

Association of Title IX Administrators

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Title IX Investigation Foundations Level One: Procedures and Critical Skills for Higher Education

Training and Certification Course

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Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with 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.

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Introduction

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The course focuses on the fundamental skills necessary to investigate sexual harassment allegations.



Practitioners will learn how to conduct Title IX investigations, apply policy, and obtain a detailed overview of the resolution process.



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

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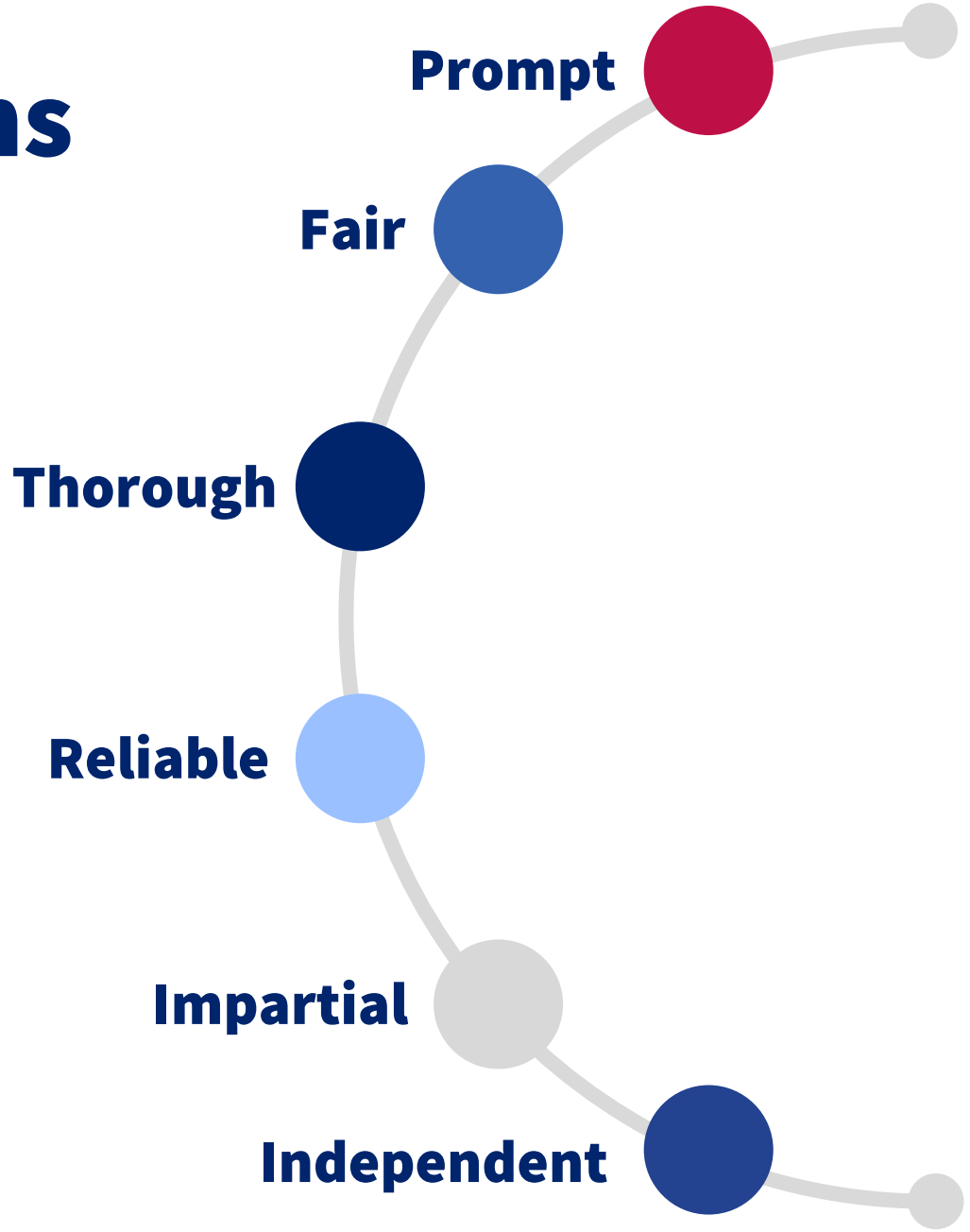
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Investigator Role

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Effective Investigations

- Investigations focus on gathering all **available** and **relevant** information
- The **institution** is responsible for gathering evidence—not the parties
- Investigators must create an investigation record that **accurately and fairly** reflects the relevant evidence



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Investigator's Role

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The Investigator is responsible for developing a thorough and reliable factual record

- Understand the allegations and applicable policy
- Develop and adapt an investigation strategy
- Identify and gather information from appropriate sources
- Conduct fair and thorough interviews
- Follow the evidence and pursue appropriate follow-up
- Identify areas of agreement, disagreement, and uncertainty
- Maintain impartiality throughout the investigation
- Create a clear and complete investigation record

The Investigator's job is to find and develop the information the Decision-maker needs to resolve the allegations, not to reach the ultimate determination

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Sous Chef/Head Chef Analogy

- The **Investigator is the sous chef:** They gather, prepare, organize the ingredients—the relevant evidence—so the Decision-maker (DM) has what is needed to evaluate the complaint
- The **Decision-maker is the head chef:** They independently assess the evidence, determine what weight to give it, apply the applicable policy and standard of evidence, and reach the final determination

The quality of the final outcome depends on both roles. A strong investigation gives the DM a reliable foundation for decision-making.

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Required Investigator Training

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Under the 2020 Title IX Regulations, Investigators must receive training on:

- Definition of **sexual harassment** in 34 C.F.R. Section 106.30
- **Scope** of the institution's education program or activity
- How to conduct an **investigation** and Title IX **grievance process**
- How to **serve impartially**, including avoiding:
  - Prejudgment of the facts at issue
  - Conflicts of interest
  - Bias
- **Issues of relevance** to create an investigation report that fairly summarizes relevant evidence
- Investigator training must promote **impartial investigations** and **not** rely on **sex stereotypes**

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Review: Title IX Applicability, Scope, and Definitions

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Understanding What You Are Investigating

Investigators must understand:

- The allegations
- The applicable laws and institutional policies
- The elements of the alleged prohibited conduct
- The scope of the investigation

These elements establish what information the investigation needs to develop

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Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance"

20 U.S.C. § 1681 and 34 C.F.R. Part 106 (1972)

Title IX has always mandated a response to sex discrimination; however, the 2020 Title IX Regulations **only** apply to sexual harassment complaints



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Applicability

- Education program or activity in the United States
- Control over the Respondent
- Control over the context of the harassment
- Applies to both student and employee complaints



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Title IX Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access and Equity

Retaliation

Sexual Harassment

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

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Review: 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

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Review: Sexual Harassment Definitions

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



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ATIXA Model Policy Definitions

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



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Consent

- **Consent is not defined** by the Title IX Regulations, but institutions are required by law to provide a definition (some states prescribe a definition applicable in that state)
- **ATIXA Model 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

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Practice: Thinking Like an Investigator

Professor Chen tells Maya, a student in his course, that he could "make sure" she receives the grade she needs in his course to keep her scholarship if she goes to dinner with him. Maya declines. Two weeks later, she receives a C on an assignment she expected to receive an A on and reports that Professor Chen lowered her grade because she rejected his dinner invitation.

