



Designing and Implementing Informal Resolutions: Key Considerations for Colleges and Universities

ADMINISTRATOR GUIDE

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INTRODUCTION

Informal resolution is an umbrella term, covering a range of processes and practices considered alternative to adjudication in cases of dating and domestic violence, sexual assault, and stalking (DVSAS) at institutions of higher education. Often including pathways such as mediation, restorative justice, and shuttle negotiation or facilitation, informal resolutions are sometimes referred to as adaptable or alternative resolutions. Despite their name, these processes require no less intentionality than those involving investigation or hearings to respond effectively to sex and gender-based harm.

ABOUT THIS GUIDE

This guide serves as a resource for administrators to develop, enhance, and implement informal resolution processes (IRP) in cases of DVSAS. It presents the benefits of incorporating this option and explains critical distinctions from formal grievance procedures. It outlines key considerations for designing these processes in ways that are legally compliant and best meet the needs of the involved parties and institutions. Finally, where Title IX intersects with informal resolutions, restrictions and requirements are summarized.

Informal resolutions may not be feasible, of interest, or appropriate in all cases of DVSAS. This resource complements a separate document, entitled, *Assessing for Informal Resolution Opportunities in DVSAS Cases: A Guide for Administrators*, which offers guidance on how to determine whether a specific situation is well suited for an informal resolution.

WHY INFORMAL RESOLUTION?

Informal resolution options differ substantially from formal investigation and hearing processes, but should not equate to lesser accountability or compromise campus safety. Because they provide non-adversarial, voluntary, and collaborative decision-making processes, the benefits of offering informal resolution options abound.

Unlike investigations focused on fact-finding and policy, IRPs prioritize healing, responsibility-taking, and active repair. Parties have more influence over the results of the process, creating opportunities to cultivate outcomes known to be counter to perpetuating violence, such as resilience, safety, connection and community.

The range and adaptability of informal resolution options recognizes that every case has nuances and what parties want and need for accountability and healing varies. As a result, parties may value completion of specific agreement items, find meaning in mutual participation in the IRP itself, or both. Resolutions that include facilitated dialogue, such as restorative justice conferencing, and sometimes even those involving shuttle facilitation, yield significant benefits for some participants, by creating opportunities to get questions answered or deepening understanding of the impact.

Lastly, not only might an **informal resolution better meet the needs of specific parties and institutional communities**, but the existence of informal resolution options may open avenues for greater numbers of reporting parties.

KEY ELEMENTS

Here are key elements for administrators to consider when designing and implementing informal resolutions in cases of DVSAAS in order to ensure accountability, support wellbeing, prevent revictimization, and comply with legal requirements.

► **Types of Resolution Process**

Not all informal resolutions are the same. Some involve dialogue, such as restorative conferencing and mediation, while others allow parties to reach resolutions without direct communication, such as shuttle facilitation. Determining which processes to offer under the umbrella of informal resolution requires developing a clear understanding of their distinctions. While both mediation and restorative justice (RJ) conferencing use a neutral facilitator to assist the parties in reaching a resolution collaboratively, mediation confers a level of mutuality that often makes it inappropriate (and at times, legally prohibited) in DVSAAS cases. Alternatively, RJ requires greater role identification, typically resulting in action steps a respondent will take to repair harm and make things right, to the extent possible.

► **Facilitator Selection**

The types of informal resolution an institution offers also depends on the availability of well-trained, experienced and culturally conscious facilitators. Under Title IX, facilitators must meet specific training requirements, outlined on pages 8-10. Selecting an appropriate facilitator requires considering the person's role at the institution, as well as whether they hold other responsibilities under the policies or procedures used to respond to cases involving DVSAAS. While permissible for the Title IX Coordinator to serve as the facilitator, potential (and recommended) restrictions on the use of statements made during IRP in hearings or decision-making may compromise the Title IX Coordinator's role in overseeing grievance procedures, should the IRP not proceed.

KEY ELEMENTS, CONTINUED

▶ **Discretion**

In accordance with applicable laws and institutional policies, institutions have the discretion to determine whether and what form of IRPs to make available, both generally and in individual circumstances. Rather than enacting blanket prohibitions on the use of IRP in certain cases based on the severity of misconduct, institutions should consider the needs and desires of the involved parties and remember that an informal resolution should not compromise safety or accountability, nor does it always involve facilitated dialogue. In other words, there may be circumstances in which a respondent accepts responsibility for their actions and agrees to an informal resolution that includes the accountability measures required to meet the needs of a complainant and the institution.

Additional guidance on how to determine whether a specific case is appropriate for a particular informal resolution pathway can be found in the accompanying guide: *Assessing for Informal Resolution Opportunities in DVSAS Cases: A Guide for Administrators*.

▶ **Federal & State Laws**

Review of applicable state and federal laws pertaining to the use of informal resolution in cases of DVSAS will also inform the way in which campuses may offer IRP. For example, state law may limit the use of mediation in cases of sexual violence or any informal resolution in cases of sexual assault. Additionally, clearly communicating any implications for IRP in circumstances falling under Title IX will assist parties in understanding their options.

KEY ELEMENTS, CONTINUED

► Policy & Procedures

IRPs are inherently more flexible than formal resolution processes, yet equally intentional. Ideally, they offer adaptability to customize resolution paths according to participants' needs. Nevertheless, institutional policies and procedures must offer sufficient detail to assist potential participants in visualizing the process. Policies must reference the consequences and options when a resolution is not reached or a party discontinues participation. Developing resources such as process maps and FAQs, written from the parties' perspective, can also help parties understand the distinctions between IRP and formal resolution processes and select the most suitable option for their situation. Questions and answers may address common concerns such as, "What happens if I want to pursue informal resolution and the other party does not?" and "What happens if I change my mind?"

