

Sexual Misconduct Informal Resolution Training

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Agenda

1. Title IX Intro
2. Key Components of the Informal Resolution Process
3. Facilitation Approaches
4. Documentation & Record Keeping

Introduction

TITLE IX

Key Concepts & Framework

Title IX

Sex Discrimination
Sexual Harassment
Retaliation



Institutions must reasonably respond in light of known circumstances...

**1. Stop &
prevent
behavior from
continuing or
escalating**

**2. Remedies:
Supportive
measures &
resources**

3. Formal
grievance
process

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*

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)

Key Pillars: Title IX Process

Impartiality

Respect

Fairness

Equity

For all of the participants
in the process:

Complainants

Respondents

Witnesses

Third-party Reporters

Serving Impartially in your Role

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

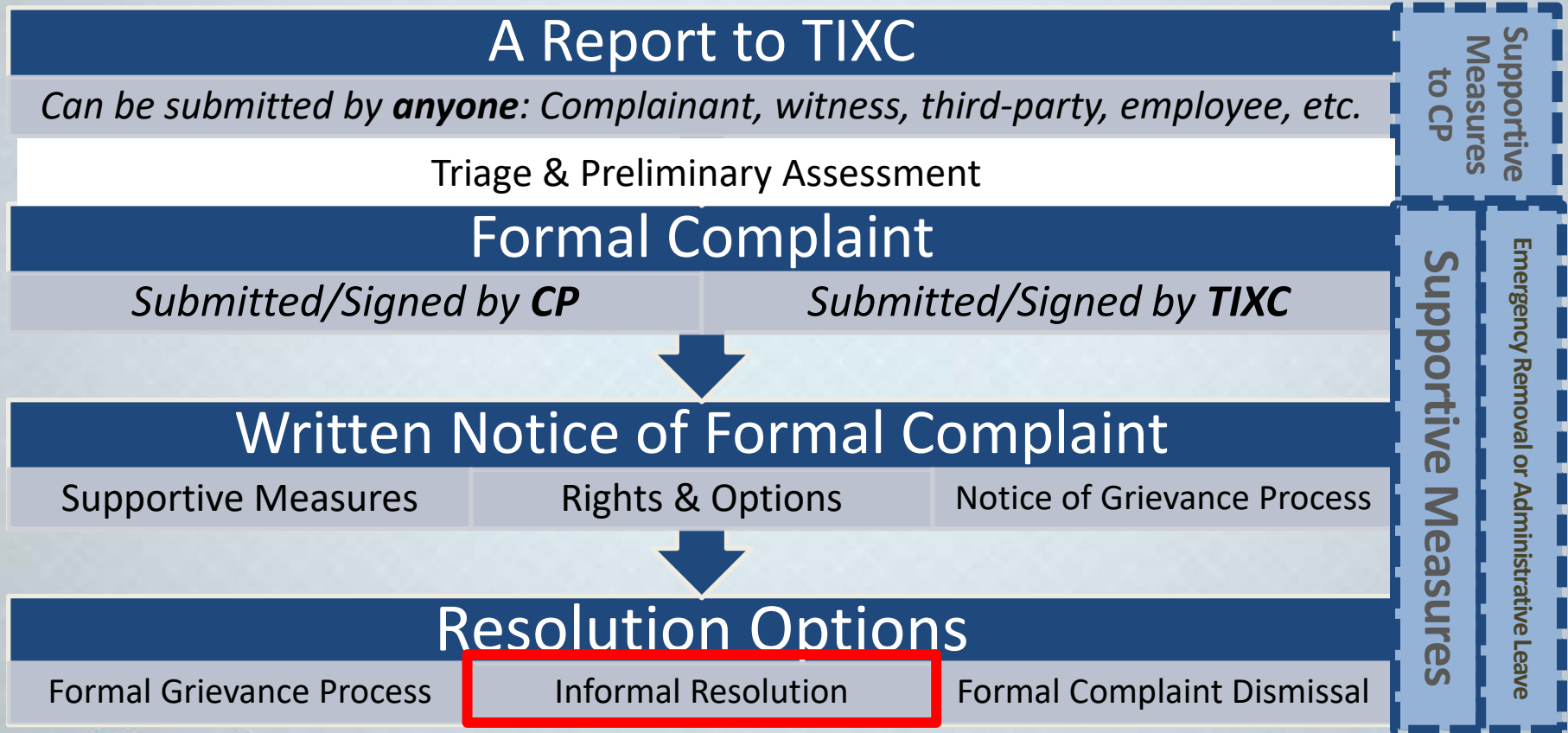
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- Must maintain **complete neutrality & impartiality at all times** in investigating alleged conduct violations of institutional policies.
 - Understanding bias & whether it exists: Need to take an “**objective, common sense approach to evaluating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

