



2020 TITLE IX INFORMAL RESOLUTION FACILITATOR TRAINING

A Certificate Course



COURSE OVERVIEW

1	An Introduction to Title IX	6	Fostering Participant Trust in the Process
2	Overview of the Title IX Regulations	7	Facilitating Informal Resolution Meetings
3	Identifying Informal Resolution Approaches	8	Informal Resolution Agreements and Outcomes
4	Evaluating Cases for Informal Resolution Suitability	9	Potential Challenges in Facilitating Informal Resolution Processes
5	Pre-Informal Resolution Meetings	10	Understanding Trauma

LEARNING OBJECTIVES



Describe the role of a Title IX Informal Resolution Facilitator as it relates to the formal grievance process.



Understand informal resolution facilitation procedural requirements under Title IX.



Identify methods and approaches in facilitating informal resolution options.



Develop a trauma-informed framework for working with Parties in Title IX informal resolution.



Organize a Title IX informal resolution facilitation plan from initial meeting to final outcomes.

LESSON COMPLETION

Title IX Solutions, LLC

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Level I: Navigating the 2024 Title IX Regulations with Confidence

3% complete

Search by lesson title

Pre-Training Materials0/3

Decoding the 2024 Title IX Regulations: A Roadmap for Educational Institutions1/6

DRAFT

Chapter & Speaker Introduction

VIDEO • < 1 MIN • PREREQUISITE • DRAFT

Defining Sex Discrimination & Sex-Based Harassment

VIDEO • < 1 MIN • PREREQUISITE • DRAFT

Revised Scope & Jurisdiction

Revised Scope & Jurisdiction

106.31 – EDUCATION PROGRAM

“In the limited circumstances in which Title IX or this part permits different treatment or separation on the basis of sex, a recipient must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm.”

Up next

Policy, Training & Reporting Requirements

CONTINUE →

Noted Changes

- 106.31(a)(2) was added addressing gender identity

Comments

- There is pending litigation regarding gender identity protection that may impact this part of the regulations.

MARK INCOMPLETE

CONTINUE →

TITLE IX SOLUTIONS, LLC

STEPPING AWAY

CERTIFICATE OF COMPLETION

THIS CERTIFICATION OF COMPLETION IS AWARDED TO:

CARTER WILSON

FOR SUCCESSFULLY COMPLETING

*LEVEL I: NAVIGATING THE 2020 TITLE IX REGULATIONS
WITH CONFIDENCE*

ON JULY 18, 2020

Learning Objectives:

- Articulate the key changes outlined in the revised 2024 Title IX regulations, including the updated scope of sex-based harassment and discrimination
- Explain the new requirements for institutions in responding to complaints, including investigation procedures and timelines
- Identify and differentiate the roles of various Title IX personnel within your institution
- Develop strategies for implementing the new Title IX regulations effectively within your educational setting through policy and practice
- Facilitate prompt, equitable, and compliant grievance processes of sex-based harassment and discrimination complaints
- Apply best practices to foster a safe and inclusive education program



Cara Kuhn
CARA KUHN
Training Coordinator
Title IX Solutions, LLC



POSTING REQUIREMENTS

In accordance with the 2020 Title IX Regulations, institutions must post “all materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an informal resolution process.”
34 C.F.R. 106.45(b)(10)(i)(D).

Such training materials must also be kept for seven years.

POSTING REQUIREMENTS

- ☐ Facilitating Informal Resolution Processes 0/4 ▾
- ☐ Informal Resolution Agreements and Outcomes 0/2 ▾
- ☐ Potential Challenges in Facilitating Informal Resolution Processes 0/2 ▾
- ☐ Understanding Trauma 0/6 ▾
- ☐ Course Wrap-up 0/3 ▾
- ☐ Title IX Posting Requirements 0/2 ▲

☐ Instructions for Posting Title IX Solutions Training Materials on Institutional Websites
INSTRUCTIONS · PREREQUISITE

☐ Final Combined Course Materials
DOWNLOAD

Instructions for Posting Title IX Solutions Training Materials on Institutional Websites

Thank you for participating in a Title IX Solutions Certification Training!

Please follow these instructions as you post the training materials to your school's website to comply with Title IX Regulation 106.45(b)(10)(i)(d).

Contact adrienne@titleixsolutions.com or tawny@titleixsolutions.com with any questions regarding the posting of Title IX Solutions' training materials.

Program materials available for download:

If you haven't done so already, you can find and download the program materials for this course by clicking on the next lesson named "Final Combined Course Materials".

Instructions for posting the above training program materials are outlined below:

Step 1: Publish Authorization & Disclaimer

COMPLETE & CONTINUE →

COURSE SUPPORT



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Courses

[2022 IX Institute Free Content](#) [2023 IX Institute Free Content](#) [2024 Title IX Training](#) [All Courses](#) [Level II Training](#) [Level I Training](#)



June 27-28, 2024: In-Person Title IX Training (Atlanta, GA)



An Introduction to the 2024 Title IX Regulations



July 23-24, 2024: Virtual Title IX Training
Use code INTD24DECS to save \$100

THANK YOU!



TITLE IX SOLUTIONS, LLC

—
AN
INTRODUCTION
TO TITLE IX



SPEAKER

CARA KUHN

TRAINING COORDINATOR

TITLE IX SOLUTIONS

IN THIS CHAPTER

A large, white, serif Roman numeral 'IX' centered within a white square border.

HISTORY OF
TITLE IX



TITLE IX
DEFINITIONS



PARTICIPANTS IN THE
TITLE IX PROCESS



OVERVIEW OF THE
TITLE IX PROCESS

HISTORY OF TITLE IX



Title IX of the Education Amendments of 1972

“

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance[.]”

”

20 U.S.C. §1681(a)

CREATION OF TITLE IX

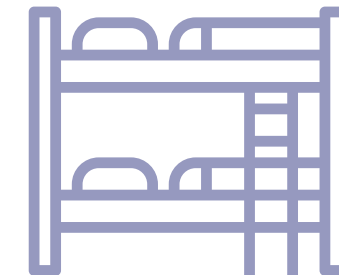
Followed the Civil Rights Act of 1964 to address discrimination on the basis of sex

Created and enacted for educational institutions (K to Postsecondary)

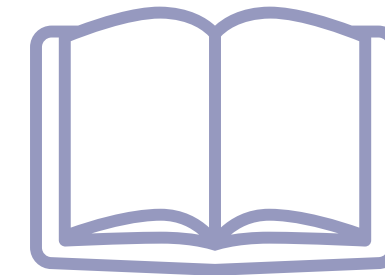
Designed initially to address inequities in:



Admissions



Residence
Life



Academic
Opportunities



Extracurricular
Activities

WHO IS PROTECTED?

All students regardless of:

- Sexual Orientation
- Gender Identity
- Nationality
- Immigration Status
- Race
- Ability

All genders are included

Employees - faculty, staff, administrators

Applies to:

- State and local educational agencies that receive federal funding
 - Vocational, professional, and higher education institutions

BRIEF HISTORY OF TITLE IX



JUNE 23, 1972

Title IX becomes
law and addresses
sex-based
discrimination



APRIL 4, 2011

Guidance expands
Title IX to include
sexual harassment,
dating and domestic
violence, sexual
assault, and stalking



AUGUST 14, 2020

New regulations go into
effect, requiring all
educational institutions
to follow specific
procedures in response
to sexual harassment

NOTE ON THE 2024 REGULATIONS

IN APRIL OF 2024, THE DEPARTMENT OF EDUCATION RELEASED NEW REGULATIONS EXPANDING THE SCOPE OF TITLE IX.

- Many states have challenged these new regulations through injunctions which has led to different school and states following different Title IX guidance.
- Title IX is a continually evolving landscape which makes training that much more important!

TITLE IX DEFINITIONS



ACTUAL KNOWLEDGE

- "[N]otice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient" (Postsecondary)
- Notice of sexual harassment or allegations by ANY employee of an elementary or secondary school
- Includes reports sent to the Title IX Coordinator in person, by mail, by telephone, by email, or by any other means that results in the Title IX Coordinator receiving a person's written or oral report

REPORT VS. COMPLAINT

REPORT

- May allege sexual harassment, sex discrimination, or sexual misconduct
- May be written or oral
- May be submitted by any person, not just the alleged victim
- May be anonymous
- May be made at any time
- May be made in person or by mail, phone, email or any other means

FORMAL COMPLAINT

- Required for initiation of the Title IX grievance process
- Can be oral or written
- Cannot be filed anonymously or by a third-party
- Request to the school that **objectively can be understood as a request for the school to investigate** and make a determination

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REMINDER:



**MAKING A REPORT OR A COMPLAINT
TO YOUR INSTITUTION OR
CONFIDENTIAL RESOURCE IS NOT
EQUIVALENT TO FILING CHARGES
WITH LAW ENFORCEMENT.**

SUPPORTIVE MEASURES

WHAT?

- Non-disciplinary, non-punitive services offered to the Complainant & Respondent
- Includes measures designed to protect the safety of all Parties or the school's educational environment, or to deter sex discrimination and sexual harassment

WHEN?

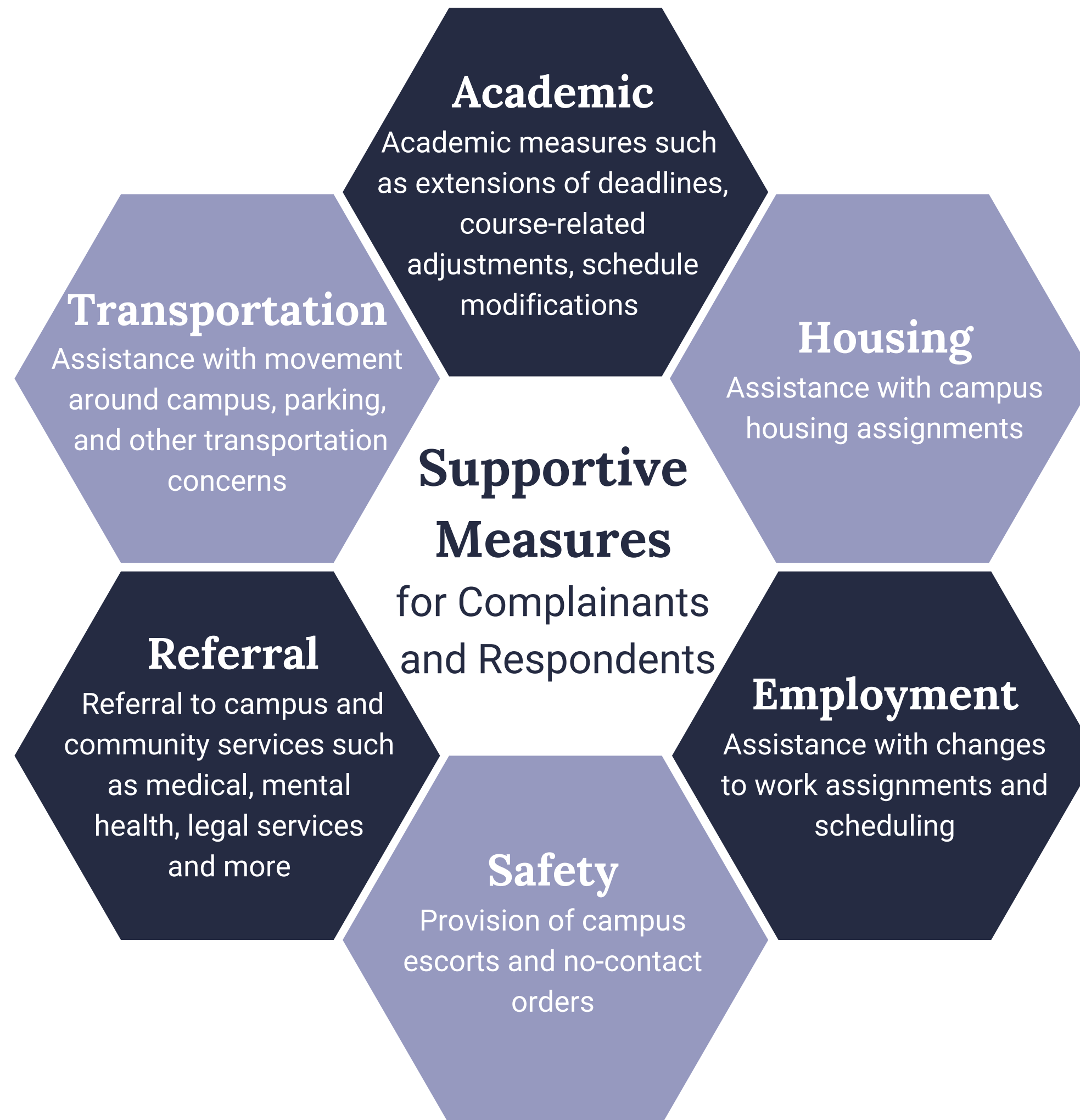
- Available before or after filing a complaint or where no complaint has been filed

WHY?

- Offered without fee or charge to the Complainant or Respondent; as appropriate and reasonably available

HOW?

- Designed to restore or preserve equal access to the school's education program or activity without unreasonably burdening the other party



AMNESTY PROVISION

- Not required under Title IX but often included in the policy to encourage reporting
- Individuals may not be subject to disciplinary action for a minor violation of other school polies (e.g., Code of Conduct) when participating in a Title IX investigation

SCENARIO



Sam is a college freshman and was sexually assaulted at a house party. Sam had been drinking heavily and is scared to report the assault as they are underage.

CONFIDENTIALITY

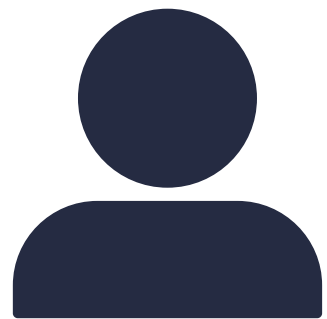
- Explicitly stated in Title IX
- Identities of the reporting parties, Complainants, Respondents, and Witnesses are to remain confidential
 - Identities of these individuals will be known to the individuals conducting the Title IX process

RETALIATION

- Intimidation, threats, coercion, or discrimination against any individual for either of the following reasons:
 - Interfering with any right or privilege under Title IX
 - Because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX

RETALIATION

All persons are prohibited from retaliating against reporting parties, Complainants, Respondents, Witnesses, and others who participate in the Title IX process.



EXAMPLE ONE:

Friends of the Complainant intimidating the Respondent, or vice versa.



EXAMPLE TWO:

School personnel discriminating against an individual for refusing to participate in the Title IX process.

REMEDIES AND SANCTIONS

REMEDIES

- Offered to Complainants
- Designed to restore or preserve equal access to the school's education program or activity
- May be the same as supportive measures
- DO NOT need to be "non-punitive" or avoid burdening the respondent

SANCTIONS

- Available after the grievance process is complete
- List or range of remedies and sanctions should be listed in policy
- Issued to Respondents found responsible for violating the school's sexual harassment policy, following the conclusion of the Title IX grievance process

EDUCATION PROGRAM OR ACTIVITY

THE EDUCATIONAL PROGRAM OR ACTIVITY INCLUDES ALL OPERATIONS OF THE SCHOOL, BOTH ON OR OFF CAMPUS.

- Includes locations, events, or circumstances over which the school exercises substantial control over both:
 - The Respondent, and
 - The context in which an incident of sexual harassment occurs
- Includes any building owned or controlled by student organizations which are officially recognized by the school (including fraternity & sorority houses)
- Includes computer and internet networks, digital platforms and computer hardware or software owned or operated by, or used in the operations of the school

STANDARD OF PROOF

STANDARD USED TO DETERMINE WHETHER OR NOT A SEXUAL HARASSMENT POLICY VIOLATION OCCURRED.

Preponderance of the Evidence

- Evidence demonstrates it is “more likely than not” the alleged conduct or policy violation occurred
- Greater than 50% chance a policy violation occurred

Clear and Convincing

- Evidence is highly and substantially more likely to be true than untrue
- A higher standard of evidence to meet when compared to the “preponderance of the evidence” standard

STANDARD OF PROOF

Preponderance of the Evidence

Anything that tips the scale to more than 50/50

Clear and Convincing

More likely to be true than untrue, substantial evidence to support

Beyond a Reasonable Doubt

Criminal court standard, overwhelming amount of evidence to support

Not enough evidence to support a finding of responsibility, doesn't necessarily mean the claim is false

Where does your needle point?

PARTICIPANTS IN THE TITLE IX PROCESS



OVERVIEW

TITLE IX PERSONNEL VARY, DEPENDING UPON SEVERAL FACTORS:

- Institution size
- Institution type
 - K-12
 - Community/two-year colleges
 - Four year colleges and universities
 - Public/private
- Institution structure and resources
 - Organizational charts and reporting
 - Full-time/part-time
 - Budget



TITLE IX PERSONNEL

EXCEPT FOR THE TITLE IX COORDINATOR, TITLE IX PERSONNEL MAY BE INTERNAL OR EXTERNAL.



Title IX
Coordinator



Deputy
Coordinators



Title IX
Investigator



Decision-
Maker



Informal Resolution
Facilitator



Advisor



Appellate
Decision-Maker

TITLE IX COORDINATOR

EVERY SCHOOL MUST HAVE A DESIGNATED TITLE IX COORDINATOR.

CAN

- Serve as the Title IX Investigator
- Serve as the Informal Resolution Facilitator
- Have other roles on campus
 - Dean of Students, Director of Human Resources, etc.

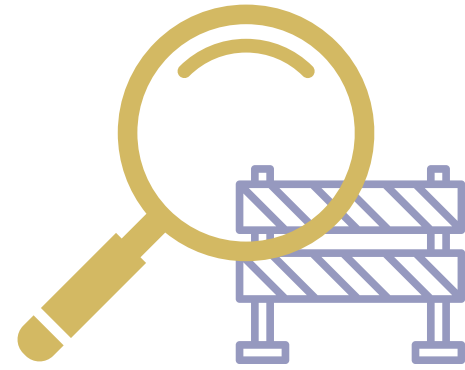
CANNOT

- Serve as the Title IX Decision-Maker
- Serve as the Appeals Decision-Maker

TITLE IX COORDINATOR



Ensure Compliance



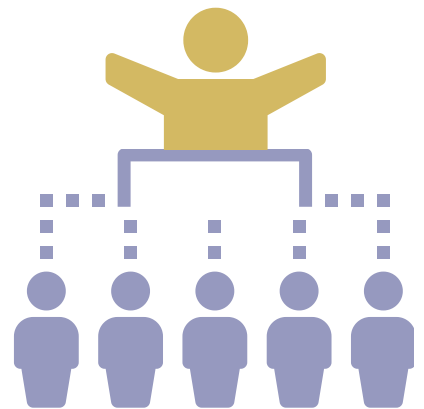
Monitors barriers
to reporting



Receive reports



Training



Oversees grievance
procedures



Offers supportive
measures

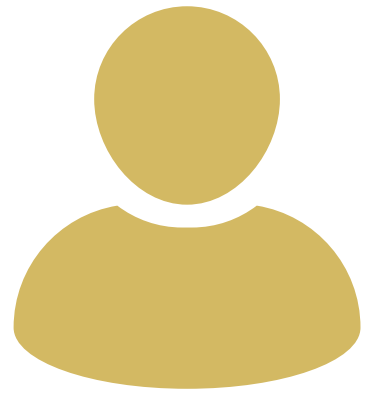


Creates policy and
procedures



Determine initiation
of complaint

TITLE IX INVESTIGATOR

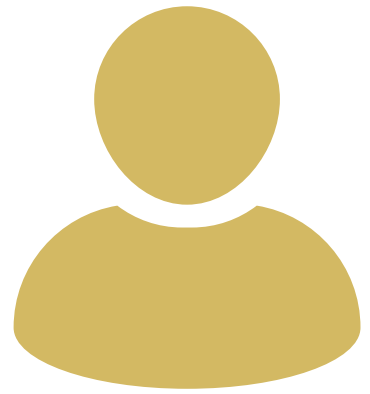


MAY BE THE TITLE IX COORDINATOR, OTHER SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR.

