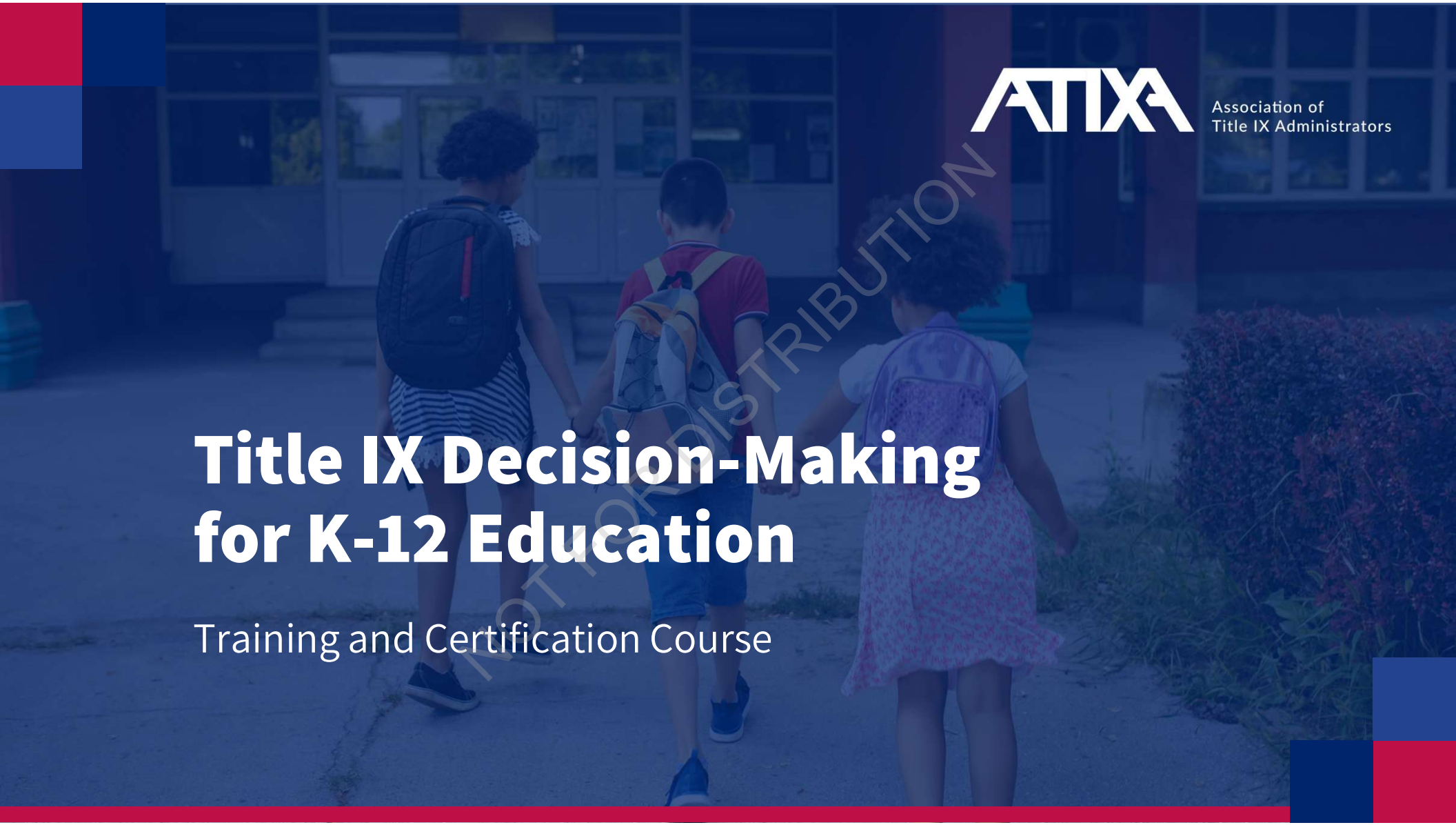


ATIXA Association of Title IX Administrators

Title IX Decision-Making for K-12 Education

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.

NOT FOR DISTRIBUTION

NOT FOR DISTRIBUTION

ATIXA | TNG | NABITA

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 training will necessarily engage with sexual harassment, sex 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.

NOT FOR DISTRIBUTION

Course Introduction

The primary focus of this course is necessary skill-building to successfully serve in a decision-making role in the Title IX Formal Grievance Process.

Decision-makers must understand their role, apply policy with analytical precision, and make determinations based on relevant and reliable evidence.

Our goal is to help Title IX Decision-makers execute their role with confidence in the K-12 educational setting.

NOT FOR DISTRIBUTION

2024 Title IX Regulations Vacated

All federal funding recipients are now subject to the 2020 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety; other federal courts have followed suit
  - The 2024 Title IX Regulations are now vacated (null and void) and **not** in effect for **any** state, institution, or school
- Institutions must revert to **2020-compliant** policies and procedures for Title IX cases
  - Ensure compliance with all 1975 and 2020 regulatory requirements
  - Revisit any complaints decided under 2024 Regulations to ensure compliance

NOT FOR DISTRIBUTION

Department of Education (ED) Updates

- Department changes include:
  - Significant staffing reductions, but increased focus in some areas
  - Closure of 7 of 12 OCR regional offices
  - Federal funding and oversight shifts
- Executive Order (EO): *Improving Education Outcomes by Empowering Parents, States, and Communities* (3/20/25)
  - Directed the Secretary of Education to "facilitate closure of the Department" and "return authority to the States and local communities"
- Civil Rights enforcement remains in ED's Office for Civil Rights (OCR), but other agencies (e.g., Health and Human Services (HHS) and Department of Justice (DOJ)) appear to be ramping up enforcement in certain areas
- Increased focus on Title VI

NOT FOR DISTRIBUTION

Dear Colleague Letter (02/04/25)

ED released a Title IX-focused Dear Colleague Letter (DCL) on 02/04/25

- OCR will enforce the 2020 Regulations, not 2024
- Institutions must immediately shift open investigations to use 2020 Regulations
- OCR will enforce *Defending Women from Gender Ideology* EO
  - Quoting the EO, OCR will:
    - "'enforce all sex-protective laws to promote [the] reality' that there are 'two sexes, male and female,' and that '[t]hese sexes are not changeable and are grounded in fundamental and incontrovertible reality.'"

