

SUMMER WEBINAR SERIES

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# OCR MEDIATIONS

FOR POSTSECONDARY INSTITUTIONS



# SUMMER WEBINAR SERIES

JOIN US THIS SUMMER AS WE DISCUSS  
A VARIETY OF TOPICS!



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ROUNDTABLE**



**JULY 22**

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RESOURCES**



**AUGUST 5**

**BACK TO  
SCHOOL  
CHECKLIST**



**SPEAKER**

**ANDRES RAMIREZ**

# AGENDA

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OCR COMPLAINT TO MEDIATION

2

OCR FORMAL MEDIATION PROCEDURES

3

OCR MEDIATION IN PRACTICE

4

WHO TO BRING AND HOW TO PREPARE

5

COMMON TERMS

6

COMMON MISTAKES INSTITUTIONS MAKE

# WEBINAR GOALS

## INSTITUTIONS OFTEN KNOW THE RISK OF AN OCR COMPLAINT, BUT NOT THE RHYTHM, EXPECTATIONS, OR PRACTICAL OPPORTUNITIES

- Mediation as a resolution process, not a mini-investigation and not a finding of liability
- OCR mediation is where legal risk, institutional reality, and potential harm can be addressed before positions harden and turn into litigation

**DISCLAIMER:** Educational information only; not legal advice; views are personal and do not represent OCR.

# WEBINAR GOALS



Identify how an OCR complaint reaches mediation.



Understand OCR mediation roles, confidentiality, and what OCR does and does not do with agreements.



Prepare the right people, documents, authority, and resolution options before the mediation day.



Recognize the types of solutions that commonly resolve postsecondary OCR complaints.



# HOW AN OCR COMPLAINT GETS TO MEDIATION



## TWO PATHS INTO OCR MEDIATION

### Early Mediation

- Requested by the complainant at filing
- If OCR finds the matter appropriate and the recipient is interested, OCR provides the Recipient with the Allegations to be mediated.

#### **PRO TIP:**

Allegations mediated may be different from what is investigated. If mediation fails, case is closed and reopened as an investigation, leading to another round of evaluation by an investigator. Allegations may narrow or expand.

### Mediation during investigation

- If OCR later determines a complaint may be appropriate for mediation, OCR contacts the parties and offers the option.

#### **PRO TIP:**

Do not wait passively. Look at OCR Notification letter for the Allegations and language about OCR's mediation process. If a matter looks resolvable, ask OCR for mediation. OCR may internally determine appropriateness based on agency's priorities, the nature of the allegations, public interest, systemic allegations, etc.

# COMPLAINT FILING PROCESS

## COMPLAINT FORM IS NOT MANDATORY AND CAN BE FILED BY LETTER OR EMAIL.

- ✓ Complainant identity
- ✓ Person discrimination against
- ✓ Recipient institution
- ✓ Alleged Discriminatory Acts
- ✓ Supporting Documents
- ✓ Waiver requested if outside 180 days
- ✓ Internal Grievance or other agency/court activity
- ✓ Attorney information & most recent date
- ✓ Signature and consent to reveal identity



# ADDITIONAL ITEMS



## REMEDY SOUGHT (ITEM 13 IN COMPLAINT FORM)

- Item 13 asks what the complainant wants the institution to do as a result of the complaint. This is often the first clue about whether mediation can work.



## PRO TIPS



### ASK OCR FOR THE COMPLAINANT'S PROPOSED REMEDIES

- OCR may not share a copy of the complaint under Privacy Laws and FOIA exclusions. But, OCR will be more willing to share the complainant's resolution proposal before it goes into mediation.
- Don't judge success based solely on what they request in the complaint form.



### IF OCR DOES NOT PROVIDE A COPY OF THE COMPLAINT, ASK FOR IT DURING MEDIATION

- The mediator may ask the complainant on your behalf to send you a copy.
- While OCR may not provide a copy, legal counsel is used to sharing their client's concerns during negotiations.



# ADDITIONAL ITEMS



## EARLY MEDIATION ELECTION

(ITEM 12 IN COMPLAINT FORM)

- The complaint form allows the complainant to indicate interest in early mediation.
- OCR describes early mediation as voluntary, informal, and an alternative to the investigative process
- OCR's mediator does not decide who is right or wrong and does not impose a settlement.



