Leaving Nothing to Chance: Intentional Applications of Informal Conflict Resolution Methods in the Title IX Environment

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2020 ATIXA CONFERENCE FEATURED SESSION

▶ Agenda

- ○ Identify four conflict resolution methods (facilitation, shuttle facilitation, mediation, and restorative practices) for use in sex-based cases, noting the opportunities and limitations offered by each method

- ○ Review program design and development, with the goal of aiding practitioners to effectively create a healthy life cycle for any conflict resolution program

- ○ Review best practices in providing conflict resolution training

- ○ Live Q&A Session

▶ Background in Conflict Resolution

- ○ Served as a mediator in court, community, and educational settings in New York and Illinois

- ○ Developed conflict resolution programs at Georgetown University, SUNY-Cortland, and Illinois State University

- ○ Has provided conflict resolution and mediation training, program design support, and program assessment guidance to many colleges and universities, court mediation programs, and numerous professional associations

- ○ Has taught college courses on both mediation and conflict resolution

- ○ 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

- ○ 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

A Quick Pre-Test

► A quick pre-assessment

Please answer the following true or false statements based on your current understanding of conflict resolution practices.

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 causing harm to the complainant.

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.

What if…?

► ## What if…?

You were told by your president/vice-president that as a result of the new 2020 Title IX regulations, you were expected to create a conflict resolution program in order to be able to provide informal resolution methods for parties in Title IX and other sex-based cases. You were further told that you have to have this program operational in six months, and that due to the budgetary situation, you cannot count on any additional resources.

Where would you begin?

Selected Conflict Resolution Methods

▶ Four Selected Conflict Resolution Methods

o *Degrees of formality and structure*

| Facilitation | Shuttle Facilitation | Mediation | Restorative Practices |

o *All of these methods are <u>voluntary</u> methods of conflict resolution that require parties who are acting in <u>good</u> <u>faith</u>*

▶ Facilitation (Facilitated Dialogue)

o a conflict resolution practice that creates a structured and direct 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 involved in the conflict. In facilitated dialogue the facilitator does not actively seek an agreement between the parties to resolve the conflict but rather seeks to aid the parties in overcoming communication barriers while allowing the parties to drive the progress made.

▶ Facilitation (Facilitated Dialogue)

- ○ 3rd party facilitator(s)

- ○ Role of facilitator is to provide a safe space for dialogue, aid the parties in communicating with one another, and help the parties identify common interests

- ○ 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

- ○ Parties direct process and conversation with minimum of ground rules, content entirely driven by the parties

- ○ 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:

  - ○ Interpersonal conflicts

  - ○ Departmental/Organizational conflicts

  - ○ Administrative Conferences (pre-hearing)

- Shuttle Facilitation (Facilitated Dialogue)

  o a conflict resolution practice that creates a structured and indirect 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 involved in the conflict. In facilitated dialogue the facilitator does not actively seek an agreement between the parties to resolve the conflict but rather seeks to aid the parties in overcoming communication barriers while allowing the parties to drive the progress made.

▶ Shuttle Facilitation (Facilitated Dialogue)

- 3rd party facilitator(s)

- Role of facilitator is to provide a safe space for parties to express their points of view and to present that information to the other party in a manner that promotes mutual understanding while dialogue, while being faithful to the intent of the first party; the facilitator seeks to help the parties identify common interests while remaining uninvolved in the content of the conflict

- 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

- 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:

  - Interpersonal conflicts

  - Departmental/Organizational conflicts

  - Administrative Conferences (pre-hearing)

► 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).

► Mediation

- o 3rd party facilitator(s)

- o 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

- o Formal ground rules and highly structured process; Mediator(s) controls the process while the parties control the content and the outcomes

- o May be used in many different areas. Applications include:

    - o Interpersonal conflicts

    - o Departmental/Organizational conflicts

    - o Voluntary intervention to supplement formal resolution methods

- o Should <u>not</u> be used to resolve complaints of rape, statutory rape, dating violence, domestic violence, or any case in which foreseeable/imminent threats of harm may exist

▶ 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.

► Restorative Practices

- 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

- Adjudicatory –

  - Requires respondent acceptance of responsibility for violations

  - Allows parties to collaboratively determine sanction interventions

  - In sex-based cases, it is strongly recommended that the institution is also a party to the process (in addition to a facilitator) to confirm that any outcome reached is in the best interest of the welfare of the broader educational environment

