

Sexual Misconduct Case Management Training (Part 1)

Krista Anderson, Systemwide Title IX Coordinator

Spring 2021



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

1

Agenda

1. Title IX Introduction
2. Triage & Case Management:
 - Definitions & Roles
 - Reports v. Formal Complaints
 - Decision Points
3. Resolution Options:
 - Formal Complaint Dismissals
 - Informal Resolutions
 - Formal Grievance Process
4. Threat Assessment Tools & Emergency Removals
 - Warning Signs
 - Predatory Behaviors
 - Sexual Violence, IPV & Stalking Cases
5. Investigation & Adjudication Transition
 - Logistics & Coordination
6. Documentation & Record Keeping



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

2

2

Introduction



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

3

Distinctions...

Sexual Harassment

- Employee Quid Pro Quo
- Severe Pervasive Obj. Offensive
- Sexual Assault
Dating Violence
Domestic Violence
Stalking

VS.

Non-Sexual Harassment
Ex. Other Inappropriate Sexual Conduct

THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

4

Definition of “Sexual Harassment” under Title IX

Conduct on the basis of sex that satisfies one or more of the following:

1. An **employee** of the institution conditioning the provision of an aid, benefit, or service of the institution on an individual’s participation in unwelcome sexual conduct (Quid Pro Quo);
2. Unwelcome conduct determined by a reasonable person to be **so severe, pervasive, and objectively offensive** that it effectively denies a person equal access to the institution’s education program or activity; or
3. **“Sexual assault,” “dating violence,” “domestic violence,” or “stalking”** as defined under Clery/VAWA.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: Title IX Regulations (2020)

5

Definition of “Other Inappropriate Sexual Conduct”

Conduct on the basis of sex that does not meet the definition of “sexual harassment” (under the Model Policy), but is

1. Verbal conduct (including through electronic means), unwanted statements of a sexual nature intentionally stated to a person or group of people, that are objectively offensive to a reasonable person and also so **severe or pervasive** that it created a Hostile Environment, as defined in the Model Policy.
2. Physical conduct...



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: UT System Model Policy for Sexual Misconduct (2020)

6

Definition of “Other Inappropriate Sexual Conduct” (Cont.)

Possible Examples (depending on facts):

- Unwelcome sexual advances (including explicit or implicit proposition(s) of sexual contact or activity);
- Requests for sexual favors (including overt or subtle pressure);
- Gratuitous comments about an individual’s sexual activities or speculation about an individual’s sexual experiences;
- Gratuitous comments, jokes, questions, anecdotes or remarks of a sexual nature about clothing or bodies;
- Persistent, unwanted sexual or romantic attention;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials;
- Deliberate, repeated humiliation or intimidation;
- Unwelcome intentional touching of a sexual nature; or
- Deliberate physical interference with or restriction of movement.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

7

“Education program or activity” under Title IX

Includes locations, events, or circumstances over which the institution exercises **substantial control** over both the respondent and the context in which the alleged sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the institution.

- **Example** of a “building owned or controlled by a student organization”: **Fraternity or sorority house** that is occupied by students of the organization, and the student organization is a recognized organization with the institution.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *Title IX Regulations (2020)*

8

Key Pillars: Title IX Processes

Title IX processes should focus on
impartiality, respect, fairness, & equity
 for all of the participants:

Complainants

Respondents

Witnesses

Third-party Reporters



THE UNIVERSITY of TEXAS SYSTEM
 FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
 WWW.UTSYSTEM.EDU

9

Serving Impartially in Your Role

- Must avoid **prejudgment** of the facts at issue
- Must avoid **conflicts of interest**
- Must avoid **bias**

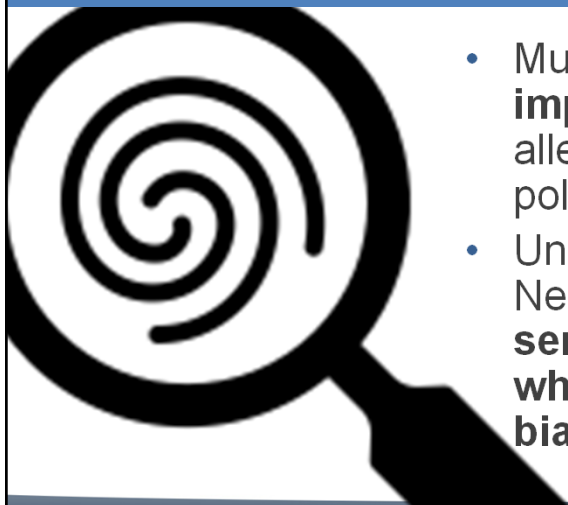


THE UNIVERSITY of TEXAS SYSTEM
 FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
 WWW.UTSYSTEM.EDU

Source: Title IX Regulations (2020)

10

Principles for Title IX Process



- Must maintain **complete neutrality & impartiality at all times** in investigating alleged conduct violations of institutional policies.
- Understanding bias & whether it exists: Need to take an “**objective, common sense approach to evaluating whether a person serving in a role is biased.**” (*Title IX Preamble (2020)*)...



11

Avoiding Bias

- Must **not** treat a party differently:
 - On the basis of the person’s **sex**;
 - On **stereotypes** about how men or women behave with respect to sexual violence; and/or
 - On the basis of the person’s **characteristics**: sex, race, ethnicity, sexual orientation, gender identity, disability, immigration status, financial ability, socioeconomic status, or other characteristic.



12

“Reasonable Person” Standard



Use a “**reasonable person**” standard for weighing all of the evidence:

- An objective test to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.



13

Institutional Policy
& Definitions



14

Institutional Sexual Misconduct Policy (Example)

Prohibits sex discrimination, sexual harassment, retaliation, and other prohibited conduct under the policy, including:

- Sex Discrimination
- Sexual Harassment
 - Sexual Assault
 - Dating Violence
 - Domestic Violence
 - Stalking
- Retaliation
- Sexual Exploitation
- Other Inappropriate Sexual Conduct
- False Information & False Complaints
- Interference with the Grievance Process
- Failure to Report (for Responsible Employees)



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

15

Definition of “Sex Discrimination”

Occurs when an individual is treated less favorably on the basis of that person’s sex (including gender), which may also include on the basis of sexual orientation, gender identity, or expression, pregnancy or pregnancy-related condition, or a sex stereotype.

Sexual harassment, as defined in the Model Policy, is a form of sex discrimination.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

16

Definition of “Sexual Assault” under Clery/VAWA

For the purposes of this definition under Clery/VAWA, **Consent** means: Voluntary, positive agreement between the participants to engage in specific sexual activity.

An offense that meets the definition of Rape, Fondling, Incest, or Statutory Rape:

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

17

Definition of “Dating Violence” under Clery/VAWA

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the consideration of the following factors:

- The **length** of the relationship;
- The **type** of relationship; and
- The **frequency** of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. It does not include acts covered under the definition of Domestic Violence.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

18

Definition of “Domestic Violence” under Clery/VAWA

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- By any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

19

Definition of “Stalking” under Clery/VAWA

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

20

Definition of “Sexual Exploitation”

Conduct where an individual takes non-consensual or abusive sexual advantage of another for their own benefit, or to benefit anyone other than the one being exploited.

Examples of sexual exploitation include, but are not limited to: Engaging in voyeurism; forwarding of pornographic or other sexually inappropriate material by email, text, or other channels to non-consenting students/groups; the intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner; and any activity that goes beyond the boundaries of consent, such as recording of sexual activity, letting others watch consensual sex, or knowingly transmitting a sexually transmitted disease (STD) to another.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

21




First Amendment Rights: Free Speech & Academic Freedom

Constitutionally protected expression cannot be considered Sexual Misconduct (e.g. “sexual harassment,” “other inappropriate sexual conduct”) under the institution’s Sexual Misconduct policy.

Note: Neither party may be restricted from discussing allegations or from gathering evidence in a grievance process.

22



Retaliation Prohibited under Title IX


No institution or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX; or because an individual has made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

23

Definition of “Retaliation”

Any **adverse action** (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone because the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities.

