



Association of  
Title IX Administrators

# **Title IX Compliance Essentials for K-12 Education**

Training and Certification Course

# WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting [www.atixa.org/atixa-event-lobby](http://www.atixa.org/atixa-event-lobby) in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
- If you have not registered for this course, an event will not show on your Lobby. Please email [events@atixa.org](mailto: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.

# Course Introduction



The primary focus of this course is introducing practitioners to Title IX's core tenets for addressing sexual harassment and discrimination within a school or district's educational program and activities.



Title IX practitioners will explore the essential training requirements under the current Title IX regulations.



Our goal is to provide a comprehensive foundation that will allow practitioners to progress into role-specific in-depth training.

# Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and 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.

# **Title IX Statute and Regulatory History**

# 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 educational 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 gender equity law
- Enacted as a follow-up to the passage of the Civil Rights Act of 1964
- 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 sexual harassment and sex discrimination create



# Title IX Evolution

1972

## Legislation

Congress passes  
Title IX

1975

## Athletics

First Title IX  
regulations on  
Athletics

1980

## OCR Enforcement

Dept. of Education's  
OCR assumes  
enforcement of  
Title IX

Late  
1990s

## Supreme Court

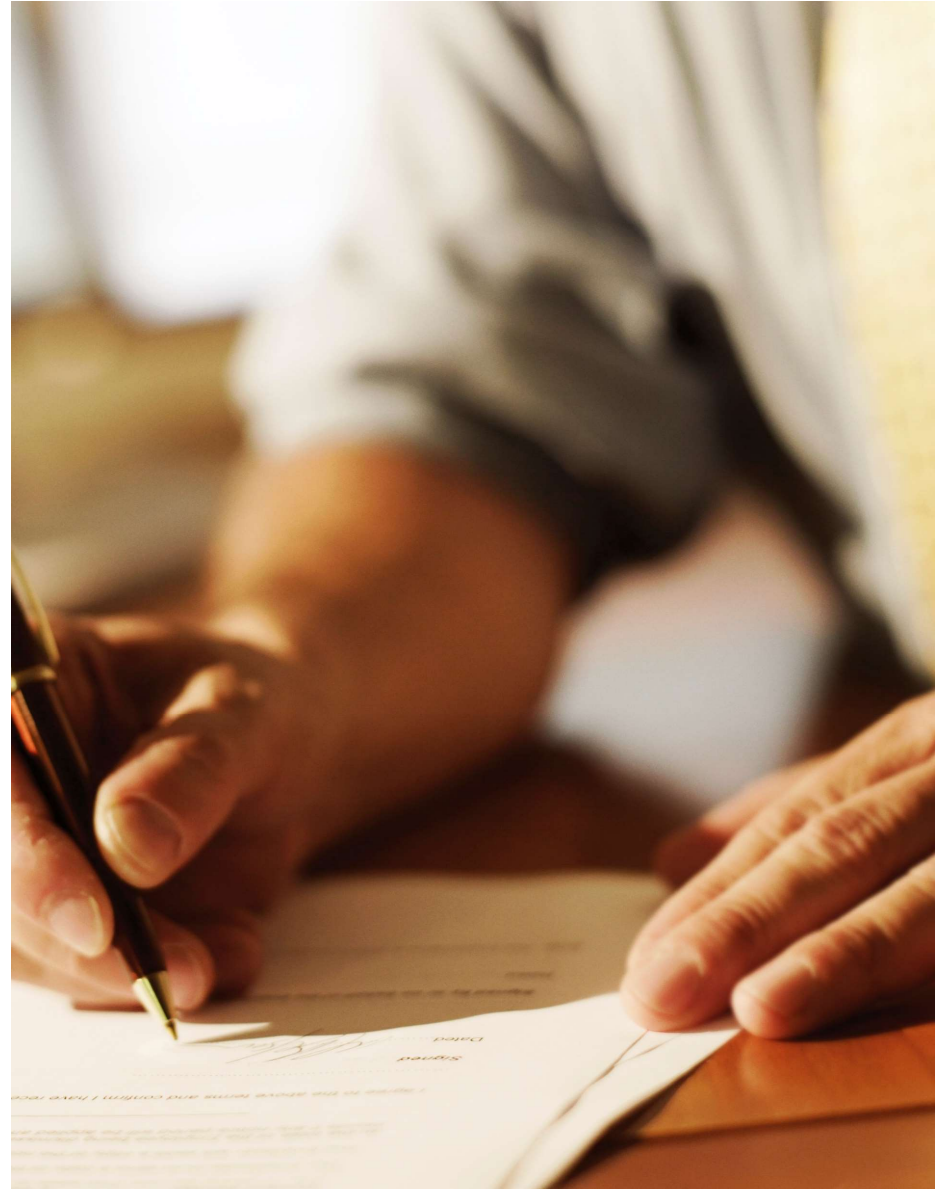
Extends Title IX to  
include sexual  
harassment

# Title IX Evolution



# New Regulations Preparation

- 2020 Title IX regulations focused on sexual harassment grievance process
- Proposed regulations (NPRM) afford significant flexibility compared to the current process
- An expanded training requirement includes training all employees
- **ATIXA has developed a Regulations Implementation Checklist for K-12**
- Second proposed regulation regarding gender identity and athletics will likely be included in the 2024 release of new regulations



# Title IX Scope and Definitions

# Scope

- Education program or activity in the United States
- School/District has control over the harasser
- School/District has control over the context of the harassment
- Applies to both student and employee



# Sexual Harassment Definitions

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking



# Definitions: Sexual Harassment

**Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:

- **Quid Pro Quo:** An employee of the school/district conditioning the provision of an aid, benefit, or service of the Recipient on an individual's participation in unwelcome sexual conduct
- **Hostile Environment:** Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Recipient's education program or activity



# Definitions: Sexual Harassment

**Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:

- **Sexual Assault, Rape:** Penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant
- **Sexual Assault, Fondling:** The touching of the private body parts of the Complainant (buttocks, groin, breasts) **for the purpose of sexual gratification**, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity



# Definitions: Sexual Harassment

**Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:

- **Sexual Assault, Incest:** Sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by [insert state] law
- **Sexual Assault, Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent of [insert age in your state]

# Definitions: Sexual Harassment

**Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:

- **Dating Violence:** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.
- **Domestic Violence:** Violence committed by a person who:
  - Is a current or former spouse or intimate partner of the victim, or a person similarly situated to a spouse of the victim
  - Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner
  - Shares a child in common with the victim, OR
  - Commits acts against a youth or adult victim protected from those acts under family or domestic violence laws of the jurisdiction

