



Association of
Title IX Administrators

Managing Intake, Evaluation, Jurisdiction, and Dismissals

An ATIXA Best Practices Workshop

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Strategic Risk
Management Solutions

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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.

Introduction



The primary focus of this workshop is exploring best practices for intake, initial assessment, jurisdictional determinations and charging decisions.



Participants will learn strategies to navigate intake meetings, assess reports of sexual harassment, and apply jurisdictional analysis to allegations.



Our goal is to provide an opportunity to apply new skills and strategies in a risk-free environment to improve participants' competency and practice.

Review: Title IX Statute

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 & 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



Scope

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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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The Initial Assessment Phase

Initial Assessment Overview

INCIDENT

- Formal Complaint/
Notice to TIXC

INITIAL ASSESSMENT

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

FORMAL INVESTIGATION

- Notice of Investigation and Allegations
- Interviews
- Evidence Collection
- Draft Report
- Party Review/
Comment
- Follow Up
- Final Report

HEARING

- Questioning
- Credibility Assessment
- Determination and Rationale
- Sanctions
- Remedies

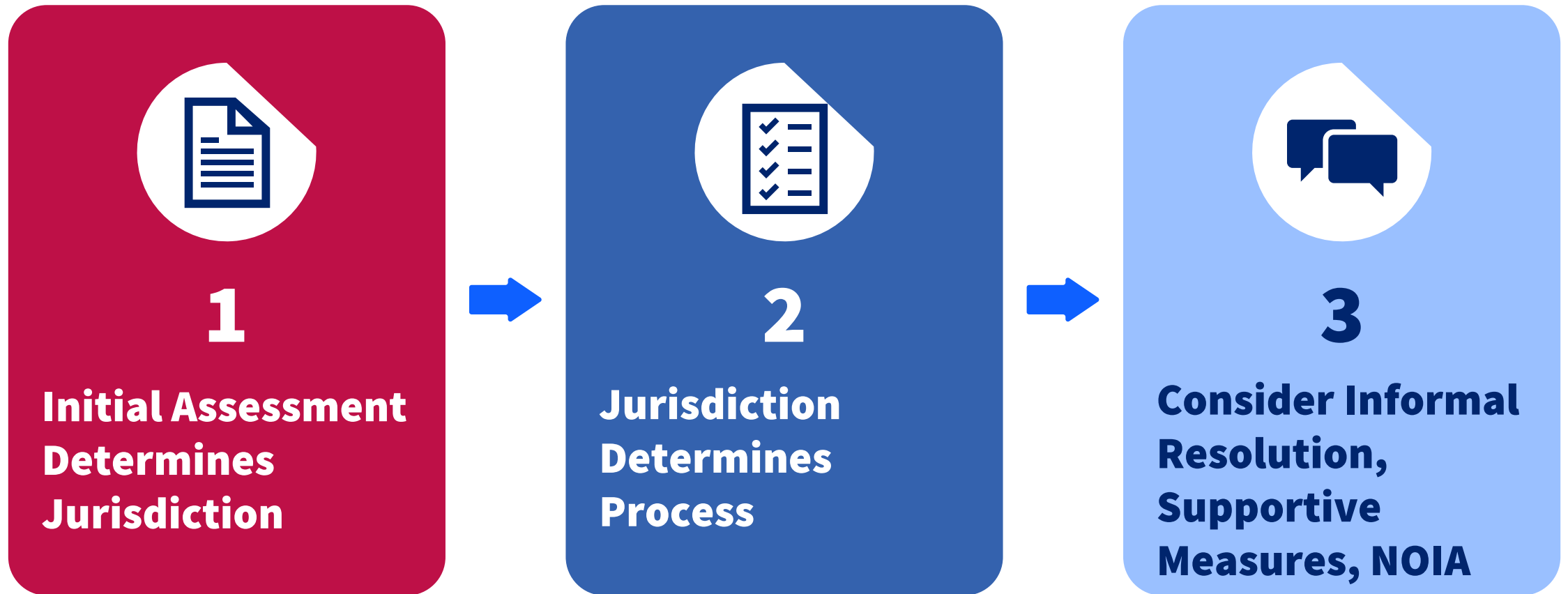
APPEAL

- Appeal Grounds
- Determination and Rationale

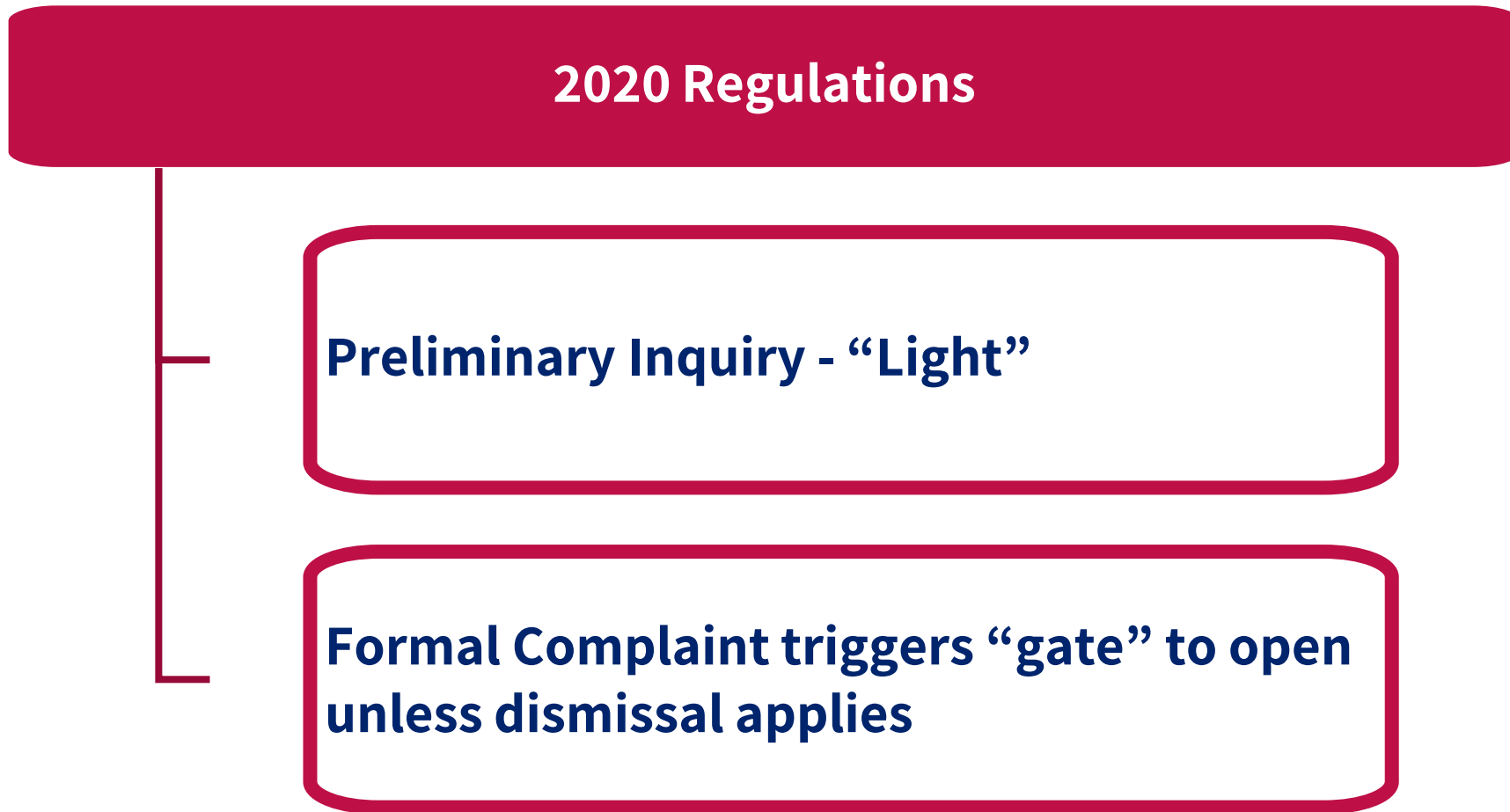
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Initial Assessment

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Initial Assessment: Framework



Refresher: “Process A” and “Process B”

Process A

- Title IX Jurisdiction
- Must follow process compliant with Title IX regulations

Process B

- No Title IX Jurisdiction
- May use other process (e.g., stand-alone Process B, student conduct, employee conduct)

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Preliminary Intake

Report vs. Formal Complaint

- **2020 Regulations Distinction**

- Report vs. Formal Complaint
- If it does not meet the formula, it's not a Formal Complaint

- **Formal Complaint**

- Written request to initiate an investigation
- Physical document or electronic submission from Complainant
 - OR signed by Title IX Coordinator (TIXC)
- Alleging sexual harassment
- Complainant must be **participating or attempting to participate** (P/ATP) at the time of the formal complaint

Intake Considerations, Cont.

