

Sexual Misconduct Investigation Training

Krista Anderson, Systemwide Title IX Coordinator

Fall 2021



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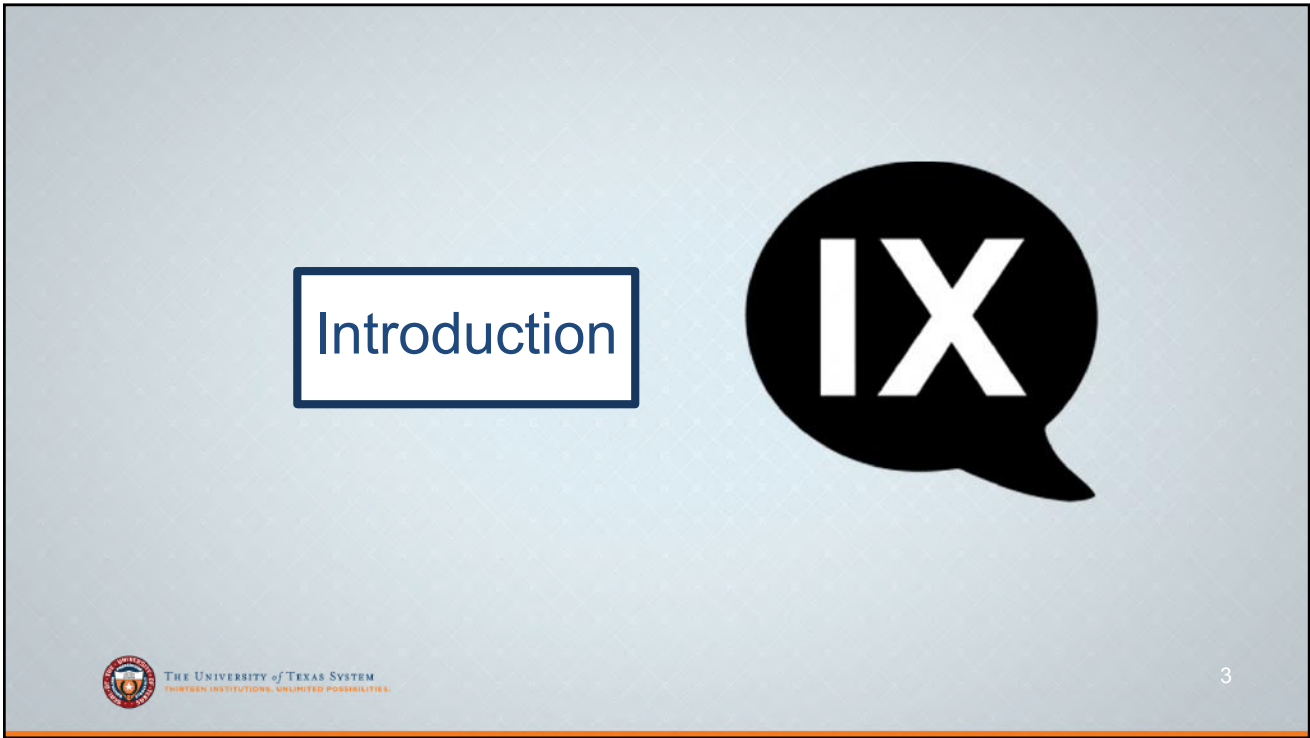
Agenda

1. Title IX Introduction
2. Investigation's Initial Steps
 - Notice of Formal Complaint
 - Party's Rights & Options
3. Interview Approaches & Example Questions
 - General Cases
 - Non-Stranger Sexual Assault Cases
 - Incapacitation vs. Intoxication
 - IPV & Stalking Cases
4. Closing Steps
 - Access to Evidence
 - Issues of Relevance
 - Investigation Reports
 - Transition to the Adjudication Stage



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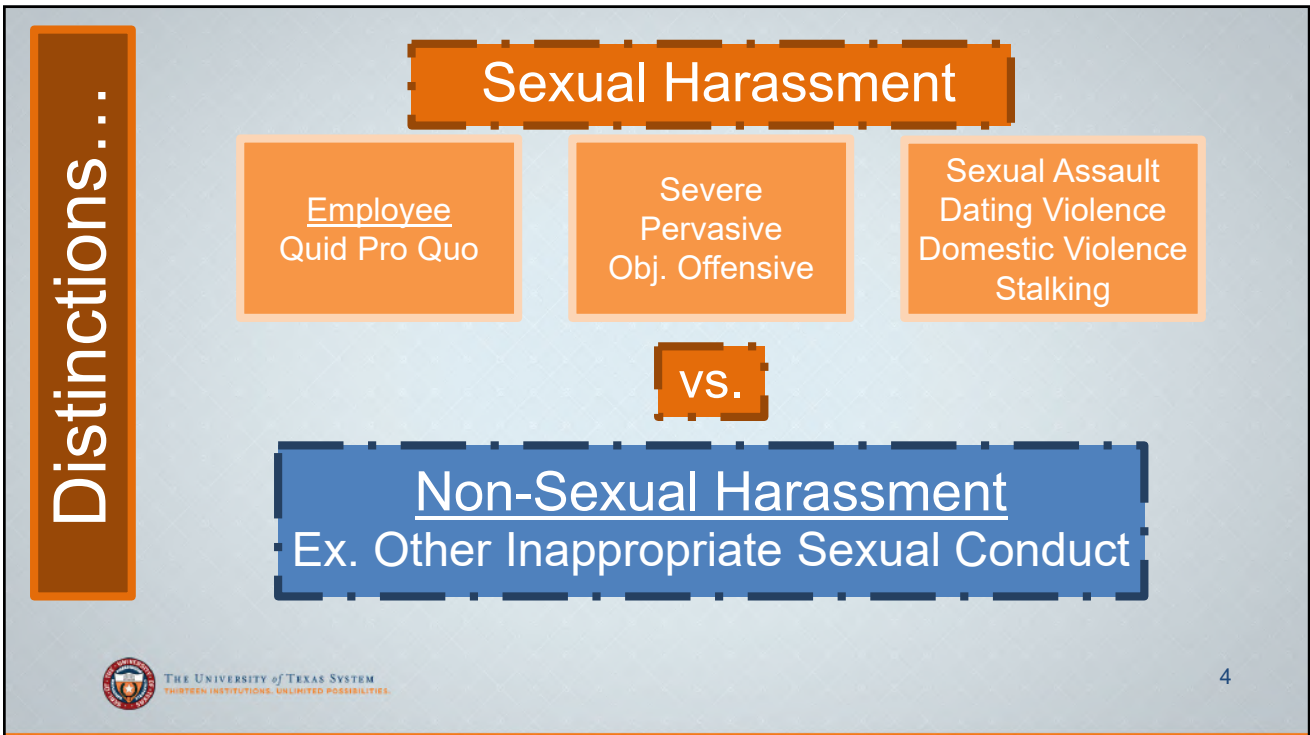
Introduction

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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

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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.



Source: Title IX Regulations (2020)

#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)
- **"Effectively denies...equal access"**: Totality of the circumstances

Examples: 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



“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.



Source: Title IX Regulations (2020)

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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

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...



Source: UT System Model Policy for Sexual Misconduct (2021)

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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;
- Sexual exploitation;
- Unwelcome intentional touching of a sexual nature; or
- Deliberate physical interference with or restriction of movement.



Source:

UT System Model Policy for Sexual Misconduct (2021)

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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



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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**



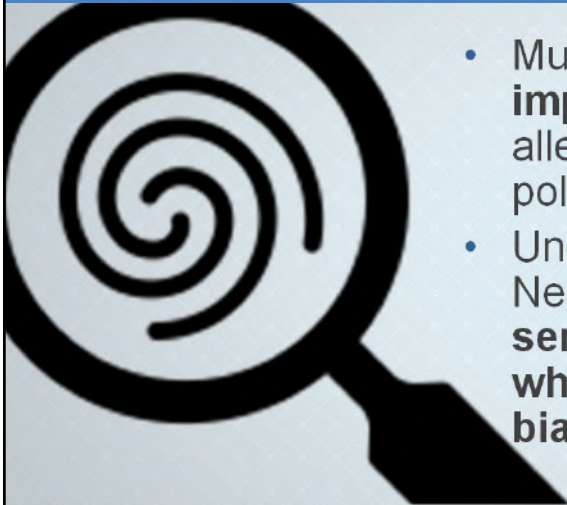
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Source: Title IX Regulations (2020)

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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)*)...



