Sexual Misconduct Investigation Training

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Agenda

1. Title IX Introduction
2. Investigation’s Initial Steps
   • Notice of Formal Complaint
   • Party’s Rights & Options
3. Interview Approaches & Example Questions
   • General Cases
   • Non-Stranger Sexual Assault Cases
   • Incapacitation vs. Intoxication
   • IPV & Stalking Cases
4. Closing Steps
   • Access to Evidence
   • Issues of Relevance
   • Investigation Reports
   • Transition to the Adjudication Stage
Introduction

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

Non-Sexual Harassment
- Ex. Other Inappropriate Sexual Conduct

Distinctions...
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)
- **“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 setting, type of alleged conduct, frequency and duration of the conduct, knowingly unwelcome in nature
“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)

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)
**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.

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

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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
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)

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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))
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)

Serving Impartially in Your Role

Also includes:

- When considering **relevant evidence**
- When using a **reasonable person standard**
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;
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;

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)
Other **resources** to include with the written notice:

1. **Supportive measures** available for both parties
2. **Campus & local** resources or services
3. **Rights & options** of both parties
4. A copy of the **grievance process & policy**
5. **Title IX Coordinator & Investigator(s)** contact information

**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).

Conducting an Investigation
Investigation Plan: The Foundation

Basis for the investigation?
- Alleged **incident** of prohibited conduct
- Alleged **pattern** of prohibited conduct
- Alleged **climate issue(s)** in an area or department

Note: It is the institution’s decision on how an investigation may be handled.
Basis: Pattern Investigations

- **Multiple incidents** of similar types of alleged conduct or circumstances with same RP?
- **Multiple complainants** regarding same or multiple incidents of similar types of alleged conduct or circumstances with same RP?
- **Multiple respondents** regarding same incident or situation?
- **Student organization** allegations?

**Note:** It is the institution’s decision on how a pattern-based investigation may be handled.

Considerations: Pattern Investigations

- May be **larger-scale** in scope.
- Document the **justification** for consolidating as a pattern investigation.
- Balance focus on the **individual** and **pattern** elements of the consolidated cases.
- **Multiple complainants:** Information/privacy waivers, participation?
- **Same** grievance process for the consolidated case?

**Note:** It is the institution’s decision on how a pattern-based investigation may be handled.
Basis: Climate Investigations

- Generalized concerns about the climate, environment, or policies in a program or department.
- No specific incidents or allegations with a program or department.
- Reputational concerns or exit interview statements regarding a program or department.

Note: It is the institution’s decision on how a climate-based investigation may be handled.

Considerations: Climate Investigations

- May be larger-scale and more open in scope.
- Without specific RP’s for a formal written notice, provide notice to the program director or department chair.
- Invite program or department affiliates as witness interviews, general prompts
- As evidence is collected & reviewed, triage & determine if the basis or scope needs to be updated.

Note: It is the institution’s decision on how a climate-based investigation may be handled.
Investigative Framework

- Establish facts & timeline(s).
- Understand each party’s perception & experiences of the alleged incident(s).
- Elicit details & descriptions of the alleged incident(s) from the parties & witnesses.
- Address disputed facts or conflicting evidence (if any) & seek responses from the parties (if applicable).
- Gather sufficient information available for a determination of facts, importance, & relevance to the formal complaint.

Investigator Considerations

- One or two investigators?
- Roles of each investigator?
  - Facilitator
  - Notetaker
- Interview notetaking or recording?
Investigation Plan (Continued)

Criteria: Outline the behavioral criteria of what constitutes the prohibited conduct & develop strategies for how to gather relevant evidence.

Witnesses: Identify relevant witnesses & determine order of interviews.

Evidence: Identify other sources of possible evidence & determine how the evidence will be obtained.

Contact Info: Confirm contact information for CP & RP; and communicate regularly with CP & RP throughout the process.

Investigation Plan (Continued)

Partnerships: Establish communication with other relevant partners, as appropriate (e.g. BIT’s, law enforcement, case managers).

Flexibility: Be flexible & revise the plan, as necessary.

Timeline: Keep a working timeline of the investigation, as well as a timeline of the alleged incident.
Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.

