

TWIN RIVERS UNIFIED SCHOOL DISTRICT

# Facilitating the Title IX Informal Resolution Process

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# Meet the Speakers

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Kim L. Kirn, J.D.



C.J. Larkin, J.D., M.A.

# Training Goals

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Recall the requirements for informal resolution under Title IX Regulations.

Identify methods of evaluating Title IX cases for informal resolution suitability.

Discuss informal resolution procedures and fostering participant trust in the process.



# Training Topics

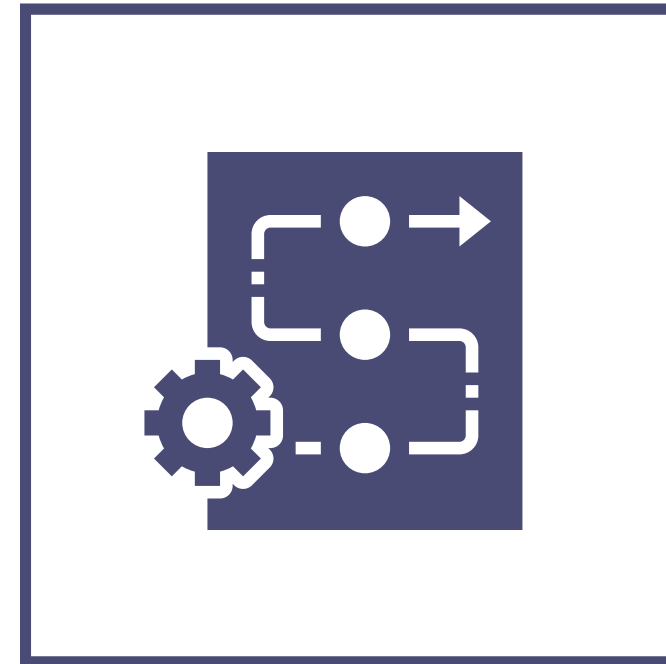
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TITLE IX  
REQUIREMENTS  
FOR INFORMAL  
RESOLUTION



EVALUATING  
CASES



INFORMAL  
RESOLUTION  
PROCESS



INFORMAL  
RESOLUTION  
SCENARIOS



# Title IX Requirements for Informal Resolution



# What do the Title IX Regulations say about Informal Resolution?

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"A recipient 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 an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, a recipient may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed."

34 CFR § 106.45(9)

## What does this mean?

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- ◆ Schools cannot take away a Parties' right to an investigation and adjudication process following a formal complaint of sexual harassment.
- ◆ Schools cannot require any Party to participate in an informal resolution process. It is a 100% optional and requires buy-in from both Parties.
- ◆ The informal resolution process can only take place once a formal complaint has been filed.

*This could be changing with the latest Title IX Regulations set to be released in May.*



"However, at any time prior to reaching a determination regarding responsibility, the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication..."

34 CFR § 106.45(9)



Informal Resolution can happen anywhere in this timeframe

"However, at any time prior to reaching a determination regarding responsibility, the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the recipient –"

34 CFR § 106.45(9)

Provides to the parties a written notice.

Obtains the parties' voluntary, written consent to the informal resolution process.

Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

# Notice of Informal Resolution must disclose:



*Board of Trustees*

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*Rebecca Sandoval  
Member*

*Superintendent  
Steve Martinez, Ed.D.*

*To inspire each student to  
extraordinary achievement*

January 30, 2023

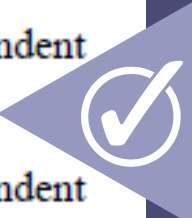
**Via Electronic Mail**

**Re: Offer of Title IX Informal Resolution Process**

Dear Respondent:

On January 9, 2023, the Twin Rivers Unified School District ("District") Title IX Coordinator signed a Formal Complaint requesting that the District investigate allegations that sixth grade student at XXXXXXXX Elementary, XXXXXXXXXXXX ("Respondent") engaged in Title IX Sexual Harassment under the District's Title IX Sexual Harassment Complaint Procedures. The Formal Complaint alleges:

- Multiple times during the 2022-2023 school year, the Respondent said unwelcome sexualized comments to students.
- Multiple times during the 2022-2023 school year, the Respondent said unwelcome sexualized comments to staff.