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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.



Source: Title IX Preamble (2020)

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Serving Impartially in Your Role

Also includes:

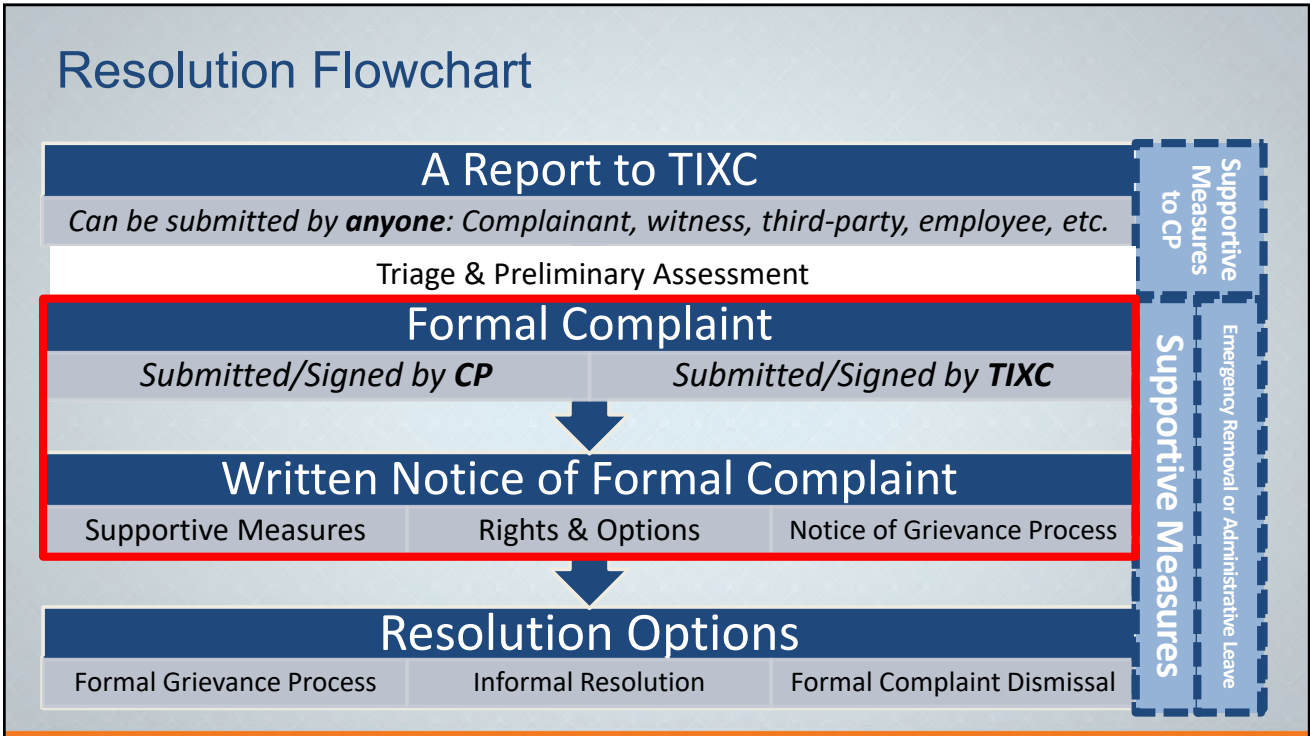
- When considering **relevant evidence**
- When using a **reasonable person standard**



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Resolution Flowchart



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Written Notice of Formal Complaint

Upon receipt of a formal complaint, promptly send written notice to CP & RP:

- Notice of the grievance process under the policy;
- Notice of the allegations that potentially constitute prohibited conduct under the policy, sufficient details about the alleged conduct: Date(s), time(s), and location(s);
- A statement that the potential policy violations are being investigated;



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Written Notice (Continued)

- A statement that the RP is presumed not responsible for the alleged conduct and that the determination regarding responsibility will be made at the conclusion of the grievance process;
- Both parties may have an advisor of choice, who may be, but is not required to be, an attorney, and may inspect and review all evidence;
- A statement that the parties may review evidence gathered as part of the any investigation;



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Written Notice (Continued)

- A provision of the policy that knowingly making false statements or knowingly submitting false information during the grievance process is prohibited and subject to disciplinary action;
- Any other relevant information for the written notice; and
- A statement that retaliation is prohibited under the policy. (recommended)



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Other **resources** to include with the written notice:

1. **Supportive measures** available for both parties
2. **Campus & local** resources or services
3. **Rights & options** of both parties
4. A copy of the **grievance process & policy**
5. Title IX Coordinator & Investigator(s) **contact information**



Party's Rights (Summary)

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**.



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.



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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.



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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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Conducting an Investigation

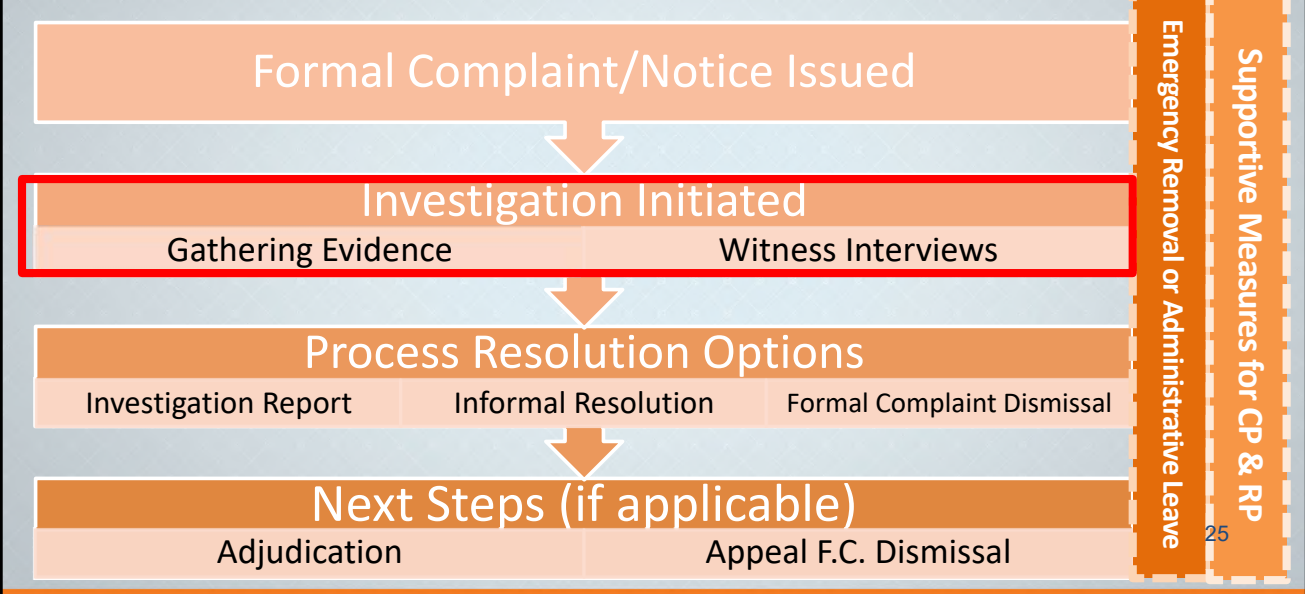


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Formal Grievance Process Flowchart (Zoomed-In) Sexual Misconduct Cases



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Investigation Plan: The Foundation

Basis for the investigation?

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



Note: It is the institution's decision on how an investigation may be handled.



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Basis: Pattern Investigations



- **Multiple incidents** of similar types of alleged conduct or circumstances with same RP?
- **Multiple complainants** regarding same or multiple incidents of similar types of alleged conduct or circumstances with same RP?
- **Multiple respondents** regarding same incident or situation?
- **Student organization** allegations?



Note: It is the institution's decision on how a pattern-based investigation may be handled.

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Considerations: Pattern Investigations



- May be **larger-scale** in scope.
- Document the **justification** for consolidating as a pattern investigation.
- Balance focus on the **individual and pattern** elements of the consolidated cases.
- **Multiple complainants:** Information/privacy waivers, participation?
- **Same** grievance process for the consolidated case?



Note: It is the institution's decision on how a pattern-based investigation may be handled.

