

# Informal Resolution Training

JULY 10, 2025

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# Agenda

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- Legal overview and required training
- What happened before the Informal Resolution?
- Informal Resolution process overview & initial steps
- Conducting an Informal Resolution process
- Wrapping up the process

# Legal Overview

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# Title IX Basics

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Prohibits sex  
discrimination in  
education programs  
and activities

Applies to students,  
employees,  
volunteers, etc.

Includes sexual  
harassment

# Essential Compliance Elements

## Institutions must:

- Respond promptly in a manner that is not “deliberately indifferent”
- Investigate formal complaints
- Follow and publish the grievance process outlined in the regulations
- Take action to *stop the harassment, prevent the recurrence, and remedy the effects*
- Designate a Title IX Coordinator
- Publish a Notice of Nondiscrimination
- Disseminate a policy prohibiting sex discrimination
- Offer supportive measures
- Conduct training for Title IX personnel and those with heightened responsibilities
- Train students and employees

# Training Mandates

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## DEFINITIONS

- Sexual harassment
- Education program or activity

## OTHER

- Sexual harassment
- Institutional policies and procedures
- Any technology for live hearings
- Training materials must be posted on institution's website and maintained for seven years
- Training cannot rely on sex stereotypes

## CONCEPTS

- Conducting an impartial investigation and hearing process
  - ... While protecting the safety of complainants and promoting accountability
- Serving impartially, without bias, and without conflicts of interest
- Relevance regarding questions, evidence, and the investigation report
- Dynamics of sexual assault, dating violence, domestic violence, and stalking

# The Clery Act and the Violence Against Women Act (VAWA)

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## CLERY

- Consumer protection law
- Institutions must provide accurate, timely, and complete information on specific types of crimes that occur on or adjacent to campus, including sexual assault
- Clery Act violations come with significant fines
- Policy, procedure, prevention, and training requirements for
  - Dating violence
  - Domestic violence
  - Stalking
  - Sexual assault
- Requires Annual Security Report including institution's policies and crime statistics

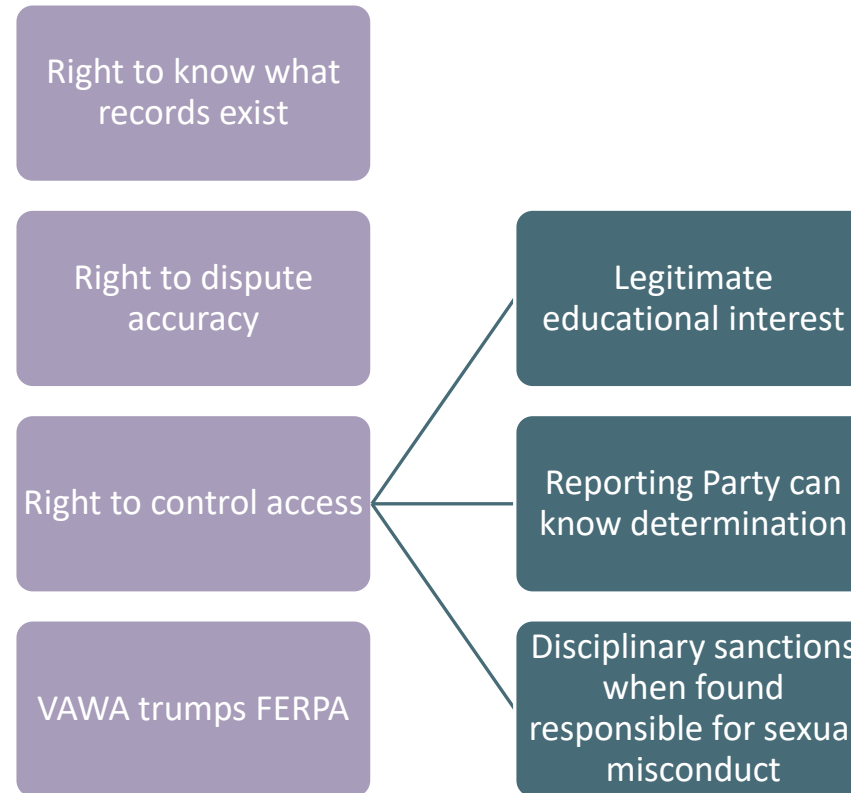
## VAWA

Institutions must:

- Prohibit sexual assault, dating violence, domestic violence, and stalking
- Provide clear definitions for the above misconduct and for consent
- Incorporate training and prevention programs for administrators, students, and employees

# What about FERPA?

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# MN State Statute 135A.15

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## INSTITUTIONS MUST:

- Incorporate sexual harassment policy requirements
- Inform victims of their rights
- Include reporting procedures and disciplinary processes in their policy
- Incorporate an amnesty policy
- Coordinate with law enforcement
- Health services must be confidential and screen for sexual violence and harassment
- Provide an online reporting system that permits anonymous reports
- Report annual statistics on **sexual misconduct**
- Data privacy stipulations
- Training requirements for administrators, campus security, and students
- Allow advisors to make opening and closing statements during a hearing
- [Full Statute Link](#)

## “Sexual misconduct” includes:

- Sexual Assault, Dating Violence, Domestic Violence and Stalking
- Sexual Extortion
- Sex Trafficking
- Nonconsensual Dissemination of Sexual Images and Deepfake Sexual Images

MN State  
Statute  
135A.15

# Title VI Overview

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Protects all students and employees from discrimination based on race, color, or national origin in programs (including schools) that receive federal financial assistance.

- National origin includes shared ancestry (including shared Jewish, Palestinian, Arab, or Muslim ancestry) and/or association with these national origins/shared ancestry.

Focus is on ensuring institutions provide equal opportunities so that everyone has full access to all the benefits and programs within the institution.

The reach is vast when considering an institution's "programs and activities" – admissions, employment, financial aid, grading, athletics, conduct, housing, etc.

Retaliation also prohibited under Title VI.

# When does Title IX apply?

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## Quid Pro Quo

- Employee conditions an outcome on an individual's participation in unwelcome sexual conduct

## Hostile Environment

- Unwelcome conduct that is **so severe, pervasive, and objectively offensive** that it denies a person equal access to a program or activity

## VAWA Crimes

- Sexual assault
- Dating Violence
- Domestic Violence
- Stalking

**Sexual harassment =**  
conduct on the basis of sex that satisfies at least one of the above

# Hostile Environment Considerations

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- Perspective of a “reasonable person” (consider age, abilities, positions of authority, etc.)
- Is it “severe, pervasive, **and** objectively offensive”?
- Does the conduct deny “equal access”? Does not need to be a total or complete loss of access, but **equal**?
- Consider the type of misconduct, how often it happened, where it took place, etc.

