

Sexual Misconduct Informal Resolution Training

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Fall 2021



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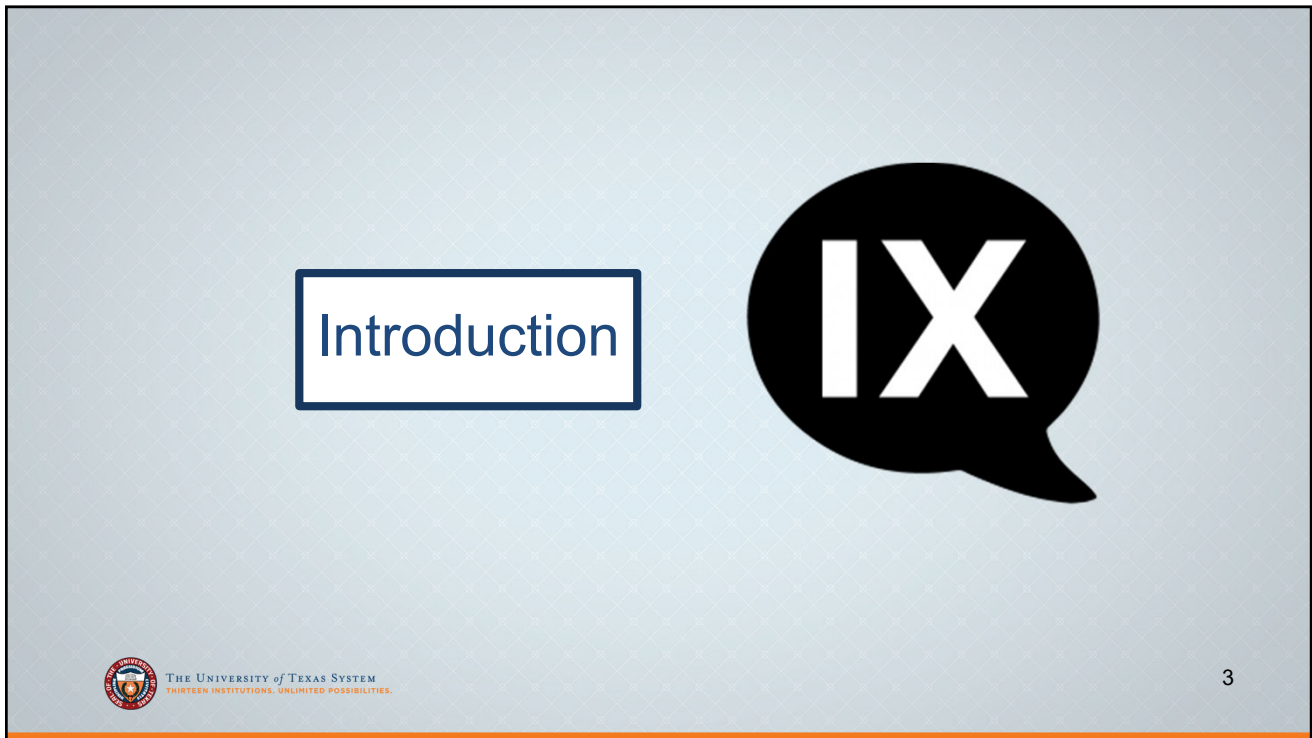
Agenda

