



CIVIL RIGHTS
INVESTIGATION TRAINING

Long Beach City College – August 9, 2018

OVERVIEW OF TITLE IX

- Text of the Law
- The IX Commandments
- Equality v. Equity

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TITLE IX

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



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

IX

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THE IX COMMANDMENTS



Thorough	Reliable	Impartial	Investigation (prompt & fair – VAWA Sec. 304)
Prompt	Effective	Equitable	Process
End the Discrimination	Prevent its Recurrence	Remedy the effects upon the victim & community	Remedies

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EQUALITY V. EQUITY

EQUALITY VERSUS EQUITY



In the first image, it is assumed that everyone will benefit from the same supports. They are being treated equally.



In the second image, individuals are given different supports to make it possible for them to have equal access to the game. They are being treated equitably.



In the third image, all three can see the game without any supports or accommodations because the cause of the inequity was addressed. The systemic barrier has been removed.

TITLE IX COORDINATOR OVERSIGHT

- The Role of the Title IX Officer in the Investigation Process
 - Supervisor of the Investigation Structure
 - Supervisor of the Investigation Process
 - Trainer for Investigators

SUPERVISOR OF THE INVESTIGATION STRUCTURE



- The Title IX officer is responsible for:
 - The appointment of investigators.
 - Training investigators, hearing boards, and appeals officers.
 - Supervision of investigators and investigations.
 - Strategizing investigations.
 - Assurance of initial remedial actions.
 - Timeline compliance.
 - Communication and coordination of investigation teams.
 - Providing institutional memory to investigators.
 - Recordkeeping of all activities.

SUPERVISOR OF THE INVESTIGATION PROCESS



- The Title IX officer or designee is responsible for:
 - Notice of investigation.
 - Gatekeeping.
 - Determining extent of investigation.
 - Notice of charge/allegation.
 - Notice of hearing.
 - Notice of outcome.
 - Duty to warn.
 - Assurance of remedies.
 - Recordkeeping of all activities.

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- Frequency of training for investigators.
- Internal and/or external trainers.
- Who can be an Investigator?
 - Staff.
 - Faculty.
 - NOT students
- External investigations/outsourcing oversight.

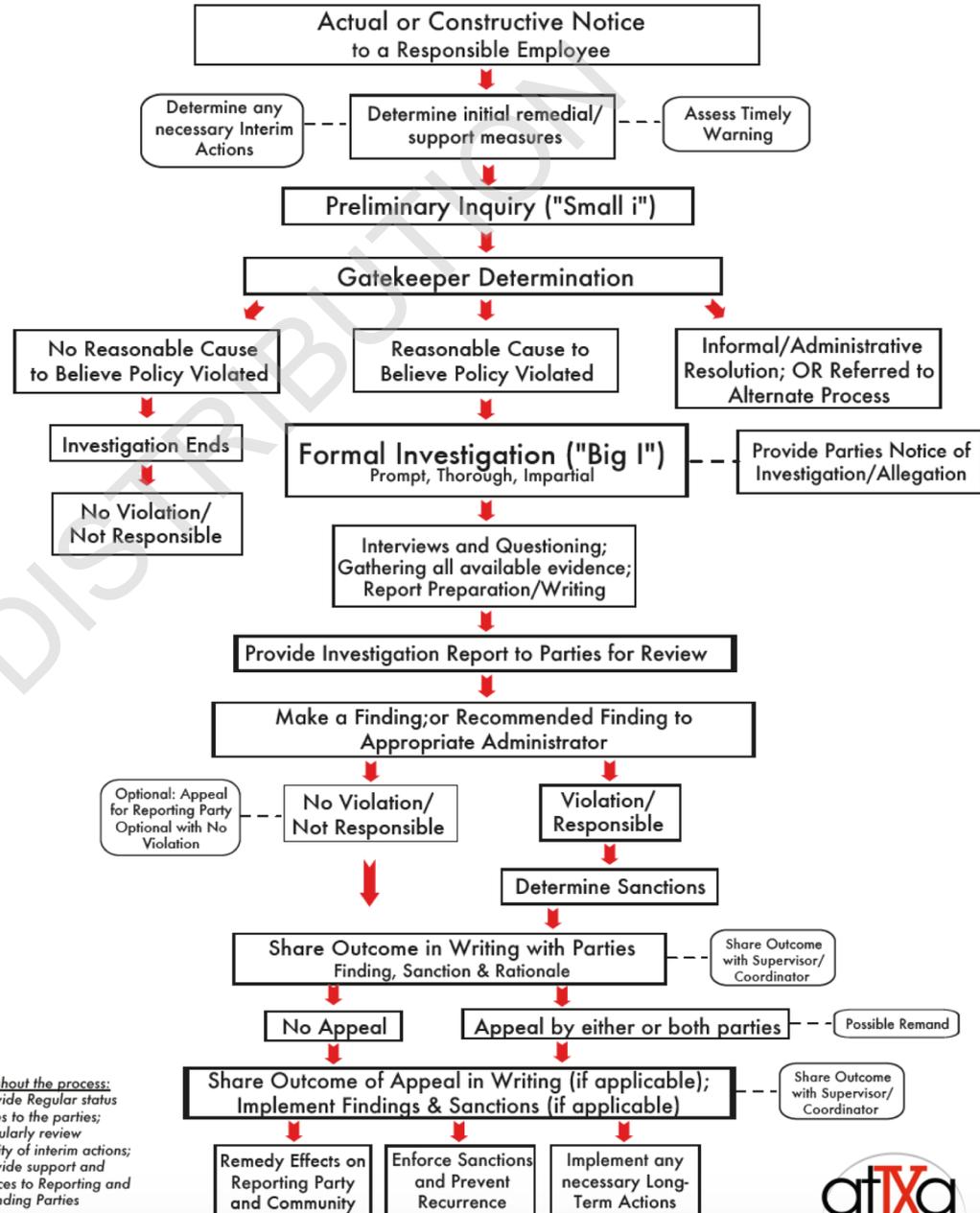
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CIVIL RIGHTS INVESTIGATION AND RESOLUTION MODEL: AN OVERVIEW

