



Association of
Title IX Administrators

University of New Mexico Title IX Training

Training and Certification Course

August 15 & 16, 2024

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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 course focuses on investigation techniques and best practices, including writing clear, comprehensive investigation reports.



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



Our goal is to provide an in-depth exploration of Title IX investigations and the skills necessary to complete them.

Title IX Regulations

Title IX and Equity

- Title IX is a sex and gender equity law
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
 - Equity focuses on providing support and resources to reduce disparities in access to the education program
 - Title IX seeks to remedy the inequities sex- and gender-based harassment, discrimination, and violence create

Title IX Compliance Oversight

Who is the Title IX Coordinator (TIXC)?

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



2024 Title IX Final Rule

- Issued **April 19, 2024**
- Effective and enforceable **August 1, 2024**
- Applies exclusively to incidents occurring **on or after August 1, 2024**
- 2024 Regulations are a blend of the 2011 Dear Colleague Letter, 2020 Regulations, and new approaches
- 1561 pages total (1504 Preamble and 57 Regulations)
- More flexibility for institutions in how to structure and staff resolution processes

Retroactivity

- The 2024 regulations apply **only** to sex discrimination alleged to have occurred **on or after** August 1, 2024
 - For conduct alleged to have occurred prior to August 1, 2024, the regulations in place at the time the alleged behavior occurred will apply
- Recipients will need to maintain/update policies, procedures, and training that are compliant with the **2020** regulations and **2024** regulations



Review: Applicability

- Education program or activity in the United States
- Downstream effects of external misconduct
- Disciplinary authority over the context of the behavior
- Identity of the Complainant
- Applies to students and employees



Title IX Regulatory Definitions

Review: Sex Discrimination Definitions

- Discrimination on the basis of sex includes:
 - Sex Stereotypes
 - Sex Characteristics
 - Pregnancy or Related Conditions
 - Sexual Orientation
 - Gender Identity
- “More than *de minimis* harm”
- Sex-Based Harassment
- **Disparate Treatment:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **unintentionally** discriminates
 - A policy may be intended to be neutral as written but it may be applied in a discriminatory manner

Sex-Based Harassment

- Subset of sex discrimination
- Includes (the “Big Six” offenses):
 - Quid Pro Quo (QPQ)
 - Hostile Environment Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- No consent definition provided
 - ATIXA recommends adopting a definition in institutional policy



Quid Pro Quo

- “An employee, agent, or **other person authorized by the Recipient** to provide an aid, benefit, or service under the Recipient’s education program or activity...”
 - Explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct”
- If a **student** occupied a position as some “other person authorized by the Recipient...” then Quid Pro Quo **could** apply to student Respondents
- Definition encompasses:
 - Extracurriculars and academics
 - Detriment or threat thereof
 - If an individual purports to have authority to provide some aid, benefit, or service, even if they are unable to do so

Hostile Environment Harassment

- Definition:
 - Unwelcome sex-based conduct that
 - Based on the totality of the circumstances:
 - Is subjectively and objectively offensive **AND**
 - Is so severe **OR** pervasive
 - That it **limits or denies** a person's ability to participate in or benefit from the recipient's education program or activity
- Lesser and broader standard than 2020 Regulations with First Amendment implications

Hostile Environment Harassment

- The definition provides factors for evaluating whether a hostile environment exists
 - Complainant's ability to access the education program or activity
 - Type, frequency, and duration of the conduct
 - Parties' ages, roles, and previous interactions
 - Location and context of the conduct
 - Control the school/district has over the Respondent
- These are **factors**, not requirements
 - There could also be other factors to consider

Retaliation

Defined as:

- Intimidation, threats, coercion, or discrimination against any person
 - By the Recipient, a student, or an employee, or other person...
 - “For the purpose of interfering with any right or privilege under Title IX,” **OR**
 - “Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing in the Title IX grievance process”
- **May require** employees to support the Resolution Process as witnesses
 - Still cannot require students to participate
 - Retaliation allegations should be resolved under Title IX Resolution Process

Clery Act Definitions

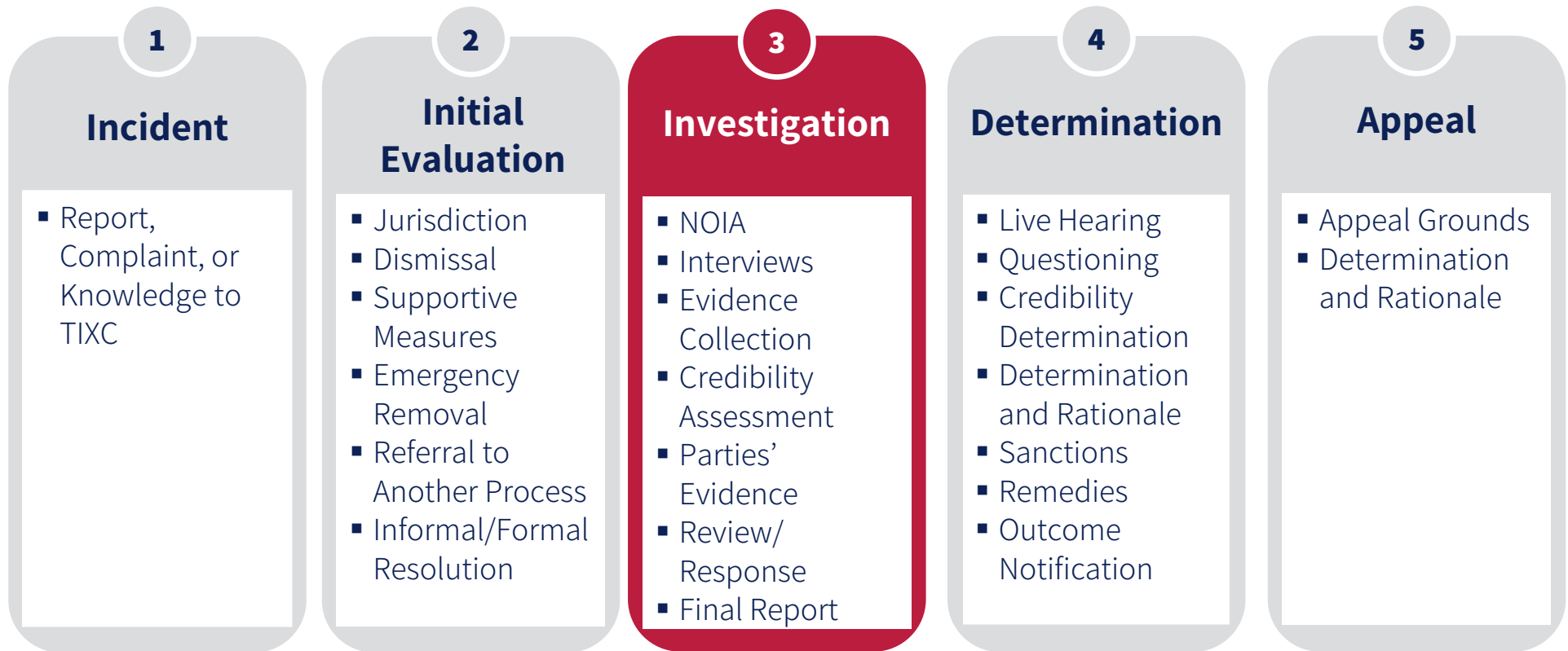
- May use the Clery Act definitions, rather than the FBI UCR definitions
 - Four, instead of six, subparts to Sexual Assault definition
 - Rape
 - Fondling
 - Incest
 - Statutory Rape
 - Dating Violence
 - Domestic Violence
 - Stalking
- Sexual Assault with an Object and Sodomy do not have Clery Act definitions
 - Do not need to include these in Title IX policy if using the Clery definitions

Consent

- UNM's Definition:
 - Affirmative, informed, and conscious decision to willingly engage in mutually acceptable sexual activity.
 - Consent requires a clear affirmative act or statement by each participant to each sexual act in a sexual interaction.
 - Consent demonstrates that the conduct in question is welcome or wanted.
 - Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on UNM to determine if its policy has been violated.
 - Consent may not be inferred from silence, passivity, or lack of active response alone.
 - A person who is asleep, unconscious, or otherwise unaware of what is happening is unable to give consent.
 - A current or past dating or sexual relationship is not sufficient to constitute consent in every instance, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.

Investigating Title IX Complaints

Investigation



Comprehensive Investigation



ADEQUATE



RELIABLE



IMPARTIAL



PROMPT



FAIR



EQUITABLE

Pre-Interview Planning

- Before scheduling interviews, consider:
 - Location
 - Virtual vs. in-person
 - Accessibility
 - Scheduling constraints
 - Participants
 - Preparation
- Must provide written notification to parties with sufficient time to prepare
 - Date, time, location, participants, and purpose
- Cannot mandate interview participation for any student who is a party or witness. Institution can require employee witnesses to cooperate or impose sanctions if they do not.

