

Sexual Misconduct Case Management Overview

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Agenda

1. Title IX Intro
2. Triage & Case Mgt for Reports and Formal Complaints
3. Resolution Options for Grievance Process
4. Adjudication Logistics
5. Documentation & Record Keeping

Introduction

TITLE IX

Key Concepts & Framework



**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



Definition of “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)

Title IX

Sex Discrimination
Sexual Harassment
Retaliation



Institutional Policy & Definitions



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.

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 (Hostile Environment); or
3. “**Sexual assault,**” “**dating violence,**” “**domestic violence,**” or “**stalking**” as defined under Clery/VAWA.

*Source: Title IX Regulations (2020);
UT System Model Policy for Sexual Misconduct*

#2 Element Examples

- **“Severe”**: The degree to which the conduct was threatening, harmful, or humiliating (using a “reasonable person” standard)
- **“Pervasive”**: Type, frequency, duration of the alleged conduct
- **“Objectively offensive”**: What a reasonable person would find hostile, intimidating, or abusive.
- **“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 a person equal access”**: Conduct that interferes with, limits, or deprives a person from participating in or benefiting from the University’s education or employment programs and/or activities ¹⁰

*Source: UT System Model
Policy for Sexual Misconduct*

Definition of “Fondling”

Note: “Fondling” as defined in 34 CFR 668.46, will be used for the purposes of complying with the Clery Act’s crime reporting statistics requirements in the university’s annual security report.

The causing of intentional touching of the clothed or unclothed genitals, buttocks, groin, breasts, or other body parts of another person, without the person’s consent, for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

Definition of “Sexual Exploitation”

Any nonconsensual or abusive conduct that takes sexual advantage of another person for the purposes of sexual arousal or gratification, financial gain, or other personal benefit.

“Sexual Exploitation” (Cont.)

Examples of Sexual Exploitation can include, but are not limited to:

- Transmitting, distributing, publishing, or threatening to transmit, distribute, or publish photos, video, audio, or other recordings, images, or generated images of a private and sexual nature, including consensual sexual activity, without the consent of the subject(s);
- Taking, making, sharing, or directly transmitting photographs, films, digital images, or generated images of the private body parts of another person without that person’s consent;
- Prostituting another person;
- Surreptitiously watching or knowingly allowing another to surreptitiously watch otherwise consensual sexual activity, without consent;
- The intentional removal of a condom or other contraceptive barrier during sexual activity without the consent of a sexual partner;
- Threatening to “out” someone based on sexual orientation, gender identity, or gender expression;
- Threatening to disclose sensitive details about one’s sexual preferences, habits, and/or experiences;
- Threatening to expose someone’s prior sexual activity to another person; or
- Knowingly transmitting a sexually transmitted disease (STD) to another person without the person’s knowledge.

*Source: UT System Model
Policy for Sexual Misconduct*

Definition of “Other Inappropriate Sexual Conduct”

Conduct on the basis of sex that does not meet the definition of “Sexual Harassment” under this Policy but is:

Unwelcome conduct that is objectively offensive and so **severe or pervasive** that it unreasonably interferes with, limits, or effectively denies a person’s ability to participate in or benefit from a University program or activity, or adversely affects the terms and conditions of a person’s University employment.

Whether the conduct is “on the basis of sex” will be determined by examining the totality of the circumstances, whether a reasonable person subjected to the conduct would construe the conduct as “on the basis of sex”, and whether the individual subject to the conduct construed it as “on the basis of sex.”



“Other Inappropriate Sexual Conduct” Cont.

*Source: UT System Model
Policy for Sexual Misconduct*

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; or
- Deliberate, repeated humiliation or intimidation.
- Unwelcome intentional touching of a sexual nature;
- Deliberate physical interference with or restriction of movement;
- Exposure to sexually suggestive visual displays such as photographs, graffiti, posters, calendars or other materials; or
- Consensual sexual conduct that is unprofessional and inappropriate for the educational or workplace environment, such as engaging in sex acts in the workplace.

Serving Impartially in Your Role

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



Other Issues





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.

Examples of Protected Speech under Title IX

- **Asking witnesses** about what they remember seeing or hearing regarding the alleged incident in question.
- Asking witnesses to **participate** in the University's grievance process.
- Posting on social media about one's **opinions** or **personal experiences** of sexual harassment, the University's grievance process, or how the University handles sexual misconduct matters.
- Telling others that they are **accused** of sexual harassment, or a **victim/survivor** of sexual harassment; and they are currently going through the University's grievance process.





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.

