

Sexual Misconduct Case Management Overview

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Fall 2023



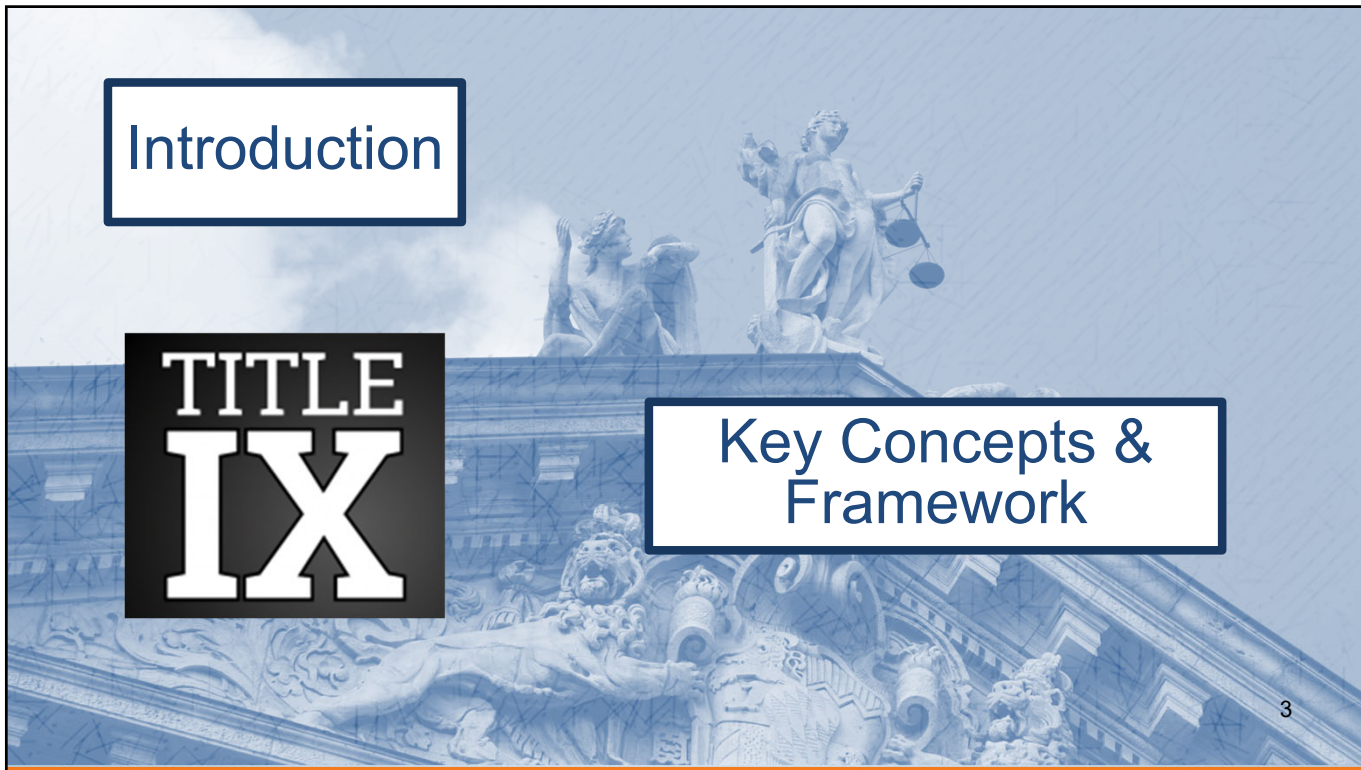
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Agenda

1. Title IX Intro
2. Triage & Case Mgt
3. Resolution Options
4. Adjudication Logistics
5. Documentation & Record Keeping

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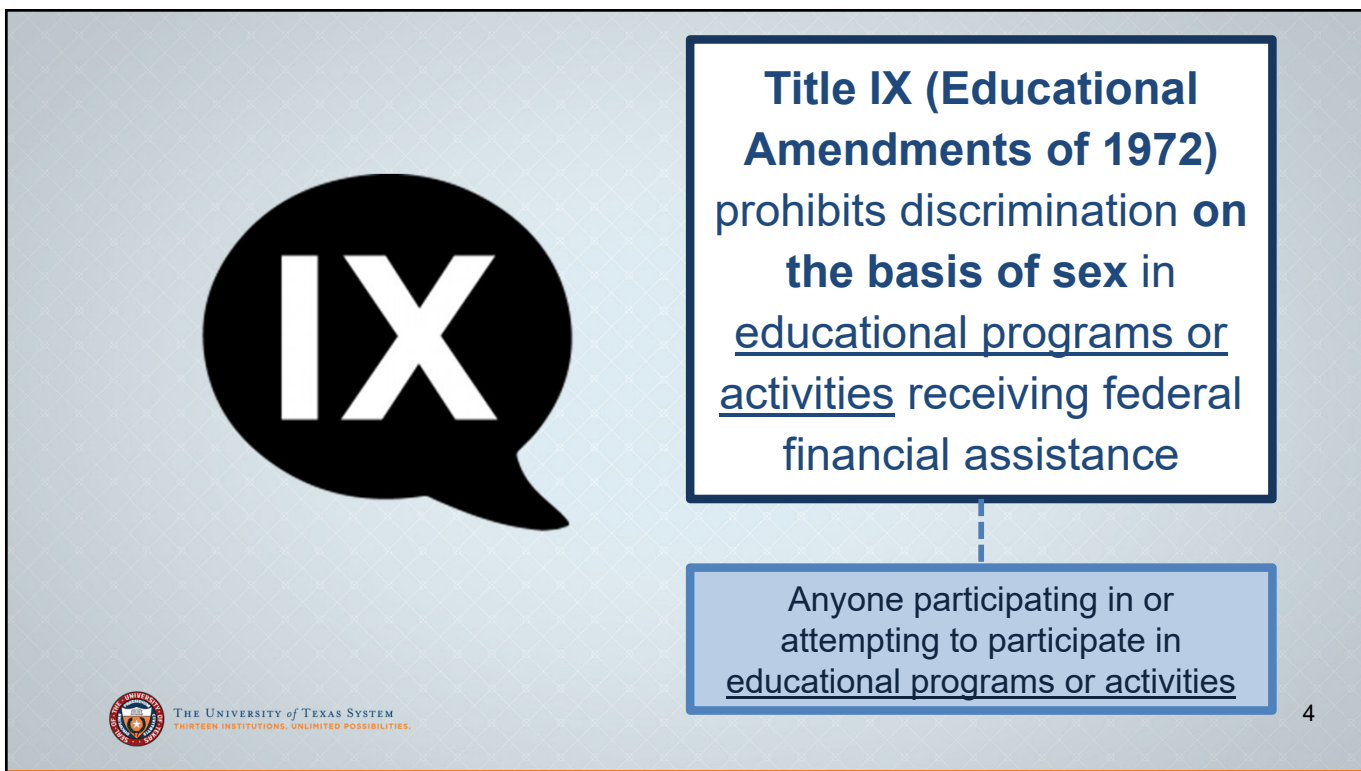
Introduction

TITLE IX

Key Concepts & Framework

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IX

Title IX (Educational Amendments of 1972) prohibits discrimination **on the basis of sex** in educational programs or activities receiving federal financial assistance

Anyone participating in or attempting to participate in educational programs or activities



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“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.



