



Association of  
Title IX Administrators

# **Solutions for Managing Intake, Jurisdiction, and Dismissal in the Title IX Grievance Process**

An ATIXA Workshop  
Laredo College

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- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting [www.atixa.org/atixa-event-lobby](http://www.atixa.org/atixa-event-lobby) in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
- If you have not registered for this course, an event will not show on your Lobby. Please email [customevents@tngconsulting.com](mailto:customevents@tngconsulting.com) or engage the ATIXA website chat app to inquire ASAP.





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.

# Course Introduction



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



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

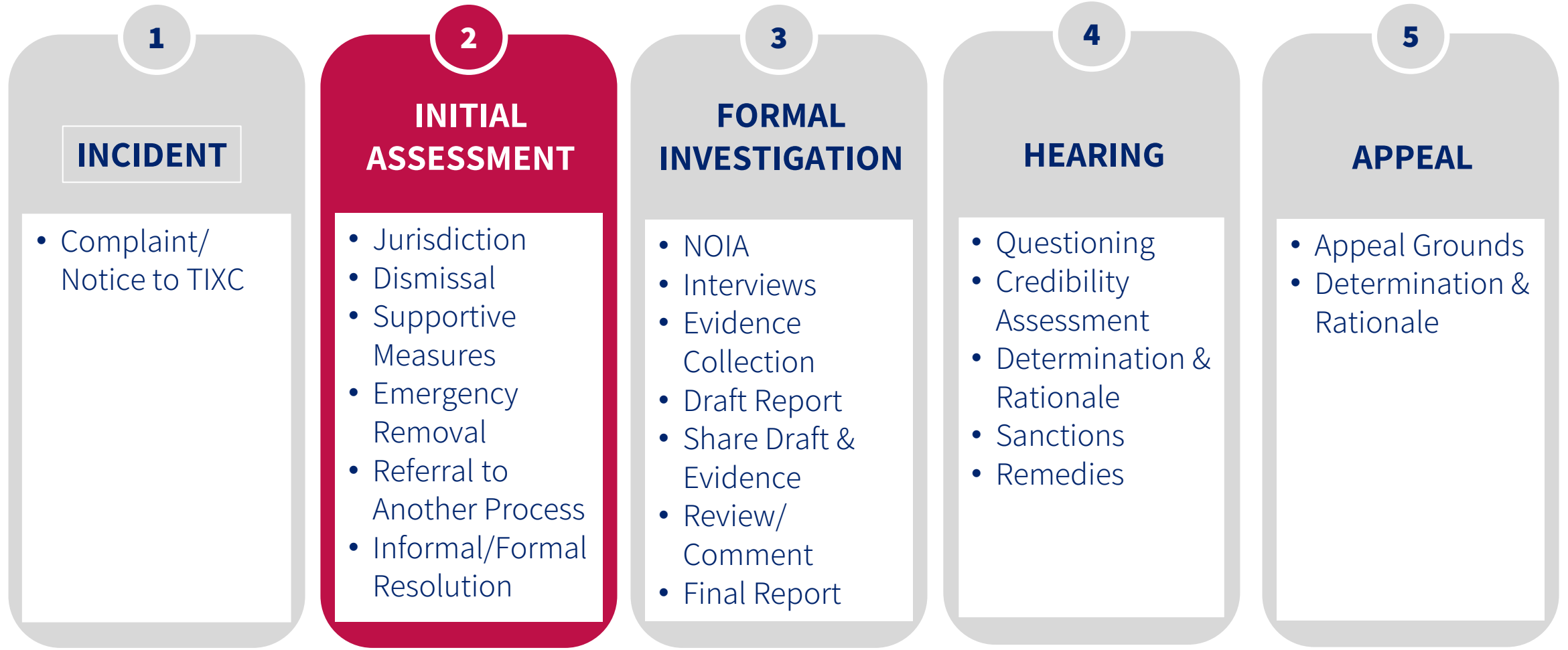


Our goal is to provide an opportunity to apply new skills and strategies in a risk-free environment to improve participants' competency and practice.

# Content Advisory

- The content and discussions in this course will necessarily engage with sex-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses
- ATIXA faculty members may offer examples that emulate the language and vocabulary Title IX Coordinators and Title IX team members encounter in their roles including slang, profanity, and other graphic or offensive language

# Initial Assessment



# Intake: Emerging Best Practices

- 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)



# Intake: Emerging Best Practices

- TIXC must oversee intake but can be delegated
  - Options for delegation
  - Delegation within Title IX office or to another area/office
    - Higher education example: Deputy TIXC in Student Affairs and/or HR
    - K-12 example: Building-based administrators for student complaints





# Intake: Emerging Best Practices

- TIXC must oversee intake but can be delegated
  - Consider role of advocates and/or confidential resources for pre-intake support
  - Consider recordkeeping challenges with delegation
  - Formal Complaints should always go to Title IX
  - Notetaking/documentation
  - Note that conducting intake can make you a witness after-the-fact
  - What are the most effective ways to connect a party with an Advisor as early as the intake step of the process?
    - How hard should a party be pushed to find an Advisor?