NOT FOR DISTRIBUTION

Executive Order re: Sex and Gender

***Defending Women from Gender Ideology Extremism and restoring Biological Truth to the Federal Government* (01/20/25)**

- Defines sex as a binary concept – man or woman
- All agencies must ensure that intimate spaces are designated by sex, not gender identity
- Limited *Bostock v. Clayton County*'s holding, says it only applies to Title VII
  - Dept of Justice issued guidance on 02/12/25 that *Bostock* does not apply to Title IX
- Prohibits federal funds and grants from promoting gender ideology
- Revokes all Biden administration EOs addressing gender identity
- Directs OCR to prioritize investigations/litigation to enforce rights and freedoms based on the binary nature of sex
- Does not address sexual orientation

NOT FOR DISTRIBUTION

Executive Order re: Gender and Athletics

***Keeping Men Out of Women's Sports* (02/05/25)**

- Prohibits transgender women from playing women's sports
  - Cited as necessary for "safety, fairness, dignity, and truth"
- Applies definitions from *Defending Women from Gender Ideology* EO
- Threatens withdrawal of federal funds
- Will use Title IX to enforce on a prioritized basis
- Seeks to eliminate Olympic competition based on gender identity or testosterone reduction
- Does not prohibit transgender men from participation
- Subject of active and rapid enforcement by Federal government

NOT FOR DISTRIBUTION

Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQ Harassment in Schools
- Enforcement of Title IX - Based on Sexual Orientation and Gender Identity in light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

NOT FOR DISTRIBUTION

Review: Title IX Overview

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

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)

NOT FOR DISTRIBUTION

Essential Compliance Elements

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

1

STOP discriminatory conduct

2

PREVENT recurrence, on both individual and School/District levels

3

REMEDY the effects of discrimination, for the individual, for the community, and on a school/district level

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Title IX Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access

Retaliation

Sexual Harassment*

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

* 2020 Regulations only apply to Sexual Harassment

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Sex Discrimination

- **Sex Discrimination** encompasses:
  - Unfair treatment based on sex
  - Exclusion from participating on the basis of sex
- **Disparate Treatment:** occurs when a school/district policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when a school/district 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

NOT FOR DISTRIBUTION

Sexual Harassment Definitions

- **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 School/District's education program or activity
- **Sexual Assault** includes:
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
  - Sodomy
  - Sexual Assault with an Object

NOT FOR DISTRIBUTION

ATIXA
Model Definitions

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

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Review:
Formal Grievance Process Overview

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Title IX Grievance Process Overview

1 INCIDENT

- Complaint/ Notice to Title IX Coordinator (TIXC)

2 INITIAL ASSESSMENT

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

3 FORMAL INVESTIGATION

- NOIA
- Interviews
- Evidence Collection
- Draft Report
- Share Draft & Evidence
- Review/ Comment
- Final Report

4 DECISION-MAKING

- Questioning
- Credibility Assessment
- Determination & Rationale
- Sanctions
- Remedies
- Option for Live Hearing

5 APPEAL

- Appeal Grounds
- Determination & Rationale

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Prompt and Fair Resolution

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; could be extended for live hearing/appeal
- Grievance process may take longer than expected
  - Anticipate, mitigate, and document delays
  - Communicate with parties regarding delays

Fair Resolution

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

NOT FOR DISTRIBUTION

Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment and 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 and Evidence
9. Parties Review Draft Report and Evidence
10. Final Investigation Report

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Parties' and Advisors' Review of Investigation 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 exculpatory and inculpatory evidence
- Investigator must:
  - Allow 10 days for written response
  - Consider parties' feedback and incorporate where appropriate
- Final investigation report is sent to the parties and Advisors for review at least 10 days prior to the decision-making phase
  - Two 10-day periods can be combined for K-12
  - Parties may exchange relevant written questions and responses facilitated by the Decision-maker (DM)

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Students with Disabilities

- If a party is a student with a disability, **TIXC should consult** with one or more members of the student's Individualized Education Program (IEP) team or Section 504 of the Rehabilitation Act (504) team
  - This consultation will determine how to comply with the IEP or 504 plan throughout the Title IX Grievance Process
- **TIXC should communicate with the DM** to ensure that any coordination needed at the decision-making stage is addressed
  - This may include:
    - Additional people present for meetings
    - Additional time to respond to any posed questions
    - Other appropriate steps to ensure compliance with Individuals with Disabilities Education Act (IDEA) and 504

NOT FOR DISTRIBUTION

© 2024 Association of Title IX Administrators

Decision-Maker Role and Responsibilities

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Title IX Decision-Making Requirements and Discretion

- Schools/Districts have two options:
  - Administrative review by a DM
  - Live hearing
- DM determines whether a Respondent has violated School/District policy
  - May be a single person or a panel
  - May be internal or external individuals
- Required separation of roles
  - TIXC may not serve as DM
  - Investigator(s) may not serve as DM
- Appellate DM is a separate role
  - May also be a single person or panel; previously uninvolved

