

Addressing Informal Resolutions in Dating and Domestic Violence, Sexual Assault, and Stalking Policies

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ABOUT THIS GUIDE

Drafting policies for addressing dating and domestic violence, sexual assault, and stalking (DVSAS) at institutions of higher education presents an opportunity to communicate to students and employees the institution's responsibilities, values and philosophies. Including informal resolution (IR) options in those policies plays a key role in expanding resolution pathways for survivors and those involved in incidents of DVSAS on college campuses and can be driven by those who were harmed in unique ways.

Informal resolution is an umbrella term, covering a range of voluntary processes and practices considered alternative to formal adjudication. Because IR inherently offers a degree of flexibility, drafting IR language in policies requires some nuance. Informal resolution descriptions must be robust enough to help parties understand what participation entails and how each resolution pathway differs. This guide is designed to assist administrators in drafting or building out IR descriptions that are straightforward, comprehensive, and transparent.

In the guide, we discuss:

- **THE PURPOSE OF IR**
- **HOW IR FITS INTO ANY POLICY USED TO ADDRESS DVSAS**
- **COMPONENTS OF IR DESCRIPTIONS, INCLUDING:**
  - **Forms of Informal Resolution**
  - **Eligibility**
  - **Who Can Facilitate**
  - **Where Information Can Go**
  - **Reaching a Resolution**

Types of DVSAS Policies: Title IX requires schools that receive federal funding to have grievance procedures and processes covering incidents that 1) meet the Title IX definition of DVSAS and 2) occur in the United States at locations, events, or circumstances over which the school has substantial control of the accused person and the context. 34 CFR 106.8(c); 106.45(b) (Aug. 15, 2020). Some schools also have other policies and procedures covering sexual misconduct that falls outside the scope of Title IX (e.g. incidents occurring outside the U.S.; incidents that don't meet Title IX DVSAS definitions; incidents involving persons, locations, or circumstances outside the school's control; etc.). Adding an IR option to any of these policies provides more resolution possibilities for parties and gives the school more flexibility in responding to DVSAS incidents.

THE PURPOSE OF AN INFORMAL RESOLUTION PATHWAY

Often including pathways such as mediation, restorative justice, and shuttle negotiation or facilitation, informal resolutions are sometimes referred to as adaptable or alternative resolutions. Informal resolution descriptions establish the parameters of the available processes, so students and employees can understand what participation involves, anticipate their rights, and make informed decisions. They also serve a legal function, ensuring that any IR option(s) an institution chooses to offer complies with state and federal laws when applicable. Lastly, adding IR descriptions to DVSAS policies helps support fair and unbiased access to resolution options, which is particularly relevant in IR given the role of institutional discretion.

Tip: If an institution offers IR to resolve DVSAS cases that fall under the jurisdiction of Title IX, information about the IR process should be included in the institution's published Title IX grievance procedures and grievance process. 34 CFR 106.8(c); 34 CFR 106.45(b)(9) (Aug. 15, 2020). Similarly, the Clery Act requires a policy statement that includes a step-by-step description of each type of proceeding the institution uses to resolve DVSAS cases that fall within Clery Act standards. 34 CFR 668.46(k)(1)(i).

HOW INFORMAL RESOLUTION FITS INTO YOUR OVERALL DVSAS POLICY OR POLICIES

Whether labeled as informal, adaptable resolution or otherwise, these pathways constitute a grievance process through which parties can reach a resolution regarding DVSAS allegations. While an IR process can be explained through resource guides like flow charts and Frequently Asked Questions for potential participants, all elements of IR should also be documented within an institution's DVSAS policy or policies.

Comprehensive IR descriptions outline a host of requirements that help individuals to know when the option is available and who decides. They also cover what to expect with respect to timelines, participation, and records, and answer questions about "what happens if" so that such decisions are not made arbitrarily should the situation arise. These essential elements of informal resolution are explored in the next section.

Some institutions may have separate sexual misconduct policies, one covering Title IX DVSAS, and one covering DVSAS cases that fall outside the jurisdiction of Title IX (so-called "non-Title IX policies"). If the institution offers IR, both types of policies

should provide clarity about when IR may or may not be used. Title IX regulations include specific requirements for when and how a school may offer IR. Those requirements are noted in tip boxes throughout this guide. For DVSAS cases that are not covered by Title IX, institutions have more flexibility. For example, non-Title IX policies could remove Title IX requirements that might create barriers, such as allowing for IR without the filing of a formal complaint or allowing IR in cases involving allegations that an employee engaged in DVSAS against a student, following a safety analysis.

WHAT TO INCLUDE

FORMS OF INFORMAL RESOLUTION

IR descriptions in policies should reflect the range of options available with enough detail so that a reader will have a sense of what to expect and how each differs from any other process.

