



Association of
Title IX Administrators

Title IX Hearing Advisors

Training and Certification Course

NOT FOR DISTRIBUTION

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



The primary focus of this training is to cultivate the skills needed to serve as an effective Advisor in the Title IX Resolution Process.



Participants will learn about the scope and function of Advisors within Title IX proceedings.



Our goal is to provide Title IX Coordinators and Advisors with a deep understanding of the Advisor's role, responsibilities, and expectations during a Title IX process.

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

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 and Equity

- Title IX is a sex and gender equity law
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
 - Equity focuses on providing support and resources to reduce disparities in access to the education program
 - Title IX seeks to remedy the inequities created by sex-based harassment and sex discrimination
- Ensuring that all parties have the same opportunity to have an Advisor in the Title IX Resolution Process helps to ensure an equitable process

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
 - Fondling
 - Incest
 - Statutory Rape

Retaliation

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
 - Athletics

Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide institutions 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 the Complainant and the community

Introduction: Dax and Casey

Dax and Casey

- Dax and Casey met in a large lecture course last year and eventually exchanged phone numbers to get class notes from each other if one was absent
- Dax ran into Casey at a football tailgate, and they took a photo together
- Dax began texting Casey frequently, and Casey stated they tried to remain polite, but found the messages annoying because the messages were not class-related
- Dax then began sending sexual messages, which Casey said they rebuffed by telling Dax they were in a relationship with someone else
- After working on a group project together, Dax increased the frequency of the texts and also began sending texts that didn't make sense, such as telling Casey that Dax wanted to have sex with them and then stating that they could hardly remember what Casey looked like in the next message

Dax and Casey

- Casey eventually stopped attending class lectures as often as possible while maintaining a passing grade
- When Casey would attend class, they would choose a different place to sit, and Dax would text Casey angry that Casey wasn't sitting near Dax
- Casey completed an international internship over the spring and summer and did not hear from Dax while outside the U.S.
- At the beginning of the next semester, Casey received a text message from an unknown number asking if Casey had any marijuana
- Casey asked who sent the text, and the person responded, "Sexy Sultan"

Dax and Casey

- Casey assumed that Dax sent the text because Dax had mentioned the word “sultan” in a previous conversation
- The sender continued to text Casey with a mix of short and long messages that did not make sense and Casey responded saying, “Stop texting me,” and “I’m not interested”
- Casey reported that they had seen Dax waiting for them outside of a local establishment, and Casey’s friends had to physically separate Dax from Casey after Dax grabbed Casey’s arm to get their attention
- Dax continued to text Casey, and Casey continued to tell Dax to stop
- Dax then said things like Casey was “playing hard to get,” and once acknowledged that Casey was afraid of Dax

Dax and Casey

- Casey stopped going to class and events on campus, afraid that they would run into Dax
- Eventually, Casey told Dax that if the text messages didn't stop, Casey was going to contact the police
- Dax responded that they would “not chase” Casey, but rather that Casey “ha[d] to want [Dax]”
- Dax then said, “Goodnight, have fun with your animals!”
- This “terrified” Casey because they had been eating animal crackers out of a large container with their roommates earlier that evening, and Dax only would have known that if they were looking through their window at their off-campus residence
- Casey never told Dax where they lived

Dax and Casey

- Casey went to the local police department to report Dax that night
- The police called Dax and told Dax to have no further contact with Casey or Dax would be arrested
- Dax immediately attempted to call Casey after the police spoke with Dax
- The local police brought Dax into the station and observed that he was demonstrating signs of mental impairment and was not tracking the conversation or making sense
- Casey blocked Dax's number and didn't hear anything from or see Dax for several weeks
- Then Casey had a meeting scheduled with an instructor, and when Casey arrived at the office, they noticed Dax sitting in the hallway outside of the office
- Dax began following Casey and shouting that Casey was trying to get Dax deported

Dax and Casey

- The director of advising contacted the police after hearing the commotion, and when the officers responded an officer escorted Casey to their car while two others spoke with Dax
- Several of Casey's friends started telling Casey that Dax was frantically asking for information about Casey's class schedule, which they did not provide
- One night, following a co-curricular event, Dax approached Casey outside of a campus building holding flowers and demanding to speak to Casey alone
- Casey refused and reminded Dax that they were not allowed to contact Casey
- Casey's classmates and faculty member observed the interaction, and the faculty member submitted a report to the Title IX office as a mandated reporter

Roles in the Title IX Process

Parties and Advisors

- **Complainant:** a person who is alleged to have been subjected to conduct that could constitute sex discrimination, sex-based harassment, or retaliation
- **Respondent:** a person who is alleged to have engaged in conduct that could constitute sex discrimination, sex-based harassment, retaliation
- **Advisor:** Any person chosen by a party who may accompany the party to all meetings related to the Resolution Process and advise the party on that process



Title IX Team Members

- **Title IX Coordinator (TIXC):** responsible for overall institutional Title IX compliance
 - Typically manages the Resolution Process, supportive measures, Informal Resolution, emergency removals, and dismissals
 - May serve as an Investigator and/or Decision-maker
- **Deputy Title IX Coordinator(s):** assist and support the TIXC or function as the TIXC if they are conflicted out or otherwise unavailable
- **Investigator(s):** gather evidence, interview parties and witnesses, and write an investigation report
- **Decision-maker(s):** individual or panel who renders a finding/determination, determines any sanctions, and recommends any remedies

