



Association of
Title IX Administrators

July 22, 2026

Title IX and the Preventing Sexual Violence in Higher Education Act

Rend Lake College

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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.

Introduction



The primary focus of this course is to fortify participants' understanding of compliance obligations under Title IX and the Preventing Sexual Violence in Higher Education Act (PSVHEA)



Practitioners must understand the requirements facing their institutions and review their policies, procedures, and practices



Our goal is to provide an overview and refresher of the compliance environment

Title IX Statute and Scope

Title IX

“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 education program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 and 34 C.F.R. Part 106 (1972)

Title IX has always mandated a response to sex discrimination. The 2020 Title IX Regulations **only** apply to sexual harassment complaints.



Limited Scope

- Title IX is broad, but Title IX Regulations apply to a narrow slice of Title IX
 - Only applies to a handful of behaviors the regulations define as “Title IX Sexual Harassment”
 - Any other types of behavior (e.g., sex discrimination) fall outside of the regulations
 - More flexibility to respond
 - May be influenced by state law, federal court decisions, collective bargaining agreements, etc.



Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access and Equity

Retaliation (+ PSVHEA)

Sexual Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault (+ PSVHEA)
- Dating Violence (+ PSVHEA)
- Domestic Violence (+ PSVHEA)
- Stalking (+ PSVHEA)

ATIXA Model Policy (1P2P)

- ATIXA designed a model policy to address behavior that falls within **and** outside of the Title IX regulations
- **One Policy, Two Procedures Model**
 - “Process A” (§ 106.45 Title IX Grievance Process for sexual harassment)
 - “Process B”
 - Non-Title IX Resolution Process for other complaints of discrimination, harassment, or retaliation
 - Non-Title IX sexual harassment allegations or Title IX sex discrimination allegations that are not sexual harassment
 - Retains most due process protections from Title IX Process; less formal
 - Model definitions have slight deviations to promote comprehension and usability

§ 106.30 Definitions

Definitions

- This section provides both the regulatory definition and ATIXA's Model Policy definitions
 - Sometimes, they are identical or virtually so
 - Other times, they are different
 - Differences are marked in **bold, blue font** for ease of comparison



Sexual Harassment

Title IX Regulations

- Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:
 1. An employee of the Recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Recipient's education program or activity; or
 3. "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30)

Sexual Harassment (Cont.)

ATIXA Model Definition

- Conduct on the basis of sex, or **that is sexual in nature**, that satisfies one or more of the following:
 - Quid Pro Quo
 - Sexual Harassment (Hostile Environment)
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking

Quid Pro Quo

Title IX Regulations and ATIXA Model Definition

- An employee of the Recipient
- Conditioning the provision of an aid, benefit, or service of the Recipient
- On an individual's participation in unwelcome sexual conduct



Hostile Environment Sexual Harassment

Title IX Regulations and ATIXA Model Definition

- Unwelcome conduct
- determined by a reasonable person
- to be so severe, pervasive, and objectively offensive
- that it effectively denies a person equal access to the Recipient's education program or activity

Sexual Assault – Rape

Title IX Regulations

- Penetration, no matter how slight,
 - of the vagina or anus with any body part or object, or
- Oral penetration by a sex organ of victim, or by a sex-related object
- Without the consent of the victim
- Including instances where the victim is incapable of giving consent because of his/her age or because of a temporary or permanent mental or physical impairment or incapacity

Sexual Assault – Rape (Cont.)

ATIXA Model Definition

- Penetration, no matter how slight,
 - of the vagina or anus of a person,
 - with any body part or object, OR
- oral penetration
 - **of a sex organ of the Complainant, or**
 - **by the Respondent's sex organ, or**
 - **by a sex-related object**
- 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 or physical incapacity

Sexual Assault – Criminal Sexual Contact (Fondling)

Title IX Regulations

- The intentional touching of the clothed or unclothed body parts
- without the consent of the victim
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- The forced touching by the victim of the actor's clothed or unclothed body parts,
- without consent of the victim
- for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation

Sexual Assault – Fondling

ATIXA Model Definition

- The intentional touching of the clothed or unclothed **genitals, buttocks, groin, breasts,** or other body parts of the Complainant by the Respondent
 - without the consent of the Complainant
 - for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- **Or the Respondent caused or directed the Complainant's intentional touching of the Respondent's** clothed or unclothed **genitals, buttocks, groin, breasts,** or other body parts
 - without consent of the Complainant
 - for the purpose of sexual degradation, sexual gratification, or sexual humiliation
- including instances where the Complainant is incapable of giving consent because of their age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation

Sexual Degradation

ATIXA Model Definition

- Refers to conduct that reduces a person to a sexual object, demeans them on the basis of sex, or portrays them as inferior, subservient, or lacking dignity because of a person's sex or sexual characteristics
- Key aspects include the reduction or objectification of a person's sense of value, not just making the person feel embarrassed
- May manifest as:
 - Verbal
 - Physical/Positional
 - Behavioral/Role-based
 - Body-based

