



Association of
Title IX Administrators

Investigator Foundations 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 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 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



This course introduces the core tenets for investigating allegations of sexual harassment and discrimination within a school or district's education program and activities.



Practitioners will learn the components of the investigation process, investigation skills, and best practices for conducting equitable investigations.



Our goal is to provide an in-depth exploration of investigations and how to practically apply the concepts to your role within the Title IX Formal Grievance Process.

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 Overview

Title IX

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any 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 Compliance

- For K-12 schools, once any school/district employee has actual notice of sexual harassment/sex discrimination, the school 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 to take action

Essential Compliance Elements

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

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, for both individual and community

The IX Commandments

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

Civil Rights Grievance Process Scope and Definitions

Review: 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 students and employees



Review: Title IX Scope

Sexual Harassment

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



Review: Title IX Scope

Sex Discrimination

- Sex/Gender Discrimination
- Program Inequity

Retaliation



Sex Discrimination Definitions

- **Disparate Treatment:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **unintentionally** discriminates
 - A policy may be intended to be neutral as written but it may be applied in a discriminatory manner or in a way that has a discriminatory effect

ATIXA Model Definitions

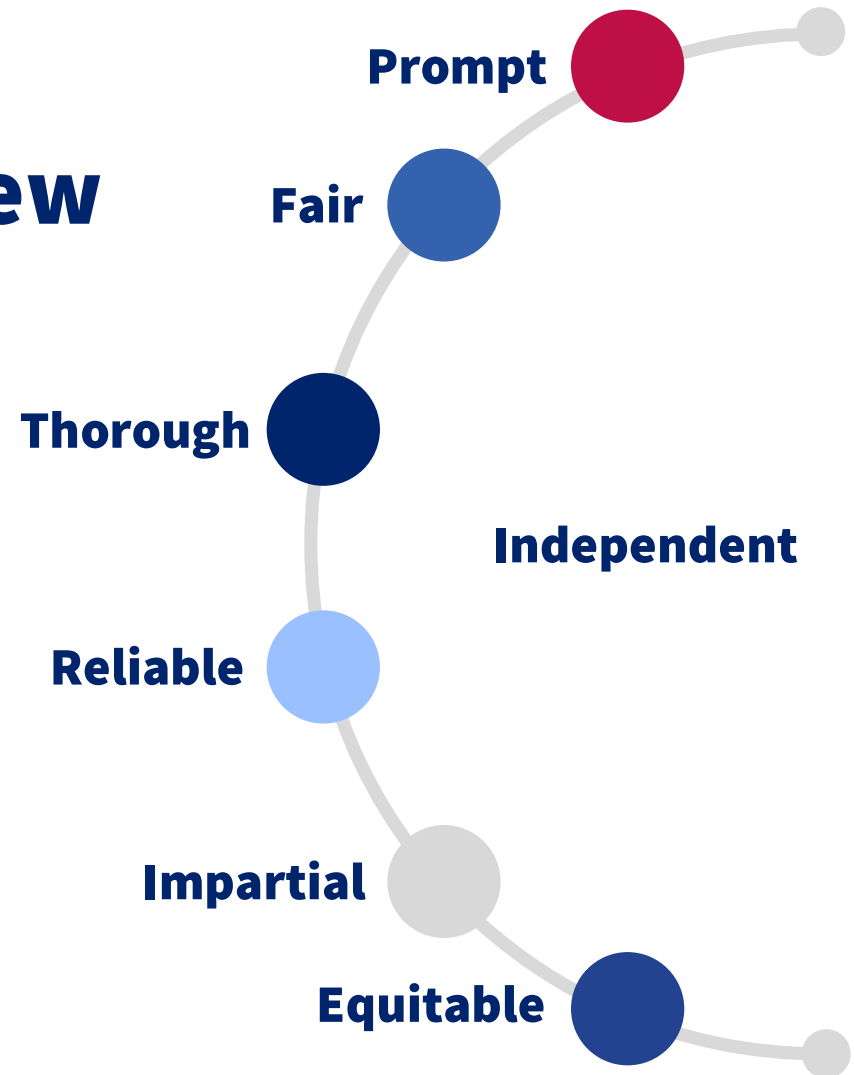
- Consent
- Common additional offenses
 - Sexual Exploitation
 - Harm/Endangerment
 - Discrimination
 - Intimidation
 - Hazing
 - Bullying



Civil Rights Investigations Overview

Civil Rights Investigations Overview

- Title IX investigations differ greatly from other investigation practices commonly used in K-12 environments
- Investigations focus on gathering all available and relevant information
- The school/district is responsible for gathering evidence—not the parties
- Respondent is presumed “not responsible”

