



Association of  
Title IX Administrators

# Investigation Report Writing for Higher Education

Howard University

January 14, 2025

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# Content Advisory

The content and discussion in this training will necessarily engage with sex- and gender-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 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 writing clear, comprehensive investigation reports.



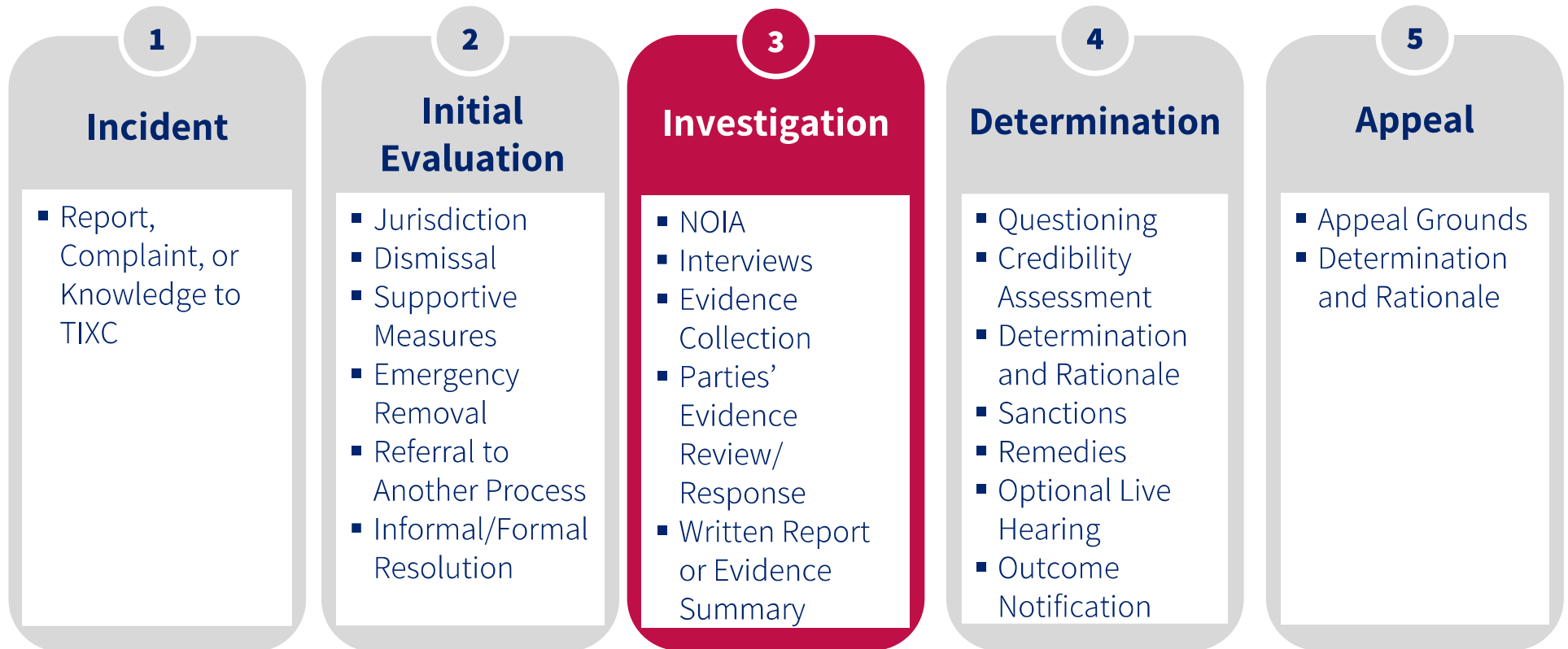
Practitioners will learn how to use policy language as a starting point for synthesizing the information collected during an investigation.



Our goal is to provide an in-depth exploration of each section of an investigation report and the skills necessary to complete each section.

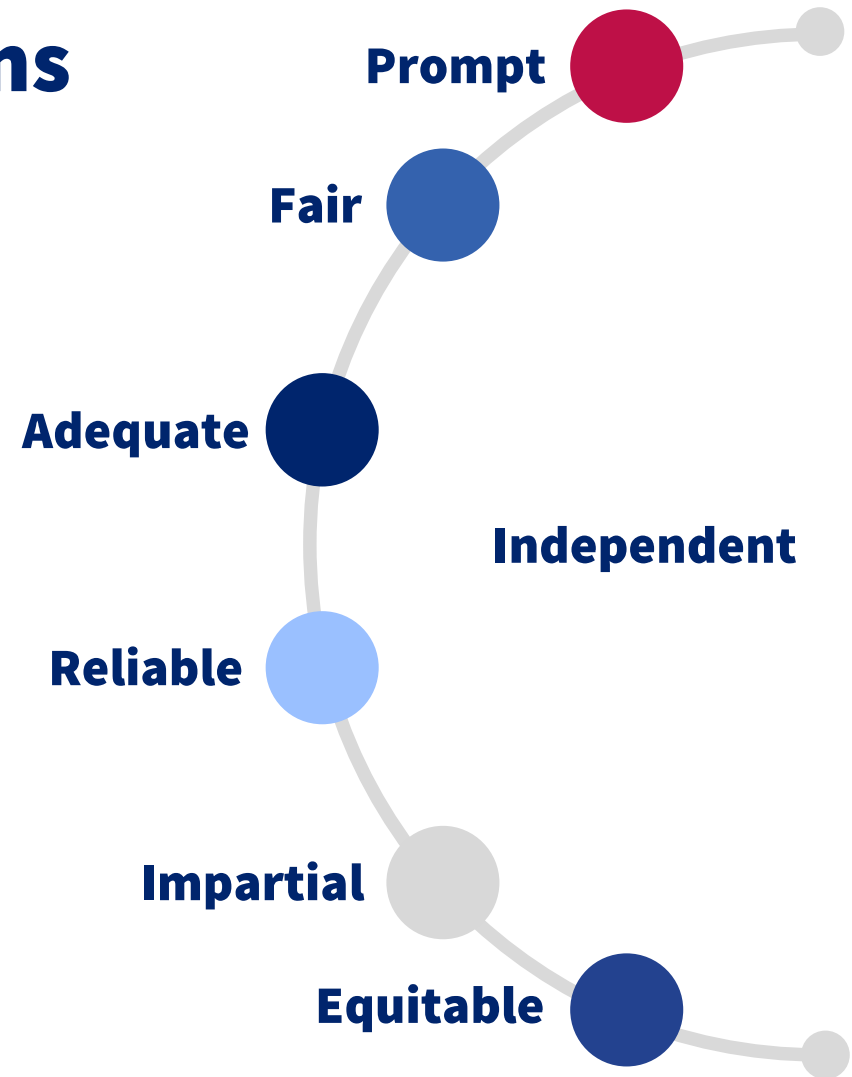
# Investigation Process Review

# Investigation



# Civil Rights Investigations Overview

- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties



# Investigation Process

## 10 Steps of Investigations:

1. Receive Notice/Complaint
2. Initial Evaluation and Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Adequate, Reliable, Impartial Investigation
7. Draft Relevant Evidence Summary/Investigation Report
8. TIXC Reviews Evidence
9. Parties Review and Respond to Summary/Investigation Report or Relevant Evidence
10. Final Investigation Report

# Investigation File

- Investigator is responsible for developing and maintaining an **investigation file** throughout the duration of the investigation
  - Copies of the policies and procedures in place at the time of the incident(s) and at the time of the investigation
  - Original NOIA and any subsequent NOIA updates
  - For each party and witness include:
    - Verified interview transcripts
    - Associated evidence (e.g., screenshots, written statements)
    - Correspondence with the Investigator(s)
  - Collected evidence and evidence log



# Investigation File

- Background information (education, employment, etc.)
  - Witness flowcharts
  - Contact Log
  - Investigator notes
  - Timelines for incident and investigation
  - Investigation Report
- 
- Investigation file becomes part of the **comprehensive complaint file**
  - Title IX-related records must be maintained for a minimum of **seven years**

# Comprehensive Complaint File

## **Title IX Coordinator should maintain:**

- Supportive measures and interim action correspondence and documents
- Emergency Removal or Administrative Leave documents (if applicable)
- Communication regarding Informal Resolution (if applicable)
- Signed releases of information for Advisors
- Advisor Non-Disclosure Agreements (NDAs) (if applicable)
- Dismissal information (if applicable)
- Allegations of bias or conflict of interest and response

# Information Gathering and Recordkeeping

# Keeping Information

- Keep **investigation file** in a secure location
- Compile a timeline of the investigation steps, including dates of all meetings and interviews
- Records of all contacts, including emails and phone calls with all parties and witnesses
- Documenting interviews:
  - Take specific notes or record
  - Recording is becoming industry standard
  - Handwritten vs. typed notes
  - **Interviewee verification is industry standard practice**

# Notetaking and Recording

## IF IT ISN'T WRITTEN DOWN, IT DIDN'T HAPPEN

- Date all records and identify who was present
- Number pages
- Keep notes describing any information shared with parties or witnesses
- Clarify anything that is unclear
- Document any refusal to answer, evasion, or refusal to participate
- Review and finalize notes immediately upon interview completion

