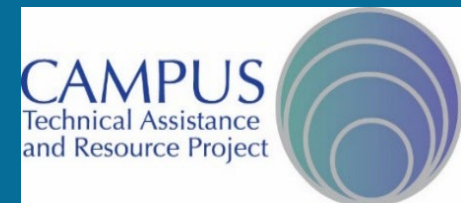




Making the Case for Informal Resolutions

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Workshop Goals:

- Develop a basic understanding of informal resolution options for DDVSAS cases
- Identify gaps in your institution's IR policy and training
- Develop action items needed to implement a robust and intentional IR process



Chat Poll

What percentage of your complaints are resolved through an informal resolution?



Let's chat

What words or phrases come to mind when you hear “informal resolution” compared to “formal resolution”? (Drop some in the chat!)



Shifting Our Mindset about IR

How it started:



“mediation is not appropriate even on a voluntary basis”

How it's going:



“Informal resolution may present a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures”

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Informal Resolution

- Policies are often vague
- IR offered, but no details about what it looks like
- Little to no investment in training, even while we are often dissatisfied with Formal Resolution
- Collectively, we haven't spent nearly as much time dedicated to IR and it shows



Making the Case for IR

- Recognizes that every case has nuances and what parties want and need for accountability and healing varies
- Parties have more influence over the result
- May open avenues for a greater number of reporting parties
- Flexibility with respect to potential interventions and outcomes
- Continuum of options
- Creates opportunity to cultivates outcomes we know to be counter to perpetuating violence such as resilience, safety, connection and community
- Does not require proving (or even agreeing) on facts in order to get to an outcome

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Breakout Groups

- What is the goal of our resolution process in DDVSAS cases?
- How do we, as a campus community think about accountability?
- What values drive our conduct processes?
- Do our process options (formal and informal) reflect those values?



What does ED say about IR in Title IX cases?

- IR permitted in Title IX cases if:
 - Formal complaint is filed
 - Institution has parties' voluntary, written consent
 - Case doesn't involve allegations that an employee sexually harassed a student.

106.45(b)(9)

*Even more discretion if the report falls outside of Title IX

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Title IX Regulations & IR

At any time prior to reaching a determination, school may facilitate IR process. Parties must be provided with notice that includes:

- Allegations
- Requirements of the IR process including circumstances that would preclude the parties from resuming a FR process
- Statement that prior to agreeing to a resolution, any party has the right to withdraw from IR process and resume the FR process
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared (106.45(b)(9)(i))

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IR Options

- Restorative Justice – (More to come next session)
- Mediation – (neutral facilitator, agreed upon resolution by parties)
- Arbitration – (Non-binding decision by the institution)



How do we think about accountability personally?

Can you think of an example about how we teach children about accountability?

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How were we taught about accountability personally?

Poll: (check all that apply)

As a young child, how many of you, were taught:

How to genuinely apologize?

How to receive a genuine apology?

How to reflect on the harm of your actions?

How to reflect on why you caused harm?

Participated in a mediated conversation to resolve a conflict?

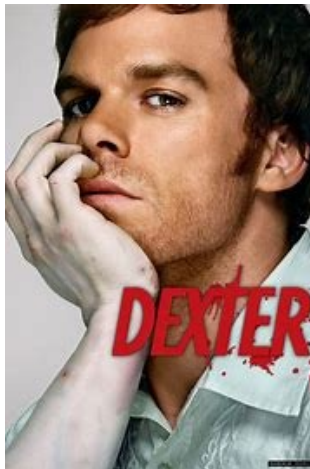
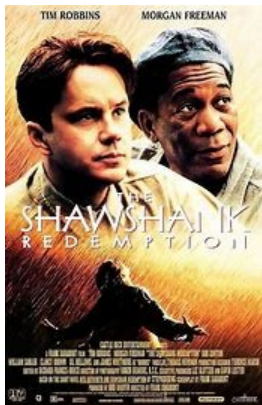
I wasn't really taught these skills.

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How this is taught & reinforced

Poll: How many examples of punitive accountability have you seen in the media?



