

# Overview of the New HOP 3-3031

PROHIBITION OF SEXUAL ASSAULT, INTERPERSONAL VIOLENCE, STALKING,  
SEXUAL HARASSMENT, AND SEX DISCRIMINATION.

EFFECTIVE AUGUST 14, 2020, UPON THE UNIVERSITY OF TEXAS BOARD OF REGENTS'S APPROVAL

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PRESENTED BY:

ADRIANA ALICEA-RODRIGUEZ, UT TITLE IX COORDINATOR

AMANDA COCHRAN-MCCALL, DEPUTY VICE PRESIDENT FOR LEGAL AFFAIRS

# Overview of Significant Changes

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# Significant Changes

- § Centralized reporting, resources, processing, and record keeping now occur or are facilitated by a single office under a single policy.
- § There are 3 Grievance Process Tracks set out in the Policy. The determination of what is the appropriate grievance process track considers (i) what conduct is at issue; and (ii) where it occurred. Two of these tracks include live hearings where a party's advisor may ask questions of witnesses.
- § If there is a finding of sexual harassment, stalking, interpersonal violence, or sexual assault against an employee, the presumptively appropriate discipline is termination.
- § Only employees designated as "Confidential Employees" are relieved from their obligation to report all information regarding an instance of stalking, dating violence, sexual assault, or sexual harassment committed by or against a student or employee. All other employees must promptly report when they reasonably believe such conduct occurred.

# What Conduct Does the Policy Cover?

- Sexual Assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
- Interpersonal Violence
  - Dating Violence
  - Domestic Violence
- Stalking
- Sexual Harassment
- Sex Discrimination
- Sexual Exploitation
- Unprofessional or Inappropriate Sexual Conduct
- Retaliation
- False Information & False Complaints
- Interference with the Grievance Process
- Failure to Report by a Non-Confidential Employee

# Prohibited Conduct

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# Prohibited Conduct

- Sexual Assault
  - Rape
  - Fondling
  - Incest
  - Statutory Rape
- Interpersonal Violence
  - Dating Violence
  - Domestic Violence
- Stalking
- Sexual Harassment
  - Quid Pro Quo
  - Hostile Environment

# Definition of Sexual Assault

Conduct that meets the definition of Rape, Fondling, Incest, or Statutory Rape.

- ❑ **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the affected individual.
- ❑ **Fondling:** The intentional touching of private body parts (including the genitalia, anus, groin, breast, inner thigh, or buttocks) of another person for the purpose of sexual gratification without the Consent of an affected individual.
- ❑ **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- ❑ **Statutory Rape:** Sexual intercourse with a person who is younger than 17 years of age and is not a spouse of the Respondent.

# Definition of Interpersonal Violence

Violence committed in a relationship that meets the definition of Domestic Violence or Dating Violence.

- ❑ **Domestic Violence:** Physical abuse, violence, or threats of abuse or violence committed by a (a) current or former spouse or intimate partner of the affected individual, (b) a person with whom the affected individual shares a child in common, (c) a person with whom the affected individual is cohabiting (or has cohabited) with, (d) a person similarly situated to a spouse of the affected individual under the domestic or family violence laws of the State of Texas, or (e) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Texas.
- ❑ **Dating Violence:** Physical abuse, violence, or threats of abuse or violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the affected individual. The existence of such a relationship will be determined based on (a) the type and length of the relationship and (b) the frequency of interaction between the persons involved in the relationship.

# Definition of Stalking

A course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or would cause that person to suffer substantial emotional distress.

- A **“course of conduct”** means two or more acts in which a person 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 affected individual.
- **“Substantial emotional distress”** means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

# Definition of Sexual Harassment

This type of harassment includes Quid Pro Quo and Hostile Environment.

- **Quid Pro Quo:** An employee of the institution conditioning the provision of University aid, benefit, service or term of employment or educational experience on an individual's participation in unwelcome sexual conduct

# Definition of Sexual Harassment (Cont.)

- **Hostile environment:** A hostile environment exists when the conduct is unwelcome and so **sufficiently severe, pervasive, and offensive** that it effectively denies a person equal access to an education program or activity. Equal access is denied when the conduct unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's education or employment programs and/or activities.
  - The University assesses the totality of the circumstances to determine if these factors are present.
  - Severity determinations consider whether conduct is physically threatening or humiliating, or a mere offensive utterance.
  - Pervasive means frequent.
  - Offensive means conduct that a reasonable person would find hostile or abusive, and the affected individual did perceive it to be hostile or abusive.