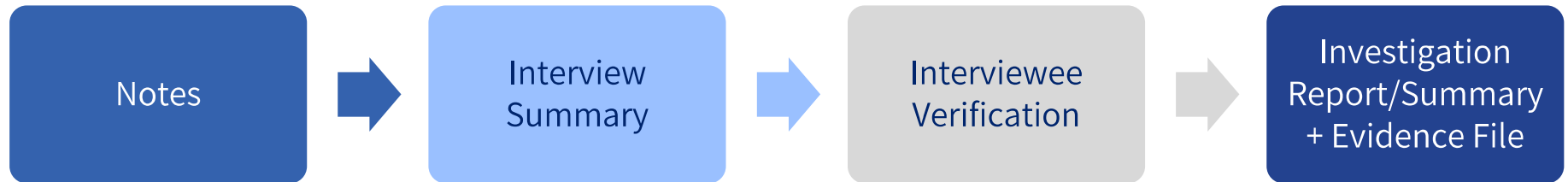
# Notetaking

- Notetaking should occur throughout the entire interview
- Taking notes may slow down the interview
- Use pre-prepared, numbered questions
  - Remain flexible for follow-ups
- Summarize perceptions of credibility

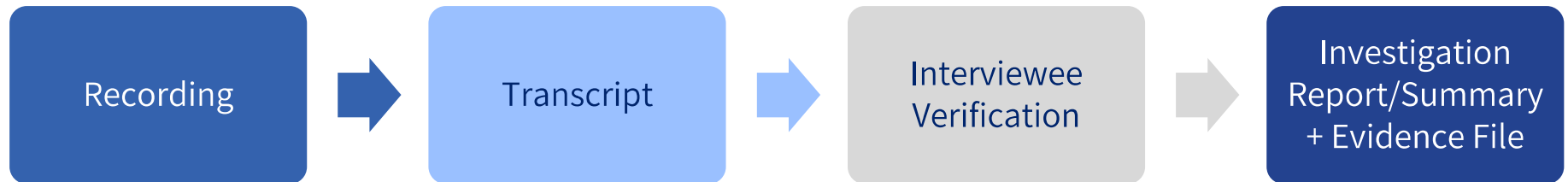


# Information Flow

## Option 1: Notetaking



## Option 2: Recording



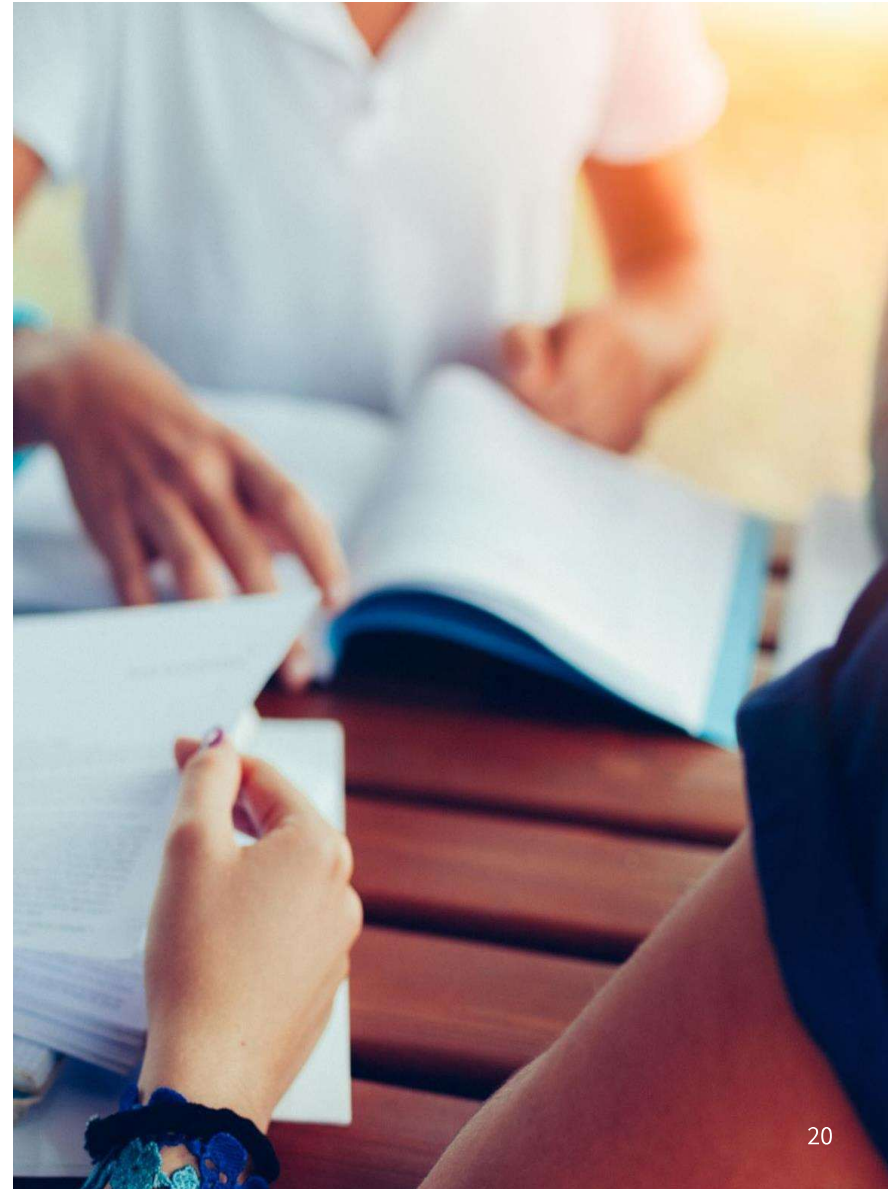
# Recordkeeping

- Certain records must be maintained for at least **seven years**
  - Comprehensive complaint file
- Electronic database preferred over paper files
- TIXC is responsible for managing record retention
  - Follow applicable Title IX and/or institutional practice for record destruction, maintenance, access, expungement, etc.

# Credibility

# Credibility

- **Credibility** is largely a function of corroboration and consistency
  - Credibility and honesty are not the same
- **Credibility Assessment** involves evaluating the extent to which evidence is believable and reliable (accurate reflection of what occurred)
  - Refrain from focusing on irrelevant inaccuracies and inconsistencies
- **Note:** Memory errors alone do not necessarily diminish witness credibility, nor does some evasion



# Credibility Factors

## Corroborating Evidence

- Evidence that can be verified by an independent and objective individual

## Inherent Plausibility

- Information that is believable on its face/ by context

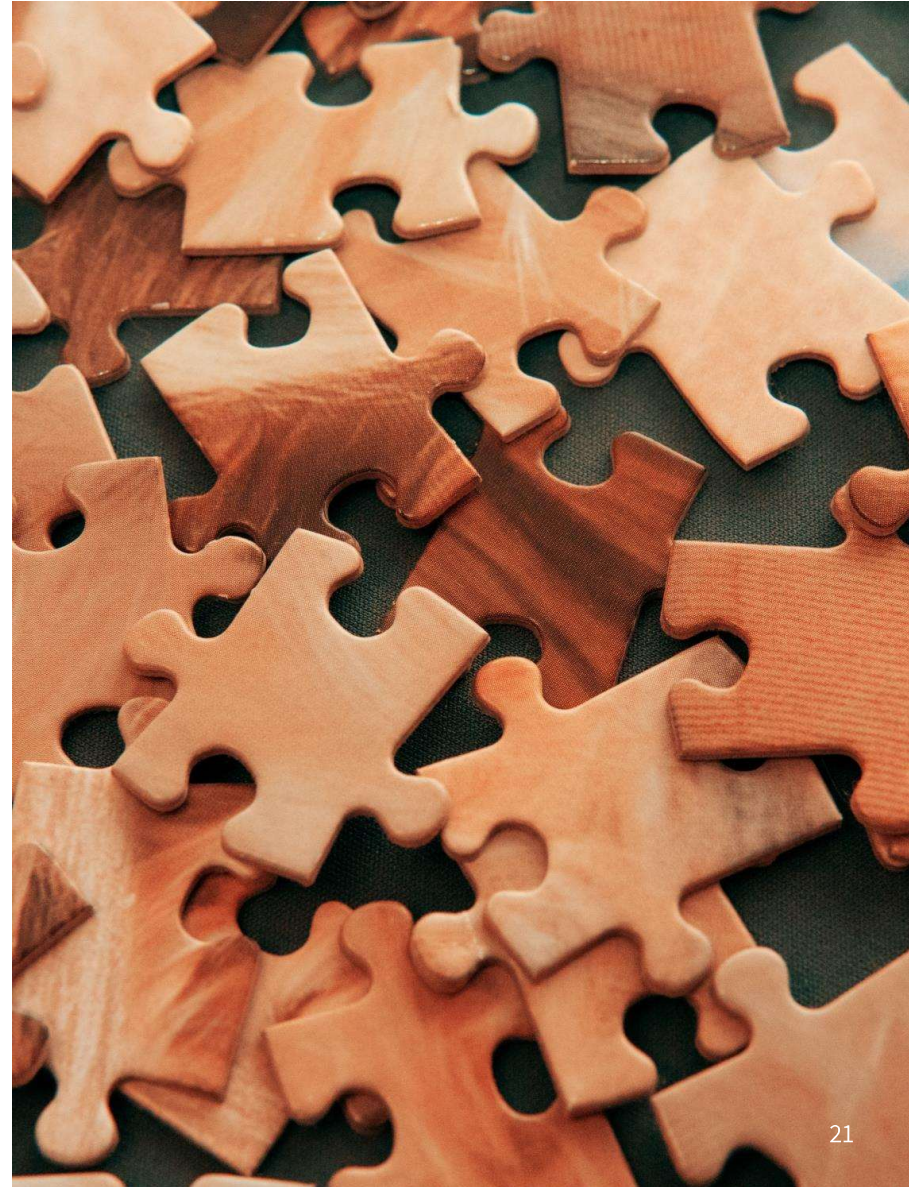
## Consistency of Evidence/Testimony

## Motive to Falsify

## Past Record\*

## Demeanor\*

\* Less probative



# Corroborating Evidence

- Strongest indicator of credibility
- Independent, objective authentication
- Corroboration of central vs. environmental facts
- Not simply aligning with friendly witnesses
- Contemporaneous witness accounts
- Outcry witnesses
- Allegiances



