Informal Resolution and Civil Rights Orientation Session for the Texas A&M University System

Rick Olshak, System Ethics and Compliance Office
August 2020

NOTICE:

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NOTICE:

This is a training program designed for those with an interest in the development of informal resolution programs within The Texas A&M University System (A&M System). A pre-requisite for this program is completion of the System Training on Title IX and System Regulation 08.01.01 which was offered on August 5, 2020 through Webex as well as through TrainTraq.

For this training…

1. This program is not a training session in any of the informal resolution methods that we will be reviewing today. Rather, the purpose of this session is to introduce attendees in the forms of informal resolution and their applications as it relates to civil rights processes within the A&M System. Members may choose to limit their application to this purpose or may choose to establish broad-based conflict resolution programs.

2. Aubrey Craft of SECO will keep members muted throughout today's training; questions may be asked in the "Chat" box; Aubrey will keep track of comments and ensure they are asked during the program.

3. The presenter is not providing legal advice; the presenter is a compliance officer and is offering compliance guidance

AGENDA:

1. Pre-Test
2. Review of Terms Utilized
3. System Regulation 08.01.01 and Informal Resolution
4. Informal Resolution Practices and their Applications
    a) Facilitation
    b) Shuttle Facilitation
    c) Mediation
    d) Restorative Practices

(5 minute break)

4. Program Design and Development
5. Training Requirements
6. Revisit Pre-Test
7. Next Steps
8. Final Questions

Poll

Do you have formal training (30 hours or more) in any of the following conflict resolution methods – facilitation, mediation, conflict coaching, and/or restorative practices (aka restorative justice)?

YES **NO**

Rick's Background

1. Has served as a mediator in higher education as well as court and community settings (NY and IL)

2. Developed mediation programs at Georgetown University, SUNY-Cortland, and Illinois State University

3. Has taught college courses on both conflict resolution and mediation

4. Authored "Mastering Mediation: A guide to training mediators in a college and university setting" (2001); new curriculum entitled "Mastering Conflict" now under development by Olshak and D. Matthew Gregory

5. Co-developer of RESOLVE © – a new personal conflict styles inventory that will be publicly available in 2021 for use in personal, professional, and clinical settings

Rick's Background

6. Has provided conflict resolution and mediation training to:

Association for Student Conduct Administration (11)
Bowling Green State University
Bridgepoint Education
Central Illinois Dispute Resolution Services (court)
College Administration Publications
College of Wooster (OH)
Concordia University – Wisconsin
DePauw University
East Carolina University
Emory University
Illinois State University (annual)
Louisiana State University
Metropolitan State College (Denver)
Middle Tennessee State University
Penn State University
Rutgers University (2)
Tufts University
University of Arkansas
University of Chicago
University of Notre Dame
University of Southern Indiana
University of Tampa

Pre-Test

Please answer the following questions based on your current understanding of conflict resolution practices. We will cover this material during the session and revisit the pre-test toward the end of the program. Please note there is no post-test requirement attached to this program.

1. True/False – Facilitators hear both sides of a matter and offer recommendations for resolution to the parties.
2. True/False – Mediation is a form of counseling or therapy.
3. True/False – In sex-based cases, Restorative Practices allow a respondent to accept a sanction without accepting responsibility for a violation.
4. True/False – Facilitators help the parties focus on the past to get to the truth of what happened.
5. True/False – In Shuttle Facilitation, the facilitator(s) should identify missing information for the parties with their own assessment of what is going on.
6. True/False – Any written agreements developed through informal resolution should leave room for interpretation in order to allow for flexibility.

Review of Terms Utilized

Review of Terms Utilized

Conflict – an expressed struggle between at least two interdependent parties who perceive incompatible goals, scarce resources, and interference from others in achieving their goals (Wilmot & Hocker, 2001). Conflict is different than a “dispute” in that it refers to the struggle between parties in a macro sense, while “dispute” is often utilized to describe smaller portions of the broader conflict.

Conflict Coaching – a practice used to support peoples' ability to engage in, manage, or productively resolve conflict. The coach works one-on-one with a party experiencing conflict with another person.

Conflict Resolution – a wide-ranging set of methods that people utilize to manage conflict situations.

Facilitated Dialogue – a conflict resolution practice that creates a structured conversation between two or more parties. The intention of the dialogue is to allow parties to share their thoughts, feelings, and experiences with one another in a private space, with the hope that the parties can make progress on some or all of the issues behind the conflict. In facilitated dialogue the facilitator does not actively seek an agreement between the parties to resolve the conflict but allows the parties to drive the progress made.

Review of Terms Utilized

Facilitation – the use of a facilitator or facilitator(s) to assist parties in the management and/or resolution of a conflict.

Informal Resolution – the use of non hearing-based methods of conflict resolution to resolve a complaint or formal complaint. These methods come with varying degrees of formality and structure and can be used in both an adjudicatory and non-adjudicatory manner.

Mediation – a voluntary and private practice in which a multi-partial third party (the mediator) facilitates the identification of issues between the disputants, the development of potential solutions, and the non-directed negotiation of a mutually satisfying outcome to the dispute (Olshak, 2020).

