



Informal Resolution

 **Bricker
Graydon
Wyatt**
Title IX In Focus
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Presenter – Jessica Galanos

- Higher Education Attorney & Consultant
- Former in-house Deputy Title IX Coordinator, Interim Title IX Coordinator, and litigator
- Currently serve in interim roles when needed, and provide investigative and decision-maker services for civil rights matters
- Based in O'Fallon, Illinois (right outside of St. Louis)

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Presenter – Elizabeth Conklin

- Associate Vice President for Institutional Equity and Accessibility, Yale University
- J.D. | labor and employment law background
- 16 years leading institutional civil rights compliance strategy (Titles VI, VII, IX, ADA/504), along with leadership development and culture-building at public and private universities (UConn, Yale) and as a higher education consultant

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Presenter – Aley Menon

- Director of Restorative Practices, Yale University, J.D.
- Guiding institutional strategy and campus-wide implementation efforts in Restorative Practices since 2023
- Twelve years overseeing processes for resolving formal complaints of sexual misconduct at Yale
- Five years in General Counsel's Offices at Yale and University of Miami, student affairs and employment matters
- Ten years as University of Miami Ombudsperson

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Disclaimers

We can't help ourselves. We're Lawyers.

- We are not giving you legal advice.
- Consult with legal counsel regarding specific situations.
- You will receive slides for today's presentation after we've concluded.

And another one...

Specific to the Title IX In Focus Webinar Series

- The 2020 Title IX regulations require training on several specific subjects
- While the Title IX In Focus webinar series will discuss some of the required subject matter, none of these one-hour webinars will cover all of the material required for Title IX training compliance
- Work with your TIXC to make sure that you are trained in accordance with Title IX, Clery, and any applicable state law

Can We Post These Materials?

YES – Post away!

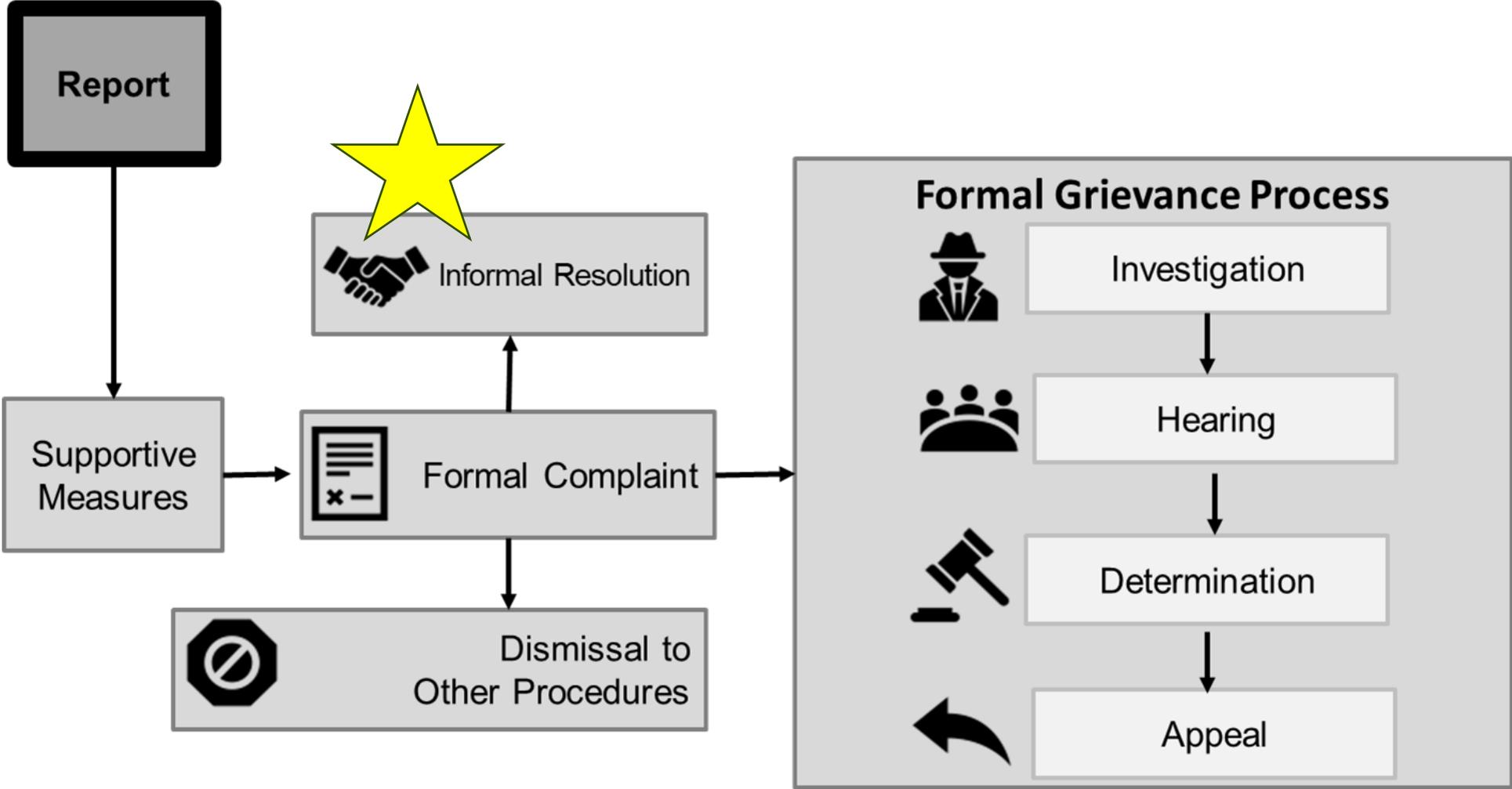
Institutions are required by §106.45(b)(10)(i)(D) to post materials used to train Title IX personnel on its website.