Note: Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: UT System Model Policy for Sexual Misconduct (2020)

24

Definition of “False Information & False Complaints”

Any person, who in bad faith, knowingly files a false complaint under this Policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University.

Note: A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent’s statements disclaiming responsibility were false.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

25

Definition of “Interference with the Grievance Process”

Interference with a Grievance Process may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the Grievance Process; or
- Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

Note: Any person who interferes with the grievance process is subject to disciplinary action up to and including dismissal or separation from the University.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

26

Responsible Employee Reporting Requirements

Under the institution's Sexual Misconduct Policy, **Responsible Employees** have a duty to report incidents and information reasonably believed to be sexual misconduct (prohibited conduct defined) under the Policy.

All employees are Responsible Employees (except Confidential Employees). Responsible Employees include all administrators, faculty, and staff.

Responsible Employees must report all known information concerning an alleged incident of sexual misconduct to the **Title IX Coordinator**.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

27

Definition of "Failure to Report" for Responsible Employees

If a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

28

Triage & Case Management


 THE UNIVERSITY of TEXAS SYSTEM
 FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
 WWW.UTSYSTEM.EDU

29

Operational Roles, Delegations, & Structure?

Title IX Coordinator	Title IX Deputies	Case Mgt Coordinators	Investigators	Advisors provided by the Institution
Informal Resolution Facilitators	Appellate Role for Formal Complaint Dismissals	Threat Assessment Personnel	Decision-Makers for Emergency Removals	Adjudication Transition Coordinators
Hearing Officers	University Representative Role at Hearings	Appellate Role for Policy Violation Determinations	Legal Affairs Support	Others ???


 THE UNIVERSITY of TEXAS SYSTEM
 FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
 WWW.UTSYSTEM.EDU

30

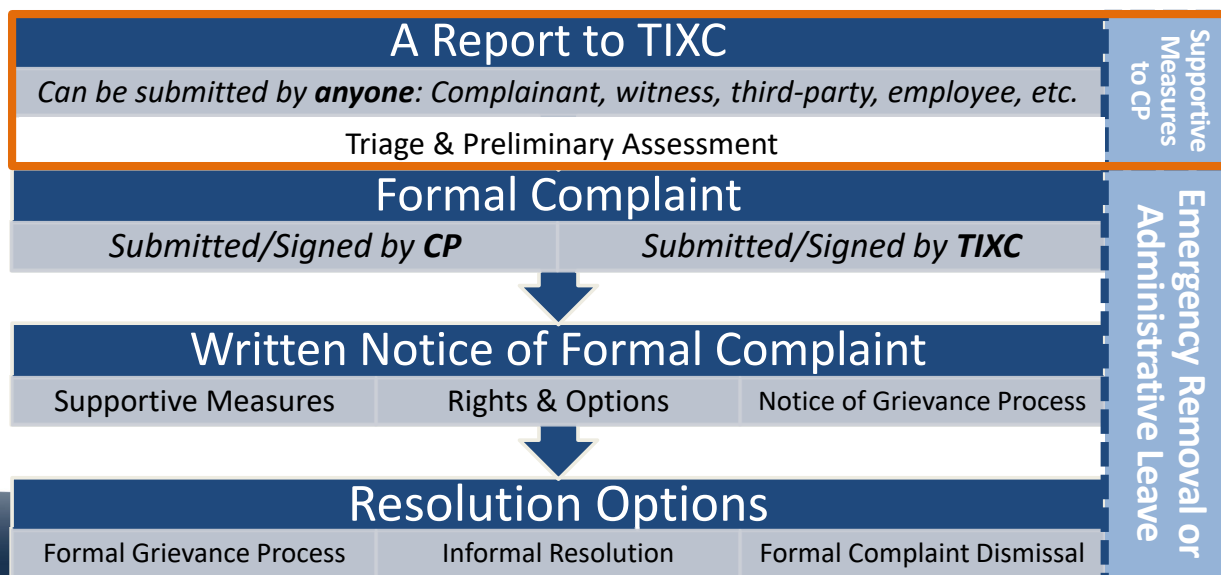
30

Considerations for Documentation & Record Keeping?

- Documentation Checklists & Forms
- Intake & Initial Assessments
- Case Management Timelines & Decisions
- Contact & Communications
- Notices, Letters, Dismissals, & Reports
- Data Systems for Electronic & Hard Copy Records



Resolution Flowchart



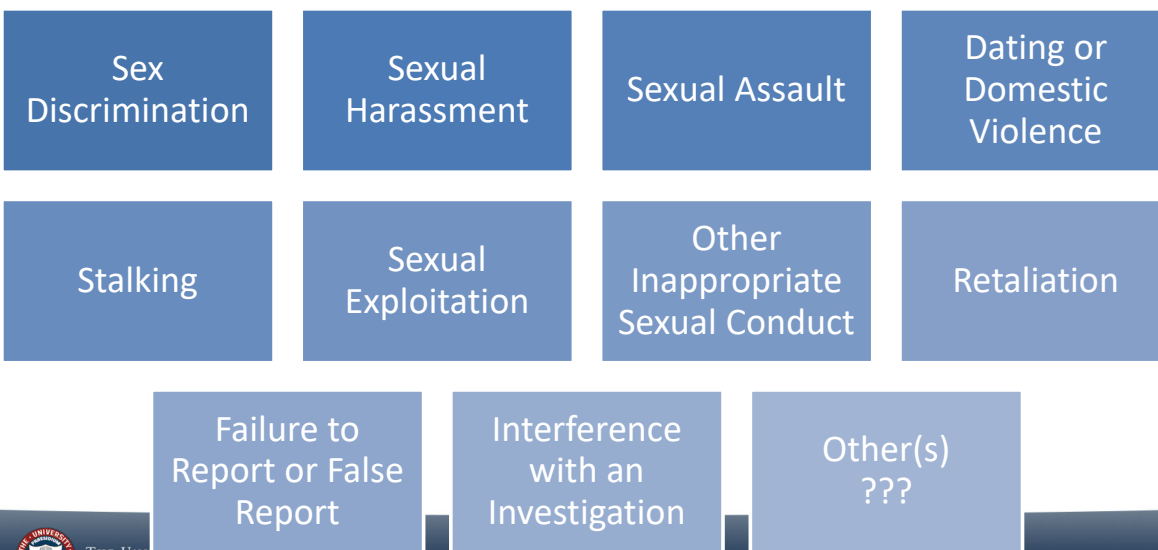
Basis of the Allegation(s)?

- Alleged **incident** of prohibited conduct
- Alleged **pattern** of prohibited conduct
- Alleged **climate issue(s)** in an area or department



33

Allegation Type(s): Sexual Misconduct Policy?



34

Other Triage Analysis & Considerations

CP & RP Affiliation
to the Institution?

Incident Location(s)

Date/Time of
Incident

Time of Alleged
Incident:
Institutional Nexus
or Jurisdiction?

Institutional Action?
Preventative
Action?
Remedies?

Level of Concern?
Threat Level?



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

35

35

A Report to the Title IX Coordinator (TIXC)

TIXC must promptly contact the **complainant** to discuss the availability of supportive measures (with or without a formal complaint), consider the wishes of the complainant, and explain the process for filing a formal complaint.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

36

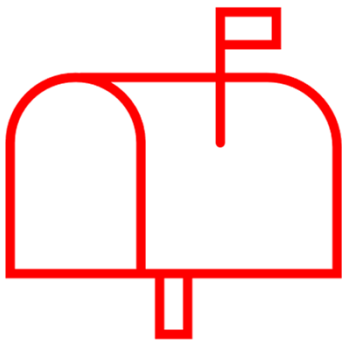
Examples of Supportive Measures

Non-Disciplinary & Non-Punitive Measures...

that do not unreasonably burden the other party

Housing Reassignment	Counseling Services	Class Extensions or Adjustments
Work or Class Modifications	Class Withdrawal or Retake (w/o penalty)	Leave of Absence
Mutual No-Contact Btwn Parties	Campus Escort Services	Increased Campus Security

Disciplinary or Punitive Measures



Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an Emergency Removal is appropriate.