Interview Scheduling and Sequencing

- Conduct interviews as promptly as possible to capture fresh recollections (but not before NOIA)
- Schedule ample time to complete the interview, review notes, and document necessary next steps
 - Consider Investigator mental capacity attention span (e.g.: “Zoom fatigue”)
 - Allow time for breaks and meals or snacks
- Solicit additional witness suggestions from parties and other witnesses
- Investigator retains discretion to determine whether a suggested witness has relevant information
 - When unsure, err on the side of conducting the interview

Interview Preparation

- Review all available documentation and evidence
- Use policy elements to determine types of evidence that would help a Decision-maker determine whether that policy was violated
 - Example: “without consent”
 - Evidence that Complainant gave consent or could not give consent
- Identify clear goals and a set of initial questions
 - Investigator should not passively accept what an interviewee wants to share, but actively gather evidence that will prove or disprove the allegations of the complaint

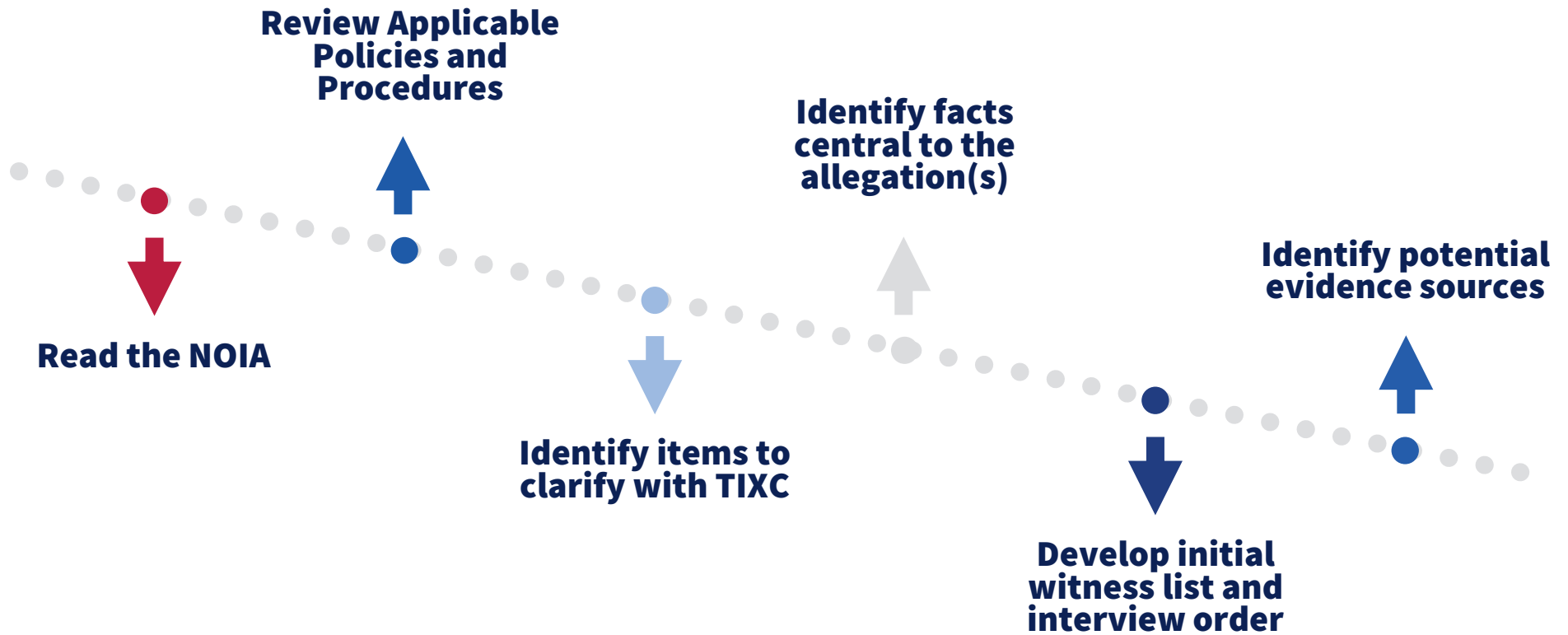
Interview Preparation

- Identify initial questions for each party and witness based on their role and evidence to which they may have access
 - Relationships prior to and after the reported incident(s)
 - Direct observation vs. receiving information after the fact
 - Communication with whom, when, and content



Activity 1: Investigation Strategy

Activity: Investigation Strategy



Information Sharing

- Information sharing practices must balance transparency, privacy, and strategy, as well as the parties' rights
 - Often sharing more information during the investigation garners more information
 - Investigators may have to give to get, but be judicious in what is shared
- The parties will have access to all relevant evidence at the conclusion of the investigation
- Witnesses:
 - May have limited or no knowledge about the complaint itself
 - May or may not know the parties or other witnesses
 - Some information sharing will be necessary, but be circumspect and don't make assumptions that witnesses already know certain facts

Party and Witness Investigation Concerns

Privacy vs. Confidentiality vs. Privilege

1

PRIVACY

Statutory protection (FERPA) only allows disclosing records to those who need to know, but cannot guarantee confidentiality

2

CONFIDENTIALITY

Information protection by those who need not report to the TIXC because they are designated confidential or have ethical/statutory confidentiality duties (subject to exceptions)

3

PRIVILEGE

The highest legal protection (attorney giving advice to a client or clergy providing pastoral advice); client/patient/parishioner controls the privilege

Working with Advisors

- Parties have the right to be accompanied by an Advisor of their choice
- “Of choice” truly means anyone
- Investigators may establish participation ground rules, if applied equitably
- Advisor availability may not unreasonably delay the process



Interviewing Skills

Interviewing Skills

Investigators build and improve skills over time and with practice:

- Appropriate questioning
- Active listening
- Seeking clarification
- Identifying gaps
- Body language and non-verbal communication (use caution)



Interviewing Considerations

- Prepare questions in advance
 - Open-ended questions designed to elicit narrative responses
 - Listen to answers before asking additional questions
 - Note discrepancies or areas for follow-up
- Use active listening skills
 - Eye contact
 - Head nodding
 - Summarization/Restating
- Avoid tangents or distractions
- Insert logical additional questions flowing from interviewee's answers

Questioning Considerations

- An interview is a conversation designed to elicit relevant information in a non-accusatory manner
- Start with broad questions, but focus on timelines and details as well
- Explore all gaps in information; answer all questions
- Ask purposeful questions:
 - What do I need to know?
 - Why do I need to know it?
- Use policy definitions to inform questions
- Avoid unnecessary repetition or traumatic re-triggering
- Choose or blend effective questioning strategies/methodologies

Questioning Tips

- Listen carefully
- Seek to clarify terms that have multiple meanings
 - “We hooked up” or “She was acting weird”
- Avoid:
 - Accusatory or argumentative questions/tone
 - Confusing questions
 - Blaming questions
 - “Double-barreled” questions
 - Evaluative responses
 - Sanitizing language (use the terms used by the interviewee)



Questioning Techniques



Following
vs.
Leading



Explaining
vs.
Defending



Clarifying
vs.
Challenging



Curiosity
vs.
Suspicion

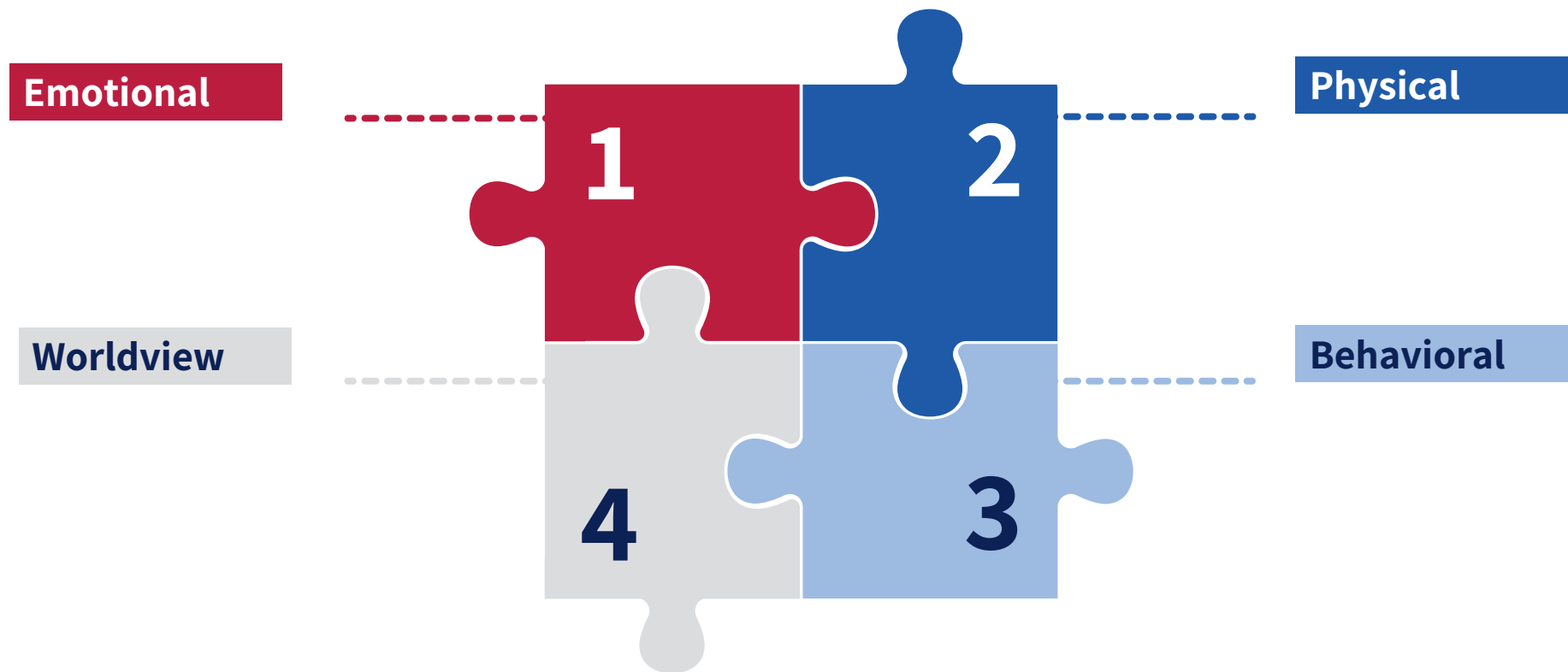
Building Rapport

- **GOAL:** Interviewee trusts that you are neutral and impartial
- Investigators help set the tone for a productive interview
- Maintain professionalism
- Provide transparency about expectations and the process
- Balance neutrality with a human approach
- Ask questions in a straightforward, non-judgmental manner
- Follow up in a timely manner, if necessary
- Use a trauma-informed approach to working with all parties and witnesses

Trauma-Informed Practices

- **Trauma** is exposure to an event or events that create a real or perceived threat to life, safety, sense of well-being and bodily integrity
 - Acute, chronic, or complex
 - Neurological, biological, psychological, social, and emotional impacts
 - Developmental, intergenerational, historical, secondary, vicarious, or collective
 - Responses to trauma can vary, depending on a variety of factors
- Provide all persons with support that makes TIX services and processes accessible, including those who may have experienced trauma

Impacts of Trauma



Trauma-Informed Practices

- **Key principles of trauma-informed practice:**
 - Safety
 - Trustworthiness and transparency
 - Collaboration and mutuality
 - Empowerment, voice, and choice
 - Cultural, historical, and gender issues
- **ATIXA Position Statement:** Application of trauma-informed practices in our field has gotten ahead of the actual science
 - **ATIXA Recommendation:** Incorporate trauma-informed investigation and interviewing methods without compromising gathering credible, relevant evidence
 - Trauma-informed practices should not significantly influence evidence evaluation

