



BEYOND INVESTIGATION: MEDIATION FOR EVERYDAY CONFLICT & INFORMAL RESOLUTION FOR TITLE IX COMPLIANCE

Davis Crow & Donna Wagner
Idaho State University
March 2025

MEET YOUR FACILITATORS



Davis Crow

Davis Crow serves as a Senior Solutions Specialist with Grand River Solutions. In this role, he serves as a hearing officer, investigator, and trainer for institutions of higher education. Davis has extensive experience serving as a hearing officer and adjudicating cases involving discrimination and sexual misconduct. Davis also has conducted numerous investigations into complaints involving Title VI, Title VII, and Title IX.



Donna Wagner

Donna Wagner is a Senior Solutions Specialist at Grand River Solutions. She has over twenty years of experience as an investigator and mediator positions in a variety of industries including higher education, non-profit, health care, biotechnology, pharmaceutical, medical devices, entertainment and insurance.

AGENDA



Understanding Mediation
Benefits, Models and Conflict Styles



Title IX
Regulations, Definitions and Scope



Informal Resolution Under Title IX
Requirements under Title IX



Conducting an Informal Resolution
Steps, Record Keeping and
Documentation



Facilitator Skills and Techniques
Impartiality and Conflict of Interest



Skills Building
Case Studies and Practice Tests

UNDERSTANDING MEDIATION

- Mediation is a voluntary, confidential, and structured process where a neutral third party (the mediator) facilitates communication between disputing parties to help them reach a mutually acceptable resolution. Unlike arbitration or litigation, mediation is **non-adversarial** and focuses on **collaboration, understanding, and creative problem-solving**.



BASIC PRINCIPLES OF MEDIATION

- **Voluntary Participation** – All parties engage willingly and can withdraw at any time.
- **Neutrality & Impartiality** – The mediator does not take sides or make decisions.
- **Confidentiality** – Discussions in mediation are private and typically cannot be used in future legal proceedings.
- **Self-Determination** – The parties control the outcome rather than having a resolution imposed by a third party.
- **Respect & Active Listening** – Encourages open dialogue and mutual understanding.
- **Creative Problem-Solving** – Focuses on finding solutions that satisfy the needs of all parties.

A BRIEF HISTORY

Ancient Roots: Mediation has been used in various cultures for centuries, from Chinese, Greek, and Roman legal traditions to indigenous dispute resolution practices.

Modern Development: In the 20th century, mediation became widely recognized in labor disputes, community conflicts, and court-connected alternative dispute resolution (ADR) programs.

Legal Recognition: The U.S. has formalized mediation through legislation like the **Alternative Dispute Resolution Act of 1998**, encouraging its use in federal courts (U.S. Department of Justice, 1998).

Expansion to Title IX & Education: Mediation and informal resolution gained traction in resolving campus disputes, particularly after the **2020 Title IX regulations** allowed informal resolution in sexual harassment cases under specific conditions (34 C.F.R. § 106.45).



What types of people are involved?

- **Employees and Unions:** Union representatives and management in a labor dispute, such as wage negotiations, working conditions, or collective bargaining issues.
- **Schools and Students/Parents:** A school, student, and parents in conflict over issues such as bullying, academic performance, or disciplinary actions.
- **Workplace Participants:** Employees and employers, or coworkers, in a workplace dispute (e.g., harassment, discrimination, or performance issues).

BENEFITS OF MEDIATION

- **Efficiency:** Faster resolution compared to a formal investigation
- **Confidentiality:** Maintains confidentiality more effectively as it typically involves fewer people and less public disclosure
- **Restorative** It focuses on repairing harm rather than assigning blame or punishment
- **Flexible Solutions:** It allows for creative, case-specific outcomes that can be more tailored to the needs of both parties
- **Cost Effective:** less costly for institutions and individuals because it requires fewer resources compared to a full investigation and adjudication
- **Empowerment:** Both parties have greater control over the outcome. They can propose and agree on resolutions that are mutually acceptable, promoting a sense of fairness and collaboration
- **Preservation of Relationships:** In settings where parties may continue to interact, mediation helps reduce hostility and preserve ongoing relationships by facilitating constructive dialogue

Basic Mediation Models

Different mediation models are used depending on the nature of the conflict and the goals of mediation

Let's explore a few!

Evaluative Mediation

- Purpose:** Focuses on providing an evaluation of the strengths and weaknesses of each party's case.
- Role of Mediator:**
 - The mediator assesses the **legal or factual aspects** of the dispute and suggests possible solutions.
 - The mediator may **recommend a resolution**, but the final decision is still up to the parties.
- Best For:**
 - Disputes involving **clear legal issues** or cases where the parties seek
 - advice on the merits of their case.

EXPERT



This Photo by Unknown Author is licensed under CC BY-SA

Transformative Mediation

Purpose: Focuses on changing the relationship dynamics between the parties and promoting understanding.

Role of Mediator:

- The mediator helps the parties explore how their **behaviors** and **communication styles** impact the conflict.
- Emphasizes **personal growth** and mutual empowerment.

Best For:

- Situations where the goal is to **repair relationships** and address deeper emotional or interpersonal issues.



Narrative Mediation

Purpose: Focuses on changing the **narrative** or story that each party tells about the dispute.

Role of Mediator:

- The mediator helps each party **reframe** their perspectives, encouraging them to see the dispute as a shared problem.
- Emphasizes **reconstructing the story** to move beyond blame and toward cooperation.
- Best For:**
 - Complex disputes where the parties have different **interpretations** of events and where understanding each other's viewpoint is key.



Facilitative Mediation

Purpose: Focuses on empowering parties to find their own solutions.

Role of Mediator:

- The mediator facilitates the conversation by guiding the parties through the discussion.
- The mediator does **not offer solutions** but helps the parties clarify issues, identify interests and generate options.

Best For:

- Situations where parties are **willing to communicate** and find a mutual resolution.



Understanding Conflict Styles

- Conflict styles describe how individuals typically respond to disagreements.
- Each style has strengths and weaknesses, and the best approach depends on the situation.
- There are five conflict styles:
 - **Competing**
 - **Collaborating**
 - **Compromising**
 - **Avoiding**
 - **Accommodating.**
- Each of these styles assess conflict preferences along two behavioral characteristics:
 - **Assertiveness** (the extent to which an individual tries to satisfy their own concerns) and,
 - **Cooperativeness** (the extent to which an individual tries to satisfy the concerns of others)

Source: Thomas, K. W., & Kilmann, R. H. (1974).
Thomas-Kilmann Conflict Mode Instrument. CPP, Inc.

The Five Conflict Styles

1 Competing (🛡️) – "I win, you lose"

- High assertiveness, low cooperativeness
- Focuses on personal goals over relationships
- Best for quick decisions or when standing firm is necessary

2 Collaborating (🤝) – "Win-win"

- High assertiveness, high cooperativeness
- Seeks solutions that satisfy all parties
- Best for complex issues where both sides need to be heard

3 Compromising (⚖️) – "Give and take"

- Moderate assertiveness, moderate cooperativeness
- Both parties make concessions to reach a fair solution
- Best for resolving conflicts quickly while maintaining fairness

Five Conflict Styles (cont.)