1. Title IX Introduction
2. Triage/Case Mgt
3. Informal Resolution Process
4. Facilitation Approaches
5. Documentation



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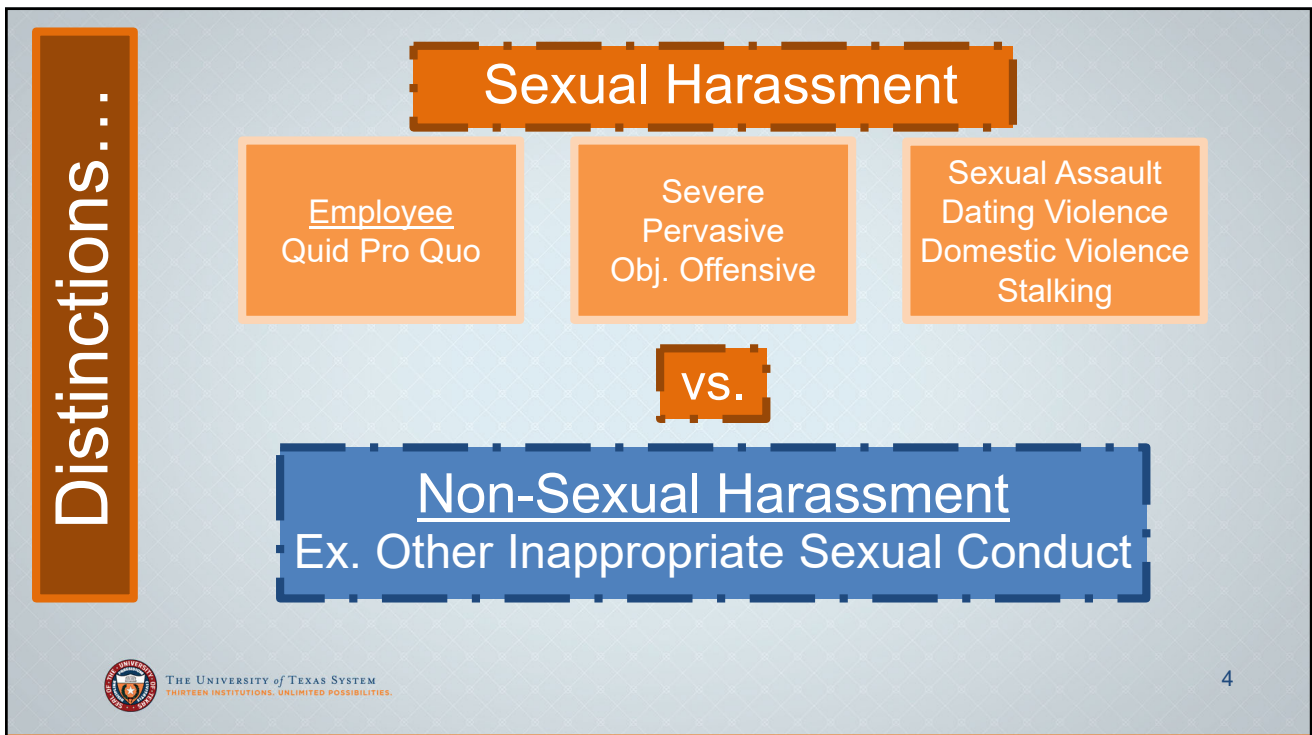
Introduction

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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.



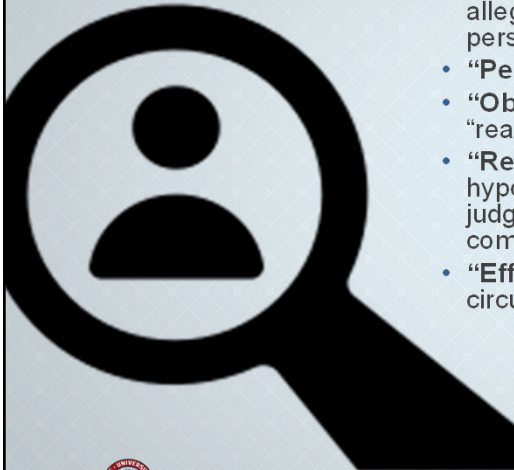
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Source: Title IX Regulations (2020)

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#2 Element Examples



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

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



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“Education program or activity” under Title IX

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

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



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.



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Source:

UT System Model Policy for Sexual Misconduct (2021)

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



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Why is it important that institutions respond to reports of sexual misconduct?