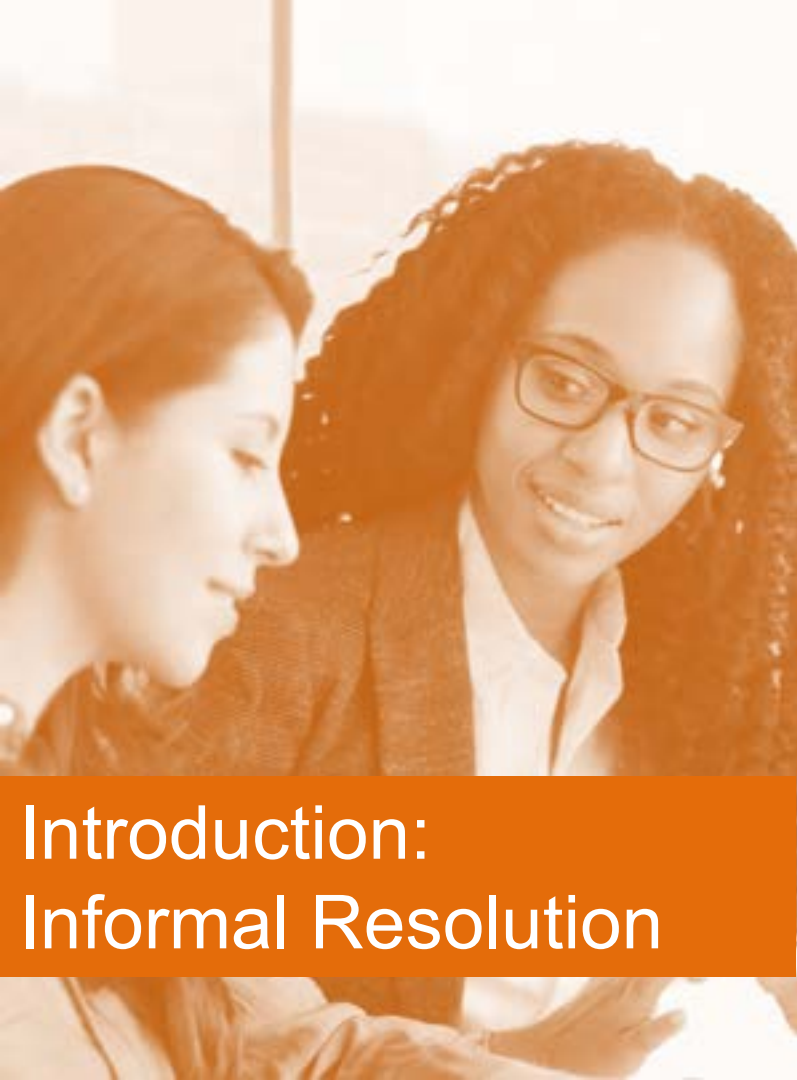
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- Must **not** treat a party differently:
 - On the basis of the person's **sex**;
 - On **stereotypes** about how men or women behave with respect to sexual violence; and/or
 - On the basis of the person's **protected characteristics**.



Informal Resolution Process

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.

The Informal Resolution Process is **not permitted**:

- In cases where **Sexual Harassment** is alleged in the Formal Complaint when the Complainant is a student and the Respondent is an employee.