# Inherent Plausibility

- Does what the party described make sense?
  - Consider environmental factors, trauma, relationships
- Is it believable on its face?
- “Plausibility” is a function of “likeliness”
- Is the party’s statement consistent with the evidence?
- Is their physical location or proximity reasonable?
- How good is their memory?

# Motive to Falsify

- Does the party have a reason to lie?
- What's at stake if the allegations are true?
  - Academic or career implications
  - Personal or relationship consequences
- What if the allegations are false?
  - Other pressures on the Complainant
- Reliance on written document while answering questions



# Past Record

- Is there evidence or records of past misconduct?
- Are there determinations of responsibility for substantially similar misconduct?
- Check record for past allegations
  - Even if found “not responsible,” may evidence pattern or proclivity
- Written/verbal statements, pre-existing relationships

# Demeanor

- Physical presentation and speech patterns are not determinative of credibility or truthfulness
  - Humans are often good at picking up non-verbal cues
  - **However**, humans are terrible at using demeanor to determine credibility or honesty demeanor cues may indicate cause for additional questioning
    - “I noticed when I asked you about...you crossed your arms. Can you tell me why your posture changed?”
    - “I noticed when I started asking you questions about...your responses became much shorter. Can you explain that for me?”
    - “I noticed you rolled your eyes when I mentioned....Can you tell me about your reaction?”

# Credibility Assessments in Investigation Reports

Indicate where to focus for the Decision-maker without rendering conclusions or making findings related to credibility

## NOT GOOD

“The Decision-maker should find Mark to be unbelievable in his testimony about having received consent for the following reasons...”

## BETTER

“Mark’s testimony about X conflicts with Mariana’s testimony about X. The accounts of Witness 1 and Witness 7 aligned with Mariana’s testimony, not Mark’s, during the investigation.”

# Common Credibility Assessment Errors

- Misinterpretation of and misplaced emphasis on nonverbal deception indicators
- Misplaced emphasis on (often trivial) information inconsistencies
- Confusion about memory
- Bias in interviews
  - Presumptions of responsibility
  - Anchor bias
- Confirmation bias
- Excusing inconsistencies by citing to trauma
- Accepting information at face value



# Investigation Reports

# Title IX Regulatory Requirements

- 2024 Regulations **do not require a written investigation report**
  - **Section 106.45:** institutions must provide parties access to all relevant and not otherwise impermissible evidence **or** an accurate description of the evidence
  - **Section 106.46:** institutions must provide parties and their Advisors access to all relevant and not otherwise impermissible evidence **or** an investigation report
  - If providing a description or investigation report, institution must still provide access to relevant evidence upon request

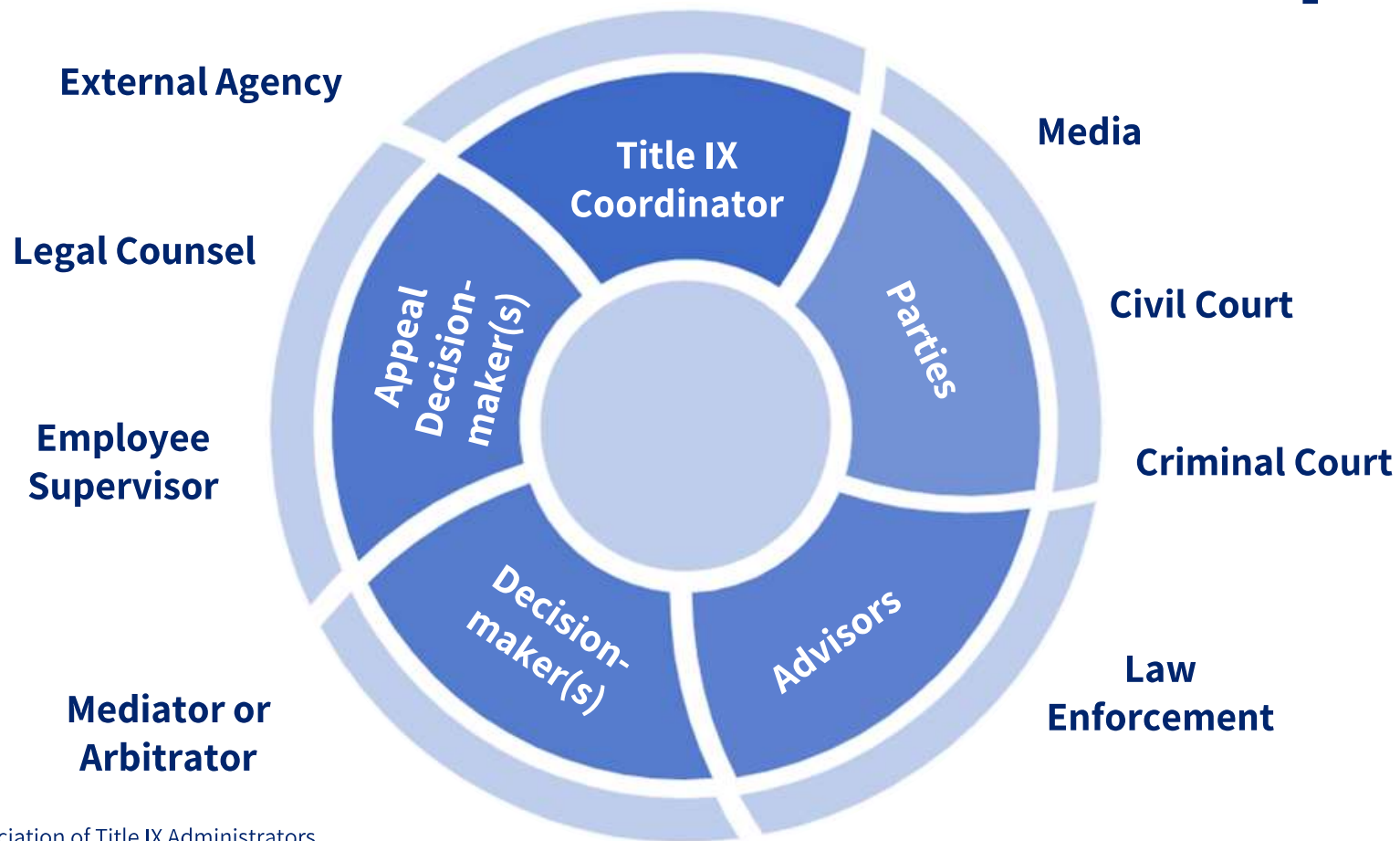
# ATIXA's Recommendation

## Comprehensive investigation report for all Title IX complaints

- Creates an opportunity for equitable access to relevant evidence
- Shows Investigator's work
- Provides Investigators with a standard and consistent format
- Helps protect institution on complaints that may be subject to scrutiny



# Consider Potential Audiences for Report



# FERPA, Title IX, and Student Records

- Title IX investigation reports involving students are subject to the **Family Educational Rights and Privacy Act (FERPA)**
- An investigation report is considered part of each party's education record
  - Not part of a student witness's education record, typically
- FERPA permits the disclosure of information contained in education records, without the student's consent, to school officials and specific external stakeholders who have a **legitimate educational interest**
  - Includes other parties and their Advisors
  - Avoid including or redact personally identifying information before releasing the report

# FERPA and Title IX

“The Department has long interpreted this provision to mean that FERPA continues to apply in the context of enforcing Title IX, but **if there is a direct conflict** between FERPA’s requirements and Title IX’s requirements, such that enforcing FERPA would interfere with Title IX’s primary purpose to eliminate sex-based discrimination in schools, **the requirements of Title IX override** any conflicting FERPA provisions”

# Employee Records

- Title IX investigation reports involving employees may be subject to state employment record laws
- Institutional policy dictates whether a complaint, and subsequent Resolution Process, are part of a Complainant's employee records
- Title IX requires releasing the investigation report to parties (whether students or employees) and their Advisors

