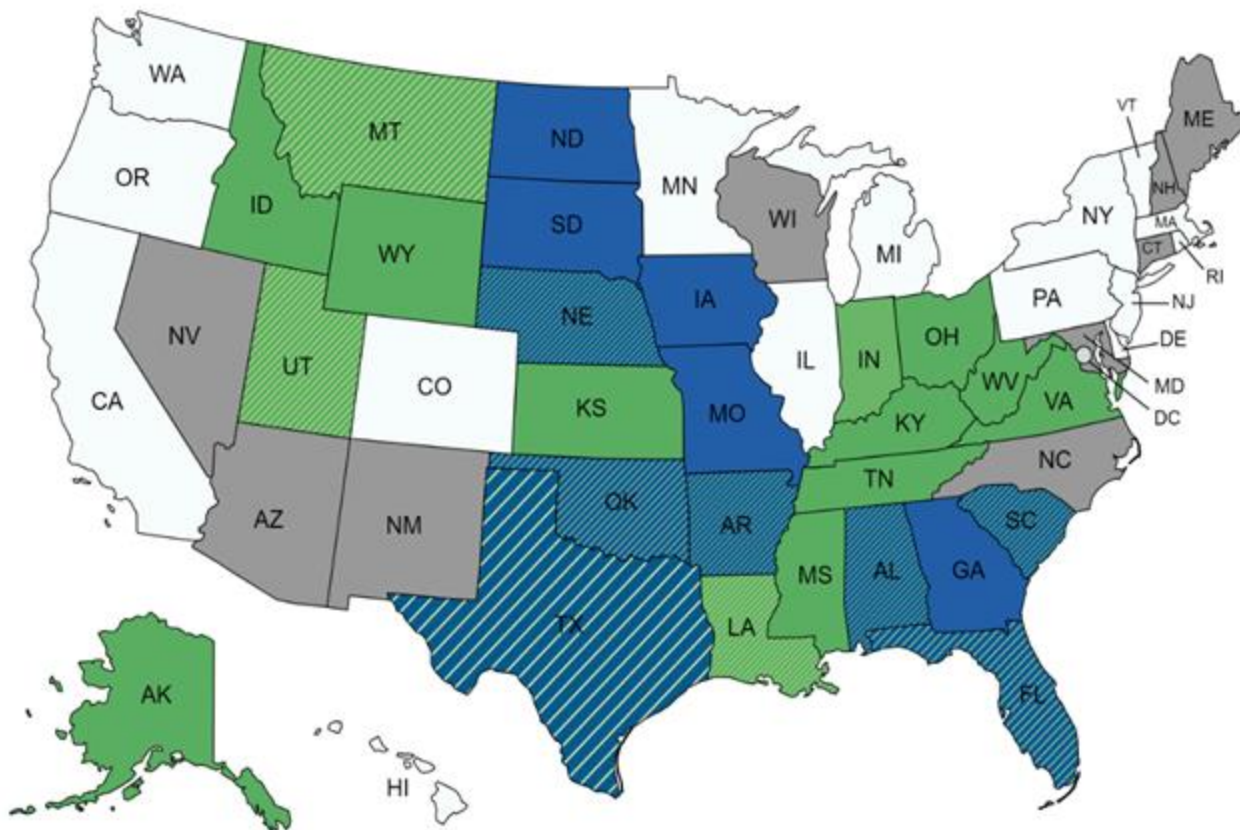


K12 TITLE IX INFORMAL RESOLUTION TRAINING



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Litigation Limiting Enforcement of 2024 Regulations



ATIXA Litigation Tracker

- No Action
- Amicus Brief
- Complete Injunction
- Injunction and DNI
- Current or Pending Litigation
- Litigation & DNI

*Other Litigation targets specific schools/districts

Moms For Liberty – List of Schools

**President Biden requests Supreme Court review



- Title IX Fundamentals
 - Legal and Regulatory Framework
 - Definitions
- Title IX Grievance and Informal Resolution Process
- Requirements of Title IX Informal Resolution Other Process
- Practical Considerations and Case Examples



Title IX Fundamentals



“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.”