Title IX Team Members

- **Informal Resolution Facilitator:** individual who facilitates Informal Resolution process
 - May not be the Investigator or Decision-maker
- **Hearing Facilitator:** individual who manages hearing logistics
 - Often the TIXC
- **Appeal Decision-maker(s):** individual or panel who decides an appeal of a final determination or a dismissal



Neutrality, Conflicts of Interest, and Bias

- Title IX regulations require that all individuals serve neutrally **without** any bias or conflicts of interest
 - Impartiality is critical to the integrity of the process
 - Title IX team members have no “side”
- Advisor must be prepared to help their advisee raise and navigate issues of bias or conflicts of interest



What's the Difference?

Conflict of Interest

- Refers to situations in which:
 - An **actual** (or perceived) clash,
 - Between the DM's role and
 - A current or previous relationship/situation with one of the parties
 - Prevents neutrality or objectivity
 - Ex: A Residence Director deciding a complaint filed by a current Resident Assistant on their building staff

Bias

- Refers to prejudice for or against a **person or group**, or an unwillingness/inability to be influenced by factual evidence
- A preference or tendency to like or dislike
- Implicit or explicit
- Can be intentional, but generally unintentional or at least unconscious
- Ex: A DM who believes Respondents cannot be trusted to tell the truth

Conflicts of Interest and Bias

- Title IX team members must **not have a conflict of interest or bias** for or against the following:
 - Complainants, generally
 - Respondents, generally
 - The individual Parties involved with a complaint
 - Subject matter or details of the complaint itself
- Advisors should report potential conflicts of interest or bias to the TIXC

Role of the Advisor

NOT FOR DISTRIBUTION

Advisors

- Advisors are not required for all Title IX Resolution Processes, though it is a best practice
 - When Advisors are permitted, the Title IX regulations contemplate two types of Advisors:

Party-Selected Advisor

- Title IX regulations (and VAWA) require that a party be allowed to select an “Advisor of choice” for sex-based harassment allegations
- May be present for every meeting, interview, and hearing
- Institution may not limit choice

Institution-Appointed Advisor

- Only required for conducting Advisor-led questioning at the hearing when a party does not have an Advisor selected
- If appointed earlier than the hearing, may accompany the party throughout Resolution Process and be present for every meeting, interview, and hearing
- May not be a confidential employee

Institution may regulate Advisor participation, if the restrictions apply equally to **all** parties

Role of the Advisor

Advisor support may take various forms:

- Accompanying advisee throughout the Resolution Process, including all meetings
- Analyzing strategic issues, such as whether to:
 - Make a complaint
 - Participate in Informal Resolution (IR)
 - File an appeal
- Accessing supportive measures, community resources, and advocacy services
- Participating in the investigation, including review and comment on the report
- Preparing for the hearing, if applicable
 - Conducting any questioning/cross-examination at the hearing, if applicable

Advisor Expectations

Advisors should:

- Understand their role in the context of their institution's policy and process
- Be reasonably available to their advisee
- Learn the applicable policies and procedures
- Advise with integrity and follow any applicable professional ethics
- Adhere to rules of confidentiality and privacy
- Meet the Title IX team and establish a good rapport
- Be timely, professional, and organized



Advisor Expectations

Advisors should not:

- Make decisions for their advisee
- Act on behalf of their advisee without permission from the advisee
- Engage in disruptive or harassing behavior toward any party, witness, or Title IX team member
- Attempt to negotiate a resolution with the Decision-maker(s)

