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Addressing Technology-Facilitated Sexual Misconduct

An ATIXA Best Practices Workshop

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Introduction

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This workshop focuses on core concepts related to technology-facilitated sexual misconduct in education settings.

Practitioners will learn how to identify instances of technology-facilitated sexual misconduct and effective steps for response.

Our goal is to provide a foundational understanding to keep practitioners current on the evolving use of technology to facilitate harm.

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Technology-Facilitated Sexual Misconduct

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What is Technology-Facilitated Sexual Misconduct (TFSM)?

- Sex-based misconduct facilitated via the use of communication technology or other emerging technologies
  - Image-Based Sexual Abuse
  - Sexual Extortion
  - Doxxing
  - Cyberstalking
  - Cyber Harassment
  - Intimate Partner Violence
- Usually involves the nonconsensual dissemination of personal and/or private information
- Can be used as a tactic to gain or maintain power and control over another individual
- The application of technology shifts the demographic characteristics usually found in offline sex-based misconduct

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TFSM in Education Settings

- Image-Based Sexual Abuse
  - Non-Consensual Intimate Images (NCII)
- Cyber Harassment
- Sexual Extortion
- Digital Intimate Partner Violence
- Cyberstalking
- Cyberflashing

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Common Respondent Characteristics and Motivations

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Characteristics	Motivations K-12	Motivations HE & Employees
▪ Cell phone and Internet users ▪ Adolescents and emerging adults (12 to 25 years old) ▪ Primarily male ▪ Often known to the Complainant	▪ Romantic attention ▪ Sexual desire ▪ Sexual currency ▪ Elevated social status ▪ Peer pressure ▪ Vengeance	▪ Romantic attention ▪ Entertainment ▪ Sexual currency ▪ Elevated social status ▪ Power and/or control ▪ Vengeance

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Applicable Laws

- Federal Laws:
  - Title IX
  - Violence Against Women Act (VAWA)
  - Take It Down Act (NCII)
- State Laws:
  - 50 states have laws against NCII
  - 36 states have laws against sexual deepfakes
  - 27 states have laws against sextortion

Source: https://cybercivilrights.org/existing-laws/

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Violence Against Women Act, Section 304

- Applies to **higher education**; includes obligations for students and employees
- Requires educational programming, training, and response for the "Big 4"
  - Sexual Assault
  - Dating Violence
  - Domestic Violence
  - Stalking
- Procedures to address both sex-based and non-sex-based stalking and DV allegations
- VAWA rights are not limited to student or employee Complainants

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Technological Abuse

- 2022 VAWA Reauthorization added the term **technological abuse**, meaning:
  - An act or pattern of behavior that **occurs within** domestic violence, sexual assault, dating violence or stalking **and** is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor, except as otherwise permitted by law, another person, **that occurs using any form of technology**, including but not limited to: internet enabled devices, online spaces and platforms, computers, mobile devices, cameras and imaging programs, apps, location tracking devices, or communication technologies, or any other emerging technologies.
- Not a standalone prohibited behavior

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Education Policies

- Common policy implications
  - Sexual Exploitation
  - Harassment
  - Bullying
  - Stalking
  - Harm/Endangerment
  - Discrimination
  - Intimidation
  - Disruptive Behavior
  - IT/Acceptable Use
  - Title IX, Title VI, Title VII

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Digital Harassment

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In-Person vs. Digital Harassment

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- **Harassment involves:**
  - Engaging in behavior that is severe, pervasive, or persistent such that it limits or denies a person's ability to participate in or benefit from the school/institution's education program or activity
- **Online Harassment involves:**
  - The use of communication technologies or emerging technology to harass another person
    - Also called cyberbullying
    - Most often occurs on social media platforms or other online forums (e.g., Yik Yak, Fizz)

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Manifestations in Education Settings

- Engaging in repeat behaviors directed at a specific person with the intent to cause harm
  - Spreading gossip or posting rumors
  - Sharing private and/or personal information
    - Doxxing
  - Impersonation
  - Encouraging self-harm
  - Disparaging sex-based speech
  - Threats
  - Hate speech

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Distinguishing Cyber Behaviors

