

Hearing Panel Training University of St. Thomas Sexual Misconduct Policy and Institutional Response

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What to Expect

- Changes to Title IX
- Highlights of Sexual Misconduct Policy and Processes
- University Response



Changes to Title IX and Policy

- New rule released in May
- Policy and process update implemented in August
- Delineation between Title IX-based sexual misconduct and non-Title IX-based sexual misconduct
- Changes to grievance procedures

Sexual Misconduct Policy and Processes



Required Response

If University has **actual knowledge** of sexual harassment, immediate action is required to:

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graph LR; A[Eliminate harassment] --> B[Prevent recurrence]; B --> C[Address effects];
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Eliminate
harassment

Prevent
recurrence

Address
effects



Employee Reporting Obligation

- Actual knowledge **under Title IX** = Officials with Authority
- Employee obligation to report **under University policy** remains unchanged



Officials with Authority

- Title IX Coordinator
- Human Resources Business Partner
- Dean of Students
- Associate and Assistant Deans within the Dean of Students Office
- Public Safety supervisors and officers
- President
- Executive Vice President and Provost
- Vice Provost for Academic Affairs
- Associate Vice Provosts
- Vice Presidents
- Associate Vice Presidents
- Deans of each St. Thomas school or college
- Associate and Assistant Deans of each St. Thomas school or college
- Rector/Vice President of The Saint Paul Seminary School of Divinity
- Department chairs and directors of departments, programs, centers, offices and institutes
- Community Directors and Hall Directors in student residence halls



Harassment

Assault

Stalking

Sexual Misconduct
Policy

Domestic
Violence

Exploitation

Dating Violence



Title IX vs. Non-Title IX

- Non-Title IX = broader range of conduct and broader jurisdiction/scope of application
- Title IX = federally mandated specific grievance procedures
- St. Thomas-specific: certain non-Title IX also utilizes Title IX grievance procedures **for students**



Title IX-Based Sexual Misconduct

- **Quid pro quo** harassment
- Unwelcome conduct so severe, pervasive, **and objectively offensive** that it **effectively denies** equal access to education program/activity
- **Sexual assault**
- **Dating violence**
- **Domestic violence**
- **Stalking** (fear for safety of self/others or substantial emotional distress)



Title IX-Based Sexual Misconduct: Scope of Application

Must meet substantive threshold on previous slide AND

- Both parties are 'Covered Persons;'
- Complainant in U.S. at time of reported conduct;
- Occurred on campus or within St. Thomas education program or activity



Additional Policy Notes

- Amnesty
- Non-retaliation
 - Now includes refusing to participate
- Supportive measures
 - Increased focus on unreasonable burden on other party
- Emergency removal (student)
 - Very narrow application– immediate threat to physical health/safety
- Administrative leave (faculty/staff employee)
 - Formal complaint filed and response process initiated

University Processes for Addressing a Report





University Processes

- **Resources and support**
 - no process
- **Alternative Resolution (90 days)**
 - Notice
 - Formal complaint required if TIX
 - Flexible process options
 - Three days to accept or initiate formal process
 - Outcome is final
- **Formal Process (90 days)**
 - Notice and formal complaint
 - Investigation + recommendation (TIX) or investigation + determination (non-TIX)
 - Live hearing (if TIX/certain non-TIX) + independent determination
 - Appeal (optional)



Alternative Resolution

- Utilized when:
 - Complainant doesn't want to follow formal process
 - Respondent accepts responsibility + sanctions
 - TIX Coord determines appropriate process
 - Other appropriate circumstances
- Available on its own or up to live hearing
- Requires notice and voluntary, written consent
- If involve sanctions, results are final
- Precludes hearing

