

November 12, 2025



Association of
Title IX Administrators

Widener University Equal Opportunity, Harassment, and Nondiscrimination Policy

Decision-maker(s) & Advisor Training

Katherine Weathers, J.D., USCG CDR (ret)
Senior Consultant, TNG Consulting



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 sex- and gender-based harassment, 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 training is to cultivate the skills needed to serve as an effective Advisor and Decision-maker(s) in the Title IX Resolution Process.



Participants will learn about the scope and function of Advisors and Decision-maker(s) within Title IX proceedings. **We will not discuss specific cases you may be handling, but hypotheticals are welcome.**



Our goal is to provide Title IX Coordinators, Advisors, and Decision-maker(s) with an understanding of the Advisor and Decision-maker(s)'s role, responsibilities, and expectations during a Title IX process.

Title IX Compliance Overview

TITLE IX

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

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



Title IX Compliance Oversight

Title IX Coordinator Role

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



Title IX 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



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

Essential Compliance Elements

The requirements to **Stop, Prevent, and Remedy** guide institutions in their compliance work

1

STOP discriminatory conduct

2

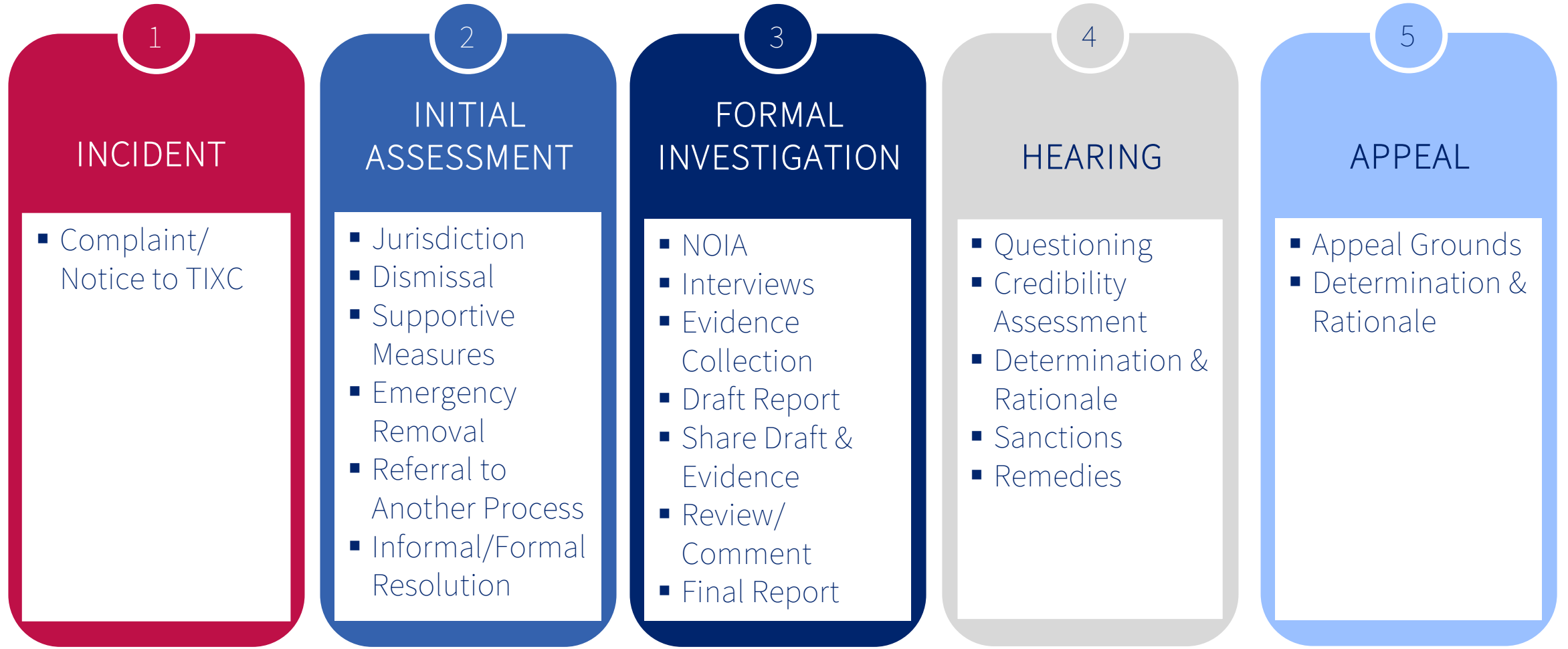
PREVENT recurrence, on both individual and institutional levels

3

REMEDY the effects of discrimination, for both the individual and institutional levels

Grievance Process: Complaint & Investigation

Title IX Grievance Process Overview



Receipt of a Formal Complaint

- Dismissal of Formal Complaint
 - Must Dismiss
 - May Dismiss
- Informal Resolution (Formal Complaint)
 - Alternate Resolution
 - Respondent Accepts Responsibility
 - Negotiated Resolution
- Hearing (Formal Complaint)
- Appeals



Supportive Measures

- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during Resolution Process
- May not unreasonably burden a Party
- May not be punitive or disciplinary
- Must be without fee or charge



Supportive Measures

Counseling/ Health Services	Employee Assistance Program	No Contact Orders	Referrals to community support services	Alternate Work Arrangements
Safety Planning	Safety Escorts	Transportation Assistance	Contact Limitations	Academic Support
Trespass Orders	Emergency Notifications	Increased Security	Campus Education	Community Education



Association of
Title IX Administrators

Definitions of Policy Violations

Quid Pro Quo

- An employee of the University
- Conditions, implicitly or explicitly, the provision of an aid, benefit, or service of the University
- On an individual's participation in unwelcome sexual conduct



Hostile Environment Sexual Harassment

- Unwelcome conduct
- determined by a reasonable person
- to be so **severe, pervasive, and objectively offensive (SPOO)**
- that it effectively denies a person equal access to the Recipient's education program or activity



Sexual Assault: Rape

- Penetration, no matter how slight,
 - of the vagina or anus of a person,
 - with any body part or object, OR
- oral penetration
 - Of a sex organ of the Complainant, or
 - by the Respondent's sex organ, or
 - by a sex-related object
- without the consent of the Complainant.