- Civil Rights Investigation Model
- Traditional Student Conduct/Hearing Panel Model
- The Process
- Ten Steps
- Notice – Actual and Constructive
- Responsible Employee
- When Do You Investigate?
- Jurisdiction
- Timelines
- Role of Law Enforcement
- Preliminary Inquiry
- Gatekeeping
- Delivery of Notice

ATIXA CIVIL RIGHTS INVESTIGATION MODEL FLOWCHART

CIVIL RIGHTS INVESTIGATION MODEL

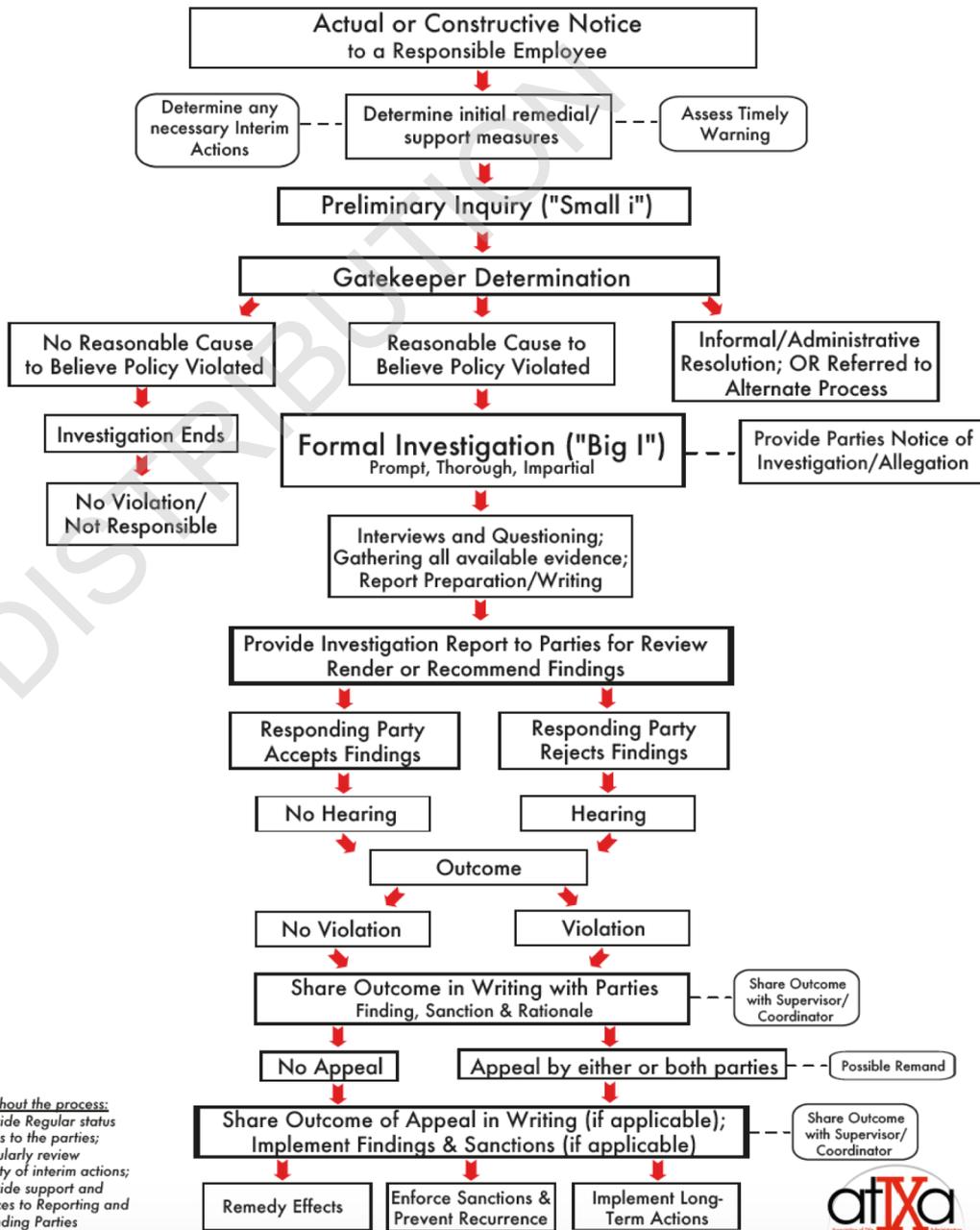


Throughout the process:
 1: Provide Regular status updates to the parties;
 2: Regularly review necessity of interim actions;
 3: Provide support and resources to Reporting and Responding Parties



INVESTIGATION AND HEARING PANEL HYBRID MODEL FLOWCHART

INVESTIGATION AND HEARING PANEL HYBRID MODEL



Throughout the process:
 1: Provide Regular status updates to the parties;
 2: Regularly review necessity of interim actions;
 3: Provide support and resources to Reporting and Responding Parties



CIVIL RIGHTS INVESTIGATION MODEL AND STUDENT CONDUCT MODEL



- How does this model alter the current student conduct model used to address sexual assault, stalking, intimate partner violence, etc.?
 - An active gathering of information by the investigator or investigators; not intended to “build a case.”
 - Does not impact the implementation of informal or alternative dispute resolution approaches.
 - Characterized by an intentional effort to equalize procedural and support mechanisms.
 - Typically provides a right of appeal for all parties to the report, not just the responding party.