- Non-adjudicatory –

  - Requires respondent acceptance of responsibility for causing harm

  - 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

  - May include the development/application of sanction interventions without the requirement of a formal finding and sanctions (a form of "self-sanctioning")
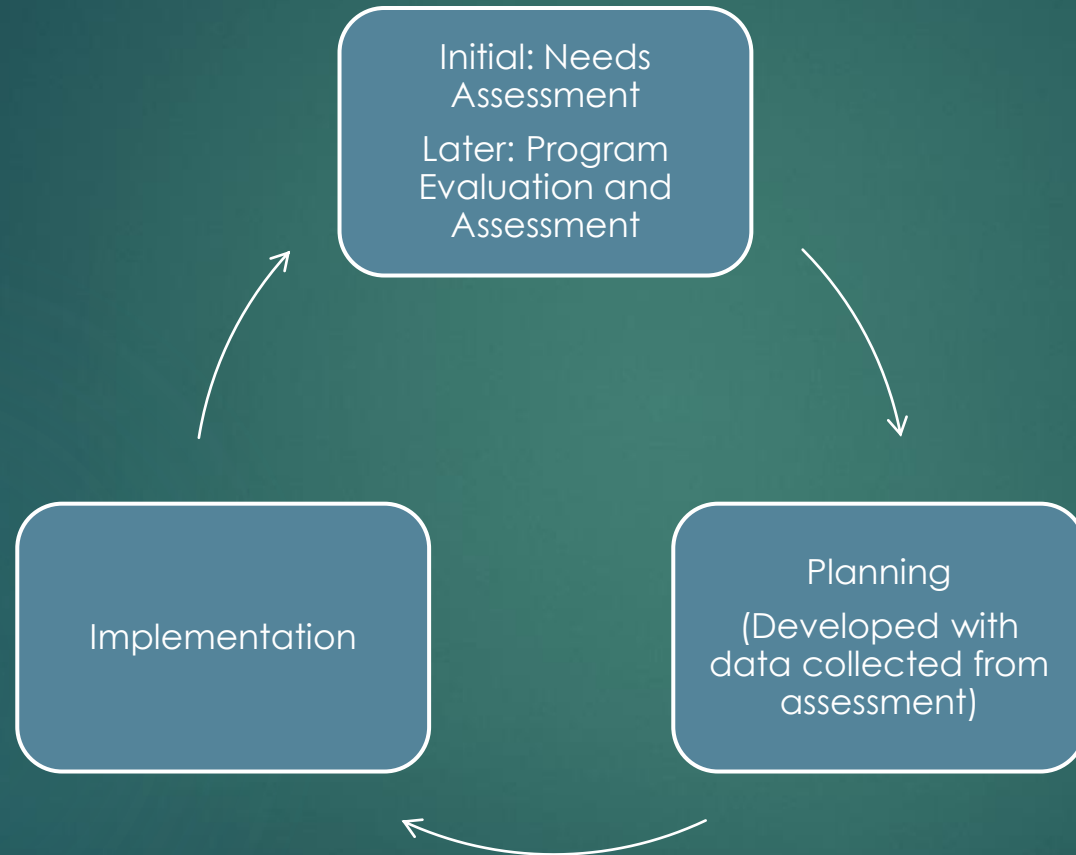
Program Design and Development

▶ Program Design and Development

- Life Cycle of a Program

- Scope

- Stakeholders

- Program Housing

- Program Staffing/Supervision

- Resources

- Intake and Outtake

- Implementation

- Evaluation and Assessment

▶ Life Cycle of a Program

- ▶ Program Scope

  - o Minimum use as determined necessary to resolve sex-based cases (e.g., facilitation, mediation, restorative practices)

  - o Expanded use to include broader student conduct and/or employee concerns

  - o Broad application of conflict resolution for all members of the educational/work environment

  - o 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)

  - o Codifying the Program (KEY) – Whatever approach is decided, the application should be codified into institutional regulations, procedures, and operations; this provides transparency, predictability, and assurance of ongoing delivery (e.g., Title IX and other civil rights procedures, code of student conduct, employee handbook, etc.)

▶ Stakeholders – who should be involved?

- Immediate stake-holders (e.g., Title IX, student conduct, human resources, residence life, ombudsperson)

- Broader stake-holders (e.g., academic departments, student affairs, campus police, student government, Faculty Senate, local community conflict resolution group)

- Kindred Spirits – individual employees and/or members of the community who have shown an interest in conflict resolution, independent of where they work

- Kindred Critics – influential people who might be critical but whose support could be valuable

▶ Program Housing – where will the practices be based?

- o Title IX/Compliance Office; generally not recommended as a first choice

- o Attached on an ad hoc basis to whatever office is providing services; again not a preferred option as it tends to create gaps in administration and practice

- o 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)

- o Development of a "stand alone" office/center dedicated to providing conflict resolution services

► Program Staffing and Supervision

- o Are the responsibilities incorporated into job descriptions? Is there a separate (perhaps supplemental) job description?

- o What positions or portions of positions are required?

- o Who will these positions report to?

- o Who will be supervising and conducting performance appraisals?

▶ Resources

- Staffing/Personnel
  - Intake/Outtake
  - Administrative Support
  - Practitioners
  - Supervisor(s)
- Training and Professional Development
- Technology
- Marketing and Educational Outreach
- Assessment Efforts
- Administration ("keeping the lights on")

▶ Intake and Outtake

  o Intake:

    o Screening cases for access to services

    o Intake interviews

    o Intake forms and case file preparation

    o Assignment of facilitator(s)

    o Preparing the environment (real or virtual)

  o Outtake:

    o Notifications and implementation

    o Process evaluation by facilitator(s) and parties

    o Monitoring compliance with any resolutions

    o Follow up at scheduled intervals

► Implementation

- o Over what time period will the program be implemented?

- o Is this a full implementation or are services staggered?