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Basis: Climate Investigations



- Generalized concerns about the **climate, environment, or policies** in a program or department.
- No specific incidents or allegations with a program or department.
- **Reputational** concerns or **exit interview** statements regarding a program or department.



Note: It is the institution’s decision on how a climate-based investigation may be handled.

Considerations: Climate Investigations



- May be **larger-scale** and more **open** in scope.
- Without specific RP’s for a formal written notice, provide **notice** to the **program director** or **department chair**.
- Invite program or department affiliates as **witness interviews**, general prompts
- As evidence is collected & reviewed, triage & determine if the **basis or scope** needs to be **updated**.



Note: It is the institution’s decision on how a climate-based investigation may be handled.

Investigative Framework

- Establish **facts & timeline(s)**.
- Understand each party's **perception & experiences** of the alleged incident(s).
- Elicit **details & descriptions** of the alleged incident(s) from the parties & witnesses.
- Address **disputed facts or conflicting evidence** (if any) & seek responses from the parties (if applicable).
- Gather **sufficient information available** for a determination of facts, importance, & relevance to the formal complaint.



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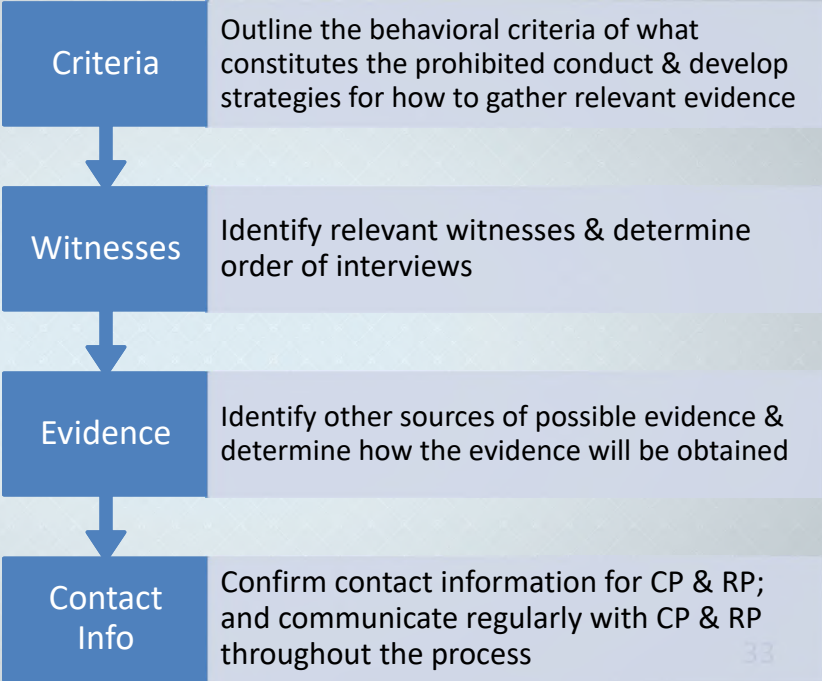

Investigator Considerations

- One or two investigators?
- Roles of each investigator?
 - Facilitator
 - Notetaker
- Interview notetaking or recording?



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Investigation Plan (Continued)



Criteria Outline the behavioral criteria of what constitutes the prohibited conduct & develop strategies for how to gather relevant evidence

Witnesses Identify relevant witnesses & determine order of interviews

Evidence Identify other sources of possible evidence & determine how the evidence will be obtained


Contact Info Confirm contact information for CP & RP; and communicate regularly with CP & RP throughout the process

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Investigation Plan (Continued)



Partnerships Establish communication with other relevant partners, as appropriate (e.g. BIT's, law enforcement, case managers)

Flexibility Be flexible & revise the plan, as necessary

Timeline Keep a working timeline of the investigation, as well as a timeline of the alleged incident

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Look at the Provision(s) at Issue:

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.

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Look at the Provision(s) at Issue:

Engaging in a (1) course of conduct (2) directed at a specific person that would (3) 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.
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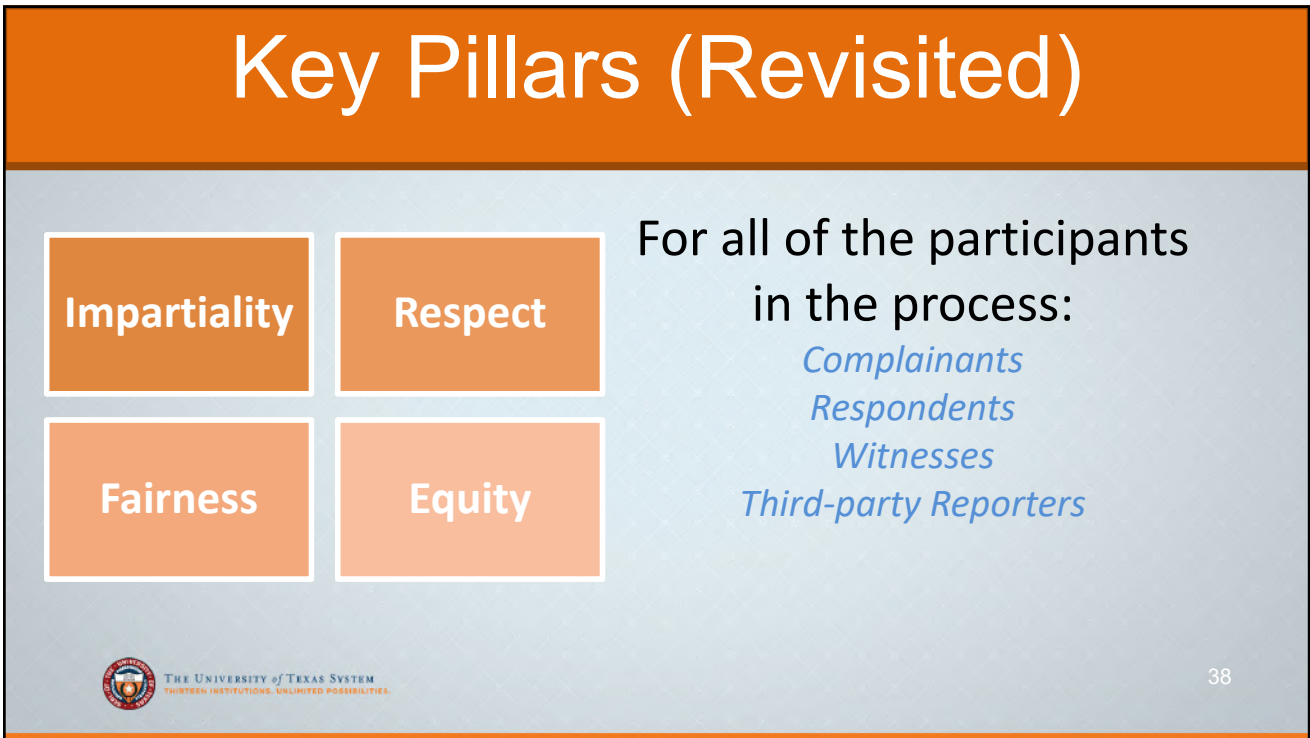
The graphic features a lightbulb with a yellow glow and a target with a blue bullseye. A hand is shown holding a pencil, pointing at the target. The text 'Interview Approaches' is enclosed in a white box with a blue border. The University of Texas System logo and name are at the bottom left, and the number '37' is at the bottom right.

Interview Approaches

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The graphic has an orange header with the text 'Key Pillars (Revisited)'. Below the header, four orange boxes contain the words 'Impartiality', 'Respect', 'Fairness', and 'Equity'. To the right, text lists participants in the process: 'Complainants', 'Respondents', 'Witnesses', and 'Third-party Reporters'. The University of Texas System logo and name are at the bottom left, and the number '38' is at the bottom right.

Key Pillars (Revisited)

For all of the participants in the process:

- Complainants*
- Respondents*
- Witnesses*
- Third-party Reporters*

Impartiality Respect

Fairness Equity

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Basis for a
“Trauma-
Informed”
Approach

- A. Encourages all participants to share what they are able to recall about their experience without demanding chronological recall; and
- B. Facilitates the gathering of information in a balanced manner from all individuals

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Interview Notice

- Date, time, & location of the interview meeting
- Names of the invited or expected meeting participant(s)
- Purpose of the meeting or investigative interview
- Opportunity to present any information, evidence, and/or witnesses relevant to the formal complaint.
- An advisor of choice may attend, though not required.