For the purposes of this definition:

- **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- **Reasonable person** means a reasonable person under similar circumstances and with similar identities to the victim.
- **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
Interview Approaches

Key Pillars (Revisited)

For all of the participants in the process:
- Complainants
- Respondents
- Witnesses
- Third-party Reporters

Impartiality
Respect
Fairness
Equity
A. Encourages all participants to share what they are able to recall about their experience without demanding chronological recall; and
B. Facilitates the gathering of information in a balanced manner from all individuals

Interview Notice

- Date, time, & location of the interview meeting
- Names of the invited or expected meeting participant(s)
- Purpose of the meeting or investigative interview
- Opportunity to present any information, evidence, and/or witnesses relevant to the formal complaint.
- An advisor of choice may attend, though not required.
Before an Interview

• Develop a **safe space** for a person’s physical & emotional well-being
• Have **handouts & resources** readily available

Pre-Interview: 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.
• How can you minimize or eliminate these factors?

**Source:**
Forensic Experimental Trauma Interview (FETI)
Pre-Interview: Rapport-Building
Other Examples

- Weather
- Hometown
- School
- News
- Pop Culture
- Music

Pre-Interview: Explain the Process

“Would it be okay if I talked with you about information I am required to share with you before we begin?”

- What to expect of the process
- Applicable policies; amnesty for alcohol/drug use; prohibition of retaliation
- Rights of the parties
- Purpose for the interview
- Options for decision-making
- Resources & supportive measures available
- Title IX Coordinator & investigator(s) contact information
- Follow-up & next steps
Body Language & Nonverbal Cues

- Small head nods (periodic, not overly animated)
- Eye contact (be attentive, soften eyes)
- Facial expressions (show genuine interest, avoid emotional movements/reactions)
- Open body language (limit crossed arms or legs)
- Focus on your breathing (mental mindfulness)
- Take pauses between questions/cues (pace yourself)
- Listen with your eyes and ears
- Check-in (when appropriate):
  - “Help me understand how you are feeling right now.”

Interview Start

- Allow the person to provide their account of the incident in their own words & at their own pace:
  - “What are you able to tell me about your experience?”
  - Allow time for the person to respond.
  - Do not ask a lot of questions at first.
- Be patient & respectful.
- Be comfortable with silence.
- Nodding or “Mmm” are ok (shows interest).
- Follow-up (if a general prompt is necessary):
  - What, if anything, do you remember once you...[insert last part]...?
Clarification Prompts
Attempt to clarify from all parties.
Examples…
• “Tell me more about [blank]…”
• “When you said [blank]…help me understand what you meant…”
• Instead of asking “Why or why not…?”
  “Help me understand your thought process for [insert the clarifying part]…”
• “What did you mean by [blank]…?”
• “There are differences in your account vs. [blank]…[insert specifics]…help me understand the reason(s) or rationale for this different account…”

Sensory Recall
“What, if anything, are you able to remember about…”

Source:
Forensic Experimental Trauma Interview (FETI)
Recall Prompts (Cont.)

- Instead of asking “Why or why not…?”
  “What was your thought process…?
  - …During [blank]?”
  - …Before [blank]?”
  - …After [blank]?”
  - “What, if anything, are you able to remember about…?
  - “What were your reactions to…?”
    - Emotional response?
    - Physical response?
- “What was the most difficult part of [blank]?”
- “What, if anything, can’t you forget about… [before/after]…?”

Source:
Forensic Experimental Trauma Interview (FETI)

Misc. Interview Prompts (if applicable)

<table>
<thead>
<tr>
<th>Example Interview Prompts</th>
<th>Purpose of the Prompt</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Let me give you this information so that you can respond.”</td>
<td>Provides an opportunity to respond to other testimony, statements, or evidence.</td>
</tr>
<tr>
<td>“It’s been reported that you said X, Y, and Z.”</td>
<td>Responding to a denial; corroboration.</td>
</tr>
<tr>
<td>“What’s the reason that Person X said/did [blank] with this specificity, if you didn’t?”</td>
<td>Responding to a denial; corroboration.</td>
</tr>
<tr>
<td>“Others have reported you did say [blank]. What’s the reason (or rationale) for considering that you didn’t?”</td>
<td>Responding to “I don’t recall”; corroboration; credibility</td>
</tr>
<tr>
<td>“Is there anything else that you’d like to add to this statement?”</td>
<td>Provides an opportunity to respond; gather information not explicitly asked about.</td>
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</tbody>
</table>
## Statement Gaps or Ambiguities

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| Text Bridges       | • After that...  
                      • The next thing I knew...  
                      • Later on...                                                      | • Afterwards...  
                      • Besides...  
                      • And then...  
                      • Finally...               | Clarification prompt |
| Ambiguous Responses| • Kind of...  
                      • I think...  
                      • Sort of...  
                      • I believe...                                                             | • To the best of my knowledge...  
                      • I may have...  
                      • Maybe...                                                 | Clarification or recall prompt |
| Broad Statements   | • Always...                                                                   | • Everyone...                                 | Clarification prompt; specific examples? |
| Hearsay            | • I heard from Person X that...                                                 |                                                   | Clarification prompt; personal knowledge or first-hand experience? |

