



Association of
Title IX Administrators

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Title IX Culture & Climate Investigations in Higher Education

Fox Valley Technical College

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Strategic Risk
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.

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The content and discussion in this course will necessarily engage with sexual harassment, sex 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.

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 & 34 C.F.R. Part 106 (1972)

Title IX has always mandated a response to sex discrimination, however the 2020 Title IX Regulations **only** apply to sexual harassment complaints



Title IX Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access and Equity

Retaliation

Sexual Harassment

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

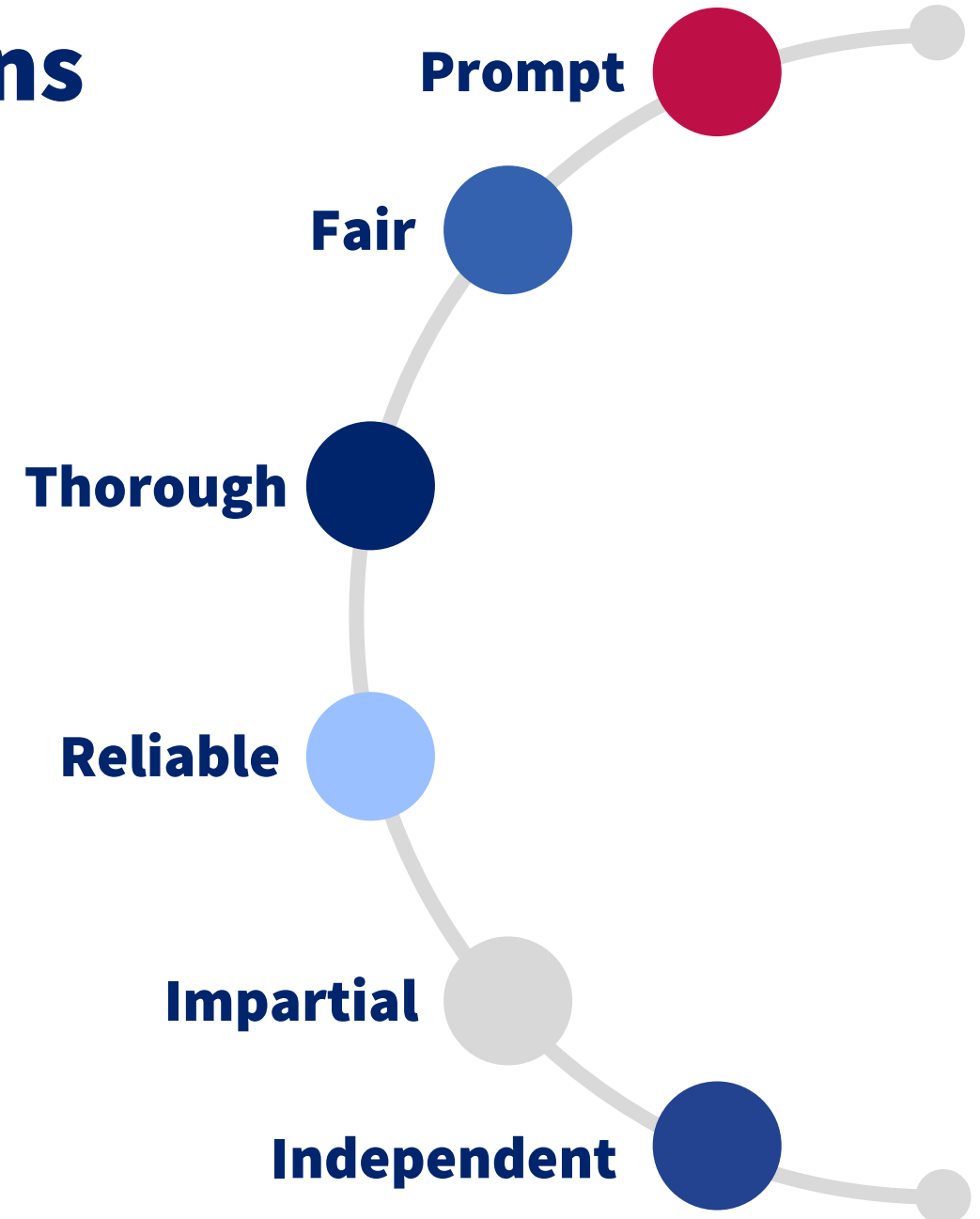
Sex Discrimination Definitions

- **Disparate Treatment:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **intentionally** discriminates
- **Disparate Impact:** occurs when an institutional policy, practice, or procedure (or an agent thereof) **unintentionally** discriminates
 - A policy may be intended to be neutral as written, but it may be applied in a discriminatory manner