Review of Terms Utilized

Restorative Practices – a set of conflict resolution practices that seeks to identify harm caused by an offender's actions and, to the extent possible, both repair the harm caused and reintegrate the offender into the community. Such resolutions may be adjudicatory or non-adjudicatory in nature.

Shuttle Facilitation – the use of a facilitator or facilitators to engage parties in an indirect conversation designed to assist parties in the management and/or resolution of a conflict.

Review of Terms Utilized

Questions?

System Regulation 08.01.01 and Informal Resolution

08.01.01 Civil Rights Compliance

Revised July 7, 2020 (Effective August 14, 2020)
Next Scheduled Review: July 7, 2025
Click to view Revision History.

Regulation Summary

The Texas A&M University System (system) will provide equal opportunity to all employees, students, applicants for employment and admission, and the public. This regulation provides guidance to each member in complying with local, state and federal civil rights laws and regulations (laws) and related system policy.

System Regulation 08.01.01 and Informal Resolution

4.6 Informal Resolution (emphasis added)

4.6.1 At any time prior to the determination of a final decision, the parties may seek informal resolution to resolve the complaint. The following conditions apply to informal resolution:

(a) Informal resolution is a voluntary process. No party may be compelled to participate in informal resolution. The system member, in consultation with SECO, must agree to allow an informal resolution to move forward and must obtain the parties' voluntary, written consent to the informal resolution process.

(b) Prior to an informal resolution, the parties will be provided with: (a) written notice of the allegations; (b) 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 (c) the consequences of withdrawing from the informal process and resuming the formal process, and including the records that will be maintained or could be shared.

System Regulation 08.01.01 and Informal Resolution

4.6 Informal Resolution (emphasis added)

(c) Once a party agrees to participate in informal resolution, they may withdraw from the process at any time prior to a final agreement and resume the formal grievance process. Information shared in the informal resolution process may not be introduced into the formal process without independent evidence.

(d) Once a final agreement is established through informal resolution, the complaint may not return to the formal complaint process unless one or both parties fails to abide by any conditions established in the agreement.

(e) Informal resolution options include mediation, restorative conferences, shuttle facilitation, and other forms of facilitated dialogue. Each member must work in consultation with SECO in developing informal resolution programs and the conditions for their use.

System Regulation 08.01.01 and Informal Resolution

4.6 Informal Resolution (emphasis added)

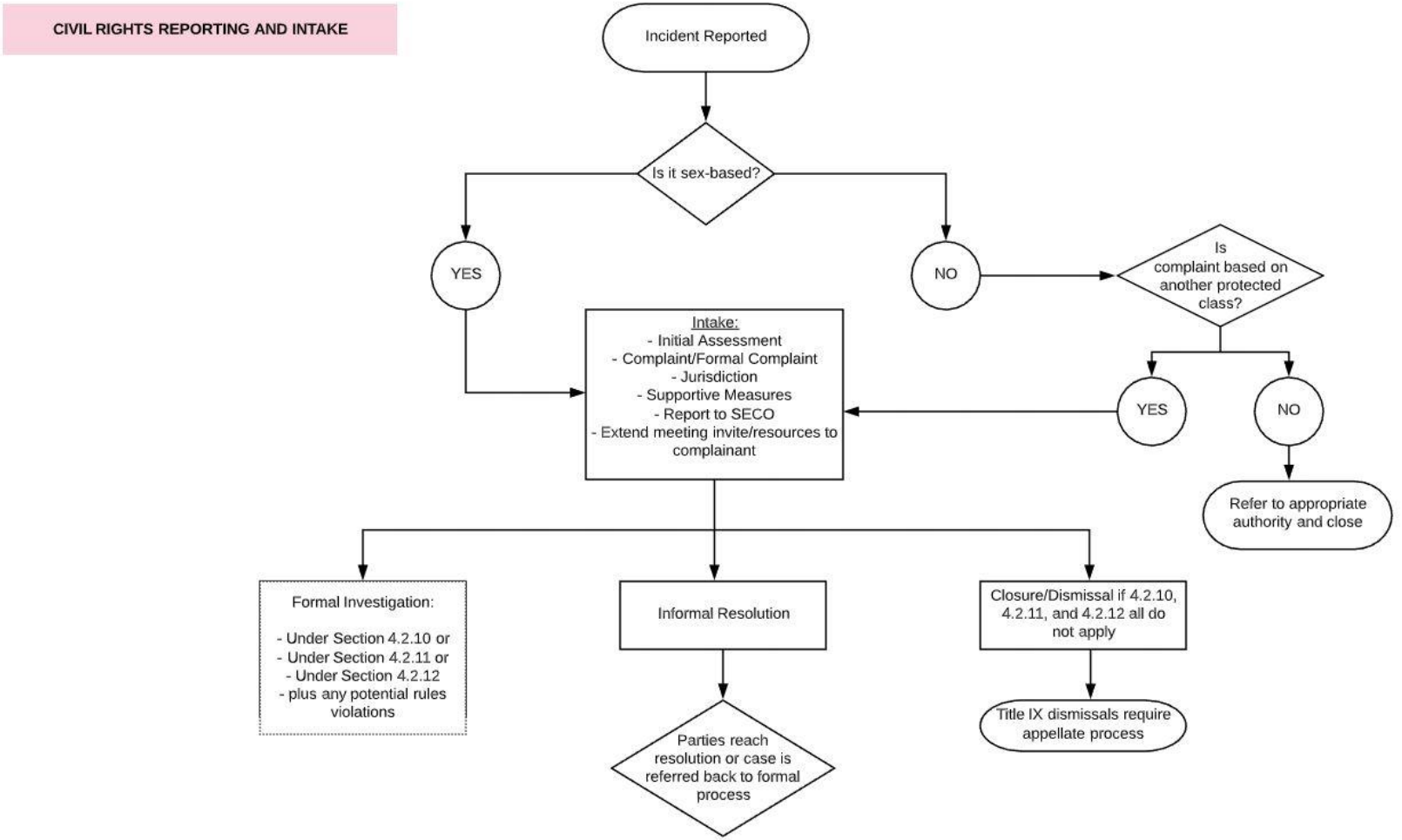
(f) Mediation may not be used to resolve complaints of rape, statutory rape, dating violence, domestic violence, or any case in which imminent threats of harm may exist.