► Notice

Before an IRP begins, parties need to understand their options, not only by reviewing policies and procedures, but also in the context of their specific situation. Sometimes in DV/SAS cases, the involved individuals have communicated about what occurred or are aware that the institution has been notified. Other times, a party may first learn of the allegation from an administrator providing them with notice. If applicable, it can be helpful to include any requests made to resolve the matter through informal resolution. Additionally, when feasible, notifying parties of forthcoming correspondence by phone, offering to meet to discuss available options, and connecting parties with confidential resources or support persons can also assist them in determining whether an IRP is the right fit for their situation.

KEY ELEMENTS, CONTINUED

▶ Participation Agreement

In collaboration with the Title IX Coordinator and any support person(s) of their choice, both complainant and respondent must be invited to make an informed, voluntary decision to initiate an IRP. A participation agreement can help outline the terms of their participation and solicit confirmation of the parties' understanding of their rights and the voluntary nature of the process. Components of the participation agreement may include, but are not limited to: the purpose of the IRP; the difference between participation and a disciplinary finding; who may end the process (i.e. the parties, the facilitator, etc.); how information from the process may be used, including when a separate investigation may or may not be initiated; and what happens when the process is complete or if the respondent does not comply with agreed upon terms.

▶ Participants

IRPs should afford parties the option to be accompanied by a support person and provide transparency as to potential attendees in advance of joint sessions. This allows parties to decide whether to participate based on agreement regarding the invited attendees. Consideration of power dynamics, intersectionality, and cultural responsiveness is critical in determining participant composition. Some circumstances may lend themselves to the use of a surrogate impacted party, in lieu of the complainant, an option made available at the facilitator's discretion and agreed upon by the parties. The role of a surrogate impacted party, sometime utilized in what is referred to as vicarious restorative justice, is not to roleplay the complainant, but rather to give the respondent an opportunity to hear how someone may be affected by similar behavior and deepen learning and insight into ways to repair harm caused. Additionally, institutions have the option to involve an administrator as an active participant in co-constructing a resolution agreement. This involvement allows the informal resolution facilitator to stay neutral without taking control of the final decisions or outcomes, ensuring fairness in the process.

KEY ELEMENTS, CONTINUED

► **Transparency & Confidentiality**

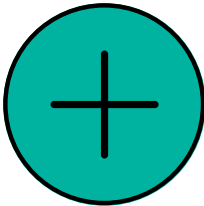
Parties must be informed about what aspects of the process will remain confidential, what records will be maintained, what information can be used as part of any formal resolution process that may follow or which may be subject to subpoena in the context of a criminal or civil process, and what information a facilitator or others may need to report as part of their mandatory reporting obligations. Often the records maintained, specifically, the classification of informal resolution as a non-disciplinary process, with participation not equating to a finding of responsibility for a policy violation, constitutes a key distinction between informal and formal resolution processes, that can have future educational and employment implications for participants. To the extent permitted by law, institutions should maximize the confidentiality of the IRP, by agreeing, for example, that notes taken during an IRP will not be maintained, that information obtained in the process will not be permissible in a formal resolution process, and committing not to open separate investigations or administrative action based on information shared, unless there is a significant threat of harm or safety to self or others.

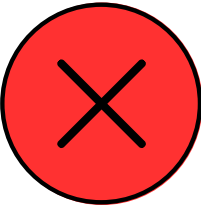
► **Resolution Agreement**

Often, an IRP involves the creation of a written resolution agreement, outlining mutually agreed upon items to be completed or adhered to by the respondent. Typically, the resolution agreement reiterates the terms listed in the participation agreement and agreed upon by the parties and institution at the onset of the IRP, such as the voluntary nature of the process and the distinction between participation and a finding of responsibility for violating policy. In addition, this document includes a description of the actions to be taken by the respondent, any due dates, and who will verify completion. The resolution agreement makes clear when the process is closed, the consequences for non-compliance, and whether the agreement may be taken into consideration for future sanctioning, should the respondent face disciplinary action for violating policy relating to separate allegations.

TITLE IX REQUIREMENTS

The 2024 Amendments to the U.S. Department of Education’s Title IX Regulations outlines specific requirements when offering and implementing IRPs. Summarized below, and pertaining to those cases falling under Title IX, these include:

Institutions MAY :	
	<ul style="list-style-type: none"> • Offer an IRP at any time prior to determining whether sex discrimination occurred under the Title IX grievance process • Decline to offer informal resolution despite one or more of the parties’ wishes

Institutions MAY NOT :	
	<ul style="list-style-type: none"> • Require or pressure the parties to participate in an IRP • Require waiver of the right to an investigation and determination of a complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right • Use as a facilitator for the IRP, the same person as the investigator or decisionmaker in the grievance procedures

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Institutions **MUST:**



- Obtain the parties’ voluntary consent to the IRP
- Inform the parties in writing of an offer of informal resolution and their rights and responsibilities in the IRP
- Ensure facilitators are trained in accordance with Title IX regulations, including on the rules and practices of the IRP and how to serve impartially, including by avoiding conflicts of interest and bias
- Use facilitators free of conflicts of interest or bias for or against complainants or respondents generally or an individual complainant or respondent

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Institutions must issue written notice to include:	
	<ul style="list-style-type: none"> • The allegations • The requirements of the IRP • That the parties’ agreement to a resolution at the conclusion of the IRP would preclude the parties from initiating or resuming grievance procedures arising from the same allegations • The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties • What information will be maintained and whether and how it could be disclosed for use in grievance procedures, if initiated or resumed (Note: Records documenting the IRP and the resulting outcome must be maintained for at least seven years)

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.