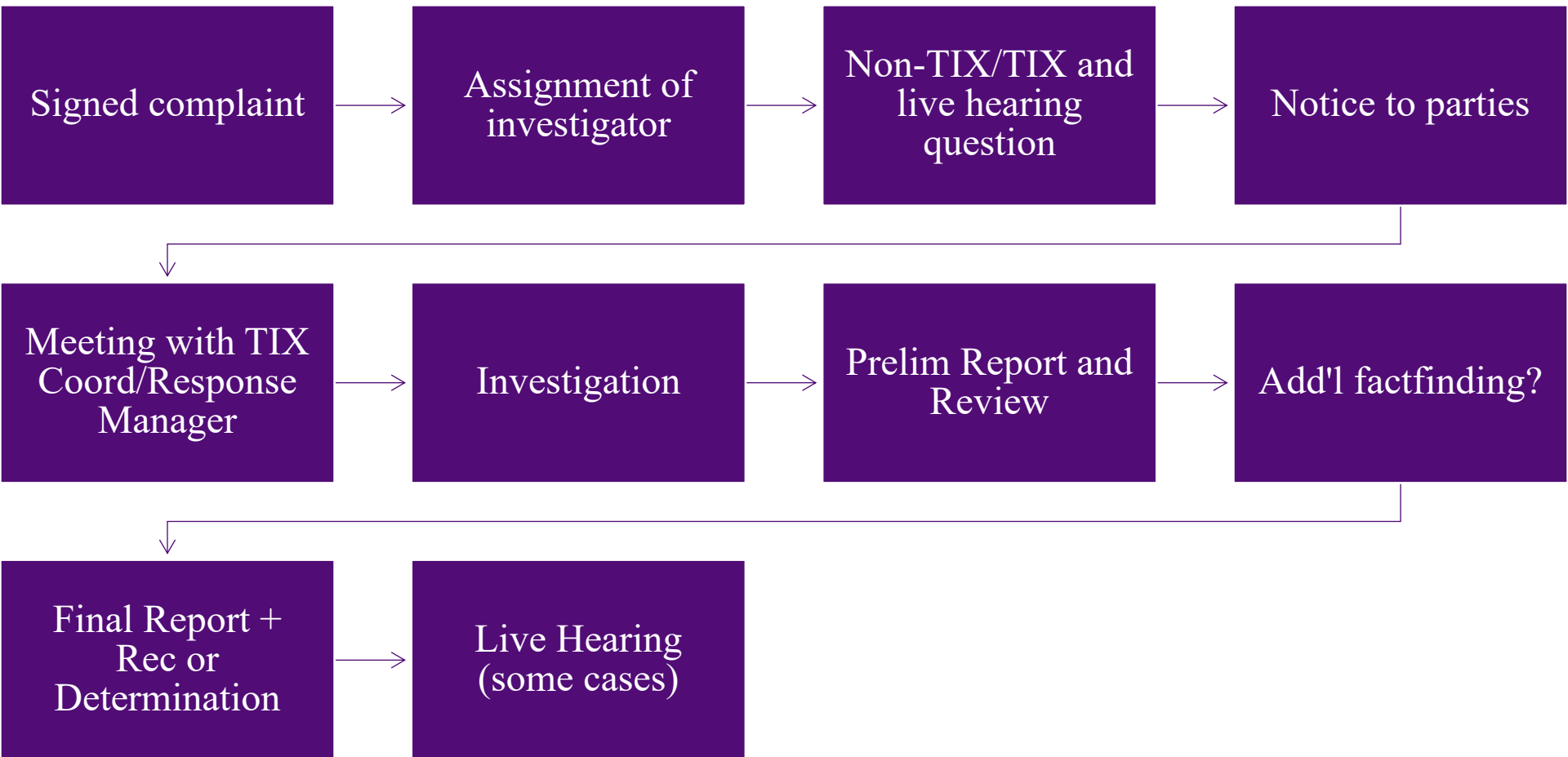


Formal Process: Equitable

- Prompt + impartial investigation and resolution
- Equitable opportunity to identify witnesses/evidence/questions
- Opportunity to meet with investigator
- Similar and timely access to review evidence and meaningfully respond
- Timely notice of meetings and hearings
- Opportunity to have support person and hearing advisor
- Opportunity to decide when and whether to participate/provide description
- Remedies to complainant when determination of responsibility



Formal Process: Steps





Formal Process: Pre-Hearing and Logistics

- Timing
- Hearing Panel
- Hearing Advisor
- Recording
- Virtual attendance



Formal Process: General Principles

- Non-participation + no inference
- Role of hearing advisor
- Submission to cross-examination
- If party disagrees with relevancy determination
- Non-statement evidence
- Determination when party/parties don't appear