## PRO TIP



### THE COMPLAINANT'S WILLINGNESS TO CHECK THE MEDIATION BOX IS USEFUL, BUT IT DOES NOT GUARANTEE MEDIATION

- OCR still evaluates the complaint and the Recipient must still agree to participate.
- **Mediation is not mandatory for either party.**

# COMPLAINT FILING PROCESS

## OCR DETERMINES IF A COMPLAINT IS APPROPRIATE FOR MEDIATION. OCR CONSIDERS:



Timeliness – generally 180 calendar days from alleged act of discrimination or 60 days from a separate or internal grievance process



Subject-Matter jurisdiction – whether facts allege discrimination or retaliation under laws that OCR enforces



Signed consent form to disclose identity of complainant



Sufficient detail – who, what, when, where, and how



Allowable – is it an issue area “allowed” to go to mediation

# COMMON INTAKE PROBLEMS THAT DELAY MEDIATION

**CHANGE IN PERSONNEL DELAYS CASES**

**MISSING CONSENT**

**VAGUE ALLEGATIONS**

**UNCLEAR DATES**

**LONG AND COMPLEX NARRATIVES OR DOCUMENTATION THAT NEED FURTHER CLARIFICATION**

**COMPLAINT FILED BY SOMEONE WITHOUT AUTHORITY FOR AN ADULT STUDENT**



# OCR'S FORMAL MEDIATION PROCEDURES

UNDER ARTICLE II OF CPM



# FORMAL MEDIATION

## VOLUNTARY AND INDIVIDUALIZED APPROPRIATENESS

- OCR offers mediation as an opportunity for the parties to voluntarily resolve allegations.
- OCR decides on an individualized bases whether allegations are appropriate for mediation



### INSTITUTIONAL TAKEAWAY

- Voluntary doesn't mean casual. Once institution agrees to mediation, it should prepare and have the right people there.



## OCR'S ROLE

- Impartial, confidential facilitator
- Inform the parties of mediation procedures, establishes constructive tone, and encourages good-faith efforts toward resolution
- Reviews the allegations and assists the parties in understanding legal standards and possible remedies
- Facilitates discussion of actions the parties may consider and may assist with reducing a resolution to writing
  - Each mediator has their own style and process
  - Mediators will explain to the parties that they are neutral, not a judge or investigator, and focus on what is possible

- Participate in good faith
- Consider offers or suggestions with an open mind and work constructively toward mutually acceptable resolution
- Implement any agreement in good faith



**PARTIES' ROLE**

# MEDIATION STEPS



## AGREEMENT TO PARTICIPATE AND CONFIDENTIALITY AGREEMENT

- Both must be reviewed, signed, verbally agreed to, or agreed to by email by the parties



## MEDIATION SETTLEMENT AGREEMENT

- OCR does not sign, approve, endorse, or monitor mediation agreement between parties
- Institution should draft terms it can implement and document internally to avoid “Breach”



## CONCLUSION OF MEDIATION

- OCR obtains either a copy of the parties’ signed agreement or a signed statement from the complainant that their allegations were resolved
- OCR issues closure letters and a copy of either the final agreement or signed statement from the complainant.

# NOTE ABOUT INVESTIGATIONS

## INVESTIGATION PAUSE AND URGENCY

- If a case is in investigation, OCR has discretion to suspend the investigation for up to 30 calendar days to facilitate agreement.
- If no agreement is reached, OCR resumes the investigation.

## MEDIATION IS SEPARATE FROM INVESTIGATION

- OCR staff member assigned to conduct mediation is not assigned to investigate complaint.
- Mediator notes and documents offered during mediation are kept separate and are not shared with investigators.

# BREACH IN AGREEMENT

## OCR DOES NOT MONITOR OR ENFORCE AGREEMENTS

- If breach occurs, the complainant may file another complaint. OCR will not address the breach itself but will determine whether to investigate the original allegation, consider whether the breach is material, its relation to any alleged discrimination, and other factors as appropriate



### PRO TIP

- Draft takeaways to avoid allegations of Breach. Build deadlines, responsible offices, documentation steps, and internal accountability into the agreement.