# Definitions: Sexual Harassment

**Sexual Harassment** is conduct on the basis of sex that satisfies one or more of the following:

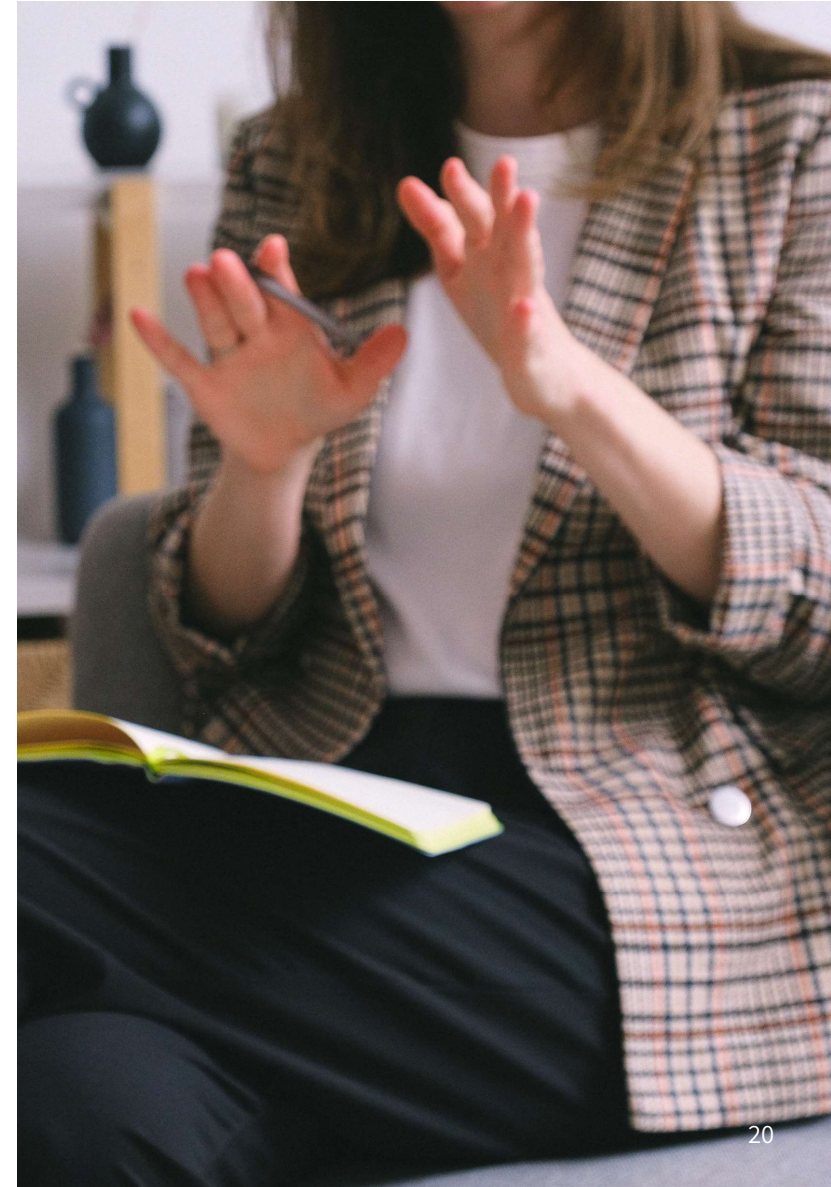
- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
  - Fear for the person's safety or the safety of others, OR
  - Suffer substantial emotional distress

# Title IX Scope

## Sex Discrimination

- Sex/Gender Discrimination
- Program Inequity

## Retaliation



# Definitions: Sex Discrimination

- **Sex discrimination** encompasses:
  - Inequitable treatment based on sex or gender
    - Sex characteristics
    - Sex stereotypes
    - Pregnancy or related conditions
    - Sexual orientation
    - Gender identity
  - Exclusion from participating on the basis of sex or gender

# Definitions: Retaliation

- Title IX has always prohibited retaliation broadly
- NPRM proposes a specific definition:
  - Intimidation, threats, coercion, or discrimination by a(n):
    - Student, employee, institution, or person authorized by the institution to provide some sort of aid, benefit, or service, AND
      - Interferes with any Title IX right or privilege OR
      - Occurs because the person has made a report or complaint, testified, assisted, or participated or refused to participate in any Title IX process.

# Model Policy Definitions

- Consent
- Common additional offenses
  - Sexual Exploitation
  - Harm/Endangerment
  - Discrimination
  - Intimidation
  - Hazing
  - Bullying



# Definitions: Consent

- **Consent** is not defined by the regulations, but institutions are required by law to provide a definition (some states prescribe a definition applicable in that state)
- ATIXA's Definition:
  - Informed, knowing, and voluntary (freely given)
  - Active (not passive)
  - Creates mutually understandable permission regarding the conditions of sexual activity
  - No means no, but nothing also means no; Silence and passivity do not equal consent
  - To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
  - Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
  - Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity



# Religiously Affiliated Institutions

- Title IX exempts 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 issues
  - Single-sex programming
  - Hiring practices



# Title IX Compliance Elements

# Title IX Compliance

- For K-12, once any school/district employee has actual notice of sexual harassment/sex discrimination, the school/district must:
  - Take immediate and appropriate steps to investigate what occurred, though the extent of the investigation may vary
    - The **obligation to investigate is absolute**, even if just an Initial Assessment is completed
  - This is regardless of whether the Complainant makes a formal complaint or asks the school/district to take action

# Essential Compliance Elements

The requirement to **Stop, Prevent,** and **Remedy** guides school/district response in assuring equity and compliance

**1**

**STOP** discriminatory conduct

**2**

**PREVENT** recurrence, on both individual and institutional levels

**3**

**REMEDY** the effects of discrimination, on both individuals and the community

# The IX Commandments

<b>INVESTIGATION</b> ➡	<b>Thorough</b>	<b>Reliable</b>	<b>Impartial</b>
<b>PROCESS</b> ➡	<b>Prompt</b>	<b>Effective</b>	<b>Equitable</b>
<b>REMEDIES</b> ➡	Act reasonably to stop discrimination	Act reasonably to prevent recurrence	Act equitably to remedy effects

# Gebser v. Lago Vista Indep. School

524 U.S. 274 (1998)

The Supreme Court held that individuals may recover monetary damages from a school if:

- Three-part standard is met:
  1. An official of the educational institution must have had “**actual notice**” of harassment;
  2. The official must have authority to “**institute corrective measures**” to resolve the harassment problem; **AND**
  3. The official must have “**failed to adequately respond**” to the harassment and, in failing to respond, must have acted with “**deliberate indifference.**”

# Davis v. Monroe County Bd. of Ed.

526 U.S. 629 (1999)

Finding in favor of Davis, the Supreme Court expanded on the *Gebser* case:

- School/District must have “**actual notice**”
- School/District must have responded with “**deliberate indifference.**”

Additionally, court held:

- Harassment must be “**severe, pervasive, and objectively offensive,**” and the indifference “**systemic,**” to the extent that the victim is deprived of educational opportunities or services
- Deliberate indifference constitutes a response that is “**clearly unreasonable in light of the known circumstances.**”

# Title IX Compliance Oversight

- School/District responses must not be **deliberately indifferent** to known sex discrimination or sexual harassment **AND**
- School/District must act **reasonably in light of known circumstances** to stop, prevent, and remedy
- A school/district is deliberately indifferent when:
  - The school/district has **actual notice** of harassment,
  - The harassment is **severe, pervasive, and objectively offensive**, and
  - The indifference is **systemic** in nature



# Title IX Team

# Title IX Team

- Title IX Coordinator (TIXC)
- Deputy Title IX Coordinator(s)
- Investigator(s)
- Decision-Maker(s)
- Appellate Decision-Maker(s)
- Informal Resolution Facilitator(s)
- Advisor(s)



# School/District Team

- Schools/Districts **must designate a school- or district-based TIXC**
- Schools/Districts have discretion in structuring their Title IX Team, including:
  - Whether or not to have **Deputy Coordinators**
  - **One Investigator vs. two Investigator** model
  - **Distinction and separation of roles** throughout Title IX process, and whether to appoint district-based administrators, school-based administrators, or contractors
  - **Contract with a trained third-party** to fulfill the roles of Investigator, Decision-Maker, Informal Resolution Facilitator, and Advisor

# Title IX Coordinator (TIXC)

- Role mandated by Title IX regulations
- Oversees school/district Title IX compliance
- May serve as Investigator but may not serve as a Decision-maker
- Responsibilities fall into two categories:
  - Responding to reports or complaints of sexual harassment and sex discrimination
  - Leading efforts to ensure gender equity across the school/district including:



# Title IX Compliance Oversight

## Responsibilities:

- Recruit, supervise, and train TIX team
- Point person for all reports and complaints
- Manage policy and procedures prohibiting sex discrimination and harassment
- Oversee complaint resolution process and program equity
- Track systemic issues or patterns
  - Take remedial action to prevent recurrence
- Assess compliance efforts and program effectiveness
- Create and disseminate annual compliance report

