



Association of  
Title IX Administrators

# **Title IX Coordinator Foundations Level Two: Sex Discrimination for Higher Education**

Training and Certification Course

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# Content Advisory

The content and discussion in this course will necessarily engage with sexual, harassment, sex discrimination, sexual violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

# Introduction



This training focuses on Title IX compliance responsibilities and techniques to stop, prevent, and remedy sex discrimination.



Participants will explore several areas of an institution's program or activity from which complaints of sex discrimination historically originate.



Our goal is to provide an in-depth understanding of a Title IX Coordinator's roles and responsibilities to assess and address program-wide sex equality concerns.

# Update on the 2024 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety
  - The 2024 Title IX Regulations are now “off the books” and **not** in effect for **any** state, institution, or school effective immediately
- Implications:
  - All federal funding recipients are now subject to the 2020 Title IX Regulations
    - Revert to **2020-compliant** policies for sexual harassment
    - Ensure sex discrimination is covered under policy
  - Consult with legal counsel on strategies for handling completed and ongoing complaints initiated under the 2024 Regulations
  - Ensure compliance with all 1975 and 2020 regulatory requirements

# Introduction to Title IX Compliance

# Title IX and Fairness

- Title IX is a sex equality law
- Focuses on increasing access by reducing disparities and barriers to increase access
  - Title IX imposes a duty on institutions to stop, prevent, and remedy the inequities created by sex discrimination

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



# Essential Compliance Elements

The requirements to **Stop, Prevent,** and **Remedy** guide Title IX Coordinators in their compliance work

**1**

**STOP** discriminatory conduct

**2**

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

**3**

**REMEDY** the effects of discrimination, on both individual and institutional levels

# Title IX Compliance Oversight

## Who is the Title IX Coordinator (TIXC)?

- Role mandated by Title IX regulations
- Oversees institutional Title IX compliance
- Responsibilities fall into two categories:
  - Responding to reports or complaints of sexual harassment and sex discrimination
  - Leading efforts to ensure sex equality across the entire institution



# Title IX Compliance Oversight

## Responsibilities:

- Manage policy and procedures prohibiting sex discrimination and sexual harassment
  - Ensure institution acts reasonably to **stop, prevent, and remedy**
- Provide notification of nondiscrimination and Title IX information to current and prospective students and employees, including union/contract employees
- Develop and maintain accurate web and print-based Title IX publications
- Train institutional employees on Title IX compliance
- Recruit, supervise, and train Title IX Team
- Serve as point person for all reports and complaints

# Title IX Compliance Oversight

- Oversee Grievance Process and institution-wide programs
- Track systemic issues or patterns
  - Take remedial action to prevent recurrence
- Assess compliance efforts and program effectiveness
  - Create and disseminate annual compliance report (best practice, not a requirement)
- Update institutional leadership on Title IX issues
- Liaise with institutional legal counsel
- Create/maintain records
- Respond to government inquiries/investigations

# Office for Civil Rights (OCR) Oversight

- OCR enforces Title IX compliance
- Conducts compliance reviews
  - Responds to complaints
- Reasons for OCR investigations
  - Athletics issues
  - Investigations regarding single-sex programming
  - Failure to accommodate pregnant individuals
  - Failure to stop, prevent, and remedy
  - Failure to investigate



# Title IX Coordinator and OCR

- TIXC serves as the point person for OCR inquiries
  - If OCR makes contact, loop legal counsel and other stakeholders, such as public relations, president's office, etc.
- OCR investigations involve document collection and interviews
- Responding to OCR complaints is a resource-intensive process
  - Costs money, time, resources, and reputation
  - Also adds significant levels of stress
- OCR is also a resource for TIXCs
  - Program Legal

# **Evolving Title IX Compliance**

# Executive Orders (EOs)

- Defending Women from Gender Ideology Extremism
  - Defines sex as a binary concept – man or woman
  - Awaiting ED guidance re: implementing this EO
  - Limits *Bostock*'s holding, says it only applies to Title VII
  - Prohibits federal funds and grants from promoting gender ideology
- Keeping Men out of Women's Sports
  - Prohibits transgender women from playing women's sports
  - Threatens withdrawal of federal funds
  - Take enforcement actions under Title IX
- Courts have paused or may pause some of these elements from enforcement and it remains an evolving situation



# EOs 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 LGBTQI+ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49<sup>th</sup> Anniversary
- Confronting LGBTQI+ 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"

# OCR Guidance

- Dear Colleague Letter: February 14, 2025
  - ED interprets *Students for Fair Admissions v. Harvard* to bar institutions from using race in decisions pertaining not only to admissions, but also:
    - Financial aid and scholarships
    - Administrative support
    - Discipline
    - Housing
    - Graduation ceremonies
    - All other aspects of student, academic, and campus life
  - Relying on non-facial information as a proxy violates the law, too
  - ED gave a deadline of 14 days from the date of the letter to comply
- FAQ issued on February 28, 2025

# Considerations for Compliance

- State law
- Appetite for litigation
- Institutional and community values
- Physical layout of buildings and capacity for capital improvements
- Athletics conference rules



# Title IX Scope

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# Title IX: Scope

## Sex Discrimination

- Inequitable Treatment
- Exclusion from participation

## Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
- Dating Violence
- Domestic Violence
- Stalking

## Retaliation

# Discrimination

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# Discrimination Defined

- The act of treating an individual differently, or less favorably, based upon specific or perceived protected characteristics
  - Discomfort vs. discrimination

**1**

**Can be connected to prejudice**

**2**

**Can be intentional or unintentional**

**3**

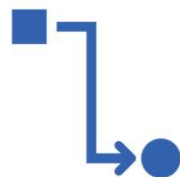
**Always based on a protected characteristic**

# Types of Discrimination



## Disparate Treatment

- Intentional
- Usually requires adverse action
- Affiliation or perception of affiliation with protected characteristic



## Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups



## Harassment

- Quid Pro Quo
- Hostile Environment



## Retaliation

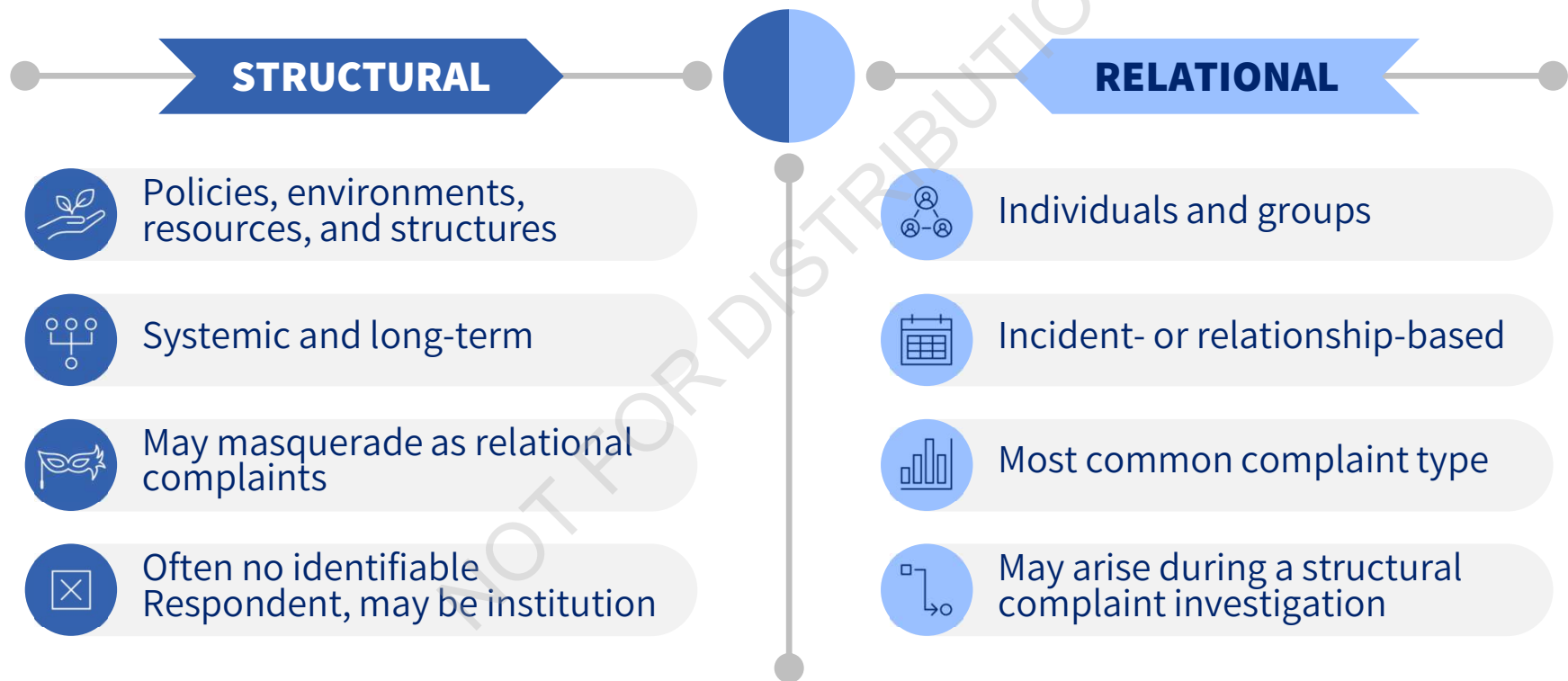
- Prohibited if engaged in protected activity
- Suffered adverse academic or employment action



# Discrimination-Related Concepts

- **Protected Characteristic:** Personal trait that cannot be used to discriminate against someone as determined by law or policy (e.g.: sex)
- **Adverse Action:** An action taken against an individual that negatively impacts their access or participation in the institution's education program and activity
- **Pretext:** Occurs when an adverse action occurred for discriminatory reasons, but an individual nonetheless asserts that there was a legitimate reason for the action
- **Similarly Situated Comparator:** A person is similarly situated if it is reasonable to expect that they would receive the same treatment as the Complainant, within context
  - Does not mean identically situated

# Types of Complaints



# Types of Discrimination: Disparate Treatment

# Disparate Treatment

Disparate Treatment exists when an individual treats another person **differently**, or takes an **adverse action**, because of that person's identity, such as sex

Examples:

- Hiring
- Promotion/Performance reviews
- Pay
- Responsibilities/Job assignments
- Shifts
- Access to resources
- Athletics
- Grading
- Program access
- Student conduct outcomes

# Adverse Action Examples

- Not hiring/demotion/termination
- Promotion/Tenure denial
- Poor performance reviews
- Less desirable work assignments
- Work-related threats
- Supervisory responsibility removal
- Abusive verbal or physical behavior
- Discipline
- Denial of leadership opportunity
- Unfair grading
- Pay and compensation disparity
- Resource inaccessibility
- Remedy inaccessibility
- Opportunity denial

# ATIXA's Model Policy Definition

## Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived Protected Characteristic and that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a Recipient program or activity

# Disparate Treatment Construct

**Step 1:** Does the complaint satisfy the required elements for a disparate treatment complaint?

**Step 2:** Does the Respondent offer a non-discriminatory reason for the adverse action?

**Step 3:** Is there evidence that the offered reason is pretext for discrimination?

# Initial Considerations

**Step 1:** Does the complaint satisfy the required elements for a disparate treatment complaint?



1(a)

Does the complaint implicate a protected characteristic?