Interview Challenges: Resistance, Reluctance, and Lying

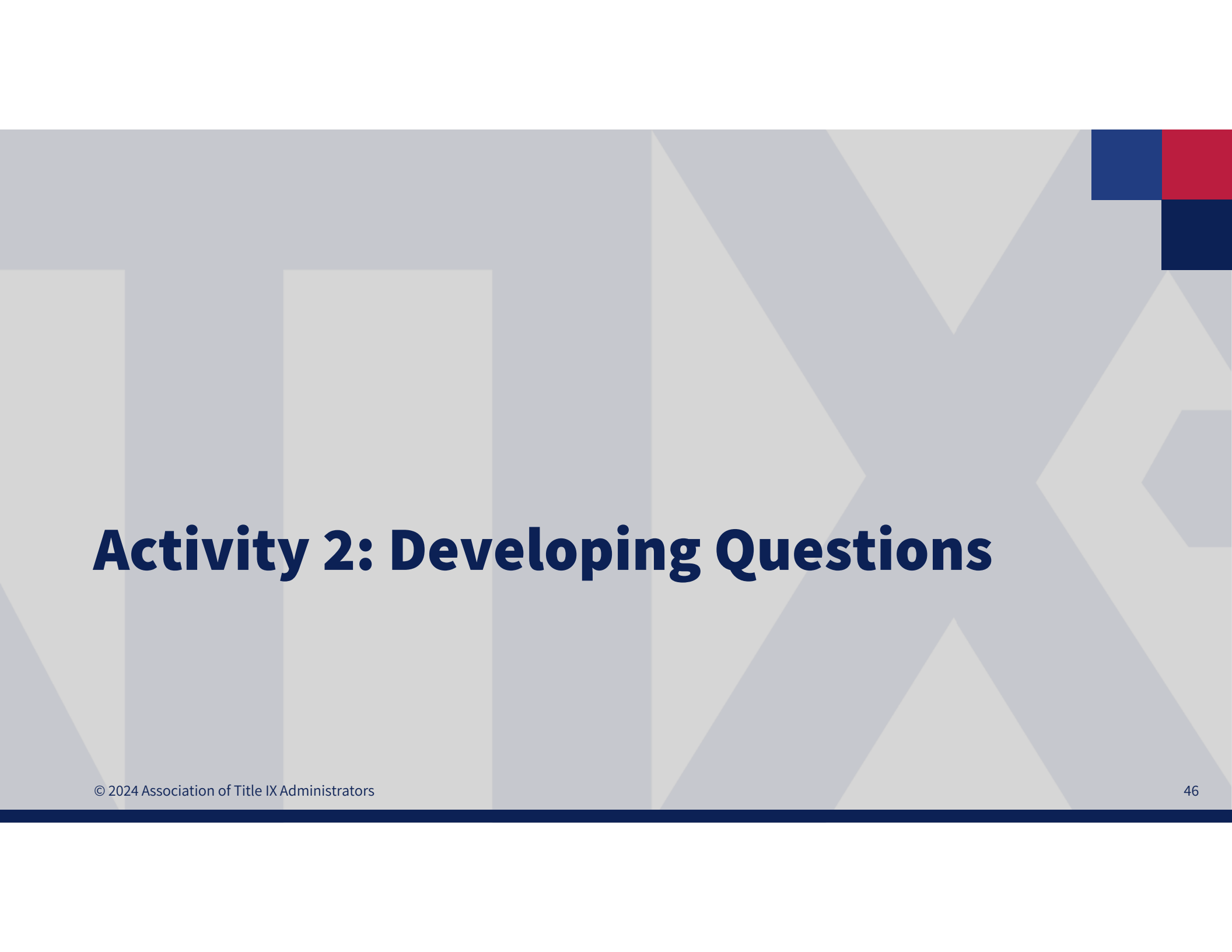
- Offer a reminder of Investigator's role as a neutral fact-gatherer
- Maintain rapport and avoid accusation
 - "Help me understand..."
 - "I think I'm missing something..."
 - "Can you tell me more about that?"
- Use language mirroring
- Allow opportunity for interviewee to restate
- Review retaliation, amnesty policies, expectation of truthfulness
- Avoid statements reflecting moral judgment

Final Interview Questions

- “Is there anyone else that you think we should talk to?”
- “Are there any questions you expected, but that we didn’t ask?”
- “Is there anything else you think we need to know?”
- What questions should I pose to other witnesses/parties?
- **FOR THE PARTIES:** “Are there any questions that you would like us to ask any witness or other party?”
- Document questions and answers provided
- Keep a running list of the questions suggested/requested by each party
 - Whether and when the question was asked
 - Rationale for not asking any question(s) based on irrelevance or impermissible evidence

Interview Documentation and Review

- Maintain interview transcripts or written summaries
 - **Transcript:** word-for-word documentation of a recorded interview
 - **Summary:** Investigator's summation of all information gathered during entire interview (may be several paragraphs or pages, depending on interview length)
- Recording is an increasingly common practice
- Parties and witnesses should be invited to review their interview transcript/summary
 - Verify accuracy, clarify where needed, and provide additional information



Activity 2: Developing Questions

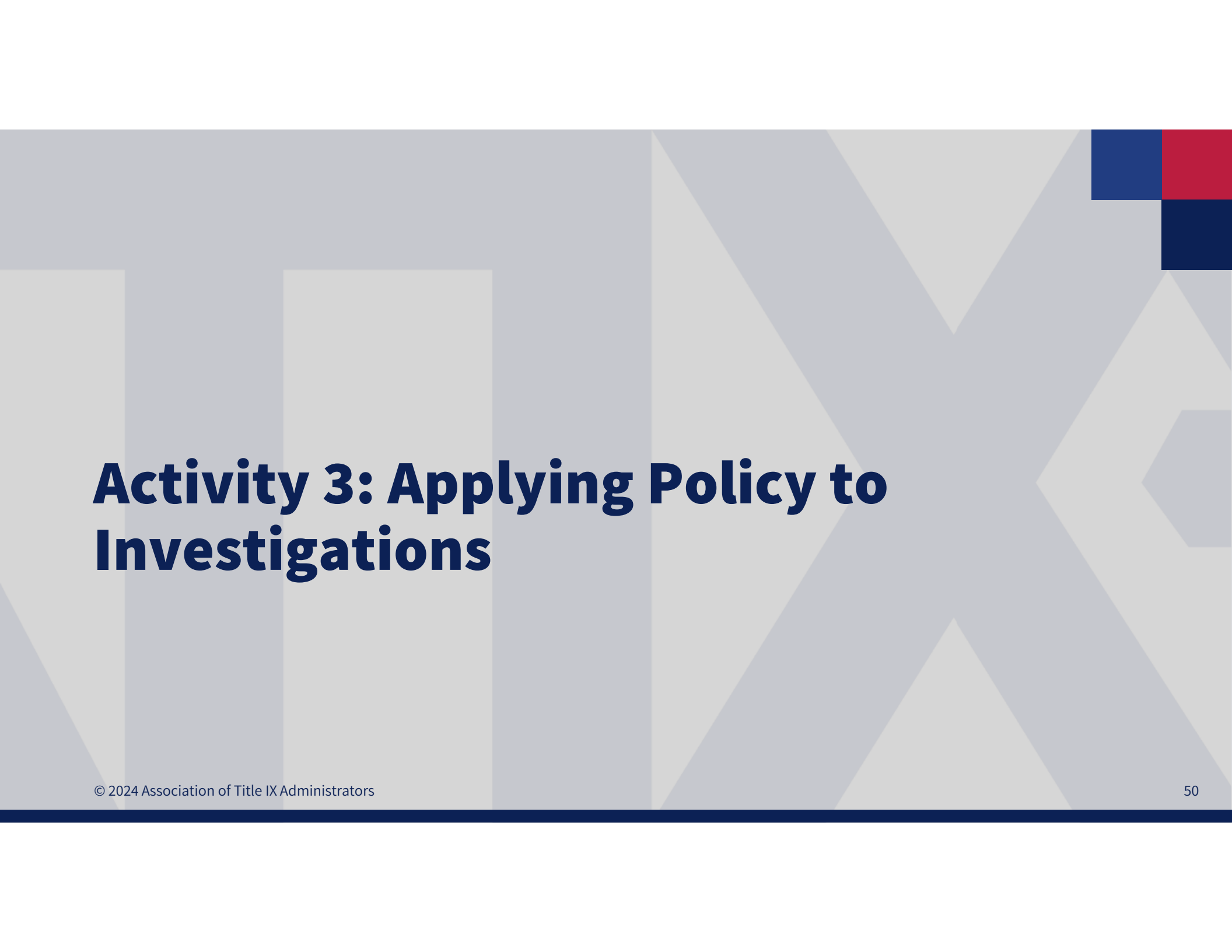
Activity 2: Developing Questions

- Refer to the **Sample Notice of Investigation and Allegations (NOIA)** in the participant packet
- Read the NOIA and begin developing interview questions for the Complainant and Respondent based on the allegations and policy language provided

Applying Policy in Investigations

Applying Policy in Investigations

- Know what to look for
- **Models of Proof:** the specific elements of each violation
- Investigators collect information and evidence specific to the alleged policy violations
- Policy language informs appropriate questions
 - Policy provisions, definitions, jurisdiction
- Decision-makers (DM) use the information gathered in the investigation to determine whether all necessary elements are met for each alleged policy violation
 - DMs rely upon Investigators to collect all of the relevant and available evidence



Activity 3: Applying Policy to Investigations

Definition: Fondling

The touching of the private body parts of the Complainant, for the purpose of sexual gratification, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of a temporary or permanent mental incapacity

Applying Policy to Investigations

Determine the policy elements for the **fondling** definition:

- ☐ The touching of the private body parts of the Complainant
- ☐ For the purpose of sexual gratification
- ☐ Without the consent of the Complainant
 - Including instances where the Complainant is incapable of giving consent
 - Because of their age or
 - Because of a temporary or permanent mental incapacity

Applying Policy to Investigations

- Review the formal complaint in your participant packet.
- Use the policy elements of the **fondling** definition to develop:
 - Initial questions for parties
 - Potential sources of evidence

Activity 4: Interviewing Practice

Interviewing Activity

Step 1

- **Interviewee:** Review your prompt in the lobby
- **Interviewer:** Review your prompt in the lobby

Step 2

- **Both:** Do not share details from your respective prompts
- **Interviewer:** Conduct interview and take notes

Step 3:

- **Interviewee:** What did the interviewer do that helped, hindered, or distracted you?
- **Interviewer:** What approaches did you use? Were they effective?