- o Is full staffing immediate or phased in over time?

- o Who is the intended audience for services?

- o How is this audience being notified of the services?

- o How will you know if program implementation is successful - what realistic markers or indicators can be established?

▶ Evaluation and Assessment

  o What intended and realistic outcomes do you have for the program/services in the first year? Three years? Five?

  o What means do you have in place to collect data as it relates to meeting your intended outcomes?

  o 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)

  o Develop an Assessment Cycle

    o Data Collection

    o Internal Program Review (e.g., CAS Assessment)

    o Benchmarking

    o External Program Review

Best Practices in Training
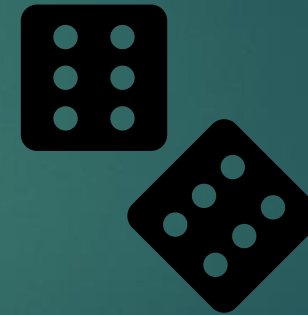
▶ Training is not just about the material…

The Novice

Mindset

The Practitioner

Training

Skills

▶ The Mindset

o Conflict Resolution Training

- o Conflict and Conflict Styles

- o Understanding One's Own Conflict Style Preferences

- o Influences on Conflict

- o Culture and Conflict (Cultural Context, Individual Narratives, Multi-partiality)

- o Groups and Conflict

- o Power and Conflict

- o Conflict Resolution Methods and Gate-keeping

▶ The Skills

- Facilitated Dialogue Training
    - Intake and Preparation
    - Joint and Shuttle Facilitation
    - Opening Statement
    - Facilitating Narratives
        - Listening and Questioning Skills
        - Re-framing Communication
        - Identifying and Communicating Needs
        - Facilitating Responses
        - Identifying Common Ground
        - Managing the Differences
    - Outtake Protocols

► The Skills

- Mediation Training
  - Intake and Preparation
  - Mediation and the Mediator
  - Ethics in Mediation
  - Listening and Questioning Skills
  - Steps of the Mediation Process:
    - Opening Statement
    - Sharing a Narrative
    - Defining Shared Interests
    - Creating the Future
    - The Agreement
  - Advanced Culture and Conflict (Stereotypes, Privilege, Microaggressions)
  - Direct Exchanges
  - Addressing Resistance
  - Caucusing
  - Impasse
  - Outtake Protocols

- ▶ **The Skills**
  - ○ Restorative Practices Training
    - ○ Intake and Preparation
    - ○ Restorative Methods
      - ○ Informal (Circles, Conferences, Shuttle Conferences, Surrogacy)
      - ○ Formal (Conferences, Panels)
    - ○ Opening Statement
    - ○ Steps of the Restorative Process
    - ○ Outtake Protocols

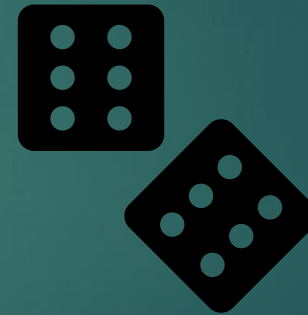 *plus some shared content from mediation training*

Revisiting the Pre-Test

▶ A quick pre-assessment

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Where would you begin?

► What if…?

I was given this direction when I took over as the director of a student conduct program that did not include other conflict resolution services. The vice president thought it was a good idea but had never been involved with formal conflict resolution services during his years in higher education.

So how did my staff and I proceed?

▶ The first year…

- Needs assessment with specific stakeholders to identify

- Started with limited scope (peer-based mediation only) – selected and trained mediators

- Conducted educational programming for university offices and student organizations

- Secured program funding for the first three years through a federal grant

- Reached out to local schools to develop educational and conflict resolution partnerships

- Reached out to local conflict resolution group and to neighborhood associations

- Implemented the program within six months as directed

► The next few years…

- o Human Resources brought conflicts to our staff mediators for resolution

- o Affirmative Action office took an interest in the program and collaborated with student conduct and human resources to expand mediation services to all students, faculty, and staff

- o Caseload steadily increased for the first three years, then collapsed on the student side – we had stopped doing the networking and outreach that had helped establish the program, so we had to start over on student referrals

- o A minor in Peace Studies was created that included our staff teaching conflict resolution courses

- o Code of Student Conduct amended to ensure availability of conflict resolution services as a function of the student conduct process

- o Operational budget was amended by the division to provide for basic operations once the federal grant expired

► Longer term…

- ○ Internal assessment efforts aided the program in identifying its strengths and weaknesses

- ○ Community inclusion was utilized to move towards a new approach to student conduct; a student conduct model based on both social justice and the broad application of multiple conflict resolution options; student government and key members of the Academic Senate became allies in this philosophical shift

- ○ Collaborated with the Social Work department to offer a course to train mediators, and this course was approved by the local court as meeting the requirements for those wishing to conduct court mediations

- ○ A student organization was established to engage in educational outreach activities, seeking to further expand the referral base

▶ Finally…

  ○ I 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!**

Live Q&A Session
Tuesday, October 6
1:30 – 2:00 pm ET

For additional questions following this program, you may contact me at olshak.rick@gmail.com