"The allegations"

This letter notifies you that the District has determined that the Formal Complaint is appropriate and eligible for Informal Resolution, contains more information about that process, and provides an opportunity for you to elect to participate in the process. If both parties choose to participate in the Informal Resolution Process, the following will serve as the Informal Resolution Facilitator:

XXXXXXXXXXXXX  
Title IX Informal Resolution Officer  
Twin Rivers Unified School District  
Human Resources Department  
Phone  
email



# Notice of Informal Resolution must disclose:

## Summary of Informal Resolution Process

After a Formal Complaint has been filed or initiated but before a determination regarding responsibility in response to the Formal Complaint filed, the parties have the option to participate in the Informal Resolution Process for all matters other than those involving an allegation of Title IX Sexual Harassment of a student by an employee. Informal Resolution may include a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation, and restorative justice.

The District's Informal Resolution Process includes the following:

- The Title IX Coordinator will designate an Informal Resolution Facilitator to facilitate the Informal Resolution Process.
- The Informal Resolution Facilitator typically will meet with the parties—in person, by telephone, or by videoconference in one or more meetings, at the Informal Resolution Facilitator's discretion—to describe the process, including the role of the Informal Resolution Facilitator; to gain an understanding of each party's feelings, positions, and wishes with respect to resolution of the Formal Complaint; and to gather necessary information to identify the issues in dispute.
- If after an initial meeting with the parties, the Informal Resolution Facilitator and both parties agree, in writing, that an in-person meeting involving both parties and the Informal Resolution Facilitator is an appropriate step, the Informal Resolution Facilitator may, at the Informal Resolution Facilitator's discretion, convene such a meeting between the parties. In such cases, any remaining steps of the process may be effectuated through separate or joint meetings of the parties, at the Informal Resolution Facilitator's discretion.
- The Informal Resolution Facilitator may provide the parties opinions on the merits of the positions provided, including pointing out strengths and weaknesses and providing an understanding of how a Decisionmaker might evaluate the parties' positions in the District's Title IX Sexual Harassment Complaint Procedures.
- The Informal Resolution Facilitator will communicate all reasonable offers, counter-offers, questions, demands, and proposals by one party to the other party during the Informal Resolution Process, with the ultimate goal of helping the parties reach a resolution of the Formal Complaint.



"The requirements of the informal resolution process"

# Notice of Informal Resolution must disclose:

## Right to Withdraw Prior to Resolution

At any time during the Informal Resolution Process before a resolution is agreed to, either party has the right to withdraw from the Informal Resolution Process and resume the District's Title IX Sexual Harassment Complaint Procedures. Once an agreement has been reached under the Informal Resolution Process, however, the District cannot resume the Formal Complaint process nor initiate or allow either party to initiate another Formal Complaint process addressing any allegations resolved in the Informal Resolution Process.



"Circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that 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"

# Notice of Informal Resolution must disclose:

## Consequences of Participation/Confidentiality

There are some consequences resulting from participating in the Informal Resolution Process of which you should be aware. Specifically, the District will maintain records regarding the Informal Resolution Process and any result therefrom for a period of at least seven years after the filing of the Formal Complaint resolved using the Informal Resolution Process.

The Informal Resolution Process is a confidential process. Nothing discussed during the Informal Resolution Process by any party or the Informal Resolution Facilitator may be discussed outside the process, including with the Investigator or other members of the Title IX Team. The Informal Resolution Facilitator may not be a witness in the investigation or determination phases of the Title IX Sexual Harassment Complaint Procedures.



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





Voluntary Participation

Your participation in the Informal Resolution Process is entirely voluntary. You are not required to participate. If you are interested in participating in the Informal Resolution Process, please sign the consent below and return it to me at [Willard.pope@twinriversusd.org](mailto:Willard.pope@twinriversusd.org) by Friday, February 3, 2023 at 4:00 pm. You can also direct any questions about the contents of this letter and the Informal Resolution Process to me at [Willard.pope@twinriversusd.org](mailto:Willard.pope@twinriversusd.org).

