



Association of  
Title IX Administrators

# Time with IX: Ten Investigation Pitfalls and Best Practices to Avoid Them

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March 10, 2023

# Today's Presenters

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# Zoom Etiquette

**This program is being recorded.**

1. Please keep your microphone **muted** throughout the meeting. You may choose to have your video on or off.
2. To ask a question, please use the **Raise Hand** feature.
  - Click on “participants” at the bottom of your screen, then click “raise hand.” Keep your hand raised and we will call upon you to speak.
  - If you click raise hand by accident or if your question is answered, you can click the button again to lower your hand.
  - If you would like to ask a question anonymously, you can send that to the moderator in a private chat.







# Upcoming Trainings and Events

## March

13-14 | Civil Rights Investigator Three: Sexual Violence/Sexual Harassment Case Processing and Resolution

15 | NPRiMer: Preparing for the 2023 Title IX Regulations: Higher Education

16 | Rationale Writing Workshop for Decision-Makers and Investigators

21-22 | Civil Rights Investigator Four: Advanced Interviewing Skills and Strategies

23 | Title IX Compliance and Athletics

23 | Consent Workshop

## April

3-4 | Title IX Coordinator Five: Bias and Cultural Competencies

3-4 | Civil Rights Investigator One: Foundations

14 | K-12 Institute: Professional Self-Care Practices

18-19 | DEI Practitioner One: Foundations

20 | Violence Risk Assessment with NABITA Endorsement

21 | Time with IX: I Will Remember You – Keeping Clery in Mind When Your Focus is on IX

25-26 | Title IX Coordinator One: Foundations

**View the full schedule and register at  
[www.atixa.org/training](http://www.atixa.org/training).**

# TODAY'S TOPIC

## Ten Investigation Pitfalls and Best Practices to Avoid Them

This Time with IX will focus on the top ten errors that investigators make while conducting civil rights investigations and best practice tips to avoid these common pitfalls. This session will also review best practices for creating an unbiased investigation report that accurately summarizes the evidence gathered during the investigation. Both K-12 and higher education practitioners will benefit from this discussion.



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. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law, 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, and 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.

# #10: FAILURE TO FOLLOW POLICY

## Don't

- Fail to read the implicated policy(ies).
- Fail to understand the procedure's requirements.
- Materially deviate from the institution's written procedures.
- Use the incorrect policy/procedure for the investigation.

## Do

- Read the policy and procedures prior to commencing an investigation.
- Understand what is required under the procedures.
- Use the policy in place at the time of the incident and the procedures in place at the time the complaint was filed.



# #9: DOCUMENTATION

## Don't

- Fail to maintain adequate records.
- Fail to document investigative activities such as phone calls.
- Fail to provide the comprehensive case file to the TIXC.
- Fail to create an investigation timeline.
- Fail to document the source of the evidence obtained.

## Do

- Maintain a communication log of all contacts.
- Document all investigation activities.
- Understand the requirements of the institution's record retention policy.
- Get interviewee verification of transcripts/notes.
- Maintain complete and detailed notes.
- Think about who may view your file (*e.g.*, judges, public).

# #8: FAILURE TO USE MODELS OF PROOF

## Don't

- Fail to identify implicated policy provisions.
- Misunderstand the scope of the investigation.
- Misapply policy definitions (*i.e.*, apply a harassment definition where there was no allegation that the conduct was based on a protected characteristic).

## Do

- Understand the scope of the investigation.
- Break the prohibited conduct definition into specific key elements.
- Gather relevant evidence that addresses each key policy definition element.
- Ensure that the scope and prohibited conduct definitions are accurate as the investigation unfolds.

# #7: TRANSPARENT INVESTIGATIONS

## Don't

- Be secretive about the investigation with the parties and their advisors.
- Withhold relevant/directly related evidence from the parties.
- Fail to provide regular investigation updates to the parties/advisors.
- Make promises related to things that investigation cannot do.

