



Assessing for Informal Resolution Opportunities in Domestic and Dating Violence, Sexual Assault, and Stalking Cases

ADMINISTRATOR GUIDE

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INTRODUCTION

When it comes to responding to dating and domestic violence, sexual assault, and stalking (DVSAS) on college campuses, **what constitutes a “good case” for an informal resolution process (IRP)?** The reality is that whether an IRP, as opposed to an investigation and decision-making model, serves the involved parties becomes less about the incident itself and more about aligning with the unique needs of those directly involved and the needs of the broader institutional community.

As explained in the accompanying guide, “Designing and Implementing Informal Resolutions: Key Considerations for Colleges and Universities”, **informal resolution is an umbrella term, covering a range of resolution processes and practices considered alternative to adjudication.** Informal resolutions are also sometimes referred to as adaptable resolutions or alternative resolutions. In particular, distinguishing between processes that involve face-to-face dialogue, such as restorative justice conferencing or mediation, and those that utilize shuttle facilitation to create written agreements, can substantially inform whether and how an IRP proceeds.

Administrators seeking to assess the appropriateness of informal resolution for a specific case or under specific circumstances may use the following guide to help inform their assessment.

DEGREE OF CONSENSUS

Do the parties need some level of agreement about what occurred?

To participate in informal resolution, the significance of how much parties' accounts align largely depends on the degree of importance the participants place on any discrepancies. That is to say, at times, when agreed upon resolution outcomes do not differ regardless, varying accounts of what occurred may not prevent IRP from proceeding. Nonetheless, though parties may not have the same perception regarding consent or the impact of an incident, situations in which a respondent asserts the reported information is entirely or largely inaccurate are best suited for investigation.

COMPLAINANT NEEDS

What would the complainant like to achieve as a result of a resolution process?

Complainants access reporting and resolution options for many different reasons, and while they may not always know or clearly articulate what they hope to see as procedural outcomes, they may voice goals and needs that warrant careful attention. Examples include a desire for the respondent to understand the impact of their actions or for reduced likelihood that the conduct will recur. Identifying needs (such as, an enhanced sense of safety, validation, accountability, etc.) is essential to determining whether an IRP is positioned to meet those needs.

VOLUNTARY

Is there interest from both parties to address a matter through an IRP?

Participation must be voluntary and free of pressure or coercion. Connecting parties with advocates or other confidential resource providers can aid them in reaching voluntary decisions regarding participation.

SAFETY

Are there safety concerns or power dynamics that make informal resolution high-risk with respect to ensuring the parties' and campus community's safety?

IRPs should prioritize physical and emotional safety and promote complainant healing. Sufficient preparation and collaboration with specialized clinicians to assess participant wellbeing are essential when questioning the risk of health and safety of a party to self or others. It is also important not to conflate eligibility to participate in informal resolution with eligibility for parties to engage in direct communication.

RISK OF REVICTIMIZATION

To what extent is the respondent accepting responsibility and open to acknowledging the impact of their actions?

Facilitators should engage in extensive preparation with the parties to listen for any minimization or victim-blaming and the ability to adhere to expectations for conduct during IRP. Gauging the respondent's openness to deepening their understanding or their desire to repair harm at the onset and throughout an IRP is essential to prevent revictimization.

PROCEDURAL FLEXIBILITY

Are there restrictions based in law or policy that prohibit using informal resolution in particular circumstances?

Certain laws may impact eligibility for informal resolution, such as states with restrictions on informal resolution in cases involving allegations of sexual assault or sexual violence. Furthermore, some laws pertain specifically to the use of mediation, which does not preclude an institution from utilizing other forms of informal resolution.

OPTICS

Are there community perceptions regarding informal resolution that are influencing its specific use and require attention?

Potential misperceptions that informal resolution is only appropriate in “lower level” cases can unjustifiably influence eligibility in individual situations. Addressing valid concerns as to whether the process will meet complainant and community needs, helps to establish informal resolution as a viable path to meaningful accountability, as does reinforcing that IRP may include agreed-upon loss of privileges or even separation.

AVOIDING BIAS

Are resolution options offered impartially?

Institutions hold broad discretion in determining whether to make informal resolution available in a given situation. To minimize the risk of bias or discrimination in eligibility, assess for any preferential treatment and ensure informal resolution options are made available to parties regardless of identity or protected class.

DISCIPLINARY RECORDS

Does the complainant value the respondent having a disciplinary record?

IRPs are often “non-disciplinary,” and do not result in a respondent having a record of being “found responsible” or in violation of policy. Though informal resolution agreements may involve interventions and accountability measures that resemble potential sanctions, complainants seeking a disciplinary record for a particular policy violation will likely need to pursue investigation and adjudication – unless the institution makes it possible for a reportable disciplinary record to flow from an informal resolution agreement.

INFORMAL RESOLUTION RECORDS

Do the parties have clarity on what records are maintained from informal resolution and where information may be utilized?

Beyond compliance alone, transparency as to how information relating to an IRP may be shared, internally and externally, by the institution and the parties is essential for voluntary participation. With privacy considerations so central in DV/SAS cases, a prerequisite of informal resolution involves the parties feeling fully informed of the limitations of confidentiality and any perceived risks of participation.

PROCESS AND FACILITATION

Is a trained facilitator available?

Informal resolutions can vary substantially, from shuttle facilitation to restorative justice conferencing. Some IRPs focus solely on the creation of a written agreement, while others center around dialogue. They require skilled, trained, and experienced culturally conscious facilitators, especially if bringing parties together. Assessing whether an IRP is feasible depends not only upon the desire or readiness to participate of the parties, but also the institutional capacity to facilitate effectively in a given situation.

For specific questions about your jurisdiction, how to use this guide or any other request for consultation or support, please contact VRLC at ta@victimrights.org.