

# Sexual Misconduct Case Management Scenarios Training

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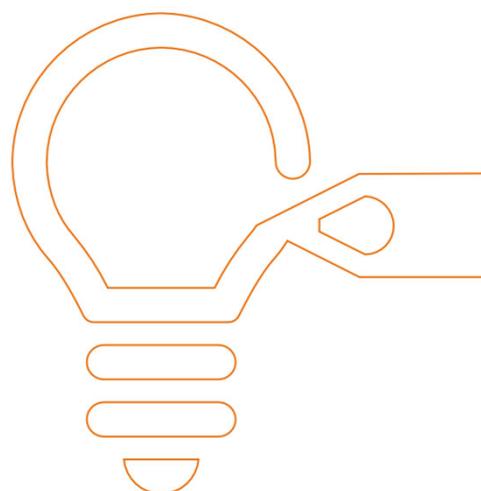


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## Agenda

1. Title IX Introduction
2. Triage & Case Management Tools:
  - General Decision-Points
  - Emergency Removals
  - Threat Assessment Basics
  - IPV, Stalking, & Sexual Assault Risk Factors
3. Additional Issues:
  - Formal complaint dismissals
  - Free speech & Retaliation
  - False complaint allegations
4. Case Management Scenarios & Discussion (5-6)



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2

2

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**  
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)*

5

## 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 they created a Hostile Environment, as defined in the Model Policy.
2. Physical conduct.



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*Source: UT System Model Policy for Sexual Misconduct (2020)*

6

## Definition of “Other Inappropriate Sexual Conduct” (Cont.)

### Potential 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;
- 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 (2020)*

7

## “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.



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Source: *Title IX Regulations (2020)*

8

# 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**

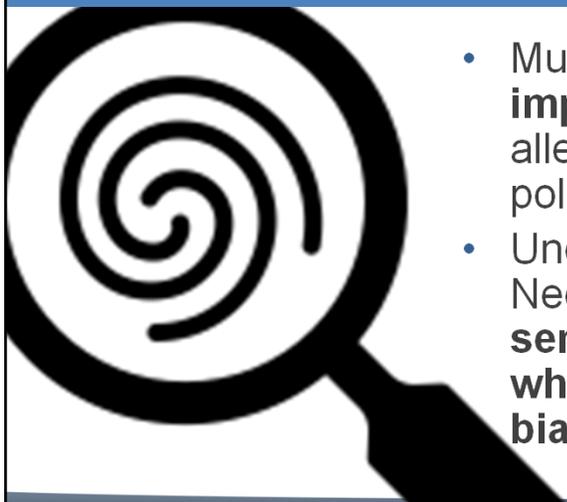


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*Source: Title IX Regulations (2020)*

10

## Principles for Fact-Finders



- 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)*)...



11

## 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 **protected characteristics**: sex, race, ethnicity, sexual orientation, gender identity, disability, immigration status, financial ability, socioeconomic status, or other characteristic.



12

## Principles for Fact-Finders (Cont.)



- Must consider **all of the relevant evidence**, including all possible **inculpatory & exculpatory** evidence obtained in the investigation
  - **Exculpatory**: Evidence tending to excuse, justify, or absolve the person of the alleged conduct.
  - **Inculpatory**: Evidence that places responsibility on the person of the alleged conduct.



13

## Principles for Fact-Finders (Cont.)



- Use a **“reasonable person”** standard for weighing all of the evidence in the context of an investigation
  - An objective test to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.



14



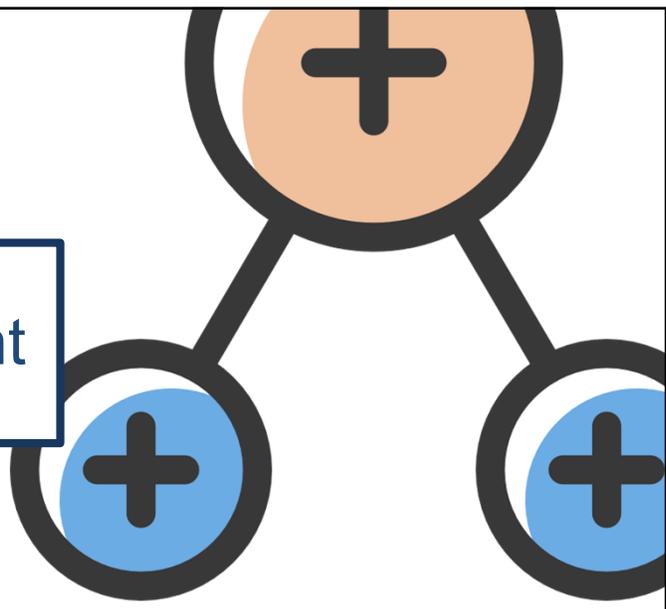
**Bottom Line for Fact-Finders**

- Be **consistent**
- Refer to **case precedent** (e.g. similar facts or elements)
- Follow your **policy** and **process**



15

15



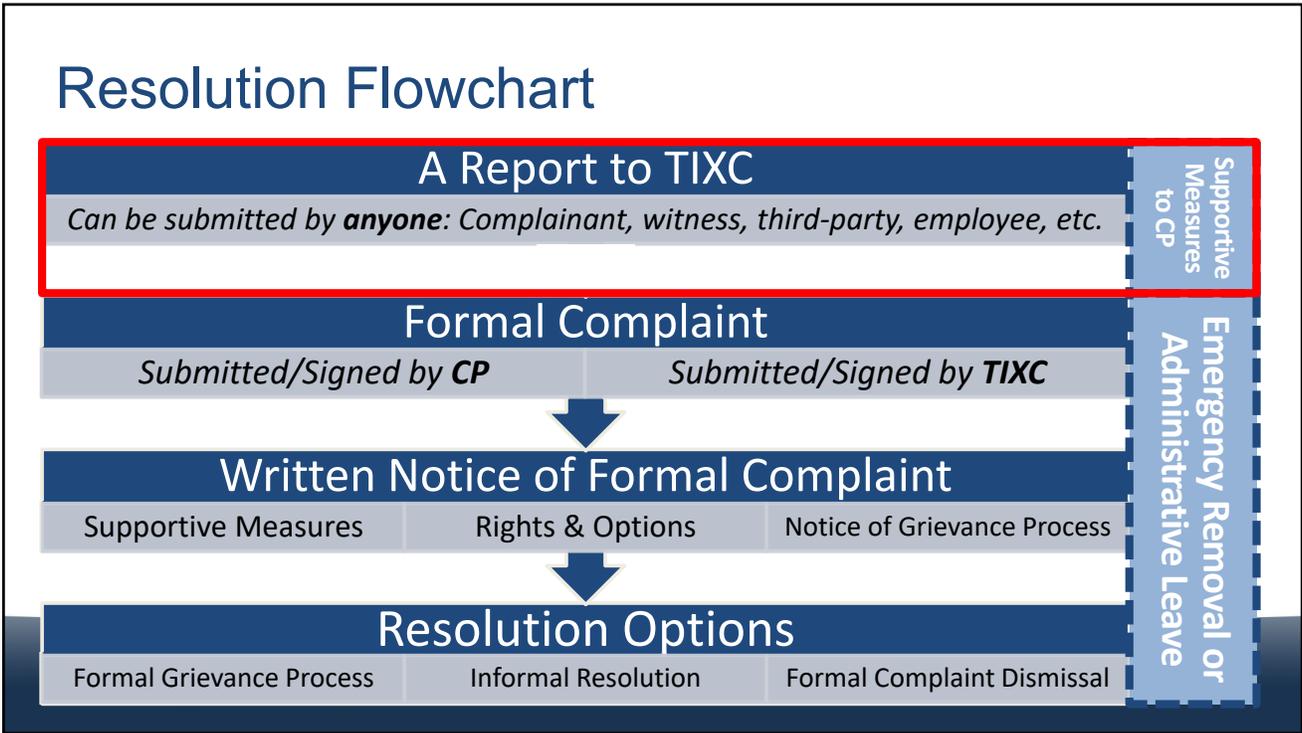
**Triage & Case Management Tools (Revisited)**