NOT FOR DISTRIBUTION

Decision-Making Oversight

Title IX Coordinator (TIXC) responsibilities:

- Appoint Decision-makers
- Ensure timeline compliance
- Oversee recordkeeping
- Review DM work to ensure thoroughness
- Serve as a process and procedures resource
- Serve as primary point of contact for parties
- Train DMs or ensure they are trained

NOT FOR DISTRIBUTION

© 2024 Association of Title IX Administrators

Activity: Ranking Priorities

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Decision-Maker Role and Responsibilities

Rank the top three responsibilities as a DM

Find the truth	Provide a just result	Provide an educational process	Make a safe community
Uphold the School/District's policy	Ensure a fair process	Protect the School/District from liability	Punish wrongdoing

NOT FOR DISTRIBUTION

Decision-Maker's Responsibilities

- Receive the investigation report and complaint file
- Facilitate exchange of written questions/responses among parties and witnesses
- Run live hearing (if applicable)
- Determine whether policy has been violated based upon the applicable standard of evidence
  - Decisions must be based upon:
    - The specific policy alleged to have been violated
    - Independent assessment of the evidence
    - Credibility assessment of the parties and witnesses
- Determine appropriate sanctions/discipline (if applicable)
- Draft a written determination that outlines the rationale for the finding(s)

NOT FOR DISTRIBUTION

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 the Title IX complaint file

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

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Working with Advisors

- Parties have the right to be accompanied by an **Advisor of their choice**
- School/District not required to provide an Advisor
- **For students**, parent/guardian may serve as an Advisor or may attend in addition to an Advisor
- **For unionized employees,** union may be entitled to have a designee/representative participate; that person may serve as an Advisor, or the party may elect to have a separate Advisor
- DM should establish and communicate reasonable expectations for Advisor participation

NOT FOR DISTRIBUTION

ATIXA © 2025 Association of Title IX Administrators

Conflicts of Interest and Bias

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Conflicts of Interest and Bias

- DM must **not have a conflict of interest or bias** for or against the following:
  - Complainants, generally
  - Respondents, generally
  - Parties involved with a complaint
  - Subject matter or details of the complaint itself
- Consider a perception of a conflict or bias, even if none exists in fact
  - Not required, but TIXC may choose to substitute a DM based on perception
- DMs have **no side**, other than the **integrity of the process**

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

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
- That prevents neutrality or objectivity

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

NOT FOR DISTRIBUTION

Conflicts of Interest

- Evaluated on a case-by-case basis
- Simply knowing a student or employee is **not** enough to generate a conflict of interest, as long as objectivity is not compromised
  - Previously disciplining a student is **not** enough unless it influences the DM's decision
- DM must bring potential conflicts to the TIXC's attention
  - Parties may alert TIXC
  - TIXC will determine whether to recuse the DM
    - DM may also recuse themselves

NOT FOR DISTRIBUTION

Bias

- Formed from stereotypes, societal norms, experiences, expectations of the people around you
- Bias can be a significant problem for DMs
  - Can affect DM perceptions of Complainants **and** Respondents
  - Common pre-conceptions about Complainants and Respondents
  - Can affect our perceptions of others within the process or associated with the process
- DM must be able to recognize bias and mitigate its effects

NOT FOR DISTRIBUTION

Recusal

- DM may determine that they need to recuse themselves or a party might seek a DM's recusal
- School/District policy should define the process and circumstances by which a party may seek to recuse a DM
- If a DM cannot hear a complaint impartially, they must inform the TIXC immediately
- TIXC determines whether to recusal is necessary
  - Have alternate DMs available

NOT FOR DISTRIBUTION

Due Process

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

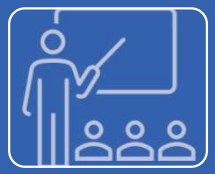
Due Process for K-12

Title IX Regulatory Requirements

- Prescriptive procedures for formal and informal grievance process
- Applies to both students and employees

Fundamental Fairness for Students in Disciplinary Procedures

- Flows from *Goss v. Lopez*
- Specific requirements for students with disabilities



Procedural Protections for Employees

- State law requirements for some or all positions
- Procedural protections from collective bargaining agreements

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Due Process in Procedure

- Consistent, thorough, and procedurally sound review of all allegations
- Substantial compliance with written policies and procedures
- Policies and procedures afford sufficient rights and protections to satisfy mandates of all applicable laws
  - Clear, written notice of the allegations
  - Opportunity to present witnesses, evidence, and be heard by DM

NOT FOR DISTRIBUTION

Due Process in the Grievance Process

Rights of the parties during the Title IX Grievance Process:

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

NOT FOR DISTRIBUTION

Due Process in the Grievance Process

Rights of the parties during the Title IX Grievance Process, continued:

- Exchange written questions for the other party and/or witnesses
  - Facilitated through the DM
- Explanation of any decision that a question is not relevant
- See/hear all evidence the DM may rely upon in their decision
  - Right to review and comment on that evidence to the DM
- Access to recording, if an optional live hearing is conducted
- Receive a written rationale explaining the basis for the DM's decision
- Appeal

NOT FOR DISTRIBUTION

Notice of Investigation and Allegations

The Notice of Investigation and Allegations (NOIA) is critical to fundamental fairness and due process

- NOIA lists the rights of the parties in the grievance process, in addition to:
  - Known details of allegations, such as identities of the parties
    - Description of the alleged conduct and relevant policy provisions
    - Date and location of the alleged conduct
  - Information about grievance procedures
    - Informal Resolution options
    - Presumption of non-responsibility
  - Prohibition on retaliation and false statements