RESPONSIBILITIES:

- Collects evidence and interviews the Parties and Witnesses
- Provides all evidence to the Parties and their Advisors for inspection and review
- Creates an investigative report that fairly summarizes relevant evidence
- Sends the investigative report to the Complainant, Respondent, Advisors, and Decision-Maker

TITLE IX DECISION-MAKER

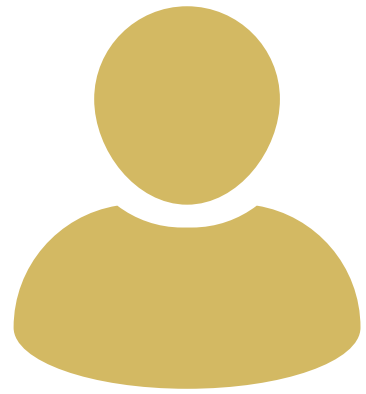


MAY BE A SINGLE DECISION-MAKER OR A HEARING PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).

RESPONSIBILITIES:

- Oversees and facilitates the Title IX adjudication process, including a hearing if the school has one
- Supervises the conduct of the involved Parties and their Advisors
- Determines the relevance of evidence and questions presented during the credibility assessment process
- Drafts and issues the written determination regarding responsibility
- Issues sanctions when appropriate

APPELLATE DECISION-MAKER



MAY BE A SINGLE APPELLATE DECISION-MAKER OR APPELLATE PANEL, SCHOOL EMPLOYEE(S), OR INDEPENDENT CONTRACTOR(S).

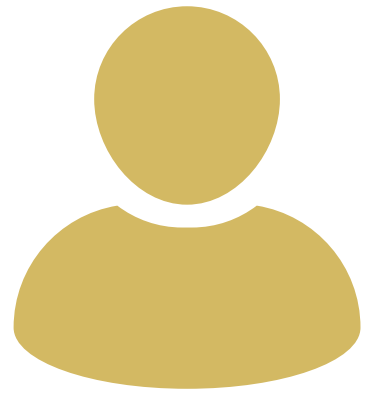
RESPONSIBILITIES:

- Reviews the appeal from the Party & the other Party's response (if any)
- Drafts and issues the final determination



Specific appellate procedures vary at every school, so refer to the school's policy for details.

INFORMAL RESOLUTION FACILITATOR

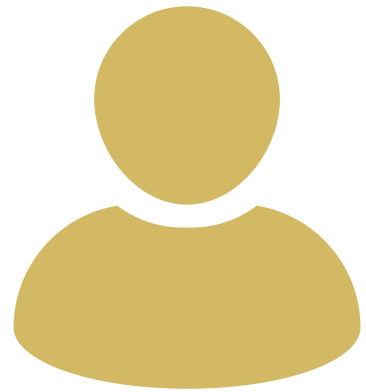


MAY BE A SCHOOL EMPLOYEE, OR INDEPENDENT CONTRACTOR. CAN BE THE TITLE IX COORDINATOR.

RESPONSIBILITIES:

- Provides information to the Parties and Advisors about the informal resolution process
- Various forms of informal resolution may be available
- Facilitates the informal resolution process
- Drafts informal resolution settlement agreements at the conclusion of the process (if the complaint is resolved)

ADVISOR



COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.



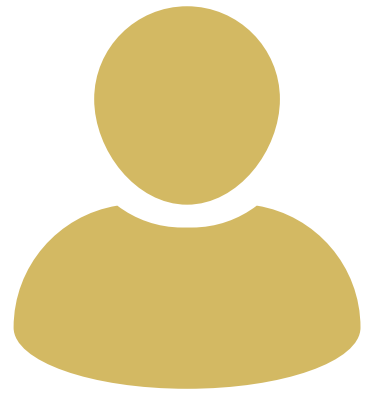
An Advisor may be, but is not required to be, an attorney.



A party's Advisor may be a friend, teacher, parent, professor, etc.

- School must provide an Advisor for the live hearing if a Party does not have one present
- School cannot limit the choice or presence of the Advisor for either Party in any meeting
- Parties have the option to include the Advisor in any meeting or investigative interview
- Schools may set specific expectations or provide guidelines for Advisors to follow during meetings, investigative interviews, and the hearing

ADVISOR



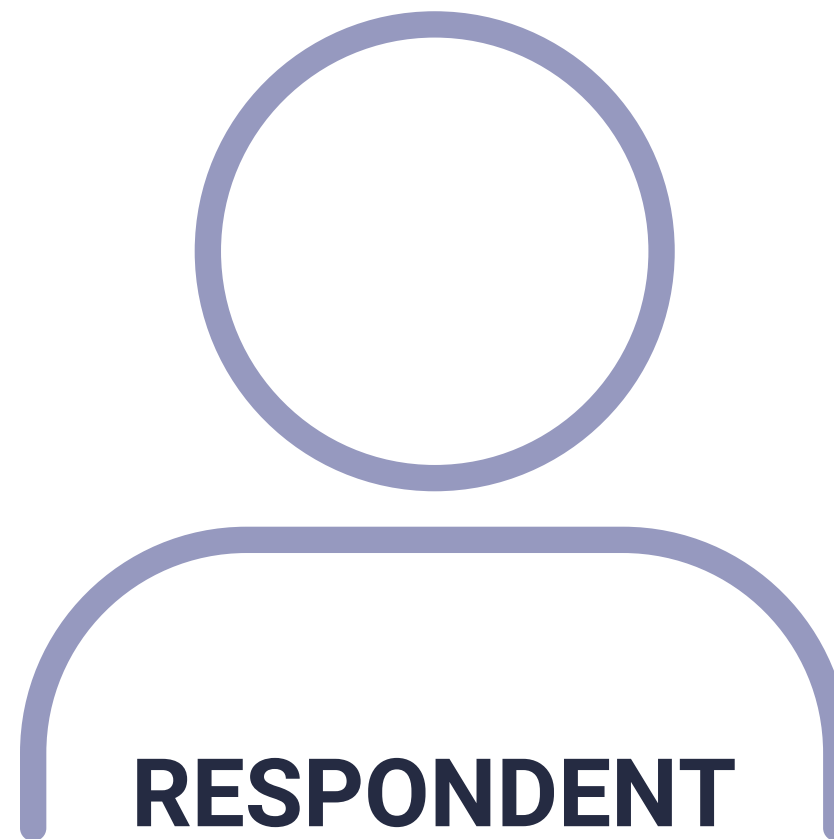
COMPLAINANT AND RESPONDENT HAVE THE RIGHT TO AN ADVISOR OF THEIR CHOICE.

RESPONSIBILITIES:

- Supports their Party by accompanying them during interviews, meetings, and the credibility assessment process
- Provides information regarding the Title IX process and resources available
- Reviews the investigative report and all evidence, as well as help craft a response
- Participates in the hearing and conducts cross-examination

PARTIES IN THE PROCESS

ASIDE FROM THE TITLE IX PERSONNEL WHO TAKE PART IN THE FACILITATION OF THE GRIEVANCE PROCESS, WE WILL ALSO SEE THESE INDIVIDUALS INVOLVED:



COMPLAINANT

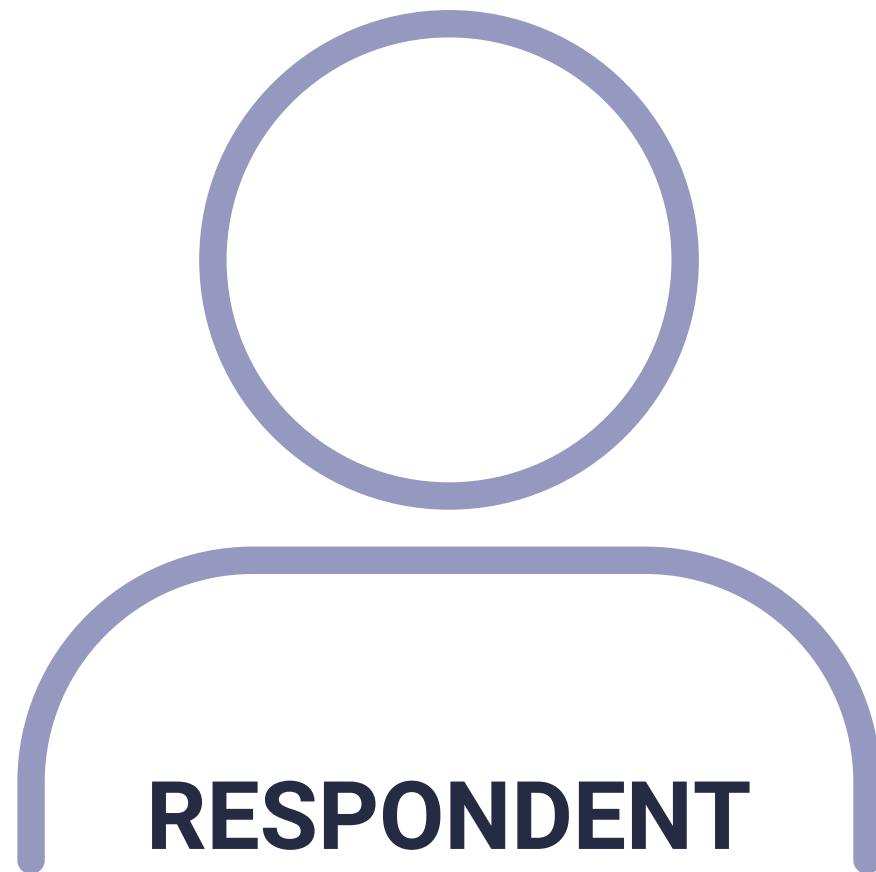
ALLEGED TO BE THE **VICTIM** OF CONDUCT THAT COULD
CONSTITUTE SEXUAL HARASSMENT



- May be a student, employee, or other community member
- Must be participating in or attempting to participate in the school's education program or activity with which the complaint is filed
- There may be more than one Complainant in a case

RESPONDENT

REPORTED TO BE THE ALLEGED **PERPETRATOR** OF CONDUCT THAT COULD CONSTITUTE SEXUAL HARASSMENT.



- May be a student, employee, community member, or non-community member
 - The school's ability to respond to incidents perpetrated by non-community member Respondents may be limited
- School may dismiss the complaint if the Respondent is no longer enrolled or employed by the school
- There may be more than one Respondent in a case

WITNESS

**INDIVIDUALS THAT ARE IDENTIFIED IN THE GRIEVANCE PROCESS AS
HAVING INFORMATION THAT MAY SUPPORT OR REFUTE ALLEGATIONS OF
SEXUAL HARASSMENT.**



- May be identified by the Complainant, Respondent, or institution
- Could have first-hand knowledge regarding allegations or may have other information that could be helpful in an investigation
- There may be multiple witnesses in a case

OVERVIEW OF THE TITLE IX PROCESS



DURING THE TITLE IX GRIEVANCE PROCESS:

A SCHOOL MUST:

- Treat Complainants and Respondents equitably
- Require objective review of all relevant evidence
- Train Coordinators, Investigators, Decision-Makers, and Informal Resolution Facilitators and ensure they are free of conflicts of interest and bias
- Include a presumption that Respondent is not responsible for allegations until determination is reached at conclusion of grievance process

GOAL OF TITLE

ULTIMATELY, THE GOAL OF TITLE IX IS TO:



Stop the harassment or discrimination



Prevent future recurrence of harassment or discrimination



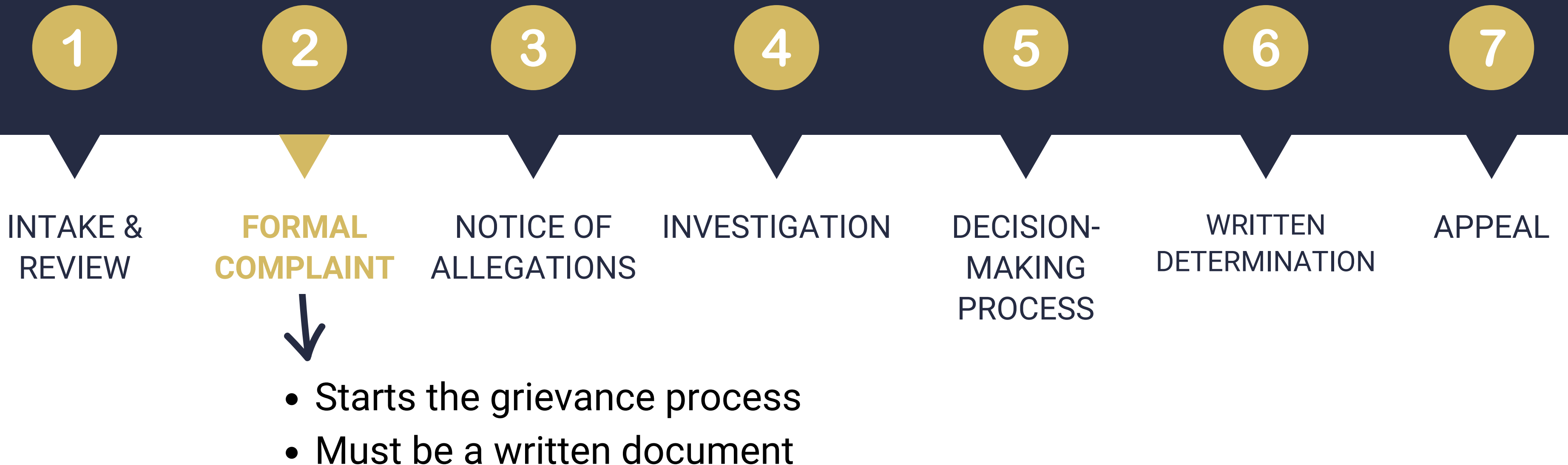
Remedy the effects of harassment or discrimination

GRIEVANCE PROCESS



- Title IX Coordinator must respond in a way that's not deliberately indifferent
- Meet with the Complainant to discuss supportive measures and process for a formal complaint

GRIEVANCE PROCESS



GRIEVANCE PROCESS



- Provided to both parties outlining the grievance procedures, information about the allegations, prohibition of retaliation, and the parties' rights

GRIEVANCE PROCESS



- Parties have the opportunity present witnesses and evidence
- Parties also have the right to access, review and respond to evidence gathered during the investigation

GRIEVANCE PROCESS



- Decision-maker has opportunity to question parties and witnesses to evaluate allegations and assess credibility

*Some conduct does not require a live hearing. The Title IX Coordinator will be able to help identify cases when a live hearing is required and cases when it is not.

GRIEVANCE PROCESS



- Standard of evidence is used to determine whether a policy violation occurred
- Notification is issued to the parties in writing

GRIEVANCE PROCESS



- Parties have the right to appeal the process on the following bases:
 - Procedural irregularity that would change the outcome
 - New evidence that would change the outcome and that was not reasonably available when the determination was made
 - The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias that would change the outcome

INFORMAL RESOLUTION

AT ANY TIME PRIOR TO DETERMINING WHETHER SEXUAL HARASSMENT OCCURRED, A SCHOOL MAY OFFER TO A COMPLAINANT AND RESPONDENT AN INFORMAL RESOLUTION PROCESS.

- Cannot offer informal resolution if the complaint includes allegations that:
 - An employee engaged in sexual harassment of an elementary school or secondary school student
 - Process would conflict with Federal, State or local law
- Schools cannot require or pressure the parties to participate in an informal resolution process.
- The school must obtain the parties' voluntary consent to the informal resolution process

TITLE IX SOLUTIONS, LLC

OVERVIEW OF THE TITLE IX REGULATIONS

TITLE IX SOLUTIONS, LLC

IN THIS CHAPTER



INTRODUCTION TO
THE TITLE IX
REGULATIONS



SEXUAL HARASSMENT
AND RECIPIENT
RESPONSE



TITLE IX GRIEVANCE
PROCESS FOR
FORMAL COMPLAINTS

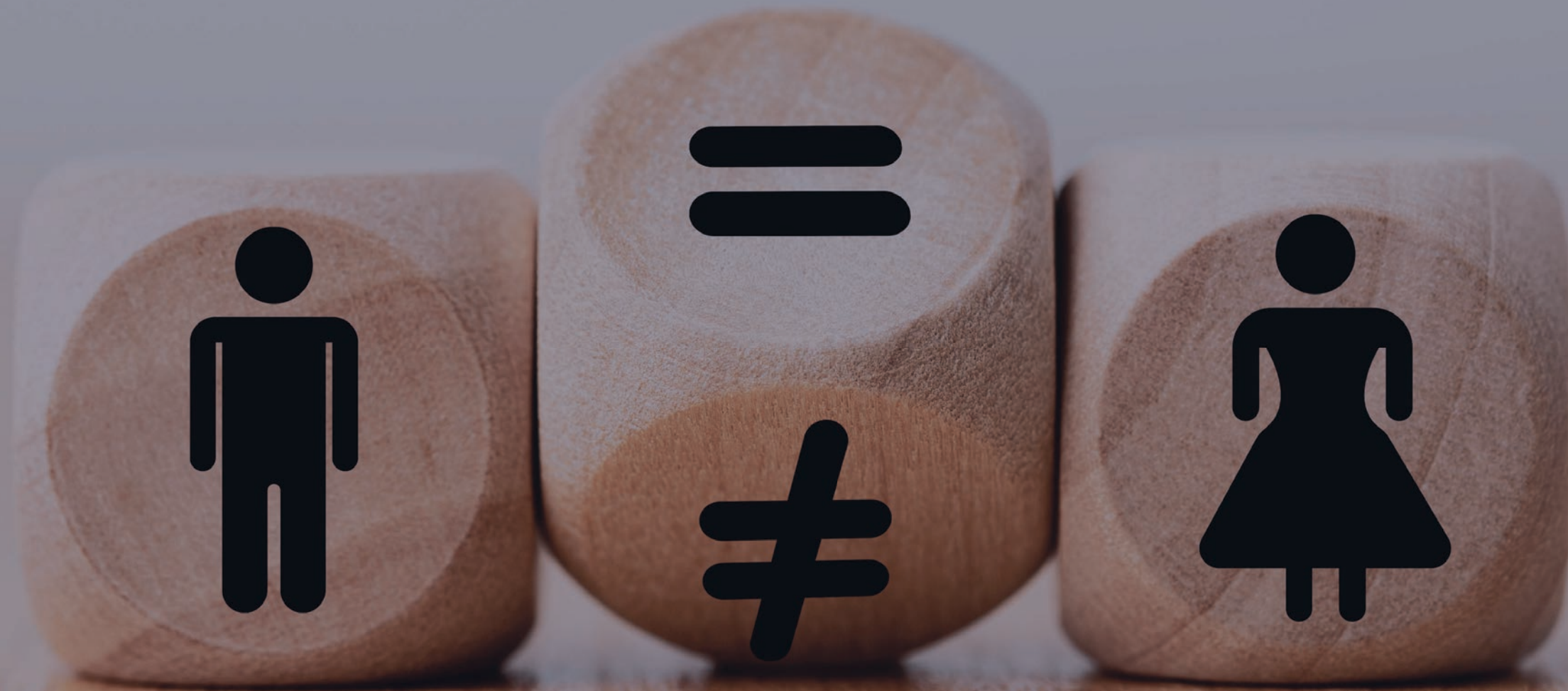


SPEAKER

PATRICK MATHIS, J.D.

CO-FOUNDER & MANAGING MEMBER
TITLE IX SOLUTIONS

INTRODUCTION TO THE TITLE IX REGULATIONS



TITLE IX COVERAGE

POSTSECONDARY INSTITUTIONS

Includes:

- Undergraduate schools
- Graduate schools
- Vocational schools
- Professional schools/programs

ELEMENTARY & SECONDARY SCHOOLS

Includes:

- Preschools and Pre-K programs
- Private elementary and secondary schools
- Charter schools

WHAT IS A RECIPIENT?

§106.2

Definitions

"Any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and which operates an education program or activity which receives such assistance, including any subunit, successor, assignee, or transferee thereof."

COMPLIANCE WITH THE REGULATIONS

RECIPIENTS MUST COMPLY WITH THE REQUIREMENTS OF TITLE IX AS OUTLINED UNDER THE REGULATIONS.

Recipients may:

- Provide guidelines, policies or protocols through their codes of conduct beyond the scope of the regulations;

and/or

- Provide details regarding policies or procedures which are not addressed in the regulations

SCHOOL'S REQUIRED RESPONSE

**PROMPT AND
EQUITABLE
GRIEVANCE
PROCEDURES**



Sex Discrimination



Sexual Harassment

(§106.45)

ALWAYS REFER TO YOUR SCHOOL'S TITLE IX POLICY!