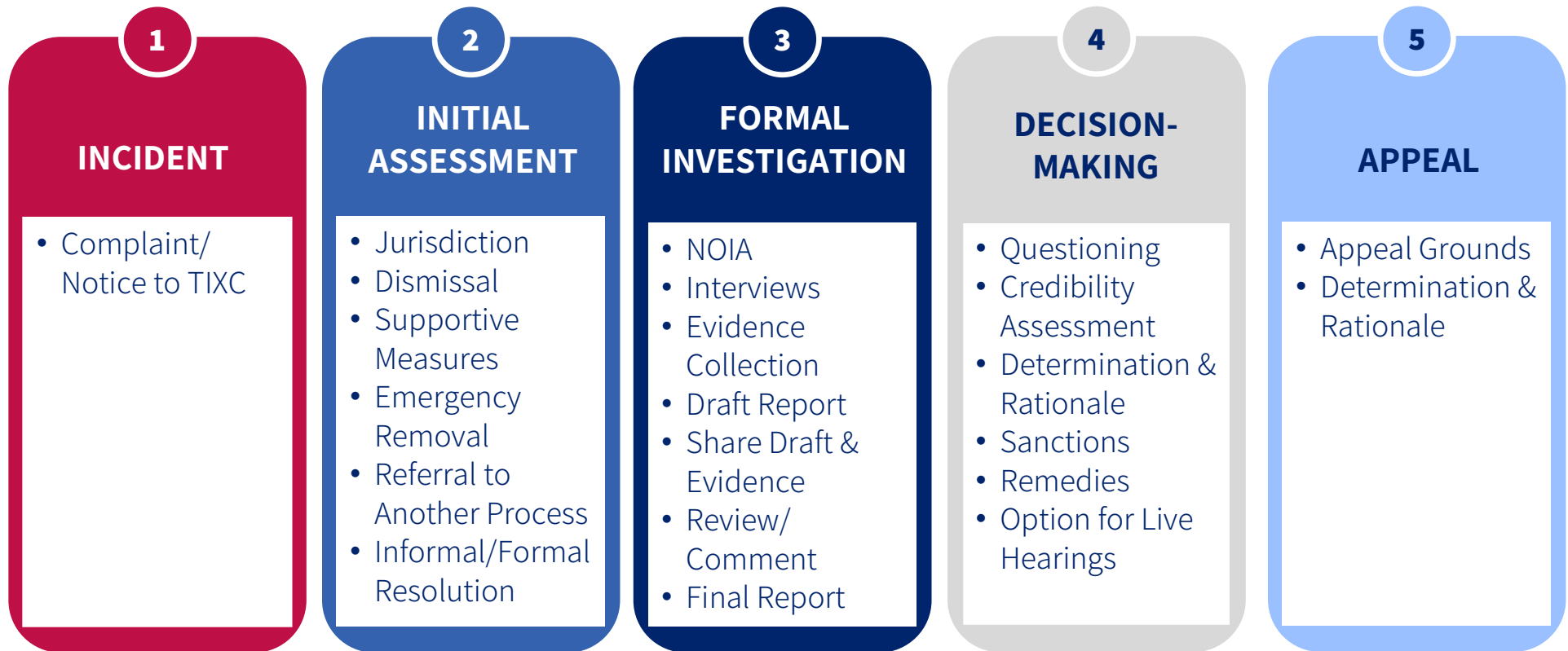


Bias and Conflict of Interest

- Title IX Investigators have no “side” other than the **integrity of the process**
- Title IX regulations **prohibit conflict of interest or bias** against parties generally, an individual party, or the substance of the complaint
- Investigators identifying a potential conflict of interest or bias should **immediately notify** and disclose the information to the TIXC



Formal Grievance Process Overview



Title IX Grievance Process

- Title IX investigations may examine allegations of sexual harassment, sex discrimination, or program inequity
- ATIXA's recommended investigation process is comprised of 10 steps over three phases:
 - Pre-investigation
 - Investigation
 - Post-investigation
- Not all phases involve the Investigator



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
 - Investigations vary widely in complexity and pacing
- Grievance process may take longer than expected
 - Anticipate, mitigate, and document delays
 - Communicate with parties regarding delays

Equitable Resolution

- Treat all parties equitably
- Ensure that all parties have opportunity to fully participate

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

Investigation Oversight and Supervision

Title IX Coordinator (TIXC) responsibilities include:

- Appointing and training Investigators
- Intake and initial assessment of report/complaint
- Strategizing and consulting with Investigators
- Providing ongoing supportive measures for parties
- Ensuring timeline compliance
- Reviewing investigative reports
- Overseeing recordkeeping
- Serving as primary point of contact for parties



Role of Investigator(s)

Responsibilities Include:

- Remaining impartial and free of bias
- Strategizing with TIXC
- 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 that fairly summarizes all relevant details



Required Training for Investigators

- Definition of **Sexual Harassment**
- **Scope** of the school/district's education program or activity
- Conducting a **fair and thorough investigation** and **Title IX Grievance Process**
- **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

Investigation Overview

10 Steps of Investigations:

1. Receive Notice/Complaint
2. Initial Assessment & Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. 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:

by:

Summary:

Root Causes:

Pre-Investigation

Pre-Investigation Steps

1

Notice/Complaint

2

**Initial Assessment
& Jurisdiction
Determination**

3

**Determine Basis
For Investigation**

Step 1: Notice/Complaint

- School/District receives a report, knowledge, or complaint of alleged harassment or discrimination
- TIXC is point person to receive reports and complaints, including referrals from school/district employees
- **Report:** Any information that indicates a potential policy violation
- **Formal Complaint:** A written request for the school/district to initiate its Formal Grievance Process
 - Signed by the Complainant (or parents/guardians)
 - Could be signed by the TIXC

Step 2: Initial Assessment & Jurisdiction Determination

TIXC or designee will perform several steps including:

- Outreach and Intake to potential Complainant (usually with parents/guardians)
- Jurisdictional Assessment
- Signing a Formal Complaint (if applicable)
 - Pattern, Predation, Threat, Violence, Weapons, Minors, Employee Respondent, Complainant not P/ATP
- Supportive Measures
- Emergency Removal or Administrative Leave (if applicable)
- Dismissal (if applicable)
- Pursuing Informal Resolution (if applicable)

Title IX Jurisdictional 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 or sex discrimination?
 - Who is the Complainant?
 - Who is the Respondent?
 - Does the school/district have control over the context of the alleged behavior?
- If an allegation falls outside Title IX jurisdiction, the school/district may proceed under another policy (i.e., student conduct code), but it is retaliatory to pursue an alternative process if the Title IX process applies.



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
- Investigators should consult with TIXC to determine whether an investigation will proceed while IR is pursued



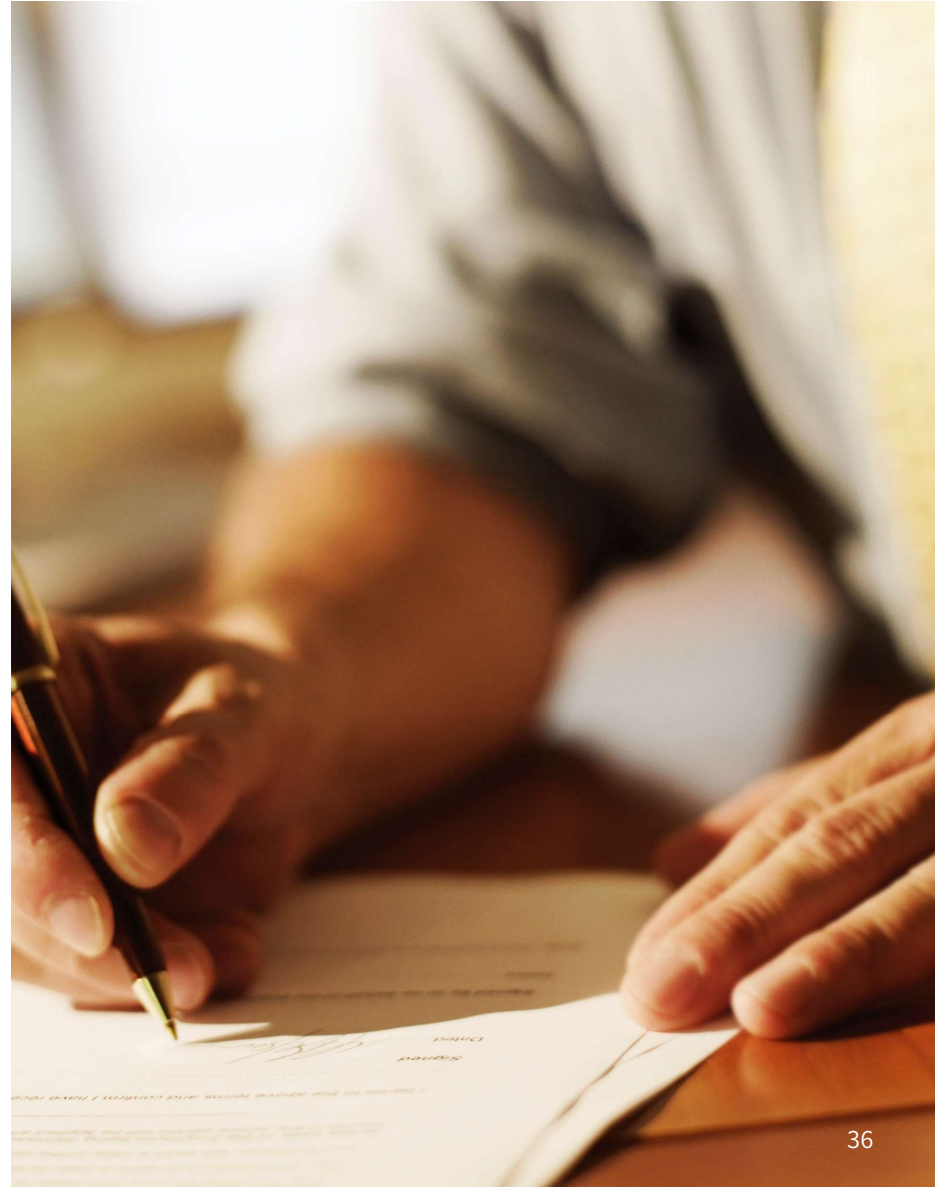
Step 3: Determine a Basis for Investigation