Stop

Prevent

Remedy

Institutions provide:

- Campus remedies & supportive measures (with or without filing a formal complaint)
- Prompt, fair, & equitable grievance processes (by filing a formal complaint)
- Preponderance of the evidence standard (in the formal grievance process)
- An informal resolution option (in some circumstances, if available)



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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**



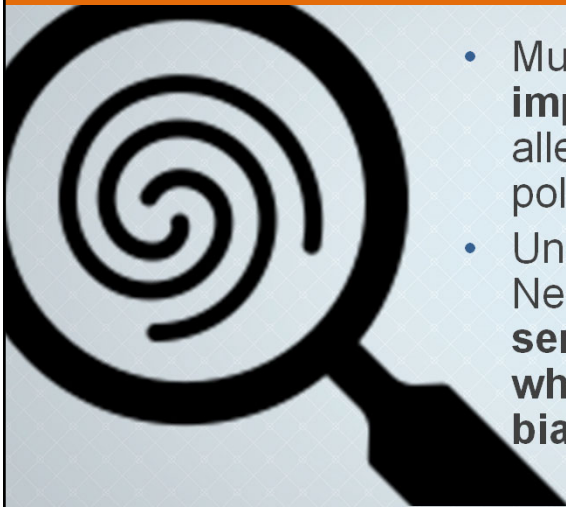
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Source: Title IX Regulations (2020)

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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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Triage & Case Management




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Allegation Type(s): Sexual Misconduct Policy?

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




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Other Triage Analysis & Considerations

CP & RP Affiliation to the Institution?	Incident Location(s)	Date/Time of Incident
Time of Alleged Incident: Institutional Nexus or Jurisdiction?	Institutional Action? Preventative Action? Remedies?	Level of Concern? Threat Level?



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A Report to the Title IX Coordinator (TIXC)

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



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Examples of Supportive Measures

Non-Disciplinary & Non-Punitive Measures...
that do not unreasonably burden the other party

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



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Party's Rights

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

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



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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).

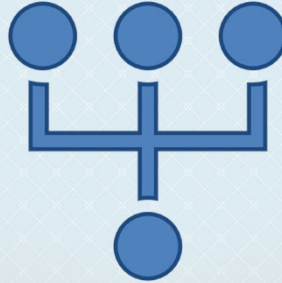


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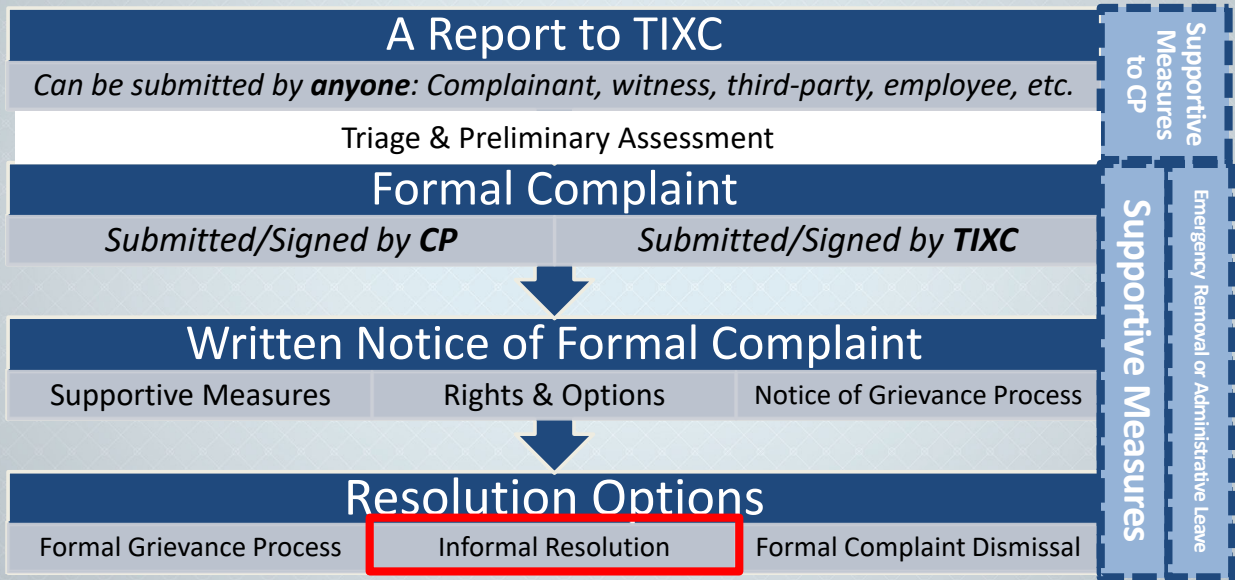
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Informal Resolution Process



Resolution Flowchart



Informal Resolutions: Introduction

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

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

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



Why an Informal Resolution?

