Sexual Misconduct
Case Management Overview

Krista Anderson, Systemwide Title IX Coordinator
Sean Flammer, Assistant General Counsel
Spring 2022

Agenda

1. Title IX Intro
2. Triage & Case Mgt
3. Resolution Options
4. Threat Assessment Overview
5. Adjudication Logistics
6. Documentation & Record Keeping
Title IX (Educational Amendments of 1972) prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance.
“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)
Sexual Harassment

- Employee Quid Pro Quo
- Severe Pervasive Obj. Offensive
- Sexual Assault Dating Violence Domestic Violence Stalking

Non-Sexual Harassment

Ex. Other Inappropriate Sexual Conduct

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)
- **“Reasonable person” standard**: An objective test to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.
- **“Effectively denies...equal access”**: Totality of the circumstances

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

---

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)*
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.

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

Source:
UT System Model Policy for Sexual Misconduct (2021)
Why is it important that institutions respond to reports of sexual misconduct?

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)

Key Pillars: Title IX Process

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**

**Source**: Title IX Regulations (2020)

---

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))...
• Must **not** treat a party differently:
  o On the basis of the person’s **sex**;
  o On **stereotypes** about how men or women behave with respect to sexual violence; and/or
  o 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)*
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.

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

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.

**Note:** Neither party may be restricted from discussing allegations or from gathering evidence in a 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 because the individual has made a report or filed a Formal Complaint; or who has supported or provided information in connection with a report or a Formal Complaint; participated or refused to participate in a Grievance Process under this Policy; or engaged in other legally protected activities.

Note: Any person who retaliates against (a) anyone filing a report of Sexual Misconduct or Formal Complaint, (b) the parties or any other participants (including any witnesses or any University employee) in a Grievance Process relating to a Formal Complaint, (c) any person who refuses to participate in a Grievance Process, or (d) any person who under this Policy opposed any unlawful practice, is subject to disciplinary action up to and including dismissal or separation from the University.

Source:
UT System Model Policy for Sexual Misconduct (2021)
Under the institution’s Sexual Misconduct Policy, **Responsible Employees** have a duty to report incidents and information reasonably believed to be sexual misconduct (prohibited conduct defined) under the Policy.

All employees are Responsible Employees (except Confidential Employees or police officers when a victim uses a pseudonym form). Responsible Employees include all administrators, faculty, and staff.

Responsible Employees must report all known information concerning an alleged incident of sexual misconduct to the **Title IX Coordinator**.

---

**Definition of “Failure to Report” for Responsible Employees**

If a Responsible Employee knowingly fails to report all information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee at the time of the incident, the employee is subject to disciplinary action, including termination.

---

**Source:**

*UT System Model Policy for Sexual Misconduct (2021)*

---

*UT System Model Policy for Sexual Misconduct (2021)*

*Tex. Edu. Code Section 51.252-51.259*
Triage & Case Management

Operational Roles, Delegations, & Structure?

- Title IX Coordinator
- Title IX Deputies
- Case Mgt Coordinators
- Investigators
- Advisors provided by the Institution
- Informal Resolution Facilitators
- Appellate Role for Formal Complaint Dismissals
- Threat Assessment Personnel
- Decision-Makers for Emergency Removals
- Adjudication Transition Coordinators
- Hearing Officers
- University Representative Role at Hearings
- Appellate Role for Policy Violation Determinations
- Legal Affairs Support
- Others ???
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

Resolution Flowchart

A Report to TIXC
Can be submitted by anyone: Complainant, witness, third-party, employee, etc.

