

TITLE IX BASICS FOR INVESTIGATORS

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April 2022

Some slides in this presentation are provided courtesy of Danielle Charters, Boise State Title IX Coordinator

WHO'S IN THE ROOM?

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[POLLEV.COM/ANNIEHIGHTOWER974](https://pollev.com/ANNIEHIGHTOWER974)
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What is your role at your school/district (teacher, counselor, superintendent, etc.)

What is your role on your school's/district's Title IX Team?

Title IX Coordinator

Investigator

Decision maker (original or
appeals)

Informal resolution facilitator

Something else (law enforcement,
advocate, support person)

What's a Title IX Team?

WHAT IS TITLE IX?



**TITLE IX OF THE
EDUCATION
AMENDMENTS
OF 1972
(20 USC § 1681)**

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.

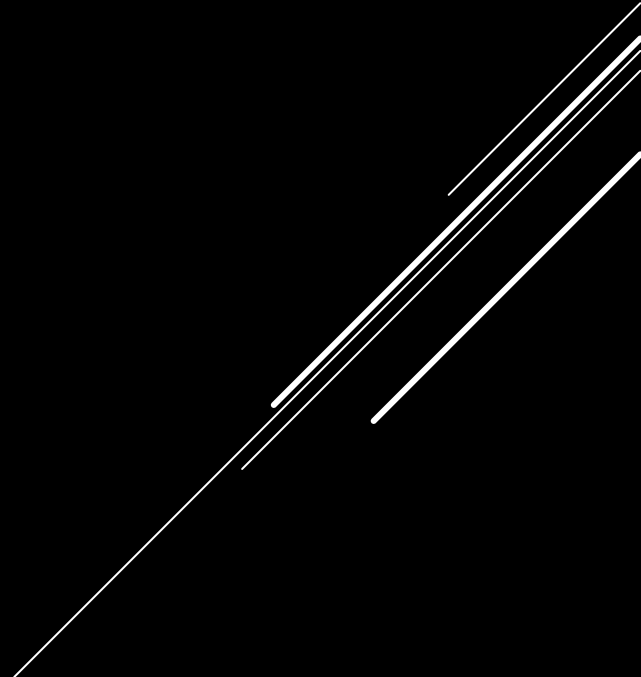
NEW TITLE IX RULES ON SEXUAL HARASSMENT EFFECTIVE 8/14/20

COMPLEX REGULATORY SCHEME!

- ▶ Have the force and effect of law
- ▶ Changes coming with current administration

WHEN DOES TITLE IX APPLY AND WHY DOES IT MATTER TO YOU?

IF TITLE IX REQUIREMENTS ARE MET:

- You must take jurisdiction and process under the required grievance processes
 - If requirements not met, then you can handle under any other applicable school policy
 - Cannot skirt requirements from processing a case under another policy if complaint originates from a matter subject to Title IX
- 

SUBJECT MATTER

- Sexual Harassment (New Regs Definitions)
 - Sex – includes biological sex, gender, and sexual orientation
 - ▶ Touches athletics, facilities, employment, access to programs/classes, counseling and guidance, etc.
 - ▶ Other policy violation that is sex/gender-based that causes a discriminatory effect (e.g., hazing, bullying, arson, vandalism, theft, etc.)
 - Pregnant and parenting discrimination
 - Retaliation
- 

Title IX applies, and jurisdiction is required, when the institution has:

- ▶ Control over the Respondent AND control over the context of the harassment
- ▶ **“Education program or activity”** means... locations, events, or circumstances under substantial control
 - ▶ This includes all operations of a local educational agency


CONTROL REQUIRED




- ▶ At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the school's education program or activity
 - ▶ EXCEPT – assess pattern
- ▶ “Attempting to participate” can include dual enrollment students, alumni, prospective students/employees, medical residents, etc.