IR Availability
Title IX Regulations

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



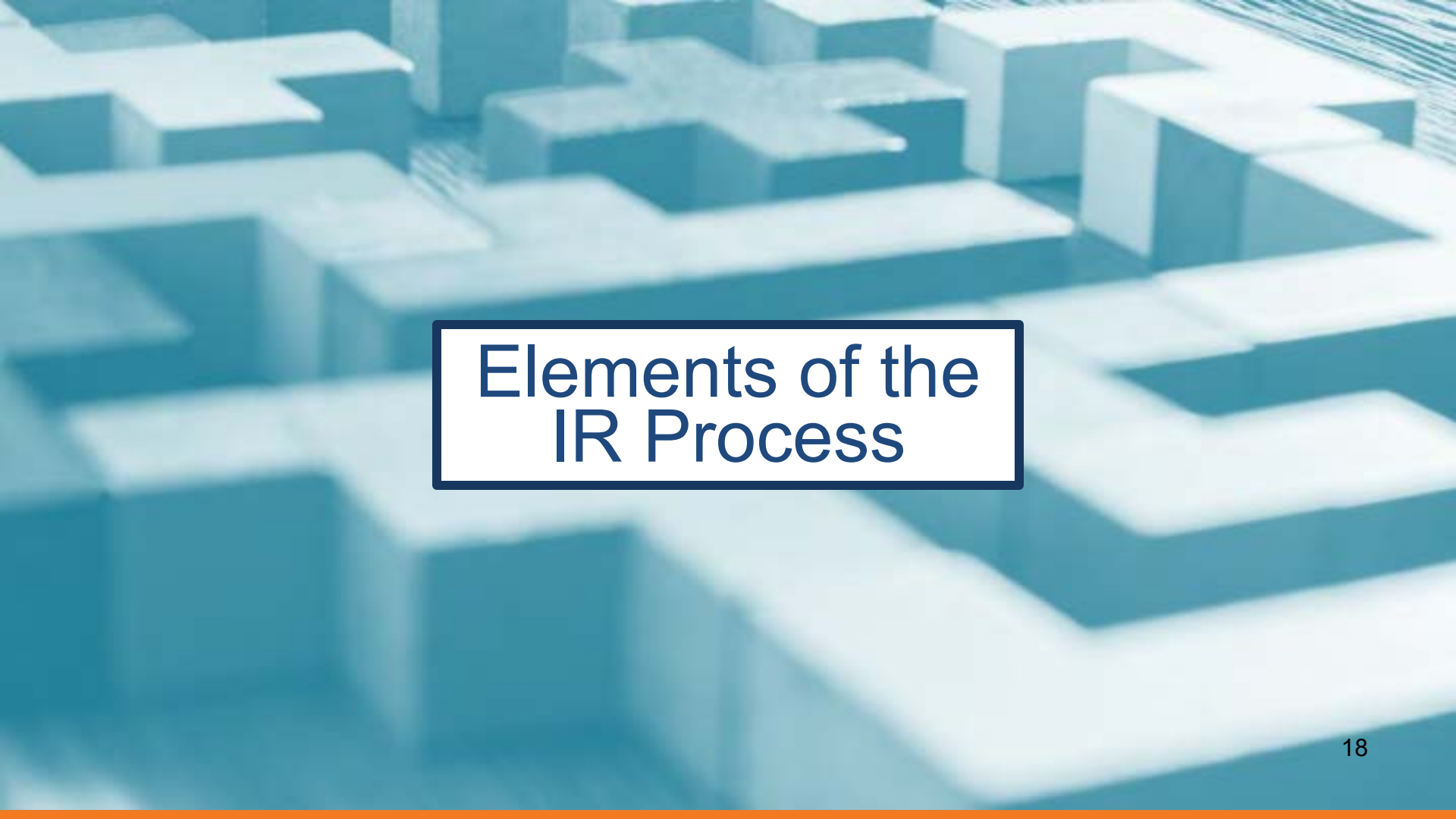
IR Availability from UT System

The Informal Resolution Process is **not available** where the Respondent:

1. Has previously participated in the IR process and where that process resulted in a mutual IR agreement;
or
2. Has previous Sexual Misconduct policy violations.