# Online Reporting

- Online reporting is pivotal especially with remote and hybrid employment and instruction
- Structure online reporting to ensure that it has the effect of facilitating a report and not a Formal Complaint
- Helps to prevent the notification trap
  - Important to Complainant confidentiality
  - Prevents inadvertent submission of Formal Complaint when report was desired
  - Avoids required notification to a Respondent who does not yet know a Formal Complaint has been filed
    - Dismissal decision
    - Notice of Investigation and Allegation letter (NOIA letter)

# **Group Discussion**

# Resolution Process Selection

- Steer the Complainant/complaint to the right process
- Intake can be overwhelming
  - Don't expect immediate decisions
  - Don't expect the Complainant to know what to ask
  - Try to set and manage realistic expectations
  - Consider your tone and word choice
  - You may not like the current Title IX process, but should you show/share that?



# Intake Follow-up: Communication

- Follow-up in writing and reiterate options
  - Offer the VAWA Brochure or written summary of options
  - Consider flowcharts, rights guides, and other presentations
- You know the process, but Complainant is likely a newcomer to it
- Research shows that even when students have read policies and procedures:
  - Title IX process is confusing
  - Seemingly lacking in transparency
  - Inaccessible

# Intake Follow-up: Action Items

- Connect parties with Advisors as soon as possible
- 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



# Initial Assessment

# Initial Assessment

Initial Assessment Determines Jurisdiction

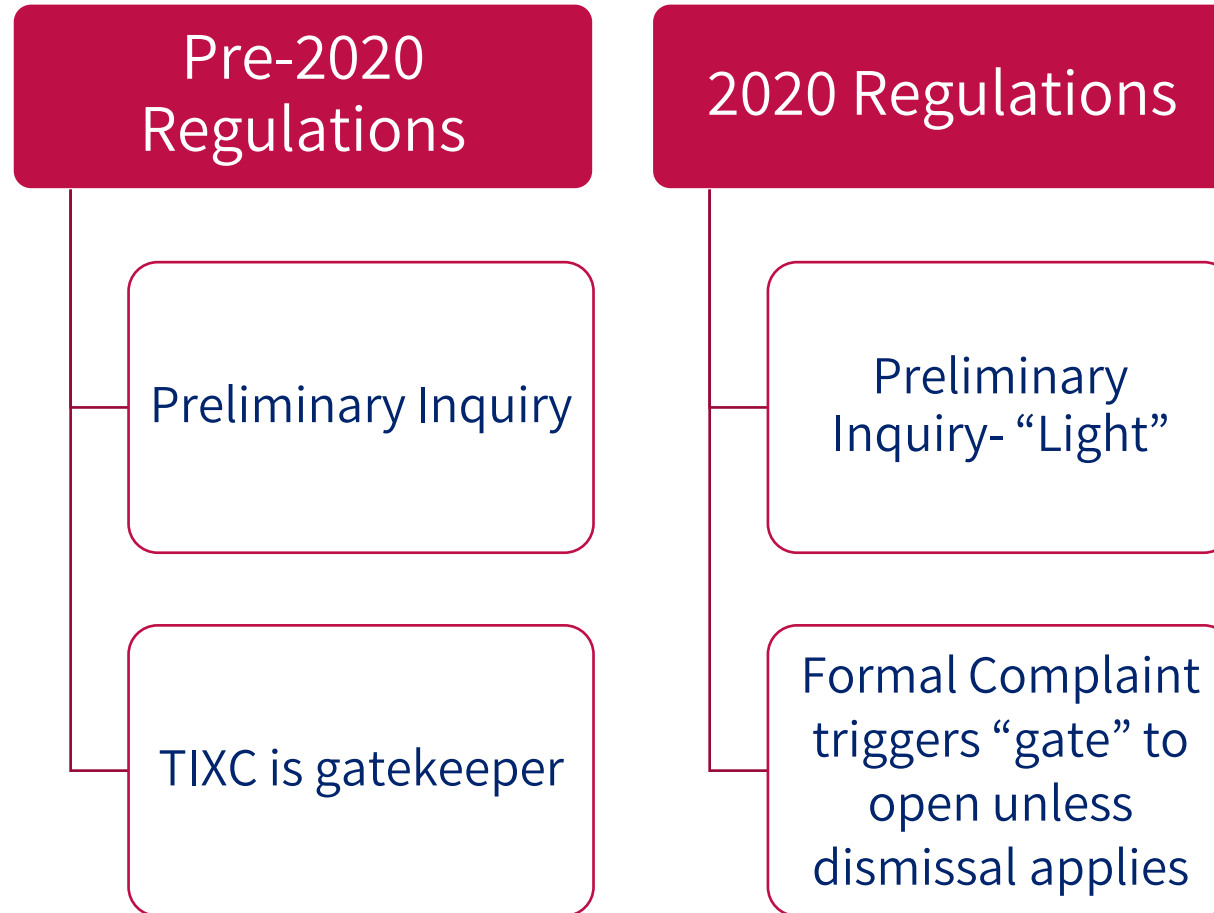


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graph TD; A[Initial Assessment Determines Jurisdiction] --> B[Jurisdiction Determines Process]; B --> C[Initial assessment also provides opportunity to consider Informal Resolution, offering Supportive Measures, and beginning to frame the charges for the NOIA];
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Jurisdiction Determines Process