Triage & Preliminary Assessment

Formal Complaint
Submitted/Signed by CP
Submitted/Signed by TIXC

Written Notice of Formal Complaint
Supportive Measures Rights & Options Notice of Grievance Process

Resolution Options
Formal Grievance Process Informal Resolution Formal Complaint Dismissal
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) ???
### Other Triage Analysis & Considerations

<table>
<thead>
<tr>
<th>CP &amp; RP Affiliation to the Institution?</th>
<th>Incident Location(s)</th>
<th>Date/Time of Incident</th>
</tr>
</thead>
</table>

### 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

<table>
<thead>
<tr>
<th>Non-Disciplinary &amp; Non-Punitive Measures… that do not unreasonably burden the other party</th>
</tr>
</thead>
<tbody>
<tr>
<td>Housing Reassignment</td>
</tr>
<tr>
<td>Counseling Services</td>
</tr>
<tr>
<td>Class Extensions or Adjustments</td>
</tr>
<tr>
<td>Work or Class Modifications</td>
</tr>
<tr>
<td>Class Withdrawal or Retake (w/o penalty)</td>
</tr>
<tr>
<td>Leave of Absence</td>
</tr>
<tr>
<td>Mutual No-Contact Btwn Parties</td>
</tr>
<tr>
<td>Campus Escort Services</td>
</tr>
<tr>
<td>Increased Campus Security</td>
</tr>
</tbody>
</table>

### 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.
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.
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.

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).
### Other Required Action?

<table>
<thead>
<tr>
<th>Type of Concern</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-emergency behavioral or wellness issues(s)</td>
<td>Refer to Behavior Intervention Team (BIT) or campus equivalent</td>
</tr>
<tr>
<td>Immediate safety concerns (emergencies) or welfare check required</td>
<td>Report immediately to 911</td>
</tr>
</tbody>
</table>
| Clery reportable crimes that meet Clery geography requirements and/or timely warning requirements | **Timely Warnings:** Report immediately to campus law enforcement  
**Clery Crime Reporting:** 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:

1. The **nature**, **circumstances**, & **seriousness** of the alleged conduct;
2. The **safety** & **risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5. Other relevant factors in the specific matter?

---

**Resolution Flowchart**

<table>
<thead>
<tr>
<th>A Report to TIXC</th>
<th>Can be submitted by <strong>anyone</strong>: Complainant, witness, third-party, employee, etc.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Triage &amp; Preliminary Assessment</td>
</tr>
<tr>
<td></td>
<td><strong>Formal Complaint</strong></td>
</tr>
<tr>
<td><strong>Submitted/Signed by CP</strong></td>
<td><strong>Submitted/Signed by TIXC</strong></td>
</tr>
<tr>
<td></td>
<td><strong>Written Notice of Formal Complaint</strong></td>
</tr>
<tr>
<td>Supportive Measures to CP</td>
<td><strong>Supportive Measures</strong></td>
</tr>
<tr>
<td>Supportive Measures</td>
<td><strong>Emergency Removal or Administrative Leave?</strong></td>
</tr>
<tr>
<td><strong>Resolution Options</strong></td>
<td></td>
</tr>
<tr>
<td>Formal Grievance Process</td>
<td>Informal Resolution</td>
</tr>
</tbody>
</table>
Resolution Flowchart

A Report to TIXC

*Can be submitted by anyone: Complainant, witness, third-party, employee, etc.*

Triage & Preliminary Assessment

**Formal Complaint**

*Submitted/Signed by CP*  
*Submitted/Signed by TIXC*

**Written Notice of Formal Complaint**

Supportive Measures  
Rights & Options  
Notice of Grievance Process

**Resolution Options**

Formal Grievance Process  
Informal Resolution  
Formal Complaint Dismissal
Mandatory Dismissals are required when the definitional or any element of the jurisdictional framework under Title IX is not met.

Source: Title IX Regulations (2020)

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

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

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

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

**If Mandatory Dismissal** is required, then are additional **discretionary reasons** for a dismissal applicable to the specific circumstances?