4 Avoiding (🚶) – "Let's not talk about it"

- Low assertiveness, low cooperativeness
- Ignores or postpones conflict
- Best for minor issues or when emotions need to cool down

5 Accommodating (💙) – "You win, I lose"

- Low assertiveness, high cooperativeness
- Prioritizes relationships over personal goals
- Best when maintaining harmony is more important than winning

Discover your Conflict Style

Why It Matters:

Conflict is a natural part of interactions, but how we respond to it can impact relationships and outcomes. The **Thomas-Kilmann Conflict Mode Instrument (TKI)** helps individuals understand their preferred approach to conflict and how to adapt their style for more effective resolution.

-  **Takeaway:** Understanding your conflict style helps you navigate difficult conversations and adjust your approach for better outcomes.

Activity: Take the Conflict Styles Quiz

- ◆ You will answer a few questions based on the Thomas-Kilmann Conflict Mode Instrument (TKI) that identifies your **dominant conflict style**.
- ◆ For each scenario, choose the response that best reflects how you would act
- ◆ The TKI assesses how you balance **assertiveness (concern for self)** and **cooperativeness (concern for others)**.
- ◆ Your results will place you into one of **five conflict styles**.

A colleague disagrees with you on an important work decision.

You:

- A) Firmly advocate for your position and try to convince them why you're right.
- B) Try to find a middle ground that works for both of you.
- C) Listen to their viewpoint and prioritize maintaining a positive relationship.
- D) Avoid the conflict and hope the issue resolves itself.

Your boss criticizes your work on a project, but you disagree with their feedback

You:

- A) Defend your work and explain why you believe it was done correctly.
- B) Ask what changes they'd like and try to find a compromise.
- C) Accept the criticism without arguing to avoid conflict.
- D) Stay silent and hope they don't bring it up again.
- E) Ask for clarification and offer to collaborate on ways to improve.

You and a friend want to go to different restaurants for dinner.

You:

- A) Insist on your choice because you really want to go there
- B) Suggest a new restaurant that has options both of you like
- C) Let your friend decide—it's not a big deal to you.
- D) Say you don't care and let them choose, even though you have a preference.
- E) Ask why they prefer their choice and see if you can come up with an even better alternative together.

A coworker consistently arrives late to meetings, delaying progress.

You

- A) Confront them directly and ask them to be on time.
- B) Suggest adjusting the meeting time to better accommodate their schedule.
- C) Ignore the issue and just wait for them each time.
- D) Stop attending the meetings and let others deal with it.
- E) Bring it up in a team discussion and collaboratively set expectations.

A family member wants to borrow money, but you're uncomfortable lending it.

You:

- A) Directly refuse and explain why you won't lend them money.
- B) Offer to lend a smaller amount as a compromise.
- C) Lend the money even if you're hesitant to avoid upsetting them.
- D) Change the subject and hope they don't ask again.
- E) Have a discussion to explore their needs and see if there's another way to support them.

A neighbor complains that your guests are parking in front of their house.

You:

- A) Explain why your guests have the right to park there and stand your ground.
- B) Suggest alternating parking days to keep things fair.
- C) Apologize and ask your guests to park elsewhere.
- D) Avoid the neighbor and hope they drop the issue.
- E) Have a conversation to understand their concerns and find a solution that works for both of you.

SCORING AND CONFLICT STYLES

Count how many times you chose each letter and match it to the following styles:

Mostly A's – Competing (Assertive & Uncooperative) You prioritize your own needs and stand firm in conflicts. This style is effective when quick decisions are needed but may come across as aggressive.

Mostly B's – Compromising (Moderate Assertiveness & Cooperativeness) You seek a middle ground and prefer fair solutions. This style works well in everyday disagreements but may not always address deeper concerns.



SCORING AND CONFLICT STYLES

Mostly C's – Accommodating (Cooperative & Unassertive) You prioritize relationships over conflict. This can be helpful in maintaining harmony but might lead to resentment if your needs are overlooked.

Mostly D's – Avoiding (Unassertive & Uncooperative) You tend to withdraw from conflict. This can be useful when emotions are high, but it may lead to unresolved issues.

Mostly E's – Collaborating (Assertive & Cooperative) You seek win-win solutions through open discussion. This is the most effective style for long-term resolution but may take more time and effort.



Activity Debrief Discussion

- 1 Which conflict style do you most identify with?
- 2 How do your preferred conflict styles impact your relationships and negotiations?
- 3 Can you think of a time when a different conflict style would have been more effective?
- 4 How can you use knowledge of your conflict style to improve mediation or negotiation situations?

 **Key Insight:** The best style **depends on the situation**—developing flexibility in your approach leads to more effective conflict resolution!

A man in a white dress shirt and a dark tie with gold-colored rectangular patterns is holding a rectangular, textured yellow sign. The sign has the words "BREAK" and "TIME" in a dark red, stylized, hand-drawn font. He is standing behind a dark, speckled granite countertop. To his left is a white ceramic mug, and to his right is a black office machine, possibly a fax or a small printer. The background is a warm, yellowish wall with some green foliage visible on the left.

**BREAK
TIME**

TITLE IX

Regulations, Definitions, Scope

01

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).



