



Formal and Informal Resolutions

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Learning Outcomes

- Understand the Title IX parameters for informal resolutions.
- Discuss the caveats to using one process over another.

Knowledge and Skills (Item(s) and Level)

Case Resolution Management

3.4 Case Resolution Pathways

Foundational

Intermediate

Education

4.1 Curriculum Development

Foundational

Intermediate

Law and Policy

8.2 Compliance and Application

Foundational

Intermediate

Check-In Questions

- How have you previously interacted with the formal and informal Title IX processes?
- What concerns (if any) do you have about informal resolution options?

Formal Resolutions

Formal resolutions at postsecondary institutions governed by two sections:

- § 106.45 Grievance procedures for the prompt and equitable resolution of complaints of sex discrimination; and
- § 106.46 Grievance procedures for the prompt and equitable resolution of complaints of sex-based harassment involving student complainants or student respondents at postsecondary institutions

Informal Resolutions

§ 106.45(k) Informal resolution

- “In lieu of of resolving a complaint through the recipient’s grievance procedures, the parties may instead elect to participate in an informal resolution process under § 106.44(k) if provided by the recipient consistent with this paragraph.”

(p. 1549)

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (1) Recipient may offer an informal resolution anytime prior to a finding, unless complaint alleges “that an employee engaged in sex-based harassment of an elementary or secondary school student or such a process would conflict with Federal, State, or local law.”
 - If providing an informal resolution, TIX Coordinator still required to promptly and effectively ensure that sex discrimination does not continue.

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (1)(i): Recipient's have the discretion to determine the appropriateness of offering an informal resolution when it receives reporting information "and may decline to offer informal resolution despite one or more of the parties' wishes." (p. 1538 - 1539).
- (1)(ii): "...circumstances when a recipient may decline to allow informal resolution include but are not limited to when the recipient determines that the alleged conduct would present a future risk of harm to others."

(p. 1539).

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (2): Recipients cannot pressure parties into informal resolution. Parties must voluntarily consent to this process. Recipients cannot 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 exercise of any other right.”

(p. 1539).

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (3): Prior to initiating informal resolution, recipient must provide the following notice that explains:
 - (i) The allegations;
 - (ii) The requirements of the informal resolution process;
 - (iii) That, prior to reaching an agreement, any party retains the right to withdraw from the process and initiate/resume the formal grievance process;

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (iv) An agreement to an informal resolution precludes parties from initiating/resuming the formal grievance process arising from the same allegations;

- (v) The potential terms requested or offered in an agreement is binding only on the parties; and

- (vi) What information the recipient maintains and whether/how the recipient could disclose and use such information in the formal grievance process if that process is initiated/resumed.

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (4): Informal resolution facilitator cannot also be the investigator or decision-maker in the formal grievance process.
 - Facilitator cannot have a “conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.”
 - Facilitators must receive training under § 106.8(d)(3)

(p. 1540)

Informal Resolutions

§ 106.44(k) Discretion to offer informal resolution in some cases

- (5) “Potential terms that may be included in an informal resolution agreement include but are not limited to:
 - (i) Restrictions on contact; and
 - (ii) Restrictions on the respondent’s participation in one or more of the recipients programs or activities or attendance at specific events, including restrictions the recipient could have imposed as remedies or disciplinary sanctions had the recipient determined at the conclusion of the recipient’s grievance procedures that sex discrimination occurred.”

Caveats to Using Informal Resolutions

- Largely as burdensome as a formal resolution.
 - This option shouldn't be used to “save time” on a case, it should be intentionally offered by the institution.
 - Consider the training of additional staff and potential external partnerships.
- Effect on parties.
 - This option should be considered from a trauma-informed lens, both for complainants and respondents.
 - Example: Kristi's case.

Caveats to Using Informal Resolutions

- Differentiate between Alternative Resolutions, Restorative Justice, and Mediation.
 - These all very different informal resolutions with very different goals. Consider these differences and choose the right offering for your parties and the subject matter of the case.
- Institutional considerations.
 - Are you limiting informal resolutions by case types?
 - Just because you *can* offer informal resolution, doesn't mean you *should*.

Questions?