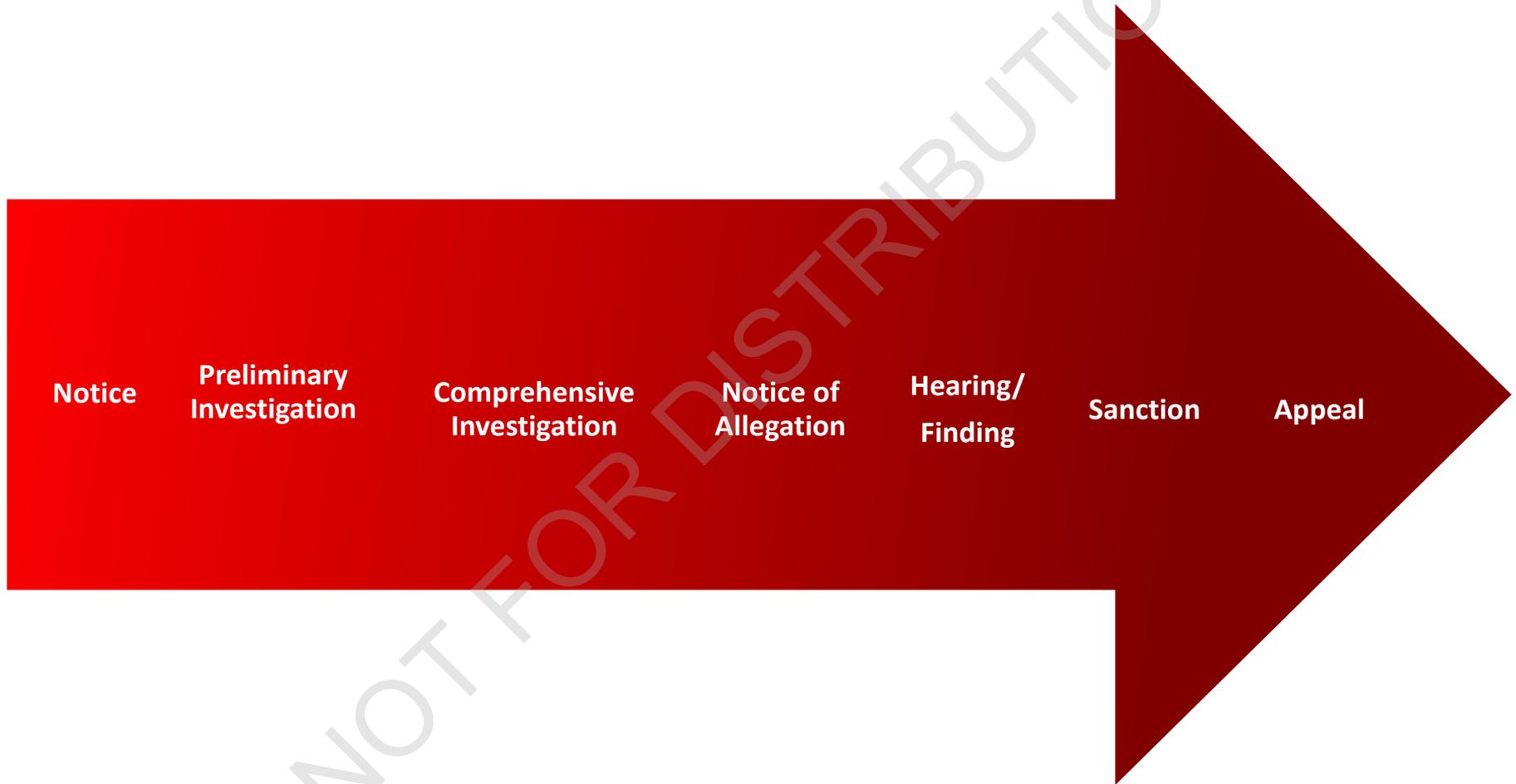
TEN STEPS



1. Allegation (complaint) or notice.
2. Preliminary inquiry (initial strategy).
3. Gatekeeper determination (earliest point).
4. Notice of investigation and/or allegation (earliest point).
5. Strategize investigation.
6. Formal comprehensive investigation.
7. Witness interviews.
8. Evidence gathering.
9. Analysis.
10. Finding.

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A VISUAL WAY TO EXPLAIN THE PROCESS



- A **Responsible Employee** includes any employee who:
 - Has the authority to take action to redress the harassment; or
 - Has the duty to report harassment or other types of misconduct to appropriate officials; or
 - Someone a student could reasonably believe has this authority or responsibility;



Institutions must ensure that employees are trained regarding their obligation to report harassment to appropriate administrators.

WHEN DO YOU INVESTIGATE?



- Receive allegations (complaint).
- Actual notice or constructive notice.
- Rumors, gossip, social media, etc. can be notice.
- Once notice exists, the duty to investigate is absolute.
 - Small “i” preliminary inquiry.
 - Big “I” comprehensive investigation.

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NOTICE – ACTUAL AND CONSTRUCTIVE



- In the context of harassment, a school has notice if a responsible employee knew, or in the exercise of reasonable care, should have known about the sexual harassment or violence.
