

Sexual Misconduct Interview & Questioning Approaches

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Agenda

1. Title IX Intro
2. Overview of Initial Steps & Ongoing Elements
3. Interview & Questioning Approaches & Example Prompts
 - General Approaches
 - Non-Stranger Sexual Assault Cases
 - Incapacitation vs. Intoxication
 - IPV & Stalking Cases
 - False Complaint & False Information Cases

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Introduction

TITLE IX

Key Concepts & Framework

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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
Ex. 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)

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#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

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“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)

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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.



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Source:

UT System Model Policy for Sexual Misconduct (2022)

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“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.



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Source:

UT System Model Policy for Sexual Misconduct (2022)

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Key Pillars: Title IX Process

Impartiality

Respect

Fairness

Equity

For all of the participants
in the process:

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**



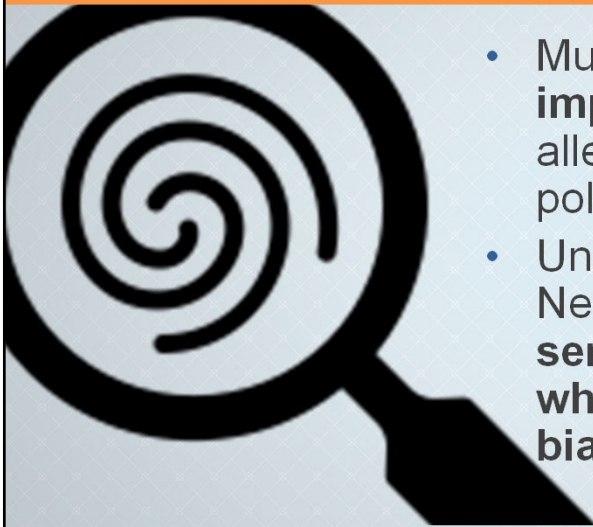
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Source: Title IX Regulations (2020)

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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)*)...



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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)

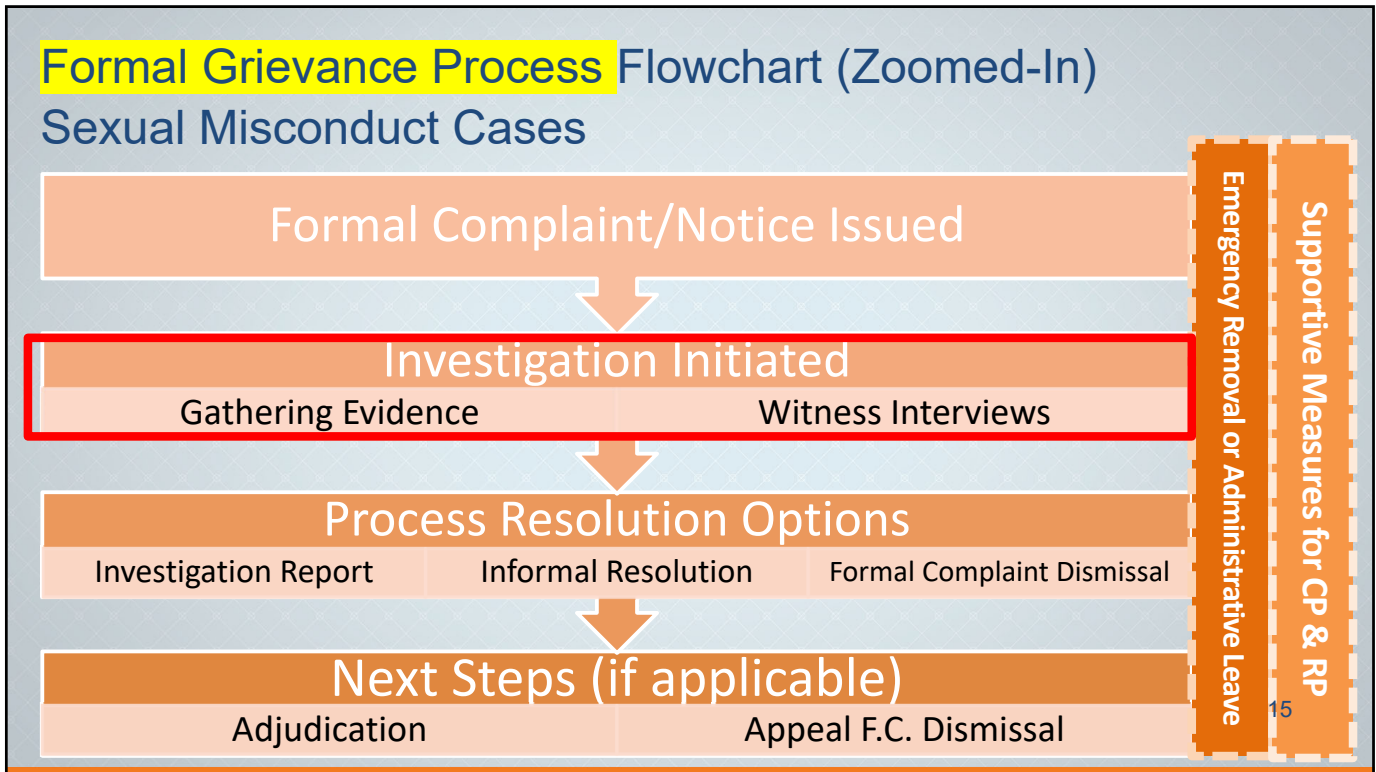
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Conducting an Investigation: Ongoing Elements

