



INFORMAL RESOLUTION FACILITATION

CUNY
Spring 2025

AGENDA

- | Title IX & CUNY Policy
- | Informal Resolution
Goals and Roles
- | Types of Resolution
- | Impartiality
- | Conducting the IR
Options & Considerations
- | Elements of an
agreement
- | Discussion
- | Closing

Title IX of the Education Amendments Act 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 (1972).



CUNY PROHIBITED CONDUCT (SECTION III)

Title IX Sexual Harassment

is a subset of the broader definition of Sexual Harassment above. It is defined by the USDOE to mean conduct on the basis of sex that occurs in CUNY's education program or activity against a person in the United States and that satisfies one or more of the following:

- (1) a CUNY employee conditioning the provision of an aid, benefit, or service of CUNY on an individual's participation in unwelcome sexual conduct;
- (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to CUNY's education program or activity; or
- (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking as defined in this Policy.

CUNY PROHIBITED CONDUCT (SECTION III)

- **Sexual Harassment**

is unwelcome verbal or physical behavior based on a person's sex (including sexual orientation, gender, gender expression and gender identity, including transgender status). Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive. This includes unwelcome conduct when: (1) a CUNY employee conditions the provision of an aid, benefit, or service of CUNY on an individual's participation in unwelcome sexual conduct (quid pro quo); and/or (2) such conduct alters the conditions of, or has the effect of interfering with, an individual's educational or work experience by creating an intimidating, hostile or offensive environment (hostile environment). The effect will be evaluated based on the perspective of a reasonable person in the position of a complainant.

