Informal Resolution Agreement Template For Colleges and Universities in Cases of Dating and Domestic Violence, Sexual Assault, and Stalking

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INTRODUCTION

"Informal resolution" is an umbrella term, covering a range of practices that are alternatives to adjudication including for cases of dating and domestic violence, sexual assault, and stalking (DVSAS) at institutions of higher education. Including pathways such as mediation, restorative conferences, and shuttle negotiation or facilitation, informal resolution processes (IRP) are sometimes referred to as adaptable or alternative resolutions.

Often designed to center healing and accountability for participants, these collaborative, voluntary processes may include facilitated communication or dialogue, the creation of a written resolution agreement, or both. In cases falling under Title IX, federal regulations require specific documentation related to notifying parties and obtaining consent to participate before beginning an IRP. However, beyond the obligation to maintain records of an informal resolution and any resulting outcomes, schools have more flexibility as to how they document the resolution itself. Additionally, institutions should consult any applicable state regulations and institutional policies that address requirements impacting informal resolutions.

ABOUT THIS GUIDE

This guide offers **a template for writing IRP agreements** that outline action items and terms agreed upon by the parties and institutions in cases of DVSAS. Because of the range and adaptability of these processes, informal resolutions will differ across campuses and cases, but typically, written agreements contain several categories of information:

1. **CASE INFORMATION**
2. **ITEMS FOR COMPLETION**
3. **TERMS OR CONDITIONS**
4. **CONFIRMATION**

For additional information about the use of informal resolutions in cases of DVSAS, see Administrator Guides:

- Designing and Implementing Informal Resolutions: Key Considerations for Colleges and Universities
- Assessing for Informal Resolution Opportunities in Domestic and Dating Violence, Sexual Assault, and Stalking Cases

While procedural language may vary by campus, here is a glossary of the terminology used in this guide:

Informal Resolution Process (IRP) - The range of voluntary, facilitated processes and practices considered alternative to formal investigation and adjudication.

Notice of Allegations - The written notice an institution sends to the parties [upon receiving a formal complaint of DVSAS] about the grievance process, including information about any informal resolution process options, what the grievance process and IRP requires, and any participation outcomes.

Participation Agreement - A document utilized at the start of the IRP to obtain informed, voluntary, written consent from the parties, informing them in detail of what it means to participate in an IRP.

Informal Resolution Agreement - The written document outlining the agreed upon outcomes (i.e. "the Informal Resolution") of a complaint reached by the parties using an IRP.

1 CASE INFORMATION

PARTICIPANTS

Include the names of the parties to the informal resolution agreement – specifying their role in the process, such as complainant, respondent, facilitator, and any other institutional representative participating in the agreement reached.

DATE OF THE AGREEMENT

Informal resolutions may be agreed upon by all parties simultaneously, such as during a mediation or restorative justice conference, or asynchronously, such as through shuttle facilitation, when a facilitator meets separately with involved parties to support them in collaboratively reaching a resolution. The informal resolution agreement should specify when the agreement goes into effect, typically once all parties have agreed to its contents.

Dates when specific items must be completed or go into effect are addressed on the next page.

This effective date has implications for the parties, as they maintain the right to withdraw from the IRP and resume the formal grievance process prior to all participants agreeing to a resolution.*

*2020 Amendments to the U.S. Department of Education's Title IX Regulations (34 CFR Part 106)

PURPOSE

Though the level of detail included may vary, a resolution agreement should make clear to which circumstances it corresponds or to which complaint it resolves and how. This may range from summarizing the allegations, listing the policy charges at issue, or simply referencing process dates, such as when the parties entered into an IRP or the date on which they received the notice of the allegations. Regardless of how in-depth the summary of events leading up to the resolution, the agreement should specify the nature of the informal resolution process.