# Sexual Assault

***Any sexual act directed against another person, without the consent of that person, including instances where the individual is incapable of giving consent.***

**Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without their consent, including instances where they are incapable of giving consent because of age or temporary or permanent mental or physical incapacity.

**Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law

## Sexual Assault contd.

*Any sexual act directed against another person, without the consent of that person, including instances where the individual is incapable of giving consent.*

**Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent

**Sexual assault with an object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will (non-consensually) or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances where the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity

# Sexual Misconduct

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Remember policy must also address **sexual extortion**, **sex trafficking** and **deepfake images**.

MN Law changed sexual assault to sexual misconduct, which is defined to include:

- Sexual assault
- Domestic violence
- Dating violence
- Stalking
- Nonconsensual distribution of sexual images including deepfakes depicting intimate parts or sex acts
- Sexual extortion
- Sex trafficking

## Interacting with Complainants: Dynamics of Sexual Violence

- Most victims know the perpetrator.
- The vast majority of incidents go unreported to law enforcement.
- Alcohol and/or drugs are involved in many instances of assault (particularly on college and university campuses).
- Most sexual assaults are committed without severe physical violence and without a weapon.
- Most victims do not physically resist during an assault.

[https://evawintl.org/wp-content/uploads/Module-2\\_Dynamics-11.9.2020.pdf](https://evawintl.org/wp-content/uploads/Module-2_Dynamics-11.9.2020.pdf)  
<https://rainn.org/effects-sexual-violence>

Nonconsensual  
distribution of  
sexual images  
including  
deepfakes  
depicting  
intimate parts  
or sex acts

Revenge porn

Deepfake = “an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said” (Merriam Webster definition)

# Extortion

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Subdivision 1. **Crime defined.** (a) A person who engages in sexual contact with another person and compels the other person to submit to the contact by making any of the following threats, directly or indirectly, is guilty of sexual extortion:

- (1) a threat to withhold or harm the complainant's trade, business, profession, position, employment, or calling;
- (2) a threat to make or cause to be made a criminal charge against the complainant, whether true or false;
- (3) a threat to report the complainant's immigration status to immigration or law enforcement authorities;
- (4) a threat to disseminate private sexual images of the complainant as specified in section 617.261, nonconsensual dissemination of private sexual images;
- (5) a threat to expose information that the actor knows the complainant wishes to keep confidential; or
- (6) a threat to withhold complainant's housing, or to cause complainant a loss or disadvantage in the complainant's housing, or a change in the cost of complainant's housing.

# Sex trafficking

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Subd. 7a. **Sex trafficking.** "Sex trafficking" means:

(1) receiving, recruiting, enticing, harboring, providing, or obtaining by any means an individual to aid in the prostitution of the individual; or

(2) receiving profit or anything of value, knowing or having reason to know it is derived from an act described in clause (1).

# Consent

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*Institutions are not required to maintain a particular definition of consent; however, they should include a definition in their policy.*

Consent is words or overt actions by a person clearly and affirmatively communicating a freely-given, present agreement to engage in a particular form of sexual contact.

# Incapacitation

- An individual's physical and/or mental inability to make informed, rational judgments
- Incapacitated individuals cannot give consent to sexual contact
- Intoxication vs. Incapacitation
- Examples include sleep, unconsciousness, or intermittent consciousness
- Signs may include slurred speech, difficulty walking, vomiting
- May also exist due to mental or developmental disability
- **Frequent decision point for adjudicators:** *1) Was the complainant incapacitated; and 2) did or should the respondent (or a reasonable person) know/have known?*

# Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

# Domestic Violence

A felony or misdemeanor crime of violence committed:

- By a current or former spouse or intimate partner of the Complainant;
- By a person with whom the Complainant shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
- By a person similarly situated to a spouse of the Complainant under domestic or family violence laws;
- By any other person against an adult or youth Complainant who is protected from that person's acts under domestic or family violence laws.



DOMESTIC ABUSE INTERVENTION PROGRAMS  
202 East Superior Street  
Duluth, Minnesota 55802  
218-722-2781  
[www.theduluthmodel.org](http://www.theduluthmodel.org)