Initial assessment also provides opportunity to consider Informal Resolution, offering Supportive Measures, and beginning to frame the charges for the NOIA

# Initial Assessment: Framework



# Title IX Coordinator Signing Complaint

- TIXC has authority to sign complaint when the Complainant can't/won't, or when anonymous or third-party notice is provided
- 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



# Refresher: 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

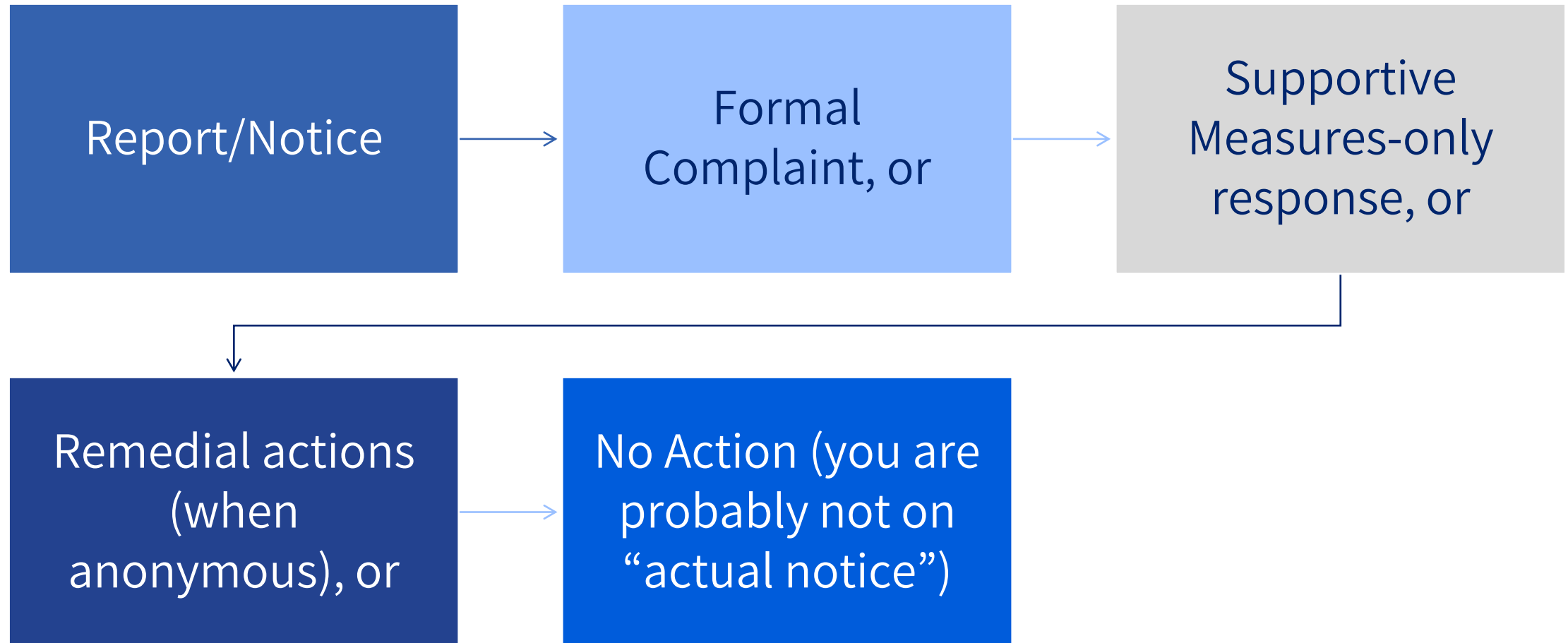
- Safety concern or danger is reasonably present that requires the institution to act to protect the community from additional harm
- Complainant is reluctant, but accusation is against an employee
  - TIXC does not think it is reasonable to respect the Complainant's request for confidentiality
- Complainant is not participating or attempting to participate
  - When TIXC believes the institution should formally act
  - 2021 OCR Q&A on the Title IX Regulations on Sexual Harassment (revised 2022)
- Group Discussion:
  - What are the circumstances in which a TIXC should consider signing a complaint?
  - Discuss or post your thoughts in the chat