Characteristic	Cyberstalking	Cyberbullying	Cyber Harassment
Primary Behavior	Persistent tracking or surveillance	Peer-based aggression or embarrassment	Repeated threats or intimidation
Intention	Cause fear for safety; invade privacy	Embarrass, exclude, isolate	Intimidate, threaten, denigrate, humiliate
Typical Relationship	Often known to the Complainant, but may be a stranger	Usually between known peers (e.g., classmates, coworkers)	May be anyone; often anonymous
Common Indicators	Location tracking, compromised accounts, login attempts	Spreading rumors, mocking, social exclusion	Doxxing, threats about family/friends, unwanted contact

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Responding to Digital Harassment

- Obligation to **stop**, **prevent**, and **remedy**
  - Including in-program behaviors **AND** impacts of off-site conduct/posting
- Offer and implement supportive measures
- Conduct a hostile environment analysis
  - Unwelcome sex-based conduct that is severe, pervasive, and objectively offensive such that it effectively denies a person equal access to the school/institution's education program or activity (Title IX)
  - Severe, pervasive, or persistent (non-Title IX) such that it limits or denies a person's ability to participate in or benefit from the school/institution's education program or activity
- Conduct jurisdictional analysis of where actions occurred, including whether institutional equipment or networks were used

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Analysis Framework

- **Severity:** a measure of the egregiousness of an incident, either in isolation or in aggregate
  - Consider the totality of the circumstances
- **Pervasiveness:** a measure of the widespread nature of conduct or its impact
  - Consider the permanence of the Internet, the range of distribution, and the momentum gathered (“gone viral”)
- **Persistence:** a measure of the frequency, duration, or endurance of the conduct
- **Objective offensiveness:** can be measured by how humiliating, intimidating, ridiculing, or abusive the conduct is to a similarly situated reasonable person
  - Consider factors such as the age, maturity level, relationship of the parties, frequency, and severity

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Image-Based Sexual Abuse

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Non-Consensual Intimate Imagery (NCII)

- **Authentic NCII:** Authentic (i.e., real) sexually explicit, nude, or intimate videos, photos, or audio recordings of an individual distributed without the consent of the individual depicted
- **Synthetic NCII:** Videos, photos, or audio representations of an individual that have been digitally manipulated (i.e., faked) to depict an individual in a sexually explicit, nude, or intimate manner or saying sexual or explicit words/statements and distributed without the consent of the individual depicted

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Synthetic NCII ("Deepfakes")

- Depictions of sexually related actions or behaviors that never happened, or that places identifiable individuals in pornographic, nude, or sexual situations without the consent of the person depicted
- Produced using AI or other emerging technology
  - Undressing Apps
  - Deepfake Apps & Marketplaces
- Frequently used in other forms of TFSM
  - Doxxing, spoofing, and impersonations

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NCII Considerations

- Ease of access to technology has resulted in increased prevalence and prominence at all levels of education
- Impacts are similar for authentic and synthetic NCII
- Technology enables rapid distribution and wide reach
  - Can escalate pervasiveness, persistence, severity, and offensiveness of behavior
  - Supportive measures should consider totality of the impact
  - Necessity of online engagement prevents Complainants from escaping social, emotional, and mental impact

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Intimate Partner Violence and Stalking

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Intimate Partner

- A person with whom one has a close personal relationship that may be characterized by the partners' emotional connectedness, regular contact, ongoing physical contact, sexual behavior, and/or identity as partners
- Includes current or former:
  - Spouses; married, common-law, civil union, domestic partner
  - Boyfriends/Girlfriends/Significant others
  - Dating partners
  - Sexual partners

Source: Centers for Disease Control and Prevention

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Intimate Partner Violence

- Intimate partner violence (IPV) is defined as:
  - Abuse or aggression
  - Occurring in a relationship
- Often encompasses:
  - Controlling behavior
  - Physical violence
  - Psychological violence
  - Sexual violence
  - Stalking
- Irrespective of sex

Source: Centers for Disease Control and Prevention

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Stalking

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Stalking: Engaging in a course of conduct, based on a protected characteristic, directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; **or**
- Suffer substantial emotional distress