Civil Rights Investigations Overview

Civil Rights Investigations Overview

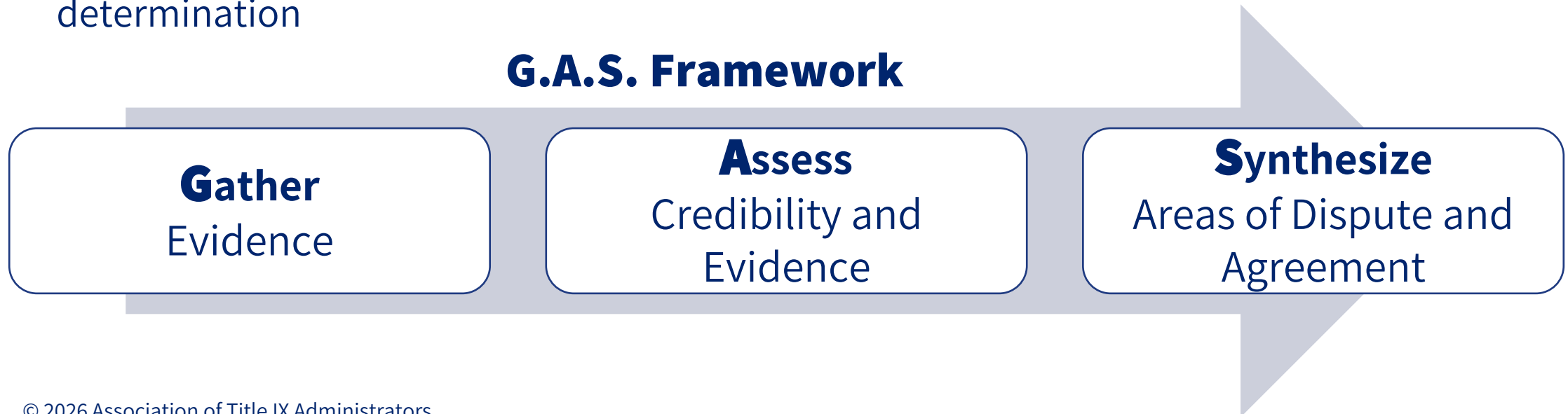
- Investigations focus on gathering all available and relevant information
- The institution is responsible for gathering evidence—not the parties
- Investigators must provide a report that accurately and succinctly summarizes the collected evidence



