

Virtual Certified Informal Resolution Facilitator Training

Informal Resolution Facilitator

2024

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About Us

OUR MISSION

To provide the best Care and Support for our clients, Community Partners, employees, contractors, collaborators, vendors, and all others who encounter our company.

GOAL

To assist schools and districts in providing a safe and healthy learning and working environment for students, faculty and staff.

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Before We Get Started...

- Not legal advice
- Materials
- Chat Bar and Questions
- Breaks
- Posting Link
- No recording
- Level 1 Training

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Agenda

- Title IX Overview
- Informal Resolution Process
  - -Notice(s)
- Break
- Facilitator's Role
- Serving Impartially
- Types of Informal Resolution
- Outcome Options

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What is Title IX?

"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."

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Title IX Applies To:

01 **Student on student**

02 **Employee on employee**

03 **Student on employee**

04 **Employee on student**

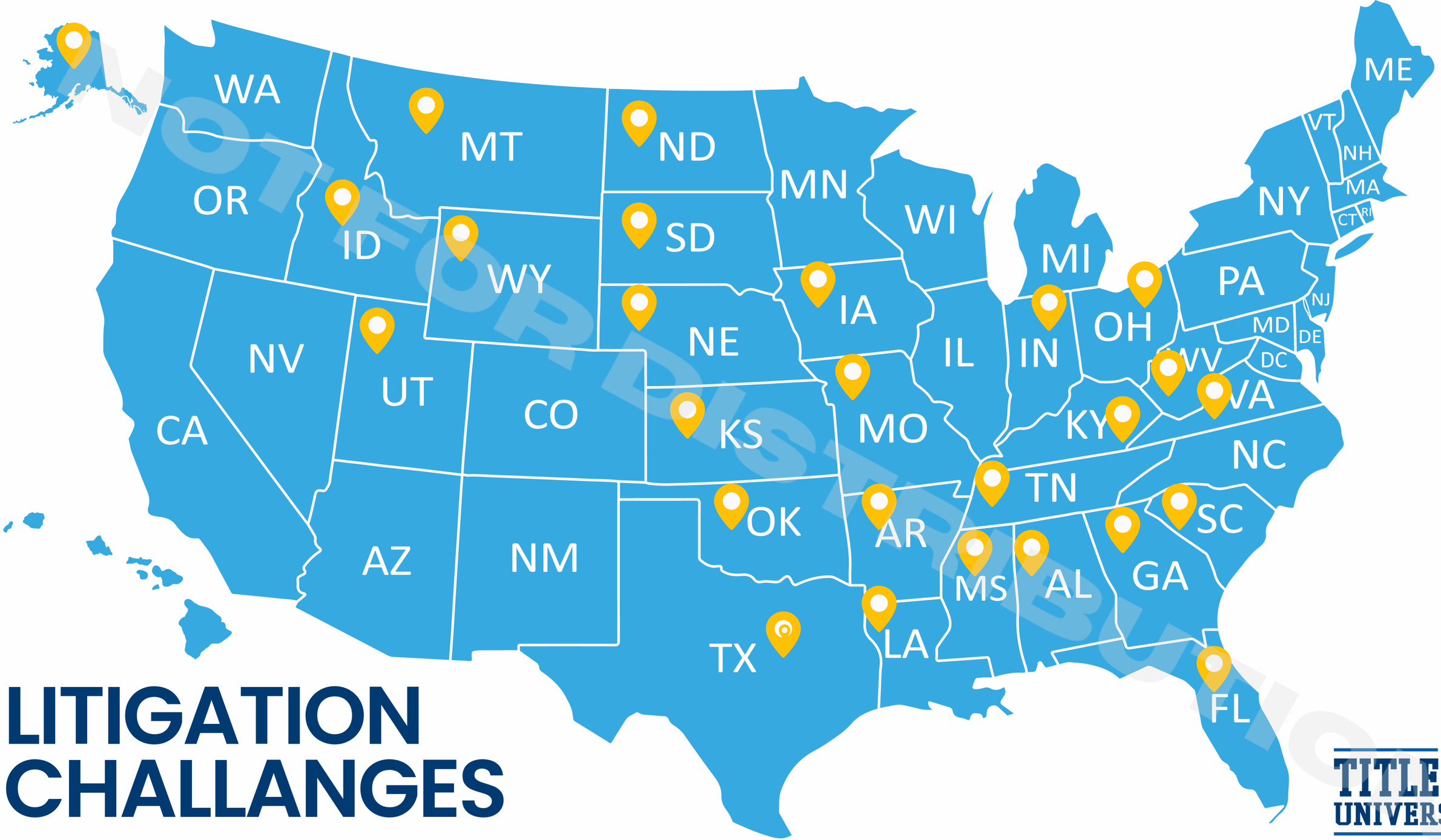
**Will you be handling only student cases or only employee cases?*