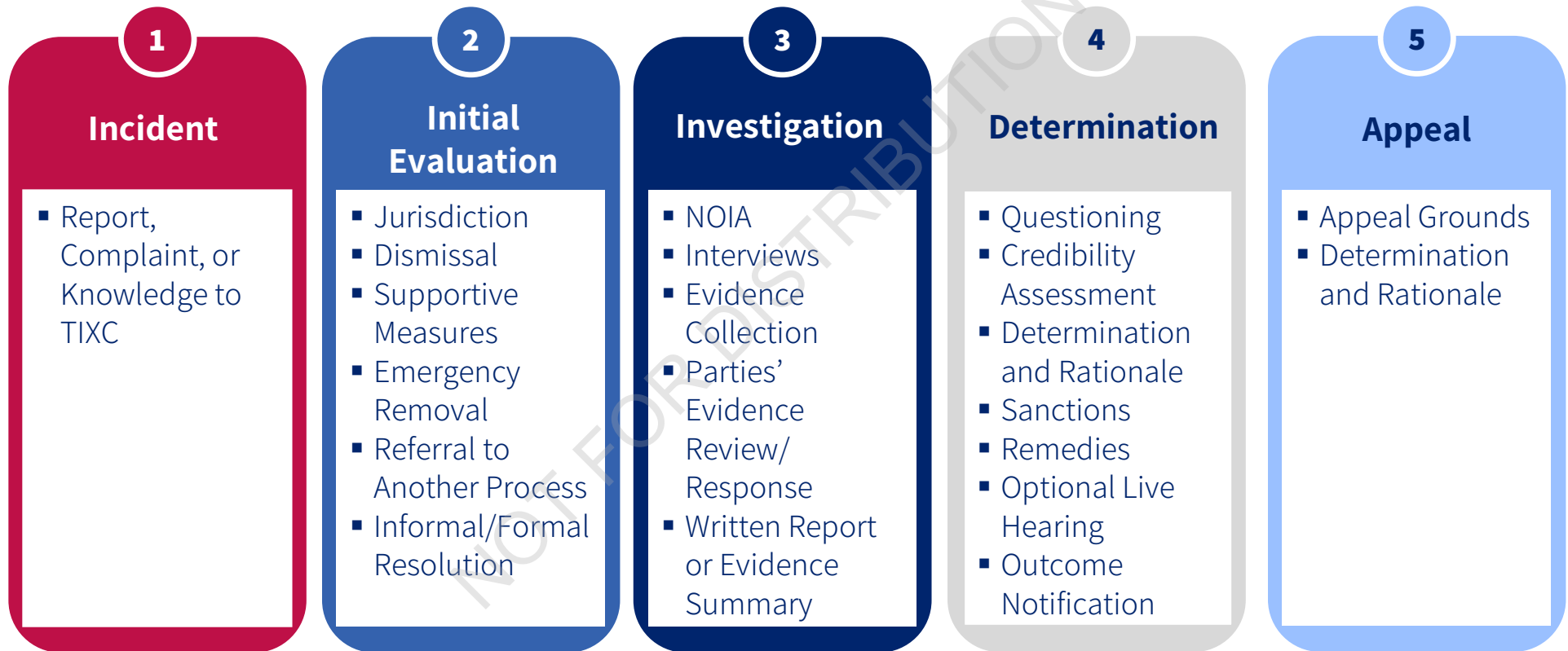


Confidentiality and Privacy Concerns

- Although institutions must generally maintain privacy about the complaint and any individuals involved in Title IX processes, procedural requirements necessitate that each party know:
 - The identity of all other parties
 - The identity of all witnesses
- Information may be shared as permitted by FERPA, required by state law, or to execute the Title IX regulations, including investigations, hearings, or other proceedings
- Advisors may be asked to sign non-disclosure agreements regarding complaint information learned while serving as an Advisor

Resolution Process: Overview and Pre-Investigation

Title IX Resolution Process Overview



Title IX Resolution Process Overview

Prompt Resolution

- Reasonably prompt timeframes for “major stages” of Resolution Process
- Title IX regulations do not define “reasonably prompt”
 - 30-120 business days is common from intake through investigation, to a decision, and then through an appeal, if any
- Process may take longer than expected
 - Institutions should communicate with parties about delays
 - Reasonable extensions permitted

Title IX Resolution Process Overview

Equitable Resolution

- All parties are to be treated equitably
 - If the institution affords a right, privilege, benefit, or opportunity to one party, it should generally be provided to other parties
- All parties must be given an opportunity to fully participate in the Resolution Process
- The Title IX team must operate without bias and/or conflicts of interest



Advisee Rights

- The Title IX regulations confer many substantive rights on parties
- Advisors need to be:
 - Familiar with these rights to help ensure that their advisee's rights are upheld
 - Prepared to advocate for their advisee to receive them



Two-Track Grievance Process

- Which grievance process applies depends on the identities of the parties
 - Section 106.45 provides a civil rights resolution process for resolving complaints
 - Section 106.46 incorporates § 106.45 and adds some due process protections
 - Retains many, but not all, features of the formal process from the 2020 Regulations
- Two separate processes are permitted but **not** required
 - If using only one, it must be § 106.46 (ATIXA’s recommendation)

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

Intake to Investigation

- A party should be able to seek policy and process information without disclosing details of their own experience to a Title IX team member
- Advisors may accompany advisees to any intake meetings, interviews, or other meetings related to the Resolution Process
 - Institution can conduct intake without an Advisor present if the party agrees
- During the initial evaluation, the parties may wish to advocate for or against supportive measures, dismissal, or emergency removal/administrative leave
 - Advisors can help parties articulate their needs for supports and frame their arguments
- Advisors can and should help advisees understand the details of the Notice of Investigation and Allegations (NOIA)

Knowledge

The institution has **knowledge** of sex discrimination when information about conduct that reasonably may constitute sex discrimination is reported to:

- **TIXC**, or
- Any non-confidential employee who either:
 - Has authority to institute corrective measures on behalf of the institution, **or**
 - Has responsibility for administrative leadership, teaching, or advising in the institution's education program or activity
- Advisors should be familiar with mandated reporting policies and how to navigate reporting responsibilities when serving as an Advisor

TIXC Outreach

- After receiving a report, TIXC (or designee), must 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
 - Review of available resources and resolution options, including how to make a complaint
 - Discussion of supportive measures and resources
 - Explanation of law enforcement reporting options
 - Written follow up about resources and process information

Casey Discussion

- You are a faculty member in the Entrepreneurship program and the faculty sponsor for a student organization in which Casey is a member
- Casey contacts you after receiving a letter from the Title IX office and asks whether you think they should meet with the Title IX Coordinator, and if so, if you will accompany them to the meeting
- What should you consider before responding to Casey's questions?