Role of the Investigator

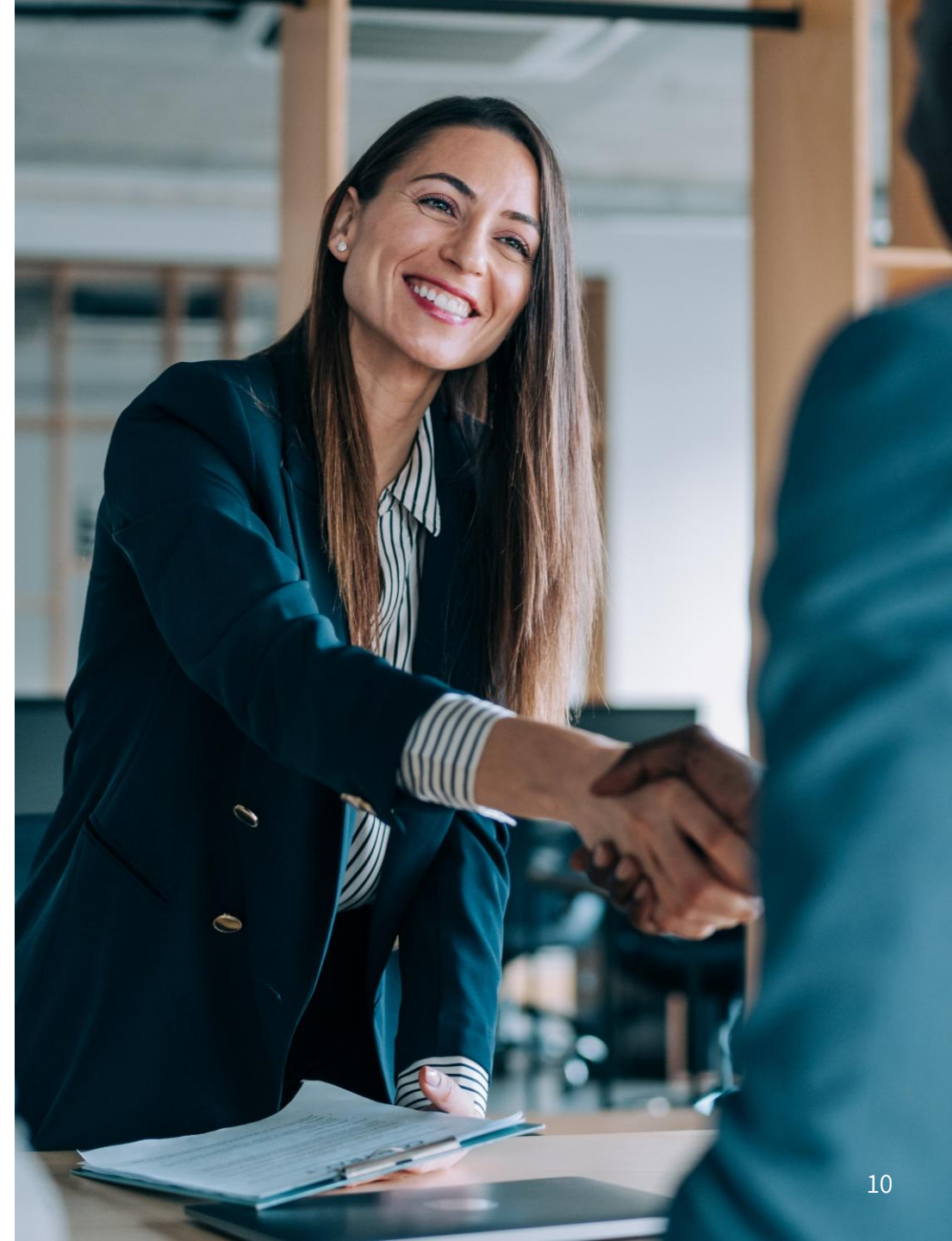
- **Input:** all available, relevant evidence
- **Outputs:** a comprehensive, detailed written investigation report that fairly summarizes all relevant evidence **and** the investigation; an organized directly related evidence file
- Follow the G.A.S. Framework to well position the Decision-maker for reaching a determination

G.A.S. Framework



Investigation Overview

- Title IX investigations may examine sex discrimination, sexual harassment, or retaliation allegations
- ATIXA's recommended investigation process is comprised of 10 steps over three phases:
 - Pre-investigation
 - Investigation
 - Post-investigation
- Not all phases involve the Investigator
- TIXC is responsible for Title IX Investigator oversight and supervision



Investigation Steps

1. Receive Notice/Complaint
2. Initial Assessment & Jurisdiction Determination
3. Determine Basis for Investigation
4. Notice of Investigation and Allegations (NOIA)
5. Establish Investigation Strategy
6. Formal Comprehensive Investigation
7. Draft Investigation Report
8. TIXC Reviews Draft Report & Evidence
9. Parties Review Draft Report & Evidence
10. Final Investigation Report

INCIDENT INVESTIGATION
SUMMARY

Incident Date:

Review Date:

ed by:

ent Summary:

Root Causes:

Determine a Basis for Investigation

There are three bases for civil rights investigations:

- **Incident:** a specific incident or period
 - May involve one or multiple alleged violations
 - Sexual Harassment or Retaliation
 - Disparate Treatment on the basis of sex
- **Pattern:** repetitive or similar behaviors or targets by the same Respondent over a period
 - Tend to involve multiple Complainants
- **Climate/Culture:** discriminatory policies, processes, and environments
 - 1975 regulatory framework
 - May have no identifiable Respondent

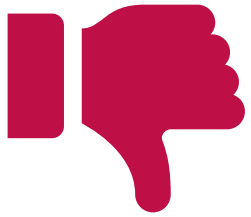
Culture/Climate Investigations

Investigation Scope

- TIXC determines the scope of the investigation
- **Scope** refers to the allegations, timeframes, and parties subject to the investigation
- Considerations:
 - Collateral misconduct allegations
 - Individual vs. group
 - Multiple Complainants or Respondents
 - Counter-complaints
 - Patterns
- If scope needs to be adjusted during the process, Investigator should consult with TIXC