Complaint Analysis Tools

Evaluating Sex-Based Harassment Rubric

- The 2020 Regulations consider unwelcomeness from a subjective lens
 - If a Complainant says the conduct is unwelcome, it is
- The 2024 Regulations consider unwelcomeness from both an objective and a subjective lens
 - Most people do not welcome objectively offensive conduct
 - Someone who welcomes objectively offensive conduct is unlikely to initiate a complaint about such conduct

Evaluating Sex-Based Harassment Rubric

- Investigators should consider reported conduct to be unwelcome unless a preponderance of the evidence shows otherwise
 - Complainants may act as if something is welcome, even if it is not
- For SBH, Investigators should primarily be focused on evidence that supports or detracts from the “limits or denies” language
 - If there is limitation or denial, then evaluate whether the conduct was severe or pervasive enough to cause that effect

Consent Construct

Overview of The Three Questions

1. **FORCE:** Was force used by the Respondent 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

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

3. **CONSENT:** What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place?

Force

Was force used by the Respondent to obtain sexual or intimate access?

Physical Violence:

- Hitting, restraint, pushing, kicking, etc.

Threats:

- Objective and subjective analysis of the viability of the threat (true threat if public)

Intimidation:

- Implied threat that menaces and/or causes reasonable fear

Coercion:

- Unreasonable amount of pressure for sexual access (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
 - Situational awareness
 - Consequential awareness

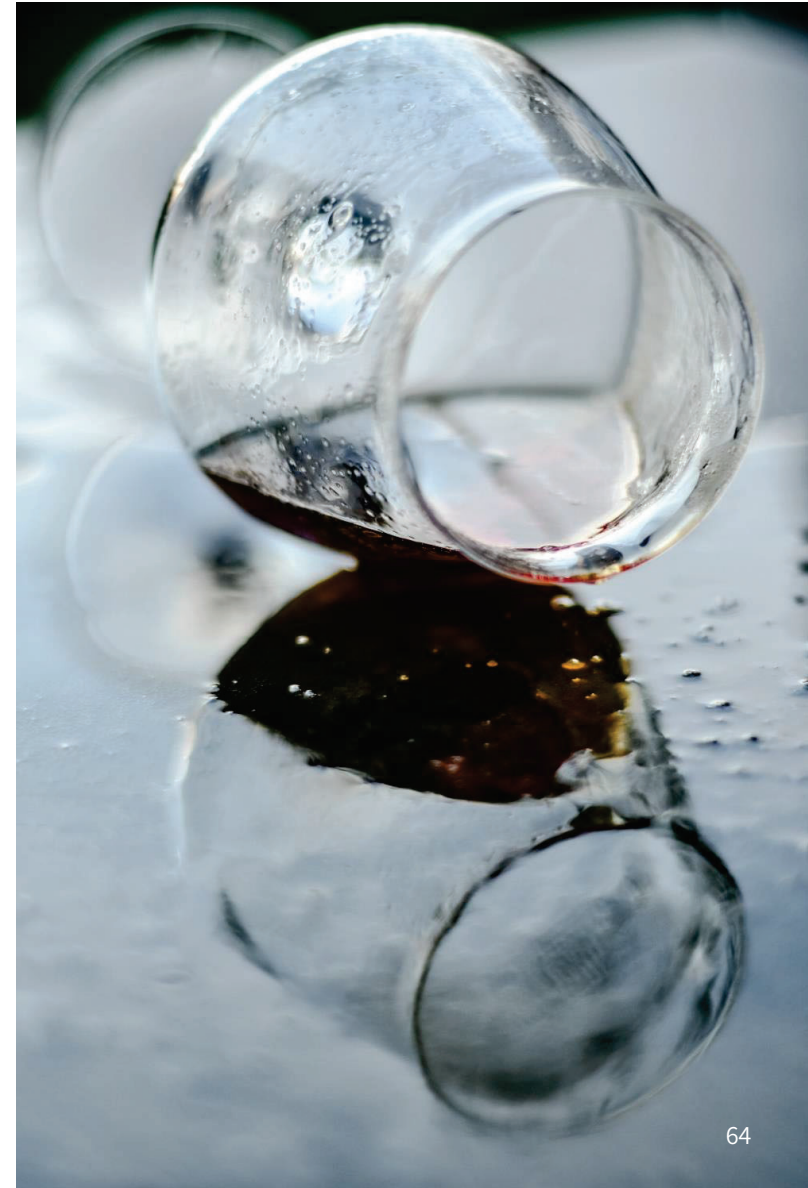
Incapacity

- What was the reason for incapacity?
 - Alcohol or other drugs (prescription or non-prescription)
 - Mental/cognitive impairment
 - Injury
 - Asleep or unconscious
- Blackouts are frequent issues
 - Blackout ≠ incapacitation (automatically)
 - Blackout = working memory is functional; short-term memory not retained
 - Partial blackout must be assessed as well
 - Although memory is absent in a blackout, verbal and motor skills may still function, as may decision-making capacity

Evidence of Incapacity: Potential Context Clues

- Slurred speech
- Scent of alcohol on the breath
- Shaky equilibrium; disorientation
- Passing out/unconsciousness
- Throwing up
- Known blackout
- Outrageous or 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 (reasonable person)** = policy violation
 - Remember: the Respondent's own intoxication cannot be used as a defense because of the reasonable person standard (though it could mitigate sanctions)

Prior Knowledge Construct

- Did the Respondent previously know the Complainant?
 - If so, was the Complainant acting differently than previous similar situations, or out-of-character?
- Evaluate what, if anything, the Respondent observed the Complainant consuming
 - Use a timeline analysis
- Determine if the Respondent provided any substances to the Complainant

Consent Analysis

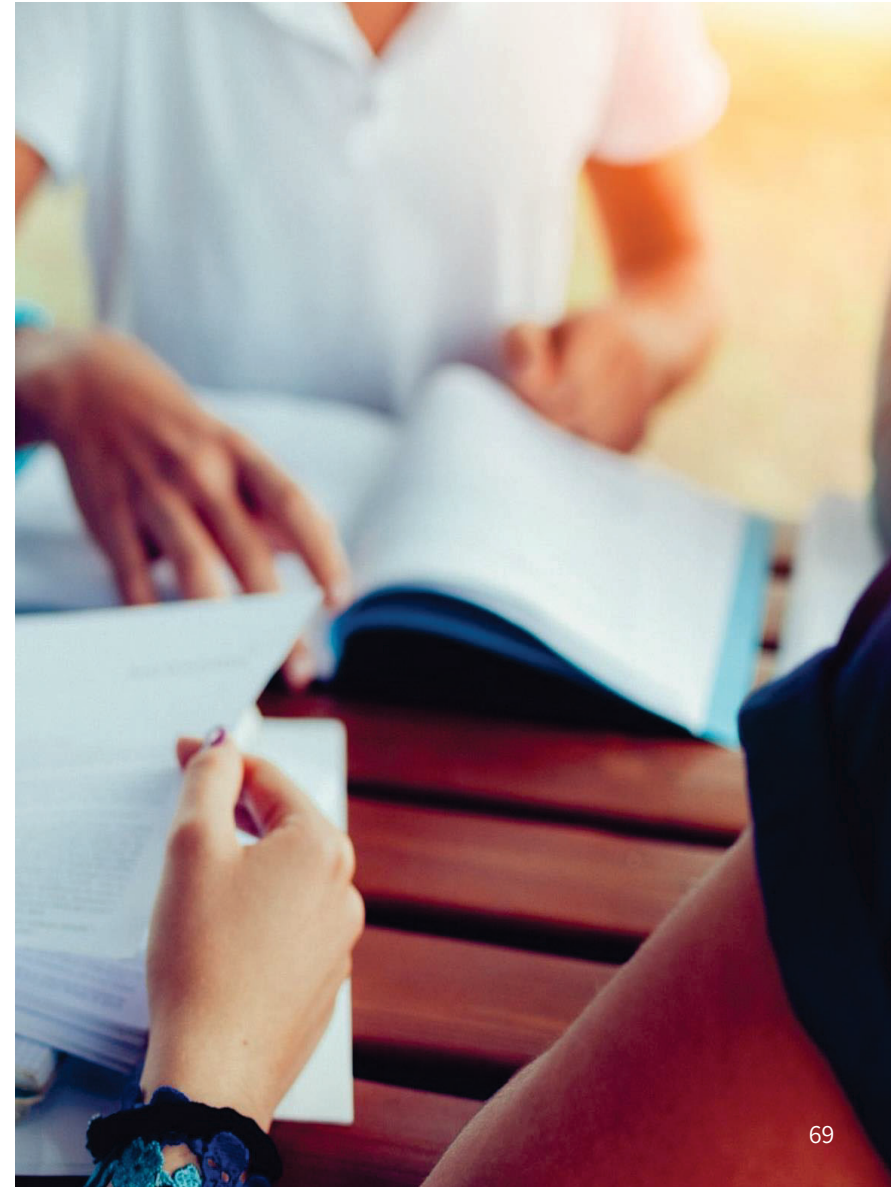
What clear words or actions gave the Respondent permission for each specific sexual or intimate act that took place?

