In-Depth Training for Title IX Informal Resolution Facilitators

Remember Your “Basic Training”
- Definition of Title IX Sexual Harassment
- Scope of Education Program/Activity

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

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)

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
WHY ALLOW IR?

When is IR most useful?

No Competing Factual Narratives

Robin’s Report

• Report from an RA
• Robin, a freshman, rooms with Cameron, another freshman. Cameron told Robin that another student, a senior, Parker, had been sending inappropriate email messages to Cameron.

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.

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.
Types of Informal Resolution

- Restorative Justice
- Mediation
- Consider: Face to Face?

Who Should Serve as an IRF?

- Trained Facilitator
- Neutral Party/Impartial/Unbiased
- No prejudgment of case
- Per Illinois Tech policy:
  - IRF cannot be involved in the investigation
  - IRF can be employee or third party contractor

Standard

- Declined to define “bias,” “conflict of interest,” “prejudge”
- 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.

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

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

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
19
You signed the Formal Complaint as Title IX Coordinator or designee. Is that a conflict of interest?

Yes  No

20
You attend the same church as Parker. Is that a conflict of interest?

Yes  No

21
You have a history of working as a victim advocate. Is that a conflict of interest?

Yes  No

22
You are the ADA compliance officer. Is that a conflict of interest?

Yes  No

23
You have had training on trauma informed interviewing practices. Does that create bias or the risk of prejudgment?

Yes  No

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**Required & Recommended Notices**
- Notice of allegations + existence of IR process (by Investigator w/in 7 calendar days per policy)
- Offer of informal resolution (with impacts of participation)
- Notice of end of informal resolution without agreement
- Notice of successful informal resolution
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))

Notice of Impacts of Participation in IR Process

- 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, can be shared
- Other impacts of participation

Other Impacts of IR Process

- Can IR Facilitator testify against the parties at a later hearing?
- Can facts be used against the parties at a later hearing?

The Mediation Process

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

Potential Trauma for CP and RP

- 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

Emotions

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Introductions

Illinois Tech IR Process

- Meet with each party separately
- Describe process
- Gain understanding of feelings, positions, wishes
- Gather necessary information
- Then, separate or join meetings

Critique an Introduction

Critique a Mediation: Introduction Content

Critique a Mediation: Delivery of Introduction

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

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

Illinois Tech Policy Examples

• Participation in educational programming;
• Changes in academic, work, and living arrangements;
• Assistance with requesting academic allowances and extensions;
• Writing an impact statement;
• Writing a statement acknowledging harm caused; and
• Restrictions of contact between the parties.

Length of Informal Resolution

• Will vary depending on complexity
• Per Illinois Tech Policy:
  ➢ 30 calendar days, but extensions will be warranted in many cases
  ➢ Obtain written agreement to extensions from all parties
• Keep the Title IX Coordinator apprised of progress

Outcome of IR
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

Recordkeeping
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