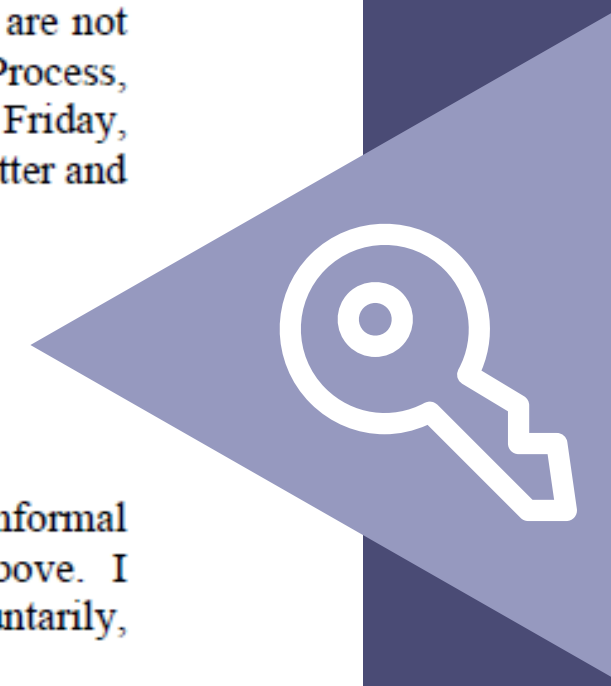
Informal Resolution Consent

I hereby acknowledge and agree that I understand the requirements of the Title IX Informal Resolution Process and my rights and responsibilities thereunder, as described above. I acknowledge and agree that I am entering into the Informal Resolution Process voluntarily, without any duress, undue influence, or coercion.

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



Consent is  
key in IR!

# Informal Resolution Facilitators

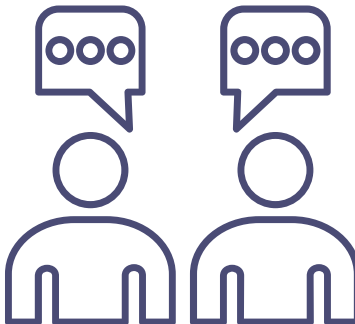
"The same [training] requirements that apply to Title IX Coordinators, investigators, and decision-makers now also apply to any individuals who facilitate informal resolution processes."



Title IX  
definition of  
sexual  
harassment



Scope of the  
education  
program or  
activity



How to  
conduct  
informal  
resolution  
processes



How to serve  
impartially

# Types of Informal Resolution

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Mediation

Restorative Justice

Arbitration

Other Custom Institutional Processes

# Evaluating Cases



# Evaluating Cases

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Evaluating cases may happen in two stages.

- 1) Evaluator (usually the Title IX Coordinator) will review available information, including the complaint and all allegations.
- 2) Evaluator may interview the Parties and parents (or confer with the Title IX Investigator) to determine the feasibility and appropriateness of offering the informal resolution process.



# Guidelines for Evaluation

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Has a formal complaint been filed?



Note: Offering informal resolution options prior to the signing of a formal complaint could be a major change seen in the new Title IX Regulations

# Guidelines for Evaluation

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## Compliance

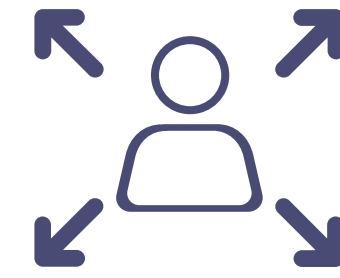
Is this case eligible for informal resolution according to Title IX Regulations and/or Twin Rivers Unified School District policy?



Recall: Informal resolution is never an option for employee on student cases.  
Are there other cases in which you would never offer informal resolution?

# Guidelines for Evaluation

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## Capacity

Do the Parties and/or parents have:

- the necessary communication skills to feel comfortable expressing themselves?
  - English language proficiency?
- the capacity to understand the full consequences of informal resolution?
  - Special needs, learning differences?



Ensure all needs are inventoried and accounted for using the appropriate accommodations.

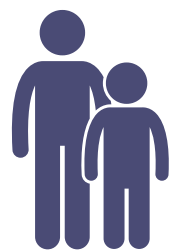
# Guidelines for Evaluation

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## Support

Do the Parties have supportive adults who can help them before, during, and/or after the process?