INFORMAL RESOLUTION

Alternative to formal investigation & adjudication



Option 1) administrative resolution

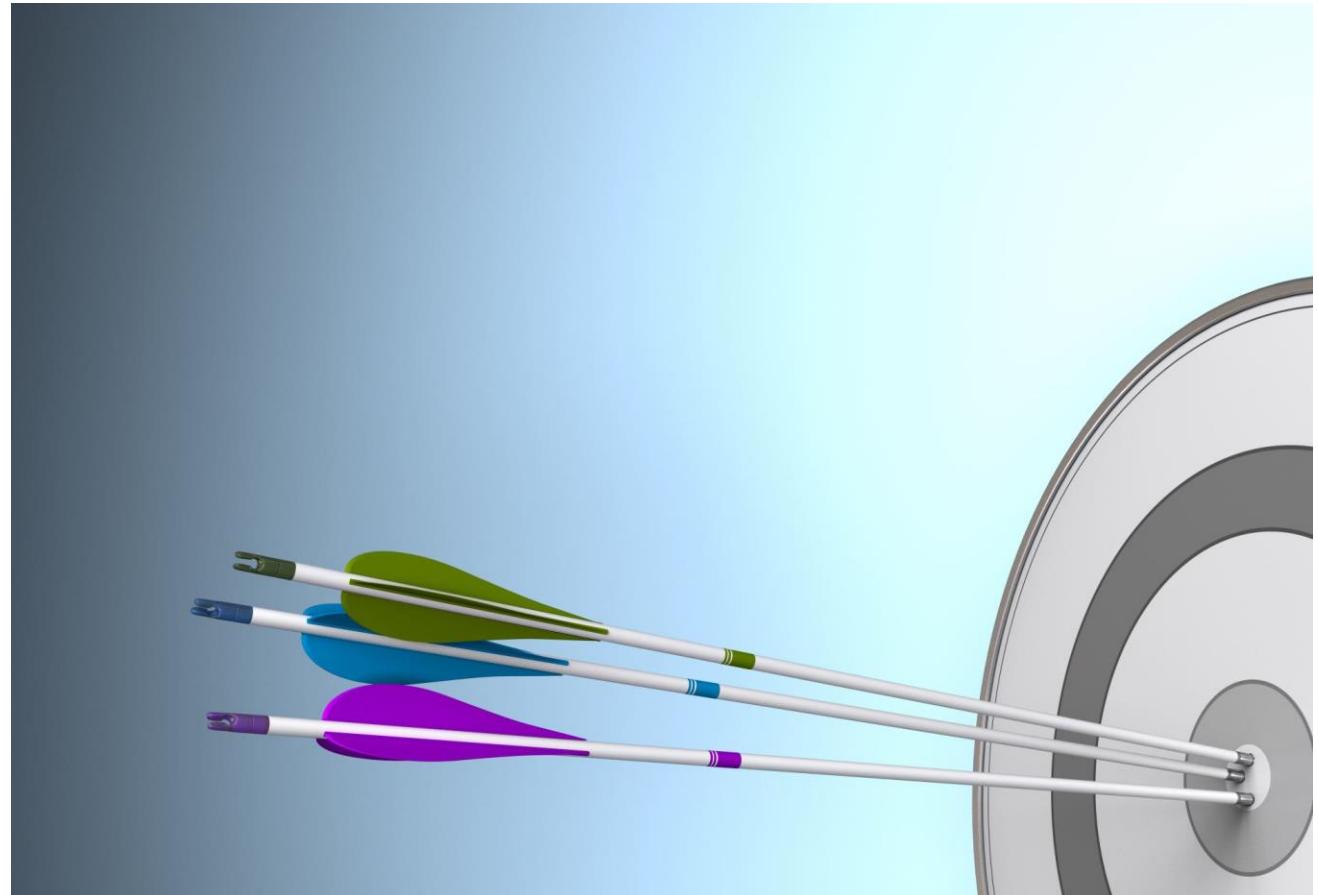
Option 2) acceptance of responsibility

Option 3) Mediation or alternative dispute resolution

Cannot be used for Title IX Sexual Harassment
allegations by a student against an employee

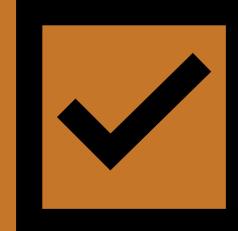
OPTION TO USE INFORMAL RESOLUTION

- Institutions have the option to offer an informal resolution; it is not required
- Can be determined on a case-by-case basis as a resolution option
- May be used at any point prior to a determination of responsibility
- Any party has the right to end the Informal Resolution process



GOALS OF INFORMAL RESOLUTION

Allows parties to have more control over the process



Establishes a resolution agreement that meets the needs of the parties

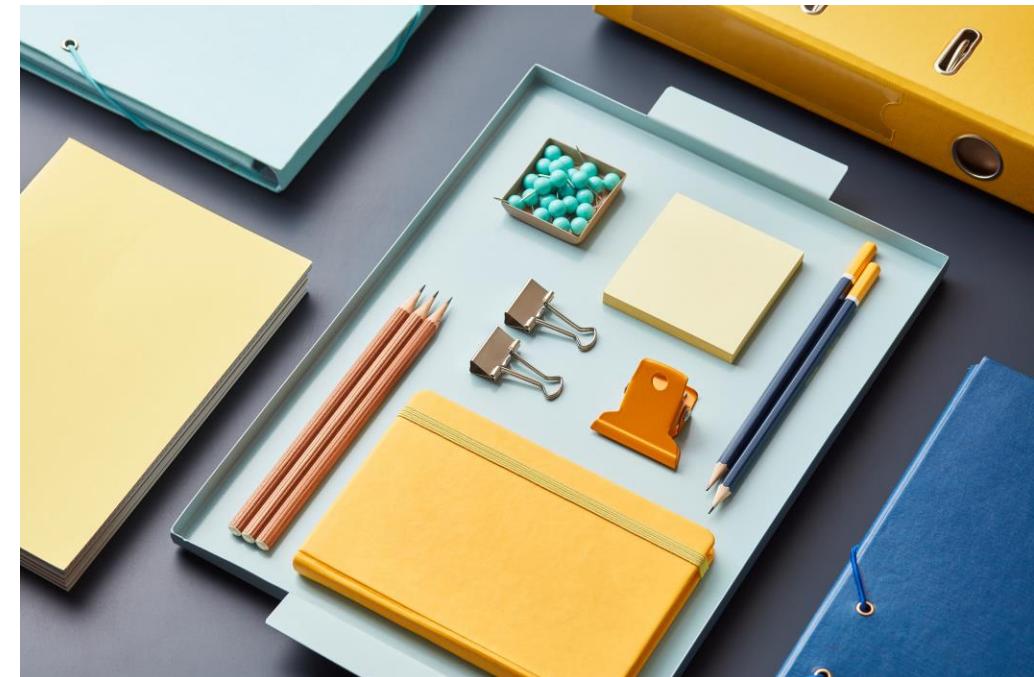
Provides remedies/solutions in a timely manner

Creates a safe space for participants to be open and honest
Trauma informed

Can help preserve relationships of involved parties

ROLE OF THE TITLE IX COORDINATOR

- Considers every eligible case for informal resolution
- Discusses the options with the parties
- Provides written notice that IR is being offered to resolve the allegations
- Obtains an agreement from both parties to participate
- Refers the matter to the designated facilitator
- Conducts periodic check-ins to oversee progress – 30 days



TITLE IX COORDINATOR EVALUATION

The Title IX Coordinator must determine if it is appropriate to refer the matter for Informal Resolution.