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Source: Title IX Regulations (2020)

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Title IX

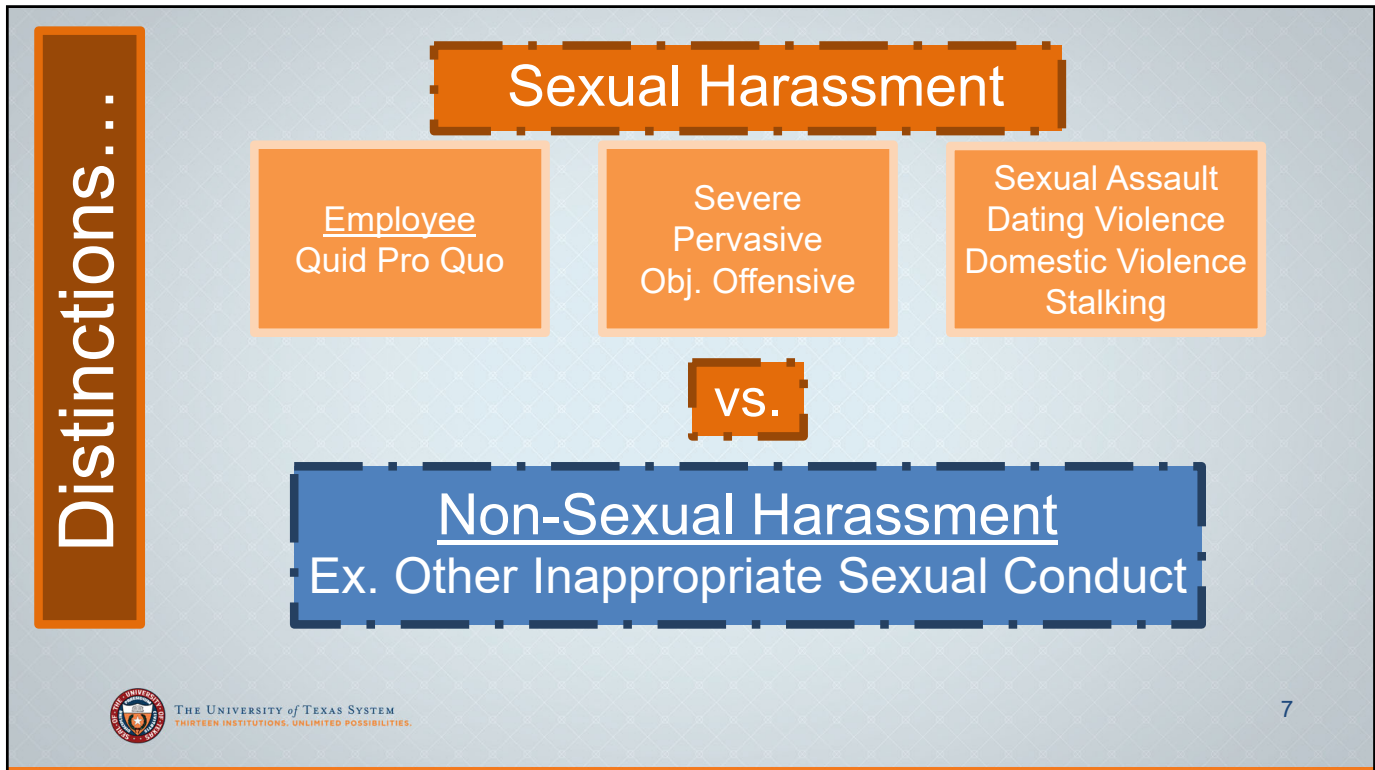
Sex Discrimination
Sexual Harassment
Retaliation



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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.

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Source: Title IX Regulations (2020) 8

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#2 Element Examples

- **“Severe”**: Physically threatening or humiliating; effects of the alleged conduct to a reasonable person (using a “reasonable person” standard)
- **“Pervasive”**: Frequency, duration of the alleged conduct
- **“Objectively offensive”**: To a reasonable person (using a “reasonable person” standard)
- **“Reasonable person” standard**: An objective test to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.
- **“Effectively denies...equal access”**: Totality of the circumstances

For example, the degree of the alleged conduct’s interference with the CP or effects in an educational setting, type of alleged conduct, frequency and duration of the conduct, knowingly unwelcome in nature

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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 prohibited inappropriate or unprofessional sexual conduct.

Such conduct 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.
2. **Physical conduct** that is objectively offensive to a reasonable person and also so **severe or pervasive** that it created a Hostile Environment.



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Source:

UT System Model Policy for Sexual Misconduct (2022)

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“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;
- Sexual exploitation;
- Unwelcome intentional touching of a sexual nature;
- Deliberate physical interference with or restriction of movement; or
- Consensual sexual conduct that is unprofessional and inappropriate, and created a Hostile Environment.



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Source:

UT System Model Policy for Sexual Misconduct (2022)

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Serving Impartially in Your Role

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



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Source: *Title IX Regulations (2020)*

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Institutional Policy & Definitions



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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)

Policy Differences Note: For the purposes of this training, the UTS Model Policy for Sexual Misconduct will be the primary policy reference. UT Institutional policies may have some differences.



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Source:

UT System Model Policy for Sexual Misconduct

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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.

The **subjective offensiveness of speech**, alone, is not sufficient to create a hostile environment.

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

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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.

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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.



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Source:

UT System Model Policy for Sexual Misconduct

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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 or police officers when a victim uses a pseudonym form). 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**.

Source:

UT System Model Policy for Sexual Misconduct

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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 Sexual Misconduct (including 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.



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Source:

UT System Model Policy for Sexual Misconduct;
Tex. Edu. Code Section 51.252-51.259

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Triage & Case Management

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Operational Roles, Delegations, & Structure?



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Documentation & Record Keeping Examples

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

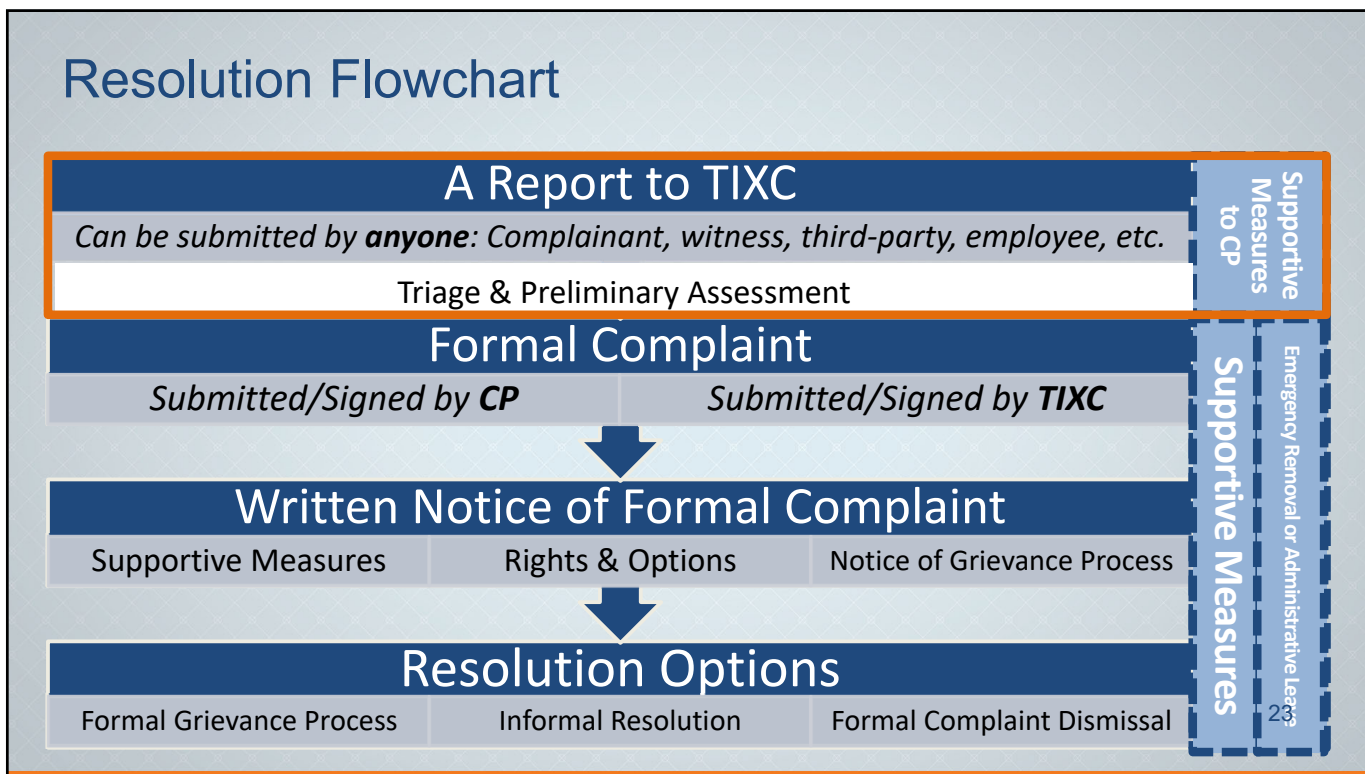


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Resolution Flowchart



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Basis of the Alleged Conduct

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

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Allegation Type(s): Sexual Misconduct Policy?

