



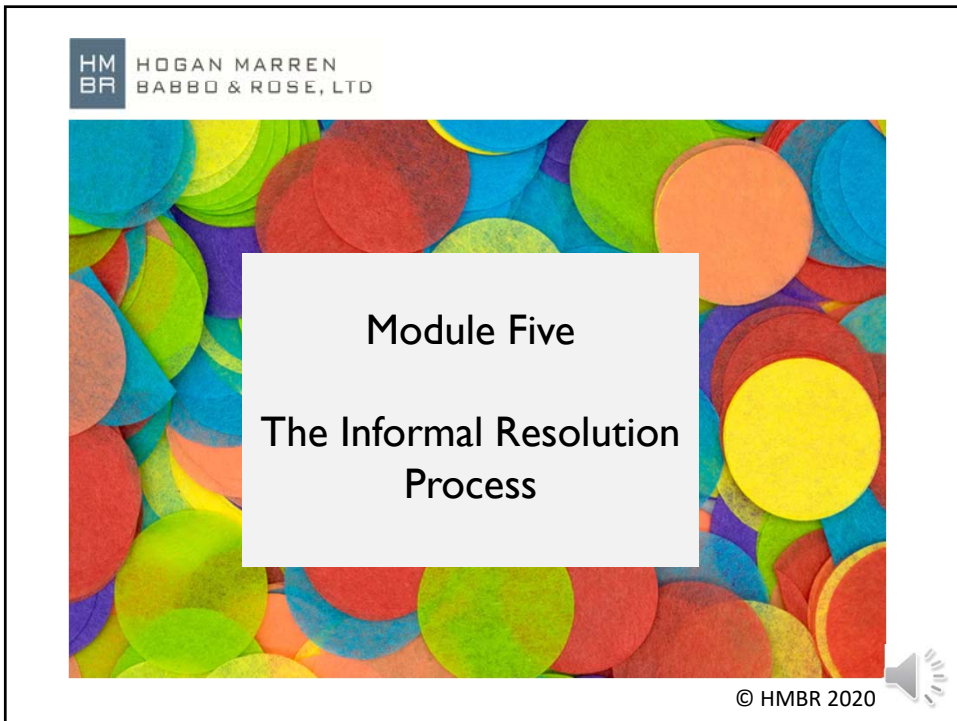
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**Title IX Sexual Harassment
Training
August 2020**

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**Module Five
The Informal Resolution
Process**

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Modules for Title IX Training –

1. An overview of the Title IX statute and the 2020 Title IX Regulations
2. How to conduct a prompt, thorough and impartial investigation of Title IX sexual harassment complaints
3. How to ensure equity and due process in the Title IX hearing process
4. The appeals process
5. The informal resolution process
6. Advisors

Disclaimers

1. The contents of this presentation and the related discussion are for informational purposes only and do not constitute legal or regulatory advice.
2. No party should act or refrain from acting on the basis of any statements made today without seeking individualized, professional counsel as appropriate.



New Title IX Training Requirements

Goal: To promote impartial investigations and adjudications of formal complaints

Who must be trained:

- Title IX Coordinators
- Investigators
- Decision-makers
- Any person who facilitates an informal resolution process



Recordkeeping

- Training materials must be maintained for 7 years and posted on the school's website.



New Title IX Training – Required Content

The training will address:

1. The definition of sexual harassment
2. The scope of the education program or activity
3. How to conduct an investigation and grievance process including investigations, informal resolutions, hearings, and appeals, as applicable
4. How to serve impartially
5. Technology to be used at a live hearing
6. Issues related to relevancy



Agenda

The Informal Resolution Facilitator

1. Title IX provisions relating to informal resolution
2. Using informal resolution as an effective resolution tool
3. Types of informal resolution



Why Informal Resolution ?

From the perspective of the parties:

- To achieve more control over the process
- To avoid the formal resolution process, including the investigation and the hearing
 - Less formal
 - Less intimidating
 - Fewer people involved (no witnesses)
- To resolve the matter more quickly
- May be a more fair and equitable result?
- To reach a creative resolution that may not be possible under the formal resolution process (e.g., apology)



Why Informal Resolution ?

From the institution's perspective:

- A more educational and less punitive process
- Requires fewer resources
- Quicker resolution
- Less antagonistic process
- Avoid Title IX Coordinator burnout?