- Is there any relevant sexual or intimate pattern or history between the parties?
- What verbal and/or non-verbal cues were present during any acts or portion of the encounter that the parties agree were consensual? Non-consensual?
 - Contemporaneous communication
- Critical to gather evidence regarding detailed and specific intimate behaviors
- Investigators sometimes think it isn't trauma informed to probe, but probing is part of the job – Investigators must probe gently and with tact

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

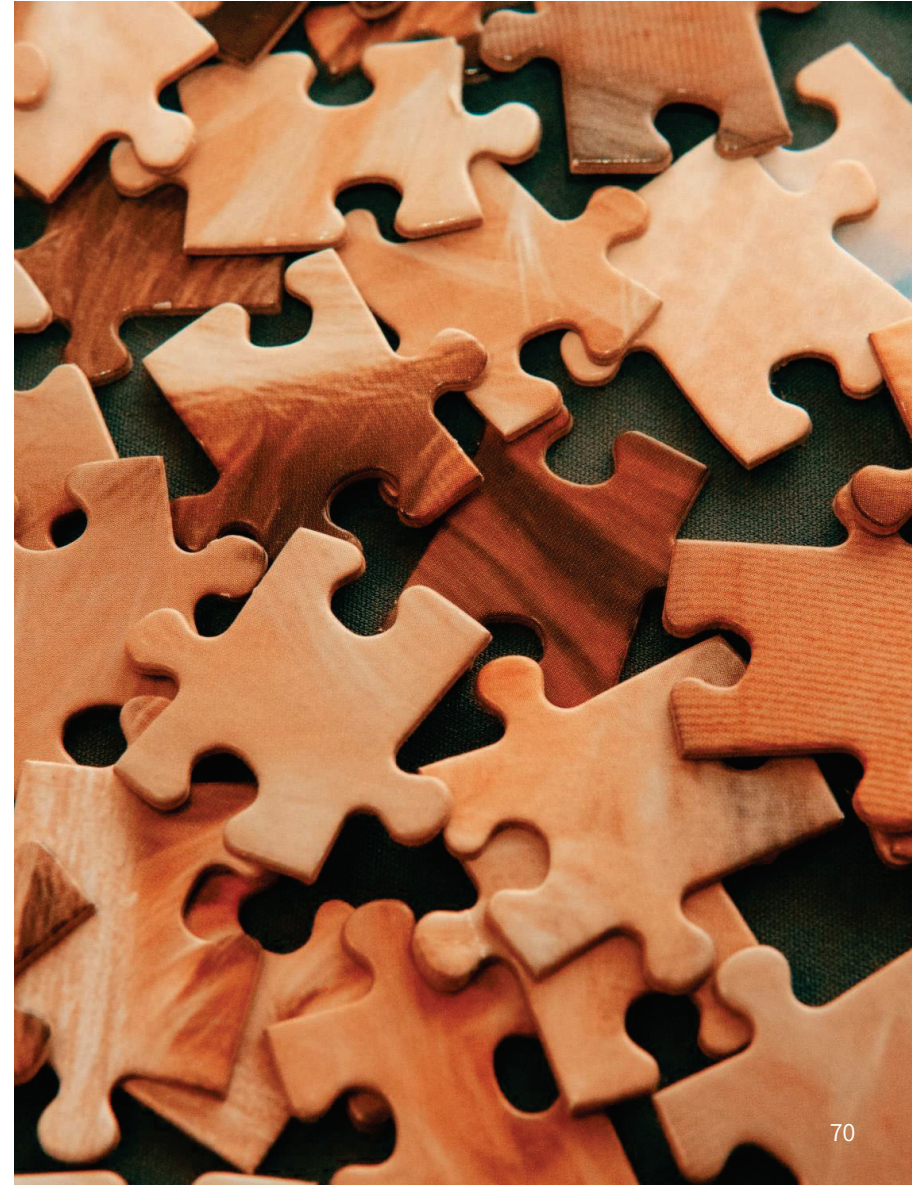
Consistency of Evidence/Testimony

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

Making Credibility Assessments

- Examine consistency of the story
 - Analyze statement substance and chronology
 - Inherent plausibility of all relevant evidence taken together
- Compare degrees of credibility within evidence
 - Is a piece of evidence consistent with other evidence known to be credible?
- Consider the amount of detail provided
- Non-verbal behaviors may be important to note
 - Do **not** let this drive the analysis

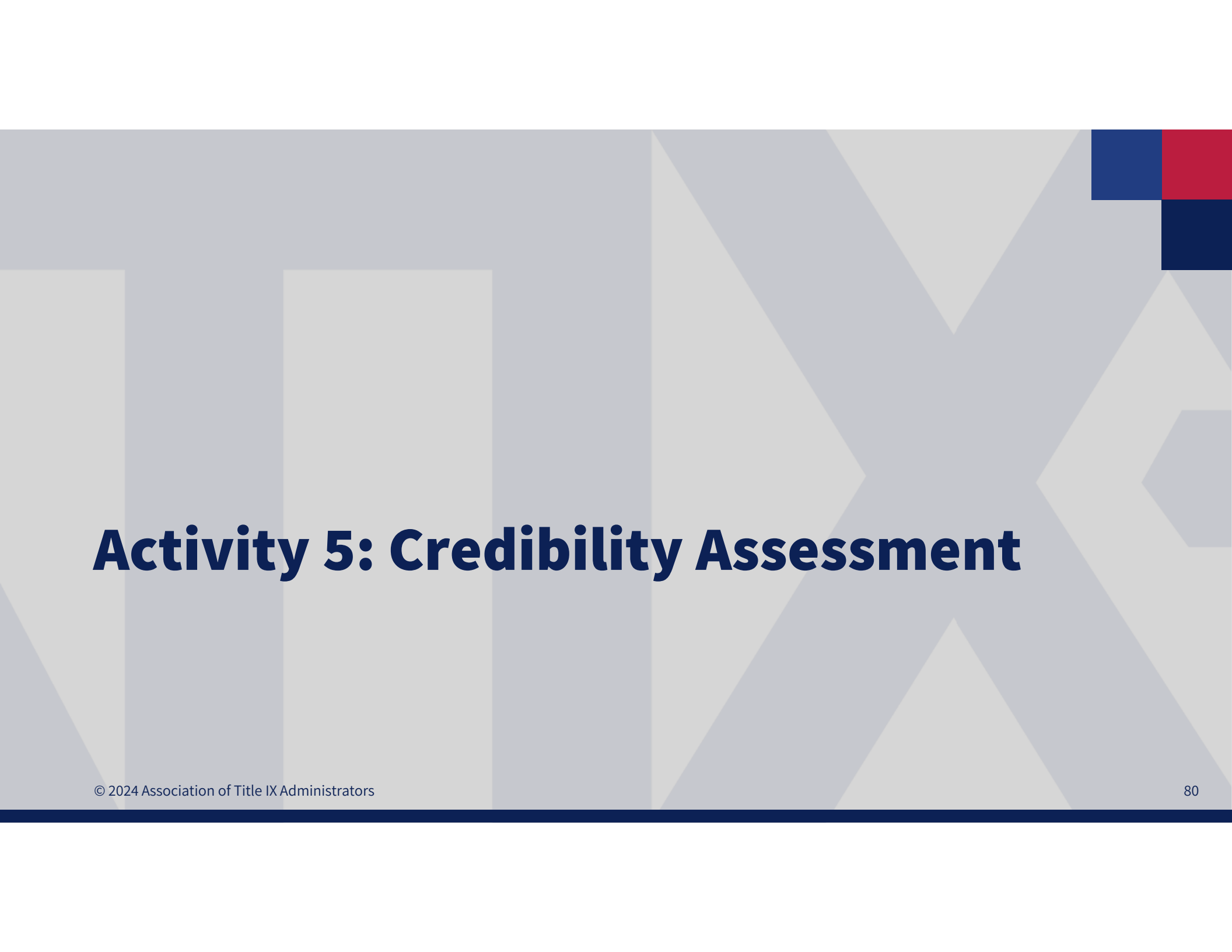
Common Credibility Errors

- Misplaced emphasis on:
 - Nonverbal indicators (nervousness, anxiety)
 - Inconsistent information
- Confusion about memory
 - Stress and emotion can complicate memory
- Parties' status
- Investigator bias



Credibility Assessments

- If the Investigator does not make findings, the Investigator should use credibility assessments to direct the Decision-maker to examine more closely
 - Focus the Decision-maker on alignment or discrepancies that may be significant for their analysis
 - Summarize the evidence to provide a snapshot
 - Use citations to help Decision-makers find the evidence within the report



Activity 5: Credibility Assessment

Collecting and Managing Evidence

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 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

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

Evidence Preservation

- Discuss the need to preserve evidence with parties and witnesses as soon as feasible
 - Ask parties to record names of witnesses and contact information
 - Save relevant communications in a secure location, not just on a phone/tablet/etc.
Screenshots
 - Date stamps
 - Photograph/videorecord physical evidence
 - Clothing
 - Damaged property
 - Injuries
- Also consider preservation for evidence in the institution's possession

Evidence Management

- Electronic databases are becoming an industry standard
- Properly record and categorize evidence provided to Investigator or TIXC
 - Quick access (indexed, digitized)
 - Organized
 - Redacted versions and/or descriptions of graphic content
 - Unredacted version available for viewing
- Ensure the evidence is not compromised
 - Establishing/maintaining chain of custody
 - Do not modify evidence in any way, unless you clearly indicate doing so
 - Example: renaming an electronic file