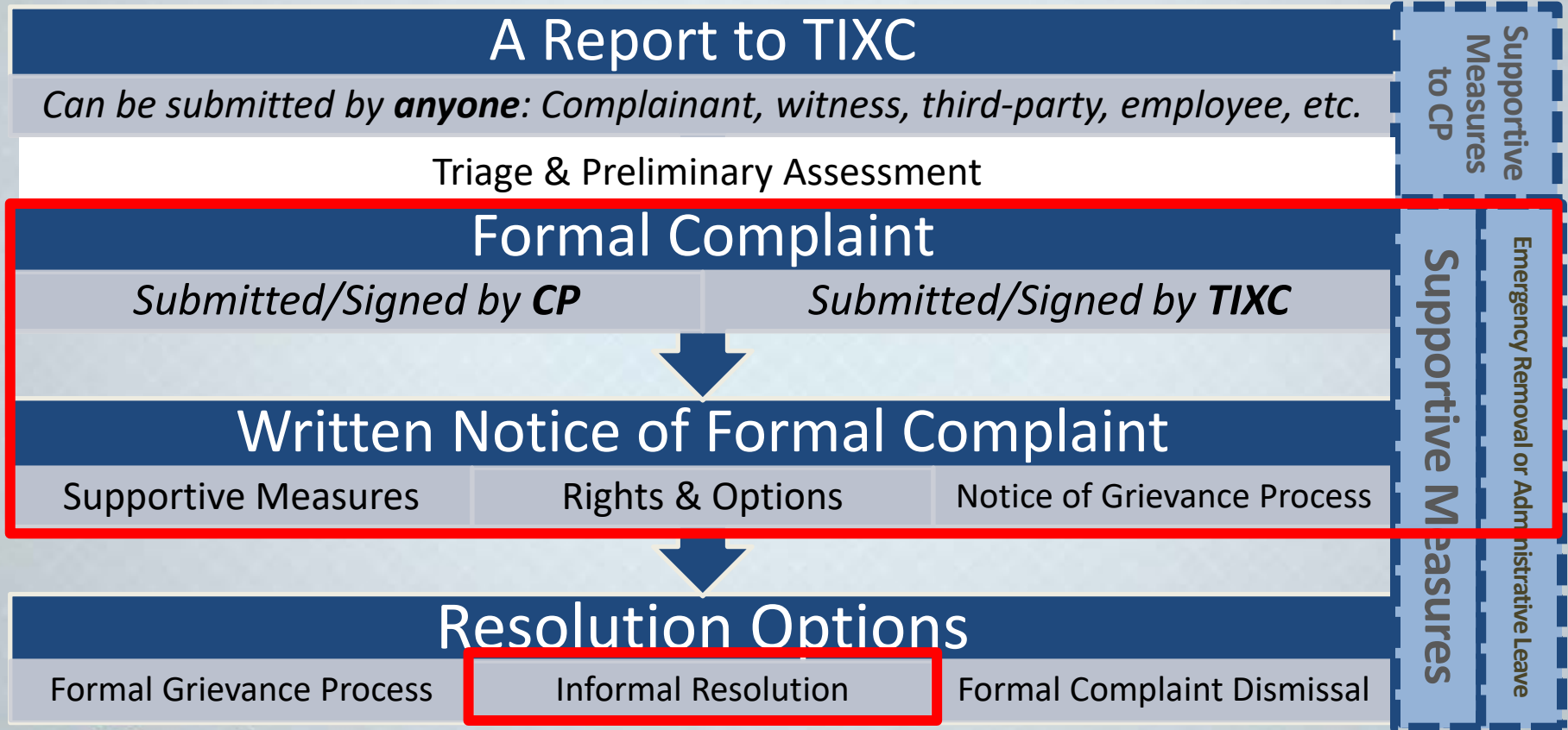
For all other cases, the institution has the discretion to determine whether Informal Resolution is appropriate to resolve the Formal Complaint, depending on the specific facts and circumstances of the case.

Check the institution's Sexual Misconduct Policy for specific IR Availability provisions.



Elements of the IR Process

Resolution Flowchart





Preparations

- Formal Complaint and process status?
- I.R. Pre-screening:
 - Background information
 - IR available/eligible?
 - CP: Supportive measures/remedies?
 - RP: Sense of willingness to address their alleged conduct through IR process?
 - Any potential conflicts between the parties?
 - Concerns raised (if any) from the parties?