Sexual Gratification Decisional Rubric

- ATIXA suggests the following decisional rubric for assessing when it is reasonable to find that the contact in question is **NOT** for purposes of sexual gratification:
 - The contact can be proven inadvertent
 - The contact is for a legitimate medical (or other privileged) purpose and thus is conduct for which consent should have been sought and obtained by the provider
 - The contact involves a Respondent who is pre-sexual, based on maturity/age (thus their intent is not sexual)
 - The contact involves a Respondent who cannot developmentally understand sexual contact or that their contact is sexual
 - The contact is something like butt-slapping on a team and is both minimal and unlikely to have sexual motivation or purpose, as shown by the context of the act(s)

Sexual Humiliation

ATIXA Model Definition

- Refers to conduct that causes embarrassment, shame, or loss of dignity through sexualized means
- Sexual humiliation typically involves verbal, physical, or psychological acts that target a person's sense of dignity, self-worth, or bodily autonomy, while being tied to sexual activity, sexuality, or sexual identity
- May manifest as:
 - Verbal
 - Exposure-based
 - Situational
 - Social

Sexual Assault – Incest

Title IX Regulations

- Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

ATIXA Model Definition

- Sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by <<state>> law

Sexual Assault – Statutory Rape

Title IX Regulations

- Nonforcible sexual intercourse with a person who is under the statutory age of consent

ATIXA Model Definition

- Sexual intercourse,
- with a person who is under the statutory age of consent of << age>> years old

Dating Violence

Title IX Regulations

- Violence committed by a person
 - Who is in or has been in a social relationship of a romantic or intimate nature with the victim and
 - Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- For the purposes of this definition—
 - Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
 - Dating violence does not include acts covered under the definition of domestic violence

Dating Violence (Cont.)

ATIXA Model Definition

- Violence,
- committed by **a Respondent**,
- who is in or has been in a social relationship of a romantic or intimate nature with the **Complainant**
 - **The existence of such a relationship shall be determined based on the Complainant's statement** and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship
- For the purposes of this definition:
 - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse
 - Dating Violence does not include acts covered under the definition of Domestic Violence

Domestic Violence

Title IX Regulations

- A felony or misdemeanor crime of violence committed:
 - by a person who is a current or former spouse or intimate partner of the victim;
 - by a person with whom the victim shares a child in common;
 - by a person who is cohabitating, or has cohabited, with the victim as a spouse or intimate partner;
 - by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
 - by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred

Domestic Violence (Cont.)

ATIXA Model Definition

- Violence,
- Committed by a **Respondent** who is a current or former spouse or intimate partner of the **Complainant**, or
- by a person with whom the **Complainant** shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the **Complainant** as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the **Complainant** under the domestic or family violence laws of the state, or
- by any other person against an adult or youth **Complainant** who is protected from that person's acts under the domestic or family violence laws of the state

Violence

ATIXA Model Definition

- Violence includes situations where the Respondent **intentionally or recklessly** causes the Complainant serious physical, emotional, or psychological harm
 - Intent is evidenced when a reasonable person would be more likely to act with the purpose of causing serious harm rather than for any other reason
 - Recklessness is evidenced by a disregard of obvious risk to the safety of the Complainant
 - Violence in self-defense is not chargeable under the Policy if the purpose is **safety**, not harm
 - Consensual use of violence, such as in kink relationships, would not meet this definition
 - Threats to seriously harm the Complainant or people they care about may be chargeable under this definition if doing so causes serious emotional or psychological harm
 - Threats to harm oneself, even if made to cause emotional or psychological harm, are not considered violence under this definition (but may be addressable under a threat policy)
- **Note:** There is **no** definition of violence in the regulations

Stalking

Title IX Regulations

- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to
 - Fear or their safety or the safety of others
 - Suffer substantial emotional distress
- For the purposes of this definition—
 - Course of conduct means two or more acts, including, but not limited to acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
 - Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim
 - Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling

Stalking (Cont.)

ATIXA Model Definition

- **A Respondent** engaging in a course of conduct,
- Directed at the Complainant, that
 - would cause a reasonable person to fear for that person's safety, or the safety of others, or
 - suffer substantial emotional distress

For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

Consent

PSVHEA requires a definition of consent that, at a minimum, recognizes that:

- Consent is a freely given agreement to sexual activity,
- A person's lack of verbal or physical resistance or submission resulting from the use or threat of force does not constitute consent,
- A person's manner of dress does not constitute consent,
- A person's consent to past sexual activity does not constitute consent to future sexual activity,
- A person's consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another,
- A person can withdraw consent at any time, and

Consent (2)

PSVHEA requires a definition of consent that, at a minimum, recognizes that:

- A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following: (A) the person is incapacitated due to the use or influence of alcohol or drugs; (B) the person is asleep or unconscious; (C) the person is underage; or (D) the person is incapacitated due to a mental disability

Consent (3)

- **Consent is not defined** by the Title IX Regulations
- **ATIXA Model Definition:**
 - Informed, knowing, and voluntary (freely given)
 - Active (not passive)
 - Creates mutually understandable permission regarding the conditions of sexual activity
 - No means no, but nothing also means no; Silence and passivity do not equal consent
 - To be valid, consent must be given immediately prior to or contemporaneously with the sexual or intimate activity
 - Consent can be withdrawn at any time, so long as it is clearly communicated verbally or non-verbally
 - Consent to one form of sexual activity does not necessarily imply consent to other forms of sexual activity

§ 106.71 Retaliation

Retaliation

Title IX Regulations

- No Recipient or other person may intimidate, threaten, coerce, or discriminate against any individual
 - For the purpose of interfering with any right or privilege secured by Title IX or
 - Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing
- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation

Retaliation (Cont.)