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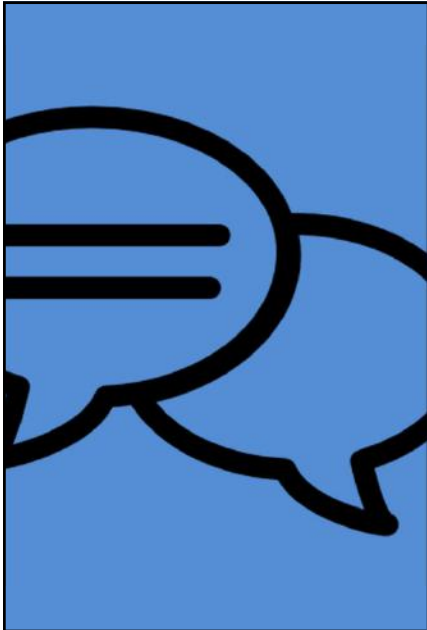
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Before an Interview

- Develop a **safe space** for a person’s physical & emotional well-being
- Have **handouts & resources** readily available




Pre-Interview: Rapport-Building Prompts



- *“Help me understand how you are feeling right now.”*
- *“What, if anything, can I explain to you about this process before we get started?”*


Note: Consider possible **barriers** or **concerns** to building trust with a participant.

- How can you minimize or eliminate these factors?




Pre-Interview: Rapport-Building Other Examples

Weather	Hometown	School
News	Pop Culture	Music

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Pre-Interview: Explain the Process


“Would it be okay if I talked with you about information I am required to share with you before we begin?”

- What to expect of the process
- Applicable policies; amnesty for alcohol/drug use; prohibition of retaliation
- Rights of the parties
- Purpose for the interview
- Options for decision-making
- Resources & supportive measures available
- Title IX Coordinator & investigator(s) contact information
- Follow-up & next steps

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Body Language & Nonverbal Cues

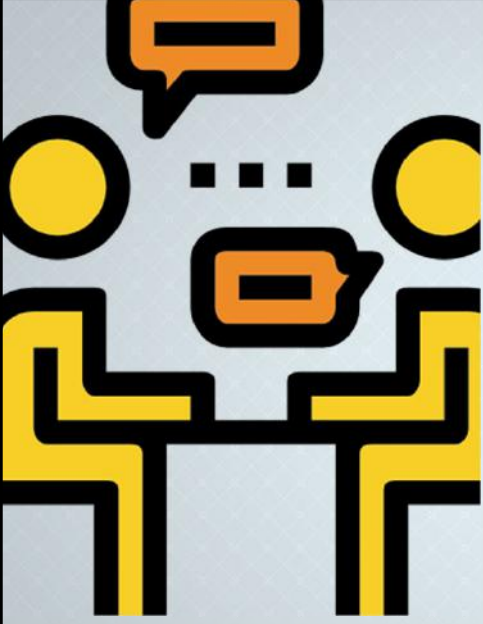
- **Small** head nods (periodic, not overly animated)
- **Eye contact** (be attentive, soften eyes)
- **Facial expressions** (show genuine interest, avoid emotional movements/reactions)
- **Open** body language (limit crossed arms or legs)
- Focus on your **breathing** (mental mindfulness)
- Take **pauses** between questions/cues (pace yourself)
- Listen with your **eyes and ears**
- **Check-in** (when appropriate):
 - *“Help me understand how you are feeling right now.”*



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Interview Start

- Allow the person to provide their account of the incident **in their own words & at their own pace**:
 - *“What are you able to tell me about your experience?”*
 - Allow time for the person to respond.
 - Do **not** ask a lot of questions at first.
- Be patient & respectful.
- Be comfortable with silence.
- **Nodding** or **“Mmm”** are ok (shows interest).
- Follow-up (if a general prompt is necessary):
 - *What, if anything, do you remember once you...[insert last part]...?*



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Clarification Prompts

Attempt to clarify from **all** parties.

Examples...

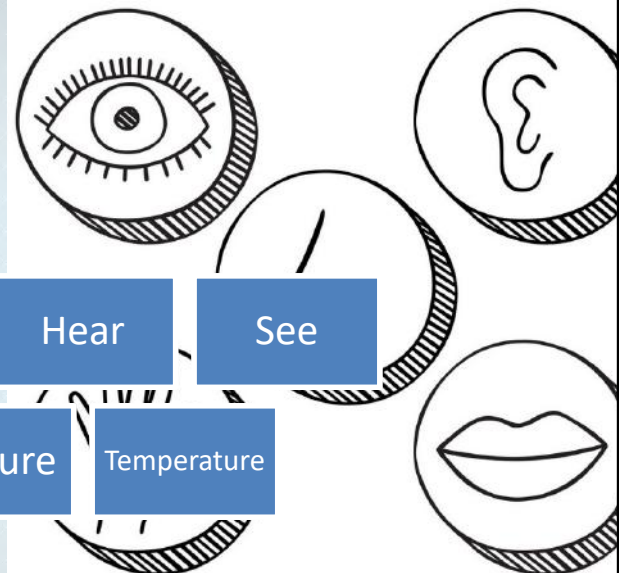
- **“Tell me more about [blank]...”**
- **“When you said [blank]...help me understand what you meant...”**
- **Instead of asking “Why or why not...?”**
“Help me understand your thought process for [insert the clarifying part]...”
- **“What did you mean by [blank]...?”**
- **“There are differences in your account vs. [blank]...[insert specifics]...help me understand the reason(s) or rationale for this different account...”**



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Sensory Recall

“What, if anything, are you able to remember about...”

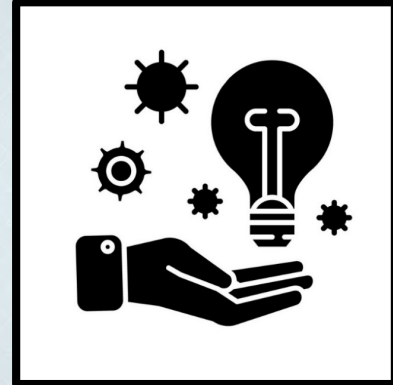


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Source:
Forensic Experimental Trauma Interview (FETI)

Recall Prompts (Cont.)

- **Instead of asking “Why or why not...?”**
*“What was your **thought process**...?”*
 - *...**During** [blank]?”*
 - *...**Before** [blank]?”*
 - *...**After** [blank]?”*
- *“What, if anything, are you able to **remember** about...?”*
- *“What were your **reactions** to...?”*
 - *Emotional response?*
 - *Physical response?*
- *“What was the **most difficult** part of [blank]?”*
- *“What, if anything, **can’t you forget about**... [before/after]...?”*



Source:
Forensic Experimental Trauma Interview (FETI)

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Misc. Interview Prompts (if applicable)

Example Interview Prompts	Purpose of the Prompt
<i>“Let me give you this information so that you can respond.”</i>	Provides an opportunity to respond to other testimony, statements, or evidence.
<i>“It’s been reported that you said X, Y, and Z.”</i>	Responding to a denial; corroboration.
<i>“What’s the reason that Person X said/did [blank] with this specificity, if you didn’t?”</i>	Responding to a denial; corroboration.
<i>“Others have reported you did say [blank]. What’s the reason (or rationale) for considering that you didn’t?”</i>	Responding to “I don’t recall”; corroboration; credibility
<i>“Is there anything else that you’d like to add to this statement?”</i>	Provides an opportunity to respond; gather information not explicitly asked about.



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Statement Gaps or Ambiguities

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Type	Example Statements		Interview Approaches
Text Bridges	<ul style="list-style-type: none"> • <i>After that...</i> • <i>The next thing I knew...</i> • <i>Later on...</i> 	<ul style="list-style-type: none"> • <i>Afterwards...</i> • <i>Besides...</i> • <i>And then...</i> • <i>Finally...</i> 	Clarification prompt
Ambiguous Responses	<ul style="list-style-type: none"> • <i>Kind of...</i> • <i>I think...</i> • <i>Sort of...</i> • <i>I believe...</i> 	<ul style="list-style-type: none"> • <i>To the best of my knowledge...</i> • <i>I may have...</i> • <i>Maybe...</i> 	Clarification or recall prompt
Broad Statements	<ul style="list-style-type: none"> • <i>Always...</i> 	<ul style="list-style-type: none"> • <i>Everyone...</i> 	Clarification prompt; specific examples?
Hearsay	<ul style="list-style-type: none"> • <i>I heard from Person X that...</i> 		Clarification prompt; personal knowledge or first-hand experience?