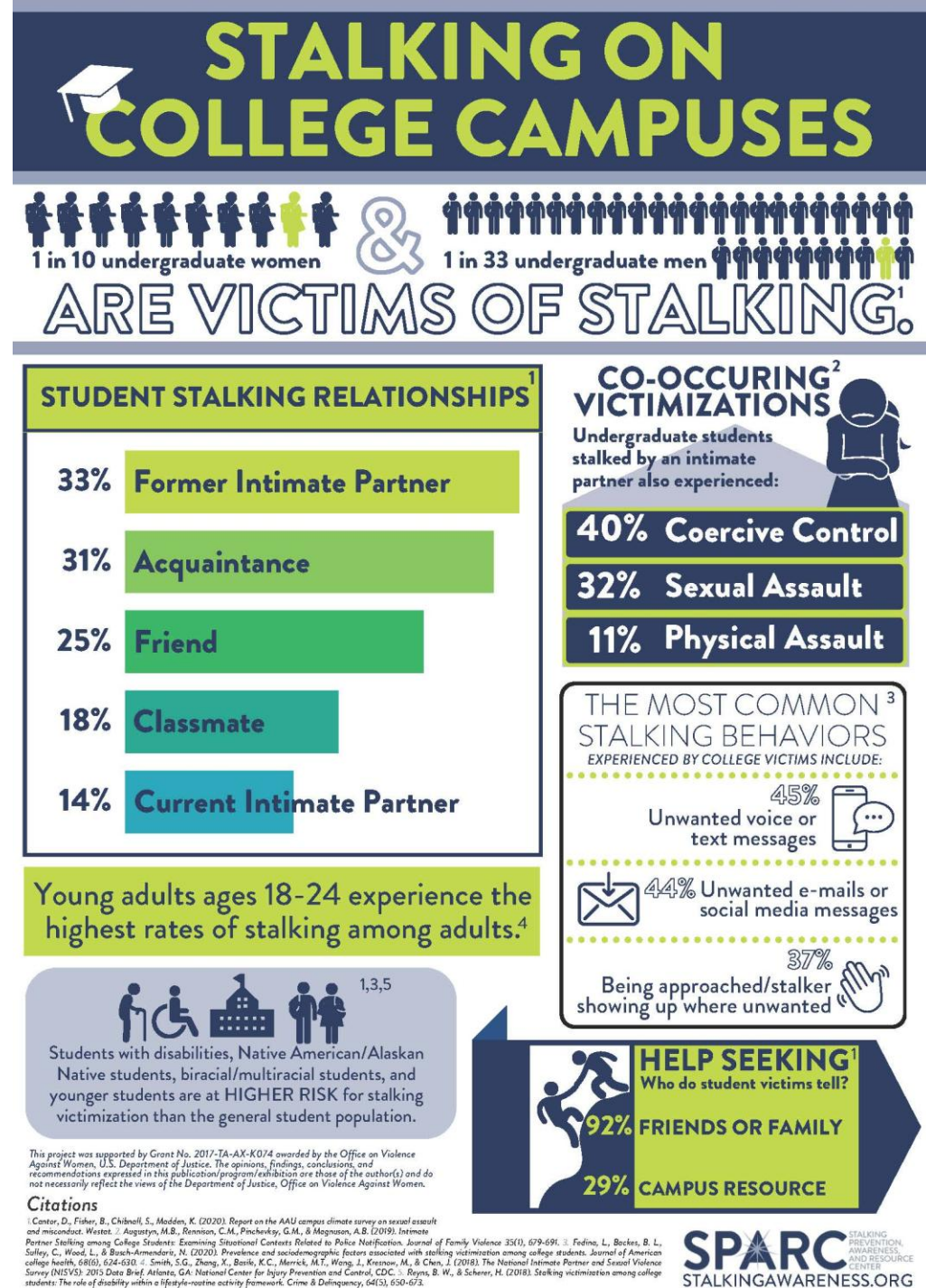
<https://www.loveisrespect.org/everyone-deserves-a-healthy-relationship/power-and-control-dating-abuse/>

# Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress.

Course of conduct means **two or more acts**, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

<https://www.stalkingawareness.org/fact-sheets-and-infographics/>



# Sexual exploitation

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A form of sexual harassment that involves one or more of the following behaviors committed for any purpose, including sexual arousal or gratification, financial gain, or other personal benefit:

- taking sexual advantage of another person without consent;
- taking advantage of another's sexuality; or
- extending the bounds of consensual sexual contact without the knowledge of the other individual.

# Retaliation

Any intimidation, threats, coercion, or discrimination against any individual because the individual has made a report, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.



# Education Program or Activity under Title IX

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## WHAT DOES IT MEAN?

- Locations, events, or circumstances...
- On or off campus...
- Over which the institution exercises substantial control over the context in which the harassment took place.

## ADDITIONAL REQUIREMENTS:

- Must have occurred within the United States.
- Includes conduct that occurred in any building owned or controlled by an officially recognized student organization.
- Institution must also have exercised substantial control over the responding party.

# Parties' relationship with the institution

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## REPORTING PARTY

Must be participating or attempting to participate in the institution's education program or activity at the time of filing a Formal Complaint.

*\*Broad interpretation of "participating or attempting to participate in"*

## RESPONDING PARTY

An institution's ability to take disciplinary action under Title IX is limited when the Responding Party is not affiliated with the institution.

*\*But... should still consider appropriate action steps to facilitate reporting party's participation in education programs and activities.*

# A Note about Sex-Based Discrimination

Discrimination based on sex or gender (i.e., adverse or preferential treatment based on someone's sex, gender identity, sexual orientation, etc.) is still prohibited under Title IX; however, institutions are not obligated to implement all the same Grievance Process requirements as stated in the regulations in order to address and/or investigate those types of concerns.

# Title IX Personnel

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# Title IX Coordinator: Role and Responsibilities

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Must designate at least one Title IX Coordinator

May be housed in various departments/divisions, depending on the institution

- Creates and implements legally compliant policy and procedures
- Oversees response to reports and formal complaints as well as informal and grievance procedures
- Implements supportive measures and facilitates connection to resources
- Ensures sanction and remedy compliance
- Training oversight
- Recordkeeping
- Maintains impartiality and avoids bias
- Receives annual training

# Investigator: Role and Responsibilities

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- Can be internal or external
- Burden to collect sufficient evidence
- Conducts fair, prompt, and impartial investigations
  - Identifies witnesses and evidence
  - Provides parties opportunity to submit evidence
  - Identifies factual issues
  - Maintains records, recordings, etc.
  - Creates an investigation report
- Works in coordination with the Title IX Coordinator, particularly around evidence and report review
- Maintains impartiality and avoids bias
- Receives annual training



# Decision-makers: Role and Responsibilities

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## HEARING PANEL MEMBERS & ADJUDICATOR(S)

- Attends and conducts a live hearing
- Determines whether the institution's policy has been violated under the appropriate standard of evidence
- Determines sanctions, if necessary
- Writes a Notice of Decision that includes a rationale for the finding
- Avoids bias and conflicts of interest
- Receives annual training

## APPEAL OFFICER(S)

- Determines a ruling on a party's appeal by reviewing appropriate investigation/hearing materials
  - Not a "re-do" of the investigation
- May meet with parties
- Writes a Notice of Decision that includes a rationale for the outcome
- Avoids bias and conflicts of interest
- Receives annual training

# Advisors

- Advisors assist parties throughout the process; can be attorneys, advocates, friends, family members, mentors, etc.
- Parties have the right to an advisor of their choice
- Advisors may attend meetings and interviews with the party
- If a party does not have an advisor, the institution must provide an advisor to conduct cross-examination on the party's behalf **during the hearing**. These advisors are not required to be trained
- Consider Advisor Guidelines for both the general process as well as the hearing

# Who can/should be an Informal Resolution Facilitator?

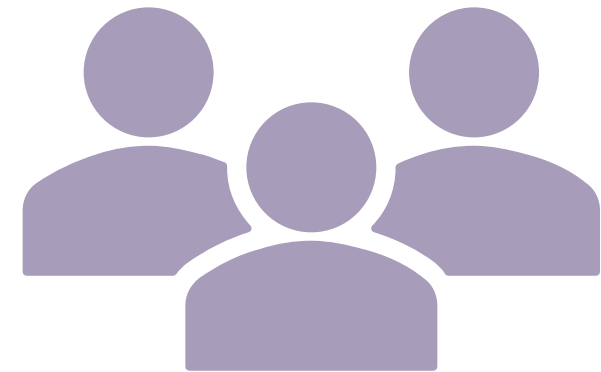
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First and foremost, someone without bias and conflicts of interest.