EDUCATION PROGRAM OR ACTIVITY

“ —

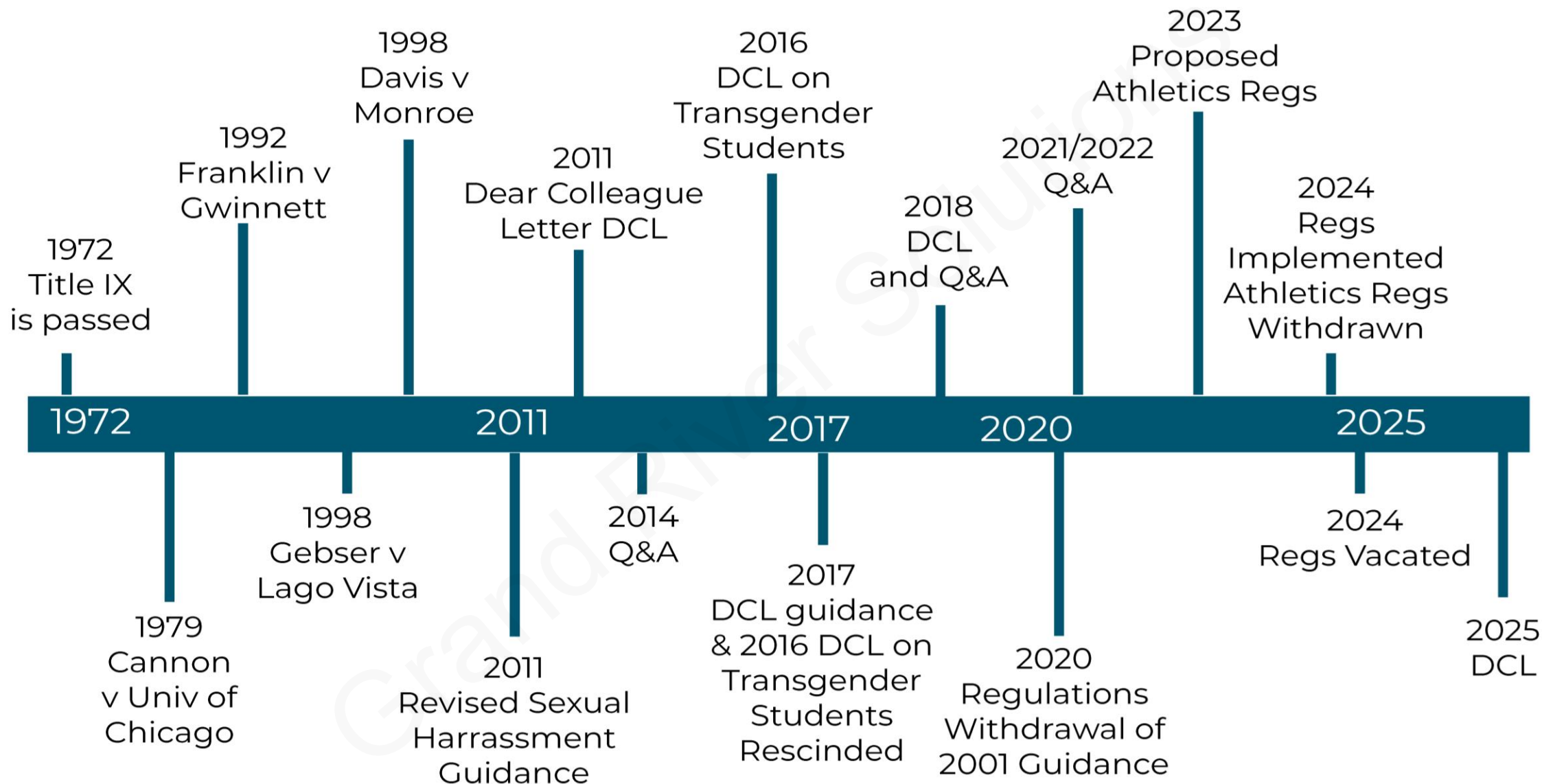
For the purposes of this section, §§ 106.30, and 106.45, “education program or activity” includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

— ”

TITLE IX APPLIES TO ALL FORMS OF SEX DISCRIMINATION

- Sexual Harassment
- Achievement Awards
- Athletics
- Benefits
- Financial Aid
- Leaves of absence and re-entry policies
- Opportunities to join groups
- Pay rates
- Recruitment
- Retention Rates
- Safety
- Screening Exams
- Sign-on Bonuses
- Student and Employee Benefits
- Thesis Approvals
- Vocational or College Counseling
- Research opportunities

THE HISTORY OF TITLE IX — TIMELINE



THE TITLE IX REGULATIONS

SEXUAL HARASSMENT ONLY

1

Narrows the definition of sexual harassment;

2

Narrows the scope of the institution's educational program or activity;

3

Narrows eligibility to file a complaint;

4

Develops procedural requirements for the investigation and adjudication of sexual harassment complaints, only.

DEFINITIONS

Recipient

The recipient of federal funds; the institution/school/college

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

SEXUAL HARASSMENT: SECTION 106.30

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An **employee** of the recipient conditioning the provision of an aid, benefit, or service of the recipient 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 the recipient's education program or activity; or
- (3) "**Sexual assault**" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "**dating violence**" as defined in 34 U.S.C. 12291(a)(10), "**domestic violence**" as defined in 34 U.S.C. 12291(a)(8), or "**stalking**" as defined in 34 U.S.C. 12291(a)(30).



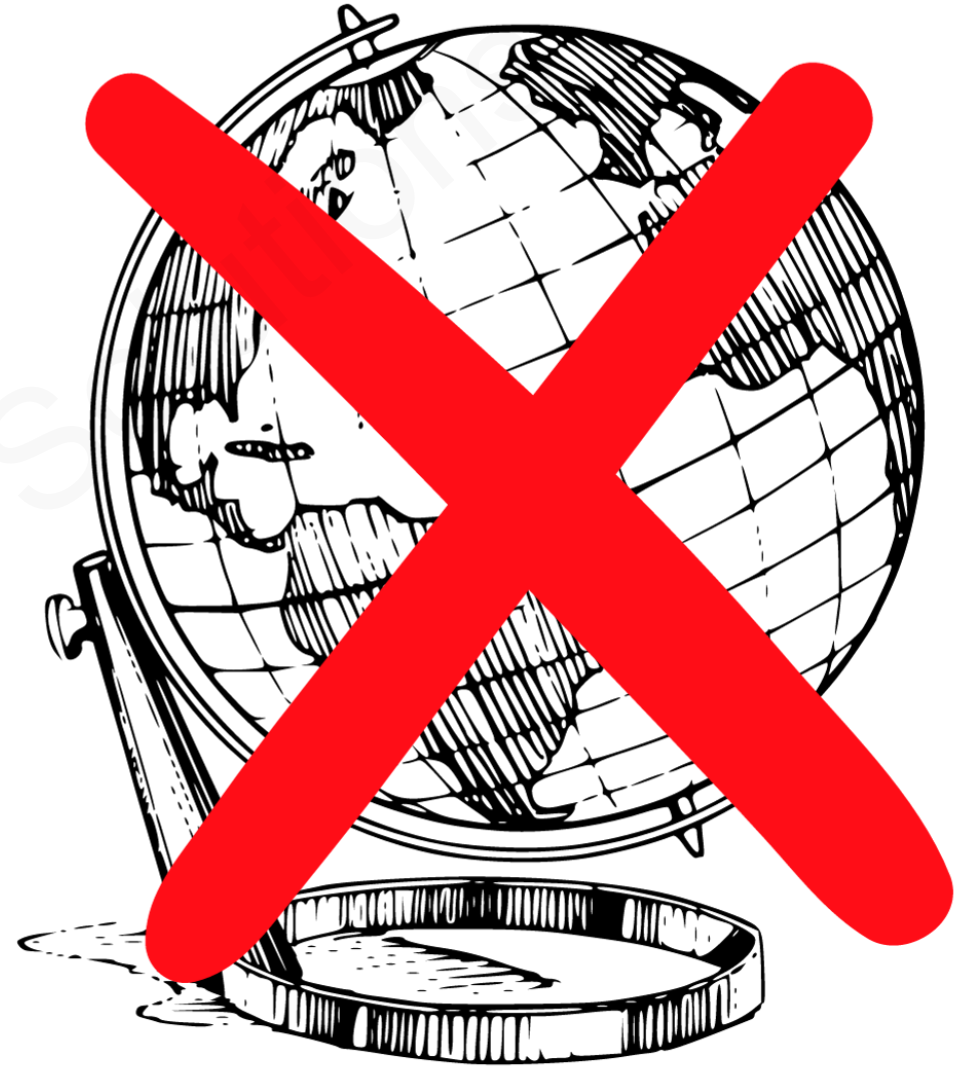
COVERED GEOGRAPHY

Includes locations, events, or circumstances over which the recipient exercised **substantial control** over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

- ✓ On campus or in a building owned or controlled
- ✓ Off-campus incident that occurs as part of the institution's operations
- ✓ Institution exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a); or
- ✓ the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a postsecondary institution

NOT COVERED GEOGRAPHY

- x Off campus conduct, even if it has an impact on the educational program or activity;
- x Conduct that occurs outside of the United States.