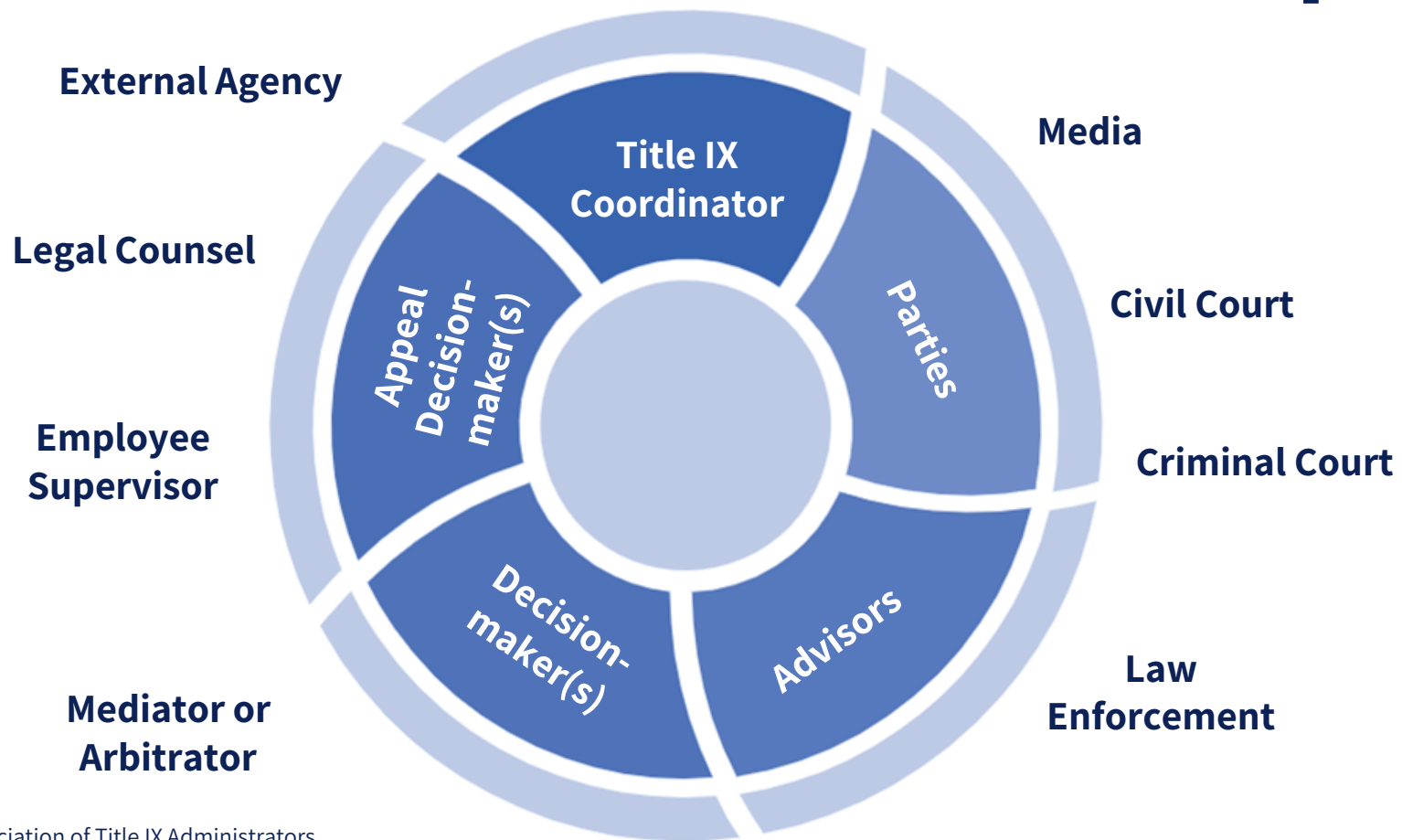
Managing Sensitive Information

Store information in secure locations:

- Electronic
 - Password protection or encryption; multi-factor authentication
 - Limited access, deadline for access, auditable storage
 - View or save information on appropriate devices
- Physical
 - Locked; limited access
- Remove personally identifiable information
- Communicate information storage practices to parties

Investigation Reports

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

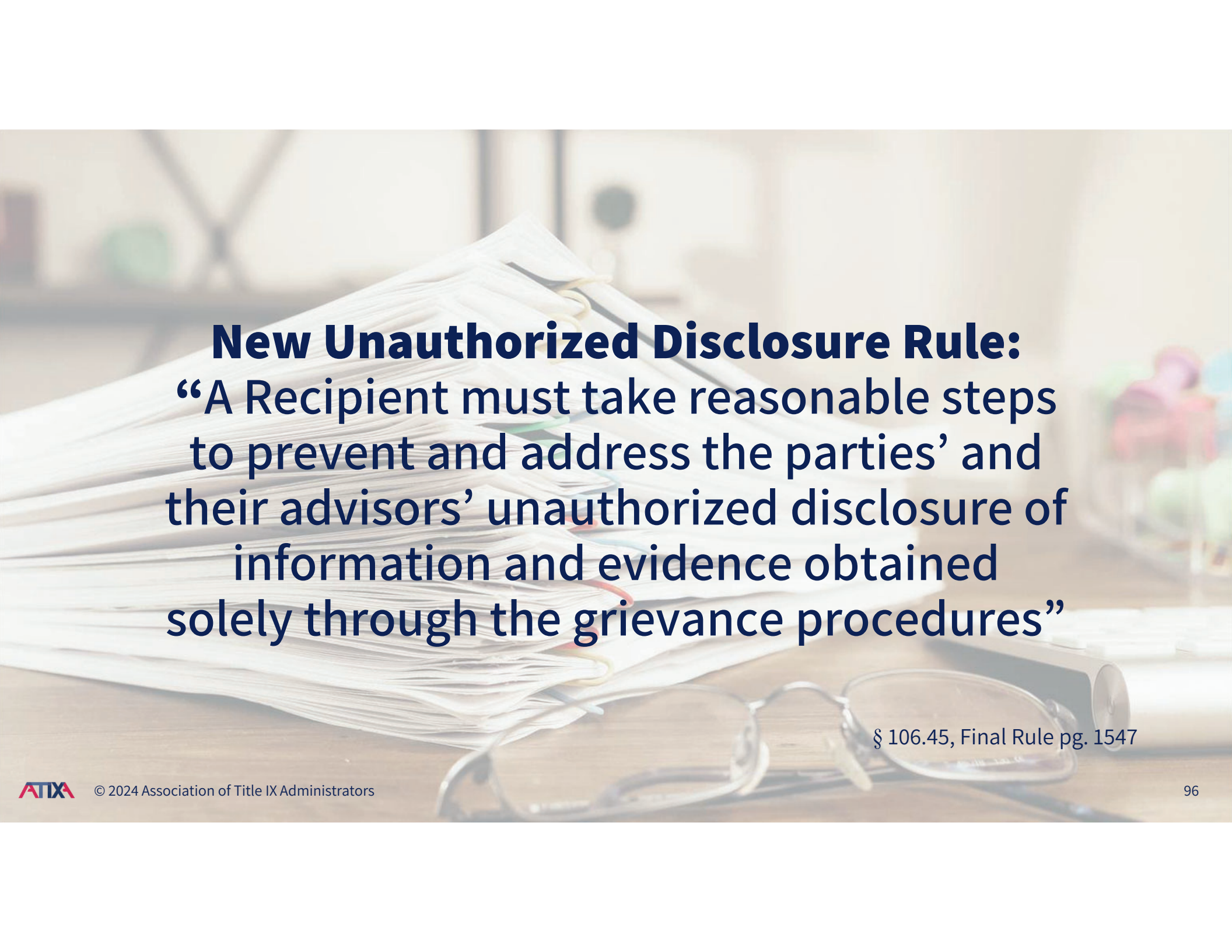
FERPA and Title IX

“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”

Final Rule Preamble, pg. 223

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”

§ 106.45, Final Rule pg. 1547

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

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

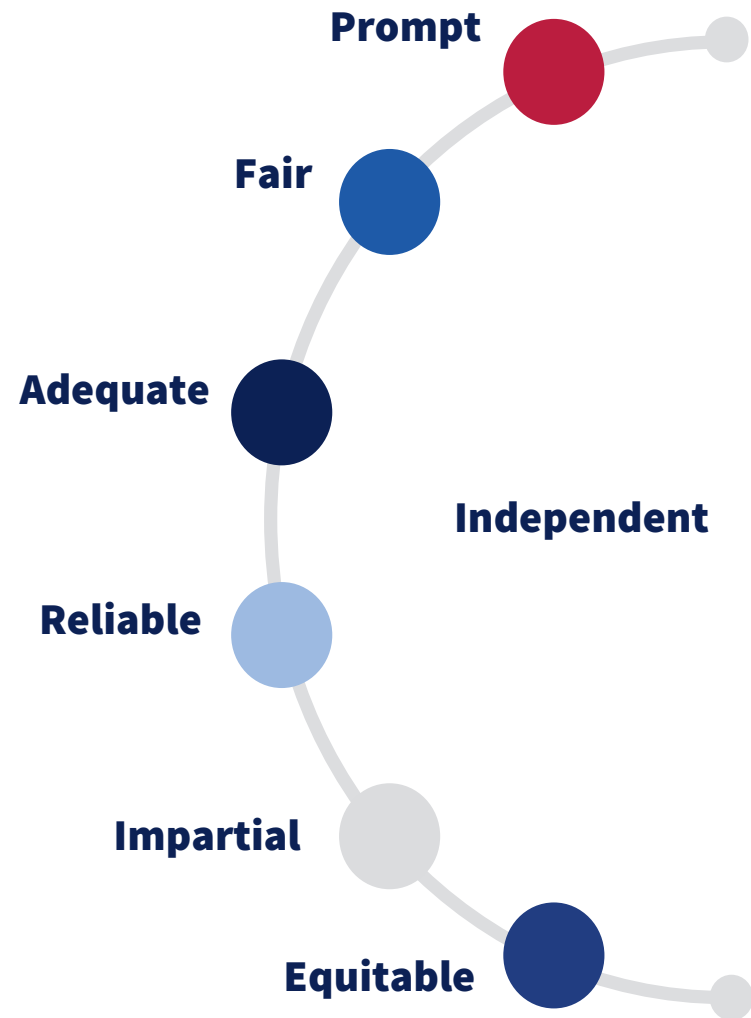
Unanswered Questions

- **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.”