ATIXA Model Definition

- **Any member of Recipient's community,**
 - **Taking or attempting take adverse action,**
 - By intimidating, threatening, coercing, harassing, or discriminating against any individual,
 - For the purpose of interfering with any right or privilege secured by law or policy, or
 - Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing

Narrowly Defined

- The Title IX definition of retaliation is typically **not as broad** as what community members may consider to be retaliatory
 - Complaints alleging “retaliation” may not meet the definition
 - Social media gossip **may not** be retaliation if it does not meet the requirements
 - First Amendment concerns



§ 106.44 Reports, Complaints, and Notice

When is the Institution “On Notice?”

The institution is “**on notice**” of sexual harassment when a report is made to:

- **Title IX Coordinator (TIXC)**, or
- An **Official with Authority (OWA)**: any official who has authority to institute corrective measures on behalf of the Recipient
 - ATIXA recommends including OWAs by role in policy
- The regulations refer to “on notice” as the institution having “actual knowledge”

Having “actual knowledge” creates an institutional obligation to respond

Reporting Obligations

- ATIXA recommends that institutions, by policy, designate **all employees** as **mandated reporters** (except for **confidential resources like confidential advisors under PSVHEA**) under Title IX
- The regulations rely on the “actual knowledge” concept to drive reporting, rather than providing specific reporting requirements
 - Example: If an OWA receives notice, that must be reported to the TIXC for the institution to fulfill its Title IX obligations
- Many employees will also have reporting responsibilities under other state and federal laws or institutional policy

PSVHEA and Violence Against Women Act Notification

- For reports of sexual assault (sexual violence), domestic violence, dating violence, and stalking, both PSVHEA and the Violence Against Women Act (VAWA) mandate notification of victim's rights
- PSVHEA requires this notice within 12 hours of receipt of a report
- Includes agency and law enforcement reporting options
- TIXC contact information
- Interim and supportive measures, including counseling and mental health
- Complaint resolution procedures

Party and Witness Privacy 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 protected 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

Report vs. Complaint

- A **report** is different than a **Formal Complaint**
- **Report**
 - Notifies the TIXC of an incident and
 - Obligates the TIXC to offer supportive measures and explain the process
- **Formal Complaint**
 - Written request to the TIXC to initiate an investigation
 - Physical document or electronic submission from Complainant
 - OR signed by TIXC
 - Alleging sexual harassment
 - Complainant must be **participating or attempting to participate** (P/ATP) at the time of the Formal Complaint
 - TIXC can make a complaint P/ATP by signing a Formal Complaint

Signing a Formal Complaint: PPTVWM

In limited circumstances, a TIXC should sign a formal complaint even if the Complainant declines to do so

Factors that likely indicate an ongoing risk of harm include:

- **P**attern
- **P**redation
- **T**hreat
- **V**iolence
- **W**eapons
- **M**inors

Other Considerations for TIXC Signing a Formal Complaint

- Employee Respondent
- Complainant who is not P/ATP

§ § 106.44-106.45 Formal Grievance Process Overview

NOT FOR DISTRIBUTION

§ § 106.44-106.45 Initial Assessment

Jurisdiction Determination

- TIXC is responsible for conducting an initial assessment to determine Title IX jurisdiction:
 - Does the alleged conduct, if proven, meet one of the definitions of Title IX Sexual Harassment?
 - Who is the Complainant? Were they participating or attempting to participate (P/ATP) at the time of filing the Formal Complaint?
 - Did the alleged misconduct occur in the institution's education program or activity?
 - Does the institution have control over the context of the alleged harassment?
 - Does the institution have control over the Respondent?
 - Did the behavior occur in the United States?

Jurisdiction

- **Yes, or Arguable:** move forward with Title IX Grievance Process
- **No:** determine whether an alternate policy or process applies
 - Dismiss the complaint under Title IX
 - Document the rationale
 - Refer to other process
- Dismissal analysis can occur throughout the process



Outreach and Intake

- After receiving a report, TIXC (or designee), must reach out to the Complainant
- **Outreach includes:**
 - Introduction to Title IX and staff
 - Reason for the outreach
 - Offer to meet/speak over the phone; include right to Advisor
 - Available resources and resolution options, including how to file Formal Complaint
 - Discuss supportive measures and resources
 - Explain options to report to law enforcement
 - Follow up in writing with resources and information

Mandatory Dismissal

TIXC **must** dismiss the complaint at any time prior to a determination, if:

1. The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in the Title IX Regulations even if proved, and/or
2. The conduct did not occur in the Recipient's education program or activity, or
 - No control over the context
3. The conduct did not occur against a person in the United States, or
4. At the time of filing a Formal Complaint, the Complainant is not P/ATP
 - **AND** the TIXC determines they do not need to sign a Formal Complaint

