

Sexual Misconduct Informal Resolution Training

Krista Anderson, Systemwide Title IX Coordinator

Fall 2023



1

Agenda

1. Title IX Introduction
2. Party's Rights
3. Informal Resolution Process
4. Facilitation Approaches
5. Documentation & Record Keeping

2

2

Introduction

TITLE IX

Key Concepts & Framework

3

Distinctions...

Sexual Harassment

Employee
Quid Pro Quo

Severe
Pervasive
Obj. Offensive

Sexual Assault
Dating Violence
Domestic Violence
Stalking

vs.

Non-Sexual Harassment
Ex. Other Inappropriate Sexual Conduct

THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

4

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)

5

5

#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 ⁶

6

“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)

7

7

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 prohibited inappropriate or unprofessional sexual conduct.

Such conduct 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.
2. **Physical conduct** that is objectively offensive to a reasonable person and also so **severe or pervasive** that it created a Hostile Environment.



Source:
UT System Model Policy for Sexual Misconduct (2022)


8

8

“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;
- Deliberate physical interference with or restriction of movement; or
- Consensual sexual conduct that is unprofessional and inappropriate, and created a Hostile Environment.



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Source:
UT System Model Policy for Sexual Misconduct (2022)

Key Pillars: Title IX Process

Impartiality	Respect
Fairness	Equity


For all of the participants in the process:

Complainants

Respondents

Witnesses

Third-party Reporters



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Serving Impartially in Your Role

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



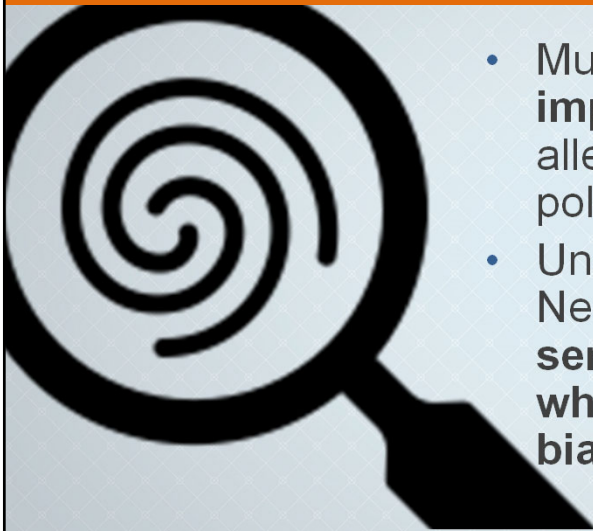
THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Source: Title IX Regulations (2020)

11

11

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)*)...



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

12

12

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**.



Source: Title IX Preamble (2020)

13

13

Party's Rights

14

14

Party's Rights

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

Information and Support

- 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 information and ask questions about the **formal** and **informal processes**.

Equal Opportunity and Representation

- To receive a **prompt, fair, equitable, and impartial grievance process**
- To be given **equal chance** to participate in a grievance process, including the opportunity to identify witnesses and other relevant evidence and 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.
- 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.



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

15

15

Complainant's Rights (related to the Grievance Process)