Sexual Assault: Fondling

- The touching of the private body parts of another person (buttocks, groin, breasts),
 - for the purpose of sexual gratification
 - Forcibly,
 - and/or against that person's will (non-consensually),
 - Or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Consent

Must be

Knowing

Voluntary

With clear permission

By word or action

To engage in sexual activity.

Must NOT have

Force

Intimidation

Threats

Coercion

Incapacitation

Sexual Offenses, Non-Forcible

- Incest
 - Non-forcible sexual intercourse,
 - Between person who are related to each other,
 - Within the degrees wherein marriage is prohibited by Pennsylvania or Delaware law.

- Statutory Rape
 - Non-forcible sexual intercourse,
 - with a person who is under the statutory age of consent of 16.

Dating Violence

- Violence, on the basis of sex,
- Committed by a person
 - Who is in or has been in a social relationship of a romantic or intimate nature with the Complainant
 - The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interactions between the persons in the relationship
- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
 - Does not include acts covered under the domestic violence definition

Domestic Violence

- Violence, on the basis of sex,
- Committed by a current or former spouse or intimate partner of the Complainant
 - By a person with whom the Complainant shares a child in common, or
 - By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
 - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the state, or
 - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania or Delaware.

Stalking

- Engaging in a course of conduct,
- On the basis of sex,
- Directed at the Complainant, that
 - would cause a reasonable person to fear for that person's safety, or
 - The safety of others, or
 - suffer substantial emotional distress

Sexual Exploitation

Taking non-consensual or abusive sexual advantage of another for their own benefit or the benefit of anyone other than the person being exploited.

- Examples:
 - Sexual Voyeurism
 - Taking pictures, video, or audio recording of another in a sexual act without their consent
 - Sextortion
 - Engaging in sexual activity with another while knowingly infected with an STD
 - Causing or attempting to cause the incapacitation of another person for the purpose of compromising their ability to give consent to sexual activity

Retaliation

- Recipient, or any member of Recipient's community,
 - Taking or attempting 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 this Policy and procedure

Roles and Responsibilities

Parties, Advisors, & Decision-maker(s)s

- **Complainant:** a person who is alleged to have been subjected to conduct that could violate applicable policies.
- **Respondent:** a person who is alleged to have engaged in conduct that could violate applicable policies.
- **Advisor:** Any person chosen by a Party who may accompany the Party to all meetings related to the Resolution Process and advise the Party on that process
- **Decision-maker(s)(s):** the person or persons who have decision-making and sanctioning authority within the University's Formal Grievance process



Neutrality, Conflicts of Interest, and Bias

- Title IX Regulations require that all individuals serve neutrally; **without** bias or conflicts of interest
 - Impartiality is critical to the integrity of the process
 - Title IX team members have no “side”
- Advisor must be prepared to help their advisee raise and navigate issues of bias or conflicts of interest





Association of
Title IX Administrators

Advisor Role

Advisors

- Advisors are not required for all aspects of a Title IX Grievance Process, though it is best practice
 - **Advisors are required for cross examination during a Title IX hearing**
- The Title IX Regulations contemplate two types of Advisors:

Party-Selected Advisor

- Title IX Regulations (and VAWA) require that a party be allowed to select an “Advisor of choice” for **sexual harassment** allegations
- May be present for every meeting, interview, and hearing
- Institution may not limit choice

Institution-Appointed Advisor

- Only required for conducting Advisor-led questioning at the hearing when a party does not have an Advisor selected
- If appointed earlier than the hearing, may accompany the party throughout Grievance Process and be present for every meeting, interview, and hearing

Who Can Serve as an Advisor

- The Parties may each have one Advisor of choice
 - Friend, mentor, family member, attorney, or any other individual
- Advisor must be eligible and available.
- University will assign a trained Advisor upon request.
- The University is not obligated to provide an attorney to serve as an Advisor.
- Parties may change Advisors but must provide timely notification and consent to share information.

Role of the Advisor

Advisor support may take various forms:

- Helping advisee prepare for each meeting
- Accompanying Advisee throughout the Resolution Process, including all meetings
- Analyzing strategic issues, such as whether to:
 - Participate in Informal Resolution (IR)
 - File an appeal
- Helping Advisee access supportive measures, community resources, and advocacy services
- Participating in the investigation, including review and comment on provided materials
- Preparing for the hearing, if applicable
 - Developing/Reviewing questions for the other Party and Witnesses with your Party, and
 - Conducting any questioning/cross-examination at the hearing, if applicable

Advisor Expectations

Advisors should:

- Understand their role in the context of their institution's policy and process
- Learn the applicable policies and procedures
- Adhere to rules of confidentiality and privacy
- Advise with integrity and follow any applicable professional ethics
- Be reasonably available to their advisee
- Be timely, professional, and organized
- Read the case materials thoroughly



Advisor Expectations

Advisors should not:

- Make decisions for their advisee
- Act on behalf of their advisee without permission from the advisee
- Engage in disruptive or harassing behavior toward any party, witness, or Title IX team member
- Answer questions during a live hearing for their advisee
- Attempt to negotiate a resolution with the Decision-maker(s)



Confidentiality and Privacy Concerns

- The University makes every effort to preserve the Parties' Privacy.
- Except as permitted by applicable laws and policies, the University will not share the identity of a:
 - Reporter
 - Complainant
 - Respondent
 - Witness
- Procedural requirements necessitate that each Party know:
 - The identity of all other Parties
 - The identity of all witnesses



Association of
Title IX Administrators

Title IX Investigation Phase

Notice of Investigation and Allegations

- Must be provided to the Parties simultaneously and in writing prior to interviewing any party
- **NOIA must include:**
 - Notice of the allegations and known details, such as identities of the Parties, date, and location of the alleged conduct
 - A description of the alleged conduct and relevant policy provisions
 - Information about grievance procedures
 - Any Informal Resolution options
 - Parties' rights, including right to an Advisor of their choice
 - Presumption that Respondent is not responsible

Notice of Investigation and Allegations, Cont.

