

# K12 TITLE IX INFORMAL RESOLUTION TRAINING



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- Title IX Fundamentals
  - Law
  - Coverage
- Roles in Title IX Grievance Process
  - Requirements and Prohibitions
- Informal Resolution Process
- Facilitation Skills
- Quiz



# Title IX Fundamentals



“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.”

- Federal law passed in 1972
- Enforced through the Department of Education, Office for Civil Rights (OCR)



## Legal Obligation

Educational institutions must respond in a manner that is not **deliberately indifferent** when it has actual knowledge of sexual harassment occurring in the institution's education program or activity against a person in the United States.

# Actual Knowledge of Sexual Harassment



- When sexual harassment or allegations of sexual harassment come to the attention of **ANY EMPLOYEE** of a K-12 district:
  - All employees **MUST** report to the **TITLE IX COORDINATOR**
- Failure to report could lead to an inadequate response
  - Proof of deliberate indifference
  - Legal responsibility for sexual harassment



# Scope of the Education Program or Activity



For Title IX to apply, the behavior must occur in the school's "education program or activity," further defined as:

*locations, events, or circumstances over which the school exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.*

Off-campus activities covered if one (1) of three (3) requirements:

1. the off-campus incident occurs as part of the school's operations;
2. the school exercised substantial control over the respondent and the context of alleged sexual harassment that occurred; or
3. the incident of sexual harassment occurs at an off-campus building owned or controlled by a student organization officially recognized by a college.





- A licensed mental health professional at the school can maintain confidentiality.
- All other employees are required to report the matter to the Title IX Coordinator.
- In instances of potential sexual harassment, investigators (and other employees) cannot offer to keep the matter confidential.
- A Title IX investigation is completely transparent to both parties:
  - Parties get to know the names of all the people involved, including witnesses.
  - Parties get access to all of the information gathered during the investigation.
  - Parties get the opportunity to request additional investigation and to challenge the investigator prior to the final decision.

# Title IX Enforcement and Federal Constitutional Protections



Under Title IX, schools may not restrict the rights afforded under:

- First Amendment (Free Speech)
- Fifth Amendment (Protection against Self-Incrimination)
- Fourteenth Amendment (Due Process)

# Title IX Prohibits Retaliation



- Prohibition against retaliation for any participant in the Title IX reporting & investigation process
- Requires some level of school action