Definition of “Retaliation”

Any adverse action (including, but is not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone either (a) **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, or (b) for the purpose of **interfering** with any right or privilege secured under Title IX or this Policy.

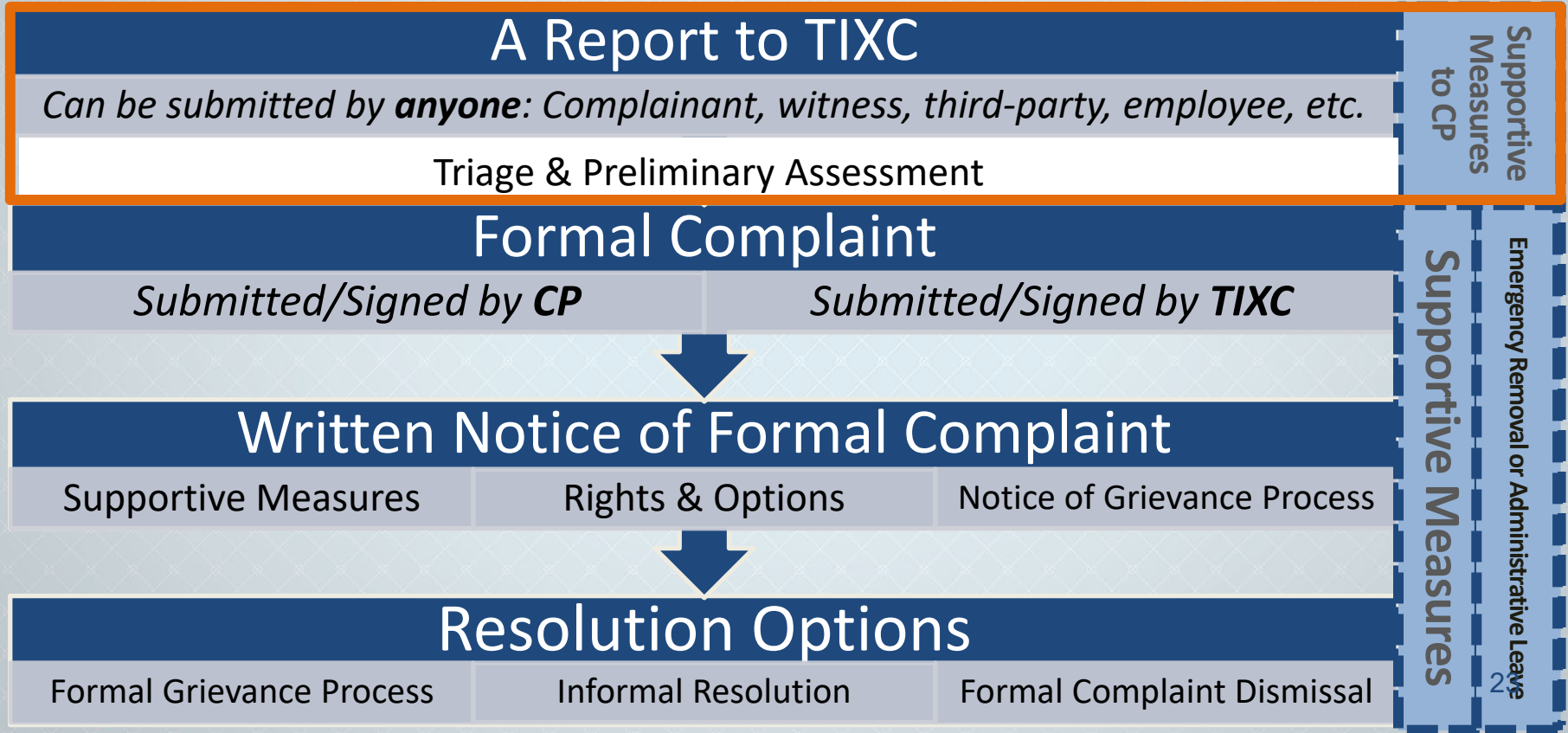
Any person who retaliates against (a) anyone filing a report or Formal Complaint under this Policy, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Complaint, (c) any person who refuses to participate in a Grievance Process, 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.

*Source: UT System Model
Policy for Sexual Misconduct*



Triage & Case Management

Resolution Flowchart



Basis of the Alleged Conduct

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



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)
???

Jurisdiction Analysis and Other 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.



