

INFORMAL RESOLUTIONS

An Overview of the Process



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INFORMAL RESOLUTION

AN OVERVIEW



Informal Resolution

At any time after a complaint is filed but prior to making a determination, a district may offer an informal resolution (IR) process.



However, IR cannot be offered when the allegations are that an employee discriminated against a student on the basis of sex.

The Alternative Process

Alternative process to a formal investigation and decision in which both parties **voluntarily agree** to attempt to “informally” resolve the allegations of sexual harassment.

Flexibility in Process & Remedies

IR is meant to provide more flexibility and the possibility for the parties to agree on any of a wide range of possible outcomes, resulting in a **voluntary agreement** between parties, which would take the place of a “formal resolution.”

School District Discretion

School districts have discretion in determining whether a situation is appropriate to offer IR, and may even decline a party's request for IR.

Circumstances when a school district may decline to allow IR include, but aren't limited to, when the district determines the alleged conduct would present a future risk of harm.

Voluntary!

IR must be *voluntary*.

Both parties must voluntarily agree (in writing) to enter the process, and any final agreement resulting from the process must be voluntarily agreed to (in writing) by ***both parties***.

Voluntary!

Schools cannot:

- Pressure or require the parties to do IR
- Require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right
- Require the parties to waive their right to an investigation and determination of a complaint

IR Facilitator

Cannot be the same person as the decisionmaker.

Must receive training on:

- The definition of sexual harassment in [§ 106.30](#)
- The scope of the recipient's education program or activity
- How to conduct an informal resolution process
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest and bias

Pros & Cons of IR

Pros

- Quicker and simpler process
- Parties are not subjected to months of investigation
- More control of resolution
- Greater flexibility
- Remedies more personalized

Cons

- Delays process if not successful
- May receive lesser consequence than actions deserve
- Must monitor agreement

When is IR appropriate?

Never for allegations of an employee harassing a student.

Less serious or less violent allegations

→ If the allegation would also be a crime, probably not appropriate

When is IR appropriate?

Does the complainant have specific goals in mind that can be accomplished through IR?

At times, a complainant or their parents/guardians have a specific remedy in mind that satisfies the district's thoughts/policy requirements of fair discipline and is a resolution that the respondent would agree to consider.

When is IR appropriate?

- Do the parties have the emotional maturity to handle this process?
- Are the parents/guardians in the appropriate emotional mindset to handle the process?

INFORMAL RESOLUTION

THE PROCESS



Notice

Prior to entering into the IR process, the district must provide the parties notice that explains:

1

**The
allegations.**

2

The requirements of the IR process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations.

3

At any time prior to 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.

4

Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

Voluntary Written Consent

The district must obtain the parties' voluntary written consent prior to engaging in the process.

Process

- The process is flexible and allows districts discretion in determining the best approach, although certain formats are recognized as safer and more effective.
- Whatever process is used, the parties should not be forced to meet in person or confront one another.

Process

- There are several recognized processes for resolving disputes between parties, including mediation, restorative justice and arbitration.
- For K-12 schools in Oklahoma that want to use an employee to conduct IR, mediation, in some form, will be the best route (restorative justice requires detailed training, and arbitration is its own animal that requires a third-party arbitrator).

STEP 1

Consideration of Appropriateness

After a formal complaint is filed, consider the allegations and the mindset/characteristics of the parties to determine whether IR should be suggested.

STEP 2

Discuss with Parties

If so, broach the subject with the parties, beginning with the complainant, to determine their willingness to engage in the process.

- *If yes, provide the parties the notice explained above and obtain written consent from both parties.*
- *If no, continue with the investigation.*

STEP 3

Determine Format

Determine how the IR will be conducted, based on the needs of the parties and abilities of the district. Examples include:

- *In-person IR with the parties in separate rooms*
- *In-person IR with parties in the same room*
- *Virtual*
- *Parents or advisors present*
- *Etc.*

STEP 3

Determine Format

For K-12 schools, “shuttle diplomacy” (i.e., parties in different rooms with facilitator moving back and forth between parties) is usually the best way to start.

This gives the parties the chance to tell their story without the presence of the other party and to convey their preferred outcomes.

STEP 4

The IR

At the beginning of the mediation process, meet with each party to discuss the following:

- *What the process will look like*
- *What you will share with the other party*
- *What an agreement could look like*

STEP 4

The IR

Also, speak with the parties to learn the following:

- *What do they hope to achieve through the process?*
 - *Try to get 2-3 primary concerns from each party.*
- *What would make the complainant feel safe at school?*
- *How much are the parties willing to compromise?*
- *What won't either party agree to?*

STEP 4

The IR

The facilitator should document the agreement while still with the parties. This will at least ensure that an understanding was reached during the mediation and may even allow for a signed agreement at that time.

Have each party review the document to ensure that it meets the parties' understandings and have them sign and date the document.

STEP 4

The IR

Parties may take time to consider the agreement, but the district should set a date by which an agreement must be reached, or the district will reinitiate the investigation.

Generally, no more than 5 days from the end of the mediation process.

STEP 5

The Agreement

The agreement should be a written document that accurately reflects the terms agreed to by the parties, and that is signed and dated by both parties.

STEP 5

The Agreement

The agreement can have a wide range of remedies, including:

- *Restrictions on contact, including a no-contact order.*
- *An apology.*
- *Agreement to stop practices that led to complaint.*
- *Discipline under the Student Code of Conduct.*
- *Restrictions on respondent's participation in one or more aspects of program or activity or attendance at specific events.*

STEP 5

The Agreement

Aside from the direct remedies, the agreement may also include:

- *Possible consequences for violating the agreement*
- *Possible consequences for either party sharing the agreement with others*
- *An expiration date*
- *Etc.*

STEP 6

Final Steps

Ensure the parties understand that the agreement resolves the matter, and the investigation will not continue.

Provide the agreement to those responsible for its enforcement.

Confidentiality

When providing supportive measures, conducting an informal resolution, or investigating, the district must not disclose the identity of a party, witness, or other participant except:

- When the person has provided prior written consent
- When permitted under FERPA
- As required by law
- To carry out the purposes of Title IX