- Provide options and choice for the parties to explore their own voluntary terms for a resolution.
- Opportunity to repair harm that was experienced through an alternative method.
- Ability to explore non-punitive and/or learning-focused resolutions, if desired.



Not Permitted When...

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

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



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Source: Title IX Regulations (2020);
UT System Model Policy for Sexual Misconduct (2021)

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Required Components

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



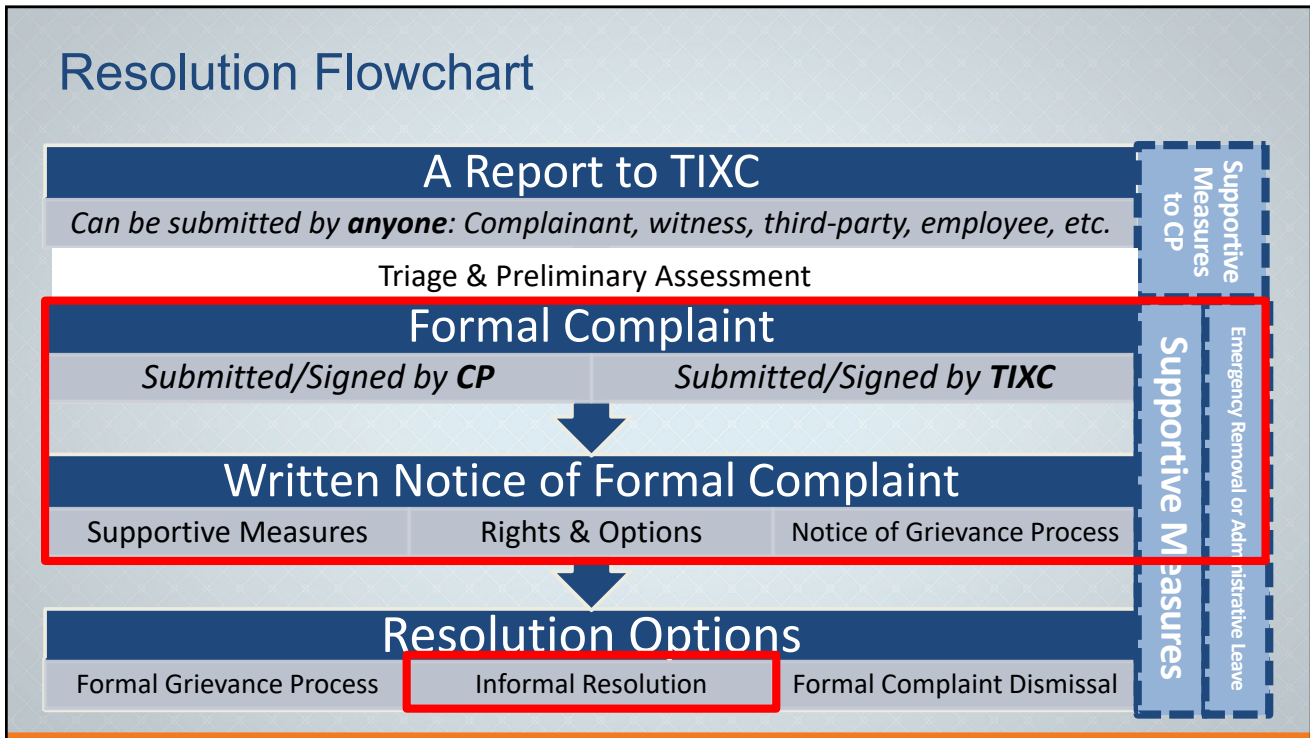
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Source: Title IX Regulations (2020)

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Resolution Flowchart



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Written Notice of Allegations