- What information would you need to gather to investigate the allegation?
- What does the definition of **quid pro quo sexual harassment** tell you that you need to understand?

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Formal Grievance Process

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Formal Grievance Process Overview

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INCIDENT	INITIAL ASSESSMENT	FORMAL INVESTIGATION	HEARING	APPEAL
▪ Complaint/ Notice to TIXC	▪ Jurisdiction ▪ Dismissal ▪ Supportive Measures ▪ Emergency Removal ▪ Referral to Another Process ▪ Informal/ Formal Resolution	▪ Notice of Investigation and Allegations ▪ Interviews ▪ Evidence Collection ▪ Draft Report ▪ Party Review/ Comment ▪ Follow Up ▪ Final Report	▪ Questioning ▪ Credibility Assessment ▪ Determination and Rationale ▪ Sanctions ▪ Remedies	▪ Appeal Grounds ▪ Determination and Rationale

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Prompt Resolution

- Grievance processes must include **reasonably prompt time frames**
  - Regulations do not prescribe a specific number of days
  - Follow the time frames established in institutional policy
  - ATIXA Recommends **60 days** as a good guideline
- **Temporary delays or limited extensions** are permitted for good cause
  - Examples include absence of a party, Advisor, or witness; concurrent law enforcement activity; or need for language assistance or disability accommodations
- When a delay or extension is necessary:
  - **Document the reason**
  - **Provide written notice to the parties** explaining the delay or extension and the reason

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Fair Resolution

- Treat all parties **fairly and impartially**
- Provide all parties a **full and fair opportunity to participate** in the investigation
- Approach the investigation with an **open mind**
  - Avoid prejudgment of the facts
  - Avoid bias and conflicts of interest
- Apply investigation procedures **consistently**



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Parties' Rights During the Investigation

- Be accompanied by **Advisor of their choice**
- Discuss the **allegations** under investigation without restriction
- Gather and present relevant evidence without restriction
- Have an **equal opportunity to present witnesses**, including fact and expert witnesses
- Present inculpatory and exculpatory evidence
- Receive written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Review all relevant and directly related evidence before the investigation report is finalized

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Parties' Rights to Review and Respond

- Have an **equal opportunity to inspect and review directly related evidence**
  - Includes inculpatory and exculpatory evidence
  - Includes evidence the institution does not intend to rely upon
- Receive the evidence before completion of the final investigation report
- Have at least **10 days to submit a written response**
- Have the Investigator **consider the response** before completing the report
- Receive the **investigation report** for review and written response at least **10 days** before the hearing

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Investigation Process

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Investigation Overview

- ATIXA's recommended intake and investigation process is comprised of 10 steps over three phases:
  - **Pre-investigation:** Establish the scope and plan for the investigation
  - **Investigation:** Gather evidence, conduct interviews, and pursue appropriate follow-up
  - **Post-investigation:** Review and complete the investigation record
- The Investigator is not responsible for every step in the process



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Intake and Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment and Jurisdiction Determination
3. Determine Investigation Type
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



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Investigation Supervision and Support

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The TIXC provides appropriate support and supervision throughout the investigation, including:

- Clarifying the **allegations, scope, and applicable policies**
- Helping address **procedural questions** that arise during the investigation
- Supporting access to **institutional information, resources, and subject-matter expertise**
- Monitoring **timelines and procedural requirements**
- Addressing **conflicts of interest, bias concerns, or other process issues**
- Consulting with the Investigator about **scope changes or additional allegations** identified during the investigation
- Reviewing the investigation for **completeness and procedural compliance**

Supervision and support should protect the integrity of the process without compromising the Investigator's independence or impartiality

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Pre-Investigation

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Pre-Investigation Overview

Before the formal investigation begins, the institution must determine:

- What information has been reported?
- Does the matter fall within the institution's applicable policy and process?
- What type of investigation is appropriate?
- What allegations and scope will be investigated?
- What initial strategy will guide the investigation?



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Pre-Investigation Steps

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1

Notice/Complaint

2

Initial Assessment and Jurisdiction Determination

3

Determine Basis For Investigation

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Step 1: Notice/Complaint

- Institution receives a report, knowledge, or complaint of alleged discrimination, harassment, or retaliation
- TIXC is point person to receive reports and complaints, including referrals from mandated reporters
- **Report:** Any information that indicates a potential policy violation
- **Formal Complaint:** A written request for the institution to initiate its Formal Grievance Process
  - Signed by the Complainant or the TIXC

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Step 2: Initial Assessment

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TIXC or designee will perform several steps including:

- Outreach and Intake to potential Complainant
- Jurisdictional Assessment
- Sign a Formal Complaint (if applicable)
  - Pattern, Predation, Threat, Violence, Weapons, Minors, Employee Respondent, Complainant not participating or attempting to participate (P/ATP)
- Offer and coordinate supportive measures
- Initiate Emergency Removal or Administrative Leave procedures (if applicable)
- Complete Mandatory or Discretionary Dismissal (if applicable)
- Arrange for Informal Resolution, if requested/appropriate

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Informal Resolution

- Some complaints may be eligible for **voluntary Informal Resolution**
- Informal Resolution may occur anytime **before a final determination**
- The TIXC determines whether Informal Resolution is appropriate to offer
- If Informal Resolution is pursued, the Investigator should clarify with the TIXC:
  - Whether the investigation will **pause or continue**
  - What, if anything, the Investigator needs to do while the process is pending
- If Informal Resolution ends without resolution, the **formal grievance process may resume**

Informal Resolution may change the path or timing of an investigation, but it does not change the Investigator's role

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Step 3: Determine the Investigation Type

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There are three types of (bases for) civil rights investigations:

- **Incident:** A specific incident or period
  - May involve one or multiple alleged violations
    - Sexual Harassment or Retaliation
    - Disparate Treatment on the basis of sex
- **Pattern:** Repetitive or similar behaviors or targets by the same Respondent over a period
  - Tends to involve multiple Complainants
- **Climate/Culture:** Discriminatory policies, processes, and environments
  - 1975 regulatory framework
  - May have no identifiable Respondent

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Investigation Scope

- TIXC determines the scope of the investigation
- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
- Considerations:
  - Collateral misconduct allegations
  - Individual vs. group
  - Multiple Complainants or Respondents
  - Counter-complaints
  - Patterns
- If scope needs to be adjusted during the process, Investigator should consult with TIXC



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Practice: Defining the Investigation

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What we already know:

Professor Chen tells Maya, a student in his course, that he could "make sure" she receives the grade she needs in his course to keep her scholarship if she goes to dinner with him. Maya declines. Two weeks later, she receives a C on an assignment she expected to receive an A on and reports that Professor Chen lowered her grade because she rejected his dinner invitation.