COVERED INDIVIDUALS

ELIGIBILITY FOR TITLE IX'S PROTECTIONS:

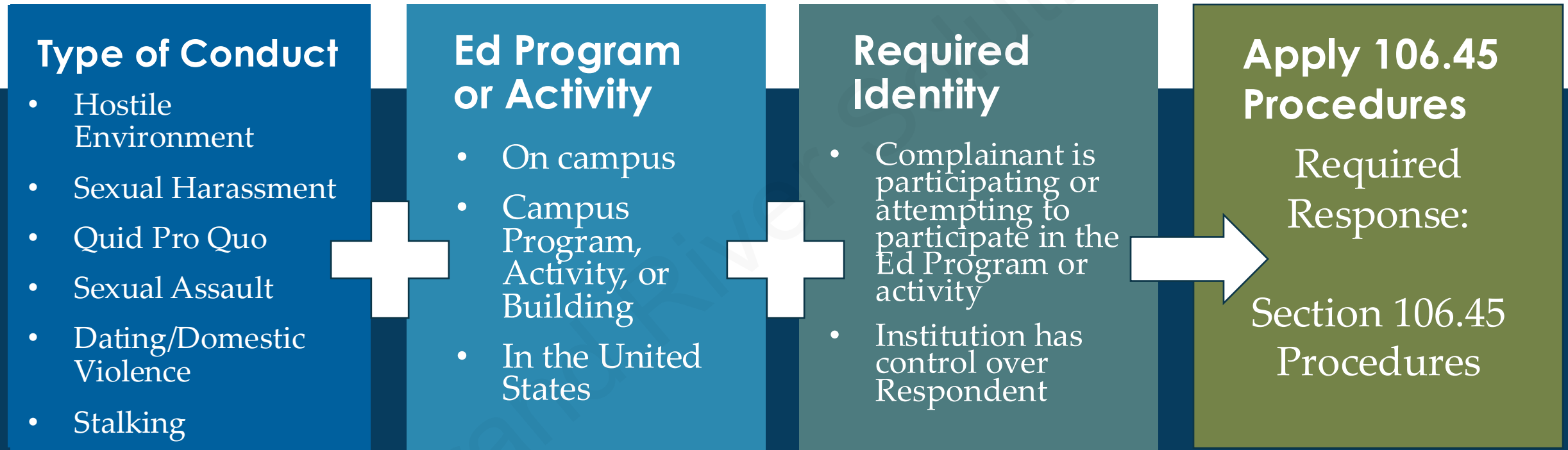
“At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.” 34 C.F.R. § 106.30

- Applicant
- Enrolled or Employed
- Accepted or Hired



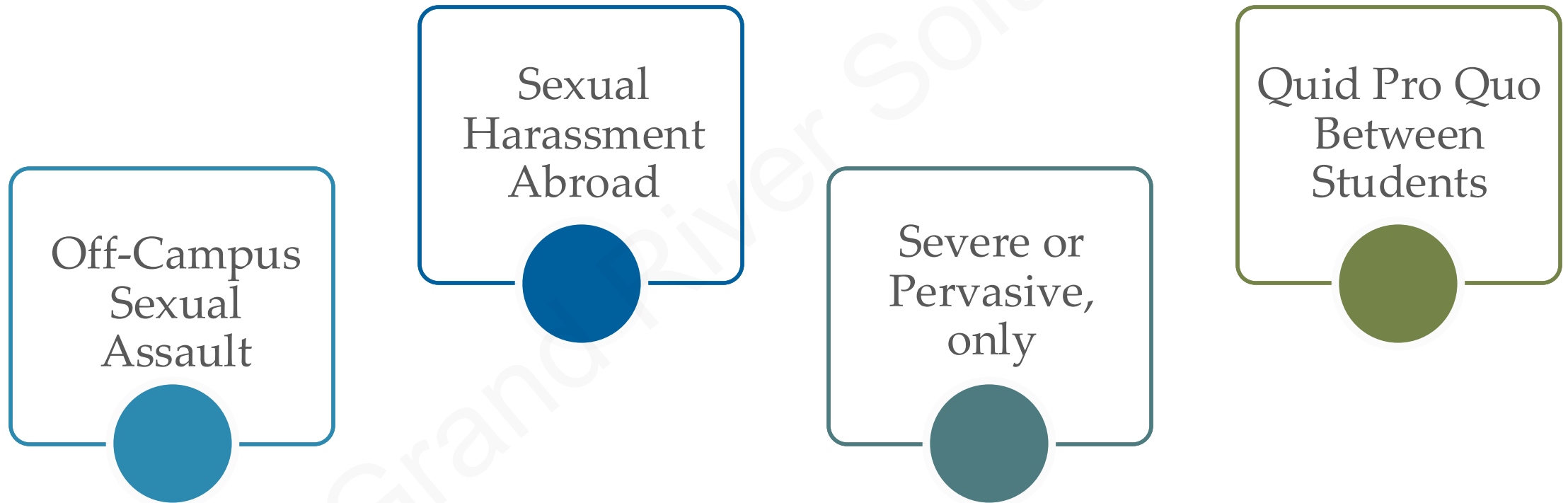
TITLE IX APPLICATION REGULATIONS

(POST-MAY 2020)



CONDUCT FALLING OUTSIDE THE SCOPE OF TITLE IX

- Apply other institutional policies and procedures
- Ensure that those policies and procedures are complaint with VAWA/Clery, other intersecting federal and state laws



ACTUAL NOTICE

A NARROWED SCOPE OF INSTITUTIONAL RESPONSIBILITY

Institution must respond when it has:

”Actual Knowledge...”

When “an official of the recipient who has authority to institute corrective measures” has notice, e.g., Title IX Coordinator

...of “sexual harassment that occurred within the school’s “education program or activity...”

“includes locations, events, or circumstances over which the recipient exercised substantial control” over the respondent and the context in which the sexual harassment occurred

- Fact specific inquiry focused on control, sponsorship, applicable rules, etc.