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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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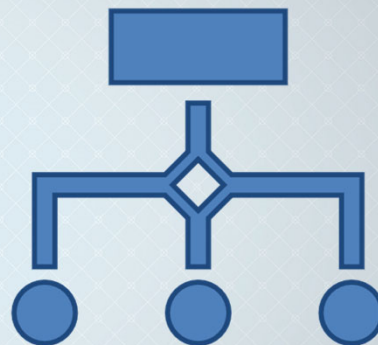
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Written Notice (Continued)

- 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)



Required Elements of the IR Process



Informal Process Considerations

1. Under the institution's policy, what is the **IR availability**? What conditions are permissible for an IR agreement?
2. What are the **timeframe** parameters to complete an IR agreement?
3. Who will **facilitate** IR's?
4. What **acknowledgments** are required by both parties before an IR agreement?
5. What are the **consequences** resulting from participating in an informal process?



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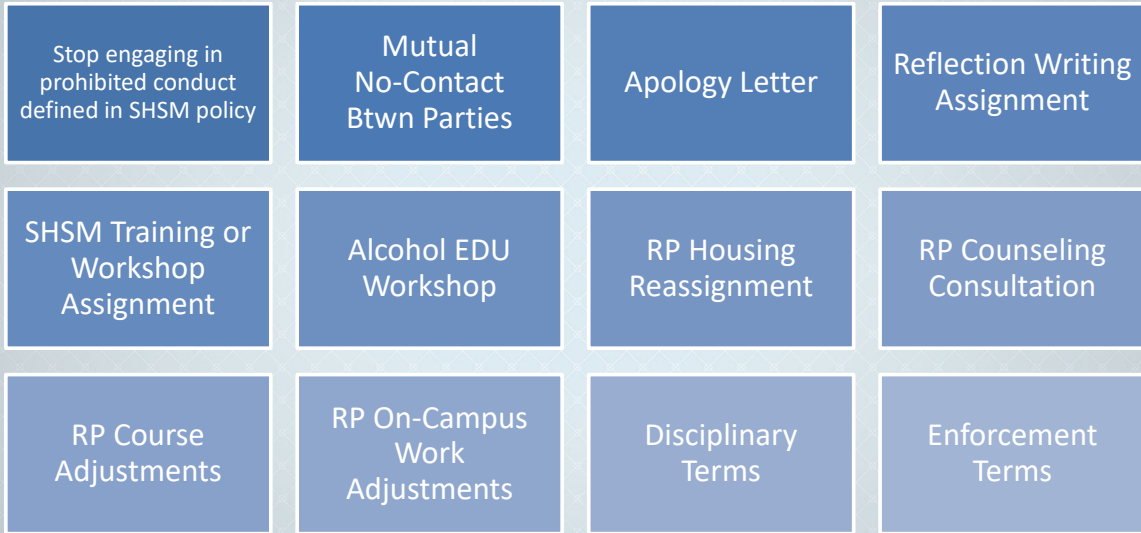
Example Acknowledgments & Consequences of Participating in an IR Process

1. Acknowledgment of the **written notice** and allegations therein.
2. Received **rights and options** of both parties.
3. An IR agreement is a **voluntary** option, if available under the institution's policy.
4. Each party has the **right to withdraw** from the IR process and resume the formal grievance process...
5. IR **timeframe** (example: within 45 days of notice)
6. No recording will be made of the IR process...
7. Any statements made during the IR process may not be used for or against either party... should the parties resume the formal grievance process.
8. The respondent will not be eligible for further IR agreements in the future.
9. An IR agreement will be based on individual needs, and based on specific facts and circumstances available.
10. Documentation & records provisions... 7 years retention...privacy and confidentiality of records...
11. **Terms of Enforcement:** Failure to comply with a provision or term in an IR agreement may result in disciplinary action.

