



Association of
Title IX Administrators

Managing Intake, Evaluation, Jurisdiction, and Dismissals

An ATIXA Best Practices Workshop

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Management Solutions



Any advice or opinion provided during this training, either privately or to the entire group, is **never** to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, violence, and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language. It is not used gratuitously, and no offense is intended.

Workshop Introduction



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



Participants will learn strategies to navigate intake meetings, evaluate reports of sex discrimination, and apply jurisdictional analyses to allegations.



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

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
- Institutions will need to maintain/update policies, procedures, and training that are compliant with the **2020** Regulations and **2024** Regulations
 - If the institution is not fully compliant with 2020, now is the time



Reports and Complaints

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Complaints

- **Complaint: Verbal** or **written** request to the institution that **objectively** can be understood as a request for the institution to investigate and make a determination about alleged discrimination
- **Complainant:**
 - A student or employee alleged to have been subjected to conduct that could constitute sex discrimination, or
 - A person other than a student or employee alleged to have been subjected to conduct that could constitute sex discrimination and who was participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

Complaints

- Individuals who may make a complaint depends on the **nature** of the complaint:
 - **Sex-Based Harassment:**
 - A Complainant, or parent/guardian
 - Title IX Coordinator
 - **Sex Discrimination:**
 - A Complainant, or parent/guardian
 - Title IX Coordinator
 - Any student or employee
 - Any other person participating or attempting to participate in the institution's education program or activity at the time of the alleged sex discrimination

For purposes of having Complainant process rights, there is an important distinction between being a **Complainant** and being **able to initiate** a complaint

Online & Anonymous Reporting

- Online reporting mechanisms are a best practice
- Structure online reporting to facilitate a report, rather than a complaint
 - Clarify whether the reporter intends it to be a complaint, or not
- Facilitates reports by mandated reporters
- Anonymous report mechanisms are a common practice:
 - May be required by law
 - Present challenges for Title IX Coordinators (TIXCs)
 - More effective when there is a way to communicate back to the reporter
 - Allows for remedial response, but no formal action

TIXC-Initiated Complaints

In rare instances, a TIXC may initiate a complaint and/or initiate an investigation without the consent of the Complainant

- Only after determining the alleged conduct presents an **imminent and serious** threat to health or safety of the Complainant or another person; **OR**
- The conduct as alleged prevents the institution from ensuring equal access based on sex to its education programs or activities

TIXC-Initiated Complaints

TIXC must consider, at a minimum, the following factors:

- Complainant's request not to proceed
- Complainant's reasonable safety concerns
- Risk of additional discrimination or pattern, if not addressed
- Severity of alleged conduct, including whether removal or other discipline is appropriate
- Parties' ages and relationship, including whether Respondent is an employee
- Scope of the alleged conduct (e.g., pattern, ongoing, impacted multiple people)
- Evidence availability
- Whether the institution could stop and prevent without the Resolution Process

Intake

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Intake: Best Practices

All sex/gender discrimination reports should go to the TIXC

- Intake serves as an opportunity to orient a potential party to:
 - The process
 - Their rights
 - Their options
 - Access to supportive measures
- TIXC may delegate intake duties within Title IX office or another area, such as:
 - Deputy TIXC, Principals, Dean of Students, or VP of Student Affairs
 - Human Resources

Intake: Best Practices

Delegation considerations:

- Role of advocates and confidential employees/resources for pre-intake support
- Recordkeeping challenges
- Notetaking/documentation requirements are more flexible, but still a best practice in most circumstances
- Connecting to Advisors
 - **Note:** Advisors are not required in all Resolution Processes, but should be afforded as a best practice

Group Discussion

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Intake Considerations

- Intake can be overwhelming:
 - Don't expect immediate decisions
 - Don't expect the Complainant to know what to ask
 - Try to set and manage expectations
 - Consider tone and word choice
 - Avoid sharing personal opinions
 - Empathize but maintain neutrality
- Research shows that resolution processes can be:
 - Confusing
 - Lacking in transparency
 - Inaccessible



