

ST9 Training (#4). Informal Resolution Process

School Informal Resolution Process

In compliance with DE 34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

IRP Definition

Under Title IX regulations a complainant may choose whether to receive supportive measures without filing a formal complaint, may choose to receive supportive measures and file a formal complaint, or may choose to receive supportive measures and request the **Informal Resolution Process (IRP)** that the school offers. Accordingly, these regulations respect complainants' autonomy and require recipients to consider the wishes of each complainant with respect to the type of response that best suits a complainant's particular needs.

While the final Title IX regulations permit recipients wide discretion to facilitate informal resolution of formal complaints of sexual harassment, the Department of Education declines to require parties to attempt mediation by IRP before initiating the formal grievance process. Every party should know that a formal, impartial, fair process is available to resolve Title IX sexual harassment allegations; where a recipient believes that parties may benefit from mediation or other informal resolution process as an alternative to the formal grievance process, the decision to attempt mediation or other form of informal resolution should remain with each party.

106.45(b)(9) permits recipients to facilitate informal resolution processes (thus avoiding the need to hold a live hearing with cross-examination), which may be particularly desirable by the parties (complainant and respondent) and the school in situations where the facts about the underlying incident are not contested by the parties and thus resolution does not turn on resolving competing factual narratives.

Prompt Time Frame

As published in is catalog, the school establishes a reasonably prompt time frame for the conclusion of any Informal Resolution Process (IRP), whether there is not a broader threat to individual or campus safety, while maintaining the purpose of Title IX regulations of:

To give individuals protections against discriminatory practices and ensure that recipients provide victims of sexual harassment with remedies to help overcome the denial of equal access to education caused by sex discrimination in the form of sexual harassment.

IRP Requirements According to Regulations

1. Section 106.45(b)(9) gives recipients the discretion to offer and facilitate informal resolution processes, such as mediation or restorative justice, subject to each party voluntarily agreeing after giving informed, written consent. Informal resolution may present a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures that comprise the § 106.45 grievance process. Informal resolution may only be offered after a formal complaint has been filed, so that the parties understand what the grievance process entails and can decide whether to voluntarily attempt informal resolution as an alternative. Recipients may never require any person to participate in information resolution, and may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

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2. Section 106.45(b)(1)(i)–(x) requires that the school employees who facilitate informal resolutions to be free from conflicts of interest and bias and trained to serve impartially without prejudging the facts at issue.
3. Section 106.45(b)(9) allows recipients to offer and facilitate informal resolution processes, within certain parameters to ensure such informal resolution only occurs with the voluntary, written consent of both parties; however informal resolution ***is not permitted to resolve allegations that an employee sexually harassed a student.***
4. Section 106.45(b)(10) requires recipients to publish materials used for training persons who facilitate informal resolutions on the recipient’s website or make these materials available upon request for inspection by members of the public.
5. Section 106.45(b)(9) allows recipients the option of facilitating informal resolution processes (except as to allegations that an employee sexually harassed a student) so long as both parties voluntarily agree to attempt an informal resolution.
6. An informal resolution process, in which the parties voluntarily participate, may end in an agreement under which the respondent agrees to a disciplinary sanction or other adverse consequence, without the recipient completing a grievance process, under § 106.45(b)(9).
7. 106.45(b)(1)(iii) prohibits persons who facilitate informal resolution processes from having conflicts of interest or bias against complainants or respondents generally, or against an individual complainant or respondent, training that also includes “how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.”
8. § 106.45(b)(1)(iii) obligates persons who facilitate informal resolutions) to serve impartially without conflicts of interest or bias for or against complainants or respondents generally, or for or against an individual complainant or respondent.

SIRF Impartiality

The organization staff, or external individual, working as a School Informal Resolution Facilitator (SIRF) and in charge of conducting an impartial process must avoid bias and sex stereotypes recalling examples such as:

- Women have regret sex and lie about sexual assaults.
- Men are sexually aggressive or likely to perpetrate sexual assault.
- Consideration of marginalized groups: people with disabilities, people of color, people who identify in the “LGBTQ” community (30259-30260).
- Common tactic used in defense of sexual assault remains the “leveraging rape myths” when cross-examining rape victims (30325).