## **New Unauthorized Disclosure Rule:**

**“A Recipient must take reasonable steps to prevent and address the parties’ and their advisors’ unauthorized disclosure of information and evidence obtained solely through the grievance procedures”**



# Unauthorized Disclosure Exceptions

- **Unauthorized Disclosures**

- **Exception:** Complainant or Respondent may share evidence they have gathered themselves
  - The parties may not share other information disclosed in the Title IX Resolution Process that is the institution's work product
  - **Note:** This is not a FERPA requirement, but rather a specific Title IX confidentiality requirement
  - Typically warrants either warning, sanctioning (parties), or removal (Advisors)
- Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of sex discrimination are authorized

# Writing Mechanics

# Tone, Voice, Tense, and Point of View



## **TONE**

Writer's attitude toward the subject or audience



## **VOICE**

Form or format through which a narrator communicates a story



## **TENSE**

When events or actions occurred in time—in the past, present, or future



## **POINT OF VIEW**

The position from which the author “speaks” to the reader

# Formal vs. Informal Language

## Formal Language

- Medical/anatomical terms
- Accurate terms for alcohol or other drugs, their composition, and use
- Full words--we would, cannot, percent
- Last name, role, titles
- Third-person writing

## Informal Language

- Colloquial or slang terms for anatomy (“junk”) or sexual acts (“smashing”)
- “Weed,” “hunch punch,” “hammered”
- Contractions--we’d, can’t
- First name or nickname
- Empathic writing/taking a position

# Active vs. Passive Voice

- **Active Voice:** used when the subject performs the action
  - Focuses on the doer of the action
  - Best practice
- **Passive Voice:** used when the action is performed upon the subject
  - Focuses on the action; doer is unknown, implied, or irrelevant

Examples of the Three Voices in Writing	
1. Active Voice	"You ate six donuts."
2. Passive Voice	"Six donuts were eaten by you."
3. Passive-Aggressive Voice	"You ate six donuts and I didn't get any. Don't worry, it's cool. I can see donuts are very important to you."

# Tense

- Investigation reports are a narrative of events that have already occurred
  - **Past tense is best practice**
  - Avoid changing tenses
    - Exception: Investigator actions for the present or future
- **Present Tense:** expresses anything that is happening now, or is ongoing, constant, or habitual
- **Past Tense:** indicates past events, prior conditions, or completed processes
- **Future Tense:** indicates actions or events that will happen in the future

# Neutral Perspective

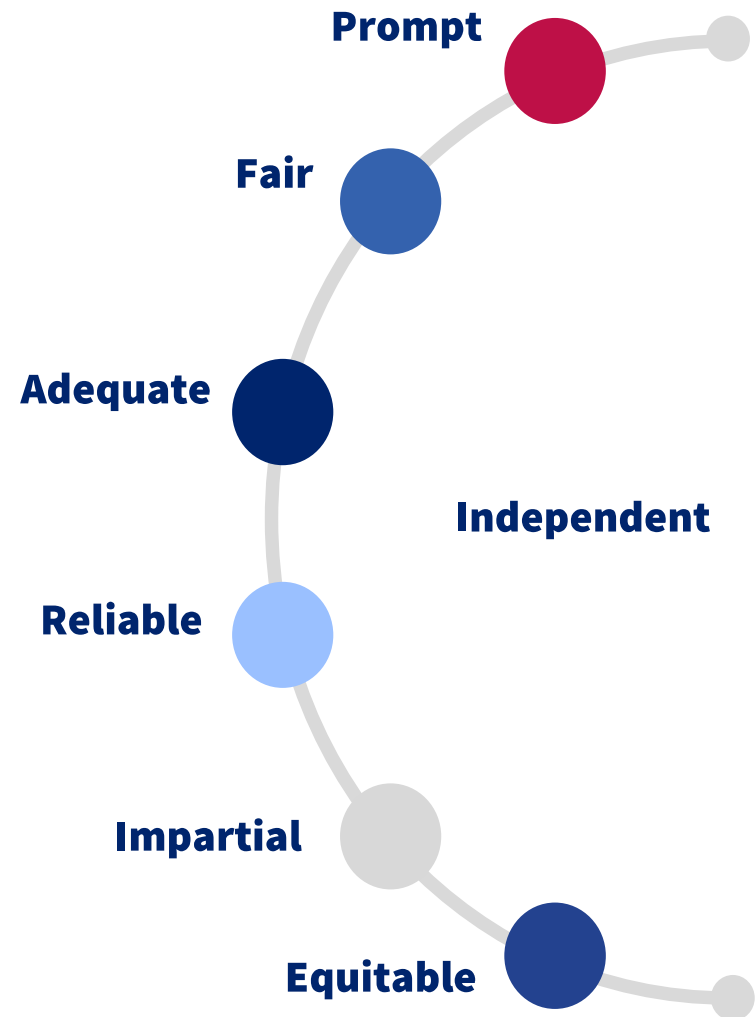
- **ATIXA recommends Investigators write in third person and from a neutral, detached observer point of view**
  - Creates distance between the reader and the parties
    - Example: I watched the Complainant sob and tremble at the pain they felt as they described the incident during the interview vs.
    - Complainant stated it was “very painful” to discuss the incident
- Investigator’s writing can unintentionally reflect their own biases
  - Focus on information and evidence, not opinions or suppositions
  - Describe evidence in a neutral manner; avoid emotional language or moralizing
  - Write so that the report is consistent in tone/format/voice no matter who writes it
- Templates can help maintain a neutral perspective regardless of Investigator

# Writing and Structuring Investigation Reports



# Fair and Impartial

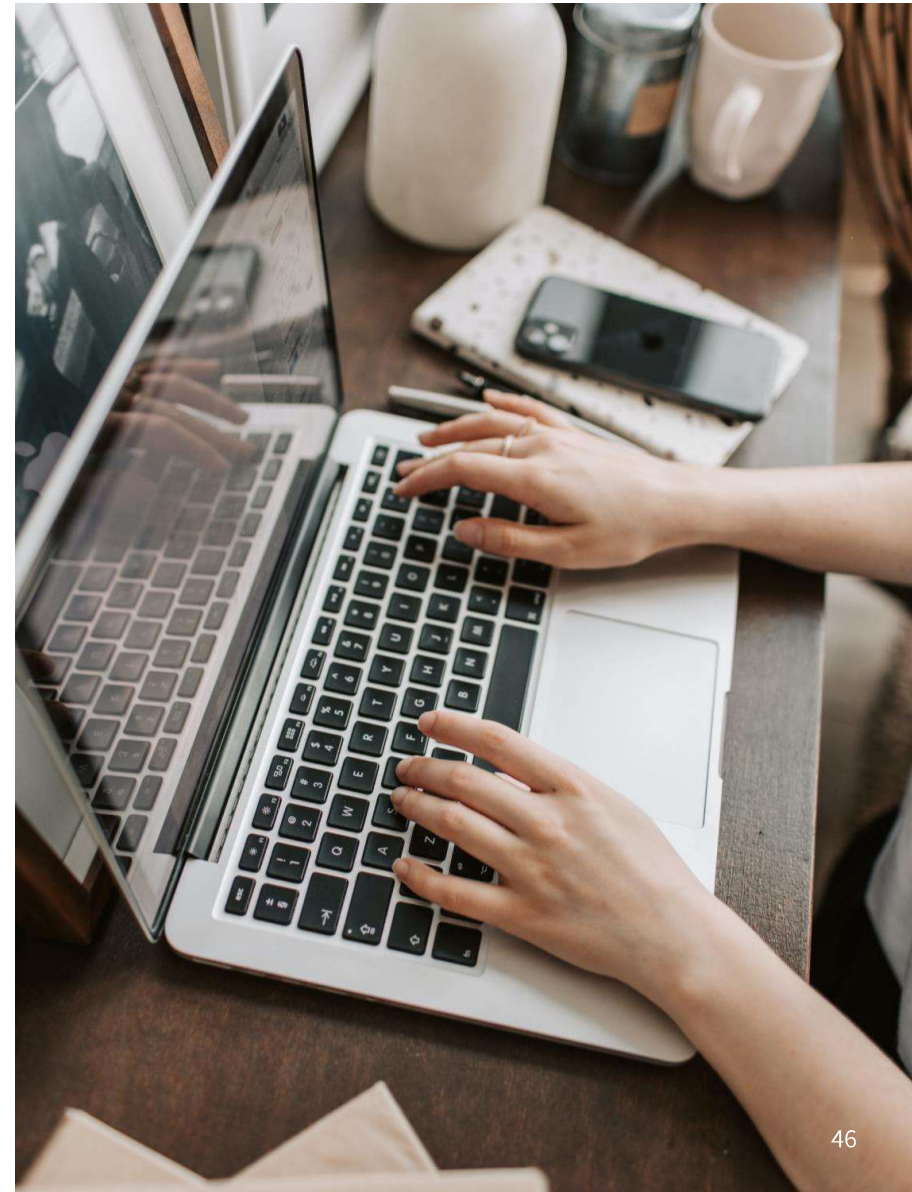
- It is incumbent on fair and impartial Investigators to provide a report that accurately and succinctly summarizes the evidence the parties and witnesses have provided, and the Investigator has otherwise collected