1(b)

Does the complaint identify an adverse action?



1(c)

Does the complaint assert that the protected characteristic status caused the adverse action?



# Step Two: Non-Discriminatory Reason

## Collect evidence related to any alleged non-discriminatory reason

- Interview the Respondent about the allegations to elicit an explanation:
  - Ask about the **why** behind the alleged adverse action or disparate treatment
    - “Why didn’t Sally get tenure?”
    - “Why did John get tenure when Sally didn’t?”
  - Gather any evidence that supports the stated reason(s)
- Investigator should seek corroboration of any offered non-discriminatory reason(s)
  - Analyze the Respondent’s offered reason in light of relevant evidence
    - Statistical evidence may also be used to rebut a discriminatory motive

# Step Three: Pretext Analysis

- If the Respondent offers a non-discriminatory reason for the adverse action, the Investigator must then seek relevant evidence to determine if that reason is “legitimate”
  - **Pretext** occurs when an adverse action occurred for discriminatory reasons, but an individual nonetheless asserts that there was a legitimate reason for the action
  - Is the Respondent’s stated reason just pretext for discrimination?
- Provide the Complainant with an opportunity to respond to the Respondent’s reasoning
  - Use follow-up interview to identify any evidence to rebut the Respondent’s reasoning
    - Direct evidence
    - Other witnesses or documents
- Consider other sources to thoroughly investigate whether the reasoning is pretextual

# Investigating Disparate Treatment

## Some evidence must connect the adverse action to the protected characteristic

- Direct evidence of a connection
  - Documents or witnesses who have evidence of discriminatory intent/animus
  - Can also be circumstantial or indirect evidence
- Comparison to “similarly situated individuals” (SSI) can be helpful
  - SSIs are outside the protected characteristic group and treated differently than those in the protected group
  - Any individual is “**similarly situated**” if it is reasonable to expect that they would receive the same treatment as the Complainant, within context
  - Fact-specific analysis

# Gathering Evidence

- Similarly situated does not mean identically situated
  - **Most relevant** comparisons based on the available evidence
  - Evidence of differential treatment of similarly situated individuals creates an inference of the presence of a discriminatory motive
- It is the responsibility of the institution to gather relevant evidence once an initial showing of disparate treatment has been made



# Statistical Evidence

## Statistical evidence could be important for an alleged pattern or practice of discrimination

- Example: A professor alleges his department chair implemented a hiring process that is biased against males
  - Consider the identities of the department chair's hires against the overall applicant pools in those hiring cycles
  - 75% of applicants are male identifying but comprise only 25% of hires
- Common in disparate impact complaints, too



# Types of Discrimination: Disparate Impact

# Disparate Impact

- Disparate impact exists when “neutral” policies and practices have discriminatory impact
- Complex investigations
  - Often examines culture/climate
- High level statistical analysis
  - Validity studies
  - Programmatic necessity
- Examples: effect of hiring, admissions, or disciplinary processes, even when conducted in a facially neutral way
- Focuses on remedies, not sanctions



# ATIXA's Model Policy Definition

## Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
  - Excludes a person from participation in;
  - Denies the person benefits of; or
  - Otherwise adversely affects a term or condition of a person's participation in a Recipient program or activity



# Disparate Impact Complaints

- First, determine whether adverse outcomes of a policy or practice have a disproportional impact on members of a certain group
- Second, determine whether there is an educational necessity for the policy or practice and no alternative could have achieved the same goal without having a discriminatory impact
- Common Examples:
  - Student or employee discipline processes
  - Hiring processes
  - Housing policies

# Disparate Impact Complaints

- Often disparate impact complaints will not have an identifiable Respondent
  - Usually, the institution or a proxy will be the named Respondent
- If a disparate impact is identified, consider whether the Title IX Coordinator can take direct action to resolve the problem



# Types of Discrimination: Retaliation

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# ATIXA's Model Policy Definition

## Retaliation:

- The institution or any member of the institutional community,
- Taking or attempting to take materially adverse action,
- by intimidating, threatening, coercing, harassing, or discriminating against any individual,
- For the purpose of interfering with any right or privilege secured by law or Policy, or
- Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Policy and associated procedures.

# Retaliation Complaints

**Step 1:** Does the complaint satisfy the required elements for a retaliation complaint under Title IX?

**Step 2:** Does the Respondent offer a non-retaliatory reason for the adverse action?

**Step 3:** Is there evidence that the offered reason is pretext for discrimination?

# Step One: Complaint

**Step 1:** Does the complaint satisfy the required elements for a retaliation complaint under Title IX?



1(a)

Does the complaint implicate a protected activity involving sex?



1(b)

Does the complaint identify an adverse action?



1(c)

Does the complaint assert that the adverse action was because of the protected activity?

# Causation Element

- If there is protected activity and adverse action, move on to the next step:
  - **Does a causal connection exist between the two?**
- While causation is required, **direct** evidence of motive or intent is not required
  - Often only indirect evidence is available
  - Consider whether the individual taking the adverse action knew of the protected activity
- Direct evidence
  - Supervisor told a peer, “I want to teach Davey a lesson about complaining”
- Indirect evidence
  - Close timing between protected activity and adverse action
  - A Respondent posting “lol got him” after Complainant’s car was keyed

## Step Two: Non-Retaliatory Reason

- If the initial assessment in Step One does not establish the required complaint elements, end the inquiry
  - Consider dismissal and/or referral to a different process or office, as appropriate
- If an initial case of retaliation is established, the complaint moves forward
  - Step Two and Step Three roughly correspond to the investigation phase





# Step Two: Non-Retaliatory Reason

- Interview the Respondent about the allegations:
  - Ask about the **why** behind the adverse action
    - “What led to the decision to deny Sally’s tenure application?”
    - “Describe what led to the student receiving a C+ in your class”
  - Gather any evidence that supports their rationale
    - Respondent may need to direct the Investigator to potential sources for that evidence, rather than providing it themselves
- Investigator should seek corroboration of any offered non-retaliatory reason(s)
  - Analyze the Respondent’s reason(s) in light of relevant evidence

# Step Three: Pretext Analysis

- **Pretext** occurs when an adverse action occurred for retaliatory reasons, but the Respondent nonetheless asserts that there was a legitimate reason for the action
- When determining whether an alternative explanation for the adverse action is pretextual, consider whether:
  - The explanation makes sense
  - Other actions taken are inconsistent with the explanation
  - The explanation is inconsistent with past policy or practice
  - There is evidence of other individuals being treated differently in similar situations
  - There is witness testimony, including experts
  - The timeline of events aligns

# Techniques for Assessing Pretext

- Always provide the Complainant with the **opportunity to respond** to the Respondent's non-retaliatory reason
  - Complainant may have evidence or be able to suggest evidence to rebut Respondent's position as **pretext**
  - Investigator's responsibility to investigate pretext
- When a conflict between Respondent's position and Complainant's position arises, seek corroborating evidence
  - Coworkers or other students may be able to verify
  - Documents or testimony of senior officials may verify a policy or practice
- Analyze credibility of all parties' positions and the evidence they provided

# Non-Retaliatory Reasons

- Poor academic or work performance
- Inadequate qualifications for role or position
- Other candidates are better qualified
- Evidence of misconduct and/or history of misconduct
- Insubordination
- Budget cuts or hiring freezes
- Does not qualify for requested accommodation or adjustment

# Activity: Is it Sex Discrimination?

# Student-Athlete Curfew 1

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want [the] girls to be safe”
- The men's volleyball coach does not make the same request

**Is this discrimination?**

**If so, what type of discrimination is it?**

# Student-Athlete Curfew 2

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want [the] girls to be safe”
- The men's volleyball coach does not make the same request

**What if the women's coach has never made curfew a team rule or disciplined any curfew violations?**

# Student-Athlete Curfew 3

- The women's volleyball coach has been at the institution for five years
- Each year, he reminds his players to “get to [their] rooms by 10:00 p.m.” because “nothing good happens after 10:00 p.m., and I want [the] girls to be safe”
- The men's volleyball coach does not make the same request

**What if the women's coach makes 10:00 p.m. curfew a team rule and will discipline or dismiss players that violate curfew?**



# Best Practices for Supporting Pregnancy or Related Conditions

# 1975 Title IX Regulations

## Recipient may not:

- Discriminate in its education program or activity against any student or employee based on
  - pregnancy
  - childbirth
  - false pregnancy
  - termination of pregnancy
  - recovery therefrom
- Adopt a rule which treats a student or employee differently on the basis of their actual or potential **parental, family, or marital status**
- Applies to applicants for admission and employment

PWFA and PUMP Act may provide rights and protections for pregnant employees, too

# Best Practices: Scope

## Individuals and Status:

- Students
- Employees
- Pregnancy and related conditions
- Family status
- Marital status
- Parenting status
- “Head of household”