There are three bases for civil rights investigations:

- **Incident:** a specific incident or period
 - May involve one or multiple alleged violations
 - Sexual Harassment or Retaliation
 - Disparate Treatment or Disparate Impact
- **Pattern:** repetitive or similar behaviors or targets by the same Respondent over a period
 - Tend to involve multiple Complainants
- **Climate/Culture:** discriminatory policies, processes, and environments
 - 1975 regulatory framework
 - May have no identifiable Respondent

Investigation Scope

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



Who Should Investigate?

- Investigator(s) may not be Decision-maker(s) for the same complaint
- School/District will determine the staffing model, including one Investigator or two
- Tasks:
 - Conduct prompt, thorough, and impartial investigations
 - Collect the maximum amount of relevant information available
 - Write comprehensive investigation report summarizing all relevant evidence

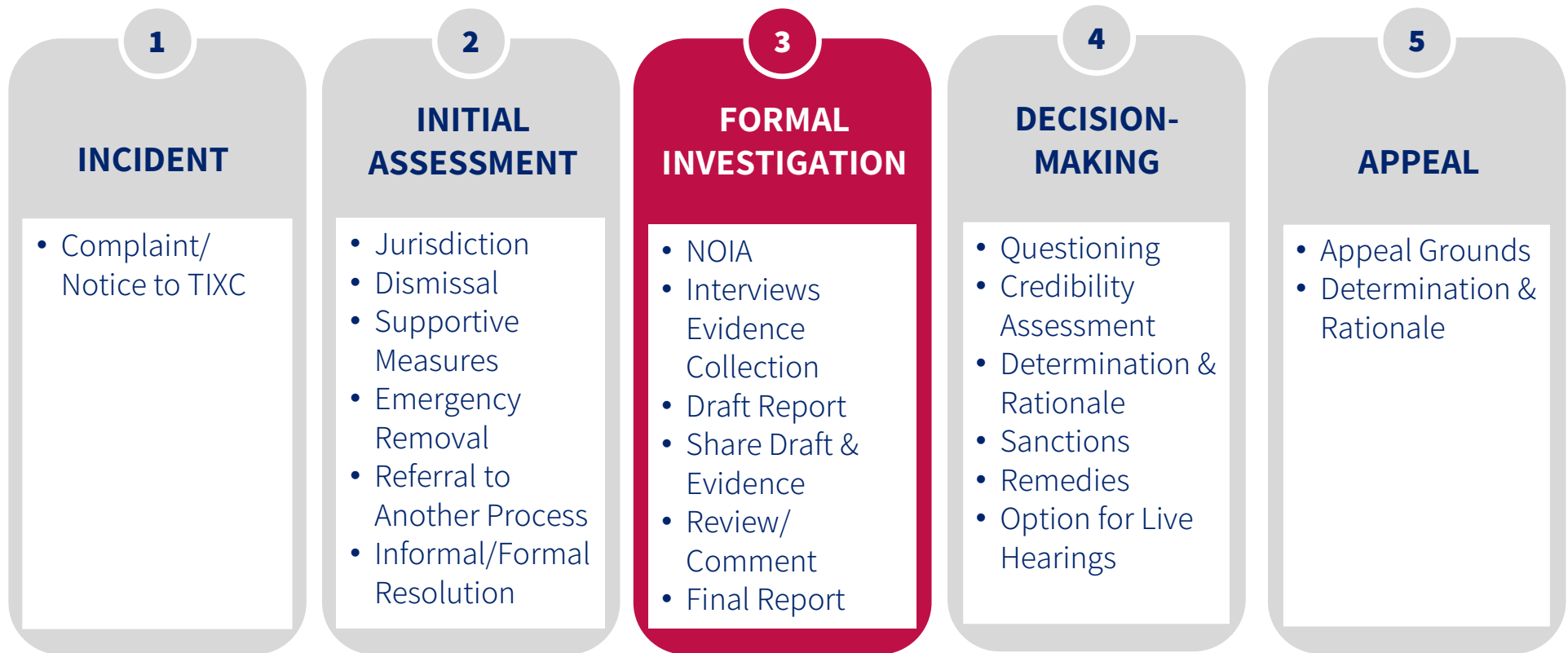
**Full-Time
Investigator(s)**

Investigator Pool

**Coordinator as
Investigator**

Formal Investigation

Investigation



Investigation Steps

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

INCIDENT INVESTIGATION
SUMMARY

Incident Date:

Review Date:

by:

Summary:

Root Causes:

Step 4: 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

Title IX Grievance Process Overview

The NOIA must outline the parties' rights in the Formal 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

Recordkeeping

Recordkeeping

- Investigator is responsible for developing and maintaining an **Investigation File** through the duration of the investigation
- Investigation File includes:
 - Copies of the policies and procedures in place at the time of the incident(s) and at the time of the investigation
 - Original NOIA and any subsequent NOIA updates
 - File for each party and witness
 - Approved interview transcripts
 - Associated evidence (e.g., screenshots, written statements)
 - Correspondence with the Investigator(s)

Recordkeeping

- Investigation File includes:
 - Collected evidence and evidence log
 - Background information (education, employment, etc.)
 - Witness flowcharts
 - Contact log
 - Investigator notes
 - Timelines for incident and investigation
 - Investigation Report
- Investigation File becomes part of the **Comprehensive Complaint File**
- Title IX-related records must be maintained for a minimum of **seven years**

Contact Log

- All forms of contact with any party, witness, or third party regarding the complaint or associated needs
- Date, time, method of contact, topics discussed, determinations, and any agreed upon action steps for each interaction related to the Complaint

Contact Log Example

CONTACT LOG

Staff Member: Alicia Harrison

Date(s) for Communication Log: January 2023 to March 2023

Communications Log

DATE	TIME	NAME OF CONTACT	TYPE OF COMMUNICATION (EMAIL, PHONE, IN PERSON)	COMMUNICATION NOTES	RESOLUTION PROVIDED AND FOLLOW-UP NEEDED
01/25/2023	1:00pm	Sam Smith	Phone	Discussed getting emails from IT	Received emails from IT on 01/26/2023
01/27/2023	2:00pm	Sally Harris	Email	Sent an email to Complainant to schedule <u>interview</u> .	Scheduled interview with Complainant for 01/29/2023.
01/29/2023	3:00pm	Sally Harris	In Person	Investigation Interview	Interviewed Complainant – send transcript to Complainant for verification.