Party's Rights

A **Complainant** and **Respondent** have the following rights during a grievance process:

- To be informed of and have access to counseling, medical, academic, and other applicable **support services**, including **confidential resources**.
- To be informed of the importance of a victim going to a **hospital for treatment** and the **preservation of evidence**, if applicable, as soon as practicable after an alleged incident.
- To be informed of a **notice of formal complaint** to the University, whether filed by a CP or the TIXC.
- To receive a **prompt, fair, equitable, and impartial grievance process**.
- To receive information and ask questions about the **formal and informal processes**.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

39

Party's Rights (Cont.)

- To be given **equal chance** to participate in a grievance process, including the opportunity to identify witnesses and other relevant evidence.
- To choose **not** to actively participate in the grievance process, if desired.
- To have an **advisor of choice** present during all meetings and grievance proceedings.
- To have an **advisor provided** for a party at a **hearing** under the Title IX/SH grievance process, if an advisor of choice is not present.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

40

Party's Rights (Cont.)

- To have access and equal opportunity to **inspect** and **review any evidence obtained** as part of the investigation, and to receive a copy of the completed investigation report.
- To be **equally informed** of any **determinations** regarding responsibility, dismissals of formal complaints, and/or a party's filing of an appeal.
- To **appeal** a determination regarding responsibility and/or dismissals of formal complaints.
- To file a report with **local** and/or **campus law enforcement** authorities.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

41

Complainant's Rights

- To **report** an incident and/or **file a formal complaint** with the University.
- To **request** in writing that the University **not investigate** a reported incident and be **informed** of the **University's decision** whether or not to investigate.
- To **request** in writing a **dismissal** of a formal complaint (e.g. withdraws the formal complaint or any allegations therein).



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

42

Other Required Action

Type of Concern

Action

Non-emergency behavioral or wellness issues(s)

Refer to Behavior Intervention Team (BIT) or campus equivalent

Immediate safety concerns (emergencies) or welfare check required

Report immediately to 911

Clery reportable crimes that meet Clery geography requirements and/or timely warning requirements

Timely Warnings: Report immediately to campus law enforcement
Clery Crime Reporting: Report to the campus Clery Manager

Alleged abuse and/or neglect of minors

Report immediately to Dept. of Family & Protective Services (DFPS): 800-252-5400

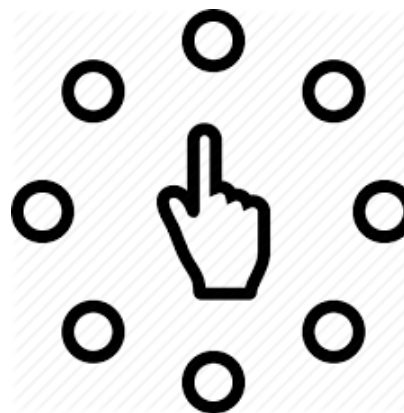
Alleged conduct could violate other institutional policies

Refer to the appropriate office(s) who oversees the applicable policies

43

TIXC: Options for Next Steps

- Supportive Measures for the CP
- CP's right to file a formal complaint
- TIXC files a formal complaint, in lieu of a Reluctant Complainant and/or compelling reasons to investigate further...



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

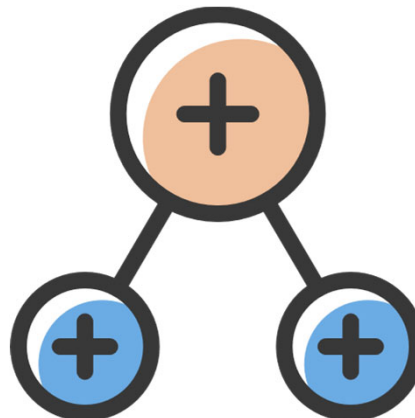
44

44

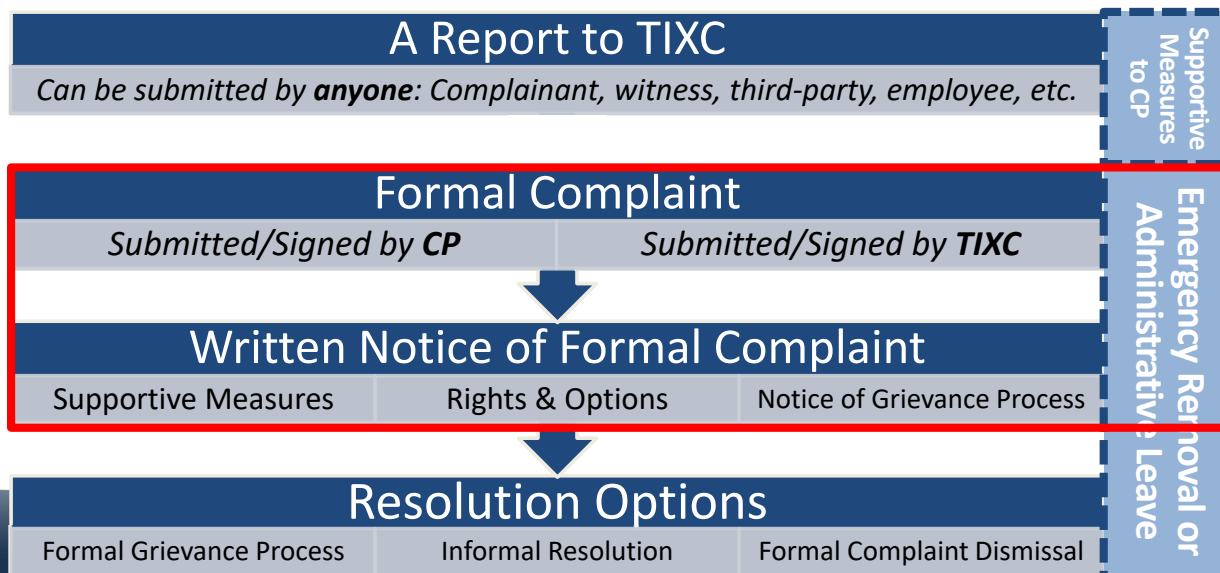
TIXC: File a Formal Complaint?

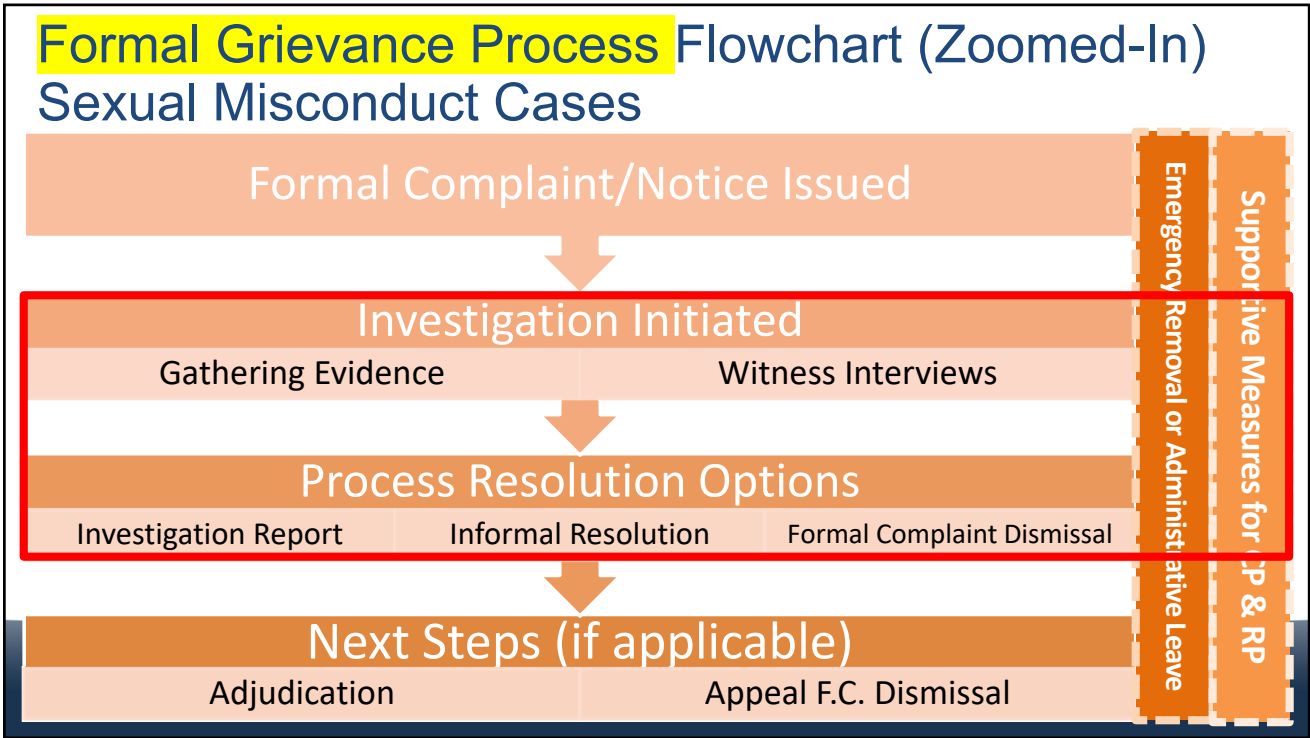
Consider if there are compelling reasons:

1. The **nature, circumstances, & seriousness** of the alleged conduct;
2. The **safety & risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5. Other relevant factors in the specific matter?

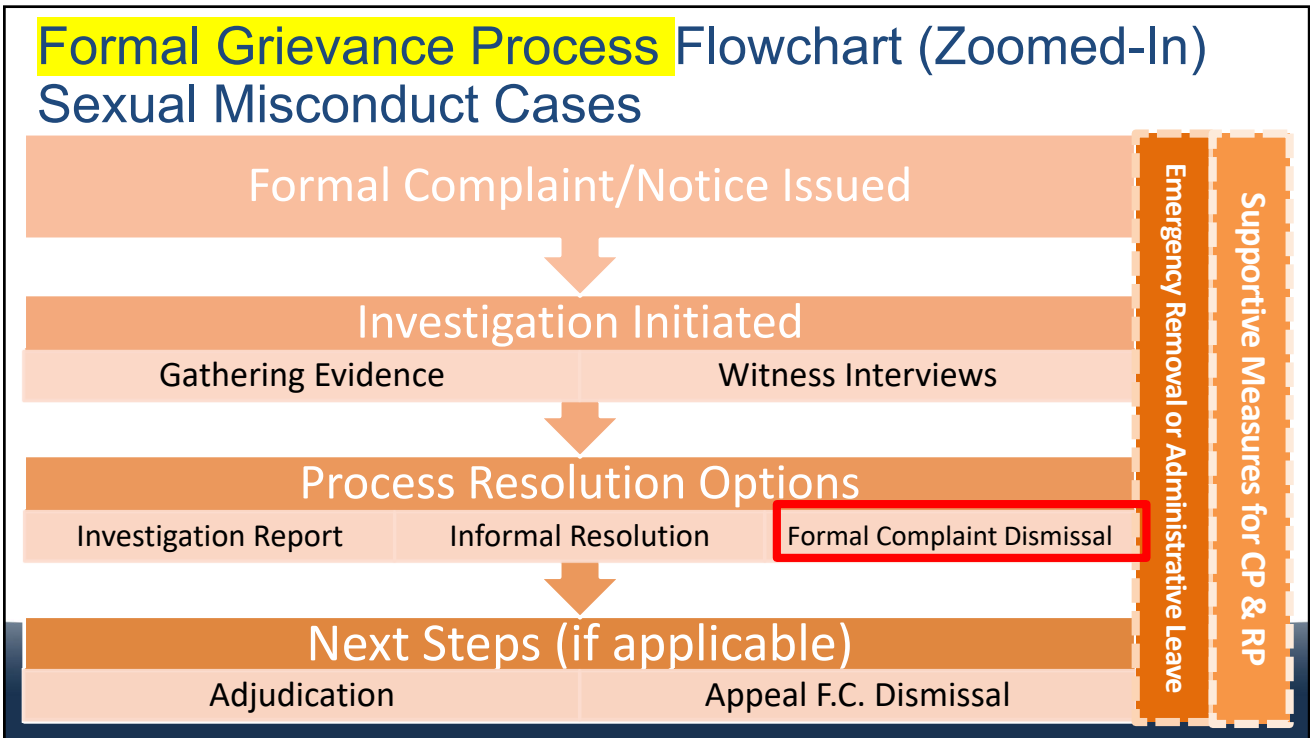


Resolution Flowchart





47



48

Mandatory Formal Complaint Dismissals under Title IX

Mandatory Dismissals are required when the **definitional** or any element of the **jurisdictional** framework under Title IX is not met:

- Conduct alleged constitutes “**sexual harassment**” under the regulations;
- Conduct alleged occurs in the institution’s “**education program or activity**”;
- Conduct alleged occurs against a person “**in the United States**”; or
- Complainant is **participating in** or **attempting to** participate in the “education program or activity” of the institution.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

49

If **Mandatory Dismissal** is required, then are additional **discretionary reasons** for a dismissal applicable to the specific circumstances?

- CP expressly **prefers to dismiss** the formal complaint or requests to not investigate the matter.
- RP was an employee and is **no longer employed** by the institution at the time the formal complaint is filed.
- Any **specific circumstances** that prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- The conduct alleged does not meet the definition of **any** prohibited conduct under the institution’s Sexual Misconduct Policy.

Additional Considerations



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

50



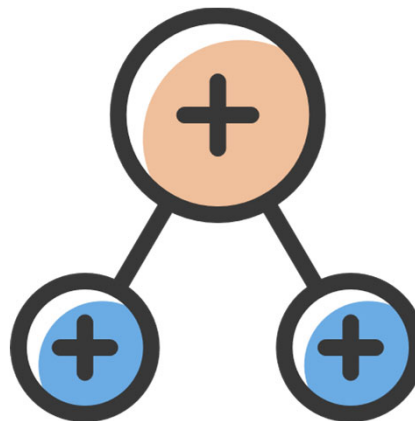
Dismissing a Formal Complaint under Title IX doesn't preclude an institution from addressing conduct prohibited under an institution's policy through a fair and equitable grievance process...



Triage Again

Consider compelling reasons for continuing a grievance process:

1. The **nature, circumstances, & seriousness** of the alleged conduct;
2. The **safety & risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5. Other relevant factors in the specific matter?