☐ Define Informal Resolution

Start by providing a definition of informal resolution generally, including that IR is voluntary and mutually agreed upon. Avoid using language that qualifies the differences between IR and a formal resolution. For example, rather than saying IR is "a less formal proceeding" say, "IR offers more flexibility for the parties."

Sample policy language: The University recognizes that some individuals may prefer not to go through an investigation. Informal resolution is a voluntary, remedies-based, structured interaction between or among affected parties that balances support and accountability.

Sample policy language: Alternative Resolution is a restorative process that creates space for those affected by harm to work with a trained facilitator to identify needs and co-create meaningful pathways forward. Instead of emphasizing broken policies, restorative practices prioritize addressing harm and fostering healing, accountability, and community restoration.

☐ Define Each Available Informal Resolution Process

Examples could include:

Shuttle facilitation (or “shuttle negotiation”) is a process through which a neutral facilitator meets separately with both parties when they do not wish to meet or speak to each other directly. Through a series of conversations with the facilitator, the parties may co-construct a written

agreement that includes action items or imposes restrictions that are designed to address the harm, create safety, and set concrete boundaries between the parties. This process can also allow the parties to indirectly communicate with each other about the incident or allegations to enhance understanding.

Mediation offers a private, collaborative way for parties to meet voluntarily with the assistance of a neutral mediator. Specialized training prepares mediators to attempt to help parties better understand viewpoints and explore mutually agreeable ways to move forward. In DVSAS cases, parties meet privately with mediators before attending joint sessions to articulate needs and hopes for the informal resolution process. Mutually agreed upon resolutions may place requirements on one or both parties.

Restorative Justice is a framework that centers the harm that resulted from an incident and aims to identify the needs that resulted to determine how the harm can be repaired, to the extent possible. Restorative justice is a community-driven process with indigenous roots that has many forms, including Restorative Conferencing and Circle Processes, such as Circles of Support and Accountability or COSAs. Using trained facilitators, restorative resolutions involve a level of responsibility-taking and may or may not involve direct dialogue between parties. They are appropriate when an accused party wants to take responsibility for repairing harm and may result in a mutually agreed upon resolution outlining actions steps for repair.

☐ Clarify if Participation May Include an Option to Accept Responsibility

Some IR processes offer an accused party the opportunity to accept responsibility for causing harm or for violating policy without a full investigation or adjudication. Alternatively, IR may be offered as a non-disciplinary alternative to adjudication.

Sample policy language: Adaptable Resolution is generally designed to allow a respondent to acknowledge harm and take responsibility for repairing harm (to the extent possible) experienced by the complainant and/or the University community.

☐ Describe Each Step in the Process for Each IR Option

Depending on the IR options at your school, steps may include: filing a formal complaint, initial screening, written notice and agreement to participate from both parties, facilitator and advisor selection, pre-informal resolution meetings, joint meetings, mediation, restorative circles or shuttle negotiation, agreement creation, agreement completion, withdraw or case closure.

☐ Include Time Frames

Include specific and reasonably prompt timelines for each step in an IR process. Because IR processes are participant driven, the timeframe for completion may vary. Establish a reasonable timeline and then specify the process for requesting additional time.

Tip: In Title IX cases, IR time frames must be reasonably prompt and the process must allow for temporary delay or extension for good cause with written notice to both parties informing them of the delay or extension and the reasons for that action. 34 C.F.R. 106.45(b)(1(v) (Aug. 15, 2020).

ELIGIBILITY FOR INFORMAL RESOLUTION

Though IR processes in cases of DVSAS should be voluntary and should require the consent of both parties, institutions maintain the discretion to determine when and how IR is available, to preserve IR integrity, to align IR processes with institutional philosophies, to comply with relevant laws when applicable, and to maintain safety. Additionally, in Title IX cases, there are certain restrictions and requirements on the use of IR that must be specified.

☐ Describe the Process for Submitting a Request for an IR

Describe who may submit a request for an IR, when a request must be made, and how a request must be made including relevant staff contact information.

Tip: In Title IX cases, institutions are not allowed to offer an IR process unless a written formal complaint is filed. However, once a formal complaint is filed, an institution may offer an IR process at any time before the decision-maker reaches a determination of responsibility. 34 CFR 106.45(b)(9) (Aug. 15, 2020).

☐ Explain What Parties Can Expect Before an IR

Reference the written notice parties will receive, which provides information about the IR options, including when parties may withdraw from an IR process and resume a formal resolution process.

☐ State that Participation Is Voluntary

Tip: In Title IX cases, institutions must obtain the parties' voluntary, written consent to the IR process. 34 CFR 106.45(b)(9) (Aug. 15, 2020).

Sample policy language: Participation in the Informal Resolution process is voluntary and requires the Parties' written consent. The written consent must state that either Party may withdraw from the process at any time and request that an investigation be initiated or resumed.