- NOIA must include:
 - A statement that retaliation is not permitted
 - Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
 - The NOIA must be updated if additional allegations arise during the course of the investigation
 - Current policy and procedures (or link to them)
 - Parties are offered Advisors

Interviews

- During the formal process, the Investigator will request that the Parties participate in an interview.
- The Advisor may attend the interview but cannot answer questions on behalf of the Advisee.
- The Advisor and Advisee can request breaks during the interview.
- The Party does not have to participate in the interview or can choose not to answer some questions.
- The Advisor and Advisee should be in quiet, private areas during this time.
- If the interview is virtual, the Advisor should keep their camera on.

Understanding Evidence

- The institution has the duty to collect **relevant** evidence
 - Relevant evidence is information **related to the allegations** of sexual harassment under investigation that may aid in determining whether the alleged misconduct occurred
 - Inculpatory and exculpatory evidence
 - Some evidence may only be relevant to assessing credibility
- Relevant evidence forms the basis of the investigation report



Specific Evidence Issues

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

Parties' Review and Response

Parties (and their Advisors) must be given:

- Ten days to respond to draft investigation report and Directly Related Evidence
- Electronic or hardcopy access to materials

During the review and comment period, the advisee and Advisor may:

- Suggest new witnesses or additional questions to be asked of Parties or witnesses
- Comment on the evidence or offer new evidence
- Challenge Investigator's relevance determinations
- Ask to correct any mis-transcription or errors to ensure accuracy
- Address any bias concerns

Informal Resolution Procedure

Informal Resolution Procedure

- At discretion of the University and only with voluntary consent of the Parties
 - Any Complainant or Respondent can request Informal Resolution (IR)
 - Available any time prior to determination
 - Title IX Coordinator determines available methods/structures
- Parties may withdraw from IR at any time prior to agreement
- Parties precluded from initiating or resuming investigation and Resolution Process if agreement is reached
- No appeal if agreement is reached

Decision-Maker Role & Live Hearings



Association of
Title IX Administrators

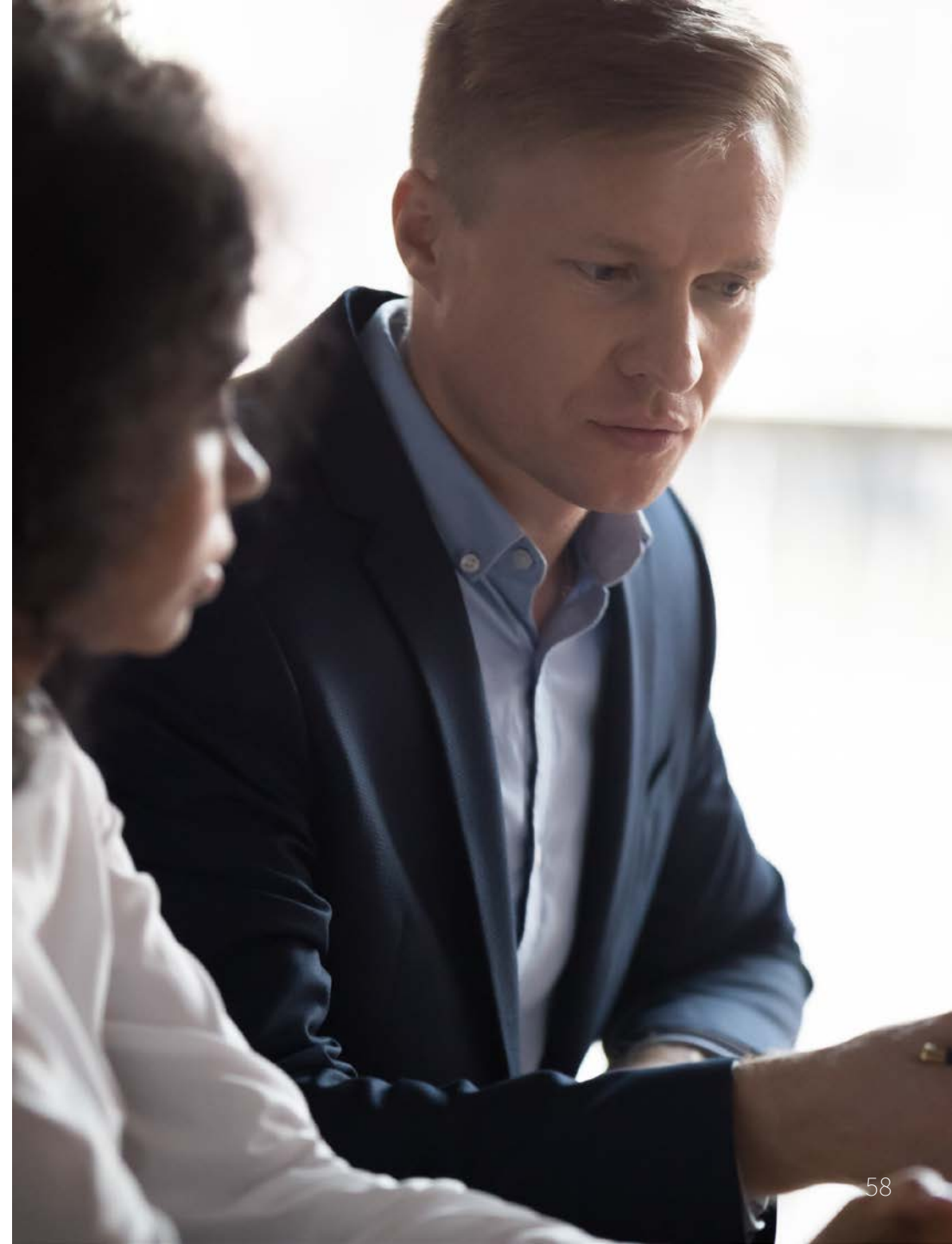
Decision-maker

Decision-Making Under the 2020 Regulations

- Decision-maker (DM) could be a single person or a panel (typically three)
 - Conducted by institutional community members (typically faculty or staff) or external contractors
 - Must Operate without bias and/or conflicts of interest
 - Must provide rationale for all decisions/determinations prior to, during, or after a hearing
- All institutions must hold a live hearing
- Hearings must be recorded
- Title IX Coordinator (TIXC) and Investigator may not serve as DM for the same complaint

