



Association of
Title IX Administrators

Revising Policies

An ATIXA Best Practices Seminar

WELCOME!

- Please log in to your ATIXA Event Lobby to access the training slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by scanning the QR code or by visiting www.atixa.org/atixa-event-lobby.
- You will be asked to enter your registration email to access the Event Lobby.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby.
- If you have not registered for this training, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.





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.

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.

Introduction



The primary focus of this seminar is to explore the process for policy development and to develop a strategy for doing so.



Title IX Coordinators and others who guide the policy development process must understand compliance requirements, identify and navigate policy overlaps, and manage stakeholders.



Our goal is to equip participants with the knowledge and skills they need to execute an effective and compliant policy revision process.

Policy Revision Landscape and Stakeholders

Terminology

Policy

- The rules: Sets conduct expectations
- Enhances institutional mission and expresses values
- Ensures compliance
- Reduces risk

Procedures

- Describe the process used to resolve alleged policy violations
- Establish roles and responsibilities
- Ensure consistency
- Protect rights

Protocols

- Specify with more detail the “what,” “when,” and “how” to execute procedures
- Fill in gaps where procedures are silent or ambiguous
- Reflect office/departmental practice

Title IX Coordinator (TIXC) Role

- Ensures policies and procedures related to sexual harassment and sex discrimination are:
 - Accurate
 - Compliant
 - Comprehensive
 - Published
 - Disseminated
- Should have decision-making authority in policy and procedure revision process



Policy Environment

- Understand the **policy environment**
 - K-12 vs. higher education
 - System vs. independent
 - Public vs. private
 - Flat structure vs. hierarchical structure
 - Politicized vs. non-politicized
 - Public comment vs. closed process
 - Stakeholders vs. collaborators
 - Boards, unions, faculty senate (higher ed)
 - Federal, state, and local law
- Does the district or institution have a “policy on policies?”



Assessing Readiness for Change

Revising policy can be a matter of timing

- **Is this the right time for major changes or incremental ones?**
 - How much change can the community absorb?
- **Assessing impact**
 - If rights are significantly different based on revisions, how will the community react to that?
- **Looking both backward and forward**
 - Are existing policy and procedures for the 2020 Regulations compliant?
- **What's possible?**
 - Are some ideas non-starters? Why? Are there any strategies available to navigate resistance to worthy ideas?

Planning the Process

- Understand:
 - Stakeholders and collaborators
 - Layers of review and approval
 - Timelines
 - Federal or state requirements
 - Resources
 - The reasons necessitating revision
- Determine whether a procedure or protocol change would suffice instead of a policy change
- Anticipate challenges/points of resistance



Timeliness and Collaboration

- Institutions must be able to promptly create or amend policies and procedures
 - May conflict with creating “buy-in” and using committees or task forces
- Ideally, policy and procedure amendments can be approved without too many levels of review, but review process can create buy-in
 - Limit the authority of those individuals without subject matter or legal expertise to dictate policies and procedures
 - Balance stakeholder involvement



Stakeholders

Individuals Often Involved in Revisions

Higher Education

Board of Directors
President/VPs/Cabinet
Law Enforcement
Legal Counsel
Compliance
Shared Governance Bodies
Students
Unions

K-12

School Board/Policy Subcommittee
Superintendents/Asst. Superintendents
School-based Administrators
School Resource Officers
Legal Counsel; Compliance
Students
Parents/Guardians
Unions
State-wide Policy Resources

Stakeholders & Collaborators

Consider key stakeholders and collaborators in the revision process

- **“Must have”** individuals, offices, or groups
 - Legal counsel, human resources, Title IX Team, student conduct, board subcommittee
- **“Nice to have”** individuals, offices, or groups, based on:
 - Subject matter expertise
 - District or institutional politics
 - Public relations concerns
- **Impacted** stakeholders, offices, or groups
 - Principals, student government, athletics, faculty/academic affairs

Bringing the Policy Into Compliance

District/Institutional policy revision can be complex and cumbersome

- Orient key stakeholders to Title IX compliance mandates, including areas where choice exists
 - Board of Directors/policy committee
 - Superintendent/President
 - Assistant superintendents/vice presidents
 - School-based administrators
 - Law enforcement/School resource officers (SROs)
 - Legal counsel
 - Compliance/Risk management
 - Shared governance bodies (e.g., faculty senate, student government)
- Emphasize costs of noncompliance or delaying compliance

Varied Perspectives

- Starts with the individuals invited to the table
- Reflect on Title IX purpose and mission
 - Who brings a valuable perspective?
- Leverage assessment data
 - Barrier analysis
 - Climate/program assessments
 - Report or complaint audit
 - Title IX Team feedback
 - Focus groups
- May be involved in different capacities
 - Committee, advisory group, etc.