## Non-Discrimination Mandate:

- Academics and access to course offerings
- Admissions
- Athletics
- Employment, Recruitment, and Hiring
- Extra-curricular activities
- Facilities
- Financial Assistance
- Funding
- Lactation space and time
- Health Insurance
- Housing
- Leaves of Absence
- Salaries and Benefits

# Best Practices for TIXC Oversight



**Documentation**



**Policies,  
Practices, and  
Procedures**



**Resolution  
Process**



**Reporting/  
Information  
Sharing**



**Outreach and  
Support**



**Training**

# Reasonable Modifications

- The 1975 Title IX Regulations do not require institutions to modify policies or procedures for students or employees on the basis of pregnancy or a related condition
- ATIXA recommends using the term **reasonable modifications** to distinguish support for pregnancy and related conditions from **supportive measures** for sexual harassment and **reasonable accommodations** for disabilities
- **Reasonable Modifications** to the Recipient's policies, practices, or procedures to prevent discrimination:
  - **Individualized:** must consult with the individual before offering
  - **Voluntary:** individual may accept or decline each reasonable modification offered
  - Fundamental alteration of education program or activity is **NOT** reasonable

# Outreach and Intake

## **TIXC should inform the individual of the institution's obligation to:**

- Prohibit sex discrimination
- Provide reasonable modifications to prevent discrimination
- Allow access, on a voluntary basis, to any separate and comparable portion of the institution's education program or activity
- Allow a voluntary leave of absence
- Provide information about available lactation space
- Maintain Grievance Process for alleged discrimination
- Treat pregnancy as comparable to other temporary medical conditions for medical benefit, service, plan, or policy purposes

# Reasonable Modification Examples

Not all reasonable modifications are appropriate for all contexts, but could include:

Breaks During  
Academic  
Activities

Excusing  
Intermittent  
Absences

Online or  
Homebound  
Participation

Providing Course  
Flexibility

Accessing  
Alternate Parking

Counseling

Adjusting  
Physical Space

Arranging  
Elevator Access

# Best Practices: Lactation Time & Space

Ensure student and employee access to a lactation space that is functional, appropriate, and safe:

- A space other than a bathroom, that is:
  - Clean
  - Shielded from view
  - Free from intrusion from others
  - Available for expressing breast milk or breastfeeding as needed





# Common Challenges

- Lack of clear process for requesting supports/modifications
  - Ad hoc and uncoordinated approach
  - No or poor communication with individual regarding options
- Faculty/staff failing to consult with TIXC
- Faculty/staff unwillingness to accommodate
- Failing to engage in an iterative process
- Discriminatory documentation requirements
- State law intersections with pregnancy and pregnancy records/documentation



# Activity: Sasha Case Study

# Case Study: Sasha

- Sasha is a sophomore theatre major and just found out she is pregnant
- Sasha is having a very rough first trimester and is having to miss a lot of rehearsal time for a play in which she was recently cast as the lead role
- Professor Alexa, Sasha's Acting II instructor and the director of the production Sasha is in, has a very strict attendance policy when it comes to missing rehearsals
- Professor Alexa's policy prohibits a student from missing more than two rehearsals, otherwise they are removed from their role
- Sasha has now missed her third rehearsal and has been removed from the lead role and the play altogether

# Case Study: Sasha

- Sasha is mad that she has been removed from the cast of the show and reports to the TIXC that she is being discriminated against based upon her sex and pregnancy status
- Professor Alexa states that Sasha's removal has nothing to do with her sex or pregnancy status and has everything to do with the attendance policy which is applied equally to all students in productions
- Furthermore, according to the national theatre accrediting body, each production must include a minimum of twenty rehearsal hours for each actor prior to the first full dress rehearsal in order for the play to be considered of educational quality, and for it to count toward the student's degree requirements

# Case Study Discussion: Sasha

- Rehearsals take place one day per week for six hours each session
- Missing one rehearsal is the equivalent of missing three weeks of course material
- Sasha's three absences have significantly impacted the others involved in the production, including other students not having the ability to rehearse scenes with her, which has in turn decreased their total number of rehearsal hours
- Sasha tells the TIXC that she has been rehearsing during the weekends with her scene partners and knows her lines despite missing the three class periods

**What should the Title IX Coordinator do?**

# Title IX & Disability

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# Relevant Disability Laws

- Americans with Disabilities Act (ADA)
  - Title II applies to public institutions
  - Title III applies to private institutions and places of public accommodation
- Section 504 of the Federal Rehabilitation Act
  - Section 504 and Title IX share similar language
  - Section 504 protects individuals from discrimination on the basis of their disability
- Title IX Coordinators and Section 504/ADA Coordinators share similar responsibilities
  - Ensuring compliance with anti-discrimination laws
  - Publication of non-discrimination notice
  - Oversight of a grievance process
  - Investigation and resolution of grievances

# Key Points

- TIXC and ADA/Section 504 Coordinator may be the same person
- ADA/Section 504 Coordinator should **not** be the same person as the disability/accessibility services coordinator
  - Their duties would create a conflict of interest
- TIXCs and ADA/504 Coordinators should have knowledge of each other's process
  - Communication and collaboration will smooth overlap between processes
- TIXCs should consider consulting with disability/accessibility services professionals early in the Grievance Process, as needed
  - Supportive measures, Advisors, etc.



# Title IX and Athletics

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# Overview

- Since the 1970s, Title IX has spotlighted athletic program balance and fairness
  - Accommodation of interests and abilities
  - Balanced and fair distribution of resources
  - Balanced and fair treatment
- TIXC provides oversight, may delegate
  - Senior Woman Administrator (NCAA)
- Compliance requirement applies to
  - Intercollegiate and interscholastic athletics
  - Intramurals
  - Club sports



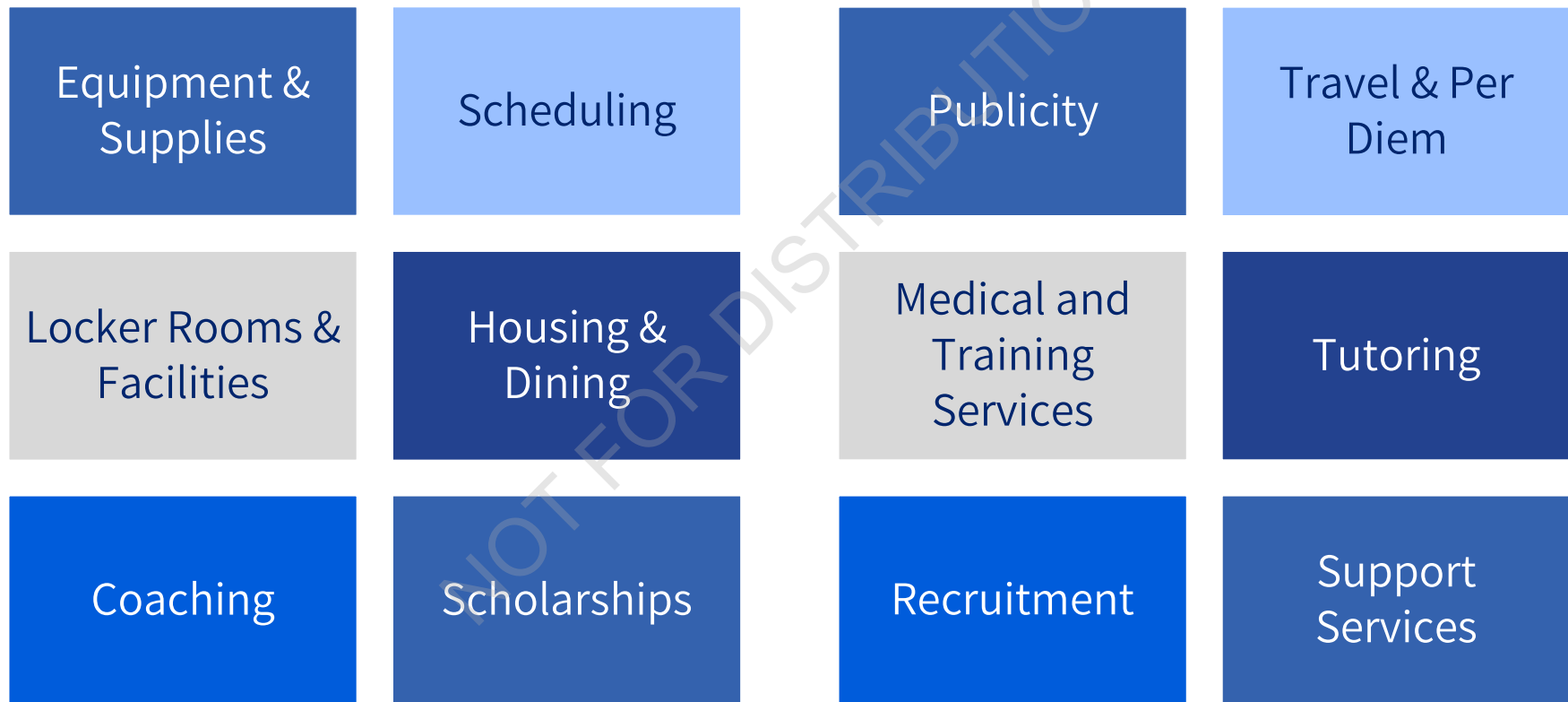
# Accommodating Interests and Abilities: Three-Part Test

