TRAPS, TIPS AND TOOLS

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Missy will transition to WLR Law on January 1, 2021

About Us

Darci Heroy is the Director of Strategic Partnerships at Grand River Solutions, and regularly acts as a mentor, interim coordinator, and resource for our Northwest clients. Darci has served in various Title IX related institutional roles, including as Title IX Coordinator and Chief Civil Rights Officer, performed and directed hundreds of complex investigations, and audited and restructured campus wide systems responding to equity complaints. During over a decade of labor and employment work, she has presented countless hours of trainings and developmental coaching, served as a civil rights investigator for the State of Oregon, and as a contract attorney for both employer and union labor firms. She is available way too much at darci@grandriversolutions.com

Missy Matella is currently the Senior Director of Employee and Labor Relations and Associate General Counsel for the University of Oregon. She is transitioning to work for Watkinson Laird on January 1, 2020. Missy has over a decade of experience as an employment, labor, business, public sector and higher education attorney and has worked as both outside and inside counsel, and as senior leadership for large institutions of higher education and private organizations. Missy uses her first-hand knowledge of the realities of implementation to provide practical legal advice with the goal of not only managing risk, but coming up with solutions that appropriately balance operational needs and creating positive work cultures for clients and their employees. Her new email address is: MMatella@WLRLaw.com

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Traps, Tips and Tools

The 5 Cs of a Non -Formal Process

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The 5 Cs of Non-Formal Resolutions

Clarity

Capacity[2]

Communication

Consistency and Compliance

Clarity

Culture Change Tools

- Climate Surveys
- Training
- Group Meetings
- Team Building
- Role Clarifications
- MOUs
- Policy Changes/Audits
- Review panels

Group

Agreements

- Focused on culture
- Focused on conflict
- Focused on atmosphere

Training

- Focused on discrimination and harassment
- Respectful and inclusive workplace
- Difficult conversations
- Supervisor

Counseling, support measures, emergency measures, interim measures, coaching, training, development, mediation, facilitation, alternate dispute resolution, restorative practices, restorative justice, discussion, apology, acknowledgment of violation, negotiated interventions, rehabilitation, restitution, settlement, brokered agreements……….

Oh My!

Multiple Individuals

- Mediation
- Shuttle Diplomacy
- Facilitated Dialogue
- Work Agreements
- Supportive Measures
- Administrative Leave
- Other Leave
- Changes to working location, hours, reporting etc.
- Discipline? Remedies?