Live Hearings

- Live hearings are required
- DM and Advisors can ask relevant questions of parties and witnesses
- DM makes relevance determinations
- DMs deliberate privately to reach a final determination
 - DMs may or may not be involved in determining sanctions and remedies
- Parties and witnesses may be in person or virtual



Questioning & Cross-Examination Tips

Platinum Rule

“Treat others how they want to be treated”

Ask direct questions, but don't intimidate

Don't try to trick or confuse

Remain seated while questioning

Respect the process, rules, and boundaries

Pause after asking each question to allow DM to determine its relevance

Avoid multi-part or confusing questions

Questioning Tips During Hearing for Advisors and DMs

- Decision-maker(s) will likely ask questions of Parties and witnesses before Advisors ask questions
 - Advisor's question may be disallowed if already asked or if abusive/uncivil
 - Decision-maker(s) may permit Advisors to reword questions
- Keep track of what has been asked
 - Be prepared to explain why a question is relevant, but engage in discussion **only** if invited to do so by the Decision-maker(s) or Hearing Chair
 - Explain why the question may produce a different answer than was already provided
- Note relevant page and line numbers when drafting questions to aid in quickly accessing the information during the hearing

Asking Difficult Questions

- DMs will need to ask difficult questions about sensitive topics
- Acknowledge if a topic may be hard to discuss
 - DO NOT avoid asking questions because the topic is difficult to discuss
- Provide opportunities to take breaks
- DMs can show empathy **without** sacrificing their impartiality
 - Offer an empathetic response equitably to all parties and witnesses during the hearing, so that there is no appearance of favoritism

Trauma-Informed Questioning

ATIXA Position Statement: Application of trauma-informed practices in our field has gotten ahead of the actual science

- **ATIXA Recommends** incorporating trauma-informed **questioning** practices without allowing trauma to influence the evaluation of credible, relevant evidence
 - DM must only assess the available relevant evidence
 - DM must avoid substituting trauma indicators for evidence
 - Trauma is neutral; it neither enhances nor detracts from proof
- Assume that any party or witness could have trauma; therefore, treat everyone with sensitivity

Activity: Ranking Priorities

Decision-Maker Role and Responsibilities

Rank your top three responsibilities as a Decision-maker

Finding the
truth

Providing a
just result

Providing an
educational process

Making a safe
community

Upholding the
institution's policy

Ensuring a fair
process

Protecting the
institution from
liability

Punishing
wrongdoing

Decision-Maker Responsibilities

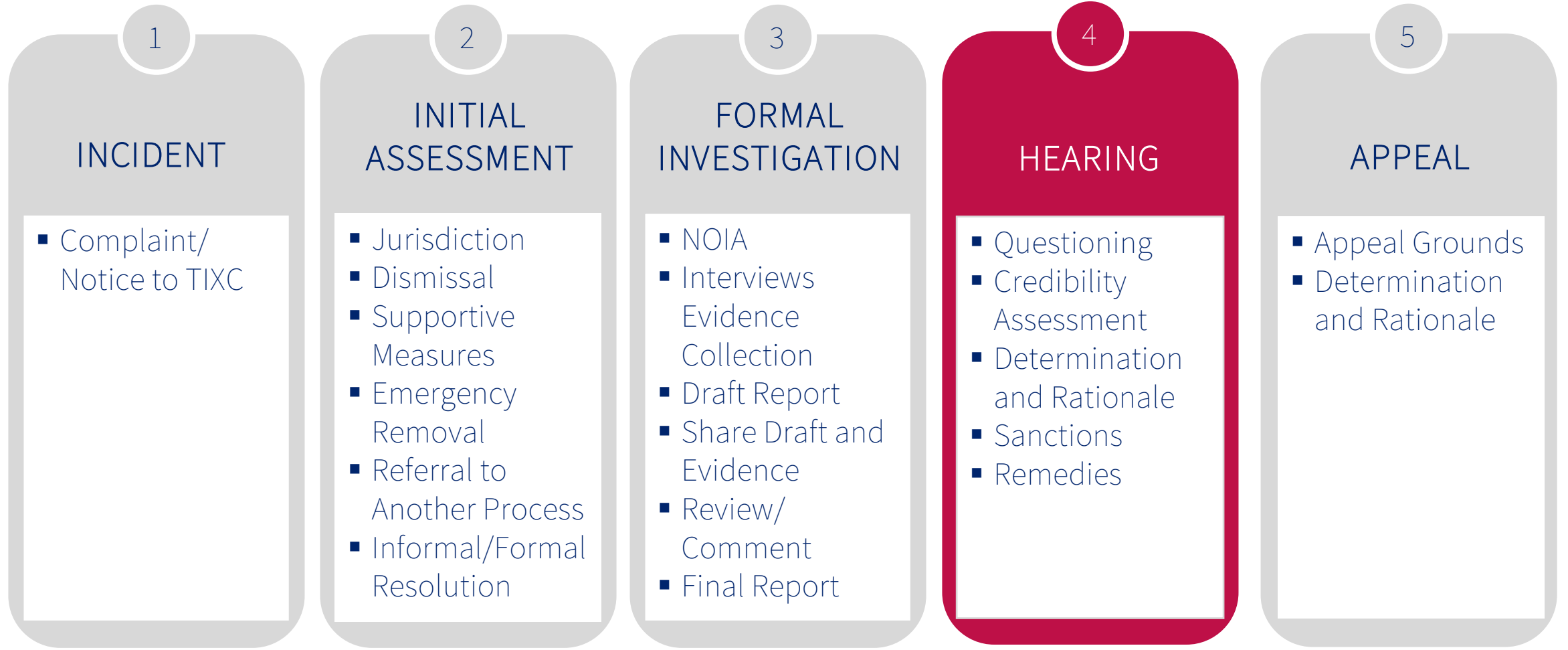
- DMs have **no side**, other than the **integrity of the process**
- DM must have a thorough understanding of:
 - Institutional policy and procedures, including the investigation process
 - Whether the determination is for an alleged incident(s), a pattern, or a culture/climate complaint, and what findings are necessary based on that footing
 - Best practices for asking relevant questions
 - Decision-making procedures and management
 - How to weigh and apply evidence to policy by the standard of evidence
 - How to analyze credibility
 - How to make determinations, decide sanctions/remedies, and write a rationale