IR Required Components (Title IX)



Once a formal complaint is filed...

An Informal Resolution Process must include:

- a) Written notice of allegations;
- b) Required elements of the informal process; and
- c) Any consequences resulting from participating in an informal process

Source: Title IX Regulations (2020)

IR Components



- a) Written notice of IR process (including the parties rights and options in the IR process);
- b) Examples of IR Agreement Terms;
- c) Other terms and conditions of the IR Process (including documentation and records retention); and
- d) Timeframe of IR process

Source: UT System Model Policy for Sexual Misconduct

Written Notice of IR Process (Example)



Once it is determined that an Informal Resolution (IR) is **available** to resolve the Formal Complaint, both parties should be notified **in writing of the initiation of the IR process**, and the parties rights and responsibilities in the IR process.

Note: Check the institution's Sexual Misconduct Policy for specific IR process and procedures.

Written Notice of IR Process (Cont.)



The written notice of the IR process should include the following:

- The Formal Complaint allegations;
- The requirements of the IR process (as outlined in the institution's policy);
- Prior to an IR Agreement, a party has the right to **withdraw** from the IR process, and separately, initiate or resume the Formal Grievance Process or Alternative Formal Grievance Process for Students (as outlined the institution's policy);

Note: Check the institution's Sexual Misconduct Policy for specific IR process and procedures.



At any point prior to signing the IR Agreement, each party has a right to **withdraw** from the IR process, and separately, initiate or resume the Formal Grievance Process or Alternative Formal Grievance Process for Students (as outlined in the institution's policy) with respect to the Formal Complaint.

Withdrawal from IR Participation

Written Notice of IR Process (Cont.)



The written notice of the IR process should include the following (cont.):

- Includes examples of potential terms that may be reached in an IR Agreement;
- If by signing an IR Agreement, the parties would be agreeing to the terms of the agreement, would be bound by the terms of the agreement, and thereby would **waive** the right to a Formal Grievance Process regarding the alleged conduct at issue; and
- The IR Agreement, if signed, will be retained, as outlined in the institution's policy.

Note: Check the institution's Sexual Misconduct Policy for specific IR process and procedures.

Examples of Agreement Terms

Stop engaging in
prohibited conduct
defined in SHSM policy

Mutual
No-Contact
Btwn Parties

Apology Letter

Reflection Writing
Assignment

SHSM Training or
Workshop
Assignment

Alcohol EDU
Workshop

RP Housing
Reassignment

RP Counseling
Consultation

RP Course
Adjustments

RP On-Campus
Work
Adjustments

RP Voluntary
Leave from Uni

Enforcement
Terms

Terms and Conditions (Example)



No recording of the IR process should be made and all statements made during the IR process may not be used for or against either party.

In addition, the Hearing Officer and Appellate Officer may not consider any such statement made during the IR process), should the parties resume the Formal Grievance Process.

Note: Check the institution's Sexual Misconduct Policy for specific IR terms and conditions.

Terms and Conditions (Cont.)

