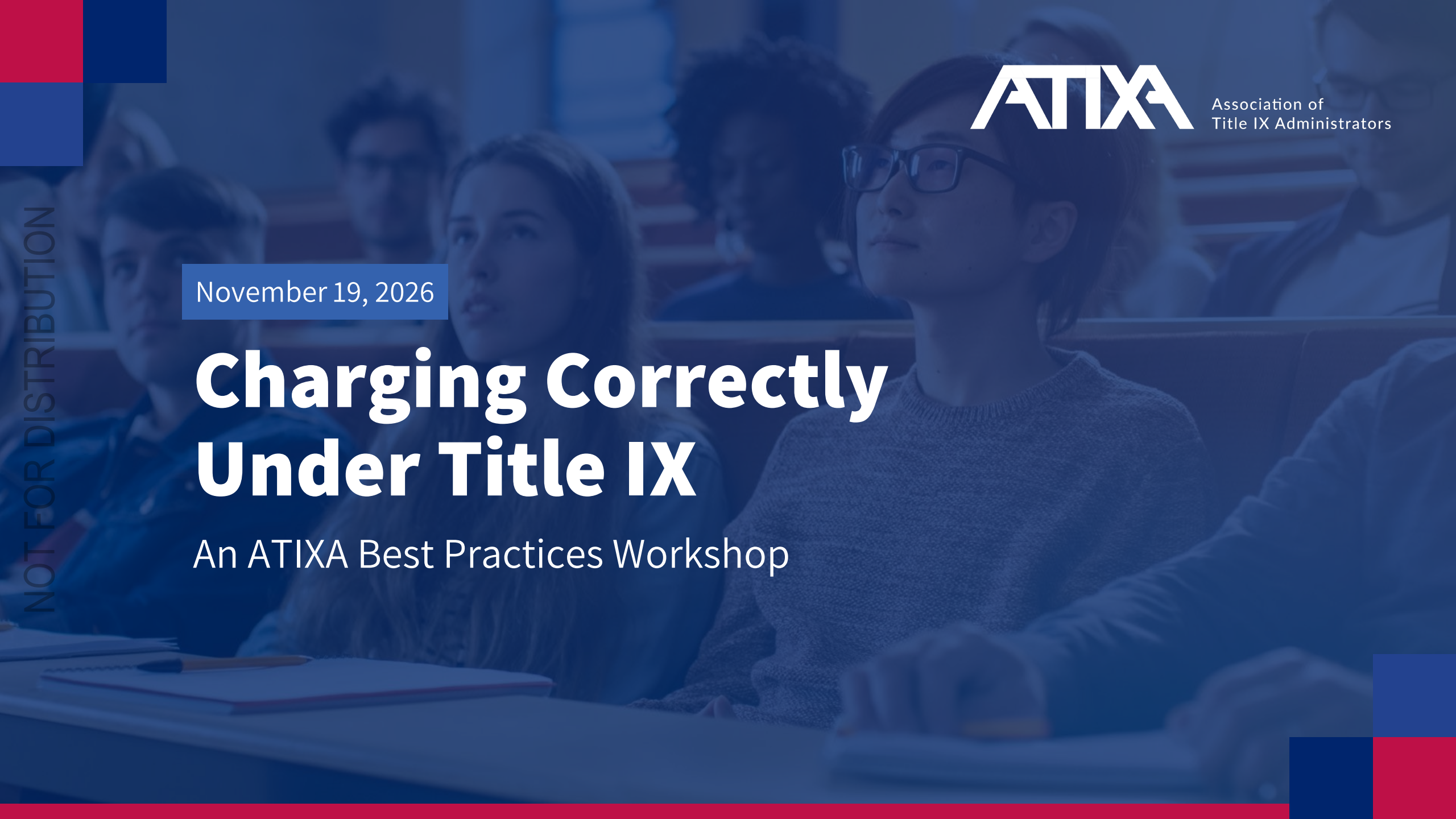

Association of
Title IX Administrators

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November 19, 2026

Charging Correctly Under Title IX

An ATIXA Best Practices Workshop

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Content Advisory

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.