Agenda

- Overview of Informal Resolution in the 2020 Title IX Regulations
- Overview of Yale's Informal Resolution Process
- Q & A regarding Informal Resolution
- First steps if your institution doesn't have an IR process
- Suggestions for regularly evaluating your institution's IR process

The Process



Focus on Autonomy

The option of informal resolution supports autonomy of the complainant **on how to proceed** if they file a formal complaint.

- 2020 Preamble 30086, 30089

Less Adversarial

"Informal resolution may present a way to resolve sexual harassment allegations in a **less adversarial manner**" than the grievance process.

- 2020 Preamble, p. 30098, FN 463

Voluntary

- Only available to parties if a Formal Complaint has been filed.
- Available at any time prior to reaching a determination, except:
 - NOT available for cases involving Title IX SH by faculty/staff of student
- A recipient institution may **NOT** require informal resolution:
 - As a condition of enrollment or continuing enrollment
 - As a condition of employment or continuing employment
 - As a condition of enjoyment of any other right

"Informal" - but not really

- Misnomer
 - Title IX IR includes specific process protections
 - Build the "scaffolding"
 - Policies
 - Procedures
 - Staffing models
 - Ongoing training
 - Documentation
 - Guardrails

Types of Informal Resolution

- The Preamble to the 2020 Title IX Regulations specifically identify:
 - Mediation
 - Make sure you understand what this means in your jurisdiction
 - May require specific training or recognition
 - Restorative Justice (p. 30098, fn. 463)
 - Not defined in the regulations
 - Typically aimed at repairing harm through facilitation, but varies from program-to-program
 - Be aware of whether the RJ your institution uses requires an admission of responsibility
 - Remember – an institution cannot make a finding of responsibility without a live cross-examination hearing
- Although Mediation and RJ are mentioned in the Preamble, other options may be used as long as they don't conflict with the regulations

Documentation (34 CFR 106.45(b)(9))

- Formal Complaint (remember, it's required even for an *informal* resolution)
- Notice of Allegations (triggered by Formal Complaint)
- Written Notice disclosing the following:
 - 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
 - Any consequences resulting from participating in the IR process, including the records that will be maintained or shared
- Voluntary written consent from the parties to the IR process
- Agreement reached as a result of IR

Overview of Yale's Informal Resolution Process

- Informational meeting
- Formal complaint
- University determination of suitability for Alternative Resolution (AR)
- Notice of allegations and request for AR
- Written description of AR process to parties
- Voluntary consent in writing by parties
- Preparatory meetings with facilitator
- AR Options: Shuttle Dialogue, Facilitated Dialogue or Restorative Circle
- Resolution Agreement

Q&A

Upcoming Title IX In Focus Webinars

- All of these are free and held at 12:00 p.m. CT/1:00 p.m. ET
- Sign up at www.brickergraydon.com/events
 - March 26th – Transferrable Skills for Title IX and Title VI Investigators
 - April 23rd – Legal History of Title IX
 - May 28th – Title IX Litigation Update

Upcoming Higher Ed Webinars

All of these are free and held at 11:00 p.m. CT/12:00 p.m. ET

- March 6th – Athletics Hot Topics
- April 8th – The Intersection of Higher Ed and Copyright

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