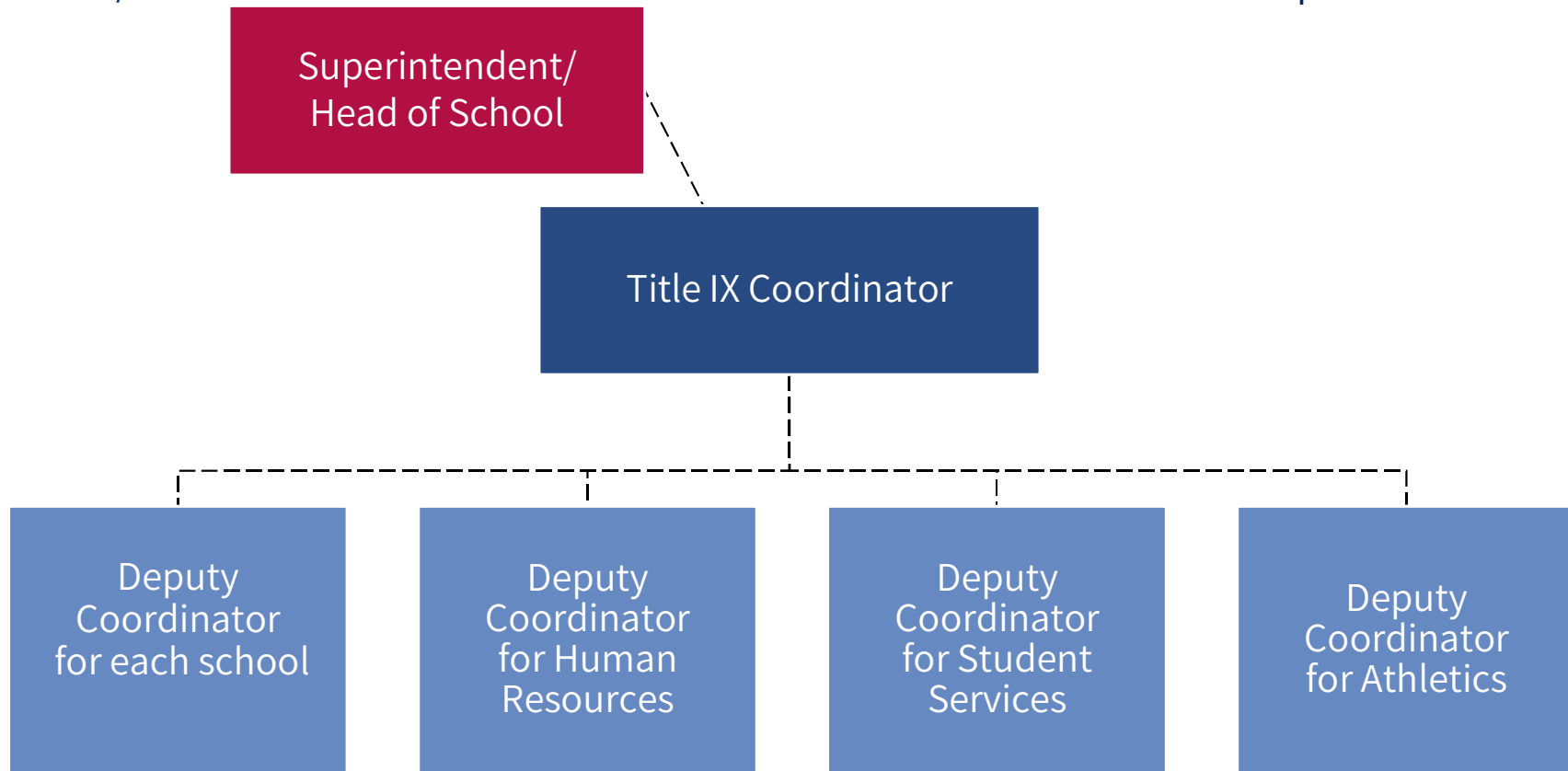
# Title IX Compliance Oversight

## Responsibilities:

- Update school/district leadership on Title IX issues
- Maintain records
- Liaise with school/district legal counsel
- Develop and maintain accurate web and print-based Title IX publications
- Respond to government inquiries

# Sample Title IX Team Structure

Schools/Districts will determine a structure that best works for their unique needs





# Deputy Title IX Coordinator(s)

- Not required, **but may alleviate the burden** on one administrator
- Deputy TIXC responsibilities may vary based on need of the school/district
- **Responsibilities** may include:
  - Receiving reports and complaints
  - Assisting the TIXC with training
  - Conducting initial assessments
  - Coordinating supportive measures
  - Overseeing investigations
  - Consulting with TIXC on complaints

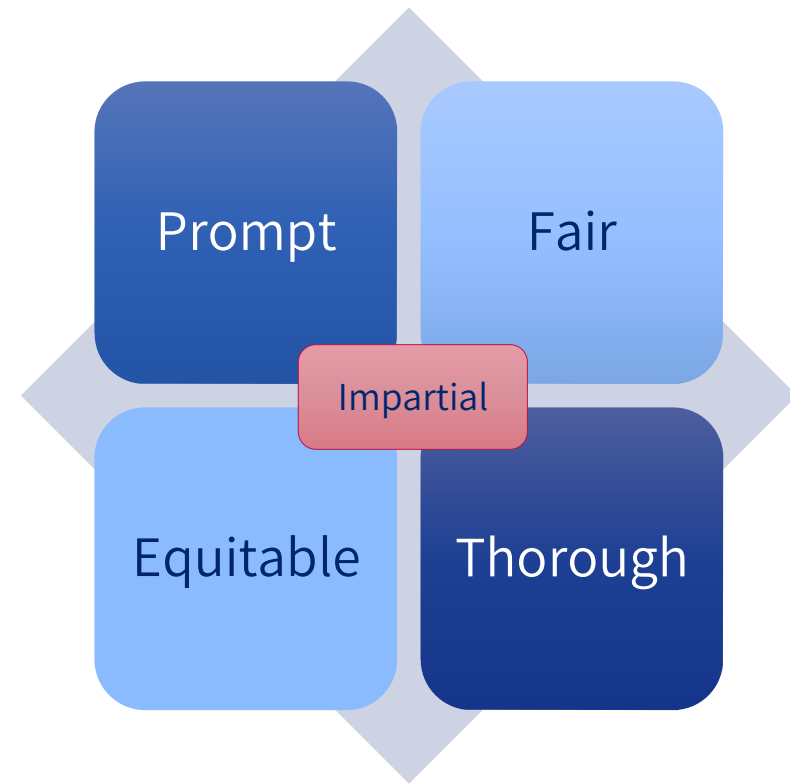




# Investigator(s)

## Responsibilities:

- Remaining impartial and free of bias
- Gathering all available and relevant information
- Interviewing the parties and witnesses
- Maintaining accurate and thorough investigation records and notes
- Sharing the evidence with the parties
- Creating an investigation report



# Decision-Maker(s)

## Responsibilities:

- Remain impartial and free of bias
- **May not be the TIXC or the Investigator**
- K-12 schools/districts *may* hold a hearing or Decision-maker may review investigation report, evidence, and facilitate questioning by parties
- Conduct an independent assessment of the evidence gathered during the investigation, including assessment of credibility of the parties and witnesses
- Determine whether school/district policy was violated based upon the applicable standard of evidence
- Determine appropriate sanctions/discipline (if applicable)
- Draft a written determination outlining the rationale for all finding(s)

# Appellate Decision-Maker(s)

## Responsibilities:

- Remain impartial and free of bias
- **May not be the TIXC, Investigator, or Decision-maker**
- Evaluate and deny or approve a party's request for an appeal
- Review written submissions from the parties, investigation report, and evidence
- Speak with parties, Investigator(s), Decision-Maker(s) as needed
- Determine whether an error was made during the grievance process
- Draft a written determination of the outcome and rationale

# Informal Resolution Facilitator(s)

## Responsibilities:

- Remain impartial and free of bias
- Review all directly related materials provided by the parties and/or the TIXC
- Meet individually with all parties to ascertain motivations, goals, and manage expectations
- Facilitate Informal Resolution process
- Draft Informal Resolution agreement (or) refer the complaint back to the TIXC

# Advisor(s)

## Responsibilities:

- Title IX requires school/district to allow all parties to have an Advisor of their choice, including an attorney
- Assist the Complainant or Respondent in navigating the Title IX grievance process
- Liaise with the TIXC on behalf of the Complainant or Respondent (as needed)
- Accompany the Complainant or Respondent to meetings and interviews
- Pose questions to the Investigator(s) and Decision-makers on behalf of the Complainant or Respondent (as requested)

# Bias and Conflict of Interest

- Title IX administrators have no “side” other than the **integrity of the process**
- Title IX Regulations **prohibit conflict of interest or bias** with Coordinators, Investigators, and Decision-makers against parties generally, an individual party, or related to the substance of the Complaint
- **Training materials** cannot include sex stereotypes and should promote impartiality



# Required Training

The Title IX Team (including TIXC, Deputy Coordinators, Investigators, Decision-makers, and Informal Resolution Facilitators) are **required to have training on the following topics:**

