

# Train the Trainer: Title IX Investigator Training Certification

Oregon School Personnel Association  
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# Informal Resolution in a Nutshell



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## Informal Complaint Process under the Final Rule

- Certain acts can be addressed through informal resolution
- If school offers it (discretionary)
- Voluntary
- Structured interaction between parties
- To address and resolve issue at earliest stage possible
- Ex: mediation or restorative justice



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## Informal Complaint Process under the Final Rule

- Separate and apart from formal Grievance Process
- No comprehensive investigation
- Confidentiality maintained
- No disciplinary action if parties and school agree



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## Informal Complaint Process under the Final Rule



- **May not** require parties to participate in an informal resolution process
- **May not** offer an informal resolution process unless formal complaint is filed

## When is Informal Process Appropriate?

- School district offers it
- All parties consent
- Formal complaint has been filed
- Respondent is a student
- Title IX Coordinator determines it is appropriate

## When is it not...?

Consider if you want to allow it for:

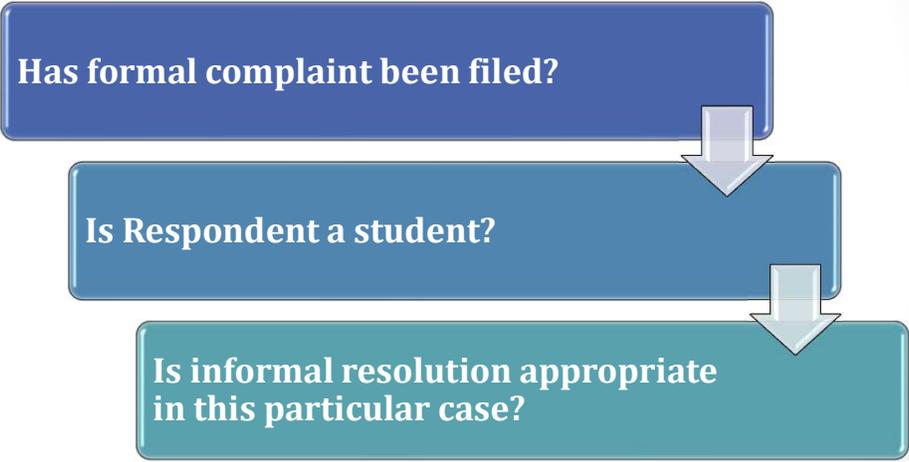
- Sexual assault
- Dating violence
- If Complainant feels pressured into using it

You cannot allow it if:

- Formal complaint has not been filed
- Employee respondent

## Steps in Informal Resolution Process

## 1. Decision to Participate in Informal Resolution



```
graph TD; A[Has formal complaint been filed?] --> B[Is Respondent a student?]; B --> C[Is informal resolution appropriate in this particular case?];
```

Has formal complaint been filed?

Is Respondent a student?

Is informal resolution appropriate in this particular case?

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## 1. Decision to Participate in Informal Resolution

- If appropriate, offer parties opportunity to participate
- Do not require any party to participate
- Emphasize voluntariness

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## 1. Decision to Participate in Informal Resolution

- Provide **Notice of Informal Resolution Session & Consent to Proceed with Informal Resolution Process** – include:
  - ❖ Allegations in formal complaint
  - ❖ Requirements for informal resolution process, including circumstances where informal resolution precludes parties from resuming Grievance Process for formal complaint based on or arising from same allegations
  - ❖ Consequences resulting from participation, including records maintained/possibly shared
  - ❖ Notification that it will only process with parties' voluntary written consent and cooperation



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## 1. Decision to Participate in Informal Resolution

- Either party may also request submit written request to Title IX Coordinator
- Promptly notify the other party of request and provide Notice and Consent
- Other party must volunteer to participate
- If other party declines, Title IX Coordinator should notify other party that informal resolution has been terminated and resume formal Grievance Process



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## 2. Assign Informal Resolution Facilitator

- Upon receipt of Consent from all parties, Title IX Coordinator will assign Informal Resolution Facilitator
  - Recommended that it not be the Title IX Coordinator or investigator(s)
  - Cannot be the initial or appellate decision-makers assigned to formal Grievance Process

## Informal Resolution Facilitator

- ✓ Must be well trained on informal resolution processes
- ✓ Must be free from conflicts of interest or bias

**Remember Your Basic Training**

**Consider a Training for All Team Members on Bias/Conflict of Interest (1 hour training)**

## Remain Impartial

**The night before the mediation, the Facilitator reviews all of the evidence provided to him to prepare for success. However, he also looks up the parties on Facebook and sees one of the parties has posted racist and anti-Semitic language all over his Facebook page. He is irate and thinks to himself, “I really don’t think I can even look this kid in the eye.”**

What should he do?