Sex Discrimination	Sexual Harassment	Sexual Assault	Dating or Domestic Violence
Stalking	Sexual Exploitation	Other Inappropriate Sexual Conduct	Retaliation
Failure to Report	False Report or False Information	Interference with an Investigation	Other(s) ???



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?



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.



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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 academic penalty)

Leave of Absence

Mutual No-Contact Btwn Parties

Campus Escort Services

Increased Campus Security

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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.

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Party's Rights

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

Information and Support

- 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 information and ask questions about the **formal and informal processes**.

Equal Opportunity and Representation

- To receive a **prompt, fair, equitable, and impartial grievance process**
- To be given **equal chance** to participate in a grievance process, including the opportunity to identify witnesses and other relevant evidence and 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.
- 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.



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Complainant's Rights

(related to the Grievance Process)

- 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).



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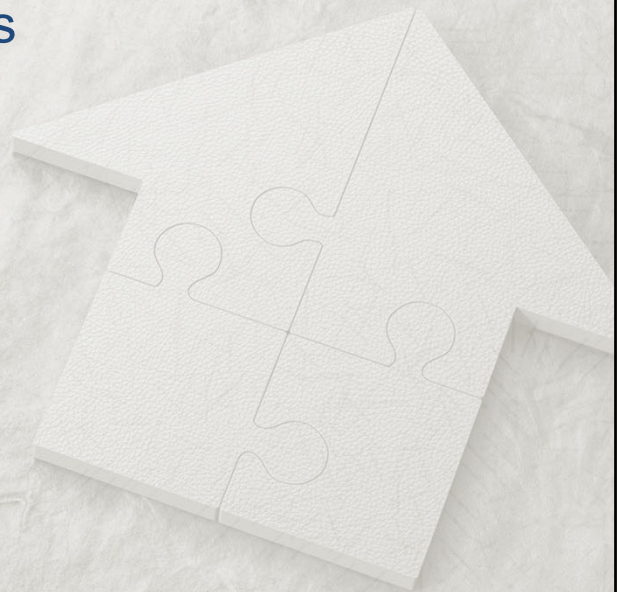
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Other Required Action?

Type of Concern	Possible 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	<u>Timely Warnings</u> : Report immediately to campus law enforcement <u>Clery Crime Reporting</u> : 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

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...



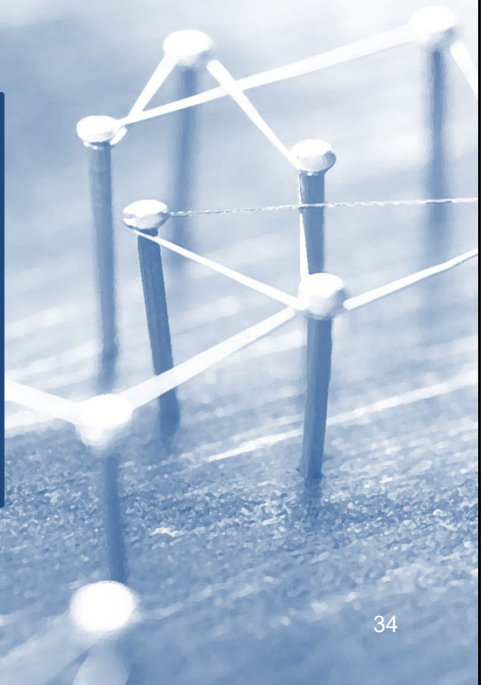
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TIXC: File a Formal Complaint?

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?



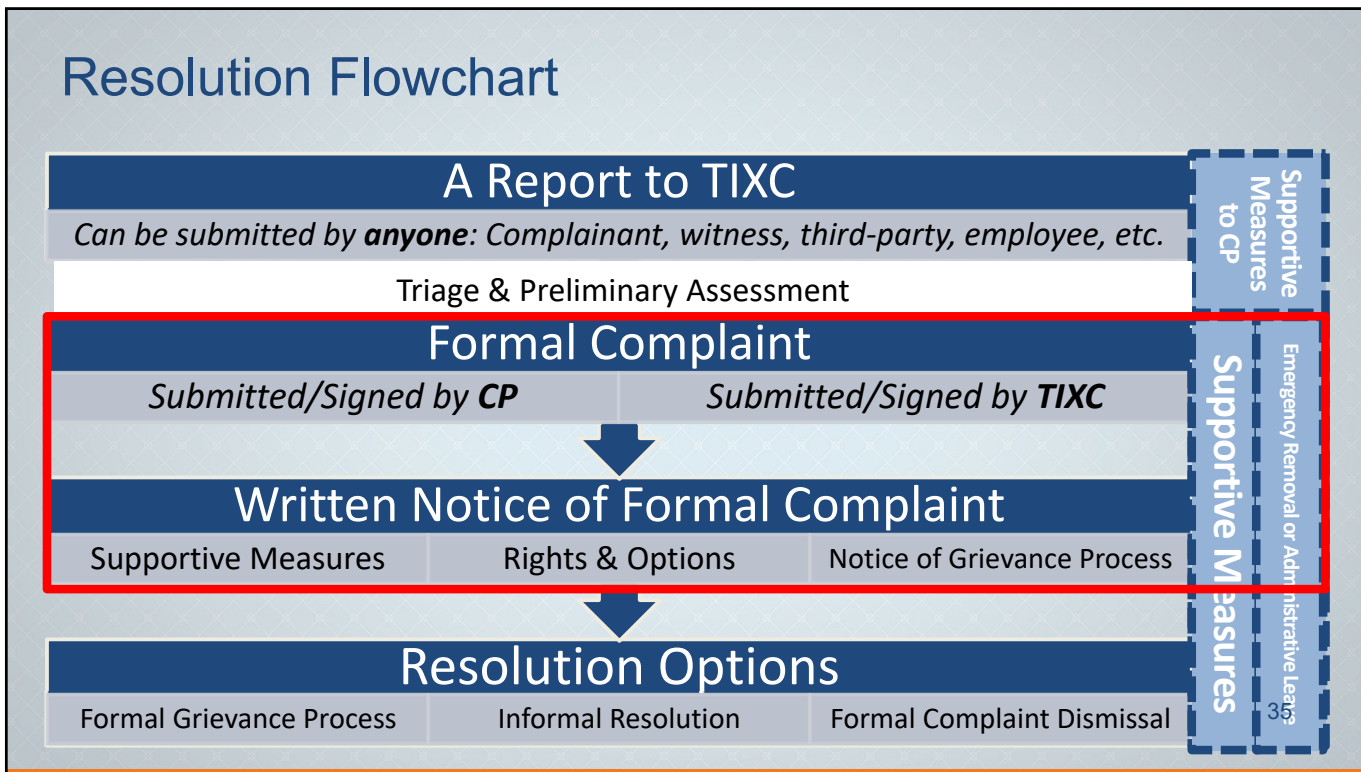
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Resolution Flowchart