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Introductions

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Participants should apply consistent charging frameworks to allegations involving sexual harassment across multiple legal frameworks



Participants will leave being able to make charging decisions that provide sufficient notice while avoiding unnecessary duplication, undercharging, or overcharging



This workshop is designed to help provide clarity to complex and confusing processes

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Charging Correctly

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The Problem with Charging

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- Title IX Coordinators (TIXCs) are wrestling with complicated fact patterns and a growing number of complaints
  - The 2020 Title IX Regulations created a framework for charging, but it is inconsistent, ill-defined, and left many questions unanswered
- Incomplete charging matrices lead to recurring problems with:
  - Overcharging
  - Undercharging
  - Duplicative charges
  - Incomplete charges
  - Incorrect policies being charged
  - Non-compliance with related legislation

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Accurate Charging Matters

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- Accurate and cohesive charging leads to a more efficient and fair process
  - Understanding the allegations and implicated policies can eliminate the need for follow-up interviews
  - Collateral misconduct can be investigated alongside Title IX and sexual misconduct
  - Hearings can go on as planned without investigations being re-opened because of an updated notice of investigation and allegation (NOIA)
- Although the NOIA can be updated, fewer updates reduce confusion throughout the grievance process

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Charging Considerations

- After receiving or signing a formal complaint, TIXCs should:
  - Charge under the policy that was in effect at the time of the alleged incident(s)
    - Consider the timing of the **alleged behavior**, not the timing of the report
    - Allegations may describe behavior spanning different policies or policy versions
  - Charge with **all applicable** Title IX violations based on the alleged conduct
    - No "small i" investigations permitted under Title IX, but initial assessment permitted and recommended
    - Consider any non-Title IX charges (i.e., collateral misconduct)
    - Adjust NOIA as circumstances change
- Complainant does not determine:
  - The charges or which policy applies
  - The process (though parties may request Informal Resolution (IR), if available)

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Charging: Title IX

- Disparate Treatment*
- Retaliation*
- Quid Pro Quo
- "Hostile Environment“ – Severe and pervasive and objectively offensive (SPOO)
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

*2020 Title IX Regulations may not apply



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Charging Basis

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



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Charging: Pattern and Joint Allegations

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- A pattern can be a corroborative element and/or its own charge
- **Goal:** Avoid Complainants serving as witnesses to a pattern in other resolution processes (not trauma-informed)
  - 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
- Avoid joining if multiple Complainants alleged dissimilar, disconnected offenses by a single Respondent

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Charging Frameworks

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- **Compliance Framework:** Required by the applicable regulations
- **Suggested Framework:** An approach recommended in the regulatory preamble, rather than expressly required by the regulatory text
- **Best Practice Framework:** ATIXA's recommended approach, even when other legally permissible approaches exist
- **Other Framework:** Since the Title IX Regulations do not clearly resolve the charging question your practice may vary based on institutional norms or other considerations

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Third-Party Reports

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- Charging requires one or more identified Complainant and one or more identified Respondent; without those, there can be no Title IX charges
- Third-party reports are permitted, but third-party complaints are not permitted under the 2020 Title IX Regulations
  - Any Title IX sexual harassment complaints must be signed by either the individual impacted by the conduct (or their parents/guardian if a minor) **or** the TIXC
  - Identities of the parties must be shared in the NOIA, if known
- Reports without an identified Respondent could result in a culture/climate assessment, but not a formal Title IX investigation

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Managing Overlap

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Navigating Multiple Legal Frameworks

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- One incident may implicate multiple federal laws or institutional policies
- Each framework has its own scope, definitions, and jurisdictional requirements
- Evaluate each allegation independently, then determine which institutional charges and procedures apply
- Parallel legal obligations do not always require duplicative institutional processes, findings, determinations, or sanctions