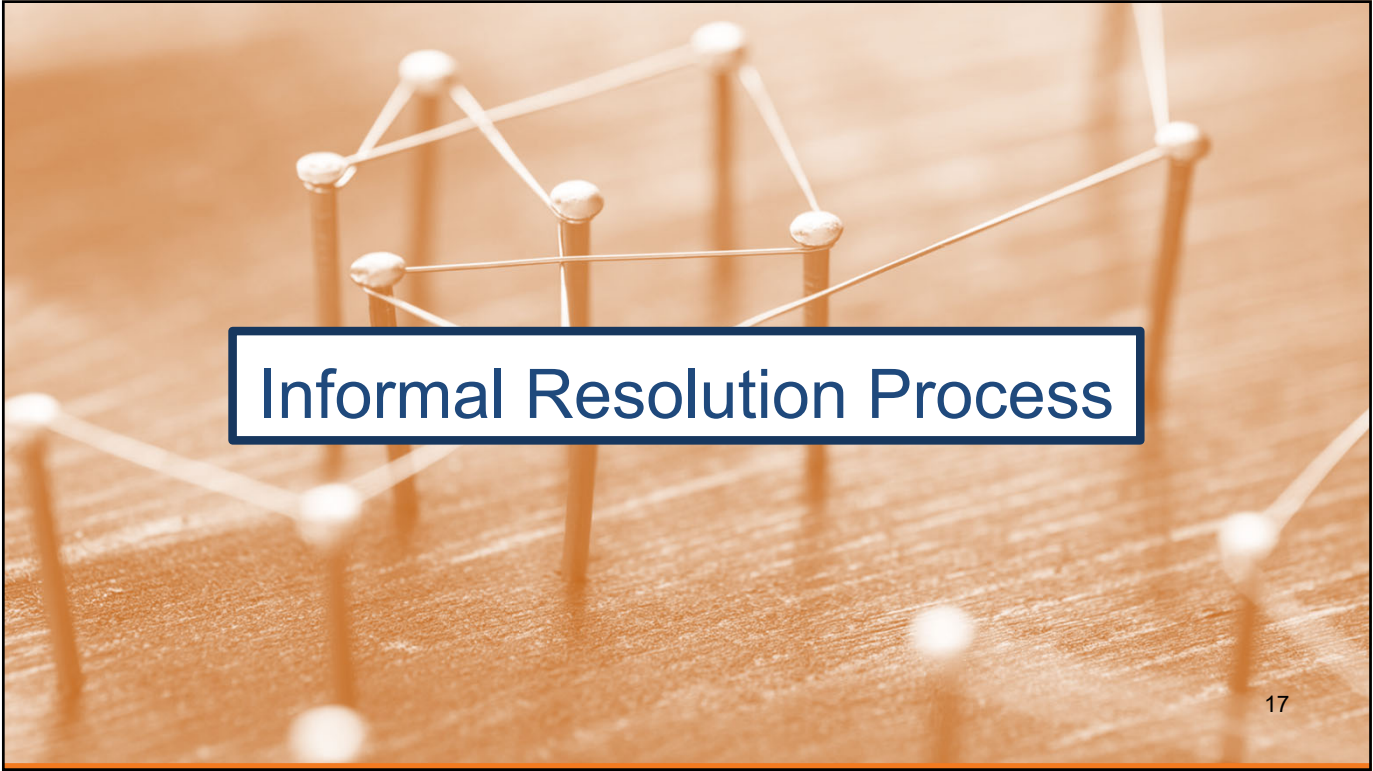
- To **report** an incident and/or **file a formal complaint** with the University.
- To **request** in writing that the University **not investigate** a reported incident and be **informed** of the **University's decision** whether or not to investigate.
- To **request** in writing a **dismissal** of a formal complaint (e.g. withdraws the formal complaint or any allegations therein).