NOT FOR DISTRIBUTION

Due Process in Decision-Making

A decision must:

- Be appropriately impartial and fair; both in finding and sanction(s)
- Be neither arbitrary nor capricious
- Be based on a fundamentally fair rule or policy
- Be made in good faith
- Have a rational relationship to the evidence

NOT FOR DISTRIBUTION

ATIXA © 2025 Association of Title IX Administrators

Decision-Making Phase: Skills and Practical Application

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Initial Materials Review

- Thoroughly review the complaint file, including:
  - Complaint
  - Written NOIA
  - Applicable policies
  - Investigation report and appendices
- Consider conducting multiple reads

NOT FOR DISTRIBUTION

ATIXA © 2025 Association of Title IX Administrators

Applicable Policy and Procedures Review

Policy

- Alleged policy violations (individual provisions)
- Elements of each policy provision
  - DM will weigh and apply relevant evidence to determine whether a policy violation occurred

Procedures

- Review decision-making procedures to refresh initial training
- Note any procedural questions to ask the TIXC/legal counsel

NOT FOR DISTRIBUTION

Activity: Parsing the Policy

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Parsing the Policy

Identify the elements for the policy provision:

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 School/District's education program or activity

NOT FOR DISTRIBUTION

Parsing the Policy: Answers

Identify the elements of the policy provision:

- **Unwelcome conduct**
- Determined by a **reasonable person** to be so:
  - **severe**, and
  - **pervasive**,
  - and **objectively offensive**
  - that it **effectively denies a person equal access** to the School/District's education program or activity

NOT FOR DISTRIBUTION

Second and Third Materials Review

- **Second review: note all areas of information consistency**
  - No additional verification or questioning is needed on these issues
  - Begin to identify pieces of evidence that address the various policy elements
    - This should be well-outlined in the investigation report, but the DM must conduct an independent assessment and include this in their written determination
- **Third review: identify information inconsistencies**
  - DM compiles all remaining questions
  - DM identifies the pieces of evidence that address the various policy elements
  - This should be School/District's primary focus, as the DM's job is to resolve contested facts

NOT FOR DISTRIBUTION

Skills: Managing the Exchange of Questions

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Managing Question Exchange

- DM is responsible for managing the exchange of questions
  - Important due process component
  - Typically occurs during the second 10-day review period
- Parties must have the opportunity to ask questions in writing
  - Questioning occurs indirectly through the DM
    - Can be communicated by TIXC, Investigator, or DM
- DM may ask Investigator, parties, or witnesses questions

NOT FOR DISTRIBUTION

ATIXA © 2025 Association of Title IX Administrators

Mechanics of Exchanging Questions

- Parties/Advisors may submit questions in writing to DM
- DM determines whether questions seek relevant evidence
  - May ask a party to explain why the question is relevant
  - When excluding or rewording a question, DM should provide a written rationale
  - Questions challenging credibility are typically relevant
- Provide each party with the answers and allow for limited follow-up
- 10-day review period may expire with no questions from either party
- May grant extensions, but must be provided equitably

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

DM Questioning Goals

- DM may ask questions to **ensure a comprehensive understanding** of information and evidence contained in the investigation report, this includes:
  - Relevant evidence about what happened during the incident(s)
  - Credibility questions
  - Corroborating information
- **DM should use questions to:**
  - Elicit details and eliminate vagueness
  - Fill in missing information gaps
  - Resolve conflicting information as it relates to the policy elements

NOT FOR DISTRIBUTION

Skills: Understanding Evidence

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Understanding Evidence

DM must evaluate all relevant evidence

- **Evidence** is any information presented to help determine what occurred
- **Relevant evidence** is evidence that tends to prove or disprove the underlying allegations
- **Directly related evidence** is connected to the complaint, but is neither inculpatory nor exculpatory

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

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 observations or experiences
Circumstantial Evidence	Factual inferences
Hearsay Evidence	Statement from outside the interview presented as truthful
Character Evidence	Evidence of a person's character or character traits

NOT FOR DISTRIBUTION

Primary Questions for Decision-Makers

1

Is this information **relevant**?

2

Is this information **reliable**?

3

Will the information **be relied upon** as evidence supporting a rationale?

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Relevance

1. Is this information relevant?

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Relevance

- Evidence is generally considered **relevant** when it helps determine:
  - Whether the Respondent violated policy, and/or
  - The credibility of any evidence, including a party or witness statement
- The Investigator initially evaluates relevance, but the DM ultimately decides
- All relevant evidence must be objectively evaluated and considered
  - **Inculpatory:** supports a finding of responsible
  - **Exculpatory:** supports a finding of not responsible
- In the decision-making phase, parties may dispute the Investigator's initial relevance determinations

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Privileged and Medical Information

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

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

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Relevant Evidence Exclusions