- Federal law passed in 1972
- Enforced through the Department of Education, Office for Civil Rights (OCR)

Preliminary Definitions



Complainant

- 1) student or employee who person who has been subject to conduct that could be sex-based discrimination; under Title IX
- 2) person other than a student or employee who is alleged to have been subject to sex-based discrimination and who was participating in the school's education program or activity at the time of the alleged discrimination.

Respondent

person who is alleged to have violated the school's prohibition on sex discrimination.

Complaint

an **oral or written request** to school that can objectively be understood as a request for the school to investigate and make a determination about alleged sex-based discrimination.

Parents/Guardians

permitted to make decisions for minor students related to filing a complaint, accompanying students to interview/hearings/meetings, investigation process, and accessing records.

- Advisors – Parents/guardians can serve in this capacity; policy will define if others can act as advisors to parties in Title IX matter.



LEGAL OBLIGATION

K12 school districts have an obligation to take **prompt and effective action** to end any sex discrimination in their educational programs or activities, to **prevent** its recurrence, and to **remedy** its effects.



Complaint of Discrimination

Complaint is an **oral or written request** to the school that **objectively can be understood** as a **request for the school to investigate and make a determination** about alleged discrimination under Title IX or its regulations.



REQUIRED RESPONSE

In relation to sex discrimination and/or sex-based harassment, the school must **respond to information about conduct that reasonably may constitute sex discrimination**, including sexual violence and other forms of sex-based harassment.

Reporting Obligations of Employees



Non-Confidential Employees

All employees, except Confidential Employees, have an obligation to report to Title IX Coordinator upon notice *about conduct that reasonably may constitute sex discrimination under Title IX.*

Confidential Employees

Designated as Confidential
No duty to report

Confidential employees

must share with potential Complainants:

- 1) they are confidential and not required to report to Title IX Coordinator;
- 2) how to contact Title IX Coordinator;
- 3) how to file a complaint;
- 4) Title IX Coordinator may be able to provide supportive measures, initiate an informal resolution, and/or start an investigation.



Conduct that occurs under a District's education program or activity in the United States and includes conduct that is subject to the District's disciplinary authority.

Includes

- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by the school.
- Conduct that is subject to the school's disciplinary authority.

Expansion of Jurisdiction

1. Sex-based hostile environment allegations even if some of the alleged conduct took place outside the District's education program or activity and/or outside of the United States.
2. Definition of Complainant also includes a party who is no longer participating in or attempting to participate in the District's education program or activity.

Definitions:

Sex Discrimination and Sex-Based Harassment



K12 school districts have an obligation to take prompt and effective action to end any sex discrimination in their educational programs or activities, to prevent its recurrence, and to remedy its effects. This includes:

- **Sex Discrimination:**

- Sex Stereotypes

- Sex Characteristics

- Sexual Orientation

- Gender Identity

- Pregnancy & Related Conditions

- **Sex-Based Harassment:**

- Quid Pro Quo

- Hostile Environment

- Sexual Assault

- Dating/Domestic Violence

- Stalking

Sex Discrimination Definition



- When an individual is treated differently based on sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity and is treated differently based on sex in:
 - Education programs
 - Activities
- Discrimination based on sex in a program:
 - Systematic, due to policy or practice
 - Programmatic discrimination adversely affects persons as a group
 - Programmatic discrimination is usually attributed to the district not to an individual respondent

Sex-Based Harassment Definition



Sex-based harassment is a form of sex discrimination and refers to sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

- Quid Pro Quo
- Hostile Environment
- Specific Offenses: sexual assault, dating/domestic violence and stalking

● Quid Pro Quo Harassment

“An employee, agent, or other person authorized by the school to provide an aid, benefit, or service under the school’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.”

- * Contemplates the possibility that a student could be found responsible for quid pro quo harassment under certain circumstances.