- Consider power dynamics
- Review the party's relationship/history
- Think about the allegations
- What are the goals of the parties? What is the goal of the College?

TITLE IX COORDINATOR RESPONSIBILITY

The Title IX Coordinator must provide a written notice to the parties that includes:

- A description of the allegations;
- The requirements of the Information Resolution process
- Potential consequences resulting from participating in the Informal Resolution Process
- Right to withdraw

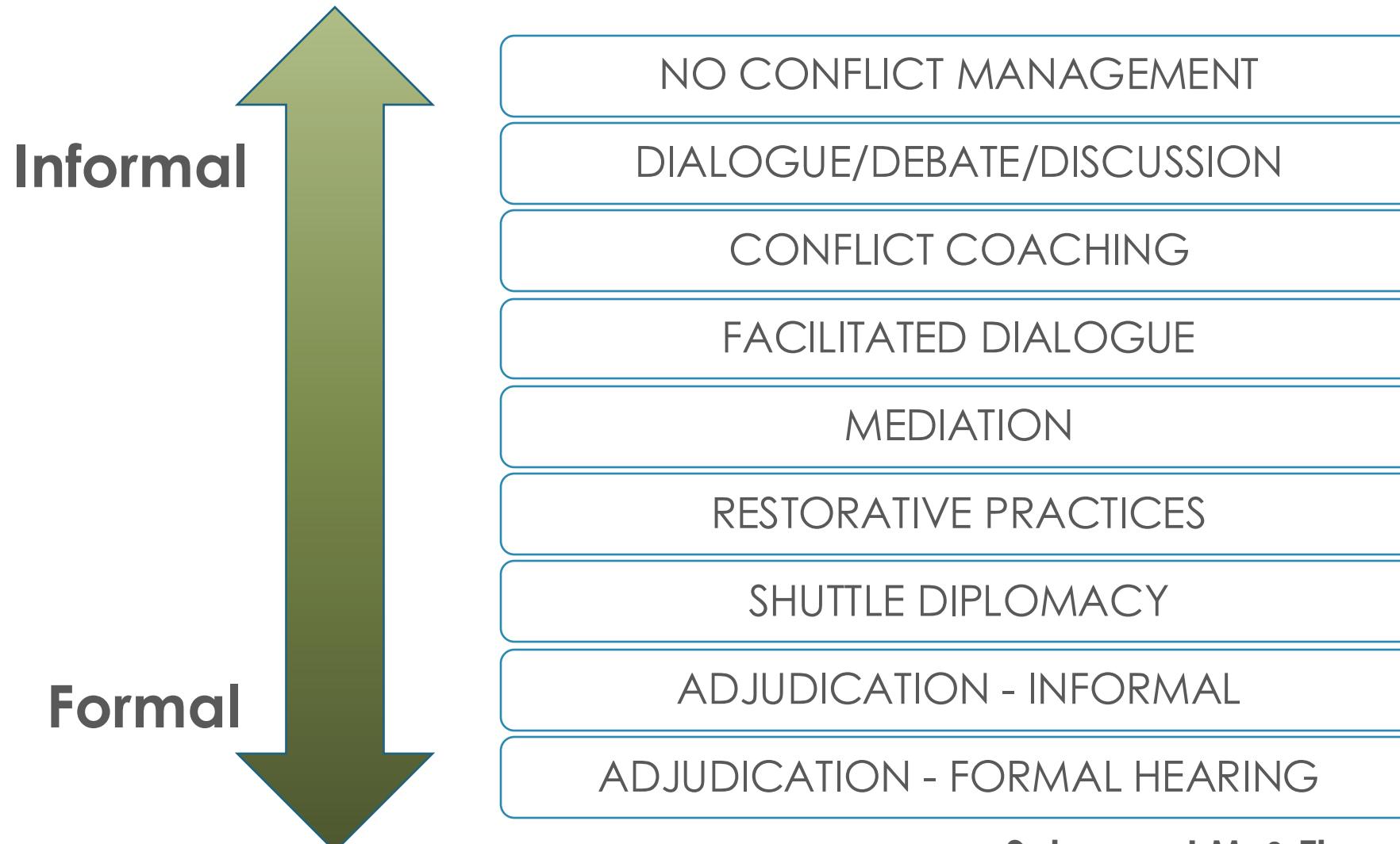
ROLE OF THE INFORMAL RESOLUTION FACILITATOR