New information:

During the initial assessment, the TIXC learns that another student previously reported that Professor Chen made comments suggesting he could help improve her grade if she spent time with him outside of class. No formal investigation was conducted at the time.

How might this new information affect the type and scope of the investigation?

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Who Can Investigate?

An Investigator must:

- Be appropriately **trained**
- Serve **impartially**
- Be free from **conflicts of interest and bias**
- Have sufficient **capacity** to conduct a prompt and thorough investigation
- Not serve as the **Decision-maker** for the same complaint

Full-Time Investigator(s)

Investigator Pool

External Investigator

Coordinator as Investigator

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Notice of Investigation and Allegations

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Investigation Stages Overview

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Step 4: Notice of Investigation and Allegations

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The NOIA:

- Is provided to all parties simultaneously in writing
- Must be provided with sufficient time to prepare before an initial interview

The NOIA identifies:

- The allegations , including sufficient details known at the time:
  - Identities of the parties
  - Conduct allegedly constituting a policy violation
  - Date and location of the alleged conduct, if known
- Applicable grievance process and procedural information

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Step 4: Notice of Investigation and Allegations (Cont.)

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The NOIA also communicates:

- The **presumption that the Respondent is not responsible** for the alleged conduct
- The parties' right to an **Advisor of their choice**
- The parties' right to **inspect and review evidence**
- Applicable provisions concerning **knowingly making false statements or submitting false information**
- Any additional information required by institutional policy

If new allegations arise during the investigation, the parties must receive notice of the additional allegations

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Updating the NOIA

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The NOIA may need to be updated when:

- Additional allegations arise during the investigation
- Information changes the allegations or applicable policy provisions
- An allegation is withdrawn or no longer within the investigation
- A counter-complaint is initiated
- The original NOIA omitted or inaccurately described an allegation

If information gathered during the investigation suggests that the allegations or scope may need to change, the Investigator should consult with the TIXC before proceeding beyond the existing scope

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Case Study

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Gia and Johnny Case Study

- Gia and Johnny were both first-year students at Poe College
- One night they attended an on-campus party in a residence hall
- While pre-gaming, Gia drank two to three cups of wine, two to three shots of tequila, and a mixed drink containing Sprite and three shots of vodka
- Gia and Johnny arrived at the party an hour after it began
- After leaving the party, Gia and Johnny decided to walk back to Gia's residence hall where they engaged in vaginal penetrative sex
- Midway through the sexual encounter, the condom broke, and Johnny ceased penetration

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Gia and Johnny Case Study (Cont.)

- Johnny informed Gia that the condom broke, told her that he would purchase the morning after pill for her the next morning, and then he left
- Gia was later found on the residence hall bathroom floor by a student and the Resident Assistant (RA)
- After helping Gia back to her room, the RA observed a used condom in Gia's trashcan in her residence hall room
- The RA noted her observation in her incident report, which the Hall Director forwarded to the TIXC

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Gia and Johnny Formal Complaint

- Gia submitted a formal complaint for rape based on her recollection that Johnny refused to use a condom
- Gia told the TIXC that she had been drinking heavily and couldn't remember parts of the night
- The TIXC was also in receipt of the RA's incident report
- However, the TIXC wrote the NOIA by framing the rape allegation around condom use and did not include an incapacitation-based rape allegation

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Gia and Johnny Discussion

Questions:

- What is your evaluation of the relevance of the evidence related to alcohol consumption?
- As the Investigator, how would you handle the possible deficiency in the scope of the NOIA?

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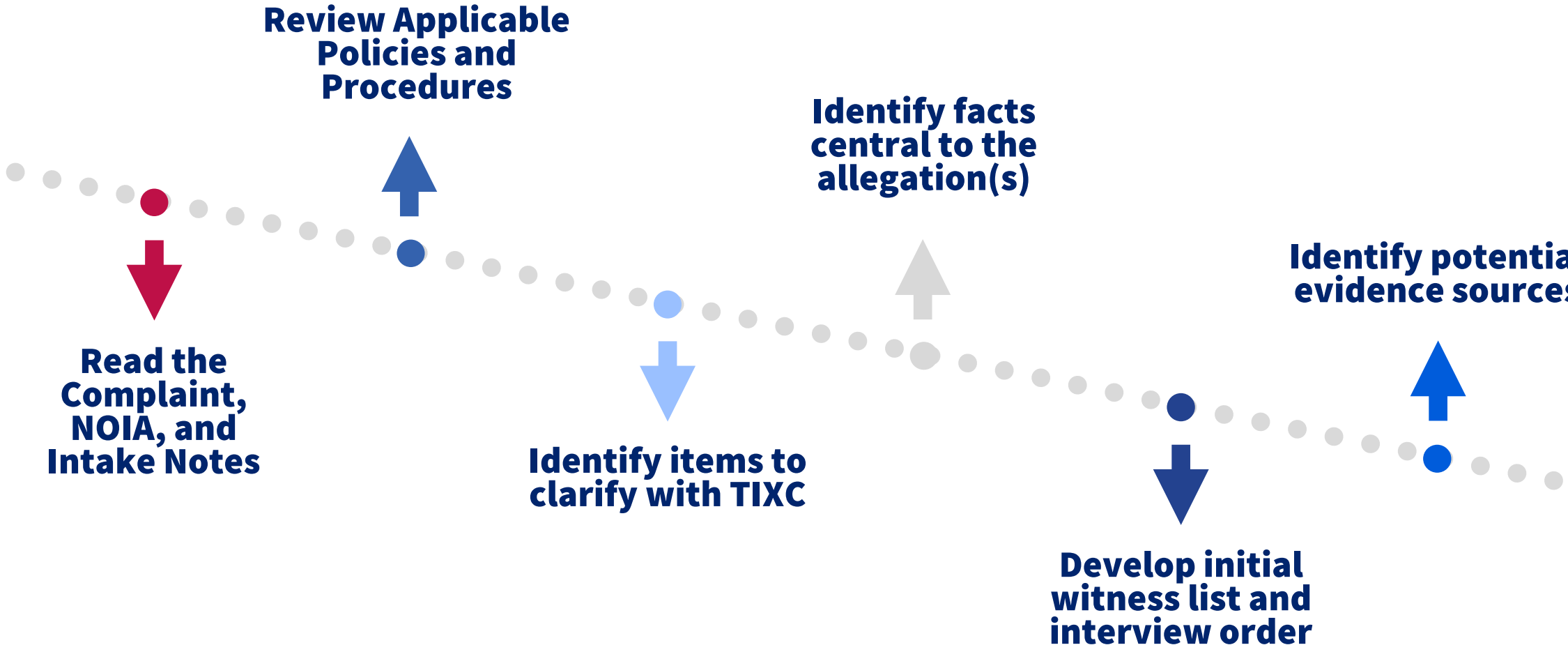
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Investigation Strategy