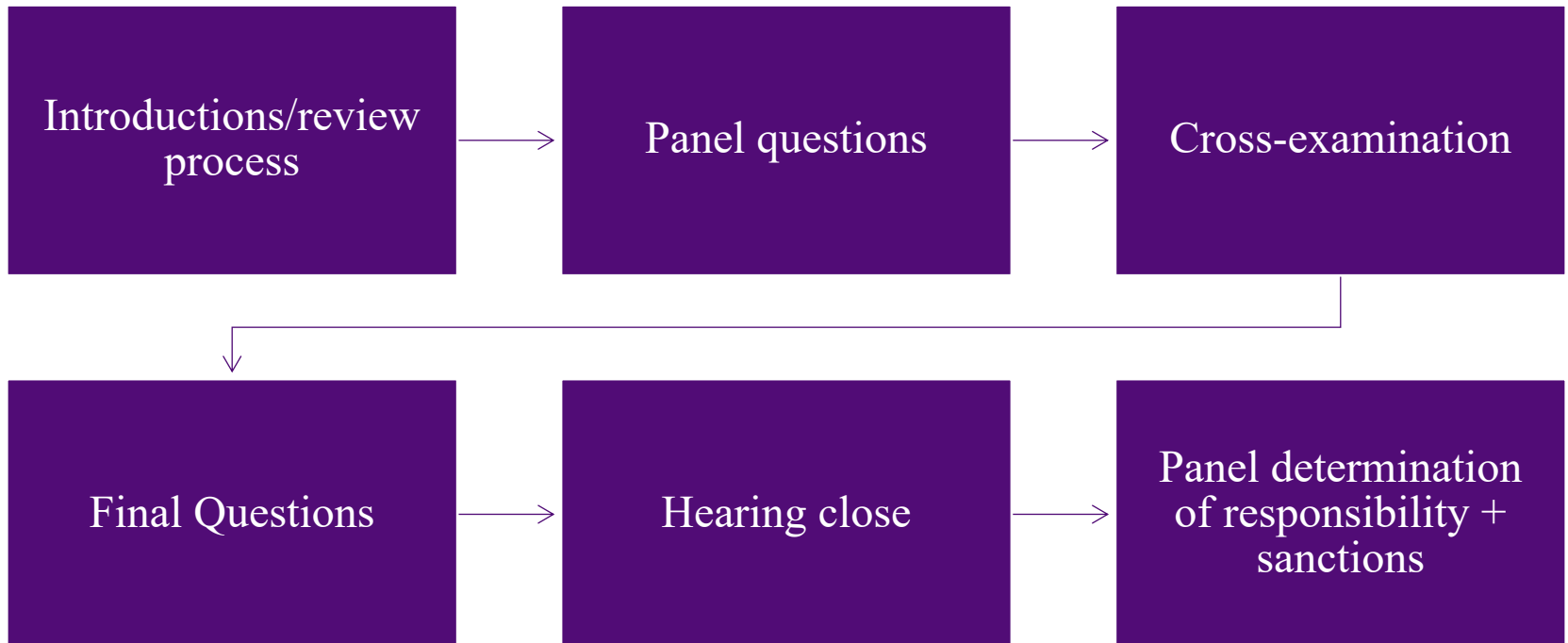


Formal Process: Role of Panel

- Independent determination of responsibility
 - Based on preponderance of evidence standard (more likely than not)
- Review all materials provided to parties
- Have opportunity to hear directly from parties and witnesses prior to making determination
- Chair
 - Oversee hearing process
 - Relevancy determinations



Formal Process: Live Hearing





Formal Process: Relevancy

- Chair makes determination after question asked but before answered
- Explain any decision to exclude
- Standard: whether a question asks about information that is probative of any material fact concerning the allegations
 - Does it seek evidence/information likely to prove whether important facts regarding allegations are more or less true?



Formal Process: Relevancy Ctd.

- Generally irrelevant/not appropriate:
 - Information protected by legally recognized privilege
 - Evidence of Complainant's prior sexual history, unless
 - To prove someone other than Respondent committed alleged conduct
 - Concern specific instances of prior sexual behavior with Respondent and offered to prove consent
 - Any party's medical, psychological, and similar records unless party has given voluntary, written consent
 - Questions that are duplicative or repetitive



Formal Process: Post-Hearing

- Written determination
- Notice of Outcome to parties
- Opportunity to appeal

Questions?