**Part 1:** Opportunities for males and females are **substantially proportionate** to their respective enrollments

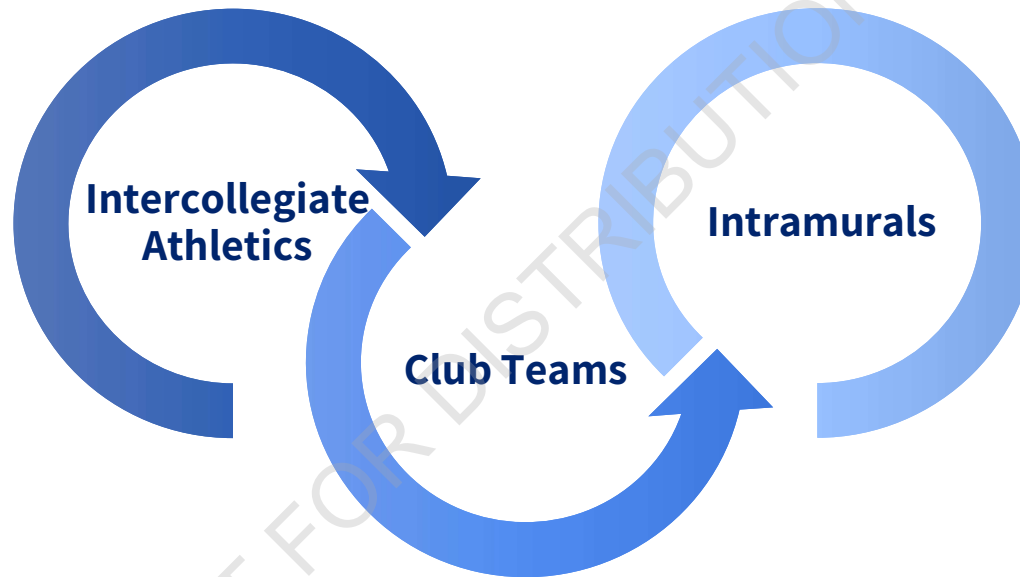
**Part 2:** Where one sex has been underrepresented, there is a **continuing practice of expansion** responsive to interests and abilities of underrepresented sex

**Part 3:** Where one sex is underrepresented and there is no continuing practice of expansion, demonstrate that interests and abilities of underrepresented sex have been **fully and effectively accommodated** by present program

# Fair Treatment: “The Laundry List”



# Title IX and Athletics



Three-Part Test and the 13 program components are typically **not** as problematic for intramurals and clubs because those programs tend to be self-initiated with fewer institutionally provided benefits

# Common Areas of Concern

- Eliminating teams
- Inequitable facilities or equipment
- Scheduling of games or practice time
- Financing concerns
  - Scholarship funding
  - Name, Image, and Likeness and institutions paying players
  - Fundraising/Donations from booster clubs or donors
- Hostile environment sexual harassment complaints
- Removal from team for Title IX-related reasons
- EOs re: athletic participation

# Program Compliance Audits and Assessments

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# Monitoring and Barrier Analysis

- Best practice to monitor the education program/activity for barriers to reporting and participation in the process
  - Take steps to address such barriers
- Examples:
  - Availability and ability to access the reporting process
  - Confusing or delayed procedures
  - Difficulty finding information or contacting Title IX staff
  - Perceptions that TIX staff are biased



# Program Audits and Assessments

- Audits are intermittent assessments to measure compliance
  - Factors such as cost and personnel capacity impact regularity
- Athletics
- Reports/Complaints
- Scholarships and Financial Aid
- Hiring, Compensation, Evaluation, and Promotion

# Tips, Strategies, & Tools

- Climate assessments and surveys
- Micro surveys, graduation/transfer surveys, and exit surveys
- Focus group data
- Post-process surveys
- Training and education about reporting obligations, but especially for common sources of reporting
- Annual caseload data analysis
- Benchmark practices against peer institutions, leverage information and relationships from professional associations
- ATIXA's Barrier Analysis Tool

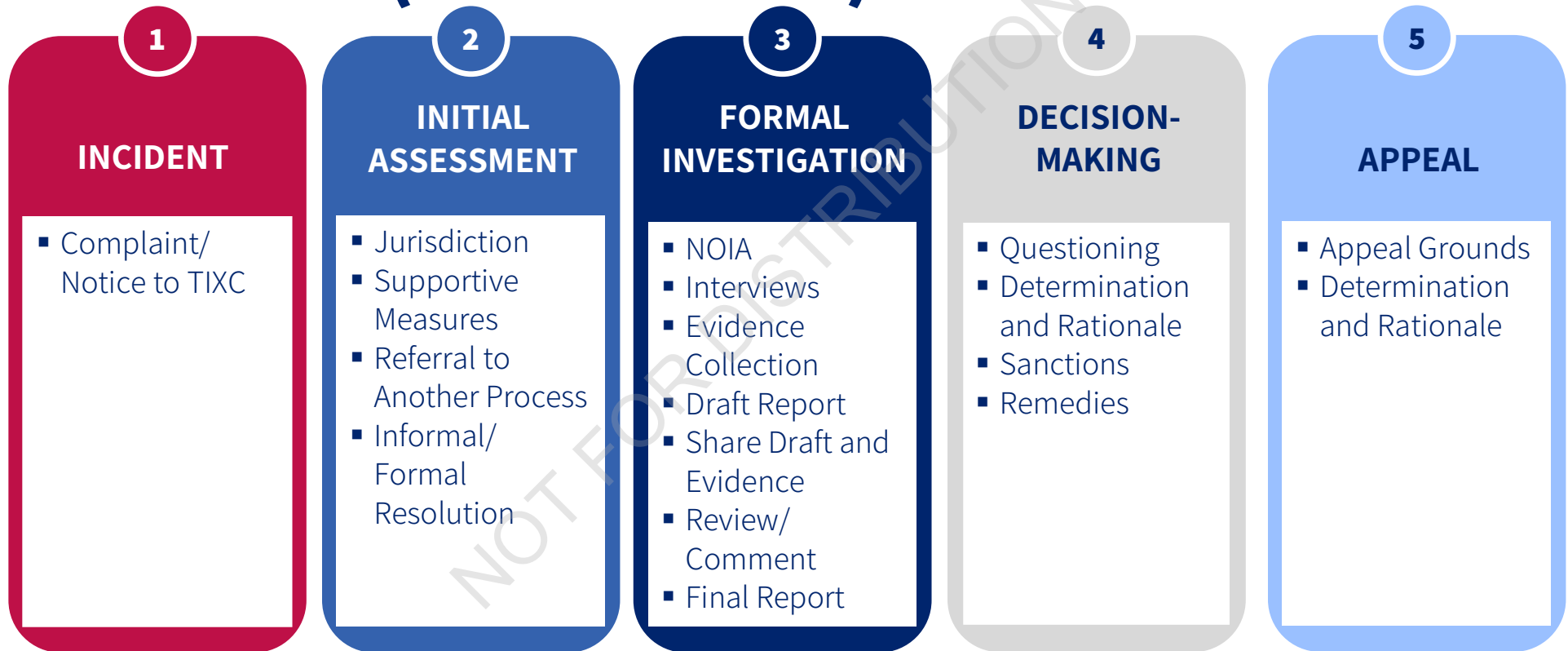
# **Title IX Coordinator and the Formal Grievance Process (“Process B”)**

# Grievance Process for Sex Discrimination

- Neither the 1975 nor the 2020 regulations mandate a detailed grievance process for sex discrimination complaints
- Title IX – the law, not the regulation – still prohibits sex discrimination
  - Must still stop, prevent, and remedy promptly and effectively
  - Institution still has obligation to respond
- ATIXA recommends addressing all forms of discrimination in similar ways
  - One Policy, Two Procedures Model



# Discrimination Grievance Process Overview (“Process B”)



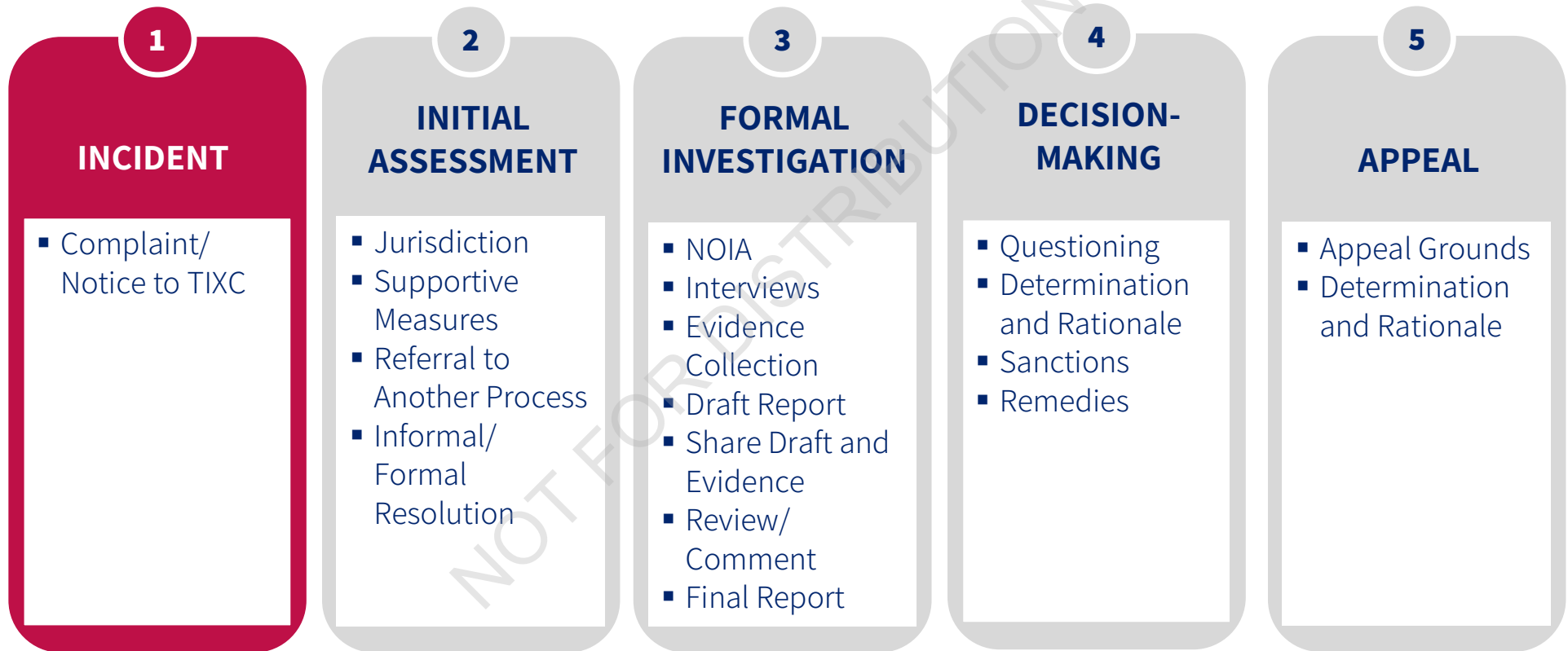
# Due Process Best Practices

## **Borrow basic due process protections outlined in the 2020 Regulations:**

- Written notice of the allegations and potential policy violations
- Gather and present witnesses and other relevant evidence, without restriction
- Discuss the allegations under investigation, without restriction
- Be accompanied by Advisor of party's choice
- Written notice of the date, time, location, participants, and purpose of investigation interviews or other meetings, with sufficient time to prepare
- Review and respond to evidence gathered in the investigation
- Opportunity to appeal the outcome on specific grounds