Hostile Environment Harassment

“Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the school’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- The degree to which the conduct affected the complainant’s ability to access the school’s education program or activity;
- The type, frequency, and duration of the conduct;
- The parties’ ages, roles within the school’s education program or activity, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
- The location of the conduct and the context in which the conduct occurred; and
- Other sex-based harassment in the school’s education program or activity.”

Specific Offenses: Sexual Assault, Dating/Domestic Violence and Stalking

Sexual assault meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

Forcible:

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling.

Non-Forcible:

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.



Dating/Domestic Violence

Dating violence meaning violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

Domestic violence meaning felony or misdemeanor crimes committed by a person who:

- (1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (3) Shares a child in common with the victim; or
- (4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



Stalking

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person's safety or the safety of others; or

(2) Suffer substantial emotional distress.



Pregnancy and Related Conditions

Pregnant students (or person who has a legal right to act on behalf of the student) must be promptly informed of the Title IX Coordinator's contact information and informed that the Title IX Coordinator can coordinate specific actions to prevent sex discrimination and ensure the student's equal access to the school's education program or activity.
Reasonable modifications must be permitted.
"Related conditions" are expansive.

Complying with Pregnancy Provisions



Students

- Must NOT discriminate against any student on the basis of the student's current, potential, or past pregnancy or related conditions
- Provide information about school's obligations
- Provide reasonable "modifications"
- Voluntary access to separate and comparable program/activity
- Voluntary leave of absence
- Lactation space
- Comparable to other medical conditions

Employees

- MUST treat pregnancy or related conditions as any other temporary medical conditions for ALL job-related purposes
 - Leave
 - Disability
 - Other Benefits
- Lactation spaces
- Pre-employment questions



KEY ROLES IN TITLE IX PROCESS

Title IX Coordinator Role



- Shepherds the Title IX process
- Receives report
- Evaluates the complaint and holds initial meeting with Complainant
 - Supportive Measures
 - Procedure Options – Investigation, Informal Resolution
- Identifies investigator
- Sends notice of allegations letter
- Provides supportive measures for Respondent
- Engages in regular outreach to the parties about investigation and potential delays
- Shares investigation information with the parties
- Identifies Decisionmaker
- Addresses challenges based on bias or conflict of interest
- Delivers outcome letter to parties
- Processes a potential appeal



- Policy will define expectations for the Investigator
- Seek clarity about role
 - Investigator OR Investigator-Decisionmaker
 - Information that will be shared
 - Full file OR list of evidence
 - Managed by TIXC or Investigator
- Gather relevant evidence
- Create and maintain the investigation record
- Develop and revisit your investigation strategy
- Collect the investigatory information into the proper format
 - Report OR something else?

Decisionmaker Role



- Permitted to be:
 - Anyone trained
 - Title IX Coordinator
 - Title IX Investigator
- Reviews:
 - All evidence collected in the investigation
 - Parties' responses to the investigation file review
- Engages in Questioning of Parties
 - Credibility
 - Seeks answers to unanswered, relevant questions
- Determines
 - Policy violation
 - Discipline
- Must avoid
 - Partiality
 - Conflicts of interest and
 - Bias are still prohibited
- Respect parties' rights under the process

Informal Resolution Facilitator Role



- Working within the policy requirements and/or outline of process that the parties agreed to, informal resolution facilitator seeks informal resolution of the matter
- Cannot be investigator or decisionmaker on same matter
- Cannot involve complainant-student and respondent-employee
- Not constrained by relief offered through the grievance process
- Either party and/or the facilitator may end the resolution process at any point prior to the matter reaching agreed resolution



Resolving Allegations of Sex Discrimination/Harassment



Formal Grievance Process

- Request for Investigation
- Notice to Parties
- Investigation
- Sharing of investigation materials and response
- Outcome

Informal Resolution

- Quasi-Informal Resolution
- Facilitated Informal Resolution



Formal Resolution

- Determine if school policies have been violated
- If appropriate, impose the proper discipline

Informal Resolution

Various goals can be met

- Empower the parties to reach resolution
- Restore educational access
- Address past harm
- Prevent future harm
- Create space for communication and understanding among parties, if desired

Rights of Parties to Investigation



Treat parties equitably

Provide notice of allegations
(writing not required)

Objective evaluation of
evidence, including relevance

Provide appropriate
supportive measures

Have parent (or advisor)
attend meetings, interviews,
etc.