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

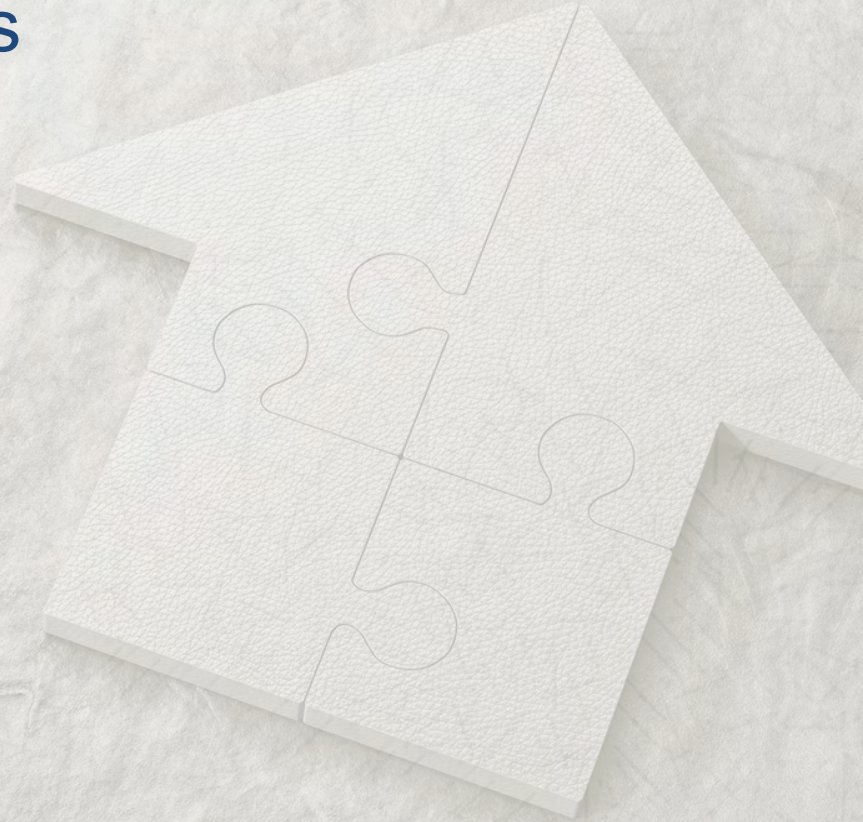
Increased Campus
Security

Triage for 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...



TIXC: File a Formal Complaint?

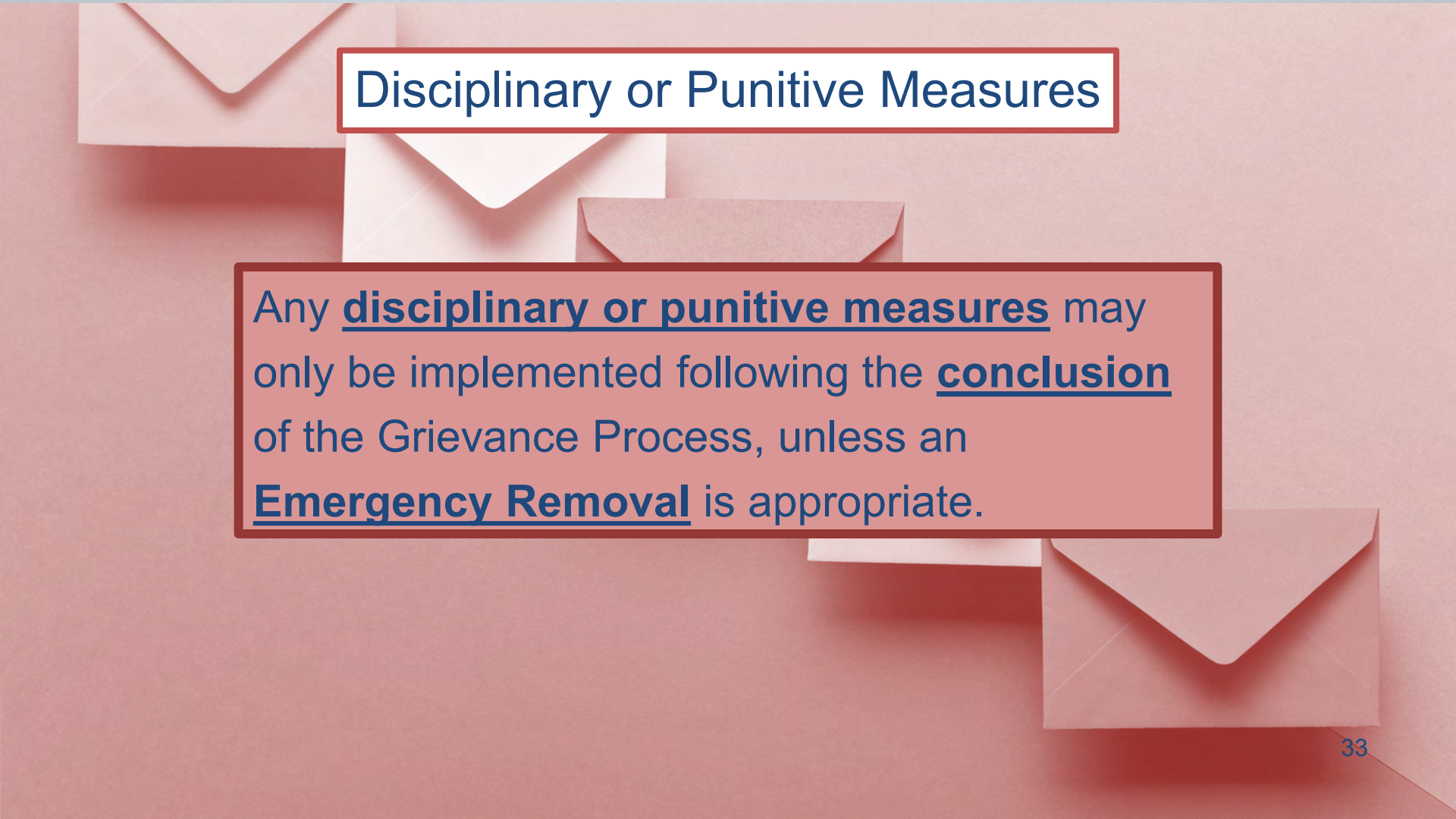
Consider if there are compelling reasons:

- The **Complainant's request** to the University to **not investigate** the alleged conduct;
- The **Complainant's reasonable safety concerns** for initiating a Formal Complaint and Formal Grievance Process;
- The extent to which the alleged conduct poses a **risk of harm** to the Complainant and/or the campus community;
- The **seriousness** and **severity** of the alleged conduct;
- The **age** and **relationship** of the parties;
- The **scope** of the alleged conduct by the Respondent, including other reports of alleged Sexual Misconduct received by the University, pattern-based allegations, alleged ongoing misconduct, or alleged conduct that impacted multiple individuals;

TIXC: File a Formal Complaint? (Cont.)

Consider if there are compelling reasons (cont.):

- The availability of **relevant evidence** to assist a decision-maker in determining whether alleged conduct occurred;
- The **status** of the Complainant and/or Respondent within the University and/or whether either party is still a member of the campus community;
- Whether the **University** could reasonably prevent the conduct's recurrence **without** initiating a Formal Complaint and Formal Grievance Process; and
- Any other factors the University determines relevant, depending on the facts and circumstances known at that time.



Disciplinary or Punitive Measures

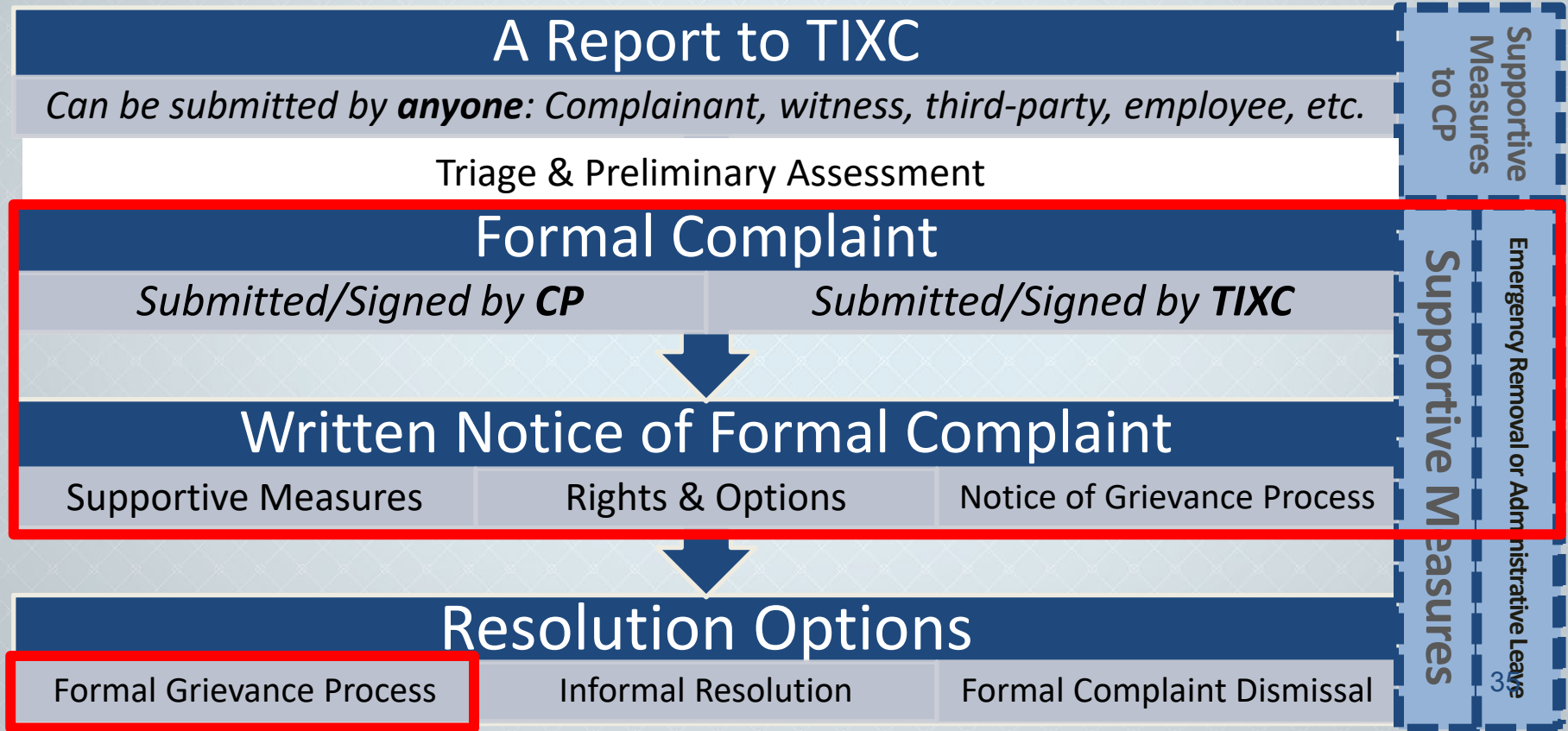
Any disciplinary or punitive measures may only be implemented following the conclusion of the Grievance Process, unless an Emergency Removal is appropriate.



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.

Resolution Flowchart



Formal Grievance Process Flowchart (Zoomed-In)

Sexual Misconduct Cases

Formal Complaint/Notice Issued

Investigation Initiated

Gathering Evidence

Witness Interviews

Process Resolution Options

Investigation Report

Informal Resolution

Formal Complaint Dismissal

Next Steps (if applicable)

Adjudication

Appeal F.C. Dismissal

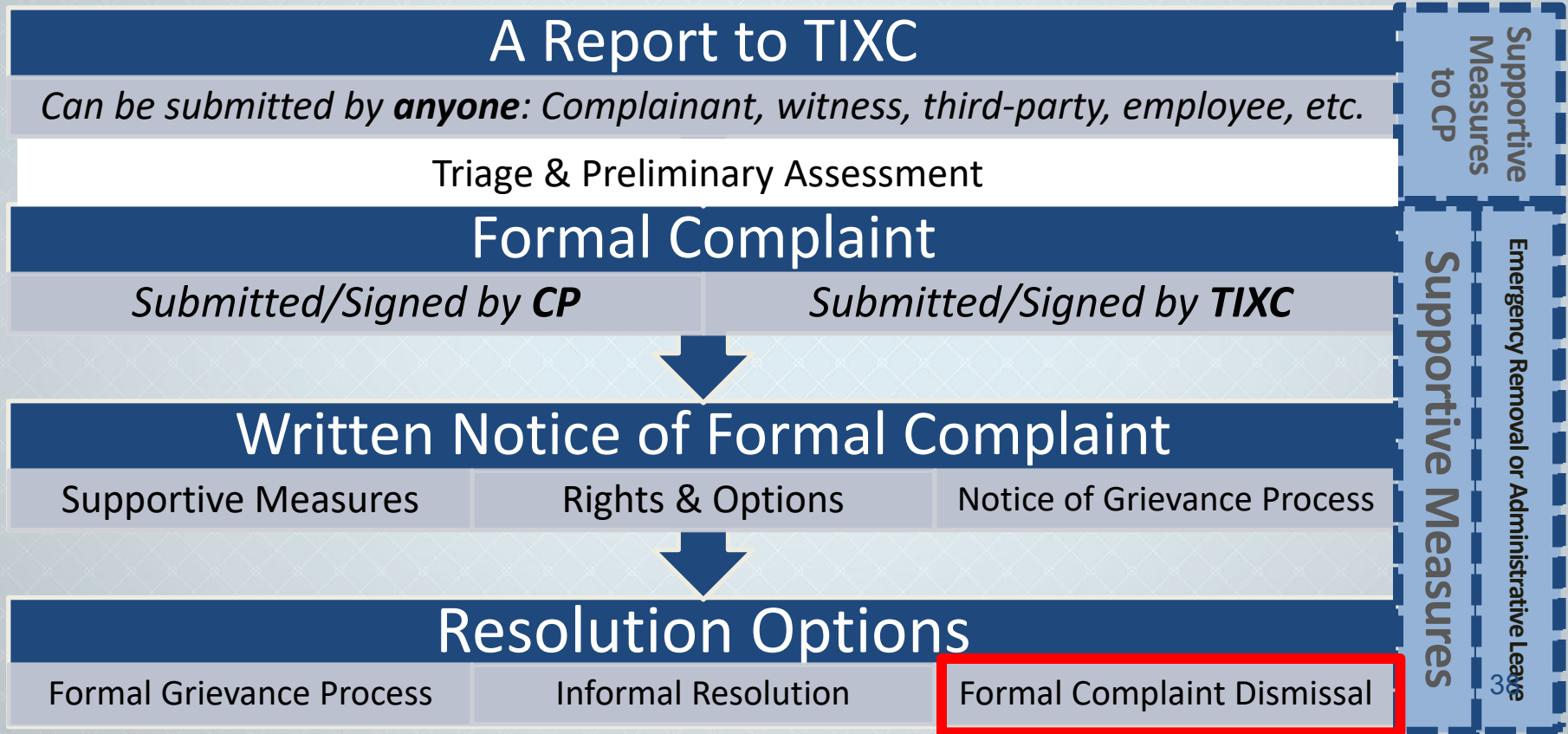
Emergency Removal or Administrative Leave