- Definition of **Sexual Harassment**
- **Scope** of the school/district's education program or activity
- **Title IX Grievance Process** including conducting investigations, decision-making, appeals, and facilitating Informal Resolutions
- **Serving impartially**, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- **Relevance of questions and evidence**; including restrictions on questions and evidence about the Complainant's sexual predisposition or prior sexual behavior
- Creating an **investigation report** that fairly summarizes relevant evidence

# Title IX Grievance Process



# Due Process in K-12

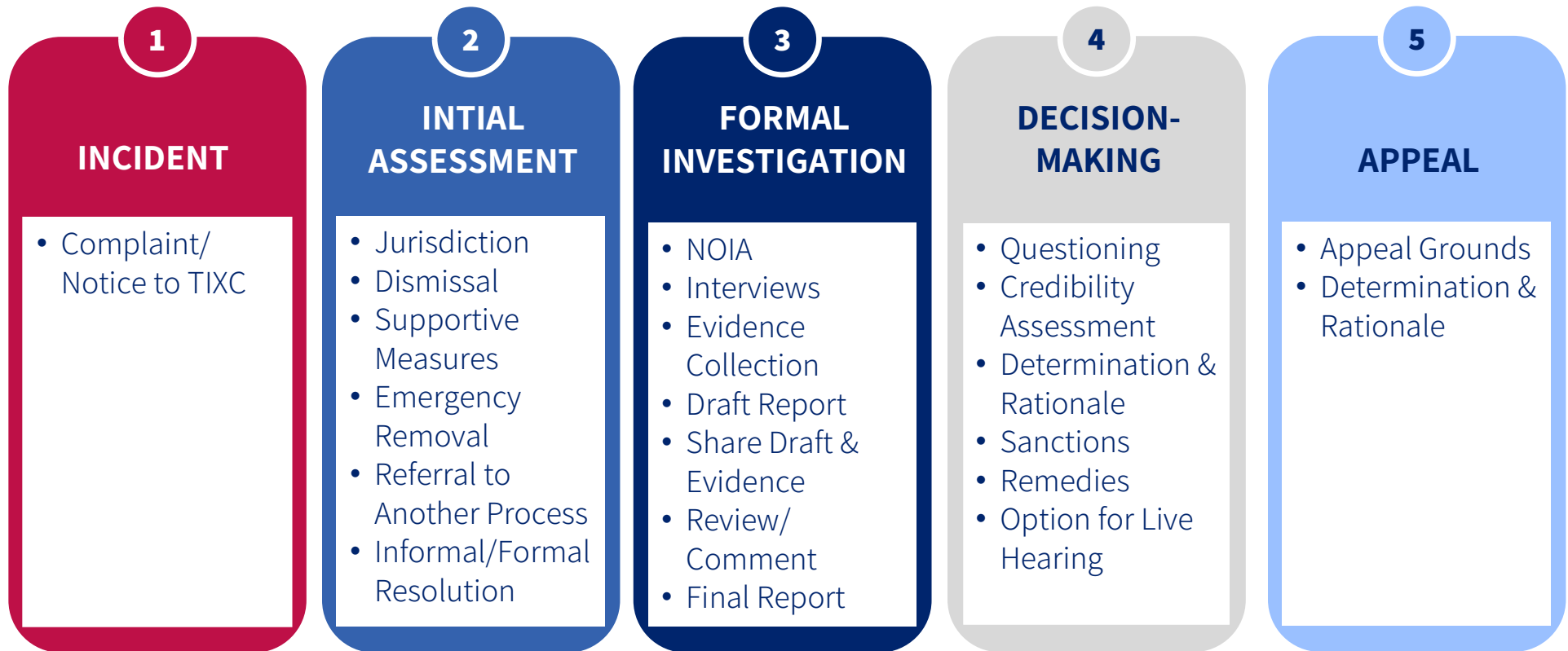
*Goss v. Lopez*, 419 U.S. 565 (1975)

- Supreme Court held that:
  - **K-12 education is a fundamental right**; therefore, students are **entitled to due process in disciplinary matters**
- **Due process minimally includes:**
  - Oral or written notice of charges
  - Explanation of the evidence
  - Opportunity to present their side of the story
  - Neutral decision-maker

# Due Process in K-12

- Applies to both **public and private** schools/districts
- Standard of Evidence should be consistent across all grievance processes
- Detailed **Notice of Investigation and Allegations** (NOIA)
- Presumption that the **Respondent is not responsible**
- Limited ability to take any punitive or disciplinary actions prior to completion of grievance process
- **Prohibit bias:** TIXC, Investigators, Decision-makers, and Informal Resolution Facilitators
- Need to appropriately train individuals who play a role in grievance process
- Requirement to publicly post training materials

# Title IX Grievance Process Overview



# Title IX Grievance Process Overview

## Prompt Resolution

- Complete without undue delay
- Title IX regulations do not define “prompt”
  - Ideally 30 business days in K-12
  - 60 business days as an outer limit
- Grievance process may take longer than expected
  - Anticipate, mitigate, and document delays
  - Communicate with parties regarding delays

# Title IX Grievance Process Overview

## Equitable Resolution

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



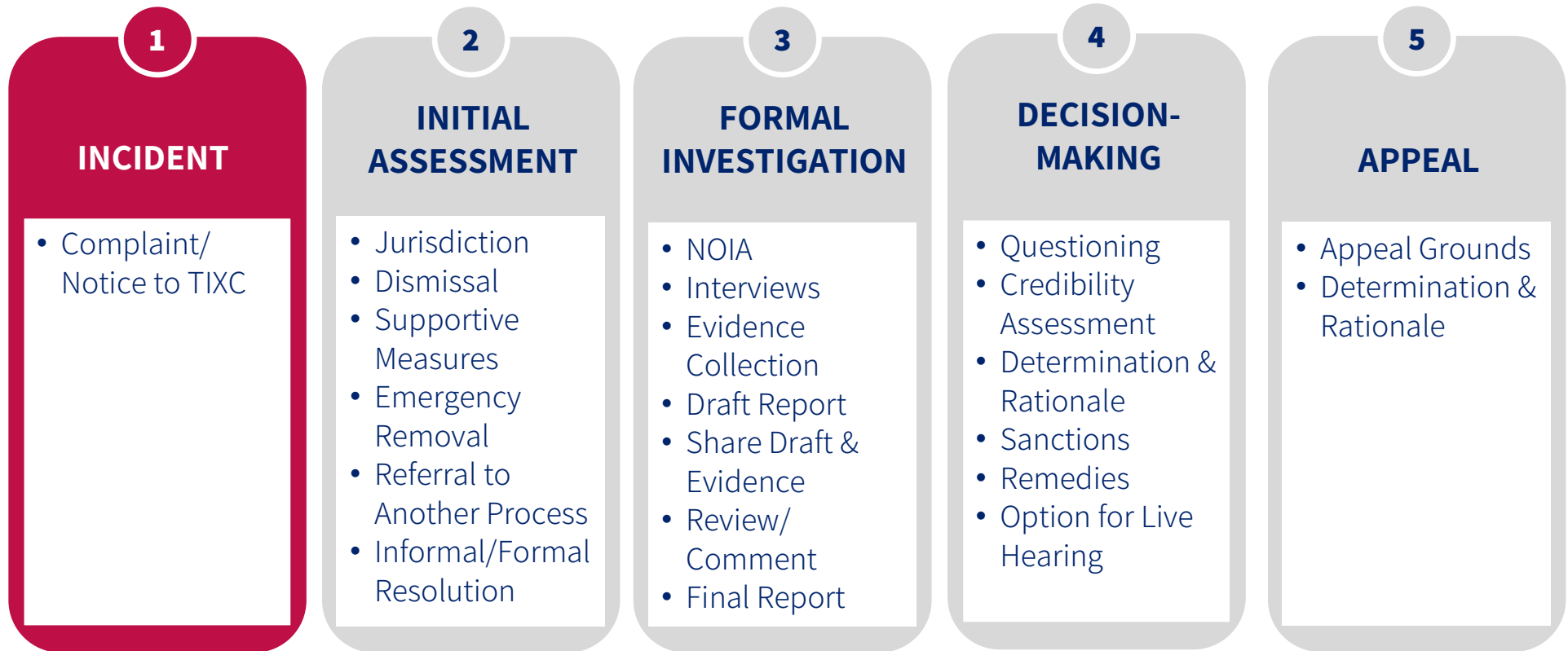
# Title IX Grievance Process Overview

## Rights of the parties during the grievance process:

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

# Reports, Complaints, and Notice to the School/District

# When is the School/District “On Notice?”





# When is the Institution “On Notice?”

- The school/district is “**on notice**” of sexual harassment or discrimination when a report is made to:
  - **TIXC**, or
  - **Any employee** of the school/district is made aware of the incident or concern
- Notice includes information that K-12 employees witness, hear about, or receive a written or verbal complaint about, including from parents/guardians

