



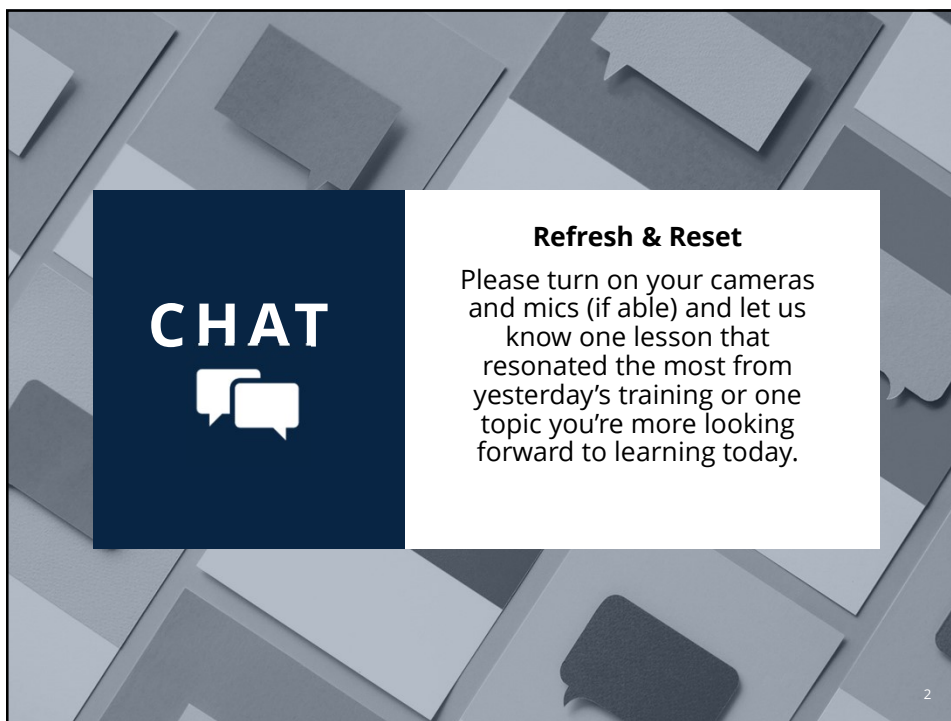
# AGENDA

**November 10, 2021**

- 6. The Mediation – Party Proposals & Ethical Considerations
- 7. Preparing the Agreement
- 8. Failure to Reach Agreement
- 9. Preparing for Mock Mediation
- 10. Module 1: Messaging, Fact Exploration, & Negotiation
- 11. Module 2: Dealing with Party Advisors and Saving the Mediation
- 12. Mock Mediation Debrief & Final Q&A

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## CHAT

**Refresh & Reset**

Please turn on your cameras and mics (if able) and let us know one lesson that resonated the most from yesterday's training or one topic you're more looking forward to learning today.

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# #6

## The Mediation – Party Proposals & Ethical Considerations

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### Party Proposals

- Explore the proposals
  - If unreasonable or will be rejected, discuss ways to modify the proposal.
  - Be subtly evaluative.
- Communicating a resolution proposal (i.e., terms)
  - Avoid criticism of the proposal unless asked or unless you believe your opinion will not hinder further discussions.

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## Unreasonable Party Demands


- Won't lead to agreement.
- Won't be able to achieve demand in the next stage.
- Won't be seen as a compromise gesture.
- May be met with an unreasonable response.

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## Techniques for Keeping the Parties Talking

- Bracketing issues
- Mediator's proposal 
- Time to consider
- Risks of no agreement
  - Future administrative process
  - Less control over outcome
  - Time considerations
  - Emotional considerations
  - Healing

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## Terms for Resolution

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Resolution Agreements, generally.

- Terms/outcome of the resolution are negotiable and may be restricted by the applicable policy.
- May result in party-imposed corrective or punitive measures for a Respondent; remedies for Complainant.
- Informal resolution agreements may become binding according to their terms (i.e., contractual in nature).
- Outcome should be enforceable by the institution.

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## Types of Remedies

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Types of remedies may include:

- Complainant or respondent relocate their housing.
- Each party is assigned to a different dining hall, workout facility, area of library.
- Complainant/Respondent withdraws from a class that the parties have together.
- Respondent writes an apology letter to Complainant acknowledging harm caused.
- Indefinite mutual no contact order

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## Types of Corrective or Punitive Measures

Types of corrective or punitive measures may include :

- Withdrawal from extra-curricular activities (athletics, student groups, Greek life, etc.)
- Avoidance of campus activities (athletics events, programs, concerts, etc.)
- Enter counseling or other educational programming relating to alleged misconduct.
- Temporary withdrawal from the institution
- Permanent withdrawal from the institution

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## Ethical Considerations

- Conflicts of interest
- Confidentiality
- Pressuring to reach agreement
- Subsequent disclosure of information
- Appearance of impropriety
- Disclosure of background
- Impartiality
- Mental competency of a party
- Autonomy informed consent
- Honesty
- Role boundaries
- Privileged communications

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## The Resolution Agreement

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- Resolution Agreement must be in writing signed by:
  - Complainant
  - Respondent
  - Title IX Coordinator(?)