Intake Meeting

- If Advisor is present:
 - Advisor may be asked to sign a non-disclosure agreement
 - Party may be asked to sign a waiver to allow their Advisor access to the Title IX complaint records and to be able to communicate with the Title IX team (e.g., FERPA Release)
- TIXC or designee explains the process and reviews the party's options for support and institutional response
 - Should provide written materials to reference and for parties to take with them
 - Parties should also receive a follow-up email containing these materials
 - Should include information on access to medical care and evidence preservation
- Exploring facts, but not interviewing
 - Needed for initial evaluation and Clery timely warning

Supportive Measures

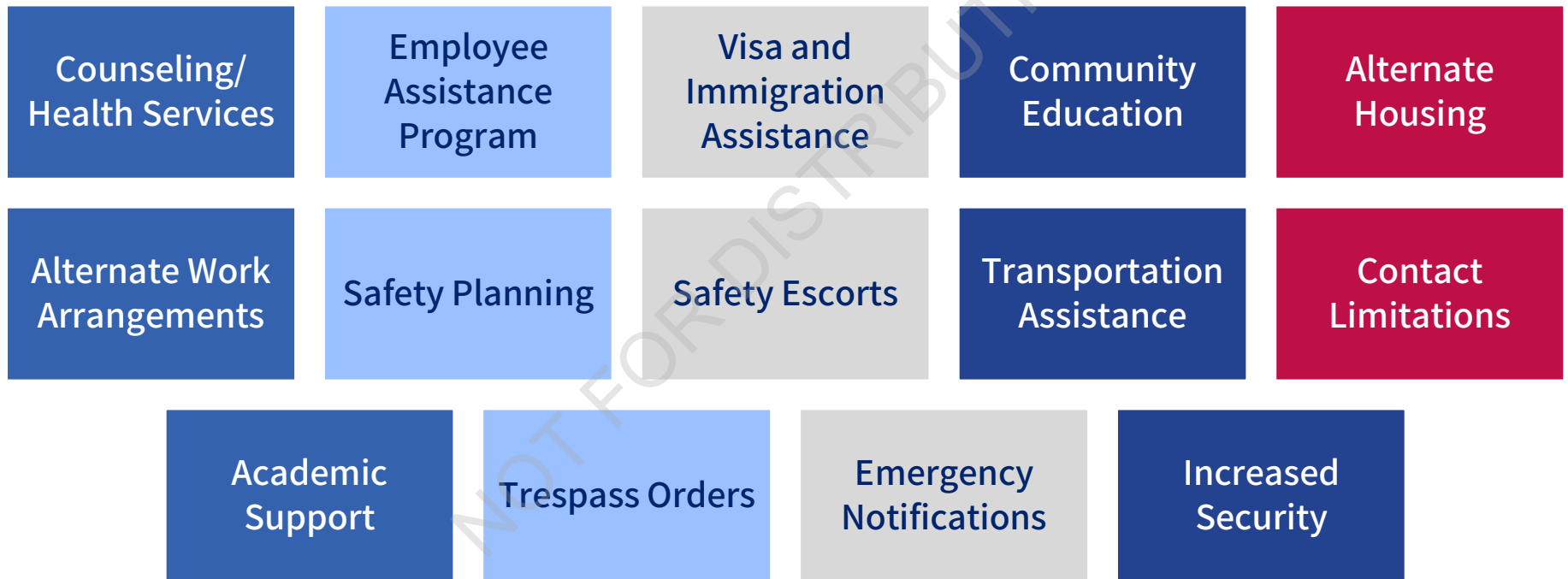
- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during Resolution Process
- May **not unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or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



Supportive Measures

- Institution may deem which supportive measures are **reasonably available**
 - Must provide a **timely opportunity** to seek modification, reversal, or denial
- Advisors should be prepared to counsel their advisee for a supportive measures challenge
 - When challenged, the “review” considers whether the original decision was **inconsistent** with the regulatory definition of supportive measures
 - Any challenge to a supportive measure should focus on such inconsistencies
- Institutions must also permit an opportunity to contest a supportive measures if circumstances materially change
- Supportive measures may be continued, modified, or ended at conclusion of Resolution Process

Supportive Measures



Casey Discussion

- Casey has decided to initiate a complaint against Dax
- Based on what you know about Casey, what are some supportive measures that they may want to request?

NOT FOR DISTRIBUTION

Emergency Removals

- A student Respondent may be removed from the education program or activity after an individualized safety and risk analysis
 - Student must comply with assessment or risk removal for failure to comply
 - An **imminent and serious threat** to the health or safety of the Complainant, any student, employee, or other persons must exist
 - Threat must arise from sex discrimination allegations
- Provide the Respondent an opportunity to challenge the decision **immediately**



Emergency Removal Challenge

Advising a Complainant

- Complainant **may** have an opportunity to provide a statement or attend the show cause meeting
 - May be in support of or against removal
 - Be cautious of potential Respondent influence on Complainant
 - Example: dating violence allegations where TIXC initiated the complaint
- Advisors should assist their party as needed
 - Submit a timely statement and/or attend the meeting
 - Effective statements are fact-based and speak to the “immediate and serious” threat standard
 - May benefit from supporting documentation

