



**Select Education Group**

**In-Depth Training for Title IX  
Informal Resolution Facilitators**

August 21, 2020  
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1



**Ask Questions**

2

## Remember Your “Basic Training”

- Definition of Title IX Sexual Harassment
- Scope of Education Program/Activity

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## What is Informal Resolution?

- Informal method to settle formal complaints of Title IX Sexual Harassment
- Can be offered
- Must be offered consistently

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## When Can IR be Offered?

- Can only be used when formal complaint has been filed
- Cannot be used in cases of employee-on-student harassment
- Can only be used if each party has given informed, written consent (cannot ever be required, indirectly or directly)

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5

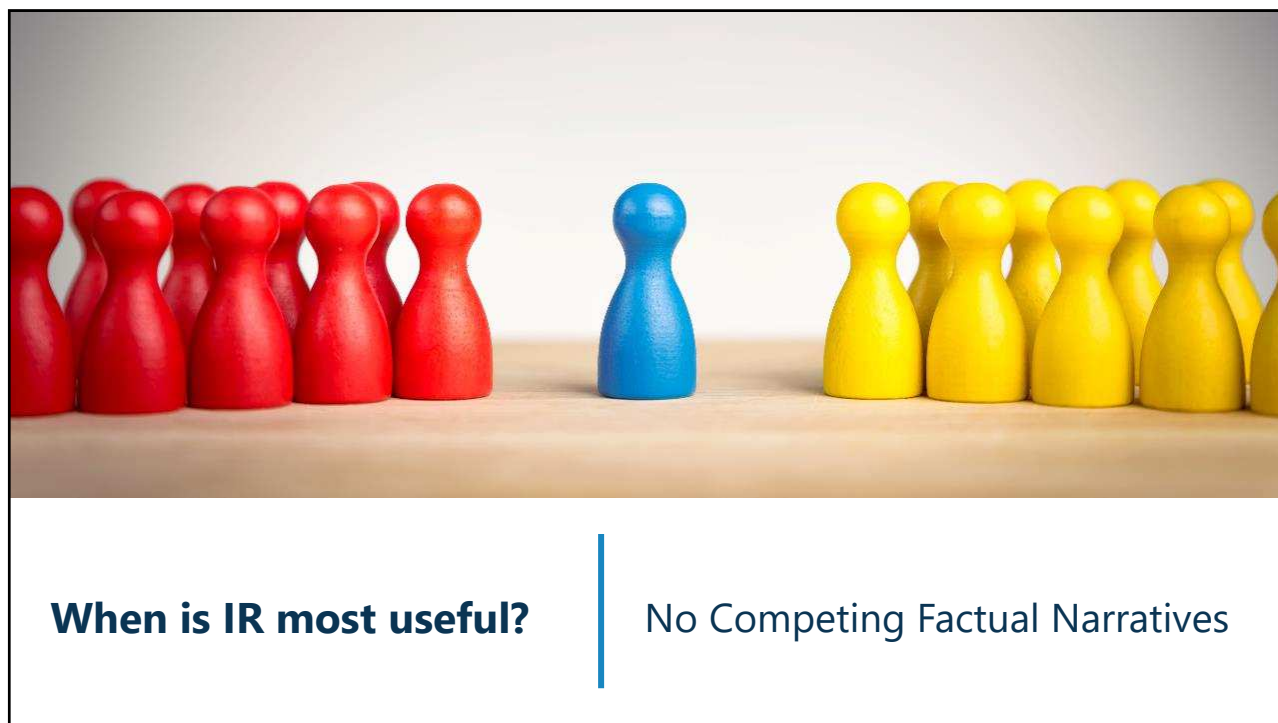
## Old Rules vs. New Rules

- Discouraged by OCR before
- Allowed in 2017 (but did not prohibit in cases involving employee sexual harassment of a student)
- Now allowed but only where formal complaint is filed and not in cases involving employee-on-student misconduct

6

# WHY ALLOW IR?

7



8

## Robin's Report

- Report from an RA
- Robin, a freshman, said a friend, Cameron, also a freshman, told Robin that another student, a senior, Parker, had been sending inappropriate email messages to Cameron.

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## Robin's Report

- Robin encouraged Cameron to report, but Cameron refused
- Robin was talking to another student, Peyton, at a party last weekend. Peyton reported also receiving inappropriate messages from Parker.

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## Robin's Report

- Because this seemed like a pattern, Robin felt the need to report.
- The emails began with requests for dates but evolved into name calling (slut, skank), rambling comments about the recipient's "obvious" desire for Parker, and incessant requests for connection.
- Cameron and Peyton are not interested in filing a formal complaint.

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### Your institution offers face-to-face restorative justice. Can this be done with Cameron?

Yes, because the new Title IX regs now clearly allow informal resolution

Yes, as long as the facilitator has been trained on Title IX

No, because Cameron has not filed a formal complaint

No, because sexual harassment cannot be addressed through informal resolution

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12

## Types of Informal Resolution

- Restorative Justice
- Mediation
- Consider: Face to Face?

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## Who Should Serve as an IRF?