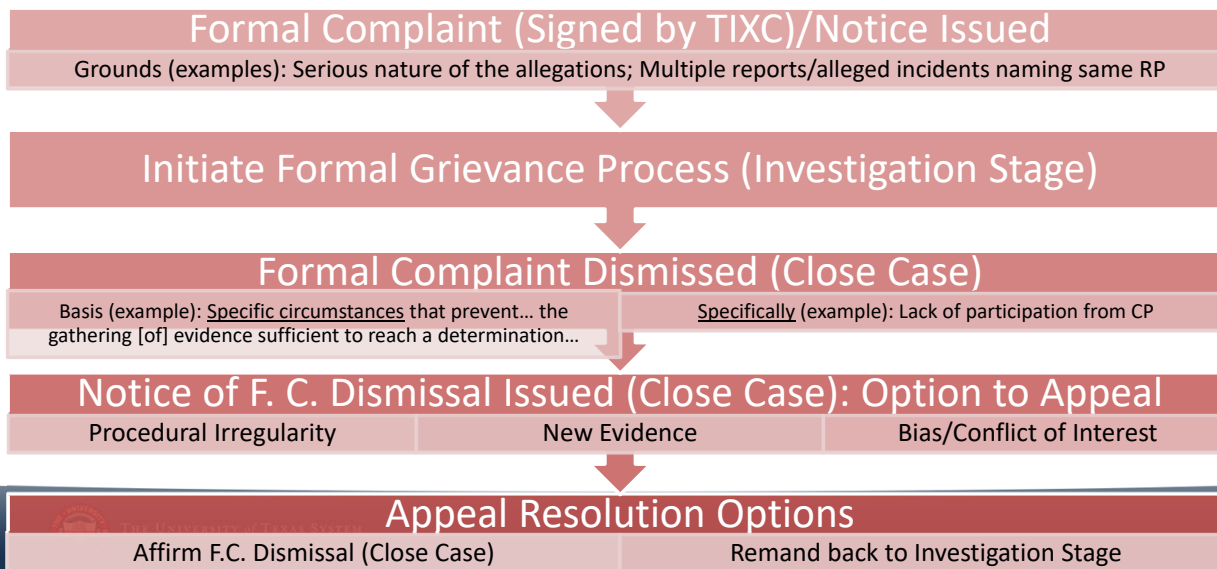


Notice of Formal Complaint Dismissal

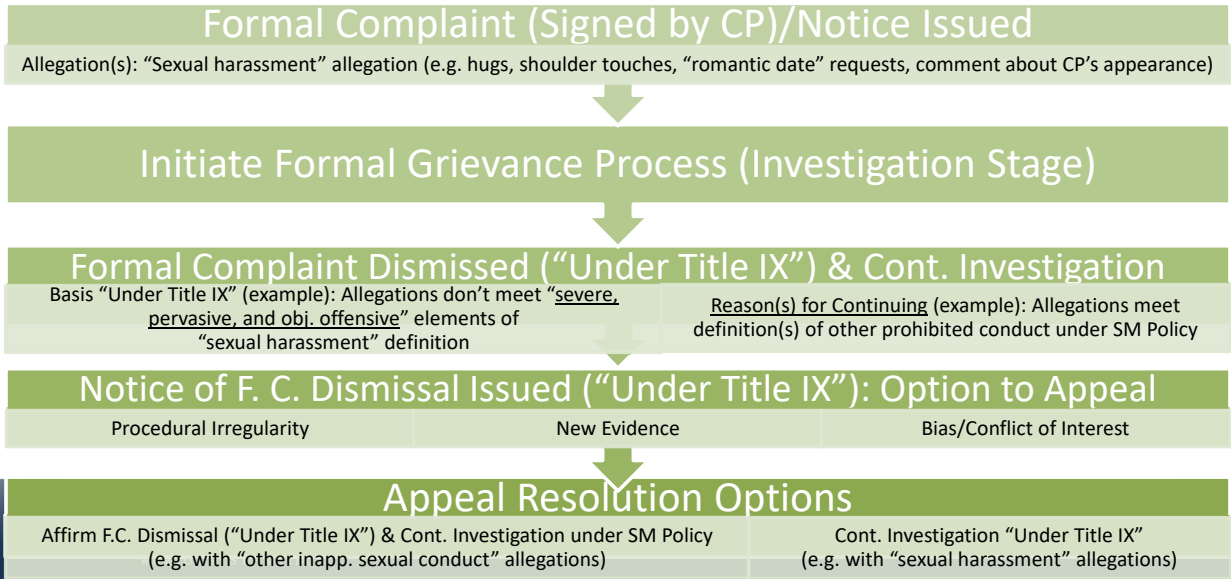
1. Note the reasons for the **mandatory dismissal** “**under Title IX**” (if applicable).
2. Explain the rationale for the following:
 - Additional discretionary reason(s) for dismissing the formal complaint under the institution’s policy and closing the case; **or**
 - Additional compelling reason(s) for continuing a grievance process under the institution’s policy (e.g. the allegations still apply to the policy).
3. Option to Appeal the F.C. Dismissal
4. Outline next steps in the process (if applicable) **or** note the conclusion/end of the process with this formal complaint dismissal.



Formal Complaint Dismissal (Example #1)

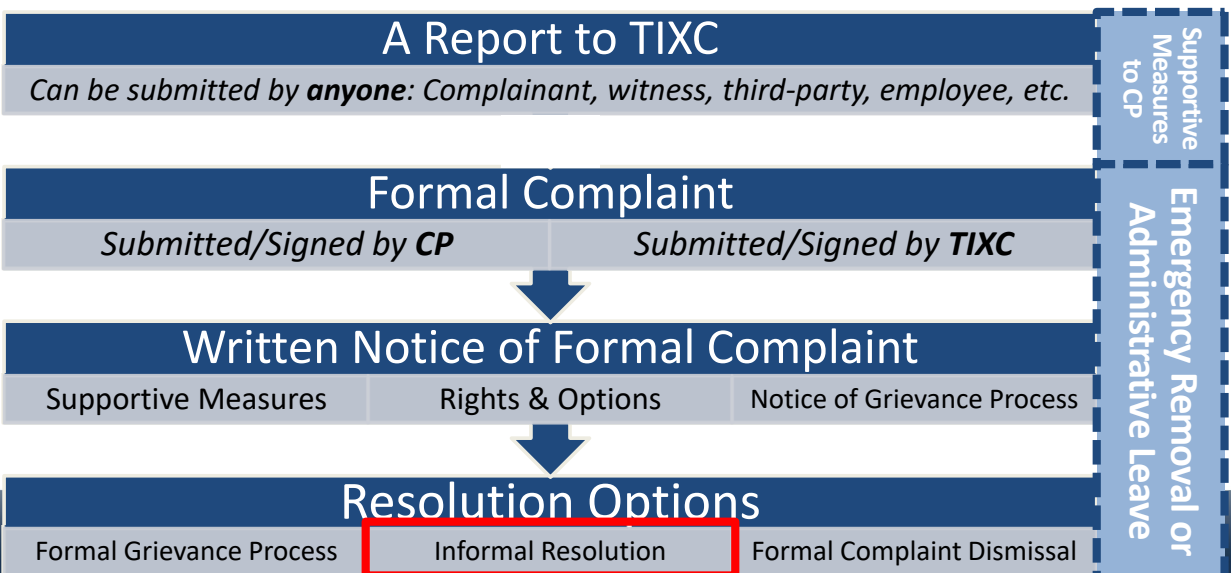


Formal Complaint Dismissal (Example #2)



55

Resolution Flowchart



56

Informal Resolutions

1. It's an alternative resolution option once a formal complaint is filed.

- Available as an option at any time prior to reaching a determination regarding responsibility.
- Doesn't involve a full investigation & adjudication.
- May be facilitated through **mediation** (as an example).
- Informal Resolution Process must include:
 - (a) Written notice of allegations, (b) Requirements of the informal process, & (c) Any consequences resulting from participating in an informal process (e.g. record keeping).



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

57

Informal Resolutions (Cont.)


2. Not permitted as a resolution option “under Title IX” when an **employee respondent** is alleged of “sexual harassment” by a **student complainant**.
3. Examples of other non-applicable reasons* due to seriousness and/or pattern of allegations:
 - Sexual Harassment cases
 - Sexual Violence cases
 - Dating or Domestic Violence cases
 - Stalking cases
 - The same respondent has previous informal resolution agreements

** Check the institution's Sexual Misconduct Policy for specific provisions*




THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

58



Bottom Line

- Be **consistent**
- Refer to **case precedent** (e.g. similar facts or elements)
- Follow your **policy** and **process**