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The Relationship Between Charges

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- A stand-alone offense = only one policy or definition is charged for a behavior
- Overlapping = more than one offense definition applies to the same conduct
  - Charge all offense definitions that apply and the finding of one means the other is automatically met
- Overlapping **and** stand alone
  - Title IX hostile environment (SPOO-SH) and Fair Housing Act sexual harassment (FHA-SH)
    - Where Title IX is found, FHA-SH will also be met = overlapping
    - FHA-SH can stand alone if SPOO-SH is not met, and should then be independently evaluated (because it is a broader/lesser standard)
  - Same would also be true of a Title IX/Title VII sexual harassment charge

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Title IX and Title VII Intersections

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- Title IX and Title VII overlap (as to sex)
  - Occurs when there is an employee Complainant who alleges sexual harassment or sex discrimination during employment (Respondent may be a student, employee, vendor, etc.)
  - Sexual harassment allegations involving an employment context will likely lead to Title IX and Title VII charges (not either/or, it's both)
- Title VII sexual harassment/hostile environment:
  - Severe **or** persistent **and** objectively offensive
- Title VI and Title VII can overlap (race, color, national origin)

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FHA Sexual Harassment

- The Fair Housing Act (FHA) applies to allegations by any Complainant about sex-based conduct occurring in residential facilities (likely even if Complainant not a residential student/employee)
  - Behaviors occurred in the residential facility
  - Substantially similar to Title VII definition
- All “Big Five” offenses covered by the FHA
  - Big Five = Sexual harassment, sexual assault, dating violence, domestic violence, stalking
- Charge under FHA when behavior occurs within a residential facility involving a residential complainant



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Types of Overlap

- **Automatic**
  - Any finding of a sub-offense (e.g., sexual assault, domestic violence, dating violence, stalking) means that sexual harassment is also proven
  - Example: If you find that something is dating/domestic violence it is automatically sexual harassment per the Title IX Regulations
- **Overlapping offenses cover the same conduct**
  - Sexual assault and dating/domestic violence, if a relationship is present

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Types of Overlap (Cont.)

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- **Overlapping but disjunctive**
  - If something meets fondling, it need not be analyzed as severe, pervasive, and objectively offensive (SPOO), though the SPOO analysis could apply to an overall pattern of conduct of which the fondling is just one part
    - Fondling could be proven as its own offense (thus sexual harassment is also proven)
    - Fondling could also be analyzed in combination with other non-physical harassing conduct as part of a sexual harassment totality analysis
      - This would result in another sexual harassment finding for a broader range of conduct that is both encompassing of fondling and other behaviors as well

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Overlapping Charging Decisions

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- The Title IX Regulations contemplate distinct treatment of hostile environment harassment and the specific offense charges (i.e., "Big Four" offenses), but multiple policies can still be implicated (sexual assault, dating violence, domestic violence, and stalking, etc.) by the same conduct
  - **Example:** For sexual assault among intimate partners, charge sexual assault and dating violence, but typically **not** a separate sexual harassment charge on the same facts
    - Sexual harassment could be charged alongside the sexual assault and dating violence charges, if arising from separate facts
    - Dating violence does not need to be SPOO-SH to violate the regs
    - May also implicate "Harm to Others," FHA-SH, state law, or other policies that live outside sexual misconduct/Title IX policies
- Policy should have a **collateral misconduct provision** as a best practice, that allows non-Title IX offenses to be charged and resolved alongside Title IX offenses

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Overlapping Charging Decisions (Cont.)

- Charging is often as much art as science:
  - Does sexual assault always include dating violence?
  - Should you always charge fondling alongside rape?
  - Are there times when you **should** add a SPOO-SH charge for behavior that implicates a specific offense?
    - Fondling?
    - Dating violence when the relationship is in question?
- Where does that leave SPOO-SH?
  - Verbal?
  - Conduct?
  - Pattern?