WHEN IS SEXUAL HARASSMENT ACTIONABLE?



When it denies a
person equal
access to education

TITLE IX'S APPLICATION

REGULATIONS APPLY EQUALLY TO ALL PERSONS,
REGARDLESS OF:



Gender Identity or Expression

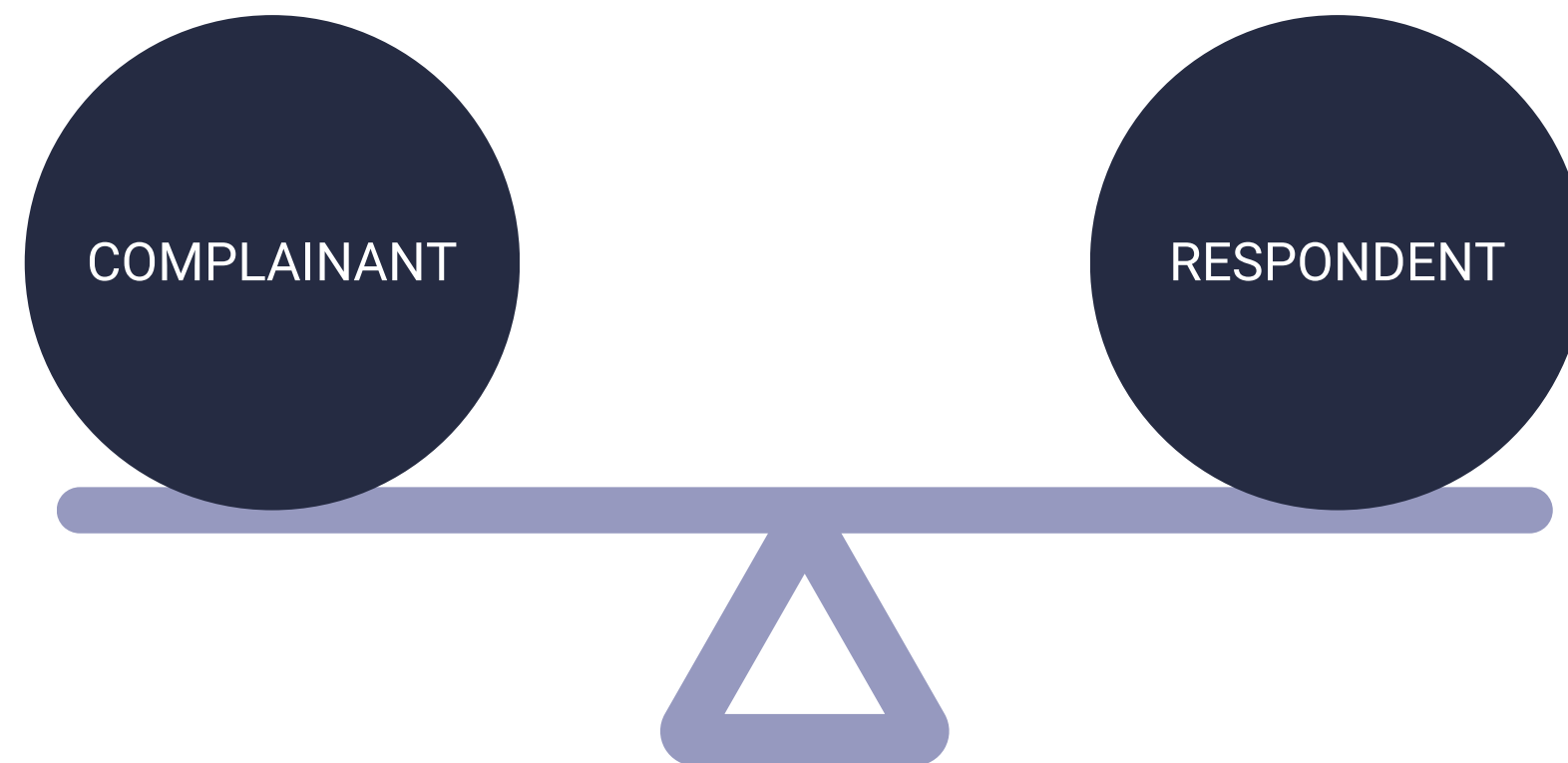


Sexual Orientation

TREATMENT OF THE PARTIES

A SCHOOL MUST TREAT BOTH PARTIES EQUITABLY AND EQUALLY THROUGHOUT THE PROCESS.

This includes supportive measures, investigations, and the grievance process



BIAS AND CONFLICT OF INTEREST

§106.45 (b)(1)(3)

Grievance
process for
formal
complaints of
sexual
harassment

"...that any individual designated by a recipient as a Title IX Coordinator, Investigator, Decision-Maker, or any person designated by a recipient to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."

TITLE IX PERSONNEL

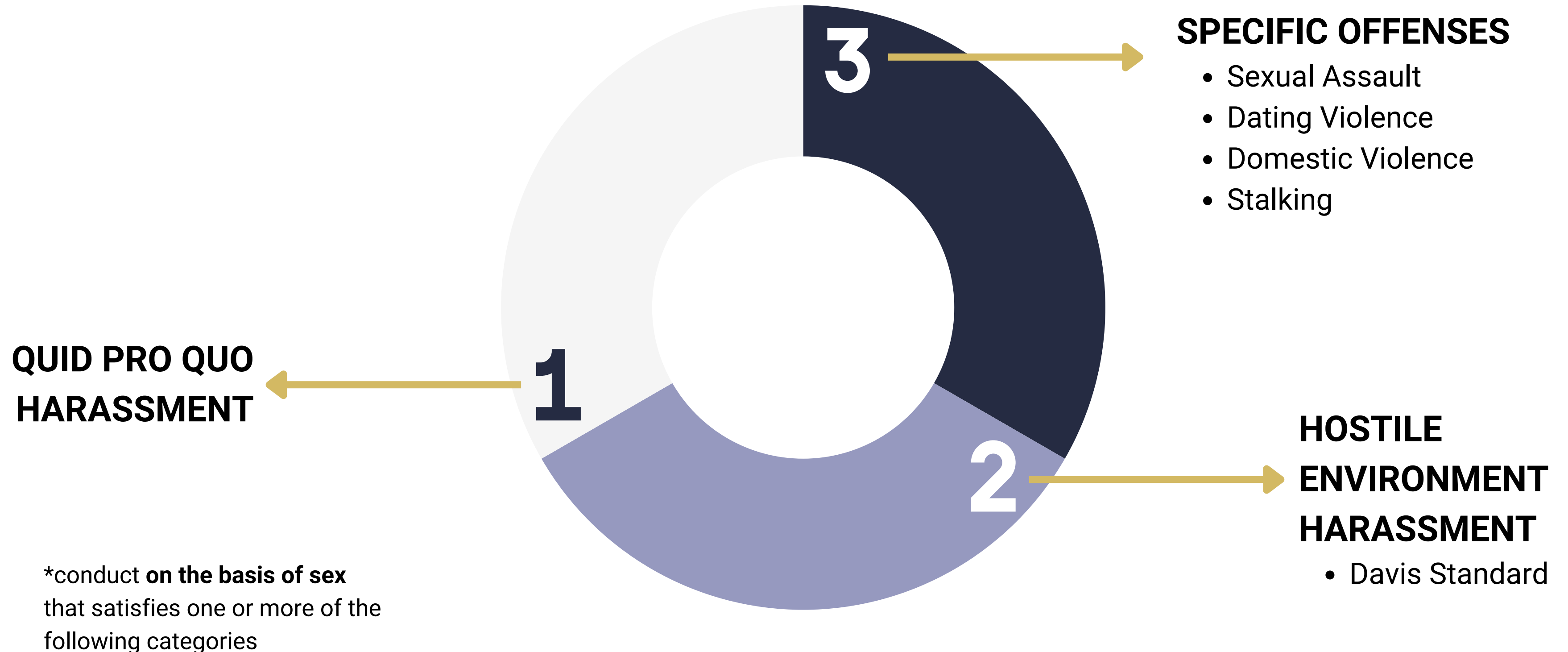


Recipients have the flexibility to use their own employees or external Title IX Investigators, Adjudicators, or Informal Resolution Facilitators

SEXUAL HARASSMENT AND RECIPIENT RESPONSE



SEXUAL HARASSMENT



SEXUAL HARASSMENT

1

QUID PRO QUO

DEFINITION:

An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient of an individual's participation in unwelcome sexual conduct.

- May be expressed or implied
- Need not be “severe” or “pervasive” as a single incident
- Considered inherently “offensive” and jeopardizes equal educational access

SEXUAL
HARASSMENT

2

HOSTILE
ENVIRONMENT

DEFINITION:

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 recipient's education program or activity.

SEXUAL
HARASSMENT

3

DEFINED
ACTS

SPECIFIC OFFENSES DEFINED UNDER THE FBI'S UNIFORM CRIME REPORTING (U.C.R) PROGRAM.

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking

SEXUAL ASSAULT

SEX OFFENSES, FORCIBLE:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape

Forcible Sodomy

Sexual Assault with an Object

Forcible Fondling

SEX OFFENSES, NONFORCIBLE:

Unlawful, nonforcible sexual intercourse (not including prostitution offenses).

Incest

Statutory Rape

20 U.S.C. 1092(f)(6)(A)(v)

DATING VIOLENCE

VIOLENCE COMMITTED BY A PERSON:

- a. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. The length of the relationship.
 - ii. The type of relationship.
 - iii. The frequency of interaction between the persons involved in the relationship.

34 U.S.C. 12291(a)(10)

DOMESTIC VIOLENCE

FELONY OR MISDEMEANOR CRIMES OF VIOLENCE COMMITTED BY A CURRENT OR FORMER SPOUSE OR INTIMATE PARTNER OF THE VICTIM:

- a. by a person with whom the victim shares a child in common,
- b. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- c. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies,
- d. or by 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 jurisdiction.

34 U.S.C. 12291(a)(8)

STALKING

ENGAGING IN A COURSE OF CONDUCT DIRECTED AT A SPECIFIC PERSON
THAT WOULD CAUSE A REASONABLE PERSON TO:

1

Fear for his or her safety or the safety
of others; or

2

Suffer substantial emotional distress

34 U.S.C. 12291(a)(30)

CONSENT



The Regulations do not include a definition of consent and do not require recipients to adopt a particular definition of consent, including “affirmative consent,” with respect to sexual assault.

RECIPIENT'S RESPONSE

THRESHOLD CRITERIA (ALL FOUR MUST BE MET):



Incident constitutes sexual harassment as previously defined



School must have “actual knowledge” of an allegation of the incident of sexual harassment



Conduct must have occurred within the school’s own education program or activity



Alleged harassment must have occurred within the United States

ACTUAL KNOWLEDGE DEFINED

§ 106.30 Definitions

"Notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has authority to institute corrective measures on behalf of the recipient, or to any employee of an elementary and secondary school"

- Does not need to be a written statement or a formal complaint
- May be conveyed by any person, not just the Complainant
- May be "written or oral, by observation, via a newspaper article or other means"



Postsecondary Institutions - reporting to Title IX Coordinator always constitutes actual knowledge

Elementary and Secondary Institutions - reporting to ANY employee constitutes actual knowledge

EDUCATION PROGRAM OR ACTIVITY DEFINED

§ 106.11 Application

Recipient's education program or activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by a postsecondary institution, and conduct that is subject to the recipient's disciplinary authority.

- School may offer supportive measures if harassment occurred outside of the educational program or activity
- School's responsibility is limited under Title IX regulations, though conduct outside of this jurisdiction may be addressed by Code of Conduct or other policies
- Schools must make fact-specific determinations regarding substantial control over the respondent and the context

RECIPIENT'S RESPONSE

Schools must not act in a manner that is deliberately indifferent, meaning:

"...clearly unreasonable in light of the known circumstances."

RECIPIENT'S RESPONSE

QUALIFYING INCIDENTS OF SEXUAL HARASSMENT

- Treat Complainants and Respondents equitably by offering supportive measures

 **WHEN DO THEY APPLY?**

 **WHAT DO THEY INCLUDE?**

- Follow a grievance process that complies with §106.45 of the Title IX Regulations

RECIPIENT'S RESPONSE

QUALIFYING INCIDENTS OF SEXUAL HARASSMENT

The Title IX Coordinator must promptly contact the Complainant to:

1. Discuss the availability of supportive measures as defined in §106.30;
2. Consider the Complainant's wishes with respect to supportive measures;
3. Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint;
4. Explain to the Complainant the process for filing a formal complaint.

RECIPIENT'S RESPONSE

SUPPORTIVE MEASURES

§ 106.30 Definitions.

"non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed"

- Intended to restore Complainant's access to educational program or activity

RECIPIENT'S RESPONSE

EMERGENCY REMOVAL



Safety and risk analysis



Immediate threat to physical health or safety



Provide Respondent with notice and opportunity to challenge the decision

RECIPIENT'S RESPONSE

ADMINISTRATIVE LEAVE



- Applies to non-student employees

TITLE IX GRIEVANCE PROCESS FOR FORMAL COMPLAINTS



GRIEVANCE PROCESS



BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**TREAT COMPLAINANTS AND
RESPONDENTS EQUALLY**

- Ensure processes do not differ based on status as a Complainant or Respondent
- Communicate rights of the parties

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

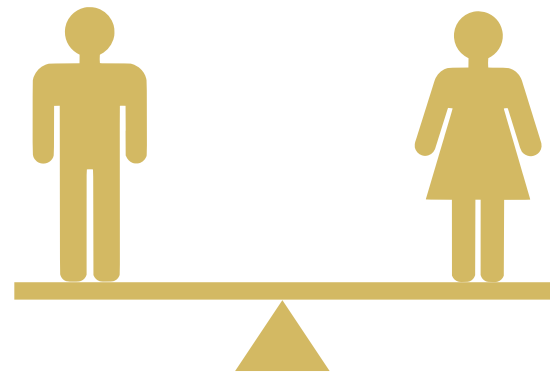


**REQUIRE OBJECTIVE
EVALUATION OF
RELEVANT EVIDENCE**

- Consider both inculpatory and exculpatory evidence
 - Inculpatory = Corroborating evidence
 - Exculpatory = Contradictory evidence
- Do not determine credibility based solely on a person's status as a Complainant, Respondent, or witness

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**REQUIRE TITLE IX
PERSONNEL NOT HAVE BIAS
AND CONFLICT OF INTEREST**

- Title IX personnel must be trained
- Title IX personnel must *“not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent”*
- Title IX personnel should consider recusing themselves if they are unable to serve impartially.

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

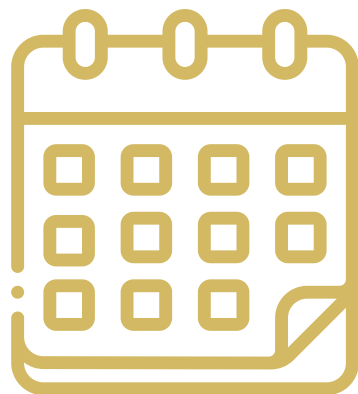


**INCLUDE A PRESUMPTION
THAT RESPONDENT IS NOT
RESPONSIBLE UNTIL A
DETERMINATION IS MADE**

- Punitive measures may not be put in place until a finding of responsibility has been issued
- Think "*innocent until proven guilty*" in the criminal justice system

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**INCLUDE REASONABLY
PROMPT TIME FRAMES**

- Title IX policies should include reasonably prompt time frames for filing and resolving appeals, informal resolution processes, and more
- The grievance process may be delayed for good cause, which could include:
 - Absence of a party or party's advisor
 - Request from law enforcement to pause for concurrent investigation
 - Acquiring accommodations such as language assistance, disabilities

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**DESCRIBE RANGE OF
POSSIBLE DISCIPLINARY
SANCTIONS AND REMEDIES**

- Ensure these ranges are communicated in policy and procedural documents

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:

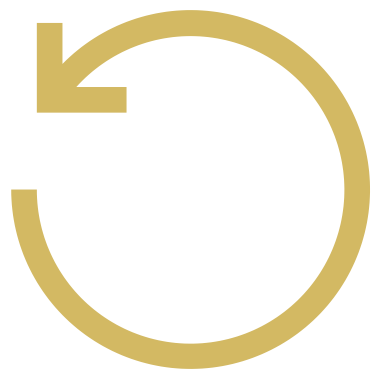


STATE THE STANDARD OF EVIDENCE

- A school may elect to apply either:
 - The preponderance of evidence (“more likely than not”) standard; or
 - The clear and convincing evidence (“highly probable”) standard
- The same standard of evidence must be used for:
 - Formal complaints against students as is used for formal complaints against employees, including faculty
 - All formal complaints of sexual harassment

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**INCLUDE THE PERMISSIBLE
BASES FOR APPEAL**

- Title IX allows for appeals of the final determination of responsibility

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**DESCRIBE THE RANGE OF
SUPPORTIVE MEASURES
AVAILABLE**

- Ensure these ranges are communicated in policy

BASIC REQUIREMENTS

A RECIPIENT'S GRIEVANCE PROCESS MUST:



**NOT REQUIRE OR RELY ON
PRIVILEGED INFORMATION,
UNLESS WAIVED**

- This would include information such as:
 - Medical records
 - Academic records protected under FERPA
 - Conversations with privileged individuals such as counselors or clergy

TITLE IX SOLUTIONS, LLC

IDENTIFYING INFORMAL RESOLUTION APPROACHES

IN THIS CHAPTER



AN INTRODUCTION
TO INFORMAL
RESOLUTION



THE INFORMAL
RESOLUTION
FACILITATOR



MEDIATION



RESTORATIVE
JUSTICE



OTHER PROCESSES
AVAILABLE



SPEAKER

CJ LARKIN

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR

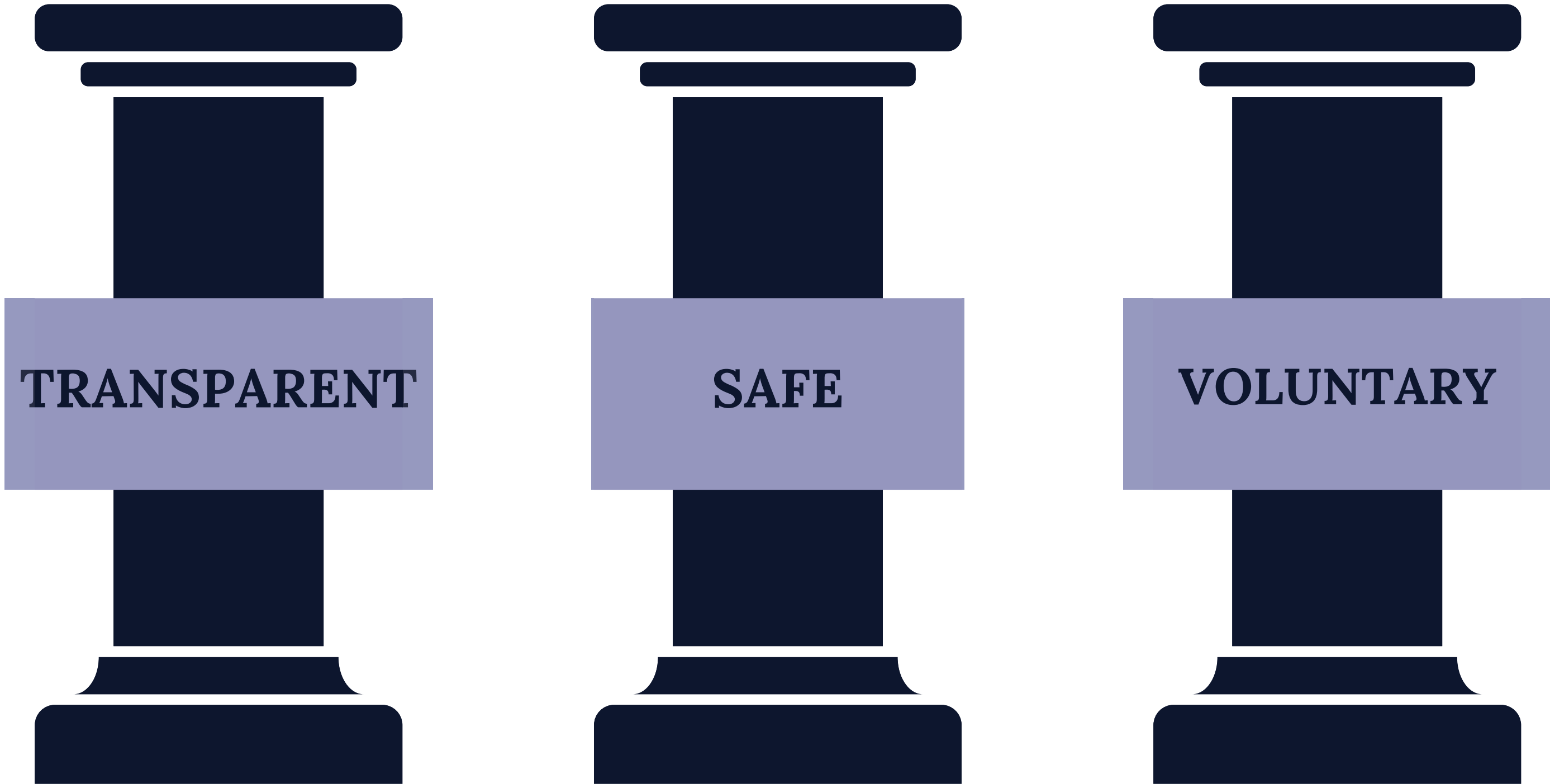
AN INTRODUCTION TO INFORMAL RESOLUTION





WHAT IS INFORMAL RESOLUTION UNDER TITLE IX?