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Investigation Strategy Breakdown



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Step 5: Investigation Strategy

- Investigation begins with a strategy meeting
  - Investigator(s) and TIXC (or investigation supervisor)
- Review complaint, NOIA, and intake documentation
- TIXC reviews scope with Investigator
  - Identify potential biases or conflicts of interest
  - Clarify roles and responsibilities
    - Interview scheduling
    - Primary contact for Advisors
  - Discuss information sharing



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Strategy Considerations

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Sexual Harassment

- Common understanding vs. Title IX definition
- First Amendment
- Consent Construct
- Credibility
- Limited eyewitnesses
- Bandwagon effect
- Evidentiary limitations

Sex Discrimination

- Pattern and practice
- Climate and culture
- Respondent vs. no Respondent
- Similarly situated comparator
- Non-discriminatory justification
- Statistical and numerical data

Retaliation

- Common understanding vs. Title IX definition
- Back-and-forth interview process
- Protected activity
- Adverse action
- Non-retaliatory purpose
- Evidence of pretext

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Strategy Meeting

- Review elements of the specific policy provision(s) alleged to have been violated
  - Investigators are looking for evidence that speaks to each element
- Develop initial witnesses and tentative interview order
- Discuss challenges with the type of complaint and the parties involved
  - Anticipate allegiances
  - Disrupt possible collusion
  - Predict obstacles and obstructions
- Assess relevant pattern considerations
- Identify preliminary undisputed and disputed facts and their significance
- Other types of possible evidence and the plan to acquire such evidence

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Strategy Meeting (Cont.)

- Establish preliminary investigation timeline
- Consider whether Informal Resolution is available
- Discuss supportive measures, accommodations, and language assistance needs as applicable
- Determine whether Emergency Removal or Administrative Leave is applicable
- Other considerations:
  - Coordination with law enforcement
  - Counter-complaints



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Counter-Complaints

- Respondents may file a **counter-complaint** of sex discrimination, sexual harassment, or retaliation against the Complainant if there is Complainant misconduct that they wish to report
- Reporting other alleged misconduct (e.g., drug dealing, academic misconduct) is not considered a counter-complaint
- Counter-complaints may arise prior to, during, or after the investigation of the original complaint
- If a party mentions (even casually) discrimination or harassment that could serve as a basis for a counter-complaint, but it is unclear if they wish to make a complaint, clarify or have the TIXC contact them to clarify
  - Be wary of the use of counter-complaints for retaliatory purposes

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Coordinating with Law Enforcement

- Law enforcement may also be investigating one or more of the allegations in the Title IX investigation
- Law enforcement may request that the institution pause or stop its investigation; however, the Title IX investigation cannot be unreasonably delayed
  - Pausing for a reasonable time to permit law enforcement to gather evidence is permissible, but offer supportive measures in the meantime
- Criminal investigation cannot substitute for the Title IX investigation



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Activity: Investigation Strategy

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Activity Directions

Read the Strategy Exercise document in the course lobby

- Are there additional policies that may apply?
- Who are the initial witnesses?
- Who do you want to interview and in what order?
- What other sources of evidence may exist?

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Recordkeeping

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Investigation File

The Investigator is responsible for maintaining a complete and organized investigation file throughout the investigation

- The investigation file should include, as applicable:
  - Complaint and related intake materials
  - Applicable policies and procedures
  - Original **NOIA and any updates**
  - **Interview records** for parties and witnesses
    - Verified transcripts or interview notes
  - Information or evidence provided during or following interviews
    - Relevant correspondence

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Investigation File (Cont.)

- **Evidence gathered during the investigation**
- **Evidence log**
- Documentation of significant investigative actions and follow-up

- The investigation file should reflect the work of the investigation from beginning to end
- Investigation file becomes part of the **comprehensive complaint file**
- Title IX-related records must be maintained for a minimum of **seven years**

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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

Date	Time	Contact	Type	Notes	Follow-up/ Resolution
1/25/25	1:00 PM	Sam Smith	Phone	Discussed getting emails from IT	Received emails from IT on 1/26/25
1/27/25	2:00 PM	Sally Harris	Email	Interview Scheduling Request	Interview scheduled for 1/29/25
1/29/25	3:00 PM	Sally Harris	In Person	Investigation Interview	Send transcript for verification

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Evidence Log

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



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Evidence Log Example

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Date	Source	Method of Receipt	Type	Description	Authentication
1/25/25	Sam Smith	Email	Security video footage; USB drive	Elevator video footage from 9:10 – 10:10 PM on 12/10/24	Closed circuit from Public Safety
1/27/25	Sally Harris	Social Media Screenshot	Social Media Screenshot	Post made by Respondent at 9:22 PM on 12/10/24	None
1/29/25	Sally Harris	In Person	Call Record	Phone call log from Complainant's cell phone carrier	Email with attachment from carrier to Complainant

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Investigation Timeline

- Investigators 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
- Often included in the investigation report

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Formal Investigation Overview

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Step 6: Conduct the Investigation



THOROUGH



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IMPARTIAL



PROMPT



FAIR

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Evidence Gathering Throughout the Investigation

- Evidence gathering is an active and ongoing process
- Identify potential sources of information
- Gather evidence from parties, witnesses, institutional sources, and other available sources
- Seek to verify/authenticate evidence obtained
- Document efforts to gather, even when not successful
- Continue identifying and pursuing evidence as the investigation progresses

What are the most common types of evidence in your investigations?

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Pre-Interview Planning Logistics

- Before scheduling interviews, consider:
  - Location
    - Virtual vs. in-person
    - Accessibility
  - Scheduling constraints
  - Participants
  - Preparation
- Must provide written notification to parties with sufficient time to prepare
  - Date, time, location, participants, and purpose
- Cannot mandate interview participation for any student or employee

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Interview Scheduling and Sequencing

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- Conduct interviews as promptly as possible to capture fresh recollections (but not before NOIA)
- Schedule ample time to complete the interview, review notes, and document necessary next steps
  - Consider Investigator mental capacity attention span (e.g., “Zoom fatigue”)
  - Allow time for breaks and meals or snacks
- 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

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Interview Preparation

- Review all available documentation and evidence
- Use policy elements to determine types of evidence that would help a Decision-maker (DM) determine whether each policy was violated
  - Example: “without consent”
    - Evidence that Complainant gave consent or could not give consent
- Identify what you know, what you still need to know, and what this interview may help you understand
  - Investigator should not passively accept what an interviewee wants to share, but actively gather evidence that will prove or disprove the allegations of the complaint

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Interview Preparation (Cont.)