# Reports, Complaints, and Notice to the Institution

# When is the Institution “On Notice?”





# Point Person for Reports and Complaints

- TIXC receives all reports or complaints of sex discrimination
  - Recipient may designate multiple entry points for receipt of information
    - Deputy Title IX Coordinator(s)
- TIXC contact information must be included within:
  - The institution's website
  - All handbooks or catalogs provided to applicants, students, employees, and unions



# Mandatory Reporting

- ATIXA recommends that **all employees** are **mandated reporters** (except for confidential resources) for allegations of sex discrimination
  - Ensures information gets to those trained to respond
  - Enables institution to best support individuals
  - Supports tracking patterns
  - Provides for simpler, uniform, and universal training and reporting
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy

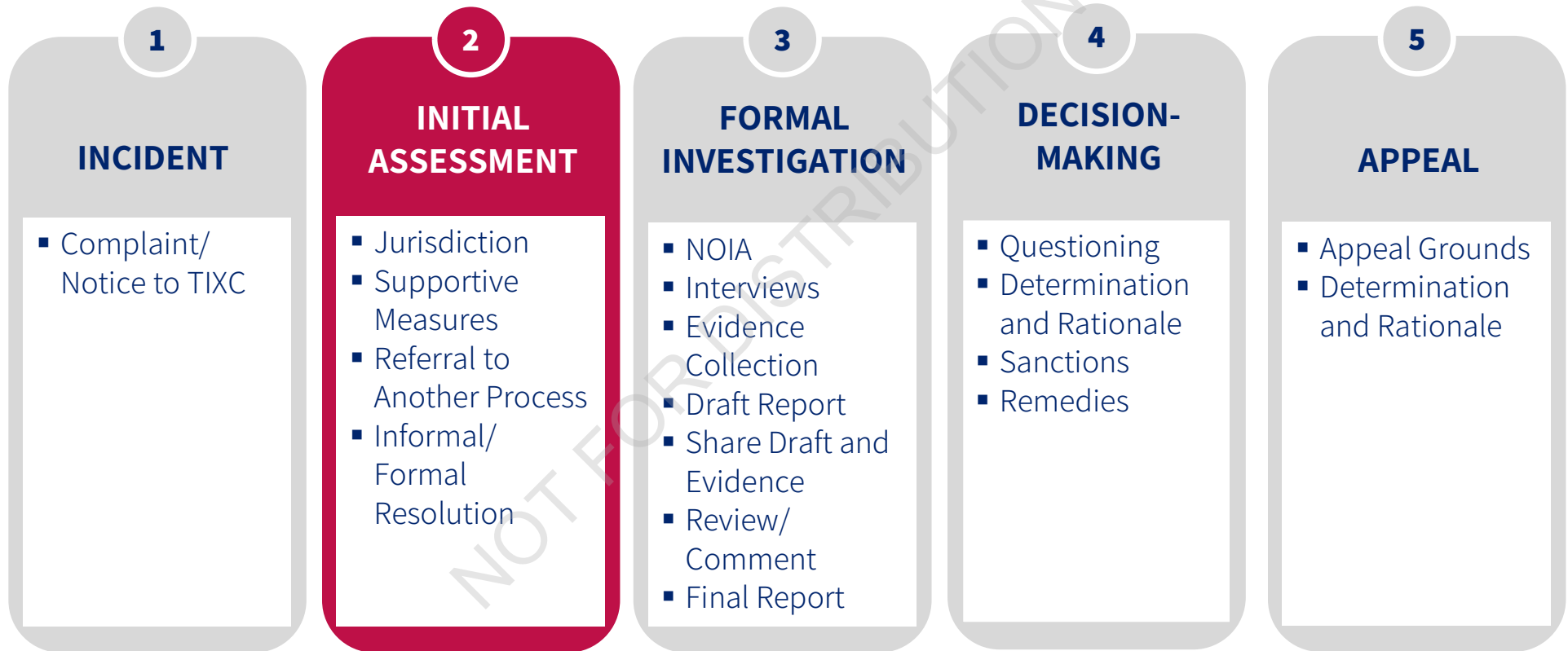
# Reporting Considerations

- Online Reporting Form
- Anonymous Reports
- Confidentiality Requests
- Complainant's Wishes
- No Formal Action

# Initial Assessment

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# Initial Assessment



# Jurisdiction

- For sex discrimination complaints, the jurisdiction analysis is different
  - The jurisdictional factors in the 2020 Title IX Regulations do not apply
- Identify the applicable policy
  - Who owns the anti-discrimination policies and resolution procedures?
  - Do faculty and staff have a different process than students?
- Refer, as necessary, to other processes



# Outreach

- After receiving a report/knowledge, TIXC (or designee), should always reach out to the Complainant
- **Outreach** includes:
  - Introduction to Title IX and staff
  - Reason for the outreach
  - Offer to meet/speak over the phone; include right to Advisor
  - Available resources and resolution options, including how to make a complaint
  - Discuss supportive measures and resources
  - Follow up in writing with resources and information

# Intake

**Intake** includes:

- Overview of the process
- Having written materials to reference and for parties to take with them
  - Follow up with an email containing these materials
- Exploring facts, but not interviewing
- Discussing Supportive Measures
- Discussing Complainant's options
- Answering questions
  - **DO NOT** answer the question “What should I do?”



# Supportive Measures

- Provided to parties throughout the process:
  - Non-disciplinary, non-punitive
  - Individualized, no-cost
  - Restore or preserve equal access
  - Promote safety
  - Deter sex discrimination
  - Without **unreasonably** burdening other party
- Avoid unnecessary disclosures about SMs to faculty, supervisors, etc.
- Consult with disability services when appropriate
- If not provided, document the rationale for refusal



# Common Supportive Measures

Counseling/ Health Services	Employee Assistance Program	Visa and Immigration Assistance	Community Education or Programs	Alternate Housing
Alternate Work Arrangements	Safety Planning/Escorts	Mediate with Faculty or Supervisor	Transportation Assistance	Contact Limitations
Academic Support	Policy Revision	Training	Climate/Culture Assessment	Alternate Course Completion Options

# Assessing Unreasonableness of Supportive Measures

- Complainant has requested that Respondent be moved to another residence hall as a supportive measure
- Potential Considerations:
  - Whether Respondent will be separated from a living learning community, student-athlete housing, scholarship housing, or other similar type of grouped housing
  - Whether a comparable facility has space
  - Whether Respondent will have an increased distance to travel to their classes, campus employment, or other services that may have impacted their housing selection
  - Whether Respondent will lose access to any other facilities (e.g., study space, dining options) by moving
  - Whether the institution can provide any resources or supports to offset anything that might make the move unreasonable (e.g., assistance packing/moving, shuttle service)

# Activity: Supportive Measures

# Activity: Supportive Measures

- A graduate student has on-campus employment in a research lab
- The research necessitates having a researcher in the lab around the clock
- The professor responsible for managing the lab only assigns male students to monitor the lab after 9:00 p.m.
- When a male student asked the professor about it, the professor said, “I have daughters and would not want them walking through a parking lot by themselves late at night”
- The male student reported the professor for sex discrimination and now receives half as many shifts

**What supportive measures should be considered?**

# Activity: Supportive Measures

- A pregnant student alleges that their chemistry professor will not discuss any accommodations or modifications to her chemistry lab course, insisting she complete the course as designed
- The student is concerned about exposure to chemicals in the lab and the date of their final exam, which is right around her due date

**What supportive measures should be considered?**

# Informal Resolution

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# Informal Resolution

- **Voluntary** Informal Resolution (IR) may be made available at the discretion of the TIXC at any time prior to a final determination
  - Likelihood of resolution
  - Power dynamics
  - Goals and motivation of the parties to participate
  - Complexity, nature, and timing of the complaint
- Available for sex discrimination complaints between employees and students
- IR Facilitators must receive training and be free of bias or conflicts of interest
  - ATIXA recommends IR Facilitators not serve in any other role for the same complaint