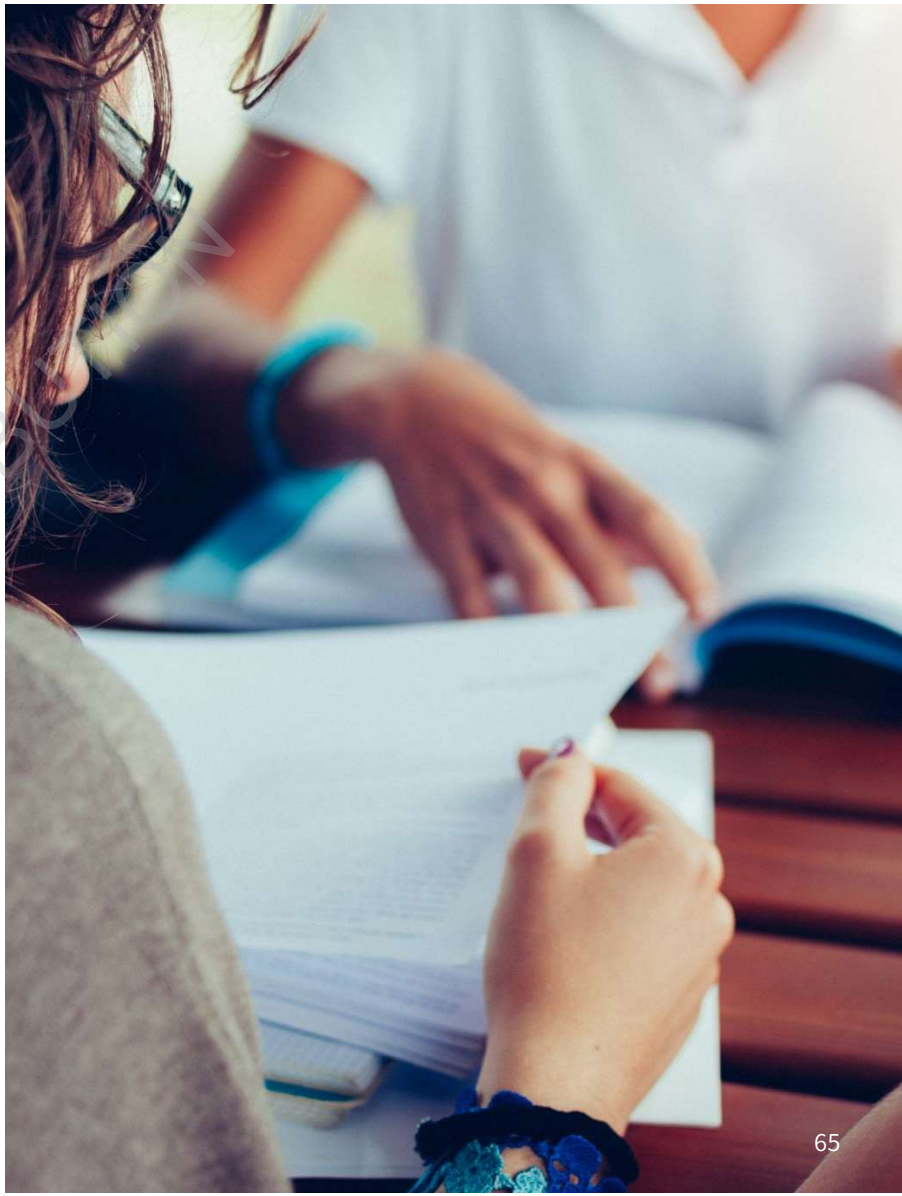
- Evidence of the **Complainant's sexual predisposition** is never relevant
- Evidence of the **Complainant's prior sexual behavior** is not relevant except:
  - If offered to prove that someone other than the Respondent committed the alleged conduct; or
  - Specific incidents of the Complainant's prior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

NOT FOR DISTRIBUTION

Evidence Authentication

Evidence authentication attempts to ensure that the evidence is genuine and credible

- Investigator should authenticate evidence, but sometimes the DM will
- Examples of authentication:
  - Verifying text messages by collecting texts from all involved parties
  - Collecting photographic evidence after it is referenced in an interview
  - Establishing chain of custody for a piece of physical evidence



NOT FOR DISTRIBUTION

© 2024 Association of Title IX Administrators

Other Evidence Considerations

- No restriction on parties discussing complaint or gathering evidence, but school/district can restrict parties from sharing materials it has gathered
- Parties seeking to introduce new evidence in the DM phase or at the hearing
  - Consult with the TIXC

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Credibility Assessment

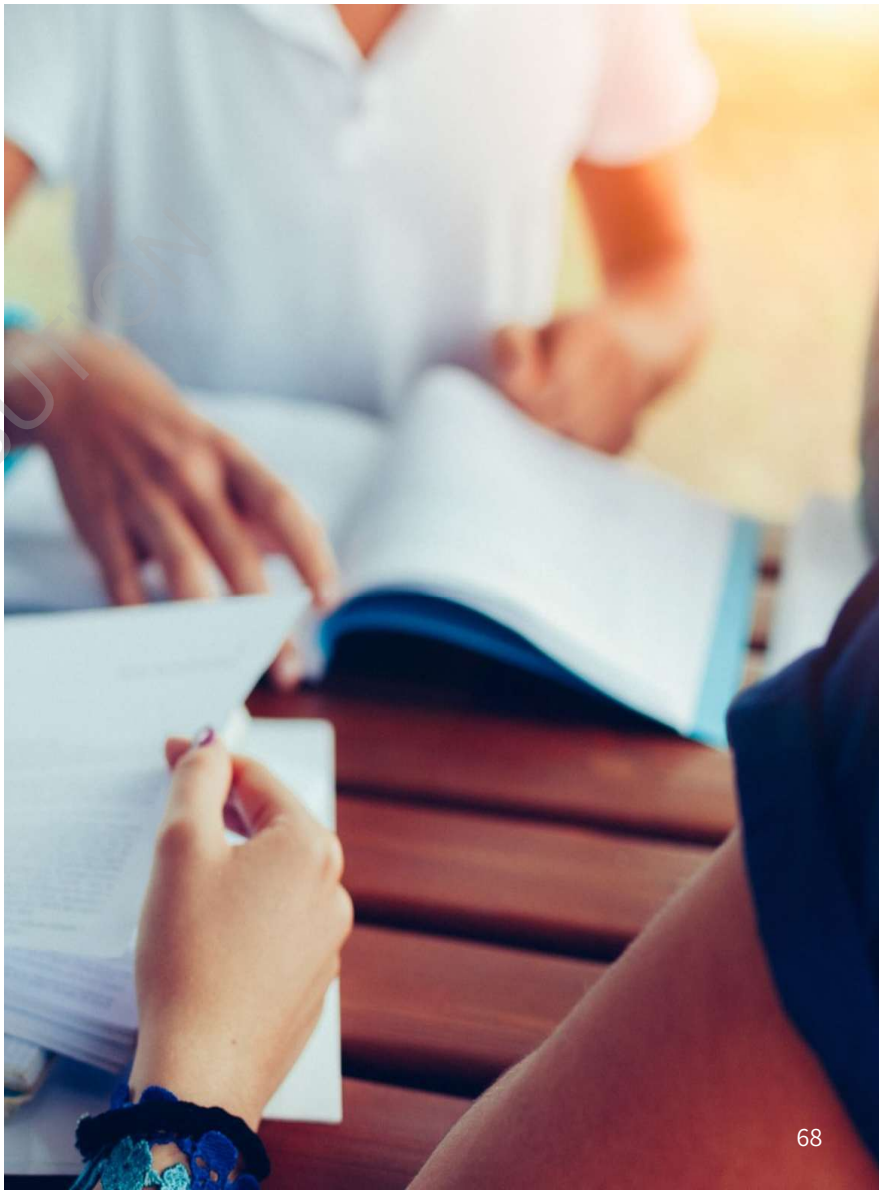
2. Is this information reliable?