Evidence Log

- All evidence gathered with:
 - Description
 - Date of receipt
 - Source
 - Method of receipt
- Any evidence verification/authentication information



Evidence Log Example

EVIDENCE LOG

Staff Member: Alicia Harrison

Date(s) for Communication Log: January 2023 to March 2023

DATE OF RECEIPT	SOURCE	METHOD OF RECEIPT	TYPE	DESCRIPTION	AUTHENTICATION
01/25/2023	Sam Smith	Email	Security video footage; Thumb drive	Elevator video footage from 12/10/22 9:10 pm to 10:10 pm	Closed circuit from Public Safety
01/27/2023	Sally Harris	Social Media Screenshot	Social media screenshot	Post made from 12/10/22 by Respondent at 9:22 pm	
01/29/2023	Sally Harris	In Person	Call record	Phone call log from Complainant's phone carrier	Copy of the phone record from the Complainant's record

Investigation Timeline

- Investigator begin documenting an investigation timeline upon assignment of the formal complaint
- The comprehensive timeline should include:
 - Dates of all significant investigation steps
 - Dates of all meetings and interviews
 - Evidence collection and review periods
 - Report writing and review periods

Investigation Strategy

Step 5: Establish Investigation Strategy

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

- Elements of the specific policy provision(s) alleged to have been violated
- Preliminary undisputed and disputed facts and their significance
- Initial witnesses and interview order
- Other types of possible evidence and the plan to acquire such evidence
- Anticipated obstacles and obstructions
- A working timeline for the investigation

Step 5: Establish Investigation Strategy

- Planning considerations:
 - Process delays
 - Working with Advisors/parent/guardians
 - Coordination with law enforcement
 - Interview sequencing
 - Evidence collection
 - Counter-complaints
 - Sharing information with parties and witnesses during the investigation

Process Delays

- Investigations must be completed within a reasonably prompt timeframe; avoiding undue delays
 - Investigations must proceed during school breaks, including summer
 - Investigators should consult with TIXC if circumstances cause more than a short process delay
- Provide parties with written notice and rationale for any delays
- Parties may request reasonable extensions on a case-by-case basis
 - Grant or deny extensions equitably
 - Extensions must be documented

Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice as well as a parent/guardian
- “Of choice” truly means anyone
- Investigators may establish participation ground rules; must be applied equitably
- Parties may request an Advisor be provided by the school/district for the purposes of a live hearing
 - Schools/districts may choose to appoint an Advisor earlier in process
- Advisors may ask questions of the other party and any witnesses on behalf of the party they advise during live hearings



Working with Parents/Guardians

Parents/Guardians are permitted to:

- **File** a complaint on behalf of their student
- **Accompany** their student to all interviews/meetings/hearings
- **Make decisions** throughout the grievance process on behalf of their student
- **Access** their student's education records, including Title IX Complaint File

ATIXA recommends having open communication with parents/guardians and providing them with written notifications whenever possible



Coordinating with Law Enforcement

- Incidents of Title IX sexual harassment may also give rise to criminal law allegations under your state laws
- Law Enforcement (LE) may notify the school/district of a complaint, or an incident may be reported by a school employee to LE
- Criminal investigations do not relieve a school/district of its duty to respond promptly and effectively
- Criminal investigation cannot substitute for the Title IX investigation
 - Each applies different laws/policies and a different standard of evidence
- TIXC communicates with LE in cases with concurrent responses



Interview Sequencing

- Conduct interviews as promptly as possible to capture fresh recollections (but not before NOIA)
- Identify an initial witness list and solicit additional witness suggestions from parties and other witnesses
- Investigator retains discretion to determine whether a suggested witness has relevant information
 - When unsure, err on the side of conducting the interview
- When addressing student witnesses, consider getting parent/guardian permission (especially if required by state law or school/district policy), because the parties will have access to interview summary

Sample Interview Sequences

Sequence A



Sequence B



Evidence Collection

- Active process to gather evidence
- Identify potential sources of information
- Document efforts to gather, even when not successful



Counter-Complaints

- Respondents may file a **counter-complaint** of sexual harassment or sex discrimination against the Complainant if there is Complainant conduct that they wish to report
- Reporting other alleged misconduct (e.g., drug dealing, academic misconduct) is not considered a counter-complaint
- May occur prior to, during, or after the investigation of the original complaint

Information Sharing

- Information sharing practices must **balance transparency, privacy, and strategy**, as well as the parties' rights
- Witnesses may have limited or no knowledge about the complaint itself
- Witnesses may or may not know the parties or other witnesses
- Some information sharing will be necessary
- The parties will have access to all relevant and directly related information at the conclusion of the investigation

Formal Investigation

Step 6: Formal Comprehensive Investigation



THOROUGH



RELIABLE



IMPARTIAL



PROMPT



FAIR



EQUITABLE

Pre-Interview Planning

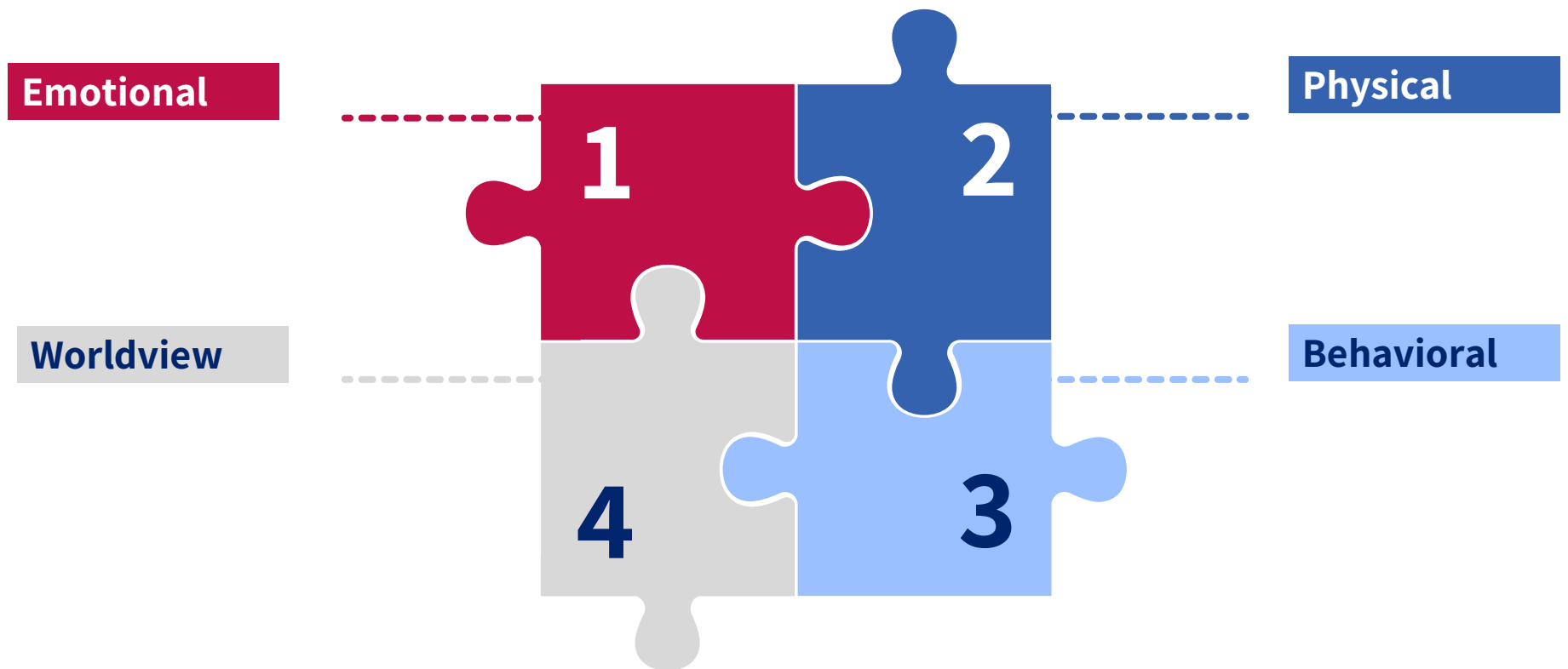
- Before scheduling interviews, consider:
 - Location, scheduling constraints, participants, and preparation
- Must **provide written notification** to parties with sufficient time to prepare
 - Date, time, location, participants, and purpose
- **Cannot mandate participation** in interviews
- It can be beneficial to conduct interviews in person, when possible, but videoconferences are common
- Investigator should always prepare initial questions in advance, but **remain flexible**