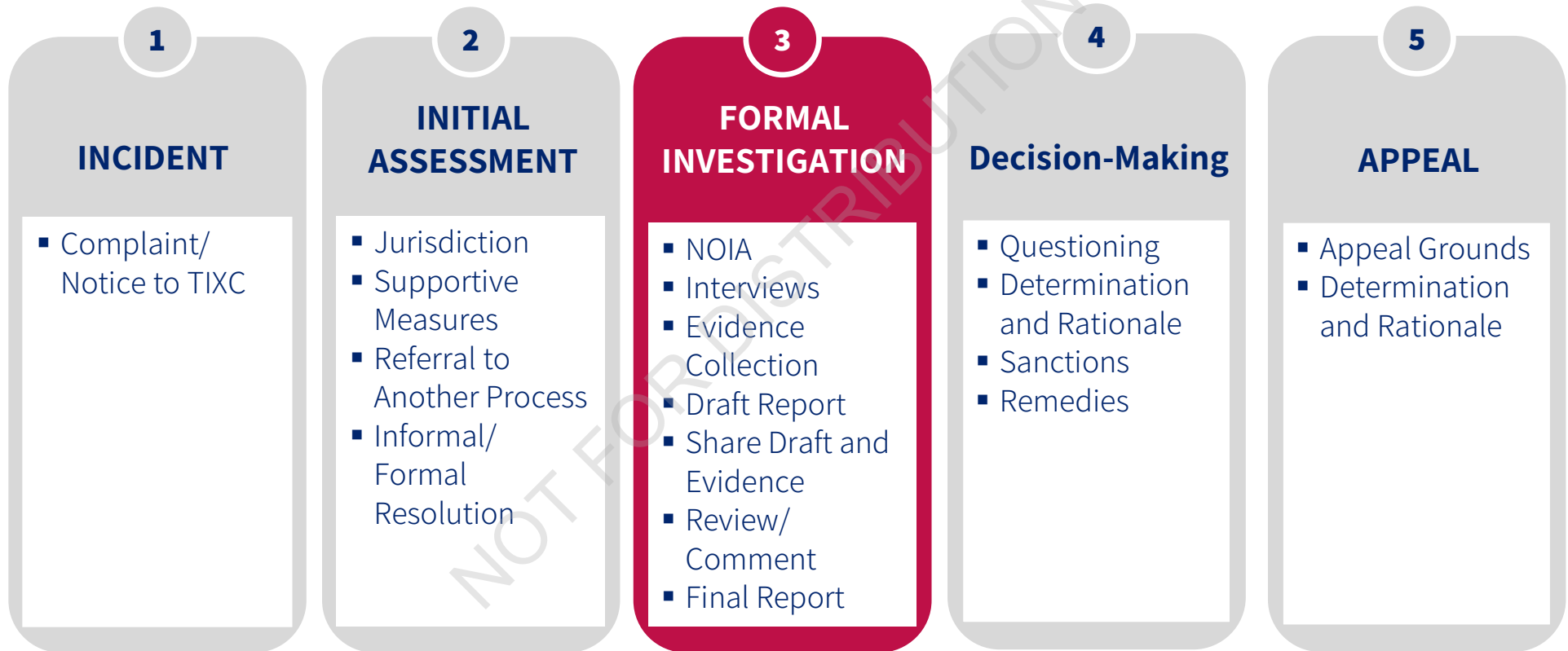
# Informal Resolution

- Procedural Recommendations:
  - Provide notice of:
    - Allegations
    - IR procedures
    - Records creation
    - Potential outcomes
  - Parties' voluntary, written consent
  - Must still stop, prevent, remedy
- Institution as Respondent



# Sex Discrimination Investigations

# Investigation



# Investigation and Decision-making Models

# Who Should Investigate?

- More flexibility to assign roles in sex discrimination complaints
- ATIXA recommends Investigator(s) **not** be Decision-maker(s) in the same complaint, but that is discretionary
- Carefully assess whether an individual could have a bias or conflict of interest
- Investigators have **no side**, they are committed to the integrity of the process



# Investigation and Decision-Making Models

**Separation of Roles:** Every Title IX team member serves a distinct role with no overlap in the same complaint

## Pros:

- Avoids perceptions of bias
- Does not bog TIXC down with fulfilling other roles so they can provide process oversight
- Title IX team members may develop expertise in certain roles or types of complaints

## Cons:

- Need personnel and budget for training
- Coordinating team member schedules
- Each new Title IX team member needs to review complaint material to get up to speed, less familiarity with specific complaints

# Investigation and Decision-Making Models

**TIXC as Investigator** with separate Decision-maker(s) chosen from TIX team

## **Pros:**

- Middle ground to balance perceptions of bias against other considerations
- Helpful structure for resource-strapped institutions
- TIXC may be more highly trained than other individuals

## **Cons:**

- Decision-maker(s) must commit to thoroughly understanding the facts to render a fair and accurate decision
- TIXC must juggle dual roles
- TIXC cannot consult with Decision-maker(s)
- TIXC becomes witness in Decision-making phase

# Investigation and Decision-Making Models

## Investigator as Decision-maker

### Pros:

- Investigator is often the individual most familiar with the facts of the complaint
- Has established rapport with parties and witnesses
- Can reduce time and staffing needs

### Cons:

- Perceptions of bias
- Only one perspective/viewpoint on the complaint
- May miss critical information or valuable perspective

If using this model, ATIXA recommends a robust appeal opportunity that allows parties to challenge the substance of the decision, at least in suspension or expulsion cases



# Investigation and Decision-Making Models

## ATIXA recommends:

- Investigators make non-binding recommended findings
- Separate Decision-maker makes findings, policy violation determination, and sanctions/remedies determination
- Appeal opportunity



# Initiating the Investigation

# Investigation Oversight

## Common Investigation Steps:

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

INCIDENT INVESTIGATION  
SUMMARY

Incident Date:

Review Date:

Investigated by:

Incident Summary:

Root Causes:

# Determining a Basis for Investigation

There are three bases for investigations:

- **Incident:** a specific incident or period
  - May involve one or multiple alleged violations
- **Pattern:** repetitive or similar behaviors or targets chosen by the same Respondent over a period
  - Tend to involve multiple Complainants
- **Climate/Culture:** discriminatory policies, processes, and environments
  - May have no identifiable Respondent or the “Respondent” may be the institution
  - May be useful tool for DT/DI complaints
  - May lead to named respondents or individual/pattern investigations

# Investigation Scope

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

# Investigation Strategy

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

- With sex discrimination complaints, the structure of the investigation process will look different based on the type of complaint
  - Disparate Treatment
  - Disparate Impact
  - Retaliation
  - Harassment



# Notice of Investigation and Allegations

- ATIXA recommends the NOIA letter for sex discrimination allegations follow the same requirements as a NOIA for sexual harassment allegations
  - Sent to all parties, simultaneously
- The NOIA should include:
  - Notice of the allegations and known details, such as identities of the parties
  - A description of the alleged conduct and relevant policy provisions
  - The date and location of the alleged conduct
  - Information about grievance procedures
  - Any Informal Resolution options
  - Presumption of non-responsibility
  - Code of conduct provisions prohibiting false statements
  - Statement prohibiting retaliation

# Notice of Investigation and Allegations

## The NOIA outlines the parties' right to:

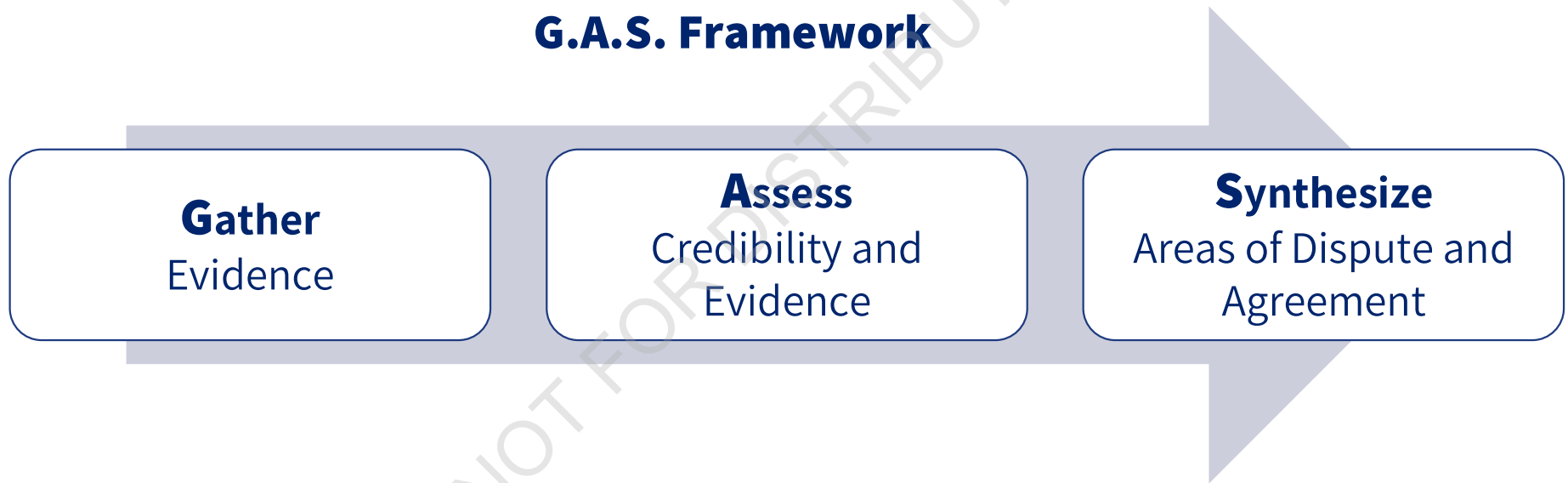
- Present witnesses, including experts, and inculpatory/exculpatory evidence
- Freely discuss the allegations
- Be accompanied by an Advisor of their choice
- Receive written notice of any investigation interview or other meeting they are requested to attend, including participants and purpose, with sufficient time to prepare,
- Review all relevant and directly related evidence



# Formal Investigation Overview

# Formal Investigation

## G.A.S. Framework



**The burden to gather evidence is on the institution, not the parties.**

# 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 allegations
- In sex discrimination complaints, Investigators look for **different** types of evidence:
  - Similarly situated individuals
  - Statistical evidence
  - Non-discriminatory reasons
  - Pretext
- Circumstantial evidence may play a larger role in sex discrimination complaints
  - There may be little direct evidence – a statement or an email – of discrimination

# Evidence Activity: Dr. Munroe

- Dr. Munroe, a faculty member, reports to the Title IX office that he believes his department is biased against men in its hiring, evaluation, and promotion practices – which in turn impacts compensation
- As evidence, he cites:
  - Recent hiring decisions to hire female faculty members despite the recruiting pool being overwhelmingly male
  - Recent performance concerns mentioned by the department chair, who is female, toward a handful of male faculty members
  - A recent decision by the department chair to pass him over for tenure in favor of a faculty member with fewer years of experience and fewer publications in the field