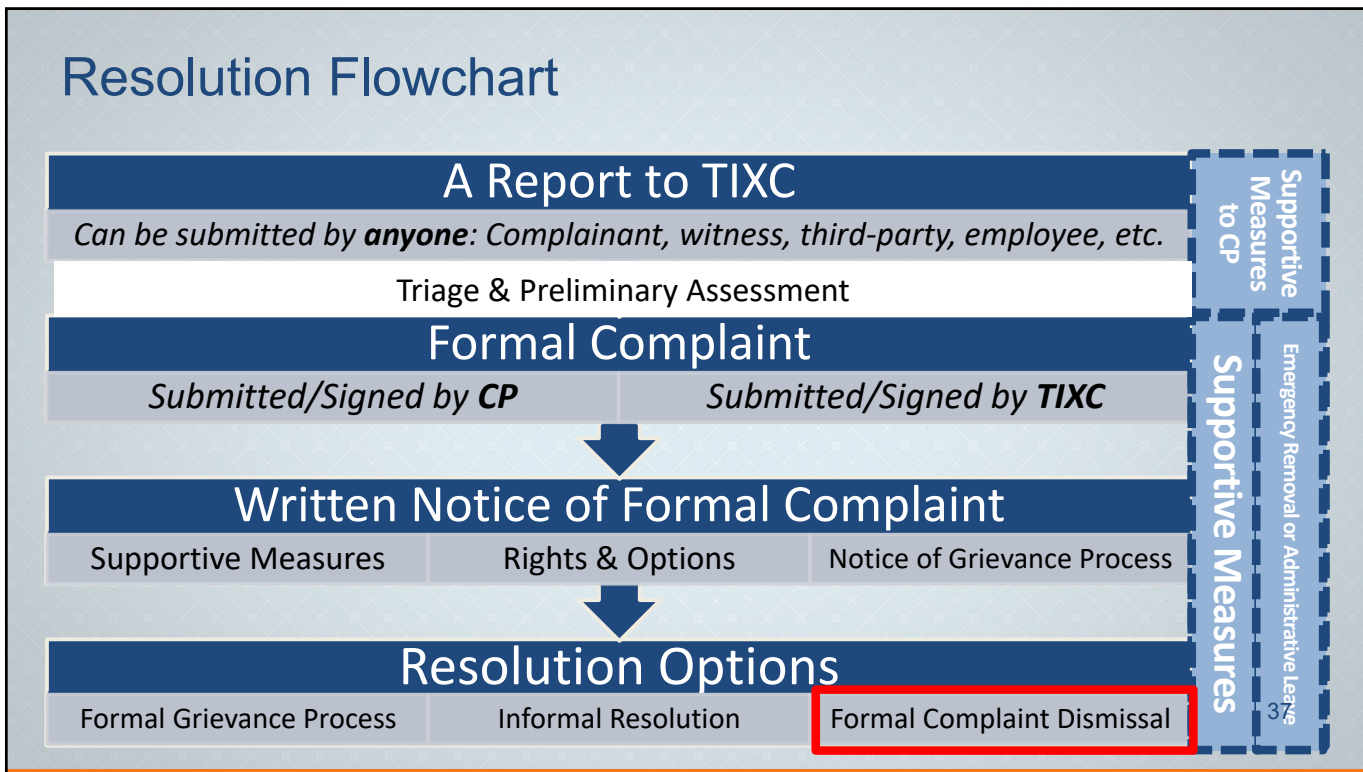
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Resolution Flowchart



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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**.



Source: Title IX Regulations (2020)

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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...

Source: Title IX Regulations (2020)

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Mandatory Formal Complaint Dismissals under Title IX

Under Title IX regulations, universities are **required** to distinguish between prohibited conduct that is “under Title IX” and prohibited conduct that is a violation of university policy. Under Title IX, the University **must dismiss** a Formal Complaint or the part of the allegations in a Formal Complaint, if applicable, where:

Sexual Harassment is alleged and where:

- The conduct alleged does not meet the definition of Sexual Harassment;
- The alleged conduct did not occur in the University's education program or activity; or
- The alleged conduct did not occur against a person in the United States.

Note: A dismissal under this provision only applies to allegations of Sexual Harassment under Title IX. In such an instance, the University may still investigate a Formal Complaint for allegations of Sexual Harassment under this Policy. The University may also investigate allegations of prohibited conduct under this Policy but it will not technically be “under Title IX.”

Source:

UT System Model Policy for Sexual Misconduct



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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



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Triage Again

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?



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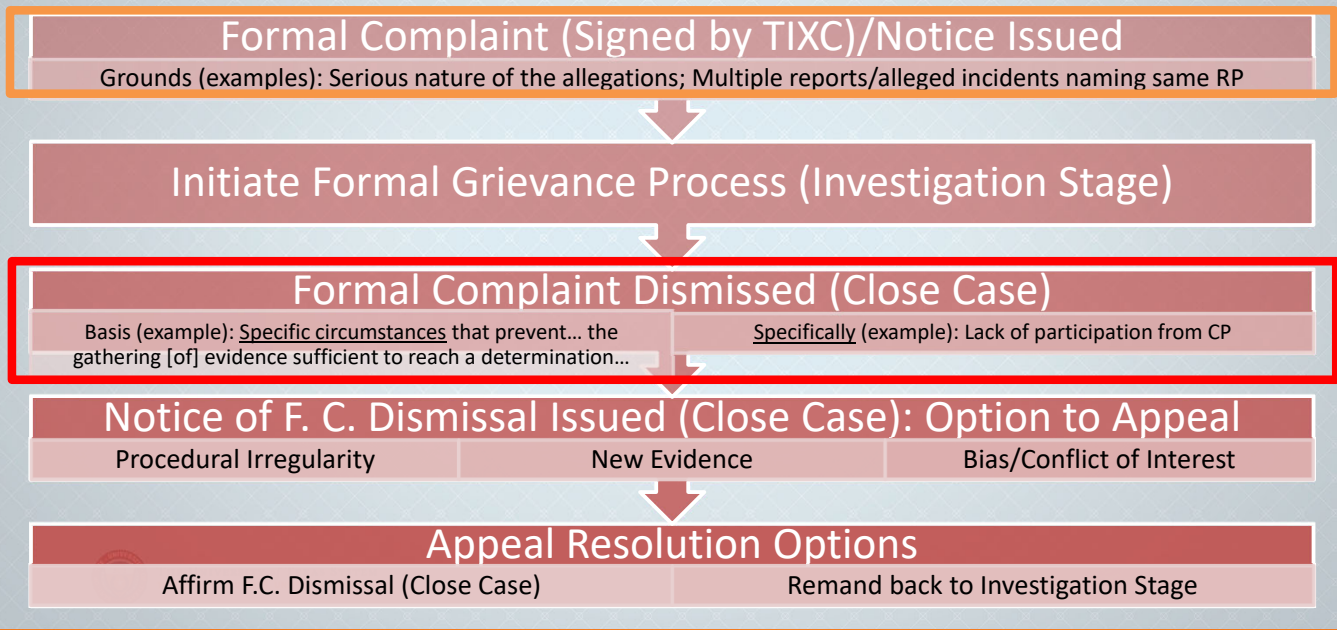
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Notice of Formal Complaint Dismissal

1. Note the reasons for the **mandatory dismissal** "under Title IX" (if applicable).
2. Explain the **basis/rationale** for the following:
 - o Additional discretionary reason(s) for dismissing the formal complaint under the institution's policy and closing the case; **or**
 - o 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.