Supportive Measures for CP & RP



Formal Complaint Dismissals

Resolution Flowchart



Mandatory Formal Complaint Dismissals under 2020 Title IX Regulations

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

The background of the slide is a solid green color. Scattered across the green surface are several incandescent light bulbs. Some bulbs are upright, some are lying on their sides, and some are partially visible at the edges. The bulbs have a warm, yellowish glow, suggesting they are turned on. The overall aesthetic is clean and modern.

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)

Mandatory Formal Complaint Dismissals under 2020 Title IX Regulations

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.”

The University may dismiss a Formal Complaint, at its **discretion**, under this Policy's Grievance Process for any of the following circumstances:

- The Complainant voluntarily withdraws any or all of the Formal Complaint allegations and the University determines that the remaining allegations (if any) would not constitute Prohibited Conduct defined in this Policy, even if proven;
- The Complainant submits a written request to the University to not investigate the Formal Complaint filed, and the University determines it can and will honor the request, in accordance with the SHSM Policy and applicable state law;
- The University is unable to identify the Respondent, after the University has taken reasonable steps to do so;

Discretionary Dismissals

The University may dismiss a Formal Complaint, at its **discretion**, under this Policy's Grievance Process for any of the following circumstances (continued):

- The Respondent is no longer employed by the University;
- Any other specific circumstances that prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint or any allegations therein;
- The University determines the alleged conduct in the Formal Complaint would not constitute Prohibited Conduct under this Policy, even if proven; or
- The University determines the Formal Complaint does not fall within the scope or applicability of this Policy.

Discretionary Dismissals (Cont.)

Triage Again

Consider if there are compelling reasons:

- The **Complainant's request** to the University to **not investigate** the alleged conduct;
- The **Complainant's reasonable safety concerns** for initiating a Formal Complaint and Formal Grievance Process;
- The extent to which the alleged conduct poses a **risk of harm** to the Complainant and/or the campus community;
- The **seriousness** and **severity** of the alleged conduct;
- The **age** and **relationship** of the parties;
- The **scope** of the alleged conduct by the Respondent, including other reports of alleged Sexual Misconduct received by the University, pattern-based allegations, alleged ongoing misconduct, or alleged conduct that impacted multiple individuals;

Triage Again (Cont.)

Consider if there are compelling reasons (cont.):

- The availability of **relevant evidence** to assist a decision-maker in determining whether alleged conduct occurred;
- The **status** of the Complainant and/or Respondent within the University and/or whether either party is still a member of the campus community;
- Whether the **University** could reasonably prevent the conduct's recurrence **without** initiating a Formal Compliant and Formal Grievance Process; and
- Any other factors the University determines relevant, depending on the facts and circumstances known at that time.