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

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



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 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)

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

TIXC and/or Legal Counsel Report Review

Internal Report Review and Feedback

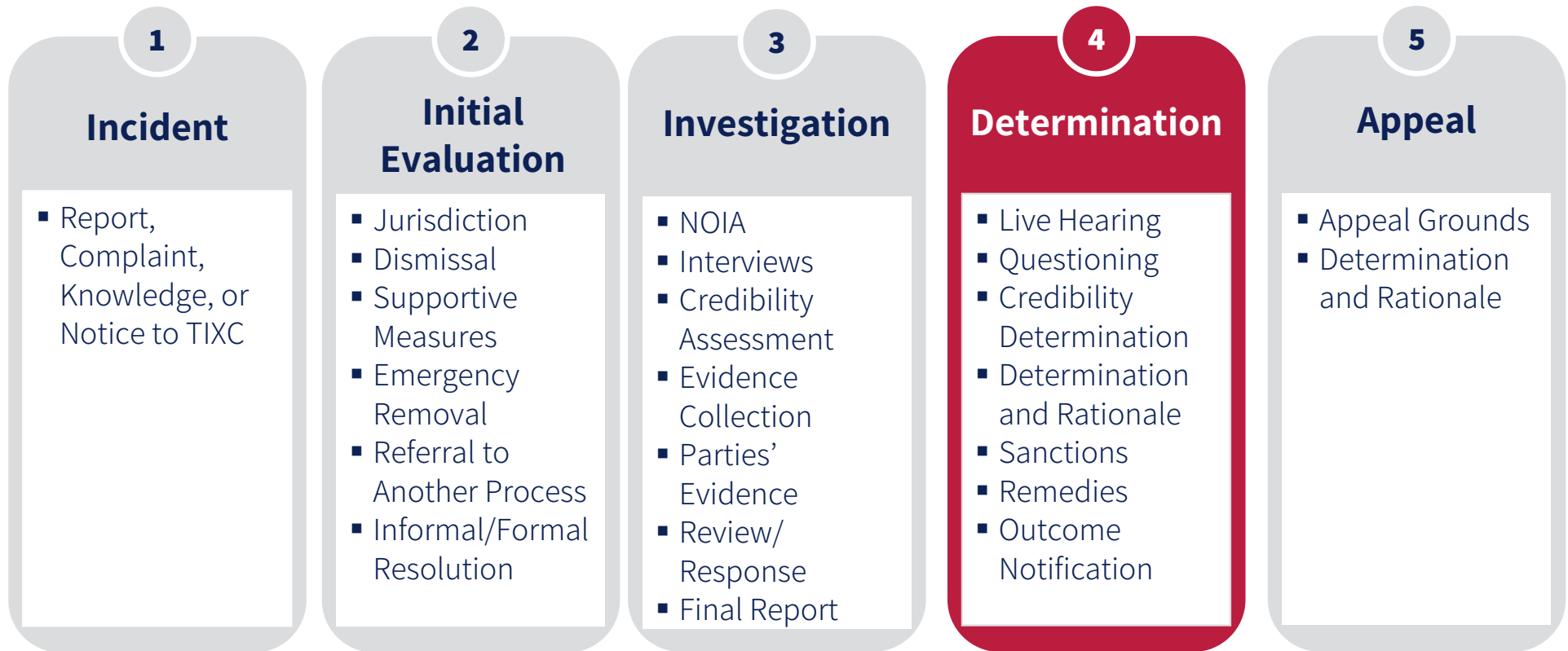
- TIXC and/or legal counsel reviews draft investigation report prior to providing it to the parties, after providing it to the parties, or both
 - ATIXA recommends having legal counsel review after providing the report to the parties
- Reviewer(s) identifies gaps, logic leaps, typographical errors, and substantive issues
- Reviewer(s) should not rewrite any section of the report but can ask questions and provide suggestions
- Investigator should review and incorporate helpful edits and suggestions

Feedback Examples

- Respondent said, “You can touch me too if you want.” Complainant did not say if she touched Respondent.
 - **Comment:** Why is this unanswered? As a primary element of their defense, the Respondent is arguing Complainant reciprocated the sexual contact. This is important information.
- Witness 4 also said that Complainant did not explain what Complainant meant when she said she was considering getting Respondent in trouble.
 - **Comment:** Did the Complainant say what she meant by this comment?
- Complainant was told there was no appeal process.
 - **Comment:** By whom? Do you know?

Post-Investigation: Decision-Making and Hearings

Determination



Live Hearings

- Investigator may be asked to participate as a witness in the live hearing and be questioned by the Decision-maker(s) and/or parties through their Advisors
 - Example: Why did you decide some evidence is relevant and other evidence was not?
- Decision-maker manages the hearing and questioning to limit to relevant, permissible evidence only
- Hearing can be held in a physical location or virtually
- Must record hearing or create transcript

Written Determinations

▪ Written Determination

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

▪ Finality

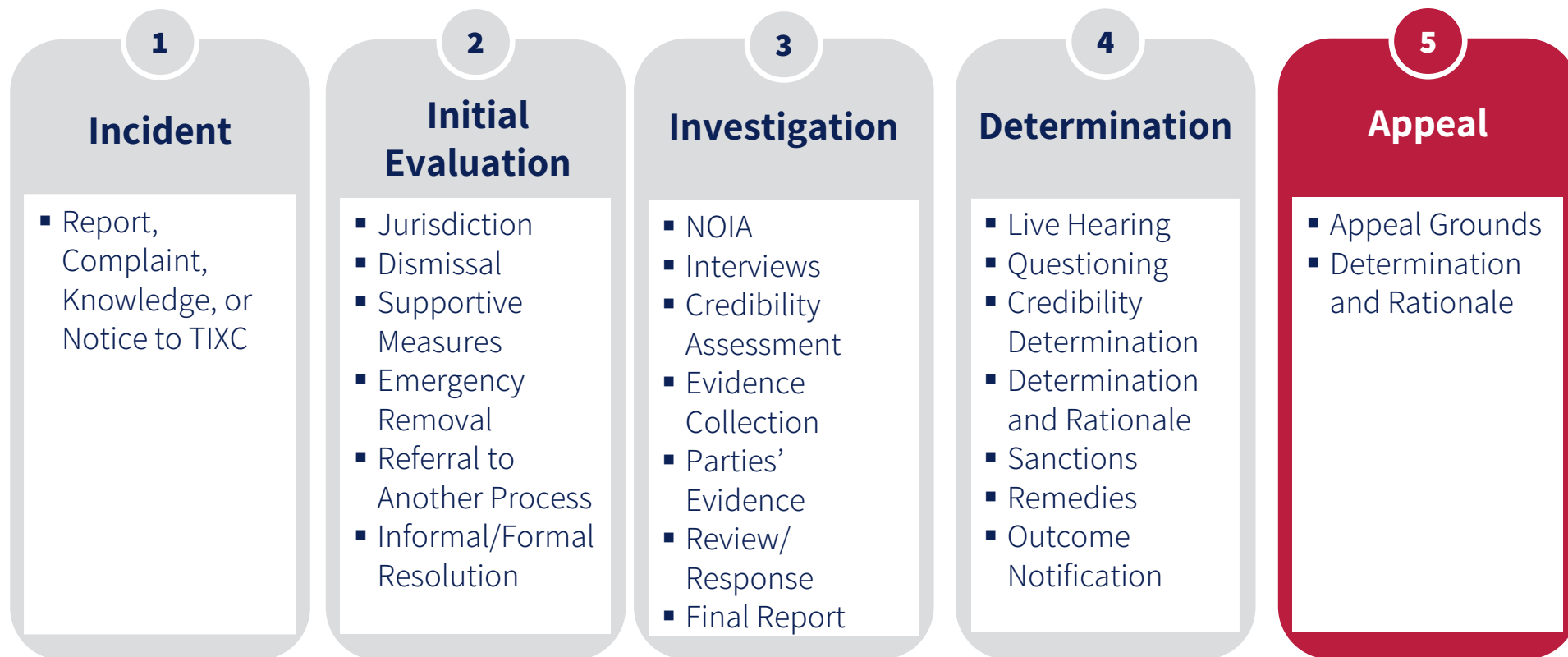
- On the date the Recipient provides a written appeal determination
 - OR the date when an appeal would no longer be timely

Written Determination Elements

- Applicable policy
- Procedural steps from complaint through determination
- Statement of and rationale for the result of each specific allegation
- 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

Appeal



Appeal Grounds

1

Procedural irregularity that would **change the outcome**

2

New evidence that would **change the outcome** and that was not reasonably available when the determination was made

3

TIXC, Investigator, Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would **change the outcome**

Institutions have the discretion to add additional appeal grounds

Appeal Decision-Maker and Outcomes

- Must not have been previously involved in the complaint or Resolution Process
- Must complete a written determination with rationale
- Determinations may include:
 - **Upholding** the original determination and sanctions (if any)
 - **Remanding** the complaint back to the Decision-maker for reconsideration or to the Investigator for further investigation
 - **Modifying** the original determination and/or sanctions (if any)
 - **Overturning** the determination (not recommended)



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Association of
Title IX Administrators

University of New Mexico Title IX Training

August 16, 2024

Presented by: Alisha Carter Harris, Senior Consultant, TNG Consulting, LLC/ATIXA

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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.

Hearing Officer Role and Responsibilities

Responsibilities in the Process

Before Hearing

- Pre-hearing meeting
- Technology training
- Witness list
- Evidence review and redaction (if applicable)
- Review investigation report and evidence file
- Ensure no conflict of interest
- Prepare questions

Hearing

- Follow procedures
- Manage questioning, including relevance determinations
- Consult w/counsel/TIXC
- Listen actively
- Ask/pose questions
- Assess credibility

Deliberation

- Lead discussion
- Take notes
- Draft rationale/outcome letter
- Analyze relevant evidence
- Balance credibility and reliability
- Determine outcome, sanctions, remedies

Hearing Officer Responsibilities

- Follow the hearing procedures
- Enforce decorum expectations
- Manage Advisors
- Determine question relevance
 - Parties/witnesses pause before responding to a question
 - Chair makes relevance determination, states rationale if question deemed not relevant
 - Cannot permit questions that are unclear or harassing; opportunity to clarify or revise
- Deliberate
- Write outcome letter

Other Hearing Officer Considerations

- Clarify with TIXC prior to hearing whether Hearing Officer:
 - Determines relevance and provides verbal rationale for questions deemed not relevant
 - Permits Advisors to “argue” whether a question should be deemed relevant
- Ask questions of parties and witnesses **before** or **after** Advisor-led Questioning
- Determine how to provide an opportunity for follow-up questions
- Address evidence that Hearing Officer should not rely upon

Pre-Hearing Meetings: Purpose and Format

- May hold several separate meetings with each party and their Advisor
 - May hold combined meetings
 - Summarize decisions in a memo to the parties and Advisors, as needed
- May be virtual or in-person
- Address questions, concerns, expectations prior to hearing
- May flow more efficiently if Advisors are able to speak freely with the Hearing Officer

Pre-Hearing Topics

- Answer questions about procedures
- Review technology
- Discuss interpretation, translation, or accommodation needs
- Address scheduling questions or concerns
- Review flow and logistics for before, during, and after the hearing
- Reinforce expectations and decorum rules
- Explain direct and cross-examination procedures



Common Pre-Hearing Meeting Discussions

Pre-hearing meetings can provide an opportunity to:

- Discern whether parties intend to ask questions of any or all witnesses, or whether a party intends not to testify at the hearing
- Discern any conflicts of interest/vet recusal requests
- Consider any questions regarding evidence or proposed question relevance and make pre-hearing rulings
- Decide whether to redact inadmissible information or just disregard it
- Address expectations or issues regarding new evidence consistent with institutional policy

Hearing Participants and Logistics

Who Will be Present at the Hearing?