# Relevant Evidence

Investigators should include **relevant** evidence in their reports

- **Relevant** means related to the allegations of sex discrimination under investigation
  - Evidence is relevant when it may aid a Decision-maker in determining whether the alleged sex discrimination occurred
  - Evidence can also be relevant to credibility assessments
- It is the Investigator's responsibility to obtain **relevant** evidence



# Privileged and Medical Information

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

- Evidence protected under a legally recognized privilege, including evidence relevant to determining capacity to consent for students with disabilities
- Records made or maintained by:
  - Physician
  - Psychiatrist
  - Psychologist
  - Recognized professional or paraprofessional in reference to party or witness treatment



# Impermissible Evidence

- Evidence of the **Complainant's sexual interests** is never relevant
- Evidence of the **Complainant's prior sexual conduct** is not relevant except:
  - If offered to prove that someone other than the Respondent committed the alleged conduct, or
  - Prior sexual conduct with Respondent, if offered to prove consent to the alleged sex-based harassment
  - Any prior consensual sexual conduct between the parties does not by itself demonstrate or imply the Complainant's consent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or sexual interests

# Format and Structure

- Templates, templates, templates
- Transcripts vs. interview summaries
- Narrative vs. bulleted format
  - Headnotes
- Multi-party or multi-allegation investigations
- Use attachments, appendices, and exhibits

## **Enhancing User-Friendliness**

- Table of contents
- Page numbers
- Line numbers
- File naming conventions
- Internal document links

# Direct Quotations

- Direct quotations and commentary from parties and witnesses can help to accurately convey their experiences and perceptions
- Recorded interviews, written statements, electronic messages, etc. can help facilitate use of direct quotations
- Advisors' statements should not be attributed to a party
- Care must be taken to indicate whether a quote is something a witness told Investigator(s) or something another person said to a witness

# Incorporating Direct Quotations

## **Introduce the quotation with a complete sentence**

Cole described how his relationship with Devyn evolved over time: “We were friends, and then we became friends with benefits.”

## **Use an introductory or explanatory phrase**

When asked to describe his relationship with Devyn, Cole responded, “We are friends with benefits.”

## **Incorporate the quotation part of the sentence**

Cole described his relationship with Devyn as “friends with benefits.”

## **Use a short phrase as part of the sentence**

Cole used the term “friends with benefits” to describe his relationship with Devyn.

# Punctuation for Quotations

## **If words are omitted from a quotation, use an ellipsis (...)**

- Three dots (...) indicate the quote omits words in a sentence or sentences in a paragraph
- Four dots (....) indicate indicates the quote omits words at the end of one sentence when the quote continues onto the next sentence
- Do not change the meaning of the sentence by omitting text

## **If words are inserted or altered in a quotation to improve readability, use square brackets [ ] to indicate the change**

- May include:
  - Letter case or verb tense
  - Replacing a word to clarify meaning



# Punctuation for Quotations

**Enclose “sic” in square brackets to indicate that the quote is verbatim, though there are spelling or other syntax errors**

- Most needed for excerpts from documentary evidence or interview transcripts
- Use [sic] when the meaning of the quotation is unclear
  - Helps proofreaders know what is/is not intentional
- If there are numerous errors throughout, consider a blanket statement that quotes are verbatim and that grammatical, syntax, or other errors are a function thereof

# Sensitive Information

- Offensive, triggering, or explicit language (e.g., slurs)
- Graphic images/videos
- Medical information, including test results
- Mental health information
- Sex assigned at birth vs. gender identity
  - Avoid the singular “they” in report writing; use roles instead (e.g., C, R, W1, W2)
- Chosen name vs. legal name



# Redaction Practices

## Full redaction vs. role identifiers

- Example:
  - **Original:** Teagan stated that Jesse smacked her with an open hand
  - **Full:** [REDACTED] stated that [REDACTED] smacked her with an open hand
  - **Role Identifiers:** Complainant stated that Respondent smacked her with an open hand
- Full redaction is a common practice in law enforcement, but is not recommended for Title IX investigations
- Provide key with names for parties and Advisors

# Redaction Practices

- Other options:
  - Include full name for first mention
  - Use initials
  - Use one- or two-letter identifiers (C, R, W1, W2, etc.)
- Determine whether to create a fully unredacted copy
  - Legal counsel
  - Decision-maker(s)



# Word Choice

- Investigation report writing is **clear and factual**
- Avoid:
  - Unnecessary adverbs and adjectives
  - Conclusory words
  - Bias language
  - Judgmental statements

## Common Pitfalls

- Abbreviations, initialisms, and acronyms
- Absolutes
- Clichés
- Exaggerations
- Generalizations
- Idioms
- Inconsistency
- Jargon
- Repetition

# Word Choice Exercise Part 1

**Consider the difference a single word makes:**

- The Respondent **fondled** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **felt** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **caressed** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **touched** the Complainant's breasts while they were sitting next to each other at the movie theater
- The Respondent **groped** the Complainant's breasts while they were sitting next to each other at the movie theater

## Word Choice Exercise Part 2

Now that you've considered each of the statements, where would you place the described actions on a continuum from least severe/egregious to most severe/egregious?



The Respondent:

- Fondled
- Felt
- Caressed
- Touched
- Groped

# Word Choice Examples

- The Respondent **refused** to answer the question.
- The Respondent **declined** to answer the question.
- The Respondent **chose not** to answer the question.

- The Complainant **denied** offering to massage the Respondent.
- The Complainant **vehemently denied** offering to massage the Respondent.
- The Complainant **flatly denied** offering to massage the Respondent.



# Word Choice Examples

**Poor Phrasing Example:** “On September 21, 2016, four upperclassmen male students brought unwelcome sexual activity to Jane Doe and another female student in a stairwell at Maplewood.”

*Doe v. Metropolitan Government of Nashville and Davidson County*, No. 20-6225 (6th Cir. May 19, 2022)

**Recommended Revision:** Four male upperclassmen engaged in sexual activity with Jane Doe and another female student in a Maplewood stairwell on September 21, 2016. Jane Doe and the other female student allege the sexual activity was unwelcome.

# Biased Language Example

“Allegations of sexual assault on college campuses are fraught with potential injustice for both female student victims of sexual violence and male students who may be falsely accused of improper conduct”

*Doe v. Wake Forest University*, 1:23-cv-00114 (M.D.N.C., Sept. 6, 2023)

# Bias Example

## Email to Complainant

Dear Joelle,

Thank you so much for sending your written statement. I hope you are doing ok. I would like to set up another meeting with you to ask some further questions and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other concerns you might have. If you could just let me know if there's a convenient time that works well for you and if you have a preferred meeting location, I'll set an appointment for us.

I hope we can find a good time to meet next week. In the meantime, take good care and please don't hesitate to reach out if there's anything you need. Thanks!

Best regards, Title IX Investigator

# Bias Example

## Email to Respondent

Hank,

I have received your statement. We will need to meet again so that I can ask you follow-up questions I have and discuss the evidence that you may have, witnesses you'd like me to speak with, and any other outstanding process pieces. Based on your class schedule, I set an appointment for us at 11 AM on Monday, October 7, 2024, in my office.

Refer to the list of resources at [website] if you need assistance before our meeting.

Sincerely,

Title IX Investigator

# Footnotes

- Provide a space for definitions, context, or source information that would disrupt the flow of the report
- Description of electronic devices or applications
- References to appendices or evidence file
- Background information
- Relevant evidence source(s)
- If the Investigator is offering context from their own knowledge, make sure it is clearly indicated as such
  - Example: The Investigator notes from personal familiarity with the building that Room 19 is approximately halfway down the hall from the elevator

# Footnotes

- Consider who will be reading the report now and potentially in the future
  - Technology evolves
  - Slang shifts
  - Pop culture references change
  - Businesses come and go
  - Generational differences
  - Cultural differences
- Do not assume common knowledge
- In text, the footnote marker follows punctuation except for the em dash (—)
  - I.e., .<sup>1</sup> vs. <sup>1</sup>—

# Footnote Example

Respondent described this interaction as follows,

“At this point we were fully naked. And so we were grinding on each other. We were grinding on each other’s genitalia. And then she placed her hand over her vagina and said, ‘Wait, do you have a condom?’ Then we began to discuss the use of a condom. I did not have a condom. I had just ran out the week prior. And so she asked if I could grab one from one of my friends, to which I responded, ‘They’re not home. They’re still at the party. And I can’t exactly go searching through their things while they’re gone to find a condom.’”<sup>2</sup>

The parties agreed they engaged in a conversation about Respondent’s lack of a condom and Complainant’s concerns regarding proceeding with sexual intercourse without a condom.

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<sup>2</sup> See Respondent Interview 4.1.2024\_Transcript.pdf, p. 6.