Stakeholder Involvement

- **Managing stakeholders**

- Establish a clear vision and timeline for the revisions
- Set clear expectations regarding input, decisional authority
- Lead with confidence and accountability
- Invite buy-in across the organization
- Leverage relationships, authority, seniority, and allies

- **Other constituencies**

- Student involvement and input
- Campus/school community involvement
- Elected official involvement (i.e., school board members)
- Faculty, staff, and employee feedback, including labor unions

Activity: Defining Stakeholders

Policy Design

NOT FOR DISTRIBUTION

Sources of Requirements and Guidance

Federal Law and
Regulations

State/Local Law and
Regulations

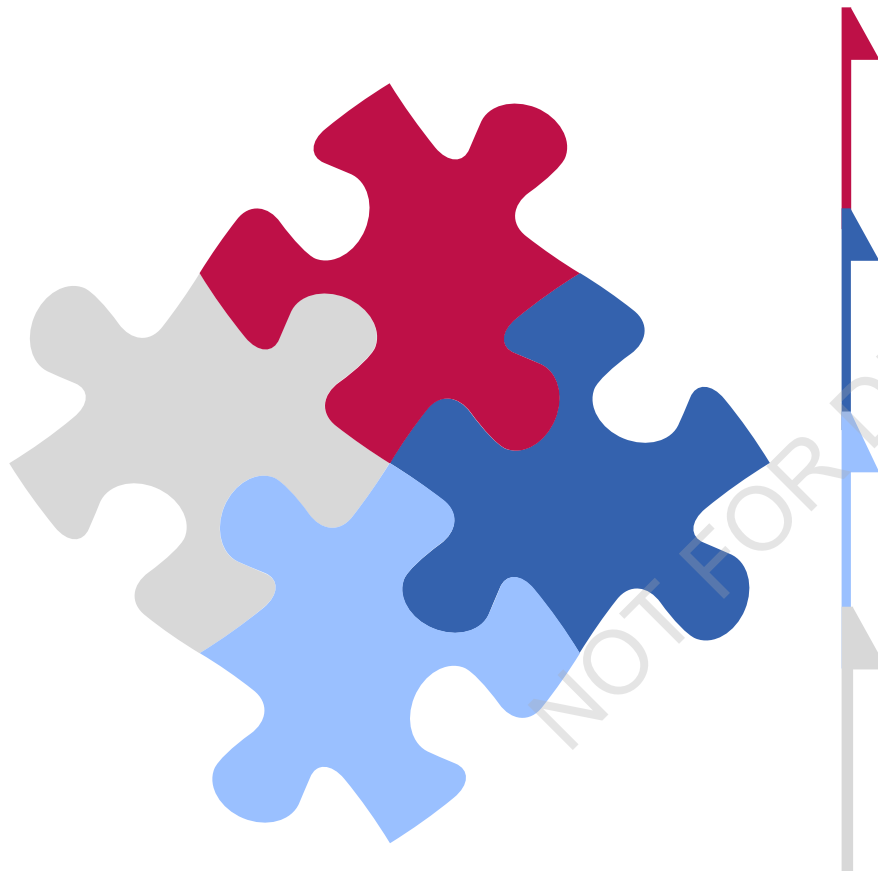
Relevant Court
Decisions

OCR Resolution
Agreements

Insurance Provider
Requirements

Governing Body
Policies

Overlapping Policies



Governing Body

- Board Policy
- Board Administrative Procedures

Employee-Facing Publications and Websites

- Human Resources Policies & Procedures
- Faculty/Staff Handbooks

Student-Facing Publications and Websites

- Student Conduct Code and/or Handbooks
- Student Org. Policies & Procedures

Student and Employee-Facing

- Civil Rights & First Amendment Policies & Procedures
- Acceptable Use Policies
- Athletic Policies