This is particularly relevant as an IRP like mediation or restorative justice may be utilized as an alternative to a determination of responsibility by the institution as in a conference or a means through which a Respondent can accept responsibility for violations of policy. Examples of each are below:

- The parties elected to participate in a restorative justice process. A restorative justice process is a non-disciplinary informal resolution option centered on repairing harm.
- Informal resolution is available when a respondent wishes to accept responsibility and both parties want to resolve a case without a full investigation or adjudication. Respondent accepts responsibility for the following violations of policy...

2 ITEMS FOR COMPLETION

Resolution agreements outline arrangements or action items to which both parties agree as a means of resolving the allegation against the respondent. At times, such as when an IRP involves mediation, a resolution may include agreed-upon conditions or actions to be taken by both parties and/or the institution.

For clarity and emphasis on the voluntary nature of the IRP, agreement items may start with:

- Respondent will...
- Respondent agrees to...

Agreement items should be specific, measurable, achievable, realistic, and timely (SMART). The description of each item explains how the individual responsible can comply with or complete the item, what is required to prove completion, and by when. Provide names and contact information for any specific point people associated with each item.

At times, it may be of interest to the parties or the institution to reassess open-ended items, such as No Contact Orders or access restrictions, at a future date. In these circumstances, the agreement should specify the procedure for doing so, including whose responsibility it is to initiate outreach to assess or request changes to an item (i.e. the parties or the institution), when it is available, and who needs to approve of any revisions.

3 TERMS OR CONDITIONS

The agreement should list all applicable terms and conditions of the informal resolution and reference those acknowledged and agreed to by the parties when electing to begin the IRP.

VOLUNTARY AGREEMENT

Under federal Title IX regulations*, institutions may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.

Participation by parties to IRP and the outcomes agreed upon must be informed and voluntary. Institutions also maintain discretion as to the eligibility of the IRP and anything prompting the revocation or reevaluation of eligibility should be referenced. Stating this in the terms of the written agreement allows the parties to confirm they are informed of all available resolution processes and accompanying terms and conditions, have chosen to participate in the informal resolution process, and have engaged IRP voluntarily. Reiterate that prior to all parties agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.*

CONFIDENTIALITY

Voluntary and informed consent also requires that parties be fully informed of the limitations of confidentiality and any perceived risks of participation. This section of the resolution agreement documents these parameters, including whether the parties agree to keep any information regarding the resolution or process confidential and whether any information obtained during the course of the informal resolution process may be made available for use during any subsequent formal grievance or administrative process, without all parties' written consent.

*2020 Amendments to the U.S. Department of Education's Title IX Regulations (34 CFR Part 106)

Additionally, any legal limitations to keeping information confidential should be addressed. Parties can verify their understanding of these constraints by agreeing to statements such as:

- To the extent permitted by law...
- I understand that information documented and/or shared during informal resolution is subject to subpoena if a criminal or civil process is initiated...

Before agreeing to an IRP in cases falling under Title IX, written notice must be issued to parties informing them of any consequences resulting from participating in an IRP, including the scope of confidentiality, such as whether the IRP facilitator may serve as a witness in subsequent formal grievance processes. Ideally, to support parties' full participation, information obtained during the course of the IRP should not be made available for use during any subsequent or separate grievance processes.

RECORD KEEPING

The agreement should specify the records maintained, for how long, and when they may be shared. This includes whether parties may receive a written copy of the outcome with or without each other's names redacted and, if they may not receive a copy, how they may review one.

Importantly, parties must know whether or not the informal resolution constitutes a disciplinary record for the respondent, including whether it might be considered in any subsequent (un)related disciplinary proceedings at the institution. Often the classification of an IRP as a non-disciplinary process, with participation not equating to a finding of responsibility for a policy violation, is a key distinction between informal and formal resolution processes. Agreements may include statements, such as:

- I understand that participation in an informal resolution process does not constitute a finding of responsibility for a policy violation and is therefore not part of the respondent's disciplinary file; or
- The respondent's acknowledgement of harm in this process is not an admission of responsibility for the alleged policy violations and may not be characterized as such by any party to this agreement.