One Individual

- Coaching
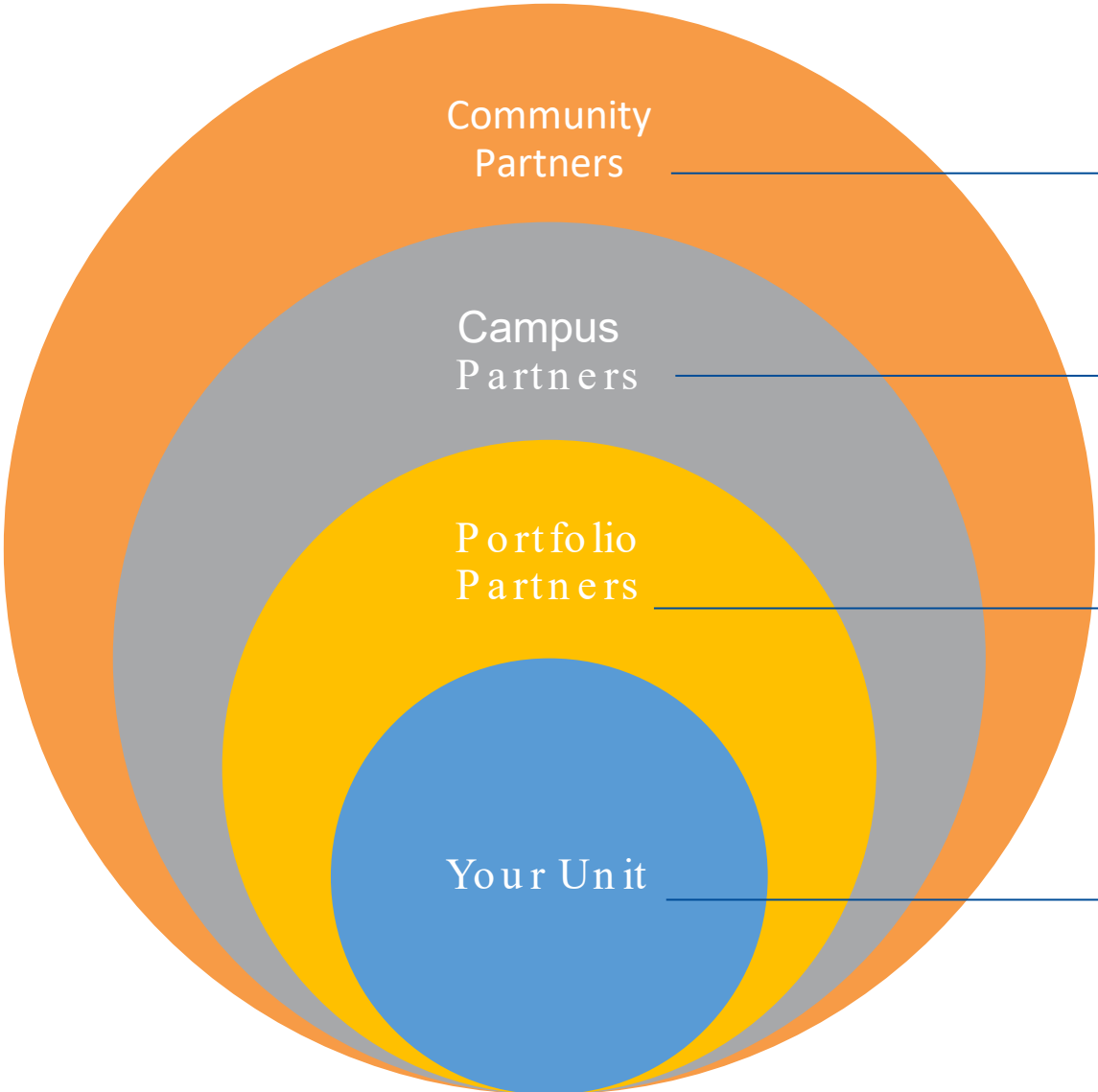- Training
- Supportive Measures
- Discipline?

Capacity

- Do you have the people?

- Do they have the time?

- Do they have the training?

- Do you have the cultural and campus capacity?

- Do you have the capacity and systems needed to operationalize the process?