Receive written outcome

Title IX Administrators with no
conflicts of interest or bias

Ability to provide and respond
to evidence

Completed in a reasonably
prompt timeframe and
explain delays in procedure

Presumption of non-
responsibility for Respondent

Review evidence/receive
description of evidence with
ability to inspect

Offer of appeal (if offered in
other proceedings)

Ability to not participate in
the Title IX grievance process

Take steps to protect
confidentiality of parties and
witnesses

Prohibit retaliation

Considerations: Parties with Special Education Services



- Pro-active, mandatory requirement for Title IX Coordinator to consult with Special Education Department when a party is receiving special education services
- Potential modifications to the grievance process may be necessary to accommodate
- Supportive measures should incorporate the knowledge from Special Education team

Resolution Process Overall Requirements



- Prompt and equitable
Published in writing
- Administered by persons free of conflicts of interest and bias
- Parties freely and voluntarily enter into the process; no rights are waived
- Informal process facilitator is not Investigator or Decisionmaker in same case
- Formal complaint is NOT necessary

Stages of Grievance Procedure



1

Notification of Incident to Title IX Coordinator

2

Initial Evaluation

Supportive Measures
Jurisdiction
Dismissal
Removal
Discussion of informal
resolution with Complainant

3

Investigation

Notice to Respondent
Interviews/Review of
Documents, Digital Records
Review of Investigation File by
Parties
Report (optional)

4

Determination

Questions/Cross Examination
Credibility Assessment
Determination:
-Policy Violation, Discipline
-Remedies
Outcome Notification

5

Appeal

*No set timelines; “reasonably prompt” standard

Overview of Grievance Process - Informal



Intake Meeting held with Complainant to provide support (supportive measures) and review resolution options

1 No Action

Supportive Measures only
Notification recorded

2 Investigation

Notice to Respondent
Investigation process – interviews, documents
Parties review materials
Additional questioning
Outcome

3 Informal Resolution

Parties agree in writing to informal process
Selected process occurs
Outcome Notification
Not offered in student-employee matters

4 Ongoing monitoring of situation/check-ins with parties



Informal Resolution Process

Informal Resolution – Preliminary Considerations



- Alternative process to the formal grievance investigation process for Title IX matters
- Can be used:
 - Any time before final resolution is reached
- Both parties must:
 - Voluntarily participate
 - Not a waiver of any rights
- Title IX Coordinator can identify matters that are appropriate or inappropriate for the informal process; inappropriate might include:
 - Presence of violence in the allegations
 - Prior behavior by Respondent
 - Multiple Complainants
- Other factors
 - Power imbalance between the parties (real or one-sided)
 - Lack of good faith of either party



“Quasi” Informal Resolution

- Investigation is not requested
- Complainant is seeking resolution
- Respondent’s agreement is not necessary
- Notice of allegations to other party may not be required

Informal Resolution

- Parties need to agree to the process
- Investigation is stayed/stopped, pending the outcome of the informal process
- Facilitator is used

Quasi-Informal Process Complainant-Driven Resolution



- Complainant declines an investigation
- No Notice of Allegations is sent
- Seeks the following type of relief:
 - Supportive measures and/or
 - Educational conversation with Respondent