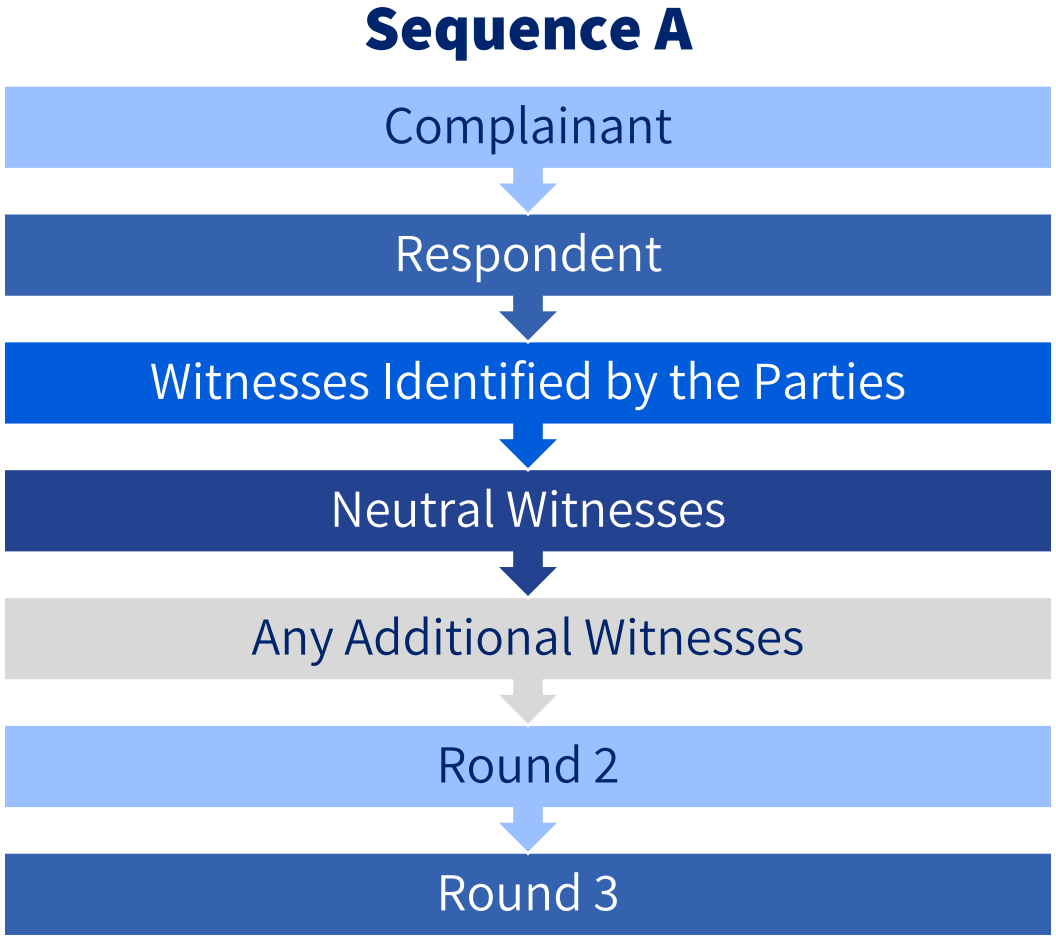
- Develop initial questions for each party and witness based on their anticipated knowledge and the information or evidence they may be able to provide
  - Relationships to the parties, other witnesses, and relevant events
  - Direct observations or firsthand knowledge
  - Information learned from others
  - Relevant communication: with whom, when, and what was communicated
  - Potential courses of additional information

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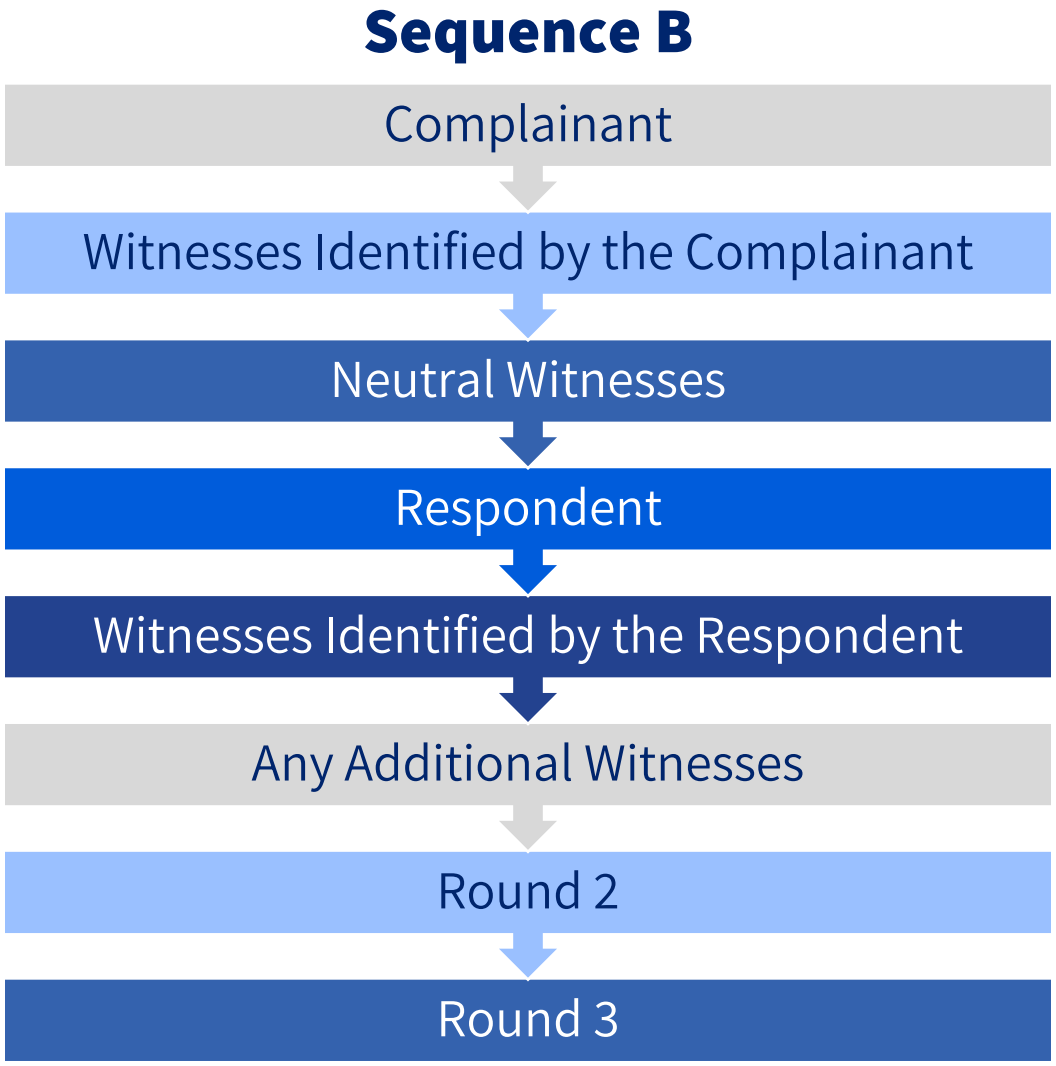
Sample Interview Sequences – Sequence A