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LITIGATION CHALLANGES

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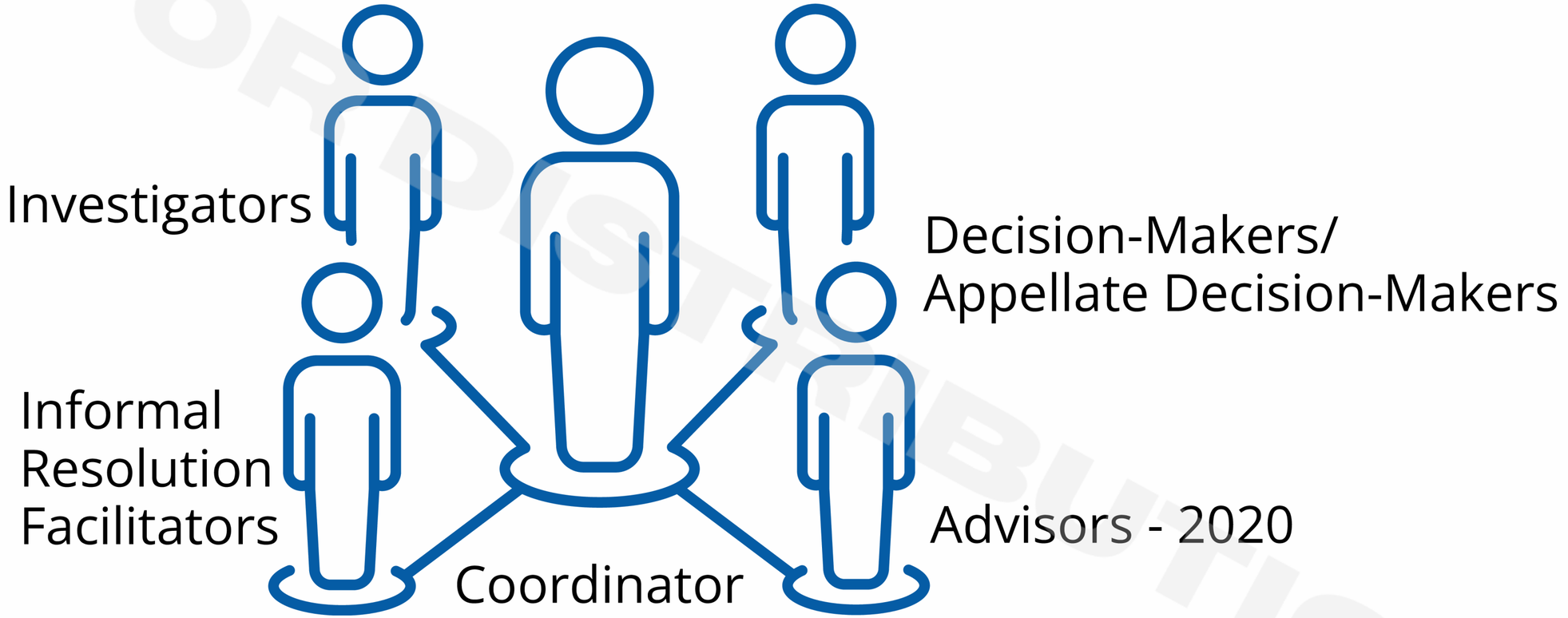
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IDENTIFIED AND TRAINED TITLE IX TEAM

Mandated under the regs, trained on your policies and procedures



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Roles under 2020 and 2024 regulations

- 2020: No issue with overlap of roles
- 2024: IRF cannot be the investigator in the same matter

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Prohibited Conduct Under Title IX



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2024 SEX-BASED HARASSMENT
2020 SEXUAL HARASSMENT



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2020 SEXUAL HARASSMENT



Conducts on the basis of sex that satisfies one or more of the following

- An employee of the district conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- 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; or
- "Sexual Assault," "Dating Violence," "Domestic Violence" or "Stalking" as defined in the Clery Act.

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QUID PRO QUO



1. **An employee of the recipient**
2. **Conditioning the provision of an aid, benefit, or service of the recipient**
3. **On an individual's participation in unwelcome sexual conduct**

*only change between 2020 and 2024, 2024 adds “explicitly and impliedly”.

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HOSTILE ENVIRONMENT HARASSMENT



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

1. **Severe** - can be non verbal through sexual assault (touching/fondling)
2. **Pervasive** - how often and how widespread
3. **Objectively Offensive** - behavior that would be offensive to a reasonable person under the circumstances

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SPECIFIC OFFENSES



Specific Offenses

1. **Sexual Assault**
    a. Rape
    b. Fondling
    c. Incest
    d. Statutory Rape
2. **Dating Violence**
3. **Domestic Violence**
4. **Stalking**

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Conduct + Education Program or Activity

- It's more than the behavior...
- Must evaluate location/ Jurisdiction as well

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Jurisdiction



Education Program or Activity

Locations, events, or circumstances (operations) over which the school exercised substantial control over both the respondent AND the context in which the sexual harassment occurs.





Includes online sexual harassment but it must be analyzed to determine if it occurs in education program or activity.

Does not create or apply a geographic test, does not draw a line between “off campus/property” and “on campus/property,” & does not create a distinction between sexual harassment occurring in person vs online.



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APPLICATION –2024

(JURISDICTION - EXPANDED)

ALL sex discrimination that occurs under the school's education program or activity in the U.S., including but not limited to:

- 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 (What is school's jurisdiction for other policies?).
- Even when some conduct alleged to be contributing to the hostile environment occurs outside of the education program or activity or outside of the US.

Consider: Does the behavior OUTSIDE of education program or activity CONTRIBUTE to a sex-based hostile environment INSIDE the education program or activity?