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

16

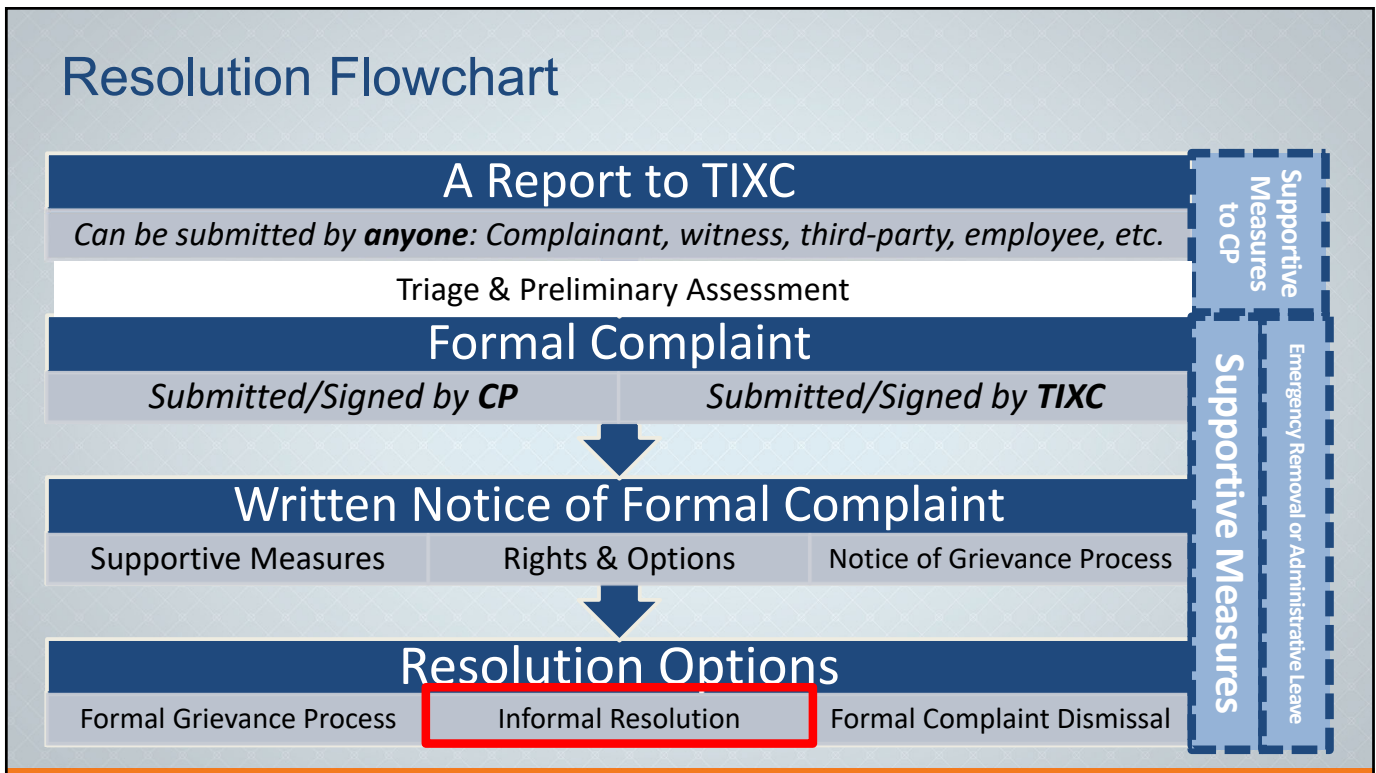
16



Informal Resolution Process

17

17



18

Informal Resolutions: Introduction

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

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

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



Why an Informal Resolution?

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



Not Permitted When...

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

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



Source: Title IX Regulations (2020);

UT System Model Policy for Sexual Misconduct (2022)

21

21

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;
- Deliberate physical interference with or restriction of movement; or
- Consensual sexual conduct that is unprofessional and inappropriate, and created a Hostile Environment.



Source:

UT System Model Policy for Sexual Misconduct (2022)

22

22

Required Components

Once a formal complaint is filed...

An Informal Resolution Process must include:

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

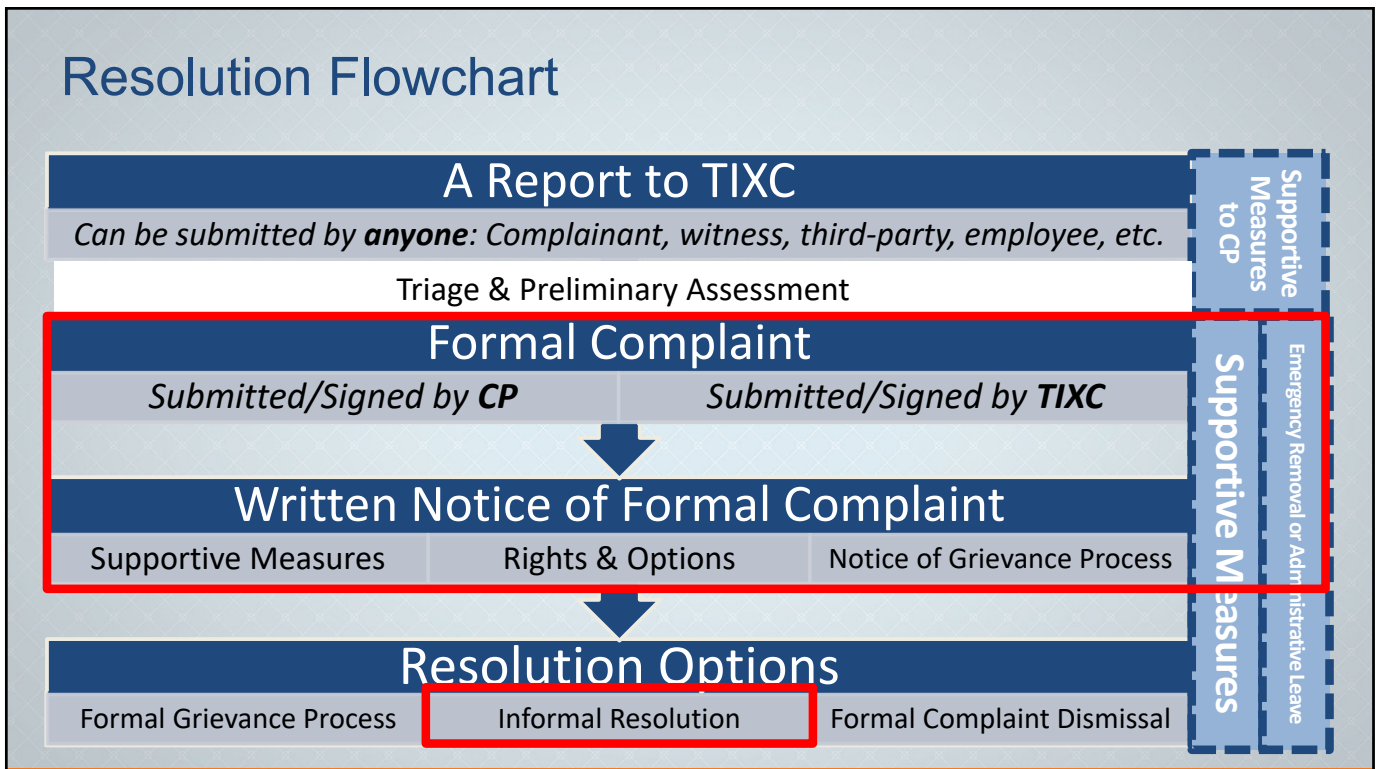


THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Source: Title IX Regulations (2020)

23

23



24

Written Notice of Allegations



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

25

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;

26

26

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;

27

27

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)

28

28

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**



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.



29

29

Required Elements
of the IR Process

30

30

Informal Process Considerations

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



Example Acknowledgments & Consequences of Participating in an IR Process

1. Acknowledgment of the **written notice** and allegations therein.
2. Received **rights and options** of both parties.
3. An IR agreement is a **voluntary** option, if available under the institution's policy.
4. Each party has the **right to withdraw** from the IR process and resume the formal grievance process...
5. IR **timeframe** (example: within 45 days of notice)
6. No recording will be made of the IR process...



Example
Acknowledgments
& Consequences
of Participating in
an IR Process
(Cont.)

7. Any statements made during the IR process may not be used for or against either party... should the parties resume the formal grievance process.
8. The respondent will not be eligible for further IR agreements in the future.
9. An IR agreement will be based on individual needs, and based on specific facts and circumstances available.
10. Documentation & records provisions... 7 years retention...privacy and confidentiality of records...
- 11. Terms of Enforcement:** Failure to comply with a provision or term in an IR agreement may result in disciplinary action.



