



## Checklist

# Informal Resolution of Sexual Harassment Complaints

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*After the filing of a formal complaint of sexual harassment, higher education and K-12 institutions may offer the parties the option of informal resolution to resolve the allegations.*

Consult legal counsel about specific legal requirements that may govern these resolution processes. Relevant federal laws impacting sexual harassment allegations include Title IX and the Violence Against Women Act (VAWA) amendments to the Clery Act; both regulate how campuses investigate complaints of sexual harassment against students and employees.

Title IX affects schools receiving federal funding, including higher education institutions and public K-12 schools, and applies to student and employment matters. VAWA only applies to higher education institutions. Employment matters implicate Title VII of the Civil Rights Act of 1964, which applies to higher education institutions and K-12 schools. In addition, comply with any state law requirements and carefully follow your institution's policies. Note that the Department of Education (ED) stated that the Title IX regulations pre-empt existing state law, but that ED doesn't believe the regulations prohibit institutions from complying with other applicable federal laws.

This checklist is based on federal legal requirements and on United Educators' (UE's) research and experience with claims brought against members. *Title IX regulations requirements in the checklist are italicized.*

People responsible for receiving sexual harassment complaints and overseeing or participating in the informal resolution process should review the checklist and determine whether your institution follows these requirements and recommendations.

For each item, check the appropriate box (“Yes,” “No,” or “N/A (Not Applicable)”) and, if the answer is “no,” consider when further action is necessary.

## Sexual Harassment Policy

The Title IX regulations allow schools to offer the parties – after a formal complaint of sexual harassment has been filed and the respondent is provided with the full allegations – the option to engage in an informal resolution process, without requiring a full investigation and adjudication of the allegations.

If your institution offers this option, ensure it is carefully stated in your school’s sexual harassment policy and that the process conforms to the regulations’ requirements.

### Terminology

**Advisor** — Someone chosen by a party, or provided by the institution when required, to accompany them to a meeting, interview, or hearing. *At higher education institutions, at the hearing, the advisor will conduct cross-examination on the party’s behalf.* This person may or may not be an attorney.

**Complainant** — The person alleged to be the victim or survivor of conduct that could be sexual harassment, sexual assault, dating violence, domestic violence, stalking, or other prohibited conduct

**Neutral Party or Facilitator** — The person conducting the informal resolution process. This person doesn’t act on behalf of the institution’s interests or on behalf of either party.

**Parties** — The complainant and the respondent, including parents or guardians of elementary and secondary school students bringing complaints on behalf of those minor students

**Respondent** — The alleged perpetrator of prohibited conduct

**School and Institution** — These terms are used interchangeably to refer to K-12 schools and higher education institutions. If a requirement applies only to one or the other, it is noted in the checklist.

**Sexual Harassment, Sexual Violence, or Sexual Misconduct** — Used interchangeably throughout this checklist, these terms encompass a range of behaviors including rape, sexual assault, sexual abuse, sexual coercion, and sexual exploitation as well as other gender-based misconduct that can include dating violence, domestic violence, and stalking. For more on what constitutes Sexual Harassment under Title IX specifically, visit UE’s [Title IX page](#) and view checklists on Title IX policies and procedures and conducting investigations.

### Using Informal Resolution Appropriately

*Does your sexual harassment policy provide for an investigation and adjudication, when required, of formal complaints of **sexual harassment**?*

- Yes
- No
- N/A

*Does your sexual harassment policy allow the involved parties to voluntarily select the option of an informal resolution process following the filing of a formal complaint of sexual harassment?*

- Yes
- No
- N/A

- *Is the process offered at any time prior to a determination regarding responsibility?*

- Yes
- No
- N/A

### Actions Needed

<ul style="list-style-type: none"> <li>Does the process <i>avoid requiring a full investigation and adjudication</i>?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Does the process include formats such as:             <ul style="list-style-type: none"> <li>Mediation?</li> </ul> </li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Restorative justice, including multiple forms of the restorative justice process?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Does the policy or another document detail the informal process and potential options?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><b><i>Does your sexual harassment policy prohibit the use of informal resolution when the formal complaint alleges sexual harassment of a student by an employee?</i></b></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><b><i>Does your policy reserve the right to decline to offer informal resolution to the parties in certain cases, at the discretion of the Title IX coordinator or another neutral administrator?</i></b></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Does your policy explain the factors, such as use of force or violence, ongoing individual safety risk, a pattern of misconduct, or similar behavior, that may cause the Title IX coordinator to decline a request to use the informal resolution process?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

### Informal Resolution Requirements

<p><i>Do you obtain the voluntary, written consent of each party agreeing to participate in the informal resolution process?</i></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><i>Does your policy allow for each party to be accompanied by the advisor of their choice to any meetings related to the informal resolution process?</i></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p>Does your policy describe the role the advisor will play in an informal process?</p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