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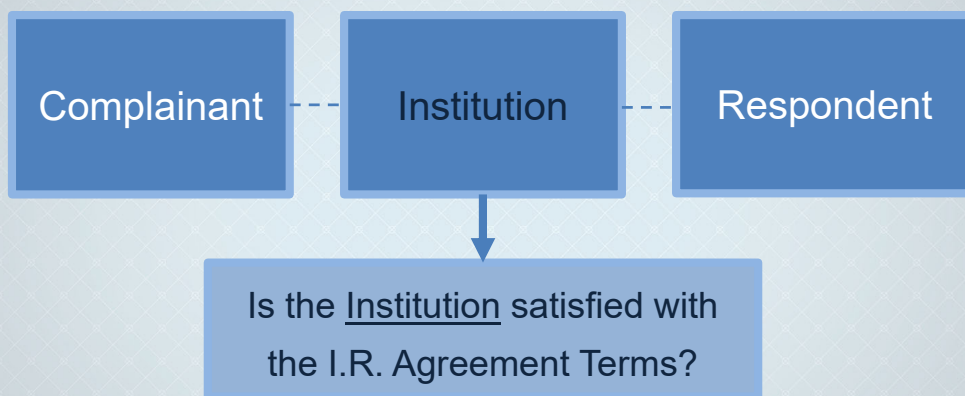
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Examples of Agreement Terms



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Agreement Terms



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IR Documentation Examples

- Documentation Checklists & Forms
- Intake & Initial Assessments
- Case Management Timelines
- Contact & Communications
- Notices, Letters, IR Agreements
- **Obtain signatures for the IR Agreement**
- Data Systems for Electronic & Hard Copy Records



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Facilitation
Approaches



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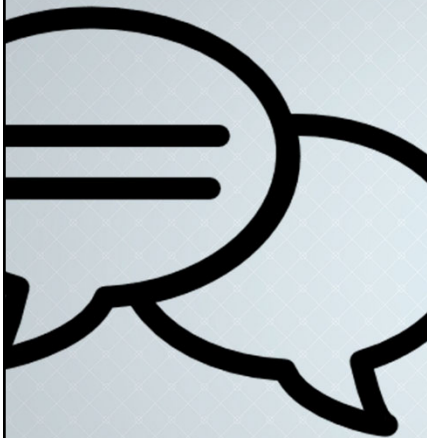
Exploration & Mediation Tools



- Rapport-building
- Active listening
- Motivational interviewing
- Indirect facilitation (e.g. shuttle-diplomacy)
- Restorative considerations

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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.

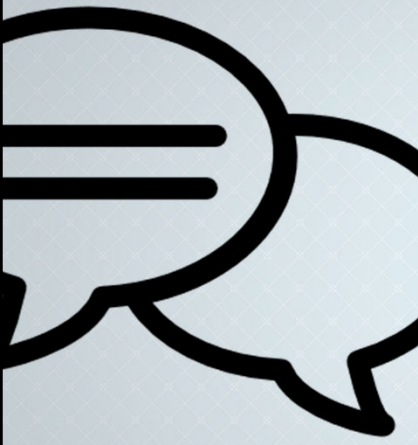
- Facilitators: How can you minimize or eliminate these factors?

Source:

Forensic Experimental Trauma Interview (FETI)

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Rapport-Building (Other Examples)



Weather	Hometown	School
News	Pop Culture	Music


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Active Listening

- **Goal:** Sense of feeling heard and understood; may increase cooperation
- Paying attention to the person
- Open-minded & impartial focus
- Nodding, affirmative non-verbals
- Not interrupting
- Open-Ended Phrases
- Clarifying checks:
 - Reflecting (mirroring/paraphrasing)
 - Summarizing
 - Restating



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Active Listening: Examples

Type	Example Prompts
Reflecting	<ul style="list-style-type: none"> • “Sounds like you are saying...” • “What I’m hearing is...”
Summarizing or Restating	<ul style="list-style-type: none"> • “Let me summarize to check my understanding [Repeat back]... Did I get that right?”
Open-Ended Phrases	<ul style="list-style-type: none"> • “Tell me more about...” • “Help me understand...” • “Explain/describe...” • “What do you mean when you say...?” • “[Repeat/rephrase what the other person said]...Is this what you mean?”