Procedural Due Process/Fundamental Fairness

- Decision-makers have an opportunity to cure process deficiencies
 - Important to have thorough understanding of policies and procedures
- Institutions owe parties:
 - Consistent, thorough, and procedurally sound review of all allegations
 - Substantial compliance with written policies and procedures
 - Policies and procedures that afford sufficient rights and protections to satisfy mandates of all applicable laws
 - Ex: Clear, written notice of the allegations
 - Ex: Opportunity to present witnesses, evidence, and be heard by DM
- DMs should raise any concerns to TIXC

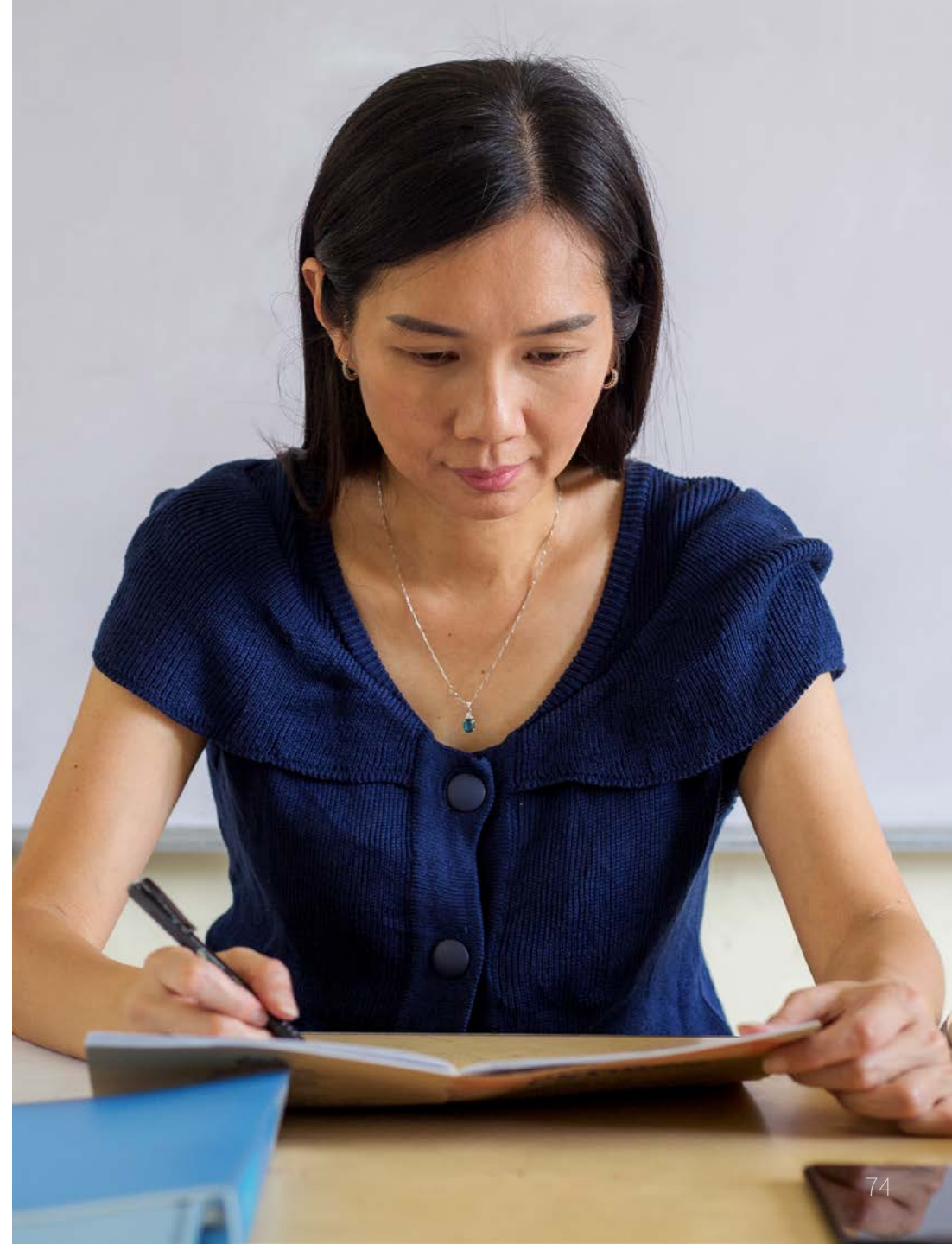
Decision-Making Phase: Skills and Practical Application

Decision-Making



Initial Materials Review

- DMs should review all available documentation and evidence prior to making a determination
- Review should consist of:
 - Complaint
 - NOIA
 - Applicable policies
 - Relevant and directly related evidence
 - Investigation report
- Consider conducting multiple reads



Review Policy Elements and Procedures

Policy

- What policies are alleged to have been violated?
- What are the elements of those policies?
 - DMs will weigh and apply relevant evidence to determine whether a policy violation occurred

Procedures

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

Materials Review

ATIXA recommends reviewing materials multiple times, focusing on areas of consistency and inconsistency:

- **Consistency review:** note all areas of information consistency/alignment
 - No additional verification or questioning is likely needed on these issues
 - Begin to identify pieces of evidence that address the various policy elements
- **Inconsistency review:** identify information inconsistencies/disparities
 - DM compiles any remaining questions
 - DM identifies the pieces of evidence that address the various policy elements
 - DM's primary focus is resolving contested facts where possible