Who are the stakeholders in the case? Is there a greater community impact? What is the ripple effect of the case?



# Guidelines for Evaluation

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## Safety and Security

Do the Parties, supporting adults, the school and the mediator have the capacity to provide a safe emotional and physical space for all participants?

How will this be measured?



Have you considered the potential for retaliatory behavior? How will it be addressed?

# Guidelines for Evaluation

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## Consent

Do you fully believe the Parties can consent to participating in informal resolution without duress, coercion, or pressure due to power differentials?



What is the relationship between the Parties? How might this affect the ability of one or both to consent to informal resolution processes?



# Informal Resolution Process





# TRUSD Informal Resolution Process

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"The Title IX Coordinator will designate an Informal Resolution Facilitator to facilitate the Informal Resolution Process."





What is the role of this IR Facilitator?  
What are their goals?

- Serving neutrally, impartially
- Facilitating the go-between
- Providing physical and emotional safety

# TRUSD Informal Resolution Process

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"The Informal Resolution Facilitator typically will meet with the parties—in person, by telephone, or by videoconference in one or more meetings, at the Informal Resolution Facilitator's discretion—to describe the process, including the role of the Informal Resolution Facilitator; to gain an understanding of each party's feelings, positions, and wishes with respect to resolution of the Formal Complaint; and to gather necessary information to identify the issues in dispute."



## How will you determine the following?:

- Who?
  - Participants at the table
- When?
  - Scheduling meetings
- Where?
  - In-person vs. Virtual vs. In writing
- How?
  - Facilitating the conversation

# TRUSD Informal Resolution Process

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"If after an initial meeting with the parties, the Informal Resolution Facilitator and both parties agree, in writing, that an in-person meeting involving both parties and the Informal Resolution Facilitator is an appropriate step, the Informal Resolution Facilitator may, at the Informal Resolution Facilitator's discretion, convene such a meeting between the parties. In such cases, any remaining steps of the process may be effectuated through separate or joint meetings of the parties, at the Informal Resolution Facilitator's discretion."





## What does this meeting look like?

- Taking turns speaking
- Sharing information
- Providing explanations
- Acknowledging harm
- Apologizing
- Analyzing Consequences
- Repairing harm

# TRUSD Informal Resolution Process

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4

"The Informal Resolution Facilitator may provide the parties opinions on the merits of the positions provided, including pointing out strengths and weaknesses and providing an understanding of how a Decisionmaker might evaluate the parties' positions in the District's Title IX Sexual Harassment Complaint Procedures."





## Let's discuss...

- "Opinions on the merits of the Parties positions"
- Decision-Maker's potential interpretation of the facts at hand

# TRUSD Informal Resolution Process

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"The Informal Resolution Facilitator will communicate all reasonable offers, counter-offers, questions, demands, and proposals by one party to the other party during the Informal Resolution Process, with the ultimate goal of helping the parties reach a resolution of the Formal Complaint."



## Revisit this model:

- Taking turns speaking
- Sharing information
- Providing explanations
- Acknowledging harm
- Apologizing
- Analyzing Consequences
- Repairing harm



# TRUSD Informal Resolution Process

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"The Informal Resolution Facilitator does not have the power to make a decision for the parties, but will attempt to help the parties find a mutually agreeable resolution to the Formal Complaint or one or more allegations therein. Under the Informal Resolution Process, the parties may agree to disciplinary sanction(s) or other adverse consequences. The Informal Resolution Facilitator may help the parties reduce any agreement to a written agreement between the parties."



## What does closure look like?

- Agreement
- Return to the Title IX grievance process





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Member

Rebecca Sandoval  
Member

Superintendent  
Steve Martinez, Ed.D.

To inspire each student to  
extraordinary achievement  
every day

February 1, 2023

**Via Electronic Mail**

**Re: Notice of Title IX Informal Resolution Agreement**

Dear Respondent:

On January 9, 2023, the Twin Rivers Unified School District (“District”) Title IX Coordinator signed a Formal Complaint requesting that the District investigate allegations that sixth grade student at XXXXXXXX Elementary, XXXXXXXXXX (“Respondent”) engaged in Title IX Sexual Harassment under the District’s Title IX Sexual Harassment Complaint Procedures. The Formal Complaint alleges:

- Multiple times during the 2022-2023 school year, the Respondent said unwelcome sexualized comments to students.
- Multiple times during the 2022-2023 school year, the Respondent said unwelcome sexualized comments to staff.