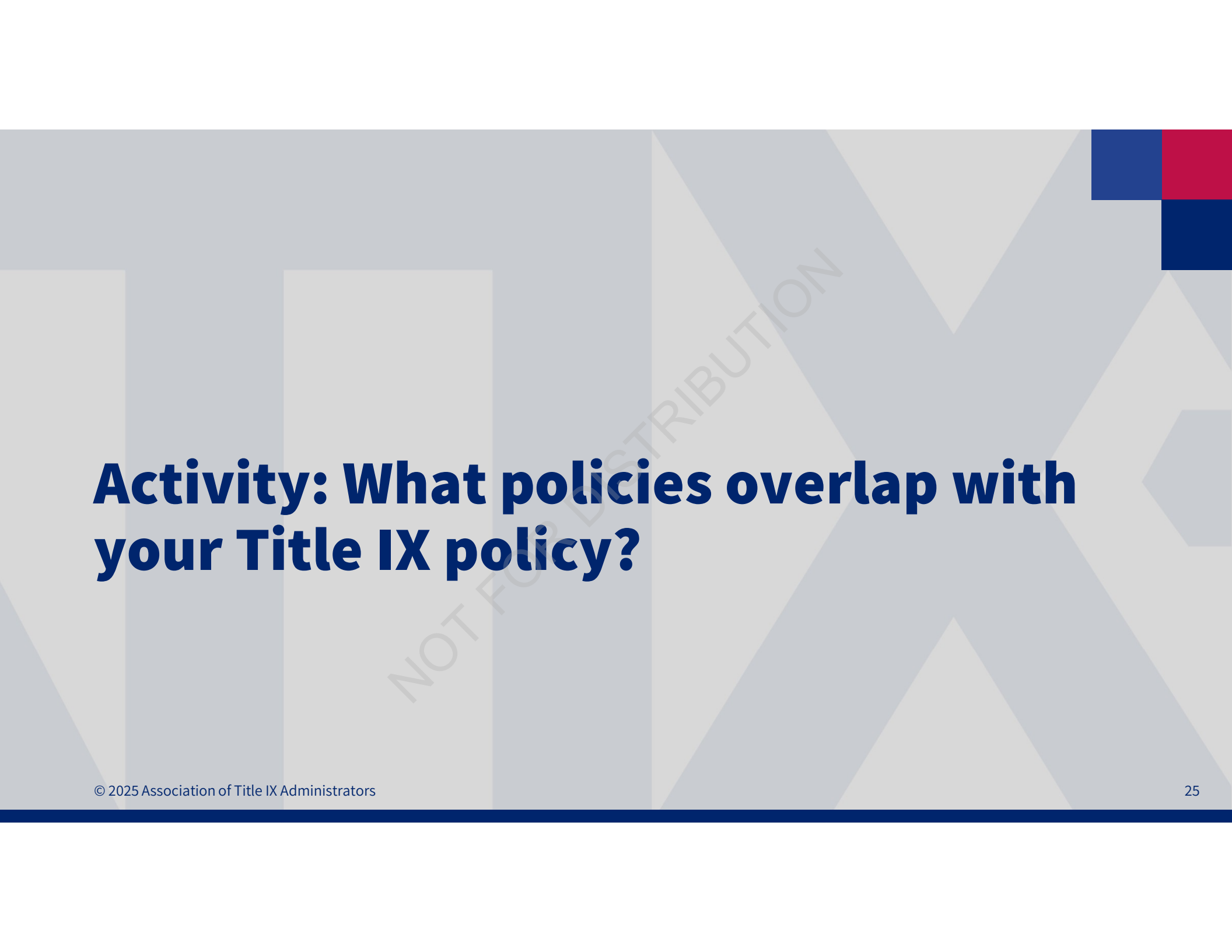
Common Overlap Topics

- Bullying/cyberbullying and hazing
- Dress code
- Professional conduct
- Consensual relationships
- Child abuse
- Non-Title IX sexual misconduct
- Athletics
- Multiple protected class issues in one complaint
- Pregnancy



Identifying and Coordinating Overlap

- Degree of overlap – consider whether:
 - One policy incorporates the other
 - One policy applies if another does not
 - One or more policies apply in certain situations
 - One policy cites or references another
- Consider consistency or inconsistency between overlapping policies
 - Failure to do so may lead to complications
 - Unintended downstream effects
- Consider whether revision of multiple policies simultaneously is feasible
 - Strong argument for a unified policy



Activity: What policies overlap with your Title IX policy?