Emergency Removal Challenge

Advising a Respondent

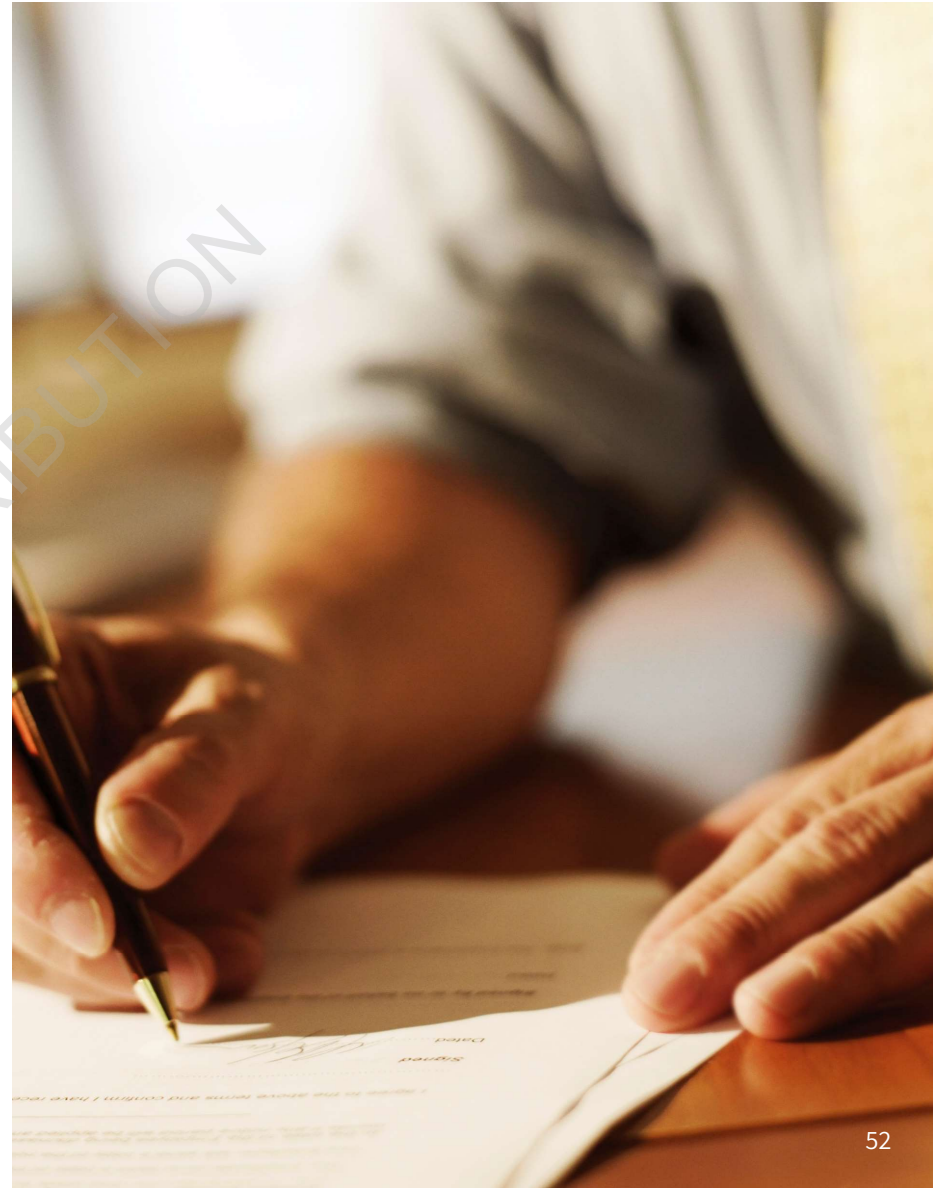
- Respondent may submit a request to challenge the removal, meet with challenge decision-maker, or both
 - Ensure Respondent knows the deadline to challenge the removal
- Review the individualized risk and safety analysis documentation
- Determine whether institution offers partial removal vs. full removal and consider whether to advocate for partial removal rather than full removal or some other modification of removal terms
- Advisors should help their party understand the emergency removal standard and articulate either 1) why the standard has not been met, or 2) how the circumstances have changed
 - Effective statements are fact-based and speak to the “immediate and serious” threat standard
 - Standard must be met and **arise from** the alleged sex discrimination

Dax and Casey Discussion

- The institution completed a violence risk assessment and determined that Dax would be emergency removed from the education program because he posed an imminent and serious threat to Casey
- Dax decides to challenge the emergency removal. As their Advisor, what would you recommend they include in their challenge documentation?
- If you were Casey's Advisor, what would you recommend Casey include in their statement if invited to provide one for consideration?