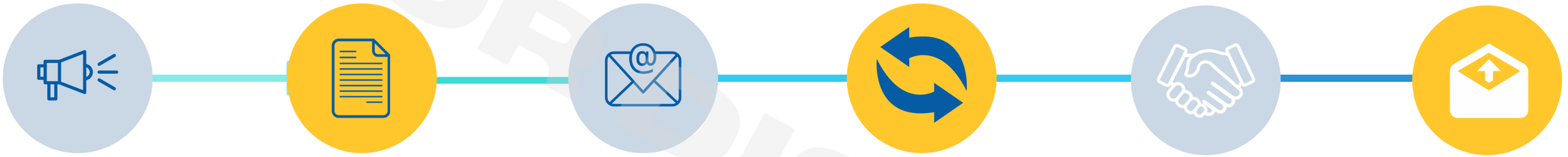
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TITLE IX INFORMAL RESOLUTION PROCESS – 2020



Report of Title IX Sexual Harassment

Formal Complaint w/Notice of Allegations including Informal Resolution Process Option

Notice of Informal Resolution Process (if Parties and Title IX Coordinator Agree)

Informal Resolution Process

Agreement or Transition Back to Formal Grievance Process

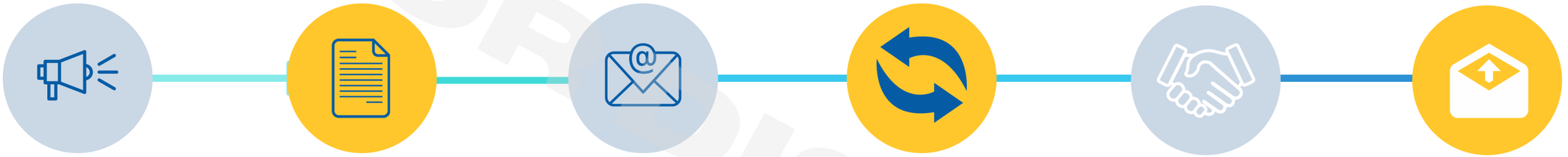
Notice of Outcome

*Informal Resolutions may not be used when the Respondent is an employee and the Complainant is a student.

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TITLE IX INFORMAL RESOLUTION PROCESS - 2024



Notification of Sex Discrimination

*Complaint is not required but useful for the NOA

Notice of Informal Resolution Process (if Parties and Title IX Coordinator Agree) w/ Notice of Allegations provided

Informal Resolution Process

Agreement or Transition Back to Formal Grievance Process

Notice of Outcome

*Informal Resolutions may not be used when the Respondent is an employee and the Complainant is a student.

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2020: IR cannot be used in Employee on Student cases

2024: K12 IR cannot be used in Employee on Student cases; Higher Ed can be used in any cases

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The Process/ When and How IR Can Begin

2020 v 2024



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Formal Complaint- 2020

- ✓ In Writing
  - Hard copy
  - Electronic
  - Online submission
- ✓ Signed by:
  - Complainant or Parent/Guardian
  - Title IX Coordinator
- ✓ Alleging Sexual Harassment
- ✓ Requesting an Investigation



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Notice of Informal Resolution Process

When:

Requested by one or both parties and/or recommended by Title IX Coordinator (cannot be coerced, forced or required by Institution) AND

Agreed by all parties

After Formal Complaint and before determination regarding responsibility

Includes:

Allegations

Requirements of informal resolution process including circumstances under which it precludes parties from resuming Formal Complaint from the same allegations

Right to withdraw

Consequences including records that will be maintained or could be shared

Voluntary written consent to the informal resolution process

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Reasons a Title IX Coordinator May Choose Not to Agree to Informal Resolution



- Severity of the allegations
  - Some policies/institutions prohibit IR when Sexual Assault (Rape) is alleged
- Multiple allegations against the same Respondent
- Multiple Respondents in the same allegations
- Use of a weapon or violence
- MUST not allow when Respondent is employee and Complainant is a student

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Signed Agreement to Enter Informal Resolution Process

INSERT COMPLAINANT NAME and INSERT RESPONDENT NAME agree to participate in the Informal Resolution Process to attempt to resolve the allegations against INSERT RESPONDENT.

The allegations include (INSERT NARRATIVE including parties, date, time, location and allegations).

The requirements of the Informal Resolution Process can be found (INSERT LINK or Section number of Policy and link to full policy).

If a resolution is reached through the Informal Resolution Process, parties may not appeal the agreement, or resume the Formal Grievance Process related to the same allegations. However, either party, at any time prior to the resolution may withdraw from the Information Resolution Process and resume the Formal Grievance Process with respect to the Formal Complaint.

Records from the Informal Resolution Process will be maintained by INSERT INSTITUTION for seven (or more) years but will not be used as part of the investigation or resolution if the Formal Grievance Process is resumed. Records will be shared between the parties during the Informal Resolution Process as determined and communicated by the informal resolution facilitator.

_____ _____

Complainant Date Respondent Date

_____

Title IX Coordinator Date

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2020- Informal Resolution



- Cannot be offered as a condition of enrollment or continued employment.
- Cannot be offered to resolve employee on student allegations.
- After a Formal Complaint is filed.
- Prior to decision regarding responsibility.
- Parties cannot be required to participate.

School Must:

- Provide written notice disclosing allegations, requirements of the informal resolution process including circumstances under which it preclude the parties from resuming a Formal Complaint arising from the same allegations.
- Allow any party the right to withdraw from the informal resolution process and resume grievance process with respect to Formal Complaint.
- Provides consequences resulting from informal resolution process including records maintained or shared.
- Obtain both parties voluntary, written consent to the informal resolution process.