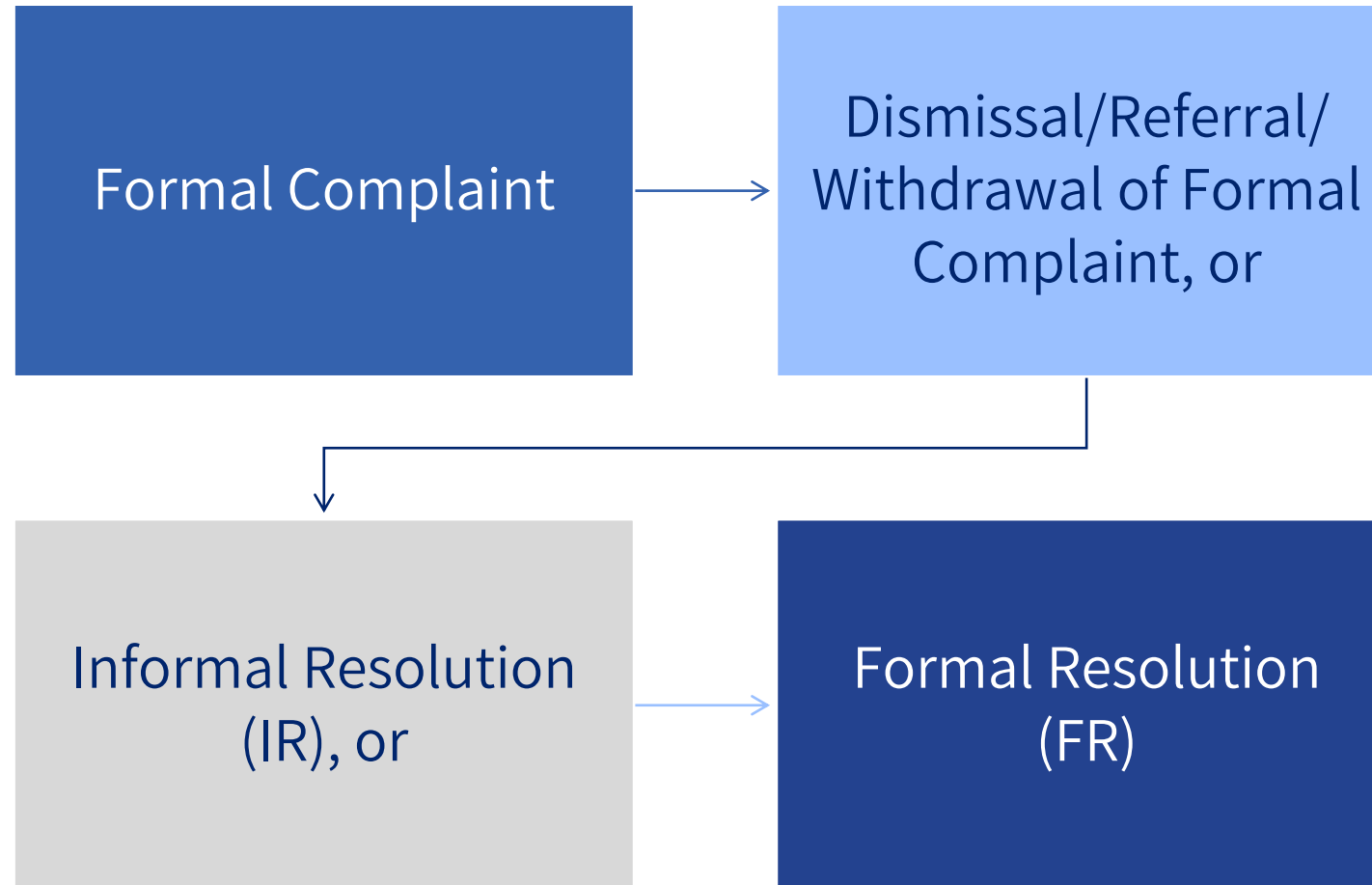
# Third Party Notice and/or Anonymous Reports

- Third-party notice has its own set of hurdles and challenges
  - Analyze third-party notice as reports
  - Consider analysis akin to a Complainant who is not participating or attempting to participate
- Anonymous report mechanisms are a best practice
  - May be required by your jurisdiction
  - Inherent challenges for TIXCs
  - When we empower and invite anonymous reports, anticipate needing to decide more frequently whether the TIXC deciding should sign

