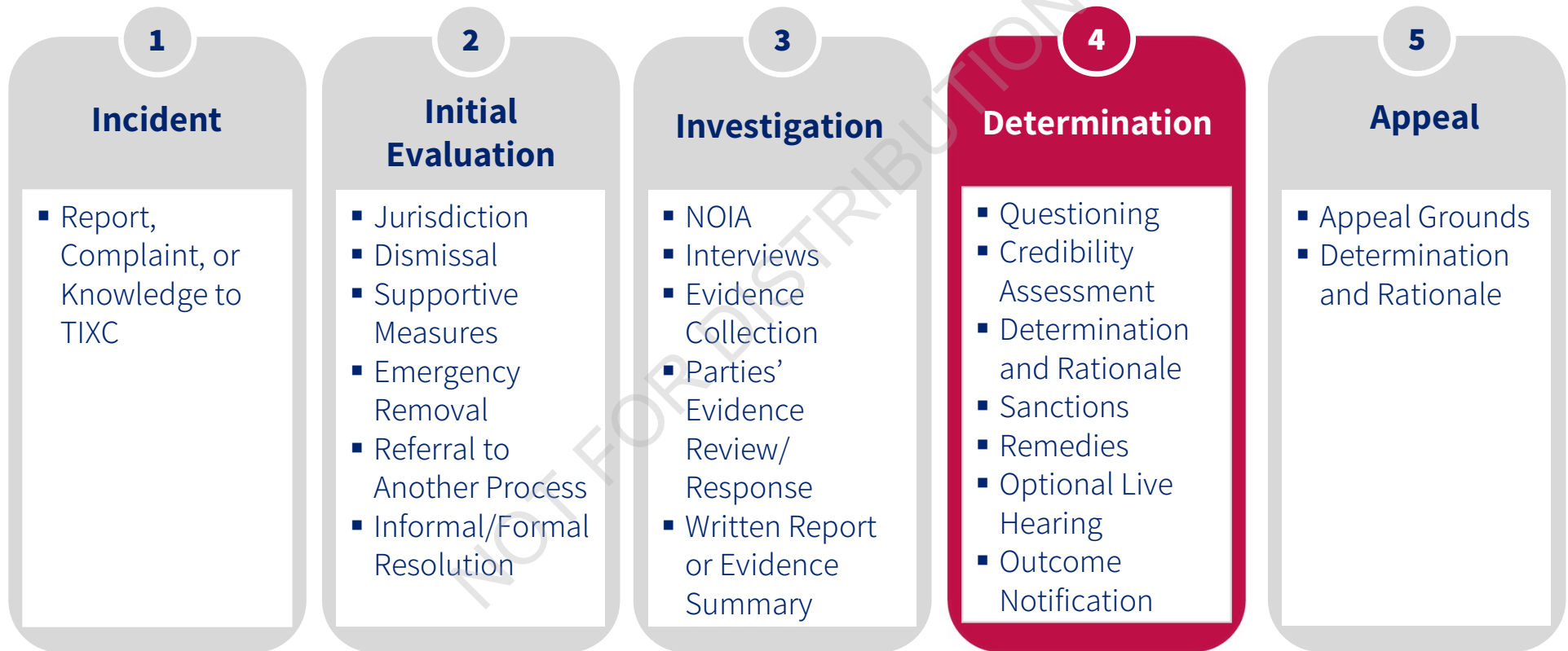
- Dr. Munroe, a faculty member, reports to the Title IX office that he believes his department is biased against men in its hiring, evaluation, and promotion practices – which in turn impacts compensation
- As evidence, he cites:
 - Recent hiring decisions to hire female faculty members despite the recruiting pool being overwhelmingly male
 - Recent performance concerns mentioned by the department chair, who is female, toward a handful of male faculty members
 - A recent decision by the department chair to pass him over for tenure in favor of a faculty member with fewer years of experience and fewer publications in the field

What additional evidence may be available in this situation?

What are possible next steps?