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Examples of Agreement Terms

Stop engaging in prohibited conduct defined in SHSM policy

Mutual No-Contact Btwn Parties

Apology Letter

Reflection Writing Assignment

SHSM Training or Workshop Assignment

Alcohol EDU Workshop

RP Housing Reassignment

RP Counseling Consultation

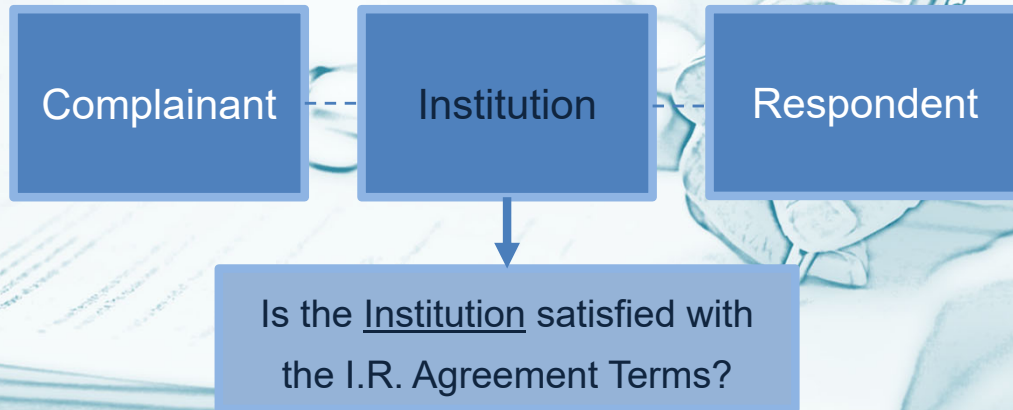
RP Course Adjustments

RP On-Campus Work Adjustments

Disciplinary Terms

Enforcement Terms

Agreement Terms



35

35

IR Documentation Examples

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



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

36

36



37

A slide with a light blue background and a diamond pattern. On the left is an orange-tinted image of two people walking on a rocky path. The title "Exploration & Mediation Tools" is in blue text. A list of five tools is on the right. The number "38" is in the bottom right corner.

Exploration & Mediation Tools

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

38

38

Rapport-Building Prompts



- **“Help me understand how you are feeling right now.”**
- **“What, if anything, can I explain to you about this process *before we get started?*”**

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

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



Source:

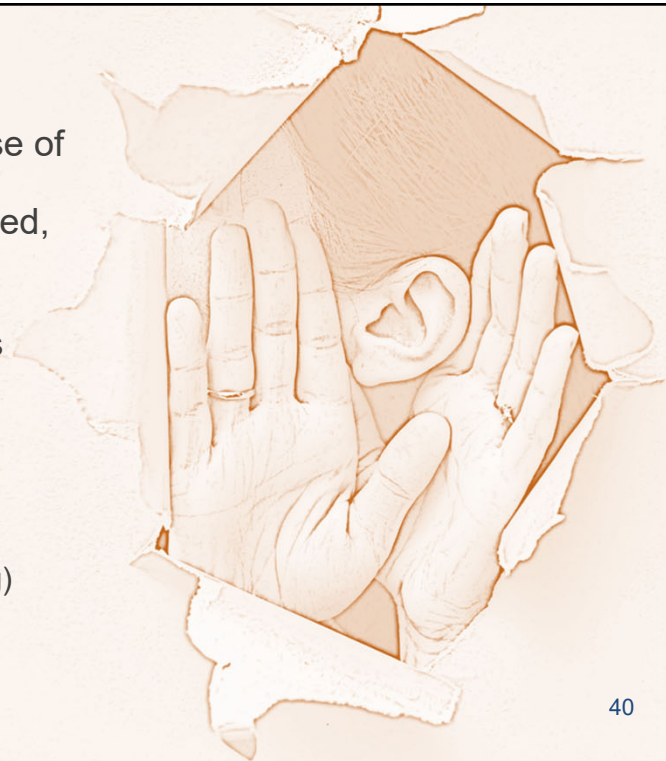
Forensic Experimental Trauma Interview (FETI)

39

39

Active Listening

- **Goal:** Provide the person a sense of feeling heard and understood
- **Listener’s Mindset:** Open-minded, objective, & impartial
- Pay full attention to the person
- Nodding, affirmative non-verbals
- Not interrupting; using silence
- Open-Ended Phrases
- Clarifying checks & validations:
 - Validating & emotional acknowledgements
 - Reflecting (mirroring/paraphrasing)
 - Summarizing
 - Restating