Informal Resolution



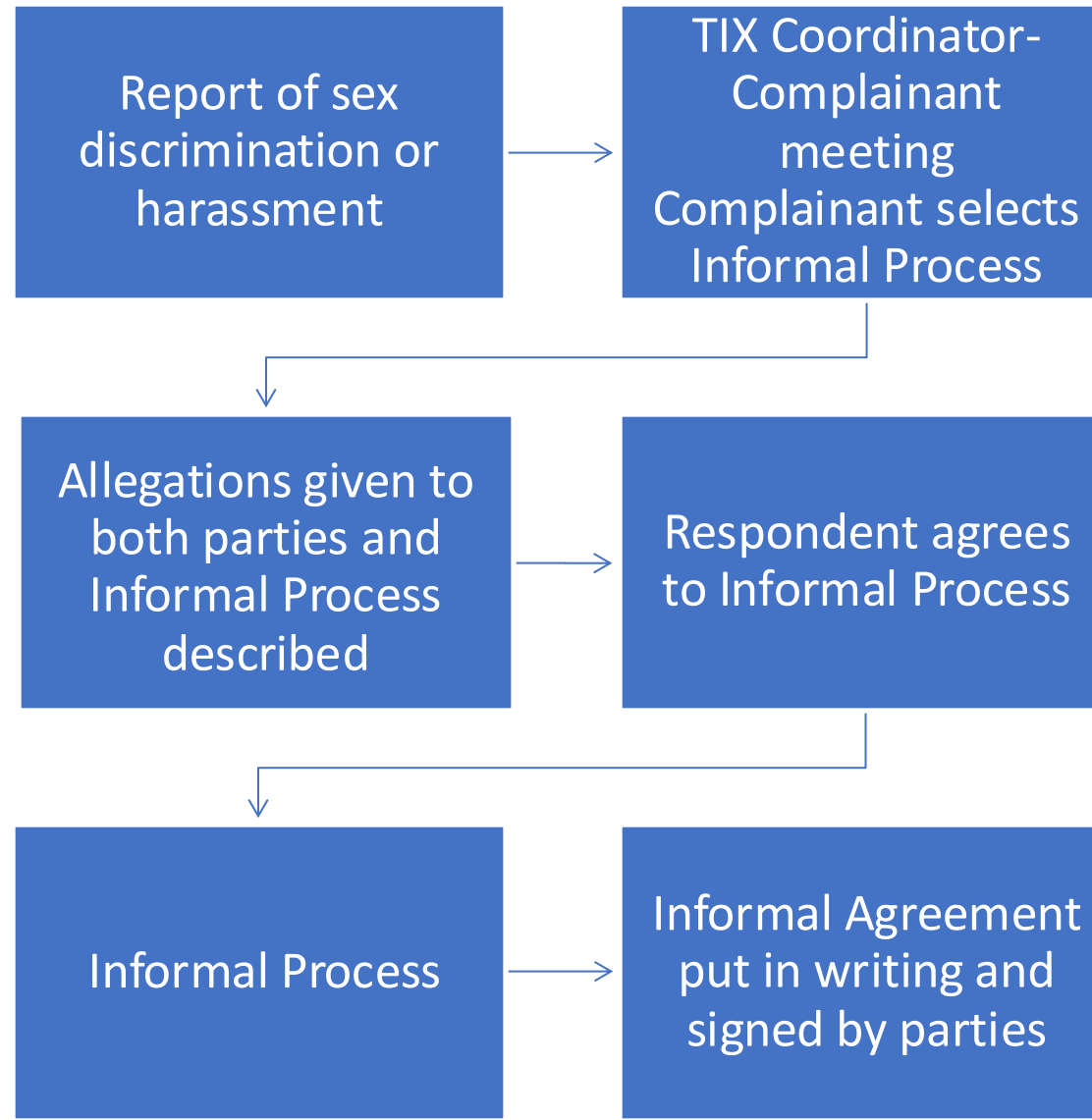
Information must be shared with the parties, including the following:

- Allegations at issue
- Requirements of the process
- Parties advised of right to withdraw from the process and initiate or resume grievance procedures
- What information the school will retain if resolved OR if returned to grievance process
- If informal resolution concludes, parties may not initiate or resume grievance procedures
- Whether and how the school could disclose the information if informal resolution is not successful; Facilitator not called as witness



- Is the matter proper for informal resolution?
- Certain matters may NOT be appropriate, such as:
 - Respondent could be a future risk to others
 - Matter could result in serious discipline (suspension, expulsion) if proved
 - Severity of the conduct
 - Desire of the parties
 - Impact on other students and campus environment
 - Various other concerns