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Quirks of Charging

- **Quid pro quo:**
  - Unwelcomeness is automatic when the complainant in a minor
    - For all others, this is a question for the decision-maker
- **Sexual assault:**
  - National Incident-Based Reporting System (NIBRS) definition of sexual assault versus the four sub-offenses
    - The sub-offensives are the policy charges
  - Incest only applies to penetrative sex, not to fondling
  - Statutory rape only applies to penetrative sex, not to fondling
    - Charge statutory rape only when the conduct is non-consensual by virtue of nothing other than age
      - If a minor is raped, the charge should be rape, not statutory rape
    - Charge fondling for the non-penetrative conduct, if applicable

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Ethics of Charging

- How detailed does a formal complaint have to be?
  - Does every element need to be specifically mentioned in the complaint?
    - Can the TIXC “screen cases”?
    - Can a single incident be pervasive?
- In K-12, if parents/guardians and their student disagree about a charge, what then?
- Charging with all available offenses versus starting with the most obvious applicable charge
  - Add more as we go?
  - All at the end?
- Can someone avoid Process A by omitting certain facts?

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State Law Considerations

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- Several states have state-based campus sexual misconduct laws that may provide for different offenses in addition to Title IX definitions of sexual harassment
- K-12 districts may have state bullying laws (and other similar laws) to consider
- Some state laws may also include different jurisdictional elements
  - Generally, states can provide additional protections but cannot take them away
- Consult with local legal counsel
- ATIXA recommendation: Add sexual exploitation (as if it is another Title IX offense) to policy, mirroring many state laws

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Charging Traps

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Confusing the Elements

- **Unwanted ≠ Unwelcome ≠ Nonconsensual**
  - Note: When charging sexual assault, analyze consent under the applicable definition, not whether the conduct was welcome
  - If there is a companion sexual harassment charge, consent controls, not welcomeness (meaning if consent is found, the conduct is likely welcome as a result)
- **Ignoring crucial elements**
  - "Pantsing" is not automatically criminal sexual contact
  - The expanded NIBRS definition may encompass it but look for actual touching and the required purpose
- **Do not import elements from one offense into another**
  - Charge based on the definition you're applying
    - Example: Rape would not need an analysis of intent/purpose

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Undercharging and Overcharging

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- **Do not undercharge to appear impartial**
  - Include each independently supportable violation
    - If there are 17 charges, there are 17 charges (if you don't like the overlap, rewrite your policy offense definitions for greater precision/distinction)
  - If you opt to be selective in charging, document the rationale
- **Do not stack charges** simply because you can (especially if that's not what you normally do)
  - Consider overlap, definitional exclusions, and whether each charge is justified
- **More findings should not automatically mean more punishment**
  - Sanctions should account for the underlying conduct, not merely the number of policy provisions violated
  - Where conduct overlaps charges, cumulative sanctioning is not called for

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Determining What to Charge

- To determine whether a charge should be included, consider the following:
  - Would the alleged conduct, if proven, satisfy every required element?
  - Is the charge supported by the applicable policy and jurisdiction?
  - Does it address a distinct violation, or substantially duplicate another charge?
  - Is there an applicable definitional exclusion?
  - Are there clearly identifiable factual allegations supporting each charge?
  - Are we relying on alleged facts or someone's characterization of the conduct?

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Why Didn’t I Think of That?