# Additional Reporting Requirements

- **Supervisors and Managers** (per Title VII)
  - Mandated to report harassment or other misconduct of which they are aware
- **Abuse or Suspected Abuse of Minors**
  - All employees are required to report abuse or suspected abuse of minors consistent with state law
  - This generally includes immediately reporting to law enforcement and to the state's child welfare agency
- Additional **state reporting requirements** (e.g., elder abuse and felony reporting)

# Report vs. Complaint

A **report** is different than a **formal complaint**:

- **Report**

- Notifies the TIXC of an incident and
- Obligates the TIXC to offer supportive measures and explain the process

- **Formal Complaint**

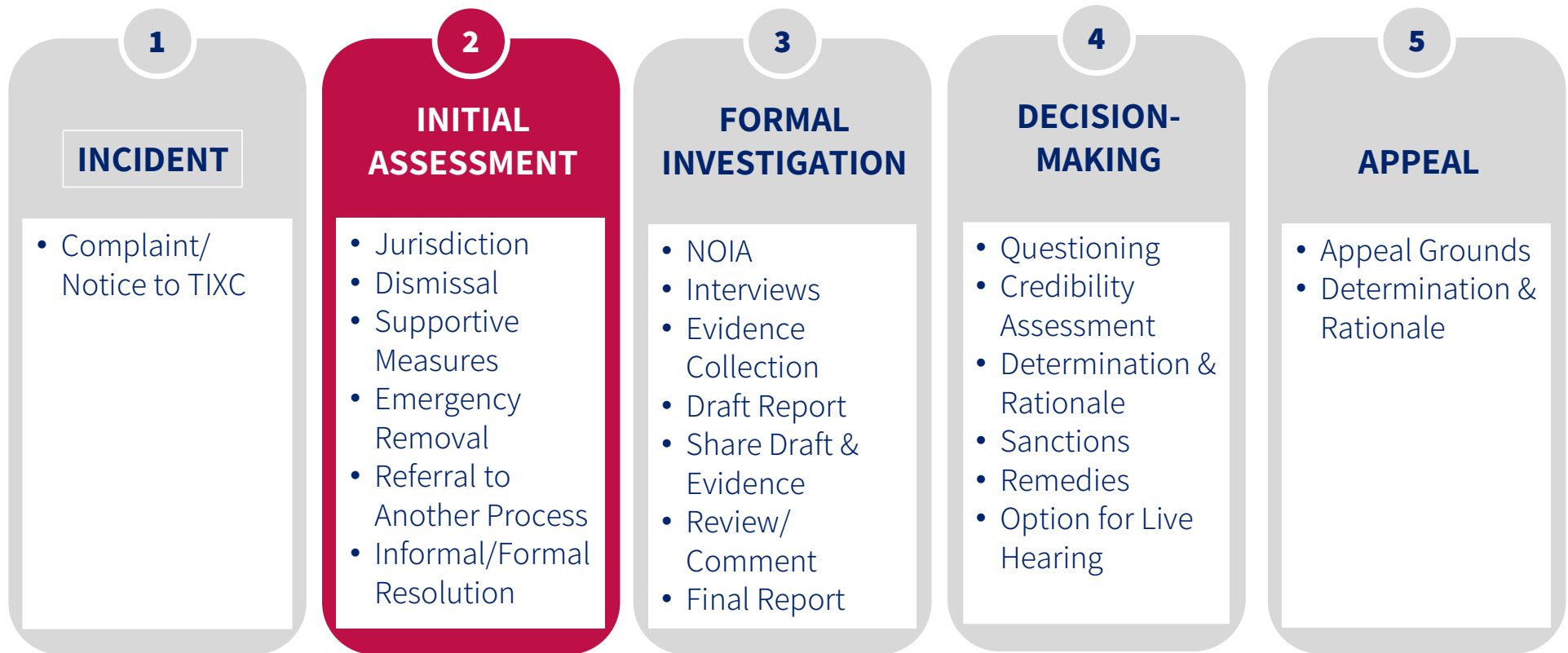
- Written request to initiate an investigation
- Physical document or electronic submission from Complainant
  - OR signed by TIXC
- Alleging sexual harassment or sex discrimination
- Complainant must be **participating or attempting to participate** (P/ATP)

# Report vs. Complaint

- Online reporting form
- Anonymous reports
- Take all reasonable steps to follow the Complainant's wishes
  - School/District must respond effectively and prevent harassment of other students or Complainant
- If TIXC takes no formal action in response to a report, document rationale

# Initial Assessment

# Initial Assessment



# Initial Assessment

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

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



# Initial Assessment

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





# Outreach and Intake

- After receiving a report, TIXC, should always reach out to the Complainant and parent/guardian (if not yet informed)
  - Best practice and regulatory requirement
- **Outreach** includes:
  - Introduction to Title IX and staff
  - Reason for the outreach
  - Offer to meet/speak over the phone; include right to Advisor
  - Available resources and resolution options, including how to file formal complaint
  - Discuss supportive measures and resources
  - Explain options to report to law enforcement
  - Follow up in writing with resources and information

# After Outreach and Intake

- TIXC (or designee) will:
  - Consider if new information affects jurisdictional assessment
  - Implement any requested supportive measures and/or remedies

## If formal complaint is filed:

- TIXC will determine whether to **dismiss** or proceed with formal investigation
- TIXC will consider whether **emergency removal or administrative leave** is warranted
- TIXC will evaluate whether complaint is appropriate for potential **Informal Resolution**

## If no formal complaint is filed:

- TIXC will determine if they should sign a formal complaint

# Supportive Measures

- Provided to all parties throughout the process:
  - Non-disciplinary, non-punitive
  - Individualized
  - Restore or preserve equal access
  - Without unreasonably burdening other party
  - Protect safety of parties or environment, or deter sexual harassment
  - At no cost to the party
- Consult with IEP/504 team when appropriate
- May be provided without a formal complaint
- Avoid unnecessary disclosures about supportive measures

# Supportive Measures

Counseling/  
Health Services

Employee  
Assistance  
Program

Visa and  
Immigration  
Assistance

Community  
Education

Alternate  
Housing

Alternate Work  
Arrangements

Safety Planning

Safety Escorts

Transportation  
Assistance

Contact  
Limitations

Academic  
Support

Trespass Orders

Emergency  
Notifications

Increased  
Security

# Dismissal

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

- The conduct alleged would not constitute sexual harassment or discrimination as defined in the Title IX regulations even if proved, and/or
- The School/District does not have Title IX jurisdiction
- **Parties may appeal**

# Dismissal

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

- Complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any portion thereof
- School/District no longer employs or enrolls Respondent
- Specific circumstances prevent the school/district from gathering sufficient evidence for a determination
- **Parties may appeal**

# Signing a Formal Complaint: PPTVWM

In limited circumstances, a TIXC should sign a formal complaint even if the Complainant declines to do so.