59

59

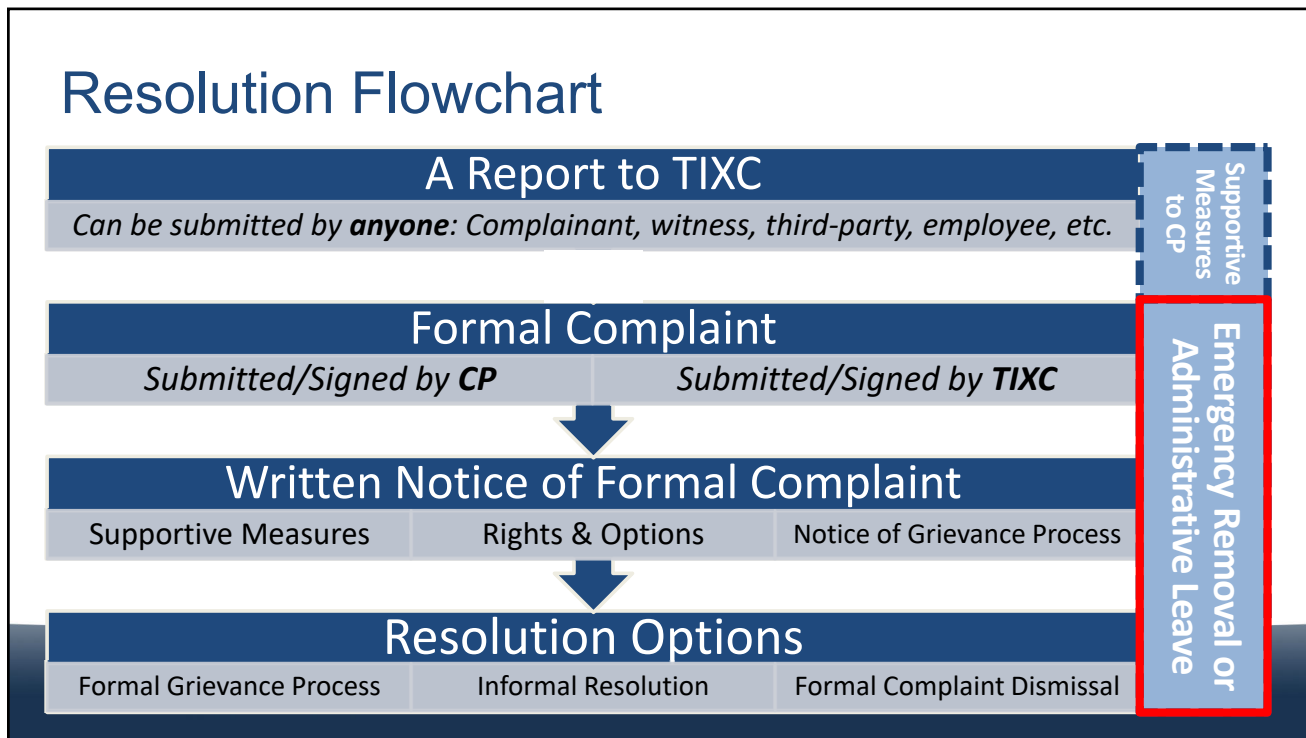


Threat Assessment Tools & Emergency Removals



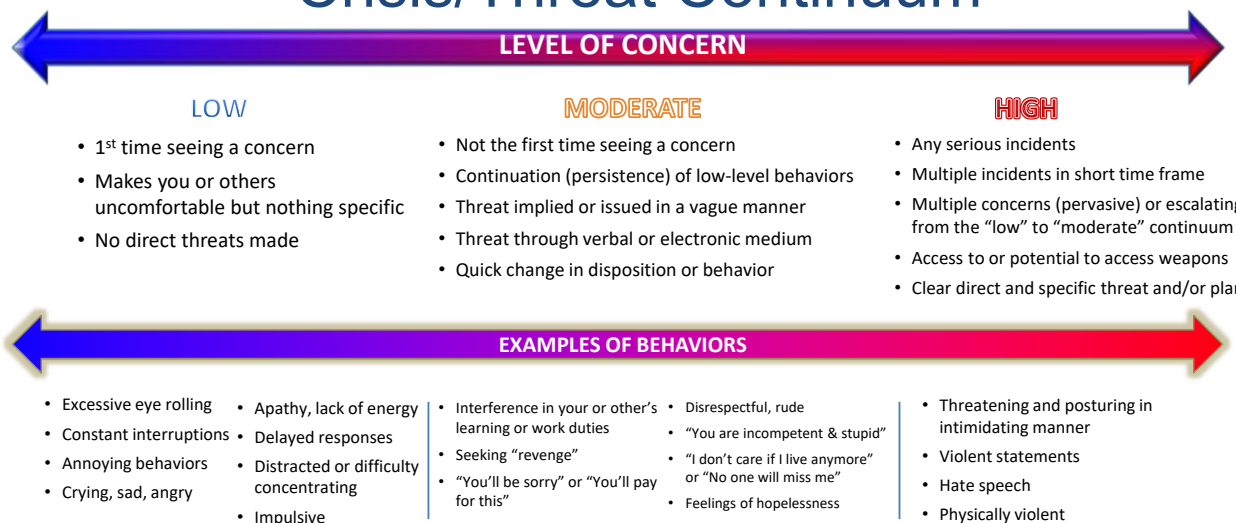
60

Resolution Flowchart



61

Crisis/Threat Continuum



62

Most Critical Warning Signs

1. Direct communicated threat?
2. Plans, tools, weapons, and/or materials to carry out physical harm?
3. Harbors violence fantasies?
4. A timeframe or action plan created?
5. Fixations and/or focused on a specific target?
6. Grudges or resentments?
7. The specific target has been described negatively in writing by the person of concern?
8. "Leakage" concerning a potential action plan?
9. Current suicidal thoughts, ideations, and/or plan to die?
10. Talks about being persecuted or treated unjustly?
11. Engaged in "last acts" behaviors?
12. Confused, odd, or troubling thoughts; may hear voices or see things that are not there?

Purpose: Understand, contextualize, assess, examine, qualify... macro-analysis...

What is the level of concern/threat?



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: SIVRA-35, NaBITA

63

63

Transient vs. Substantive Threats

Transient Threat	Substantive Threat	
Statements that do not express a lasting intent to harm themselves or someone else.	Statements that express a <u>credible</u> and/or <u>continuing</u> threat to harm themselves or someone else.	
Figure of speech or short-term feelings.	Impulsive, reactive, emotional. Impaired emotional recognition. Exhibits lack of control.	Long-term feelings established. Desire to harm self or others extends beyond an immediate incident or argument.



Affective Violence



Premeditated Violence



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

64

64

Special Considerations: Sexual Violence, IPV, & Stalking Cases



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

65

Determining Predominant Aggressors

Common Considerations:

- Indicators of **power & control**?
- Presence or threat of a **weapon**?
- **History** of dating or domestic violence?
- Aggressive or hostile **body language**?
- Pre-existing **protective orders** or “**no contact**” directives?
- Comparative extent of **injury** (if both are injured)?
- **Property** damage?
- Elements of **fear**?



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

66

66

Consent Definition

A **voluntary, mutually understandable agreement** that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.



Any Predatory Behaviors? Power & Control?

Consent is not effective if:

- Physical force;
- Threat of physical force;
- Intimidation;
- Coercion; or
- Incapacitation



Definition of “Intimidation”

Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or conduct, but without displaying a weapon or actual physical force.



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

69

69

Definition of “Coercion”

Use of pressure to compel another person to initiate or continue a sexual activity against the person’s will.

Examples: psychological/emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail.

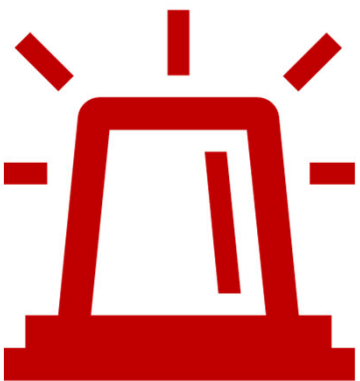


THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

Source: *UT System Model Policy for Sexual Misconduct (2020)*

70

70



Examples of Predatory Behaviors

- Tests the **boundaries** of the prospective victim.
- Uses **grooming** tactics: Isolation of the prospective victim, trust building, gift giving, have “secrets” between the perpetrator & victim.
- Plans and **premeditates** assaults.
- Uses “**psychological**” **weapons** – power, control, manipulation, threats*.
- Uses **alcohol** and/or **drugs** as a weapon to incapacitate a prospective victim.