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Party and Witness Credibility

- **Credibility may speak to likeliness**
  - Would a reasonable person do the same?
  - Are there more likely alternatives?
- **Credibility Assessment** involves evaluating whether evidence is believable and reliable
  - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** Memory errors alone do not necessarily diminish witness credibility, nor does some evasion



NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Credibility Considerations

- Assessing and determining credibility is an important DM role
- Credibility does not necessarily equate to honesty or truthfulness
  - Believability ≠ truthfulness
  - Credibility = consistency + corroboration
  - Suspend character judgments
- Credibility impacts the reliability of evidence and its weight
- Specific credibility issues that a DM may consider:
  - Relationships between the parties and witnesses
  - Whether a witness was exposed to information (e.g., the case of a parent/guardian or Advisor) that may have influenced their statements

NOT FOR DISTRIBUTION

Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Inherent Plausibility

- "Does this make sense?"
- Be careful of bias influencing sense of "logical"

Motive to Falsify

- Do they have a reason to lie?

Past Record

- Is there a history of similar behavior?

Demeanor

- Do they seem to be lying or telling the truth?

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

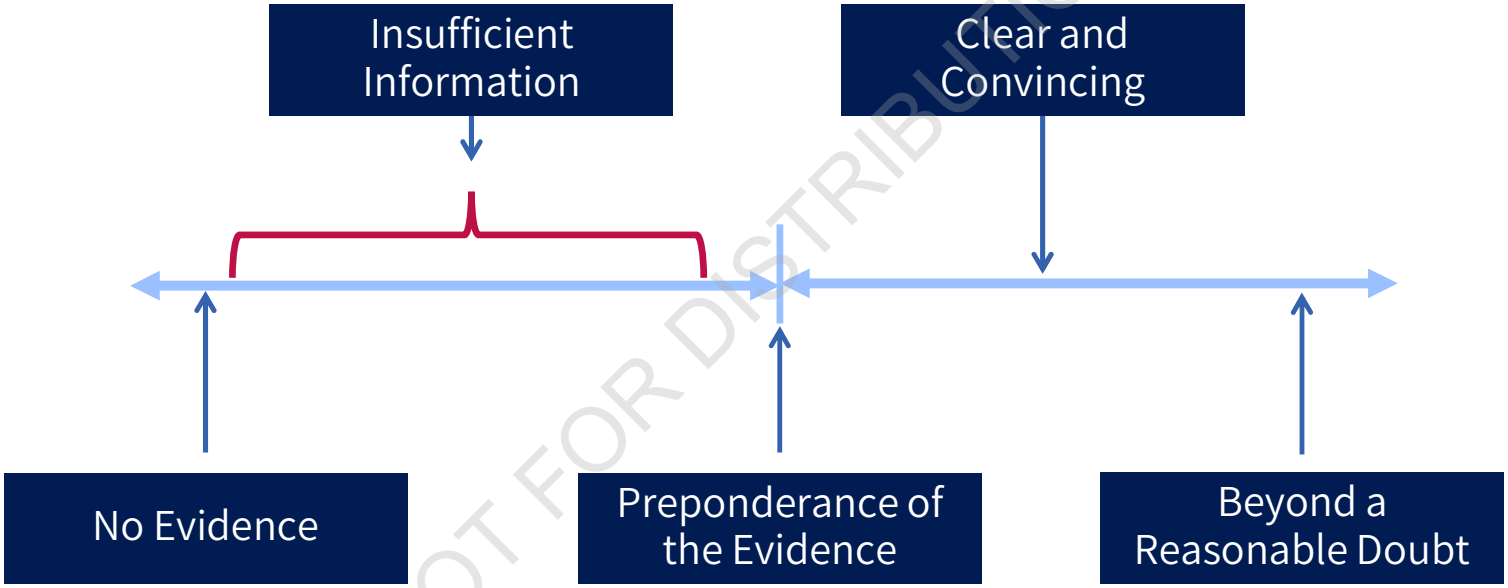
Weighing and Analyzing Evidence

3. What evidence is relied upon in making a determination?

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Standard of Evidence



NOT FOR DISTRIBUTION

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

© 2025 Association of Title IX Administrators

Applying Facts to Policy

- DM must **presume the Respondent is not in violation** unless and until the standard of evidence is met
- The DM **analyzes facts against each policy element** to determine whether the Respondent violated policy
  - Written rationale will have to cite to specific evidence supporting conclusion
- Assess credibility of evidence and evidentiary weight
  - Assess statements as factual, opinion-based, or circumstantial
- Apply the standard of evidence to determine if policy has been violated