16

16

# Resolution Flowchart



17

## 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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18

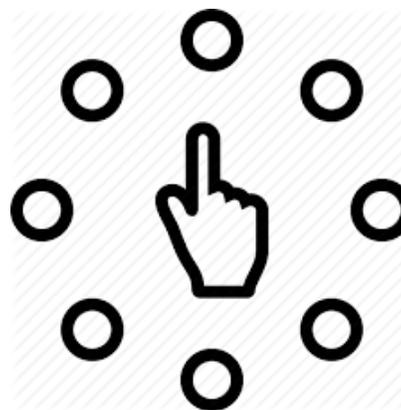
## Other Required Action

| Type of Concern   | 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<br><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  |

19

## 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 & compelling reasons to investigate further...

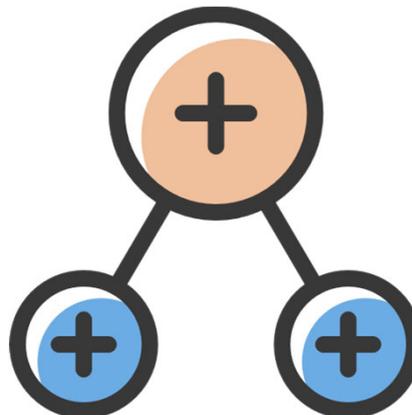


20

## TIXC: File a Formal Complaint?

Consider if there are compelling reasons:

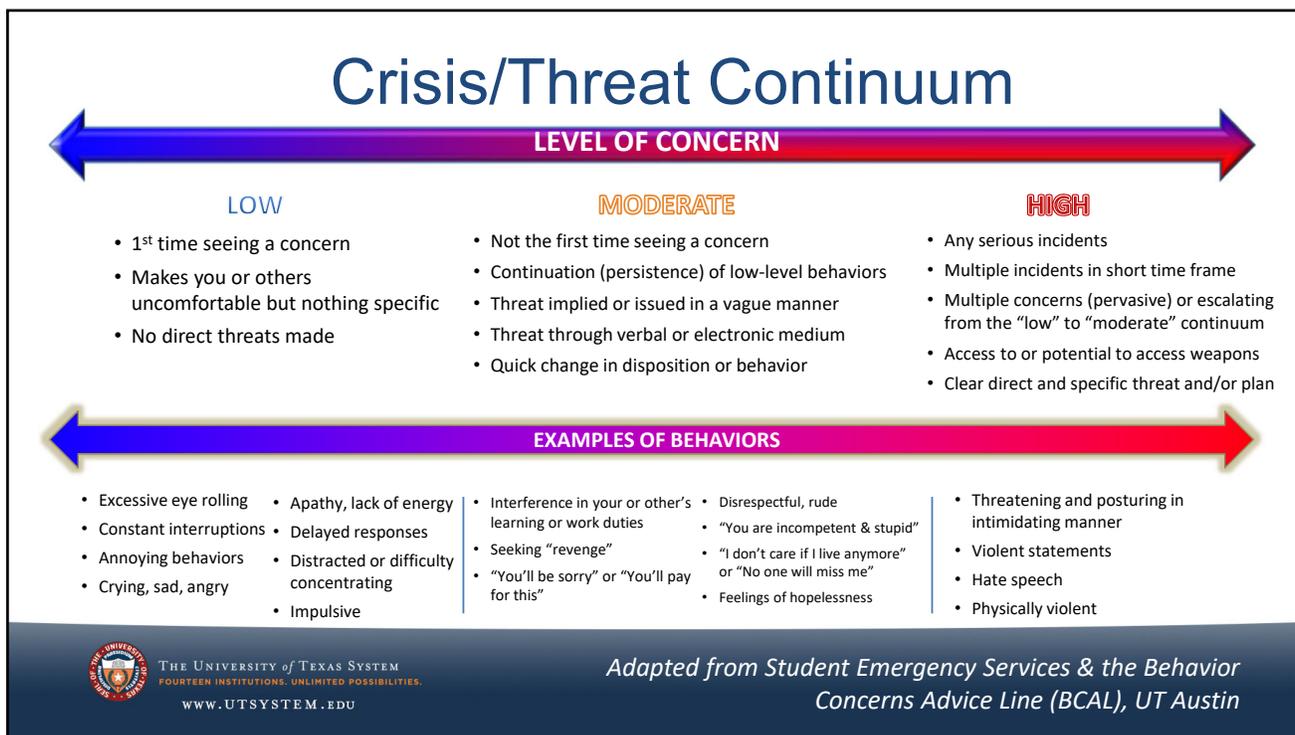
1. The **nature, circumstances, & seriousness** of the alleged conduct;
2. The **safety & risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5.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