Flow Chart for Informal Resolution Process





Provides the parties with written notice disclosing:

1. the allegations;
 2. the requirements of the informal resolution process;
 3. the right to withdraw from the informal process and resume the formal complaint process;
 4. the inability to initiate or resume complaint procedures arising from the same allegations once the informal resolution process is concluded;
 5. the potential terms that may be requested or offered in an informal resolution agreement, including that the agreement would only be binding on the parties; and
 6. the information that the district will maintain and whether and how the district could disclose such information for use in Title IX grievance procedures if such procedures are initiated or resumed;
- Obtains parties' voluntary consent to participate



- Mediation
 - Facilitated process to reach resolution
- Shuttle negotiation
- Restorative practices
- Any method and/or process that parties agree to follow



Successful

- Document the agreement and have the parties sign
- Brings the investigation to a conclusion
- Incorporate language about failing to abide by the terms and consequences
 - Do not return to investigation
 - Designate who will address potential violations of agreement

Unsuccessful

- Document return to investigation process
- Advise parties of conclusion of informal process
- Follow documentation requirements from policy or practice

Suggested Outline for Resolution Agreement



- Parties and parents/guardians (if participating)
- Allegations
- Relevant dates
- Name of facilitator
- Explain the process in brief terms
- Terms of the agreement
- Relevant dates when terms expire or cease to exist
- Consequence for failure to abide by the terms and acknowledgement of these consequences by both parties



Other Important Considerations

Avoid Bias and Conflict of Interest



Impartiality

Address conflicts of interest
as soon as they arise

Equitable process

Not favor Complainant
or Respondent

Initial communications
about participants in
the process

Bias could occur
throughout the
process and needs to
remain checked



Prohibit schools from disclosing personally identifiable information that they obtain through compliance with Title IX

Exceptions

- prior written consent of party
- information disclosed to parent of a minor



- Parties agreement to use informal process
- What the informal process will look like (might include) in this particular matter
- Signatures
- **Privacy of documents captured during the informal resolution process**
- Return to process
- Conclusion of the process
- Record of agreement between the parties
- Title IX Office “owns” these documents in order to protect confidentiality
- Records must be maintained for seven (7) years



Title IX Informal Resolution General Facilitation Skills Regardless of Method



Documents Prior to Assignment

- Notice of Allegations (or similar document)
- Agreement to enter into informal resolution, signed by both parties
- School policy on Title IX Informal resolution
- Explanation of the process with confirmed receipt from the parties

Documents after Facilitation

- Information from the facilitation (if policy requires)
- Return to the investigation process, with notice to parties and Title IX Coordinator OR
- Agreement reached in informal process, signed by both parties



What techniques will and/or will not be used in the process?



Role may include:

- Review, explain and develop agreed-upon process for parties
- May interview witnesses, collect documents
- Facilitate storytelling by all participants
- Identify and list harms
- Brainstorm solutions
- Question parties about requested terms and explain legal restrictions on the process and resolutions
- Prepare resolution agreement with input from parties

Not an investigation:

- Gather information about what they are seeking from the process
- Manage their expectations
- Explore opportunities for agreement
- Determine how to get to requested agreement
- NOT interviewing
- NOT trying to reach a policy violation conclusion



Title IX Facilitator Confronts Conflict in Informal Resolution Process

Conflict Resolution Steps to Incorporate



- Meet with parties and parents (K12) to set ground rules and see what is possible.
 - Identify non-negotiables.
- Set ground rules.
 - Personal experience of what happened; acknowledge it is not necessarily everyone's experience.
- Be an active listener and use positive body language to show you are attentive and following along.
- Remain professional and unbiased in all interactions to earn and maintain both sides' respect.
- Know when to take a break when emotions are running high or nerves need calming.
- Bring in someone else to act as a mediator if needed, as this will showcase your integrity and earn respect from both sides.

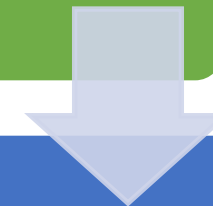
Initial Inquires



Does district have requirements for the informal resolution process to move forward (i.e., required discipline; moving classes; voluntary withdraw)?