Conduct must be deemed severe, pervasive, and offensive from both a subjective and an objective perspective. It will be necessary, but not adequate, that the conduct was unwelcome to the individual who was affected.

# Definition of Consent

- Consent is the act of willingly agreeing to engage in each specific sexual contact or activity.
- Consent must be clear, knowing, voluntary, and expressed prior to engaging in and during each sexual act.
- Consent may be expressed by mutually understandable words or actions.
- Given the importance of sexual autonomy and the potential impact on those subjected to nonconsensual sexual contact or activity, the University charges all parties to a sexual contact or activity with obtaining agreement from each party engaging in the sexual contact or activity.
- In assessing discipline matters, the responsibility for obtaining effective Consent is on the person initiating each particular sexual activity or contact.

## Definition of Consent (Cont.)

- Consent to some form of sexual contact or activity cannot be automatically taken as agreement to any other form of sexual contact or activity.
- Previous Consent does not imply on-going Consent to future sexual conduct. Silence or passivity—without actions demonstrating agreement—cannot be assumed to show Consent.
- Consent, once given, can be withdrawn at any time.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- An individual's manner of dress does not constitute Consent to engage in sexual contact or activity. The existence of a current or previous dating or sexual relationship between two or more individuals does not, in and of itself, constitute Consent to engage in sexual contact or activity.

# When Is Consent Not Effective?

- Consent is not effective if it results from force, coercion, or incapacitation.
- Use of alcohol or drugs does not diminish responsibility to obtain Consent. If drugs or alcohol are involved, the University will determine Consent through the totality of circumstances
  - whether a sober reasonable person would have known or deduced that the other was incapacitated;
  - whether a person actually knew the other was incapacitated.
  - whether a person demonstrates that they are unaware of where they are, how they got there, or why or how they became engaged in a sexual interaction;
  - whether a person was conscious or unconscious;
  - whether and when a person became sick due to intoxication;
  - a person's ability to communicate and/or slurred speech;
  - a person's coordination and physical control of the person's own body (ex. ability to walk, dress/undress, perform simple tasks); and
  - any other action that would be indicative of a level of cognitive and physical functioning.

# Termination is the Presumptively Appropriate Discipline for Prohibited Conduct

This presumption may be rebutted or confirmed, in the disciplinary authority's discretion, by one or more mitigating or aggravating factors in order to reach a just and appropriate resolution in each case.

**Mitigating factors** include, but are not limited to:

- the expressed requests of the affected individual; and
- the absence of previous disciplinary history of the Respondent.

# Termination is the Presumptively Appropriate Discipline for Prohibited Conduct (Cont.)

**Aggravating factors** include, but are not limited to:

- the nature and severity of the conduct, including the use of force or a weapon;
- the level of ongoing threat to the physical safety and security of the Complainant or other members of the University community;
- the need to remedy and address the impact or effects of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University, including other members of an affected academic or departmental unit;
- whether the Respondent engaged in any acts of retaliation for the report of the incident;
- prior misconduct by the Respondent, including the Respondent's relevant prior discipline or criminal history (if available); and
- refusal to acknowledge culpability or accept responsibility for clear violation of the Policy.

# Additional Conduct Violations Under This Policy

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## Additional Conduct Violations Under The Policy

- Sex Discrimination
- Sexual Exploitation
- Unprofessional or Inappropriate Conduct
- Retaliation
- False Information and False Complaints
- Interference with Grievance Processes
- Failure to Report by a Non-Confidential Employee

# Definition of Sex Discrimination

Disparate treatment of an individual on the basis of sex or gender (including, but not limited to, sexual orientation, gender identity, gender expression, and pregnancy status) that adversely affects the terms or conditions of the individual's employment or substantially interferes with the individual's access to education or educational benefits.

# Definition of Sexual Exploitation

Sexual Exploitation occurs when a person takes non-consensual sexual advantage of another person for the person's own benefit, or to benefit anyone other than the affected individual, and that behavior does not otherwise constitute other Prohibited Conduct.

## Definition of Unprofessional or Inappropriate Conduct

Conduct of a sexual nature that is unprofessional or inappropriate for the educational or working environment, but does not rise to the level of another form of Prohibited Conduct outlined in this Policy.