(g) Members may not offer an informal resolution process in sex-based complaints unless a formal complaint is filed and may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

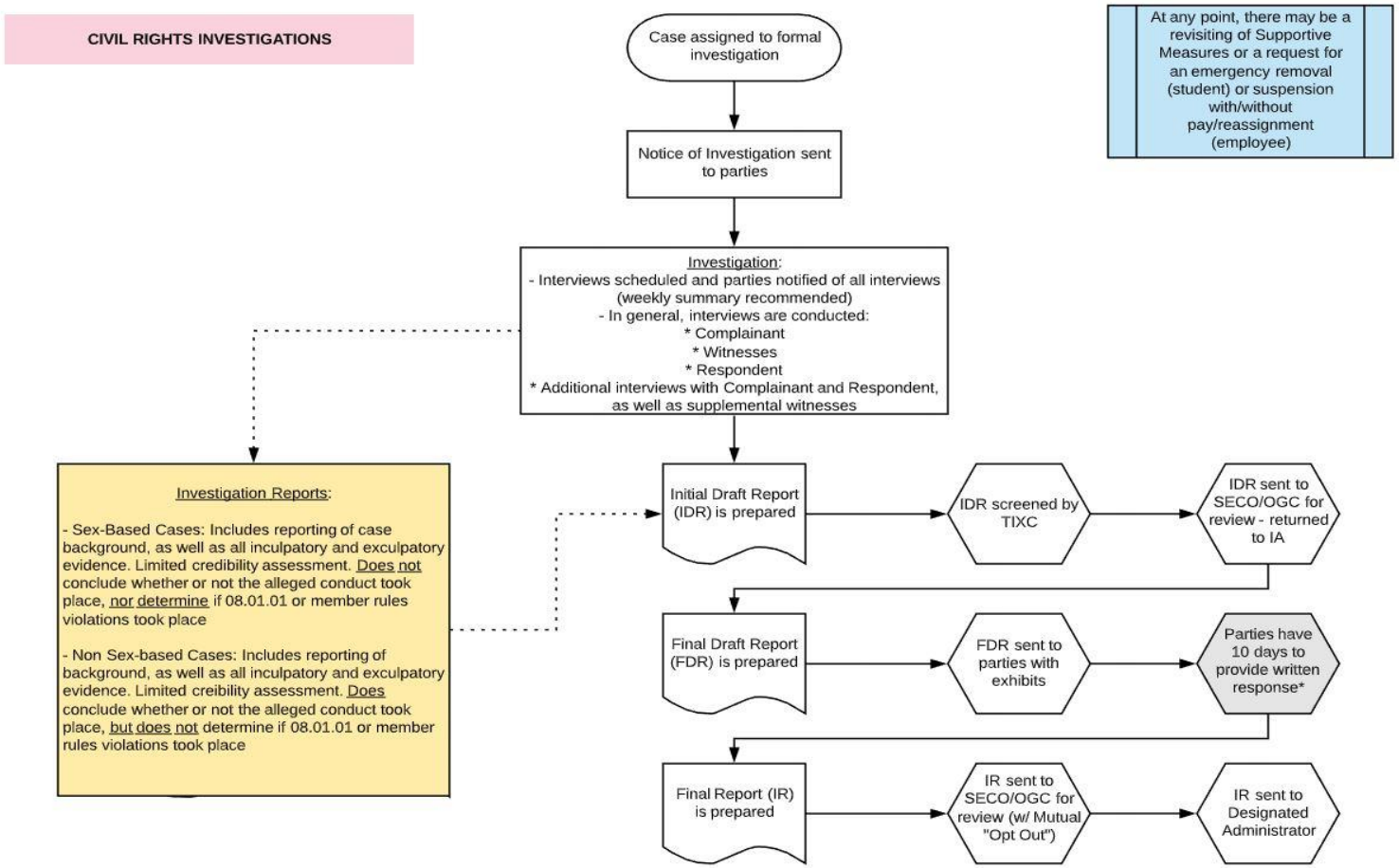
Informal Resolution Orientation

	TITLE IX (4.2.10)	SEX-BASED MISCONDUCT (4.2.11)	OTHER CIVIL RIGHTS (4.2.12)	STUDENT CONDUCT / EMPLOYEE PROFESSIONALISM
Supportive Measures	Yes	Yes	Yes	Yes
Requires	Formal Complaint	Report/Complaint	Report/Complaint	Awareness and Evidence
Standard of Evidence	Preponderance	Preponderance	Preponderance	Preponderance
Informal Resolution Allowed?	Yes – with SECO approval	Yes – with SECO approval	Yes – with SECO approval	Yes
Role of Investigative Authority	Collect and report inculpatory and exculpatory evidence	Collect and report inculpatory and exculpatory evidence	Collect and report inculpatory and exculpatory evidence; conclude if allegations are substantiated but not if 08.01.01 or member rules were violated	Refer to Member Rules and appropriate System Regulation
Adjudication	Formal (Live) Hearing	Formal (Live) Hearing	Written Review	Refer to Member Rules and appropriate System Regulation
Adjudicator	Hearing Officer or Hearing Panel (in role of DA)	Hearing Officer or Hearing Panel (in role of DA)	Designated Administrator	Refer to Member Rules and appropriate System Regulation
Allowed an Advisor?	Yes – provided by Member for formal hearing if no advisor is present	Yes – provided by member for formal hearing if no advisor is present	Yes	Yes
Role of Advisor	Cross-examination and Support	Cross-examination and Support	Support	Support
For a Finding…	Severe and Pervasive and Objectively Offensive (SPOO) **OR** Quid Pro Quo (employee respondents only)	Severe or Persistent or Pervasive and Objectively Offensive (hostile environment) **OR** Quid Pro Quo	Severe or Persistent or Pervasive and Objectively Offensive	Did it take place? Does it violate the published rule/expectation?
Appeal?	Yes	Yes	No	Refer to Member Rules and appropriate System Regulation