PERSONAL JURISDICTION -
COMPLAINANT

PERSONAL JURISDICTION - RESPONDENT

- ▶ Only when the Respondent is affiliated with the institution
 - ▶ If Respondent is not affiliated with the institution, the institution lacks authority to take disciplinary action under Title IX
 - ▶ External vendors
 - ▶ Guest speakers
 - ▶ Prospective/former students
 - ▶ Former employee
 - ▶ Student from another school
- 

GEOGRAPHIC LIMITS

- ▶ Must dismiss if the behavior did not occur against a person in the U.S.
 - ▶ Off-site incidents apply when the property is:
 - ▶ Owned or controlled by the school/district; or
 - ▶ Used for a program/event sponsored by the school/district.
 - ▶ **A school can still assert jurisdiction over incidents happening outside your operations, but not under Title IX**
- 

OTHER LIMITATIONS AND INTERSECTIONS

- ▶ Except for actions, conduct, or speech protected by:
 - ▶ Academic freedom
 - ▶ The First Amendment

MAY INTERSECT WITH:

- ▶ ADA/504/IDEA
 - ▶ Title VII, Title VI of the Civil Rights Act
- 

REGULATORY REQUIREMENTS AND IMPORTANT DEFINITIONS

SOME MAJOR REQUIREMENTS

1. Policy of non-discrimination and notice of policy
2. Title IX Coordinator – identify and inform
3. Title IX sexual harassment grievance procedures reflecting new rules – adopt and publish
4. Website requirements
5. Title IX team – designate and train
6. All K12 employees – mandatory reporters



IMPORTANT DEFINITIONS – 34 CFR 106.30

- ▶ **Actual knowledge** - Notice of sexual harassment or allegations there of to the TIX Coordinator OR to ANY employee of an elementary or secondary school
- ▶ **Formal Complaint** – A document filed by the complainant or signed by the TIXC alleging sexual harassment against a respondent requesting the school investigate
 - ▶ Complainant must be participating in or attempting to participate in an educational program or activity

IMPORTANT DEFINITIONS – 34 CFR 106.30

- ▶ **Sexual Harassment*** – conduct on the basis of sex that is:
 - ▶ Quid pro quo by an employee (conditioning of a benefit, help, etc. on participation in sexual contact); OR
 - ▶ Unwelcome conduct that is so severe, pervasive and objectively offensive that it effectively denies access; OR
 - ▶ Sexual assault – forcible or nonforcible sex offense; OR
 - ▶ Rape, sodomy, sexual assault with an object, fondling, incest, statutory rape

IMPORTANT DEFINITIONS – 34 CFR 106.30

- ▶ **Sexual Harassment** (con't) – conduct on the basis of sex that is:
 - ▶ Dating violence – violence committed within an intimate or romantic relationship; OR
 - ▶ Domestic violence - misdemeanor or felony crime; OR
 - ▶ Stalking – a course of conduct directed at a specific person that would cause a reasonable person fear for their safety or other's safety or to suffer substantial emotional distress.

RESPONSE WITH OR WITHOUT FORMAL COMPLAINT – 34 CFR 106.44

- ▶ When you have actual knowledge of sexual harassment in an education program or activity, you must respond in a way that is not deliberately indifferent
- ▶ You must:
 1. Treat complainants and respondents equitably
 2. Follow a 106.45 compliant grievance process BEFORE implementing disciplinary measures or other actions that are not supportive measures
 3. Provide appropriate supportive measures

TITLE IX TEAMS

WHO IS REQUIRED TO BE ON YOUR TITLE IX TEAM?

Role	Some of the Role's Responsibilities
Title IX Coordinator* (employee)	<ul style="list-style-type: none">• Day-to-day compliance with law• Gatekeeper• Coordination of complaints• Intake/notice and supportive measures• Ensure remedies are effectively implemented
Investigator*	<ul style="list-style-type: none">• Conduct interviews of parties and witnesses• Gather other available information• Draft summary report and provide information to parties to review• Incorporate feedback and finalize investigation report• Work closely with TIXC
Informal Resolution Facilitator* (IF OFFERED)	<ul style="list-style-type: none">• Facilitate or attempt to facilitate an informal resolution• Document process and appropriate notices• Return matter to investigator if IR fails

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WHO IS REQUIRED TO BE ON YOUR TITLE IX TEAM?