## Definition of Unprofessional or Inappropriate Conduct

Behavior that could constitute unprofessional or inappropriate conduct of a sexual nature may include, but is not limited to:

- repeatedly engaging in sexually oriented conversations, comments, horseplay, or jokes including the use of language or the telling of jokes or anecdotes of a sexual nature, commenting on an individual's body parts or the fit of their clothing, sharing or asking about an individual's sexual activities or preferences;
- making targeted and repeated unwelcome overtures to an individual when the overtures could be reasonably construed as romantic or sexual in nature; and
- engaging in a course of conduct that fails to observe the appropriate boundaries of the supervisor/subordinate or faculty member/student relationship;

## Definition of Retaliation

Retaliation means any action taken to adversely affect the terms or conditions of an individual's academic experience or employment with the University, or other institutional status of a student, employee, university affiliate, visitor, or applicant for admission to or employment with the University, because an individual has, in good faith, reported or brought a complaint under this Policy, opposed an unlawful practice, participated in an investigation, or requested supportive or protective measures.

# Definition of False Information & False Complaints

Any person, who in bad faith, knowingly files a false complaint under this 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.

# 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, withholding, 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.

# Definition of Failure to Report by a Non-Confidential Employee

All Employees, not designated by the University as Confidential Employees,

- that knowingly fail to report all known information concerning an incident the employee reasonably believes constitutes stalking, dating violence, sexual assault, or sexual harassment
- committed by or against a student or employee
- at the time of the incident,

are subject to disciplinary action, including termination. Non-Confidential Employees are required to promptly report known incidents. Promptly means as soon as is practicable and without unreasonable delay.

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**Note:** For purposes of Failure to Report, the definition of sexual harassment, as defined under state law, is broader than the definition of sexual harassment under this Policy and is defined as:

Unwelcome, sex-based verbal or physical conduct that:

- (1) in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- (2) in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary institution.

# Reporting Incidents and Formal Complaints

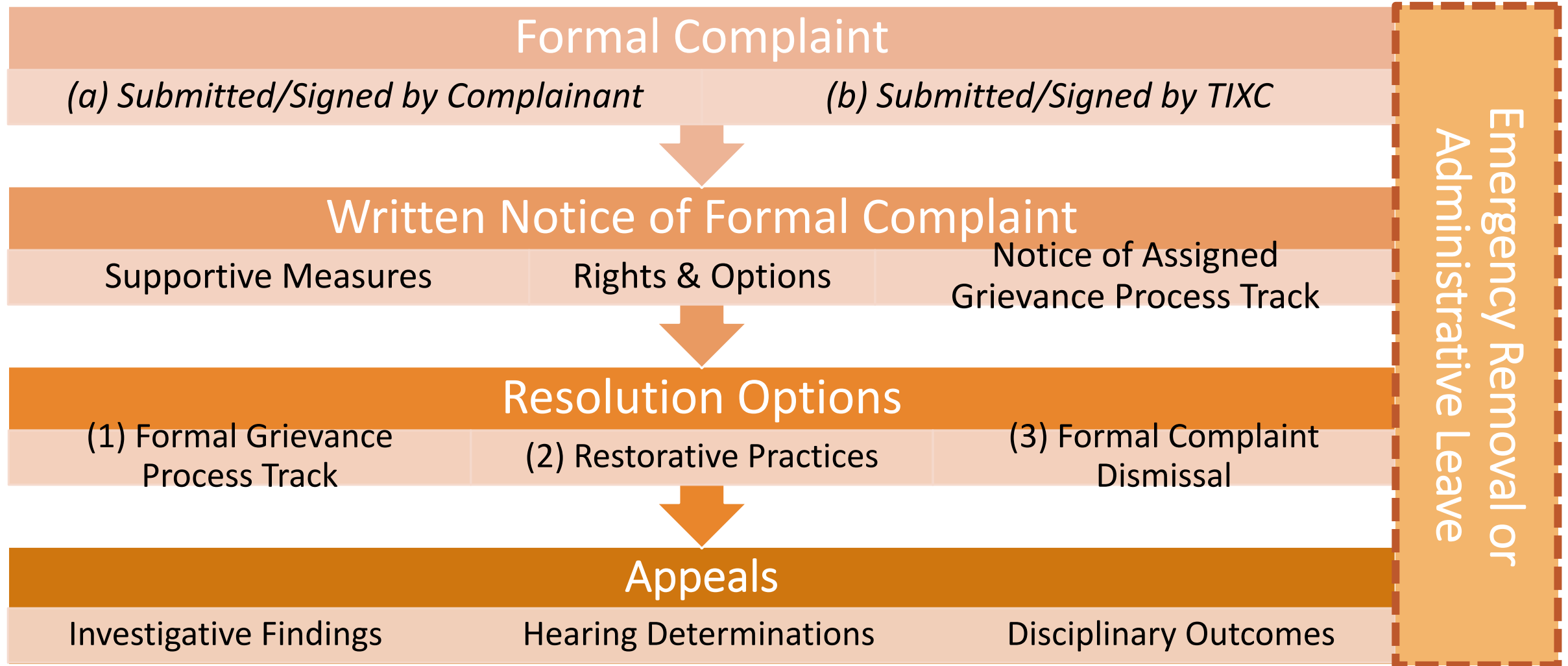
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# Reporting Incidents and Formal Complaints