INFORMAL RESOLUTION PILLARS



TRANSPARENT

SAFE

VOLUNTARY

INFORMAL RESOLUTION PILLARS



TRANSPARENT

INFORMAL RESOLUTION UNDER TITLE IX PROVIDES PARTIES THE OPPORTUNITY TO RESOLVE COMPLAINTS OUTSIDE OF THE FORMAL GRIEVANCE PROCESS.

- Provide clear, consistent communication to the Parties

INFORMAL RESOLUTION PILLARS

INFORMAL RESOLUTION UNDER TITLE IX PROVIDES PARTIES THE OPPORTUNITY TO RESOLVE COMPLAINTS OUTSIDE OF THE FORMAL GRIEVANCE PROCESS.

SAFE

- Provide emotional and physical safety
- Conduct safety and risk analysis (optional)
- Put safety measures in place (optional)

INFORMAL RESOLUTION PILLARS

VOLUNTARY

INFORMAL RESOLUTION UNDER TITLE IX PROVIDES PARTIES THE OPPORTUNITY TO RESOLVE COMPLAINTS OUTSIDE OF THE FORMAL GRIEVANCE PROCESS.

- Obtain voluntary, written consent
- Highlight right to withdraw prior to the agreement



WHO IS INVOLVED IN THE INFORMAL RESOLUTION PROCESS?

INFORMAL RESOLUTION PARTICIPATION

- Under Title IX, schools must obtain the Parties' written, voluntary consent to participate in the informal resolution process
- Informal resolution is not permitted to resolve allegations that an employee sexually harassed a student
- Advisors are permitted to participate, but the school may impose restrictions on participation
- Emergency Removal may be considered, if appropriate



WHEN CAN INFORMAL RESOLUTION TAKE PLACE?

GRIEVANCE PROCESS



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL



A Party may withdraw from the informal resolution process at any time and proceed with the formal grievance process.

INFORMAL RESOLUTION
WINDOW



**SHOULD THERE BE A DEFINED AMOUNT
OF TIME FOR THE INFORMAL
RESOLUTION PROCESS TO OCCUR?**

REASONABLY PROMPT TIME FRAMES

"Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the recipient offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action."

§106.45 (b)(1)(v)



Consult the institution's policy to determine if specific timeframes are in place for informal resolution processes.



WHERE CAN INFORMAL RESOLUTION TAKE PLACE?

INFORMAL RESOLUTION LOCATION



VIRTUAL



ON CAMPUS



OFF CAMPUS



IN WRITING



WHY IS INFORMAL RESOLUTION PERMITTED UNDER TITLE IX?

BENEFITS TO PARTIES & INSTITUTIONS

INFORMAL RESOLUTION HAS THE POTENTIAL TO:

- Empower Complainants and Respondents to address incidents through a process that best suits their needs
 - Parties determine the outcome and resolution can be creative
- Enhance institutional and Party autonomy by providing schools and Parties with flexibility in addressing unique situations
- Provide a more timely and less expensive option than the live hearing or decision-making process
- Present an opportunity to educate and change behavior
- Allow for confidential results
- Yield remedies which are more customized to the needs of the unique situation and involved Parties

TO COMPARE:

IN THE AMERICAN LEGAL SYSTEM, INFORMAL OR ALTERNATIVE DISPUTE RESOLUTION HAS THE POTENTIAL TO:



- Shorten the timeframe of the grievance process
- Provide greater Party control over outcomes, which may improve Parties' sense of justice and increase compliance with outcomes
- Yield remedies more customized to the needs of unique situation



**WHAT ARE THE GOALS OF THE
PARTIES AND INSTITUTIONS AS
THEY PARTICIPATE IN INFORMAL
RESOLUTION PROCESSES?**

GOALS FOR THE PARTIES



Undergo a less intimidating process than the grievance process



Explore potential for less harsh outcomes



Provide input regarding outcomes of the process



Minimize re-traumatization



Reduce embarrassment for both Parties



Allow an opportunity for interaction and open dialogue



Participate in a more personal experience

- ✓ Provide an opportunity for early intervention and resolution
- ✓ Present a less intimidating process
- ✓ Offer a more conciliatory process
- ✓ Allow for more healing
- ✓ Demonstrate that they are using the full range of Title IX options or responses
- ✓ This is also a chance to comport with a school mission or philosophy

GOALS FOR THE INSTITUTION





WHAT SHOULD INFORMAL RESOLUTION PROCESSES LOOK LIKE?

WHAT DO THE REGULATIONS SAY?

"A recipient **may not** require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient **may not** require the Parties to participate in an informal resolution process under this section and **may not** offer an informal resolution process unless a formal complaint is filed."

§ 106.45(9)

WHAT DOES THIS MEAN?



SCHOOLS CANNOT TAKE AWAY A PARTIES' RIGHT TO AN INVESTIGATION AND ADJUDICATION PROCESS FOLLOWING A FORMAL COMPLAINT OF SEXUAL HARASSMENT.



SCHOOLS CANNOT REQUIRE ANY PARTY TO PARTICIPATE IN AN INFORMAL RESOLUTION PROCESS. IT IS A 100% OPTIONAL PROCESS AND REQUIRES BUY-IN FROM BOTH PARTIES.



THE INFORMAL RESOLUTION PROCESS CAN ONLY TAKE PLACE ONCE A FORMAL COMPLAINT HAS BEEN FILED.

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)



INTAKE &
REVIEW

FORMAL
COMPLAINT

NOTICE OF
ALLEGATIONS

INVESTIGATION

DECISION-
MAKING
PROCESS

WRITTEN
DETERMINATION

APPEAL

**RECALL: INFORMAL RESOLUTION CAN HAPPEN
AT ANY POINT WITHIN THIS TIMEFRAME.**

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)

Provides to the Parties a written notice

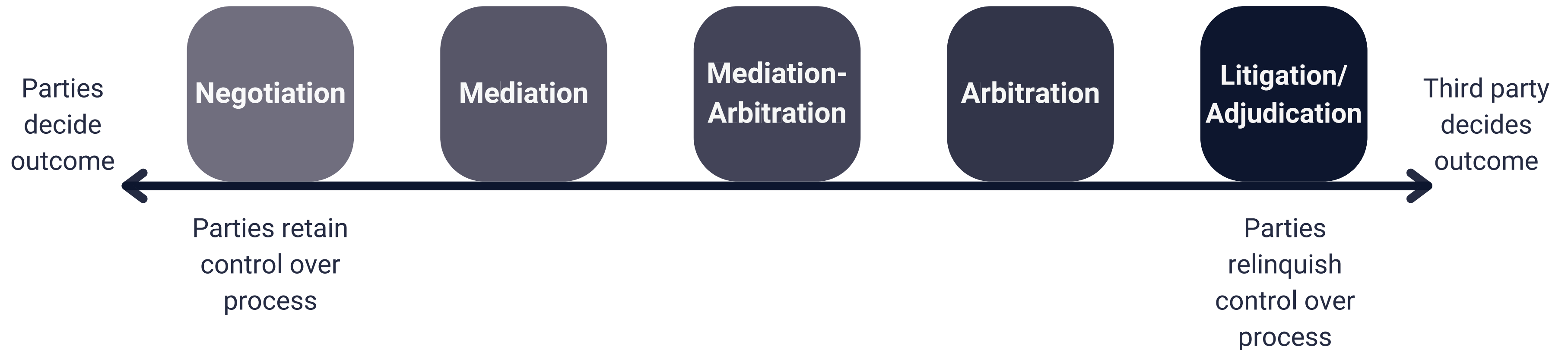
Obtains the Parties' voluntary, written consent to the informal resolution process

Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student

TYPES OF INFORMAL RESOLUTION

THE TITLE IX REGULATIONS DO NOT SPECIFY THE EXACT PROCESSES INSTITUTIONS MUST USE TO CARRY OUT INFORMAL RESOLUTION.

Instead, they provide flexibility for institutions to determine which processes best suit their needs and provide the opportunity to craft custom institutional processes.



THE INFORMAL RESOLUTION FACILITATOR



WHAT IS THE ROLE OF THE INFORMAL RESOLUTION FACILITATOR?



Serving neutrally, impartially



Facilitating the conversation
between Parties



Providing physical and
emotional safety

TRAINING INFORMAL RESOLUTION FACILITATORS

FACTORS TO CONSIDER:

- Levels of training

"The same [training] requirements that apply to Title IX Coordinators, Investigators, and Decision-Makers now also apply to any individuals who facilitate informal resolution processes."

- Title IX definition of sexual harassment
- Scope of the education program or activity
- How to conduct informal resolution processes
- How to serve impartially

INTERNAL VS. EXTERNAL

INTERNAL

- Trained teachers or professors
- Administrators
- Counselors

**ALWAYS CHECK FOR BIAS AND
CONFLICTS OF INTEREST WHEN
SELECTING AN INTERNAL INFORMAL
RESOLUTION FACILITATOR**

EXTERNAL

- Consultants
- Local mediators

**SELECTING AN EXTERNAL INFORMAL
RESOLUTION FACILITATOR MAY
REDUCE POTENTIAL FOR BIAS AND
CONFLICT OF INTEREST, BUT IT IS
STILL IMPORTANT TO CONFIRM A
BIAS OR CONFLICT IS NOT PRESENT**

WHO MAY SERVE AS THE INFORMAL RESOLUTION FACILITATOR?

FACTORS TO CONSIDER:

- The Title IX Coordinator is not precluded from serving as the Informal Resolution Facilitator
- Potential challenges include:
 - Perceived or actual conflict of interest and/or bias
 - Confusion of dual role



Questions to Consider:

- Why has the Title IX Coordinator been assigned as the Informal Resolution Facilitator?
- Is the Title IX Coordinator truly comfortable fulfilling this role?
- Does the Coordinator have the necessary skills to fulfill this role?

WHO MAY SERVE AS THE INFORMAL RESOLUTION FACILITATOR?

THE INVESTIGATOR AND DECISION- MAKER MAY NOT SERVE AS THE INFORMAL RESOLUTION FACILITATOR IN THE SAME CASE.

- Allows Investigators and Decision-Makers to remain unbiased should the Parties return to the formal grievance process
- Eliminates role confusion
- Ensures Facilitators are present to facilitate the conversation – not gather evidence or make a decision prior to or after



Best Practice: Separate this role from all other Title IX roles and provide clarity on the responsibilities of the Informal Resolution Facilitator.

CONFLICT OF INTEREST

- Conflicts of interest arise when there is a real or perceived personal or private interest that may prevent a Title IX Coordinator, Investigator, Decision-Maker, or Informal Resolution Facilitator from carrying out their role impartially
- Conflicts of interest are not explicitly defined under the Title IX Regulations
- Conflicts of interest may be more difficult to navigate within smaller institutions or school districts

EXAMPLES OF POTENTIAL CONFLICT



PERSONAL RELATIONSHIP WITH A PARTY OR PARENT/GUARDIAN OF A PARTY

Example: An Informal Resolution Facilitator is a close family friend and has known the Party for years outside of the academic program.



POSITION OF POWER OVER A PARTY NOT RELATED TO THE TITLE IX PROCESS

Example: The assigned Informal Resolution Facilitator is one of the Party's instructors in a course in which they are currently enrolled.

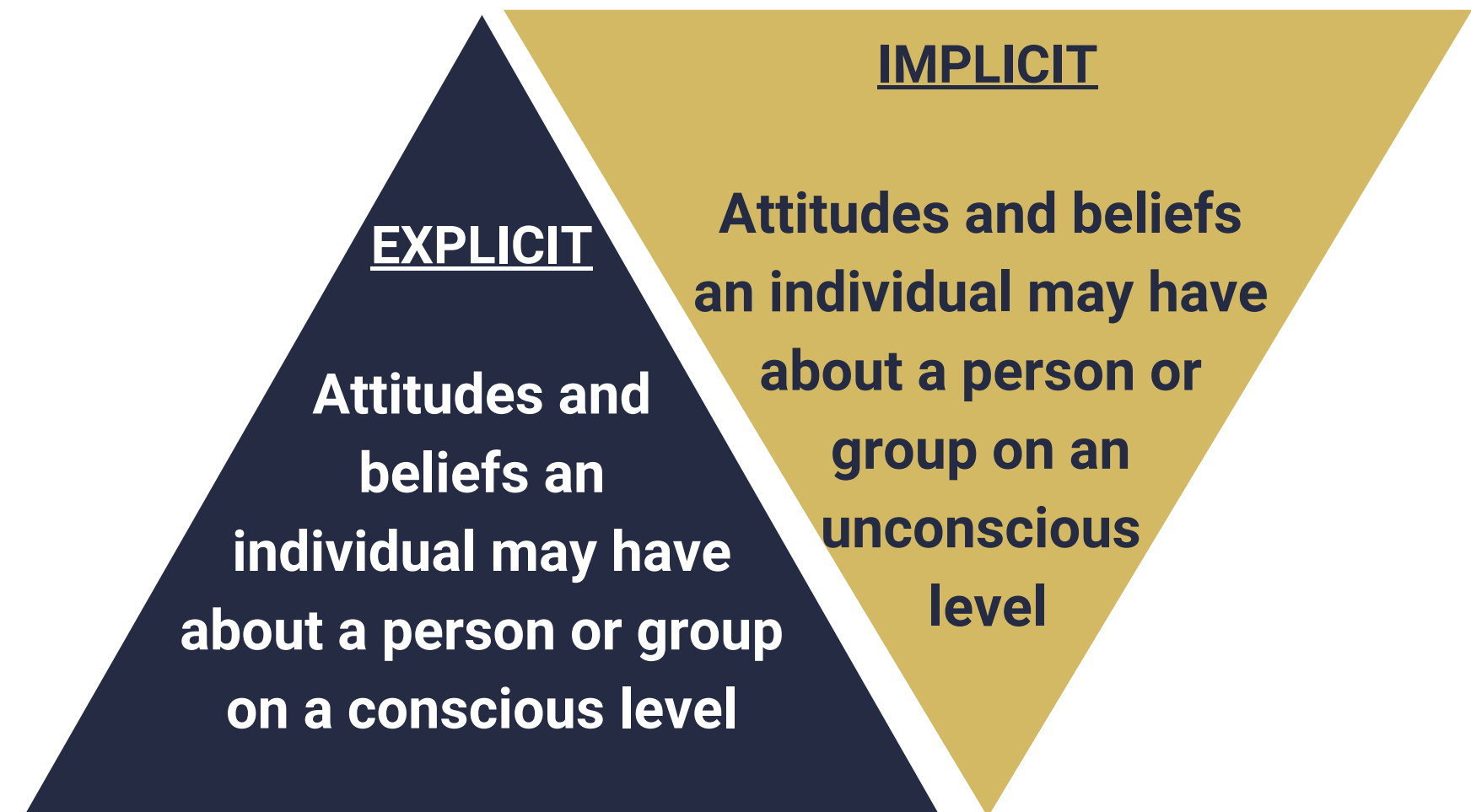


PREVIOUS KNOWLEDGE ABOUT A PARTY THAT COULD IMPACT THE ABILITY TO ADJUDICATE THE CASE

Example: An Informal Resolution Facilitator was a former conduct officer who adjudicated other code of conduct violations involving a Party.

WHAT CONSTITUTES A BIAS?

FACILITATORS MUST AVOID BOTH EXPLICIT & IMPLICIT BIASES:



- Title IX Regulations specifically references "bias for or against Complainants or Respondents generally, or for or against an individual Complainant or Respondent."
- Recusal may be required if the Informal Resolution Facilitator believes they cannot be impartial due to personal views or experiences

CONFLICT OF INTEREST VS. BIAS

CONFLICT OF INTEREST =

The Informal Resolution Facilitator has their own agenda, needs, or interests

BIAS =

Prejudices and beliefs that may favor one of the Parties

A CONFLICT OF INTEREST CAN CAUSE THE INFORMAL RESOLUTION FACILITATOR TO HAVE A BIAS.

IDENTIFYING BIAS

**A LEGITIMATE CLAIM OF BIAS CAN BE
THE BASIS FOR AN APPEAL.**

Consider personal
biases and how they
may affect your
ability to serve
objectively

Recuse yourself
from a case if biases
may impact the
process or
determination



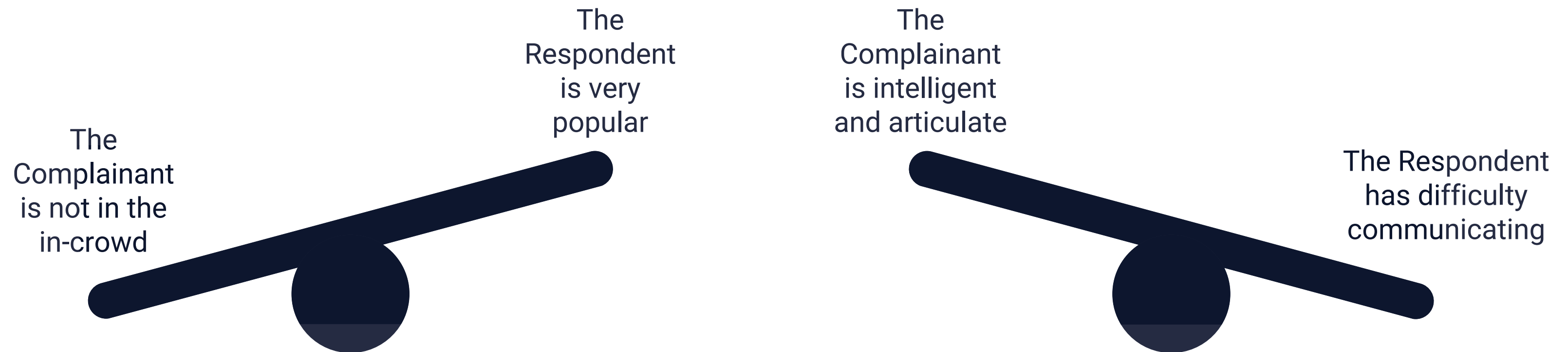
What are the necessary skills and characteristics of an Informal Resolution Facilitator?

- Active listener
- Emotionally stable
- Calm demeanor
- Empathetic
- Clear professional and ethical boundaries
- Prepared
- Competent – with the process
- Competent – with the subject matter
- Scrupulously neutral
- Cautious and precise with language
- Willing to face unpleasant facts or emotions
- Intuitive
- Insightful
- Interested in people and human nature
- Resourceful
- Analytical
- Logical
- Good oral communicator
- Documents clearly and thoroughly
- Resilient
- Persistent
- Comfortable with diversity
- Respectful
- Has faith in mediation process
- Sense of humor
- Optimistic
- Helpful
- Authentic
- Self-confidence (without arrogance)
- Open-minded
- Prefers asking to telling
- Makes appropriate process and option suggestions
- Assists with evaluation options

(C.J. Larkin, Washington University School of Law, 2010 (amended 2012))

POWER BALANCING

THE INFORMAL RESOLUTION FACILITATOR SHOULD BE SENSITIVE TO ONE PARTY HAVING MORE POWER THAN THE OTHER PARTY AFFECTING THE PROCESS AND OUTCOME.