Decision-Making

Determination



Decision-Making

Must provide a process enabling DM to question parties and witnesses to assess credibility

Title IX Coordinator

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

Decision-Maker(s)

- Determines relevance
- Assesses credibility
- Makes a finding of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

DM Model: Separate Decision-Maker

ATIXA recommends:

- A separate DM
 - May meet with parties in individual meetings to ask questions and assess credibility
 - May meet with Investigators or witnesses as needed
 - Makes findings and policy violation determinations
 - Determines sanctions and remedies
- Robust appeal opportunity

DM Model: Investigator as Decision-Maker

- One person serves as Investigator and DM
 - This could be the Title IX Coordinator
- ATIXA does **not** recommend this model, but recognizes institutions may feel as though this is the best option for them
- If institutions decide to use this model, ATIXA recommends institutions offer a robust appeal opportunity
 - Expand upon the three appeal grounds in the regulations
 - Permit substantive appeals of findings and sanctions for separation-level offenses only

Decision-Making

Making a Finding

- DMs determine what occurred based on the standard of proof

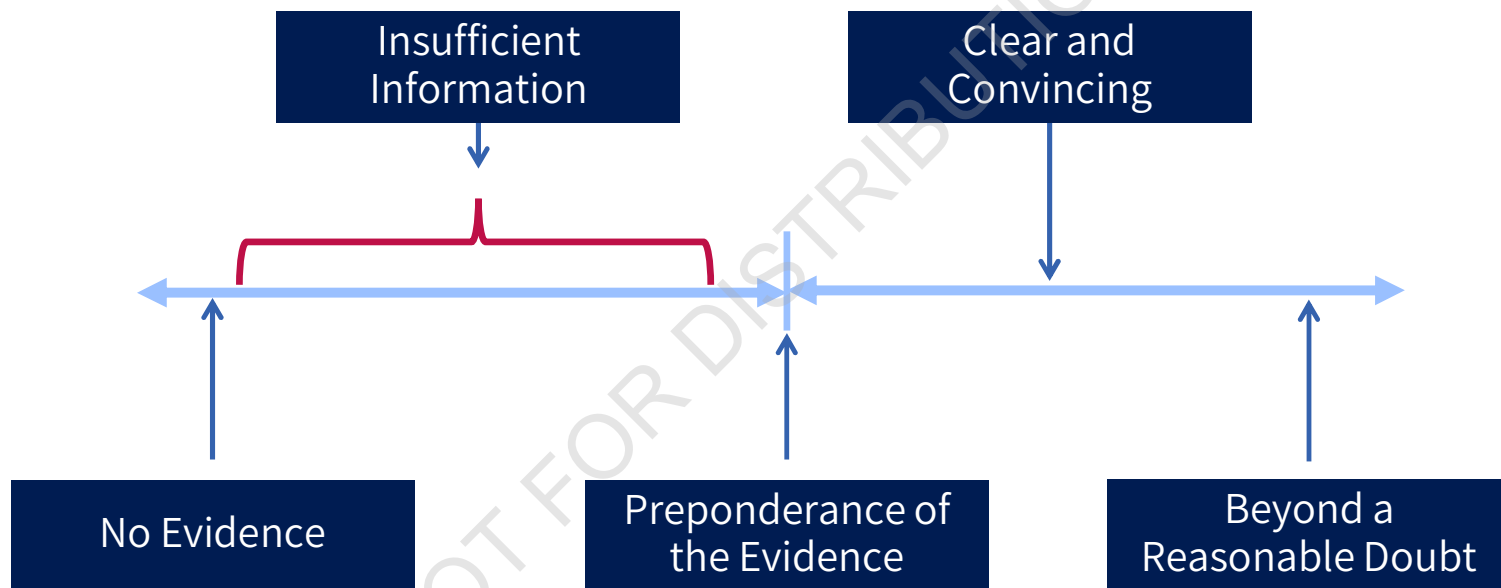
Making a Final Determination

- DMs determine whether what occurred is a policy violation by applying the standard of proof
- Consider each allegation individually for each Respondent

Standard of Proof

- Use preponderance of the evidence standard
 - Unless clear and convincing is used for other “comparable proceedings”
 - “Comparable proceedings”
 - Proceedings for other discrimination complaints involving the same category of Respondents (students vs. employees)

Standard of Proof



Preponderance of the Evidence is the current industry standard

Written Determination Considerations

The written determination should include a rationale and any appeal procedures

Recipients must:

- Notify parties of the outcome of the complaint
 - Overrides FERPA protections
- Refrain from disciplining parties for false statements based solely on the determination
- Provide and implement remedies to restore access and prevent recurrence
 - Not just sanctions
- TIXC to implement remedies and disciplinary sanctions as appropriate

Sanctions and Remedies

Sanctions

- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- 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 equitable and not clearly unreasonable given the circumstances
- Goal: preserve or restore access to education program and activity
- TIXC ensures remedies are implemented

Remedy Recommendations



Remedies should seek to restore affected individuals to their pre-deprivation status