Secondly, someone who has the appropriate skillset.

Could be:

- Title IX Coordinator or Deputy
- Someone from your Title IX Team
- Another employee within your institution
- An external facilitator



# What happened before the Informal Resolution?

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# Initial Conversation with a Reporting Party

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## PROCESS OPTIONS:

- Law enforcement report
- Grievance Process
  - Informal Process
- Taking time to decide what to do next, if anything
- Potential for TIXC Formal Complaint
- Preservation of evidence
- Other options permitted by your policy, if not Title IX?

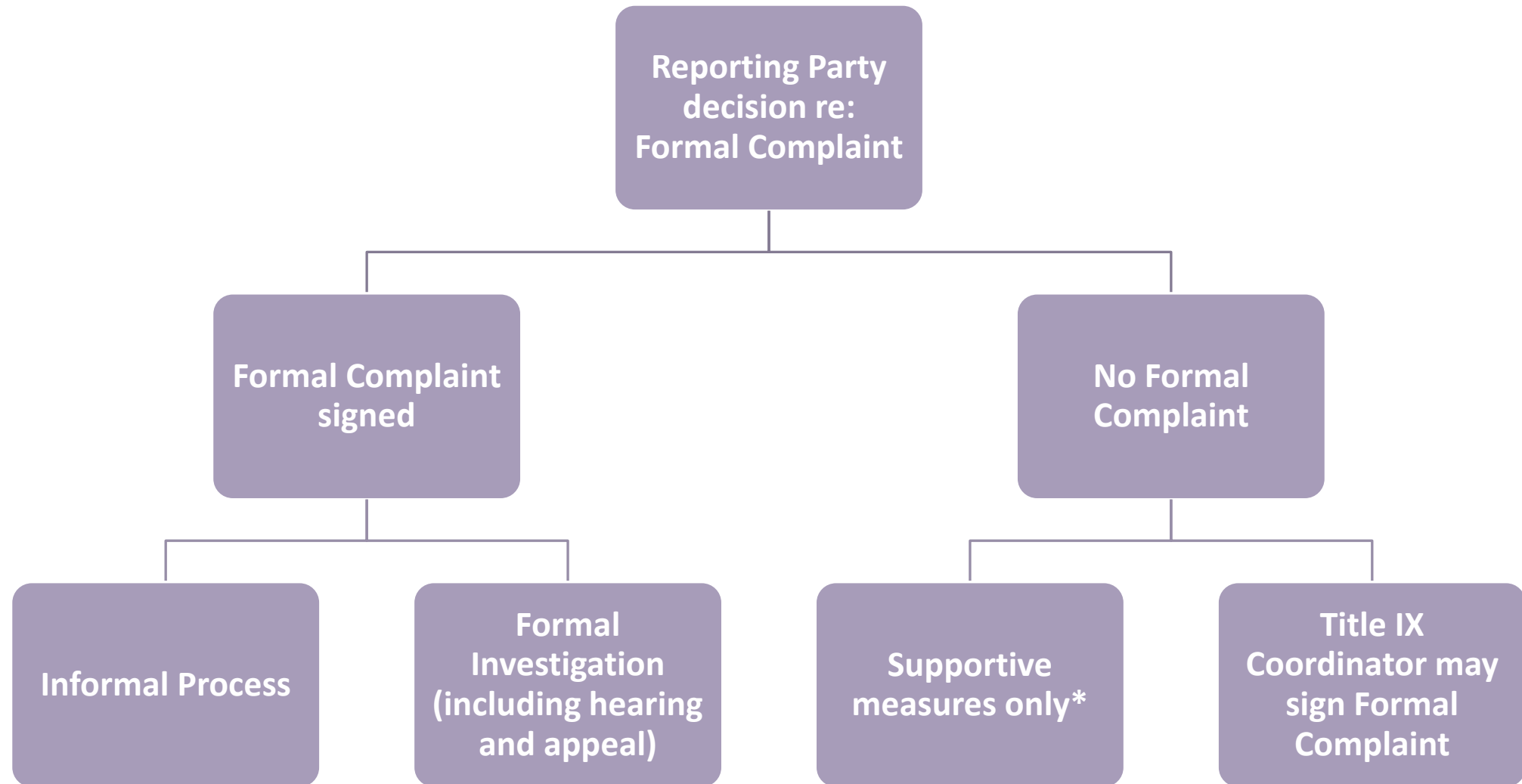
## SUPPORTIVE MEASURES

- Cannot be punitive
- No-contact directives
- Accommodations for housing, classes, etc.
- Confidential resources
- Community resources
- Campus security escorts
- Etc.

*\*Explain that access to these resources is not contingent upon moving forward with a formal complaint*

## NEXT STEPS FOR TIXC:

- Does the reported incident fall within the scope of your policy? If so, which process would apply?
- Notify others at the institution who need to know?
- Timely warning?
- Emergency removal?
- TIXC Formal Complaint if reporting party declines Grievance Process?



*\*Reporting party may initiate Formal Complaint in the future.*

# Starting the Grievance Process

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## FORMAL COMPLAINT INITIATED BY REPORTING PARTY

- Can initiate at any time
- Requests an investigation
- Must be signed and in writing, but can be on paper or electronic (i.e., via email)

## FORMAL COMPLAINT INITIATED BY TIXC

TIXC considers:

- Egregiousness of allegations?
- Use of weapon?
- Risk? Threat?
- Availability of evidence?

Discuss with Deputies or Title IX Team

If proceeding, notify reporting party

# Rights of the Parties throughout the Process

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Notice of policies,  
meetings, investigation,  
outcome, etc.