Note: “Threats” may not be threats of violence

71

Has the RP:

- Prevented you from talking to others such as family or friends?
- Listened to your private phone calls or read your email?
- Acted jealous?
- Humiliated you at home or in public?
- Broken your personal belongings?
- Behaved violently or aggressively in public?
- Been arrested in the past for violence?

Assessing Danger Example Questions



THE UNIVERSITY of TEXAS SYSTEM
FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
WWW.UTSYSTEM.EDU

72

72

Assessing Lethality Example Questions

Has the RP:

- Have access to a weapon, and/or threatened to use a weapon?
- Threatened to harm or kidnap your children?
- Threatened to kill you, themselves, or others?
- Harmed your pet(s)?
- Been abusing alcohol or drugs?
- Stalked or followed you?
- Forced you or your children to flee in the past?




73

Emergency Removals

1. **Individualized safety & risk analysis:** Determines that immediate threat to the physical health & safety of any student or other individual arising from the allegations justifies the respondent's removal from the education program or activity.
 - Notice & opportunity to challenge the decision immediately following the removal.
 - Rights under **ADA & Section 504** still apply.
2. Doesn't preclude an institution from placing non-student employee respondents on **administrative leave** during the pendency of the grievance process.




74




Bottom Line for Emergency Removals

- Establish & maintain a **communication plan** to key partners:
 - BIT;
 - Dean of Students; or equivalent
- Know who is making the **key decisions** for Emergency Removals
- Be **consistent** with communication & decision-making
- Refer to **case precedent** (e.g. similar fact or elements)
- Follow your **policy** and **process**



 THE UNIVERSITY of TEXAS SYSTEM
 FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
 WWW.UTSYSTEM.EDU

75

75



Case Mgt: Closing Steps of the Investigation


 THE UNIVERSITY of TEXAS SYSTEM
 FOURTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.
 WWW.UTSYSTEM.EDU

76

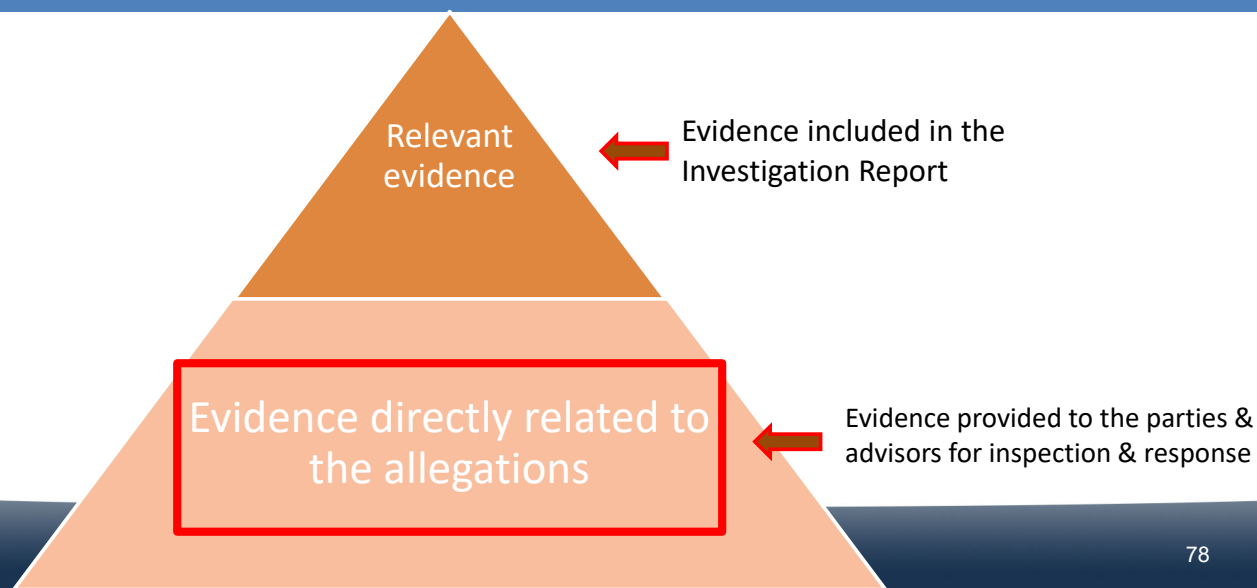
Advisor Considerations

- Is an advisor of choice involved?
- Access to the related evidence & the finalized investigation report (closing steps of the investigation).
- Consider providing an advisor, if an advisor of choice has not been involved.



77

Evidence Pyramid



78

Access to Evidence

Equal opportunity to both parties (& the advisors) to **inspect & review any evidence obtained** that is directly related to the allegations in the formal complaint.



Access to Evidence: When?

- Upon request from a CP, RP, or an Advisor?
- At the end of the investigation?



Access to Evidence (Cont.)

Send each party (& the advisors*) the applicable evidence:

- In hard copy or electronic format
- At least 10 days to inspect, review, & respond to the evidence
- All responses to the evidence must be submitted in writing to the investigator(s)

** Advisor of choice; or the provided advisor by the institution (If applicable)*



Access to Evidence (Cont.)

The investigators will consider all timely responses submitted by the parties **prior** to completing the investigation report.



Draft vs. Completed Investigation Report



83

Access to the Completed Investigation Report

Send each party (& the advisors*) the completed investigation report:

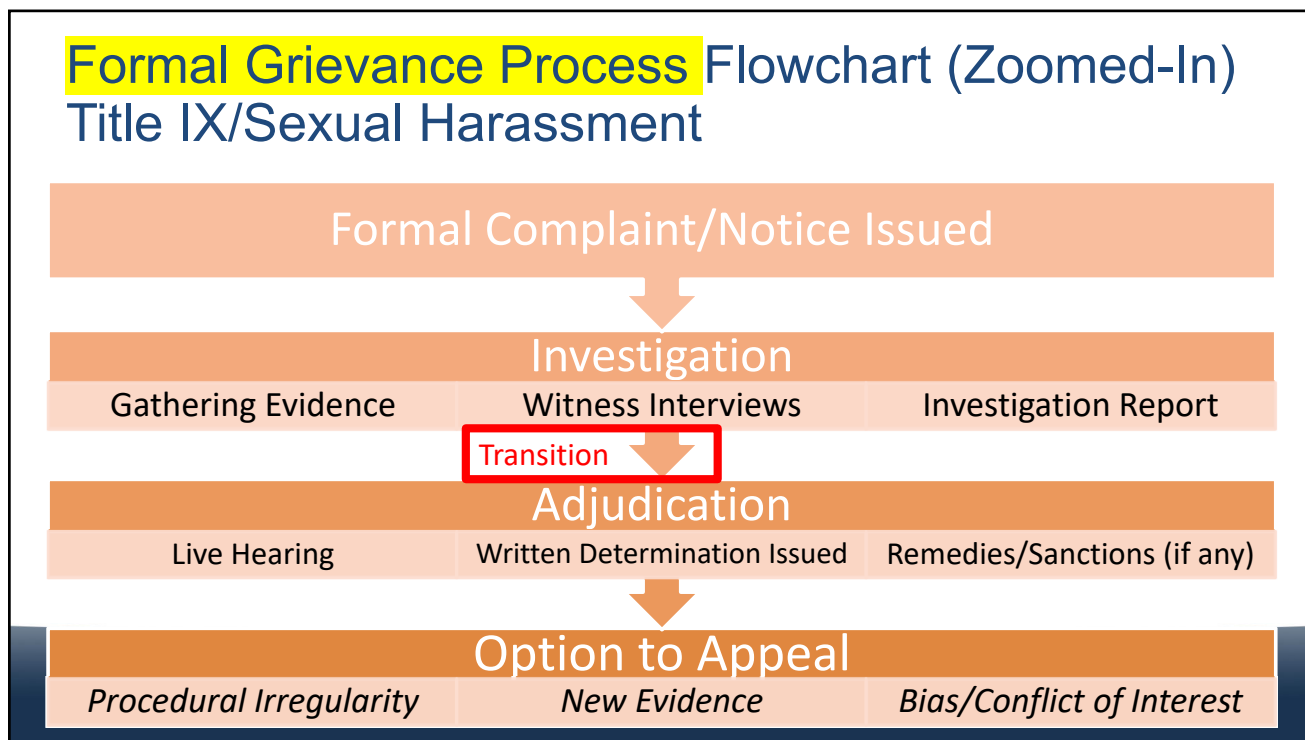
- At least 10 days prior to the scheduled hearing
 - Why? Opportunity for the parties to inspect, review, & respond to the investigation report (at the hearing)
- A copy of the investigation report to the TIXC and hearing officer assigned.