# Parties' Questions for Others

Document questions suggested or requested to be asked by the parties

**1**

## Otherwise Answered

Document:  
the question and the answer

**3**

## Rephrased and Asked

Document: the question,  
rephrased question, rationale for  
rephrasing, and the answer

**2**

## Asked and Answered

Document: the question, how it  
was asked, and the answer

**4**

## Not Asked

Document: rationale for not  
asking the question (e.g.,  
irrelevant, impermissible)



# Tips for Report and Evidence File Sharing

- Use a secure file-sharing platform
  - Consider functional and time limit restrictions as appropriate for the school community and process
- Include a separate watermark for each party and Advisor
- Clearly mark **draft** and **final** versions, including draft number
- Ensure the parties have a user-friendly method for providing feedback
- Remind of Unauthorized Disclosure Rule



# Parties' Review and Response

- Must provide an equal opportunity to access:
  - Relevant and not otherwise impermissible evidence, **or**
  - An accurate description of this evidence (investigation report)
    - Must provide the parties with the relevant and not otherwise impermissible evidence upon the request of any party
- Must provide a reasonable opportunity to respond to the evidence or the investigation report
- Strategies for addressing :
  - New evidence
  - Clarification of earlier statements

# Post-Review Investigator Response

- Follow-up on all areas, as needed
  - Additional evidence
  - Additional witnesses
  - Questions
- Track changes
- Include each party's review and comment in appendix
  - Note if a party declined to comment
- Include Investigator response to review and comment in appendix
  - Rationales for responses

# Absent Information

# Information Not Obtained

**Investigators should document all efforts to obtain evidence and explain any information that could not be obtained**

- Did/does not exist
- Cannot be located
- Party/witness not available or declines to respond to question(s)
- Party/witness declined to submit
- Deleted, destroyed, damaged
- Unable to access without a court order
- Cannot be released based on an ongoing criminal and/or agency investigation

# Unanswered Questions

- **ATIXA recommends including unanswered questions asked** during the investigation to:
  - Demonstrate a thorough investigation
  - Help guide the Decision-maker to topics that may need further exploration
- **If relevant, document in the interview summary**
  - Example: “Witness 2 declined to provide additional information regarding their text conversation with Complainant on February 19, 2024. Witness 2 was informed that Complainant voluntarily submitted screenshots of the text messages in question for purposes of this investigation.”

# Investigation Report Sections

# Showing Investigators the Ceiling

- The 2024 Regulations state:
  - Institution must provide an equal opportunity to access either:
    - **The relevant and not otherwise impermissible evidence, or**
    - **An accurate description of this evidence (which may be an investigation report)**
- This is the floor; we recommend shifting more toward the ceiling because a report is the best way to organize evidence for clarity and user-friendliness
- The slides that follow provide a detailed explanation of the various sections that investigation reports can include
  - Investigators are encouraged to select those elements that will help provide a report that is **adequate, impartial, fair, and reliable**



# Possible Investigation Report Sections

- Introduction/Complaint Information
- Allegations Overview
- Jurisdiction
- Investigation Scope
- Applicable Policies and Relevant Definitions
  - Standard of Proof
- Evidence List
- Investigation Timeline
- Relevant Background
- Incident Timeline
- Relevant Evidence Summary
- Credibility Assessment
- Discussion and Synthesis
- Recommended Findings and Final Determination
- Conclusion
- Appendices
- Evidence File

# Complaint Information

- Complaint date
- Complainant's name
- Respondent name
- Initial notice date
- Initial notice received from
- Date assigned to Investigator(s)
- Assigned Investigator(s)



# Allegations Overview

- Date, time, and manner of complaint
  - Complainant, third party, or TIXC
- Description of alleged misconduct
- Policies governing the investigation



# Allegations Overview Example

On Tuesday, October 6, 2024, the Title IX Coordinator (TIXC) met with Complainant and her advisor, the Sexual Assault Victim's Advocate. Complainant reported that on Saturday, September 5, 2024, Respondent sexually assaulted her while Complainant was in a state rendering Complainant unable to give consent due to alcohol consumption. Complainant requested to initiate a complaint and completed the complaint form during the meeting.

As a result of this allegation and additional evidence presented at the time of intake, the TIXC asked the Title IX Investigator to conduct a thorough and impartial investigation using the provisions outlined in the University's Equal Opportunity, Harassment, Nondiscrimination Grievance Policy (hereinafter, Grievance Policy) and in accordance with Title IX and following guidelines from the U.S. Department of Education's Office for Civil Rights.

# Jurisdiction Statement

## **Provide a jurisdiction statement including:**

- Date(s), time(s), and location(s) of reported conduct
- Individuals involved
- Relevant policies and procedures related to jurisdiction
  - Analysis of the institution's jurisdiction over this type of complaint
  - Institutional control and/or disciplinary authority for the context of the alleged misconduct
  - Indicate whether Title IX requires the institution to investigate, or whether jurisdiction is discretionary
- Often prepared by TIXC

# Jurisdiction Statement Example

According to available information, the Respondent is currently a full-time administrative employee in the College of Human Performance, and the Complainant is currently a third-year doctoral student the physical therapy program. Both parties maintained the same institutional affiliations at the time of the reported incident.

The reported incident occurred in Parking Garage Six on the University of the Northwest campus in Seattle, Washington, United States. If proven, the allegations would constitute sexual assault under University policy and Title IX.

The University controls the location of the reported incident. The Respondent is an employee, and the Complainant is participating in the institution's education program as a student; therefore, the University has jurisdiction over this complaint pursuant to University Policy 10.1, Section 2(b).

# Scope of the Investigation

- **Scope** refers to the nature of the allegations, timeframes, and parties subject to the investigation
  - Clearly indicate whether the investigation is examining an incident, pattern, or climate/culture (and if pattern, whether there is a pattern charge)
- TIXC determines the scope of the investigation
- Parties and relevant witnesses
  - Provide basic context for a witness's connection to the institution and the parties
- Include when each individual was interviewed and by whom
  - Include nonresponsive individuals and anyone who declined to participate

# Scope Example

The Office of Institutional Equity, which oversees Title IX and VAWA compliance, commenced an investigation to determine:

1. Whether the Respondent engaged in behavior that constitutes sexual assault under University policy in an on-campus apartment on April 7, 2021
2. Whether the Respondent engaged in behavior that constitutes sexual exploitation under University policy in an on-campus apartment on April 7, 2021

Investigator Felicia Morris conducted an investigation in accordance with guidelines and requirements set forth by the U.S. Department of Education's Office for Civil Rights for Title IX investigations, the Violence Against Women Act Section 304, and University policy. Her efforts were overseen by Melanie Wallace, Title IX Coordinator. Witnesses interviewed include current students and non-students.



# Scope Example

This investigation was designed to collect all available information and to determine if the complaint should be dismissed or referred to a decision-maker for a formal hearing.

Individuals interviewed:

- Complainant – student
- Respondent – student
- Witness 1 – student and Complainant’s best friend
- Witness 2 – student and Respondent’s roommate
- Witness 3 – former student and Respondent’s former roommate

# Applicable Policies and Relevant Definitions

- Include the full text of **ALL** (correct versions) of applicable policy sections
- Alleged violation(s)
  - Relevant definitions (e.g., consent)
  - Standard of Proof
- Consistent with the Notice of Investigation and Allegations (NOIA), including any amendments



# Evidence List

- Recipient policies
- Evidence from Title IX staff
  - Meeting notes
  - Incident reports
- Evidence from parties and witnesses
  - Verified interview transcripts/summaries
  - Additional evidence provided
- Unavailable evidence



# Investigation Timeline

- Notifications to the parties
- Interviews with parties and witnesses
- Site visits
- Methods used to gather other evidence
- Meetings/Hearings held
- Note any process delays, including reasons for the delay