Role	Some of the Role's Responsibilities
Decision Maker	<ul style="list-style-type: none">• Review final report• Provide opportunity for parties to conduct 2nd review and conduct written "cross-examination"• Ask questions of investigator as necessary• Make decision based on policy• Consult with appropriate school officials regarding sanctions and remedies (if necessary)• Documentation (outcome letter/justification)
Appeal Decision Maker	<ul style="list-style-type: none">• Review appeal (document review only)• Assess if basis for appeal has been met• Remand investigation if necessary• Justify and document decision/notice

WHO ELSE MIGHT YOU WANT TO BE IN RELATIONSHIP WITH?

Role	Possible Responsibilities
SRO/representative from local law enforcement agency	<ul style="list-style-type: none">• Coordination of school actions with any pending criminal investigation
Representative from local community-based domestic violence/sexual assault agency	<ul style="list-style-type: none">• Advisor for complainant• Help develop appropriate sanctions if there is a finding of responsibility• Coordination of services in community
People able to serve as advisors/support people	<ul style="list-style-type: none">• Act as allowed support person during grievance process – no limit on who this can be• Help parties understand and fully participate in processes
Who else?	

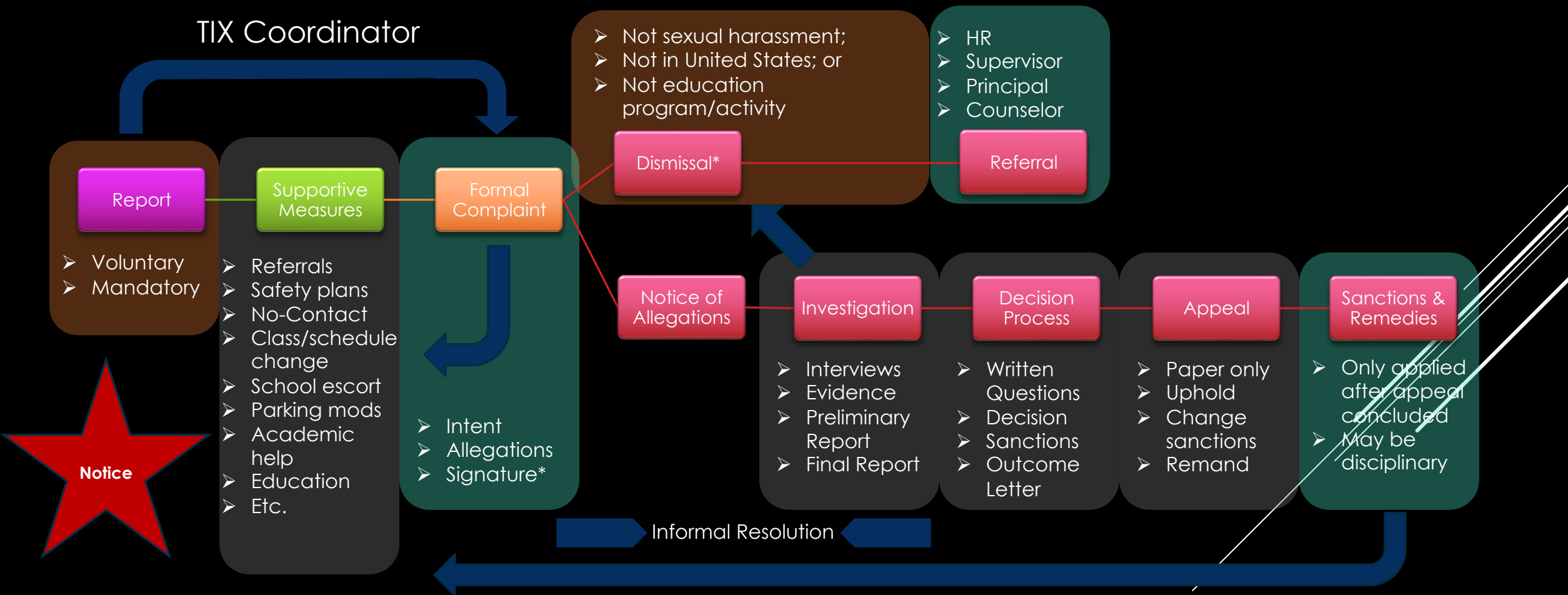
106.45 COMPLIANT GRIEVANCE PROCESSES

TOGETHER, THE TIX TEAM WILL RUN THE PROCESS

Compliant processes must:

- Treat parties equitably*
- Objectively evaluate all relevant evidence and make non-biased credibility determinations*
- Include required TIX team members and ensure they are adequately trained
- Make no presumptions as to responsibility*
- Include reasonably prompt time frames
- Describe possible disciplinary sanctions and remedies
- State the standard of evidence to be used
- Include processes and bases for appeal
- Describe supportive measures available
- Not require, allow or rely upon questions or evidence that is legally protected, unless protection is waived*

TITLE IX FORMAL GRIEVANCE PROCESS – MUST PROVIDE FOR “PROMOTE AND EQUITABLE RESOLUTIONS OF STUDENT AND EMPLOYEE COMPLAINTS”



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Slide courtesy of Danielle Charters– modified for K-12

INVESTIGATIONS