- Intake can be overwhelming:
 - Don't expect immediate decisions
 - Anticipate and answer common questions
 - Try to set and manage expectations
 - Consider tone and word choice
 - Avoid sharing personal opinions
 - Empathize but maintain neutrality
- Explore options
- Intake is **not** an interview
 - But **some** information is necessary to complete the jurisdictional analysis



Intake Follow-up: Communication

- **Follow-up in writing** and reiterate options
 - Offer the VAWA Brochure (higher education only) or written summary of options
 - Consider flowcharts, guides, etc.
- Complainant is likely a newcomer to the process
 - Present information clearly and in multiple forms
 - Allow time for processing information and decision-making without pressure
- Even when students have read policies and procedures:
 - The Title IX Grievance Process can be confusing
 - May include inaccessible language

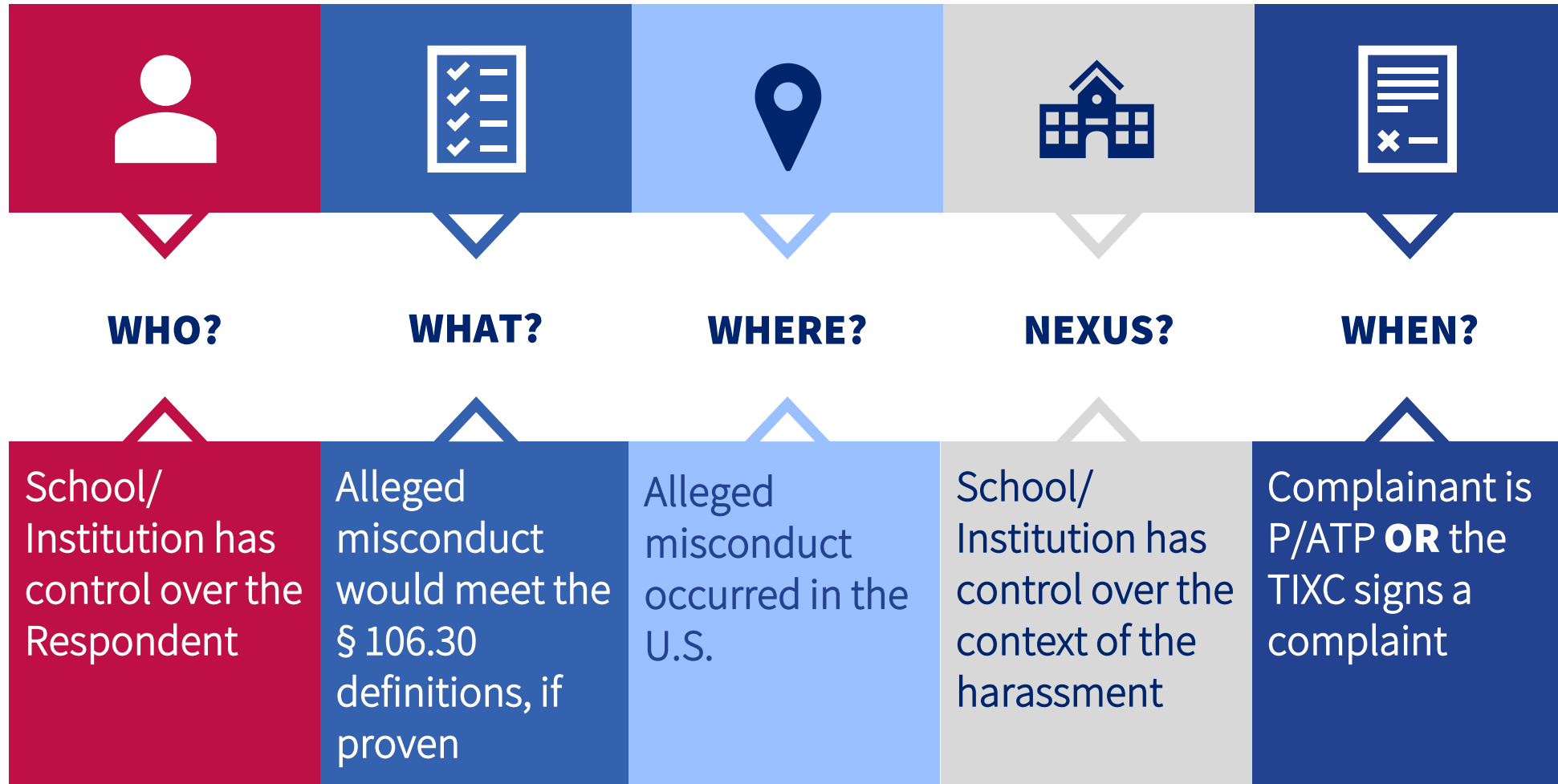
Intake Follow-up: Action Items

- Connect parties with Advisors as soon as possible
- Implement appropriate supportive measures
- Notetaking/documentation
- Remember that there may be needs related to translation, interpretation, and/or accommodation
 - Offer; don't wait for the request
 - Complainant may not know to request
- Mindset of anticipating barriers to access and find workarounds
- Becoming a witness after the fact

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Jurisdiction

Title IX Sexual Harassment Jurisdiction



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Jurisdictional Factors 1-3

- 1. Control over the Respondent**
 - Is the Respondent a student or an employee?
- 2. Section 106.30 definitions**
 - Quid Pro Quo
 - Hostile Environment Sexual Harassment
 - Sexual Assault
 - Stalking
 - Dating Violence
 - Domestic Violence
- 3. Occurs against person in the United States**

Factor 4: Control over the Context

- Locations, events, or circumstances over which the Recipient exercised **substantial control** over both
 - The Respondent **and**
 - The context in which the sexual harassment occurs
- Includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution
- **Note:** Network usage and online environments



Factor 5: Filing a Complaint

Two individuals may file a Formal Complaint:

- A Complainant (or parent/guardian)
 - Complainant must be participating or attempting to participate in the Recipient's education program or activity **at the time of the formal complaint**
- Title IX Coordinator



Title IX Coordinator Signing Complaint

- TIXC has authority to sign complaint when the Complainant cannot or will not do so
- Can be very disempowering, so remember trauma-informed best practices when making this decision
- Fairly rare and exceptional for higher education
 - Required more frequently in K-12



PPTVWM

In limited circumstances, a TIXC should sign a Formal Complaint even if the Complainant declines to do so

Factors that likely indicate an ongoing risk of harm include:

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

Other considerations for TIXC signing a Formal Complaint:

- Employee Respondent
- Complainant who is not P/ATP

Additional Thoughts: When to Sign

- Safety concern or danger is reasonably present that requires the institution to act to protect the community from additional harm
- Complainant is reluctant, but accusation is against an employee
 - TIXC does not think it is reasonable to respect the Complainant's request for confidentiality
- Complainant is not participating or attempting to participate
 - When TIXC believes the institution should formally act
- **Group Discussion:**
 - What are the circumstances in which a TIXC should consider signing a complaint?
 - Discuss or post your thoughts in the chat

Complaints Outside Title IX Jurisdiction

- For allegations or complaints that do **not** meet all the requirements of Title IX jurisdiction, Recipients may use – and should use – other policies or procedures to respond
 - “Process B”
 - Student conduct codes
 - Board policies
 - Employee policies
 - Collective Bargaining Agreement policies
 - Faculty policies

Referral

- TIXC must determine whether Process A or B applies
 - Not the decision of the Dean of Students, Director of HR, Director of Student Conduct, or anyone else
 - Other officials must consult with the TIXC before proceeding to investigate/resolve an incident that may fall under Title IX
 - Requires training
 - Specific challenge for K-12 and building-based administrators
- Complainant doesn't get to opt for Process A or B
 - Title IX regulations define which cases must follow Process A

Referral Corrections

- If another office/administrator investigates as a Process B allegation, **and**
 - TIXC finds out and determines there is Title IX jurisdiction, **then**
 - Incident must be referred to the Title IX office for proper resolution
 - If post-resolution under another process, consult legal counsel on proper response



Jurisdiction Case Studies

Jurisdiction Case Study 1

- Jerrod submitted a report alleging that he was fondled by another student, Markus, at a party at the soccer house just off campus.

What additional information would be helpful to make this evaluation?

Do you have jurisdiction?

Jurisdiction Case Study 2

- The TIXC receives a report from a teacher that they overheard several high school students discussing explicit text messages one of the students received from a student-teacher while on a school-sponsored band trip.
- The student-teacher is enrolled at the local university and is assigned as a student-teacher in the music program at the high school.
- During a meeting with the student, the student confirms that they received text messages from the student-teacher.
- The student added that while the messages made them “uncomfortable,” they do not want to file a Formal Complaint and just want to forget about it.

What would you do in this situation?