Establishing Rapport

GOAL: Interviewee trusts that you are neutral and impartial

- Investigator(s) help set the tone for a productive interview
- Maintain professionalism
- Provide transparency about expectations and the process
- Balance neutrality with compassionate approach
- Ask questions in a straightforward, non-judgmental manner
- Follow up in a timely manner, if necessary
- Use a trauma-informed approach to working with all parties and witnesses

Impacts of Trauma



Trauma-Informed Practices

Key principles of trauma-informed practice:

- Safety
- Trustworthiness and transparency
- Collaboration and mutuality
- Empowerment, voice, and choice
- Cultural, historical, and gender issues

ATIXA Recommendation: Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence

- Trauma-informed practices should not significantly influence evidence evaluation

“The Spiel”

- Establishing rapport creates a conducive interview environment
- “The Spiel” helps an interviewee to understand the Investigator’s role and the process

- Investigator introduction and role
- Purpose of investigation
- Role of the Advisor
- Interview questions
- Notetaking practices
- Commitment to privacy
- Witness-specific information
- Post-interview steps
- Interview expectations
- Relevant policies
- Acknowledge difficulty
- Retaliation reminder



Activity: Practicing Your Spiel

Interviewing Skills

Investigators build and improve skills over time and with practice:

- Appropriate questioning
- Active listening
- Seeking clarification
- Identifying gaps
- Body language and non-verbal communication



Questioning Considerations

- An interview is a conversation designed to elicit information in a non-accusatory manner
- Ask questions directly to the student; it is critical that they, not their Advisor(s), answer
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; obtain answers to all questions
- Ask purposeful questions:
 - What do I need to know?
 - Why do I need to know it?
- Use policy definitions to inform questions
- Avoid unnecessary repetition or traumatic re-triggering
- Choose or blend effective questioning strategies/methodologies (cognitive interviews, etc.)

Questioning Tips

- Listen carefully
- Seek to clarify terms that have multiple meanings
 - “We were hanging out” or “She was acting weird”
- Avoid:
 - Accusatory or argumentative questions or tone
 - Confusing questions
 - Blaming questions
 - “Double-barreled” questions
 - Evaluative responses
 - Sanitizing language (use the terms used by the interviewee)

Consent Construct: Three Questions

1. Was **force** used by the Respondent to obtain sexual or intimate access?
2. Was the Complainant **incapacitated**?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated
3. What **clear words or actions** by the Complainant gave the Respondent permission for each specific sexual or intimate act that took place as it took place?

Interview Challenges: Resistance, Reluctance, and Lying

- Offer a reminder of Investigator's role as a neutral fact-gatherer
- Maintain rapport and avoid accusation
 - “Help me understand...”
 - “I think I’m missing something...”
 - “Can you tell me more about that?”
- Use language mirroring
- Allow opportunity for interviewee to restate
- Review retaliation, amnesty policies (if applicable), expectation of truthfulness

Final Questions for Interviews

- “Is there anyone else that you think we should talk to?”
- “Are there any questions you expected that we didn’t ask?”
- “Is there anything else you think we need to know?”
- FOR THE PARTIES: “Are there any questions that you would like us to ask any other witness or the other party(ies)?”
- Document questions and answers provided
- Keep a running list of the questions suggested/requested by each party
 - Whether and when the question was asked
 - Rationale for not asking any question(s) based on irrelevance or impermissible evidence

Interview Documentation and Review

- Maintain interview transcripts or written summaries
 - **Transcript:** word-for-word documentation of a recorded interview
 - **Summary:** Investigator's summation all information gathered during entire interview (may be several paragraphs or pages, depending on interview length)
- Recording is an increasingly common practice
- Parties and witnesses should be invited to review their interview transcript/summary
 - Verify accuracy, clarify where needed, and provide additional information

Understanding Evidence

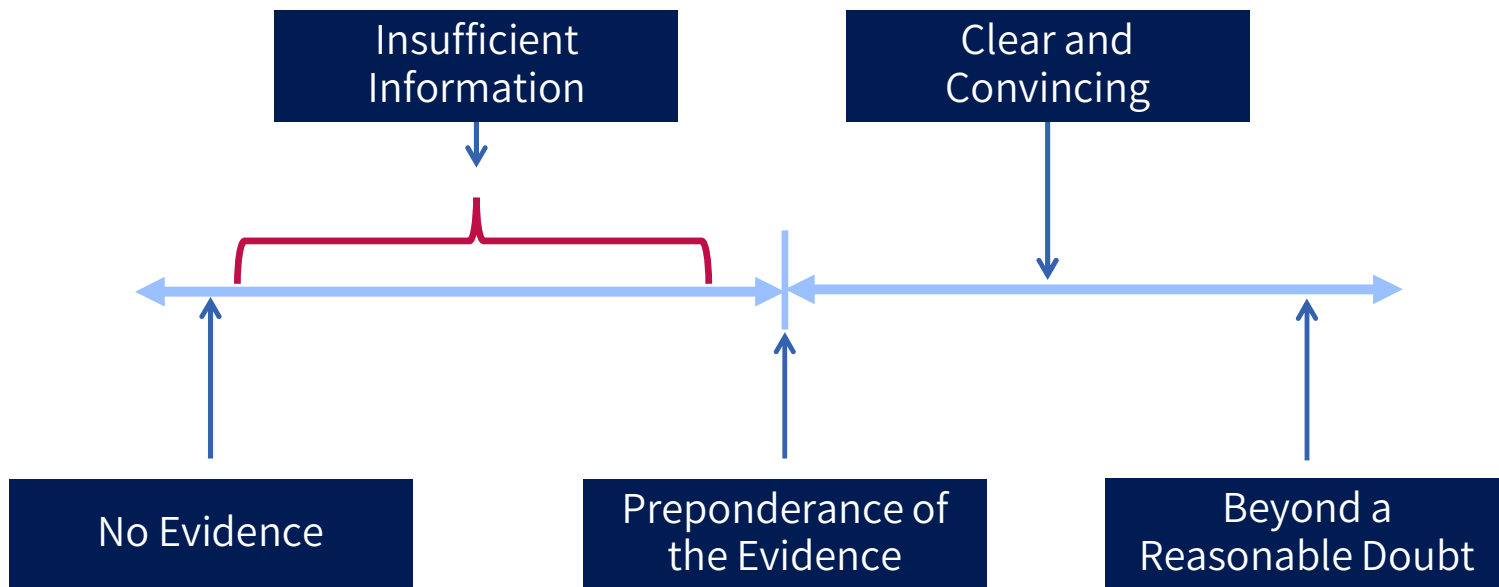
- Duty to collect and objectively evaluate all evidence that is relevant to the complaint
- **Evidence** is any kind of information presented to help determine what occurred
- **Relevant evidence** is evidence that tends to prove or disprove the underlying allegations
 - Inculpatory and exculpatory evidence
- **Directly related evidence** is connected to the complaint, but is neither inculpatory nor exculpatory