Supportive measures  
*(cannot penalize  
responding party in any  
way unless and until they  
are found responsible)*

Impartial Title IX  
personnel

Ability to discuss  
allegations

Advisor of choice

Opportunity to identify  
witnesses and provide  
evidence

Ability to review  
evidence and  
investigation report

Ability to appeal

# Notice of Allegations

- Notice of grievance process and the informal process
- Information about the allegations known at the time (names, conduct constituting sexual harassment, date and location of incident)
- Responding party presumed not responsible, and that the determination of responsibility occurs at conclusion of the process
- Rights of parties to an advisor, to review evidence, etc.
- Any code of conduct provision prohibiting knowingly making false statements/submitting false information
- Provide with sufficient time for parties to prepare a response
- *\*If additional allegations arise during the process, provide an amended or additional notice to both parties*



# Notice of Allegations contd.

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Beyond the allegations, Notices must include information specific to the Informal Process including:

- the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations
- that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint
- any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

# Informal Resolution Process Overview & Initial Steps

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# Informal Process

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## REQUIREMENTS

- Must be voluntary; parties must provide written consent to participate
- Formal complaint required
- Allowed at any time prior to final decision being made
- Title IX Coordinator has discretion
- **Unavailable when responding party is an employee and reporting party is a student**

## VARIOUS APPROACHES

- Alternative resolution (i.e., restorative justice, dialogue facilitation, etc.)
- Shuttle diplomacy or negotiation
- Responding party does not need to accept responsibility to access informal process, but that can be written into your policy if desired

# What is mediation?

- A process where the parties meet with an impartial and neutral person who assists them in the negotiation of their differences.
- Mediation leaves the decision power totally and strictly with the parties.
- The mediator does not decide what is "fair" or "right," does not assess blame nor render an opinion on the merits or chances of success if the matter is investigated.
- The mediator acts as a catalyst between opposing interests attempting to bring them together by defining issues and eliminating obstacles to communication, while moderating and guiding the process to avoid confrontation and ill will.

*Modified from JAMS*

# Pros and Cons

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## PROS

- Quick
- Low/No confrontation
- Parties in control
- Parties feel heard
- Focus on resolution; not conflict
- Less resources and risk

## CONS

- Coercive?
- Doesn't hold perpetrators accountable?
- Lack of due process?
- Puts community at risk?
- Party changes mind?

# Informal Process Considerations

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Does completing an informal process mean that the reporting party can no longer resume/initiate the investigation process?

What records will be maintained, and with whom could they be shared?

What outcome is necessary to stop, prevent, and address effects of the harassment?

What types of allegations are more/less appropriate for informal resolution?

What if the allegation is especially egregious – is informal resolution still an option?

# Institutional Review

Must have formal complaint first

May not follow determination of responsibility

Cannot mediate matters involving student and employee

Create record to refute “deliberate indifference”

Assess potential impact on community

# When does the institution do their internal review?

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Might depend on how much information the Coordinator knows prior to their initial meeting with the Complainant.

- If TIXC has a written description from the Complainant detailing their experience (e.g., from an online reporting form), you might be able to do your institutional assessment of whether IR is available prior to meeting with the Complainant.
- If you don't have any information about the allegations prior to your first meeting with the Complainant, you can explain the IR process and gauge interest during your initial meeting, but let the Complainant know that it's not available in all circumstances. Then, do your internal review after this first meeting so you can follow up with the Complainant about IR Process availability.



# Explaining the Process

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TIXC meets with parties separately

- Explain purpose and logistics
  - Not an investigation
  - Either party can discontinue the process
  - Binding only if agreement reached / never imposed
  - Permitted to have an advisor
  - Identify mediator and discuss bias / conflict issues
- Support process without selling
- Ask whether either party has any questions or concerns
- Retaliation always prohibited

# Prepare for Questions

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- How long will this take?*
- What do most people do?*
- Why aren't you punishing them?*
- Why would I do this when I didn't do anything wrong?*
- Do I need a lawyer?*
- Will it look bad if I don't agree?*
- Will we be in the same room?*

# Important Question

What information will be documented and could potentially be shared through an informal resolution process? Parties will want to know the answer to this.

# Sample Informal Resolution Process Authorization Form

The purpose of this communication is to confirm your decision to participate in the College's/University's Informal Resolution Process. [Complainant] brought a report to the attention of the Title IX Coordinator. [Complainant] reported [Respondent] engaged in [behavior] on/during [date].

Upon receipt of the Complainant's report, and in accordance with Section [xx] of the [Institution Policy Title, include link] (the "Policy"), the [Institution] Title IX Coordinator spoke with the Complainant to discuss the Formal Resolution Process and the option for pursuing resolution of this matter through informal negotiations supervised by a trained College/University official (the "Facilitator"), a process known as the Informal Resolution Process. The Title IX Coordinator also met with Respondent, who indicated agreement to participate in the Informal Resolution Process.

The Complainant and the Respondent were advised (in separate meetings) of the logistics of the Informal Resolution Process. Both parties were informed that participation in the Informal Resolution Process is completely voluntary; that the Informal Resolution Process would not proceed without both parties' agreement to participate; and that unless and until the parties reach a final agreement, any party may discontinue the process at any time. The parties were also advised of potential terms that may be included in an informal resolution agreement such as restrictions on contact; restrictions on a party's participation in one or more programs or activities; limitations on attendance at specific events; and other terms including restrictions the institution could have imposed as remedies or disciplinary sanctions had the institution determined that sex discrimination occurred through the Formal Resolution Process.

The parties were also advised that the Informal Resolution Process seeks to discover mutually agreeable terms to resolve the conflict between the parties and is not focused upon either investigation or making fact-finding determinations regarding either parties' allegations. The Complainant and the Respondent were advised that they both have the option to discontinue the Informal Resolution Process and request a Formal Resolution Process. In addition, the College/University maintains discretion to discontinue the Informal Resolution Process and move forward with a Formal Resolution Process. If at any point prior to reaching a resolution agreement, the Complainant or Respondent or the College/University wishes to stop the Informal Resolution Process, the Process will stop and the Formal Resolution Process will move forward. As outlined in the Policy, the Complainant retains the ability to withdraw a complaint and, under certain circumstances, the College/University may dismiss a complaint.

# Sample Informal Resolution Process Authorization Form contd.

After receiving information about their options, the Complainant and the Respondent have agreed to engage in attempts to resolve the matter through the Informal Resolution Process. The College's/University's Title IX Team has reviewed this request and has agreed that the Informal Resolution Process could be an appropriate means of resolving the concerns raised by the Complainant.