- Reviews Notice of Informal Resolution being offered
- Contacts parties to setup separate meetings to review process and expectations
- Provides ground rules to the parties
- Facilitates a discuss with the parties individually or jointly
- Discusses the parameters of the resolutions being considered
- Finalizes and memorializes the resolution agreement

INFORMAL RESOLUTION TYPES

TYPES OF CONFLICT RESOLUTION



Schrage, J.M. & Thomas, M.C (2008)

MEDIATION

“Mediation is a process in which a neutral third party (mediator) helps the parties communicate with one another in an attempt to reach an agreement that is acceptable to everyone. Mediation is a forward-looking process in that it encourages the participants to focus on their current and future needs and interests rather than focusing on fault and blame for past actions. Mediation differs from a court proceeding in that the parties maintain control of their dispute. The decision-making power in mediation lies with the parties, not with the mediator.”

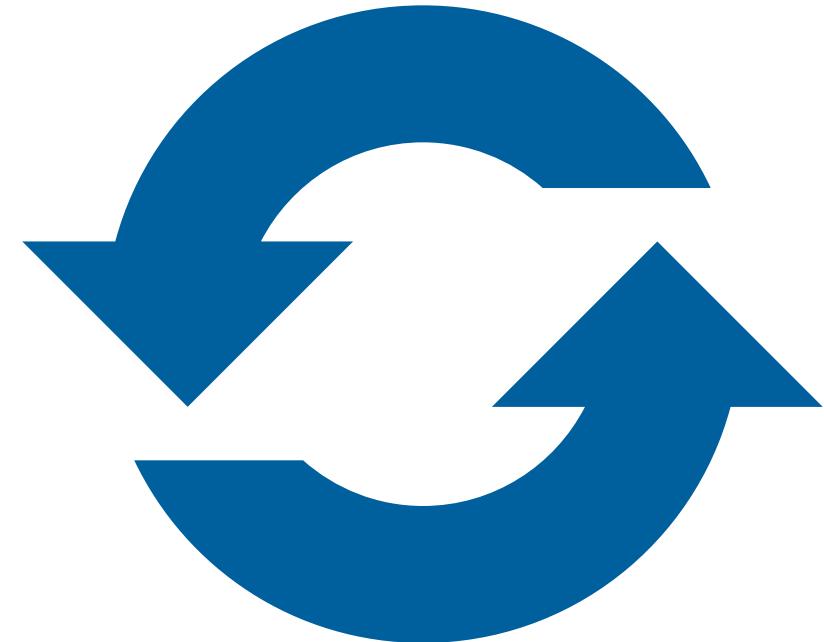
-Harris County TX Dispute Resolution Center



RESTORATIVE PRACTICES

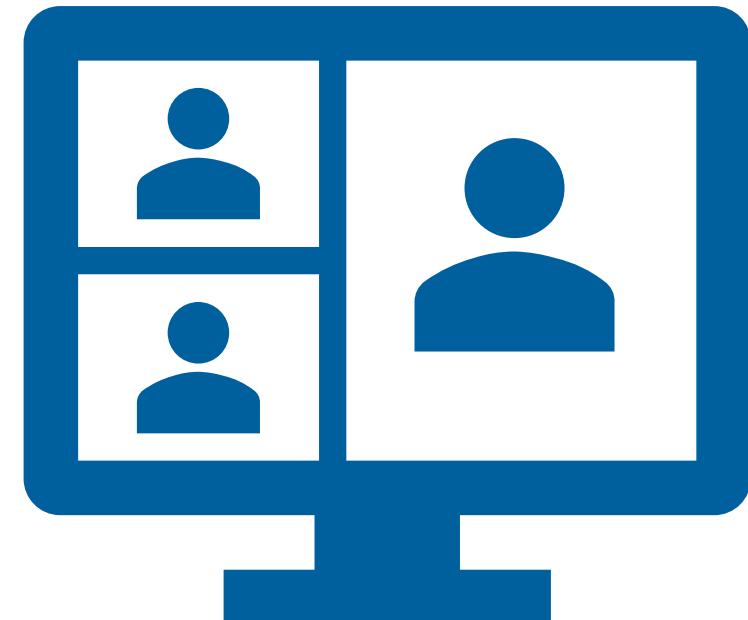
Restorative practices focus on the respondent taking accountability and repairing harm they have caused.