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Document the **psychological & physical responses** of the experience (if applicable):

Interview Documentation

Nausea

Flashbacks

Trembling

Muscle Rigidity

Terror

Memory Gaps

Sensory Recall

Injuries

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Interview
Documentation
(Cont.)

Document **elements** of force, threat, coercion, intimidation, or fear (if applicable):

Note: These elements may not be based on weapon use or actual physical threat for it to be perceived as real

Interview
Documentation
(Cont.)

Document **defensive strategies** (if applicable):

Forceful Physical
Resistance
(Fight)

Verbal
Resistance

Attempt to
Get Away
(Flight)

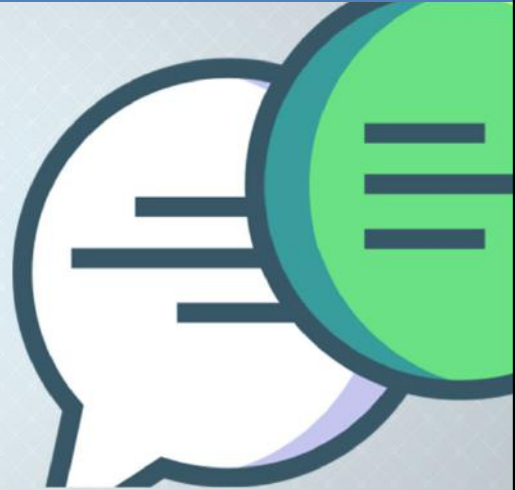
Bargain
(Appease)

Tonic Immobility
(Freeze)

Interview Wrap-Up

Show appreciation:

“I really appreciate you being willing to speak with me.”



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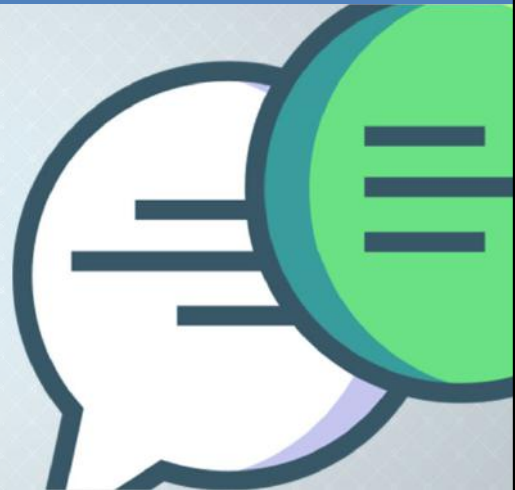
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Interview Wrap-Up

Explain the following:


- Revisit what to expect for next steps of the process, person’s rights, person’s options, resources available, and applicable remedies
- Decision options (and timelines or deadlines, if applicable)
- Ways to provide evidence, witnesses, or respond to other party’s statements
- Contact information for the investigator and/or TIXC/Deputy




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Non-Stranger Sexual Assault Cases



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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.



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Source:
UT System Model Policy for Sexual Misconduct (2021)

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Consent (Example Questions)

- Refer to the definition of “**consent**” based on the **institution’s policy**.
- What was the nature, timing, & scope of the **relationship** btwn the parties?
- What were each party’s **expectations** (e.g. perceived, communicated), about the **nature of the contact** on the date of the alleged incident?
- What was the manner of communication **before, during, & after** the alleged incident (e.g. words & actions) btwn the parties?
- What were the circumstances of the **CP’s disclosure** & the **RP’s reaction** to the disclosure?
- Who **initiated** the sexual activity (that is at issue in the allegation(s))? How so, or in what way?
- What was the **impact** of alcohol or other drug use in relation to the **ability to give consent**?
- Are there any reported or demonstrated **predatory behaviors**?
- **For RP** (if applicable): What **words or actions** by CP indicated consent to sexual activity?



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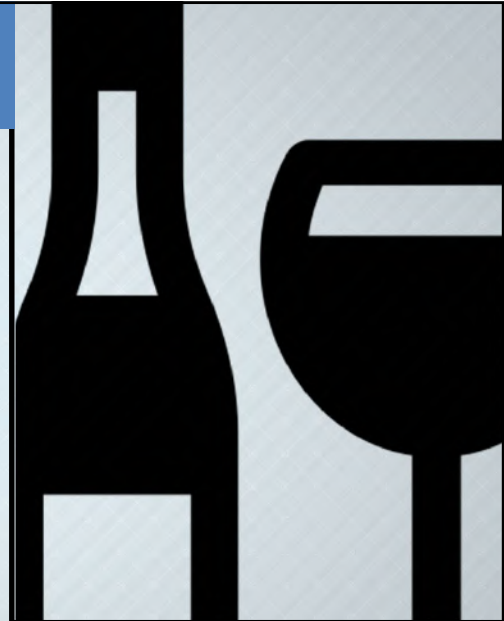
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First...Establishing Consent

Consent is not effective if:

- Physical force;
- Threat of physical force;
- Intimidation;
- Coercion; or
- **Incapacitation**
- Other factors?



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Incapacitation Definition

Incapacitation is the **inability, temporarily or permanently, to give consent** because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.



Source:
UT System Model Policy for Sexual Misconduct (2021)



Intoxication:

- Slurred speech
- Weaving or stumbling while walking
- Exaggerated emotions

Incapacitation*:

- Mentally or physically helpless
- Unconscious
- Asleep
- Unable to speak coherently or walk unassisted
- Unaware of the sexual activity occurring
- Unaware of time, place, or how they became engaged in a sexual act
- A state beyond drunkenness or intoxication



* Using a "reasonable person" standard

Incapacitation Definition (Cont.)

After establishing that a person is in fact incapacitated, the University asks:

1. Did the **person initiating sexual activity** know that the other party was incapacitated? And if not...
2. Should a **sober, reasonable person in the same situation** have known that the other party was incapacitated?

*If the answer to either of these questions is “**YES**,” consent was absent and the conduct is likely a violation of this Policy.*

Note: A Respondent will be found to have violated policy only if the Respondent knew or should have known that the person was incapacitated.



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Source:

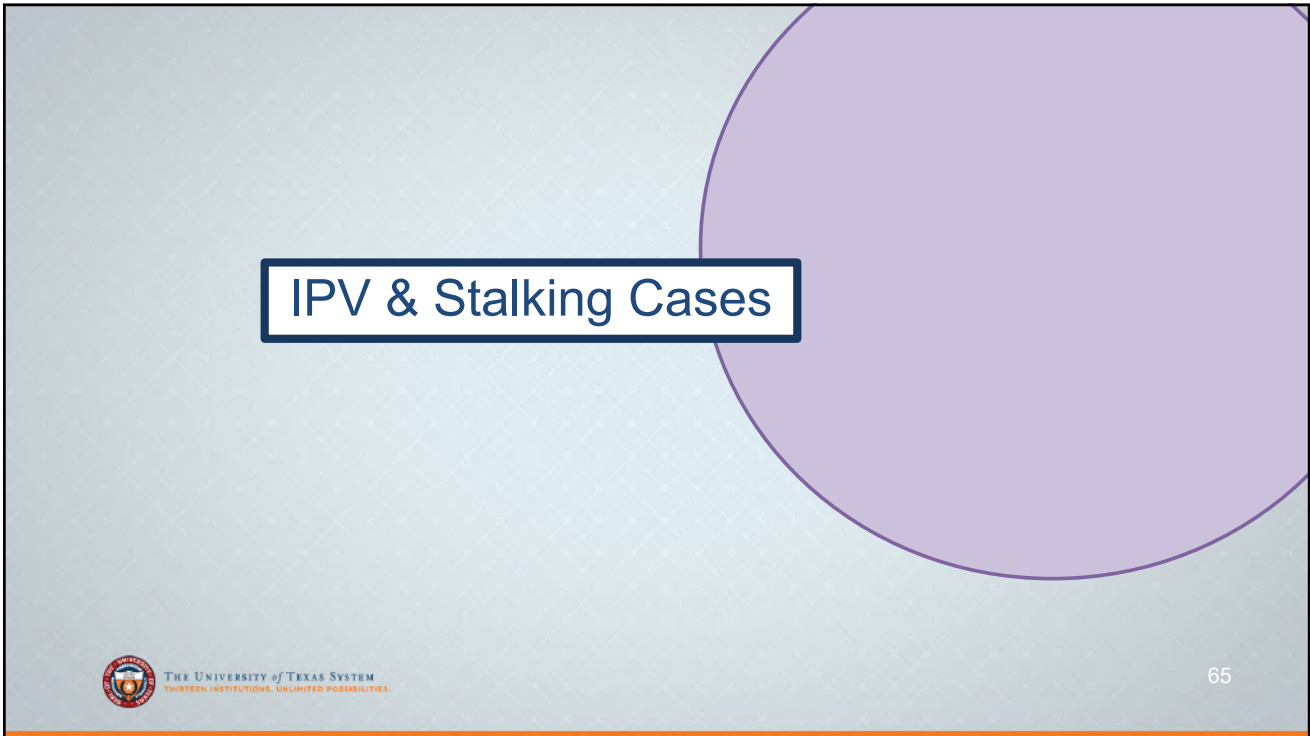
UT System Model Policy for Sexual Misconduct (2021)