Discretionary Dismissal

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

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

Dismissal Appeal

- Promptly notify parties of the dismissal
- Notify parties that a dismissal may be appealed and include appeal information
 - Appeals grounds from § 106.45 apply to both dismissals and final determinations
 - Dismissal Appeal Decision-maker(s) must be trained
 - Must not have been involved in the complaint so far
 - Cannot also serve as the Appeal Decision-maker for final determination



Supportive Measures

- Provided to parties throughout the process:
 - At no cost to the party
 - Individualized
 - Non-disciplinary, non-punitive
 - Protect safety of parties or environment, or deter sexual harassment
 - Restore or preserve equal access
 - Without unreasonably burdening other party
- Publish the range of supportive measures
- Avoid unnecessary disclosures about supportive measures
- Consult with disability services when appropriate
- If not provided, document the rationale for refusal

Supportive Measure Examples

NOT FOR DISTRIBUTION

Counseling/ Health Services	Employee Assistance Program	Visa and Immigration Assistance	Community Education	Alternate Housing
Alternate Work Arrangements	Safety Planning	Safety Escorts	Transportation Assistance	Contact Limitations
Academic Support	Trespass Orders	Emergency Notifications	Increased Security	Confidential Advisors

Emergency Removal

- Imposed upon Respondents on an emergency basis only
- Individualized safety and risk analysis
 - Immediate threat exists to the physical health or safety of any student or other individual
 - The threat arises from the allegations of sexual harassment
- Respondent entitled to immediate notice and opportunity to challenge



Administrative Leave

- May remove an employee Respondent using existing administrative leave procedures
- A lower bar than emergency removal



Informal Resolution

- Title IX permits **voluntary** Informal Resolution (IR)
- Not available for employee-on-student harassment
- IR is not defined by the Title IX Regulations
- At discretion of TIXC, at any time prior to a final determination
 - Likelihood of resolution
 - Power dynamics
 - Goals and motivation of the parties to participate
 - Complexity and timing of the complaint
- IR Facilitators must receive training, be free of bias or conflicts
 - ATIXA recommends IR Facilitators not serve in any other process roles

Informal Resolution (Cont.)

- Procedural requirements:
 - Formal Complaint
 - Parties must receive written notice of the allegations, IR procedures, records created, and potential consequences
 - Parties' voluntary, written consent
 - Must still stop, prevent, remedy
- May withdraw from IR to start or resume Formal Grievance Process at any time



§ 106.45 Investigation

Notice of Investigation and Allegations

- Notice of Investigation and Allegations (NOIA) letter
 - Sent to all parties, simultaneously
 - Must be sent prior to interviewing any party
- **The NOIA includes:**
 - Parties' Rights
 - Notice of the allegations and known details, such as identities of the parties
 - A description of the alleged conduct and relevant policy provisions
 - The date and location of the alleged conduct
 - Information about grievance procedures
 - Any Informal Resolution options

Parties' Rights

- **The NOIA must outline the parties' right to:**
 - Present witnesses, including expert witnesses
 - Present inculpatory and exculpatory evidence
 - Freely discuss the allegations
 - Be accompanied by an Advisor of their choice
 - Receive written notice of all details and purpose, with sufficient time to prepare, of any investigation interview or other meeting they are requested to attend
 - Review all relevant and directly related evidence before the investigation report is finalized

NOIA Additional Inclusions

- **The NOIA must also include:**
 - Presumption that Respondent is not responsible
 - A statement that retaliation is not permitted
 - Reference to any code of conduct provisions (student or employee) regarding consequences for knowingly providing false statements
 - The NOIA must be updated if additional allegations arise during the investigation
 - Include or reference current policy and procedures

Understanding Evidence

- Duty to collect **relevant** evidence
 - Evidence is any kind of information presented to help determine what occurred
 - Relevant evidence is evidence that tends to prove or disprove the underlying allegations
 - Inculpatory and exculpatory evidence
 - Some evidence may only be relevant to assessing credibility
- Collect **all** relevant and reasonably available evidence
- Relevant evidence forms the basis of the investigation report



Directly Related Evidence

- Connected to the complaint but neither inculpatory nor exculpatory and will not be relied upon by the Decision-maker (DM)
- Must be provided to the parties and their Advisors for review
 - ATIXA recommends providing an organized directly related evidence file
- DMs ultimately determine what is relevant, directly related, or neither



Specific Evidence Issues

- Evidence of the **Complainant's sexual predisposition** is never relevant
- Evidence of the **Complainant's prior sexual behavior** is not relevant except:
 - If offered to prove that someone other than the Respondent committed the alleged conduct; or
 - If offered to prove consent with respect to prior consent with the Respondent
- Even if admitted/introduced by the Complainant
- Does not apply to Respondent's prior sexual behavior or predisposition