Pre-Hearing DM Interactions

- Chair or Decision-maker(s) may have **pre-hearing communication** with each Party and Advisor
 - In writing or in person

Pre-hearing communication can provide an opportunity to:

- Ask questions about the hearing and its procedures
- Clarify expectations regarding logistics, decorum, Advisor role, and technology
- Discuss whether a Party intends to ask questions of any or all witnesses
- Convey whether a Party intends not to speak at the hearing
- Submit questions in advance, but this is **not** required
- Express any concerns about conflicts of interest or bias

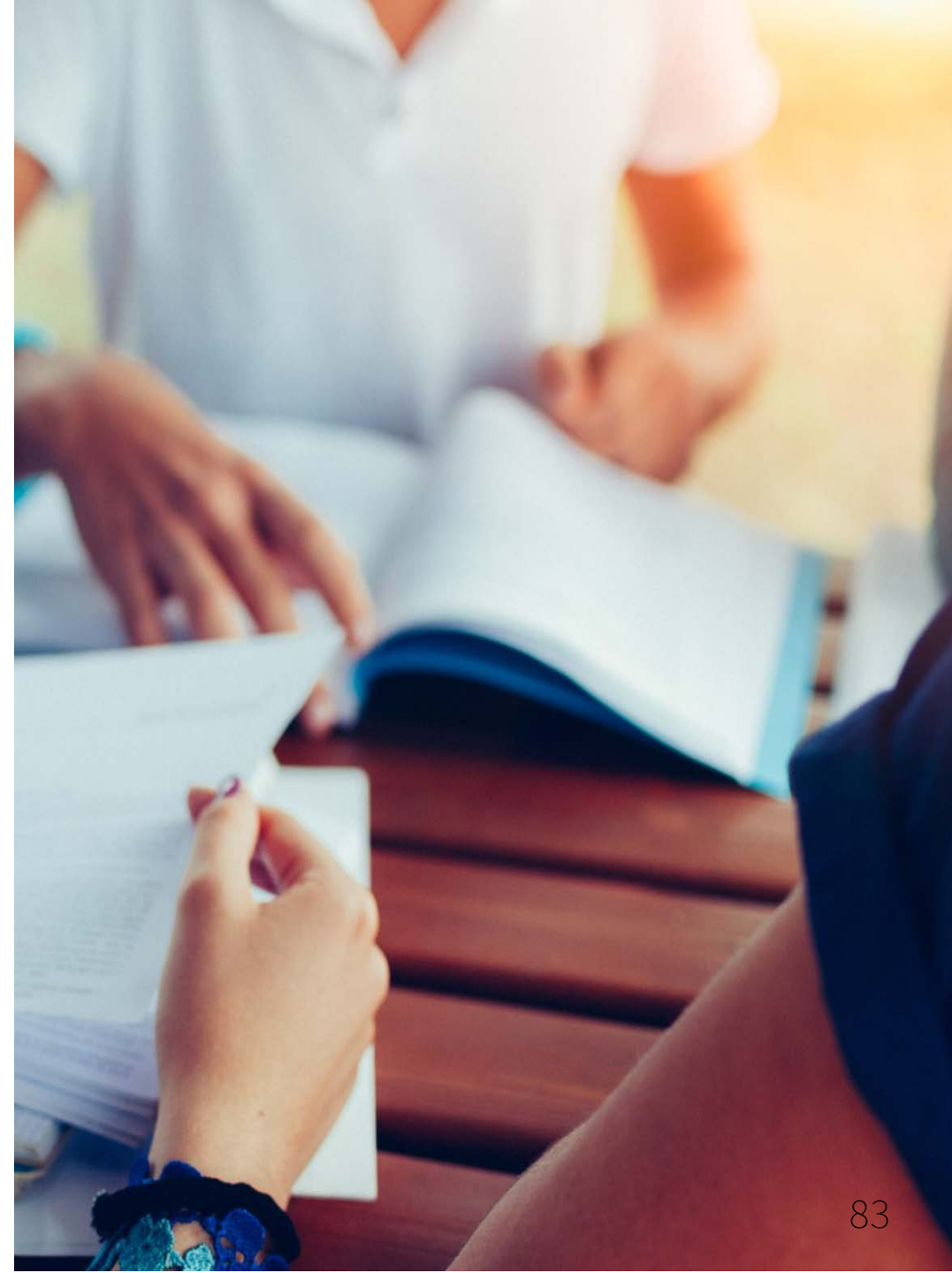
Advisors should discuss these topics with their Advisee prior to any pre-hearing meeting