...against a “person in the United States”

So, not in the study abroad context

INITIAL RESPONSE REQUIREMENTS



1. Receipt of Report

2. Outreach/Response from Title IX Coordinator

3. Support Measures, whether or not Formal Complaint is filed

4. How to File

5. Options for Resolution

PROCEDURAL REQUIREMENTS FOR INVESTIGATIONS

Notice to both parties

Equal Opportunity to Present Evidence

Advisor of choice

Written notification of meetings, etc., and sufficient time to prepare

Opportunity to review all directly related evidence, and 10 days to submit a written response to the evidence prior to completion of the report

Report summarizing relevant evidence and 10-day review of report prior to hearing

PROCEDURAL REQUIREMENTS FOR HEARINGS

Must be live, but can be conducted remotely

Cannot compel participation of parties or witnesses

Standard of proof used may be preponderance of the evidence or clear and convincing; standard must be the same for student and employee matters

Cross examination must be permitted and must be conducted by advisor of choice or provided by the institution

Decision maker determines relevancy of questions and evidence offered

Written decision must be issued that includes finding and sanction

GROUNDS FOR APPEAL

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.



OTHER REQUIREMENTS OF THE REGULATIONS

Designation of a Title IX Coordinator

Dissemination of policy

Separation of Responsibilities

Training and posting of training

Impartiality

Record Keeping

TIME FOR A
BREAK



INFORMAL RESOLUTION

Requirements under Title IX regulations



02

Informal Resolution under Title IX

◆ What is Informal Resolution?

- Informal resolution is a **voluntary, structured process** used to resolve Title IX complaints **without a full investigation or formal hearing**. It allows parties to reach a **mutually agreeable resolution** with the help of a trained **facilitator**. The concept has been integrated into the Title IX process to provide a less adversarial way to resolve complaints.

◆ Key Terminology

- **Facilitator** – The neutral third party guiding the resolution process (***Not called a mediator in Title IX cases***).
- **Informal Resolution** – The Title IX-compliant alternative to formal adjudication (***Not referred to as mediation***).

STEPS IN THE PROCESS

Formal
Complaint

Notice of
Allegations

Title IX
Coordinator
evaluates if
informal
resolution is
appropriate

Obtains voluntary
consent and
issues separate
notice



When can informal resolution be used?

- Before 2020, informal resolution was not required under Title IX, but is permissible in lieu of the investigatory and/or hearing process §106.45(b)(9) when:
 - A formal complaint is filed, and
 - When the parties **voluntary** agree in writing to resolve the case through informal resolution
- The Title IX Coordinator is responsible for evaluating whether a complaint is suitable for informal resolution
- There are no limitations on offering informal resolution to participants except:
 - Institutions must not offer or facilitate an informal resolution process to resolve allegations that an **employee** sexually harassed a **student** §106.45(b)(9)(iii)

- The parties must voluntarily agree in writing to resolve the case through informal resolution. §106.45(b)(9)
- May not require participation in the process as a condition of employment or enrollment
- May be entered into at any time in the process, prior to reaching a determination regarding responsibility
- May be stopped at any time prior to determination regarding responsibility, or any other time.

Informal Resolution

OTHER REQUIREMENTS

- The recipient must ensure that the informal resolution process is concluded within a reasonably prompt timeframe. “34 C.F.R. § 106.45(b)(5)(iv)
- The parties must voluntarily agree in writing to resolve the case through informal resolution. §106.45(b)(9)
- A respondent’s admission of harm or acceptance of responsibility is not required 34 CFR § 106.45(b)(9)(i)
- Informal resolution can be facilitated any time prior to reaching a determination regarding responsibility

Written Notice 34 CFR § 106.45(b)(9)(i)

Informal Resolution requires its own notice to the parties and should include:

- The allegations; §106.45(b)(9)(i)
- Requirements of the informal resolution process §106.45(b)(A)
- The right to withdraw from the process and resume or initiate an investigation §106.45(b)(9)(i)
- The circumstances that preclude the parties from resuming a formal complaint. §106.45(b)(9)(i)
- Facilitation by neutral, objective and trained facilitator. §106.45(b)(1)(iii)
- The records that will be maintained or that could be or could not be shared. §106.45(b)(10)
- Whether and how the institution could disclose any information for use in an investigation under [§ 106.45](#), and if applicable [§ 106.46](#), if grievance procedures are initiated or resumed.

QUIZ QUESTION:

Under Title IX, can a Title IX Coordinator facilitate an informal resolution process?

- A. Yes, as long as they are trained and impartial
- B. No, a Title IX Coordinator cannot ever facilitate an informal resolution
- C. Yes, but only if the parties agree to participate.
- D. No, only external mediators can facilitate an informal resolution.



Who can facilitate an Informal Resolution Under Title IX?

Per Title IX Regulations, 34 C.F.R. § 106.45(b)(9), facilitator requirements to conduct an informal resolution are:

- **Trained** in Title IX definitions, scope, and informal resolution processes
- **Impartial**—free from conflicts of interest or bias
- **Ensures voluntary participation** with informed, written consent
- **Examples of Eligible Facilitators:**
 - ◆ Title IX Coordinators trained in informal resolution
 - ◆ University/school officials with Title IX and mediation training
 - ◆ External professional mediators with Title IX knowledge
 - ◆ Ombuds or conflict resolution specialists

FACILITATOR REQUIREMENTS

The Title IX regulations do not explicitly list detailed qualifications for facilitators of informal resolution. However, they do state that:

Facilitators must be trained on:

- The definition of sexual harassment in the regulations
- The scope of the institution's education program or activity
- How to conduct an informal resolution process
- How to serve impartially, avoiding conflicts of interest, bias or prejudice

 **Best Practices:** While not required under the regulations, facilitators benefit from **mediation, conflict resolution, and trauma-informed training** to ensure effective outcomes.

Cases suitable for informal resolution

Suitable for Informal Resolution

- Any harassment where both parties seek a resolution
- Non-violent or lower-level conduct cases
- Cases where both parties are open to resolution outside of formal processes

Not suitable for informal resolution

- Allegations of sexual harassment or assault against an employee (such as a teacher or staff member) from a student
- Cases involving sexual violence or serious misconduct
- A dangerous pattern of conduct
- When any **power imbalances between the parties** may affect fairness or exacerbate harm

PROCESS PARTICIPANTS



THE PARTICIPANTS: THE PARTIES

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Respondent

An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

THE PARTICIPANTS:

FACILITATOR

Neutral facilitator

Ensure a fair, unbiased process

Communicate effectively with both parties

Document the formal agreement reached

TITLE IX COORDINATOR

Conduct initial assessment to determine suitability for informal resolution

Confirm voluntary participation with both parties

Provide notice to both parties about rights and options

Monitor to ensure compliance with the agreement

THE PARTICIPANTS: ADVISORS

- The regulations do not impose restrictions on who can serve as an advisor, meaning that a party may choose:
 - An **attorney**
 - A **parent or guardian**
 - A **friend or family member**
 - A **faculty member or colleague**
 - Any **other individual the party trusts**
- Unlike formal hearings, where an advisor is required to conduct cross-examination, the informal resolution process does not have the same procedural requirements.