\_\_\_\_\_ will serve as an impartial intermediary (the "Facilitator") who will speak with both parties separately in an attempt to assist them in reaching a mutually agreeable resolution. Complainant and the Respondent were given an opportunity to raise any concerns about the Facilitator assigned to oversee the Informal Resolution Process, and neither party has identified any concerns about bias, conflict of interest or any other concerns. Complainant and the Respondent understand that the Facilitator is not serving in an advisory capacity to either party, and that the parties should consult an advisor of their choosing if they wish to have one.

Should the parties come to a finalized agreement through this Informal Resolution Process, the matter will be considered closed and no further option for investigation or adjudication will be available for this matter under any College/University process. Any resolution reached will be binding only on the Parties participating in the Informal Resolution Process. The College/University reserves the right to take prompt and effective steps it deems appropriate to end sex discrimination and prevent its recurrence even if the matter is resolved by the parties through the Informal Resolution Process. Parties are not required to waive their right to an investigation and determination of the Formal Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or exercise of any other right.

With respect to the Informal Resolution Process, the College/University maintains records of parties' agreement to participate in the process and any written agreement reached. The College/University does not request or maintain records received or created by the Facilitator. The records maintained by the College/University relating to the Informal Resolution Process are not publicly available.

My signature below signifies that I understand the information above and consent to these terms of the Informal Resolution Process.

# Scenario

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You are the Title IX Coordinator at Parkland University. Jen, a student, reports that another student, Casey, shared nude photos of her with other students at the institution without her consent. Jen expresses an interest in doing “something,” but is unsure whether she’s interested in the Title IX grievance process.

Would informal resolution be an option available to Jen at your institution?

If so, how would you explain your informal resolution process to Jen as an available option?

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What if... During your initial conversation with Casey to ask whether he’s willing to participate in the IR Process with Jen, Casey alleges that Jen also engaged in sexual misconduct towards him.

Does this impact the availability for or the steps involved in the Informal Resolution at all?

# The Facilitator's Role

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## Key Elements of the Role

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Remain impartial

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Do not need to know all the details of the reported incident

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Explain to parties their rights and the limitations of the process

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Attempt to determine agreeable outcomes for both/all parties

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You are not an advisor and it is not within your scope to consider either party's interests

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Refrain from judgment or opinions about the validity of a matter

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Avoid conflicts of interest and bias

# Conflicts of Interest

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Biases *for* or *against* reporting or responding parties individually or generally



A material connection to the parties, witnesses, or issues that would cause a reasonable person to question partiality



Immediately disclose any potential conflicts of interest to the Title IX Coordinator



Conflicts of interest may be raised on appeal



Incorporate an avenue for parties to raise potential conflicts of interest early in the process

# Avoiding Bias

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**Bias = tendency to like or dislike; may involve stereotypes**

**Might be implicit**

**Avoid  
prejudgment of  
the facts**

# Frequent implicit biases

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- Race
- Gender
- Gender identity
- Gender expression
- Sexual orientation
- Religion
- National origin
- Ethnicity
- Age
- Disability
- Marital status
- Veteran status

# Scenario

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You are an Informal Resolution Facilitator who works in the Student Life Division at Parkland University. The Title IX Coordinator informs you that Jen signed her Formal Complaint and is requesting to pursue the Informal Resolution Process. Casey has also agreed to participate.

When the Coordinator tells you Casey's full name, you recognize it. Casey is:

- Friends with your son, who also attends Parkland University.
- A student with whom you previously met regarding his poor academic performance last year.
- Part of a student group that you serve as the Advisor for.

Do any of these scenarios constitute a conflict of interest?

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You and the Coordinator confirm that you don't have any conflicts of interest with the two parties. Do you request any additional information from the Title IX Coordinator prior to reaching out to the parties to begin the process?

# Conducting an Informal Resolution Process

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# Facilitator's Initial Conversation

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- Meet with parties separately
- Confirm no concerns about bias / conflict of interest
- Discuss your role in process
- Recommend having an advisor if none present (confirm party still wants to proceed without an advisor)
- Not an investigation / feel free to share information (can that be shared later?)
- Remind of option to discontinue and impacts of that decision
- Answer questions
- Begin assessing what outcomes parties are looking for



# Questions to ask the parties

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- What are you hoping to achieve through this process?
- Do you have concerns about crossing paths with the other party? Do you participate in any of the same activities?
- Do you have any non-negotiables?
- If [the other party] doesn't agree to X, is there an alternative outcome that would meet your needs?

# Facilitator Strategies

- Be an active listener
- Remain impartial / neutral
  - As to what happened
  - As to terms of resolution
- Seek to understand not only the “what” but the “why” before asking what parties want
- Be realistic about options
- Don’t push an outcome
- Use email to summarize and document

# Scenario

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During your initial meeting with Casey, he asks you whether anything he tells you could be shared with the Investigator if Jen ultimately decides she wants a formal investigation.

How do you respond?

After addressing Casey's question, you let him know that Jen is requesting that he voluntarily withdraw from the institution. Casey starts to get upset and begins crying. He tells you that as much as he wants this to "go away," he is incredibly worried about what it would look like if he left the school and the impact that might have on his life. Casey does not have an advisor and tells you, "No one else knows what I'm going through right now."

How do you respond?

1

Explain this may take multiple meetings / let time be on your side (within reason)

2

Keep moving and keep parties invested in process

3

Want informed and voluntary agreement

# Timing

# What does “prompt” mean?

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Regs require reasonably prompt timeframes



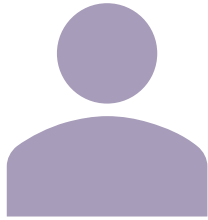
Temporary delays for “good cause” are ok, as long as they’re accompanied with written notice of the delay to the parties



Incorporate grievance process timeframes into your policy, but build in opportunity for discretion (case complexity, law enforcement investigation, breaks, etc.)



Consider incorporating weekly updates to the parties



How often should the Facilitator provide status updates to the Title IX Coordinator?



What are some reasons why the Facilitator might need to get the Coordinator's input or involvement?



Should the Facilitator confer with the Coordinator prior to finalizing the agreement?

# Collaboration with Title IX Coordinator

# Scenario

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You go back to Jen and let her know that Casey is not agreeing to voluntarily withdraw from the institution. You ask her how she would like to proceed, and then she asks you what her options are.

How do you respond?