Recover any lost work, education time, economic, or access impacts



Restore opportunities, if applicable

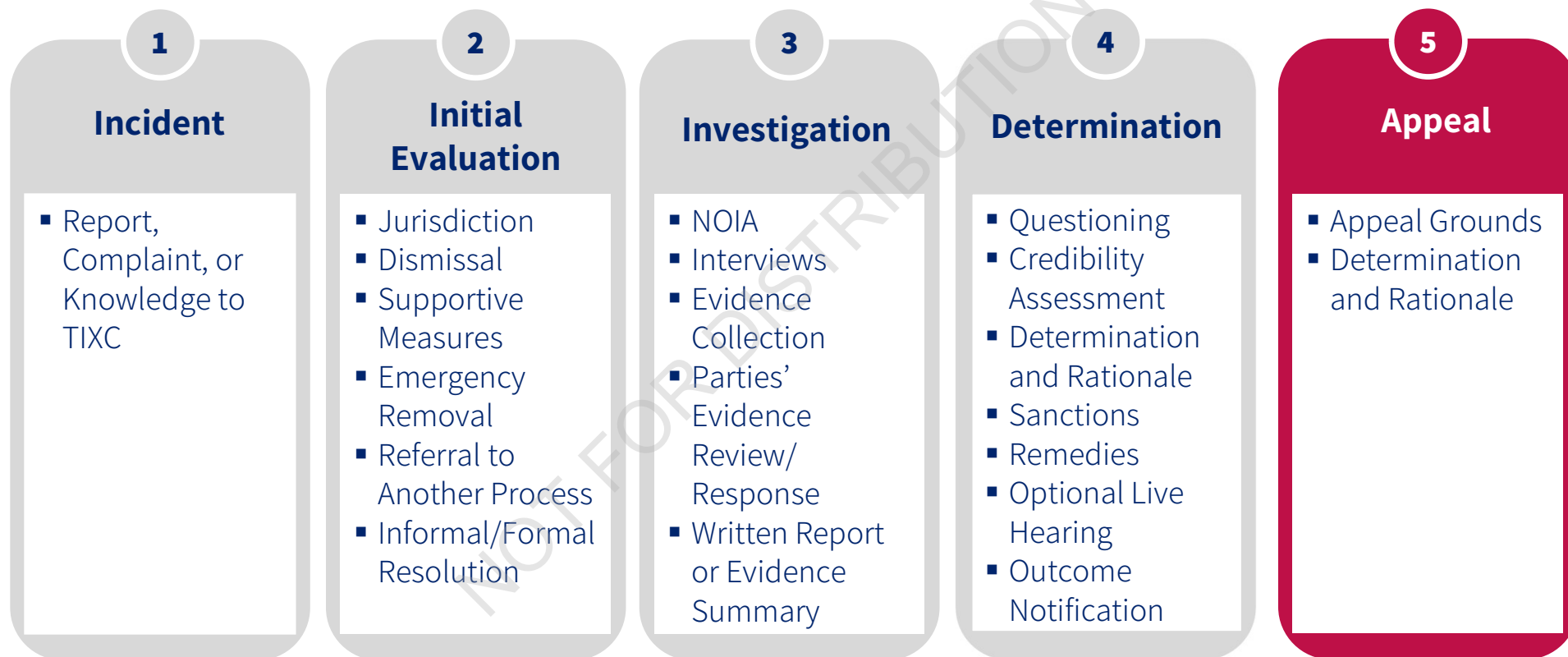


Repair damage from discrimination

Appeals

NOT FOR DISTRIBUTION

Appeals



Appeals

- Under § 106.45, offer an appeal process mirroring those in **comparable proceedings**:
 - If there is no appeal in comparable proceedings, none is required
 - Institutions may exceed this requirement
 - Comparable proceedings may include those used to resolve other discrimination complaints
- Any appeal process offered must be equal for all parties
- ATIXA recommends permitting only one level of appeal
- ATIXA also recommends using the same grounds for appeal as the institution does for a § 106.46 process

§ 106.46 Appeal Grounds

1

Procedural irregularity that would **change the outcome**

2

New evidence that would **change the outcome** and that was not reasonably available when the determination of whether sex discrimination occurred was made

3

TIXC, Investigator, Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would **change the outcome**

Institutions have the discretion to add additional appeal bases, as long as the procedures and additional bases for appeal are equally available to all parties