- OCR enforcement of Title IX uses both an actual notice and constructive notice standard because OCR investigations are an administrative enforcement process – different than a civil lawsuit for monetary damages.

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ACTUAL NOTICE



- Individual files a Title IX complaint.
- Individual notifies the Title IX coordinator or other Responsible Employee.
- Individual reports to campus police or security official.
- Staff member witnesses harassment.
- Indirect notice from sources such as flyers posted on campus, media, online postings, or video.

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CONSTRUCTIVE NOTICE

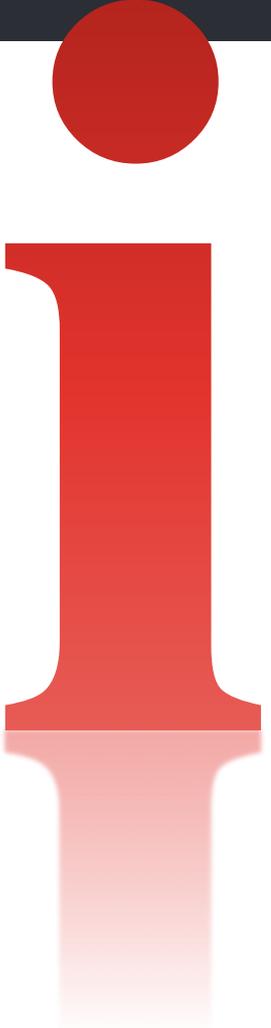


- Pervasiveness of the harassment may be enough to conclude that the school should have known of the hostile environment.
- Harassment is widespread, openly visible, or well known to students and/or staff.
- OCR can conclude the institution should have known of incidents of harassment from a report to an employee who had a reporting duty to a supervisor, but failed to do so.

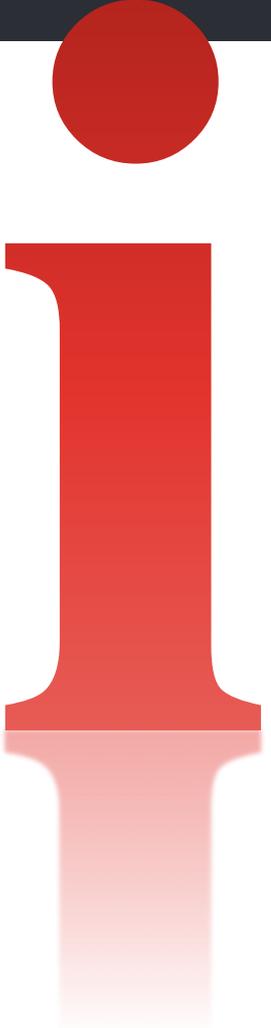
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- For sexual misconduct/Title IX allegations:
 - There is an expectation that you have **SOME** jurisdiction over off-campus incidents (at least the on-campus effects of off-campus discrimination).
- Jurisdictional limitations:
 - Geographic and temporal.
- When is a student a “student?”
 - Application-Admission-Registration-Attendance-Breaks.
- Control over the harasser and the context of the harassment.
- What about employees outside the scope of employment?