Alternatively, as permitted under Title IX*, an informal resolution process may offer a respondent the opportunity to accept responsibility for violating policy and all parties to agree to particular consequences.

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In these circumstances, the agreement provides verification of that, including how that acceptance will be considered a disciplinary record and the potential impacts on potential future disciplinary matters. Either way, inform parties that the agreement is part of their education record and may be released upon request, with the written permission of the parties, and in accordance with FERPA.

An institution may decide that notes taken during an IRP will not be maintained, but that all other official documentation associated with the case, including the resolution agreement, will be maintained for a period of seven years.* Even when informal resolutions are non-disciplinary, institutions should clarify when the records may be considered or accessed by disciplinary bodies. For example, it may be advantageous to acknowledge that if the respondent is found responsible for a violation of policy in the future, the agreement can be taken into consideration when issuing sanctions. Retaining the option to share a resolution agreement with a sanctioning body in the future supports an institution's ability to assign appropriate and effective interventions in response to misconduct and, as necessary, to avoid unknowingly repeating measures in future sanctions.

CLOSE OF CASE

When all parties reach agreement through an IRP, and it has been approved by the Title IX Coordinator or designee, it brings the resolution process to a close, even if agreed upon items for completion or compliance remain ongoing. To signify the conclusion of the informal resolution process, the agreement may include such statements as:

- I understand that once this agreement is fully executed, the institution will consider the complaint resolved; or
- I understand the parties are bound by its terms...

Because of the voluntary nature of informal resolution, typically, there are no accompanying appeal procedures. Additionally, the parties must be informed when an agreement precludes them from resuming a formal complaint arising from the same allegations.

NON-COMPLIANCE

Designate the administrative office or position responsible for determining whether a party has complied with all of the items and terms of the agreement and the potential consequences of non-compliance. In the event a party does not comply, a resolution agreement says where the matter may be referred and the potential for disciplinary action.

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Typically, institutions have policy language regarding "failure to comply" within their Codes of Conduct. However, these policies often refer to failure to comply with official directives from institutional officials or failure to complete sanctions. Expanding this section to include failure to complete a fully executed informal resolution, affords maximum flexibility. Alternatively, the agreement may be framed as a directive from the executing university official. Furthermore, the agreement may allow parties to affirm that failure to comply may result in the potential for the formal complaint to be refiled or to proceed through a formal grievance process.

4 CONFIRMATION

To avoid dispute or confusion, the Informal Resolution Agreement should obtain signatures or digital verification from the parties that each understands and agrees to the entirety of the resolution. You may wish to indicate whether other forms of electronic verification are sufficient, such as an email sent from a party's official institution-issued email address affirming agreement. When parties reach resolutions during facilitated dialogue, agreements may be hand-written or typed, printed and signed in-person. Multiple options exist when using video-conferencing platforms for dialogue, as well, including reading a resolution aloud and recording the parties agreeing or using live document signing programs.

The federal Title IX regulations do not specify the manner through which parties must agree to a resolution. It is required, however, that institutions obtain the parties' voluntary, written consent to the informal resolution *process*. A participation agreement aids in receiving verification from parties that they want to attempt an informal resolution process and that they understand the conditions of participation.

CONCLUSION

Once all parties have agreed to the resolution, including any institutional representatives actively participating in the IRP or providing approval in accordance with the institution's IRP policy, notify all parties of its execution. Rather than waiting to hear if something goes wrong, both complainants and respondents may benefit from periodic check-ins regarding the status of the completion of the resolution agreement. In particular, after actively co-creating an agreement, a complainant may wonder whether a respondent is successfully completing the items as agreed.

Offering the option of a notification or a meeting when the last resolution item is complete demonstrates a commitment to the wellbeing of all parties consistent with informal resolution. This communication offers an opportunity to convey what obligations have been met and what restrictions or conditions remain in place.