▢ State When IR Is Not Available

Describe the types of cases, circumstances, and parties that are ineligible for IR.

> **Tip:** In Title IX cases, institutions are not allowed to offer or facilitate an IR process to resolve allegations that an employee engaged in DVSAS against a student. Also in Title IX cases, institutions cannot require parties to participate in IR and may not require waiver of the right to an investigation and adjudication of formal complaints of sexual harassment as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right. 34 CFR 106.45(b)(9) (Aug. 15, 2020)

▢ Indicate Who Decides Eligibility

Policies should assign responsibility for authorizing IR to a specific individual or office, such as the Title IX Coordinator or designee. Once IR has been authorized, the parties may choose which available form of IR to engage in, so long as the parties agree. (For more on considering eligibility for IR in individual cases, see Assessing for Informal Resolution Opportunities in Domestic and Dating Violence, Sexual Assault, and Stalking Cases.)

WHERE INFORMATION CAN GO

When deciding whether to participate in any grievance process, parties often have questions about what information is recorded, what records are maintained, and where information can be used, with respect to both statements and other information provided or produced during an IR process.

▢ Explain the Degree of Confidentiality of an IR Process

Establish the bounds of confidentiality by stating, for example, whether the IR facilitator may serve as a witness in a subsequent formal grievance process and whether information obtained during the course of an IR may be made available for use during any subsequent or separate grievance process or legal proceeding.

> **Tip:** In Title IX cases, institutions must give written notice to parties informing them of any consequences resulting from participating in the IR process, including the records that will be maintained or could be shared. 34 CFR 106.45(b)(9)(i) (Aug. 15, 2020).

Sample policy language: Information gathered in Informal Resolution is kept private as a way to create an environment that cultivates open and honest communication, and will not be shared, other than with the Title IX Coordinator. By signing a participation agreement, parties agree that, to the

extent permitted by law, they will not use information shared or obtained during IR in any other University process, including formal investigation, or legal proceeding.

☐ Describe What Information Will and Will Not Be Included in Records of an IR Process

Sample policy language: The Title IX Coordinator/Title IX Office maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained.

☐ State How Long Records of an IR Process Will Be Maintained

A thorough IR description includes a section stating whether and how long records of the resolution will be kept.

> **Tip:** In Title IX cases, the institution must maintain the records of any IR and its result for seven years. 34 CFR 106.45(b)(10)(i)(C) (Aug. 15, 2020).

REACHING A RESOLUTION

Policies ensure transparency and consistency by stating when a grievance process is considered closed, including in the case of IR.

☐ List the Potential Outcomes of an IR Process

Sample policy language: Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur; Targeted or broad-based educational programming or training for relevant individuals or groups; Academic and/or housing modifications for either Party; Workplace modifications for either Party; Completion of projects, programs, treatment or requirements designed to help the Respondent manage behavior, refrain from engaging in Prohibited Conduct, and understand why the Prohibited Conduct is prohibited; Fines, reimbursement or payment for costs incurred by Complainant as a result of the incident; Compliance with a No Contact Order; Compliance with a Denial of Access; Completion of community service hours over a specific period of time; and Separation from the University.

☐ Describe When It Is No Longer Possible to End an IR and Initiate or Resume a Formal Grievance

An IR description should include information about whether and how a party may stop the IR process. This should include when a formal grievance may be initiated or resumed.

Tip: In Title IX cases, the institution must maintain the records of any IR and its result for seven years. 34 CFR 106.45(b)(10)(i)(C) (Aug. 15, 2020).

Sample policy language: Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time and initiate or resume the Hearing or Administrative Resolution Process. Once an Informal Resolution agreement is finalized and implemented, it precludes the Parties from resuming investigation and adjudication of a Formal Complaint arising from the same allegations.

☐ Describe When IR Is Closed or Finalized

Define when a resolution is considered "reached" or "finalized," such as signed by the parties and approved by any specific individual or office.

Sample policy language: Once a complaint has been resolved through an Informal Resolution Process, and all terms of any Resolution Agreement have been fulfilled, the matter will be closed.

☐ State Whether Appeal Is Available

Because of the voluntary nature of IR, typically, there are no accompanying appeal procedures, which should be stated in the IR description.

☐ State Consequences for Non-Compliance

The IR description should state what happens if the terms of the agreement are not completed.

Sample policy language: If a party fails to comply with the terms of a Resolution Agreement, the University may proceed to resolve the Formal Complaint through the Formal Grievance Process, and/or enforce the terms of the Resolution Agreement. Students who fail to comply with the terms of a Resolution Agreement may be subject to the University's Student Conduct process for failure to comply; employees may be disciplined.

For more on creating resolution agreements, see Informal Resolution Agreement Template for Colleges and Universities in Cases of Dating and Domestic Violence, Sexual Assault, and Stalking.

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.