After Intake

- Follow up in writing and reiterate options:
 - Offer the VAWA Brochure or written summary of options
 - Consider flowcharts, rights guides, and other ways to present information
- Remember that there may be needs related to supportive measures or translation, interpretation, and/or accommodation:
 - Offer; do **not** wait for the request
 - Complainant may not know to request
- Anticipate barriers to access and find workarounds
- Document efforts

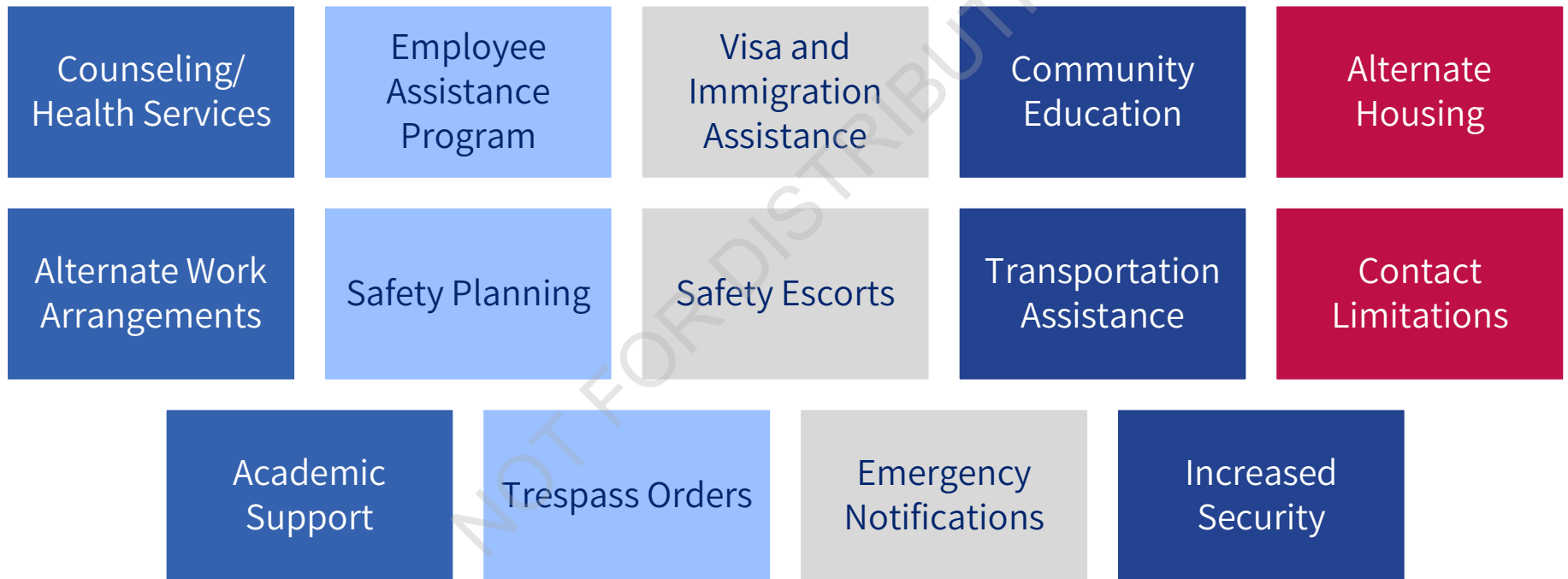
Supportive Measures

Offer **supportive measures** at intake

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



Supportive Measures



Assessing Unreasonableness Example

- Complainant has requested that Respondent be moved to another residence hall as a supportive measure
- Potential Considerations:
 - Whether Respondent will be separated from a living learning community, student-athlete housing, scholarship housing, or other similar type of grouped housing
 - Whether a comparable facility has space
 - Whether Respondent will have an increased distance to travel to their classes, campus employment, or other services that may have impacted their housing selection
 - Whether Respondent will lose access to any other facilities (e.g., study space, dining options) by moving
 - Whether the institution can provide any resources or supports to offset anything that might make the move unreasonable (e.g., assistance packing/moving, shuttle service)

Jurisdiction

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Title IX Jurisdiction

- The jurisdictional analysis asks:
 - What was the incident? Who was involved? Where and when did it occur?
- TIXC is responsible for evaluating Title IX jurisdiction:
 - Is the conduct of a nature that “may reasonably constitute sex discrimination?”
 - Who is the Complainant?
 - Who is the Respondent?
 - Is the incident part of the institution’s education program or activity?