Do you have jurisdiction?

Jurisdiction Case Study 3

- Gabriella, a student, submitted a report alleging that Dennis, an employee in the IT department, has been following her after class and has come to her part-time job at a local coffee shop several times over the past few months.
- Gabriella generally stays late in the library after class to use the Internet before heading home and has noticed Dennis lurking nearby and staring at her on occasion.

What additional information would be helpful to make this evaluation?

Do you have jurisdiction?

Jurisdiction Case Study 4

- Jasper is upset that his ex-girlfriend is allegedly going around telling many other students that Jasper abused her during their relationship and sexually assaulted her multiple times.
- Jasper wants the TIXC to protect him from these “lies” spreading further, and to ensure that his ex recants these untrue allegations.

What would you do in this situation?

Do you have jurisdiction?

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Dismissals

Mandatory Dismissal

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

1. The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Title IX regulations even if proved, and/or
2. The conduct did not occur in the Recipient's education program or activity, or
 - No control over the context
3. The conduct did not occur against a person in the U.S., or
4. At the time of filing a Formal Complaint, a Complainant is not P/ATP
 - And the TIXC determines they do not need to sign a Formal Complaint

Discretionary Dismissal Provisions

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

1. Complainant notifies the TIXC in writing that they would like to withdraw the Formal Complaint or any portion thereof
2. Recipient no longer employs or enrolls Respondent
3. Specific circumstances prevent the school/institution from gathering sufficient evidence for a determination

Dismissal Notification and Appeal Notifications

- Must promptly notify parties of the dismissal
- Notify parties that a dismissal may be appealed and include appeal information
 - Dismissal rationales should be drafted carefully
 - Appeal Decision-maker(s) must be trained; must not have been involved in the complaint so far and will not hear future appeal in full grievance process
 - A successful appeal of a dismissal decision will result in reinstatement of the Formal Complaint
- Address reported behavior under Process B
- Unsupported dismissal decision could be the basis for a retaliation complaint

Dismissal Notification and Appeal Information

- Must promptly notify **all** parties of dismissal decision
 - Can create some confusion with Respondents if they have not yet received notice
 - All parties have the right to appeal the dismissal decision
- Notify parties that a dismissal may be appealed and include appeal information
 - Dismissal rationales should be drafted carefully
 - Appeal Decision-maker(s) must be trained; must not have been involved in the complaint so far and will not hear future appeal in full grievance process
 - A successful appeal of a dismissal decision will result in reinstatement of the Formal Complaint
- If dismissal stands, consider referral to another process

Dismissal Decision Appeals

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

1

Procedural irregularity that affected the outcome of the matter

2

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

3

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

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Charging

Charging: Title IX

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



Charging: How

- Charge under the policy that was in effect at the time of the alleged incident(s)
 - Consider the timing of the **alleged behavior**, not the timing of the report
 - Charging behavior spanning different policies or regulatory schemes
 - Stalking, Hostile Environment, Domestic Violence, Dating Violence
- Complainant does not:
 - Determine the charges or which policy applies
 - Pick the process
 - Though parties may request Informal Resolution (IR), if available
- Charge with all applicable Title IX violations
 - Consider any non-Title IX charges (i.e., collateral misconduct)
 - Adjust NOIA as circumstances change

Charging Basis

TIXC determines the investigation basis:

- **Incident:** specific incident or period
- **Pattern:** repetitive or similar behaviors or targets chosen by the same Respondent over a period
 - Does policy permit pattern charges vs. viewing pattern as corroborative?
- **Climate/Culture:** discriminatory policies, processes, and environments



Charging: Pattern and Joint Allegations

- A pattern can be a corroborative element and/or its own charge; it can only impact sanctions when charged as a pattern
- **Goal:** Avoid Complainants serving as witnesses to a pattern in other resolution processes
 - Use one process to address the entire alleged incident or pattern of incidents
 - Combine when Respondents act in concert against one Complainant
 - Example: multiple-Respondent rape
 - Combine when a single Respondent has allegedly engaged in pattern misconduct toward more than one Complainant
 - Pattern = similar motivation, targets, similar types of offenses
- Avoid joining if multiple Complainants alleged dissimilar, disconnected offenses by a single Respondent