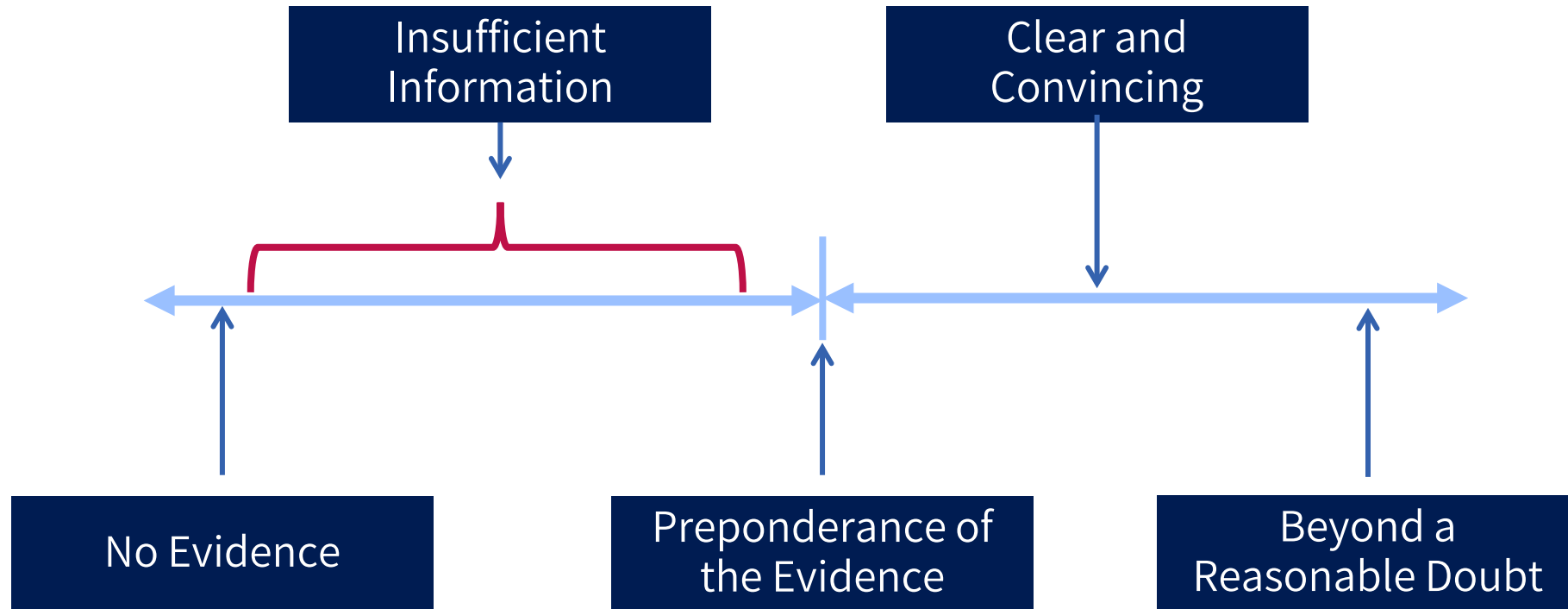
Privileged and Medical Information

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

- Evidence protected under a legally recognized privilege
- Records made or maintained by:
 - Physician
 - Psychiatrist
 - Psychologist



Standard of Evidence



Parties' and Advisors' Review of Report and Evidence File

- Draft report and directly related evidence must:
 - Be sent to each party and Advisor in an electronic format or hard copy
 - Include evidence upon which the Recipient does not intend to rely
 - Include exculpatory and inculpatory evidence
- Investigator must:
 - Allow 10 days for written response
 - Consider parties' feedback and incorporate where appropriate
- Investigator sends the final investigation report to the parties and Advisors for review 10 days prior to the hearing

Drafting, Reviewing, and Finalizing the Investigation Report



§ 106.45

Decision-Making and Appeals

Decision-Making

- All postsecondary institutions must hold a **live hearing** to address Title IX sexual harassment allegations, unless resolved by IR
 - Decision-maker (DM) can ask relevant questions
 - Advisors can ask relevant questions on behalf of parties
- TIXC and Investigator may not serve as DM



Live Hearings

- Questions must be asked by the parties' Advisors and/or DM(s)
 - If the party does not have an Advisor, the institution **must** provide an Advisor for the purpose of asking questions during the hearing, if the party wishes to ask questions
 - DM must determine whether a proposed question is relevant and permissible
- Hearing can be in one location or virtually through technology
 - DM and parties must be able to simultaneously see a party or witness when they are speaking/communicating
- Must create an audio or video recording or transcript and make it available to parties to inspect and review
- May impose reasonable decorum rules

Relevance Determinations

- **Title IX Regulations establish a questioning protocol during hearings**
 - A Hearing Board member (other than the Chair), or Advisor poses a question to a party or witness
 - Party/witness pauses while the DM considers the relevance of every question and decides whether to permit the question
 - Party may answer if DM deems question relevant
 - The DM must explain to the individual proposing the questions any decision to exclude a question as not relevant
 - The regulations are silent on whether the DM can instruct other options beyond excluding a question, such as rephrasing or asking the Advisor to reframe
 - **ATIXA recommends** permitting rephrasing or reframing
- Title IX Regulations leave open the question of whether Advisor can/should make a showing of relevance to the DM
 - **ATIXA recommends** permitting it