On December 18, 2022, the District issued an Offer of Title IX Informal Resolution providing both parties information about the rights, responsibilities and process of an Informal Resolution Process and an opportunity to elect to participate in the process. Both parties chose to participate in the Informal Resolution Process supported by the assigned Informal Resolution Facilitator:

XXXXXXXX  
Title IX Informal Resolution Officer  
Twin Rivers Unified School District  
Human Resources Department  
Phone  
email

Physical Address: 5115 Dudley Blvd. • McClellan, CA 95652  
Mailing Address: 3222 Winona Way • North Highlands, CA 95660  
(916) 566-1800 • FAX (916) 566-1784 • www.twinriversud.org



Informal  
Resolution  
Agreement

Informal Resolution Timeline

The Title IX Informal Resolution Process included the following procedural components to date:

- January 30, 2023: Offer of Informal Resolution Process issued to parties
- January 31, 2023: Respondent agreed to Informal Resolution Process

February 1, 2023: Respondent, with Advisor's knowledge agreed to the District's proposals, including:

- 3-day suspension for sexual harassment to occur on February 1-3, 2023.
- Respondent will participate in sexual harassment education in February, 2023
- Respondent will participate in four documented counseling sessions to check for understanding about healthy relationships in February and March, 2023



Informal  
Resolution  
Agreement





**Informal Resolution Consent**

I hereby acknowledge and agree that I understand the agreements of the Title IX Informal Resolution Process and my responsibilities thereunder, as described above. I acknowledge and agree that I am consenting to close the Informal Resolution Process and the Title IX Complaint Procedure voluntarily, without any duress, undue influence, or coercion.

\_\_\_\_\_  
Respondent Name (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Advisor Name (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title IX Informal Resolution Officer Name (Printed)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Physical Address: 5115 Dudley Blvd. • McClellan, CA 95652  
Mailing Address: 3222 Winona Way • North Highlands, CA 95660  
(916) 566-1600 • FAX (916) 566-1784 • [www.twinriversusd.org](http://www.twinriversusd.org)



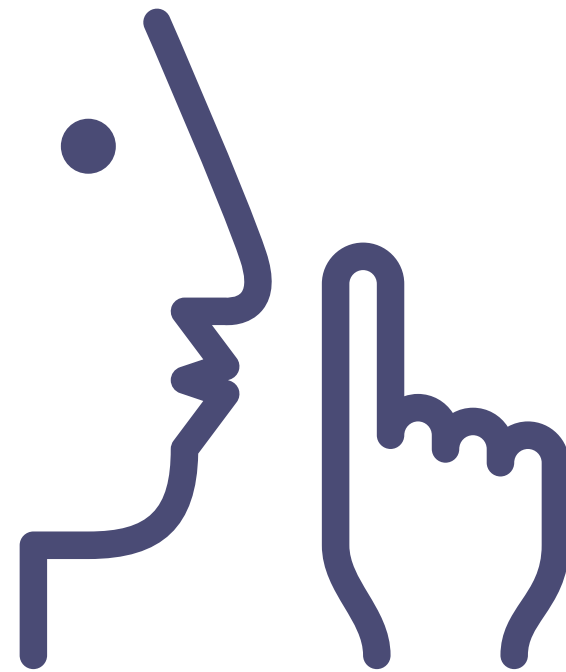
Informal  
Resolution  
Agreement

# Benefits of Pre-Informal Resolution Meetings

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Efficiency



Confidentiality



Transparency

# Building Trust

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## Ask Questions

- What does each Party want out of the process?
- What is their desired outcome?
- Are they willing to be open and make compromises?