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- Any person may report an incident covered by this Policy .
- Any person subject to an alleged incident under this Policy, may file a Formal Complaint to initiate the appropriate grievance process.
- The Title IX Coordinator may also file and sign a Formal Complaint based on any incident report received which will initiate the appropriate grievance process track

# Life Cycle of a Formal Complaint



# The Formal Complaint and Grievance Process Tracks

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# Grievance Process Track A

This Track Applies when all of the following are met:

- the Respondent is a student (including a student employee) or employee or other university affiliate at the University at the time of the alleged conduct;
- the alleged conduct includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, or Sexual Harassment;
- the alleged conduct occurred against a person in the United States; and
- where the Complainant was participating or attempting to participate in an education program or activity at the University. This element is met if the conduct occurred in any of the following: on any University property; during any University activity; in a building owned or controlled by a student organization that is officially recognized by the University; or in instances where the University exercised substantial control over the Respondent and the context in which the alleged conduct occurred.

# Grievance Process Track B

This Track applies when all of the following are met:

- the alleged conduct includes Sexual Assault, Dating Violence, Domestic Violence, Stalking, or Sexual Harassment ***and*** the alleged conduct occurred as off-campus conduct ***and*** the conduct substantially affect a person's education or employment with the University or poses a risk of harm to members of the University community; and
- the Respondent is a student (including a student employee) or employee at the time of the alleged conduct.

## Grievance Process Track C

This Track applies in all instances of alleged conduct under this Policy that are not covered by Grievance Process Tracks A or B.

These instances include allegations of conduct that potentially constitute Sex Discrimination, Sexual Exploitation, Unprofessional/Inappropriate Conduct, Retaliation, False Information or False Complaint, Interference with Grievance Process, or Failure to Report by a Non-Confidential Employee

# Grievance Process Tracks A & B

## STEPS IN THE PROCESS

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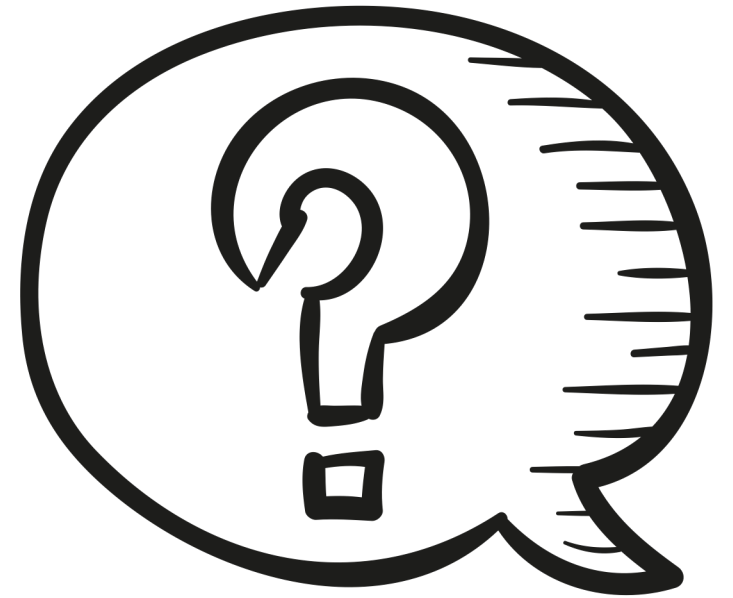
# TRACKS A & B