Incapacitation (Example Questions)


- What were each person’s **pre-incident** behavior?
- **Quantity & quality** of alcohol & other drug use:
 - What was the nature of the **event & setting**?
 - Was there any respective **power or control** of either party?
 - Who **supplied** the alcohol or other drug(s) to either party?
- What were each person’s **expectations & mindset**?
- How did each person **reasonably know** the level of intoxication of the other party?
- Is there any information from **witnesses, video footage**, etc. as to the level of incapacitation?
- What were each person’s **post-incident** behavior?



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A presentation slide with a light blue background and a large purple circle on the right side. A white box with a dark blue border in the center contains the text "IPV & Stalking Cases". At the bottom left is the University of Texas System logo and text. At the bottom right is the number "65".

IPV & Stalking Cases



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A presentation slide with a light blue background. On the left is a red vertical bar containing the text "Determining Predominant Aggressors". On the right is a list of "Common Considerations" with seven bullet points. At the bottom left is the University of Texas System logo and text. At the bottom right is the number "66".

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**



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*Source:
The National Center for Campus Public Safety*

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Has the person of concern:

- 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 or damaged your property?
- Prevented you from leaving or held you against your will?
- Behaved violently or aggressively at home or in public?
- Assaulted your friends or family?
- Been arrested in the past for violence?

**Assessing
Danger**

Example Questions
for Complainant



Sources: National Center for Campus Public Safety;
Stalkingawareness.org

**Assessing
Lethality**

Example Questions
for Complainant

Has the person of concern:

- 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? Showing up unannounced?
- Forced confrontation(s) with you?
- Forced you or your children to flee in the past?



Sources: National Center for Campus Public Safety;
Stalkingawareness.org

False Complaint & False Information Allegations



Definition of “False Complaints & False Information”

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

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.



Source:
UT System Model Policy for Sexual Misconduct (2021)

Knowingly... (Examples)

Knowingly files a false complaint or provides materially false information...

- Showing intent to deceive;
- A design to induce belief in a falsity or to mislead; or
- Acted with knowledge or awareness of the falsity... and not because of mistake, accident, or some other reasonable reason.



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Understanding Deception

Deception doesn't necessarily equate to someone knowingly filing a false complaint or providing materially false information.

Lack of open information-sharing may result from: uneasiness or uncertainty of the grievance process, distrust of University officials, lack of rapport, or deceptive intent, among other possible reasons.



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Detecting Possible Deception (Examples)

Non-Verbal Elements	Verbal Elements
<ul style="list-style-type: none"> Little to no eye contact Touching face frequently Twitching Shaking Folding or crossing arms Turning to the side 	<ul style="list-style-type: none"> Falsities Omissions Minimization Text bridges Ambiguous statements Broad statements Answers question with a question Does not answer the question asked Disjointed or inconsistent answers

Remember: There may be other plausible reasons a person may present with these types of characteristics too.



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Statement Gaps or Ambiguities Revisited

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Type	Example Statements		Interview Approaches
Text Bridges	<ul style="list-style-type: none"> • After that... • The next thing I knew... • Later on... 	<ul style="list-style-type: none"> • Afterwards... • Besides... • And then... • Finally... 	Clarification prompt
Ambiguous Responses	<ul style="list-style-type: none"> • Kind of... • I think... • Sort of... • I believe... 	<ul style="list-style-type: none"> • To the best of my knowledge... • I may have... • Maybe... 	Clarification or recall prompt
Broad Statements	<ul style="list-style-type: none"> • Always... 	<ul style="list-style-type: none"> • Everyone... 	Clarification prompt; specific examples?
Hearsay	<ul style="list-style-type: none"> • I heard from Person X that... 		Clarification prompt; personal knowledge or first-hand experience?



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Remember the Investigation Plan



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Closing Steps of the Investigation



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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.

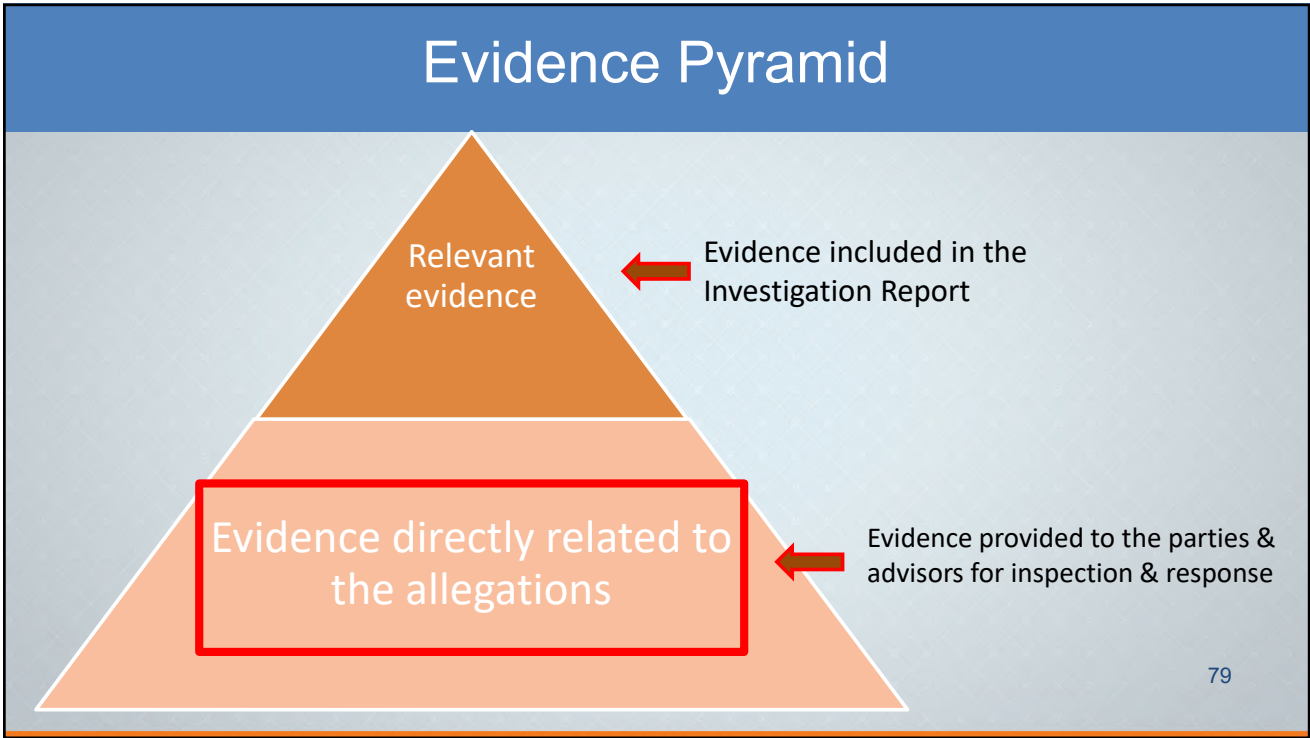


Evidence Collection

- Available body of facts or information:
 1. Tangible objects (real items)
 2. Demonstrative (modeling)
 3. Documentary (written materials)
 4. Testimonial (statements)

...that indicates whether a claim, belief, or proposition may be true or valid.





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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.

The slide features a graphic of two overlapping orange folders on the right side. The top folder is slightly behind the bottom one, creating a sense of depth.