Written Determinations

- **Written Determination**
 - Authored by DM(s)
 - Communicated to the parties simultaneously in writing
- **Finality**
 - On the date the institution 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

Sanctions and Remedies

Sanctions

- Only implemented after a determination of responsibility
- Nexus between sanctions and misconduct
- Goal: stop, prevent, and remedy
- TIXC does not issue sanctions but oversees the process
- TIXC assures sanction compliance
 - Failure to comply could lead to discipline

Remedies

- May be implemented before or after a determination
- TIXC determines remedies that are fair and not clearly unreasonable given the circumstances
- Goal: preserve or restore access to education program and activity
- TIXC ensures remedies are implemented

Appeal Grounds

Must offer appeals on the following grounds:

- Procedural irregularity that affected the outcome of the matter
- New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter
- Conflict of interest or bias by the TIXC, Investigator, DM that affected the outcome of the matter
- The sanction is disproportionate with the violation (PSVHEA)

Institutions have the discretion to add additional appeal grounds

Recordkeeping

Recordkeeping Inclusions

- Recipient must maintain records for a minimum of **seven** years:
 - Sexual Harassment formal complaints, including determination and discipline/remedies
 - Appeals and results
 - Rationales for all determinations
 - Informal Resolution
 - Supportive measures
 - Measures taken to preserve/restore access
 - All training materials
- Document how response was **not** deliberately indifferent



Training Records

- Institutions must make all materials used to train TIXC, Investigators, DM, and IR Facilitators publicly available on the Recipient's website
 - Post the most recent materials used to train the Title IX Team
 - But keep electronic copies of seven (7) years of training materials
- If the Recipient does not maintain a website, the Recipient must make these materials available upon request for inspection by members of the public

Additional Compliance Requirements

Title IX Compliance Checklist

- Designate a Title IX Coordinator
- Publish the Title IX Coordinator's name and contact information
 - Notify all applicants for admission or employment, students, employees, and all unions or other CBA professional organizations of contact information
 - Notify how to make a report to the Title IX Coordinator
- Publish non-discrimination statement, including that the institution does not discriminate on the basis of sex in its education program and activities
- Publish policy and grievance procedures reflect the regulatory requirements

Training and Prevention Education Requirements

Title IX

- Training for all Title IX Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators

VAWA

- Primary prevention education for all incoming students and new employees
- Ongoing prevention and awareness campaigns for all students and employees
- Annual training for all employees involved in the resolution of a complaint

PSVHEA

- Training for all students and employees, Confidential Advocates, and Resolution Team Members

Title IX Team Training

- TIXC (or designee) has responsibility to ensure the **Title IX Team** also receives **annual training** on:
 - Institutional response obligations to reports of sex discrimination and sexual harassment, including reporting requirements
 - Definition of sexual harassment
 - Title IX Grievance Procedures
 - Serving impartially and without conflicts of interest or bias
 - Meaning and application of relevant questions and evidence
- IR Facilitators must receive training on rules and practices associated with the institution's Informal Resolution process

VAWA Ongoing Educational Programs and Campaigns Guidance

- Tailored to each institution
- Focused on increasing awareness or understanding
- Culturally relevant
- Inclusive of diverse communities and identities
- Sustainable
- Responsive to community needs
- Informed by research or assessed for value, effectiveness, or outcome

Source: U.S. Department of Education. (2014, October 20). *Violence Against Women Act* (Final rule, 79 FR 62752). Federal Register.

PSVHEA Annual Student Training

- | | |
|-----------|---|
| 1. | Definition of Consent |
| 2. | How to Make a Report |
| 3. | Accessing Confidential Resources |
| 4. | Bystander Intervention |
| 5. | Risk Reduction |

PSVHEA Annual Employee Training

- Overview of the policy
- Federal/State laws regarding Sexual Harassment, Sexual Assault, Domestic/Dating Violence, Stalking, Consent
- Mandatory reporting obligations
- The roles of the higher education institution, medical providers, law enforcement, and community agencies in ensuring a coordinated response
- Effects of trauma
- Consent and drugs/alcohol
- Cultural sensitivity

Confidential Advisor Training

PSVHEA requires all confidential advisors to:

- Receive **40 hours** of training on **sexual violence**, if they have not already completed this 40-hour training, before being designated a confidential advisor
- Attend a minimum of **6 hours** of ongoing education training **annually** on issues related to sexual violence to remain a confidential advisor
- Receive **periodic** training on the campus administrative processes, interim protective measures and accommodations, and complaint resolution procedures

Resolution Team Training

PSVHEA requires resolution team members to complete:

- Minimum of **8 to 10 hours** of **annual** training on issues related to sexual violence, domestic violence, dating violence, and stalking and how to conduct the higher education institution's complaint resolution procedures, **in addition to the annual training required for employees**

Assessing the Programs

Assessing the Program

Assessment should be multifaceted:

- Benchmarking
- Climate assessments
- Compliance reporting
- Complaint, investigation, and resolution process debriefing
- Internal reviews/audits/assessments
 - Address areas for improvement
 - Evaluate resolution team
 - Conduct barrier analysis
 - Identify strengths, program gaps