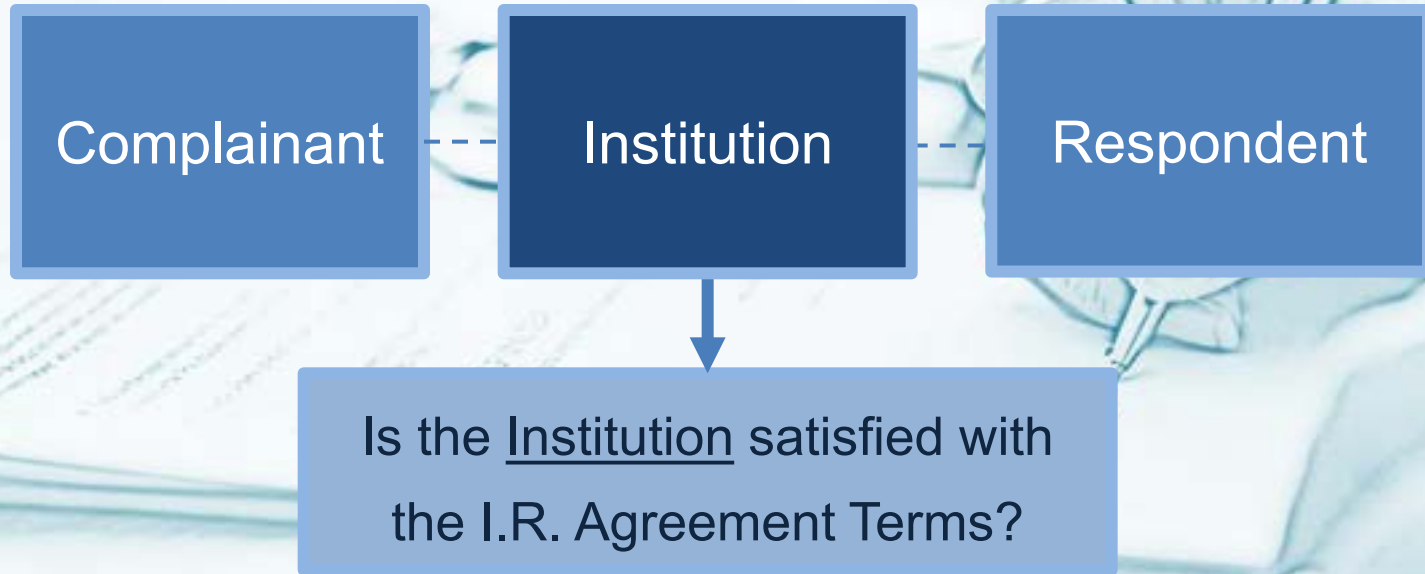


By signing the IR Agreement:

- The parties are affirming that the terms of the agreement (along with any other supportive or interim measures in place, if applicable) **appropriately address the alleged conduct at issue and remedy its effects.**

Note: Check the institution's Sexual Misconduct Policy for specific IR terms and conditions.

Agreement Terms



Terms and Conditions (Cont.)



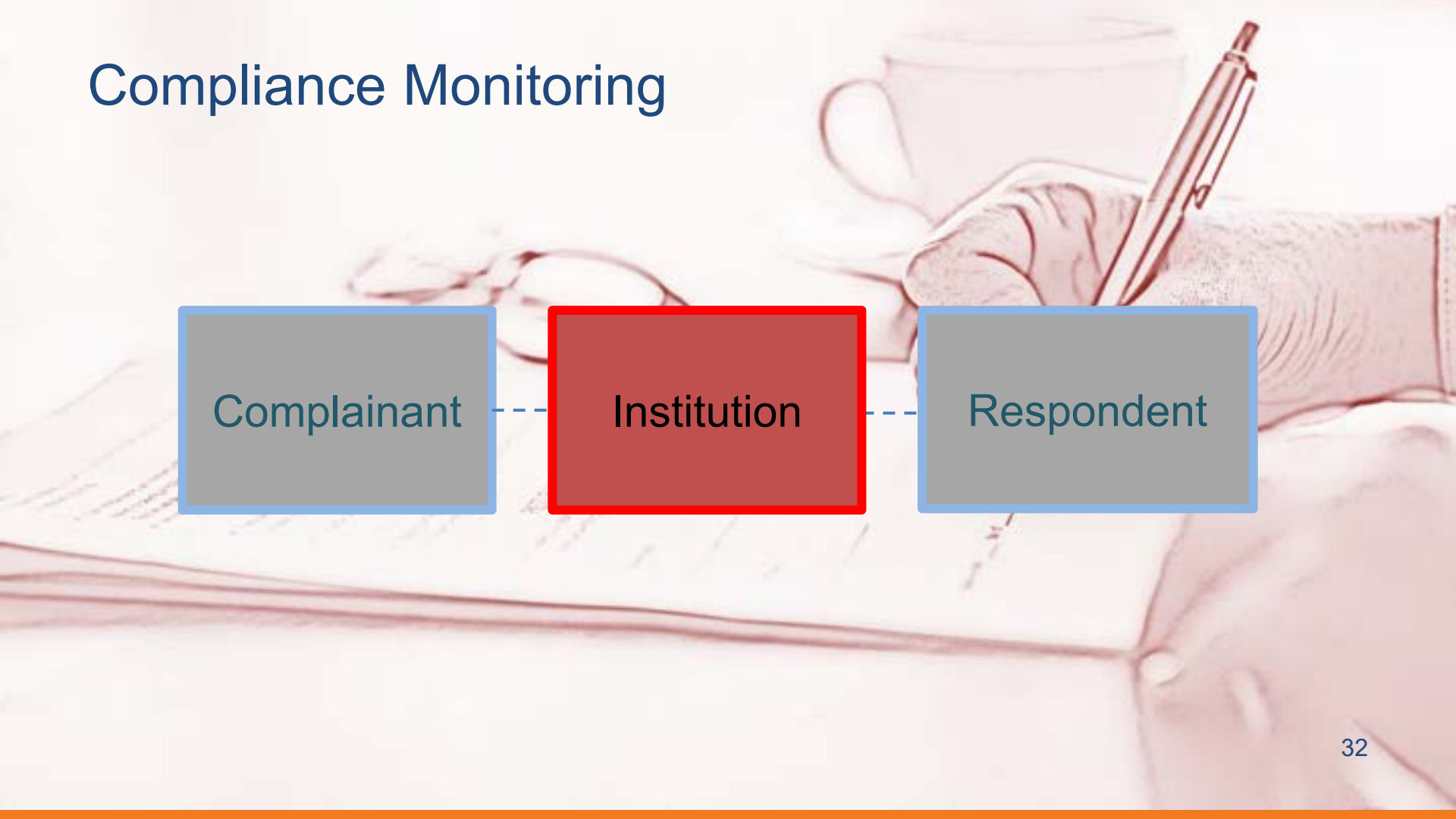
By signing the IR Agreement:

- The parties **agree to comply** with the terms of the agreement.
- The parties **waive** the right to a Formal Grievance Process regarding the alleged conduct at issue.

Note: The parties' **failure to comply** with any terms of the IR Agreement may result in its own disciplinary action and mutually agreed-upon consequences in the agreement.

Note: Check the institution's Sexual Misconduct Policy for specific IR terms and conditions.

Compliance Monitoring



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graph LR; A[Complainant] -.-> B[Institution]; B -.-> C[Respondent];
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Complainant

Institution

Respondent

IR Agreement: Documentation and Record Retention

The University (through the appropriate office) should retain all of the documentation included from the resolution of a Grievance Process under the institution's policy.

- For the IR Process – the **IR Agreement** (if signed) will be included in the record retention.

The records retention of such documents should be for **seven years**, in accordance with state and federal records laws and University policy.

Note: Check the institution's Sexual Misconduct Policy for specific IR documentation and record retention.

Grievance Process Documentation and Record Retention

All documentation of records is 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.

Note: Check the institution's Sexual Misconduct Policy for specific IR documentation and record retention.

Informal Resolution Timeframe (Example)

Informal Resolutions of a formal complaint should be concluded within **45 days** of notice to the institution that both parties wish to proceed with the Informal Resolution process.

Such notice that the parties wish to proceed with an IR process should **“pause”** the counting of the Investigation and Grievance Process timeframes, as outlined in the institution’s policy.

Further, should the IR process fail, the Investigation and Grievance Process timeframes should resume accordingly.

Note: Check the institution’s Sexual Misconduct Policy for specific IR timeframes.

Informal Resolution Timeframe – Temporary Delays

Delay for good cause may include considerations, such as:

- The absence of a party, a party's advisor, or a witness;
- Concurrent law enforcement activity; or
- The need for language assistance or accommodation of disabilities.

Note: Other delays for good cause may apply as well.