# WHAT OCR MEDIATION LOOKS LIKE IN PRACTICE



# POSSIBLE MEDIATION FORMATS

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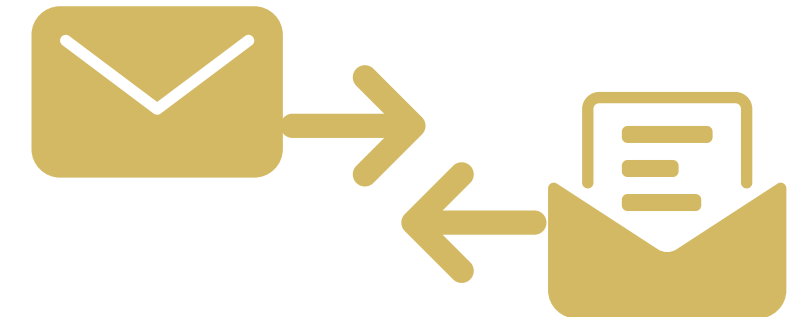
**In-person  
mediation**



**Virtual  
mediation**



**Hybrid format**  
(with some institutional  
participants available by  
phone or video)



**Complete shuttle  
format**  
(by phone, email, or  
separate virtual rooms)

# PERSONAL EXPERIENCE

## SAME DAY MEDIATIONS WHETHER VIRTUAL OR IN-PERSON RESULTED IN GREATER CHANCES OF SUCCESS.

- Decision makers are present and focused in finding a solution
- Momentum is easier to maintain
- Parties hear the same information and the same urgency
- Emotional energy can be converted into concrete terms before people retreat into hardened positions
- Drafting before the parties leave reduces misunderstanding and second-guessing

# TYPICAL MEDIATION STEPS

1

## PRE-MEDIATION CONTACT

*Confirm participants, authority, logistics, agreements to participate, confidentiality, technology, accommodation needs, and any safety or contact concerns*

2

## OPENING MEDIATOR STATEMENT

*Role, confidentiality, voluntary nature, ground rules, structure, and purpose*

3

## JOINT SESSION (IF APPROPRIATE)

*Each Side explains they are here, how they got here, and what they need to move forward*

4

## PRIVATE CAUCUS OR SHUTTLE

*Mediator tests positions, identifies interests, translates concerns, exchanges proposals, and helps parties build terms*

5

## TECHNICAL PROBLEM-SOLVING

*Bring in the right campus experts to make sure proposed terms are feasible*

6

## AGREEMENT DRAFTING

*Clarify who will do what, by when, how completion will be documented, and what happens if implementation problems arise*

# JOINT SESSION VS. SHUTTLE

## JOINT SESSIONS

- When the institution needs to hear the complainant's experience directly
- When acknowledgment, apology, explanation, or clarification could change the trajectory
- When technical solutions required shared understanding from multiple campus offices or technical experts
- When the parties will have to continue interacting after resolution

## SHUTTLES

- When safety, trauma, no-contact concerns, retaliation fears, or intense emotion make joint exchange counterproductive
- When counsel or a party needs private space to reality-test the case
- When the complainant is unrepresented and feels overwhelmed by large team
- When there are separate Title IX, employment, academic, or litigation processes moving at the same time

# WHO YOU SHOULD BRING AND HOW TO PREPARE

**“The right team is not the biggest team; it is the team with authority, knowledge, and judgment.”**



# CORE INSTITUTIONAL PARTICIPANTS

**BRING PEOPLE WHO CAN EXPLAIN WHAT HAPPENED, DECIDE WHAT CAN BE OFFERED, AND IMPLEMENT WHAT IS AGREED.**

- ✓ General counsel or outside counsel
- ✓ Title IX Coordinator or Deputy Title IX Coordinator
- ✓ ADA/Section 504 Coordinator or Disability Services
- ✓ Student affairs, Dean of Students, or conduct
- ✓ Academic department chair or program chair
- ✓ Human Resources or employee relations
- ✓ Risk Management or Insurance Representative

# PEOPLE WHO MAY NEED TO BE REACHABLE

## A PERSON CAN BE ON STANDBY WITHOUT BEING IN THE ROOM

- ✓ Registrar
- ✓ Financial Aid
- ✓ Housing
- ✓ IT
- ✓ Campus Safety
- ✓ Athletics
- ✓ International Students & Study Abroad

# AUTHORITY QUESTIONS TO ANSWER

- ❓ Who can approve non-monetary remedies?
- ❓ Who can approve refunds, reimbursements, tuition credits, fee waivers, or attorney-fee contributions?
- ❓ Who can approve record changes, transcript language, readmission, course retakes, academic deadlines, or housing changes?
- ❓ Who can approve policy review, training, notices, or systemic steps?
- ❓ Who needs to sign the agreement?