INVESTIGATION

- ▶ Baseline considerations
 - ▶ Parties are not responsible for proving the claim or defending themselves
 - ▶ Must provide equal opportunity to present witnesses and evidence
 - ▶ Cannot restrict either party from discussing the allegations or from gathering evidence

INVESTIGATION

- ▶ Baseline considerations
 - ▶ Provide same opportunities to have people present
 - ▶ Provide WRITTEN notice of date, time, location, involved people, and purpose for all hearings, interviews, and other meetings
 - ▶ Provide equal opportunity to inspect and review evidence DIRECTLY RELATED to allegations in complaint
 - ▶ Must have at least 10 days to review and respond
 - ▶ Must consider responses prior to finalization of report

INVESTIGATION

- ▶ Baseline considerations

- ▶ Create a final investigation report

- ▶ Fairly summarize all RELEVANT evidence

- ▶ Send to the party and advisor at least 10 days before determination is made by decision maker

- ▶ This may be a longer time period if there is no live hearing (don't recommend live hearings for K-12)

INVESTIGATION OVERVIEW

Goal – Neutral process to gather information necessary to determine if your school policy (34 CFR 106.45 compliant) was violated

30,000 ft overview of process:

- Formal Complaint
- Notice of allegations (include info required by regulations)
- Investigation
 - Create investigation plan/strategy – questions, evidence, etc. Revisit as necessary.
- Interview Parties
 - Review policy and rights/responsibilities up front
 - Review ability of support person and limitations on role
 - Identify and address any immediate concerns of the party
 - If recording – let the parties know and provide information on usage/access
- Follow up with TIXC as needed

INVESTIGATION OVERVIEW – CONTINUED

- Identify Witnesses and conduct interviews
 - Witnesses should have information related to the event(s) under investigation
 - If necessary, work with TIXC to determine witnesses
 - Identify if there is a need for an expert witness/content area specialist
- Gather any other available evidence
- Compile all directly related evidence
- Write info summary, allow parties (and support people) to review and respond to summary and ALL directly related evidence – 1st 10-day review
 - Know how your school policy process/practice on sharing this info