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Motivational Interviewing



- **Goal:** Provides an avenue for someone to take action for changing behavior
- Conduct-specific focus
- The person is interested in the need for change
- Organize a plan & actionable pathway for change



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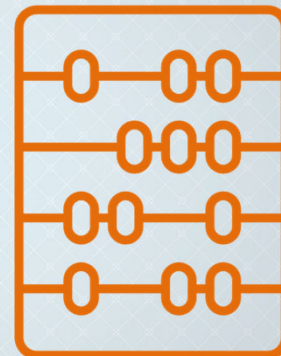
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Motivational Interviewing: Examples

Purpose	Example Prompts
Draw out ideas	<ul style="list-style-type: none"> • “What are your thoughts/feelings about the allegations?” • “What was your thought process at the time?” • “Who has been affected by your conduct?” • “How did your actions impact the others?” • “How do you want to approach an IR agreement?”
Be open to <u>all</u> types of responses	<ul style="list-style-type: none"> • “What are some applicable takeaways that you can learn and grow from this experience?” • “What are terms or remedies that seem fair to you?” • “The decision to accept or not accept certain terms or remedies is up to you.”

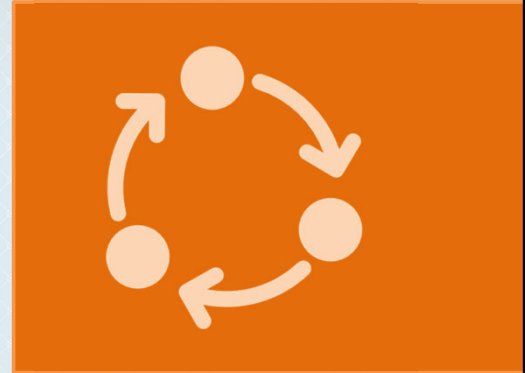
Motivational Interviewing: Other Considerations

- Be mindful of the person’s desire, ability, reasons, and/or needs to change one’s own behavior, mindset, or attitude on the subject matter.
- Tailor facilitation prompts or responses based on the person’s interest to changing one’s own behavior.



Restorative Considerations

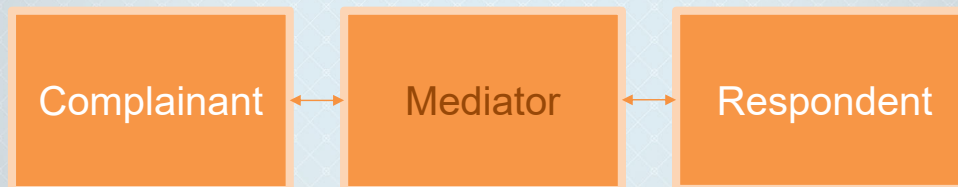
- Address the conduct, impacts, and/or needs of the individuals?
- Provide accountability & support?
- Actively engage with the individuals?
- Learning-focused?
- Opportunities for closure?
- Ability to reintegrate the person back into the community?



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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

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Restorative Approaches: Additional Examples

Type	Description
Restorative Conferences	A <u>structured and facilitated conversation</u> between two or more individuals (often the person who has been harmed (CP) and the person who caused the harm (RP)). An agreement between the parties can resolve and address what steps the RP can take to repair the harm and rebuild trust.
Restorative Circles	Similar to a restorative conference, but typically involves a <u>larger group</u> and a <u>community approach</u> to addressing and repairing harm. It involves a structured dialogue of turn-taking between the person(s) harmed (CPs), the person(s) who caused the harm (RPs), and others who have been impacted. Also helpful for community-building or discussing difficult issues.
Surrogate Participation	A restorative circle or conference in which the CP doesn't want to participate in a restorative process but wants someone else (surrogate) to help the RP to understand the impact of the harm.



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Source: *Restorative Justice Approaches to Informal Resolution of Student Sexual Misconduct* (Orcutt, Petrowski, Karp, & Draper)

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Informal Resolution Timeframe (Example)

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

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

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



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Source:

UT System Model Policy for Sexual Misconduct (2021)

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Informal Resolution Documentation & Record Keeping

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



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



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

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Q & A



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Contact Information

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