The Facilitator may need to assist the “power-down” participant to fully participate in the process. This assistance could be perceived as (or may actually be) undermining the Facilitator’s neutrality. Power-balancing must be handled with awareness.

EXAMPLES

- Slowing down the conversation
- Checking for comprehension
- Asking if assistance or additional information is needed
 - Parent or legal guardian
 - An adult support person or advisor
 - Third-party assistance or accommodations
- Reframing power-up Party's statements to be less threatening, demanding, etc.
- Asking power-down Party if they feel so and how to empower
- Asking power-up Party if they are aware of power differences



MEDIATION



WHAT IS MEDIATION?



A process of assisted negotiation in which a neutral person helps people explore and possibly reach an agreement



A consensual and informal process



A confidential process



A process in which the Parties decide the terms and outcomes

PURPOSE OF MEDIATION

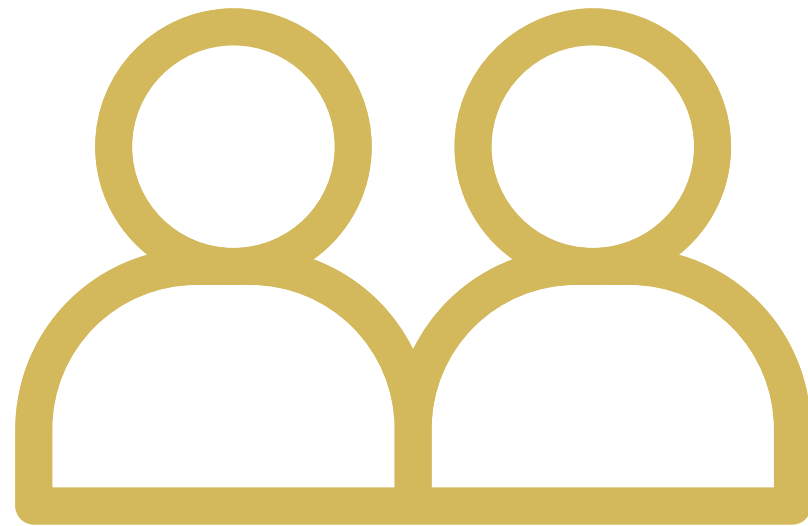


Provides a place for civil discussion about issues where Parties can gain perspective about the other's experience

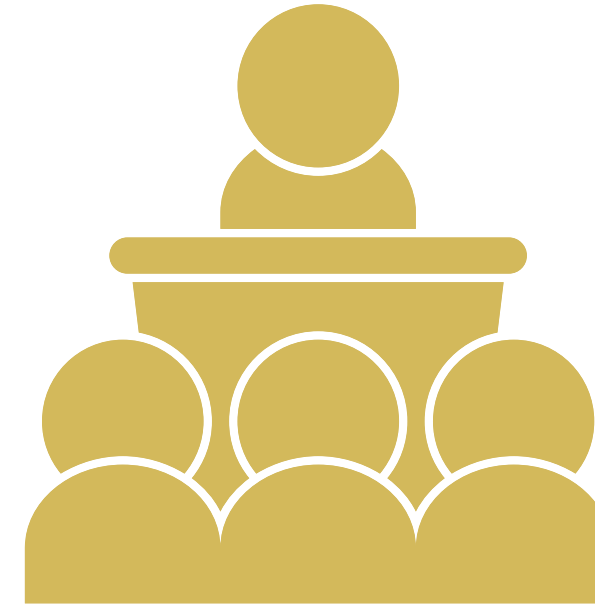


Establishes a place to resolve the identified conflict

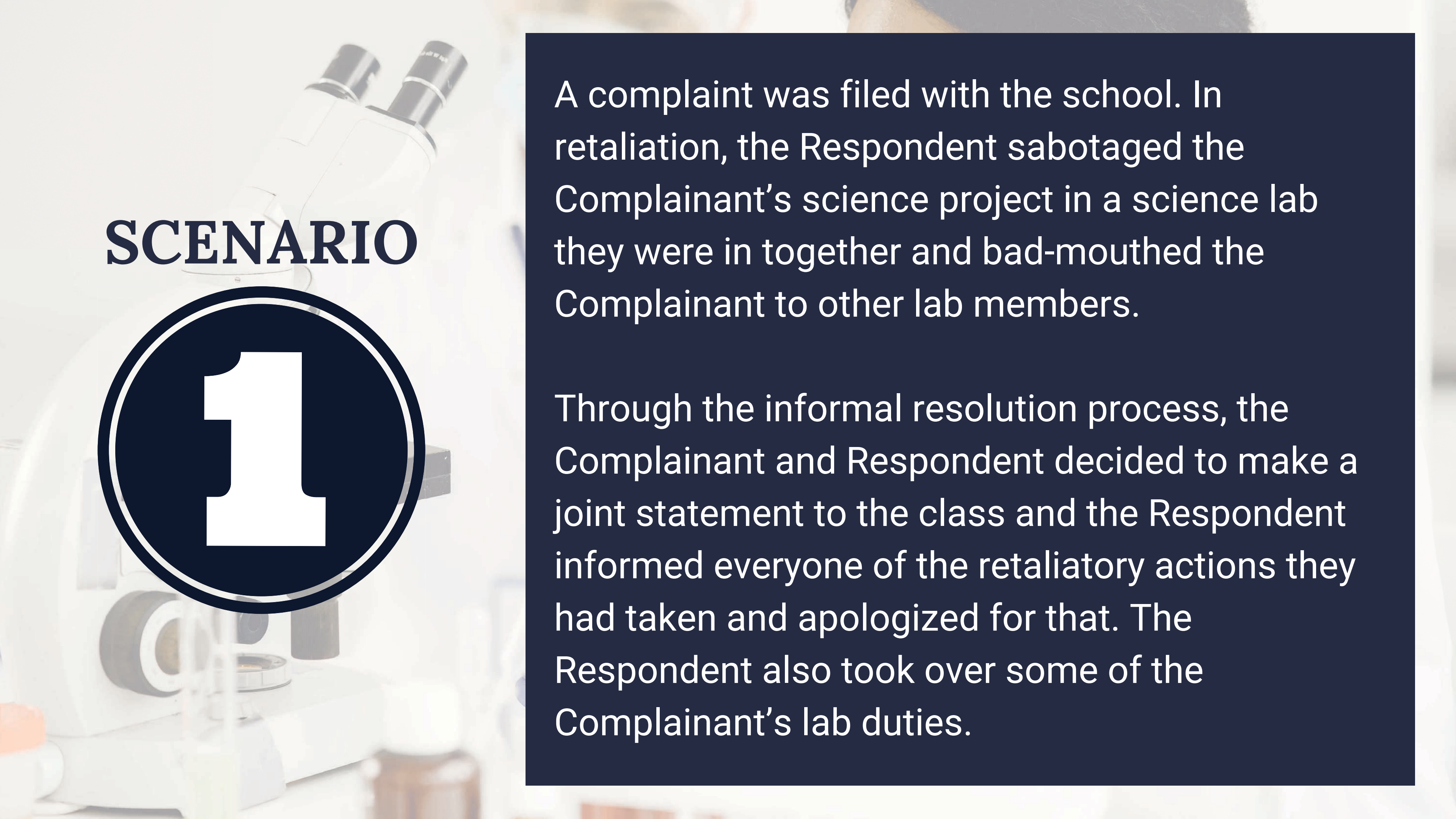
COMMUNITY IMPACT OF MEDIATION



Mediation is predominantly between the Parties, however the Parties may agree upon a message to the impacted communities.



The Parties may also choose not to communicate with the greater community which has been impacted by the incident.



SCENARIO

1

A complaint was filed with the school. In retaliation, the Respondent sabotaged the Complainant's science project in a science lab they were in together and bad-mouthed the Complainant to other lab members.

Through the informal resolution process, the Complainant and Respondent decided to make a joint statement to the class and the Respondent informed everyone of the retaliatory actions they had taken and apologized for that. The Respondent also took over some of the Complainant's lab duties.

SCENARIO

2

Complaint was filed with the school. The Complainant, due to the harassment from the Respondent, quit the chess team and didn't explain why to their team.

After the Informal Resolution process, the Complainant was allowed to explain what happened to the chess team and the Respondent apologized. Because the Complainant had quit the chess team, they had lost their position in the upcoming chess competition. As part of the Informal Resolution Agreement, the Respondent allowed the Complainant to take their place in the upcoming chess competition.



**WHAT ARE THE
MEDIATOR'S GOALS DURING
THE PROCESS?**

STAGE

1

STARTING THE MEETING

- Introduce yourself, Parties and support persons
- Explain the process, including private meetings and written agreement
- Set “ground rules”
 - taking turns, not interrupting
- Create a safe space emotionally and physically
- Check for understanding and readiness
- Answer questions
- Maintain an attitude of respect, patience and empowerment

STAGE

2

TELLING THEIR STORIES

- Begin with Complainant, ensuring Parties have uninterrupted time to tell their story
- Allow a reasonable amount of venting
- Give continued opportunity to share thoughts/feelings
- Coordinate any statements or questions from third-parties
- Ask open-ended questions to encourage sharing and more pointed questions to clarify
- Reframe and summarize – check for acceptance of summaries

STAGE

3

IDENTIFYING GOALS, INTERESTS, AND NEEDS

- Clarify and help Parties analyze how their goals meet interests and needs
- Ask what would help achieve their goals
- Assist in prioritization
 - What is most important to them?

STAGE



GENERATING OPTIONS

- Encourage idea generation – brainstorming without judgement
- Make suggestions gently, non-coercively
- Help analyze options for satisfaction and practicality
- Explore resistance and negativity
- Assist in narrowing options for agreement

STAGE

5

COMING TO AGREEMENT

- Offer to draft WITH Parties not FOR them
- Cover who, what, when, how, where, how much, how long
- Allow all Parties to review
- Ask Parties to sign
- Provide copies to Parties

STAGE



CLOSING

- Review confidentiality and need-to-know communication
- Help craft community/public statement, if desired
- Clarify follow-up and monitoring, if any
- Thank and validate all Parties

RESTORATIVE JUSTICE



WHAT IS RESTORATIVE JUSTICE?



Restorative justice is a general term that encompasses various forms and practices



The focus of restorative justice is the “harm” caused by one’s conduct and how to repair that “harm”



There is less focus on punitive results and more on educating the Parties of the impacts of their behavior, reaching resolution, and perhaps reconciliation



Restorative justice comes from a “community” model that considers how the Respondent’s behavior has affected individuals and the community as a whole

SHIFTING FOCUS

FROM

A violation against
the school and its
policy

Adversarial
relationships and
focus on a process

Accountability in the
form of punishment

Justice is school
making determination
and sanctioning

TO

A violation of a
person, trust, and
responsibility

Dialogue and focus
on people

Accountability in the
form of accepting
responsibility

Justice is all affected
Parties coming
together to repair harm

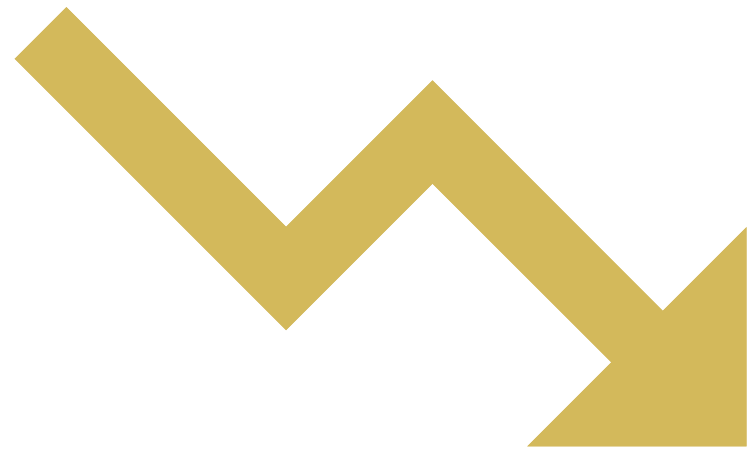
THIS

THE RIPPLE EFFECT

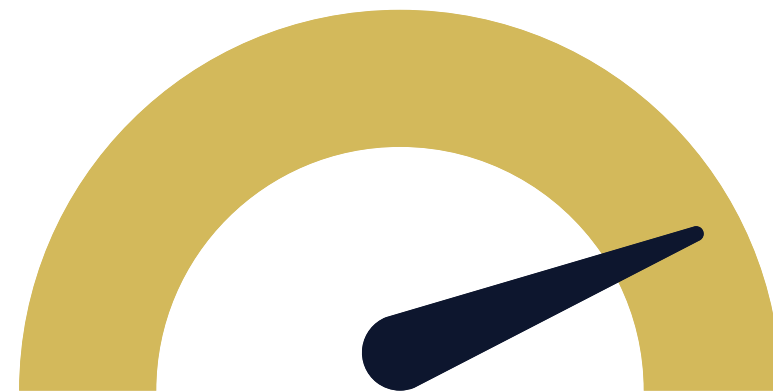
RESTORATIVE JUSTICE TAKES INTO ACCOUNT THE “RIPPLE EFFECT” OF ONE’S ACTIONS.



WHY CHOOSE RESTORATIVE JUSTICE?



14% reduction in rate
of reoffending



85% of victims were
satisfied with the
process



62% of victims felt
restorative justice had
made them feel better
after an incident of
crime

Source: The Effect of Restorative Justice Practices on Crime Victims : A Meta-analysis (2006)

CORE QUESTIONS IN RESTORATIVE JUSTICE

Who was
harmed?

What was the
impact of the
harm?

Who is
responsible for
repairing the
harm?

What is needed
to repair the
harm?

RELATIONSHIP

RESPECT

RESPONSIBILITY

REPAIR

REINTEGRATION

COMBINING RESTORATIVE JUSTICE PRINCIPLES WITH TITLE IX INFORMAL RESOLUTION

A COMBINATION OF TRADITIONAL INFORMAL RESOLUTION PROCESSES AND RESTORATIVE JUSTICE MIGHT INCLUDE THE FOLLOWING:

- ① Including more affected parties than just the Complainant and Respondent
 - Other students
 - Parents
 - Employees (teachers, staff, etc.)
- ② Allowing expanded participants to have a larger role in expressing their own losses, values, and interests

COMBINING RESTORATIVE JUSTICE PRINCIPLES WITH TITLE IX INFORMAL RESOLUTION

A COMBINATION OF TRADITIONAL INFORMAL RESOLUTION PROCESSES AND RESTORATIVE JUSTICE MIGHT INCLUDE THE FOLLOWING:

- ③ Allowing expanded participants to have a larger role in providing assistance and, on occasion, reflecting on their own contribution to the incident
- ④ Focusing on holding the Respondent accountable but also seeking to reintegrate them into good standing in the school/community

SCENARIO

1

Three high school students had gone into the school's computer lab after hours and smashed all the computers. They also wrote profanity on various places around the room.

One of the students was a football star. This school's team was doing really well and playoffs were a couple weeks away. The school had already decided to kicked him off the team because of his involvement.

One of the other students was bullied and all three students were not doing well academically, especially in the computer teacher's class.

Understanding all these facts helped understand the why behind the student's decision.

Who was affected?

- Everybody who took a computer class
- The Computer Club (Members and teacher)
- Football Team, Football Coach, Football Players
- Janitors

OTHER PROCESSES AVAILABLE



WHAT IS ARBITRATION?



The Informal Resolution Facilitator would act as a judge by reviewing evidence, applying facts to the policy, and deciding the outcome of the matter



It is a confidential process guided by an arbitration agreement of the Parties and applicable rules



Would this be used as a method the Title IX informal resolution process?

- Though arbitration is not a prohibited method, it is more likely for a case to go through the formal Title IX decision-making process

OTHER CUSTOM INSTITUTIONAL OPTIONS

SCHOOLS MAY DESIGN AND IMPLEMENT HYBRID AND CUSTOMIZED PROCESSES TO FIT THEIR NEEDS. THESE PROCESSES MUST:

Follow the requirements set forth by the Title IX Regulations

Not be in conflict with other state laws or school policy

Utilize properly trained Informal Resolution Facilitators

Be explained to the Parties before they consent to participate

TITLE IX SOLUTIONS, LLC

EVALUATING CASES FOR INFORMAL RESOLUTION SUITABILITY



IN THIS CHAPTER



GUIDELINES FOR
EVALUATING
SUITABILITY



THE NOTICE OF
INFORMAL RESOLUTION



EVALUATING
SCENARIO CASES

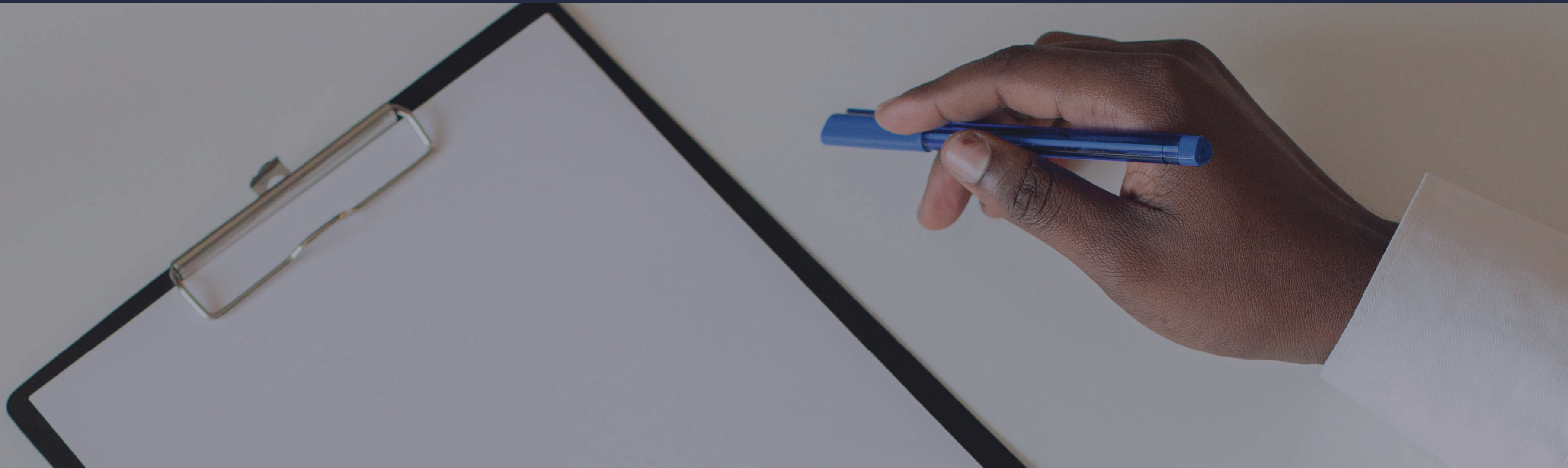


SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR
TITLE IX SOLUTIONS

GUIDELINES FOR EVALUATING SUITABILITY



TITLE IX REGULATIONS

"However, at any time prior to reaching a determination regarding responsibility the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

§ 106.45(9)

EVALUATING CASES

EVALUATING CASES MAY TAKE PLACE IN TWO STAGES:

1

Evaluator (usually the Title IX Coordinator) will review available information, including the formal complaint and all allegations.

2

Evaluator may interview the Parties and parents (or confer with the Title IX Investigator) to determine the feasibility and appropriateness of offering the informal resolution process.

GUIDELINES



**HAS A FORMAL
COMPLAINT BEEN
FILED?**

GUIDELINES FOR EVALUATION

COMPLIANCE



**IS THIS CASE ELIGIBLE FOR INFORMAL RESOLUTION
ACCORDING TO THE TITLE IX REGULATIONS AND/OR
INSTITUTIONAL POLICY?**

Remember: Informal resolution is never an option for cases involving an employee Respondent and student Complainant.

Are there other cases in which informal resolution would never be offered?