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## Preparing the Agreement

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- Resolution Agreement includes:
  - Confirmation of voluntary participation.
  - The agreed-to terms of resolution.
  - Consequences for breach of the agreement.
  - Facilitator remained neutral, objective, and unbiased.
  - Institutional record keeping responsibility.
  - Confidentiality for the process, unless otherwise required by law or applicable policy.

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## Other Possible Terms

- The parties agree to waive right to appeal the resolution agreement (*optional*) and waive formal grievance process.
- Title IX Coordinator will facilitate the agreed upon outcomes.
- Non-disclosure clause
- Non-disparagement clause

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# #8

## Failure to Reach Agreement

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### Failure to Reach Agreement

- Explain...
  - The initial inability to reach an agreement does not mean we stop trying, unless a party says so.
- Methods of continuing dialogue
  - Date certain to resume
  - Follow-up phone conferences
  - Meeting with each party
  - Time to think
  - Time to consult others
- If efforts to resolve fail, formal complaint returns to the Grievance Process.

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## Fact Pattern

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Formal Complaint

**BB** Bailey Benson <bailey.benson@fictitious.edu> ↩ Reply ↩ Reply All → Forward ⋮

To TitleIX <TitleIX@fictitious.edu>

Dear Title IX Coordinator,

Please accept this email as my Formal Complaint against my ex-partner and fellow student, Quinn Quimby.

- On May 1, 2021, Quinn grabbed me by both arms tightly and threw me out of their dorm room.
- After we ended our relationship on August 15, 2021, Quinn posted harassing and humiliating sexual things about me on their Twitter account. Quinn has at least 9,000 Twitter followers and many of them are Fictitious State University students.

*Bailey Benson*

**Bailey Benson**  
Communications '22  
Fictitious State University

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## Strategy For Mediation

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ai ACADEMIC  
IMPRESSIONS

**#10**

**Mock Mediation Module  
I: Messaging, Fact Exploration &  
Negotiation**

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**ACTIVITY**



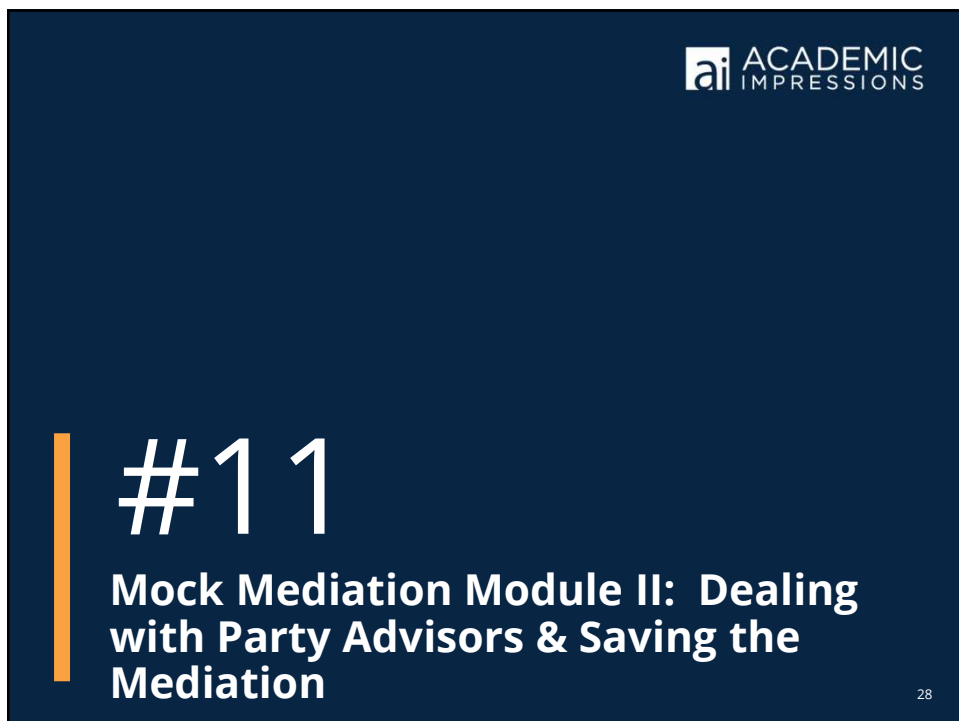
**The Mediation Part I:  
Messaging, Fact Exploration,  
& Negotiation**