- **"Reasonable person"** and **"Substantial Emotional Distress"** are not defined in the Title IX regulations
- **Course of conduct** requires that there be more than one incident, and the conduct must be directed at a specific person
  - Can occur in person or using technology
- Should consider the duration, frequency, and intensity of the conduct

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Continuum of Conduct

OBSERVATION	Action or process of watching something or someone carefully
LINGERING	Remaining present for a long time or slow to end an encounter
LURKING	Intentional encroaching, following, or bothering behavior
TRACKING	Research residence, vehicle, travel, patterns, associates, activities
STALKING	Engaging in a course of conduct that causes fear for safety or substantial emotional distress

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Cyberstalking

- Use of communication **technology**, or any other emerging technologies, to engage in a **course of conduct** directed at a specific person that would cause a reasonable person to –
  - Fear for that person's safety or the safety of others, or
  - Suffer substantial emotional distress
- Most cyberstalking behaviors are **not** protected by the First Amendment (conduct vs. speech)
- If cyberstalking is sex- or gender-based, it may implicate **Title IX**

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Common Cyberstalking Tools and Tactics

- Artificial Intelligence (AI)-generated images and messaging
- Email
- Geo-positioning data or GPS via phones or cars
- Messaging apps
- Ransomware, viruses, spyware, and keystroke loggers
- Releasing personal data
- Sextortion
- Smart Home devices
- Surveillance via mobile devices
- Social media sites
- Social networking platforms
- Text messages

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Supportive Measures and Safety Plans

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Supportive and Remedial Measures

- Not all TFSM will violate policy or the law
- Schools/Institutions must still take actions to provide support and remedy the impact of the behavior or it could lead to a hostile environment
- May include educating impacted individuals about technology safeguards
- Involving behavioral intervention team (BIT) or behavioral threat assessment and management team (BTAM) members may be necessary

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Examples of Supportive Measures

- Classroom, housing, or work arrangement adjustments
- Faculty/staff notification
- Housing relocation or on-campus housing option for an off-campus student
- Safety escorts
- Safety planning
- No Contact Orders
- Cease & Desist Directives
- Increased security and monitoring
- Referral to counseling or Employee Assistance Program
- Trespass or “be on the lookout” (BOLO) orders
- Emergency funding
- Connect with local community resources

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Safety Plans

- **Safety Plan:** a personalized, practical set of actions that can help lower risk for harm
- Often facilitated by or made in conjunction with local community resources (e.g., law enforcement's victim advocate)
- Includes information specific to the Complainant and their life that will increase their safety at school, home, and other places they visit routinely
  - Outlines necessary actions and available resources
  - Accounts for children and pets as applicable
- Complainant should keep a printed copy in a safe place, if possible, and provide a copy to a trusted friend or family member
- May require revision as circumstances change

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Safety Planning Considerations

- Level of access to the Complainant
- Full history of the alleged behaviors and context of the relationship
- Available support person(s) and immediate school/institutional resources
- Community-based resources
- Law enforcement or civil support options
- Readiness to leave and not return to the relationship

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Safety Planning Action Examples

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General

- Consider physical exit/escape options (e.g., vehicle, classroom, home)
- Alter schedules and routes
- Cease communication with Respondent
- Inform support system
- Notify school resource officer (SRO), campus security, and/or police
- Secure an emergency protective order
- Seek victim services assistance

Workplace/School Specific

- Inform residence life, coaches, teachers, supervisor, or other key administrators
- Provide photo to campus security/police or school resource officer (SRO)
- Remove FERPA directory information
- Request supportive measures
- Use safety escorts while on school property
- Change workflow protocols
- Maintain secure emergency housing

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Safety Planning Action Examples (Cont.)