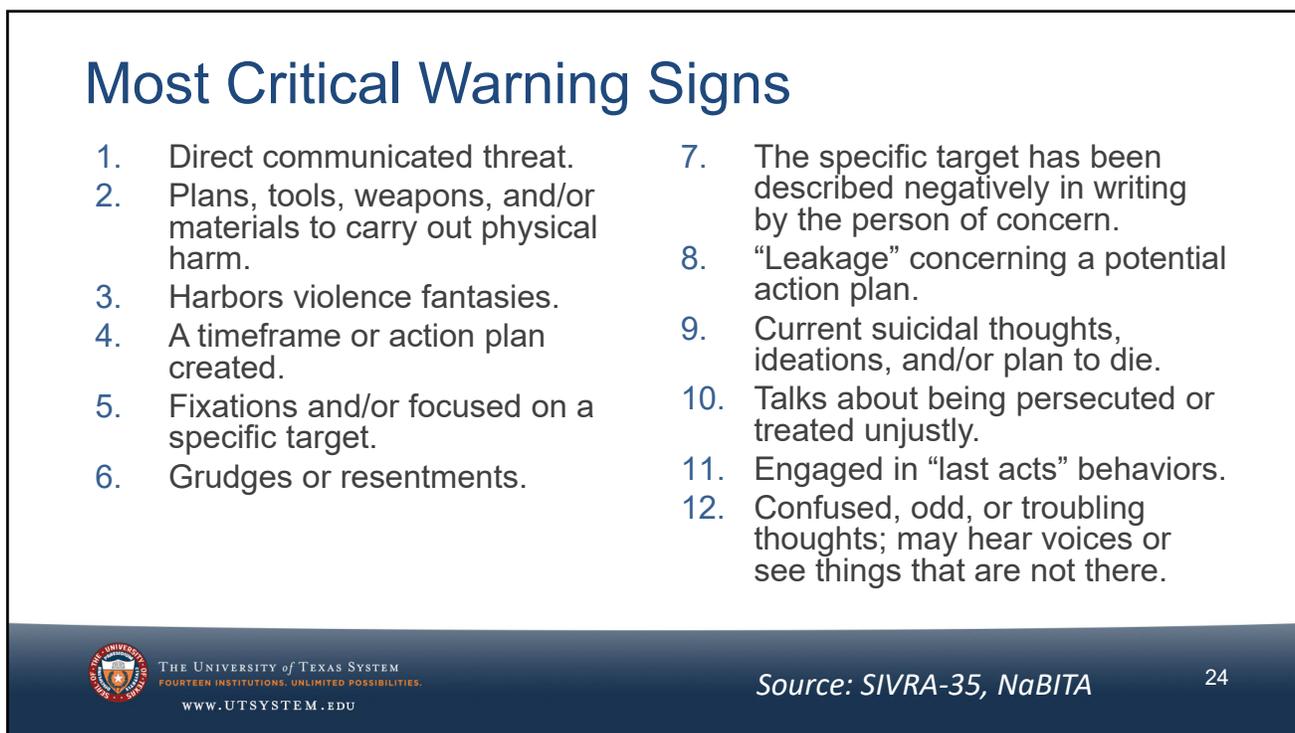
## Emergency Removals

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.





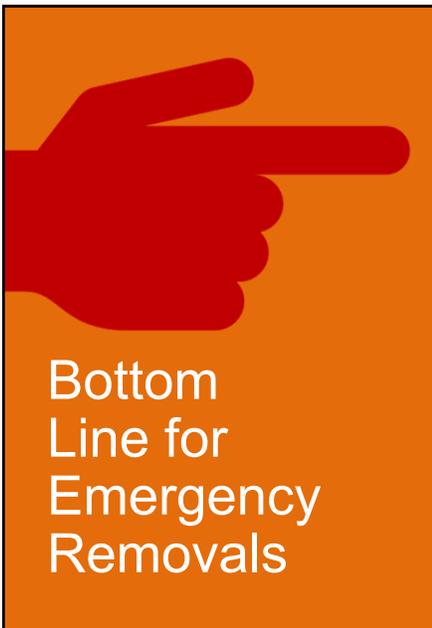
23



24

## Transient vs. Substantive Threats

| Transient Threat  | Substantive Threat  |   |
|---|---|---|
| Statements that do not express a lasting intent to harm themselves or someone else. | Statements that express a <u>credible</u> and/or <u>continuing</u> threat to harm themselves or someone else. |   |
| Figure of speech or short-term feelings.  | Impulsive, reactive, emotional. Impaired emotional recognition. Exhibits lack of control.                     | Long-term feelings established. Desire to harm self or others extends beyond an immediate incident or argument. |
|   | ↓   | ↓   |
|   | Affective Violence  | Premeditated Violence   |



- Establish & maintain a **communication plan** to key partners:
  - BIT;
  - Dean of Students; or equivalent
- Know who is making the **key decisions** for Emergency Removals
- Be **consistent** with communication & decision-making
- Refer to **case precedent** (e.g. similar fact or elements)
- Follow your **policy** and **process**

## IPV & Stalking Cases



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### Determining Predominant Aggressors

#### Common Considerations:

- Presence or threat of a **weapon**
- **History** of dating or domestic violence
- Pre-existing **protective orders** or **“no contact” directives**
- Comparative extent of **injury** (if both are injured)
- Indicators of **power & control**



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28

## Has the RP:

- Prevented you from talking to others such as family or friends?
- Listened to your private phone calls or read your email?
- Acted jealous?
- Humiliated you at home or in public?
- Broken your personal belongings?
- Behaved violently or aggressively in public?
- Been arrested in the past for violence?