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:
 - 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.



Appeal Resolution Options: Formal Complaint Dismissals

1. Affirm the Formal Complaint Dismissal; or
2. Remand the process back to a Formal Grievance Process.

Source: UT System Model Policy for Sexual Misconduct

Formal Complaint Dismissal (Example #1)

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Formal Complaint (Signed by TIXC)/Notice Issued

Grounds (examples): Serious nature of the allegations; Multiple reports/alleged incidents naming same RP

Initiate Formal Grievance Process (Investigation Stage)

Formal Complaint Dismissed (Close Case)

Basis (example): Specific circumstances that prevent... the gathering [of] evidence sufficient to reach a determination...

Specifically (example): Lack of participation from CP

Notice of F. C. Dismissal Issued (Close Case): Option to Appeal

Procedural Irregularity

New Evidence

Bias/Conflict of Interest

Appeal Resolution Options

Affirm F.C. Dismissal (Close Case)

Remand back to Investigation Stage

Formal Complaint Dismissal (Example #2)

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Formal Complaint (Signed by CP)/Notice Issued

Allegation(s): "Sexual harassment" allegation (e.g. hugs, shoulder touches, "romantic date" requests, comment about CP's appearance)

Initiate Formal Grievance Process (Investigation Stage)

Formal Complaint Dismissed ("Under Title IX") & Cont. Investigation

Basis "Under Title IX" (example): Allegations don't meet "severe, pervasive, and obj. offensive" elements of "sexual harassment" definition

Reason(s) for Continuing (example): Allegations meet definition(s) of other prohibited conduct under SM Policy

Notice of F. C. Dismissal Issued ("Under Title IX"): Option to Appeal

Procedural Irregularity

New Evidence

Bias/Conflict of Interest

Appeal Resolution Options

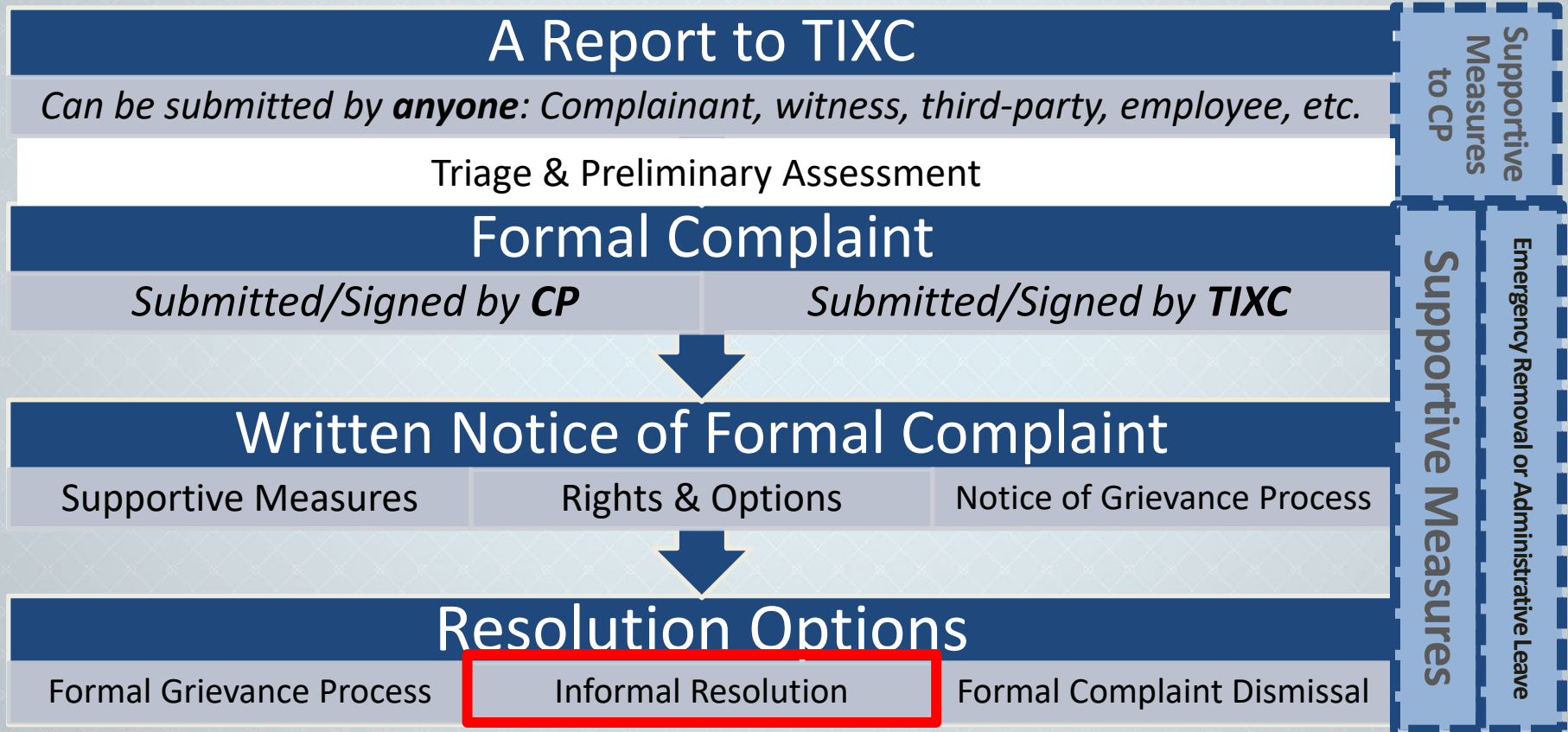
Affirm F.C. Dismissal ("Under Title IX") & Cont. Investigation under SM Policy
(e.g. with "other inapp. sexual conduct" allegations)