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- Relationship violence may implicate other misconduct and vice versa
  - Consider additional charges, including sexual assault or independently actionable harassment, where supported by the facts
- Stalking doesn't require following or surveillance
  - A course of conduct can encompass other repeated acts, including potentially repeated violence (the course of conduct in stalking, between those who are dating, could implicate both stalking and dating violence)
- Retaliation and/or disparate treatment may also constitute sexual harassment, if they would be SPOO if proven
  - Evaluate both when the alleged conduct and circumstances supporting each charge
  - Default to Process A not B if the conduct would be SPOO if proven

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First Amendment, Retaliation, and More

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- Does the First Amendment play into charging?
  - It should; charging for protected speech could be seen by the courts as having a chilling effect, which is why the dismissal for non-SPOO conduct is mandated, not discretionary
  - If the protection of the speech is questionable, investigate to determine if it deserves First Amendment protections or not (the small-i is still alive)
- Should a counter-complaint be allowed when it may not be raised in good faith?
  - We must investigate to determine if it is being made in good faith
  - If we know the counter-complaint is **only** being lodged for retaliatory reasons, then we may have an obligation to shield the Complainant from that
    - Discuss with your general counsel whether Cat's Paw Theory could apply

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Charges Can Evolve

- It is good case management to review the NOIA throughout the investigation
  - Including when reviewing the draft report
- Encourage Investigators/DMs to communicate with the TIXC if the NOIAs should be updated
- Dismissals can and should occur up to the point of hearing/decision, if called for

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Case Studies

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Case Study 1

- A college student describes weeks of unwanted sexual advances, followed by an alleged sexual assault at a party at a campus owned fraternity house.
- The respondent continues making sexual comments afterward.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 2

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- A five-year-old student touches another student's genitals during recess. The Complainant told the teacher, who called the parents.
- The parents have filed a complaint.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 3

- A seventh-grade student alleges another student repeatedly pulls down classmates' shorts to embarrass them.
- In one incident, the Respondent's hand makes contact with this Complainant's buttocks.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 4

- A university student alleges that a Respondent engaged in nonconsensual sexual touching, followed by nonconsensual penetration, during a single encounter in the student's residence hall.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 5

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- A university student reports that their dating partner repeatedly strangled them during sexual activity occurring at their partner's off-campus apartment whenever they would engage in sexual activities, over the course of many weeks.
- The complainant alleges they never agreed to strangulation, although the sexual encounters were otherwise consensual.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 6

- Your office receives a report that a student is alleging their significant other engaged in non-consensual sexual acts.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 7

- A residential student alleges repeated sexually derogatory messages are being left on the whiteboard of their residence hall door, coupled with sexually explicit comments in shared residential spaces.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 8

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- Two students live in a privately owned and managed apartment building that is located on-campus.
- One alleges repeated sexual harassment by the other in shared hallways and common areas.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 9

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- A resident assistant alleges that their residence hall director repeatedly makes sexual advances and threatens to terminate their RA appointment if they refuse.
- One day, after seeing the RA walk out of the Title IX Office, the hall director writes up the RA and recommends termination.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 10

- An employee alleges sexual assault by a coworker at a privately hosted gathering away from the District.
- Both employees subsequently must work together daily, and the Complainant reports an increasingly hostile workplace.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 11

- An ROTC instructor repeatedly calls on male students, dismisses female students' contributions, and publicly tells women they are asking to be assaulted if they wear skirts to school.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 12

- A student reports that they were sexually assaulted but does not file a formal complaint.
- The accused student repeatedly tells classmates that the complainant is lying, calls them sexually derogatory names, and encourages others to ostracize them.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 13

- An employee alleges that their supervisor denied them a promotion because of their sex, repeatedly subjected them to demeaning sex-based comments, and excluded them from meetings.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 14

- You receive a formal complaint with the following:
  "My professor is sexually harassing me. He constantly singles me out in class, gives me harder assignments than everyone else, and grades me more harshly. I've talked to other students, and it's clear that he is harassing all the women in this way."

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Case Study 15

- A five-year-old student alleges fondling, but when asked during intake where they were touched, cannot recall specifically if/where they were touched by alleged Respondent.

What are the allegations?

What policies under Title IX are implicated?

What other policies?

What should be charged?

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Questions?

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  - Exchange ideas through **K-12 CommunityServ** and streamline your work: **TIXKit for K-12**
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