  - What about the remedy?
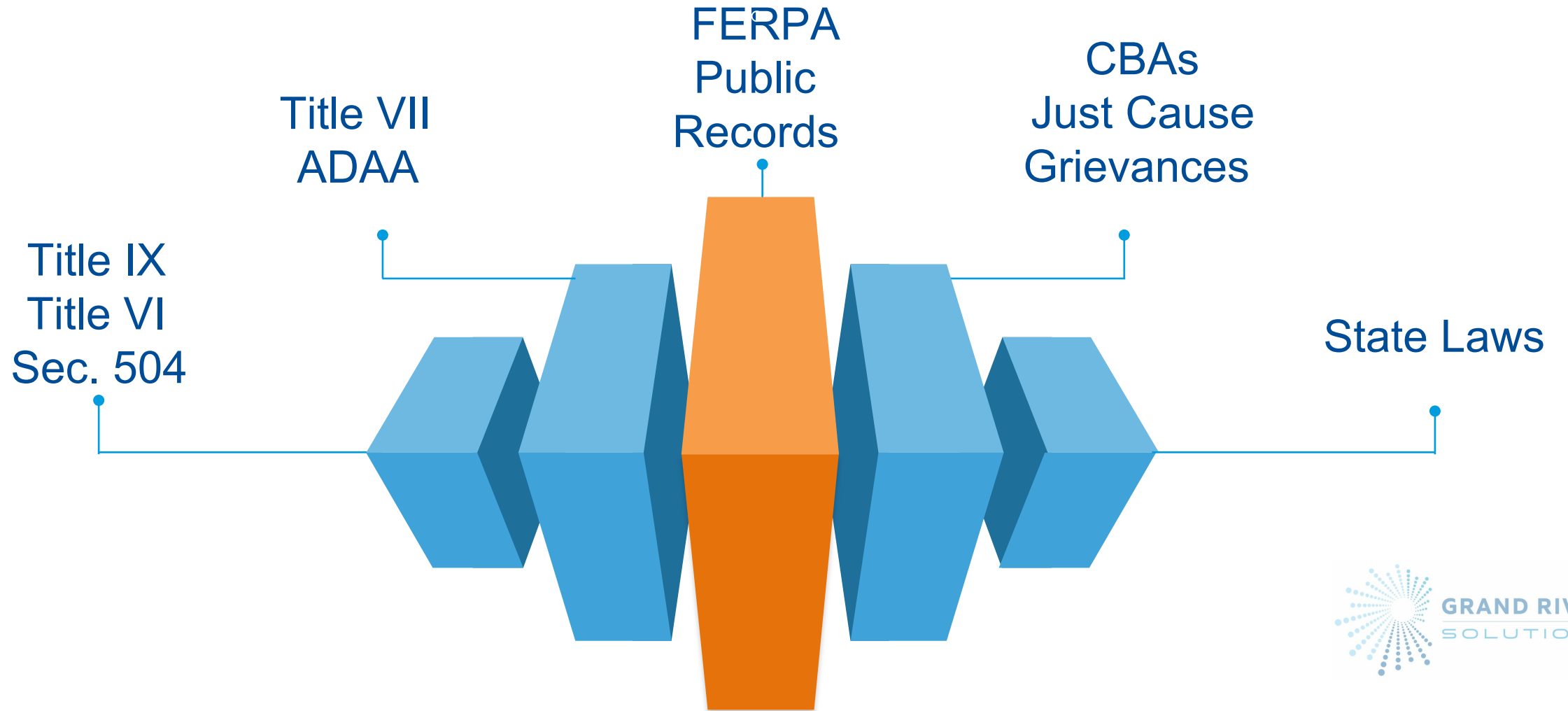
Communication → Information

Have you communicated with the parties regarding:

- Documentation
- Process Timelines and Outcomes
- Finality
- Success or Failure
- Compliance Requirements
- Risks
- Transparency

- Information Sharing and Protection
  - Privacy
  - Confidentiality
  - Privilege
  - Records
  - Access

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Consistency

- Discipline and Corrective Action
    - Comparisons and Similarities, Benchmarking

- Does the non -formal process or resolution match the stage in the process?

- Discrepancies
    - Documentation, Reasoning, Risk

- Supportive Measures and Access
    - How communicated? Implemented? Standardized?

- How are you ensuring consistency?

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Compliance

Title IX
Title VI
Sec. 504

Title VII
ADAA

FERPA
Public
Records

CBAs
Just Cause
Grievances

State Laws

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Title IX and Informal Resolutions

Title IX

Title VII/State Laws

Informal Resolution

Must include:

Written notice to the parties disclosing the allegations; requirements of the process; when informal resolutions precludes resuming a formal complaint; consequences resulting from process; records that will be maintained or could be shared;