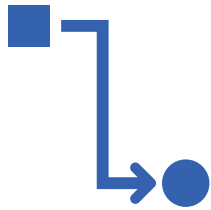


Types of Discrimination



Disparate Treatment

- Intentional
- Usually requires adverse action
- Affiliation or perception of affiliation to protected characteristic



Disparate Impact

- Occurs with unintentional discrimination
- Impact disadvantages certain groups



Harassment

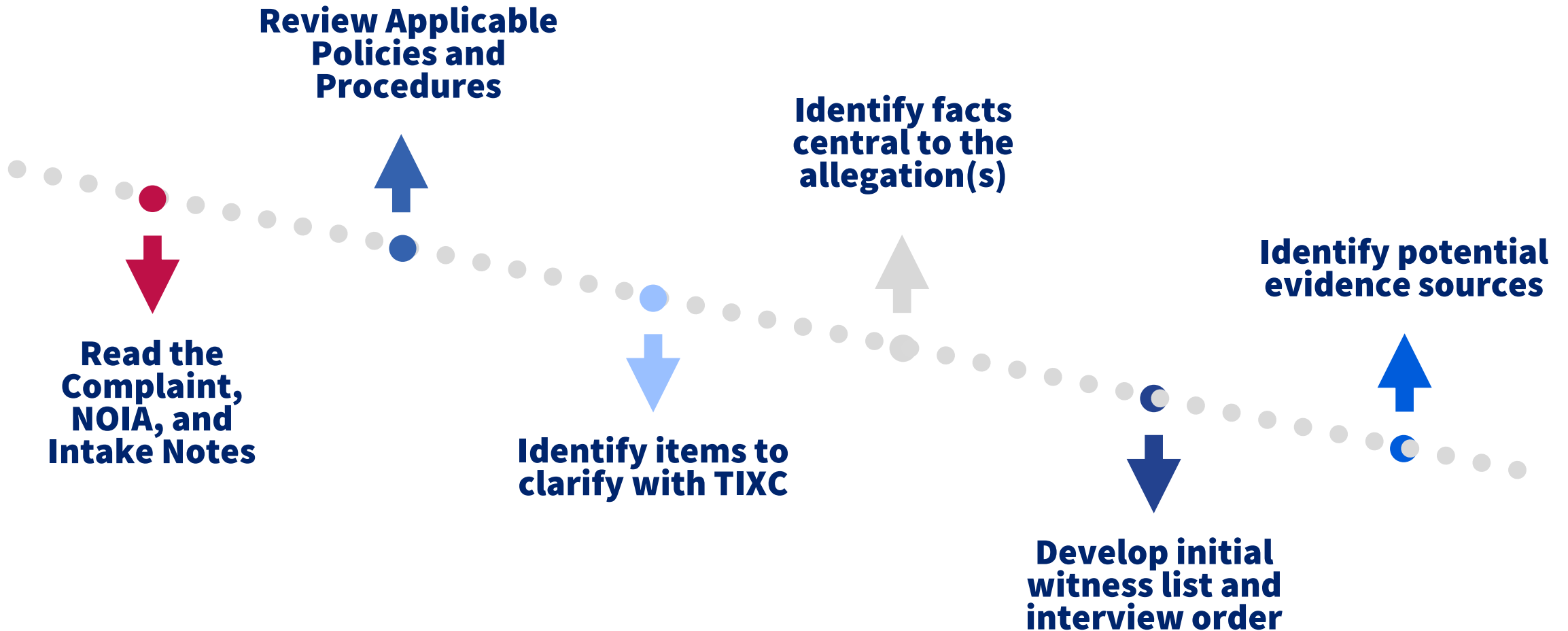
- Severe OR pervasive OR persistent behavior that limits a person's benefits, services, or opportunities



Retaliation

- Prohibited if engaged in protected activity
- Suffered adverse academic or employment action

Investigation Strategy Breakdown



Investigation Strategy

- Investigation begins with a strategy meeting
 - Investigator(s) and TIXC (or investigation supervisor)
- Review complaint, NOIA, and intake documentation
- TIXC reviews scope with Investigator
 - Identify potential biases or conflicts of interest
 - Clarify roles and responsibilities
 - Interview scheduling
 - Primary contact for Advisors
 - Discuss information sharing