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Bottom Line

- Informal Resolution cannot happen until after a Formal Complaint under 2020
- There must be a Notice of IR

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COMPLAINT – 2024

…an oral or written request to the recipient that objectively can be understood as a request for the recipient to investigate and make a determination about alleged discrimination under Title IX or this part.



- Can be initiated by:
  - Complainant
  - Parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant
  - Title IX Coordinator (after considering factors)

- If it is for anything OTHER than sex-based harassment:
  - ANY student or employee; OR
  - Any person other than a student or employee who was participating or attempting to participate in the school's education program or activity at the time of the alleged sex discrimination.

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INFORMAL RESOLUTION

K-12 - NOT when student Complainant and employee Respondent (same for 2020 and 2024)

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1	**WHEN**	Any time prior to resolution.
2	**DISCRETION**	Title IX Coordinator has discretion to allow or disallow Informal Resolution.
3	**PARTICIPATION**	May NOT pressure the parties to participate.
4	**CONSENT**	Must obtain VOLUNTARY consent from the parties.
5	**NO WAIVER**	May NOT require a waiver of the right to investigation/ determination as a condition of enrollment or employment.

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COORDINATOR DISCRETION

Coordinator MAY decline Informal Resolution when the alleged conduct would present a FUTURE risk of harm to others (or in other circumstances within the Coordinator's discretion).

*2024 requirement, 2020 recommendation

CONSIDER:

- Violence
- Prior Behavior
- Multiple Complainants
- Etc.

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Bottom Line

2024 IR can be offered at any time, and there must be a Notice of IR

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Informal Resolution Agreement

- Can include anything as long as agreed to by the parties, up to and including expulsion
- Remedies
- Impact statements
- Apologies
- Acceptance of responsibility
- Restorative justice practices
- Etc.



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Signed Agreement Informal Resolution

INSERT COMPLAINANT NAME and INSERT RESPONDENT NAME, after agreeing to participate in the Informal Resolution Process have reached an agreement. The parties agree to the following resolution:

INSERT RESOLUTION

Requirements
Sanctions
Remedies

This agreement is final and there is no appeal. Failure for the Respondent to complete the requirements of this agreement will be considered a violation of the Code of Conduct (or handbook) and may result in discipline under the INSTITUTION conduct process.

Records from the Informal Resolution Process will be maintained by INSERT INSTITUTION for seven (or more) years.

_____ _____

Complainant Date Respondent Date

_____

Title IX Coordinator Date

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Withdraw From Informal Resolution Process and Return to Formal Grievance Process

- Requested by either party
- Any time prior to agreement
- No explanation necessary
- What records can be used in formal process when transitioning back?
- Written notice when resuming formal process

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Outcome



Notice of Outcome

- Includes signed agreement
- Expectations of parties
- Deadlines
- Follow up requirements
- Appeal options (if any)
- How records will be maintained
- Who to contact if questions

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Outcome Considerations

Are there measurable outcomes?

Who retains control over outcomes?

Additional Documentation needed?

Follow-up Required?

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Informal Resolution Outcome (Respondent)

Dear INSERT NAME

Attached to this email you will find the signed Informal Resolution Agreement. As we have discussed, this agreement is final. You must complete all requirements within the agreement or be subject to discipline under the INSTITUTION Code of Conduct.

Please let me know if you have any questions.

Thank you,

Signature
Title IX Coordinator

Informal Resolution Outcome (Complainant)

Dear INSERT NAME

Attached to this email you will find the signed Informal Resolution Agreement. As we have discussed, this agreement is final. The Respondent will complete all requirements within the agreement or be subject to discipline under the INSTITUTION Code of Conduct.

The supportive measures for you will remain in place and the following remedies have been instituted. (Include them in the body of the email).

Please let me know if you have any questions.

Thank you,

Signature
Title IX Coordinator

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Any Questions?

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Informal Resolution Facilitator's Role

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What is Your Role?

- Establish expectations
  - For you
  - For the parties
- Define goals/objectives
- Listen
- Document
- Receive permission before sharing
- Stay flexible
- Remain neutral
- Serve as the "go between"

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Informal Resolutions Will Take Significant Time

- Discussion between parties
  - through you
  - in person
  - in writing
- Be patient, don't rush
- Set deadlines