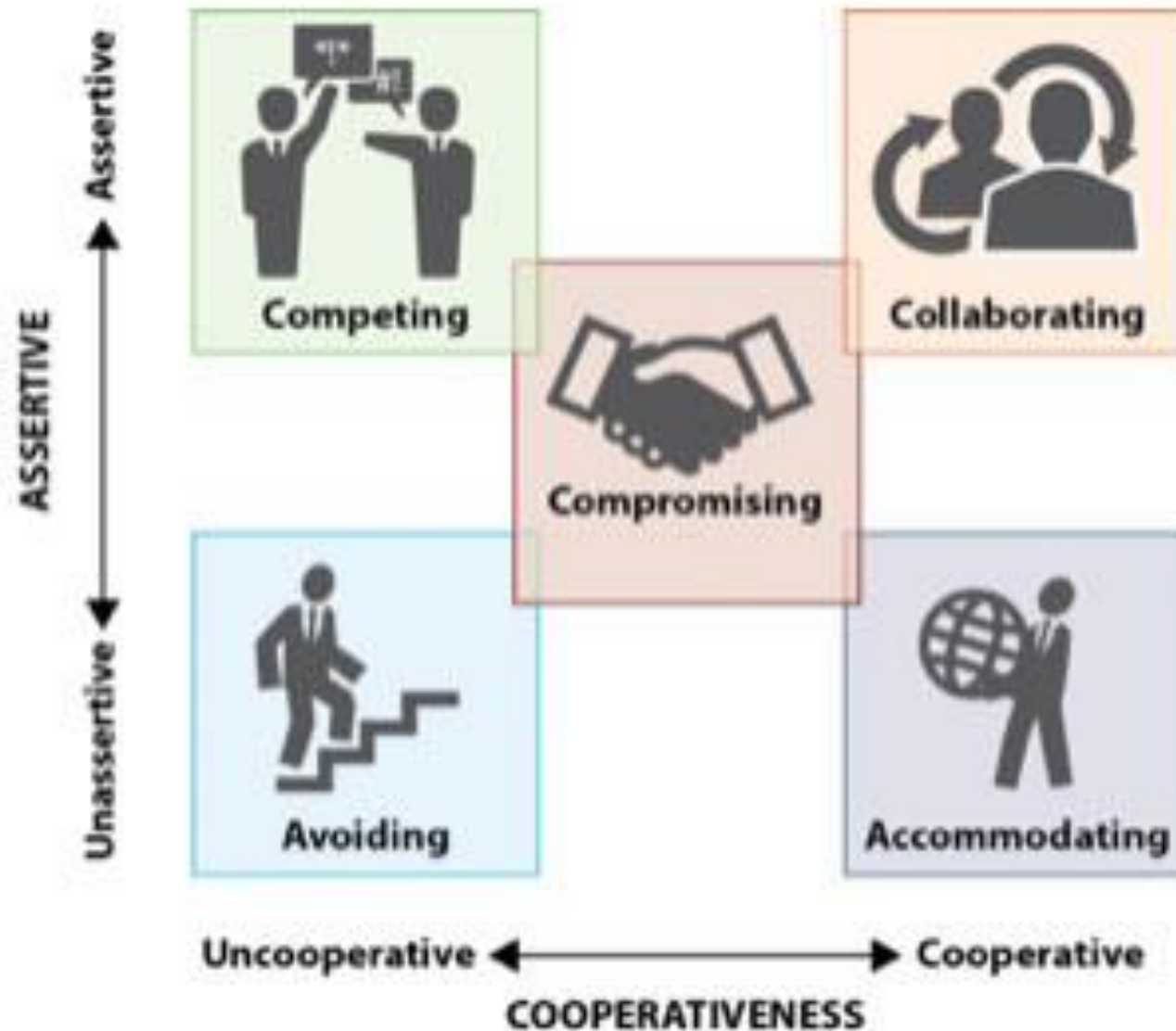
Do parties have non-negotiables (i.e., apology; campus events)?