Restorative practices are community based and provides space for all the parties involved to come together to restore trust and build or rebuild community.



SHUTTLE DIPLOMACY

Shuttle diplomacy is a form of mediation that does not require the parties to interact directly with each other. An agreement is negotiated by a facilitator or mediator working with one party at a time to reach an agreed upon resolution.



INFORMAL ADJUDICATION

Informal adjudication is an administrative decision made in accordance with processes established by the institution. While the parties are largely responsible for suggestion outcomes and actions in other forms of informal resolution, in informal adjudication, the facilitator may lead by suggesting outcomes for the parties to consider.



IMPARTIALITY

Avoiding bias, prejudgetment, and conflicts of interest

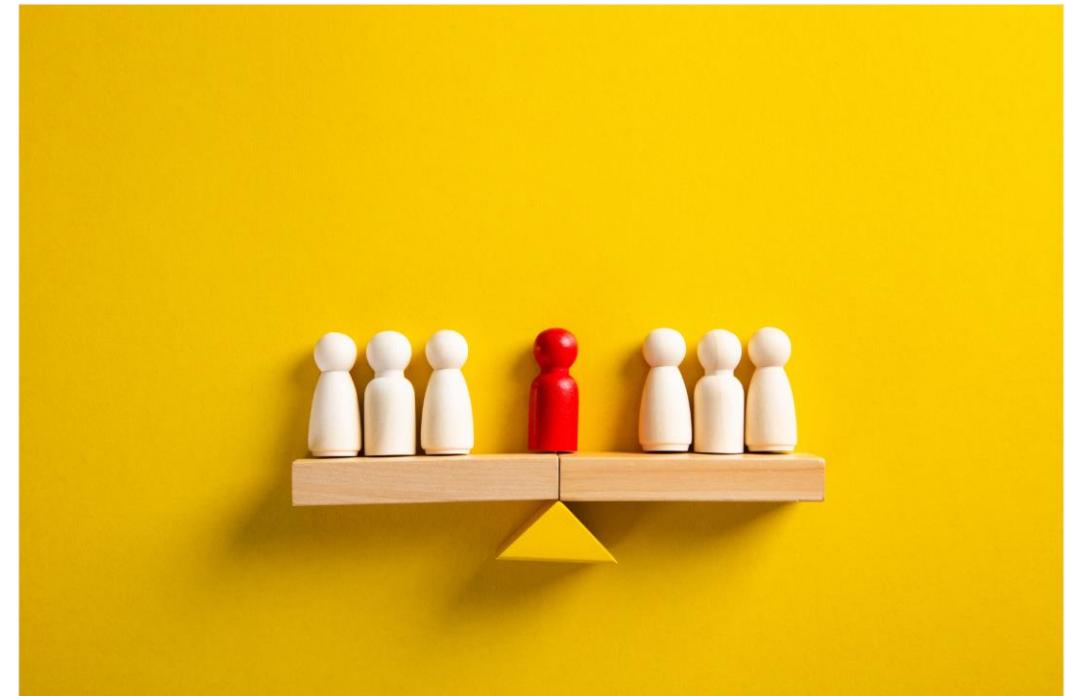
IMPARTIALITY: AVOIDING PREJUDGMENT AND BIAS

“The Department’s interest in ensuring impartial Title IX proceedings that avoid prejudgment of the facts at issue necessitates a broad prohibition on sex stereotypes so that decisions are made on the basis of individualized facts and not on stereotypical notions of what “men” or “women” do or do not do.” 85 Fed. Reg. 30254 (May 19, 2020).

SECTION 106.45(b)(1)(iii)

The grievance process must require that any individual designated by the recipient as Title IX Coordinator, investigator, or facilitator of informal resolution not to have a conflict of interest or bias:

- For or against complainants or respondents generally, or
- An individual complainant or respondent



SECTION 106.45(b)(1)(iii)

“Title IX Coordinator, investigator, decision maker, or **facilitator of informal resolution** must receive training on...how to serve impartially, including **avoiding prejudgment** of the facts at issue, **conflict of interest**, and **bias**. This training material **may not rely on sex stereotypes** and **must promote impartial investigations and adjudications** of formal complaints of sexual harassment.”