# Title IX Covers



Title IX protects BOTH students and employees of K12 Schools

**Sex discrimination**

**Sexual Harassment**

**Sexual Assault**

**Athletics**

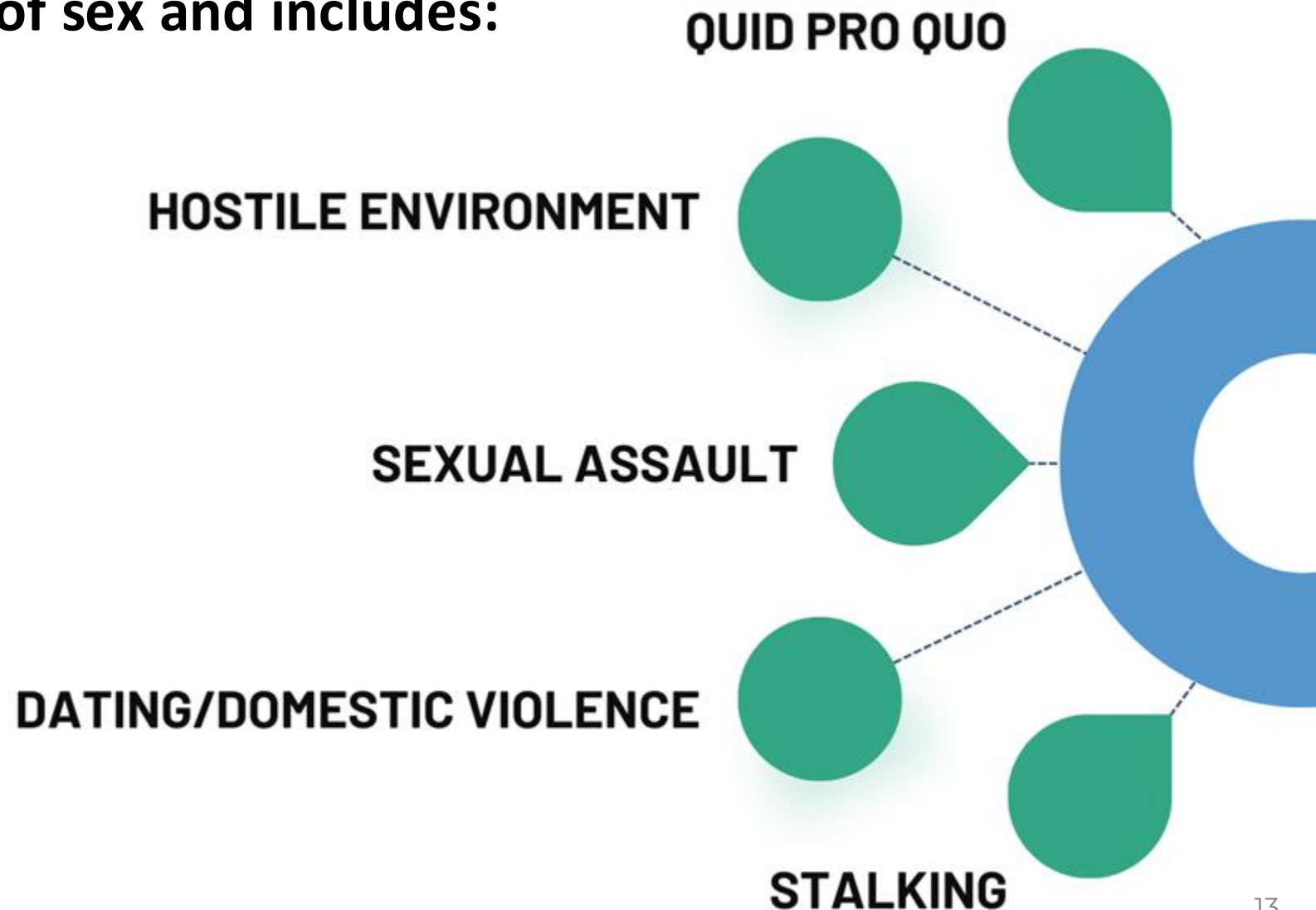
**Pregnant Students**

**Recruitment/Admissions Programs**

# Title IX (TIX) Definition of Sexual Harassment



**Defined conduct on the basis of sex and includes:**



# ● Quid Pro Quo Harassment

An employee of the school conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct.

\*



# Hostile Environment Harassment

Hostile environment - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity.



# Specific Offenses: Sexual Assault, Dating/Domestic Violence and Stalking

**Sexual assault** meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the FBI.

## **Forcible:**

- Any sexual act directed against Complainant, forcibly, against Complainant's will, or without consent, including rape, sodomy, sexual assault with an object, and fondling.

## **Non-Forcible:**

- Offenses that do not involve force where the Complainant is incapable of giving consent, including statutory rape and incest.



# Dating/Domestic Violence

**Dating violence** meaning violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.

**Domestic violence** meaning felony or misdemeanor crimes committed by a person who:

- (1) Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the school, or a person similarly situated to a spouse of the victim;
- (2) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (3) Shares a child in common with the victim; or
- (4) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.



# Stalking

Stalking meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(1) Fear for the person's safety or the safety of others; or

(2) Suffer substantial emotional distress.



# Key Roles In the Title IX Process

# Title IX Coordinator Role



- Shepherds the Title IX process
- Receives report
- Evaluates the complaint and holds initial meeting with Complainant
  - Supportive Measures
  - Procedure Options – Investigation, Informal Resolution
- Identifies investigator
- Sends notice of allegations letter
- Provides supportive measures for Respondent
- Engages in regular outreach to the parties about investigation and potential delays
- Shares investigation information with the parties
- Identifies Decisionmaker
- Addresses challenges based on bias or conflict of interest
- Delivers outcome letter to parties
- Processes a potential appeal