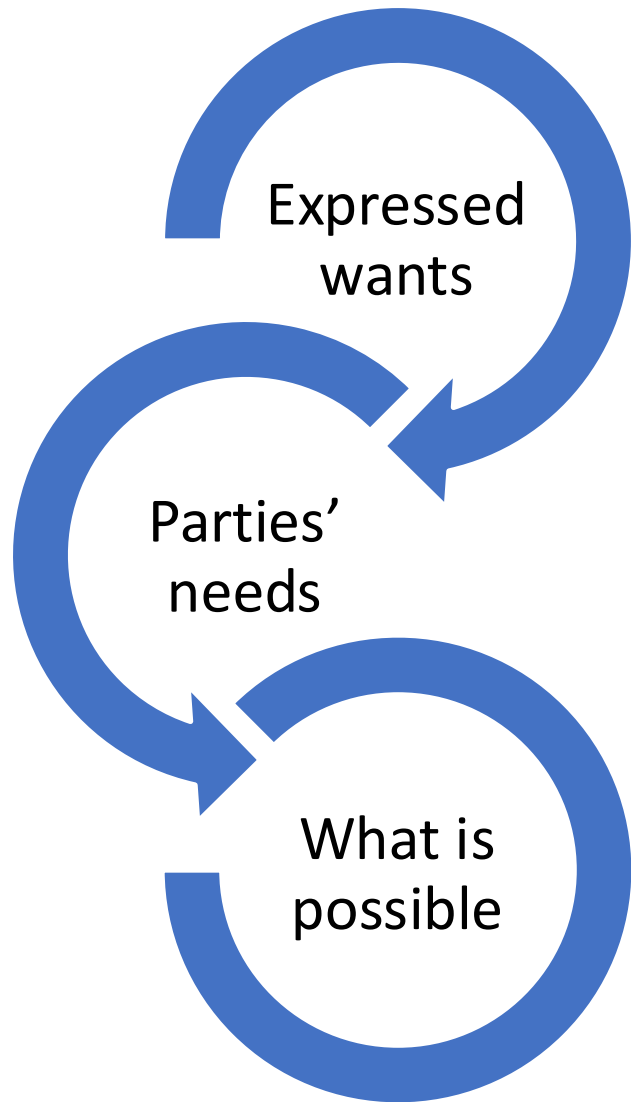


How will communication between the parties (and/or parents/guardians) be handled?

Examine the Nature of the Conflict

Thomas-Kilmann Model





Maslow's Hierarchy of Needs



Best Tool for Informal Resolution: Active Listening



- Establish rapport
- Understand perspective on event
- Gauge the level of emotional concern
 - May need to diffuse emotional presentation/response without discounting the person's feelings
- Encourage parties to share (in presence of other party or not)
- May help determine the right path for informal process
- Facilitate conversations with the other party about possibilities for resolution

Information Exchanged During Informal Process



- Institution may elect to make information shared during informal resolution confidential in the event resolution fails and grievance procedures resume
- Institution may prohibit informal resolution coordinator from serving as a witness in grievance procedures
- The parameters must be disclosed to the parties in the notice

Conclusion of Informal Process



- Informal resolution agreements should be reduced to writing with all essential terms
- Parties should sign, and institution should give written approval
- Parents/guardians should sign as well

Failure to Abide by Informal Resolution Agreement



- Informal resolution concludes the underlying process
- Agreement should address this possibility and the consequences
- Do not return to the formal investigation process



Should you use informal resolution? Case Examples



1. Parties were in a relationship that ended badly. Allegations involve sex-based hostile environment harassment at school and stalking, taking place at school and off-campus.
2. Complainant has alleged harassment based upon gender identity during Ceramics by three Respondents in the same class.
3. Complainant has alleged that Respondent engaged in non-consensual fondling at an off-campus party.
4. Respondent, a student with special education services, is alleged to have created a hostile environment for Complainant by repeatedly asking Complainant out on dates.

Questions



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