Strategy Considerations

Sexual Harassment

- Common understanding vs. Title IX definition
- First Amendment
- Consent Construct
- Credibility
- Limited eyewitnesses
- Bandwagon effect
- Evidentiary limitations

Sex Discrimination

- Pattern and practice
- Climate and culture
- Respondent vs. no Respondent
- Similarly situated comparator
- Non-discriminatory justification
- Statistical and numerical data

Retaliation

- Common understanding vs. Title IX definition
- Back-and-forth interview process
- Protected activity
- Adverse action
- Non-retaliatory purpose
- Evidence of pretext

Evidence Collection

- Active process to gather evidence
- Identify potential sources of information
- Seek to verify/authenticate evidence obtained
- Document efforts to gather, even when not successful

What are the most common types of evidence in your investigations?



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



Types of Evidence

Documentary Evidence

Supportive writings or documents

Electronic Evidence

Photos, text messages, and videos

Real Evidence

Physical objects

Direct or Testimonial Evidence

Personal observation or experience

Circumstantial Evidence

Factual inferences

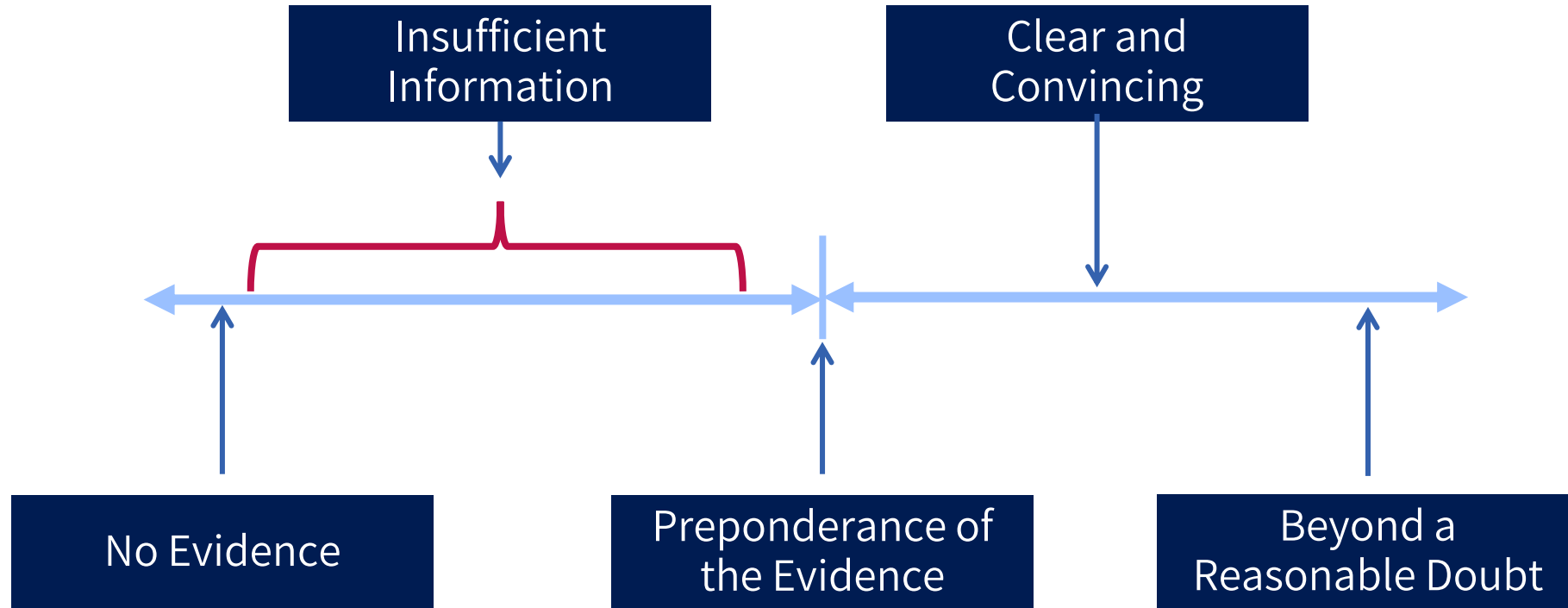
Hearsay Evidence

Statement from outside the interview presented as truthful

Character Evidence

Evidence of a person's character or character traits

Standard of Evidence



- **Preponderance of the Evidence** is the most common industry standard
- Standard of Evidence must be consistent for **all** formal complaints of sexual harassment

Questions

Working Meeting

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