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Online

- Change passwords and answers to security questions
- Update privacy settings
- Implement multifactor verification options
- Disable location sharing/tracking
- Acquire new devices
- Use facial recognition search engines to find posted images
- Remove personally identifying information from data broker sites and Google search

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Prevention Education

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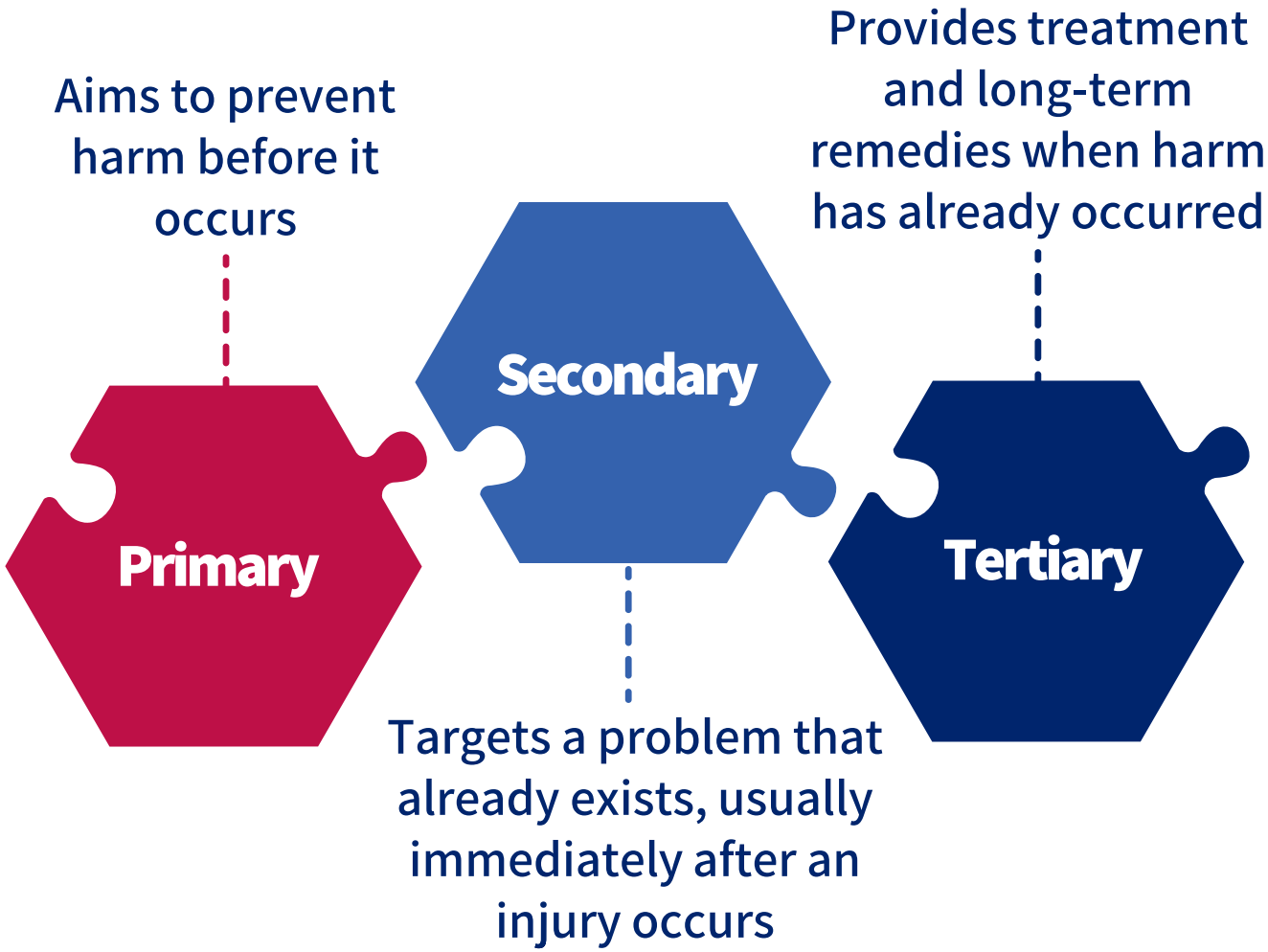
What is Prevention?