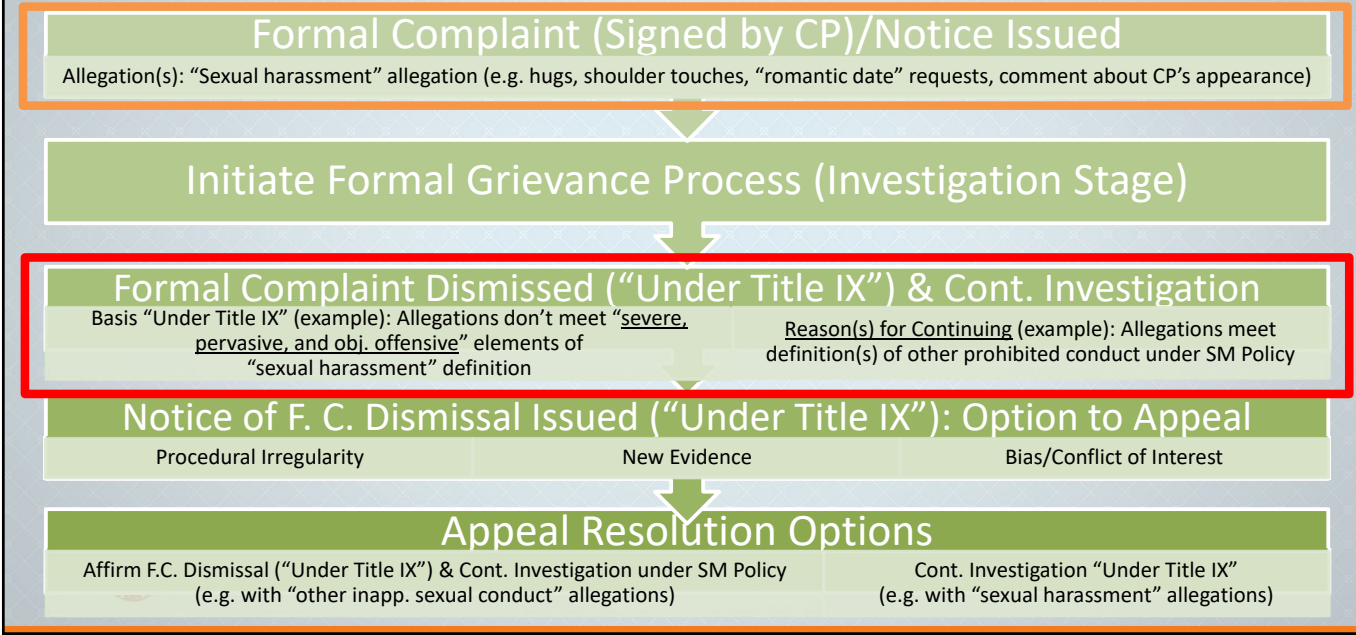


Formal Complaint Dismissal (Example #1)



Formal Complaint Dismissal (Example #2)

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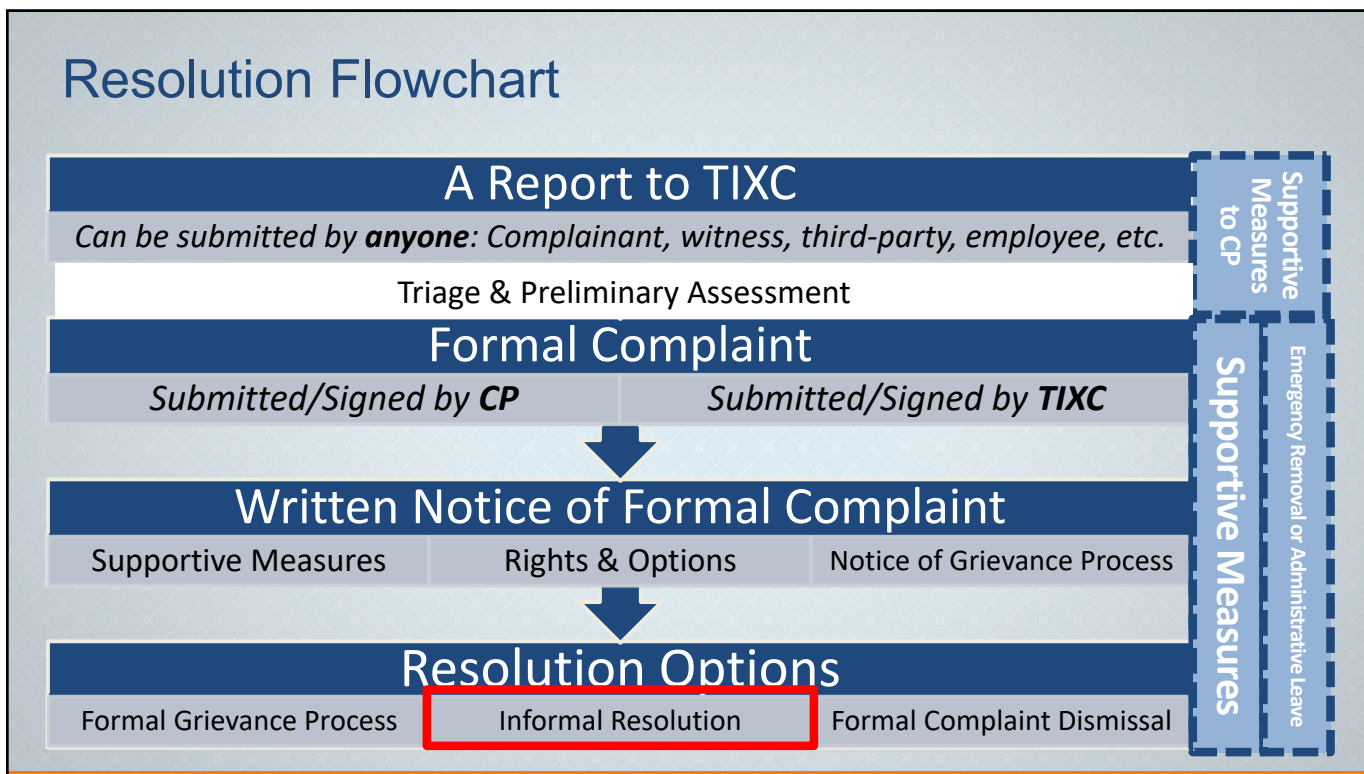


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Resolution Flowchart



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Informal Resolutions: Introduction

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

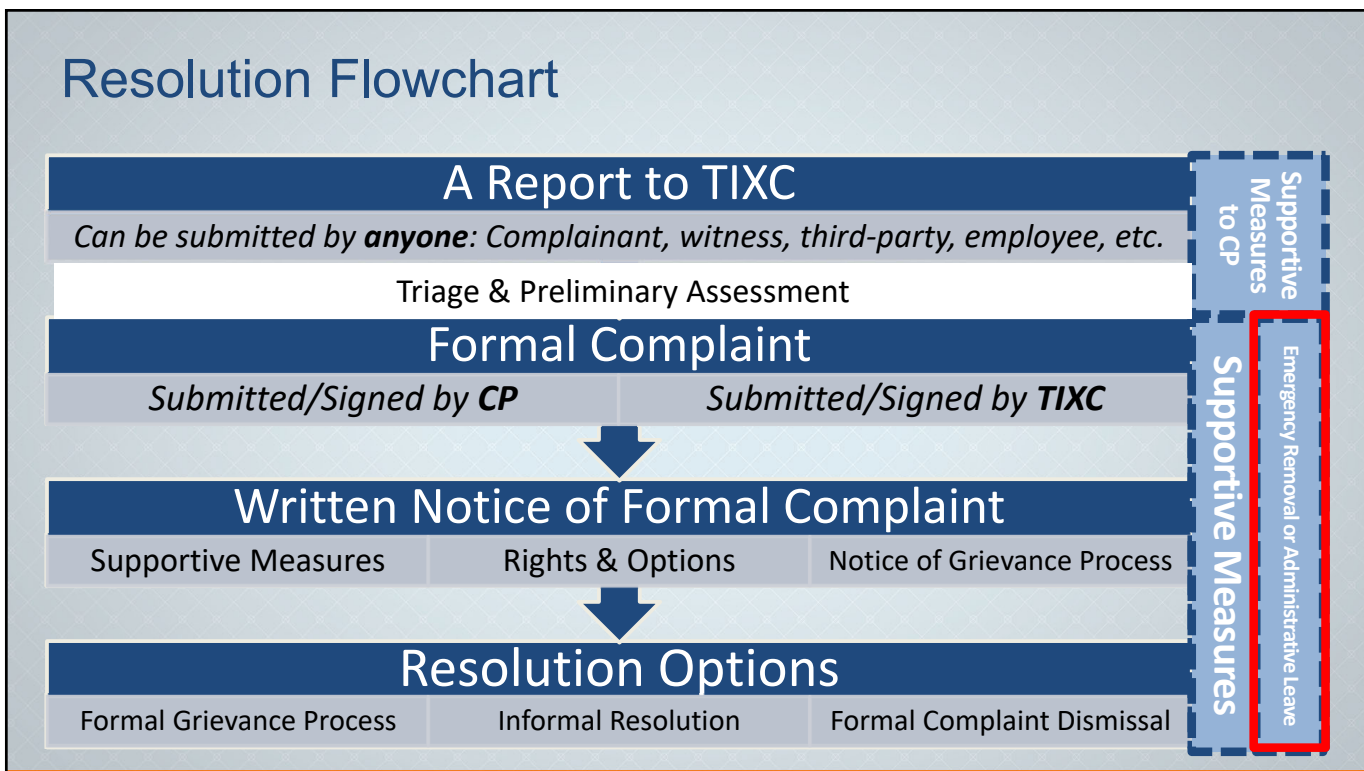
- **Voluntary agreement** made by both parties, if available.
- Available as an option at any time prior to reaching a determination regarding responsibility.
- Doesn't involve a full investigation & adjudication.
- May be facilitated through mediation (as an example).