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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.

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Look at the
Provision(s)
at Issue:

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.



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Look at the
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Engaging in a (1) course of conduct
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Interview & Questioning Approaches

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Basis for a “Trauma-Informed” Approach

- 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

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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.

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Before an Interview

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



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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)

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Pre-Interview: Explain the Process

“Before we begin, would it be okay if I talked about information that I am required to share with you?”

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

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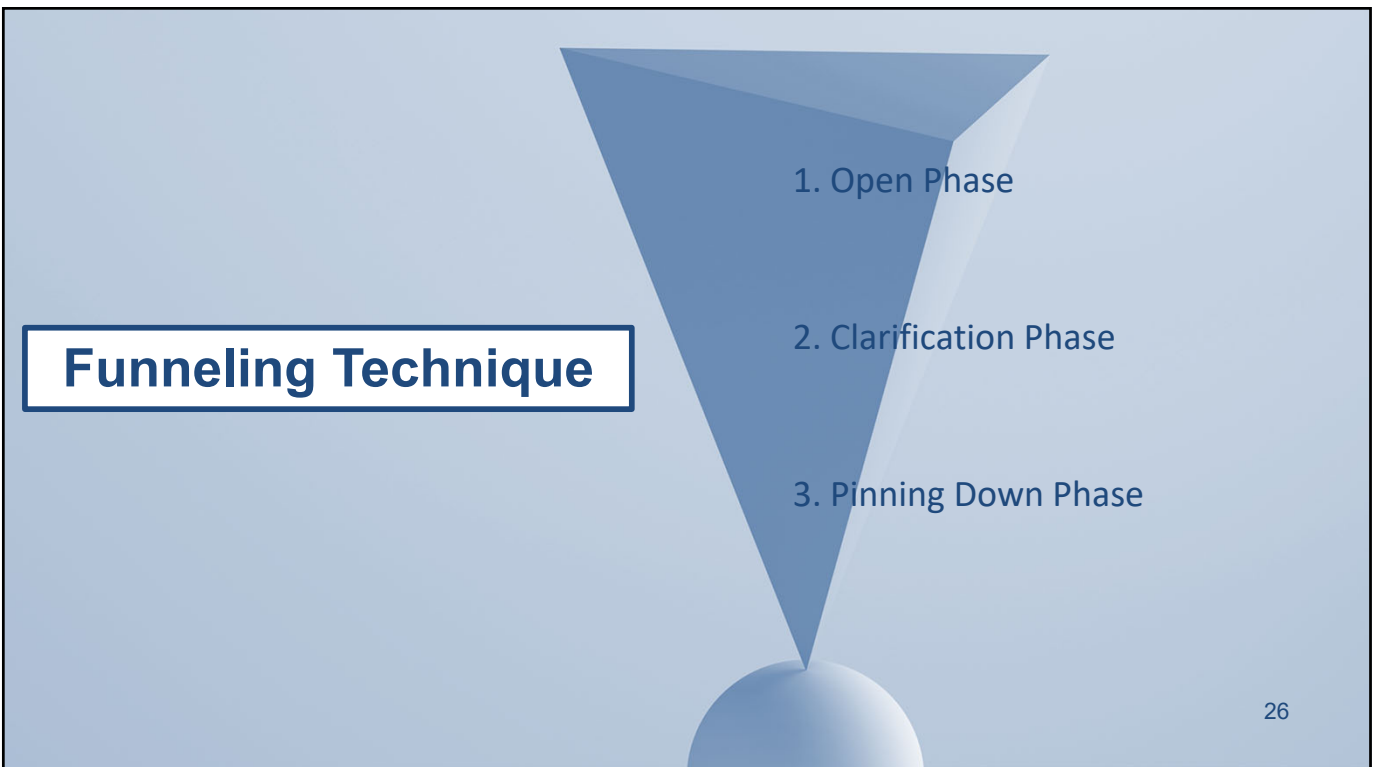


Body Language & Nonverbal Cues

- **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.”*

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Funneling Technique

1. Open Phase
2. Clarification Phase
3. Pinning Down Phase

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Interview Start (Open Phase)

- 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]...?**

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Clarification & Follow-ups (Clarification Phase)

Attempt to clarify from **all** parties. Examples...