## Do

- Do what you say you will do.
- Provide the parties/advisors the ability to review the draft report and provide written feedback that is considered.
- Explain the grievance process and allow interviewees to ask questions about the process.
- Respond to emails in a timely manner.
- Outline the parties' rights in written and verbal communication.

# #6: MISUNDERSTAND RELEVANT EVIDENCE

## Don't

- Include evidence that discusses the Complainant's sexual predisposition or sexual history.
- Include evidence that does not answer the question(s) the investigation seeks to answer.
- Forget to redact irrelevant evidence from the evidence files shared with the parties.

## Do

- Review each piece of evidence and consider whether it proves or disproves an issue in the complaint.
- Include evidence when it is regarding a party or witness's credibility.
- Include a separate and organized directly related evidence file.

# #5: QUESTIONING

## Don't

- Interrogate the interviewee.
- Ask accusatory or argumentative questions.
- Ask questions out of curiosity.
- Make questions long/confusing.
- Ask compound, multiple choice, or leading questions.
- Fail to prepare for what questions need to be asked in each interview.

## Do

- Have a purpose for asking each question.
- Prepare an outline of questions in advance of interview.
- Apologize when a bad question is asked and rephrase.
- Ask open ended questions.
- Listen carefully and with empathy.
- Learn the facts, establish a timeline, and understand each party's perception of what happened.

# #4: THOROUGH AND RELIABLE INVESTIGATIONS

## Don't

- Fail to gather all relevant evidence available.
- Fail to interview witnesses who may have relevant evidence.
- Fail to test the veracity of evidence.
- Only gather inculpatory evidence.
- Fail to interview outcry witnesses.

## Do

- Document the inability to gather evidence and the reason why.
- Document witnesses who did not participate in the investigation.
- Verify documentary evidence with others (such as screenshots of messages).
- Gather relevant evidence from all sources, internal and external to the institution.



# #3: INADEQUATE NOIAS

## Don't

- Fail to read the NOIA and understand what is being alleged and investigated.
- Observe gaps in the NOIA and fail to address them with the TIXC.
- Receive additional allegations from the Complainant and fail to update the NOIA.
- Mischarge, unclear charges, or broad charges (i.e., sexual assault only).

## Do

- Read the NOIA and understand the allegations.
- Assess the Complainant's interview statement to ensure the appropriate charges are included in the NOIA.
- Ensure the TIXC includes overlapping charges like FHA sexual harassment and dating violence for a sexual assault allegations between individuals who are dating.
- Ensure the investigation report reflects the information included in the NOIA.

# #2: BIAS IN INVESTIGATIONS

## Don't

- Only consider certain types of evidence or evidence that supports a certain belief.
- Refuse to explore contradictory information presented by an interviewee.
- Avoid jumping to conclusions or forming a belief as to whether you believe a policy was violated.
- Have a stake in the outcome.

## Do

- Remain a neutral fact-finder.
- Understand your biases and how to ensure the don't seep into investigation.
- “Flip it to test it.”
- Have your work reviewed by TIXC or General Counsel.
- Be mindful of the language used to communicate and write reports.
- Engage in professional development around recognizing and preventing bias.

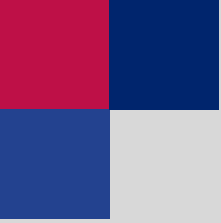
# #1: INADEQUATE INVESTIGATION REPORT

## Don't

- Include irrelevant evidence.
- Use biased language.
- Create a summary of the evidence.
- Switch tenses.
- Write in passive voice.
- Fail to assess the credibility of the parties, witnesses, and evidence.

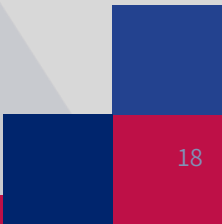
## Do

- Create a comprehensive report that includes all relevant evidence.
- Consider your audience (parties, legal counsel, court, etc.).
- Use formal language and write from the third-person objective point of view.
- Have the report reviewed prior to submitting to parties.



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# Questions?





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