- CP expressly **prefers to dismiss** the formal complaint or requests to not investigate the matter.
- RP was an employee and is **no longer employed** by the institution at the time the formal complaint is filed.
- Any **specific circumstances** that prevent the institution from gathering evidence sufficient to reach a determination as to the formal complaint or allegations.
- The conduct alleged does not meet the definition of **any** prohibited conduct under the institution’s Sexual Misconduct Policy.
Triage Again

Consider if there are compelling reasons:

1. The nature, circumstances, & seriousness of the alleged conduct;
2. The safety & risk of harm to others;
3. Any pattern evidence, other similar conduct or allegations of the RP;
4. RP’s affiliation with the institution & applicable options for institutional action; and/or
5. Other relevant factors in the specific matter?

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.
Formal Complaint Dismissal (Example #1)

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)

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)
Resolution Flowchart

A Report to TIXC

Can be submitted by anyone: Complainant, witness, third-party, employee, etc.

Triage & Preliminary Assessment

Formal Complaint

Submitted/Signed by CP  Submitted/Signed by TIXC

Written Notice of Formal Complaint

Supportive Measures  Rights & Options  Notice of Grievance Process

Resolution Options

Formal Grievance Process  Informal Resolution  Formal Complaint Dismissal
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.

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*

**Source:** Title IX Regulations (2020); UT System Model Policy for Sexual Misconduct (2021)
What’s left?
“Other Inappropriate Sexual Conduct”

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)

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

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

A Report to TIXC
Can be submitted by anyone: Complainant, witness, third-party, employee, etc.

Triage & Preliminary Assessment

Formal Complaint
Submitted/Signed by CP
Submitted/Signed by TIXC

Written Notice of Formal Complaint
Supportive Measures
Rights & Options
Notice of Grievance Process

Resolution Options
Formal Grievance Process
Informal Resolution
Formal Complaint Dismissal
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.

---

**Crisis/Threat Continuum**

**LEVEL OF CONCERN**

- **LOW**
  - 1st time seeing a concern
  - Makes you or others uncomfortable but nothing specific
  - No direct threats made

- **MEDIUM**
  - Continuation (persistence) of low-level behaviors
  - Threat implied or issued in a vague manner
  - Threat not through verbal or electronic medium
  - Quick change in disposition or behavior

- **HIGH**
  - Any serious/severe incidents
  - Multiple incidents in short time frame
  - Multiple concerns (pervasive) or escalating from the “low” to “moderate” continuum
  - Access to or potential to access weapons
  - Clear direct and specific threat and/or plan

**EXAMPLES OF BEHAVIORS**

- Low: Excessive eye rolling, Constant interruptions, Annoying behaviors, Crying, sad, angry, Apathy, lack of energy, Delayed responses, Distracted or difficulty concentrating, Impulsive
- Moderate: Interference in your or other’s learning or work duties, Seeking "revenge", "You’ll be sorry" or "You’ll pay for this", Disrespectful, rude, "You are incompetent & stupid", "I don’t care if I live anymore" or "No one will miss me", Feelings of hopelessness
- High: Threatening and posturing in intimidating manner, Violent statements, Hate speech, Physically violent

---

Adapted from Student Emergency Services & the Behavior Concerns & COVID Advice Line (BCCAL), UT Austin
Special Considerations:
Sexual Violence, IPV, & Stalking Cases

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

Source:
The National Center for Campus Public Safety
Power & Control Wheel (Examples)

Source: www.alteristic.org

Examples of Predatory Behaviors

- Tests the boundaries of the prospective victim.
- Uses grooming tactics: Isolation of the prospective victim, trust building, gift giving, have “secrets” between the perpetrator & victim.
- Plans and premeditates assaults.
- Uses “psychological” weapons – power, control, manipulation, threats*.
- Uses alcohol and/or drugs as a weapon to incapacitate a prospective victim.

Note: “Threats” may not be threats of violence
Case Mgt: Closing Steps of the Investigation

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 Pyramid

Relevant evidence

Evidence included in the Investigation Report

Evidence directly related to the allegations

Evidence provided to the parties & advisors for inspection & response

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.
Access to Evidence: Why?

• Upon request from a CP, RP, or an Advisor?
• At the end of the investigation?

Access to Evidence: When?