- Policy will define expectations for the Investigator
- Seek clarity about role
  - Information that will be shared
    - Full file
    - Managed by TIXC or Investigator
- Gather relevant evidence
- Create and maintain the investigation record
- Develop and revisit your investigation strategy
- Collect the investigatory information into the proper format
  - Final Investigation Report

# Decisionmaker Role



- Permitted to be:
  - Anyone trained
  - NOT Title IX Coordinator
  - NOT Title IX Investigator
- Reviews:
  - All evidence collected in the investigation
  - Parties' responses to the investigation file review
- Engages in Questioning of Parties
  - Credibility
  - Seeks answers to unanswered, relevant questions
- Determines
  - Policy violation
  - Discipline
- Respect parties' rights under the process



# Informal Resolution Facilitator Role



- Working within the policy requirements and/or outline of process that the parties agreed to, informal resolution facilitator seeks informal resolution of the matter
- Cannot be investigator or decisionmaker on same matter
- Cannot involve complainant-student and respondent-employee
- Not constrained by relief offered through the grievance process
- Either party and/or the facilitator may end the resolution process at any point prior to the matter reaching agreed resolution



# Title IX Grievance Process

# Title IX – Parties and Administrators



## **Parties**

- Complainant – alleged victim/survivor
- Respondent – responds to the allegation(s)

## **Other Participants**

- Fact Witnesses
- Expert Witnesses

## **Administration of Claims**

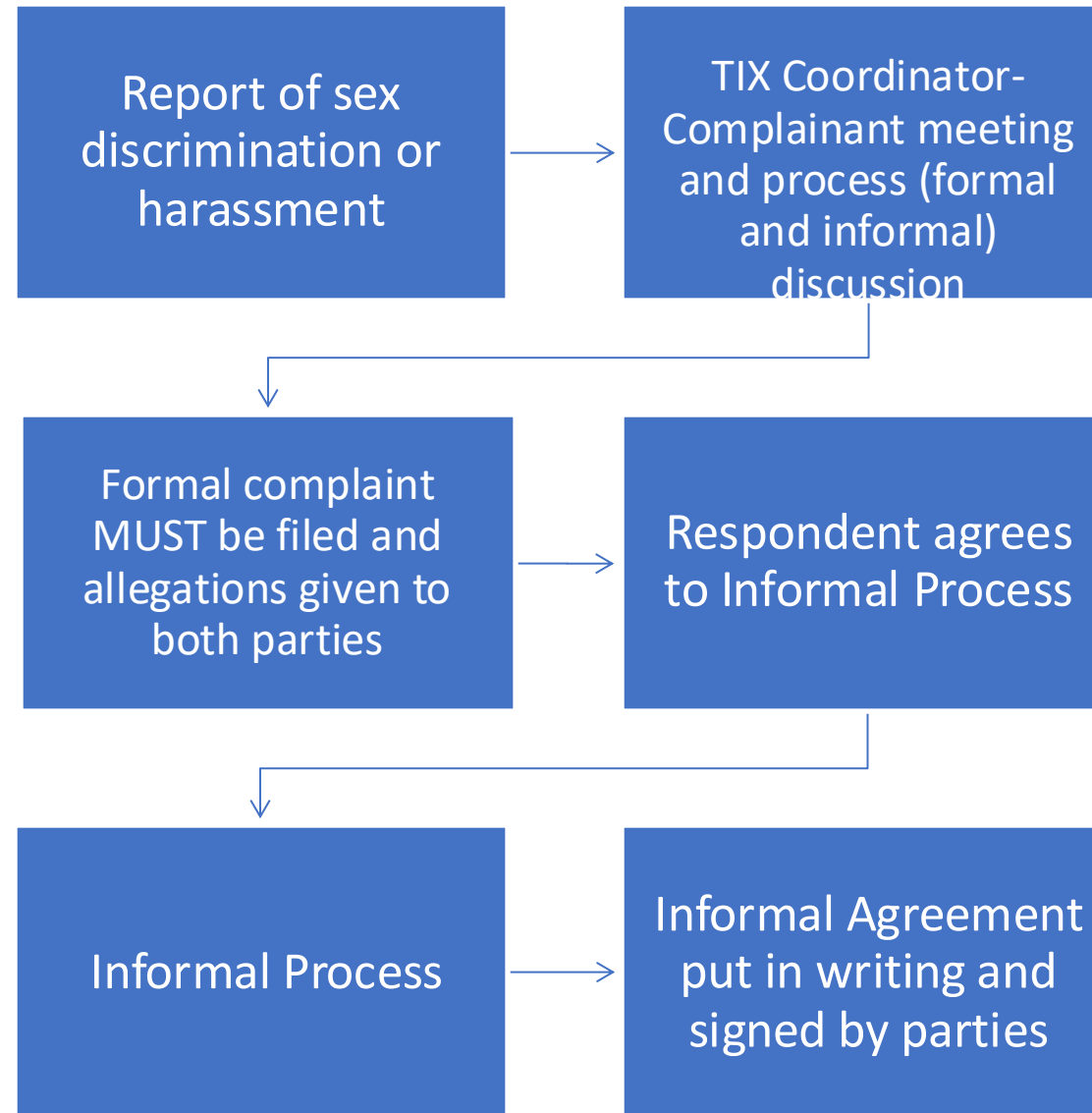
- Title IX Coordinator
- Title IX Investigator
- Title IX Decision-Maker
- Title IX Appeal Officer
- Title IX Advisor
- **Title IX Informal Resolution Officer**