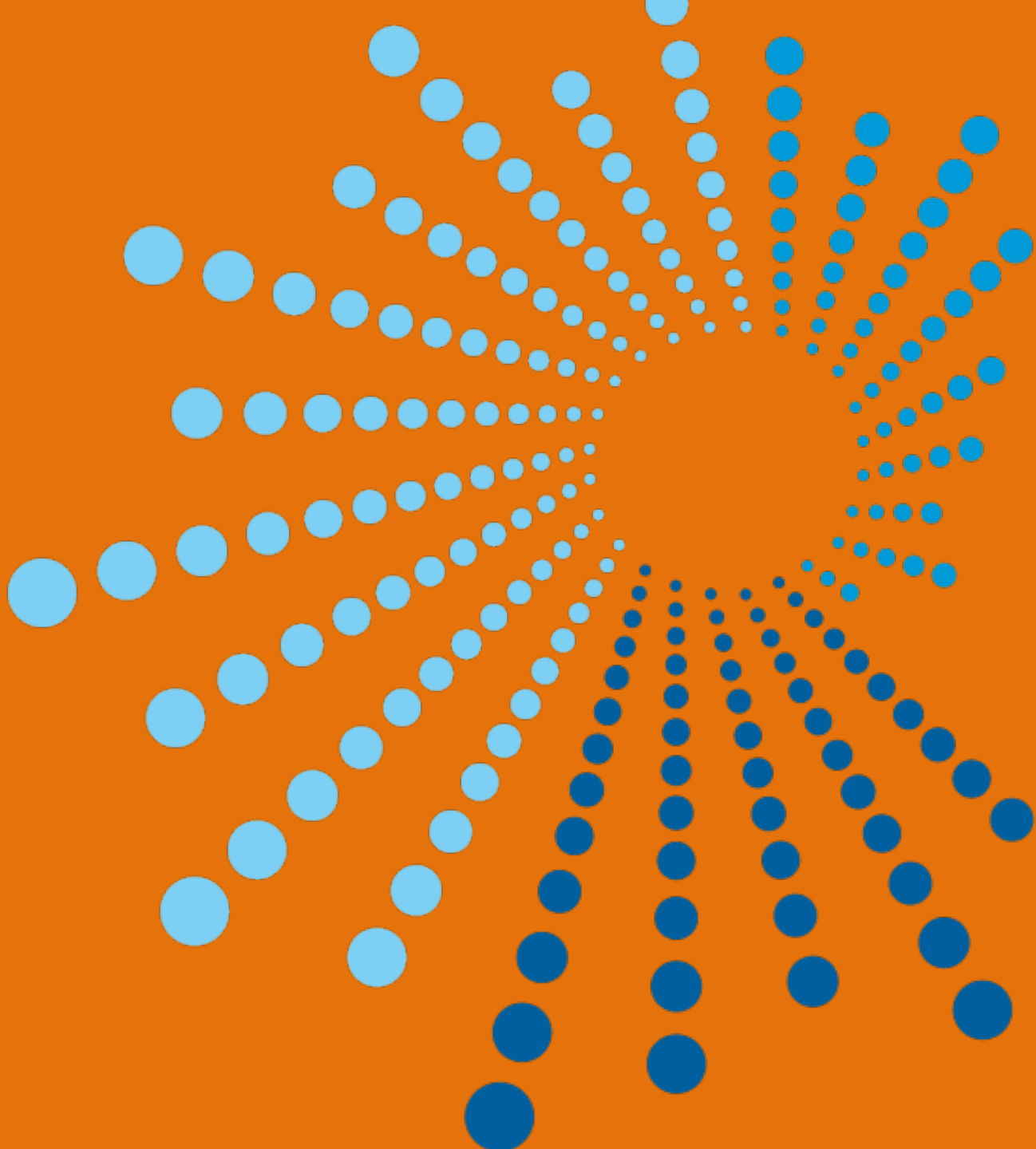Written, voluntary consent.

Schools Can

- Explore informal resolution:
- When school does not have jurisdiction;
- When the complainant does not want to move forward;
- When the facts do not support a policy violation.

Schools Cannot

- Condition formal process on participating in an informal process;
- Condition informal resolution on waiving rights to participate in or restart formal;
- Offer informal before a 'formal complaint' is filed;
- Offer informal for student claims of harassment by employees.

- Discriminatory harassment (including sexual harassment) in the workplace;
- Generally broader than TIX;
- Title VII requires action to stop harassment, prevent recurrence and remedy impact.
- Does the informal resolution meet that standard?

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Action Items

- Take 15 to 20 minutes after this presentation to:
  - Write down some of the non-formal resolutions you have done in the past that were successful.
  - Write down your unit's current capacity to engage in those types of resolutions going forward.
  - Write down some campus or external partners you can work with to build capacity. What is their capacity to do this work?
  - Write down some barriers to non-formal resolutions that exist now or in the future.
  - Using our 5 Cs to inform - strategize goals, necessary resources and a timeline for offering non-formal resolutions in the future.
  - Who do you need to discuss these with? - HR/ELR, GC, DEI, Compliance, CIO, Provost, Student Life, etc.

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Questions?