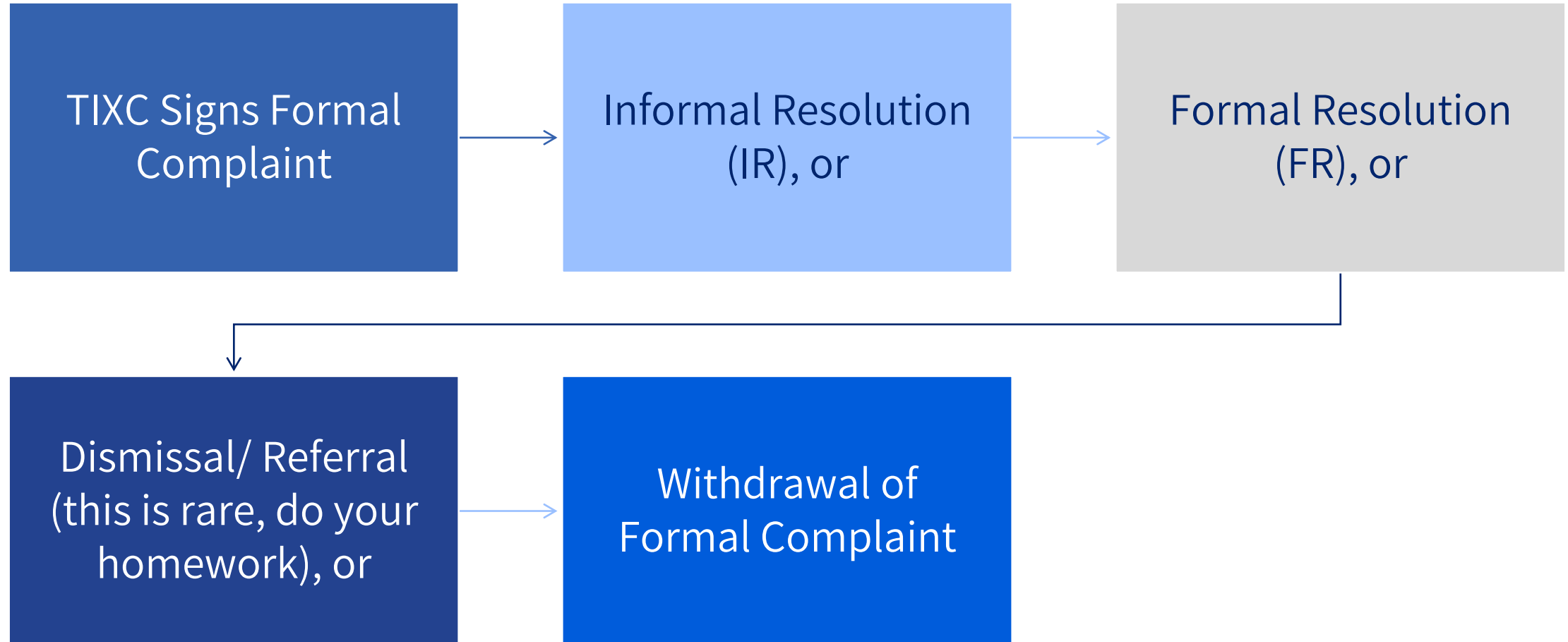
# Intake Decision Tree: Report/Notice



# Intake Decision Tree: Formal Complaint



# Intake Decision Tree: TIXC Signs Formal Complaint



# Jurisdiction

# Jurisdiction

- **All five = Title IX Sexual Harassment** under the 2020 Title IX regulations
  - Use Process A (complies with all § 106.45 elements)
- **Fewer than five** = Can/must dismiss/refer to another process (Process B)

Alleged misconduct  
occurred in the U.S.

Alleged misconduct  
would fall within the  
definitions of § 106.30 if  
proven

Complainant is P/ATP in  
the recipient's  
education program or  
activity **OR** the TIXC  
signs a complaint

Institution has control  
over the harasser  
(Respondent)

Institution has control  
over the context of the  
harassment



# 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 such as: stand-alone Process B, student conduct, employee conduct

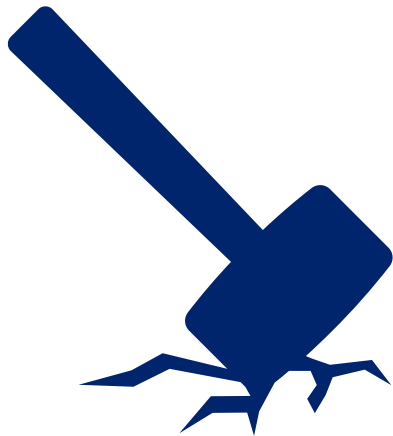
# Process A or B?

**When you're a Title IX hammer,  
everything can tend to look like a Title IX nail**

**DON'T PUSH TOWARD PROCESS A  
(THE REGULATIONS-BASED §106.45 PROCESS)  
IF PROCESS B WILL SUFFICE**

WHY SHOULD WE PREFER PROCESS B,  
FROM AN INSTITUTIONAL AND INTAKE PERSPECTIVE?

Process A is the default, but Process B will likely be used  
more frequently



# Referral to Other Processes

# 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 investigates as a Process B allegation, and
- TIXC finds out and determines there is Title IX jurisdiction,
- Incident must be referred over to the Title IX office for proper resolution



# Dismissal



# 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

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

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

# Dismissal Notification and Appeal

- 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

# Appeals

**Appeal grounds are the same for dismissal decisions as for final determinations.**

1

Procedural irregularity that affected the outcome of the matter

2

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

3

Conflict of interest or bias by the TIXC, Investigator, Decision-maker that affected the outcome of the matter



**Can a complaint be withdrawn  
without dismissing it, and if so,  
under what circumstances?**

# Charging

# Charging

- The Complainant does not:
  - Pick the process
  - Determine the allegations
- TIXC should charge with all applicable policies, noting which are overlapping, and which charges stand alone
  - Example: Charging a person in a couple with sexual assault = automatic dating violence charge
- Charge under the version of the policy that was in effect at the time of the incident





# Charging

- The TIXC chooses the basis of the investigation:
  - Incident: specific incident or period
  - Pattern: repetitive or similar behaviors or targets chosen by the same Respondent over a period
  - Climate/Culture: discriminatory policies, processes, and environments





# Charging

- Don't automatically overlap sexual harassment and sexual assault charges
  - Under the 2020 regulations, if sexual assault is found to have occurred, sexual harassment is automatically proven
  - Sexual Assault = SPOO, by definition
  - A SPOO analysis (severe, pervasive, and objectively offensive) is never needed for a sexual assault allegation under the 2020 regulations
- There may be a separate sexual harassment charge alongside a sexual assault charge when the allegations arise from separate facts

# Charging: Sexual Assault

- Sexual Assault definition transition
  - Took effect January 2021
  - Source of change: Title IX regulatory definitions refer to underlying FBI reporting system, which changed
  - Evaluate if your policy needs to be amended



