


Title IX Coordinator Training for Colorado League of Charter Schools Members



SISU Investigations

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Title IX Coordinator Course Outline

Session 1: Duties and Responsibilities of a Title IX Coordinator, Building a Title IX Program, and Developing Title IX Policies and Procedures

Session 2: Receiving and Responding to Complaints, Interim Measures, Strategies for Establishing Rapport During Intake Interviews

Session 3: Considerations for Specific Student Populations & Trauma-Informed Approaches

Session 4: Managing Informal Resolutions

Session 5: Managing Formal Resolutions, including Best Practices for Investigations

Session 6: Record Keeping and External Complaints to the Department of Education

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Session 1 Handouts

Handout 1 – Informal Resolution Information Sheet for Participants

Handout 2 – Informal Resolution Process Flow Chart

Handout 3 - Agreement to Use Informal Resolution Process

Handout 4 – Example of Joint Letter Agreement Format

Handout 5 – Example of Signed Agreement Format

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What are Informal Resolutions?

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Informal Resolutions

Voluntary, remedy-focused processes that provide members of a school community with an option to resolve Title IX disputes with other members of the school community in a forum that is separate and distinct from the school's formal complaint processes under the school's Title IX sexual harassment policy (see Handouts 1 and 2).



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Informal Resolutions: Mediation

Mediation is a process where a neutral and independent person (a mediator or facilitator) helps the parties in a conflict reach their own solution.

Mediation focuses on conflict resolution and is used in a wide variety of settings across our society.

In the Title IX setting, mediation differs from other mediation forms because the school manages the process and provides the facilitator.

In policies, use the term "informal resolution" and "facilitator" instead of mediation and mediator to avoid confusion.

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Informal
Resolutions:
Restorative
Justice

Restorative justice intends to empower community members to resolve conflicts on their own and in small groups. Essentially, the idea is to bring students together in peer-mediated small groups to talk, ask questions, and air their grievances.

Meetings between parties, educational programs, and other non-punitive responses (such as community service) can be more appropriate and lead to more positive results.

If your school has a restorative justice program, consider ways the program can be extended to Title IX matters.

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Department
of Education
Regulations

Schools may choose to facilitate informal resolution options so long as both parties give voluntary, informed, written consent to attempt informal resolution.

Schools are not required to have an informal process, but it is generally a good idea to have a method for resolving lower-level disputes.

The regulations prohibit schools from offering or facilitating informal resolution processes to resolve allegations that an employee sexually harassed a student.

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Department
of Education
Regulations

A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment.

A school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.

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.

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Why would someone prefer an informal resolution?

Conduct may not be as severe or pervasive to require an investigation and adjudication.

Parties have more control over the outcome.

The solutions can be tailored to the needs of the parties.

Less adversarial.

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When is an informal resolution inappropriate?

Schools **cannot** offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student due to power differentials inherent in those circumstances.

Student on employee harassment can be a difficult issue and is generally not advisable to use the informal process to resolve.

In severe cases (sexual assault, stalking, dating violence, etc.), informal resolutions are not appropriate. Current regulations do allow informal processes in those cases currently but there may be a significant change under the Biden administration.

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When is an informal resolution appropriate?

Student-on-student conduct that is not severe or pervasive.

Employee-on-employee conduct that is not severe or pervasive or an abuse of power.

****Consider power differentials in all cases.**

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Informal resolutions must be voluntary.

Informal resolution cannot be mandated. It cannot be a requirement as a condition for:

- Continuing enrollment at the school;
- Employment; or
- Participation in school activities.

Informal resolutions are meant to be a voluntary process for both parties. Schools cannot:

- Pressure either party to participate in the informal resolution.
- Require a full investigation prior to an informal resolution
- Exclude either party from activities because they are not participating in the informal resolution process.

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Who can facilitate informal resolutions?

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Who can be a facilitator?

Title IX Coordinators

CAN be a principal or athletic director BUT make sure you have someone who can make a decision in case the informal resolution fails

Can be another school leader.

Must be trained in Title IX compliance and resolution processes.

Any person who facilitates an informal resolution must be well trained, ideally someone who has worked in resolving disputes in other contexts.

External professionals

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External Facilitators

Look for an attorney or other professional with mediation experience
School districts may have trained professionals you can request.
Sexual misconduct constitutes particular challenges – look for someone who is trauma-informed.

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Facilitators must be impartial.

Be neutral.
Treat all parties equally.
Keep an open mind until they have all the facts needed to make a decision.
No stake in the outcome.

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Facilitators must avoid bias.

Everyone has biases, but a facilitator must learn to recognize what those biases are and ensure they do not influence the resolution process.
Ways to avoid bias:

- Keep an open mind during the resolution process
- Avoid pre-judging facts before the resolution
- Remember that each case is unique

Allow for honesty – if someone feels they will be biased, then find another facilitator.

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Facilitators must avoid conflicts of interest

You are the Title IX Coordinator. You designate the assistant principal, who has no formal role with the Title IX process, to facilitate an informal resolution, in this case a mediation.

They look at the complaint and recognize the name of the respondent from a student conduct issue that happened last year. The assistant principal had to discipline the respondent in that case.