**Factors that likely indicate an ongoing risk of harm include:**

- **P**attern
- **P**redation
- **T**hreat
- **V**iolence
- **W**eapons
- **M**inors

# Emergency Removal / Administrative Leave

## Emergency Removal:

- Imposed upon student Respondents on an emergency basis only
- Requires an individualized safety and risk analysis to determine if an immediate threat exists to the physical health or safety of any individual
- Respondent entitled to immediate notice and opportunity to challenge

## Administrative Leave:

- May remove a non-student employee Respondent using existing administrative leave procedures



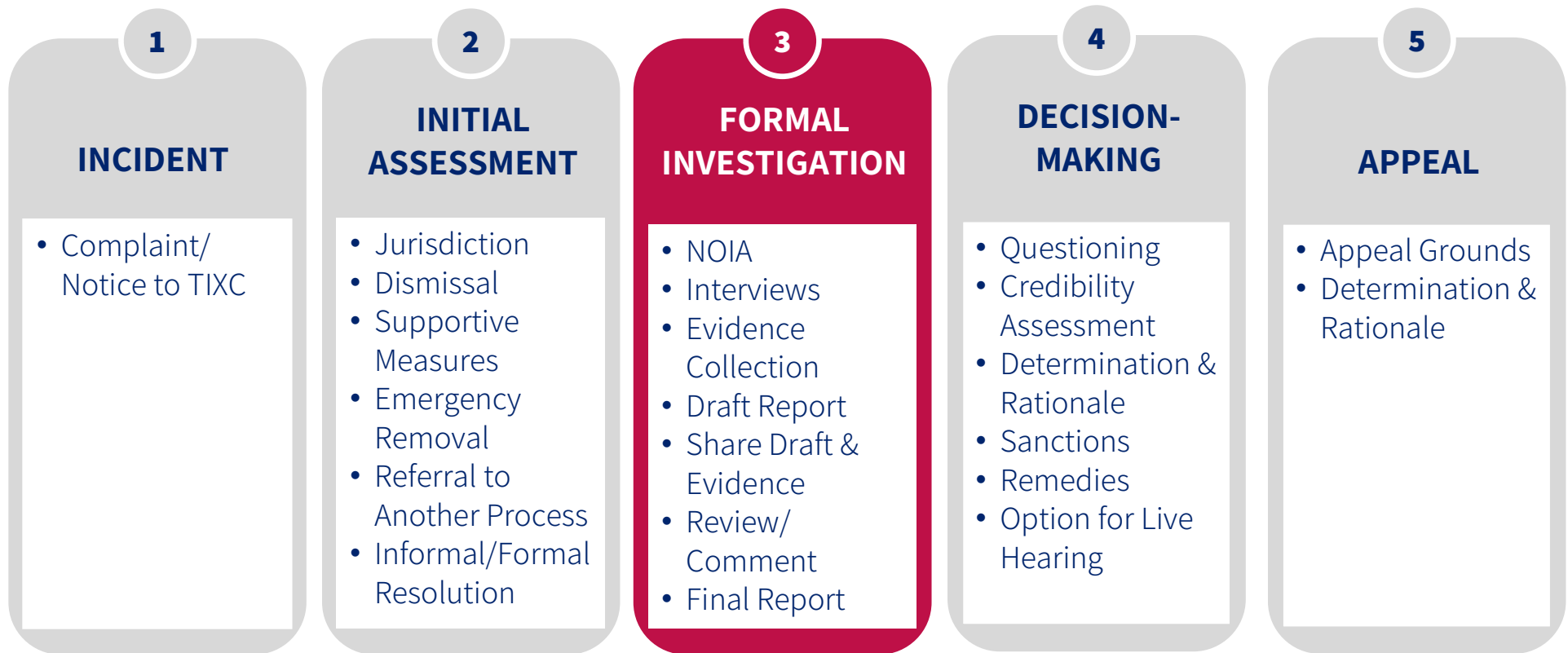
# Informal Resolution

- Title IX permits **voluntary** Informal Resolution (IR)
- Not available for employee-on-student harassment
- Not defined by regulations, but procedural requirements apply
- May be requested by parties at any time during the grievance process prior to a final determination
- May not be appropriate for all complaints; TIXC makes determination



# Investigation

# Investigation



# Formal Investigation

- There are **three bases for investigations**:
  - Incident
  - Pattern
  - Climate/Culture
- TIXC determines the **scope of the investigation**, which includes:
  - Allegations
  - Timeframes
  - Parties subject to the investigation
- TIXC provides the **Notice of Investigation and Allegations (NOIA)** letter
  - Sent to all parties, simultaneously

# Notice of Investigation and Allegations

The Notice of Investigation and Allegations (NOIA) letter is **sent to all parties simultaneously**

- The **NOIA includes:**

- Notice of the allegations and known details, such as identities or the parties
- A description of the alleged conduct and relevant policy provisions
- Information about grievance procedures
- Presumption that Respondent is not responsible
- Supportive measure available
- The rights of the parties
- Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
- Statement prohibiting retaliation

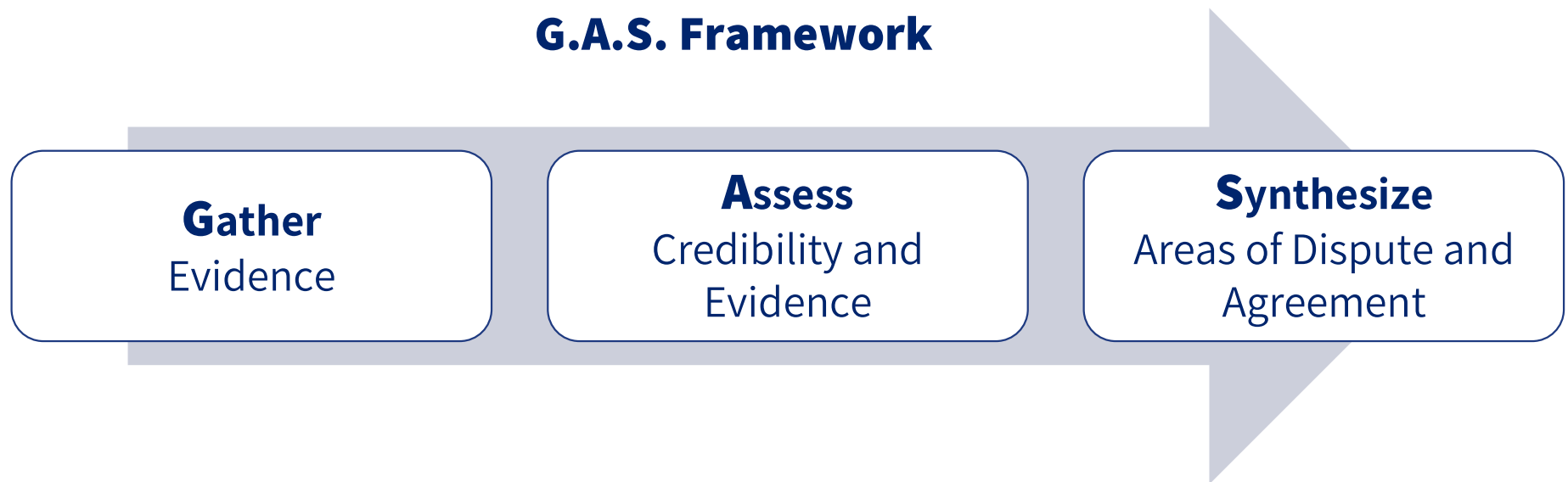
# Notice of Investigation and Allegations

**The NOIA must outline the parties' rights in the Formal Grievance Process:**

- To present witnesses
- To present inculpatory and exculpatory evidence
- To freely discuss the allegations
- To be accompanied by an Advisor of their choice
- To receive written notice of all details and purpose, with sufficient time to prepare, of any investigation interview or other meeting they are requested to attend
- To review all relevant and directly related evidence before the investigation report is finalized

# Formal Investigation

## G.A.S. Framework



**The burden to gather evidence is on the school/district, not the parties.**

# Formal Investigation

- Party interviews
  - With Advisors, and/or parents/guardians present
- Witness interviews
- All additional evidence is gathered and documented
- Relevance determination of all statements, witnesses, and evidence
- Credibility assessment
- Investigator provides evidence to parties and Advisors for review and comment



# Understanding Evidence

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



# Understanding Evidence

- **Directly related evidence:** connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon in the investigation report
- Decision-maker(s) ultimately determine what is relevant, directly related, or neither
- Heightened privacy and limitations on:
  - Evidence of a Complainant's sexual predisposition or prior sexual conduct
  - Medical records and information
  - Information subject to a privilege

# Credibility Assessment

- **Credibility:** largely a function of corroboration and consistency
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate or truthful)

