

**LEXINGTON COUNTY SCHOOL DISTRICT ONE**

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

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Presented by Jackie Gharapour Wernz

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**Ask Questions**

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## Remember Your “Basic Training”

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

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## What is Informal Resolution?

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

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## Types of Informal Resolution

- Restorative Justice
- Mediation/Facilitated Dialogue
  - Face to face
  - "Shuttle diplomacy"

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## Robin's Report

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

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## Robin's Report

Robin encouraged  
Cameron to report, but  
Cameron refused

Robin was talking to  
another student, Peyton, at  
a party last weekend.  
Peyton reported also  
receiving inappropriate  
messages from Parker.

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## Robin's Report

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

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**Your school district offers face-to-face restorative justice.  
Can you use this with Cameron, Peyton, and Parker?**

Yes, because the new Title IX regs clearly allow informal resolution  
Yes, as long as the facilitator has been trained  
No, because Cameron and Peyton have not filed a formal complaint  
No, because sexual harassment cannot be addressed through informal resolution

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**Old Rules  
vs.  
New Rules**

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

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## When Can IR be Offered?

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


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# WHY ALLOW IR?

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**When is IR most useful?** | No Competing Factual Narratives

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**Cameron and Peyton file a complaint against Parker. Should Informal Resolution be allowed?**

Yes

No

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## Who Should Serve as an IRF?

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

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## Standard

- Declined to define "bias," "conflict of interest," "prejudice"
- The Department encourages recipients to apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, exercising caution not to apply generalizations that might unreasonably conclude that bias exists....

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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

Yes No

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## Conflict of Interest

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

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## Pre-Judgment

Tips for avoiding pre-judgment of facts:

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

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## Sex Stereotypes

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

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## Required & Recommended Notices

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

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# Forms/Notices

## Informal Resolution Process

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

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

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## **Notice of Impacts of Participation in IR Process**

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

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## **Other Impacts of IR Process**

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

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## The Mediation Process

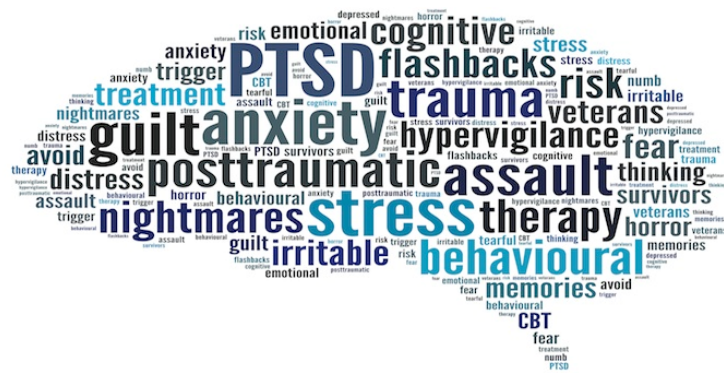
- Preparation
- Introductions
- Information Collection
- Problem Identification
- Brainstorming Solutions
- Brokering the Deal
- Agreement

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## Potential Trauma for CP and RP



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## Trauma and Informal Resolution

Empowerment

Recognition

Resolution

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## Emotions

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

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# Preparation

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## Preparation

- Appropriateness of IR
  - Under Title IX
  - Readiness of parties
- Background information
  - Complaint and related documentation
  - Ask parties for background documentation
- Select location/method
- Advisor participation/guidelines

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# Introductions

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## Critique an Introduction



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### Critique a Mediation: Introduction Content

Good Not Good

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### Critique a Mediation: Delivery of Introduction

Good Not Good

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# Information Collection

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## Information Collection

- Why are we here?
- Tell me more about....
- Help me understand....

\*\*remember your trauma-sensitive approach

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## Trauma Informed Mediation



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## Brainstorming Solutions

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## Brainstorming Ideas

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

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## Brainstorming Ideas

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

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

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## Length of Informal Resolution

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

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# Brokering the Deal

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## Brokering a Deal

- Empathy
- Honesty
- Trustworthiness
- Tenacity

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

Yes, if Parker fails to comply with the terms

Yes, but only for allegations not resolved in informal resolution

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

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## Role of Institution If Agreement Reached

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

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