### Qualifications of Informal Resolution Facilitators

<p>Does your policy require any informal resolution facilitator to be:</p> <ul style="list-style-type: none"> <li><i>Free from a conflict of interest or bias</i> for or against complainants or respondents generally or the individual complainant or respondent in the formal complaint?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
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<ul style="list-style-type: none"> <li>• <i>Trained on your institution's:</i></li> <li>• <i>Definition of "sexual harassment?"</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>• <i>Scope of its education program or activity?</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>• <i>Requirement to be free from conflicts of interest and bias? (For example, conflicts of interest – such as serving as a facilitator after previously writing a recommendation for one party – arise when personal or professional interests compromise decisions or judgment. Bias is a prejudice for or against a group. For example, believing all athletes drink too much.)</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>• <i>Trained on:</i></li> <li>• <i>How to conduct an informal resolution process?</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>• <i>How to serve impartially, including avoiding prejudgment of facts?</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><b><i>Does the training your informal resolution facilitator receives avoid relying on sex stereotypes? (For example, sex stereotypes include believing men can't be the victims of sexual harassment or that women will lie about sexual experiences they regret.)</i></b></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

## Notice Requirements

Similar to the notice requirements for a formal complaint, the Title IX regulations require that certain elements of notice be provided to the parties when they agree to engage in an informal resolution process. Before commencing the process, does the *Title IX coordinator provide written notice to both parties of:*

<ul style="list-style-type: none"> <li>• <i>The allegations?</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>• <i>Process requirements, including when parties may not resume a formal complaint arising from the same allegations?</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>• <i>Consequences resulting from participating in the process, including maintenance or sharing of records?</i></li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><b><i>Does the written notice explain to the parties that either party may withdraw from the informal resolution process prior to agreeing to a resolution and resume the grievance process?</i></b></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

## Recordkeeping

An important aspect of offering an informal resolution process, complete with trained facilitators, is keeping a record of communications with parties and trainings offered to facilitators.

**Does your institution keep records of (for a period of seven years):**

- Any informal resolution process undertaken for a formal complaint of sexual harassment, including the result, even if resolution is not reached?  Yes  
 No  
 N/A
- Any training materials used to train information resolution facilitators and whether these materials are posted to your institution's public website?  Yes  
 No  
 N/A

## Informal Resolution Process Best Practices

Merely offering the option of informal resolution isn't enough. For it to be an effective alternative to a full investigation and grievance process for formal complaints of sexual harassment, your institution should incorporate standards and overall consistency into the process, while still tailoring the specific interactions to what is best for each complaint.

**Does your institution offer one or more of the following informal resolution options?**

- Mediation? **Mediation** involves a neutral party guiding a structured process. It often involves a general joint session with both parties meeting face to face followed by private sessions with each party and the mediator. The mediator then conveys settlement proposals between the parties until an agreement is reached.  Yes  
 No  
 N/A
- Restorative justice? This **process** emphasizes repairing the harm caused by the respondent's actions. The parties may meet face to face throughout the process (although this isn't required), voluntarily speaking directly to one another, guided by a neutral party, until an understanding is reached between the parties.  Yes  
 No  
 N/A
- Facilitated negotiation? **Similar** to mediation and restorative justice, the parties employ a neutral facilitator to convey settlement proposals, but the parties generally won't meet during the process.  Yes  
 No  
 N/A

**Does the informal resolution process facilitator:**

- Meet with each party to explain the informal resolution process?  Yes  
 No  
 N/A
- Explain to each party any confidentiality requirements for participation in the process?  Yes  
 No  
 N/A
- Explain that the process is designed to provide a satisfactory resolution to the formal complaint but that no institutionally driven disciplinary action will be taken against the respondent as a result of the informal resolution process?  Yes  
 No  
 N/A

## Actions Needed

<ul style="list-style-type: none"> <li>Explain how evidence obtained or discussed, including admissions of responsibility, in the process may or may not be used if the parties fail to reach an agreement and the formal complaint grievance process continues?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Obtain the written consent of each party to participate in the process following the process explanation?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Explain in detail the elements of a final informal resolution agreement the parties reach?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Require the parties to sign the informal resolution agreement, including all terms?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Explain to both parties any consequences for violation of the terms of the informal resolution agreement?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<ul style="list-style-type: none"> <li>Inform the Title IX coordinator of the outcome of any informal resolution process, and provide the outcome in writing, including a copy of any written informal resolution agreement?</li> </ul>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><b>Does your policy allow the Title IX coordinator or the facilitator to terminate the informal resolution process prior to the parties reaching an agreement if they deem the informal resolution process is no longer appropriate?</b></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A
<p><b>Does your policy explain that failure to follow the terms of the signed resolution agreement could result in additional disciplinary action for either party?</b></p>	<input type="radio"/> Yes <input type="radio"/> No <input type="radio"/> N/A

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