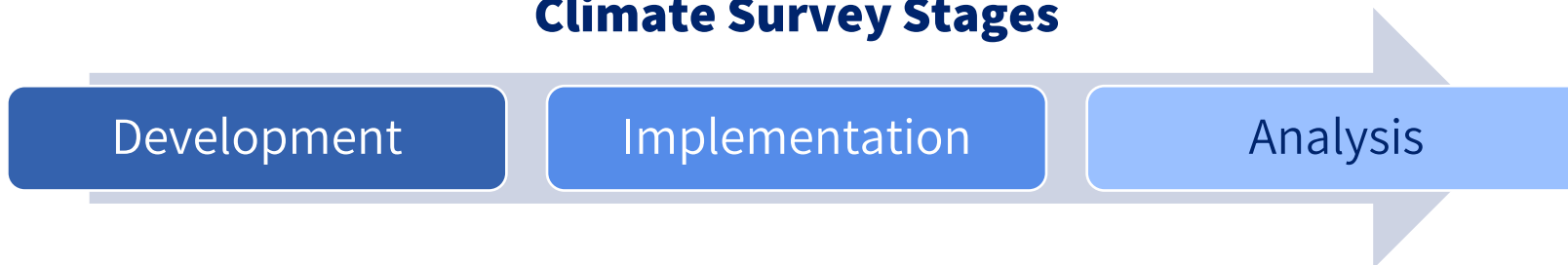


Climate Surveys

Climate Survey Objectives

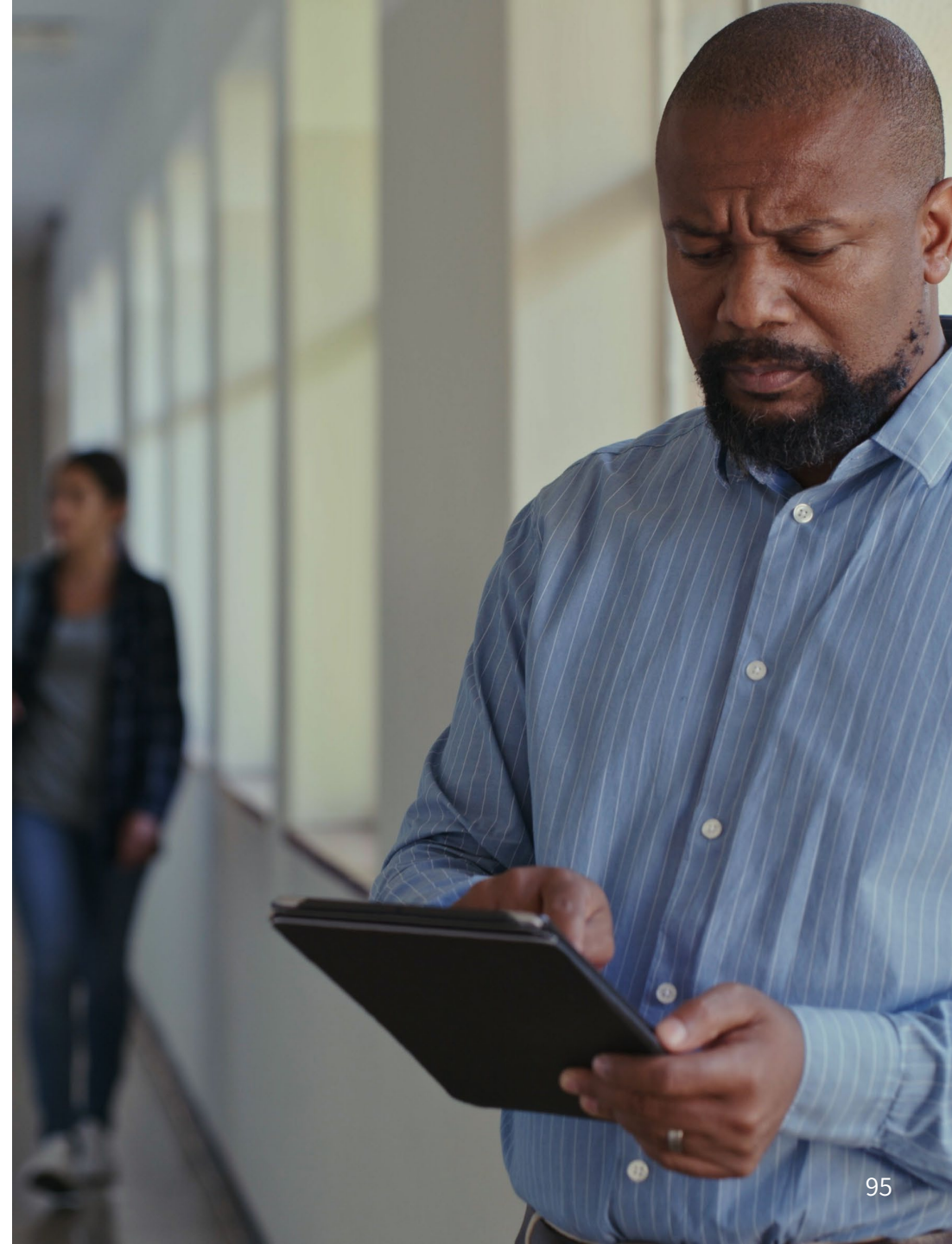
- Focused on sex discrimination and sexual harassment, including sexual assault, dating and domestic violence, and stalking
 - Assess **prevalence** of sex discrimination and sexual harassment
 - Evaluate awareness of **policies, resources**, and reporting **procedures**
 - Gauge the **perception of** campus safety and the effectiveness of institutional responses
 - Identify **gaps** in services, support, and education
 - Could lay a foundation/justification for **affirmative action** (though courts hostile)
- Assists TIXC with **monitoring** the education program for barriers to reporting