# Overview of Title IX Grievance Process (TIXGP)



- Respond promptly in a manner that is not deliberately indifferent
- Due process and fundamentally fair procedures to adjudicate the allegations
- Upon notification, supportive measures offered
  - Emergency removal
- Offer of formal process (upon signing of Formal Complaint)
  - Complainant files or Title IX Coordinator may file
- Both parties receive notice of the allegations
- Both parties participate in investigation and can inspect information gathered
- Separate decision-maker(s)
- Completed in a prompt time-frame
- Retaliation prohibited - define the retaliation complaint process

# Flow Chart for Informal Resolution Process





# Title IX Informal Resolution Facilitator



- Be neutral – neither pro-Complainant nor pro-Respondent
- Consider the evidence as presented
- Confront and understand bias and not allow it to impact discussion
- Maintain open mind as to the potential conclusions



# Conflicts of Interest



- Relationship to parties or witnesses
- Professional conflicts
- Personal conflicts
- Actual and perceived



- “A fixed, over generalized belief about a particular group or class of people.” (Cardwell, 1996)
- Stereotypes around sexual assault
- Stereotypes around sexual harassment
- Complainant and Respondent



- Conscious/Explicit
  - Discriminatory intent
  - Stated preferences
- Unconscious/Implicit
- For the most part, most people are unaware of these drivers
- Developed over a period time and can influence many factors in hearing
- Short cuts developed by the brain and often play a role in:
  - Immediate response to conflict
  - Often mimics fear responses



# Resolving Allegations of Sex Discrimination/Harassment



## **Formal Grievance Process**

- Request for Investigation
- Notice to Parties
- Investigation
- Sharing of investigation materials and response
- Outcome

## **Informal Resolution**

- Report
- Quasi-Informal Resolution
- Formal Complaint filed
- Facilitated Informal Resolution



## **Formal Resolution**

- Determine if school policies have been violated
- If appropriate, impose the proper discipline

## **Informal Resolution**

Various goals can be met

- Empower the parties to reach resolution
- Restore educational access
- Address past harm
- Prevent future harm
- Create space for communication and understanding among parties, if desired



# Informal Resolution Process



# Informal Resolution – Preliminary Considerations



- Alternative process to the formal grievance investigation process for Title IX matters
- Can be used:
  - ONLY after a formal complaint has been filed
- Both parties must:
  - Voluntarily participate and memorialize this in writing
  - Not a waiver of any rights
- Title IX Coordinator can identify matters that are appropriate or inappropriate for the informal process; inappropriate might include:
  - Presence of violence in the allegations
  - Prior behavior by Respondent
  - Multiple Complainants
- Other factors
  - Power imbalance between the parties (real or one-sided)
  - Lack of good faith of either party
- NEVER available when a student brings a complaint against an employee of the district/school