Note: Each party has a right to **withdraw** from the informal resolution process and resume the formal grievance process at any point prior to an agreement.

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Threat Assessment Tools & Emergency Removals



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.



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Crisis/Threat Continuum

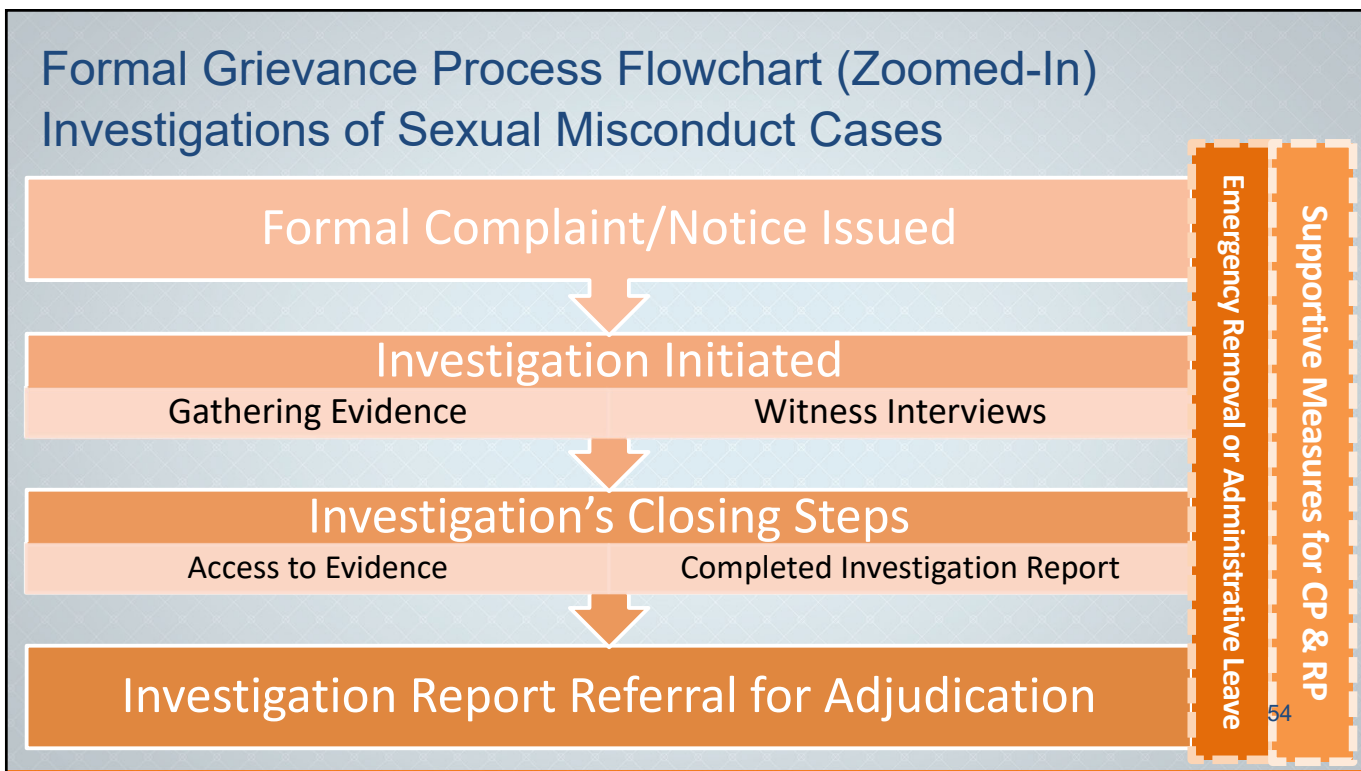
LEVEL OF CONCERN

MILD	MODERATE/ESCALATING	CRITICAL
<p>DEVELOPING</p> <ul style="list-style-type: none"> • 1st time behavior is reported • Situational & environmental stressors emerging • Difficulty managing emotions • Quick change in disposition or behavior • Others may feel discomfort or experience disruptions <p>EMPOWERING THOUGHTS</p> <ul style="list-style-type: none"> • Hardened perspective • Catalyst event • Lack of empathy toward others, projecting insults or defensiveness • No threats of violence <p>OVERALL</p> <ul style="list-style-type: none"> • Struggling, not fitting in • Lacking connection with others • Socially isolated, alienating themselves • Minor bullying/teasing toward others 	<p>DETERIORING</p> <ul style="list-style-type: none"> • Continuation (persistence) of mild-level behaviors • Verbally harassing, disruptive, aggressive, or stalking behaviors • Very poor personal & mental self-care • Troubling or suicidal thoughts, suicidal talk, self-injuries, and/or substance abuse • Vague, indirect threats of violence toward self <p>ELABORATION OF THREAT</p> <ul style="list-style-type: none"> • Fixation/focus on person or group • Objectification of others • Vague, indirect threats of violence • Threats likely escalate, more specific, targeted, repeated toward target(s) <p>OVERALL</p> <ul style="list-style-type: none"> • More aggressive speech and disruptions, multiple incidents or concerns reported (pervasive) • Brief, limited altercations (e.g. pushing) • Others may feel threatened, but the threats lack depth or substance 	<p>DECOMPENSATING</p> <ul style="list-style-type: none"> • Actively dangerous, life-threatening behaviors (toward self or others) • “Last act” behaviors, free fall • Direct, substantive threats of violence <p>CRITICAL</p> <ul style="list-style-type: none"> • Moving toward attack plan • Desperate, “all or nothing” mentality • Research, access to lethal means • Credible threat • Leakage before an attack • Weapons present or exposed <p>OVERALL</p> <ul style="list-style-type: none"> • Very serious & imminent risk of suicide attempt, life-threatening self-injury, and/or violent attack toward others

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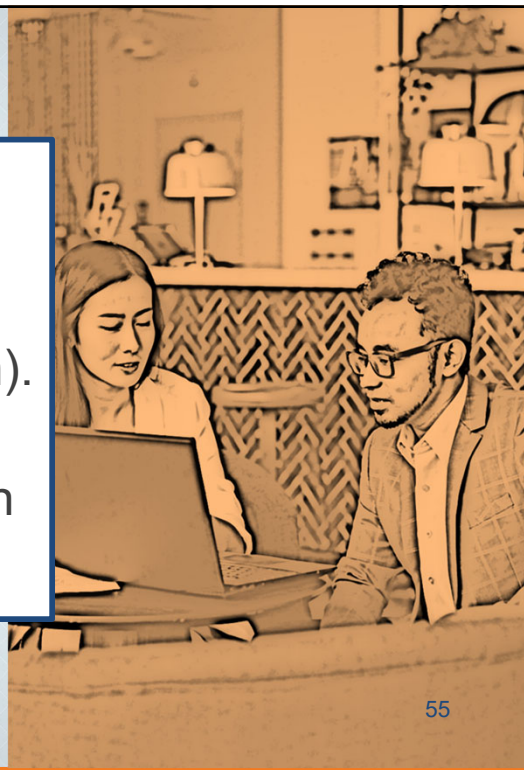
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Advisor Considerations

- 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.



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Evidence Pyramid



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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)



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Investigation Timeframe (Example)

The investigation of a formal complaint will be concluded within **90 days** of the filing of a formal complaint

Note: Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for good cause.