POTENTIAL RED FLAGS

Presence of
physical violence

Fear of
retaliation or
danger

Actual
retaliation

Significant
power imbalance

Participants
unable to follow
process

Conflict of
interest or bias

Related legal
proceedings

GUIDELINES FOR EVALUATION

CAPACITY



DO THE PARTIES AND/OR PARENTS OR LEGAL GUARDIANS HAVE:

- The necessary communication skills to feel comfortable expressing themselves?
 - English language proficiency?
- The capacity to understand the full consequences of informal resolution?
 - Special needs, learning differences?

Remember: Ensure all needs are accounted for and responded to using the appropriate accommodations.

GUIDELINES FOR EVALUATION

SUPPORT



DO THE PARTIES HAVE A SUPPORT NETWORK THAT CAN HELP THEM BEFORE, DURING, AND/OR AFTER THE PROCESS?

Questions to consider:

- Who are the stakeholders in the case?
- Is there a greater community impact?
- What is the ripple effect of the case?

GUIDELINES FOR EVALUATION

SAFETY AND SECURITY



DO THE PARTIES, SUPPORTING INDIVIDUALS, SCHOOL AND INFORMAL RESOLUTION FACILITATOR HAVE THE CAPACITY TO PROVIDE A SAFE EMOTIONAL AND PHYSICAL SPACE FOR ALL PARTICIPANTS?

Questions to consider:

- How will this be measured?
- Has the potential for retaliatory behavior been considered?
- How will it be addressed?

GUIDELINES FOR EVALUATION

CONSENT



**DOES THE INFORMAL RESOLUTION FACILITATOR
FULLY BELIEVE THE PARTIES CAN CONSENT TO
PARTICIPATING IN INFORMAL RESOLUTION WITHOUT
DURESS, COERCION, OR PRESSURE DUE TO POWER
DIFFERENTIALS?**

Questions to consider:

- What is the relationship between the Parties?
- How might this affect the ability of one or both to consent to informal resolution processes?

OFFERING INFORMAL RESOLUTION

THE NOTICE OF ALLEGATIONS MAY CONTAIN A BRIEF STATEMENT OR PARAGRAPH HIGHLIGHTING THE OPPORTUNITY FOR THE PARTIES TO PURSUE INFORMAL RESOLUTION OPTIONS.

Sample Language:

At any time prior to reaching a determination regarding responsibility, you may request an informal resolution process that does not involve a full investigation and adjudication. This process is voluntary and will be initiated only upon receiving written consent from all parties. At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Title IX grievance process. If the matter is resolved through an informal resolution process, the parties may not resume or initiate a formal complaint arising out of the same allegations. To request more information regarding the informal resolution process, please contact the Sample University Title IX Coordinator.

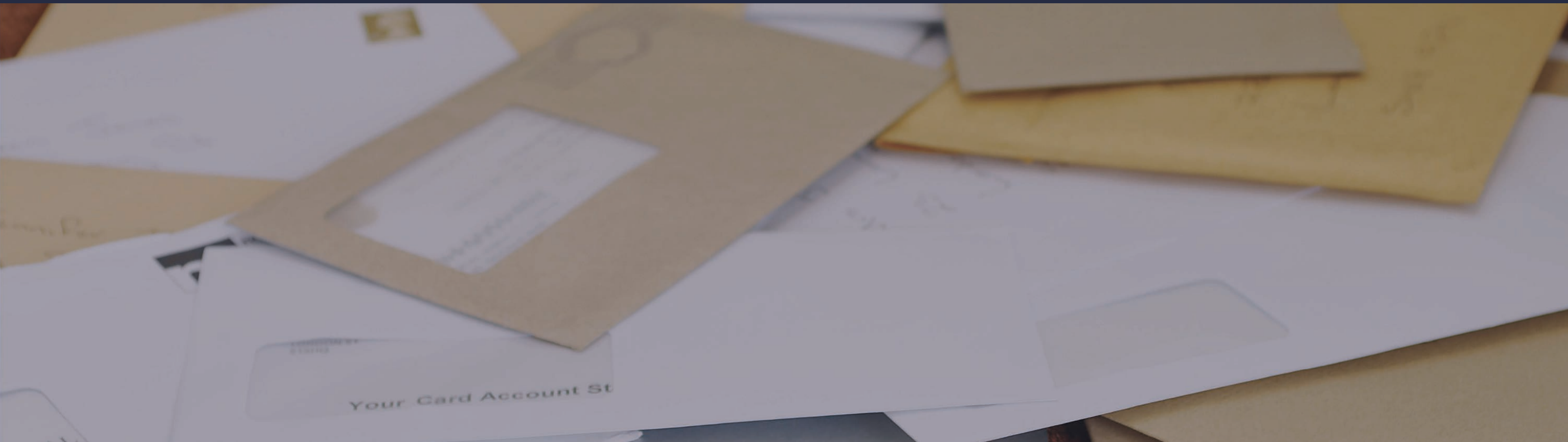
EVALUATING CASES

CONTINUAL MONITORING

Though evaluation for suitability takes place as the grievance process is initiated, the Title IX Coordinator, Investigator, Decision-Maker, and Informal Resolution Facilitator should continually monitor to determine whether circumstances change.

If the previous conditions cannot be met, informal resolution may no longer be a suitable option.

THE NOTICE OF INFORMAL RESOLUTION



TITLE IX REQUIREMENTS

WRITTEN NOTICE OF INFORMAL RESOLUTION PROVIDED TO THE PARTIES MUST INCLUDE:

"The allegations,"

§ 106.45(9)

which can be pulled directly from:



The Formal
Complaint



The Notice of
Allegations

TITLE IX REQUIREMENTS

WRITTEN NOTICE OF INFORMAL RESOLUTION PROVIDED TO THE PARTIES MUST INCLUDE:

- "Requirements of the informal resolution process, including:*
- Circumstances under which it precludes the Parties from resuming a formal complaint arising from the same allegations,"*

§ 106.45(9)

which can be pulled directly from:



Institutional Policy

TITLE IX REQUIREMENTS

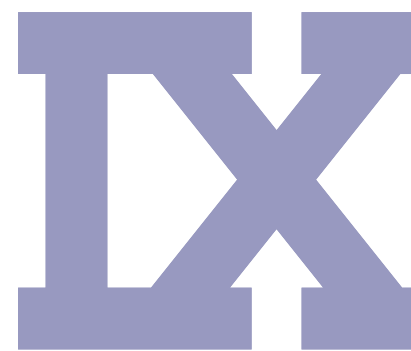
WRITTEN NOTICE OF INFORMAL RESOLUTION PROVIDED TO THE PARTIES MUST INCLUDE:

"Requirements of the informal resolution process, including:

- At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,"*

§ 106.45(9)

which can be pulled directly from:



Title IX Regulations

TITLE IX REQUIREMENTS

WRITTEN NOTICE OF INFORMAL RESOLUTION PROVIDED TO THE PARTIES MUST INCLUDE:

"Requirements of the informal resolution process, including:

- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared."*

§ 106.45(9)

which can be pulled directly from:



Institutional Policy

IMPORTANCE OF THE WRITTEN NOTICE OF INFORMAL RESOLUTION



Informs the Parties of the upcoming process



Illustrates potential outcomes



Seeks consent of the Parties



Highlights the ability to exit the process at any time



Covers information regarding confidentiality



Outlines expectations for the Parties

ADDITIONAL INFORMATION

IT IS BEST PRACTICE TO INCLUDE:



- Confidentiality parameters
- Potential terms of the informal resolution agreement
- Need for written consent to participate in the process
- Date, time, location, participants and purpose of any meeting arising from the informal resolution process
- Name and information about the Informal Resolution Facilitator to confirm absence of bias or conflict of interest

Sample Language

Employees participating in the Title IX grievance process including the Title IX Coordinator, investigators, decision-makers, and informal resolution facilitators as well as external parties employed by the school to complete Title IX investigation and adjudication functions (hearings, appeals, and informal resolution options) are prohibited from having a conflict of interest or bias for or against complainants or respondents generally or as an individual complainant or respondent.

In an effort to avoid potential conflicts of interest, Sample University may provide the names and titles of internal and external Title IX investigators, adjudicators, and informal resolution facilitators to the parties at the initiation of the investigation, informal resolution process, or hearing. This information will be provided no less than seven (7) days before any meeting or hearing between the party and the investigator, adjudicator, or informal resolution facilitator.

The Complainant or Respondent may request the removal of an investigator, adjudicator, or informal resolution facilitator on the grounds of personal bias or other conflicts of interest by submitting a written statement to the Title IX Coordinator setting forth the basis for the request no more than three (3) days after receiving notice of the identity of the individual(s) involved in the Title IX grievance process. The Title IX Coordinator will review the written statement and make a determination if there is a conflict of interest.

Appropriate steps will be taken to ensure that no conflict of interest exists on the part of anyone involved in the Title IX investigation, hearing, appeals, or informal resolution processes. If a conflict of interest exists, another individual will be assigned to the appropriate role. If a conflict of interest exists between the Complainant or Respondent and the Title IX Coordinator, reports should be directed to the Sample University Vice President for Equity and Inclusion.

CHALLENGING THE NEUTRALITY OF THE INFORMAL RESOLUTION FACILITATOR

QUESTIONS TO CONSIDER:



Does the institution's policy or process allow for the right to object to an Informal Resolution Facilitator?



Has the school, Coordinator, or Facilitator created this process in case it arises?



When will the opportunity to object be given?



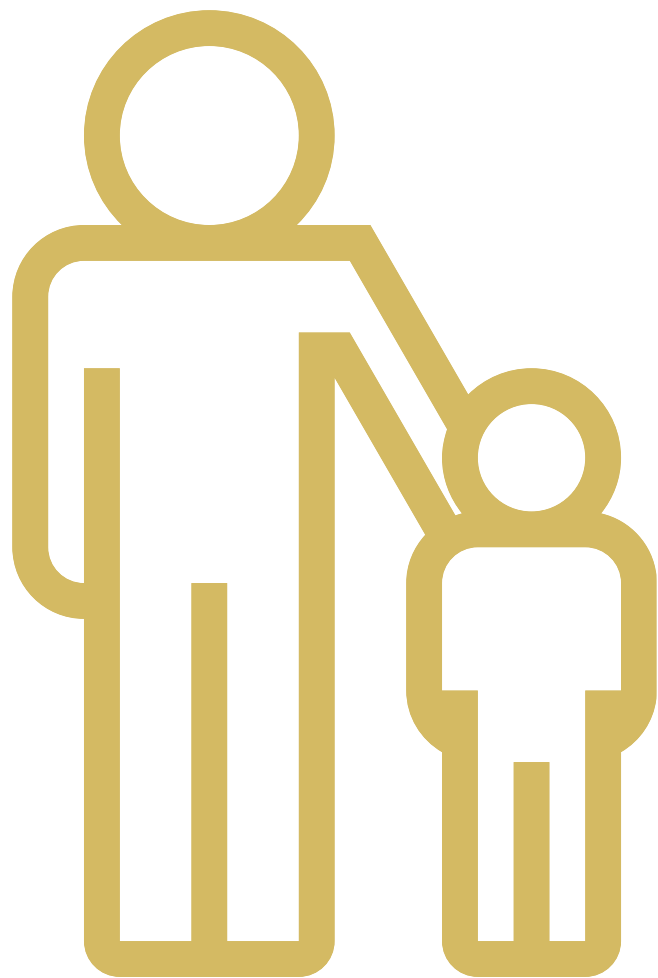
What if there is an objection to the IR Facilitator?



Who will ultimately decide if there is a conflict of interest or bias, and how will this be communicated?

CONSIDERATION FOR MINORS

IT IS BEST PRACTICE TO INCLUDE THE PARENT/LEGAL GUARDIAN



- If either Party is a minor or legally incompetent person, the parent or legal guardian of that Party will receive the required written notice.
- Parents or legal guardians are responsible for signing the consent form.

TITLE IX SOLUTIONS, LLC

PRE-INFORMAL RESOLUTION MEETINGS



IN THIS CHAPTER



PRE-INFORMAL
RESOLUTION MEETINGS



SPEAKER

CJ LARKIN

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR

PRE-INFORMAL RESOLUTION MEETINGS



WHAT IS THE PRE-INFORMAL RESOLUTION MEETING?

THE PRE-INFORMAL RESOLUTION MEETING PROVIDES AN OPPORTUNITY FOR THE INFORMAL RESOLUTION FACILITATOR TO MEET SEPARATELY AND PRIVATELY WITH THE PARTIES AS WELL AS WITH ANY SUPPORTING INDIVIDUALS (PARENTS/LEGAL GUARDIANS, ADVISORS).

- It may occur:



in person



online

IMPORTANCE OF THE MEETING

PREPARATORY



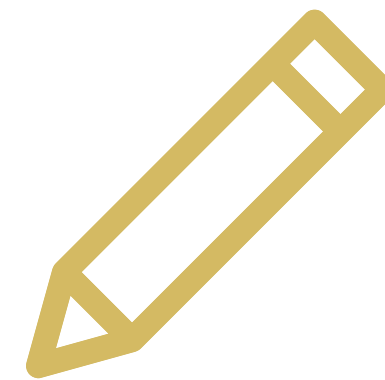
Talk about how the informal resolution process will typically unfold

INFORMATIONAL



Listen to Parties' perspectives, hopes, desired outcomes, concerns, etc.

INTENTIONAL



Assess Parties' safety concerns, ability to communicate effectively and sincerely



**WHAT IF IN-PERSON OR VIRTUAL
DIALOGUE IS NOT POSSIBLE OR
APPROPRIATE?**

PRE-INFORMAL RESOLUTION BRIEF

GATHER THE FOLLOWING INFORMATION IN WRITING:

- Names and contact information of the Party and any other individuals that will attend the informal resolution facilitation meeting with them
- A statement about the incident
- Any questions or concerns the Party may have regarding the upcoming informal resolution process
- Availability of the Party for the informal resolution facilitation meeting

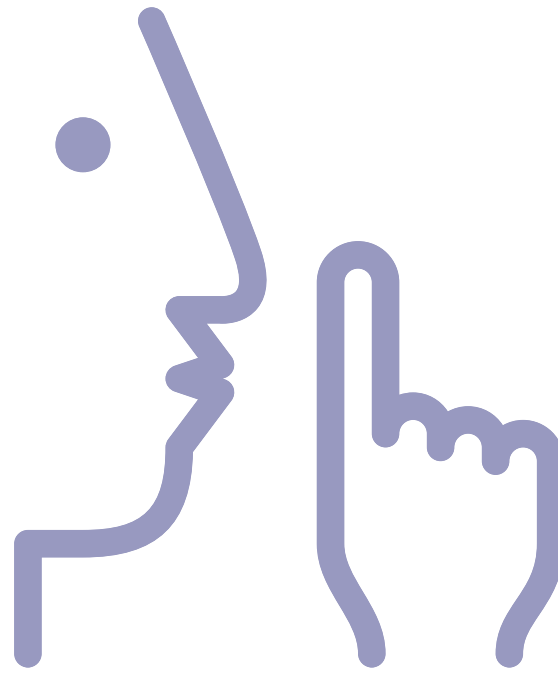


**DOES THE INSTITUTION'S POLICY PROVIDE
GUIDELINES FOR THIS?**

BENEFIT OF THE MEETING



EFFICIENCY



CONFIDENTIALITY



TRANSPARENCY

PRE-INFORMAL RESOLUTION MEETING

FIRST STEPS

- Create a relaxed, cordial atmosphere
- Introduce yourself as the Informal Resolution Facilitator and your role in the process
- Explain the purpose of informal resolution
- Provide a brochure or written information regarding the process
- Ask the Parties to tell you about the difficulty or conflict in question

PRE-INFORMAL RESOLUTION MEETING

NEXT STEPS

- Demonstrate concern and understanding
- Review the Agreement to Informal Resolution Process
- Explain neutrality and maintain positive neutrality
- Outline confidentiality expectations both within the informal resolution process and during the pre-informal resolution meeting
- Discuss informal resolution ground rules

PRE-INFORMAL RESOLUTION MEETING

NEXT STEPS

- Ask questions to gain understanding
- Answer any questions they have about your role and the process
- Avoid sharing information about the other Party in the dispute
- Explore the Party's conflict style and cultural preferences about conflict resolution

PRE-INFORMAL RESOLUTION MEETING

FINAL STEPS

- Discuss practical and logistical issues:
 - Who will attend the informal resolution meeting?
 - Where will it be held?
 - How long will it last?
 - What documents or information should the Party bring to the informal resolution meeting?

WORKING WITH SUPPORTING INDIVIDUALS

DETERMINE AS EARLY AS POSSIBLE WHO WILL BE INVOLVED AND:

- Assess their relationship to the student or employee
- Ensure Party's willingness to have them involved
- Determine their role
 - Parent, Legal Guardian
 - Attorney, Advisor
 - Advocate
 - Emotional Support
 - Interpreter, Special Needs Facilitator
- Recognize that a supporting person may be added at different points in process

WORKING WITH SUPPORTING INDIVIDUALS

DETERMINE AS EARLY AS POSSIBLE WHO WILL BE INVOLVED AND:

- Notify all participants of who will attend the informal resolution meetings, including additions
- Follow best practice by including supported Parties in conversations with supporting individuals
- Exercise caution when conducting private meetings or conversations with supporting individuals
 - Assist them in understanding their role in the process and set clear expectations
 - Understand there may be high emotions experienced by supporting individuals as well as a positional or one-sided perspective
- Stress the goals and philosophy of the informal resolution process

PRE- INFORMAL RESOLUTION MEETING CHECKLIST



**NOTIFY ALL PARTICIPANTS BY
PHONE, EMAIL, OR LETTER THAT
YOU WILL BE SETTING UP A MEETING
TO MEET WITH THEM INDIVIDUALLY
BEFORE THE INFORMAL RESOLUTION
MEETING.**



**SET THE PRE-MEETING TIME,
LOCATION, AND MODE.**

PRE- INFORMAL RESOLUTION MEETING CHECKLIST



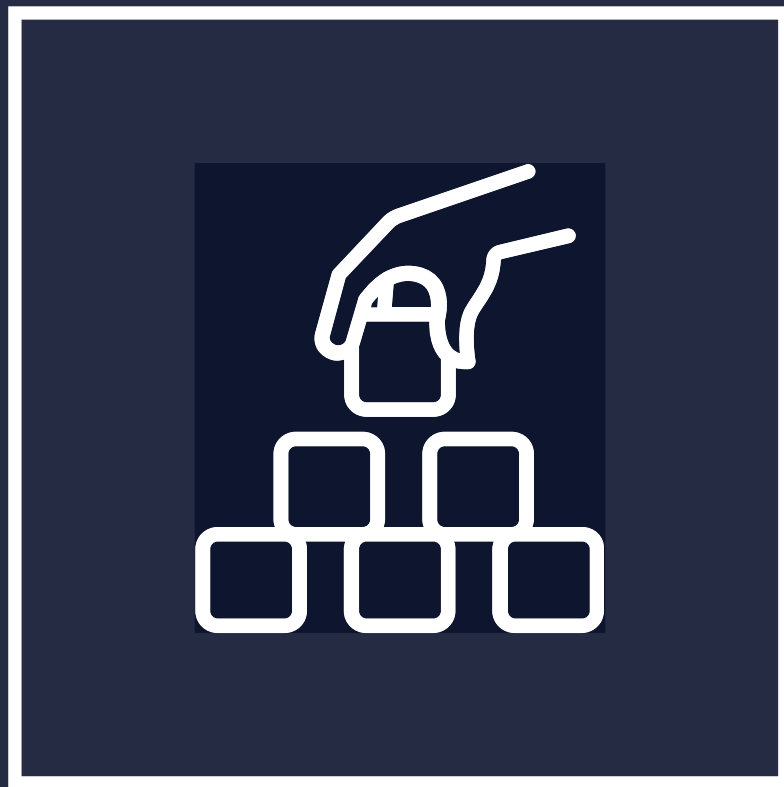
AT THE MEETING:

1. Introduce yourself
2. Explain the confidential nature of the pre-informal resolution meeting
3. Ask attendees to introduce themselves, their role, and relationship.
4. Explain your role, duties and neutrality
5. Explain the purpose, process and ground rules of the informal resolution meeting
6. Ask attendees if they have any questions, concerns and goals for the process
7. Encourage Parties to bring any documents or information they would like to the informal resolution meeting
8. Ask any informational or process questions
9. Provide the informal resolution meeting time, location, duration and mode.
10. Ask Parties to sign the Agreement to Participate
11. Close the meeting with your thanks for their participation and cooperation.