Role of the advisor

- They are present to support and guide the parties, but actions are more limited compared to their role in formal investigations and hearings
- Some examples of inappropriate advisor conduct:
 - Disrupting the process
 - Speaking on behalf of the party
 - Coercing or pressuring the parties
 - Introducing new evidence
 - Violating confidentiality
 - Harassment or intimidation
 - Refusing to follow institutional policies



NAVIGATING THE INFORMAL RESOLUTION PROCESS

Initial Steps & Requirements

05

Step 1: PREPARE



Review the Complaint & Policies



Understand the allegations, institutional policies, and any prior interactions.

Step 2: MEET WITH COMPLAINANT



Explain the Process: Clarify expectations, the neutral role of the mediator, and confidentiality limits.



Identify Interests & Needs: Understand their goals for resolution, desired outcomes, and any concerns.



Assess Readiness for Mediation: Ensure they are willing to engage in good faith and feel safe participating.



Explore potential resolutions, such as apologies, policy changes, or educational measures.

Step 3: MEET WITH RESPONDENT



Explain

Explain the Process:
Provide the same information as given to the complainant.



Hear

Hear Their Perspective:
Allow them to share their side and express their interests and needs



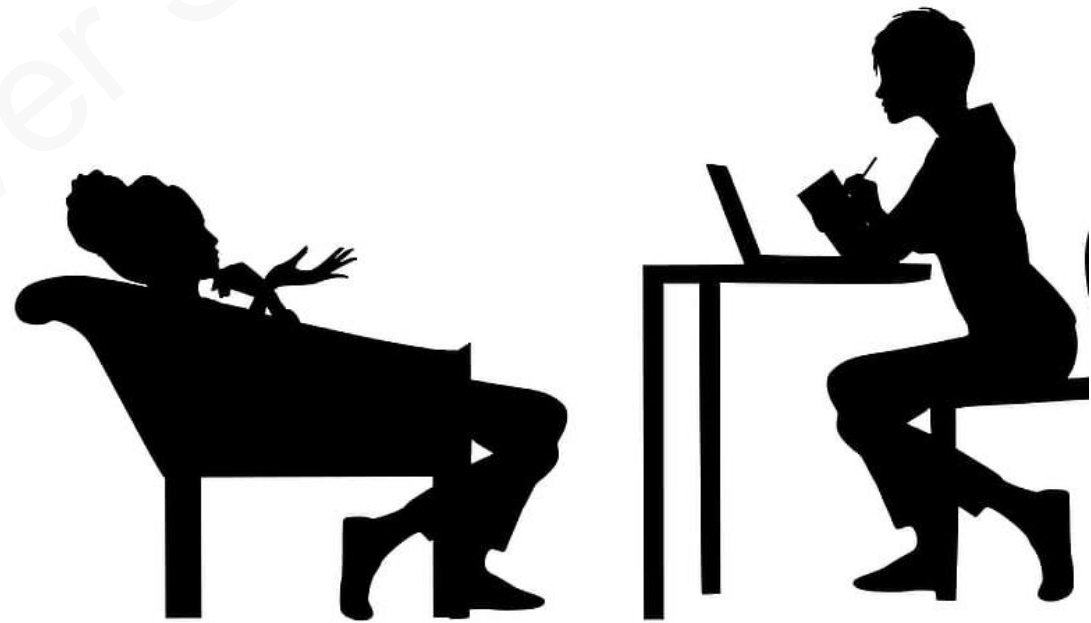
Assess

Assess Readiness for Mediation:
Ensure they are willing to participate in a meaningful way



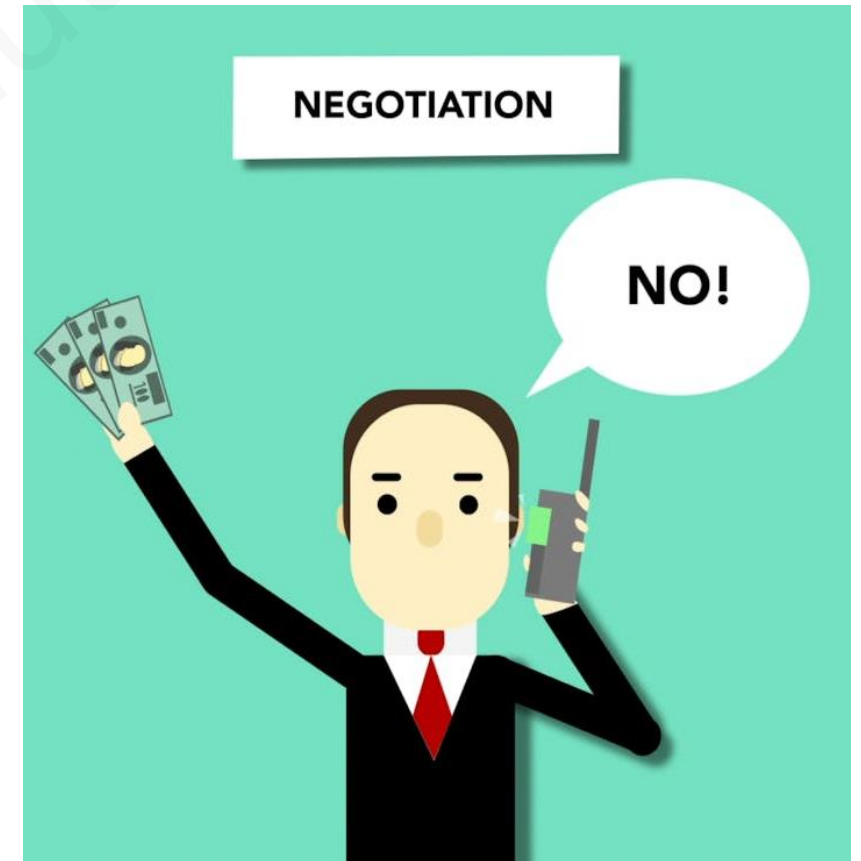
Discuss

Discuss Potential Resolutions:
Explore possible outcomes that they would agree to



Step 4: CONDUCT THE INFORMAL RESOLUTION

- **Choose the Mediation Structure:** Have the parties decide between a **joint session** or **shuttle mediation** (where the mediator moves between parties).
- **Establish Ground Rules:** Ensure respectful communication, active listening, and confidentiality.
- **Facilitate Dialogue:** Allow each party to express their thoughts, clarify misunderstandings and explore possible solutions.
- **Encourage Problem-Solving:** Help both parties work toward a mutually agreeable solution



ESSENTIAL FACILITATOR SKILLS FOR MEDIATION AND INFORMAL RESOLUTION

Strategies for success

REMEMBER...