- **“Tell me more about [blank]...”**
- **“When you said [blank]...help me understand what you meant...”**
- **What, if anything, do you remember once you...[insert last part]...?**
- **Instead of asking “Why or why not...?”...**
Say **“Help me understand your thought process for [insert the clarifying part]...”**
- **“What did you mean by [blank]...?”**
- **“How do you know about [blank]...?”**
- **“There are differences in your account vs. [blank]...[insert specifics] ...help me understand the reason(s) or rationale for this different account...”**



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Sensory Recall (Clarification Phase)

*“What, if anything, are you able to **remember** about...”*

Taste

Smell

Feel/Touch

Hear

See

Pain

Body
Position

Pressure

Temperature

Source:
Forensic Experimental Trauma Interview (FETI)

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Recall (Cont.)

- **Instead of asking “Why or why not...?”**
Ask “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)

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Statement Gaps or Ambiguities (Pinning Down Phase)

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Type	Example Statements		Interview Approaches
Text Bridges	<ul style="list-style-type: none"> • <i>After that...</i> • <i>The next thing I knew...</i> • <i>Later on...</i> 	<ul style="list-style-type: none"> • <i>Afterwards...</i> • <i>Besides...</i> • <i>And then...</i> • <i>Finally...</i> 	Clarification prompt
Ambiguous Responses	<ul style="list-style-type: none"> • <i>Kind of...</i> • <i>I think...</i> • <i>Sort of...</i> • <i>I believe...</i> 	<ul style="list-style-type: none"> • <i>To the best of my knowledge...</i> • <i>I may have...</i> • <i>Maybe...</i> 	Clarification or recall prompt
Broad Statements	<ul style="list-style-type: none"> • <i>Always...</i> 	<ul style="list-style-type: none"> • <i>Everyone...</i> 	Clarification prompt; specific examples?
Hearsay	<ul style="list-style-type: none"> • <i>I heard from Person X that...</i> 		Clarification prompt; personal knowledge or first-hand experience?

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Misc. Interview Prompts (Pinning Down Phase)

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



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Interview Documentation

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

Nausea

Flashbacks

Trembling

Muscle Rigidity

Terror

Memory Gaps

Sensory Recall

Injuries



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Interview Documentation (Cont.)

Document these additional **elements** (if applicable):

Force

Threats

Coercion

Intimidation

Fear

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



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Interview Documentation (Cont.)

Document any **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



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Non-Stranger Sexual Assault Cases

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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.



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Source:

UT System Model Policy for Sexual Misconduct

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Consent (Example Questions/Considerations)

- 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 (of a possible sexual assault)** & 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?



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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.



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Source:

UT System Model Policy for Sexual Misconduct

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Intoxication:

- Slurred speech
- Weaving or stumbling while walking
- Exaggerated emotions



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

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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

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Incapacitation (Example Questions/Considerations)

- 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?



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IPV & Stalking Cases

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Determining Predominant Aggressors