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School Actions for initiation an IRP

Documented Agreement

Once there is a signed complainant(s) decision of accepting an Informal Resolution Process (IRP), the Title IX coordinator will contact the alleged respondent(s) and provide individual written information of:

1. Notice of facts alleged by a complainant;
2. The Paramount policy of not contacting with a complainant during and after the IRP resolution;
3. Information of school prohibition on retaliation policy;
4. IRP confidentiality;
5. The range of IRP Disciplinary Actions;
6. The no appeals to any IRP resolution and disciplinary actions decided by School Informal Resolution Facilitator;
7. Assurances that any party may withdraw from the IRP and resume the Grievance Process at any time before an informal resolution agreement have been reached;
8. The no statute of limitations for addressing a complaint under the school's IRP policy and how, whether the individual decides to moves forward with the IRP or not, resources are available to provide supportive measures; and
9. The option to of the respondent of refusing the IRP and commencement of a full investigation and adjudication of a formal complaint.

Important Notice: As corollary an Informal Resolution Process (IRP), as an alternative to a full investigation and adjudication of a formal complaint may encourage some complainants to file a formal complaint where they may have been reluctant to do so if a full investigation and adjudication was the only option. The school will never force, threaten, or require any party into going into informal resolution.

IRP School Responses

An Informal Resolution Process (IRP) allows the school to tailor responses to the unique facts and circumstances of an incident between complainant(s) and respondent(s), particularly in cases where there is not a broader threat to individual or campus safety. In these cases, the designated School Informal Resolution Facilitator (SIRF):

- a. Meet with the respondent to:
 - ❖ Discuss the behavior of the respondent;
 - ❖ Provide an opportunity for a response and/or review of the facts;
 - ❖ Explain Disciplinary Actions and consequence upon the respondent; and
 - ❖ Enforce the importance to avoid any retaliation against the complainant;
- b. Follow-up with the complainant regarding the discussion with the respondent.

IRP Disciplinary Sanctions

The disciplinary sanctions range depends on the factors of each case and might include:

1. Educational actions;
2. Student Probation;
3. Letter of reprimand to the student file;

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4. Class Suspension;
5. Expulsion from program;

Alcohol and Drugs Involved

Because the school's primary concern is safety and to encourage reporting, minor infractions by individuals involved in an incident, such as personal consumption of alcohol or other drugs, will not be addressed through any disciplinary action against an individual who reports a concern. Intoxication resulting from intentional use of alcohol/drugs, however, is not a defense against allegations of misconduct. However, the School Informal Resolution Facilitator will follow school policies (published in catalog) that states:

TERMINATION BY FELONIES, DUI, DRUGS, OR ALCOHOL ABUSE

The abuse and use of drugs and alcohol can pose serious health problems; some more serious than you would ever think. Drug and alcohol abuse are big problems for everyone involved. Families can be destroyed and careers greatly damaged. Injury or death may even result from the effects of such substances addiction.

The bad effects of using drugs and/or alcohol will definitely lead to a downward path to a health care career. This negative behavior can destroy the livelihood of an individual, and can cause to lose his occupation too. Working while under the influence of alcohol or drugs more often than not changes people, both mentally and physically. Frequently the effects of the changes cause people to make decisions or do things that they wouldn't otherwise do. They are much more likely to be prone to accidents in their workplace. It changes the way a person thinks and it becomes very difficult to concentrate on whatever the person is doing. The mind fails to make good judgments and the depth of perception is lost.

No Retaliation Against Complainant

The school prohibits retaliation against any student who reports a concern or who testifies, assists, or participates in a proceeding, investigation, or hearing related to a potential policy violation. All parties and witnesses are informed of the prohibition on retaliation, and any behavior that feels retaliatory should be reported immediately to the school Title IX Coordinator.