40

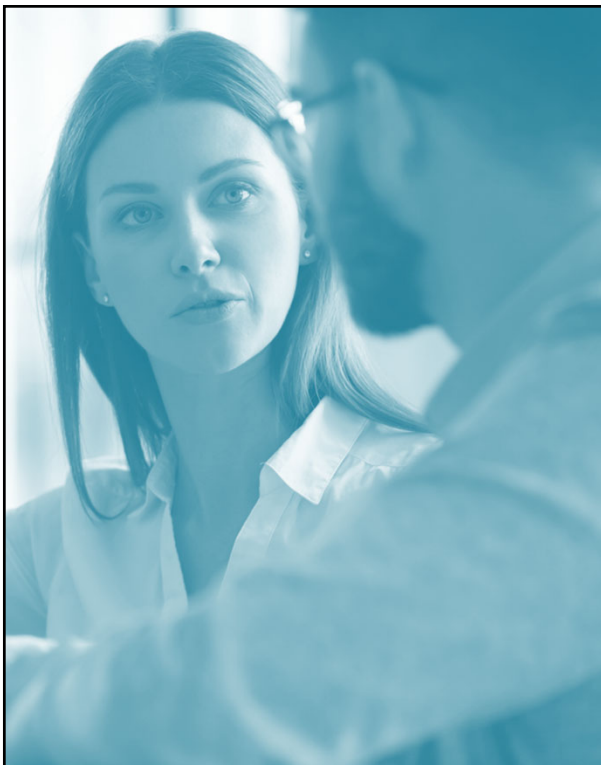
40

Active Listening: Examples

41

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

41



Motivational Interviewing

- **Goal:** Provides an avenue for someone to take action for changing behavior
- Conduct-specific focus
- The person is interested in the need for change
- Organize a plan & actionable pathway for change
- Facilitator uses Active Listening skills:
 - Validating & emotional acknowledgements
 - Reflecting (mirroring/paraphrasing)
 - Summarizing
 - Restating
- Avoid conflicts and stay solution-focused

42

42

Motivational Interviewing: Informal Resolution Example Prompts

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

43

43

Motivational Interviewing: Other Considerations

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

44

44

Motivational Interviewing: Refocusing Conversations

Purpose	Example Prompts
If the person <u>doesn't respond to the relevant prompts...</u>	<ul style="list-style-type: none"> • <u>Rephrase</u> the prompt again. • Acknowledge the shift: <i>"It seems like the discussion is evolving to _____, but we started off exploring _____."</i>
If the person <u>makes an argument about a different topic...</u>	<ul style="list-style-type: none"> • <u>Acknowledge</u> the concern & attempt to finish the <u>initial discussion</u> first: <i>"I want to talk about that, but let's first finish addressing _____?"</i>
If the person <u>attempts to change the subject...</u>	<ul style="list-style-type: none"> • It might be to <u>vent</u> or release some tension. • <u>Prompt</u> the person to discuss what's on their mind. • Then, use <u>active listening</u> to acknowledge the person's current <u>concerns, emotions, and/or needs</u>. • Try to <u>link</u> the person's concerns with the initial discussion topic.

45

45

Restorative Considerations

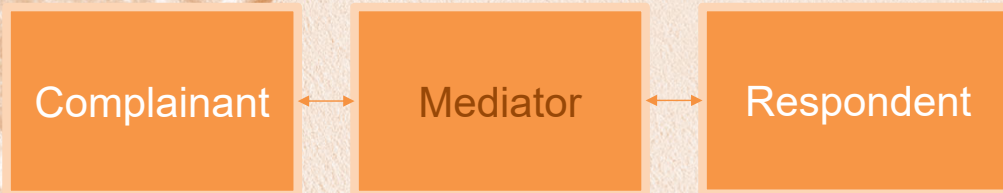
- Addresses the conduct, impacts, and/or needs of the individuals?
- Provides accountability & support?
- Actively engages with the individuals?
- Learning-focused?
- Opportunities for closure?
- Ability to reintegrate the person back into the community?

46

46

Indirect Facilitation (Shuttle-Diplomacy)

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



Example model

47

47

Restorative Approaches: Additional Examples

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

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

48

48

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



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Source:

UT System Model Policy for Sexual Misconduct (2021)

49

49

Informal Resolution Documentation

Any final resolution pursuant to the Informal Resolution process will be documented and kept for seven years as required by law. However, no recording of the Informal Resolution process will be made and all statements made during the Informal Resolution process may not be used for or against either party (and the Hearing Officer and Appellate Officer may not consider any such statement made during Informal Resolution) should the parties resume the Grievance Process. Failure to comply with an Informal Resolution agreement may result in disciplinary action.



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

Source:

UT System Model Policy for Sexual Misconduct (2021)

50

50

Documentation & Record Keeping

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

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



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

Q & A



Contact Information

Krista Anderson	Sean Flammer
Systemwide Title IX Coordinator	Assistant General Counsel
Office of Systemwide Compliance UT System (Austin, TX)	Office of General Counsel UT System (Austin, TX)
Phone: 512-664-9050	Phone: 512-579-5106
Email: kranderson@utsystem.edu	Email: sflammer@utsystem.edu



THE UNIVERSITY of TEXAS SYSTEM
THIRTEEN INSTITUTIONS. UNLIMITED POSSIBILITIES.

53