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**



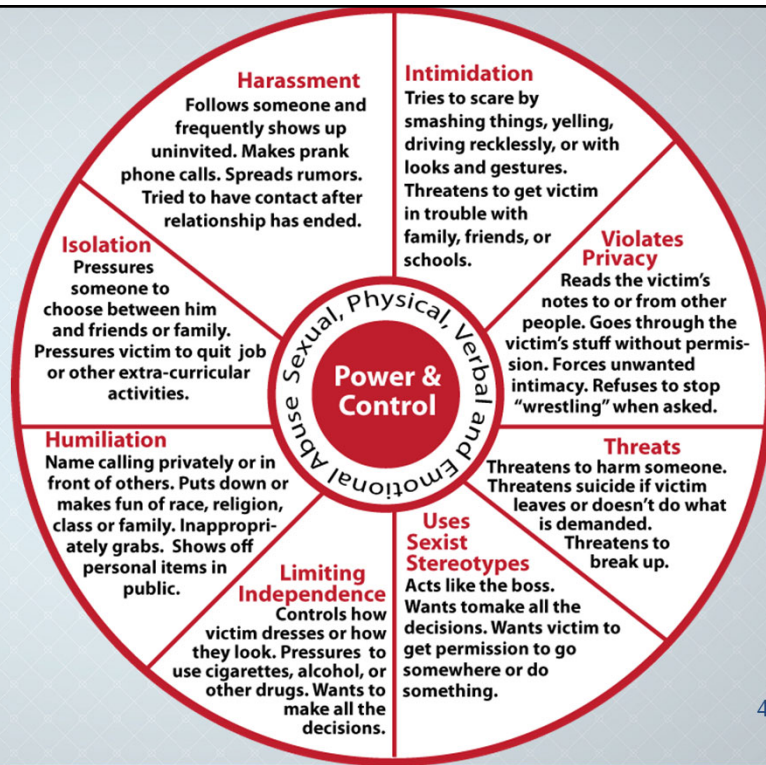
Source:

The National Center for Campus Public Safety

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Power & Control Wheel (Examples)



Source: www.alteristic.org



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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

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Examples of Psychological Manipulation

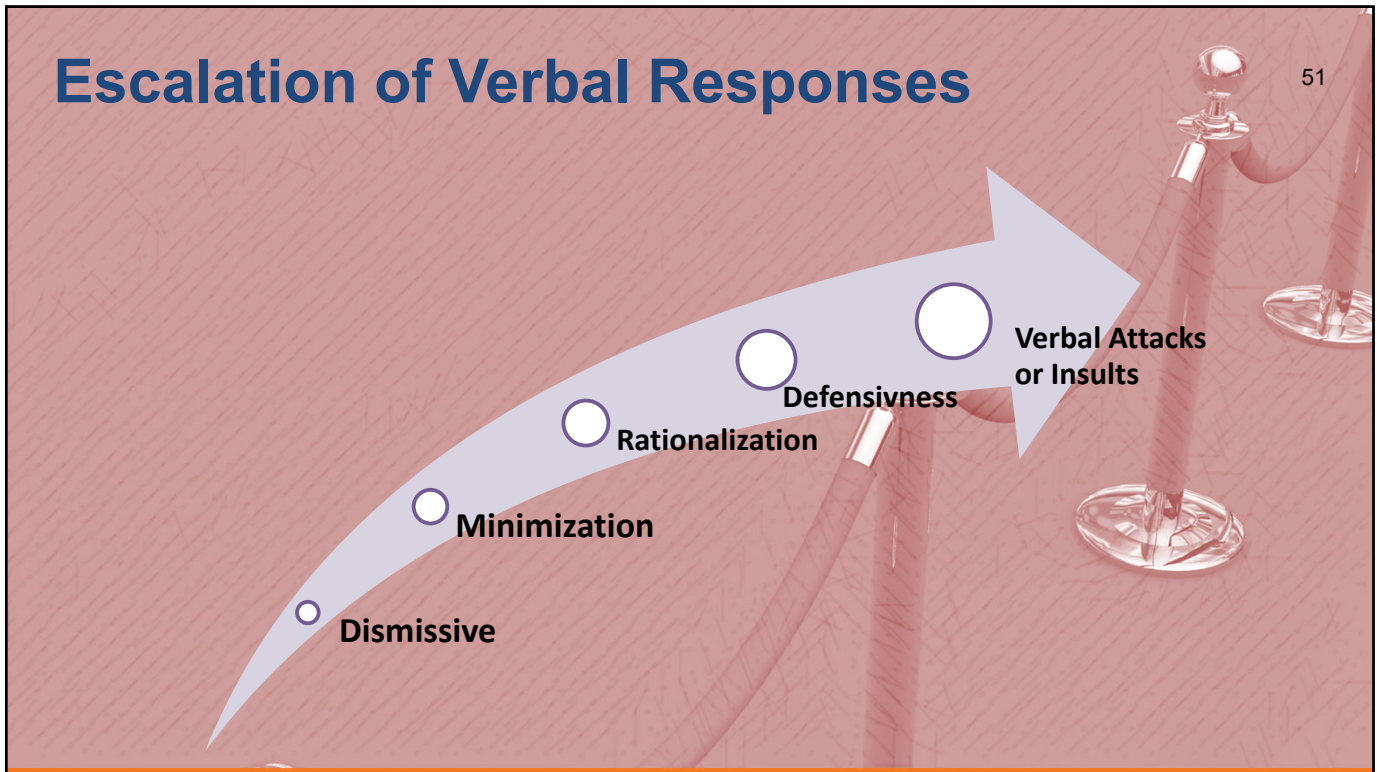
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Type of Response	Example Statements	
Dismissive	<ul style="list-style-type: none"> • <i>I <u>never</u> said/did that.</i> • <i><u>Your</u> memory is bad.</i> • <i>I don't remember it that way.</i> 	<ul style="list-style-type: none"> • <i>That didn't happen. [or] That's not what happened.</i> • <i>I have no idea what you are talking about.</i>
Minimizing	<ul style="list-style-type: none"> • <i>It's <u>only</u> a joke. [or] It's not that bad.</i> • <i>We're <u>just</u> having fun.</i> 	<ul style="list-style-type: none"> • <i><u>Nobody</u> got hurt.</i> • <i>What's the <u>big</u> deal?</i>
Rationalizing or Making Excuses	<ul style="list-style-type: none"> • <i>This wasn't ever an issue before now.</i> • <i>I said/did ____ because ____.</i> • <i>I didn't even know I did anything.</i> • <i>I didn't mean it like that.</i> 	<ul style="list-style-type: none"> • <i>That's not how things used to be.</i> • <i><u>No one else</u> is saying anything.</i> • <i><u>Others</u>, even <u>you</u>, do the same thing too.</i>
Attacking or Defensive	<ul style="list-style-type: none"> • <i><u>You're</u> too sensitive. [or] <u>You're</u> overreacting.</i> • <i><u>You're</u> petty. [or] <u>You're</u> jealous.</i> • <i><u>You</u> are taking it the wrong way.</i> • <i><u>You</u> think you are better than everyone else.</i> • <i><u>You</u> can't take a joke.</i> • <i>This is why nobody likes <u>you</u>.</i> 	<ul style="list-style-type: none"> • <i>It's <u>your</u> fault because ____.</i> • <i>What about when <u>you</u> said/did ____?</i> • <i>Why are <u>you</u> so emotional?</i> • <i><u>You're</u> letting your emotions get the better of you.</i> • <i><u>Who</u> told you that? What did <u>they</u> say?</i> • <i>What do <u>you</u> have to back that up?</i>