NOT FOR DISTRIBUTION

Making Findings, the Final Determination, and Sanctioning

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Finding vs. Determination

Finding
Whether the conduct occurred, by the standard of evidence

Final Determination
Whether the conduct that is proven to have occurred violates policy

Written Determination Standards

- Cogent explanation of facts
- Evidence relied upon/not relied upon and why
- Evidence that was unavailable and why
- Whether presumption of innocence was overcome
- Credibility assessment and explanation
- Rationale explains how DM got from the allegation to the final determination, and also offers rationale for any sanctions implemented

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Determination Process Overview

- Anticipate having to concretely articulate the rationale for and evidence supporting all conclusions
- Parse the policy again; review the elements that comprise each allegation
- Determine credibility of evidence and assess statements as factual, opinion-based, or circumstantial
- Determine whether it is more likely than not that policy has been violated
  - Or use school/district standard of evidence
- Ensure an impartial decision

Withhold judgment until all the evidence has been considered

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Making a Finding and Final Determination

- Finding(s) must be based upon information gathered during the investigation and decision-making phases only
  - No outside information should influence decision-making
- **Separate the determination from the sanction:**
  - Do not use impact-based rationales for policy violation findings and determinations
  - Use impact-based rationales for sanctions only; impact is not relevant to the policy question
    - Impact is **not** relevant to the policy violation question
  - Same with prior misconduct, unless a pattern is alleged/proven
- Schools/Districts can identify a separate individual to determine sanctions OR permit the DM to determine sanctions, if any

NOT FOR DISTRIBUTION

Determining Sanctions

- DM may consider:
  - Impact/mitigation statements from the parties
  - Precedent, prior misconduct, proven pattern (if alleged), attitude, collateral violations, or multiple violations
  - Aggravating or mitigating circumstances
- Primary purpose should not be developmental or educational, but focused on ensuring fairness and providing remedies
- Each sanction must have a rationale

NOT FOR DISTRIBUTION

ATIXA © 2025 Association of Title IX Administrators

Common Student Sanctions

- Warning
- Detention
- Loss of privileges
- Counseling
- No contact order
- Limited access to school activities
- Service hours
- Online education
- Discretionary sanctions
- Alcohol and drug assessment, and counseling
- Alternative Placement
- In-School-Suspension
- Out-of-School Suspension
- Expulsion

NOT FOR DISTRIBUTION

Common Employee Sanctions

- Warning (preferably written)
- Probation
- Performance improvement/ management process
- Training
- Counseling
- Loss of privileges
- Reduction in pay
- Loss of annual raise
- Discretionary sanctions
- Loss of supervisory or oversight responsibilities
- Paid or unpaid leave
- Suspension
- Termination

NOT FOR DISTRIBUTION

Common Sanctioning Pitfalls

- Failure to stop, prevent, and remedy
- Conflating the finding, the determination, and the sanction(s)
- Unwillingness to expel, suspend, or terminate
- Inconsistent or disparate sanctions for similar behaviors
- Failure to consider aggravating or mitigating circumstances
- Lockstep or prescribed sanctioning; failing to address incident-specific circumstances

NOT FOR DISTRIBUTION

Written Determinations

Written Determination

- Authored by DM
- TIXC/Legal counsel typically reviews
- TIXC communicates to the parties simultaneously in writing

Finality

- On the date the school/district provides a written appeal determination
  - **OR** the date when an appeal would no longer be timely

Written Determination Elements

- Applicable policy
- Procedural steps from complaint through determination
- Statement of, and rationale for, the result of each specific allegation
- Finding and Final Determination
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Whether remedies will be provided to Complainant
- Procedures and bases for appeal

NOT FOR DISTRIBUTION

Appeals

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Appeals

1 INCIDENT

- Complaint/ Notice to TIXC

2 INITIAL ASSESSMENT

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

3 FORMAL INVESTIGATION

- NOIA
- Interviews
- Evidence Collection
- Draft Report
- Share Draft & Evidence
- Review/ Comment
- Final Report

4 DECISION-MAKING

- Questioning
- Credibility Assessment
- Determination & Rationale
- Sanctions
- Remedies
- Option for Live Hearing

5 APPEAL

- Appeal Grounds
- Determination & Rationale

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Appeal Process

School/District must offer a fair appeal process

- School/District policy must include grounds and process for appeal
- School/District must provide information about the appeal process in writing to parties and Advisors
- One level of appeal is best practice
- Typically, document-based review for error only; not a new consideration
- Deference is given to the original DM

NOT FOR DISTRIBUTION

Grounds for Appeal

Must offer appeals on the following grounds:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter
3. Conflict of interest or bias by the TIXC, Investigator, or DM that affected the outcome of the matter