Administrative Leave

- May remove a non-student employee Respondent using existing administrative leave procedures
- A lower bar than emergency removal of a student Respondent
- Opportunity to challenge a leave decision is determined by institutional policy



Dismissal

TIXC may dismiss a complaint in the following situations:

- Unable to identify Respondent after **reasonable** steps to do so
- Respondent no longer participating in education program/activity 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

Upon dismissal of a complaint, institution must:

- Make appropriate notifications
- Offer supportive measures, if appropriate
- Permit an appeal of the dismissal decision, as outlined by policy

Dismissal Appeals

- Ensure advisee knows appeal timeline and process
- Review dismissal rationale and dismissal grounds
- Organize facts and arguments around the identified dismissal grounds and available appeal grounds
 - Provide additional relevant information to counter or reinforce the grounds for dismissal
 - Anticipate the other party's arguments, if possible

Informal Resolution

- At discretion of TIXC and only with voluntary consent of the parties
 - Complaint not required
 - Available any time prior to determination
 - Institution determines available methods/structures
- Must provide Notice of Allegations and IR Process
- Parties may withdraw from IR at any time prior to agreement
- Parties precluded from initiating or resuming investigation and Resolution Process if agreement is reached
- No appeal if agreement is reached

Informal Resolution

Advising a Complainant

- Discuss Complainant's response to the following:
 - What is their goal in pursuing the Title IX process?
 - What are they hoping for as an outcome?
 - How important is it that there be a finding of responsibility on record?
 - Is reaching a written agreement with the Respondent(s) important?
 - Are they open to communicating directly with the Respondent(s)?
 - Are they willing to be in the same space with the Respondent(s) (virtually or in person)?
 - What concerns do they have about resolving informally?
- Review available IR options
- Weigh the benefits and drawbacks

Informal Resolution

Advising a Respondent

- Discuss Respondent's response to the following:
 - Are they accepting responsibility for any or all of the alleged behavior?
 - What are they hoping for as an outcome of the Title IX process?
 - How important is it that there be a finding of non-responsibility on record?
 - Are they open to communicating directly with the Complainant(s)?
 - Are they willing to be in the same space with the Complainant(s) (virtually or in person)?
 - What concerns do they have about resolving informally?
 - Are there sanctions they would offer to agree to in order to resolve the complaint?
- Discuss use of information if future legal action is possible
- Review available IR options
- Weigh the benefits and drawbacks

Dax Discussion

- Dax tells you that he knows this will all be fine if he can just talk to Casey in person
- Would you recommend that Dax request to pursue Informal Resolution? Why or why not?

Resolution Process: Investigation

Common Steps in TIX Investigations

- Institution receives notice/complaint
- TIXC conducts evaluation and jurisdiction determination
- TIXC sends parties Notice of Investigation and Allegations (NOIA)
- Complaint assigned to Investigator(s)
- Adequate, Reliable, Impartial Investigation
- Investigator(s) produce(s) Summary of Relevant Evidence/Investigation Report
- TIXC Reviews Evidence
- Parties (and Advisors) review Summary/Investigation Report and have an opportunity to respond
- Final Investigation Report/updated Summary provided to DM(s)

Notice of Investigation and Allegations

- Policy will explain whether notice will be written and what notice includes
- **Common inclusions:**
 - Recipient's grievance 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) of the alleged conduct
 - Information on right to an Advisor of choice/role of Advisor
 - Statement that retaliation is prohibited
 - Statement that parties have opportunity to access relevant evidence or description of the evidence (or an investigation report)
 - Presumption of non-responsibility
 - Any prohibition against false statements

Understanding Evidence

- The institution has the duty to collect **relevant** and not impermissible evidence
 - Relevant evidence is information **related to the allegations** of sex discrimination under investigation that may aid in determining whether the alleged misconduct occurred
 - Inculpatory and exculpatory evidence
 - Some evidence may only be relevant to assessing credibility
- Relevant evidence forms the basis of the investigation report



Privileged and Medical Information

The party must provide written permission to obtain and/or include:

- Evidence protected under a legally recognized privilege, including evidence relevant to determining capacity to consent for students with disabilities
- Records made or maintained by:
 - Physician
 - Psychiatrist
 - Psychologist
 - Recognized professional or paraprofessional in reference to party or witness treatment



Privileged and Medical Information

Advising a Party

- Discuss the following before a party determines whether to provide written permission to include privileged and/or medical information in an investigation
 - All individuals who will have access to the information
 - Potential impacts of the information being shared more broadly
 - Intended purpose of including the information
 - Does it speak to whether the alleged conduct occurred?
 - Does it speak to credibility?
 - Whether a statement from the provider that summarizes the pertinent information would be sufficient

Impermissible Evidence

- Evidence of the **Complainant's prior sexual conduct or sexual interests** is not relevant except:
 - If offered to prove that someone other than the Respondent committed the alleged conduct, or
 - Prior sexual conduct with Respondent, if offered to prove consent to the alleged sex-based harassment
 - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or sexual interests

Advisors in Investigations

- Advisor may support advisee during interviews, but should avoid answering questions on advisee's behalf or coaching (unless permitted by law or policy)
 - Breaks for consultation or rest are permissible
- Working with Investigators
 - If there is a pre-interview opportunity, build a rapport with the Investigator(s) to support an advisee prior to the interview
 - Confirm whether institutional policy requires Advisors to take breaks or sidebars with an advisee to speak with them during an interview, or if Advisors may speak directly to them
 - Clarify under what circumstances an Advisor can address Investigator(s)
- Be aware of any decorum expectations

Parties' Review and Response

Parties (and their Advisors) must be given:

- A reasonable opportunity to respond to investigation report/accurate evidence summary
- Access to relevant evidence upon a party's request

During the review and comment period, the advisee and Advisor may:

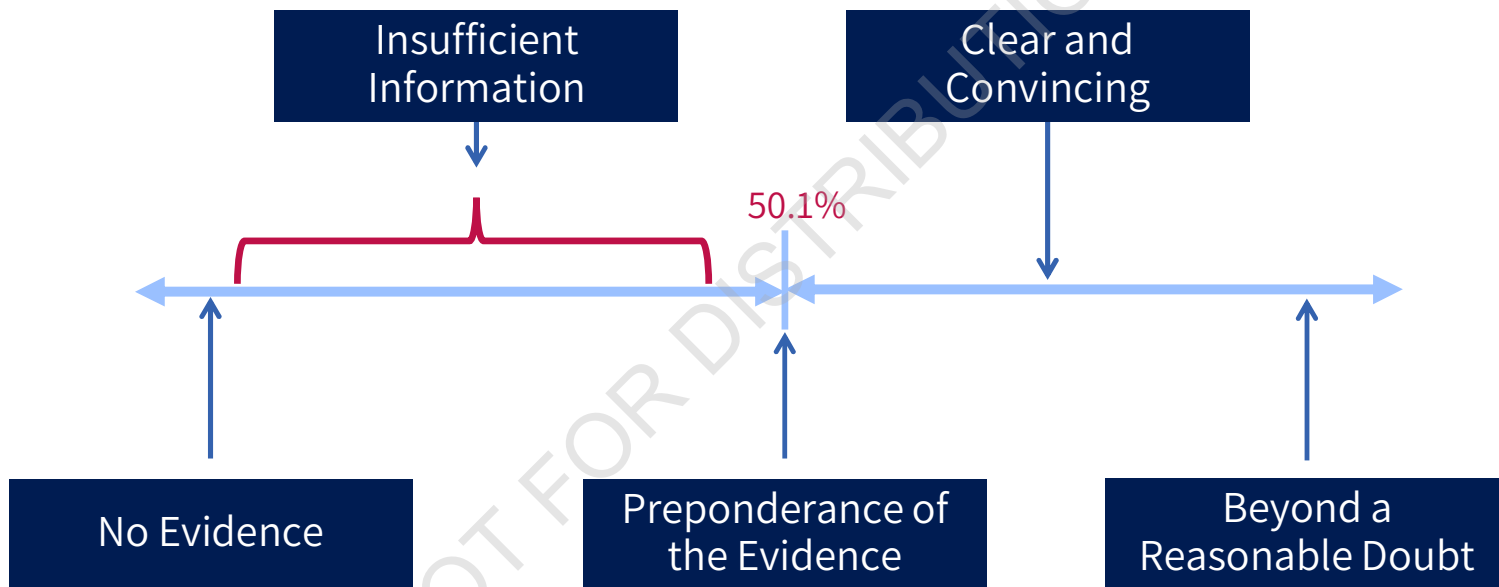
- Suggest new witnesses or additional questions to be asked of parties or witnesses
- Comment on the evidence or offer new evidence
- Challenge Investigator determinations of relevance
- Ask to correct any mis-transcription or errors to ensure accuracy
- Address any bias concerns

Resolution Process: Decision-Making

Decision-Making

- Process enabling DM to question parties and witnesses to assess credibility
 - Live hearing
 - Individual meetings
- **Finding:** DM(s) determine(s) what occurred based on the standard of proof
- **Final Determination:** DM(s) determine(s) whether what occurred is a policy violation applying the standard of proof
- DM authors a written determination letter for all parties
 - Whether each policy provision was violated
 - Sanctions, if any
 - Appeal procedures, if any

Standard of Proof



Decision-Making: Individual Meetings

- Investigator or DM asks relevant and follow-up questions during individual meetings
 - Each party may propose questions to be asked of any party or witness, **AND**
 - Has the right to have those relevant questions asked by the Investigator or DM during individual meetings, **AND**
- Each party has the right to a recording or transcript of the meetings with a reasonable opportunity to propose follow-up questions
- DM must have the ability to ask more questions, if needed
- Advisor can assist party with drafting questions and preparing for questions that may be asked of the party

Decision-Making: Live Hearings

- DM always has the option to ask questions directly of the parties and witnesses
 - Depending on policy, Advisors may also ask questions of the parties and witnesses
- **DM-Facilitated Questioning:** The institution may permit each party to propose questions to the DM to be asked of another party or witness; **OR**
- **Advisor-Led Questioning:** Advisors ask questions directly of another party or witness on behalf of their advisee, subject to rulings by the DM on relevance and permissibility
- Hearings via technology (e.g., Zoom or Teams) are permitted
 - DM and parties **must** be able to simultaneously see and hear the party or witness while they are speaking
- Institution must create recording or transcript of hearing

The Advisor's Role at the Live Hearing

NOT FOR DISTRIBUTION

Pre-Hearing DM Interactions

- Chair or Decision-maker may have **pre-hearing communication** with each party and Advisor
 - In writing or in person

Pre-hearing communication can provide an opportunity to:

- Ask questions about the hearing and its procedures
- Clarify expectations regarding logistics, decorum, Advisor role, and technology
- Discuss whether a party intends to ask questions of any or all witnesses
- Convey whether a party intends not to testify at the hearing
- Submit questions in advance, but this is **not** required
- Express any concerns about conflicts of interest or bias

Advisors should discuss these topics with their advisee prior to any pre-hearing meeting