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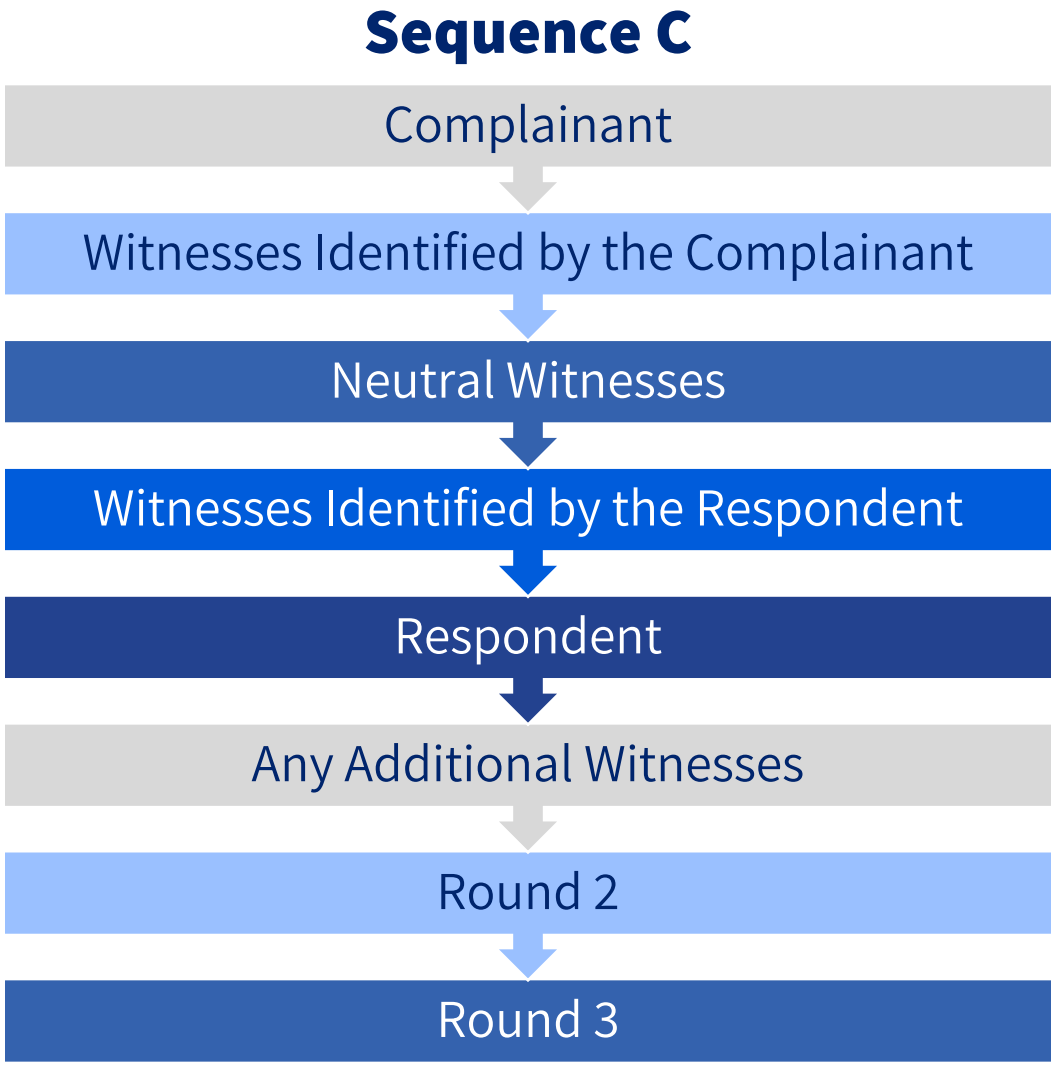
Sample Interview Sequences – Sequence B



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Sample Interview Sequences – Sequence C



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Information Sharing

- Information-sharing practices must balance transparency, privacy, and strategy, as well as the parties' rights
  - Often sharing more information during the investigation garners more information
    - Investigators may have to give to get, but be judicious in what is shared
- The parties will have access to all relevant and directly related evidence at the conclusion of the investigation
- Witnesses:
  - May have limited or no knowledge about the complaint itself
  - May or may not know the parties or other witnesses
  - Some information sharing will be necessary, but be circumspect and don't make assumptions that witnesses already know certain facts

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Party and Witness Privacy Concerns

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Privacy vs. **Confidentiality** vs. **Privilege**

1

PRIVACY

Statutory protection (FERPA) only allows disclosing records to those who need to know, but cannot guarantee confidentiality

2

CONFIDENTIALITY

Information protected by those who need not report to the TIXC because they are designated confidential or have ethical/statutory confidentiality duties (subject to exceptions)

3

PRIVILEGE

The highest legal protection (attorney giving advice to a client or clergy providing pastoral advice); client/ patient/parishioner controls the privilege

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Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice
- “Of choice” truly means anyone
- Investigators may establish participation ground rules, if applied equally to the Parties’ Advisor
- Advisor availability may not unreasonably delay the process



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Building Rapport

GOAL: Interviewee trusts that Investigator is neutral and impartial

- Investigators can help set the tone for a productive interview
- Maintain professionalism
- Provide transparency about expectations and the process
- Balance neutrality with human 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

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Understanding Trauma

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity
  - Acute, chronic, or complex
  - Neurological, biological, psychological, social, and emotional impacts
  - Developmental, intergenerational, historical, secondary, vicarious, or collective
  - Responses to trauma can vary, depending on a variety of factors
- Provide all persons with support that makes Title IX services and processes accessible, including those who may have experienced trauma

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Trauma-Informed Principles

- **Key principles of trauma-informed practice:**
  - Safety
  - Trustworthiness and transparency
  - Collaboration and mutuality
  - Empowerment, voice, and choice
  - Cultural and historical context
- **ATIXA Position Statement:** Application of trauma-informed practices in our field has gotten way ahead of the actual science
  - **ATIXA Recommendation:** Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
  - Trauma-informed practices should not significantly influence evidence evaluation

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“The Spiel”
The Process and Investigator Role

- 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
- Recording/notetaking practices
- Commitment to privacy
- Witness-specific information
- Post-interview steps
- Interview expectations
- Relevant policies
- Acknowledge difficulty
- Retaliation reminder

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Activity: Practicing Your Spiel

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Interviewing Skills

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Primary 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 (use caution)



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Interviewing Considerations

- Prepare questions in advance
  - Open-ended questions designed to elicit narrative responses
  - Listen to answers before asking additional questions
  - Note discrepancies or areas for follow-up
- Use active listening skills
  - Eye contact
  - Head nodding
  - Summarization/restating
- Avoid tangents or distractions
- Insert logical additional questions flowing from interviewee's answers