Climate Survey Stages



Climate Survey Structure

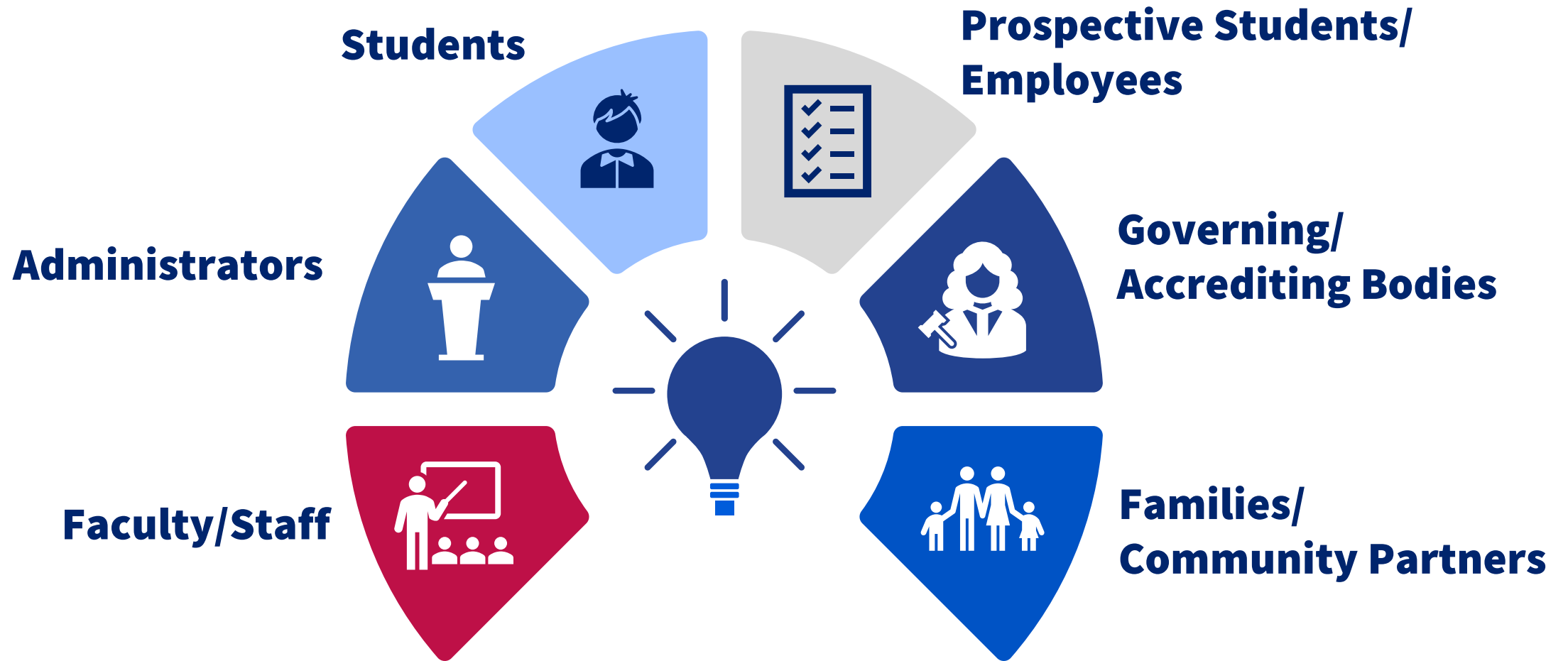
- Demographic questions
 - Narrow results
 - Basis for comparison
- Experience and perception questions
 - Bulk of the survey
 - Gain a better understanding of the participants' experience
- ATIXA recommends targeted questions to evaluate how well individuals understand existing policy and procedures



Climate Survey Report

- Draft a comprehensive overview of the Climate Survey responses
- Compiling a report can feel onerous, some tips to help:
 - Create or follow a template
 - Assign sections to committee members to draft
 - Allocate sufficient time for writing and review
- Consider:
 - Accessible platform for sharing the climate survey results
 - Showcasing both qualitative and quantitative data
 - Sharing a “next steps” plan to address areas needing improvement

Assessment Outcome Sharing



PSVHEA Biennial Climate Survey

- Climate survey required to be administered every two years
- Base set of survey questions provided by Illinois Community College Board
- Institutions may append additional, trauma-informed questions
- Required to send summarized survey results to the Illinois Community College Board
- Required to publish summary results on the institution's website



Association of
Title IX Administrators

Questions?

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