Skills: Credibility Assessment

Party and Witness Credibility

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



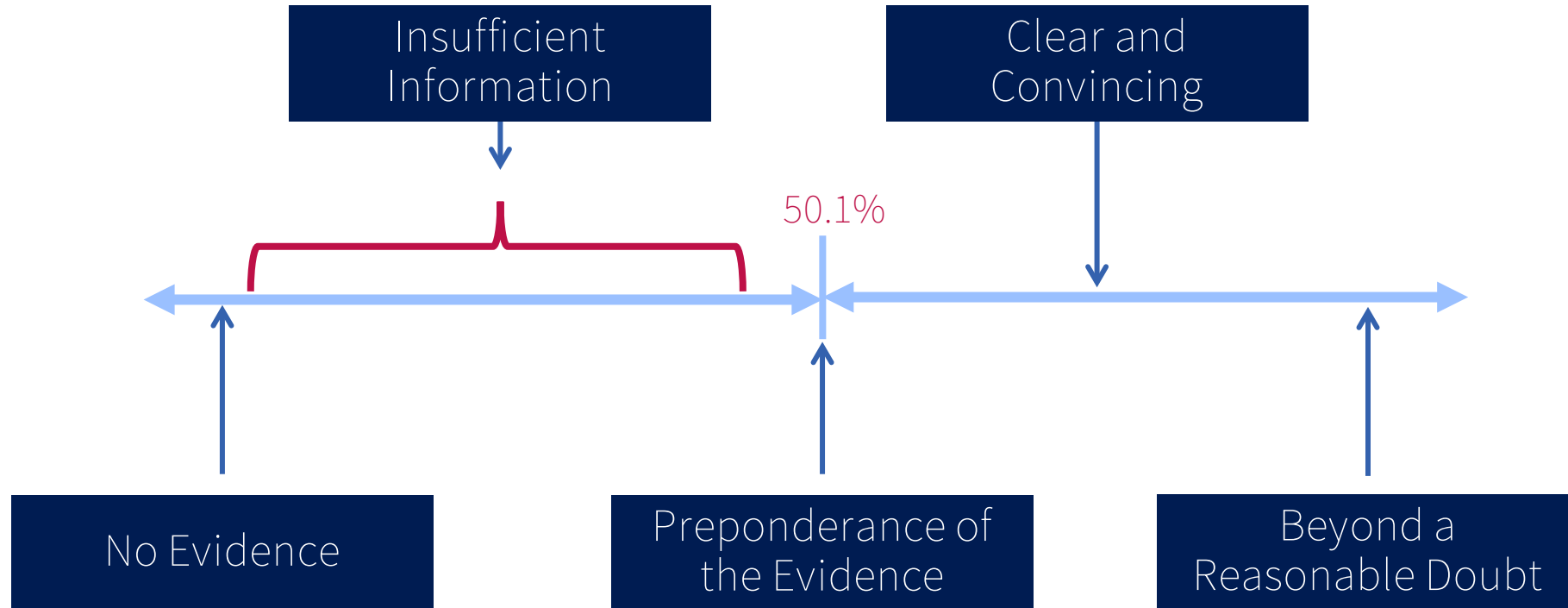
Credibility Considerations

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



Skills: Weighing and Analyzing Evidence

Standard of Proof



Applying Facts to Policy

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

Step One: Parsing the Policy

A key part of weighing and analyzing evidence is identifying the elements of each policy provision:

- **Stalking:**
 - Engaging in a course of conduct,
 - Directed at the Complainant,
 - That would cause a reasonable person to:
 - Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress

Step Two: Applying Facts to Policy

Map relevant and credible facts to the applicable policy element

Policy Element:

- Engaging in a course of conduct

Facts:

- Complainant asserts Respondent followed Complainant to an off-campus party on October 1
- Respondent came to Complainant's residence hall room three times between October 5 and October 12
- Respondent denies following Complainant on October 1
- Witness corroborates Respondent knocked on Complainant's door several times in one week

Step Two: Applying Facts to Policy

Map relevant and credible facts to the applicable policy element

Policy Element:

- Directed at the Complainant:
 - That would cause a reasonable person to **fear for their safety**

Facts:

- Complainant alleged Respondent pounded on his door and yelled until an RA told her to leave
- Complainant alleged Respondent sent texts suggesting she was following him, and he should fear her
- Respondent produced texts that do not support Complainant's characterization
- RA witness asserts "pounded on his door and yelled" is an exaggeration



Skills: Analyzing Consent Evidence Using the Consent Construct

The Consent Construct

1. **Force:** Did the Respondent use force to obtain sexual or intimate access?
2. **Incapacity:** Was the Complainant incapacitated?
 - a. If so, did the Respondent know, or
 - b. Should the Respondent have known that the Complainant was incapacitated?
3. **Consent:** 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?

Force

Did the Respondent use force to obtain sexual or intimate access?

Physical Violence:

- Hitting, restraint, pushing, kicking, etc.

Threats:

- Objective and subjective analysis of the viability of the threat

Intimidation:

- Implied threat that menaces and/or causes reasonable fear

Coercion:

- Unreasonable amount of pressure for sexual access (Consider: isolation, frequency, intensity, and duration)

Incapacity

Was the Complainant incapacitated?

- **Incapacitation:** a state where an individual cannot make rational, reasonable decisions because they **lack the capacity** to give knowing consent:
 - Unable to understand who, what, when, where, why, or how
 - Incapacity ≠ impaired, drunk, intoxicated, or under the influence
 - Insufficient situational awareness
 - Lack of consequential awareness
 - Blackout and incapacity are **not** synonymous:
 - Blackout means memory is not formed
 - Incapacitation is about decision-making capacity
 - Incapacity could be the result of substance use, disability, or a health condition

Evidence of Incapacity: Potential Context Clues

- Slurred speech
- Scent of alcohol on the breath
- Shaky equilibrium; disorientation
- Passing out/unconsciousness
- Throwing up
- Outrageous/unusual behavior
 - Requires prior knowledge

Incapacitation determination is made contextually,
in light of all the available relevant evidence



Incapacity Analysis

- If the Complainant **was not** incapacitated, move to the Consent Analysis
- If the Complainant **was** incapacitated, but:
 - The Respondent did not know, **AND**
 - The Respondent would not have **reasonably known** of the Complainant's incapacity = no policy violation, move to Consent Analysis
- If the Complainant **was** incapacitated, and:
 - The Respondent **knew it or caused it** = policy violation
 - The Respondent **should have known it** = policy violation

Note: The Respondent's own intoxication cannot be used as a reason they did not know of the Complainant's incapacity

Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
 - If so, was the Complainant acting differently than in previous similar situations?
- Evaluate what, if anything, the Respondent observed the Complainant consuming or ingesting
 - Use a timeline analysis
- Determine if the Respondent provided any substances to the Complainant
- Pace of consumption and amount of consumption can both be relevant