TITLE IX SOLUTIONS, LLC

FOSTERING PARTICIPANT TRUST

IN THIS CHAPTER



FOSTERING PARTICIPANT
TRUST IN THE PROCESS



SPEAKER

KIM KIRN

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR

FOSTERING PARTICIPANT TRUST IN THE PROCESS



STRATEGIES

ASK QUESTIONS



- What does each Party want out of the process?
- What are their concerns, questions, informational needs?
- What is their desired outcome?
- Are they willing to be open and make compromises?

STRATEGIES



PRACTICE ACTIVE LISTENING

- Make eye contact
- Create physical face to face interaction without barriers

STRATEGIES

HOW DO WE OVERCOME THIS IN A VIRTUAL MEETING?



- Conduct private, 1-on-1, meetings with each Party prior to and during the informal resolution meeting
- Be intentional about maintaining eye contact
- Ensure your face and Parties' faces can be fully seen and voices can be heard

STRATEGIES

PROVIDE AFFIRMATIONS AND DEMONSTRATE UNDERSTANDING



- Set expectations, including time limits
- Summarize statements
 - “So what I heard you say is...” then paraphrase
- Acknowledge feelings and concerns
 - “I can see that is concerning to you.”
 - “Thank you for sharing that you’re frustrated.”

STRATEGIES

PROVIDE AFFIRMATIONS AND DEMONSTRATE UNDERSTANDING



- Gently ask clarifying questions
 - "Could you tell me why this is important to you?"
 - "Can you help me understand this statement?"
- You may have to conduct more than one pre-informal resolution discussion

STRATEGIES

PROVIDE AFFIRMATIONS AND DEMONSTRATE UNDERSTANDING



- Encourage additional comments
 - "What happened next?"
 - "Would you mind expanding upon that thought?"
- Ask questions when things don't make sense
- Ask permission to take notes
- Repeat statements back to the Party
- Seek confirmation that you accurately understood

STRATEGIES

PROVIDE CLARITY AND CONSISTENCY



- Be knowledgeable of Title IX Regulations and institutional policy to answer all questions
- Be clear about what will happen throughout the informal resolution process and about potential consequences
- Be consistent in communication and expectations

RESPECTING PRIVACY OF THE PARTIES AND PROCESS



INSTITUTIONAL POLICY SHOULD
OUTLINE THE CONFIDENTIALITY
EXPECTATIONS OF THE PROCESS



GENERALLY, INFORMATION SHARED
THROUGHOUT THE PROCESS IS
CONFIDENTIAL UNLESS THERE IS A
POTENTIAL THREAT OF HARM TO SELF OR
OTHERS



ARE YOU SEEKING EACH PARTY'S CONSENT
TO SHARE INFORMATION WITH THE OTHER
PARTY?

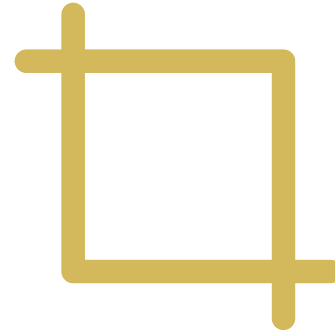
DEALING WITH CONFLICT, TRAUMA, AND DIFFICULT EMOTIONS

- Informal Resolution Facilitator training should include trauma-informed education.
 - Assists in the creation of a targeted approach that is sensitive to the experiences of those in the process
- The Informal Resolution Facilitator must identify, acknowledge, and manage difficult emotions such as anger, desire for revenge, fear, and low self-esteem.

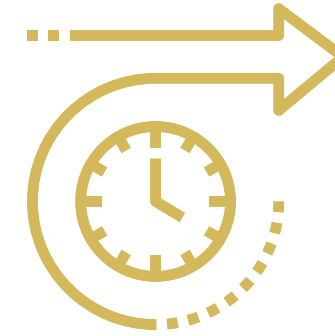
TECHNIQUES FOR DE-ESCALATION



Acknowledge
feelings and causes



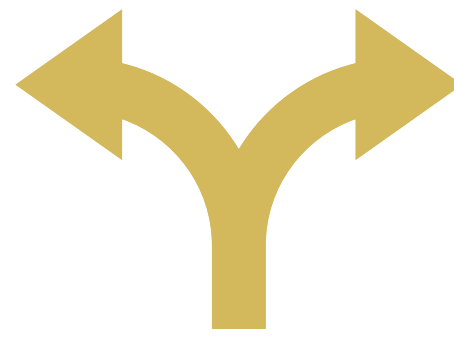
Reframe to lower
rhetoric and
emotional level



Orient to the future



Employ the mirror
technique



Take breaks for
separation



Highlight progress
and effort



**WHAT ARE SOME TRUST OR
RAPPORT-BREAKERS?**

TRUST OR RAPPORT BREAKERS

- Your words must always convey neutrality
 - Choose your words carefully
- Seeming to adopt the statements of other participants
 - The Informal Resolution Facilitator should be clear in sharing “facts” or perspectives of other participants as not absolute fact or the Facilitator’s own view
- Becoming impatient
 - The Informal Resolution Facilitator should allow sufficient time to meet and encourage participant communication
- Ridiculing or dismissing concerns
 - The Informal Resolution Facilitator should exercise care with humor or minimization of concerns

TITLE IX SOLUTIONS, LLC

FACILITATING INFORMAL RESOLUTION MEETINGS



IN THIS CHAPTER



INFORMAL RESOLUTION
MEETING LOGISTICS



STAGES OF THE
INFORMAL RESOLUTION
MEETING



SPEAKER

JIM REEVES

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR

INFORMAL RESOLUTION MEETING LOGISTICS



LOGISTICAL CONSIDERATIONS

HOW WILL YOU DETERMINE THE FOLLOWING:

WHO

Participants at
the table

WHEN

Scheduling
meetings

WHERE

In person, virtual
or in writing

HOW

Facilitating the
conversation

LOGISTICAL CONSIDERATIONS



PARTIES NEEDS

- The Facilitator will meet with the Parties and supporting individuals, if any.
- The type of informal resolution and the setup will depend on the Parties' needs.
 - In person vs. virtual
 - Dialogue in the same room vs. separate rooms with shuttling

LOGISTICAL CONSIDERATIONS



DURATION OF MEETING(S)

- Often, two hours is considered the longest duration participants can maintain focus and commitment to the process.
- The Facilitator should be clear about time requirements and work with all participants' schedules.
- Multiple sessions of varying length may be appropriate and/or necessary. The Facilitator should provide confidentiality guidelines for the interim time between sessions.

STAGES OF THE INFORMAL RESOLUTION MEETING





WHAT DOES THE INFORMAL RESOLUTION MEETING LOOK LIKE?

INFORMAL RESOLUTION AGENDA

- ➊ Facilitator Opening
- ➋ Parties' Statements
- ➌ Sharing Information
- ➍ Providing Explanations
- ➎ Acknowledging Harm
- ➏ Apologizing
- ➐ Analyzing Consequences
- ➑ Considering Resolution Options
- ➒ Coming to an Agreement
- ➓ Drafting and Signing an Agreement

1

FACILITATOR OPENING

- Facilitator is going to do most of the talking
- If it is safe, do this opening with all parties
 - Everyone get's the same information and questions can be answered
- Opening includes:
 - Introductions
 - Overview of the Process
 - Remind Parties that Facilitator knows what the complaint says and is informed on what has happened
 - Outline Ground Rules
 - i.e. no interruptions, everyone will have a chance to speak, review harm questions
 - Ask Parties to listen carefully
- Be Transparent - helps ensure Facilitator's neutrality

2

PARTIES' STATEMENT

- Start with the Complainant
- Remind Parties that they will take turn speaking and to listen when the other Party is speaking

3

SHARING INFORMATION

- After the Parties have given their statement, open up the floor for sharing other information, questions, or clarification that may be helpful
- Avoid Advisors or Parties from cross-examining the other Party
 - If that occurs, Facilitator can reframe the question in a less threatening or adversarial way

4

PROVIDING EXPLANATIONS

- Allow the Parties to provide explanations
 - Here is what I was thinking
 - Here is what I was feeling
 - Here is what I thought was going on
- Give the Parties voice to share what was going on from their perspective
- Parties may agree or disagree, but hearing that from each Party is important.

5

ACKNOWLEDGING HARM

- Gone over in-depth during the pre-informal resolution meeting
- Questions to think about:
 - What words are the Parties using that could trigger a bad reaction?
 - What tone or non-verbal communication is happening that may make it more difficult to come to an agreement.
- Powerful mechanism to bring the Parties together and focusing on resolution.



APOLOGIZING

- Apology can be a great way to start a conversation
- Talk about apologies during the pre-informal resolution meeting
- Questions to think about:
 - Is an apology appropriate?
 - Is a Party willing to apologize?
- Have the Party practice the apology and discuss with the Party what a good apology looks like
- You may have mutual apologies happen in this process

7

ANALYZING CONSEQUENCES

- Consider how others may have been harmed or impacted by this incident
 - Friends
 - Family
 - Teachers
 - School
- Taking a look at those consequences and acknowledging those consequences will help us in the later stage of options for resolutions.



CONSIDER RESOLUTION OPTIONS

- Brainstorm issues, concerns, fears, hopes for the resolution
- Tailor your agreement to meet the needs of both Parties



COMING TO AN AGREEMENT

- Together, with both Parties, options will be chosen that are best for the Parties and what will work best.

10

DRAFTING AN AGREEMENT

- Once an agreement has been decided, the Facilitator will help the Parties draft an agreement
- The agreement is
 - Understandable
 - Non-ambiguous
- Obligations of each party is clearly outlined.



If using a restorative justice process, the Informal Resolution Facilitator will use 5 R language including "repairing harm" and "reintegrating."

PRE-INFORMAL RESOLUTION MEETING

1

The Informal Resolution Facilitator conducts pre-informal resolution meetings with Parties.

MEETING SCHEDULED



2

The Informal Resolution Facilitator sets a date, time, location for the meeting and establishes who will participate.

FACILITATOR OPENING



The Informal Resolution Facilitator provides a welcome, which includes introductions and an explanation of the process ahead.

AGREEMENT FORM

4

The Informal Resolution Facilitator ensures all who will participate have signed the provided agreement form.

ROLE CLARIFICATION



The Informal Resolution Facilitator clarifies the roles of all participants in the informal resolution meeting.

POTENTIAL PARTICIPANTS

- Complainant
- Respondent
- Supporting Adults
 - Parent
 - Legal guardian
- Advisors
 - Non-attorney Advisors may be present to provide an emotional support role.
 - Attorney Advisors may be present to provide legal or practical advice and assistance in drafting agreements.



It would not be uncommon to see an attorney as an Advisor if there is a concurrent juvenile, disciplinary, criminal, or employment process taking place concurrent with the Title IX process.

COMPLAINANT STATEMENT



Complainant shares their experience and concerns.

RESPONDENT RESPONSE

7

Respondent provides their response.

SUPPORTING ADULT STATEMENTS



8

Supporting adults may make statements if the case involves a minor Party.

FACILITATOR RESPONSE



The Informal Resolution Facilitator assists the Parties by asking questions and summarizing responses.

RESOLUTION DISCUSSION



The Parties discuss possible solutions and/or resolutions to the concerns.

RESOLUTION OPTION SELECTED

11

The Parties select options for resolution.

FACILITATOR RESPONSE



The Informal Resolution Facilitator assists in the discussion of the options presented.

DRAFTING THE AGREEMENT



The Informal Resolution Facilitator drafts an agreement if a solution and/or resolution is agreed upon by the Parties.

DRAFTING THE AGREEMENT

- Preferably, the Informal Resolution Facilitator will write the agreement with the Parties' input and feedback.
- Sometimes, additional information or clarification is needed which might delay the drafting until a second meeting.
- Concurrent, in-person review and signing by the Parties is best.
- There may need to be virtual communication if Parties are unavailable.

REVIEW AND SIGN AGREEMENT



The Parties review the drafted agreement, make edits, and sign the final version.

TITLE IX SOLUTIONS, LLC

INFORMAL RESOLUTION AGREEMENTS AND OUTCOMES



IN THIS CHAPTER



INFORMAL RESOLUTION
AGREEMENTS AND
OUTCOMES



SPEAKER

ADRIENNE MATHIS

EXECUTIVE DIRECTOR
TITLE IX SOLUTIONS

INFORMAL RESOLUTION AGREEMENTS AND OUTCOMES



POTENTIAL OUTCOMES

1

Complaint is resolved using the informal resolution process.

Parties agree upon terms and sign a written agreement to abide by.

2

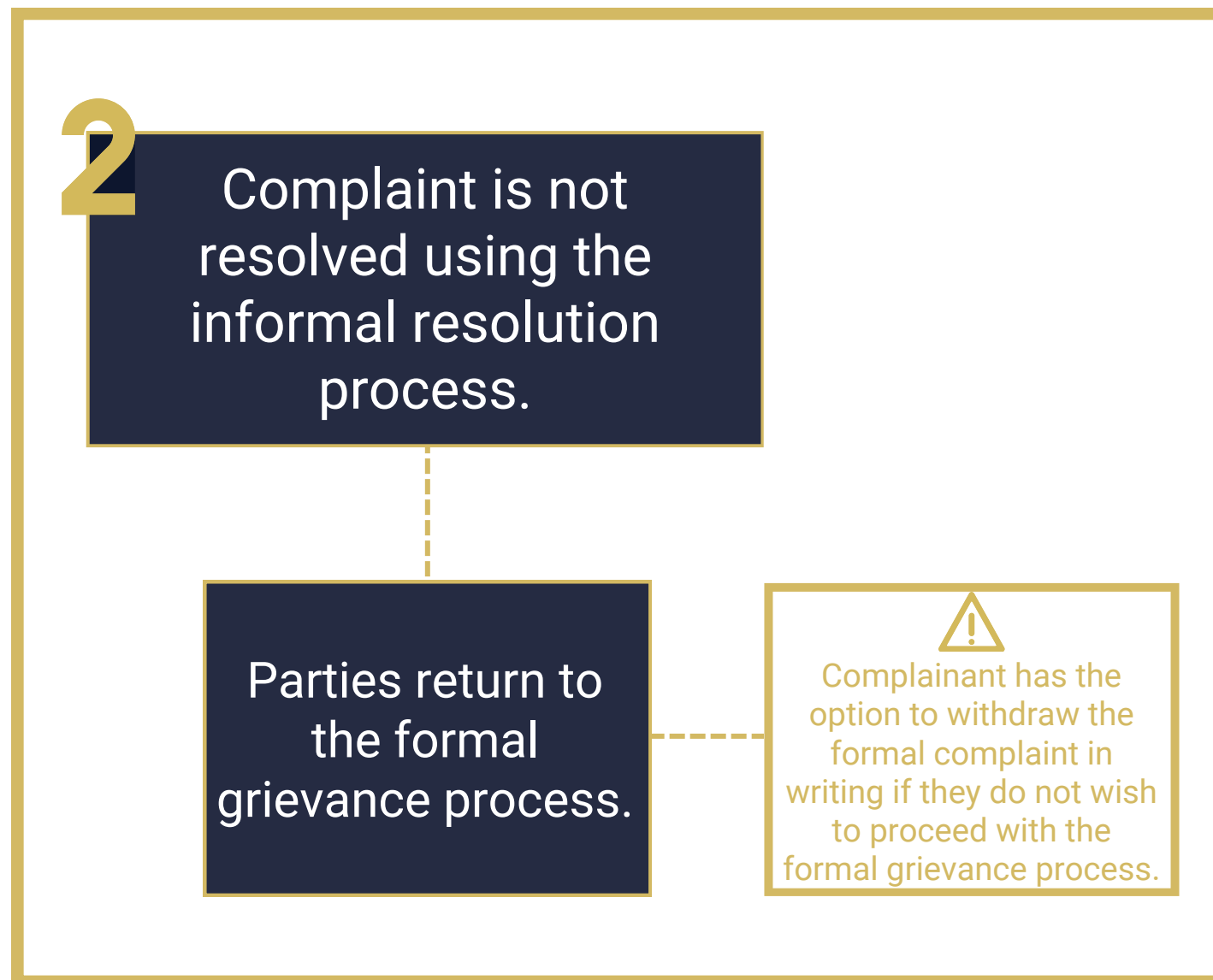
Complaint is not resolved using the informal resolution process.

Parties return to the formal grievance process.



Complainant has the option to withdraw the formal complaint in writing if they do not wish to proceed with the formal grievance process.

POTENTIAL OUTCOMES



- The Title IX Coordinator should notify the Parties in writing once the process resumes and provide updated timeframes.
- Be careful not to imply the Complainant should drop a formal complaint simply because the informal resolution process did not yield an agreement.



**WHAT IF A RESPONDENT ADMITS
RESPONSIBILITY DURING THE
INFORMAL RESOLUTION PROCESS?**

ADMISSIONS OF RESPONSIBILITY



Consult the institution's policy to determine how admissions of responsibility will be addressed.

- Consider the confidentiality of the informal resolution process.
- If the Parties decide to return to the formal grievance process following an admission of responsibility, what information does your policy allow or not allow you to share?

IF THE PARTIES DECIDE TO RETURN TO THE FORMAL GRIEVANCE PROCESS:

WHAT INFORMATION DOES YOUR POLICY ALLOW YOU TO SHARE?

- It is best practice for information shared in the informal resolution process to remain confidential, however, it is hard to “un-ring” a bell.



Example: During an informal resolution meeting, the Respondent states that another student was involved in the conduct alleged. It is possible this statement would not be used moving forward (if outlined in policy), however, the Complainant now has knowledge of the involvement of the other student.

ADMISSIONS OF RESPONSIBILITY

"[A] recipient has discretion under this provision to specify the circumstances under which a Respondent's admission of responsibility while participating in [informal resolution processes] would, or would not, be used in an adjudication if either Party withdraws from the informal process and resumes the formal grievance process."

(Preamble to the 2020 Title IX Regulations, p. 1387)

POTENTIAL OUTCOMES

1

Complaint is resolved using the informal resolution process.

Parties agree upon terms and sign a written agreement to abide by.

- The informal resolution agreement is a written, binding document with specific terms to which the Parties agree by signing.
- The Informal Resolution Facilitator and Parties work together to draft the agreement, with the final version being created by the Facilitator.



WHAT SHOULD THE TERMS OF THE INFORMAL RESOLUTION AGREEMENT LOOK LIKE?

TERMS OF THE AGREEMENT

SPECIFIC

FEASIBLE

CLEAR

- Terms should take academic and non-academic presence into account
- Consider implications of the agreement in the following areas:
 - Academic settings, such as in the classroom
 - Extracurricular settings
 - Residential settings
- Terms should account for short and long term solutions
- Terms may resemble supportive measures
- Terms may be disciplinary or punitive in nature



**WHAT ARE EXAMPLES OF
TERMS IN AN INFORMAL
RESOLUTION AGREEMENT?**



TERMS

- Education or Training
- Counseling
- Restrictions on Contact
- Accommodations
 - Extracurricular
 - Academic
 - Workplace
- Disciplinary Action
- Voluntary Removal

CREATING THE TERMS



ENSURE THE PROPOSED TERMS OF THE AGREEMENT ARE POSSIBLE AND FEASIBLE.

- The terms of the agreement may be creative. However, they must be realistic.
- The informal resolution process may need to be paused to work with the providers of the resolution term.

CREATING THE TERMS



TAKE INTO ACCOUNT THE COORDINATION AND OUTSIDE DEPARTMENTS OR PERSONS NECESSARY TO IMPLEMENT THE AGREEMENT.

- Obtain permission from the Parties to contact the provider.
- Explain confidentiality and privacy of the process, share only necessary information (likely not case-specific information).
- Consider having assisting individuals sign a confidentiality agreement.



Example: The registrar and/or academic department would need to be consulted if the Parties agree not to take the same classes.

CREATING THE TERMS

CONSIDER THE BROADER EDUCATIONAL COMMUNITY AND IMPACT.