# HOW TO PREPARE

## READ THE OCR ALLEGATIONS STATEMENT LIKE A PROBLEM-SOLVER, NOT LIKE A LITIGATOR OR INVESTIGATOR

- Identify the accepted allegation or issue OCR is offering for mediation.
- Separate the legal issue from the human concerns
- Ask for a copy of the complaint
- Ask for the complainant's proposed remedies
- Ask yourself: "What does the complainant need to feel heard, safe, respected, and able to move forward?"
- Ask internally: "What can the institution do without compromising core policies, academic integrity, safety, or legal obligations?"

# HOW TO PREPARE

## PREPARE A SHORT INTERNAL CASE MAP

- Chronology of key events
- Applicable policies and procedures
- Prior internal complaint, grievance, Title IX, Title VI, ADA/504, conduct, HR, or appeal activity
- Prepare copies of documents likely to matter: complaint, communications, accommodation records, supportive measures, investigation reports, grievance outcomes, academic records, policy excerpts, meeting notes, and prior remedy offers
- Implementation realities – Who can do what, how long will it take, and what documentation is needed

# HOW TO PREPARE

## PREPARE A RESOLUTION MENU BEFORE THE MEDIATION.

- Identify what the institution can offer early
- Identify what the institution might request of the complainant
- Identify what the institution cannot offer and why
- Identify who must approve each category of remedy

## PREPARE THE INSTITUTIONAL MESSAGE

- Avoid an opening that sounds like a litigation brief
- Lead with respect for the process, willingness to listen, and commitment to finding a practical path forward
- Use careful acknowledgment without unnecessary admissions
- Prepare participants emotionally and strategically