- Provide **notice** to the parties for temporary delays or extensions



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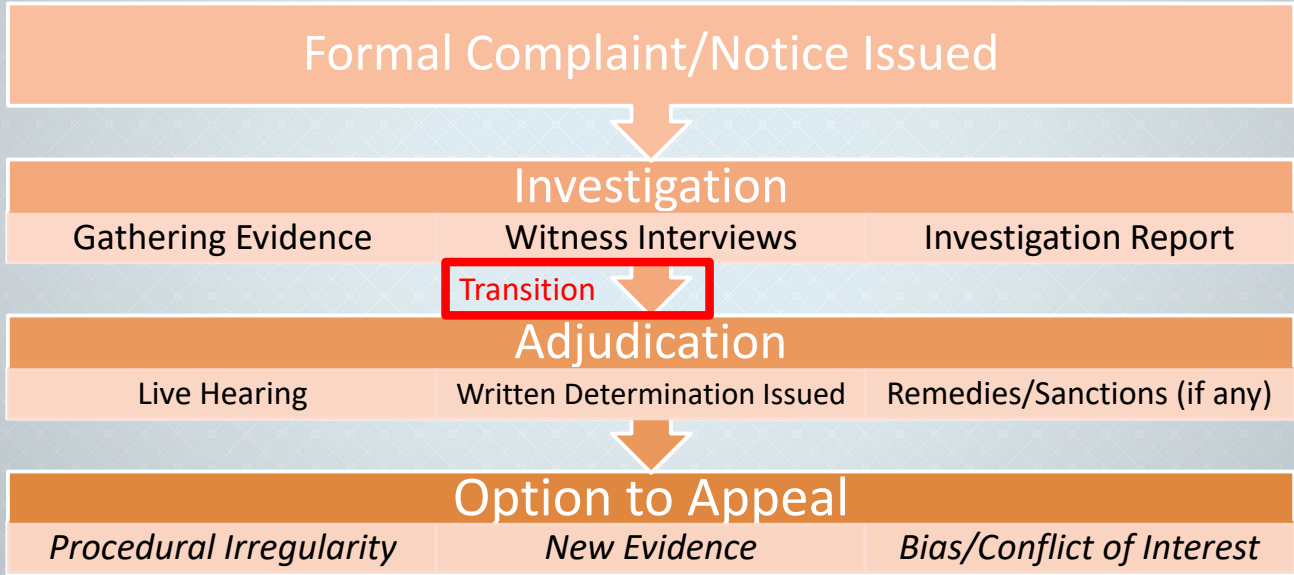
Source: UT System Model Policy for Sexual Misconduct

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

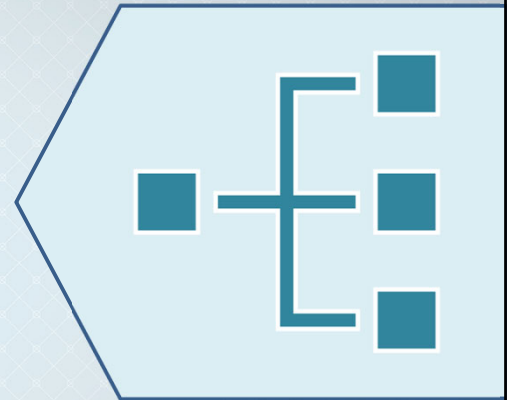
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Transition to Adjudication

- 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.



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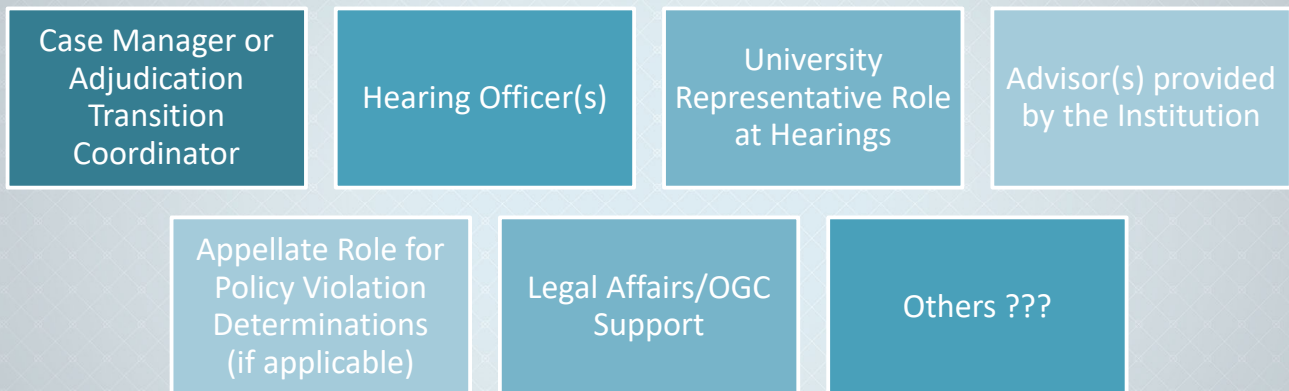
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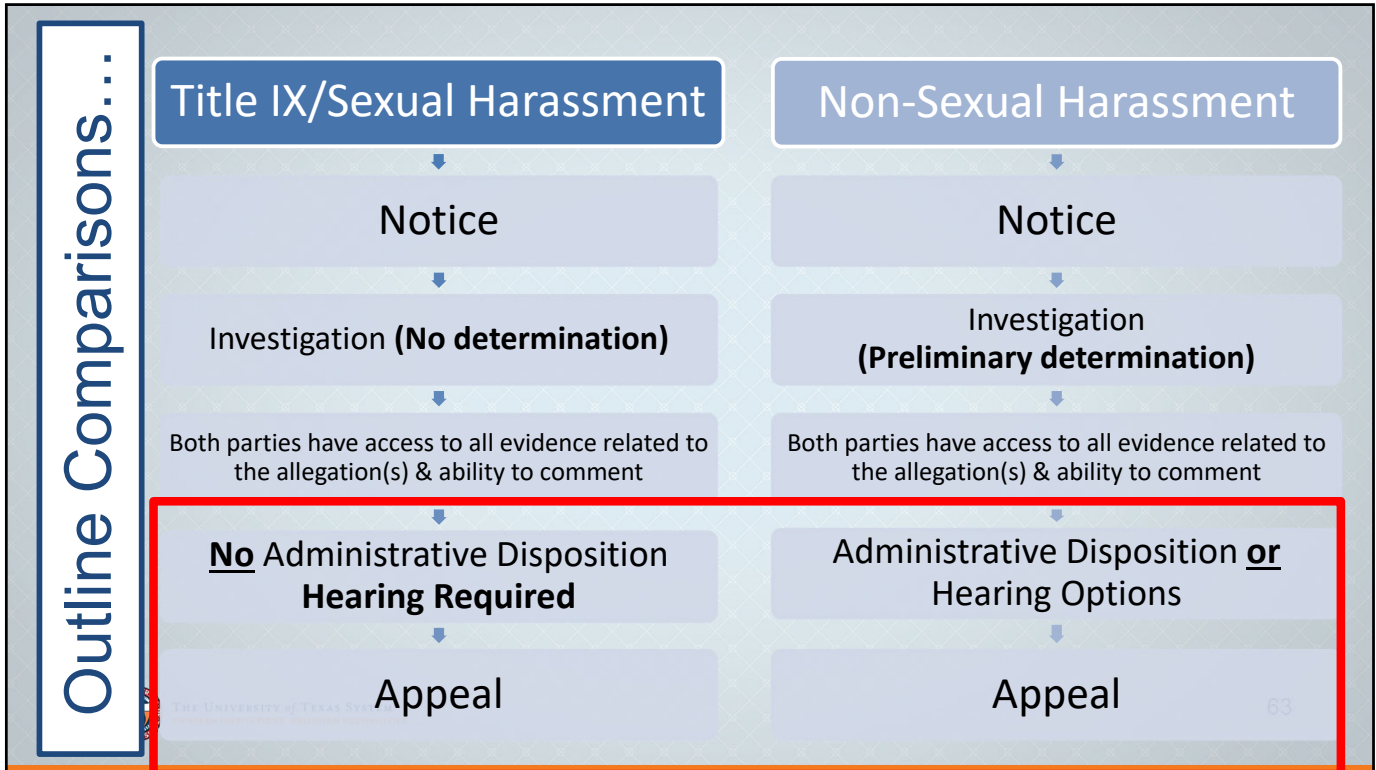
Adjudication Intake