## **“Quasi” Informal Resolution**

- Investigation is not requested
- Complainant is seeking resolution
- Respondent’s agreement is not necessary
- Notice of allegations to other party may not be required if supportive measures only are sought by Complainant

## **Informal Resolution**

- Parties need to agree to the process
- Investigation is stayed/stopped, pending the outcome of the informal process
- Facilitator is used
- Parties may return to the formal process at any point before completion of informal resolution process

# Quasi-Informal Process Complainant-Driven Resolution



- Complainant declines an investigation
- No Notice of Allegations is sent
- Seeks the following type of relief:
  - Supportive measures ONLY

# Informal Resolution Best Practices



- Formal Complaint filed
- Notice of Allegations sent detailing the allegations and formal complaint process requirements of the process
- Parties advised of the informal resolution process and both agree in writing to proceed
- Parties advised of right to withdraw from the process and initiate or resume grievance procedures
- If informal resolution concludes, parties may not initiate or resume grievance procedures
- Resolution put in place in writing and kept for recordkeeping purposes



- Is the matter proper for informal resolution?
- Certain matters may NOT be appropriate, such as:
  - Respondent could be a future risk to others
  - Matter could result in serious discipline (suspension, expulsion) if proved
  - Severity of the conduct
  - Desire of the parties
  - Impact on other students and campus environment
  - Various other concerns

# EXERCISES - Case Examples Informal Resolution

## Appropriate or Not?



1. Parties were in a relationship that ended badly. Allegations involve sex-based hostile environment harassment at school and stalking, taking place at school and off-campus.
2. Complainant has alleged harassment based upon gender identity during Ceramics by three Respondents in the same class.
3. Complainant has alleged that Respondent engaged in non-consensual fondling at an off-campus party.
4. Respondent, a student with special education services, is alleged to have created a hostile environment for Complainant by repeatedly asking Complainant out on dates.

# Facilitated Resolution Methods



- Mediation
  - Facilitated process to reach resolution
- Shuttle negotiation
- Restorative practices
- Any method and/or process that parties agree to follow

# Bringing the Facilitated Resolution to Conclusion



## Successful

- Document the agreement and have the parties sign
- Brings the investigation to a conclusion
- Incorporate language about failing to abide by the terms and consequences
  - Do not return to investigation
  - Designate who will address potential violations of agreement

## Unsuccessful

- Document return to investigation process
- Advise parties of conclusion of informal process
- Follow documentation requirements from policy or practice



# Suggested Outline for Resolution Agreement



- Parties and parents/guardians (if participating)
- Allegations
- Relevant dates
- Name of facilitator
- Explain the process in brief terms
- Terms of the agreement
- Relevant dates when terms expire or cease to exist
- Consequence for failure to abide by the terms and acknowledgement of these consequences by both parties



- Parties agreement to use informal process
- What the informal process will look like (might include) in this particular matter
- Signatures
- Privacy of documents captured during the informal resolution process
- Return to process
- Conclusion of the process
- Record of agreement between the parties
- Title IX Office “owns” these documents in order to protect confidentiality
- WHAT ELSE?
- Records must be maintained for seven (7) years



# Title IX Informal Resolution - General Facilitation Skills

# Initial Assignment – Review Documentation



## **Documents Prior to Assignment**

- Notice of Allegations (or similar document)
- Agreement to enter into informal resolution, signed by both parties
- School policy on Title IX Informal resolution
- Explanation of the process with confirmed receipt from the parties

## **Documents after Facilitation**

- Information from the facilitation (if policy requires)
- Return to the investigation process, with notice to parties and Title IX Coordinator OR
- Agreement reached in informal process, signed by both parties



## **Role may include:**

- Review, explain and develop agreed-upon process for parties
- May interview witnesses, collect documents
- Facilitate storytelling by all participants
- Identify and list harms
- Brainstorm solutions
- Question parties about requested terms and explain legal restrictions on the process and resolutions
- Prepare resolution agreement with input from parties

## **Not an investigation:**

- Gather information about what they are seeking from the process
- Manage their expectations
- Explore opportunities for agreement
- Determine how to get to requested agreement
- NOT interviewing
- NOT trying to reach a policy violation conclusion