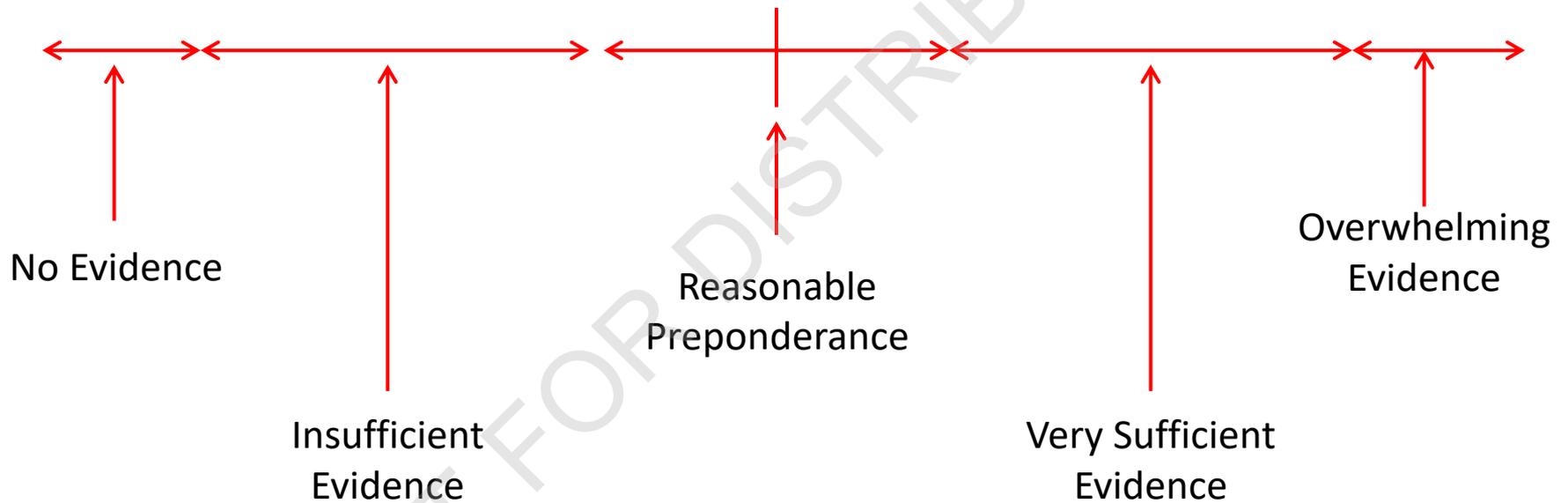
PRELIMINARY INQUIRY

- 
- This is an initial inquiry to determine if a comprehensive investigation is desired or necessary.
 - Checking background, obvious patterns, indicia of predatory, violent, or threatening behavior.
 - Push one Domino over at a time.
 - How much involvement does reporting party want?
 - Can we remedy informally or without discipline?
 - Give reporting party as much control as possible in the process.
 - May help to determine if there is reasonable cause to move process forward, and what policy violations should the responding party be noticed on.

PRELIMINARY INQUIRY (CONT.)

- 
- Establish a preliminary timeline for the investigation.
 - Investigate all allegations to determine:
 - The extent of the harassment.
 - The acuity of the threat it represents to students or employees.
 - What might be necessary to put an end to it.
 - Be able to show that a comprehensive civil rights investigation was completed and documented.
 - Responding to anonymous reports:
 - Determine if a trend or pattern may be apparent.
 - You may have a duty to attempt some form of remedial response, even to an anonymous report.

PREPONDERANCE STANDARD



PROMPT TIMEFRAMES FOR RESOLUTION



- The 60-day rule:
 - Could it be less than 60 days?
 - More than 60 days?
 - What about pending criminal/civil matters?
 - This is discussed in detail later
 - What about injunctions?
 - What about Summer break? Winter break? Studying abroad?

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- Ensure that all steps in the investigation are conducted according to the timelines in the institution's policy.
- Parties and witnesses should be interviewed as soon as possible:
 - So that recollections are as fresh and accurate as possible.
 - To secure necessary remedies as soon as possible.
- Document unavoidable delays.
- Notice of extensions.

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ATIXA RECOMMENDED TIMELINE



- Notice of allegation to Title IX coordinator (clock starts ticking!).
- Title IX eligibility determined (within two business days).
- Assignment to investigation team (within four business days).
- Notice of investigation (varies according to investigation strategy).
- Investigation (within 10–14 business days).
- Shared outcome of investigation (within one to three business days).
- Gatekeeping (ongoing).
- Notice of charge (within two business days of of investigation conclusion or during investigation as appropriate).
- Notice of hearing (within two business days of investigation conclusion).

ATIXA RECOMMENDED TIMELINE



- Hearing (within five business days of notice of hearing).
- Notice of outcome (within two business days).
- Appeal (within three to five business days).
- Notice of appeal (within one business day).
- Notice of final determination (within seven business days).
- Notice of implementation of remedies/sanctions (no later than 60 +/- days).
 - Sanctions or responsive actions are implemented immediately unless the appropriate administrator stays implementation in extraordinary circumstances, pending the outcome of an appeal.