The steps in  
the process  
are the same

- Formal Complaint
- Written Notice of Formal Complaint, notice of available resources and assistance, and assigned Grievance Process Track
- Investigation
  - Parties may present evidence to investigator
  - Advisor may attend meetings with party
  - Parties have access to the evidence before a final report
  - Final report includes allegations that could be policy violation and a summary of the relevant evidence
- Live Hearing
  - University must provide a live hearing unless the Formal Complaint is dismissed or the parties are pursuing Restorative Practices to resolve the matter.
  - A party's advisor asks questions of witnesses at the hearing. Parties may select an advisor of their choice. If a party does not have an advisor, the University will provide one.
- Hearing Officer Determination
  - Prepares a report including the findings of facts and conclusions regarding whether a respondent is responsible,
  - Referred for discipline decision
- Appeal of Determination of Responsibility

# Questioning at Live Hearings

1. **Only relevant questions** may be asked of a party or witness:
  - Before a complainant, respondent, or witness answers a question that was asked by an advisor, the decision-maker must first determine whether the question is relevant & explain any decision to exclude a question as not relevant.





## Questioning at Live Hearings

2. Questions about the complainant's **sexual predisposition** or **prior sexual behavior**:  
Not relevant unless:
  - a. The questions are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or
  - b. The questions are offered to prove consent regarding specific incidents of the complainant's prior sexual behavior with respect to the respondent.
3. If a party or witness doesn't submit to questioning at the live hearing: the decision-maker **must not rely** on any statement of the party or witness in reaching a determination regarding responsibility.

# Grievance Process Track C

STEPS IN THE PROCESS

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# TRACK C

## The steps in the process

- Formal Complaint
- Written Notice of Formal Complaint, notice of available resources and assistance, and assigned Grievance Process Track
- Investigation
  - Written report outlines allegations, provides timeline of investigation, summarizes relevant information and evidence
  - Includes a statement of finding of violation or no finding of violation with the supporting rationale
- Disciplinary Determination
  - The completed investigation report will be referred to the appropriate decision-maker for disciplinary determination
- Appeal is through existing avenues:
  - For Students via Chapter 11 of Appendix C to the General Information Catalogue
  - For Faculty via the procedures set out in the Handbook of Operating Procedures 2-2310
  - For Staff via the procedures set out in Handbook of Operating Procedures 5-2420.

# Parties' Rights

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

- To be informed of and have access to counseling, medical, academic, and other applicable support services, including confidential resources.
- To be informed of the importance of a survivor going to a hospital for treatment and the preservation of evidence, if applicable, as soon as practicable after an alleged incident.
- To receive a prompt, fair, equitable, and impartial grievance process.
- To receive information and ask questions about the formal and informal processes.
- To be given equal chance to participate in a grievance process, including the opportunity to identify witnesses and other relevant evidence.

## Parties' Rights (Cont.)

- 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 under Tracks A & B.
- To have an advisor provided for a party at a hearing under Grievance Process Tracks A & B, 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 file a report with local and/or campus law enforcement authorities.

# Restorative Practices

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# Restorative Practices

- This is an alternative resolution path which will be administered through The Office of Inclusion and Equity.
- The University recognizes that in some circumstances, pursuing restorative practices in lieu of the formal grievance process tracks is preferable to the parties involved.

# Restorative Practices (Cont.)

- If a Formal Complaint would otherwise be in Tracks A or B, the following provisions apply:
  - Availability. It is not available to address Formal Complaints of Sexual Assault, Dating Violence, Domestic Violence, Stalking, or Sexual Harassment against an employee where the Complainant is a student.
  - Agreement and Approval Required. To invoke this alternative, after the parties have been provided a copy of the written notice of a Formal Complaint, both parties must, in writing, voluntarily agree to use this alternative. The Restorative Practices Alternative means the parties forgo the Grievance Processes (including the investigation and hearing, depending on when the parties agree to engage in the alternative). The Title IX Coordinator's approval of the parties' voluntary agreement is necessary to proceed with the alternative.
  - Revocation of Alternative. At any time prior to agreeing to a resolution, any party has the right to withdraw from the Restorative Practices Alternative and resume the appropriate grievance process of the Formal Complaint.

# Questions - Contact Us

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Website: <https://titleix.utexas.edu>

Reporting: <https://titleix.utexas.edu/file-a-report>