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Escalation of Verbal Responses

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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 Danger

Example Questions
for the Person
Targeted



Sources: National Center for Campus Public Safety;
Stalkingawareness.org

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Assessing Lethality

Example Questions
for the Person
Targeted

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?



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Sources: National Center for Campus Public Safety;
Stalkingawareness.org

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False Complaint &
False Information Allegations

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Definition of “False Complaints & False Information”

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.



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Source:

UT System Model Policy for Sexual Misconduct (2021)

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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.



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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.



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Detecting Possible Deception (Examples)

Non-Verbal Elements	Verbal Elements
Little to no eye contact	Falsities
Touching face frequently	Omissions
Twitching	Minimization
Shaking	Text bridges
Folding or crossing arms	Ambiguous statements
Turning to the side	Broad statements
	Answers question with a question
	Does not answer the question asked
	Disjointed or inconsistent answers

Remember: There may be other plausible reasons a person may present with these types of characteristics too.



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Ambiguity

- Limited or lack of information to base one's decisions or judgments.

Examples:

- Evidence may be interpreted multiple ways
- Gaps in witness statements (e.g. memory gaps, lack of testimony)
- Unfamiliarity with the subject matter



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Statement Gaps or Ambiguities Revisited

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Type	Example Statements		Interview Approaches
Text Bridges	<ul style="list-style-type: none"> After that... The next thing I knew... Later on... 	<ul style="list-style-type: none"> Afterwards... Besides... And then... Finally... 	Clarification prompt
Ambiguous Responses	<ul style="list-style-type: none"> Kind of... I think... Sort of... I believe... 	<ul style="list-style-type: none"> To the best of my knowledge... I may have... Maybe... 	Clarification or recall prompt
Broad Statements	<ul style="list-style-type: none"> Always... 	<ul style="list-style-type: none"> Everyone... 	Clarification prompt; specific examples?
Hearsay	<ul style="list-style-type: none"> I heard from Person X that... 		Clarification prompt; personal knowledge or first-hand experience?



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Framing Effect

- Relying on the way information is presented when making judgments or decisions
- Equivalent information can be more or less attractive depending on **how** the information is delivered

Examples:

1. Presenting information through empirical research findings vs. a person's anecdotal personal experience or opinion
2. Providing feedback in an "angry, raised voice" vs. a "more-balanced emotional posture"



Q & A



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