Fair and Accessible Policies

Policy Development Goals

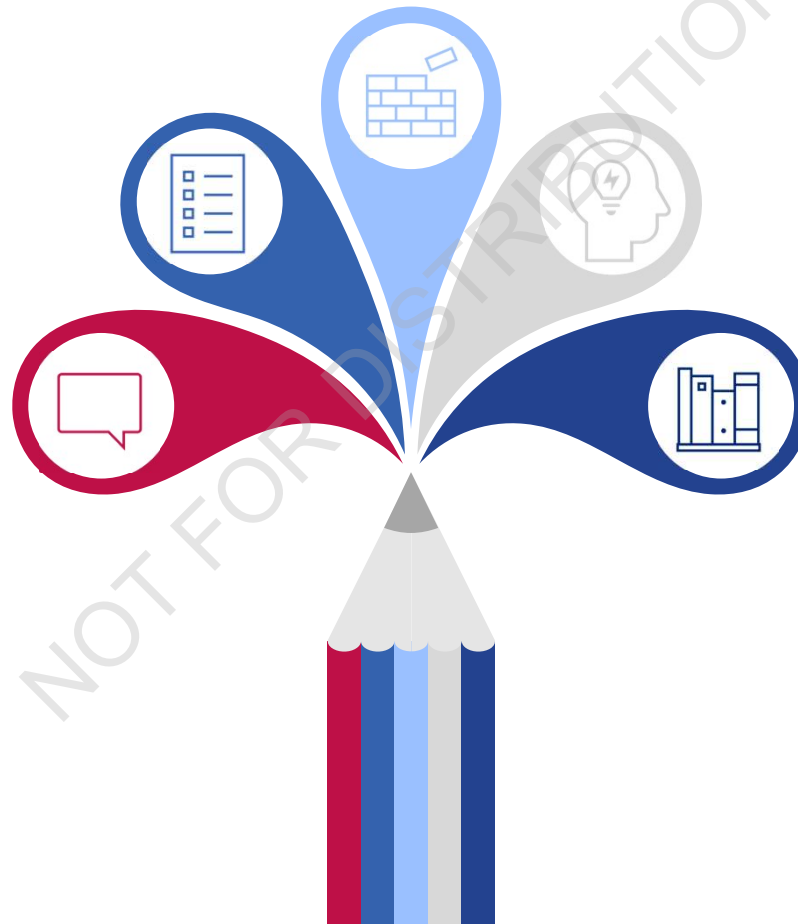
There are several goals for the policy development process:

- Fair
- Accessible
- Transparent
- User-friendly
- Roadmap for community expectations



Accessible and Functional Policy Design

- ◆ **LANGUAGE**
 - Consider audience
 - Plain language
 - Definitions
- ◆ **FORMAT**
 - Bullet points
 - Font
 - Internal links
- ◆ **STRUCTURE**
 - Order of sections
 - Labels
 - Information flow



- ◆ **CONTENT**
 - Clarity
 - Digestible chunks
 - Appropriate detail
- ◆ **ACCESSIBILITY**
 - Web/Digital Accessibility
 - Translatable
 - Alt text

Additional Policy Writing Tips

Policies should be:

- Comprehensive, concise, and consistent
- Third person perspective
- Active voice
 - Active: “The Title IX Coordinator determines whether to dismiss the complaint and communicates their decision to the parties”
 - Passive: “The dismissal decision will be made and sent to the parties”
- Verb modifier choice
 - **“Must”** or **“will”** is clearer than **“should”** or **“shall”**
- User-friendly
 - Avoid legalese where possible

ATIXA's Model Policies and Procedures

Using a template can smooth the revision process

- ATIXA's One Policy, One Procedure (1P1P) Model
 - Addresses all protected characteristic discrimination in addition to sexual harassment and misconduct
 - Reduces overlap
 - Reduces conflict or inconsistency
 - Streamlines response
 - Unifies approach to all discrimination complaints
- ATIXA's Title IX Model Policy & Procedure (AMPP)
 - Title IX-specific policies and procedures