## 3. Begin Informal Resolution Process

- Mediation or other informal process
- May or may not include in-person meetings
- Parties may have advisor (attorney or non-attorney)
- Restrictions okay if equally applied
- Must be reasonably prompt

### 3. Begin Informal Resolution Process

- Parties *may* present arguments, written statements, and other evidence to Informal Resolution Facilitator
  - ❖ Maintained by the District
  - ❖ May be shared with Title IX Coordinator, investigator(s), decisionmaker(s), or appeal officer(s)
    - Ensure parties understand this from the beginning
    - Confidentiality considerations

### 4. Reach Mutual Agreement

- If parties reach mutual agreement to resolution, they must memorialize agreement and obtain signatures from all parties; you can help
- Formal Title IX Grievance Process does not proceed
- **Final** and cannot be appealed through Grievance Process

If parties cannot reach mutual agreement, proceed with formal Grievance Process

## Potential Remedies

- Counseling
- Education
- Mutual avoidance via no-contact agreement
- Often not disciplinary; but can be

Bottom Line: it depends on the specific nature of the case

## Withdrawal

- 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 (Final Rule)
- Title IX Coordinator will notify other party

## Timeframes

- During informal resolution, time frames for formal Grievance Process will be placed on hold
- Will resume if resolution is not reached



Hypothetical

## Hypothetical

You are assigned to handle an informal resolution involving Cao and Reece. They are both students and the claim is that Reece made inappropriate sex-based comments to Cao over the first few months of the school year. As you are reviewing the file, you realize that you used to teach Reece years ago when you taught in another building. Cao's mother is a volunteer for the annual school carnival, for which you sit on the volunteer board. Last year, she was on the team that you oversaw for the event.

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**Are you concerned about bias, conflict of interest, or  
prejudgment, and why? What should you do about it?**

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## Hypothetical

You reach out to Cao and Cao's parents as the first step in your informal resolution mediation process. You introduce yourself, describe the process, and ask if they have any questions. They have none. After the phone call ends, Cao emails you the following:

*I don't really want to do this; my parents are making me. Reece deserves to be kicked out of school and I know that can only happen if there is an investigation.*



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**Are you concerned? Why or why not?**

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## Hypothetical

In your first call, Reece asks if the information shared during your conversations will make their way back to the investigation process, should informal resolution fail. What is your response?



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Text **THOMPSONHORTON365** to **22333** once to join

### Will the information Reese shares get back to the investigation process?

No, because all information shared in informal resolution must be confidential.

No, but only if the parties agree that the information shared is confidential.

I don't know; I would have to check our school/district's process

Yes, we cannot offer confidentiality as the parties to the Title IX process must be allowed to review all directly related evidence collected

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A graphic showing two hands shaking in a firm grip, symbolizing agreement or mediation. The hands are set against a dark blue background that transitions into a light blue background at the top.

## Tips and Tricks for Effective Mediations

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## Be Prepared

- Review all relevant information and evidence prior to mediation
- But do not predetermine outcome
- Have relevant documents and evidence present

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## Set Ground Rules

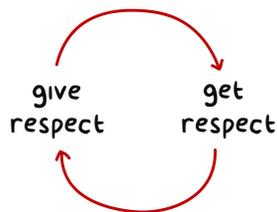
- Consider developing written information regarding the process and ground rules for informal resolution session
- Have all parties read and sign

## Mutually Agreeable Time and Place

- Mutually agreeable time and place
- Begin early if possible
- Not close proximity to another mediation
- Neutral, comfortable location
- No privacy/confidentiality concerns

## Respect All Parties

- Equal treatment for all parties
- Cultural sensitivity
- Understand emotions are high & acknowledge feelings



## Inspire Trust

- Ensure confidentiality (where possible)
  - Be transparent when not possible
- Sincerity and fairness



## Be Approachable

- Friendly yet firm
- Empathetic yet impartial
- Listen carefully – cues
- Convey sense of optimism



## Remain Impartial

- Commitment to aid all parties
- Avoid accusatory language/placing blame on any party during discussions
- Do not invest emotionally
- Stay objective; focus on facts
- No consideration of external factors

## Remain Impartial

- Remind that you do not have material interest in outcome
- Be consistent
- Communicate effectively
- Transparency



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## Be Inclusive

- Allow both sides to be fairly represented
- Communicate with any party necessary to address conflict
- Do not allow advisors to steamroll process



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## Focus on Resolution

- Encourage parties to not react defensively
- Focus discussion on possible solutions as opposed to “rehashing” defensive statements or explanations

**SOLVED**

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