**Assessing  
Danger**  
(Example  
Questions  
for CP)

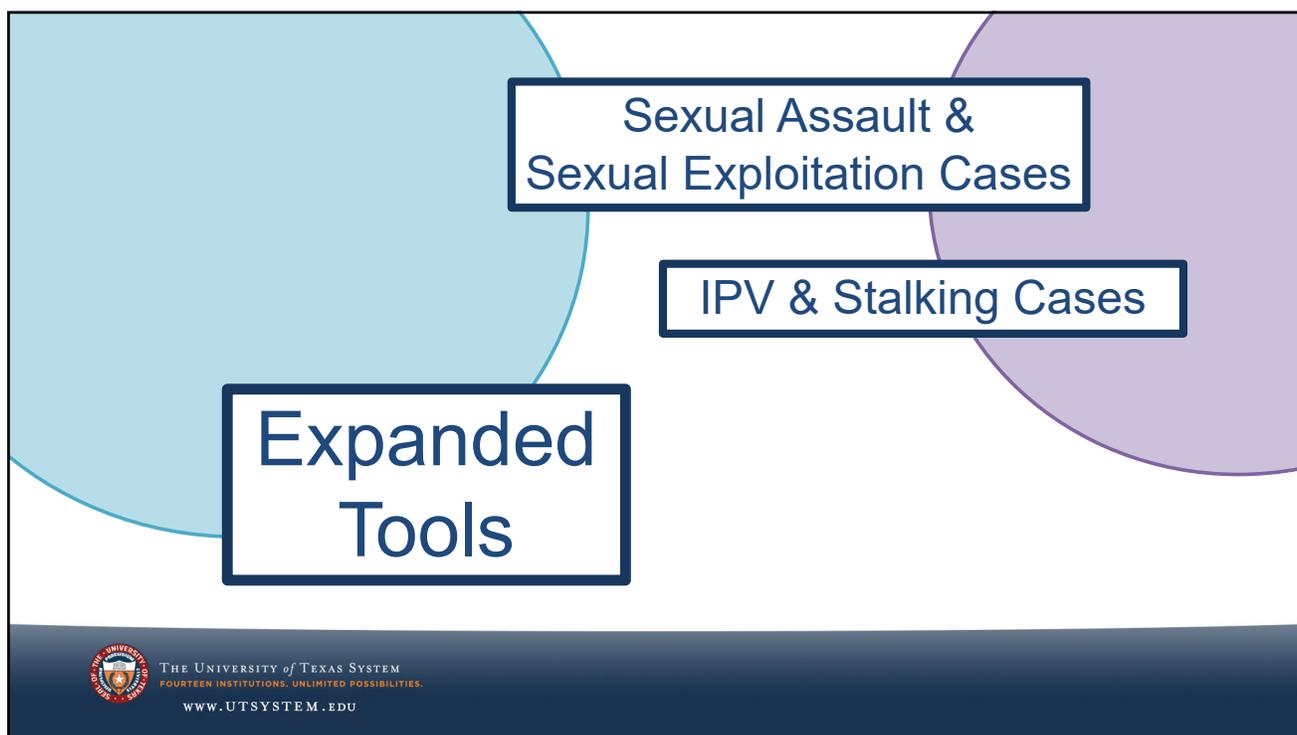


**Assessing  
Lethality**  
(Example  
Questions  
for CP)

## Has the RP:

- Have access to a weapon, and/or threatened to use a weapon?
- Threatened to harm or kidnap your children?
- Threatened to kill you, themselves, or others?
- Harmed your pet(s)?
- Been abusing alcohol or drugs?
- Stalked or followed you?
- Forced you or your children to flee in the past?





31

## Any Predatory Behaviors? Power & Control?

**Consent** is not effective if:

- Physical force;
- Threat of physical force;
- Intimidation;
- Coercion; or
- Incapacitation



32

## Definition of “Intimidation”

Unlawfully placing another person in reasonable fear of bodily harm through the use of threatening words and/or conduct, but without displaying a weapon or actual physical force.



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Source: *UT System Model Policy for Sexual Misconduct (2020)*

33

33

## Definition of “Coercion”

Use of pressure to compel another person to initiate or continue a sexual activity against the person’s will.

Examples: psychological/emotional pressure, physical or emotional threats, intimidation, manipulation, or blackmail.

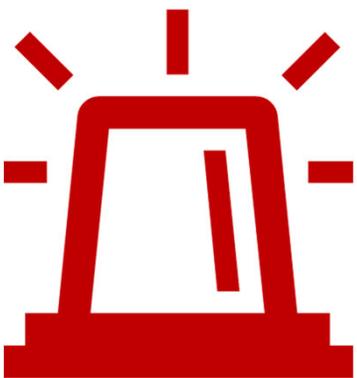


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Source: *UT System Model Policy for Sexual Misconduct (2020)*

34

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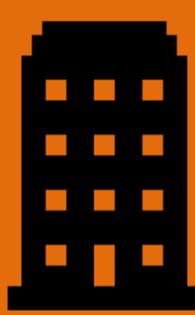


## Examples of Predatory Behaviors

- 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*

35



## Hypothetical Scenario 1

- Responsible employee submits a **report** to the TIXC
- CP (student) disclosed being a victim of a “sexual assault” by RP (student) at an off-campus apt “last semester”

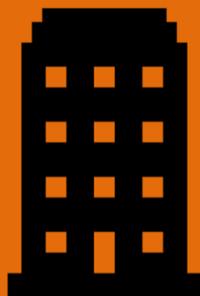
*Triage/next steps?*



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36

36



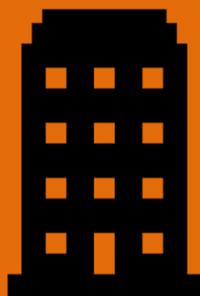
## Hypothetical Scenario 1 Follow-up

- Responsible employee submits a **report** to the TIXC
- CP (student) disclosed being a victim of a “sexual assault” by RP (student) at an off-campus apt “last semester”
- CP expressly wishes “no investigation”
- Two previous reports of alleged “sexual assault” in the past year against same RP

*Should the TIXC file a Formal Complaint?*



37



## Hypothetical Scenario 1 Considerations

1. Opportunity to revisit with the 3 CP's (independently) & explore options again?
2. Case precedent? Similar cases like this in the past?
3. Specific circumstances of the alleged sexual assaults? Any predatory behaviors alleged?
4. Weigh the safety factors when filing a F.C. without CP's support or cooperation. Impacts or risks?



38



## Hypothetical Scenario 2

- Responsible employee submits a **report** to the TIXC
- CP (student) disclosed being the victim of “sexual blackmail” by RP (student) via multiple texts and emails: Accused of threatening to post sexually explicit content of the CP “if the CP doesn’t talk to the RP”.
- CP & RP were in a previous romantic/sexual relationship; currently not together.

*Triage/next steps?*



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39

39



## Hypothetical Scenario 2 Follow-up

- Responsible employee submits a **report** to the TIXC
- CP (student) disclosed being the victim of “sexual blackmail” by RP (student) via multiple texts and emails: Accused of threatening to post sexually explicit content of the CP “if the CP doesn’t talk to the RP”.
- CP & RP were in a previous romantic/sexual relationship; currently not together.
- CP expressly wishes “no investigation”.
- CP has history of academic probation and withdrawals.

*Should the TIXC file a Formal Complaint?*



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40



## Hypothetical Scenario 2 Considerations

1. Opportunity to revisit with the CP, discuss warning signs of “stalking”, safety tips, supportive measures for academic impacts, & explore options again?
2. Case precedent? Similar cases like this in the past?
3. Specific circumstances of the alleged “sexual harassment” or “stalking”? Any threats of violence, intimidation, or predatory behaviors alleged?
4. Weigh the safety factors when filing a F.C. without CP’s support or cooperation. Impacts or risks?
5. Opportunity for BIT referral for the RP? CP?



41



## Hypothetical Scenario 3

- Responsible employee submits a **report** to the TIXC
- CP (student) disclosed being a victim of an “abusive relationship” by RP (student). Both CP & RP live “off campus” and are currently in a relationship together.

*Triage/next steps?*



42



## Hypothetical Scenario 3 Follow-up

- Responsible employee submits a **report** to the TIXC
- CP (student) disclosed being a victim of an “abusive relationship” by RP (student). Both CP & RP live “off campus” and are currently in a relationship together.
- CP expressly wishes “no investigation”.
- One additional report of alleged “dating violence” in past month against the same RP by the same CP, involving a physical altercation (pushing and restraining arms during an argument).
- CP has described RP as “jealous” toward CP’s interactions with others, and RP “has a temper” and “gets angry easily.”
- RP has threatened “suicide” in the past when CP doesn’t return calls/texts.

