



Association of  
Title IX Administrators

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# Informal Resolutions in Title IX Processes

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Strategic Risk  
Management Solutions



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# TITLE IX OVERVIEW

- When Does Title IX Apply?
- 2020 Regulations
- Dismissals
- What if Jurisdiction is Not Present Under Title IX?

# WHEN DOES TITLE IX APPLY?

- Sexual Harassment as defined in the 2020 Title IX regulations
- Sex/Gender discrimination (Equity)
  - The OCR recently noted this includes sexual orientation and gender identity (based on biological sex) following Supreme Court's *Bostock* case
- Any other policy violation that is sex/gender-based that causes a discriminatory effect (e.g., hazing, bullying, arson, vandalism, theft, etc.)
- Pregnant and parenting discrimination
- Retaliation

# 2020 TITLE IX REGULATIONS

- Emphasize the *Davis* standard - Title IX applies, and jurisdiction is required, when the recipient has:
  - Control over the harasser (Respondent) AND control over the context of the harassment
  - “Education program or activity” means...
    - locations, events, or circumstances under substantial control
    - any building owned or controlled by an officially recognized student organization
- Only proscribe the grievance process for **sexual harassment** as defined in §106.30, including the use of informal resolution

# WHEN DOES TITLE IX APPLY?

- 2020 Regulations **do not** address Title IX complaints for sex or gender-based discrimination that is NOT sexual harassment or retaliation (e.g., disparate treatment, disparate impact, athletics, or pregnancy & parenting-based discrimination), but they are covered by the law

# MANDATORY DISMISSAL – FOUR GROUNDS

**The Title IX Coordinator MUST dismiss a complaint at any time during the investigation or hearing:**

1. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Title IX regulations even if proved, and/or
2. If the conduct did not occur in the Recipient's education program or activity\*, or
3. If the conduct did not occur against a person in the United States, or
4. If at the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the Recipient.

# DISCRETIONARY OR PERMISSIVE DISMISSAL

**The Title IX Coordinator MAY dismiss a complaint if at any time during the investigation or hearing:**

- If a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations; and/or
- If the Respondent is no longer enrolled or employed by the Recipient; and/or
- If specific circumstances prevent the Recipient from gathering evidence sufficient to reach a determination as to the formal complaint or any allegations.



# IF TIX JURISDICTION IS NOT PRESENT

- Behavior could still violate and be addressed under:
  - Institutional harassment/discrimination policies
  - Student Handbook/conduct policies
  - Technology/Acceptable Use policies
  - Employee Handbook/conduct policies
  - Professionalism standards
- Institution should still take steps to:
  - Provide support and resources to the Complainant and campus community
    - Address any “downstream effects”
  - Determine if there are patterns or institutional variables that contributed to the alleged incident
  - Take what action it can (e.g., trespass the person)



# **INFORMAL RESOLUTION AND TITLE IX**

- OCR Guidance History
- 2020 Title IX Regulations
- Forms of Informal Resolution

# OCR INFORMAL RESOLUTION GUIDANCE HISTORY

## 2001 Revised Sexual Harassment Guidance (rescinded)

- “grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so.” <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>
- It may often not be appropriate for students who reported harassment to be required to “work out” the problem directly with the peer alleged to be harassing them, and that a high degree of involvement by the school, say by a teacher or administrator, would be required for an alternative resolution mechanism to be appropriate.

## 2011 Dear Colleague Letter (rescinded)

- “in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis.”

<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>

# OCR INFORMAL RESOLUTION GUIDANCE HISTORY (CONT.)

## 2017 Q&A on Campus Sexual Misconduct (rescinded)

- “[I]f all parties voluntarily agree to participate in an [alternative] resolution that does not involve a full investigation and adjudication after receiving a full disclosure of the allegations and their options for formal resolution, and if a school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate an [alternative] resolution, including mediation, to assist the parties in reaching a voluntary resolution.”

# 2020 TITLE IX REGULATIONS

- Recipients are permitted to offer Informal Resolution for formal complaints of sexual harassment as defined in §106.30
- Regulations do not define or proscribe what “Informal Resolution” looks like in practice; institutions will differ in application
- Not permitted to resolve allegations that an employee sexually harassed a student

# 2020 TITLE IX REGULATIONS (CONT.)

- Requirements
  - Submission of a formal complaint (to TIXC)
  - Written notice to the parties:
    - Allegations
    - Requirements of the informal resolution process
    - Prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the formal grievance process
    - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
  - Parties' voluntary, written consent to participate

# INFORMAL RESOLUTION APPLICATION

- Informal Resolution could be offered to address concurrent non-Title IX based issues as well
  - i.e.: incidents which meet the definition of sexual harassment in §106.30 and those which fall under another policy
- Each institution will decide if and in what form it will offer Informal Resolution