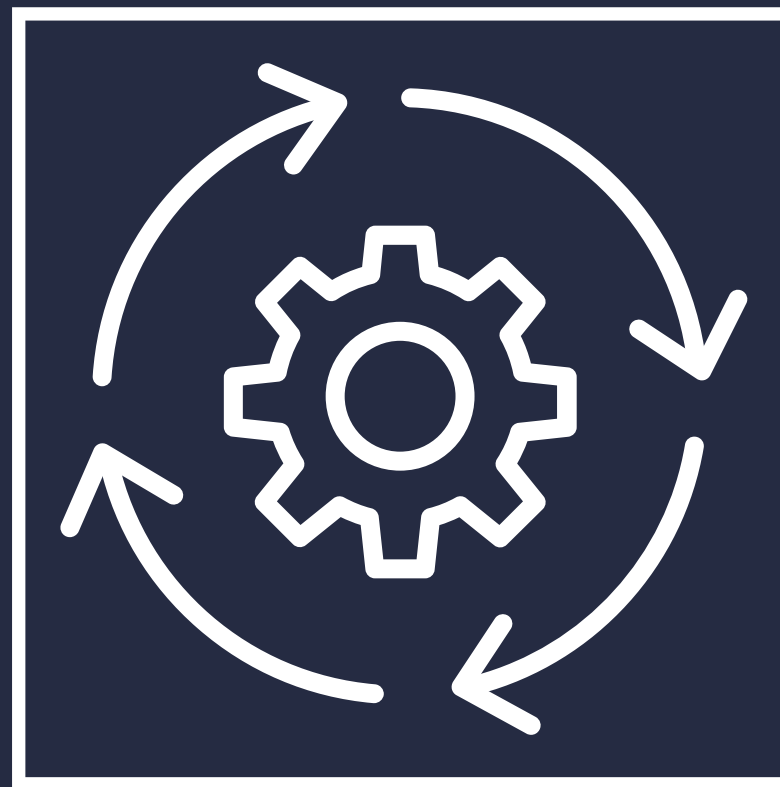
# COMMON RESOLUTION TERMS



# COMMON RESOLUTION TERMS



INDIVIDUAL STUDENT  
OR EMPLOYEE



PROCESS AND  
SYSTEMS



RELATIONAL AND  
COMMUNICATION

# COMMON RESOLUTION TERMS



**INDIVIDUAL STUDENT  
OR EMPLOYEE**

- Academic accommodations, auxiliary aids, exam retakes, deadline extensions, course substitutions, placement adjustments, clinical or internship modifications, or disability services review
- Readmission, reenrollment, withdrawal coding, transcript notation changes, disciplinary-record clarification, or academic standing review
- Tuition credits, refunds, fee waivers, reimbursement of documented expenses, attorney-fee contributions, or compensatory education-like academic supports where appropriate
- Housing, dining, parking, transportation, campus access, no-contact directives, supportive measures, counseling, coaching, advising, or designated point of contact
- Letters of reference, neutral reference language, internship/clinical placement support, or reapplication guidance

# COMMON RESOLUTION TERMS



## PROCESS AND SYSTEMS

- Policy or procedure review
- Training
- Website or notice updates, including nondiscrimination notices, grievance procedures, coordinator contact information, or accommodation process information
- Accessibility review of facilities, programs, online content, or events
- Case-management checkpoints, communication plans, or office handoffs to prevent same breakdown from recurring

# COMMON RESOLUTION TERMS



## RELATIONAL AND COMMUNICATION

- Acknowledgment of experience without admitting legal liability
- Apology or expression of regret carefully framed around impact, delay, communication, or misunderstanding
- Facilitated follow-up meeting between complainant and an institutional representative
- Written explanation of institutional steps already taken or to be taken



# COMMON MISTAKES INSTITUTIONS MAKE



# COMMON MISTAKES

## TREATING MEDIATION AS DISCOVERY

The complainant quickly senses when staff is there only to learn the case rather than resolve it.

## SENDING REPRESENTATIVES WITHOUT AUTHORITY.

A mediation loses momentum when every meaningful term requires a committee, provost, board, insurer, or absent administrator.

## OVER-DEFENDING BEFORE LISTENING

A strong legal defense can be received in a way that escalates the emotional conflict

# COMMON MISTAKES

## **FAILING TO PREPARE NON-MONETARY OPTIONS**

Many OCR mediations resolve through practical academic, procedural, access, or communication terms rather than merely money

## **BRINGING THE WRONG PEOPLE INTO THE ROOM**

A person who is legally or operationally important may still be emotionally explosive for the complainant.

# COMMON MISTAKES

## **DRAFTING VAGUE PROMISES**

"We will review" or "we will consider" may not be enough unless the agreement identifies who reviews, by when, using what information, and what will be communicated

## **ASSUMING OCR'S LACK OF MONITORING MEANS IMPLEMENTATION DOES NOT MATTER**

The agreement still matters to the parties, to institutional credibility, and to future risk if implementation fails

# KEY TAKEAWAYS



## OCR MEDIATION IS VOLUNTARY, CONFIDENTIAL, AND SEPARATE FROM INVESTIGATION

- But it should be taken seriously

## PREPARATION DETERMINES CREDIBILITY

- The institution should arrive with authority, the right people, accurate information, and a practical menu of options

## ONE-DAY RESOLUTION WORKS WHEN PEOPLE CLEAR THE TIME AND DRAFT BEFORE LEAVING

- Momentum, authority, and specificity are the strongest predictors of a durable resolution

## THE BEST AGREEMENTS ARE BOTH PRECISE AND HUMAN

- Address the actual needs of the parties while giving the parties a workable path forward.



"In OCR mediation, the question is not 'what happened.' The question is what can be done now that is fair, feasible, and meaningful enough for the parties to move forward."



# QUESTIONS?

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**WE ARE  
HERE TO  
HELP!**

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**WANT MORE IN-DEPTH COORDINATOR  
TRAINING?**

**PURCHASE OUR CERTIFICATE COURSE**



**NEED SERVICES FOR YOUR  
INSTITUTION?**

**REACH OUT TO ADRIENNE AT  
[ADRIENNE@TITLEIXSOLUTIONS.COM](mailto:ADRIENNE@TITLEIXSOLUTIONS.COM)**



**HAVE OTHER TRAINING QUESTIONS?**

**REACH OUT TO CARA AT  
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