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Questioning Considerations

- An interview is a conversation designed to elicit information in a non-accusatory manner
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; answer 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

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Questioning Tips

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



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Questioning Techniques

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Following
vs.
Leading



Explaining
vs.
Defending



Clarifying
vs.
Challenging



Curiosity
vs.
Suspicion

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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, expectation of truthfulness
- Avoid statements reflecting moral judgment

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Wrap-Up Interview Questions

- “Is there anyone else that you think we should talk to?”
- “Are there any questions you expected, but that we didn’t ask?”
- “Is there anything else you think we need to know?”
- “What questions should I pose to other witnesses/parties?”
- **FOR THE PARTIES:** “Are there any questions that you would like us to ask any witness or other party?”
- 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

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Interview Documentation and Review

- Maintain interview transcripts or written summaries
  - **Transcript:** Word-for-word documentation of a recorded interview
  - **Summary:** Investigator's summation of 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

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Activity: Developing Questions

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Directions for Developing Questions

- Refer back to the **Strategy Exercise** in the course lobby
- Begin developing interview questions based on the complaint, intake notes, and policy language provided

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Evidence

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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
- Collect **all** relevant and reasonably available evidence
- Relevant evidence forms the basis of the investigation report



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

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Privileged and Medical Information

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

- Evidence protected under a legally recognized privilege
- Treatment-related records made or maintained by:
  - Physician
  - Psychiatrist
  - Psychologist
  - Other recognized professionals/ paraprofessionals



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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
  - If offered to prove consent with respect to prior consent with the Respondent
  - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Both exclusions apply even if admitted/introduced by the Complainant
- Exclusions do **not** apply to Respondent's prior sexual behavior or predisposition

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Evidence Authentication

- Not all evidence has the same degree of credibility
  - Less credible evidence may be less reliable evidence
- Investigator should seek the **highest quality evidence** available
- Investigator should try to **authenticate all evidence** provided
  - Check for possible evidence fabrication or alteration
  - Corroborate information between witnesses
  - Try to obtain complete, rather than partial, records when possible
  - Test assertions to verify accuracy when possible
    - Example: “I don’t remember if I wore a condom, but the condom in my wallet is no longer there”

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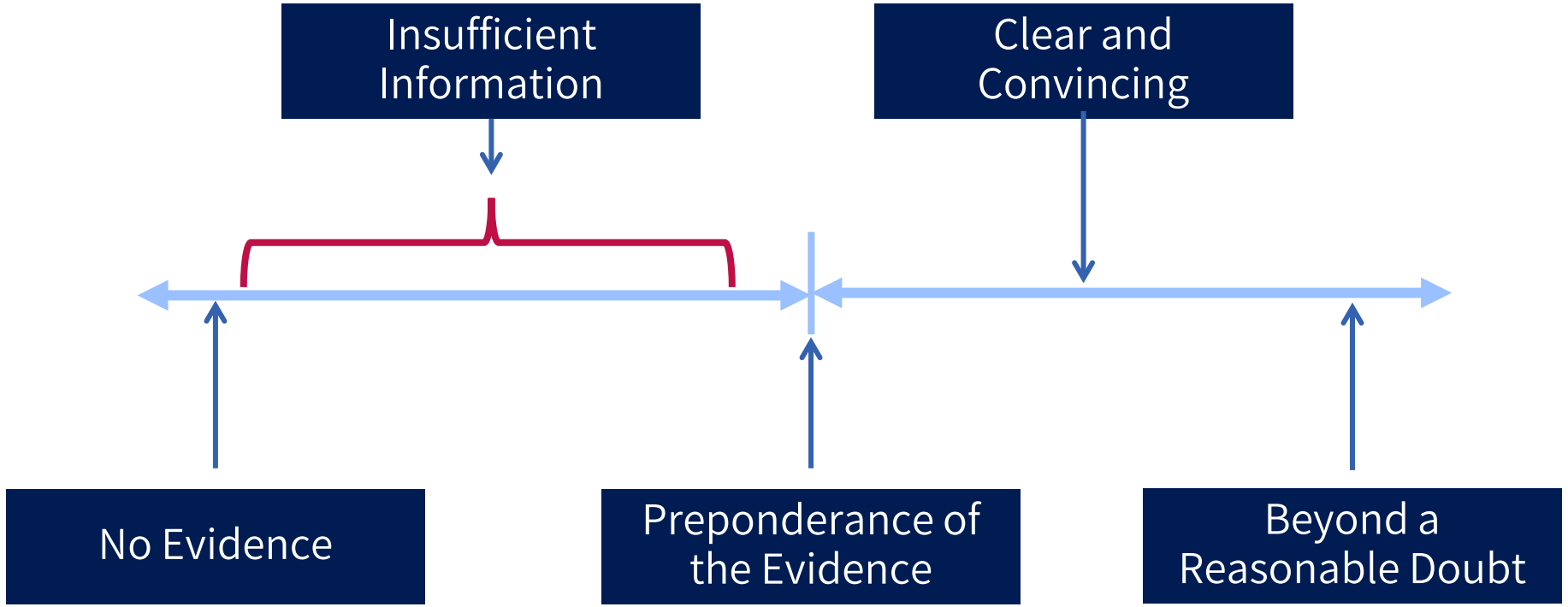
Standard of Evidence

- **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, including faculty
- Investigator must be familiar with the standard in institutional policy
- ATIXA recommends the preponderance of the evidence standard

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Standard of Evidence Spectrum



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

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Credibility Considerations

- Credibility considerations help identify factors that may affect the **reliability of relevant information**
- Primary considerations are **consistency** and **corroboration**
- Inconsistencies do not necessarily mean that information is unreliable
  - Consider whether differences are **material** and whether there are reasonable explanations
- Credibility is not synonymous with a person being “truthful” or “honest”
- Avoid character judgments such as “lying,” “honest,” “deceitful,” or “sincere”
- Use significant caution if relying on demeanor to determine credibility

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Primary Credibility Factors

Corroboration

- Aligned testimony and/or physical evidence

Consistency

- Is a person's account consistent over time?

Inherent Plausibility

- Does the explanation 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?



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Practice: What Matters for Credibility?

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Julian tells the Investigator that he left the party at approximately 11:30 p.m. and saw Millie sitting alone on the front porch as he left

- Later, the Investigator learns:
  - Julian initially told a friend he left around midnight
  - A rideshare receipt shows Julian's ride was requested at 11:47 p.m.
  - Julian and Millie have been close friends for several years
  - Julian became visibly nervous when asked whether he had consumed alcohol that evening
  - A photo timestamped 11:42 p.m. appears to show Millie inside the house

Which information warrants further exploration when considering the reliability of Julian's account? Why?