# FORMS OF INFORMAL RESOLUTION

Supportive  
Measures Only

Respondent  
Accepts  
Responsibility

Alternative  
Resolution



# SUPPORTIVE MEASURES ONLY

- Complainant declines to pursue formal grievance process
- Title IX Coordinator works with Complainant to determine reasonable and appropriate supportive measures
  - May not adversely impact the Respondent
  - No cost to Complainant
- Examples
  - Housing reassignment
  - Work adjustment/reassignment
  - Academic adjustment
  - Counseling
  - No Contact Directive\*
  - Incomplete

\*Requires Respondent notification

# RESPONDENT ACCEPTS RESPONSIBILITY

- Respondent accepts responsibility for policy violation(s) prior to a determination being made
- Title IX Coordinator, Complainant, and Respondent agree to sanction(s)/corrective action(s) and/or remedies

# ALTERNATIVE RESOLUTION

- Multi-partial facilitator assists parties with reaching an agreement to resolve the complaint
- May take any number of forms
  - Examples:
    - Conflict Coaching
    - Facilitated Dialogue
    - Mediation
    - Shuttle Diplomacy
    - Restorative Practices
    - Transformative Practices
    - Circles of Support and Accountability

# CONFLICT COACHING

- A party works one-on-one with a trained facilitator to discuss an incident or conflict and explore strategies for addressing it with the other party
- May include role playing practice
- **Strengths**
  - Can prevent low-level concerns from escalating to potential policy violations
- **Challenges**
  - Relies upon one individual's account of the information and context
  - Highly dependent upon initiating party's willingness to implement any of the discussed strategies

# FACILITATED DIALOGUE

- All parties engage in a direct conversation about the incident/conflict with the assistance of a multi-partial facilitator
- Focus is on providing a space and framework for communication rather than on finding a resolution
- **Strengths**
  - Allows parties to discuss their individual experiences and listen to the experiences of others without pressure to reach an agreement
- **Challenges**
  - May leave parties feeling the situation is unresolved
  - Can easily turn to debate vs. dialogue

# SHUTTLE DIPLOMACY

- Third-party facilitator acts as a go-between for the parties to negotiate a resolution
- Often takes several conversations with each party before a resolution is reached
- **Strengths**
  - Allows parties to reach resolution without direct interaction
- **Challenges**
  - Reliant upon the facilitator's accuracy and skill in communicating between the parties
  - Does not typically address underlying feelings and needs

# MEDIATION

- Structured process where a trained multi-partial facilitator fosters an environment for open communication between the parties
- Goals may include improving relationships, resolving issues, and/or achieving specific outcomes
- **Strengths**
  - Seeks to address both short-term and long-term issues
  - Process is often structured to facilitate the parties coming to some sort of tangible agreement about how to proceed
- **Challenges**
  - Incidents involving abusive behavior, violence, and sexual violence are poor candidates for mediation

# RESTORATIVE PRACTICES

- Commonly designed as a circle process with a multi-partial facilitator and the parties; impacted community members and/or supporters for the parties are optional
- Focus on identifying harm, taking accountability for the harm, and determining how to best repair the harm;  
**Respondent must take accountability for causing harm**
- **Strengths**
  - Allows the parties to work collaboratively to determine how harm and relationships can be repaired
- **Challenges**
  - Most institutions do not have internal staff with the skill and experience to facilitate
  - It is a cultural shift for most Respondents to accept responsibility for their actions



# TRANSFORMATIVE PRACTICES

- Historically seen in communities of color within the U.S.
- Rooted in communities rather than within systems
- Focus on addressing issues of injustice and oppression which lead to inequity and power abuses within communities and create the conditions under which harm is done
- **Strengths**
  - Provides means to address community impact beyond the parties involved
  - Often addresses harmful behaviors which fall outside the scope of policy
- **Challenges**
  - Very few institutions have the resources and requisite training to effectively engage in this process

# CIRCLES OF SUPPORT AND ACCOUNTABILITY

- Longer-term process focused on successful community reintegration after a Respondent has committed a violation
- Circle supports the Respondent to provide emotional support, develop constructive and pro-social strategies to address everyday problems, and to challenge the behaviors and attitudes of the core member that may be associated with the harmful behavior
- **Strengths**
  - Acknowledges humanity of Respondent
  - Significantly reduces likelihood of recidivism
- **Challenges**
  - Limited application in educational settings at present; requires significant volunteer commitment

# ASSESSMENT FOR APPROPRIATENESS

The Title IX Coordinator may look to the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, taking into account any power dynamics between the parties
- The parties' motivation to participate
- Civility of the parties
- Cleared violence risk assessment/ongoing risk analysis
- Disciplinary history
- Whether an emergency removal is needed

# ASSESSMENT FOR APPROPRIATENESS (CONT.)

- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/intelligence of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

# FINAL NOTES

- Title IX Coordinator makes ultimate determination of whether Alternative Resolution is available or successful
- The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions
- Results of complaints resolved by Informal Resolution or Alternative Resolution are not appealable



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# Questions?



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