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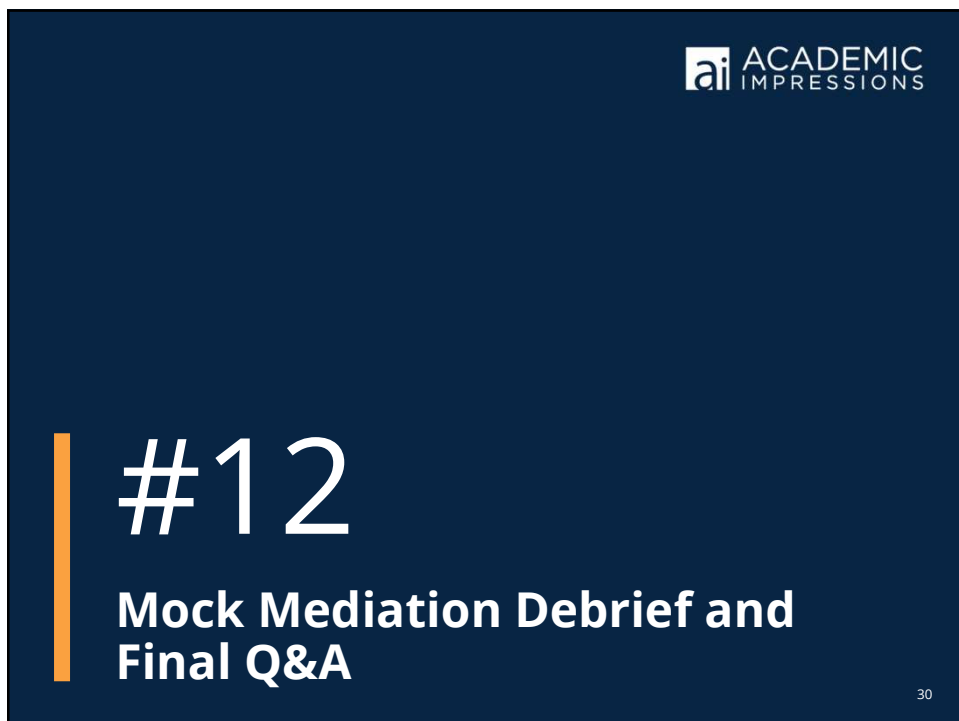
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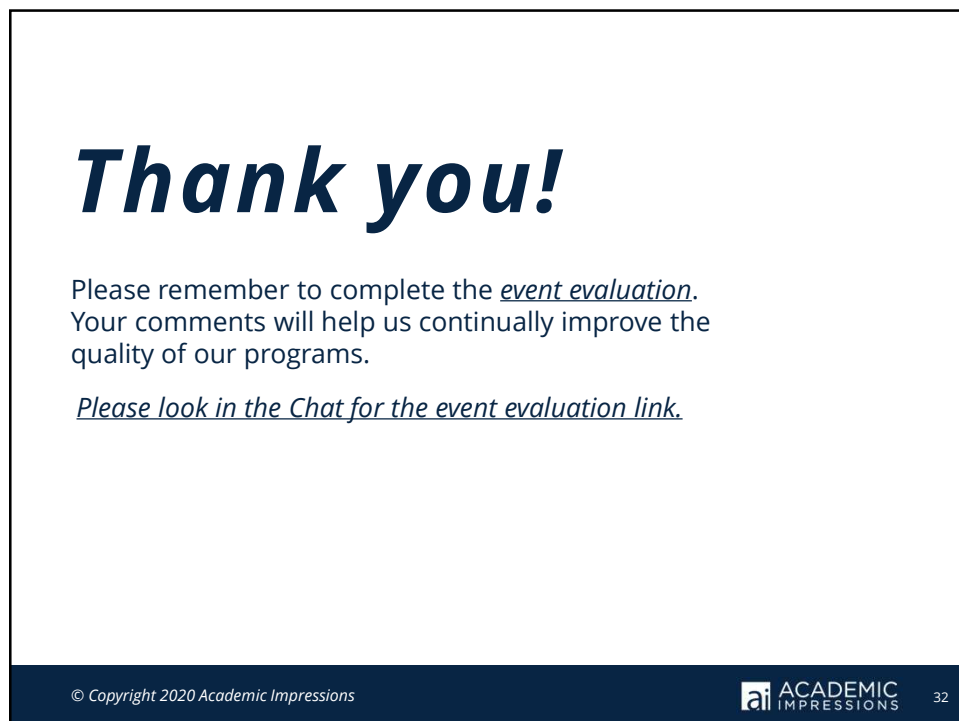
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