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Complaint Analysis Tools

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Sexual Harassment Charging Rubric

- "Sexual harassment" is an umbrella term, though it is often thought of as a specific charge for hostile environment harassment
- A Hostile Environment/SPOO analysis (severe, pervasive, and objectively offensive) **is never needed for a sexual assault allegation**
  - Sexual Assault = SPOO by definition
  - If sexual assault is found to have occurred, sexual harassment (umbrella term) is automatically proven
- There may be a separate sexual harassment (hostile environment) charge alongside a sexual assault charge when the allegations arise from separate facts

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Evaluating Sexual Harassment Rubric

- Unwelcomeness is considered from a subjective lens
- Generally considered a “self-proving” element when a Complainant says the conduct was unwelcome
  - Includes a quid pro quo situation
- Investigators should primarily be focused on the “severe, pervasive, and objectively offensive” elements of sexual harassment

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Consent Construct: Three Questions

1. Did the Respondent use **force** used 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?

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Artificial Intelligence (AI) and Investigations

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Generative AI in Investigations

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Generative AI may assist with some investigation tasks, but it does not replace the Investigator's judgment or responsibilities

- AI tools may assist with tasks such as:
  - Generating ideas for interview questions or follow-up
  - Organizing or summarizing information
  - Transcription or note-taking
  - Drafting or editing language
- AI-generated content may be **inaccurate, incomplete, biased, or misleading**
- Investigators remain responsible for the **accuracy and integrity of their work**
- Use AI only as permitted by the TIXC

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AI Use by Parties and Witnesses

- **Parties and witnesses may use AI in ways that affect the investigation**
- AI may be used to:
  - Draft or revise written statements
  - Prepare for interviews
  - Summarize communications or other materials
  - Generate or modify text, images, audio, or video
- When appropriate, Investigators may ask whether and how AI was used

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AI Use by Parties and Witnesses (Cont.)

- Consider whether AI use affects:
  - The **source** of the information
  - The individual's **personal knowledge or recollection**
  - The **accuracy or authenticity** of submitted material
  - Whether additional information or verification is needed
- **AI use alone does not establish that information is inaccurate or unreliable**

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Investigation Report

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Step 7: Draft Investigation Report

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Title IX requires a written investigation report that fairly summarizes relevant evidence

- The investigation report organizes the investigative record so the DM can understand and evaluate the relevant evidence
  - Accurately and fairly summarize the relevant evidence
  - Organize the evidence around the allegations and applicable policies
  - Clearly identify areas of agreement, disagreement, and uncertainty
- ATIXA recommends sharing draft report in Step 9 when the parties are entitled to review the evidence

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What Does the DM Need?

- Complaint Information
- Allegations
- Applicable Policies and Relevant Definitions
- Investigation Timeline
- Relevant Background
- Incident Timeline
- Relevant Evidence Summary
- Credibility Assessment
- Analysis



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Drafting, Reviewing, and Finalizing the Investigation Report



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Step 8: Internal 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
- Institutions may elect to complete this review after the parties' review or have two separate TIXC/legal counsel reviews



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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 Recipient 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

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Review and Response

Review and response may include:

- Suggested additional witnesses
- Suggested additional questions for parties or witnesses
- Additional evidence for review
- Clarification of earlier statements
- Correction of misinformation
- Argument that evidence is relevant or not



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Step 10: Final Investigation Report

- Institutions determine the final investigation report review process
  - Once finalized, the investigation report is distributed simultaneously to the parties and their Advisors
  - The Title IX office provides the report and directly related evidence file to the DM(s)
- Parties and Advisors will be sent the final investigation report for review at least 10 days prior to the hearing

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Post-Investigation: Decision-Making and Hearings

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Decision-Making Overview

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INCIDENT	INITIAL ASSESSMENT	FORMAL INVESTIGATION	HEARING	APPEAL
▪ Complaint/ Notice to TIXC	▪ Jurisdiction ▪ Dismissal ▪ Supportive Measures ▪ Emergency Removal ▪ Referral to Another Process ▪ Informal/ Formal Resolution	▪ Notice of Investigation and Allegations ▪ Interviews ▪ Evidence Collection ▪ Draft Report ▪ Party Review/ Comment ▪ Follow Up ▪ Final Report	▪ Questioning ▪ Credibility Assessment ▪ Determination and Rationale ▪ Sanctions ▪ Remedies	▪ Appeal Grounds ▪ Determination and Rationale

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Decision-Making

- Separate Decision-maker(s) who is not the TIXC or Investigator for sexual harassment allegations; may use a different structure for other types of complaints
- **Decision-making models situate the Investigator role in three ways:**
  - Investigator as evidence gatherer
  - Investigator as evidence synthesizer
  - Investigator as determination recommender
- **DM relies heavily on the work of the Investigator to determine:**
  - Relevance of all evidence
  - Credibility of all evidence
- DM determines whether the Respondent violated policy, and if so, what sanctions or remedies are appropriate and necessary

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Live Hearings

- All sexual harassment complaints must be resolved through a live hearing unless an Informal Resolution is reached
- Investigator may be asked to participate as a witness in the live hearing and be questioned by the DM(s) and/or parties through their Advisors
  - Example: Why did you decide some evidence relevant; other evidence was not?
- DM manages the hearing and questioning to limit to relevant evidence
- Hearing can be held in a physical location or virtually
- Must record hearing or create transcript

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Written Determinations

- **Written Determination**
  - Authored by DM(s)
  - TIXC/Legal counsel reviews
  - TIXC communicates to the parties simultaneously in writing
- **Finality**
  - On the date the Recipient 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
- 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

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Appeals

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Appeal Overview

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INCIDENT	INITIAL ASSESSMENT	FORMAL INVESTIGATION	HEARING	APPEAL
▪ Complaint/ Notice to TIXC	▪ Jurisdiction ▪ Dismissal ▪ Supportive Measures ▪ Emergency Removal ▪ Referral to Another Process ▪ Informal/ Formal Resolution	▪ Notice of Investigation and Allegations ▪ Interviews ▪ Evidence Collection ▪ Draft Report ▪ Party Review/ Comment ▪ Follow Up ▪ Final Report	▪ Questioning ▪ Credibility Assessment ▪ Determination and Rationale ▪ Sanctions ▪ Remedies	▪ Appeal Grounds ▪ Determination and Rationale

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Appeal Grounds

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

Institutions have the discretion to add additional appeal grounds

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Appeal Decision Maker and Outcomes

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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)
- Cannot be TIXC or serve another role in the same complaint resolution

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Questions?

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Stay Connected to ATIXA's Community

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- Attend the next recommended training: **Title IX Investigation Foundations Level Two: Investigation Skills and Report Writing for Higher Education**
- Exchange ideas through the **ATIXA Listserv**
- Build skills with **20-Minutes-to…Trained** videos
- Get practical guidance at **Time with IX**
- Streamline your work with **TIXKit** templates
- Schedule a **Training and Certification**
- Expand your network in **Mentor Match**
- Explore **Thought Leadership** from ATIXA experts
- Stay informed with the **"More Likely Than Not" Podcast**

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