Informal Resolution Orientation

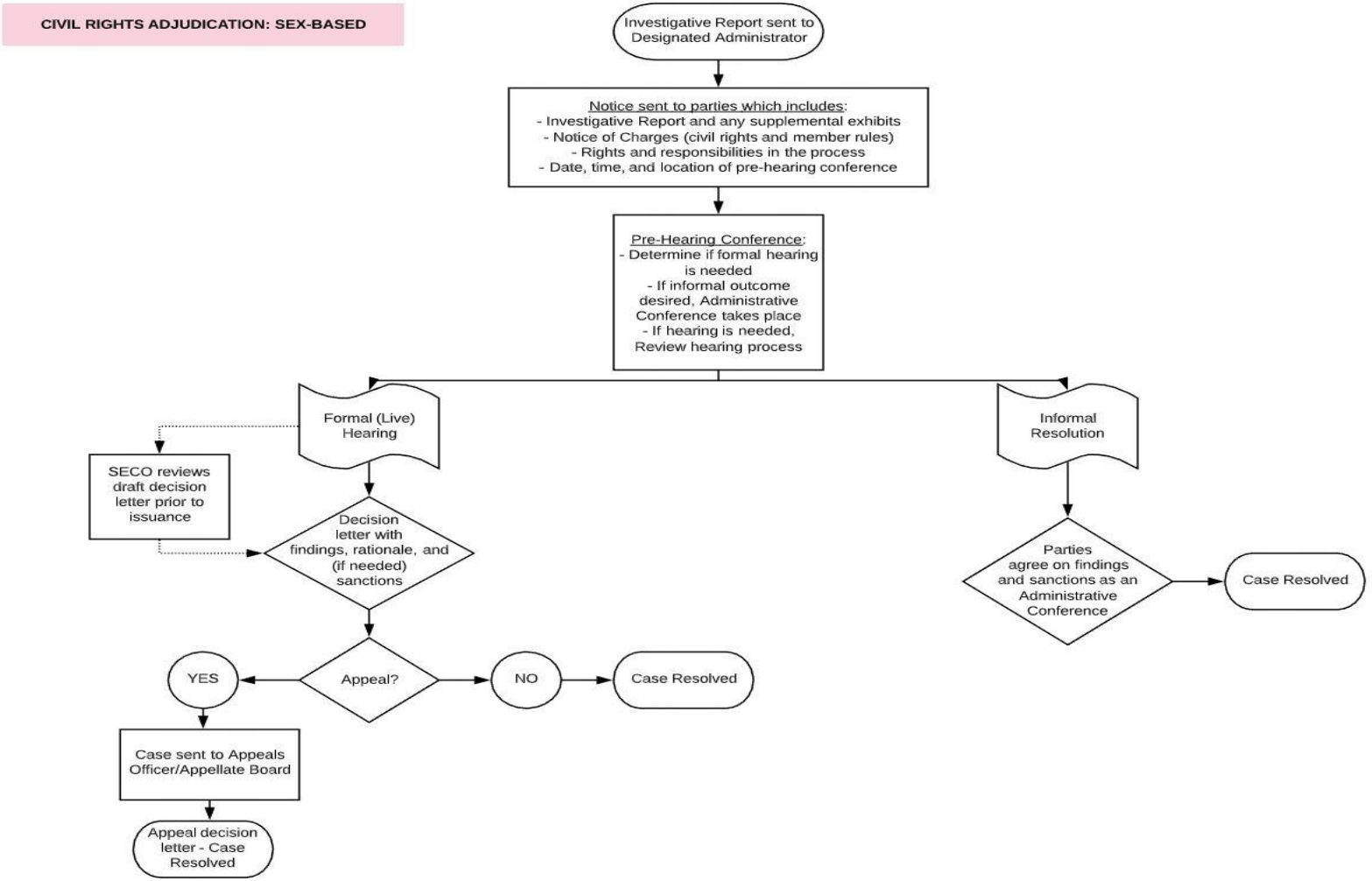


Informal Resolution Orientation



* For sex-based cases, written responses are taken from parties; in non sex-based cases, questions for parties and/or witnesses are taken from the parties

Informal Resolution Orientation



System Regulation 08.01.01 and Informal Resolution

Questions?

Informal Resolution Practices and their Applications

Adapted from Olshak and Gregory (2020)

Informal Resolution Practices and their Applications:

1. Facilitation
2. Shuttle Facilitation
3. Mediation
4. Restorative Practices

Degrees of structure and formality

Facilitation

A. 3rd party facilitator(s)
B. May have knowledge of the parties and/or the conditions of the dispute but must be seen by the parties as “objective” and must not have a personal interest in any possible resolution
C. Parties direct process and conversation with minimum of ground rules, content entirely driven by the parties
D. Should be utilized to address issues prior to them becoming a significant behavioral concern, but also may be utilized as an option for resolution outside of a formal hearing. Applications include:
    i. Interpersonal conflicts
    ii. Departmental/Organizational conflicts
    iii. Administrative Conferences (via Pre-Hearing Conference)

Shuttle Facilitation

A. 3rd party facilitator(s)
B. May have knowledge of the parties and/or the conditions of the dispute but must be seen by the parties as “objective” and must not have a personal interest in any possible resolution
C. Indirect conversation between disputants that places facilitator(s) in position to work with content without influencing the parties, issues, or potential resolutions
D. Parties direct process and conversation with minimum of ground rules, content entirely driven by the parties
E. Should be utilized to address issues prior to them becoming a significant behavioral concern, but also may be utilized as an option for resolution outside of a formal hearing. Applications include:
    i. Interpersonal conflicts
    ii. Departmental/Organizational conflicts