Education Program or Activity

- Within education program or activity
 - Conduct subject to institution's **disciplinary authority**
 - Conduct in a building **owned or controlled by a student organization** officially recognized by a postsecondary institution
- Downstream effects
 - Including off-campus and outside the United States



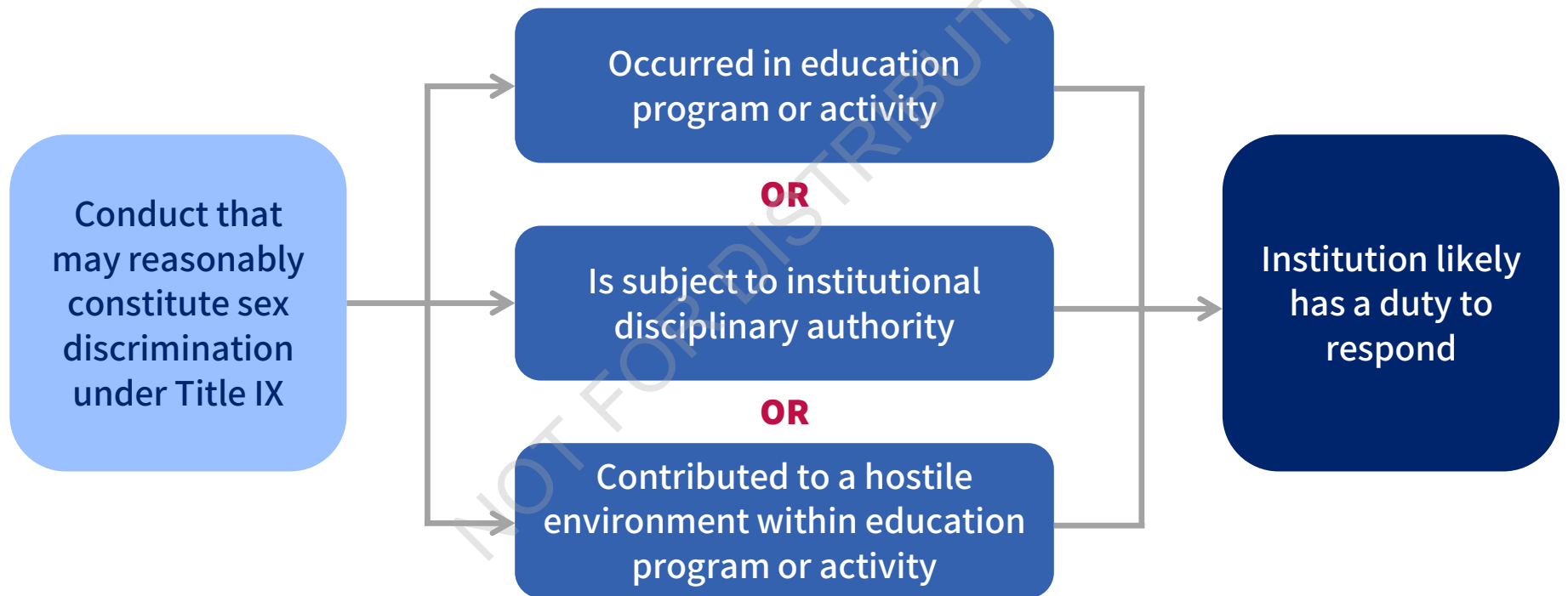
Disciplinary Authority

- “Conduct that is subject to Recipient’s disciplinary authority”
 - Fact-specific analysis
 - “To the extent a Recipient addresses other student misconduct...a Recipient may not disclaim responsibility for addressing sex discrimination that occurs in a **similar context**”
- Similar context
 - Ex: Theft or non-sexual assault; other forms of discrimination
- Obligation to **investigate** conduct occurring under institution’s disciplinary authority is only ever as broad as institution’s **reasonable ability** to do so