Standard of Evidence

- Two options:
 - Preponderance of the evidence
 - Clear and convincing evidence
- **Standard of evidence must be consistent** for all formal complaints of sexual harassment in all policies
- Must apply the same standard for complaints against students and employees
- Investigator must be familiar with the standard in school/district policy
- **ATIXA recommends** the preponderance of the evidence standard

Standard of Evidence



Types of Evidence

Documentary Evidence	Supportive writings or documents
Electronic Evidence	Photos, text messages, and videos
Real Evidence	Physical objects
Direct or Testimonial Evidence	Personal observation or experience
Circumstantial Evidence	Not eyewitness, but compelling
Hearsay Evidence	Statement from outside the interview presented as truthful
Character Evidence	Evidence of a person's character or character traits

Specific Evidence Issues: Privileged and Medical Information

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

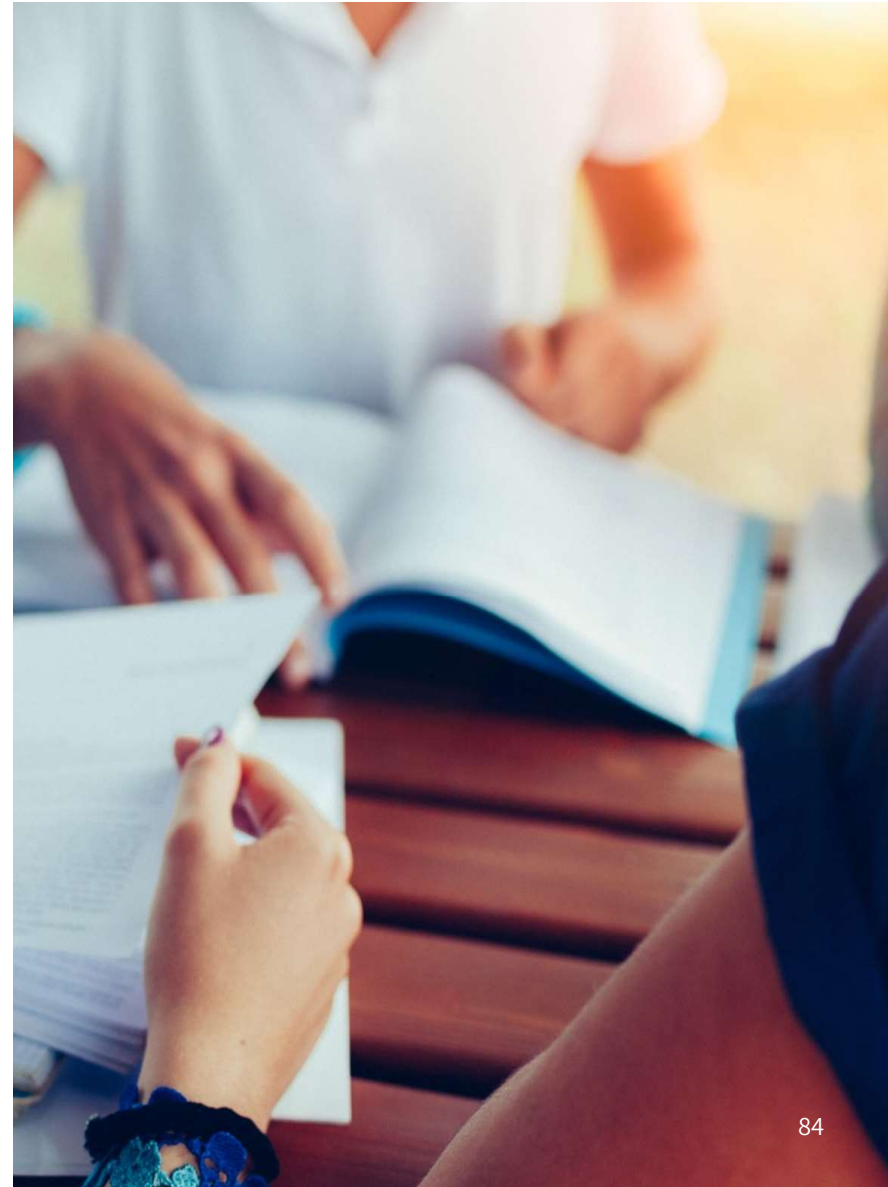
- Evidence protected under a legally recognized privilege
- Records made or maintained by:
 - Physician
 - Psychiatrist
 - Psychologist

Specific Evidence Issues: Rape Shield Provision

- Evidence of the **Complainant's sexual predisposition** is never relevant
- Evidence of the **Complainant's prior sexual behavior** is not relevant except:
 - If offered to prove that someone other than the Respondent committed the alleged conduct; or
 - If offered to prove consent with respect to prior consent with the Respondent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or predisposition

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



Credibility Assessment

Consider the following elements to establish credibility:

- **Corroborating Evidence:** evidence that can be verified by an independent and objective individual
- **Inherent Plausibility:** information that is believable on its face
- **Motive to Falsify**
- Additional elements that investigators should consider, but are commonly less probative are:
 - **Past Record**
 - **Demeanor**