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Access to Evidence: Why?

So that each party can **meaningfully respond** to the evidence prior to the conclusion of the investigation.



Access to Evidence: When?

- While the investigation is still ongoing?
- 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)

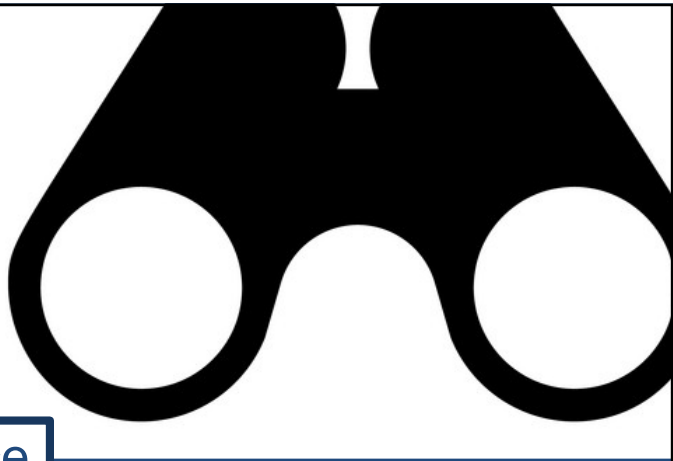
** Advisor of choice; or the provided advisor by the institution (If applicable)*




Access to Evidence (Cont.)

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





Issues of Relevance





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Review the Evidence

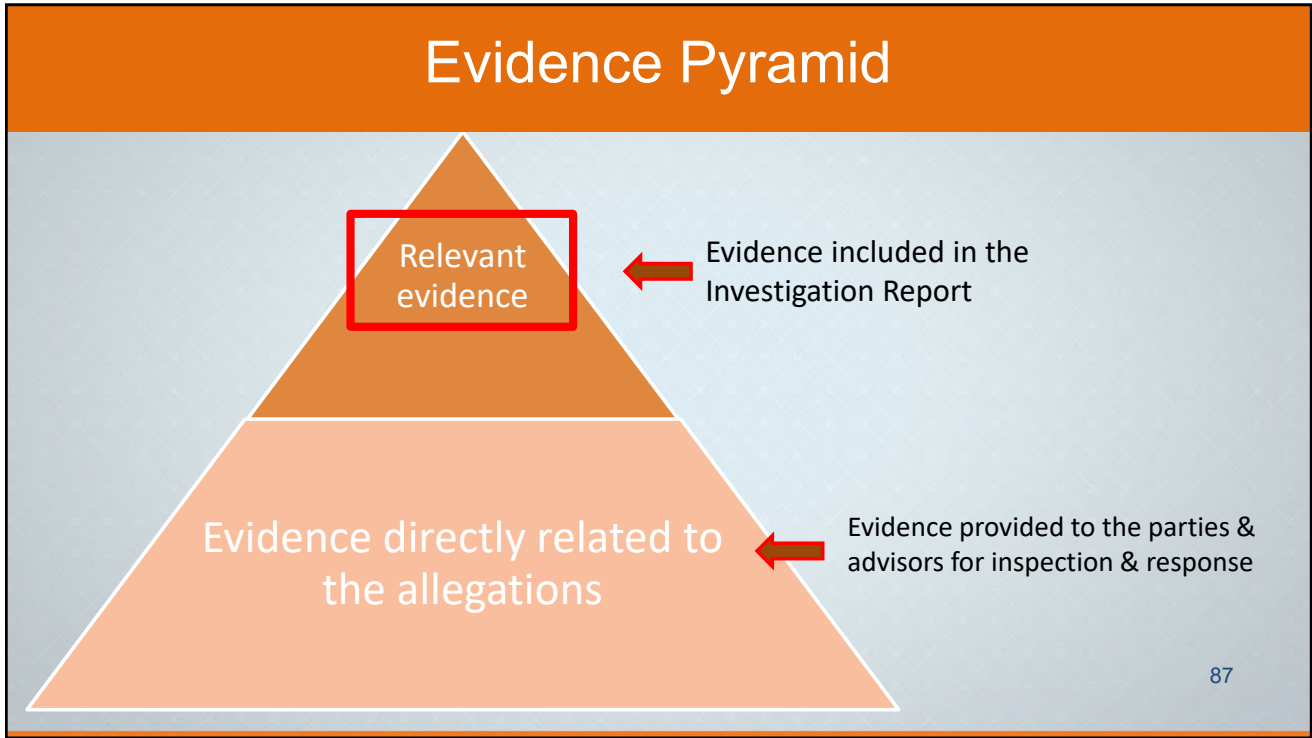
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 4. Testimonial (statements)



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Relevant Evidence



Evidence is **relevant** if:

- The evidence has any tendency to make a **fact** more or less probable than it would be without the evidence; **and**
- The **fact** is of consequence in determining the action.



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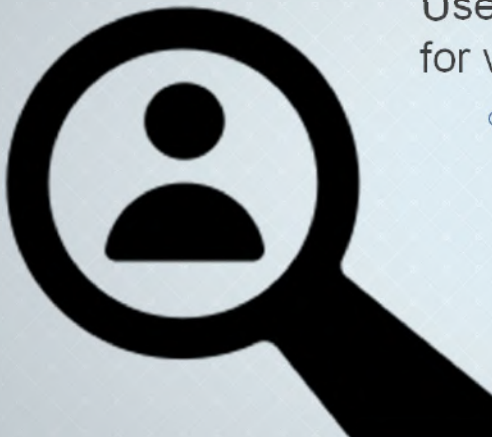
Relevant Evidence



Another way to frame it:

- **Exculpatory evidence:** Evidence tending to excuse, justify, or absolve the person of the alleged conduct.
- **Inculpatory evidence:** Evidence that places responsibility on the person of the alleged conduct.

“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.

Medical Records Evidence



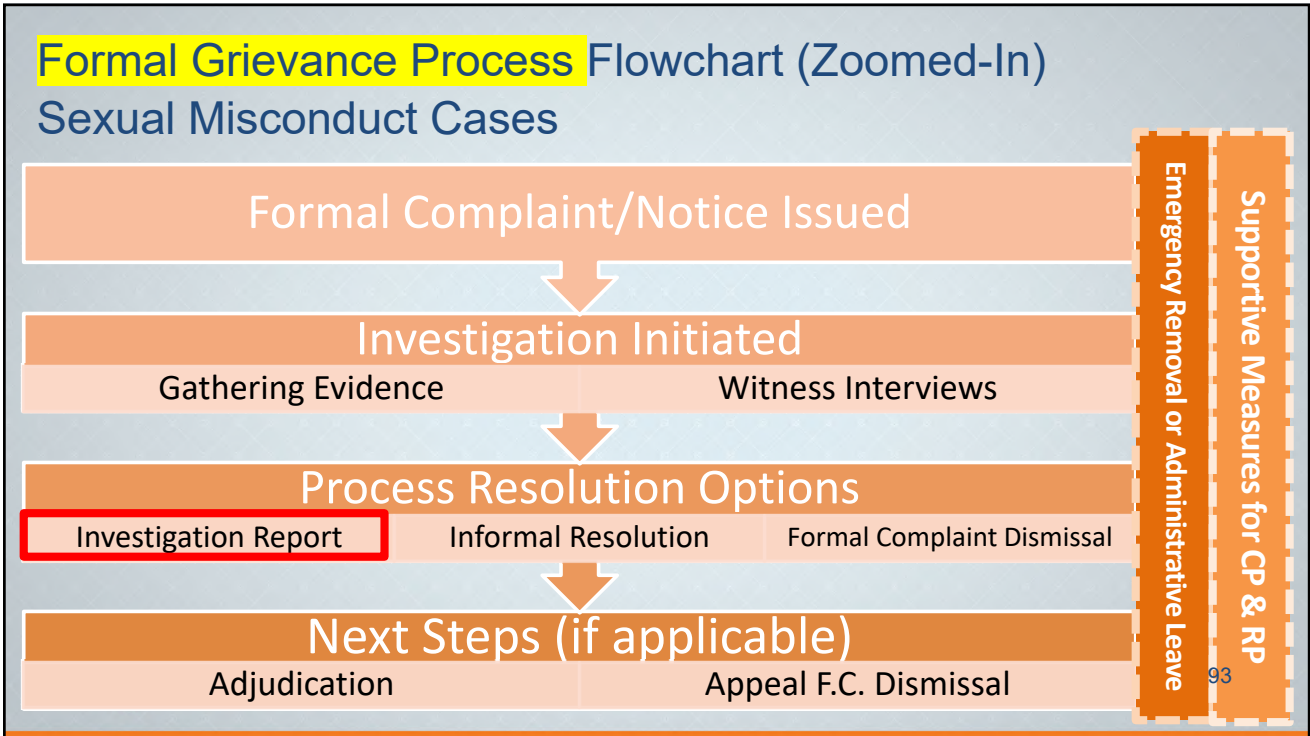
Cannot access, consider, disclose, or use a party's **medical** or **mental health records** as evidence unless the party provides voluntary, written consent to the institution for the grievance process.