**Note:** memory errors alone do not necessarily diminish witness credibility, nor does some evasion



# Drafting, Reviewing, and Finalizing the Investigation Report

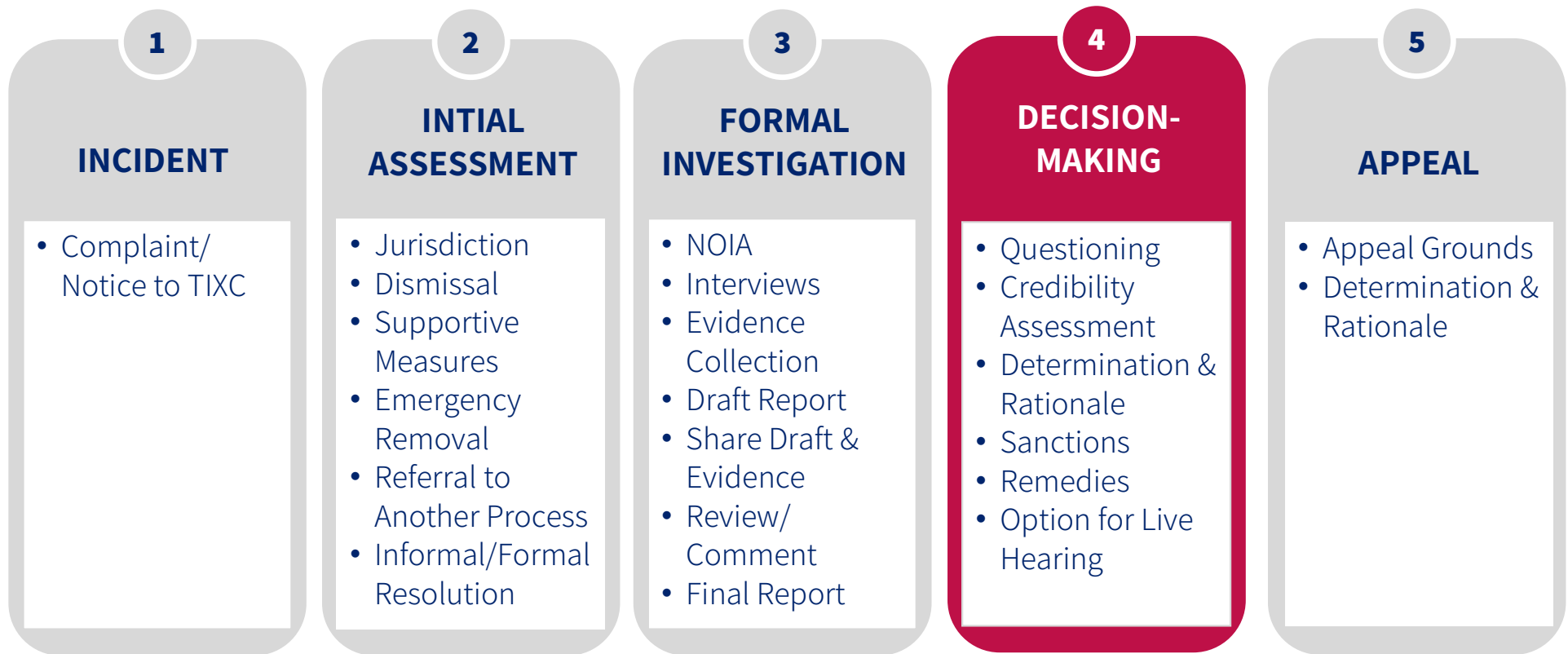


# Parties' and Advisors' Review of Report and Evidence File

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

# Decision-making

# Decision-making



# Decision-making Process

## Process Steps

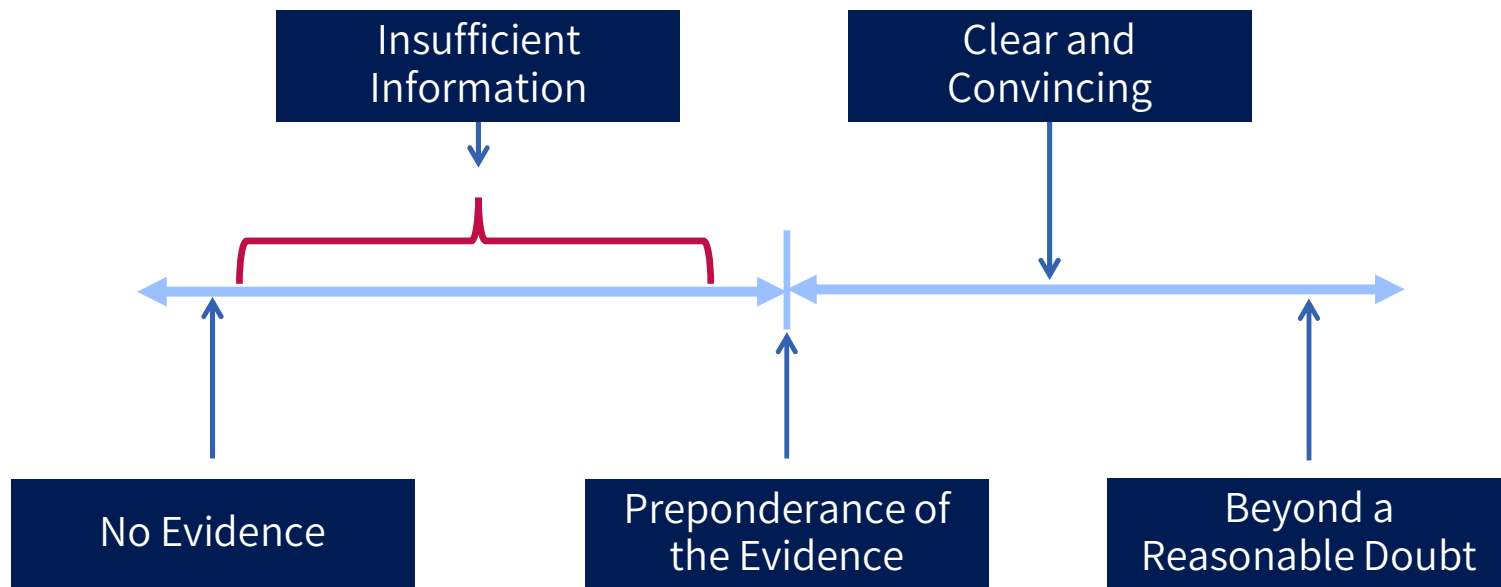
- Decision-maker reviews full investigative report and evidence
- K-12 grievance process requires the Decision-maker to facilitate either:
  - A live hearing
  - An opportunity for parties to submit written questions to the other party and any witnesses, receive written answers, and ask limited follow-up questions



# Determinations

- Decision-maker **evaluates the relevant evidence** gathered by the Investigator and must consider both inculpatory and exculpatory evidence
  - Each allegation is considered individually for each Respondent
- Decision-maker **applies the standard of evidence** to make determination
  - Standard of evidence options include:
    - **Preponderance of the evidence**
    - **Clear and convincing evidence**
  - Standard of evidence must be consistent for all formal complaints of sexual harassment
- Decision-maker determines whether the Respondent violated school/district policy