Why Informal Resolution? A Recap

WIN
WIN
WIN




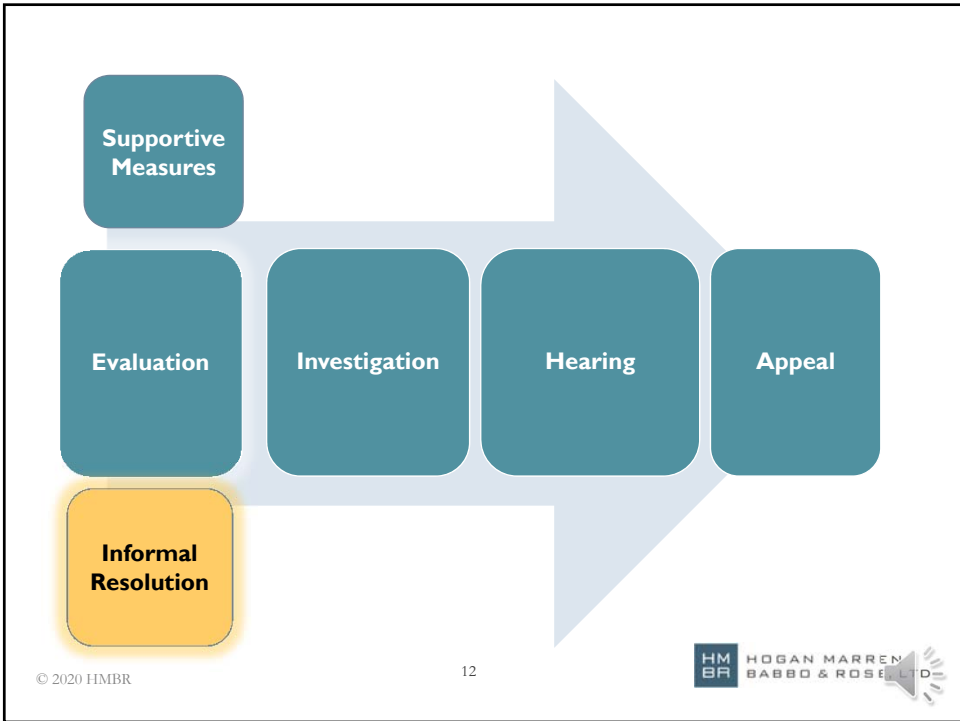
Part One

**Title IX Provisions relating to
Informal Resolutions**

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Informal Resolution - Timing

Informal resolution is available at any time:

- After filing of a formal complaint
- Before a determination of responsibility is reached



Informal Resolution – Voluntary

- School may not require that the parties use informal resolution
- School must obtain the parties' voluntary, written consent to informal resolution
- At any time prior to agreeing to a resolution, any party may withdraw from the informal resolution process and resume the grievance process



Informal Resolution

- Not available for allegations that an employee sexually harassed a student
- A school may not require, as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, a waiver of the right to a formal investigation and adjudication of a formal complaint of sexual harassment.



Informal Resolution – Written Notice

Written notice to the parties must describe:

- The allegations
- 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, and

Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared



Informal Resolution – Recordkeeping



Must maintain for a period of seven (7) years records of any informal resolution and the result of the informal resolution process



Part Two

Using Informal Resolution as an Effective Resolution Tool



Informal Resolution – Players

- Title IX Coordinator
- Informal Resolution Facilitator
- The Parties



Informal Resolution Facilitator

- Conducts the informal resolution process if and when the Complainant and the Respondent voluntarily consent to participate
- Impartial
- Trained on Title IX and informal resolution techniques
- Maintains confidentiality



Structural

- Include clear descriptions of the informal resolution procedures in the policy and other information
- Separate investigation and informal resolution process and personnel
- Maintain separate records for informal resolution and formal investigation and hearing process



Promoting Informal Resolution



It is important to promote the informal resolution option:

- in the training provided to students and employees
- in the institution's written Title IX policy and grievance procedures
- in informational materials relating to sexual harassment
- in discussions between the Title IX Coordinator and each of the parties



Success Stories

- An increase in university informal resolutions vs. formal investigations and hearings
- Increased and successful use of informal resolution by federal civil rights agencies




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Possible Results

- Counselling
- No-contact agreements
- Modifications of work or class schedules
- Additional training
- Possible accommodations to meet the interests and/or needs of the parties



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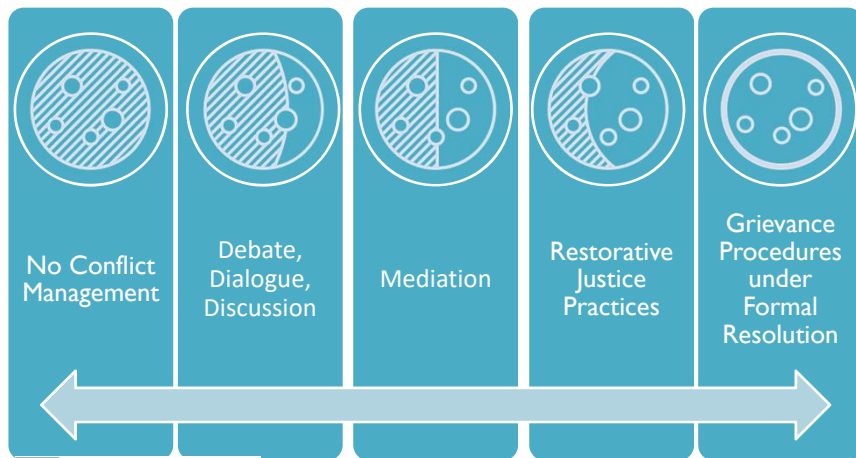
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Part Three

Types of Informal Resolution



Spectrum of Conflict Resolution



Principles of Mediation

- Empower Participants
 - Providing opportunity for dialogue between parties
 - Immediate Parties Only
- Trained Personnel in Mediation
 - Mediator’s Role is a True Neutral
- No Blame
- Limited Safeguards
 - Question of confidentiality
- Focus on Shared Interests
- Seek Mutually Satisfying Resolutions




The Mediation Process

- Mediator’s Opening Remarks
- Opening Statements by Parties/Counsel
- Parties Share Perspectives
- Parties Identify Issues
- Parties Generate and Evaluate Options
- Parties Negotiate to Arrive at Mutually Agreeable Resolution
- Mediator Drafts Memo that Captures What Parties Agreed Upon




Principles of Restorative Justice

- Acceptance of responsibility
- Focus on repairing the harm caused
- Empower participants: the people most affected by the incident should be able to participate in its resolution
- Providing opportunities for dialogue between parties
- Community and institutional stakeholder participation
- Trauma-informed safeguards




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The Restorative Justice Process



- Preconference**
 - Voluntary, complainant-driven
 - Preparation and assessment of objectives
- Conference**
 - What happened from your perspective?
 - What have you thought about since?
 - What harm was caused? What was the impact?
 - How can the harm be addressed?
 - How can trust be restored?
- Post-conference**
 - - Support for one or both parties

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