Schools/Districts have the discretion to add additional appeal grounds

NOT FOR DISTRIBUTION

Appeal Decision-Maker

- Cannot be TIXC or serve another role in the same complaint resolution
- Makes determination on a party's request for an appeal
- Reviews written submissions from parties
- May review investigation report or evidence gathered during investigation/decision-making phase
- May speak with Investigator, DM, parties, and/or witnesses
  - More likely when this will serve as the *Goss* hearing; when suspension/expulsion may be recommended
- **Review of complaint should be limited to the grounds noted in the appeal request**
  - Not a *de novo* review; exception may be when this will serve as the *Goss* hearing
- Draft a written determination that outlines the rationale for the outcome

NOT FOR DISTRIBUTION

Appeal Determinations

Appeal Decision-maker must complete a written determination with rationale

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

NOT FOR DISTRIBUTION

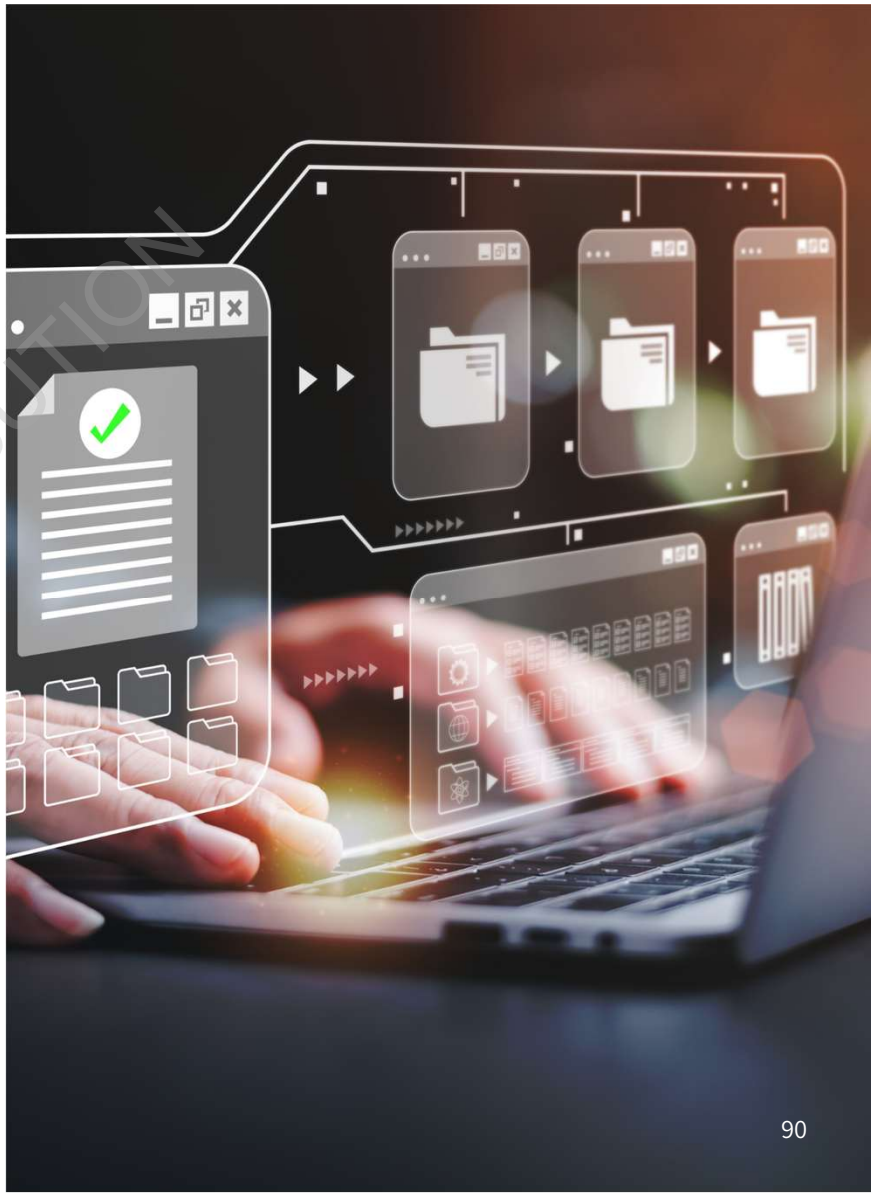
Recordkeeping and Documentation

NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Recordkeeping

- DM compiles all documentation related to the decision-making process, including:
  - **Timeline** of decision-making process
  - **Interactions** and meetings with parties, other DMs, TIXC, etc.
  - **Determination** with any associated sanctions and/or remedies
  - **Rationales** for all determinations
  - **All work product** from the DM process
- TIXC is responsible for maintaining complaint files for a minimum of **seven years**



NOT FOR DISTRIBUTION

© 2025 Association of Title IX Administrators

Decision-Maker Notes and Drafts

- TIXC should provide guidance and clear expectations about saving work product, including personal notes
- Anticipate that the parties could see the work product
  - Students have FERPA review rights
  - Employees may have rights to personnel records
  - Litigation
- Be judicious with notetaking, annotating, draft writing, and communication

NOT FOR DISTRIBUTION

Association of
Title IX Administrators

Questions?

NOT FOR DISTRIBUTION

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 C.F.R. Part 106. If you have lawfully obtained ATIXA materials by registering for ATIXA training, you are licensed to use the materials provided for that training.

34 C.F.R. 106.45(b)(10) (2020 Regulations) requires all training materials to be publicly posted on a Recipient's website. Licensees subject to the 2020 Title IX Regulations may download and post a PDF version of training materials for their completed training to their organizational website to comply with federal regulations. ATIXA will provide licensees with a link to their materials. That link, or links to the materials on that page only, may be posted to the licensee's website for purposes of permitting public access to the materials for review/inspection only.

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.

NOT FOR DISTRIBUTION