Managing Overlap

Charging: Overlap

- When different prohibited behavior definitions could apply to the same allegations
 - The 2020 Title IX Regulations **prohibit** overlapping a hostile environment harassment charge with specific offense charges
 - Example: For sexual assault among intimate partners, charge sexual assault & dating violence, but **not** a separate sexual harassment charge on the same facts
 - Sexual harassment could be charged alongside the sexual assault and dating violence charges **if** arising from separate facts
- Policy should have a **collateral misconduct provision** as a best practice
 - Allows non-Title IX offenses to be charged and resolved alongside Title IX offenses

Charging: Title VII Intersections

- Title IX and Title VII overlap
 - Occurs when there is an **employee** Respondent alleged to have engaged in sexual harassment or sex discrimination during employment
 - Sexual harassment allegations involving an employee Respondent will likely lead to Title IX and Title VII charges
- Title VII sexual harassment/hostile environment:
 - **Severe** or **pervasive** or **persistent** and **objectively offensive**

Charging: FHA Sexual Harassment

- The Fair Housing Act (FHA) only applies to residential facilities for students and/or employees:
 - Behaviors occurred in the residential facility
 - Mirrors Title VII definition
- All “Big Five” offenses treated as sexual harassment under the FHA
 - Sexual harassment, sexual assault, dating violence, domestic violence, and stalking
- Will likely result in an additional FHA Sexual Harassment charge



Charging: State Law

- Several states have state-based campus sexual misconduct laws that may provide for different offenses in addition to Title IX definitions of sexual harassment
- K-12 districts may have state bullying laws (or other similar state laws) to consider
- Some state laws may also include different jurisdictional elements
 - Generally, states can provide additional protections but cannot take them away
- Consult with local legal counsel

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Charging Case Studies

Charging Case Study 1

- TIXC receives a complaint alleging that an employee sexually assaulted another employee at school while they were in a relationship.
 - They have since broken up.
- Complainant alleges that after the breakup, they told the Respondent that they were going to file a Title IX complaint.
- As a result, the Respondent threatened, cajoled, and pressured the Complainant not to file the complaint.

What additional information would be helpful to make this decision?

What charges should be included in an NOIA?

Charging Case Study 2

- Libby wants to submit a complaint against another student, Demarcus, alleging that:
 - Demarcus repeatedly writes “slut” and “whore” on Libby’s whiteboard outside her residence hall room, even after Libby confronted him.
 - Demarcus has made comments to Libby and in front of others about how Libby often he sees Libby with different men and asked when he will get his turn with her.
 - When Libby encountered Demarcus in the residence hall laundry room, in front of other students in the laundry room, Demarcus started to mimic sex acts and asked Libby if she wanted to sit on the washer while they had sex.

What additional information would be helpful to make this decision?

What charges should be included in an NOIA?

Charging Case Study 3

- Sarah is an employee in admissions and Yoshiko works in the business and finance office
 - Sarah and Yoshiko are married but living apart while they seek a divorce
 - They have one adopted child between them
- Sarah came to the Title IX office because she suspects Yoshiko is the source of some rumors that Sarah has had sexual relationships with new students after they've been admitted and enrolled
- During the meeting, Sarah disclosed that she suspects Yoshiko keyed her car a few weeks ago when it was parked at school late at night during an admissions event
 - Sarah also reports that Yoshiko slapped Sarah and called Sarah a “cheating whore” when Sarah confronted Yoshiko about the car the next day when Yoshiko arrived at work

What additional information would be helpful to make this decision?

What charges should be included in an NOIA?

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Additional Case Studies

Case Study 1

- Aleksandra files a report alleging that she was sexually assaulted in her off-campus apartment.
 - The Respondent, Andrea, discloses during her “Process B” interview that she had sex with Aleksandra once in her on-campus room.
 - During Aleksandra’s second interview, the investigator asks Aleksandra if the sexual encounter in Andrea’s room was consensual.
 - Aleksandra replies that she did not know they had sex that night, but she had been drinking.
 - Aleksandra says she may have been incapacitated due to alcohol that night, which is why she does not remember.

How would you respond?

Case Study 2

- Alani and Bernardo are high school students in a dual enrollment program at a local community college.
- Alani emailed the Title IX Coordinators for the high school and college alleging:
 - Alani and Bernardo had been dating for the past six months but recently split.
 - Since then, Bernardo has been following Alani while she's been on the college's campus and occasionally at high school sporting events after hours.
 - Bernardo has also grabbed Alani's buttocks several times passing in the hallway at the high school and smiles at her after he does it.
 - Bernardo's friends that are in Alani's college courses have harassed her while on campus, telling her they have seen her nudes on Bernardo's phone.

How would you respond?

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Questions?

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