*Should the TIXC file a Formal Complaint?*



43

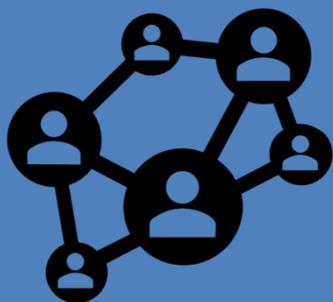


## Hypothetical Scenario 3 Considerations

1. Opportunity to revisit with the CP, discuss warning signs of “dating violence”, safety tips, supportive measures (e.g. counseling, victim advocacy) & explore options again?
2. Case precedent? Similar cases like this in the past?
3. Specific circumstances of the alleged “dating violence”? Any threats of violence, intimidation, or predatory behaviors alleged? How lethal?
4. Weigh the safety factors when filing a F.C. without CP’s support or cooperation. Impacts or risks?
5. Opportunity for BIT referral for the RP? CP?



44



## Hypothetical Scenario 4

- Responsible employee submits a **report** to the TIXC
- CP (employee) disclosed witnessing “inappropriate conduct” of a sexual nature in the workplace by RP1 (employee) and RP2 (employee):
  - RP1 uses “vulgar” language & “picks on the women” in the office;
  - RP2 talks about their own “sexual encounters” and how attractive the coworkers are in the office.
  - The supervisor “doesn’t seem to address any of the behavior,” and it’s “interfering with the office morale & work environment.”

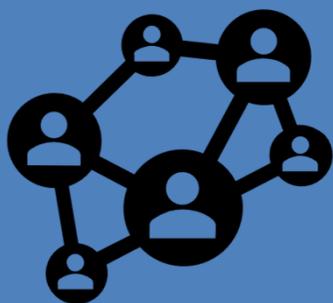
*Triage/next steps?*



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## Hypothetical Scenario 4 Follow-up

- Responsible employee submits a **report** to the TIXC
- CP (employee) disclosed witnessing “inappropriate conduct” of a sexual nature in the workplace by RP1 (employee) and RP2 (employee):
  - RP1 uses “vulgar” language & “picks on the women” in the office;
  - RP2 talks about their own “sexual encounters” and how attractive the coworkers are in the office.
  - The supervisor “doesn’t seem to address any of the behavior,” and it’s “interfering with the office morale & work environment.”
- CP isn’t sure what to do; and “fears” retaliation from the supervisor and coworkers.
- CP says that other women in the office have expressed “feeling uncomfortable” and have considered quitting.
- CP says the office has been like this “for a long time.”

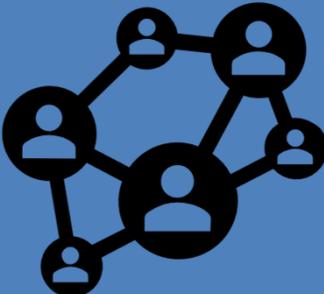
*Should the TIXC file a Formal Complaint?*



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## Hypothetical Scenario 4 Considerations

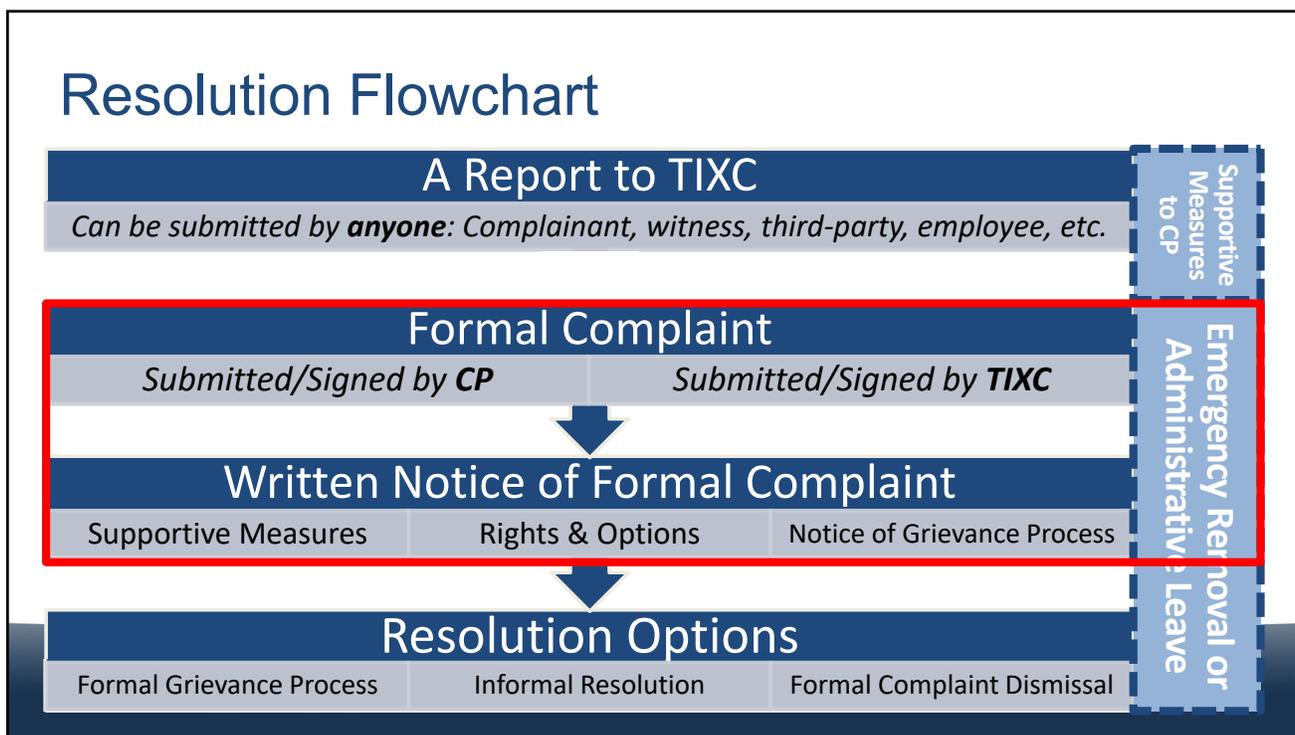
1. Opportunity to revisit with the CP, discuss supportive measures & discuss that the TIXC can file a F.C. to address the potential “hostile environment” in the education program or activity (e.g. work environment of the institution).
2. Duty to respond under Title VII?
3. Case precedent? Similar cases like this in the past?
4. Specific circumstances of the alleged “hostile environment”? Any intimidation, manipulation or predatory behaviors alleged? How severe?
5. Weigh the safety factors when filing a F.C. possibly without CP’s support or cooperation. Impacts or risks?