Opening and Closing Statements

- Some institutions will permit the parties to make opening and/or closing statements at a live hearing
 - **Opening Statements** introduce and summarize the party's version of events
 - **Closing Statements** summarize and reiterate the points a party wants to emphasize for DM consideration
- Such statements should be fact-based and avoid impact or mitigation information
- Advisors can assist their parties in preparing their statements and providing feedback



Advisor-Led Questioning

- Advisors **must** ask any relevant questions their advisee wants asked
- DM must:
 - Permit relevant questions and follow-up questions, including those challenging credibility
 - Determine whether questions are relevant and direct the party or witness to answer
 - Explain any decision to exclude a question as not relevant
- DM's relevance determination is final
- Institutional procedures may state whether Advisors may ask questions of their own advisee

Questioning & Cross-Examination Tips

Platinum Rule

Ask direct questions,
but don't intimidate

Don't try to trick or
confuse

Remain seated while
questioning

Respect the process
rules and boundaries

Pause after asking
each question to
allow DM to
determine its
relevance

Avoid multi-part or
confusing questions

Additional Tips

- DM will likely ask questions of parties and witnesses before Advisors ask questions
 - Advisor's question may be disallowed if already asked or if abusive/uncivil
 - DM may permit Advisors to reword questions
- Keep track of what has been asked
 - Be prepared to explain why a question is relevant, but engage in discussion **only** if invited to do so by the DM or Chair
 - Explain why the question may produce a different answer than was already provided
- Note relevant page and line numbers when drafting questions to aid in quickly accessing the information during the hearing

Dax and Casey Discussion

- If you were Dax's Advisor, what are some of the questions you would want to ask Casey?
- If you were Casey's Advisor, what are some of the questions you would want to ask Dax?
- Be prepared to explain why your questions are relevant

Answering Questions During the Hearing

- Advisee may pause to discuss a question or answer with their Advisor
 - Advisor can also request to pause or confer before the advisee answers
- No obligation to conduct cross-examination if the advisee determines that it is not necessary or could be counter-productive
 - If an advisee does not direct their Advisor to conduct cross-examination, the Advisor is not to conduct it
 - An Advisor is there on the advisee's behalf and has no independent agency as an Advisor

Supporting an Advisee During Questioning

An Advisor can support their advisee in the following ways:

- Be supportive during questioning of other parties and witnesses
- Ask for a break if an advisee is uncomfortable or emotional
- Ask the DM to rule on questions from the other Advisor if they seem to be asked in an abusive way
- Ask for questions to be repeated or clarified for an advisee
- Repeat questions for the advisee if necessary
- Allow space for advisees to pause, frame their response, and compose themselves before answering questions

Impact and Mitigation Statements

- Institutional policy may permit parties to submit impact and/or mitigation statements
 - Opportunity to present information not be included in an investigation report or relevant to the alleged policy violation(s)
 - Only considered by the DM during the sanction phase if a policy violation is determined
- Advisors can help their advisee draft an effective impact or mitigation statement
 - Impact of the behavior, allegations, or Resolution Process
 - Mitigation information offered by the Respondent
 - Potential unintended or unknown impact a particular sanction may have (e.g., loss of an internship or job offer if suspended)
 - Complainant requests for sanctioning leniency or severity, including identification of aggravating factors

Decision-Making Reminders

Recipients must:

- Notify all parties of the outcome of the complaint
 - Overrides FERPA protections
 - Not a violation of employment record privacy
- 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
- DM may consider prior misconduct, precedent, acceptance of responsibility, and collateral or multiple violations when determining sanctions

Appeals

NOT FOR DISTRIBUTION

Appeals

- Appeal rights may differ depending upon the nature of the complaint
 - Must be offered equitably to all parties if provided
- Burden is in the appealing party to demonstrate that an error occurred
 - Appeal is not a re-hearing
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the Decision-maker for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturning** the determination (not recommended)

Appeal Grounds

For complaints of sex-based harassment involving a post-secondary student, institutions must offer appeals on the following 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-based harassment occurred, or dismissal 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 grounds

Advising for Appeals

- Ensure advisee knows the appeal timeline and process
- If making the appeal request, help advisee understand the available appeal grounds
 - Frame arguments according to the applicable appeal grounds
 - Provide facts and evidence to support arguments
 - Even if the advisee has valid reasons for appeal, if they cannot properly frame their arguments, their appeal may not be considered
- If responding to an appeal:
 - Determine if response is warranted
 - Help advisee respond directly to the arguments raised in the appeal
 - Consider whether a separate appeal should be submitted
- Accompany advisee to any appeal meetings, if applicable

Dax and Casey Discussion

- Dax is found responsible for stalking Casey and suspended for one calendar year
- As a result, Dax will lose their student visa and must return to their country of origin
- Dax wants to submit an appeal on the basis of new evidence that would change the outcome and submit records from their psychiatrist and psychologist for consideration
- What would you want to discuss with Dax related to the appeal process?

Recordkeeping

NOT FOR DISTRIBUTION

Recordkeeping

- Institution-appointed Advisors should confer with the TIXC regarding creating, sharing, and maintaining records
- Follow institutional policies for:
 - Storage
 - Access
 - Privacy
 - Destruction

NOT FOR DISTRIBUTION



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.