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PUT IN THE EFFORT

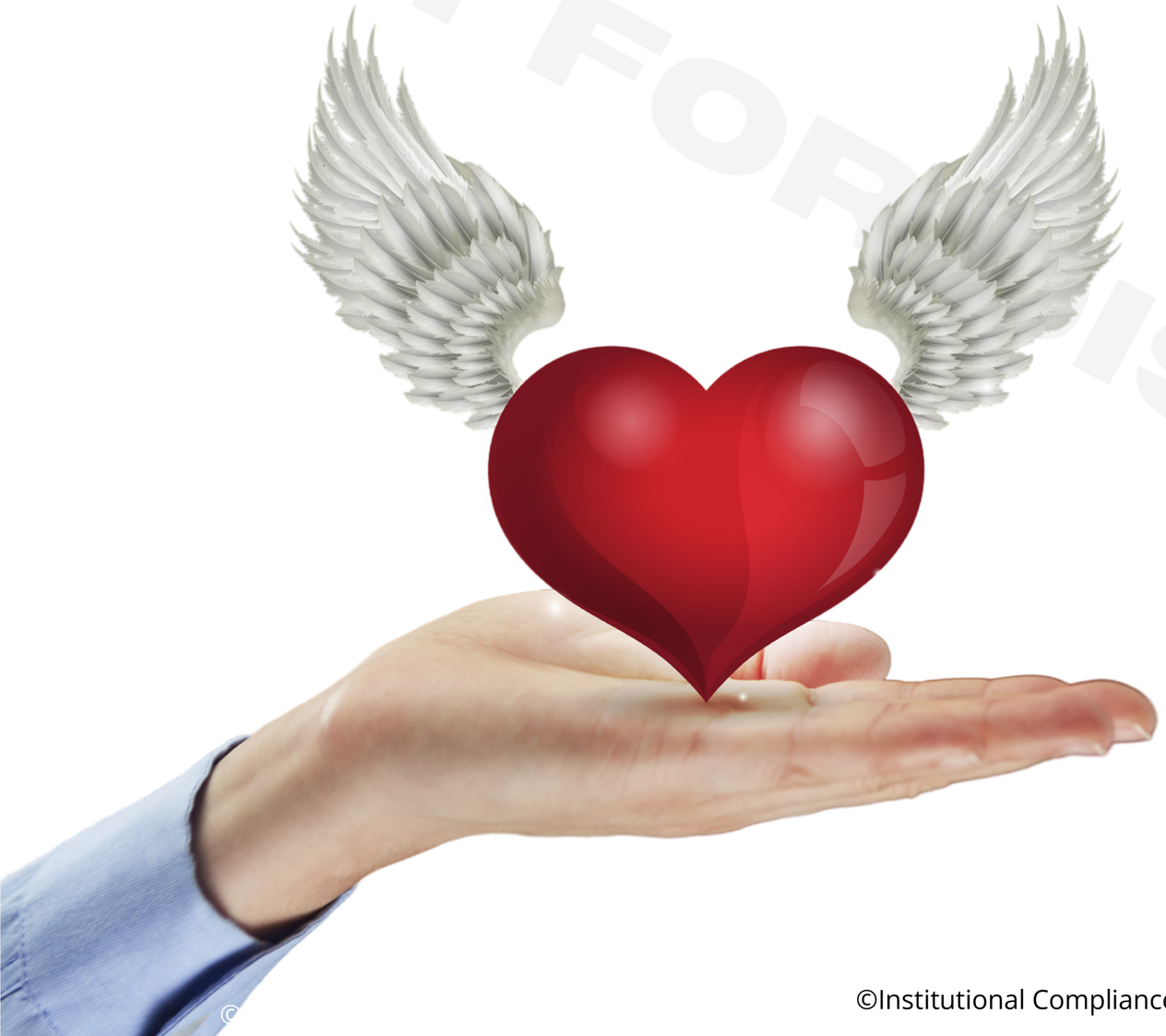


- If parties request and agree to this process they will have to put in the work...and so will you.
- Every outcome will look different.
- It may get messy.
- Give breaks during meetings with either or both parties.
- Parties may put up walls- therefore, you may have to resume the Formal Grievance Process.

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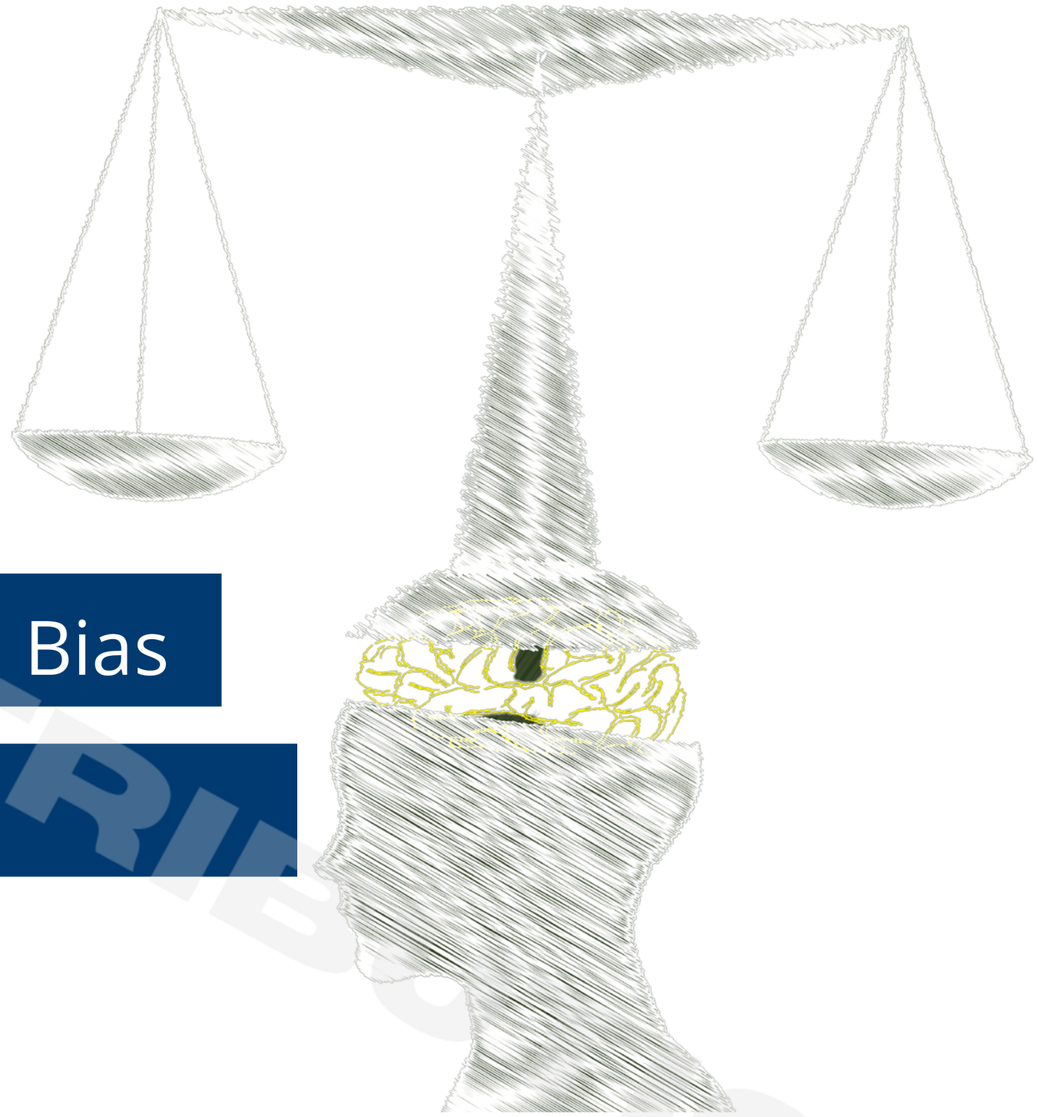
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- Be Kind
- Be Patient
- Be Understanding
- Include/Update Supportive Measures