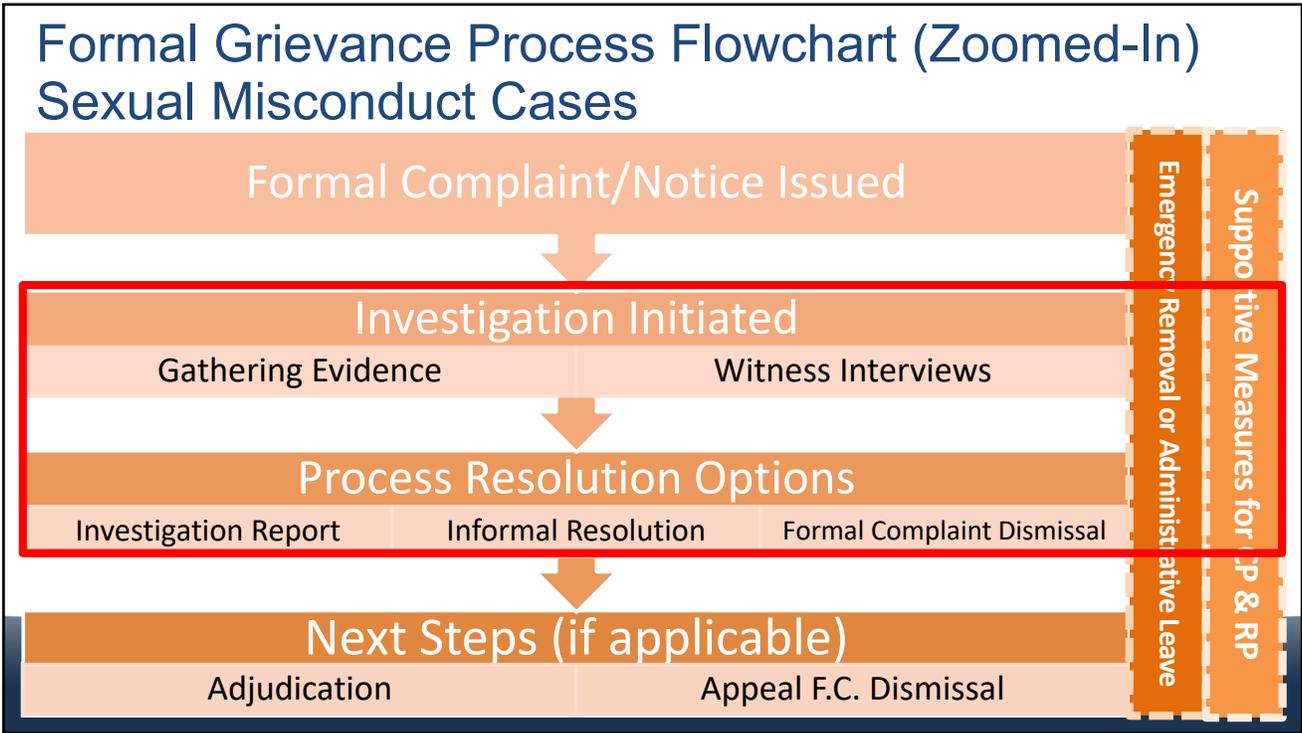
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48



49



### 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.

50



## 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.

51

## Definition of “Retaliation”

Any **adverse action** (including but not limited to, intimidation, threats, coercion, harassment, or discrimination) taken against someone *because* the individual has...

- Made a report or filed a formal complaint;
- Supported or provided information in connection with a report or filed a formal complaint;
- Participated or refused to participate in a grievance process; or
- Engaged in other legally protected activities.

Source: *UT System Model Policy for Sexual Misconduct (2020)*



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## Definition of “Interference with the Grievance Process”

Interference with a Grievance Process may include, but is not limited to:

- Attempting to coerce, compel, or prevent an individual from providing testimony or relevant information;
- Removing, destroying, or altering documentation relevant to the Grievance Process; or
- Knowingly providing false or misleading information to the Title IX Coordinator, investigator or hearing officer, or encouraging others to do so.

**Note:** Any person who interferes with the grievance process is subject to disciplinary action up to and including dismissal or separation from the University.



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Source: *UT System Model Policy for Sexual Misconduct (2020)*

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## Definition of “False Information & False Complaints”

Any person, who in bad faith, *knowingly* files a false complaint under the institution’s policy or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University.

**Note:** A determination that a Respondent is not responsible for allegations of Sexual Misconduct does not imply a report, Formal Complaint, or information provided was false. Similarly, a determination that a Respondent is responsible for a policy violation does not imply that a Respondent’s statements disclaiming responsibility were false.



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Formal Complaint Dismissals (Recap)


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**Mandatory Formal Complaint Dismissals under Title IX**

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

- Conduct alleged constitutes “**sexual harassment**” under the regulations;
- Conduct alleged occurs in the institution’s “**education program or activity**”;
- Conduct alleged occurs against a person “**in the United States**”; or
- Complainant is **participating in** or **attempting to** participate in the “education program or activity” of the institution.


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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.

## Additional Considerations



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57



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...



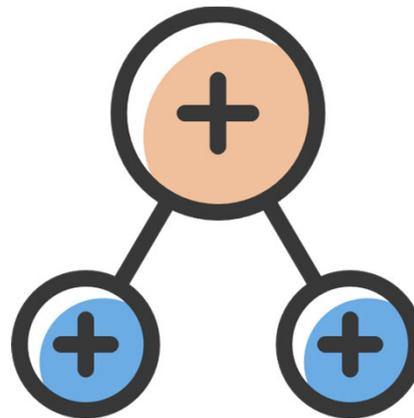
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58

## Triage Again

Consider compelling reasons for continuing a grievance process:

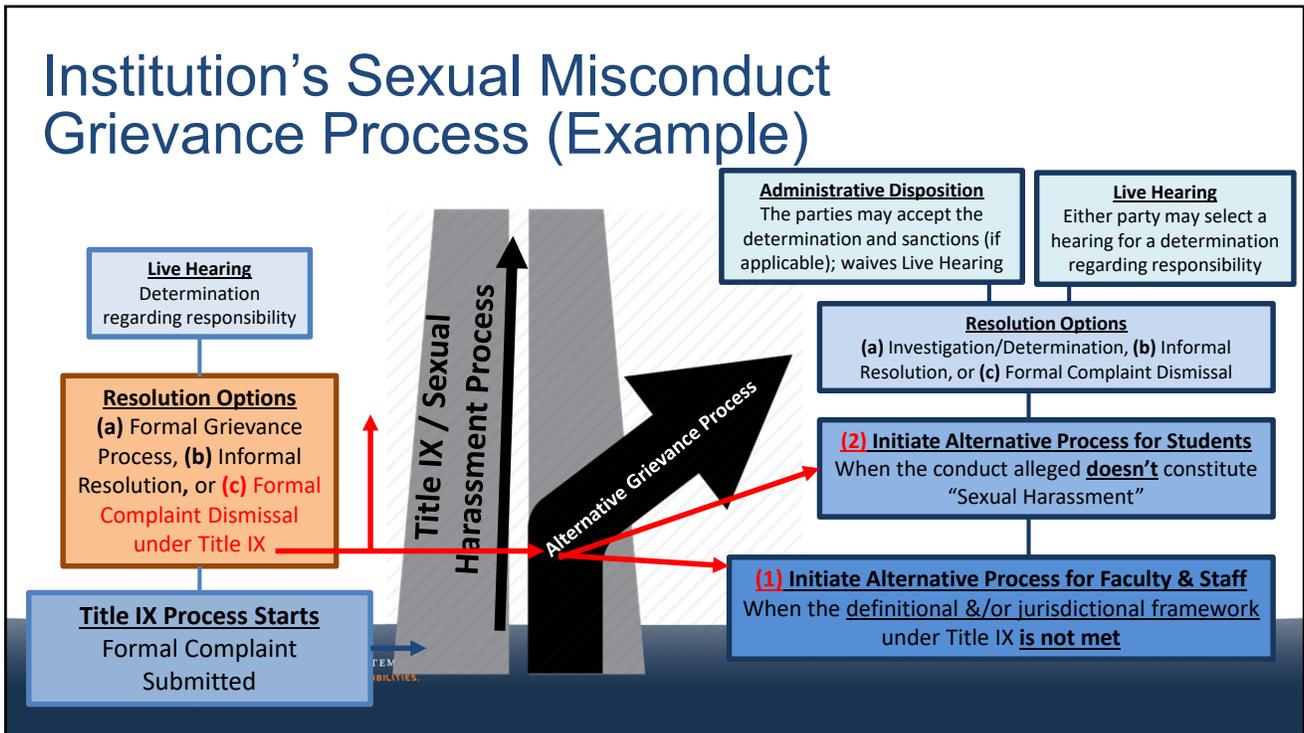
1. The **nature, circumstances, & seriousness** of the alleged conduct;
2. The **safety & risk of harm** to others;
3. Any **pattern evidence**, other similar conduct or allegations of the **RP**;
4. **RP's affiliation** with the institution & **applicable options** for institutional action; and/or
5.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





61



Hypothetical Scenario 5.a

- CP files a **formal complaint** to the TIXC
- CP (student) alleges being the victim of "sexual harassment" by RP (student): CP feels uncomfortable by the RP; RP gives the CP "strange looks" and unwanted verbal contact.

Triage/next steps?



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62

62



## Hypothetical Scenario 5.a Updates

- In the course of the investigation, evidence gathered shows that the RP asked the CP to “hangout” and tried to initiate a “study date.”
- The RP had romantic interest in the CP at the time of the attempted forms of contact.
- CP didn’t respond to the RP’s attempts at contact and CP said the RP acts “awkward” and “creepy.”
- RP says that the CP is making a “false complaint.”
- Using a “reasonable person” standard, investigators examine & determine that the alleged conduct doesn’t constitute “sexual harassment,” “other inappropriate sexual conduct” and the conduct doesn’t meet the definitions of any other prohibited conduct under the Sexual Misconduct Policy.

*Triage/next steps?*



63



## Hypothetical Scenario 5.a Considerations

### For the CP’s Formal Complaint:

1. Follow-up with CP & gather any additional information or testimony necessary.

If there is no other information that may change the investigators’ conclusion then...

2. Issue a Formal Complaint Dismissal to CP & RP regarding the open case, dismissing all of the allegations and therefore closing the case.
  - Both CP & RP have the option to appeal the F.C. Dismissal.



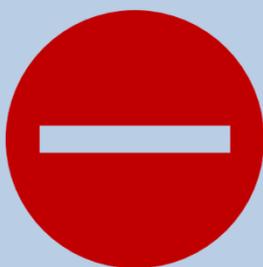
64



## Hypothetical Scenario 5.a Considerations (Cont.)

### For the RP's verbal allegation of "false complaint" against the CP:

1. Review the definition of "false information & false complaint" in the Sexual Misconduct Policy.
2. Is there any preliminary evidence to any elements of the "false complaint" definition that show this is a reasonable consideration for the TIXC to file a formal complaint against the original CP regarding these allegations?
3. Provide the original RP with the process for filing formal complaints, as well as providing the definition of prohibited conduct under the policy (e.g. "false information & false complaints") so that the RP has a description of that type of conduct.
  - RP has the right to file a formal complaint (e.g. against the CP) regarding any prohibited conduct in the Sexual Misconduct Policy.

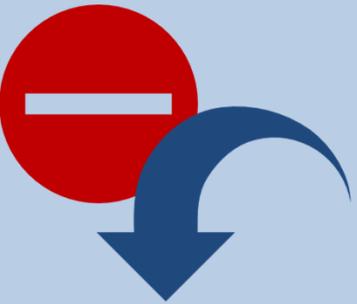


## Hypothetical Scenario 5.b

- To re-cap, the **original formal complaint** by the CP alleging "sexual harassment" against the original RP has been dismissed and closed, and both parties have been notified.
- However, the original RP now files a **formal complaint** alleging "false complaint" against the original CP.

*Triage/next steps?*





## Hypothetical Scenario 5.b Updates

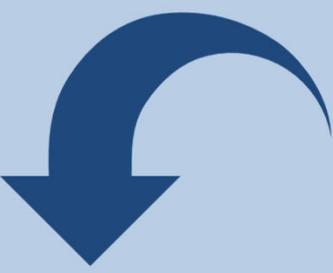
- To re-cap, the **original formal complaint** by the CP alleging “sexual harassment” against the original RP has been dismissed and closed, and both parties have been notified.
- However, the original RP files a **formal complaint** alleging “false complaint” against the original CP.
- Notice of the new formal complaint regarding the “false complaint” allegation is issued and sent to both parties.
- Shortly thereafter, the original CP files a formal complaint of “retaliation” against the RP and against the institution.
- CP threatens to file an OCR complaint of “retaliation” against the institution if the “false complaint” allegation isn’t dismissed immediately. CP has an attorney advisor.

*Triage/next steps?*

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67



## Hypothetical Scenario 5.b Considerations

For the original CP’s Formal Complaint regarding the “retaliation” allegation against the **institution**:

1. Refer the formal complaint to your institution’s Legal Affairs Office for immediate guidance.

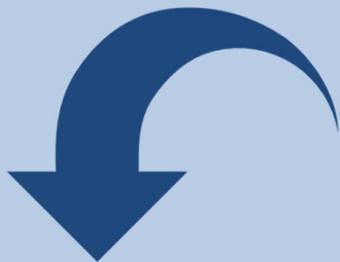
Regarding the original CP’s **threat to file an OCR complaint** for “retaliation” against the institution:

1. Refer the concern to your institution’s Legal Affairs Office for guidance.
2. Refer the original CP to your Sexual Misconduct Policy; OCR’s contact information is available there.

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68

68



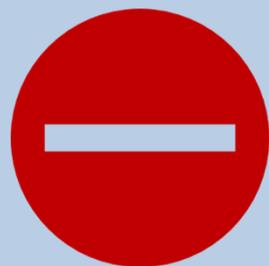
## Hypothetical Scenario 5.b Considerations (Cont.)