INVESTIGATION OVERVIEW – CONTINUED

- Amend investigation report as need
- Finalize investigation report, and compile all RELEVANT information; provide to parties and the decision maker
- Respond to questions from initial decision maker
- Respond to any questions from appeal decision maker
- Restart investigation based on NEW evidence provided during appeal or based on other reason for remand

INVESTIGATIONS – GETTING THE MOST OUT OF YOUR MEETINGS AND AVOIDING ALLEGATIONS OF BIAS

ENGAGING IN A STRESSFUL PROCESS

Engagement can:

- Be willing and intentional
- Or forced/required

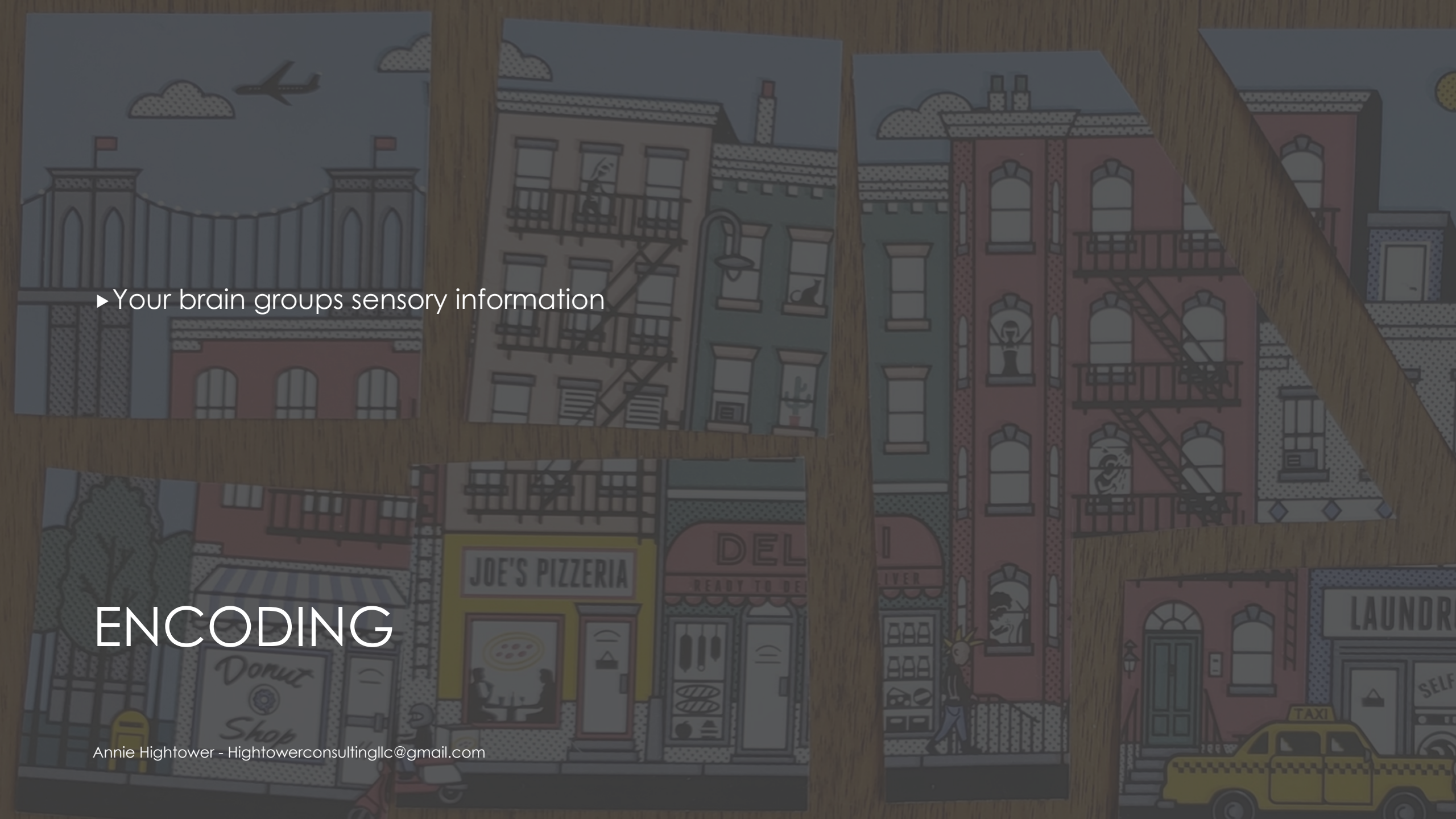
Either way, these processes are scary and stressful.