 **Every case is unique—adapt techniques as needed.**

 **Facilitators are neutral—guide, but don't pressure agreements.**

 **Focus on respect, fairness, and clear communication.**

REGULATORY REQUIREMENT: IMPARTIALITY



34 C.F.R. § 106.45(b)(1)(iii) states:

- "Any individual designated as a Title IX Coordinator, investigator, decision-maker, or facilitator of informal resolution must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent."



WHAT IS IMPARTIALITY?

Definition: The ability to remain neutral and free from bias in decision-making and facilitation.

Why It Matters: Ensures fairness and credibility in the informal resolution process.

Examples of Lack of Impartiality:

- Favoring one party due to prior relationships.
- Personal beliefs influencing facilitation.
- Prejudging the outcome before discussions begin.



STRATEGIES TO MAINTAIN IMPARTIALITY

Self assessment: Regularly evaluate your own biases

Seek external support when needed

Focus on Interests, not Positions

Consistency: Follow structured facilitation techniques that ensure fairness

Maintain a neutral communication style

Adhere to process and ground rules

UNDERSTANDING CONFLICT OF INTEREST

Definition: A situation where personal, financial, or professional relationships may compromise neutrality.

Types of Conflicts of Interest:

- *Personal:* Prior relationship with a party (friend, relative, colleague).
- *Professional:* Previous involvement in related cases.
- *Financial:* Any financial stake or incentive in the outcome.

IDENTIFYING BIAS AND CONFLICTS OF INTEREST

Key Questions to Ask:

- Do I have a personal or professional connection to either party?
- Have I formed an opinion about the case before hearing all facts?
- Would my involvement create an appearance of bias?
- Can I remain neutral and ensure fairness throughout the process?

You are assigned to facilitate an informal resolution where one party is a colleague you have worked with before. How do you proceed?

- **Option A:** Proceed with the case but disclose the connection.
- **Option B:** Decline the case due to potential bias.
- **Option C:** Seek guidance from the Title IX Coordinator.

Discussion: Which option aligns best with Title IX requirements and why?

CASE STUDY SCENARIO

OTHER ESSENTIAL FACILITATOR SKILLS FOR MEDIATION AND INFORMAL RESOLUTION

- **Why These Skills Matter:**

A skilled facilitator **creates a safe, respectful, and productive space** for both parties to express their concerns and reach a resolution. The following skills are essential for ensuring a fair and effective process:

- **Takeaway:**

Strong facilitation skills **foster open dialogue, reduce conflict, and help both parties feel respected** throughout the informal resolution process. **Practice these skills regularly** to build confidence and effectiveness!

Demonstrating Empathy & Active Listening

- ◆ **Why?** Helps parties feel heard, validated, and safe to express themselves.
- ◆ **Techniques for Active Listening:**
 - ✓ **Paraphrasing:** *“It sounds like you’re saying...”*
 - ✓ **Validating:** *“I can understand why that would be upsetting.”*
 - ✓ **Reflecting emotions:** *“It seems like this situation made you feel frustrated and unheard.”*
 - ✓ **Using nonverbal cues:** Maintain **eye contact**, **nod**, and have an open posture.

◆ Activity: Empathy in Action

💬 **Scenario:** A complainant says, *“I don’t think the respondent even understands why I’m upset.”*

💡 **How should a facilitator respond?**

Managing Emotions & De-escalation Strategies

- ◆ **Why?** Strong emotions (anger, sadness, defensiveness) can escalate discussions.
- ◆ **Techniques to Manage Emotions:**
 - ✓ **Normalize emotions:** “It’s okay to feel upset about this.”
 - ✓ **Use neutral language:** “Let’s take a step back and look at what resolution might be possible.”
 - ✓ **Offer breaks when needed:** “Would you like a moment before we continue?”
 - ✓ **Use the “pause” technique:** If a party raises their voice, respond **calmly and slowly** to de-escalate.

◆ Activity: Emotion Management Role-Play

💬 **Scenario:** One party raises their voice and says, “*This is a waste of time!*”

💡 **How should the facilitator respond?**

Asking Open-Ended Questions

- ◆ **Why?** Encourages participants to share more details, feelings, and perspectives.
- ◆ **Activity: Reframe the Question**

Instructions:

Convert the **closed-ended questions** below into **open-ended** ones.

✗ *Did you feel uncomfortable when that happened?*

✗ *Do you want an apology?*

✗ *Was that your intention?*

💡 **Key Tip:** Use “**What,**” “**How,**” and “**Tell me more about...**” instead of questions that lead to **yes/no** answers.

Encouraging Mutual Agreement & Next Steps

- ◆ **Why?** The goal is to reach a resolution that both parties **feel is fair**.
- ◆ **Techniques for Agreement-Building:**
 - ✓ **Focus on future solutions, not past conflicts.**
 - ✓ **Summarize agreements in neutral language.**
 - ✓ **Check for understanding:** “Does this agreement feel fair to both of you?”

◆ Activity: Reaching an Agreement Exercise

💡 **Scenario:** The complainant wants an apology; the respondent is reluctant.

💡 **Facilitator Task:** Help the parties find **common ground** for an agreement.

Step 5: FINALIZE THE AGREEMENT

- **Summarize the Agreed-Upon Terms:** Confirm that both parties understand and agree to the resolution terms.
- **Put the Agreement in Writing:** Ensure it is clear, specific, and enforceable.
- **Obtain Signatures:** Both parties must sign the agreement, acknowledging their acceptance.
- **Institution Implements the Agreement:** Any required actions (e.g., training, no-contact agreements, accommodations) should be enforced.

Key Ingredients to a Written Agreement

Objective

Clear

Specific

Equitable and Fair

Enforceable and
Measurable

Time-Bound and Practical

Examples of Terms in a Written Agreement

- **Educational Training** : Respondent agrees to complete training on sexual harassment, consent, or other Title IX-related topics
 - Respondent participates in a facilitated discussion apology or reflection exercise
 - Respondent engages in voluntary service
- **No Contact Agreement** - Both parties agree not to communicate or interact in person, online, or through third parties.
- **Housing or Class Reassignment** – If applicable, the responding party agrees to change dorms, classes, or schedules to limit contact.

Examples of Terms in a Written Agreement (cont.)

-
- **Work or Internship Adjustments** – Modifications to work schedules or assignments to prevent continued interactions.
 - **Activity Restrictions** – The responding party voluntarily agrees to step down from leadership roles, clubs, or teams.
 - **Counseling or Coaching** – The responding party agrees to attend therapy, anger management, or consent education sessions.
 - **Voluntary Withdrawal or Transfer** – The responding party voluntarily agrees to withdraw from the institution or transfer to another program.

Examples of Terms in a Written Agreement (cont.)

-
- **Mutual Confidentiality Clause** – Both parties agree to keep the resolution terms private (subject to legal and institutional obligations)
 - **Non-disparagement Clause** – Both parties agree not to make negative or harmful statements about each other.