Tips for Managing the Process

- **Take the lead** on policy drafting
- **Seek assistance** from legal counsel and compliance administrators
- **Solicit feedback** by scheduling sessions with key stakeholders
- **Mitigate objections** by training senior administrators or board members
- **Use** a qualified consultant or model policy and procedures template from a reputable source

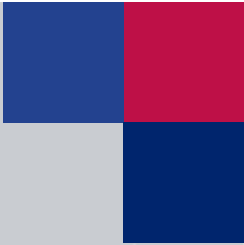


Final Product

- Checks all compliance boxes
- Aligns with industry standards
- Achieves best practices, where able
- Reflects peer institutions
 - Document rationale for policy quirks

Train school, district, or institution on new policy





Discussion: What other tips do you have?

After the Revision Process

Policy and Procedure Training

Prioritize community-wide education and training

- Policy publication and dissemination is **not** enough
- Identify:
 - Priority groups
 - Training resources
 - Training options
 - Synchronous vs. asynchronous
 - Collaboration opportunities
 - Marketing opportunities
- Assess training efforts and fill gaps

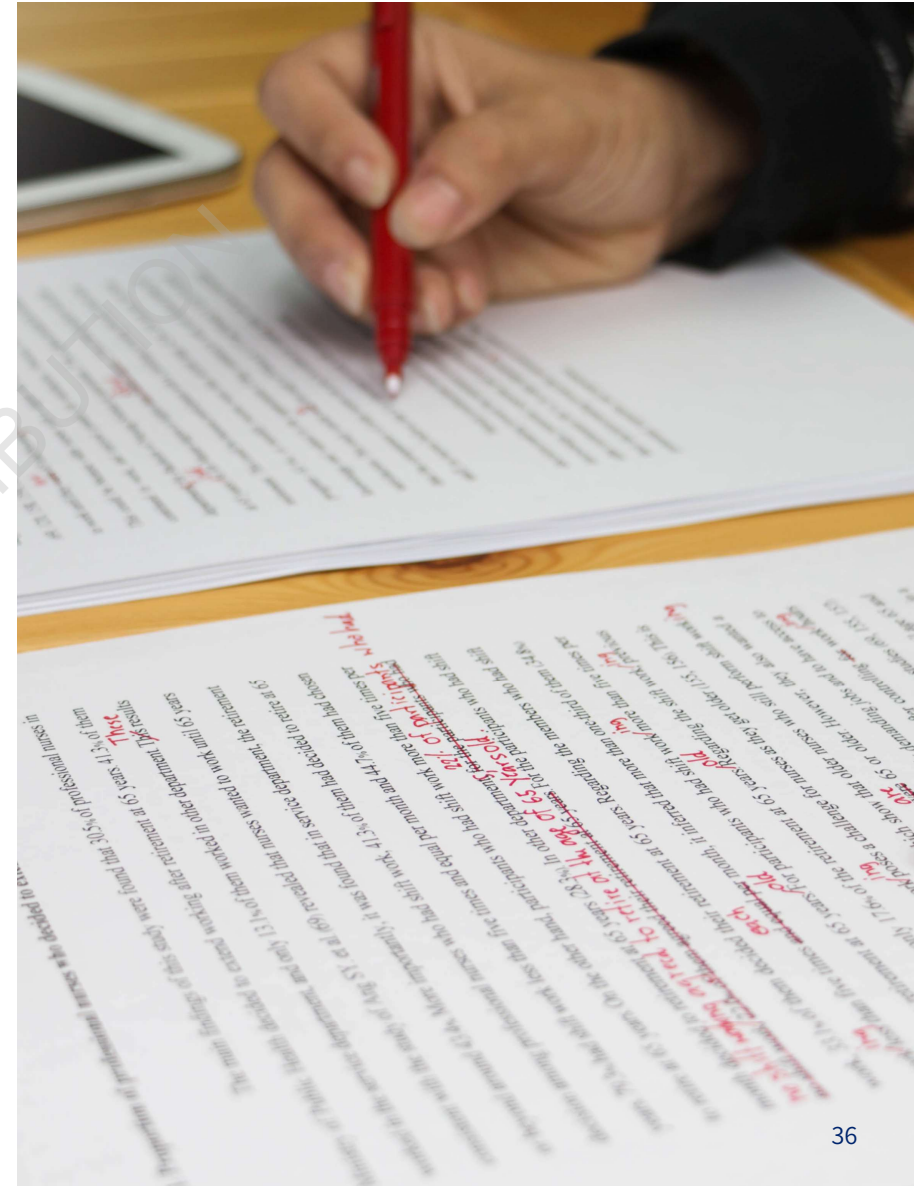


Continuous Improvement

Continually assess policies and procedures to identify areas for improvement

Assessment Tools:

- Common questions/areas of confusion
- Report/complaint audit
- Climate surveys
- Complaint debriefs
- Retraining
- Regular check-ins with key stakeholders



Continuous Improvement

Policy should:

- Give administrators authority to **implement** and **adjust** procedures based on:
 - Assessment data
 - Regular policy review
 - Professional development
- Include a provision permitting administrators to interpret policy consistent with law and regulatory changes, and to permit a streamlined amendment process to comply with laws or regulations
 - Similar provisions are common with collective bargaining agreements

Know options when quick changes are necessary

Publication and Posting Requirements

Publication Requirements

Title IX regulations require Recipients to publish policies, procedures, and non-discrimination notices to:

- Students and applicants
- Parents or legal guardians in K-12
- Employees and employment applicants
- All unions or professional organizations holding collective bargaining or professional agreements with the Recipient



Required Information

- Students and employees should know:
 - The policy exists
 - How the policy works
 - How to file a complaint
- The following must be **prominently displayed** on the Recipient **website** and in each **handbook** or **catalog**
 - TIXC's contact information
 - Non-discrimination notice
 - Title IX policy



Required Information