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ROLE OF CAMPUS LAW ENFORCEMENT IN CIVIL RIGHTS INVESTIGATIONS



- Can campus law enforcement be the Title IX investigatory arm?
 - Should it be?
 - Legal standards for criminal investigations are different.
 - Police investigations or reports may not be determinative of whether harassment occurred under Title IX and do not relieve the school of its duty to respond promptly and effectively.
- Establish MOUs with campus police and other local enforcement and update annually.
 - The power of the table top exercise.

INTERVIEWING

- Interview Scheduling
- Sharing Information with Parties and Witnesses
- Pre-interview Ground Rules
- Providing Policy & Procedure Copies
- Setting Up Reasonable Expectations
- General Questioning Skills
- Rapport Building
- Demeanor of Investigator(s)
- Interview Skills
- Questioning Guidelines
- The Art of Questioning

STRATEGIZE WHEN TO INTERVIEW PARTIES AND WITNESSES



- Parties and witnesses should be interviewed as soon as possible:
 - So that recollections are as fresh and accurate as possible.
 - To secure necessary remedies in a timely manner.
- Strategize notifying the responding party of the report:
 - Immediately upon receipt of the report or notice.
 - In other circumstances, interviewing witnesses and accumulating evidence first may be the best practice.

INTERVIEW SCHEDULING



- Try to anticipate how long each interview will take (e.g., How many times will you interview the witness? How much time can the witness give you?).
- Back-to-back interviews should be avoided, if possible. Interviews often take longer than expected and may require you to reschedule interviews.
- Leave open an amount of time roughly equivalent to the length of the interview for post-interview teamwork, review of notes with your co-investigator and prepare for the next interview.

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WITNESS INTERVIEWS



- Strategize contacting witnesses, ordering witness interviews, and preventing contact between witnesses, where necessary.
- Solicit a witness list from the both parties. Identify them as “witnesses,” not “his” or “her” witnesses
- Determine when you are going to question responding party.
- Option 1: Reporting party → Reporting party’s witnesses → Neutral witnesses → Responding party’s witnesses → Responding party → Any additional witnesses identified by either party → Round 2 → Round 3.
- Option 2: Reporting party → Responding party → Reporting party’s witnesses → Responding party’s witnesses → Neutral witnesses → Any additional witnesses identified by either party → Round 2 → Round 3.

WITNESS LIST AND FLOWCHARTING BEST PRACTICES



- Keep freshly updated list of your witnesses as you learn of them.
- Identify which parties or witnesses led you to other witnesses.
- Keep track of whether witnesses are neutral, loyal and biased, or loyal but objective.
- In complex cases, use a flowchart to track witnesses the reporting party leads you to, the witnesses responding party leads you to, and the witnesses who are neutral.
- Note in the flowchart where witnesses intersect in terms of relationships to each other and/or potential loyalties to parties.

SHARING INFORMATION WITH PARTIES AND WITNESSES DURING INVESTIGATION



- Decide how much information you will share in advance of each interview, and have a rationale for what information will be shared and what will not be shared.
- Explore only those facts that are relevant to the issue at hand.
- Start with broad questions, then move to narrow, more pointed questions.
- It can be difficult for the responding party to respond effectively to broad-based or abstract allegations and can diminish trust and hurt rapport building.

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ESTABLISH PRE-INTERVIEW GROUND RULES



- Who will attend?
- How will records be kept?
- Role of Advisors.
- Role of Attorneys.
- Involvement Roommates, Parents, etc.
- FERPA/confidentiality.

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- Each party should receive a copy of:
 - The policies alleged to have been violated.
 - The procedures that will be used to resolve the complaint, including the rights that extend to the parties.
- Consider providing parties with your non-retaliation provision.
- The file should contain all policies and procedures currently applicable.

SETTING UP REASONABLE EXPECTATIONS



- People who conduct investigations with skill rest secure in the knowledge that all those involved, including witnesses, were treated objectively and fairly.
- Be sure reporting and responding parties understand parameters of the policy, what it does and does not cover, how the process plays out, and what the process can and cannot accomplish.
- Provide ample opportunity for the reporting party and the responding party to ask questions.
- Keep the reporting party in the loop as to exactly when notice will be given to the responding party.

GENERAL QUESTIONING SKILLS



- What are the goals of questioning?
 - Learn the facts.
 - Establish a timeline.
 - Understand each party's perception:
 - Of the event and of the process.
 - Try to learn the what is more likely than not what happened (is that the truth?).
 - Three sides to every story (or more).
- What are NOT the goals of questioning?
 - Curiosity.
 - Chasing the rabbit into Wonderland.