    iii. Administrative Conferences (via Pre-Hearing Conference)

Mediation

A. 3rd party facilitator(s)
B. May have minimal knowledge of the parties but should generally not have knowledge of the conditions of the dispute; must be seen by the parties as "objective" and must not have a personal interest in any possible resolution
C. Formal ground rules and highly structured process; Mediator(s) controls the process while the parties control the content and the outcomes
D. May be used in many different areas. Applications include:
    i. Interpersonal conflicts
    ii. Departmental/Organizational conflicts
    iii. Voluntary intervention to supplement formal resolution methods
E. May not be used to resolve complaints of rape, statutory rape, dating violence, domestic violence, or any case in which imminent threats of harm may exist

Restorative Practices

A. May be adjudicatory or non-adjudicatory; highly structured with facilitator controlling process and actively steering conversation – facilitator not involved in resolving content or imposing any interventions
   1. Adjudicatory –
      a) Requires respondent acceptance of responsibility for violations
      b) Allows parties to collaboratively determine sanction interventions
      c) In sex-based cases, the System Member is also a party to the process (in addition to a facilitator) and is invested in making sure that any sanction intervention is consistent with System Regulation 08.01.01 and is in the best interest of the welfare of the broader educational environment
   2. Non-adjudicatory –
      a) Requires respondent acceptance of responsibility for causing harm
      b) Allows effected parties to meet with respondent, express the harm caused as well as their feelings and concerns regarding the respondent, for the purpose of reintegrating the respondent into the community
      c) May include the development/application of sanction interventions without the requirement of a formal finding and sanctions; this may not be done at present for sex-based offenses

Informal Resolution Practices and their Applications

Questions?