How do you think fear or stress will impact a party's ability to thoughtfully and fully engage in an investigation process?



LIFE HAPPENS

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► Your brain groups sensory information

ENCODING

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And then it makes and stores memories



CONSOLIDATION

This is what many investigators expect to get during investigation interviews

BUT FEAR AND STRESS MAY IMPACT ENCODING AND CONSOLIDATION



All the pieces are there!



This is what you may get during one or more interviews

As an investigator, it is your role to gather this info and put it into place!



Why?

Alcohol or drugs

CAVEATS



Are committed to preventing unnecessary harm

Recognize that behaviors and responses during investigations may be related to stress or trauma

Take into consideration power dynamics and prior lived experiences in investigation mapping and questioning

PERSON-CENTERED INVESTIGATIONS

PEOPLE-CENTERED INTERVIEWS

- ▶ Reduce the impact of trauma, avoid triggers, and create an environment in which parties feel comfortable talking to you
- ▶ Are thoughtful in how they approach questioning and create the relationship and environment necessary to support full disclosure and cooperation of interviewees

When thinking about how to conduct an interview in what are ways you think you can make your interview more people-centered?



Things to consider:

1) Environment

2) Building rapport

3) Pace of interview

4) Avoiding appearance of bias in questioning

TABLETOP DISCUSSIONS: PEOPLE-CENTERED INTERVIEWS

EXERCISE

PEOPLE-CENTERED INTERVIEWS

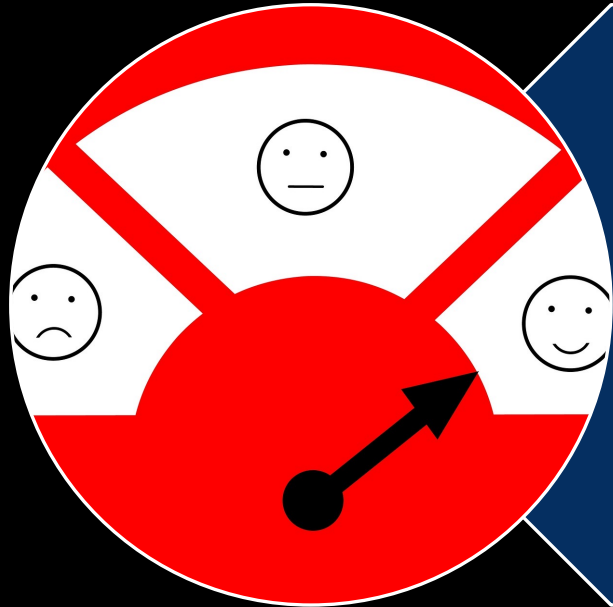


Environment

- How can you structure an interview environment to be comfortable for the interviewee?
- How will being thoughtful about your interview environment help your investigation?

EXERCISE

PEOPLE-CENTERED INTERVIEWS



Building Rapport

- What are some ideas for building rapport at the start of and during an interview?
- What are ways you can show engagement and understanding during an interview?
- How does building rapport benefit you?