Skills: Making Findings, the Final Determination, and Sanctioning

Finding vs. Determination

Finding

Whether the conduct occurred, by the standard of evidence

Final Determination

Whether the conduct that is proven to have occurred violates policy

Written Determination Standards

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

Making a Finding and Final Determination

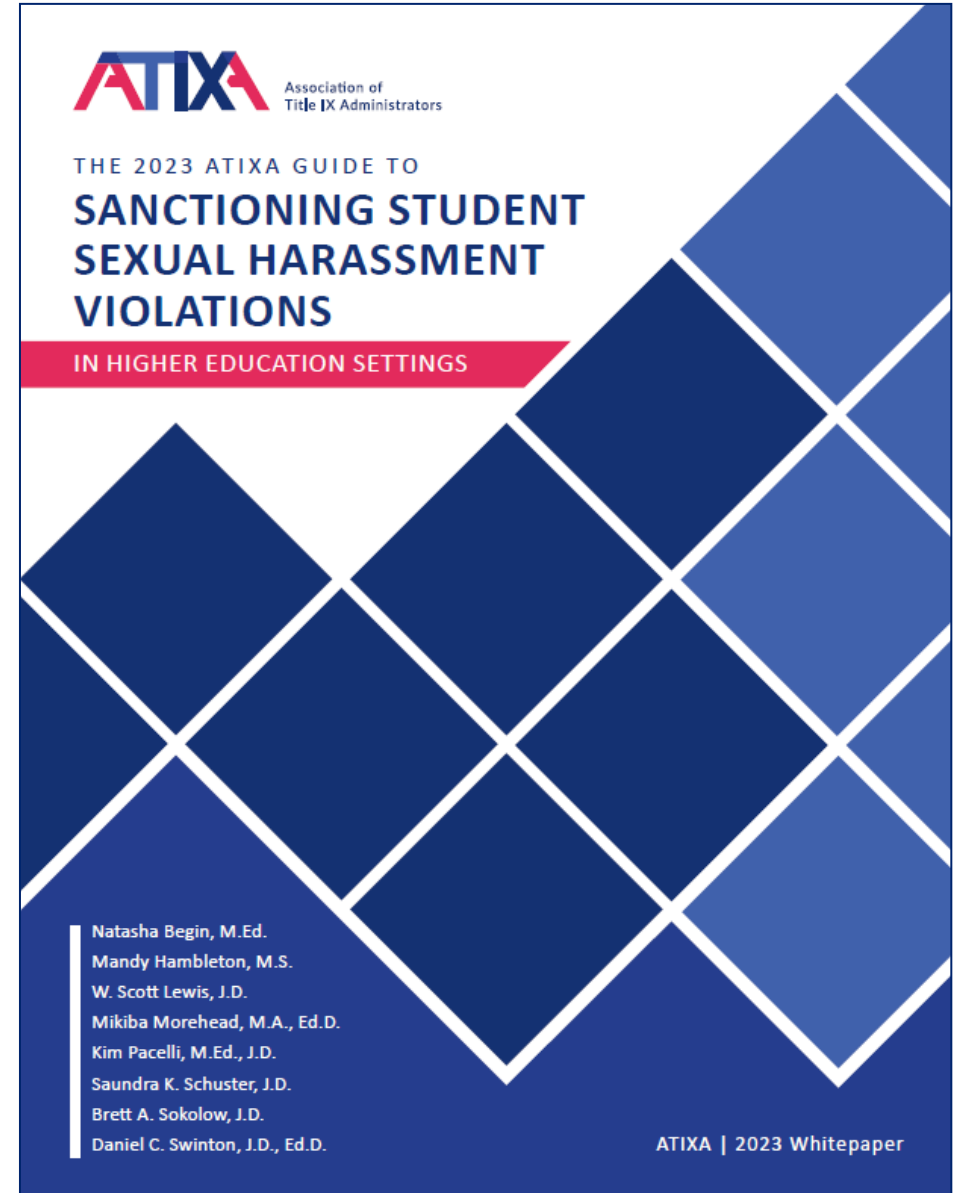
- Finding(s) must be based upon information gathered during the investigation and decision-making phases only
 - No outside information should influence decision-making
- Separate the **determination** from the **sanction**:
 - Do not use impact-based rationales for policy violation findings and determinations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

Possible Sanctions

- Warning
- Probation
- Educational Outcome
- Permanent No Contact Order
- Permanent Restriction
- Suspension
- Expulsion
- Demotion
- Termination

Sanctioning Pitfalls

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



Written Determinations

Written Determination

- Authored by Decision-maker(s)
- TIXC/Legal counsel reviews
- TIXC communicates to the parties simultaneously in writing
 - No FERPA concerns

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
- Finding and Final Determination
- Sanctions imposed (if any) and rationale for chosen sanctions or deviation from precedent
- Whether remedies will be provided to Complainant
- Procedures and bases for appeal

Appeals

Appeals

- Appeal rights may differ depending upon the nature of the complaint
 - Must be offered equitably to all Parties if provided
- Burden is on the appealing Party to demonstrate that an error occurred
 - Appeal is not a re-hearing
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the Decision-maker(s) for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturning** the determination (not recommended)

Appeal Grounds

For complaints of sex-based harassment involving a post-secondary student, institutions must offer appeals on the following grounds:

- 1** Procedural irregularity that would likely **change the outcome**
- 2** New evidence that would likely **change the outcome** and that was not reasonably available when the determination of whether sex-based harassment occurred, or dismissal was made
- 3** TIXC, Investigator, Decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would likely **change the outcome**

Institutions have the discretion to add additional appeal grounds

Questions



Association of
Title IX Administrators

ALL ATIXA PROPRIETARY TRAINING MATERIALS ARE COVERED BY THE FOLLOWING LIMITED LICENSE AND COPYRIGHT.

By purchasing, receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for their use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes, only. If these materials are used to train Title IX personnel, they are subject to 34 CFR Part 106.8(f)(3), requiring all training materials to be available for inspection upon request. ATIXA does not permit any licensee/purchaser to publicly display, share, or publish these materials. If you have lawfully obtained ATIXA materials by registering for an ATIXA training, you are licensed to use the materials provided for that training. Licensees may download and save a PDF version of training materials for their completed training to provide them to a third-Party for inspection upon request in compliance with federal regulations. No right to disseminate, post, or provide a copy of the materials publicly or to any third-Party is permitted.

You are not authorized to copy or adapt these materials without ATIXA's explicit written permission. No one may remove this license language from any version of ATIXA materials. Should any non-licensee post these materials to a public website, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.