### For the original CP's Formal Complaint regarding the "retaliation" allegation against the original RP:

1. Issue notice to CP & RP of the Formal Complaint for "retaliation" against CP.
2. Follow-up with both parties & conduct initial interviews. Make a good faith effort to investigate.
3. Expedite the interviews, due to the escalation of the cases, and the filing of multiple formal complaints against each other.

If there is a valid reason to dismiss the Formal Complaint during the investigation, then...

3. Issue a Formal Complaint Dismissal to CP & RP regarding the "retaliation" allegation, dismissing the allegation, and therefore closing the case.
  - o Both CP & RP have the option to appeal the F.C. Dismissal.



## Hypothetical Scenario 5.b Considerations (Cont.)

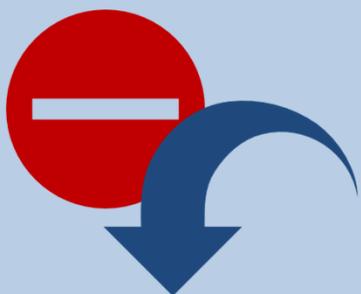
### For the original RP's Formal Complaint regarding the "false complaint" allegation against the original CP:

1. Follow-up with both parties & conduct initial interviews. Make a good faith effort to investigate.
2. Expedite the interviews, due to the escalation of the cases, and the filing of multiple formal complaints against each other.

If there is a valid reason to dismiss the Formal Complaint during the investigation, then...

3. Issue a Formal Complaint Dismissal to CP & RP regarding the "false complaint" allegation, dismissing the allegation, and therefore closing the case.
  - o Both CP & RP have the option to appeal the F.C. Dismissal.





## Hypothetical Scenario 5.b Considerations (Cont.)

1. TIXC can revisit with both parties about **supportive measures**, **expressed wishes**, and **options**.
2. Investigators can revisit with both parties about **what to expect** of the process, the policy, and **procedures** of the grievance process.
  - Focus on the impartiality & neutrality of your role as a fact-finder.
  - Center on the elements of conduct definitions that constitute a possible policy violation.
  - Be consistent.



71



## Hypothetical Scenario 6

- CP files a **formal complaint** to the TIXC
- CP (student) alleges being the victim of “sexual harassment” by RP (faculty): CP says that the RP made inappropriate comments about the CP’s gender in class and made sexually suggestive comments toward CP in one-on-one appointments.
- RP teaches about gender & sexuality.

*Triage/next steps?*



72



**Hypothetical Scenario 6 Updates**

- RP responds to the allegations that RP’s conduct was in relation to the curriculum, and they have “academic freedom” in the course & scope of their faculty role.
- CP provides investigators with testimony and witnesses from class to help corroborate the “sexual harassment” allegations.
- As the investigation continues, CP posts on social media that they are the victim of “sexual harassment” and names the RP publicly.
- Shortly thereafter, the RP files a formal complaint of “retaliation” against the CP, based on CP’s social media post.

*Triage/next steps?*

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**Hypothetical Scenario 6 Considerations**

For the original CP’s Formal Complaint regarding the **“sexual harassment” & “other inappropriate sexual conduct”** allegations against the original RP:

1. There could be elements of a legitimate “other inappropriate sexual conduct” complaint & legitimate free speech/academic freedom rights (e.g. RP’s defense, RP’s course & scope of teaching). Continue to make a good faith effort to investigate.
2. Administrative Leave for RP?

If there is a valid reason to dismiss the Formal Complaint during the investigation, such as for the **“sexual harassment”** allegation, then...

3. Issue a Formal Complaint Dismissal regarding the “sexual harassment” allegation, dismissing the allegation “under Title IX” but the investigation is continuing under the Sexual Misconduct Policy’s grievance process for “other inappropriate sexual conduct”.
  - Both CP & RP have the option to appeal the F.C. Dismissal.

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74

74



## Hypothetical Scenario 6 Considerations (Cont.)

### For the original RP's Formal Complaint regarding the "retaliation" allegation against the original CP:

1. The original CP's conduct can be an expression of free speech, but there should be a thoughtful analysis on alleged adverse action claim toward original RP.
2. Issue notice to CP & RP of the Formal Complaint for "retaliation" against CP.
3. Follow-up with both parties & conduct initial interviews. Make a good faith effort to investigate.
4. Expedite the interviews, due to the escalation of the cases, and the filing of multiple formal complaints against each other.



## Hypothetical Scenario 6 Considerations (Cont.)

### For the original RP's Formal Complaint regarding the "retaliation" allegation against the original CP (cont):

If there is a valid reason to dismiss the Formal Complaint during the investigation, then...

5. Issue a Formal Complaint Dismissal to CP & RP regarding the "retaliation" allegation, dismissing the allegation, and therefore closing the case.
  - Both CP & RP have the option to appeal the F.C. Dismissal.





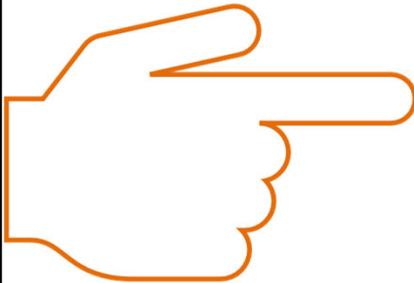
## Hypothetical Scenario 6 Considerations (Cont.)

1. TIXC can revisit with both parties about **supportive measures**, **expressed wishes**, and **options**.
2. Investigators can revisit with both parties about **what to expect** of the process, the policy, and **procedures** of the grievance process.
  - Focus on the impartiality & neutrality of your role as a fact-finder.
  - Center on the elements of conduct definitions that constitute a possible policy violation.
  - Be consistent.


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77

77



## Other Issues for Case Mgt

During an investigation, develop case mgt procedures for:

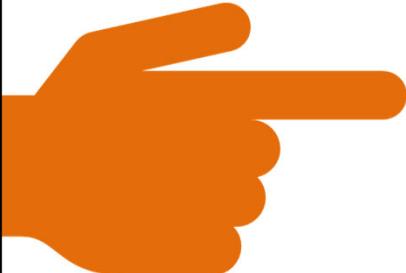
- Seeing relevant evidence of “interference with an investigation” or other elements of conduct that constitute a possible policy violation...

*When does the TIXC file a Formal Complaint? Under what circumstances?*


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78

78



Wrap-Up:  
Bottom Line  
for Case Mgt

- Focus on the **impartiality & neutrality** of your role
- Use **communication paths** for BIT referrals & “need to know” matters
- Be **consistent** with **case mgt decision-making**
- Refer to **case precedent** (e.g. similar facts or elements)
- Follow your **policy** and **process**



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80

## Contact Information

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|---|---|
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| Office of Systemwide Compliance<br>UT System (Austin, TX)                   | Office of General Counsel<br>UT System (Austin, TX)                     |
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