- If using restorative justice processes, this will have been considered from the beginning of the process.
- Informal resolution processes may reveal school policies, procedures, or programs need to be changed.



School policy limits student “service” credits to organizations within the city limits or only to non-profit organizations and the proposed agreement involves the Respondent providing volunteer service to an international organization.



Institutional policy on bullying is not proactive and provides limited support to students.



**WHO REVIEWS AND/OR
APPROVES THE INFORMAL
RESOLUTION AGREEMENT?**

APPROVAL OF THE INFORMAL RESOLUTION AGREEMENT

- This will be determined by school policy.
- The school may need to review the agreement to ensure that it does not violate any other institutional policies, laws, or union agreements.



Question to Consider:

- Will the Title IX Coordinator need to review and approve the informal resolution agreement before the Parties sign?



**WHEN MIGHT A SCHOOL WANT TO HAVE A
REPRESENTATIVE INVOLVED IN THE PROCESS
OR HAVE “VETO” OR “EDITING” POWER
REGARDING THE PROCESS AND OUTCOME?**

SCHOOL REPRESENTATIVE

IT MAY BE HELPFUL TO HAVE A REPRESENTATIVE WHEN:



The school has concerns regarding safety



The school needs to ensure certain policies are followed



Administration or staff have a role to play in the process

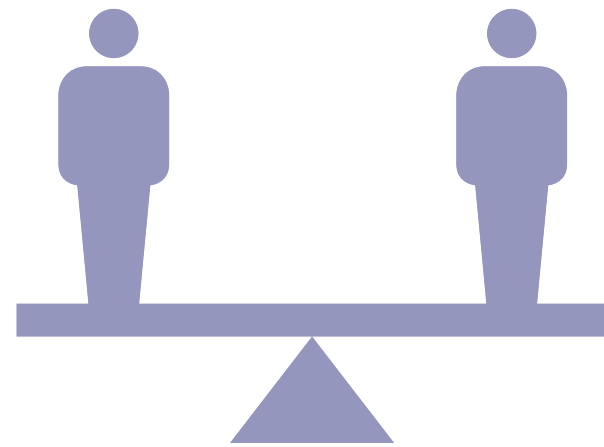


Administration or staff have been harmed by the Respondent

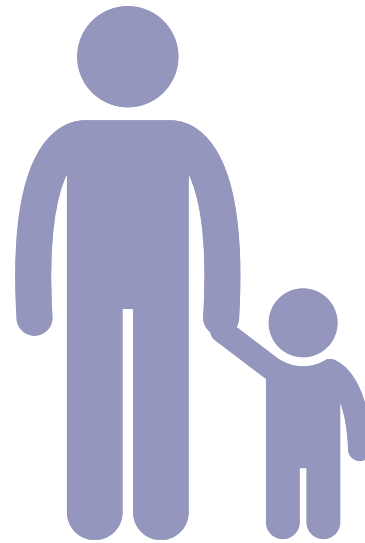


**WHO WILL HAVE ACCESS TO
THE INFORMAL RESOLUTION
AGREEMENT?**

ACCESS TO AGREEMENT



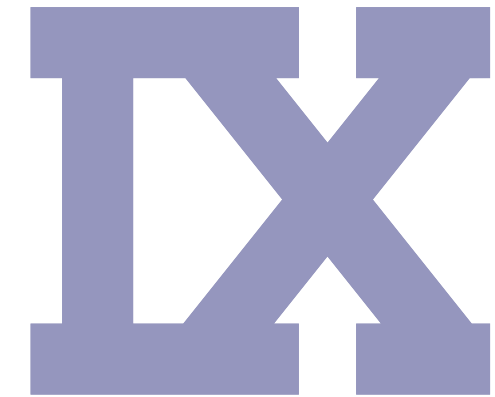
Complainant and
Respondent



Parent and/or legal
guardian (if Parties
are minors)



Advisors
(if applicable)



Title IX office

RECALL TITLE IX RECORDKEEPING REQUIREMENTS:

"A recipient must maintain for a period of seven years records of any informal resolution and the result therefrom."

§ 106.45(10)



REMINDER:



- The agreement must be in writing and must be signed by both Parties to become effective.
 - Parents or legal guardians, the Informal Resolution Facilitator, Title IX Coordinator, and Advisors may also be asked to sign
- The agreement is binding and precludes the Parties from resuming a formal complaint arising from the same allegations.



**WHAT HAPPENS IF ONE OR BOTH
PARTIES FAIL TO COMPLY WITH THE
TERMS OF THE AGREEMENT? WHO
ENFORCES THE AGREEMENT?**

ENFORCING THE INFORMAL RESOLUTION AGREEMENT

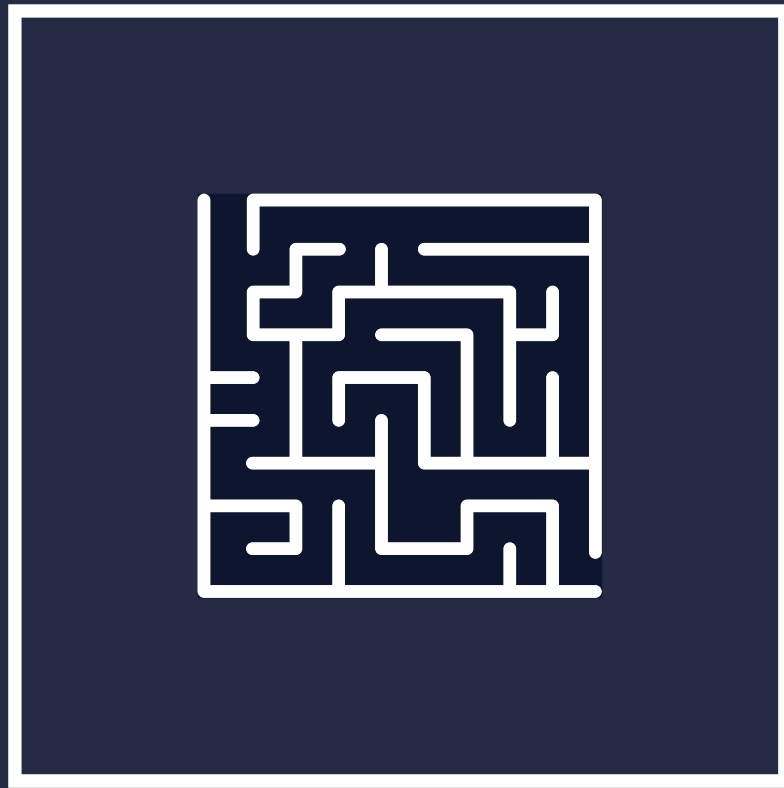
- Again, this will be determined by school policy.
- Best practice is to articulate the consequences and enforcement in the agreement.
- The agreement should also address retaliation concerns.

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POTENTIAL CHALLENGES IN FACILITATING INFORMAL RESOLUTION PROCESSES



IN THIS CHAPTER



POTENTIAL CHALLENGES
IN FACILITATING
INFORMAL RESOLUTION
PROCESSES



SPEAKER

CJ LARKIN

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR



SPEAKER

JIM REEVES

INFORMAL RESOLUTION FACILITATOR
AND ADVISOR



**HOW DOES AN INFORMAL RESOLUTION
FACILITATOR IDENTIFY THEIR OWN
POTENTIAL BIASES AND PREVENT THEM
FROM IMPACTING THEIR ABILITY TO SERVE
IN THIS ROLE?**



**HOW CAN THE INFORMAL RESOLUTION
FACILITATOR HELP PARTIES IN SETTING
CLEAR TERMS FOR THE INFORMAL
RESOLUTION AGREEMENT?**



**WHAT ARE SOME HELPFUL STRATEGIES FOR
WORKING WITH CHALLENGING
PARTICIPANTS IN THE INFORMAL
RESOLUTION PROCESS?**



**HOW DOES A FACILITATOR HANDLE
UNREALISTIC EXPECTATIONS SET FORTH BY
ONE OR BOTH OF THE PARTIES?**



**HOW DOES A FACILITATOR NAVIGATE THE
INFORMAL RESOLUTION PROCESS WHILE
OTHER LEGAL PROCESSES OCCUR
SIMULTANEOUSLY?**



**HOW DOES A FACILITATOR LOOK OUT FOR
THE MENTAL HEALTH NEEDS OF THE
PARTICIPANTS IN THE INFORMAL
RESOLUTION PROCESS?**

TITLE IX SOLUTIONS, LLC

UNDERSTANDING TRAUMA

Dr. Jessica Groleau, Ph.D



IN THIS CHAPTER



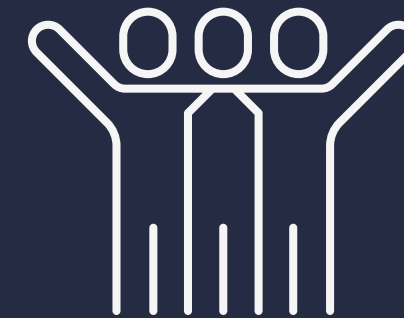
INTRODUCTION TO
TRAUMA



RECOGNIZING
PERSONAL BIAS



TRAUMA-INFORMED
COMMUNICATION



PROMOTING
EMPOWERMENT



UNDERSTANDING
TRAUMA AS AN
DECISION-MAKER

SPEAKER



DR. JESSICA GROLEAU, PH.D

LICENSED CLINICAL PSYCHOLOGIST

UNDERSTANDING TRAUMA



WHAT IS TRAUMA?

DEFINITION OF TRAUMA

- Subjective
- Real or perceived threat
- Manifests differently in each person

CONSIDER EACH PARTY'S EXPERIENCES

- One or both Parties have likely already experienced trauma, either:
 - Prior to the incident (childhood experiences, family history, collective memory, etc.)
 - During the incident
 - As a result of being accused of the alleged incident
 - Through a combination of these experiences
- One or both Parties may be currently experiencing trauma during the Title IX grievance process

NEUROBIOLOGY OF TRAUMA

BRAIN STEM ("REPTILIAN BRAIN")

- Involuntary survival processes (heartbeat, breathing, etc.)

LIMBIC SYSTEM ("EMOTIONAL BRAIN")

- Regulates the body's stress response
- Plays an important role in memory and learning

FRONTAL LOBES ("EXECUTIVE BRAIN")

- Responsible for cognitive skills including ability to rationalize, plan, self-monitor, and control one's responses
- Important for voluntary movement

NEUROBIOLOGY OF TRAUMA

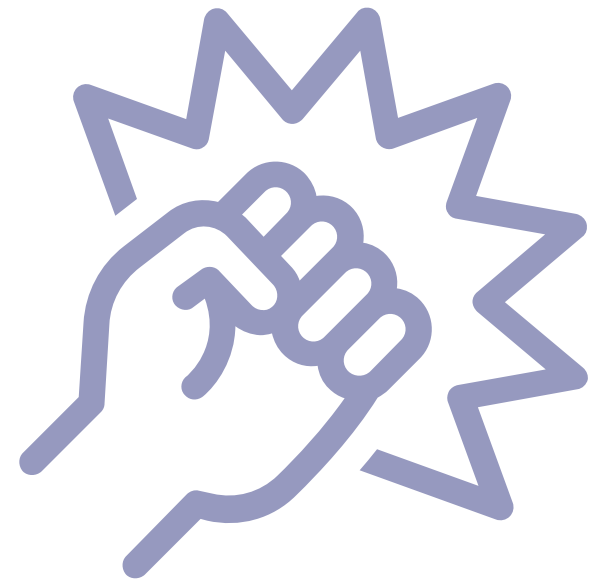
LIMBIC SYSTEM RESPONSE

- Amygdala (“fear center”) is activated
 - All resources are re-directed toward survival

DISCONNECTION OF FRONTAL LOBES

- Executive functioning goes “offline”
- Interferes with cognition, voluntary muscle movement, and ability to process the experience later on
 - This is functional and protective

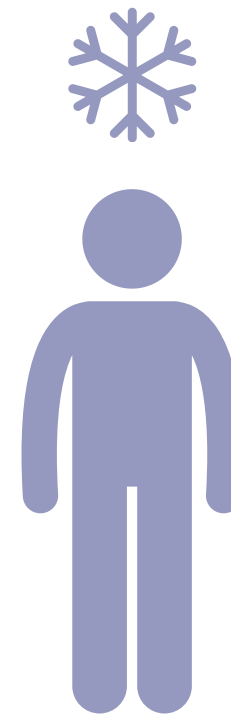
HUMAN STRESS RESPONSE



FIGHT



FLIGHT

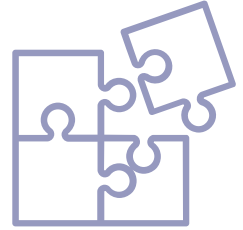


FREEZE

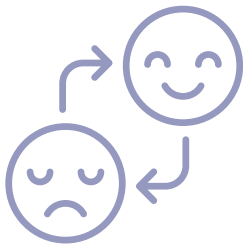


FAWN

WHAT DOES THIS MEAN FOR TITLE IX?



Fragmented, incomplete memories are common



Emotional dysregulation is expected

- Can appear in a variety of ways: inappropriate affect (laughter), extreme anxiety, numbing/disconnection



The fawn or freeze responses may appear to be consent



Discussing the event is retraumatizing

- Try to limit the number of interviews, questions, etc.

RECOGNIZING PERSONAL BIAS



PERSONAL BIAS

A TENDENCY, INCLINATION, OR PREJUDICE TOWARD OR AGAINST SOMETHING OR SOMEONE.

- Biases are universal
 - We are all products of our own personal histories, cultures, and many other factors that shape the ways in which we see the world
 - Biases are automatic and often outside of conscious control
- Biases are not always bad
 - i.e. an inclination toward healthy lifestyle behaviors
- Biases can be based on stereotypes or inaccurate information



It is crucial that you understand your biases in order to be most effective in your role.

BIAS VS. CONFLICT OF INTEREST

BIAS

- Having a personal history with sexual misconduct
- Holding stereotyped gender beliefs about sexual violence
 - i.e. perpetrators are males
- Internalization of rape culture
 - Often leads to skepticism or blaming of the Complainant

CONFLICT OF INTEREST

- Having a personal relationship with one or more parties
- Holding multiple relationships with one or more parties
- There is any way in which you could benefit (or be harmed) from the outcome of the investigation

IMPLICIT BIAS TESTS

Project Implicit

- Race IAT ('Black - White' IAT)
- Weapons IAT ('Weapons - Harmless Objects' IAT)
- Age IAT ('Young - Old' IAT)
- Transgender IAT ('Transgender People - Cisgender People' IAT).
- Gender-Science IAT ('Gender - Science' IAT)
- Gender-Career IAT ('Gender - Career' IAT)
- Asian IAT ('Asian - European American' IAT)
- Disability IAT ('Physically Disabled - Physically Abled' IAT)
- Native IAT *Native American* ('Native - White American' IAT).

Project Implicit

- Native IAT *Native American* ('Native - White American' IAT).
- Presidents IAT ('Presidential Popularity' IAT)
- Religion IAT ('Religions' IAT).
- Weight IAT ('Fat - Thin' IAT)
- Arab-Muslim IAT ('Arab Muslim - Other People' IAT).
- Skin-tone IAT ('Light Skin - Dark Skin' IAT)
- Sexuality IAT ('Gay - Straight' IAT)

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RECOGNIZING PERSONAL BIAS

IS YOUR PERSONAL BIAS AFFECTING YOUR ABILITY TO BE OBJECTIVE?

✓ Introspection

- Implicit Bias Tests
 - <https://implicit.harvard.edu/implicit/selectatest.html>

✓ Having implicit bias does not make you a bad person (we all have it)

- Managing your implicit biases will make you a better Title IX professional

✓ Questions to ask yourself:

- What does the information at hand cause me to believe about those involved? Why?
- When should an individual recuse themselves from a case because they are unable to overcome personal bias?

TRAUMA-INFORMED COMMUNICATION



FOUNDATIONS OF A TRAUMA-INFORMED APPROACH



EMPATHY

- The ability to understand and share the feelings of another
 - Doesn't mean that you fully "get it" – because you don't
 - You can try to put yourself in your party's shoes
- Not the same as sympathy!
 - Sympathy is rarely helpful in these situations
 - Most trauma survivors report that sympathy exacerbates feelings of shame/embarrassment

COMMUNICATING EMPATHY

“I can see how painful this is for you to talk about.”

“That sounds incredibly scary.”

“There are resources here on campus to support you through this.”

VALIDATION

Recognition or affirmation that a person or their feelings, opinions, and experiences are real or worthwhile.

DO

Share your own similar reactions, if you have them:

"I would feel really angry too."

"It makes sense that you would feel that way."

DON'T

Tell someone how they should feel:

"You shouldn't let this bother you so much."

Question their responses:

"Are you sure that is what happened?"

Validation ≠ Agreement

ACTIVE LISTENING

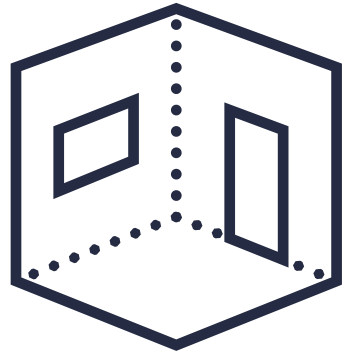
A COMMUNICATION TECHNIQUE THAT SERVES THE FOLLOWING PURPOSES:

1. Ensures that you understand what the other person is saying accurately
2. Communicates to the other person that you are listening

STRATEGIES FOR ACTIVE LISTENING

- Avoid distractions
 - Cell phones, emails, knocks on the door
- Use frequent brief paraphrases of what you heard
- Use nonverbal cues
 - Nodding, smiling or frowning, leaning forward
- Remain neutral and nonjudgmental
- Use phrases to communicate your desire to understand:
 - *"Did I understand that correctly?"*
 - *"I want to make sure I am hearing you."*
- Ask open-ended questions:
 - *"Can you tell me more about..."*

ADDITIONAL STRATEGIES



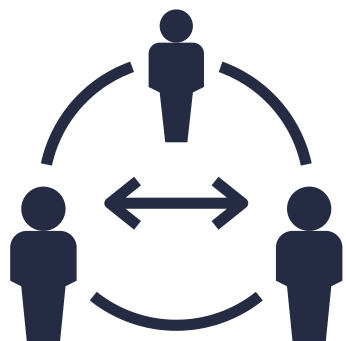
CONSIDER THE ENVIRONMENT

- Allow each Party to choose the meeting place, if possible
- Consider comfortable seating, tissues, water, privacy, etc.



FOCUS ON EACH PARTY AND THEIR NEEDS

- Refrain from sharing own stories & experiences
- Create an open space for them to talk (no judgement)
- Aim to understand each Party's perspective



KEEP A HEALTHY EMOTIONAL DISTANCE

- Self-care is crucial
- Boundaries are okay (and even healing!)
- Direct each Party to campus resources that can provide support

DE-ESCALATION

CONFRONTATION IS POSSIBLE

- Title IX processes may be intense, and emotions may run high
- Confrontation may occur between you and either Party or their Advisor

STRATEGIES FOR DE-ESCALATION

- Keep personal emotions in check
- Create physical space
- Allow for silence & patience for decisions
- Practice validation, active listening & empathy

PROMOTING EMPOWERMENT



EMPOWERMENT

EMPOWERMENT = VOICE AND CHOICE

- ① What could empowerment look like for each Party?
- ② How can you, as an administrator in the Title IX process, identify resources to help empower a Party?
 - You need to be neutral and objective, but you can refer each Party to other sources of support or advocacy
- ③ What may each Party consider to be possible obstacles to empowerment?
- ④ How may you address them?

TOOLS FOR EMPOWERMENT

ASK THE PARTY:

How are you feeling?

Do you feel safe?

How can I help you feel safer?

What do you need right now?

What do you need throughout the duration of the Title IX process?

How do you feel about participating in the Title IX process?

What steps of the Title IX process concern you?



Remember the foundations of empathy, validation, and listening.
How can you best support each Party and address their needs?

UNDERSTANDING TRAUMA AS AN INFORMAL RESOLUTION FACILITATOR





FACILITATOR QUESTION AND ANSWER

1. How can I create an environment in which participants can safely share their desired outcomes?
2. What can I do to minimize re-traumatization throughout the Title IX process?