5 Minute Break

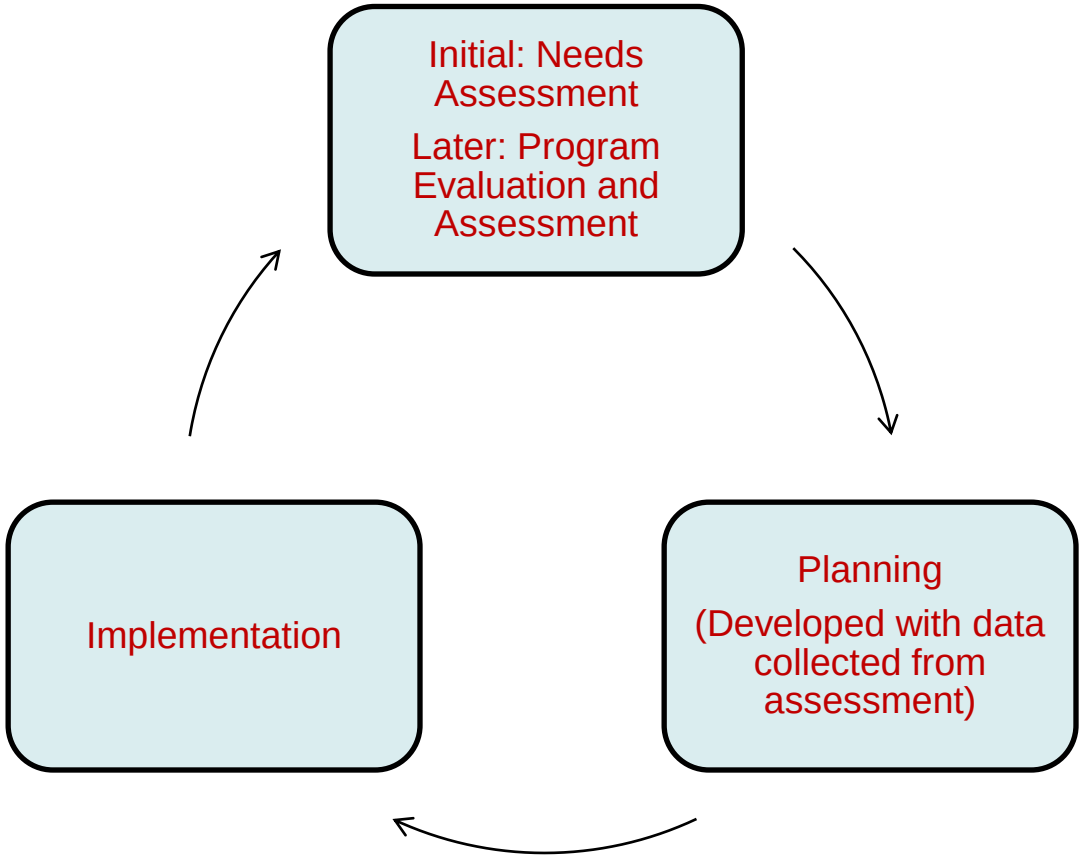
Program Design and Development

Adapted from Olshak and Gregory (2020)

Program Design and Development

1. Life Cycle of a Program
2. Scope
3. Stakeholders
4. Program Housing
5. Program Staffing/Supervision
6. Resources
7. Intake and Outtake
8. Implementation
9. Evaluation and Assessment

Life Cycle of a Program



Scope

Scope – to what degree will informal resolution be developed by a Member?

A. Minimum use as required to provide for resolutions under 08.01.01 (facilitation, mediation, restorative practices)
B. Expanded use to include student conduct and employee concerns
C. Broad application of conflict resolution for all members of the educational/work environment
D. Conflict Resolution Office – provides services noted in “C” as well as provides educational programming and opportunities for community engagement (e.g., peer mediation, speaker series, other public events)

Stakeholders

Stakeholders – who should be involved?

A. Immediate stake-holders (e.g., Title IX, student conduct, human resources, residence life, ombudsperson)
B. Broader stake-holders (e.g., academic departments, student affairs, campus police, student government, Faculty Senate, local community conflict resolution group)
C. Kindred Spirits – individual employees and/or members of the community who have shown an interest in conflict resolution, independent of where they work

Program Housing

Program Housing – where will the responsibilities be housed?

A. Title IX/Compliance Office; generally not recommended as a first choice
B. Attached on an ad hoc basis to whatever office is providing services; again not a recommended option as it tends to create gaps in administration and practice
C. Responsibilities for informal resolution/conflict resolution options attached to an office with related functions; potentially split by student and employee delivery (e.g., student conduct, human resources)
D. Development of a “stand alone” office dedicated to providing conflict resolution services

Program Staffing and Supervision

Program Staffing/Supervision – often an extension of where the program is housed; what positions and responsibilities exist?

A. Are the responsibilities incorporated into job descriptions? Is there a separate (perhaps supplemental) job description?
B. What positions or portions of positions are required?
C. Who will these positions report to?
D. Who will be supervising and conducting performance appraisals?

Resources

Resources – what resources are necessary to establish and maintain a program?