Document the **psychological & physical responses** of the experience (if applicable):

- Nausea
- Flashbacks
- Trembling
- Muscle Rigidity
- Terror
- Memory Gaps
- Sensory Recall
- Injuries
Document **elements** of force, threat, coercion, intimidation, or fear (if applicable):

*Note: These elements may not be based on weapon use or actual physical threat for it to be perceived as real*

**Interview Documentation (Cont.)**

Document **defensive strategies** (if applicable):

- Forceful Physical Resistance (Fight)
- Verbal Resistance
- Attempt to Get Away (Flight)
- Bargain (Appease)
- Tonic Immobility (Freeze)
Interview Wrap-Up

Show appreciation:
“I really appreciate you being willing to speak with me.”

Interview Wrap-Up

Explain the following:
- Revisit what to expect for next steps of the process, person’s rights, person’s options, resources available, and applicable remedies
- Decision options (and timelines or deadlines, if applicable)
- Ways to provide evidence, witnesses, or respond to other party’s statements
- Contact information for the investigator and/or TIXC/Deputy
Consent Definition

A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent.

Consent is not effective if it results from: (a) the use of physical force, (b) a threat of physical force, (c) intimidation, (d) coercion, (e) incapacitation or (f) any other factor that would eliminate an individual’s ability to exercise his or her own free will to choose whether or not to have sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

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

- Refer to the definition of "consent" based on the institution's policy.
- What was the nature, timing, & scope of the relationship btwn the parties?
- What were each party's expectations (e.g. perceived, communicated), about the nature of the contact on the date of the alleged incident?
- What was the manner of communication before, during, & after the alleged incident (e.g. words & actions) btwn the parties?
- What were the circumstances of the CP's disclosure & the RP's reaction to the disclosure?
- Who initiated the sexual activity (that is at issue in the allegation(s))? How so, or in what way?
- What was the impact of alcohol or other drug use in relation to the ability to give consent?
- Are there any reported or demonstrated predatory behaviors?
- For RP (if applicable): What words or actions by CP indicated consent to sexual activity?

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**First...Establishing Consent**

**Consent** is not effective if:
- Physical force;
- Threat of physical force;
- Intimidation;
- Coercion; or
  - **Incapacitation**
- Other factors?
Incapacitation Definition

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated if they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.

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

Incapacitation*:
- Mentally or physically helpless
- Unconscious
- Asleep
- Unable to speak coherently or walk unassisted
- Unaware of the sexual activity occurring
- Unaware of time, place, or how they became engaged in a sexual act
- A state beyond drunkenness or intoxication

* Using a “reasonable person” standard
Incapacitation Definition (Cont.)

After establishing that a person is in fact incapacitated, the University asks:

1. Did the person initiating sexual activity know that the other party was incapacitated? And if not…
2. Should a sober, reasonable person in the same situation have known that the other party was incapacitated?

If the answer to either of these questions is “YES,” consent was absent and the conduct is likely a violation of this Policy.

Note: A Respondent will be found to have violated policy only if the Respondent knew or should have known that the person was incapacitated.

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

Incapacitation (Example Questions)

- What were each person’s pre-incident behavior?
- Quantity & quality of alcohol & other drug use:
  - What was the nature of the event & setting?
  - Was there any respective power or control of either party?
  - Who supplied the alcohol or other drug(s) to either party?
- What were each person’s expectations & mindset?
- How did each person reasonably know the level of intoxication of the other party?
- Is there any information from witnesses, video footage, etc. as to the level of incapacitation?
- What were each person’s post-incident behavior?
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
Assessing Danger

Example Questions for Complainant

Has the person of concern:

- 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 or damaged your property?
- Prevented you from leaving or held you against your will?
- Behaved violently or aggressively at home or in public?
- Assaulted your friends or family?
- Been arrested in the past for violence?

Assessing Lethality

Example Questions for Complainant

Has the person of concern:

- 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? Showing up unannounced?
- Forced confrontation(s) with you?
- Forced you or your children to flee in the past?

Sources: National Center for Campus Public Safety; Stalkingawareness.org
False Complaint & False Information Allegations

Any person, who in bad faith, knowingly files a false complaint (under the Policy) or provides materially false information is subject to disciplinary action up to and including dismissal or separation from the University.

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.

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

**Knowingly** files a false complaint or provides materially false information…

- Showing intent to deceive;
- A design to induce belief in a falsity or to mislead; or
- Acted with knowledge or awareness of the falsity… and not because of mistake, accident, or some other reasonable reason.