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Serving Impartially



Avoiding Conflicts of Interest and Bias

Reserving Judgment

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Experiences



- Media
- Beliefs
- Education

Biases



- Automatic Thoughts
- Feelings

Actions

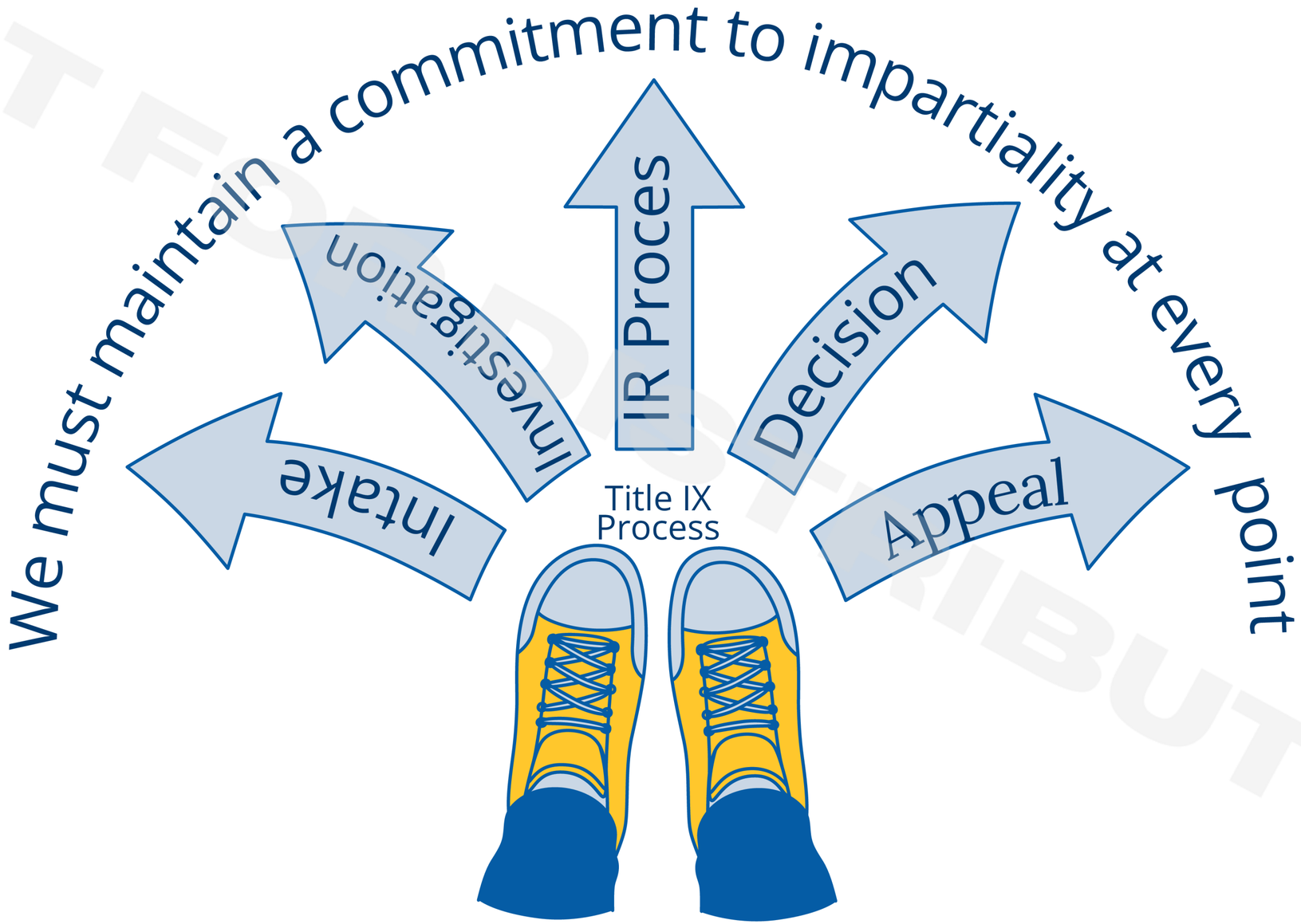


- Discriminatory
- Non-Discriminatory
- Overt
- Covert

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Avoid Conflict of Interest/Bias