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How this translates in practice as adults

- Ghosting
- Cancel Culture
- Revenge (in various forms)
- Suing
- Suspension or Expulsion
- Reliance on law enforcement to solve conflicts
- Actions that lead to loss of community



What are forms of accountability that are not rooted in punishment?

- Actions focused on the needs of the person harmed
- Actions focused on the needs of the community that has been harmed or impacted
- Acknowledging the harm we cause others by:
 - Listening to someone articulate the harm our actions caused
 - Reflecting on our actions
 - Offering (and accepting!) intentional apologies
 - Doing our work to understand how & why something happened
 - Committing to change and resourcing that commitment
 - Creating an accountability group to support, guide and check you

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What are forms of accountability that are not rooted in punishment?

- Actions of reflecting on what social and political conditions lead to the harm
- Actions to change those social and political conditions



Transforming our ideas of accountability

- Disconnecting our potential bias that ties accountability and punishment
- Recognize punishment is one form of accountability but not the only form



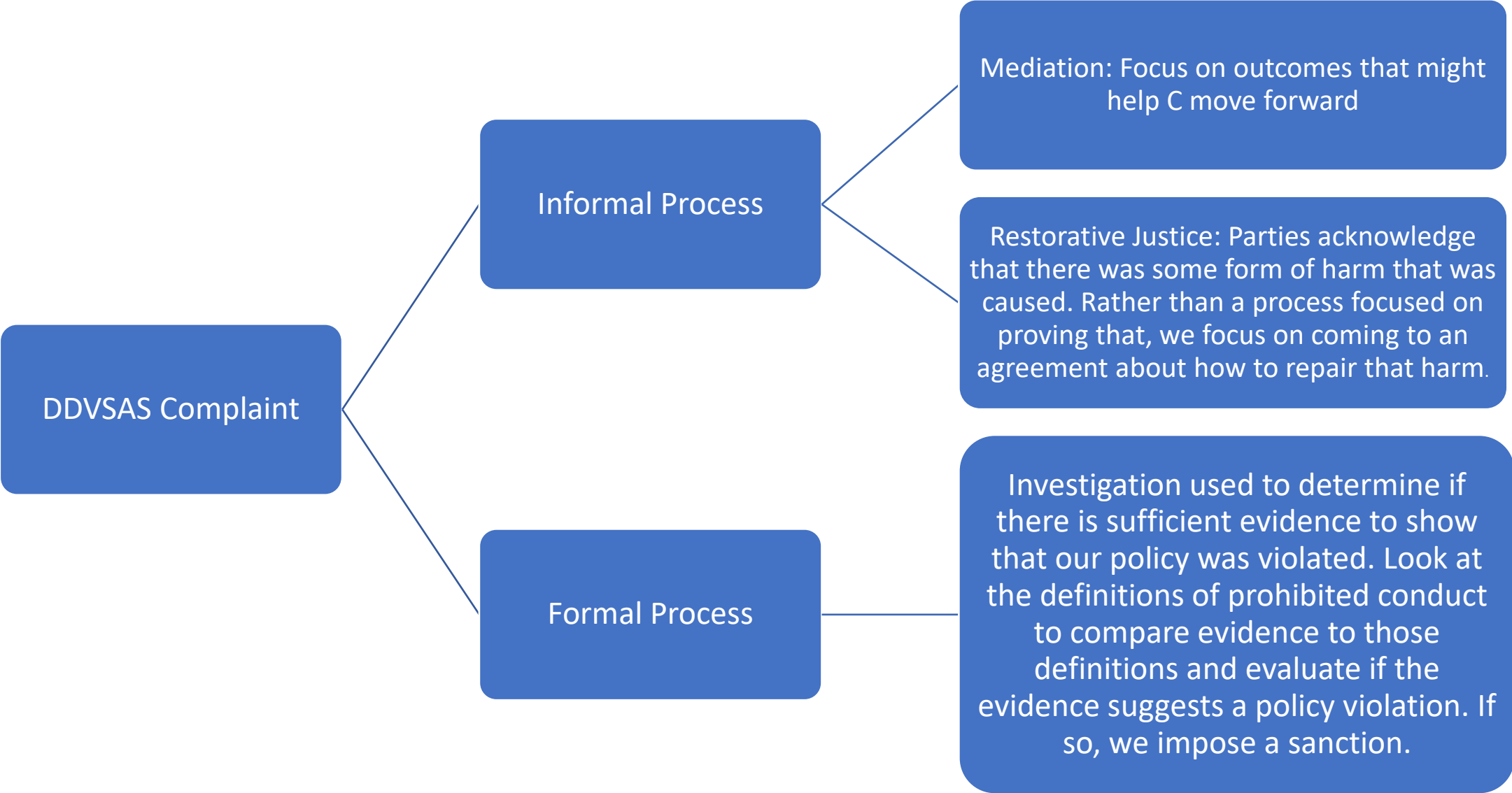
Finding balance:

How does our philosophy, policy and procedure:

- Align with our educational mission and vision, while still giving real options and agency to victims where we can?
- Provide real options for respondent accountability?

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How we talk about it matters

- Would 1-2 people be willing to unmute and share how you give a high-level overview of your informal resolution options?



IRL Example

- Complainant wrote out what happened in their own words and how it impacted them. Respondent agreed to read it.
- After time processing with therapist, best friend and mom, respondent accepted responsibility for causing harm and wrote a letter acknowledging the impact on the Complainant.
- Respondent offered to meet with Drug and Alcohol Counselor and follow suggested treatment plans.
- Respondent agreed to educational requirements that included reading a series of articles and answering questions to help them process how they learned norms around dating, consent, sexual interactions and alcohol within their family and the culture of their home country. They submitted a written response as well as had a two in person discussions with a member of the Title IX team about what they took away from the material and reflection.

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IRL Example Ctd.

- Complainant requested to not have to live in the same residence hall or be in the same classes. With support of academic advisors, institution was able to make this happen without disruption to graduation for either student.
- Complainant requested that the respondent resign for their job as a front desk worker at the gym, which the Respondent agreed to do.
- Complainant requested a no contact order and that the Respondent not attend certain graduation events that felt particularly important to the Complainant.



What can this look like in practice?

- Would anyone be willing to unmute and share examples of IR outcomes that have been successful?



Limitations to IR

- Must be truly voluntary for both parties
- Whether IR is appropriate is fact-specific
 - Is there a power imbalance between the parties?
 - Have there been threats or intimidation between the parties?
 - Is there a pattern of conduct on the part of the R or other facts that raise a safety concern?
- There are cases where one type of IR is a fit, but another is not



Chat Poll

Has your institution utilized an external informal resolution facilitator? If yes – Mediator? RJ facilitator? Arbitrator?



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Informal Resolution Facilitator

- Invest in training individuals in various forms of IR
 - ✓ Different skills required for each type of resolution – start with one!
 - ✓ How to assess whether a case is appropriate for each form of IR
- Specific training required for IRF in Title IX cases:
 - Definition of sexual harassment in § 106.30
 - Scope of the recipient's education program or activity
 - How to facilitate an IR
 - How to serve impartially, avoiding prejudgment of the facts at issue, conflicts of interest, and bias



Potential IRFs on your campus

- Student Conduct administrators
- Ombudsperson
- Third party facilitator
- Title IX Coordinator
- Dean of Students



Recordkeeping

- Records must be kept for 7 years
- Any informal resolution, including the result
- All materials used to train IR facilitators



Takeaways

- IR does not require full investigation
- Parties do not have to be in the same space or brought together
- While recordkeeping is required, outcome/sanction does not have to be on a student's "record" – individualized outcomes



Action Items

- Have a conversation with the folks on your campus involved in conduct about your philosophy
- Ensure your policy is reflective of that philosophy for DDVSAS cases
- If your policy is heavy on the formal resolution, set goals for enhancing your IR section. Ask your team:
 - What would take to get us where we want to be? Is it training? Updating our policy? Practicing how we discuss the options? Making sure our confidential folks understand the options and know how to talk about them? Developing a flow chart or one-pager to describe the options?





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Su opinión es importante. Por favor, dedique un momento para enviarnos sus comentarios sobre la presentación utilizando la sesión de evaluación. Gracias.