# Sexual Assault: Showing Changes

- Forcible Rape = Rape
- Forcible Fondling = Fondling (don't get too hung up on the “for the purpose sexual gratification language” even though it's still there)
- Forcible Sodomy = Gone
- Sexual Assault with an Object = Gone
- Sex offenses, Forcible and Non-Forcible (not a needed heading) = Sexual Assault

# Charging

- Incest and statutory rape are still offenses
  - Don't charge with incest unless intercourse occurred
  - Don't charge with statutory rape if the offense was forcible or without consent, as the proper charge is rape
- Public institutions – be very cautious about additional sexual harassment policies that use lower (broader) standards than SPOO – they may lead to outcomes that violate a Respondent's free speech rights
  - Special caution is needed with respect to allegations of intentional misgendering, deadnaming, or using incorrect pronouns

# Developing Charging Skills: The Basics

- Charge with all applicable violations of Title IX Sexual Harassment (§ 106.30)
  - Consider any non-Title IX additional charges that are applicable
  - Process should allow charging with collateral misconduct
    - Example: Sexual Harassment and Acceptable Use Policy (IT) violations
  - Address all charges simultaneously
- Update NOIA as circumstances change or new information comes to light

# Developing Charging Skills: Intermediate

- Sex discrimination allegations
  - “Does this alleged behavior meet the definition of severe, pervasive, and objectively offensive?”
    - Disparate treatment
    - Sex- and gender-based harassment
- Consider whether retaliation allegations are present
  - Retaliation provision is dense, complex
  - Not a § 106.30 offense
  - May use Process B unless it makes sense to resolve in Process A
- Retaliation and SPOO may overlap, may impact charging decisions

# Advanced Charging Skills: Title VII

- Title IX and VII overlap
- Occurs whenever there is an employee Complainant
- Title VII sexual harassment/hostile environment
  - Severe or pervasive or persistent and objectively offensive(SORPP)
- When dealing with sexual harassment allegations by an employee Complainant, likely need to charge with:
  - Title IX Sexual Harassment (SPOO)
  - Sexual Harassment (SORPP)



# Advanced Charging Skills: Fair Housing Act

- Applies to residential facilities (for students or employees)
- Allegations that occurred in the residential facility
- Mirrors Title VII definition
- SORPP: Severe or pervasive or persistent and objectively offensive
  - In addition to Title IX allegations, charge SORPP for allegations of sexual assault, sexual harassment, dating/domestic violence, or stalking