- TIXC's contact information
 - Name/Title
 - Office physical location
 - Email address
 - Telephone number
- Non-discrimination notice
 - Notice that the district/institution does **not** discriminate on the basis of **sex** in its education program or activity, **extending** to admission and employment
 - Inquiries or complaints directed to TIXC, U.S. Dept. of Education, or other relevant agencies
- Title IX policy and grievance procedures

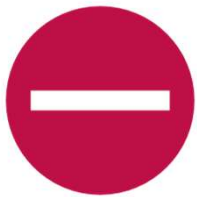
Recordkeeping and Cataloging

- TIXC should catalog previous versions of the Title IX policy and procedures
 - Future litigation
 - Future complaints of past allegations
 - Cyclical regulatory changes
- Previous versions should not be publicly available, unless they are still used for certain complaints, in which case, that should be clearly noted
 - Perform website, handbook audits
- Save digital and hard copies



Common Policy Gaps

Common Policy Gaps



Attempted
Offenses



Collateral
Misconduct



Impact and
Mitigation
Statements



Character
Evidence

Common Policy Gaps



Pregnancy &
Related
Conditions



Reporting



Amnesty/
Responsible
Action



Disparate
Treatment

Common Policy Gaps



Offense
Definitions



Withdrawal or
Resignation

Discussion: Common Policy Gaps

Questions?

NOT FOR DISTRIBUTION

**ALL ATIXA PROPRIETARY TRAINING MATERIALS ARE COVERED BY
THE FOLLOWING LIMITED LICENSE AND COPYRIGHT.**

By purchasing, receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for their use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes only.

If these materials are used to train Title IX personnel, they are subject to 34 C.F.R. Part 106. If you have lawfully obtained ATIXA materials by registering for ATIXA training, you are licensed to use the materials provided for that training.

34 C.F.R. 106.45(b)(10) (2020 Regulations) requires all training materials to be publicly posted on a Recipient's website. Licensees subject to the 2020 Title IX Regulations may download and post a PDF version of training materials for their completed training to their organizational website to comply with federal regulations. ATIXA will provide licensees with a link to their materials. That link, or links to the materials on that page only, may be posted to the licensee's website for purposes of permitting public access to the materials for review/inspection only.

You are not authorized to copy or adapt these materials without ATIXA's explicit written permission. No one may remove this license language from any version of ATIXA materials. Should any non-licensee post these materials to a public website, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.