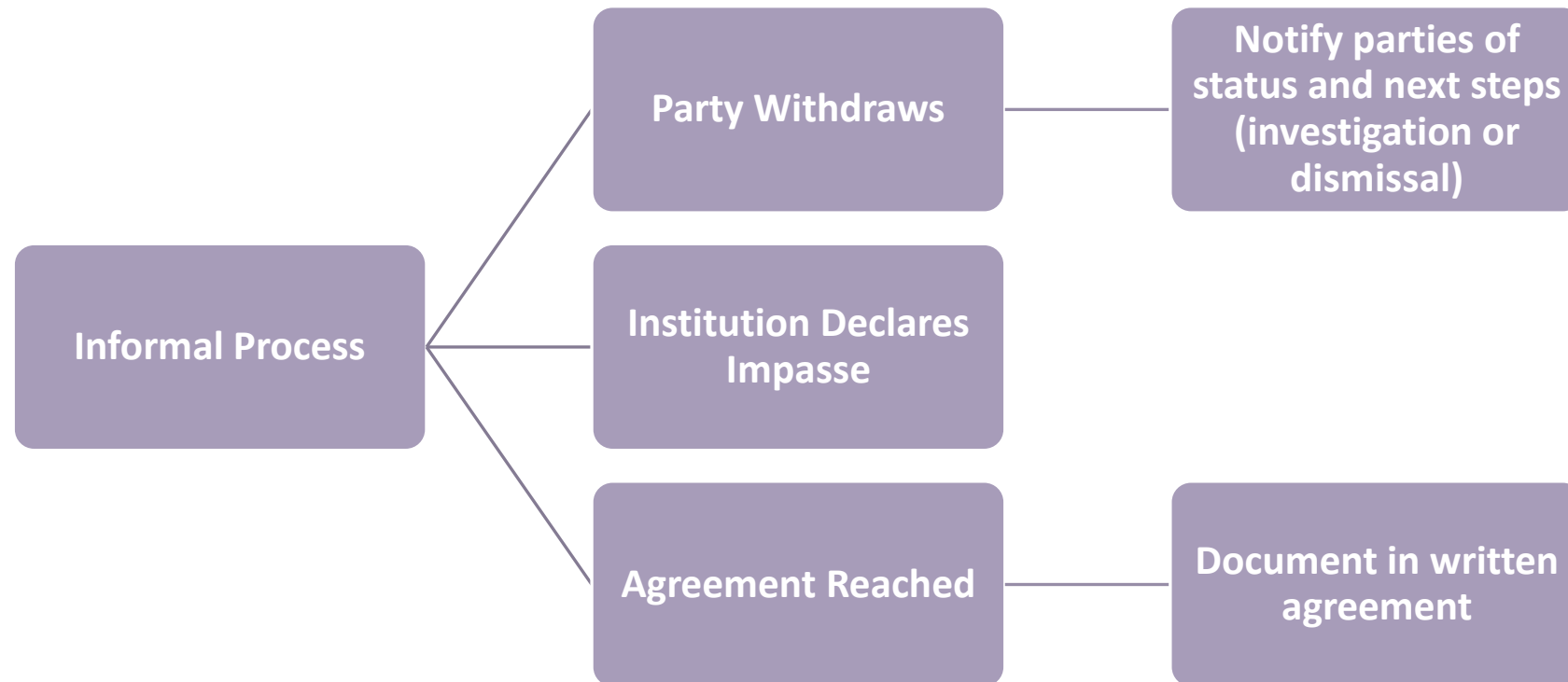
# Potential Terms of Resolution

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- Suspension/voluntary withdrawal
- No contact order
- Non-disparagement agreement
- Change in classes (now and future)
- Change in residence hall (now and future)
- Withdrawal from athletics team or co-curricular activities
- Reimburse expenses
- Boundary counseling and other mental health or addictions services
- No further action or investigation
- No admission of responsibility
- Agreement not to sue
- Impact of not following terms

# Next Steps: When does it end?

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# Wrapping up the Process

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## Finalizing the Agreement

Once the parties seem to be agreeing on outcomes, confirm with them verbally or via email that you believe they are in agreement and that your next step is to draft a written document that outlines the terms of their agreement. They will both need to sign it for the Informal Process to be complete.

Some of the terms of this agreement are boilerplate and will be included in all informal resolution agreements. Other terms are unique to the resolution terms that the parties have negotiated.

The Title IX Coordinator should review the drafted agreement before sharing with the parties.

Signatures can be captured electronically via DocuSign, Dropbox, email, etc.

# Documenting Mediated Settlement

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- Summary of process / voluntary & not an investigation
- Reviewed and approved by institution
- Identified facilitator / opportunity to raise conflicts/bias concerns
- Details about the terms of the agreement
- Facilitator has no duty to advise of rights or protect rights
- Agreement is binding and may adversely impact parties' rights
- Impact of noncompliance (separate disciplinary process and/or nullification of agreement)

The following is a sample of an informal resolution agreement that includes both standard terms and, by way of example, terms that one might include to address common issues in Title IX-related claims.

This INFORMAL RESOLUTION AGREEMENT (the “Agreement”) is entered into between XXXX and YYYY. Both XXXX and YYYY are current students of ABC College (the “College” or “ABC”).

This Agreement arises from Formal Complaints brought to the attention of ABC’s Title IX Coordinator by both parties. Upon receipt of the parties’ reports, and in accordance with ABC’s Policy Against Sexual Misconduct (the “Policy”), the Title IX Coordinator spoke with both parties to discuss the option for pursuing their concerns through ABC’s Grievance Process and the option of pursuing resolution of this matter through an Informal Resolution Process. Both parties have indicated an interest in attempting to resolve their matters through the Informal Resolution Process.

The parties were advised (in separate meetings) of the logistics of the Informal Resolution Process. Both parties were informed that participation is voluntary; that the Informal Resolution Process would not commence without both parties’ voluntary agreement to participate, and that any party may discontinue the process at any time. The parties were advised that if either party discontinued the Informal Resolution Process or if the College determines that there is an impasse in the negotiations, the Informal Resolution Process would be discontinued and the College’s Formal Complaint Resolution Process move ahead.

After both the parties expressed an interest in attempting to resolve the matter through the Informal Resolution Process, the College agreed that based upon the parties’ expressed interests and other circumstances, the Informal Resolution Process could be an appropriate means of resolving the parties’ concerns.