Facilitation Approaches

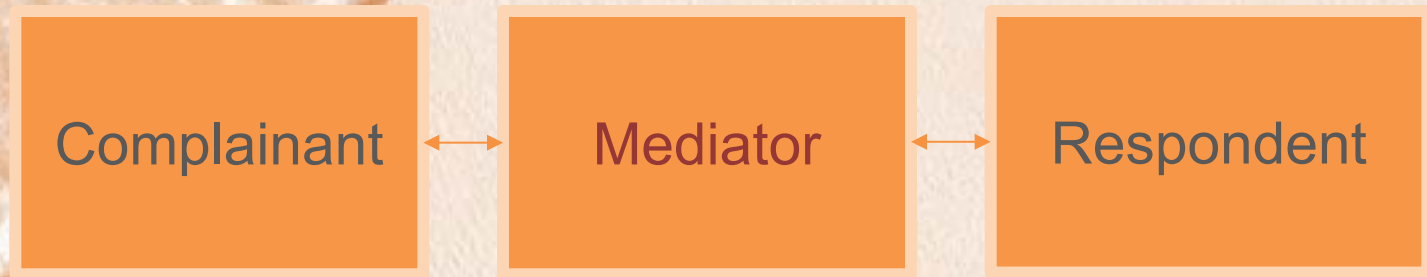


Exploration & Mediation Tools

- Rapport-building
- Active listening
- Indirect facilitation
(e.g. shuttle-diplomacy)

Indirect Facilitation (Shuttle-Diplomacy)

A mediator acts as a go-between and facilitates impartially the negotiation of proposed terms between the two parties. It doesn't require direct face-to-face interaction between the parties.



Example model

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?**”*
- ***“What, if anything, do you need** right now?”*

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

- Facilitators: How can you minimize or eliminate these factors?

General Starting Prompts

- “I’ve read the formal complaint (and initial statements (if any)) and I am familiar with this case. **Is there anything important you wish to share at this time?**”
 - “Tell me what you would like to **achieve** through this I.R. process.”
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- **To CP:** “What types of **remedies** would you like to see in an I.R. agreement?”
 - **To RP:** “What types of remedies, if any, are you **open** to? What components, if any, you are **willing to agree to?**”



Active Listening Example Prompts

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Type	Example Prompts	
Validating	• “That sounds difficult.”	• “It’s <u>okay</u> to feel upset.”
Emotional Acknowledgements	• “You seem <u>disappointed</u> right now.”	• “Having to consider different options can be <u>stressful</u> to navigate.”
Reflecting	• “What I’m hearing is...”	• “Sounds like you are saying...”
Summarizing or Restating	• “Let me summarize to check my understanding [Repeat back]... Did I get that right?”	• “[Repeat/rephrase what the other person said]...Is this what you mean?”
Open-Ended Phrases	• “Tell me more about...” • “Explain/describe...”	• “What do you mean when you say...?” • “Help me understand...”
Affirmative Comm	• “Yes” • “I see.”	• “Go on.” • “Right.”

Informal Resolution Example Prompts

Purpose	Example Prompts
Draw out ideas	• “Tell me what <u>you</u> would like to achieve through this I.R. process.” • “What types of remedies would <u>you</u> like to see in an I.R. agreement?” • “How do <u>you</u> want to approach an IR agreement?” • “What types of remedies, if any, are <u>you</u> open to?” • What components, if any, <u>you</u> are willing to agree to?” • “What are terms or remedies that seem fair to <u>you</u>?” • “What do <u>you</u> think about ____?”
Be open to <u>all</u> <u>types</u> of responses	• “How would <u>you</u> like to proceed?” • “What are some applicable takeaways that <u>you</u> can learn and grow from this experience?” • “The decision to accept or not accept certain terms or remedies is up to <u>you</u>.” • “What do <u>you</u> think might be getting in the way of coming to an agreement right now?”

Refocusing Conversations

Purpose	Example Prompts
If the person <u>doesn't respond to the relevant prompts...</u>	• <u>Rephrase</u> the prompt again. • Acknowledge the shift: <i>"It seems like the discussion is evolving to ____, but we started off exploring ____."</i>
If the person <u>makes an argument about a different topic...</u>	• <u>Acknowledge</u> the concern & attempt to finish the <u>initial discussion first</u>: <i>"I want to talk about that, but let's first finish addressing ____?"</i>
If the person <u>attempts to change the subject...</u>	• It might be to <u>vent</u> or release some tension. • <u>Prompt</u> the person to discuss what's on their mind. • Then, use <u>active listening</u> to acknowledge the person's current <u>concerns, emotions, and/or needs</u>. • Try to <u>link</u> the person's concerns with the initial discussion topic.

Q & A



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