IMPARTIALITY

Avoiding Bias

- “Department also rejected commenters’ arguments that individuals should be disqualified from serving as investigators because of **past personal or professional experience**”
- “Department encourages [schools] to apply an objective (whether a reasonable person would believe bias exists), **common sense approach** to evaluating whether a particular person serving in a Title IX role is biased” WHILE
- “exercising caution **not to apply generalizations** that might unreasonably conclude that bias exists (for example, assuming that all self-professed feminists, or self-described survivors, are biased against men, or that a male is incapable of being sensitive to women, or that prior work as a victim advocate, or as a defense attorney, renders the person biased for or against complainants or respondents”

CONDUCTING THE INFORMAL RESOLUTION

Initial Steps & Requirements

CHECK LIST

Meet with the parties

- Determine setting
- Start with the Complainant
- Review ground rules
- Explain process
- Discuss goals

Draft Agreement

- Create draft agreement doc
- Share with parties
- Meeting to discuss concerns

Finalize Agreement

- Complete final agreement
- Answer any last questions
- Obtain signatures

POSSIBLE SETTINGS



In Person:
Process is conducted in person with all parties present, though not necessarily in the same room.



Teleconference:
Process is conducted remotely; parties may or may not meet with each other



Asynchronous:
Facilitator meets with each part individually, at different times.

SETTING CONSIDERATIONS

- Parties' desire for interaction
- Safety
- Physical location of the parties
- Physical environment if in person
- Timeline required by process
- Timeline desired by the parties



REVIEW GROUND RULES – FOR ALL PARTIES

- Adhere to the NCO (if applicable)
- Respond to requests in a timely manner
- Be respectful of all individuals involved
- Listen to understand
- Identify any boundaries or when feeling uncomfortable
- It is a safe space to talk with the facilitator
- Advisor participation



UNDERSTANDING PARTY GOALS

- Why did they decide to participate in an informal resolution process?
- In an ideal world, what is their desired outcome?
- What are their non-negotiables?
- Where are they willing to compromise?
- What level of interaction with the other party do they want?
- What do they need to feel comfortable with the resolution?

Consider

- Reminding parties of their goals
- Maintaining open lines of communication
- Being honest with the parties about expectations
- Keep neutrality

Avoid

- Giving advice
- Forcing a party to continue with the process
- Making promises to a party
- Allowing the parties to waste time

KEY INGREDIENTS TO A RESOLUTION

Written

Clear

Specific

Stated Deadlines

Enforceable

State any process for
foreseeable revisions

TYPICAL OUTCOMES OF INFORMAL RESOLUTION

No-contact
directives

Apology/Reflective
Writing

Coaching or Training

Agreements to stay
away from certain
classes or activities

Facilitated dialogue

Agreement to
withdraw, transfer,
or resign

ELEMENTS OF A RESOLUTION AGREEMENT

- Identities of participants
- Procedural overview of matter
- Reference to appropriate policy
- Terms of the resolution
- Information on record retention (7 years)
- Prohibition against retaliation
- Statement of agreement
- Signatures



INABILITY TO REACH AGREEMENT

It's okay if the parties are unable to reach an agreement.

Notify the parties and refer to the Title IX Coordinator



FINAL REMINDERS ABOUT INFORMAL RESOLUTIONS



- Information learned as a direct result of the informal resolution process will not be documented in an investigatory report or subsequent adjudication.
- Informal resolutions typically do not result in a formal finding of violation.
- The Title IX Coordinator is responsible for determining when an informal resolution is appropriate.
- The facilitator is precluded from participating as a witness should the matter not be resolved and go to formal resolution.
- An agreement between the parties ends the matter.
- Informal resolution agreements are not able to be appealed.
- Violations of resolution agreements will be referred for discipline.

LET'S DISCUSS

Blake and Casey are lab partners. Casey is constantly telling Blake that they are “the most beautiful lab partner anyone could have,” and Casey keeps “finding ways to bump into [Blake] during lab.” One time, Casey said they would withhold their portion of the lab results unless Blake gave them a hug. Both parties have agreed to pursue Informal Resolution.

QUESTIONS?



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