



Mediation in Title IX and Civil Rights Matters

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DAN SCHORR, LLC

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DAN SCHORR

President

New York



Dan Schorr is a former criminal prosecutor and municipal inspector general with more than 25 years of legal and investigative experience. He manages a variety of complex assignments, including investigations into sexual misconduct, Civil Rights, and fraud allegations at educational institutions, corporations, and government entities. In addition to specializing in Title IX investigations, Dan assists higher education and K-12 schools by conducting policy and program reviews, training personnel on all aspects of Title IX and Civil Rights compliance, and serving in hearing officer and Decision Maker roles. Dan is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

ALYSSA-RAE MCGINN

Vice President

Boston



Alyssa-Rae McGinn has extensive experience serving as an investigator, decision maker, hearing chair, mediator/informal resolution facilitator, and interim Title IX Coordinator, with particular expertise in applying regulatory requirements and best practices in complex matters of sexual misconduct and identity-based harassment at educational institutions. Alyssa-Rae balances a compassionate understanding of the difficulty parties face being involved in such matters with the importance of remaining compliant with relevant law and policy.

JENNA FARRELL

Investigator

Albany



Jenna Farrell specializes in investigations of sexual misconduct and discrimination allegations based on sex, gender, and race. She was previously an intern in Kroll's Business Investigations & Intelligence practice where she worked on a wide array of investigations including due diligence, fraud investigations, and pro bono human rights matters. Prior to Kroll, Jenna interned at the Washington County District Attorney's Office in New York State focusing on cases of sexual misconduct and domestic violence. She is a pre-approved Sexual Misconduct Investigator for the United Educators ProResponse Expert Services Benefit.

What is Mediation?

- Facilitated conversation, including joint sessions and private caucus sessions
- Parties must be on equal footing and able to compromise
- Opportunity for each party to listen to one another and be heard
- Opportunity to agree on how to move forward
- Driven by the parties

Mediation as Informal/Alternative Resolution

- In Title IX and Civil Rights cases, mediation can be used at different points
- Informal measure – mediation can be used before a matter ripens into a complaint to bring parties together and resolve issues
- Alternative resolution – mediation can be used once a complaint has been initiated to circumvent the investigation/hearing process and resolve the complaint
- In either use, mediation is always voluntary

When is Mediation Appropriate?

- The complaint is not about allegations involving violence
- Parties are comfortable speaking with one another
- Parties are in relatively equal power positions
- The alleged policy violation is part of a broader conflict
- Parties must continue to coexist or work together
- A trained facilitator is available to run the process
- Your state law does not prohibit its use in this type of case

The Mediation Process

- Assess the case to determine the appropriateness of mediation
- Transparently explain mediation as an option to the parties
- Obtain parties' willing consent to proceed with mediation
- Identify trained facilitator
- Parties describe their positions and goals verbally or in writing
- Facilitator begins the mediation with an introduction and parties' opening statements
- Facilitator guides parties through joint discussion or shuttles between parties in private caucuses, focusing on both tangible and intangible goals
- Parties agree to resolve with specific terms, or mediation ends without agreement

Ensuring Valuable Mediation

- Mediation can be valuable, even if the parties do not reach an agreement
- Parties have an opportunity to hear one another and be heard, better understand each other's positions, and better understand their own goals
- Successful mediations focus on tangible terms as well as intangible wants and needs
- The goal of mediation is for the parties to come together, listen to one another, and identify a middle point where they can feel issues are resolved – reaching an agreement without achieving these goals is not a successful mediation
- Mediation is valuable when the parties own the process and the resolution

Following the Mediation

- The facilitator or other appropriate person should document the terms of the agreement for parties to approve and keep
- Check in with parties after the mediation
- Ensure parties have an outlet for addressing new issues that arise or violations of the agreed-upon terms
- If the mediation was to resolve a conflict involving a wider community, address the ripples
- Mediation may not resolve everything – or anything – and a full investigation/hearing process may be appropriate
- Continue to support the parties as they move forward

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"Dan Schorr taps his years of real-world experience investigating sexual misconduct allegations to deliver a suspenseful, propulsive, and heart-wrenching novel - *Open Bar*."

—Gretchen Carlson, Journalist, co-founder Lift Our Voices, Female Empowerment Advocate, Author



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