Parties

Witnesses

Advisors

Investigator(s)

Hearing Officer

Hearing
Coordinator

General Logistics

- Party and witness attendance
- Advisor attendance/participation
- In-Person: Location and physical space
 - Accessibility
 - Parking
 - Privacy
 - Restrooms
 - Waiting areas
 - Furniture



General Logistics

- Virtual/remote: Hearing platform
 - Party and Advisor in same location or different locations
 - If in same room, beware of multiple device interference
 - Virtual waiting room
 - Breakout rooms
 - Accessibility
 - Professional setting for Hearing Officer
 - “Camera on” policies
 - Ensure parties and witnesses are not in the location of the alleged misconduct
 - Background guidelines

General Logistics

- Recording
- Hearing technology
- Administrative, tech, or audiovisual support
- Evidence availability for parties, Advisors, and witnesses
- Breaks



Hearing Coordinator

- Facilitate a smooth hearing and help problem-solve
 - Maintain hearing schedule and order of events
 - Communicate with parties, Advisors, and witnesses during the hearing
 - Manage in-person or virtual waiting rooms and breakouts
 - Ensure recording; manage devices and files
 - Provide access to evidence during the hearing
 - Coordinate additional support (food, facilities, technology, materials)

Scheduling Considerations

- Agenda/schedule flexibility based on availability
- Availability of:
 - Parties, witnesses, and Advisors
 - Hearing Officer
 - Investigator(s)
 - Interpreter or other accommodation
 - Physical space
- Reasonable number of hours per day
- Multi-day hearings
- Breaks
- Finals/Graduation
- Employees on soon-to-be-expiring contracts

Virtual Hearing Considerations

- Any party may request a virtual hearing
- Virtual hearings provide helpful flexibility
 - No travel required
 - No large physical space needed
- Choose software or platform to meet hearing needs
 - Zoom is a common option
 - Participants must be able to see and hear each other
- Prepare for Wi-Fi issues or other tech problems
- Individuals may need to participate virtually from campus
- Address any concerns related to privacy

Hearing Decorum

Setting the Tone

- Hearing is a significant event in the parties' lives at that time
- Formal, administrative process
- Decision-making is a neutral role
- Clear, direct communication
- Active listening
- De-escalate as needed
- Maintain control

Hearing Officer Decorum Practices and Pitfalls

DO

- Set the tone with your own behavior
- Behave professionally while around any participants
- Maintain composure
- Evaluate the relevant evidence
- Minimize distractions

DON'T

- Escalate tensions or conflict
- Act like a judge
- Treat the hearing like a courtroom
- Use legal terms
- Interrogate parties or witnesses
- Make sarcastic comments or jokes
- Set out to prove or disprove allegations

Day of the Hearing

- Follow professional attire expectations
- Arrive early and prepared (either in-person or virtually)
 - Investigation report, evidence file, and preparation notes
 - Notetaking materials
 - Snacks and beverages
 - Comfort items
- Do not schedule anything else that day
- Turn off or silence technology

Decorum Rules

- UNM has decorum expectations outlined in the hearing procedures
- Govern behavior for parties, witnesses, Advisors, and Hearing Officer
- Address disruptive, disrespectful, or other prohibited behaviors
- Promote consistency across hearings



Decorum Expectations

- Questions must be conveyed in a neutral tone
- Parties, Advisors and witnesses will refer to all hearing participants using the name and gender used by the person and shall not intentionally misname, deadname, or mis-gender any person in communication or questioning
- No participant in a hearing may act abusively or disrespectfully during the hearing toward any other Party, witness, Advisor, the Hearing Officer, or any other individual participating in the hearing
- Advisors may not yell, scream, badger, or physically “lean in” when questioning a witness

Decorum Expectations

- Participants may not use profanity unless the language is a direct quote from some source such as the Investigative Report or witness. Advisors may not make personal attacks that harass or intimidate a Party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question
- Participants may take no action prior to or at the hearing that a reasonable person would see as intended to intimidate or coerce a Party, witness, Hearing Officer, or any other participant to testify, refuse to testify, or decide the matter in a particular way

Warning and Removal

- Hearing Officers have sole discretion to determine if decorum expectations have been violated
- Hearing Officer should provide one warning prior to removal, unless decorum violation is egregious
- If an Advisor is removed, the party may select a different Advisor, or the institution will provide one
 - Reasonable delays may be appropriate to find a new Advisor
 - A party may not serve as their own Advisor
- Any removal will be documented

Interpersonal Skills

Building Rapport

- Be hospitable, but mindful that small talk may come across as inappropriate
- Be clear about Hearing Officer role and transparent about the process
 - A hearing script may be helpful
- Maintain a calm demeanor
- Listen actively
- Monitor own body language
- Treat all participants with empathy and respect

Active Listening



PAY ATTENTION

- Focus on responses
- Avoid interrupting



SHOW YOU'RE LISTENING

- Communicate nonverbally
- Avoid distractions



PROVIDE FEEDBACK

- Reflective tone
- Seek clarification

Questioning Skills and Considerations

Asking Questions

- Hearing Officer may (and should) ask parties and witnesses questions
- Appropriate questions have clear intent, are relevant to the allegations or credibility, and are thoughtfully phrased
 - Avoid multi-part and leading questions
- Goals:
 - Learn the facts
 - Establish a timeline
 - Understand each party and witness's perspective
 - Eliminate vagueness and gaps

Questioning Strategies & Pitfalls

DO

- Ask short, precise questions
- Use open-ended questions
- Repeat and clarify the language the parties and witnesses use
- Prepare questions from policy definitions
- Listen carefully, ask related follow-ups
- Look for cued or rehearsed answers

DON'T

- Ask accusatory or argumentative questions
- Use a critical or sarcastic tone
- Ask compound or confusing questions
- Offer evaluative responses
- Sanitize participants' language
- Rely solely on closed-ended questions
- Chase “gotcha” moments

Questioning Tips

- Outline questions in advance, but remain flexible
 - Allows for comprehensive and thorough approach
- Prior to asking a question, consider:
 - Is the answer already available in the investigation report?
 - What are the relevant issues?
 - What do I need to know?
 - Why do I need to know it?
 - What is the best way to ask this question?

Asking Difficult Questions

- Hearing Officers 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
- Hearing Officers can show empathy **without** sacrificing their impartiality
 - Offer that 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 perhaps gotten ahead of the actual science

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

Credibility in the Hearing

- A key purpose of a hearing is to afford an opportunity to assess credibility
- Hearing Officers and/or Advisors can explore credibility in questioning, to the extent credibility is in dispute and relevant to evaluating one or more allegations
- Fundamental to due process
- Distinguish performance or presentation skills from believability

Managing Advisor-Led Questioning

Managing Advisors Generally

- Advisors approach the role differently, depending on training and background
 - All Advisors need management, not just attorney Advisors
- Be firm, but flexible
- De-escalate conflicts
- Advisor may be removed if disruptive, after warning
- Decorum expectations
 - Generally, parties should speak for themselves
 - Hearings are not court processes
- Advisor must respect confidentiality policy; can be required to sign a Non-Disclosure Agreement (NDA)

Managing Advisor-Led Questioning

- Advisors may ask relevant questions of their party and their party's witnesses
 - Direct questioning
 - E.g., Respondent's Advisor questioning Respondent
 - Valuable way to elicit important information
 - Cross-examination
 - These questions must be submitted to the Hearing Officer to be asked
- All questions must intend to elicit relevant information, which could include information relevant to assessing credibility

Direct-and-Cross Examination Challenges

- A party or witness may decide not to attend the live hearing, despite participating in the investigation
- Hearing Officers and Advisors should ask all relevant questions even if a party/witness refuses to answer or is not present
 - Possible missed opportunity for corroborative or consistent testimony
- **Recall:** Hearing Officer must not draw an inference about whether sex-based harassment occurred based **solely** on a party's or witness's refusal to respond to such questions
 - A Hearing Officer may place **less or no weight** on statements by a party or witness who refuses to respond to questions deemed relevant and not impermissible

Advisor-Led Direct-Examination

- Advisor asks question; party/witness pauses before answering
- Hearing Officer determines relevance
 - Permit relevant questions and follow-ups, including those challenging credibility
 - Disallow questions that are not relevant and state rationale
- Unduly repetitive questions are not relevant
 - Reject questions already answered in the hearing unless expected to lead to additional relevant evidence
 - Should not repeat questions already asked by Hearing Officer
 - May ask questions answered in investigation report, to confirm facts
- Permit rephrasing of unclear or harassing questions

Advisor Direct-Examination

- Parties may opt for their Advisor not to ask any questions
- Advisors may not refuse to ask relevant questions their advisee wishes for them to ask
 - Otherwise, the institution must appoint an Advisor who will ask those questions
- Advisors may ask questions their advisee wishes for them to ask even if the advisee does not attend the hearing
 - Advisor should **not** ask questions without their advisee's approval

Regulations Imagine:

Advisors will not do more than repeat or rephrase questions framed by the party

In Reality:

Advisors are much more active and engaged, especially attorneys

Deliberation/Decisions

Due Process in Decision

- A decision must:
 - Be based on a fundamentally fair rule or policy
 - Be made in good faith (i.e., without malice, ill-will)
 - Be unbiased
 - Have a rational relationship to (be substantially based upon, and a reasonable conclusion from) the evidence
 - Not be arbitrary or capricious
- Sanctions must be reasonable, constitutionally permissible, and should relate to the violations

Deliberation

- Post-hearing discussion of relevant evidence
 - Analyze relevant evidence
 - Determine credibility (if relevant)
 - Assign evidentiary weight
 - Evaluate reliable, relevant evidence considering standard of proof
- Assign sanctions, as appropriate

Finding

Whether the conduct occurred as alleged, by the standard of evidence

Final Determination

Whether the conduct that is proven to have occurred violates policy



Questions?



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