- Understand the goals of an “interview” versus an “interrogation.”
 - An interview is a conversation designed to elicit information in a non-accusatory manner.
 - Shifting to an interrogation approach should not be done lightly; you cannot go back – not recommended.
- Is person comfortable that you will handle the investigation fairly and objectively?
 - Team or peer-led investigations can help create a rapport much easier.

DEMEANOR OF INVESTIGATOR(S)



- Work to establish a baseline of relaxed conversation.
- Maintain good eye contact.
- Listen carefully to the answers to your questions.
 - Avoid writing while party/witness is talking, if possible.
 - Do not be thinking about your next question while party/witness is talking.
- Ask questions in a straightforward, non-accusatory manner.
- Nod affirmatively to keep party/witness talking.

- General Interview Skills:
 - Outline your interview questions but be flexible.
 - Plan the order of interviews; may be beneficial to interview responding party last.
 - Most beneficial to conduct interviews in person.
 - Interviews should be conducted in a neutral, quiet, and private setting with a minimal or no likelihood of interruptions.
 - Explain process, your role as a neutral fact finder, and privacy protections and limitations.

INTERVIEW SKILLS (CONT.)



- Discuss thoroughness and the need for completeness; make sure parties don't leave facts out because they are afraid of getting into trouble for alcohol/drug use, etc.
- Create comfort with language and sensitive subjects.
- Establish rapport before questioning.
- Ascertain who the individual is and their relation to the other parties in the case.
- Document whether individual is cooperative or resistant.
- Be professional: gather the facts, make no judgments, and make no statements about the parties.

INTERVIEW SKILLS (CONT.)



- Pay attention to alcohol/drug consumption and timing of consumption.
- Be cognizant of the difference between what was “heard” (rumor) and what was “witnessed” (facts).
- Ask who else you should talk to and ask for any relevant documentation (i.e., texts, emails, etc.).
- Let parties know you may need to follow up with them as the investigation progresses.
- Recommend that the parties and witnesses not discuss the investigation.
- Discuss non-retaliation.
- Discuss FERPA and privacy issues.

Take the allegations from start to finish through a process of broad to narrow questions and issues that need to be addressed.

- Engage in a matching process.
 - Ask questions about the allegations and the evidence and the policy elements.
 - Focus on areas of conflicting evidence or gaps of information.
 - Drill down on timelines and details.
 - Don't leave a question or gap unanswered.

THE ART OF QUESTIONING



- Listen carefully and adapt follow-up questions.
- Avoid evaluative responses to a person's answers.
 - E.g.: that's too bad, I'm glad you said that.
- Do not moralize.
- Do not blame the reporting party (often called "victim-blaming").
 - E.g.: Why didn't you hit him? Why didn't you leave? Why did you get so drunk?
 - Reporting parties' responses to trauma are quite varied.
- Seek to clarify terms and conditions that can have multiple meanings or a spectrum of meanings such as "hooked up," "drunk," "sex," "fooled around," and "had a few drinks."

Credibility

- To assess credibility is to assess the extent to which you can rely on a witnesses' testimony to be accurate and helpful in your understanding of the case.
 - Credibility is not synonymous with Likeability.
 - Memory errors do not necessarily destroy a witness's credibility, nor does some evasion or misleading.
 - Refrain from focusing on irrelevant inaccuracies and inconsistencies.

CREDIBILITY ASSESSMENTS



- Demeanor
 - Non-cooperation
 - Logic/consistency
 - Corroborating evidence
 - Presence
 - Proximity
 - Clarity
- Loyalty
 - Prominence
 - Vehemence
 - Rehearsal
 - General Honesty
 - Hidden motives
 - Expertise
 - Emotionality
 - Delivery style

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EVIDENCE GATHERING

- Engage in the active accumulation of evidence.
- Timeliness.
- Document receipt of information and other materials as they are obtained in the course of the investigation.
- Consider verification of evidence.
- Be thorough in your examination of factual, circumstantial, and hearsay evidence, and ensure that all evidence has been examined, and all leads exhausted.



PRIOR ACTS AS EVIDENCE



- Previous conduct violations by the responding party are not generally admissible in due process proceedings.
- BUT, they are essential (and legally required) considerations in any civil rights investigation.
- Must be considered as evidence of finding, not just of sanction.
- Previous good-faith allegations, convictions, and campus findings must be considered.
- The entire continuum of violence may establish pattern.