- Does the assistant principal have a conflict of interest?

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Facilitators must avoid conflicts of interest

You are the Title IX Coordinator. You designate the assistant principal, who has no formal role with the Title IX process, to facilitate an informal resolution through a mediation.

The assistant principal looks at the complaint and recognizes the respondent from a student conduct issue that happened last year. The assistant principal had to discipline the respondent in that case.

- Does the assistant principal have a conflict of interest?

No. The assistant principal may still facilitate the informal process so long as they will not be biased against the student. The student may have some concerns, so be sure to discuss who the facilitator will be with both students.

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Facilitators must avoid conflicts of interest

You are the Title IX Coordinator. The school's star soccer player has been accused of sexually harassing another student over social media.

The soccer coach, who knows both students, has asked to facilitate a resolution between the students and would really like to get it wrapped up before the next game this weekend. The coach has no role within the Title IX process and has been a good person to counsel students accused of misconduct in the past because the coach is well-liked.

- Does the coach have a conflict of interest?

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Facilitators must avoid conflicts of interest

You are the Title IX Coordinator. The school's star soccer player has been accused of sexually harassing another student over social media.

The soccer coach, who knows both students, has asked to facilitate a resolution between the students and **would really like to get it wrapped up before the next game this weekend.** The coach has no role within the Title IX process and has been a good person to counsel students accused of misconduct in the past because the coach is well-liked.

- Does the coach have a conflict of interest?

Maybe. Is the coach interested in having the case resolved because it might be a distraction to the star player? Even if the coach is well meaning, it would best to have the coach not facilitate this issue.

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Facilitators must avoid conflicts of interest

You are the Title IX Coordinator and two students have asked for an informal resolution related to some misconduct that occurred after their dating relationship ended. Both students want to bring their mothers as advisors for the informal process.

You then realize you are familiar with the complainant's mother. You see each other socially a few times a month but don't maintain an individual friendship.

- What should you do?

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Facilitators must avoid conflicts of interest.

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You then realize you are familiar with the complainant's mother. You see each other socially a few times a month but don't maintain an individual friendship.

Probably best to find another facilitator if you can. This is not necessarily a conflict of interest but there could be an appearance of a conflict.

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Facilitating an
Informal
Resolution

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GOAL:
Be true to your Title IX policy and process. An agreement may not always be reached in an informal resolution process.

- Did each party understand the informal resolution process?
- Did each party have an opportunity to express their position, desired outcomes, and concerns?
- Did both parties understand that they could stop the informal resolution process and pursue the formal process at any time before an agreement was made?
- Does the outcome address the issue and outline steps to prevent any further instances of misconduct?

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The Title IX regulations do not provide specific guidance as to what informal resolution should look like.

The Title IX Coordinator and the Facilitator should both provide the parties with an overview of the process.

Consider developing a script or a process flowchart (see [Handout 2](#)) so nothing is missed.

If both parties agree to try an informal resolution, document their agreement (see [Handout 3](#) for an example).

Facilitating a
Resolution

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Keep the parties separate. Title IX issues can be emotional. Keeping the parties separate during the resolution process may make for a more successful resolution.

This is different from a traditional mediation where the parties often meet at some point in the process.

Facilitating a Resolution

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Provide each party an opportunity to tell their story.

Each party should feel they have been heard.

Review what is important to them.

Identify areas of highest concern and areas of flexibility.

Facilitating a Resolution

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Determine what each party wants out of the resolution process.

Ask each party what they are looking for in a resolution.

Make a list and review it with the parties.

Be clear with each party what you can share with the other party.

Facilitating a Resolution

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Know what supportive measures you can offer on a permanent or long-term basis.

- Counseling
- Escorts in the halls
- Adjusting schedules
- Training
- Remote classes

Facilitating a Resolution

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Look to see if there is anything the parties have in common on their lists.

Go back and forth between the parties until you can reach a resolution or are at an impasse.

If you do reach an agreement, make sure both parties agree to the same terms.

Facilitating a Resolution

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Documentation

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Documentation

- If an agreement is reached, make sure the facilitator writes it out!
- Have both parties sign the agreement.
- Have a template easily accessible (see **Handouts 4 and 5** as examples).
- Have a deadline to agree to the informal resolution before it returns to the formal process.



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Written agreements should include:

- Names of both parties
- Names of advisor(s)
- Name of the facilitator
- Specific terms of the agreement
- General description of the process that led to the resolution
- Specify that the informal resolution process was used instead of the formal process and both parties volunteered to participate
- Acknowledgement of all the terms in the agreement by the Parties
- Confidentiality provisions



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Documentation - Confidentiality

The terms of the agreement should be on a need-to-know basis.

The agreement should include penalties for inappropriately disclosing terms of the agreement.

Agreements are protected by FERPA.

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Helpful Links

The Title IX Law:
<https://www.justice.gov/crt/title-ix-education-amendments-1972>
General Restorative Justice Resources:
<http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/#sthash.S0ZA7sww.dpbs>
Restorative Justice in Schools:
<https://www.edutopia.org/blog/restorative-justice-resources-matt-davis>

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Next Session December 10

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