01 **Generally toward Complainants/Respondents**

02 **Occurs when personal or private interests possibly can compromise one's judgment, decisions, or actions**

03 **Three types of COI:**

- **Actual**
- **Perceived**
- **Potential**

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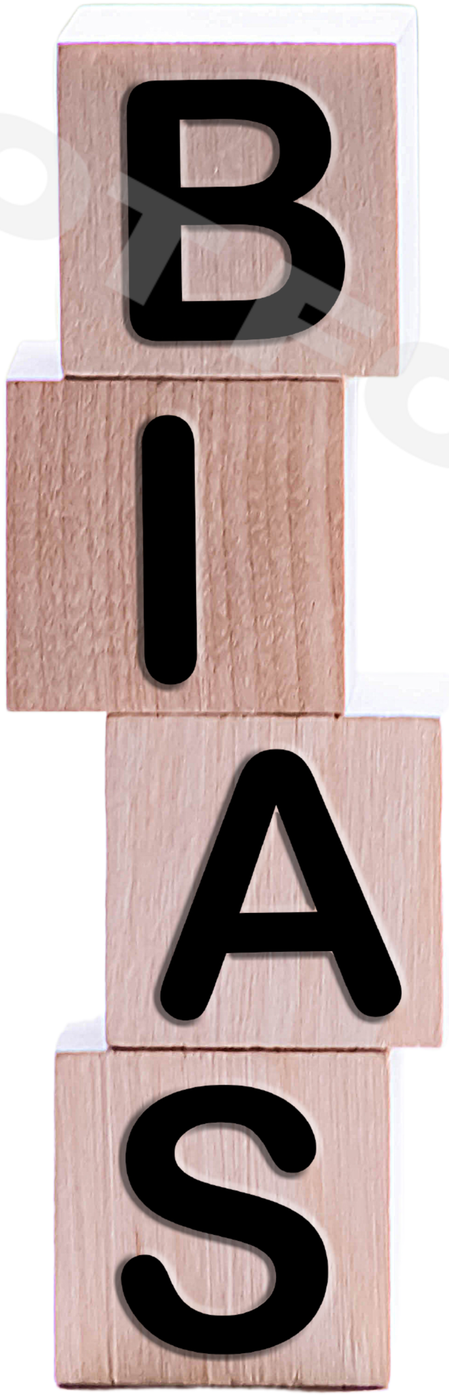


Implicit Bias

- "Implicit bias" refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.
  - Expressed indirectly
  - Unaware of bias
  - Operates subconsciously
- Example: Assuming that a woman entering a hospital room is a nurse instead of a doctor because of her gender.

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Explicit Bias

- “Explicit bias” refers to the attitudes and belief we have about a person or group on a conscio level.
  - Expressed directly
  - Aware of bias
  - Operates consciously
- Example: Statement- "I don't think a woman would make a good CEO... Women are too emotional."

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Suspend Your Mind Withhold/ Reserve Judgment

Remember, you are impartial,
not the investigator or decision maker



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Types of Informal Resolution

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Resolution Agreement

- Respondent accepts responsibility (check your policy)
- Title IX Coordinator recommends sanction and remedies
- Parties agree to sanctions and remedies as recommended

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Facilitated Dialogue

Structured conversation between the Complainant and Respondent led by a facilitator with the possibility of reaching an agreeable outcome



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Mediation

Procedure in which the parties discuss disputes with the assistance or aid of an Informal Resolution Facilitator who helps them in reaching settlement.

- Parties talk privately about their thoughts, feelings and experiences
- Consider what actions could meaningfully resolve the situation
- Explore mutually agreeable solution
- Negotiate an agreement



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Shuttle Negotiation/ Conversation

Conversation that is indirect and facilitated by Informal Resolution Faciltator.

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Restorative Justice Practices



- Emphasis on repairing the harm caused by the behavior
- Best accomplished through cooperation
- Can lead to transformation or people, relationships, and communities
- Can be used in any type of resolution

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Current Trends for Resolving Conflict

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How to Handle a Reluctant Party

- Reiterate the voluntary nature of the informal resolution process
- Assist in the brainstorming process for potential outcomes by engaging in active listening
- Identify with the party their barriers for moving forward to see if those barriers can be addressed