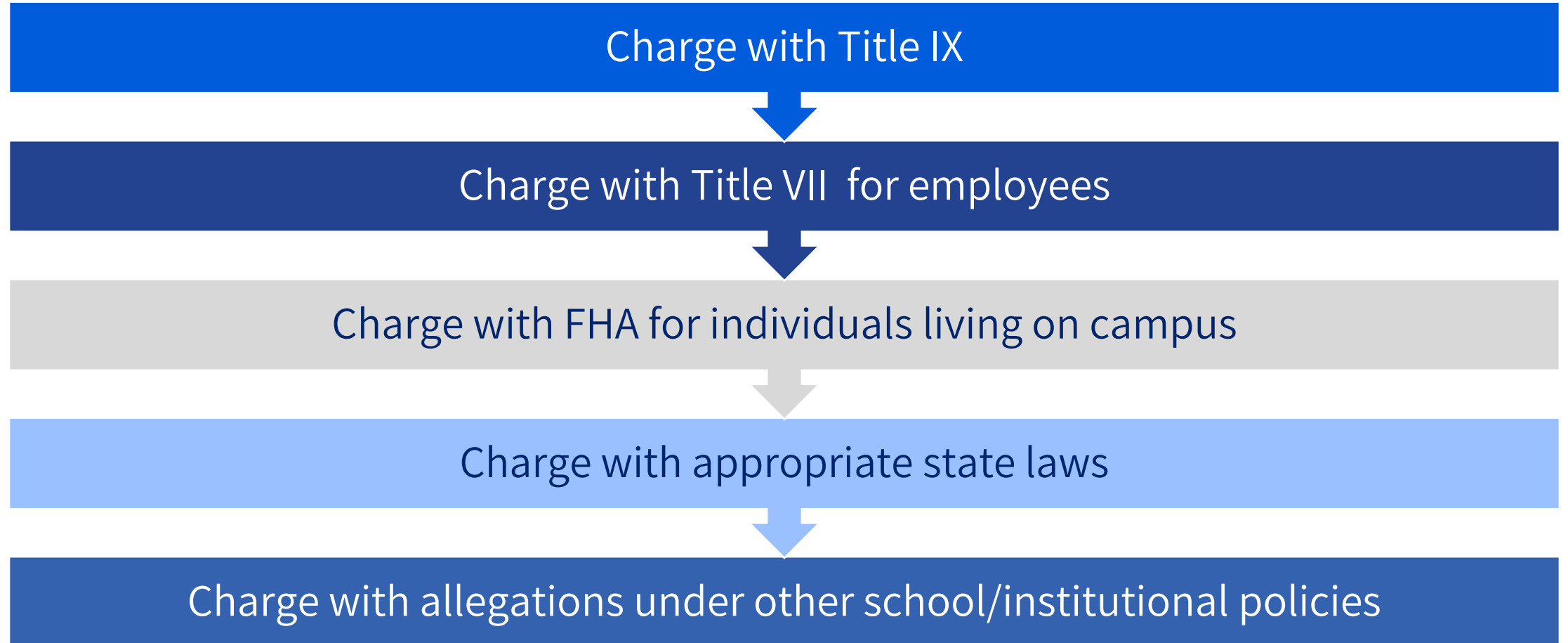




# Advanced Charging Skills: State Law

- Several states have state-based campus sexual misconduct laws that may provide for different offenses compared to Title IX definitions of sexual harassment
- Typically applies in higher education contexts only (but not always)
  - Students
  - Employees
  - Both
- Consult with local counsel
- May not apply in all states
- Some state laws may have jurisdictional distinction, too

# Charging Rubric



# Advanced Charging Skills: Pattern and Joint Allegations

- 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
- Goal: Avoid Complainants serving as witnesses to a pattern in other grievance processes
  - Use one process to address the entire alleged incident or pattern of incidents
- Avoid joining if multiple Complainants alleged dissimilar, disconnected offenses by a single Respondent

# Case studies

# Case Study 1

- Imagine that you're an Investigator (and maybe you are!).
- Your TIXC assigns you an investigation and provides you with a copy of the NOIA to get you started.
- The NOIA charges the Respondent with sexually assaulting the Respondent's former significant other in the Complainant's residence hall room after they broke up.
- You are concerned that the NOIA is too narrow in assigning just the sexual assault charge:
  - What should you do?
  - What other charges should be considered?

# Case Study 2

- You're the TIXC.
- You've initiated an investigation of alleged stalking.
- During the investigation, the Investigator learns that there are many (dozens?) instances where the Respondent derisively referred to the Complainant as a CU^+ (the C-word).
- The Investigator relays this information to you and asks whether the NOIA needs to be updated.
- How should you respond?
- What steps would you take?

# Case Study 3

- You're the TIXC.
- You receive a complaint that alleges that the Respondent sexually assaulted the Complainant while they were in a relationship. They have since broken up.
- The 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.
- Which charges should be included in the NOIA and why?

# Case Study 4

- You're the TIXC.
- A student comes to your office to file a complaint. The student is well-prepared for your meeting, having already consulted with an attorney who is a Title IX expert.
- The student shares with you that they are victim of dating violence (sexual assault in a previous relationship) and tells you that they have gone over the policy with their attorney, and they think the appropriate charges are:
  - Title IX Sexual Harassment (SPOO), FHA Sexual Harassment (SORPP), and Title IX Dating Violence.
  - Do you agree or disagree? Why?
  - What charges should be included in the NOIA?



# Case Study 4 (Cont.)

- The student further informs you that they choose to use Process B, and that they are unwilling to file a Process A complaint. They argue that the applicable FHA charge is outside of Title IX, thus allowing you to file it under Process B, with the other charges being considered collateral misconduct, which Process B allows you to address in the same process.
- How should you respond?

# Case Study 5

- You're the TIXC.
- You've received a sexual assault complaint.
- The Respondent requests to meet with you to discuss Supportive Measures.
- During this meeting, the Respondent shows you a text message timestamped an hour before the alleged sexual assault, in which the Complainant texted the Respondent, "Let's fuck".
- The Respondent shows you a second text message from the Complainant to the Respondent an hour after the alleged incident, "You totally rocked my world. Just what I needed."

# Case Study 5 (Cont.)

- Based on these texts, the Respondent informs you it is obvious they have been falsely accused and politely demands that you dismiss the complaint.
- What should you do?
- How should you respond?

# Case Study 6

- You're the TIXC.
- You've received a sexual assault complaint.
- The Respondent requests to meet with you to discuss Supportive Measures.
- During this meeting, the Respondent shows you a text message timestamped an hour before the alleged sexual assault, in which the Complainant texted the Respondent, "Let's fuck".
- The Respondent shows you a second text message from the Complainant to the Respondent an hour after the alleged incident, "You totally rocked my world. Just what I needed."

# Case Study 6 (Cont.)

- Based on these texts, the Respondent informs you it is obvious they have been falsely accused and politely demands that you dismiss the complaint. You decline to dismiss the complaint.
- The Respondent then insists on filing a complaint against the Complainant for making a false complaint and a sexual harassment charge for alleging sexual assault in bad faith, as evidenced by the text messages.
- What should you do?

# Case Study 7

- You're the TIXC.
- You issued a no-contact order (NCO) to Justine and Alyssa based on Justine's allegation that Alyssa gave her a laced vape, resulting in Justine becoming "out-of-it," and Alyssa then sexually assaulting Justine. Justine does not want to file a Formal Complaint.
- Alyssa requests a meeting with you about the NCO.
- At the meeting, she shares with you that she is traumatized by the NCO, is confused why the Title IX office is involved, believes that her freedoms are being restricted by the NCO without any evidence and on a student's unsupported say so.