EXERCISE

PEOPLE-CENTERED INTERVIEWS

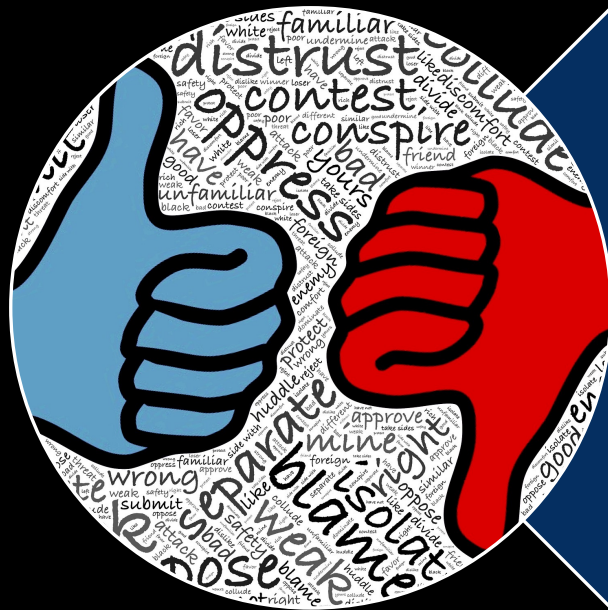


Pace of Interview

- How do you manage the pace of your interviews?
- How do you balance the need for an interviewee to provide information they think is important with what you need to gather to address your policy elements?

EXERCISE

PEOPLE-CENTERED INTERVIEWS



Avoiding Bias

- What types of things do you think could happen or said in an interview that may be perceived as biased?
- What steps do you think you could take to remove that perception?

Asks relevant questions in a way most likely to illicit a full response

- Ask one question at a time without prompts
- Avoid asking “Why” or “What”

For sensitive questions or questions that may be perceived as biased – consider whether it is relevant and if so, provide context

- Clothes, alcohol, drugs
- What else might be sensitive?

QUESTIONING – TIPS AND TRICKS

QUESTIONING – TIPS AND TRICKS

- ▶ Understand your policy – what do you need to know?
 - ▶ Map what you need to know ahead of time and create a list of questions based on that – note additional questions during interview
- ▶ Understand regulatory requirements
 - ▶ Can't ask for privileged information
 - ▶ QUESTIONS ABOUT COMPLAINANT'S PRIOR SEXUAL HISTORY GENERALLY NOT RELEVANT
 - ▶ Only relevant if:
 - ▶ Used to prove someone other than respondent violated policy, or
 - ▶ Specific prior incidents between parties to demonstrate consent was present
 - ▶ Understand/recognize the needs of the parties
 - ▶ So you missed something? Know it's okay to ask follow up questions later!

BRINGING IT ALL TOGETHER

—

WRITING AN INVESTIGATION
REPORT

PROCESS AND PURPOSE

Initial draft report + All directly related evidence	Final report + All relevant evidence
To parties for initial 10-day review and feedback	To parties and decision maker Must be provided at least 10 days before decision is made

- ▶ Your report should objectively summarize steps taken and information gathered during the investigation
- ▶ Your report should have sufficient detail for a decision maker to identify the timing of required procedural steps and understand all relevant evidence gathered by an investigator



PAINTING A PICTURE (OBJECTIVELY)

- Use their language when possible
 - Provide explanation for the olds if appropriate
- Commentary – identify clearly
- Pointing out inconsistencies

WHAT SHOULD MY REPORT INCLUDE?

1. Procedural history - Work with TIXC to compile
 - ▶ How does school know about complaint?
 - ▶ When was formal complaint filed?
 - ▶ Timing of required notices, interviews and significant correspondence
2. List of attachments including all relevant evidence
3. List of involved parties and witnesses with other important information
4. Information from Complainant (detailed complaint information)
5. Information from Respondent (detailed response)
6. Witness information
7. Credibility Assessment – IF PART OF YOUR PROCESS and there are significant conflicting versions of events

LINGERING QUESTIONS?

A series of four parallel, diagonal cyan lines of varying lengths, extending from the bottom right towards the top right of the slide.