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Understanding Evidence

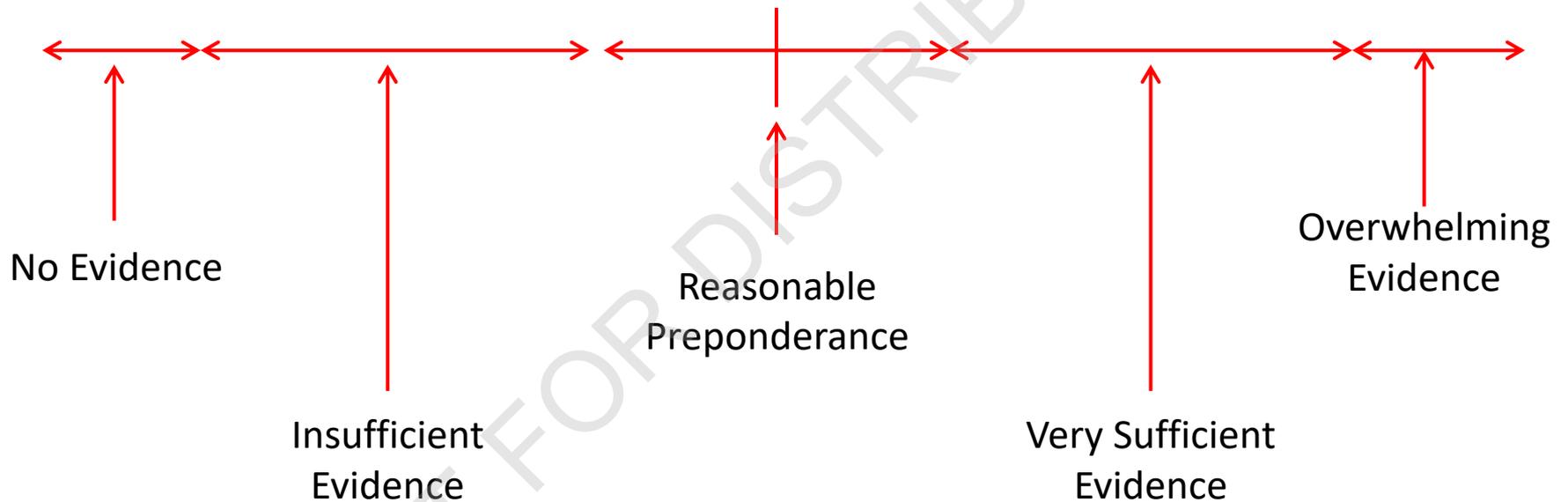
- You may assign weight to evidence based on:
 - Direct or testimonial evidence (personal observation or experience).
 - Circumstantial evidence (not eyewitness, but compelling).
 - Documentary evidence (supportive writings or documents).
 - Real evidence (physical object).
 - Hearsay evidence (statement made outside the hearing but presented as important information).
 - Character evidence (generally not relevant or acceptable).
 - Past record (should only be presented prior to sanctioning if it relates to significant pattern of behavior that would impact “more likely than not” determination).
 - Impact statements (should be reviewed only after a finding).

ANALYSIS AND FINDING



- Review the institutional policies that apply.
- List the evidence and what it shows (relevance).
- Evaluate evidence/assess credibility of evidence and witness statements as factual, opinion-based, or circumstantial.
- Make determination or recommendation based on preponderance of the evidence, whether a policy violation is more likely than not.
- Cite concrete reasons for this conclusion in written report.
- Refer allegations and findings to appropriate administrator for implementation, sanctioning, and/or hearing.

PREPONDERANCE STANDARD



- “The File:”
 - The responding party’s file.
 - The reporting party’s file.
 - The investigation file (including investigation report).
 - Personal case notes.
- Subpoenas:
 - If you get one, call your general counsel!
- Your report is virtually never used as the critical piece of evidence (if at all) in a criminal trial. Remember, your interviews are (typically) non-Mirandized and non-sworn,
- Understanding the court process.

INVESTIGATION in a Box



A TOOLKIT FROM THE ASSOCIATION OF TITLE IX ADMINISTRATORS

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INGREDIENTS OF A GOOD REPORT

DESCRIBES THE
INVESTIGATION PROCESS
CLEARLY

IT IS OBJECTIVE AND
FACTUAL WITH NO
ASSUMPTIONS

TELLS A COGENT STORY
OF WHAT HAPPENED

EVIDENCE LEADS TO A
CONCLUSION RATHER
THAN INTERPRETING
THE EVIDENCE TO
MATCH A CONCLUSION

"3 C's"
CLEAR
COMPREHENSIVE
CONCISE

Words Matter!

MAKES FINDINGS
RELEVANT TO POLICY
AND DOES NOT
PURPORT TO DRAW
CONCLUSIONS OF LAW

1 Introductory Data

- Names and biographical data, date filed, name of person and office that received the allegation, and name(s) of the investigator(s)

2 Background Information

- Summarizes the allegations
- Describes the history of the relationship between the parties and other details surrounding the allegation(s).

3 Purpose and Scope of the Investigation

- This section must paint a clear picture of the investigation for the person reading the report.
- Identify clearly which policies are in play.

4 Statement of Jurisdiction

ESSENTIAL REPORT ELEMENTS



- 5 Statement of Standard of Evidence
- 6 Description of Investigation Procedure
- 7 Timeline of the Investigation
- 8 Detailed discussion of the evidence and findings of fact
- 9 Conclusion
- 10 Identify any issues and concerns

QUESTIONING ACTIVITY WITH PARTICIPANTS



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QUESTIONS?

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