# Title IX Facilitator Confronts Conflict in Informal Resolution Process

# Conflict Resolution Steps to Incorporate



- Meet with parties and parents (K12) to set ground rules and see what is possible.
  - Identify non-negotiables.
- Set ground rules.
  - Personal experience of what happened; acknowledge it is not necessarily everyone's experience.
- Be an active listener and use positive body language to show you are attentive and following along.
- Remain professional and unbiased in all interactions to earn and maintain both sides' respect.
- Know when to take a break when emotions are running high or nerves need calming.
- Bring in someone else to act as a mediator if needed, as this will showcase your integrity and earn respect from both sides.



# Initial Inquiry



Does district have requirements for the informal resolution process to move forward (i.e., required discipline; moving classes; voluntary withdraw)?



Do parties have non-negotiables (i.e., apology; campus events)?



How will communication between the parties (and/or parents/guardians) be handled?

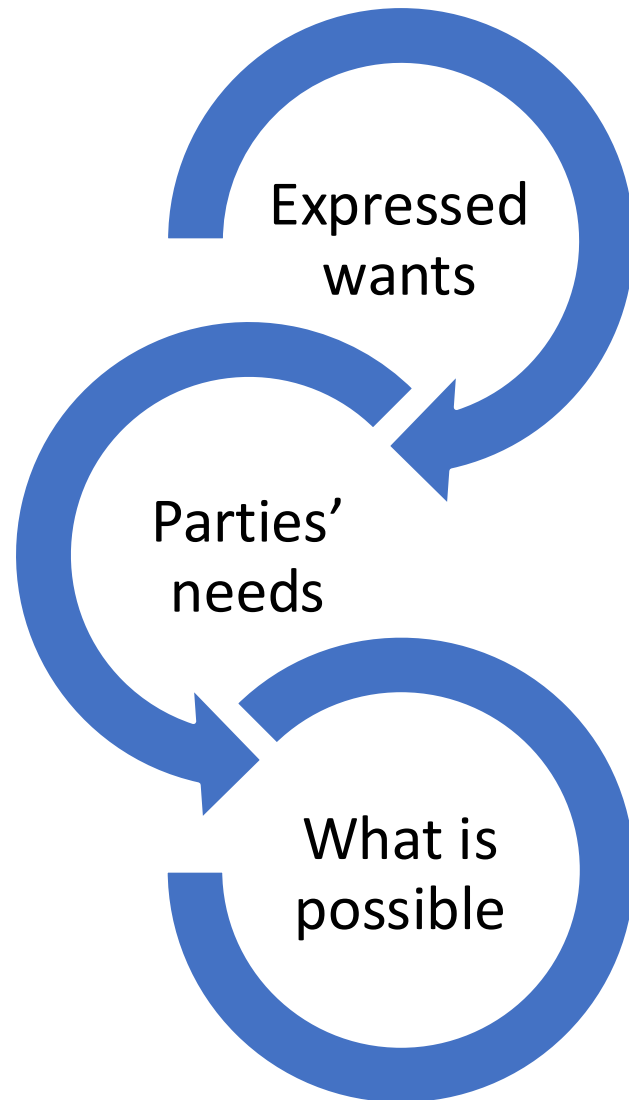


# Examine the Nature of the Conflict

## *Thomas-Kilmann Model*



# Explore Resolution Possibilities



## Maslow's Hierarchy of Needs



# Best Tool for Informal Resolution: Active Listening



- Establish rapport
- Understand perspective on event
- Gauge the level of emotional concern
  - May need to diffuse emotional presentation/response without discounting the person's feelings
- Encourage parties to share (in presence of other party or not)
- May help determine the right path for informal process
- Facilitate conversations with the other party about possibilities for resolution

# Conclusion of Informal Process



- Informal resolution agreements should be reduced to writing with all essential terms
- Parties should sign, and institution should give written approval
- Parents/guardians should sign as well

# Failure to Abide by Informal Resolution Agreement



- Informal resolution concludes the underlying process
- Agreement should address this possibility and the consequences
- Do not return to the formal investigation process

# Questions



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