BEST PRACTICE TIPS



Limited Scope of Agreement

- The agreement applies only while both parties are students at the university.
- If one or both parties leave the university, the agreement may no longer be enforceable.
- This limitation ensures that the university can oversee compliance within its jurisdiction.



Reasonable and Enforceable Terms

- The terms must be practical and within the university's ability to monitor and enforce.
- Overly broad or unrealistic conditions may not be upheld
- The agreement should align with university policies and applicable laws

SKILL BUILDING EXERCISE: Drafting and Evaluating Agreement Terms

- **Objective:**
- This exercise will help you **recognize weak agreement terms** and improve them to ensure they are **specific, measurable, and enforceable** in an informal resolution agreement.
-  **Key Takeaway:** Strong agreement terms create clarity, accountability, and follow-through!

Group Discussion: Improving Weak Agreement Terms

- **Instructions:**
- **Review the Agreement Terms**
- Read each one carefully and consider:
- Is the term **specific** enough?
- Is it **measurable**—can you track compliance?
- Is it **enforceable**—does it set clear expectations for follow-through?

✖ *"Party A will be more mindful of Party B's boundaries."*

⚡ **Issues:** What does “mindful” mean? How will this be enforced?

How can the term be improved?

✖ *"Party A agrees to take training regarding consent."*

- ⚡ **Issues:**
- **Not Specific** – What training? Who provides it? What topics does it cover?
- **No Measurability** – When should Party A complete the training? How will completion be confirmed?
- **Lacks Enforceability** – Without a clear process for tracking and verifying completion, this term cannot be effectively enforced.
- **No Timeframe** – Without a deadline, Party A could delay or ignore the training.

✗ *"Party A should avoid interacting with Party B on social media."*

⚡ **Issues:** Does this include liking posts? What platforms are included? What happens if accidental contact occurs?

✓ What are your suggestions for an **improved term**?

✗ *"Party A and Party B agree not to date or engage in relationships with other people while enrolled at the university."*

⚡ **Issues:**

- The university **does not** have the authority to regulate students' personal relationships in this way.
- This term **violates individual autonomy** and could be considered **overly intrusive**.
- It is **impossible to monitor or enforce**, making it an ineffective agreement term.

RECORDKEEPING

- **The institution must maintain for a period of seven years records of:**
- Each sexual harassment investigation including
 - any determination regarding responsibility and any audio or audiovisual recording or transcript of any live hearing
 - any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the institution's education program or activity;
- Any appeal and the result therefrom;
- ***Any informal resolution and the result therefrom***; and
- All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.
 - The institution must make these training materials publicly available on its website, or if the institution does not maintain a website, the institution must make these materials available upon request for inspection by members of the public.

Facilitator Note-taking in Informal Resolutions

When Should a Facilitator Take Notes?

- Whether notes are taken depends on **institutional policies** and the **specific nature** of the informal resolution.
- Always consult **your university's guidelines** before making a decision.

◆ Minimal Note-Taking is Best

- Track **process details, logistics, or terms reached**.
- Avoid **detailed notes** about the circumstances leading to the informal resolution.

◆ Confidentiality Matters

- Any notes taken are **generally confidential** and should **not** be used in formal proceedings if the informal resolution **fails** or a party **withdraws**.
- Maintaining **strict privacy** encourages **open communication** between the parties.

Facilitator's Responsibility

- ✓ Consult university policies on mediation records.
- ✓ **Inform the parties** about how note-taking will be handled.
- ✓ Reinforce **trust and transparency** in the resolution process.

💡 *Clear communication about confidentiality helps ensure a productive and fair informal resolution process!*



Practice Test: Challenges in Informal Resolution

Instructions:

Read each scenario and choose the best response a facilitator should take.



A party becomes overly emotional and struggles to communicate. What should the facilitator do?

- A) Ignore their emotions and push forward.
- B) Acknowledge their feelings, offer a break, and create space for them to express concerns.
- C) Tell them to calm down and refocus on the issue.

One party dominates the conversation, interrupting and not allowing the other to speak. How should the facilitator handle this?

- A) Let them talk, assuming they will eventually stop.
- B) Gently remind them of ground rules and ensure equal speaking time for both parties.
- C) Allow the other party to interrupt back to balance the discussion.

The respondent refuses to take responsibility or acknowledge the complainant's concerns. What is the best approach?

- A) End the process since no resolution is possible.
- B) Reframe the discussion to focus on impact rather than blame, and explore mutual agreements.
- C) Pressure them to apologize.

A party requests an agreement term that is outside the institution's policy or legal boundaries. What should the facilitator do?

- A) Agree to it if both parties consent.
- B) Explain the limitations and help them explore alternative solutions within policy guidelines.
- C) Ignore it and continue mediation.

**One party appears disengaged and unresponsive.
What strategy should the facilitator use?**

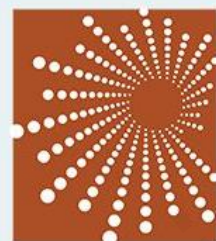
- A) Ask open-ended questions to re-engage them.
- B) Assume they have nothing to say and move forward.
- C) End the session immediately

Questions and Comments



THE RIVER CONNECT IS MOVING TO LINKEDIN.

At the same place you do your business social media networking, you can now find The River Connect and all the great events, resources, and real-time discussions on the topics important to higher ed equity professionals.



THE RIVER
CONNECT
IS MOVING TO





info@grandriversolutions.com



/Grand-River-Solutions



/GrandRiverSolutions



/GrandRiverSolutions

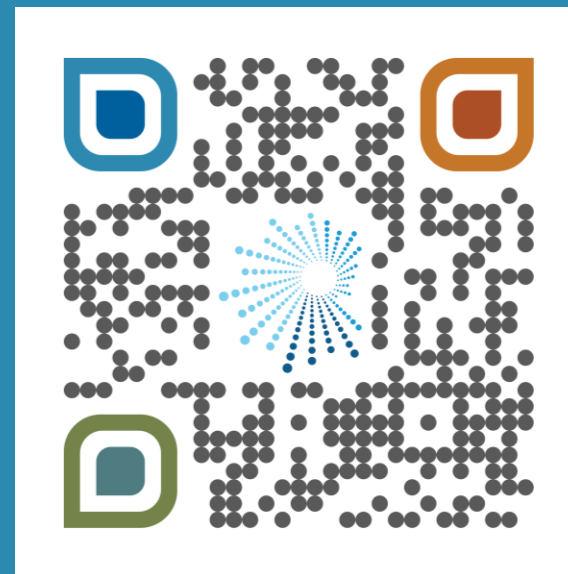


/GrandRiverSolutions.com



@titleixandequity.bsky.social

CONNECT WITH US



©Grand River Solutions, Inc., 2022. Copyrighted material. Express permission to post training materials for those who attended a training provided by Grand River Solutions is granted to comply with 34 C.F.R. § 106.45(b)(10)(i)(D). These training materials are intended for use by licensees only. Use of this material for any other reason without permission is prohibited.