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)
The investigators will consider all timely responses submitted by the parties prior to completing the 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?
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)

Access to the Completed Investigation Report

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)
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.
Adjudication Intake

<table>
<thead>
<tr>
<th>Referral Type (RP)</th>
<th>Adjudication Office (Examples)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student</td>
<td>Student Conduct</td>
</tr>
<tr>
<td>Faculty</td>
<td>Provost</td>
</tr>
<tr>
<td>Staff</td>
<td>Human Resources</td>
</tr>
</tbody>
</table>

Adjudication Roles, Operations, & Structure?

- Case Manager or Adjudication Transition Coordinator
- Hearing Officer(s)
- University Representative Role at Hearings
- Advisor(s) provided by the Institution
- Appellate Role for Policy Violation Determinations (if applicable)
- Legal Affairs/OGC Support
- Others ???
**Title IX/Sexual Harassment**
- Notice
- Investigation (No determination)
  - Both parties have access to all evidence related to the allegation(s) & ability to comment
- **No** Administrative Disposition
- Hearing Required
- Appeal

**Non-Sexual Harassment**
- Notice
- Investigation (Preliminary determination)
  - Both parties have access to all evidence related to the allegation(s) & ability to comment
- Administrative Disposition or Hearing Options
- Appeal

---

**Adjudication Flowchart**

1. Investigation Report Referral
2. Adjudication Intake
3. **Administrative Disposition Option?** (if applicable)
4. **Live Hearing**
   - Live Testimony & Cross-Examination of Witnesses
   - Written Determination Issued
   - Remedies/Sanctions (if any)
5. Option to Appeal
   - Procedural Irregularity
   - New Evidence
   - Bias/Conflict of Interest
**Live Hearing: Logistics Flowchart**

Assign Hearing Officer, Advisor(s), Uni. Rep, & Appellate Officer → Copies of Investigation Report & Access to All Evidence → Schedule Hearing Date & Send Notice of Hearing → Request from Both Parties:
- List of Exhibits & Witnesses?
- Special Accommodations?
- Need an Advisor?

Hold the Live Hearing
- Opening Statements
- Witness Testimony
- Cross-Examination
- Exhibits
- Closing Statements → Hearing Officer: Considers ALL relevant evidence impartially → Hearing Officer: Rends Written Determination
- Include Appellate Officer name & contact information
- Issue copy to CP and RP; cc: TIXC, cc: RP’s file (Adjudication Office)

Both Parties have option to Appeal
- Procedural Irregularity
- New Evidence
- Bias/Conflict of Interest

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

---

**Appeal: Logistics Flowchart**

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

Provide copy of Appealing Party’s Appeal to the Non-Appealing Party for opportunity to respond & deadline to respond.

Appellate Officer: Consider ALL points of view & relevant evidence impartially

Appellate Officer: Renders Final Determination
- Issue copy to CP and RP; cc: TIXC, cc: RP's file (Adjudication Office)

Specific deadlines may be published in the institution’s policy and/or procedures.
Grievance Process Timeframe (Example)

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

**Note:** Circumstances may require a **temporary delay** in this timeframe & the institution may extend this timeframe for **good cause**.
- Provide **notice** to the parties for temporary delays or extensions

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

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
Contact Information

<table>
<thead>
<tr>
<th>Krista Anderson</th>
<th>Sean Flammer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Systemwide Title IX Coordinator</td>
<td>Assistant General Counsel</td>
</tr>
<tr>
<td>Office of Systemwide Compliance UT System (Austin, TX)</td>
<td>Office of General Counsel UT System (Austin, TX)</td>
</tr>
<tr>
<td>Phone: 512-664-9050</td>
<td>Phone: 512-579-5106</td>
</tr>
<tr>
<td>Email: <a href="mailto:kranderson@utsystem.edu">kranderson@utsystem.edu</a></td>
<td>Email: <a href="mailto:sflammer@utsystem.edu">sflammer@utsystem.edu</a></td>
</tr>
</tbody>
</table>