Appeal Determinations

Appeal Decision-maker

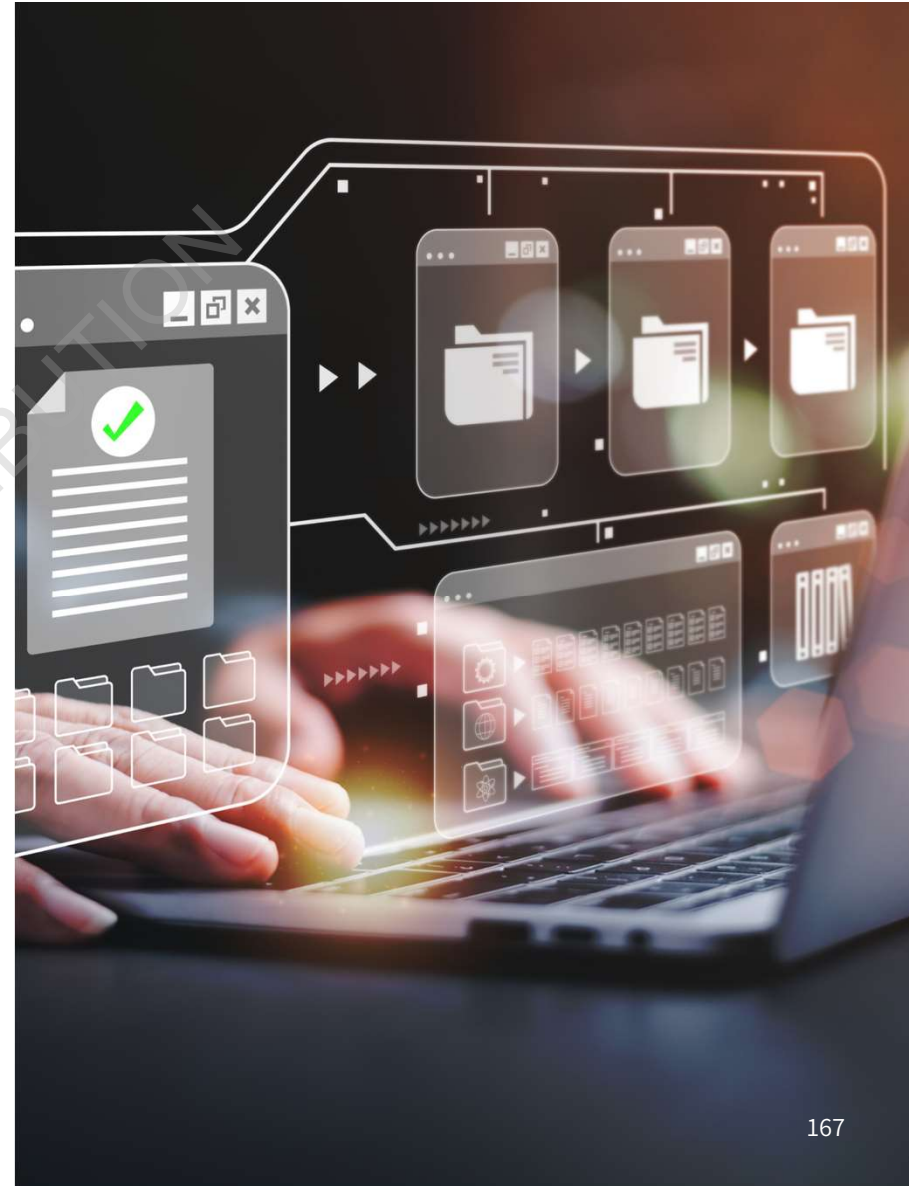
- Should complete a written determination with rationale
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the DM for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturning** the determination (not recommended)

Recordkeeping

NOT FOR DISTRIBUTION

Recordkeeping

- Recipient must maintain records for a minimum of **seven** years:
 - Sex discrimination complaints, including records re: Informal Resolution or resolution procedures and their outcome
 - Notices, reports, or information about conduct that may be sex discrimination
 - All training materials
 - Make available for review upon request





Association of
Title IX Administrators

Questions?

NOT FOR DISTRIBUTION



Association of
Title IX Administrators

**ALL ATIXA PROPRIETARY TRAINING MATERIALS ARE COVERED BY
THE FOLLOWING LIMITED LICENSE AND COPYRIGHT.**

By purchasing, receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for their use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes, only. If these materials are used to train Title IX personnel, they are subject to 34 CFR Part 106.8(f)(3), requiring all training materials to be available for inspection upon request. ATIXA does not permit any licensee/purchaser to publicly display, share, or publish these materials. If you have lawfully obtained ATIXA materials by registering for an ATIXA training, you are licensed to use the materials provided for that training. Licensees may download and save a PDF version of training materials for their completed training to provide them to a third-party for inspection upon request in compliance with federal regulations. No right to disseminate, post, or provide a copy of the materials publicly or to any third-party is permitted.

You are not authorized to copy or adapt these materials without ATIXA's explicit written permission. No one may remove this license language from any version of ATIXA materials. Should any non-licensee post these materials to a public website, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.