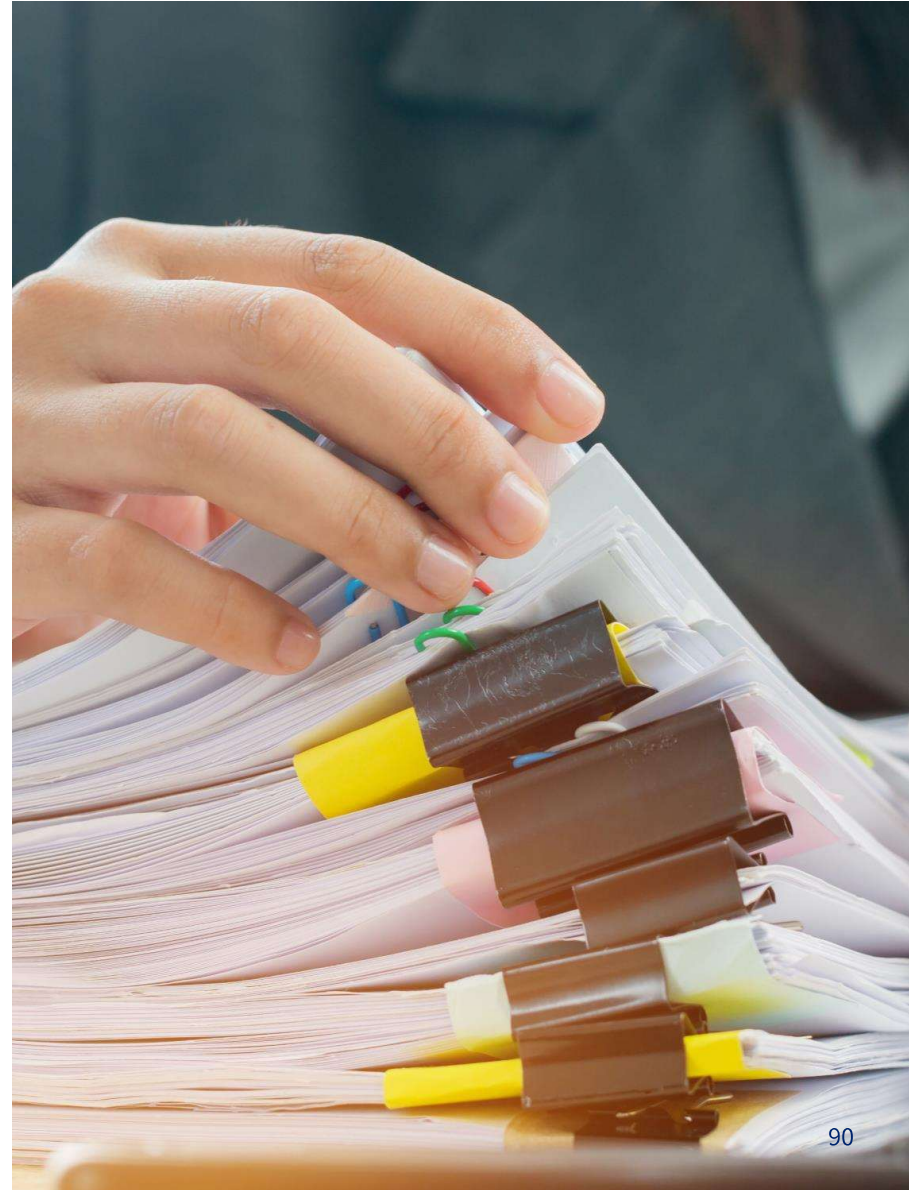


# **Discussion: Investigation Report Context Sections**



# Relevant Background

- Include additional background information as necessary to understand relationship history, context, etc.
  - Separate by topic



# Incident Timeline(s)

- Visual representation or list that shows events in chronological order
  - One timeline for the reported incident(s) based on all available information
  - Use separate timelines for multiple incidents if necessary
- Reference evidence connected to points on the timeline
  - E.g., timestamped text messages, receipts, call logs
- Especially helpful in evaluating incapacitation
- For stalking allegations, it is an industry standard to include a timeline to assess the “course of conduct” element of the offense

# Incident Timeline Example

**~10:00 PM**

## **Marty's**

C & R meet at Marty's Convenience Store and purchase beer, wine, and bread

## **Travel**

C & R travel to R's on-campus apartment and begin consuming alcohol and watching Netflix

## **Restroom**

C uses the restroom and begins feeling "like it took a lot of effort to move [her] limbs" and "everything was going on around [her] in slow motion"

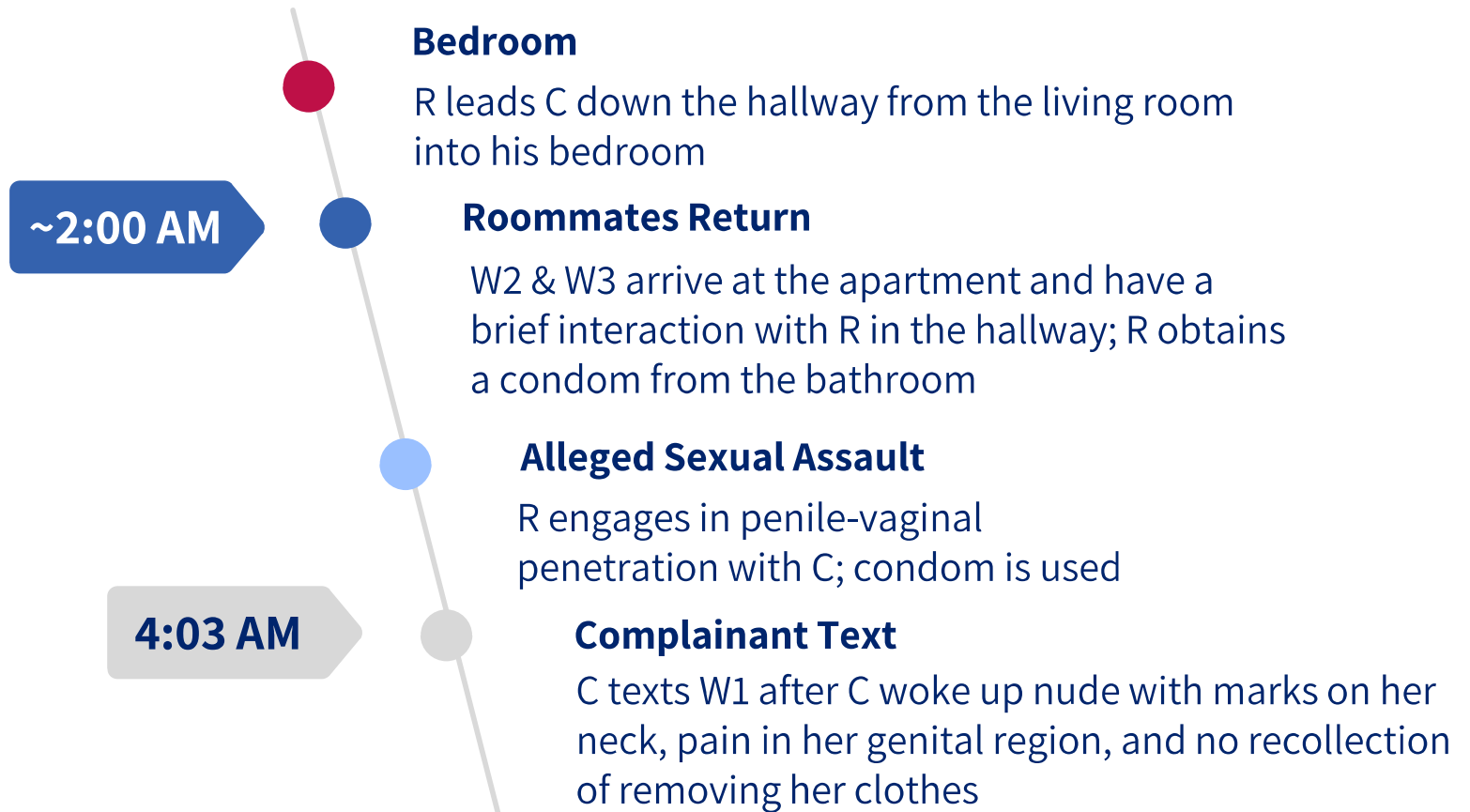
**1:47 AM**

## **Roommate Text**

W2 texts R and tells him that W2 and W3 are coming back to the apartment; R says he is "entertaining"



# Incident Timeline Example



# Incident Timeline Example



~4:30 AM

The diagram features a red arrow pointing right with the text '~4:30 AM' inside. To its right is a red circle on a vertical grey line. A diagonal grey line extends from the circle down towards the bulleted text below.

## Pick-up

W1 picks up C outside of R's residence hall and transports C to the hospital for a sexual assault examination

- Timeline established by using all available information
  - Receipts
  - Text message time stamps
  - Witness statements
  - Party statements
  - Building access records
  - Other

# Relevant Evidence Summary

## Relevant Evidence Summary Includes:

- Complaint and/or Incident Report
- Interview summaries/relevant portions of transcripts
- Written statements
- Responses to Draft Investigation Report
- Text/social media/email/electronic messages
- Photographs
- Description of and link to videos
- Relevant documents

# Organizing the Relevant Evidence Summary

- Content may dictate the most logical organization structure for this section
- Can organize in multiple ways, depending on number of complainants, respondents, witnesses, or allegations, as well as the nature and type of the allegations themselves
- Some common approaches
  - By interviewee
  - By allegation
  - Chronological by interview
  - Chronological by incident timeline

# Credibility Assessment

- Specific and detailed credibility assessment of:
  - Each party
  - Each witness
  - Any other relevant evidence
- Point to specific details that were considered that have aided in the assessments
- May or may not include conclusions about credibility, depending on institutional policy
- ATIXA does not recommend Investigators make conclusions, but comparisons may be helpful

# Credibility Assessment Example

## Respondent

- Respondent indicated that his current job at the institution is his “dream job” and he “would never do anything to jeopardize his employment”
- Respondent indicated that several people had come to him to discuss the allegations made by Complainant, and acknowledged conversations with W1, W2, W4, W9, W17, and W22
- W6 specifically refuted any suggestion that Respondent would call anyone a “lipstick lesbian,” but investigators never shared with W6 that Respondent was alleged to have used that specific term
- W2 indicated that Respondent would never use derogatory language about a student-athlete
- W21 indicated that Respondent texted her at an unusual hour to see how she was doing on the same day that Complainant filed the allegations

# Discussion and Synthesis

- Discuss and synthesize the relevant information
  - Consider the elements of each policy at issue
  - Refer back to relevant evidence cited
  - Refer to the credibility assessment(s)
- Guide for the Decision-maker(s) determination
  - What remains unresolved?
  - What type of analysis is required based on the applicable policy provisions?