A. Staffing/Personnel
    1) Intake/Outtake
    2) Administrative Support
    3) Practitioners
    4) Supervisor(s)
B. Training and Professional Development
C. Technology
D. Marketing and Educational Outreach
E. Assessment Efforts
F. Administration (“keeping the lights on”)

Intake and Outtake

Intake:

A. Screening cases for access to services
B. Intake interviews
C. Intake forms and case file preparation
D. Assignment of facilitator(s)
E. Preparing the environment (real or virtual)

Outtake:

A. Notifications and implementation
B. Process evaluation by facilitator(s) and parties
C. Follow up at scheduled intervals

Implementation

Program Implementation –

A. Over what time period will the program be implemented?
B. Is this a full implementation or are services staggered?
C. Is full staffing immediate or phased in over time?
D. Who is the intended audience for services?
E. How is this audience being notified of the services?
F. How will you know if program implementation is successful - what realistic markers or indicators can be established?

Evaluation and Assessment

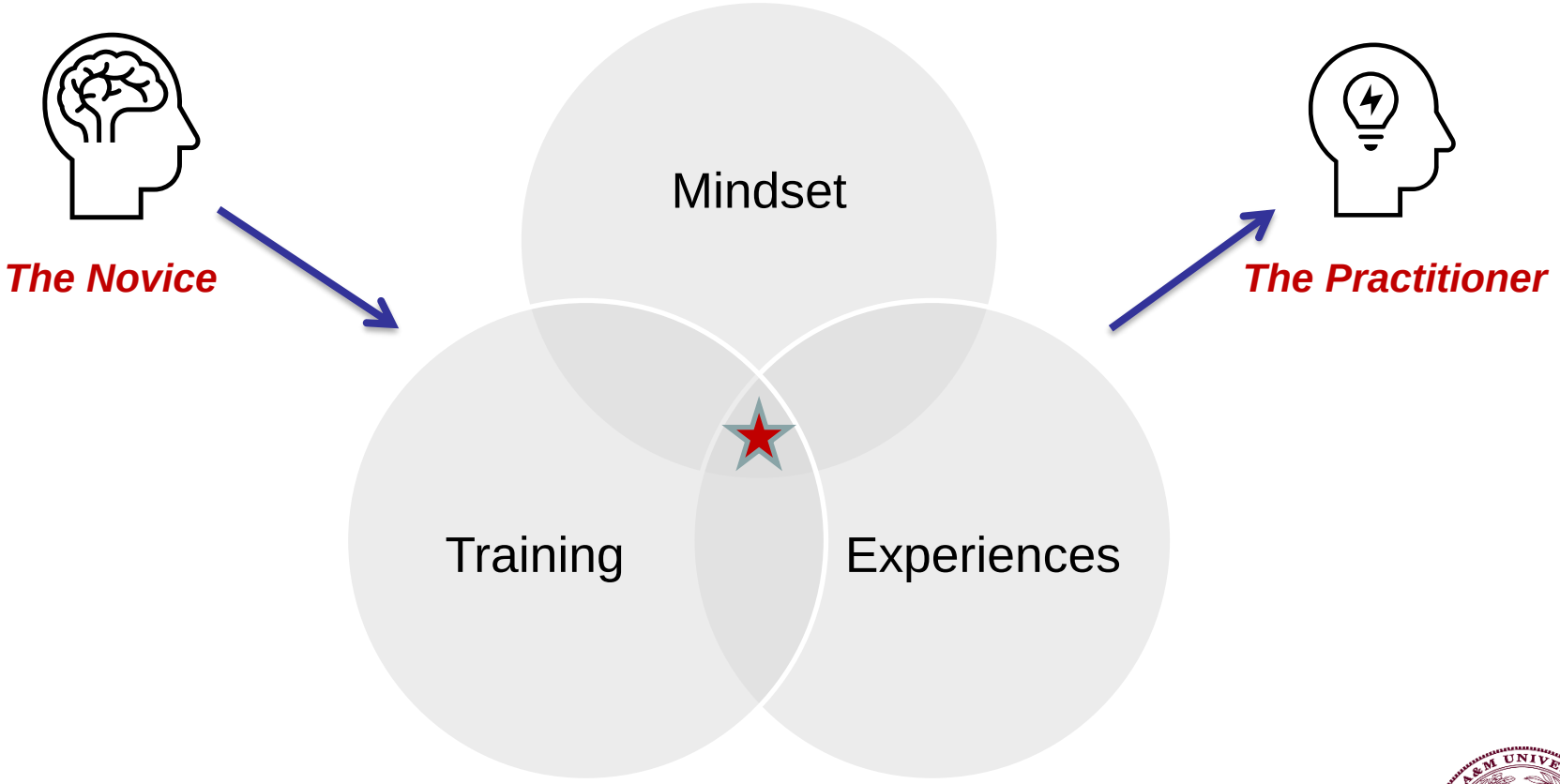
Evaluation and Assessment

A. What intended and realistic outcomes do you have for the program/services in the first year? Three years? Five?
B. What means do you have in place to collect data as it relates to meeting your intended outcomes?
C. Intended outcomes should include three to six desired realistic outcomes that are measurable; includes goals both at 30,000 feet and in the “weeds” (e.g., can speak to the desired effects of the service/program on the community, the effects of the service/program on its users, or the delivery of the service/program)
D. Develop an Assessment Cycle
    1) Data Collection
    2) Internal Program Review (e.g., CAS Assessment)
    3) Benchmarking
    4) External Program Review