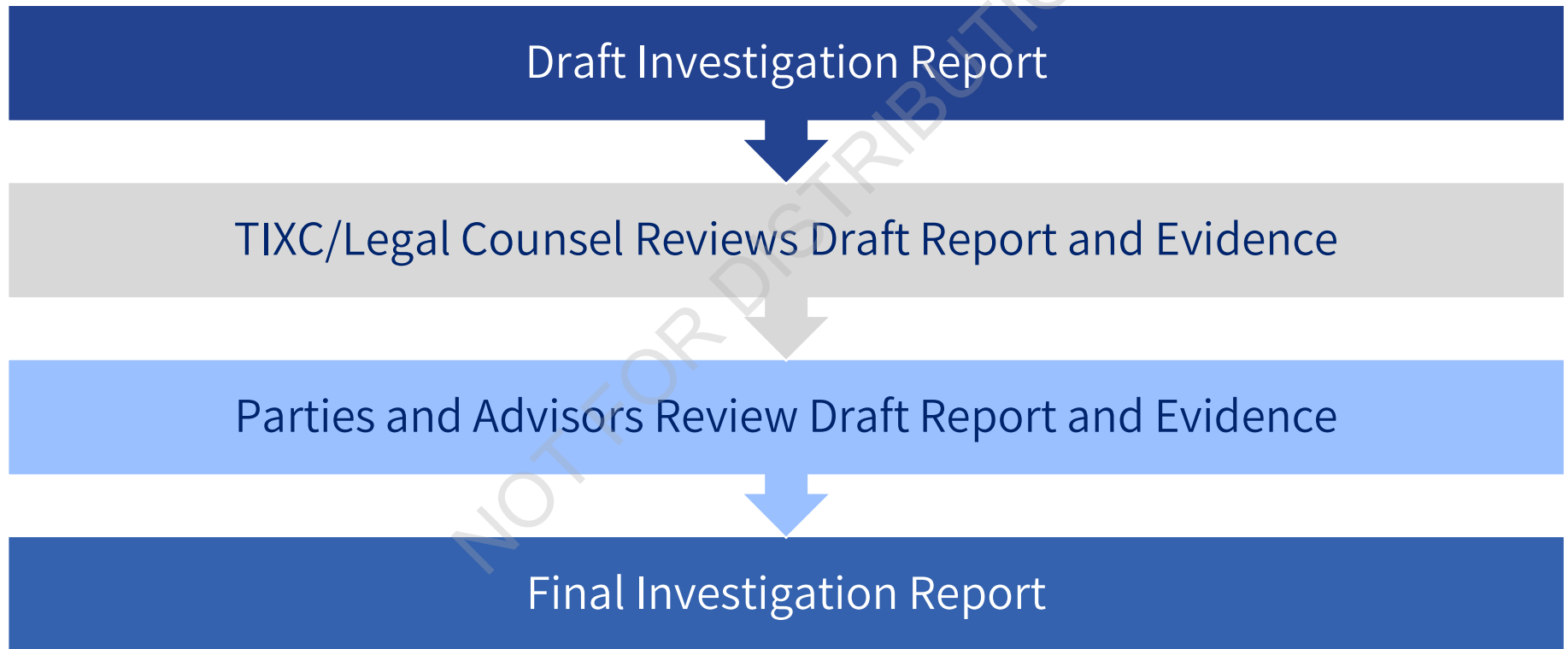
**What additional evidence may be available in this situation?**

# Credibility

- Credibility is largely a function of corroboration and consistency
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate or truthful)
  - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- Assessing **non-discriminatory reasons** and **pretext** evidence may involve substantial emphasis on credibility assessments



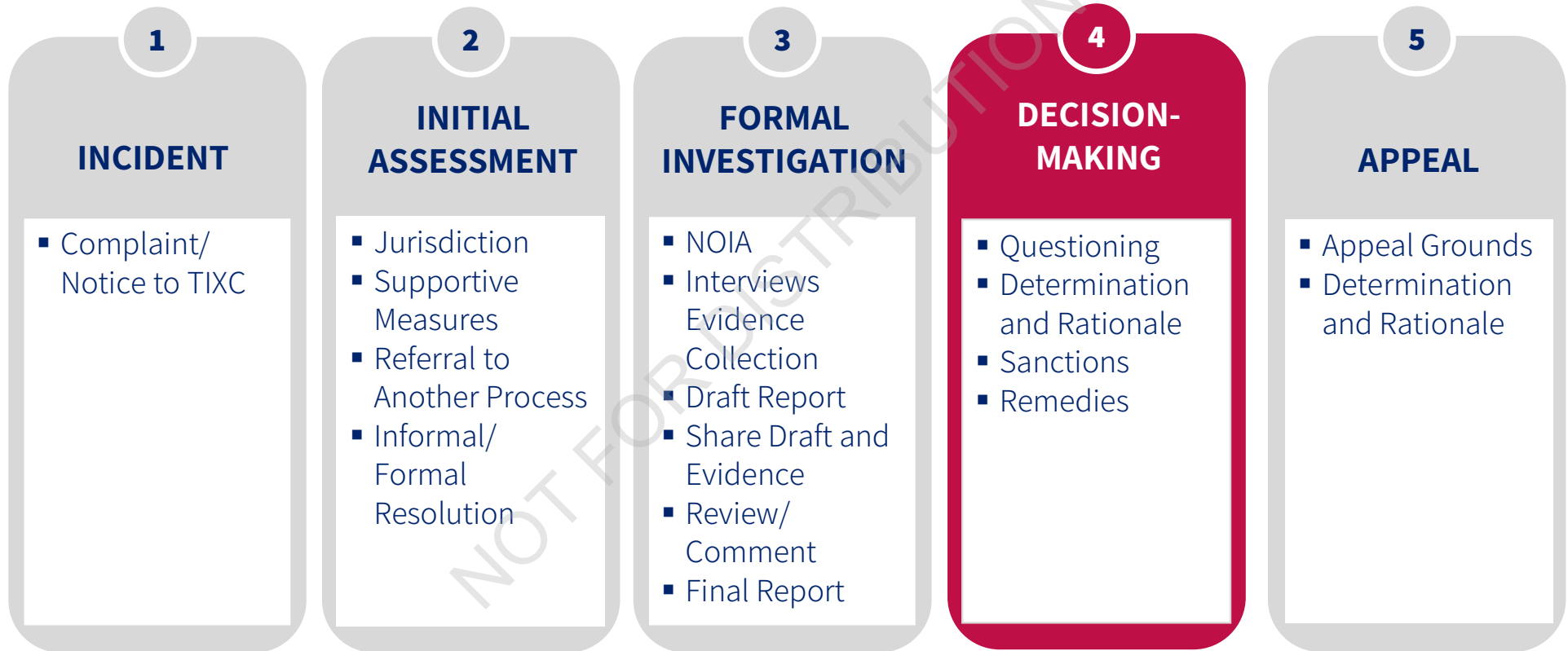
# Drafting, Reviewing, and Finalizing the Investigation Report



# Decision-Making

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# Decision-Making





# Decision-Making

## Title IX Coordinator

- Oversees process
- Facilitates scheduling and communication
- Ensures sanction compliance
- Implements remedies
- Provides institutional memory and precedent information
- Trains Decision-makers
- Maintains institutional records

## Decision-Maker(s)

- Determines relevance
- Assesses credibility
- Makes a finding of fact
- Determines whether policy was violated
- Assigns sanctions (if applicable)
- Writes determination rationale

# Decision-Making Process Options

- No prescribed decision-making process for sex discrimination complaints
  - Should provide opportunity for Decision-maker to ask questions and assess credibility
- ATIXA Model Policies (1P2P) outline a streamlined administrative resolution process without a hearing
  - Decision-maker reviews evidence, can ask questions of parties, and make findings and a final determination
- No live hearing requirement for sex discrimination complaints, but a hearing could be required based on:
  - State or local requirements
  - Terms of a collective bargaining agreement

# Decision-Making

## Making a Finding

- Decision-makers determine what occurred based on the standard of evidence

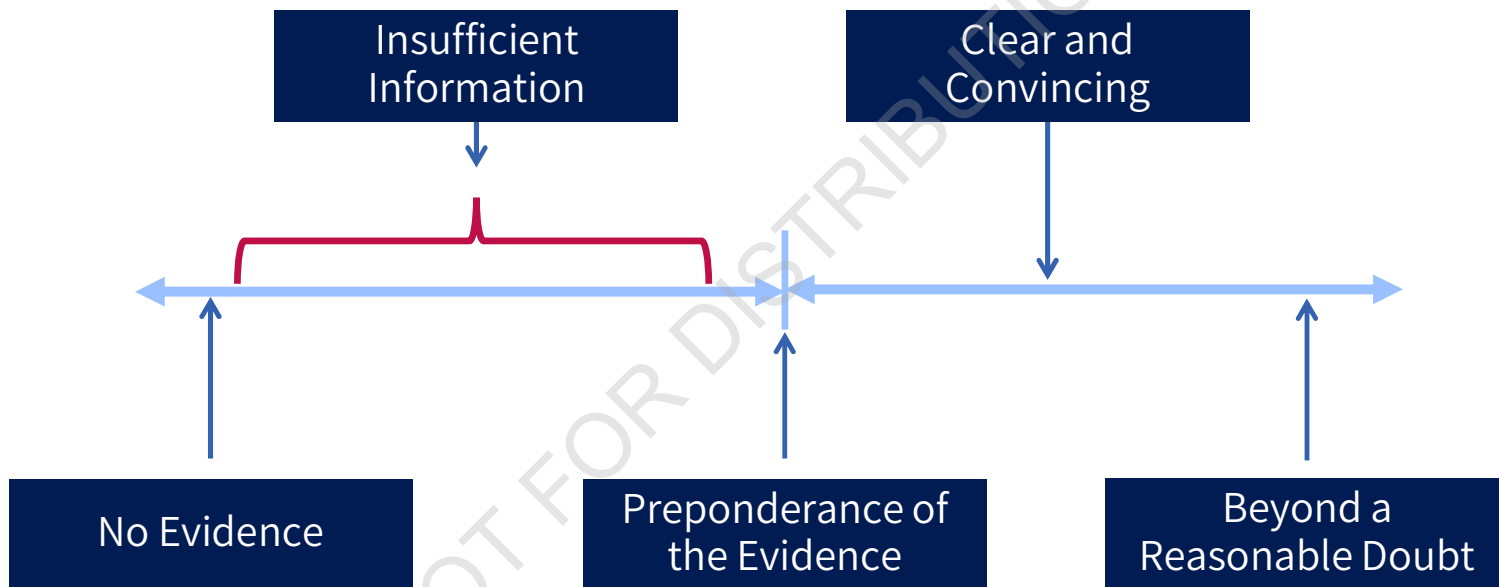
## Making a Determination

- Decision-makers determine whether what occurred is a policy violation based on the standard of evidence
- Each allegation is considered individually for each Respondent