**Understanding Deception**

**Deception** doesn’t necessarily equate to someone knowingly filing a false complaint or providing materially false information.

**Lack of open information-sharing** may result from: uneasiness or uncertainty of the grievance process, distrust of University officials, lack of rapport, or deceptive intent, among other possible reasons.
Detecting Possible Deception (Examples)

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<th>Non-Verbal Elements</th>
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<td>Little to no eye contact</td>
<td>Falsities</td>
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<td>Touching face frequently</td>
<td>Omissions</td>
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<td>Twitching</td>
<td>Minimization</td>
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<td>Shaking</td>
<td>Text bridges</td>
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<tr>
<td>Folding or crossing arms</td>
<td>Ambiguous statements</td>
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<td>Turning to the side</td>
<td>Broad statements</td>
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<td>Answers question with a question</td>
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<td></td>
<td>Does not answer the question asked</td>
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<td>Disjointed or inconsistent answers</td>
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*Remember:* There may be other plausible reasons a person may present with these types of characteristics too.

Statement Gaps or Ambiguities Revisited

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Remember the Investigation Plan

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 Collection

• Available body of facts or information:
  1. Tangible objects (real items)
  2. Demonstrative (modeling)
  3. Documentary (written materials)
  4. Testimonial (statements)

...that indicates whether a claim, belief, or proposition may be true or valid.
Evidence Pyramid

- **Relevant evidence**
- **Evidence directly related to the allegations**
- **Evidence included in the Investigation Report**
- **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?

So that each party can **meaningfully respond** to the evidence prior to the conclusion of the investigation.

Access to Evidence: When?

- While the investigation is still ongoing?
- Upon request from a CP, RP, or an Advisor?
- At the end of the investigation?
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.
Issues of Relevance

Review the Evidence

- Available body of facts or information:
  1. Tangible objects (real items)
  2. Demonstrative (modeling)
  3. Documentary (written materials)
  4. Testimonial (statements)
Evidence Pyramid

Evidence directly related to the allegations

- Evidence provided to the parties & advisors for inspection & response
- Evidence included in the Investigation Report

Relevant Evidence

Evidence is relevant if:
- The evidence has any tendency to make a fact more or less probable than it would be without the evidence; and
- The fact is of consequence in determining the action.
Another way to frame it:

- **Exculpatory evidence**: Evidence tending to excuse, justify, or absolve the person of the alleged conduct.
- **Inculpatory evidence**: Evidence that places responsibility on the person of the alleged conduct.

Use a “reasonable person” standard for weighing all of the evidence:

- An **objective test** to denote a hypothetical person who exercises average care, skill, and judgment in conduct under similar circumstances as a comparative standard.
Cannot access, consider, disclose, or use a party’s medical or mental health records as evidence unless the party provides voluntary, written consent to the institution for the grievance process.
Formal Grievance Process Flowchart (Zoomed-In)

Sexual Misconduct Cases

Formal Complaint/Notice Issued

Investigation Initiated
- Gathering Evidence
- Witness Interviews

Process Resolution Options
- Investigation Report
- Informal Resolution
- Formal Complaint Dismissal

Next Steps (if applicable)
- Adjudication
- Appeal F.C. Dismissal

Supportive Measures for CP & RP

Outline Comparisons...

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
Draft vs. Completed 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?

Completed Investigation Report: Sexual Harassment Cases

1. Outline each of the allegations that potentially constitutes prohibited conduct under the Policy (required by the Title IX regulations).
2. Provide a timeline (e.g. procedural steps) of the investigation. (recommended)
3. **Fairly summarize** relevant evidence, participate statements, and responses to questions (required by the Title IX regulations).
   - **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.

**Additional Elements for Consideration**

- Overview (Summary) of the Investigation
- Institutional Jurisdiction
- Relevant Policies
- Investigators
- Witnesses
- Procedural Next Steps
What about these Elements?

- Credibility assessments?
- Evidence analysis & rationale?
- Preliminary determination regarding responsibility?

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)
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)*

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Formal Grievance Process Flowchart (Zoomed-In)
Title IX/Sexual Harassment

1. **Formal Complaint/Notice Issued**
2. **Investigation**
   - Gathering Evidence
   - Witness Interviews
   - Investigation Report
   - Transition
3. **Adjudication**
   - Live Hearing
   - Written Determination Issued
   - Remedies/Sanctions (if any)
4. **Option to Appeal**
   - Procedural Irregularity
   - New Evidence
   - Bias/Conflict of Interest
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.
# Contact Information

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