Training Requirements

Adapted from Olshak and Gregory (2020)

Training is not just about the material…



The Mindset:

1. Conflict Resolution Training Curriculum (subject to change)
   a) Conflict and Conflict Styles
   b) Understanding One's Own Conflict Style Preferences
   c) Influences on Conflict
   d) Culture and Conflict (Cultural Context, Individual Narratives, Multi-partiality)
   e) Groups and Conflict
   f) Power and Conflict
   g) Conflict Resolution Methods and Gate-keeping

The Skills:

2. Facilitated Dialogue Training Curriculum (subject to change)
    a) Intake and Preparation
    b) Joint and Shuttle Facilitation
    c) Opening Statement
    d) Facilitating Narratives
        i. Listening and Questioning Skills
        ii. Re-framing Communication
        iii. Identifying and Communicating Needs
        iv. Facilitating Responses
        v. Identifying Common Ground
        vi. Managing the Differences
    e) Outtake Protocols

The Skills:

3. Mediation Training Curriculum (subject to change)
    a) Intake and Preparation
    b) Mediation and the Mediator
    c) Ethics in Mediation
    d) Listening and Questioning Skills
    e) Steps of the Mediation Process:
        i. Opening Statement
        ii. Sharing a Narrative
        iii. Defining Shared Interests
        iv. Creating the Future
        v. The Agreement
    f) Advanced Culture and Conflict (Stereotypes, Privilege, Microaggressions)
    g) Direct Exchanges
    h) Addressing Resistance
    i) Caucusing
    j) Impasse
    k) Outtake Protocols

The Skills:

4. Restorative Practices Training Curriculum (subject to change)
    a) Intake and Preparation
    b) Restorative Methods
        i. Informal (Circles, Conferences, Shuttle Conferences, Surrogacy)
        ii. Formal (Conferences, Panels)
    c) Opening Statement
    d) Steps of the Restorative Process
    e) Outtake Protocols

Revisit the Pre-Test

Please answer the following questions based on your current understanding of conflict resolution practices. We will cover this material during the session and revisit the pre-test toward the end of the program. Please note there is no post-test requirement attached to this program.

1. True/False – Facilitators hear both sides of a matter and offer recommendations for resolution to the parties.
2. True/False – Mediation is a form of counseling or therapy.
3. True/False – In sex-based cases, Restorative Practices allow a respondent to accept a sanction without accepting responsibility for a violation.
4. True/False – Facilitators help the parties focus on the past to get to the truth of what happened.
5. True/False – In Shuttle Facilitation, the facilitator(s) should identify missing information for the parties with their own assessment of what is going on.
6. True/False – Any written agreements developed through informal resolution should leave room for interpretation in order to allow for flexibility.

Next Steps

Next Steps:

1. Program Development Guidelines to be released by September 10, 2020
2. Internal Member Conversations
   a) Identify stakeholders and interested staff
   b) Conduct needs assessment
   c) Determine scope of program
   d) Determine housing of program
   e) Develop initial estimate of staffing and resource needs, as well as how to meet these needs
   f) Submit plan summarizing all of the above to Rick Olshak in SECO by Noon, October 9, 2020
   g) Plans will be reviewed and feedback provided to members by Noon, October 16, 2020
3. Initial Conflict Resolution Training to begin the first week of November 2020 (multiple sessions over two to three weeks, TBA)
4. Facilitated Dialogue Training to begin the week of November 30, 2020 (multiple sessions over one to two weeks, TBA)
5. Mediation and Restorative Practices trainings slated for January/February 2021

Considerations:

1. Don’t select more people to serve as practitioners than can be kept busy; conflict resolution skills require application to stay sharp. It is easier to select fewer people and keep them engaged than select more people who get bored and disinterested from lack of use.
2. Consider partnerships with other System members. Also consider partnerships with local K-12 school districts.
3. Look for grants (federal, state, local) as potential seed money opportunities for the development of campus-based programs.
4. All System training for informal resolution through February 2021 will be designed to train new practitioners (and provide refresher training for those with previous training/ experience). While this is critical training, System members should minimally plan to complement this training 1-2 times per semester. One of these trainings will be content training provided by SECO, while the other training will be a tabletop exercise conducted by System members.

Finally:

We encourage you to think **BIG** but also think **practically**. With your stakeholders, forecast down the road three to five years to what you would like to have in place at the end of that time, then start working backwards to what you can realistically do in the interim. Fully functioning conflict resolution programs have started with limited budgets, limited services, and either using existing staff or the addition of a graduate assistant. With good planning, relationship building, and getting institutional/organizational leadership on board, a broad-based program can establish itself and flourish once the right partnerships are created and success stories have been shared. Don't get frustrated when things are slow, and don't think that some early success means that the program will inevitably take root. Conflict resolution programs require constant attention and intention. Keep your eyes on the prize!

Final Questions?

Thank you for attending this session. We hope you will be joining us for further training opportunities this fall and next spring.

Special Thanks to Aubrey Craft for coordinating this event and facilitating our dialogue.

Have a great weekend!