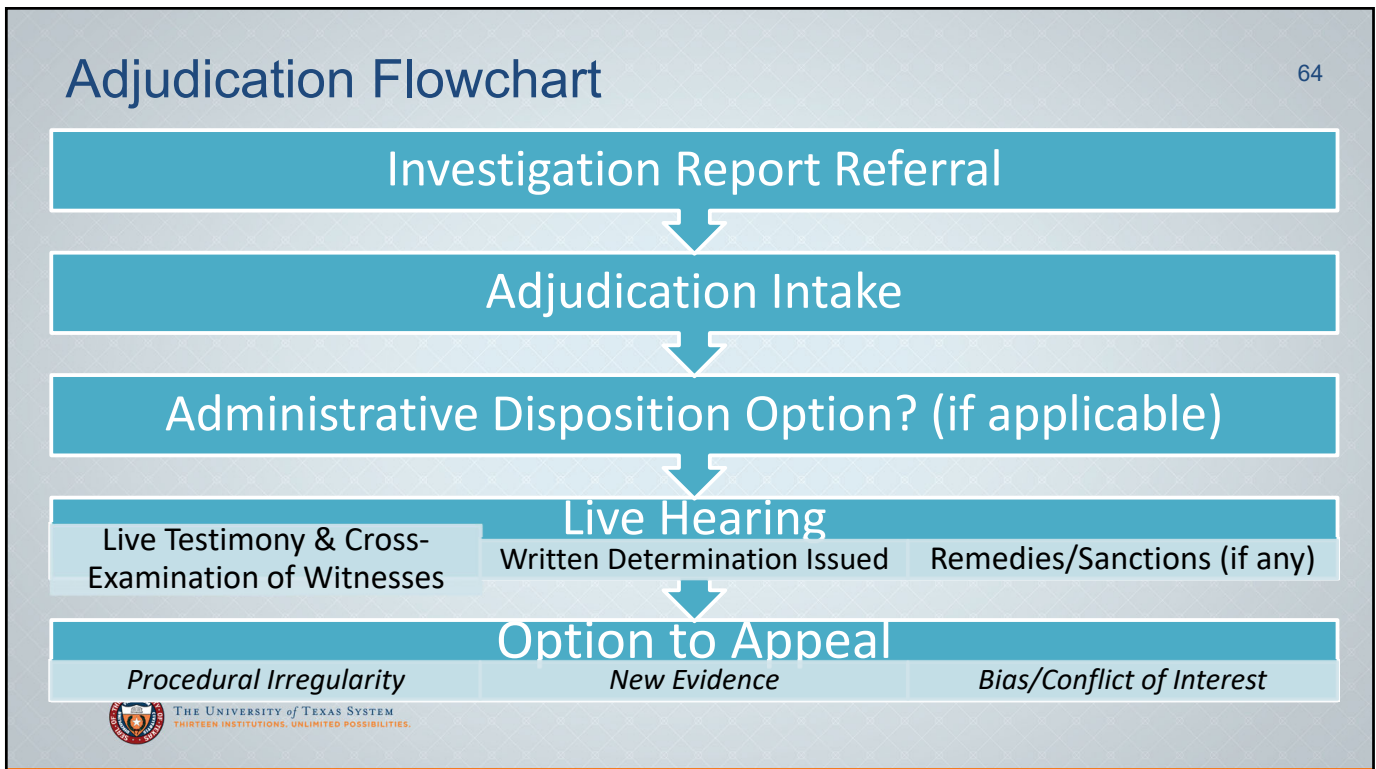
Referral Type (RP)	Adjudication Office (Examples)
Student	Student Conduct
Faculty	Provost
Staff	Human Resources

Adjudication Roles, Operations, & Structure?



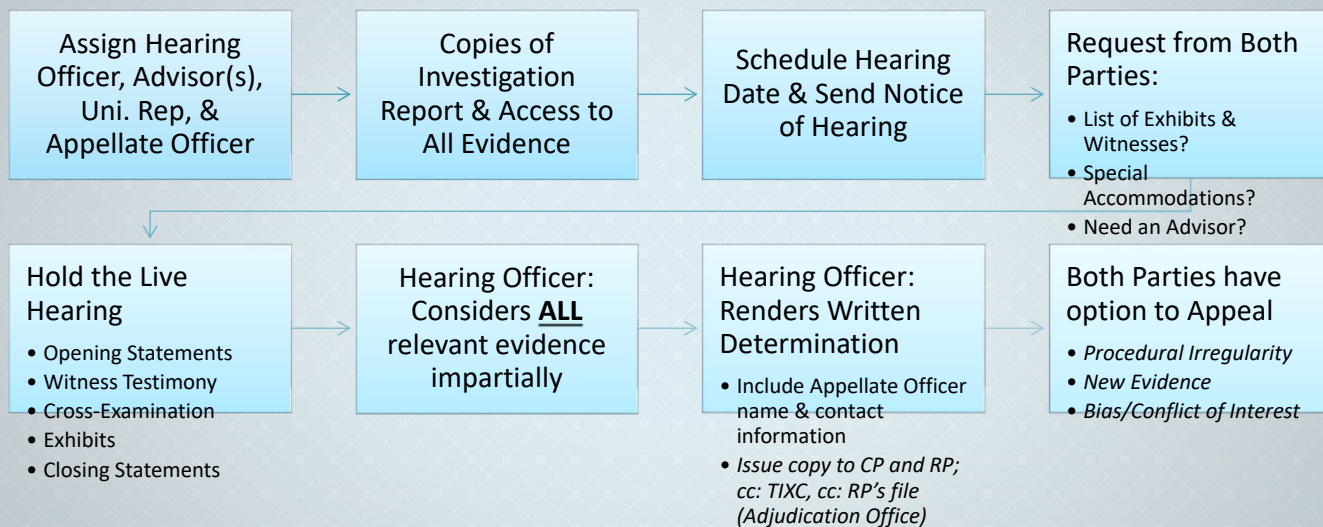


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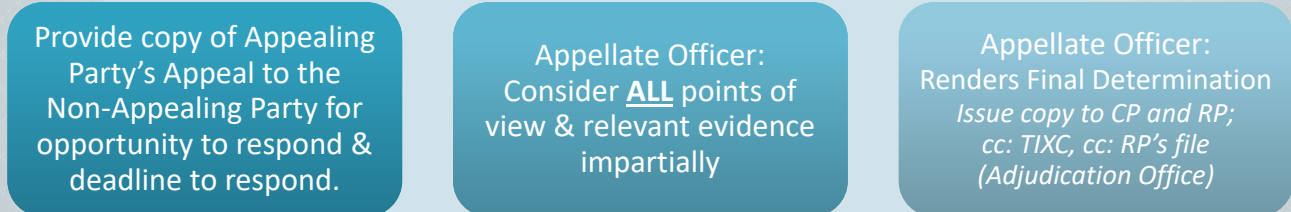
Live Hearing: Logistics Flowchart



Specific deadlines may be published in the institution's policy and/or procedures.

Appeal: Logistics Flowchart

If a Party submits an Appeal to the Appellate Officer...



Specific deadlines may be published in the institution's policy and/or procedures.



Grievance Process Timeframe (Example)

The entire Grievance Process will be completed in no more than **150 days** from the filing of the formal complaint

Note: Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for good cause.

- Provide **notice** to the parties for temporary delays or extensions



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Source: UT System Model Policy for Sexual Misconduct

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Documentation & Record Keeping Examples

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



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Documentation & Record Keeping

The University (through the appropriate office) will retain all of the documentation included in the Grievance Process (outlined in the SM Policy) for 7 years, in accordance with state and federal records laws and University policy.

All documentation of records are private and confidential to the extent possible under law. Student records of the Grievance Process are disciplinary records under FERPA. Employee records of the Grievance Process are subject to the Freedom of Information Act (FOIA) and the Texas Public Information Act (TPIA), and included in the employee's official employment record.



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Source:

UT System Model Policy for Sexual Misconduct

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Q & A



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