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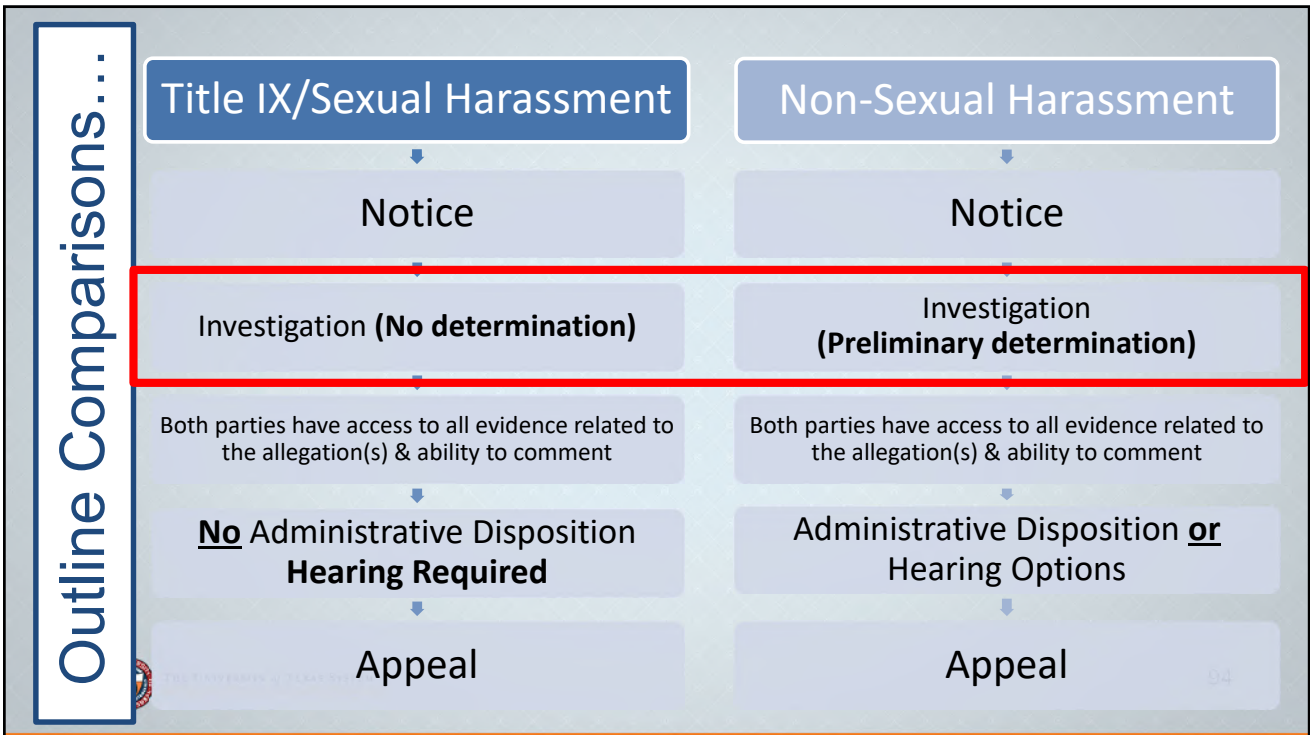


Investigation Report

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Draft vs. Completed Investigation Report

FAQ's:

- When should the investigation report be released to the parties (and the party's advisors)?
- Can the institution provide a draft investigation report first?



Completed Investigation Report: Sexual Harassment Cases

1. Outline each of the **allegations** that potentially constitutes prohibited conduct under the Policy (required by the Title IX regulations).
2. Provide a **timeline** (e.g. procedural steps) of the investigation. (recommended)



Completed Investigation Report: Sexual Harassment Cases (Cont.)



3. **Fairly summarize relevant evidence**, participate statements, and responses to questions (required by the Title IX regulations).
- **Exculpatory:** Evidence tending to excuse, justify, or absolve the person of the alleged conduct.
 - **Inculpatory:** Evidence that places responsibility on the person of the alleged conduct.



Additional Elements for Consideration



- Overview (Summary) of the Investigation
- Institutional Jurisdiction
- Relevant Policies
- Investigators
- Witnesses
- Procedural Next Steps



What about these Elements?



- Credibility assessments?
- Evidence analysis & rationale?
- Preliminary determination regarding responsibility?



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)*



Investigation Timeframe (Example)

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

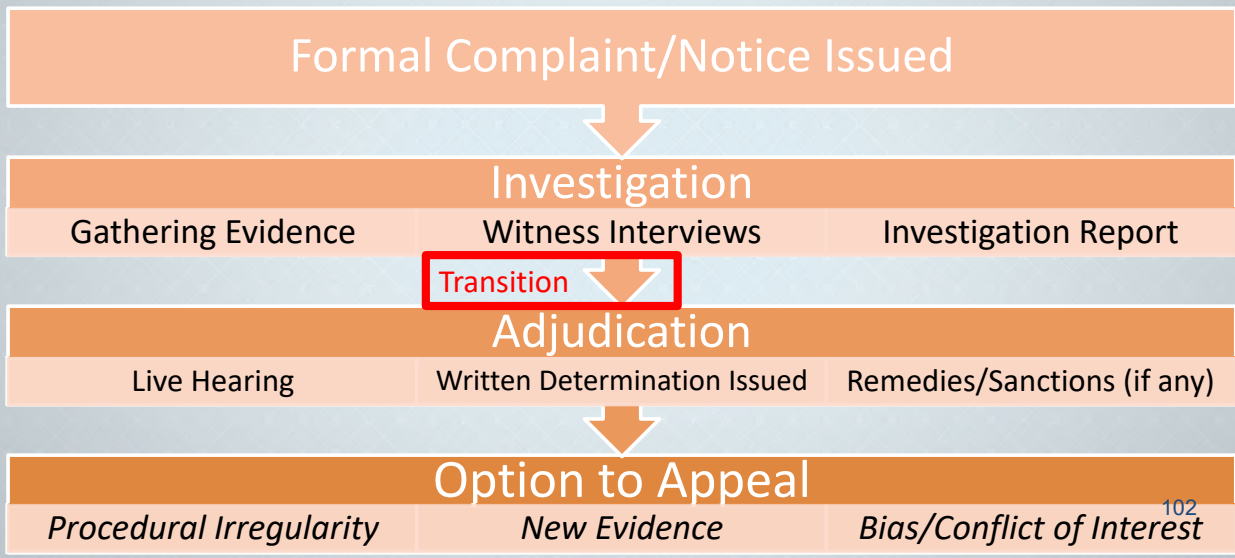
Note: Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for good cause.

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



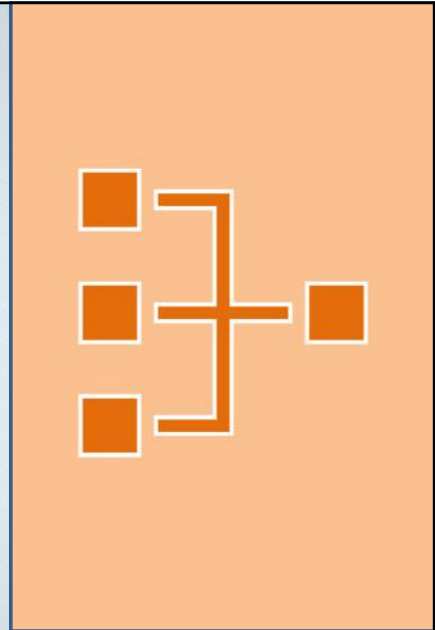
Source:
UT System Model Policy for Sexual Misconduct (2021)

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



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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Q & A



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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