Cont. Investigation "Under Title IX"
(e.g. with "sexual harassment" allegations)

The background of the slide is a close-up photograph of a wooden surface. On the surface, several thin wooden pins are stuck, and they are connected by thin, light-colored threads or wires. This creates a network-like structure with various interconnected nodes and lines, some forming triangles and other geometric shapes. The lighting is warm and slightly blurred, giving it a soft, artistic feel.

Informal Resolutions

Resolution Flowchart





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.

Introduction: Informal Resolution



Why an Informal Resolution?

- Provides an **option** and **choice** for the parties to explore their own voluntary terms for a resolution.
- Opportunity to have a more **satisfactory experience** for the parties, rather than going through a Formal Grievance Process.
- Opportunity to eliminate Prohibited Conduct, prevent its reoccurrence, and remedy the conduct's effects through an **alternative method**.
- Ability to explore **non-punitive** and/or **learning-focused** resolutions, if desired.

Case Mgt: Closing Steps of the Investigation



Formal Grievance Process Flowchart (Zoomed-In)

Investigations of Sexual Misconduct Cases

Formal Complaint/Notice Issued

Investigation Initiated

Gathering Evidence

Witness Interviews

Investigation's Closing Steps

Access to Evidence

Completed Investigation Report

Investigation Report Referral for Adjudication

Emergency Removal or Administrative Leave

Supportive Measures for CP & RP

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

Formal Grievance Process Flowchart (Zoomed-In)

Title IX/Sexual Harassment

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Formal Complaint/Notice Issued

Investigation

Gathering Evidence

Witness Interviews

Investigation Report

Transition

Adjudication

Live Hearing

Written Determination Issued

Remedies/Sanctions (if any)

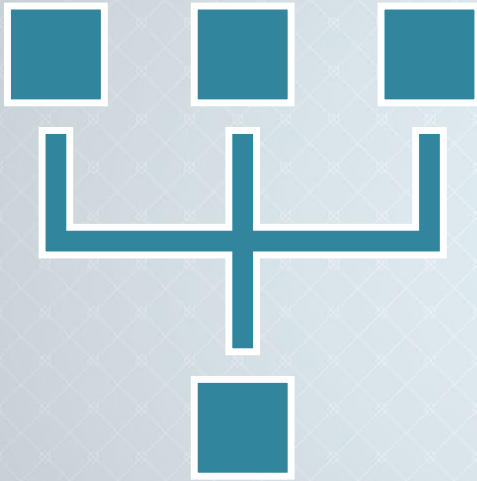
Option to Appeal

Procedural Irregularity

New Evidence

Bias/Conflict of Interest

Adjudication Intake (Examples)



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



Adjudication Flowchart

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Investigation Report Referral



Adjudication Intake



Administrative Disposition Option? (if applicable)



Live Hearing

Live Testimony & Cross-
Examination of Witnesses

Written Determination Issued

Remedies/Sanctions (if any)



Option to Appeal

Procedural Irregularity

New Evidence

Bias/Conflict of Interest



The University of
Texas System

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

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



Documentation & Record Keeping

The University (through the appropriate office) will retain all of the documentation included from the resolution of a Grievance Process (outlined in the institution's policy) for 7 years, in accordance with state and federal records 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 subject to 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.

Q & A



Contact Information

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