# Standard of Evidence



# Written Determinations

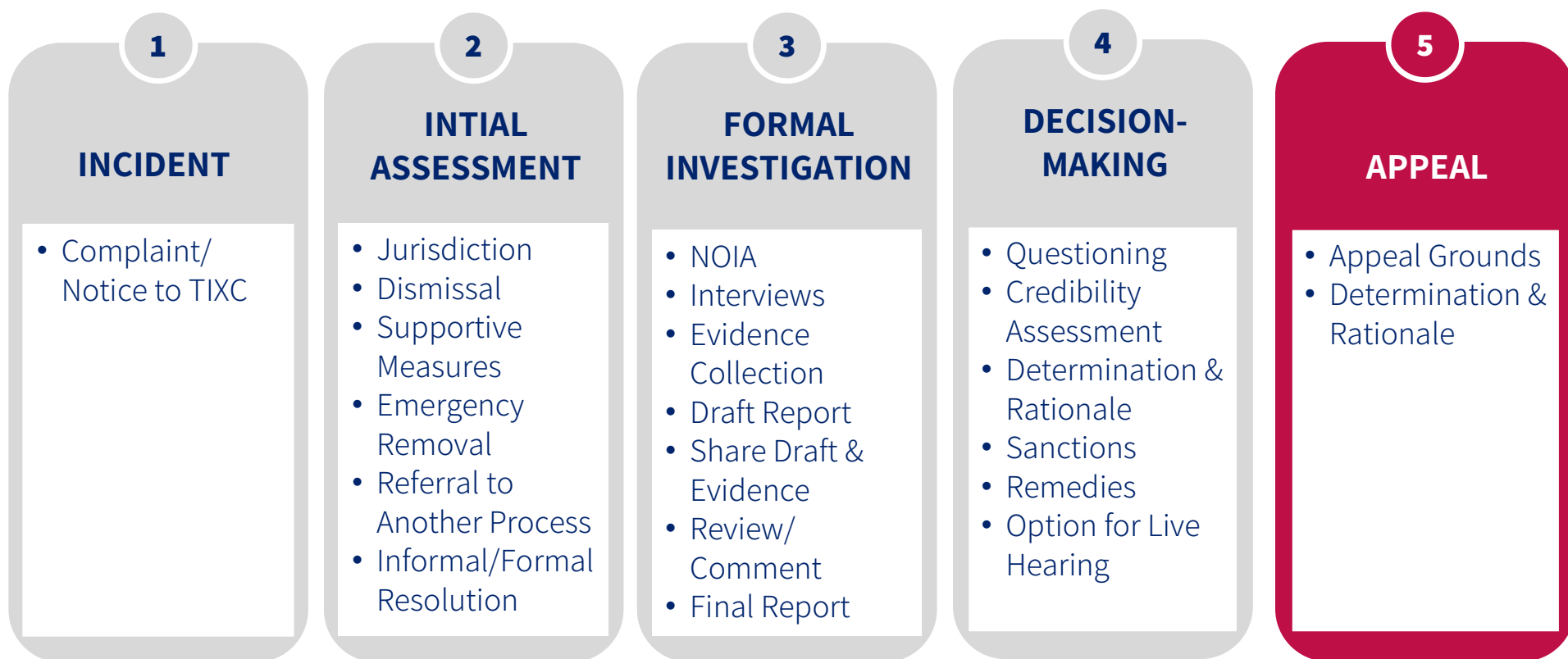
- Written Determination
  - Authored by Decision-maker(s)
  - TIXC/Legal counsel reviews
  - TIXC communicates to the parties and parent/guardian simultaneously in writing

## Written Determination Elements

- Applicable policy
- Procedural steps taken
- Statement of and rationale for the result of each specific allegation
- Sanctions imposed (if any) and rationale for chosen sanctions
- Any remedies provided to Complainant
- Procedures and bases for appeal

# Appeals

# Appeals



# Appeals

**Must offer appeals on one or more of the following grounds:**

1

Procedural irregularity that affected the outcome of the matter

2

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

3

Bias or conflict of interest issues

**Schools/Districts have the discretion to add additional appeal grounds.**

# Appeals Determinations

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

# Pregnancy and Related Conditions



# Pregnancy and Related Conditions

- TIXC is responsible for coordinating and overseeing necessary supportive measures and modifications for those experiencing pregnancy and related conditions
- Schools/Districts should **publicize supports available** for pregnancy and pregnancy-related conditions, including **how to request support**
- **Pregnancy includes:**
  - Pregnancy, childbirth, termination of pregnancy, or lactation
  - Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation
  - Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or their related medical conditions

# Pregnancy and Related Conditions

- Schools/Districts are required to:
  - Prohibit sex discrimination
  - Provide, coordinate, and document **reasonable modifications and supportive measures**
  - Allow access to separate and comparable program
  - Allow for **voluntary leave of absence**
  - Provide lactation time and space
  - **Provide grievance procedures** for sex discrimination complaints
  - Provide comparable treatment to temporary disabilities or conditions

# Other Considerations for K-12

# Working with Parents/Guardians

Parents/Guardians are permitted to:

- **File a complaint** on behalf of their student
- **Seek supportive measures** on behalf of their student
- **Attend** all interviews/meetings/hearings with their student, regardless of whether they are serving as the student's Advisor
- **Make decisions** throughout the grievance process, such as whether to pursue Informal Resolution
- **Access** their student's education records, including Title IX Complaint File



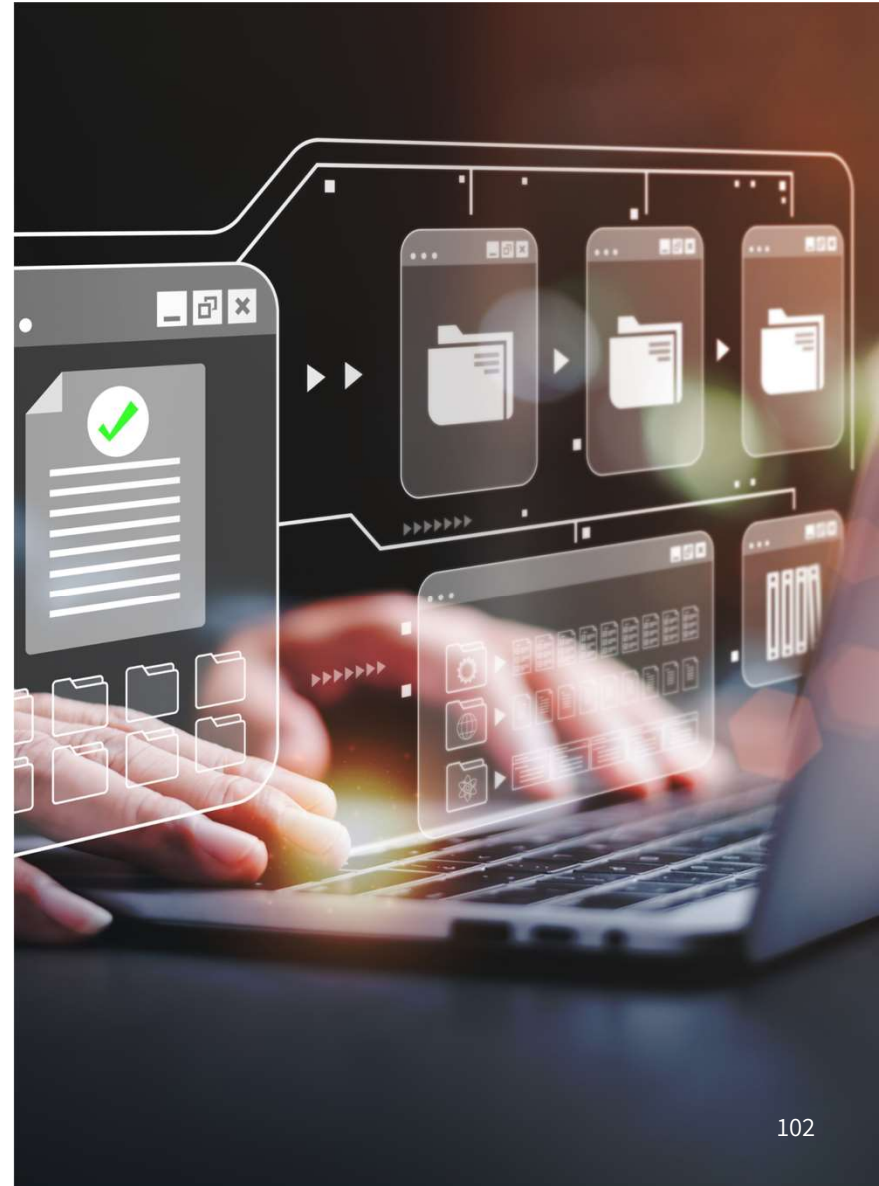
# Interacting with Law Enforcement

- TIXC should assist Complainants who wish to report to law enforcement
- Criminal investigations do not relieve a school/district of its duty to respond promptly and effectively
  - Criminal investigation process is separate from Title IX grievance process
  - Applies different laws/policies and a different standard of evidence
- TIXC typically communicates with local law enforcement in cases with concurrent responses



# Recordkeeping

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





# Family Education Rights and Privacy Act

- Parents have the right to “**inspect and review**” education records of their students
- Title IX grievance process protects privacy, but avoid promising “confidentiality”
- Recommend obtaining consent of the parents/guardians of other student(s) whose information will be disclosed, especially student witnesses
- FERPA cannot be construed to conflict with or prevent compliance with Title IX, including requirement to notify both parties of the outcome





# Questions?





Association of  
Title IX Administrators

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