Downstream Effects

- “Obligation to address sex-based hostile environment under its education program or activity...
 - Even when **some conduct** alleged to be contributing to the hostile environment occurred **outside** the Recipient’s education program or activity”
- Do **not** need to determine whether the conduct occurring outside the program/activity is itself sex-based harassment
 - Alleged conduct outside the program/activity may be relevant to investigation or institutional response
 - No need to independently respond to alleged underlying conduct; remedial response will suffice unless the in-program effects are themselves a policy violation

Visualizing Jurisdiction



Dismissal

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Dismissals

All dismissals involving conduct occurring after August 1, 2024, are **discretionary**, and may be used under the following circumstances:

- Unable to identify Respondent after **reasonable** steps to do so
- Respondent no longer participating in education program/activity or employed by institution
- Complainant withdraws all or a portion of complaint and any remaining conduct would not be sex discrimination under Title IX
- Alleged conduct, if proven, would not be sex discrimination under Title IX
 - Institution must make reasonable efforts to clarify allegations before dismissal

Dismissals

Upon dismissal of a complaint, institution must:

- Notify Complainant
 - Notify Respondent only if Respondent has already been notified of complaint
 - Offer supportive measures, as appropriate
- Inform Complainant of their right to appeal
 - Also inform Respondent of right to appeal if they have been notified of the complaint
- Take other appropriate, prompt, and effective steps to ensure that sex discrimination does not continue or recur

Dismissal Appeals

- Implement appeal procedures equally
- Only Complainant has right to appeal dismissal if Respondent is not notified of the complaint
- If Respondent knows of complaint, both have equal right to appeal
- Appeal Decision-maker must be trained and **not** have taken part in investigation of allegations or dismissal of complaint
- Provide parties a reasonable and equal opportunity to make a statement
- Notify parties of the appeal result and rationale
 - **Written** notification not required
- A successful appeal of a dismissal decision will result in reinstatement of the complaint

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 of whether sex-based harassment occurred, or dismissal 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**

Should consider an **additional** ground for substantive challenges to dismissals

Charging

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Charging: Incidents & Patterns

Charging

- Charge under the policy that was in effect at the time of the reported incident(s)
 - Consider the timing of the **alleged behavior**, not the timing of the report
- Complainant does not:
 - Determine the allegations
 - Pick the process
 - Though parties may request Informal Resolution (IR), if available



Charging

TIXC determines the investigation basis:

- **Incident:** specific incident or period
- **Pattern:** repetitive or similar behaviors or targets chosen by the same Respondent over a period
 - Does policy permit pattern charges vs. viewing pattern as corroborative?
- **Climate/Culture:** discriminatory policies, processes, and environments



Charging: Pattern and Joint Allegations

- **Goal:** Avoid Complainants serving as witnesses to a pattern in other resolution processes
 - Use one process to address the entire alleged incident or pattern of incidents
- Combine when Respondents act in concert against one Complainant
 - Example: multiple-Respondent rape
- Combine when a single Respondent has allegedly engaged in pattern misconduct toward more than one Complainant
 - Pattern = similar motivation, targets, similar types of offenses
- A pattern can be a corroborative element and/or its own charge; it can only impact sanctions when charged as a pattern
- Avoid joining if multiple Complainants alleged dissimilar, disconnected offenses by a single Respondent

Title IX Charges & Managing Overlap

Charging: Title IX

Sex-Based Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

Sex Discrimination

- Disparate Treatment
- Disparate Impact
- Retaliation

Charging: Overlap

- 2024 Regulations **require** overlap of sex-based harassment and specific offense charges:
 - This is a significant change from the 2020 Regulations
 - Many of the specific behaviors will inherently meet the definition of a hostile environment, but separate analysis will be required
 - Example: For sexual assault among intimate partners, allegations are charged as sexual assault, dating violence, & sex-based harassment
- Policy should have a **collateral misconduct provision** as a best practice:
 - Allows non-Title IX offenses to be charged alongside Title IX offenses
 - Allegations are resolved together in the same process