# Building Trust

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## Practice Active Listening

- Make eye contact
- Create physical face to face interaction without barriers
- Provide affirmations
- Ask permission to take notes
- Repeat statements back to Party
- Seek confirmation that you accurately understand



# Building Trust

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## Provide Clarity and Consistency

- Be knowledgeable of Title IX Regulations and school policy to answer all questions
- Be clear about what will happen throughout the IR process and about potential consequences
- Be consistent in communication and expectations

## Working with Supporting Adults

### **Determine as early as possible who will be involved.**

1. Assess their relationship to the student.
2. Ensure student's willingness to have them involved.
3. Determine their role.
  - a. Parent, Legal Guardian
  - b. Attorney, Advisor
  - c. Advocate
  - d. Emotional Support
  - e. Interpreter, Special Needs Facilitator
4. Recognize that a supporting adult may be added at different points in process.
5. Notify all participants of who will be attending the informal resolution meetings, including additions.

# Working with Supporting Adults

## **Explain the TRUSD informal resolution process.**

1. Follow best practice by having this conversation with supported student involved.
2. Exercise caution when conducting private meetings or conversations with supporting adults.

# Working with Supporting Adults

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**Stress the goals and philosophy of the informal resolution process.**



# Informal Resolution Scenarios







1

Nine year-old Tim has been part of a group of boys who have been observed teasing a younger boy, Azim (seven years old) who has recently moved to the school district.

Last week, Azim's homeroom teacher saw Tim push Azim against a wall at recess, pull down Azim's pants and "pull on" Azim's penis. There were three or four boys standing behind Tim and shouting, "See if it's (Azim's penis) black or white."

Azim and his parents are refugees from Syria.



2

A 6th grade student, Brittany, reported to her parents that, another 6th grader, Colin, had cornered her at an after-school basketball game in an empty hallway. Brittany said that Colin forcibly kissed her and touched her breast above her clothes.

She said that she told him no and tried to push him away. Only when she yelled, “STOP”, did he stop. He went back into the gym and Brittany found her girlfriends and told them what had happened.

3

Bob and Marissa are good students in their sophomore year. They “get together” and date exclusively for several months. However, the relationship ends in March. They have several classes together and mutual friends, so their day-to-day contact continued. Marissa comes to school one Monday morning and complains to the Guidance Counselor that Bob is “bugging” her. Upon further inquiry Marissa complains that they were at a party over the weekend and Bob followed her outside and tried to kiss her and “do more.” She admits they were both “kinda drunk” but denies ever consenting. Bob adamantly states she wanted to get back together.





3

Change of circumstance.

Marissa and Bob were part of a World Quest Team, sponsored by the school, that competed in Washington DC over the weekend. The kissing incident occurred in the hallway of the hotel where the team was staying.



4

The American government class stirred up a strong debate over election fraud and several students (coincidentally who were all female) posted disparaging comments using Snapchat about their classmate, Terrence, who took a strong position in class. Terrence responded by posting that “these bitches were hags who couldn’t get laid.” The classmates replied with more snaps and posts including calling out Terrence for being a “gay-boy in hiding.”

Terrence replied with equal vitriol.

Within a few days, two of the female students signed a formal complaint against Terrence and the next day Terrence signed a formal complaint against his classmates.





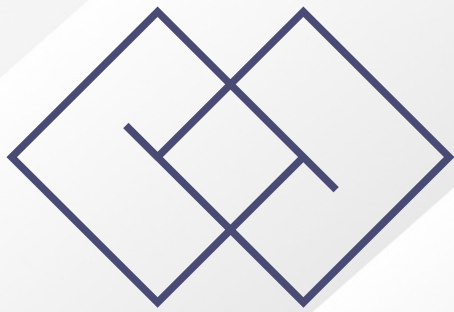
5

Carissa and Abby, both Juniors, are members of the cheerleading squad, and are cordial, but not necessarily friends. They traveled by bus with the football team to an away game two weeks ago.

On the way home Abby mentioned how tired and stressed out she was. Carissa offered her a pill to, "take the edge off and get some rest". Abby stated Carissa told her she "takes them all the time". After an hour or so, Abby had fallen asleep on Carissa's shoulder. She woke up suddenly because Carissa's hand was inside her sweater. Abby told Carissa to stop, but Carissa pushed her against the window. Carissa then tried to kiss Abby while putting her hand on Abby's inner thigh. Abby shoved Carissa away and went to sit in the front of the bus.

When Carissa was contacted by the Title IX office, she denied everything Abby alleged.





Thank You!  
Questions?