- Trained Facilitator
- Neutral Party/Impartial/Unbiased
- No prejudgment of case
- We do not recommend the IRF be involved in the investigation

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## Standard

- Declined to define "bias," "conflict of interest," "prejudice"
- The Department encourages recipients 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, exercising caution not to apply generalizations that might unreasonably conclude that bias exists....

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## Conflict of Interest

- Flexibility to choose informal resolution facilitator
- Can use a school employee
- Can use an individual with a history of working in certain fields
- Caution against using generalizations to identify conflict of interest

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## Pre-Judgment

Tips for avoiding pre-judgment of facts:

- Each case is fact-specific
- Keep an open mind
- Listen to facts presented
- You are not an advocate for either party, even if you believe one is right

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## Sex Stereotypes

- Must not rely on sex stereotypes such as:
  - Women are "asking for it" based on actions or clothing
  - Men cannot be sexually assaulted
  - Women only decide they were assaulted after the fact due to regret or embarrassment
  - Men are more likely to be sexual aggressors
- Consider intersection of sex stereotypes with race, ability, sexuality, and gender identity

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**You signed the Formal Complaint as Title IX Coordinator or designee. Is that a conflict of interest?**

Yes No

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**You attend the same church as Parker. Is that a conflict of interest?**

Yes No

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**You have a history of working as a victim advocate. Is that a conflict of interest?**

Yes No

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**You are the ADA compliance officer. Is that a conflict of interest?**

Yes No

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**You have had training on trauma informed interviewing practices. Does that create bias or the risk of prejudice?**

Yes No

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23

**Required & Recommended Notices**

- **Notice of allegations + existence of IR process**
- **Offer of informal resolution (with impacts of participation)**
- **Notice of end of informal resolution without agreement**
- **Notice of successful informal resolution**

24

## Forms/Notices

### Informal Resolution Process

Offer of Title IX  
Informal Resolution  
Process  
(Franczek Notice 5(a))

Notice of Closure of  
Title IX Informal  
Resolution Process  
(Franczek Notice 5(b))

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### Notice of Impacts of Participation in IR Process

- Can withdraw and return to investigation process before resolution
- Neither party can ask for investigation to resume after resolution
- Records will be maintained for 7 years
- Other impacts of participation

26

## Other Impacts of IR Process

- Can IR give information against the parties in a later investigation?
- Can facts be used against the parties in a later investigation?

27

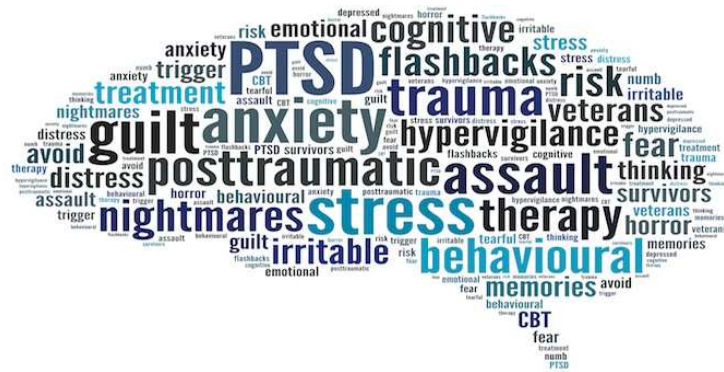
## The Mediation Process

- Introductions
- Information Collection
- Problem Identification
- Brainstorming Solutions
- Brokering the Deal
- Agreement

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## Potential Trauma for CP and RP



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## Emotions

- Silence is ok
- Sympathy is ok (within reason/neutral) – “I can tell this is hard” “I’m sorry this is difficult”
- Allow breaks
- Remember equality not equity is goal for processes

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# Introductions

31

## Critique an Introduction



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## Critique a Mediation: Introduction Content

Good Not Good

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## Critique a Mediation: Delivery of Introduction

Good Not Good

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# Brainstorming Solutions

35

## Brainstorming Ideas

- Don't shut down ideas
- Write down all ideas
- Suggest, but don't advocate
- Discuss pros/cons and possibility of solution working

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36

## Brainstorming Ideas

- “What solution would allow you to feel comfortable settling the complaint?”
- “If the other party were to offer  $x$ , would you be willing to offer anything in return?”
- If a party refuses to make further offers, ask questions to understand why

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**What types of solutions might you brainstorm for Cameron and Parker?**

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## Length of Informal Resolution

- Will vary depending on complexity
- 20 days is a reasonable time, but extensions will be warranted in many cases
- Try to obtain agreement to extensions from all parties
- Keep the Title IX Coordinator apprised of progress

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39



40

## Cameron and Parker reach an agreement in informal resolution. Can the Title IX process ever recommenced?

Yes, if Parker fails to comply with the terms

Yes, but only for allegations not resolved in informal resolution

No, because you can only recommence an investigation before a resolution is reached

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41

## Role of Institution If Agreement Reached

- Agreement is between the parties; institution is not a party
- IR Facilitator can:
  - Act as intermediary
  - Make suggestions, evaluations
  - Help with drafting document

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42



43



44

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