[Name][Title] (the “Facilitator”), served as an impartial facilitator, and met separately with both parties in an attempt to reach a mutually agreeable resolution. The parties understand that the Facilitator is not serving in an advisory capacity to either party. While the College strives to respect all parties’ rights, the Facilitator’s role in the process does not involve advising students on their rights or guaranteeing that their interests are protected. Because this is not the Facilitator’s role in this process, and because this agreement is a legal contract, the parties are each encouraged to consult with an attorney prior to signing this Agreement if they are uncertain of their rights or if they have questions about the agreement.

The Facilitator met with the parties (separately) on the following dates:

After discussions with both parties about possible measures to resolve this matter, XXXX and YYYY reached an agreement on the following terms:

### **Mutual No Contact Order**

The mutual no-contact order executed by the parties on [Date] will remain in place between XXXX and YYYY as long as either party is participating in or attempting to participate in the College's education program or activity. This includes no direct communication (in-person, electronic, or otherwise) and no indirect communication through third parties, except through legal counsel or similar representative.

Both parties may use all public or common campus areas and attend the same on-campus events, except as specified otherwise in this Agreement.

In the event that XXXX and YYYY are in the same public space on campus (such as libraries, student centers, or other common areas not otherwise specified in this Agreement), both parties agree to avoid interaction and to maintain a physical distance of at least 10 feet from each other. Neither party shall initiate or attempt any form of communication, whether verbal or non-verbal. Incidental eye contact or "looking" at each other is not considered non-verbal communication or a violation of the No Contact Order or this provision.

If either party feels uncomfortable or threatened by the presence of the other, the parties both agree that the party who is uncomfortable will quietly and discreetly exit the area without engaging in any form of confrontation. Both parties acknowledge that such encounters in shared public spaces may occasionally occur due to the nature of campus life and agree to handle these situations maturely and respectfully to avoid escalation.

### **Separation of On-Campus Residences**

Both parties agree not to live in the same on-campus residential hall or house while enrolled as students at ABC College.

XXXX has already selected 123 Hall as his on-campus residence for the next academic year. YYYY agrees to live in any other on-campus residential hall or house beside 123 Hall.

In subsequent academic years, in order for the College to accommodate separate housing, both parties agree to check in with the Title IX Coordinator and the Director of Residence Life after their room draw numbers have been assigned and before room draw occurs in order to discuss their housing plans. Should both students want to live in the same residence hall, the Title IX Coordinator and Residence Life Director will determine an equitable way to house both students, a process which may include removing the preferred housing location for both students.

If a party would like to change residences while they are enrolled at the College, they must notify the Title IX Coordinator prior to making any changes to ensure the terms this Agreement is not violated.

### **Separation of On-Campus Dining Facilities**

Both parties agree to use a separate primary campus dining hall while enrolled as students at ABC College.

If both parties reside on campus, the parties will be assigned to the dining hall nearest their residential hall or house. If both parties live nearest to the same dining hall, the party living in the residence with the least physical distance from that dining hall will have priority.

This restriction on use of common dining areas does not apply to the dining facility in 789 Hall, and both parties are authorized to use the dining facility in 789 Hall.

If a party would like to change residences while they are enrolled at the College, they must notify the Title IX Coordinator prior to making any changes so the Coordinator may assess the assignment of dining facilities. This would include moving off campus.

### **Separation of Academic Classes and Class Registration**

Both parties agree not to enroll in an academic class in which the other is enrolled.

Both parties agree to communicate with the Title IX Coordinator prior to registration for each term to ensure there is no overlap in scheduling. The Title IX Coordinator will work with the parties' academic deans to address any issues which may arise.

### **Participation in Student Activities**

YYYY has participated and may continue to participate in the following ABC College student clubs, jobs and organizations: Club 1, Org 2, etc. XXXX agrees not to participate in these clubs and organizations while enrolled as a student at ABC College.

XXX has participated and may continue to participate in the ABC Student Government Association, and Homecoming Planning Committee. YYYY agrees not to participate in these clubs and organizations while enrolled as a student at ABC College.

### **Social Media Retraction and Removal**

XXXX and YYYY will remove all posts related to these allegations and subsequent Title IX processes from social media accounts and agree not to post anything further about it.

Failure to comply with any of these terms, the lack of compliance could be referred as a disciplinary matter under ABC's Disciplinary Code, and/or could render this agreement null and void. In the event a party does not comply with one or more terms of this agreement, the College is authorized to notify the other party of the lack of compliance.

This Agreement represents the entire agreement between XXXX and YYYY with respect to this matter. There are no other terms or conditions that have been agreed upon between the parties relating to this matter except those that are outlined above. Both parties are satisfied that these actions will resolve this matter completely, and both parties wish to have the College discontinue any investigation or other process that may have been initiated as a result of this matter, and to dismiss the Formal Complaint. Unless there is a material breach of this agreement, both parties agree that they may not initiate any future complaint process stemming from the allegations underlying this matter.

Signature/Date: \_\_\_\_\_

Signature/Date: \_\_\_\_\_

# Scenario

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Jen and Casey seem to be in agreement about the terms of their agreement. One of the terms they've agreed to is that Casey will delete all photos of Jen that he currently has in his possession, on all his devices.

As you begin drafting the final agreement for the parties to sign, Jen emails you to ask what would happen if Casey does not delete the photos. She asks, "How will I know that they've been deleted? Will he be forced to prove that? If it turns out that he doesn't actually delete them, could I still pursue a complaint down the road? And what about police? Does signing this agreement mean I can't report to them?"

How do you respond to Jen?

What if Jen says, "I feel like this agreement resolves the issue of Casey sharing the photos of me with others, but I could still pursue a complaint later about him taking the photos to begin with, right?" How would you respond to that?

# What next?

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The Facilitator's job is done!

Consider what notes/documentation you should share with the Coordinator for recordkeeping purposes.

Title IX Coordinator will be responsible for maintenance of the agreement and ensuring its terms are upheld.

If you have any feedback about how the process went or areas for improvement next time, consider sharing those with the Coordinator.

# Recordkeeping

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Records must be retained for at least **seven years**.



## Records to maintain:

- Any informal resolution and the outcome of the process, including consent forms
- Training materials for decision-makers, investigators, Title IX Coordinators/Deputies, and informal resolution facilitators
- Post training materials on website

Thank you!



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