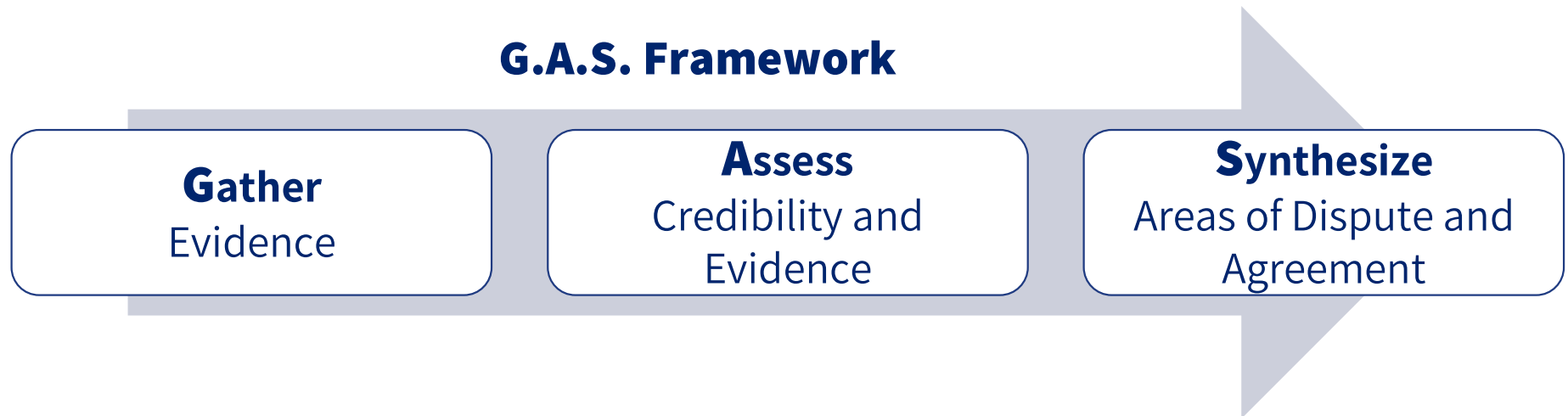
Evidence Authentication

- Not all evidence has the same degree of credibility
 - Less credible evidence may be less reliable evidence
- Investigator(s) should seek the **highest quality evidence** available
- Investigator(s) should try to **authenticate all evidence** provided
 - Check for possible fabrication of evidence
 - Corroborate information between witnesses
 - Try to obtain complete, rather than partial, records when possible

Step 7: Draft Investigation Report

- Title IX **requires a written investigation report** that fairly summarizes all relevant evidence and the investigation
- ATIXA recommends sharing draft report in Step 8 when the parties are entitled to review the evidence

G.A.S. Framework



Investigation Report Elements

Comprehensive investigation report typically includes:

- Complaint and party information
 - Jurisdiction and scope
 - Applicable policies
 - Investigation timeline
 - Summary of evidence
 - Analysis: credibility assessment, disputed and non-disputed facts
 - Conclusion
 - Appendices
-
- Investigative report is between 5-25 pages

Investigation Report Steps



Step 8: Report Review

- TIXC and/or legal counsel reviews draft investigation report prior to providing it to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions
- Schools/districts may elect to complete this review after the parties' review or have two separate TIXC/legal counsel reviews



Step 9: Parties and Advisors Review Draft Investigation Report

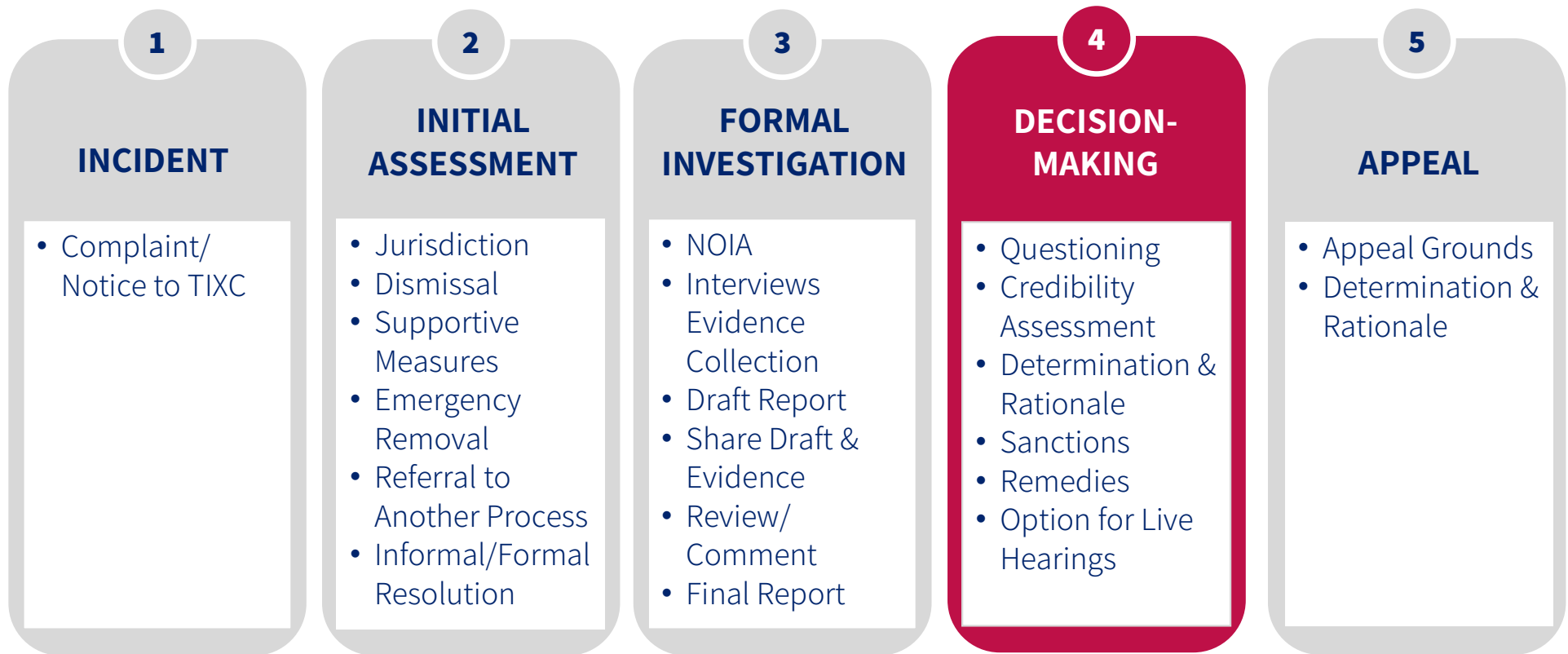
- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the school/district does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must:
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
 - Document rationale for not making recommended changes as appropriate

Step 10: Final Investigation Report

- School/District determines the final investigation report review process
 - Once finalized, the investigation report is distributed simultaneously to the parties and their Advisors
 - TIXC provides the report to the Decision-maker(s)
- Parties and Advisors will be provided with the final investigation report for review at least 10 days prior to the Decision-maker making a final determination