# Discussion and Synthesis Example: Undisputed Facts

## The parties agree to the following facts:

- The parties met at an off-campus store, Marty's, where the Respondent purchased beer, wine, and bread
- The Respondent selected the beer, and the Complainant selected the wine
- The parties returned to the Respondent's on-campus apartment where they both consumed alcohol and watched Netflix while sitting on the couch in the living room
- The Complainant used the restroom in the apartment
- The Complainant awoke in the Respondent's bedroom early the following morning and texted her friend to pick her up



# Discussion and Synthesis Example: Disputed Facts

**The parties disagree about the following:**

- Whether the Complainant was incapacitated due to alcohol consumption
- Whether Complainant asked Respondent to get a condom
- Whether the Respondent engaged in physical violence against the Complainant resulting in bruising on Complainant's neck and hip
- Whether Respondent had consent to engage in vaginal sexual intercourse with Complainant

# Discussion and Synthesis Example

## Allegation #1 – Sexual Harassment

**Did Respondent sexually harass Complainant by showing Complainant's nude video to other Acme students?**

- Acme Policy defines “sexual harassment” as any unwelcome or unwanted sexual attention, sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature or other offensive behavior directed toward a student because of or on account of their gender, when:
  - such conduct has the purpose or effect of unreasonably interfering with an individual's performance as a student; or
  - such conduct creates an intimidating, hostile or offensive environment at the school.

# Discussion and Synthesis Example

## The parties dispute this allegation

- Respondent denied showing Complainant's nude video to Witness 3
  - Complainant was not present when Respondent allegedly shared the video
  - Respondent did not explicitly deny playing the video on her phone in the presence of other students, but very deliberately defined “share” in such a way that Respondent could have been playing the video on her phone in plain view of other students and Respondent would not consider that “sharing” the video with other students

# Discussion and Synthesis Example

- Witness 3 told Complainant that Respondent showed Witness 3 and other students a nude video of Complainant
  - Witness 3 told Complainant that she was wearing a colorful robe in the video Respondent showed Witness 3
  - Complainant recognized Witness 3's description of the video as one she had shared with Respondent privately
  - Respondent denied that Complainant sent a video wearing a colorful robe

# Discussion and Synthesis Example

- Respondent thought Witness 3 overheard a conversation that was not directed at Witness 3 but denied ever showing or describing Complainant's video. Respondent also said Respondent did not have Complainant's text messages pulled up during this time.
  - Witness 3 told Complainant that Respondent showed Witness 3, Witness 1, and Witness 2 a video of Complainant while the group was talking about their classmates
  - Witness 3 said that she and another student in the group during the conversation were new to the Queens campus, and the conversation was about "who was weird" and trying to "warn" people about other students
  - At some point, Complainant was brought up and then Respondent showed the videos

# Discussion and Synthesis Example

## Did the incident occur as described?

- The Decision-maker should first evaluate the witness and parties' statements to determine whether the factual allegations are supported by a preponderance of the evidence
- Because there is a material disagreement on whether the video was shown, the Decision-maker should determine which description of these specific events is most reliable
- That determination may largely depend on the Decision-maker's evaluation of the credibility of the parties
- Relevant evidence that may impact the Decision-maker's evaluation of the parties' credibility is outlined in the credibility section of this report

# Discussion and Synthesis Example

- When the Decision-maker has determined which version of the interactions subject to disputed evidence in Allegation #1 is supported by a preponderance of the evidence, the Decision-maker should, if appropriate, determine whether the conduct constituted unwelcome or unwanted sexual attention that had the purpose or effect of unreasonably interfering with Complainant's performance as a student or created an intimidating, hostile, or offensive environment at the school



# **Discussion: Investigation Report Evidence Sections**



# Recommended Finding & Recommended Determination

## Recommended Finding

Whether the conduct occurred, by the standard of evidence

## Recommended Determination

Whether the conduct that is proven to have occurred violates policy

# Recommended Findings

- This section is only applicable if permitted by institutional policy (not recommended)
- **Apply the standard of proof and use the relevant, credible evidence to answer the following question:**
  - **Did the conduct occur as alleged?**
    - What is more likely than not to have occurred?
    - Who was involved in what occurred?
    - When and where did it happen?

# Recommended Findings

- Apply the credibility analysis
  - Evidence is less credible if it is inconsistent or not corroborated
  - Passage of time, coupled with memory errors can adversely impact credibility of evidence
- Don't assign disproportionate weight to minor deviations
- Recognize and neutralize any biases – allow the evidence alone to guide recommended findings
- List the recommended finding of fact for each alleged policy violation, applying the standard of proof

# Recommended Final Determination

- This section is only applicable if permitted by institutional policy (not recommended)

**For complaints where Investigator(s) found that the alleged conduct occurred, apply the standard of proof and use the relevant, credible evidence to answer the following question**

- **Did the conduct alleged violate policy?**
  - Parse the policy into its individual elements (model of proof)
    - A final determination of a violation can only occur when every element of a policy is met
    - Which facts provide information that either supports or detracts from meeting each element?
- List the recommended final determination for each alleged policy violation applying the standard of proof



# **Discussion: Investigation Findings and Final Determinations**

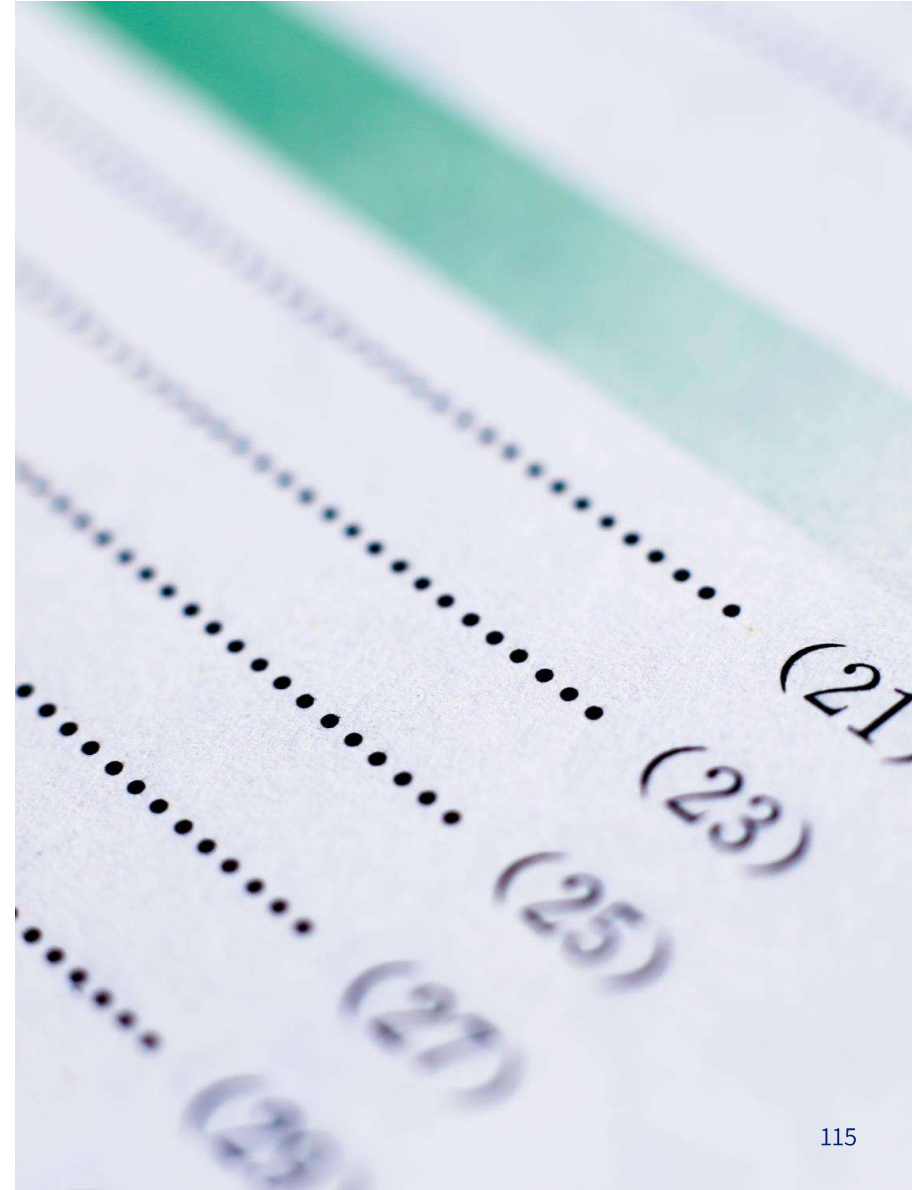
# Appendices

- Relevant information that would not fit neatly in the investigation report
  - Policies
  - Complaint (depending on length)
  - Lengthy documents
- Parties' feedback on the investigation report and Investigator responses
- Parties' questions for others and responses
- Description, date of receipt, source, method of receipt, and verification/authentication information



# Evidence File

- All relevant information in complete form
- Redact information that is impermissible
- Logical organization to align with report
- Maintain electronically
- TIXC must be able to access





# Questions?





Association of  
Title IX Administrators

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