Charging: Title VII Intersections

- Title IX and Title VII overlap
 - Occurs when there is an **employee** Complainant who experienced sex discrimination during course of employment
- Title VII sexual harassment/hostile environment:
 - **Severe** or **pervasive** or **persistent** and **objectively offensive**
 - Similar to 2024 Title IX hostile environment definition

Charging: FHA Sexual Harassment

- The Fair Housing Act (FHA) only applies to residential facilities for students and/or employees:
 - Behaviors occurred in the residential facility
 - Mirrors Title VII definition
- All “Big Five” offenses treated as sexual harassment under the FHA
- Overlapping charges

*Big Five: sexual harassment, sexual assault, dating violence, domestic violence, and stalking



Charging: State Law

- Several states have state-based campus sexual misconduct laws that may provide for different offenses in addition to Title IX definitions of sexual harassment
- Typically applies in higher education contexts only (but not always)
- Consult with local counsel
- Some state laws may also have jurisdictional distinctions
- Generally, states can provide additional protections but cannot take them away

Case Studies

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Case Study 1

- TIXC assigns an investigation and provides the Investigator with a copy of the Notice of Investigation and Allegation(s) (NOIA) to get them started
- Complainant and Respondent are students and former intimate partners
- The NOIA charges the Respondent with sexually assaulting the Complainant in the Complainant's residence hall room after they broke up
- The Investigator is concerned that the NOIA is too narrow in assigning just the sexual assault charge

What would you do if you were the Investigator?

What other charges should be considered?

Case Study 2

- During an investigation of alleged stalking, the Investigator learns that there are instances where the Respondent derisively referred to the Complainant as a “cu^+” (the c-word)
- The Investigator relays this information to the TIXC and asks whether the NOIA needs to be updated

How should the TIXC respond?

What steps would should they take?

Case Study 3

- TIXC receives a complaint alleging that a faculty member sexually assaulted a graduate student while they were in a relationship
- They have since broken up
- Complainant alleges that after the breakup, they told the Respondent that they were going to file a Title IX complaint
- As a result, the Respondent threatened, cajoled, and pressured the Complainant not to file the complaint

Which charges should be included in the NOIA and why?

Case Study 4 – Part I

- A student comes to the Title IX office to file a complaint
- The student is well-prepared for the meeting, having already consulted with an attorney who is a Title IX expert
- The student shares that they are a victim of dating violence (sexual assaults in a previous relationship that ended on August 2, 2024) and tells the TIXC that they have reviewed the policy with their attorney and waited until the new regulations came out to file, and they think the appropriate charges are:
 - Sex-Based Harassment: Hostile Environment and Dating Violence

Do you agree or disagree? Why?

What charges should be included in the NOIA?

Case Study 4 – Part II

- The Complainant and her attorney claim the institution should use the new procedures, since those are in place when they filed the complaint.

Are they correct?

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Case Study 4 – Part III

- The student further informs the TIXC that, assuming the TIXC is correct, they want to withdraw part of the complaint and only focus on the allegations that occurred on August 1, 2024. The student is not willing to participate in the old Title IX process and thus, does not want to address the behavior that occurred before August 1, 2024.

How should the TIXC respond?

Case Study 5

- A teacher is the Respondent in a sexual assault complaint and requests to meet with the TIXC to discuss supportive measures
- During this meeting, the Respondent shows the TIXC a text message timestamped one hour before the alleged sexual assault, in which the Complainant, another employee, texted the Respondent, “Let’s fuck”
- The Respondent shows the TIXC a second text message from the Complainant to the Respondent one hour after the alleged incident, stating, “You totally rocked my world. Just what I needed.”
- Based on these texts, the Respondent informs the TIXC it is obvious they have been falsely accused and expects the TIXC to dismiss the complaint

What should the TIXC do? How should they respond?