** Advisor of choice; or the provided advisor by the institution (If applicable)*



84

Formal Grievance Process Flowchart (Zoomed-In) Title IX/Sexual Harassment



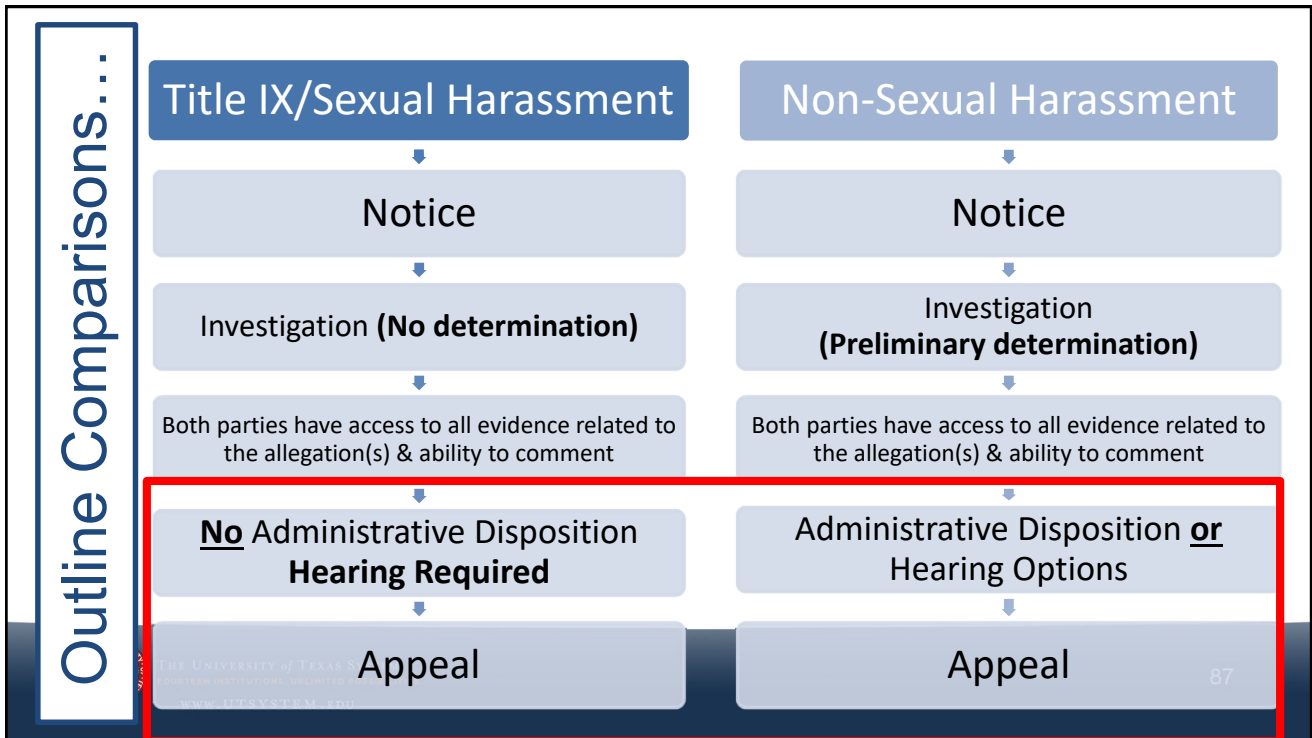
85

Transition to Adjudication

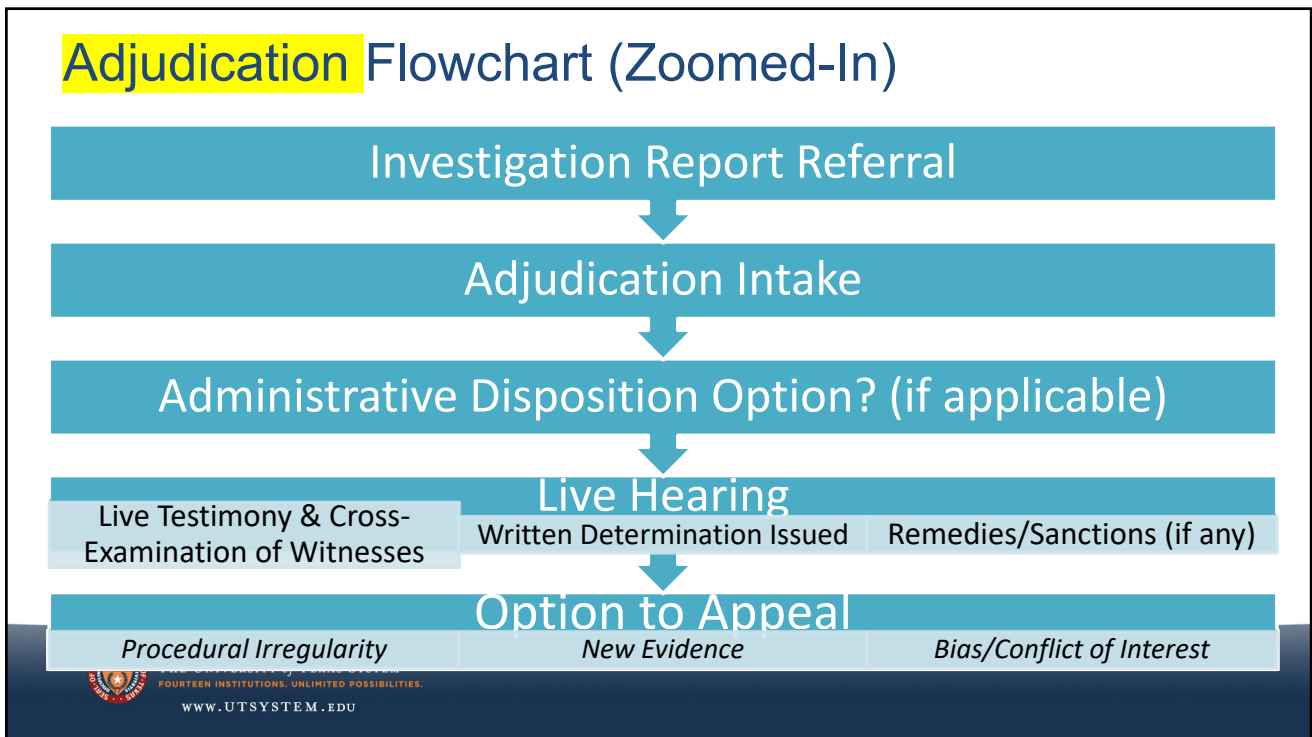
- Transition process to the adjudication office? Referral?
- An administrative coordinator for the adjudication intake, scheduling, organizing, & communicating the next steps (e.g. hearing) to all participants.



86



87



88

Documentation & Record Keeping

- Documentation Checklists & Forms
- Intake & Initial Assessments
- Case Management Timelines & Decisions
- Contact & Communications
- Notices, Letters, Dismissals, & Reports
- Data Systems for Electronic & Hard Copy Records



Q & A



Contact Information

Krista Anderson	Sean Flammer
Systemwide Title IX Coordinator	Assistant General Counsel
Office of Systemwide Compliance UT System (Austin, TX)	Office of General Counsel UT System (Austin, TX)
Phone: 512-664-9050	Phone: 512-579-5106
Email: kranderson@utsystem.edu	Email: sflammer@utsystem.edu