Post-Investigation: Decision-Making and Hearings

Decision-making



Decision-making Process

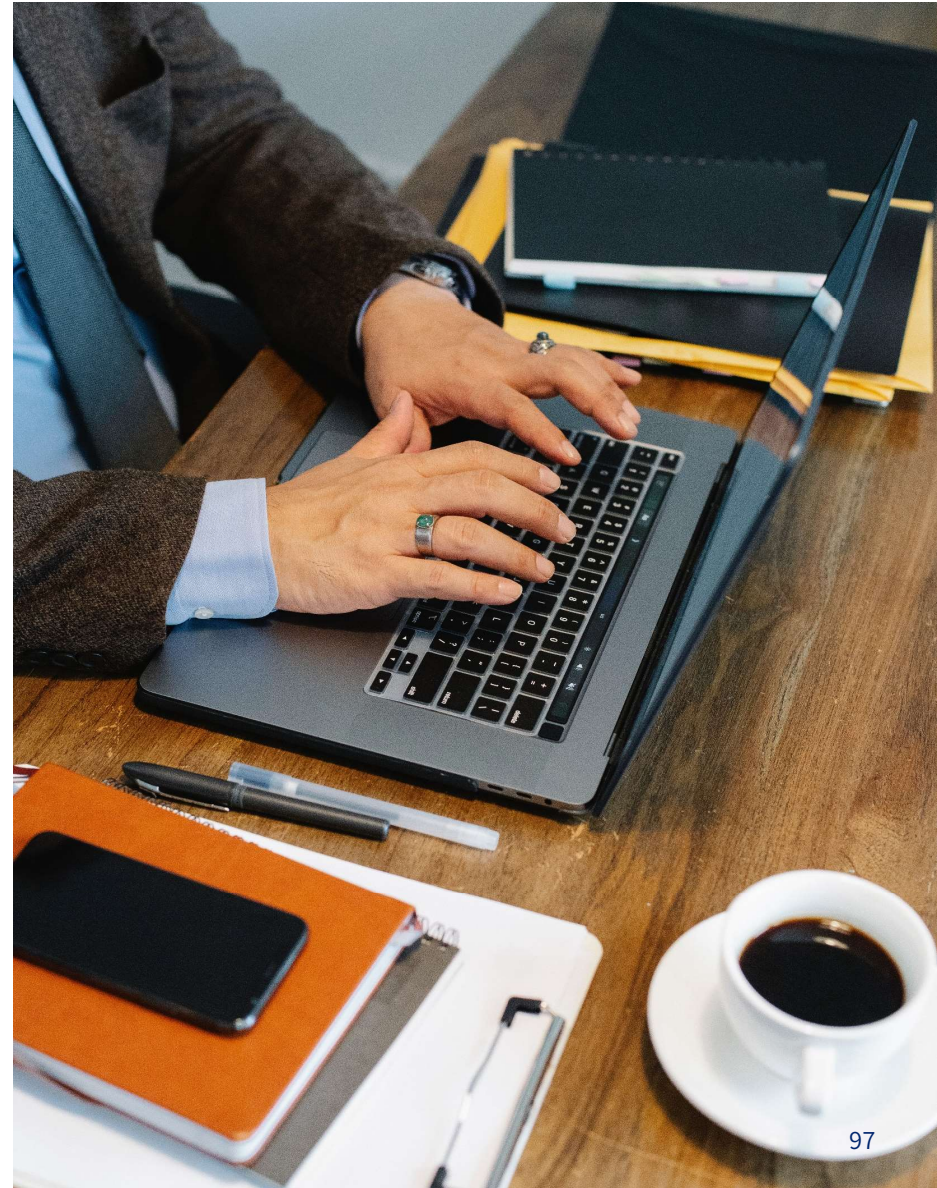
- Separate Decision-maker(s) who is not the TIXC or Investigator for allegations of sexual harassment complaints; may use a different structure for sex discrimination complaints
- Decision-maker reviews full investigative report and evidence
- K-12 grievance process requires the Decision-maker to facilitate either:
 - A live hearing (may depend on state law, legal precedent, school/district policy)
 - 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**
 - Standard of evidence must be consistent for all formal complaints of sexual harassment

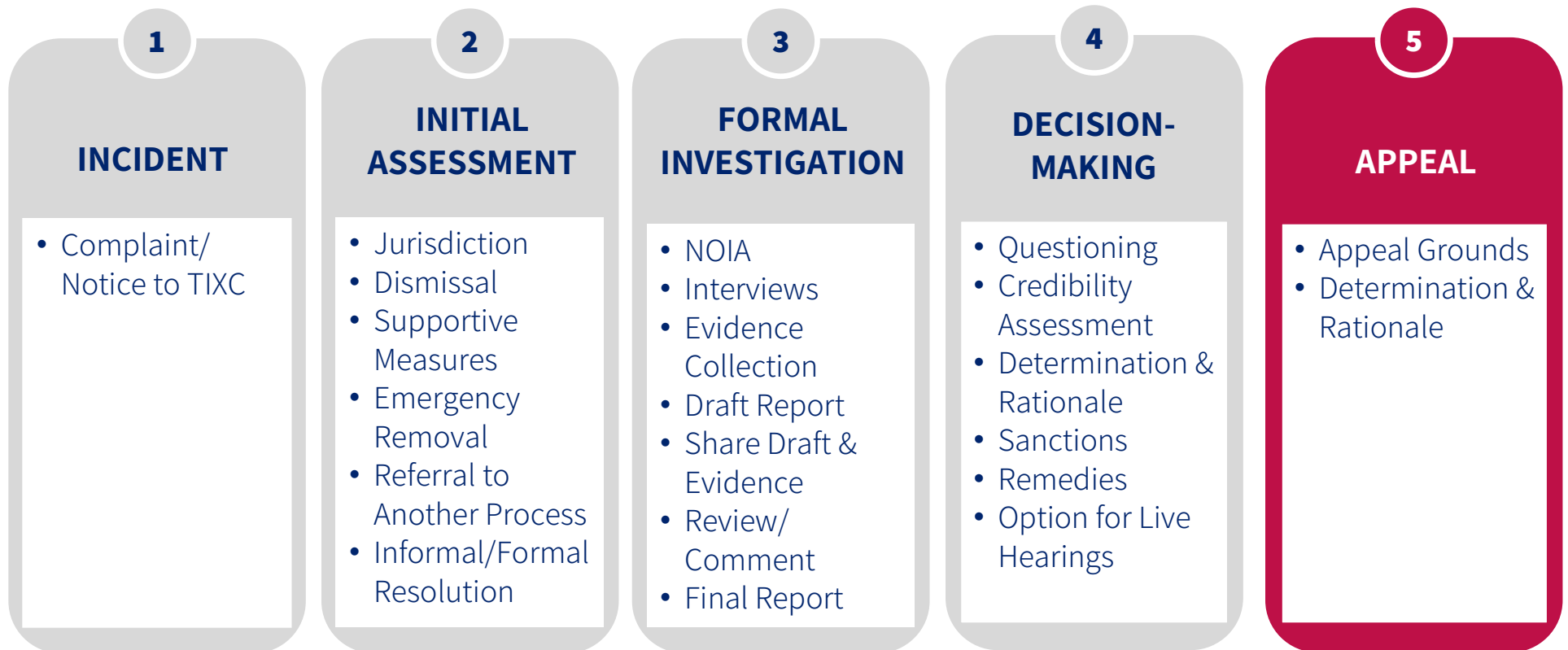
Determinations

- Decision-maker determines whether the Respondent violated school/district policy
- Decision-maker drafts **written determination with rationale**
 - Reviewed by TIXC and/or legal counsel
 - Communicated to the parties and Advisors simultaneously



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

Appeal Decision-maker

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



Questions?



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Title IX Administrators

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