What if the TIXC does not dismiss?

Case Study 6

- The TIXC issued a no-contact order (NCO) between Justine and Alyssa
- Justine alleged that Alyssa gave her a laced vape, resulting in Justine becoming “out-of-it,” and Alyssa then sexually assaulted her
- Justine does not want to file a complaint
- Alyssa requests a meeting with the TIXC about the NCO
- At the meeting, she shares that she is traumatized by the NCO, is confused why the Title IX office is involved, and believes that her freedoms are being restricted by the NCO without any evidence and on a student’s unsupported say so

Case Study 6

- Alyssa doesn't know what the allegations are, but she denies anything other than getting high together took place, and nothing that would implicate Title IX
- She asks the TIXC to lift the NCO, as it presumes her guilt

Assume that the TIXC refuses. What should they tell Alyssa?

Alyssa responds that she wishes to appeal the decision. What now?

Case Study 7

- Jasper is upset that his ex-girlfriend is allegedly going around telling many other students that Jasper abused her during their relationship and sexually assaulted her multiple times
- Jasper wants the TIXC to protect him from these “falsehoods” spreading further, and to ensure that his ex recants these untrue allegations

What are Jasper’s options?

What would you advise Jasper to do, if he asks you for your advice?

Case Study 8

- Employee William comes to the TIXC stating that he “hooked up” with another employee, Jacques
- Jacques told a friend, Nefertari, that William may have sexually assaulted Jacques
- William found out about this conversation, and to combat anyone’s perception that he sexually assaulted Jacques, he told several other co-workers that he consensually hooked up with Jacques, including providing details and video (non-graphic) to back up his assertions
- After meeting with William, the TIXC reaches out to Jacques to discuss the situation and offer him a chance to file a Complaint

Case Study 8

- Jacques alleges that William discussed the hook-up with co-workers in retaliation for the private conversation Jacques had with Nefertari about the situation

Should the TIXC accept this retaliation complaint?

How should William be charged, if at all?

What considerations should influence the TIXC's decision?

Case Study 9

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

**Does the school/district have jurisdiction over the school resource officer's conduct?
Why or why not?**

What steps should be taken?

Case Study 10

- The TIXC receives a report from a teacher indicating that they overheard several high school students discussing what sounded like explicit text messages one of the students received from a student-teacher while on a school-sponsored band trip
- The student-teacher is enrolled at the local university and is assigned as a student-teacher in the music program at the high school
- The reporting teacher did not see any specific messages, and the students wouldn't tell her what they were discussing when she asked

Case Study 10

- The TIXC invites the student who received the messages to meet. During the meeting, the student confirms that they received text messages from the student-teacher
- The student added that while the messages made them “uncomfortable,” they do not want to file a complaint and just want to forget about it

Does the school/district have jurisdiction over the student-teacher’s conduct? Why or why not?

What should be done under these circumstances?

Case Study 11

- An Investigator receives a complaint from a parent who reports that their student is being harassed and called names like “slut,” “whore,” and “Master Missy” by other students both in person during school hours and via social media
- The parent can identify some of the students by name in the complaint

Which behaviors, if any, warrant charges?

What should those charges be?

Case Study 11

- Upon issuing a NOIA to one of the responding students, their parent calls and informs the Investigator that the Complainant is the one that should be investigated because she took a cell phone video of herself masturbating and sent it to another student
- The parent states that is the reason that the other students were calling the Complainant names

Is it appropriate to charge the Complainant?

If so, which charges would be appropriate and why?

Case Study 12

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

Case Study 12

- The male student is on his knees and the female student is standing over him
- The male student can be heard saying, “Please, baby, I love you, don’t break up with me,” and the female student responds, “You’re such a dumb fuck; why should I stay with you? You can’t do anything right.”

**The TIXC is able to confirm that the two students
in the videos are enrolled at their school**

What should the TIXC do?



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Questions?

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