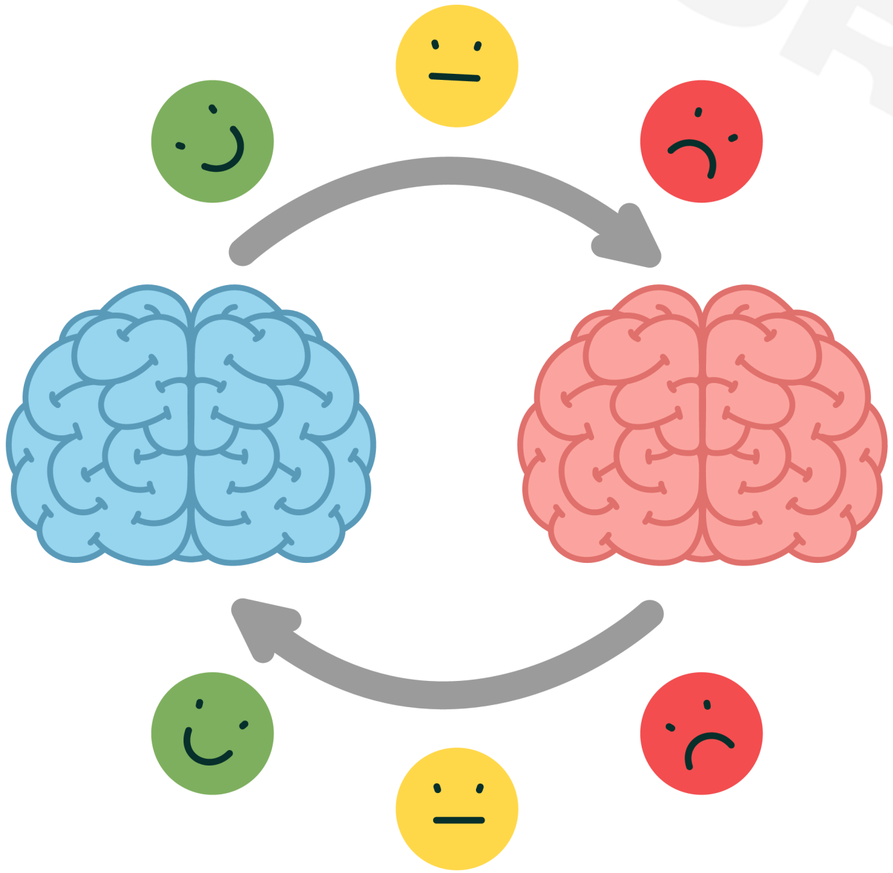


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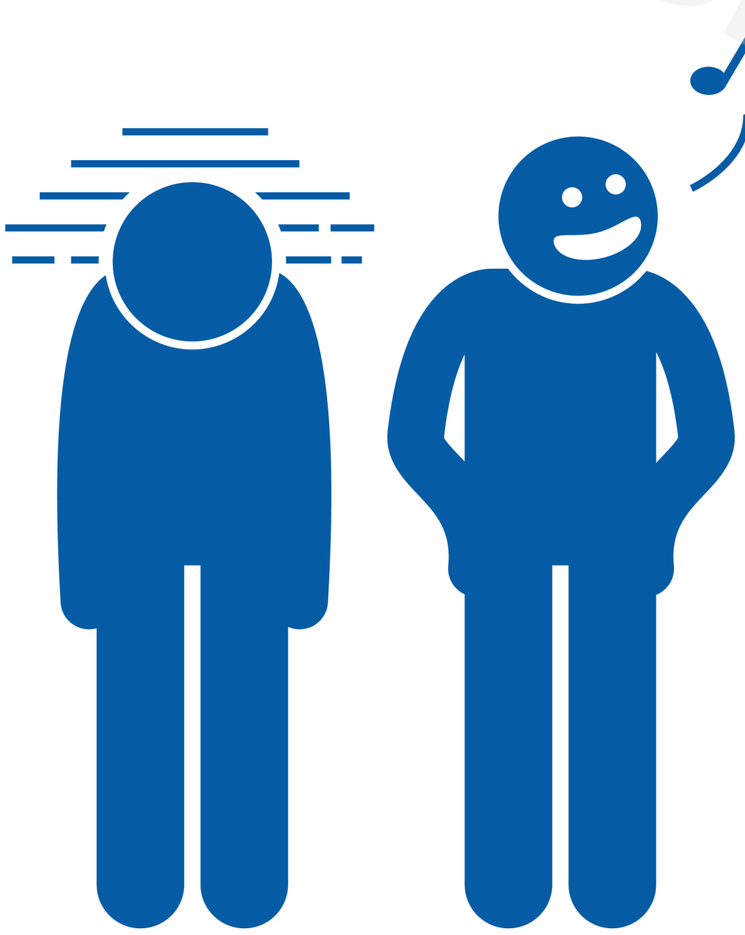
When Emotion is the Driving Force



- Acknowledge the emotional experience
- Assist them in understanding that the resolution will not likely resolve the emotions
- Re-focus on tangible action steps to move toward desired outcomes

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How to Handle a Detached Party



- Review informal resolution vs. formal grievance process for increased understanding of severity of situation
- Look for a “hook” to engage them in the process
- Remind them that this is an opportunity to offer input as to an agreed upon outcome

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How to Handle a Party with Unrealistic Expectations



- Remind them that all parties have to agree on the terms of the resolution agreement
- Help them further distinguish between their needs and wants
- If dissonance remains between the wants/needs, re-direct them toward the formal grievance process

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Practical Takeaways

This is hard work. The path to resolution is never a straight line.

Have forms/templates ready before IR.

Can be helpful to start with needs vs. wants for each party.

What does your policy state?

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Considerations

What happens if the parties are unsuccessful in IR?

What if the Respondent admits to the conduct and the investigator is the IR facilitator?

How do you know when/if they are unsuccessful - how long is too long?

Tips and tricks to assist the parties in reaching a resolution.

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Any Questions?

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