# Case Study 7 (Cont.)

- Alyssa doesn't know what the allegations are, but she denies anything other than getting high together took place, and nothing that would implicate Title IX. She asks you to lift the NCO, as it presumes her guilt.
- Let's assume that you refuse. What would you tell Alyssa?
- Alyssa responds that she wishes to appeal your decision. What now?

# Case Study 8

- You're conducting an intake.
- You are speaking with a student named Jasper, who 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 you to protect him from these falsehoods being spread further, and to ensure that his ex recants these allegations, because they are completely untrue.
- Devise three routes of resolution that you would present as options to Jasper, road-mapping each.



# Case Study 8 (Cont.)

- What are Jasper's options, and what are the repercussions of each that he should consider?
- What would you advise Jasper to do, if he asks you for your advice?

# Case Study 9

- You're the TIXC.
- Employee Nate comes to you. He “hooked up” with another employee, Jacques.
- Jacques told a friend, Nefertari, that Nate may have sexually assaulted him.
- Nate found out about this conversation, and to combat anyone's perception that he sexually assaulted Jacques, he told several other co-workers that he consensually hooked up with Jacques, including providing details and video (non-graphic) to back up his assertions.

# Case Study 9 (Cont.)

- You reach out to Jacques to discuss the situation and offer him a chance to file a Formal Complaint. Jacques alleges that Nate's discussion of their hookup with co-workers is retaliation for the private conversation he had with Nefertari about his feelings about the situation.
- Should you accept this retaliation complaint?
- How should Nate be charged, if at all?
- What considerations should influence your decision?

# Case Study 10

- You're conducting an intake.
- Noelia comes to you, alleging a series of acts of sexual violence by Serge. She tells you she wants to file a Formal Complaint, and you explain the process. She tells you she prefers Process B, but you explain that the institution's jurisdiction rules and policies require that these allegations be resolved through Process A.
- Noelia asks you some questions and agrees to think about filing a Formal Complaint.

# Case Study 10 (Cont.)

- Noelia comes back to you one week later and says that she wishes to file a Formal Complaint about all of Serge's actions that took place off-campus, only, and does not wish to address the allegations of misconduct she made earlier involving on-campus conduct. She informs you that as a result of this narrower scope of her allegations, she believes she is eligible for a Process B resolution.
- How should you respond?

# Case Study 11

- You are the TIXC.
- You receive an e-mail from a parent indicating that they have knowledge of a sexual relationship between a high school student (not their child) and the school resource officer.
- The sexual interactions have taken place both on school property and out of school.
- The parent indicates that they have also notified the local sheriff's office because they employ the school resource officer. The sheriff's office has commenced an investigation.

# Case Study 11

- You are the TIXC.
- You receive an e-mail from a parent indicating that they have knowledge of a sexual relationship between a high school student (not their child) and the school resource officer.
- The sexual interactions have taken place both on school property and out of school.
- The parent indicates that they have also notified the local sheriff's office because they employ the school resource officer. The sheriff's office has commenced an investigation.
- Do you have jurisdiction over the school resource officer's conduct? Why or why not?
- What steps should you take?

# Case Study 12

- You are the TIXC.
- You receive a report from a teacher indicating that they overheard several high school students discussing what sounded like explicit text messages one of the students received from a student-teacher while on a school-sponsored trip for the band.
- The student-teacher is enrolled at the local university and is assigned to complete their student teaching for the current semester with the music program at your high school.
- The reporting teacher did not see any specific messages, and the students wouldn't tell her what they were discussing when she asked.



# Case Study 12 (Cont.)

- You invite the Complainant to meet with you, and they confirm during your meeting that they received text messages from the student-teacher that made them “uncomfortable,” but they do not want to file a Formal Complaint and just want to forget about it.
- Do you have jurisdiction over the student teacher’s conduct? Why or why not?
- What should you do under these circumstances?

# Case Study 13 PART A

- You are the Investigator.
- You receive a Formal Complaint from a parent who reports that their student is being harassed and called names like “slut,” “whore,” and “Master Missy” by other students both in person during school hours and via social media. The parent is able to identify some of the respondent students by name in the complaint.
- Which behaviors, if any, warrant charges?
- What should those charges be?

# Case Study 13 PART B

- Upon issuing a NOIA to one of the responding students, their parent calls you and informs you that the Complainant is the one that should be investigated because she took a cell phone video of herself masturbating and sent it to another student. The parent states that is the reason that the other students were calling the Complainant names.
- Is it appropriate to charge the Complainant?
- If so, which charges would be appropriate and why?

# Case Study 14

- You are the TIXC.
- You receive an anonymous e-mail with three attached video files.
- The first video shows a group of students gathered at an out-of-school location and a female student is berating a male student in front of the others.
- The second video shows the same female and male student in a school stairwell. The female student snatches the male's cell phone out of his hand, and the female says, "I guess I have to take this away from you again since you can't seem to follow my rules and stop talking to other girls."

# Case Study 14 (Cont.)

- The third video again shows the same two students in what appears to be an empty classroom. The male student is on his knees and the female student is standing over him. The male student can be heard saying, “Please, baby, I love you, don’t break up with me,” and the female student responds, “You’re such a dumb fuck; why should I stay with you? You can’t do anything right.”
- You are able to confirm that the two students in the videos are enrolled at your school.
- What should you do?



**Questions?**



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