## Standard of Evidence

- Preponderance of the evidence or clear and convincing evidence
- Standard of evidence should be consistent for all sex discrimination complaints

# Standard of Evidence



Preponderance of the Evidence is the current industry standard

# Sanctions and Remedies

## Sanctions

- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC does not issue sanctions but oversees the process
- TIXC assures sanction compliance
  - Failure to comply could lead to discipline

## Remedies

- May be implemented before or after a determination
- TIXC determines remedies that are equitable and not clearly unreasonable given the circumstances
- Goal: preserve or restore access to education program and activity
- TIXC ensures remedies are implemented
- Remedies may take time or significant resources to implement

## Remedy Recommendations



Remedies should seek to restore affected individuals to their pre-deprivation status



Recover any lost work, education time, economic, or access impacts



Restore opportunities, if applicable



Repair damage from misconduct

# Written Determinations

## Written Determination

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

## Finality

- On the date the institution provides a written appeal determination
  - OR the date when an appeal would no longer be timely

## Written Determination Elements

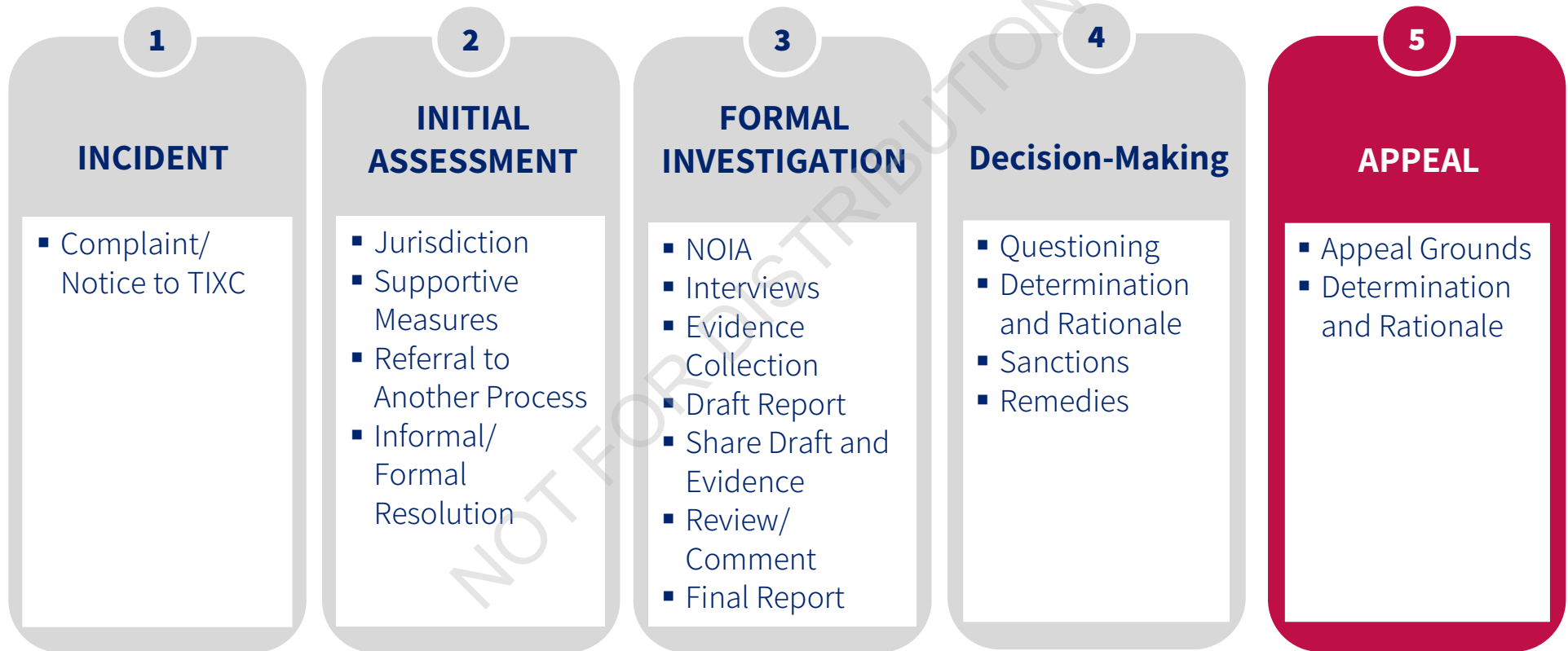
- Applicable policy
- Procedural steps from complaint through determination
- Statement of, and rationale for, the result of each specific allegation
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Whether remedies will be provided to Complainant
- Procedures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

# Appeals

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# Appeals



# Appeals

**ATIXA recommends offering appeals on one or more of the following grounds:**

**1**

Procedural irregularity that affected the outcome of the matter

**2**

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

**3**

Conflict of interest for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter

**Institutions have the discretion to add additional appeal grounds**

# Appeals

## Appeal Decision-maker

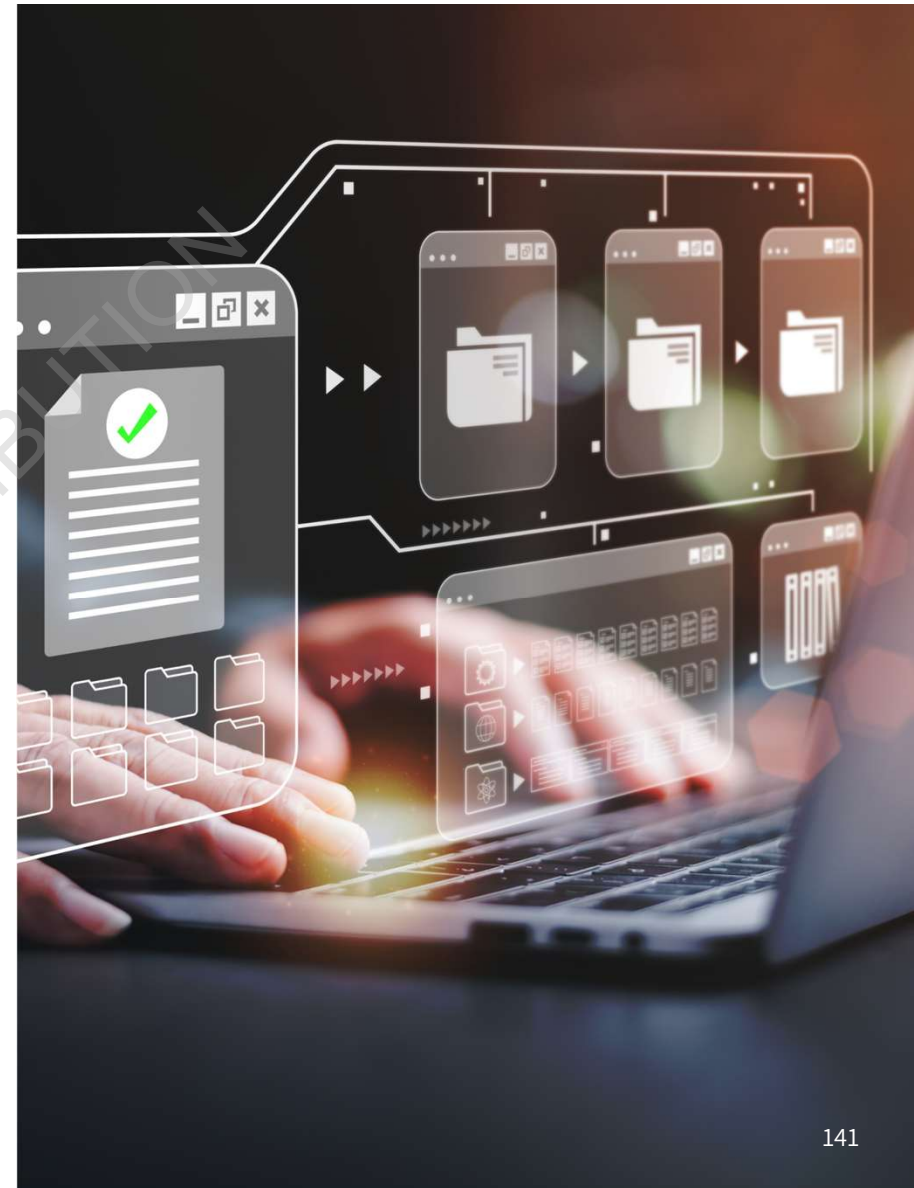
- Should complete a written determination with rationale
- Determinations may include:
  - **Upholding** the original determination and sanctions (if any)
  - **Remanding** the complaint back to the Decision-maker for reconsideration
  - **Modifying** the original determination and/or sanctions (if any)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

# Recordkeeping

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# Recordkeeping

- Recipient should maintain records for a minimum of **seven** years:
  - SD complaints, including determination and sanctions and/or remedies
  - Appeals and results
  - Rationales for all determinations
  - Informal Resolution
  - Supportive Measures
  - Measures taken to preserve/restore access
  - All training materials
  - All support provided to pregnant and parenting students.

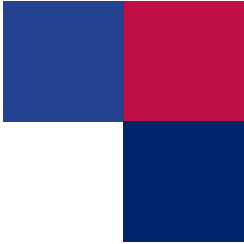




Association of  
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**Questions?**

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