An integrated and collaborative approach to addressing multiple areas of wellness that is:

- Evidence-based
- Multi-layered
- Directed at individual, community, and environmental levels



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K-12 Prevention Education Recommendations

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Elementary

- Personal boundaries and bodily autonomy
- Safe vs. unsafe touch
- Identifying trusted adults
- Expressing personal boundaries
- Respecting others' boundaries
- Online safety

Middle

- Understanding consent
- Peer pressure and healthy relationships
- Recognizing harassment
- Bystander intervention strategies
- Sexual harassment vs. flirting
- Digital citizenship

High

- Consent
- Healthy relationships
- Bystander intervention training
- Title IX and student rights
- Supporting peers and reporting misconduct
- Impact of interpersonal violence
- AI and relationships

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Higher Education Prevention Education Requirements

- **VAWA Section 304 imposed training requirements**
  - Programs tailored to each institution and its populations
  - Direct programming to **all** incoming students and new employees
- **Requires programming and education**
  - Sexual assault, **dating violence**, **domestic violence**, and **stalking** ("The Big 4")
  - Primary prevention programs
  - Ongoing prevention and awareness programming and campaigns
  - Risk factors, protective factors, and risk reduction
- **Emphasizes programming that focuses on:**
  - Changing behavior and social norms
  - Increasing understanding and skills

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TFSM Prevention Education Topics

Messaging can be tailored for Higher Education or K-12 environments

- Digital Citizenship
  - Bystander Empowerment
- Digital Consent
- Digital Literacy
- Healthy Relationships
- Healthy Breakups

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Digital Citizenship

Digital Citizenship is the ability to navigate digital environments safely and responsibly

Topics may include:

- Evaluating the amount of time spent online and use patterns
- Online safety and privacy
- Digital etiquette
- Critical thinking skills in digital spaces
- Managing your “digital reputation”

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Digital Consent

- **Consent** is about how we communicate and negotiate our needs and the needs of others (e.g., consent for sexual activity)
- **Everyday consent** involves active communication with another person and asking for their perspective or permission before taking action that impacts them
- **Digital consent** is the clear, informed, and voluntary permission to collect, share, or use personal information in digital environments
  - Allows individuals to maintain control over their digital footprint

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Digital Literacy

- **Digital literacy** is the ability to use digital technology, communication tools, and networks to locate, evaluate, use, and create information
- **Digital footprint** is the trail of data a person creates while using the Internet
  - Data can be left intentionally or automatically collected by platforms and websites
- Topics may include:
  - Distinguishing reliable information from disinformation
  - Evaluating digital consumption
  - Managing your digital footprint
  - Digital ethics and safety
  - AI literacy

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Healthy Relationships

- What does it mean to have a healthy relationship?
  - Intimate relationship
  - Friendship
  - Familial relationship
- Communicating and maintaining personal boundaries
- Identifying and responding to “red flag” behaviors
- Healthy digital relationships

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Healthy Breakups

- Have a direct conversation
- Disentangle digital lives
  - Friends and followers
  - Location sharing
  - Account sharing
  - Passwords
- Discuss boundaries
- Respect the decision to end the relationship

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Emerging Issues

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Artificial Intelligence (AI) Avatars

- **Artificial Intelligence Avatars** are digital representations of a person designed to look, sound, and/or act like a real human
- AI Avatars can be used to:
  - Impersonate someone
  - Harass or manipulate others
  - Facilitate romance scams
  - Serve as a platonic or romantic companion
- Individuals can use AI avatars to mimic human cyberstalking or harassing behaviors

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Questions?

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Stay Connected to ATIXA's Community

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- Build skills with **20-Minutes-to…Trained** and get practical guidance at **Time with IX**
- Schedule a **Training and Certification course** and explore **Thought Leadership** from experts
- Expand your network with **Mentor Match** and **Community Connections**
- Stay informed with **ATIXA's "More Likely Than Not" Podcast**
- Refer Members. Earn **Rewards**.
- **K-12:**
  - Exchange ideas through **K-12 CommunityServ** and streamline your work: **TIXKit for K-12**
  - Access a complimentary **K-12 Community Membership**
- **Higher Education:**
  - Exchange ideas through the **ATIXA Listserv** and streamline your work: **TIXKit**

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Acknowledgement

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ATIXA thanks EndTAB for its contributions to the development of this workshop.

EndTAB helps organizations address technology-enabled abuse, online harms, and emerging digital safety risks through trainings, consulting, and resource development for professionals, schools, nonprofits, government agencies, and communities nationwide.

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